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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Pickens County

Honorable Daniel McLeod Coble, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MELANIE CROMER MCCLAIN,

APPELLANT

APPELLATE CASE NO. 2024-000472

RECORD ON APPEAL

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
STATE'S EXHIBIT#1 (FLASH DRIVE OF BODY WORN CAMERA VIDEO)**

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF PICKENS	)	2022-GS-39-00264
	)	
	)	
	)	
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
MELANIE CROMER MCCLAIN,	)	
DEFENDANT.	)	
_____	)	

February 5, 6, and 7, 2024
Pickens, South Carolina

B E F O R E:

THE HONORABLE PERRY H. GRAVELY, JUDGE; and a jury.

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

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Assistant Solicitor

J. MAXWELL GRAVLEE, ESQ.
WILLIAM R. HELLAMS, ESQ,
Attorneys for the Defendant

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(SW) - Denotes State's Witness
 (DW) - Denotes Defense Witness
 (IC) - Denotes In Camera

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1 record about voir dire?

2 MR. GRAVLEE: Yes, sir, Your Honor. We had a bench
3 conference, specifically, regarding number seven,
4 basically, the -- it was a question that said, Is any
5 member of the jury panel religiously, morally, or in any
6 other way, shape, or form offended by the use of
7 methamphetamine that they could -- I meant to say such
8 that, but that they could not be fair and impartial in the
9 trial of this case?

10 I thought just, specifically, with regard to
11 methamphetamine, either from personal experiences with
12 prior ones that just methamphetamine in and of itself in
13 Pickens is, obviously, an issue and people, a lot of
14 times, it seems, can be more offended with that than some
15 other drugs sometimes. And that was the purpose of trying
16 to ferret that out from any jurors that would have been so
17 opposed that they could not have -- you know, not be
18 partial -- not be impartial in the trial, Judge.

19 THE COURT: And I think some of the other questions
20 we had would have covered that. Because that question
21 looks like, basically, are you morally opposed to the use
22 of methamphetamine, and did not mention it is illegal.

23 So I would think everybody -- that it could have had
24 everybody stand up. But I think the way we covered it
25 about a connection with drugs -- and several people did

1 stand up and say that they had had a connection with
2 methamphetamine in their family. And so I believe you're
3 covered on that. But you're, also, covered on the record.

4 Also, number three?

5 MR. GRAVLEE: Yes, sir. Just the -- the bumper
6 stickers. And I've asked that question for several years
7 now ever since I saw the bumper sticker on a juror's car
8 that one time -- it looked like from a long ways off that
9 it just said meth in big, bold letters across the back of
10 the windshield. But upon closer inspection, it said, Kill
11 your local meth dealer. And "meth" was the big, bold
12 word.

13 So that's why we ended up asking that question,
14 especially in light of that. It just seems like it's more
15 of a thing these days, Judge.

16 THE COURT: Right. And I, specifically, asked if any
17 member of the group had a particular bias against law
18 enforcement or for law enforcement. So I believe that was
19 covered, too. But you've got those on the record.

20 All right. Are we ready to proceed with motions,
21 State?

22 MR. HOFFERTH: Yes, Your Honor.

23 THE COURT: I'm be glad to hear from you.

24 MR. HOFFERTH: Thank you.

25 Just to provide some background before we get into

1 the substance of the motions, this particular instance
2 took place on October 20th of 2021 in the late evening
3 when Officer Daw with the Pickens County Sheriff's Office
4 conducted a traffic stop on Ms. McClain's vehicle.
5 Ms. McClain was the driver and there were two passengers
6 in the car, one of whom was Albert Dustin Pace and the
7 other was Shawna Johnston.

8 The events that transpired were Ms. McClain was
9 making movements in the car that the officers determined
10 were amounting to fidgeting or, possibly, concealing
11 something. And pretty much immediately after she gets out
12 of the car, Officer Daw finds a quantity of
13 methamphetamine in her hand.

14 They, subsequently, get everybody out of the car.
15 They search the car. They, thereafter, find a small
16 bookbag that contains the bulk of methamphetamine, which
17 after lab testing amounted to just over 10 grams of
18 meth --

19 MR. GRAVLEE: Judge, I don't mean to interrupt. I
20 just wanted to see what the motion is that we're talking
21 about.

22 MR. HOFFERTH: I'm just providing a backdrop before
23 the motions.

24 THE COURT: He said he was providing background --

25 MR. GRAVLEE: I didn't know if it was background for

1 this specific motion or just generically.

2 THE COURT: I don't know. I guess we're going to
3 find out.

4 Both of y'all -- you know, unbutton your vest when
5 you feel it's appropriate.

6 MR. GRAVLEE: I'm probably going to probably leave it
7 unbuttoned, Judge.

8 MR. HOFFERTH: No passenger, including Ms. McClain,
9 admits to the methamphetamine in the vehicle. And
10 they're, thereafter, charged with trafficking and placed
11 under arrest.

12 Ms. Johnston when she gets back to the jail is more
13 thoroughly searched. And they find a small quantity of
14 methamphetamine within her clothes, I believe it was. And
15 she is charged with contraband for that specific
16 methamphetamine.

17 In March -- on March 30th of 2023, Ms. Johnston pled
18 to possession of methamphetamine, which she pled to the
19 warrant that was the contraband charge, not the
20 trafficking charge, the contraband charge. And it was
21 reduced to possession of methamphetamine. I have copies
22 of those, if the Court would like to see them.

23 THE COURT: No.

24 MR. HOFFERTH: Okay. I have the warrant and the
25 sentencing sheets.

1 Ms. Johnston is a witness for the State. And I
2 believe the Defense has, also, subpoenaed her as well.

3 And the first motion that the State would like to
4 address relates to Ms. Johnston's conviction for that
5 possession of methamphetamine. There are multiple cases
6 on this specific point starting with State vs. Moore,
7 State vs. Brown, which is 306 S.C. 448, and State vs.
8 Murphy, which is 270 S.C. 642. I have a copy of State vs.
9 Moore, one for Defense Counsel and one for Your Honor.

10 It's a very clear point of law, Your Honor. And all
11 of these cases reiterate the same thing, that guilty pleas
12 are not substantive evidence that can be used of a
13 co-defendant to show the guilt or innocence of the
14 Defendant, who's here on trial today.

15 So as it, specifically, relates to the case before
16 us, Ms. Johnston is to testify. Mr. Gravlee or co-counsel
17 is not entitled to introduce evidence of this conviction
18 in order to show, you know, that Ms. McClain is more or
19 less culpable of the crime for which she is charged.

20 Now, there is a narrow exception as listed in the
21 three cases that I listed. And that is for impeaching a
22 witness when they get on the stand to testify as to the
23 events that relate as to this instance. Specifically, in
24 State vs. Murphy, it's a housebreaking case where two
25 individuals were charged. A co-defendant pled. He gets

1 up and testifies and claims that he had no idea as to the
2 motive for that particular defendant breaking into the
3 house or the building on that occasion.

4 That then opened the door for the conviction to be
5 entered as evidence to impeach him as to the subject of
6 him not knowing the motive for that individual being in
7 the house that night.

8 So as it relates to this case, I believe that
9 exception, also, applies and it is extremely narrow. So
10 in the context of the case before us if Ms. Johnston is to
11 testify and she is to say I didn't know the contents that
12 were in that bag. I did not know there was
13 methamphetamine in that bag. That does not open the door
14 for them to introduce that guilty plea. Because that
15 guilty plea was to the contraband charge, not the
16 methamphetamine that was in the bag that amounted to the
17 trafficking.

18 So that is the first part, I guess, to my motion as
19 it relates, specifically, to the conviction. And I can
20 get into, I guess, the second part, which relates more to
21 third-party guilt in this case upon --

22 THE COURT: I guess your -- your motion is a motion
23 in limine as to --

24 MR. HOFFERTH: The admissibility or not of that
25 conviction.

1 THE COURT: Okay. Mr. Gravlee.

2 MR. GRAVLEE: Judge, anybody that takes the stand is
3 subject to impeachment for prior convictions if within the
4 relevant time period do come in.

5 THE COURT: Well, but there's a little bit of
6 exception involved in a co-defendant case.

7 MR. GRAVLEE: There is, Judge. We're checking out as
8 far as what -- what Moore says. I mean, he's saying
9 that -- I guess that the -- trying to say that the guilty
10 pleas occupants of -- or other occupants weren't
11 admissible for the purpose of establishing the guns and
12 drugs found in the Defendant's van did not belong to the
13 Defendant.

14 But I don't think that the drawing of questions
15 concerning reasonable doubt in the case limit it if you're
16 just trying -- he's saying it would just be for the
17 specific purpose. And, you know, it's going toward
18 overall drawing a connection of whether, you know, she's
19 got knowledge of it, dominion, control, all that stuff
20 that is absolutely impeachable material under the Sixth
21 Amendment and confrontation clause.

22 So I don't think that it -- I know it doesn't fully
23 restrict the ability to cross her or be able to
24 potentially get into that when in this case, it's three
25 co-defendants, all of them charged and only one on trial

1 today. So, especially, I think considering that
2 Ms. Johnston's not on trial, there could be other concerns
3 and Bruton issues, but there aren't considering
4 there's not -- not on trial today.

5 THE COURT: Let me read State vs. Moore.

6 MR. HOFFERTH: Yes, Your Honor.

7 THE COURT: So let me take a look at that. And I'll
8 let you know.

9 When are you calling her? This afternoon?

10 MR. HOFFERTH: It will be tomorrow, Judge. And I
11 will let the Court know. And I believe Mr. Gravlee and I
12 talked about this late last week, we have been attempting
13 to serve her for weeks now. Brian Bolding with our office
14 did -- he's been in contact with her. He got in contact
15 with her mom, who is her listed place of residence, served
16 her mother with the subpoena and, like I said, has been in
17 contact. She's --

18 THE COURT: So we don't know if she's going to be
19 here or not.

20 MR. HOFFERTH: Right. So I just want the Court to be
21 aware if it should come to a no-show that we may have to
22 go get her. I don't -- you know, address that as it
23 comes.

24 But as to the second part, which is in relation to
25 the specific guilty plea, I have a motion as it relates to

1 the Defense -- the Defense's use or the Defendant's -- the
2 Defense's delving into the subject of third-party guilt in
3 this instance. I mean, all parties are aware here that
4 all three -- all three individuals were charged with the
5 trafficking charge.

6 Now, all three can be culpable of that same
7 trafficking charge, all three could have been in
8 possession of this methamphetamine. And case law is clear
9 starting with State vs. Gregory, 198 S.C. 98, and the
10 cases that follow is that any evidence offered by the
11 defense to show third-party guilt is limited to that to
12 which would do two things, show that the third is guilty
13 and at the same time -- and in the same token show that
14 the Defendant is not guilty.

15 I believe we get into kind of a hairy circumstance in
16 this case because any evidence that shows that either
17 Ms. Johnston or Mr. Pace may or may not have been in
18 possession of this methamphetamine does not exculpate the
19 Defendant. It may show that another individual was privy
20 to the drugs, but it does not show that Ms. McClain is
21 more or less culpable of the same thing.

22 So I just want to make the Court aware that I believe
23 that the brunt of the defense -- and I'm sure they'll say
24 the same thing -- is third-party guilt in this case as it
25 relates to the other two passengers. But State vs.

1 Gregory and the cases that follow cut narrow circumstances
2 to how and when that type of evidence can come in.

3 So I don't think they have carte blanche as it
4 relates to casting mere suspicion, which is the language
5 from Gregory upon third parties, as opposed to offering
6 substantive evidence. That cuts both ways.

7 THE COURT: Mr. Gravlee.

8 MR. GRAVLEE: Thank you, Your Honor.

9 Several years ago, we had a trial that I tried in
10 front of Your Honor. And it was not dissimilar in terms
11 of, at least, there was two occupants in the car, somebody
12 getting in. And the drawing of reasonable doubt and
13 questioning whether, you know, getting into what the
14 others knew or didn't know or circumstances might indicate
15 what they knew or didn't know does not equate to raising
16 third-party guilt, especially in a constructive possession
17 case, Judge. That is what happens every time in a
18 constructive possession drug case.

19 It's not third-party guilt. They're just trying to
20 prove circumstances that amount to show that -- you know,
21 dominion and control in a case and knowledge. The drawing
22 of questions about the other co-defendants does not mean
23 that it is third-party guilt.

24 In fact, in Gregory, what they say is, you know,
25 evidence offered by -- for the commission of -- it's just

1 got to be limited to the facts that are inconsistent with
2 his own guilt. I mean, it's got to be -- you know, we're
3 saying it's harry carry that, you know, put him in the car
4 and it's, specifically, them. And when you don't know who
5 has put them in there, or who had them, or knowledge, or
6 dominion, or control, the drawing of questions about that
7 does not equate to third-party guilt. And I just don't
8 think third-party guilt, Judge, is an issue here in this
9 case.

10 And Gregory doesn't apply because these circumstances
11 in this case are unlike those in Gregory where, I believe,
12 they -- in Gregory address the -- they don't address the
13 third-party guilt in terms of, you know, kind of specific
14 persons that are, again, inconsistent with theirs.

15 And he was just mentioning that, you know, in a
16 constructive case just because if one is guilty doesn't
17 necessarily mean that the other two are guilty as well.
18 Constructive -- that's just the nature of a constructive
19 possession case, Judge.

20 THE COURT: Okay.

21 MR. HOFFERTH: Judge, I would just say -- I think,
22 you know, if his stance is they don't want to delve into
23 third-party guilt and that's not what the ultimate -- you
24 know, the brunt of their defense is, perhaps, there's
25 no -- there's no issue here.

1 I would just make the Court aware, you know, that
2 Gregory is clear. I mean, he read it himself that any
3 evidence offered on the basis of a third party being
4 culpable or not has to be inconsistent with the
5 defendant's own guilt. We're dealing, obviously, with a
6 drug case where multiple people can be guilty of the same
7 trafficking.

8 So, like I said, I just want to make the Court aware
9 if it's more an issue on their end as far as, you know,
10 where the drugs came from in the first place, then we may
11 not be in contention here. But, like I said, I'm just
12 making the Court aware. It might be more appropriate down
13 the road to address.

14 THE COURT: I foresee it being a contention at some
15 point. So maybe try to slide it through the back door,
16 maybe not.

17 MR. GRAVLEE: Judge --

18 THE COURT: I guess I need to look at Gregory and
19 see. You're saying you're not going to go third-party
20 guilt. But what you're saying is the basis of some of
21 your arguments and some of your cross, your argument is
22 this isn't third-party guilt.

23 And he -- his argument is, yes, it is. And that's
24 what I've got to determine, I think, at some point.

25 MR. GRAVLEE: Right. I think just simply drawing

1 questions about the circumstances in the case and, you
2 know, even drawing specific questions about the occupants
3 in the car doesn't -- doesn't mean that third-party guilt
4 is being asserted in the case.

5 And the -- in the other case that we had, there was a
6 person in the car that was the driver. And, you know, we
7 got into that case, you know, and the fact that they had
8 needles in their possession, in the driver's possession,
9 who was not charged and evidence of other drug
10 paraphernalia scattered throughout the driver's car was
11 something that, you know, I was able to get into and
12 address on cross. Because that's -- I'm not trying to say
13 that, you know, in a constructive possession case that it
14 is definitively that person's because they have a needle
15 in that case. No, in that case, it was an appropriate
16 line of questioning on cross, especially under the State's
17 constructive possession theory.

18 So that's why I think that's distinguished from
19 Gregory. And third-party guilt does not apply when cross,
20 and questioning, and evidence can be limited to drawing
21 questions of reasonable doubt about the circumstances in
22 the case.

23 THE COURT: All right. I guess I am aware. And I
24 guess we'll address it at such point that it needs to be
25 addressed.

