

RECEIVED

Jul 07 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenwood County

Honorable Alex Kinlaw, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KRISTOPHER D. BAGWELL,

APPELLANT

APPELLATE CASE NO 2024-001279

RECORD ON APPEAL

WANDA H. CARTER
Interim Chief Appellate Defender

ALAN WILSON
Attorney General

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

MARK R. FARTHING
Senior Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEY FOR APPELLANT

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED JULY 24-25, 2024.....	1
SOLICITOR’S OBJECTIONS REGARDING VOIR DIRE QUESTIONS	5
COURT’S RULING	6
OBJECTION TO VOIR DIRE RULING BY THE DEFENSE	7
MOTION TO SUPPRESS JAIL CELL CALL (AND LYLE OBJECTION)	8
DISCOVERY VIOLATION MOTION.....	32
CONTINUED MOTION TO SUPPRESS JAIL CELL CALL (LYLE OBJECTION)	32
CONTINUED DISCOVERY VIOLATION MOTION AND PLEA OFFER MOTION	34
RESOLUTION ON PLEA OFFER	39
CONTINUED MOTION TO SUPPRESS JAIL CELL CALL (LYLE OBJECTION)	41
COURT’S RULING (JAIL CALL).....	48
COURT’S RULING ON DISCOVERY MOTION.....	49
DEFENSE MOTION FOR A CONTINUANCE	49
COURT’S RULING	49
PLEA RESOLUTION REVISITED.....	52
COURT’S REMARKS TO THE VENIREPERSONS.....	55
JURY VOIR DIRE	60
JURY SELECTION.....	69
MOTION TO SEQUESTER WITNESS (LEAD OFFICER)	79
COURT’S RULING	80
OPENING STATEMENT BY SOLICITOR.....	85

OPENING STATEMENT BY DEFENSE	87
TRIAL TESTIMONY	
JARED GREER	91
ANDREW HERRING	115
CHARLES MOORE	134
OBJECTION TO STATE’S EXHIBIT NO. 3 (JAIL CELL CALL)	136
TRIAL TESTIMONY CONTINUED	
KATHY LANCE	138
KRISTEN MCCALL	143
STATE RESTS	150
DIRECTED VERDICT MOTION AND RENEWED PRIOR MOTIONS	150
COURT’S RULING	151
RIGHT TO TESTIFY COLLOQUY	154
JURY CHARGE CONFERENCE	156
DEFENS RESTS	161
CLOSING ARGUMENT BY SOLICITOR	162
CLOSING ARGUMENT BY DEFENSE COUNSEL	170
JURY CHARGE ON THE LAW	188
JURY VERDICT	205
SENTENCING	209
INDICTMENTS	211
CERTIFICATE OF COUNSEL	213

THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:

STATE'S EXHIBIT NO. 3 – DVD – JAIL PHONE CALLS

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF GREENVILLE	)	2023-GS-23-01605
	)	
	)	
	)	
	)	
STATE OF SOUTH CAROLINA,	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
KRISTOPHER DAVID BAGWELL,	)	
DEFENDANT.	)	
_____	)	

July 24-25, 2024
Greenville, South Carolina

B E F O R E:

THE HONORABLE ALEX KINLAW, JUDGE.

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

GRACE MOHONEY, ESQ.
SYDNEY CASE, ESQ.
Attorney for the Plaintiff

ZACHARY DEMAIO, ESQ.
RACHEL KEPLEY, ESQ.
Attorney for the Defendant

HOLLIE M. JENKINS
Court Reporter III

I N D E X

(PW) - Denotes Plaintiff's Witness
(DW) - Denotes Defense Witness

	<u>Page No.</u>
Opening Statement by the State.....	85
Opening Statement by the Defense.....	87
<u>(PW) JARED GREER:</u>	
Direct Examination by Ms. Moroney.....	91
Cross-Examination by Mr. Demaio.....	103
Redirect Examination by Ms. Moroney.....	109
Recross-Examination by Mr. Demaio.....	111
<u>(PW) ANDREW HERRING:</u>	
Direct Examination by Ms. Moroney.....	115
Cross-Examination by Mr. Demaio.....	127
Redirect Examination by Ms. Moroney.....	131
<u>(PW) CHARLES MOORE:</u>	
Direct Examination by Ms. Case.....	134
<u>(PW) KATHY LANCE:</u>	
Direct Examination by Ms. Case.....	138
<u>(PW) KRISTEN MCCALL:</u>	
Direct Examination by Ms. Moroney.....	143
Closing Argument by the State.....	162
Closing Argument by the Defense.....	170
Charge on the Law.....	188

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
------------	--------------------	------------	-------------

(State's Exhibits)

1	DVD - Greer Body-Worn Camera		
2	DVD - Herring Body-Worn Camera		
3	DVD - Jail Phone Calls		
4	Methamphetamine		
5	Methamphetamine		

(Court's Exhibits)

1	GCDC Policy		
2	GCDC Handbook		
3	Memorandum		

All Exhibits were retained by the Clerk of Court for Greenville County.

1 THE COURT: Madam Court Reporter, let's go on the
2 record.

3 Are you Kristopher Bagwell?

4 DEFENDANT BAGWELL: Yes, sir, I am.

5 THE COURT: How you doing?

6 DEFENDANT BAGWELL: I'm doing as best as possible.

7 THE COURT: Good. Good. Good.

8 This is State vs. Kristopher David Bagwell. He is
9 present, along with a plethora of lawyers.

10 MR. DEMAIO: Thank you, Your Honor.

11 THE COURT: He has Mr. Demaio, Ms. Rachel Kepley.
12 Who else am I missing?

13 MR. MARTINEZ: Michael Martinez.

14 THE COURT: Michael Martinez.

15 And the State is present. On behalf of the State is
16 Ms.?

17 MS. MORONEY: Grace Moroney, Your Honor.

18 THE COURT: Grace Moroney and Sydney Case.

19 And this young lady?

20 MS. SANDY NASON: Sandy Nason, Your Honor.

21 THE COURT: All right. Got you.

22 All right. This is -- I've been advised that this is
23 probably a trial that would probably last maybe a day,
24 give or take. Is that where we are?

25 MS. MORONEY: That's where we think it is, Your

1 Honor.

2 THE COURT: Okay. I have in my possession some -- a
3 witness list from the State. And then I have a witness
4 list from the Defendant. And then I have some voir dire
5 questions proposed by the Defendant.

6 Did the State look at them?

7 MS. MORONEY: I did, Your Honor. I only have an
8 objection to the last two, actually. Because I believe
9 that would be kind of commenting on the facts of the case.

10 THE COURT: Are you talking about four and five?

11 MS. MORONEY: Four and five, correct, Your Honor.
12 It's about substance abuse and addiction and working in
13 that field.

14 THE COURT: Which one of you lawyers want to respond?

15 MS. KEPLEY: I'll respond to that, Judge. Those voir
16 dire questions are directed to figure out if any jury
17 members have any knowledge, experience or bias related to
18 addiction or addiction treatment. This is -- it's charged
19 with possession with intent to distribute third offense,
20 but it's a personal use case, Judge. So that's where
21 bias, knowledge is going to be very crucial in figuring
22 out how to use our strikes.

23 THE COURT: What didn't you like about it? You just
24 don't like it?

25 MS. MORONEY: Well, Your Honor, I think it is trying

1 to introduce, basically, their theory of the case that
2 this is an addiction issue and not a possession with
3 intent to distribute type case. I understand their
4 probably going to ask Your Honor for a possession charge
5 at the end of this. We are proceeding on a PWID type of
6 theory with the weight being found on Mr. Bagwell.

7 I think -- you know, when we come to -- you know, in
8 Greenville, my experience is that we kind of keep it
9 limited as to what the factual questions are going to be
10 towards a jury pool. I think I've seen Your Honor
11 actually ask, you know, does anyone else have any other
12 potential biases about anything that pertains to this.
13 And if they don't stand, they don't stand. We already
14 know the employment histories of all the jurors and their
15 spouses from qualification. I think it's unnecessary and
16 would be, essentially, a comment on the facts.

17 THE COURT: Okay. I'll tell you what we're going to
18 do. The reason I'm going to eliminate number five, I'm
19 going to tell you why, because if you were in jury
20 qualifications, you would have found that out -- wait a
21 minute, you wouldn't have found out about any relative.

22 But number four, I was thinking about changing this
23 and I did in the past, has any member of the jury panel or
24 relative ever suffered from drug abuse and leave it at
25 that. Take the word substance out and say drug abuse.

1 MS. KEPLEY: I have no objection to that, Judge.

2 THE COURT: She objects, but I don't care.

3 MS. MORONEY: That's fine with me, Your Honor.

4 THE COURT: Drug abuse. I'm not inclined to do
5 number five. I'll do four, but not five.

6 MS. KEPLEY: Thank you, Judge.

7 THE COURT: But your objection is noted for the
8 record.

9 MS. MORONEY: Thank you, Your Honor.

10 THE COURT: All right. So we'll make that
11 modification.

12 We've got -- do we have any pre-trial motions that we
13 need to address before we bring the panel up?

14 MS. MORONEY: Your Honor, the State has not heard of
15 any. I feel she's just stood up because -- I mean, if
16 there are going to be some, I have no idea what they're
17 about.

18 MS. KEPLEY: Well, we've informed the State that we
19 do have a suppression motion. I expect it would take some
20 time. There's, also, some discovery issues, Judge, some
21 discovery violation issues. We're going to be asking for
22 suppression of a jail call in this case that was provided
23 --

24 THE COURT: And you're going to put up some testimony
25 and all that?

1 MS. KEPLEY: Well, we, essentially, have three
2 different basis for suppression. The first two, I,
3 certainly, don't think need any testimony. The third
4 portion would be it be suppressed under the Fourth
5 Amendment. And I think we would need testimony and a
6 hearing on that basis, Judge.

7 THE COURT: Well, let me ask you this, are you -- in
8 terms of trying to facilitate the time, are you okay with
9 us trying to bring the panel up here, pick a jury and get
10 started -- it's 2:30. I figure it's probably going to
11 take about an hour. That puts us at 3:30. I'll send the
12 jury home and then hear your motions. And then we'll
13 start -- then we just start fresh tomorrow morning. I
14 mean, I'm going to hear the motions today, but we just
15 start fresh tomorrow morning. Does that work?

16 MS. KEPLEY: Yeah, that works for us, Your Honor.

17 THE COURT: Does that work for you?

18 MS. MORONEY: Your Honor, the only thing I noticed, I
19 truly do not know the basis of the suppression motions,
20 what they're -- other than the jail phone call, she's not
21 said whether it's to suppress the drug evidence. I have
22 no --

23 THE COURT: You didn't send a written motion?

24 MS. KEPLEY: We were provided a jail call on Sunday,
25 Judge. We do have a written motion as to the Fourth

1 Amendment issue. We're happy to hand that over.

2 The other two motions as to discovery motion,
3 discovery violation issue. And we'd, also, be asking to
4 suppress under a 404(b) Lyle analysis. Those would be
5 oral motions. We don't have a written motion on that,
6 Judge.

7 THE COURT: Are you contesting notice of that?

8 MS. MORONEY: Your Honor, I walked in here today not
9 knowing that the motions would be. I know Judge Fant's
10 law clerk when he previously thought he was going to be
11 hearing the case asked for these to be provided to the
12 State as soon as possible. And the first time I'm hearing
13 of it is verbally from Ms. Kepley, who is not even the
14 attorney of record. And I have no other --

15 MS. KEPLEY: We let counsel know on Monday we had a
16 suppression hearing, Judge. I'm not sure what she's
17 talking about.

18 MS. MORONEY: That is incorrect. That was not passed
19 off to me.

20 THE COURT: Okay. Well, I think, counsel, you've
21 been practicing long enough to know -- you can handle a
22 suppression motion even if they just give it to you the
23 day of, can't you?

24 MS. MORONEY: We can, Your Honor. But there is some
25 case law that suggest we need to know kind of what the

1 basis of that is so we can be prepared with our witnesses
2 to go forward. Because a suppression motion, especially
3 in a case that involves a warrantless search like this one
4 does requires testimony from the stand. So just to have
5 it for judicial purposes, you know, ease of the flow of
6 scheduling and such, you know, would be helpful to point
7 out what --

8 THE COURT: Since it's the eleventh hour, can she --

9 MS. KEPLEY: Judge, a point of clarification, to be
10 fair, we're not having any suppression motion relating to
11 the drugs for which Mr. Bagwell is charged. We're not
12 doing that. I don't expect to call any testimony to that.
13 The only thing that we would be asking to suppress would
14 be a jail phone call that was provided on Sunday, Judge.
15 That's the only issue. That's the only thing we would be
16 asking to suppress.

17 THE COURT: You can handle that, can't you?

18 MS. MORONEY: I can, Your Honor, but, you know, I --
19 I think Your Honor has said before that having an equal
20 playing field is best. If they could just provide me
21 information about what the basis of the suppression is
22 other than a vague reference to a discovery violation,
23 that would be helpful.

24 THE COURT: What you want to say?

25 MS. KEPLEY: We certainly have a written motion as to

1 the Fourth Amendment issue. Mr. Martinez was going to
2 handle the Fourth Amendment suppression hearing.

3 THE COURT: Have you given the other side a copy?

4 MR. MARTINEZ: I have not, Your Honor. And as Ms.
5 Kepley noted, this jail call was provided on Sunday. So
6 this is a particular issue that I think is -- is
7 prevalent. And so --

8 THE COURT: Where did you get the jail call from?
9 Who sent it to you?

10 MR. MARTINEZ: Ms. Moroney provided it on Sunday.

11 MS. MORONEY: That's correct, Your Honor.

12 THE COURT: Okay.

13 MR. MARTINEZ: And Your Honor, the argument we have
14 is based on the Fourth Amendment and some other things.
15 So while I have been working on this argument for a while
16 because this issue is so prevalent, this particular call
17 was just provided on Sunday. We have incorporated facts
18 from this case into the motion as well as some reference
19 to policies and procedures from the detention center about
20 this that I received today.

21 And so, Your Honor, that's the main reason we haven't
22 really turned this over. I'm happy to do it now. But
23 it's a suppression motion, Your Honor, Fourth Amendment as
24 well as some other matters. I don't believe it's --
25 there's any rule that requires us to turn over something

1 ahead of time, especially in light of the fact that the
2 discovery that we're seeking to suppress here was turned
3 over three days ago.

4 THE COURT: What do you say?

5 MS. MORONEY: Your Honor, it's a jail phone call that
6 I started to review this weekend in preparation for trial.
7 After learning that Mr. Elmore's case was continued,
8 several of our docketing cases were continued and there's
9 a potential we would be reached. I reviewed jail phone
10 calls and found one that I found to be relevant. I
11 immediately produced it to the Defense, downloaded it, put
12 it in PCMS, released it and then, in fact, e-mailed a copy
13 to Mr. Demaio notifying him that I intended to introduce
14 this. It's one 15-minute jail phone call of this
15 Defendant's own statements. And it's my understanding
16 that GCDC allows access to jail phone calls to the Defense
17 if they request such.

18 THE COURT: So you've got a motion to suppress the
19 call?

20 MR. MARTINEZ: Yes, Your Honor.

21 THE COURT: Why can't we move forward with that?

22 MS. MORONEY: I'd like to see -- you know, if they
23 have a Fourth Amendment and this is a bigger issue, then
24 I'd like to be able to prepare just a little bit for that
25 motion. That's all I was requesting. If we have motions

1 that we intend to hear before the trial, I usually hand
2 mine over to them. They hand them back over to me.

3 THE COURT: So you want to pick the jury today and
4 then hear all the motions first thing in the morning?

5 MR. MARTINEZ: I believe we're prepared to go forward
6 on that motion today, but if Ms. Moroney needs time to
7 review it.

8 THE COURT: You need to look at it overnight?

9 MS. MORONEY: I'll look at it now and I think we can
10 go forward today. I would just like to have something to
11 look at.

12 MR. MARTINEZ: And Your Honor, it's an unusual
13 circumstance to have to do this, but I do want to alert
14 the Court that as part of the particular testimony that we
15 intend to elicit as related to this motion is testimony
16 from Ms. Moroney. As she's the one who reviewed and
17 listened to this call, I think it's necessary to elicit
18 the testimony as to how she has access to this call and
19 how that relates to our argument on the Fourth Amendment,
20 Your Honor.

21 THE COURT: So you want to call her as a witness?

22 MR. MARTINEZ: Correct, Your Honor.

23 THE COURT: What do you say, counsel?

24 MS. MORONEY: Your Honor, that's unheard of. I mean,
25 that is -- I have just told you as a member of the bar in

1 good standing and an officer of this Court how I came
2 across the jail phone call and what I did. And I can -- I
3 have shown that. I have the e-mail that I sent to Mr.
4 Demaio that he responded to. I think I even copied Ms.
5 Kepley on that.

6 THE COURT: You just don't trust her?

7 MR. MARTINEZ: Your Honor, it's not about that, but I
8 do have to create a record for Mr. Bagwell's case. And
9 it's not -- I need to elicit testimony about exactly the
10 nature of the access that not only Ms. Moroney, but from
11 my understanding, the entire solicitor's office has to the
12 inmate jail calls. I think that's relevant to the motion
13 and I do think it's essential to presenting this case and
14 arguing this motion, Your Honor.

15 THE COURT: How does the Solicitor's office have
16 access to jail calls? Can you answer that?

17 MS. MORONEY: I can answer as to my access, if that's
18 okay, Your Honor?

19 THE COURT: Yeah. Go ahead.

20 MS. MORONEY: I was given a log-in to the Securus,
21 slash, NexGen.

22 THE COURT: Who gave you that?

23 MS. MORONEY: A person at GCDC.

24 THE COURT: At your request?

25 MS. MORONEY: We are all offered the opportunity to

1 have the log-in. And if you want one, I think you have to
2 do a little bit of training and they provide you one.

3 THE COURT: So Defense counsel is able to do exactly
4 what you did to get it?

5 MS. MORONEY: My understanding, with respect to just
6 the defendants because, obviously, Defense counsel is not
7 entitled to all jail phone calls.

8 THE COURT: Right.

9 MS. MORONEY: They're entitled to the calls made by
10 their clients because those are, of course, their client's
11 statements.

12 THE COURT: So they have the opportunity to get the
13 same thing you got?

14 MS. MORONEY: That's correct, Your Honor.

15 MR. MARTINEZ: And, Your Honor, with respect to our
16 individual clients. But I want to note that it's my
17 understanding that the State has, essentially, unfettered
18 access to these calls. We have to, actually, get a
19 release from our client to obtain those calls. So it's
20 not simply --

21 I don't have a Securus account. I've never been
22 offered a Securus account. And part of the motion today
23 and the presentation to the Court will be policies and
24 procedures from the detention center about the release of
25 jail calls from inmates. And I don't want to get too far

1 into the motion, but, essentially, the State is conducting
2 a search by listening to these calls. And I believe the
3 nature of their access, how they get these phone calls,
4 how they listen to them is a search under the Fourth
5 Amendment. And I believe that we're entitled to elicit
6 that testimony to support our argument, Your Honor.
7 And -- and the -- the nature of the access, how long
8 they've had access for, when it's provided, all of those
9 things are relevant to this motion, Your Honor.

10 THE COURT: And you're equating all that to an
11 unlawful search?

12 MR. MARTINEZ: Yes, Your Honor. And I have case law
13 to support that.

14 THE COURT: What case law you got to support that?

15 MR. MARTINEZ: It is a South Carolina Supreme Court
16 case, State vs. Ellison. And I can hand up a copy --

17 THE COURT: You've got a copy?

18 MR. MARTINEZ: -- of the motion that I can hand up to
19 the Court as well as a copy of the Court decision as well.

20 THE COURT: Could you provide it to opposing counsel?

21 MR. MARTINEZ: Yes, Your Honor.

22 THE COURT: Go ahead.

23 MR. MARTINEZ: Your Honor, State vs. Ellison, I think
24 you'll notice it is an older case, but I think it is fully
25 analogous to the circumstances that we have here. The --

1 in that case, the -- the Defendant was incarcerated,
2 actually, at the Greenville County jail on a breach of
3 trust charge, pending charge just as Mr. Bagwell is. And
4 a detective, who was unconnected with the operation of the
5 jail, unconnected to ensuring jail security institutional
6 order, anything of that nature went to the jail, got
7 permission from the jail staff member who was tasked with,
8 basically, scanning outgoing mail, allowed the detective
9 to review and copy these letters that turned out to be
10 incriminating, turned that over, I guess, during the
11 course of discovery. It was, ultimately, introduced in
12 the Defendant's trial where he was convicted.

13 On appeal to the South Carolina Supreme Court, the
14 Court said that was an illegal search under the Fourth
15 Amendment. Because the case law authorizing the screening
16 or searching of inmate mail and other items is on the
17 rational of jail security institutional order. It's -- it
18 doesn't permit just a wholesale exploratory search by a
19 member of, essentially, the Prosecution team entirely in
20 search of evidence.

21 And that's precisely what I believe Ms. Moroney said
22 earlier. She started looking at these calls last week in
23 preparation for this trial. It clearly has nothing to do
24 with institutional order. I would, also, note that this
25 call was from July of 2021, so more than three years ago.

1 And Your Honor, exactly as in Ellison, the detective
2 was engaging in a purely exploratory search, never
3 attempted to demonstrate probable cause. He never got a
4 warrant. No -- nothing to indicate exigent circumstances.
5 It was pure investigation, plain and simple, in pursuit of
6 a conviction. That's all it was there. That's all it is
7 here. The fact that it's a monitor recorded jail call,
8 audio recording is -- is not distinguishable from a
9 handwritten letter of the Defendant at the jail.

10 And so, Your Honor, that is -- that is the main basis
11 for the motion. I would, also -- I laid out in the
12 memorandum that I've handed up, we, also, make
13 arguments -- Ellison is really based on the Fourth
14 Amendment.

15 We would, also, point out that the South Carolina
16 Constitution's expressed right to privacy provision
17 establishes a higher floor than the Fourth Amendment.
18 That's been clear throughout our appellate courts analysis
19 of that provision.

20 And so even if Ellison didn't hold that this was --
21 that this violated the Fourth Amendment, it would violate
22 the expressed right to privacy under our own constitution.
23 And, basically, that analysis is the reasonableness of the
24 search. And when you evaluate the reasonableness of the
25 search, the nature and purpose and scope of the search is

1 relevant. The nature of the search is, essentially,
2 wholesale access to pretrial detainee, someone who's never
3 been convicted of this crime, any call that they have made
4 over the course of their detainment in the detention
5 center pending trial.

6 The -- and the purpose is to collect evidence. It
7 has nothing to do with jail security. And therefore,
8 doesn't support the rationals in the many cases the U.S.
9 Supreme Court has decided pointing out that institutional
10 order, institutional security is the basis for why inmates
11 do not have the same expectation of privacy as someone
12 else.

13 Investigation has nothing to do with institutional
14 security. The fact that this -- this call, this evidence
15 was discovered three years after the fact, certainly,
16 belies any notion that it was done in support or to
17 accomplish some jail security function.

18 And Your Honor, if I may, I mentioned some policies
19 from the detention center that I would hand up and make
20 Court Exhibits. And I reference them in the motion as
21 Exhibit 1 is the call policy and Exhibit No. 2 is the
22 inmate handbook. And they're referenced -- the policy
23 references the handbook. And, essentially, what the
24 policy says is --

25 THE COURT: Give her a minute to mark them.

1 MR. MARTINEZ: Yes, sir. I'm sorry.

2 (WHEREUPON, Court's Exhibit Nos. 1 and 2 were marked
3 for identification only.)

4 THE COURT: Go ahead. .

5 MR. MARTINEZ: Your Honor, in the policy on Page 2,
6 it talks about inmate notification and consent. And,
7 essentially, it says inmates are notified through the
8 inmate handbook that telephone calls and visits are
9 subject to recording and monitoring. And there's some
10 posted notices in the detention center. The handbook in
11 turn says telephone calls are recorded and may be
12 monitored. That's Page 21 of that handbook.

13 Nowhere in either the policy or in the handbook or on
14 the recorded call itself is the inmate informed that not
15 only is this call monitored and recorded, but the
16 prosecutor on your case has complete access to every
17 single call you have made. And again, this -- obviously,
18 we are kind of past the explaining why it's necessary to
19 call Ms. Moroney as a witness. But some of the testimony
20 that I would seek to illicit would be, you know, exactly
21 the purpose of listening to the call. And exactly, you
22 know, why -- why the solicitor's office has this -- has
23 this access and the nature of that access.

24 And I would, also, seek to elicit, you know, did they
25 have any probable cause? Did they get a search warrant?

1 I don't believe there's any basis to suggest that. But,
2 you know, these are the types of things I would seek to
3 elicit.

4 But my point in bringing up the policy and this
5 notion of the Defendant consenting is the scope of consent
6 may be limited by the person giving the purported consent.

7 And the reason Courts have said jails, prisons that
8 they have the right to listen and monitor to inmate calls,
9 letters, things like that is to ensure jail security. And
10 so that's why -- that's why it makes sense that consent
11 could be authorized to them. But that doesn't mean it's
12 complete authorization to the entire law enforcement
13 investigative agency community, including, apparently, the
14 solicitor's office.

15 And it's my understanding -- and again, this would be
16 testimony I would seek to elicit -- would be is this
17 access perpetual? Can the solicitor's office review
18 inmate telephone calls from -- obviously, years earlier,
19 they can. But does the inmate still have to be
20 incarcerated in the detention center at the time that they
21 listen to the call? All those things I think are relevant
22 to the nature and purpose of the search and how it -- you
23 know, any notion that it would be justified to listen to
24 the call to the conduct this search.

25 And so the -- I believe that there's -- there's no

1 true basis for finding that he consented to the
2 solicitor's office listening to his call or anyone,
3 really, other than the detention center by virtue of
4 ensuring jail security.

5 And so in numerous cases, the scope of consent may be
6 limited. In this case, there's nothing in these policies
7 in the inmate handbook, in the recorded call itself
8 uniforming the inmate that anyone in the law enforcement
9 community can listen to those calls carte blanche, no
10 justification needed.

11 So the last thing I would say is the basis for our
12 motion is that it candidly implicates the Sixth Amendment
13 and the right to present a defense, the right to -- the
14 effective assistance of counsel. And I would note in this
15 policy that it specifically lays out certain information
16 that may be prohibited from being released generally, such
17 as medical information, attorney-client privilege
18 communication and financial privacy. But in each of those
19 categories, there's still an exception that says the only
20 exception to this practice, meaning the -- the prohibition
21 on releasing it is the release or access to inmate records
22 for law enforcement persons regarding active criminal
23 investigations, to include designated facility staff for
24 security purposes.

25 So, essentially, what that means is an inmate could

1 have a conversation with his lawyer -- and it explicitly
2 recognizes this scenario. Have a conversation with his
3 lawyer, then call his family and talk about that
4 discussion with his lawyer. Now the State has access to
5 that information. That would be privileged communication.
6 There's seemingly no limitation on the solicitor's office
7 having access to such communications that really implicate
8 the -- the right to effective assistance of counsel and to
9 ensure privileged communication.

10 THE COURT: All right. Before I hear -- are you
11 finished?

12 MR. MARTINEZ: Yes, Your Honor.

13 THE COURT: Before I hear from you, counsel, I've got
14 some logistical questions to ask and maybe you can answer
15 them. What's the solicitor's office procedure or mode of
16 operandi in terms of every case that -- you may or may
17 know the answer to this -- case that comes through their
18 office? Is it customary and normal procedure if the
19 Defendant is incarcerated waiting -- or in jail waiting
20 for trial, is it normally the practice of the solicitor's
21 offices to screen or to determine whether or not that
22 particular inmate made some calls; and if so, for the
23 solicitor's office to look at those calls in every
24 individual case? Is that something that's normally done?
25 And if not, what's the procedure? I mean, what's the mode

1 of operandi in terms of jail calls and the solicitor's
2 office having access to those calls without a written
3 consent from the inmate? What's the procedure?

4 MS. MORONEY: Sure, Your Honor. I think it's a
5 case-by-case basis. So it would depend on the prosecutor
6 you asked in our office. We don't have a policy that says
7 we must listen to or not listen to.

8 THE COURT: So what standard would the Prosecutor --
9 or you, since you're here.

10 MS. MORONEY: Sure.

11 THE COURT: What standard would you utilize to
12 determine whether or not you would listen to a jail call
13 on a case that you're handling? What would make you do
14 that?

15 MS. MORONEY: Well, Your Honor, I -- you know, it
16 depends on the case, on what is going on in the case. But
17 what I would like to touch on very briefly, Your Honor, if
18 I may, is I think a part of -- it's a very interesting
19 argument that Mr. Martinez put forth to the Court, but it
20 really does gloss over the purpose of the Fourth Amendment
21 in that this is not a search. We don't even reach any of
22 the other questions about warrants, probable cause, any
23 sort of issue about our access, law enforcement's access,
24 the jail detention center employees' access because we
25 never get there because the answer to that question of

1 whether review of a jail phone call is a search is no.

2 There is no reasonable expectation of privacy in a
3 jail phone call. They're notified at the very beginning
4 and through signage and through their consent when they
5 get their pin number as Mr. Martinez just went through
6 that they're being recorded and monitored. And whether
7 that comes to me through Sergeant Herring has looked at
8 the jail phone call and he sends it to me on a murder case
9 and it's added to my file and placed in discovery for Ms.
10 Kepley to have, that does not require a search warrant,
11 never has. This has never been brought up before in that
12 kind of context.

13 It would be the same as it applies to me. I have
14 access to jail phone calls. We are part of -- you know,
15 we're not part of law enforcement, but we do have a law
16 enforcement objective in some sense, which is to help take
17 these cases from one place to the next, which is in front
18 of 12 jurors and to convict someone of a crime they've
19 been accused of.

20 Our access to jail phone calls is similar to law
21 enforcement. We're allowed to look at them. They are not
22 protected by the Fourth Amendment, so we don't even get
23 there is my argument, Your Honor. No one could ever say
24 that there is a reasonable expectation of privacy when
25 you're talking to someone on a recorded jail phone call,

1 except in the situations that Mr. Martinez has pointed out
2 in the policy, which is probably talking to medical
3 personnel, if they need to speak with a doctor on the
4 phone, and talking to their attorney, which, of course, we
5 do not have access to.

6 So I think that while that is a very interesting
7 argument he just put out there and very novel, it fails at
8 the very start because this does not qualify as a search
9 under the Fourth Amendment.

10 THE COURT: Well, I know at the jail, you don't have
11 access to any communication between the inmate and his
12 attorney. Obviously, that's --

13 MS. MORONEY: That's correct, I do not.

14 THE COURT: You don't have any access to any
15 communication between medical personnel.

16 MS. MORONEY: It appears I do not.

17 THE COURT: You don't have any access to that. But I
18 think you would agree, counsel, that Mr. Martinez makes an
19 interesting argument.

20 MS. MORONEY: I think it's a novel argument. I don't
21 think that it is sound in Fourth Amendment case law, Your
22 Honor, based on all the research I have at my fingertips.
23 I did not print anything out, of course, because I was not
24 aware this was on the table, but we have more recent case
25 law than Ellison, which is 1976, that says that,

1 basically, if a person comes into the jail and their
2 property and effects are taken from them and say they're
3 suspected for one crime and someone else is hot on their
4 tail for a second, no search warrant is needed to obtain
5 those property and effects from the jail. Because there's
6 no reasonable expectation of privacy in the things that
7 you bring into the jail with you and what you say in the
8 jail on a recorded line that you've been notified of every
9 time you pick up that receiver.

10 That case is -- let me get the cite for you, Your
11 Honor. That would be State of South Carolina vs. Muguit.
12 It's a Court of Appeals opinion in 2009. And the cite
13 would be 381 S.C. 114. That's -- it's already been ruled
14 upon more recently than 1976, as Mr. Martínez is kind of
15 resting his hat on.

16 But there's no reasonable expectation of privacy, so
17 therefore, it's not a search. It does not require a
18 search warrant or any sort of establishment of probable
19 cause to obtain those items.

20 THE COURT: And you can -- you can solicit jail calls
21 all the way up to the time of trial? Is that what y'all
22 do?

23 MS. MORONEY: Well, Your Honor --

24 THE COURT: Because you just recently checked that?

25 MS. MORONEY: I just recently checked that one.

1 THE COURT: What made you do that?

2 MS. MORONEY: Well, as I stated earlier, Mr. Elmore's
3 case fell off the trial docket. We had a bunch of status
4 conference cases that fell off the trial docket.

5 THE COURT: No, I mean what made you check that jail
6 call?

7 MS. MORONEY: I just went back and said okay, he was
8 arrested on seven something 2021 --

9 THE COURT: Let's just see what he --

10 MS. MORONEY: See if he said anything about it, yep.
11 And, of course, it's a 15-minute jail phone call. I
12 intend to only introduce the portion of it that is
13 relevant to this case and make the appropriate redactions
14 if he mentions anything that would be inappropriate for
15 the jury. It was turned over as soon as I had it.

16 THE COURT: Other than the Ellison case,
17 Mr. Martinez, is there any -- there's no recent case that
18 addresses that issue; is that right?

19 MR. MARTINEZ: There's --

20 THE COURT: I think it's a novel issue and I think
21 maybe the appellate court needs to chime in on it.

22 MR. MARTINEZ: And what I would point out, Your
23 Honor, is although State v. Ellison is an older case, it's
24 never been overruled. There's never been an appellate
25 court that said Ellison doesn't apply to jail calls.

1 And I haven't read the case that Ms. Moroney cited a
2 minute ago, but it sounded from her description like it
3 referred to physical property that a person brings into
4 the jail. That is distinct from verbal communications
5 that a person has while detained, again, pre-trial while
6 they're still cloaked with that presumption of innocence.

7 And I don't -- under Ellison, I don't think Ms.
8 Moroney could go down to the jail and look through
9 Mr. Bagwell's or any other person's written outgoing
10 mail --

11 THE COURT: But Ellison doesn't really speak to jail
12 calls.

13 MR. MARTINEZ: It doesn't, Your Honor, probably
14 because it wasn't really an issue --

15 THE COURT: An issue back when this case was decided.

16 MR. MARTINEZ: -- back then.

17 THE COURT: It may have not been. Well, 1976,
18 technology was extremely different back then. That wasn't
19 a big issue back then.

20 MR. MARTINEZ: But I still think that it is perfectly
21 analogous to the circumstances in Ellison. I don't think
22 the fact that it's a jail call changes that analysis. It
23 is still a search. Mr. Bagwell has an expectation of
24 privacy. And the expectation of privacy analysis is the
25 same.

1 If -- if Mr. Ellison had an expectation of privacy
2 with respect to his written outgoing mail, but that was
3 still permitted the jail to review and scan that, then
4 he -- then Mr. Bagwell and every inmate at the detention
5 center right now has an expectation of privacy as it
6 relates to just categorical searches by the Prosecution or
7 by generalized law enforcement who are not connected with
8 the operation or security of the jail. I think that is
9 very clear from the Supreme Court's decision in Ellison.
10 I don't -- the fact that it is from 1976 doesn't change
11 the fact that it is still good law.

12 THE COURT: Well, you know, I think that's a very
13 well put argument, counsel. I'm just not prepared at this
14 time to expand the Fourth Amendment to include jail calls.
15 You know -- and I think it's a novel argument that you're
16 making. I think it's one that I hadn't really thought
17 about. And I looked at Ellison and maybe the court on the
18 appellate level one day may look at it differently and may
19 feel that the umbrella afforded in Ellison may, also, be
20 extended the include jail calls. But right now, I'm not
21 prepared to expand the Fourth Amendment to that extent.

22 But I'll note your argument for the record. I'm not
23 prepared to grant the motion.

24 MR. MARTINEZ: And I understand Your Honor's ruling.
25 Just for purposes of preserving the record, I would note

1 as it relates to the South Carolina Constitution right to
2 privacy provision, the committee who studied the adoption
3 of that provision specifically was considering adopting
4 that provision to guard against the advent of technology
5 that would allow for invasions of privacy. I think this
6 fits perfectly within that.

7 I understand Your Honor's argument -- or I'm sorry,
8 Your Honor's ruling on the Fourth Amendment. I would,
9 also, ask for a ruling on the -- on the basis -- on the
10 argument for the right to privacy under the South Carolina
11 Constitution, which is a higher floor than the Fourth
12 Amendment.

13 THE COURT: All right. And I think you addressed
14 that.

15 MS. MORONEY: I think I addressed that with --

16 THE COURT: And I would deny the motion.

17 MS. MORONEY: Thank you.

18 MR. MARTINEZ: And Your Honor, as it relates to Sixth
19 Amendment as well.

20 THE COURT: Yeah, I deny that as well.

21 MR. MARTINEZ: Thank you, Your Honor.

22 THE COURT: Okay. Any other pre-trial motions the
23 Court needs to address?

24 MS. KEPLEY: Judge, I have two other grounds for
25 suppression I would need to put on the record as well.

1 And if the discovery violations suppression motion is not
2 granted, we would be asking for a continuance. I think
3 we're required to, Judge.

4 THE COURT: Let me hear from you.

5 MS. KEPLEY: Sure. As we discussed at length, this
6 jail call is three years old and it was released on
7 Sunday --

8 THE COURT: We're talking about the jail call still?

9 MS. KEPLEY: We're still talking about the jail call,
10 Judge.

11 THE COURT: Are you going to argue something
12 different than what he just did?

13 MS. KEPLEY: Yes, Judge, yes. I think there's a
14 discovery violation here and I, certainly, have a duty to
15 bring that to the Court's attention.

16 THE COURT: What's the violation?

17 MS. KEPLEY: This is a -- the jail call includes a
18 statement from Mr. Bagwell that would, certainly, fall
19 under Rule 5 duty to disclose on the part of the State.
20 The call itself is three years old. So it's, certainly,
21 well outside the timeline when it should have been turned
22 over. It was given last minute, 24 hours before the trial
23 docket --

24 THE COURT: But the call was just made within the
25 last month, wasn't it?

1 MS. KEPLEY: No, the call is three years old, Judge.

2 THE COURT: Three years old?

3 MS. KEPLEY: Yeah, the call itself is three years
4 old. So it absolutely should have been turned over sooner
5 under Rule 5. I don't think there's any dispute about
6 that. The call itself is, also, I think undeniably falls
7 into Brady territory.

8 I think to explain that I need to explain a little
9 bit about what's on the call. If Your Honor wants to
10 review the call in camera or I can, certainly, describe
11 it. But I think to explain why it's Brady and why it's --

12 THE COURT: Give me a summary.

13 MS. KEPLEY: Sure. Back in July 1st of 2021,
14 Mr. Bagwell was arrested and he's charged with some
15 charges. But why we're here today is he had some
16 methamphetamine in his pocket. Okay. When he's arrested
17 in the jail, he makes a phone call presumably to his
18 girlfriend. This is the phone call --

19 THE COURT: To his girlfriend?

20 MS. KEPLEY: To his girlfriend, I believe so, Judge.

21 THE COURT: Okay.

22 MS. KEPLEY: -- that the State would seek to
23 introduce. During that phone call, he says, among very
24 personal things, he discusses his prior criminal history.
25 That he's scared. I think -- Ms. Moroney can correct me

1 if I'm wrong. I think the reasoning to seek to introduce
2 that call is that at some point in the call he says
3 something to the effect of during the arrest, I had some
4 dope in my hand that I threw and I don't know if the
5 police found it or not. His girlfriend says something
6 like well, I'm not going back there to look for it. I
7 think that's the reason Ms. Moroney would seek to
8 introduce it.

9 There is no dope or drugs of any sort that were found
10 on the scene. He's not charged with any drugs that are
11 found on the scene. But I think that's the statement they
12 would seek to introduce. I believe it would be material
13 to guilt or punishment and it has been in their control or
14 possession for the last three years. So I, certainly,
15 think it falls in the category of a Brady violation,
16 Judge.

17 And I will say it's, certainly, I believe a PCR not
18 to ask for a continuance for last minute discovery of this
19 nature.

20 And I think the bigger issue of the discovery
21 violation is Mr. Bagwell's offer is -- expired by this
22 point and his decision to take that offer or go to trial
23 is based on the evidence we had at the time. He -- we've
24 been negotiating this case for literal years. The offer
25 has been expired for a very long time. Had he known about

1 this jail phone call, he may have made a different
2 decision to take that offer. We really don't know.

3 We had, certainly, approached Ms. Moroney and said if
4 you're going to give us this last minute information you
5 intend to introduce, would you open up that old offer in
6 fairness? We talked to Mr. Bagwell. Mr. Bagwell said he
7 would take it. But Ms. Moroney says she will not put the
8 old expired offer on the table.

9 But I think the idea that they're giving new evidence
10 after the offer is expired that they intend to use at
11 trial, I don't think his decision to go to trial or plea
12 was very knowingly or voluntary. And I don't think it's
13 very fair.

14 THE COURT: So tell me about this offer.

15 MS. MORONEY: The offer initially to Mr. Bagwell was
16 ten years on the PWID third, which is an 85 percent ten
17 years. He's a true PWID third. His two priors are PWID
18 and PWID second. He then got an attorney with the public
19 defender's office, which was eventually Mr. Demaio. Mr.
20 Demaio and I discussed pleading him to a five-year
21 recommendation on a PWID second, which would be a parole
22 eligible offense.

23 What Ms. Kepley just said about my providing of the
24 jail phone call and their request for the old offer, I
25 don't know if that was done through someone else, but that

1 never reached me. So I don't know what that's about. If
2 that happened recently, that is not my memory of events.

3 Mr. Demaio and I had a long conversation about he
4 didn't want to take the five years. He said that -- Mr.
5 Demaio excused him from court several times during bond
6 card process, which I advised him I thought was silly
7 because it was a very good offer. Mr. Demaio could have
8 asked probation, whatever he wanted. The State's
9 recommendation was five years.

10 Mr. Bagwell, for Court's purposes, has been to prison
11 for six years on a PWID second. That was the basis of
12 that recommendation being five years. I thought that was
13 appropriate. It was open until the end of May. He
14 refused to take it. Mr. Demaio couldn't get him to take
15 it, whatever the case may be. Then he failed to appear,
16 which is why he's in jail right now. So it was placed on
17 the trial docket.

18 I am not authorized to reduce the charge at this time
19 without conferring with some of my supervisors. I know
20 that a conversation about that may have occurred earlier
21 today, but I am not privy to the outcome of that
22 conversation between, perhaps, the solicitor and the
23 public defender.

24 THE COURT: Okay. So, apparently, what your -- what
25 you sent over requesting, you don't have any knowledge --

1 at least, going through the phone calls, you don't know
2 anything about that?

3 MS. MORONEY: A request to reopen the offer?

4 THE COURT: No, the phone call. You said something
5 about talking to the girlfriend and getting that
6 information.

7 MS. KEPLEY: That's the contents of the jail phone
8 call that was provided on Sunday, Judge, the
9 three-year-old jail phone call.

10 THE COURT: All right. So what you're telling me
11 right now is the offer is expired and we're going to trial
12 on PWID --

13 MS. MORONEY: It's my understanding that the
14 Defense -- or the Defendant has rejected all of our
15 offers.

16 THE COURT: All right. Ms. Kepley, you're telling me
17 now that he would have accepted the offer?

18 MS. KEPLEY: I think having new discovery provided
19 after the expired offer, he may have very well made a
20 different choice. We've spoken to Mr. Bagwell today and
21 he tells me that is the case, that he would have,
22 certainly, taken that offer had this been provided.

23 Certainly, Ms. Moroney does not have to reopen the
24 old offer, that's, certainly, her choice. I'm not trying
25 to force her into anything. It's absolutely her right and

1 her choice. But if she's not going to reopen that offer,
2 I think in fairness, I think Rule 5, I think discovery,
3 the nature of discovery and Brady material would
4 necessitate that it be suppressed in all fairness, Judge.

5 THE COURT: Yes, ma'am. Anything else?

6 MS. MORONEY: Your Honor, just that the public
7 defender's office, anything that comes after a plea offer
8 has expired, which we are held to very strictly by a
9 docketing system in Greenville County, what our due dates
10 are. We're not allowed to change them in the solicitor's
11 office.

12 Basically, her argument is that anything that comes
13 after that is Brady, which is incorrect. The third prong
14 of Brady is to show prejudice. And I still right now have
15 not heard how it has prejudiced this Defendant in any way.
16 It is his own statements that he knew were being recorded
17 on a recorded line that was monitored at the detention
18 center. The fact that he did not disclose them to his own
19 defense attorney does not amount to a Brady violation by
20 the State.

21 She has not shown prejudice. It was provided as soon
22 as it was discovered. It is a 15-minute jail phone call
23 that I'm sure they've discussed with their client at some
24 point. And I have heard nothing further about trying to
25 get an offer back.

1 THE COURT: Do you think it would serve any purpose
2 at all for the two sides to have a discussion and maybe
3 you check with whomever you need to check with to see
4 whether or not the matter can be resolved by way of a
5 plea? Or is that a waste of time?

6 MS. MORONEY: I would defer to them, Your Honor.

7 MS. KEPLEY: It wouldn't be a waste of time on our
8 end, Judge. I have spoken to Mr. Bagwell this morning.
9 He says the original five-year offer that was given to Mr.
10 Demaio at some point was back on the table, he would,
11 certainly, take it.

12 THE COURT: All right. It's five minutes after 3:00.

13 MS. MORONEY: Your Honor, may I just briefly respond
14 to that? It would be the State's position to be clear
15 that the original offer would not be extended. So if
16 that's the only way that this gets resolved by a plea,
17 then we can go forward.

18 THE COURT: Is that --

19 MS. KEPLEY: I'm not sure, Judge. If they're not
20 willing to put the possession with intent to distribute
21 second five-year offer back on the table that I've
22 discussed with Mr. Bagwell, if that's not something
23 they're willing to extend, I, certainly, can't make them,
24 Judge.

25 MS. MORONEY: And that would not be extended, Your

1 Honor, just to be clear.

2 THE COURT: That's firm?

3 MS. MORONEY: That's firm.

4 THE COURT: Well, I guess we need to go ahead and
5 move forward with the trial. That's the only thing that's
6 next.

7 MS. MORONEY: We have nothing further, Your Honor,
8 pre-trial wise.

9 MS. KEPLEY: Your Honor, I will say if there's
10 another offer, we will, certainly, happily discuss it with
11 our client. I don't know what they're willing to do and
12 not willing to do. We're, certainly, open to resolving
13 this case, Judge.

14 THE COURT: How much time do you need? Do you want
15 to try to do that today?

16 MS. KEPLEY: I would, certainly, leave that in Ms.
17 Moroney's hands.

18 THE COURT: It's about five after 3:00. This case
19 will probably last a little over a day. The earlier we
20 get started, the earlier we get finished with it. We were
21 prepared to maybe start the case in the morning anyway.
22 So --

23 Have you got something to tell me, Solicitor?

24 MS. MORONEY: Deputy Solicitor McCall is going to go
25 check on the other courtroom to make sure where the jury

1 is at. I think that's what we're waiting on.

2 THE COURT: All right.

3 MS. KEPLEY: But I did have -- I'm not sure we got a
4 ruling on the discovery issue. But I did have another
5 motion I needed to make on suppression as well. I don't
6 know when is the appropriate time you want to put that on
7 record.

8 THE COURT: Go ahead.

9 MS. KEPLEY: Judge, the third ground we'd be asking
10 for this -- again, we're still talking about the jail
11 call. The third ground we're asking the jail call to be
12 suppressed is under 404(b). As I described the jail call,
13 I think in the light most favorable to the State, it can
14 be described as another bad act. It does not relate
15 directly to the crime he's charged with.

16 Again, he's charged with possessing methamphetamine
17 that was found in his pocket with an intent to distribute
18 the methamphetamine that was found in his pocket. The
19 jail call references him potentially having what he calls
20 dope in his hand and tossing it and not being sure if the
21 police found it or not during the same arrest, Judge.

22 So I think the proper analysis would be 404(b), other
23 bad act. Because if that is completely true, that would
24 be a separate crime that he's not on trial for and has not
25 been charged with. And again, just to relay those facts,

1 nothing was ever found at the scene. So when he says dope
2 in that jail call, we don't know which drug he could have
3 been referring to, marijuana, cocaine, heroin. There's
4 nothing else in that jail call that would indicate any
5 sort of intent to deal drugs, which is what this case is
6 going to be about, Judge.

7 The first -- the first prong on the 404(b) is whether
8 or not there's clear and convincing evidence that he even
9 committed this other bad act. Especially when there's no
10 charge or conviction, that has to be step one. The Court
11 must make a finding of clear and convincing evidence that
12 this happened on the record. Even if we admit the jail
13 call to be true, there's no knowledge of specificity of
14 the weight of the type.

15 So if this happened and we don't know exactly what it
16 was other than this bad act with enough certainty to say
17 it's clear and convincing that it happened. I think that
18 would require some level of specificity that doesn't exist
19 here.

20 If the officers had found something on scene that day
21 and they couldn't determine who had dropped it or where it
22 came from, I think that wouldn't fill in that gap enough
23 to rise to clear and convincing. I think it fails the
24 first prong.

25 I'm going to move to the second prong. That's an

1 analysis of whether or not this is relevant. The closest
2 the jail call gets to be incriminating is the statement
3 that he had dope in his hand. There's no way to know
4 which illegal drug or weight. Again, it tends -- whether
5 or not something is relevant doesn't tend to prove the
6 fact at issue. The only issue at trial is what's in his
7 pocket, what did he intend to do with it. Whether or not
8 he threw something or may have thrown something on the
9 ground and what it may or may not have been, I don't think
10 that rises to the level of relevance of what's in his
11 pocket, Judge.

12 The 404(b) would, also, require an analysis of,
13 essentially, a Lyle analysis. Okay. Is this being
14 offered for prejudicial reasons, for conformity reasons or
15 is there some other intention behind it? If they're
16 offering to show he had some unknown quantity of some
17 unknown drug at the time of his arrest, then he must be
18 the kind of person who deal drugs. That's what 404(b) and
19 Lyle says.

20 It doesn't go to motive. It doesn't go to identity.
21 It doesn't go to intent. It doesn't go to any sort of
22 common scheme. It's purely evidence of his character as a
23 potential drug user or potential drug dealer. The jail
24 call doesn't reference anything that could go directly to
25 intent to distribute other than the fact that he had some

1 other mystery drug on him. I would say that's exactly the
2 type of evidence prohibited by 404(b).

3 The last part of that 404(b) analysis is if it's
4 prejudicial or confusing under Rule 403, Judge. Admitting
5 the call runs the risk of creating unfair prejudice and,
6 also, I would say very clearly confusing to the jury.
7 Prejudice here is self-evidence in the call. It's a
8 private conversation with his girlfriend. He describes
9 how worried he is. He sounds very upset. He thinks he's
10 dropped some dope that wasn't found. The implication
11 being if he had more than one drug on him, he must be the
12 kind of person to deal drugs.

13 Firstly, I think that's a really huge leap that's
14 based on assumption and prejudice and not on a lot of
15 facts, Judge. Further, bringing in evidence about other
16 drugs that were never found or charged into the trial
17 poses a real risk of confusing the jury about what they're
18 being asked to determine he possessed. What type of drug
19 he was possessing. It creates a lot of risk that a jury
20 is deciding real issues based on misunderstandings and
21 prejudice.

22 And for all those reasons, I think -- if the Court
23 doesn't see fit to suppress it under Fourth Amendment or
24 Brady as a discovery violation, I would ask that it be
25 suppressed under 404(b), Judge.

1 MS. MORONEY: Your Honor, again, a bit of a stretch
2 of our rules of evidence to say it's not relevant to
3 intent. That is exactly what it's relevant to.

4 To give Your Honor kind of a background, it's not
5 just the jail phone call that has to be taken in context
6 with what the body cams show from the two officers who
7 chased Mr. Mr. Bagwell through a bunch of yards on that
8 day when he was arrested. I'm not going to go ahead and
9 lay out the whole State's case and theory of the case
10 because I don't think that's necessary. And I don't want
11 to show my hand, honestly, about what my argument is going
12 to be at the end of the day. But it's relevant to the
13 fact that it corroborates he's running from police, which
14 you'll see on the body cam when we get up and running in
15 this case. He's running from the two deputies. He's
16 reaching for his belt. And then at the end of the day
17 when he's placed down on the ground, he continues to reach
18 for the front part of his pockets. One of the deputies
19 has to utilize some level of force to get him to get his
20 arm back into a position behind his back.

21 It's relevant to that part of the case that, you
22 know, he was resisting when he was on the ground trying to
23 grab something from the front of him. And then he makes
24 an excited utterance when he finally gets in handcuffs
25 that oh, no, I thought I threw that away. So it directly

1 corroborates that he was intending to throw something away
2 and was reaching for something, which the deputies are
3 going to testify they observed as they were chasing him.

4 Now, Ms. Kepley is correct in that a search was
5 conducted and nothing was found. But I think it does
6 corroborate the concern for safety that the officers have
7 when approaching Mr. Bagwell and the reason for placing
8 him on the ground in that manner. And that he himself
9 said oh, I thought I got rid of that. You know, he got
10 rid of part of it.

11 We have frequent conversations with the Solicitor's
12 office and the public defender's office about what
13 constitutes a possession with intent to distribute drugs
14 just on weight alone. And typically, the things they'll
15 ask about to our office about how we intend to prove that
16 is was it multiple drugs? In this case, it was -- or was
17 it in multiple bags? In this case, it was. Were there
18 other drugs?

19 In this case, we're not sure, but we have the
20 testimony of Mr. Bagwell, essentially, through a jail
21 phone call saying that he threw some sort of dope away.
22 Whether it's marijuana or pills or whatever is up in the
23 air, but it shows intent to discard evidence, at least, in
24 that he was intending to get rid of things which is what
25 the deputies observed as he ran away from them on scene.

1 So I don't think it is as clear of 404(b) bad acts as
2 Ms. Kepley is trying to make it out to be. It does
3 clearly fall into absence of mistake and the intent of
4 Mr. Bagwell in his interaction with law enforcement. So
5 it corroborates the State's case and, honestly, is very
6 truthful as to what the deputies observed on scene when he
7 was running.

8 So that was the State's intent in introducing it.
9 It's not just for -- it's, certainly, not -- I do want to
10 be clear. It's, certainly, not to show he is of some bad
11 character or that he is a drug dealer. That is not what I
12 am getting at at all. It never crossed my mind. It's
13 more that he was trying to discard some sort of illegal
14 substance as he ran away, which the deputies observed and
15 they stated on scene that he's reaching for something.

16 THE COURT: Anything in response?

17 MS. KEPLEY: Well, I would say he's not charged with
18 discarding anything. He's not charged with resisting.
19 Those things are very outside the bounds of relevancy,
20 Judge. The only issue at trial is did he have drugs in
21 his pocket, did he intend to distribute them. If she's
22 trying to say this will prove some other things that he's
23 not charged with, I would say that's outside of relevancy
24 and that would fail the 404(b) test.

25 THE COURT: Anything else?

1 MS. MORONEY: He's charged with PWID based on weight,
2 Your Honor. It shows that he had something and he was
3 trying to discard it. And he was, in fact, reaching for
4 his belt. And at the very end of the day said, Oh, I
5 thought I got rid of that. Or however he said it, I
6 forget the exact wording.

7 THE COURT: Anything else?

8 MS. KEPLEY: Well, I would just point out, it's not
9 just 404(b). There's a lot of 403. The risk of unfair
10 prejudice is pretty high here. And I'm not sure the
11 benefit the State gets from introducing it. And I would
12 say this is going to be very confusing to the jury. I
13 think it should be suppressed for those reasons, Judge.

14 THE COURT: All right. I'm going to address the last
15 portion of what you said. First of all, I disagree. I
16 think the -- when you go to 403, I think the probative
17 value outweighs the prejudicial value. So I don't find
18 any prejudice there.

19 Now, when we look at 404(b), it says evidence of
20 other crimes, wrongs or acts is not permissible to prove
21 the character of a person in order to show the actions in
22 conformity therewith. It may, however, be admissible to
23 show motive, identity, the existence of a common scheme or
24 plan, the absence of mistake or accident or intent.

25 I would adopt the State's argument. I think it shows

1 intent. So I'm going to rule against you in that regard,
2 but adopt the rational for ruling against you or denying
3 your motion based upon your argument that the State made.
4 I agree with that.

5 MS. MORONEY: Thank you, Your Honor.

6 MS. KEPLEY: Thank you, Judge. And just for the
7 record, could I get a ruling on my motion to suppress for
8 discovery violation.

9 THE COURT: Denied.

10 MS. KEPLEY: If that motion is denied, Judge, I do
11 have to put on the record a motion for continuance for
12 late discovery.

13 THE COURT: All right. Unless the State wants to
14 respond to that, I'm prepared to deny that motion as well.

15 MS. MORONEY: Thank you, Your Honor.

16 THE COURT: All right. So as far as we know, we
17 are -- what posture are we in right now? Are we still
18 trying to have conversations regarding a resolution or are
19 we moving forward with a trial? Tell me where we are.
20 And I'm prepared to move forward with the trial if that's
21 where we are.

22 MS. MORONEY: I think the State believes we're moving
23 forward. I have not heard anything from the Defense about
24 intent to take a plea.

25 MR. DEMAIO: Judge, I think we have always been

1 amenable to plea negotiations in this case based on my
2 communication with the solicitor's office and otherwise.
3 I don't want to despair against anybody involved in this.
4 But there's been this sort of reluctance of the
5 solicitor's office to negotiate at this point in the case
6 pertaining to the fact that this case has been placed on
7 the trial docket and we have been, basically, removed or
8 sent prior plea offers or stopped negotiating at that
9 point.

10 We are happy to discuss this. Mr. Bagwell is
11 interested in plea negotiations and has been since the
12 time I started representing him in this case. He's ready
13 to plead this case out.

14 THE COURT: Well, it's my understanding that the
15 original one is off the table. The State is willing to
16 hear what the Defense wants to propose.

17 Am I putting words in your mouth?

18 MS. MORONEY: No, Your Honor. I just want to be
19 clear that he is afforded the opportunity to plead as
20 charged. He can enter a plea, of course, and avoid trial,
21 but it would be as charged. It would not be a reduction.

22 MR. DEMAIO: Respectfully, Judge, that's not a plea
23 negotiation. That's just a plea straight up. We're happy
24 to compromise, we're willing to work with the State and do
25 this, but if the State is unwilling to meet its own plea

1 offer. We've heard no terms as far as I'm aware with
2 respect to Ms. Moroney other than pleading straight up.
3 If we are able to find some sort of common ground between
4 that, I'm sure Mr. Bagwell would be eager to consider
5 that. But thus far, if the only two options presented to
6 him are either his old plea offer, which is not available,
7 or to plead straight up as indicted, then we would proceed
8 with trial at that point.