1 MR. HOFFERTH: Thank you, Your Honor.

2 Also, the State wants to make the Court aware -- I
3 don't think it will require a Denno hearing, but there are
4 statements that the Defendant makes after being placed
5 under Miranda. In fact, she's Mirandized twice. But
6 there are statements, like I said. No one in the vehicle
7 admits to possession of this methamphetamine. But she
8 does make statements regarding the placement of where this
9 methamphetamine bag was, her knowledge it was there, her
10 lack of knowledge, as she states, of the methamphetamine
11 in her hand.

12 And I just want to make the Court aware that the
13 State does intend to introduce those statements if the
14 Defense has any umbrage with that.

15 THE COURT: I guess we need to have a Jackson vs.
16 Denno hearing.

17 MR. HOFFERTH: Correct.

18 MR. GRAVLEE: Judge, normally, he would call -- in
19 terms of Denno, I think the larger concerns are just going
20 to be those that address for the redactions of the videos.

21 THE COURT: Okay.

22 MR. GRAVLEE: That we'll have you rule on. But,
23 yeah, I -- if the State wants to have a Denno hearing,
24 they can have a Denno hearing.

25 THE COURT: Well, I guess he's not saying he wants

1 one, unless you are objecting to that coming in.

2 MR. GRAVLEE: Maybe it's something to address after
3 the redactions, Judge.

4 THE COURT: Okay.

5 MR. GRAVLEE: As far as that goes for Denno purposes.

6 THE COURT: Y'all are really dancing around a lot of
7 issues here. We need some music for this. I'm not sure
8 what kind. All right.

9 MR. HOFFERTH: So next, Judge, the State wants to
10 make the Court aware of a suppression order that was
11 signed by Judge Coble. This was on February [sic] 2nd of
12 2024. The hearing was last term in January. If we want
13 to make this a Court's Exhibit.

14 THE COURT: Is this the one that started and the body
15 cams popped up?

16 MR. HOFFERTH: That's it.

17 MR. GRAVLEE: Yes.

18 MR. HOFFERTH: And to shed some light on that, there
19 were three officers at the scene. Devin Daw makes the
20 stop. Van Massingill comes shortly thereafter and then
21 Corey Cassell after him. We have had the body camera for
22 Devin Daw and Van Massingill for the life of this case.
23 It was Corey Cassell's body camera that came to light the
24 Monday last term of court. We had a hearing on it. Judge
25 Coble heard from both of us. Whereupon, Mr. Gravlee was

1 asking for dismissal of the case. I argued that the
2 better remedy is to suppress the evidence and to continue
3 the case. And that's what he ordered.

4 Now, the State wants -- I just want to get some
5 clarity here as to procedurally how this is handled. It's
6 my understanding, based on looking at case law and based
7 on looking into the issue of suppression, that this is
8 treated similarly to a 404 issue as it relates to the
9 defendant -- when a defendant offers evidence of good
10 character of the defendant. Whereupon, they open the door
11 for the State to enter evidence to the contrary.

12 So what my concern here is when Corey Cassell takes
13 the stand and he is questioned about this late disclosure,
14 of course, that's fair game. And he'll have to explain
15 himself as to what happened there as far as the late
16 disclosure.

17 However, what I believe is impermissible is if
18 Mr. Gravlee or co-counsel either implicitly or explicitly
19 starts getting into the contents of said body camera
20 without introducing it and allowing the jury to see it.
21 Essentially, it would be alluding to the fact that there
22 was content on there that the State deliberately withheld.
23 There was content on there that's exculpatory and then
24 doesn't choose to enter into it or allow Officer Cassell
25 to explain -- explain it accordingly.

1 I believe, Judge, that as soon as they get into the
2 content of that body camera, it becomes admissible by the
3 State. So I just want to get some clarity there before we
4 reach that point. Like I said, I believe that's the
5 correct route procedurally. I just don't think it's
6 proper for them to be able to talk about it or allude to
7 it without introducing it, and then it be barred from the
8 State to go in and clarify what's on this body camera.

9 MR. GRAVLEE: Judge, I think that's just a standard
10 opening the door issue that happens in any case. If
11 something is suppressed or inadmissible and I open the
12 door, then, of course, it comes in. I don't think there
13 needs to be any argument on it.

14 But to clarify, it was -- for purposes of this trial
15 so it's on this record, it was last term, I'd asked
16 Mr. Hofferth during the first setting of this trial last
17 November of 2023 about the body camera. I was told it did
18 not exist.

19 I followed up with him, I believe, the Thursday or
20 Friday before the trial, too, in an e-mail to ask again,
21 where is the body camera? Because you could see it -- see
22 the bright red recording light on in the other officer's
23 camera that looked like it was there. And then that's
24 when it showed up the morning of trial, despite those
25 repeated requests. I put on the record last time that it

1 happened in the last trial that --

2 THE COURT: Are we rehearing the motion?

3 MR. GRAVLEE: Sir?

4 THE COURT: Are we rehearing the motion?

5 MR. GRAVLEE: No, sir. I just want to put the
6 context on the record. I'm not asking for another ruling.

7 But it was another trial before this that I had
8 another body cam been turned over. So those are the
9 reasons for those requests. Judge Coble did rule on those
10 and ordered it be suppressed. But I did want to put that
11 context on the record for clarifying for any purposes of
12 an appeal, Judge.

13 THE COURT: So it would be -- I think everybody is in
14 agreement that in the event the door is opened, then the
15 body cam could be admissible.

16 MR. GRAVLEE: Yes, sir, Your Honor.

17 THE COURT: All right.

18 MR. HOFFERTH: Thank you, Your Honor.

19 And the last thing, which I think is from both of us,
20 is addressing the body camera footage, specifically, what
21 is and is not to be redacted. As it stands, as the State
22 intends to introduce, it's three separate body camera
23 clips, two of which are from Devin Daw, one is from Van
24 Massingill. I have spoken to Mr. Gravlee about this. And
25 we have what I believe are minor --

1 THE COURT: And y'all are going to look at that at
2 lunch?

3 MR. HOFFERTH: We can, yes, Judge.

4 THE COURT: Okay.

5 MR. HOFFERTH: But I think as it stands, we can see
6 what we agree to and if we need to hash it out further
7 over lunch, if that's okay with you.

8 THE COURT: Okay.

9 MR. HOFFERTH: On the first body camera, the only
10 muted portion I have is from eight minutes and 54 seconds
11 to eight minutes and 57 seconds. She does mention she's
12 on probation in that clip. That's inadmissible.

13 And then on the second body camera, I have eight
14 minutes to eight minutes and 30 seconds, nine minutes and
15 40 seconds to 10 minutes. And then 10 minutes and 11
16 seconds to the end of the video.

17 And the reasoning I have for portions not muted in
18 between there, she's going kind of back and forth talking
19 about her prior history with drug charges, her status on
20 probation. But she does speak in that -- in the timeframe
21 that I've unmuted as to the positioning of the bag -- or
22 where she thought the positioning of the bag was.

23 And she speaks about -- she explains her movements in
24 the car as to what Officer Massingill interpreted as
25 fidgeting. She denies possession of the methamphetamine

1 at all. And they just inform her that the weight is
2 likely amounting to trafficking, which is why I have those
3 unmuted. But that's it.

4 And then as for Van Massingill's body camera footage,
5 I don't believe I have any of that muted, so.

6 MR. GRAVLEE: Judge, we did speak about it before the
7 last trial, myself and Mr. Hofferth, to discuss some
8 redactions. And I think what he'd like to redact is a
9 bunch of piecemeal portions that are -- I think come off a
10 little, you know, for lack of a better term, herky jerky,
11 kind of back and forth starting and stopping, starting and
12 stopping.

13 I was willing to stipulate to a longer period that I
14 think probably had some good and bad in it for both of us.
15 But I thought it would be a more efficient and easier way
16 to do the redactions. Because I don't -- unless -- I
17 don't know how the redactions that he -- he's got at this
18 time, but, normally, they just mute it and --

19 MR. HOFFERTH: We can. We can. I have it -- usually
20 to take out the human error element, instead of letting
21 it -- should not work for me physically muting. I try to
22 get as much redacted as I can in Greenville. The video
23 just takes it out automatically.

24 But whatever you rule, Judge, we can make it work.
25 I'll just have to -- myself or Mr. Gravlee, depending on

1 who's going, will have to manually do it if we tailor it
2 past what I have.

3 THE COURT: I mean, I guess -- I mean, it sounds like
4 your primary objection really is not necessarily the
5 content that's left in or taken out. It's just that
6 itself -- it's just not real smooth.

7 MR. GRAVLEE: No. It's -- it's twofold, Judge. One,
8 that's the concern, if you're mainly muting it, too, you
9 could run into some issues, you know. We want this thing
10 to go smooth and not have some accidental -- you know,
11 explainable accidental human errors where you try to hit
12 it and it doesn't respond and it just keeps going. We
13 agreed to redact that.

14 But within those, I think there's some relevant and
15 admissible portions of the body cam that could be allowed
16 in if we didn't want to, you know, agree to the redactions
17 I, initially, asserted and talked about with Mr. Hofferth,
18 rather than, you know, trying to start and stop and kind
19 of pick and choose.

20 Because, obviously, what he wants in is the stuff
21 that's good for him. And there's portions that he's left
22 out that if we're going to piecemeal it like that, I would
23 want other portions in, Judge.

24 So that's why I'm -- we weren't able to agree on the
25 redactions when we talked about this probably, I guess, a

1 month ago.

2 THE COURT: Well, I guess y'all need to figure out
3 what y'all -- I mean, I can't quite figure out -- it
4 doesn't sound like you know what you want to agree to, or
5 have you?

6 MR. GRAVLEE: Judge, I think the best way to do it is
7 maybe to play it for Your Honor, the portions that we're
8 talking about. And I can mention what I was talking about
9 redacting or what -- just what he wants to redact, if he
10 wants to have that piecemeal part of it.

11 I would just have my objections to those portions --
12 or the time stamp periods that he wants to do and that I
13 think would be better off to start or stop at another
14 part, Judge.

15 THE COURT: I have no idea what y'all are talking
16 about.

17 MR. GRAVLEE: Basically --

18 THE COURT: I mean, I know, generally. But I'm not
19 sure what I'm -- what am I supposed to rule --

20 MR. GRAVLEE: I think we have to play it.

21 THE COURT: Yeah, I guess. How long are we talking
22 about?

23 MR. HOFFERTH: This specific portion is eight minutes
24 to -- about five minutes.

25 THE COURT: Okay. Now, these parts have been

1 redacted or not redacted?

2 MR. HOFFERTH: I'm playing it completely unredacted.

3 THE COURT: And have you agreed to -- I mean, were
4 you going to redact some of it or just --

5 MR. HOFFERTH: I have portions redacted.

6 THE COURT: And you object to those redactions?

7 MR. GRAVLEE: I'm not sure exactly what time stamps
8 he's --

9 THE COURT: This is why -- y'all are not real clear
10 on what we're talking about here.

11 MR. GRAVLEE: What he had talked to me about before
12 when he said those specific portions that's when I said I
13 wouldn't be able to stipulate to those specific portions.
14 And he'd have to put it on the record what those time
15 stamps are while this is playing. So I think we should
16 play the unredacted.

17 MR. HOFFERTH: I'll play the unredacted. And I'll
18 pause it on the portions that I say -- and let the Court
19 know what I have redacted.

20 THE COURT: These are the ones you're not agreeing
21 to?

22 MR. GRAVLEE: Yes, sir, Judge.

23 (WHEREUPON, an unmarked video was played in open
24 court.)

25 MR. HOFFERTH: I have it redacted from here and I'll

1 tell you when.

2 (WHEREUPON, an unmarked video continued to be played
3 in open court.)

4 MR. HOFFERTH: That's where I unmute it right here.
5 And I mute it because of the probation statements.

6 THE COURT: Let's address this then. Why do you
7 object to him redacting that?

8 MR. GRAVLEE: Judge, that specific portion -- I don't
9 have any objection to that specific portion.

10 THE COURT: Okay.

11 (WHEREUPON, an unmarked video continued to be played
12 in open court.)

13 MR. HOFFERTH: I have it muted here.

14 (WHEREUPON, an unmarked video continued to be played
15 in open court.)

16 MR. HOFFERTH: To here because of the speaking of the
17 charges in Georgia.

18 THE COURT: Mr. Gravlee.

19 MR. GRAVLEE: Judge, I think kind of in between that
20 interim period, there's some mentions of GD and the F bomb
21 in there, too. And I think some of that stuff is more
22 prejudicial than probative just because of that language,
23 Judge. There's not a whole lot of probative value in
24 terms of what's being said there.

25 THE COURT: You're not objecting to this redaction?

1 You think more should be redacted?

2 MR. GRAVLEE: I would say that portion, Judge, yes,
3 sir, just from the -- you know, initially, I had said I
4 think from 8:12 to either 10:30 or 11:30. And I'll see
5 the specific time stamp again, Judge. But that -- I was
6 having a wider swap of redaction rather than piecemeal
7 part.

8 THE COURT: I got you.

9 MR. HOFFERTH: The portion that the State has
10 unmuted, we unmuted because she's talking about the
11 subject of the case, which were her movements in the car.
12 She's talking about denying knowledge of the
13 methamphetamine and she's talking about -- you know,
14 Officer Daw is informing her of the trafficking charge.

15 If we're going to talk about issues of specific
16 language, then we have really bigger issues here. But
17 it's relevant. It's all relevant. And I redacted the
18 portions that are not and that we are barred from
19 introducing.

20 THE COURT: I mean, we had a whole trial with this
21 language that's very relevant, I mean.

22 MR. GRAVLEE: I don't believe it's a First Amendment
23 type case, Judge.

24 THE COURT: I don't.

25 MR. GRAVLEE: It's, also, cumulative. She mentions

1 that in other portions as well where it is -- that she
2 concedes that she had it on her side, or something like
3 that in another officer's body cam. So it seems
4 cumulative and prejudicial in this case because of the
5 circumstances that is addressed in other portions of the
6 body cam and then here.

7 THE COURT: I'm not going to require them to redact
8 it just because she uses colorful language, so.

9 MR. HOFFERTH: For the Court, this is where I have it
10 unmuted.

11 (WHEREUPON, an unmarked video continued to be played
12 in open court.)

13 MR. HOFFERTH: And then I have it muted here. And
14 just for the Court, I have it muted to the end of the
15 video.

16 THE COURT: That was muted there?

17 MR. HOFFERTH: Yes.

18 THE COURT: What's your objection to that?

19 MR. GRAVLEE: From --

20 MR. HOFFERTH: Is it 10:11 where she talked about
21 paraphernalia?

22 MR. GRAVLEE: Judge, I think the redactions go from
23 9:40 to there. Because he starts commenting on the law
24 and talking about what the weight is for trafficking and,
25 you know, ends up getting into a discussion where that's

1 an impermissible instruction on the law in the case when
2 Your Honor is the only one that should be instructing the
3 jury here.

4 I mean, he can testify to the weight and whatnot on
5 the stand. But that comes off as a characterization of an
6 instruction of the law in the case. And it just seems --
7 it seems objectionable, Judge, for sure, just as a comment
8 on the law.

9 MR. HOFFERTH: He's telling her that it's probably
10 trafficking because it's above 10 grams. That's in the
11 indictment. I don't think he's deviating too far from
12 what the jury has already been told. She's asking about
13 it and he's telling her. So I don't see an issue with it.

14 THE COURT: I'm going to allow it in.

15 MR. GRAVLEE: Over objection, Judge?

16 THE COURT: Over objection. I mean, you objected and
17 I'm allowing it in. It's over your objection. I'm not
18 sure that needs to be clarified.

19 MR. HOFFERTH: And I don't know how Mr. Gravlee
20 stands, but I have to the end of the video muted.

21 MR. GRAVLEE: Judge, I think there is some more
22 relevant portions to be played there.

23 THE COURT: All right.

24 (WHEREUPON, an unmarked video continued to be played
25 in open court.)

1 MR. GRAVLEE: Judge, I was going to ask to redact to
2 that point to -- after they get done with, obviously, the
3 objection on probation language, and other charges, and
4 enhancements, and that language. But to begin playing the
5 video again at 11:30 to show the rest of it.

6 (WHEREUPON, an unmarked video continued to be played
7 in open court.)

8 THE COURT: Okay. Let me ask you this, if you've
9 redacted it -- you have a CD with the redactions. So if
10 you allow this in, then you can't unredact?

11 MR. HOFFERTH: Right. If we want -- if Your Honor
12 rules that this needs to be played, we'll have to do it
13 all manually. That's just the way we have to do it.
14 Because I have the video I sent to Greenville and sent
15 back that's redacted. I have the completely unedited
16 video, but we will have to upon your determination --

17 THE COURT: You can put what you wanted to and --

18 MR. HOFFERTH: And that's what I think would be most
19 efficient. If he really wants to play the portion, he can
20 get up and play it and do it. I think it would save us a
21 huge looming issue of this going awry on the unedited
22 video something about probation, or something about her
23 probation officer, or something about her Georgia charges
24 coming in.

25 THE COURT: Well, let's see what else is in here.

1 (WHEREUPON, an unmarked video continued to be played
2 in open court.)

3 THE COURT: What's in there that's --

4 MR. GRAVLEE: Well, Judge, it informs the whole
5 investigation and kind of what they're doing, where
6 they're looking, who they're speaking to -- the
7 co-defendant there about their investigation in general,
8 let's wrap this up, let's go get another one. I think
9 it's relevant to the overall case and how it's been
10 investigated.

11 As far as whether I need to enter that other portion,
12 I think, you know, we're just discussing, you know, if
13 it -- if he's entering the body camera, he's entering the
14 body camera subject to the stipulations. It's not that he
15 enters three-quarters of the body camera and I introduce
16 one-quarter of it. I just introduce subject to the
17 stipulations --

18 THE COURT: But what I'm talking about here is,
19 though, he's not going to be able to -- even if he were to
20 agree to that, he's not going to be able to come up with a
21 disk that has all the proper redactions. So, therefore,
22 he's going to have to have the original disk and he'll --
23 and follow it.

24 MR. GRAVLEE: I think subject to not running awry,
25 I'm not worried about Mr. Hofferth trying to accidentally

1 play some extra seconds, or anything. But I guess at the
2 same time, it wouldn't make it any less objectionable just
3 as a matter of law if I was -- if it -- if I had to -- I
4 don't -- we've done this in another trial before with
5 redactions. And I don't think we ran into any issues with
6 that with the start and stop.

7 So I think we could still play it all the same,
8 Judge, and just redact it the way that he intended. But I
9 never agreed to it at the time when we were talking about
10 it. Because I think the relevant portions to play the
11 completeness of it and inform the jury of the greater
12 investigation that's going on.

13 THE COURT: Y'all got ready for trial before and
14 y'all couldn't work this issue out then?

15 MR. HOFFERTH: Judge, it's not an issue. There's
16 nothing on past that 11 minutes and 30 seconds. If he
17 could articulate something outside it's a fuller view of
18 what happened. They can still see it. They can still see
19 them walk by the car and pull the Ritz crackers out of the
20 door knob. It's nothing.

21 THE COURT: I agree. If he's not stipulating to it,
22 it's not objectionable, then you just have to do that.

23 MR. GRAVLEE: Judge, I mean, if we had a month that,
24 like, we could have talked about this -- and that's
25 exactly what I did.

1 THE COURT: I have ruled. Let's go on.

2 Anything else from the State?

3 MR. HOFFERTH: That's it from the State.

4 THE COURT: Okay.

5 MR. GRAVLEE: Your Honor, so to be clear, that last
6 portion is coming in?

7 THE COURT: Right.

8 MR. GRAVLEE: Okay.

9 THE COURT: And y'all just figure out the logistics
10 of it.

11 MR. HOFFERTH: It's being played with sound.

12 THE COURT: With sound. And y'all just figure out --

13 MR. GRAVLEE: Thank you, Your Honor.

14 So that's 11 minutes and 30 seconds to the end and
15 then --

16 THE COURT: Let me ask you this, though, could you --
17 could you -- could you -- could you at some point swap --
18 I mean, play your regular disk and then, say, for the
19 second portion, this is the last portion we have to show.

20 MR. HOFFERTH: I could, Your Honor.

21 THE COURT: Y'all -- that may be able to work out
22 that way.

23 MR. HOFFERTH: Okay. We'll do that.

24 THE COURT: All right.

25 MR. GRAVLEE: Judge, I filed before the -- before the

1 last trial two -- two motions. I haven't received a
2 response in writing yet. But --

3 THE COURT: Has anything been presented to me? No.

4 MR. GRAVLEE: I -- I don't know, Your Honor. But --

5 THE COURT: I can tell you it hasn't. I have
6 nothing -- I know nothing about a written motion at all.

7 MR. GRAVLEE: Yes, Your Honor. And -- and in my
8 defense, when I -- I just found out about who the trial
9 judge was going to be, and whether I was going to blanket
10 send it out to you and Judge Kinlaw. And I didn't know
11 who the Judge was going to be. I found out you had the
12 flu. I didn't know who was -- who was going to be doing
13 it.

14 So there was the logistical issues of not knowing
15 which judge --

16 THE COURT: You've known since 9:30.

17 MR. GRAVLEE: -- I, actually, need to send it to.
18 Sir?

19 THE COURT: You've known since 9:30.

20 MR. GRAVLEE: I -- I have, Judge.

21 THE COURT: All right. What is it? Do you have a
22 copy of it?

23 MR. GRAVLEE: It's -- it's a standard pretty much
24 motion to reveal grants of immunity or -- under
25 concessions, you know, for -- specifically, for

1 impeachment material. I've got a clocked copy here that I
2 can submit as a Defense exhibit.

3 (WHEREUPON, Defendant's Exhibit No. 1 was marked for
4 identification only.)

5 MR. GRAVLEE: And I handed this to Mr. Hofferth last
6 term as well, Judge.

7 THE COURT: Okay.

8 MR. GRAVLEE: What I wanted to put on the record,
9 Judge, the State's -- State's response. Because we
10 have -- you know, particularly in light of we've got
11 one -- one defendant out of three co-defendants that's
12 being tried -- tried today. It's pretty unusual in the
13 grand scheme of things in a case like this with
14 constructive possession.

15 And I asked Mr. Hofferth last term if the State had
16 made any implied -- expressed or implied offers of
17 leniency, plea offers, as the motion states, any type --
18 any type of agreements, immunity, charge reductions,
19 anything like that that would be absolutely ripe and --
20 ripe evidence for -- for cross and subject to disclosure
21 under Brady.

22 And he shared with me, I believe, not -- not to his
23 knowledge I believe is what -- what he said --

24 MR. HOFFERTH: There have been no -- no offers, no
25 communication with the co-defendants. Like I said,

1 Johnston's charges were disposed of in -- March 30th of
2 2023 -- 2023 or 20 -- 2023 before this trial was even
3 contemplated. No -- no offer there. No deal. Nothing
4 has been offered to Pace, nothing. .

5 THE COURT: All right. So there's nothing in
6 response to -- to his motion?

7 MR. HOFFERTH: Correct.

8 MR. GRAVLEE: Your Honor, after speaking with the
9 co-defendant's attorney in this case, Mr. Albert Dustin
10 Pace, it's my understanding that there has been plea
11 offers made by the State in his case for reductions on it.
12 He didn't get into the specifics of it, I think, to -- to
13 ensure that he's not revealing any -- any confidences.

14 But I don't know if it's Mr. Hofferth or whoever
15 might be prosecuting Mr. Dustin Pace. Because his case is
16 still pending in --

17 THE COURT: Who's the attorney?

18 MR. GRAVLEE: Mr. Chase Harbin.

19 And so my understanding after speaking with him, it
20 does sound like there have been -- an offer for some type
21 of reduction in his case. But, you know, he's not able
22 to -- to share that with me or provide it to me. And
23 if -- if there is, I would like to know the contents of
24 it, what it is, what the reduction is. And if that hasn't
25 been turned over, Judge --

1 THE COURT: Well, let him respond.

2 MR. HOFFERTH: That is absolutely untrue. There's
3 been no offer made for Mr. Pace. The only communication
4 I've had with Mr. Harbin is that his client's going to
5 have to testify. No offer. Nothing.

6 THE COURT: Okay.

7 MR. GRAVLEE: Specifically, it was not Mr. Hofferth.
8 It was somebody in his office. And so that knowledge --
9 you can't stick your head in the sand and say you don't
10 see the sun, you know. The State, as a prosecuting
11 agency -- the attorneys that are working on these cases
12 with the solicitor's office --

13 THE COURT: Well, who's --

14 MR. GRAVLEE: -- that knowledge --

15 THE COURT: -- handling that case?

16 MR. HOFFERTH: Morgan Cancel is handling that case.
17 I -- in my discussion with her, my -- it was limited to
18 I'm calling him as a witness in my trial, don't resolve
19 the case.

20 THE COURT: Well, check with her during lunch.

21 MR. HOFFERTH: I'll check with her. But I explicitly
22 told Chase myself, there's no offer extended in exchange
23 for his testimony. Nothing. So that's just --

24 THE COURT: Double-check with Morgan just to make
25 sure.

1 MR. GRAVLEE: Judge, I'm sorry. I didn't mean to
2 speak over you earlier. Because what I was -- wanted to
3 make sure that we put on the record is that their office's
4 knowledge -- one attorney's knowledge of it being on the
5 docket. I served them notice of the motion and discussing
6 it -- knowledge of one attorney's going to be imputed to
7 another --

8 THE COURT: Well, I said I want to have him check
9 with Morgan Cancel.

10 MR. GRAVLEE: And I just didn't have that language,
11 Judge. I just wanted to put it on the record.

12 THE COURT: Okay. I told him -- he's going to check
13 with Morgan Cancel. And that -- I mean, we're very aware
14 of what the --

15 MR. GRAVLEE: Thank you, Judge.

16 That's all I have to offer.

17 THE COURT: All right. What else?

18 MR. GRAVLEE: Judge, I move to sequester all the
19 witnesses in this -- in this case. I understand --

20 THE COURT: All right. Any objection?

21 MR. HOFFERTH: With the exception of Devin Daw.

22 THE COURT: All right. So granted.

23 MR. GRAVLEE: Thank you, Judge.

24 And I think that's all we have from the Defense.

25 THE COURT: All right. So y'all need to figure out

1 what you're going to do on the video, talk to Morgan and
2 see if there's some other response to this. And be ready
3 to go -- come back in here just a few minutes before 2:00,
4 just in case we have any issues we need to go over.

5 MR. GRAVLEE: Okay.

6 THE COURT: I guess I kind of held in abeyance a
7 ruling on the prior -- the conviction on the -- what was
8 the other Defendant -- the conviction was related --

9 MR. HOFFERTH: Shawna Johnston.

10 THE COURT: Johnston. Okay. I was going to review
11 Moore and let y'all know about that. But you're not
12 calling her today, you said? And she may not -- you
13 may -- you may call her, but she may not appear, so.

14 MR. HOFFERTH: Right.

15 THE COURT: All right. See y'all back at 2:00.

16 (WHEREUPON, a lunch break was taken.)

17 (WHEREUPON, State's Exhibit Nos. 1, 2, 3, 4, 5, 6,
18 7, 8, and 9 were marked for identification only.)

19 THE COURT: I guess the only thing that I took under
20 advisement are just review -- I looked at -- reviewed
21 State vs. Moore in light of the criminal record of
22 Ms. Johnston, I think, was the issue. I mean, I think
23 State vs. Moore is pretty clear and applies here, unless
24 it's some impeachment reason. I'm not sure how you will
25 get it in if that becomes the point, so.

1 MR. GRAVLEE: Yeah. Judge, I think the -- certainly,
2 for -- for impeachment. But I -- I think, in general,
3 that the -- that the plea involved in that case, at least,
4 in -- with regard to the -- the meth found in the bra,
5 even if I don't have to get into the -- the plea, I'd,
6 certainly, be allowed to get into the fact that she had
7 meth in her bra that they found in this case and not
8 necessarily -- I guess the --

9 THE COURT: I think the only -- I think the only
10 thing we were addressing -- the motion was made. The only
11 thing it relates to is the guilty plea, so.

12 MR. GRAVLEE: So you're -- you're ruling, Judge,
13 that --

14 THE COURT: That State vs. Moore is appropriate law.

15 MR. GRAVLEE: And that unless she were to take the
16 stand and testify --

17 THE COURT: No. That's not what it says.

18 MR. GRAVLEE: That you can't get into prior
19 convictions if she is a testifying witness?

20 THE COURT: It still has to be for impeachment
21 purposes.

22 MR. GRAVLEE: Yes, sir. On -- on impeachment?

23 THE COURT: Right.

24 MR. GRAVLEE: So it would be -- it would be
25 admissible for impeachment purposes?

1 THE COURT: State vs. Moore applies. I'm not going
2 to change the way it's written. It's very clear that --

3 MR. GRAVLEE: I was just trying to get a ruling from
4 you, Judge.

5 THE COURT: Well, I just ruled.

6 MR. GRAVLEE: And to clarify, that I could get into
7 it for -- for impeachment purposes?

8 THE COURT: Well, that's what I said. State vs.
9 Moore says for impeachment purposes.

10 MR. GRAVLEE: Okay. Thank you, Judge.

11 THE COURT: I'm not sure how much clearer I can make
12 it, so.

13 All right. Anything else from the State?

14 MR. HOFFERTH: Judge, per your instructions, as
15 related to Mr. Gravlee's assertion or alluding to the fact
16 that some sort of deal might have been offered to one of
17 the witnesses and co-defendant's, Albert Dustin Pace,
18 between our office and Chase Harbin through possibly
19 Morgan Cancel. I've spoken with Morgan Cancel. She is
20 here.

21 We've spoke to Chase Harbin. And we have solidified
22 the fact that there was no deal offer. There is no record
23 of a deal offered. Chase said that he had relayed screen
24 shots of texts between Ms. Cancel and himself as related
25 to trying to get his case worked out. No contemplation of

1 him testifying being in play there.

2 So I don't know exactly where that came from. But if
3 the Judge would like to hear from Ms. Cancel, I'm sure
4 she's more than willing. But we covered our bases there.

5 THE COURT: All right.

6 MR. GRAVLEE: Thank you, Your Honor.

7 What -- what I requested as part of this impeachment
8 material doesn't just depend on whether it's consideration
9 of the testimony. The fact that he's been extended an
10 offer at all is -- is impeachment material. It is a
11 reason to get into -- it is the reason we have
12 cross-examination --

13 THE COURT: But I thought -- I thought they said no
14 offer has been made.

15 MR. HOFFERTH: There -- there's an -- Ms. Cancel has
16 made an offer, not in contemplation of him testifying.
17 And in their discussion as it relates to working his
18 charge out, there's no mention of him testifying. There's
19 never been a conversation with Mr. Harbin as it relates to
20 parlaying him testifying with that offer.

21 I mean, we -- we addressed that. I -- I spoke to
22 Ms. Cancel. I spoke to Chase Harbin. And we're all on
23 the same page as far as it's completely separate from
24 the -- the prospect of him testifying.

25 THE COURT: But an offer has been made?

1 MR. HOFFERTH: Yeah.

2 THE COURT: I mean --

3 MR. GRAVLEE: So, Judge, that's -- that's the point
4 of it. I asked whether offers had been made. And I filed
5 the motion. I asked for it. They denied it, that there's
6 been any offer -- offer made and tried to say to his
7 knowledge and the office's -- their collective office's
8 knowledge of that offer is, obviously, imputed.