9 MS. MORONEY: Your Honor, Mr. Bagwell --

10 THE COURT: Well, it seems to me like you're just
11 looking for a number.

12 MR. DEMAIO: I believe that's probably the case, sir,
13 yes.

14 THE COURT: And you're looking for a number other
15 than the one that the State has taken off of the table?

16 MR. DEMAIO: I understand that. I believe the State
17 is offering like ten years straight up was the -- that he
18 could plead to ten years. I feel like we could
19 potentially meet somewhere in the middle of all this. But
20 that being said, thus far, not able to meet.

21 THE COURT: I don't have the -- what's the maximum on
22 what he's currently charged with?

23 MR. DEMAIO: 30 years, Judge.

24 MS. MORONEY: 30.

25 THE COURT: 30 years. Up to that?

1 MR. DEMAIO: Yes, Judge.

2 MS. MORONEY: Ten to 30, yes.

3 THE COURT: Uh-huh.

4 MS. MORONEY: 10 to 30 with 85 percent.

5 THE COURT: Ten means base number?

6 MS. MORONEY: Mandatory 10, correct, Your Honor.

7 THE COURT: So I don't want to get involved in your
8 plea negotiations. I don't want to do that. I mean,
9 y'all -- y'all work it. I don't want to get involved with
10 that. If I get involved in that, I guess, you're going to
11 try to figure out what I'm thinking. So I try to stay out
12 of that. This is where it is right now. We've either got
13 to try it or we've got to soften up the solicitor's office
14 over here a little bit. They don't like that word soften.
15 They don't like that. If there's a possibility of
16 softening them up and seeing what we can do. Otherwise,
17 I'm the trial judge. That's why they say trial judge.
18 That's why I say are y'all ready to try it. That's what I
19 do. Because anything in terms of plea negotiations and
20 all that is pretrial.

21 When you come in here, you've pretty much exhausted
22 all of that. I mean, that's why it's on the trial docket
23 because you've exhausted the back and forth trying to work
24 it out. If you can't work it out, you just got to go to
25 trial. That all there is. I mean, obviously, it's more

1 expeditious to see if you can work it out, but if you
2 can't, you just can't.

3 So I don't know if the Solicitor sleeping on it
4 tonight would make a difference. I don't know that. I
5 don't have a clue. But if she's -- she looked me in the
6 eye and she said that they were firm. I mean, she didn't
7 look sideways when she said that. She looked me in the
8 eye and told me that. So that's kind of where they are.
9 She says -- and I'm pretty sure she has folks that she's
10 got to report to and that kind of stuff. One of them
11 might be Mr. McCollum sitting behind her, I don't know.
12 Because he's sitting real close to her, so I don't know.
13 Maybe she's got to ask him or maybe coming through the
14 door might be the answer. I don't know. I don't know.

15 So what do y'all want to do? Just tell me what you
16 want to do.

17 MR. DEMAIO: We want to set this up for tomorrow
18 morning, Judge, if we can't resolve this before then this
19 evening.

20 THE COURT: Yeah, we don't want to waste time
21 tomorrow morning having a long discussion. It's either
22 going to be -- when we come in tomorrow morning, we're
23 going straight into jumping into this.

24 Do you have something else?

25 MS. MORONEY: Your Honor, the -- I didn't hear that

1 last part you said.

2 THE COURT: I think Mr. Demaio says we'll just
3 continue this tomorrow morning. I said I don't really
4 want to continue having this long conversation tomorrow
5 morning, we'll just jump into trial. This is the time now
6 to have these kind of discussions. If y'all can't reach
7 an agreement on anything, then we've got to proceed on a
8 trial as charged and move forward. That's kind of where
9 it is. Because I've got some jurors, obviously, sitting
10 downstairs that I was under the impression that we
11 probably would pick a jury this afternoon and hit tomorrow
12 morning running. And we still can do that. But I just
13 thought before we brought the panel up here, we could see
14 if y'all were able to reach an agreement, but, apparently,
15 you can't. So we've got to try the case. I don't see any
16 other way. Of course, if we pick the jury, y'all talk
17 overnight, we still can get this done, but, at least,
18 we'll have the jury in place and we can begin to start
19 tomorrow morning sharp. I won't swear the jury in until
20 tomorrow morning. You want to go that route? Go ahead
21 and pick the jury?

22 MS. MORONEY: That seems like a good idea.

23 THE COURT: Get Jeannine to send me 35 able
24 individuals.

25 (WHEREUPON, the jury panel entered the courtroom.)

1 THE COURT: Madam Court Reporter, we're on the
2 record.

3 How is everybody doing?

4 THE JURY POOL: Good.

5 THE COURT: Some of you may be familiar with me. You
6 may have seen me before. Welcome back for those of you
7 who I saw earlier.

8 I know it's been a -- today is Wednesday, but
9 sometimes it seems like it's a long week when you get
10 picked and serve on the jury -- for jury duty. But I know
11 you're just as enthusiastic now as you were on Monday. If
12 the truth were known -- as a matter of fact, you may be
13 more excited now than you were on Monday.

14 For those of you who did not see me earlier, I'm
15 Judge Kinlaw. We're going to be presiding over a matter
16 that should probably take about a day, maybe a little over
17 that, give or take.

18 So what I'm going to do is I'm going to introduce you
19 to the case and then, also, to the Defendant. But this is
20 the case of the State v. Kristopher, with a K, David
21 Bagwell.

22 Mr. Bagwell, would you stand and face the jury panel?

23 (The Defendant stood.)

24 THE COURT: Okay. You can have a seat. And I'll get
25 back to you in just a minute.

1 Mr. Bagwell is charged with a criminal offense. And
2 I say to you some of you may have served as a juror in the
3 Court of Common Pleas. That's civil matters. And then
4 some of you may have served in the Court of General
5 Sessions. But the burden of proof is a little
6 different -- if you ever get one of these watches, throw
7 it in the trash.

8 But the burden of proof in the Court of Common Pleas,
9 you may have heard the term by the greater weight or
10 preponderance of the evidence. That's what's used in
11 Court of Common Pleas or civil matters. But in criminal
12 matters, the State has the burden of proving a defendant
13 guilty beyond a reasonable doubt and they must prove all
14 the elements upon which the Defendant is charged. So
15 that's the burden of proof that's utilized in the Court of
16 General Sessions.

17 Now, I told the earlier group and I'll say this again
18 to some of you who have not been in my courtroom. We
19 talked about indictment. And the indictment is the -- is
20 the mechanism by which matters come before the Court in
21 criminal court. And I gave you an example, a simplistic
22 example earlier. I said back during the time when I used
23 to go to the movie -- I haven't been to the movie lately,
24 but when I did go, I had to buy a ticket. In order to go
25 into the movie, I had to give the usher the ticket to get

1 into the movie. Otherwise, I didn't see the movie.

2 Well, an indictment is sort of like that. This is
3 just a piece of paper that allows this case to come before
4 this court, the court of general sessions. You should
5 attach no meaning to it. It does not indicate any guilt
6 or innocence on behalf of this Defendant at all. It's
7 just the mechanism by which the matter comes before me to
8 be heard by this Court. And I gave that analogy to the
9 earlier group.

10 This indictment on today and Mr. Bagwell just stood
11 for you. And I'm going to read this to you. This
12 indictment, indictment 2023-GS-23-01605, State vs.
13 Kristopher David Bagwell, alleges that Kristopher David
14 Bagwell did in Greenville County on or about the 1st day
15 of July of 2021 possess with intent to distribute or aid,
16 abet or conspire to possess with intent to distribute a
17 quantity of methamphetamine, a controlled substance, such
18 possession not being authorized by law. This is what
19 Mr. Bagwell is being charged with.

20 Now, obviously, you took an oath earlier on Monday
21 when you came in. And I'm going to ask you some questions
22 a little different than the questions you were asked on
23 Monday. So I'm going to right now defer to Madam Clerk
24 and she's going to swear you again.

25 So I'm going to turn it over to you just momentarily,

1 Madam Clerk.

2 THE CLERK: Please stand and raise your right hand.
3 The correct response will be "I will".

4 (WHEREUPON, THE jury panel was sworn.)

5 THE COURT: And before I get into the specific
6 questions, let me just say this to you. When I ask you
7 the question, I need you to do two things for me. I need
8 you to speak loudly and give your juror number and name as
9 you stand up. As I said earlier, I'm not the most
10 important person in the courtroom. The most important
11 person in the courtroom is the young lady sitting in front
12 of me. She has to take down everything somebody says. So
13 that's why it's important that you speak loud so she'll
14 know who you are if you answer any questions. So please,
15 ma'am, please, sir, do that for me.

16 Before we get started, I'm going to introduce -- or
17 let them introduce themselves. We've got the State and
18 the State is represented by Counsel Moroney.

19 And I'm going to let you introduce yourself as well
20 as who's at your counsel table. And if there is a law
21 enforcement officer, introduce that person, too.

22 MS. MORONEY: Thank you, Your Honor.

23 My name is Grace Moroney. I'm a solicitor here in
24 the Thirteenth Circuit Solicitor's Office. This is my
25 co-counsel, Sydney Case. She's, also, assistant

1 solicitor. My paralegal Sandy Nassan.

2 THE COURT: Y'all stand.

3 MS. MORONEY: I'm sorry, Sydney Case and Sandy Nassan
4 and Master Deputy Jared Greer of the Greenville County
5 Sheriff's Office.

6 THE COURT: Y'all stand for just a second.

7 Does anybody on the jury panel know any of these
8 individuals? Have you seen them in Publix, the Piggly
9 Wiggly, the Bi-Los? They go to your church? Have you
10 ever just laid eyes on them at all? Have you ever seen
11 them at all? If so, please stand and tell me how you know
12 these individuals.

13 Let the record reflect that no one stood.

14 Y'all can be seated.

15 Then going over to Defense counsel. Go ahead and
16 introduce yourself.

17 MR. DEMAIO: Hello, I'm Attorney Zachary Demaio. I'm
18 a public defender here in Greenville County. I represent
19 Kristopher Bagwell. He's our client in this case. I'm
20 here with my co-counsel, Rachel Kepley.

21 THE COURT: Remain standing about half a second.

22 Anybody on the panel ever seen these individuals,
23 have you ever seen them at Bi-Lo, the Piggly Wiggly, the
24 Dollar General? See them at a church, go to the gym with
25 them? In other words, have you ever laid eyes on them at

1 any time at any place? If so, please, stand.

2 All right. Y'all can be seated.

3 Let the record reflect that no one stood at all.

4 Now, what I am going to do is ask you some questions
5 regarding any potential witnesses that you may know that's
6 either submitted by the State or the Defendant. And I'll
7 start with the State. And if you know any of these
8 individuals, please, ma'am, and, please, sir, stand up and
9 tell me how you know them and give me your juror number
10 and name before you do that.

11 Andrew Herring, this is with the Greenville County
12 Sheriff's Office. Anybody know Andrew Herring?

13 (There was no response.)

14 THE COURT: Jared Greer with the Greenville County
15 Sheriff's Office. Anybody know Officer Greer, please,
16 stand.

17 (There was no response.)

18 THE COURT: Next is Kara Bennick, slash, Kathy Lance
19 with the Greenville County Department of Public Safety?

20 (There was no response.)

21 THE COURT: Charles Moore with the Greenville County
22 Detention Center? Anybody know Mr. Moore?

23 (There was no response.)

24 THE COURT: And the last one I'm going to call is
25 with the Greenville County drug lab. Anybody know Kristen

1 McCall with the Greenville County drug lab?

2 (WHEREUPON, there was no response.)

3 THE COURT: Let the record reflect no one stood. And
4 I already asked you about Mr. Bagwell.

5 Now, I want to ask you a couple of voir dire
6 questions. And that's just a fancy word voir dire, that
7 just means questions that the attorneys gave me relative
8 to your opinion with regard to certain aspects --

9 THE CLERK: Judge.

10 THE COURT: Oh, give me your juror number and name.

11 JUROR #53: 53, Anthony Derogatis.

12 THE COURT: You know somebody?

13 JUROR #53: So my neighbor and close friend is a
14 deputy sheriff for Greenville." I've been to his house for
15 parties.

16 THE COURT: So you say you've been partying with the
17 deputies?

18 JUROR #53: There's always a bunch of Greenville
19 sheriff's officers there. I mean, I don't them by name,
20 but by face, I might. I don't know if that's going to be
21 an issue later, so I just wanted to bring it to your
22 attention now.

23 THE COURT: Right now, you just don't recognize those
24 names?

25 JUROR #53: No.

1 THE COURT: But if you do, please, call it to my
2 attention.

3 JUROR #53: Will do.

4 THE COURT: Anybody else?

5 (There was no response.)

6 THE COURT: All right. If I ask anyone a question
7 that they feel uncomfortable answering in front of all
8 these people that you don't know, I'll give you an
9 opportunity to answer that question privately. If you
10 fall in that category, I'll try to accommodate you.

11 First question, this is the Defendant's voir dire.
12 Is the -- is any member of the jury panel related to by
13 blood or marriage or close personal friend of anyone
14 employed with the Thirteenth Circuit Solicitor's Office or
15 the Attorney General's Office? Anyone other than these
16 individuals right here? Do you know anybody that's works
17 there -- that's not in the courtroom that works with the
18 Thirteenth Circuit Solicitor's Office?

19 JUROR #139: 139, William McDonald.

20 THE COURT: Who do you know?

21 JUROR #139: William McMasters. He's -- maybe just
22 went on the bench.

23 THE COURT: All right. Anybody else?

24 JUROR #139: That's probably the only name I recall.

25 THE COURT: But even though you know Mr. McMasters,

1 you think you can be fair and impartial in this case?

2 JUROR #139: Yes, sir, Your Honor.

3 THE COURT: Thank you so much for that.

4 Anybody else know anyone in the Thirteenth Circuit
5 Solicitor's Office?

6 (There was no response.)

7 THE COURT: Is any member of the jury panel related
8 by blood or marriage or a close personal friend of anybody
9 employed by a state, local, federal or military law
10 enforcement agency?

11 I've got several people standing. And I think I'll
12 start on this side. And I'm going to start in the far
13 corner.

14 Give me your juror number and name.

15 JUROR #116: Dinah Kowalik, 116. And I have --

16 THE COURT: Can you speak up just a little louder.

17 JUROR #116: Dinah Kowalik, 116. And I have a couple
18 of family members that are police officers.

19 THE COURT: All right. They're currently police
20 officers?

21 JUROR #116: Yes.

22 THE COURT: But you still think even though your
23 family members are police officers, you still think you
24 could be fair and impartial and listen to both sides in
25 this case?

1 JUROR #116: Yes, sir.

2 THE COURT: Thank you so much.

3 All right. Young man right next to you.

4 JUROR #28: 28, Cody Brooks. I have a close church
5 friend that's a Greenville County deputy.

6 THE COURT: And you still think you can be fair and
7 impartial in the trial of this case?

8 JUROR #28: Yes, sir, Your Honor.

9 THE COURT: All right. Next young lady right here,
10 yes, ma'am.

11 JUROR #5: Number 5, Alicia Alston. My father is a
12 retired Greenville County -- from the Greenville County
13 Sheriff's Office 25 plus years ago.

14 THE COURT: All right. But you think you can still
15 be fair and impartial and listen to both sides?

16 JUROR #5: Absolutely yes, sir.

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

18 And the young lady in the -- the one near the front
19 here.

20 JUROR #172: 172, Mary Provost. I have a nephew in
21 the FBI in Ohio.

22 THE COURT: In Ohio, okay. You still can be fair and
23 impartial in the trial of this case?

24 JUROR #172: Yes, sir.

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

1 Right behind you. You, young lady.

2 JUROR #147: 147, Alessia Miller. My brother is a
3 Greenville County -- he's a sergeant currently.

4 THE COURT: With the Greenville County Sheriff's
5 Department?

6 JUROR #147: Yes, sir.

7 THE COURT: Do you still think you can be fair and
8 impartial in the trial of this case?

9 JUROR #147: Yes, sir.

10 THE COURT: Very good.

11 I know about you.

12 JUROR #53: 53, Anthony Derogatis. My neighbor is --

13 THE COURT: The one you party with.

14 JUROR #53: Barbecues, party same thing. And then
15 friends back from where I'm from in New Jersey.

16 THE COURT: You still think you can be fair and
17 impartial?

18 JUROR #53: Yes, sir.

19 THE COURT: Young man in the red.

20 JUROR #121: 121, Kenneth Larusso. I'm retired law
21 enforcement. I'm still friends with people in law
22 enforcement, federal, state, local.

23 THE COURT: But you still think you could put that
24 aside and be fair and impartial and listen to both sides?

25 JUROR #121: Absolutely.

1 THE COURT: Thank you, sir.

2 Yes, sir.

3 JUROR #37: Juror Number 37, Brian Coe. My partner's
4 brother is a sheriff deputy and their mother is a judge..

5 THE COURT: What's the mother's name?

6 JUROR #37: Michelle. It's in Princetown.

7 THE COURT: But you still think you can be fair and
8 impartial in the trial of this case.

9 JUROR #37: Yeah.

10 THE COURT: Thank you, sir.

11 All right. Young man right here.

12 JUROR #183: 183, Joseph Rumier. My deceased father
13 was a Greenville City police officer.

14 THE COURT: All right. But you still think you can
15 be fair and impartial?

16 JUROR #183: Yes.

17 THE COURT: All right. Thank you, sir.

18 All right. Anyone else?

19 (WHEREUPON, there was no response.)

20 THE COURT: Okay. Has any member of the jury panel
21 or close relative ever suffered from drug abuse at all?
22 And if that -- if that's a question that's applicable to
23 you and you want to give me the answer in private, you can
24 or you can let me know now.

25 (There was no response.)

1 THE COURT: Okay. That is the -- I think, counsel,
2 if my shuffling of papers are correct, that is all of the
3 voir dire questions.

4 Is that right from the State?

5 MS. MORONEY: None from the State, Your Honor.

6 THE COURT: In other voir dire questions?

7 MR. DEMAIO: No further questions, Judge.

8 THE COURT: All right. We are now -- I didn't ask
9 this question, but let me ask this question. I've been
10 around a minute, maybe two minutes. Is anyone on the jury
11 panel ever seen me before, seen me at the Bi-Lo. I shop
12 at the Piggly Wiggly. Y'all seen me there?

13 (There was no response.)

14 THE COURT: All right. Anybody seen me before?

15 I've got two jurors that stood up. I've got three.
16 I'm going to start over here in the corner.

17 Give me your juror number and name.

18 JUROR #139: William McDonald.

19 THE COURT: How do you know me?

20 JUROR #139: Judge, I don't know you personally, but
21 I've seen you at bar functions and events.

22 THE COURT: Was I nice to you?

23 JUROR #139: Absolutely.

24 THE COURT: All right. You still can be fair and
25 impartial?

1 JUROR #139: Yes, sir, Your Honor.

2 THE COURT: Thank you, sir.

3 Yes, sir.

4 JUROR #108: Elijah Johns, 108. It was this morning.

5 THE COURT: Oh, you saw me this morning?

6 JUROR #108: Yeah.

7 THE COURT: Okay. You still think you can be fair
8 and impartial?

9 JUROR #108: Yes, sir.

10 THE COURT: Even though a few hours have passed?

11 JUROR #108: Yes, sir.

12 THE COURT: All right. Juror number and name?

13 JUROR #168: Jovida Perkins, 168. Unfortunately, my
14 son was in drug court five or six years ago and you was
15 the Judge.

16 THE COURT: I was the Judge. And I'm still doing
17 that.

18 JUROR #168: Okay.

19 THE COURT: Your son was in drug court with me?

20 JUROR #168: Yeah.

21 THE COURT: How is he doing?

22 JUROR #168: Oh, he's doing wonderful now. And he
23 learned from it.

24 THE COURT: I'm glad you told me that.

25 JUROR #168: Yes, sir.

1 THE COURT: You still think you can listen to both
2 sides and be fair?

3 JUROR #168: I do, yes, sir.

4 THE COURT: All right. Give your son a hug for me.

5 JUROR #168: I will.

6 THE COURT: All right. Anybody else?

7 (There was no response.)

8 THE COURT: All right. Right now, we're going to go
9 directly into jury selection. And I'm going to turn it
10 over to Madam Clerk. She has the dubious tasks of moving
11 forward with this.

12 THE CLERK: How many strikes?

13 THE COURT: Are we doing ten and five or five and
14 five? I'm not sure.

15 MS. MORONEY: I believe it's five and five.

16 MS. KEPLEY: I believe five and five, Judge.

17 THE COURT: All right. And let's just do two
18 alternates since we've got some people. Two alternates.

19 Go ahead.

20 THE CLERK: When I call your name and number, please,
21 stand.

22 Juror Number 139, William McDonald.

23 (WHEREUPON, Juror Number 139, a white male, stood.)

24 THE CLERK: What says the State?

25 MS. MORONEY: Please present the juror.

1 THE CLERK: What says the Defendant?

2 MR. DEMAIO: Please seat this juror.

3 THE CLERK: Sir, you may take your things to the jury
4 box.

5 Juror Number 83, Connor Greene.

6 (WHEREUPON, Juror Number 83, a white male, stood.)

7 THE CLERK: What says the State?

8 MS. MORONEY: Please present the juror.

9 THE CLERK: What says the Defendant?

10 MR. DEMAIO: Please seat this juror.

11 THE CLERK: Sir, please take your things to the jury
12 box.

13 Juror Number 158, Marna Nielsen.

14 (WHEREUPON, Juror Number 158, a white female, stood.)

15 THE CLERK: What says the State?

16 MS. MORONEY: Please present the juror.

17 THE CLERK: What says the Defendant?

18 MR. DEMAIO: Please seat this juror.

19 THE CLERK: Ma'am, please take your things to the
20 jury box.

21 Juror Number 141, Elizabeth McNew.

22 (WHEREUPON, Juror Number 141, a white female, stood.)

23 THE CLERK: What says the State?

24 MS. MORONEY: Please present the juror.

25 THE CLERK: What says the Defendant?

1 MR. DEMAIO: Please seat this juror.

2 THE CLERK: Ma'am, please take your things to the
3 jury box.

4 Juror Number 119, Arthur Lafavor.

5 (WHEREUPON, Juror Number 119, a black male, stood.)

6 THE CLERK: What says the State?

7 MS. MORONEY: Please present the juror.

8 THE CLERK: What says the Defendant?

9 MR. DEMAIO: Please seat this juror.

10 THE CLERK: Sir, please take your things to the jury
11 box.

12 Juror Number 123, Kimberly Laws.

13 (WHEREUPON, Juror Number 123, a white female, stood.)

14 THE CLERK: What says the State?

15 MS. MORONEY: Please present the juror.

16 THE CLERK: What says the Defendant?

17 MR. DEMAIO: Please excuse this juror.

18 THE CLERK: Ma'am, you may take a seat.

19 Juror Number 5, Alicia Alston.

20 (WHEREUPON, Juror Number 5, a white female, stood.)

21 THE CLERK: What says the State?

22 MS. MORONEY: Please present the juror.

23 THE CLERK: What says the Defendant?

24 MR. DEMAIO: Please seat this juror.

25 THE CLERK: Ma'am, please take your things to the

1 jury box.

2 Juror Number 174, Nathan Redding.

3 (WHEREUPON, Juror Number 174, a white male, stood.)

4 THE CLERK: What says the State?

5 MS. MORONEY: Please present the juror.

6 THE CLERK: What says the Defendant?

7 MR. DEMAIO: Please seat this juror.

8 THE CLERK: Sir, please take your things to the jury
9 box.

10 Juror Number 11, Bradford Barnes.

11 (WHEREUPON, Juror Number 11, a white male, stood.)

12 THE CLERK: What says the State?

13 MS. MORONEY: Please present the juror.

14 THE CLERK: What says the Defendant?

15 MR. DEMAIO: Please seat this juror.

16 THE CLERK: Sir, please take your things to the jury
17 box.

18 Juror Number 76, Kelly Gantt.

19 (WHEREUPON, Juror Number 76, a white female, stood.)

20 THE CLERK: What says the State?

21 MS. MORONEY: Please present the juror.

22 THE CLERK: What says the Defendant?

23 MR. DEMAIO: Please excuse this juror.

24 THE CLERK: Ma'am, you may take a seat.

25 Juror Number 183, Joseph Rumier.

1 (WHEREUPON, Juror Number 183, a white male, stood.)

2 THE CLERK: What says the State?

3 MS. MORONEY: Please excuse this juror.

4 THE CLERK: Sir, you may take a seat.

5 Juror Number 72, Andrea Galehouse.

6 (WHEREUPON, Juror Number 72, a white female, stood.)

7 THE CLERK: What says the State?

8 MS. MORONEY: Please present the juror.

9 THE CLERK: What says the Defendant?

10 MR. DEMAIO: Please seat this juror.

11 THE CLERK: Ma'am, please take your things to the
12 jury box.

13 Juror Number 56, Douglas Dunko.

14 (WHEREUPON, Juror Number 56, a white male, stood.)

15 THE CLERK: What says the State?

16 MS. MORONEY: Please excuse this juror.

17 THE CLERK: Sir, you may take a seat.

18 Juror Number 147, Alessia Miller.

19 (WHEREUPON, Juror Number 147, a white female, stood.)

20 THE CLERK: What says the State?

21 MS. MORONEY: Please present the juror.

22 THE CLERK: What says the Defendant?

23 MR. DEMAIO: Please excuse this juror.

24 THE CLERK: Ma'am, you may take a seat.

25 Juror Number 128, Nathan Lindsey.

1 (WHEREUPON, Juror Number 128, a white male, stood.)

2 THE CLERK: What says the State?

3 MS. MORONEY: Please present the juror.

4 THE CLERK: What says the Defendant?

5 MR. DEMAYO: Please seat this juror.

6 THE CLERK: Sir, you may take your things to the jury
7 box.

8 Juror Number 211, Joshua Turner.

9 (WHEREUPON, Juror Number 211, a white male, stood.)

10 THE CLERK: What says the State?

11 MS. MORONEY: Please present the juror.

12 THE CLERK: What says the Defendant?

13 MR. DEMAYO: Please seat this juror.

14 THE CLERK: Sir, you may take your things to the jury
15 become.

16 Juror Number 227, Beyonce Williams.

17 (WHEREUPON, Juror Number 227, a black female, stood.)

18 THE CLERK: What says the State?

19 MS. MORONEY: Please present the juror.

20 THE CLERK: What says the Defendant?

21 MR. DEMAYO: Please seat this juror.

22 THE CLERK: Ma'am, please take your things to the
23 jury box.

24 THE COURT: All right. Alternates.

25 THE CLERK: Juror Number 108, Elijah Johns.

1 (WHEREUPON, Juror Number 108, a white male, stood.)

2 THE CLERK: What says the State?

3 MS. MORONEY: Please present the juror.

4 THE CLERK: What says the Defendant?

5 MR. DEMAIO: Please seat this juror.

6 THE CLERK: Sir, please take your things to the jury
7 box.

8 Juror Number 53, Anthony Derogatis.

9 (WHEREUPON, Juror Number 53, a white male, stood.)

10 THE CLERK: What says the State?

11 MS. MORONEY: Please present the juror.

12 THE CLERK: What says the Defendant?

13 MR. DEMAIO: Please excuse this juror.

14 THE CLERK: Sir, you may take a seat.

15 Juror Number 172, Mary Provost.

16 (WHEREUPON, Juror Number 172, a white male, stood.)

17 THE CLERK: What says the State?

18 MS. MORONEY: Please excuse the juror.

19 THE CLERK: Ma'am, you may take a seat.

20 Juror Number 168, Jovida Perkins.

21 (WHEREUPON, Juror Number 168, a black female, stood.)

22 THE CLERK: What says the State?

23 MS. MORONEY: Please present the juror.

24 THE CLERK: What says the Defendant?

25 MR. DEMAIO: Please seat the juror.

1 THE CLERK: Ma'am, you may take your things to the
2 jury box.

3 THE COURT: All right. For those of you who remain,
4 I've got some good news and I've got some bad news.
5 Here's the good news. The good news is you may get to
6 serve again. What I'm going to do is I'm going to ask you
7 to go downstairs in the jury assembly room. I think we've
8 got another jury that we'll probably pick in the morning,
9 so you'll probably be in that pool. Please go downstairs.
10 That's the good news.

11 Here's the bad news. And it's really bad. And I
12 hope you can get over this real bad news I'm going to give
13 you. I hesitate to tell you about it, but I've got to
14 tell you about it. The rest of you probably won't get an
15 opportunity to spend any more time with me this week.
16 It's hard. It's hard to take that news. Most people
17 can't take it. But, hopefully, you'll be able to get over
18 that news and go on and have a productive life.

19 So I'm going to let you follow this bailiff out and
20 go back downstairs to the jury assembly room.

21 (WHEREUPON, the remaining jury panel members exited
22 the courtroom.)

23 THE COURT: All right. To those of you who will
24 spend some time with me, I'm going to do a couple of
25 things. I need Juror Number 139.

1 I want you to exchange seats with this juror over
2 here, with this young lady on the end. All right. You
3 have been chosen to be foreperson of this jury. And your
4 responsibilities are this, you are to preside over
5 deliberations whenever that occurs per my instructions.
6 You're, also, to -- with the way I put it, keep all these
7 people in line that you've never met before, you've never
8 seen them before, but they're going to listen to you.

9 Now, from time to time, I may have to send the jury
10 out to deal with a legal matter of some sort or any kind
11 of matter. And I will tell you, please, ma'am, and,
12 please, sir, do not talk about the case with each other or
13 to anyone. You've probably heard that before, but I'll
14 state that to you again.

15 Mr. Foreman, you will always occupy that seat. That
16 will be your seat always.

17 The rest of you can sit anywhere you want to.

18 And the two alternates up there, those will be your
19 seats. One day, you can sit next to the wall and she sits
20 there, however you want to do it. But those two seats
21 will belong to all of you.

22 We're going to probably start this trial in the
23 morning. Tomorrow is Thursday. We're probably going to
24 start tomorrow at 9:30. 9:30 is when I would want you to
25 be in the jury room. It's okay if you get there at 9:27

1 or 9:28, that still works. Just be there at 9:30 and
2 we'll get started. We'll have -- we'll swear you in in
3 tomorrow morning when you show up.

4 So y'all have good evening. Get a good night's rest
5 and I'll see you first thing tomorrow morning around 9:30.
6 Y'all take care of yourself. All right.

7 (WHEREUPON, the jury was excused from open court at
8 approximately 4:07 p.m.)

9 THE COURT: Okay. We will start at 9:30 tomorrow
10 morning. However, between now and 9:30 tomorrow morning,
11 that's a lot of hours. You can talk. You know, some of
12 the best decisions made are made after 4:08 -- between
13 4:08 this evening and 9:28 tomorrow morning. That's an
14 excellent time to talk. That's a great time to talk about
15 cases. You couldn't find a better time. And you know
16 what, one of these days y'all are going to smile. I don't
17 know when that's going to be. But that's what I want you
18 to do.

19 Anyway, anything before we adjourn?

20 MS. MORONEY: Nothing from the State.

21 THE COURT: Anything from the Defense?

22 MR. DEMAIO: Nothing at this time, Your Honor.

23 THE COURT: We'll see y'all tomorrow morning at 9:30.

24 THURSDAY, JULY 25, 2024

25 (WHEREUPON, Court's Exhibit No. 3 was marked for

1 identification and admitted into evidence.)

2 (WHEREUPON, State's Exhibit Nos. 1, 2, 3, 4, and 5 were
3 marked for identification only.)

4 THE COURT: All right. This is in the interest of
5 The State vs. Kristopher David Bagwell.

6 Mr. Bagwell, how are you, sir?

7 THE DEFENDANT: Good, sir.

8 THE COURT: Based on the information I have, we're
9 moving forward, correct?

10 MS. MORONEY: That's correct, Your Honor.

11 THE COURT: Anything we need to talk about pretrial
12 before we bring the jury in?

13 MS. MORONEY: Nothing from the State, Your Honor?

14 THE COURT: Anything else we've got to talk about?

15 MR. DEMAIO: I don't believe at this time, Your
16 Honor.

17 THE COURT: All right.

18 THE BAILIFF: Your Honor, I have the jury downstairs.
19 It'll take a couple minutes to get them up here.

20 THE COURT: Yeah, we'll take about ten minutes.

21 MR. DEMAIO: Your Honor, we just move that the
22 witnesses in this case be sequestered.

23 THE COURT: Any fight about that? Other than the
24 lead officer?

25 MS. MORONEY: Your Honor, I would leave it to your

1 discretion.

2 THE COURT: I, typically, will grant that motion,
3 except whoever the lead investigator officer is, I'll
4 allow that person to stay. Everybody else comes through
5 the back door.

6 MR. DEMAIO: Thank you, Judge.

7 THE COURT: Who would be the lead? Just him.

8 (WHEREUPON, indicating in the affirmative.)

9 (Pause.)

10 THE COURT: Good morning.

11 We're going to get started. But before we get
12 started, Madam Clerk, would you go ahead and swear the
13 jury panel.

14 THE CLERK: Please stand and raise your right hand.
15 The correct response will be "I will".

16 (WHEREUPON, the jury was sworn at approximately 9:32
17 a.m.)

18 THE CLERK: Thank you.

19 THE COURT: Ladies and gentlemen of the jury, I'm
20 going to talk to you about a few things. First of all,
21 I want to thank you again for your willingness to serve as
22 jurors. I know you've been here pretty much all week and
23 been in and out of courtrooms. I want to thank you on
24 behalf of both sides for your willingness to serve as a
25 juror this week.

1 Now, I said at the beginning, maybe in the earlier
2 part of the week to another group that in the Court of
3 General Sessions, which we are in, the State has the
4 burden of proof in all criminal cases. And the State must
5 prove all the elements of the offense upon which the
6 Defendant, Mr. Bagwell, in this instance, is charged
7 beyond a reasonable doubt. They're required to prove all
8 the elements of the offense upon which the Defendant is
9 charged.

10 Mr. Bagwell, as he sits there right now, he has a
11 cloak of innocence around him. And that cloak of
12 innocence remains with him and on him throughout the
13 course of the trial until you, the jury, are satisfied
14 that the State has met its burden of proof to find
15 Mr. Bagwell guilty of the offense upon which he's charged
16 beyond a reasonable doubt.

17 Now, I told you earlier what the indictment is. And
18 I told you the indictment is not indicative of any guilt
19 on behalf of Mr. Bagwell. It's just the mechanism by
20 which the matter comes before the Court.

21 Now, I tell juries everywhere I go that in the court
22 -- whether it's in the Court of Common Pleas or whether
23 it's in the Court of General Sessions, there are two
24 judges in the courtroom. And you may ask the question
25 well, what is he talking about?

1 This is what I'm talking about. There's a judge of
2 the law. And the judge of the law is me. I've been
3 mandated by the State of South Carolina to be the judge of
4 the law. What does that mean? That means that I don't
5 have an opinion regarding this case. I know nothing about
6 the case. My role is to rule on the issues of law. And
7 something may come up, these lawyers may object from time
8 to time during the course of the trial and I may have to
9 deal with an issue of law and I may need to send you out.
10 And I may tell you, please, ma'am, please, sir, don't talk
11 about the case while I handle it.

12 So if during the course of the trial, you happen to
13 glance up at me and you think I have an opinion about this
14 case, you must disregard that because I have no opinion
15 whatsoever. I can't have an opinion regarding the facts
16 of the case.

17 Who's the other judge? The other judge is all of
18 you. You're the judges of the facts. In other words,
19 you're the people that determine what the credibility and
20 believability of the facts are. Now, when you left home
21 this morning, I know you left home with a couple things.
22 You probably got in your car and you had your car keys,
23 because you can't move without your car keys. But when
24 you got to the courthouse, guess what else you brought
25 with you? You're common sense. Your common sense travels

1 with you everywhere you go. And you didn't lose it when
2 you came up here today.

3 In this case, evidence is going to take a couple of
4 forms. And we'll talk about specifically the kinds of --
5 the definition of evidence in a little while and at the
6 end of the case. But evidence is going to take the form
7 witness's testimony that will testify from this witness
8 stand. And you as the judges of the facts, you can
9 believe some of what a witness says, none of what a
10 witness says or all of what a witness says. That's up to
11 you. Because you're the judge of the believability and
12 credibility of the witnesses that sit here.

13 I don't know if there's an expert witness in this
14 case, but if there is, you attach the same litmus test in
15 determining the believability and credibility of the
16 expert witness as well. You can, also, make a
17 determination in your mind whether or not the witness had
18 any bias or prejudice in their testimony. So all of
19 that's within your purview.

20 Now, there may be some videos, I don't know, videos,
21 sketches, pictures, anything like that. You attach the
22 same test to those things that you would do if you had a
23 live witness. In other words, if you look at a picture,
24 you can believe some of what's on it. If you look at a
25 video, you can believe some of what's on it. You can

1 believe the whole thing. It's all up to you. It's all up
2 to you.

3 At the end of the case, I'll probably give you a
4 charge, I'll more than likely give you a charge on the
5 definition of direct and circumstantial evidence. You'll
6 hear these lawyers talk about it during the course of the
7 trial.

8 Now, in a few minutes, both sides, lawyers for the
9 State and lawyers for the Defense, are going to give you
10 what's called an opening statement. And let me tell you
11 how I best describe an opening statement. I try to be as
12 sophisticated as I can. You know, there's several ways to
13 get to New York. You can go that way or go this way. But
14 your destination is New York. What these lawyers are
15 going to do is tell you what they think the evidence is
16 going to show as relates to Mr. Bagwell. The State's
17 going to tell you their version of what they think the
18 evidence is going to show. The Defense is going to tell
19 you their version.

20 Now, once all the evidence has been received during
21 the course of the trial, the lawyers will come back and
22 give you what's called a closing statement. And now all
23 the evidence is in and now they're going to tell you what
24 they thought the evidence showed.

25 But the key thing to remember is opening statements

1 or closing statements are not evidence. They're just the
2 attorneys' opinion. And they're opinion as to what they
3 think the evidence showed and will show and did show. So
4 keep that in mind as well.

5 So counsel for both sides, ready to proceed with
6 opening statements?

7 MS. MORONEY: The State is ready, Your Honor.

8 MR. DEMAYO: The Defense is ready, Your Honor.

9 THE COURT: Go ahead.

10 MS. MORONEY: May it please the Court, Your Honor.

11 THE COURT: Yes, ma'am.

12 OPENING STATEMENT BY THE STATE:

13 MS. MORONEY: Good morning, everyone. As I told you
14 yesterday, I'm Grace Moroney. I'm Assistant Solicitor
15 here in the Thirteenth Circuit. And I'm trying this case
16 with Sydney Case, who's, also, an assistant solicitor.

17 Just for background of South Carolina, what that
18 means, solicitor is just a word for prosecutor. So I
19 represent the State. And, of course, as Judge Kinlaw just
20 pointed out, we have the burden in this case to prove
21 Mr. Bagwell guilty beyond a reasonable doubt.

22 I'm not going to get too far into what I think the
23 facts are going to be in this case. It's going to come
24 out in the witness testimony and the videos you're going
25 to watch. We're going to keep it as streamlined as

1 possible and get you the information that's necessary.

2 But as Judge Kinlaw pointed out, he is the judge of
3 the law. He's going to give you a charge at the very
4 close of this case about what the law is and what you are
5 to apply. But I do want to give you a little bit of
6 preview about what this case is about.

7 Mr. Bagwell is sitting here charged with possession
8 with intent to distribute methamphetamine. And that is a
9 case that -- or that is a law that involves a lot of
10 different verbs. It is unlawful to manufacture,
11 distribute, dispense, deliver, purchase, aid, abet,
12 attempt or conspire to manufacture, distribute, dispense,
13 deliver or purchase or possess with the intent to
14 distribute a controlled substance. So that's a lot of
15 words. But, basically, what it means is you have enough
16 methamphetamine that you intend to share it.

17 So that is what the State is going to prove to you
18 throughout these witnesses. I'll point out that the
19 legislature has said that possession of over a gram of
20 methamphetamine on its face is, at least, some evidence of
21 the intent to distribute or share that methamphetamine.
22 Basically, we say this is personal use. This is I'm going
23 to share this methamphetamine with other people.

24 So the general facts of the case are that on
25 July 1st, 2021 in Greenville County, some deputies were

1 out looking for a wanted subject and spotted Mr. Bagwell.
2 Ultimately, they placed Mr. Bagwell under arrest and found
3 an amount of methamphetamine in his pocket. So we are
4 going to ask at the end of the case for you to find him
5 guilty of possession with intent to distribute
6 methamphetamine based the amount of methamphetamine that
7 was found on his person.

8 So I will see you at the very end and ask that you
9 deliver a verdict of guilty.

10 THE COURT: All right.

11 Yes, sir.

12 OPENING STATEMENT BY THE DEFENSE:

13 MR. DEMAIO: On July 1st, 2021, for Kristopher
14 Bagwell started out like any other normal day. It was his
15 day off. He was going out to have a good time, just sort
16 of like you or I or anybody would do if they've got some
17 free time. The only difference between that and the
18 average person is that Kristopher Bagwell is addicted to
19 methamphetamine. He's a drug addict. We're not going to
20 deny that now. We're not going to deny that at any point
21 over the course of this trial.

22 His idea of a good time on his day off is to go out
23 and smoke meth. He went and hung out with some friends,
24 smoked methamphetamine and eventually decided to head
25 home. And on his way home, whether by bad luck, fate or

1 some other turn, he ended up coming across the police in a
2 completely unrelated incident. But when you're high and
3 you've got a stash of meth in your pocket because you're a
4 drug addict, you're not really thinking normally. So he
5 took off and he led the police on a merry little chase and
6 ended up with his arrest.

7 We're today because Kristopher Bagwell is a drug
8 addict. And drug addicts don't necessarily always make
9 the smartest decisions.

10 Over the course of this case, as the State said,
11 they're going to put on evidence that Kristopher Bagwell
12 was found with around 6.4 grams of methamphetamine on his
13 person. And like the State said, that is enough for them
14 to attempt to charge him with possession with intent to
15 distribute drugs.

16 But what is that really? That's trying to make
17 Mr. Bagwell into something he's just not. Mr. Bagwell is
18 a drug user. And you're going to see evidence -- excuse
19 me, Mr. Bagwell is not a drug dealer. Mr. Bagwell is a
20 drug addict. And you're going to see evidence over the
21 course of this trial that relays that.

22 But just as important as the evidence that you're
23 going to see is the evidence that you're not going to see.
24 Over the course of this trial, you're not going to see
25 evidence that Mr. Bagwell was in the process of selling

1 drugs. You're not going to see that he had any of the
2 necessary components or other important things that would
3 indicate that somebody is dealing drugs. You're not going
4 to see that Mr. Bagwell had any bags or scales to weigh
5 and distribute drugs. You're not going to see that Mr.
6 Bagwell had any money or proceeds from dealing drugs.
7 You're not going to see that Mr. Bagwell had any phone
8 records or conversations for the distribution of drugs or
9 ledgers keeping track of any transactions or anything of
10 that. And the simple reason for that is Kristopher
11 Bagwell is not a drug dealer. Kristopher Bagwell is a
12 methamphetamine addict.

13 And nobody grows up trying to be a meth addict. When
14 we're kids, nobody says hey, I want to be addicted to
15 drugs when I grow up. But, unfortunately, some of us end
16 up that way and our lives are ruled by the consequences of
17 that. Mr. Bagwell has lost family, friends, jobs to his
18 addiction. And it's going to be with him the rest of his
19 life.

20 But, ultimately, his individual issues with this
21 aren't what's important. What's important is what's not
22 going to be here and not going to be present in this case.
23 What you are not going to see is just as important as what
24 is here.

25 So over the course of this trial, like I said before

1 and I'm going to say again, we can't hide the ball on
2 this. Kristopher had meth in his possession. That's not
3 in dispute. We're not going to fight that. And Mr.
4 Bagwell, Kris, he's ready to talk about it. He's ready to
5 plead out to what he's guilty of, which is possession of
6 meth. But we're not here on possession of meth. We're
7 here on possession with intent to distribute
8 methamphetamine. And that's just not the case.

9 Mr. Bagwell, Kris, he doesn't want a trial. He
10 doesn't want to be here in front of you. He doesn't want
11 to be here today because he wants to take responsibility
12 for what he's actually guilty of. And at the end of this
13 trial, I'm going to do something that I don't normally do
14 as a defense attorney, I'm going to ask you to find the
15 Defendant guilty. But I'm going to ask you to find the
16 Defendant guilty of what he is actually guilty of, which
17 is possession of methamphetamine.

18 On the charge of possession with intent to distribute
19 methamphetamine, I'm going to ask you to find Kristopher
20 not guilty.

21 Thank you.

22 THE COURT: The State is ready to proceed?

23 MS. MORONEY: Yes, Your Honor.

24 THE COURT: The State call its first witness.

25 MS. MORONEY: The State calls Master Deputy Jared

1 Greer.

2 THE CLERK: Please place your left hand on the Bible
3 and raise your right hand.

4 WHEREUPON,

5 JARED GREER,

6 after first having been duly sworn, testified as follows:

7 THE CLERK: Thank you.

8 Please take a seat and state your name for the
9 record.

10 THE WITNESS: My name is Master Deputy Jared Greer
11 with Greenville County Sheriff's Office.

12 DIRECT EXAMINATION

13 BY MS. MORONEY:

14 Q Good morning, Master Deputy Greer. Can you tell me
15 what your job or what your duties are at the sheriff's
16 office?

17 A So I've been with the sheriff's office for about nine
18 years. I'm a Master Deputy with our Echo Platoon. As of
19 right now, I work for uniform patrol. I answer calls for
20 service. And it's a wide variety of calls for service.
21 So whatever comes in, we usually have to handle it.

22 Q And what is a Master Deputy? How is that different
23 from like a general deputy?

24 A So a Master Deputy is the direct supervisor over a
25 deputy two. We're just one step up above. Usually, just

1 more experienced training officer. So I train other
2 deputies and give them the basic skills to answer and
3 handle calls for service.

4 Q You said that you're in uniform patrol now, but on
5 July 1st, 2021, were you in a different type of unit?

6 A Yes, ma'am. I was a deputy two. I had not been
7 promoted to Master Deputy yet. I was with the directed
8 patrol unit.

9 Q Is what is the directed patrol unit? What are they
10 tasked with?

11 A So we're tasked with dealing with low level street
12 narcotics and street crimes. We do a wide range, like I
13 said, street narcotics. We do prostitution. We do just a
14 saturation of certain areas that if we have problems and
15 crimes, you know, heavy crimes going on in that area, we
16 go there and we start trying to find answers.

17 Q Okay. So you've been involved in drug investigations
18 and undercover investigations and things of that nature?

19 A Yes, ma'am.

20 Q Working with the directed patrol unit?

21 A Yes, ma'am. I was with them approximately three
22 years.

23 Q And as you said before, you were working in the
24 directed patrol unit on July 1st, 2021?

25 A Yes, ma'am.

1 Q Okay. And can you tell me what you were doing on
2 July 1st, 2021 that relates to this case?

3 A So I had been speaking with other deputies that were
4 familiar with the area and familiar with a suspect that
5 was named Christopher Robinson. I was known -- I was told
6 that he had active warrants for his arrest and that he was
7 last seen at ■ Campbell Road, which is in Greenville
8 County. And that he was last seen with -- driving a blue
9 explorer SUV and was last seen with a suspect by the name
10 of, I believe, Vincent Espinoza.

11 So I confirmed he had active warrants and decided to
12 go to ■ Campbell Road to do a drive-by, is what we call
13 it, just to see if that vehicle was in the driveway and
14 try to build some reasonable suspicion to actually make
15 contact with the residents at that address.

16 So as I drove past the residence, I noticed a blue
17 Ford Explorer that I was told that the suspect had
18 possibly been driving. And the door was open to -- I
19 believe one of the passenger doors was open, like a back
20 passenger door. And beside it was a silver sedan with a
21 white male in it that I couldn't positively identify, but
22 I believed it was Christopher Robinson. So as I passed
23 by, I went to turn around and I saw the door to the silver
24 sedan open up. I saw a white male that I believed to be
25 Christopher Robinson take off running towards the

1 backyard.

2 At that time, I drove around to the next road -- the
3 closest road, got out of my vehicle and pursued him on
4 foot. As I pursued him on foot, another deputy was, also,
5 with me. And while I was pursuing him on foot, I was able
6 to notice that he was reaching kind of towards his
7 waistband, towards his front pocket area. And we gave him
8 several commands while we were chasing him to stop
9 reaching, to get on the ground.

10 Ultimately, I was able to catch up to the suspect.
11 And because of him reaching towards his waistband, I ended
12 up pulling out my taser. However, when I gave the suspect
13 commands to get on the ground, he complied. So I,
14 ultimately, did not use a taser. And when he complied, I
15 was able to get him on his stomach and I started to effect
16 the arrest.

17 So I holstered my taser up and began to place
18 handcuffs on the suspect. About that time, my partner,
19 Deputy Herring, also, arrived and assisted me in
20 controlling the suspect and placing him under arrest.

21 THE COURT: I don't mean to interrupt you, counsel,
22 but he referenced a Christopher Robinson is that something
23 different than who's in the courtroom?

24 MS. MORONEY: Yes, sir.

25 THE COURT: Both have the first name Christopher?

1 MS. MORONEY: Yes, sir.

2 BY MS. MORONEY:

3 Q Before we keep going on that, you said you were
4 trying to get handcuffs on him. Was Mr. Bagwell still
5 reaching in some way?

6 A Yes, he was. So at the time, he complied, but as
7 soon as we went and grabbed both of his hands, he actually
8 pulled his left arm out and started reaching back towards
9 his left front pocket again, towards his waistband.

10 Q Okay. And was Deputy Herring able to get control of
11 him at that point?

12 A Yes, ma'am. I was able to control his right arm and
13 Deputy Herring was able to eventually get control of his
14 left arm.

15 Q And during this part of the interaction, you still
16 believed this to be who?

17 A At the time, I still believed it to be Mr.
18 Christopher Robinson.

19 Q And, ultimately, skipping ahead, did you determine
20 who it actually was?

21 A Yes. After a search incident to arrest, we were able
22 to identify the suspect as Kristopher Bagwell and not
23 Christopher Robinson.

24 Q And do you see Kristopher Bagwell in the courtroom
25 today?

1 A Yes, ma'am, I do.

2 Q Can you point him out for the jury?

3 A He's in the white shirt.

4 MS. MORONEY: Your Honor, can we let the reflect he's
5 pointed out the Defendant?

6 THE COURT: Let the record so reflect.

7 BY MS. MORONEY:

8 Q Okay. So at the point that Deputy Herring comes up
9 and starts to assist, what happens after that?

10 A So once we were able to place him in handcuffs, all
11 force ceased. He started complaining about breathing, so
12 we sat him up where his airway was clear. It was very hot
13 that day, so after a chase, we were all a little bit
14 winded.

15 So I start -- I tell him hey, why did you run?
16 You've got warrants. And I asked him where his ID was.
17 He said it was in his back pocket. So I went to retrieve
18 his ID and could not find it. His ID was not in his back
19 pocket.

20 So I told the suspect this and I said, hey, where's
21 your ID? He said, I think it's in my front pocket. So
22 when I reached around to search him in his front pocket, I
23 found an empty pack of cigarettes. And as I'm looking in
24 there, I find a -- actually, three baggies. Two baggies
25 that I believed was suspected narcotics.

1 Q And again, at this point, you still believed it to be
2 Christopher Robinson?

3 A Yes, ma'am.

4 Q Okay. Who was the wanted suspect?

5 A Yes, ma'am.

6 Q And was Christopher Robinson somehow similar in
7 description to Mr. Bagwell?

8 A Yes, ma'am.

9 Q Okay. Do you wear a body-worn camera while you're on
10 the job?

11 A Yes, ma'am, I do.

12 Q And can you explain for the jury kind of how that
13 works, how your camera works?

14 A So body-worn cameras are turned on by the officer
15 physically pushing a button on the camera itself. It's
16 usually mounted about chest high on our vest. I usually
17 have to press it twice and it goes back 30 seconds prior
18 to me pressing the button. Once I press it, those first
19 30 seconds don't have any audible -- it's silent, but it's
20 still video. And then once the 30 seconds cuts on where I
21 actually hit the button, it immediately starts recording
22 all of my actions and it is audio.

23 Q Okay. And were you wearing your body-worn camera on
24 July 1st, 2021?

25 A Yes, I was.

1 Q And was it operating?

2 A Yes, ma'am.

3 Q I'm going to show you what's been pre-marked as
4 State's Exhibit No. 1. Do recognize what that is?

5 A Yes, ma'am, I do.

6 Q Okay. What is that?

7 A It is a recording of my body-worn camera that I
8 signed.

9 Q And you know that because you signed it?

10 A Yes, ma'am.

11 Q Is it a fair and accurate depiction of what happened
12 when you got out with Mr. Bagwell on July 1st, 2021?

13 A Yes, ma'am, it is.

14 MS. MORONEY: The State would move State's Exhibit
15 No. 1 into evidence, Your Honor.

16 THE COURT: Any objection?

17 MR. DEMAIO: No objection, Your Honor.

18 THE COURT: All right. Without objection.

19 (WHEREUPON, State's Exhibit No. 1 was admitted into
20 evidence.)

21 BY MS. MORONEY:

22 Q I'm going to play part of it for you.

23 (WHEREUPON, State's Exhibit No. 1 played in open
24 court.)

25 BY MS. MORONEY:

1 Q So is this the portion you were just talking about
2 that has no audio?

3 A Yes, ma'am.

4 Q And you're still in your car?

5 A Yes, ma'am.

6 Q And as you described, you were driving to the next
7 road?

8 A Yes, ma'am.

9 (WHEREUPON, State's Exhibit No. 1 continued to be
10 played in open court.)

11 BY MS. MORONEY:

12 Q Who's that?

13 A That is Deputy Herring.

14 (WHEREUPON, State's Exhibit No. 1 continued to be
15 played in open court.)

16 BY MS. MORONEY:

17 Q And why did you feel like you needed to pull the
18 taser at this point?

19 A Because I -- I had, also, saw him reaching towards
20 his waistband and Deputy Herring had, also, told me while
21 I had passed him, he said, Hey, he's still reaching.

22 Q And what could he possibly be reaching for? Is that
23 a concern for you?

24 A Yes. So with my experience in law enforcement, that
25 is probably one of the most common areas is the front

1 waistband where people carry a firearm?

2 Q So you had on idea what he might be reaching for?

3 A No, ma'am.

4 (WHEREUPON, State's Exhibit No. 1 continued to be
5 played in open court.)

6 BY MS. MORONEY:

7 Q So what was going right there?

8 A So right there, as you can see, I'm on the right side
9 and I've got control of his right arm, but his left arm
10 had actually come back loose and had went back towards his
11 waistband.

12 (WHEREUPON, State's Exhibit No. 1 continued to be
13 played in open court.)

14 BY MS. MORONEY:

15 Q At this point, you still don't know who this is?

16 A Yeah, I still believed it was Christopher Robinson.

17 (WHEREUPON, State's Exhibit No. 1 continued to be
18 played in open court.)

19 BY MS. MORONEY:

20 Q At this point, do you have a better sense of who this
21 might be?

22 A Yes. At this point, I looked at, I believe it was a
23 credit card that actually has Kristopher Bagwell's name on
24 it.

25 (WHEREUPON, State's Exhibit No. 1 continued to be

1 played in open court.)

2 BY MS. MORONEY:

3 Q Who's this guy to the right?

4 A He's not law enforcement. I believe he might have
5 been one of the residents that I ran through their
6 property.

7 Q But he's unrelated to this incident?

8 A Yes.

9 (WHEREUPON, State's Exhibit No. 1 continued to be
10 played in open court.)

11 BY MS. MORONEY:

12 Q Is Mr. Bagwell still asking for water?

13 A Yes.

14 Q And, ultimately, did y'all call for EMS to come?

15 A Yes. It was a pretty hot day that day.

16 (WHEREUPON, State's Exhibit No. 1 continued to be
17 played in open court.)

18 BY MS. MORONEY:

19 Q So is this back at your car?

20 A Yes, ma'am.

21 (WHEREUPON, State's Exhibit No. 1 continued to be
22 played in open court.)

23 BY MS. MORONEY:

24 Q Were y'all just talking about the other -- what you
25 were out there for?

1 A Yes, that's me talking on the radio to the other
2 units that are back at the house.

3 (WHEREUPON, State's Exhibit No. 1 continued to be
4 played in open court.)

5 BY MS. MORONEY:

6 Q All right. So even though you had a pretty serious
7 interaction with Mr. Bagwell, at the end of the day when
8 he's secured, is he a threat to you anymore?

9 A No, ma'am.

10 Q And y'all got him the water he requested?

11 A Yes, ma'am. Like I said, it was an extremely hot
12 day. You could see I was breathing hard from the run, so
13 I knew he was probably hurting, too.

14 Q And did you, ultimately, transport him to the jail?

15 A Yes, ma'am. Once he was seen by EMS on scene, I went
16 ahead and transported him to the detention center.

17 Q Did you, also, transport the items you found in his
18 pocket?

19 A Yes, ma'am, I did. And I placed them into our
20 property and evidence.

21 Q Okay. Let me show you what's been pre-marked for
22 identification purposes as State's Exhibit No. 4 and
23 State's Exhibit No. 5. Without taking those out and
24 showing the jury, can you just look at those and tell me
25 if those appear to be what you seized from Mr. Bagwell on

1 July 1st, 2021?

2 A Yes, ma'am, they are.

3 Q Okay. And those are the items you placed in property
4 and evidence?

5 A Yes, ma'am.

6 Q Okay. Due to Mr. Bagwell's reaching, were you
7 concerned that he may have discarded something while he
8 was running from y'all?

9 A Yes, ma'am. On the video, I believe it's right about
10 the time we were trying to get handcuffs on him, a K9
11 officer actually came over the radio and asked if we
12 needed an article search. That's where they do a -- they
13 run the dog to try and sniff and find narcotics. So yes,
14 I agreed and told him yes, we definitely need one. And a
15 K9 officer did respond and did an article search.
16 However, nothing was found -- nothing else was found other
17 than what was on Mr. Bagwell's person.

18 MS. MORONEY: Please answer any questions the Defense
19 has.

20 THE COURT: Cross-examination.

21 CROSS-EXAMINATION

22 BY MR. DEMAIO:

23 Q Thank you, Officer.

24 During this altercation -- you were the original
25 officer who arrived on scene?

1 A Yes, sir.

2 Q Okay. And during that time, you were the individual
3 who pursued Kristopher during, basically, the entire chase
4 that led to his arrest?