9 My understanding after talking with Chase as well, it
10 sounds like he was originally extended a -- a possession
11 with intent to distribute reduction by Ms. Katryna Owens.
12 And then a further reduction recently -- or I -- I don't
13 know how recently, but within -- since Ms. -- Ms. Cancel
14 began over here in the Pickens office to a possession.

15 So down from a trafficking to a possession is what --
16 what we're finding out, Judge. And the fact that that's
17 not disclosed with the direct motion as to that is, yet,
18 another Brady violation, Judge. That is impeachment
19 material.

20 It's quintessential impeachment material that you
21 cross-examine a co-defendant who's -- who's been charged
22 and whose charge is still pending. Yet, he's coming in
23 here today and he's not on the trial docket to testify
24 just -- and just have a concession today on the record to
25 be able to say, yes, there's just some plea offer now.

1 That's not -- that's not the point of it. The point is
2 to, actually, disclose it meaningfully, and honestly, and
3 appropriately when it's been explicitly asked for.

4 It's not whether it's contingent upon testimony.
5 That -- the fact that there has been a reduction with a
6 co-defendant -- with a testifying co-defendant who's not
7 on trial is quintessential impeachment testimony, Judge.
8 It is a due process violation. It's a violation of the
9 Sixth and not -- not providing that in time for better
10 preparation of what that offer is and to kind of better
11 ferret that out, and investigate it.

12 This -- this is the second time that we're finding
13 out new information in this case, Judge. It's a Brady
14 violation. I'd move to dismiss, based on that ground as
15 well.

16 THE COURT: Mr. Hofferth, why isn't this disclosable?

17 MR. HOFFERTH: Your Honor, it sounds like he knows
18 more about the negotiations as it stands with Mr. Pace
19 than I do. I -- I didn't know that there was any offer
20 made as it relates to Ms. -- Ms. Cancel making an offer to
21 Mr. Pace to resolve the charge.

22 But, like I said, it was non-contemplation of him
23 testifying. All my conversation -- conversations with
24 Chase Harbin is saying, you know, he's getting nothing
25 from my end for him testifying. Mr. Gravlee's

1 frustrations here amounts to what's going to be a question
2 on his cross-examination as to, you know, is your -- you
3 know, have you received no offer for your case?

4 This is not -- this is not the insurmountable
5 surprise back door move by the State that Mr. Gravlee
6 wants it to be, you know. Ultimately, we're -- we'd be
7 talking about something else if we're talking about some
8 sort of negotiation that's occurred between the State and
9 Mr. Pace, or that the State and Mr. Pace -- Mr. Pace and
10 Mr. Harbin as it relates to, you know, pay to play as far
11 as him testifying and getting some sort of deal.

12 THE COURT: Well, I guess the question was, though,
13 did he have with this previous motion -- was any offer
14 made?

15 MR. HOFFERTH: Right. And to my understanding --

16 THE COURT: Well, does that not -- does that not put
17 the impetus on you to find out if an offer has been made
18 if it's not -- if you're not handling the case?

19 MR. HOFFERTH: Right. Well, and my conversation as
20 soon as I took this case and knew that it was going to go
21 to trial was to go to Ms. Cancel and tell her, you know,
22 don't move on this case until I resolve my trial. I --
23 you know, as far as any negotiations or anything that's
24 taken place past that, I'm not sure. But I know for a
25 fact that nothing was in play as it relates to him

1 testifying and getting a deal. I mean, his charge is
2 still pending.

3 It all amounts to the same question that Mr. Gravlee
4 is going to ask on cross as to, you know, what kind of
5 offer have you received? Have you received an offer for
6 testifying today? Are you getting some kind of deal? The
7 answers remain the same.

8 I -- I mean, and it's not a situation where he's
9 learning the day of trial that he's received a bargain for
10 his testimony. He hasn't. And that -- the answer to that
11 question is going to remain the same. So --

12 THE COURT: Well, I mean, it's -- but that's not what
13 we're talking about. Discovery here, though -- let's not
14 talk about the admissibility. But, I mean, the discovery
15 of the fact that they, specifically, asked your office had
16 an offer been made. And you keep saying, no offer was
17 made in exchange for his testimony. Well, that's not the
18 question. The question is, was an offer made?

19 MR. HOFFERTH: Right. And --

20 THE COURT: And the answer to that is, yes.

21 MR. HOFFERTH: Right.

22 THE COURT: And that was not disclosed to the
23 Defense.

24 MR. HOFFERTH: Well, my understanding was that it
25 hadn't. Because my conversation with the prosecutor in my

1 office was not to make an offer until this is finished.
2 Come to find -- you know, she may have moved on the case,
3 but it was not in contemplation of today.

4 So -- and based on what Mr. Gravlee said when he
5 brought this up to the Court, he knew about the status of
6 the case through talking with Mr. Harbin. So it was
7 information readily available to him this entire time.
8 So, you know, we're back in the same position.

9 THE COURT: Mr. Gravlee, what prejudice do you have?

10 MR. GRAVLEE: Sir?

11 THE COURT: What prejudice do you have? You seem to
12 know all about it well in advance of this trial.

13 MR. GRAVLEE: Judge, I -- I think it's a little -- I
14 don't know -- disingenuous to say that I should be --

15 THE COURT: I -- I asked a question.

16 MR. GRAVLEE: Not from Your Honor.

17 THE COURT: Okay. I'm asking you a question. What
18 prejudice do you have?

19 MR. GRAVLEE: Your Honor, the fact that this is
20 disclosed today, I don't know exactly what the details of
21 the deal are. I don't have the -- the specifics of it,
22 what they're saying this -- here it is, I've got the
23 offer, whether that is from -- from a -- an official offer
24 letter and e-mail, or something like that. That needs to
25 be disclosed to me. And I will figure out how to use that

1 in my cross of the co-defendant, if it's being used.

2 The fact that it's been held on to despite being,
3 specifically, asked for, it seems disingenuous to argue
4 that my head's in the sand. And it sounds like Defense
5 Counsel did more due diligence and somehow knows more
6 about the, you know, dealings within my own office when
7 he's just said that he did speak to her, asked her to hold
8 off. He's, obviously, in communication with her. He's
9 conceding that.

10 And then trying to just ignore it -- ignore our
11 request and not turn over this quintessential impeachment
12 material that we should have well in advance of trial, not
13 just trying to guess if this is, actually, a thing, Judge,
14 when we're here at 2:00 p.m. the third time this case has
15 been called to trial and has been on the trial docket.
16 And this is the first time that I'm, actually, getting a
17 response from the State.

18 MR. HOFFERTH: Your -- Your Honor, the basis of Rule
19 5 is that the State is to turn over information that the
20 Defense doesn't have just as well access to. He -- he
21 brought this up because he had the conversation with
22 Chase. And Chase filled him in -- up-to-date on what the
23 negotiations of his case were, even outside the range of
24 what I knew they were, based on my conversations with
25 solicitors in my office.

1 So he's sitting here stomping his feet claiming I'm
2 prejudiced, this is a back door move. I'm learning the
3 day of trial to what's going to amount to one question on
4 cross-examination. It's information that he knows and I
5 didn't know. And it's to an answer that's going to remain
6 the same.

7 So where's the prejudice? And even before we get to
8 that matter, we're talking about Rule 5. The rule states
9 it's information that's just as easily accessed by defense
10 and is his obligation to get. He talked to Chase. He
11 knew exactly what was going on with that negotiation.

12 There is no prejudice. He's trying to -- looking for
13 a way to kick down -- the can down the road time and time
14 again on this case for nitpicky issues that are not issues
15 when we're back at the same -- we're back at the same
16 spot.

17 THE COURT: When is this witness being called?

18 MR. HOFFERTH: Tomorrow.

19 THE COURT: All right. Well, you get -- make sure
20 you give him all the information that -- about whatever
21 offer has been made by your office to the Defense before
22 tomorrow.

23 MR. HOFFERTH: Understood.

24 THE COURT: And -- but, otherwise, I find it's not a
25 basis for a mistrial and deny your motion for that.

1 MR. GRAVLEE: Thank you, Your Honor.

2 THE COURT: All right. Anything else from the State
3 before we bring --

4 MR. HOFFERTH: Nothing from the State.

5 THE COURT: All right. Anything else from the
6 Defense?

7 MR. GRAVLEE: Nothing from the Defense.

8 THE COURT: All right. Bring the jury in.

9 And witnesses have been sequestered?

10 MR. HOFFERTH: Yes, Your Honor.

11 MR. GRAVLEE: Judge, we haven't -- before the jury
12 comes in, you haven't ruled on third-party guilt.

13 THE COURT: I thought we did talk about that, that if
14 it came up --

15 MR. HOFFERTH: The way we left it up is we're going
16 to take it in stride as it comes out.

17 THE COURT: Hold on.

18 But you said, no, you're not going to third-party
19 guilt. And I said, Well, I guess we've got to address it
20 at the time.

21 MR. GRAVLEE: No, we're not. But I didn't -- I just
22 wanted to make sure that we didn't get into it in terms of
23 opening, things like that. That there wasn't going to be
24 something --

25 THE COURT: I feel like I'm an advisory to the

1 Defense over here tonight -- today.

2 MR. GRAVLEE: Judge, I just -- I mean, I want to make
3 sure that we are not --

4 THE COURT: You indicated you weren't going with
5 third party guilt.

6 MR. GRAVLEE: Right. I just don't want to run astray
7 of any potential ruling. I thought you were --

8 THE COURT: I don't think -- I think we held
9 everything in abeyance until the time that became an
10 issue.

11 MR. GRAVLEE: Okay. Thank you, Your Honor.

12 THE COURT: All right.

13 (WHEREUPON, the jury came into open court at
14 approximately 2:17 p.m.)

15 THE COURT: All right. Ladies and gentlemen, I hope
16 you had a good lunch.

17 We're ready to start the trial, as I said, State vs.
18 Melanie McClain.

19 I'm going to have the clerk administer the oath. And
20 then I've got some preliminary information to give you
21 before I turn it over to the attorneys.

22 Mr. Welborn.

23 THE CLERK: If you would, please, stand. And, again,
24 after the oath is administered, if you'll answer by saying
25 "I will."

1 Raise your right hand.

2 (WHEREUPON, the jury was sworn at approximately
3 2:13 p.m.)

4 THE CLERK: Thank you.

5 If you agree with that, please, have a seat.

6 INTRODUCTORY REMARKS

7 THE COURT: All right. Ladies and gentlemen, I'm
8 going to kind of give you what I call kind of rules of the
9 road, give you a little bit of information. First of all,
10 I always like to make sure y'all know everybody -- who's
11 in the courtroom as far as staff, and all. You've met the
12 attorneys.

13 But seated right in front of you is the court
14 reporter. She takes down all of the testimony. And the
15 Clerk of Court, he's in charge of the records and the
16 courtroom, basically. Seated behind me is my law clerk.
17 She is, actually, a graduate of law school and assists
18 with anything I need in the trial, research, things like
19 that.

20 But for your purposes, the most important people are
21 the bailiffs. We have an excellent crew of bailiffs here
22 in Pickens. And if you need anything, you direct your
23 questions to them. If there's something that I need to
24 get involved in, they will let me know.

25 All right. As I said in the very beginning, the

1 y'all take a break and come back. That just means you're
2 in charge of any discussions during the deliberations.
3 You're to lead the discussions. And any communications
4 with the Court, you would do that in writing. So, as I
5 always tell everybody, your pay is the same. You don't
6 get a pay raise just for being the foreperson.

7 All right. With that being said, I will now turn it
8 over to the attorneys for opening statements.

9 OPENING STATEMENTS

10 MR. HOFFERTH: Thank you, Your Honor.

11 May it please the Court.

12 Members of the jury, good afternoon.

13 We're here today because the State has charged
14 Melanie McClain with trafficking methamphetamine,
15 specifically, 10 to 28 grams. So that's the charge before
16 you today. That's what you're going to have to figure out
17 when you go back to the jury room. But I think, more
18 pointedly, we're here because of a blatant lack of
19 accountability from Ms. McClain.

20 The events that led us here today took place on
21 October 20th of 2021, in Pickens County. It took place on
22 Hester Store Road where Sergeant Devin Daw with the
23 Pickens County Sheriff's Office narcotics team made a
24 routine traffic stop in the late evening of Ms. McClain's
25 car.

1 When he makes the traffic stop, he approaches the
2 vehicle and notes that there are three occupants of that
3 vehicle, Ms. McClain, whose vehicle it was, a passenger in
4 the front, Dustin Pace, and a passenger in the back,
5 Shawna Johnston.

6 He was going through the routine procedure of going
7 through a traffic stop. And Ms. McClain is having trouble
8 pulling up her insurance. And she notes that her
9 registration is expired. So he's trying to sort all of
10 that out. And around this time, Officer Van Massingill
11 with the Pickens County Sheriff's Office comes to help him
12 with the stop.

13 Van Massingill is observing the occupants of the car.
14 And he notes from Ms. McClain what he will explain to you
15 further as being fidgeting movements, evasive movements.
16 In their line, it can be dangerous for them. But, more
17 commonly, you're going to learn that these are the kind of
18 movements individuals make when they're trying to hide
19 something. And you're going to be able to see that from
20 their body cam footage as well.

21 Officer Massingill tells Agent Daw to get Ms. McClain
22 out of the car and to observe what's going on. And very
23 shortly after this, Agent Daw finds a quantity of
24 methamphetamine, not in her pocket, not in her jacket
25 pocket, not in her pants, not on the ground next to her.

1 It's in her hand.

2 So they do what they're trained to do. They get the
3 occupants out of the car. They start investigating
4 further. They talk to everybody. And they search the
5 vehicle.

6 Now, in the search of this vehicle very shortly
7 afterwards, they find this. It's a little book bag with
8 some camouflage on it. And they don't find it in the
9 trunk. They don't find it on Ms. Johnston's person. They
10 don't find it on Mr. Pace's person. They don't find it in
11 the backseat. They find it directly next to Ms. McClain's
12 driver's seat. And in this book bag, they find what
13 you're going to learn to be is over 10 grams of
14 methamphetamine.

15 Now, what does the State have to prove to you today?
16 Now, drug possession is pretty simple. It aligns with
17 common sense. But there are some nuances to it that it
18 helps to learn and get a little roadmap to as we go
19 through today's trial.

20 Now, starting from the 30,000-foot view, if you're in
21 possession of methamphetamine in South Carolina, you are
22 guilty of possession of methamphetamine. And then it just
23 goes to quantity as to the level we're looking at.

24 Now, there's two types of possession that you need to
25 know about -- well, really one for purposes of today's

1 trial. There's actual possession, which is very
2 straightforward. If I have something on my person, like
3 methamphetamine in my hand, that's actual possession.

4 There's, also, constructive possession. Now, what
5 you need to know for that is, say, I'm driving my car. If
6 I have something in the trunk of my car -- it's like our
7 moms told us when we were growing up, you're responsible
8 for what's in your car. You're responsible for the people
9 you put in your car. The same thing applies to different
10 areas. But we're talking about a car today.

11 So you have to have dominion and control over that
12 car, a/k/a, be the driver/owner of that car. And when
13 we're talking about drugs, you have -- we have to prove
14 that they have knowledge of those drugs and intent to
15 control their disposition or use.

16 So that could mean -- when we're talking about
17 knowledge, we all know what knowledge is, but intent to
18 control disposition or use. That could mean using drugs,
19 selling drugs. That could mean giving them to my friend.
20 That could, also, mean hiding drugs.

21 So that's the law that's before you today. It's
22 pretty straightforward. Again, we just come to quantity,
23 which you're going to learn about today.