5 A Yes, sir.

6 Q And you're the individual that searched him?

7 A Yes, sir.

8 Q And you were looking through his pockets to try to
9 find his identification?

10 A Yes, sir.

11 Q Okay. And then you found what appeared to be like an
12 empty cigarette cartoon or case or pack of cigarettes?

13 A Yes, sir.

14 Q And that pack of cigarettes is what had the drugs in
15 them?

16 A Yes, sir.

17 Q And what did you find in there, specifically?

18 A If I remember correctly, it was two separate baggies
19 of crystal-like substance that, based on my training and
20 experience, I believed to be methamphetamine.

21 Q Okay. Did you find anything else in there?

22 A I'm not sure if the -- because we found another small
23 baggy of marijuana, but I'm not sure if we -- if it was in
24 that same cigarette pack or not. I'm not sure where it
25 was on his person.

1 Q Okay. What else did Kristopher Bagwell have on him?

2 A I believe he had a watch from watching the video.
3 And then, like I said, I found that credit card that had
4 his name on it.

5 Q Okay. So you did a thorough examination of him?

6 A I believe so, yes. Because I did a -- I usually do a
7 secondary search before I put them in the vehicle.

8 Q Okay. And did you find any money on him?

9 A I don't believe so, no.

10 Q You didn't find any money on him. Did you find a
11 weapon of any sort on him?

12 A No, sir.

13 Q Okay. Did he have any scales or other items on him
14 for any purpose?

15 A No, sir.

16 Q Okay. Did he have a phone on him?

17 A I don't believe so.

18 Q Okay. Did he have --

19 A I'd have to check to see what all we put into his
20 property at the jail, but I don't believe he had one.

21 Q Did he have like a ledger or anything for notation or
22 otherwise?

23 A No, sir.

24 Q And you said you found two bags originally in that
25 cigarette pack, right?

1 A I believe so, yes.

2 Q Did you find any other bags on him?

3 A Well, obviously, another a small baggy that had the
4 marijuana in it.

5 Q Besides the three that we've referred to?

6 A No, sir.

7 Q And you arrested Mr. Bagwell -- well, Kris at that
8 point?

9 A Yes, sir.

10 Q Okay. And following that arrest, you called for that
11 K9 search?

12 A Yes, sir.

13 Q Okay. And nothing was found over the scope of that
14 search?

15 A No, sir.

16 Q Okay. And, normally, when someone is arrested and
17 they have a vehicle, that vehicle is seized or inventoried
18 or -- could you describe the process through which a
19 vehicle pursuant to an arrest is examined?

20 A So due to certain case law, we are able to search
21 without a warrant for the vehicle if we have probable
22 cause to believe that, you know, more evidence of the
23 crime would be located. Because Mr. Bagwell was found and
24 was seen by me leaving that vehicle and then found with,
25 you know, a certain amount of narcotics in his possession,

1 I had probable cause to believe that more narcotics could
2 be present inside of that vehicle. So we are afforded the
3 right to search that vehicle without a warrant.

4 Q Did you search that vehicle?

5 A I had other deputies search the vehicle, yes.

6 Q Do you know if they found anything in that vehicle?

7 A They did not.

8 Q So they didn't find any money in that vehicle or
9 anything?

10 A I don't believe so.

11 Q They didn't find scales in that vehicle?

12 A No, sir.

13 Q They didn't find any weapons in that vehicle?

14 A No, sir.

15 Q They didn't find any extra bags or anything in that
16 vehicle?

17 A No, sir, not that I was told.

18 Q Any other drugs in that vehicle?

19 A No, sir.

20 Q Did Mr. Bagwell -- did Kris talk to you over the
21 course of after you've arrested him while you were all
22 interacting, whether it was giving water or otherwise?

23 A Yes, sir, he did.

24 Q Did he talk about the drugs he had on him?

25 A Basically, the extent of most of our conversation was

1 about the drugs that was on his person. I don't know if I
2 want to go into further conversation that we had because
3 it would --

4 Q Did he talk with you about the drugs, though?

5 A Yes.

6 Q And he told you that those were his drugs?

7 A I don't remember our exact conversations. I don't
8 know verbatim what he was saying about the drugs. But our
9 conversation was leaning towards more context of what he
10 had.

11 Q And did you draw up the warrants on Kristopher in
12 this case?

13 A Yes, sir, I did.

14 Q Okay. And was he ever charged with resisting arrest?

15 A No, sir.

16 Q And he was charged with what exactly?

17 A Possession with intent to distribute and simple
18 possession of marijuana.

19 Q Okay. And what led you to draw up that warrant for
20 possession with intent to distribute?

21 A Because of the overall weight of the narcotics and
22 because it was found in two separate baggies.

23 Q Okay. So the weight of the drugs was your primary
24 reason for drawing up that warrant?

25 A Yes.

1 Q Okay.

2 MR. DEMAIO: No further questions at this time,
3 Judge.

4 THE COURT: Anything on redirect?

5 MS. MORONEY: Just briefly, Your Honor.

6 REDIRECT EXAMINATION

7 BY MS. MORONEY:

8 Q Master Deputy Greer, this clip was about 11 minutes
9 long. Was your body-worn camera running the entire time
10 you were on scene?

11 A Yes, ma'am, I believe so.

12 Q And is this the initial portion of that body cam?

13 A Yes, ma'am.

14 Q And is that because you -- this initial interaction
15 is related to another -- we heard about the potentially
16 stolen car and the other wanted suspect, right?

17 A Yes, ma'am.

18 Q So did you finish that investigation after taking
19 Mr. Bagwell into custody?

20 A Yes, we did. I believe while EMS was checking him
21 out, I had other deputies stand by with Mr. Bagwell while
22 I assisted in trying to confirm that Mr. Robinson was
23 still not present at the address.

24 Q Okay. And you talked about your experience working
25 in the drug patrol unit. But over the course of your

1 career in that unit, are you familiar with the packaging
2 of drugs and what constitutes a possession level versus,
3 potentially, an amount someone would distribute?

4 A Yes, ma'am, I am.

5 Q As to the two baggies that you did find that appeared
6 to contain methamphetamine, what was the difference
7 between the two? Was one very large?

8 A Yes. One was, I believe it was 6.5 grams of field
9 weight. I think after everything was done, all the
10 testing, it was 6.4. The other baggy was point two grams.
11 It wasn't quite a gram. The threshold for possession with
12 intent to distribute is one gram and over. So the 6.5
13 grams is definitely more than a user amount.

14 Q Okay. And that's based on your training and
15 experience?

16 A Yes, ma'am.

17 Q And when you say field weight, can you explain for
18 the jury what that means?

19 A So field weight is, basically, just -- you know, once
20 I recover a baggy of narcotics, I will actually weigh that
21 in the field, you know, right there on scene. And it
22 includes the weight of the narcotics and the baggy they
23 are packaged in. That's what a field weight is.

24 MS. MORONEY: That's all I have, Your Honor.

25 THE COURT: Anything on recross?

RECROSS-EXAMINATION

BY MR. DEMAIO:

Q This may seem odd, but do you use drugs?

A No, sir.

Q So you're just not a drug user?

A No, sir.

Q So what is the normal amount of drugs that a user might use?

A Well, it depends on the person. But, usually, a gram to two grams can sometimes be -- it just depends on how bad that person is and how often they do it. But based on the evidence that we have where my -- in my experience, when you have multiple baggies, most of the time narcotics dealers, they keep the majority of their narcotics that they sell in one baggy and they will -- you know, as they sell, they will take out that certain amount from the baggy and put it in smaller baggy and sell it.

Q Okay. And that normal sale through your experience is a gram, two grams or?

A It depends. Most of the time when I've made the more simple possession charges, I see a lot of drug paraphernalia because that proves that they're a user. When you find drug paraphernalia, it proves that hey, they have the tools to use it versus just having the tools to just sell it.

1 Q And how many bags did you find again?

2 A Three.

3 Q Three bags. And two of them had methamphetamine in
4 them?

5 A Yes, sir.

6 Q Okay. And you field-tested both of those?

7 A Yes, sir.

8 Q And over the course of your experience, you've seen a
9 lot of these sorts of issues?

10 A Yes, sir.

11 Q Does a normal -- let me walk that back.

12 So there were two bags with meth in them?

13 A Yes, sir.

14 Q And a normal drug sale depends on the individual?

15 A Yes, sir.

16 Q So just as somebody could have a small amount of
17 drugs for use, someone could have a large amount of drugs
18 for use?

19 A Yes and no. So a lot of the experience that I've
20 had, it ranges from, you know, dealer to dealer, you know,
21 mid-level dealers, you have low level dealers and then you
22 have your users. So sometimes if you have a mid-level
23 dealer, you know, he'll buy an ounce and then distribute
24 it versus a higher level dealer will buy a kilo of meth.
25 So it ranges on their intent.

1 Q So just as dealers vary, drug users vary? You said
2 that yourself?

3 A Yes, sir.

4 Q How many grams are in an ounce?

5 A How many grams are in an ounce?

6 Q Uh-huh.

7 A 28.

8 Q And you described a mid-level dealer as someone
9 buying maybe an ounce?

10 A Give or take, yes.

11 Q And you found six -- around six and a half grams in
12 this case?

13 A Yes, sir.

14 Q Okay. And does a meth user in your experience buy a
15 days worth of drugs at a time?

16 A Like I said, it all depends on their intent, what
17 they do with it. Some drug users buy it and, like I said,
18 they'll use some and they'll sell it as well. Your low
19 level dealers with use and sell.

20 Q But about individual users, we're not talking about
21 buying and selling. We're talking about how much an
22 individual person might buy at a time. And just as you
23 said, it depends on the individual?

24 A Correct.

25 Q And so somebody might buy maybe a small amount,

1 somebody might easily buy something that they could use
2 over the course of multiple days?

3 A In my experience, most -- most addicts, you know,
4 they can't keep a job. They don't usually have a savings,
5 you know, anything like that. They're not prepared for
6 the next day. They're usually looking for their next
7 high. So most of the time when that happens, they buy
8 enough for a use. They don't buy enough for the week or
9 they don't buy enough for the month. They usually buy
10 enough for that day.

11 Q In your hypothetical earlier, you proposed a user
12 might use one or two grams; correct?

13 A Yes, sir.

14 Q So that six and a half grams for that hypothetical
15 person could last around three days for that
16 two-gram-a-day user?

17 A It's possible.

18 MR. DEMAYO: No further questions, Judge.

19 THE COURT: Anything on redirect?

20 MS. MORONEY: No, Your Honor.

21 THE COURT: Sir, you can step down.

22 THE WITNESS: Thank you, sir.

23 THE COURT: This witness can be excused?

24 MS. MORONEY: He's our lead investigator, so we would
25 ask he be able to stay.

1 THE COURT: All right. He can stay.

2 Are you ready to call your next witness?

3 MS. MORONEY: Yes, Your Honor. The State calls
4 Sergeant Herring.

5 THE CLERK: Please place your left hand on the Bible
6 and raise your right hand.

7 ANDREW HERRING,

8 after first having been duly sworn, testified as follows:

9 THE CLERK: Thank you.

10 Please take a seat and state your name for the
11 record.

12 THE WITNESS: My name is Andrew Herring.

13 DIRECT EXAMINATION

14 BY MS. MORONEY:

15 Q Good morning, Sergeant Herring.

16 Do you currently work at the Greenville County
17 Sheriff's Office?

18 A I do.

19 Q Okay. And can you tell the jury some of your
20 background in law enforcement?

21 A I've worked here for a little over ten years. I
22 started on uniform patrol for a couple of years, then I
23 went to vice and narcotics for a short stint a little
24 under a year. And then, I went to our -- it's called
25 facet, but it's a fugitive apprehension team. We work

1 with only violent criminals. We've got all the murder
2 warrants and attempted murder, armed robbery. So I did
3 that for a couple of years and worked with our
4 investigators in order to find these people and get them
5 locked up.

6 After that, I went to directed patrol unit. I was
7 there for two years. We did everything from street
8 crimes, street level narcotics buys, undercover operations
9 and prostitutions, reversals, assisted federal agencies.
10 Pretty much anything and everything involving street
11 crimes for two years. I operated in an undercover
12 capacity there for a while. And then, I took a promotion
13 and went to homicide, spent about two years in homicide.
14 I had over five homicides of my own and assisted in over
15 30.

16 And now -- then I got promoted and went to the road
17 as sergeant. And now I'm a sergeant over warrants.

18 Q Okay. You mentioned during that about -- during your
19 time in the directed patrol unit that you operated in an
20 undercover capacity. Can you explain to the jury what
21 that would mean?

22 A So, obviously, I had a -- I have a heavy background
23 in drugs and narcotics investigations. And that was the
24 main reason why I was in directed patrol. I would wear
25 plain clothes everyday. It was just normal clothes,

1 mainly, to be able to take all my uniform off for any kind
2 of job to go and purchase narcotics on the street, either
3 narcotics or prostitutes. And then we would go from there
4 and, hopefully, cultivate confidential informants. I ran
5 confidential informants for several years, especially at
6 directed patrol unit, that was one of my main roles. So I
7 did that for an extensive amount of time. But I wore
8 plain clothes to help me with that.

9 Q So you would actually go in and purchase narcotics?

10 A Yeah, I would mainly ride around hotels. And after
11 doing it for a while, you just recognize who's selling,
12 learning the trends and just patterns of it. I'd go
13 purchase crack, meth, heroin, weed, anything they were
14 selling. And then, if I wasn't doing it, then I was
15 orchestrating the CI to do it.

16 Q And you did that in your time in --

17 A Directed patrol and some in vice.

18 Q And on July 1st, 2021, were you working with the
19 directed patrol unit?

20 A I was, yeah.

21 Q Okay. And what did you end up doing that day?

22 A That day, we were a little spread out. That happens
23 sometimes. We have -- we mainly try to stay together.
24 But I believe that day, we were on the south end, which is
25 district 25 mainly and the hotels. And Deputy Greer told

1 me he had some information from a confidential source that
2 he knew where a wanted suspect was probably at and a
3 stolen vehicle possibly. We were real short, so I made
4 sure to go down with him because it was a little further
5 away from where we were working that day. So just to make
6 sure we stayed together.

7 He made it there first and he found the -- what I was
8 under the impression was the car we were looking for. And
9 he believed that he found the wanted person. He thought
10 he saw him. Deputy Greer was driving a fully marked
11 patrol car at that time. I had an unmarked Explorer. So
12 that was something that alarmed me right away because he
13 had to drive past the house in order to get to where he
14 was at, so he was obviously seen.

15 So at that point, we didn't have much time. We
16 couldn't wait for the rest of unit to come down and help
17 us unless somebody was going to run off into the woods.
18 It was a heavily wooded area, easy to get away.

19 So once I got there and saw that, we decided to try
20 to make contact with the person and arrest them and try to
21 investigate furtherer about the vehicle. When we did
22 that -- before that, I saw an actual white male walking
23 around the car. But when we approached, Deputy Greer saw
24 the suspect running away -- who matched the description of
25 the one we were looking for running way from the vehicle

1 that I was under the impression was stolen.

2 As -- he was the only person out there and the only
3 person running way from that vehicle, so we pursued him on
4 foot, yelled out for him to stop. At that point, I was in
5 a plain clothes capacity dress, but I had a full uniform
6 on, vest on that had sheriff's office. It's quite obvious
7 it's a law enforcement vest. And Deputy Greer had a full
8 uniform on with his marked car. We pursued him on foot,
9 yelled for him to stop.

10 At one point, I saw him digging in his waistband and
11 it was not consistent with someone trying to pull up their
12 pants as they're running away. I've had people grab for
13 weapons extensively in my past, so I recognized that right
14 away and I was worried he was trying to get a weapon. I
15 didn't know if it was a weapon or drugs or what he was
16 doing. So I yelled out for him to stop and show us his
17 hands. So at some point, he put his hands up.

18 I lost sight of him as we were running after him. He
19 went around a building. Me and Deputy Greer split up to
20 try to cut him off. We saw him again, yelled out to him
21 again to stop. And he was reaching again, reaching in his
22 waistband, reaching near his pockets. I yelled out for
23 him to stop. Eventually, Deputy Greer caught up to him.
24 He was in a lot better shape than me.

25 So he caught up with him and he was able to give him

1 further commands. He pulled his taser out, told him to
2 put his hands up. He did so. By the time I made it up to
3 him, we were all three tired. It was a really hot day.
4 We told him to put his hands behind his back. He seemed
5 to be compliant and everything seemed to be fine. We told
6 him he was under arrest.

7 As I was trying to get one of his hands behind his
8 back, he quickly starting shooting his left hand back in
9 front of him. He was on his stomach at this point. So
10 it's -- if someone is going to give up, they put their
11 hands behind their back right away and just sit there and
12 wait for cuffs, no problem. He pulled his left arm out
13 and started digging more towards his waistband again.

14 And at that point, I was fearful he did actually have
15 a weapon and he was trying to get it. I thought he was
16 going to try to kill us to get away. And we were the only
17 ones there. So at that point, I had my left arm locked in
18 between his -- kind of laced between his arm and I punched
19 him two times in the face and told him to stop reaching.

20 He stopped. He asked me to stop punching him. No
21 more force happened. We put him in cuffs and sat him up
22 in recovery position, again, to make sure he didn't have a
23 weapon on him. And during that search incident to arrest,
24 we found what I recognized to be highly consistent with
25 methamphetamine in a bag. And another bag with what I

1 recognized to be highly consistent with marijuana. We
2 found all that.

3 Get him back to the car. It was extremely hot. He
4 was tired. We were tired. We got him water eventually as
5 soon as we could. We got him checked by medical
6 personnel. He refused treatment. And from what I
7 understand, he was transported.

8 During all that, we were being told that we were
9 needed as a SWAT team to go over to Spartanburg because
10 there was a massive shooting and hostage incident. So we
11 were trying to get everything done. And we were worried
12 about getting to that, too.

13 Q So that was the end of your involvement, though?

14 A Yeah.

15 Q Okay. Were you wearing a body-worn camera on that
16 day?

17 A I was.

18 Q And the jury has already heard a little bit about how
19 it works. But was yours operating normally?

20 A Yes.

21 Q And did you have to hit a button or how does it come
22 on?

23 A Yeah, back then, you had to hit a button to initiate
24 it. And I believe I hit it before we approached and -- or
25 right as we were approaching and that's when I started

1 recording. And it stays on until you turn it off.

2 Q I'm going to show you what's been pre-marked as
3 State's Exhibit No. 2 and ask if you know what that is?

4 A Yes. This is a recording of my body-worn video.

5 Q And how do you know that?

6 A Because I initialled it here and dated it.

7 Q And is that a fair and accurate depiction of the
8 events that unfolded that you just described?

9 A Yes. This and Deputy Greer's.

10 MS. MORONEY: The State would move State's Exhibit 2
11 into evidence.

12 THE COURT: Any objection?

13 MR. DEMAIO: No objection, Judge.

14 THE COURT: All right. Without objection, so
15 entered.

16 (WHEREUPON, State's Exhibit No. 2 was admitted into
17 evidence.)

18 BY MS. MORONEY:

19 Q Where did this occur?

20 A I can't remember the address exactly, but it was on
21 the southern end of the county, within Greenville County.

22 Q Okay.

23 A It's a pretty rural area.

24 (WHEREUPON, State's Exhibit No. 2 was played in open
25 court.)

1 BY MS. MORONEY:

2 Q This part doesn't have audio?

3 A Yeah, it's about a 30-second recording -- when you
4 hit the button, it goes back 30 seconds. There's just no
5 audio. Once I hit the button, that's when audio starts so
6 that's when I actually initiate it.

7 (WHEREUPON, State's Exhibit No. 2 continued to be
8 played in open court.)

9 BY MS. MORONEY:

10 Q And we heard you call out to Greer, is that Deputy
11 Greer?

12 A Yeah.

13 (WHEREUPON, State's Exhibit No. 2 continued to be
14 played in open court.)

15 BY MS. MORONEY:

16 Q And is that the part you described where he started
17 shooting his hand forward?

18 A Yeah. He's -- he said something, I can't breath.
19 And at that point, I felt his elbow slip back towards me
20 and I'm trying to push it back, force the elbow back
21 towards him so as to keep his arm behind his back. And
22 then he's reaching, so I hit him to try to stop him from
23 doing that.

24 Q And did he comply after that?

25 A He did.

1 (WHEREUPON, State's Exhibit No. 2 continued to be
2 played in open court.)

3 THE WITNESS: He's in the recovery position right
4 now. As soon as we cuffed him, we put him in that to help
5 him breathe because he said he couldn't breath.

6 (WHEREUPON, State's Exhibit No. 2 continued to be
7 played in open court.)

8 BY MS. MORONEY:

9 Q When you were chasing him and he was reaching, you
10 mentioned that you thought maybe it could be a weapon, but
11 is it a potential that he was reaching for other items?

12 A Yeah, that's common. So when we chase after people,
13 it extremely common for them to try to dump or throw away
14 anything they don't want to be caught with. And that's
15 always a thought, that it's either drugs or a weapon. And
16 it's always something in the back of our heads, but we
17 always have to be most cautious for if it's a weapon. But
18 it could be either/or.

19 Q But at this point, he's secured, correct?

20 A At this point, he's secured, yeah.

21 Q And the level of threat is down?

22 A Yes.

23 (WHEREUPON, State's Exhibit No. 2 continued to be
24 played in open court.)

25 THE WITNESS: At this point, I'm letting him lean

1 back on my legs to catch his breath. We're all extremely
2 tired and make sure he doesn't have an incident.

3 (WHEREUPON, State's Exhibit No. 2 continued to be
4 played in open court.)

5 BY MS. MORONEY:

6 Q So that item he just picked up, what was that?

7 A A ripped corner baggy. It was a plastic bag. You
8 see it -- it's extremely common in the drug world.
9 Distributor dealers use everything. It was a torn up
10 piece like it's been discarded.

11 Q And why would -- why would it appear that way, torn
12 up like that?

13 A It's either been dumped or -- or he discarded of it
14 and dumped it out.

15 Q But based on your history working as an undercover
16 and doing drug investigations, was that consistent with
17 packaging --

18 A Yeah, he had -- the actual drugs that were found on
19 him were multiple packages. And you have corner baggies,
20 that's the really easy way to package a small amount of
21 drugs to distribute them, sell them and make a profit.

22 (WHEREUPON, State's Exhibit No. 2 continued to be
23 played in open court.)

24 BY MS. MORONEY:

25 Q Whose vehicle is this here?

1 A I believe that's Deputy Greer's vehicle. That's the
2 fully marked patrol car he was in. Or it might be the
3 other deputy right there.

4 (WHEREUPON, State's Exhibit No. 2 continued to be
5 played in open court.)

6 BY MS. MORONEY:

7 Q So, ultimately, did you get him the water he kept
8 asking for?

9 A We did.

10 Q And I think you mentioned earlier, you called for a
11 medic?

12 A Yeah, we have several medics on our team. I called
13 for one to come down there and check him out, make sure he
14 was okay. And they're actual paramedics. They work with
15 us.

16 Q And so after this part, did that kind of conclude
17 your involvement with Mr. Bagwell?

18 A Yes, that was all.

19 Q And do you see Mr. Bagwell today in court?

20 A Yes.

21 Q Can you point him out, please?

22 A He's sitting over there in the white shirt.

23 MS. MORONEY: Thank you.

24 Please answer any questions the Defense has.

25 THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MR. DEMAIO:

Q Not too many questions here. But in brief, you participated when Kris got arrested. We've all seen the video, you were involved in that arrest?

A Yes.

Q And you were involved in his search incident to arrest?

A Yes.

Q Okay. And you helped Officer Greer go through Kristopher and his possessions?

A Yeah, I stood by. I think I did a secondary search.

Q So you checked after Officer Greer?

A Yes, from what I just saw on that video.

Q What did you find on Kris?

A When I -- when I searched him, you can play it back, we're already back at the car. So at that point, I think he's already been searched completely. So Deputy Greer would have found whatever he had and pulled it out.

Q But you didn't find anything that Officer Greer missed?

A Not that I remember. But you'd definitely be able to tell if you played it back, just that portion right there.

THE COURT: Put that microphone a little closer.

THE WITNESS: Oh, I'm sorry. You could definitely

1 tell if you played back that portion where he's at the car
2 patting him down. But I don't remember finding anything
3 that he missed.

4 BY MR. DEMAIO:

5 Q But you didn't find any money that Officer Greer
6 missed on him or anything?

7 A I mean, that might have been left in his pocket.
8 When we search people out in the woods after chasing them
9 like that, we're searching to make sure there's no
10 contraband or any weapons. We'll take that off of them.
11 But money, we don't want to lose money. So if I find
12 money in someone's pocket, I would put it right back in
13 his pocket. I don't want to hold onto that.

14 Q You didn't find any money?

15 A I can't tell you that, but if we rewind the video, we
16 can get the answer.

17 Q You don't remember finding any money?

18 A It was in 2021, so no, I don't remember. We don't
19 write that in our reports that we found money on his
20 person if I'm not taking custody of him. But the answer
21 is right there on the video if you want to --

22 Q And you never found a weapon on him?

23 A No.

24 Q And you didn't find anything else that Officer Greer,
25 who we've already spoken to, missed? Any ledgers, guns,

1 drugs, scales?

2 A No, I don't remember finding anything additional,
3 like any additional contraband at all. But again, I
4 mean...

5 Q Now, you said that Kristopher had multiple baggies on
6 him, correct?

7 A Yeah, I believe it was two.

8 Q Two bags?

9 A Two of meth, one of weed.

10 Q So he had two bags of methamphetamine?

11 A I believe so, yes.

12 Q Two being a multiple of one?

13 A That is more than one, yeah, multiple. And it's not
14 just the separation into the multiple bags, it's the
15 weight as well.

16 Q And you stated that during -- and I think we all saw
17 on video that you thought Kris was reaching for something
18 while you were in pursuit?

19 A That's correct.

20 Q And to your knowledge, was anything found? Did
21 you -- excuse me. Was there a search done because of your
22 belief that he was trying to get rid of something?

23 A On the -- I just saw it. They asked do you want an
24 article search over the radio. And I just saw and heard
25 Deputy Greer say yes, definitely. So again, at this

1 point -- and you hear our sergeant come over the radio
2 saying switch the channel. All this stuff is going on.
3 This is the point that Spartanburg had that incident, so
4 we were rushing to leave. So I don't know -- I wasn't
5 there when they did the article search. I don't remember.

6 Q So you're --

7 A I know we requested it, though.

8 Q So your knowledge is limited to, basically, what
9 we've seen here?

10 A Yes.

11 Q Okay.

12 A As far as the article search goes.

13 Q When Kristopher was arrested, there was, I think we
14 saw on that video, a torn corner of one of those plastic
15 baggies. Was that found on his person?

16 A It looked like -- it looked like it was picked up off
17 the ground where we were searching him. That's what I
18 perceived from that, the torn -- if that was just the torn
19 baggy. But I can't -- you've got to ask Deputy Greer.
20 He's the one that found the actual dope exactly where it
21 was.

22 MR. DEMAIO: No further questions for this witness,
23 Judge.

24 THE COURT: Anything on redirect?

25 MS. MORONEY: Briefly, Your Honor.

1 THE COURT: All right.

2 REDIRECT EXAMINATION

3 BY MS. MORONEY:

4 Q The Defense just asked you about the multiple baggies
5 issue. Was there anything about the difference in the
6 weight of the baggies that stood out to you?

7 A Yeah. If you could -- do you have the property form
8 with the actual weights? I believe it was a little over
9 six grams in one and less than a gram in another one.

10 Q What did that say to you from your training and
11 experience?

12 A So it was about --

13 MR. DEMAIO: Objection, Judge. Calls for
14 speculation.

15 THE COURT: What was the question again? Your
16 question.

17 MS. MORONEY: What does that say based on your
18 training and experience.

19 THE COURT: I'm going to allow it. Overruled.

20 THE WITNESS: So the -- when -- especially when you
21 get to over six grams, and it was about 6.4 in one and a
22 little bit over that in the other, you're looking at
23 almost two eight balls. So it's one -- yeah, two eight
24 balls. That's an eighth of an ounce. So 3.5 grams. So
25 you're right around having two decent products to sell to

1 somebody. Anywhere between -- depending on the price and
2 market at that time and availability, like, 60 to a
3 hundred dollars each.

4 So a small, tiny amount, a personal use amount that
5 he would sell for -- would be less than a gram, a gram or
6 less, a small amount. Any time you get to around six
7 grams or more, you're looking at profitability where you
8 can actually split it up and try to make your money back
9 that you spent.

10 BY MS. MORONEY:

11 Q And based on your experience making drug cases and
12 doing drug investigations, is it common for someone to
13 sell or share their drugs in order to obtain more drugs?

14 A Oh, yeah, absolutely.

15 Q Basically, feeding an addiction with selling the
16 drugs?

17 A Yes.

18 Q Mr. Demaio just elicited from you that you didn't
19 really find anything else on Mr. Bagwell?

20 A Right.

21 Q Did you find anything that could have been used to
22 ingest the narcotics that y'all discovered?

23 A No. I don't -- I don't believe so. It would have
24 been -- it would have been put into property. I didn't
25 see that no pipe, no needle, nothing like that.

1 Q In your history of making drug arrests, is it common
2 for someone that uses drugs to have an implementation to
3 use them?

4 A Yeah, that's the most common thing to find. So if
5 you get an absolute user, someone who's only using
6 possession weight, that's all they do, they're going to
7 buy what they can and use it almost immediately. It's
8 actually -- it's really uncommon to find just user amount.
9 Because users, the drug is in their vein as soon as they
10 buy it. They're going to buy it, smoke it, shoot it,
11 something or another. Usually, not going to have it on
12 them.

13 MS. MORONEY: That's all I have, Your Honor.

14 THE COURT: Anything on recross?

15 MR. DEMAIO: No questions, Judge.

16 THE COURT: You can step down.

17 THE WITNESS: Thank you.

18 THE COURT: Can he be excused or do you still need
19 him?

20 MS. MORONEY: He can be excused from our side.

21 THE COURT: Any objection.

22 MR. DEMAIO: No objection, Judge.

23 THE COURT: All right. You're excused.

24 THE WITNESS: Thank you, Your Honor.

25 THE COURT: All right. Y'all need to take a break or

1 you good? Everybody good?

2 (WHEREUPON, indicating in the affirmative.)

3 THE COURT: The State can call its next witness.

4 MS. MORONEY: The State calls Charles Moore.

5 THE CLERK: Please place your left hand on the Bible
6 and raise your right hand.

7 CHARLES MOORE,

8 after first having been duly sworn, testified as follows:

9 THE CLERK: Thank you.

10 Please take a seat and state your name for the
11 record.

12 THE WITNESS: Charles Moore.

13 DIRECT EXAMINATION

14 BY MS. MORONEY:

15 Q Mr. Moore, where do you work?

16 A Greenville County Detention Center.

17 Q And what are your duties at Greenville County
18 Detention Center?

19 A I'm the administrator over the inmate telephone
20 system.

21 Q And can you tell the jury a little bit about what
22 that system is and how it works?

23 A The inmate telephone system is, essentially, inmates
24 can call home, make phone calls. The way the system works
25 is they initially enroll their voice in the system after

1 booking. They're issued a sensitive pack number, which
2 works as their account number. And they use that to
3 access their personal phone account, which identifies them
4 to whoever they're calling. They say for certain calls,
5 except for calls to attorneys, they're recording them.
6 That's it. That's the way it works.

7 Q Okay. So inmates are given a pin number?

8 A Yeah, a six -- I'm sorry, a ten-digit pin, it's their
9 pack number plus four digits that they publish after
10 booking.

11 Q And does the system record all of those phone calls?

12 A All calls except for private attorney calls.

13 Q And they're accessible through your system?

14 A Yeah.

15 Q And were you able to review a jail phone call in this
16 case?

17 A Yes. I reviewed one phone call.

18 Q I want to show you what's been marked as State's
19 Exhibit No. 3. Do you know what that is?

20 A Yes.

21 Q And what is that?

22 A That's the disk I reviewed earlier, prior to coming
23 here. And it matches the call that is from our system.

24 Q And does it have a date on it?

25 A Yeah, it's today's date.

1 Q Does it have a date denoted as to when the jail call
2 was made?

3 A 7/3/2021.

4 Q And is that a -- that is, basically, the same content
5 that you were able to review independently on your
6 computer?

7 A Yes.

8 Q Okay.

9 MS. MORONEY: The State would ask to move State's
10 Exhibit No. 3 into evidence.

11 THE COURT: Any objection?

12 MR. DEMAYO: Judge, we just renew our earlier
13 objections.

14 THE COURT: Subject to -- subject to Defense counsel
15 objection noted for the record.

16 (WHEREUPON, State's Exhibit No. 3 was admitted into
17 evidence.)

18 BY MS. MORONEY:

19 Q Have certain portions been muted in this jail phone
20 call?

21 A Yes.

22 Q And those would just be irrelevant to this case?

23 A To my understanding, they would be, yeah.

24 Q Is there a prerecorded prompt that comes on when a
25 jail phone call is made that's reflected on the

1 railroading?

2 A Yes.

3 Q And is the inmate uniformed that they're being
4 recorded, possibly monitored?

5 A Yes, the message they receive when they first start
6 the call is a notification of recording. Also, throughout
7 the facility, we have signs saying that all calls are
8 recorded and monitored.

9 (WHEREUPON, State's Exhibit No. 3 was played in open
10 court.)

11 BY MS. MORONEY:

12 Q Now, is that just a portion of that jail phone call?

13 A Yes.

14 Q And that was made from Kristopher Bagwell's pin?

15 A Yes.

16 MS. MORONEY: Please answer any questions the Defense
17 has.

18 THE COURT: Cross-examination.

19 MR. DEMAIO: No questions, Judge.

20 THE COURT: All right. Sir, you can step down.
21 Can this witness be excused?

22 MS. MORONEY: From the State, yes, Your Honor.

23 THE COURT: Any objection?

24 MR. DEMAIO: No objection, Your Honor.

25 THE COURT: Sir, you're free to go.

1 THE WITNESS: Thank you.

2 THE COURT: The State call its next witness.

3 MS. CASE: The State calls Kathy Lance.

4 THE CLERK: Please place your left hand on the Bible
5 and raise your right hand.

6 KATHY LANCE,

7 after being duly sworn, testified as follows:

8 THE CLERK: Thank you.

9 Please take a seat and state your name for the
10 record.

11 THE WITNESS: My name is Katherine Lance.

12 DIRECT EXAMINATION

13 BY MS. CASE:

14 Q Ms. Lance, where do you work?

15 A I work for the Department of Public Safety in the
16 forensic division property and evidence.

17 Q How long have you been in property and evidence?

18 A 12 years.

19 Q What is your role in property and evidence?

20 A I am an administrative specialist. We check in
21 evidence, check out evidence for such as this, out to
22 court. Or we turn in evidence to people that are able to
23 get it back.

24 Q Can you explain a little bit about the process of
25 checking in and checking out evidence from property and

1 evidence?

2 A Sure. Everything is done by computer. Everything
3 that comes across our counter or through the drop box and
4 lockers, depending on how large the evidence is. I come
5 in at seven o'clock, so I'm the one who takes everything
6 out of the drop box and lockers getting them ready for
7 everybody to work on during the day. And we put in by the
8 P&E sheet, property and evidence sheet, what the evidence
9 is, check over everything, package it up and it goes on
10 the shelf until it's pulled out to go to court or
11 destroyed or given back.

12 Q And how is each one of those identified? Is it given
13 a particular number?

14 A It is given an item number, which is normally the
15 officers two or three initials with one, two, three, four
16 or however many pieces of property is in that case.

17 Q Is there a bar code with each one of these numbers?

18 A There is a bar code for that.

19 Q And can you explain a little bit about the lock box
20 you mentioned?

21 A The drop box is behind closed doors. People can get
22 in with a pass or with a key. And things in the drop box
23 are smaller items that are in the envelopes and they go
24 onto the shelf in an envelope. Larger items are put in a
25 box together, depending on how many pieces of evidence or

1 what storage area. We have general evidence, we have
2 drugs, we have firearms, we have jewelry, we have money.
3 Everything goes into the secured area.

4 Q Once it's been put in that box, does anybody else
5 have access to it?

6 A If they do have access, like the officer or the
7 solicitor that comes to look at it, it is checked out to
8 them. They have a security process with it. Then it
9 comes back to us, we check it back in.

10 Q How did the evidence in this case come to property
11 and evidence?

12 A I'm not sure. You'd have to look at the chain of
13 custody.

14 Q If I showed you that, would it refresh your memory?

15 A Yes, ma'am.

16 Thank you.

17 It looks like a couple of items. The first item came
18 in and was actually checked in at 8:42 that morning. One
19 of our other administrative specialist, Rachel Raffenburg
20 (ph), she's the one that took it and placed it onto the
21 shelf and packaged it.

22 At that point, later on -- I don't know if you want
23 the dates or not, but it was checked out by Kristen
24 McCall, who is with the drug lab. She checks it out from
25 us and then takes it to her secured area. It was brought

1 back in by another one of our attendants and then checked
2 out for court staging by me today.

3 Q Okay. I'm going to show you what has been pre-marked
4 as State's Exhibit No. 4 and 5. Can you open it up
5 without showing the jury and tell us what it is?

6 A Okay. This is the two drugs stated on the chain of
7 custody here.

8 Q Okay. And do they appear to be in the same packaging
9 and labeling as when they were dropped off or when they
10 were submitted into property and evidence?

11 A They are. The original bag is inside this other
12 sealed bag. This is what the drug lab puts it in once
13 they test it. But the original bag that we got out of
14 lockers or drop boxes is still in here.

15 Q And are those labeled with the officer's initials
16 like you mentioned previously?

17 A They are.

18 Q And they have a bar code given to them?

19 A They have a bar code given to them.

20 Q And do the numbers on the bags inside match the
21 numbers on the outside of the packaging?

22 A They do.

23 Q Okay. How do you know that these -- are these items
24 in -- have they been altered in any way?

25 A Altered in any way?

1 Q Do they appear to have been altered in any way?

2 A No, ma'am, they have not.

3 Q Apart from the transfer that you mentioned to the
4 lab, does it appear anybody else has had access to these
5 items?

6 A It does not. When it was brought back from the drug
7 lab, I took it back in. And then it was there until I
8 checked it out for court today.

9 Q And they've been in property and evidence's
10 possession until this trial?

11 A They have.

12 MS. CASE: Thank you. Please answer anything from
13 the Defense.

14 THE COURT: Cross-examination.

15 MR. DEMAIO: No questions for the witness, Judge.

16 THE COURT: Ma'am, you can step down.

17 Can this witness, also, be excused?

18 MS. CASE: From the State, yes, sir.

19 THE COURT: Any objection?

20 MR. DEMAIO: No objection.

21 THE COURT: Ma'am, you're free to go. Thank you for
22 coming.

23 State ready to call its next witness?

24 MS. CASE: The State calls Kristen McCall.

25 THE CLERK: Please come to the Bible. Place your

1 left hand on the Bible and raise your right hand.

2 KRISTEN MCCALL,

3 after being duly sworn, testified as follows:

4 THE CLERK: Thank you.

5 Please take a seat and state your name for the
6 record.

7 THE WITNESS: Okay. Kristen McCall.

8 DIRECT EXAMINATION

9 BY MS. CASE:

10 Q Ms. McCall, where are you employed?

11 A I'm employed at the Greenville County Department of
12 Public Safety forensics division.

13 Q And what do you do there?

14 A I'm a forensic chemist.

15 Q Can you explain your educational background?

16 A Yes, I have a Bachelor's in biology and a Master's in
17 (indiscernible).

18 Q What do you do at the forensics lab?

19 A In my job, I test suspected controlled substances. I
20 confirm or not confirm what the officer may or may not
21 think it is.

22 Q What types of training or certificates do you have to
23 perform those duties?

24 THE COURT: Keep your voice up.

25 THE WITNESS: My training, of course, is my education

1 and I'm a member of a CLIC, which is Clandestine
2 Laboratory Investigative Chemists, and Forensics Academy.

3 BY MS. CASE:

4 Q And do you do anything to stay current on the -- your
5 field, developments in your field?

6 A Yes. I do a lot of continuing education.

7 Q Approximately how many drug analyses have you
8 conducted in your career?

9 A I have been employed with the forensic division for
10 nine years. And in a month, I probably do about a hundred
11 cases. So you're looking at probably over 10,000 cases in
12 a year. So in my career, I'd have to get a calculator.

13 Q Have you ever testified in court before?

14 A Yes, ma'am.

15 Q How many times?

16 A This will be my ninth time.

17 Q Have you ever been qualified as an expert witness in
18 court?

19 A Yes, ma'am.

20 Q Qualified in what?

21 A In drug chemistry.

22 Q And how many times?

23 A This will be my ninth time if I am qualified.

24 MS. CASE: Your Honor, at this point, the State moves
25 to admit Ms. McCall as an expert in drug chemistry.

1 THE COURT: Any objection?

2 MR. DEMAYO: No objection, Judge.

3 THE COURT: She's so qualified in that area without
4 objection.

5 Go ahead.

6 BY MS. CASE:

7 Q Ms. McCall, general speaking, how does a substance
8 that needs to be tested come into your possession?

9 A Well, I go down to property and evidence. And I
10 think Kathy was here before me. And she is somebody that
11 I usually request cases from. So I come to the bench and
12 I say may I have some cases, please. And she'll go back
13 and get me a batch of cases. And then I will take them
14 back to the laboratory. And I will check to make sure
15 that every item that's in those envelopes is there because
16 it's in my custody. Because when she goes beep, beep and
17 she scans it into my name, I have to make sure what's in
18 there is in there. So that's how it gets into my custody
19 first. And I can go into what happens later if you like.

20 Q Generally speaking, what do you do after you get
21 those items?

22 A I check to make sure what it says, you know, like, a
23 bag containing this or a bag containing that, I check
24 that's in there. And then I print out a request from the
25 office because I'm not working on anything unless the

1 officer request it. Then I have a request. Then I take
2 it to my lab bench where I'm sitting it. And say this is
3 my scale, this is my chemical spot test. And then I have
4 my two confirmatory instruments.

5 So say I have a bag, I'll take my bag, I'll dump it
6 out onto the scale after I tear it because I get a net
7 weight. I don't want the weight of the bag because weight
8 is important. I get the bag weight. I would put it on my
9 worksheet and then I would do a chemical spot test, which
10 is an indication of what you're looking at. So let's say
11 a bag of white powder, it turns blue. To me, that tells
12 me that could be either cocaine, lidocaine, benzocaine,
13 tetracaine, all those will give you that color.

14 So then from there, I have to go into a confirmatory
15 test, which we have an FTIR, which is a Fourier Transform
16 Infared Spectroscopy. That really is for pure substances.
17 So if the cocaine was cut with anything, say, they put a
18 filler in it, you know, to bulk it up to make it weigh
19 more, say they put cocaine and baby formula, I couldn't
20 use that FTIR. So then I'd have to take it to another
21 instrument, the GCMS, which is a gas chromatograph mass
22 spectrometer. And that's where it will separate out each
23 individual compound to what it is. It's, basically, a big
24 oven.

25 Q And depending on that spot test, that determines

1 which test you perform on the substance?

2 A Yes.

3 Q And did you examine any substances in this case?

4 A Yes, ma'am.

5 Q I'm going to hand you what's been pre-marked as
6 State's Exhibit No. 4 and 5?

7 A Okay.

8 Q It matches JPG-1 and 3?

9 A Okay.

10 Q Can you explain what tests you conducted on -- well,
11 can you open up that bag?

12 A Uh-huh.

13 Q State's Exhibit No. 4 and 5. Do those appear to be
14 the substances you analyzed in this case?

15 A Yes. And I know because here, I put my -- the date
16 and the initials. And then I reseal it back up.

17 Q And does it appear to be in the same condition as
18 when you resealed it?

19 A Yes, ma'am.

20 MS. CASE: Your Honor, at this time, the State moves
21 to admit State's Exhibit Nos. 4 and 5 into evidence.

22 THE COURT: All right. Any objection?

23 MR. DEMAIO: No objections, Judge.

24 THE COURT: All right. So entered without objection.

25 (WHEREUPON, State's Exhibit Nos. 4 and 5 were

1 admitted into evidence.)

2 BY MS. CASE:

3 Q Can you explain the tests you ran on those
4 substances?

5 A Yes. So I had a bag containing crystal substance.
6 I, also, had a bag with baking soda that I did not
7 examine. And then I had a bag containing crystal
8 substance. And I did a chemical spot test on JPG-1 and it
9 turned orange, which gave me an indication that it had
10 amphetamine group in it. So from there, I took it to the
11 GCMS. And when I laid it on the GCMS to separate it out,
12 it came back as methamphetamine. Can I say that? I'm
13 sorry.

14 Q Yes?

15 A And then on JPG-3, I had another bag containing
16 crystal substance. I put in the chemical spot test and it
17 turned orange. Ran it on the GCMS to make sure there were
18 no filers and it came back as methamphetamine.

19 Q And how do you make sure there's no cross
20 contamination between the different drugs you test?

21 A When I work one drug, I only make sure that drug is
22 open at the time. Because you don't want to have this
23 drug open and that drug open because then you can
24 cross-contaminate. So when I work one drug, I set it
25 here, open it, seal it back. That's done, put it back in

1 the envelope. Then I move to my next item.

2 Q Did you weigh each substance?

3 A Yes, ma'am.

4 Q Can you tell the jury what the weight of those
5 substances were?

6 A Yes, ma'am. Out of the bag, because I only do the
7 net weight, JPG-1 was 6.21 grams. And JPG-3 was 0.19
8 grams.

9 Q And can you tell the jury which -- what did State's
10 Exhibit 4 weigh and what was it?

11 A The only thing that came in my custody was JPG-1,
12 JPG-2 and JPG-3.

13 Q Yes, ma'am. If you look at the sticker on the bag,
14 it should match up on the bag with the actual
15 methamphetamine in it?

16 A I'm sorry, State's Exhibit, excuse me. My bad.
17 Let's see JPG-3. And what was your question?

18 Q What did State's Exhibit 4 weigh and what is it?

19 A State's Exhibit No. 4, which is JPG-3, this is 0.19
20 grams and that was methamphetamine.

21 Q And what about State's Exhibit No. 5?

22 A State's Exhibit No. 5, this is 6.21 grams and that
23 was methamphetamine.

24 MS. CASE: Okay. Thank you.

25 Please answer anything from the Defense.

1 THE COURT: Cross-examination.

2 MR. DEMAIO: No questions, Judge.

3 THE COURT: All right, ma'am. You can step down.

4 THE WITNESS: Yes, sir. Thank you.

5 THE COURT: All right. The State is ready to call
6 their witness?

7 MS. MORONEY: Your Honor, at this time, the State
8 rests.

9 THE COURT: All right. Okay. Ladies and gentlemen
10 of the jury, we're going to take about a 10-minute break
11 and then I'm going to bring you back in and kind of give
12 you some direction as to lunch and all that kind of stuff.

13 Please, ma'am, please, sir, do not talk about the
14 case while you're taking this 10-minute break. I'll bring
15 you back in in about ten minutes. Just follow the bailiff
16 on the way out.

17 (WHEREUPON, the jury was excused from open court at
18 approximately 11:43 a.m.)

19 THE COURT: Any motions of any kind?

20 MR. DEMAIO: Judge, we just move to renew once again
21 our previous objections as to the admissibility of the
22 previously discussed evidence. And I believe at this
23 time, we would move for directed verdict on the charge of
24 possession with intent to distribute.

25 THE COURT: Basis?

1 MR. DEMAIO: That the State hasn't provided -- in the
2 light most favorable to the State that they haven't
3 provided sufficient evidence for the jury based on the
4 circumstances.

5 THE COURT: Thank you, counsel.

6 Anything from the State in reply?

7 MS. MORONEY: Just that I believe we have established
8 enough to go to the jury on this case.

9 THE COURT: I'm going to go ahead and deny your
10 motion.

11 Any other motions of any kind?

12 MS. KEPLEY: Yes, Judge. I will say the only
13 potential witness the Defense would have would be
14 Mr. Bagwell. We would request a little time to talk to
15 him about his decision to testify or not testify. And we
16 would certainly want to put that on the record as well.

17 THE COURT: All right. So you need to talk to him.
18 It's close to 12:00, not 12:00. I've got -- how much time
19 do you need?

20 MS. KEPLEY: Ten minutes, Judge. And I will say
21 prior to that conversation maybe this is something we
22 should have with the State. He has a very extensive
23 record, maybe a motion to settle the record as to exactly
24 what would come in as impeachment on cross or not. Before
25 I have that conversation with Mr. Bagwell, it would

1 certainly be helpful, Judge.

2 THE COURT: All right. So you need more time -- the
3 jury is going to be out about ten minutes. Do you need
4 more time than that?

5 MS. KEPLEY: I don't think I need more time that
6 than.

7 THE COURT: Y'all go ahead and talk about that.

8 What I'm going in all likelihood do -- to be honest
9 with you, I'm going to bring the jury back in and probably
10 send them to lunch. So I can go ahead and do that now and
11 then you'll have a lot of time to talk. And then we'll
12 come back around 2:00. Fair enough?

13 MS. KEPLEY: That works for us.

14 THE COURT: Fair enough?

15 MS. MORONEY: That works for us.

16 THE COURT: All right. Bring the jury back.

17 (WHEREUPON, the jury came into open court at
18 approximately 11:48 a.m.)

19 THE COURT: All right. Ladies and gentlemen of the
20 jury, what I'm going to do is I'm going to send you to
21 lunch a little bit early. And you're probably going to
22 have an extended lunch and probably reconvene back around
23 two o'clock. It's almost 12:00, so you've got a lot of
24 time, so use it wisely.

25 Please, ma'am, and, please, sir, do not be late and

1 report back to your jury room by two o'clock. Please,
2 ma'am, and, please, sir, do not talk about the case to
3 anyone during your lunchtime and do not talk about the
4 case to each other.

5 So just follow the bailiff and I'll see you back in
6 the jury room at two o'clock.

7 (WHEREUPON, the jury was excused from open court at
8 approximately 11:49 a.m.)

9 THE COURT: Okay. And while you're at lunch, also,
10 be thinking about the charge because, basically, it's just
11 going to be a standard charge on drug offense. Everything
12 else will be standard. Y'all just think about that. My
13 law clerk should be back in a little bit. She had a
14 little girl she had to take care of, so she'll be back
15 shortly. But she'll probably prepare a verdict form and
16 that kind of thing and probably have the charge with it.
17 If y'all got one you want me to see that may be different
18 than mine, bring it with you when you come back. So be
19 working on that kind of stuff.

20 Anything else before we take a break?

21 MR. DEMAIO: Not from us, Judge.

22 MS. MORONEY: Nothing from the State, Your Honor.

23 THE COURT: We'll reconvene around two o'clock.

24 (WHEREUPON, a lunch break was taken.)

25 THE COURT: This is the State vs. Kristopher Bagwell.

1 Ms. Kepley and Mr. Demaio, prior to the break for
2 lunch, you indicated you needed to speak with your client
3 relative to whether or not he's going to testify. What's
4 his decision?

5 MS. KEPLEY: Judge, Mr. Bagwell tells us he does not
6 intend to testify.

7 THE COURT: Mr. Bagwell, would you stand for me, sir?
8 Raise your right hand.

9 KRISTOPHER BAGWELL,

10 after being duly sworn, testified as follows:

11 THE COURT: All right. You can put your hand down.

12 Now, your law, Ms. Kepley, has indicated to the Court
13 that you do not intend to testify on your behalf; is that
14 correct?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. Have you had ample time to
17 discuss the pros and cons of testifying with your lawyers?

18 THE DEFENDANT: Yes, sir, I have.

19 THE COURT: Have you understood those discussions?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And so your decision not to testify, is
22 that your decision?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: You're not influenced by your lawyers?

25 THE DEFENDANT: No, sir.

1 THE COURT: You had an opportunity to make that on
2 your own and that's your decision to do that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And you're not under the influence of
5 anything at all?

6 THE DEFENDANT: No, sir.

7 THE COURT: You're clear minded and you understand
8 what you're doing?

9 THE DEFENDANT: Yes, sir, I do.

10 THE COURT: And as counsel well knows, I will
11 instruct the jury at the conclusion of the case that your
12 failure to testify should not and cannot be used against
13 you.

14 THE DEFENDANT: I understand.

15 THE COURT: Do you have any questions of me regarding
16 anything I just asked you?

17 THE DEFENDANT: No, sir.

18 THE COURT: All right. You can have a seat.

19 All right. So I'm assuming that once we bring the
20 jury back, the Defense will rests; is that correct?

21 MS. KEPLEY: That's correct, Judge.

22 THE COURT: I think that the State has already
23 rested.

24 Let's talk a little bit about the charges and where
25 we go from here. I did receive yours. Did you share that

1 with them?

2 MR. DEMAIO: You believe I copied them on that as
3 well. I have somebody fetching a physical copy now as we
4 speak.

5 THE COURT: So what we're going to do is just go over
6 a couple of things. I'm going to do the Logan charge on
7 the circumstantial evidence. I think that's the
8 appropriate charge and I think you sent that to me. So
9 I'm going to read your charge, Logan. Do you know what
10 I'm talking about?

11 MR. DEMAIO: Yes, Judge.

12 THE COURT: Now, the generic charges that I normally
13 will do is, obviously, I will charge about the Defendant's
14 failure to testify can't be used against him. I, also,
15 have a charge regarding intent. I always do that in a
16 criminal case. If y'all have tried cases in front me
17 before, you've heard it. I'll do the Logan charge on
18 direct and circumstantial evidence. And I will, also, do
19 the expert witness charge. I think you had a couple
20 experts. I think you did.

21 You had an expert witness?

22 MS. MORONEY: We had an expert.

23 THE COURT: I thought you did.

24 All right. I'll do an expert witness charge.

25 And then reasonable doubt, you know, my standard

1 generic stuff that I'm going to say. Reasonable doubt,
2 credibility, believability of witnesses, that kind of
3 thing. I'll say all that.

4 Now, here's the thing. I've got two -- I've got the
5 charge on possession and I've got a charge on possession
6 with intent. And I think what you were talking about --
7 well, let's talk about that just for a second.

8 What's the State's position and Defendant's position
9 regarding the charge on possession and possession with
10 intent? What's your position? What.

11 MS. MORONEY: I believe they're asking for it. I
12 mean, I think they're saying that there's evidence that
13 it's just possession.

14 THE COURT: Well, you've got a position, though. You
15 can say you don't want that. I'm just asking. If
16 everybody is in agreement and I charge possession and
17 possession with intent, give them an either/or, I'll do
18 that. Is that what you're telling me?

19 MS. MORONEY: You know, Your Honor, I believe if
20 there's any -- any evidence in the record to support a
21 charge, I think, of course, it's something that should be
22 given. But the State has proceeded only on possession
23 with intent to distribute. I know Mr. Demaio conceded,
24 basically, in his opening to possession. So I think it's
25 probably appropriate to give it.

1 THE COURT: All right. So I guess what I'm hearing
2 is I'm going to charge both. I'm going to charge
3 possession and then I'm going to charge possession with
4 intent. And then I am going to -- so you'll know, you've
5 got the charge on possession and possession with intent.
6 And then that second paragraph on the charge that you
7 sent, it says -- let me just read it. It says, I, also,
8 charge you that the crime of possession with intent to
9 distribute methamphetamine includes the lesser crime of
10 possession of methamphetamine. And then I may -- it
11 depends on how I'm going to do it. I may stop there and
12 do the charge on possession and possession with intent.
13 And come back and say if any of you are not convinced
14 beyond a reasonable doubt that the Defendant is guilty of
15 possession with intent to distribute and all of you are
16 convinced beyond a reasonable doubt the Defendant is
17 guilty of a lesser crime of possession of methamphetamine,
18 you may find the Defendant guilty of the lesser crime. Do
19 you see what I'm saying?

20 MR. DEMAIO: Yes, Judge.

21 THE COURT: I'm going to go around -- I may not say
22 it exactly like you has it, but I'm going to get to the
23 finish line. I may go a roundabout way.

24 So make sure we're clear, I'm charging possession
25 with intent, I'm charging possession. And then I'm going

1 to read this paragraph, the second paragraph. Your first
2 paragraph, it doesn't make a whole lot of sense, but I'll
3 read it.

4 MS. MORONEY: Your Honor, do you have a version from
5 the bench book? I think we have a standard version of the
6 --

7 THE COURT: Of what, possession?

8 MS. MORONEY: Of the inference weight. That first
9 paragraph Mr. Demaio included, it's from a case, but I was
10 looking at the standard bench book jury charges. There
11 might be a cleaner way to say that.

12 THE COURT: Are you talking about the first
13 paragraph?

14 MS. MORONEY: Uh-huh.

15 THE COURT: If you've got one, I'll say it, because
16 otherwise I was just going to say what he gave me. If
17 there's a cleaner one.

18 MR. DEMAIO: Judge, I don't think that first
19 paragraph in and of itself is the entire possession with
20 intent to distribute jury charge. I believe that's just
21 an additional --

22 THE COURT: Okay. That's -- it's on -- my
23 illustrious law clerk, I underline illustrious, she sees
24 stuff that I don't see. In one of the charges that I'm
25 going to do, it says exactly that same wording. It says

1 in the last paragraph, possession of more than one gram of
2 methamphetamine creates an inference that the Defendant
3 was possessing methamphetamine with the intent to
4 distribute. This inference does not relieve the State
5 from proving beyond a reasonable doubt that the Defendant
6 had the intent to distribute. It is simply an evidentiary
7 fact to be taken into consideration. Is that what you're
8 saying?

9 MR. DEMAIO: Essentially, Judge.

10 THE COURT: Yeah, same thing. So I think we've
11 covered it.

12 MS. MORONEY: It just includes permis and inference
13 several times.

14 THE COURT: So is everybody straight?

15 MR. DEMAIO: I believe so.

16 THE COURT: And let me see the verdict form.

17 Give them a copy.

18 Take a look at that and let me know what you think.

19 (Pause.)

20 THE COURT: Are you good with the verdict form?

21 MS. KEPLEY: No objection.

22 MS. MORONEY: Yes, Your Honor.

23 THE COURT: All right. Anything further before we --
24 now, let me ask you this, you -- once we -- once you put
25 on the record that you rest, we're going to go straight

1 into closing arguments.

2 MR. DEMAIO: Yes, Judge.

3 THE COURT: And I think y'all have been doing this
4 long enough, I don't think I need to tell you who gets the
5 last argument.

6 MR. DEMAIO: Yes, Judge.

7 THE COURT: All right. Bring the jury in and let's
8 see what we got.

9 MS. MORONEY: And Your Honor, for my closing, I
10 intend to use the computer.

11 THE COURT: Yeah, she'll help you out.

12 (WHEREUPON, the jury came into open court at
13 approximately 2:20 p.m.)