24 Now, how are we going to prove this to you? We're
25 going to put a number of witnesses on the stand who are

1 going to walk through this case with you. We're going to
2 put the officers who were there on scene on the stand to
3 testify for you. Agent Devin Daw is here, who's the
4 individual that made the stop. He works with the Pickens
5 County Sheriff's Office on their narcotics team. Deputy
6 Van Massingill is going to be here, also. And Agent Cory
7 Cassell is, also, going to be here. And together, they
8 make up members of both the community action team in
9 Pickens County and the narcotics team, which you're going
10 to hear a lot about.

11 What you need to know is that they're the best at
12 what they do. They do drug investigations. They do this
13 day after day. They have extensive experience. And
14 you're going to hear all about it.

15 Now, it is 2024, police officers wear body cameras.
16 You're going to get to see what happened on that night
17 when they're going through this search. You're, also,
18 going to hear from the chemist from SLED who tested the
19 drugs. And you're going to hear about the evidence in
20 great detail.

21 Now, what I ask of you throughout the course of
22 today's trial is to keep in mind the very straightforward
23 law I presented to you, to observe and hear about the
24 facts from that night, and reconcile some things for me.

25 You're going to see a lot of statements, a lot of

1 actions by Ms. McClain and the other members of the car.
2 I want you to think about the statements she makes, and
3 the actions she makes, and if they align with somebody
4 who's guilty of this crime. See if those discrepancies
5 that you see among those actions and among those
6 statements amount to somebody who's culpable of this
7 crime.

8 Members of the jury, I'm very confident that when you
9 pay attention, you see what happened, you hear from all
10 the witnesses that it's going to be a very easy decision
11 for you.

12 Now, I'm going to circle back at the of -- the end of
13 this week's trial, go through all the evidence, discuss it
14 in further detail, pull it all together. And I am
15 confident you're going to come back with a verdict of
16 guilty.

17 Thank you.

18 THE COURT: Defense.

19 MR. HELLAMS: May it please the Court, Your Honor.

20 Ladies and gentlemen of the jury, as I previously
21 introduced myself, I'm Will Hellams. This is my
22 co-counsel, Max Gravlee. We're with the Public Defender's
23 Office. And we have the pleasure of representing
24 Ms. Melanie McClain here.

25 Now, Melanie is charged with trafficking

1 methamphetamine. And that sounds like some high level
2 stuff; right? But I'm going to go ahead and just kill all
3 the anticipation. It's not a big deal. Okay. There's
4 no -- there's no elaborate undercover operations. There's
5 no planes dropping kilos in the Saluda River. There's no
6 secret underground tunnels running underneath the
7 courthouse. It's just a simple case with simple facts.

8 October of 2021, Melanie McClain picked up two other
9 people. She was going to run them down to the store so
10 they can get a bite to eat. She's driving down the road.
11 She crosses the center line and she gets pulled over by
12 Devin Daw. And within just a few minutes of this simple
13 traffic infraction, her car is surrounded by three
14 deputies from Pickens County community action team.

15 As Deputy Daw is walking up to the vehicle, she opens
16 the door and tells him that her window won't roll down.
17 So she talks to him through the door. But she's polite.
18 She's courteous. She gives him everything he wants,
19 doesn't give him any trouble. A little bit of time goes
20 on and Deputy Massingill seems to think that she's
21 fidgeting around doing something. And she's ordered out
22 of the vehicle. And she gets out immediately.

23 Before she gets out of the vehicle, though, let me
24 make this a little circuitous for you. My apologies.
25 Before she gets pulled out of the vehicle, the deputies

1 identify the other two people that are in there with her.
2 You've got Dustin Pace sitting in the front passenger
3 seat. And directly behind him on the floorboard of what
4 amounts to a floor van, no seats in the back seat, she's
5 sitting on the floor right behind the back seat, is Ms.
6 Shawna Johnston.

7 And while they're communicating, they see what they
8 think is this fidgety movement. They ask her to get out.
9 She gets out, doesn't give them any trouble. She's
10 courteous, as she has been. She walks back.

11 And there's no dispute. She's got some
12 methamphetamine in her hand. And it amounts to just a
13 little over a gram, which is about the same thing that a
14 paper clip weighs, just slightly over a gram. That's what
15 she's got in her hand. We're not disputing that. There's
16 no dispute to that. There's no reason to dispute that.
17 She had that in her hand. But she's charged with
18 trafficking. She's no trafficker. No Pablo Escobar here.
19 No Chapo Guzman. It's just Melanie, a user of
20 methamphetamine.

21 Now, after Melanie gets pulled out of the car, well,
22 Dustin and Shawna, they just get to sit in the car while
23 Melanie is back there talking to Deputy Daw at the back of
24 the vehicle. And several times, the other two deputies
25 walk away. You're going to see it in the body cam. They

1 walk away and leave these two in the vehicle unattended by
2 themselves.

3 Eventually, they call Dustin out and they call Shawna
4 out. And, you know, Dustin, he -- you're going to see, he
5 looks around. He doesn't want to get out. He doesn't get
6 in a rush. He's not compliant. He's looking around,
7 looking at the center console trying to figure out what's
8 going on.

9 And as he's getting out, they watch him. He's got a
10 meth pipe in his hand. And he tries to hide that meth
11 pipe. Then he stands up and right beside him is a little
12 black zipper pouch. And inside that zipper pouch are a
13 bunch of small empty baggies and some marijuana. And
14 Dustin, well, he lays claim to that. He says, Yeah,
15 that's mine. They bring him on back. They get Shawna out
16 of the vehicle. And, eventually, at some point, they find
17 more illegal items in Shawna's purse.

18 Now, this case happened in October of 2021. And
19 unless there's some new evidence that's sprung on us at
20 the last minute that we know nothing about, you're not
21 going to hear anything about any evidence that's found in
22 Melanie's purse, not between then and not now. You're not
23 going to hear it on any body cam that there's anything
24 found in Melanie's purse. You're not going to see it in
25 any written report that there's anything in Melanie's

1 purse.

2 Now, Melanie was one of three people in that vehicle.
3 The State told you that, I told you that, pretty well
4 common knowledge now; right? There was three people in
5 the vehicle. But if you look over at this table over
6 here, the only thing you're going to see is another public
7 defender and Melanie McClain.

8 I want to talk to you briefly -- and the Judge is
9 going to tell you much more about the law of the case
10 later on. I want to tell you just a little bit briefly.
11 The State, well, they can give you direct evidence, which
12 is something that's evidence that you don't need to use
13 your mind to make up any facts. It's just you can deduce
14 straight from that evidence that something happened.

15 They can use circumstantial evidence. And I think
16 you need to pay real close attention to the circumstantial
17 evidence in this case. The law makes no distinction
18 between direct and circumstantial evidence. You can make
19 your decision off of that -- either one.

20 But to the extent that you rely on circumstantial
21 evidence -- and the State's going to try to rely on
22 circumstantial evidence here a lot, too -- all of these
23 circumstances have to align and be pointing in the same
24 direction. They all have to point to the ultimate fact
25 that they come to. And if they don't, well, that

1 circumstantial evidence, it just doesn't work.

2 And the State has the burden to prove Melanie guilty
3 beyond a reasonable doubt. We don't have to prove
4 anything to you. They have to prove that to you. But
5 when she walked into this courtroom today, this lady right
6 here, she's presumed innocent, not guilty, innocent of
7 these charges. And she can only become guilty if -- if
8 the State proves beyond a reasonable doubt that she is.

9 And so it's kind of like -- I'll try to use an
10 analogy here for you. It's kind of like there's a big
11 permanent marker question mark, that's her innocence. And
12 they've got to remove that question mark. They've got to
13 take away that reasonable doubt. They're going to try to
14 paint you a picture to remove all of that. But it's got
15 to be gone. It can't be a little bit of black here, a
16 little bit of black here, a little bit of black here. If
17 any black remains, any of the outline of this question
18 mark remains, then you've got reasonable doubt and she
19 remains innocent. And you must find her not guilty.

20 As I told you, they're going to promise you this
21 masterpiece. He already has. It's a real simple case and
22 we're going to prove all this. It's an overconfident
23 artist that's promising you a masterpiece before that
24 paint brush ever touches the canvas. But if you pay
25 attention to what they show you and what they don't show

1 you, you're not even going to be confident that the State
2 can finger paint by the time this thing is all over with.
3 Okay. This painting wouldn't hang on your refrigerator if
4 a kid brought it to you. Pay attention to what they gloss
5 over. Pay attention to facts that aren't there.

6 Now, later on, my co-counsel is going to ask you to
7 find her not guilty at the end of this trial. And when
8 you see what's glossed over and what's left out, there
9 will be no question that she is not guilty.

10 Thank you.

11 THE COURT: State, you may call your first witness.

12 MR. HOFFERTH: The State would call Agent Devin Daw.

13 WHEREUPON,

14 DEVIN DAW,

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

16 THE CLERK: Thank you, sir.

17 If you would have a seat.

18 And state your name for the record, please.

19 THE WITNESS: Agent Devin Daw.

20 DIRECT EXAMINATION

21 BY MR. HOFFERTH:

22 Q Agent Daw, could you tell the jury a little about
23 what your current role is with the sheriff's office and a
24 little bit about your background?

25 A Sure. So currently, I'm assigned to the special

1 operations division. And we handle the majority of
2 narcotics for the county. That goes to investigating long
3 term narcotics investigation to doing controlled purchases
4 of narcotics, from methamphetamine to fentanyl to heroin
5 to marijuana to controlled substance pills. We execute
6 all the search warrants in regards to those investigations
7 as well.

8 We work very closely with our community action team,
9 which I was assigned to when this stop was made. They
10 handle the street level narcotics complaints. So if we
11 have a problem house that we suspect is dealing in
12 narcotics, we make the stops at it. We conduct
13 surveillance on those houses. The community action team,
14 also, handles warrant services, but that's not really
15 related to this case.

16 The community action team at the time was a unit of
17 eight guys, two of whom are, also, in this. They work
18 very closely. We're a very tight knit group as it is when
19 you work day in and day out with somebody.

20 Q So how many years total have you been with the
21 Pickens County Sheriff's Office?

22 A I've been with the Pickens County Sheriff's Office
23 since 2019. I'm sorry.

24 Q And ballpark, in that time, how many traffic stops
25 have you made?

1 A Oh, hundreds.

2 Q Okay.

3 A I could not give you a number.

4 Q Okay.

5 A Day-to-day, we might stop four, five, six cars on a
6 slow day. It could be more than that on a busy day. We
7 might make 20 stops.

8 Q Were you working on October 20th of 2021?

9 A I was.

10 Q Did you conduct a traffic stop on Ms. Melanie McClain
11 on that day?

12 A I did.

13 Q Can you describe the events that led to that traffic
14 stop?

15 A Sure. So around 8:00 p.m., I was traveling down
16 Hester Store Road and I observed a white minivan cross
17 over the double yellow line and go back. I believe she
18 did it about three times. Then I initiated a traffic stop
19 by turning on my blue lights. She made a right-hand turn
20 onto Jim Hunt Road and stopped just after entering Jim
21 Hunt Road.

22 I approached the vehicle, which she opened the door.
23 She said the window was broken. It may be. I didn't
24 check. She provided me her driver's license and
25 registration. I noted to her that her registration had

1 expired in March of that year. I asked her for insurance.
2 And she said she had to pull it up on her phone.

3 So while she was looking on her phone, I identified
4 the passenger -- the front passenger and the rear
5 passenger. The front passenger I identified as Albert
6 Dustin Pace, who's, also, a co-defendant in this case.
7 And the back passenger who's seated on the floor behind
8 Dustin was Shawna Marie Johnston.

9 Q I'm going to stop you there, if that's all right.

10 A Go ahead.

11 Q Because we'll get into it in a little bit further.
12 Did this stop take place within Pickens County?

13 A Yes, it did. I'm sorry.

14 Q And could you identify Ms. McClain in the courtroom
15 today?

16 A She's seated right there in the pink.

17 Q Okay. Now, when you did -- conducted this traffic
18 stop, were you wearing a body camera at that time?

19 A I was.

20 Q Okay. If I showed you that body camera, would you
21 recognize it?

22 A I would.

23 MR. HOFFERTH: Pat, would you turn on the screen?

24 THE CLERK: Yes, sir.

25 MR. HOFFERTH: For the record, what I'm going to be

1 showing Agent Daw is State's Exhibit No. 1 and, more
2 specifically, Devin Daw's body camera one.

3 THE COURT: Any objection to this?

4 MR. HELLAMS: No objection, Your Honor.

5 THE COURT: All right. Except as previously
6 stipulated and subject to your prior objection.

7 (WHEREUPON, State's Exhibit No. 1 was admitted into
8 evidence.)

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

11 BY MR. HOFFERTH:

12 Q Is this your body camera from that night? Do you
13 remember?

14 A It is.

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

17 BY MR. HOFFERTH:

18 Q Is that Ms. McClain?

19 A It is.

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

22 BY MR. HOFFERTH:

23 Q At this time, Agent Daw, did other officers come to
24 assist you at the stop?

25 A Yes. At this point, it was just Deputy Massingill.

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

3 BY MR. HOFFERTH:

4 Q So at this point, you're just trying to get the
5 registration information and insurance information?

6 A Insurance information.

7 (WHERE UPON, State's Exhibit No. 1 continued to be
8 played in open court.)

9 MR. HOFFERTH:

10 Q What are you doing right here?

11 A I'm going back to run their information and make sure
12 that Melanie had a good driver's license and check for
13 warrants on all three subjects.

14 MR. HOFFERTH: Okay. Just for the record, I'm moving
15 to five minutes and 15 seconds.

16 THE COURT: Where did you stop it?

17 MR. HOFFERTH: I stopped it at four minutes.

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

20 BY MR. HOFFERTH:

21 Q What happened there, Agent Daw?

22 A Deputy Massingill was flagging me down with his
23 flashlight. He was flashing it at me. When I got out of
24 the car and approached him, he said that Ms. McClain was
25 making movements and I needed to get her out of the car.

1 And I got her out of the car. And as soon as she got out,
2 I could see she was holding tightly to her phone.

3 I asked her if she had anything on her. And she went
4 like this. And when she moved her hand, I could hear the
5 bag crinkling underneath her phone. When I went to
6 initially grab it, she swapped hands on me and then did it
7 a second time. That's when I was telling her to give me
8 what was in her hand. What was in her hand was a plastic
9 bag, which had a clear crystal substance, which in my line
10 of work, I know that it's methamphetamine.

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

13 BY MR. HOFFERTH:

14 Q What is she saying here?

15 A She's saying that the bag was on the side of her leg.

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

18 BY MR. HOFFERTH:

19 Q While Ms. McClain was taken to the back where you
20 found the methamphetamine, were the other officers by the
21 car?

22 A Yes. Deputy Cassell had arrived at that point. You
23 saw him pass by me when I was retrieving the meth from
24 Ms. McClain. He was standing at the driver's side window.
25 And Deputy Massingill was still at the passenger side

1 window.

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

4 BY MR. HOFFERTH:

5 Q What are you doing here?

6 A I'm placing her in cuffs.

7 Q Based on the methamphetamine you found?

8 A The methamphetamine, but more so, her behavior. You
9 could see Shawna was leaning up against the car and was
10 real calm. Ms. McClain was moving back and forth, looking
11 on the phone, turning, trying to see what we were doing
12 inside the car.

13 So at this point, we kind of had concerns that maybe
14 she had something else on her that she might be trying to
15 conceal.

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

18 MR. HOFFERTH: Just for the Court's purposes, from
19 eight minutes and 50 seconds to eight minutes and 57
20 seconds, I plan on muting that portion.

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

23 BY MR. HOFFERTH:

24 Q What is Officer Massingill doing there?

25 A He is advising all three of their Miranda rights off

1 of a card.

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

4 BY MR. HOFFERTH:

5 Q Agent Daw, can you identify a bag in that still shot?

6 A Uh-huh, I can.

7 Q Okay. Where is it positioned in the car?

8 A Directly next to the driver's seat, the brown camo bag.

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

11 BY MR. HOFFERTH:

12 Q Okay. So I guess, there again, I'm going to show you
13 what's been pre-marked as State's Exhibit Nos. 3 and 4.

14 THE COURT: Any objection?

15 MR. HELLAMS: No objection, Your Honor.

16 THE COURT: Entered without objection.

17 (WHEREUPON, State's Exhibit Nos. 3 and 4 were admitted
18 into evidence.)

19 BY MR. HOFFERTH:

20 Q Do you recognize those from the body camera?

21 A It does [sic].

22 Q Does it show the position of the bag in the car?

23 A It does.

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

1 BY MR. HOFFERTH:

2 Q What's happening here?

3 A I opened up the brown camo bag and there was, I
4 believe, five bags of individually packaged
5 methamphetamine.

6 MR. HOFFERTH: Okay. I'm showing defense counsel
7 what's been pre-marked as State's Exhibit Nos. 8 and
8 State's Exhibit 9.

9 MR. HELAMS: No objection.

10 THE COURT: State's Exhibit Nos. 8 and 9 in without
11 objection.

12 (WHEREUPON, State's Exhibit Nos. 8 and 9 were admitted
13 into evidence.)

14 BY MR. HOFFERTH:

15 Q Is that the book bag that's in the video?

16 A It is.

17 Q And as to -- I think State's Exhibit No. 8 is the
18 book bag and State's Exhibit No. 9?

19 A Yes.

20 Q Does that reflect some of the contents found in that
21 book bag?

22 A The illegal narcotics were found. The
23 methamphetamine was found in the bag, yes.

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

1 BY MR. HOFFERTH:

2 Q Agent Daw, in your experience, what's the
3 significance of the bags you pulled out there?

4 A It shows that they're dealing in narcotics. They're
5 able to break down large amounts into smaller amounts
6 easy -- that are more easily distributable user weights.

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

9 BY MR. HOFFERTH:

10 Q When you say he was sitting on those, who are you
11 referring to?

12 A Dustin.

13 Q Do you remember what in reference you were speaking
14 about?

15 A The black zipper pouch that he had under his leg --
16 or I was told was under his leg had a little bit of
17 marijuana and some plastic bags. And I believe there was
18 another pipe.

19 Q So it's a separate bag from this?

20 A That's correct, separate bag.

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

23 BY MR. HOFFERTH:

24 Q Agent Daw, to your recollection, does the rest of
25 this video consist of you searching the car?

1 A A majority of it, yes.

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

4 MR. HOFFERTH: For the Court's purposes, I'm pausing
5 at 14 minutes and resuming at 20 minutes, five seconds.

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

8 BY MR. HOFFERTH:

9 Q Okay. And, at this point, Agent Daw, had anyone in
10 the car admitted to ownership of that book bag that you
11 found?

12 A No.

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

15 BY MR. HOFFERTH:

16 Q Did you hear what she just said there?

17 A Yes.

18 Q What did she say?

19 A She said it's hers.

20 MR. HELLAMS: Objection, Your Honor. Hearsay.

21 MR. HOFFERTH: He stipulated to admitting the
22 exhibit.

23 THE COURT: Sustained. That was on there.

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

1 BY MR. HOFFERTH:

2 Q On that seat there, can you summarize, generally, the
3 contents of what was found in the car?

4 A Basically, it was the two pipes that we found, the
5 methamphetamine, the baggies, marijuana, this pouch, the
6 black zipper pouch. There was, also, a scale, some cut
7 straws that were in the bag. I believe that was all. I'm
8 just -- basically, I'm just gathering up all the stuff I
9 had found and making it easier for me to carry back to the
10 car.

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

13 MR. HOFFERTH: For the Court's purposes, I'm stopping
14 the video at 24 minutes and 35 seconds.

15 BY MR. HOFFERTH:

16 Q Agent Daw, was your body cam broken up into two
17 sections, to your knowledge?

18 A It was.

19 Q If I showed you the second section, would you
20 recognize it?

21 A I would.

22 MR. HOFFERTH: I'm showing Agent Daw on State's
23 Exhibit No. 1, Devin Daw BWC 2R.

24 THE COURT: This is, also, subject to stipulations
25 and objections previously?

1 MR. HOFFERTH: Correct.

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

4 BY MR. HOFFERTH;

5 Q Now, at this point, all of them are placed under
6 arrest?

7 A Yes. That's correct.

8 Q And up to this point, did Ms. McClain state that the
9 bag was anybody else's in the car?

10 A No.

11 Q No. She -- did she state it was hers?

12 A She said it was not hers.

13 Q What about the meth you found in her hand, did she
14 say it was hers?

15 A No. She said that was not hers as well.

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

18 MR. HOFFERTH: For the Court's purposes, in the
19 following sections eight minutes and 10 seconds to eight
20 minutes and 30 seconds, nine minutes and 30 seconds to 10
21 minutes, those sections are muted.

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

24 BY MR. HOFFERTH:

25 Q What did she say there?

1 A She said she remembered it was beside her leg.

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

4 THE COURT: While you're doing this -- pause for a
5 second.

6 Ladies and gentlemen, the muted portions are things
7 that either I've ruled on or counsel have stipulated that
8 are not relevant evidence, or matters to be considered by
9 you, just things not related to the case. So that's the
10 purpose of that.

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

13 MR. HOFFERTH: Again, for the Court's purposes, the
14 State has 10 minutes and 10 seconds to 11 minutes and 30
15 seconds muted, per the Court's instruction.

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

18 MR. HOFFERTH: I'm stopping the video at 11 minutes
19 and 30 seconds. Pulling up the unredacted, per the
20 Court's instruction, to play the rest of the video unmuted
21 from 11 minutes and 30 seconds.

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

24 MR. HOFFERTH: And just for clarity purposes, Devin
25 Daw's body cameras one and two are admitted, per the

1 Court's stipulation.

2 BY MR. HOFFERTH:

3 Q Agent Daw, did you, subsequently, turn the stuff you
4 found on scene into evidence?

5 A I did.

6 Q Okay. I'm showing you what's been pre-marked as
7 State's Exhibit Nos. 5 and 6.

8 MR. HELLAMS: No objection, Your Honor.

9 BY MR. HOFFERTH:

10 Q Agent Daw, what did I just hand you in State's
11 Exhibit Nos. 5 and 6?

12 A It is our property and evidence from our reporting
13 system.

14 Q Did you turn in -- so, first of all, what's State's
15 Exhibit No. 5?

16 A It is five plastic bags of crystal substance.

17 Q All right. Was that the -- what you found inside the
18 book bag?

19 A Inside the brown camo bag, yes.

20 Q What about State's No. 6?

21 A State's Exhibit No. 6 is one plastic bag of crystal
22 substance.

23 Q Was that what you found in Ms. McClain's hand?

24 A Yes.

25 Q Were both of those items turned into evidence that

1 night?

2 A Yes, they were. They were both placed in a SLED BEST
3 kit and submitted for analysis.

4 MR. HOFFERTH: The State would move State's Exhibit
5 Nos. 5 and 6 --

6 MR. HELLAMS: No objection.

7 THE COURT: Entered without objection.

8 (WHEREUPON, State's Exhibit Nos. 5 and 6 were admitted
9 into evidence.)

10 BY MR. HOFFERTH:

11 Q Agent Daw, what -- just to summarize what we saw and
12 reviewed in your body camera footage, at no time did
13 Ms. McClain take ownership of any methamphetamine that
14 night?

15 A No.

16 Q No?

17 A No. Not what was in the bag or what was in her hand.

18 Q At any time, did she indicate where that
19 methamphetamine came from or whose it may be?

20 A Not to me.

21 Q Okay. And where exactly was it found in the car?

22 A Right next to the driver's seat. So it was missing
23 the center console. It was on the floor in between the
24 driver's seat and her purse.

25 MR. HOFFERTH: I have no further questions for you.

1 THE COURT: We've been going about an hour and a
2 half. We'll take a short break. We'll bring you out in
3 just a few minutes, probably about a 10-minute break.

4 (WHEREUPON, the jury was excused from open court at
5 approximately 3:30 p.m.)

6 MR. HOFFERTH: Judge, is it all right if I run to the
7 restroom real quick?

8 THE COURT: Yeah. We're going to take a break.

9 MR. HOFFERTH: Okay.

10 THE COURT: Agent Daw, you're in the witness bubble.
11 That means you can't discuss the case with anybody. You
12 can step down, but you can't discuss your testimony.

13 (WHEREUPON, a break was taken.)

14 THE COURT: Is the State ready?

15 MR. HOFFERTH: Yes, Your Honor.

16 THE COURT: Is the Defense ready for cross?

17 MR. HELLAMS: Yes, Your Honor.

18 THE COURT: If the jury is ready, bring them in.

19 (WHEREUPON, the jury came into open court at
20 approximately 3:43 p.m.)

21 THE COURT: Ladies and gentlemen, if you -- if you
22 will recall, the State had finished their direct
23 examination testimony.

24 And now, Mr. Hellams, you may cross-examine.

25 MR. HELLAMS: May it please the Court, Your Honor.

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A That's correct.

1 Q How long is that now?

2 A I don't know how long it is now. When I went, it was
3 12 weeks.

4 Q So you cover a lot of training there?

5 A Yes, sir.

6 Q You learn about writing reports?

7 A Yes, sir.

8 Q Were body-worn cameras a thing back then?

9 A They might have just started. I can't recall. I
10 didn't get issued one right away.

11 Q They teach you about the Fourth Amendment, search and
12 seizure?

13 A Yes, sir.

14 Q They teach you about the Fifth Amendment, right to
15 remain silent?

16 A Yes, sir.

17 Q They teach you, like, a couple weeks of legal at the
18 beginning?

19 A Yes, sir.

20 Q I mean, you've got a lot of training at this point in
21 your career; right?

22 A Yes, sir.

23 Q So you go through legal, you learn about the law?

24 A Uh-huh.

25 Q And then you learn about defensive tactics and stuff

1 such as that?

2 A Uh-huh.

3 Q You're going to learn about talking to people?

4 A Uh-huh.

5 Q How to interview, interrogate? You do some driver
6 training?

7 A That's correct.

8 Q Shooting training; right?

9 And then after you get out of the academy, to get
10 where you're at now, you had to go through, I would
11 assume, a lot more training?

12 A Yes, sir.

13 Q Have you ever been through a basic detective class?

14 A I have not, no.

15 Q You have not. What about any kind of specialized
16 drug interdiction training?

17 A Not interdiction training, no, sir.

18 Q No interdiction training. Narcotics investigation
19 training?

20 A Yes.

21 Q Any specialized interrogation training?

22 A No, sir.

23 Q Now, you have to have annual training to keep your
24 certification up, too; right?

25 A Correct.

1 Q And then, you probably have some kind of in-house
2 training?

3 A Correct.

4 Q Where y'all would review policies and procedures, and
5 whatnot?

6 A That's correct.

7 Q And some of that stuff is going to probably cover
8 writing reports?

9 A That's correct.

10 Q Let's talk about writing reports for a second.
11 Writing reports is very important because your memory is
12 fleeting; right?

13 A Uh-huh.

14 Q It gives you a good record of what's going on, what
15 transpired?

16 A That's right.

17 Q Because you might not remember everything when you
18 get up here, when you get to court eventually; right?

19 A Right.

20 Q Because, I mean, this happened in 2021. It's 2024
21 now; right?

22 A Right.

23 Q And you said earlier, you could make up to 20 stops
24 in an evening?

25 A Could be.

1 Q That's a lot of stuff to keep straight in your head;
2 right?

3 A Not all of them are report stops, but, yes.

4 Q Right. That's what I'm saying. After a while, all
5 that runs together; correct?

6 A That's correct.

7 Q Same thing for videos; right? It protects you from
8 somebody saying he did this when you didn't really do it;
9 right?

10 A Correct.

11 Q But it, also, preserves evidence for court?

12 A Correct.

13 Q And y'all have got policies like we were talking
14 about, you've got policies on body-worn cameras?

15 A Correct.

16 Q And y'all have to go over those every year?

17 A I don't know if we go over that specific policy or
18 just when there's an update. But we do review policies.

19 Q Frequently? Infrequently?

20 A At least, once a year.

21 Q Now, the evening of this, you were a deputy first
22 class?

23 A That's correct.

24 Q Deputy Massingill was a deputy first class?

25 A That's correct.

1 Q And Deputy Cassell was, also, a deputy first class?

2 A Correct.

3 Q Were you the supervisor on the scene that evening?

4 A No.

5 Q Were any of you tasked with supervising each other?

6 A No.

7 Q Okay. Let's talk about these body-worn cameras.

8 Now, there's several points. We've got one video, two
9 videos. Why did we turn the videos off?

10 A That, I don't know. It could be anything from the
11 three of us having a conversation, which we are allowed to
12 do. We're allowed to mute or turn off the body cam if
13 we're talking to the side. That would be the only reason
14 that I can recall. I don't remember what the conversation
15 was had.

16 Q Okay. So there's a policy that says you can turn off
17 your camera?

18 A That's correct.

19 Q And can you quote that policy to me, tell me where
20 that's at?

21 A No. I could go on our system and find it. But, no,
22 I can't quote it to you.

23 Q In fact, you're not supposed to turn those cameras
24 off at all, are you?

25 A I believe I can, yes.

1 Q Now, you -- you review your policies, you just said?

2 A Uh-huh.

3 Q So if I showed you your policy, do you think that
4 would refresh your recollection?

5 A Sure.

6 MR. HELLAMS: May I approach, Your Honor?

7 THE COURT: You may.

8 MR. HELLAMS: Thank you.

9 BY MR. HELLAMS:

10 Q Don't read it out loud. Just read it to yourself.

11 A (Witness complied.)

12 Q Now, again, Agent Daw, are you able to turn your
13 body-worn camera off once it's activated, per your policy?

14 A No, not according to that.

15 Q Okay. And you looked through there. There are some
16 exceptions, but none of those exceptions apply to this
17 case; correct?

18 A No.

19 Q But we're not sure today why it was turned off?

20 A It could have been anything from placing something in
21 the rear of the patrol car to having a conversation with
22 other deputies on scene. I -- I honestly could not tell
23 you.

24 Q Now, earlier, you said you had some narcotics
25 investigator training; is that correct?

1 A Yes.

2 Q Did Ms. Johnston appear to be under the influence of
3 any substance when you were dealing with her?

4 A Not right off.

5 Q Well, you said she was real calm. She didn't seem a
6 little glassy eyed to you in the video?

7 A There was a beer in the backseat. I mean, she could
8 have been drinking it. I believe it was a beer. I don't
9 want to say it was a beer. It was an alcoholic beverage.

10 But drug recognition is a different training than
11 those under the influence of alcohol. And, again, a
12 narcotics investigation doesn't necessarily cover
13 DUI-related incidents.

14 Q Well, she wasn't driving, though; right?

15 A Correct. Correct.

16 Q I just wanted to clarify that.

17 A Signs of impairment. Let me rephrase that.

18 Q Okay. Now, way back when you went to basic law
19 enforcement, did y'all cover -- you did cover some
20 evidence training; correct? How to handle evidence, how
21 to preserve evidence?

22 A Yes.

23 Q And that's important because the evidence is what's
24 sitting in front of you, what we use here in court?

25 A Right.

1 Q And you mentioned earlier your training and
2 experience led you to believe that that particular
3 substance was methamphetamine?

4 A Correct.

5 Q Now, in your training and experience, you can
6 encounter more than one type of narcotics or controlled
7 substance in one location; correct?

8 A Correct.

9 Q And some of those narcotics out there are dangerous
10 if you just go up and bare hand them; right?

11 A No.

12 Q No. So there's no transdermal absorption for
13 fentanyl?

14 A There is not.

15 Q None whatsoever?

16 A Correct -- well, there's exceptions, obviously. If
17 you don't wash your hands properly after an exposure,
18 then, yes. If you use hand sanitizer to open your pores,
19 it becomes transdermal, but that changes your day-to-day
20 skin chemistry.