14 THE COURT: Is the Defense ready to proceed?

15 MR. DEMAIO: The Defendant rest, Your Honor.

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

17 All right. Ladies and gentlemen of the jury, we are
18 going to go directly into closing arguments. And remember
19 what I told you at the beginning about the difference
20 between opening statements and closing arguments. Just to
21 refresh your memory as to that. Even though all the
22 evidence is in, all the testimony has been heard, now the
23 lawyers are going to tell you their opinion as to what
24 they think the evidence that you've seen, whether it's
25 testimony or photographs, sketches, what they -- what they

1 intend to show.

2 So both sides ready to proceed with closing
3 arguments?

4 MS. MORONEY: The State's ready, Your Honor.

5 THE COURT: All right.

6 MR. DEMAIO: The Defense is ready, Your Honor. Again
7 for purposes of the record, we renew our earlier
8 objections.

9 THE COURT: It's noted for the record.

10 Thank you, Mr. Demaio.

11 Yes, ma'am.

12 MS. MORONEY: May it please the Court?

13 THE COURT: Yes, ma'am.

14 CLOSING ARGUMENTS BY THE STATE:

15 MS. MORONEY: Hello again. I'm going to use a little
16 PowerPoint here on the case. So today, we're here on the
17 State v. Kristopher Bagwell. As you heard earlier, that's
18 the Defendant in this case, who's seated over there with
19 the red tie on. He is charged with possession with intent
20 to distribute methamphetamine.

21 Now, again, Judge Kinlaw is going to give you the
22 exact law that you are to apply, but this is the part of
23 the law that he probably is going to tell you about very
24 shortly. It is unlawful to manufacture, distribute,
25 dispense, deliver and all of these verbs. But most

1 importantly for this case, possess with the intent to do
2 any of the same of methamphetamine.

3 Now, with possession with intent to distribute, we
4 have the ability to use an inference. Now, if you have
5 over a gram of methamphetamine, you are allowed to infer
6 as the triers of facts that that is evidence of someone's
7 intention to distribute.

8 You heard from Deputies Greer and Herring about what
9 is a typical user amount of methamphetamine versus what is
10 the amount that someone may intend to distribute or sell
11 or share. So Judge Kinlaw, again, is to charge you about
12 the inference weight and how that applies. That's just
13 for you to consider because I still have to prove that he
14 intended to distribute it. But that is one of the reasons
15 that we are here on possession with intent to distribute
16 methamphetamine.

17 Another way to infer that Mr. Bagwell intended to
18 distribute it is because it is packaged differently. And
19 I thought that was notable that you have State's Exhibit
20 No. 5, which is in evidence. That's your six point
21 something grams of methamphetamine. That's your main
22 stash. That's why we call it possession with intent to
23 distribute. And then as you heard from the witnesses,
24 State's Exhibit 4, is the smaller amount, that's the .19
25 amount. And that would be more like a use. That would be

1 what someone buys and uses when they're doing
2 methamphetamine. Whether that's smoking it, shooting it,
3 whatever.

4 So Mr. Bagwell in one pocket had his main stash, his
5 PWID amount, and his possession amount. Whether he
6 intended to sell this to someone, that's for you guys to
7 decide. But it is packaged separately, which is part of
8 why we're here. You can take it to show that he wanted to
9 distribute these drugs.

10 The other thing I thought was notable about the
11 testimony you heard today, you heard from the trained and
12 experienced two deputies who have worked vice and
13 narcotics and undercover. We didn't have anything else
14 that would indicate that Mr. Bagwell was using those drugs
15 immediately in time to when he was found with those drugs.
16 No smoking implement, no syringes, no anything that would
17 indicate he was going to use those drugs immediately
18 before or after.

19 So that is another point that shows that these drugs
20 were not intended for his own personal use. These were
21 potentially being shared amongst the friends he was at the
22 house with. He was there with those people with the car
23 that Deputy Greer said he was looking for. He was hanging
24 out with those people beforehand and he was leaving. So
25 that is evidence of intent to distribute.

1 So this is the fun part about PWID versus possession.
2 I like to draw the analogy when I'm talking about it with
3 friends and family members, they ask what is the
4 difference. It doesn't really make that much sense. Can
5 you explain it? I like of think of possession amount as,
6 basically, you have a six-pack of beer. A person could
7 drink a six-pack of beer. Now, depending on who you are,
8 you would really, really drunk or maybe you would be fine.
9 But that is a possession amount of bear.

10 Possession with intent to distribute amount of beer
11 would be like seeing a keg at a party. No person is
12 intending to drink all of that beer in one night. It
13 would be impossible. But if you have some friends over
14 and you might have a cookout, say, sure, go get yourself a
15 beer from my keg. It doesn't have to be a sell of the
16 drugs.

17 The fact that there was not ledgers or money or
18 scales in this case, as Mr. Demaio tried to point out with
19 our witnesses, that doesn't mean it's not intent to
20 distribute. Intent to share is, also, an intent to
21 distribute.

22 And that's what I have here. You heard from Deputy
23 Greer and Deputy Herring about, you know, the different
24 levels of dealing. Basically, you have like King Pin
25 level dealing. That's not what we're here on. That's not

1 what the State is trying to say about Mr. Bagwell. We're
2 not trying to say he's the biggest drug dealer in
3 Greenville County. I'm saying that he has a lot of
4 methamphetamine in his pocket over the amount for personal
5 use. And he may have intended to give it to his
6 girlfriend, give it to his friends or share it in some
7 way. Even if that is just to feed an addiction, he's
8 selling it so he can get some money so that he can buy
9 some more drugs. That's still possession with intent to
10 distribute methamphetamine.

11 And just running through again our case presented to
12 you today, you heard from Deputy Greer about chasing
13 Mr. Bagwell and him immediately saying oh, there's dope in
14 there when he goes to get his -- looking for his ID in his
15 pocket. He says something to the effect -- and you'll be
16 able to watch it again, so I'm not going to go through it,
17 but something about I thought I got rid of that.

18 Then you heard from Sergeant Herring about his
19 experience as an undercover officer, buying drugs. His
20 experience what packaging drugs are in. You heard all
21 that information about the little torn corner baggy. You
22 know, having the possession level, the smaller amount,
23 versus the larger amount in his pocket.

24 You heard about how we keep track of evidence and
25 bringing it here today. Making sure this was the correct

1 evidence that -- this was three years ago, July of 2021,
2 and it's here today for you to look at. You're going to
3 have these things in the back so you can look at them.

4 You heard from Kristen McCall at our drug lab about
5 how she test -- the procedure she goes through and how she
6 test these items and determined that both of the items
7 were methamphetamine.

8 And then finally, you have heard the jail phone call.
9 Now, you're going to be able to go back there and listen
10 to it again, but we'll bring that up in a second.

11 Again, Mr. Demaio asked a lot of questions about
12 having ledgers and money and a lot of other things that
13 you would typically think of with your classic movie drug
14 dealer. Now, that's not always what it is in situations
15 like this. It's not always they have the ledgers and
16 everything like that. But the legislature here has given
17 us the ability to pursue on possession with intent to
18 distribute methamphetamine based on weight alone. So that
19 is why we're here with the 6.4 grams total that was found
20 in his pocket. That's six times that inference weight.
21 That's six times more than what a typical user would have
22 on a day-to-day basis.

23 Again, I bring back Deputy Greer talking about true
24 addicts and users of drugs, they don't save up. They
25 don't buy in bulk. They're thinking of the next high and

1 the next thing they're going to get their hands and using
2 it immediately.

3 You, also, heard Sergeant Herring testify about the
4 6.4 grams was, essentially, two eight balls. The 3.5
5 grams being a typical amount a distributor would carry on
6 them or someone might buy.

7 Now, pointing to the jail phone call. That
8 corroborates with what Mr. Bagwell said when he was --
9 when the meth was finally pulled out of his pocket. He,
10 essentially, says I thought I got off of me. As he was
11 running, he was trying to dig through his pockets or
12 whatever in the front of his pants as Deputy Herring and
13 Greer told you. He was trying to get something. They
14 thought maybe it was a weapon at first, but according to
15 Mr. Bagwell's own words in his jail phone call, it appears
16 that he tried to ditch some amount of something.

17 Now, that was never found. You heard that. The K9
18 came out and there was negative results of that search.
19 But that's Mr. Bagwell's own words that he thought he got
20 it off of him. That's another thing that I think you can
21 use to try and -- it may not have even been just 6.4
22 grams. It could have been something else. We don't know
23 and will never know. But he thought he had thrown dope
24 off of himself into the yard.

25 Finally, Judge Kinlaw is going to charge you about

1 reasonable doubt. But something I wanted to point out
2 about reasonable doubt. It's not beyond all or
3 unreasonable doubt. I like to use that old saying that my
4 mom used to say to me about when you hear hoof beats,
5 think horses, not zebras. You don't have to consider
6 every unreasonable outcome. I don't have to prove my case
7 beyond every unreasonable outcome. You just need to find
8 that you are firmly convinced. And Judge Kinlaw is going
9 to charge you on that. That you're firmly convinced of
10 the guilt of Mr. Bagwell as it pertains to possession with
11 intent to distribute drugs.

12 Now, if you do not find him guilty of possession with
13 intent to distribute. If you find that you don't feel
14 firmly convinced, there's going to be the option to find
15 him guilty of possession of methamphetamine. Now,
16 possession of methamphetamine is, typically, under a gram.
17 But in this case, you're going to have those two options.

18 When you go back to your jury room, I urge you to
19 look at the difference between these two amounts. You
20 have your -- this is what's contemplated for possession of
21 methamphetamine, the 0.19. And this is what is
22 contemplated for possession with intent to distribute
23 methamphetamine, the 6.2. I urge you to look at the
24 videos and listen to the jail phone call again. Because I
25 know it's a little hard to hear in here.

1 But I would ask you to return a verdict of guilty on
2 possession with intent to distribute methamphetamine.

3 Thank you.

4 THE COURT: Mr. Demaio.

5 CLOSING ARGUMENT BY THE DEFENSE:

6 MR. DEMAIO: I told you all at the beginning of this
7 trial that I was going to do something strange. I was,
8 actually, going to ask you to find my client, Kristopher
9 Bagwell, guilty. Because he is guilty of one thing and
10 that's guilty of being in possession of methamphetamine.
11 There's no doubt about that. We're not here to hide the
12 ball. We've been straight with you guys from the start.
13 But I think it's pretty clear from everything you guys
14 have seen and heard that he had methamphetamine in his
15 pocket. That's who he is. He's a meth addict and he's
16 going to go around trying to get and have methamphetamine.

17 Now, what the State is trying to do is make
18 Kristopher into something he's not. They're trying to
19 make him into somebody who sells or gives other people
20 drugs. And we've heard a lot of evidence here today.
21 Some conflicting, some more confusing to others in my
22 opinion. And there's sort of a lot of confusion going
23 around. And I just want to take some time here to go
24 through all of that and make the picture a bit more clear
25 and see what's actually in front of all of you.

1 Now, Kris had 6.4 grams of methamphetamine. That's
2 enough for the State to charge him with possession with
3 intent to distribute. We can't dispute that. That's just
4 the way the statute is written. But if you notice, that
5 statute says something else, that it's a permissive
6 inference you can draw from that, that Kris did have more
7 than a gram of meth, the conclusion that he intended to
8 distribute it. That it's possible. Which means that it's
9 not something that the legislature saw fit to say hey, if
10 Kris has more than a gram of meth on him, then he's guilty
11 of intent to distribute methamphetamine. It's just a
12 piece of evidence. It's something to look at as part of
13 the bigger picture. That weight is just one component of
14 everything that's going on in this case.

15 We've heard that word a lot, weight. It's the
16 State's primary reason that we're here today. It's what
17 they told you in opening. It's what we've just heard them
18 talk to you about in close. That weight is important.
19 They want it to be the deciding factor in this case.

20 But intent is more about than just having something
21 on you. It's the goal, the desire, the plan to share it
22 with another individual. Whether it's for selling to make
23 money, whether it's to get high with another individual or
24 whatever, postulate whatever thing you want to assume that
25 he wanted to do with it. But I'm here to say that Kris is

1 an addict and that's his drugs. That's the way it works.

2 Now, when Officer Greer was testifying a little while
3 ago, he talked to us about a lot of things. He talked to
4 us about what a user might use on a day-to-day basis. He
5 gave a reasonable range. Maybe an average user of meth
6 could use something like one to two grams of meth a day.
7 But when you think about it, what is an average user? An
8 average user splits everything right down the middle. And
9 50 percent is higher, 50 percent is lower. You're taking
10 a range of something and melting it into one simple
11 number.

12 Now, what about somebody who uses less or, in this
13 case, somebody who uses more? I mean, Kris is a meth
14 addict. He's been a meth addict for a long time. And
15 when you use drugs, when they become to dominate your
16 life, you end up using more and more drugs. And that's
17 just the way it works with any addiction. I think that's
18 common sense amongst everything that we know about society
19 and how these sort of things work.

20 I mean, Kris -- what is -- what can you say is six
21 grams? Is it a day? Is it two days? Is it three days?
22 I mean, if someone on an average scale is using a gram,
23 two grams a day, that's three days of meth. If somebody
24 is using more than that, you're shortening that theory
25 considerably. Every time you inch higher, say, somebody

1 uses multiple times a day. Say, somebody is constantly
2 trying to chase that fix and get high, you're going to go
3 through that a heck of a lot faster than even just a
4 couple days a week.

5 And when we go beyond what's here -- yes, we have a
6 bag with 6.21 grams of methamphetamine and another with
7 residue of previous use amounting to, what is it, 0.19
8 grams, I mean, really think about what's in there. You've
9 got a bag where a guy has his stash of drugs. He's on --
10 he's got his drugs, which is why he ran from the police in
11 the first place. Because he had drugs him and he had meth
12 on him. That's not in contention. That's just what
13 you're going to do. When you're high, you're zonked out
14 on meth, you've got your blood pumping through your veins,
15 you're full of adrenaline, completely amped up, you're
16 going to duck and run when somebody shows up. I think
17 that's just common sense. And when -- excuse me.

18 Beyond that, we, also, heard from Officer Greer about
19 what somebody who's dealing in methamphetamines might look
20 like when we're talking about weight. You heard him say
21 we're not talking about something necessarily like six
22 grams. Now, six grams is inference, but he gives a
23 specific range. He talked about well, somebody might buy
24 and ounce of meth, anything up to a kilo to sell it or do
25 anything with it. As he told us, an ounce is 28 grams.

1 And how much is that in a ratio to six grams? That's over
2 four times how much meth Kristopher actually had on him.
3 And they're trying -- the State wants to use that number,
4 that six is greater than one. Oh, it's six times higher
5 than the amount necessary to get that PWID inference.

6 Anybody who buys drugs is going to last more than a
7 day. If you're even slightly more than an average user,
8 he's going to get more than an ounce. When I go to a
9 store, when I got to a shopping mall, I don't go down
10 there and just buy a day's worth of groceries. I don't
11 think any of us do. I think it would be ridiculous to go
12 down to Food Lion or Wal-Mart or wherever you buy your
13 groceries and pick out exactly and only what you're going
14 to have for dinner that evening or for a snack after
15 lunch. No, you go down prepared and plan. You figure out
16 what you're going to need and what you think you expect to
17 use. And you don't go down there just for your immediate
18 I'm hungry, I need to buy something real quick and then
19 I'll come back tomorrow or the next day or whenever I want
20 more food or, in Kristopher's case, whenever I want to get
21 high again. You're not going to be bugging a drug dealer
22 every day of the week in order to get your day's worth
23 drugs. One, no drug dealer is going to put up with you
24 under those circumstances. And two, it's just not
25 practical to expect that that's going to happen. It's

1 just not something that fits a pattern of human behavior.
2 That's not -- it just doesn't make any sense.

3 Now, when you go to a store and you buy something,
4 whether it's food or -- let's use me for an example. I'm,
5 also, an addict. I'm not an addict like Kris is. Kris is
6 addicted to methamphetamines. But I'm, also, a smoker.
7 I'm addicted to tobacco. And when I go to purchase
8 tobacco, I can't just walk into a store and say hey, I'd
9 like to buy some tobacco. I don't go up to a clerk, grab
10 a handful of whatever he's got, throw some random amount
11 of change on the counter and walk out the door. No,
12 there's a process to these sorts of things. There are
13 tools, implements and things that are necessary that would
14 allow something like this to happen. And these things,
15 which we're going to go through, just weren't present in
16 this case.

17 When you walk -- excuse me, if I were to, say, buy an
18 ounce of tobacco or less than an ounce, half an ounce or
19 however much that I end up that I'm going to need to smoke
20 over the course of a week, I can't just tell whoever I'm
21 buying that from, hey, I'd like this much and they will
22 reach into a bowl, pull out whatever it is and then put it
23 in a bag and go. No. You're going to need equipment for
24 things like this.

25 And just like drug dealers do that sort of thing,

1 they act in the same manner. They use things, whether
2 it's scales or weights to measure out what they're doing,
3 what they're selling. They want to portray Kristopher as
4 a drug dealer, as somebody who was out there to give away
5 or sell drugs. And he didn't have any of the equipment
6 that's necessary. He didn't have scales to weigh out the
7 drugs.

8 No person is going to buy a random amount of drugs.
9 I mean, a junkie is not going to want to get ripped off,
10 and somebody that wants to buy drugs isn't going to want
11 to get less than what they're actually paying for. And
12 somebody who's dealing drugs isn't going to want to give
13 away more than they're actually getting their money for.
14 It's a business just like any other. It's one that's
15 illegal and one we're not allowed to do, which is why
16 we're here today, but it is a business just like any
17 other. People are trying to either make money off of this
18 or to buy drugs to feed their addiction. And to do those
19 sorts of transactions, you need equipment.

20 And there's other sorts of things involved. There's
21 no bags. How are you going to distribute or sell drugs?
22 Now, we have two bags here that we can't deny. The State
23 is trying to make a very large deal out of the fact there
24 are two very small bags here that are full of drugs. But
25 when I go to a store, I don't see a clerk there behind the

1 counter with a singular bag. They don't have one bag
2 they're going to hand off to the next person, then have to
3 close up shop. That's ridiculous. If you're trying to do
4 this in order to provide for yourself or just to make
5 money or do anything, you're going to have means of
6 distributing this because that's how this works. And
7 Kristopher didn't have any of that on him. You've heard
8 from all the officers, the only things they found on
9 Kristopher is that carton of cigarettes that had these two
10 small bags of meth and a small amount of marijuana. This
11 is what we expect to find on somebody who's doing drugs.

12 And of the same type, when you go into a store and
13 you set out to buy something, the clerk isn't just going
14 to take however much money you have. They're going to
15 have change. They're going to be able to make and
16 recognize transactions as they go down. They're not going
17 to take just whatever amount of money you have. I can't
18 buy an ounce of tobacco with whatever I've got in my
19 pocket on a given day. It's a price. And for every
20 price -- excuse me. And every sort of transaction has its
21 given price.

22 You've heard what an eight ball might cost. Whether
23 three and a half grams of meth might cost around \$60 or
24 more than that. But whether you're buying or selling,
25 you're going to have -- one, there's no \$60 bill. You're

1 not just going to get one of those sorts of things if
2 you're selling that much. Or two, I mean, you just expect
3 to see cash on somebody who's selling or distributing
4 drugs. I mean, that's the whole point. Whether you're
5 buying or selling, you have to be willing to work and able
6 to work with the customer. And just like in any business
7 transaction, legal or illegal, those things are necessary.
8 And they're just not here in this case.

9 And while we're on the topic of business, just like
10 any other sort of business that's going around, drug
11 dealers do keep track of their transactions. Now, I feel
12 like the State wants to have it both ways. They want to
13 make Kris somebody who's out there potentially selling
14 drugs for profit or somebody who just wants to give drugs
15 to a friend. But if you're out here trying to give
16 something and proposing that he has the appropriate amount
17 of drugs to sell and distribute like the officers have
18 insinuated in the case here today, then you're going to
19 keep track of it. You're going to know who you're selling
20 to, you're going to know who you're buying from. You're
21 going to know what you came in with, what you came out
22 with. Somebody short you, you're not going to transact
23 with somebody anymore. Drug dealers keep track of this
24 just like any other business does. I know when I go to a
25 store, whether it's the grocery store or the tobacco

1 store, I get a receipt at the end of every transaction.

2 And you don't see any of that here.

3 Now, drug dealers aren't going to give your addict a
4 receipt, certainly not, but they are going to keep track
5 of what they're doing. It's just good business practice
6 and it's a business like any other. That is, also,
7 something that is clearly not here today. We keep going
8 back because we have to keep going back to what is
9 present, what the State has showed us, six grams of drugs,
10 to what is actually here, which is just six grams of
11 drugs.

12 Now, a gram is an interesting sort of measurement.
13 Now, I don't necessarily know what a gram is. I know
14 there's 28 of them in an ounce. I know that it's a metric
15 unit. It's some fancy thing that people periodically use.
16 But I think something that's analogous that we can
17 actually use in sort of -- I don't want to say our
18 day-to-day lives, but I think everybody has been cooking,
19 at least, once or twice.

20 And what we have here is a standard teaspoon, which
21 is approximately -- excuse me, just a standard teaspoon
22 that we all use in baking. And I think everybody gets a
23 vague idea of how much a teaspoon is or how little a
24 teaspoon actually is in baking. It's not a large thing.
25 And 6.4 grams of drugs is 1.53 tablespoons. I'll say it

1 again. 6.4 grams of meth is a little over a tablespoon
2 and a half. That's what we're talking here that the State
3 is trying to convince you is sufficient to make Kristopher
4 into a drug dealer. And I don't know about you, but to
5 me, that seems like a little bit of trying to exaggerate.

6 Now, we can't deny a lot of things about this case.
7 We can't deny that Kristopher had drugs. We're not trying
8 to deny that. Kristopher came in here today ready and
9 willing to plead guilty to what he was guilty of. But
10 what he's guilty of is not what the State is charging him
11 with. They're charging him with something above and
12 beyond that and they're trying to make a wolf out of a
13 sheep.

14 And on that note, we have a couple other analogies
15 that the State has been so kind to give us during closing.
16 And we're talking about what it is to share something with
17 another individual. Somebody can get drunk off of six
18 beers, maybe they can, maybe they can't. It depends on
19 the individual. I know I'm a little a bit of a light
20 weight. I know when I go drinking, I am only able to have
21 a single beer or maybe two before I'm inebriated and I'm
22 not able to drive home that night. But you can talk to my
23 friend, whether it's my father, my uncle, they're very
24 avid drinks and they're able to down seems like beer after
25 beer after beer and they just don't get drunk like I do.

1 They need a lot more alcohol in order to be able to feel
2 the effects. And that's what happens when you go drinking
3 for a long time.

4 It's the same thing that happens whenever you deal
5 with lengthy substance abuse. You just need more and more
6 of a substance in order to get that high or to get that
7 fix and become intoxicated, whether it's, like with my
8 family, or whether it with drugs, like with Kristopher
9 over here. You just need that excessive amount because
10 that's what a heavy user needs. That's what they go
11 through. And Kris is going to go through something like
12 that faster than you can say lickity split. It's just the
13 way that heavy drug use is. And it's unfortunate. It's
14 not something we want to see in this day and age. But
15 does it make Kris a drug dealer? Does it make him
16 somebody who's out there to disseminate? No, it makes him
17 somebody who has a couple day's worth of drugs.

18 And you've heard the officers testify that drug users
19 are immediately going to use whatever they get their hands
20 on, that it's unlikely -- it's strange to see them with
21 more than a day's worth of drugs at a time. That as soon
22 as they purchase something, they're just going to use it
23 and they can't keep their hands off of it. Can't keep
24 control of themselves.

25 I mean, I don't think that passes the smell test,

1 quite frankly. I mean, if you're addicted to cocaine or
2 methamphetamine or whatever, you're not going to
3 immediately use whatever you purchase as soon as you get
4 it. I mean, like, if you're addicted to it, sure, you
5 have a compulsion to seek out and buy these things and to
6 enjoy them. You're compelled to use and abuse them, but
7 assuming the fact that every drug transaction ends with a
8 junkie just immediately huffing what they purchased in
9 front of their drug dealer, immediately getting high, that
10 there's no either time or ability to store anything or the
11 ability to have anything for any length of time beyond a
12 given day, I mean, that just doesn't pass the smell test
13 to me either. I think people in normal circumstances, if
14 you use your common sense, are going to be able to have,
15 at least, a little bit of foresight.

16 And, I mean, that's really what we have here. We
17 have a drug user who had more than a day's worth of his
18 own supply that he got caught with. And he ran from the
19 police because he was high and panicky and ended up
20 fleeing and he got caught. You heard him get caught. You
21 heard him on the video talk about hey, crap, I thought I
22 got rid of those drugs. He says it on Greer's body
23 camera. And you guys can listen to it again if you want
24 to about how he thought that he was able to get rid of the
25 stuff that he had on him before the police caught him.

1 The State wants to make a big deal out of the jail
2 phone call where he says maybe I got rid of it or
3 something along those lines. I find it incredibly hard to
4 find anything out of that phone call. I don't know
5 exactly how their pulling it out of there, but maybe their
6 ears are better than mine.

7 That being said, what I do hear and I think can be
8 heard clearly on Greer's body camera is that he says he
9 thought he got rid of those drugs because he didn't get
10 rid of those drugs because he still had those drugs on
11 him. Because two cops went on a chase with him,
12 reasonably under the circumstances, they had their guns
13 drawn on him. They caught him. They pursued him the
14 entire step of the way. And they thought that he was
15 going to pull out a weapon. They thought he was
16 dangerous. They thought something dramatic might happen,
17 which is why you saw one of the two responding officers
18 engage in a little bit of -- I don't want to say necessary
19 force, but a little bit of a forceful take down of
20 Kristopher under the circumstances.

21 It turns it, he didn't have anything. He didn't have
22 a gun. He didn't have weapons. He didn't have anything
23 to protect himself while he was allegedly dealing drugs or
24 doing anything of the sort. No, the only thing they found
25 on him was that cigarette pack with these small bags of

1 meth on him that he thought he got rid of, which is what
2 he was actually reaching for because he was in a panic run
3 from the police.

4 I mean, you saw how sweaty and hot and out of sorts
5 that man was on that video. He was a complete mess.
6 Because he was high on meth and just went on a jaunt for a
7 few minutes to try to escape the police to absolutely no
8 avail. He passed out at the end, basically, fell down on
9 the ground, begging for water for multiple minutes because
10 he wasn't a danger or a threat to anybody and he didn't
11 have any weapons to be a threat to anybody. And I think
12 under the circumstances, it's clear why he didn't have any
13 of those things. Because he doesn't need those things
14 because he's not out there giving away drugs or selling
15 drugs or anything of that sort.

16 And whether it's just giving away drugs to your
17 friends, and the State, also, addressed this in their
18 argument, I don't know why -- or anybody who would be so
19 heavily addicted to meth that they would just go out and
20 give meth away either. Whether it's sharing with somebody
21 else or anything of the sort. You don't just give away
22 drugs. Certainly not if you're an addict. Certainly not
23 if you're that man we saw on those body-worn cameras.
24 You're not going to just out there and share your meth
25 with anybody.

1 I mean, just take a look at him. He's a squirrely
2 little guy and doesn't look like a person to go around
3 doing any of that. He looks like a meth addict because he
4 is a meth addict. You've heard again and again how
5 addicted this man is to meth. You've seen what an average
6 user might use. You've seen what a heavy user might use.
7 And looking at the culmination of all of these facts, I
8 think it's clear that the amount of meth that Kristopher
9 had on him, which, again, we've been very open and upfront
10 about, is for Kristopher's personal use.

11 And when we think about all of that, sort of in its
12 totality, what do we really have in this case? I've got a
13 nice little sort of picture here for us as to what's going
14 on. And I think there's a nice little puzzle that we can
15 sort of see in this case that would paint a wonderful
16 picture of somebody who has intent to distribute. I think
17 there's a lot of pieces that can go in there and then
18 there's a lot of pieces that are on this board that just
19 aren't present in this case.

20 We've got things like money. Did Kristopher have any
21 money on him in this case? No, he didn't have anything,
22 whether it's for buying, selling or anything of the sort.
23 And so we -- going here, we sort of peel this piece off.
24 And that leaves us with the rest of it. And beyond that,
25 he didn't have any guns in this case, so we take this

1 piece off, too. And I don't think he had any scales on
2 him for proper sale or distribution of drugs or anything.
3 I don't think he had a ledger or bags or anything. So we
4 can remove that.

5 And as we take away puzzle piece by puzzle piece, our
6 wonderful picture of how a picture comes together and
7 shows us the charge of possession with intent to
8 distribute is down for just a single solitary one. We
9 can't deny and we've never denied that Kristopher had
10 drugs on him. But I think when we look at the whole
11 picture, we're trying to turn one puzzle piece here of a
12 charge into a whole drawing. And that's just covering up
13 the underlying charge in this case, which is possession,
14 which is what Kristopher Bagwell is guilty of.

15 Now, the State's, also, talked a little bit about the
16 burden of proof in this case. The burden of proof, like
17 you've heard and the judge is going to tell you in a
18 little bit, is proof beyond a reasonable doubt. It's been
19 a while since I've been in a jury box and I don't know if
20 any of you have done that before either. But reasonable
21 doubt is the highest standard of proof under the law.
22 It's not a preponderance of the evidence. You may have
23 heard those words before. Preponderance of the evidence
24 simply means more likely than not, 50 plus one. It's more
25 likely that, say, Kristopher in this case was selling

1 drugs, that he wasn't dealing drugs. Proof beyond a
2 reasonable doubt, which is the standard in this case, is
3 higher than that. It's not clear and convincing evidence
4 either.