21 Q Okay. So you're telling me you could touch it, pick
22 it up, and then if you don't wash your hands, it gets
23 transferred?

24 A Do I want to? No.

25 Q That wasn't my question. I'm not trying to be

1 argumentative. But that's --

2 A I'm saying, yes, potentially, you could.

3 Q Okay. And one of the things about collecting
4 evidence is to preserve it so it's in the best form for .
5 court; correct?

6 A Uh-huh.

7 Q So handling evidence, you probably want to protect
8 your fingerprints from getting on the evidence; right?

9 A Well, collecting fingerprints isn't full proof.

10 Q Not my question.

11 A Well, that's what you're asking. You're asking me
12 if --

13 Q No, sir.

14 A -- I believe that my fingerprints could have gotten
15 placed on those bags, which would have made it so that
16 fingerprints from the suspects could have been removed.
17 The collection of fingerprints is putting dust on a fine
18 material -- or any material and removing the oils from
19 your skin on those from whatever it is your dusting;
20 correct?

21 Q That's not my question.

22 A What is your question?

23 Q My question was, to preserve evidence, not putting
24 your fingerprints on it would preserve it; correct?

25 A Sure.

1 Q Otherwise, it's been altered; correct?

2 A I guess.

3 Q I mean, it's a "yes" or "no" question.

4 A It depends on what evidentiary value you're trying to
5 retain on it. If you're just trying to retain the drugs
6 and the bags they're in. If you're trying to remove
7 fingerprints, that's a different matter.

8 Q What about dumping everything together in a seat,
9 dumping all the evidence together, how do you keep track
10 of what goes where?

11 A Because I knew what I removed from that bag.

12 Q You knew what you removed from that bag?

13 A Uh-huh.

14 Q You didn't alter it in any way?

15 A No.

16 Q Now, eventually, you charged three people with
17 trafficking methamphetamine; correct?

18 A Correct.

19 Q And you charged those three people because you didn't
20 know who it belonged to?

21 A Correct.

22 Q But you could have collected fingerprints from that
23 bag?

24 A Trying to collect fingerprints from a fabric bag is
25 not possible.

1 Q Okay. How about the nonporous surface of the scale
2 that was within the bag, could you have done that?

3 A Sure, possibly. But --

4 Q You have cyanoacrylate at your property and evidence
5 room; correct? That's super glue fuming?

6 A No, we do not, I don't believe. I don't know. I
7 don't work in forensics.

8 Q Okay. The purpose of preserving evidence is to help
9 strengthen convictions; correct?

10 A Correct.

11 Q So you don't convict innocent people; correct?

12 A Correct.

13 Q Now, within that zipper bag, there was some more
14 marijuana; correct?

15 A In this one?

16 Q In this one right here.

17 A I do not believe so.

18 THE COURT: What exhibit number are you referring to?

19 MR. HELLAMS: My apologies, Your Honor. This is
20 State's Exhibit No. 8.

21 I beg the Court's indulgence, Your Honor.

22 (Pause.)

23 BY MR. HELLAMS:

24 Q Detective Daw, you wrote a written report about this
25 incident; correct?

1 A Yes, I did.

2 Q If I showed you your written report, would it
3 reflect -- would it refresh your recollection?

4 A Yes, it would.

5 Q As before, please, do not read it out loud. Just
6 read it to yourself.

7 A Okay.

8 Q And you found some marijuana in that bag that's
9 State's Exhibit No. 8; is that correct?

10 A Yes. That's my apologies.

11 Q Correct?

12 A Correct.

13 Q Did you maintain that evidence?

14 A No, sir.

15 Q What happened with that evidence?

16 A It was destroyed.

17 Q You, also, found -- or someone on scene found
18 marijuana in Dustin Pace's bag; correct?

19 A Yes.

20 Q But we don't have the ability to look at those and
21 see if they're even remotely similar today, do we?

22 A No.

23 Q Speaking of Dustin's bags -- or Dustin's bag, within
24 that zipper pouch, there were more small, clear Ziploc
25 bags; correct?

1 A Correct.

2 Q And earlier you testified that small, clear Ziploc
3 bags in any quantity is an indicator that someone is
4 dealing narcotics; correct?

5 A Correct.

6 Q The prescription you found in Shawna Johnston's purse
7 was not prescribed to her, was it?

8 A No.

9 Q And you destroyed that evidence as well?

10 A They were not controlled. There was no evidence.

11 Q Is it not illegal for a person to possess the
12 prescription -- a prescription that is not prescribed to
13 them?

14 A It's not a charge I can make if it is.

15 Q So you don't know whether it's legal or illegal?

16 A What I'm saying is it is not legal at the state level
17 for me to charge that. It is not a charge I can make at
18 the state level.

19 Q Was there a name on that prescription bottle?

20 A I don't recall. The label was partially torn, I
21 remember that.

22 Q But you deduced that it was not prescribed to her?

23 A Yes.

24 Q And then what did you do with those pills?

25 A They were destroyed on scene.

1 Q Now, you said you couldn't collect fingerprints from
2 those bags, the individual baggies or the fabric. Is that
3 the testimony that you gave?

4 A Yes.

5 Q What about touch DNA? You can do that from fabric;
6 right?

7 A I can't testify to that.

8 Q Now, some of the bags in Dustin's zipper pouch that
9 you recovered, they had some type of residue in them;
10 right?

11 A Correct.

12 Q Was that submitted for analysis?

13 A No. There wasn't a threshold to make a charge on those.

14 Q So it wasn't submitted for analysis?

15 A No.

16 Q Thank you.

17 Now, you didn't find anything in Melanie's purse, did
18 you?

19 A No, sir.

20 Q There were no drugs in her purse?

21 A No, sir.

22 Q No drugs prescribed to other people that she couldn't
23 be charged with?

24 A No, sir.

25 Q No meth pipes?

1 A I don't believe so.

2 Q No little baggies?

3 A No, sir.

4 Q No scales.

5 A (There was no response.)

6 Q No scales?

7 A No, sir.

8 Q I'm sorry. I didn't hear you.

9 What about any ledgers? Did she have any ledgers?

10 A I don't remember seeing any.

11 Q At some point in your investigation, you recovered a
12 ledger for this case, did you not?

13 A If I did, it would have been placed into evidence. I
14 don't recall.

15 Q How about counterfeit money? Did you find any
16 counterfeit money in her purse?

17 A I was -- turned some -- oh, not from her, no.

18 Q Now, Melanie, she had a phone on her; correct?

19 A Uh-huh.

20 Q Did you seize that phone?

21 A I can't recall without seeing the evidence section.

22 Q Did you submit that phone for any kind of forensics?

23 A No.

24 Q Did you submit any electronic device for any kind of
25 forensic recovery?

1 A No.

2 Q But in drug investigations, very often, telephones
3 can provide a lot of useful information; right?

4 A Absolutely.

5 Q But you didn't preserve that evidence either?

6 A Preserve it how?

7 Q Well, I mean, you had the opportunity to collect it,
8 did you not?

9 A Sure.

10 Q But you didn't?

11 A Correct.

12 Q So we'll never know what was on it?

13 A Correct.

14 Q Now, the counterfeit money, where did that money
15 originate? How did it come into your possession, I should
16 say?

17 A Yes. I was notified by Lieutenant Hamilton at the
18 detention center that she had obtained some bills. A
19 number of it was from Shawna Johnston's purse and a number
20 of it was from Dustin's wallet.

21 MR. HELLAMS: I beg the Court's indulgence, Your Honor.

22 (Pause.)

23 BY MR. HELLAMS:

24 Q Agent Daw, when the jail called you about counterfeit
25 money, they, also, advised you of a notebook?

1 A Yes.

2 Q Do you recognize this notebook?

3 A I do.

4 Q How do you recognize it?

5 A It was handed to me from Shawna Johnston's purse.

6 Q From Shawna Johnston's purse. Who handed it to you?

7 A I believe it was Lieutenant Hamilton.

8 MR. HELLAMS: Your Honor, the Defense would move to
9 enter this as Defendant's Exhibit No. 1 [sic].

10 THE COURT: Okay.

11 MR. HOFFERTH: The State would object to this. I
12 mean, there's been no foundation laid as to the relevancy
13 of this ledger. The lack of foundation -- I don't see how
14 it ties into the charge before the Court today.

15 MR. HELLAMS: I can lay a better foundation, Your
16 Honor.

17 BY MR. HELLAMS:

18 Q Did you place this into evidence?

19 A Yes.

20 Q And at any point in time, did you look through this
21 notebook?

22 A I would have had to have.

23 Q Did you notice any note in the notebook that referred
24 to any amounts of money owed to anyone?

25 A I don't recall right off.

1 Q But you do -- there was a note about the purchase of
2 the counterfeit bills; correct?

3 A Yes, there was. I do remember that.

4 Q Does this appear to be in the same condition that it
5 was in when you entered it into evidence?

6 A Yeah.

7 MR. HELLAMS: Your Honor, I would move to submit this
8 as Defendant's Exhibit No. 1 [sic]. This is evidence
9 provided by the State. It's relevant in that it, we
10 believe, contains a ledger. And it, also, contains a
11 notation to the purchase of counterfeit currency, which is
12 relevant to this case. It was seized as evidence in this
13 case. And it is relevant.

14 MR. HOFFERTH: Nothing in that description provides a
15 basis of relevance. This case is not a charge for
16 counterfeit bills.

17 He's making a lot of inferences as to what that
18 notebook provides. A, this is the wrong witness to get
19 this through. It was purportedly Ms. Johnston's. This
20 isn't proper. There's been no foundation as to how this
21 ties in. He needs something more that ties into the
22 charge today. It's not there and it's the wrong witness.

23 THE COURT: I mean, I don't know what's in that
24 thing. But, I mean, it's something seized at the arrest.
25 But beyond that, the information in there, I'm not -- I

1 don't know how -- you haven't laid the proper foundation
2 for that.

3 MR. HELLAMS: Your Honor, it was transferred from the
4 jail to his possession. And then it made its way from his
5 possession to --

6 THE COURT: Right. But I'm just talking about
7 whatever is in there, though, is --

8 MR. HELLAMS: There's a notation -- I'm sorry. Go
9 ahead.

10 THE COURT: I think it should be marked so
11 we'll know, at least, for identification purposes at this
12 point.

13 MR. HELLAMS: Can we mark this for identification,
14 please, as Defendant's Exhibit No. 1?

15 THE COURT REPORTER: It's Defendant's Exhibit No. 2.

16 MR. HELLAMS: Defendant's Exhibit No. 2?

17 THE COURT REPORTER: Yes.

18 (WHEREUPON, Defendant's Exhibit No. 2 was marked for
19 identification only.)

20 BY MR. HELLAMS:

21 Q Deputy Daw, you -- I'm sorry, Agent Daw, you
22 testified earlier that you charged all three people
23 because you weren't sure who the drugs belonged to; is
24 that correct?

25 A That's correct.

1 Q But at one point, you had a pretty good idea who you
2 thought it belonged to, did you not?

3 A No.

4 Q You had a conversation with Deputy Massingill about
5 the contents of that bag?

6 A Uh-huh.

7 Q And who the owner was?

8 A I don't recall the exact conversation, but I do
9 recall a conversation.

10 MR. HELLAMS: I beg the Court's indulgence, Your
11 Honor. I apologize.

12 (Pause.)

13 BY MR. HELLAMS:

14 Q Let's talk about your first body-worn camera.
15 There's about a six-minute portion that y'all didn't play
16 today; correct?

17 A Correct.

18 MR. HELLAMS: If we may go through body-worn camera
19 number one. Can you, please, queue that up? You can
20 start it at the 14-minute mark.

21 (WHEREUPON, a portion of State's Exhibit No. 1 was
22 played in open court.)

23 MR. HELLAMS: You can bump that volume up.

24 Mr. Hofferth, could you pause that, please, there,
25 sir?

1 BY MR. HELLAMS:

2 Q You're looking through Ms. McClain's purse here?

3 A Yes, sir.

4 Q And you don't find anything in there?

5 A No, sir.

6 Q Nothing illegal?

7 A No, sir.

8 MR. HELLAMS: Could you, please, continue playing?

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

11 MR. HELLAMS: Can you pause that? Back it up about
12 three seconds, please. And then just pause it, if you
13 don't mind.

14 MR. HOFFERTH: Do you want to switch places with me?

15 MR. HELLAMS: Sure.

16 Thank you.

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

19 BY MR. HELLAMS:

20 Q Agent Daw, is that a knife right there?

21 A Yes.

22 Q Now, this didn't come out of Ms. McClain's purse, did
23 it?

24 A No.

25 Q Are you -- can you tell us where that came from?

1 A I believe that was on Ms. Johnston's person. And I
2 sat it there after I took it off of her.

3 Q You believe, but you're not sure?

4 A No, not -- I'm not a hundred percent sure where that
5 knife...

6 Q Now, earlier, you testified you could keep track of
7 what was co-mingled?

8 A Uh-huh.

9 Q But you're not sure now?

10 A No.

11 Q But you are certain it didn't come from Ms. McClain's
12 purse; correct?

13 A Yes. And I'm certain it didn't come from that camo bag.

14 Q Well, I don't think it came from the camo bag.

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

17 BY MR. HELLAMS:

18 Q Agent Daw, just for clarification purposes, that jar
19 that was opened, that ended up being Ms. McClain's
20 father's ashes; is that correct?

21 A I don't know that.

22 Q Okay. It was nothing illegal, though?

23 A No, sir.

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

1 BY MR. HELLAMS:

2 Q That's Shawna's purse?

3 A Uh-huh.

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

6 BY MR. HELLAMS:

7 Q You said it was just sitting right there between the
8 two of them?

9 A Yes, referring to Ms. McClain and Mr. Pace.

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

12 BY MR. HELLAMS:

13 Q Now, right here, this is not a redaction that we did
14 for court; correct?

15 A Correct.

16 Q This is you turning off your audio; correct?

17 A Correct.

18 Q So we have no idea what the conversation was here;
19 correct?

20 A Correct.

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

23 BY MR. HELLAMS:

24 Q Who was that you were talking to right there? Did
25 you identify the other voice?

1 A What do you mean?

2 Q You were having a conversation when the audio kicked
3 back on. Who were you speaking with there?

4 A It was still Deputy Massingill.

5 Q Deputy Massingill. And he says, I'm surprised he
6 didn't have more because normally, you know, it's his;
7 right?

8 A Uh-huh.

9 Q And then you said, I know who it is; correct?

10 A Uh-huh.

11 Q So you had a good idea who this belonged to; correct?

12 A No, not that bag.

13 Q Well, we know exactly whose bag that is because
14 that's Shawna's?

15 A I'm not referring to that bag. I'm referring to this
16 bag. That is not -- I can tell you that that conversation
17 that Deputy Massingill and I were having was not in
18 reference to that bag.

19 Q But you just said you can't tell what the contents of
20 that conversation were [sic]?

21 A Correct, until I heard the tail end of the
22 conversation.

23 Q Right. But that's the reason that muting is
24 important; correct?

25 A Uh-huh.

1 Q Because all I can go with is, I'm surprised he didn't
2 have more, you know, it's his; right? And I hear you
3 saying, I know who it is; correct?

4 A Uh-huh.

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

7 BY MR. HELLAMS:

8 Q I believe we've already seen from this point forward;
9 correct?

10 A Yes.

11 Q Now, Agent Daw, I'm going to clarify a couple things.
12 Through your investigation, you found out that Shawna had
13 \$660 in counterfeit \$20 bills on her person; correct?