5 Now, clear and convincing evidence would be if a jury
6 or anybody under the circumstances viewed Kristopher and
7 said they were clearly convinced that that man in this
8 case was somebody who was out there distributing and
9 selling drugs. No. Proof beyond a reasonable doubt is
10 even higher than that. It's the highest standard under
11 the law. So in a little bit, the Judge is going to ask
12 you guys to deliberate as to whether or not that standard
13 has been met in this case.

14 Now, the State has to prove that Kristopher had meth,
15 that's the basic element. That's not in question. I
16 don't think anybody could possibly dispute that Kristopher
17 had methamphetamine. But they've got to prove beyond a
18 reasonable doubt that Kristopher intended to sell,
19 distribute, giveaway or do anything with those drugs that
20 would involve giving them to another person. I don't
21 think based on all the evidence here today that that's
22 been met. I don't think that burden has been met.

23 And when we think about what evidence is here today,
24 we've got two bags of drugs, one with, like we said, had
25 6.21 grams of drugs. Maybe two days of drugs, three days

1 of drugs for a moderate user. Let alone, somebody who's
2 heavily addicted to drugs. That's the puzzle piece we're
3 left with. And I don't think -- I think if you use your
4 common sense, that puzzle piece alone isn't going to be
5 enough to covering up the underlying charge in this case,
6 which is the actual thing that Kristopher Bagwell is
7 guilty of, which is possession of methamphetamine.

8 And I'm just going to close out here by sort of
9 wrapping everything into a wonderful little bow. The
10 State has talked a lot about weight. But they don't have
11 guns, they don't have money, they don't have drugs, they
12 don't have a transactional ledger. They never got a
13 search warrant for his home. They never got a search
14 warrant for his phone. They searched his car. They
15 didn't find anything in the car. Like, Kristopher is
16 guilty. But I ask that you, the jury, convict my client
17 of what he is actually guilty of, which is in this case
18 possession of methamphetamine.

19 Thank you.

20 CHARGE ON THE LAW:

21 THE COURT: Ladies and gentlemen of the jury, it now
22 becomes my duty as the trial judge and under the
23 Constitution of this state to instruct you on what the
24 applicable law is as it relates to this case. First of
25 all, I'd like to thank you on behalf of both sides for

1 paying attention during the course of this trial. I want
2 to thank you in advance for that.

3 It is your duty as jurors to accept the law that I'm
4 getting ready to tell you in just a little bit and apply
5 the law in the court not as you see it, but as I give it
6 to you. Both the State and Mr. Bagwell have a right to
7 expect that you will conscientiously consider and evaluate
8 the evidence and apply the law of this case to that end.
9 Each side -- each side will receive and obtain a fair and
10 impartial trial in this case.

11 When I use the word Defendant, obviously, I'm talking
12 about Mr. Bagwell. Mr. Bagwell had been accused by what
13 we call an indictment. I went over that with you. An
14 indictment is the piece of paper I showed you earlier.
15 It's just a vehicle by which this matter came before the
16 Court. You have received and will be looking at a number
17 of exhibits. Those exhibits are on the table in front of
18 you.

19 And as to the indictment that I read to you earlier,
20 Mr. Bagwell has pled not guilty. So that places the
21 burden squarely on the shoulders of the State, squarely on
22 the shoulders of the State to prove beyond a reasonable
23 doubt that the Defendant is guilty.

24 The State has the burden to prove every element of
25 the offense for which this Defendant was charged. And I'm

1 going to talk about intent in just a little bit. In this
2 state and in this country, a person who is accused of a
3 criminal offense is never required to come in and prove
4 him or herself innocent. This principle of law, we call
5 the presumption of innocence. And I said earlier,
6 referenced a cloak of innocence that robed Mr. Bagwell.
7 That cloak of innocence is still robed on him and it is up
8 to you to determine as the fact finders whether or not the
9 State has met its burden of proof beyond a reasonable
10 doubt upon the offense for which Mr. Bagwell is charged.

11 So what is reasonable doubt? A reasonable doubt is a
12 doubt what makes an honest, sincere and conscientious
13 juror, which all of you are, in search of the truth to
14 hesitate to act. Proof beyond a reasonable doubt is proof
15 that leaves you firmly convinced of the Defendant's guilt.
16 There are few things in the world that we know with
17 absolute certainty.

18 And in criminal cases, the law does not require proof
19 that overcomes every possible doubt. Based on your
20 consideration of the evidence, if you're firmly convinced
21 the Defendant is guilty, you must find him guilty. If on
22 the other hand, you think there is a real possibility that
23 he is not guilty, you must give him the benefit of the
24 doubt and find him not guilty.

25 Reasonable doubt may arise from evidence which is in

1 the case or from the lack of evidence in the case. It is
2 up to you as the fact finders, you, ladies and gentlemen,
3 to determine whether or not a reasonable doubt exists as
4 to the guilt of Mr. Bagwell.

5 I charge you that Mr. Bagwell is entitled to every
6 reasonable doubt arising in the whole case. If upon any
7 issue of fact essential to the conviction you have a
8 reasonable doubt as to how that issue should be resolved,
9 it will be your duty as jurors to resolve that reasonable
10 doubt in favor of the Defendant.

11 Now, I'm going to talk to you about the difference
12 between circumstantial evidence and direct evidence. Now,
13 we have already discussed -- I've already mentioned to you
14 direct and circumstantial evidence, but let me define it.
15 Direct evidence is simply evidence like the testimony of
16 an eyewitness, which if you believe it, directly proves a
17 fact. If a witness testified that he saw something
18 walking across a field and you believed him, that would be
19 direct evidence that that thing happened. Circumstantial
20 evidence is simply a collection of circumstances that
21 indirectly proves a fact.

22 I'll give you a simplistic example. When you came --
23 if you came into this building and the sun was out and you
24 stayed in this building for an hour and a half and then
25 you went back outside and the sun was out again, but there

1 was raindrops on your car, you didn't see the raindrops
2 fall on your car, but based on the circumstances, you
3 would assume it was raining while you were in the
4 building. That's a simplistic example of circumstance
5 evidence.

6 Circumstantial evidence is simply a collection of
7 circumstances that indirectly proves a fact. If a witness
8 said he saw fresh footprints in newly fallen snow, that
9 would be circumstantial evidence from which you could
10 conclude that someone had recently been walking there and
11 conclude that somebody has been walking there.

12 Legally, there is no difference -- you attach no
13 difference at all between direct and circumstantial
14 evidence. The law does not say one is necessarily any
15 better than the other. You should consider all the
16 evidence, both direct and circumstantial, and give it
17 whatever weight that you think it deserves.

18 Now, the evidence that you consider -- and I said
19 this earlier, is compartmentalized. What do I mean when I
20 say that? Evidence in this case is the testimony of
21 witnesses who sat in that witness box that you had the
22 opportunity to hear. You're the fact finders. You're the
23 judges of the facts. And as I said earlier at the outset,
24 now that you've heard and seen the evidence, then during
25 the course of the trial, you had an opportunity using your

1 common sense to determine the believability and
2 credibility of that evidence that was before you. In
3 other words, you listened to the witnesses who testified,
4 you formed an opinion whether or not you believed
5 everything a witness said or some of what a witness said
6 or none of what a witness said. All of that is within
7 your purview.

8 As it relates to any videos that you saw or
9 anything -- sketches or anything like that, you apply the
10 same litmus test to determine the credibility and
11 believability of the evidence. If there's a live witness
12 that testified, you have to make the determination as the
13 fact finders whether or not that witness had any bias or
14 prejudice of some sort in their testimony. You make those
15 decisions as -- as the fact finders.

16 Now -- and I said it to you earlier and I'll
17 underline it. I have no opinion about this case. I
18 cannot have an opinion about this case. So if during the
19 course of the trial, you happen to look at me and you
20 think my facial expressions or anything about me would
21 indicate that I have an opinion one way or the other, you
22 disregard that because I do not.

23 Now, you noticed that in this case, the Defendant did
24 not testify. And I'm going to read you what you're to
25 consider in the failure of -- the Defendant to not

1 testify. I instruct you and emphasize that the fact that
2 the Defendant, Mr. Bagwell, did not testify is not a
3 factor, underline that, is not a factor to be considered
4 by you in anyway at all in your deliberation and your
5 consideration of the question of guilt or innocence of
6 Mr. Bagwell. It must not be considered by you in any
7 manner whatsoever. The Defendant has the Constitutional
8 right to remain silent. And the assertion of this right
9 must not be considered by you at all in your
10 deliberations.

11 I repeat, under your oath that you took, you are to
12 draw no conclusion whatsoever from the fact that the
13 Defendant, Mr. Bagwell, in this case did not testify. The
14 fact that this Defendant did not testify should not even
15 be discussed by any of you in the jury room. The burden
16 of proof as I stated to you is on the State. The
17 Defendant is not required to prove his innocence. The
18 burden of proof remains on the State to prove the
19 Defendant, Mr. Bagwell, guilty beyond a reasonable doubt.

20 Now, in order for the State to prove -- present proof
21 of any criminal offense, they must, also, prove intent.
22 And let's talk about intent. In order to establish
23 criminal liability in any case, criminal intent is
24 required. For example, the mental state required to be
25 proven by the State for a particular crime might be

1 purpose, intent, knowledge, recklessness or criminal
2 negligence. Criminal intent must be proven by the State
3 beyond a reasonable doubt. Criminal intent is always a
4 matter that must be determined by the jury from the
5 circumstances surrounding the situation.

6 There is no way to prove intent to a mathematical
7 certainty. There is no way medical science can dissect
8 the person's brain and determine what the person had in
9 mind. So the law says that criminal intent may be
10 inferred from the circumstances shown to have existed.
11 This is how you make a determination of whether or not the
12 element requiring intent was present.

13 It is not necessary to establish intent by direct and
14 positive evidence. An intent may be established by
15 inference in the same way as any other fact by taking into
16 consideration the acts of the parties and all the facts
17 and circumstances of the case.

18 Criminal intent is a mental state, a conscious
19 wrongdoing. It is up to you, the fact finders, to
20 determine what the Defendant intended to do based on the
21 circumstances shown to have existed. Criminal intent can
22 arise from action or a failure to act. It may arise from
23 negligence, recklessness or an indifference to duty or
24 consequences that is considered by the law to be the
25 equivalent of criminal intent.

1 Now, also, as you noticed, in this case, you heard
2 the testimony of an expert witness, maybe one or two. And
3 you may ask the question well, how do we evaluate the
4 testimony of an expert witness. Let me read this to you.
5 The rules of evidence ordinarily do not permit witnesses
6 to testify to opinions or conclusions. An exception to
7 this rule exists for witnesses we call expert witnesses.
8 A witness who by education and experience has become an
9 expert in some art, science, profession or calling may
10 state an opinion as to relevant material in which the
11 witness claims to be an expert. And they, also, may state
12 their reasons for that opinion.

13 You should consider any expert opinion received in
14 evidence in this case like any other evidence. Give it
15 the weight you think it deserves. And if you find the
16 opinion of the expert witness is not based on sufficient
17 education and experience or if you conclude that the
18 reasons given in support of the opinion are not sound or
19 if the opinion is outweighed by other evidence, you may
20 disregard the opinion entirely.

21 An expert witness's testimony is to be given no
22 greater weight than any other witnesses that testified on
23 the witness stand. Further, you are not required to
24 accept an expert's opinion even though it is not
25 contradicted.

1 So in other words, the litmus test in determining the
2 believability or credibility of an expert witness is no
3 different than the litmus test in determining the
4 believability or credibility of any other witness. So you
5 put them in the same category.

6 Now, I am going to talk specifically about the
7 offenses upon which Mr. Bagwell is charged. And I am
8 going to read to you what the law states as to possession
9 with intent to distribute and what the law says on
10 possession, just possession. I will send these two
11 charges back to the jury room with you. So you will have
12 an opportunity to read them if you -- if you miss
13 something I may have said, you'll have an opportunity to
14 review them as well.

15 So let's start with the offense upon which
16 Mr. Bagwell is charged. The Defendant, Mr. Bagwell, is
17 charged with possession with intent to distribute
18 methamphetamine. The State must prove beyond a reasonable
19 doubt that the Defendant possessed methamphetamine with
20 the intent to distribute it. To prove possession, the
21 State must prove beyond a reasonable doubt that the
22 Defendant had both the power and the intent to control the
23 disposition or use of the methamphetamine.

24 Possession may be either actual or constructive.
25 Actual possession means that the methamphetamine was in

1 the actual physical custody of the Defendant.
2 Constructive possession means that the Defendant had the
3 dominion and control or the right to exercise dominion and
4 control over, either the methamphetamine itself or the
5 property upon which the methamphetamine was found.

6 Mere presence at the scene where the drugs were found
7 is not to prove possession. The Defendant's knowledge and
8 possession must -- may be inferred when a substance is
9 found in the property under the Defendant's control.
10 However, this inference is simply an evidentiary fact to
11 be taken into consideration by you along with the other
12 evidence in the case and to be given the weight you decide
13 it should have. Two or more persons may have joint
14 possession of a drug.

15 The State must, also, prove beyond a reasonable doubt
16 that the Defendant intended to distribute the
17 methamphetamine. Distribute means to deliver other than
18 by administering or dispensing a drug. Intent may be
19 shown by acts and conduct of the Defendant and other
20 circumstances from which you may naturally and reasonably
21 infer intent.

22 In determining whether the Defendant had the intent
23 to distribute the methamphetamine, you may consider the
24 circumstances surrounding the Defendant's alleged
25 possession. You may consider the amount of the substance

1 alleged to have been possessed, the manner in which it was
2 allegedly possessed, the place it was allegedly possessed
3 and all of the factors which you consider are important.
4 You must find that the Defendant did not intend to have
5 the methamphetamine solely for his own use.

6 Possession of more than one gram of methamphetamine
7 creates an inference that the Defendant possessed the
8 methamphetamine with the intent to distribute it. This
9 inference does not relieve the State from proving beyond a
10 reasonable doubt that the Defendant had the intent to
11 distribute. It is simply an evidentiary fact to be taken
12 into consideration by you along with the other evidence in
13 the case and be given the weight that you decide it should
14 have as the fact finders. This is the law in this state
15 as it relates to the offense of possession with the intent
16 to distribute methamphetamine.

17 Now, let's talk about possession. Here again, you'll
18 have both of these with you in the jury room. To prove
19 possession, the State must prove beyond a reasonable doubt
20 that the Defendant had both the power and the intent to
21 control the disposition or use of the methamphetamine.
22 Possession may be either actual or constructive.

23 Actual possession means that the methamphetamine was
24 in the actual physical custody of the Defendant.
25 Constructive possession means that the Defendant had

1 dominion and control or the right to exercise dominion or
2 control over either the methamphetamine itself or the
3 property on which the methamphetamine was found.

4 Mere presence at the scene where the drugs were found
5 is not enough to prove possession. The Defendant's
6 knowledge and possession may be inferred when the
7 substance is found on the property under the Defendant's
8 control. However, this inference is simply an evidentiary
9 fact to be taken into consideration by you along with all
10 the other evidence in the case and given the weight that
11 you decide it should have. Two or more persons may have
12 joint possession of a drug.

13 So there is a distinction between possession and --
14 between possession and possession with intent to
15 distribute. And I'll give you both of these in the jury
16 room.

17 And I charge you that the crime of possession with
18 intent to distribute methamphetamine includes the lesser
19 crime of possession of methamphetamine. If any of you --
20 if any or all of you are not convinced beyond a reasonable
21 doubt that the Defendant is guilty of possession with
22 intent to distribute and all of you are convinced beyond a
23 reasonable doubt that the Defendant is guilty of the
24 lesser crime of possession of methamphetamine, you may
25 find the Defendant guilty of possession of

1 methamphetamine. In order for the Defendant to be found
2 guilty of the lesser crime of possession of
3 methamphetamine, the State must prove each of the
4 following elements beyond a reasonable doubt. That the
5 Defendant, Kristopher Bagwell, did have in his possession
6 some quantity of methamphetamine.

7 Now, you will be given all of the evidence that was
8 presented in this case, the tangible evidence. It will be
9 sent back to you in your jury room. Ladies and gentlemen,
10 I say this to you and I'll talk about the verdict form.
11 Ladies and gentlemen, you are not partisans or advocates
12 for the State of South Carolina or this Defendant. You do
13 not serve as jurors to award friend or punish enemies.
14 You have been selected by the State and the Defense to be
15 fair and impartial. It is your duty under your oath in
16 your deliberations to determine the truth in this case,
17 giving both sides a fair trial. Then to the facts you
18 determine to be true, you take the law which I have given
19 to you and arrive at a verdict.

20 I will be sending back to you, Mr. Foreman, a verdict
21 form along with all the evidence. The verdict form will
22 say this -- and pay no attention to the order in which I
23 say this, I have to say it in some order. This verdict
24 form says the State of South Carolina vs. Kristopher David
25 Bagwell, this is indictment 2023-GS-23-01605. It says

1 verdict form. At first, it says, we, the jury, as to the
2 indictment of possession of methamphetamine with intent to
3 distribute unanimously find the Defendant, there's a line
4 that says guilty and there's a line that says not guilty.
5 You determine what you put on those lines. If you answer
6 the question one as guilty, you can stop your
7 deliberations and, Mr. Foreman, you sign the verdict form.

8 Alternatively, if your answer to number one is not
9 guilty, then you proceed to question two. Question two
10 says, we, the jury, as to the offense of possession of
11 methamphetamine unanimous find the Defendant either guilty
12 or not guilty. There's a line where you sign your name
13 and today is the 25th day of July. And that's already on
14 the form.

15 Do not begin any deliberations until I have
16 instructed you to do so. And the bailiff will make sure
17 that you have in your jury room all of the exhibits and,
18 also, copies of the charges as it relates to the two
19 offenses, possession as well as possession with intent.

20 If there are any questions, Mr. Foreman, all
21 questions must come through you. If there is anything in
22 the jury room that's going on that the Court needs to my
23 privy to, must come through you. You're to preside over
24 all the deliberations. In other words, you're in charge
25 of the deliberations. But you will not do so until I tell

1 you to do so. I have to check with the attorneys and I'll
2 let you know something shortly.

3 So just follow the bailiff. Do not talk about the
4 case until I instruct you to do so.

5 (WHEREUPON, the jury was excused from open court at
6 approximately 3:21 p.m.)

7 THE COURT: All right. Any exceptions to the charge
8 by the State?

9 MS. MORONEY: Nothing from the State, Your Honor.

10 THE COURT: Any exceptions to the charge by the
11 Defense?

12 MR. DEMAIO: No, Your Honor.

13 MS. MORONEY: And Your Honor, I would think you're
14 going to get the alternates back out.

15 THE COURT: Oh, yeah, yeah, yeah.

16 Bring them out here.

17 Because of things that's happened in the past,
18 counsel on both sides, we don't want the alternate to go
19 home, but I hate for them just to sit in a room looking at
20 each other. So I'll give them the opportunity to come out
21 here and sit. Do y'all want to keep them?

22 MR. DEMAIO: I suppose we should.

23 THE COURT: Okay. All right.

24 They may want to sit back in one of those rooms.

25 THE BAILIFF: The two alternates are here.

1 THE COURT: Bring them out.

2 (WHEREUPON, the alternates entered the courtroom.)

3 THE COURT: Don't be afraid. Come on.

4 First of all, I want to tell you both that I thank
5 you for serving on this jury this week. And I know we've
6 had a lot of moving parts. You've been in and out. But I
7 thank you for serving on this jury.

8 And I think you told me at the beginning that -- it's
9 your son?

10 JUROR #168, JOVIDA PERKINS: Yeah.

11 THE COURT: Your son, he was in drug court.

12 JUROR #168, JOVIDA PERKINS: Right.

13 THE COURT: So your service is really over. But
14 here's the thing, I'm not going to let you -- I can't let
15 you go home because we may or may not need you. So you
16 may need to stay a little bit. Now, I know you don't know
17 each other. You probably just saw each other today for
18 the first time. So I always hate to put jurors sitting in
19 a room by yourself and you don't know each other. If
20 you're not okay with that, then I can place you on the
21 back row back there. Where would you feel comfortable?

22 JUROR #168, JOVIDA PERKINS: It don't matter.

23 THE COURT: You're okay sitting in the back row?

24 JUROR #108, ELIJAH JOHNS: Wherever is easiest.

25 THE COURT: Okay. We're going to put you in the back

1 row over there on the left-hand side. Just sit back there
2 for me. Come back, y'all come back. I changed my mind.
3 They said that room back there is real nice, air
4 conditioned, so we'll sit you back there. Okay.

5 (WHEREUPON, alternates exited the courtroom.)

6 THE COURT: Here's the verdict form. Y'all are
7 okay -- is there anything on the table that goes back?

8 MS. MORONEY: Yes.

9 (WHEREUPON, the proceedings were recessed at
10 approximately 3:24 p.m.)

11 VERDICT

12 (WHEREUPON, the jury came into open court at
13 approximately 4:35 p.m.)

14 THE COURT: All right. We're back on the record,
15 Madam Court Reporter.

16 Mr. Foreman, the bailiff has indicated to me the jury
17 has reached a verdict; is that correct?

18 THE FOREPERSON: That's correct, Your Honor.

19 THE COURT: Would you hand the verdict to the clerk,
20 please?

21 THE CLERK: Your Honor, in the case of
22 2023-GS-23-01605, State v. Kristopher David Bagwell, we,
23 the jury, as to the indictment of possession of
24 methamphetamine with intent to distribute unanimously find
25 the Defendant not guilty.

1 We, the jury, in the offense -- as to the offense of
2 possession of methamphetamine unanimously find the
3 Defendant guilty.

4 Ladies and gentlemen, if this is the verdict you
5 reached in your deliberation room, please raise your right
6 hand.

7 (WHEREUPON, all raised their right hand.)

8 THE CLERK: Thank you.

9 THE COURT: All right. Ladies and gentlemen of the
10 jury, first of all, I want to thank you for your service
11 this week. The good news is we're not going to be trying
12 a case on Friday, so you won't have an opportunity to do
13 that. But make sure that if you ever have an opportunity
14 to serve as a juror again, whether it's in state court,
15 federal court, magistrate court, municipal, wherever it
16 is, jump at the opportunity because it's a noble way to
17 give back to the community. Thank you. And if our paths
18 never cross again, I wish you luck. You can just follow
19 the bailiff.

20 And I want to thank my alternates as well. Thank
21 y'all.

22 (WHEREUPON, the jury was excused from open court at
23 approximately 4:37 p.m.)

24 THE COURT: All right. Anything from either side
25 before sentencing?

1 MS. MORONEY: Your Honor, this case -- someone is
2 going to go get a sentencing sheet. We have the new
3 sentencing sheet.

4 THE COURT: Okay.

5 MS. MORONEY: Nothing from us, Your Honor.

6 THE COURT: Anything from the Defense, Your Honor?

7 MR. DEMAIO: No, Your Honor.

8 THE COURT: All right. Are y'all ready?

9 MR. DEMAIO: Yes, Your Honor.

10 THE COURT: What's the statutory penalty on this?

11 MS. MORONEY: Zero to ten years.

12 THE COURT: Are you all ready?

13 MR. DEMAIO: Yes, Your Honor.

14 THE COURT: They told us to stand there, but we can
15 come up.

16 You're fine.

17 Okay. Who wants to talk to me first?

18 MS. MORONEY: I can give you the jail days and
19 criminal history.

20 THE COURT: Give me the jail days.

21 MS. MORONEY: Jail days is 170 as of today.

22 THE COURT: All right.

23 MS. MORONEY: And then criminal history would be 2012
24 shoplifting, 2014 PWID meth first offense, eight counts of
25 auto breaking and grand larceny, 2015, simple possession

1 of marijuana; 2016, violation of probation; 2018, PWID
2 meth second offense; 2019, auto breaking times two, petite
3 larceny and failure to stop for blue lights.

4 THE COURT: All right. Is that it?

5 MS. MORONEY: That's all.

6 THE COURT: That's everything from the State?

7 MS. MORONEY: We leave sentencing in Your Honor's
8 discretion.

9 THE COURT: What you want to tell me?

10 MR. DEMAIO: Not too much in excess, Judge. You've
11 heard a lot of the facts and testimony today. Mr. Bagwell
12 does have a serious drug addiction. He's had that for a
13 long time. He's been doing serious amounts of drugs for
14 over ten years at this point. He lost his mother, which
15 sort of started all this. It's destroyed his work and his
16 family. He's lost numerous jobs. He, basically, can't
17 interact or see his kids anymore because his family
18 doesn't want him around because of his addiction problem.

19 You've heard he's got 170 days on this charge. We're
20 asking for something along the shorter sentence, Judge.
21 Speaking in my client, we would like to get him into an
22 inpatient rehabilitation program. If Your Honor isn't
23 inclined to do something like that, we'd ask for generally
24 something on the lighter end of the sentence. I
25 understand that Mr. Bagwell is a drug addict. He knows

1 that. But he's been improving a lot for a hot minute a
2 little bit before this. And we think that this is the
3 sort of thing that we need to get him clean to have him be
4 a productive member of society.

5 In full disclosure, there is another matter pending
6 with the court that we aren't addressing here today. So
7 when the court addresses that, we'd also ask that if he's
8 held for a bed wonderful, if not, we'd ask that he just be
9 held here shortly so that we might be able to resolve
10 those other pending matters.

11 THE COURT: That's it?

12 MS. MORONEY: That's all, Your Honor.

13 THE COURT: Mr. Bagwell, anything you want to tell
14 me?

15 THE DEFENDANT: Like he said, I am a drug addict.

16 THE COURT: I hope you get better.

17 DEFENDANT BAGWELL: Yes, sir. Thank you.

18 THE COURT: All right. Indictment ending in 01605,
19 the State v. Kristopher David Bagwell, the Court is just
20 going to give you a sentence, the sentence that was
21 originally offered, five years and 170 days credit.

22 *****END OF TRANSCRIPT OF RECORD*****
23
24
25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, PENNY M. JOHNSON, Official Court Reporter for the
Second Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate, and
complete Transcript of Record of the proceedings had and the
evidence introduced in the hearing of the captioned case,
relative to appeal, in the Court of General Sessions for
Greenville County, South Carolina, on the 24th and 25th day
of July, 2024.

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

January 12, 2025

Penny M. Johnson
Penny M. Johnson
Official Court Reporter

WITNESSES

B. Leopold 524 * 1714

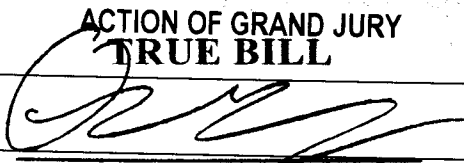
Greenville County Sheriff's Office

11/4/2021

ARREST WARRANT NUMBER

2021A2330210268

ACTION OF GRAND JURY
TRUE BILL



FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2023-GS-23-01605

GHB

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

June TERM 2024

THE STATE

vs.

KRISTOPHER DAVID BAGWELL

Indictment for

3200

POSSESSION OF METHAMPHETAMINE
WITH INTENT TO DISTRIBUTE

VIOLATION § 44-53-0375

ENTERED ACCT

GW

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

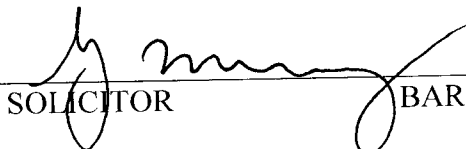
INDICTMENT FOR
POSSESSION OF METHAMPHETAMINE
WITH INTENT TO DISTRIBUTE

At a Court of General Sessions, convened on **JUN 04 2024** the Grand Jurors of Greenville

County present upon their oath:

That KRISTOPHER DAVID BAGWELL did in Greenville County, on or about the 1st day of July, 2021, possess with intent to distribute or aid, abet, or conspire to possess with the intent to distribute a quantity of Methamphetamine, a controlled substance, such possession not having been authorized by law. This is in violation of § 44-53-0375 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

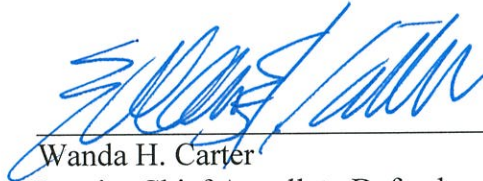

SOLICITOR

BAR # 103602

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,



Wanda H. Carter
Interim Chief Appellate Defender

RECEIVED

Jul 07 2025

SC Court of Appeals

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 7th day of July, 2025.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenwood County

Honorable Alex Kinlaw, Circuit Court Judge

RECEIVED

Jul 07 2025

SC Court of Appeals

THE STATE,

RESPONDENT,

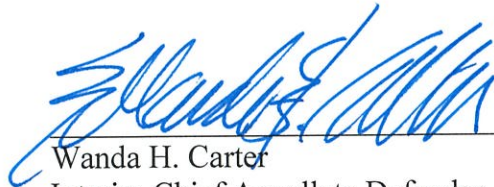
V.

KRISTOPHER D. BAGWELL,

APPELLANT

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 R. Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), and on Kristopher D. Bagwell, 369517, Manning Correctional Institution, 502 Beckman Dr., Columbia, SC, 29203, this 7th day of July, 2025.



Wanda H. Carter
Interim Chief Appellate Defender