14 A Correct.

15 Q And Dustin had \$60 worth of counterfeit bills on his
16 person; correct?

17 A Correct.

18 Q There were none found on Ms. McClain?

19 A Correct.

20 Q And no other illegal substances were found on her or
21 in her purse at the detention center?

22 A Correct.

23 Q There was nothing else illegal found on her person or
24 in her purse at the traffic stop; correct?

25 A Incorrect. She --

1 Q Yes. Other than that -- she had that. After that?

2 A No.

3 Q There was nothing else found?

4 A No, sir.

5 Q And through your investigation, you found a notation
6 that Shawna Johnston paid \$80 for the counterfeit bills?

7 A Yes.

8 Q And the number of counterfeit bills that she
9 purchased --

10 MR. HOFFERTH: Judge, I'm going to stop him here.
11 We've heard this at length. Again, there's been no nexus
12 made to this counterfeit bill route and the charge before
13 us today. There simply is none. We're talking about an
14 individual who transferred evidence from point A to point
15 B. It's grasping at straws. And, again, this goes into
16 pre-trial and what we discussed. This needs to stop.

17 THE COURT: Sustained.

18 That's not relevant to this case. And you haven't
19 laid any authenticity to any of the documents you're
20 referring to with this witness.

21 MR. HELLAMS: Yes, sir, Your Honor.

22 BY MR. HELLAMS:

23 Q So in making the case, you didn't follow departmental
24 policies about your body-worn camera; correct?

25 A Yeah.

1 Q You didn't follow best practices with evidence
2 collection; correct?

3 A To your statements.

4 Q You didn't follow best standards for evidence
5 preservation; correct?

6 A Again, to your standards.

7 Q In fact, you destroyed evidence on the side of the
8 road; correct?

9 A I didn't believe it was evidence.

10 Q You had a pretty good idea who all this belonged to
11 based on your conversation with Deputy Massingill;
12 correct?

13 A Incorrect.

14 Q And, yet, you charged all three people?

15 A Correct.

16 MR. HELLAMS: Nothing further, Your Honor.

17 THE COURT: Redirect?

18 MR. HOFFERTH: Yes, Your Honor.

19 Thank you.

20 REDIRECT EXAMINATION

21 BY MR. HOFFERTH:

22 Q Agent Daw, in your history with the Pickens County
23 Sheriff's Office, how many times have you taken
24 fingerprints on drugs seized?

25 A None.

1 Q Why don't you do that?

2 A Because, like I was trying to explain, to obtain
3 fingerprints on a plastic bag is not an easy thing to do,
4 even if you fumigate it like counsel was suggesting I had
5 done. For lack of a better reason, you don't know who
6 else has touched the bag. It could have been three, four,
7 five, six, seven, eight people. We have no idea.

8 So fingerprinting a bag and getting back 12
9 fingerprints doesn't help us solve the case.

10 Q Were those -- was what you seized as far as the
11 methamphetamine contained in plastic bags?

12 A Yes. Let me back up real quick. That's assuming we
13 could even get a fingerprint from the fumigation.

14 MR. HOFFERTH: And I am approaching the witness, Your
15 Honor, with State's Exhibit No. 9.

16 BY MR. HOFFERTH:

17 Q Now, State's Exhibit No. 9, this is all the
18 methamphetamine that was seized at the stop; correct?

19 A Correct.

20 Q And you separated the methamphetamine that was found
21 in her hand?

22 A Correct.

23 Q I'm going to clarify that because -- so there was
24 something illegal on Ms. McClain when you stopped her?

25 A Correct. Yes.

1 Q Okay. I think I counted two times, but how many
2 times did Ms. McClain indicate the location of
3 methamphetamine from her when she was in the car?

4 A I recall two just from watching the video.

5 Q And what did she say, specifically?

6 A It was beside my leg.

7 Q What, also, was beside her leg?

8 A The bag of five other bags.

9 Q Okay. And there was another question regarding the
10 fact that nothing illegal was found in the purse that she
11 claimed; correct?

12 A Correct.

13 Q What was on top of it?

14 A This camo bag was directly next to it.

15 Q Directly next to it?

16 A Correct. They were touching.

17 Q All right. There was a comment made about a knife
18 found in the course of this search. Is there something
19 illegal about that?

20 A Not that I know of.

21 Q And there was some question about you deviating from
22 Pickens County protocol as it relates to body-worn camera;
23 right?

24 A Yes.

25 Q What are some reasons your body camera might go mute

1 or chop in and out, if you can think of some?

2 A Obviously, manual. There's a switch on the side.

3 The head is attached to the vest, which has a cord that's
4 attached to the battery pack and memory storage. And that
5 can malfunction.

6 Q And what would be a reason that you mute it when
7 you're talking to another officer?

8 A When it has -- the conversation has something
9 entirely aside from this case. That's a primary one.
10 Obviously, if something personal arises.

11 Q And going back to State's Exhibit No. 9, the
12 methamphetamine that you took from Ms. McClain out of her
13 hand?

14 A Yes.

15 Q Was it consistent with that of -- what you found in
16 the book bag?

17 A Yes.

18 Q Okay. There was a question -- a line of questioning
19 about transdermal exposure. Is that something you're
20 concerned about when drugs are in plastic bags?

21 A No.

22 Q There was a question about preserving the marijuana
23 that was found in this case. Is it common practice to
24 destroy marijuana when there are methamphetamine charges
25 brought?

1 A Yes, especially when there's three suspects involved.

2 MR. HOFFERTH: Thank you.

3 I have no further questions.

4 THE COURT: You can step down.

5 THE WITNESS: Thank you, Your Honor.

6 THE COURT: All right. It's 4:30. What's --

7 MR. HOFFERTH: Your Honor, my next witness is Deputy
8 Massingill. I assume it would take us past 5:00. We can
9 just hit the ground running tomorrow, if you like.

10 THE COURT: Okay. Remember we're starting at 10:00.

11 All right. Ladies and gentlemen, I don't want to
12 have to make y'all go past 5:00. So we're going to break
13 for the day. Like I said, we're starting at 10:00 in the
14 morning. We should be through with the other hearing in
15 the other matter by 10:00. That shouldn't be a problem.
16 But if we're running a little bit late, I apologize in
17 advance.

18 So remember my four rules. Don't discuss the case.
19 Do not do any type of research on it. And it's tough when
20 you get home and they ask you what did you do all day.
21 And you say, I can't tell you. You can tell them what you
22 did. You can't discuss the case. Don't do any type of
23 research. Do not pay attention to media coverage,
24 including social media. And finally, should somebody
25 contact you, other than somebody from the clerk's office,

1 please, let the bailiff know.

2 Otherwise, I'll see you at 10:00 in the morning.

3 (WHEREUPON, the jury was excused from open court at
4 approximately 4:38 p.m.)

5 THE COURT: You may have done this. Is there an
6 exhibit for all of these videos?

7 MR. HOFFERTH: Yes, State's Exhibit No. 1.

8 THE COURT: I mean, is there something -- a physical
9 thing somewhere?

10 MR. HOFFERTH: State's Exhibit No. 1.

11 THE COURT: Okay. I wasn't sure. I just -- I just
12 hadn't seen the actual physical thing. It's on a thumb
13 drive?

14 MR. HOFFERTH: Thumb drive.

15 THE COURT: All right. Anything from the State?

16 MR. HOFFERTH: Nothing from the State, Judge.

17 THE COURT: Anything from the Defense?

18 MR. HELLAMS: No, Your Honor.

19 THE COURT: It looks like we probably didn't get as
20 far as we thought today. So probably a full day of
21 testimony tomorrow? I mean, I don't see this case going
22 to the jury tomorrow, do you?

23 MR. HOFFERTH: Hopefully.

24 THE COURT: We're starting at 10:00.

25 MR. GRAVLEE: Realistically, Judge, I'm just being

1 candid with how long it's going to take. I mean, with
2 lunch and whatnot, too, we're --

3 THE COURT: I mean, it's going to be tough, I think.
4 But, hey, I'm always optimistic.

5 All right. Anything else then before we break?

6 MR. HOFFERTH: Nothing.

7 MR. GRAVLEE: Nothing from the Defense, Judge.

8 THE COURT: Oh, I guess we need to talk about your
9 client's bond.

10 MR. GRAVLEE: We do, Judge. She's been out on bond
11 for quite some time. She is on an ankle monitor. She
12 is --

13 THE COURT: She's on one now?

14 MR. GRAVLEE: Yes, sir, Judge.

15 DEFENDANT MCCLAIN: Yes.

16 MR. GRAVLEE: She has been on one this whole time
17 with no violations, to my knowledge. She comes to every
18 single court date. I've got no concerns. And Ben Sheriff
19 could find her in a hurry. She's in contact with them,
20 too, whenever she's here at court. She let's them know
21 she's been here.

22 THE COURT: All right. Any position by the State?

23 MR. HOFFERTH: Nothing from the State, Your Honor.

24 THE COURT: All right. Ms. McClain, I'm going to --
25 I'm going to let you stay out. Normally, your bond,

1 basically, expires once the trial starts. The fact that
2 you're on an ankle monitor and there's no indication
3 you've never not made it to a court appearance, I'm going
4 to accept your word from your attorney that you're good
5 for it.

6 Now, I'm just letting you know, we will continue the
7 case -- I mean, we will continue the trial of this case
8 whether you're here or not.

9 DEFENDANT MCCLAIN: Yes, sir. I'll be here.

10 THE COURT: So we will come find you. Ben Sheriff,
11 you know, he's good at finding you anywhere.

12 All right. We'll see y'all in the morning.

13 (WHEREUPON, the proceedings were concluded at
14 approximately 4:41 p.m., to be reconvened on
15 Tuesday, February 6, 2024.)

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1 TUESDAY, FEBRUARY 6, 2024

2 (WHEREUPON, Defendant's Exhibit Nos. 3, 4, 5, 6, 7, and
3 8 were marked for identification only.)

4 THE COURT: Mr. Gravlee, do you want to put something
5 on the record?

6 MR. GRAVLEE: Yes, sir, Your Honor. With regard to
7 your sequestration order I moved for yesterday, the
8 purpose of a sequestration order, you know, under -- you
9 know, specifically, citing a Fourth Circuit case, United
10 States vs. Rhynes, 218 F.3d 310, Judge, the point of
11 sequestration is that -- as Rhynes points out when it
12 talks about how it doesn't -- sequestration and Moore, and
13 State vs. Moore, 257 S.C. 147, discusses sequestration as
14 well. And, like, the object of separating witnesses is to
15 afford the means of discovering discrepancies in the
16 different accounts which if not true, the witnesses would
17 give the -- the same transaction. And that was from
18 Moore.

19 And the language from Rhynes, 310 at 317, is that,
20 you know, we probably recognized -- and the federal
21 rule -- excuse me -- being the same as the state rule
22 noted in 615 -- Rule 615 that we properly recognize the
23 purpose and spirit underlying with the sequestration.

24 It is designed to discourage and expose fabrication,
25 and accuracy, and collusion. Put differently,

1 sequestration helps to smoke out lying witnesses. It is
2 now recognized that sequestering witnesses is next to
3 cross-examination one of the greatest [inaudible] that man
4 ever invented for the detection of liars in the court of
5 justice.

6 THE COURT: I mean, I'm aware of the basis for the
7 rule. Get to the point.

8 MR. GRAVLEE: So, Judge, yesterday at the close of
9 and conclusion of day one, Agent Daw's testimony on direct
10 and cross-examination, I believe around 5:30, give or
11 take, yesterday evening, a colleague in my office,
12 Mr. Stephen Snow, was walking to his car as well and
13 noticed that the three officers involved in the stop of
14 this case and the only three officers involved in the stop
15 of this case were at their car having a conversation
16 immediately at the close of it.

17 While I do not have the specific contents of that, I
18 think that it is important that the Court does question
19 the officers in this case about the issue. It's not an
20 issue of whether Agent Daw is here in the courtroom. It's
21 about discussions outside of it.

22 And during that time, the circumstances are just too
23 much that it seems like it would be just a conversation
24 about anything else other than what was discussed in court
25 yesterday at the close of the case with the only other two

1 officers that are about to be called here today.

2 Under State vs. Moore, it, actually, says that the
3 remedy, actually, is supposed to be a mistrial. So to
4 protect myself, I will move for a mistrial, Judge. I'll
5 let you take that up after talking to Agent Daw.

6 THE COURT: All right. Agent Daw, I'm going to ask
7 you -- will you raise your right hand?

8 MR. DEVIN DAW: Do you want me to stand, Your Honor?

9 THE COURT: Yes.

10 WHEREUPON,

11 DEVIN DAW,

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

13 THE COURT: After the conclusion of your testimony,
14 did you have any discussions with the other witnesses in
15 this case about your testimony about this case?

16 MR. DEVIN DAW: No.

17 THE COURT: All right. First of all, I don't find
18 that there's any basis that they violated -- there wasn't
19 any witnesses reviewing any testimony, hearing any
20 testimony. The fact that three officers that work
21 together were seen together in the parking lot, clearly,
22 does not violate the sequestration order. And I don't
23 find that there's any basis that the Defense has
24 presented, other than mere speculation that that has
25 occurred.

1 So without more, I'm going to deny your motion and
2 deny your motion for a mistrial.

3 MR. GRAVLEE: Judge, just the final request on that.
4 I'd ask that I just be allowed to, at least, question that
5 they were on cross --

6 THE COURT: I've already ruled.

7 MR. GRAVLEE: -- for impeachment.

8 THE COURT: I've already ruled.

9 MR. GRAVLEE: Okay.

10 THE COURT: That's the ruling of the Court, unless
11 you have something else.

12 MR. GRAVLEE: No, sir, Your Honor. I was just adding
13 that's a second option to ask the Court about.

14 Thank you.

15 THE COURT: Is the State ready for the jury?

16 MR. HOFFERTH: The State is ready.

17 THE COURT: Is the Defense ready for the jury?

18 MR. GRAVLEE: Yes, sir, Your Honor.

19 THE COURT: All right. Bring the jury in.

20 (WHEREUPON, the jury came into open court at
21 approximately 10:15 a.m.)

22 THE COURT: All right. Good morning, ladies and
23 gentlemen. I hope everybody had a good evening.

24 We were able to conclude our other matters in a
25 timely manner so we didn't have much of a delay this

1 morning.

2 As you will recall, the State is still in their case
3 in chief.

4 The State, you may call your next witness.

5 MR. HOFFERTH: Thank you, Your Honor.

6 The State will call Deputy Van Massingill.

7 WHEREUPON,

8 VAN MASSINGILL,

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

10 THE CLERK: Thank you.

11 If you would have a seat.

12 And state your name for the record.

13 THE WITNESS: Deputy Van Massingill.

14 DIRECT EXAMINATION

15 BY MR. HOFFERTH:

16 Q Deputy Massingill, good morning.

17 A Good morning.

18 Q Do me a favor, tell the jury a little bit about what
19 your current role is with the sheriff's office.

20 A All right. Just a little background on me, 2012, I
21 started with the Pickens County Sheriff's Office. I was a
22 road cop answering calls for service, which that means
23 somebody dials 911, I respond to that call.

24 2014, I was lucky enough to get on this team of
25 what's called the Community Action Team. Basically, what

1 our goals and our mission is is community complaints, all
2 the way from speeding to, you know, people running stop
3 signs, basically, just traffic stuff, all the way to
4 investigations such as distribution of narcotics,
5 trafficking narcotics.

6 Over the years -- since 2014, up until now, I've
7 probably made 500 plus cases, at least, of distribution of
8 narcotics, trafficking narcotics. We, also, get to work
9 with state agencies, other local agencies in the county,
10 just a wide range of things.

11 Q Was 2012 the start of your career in law enforcement?

12 A Actually -- correction on that. Before that, I
13 worked at the Anderson County Detention Center. I did
14 that a year and then came over here to Pickens County
15 around the 2012 mark.

16 Q Okay. Were you working on October 20th of 2021?

17 A Yes, sir.

18 Q Here in Pickens County?

19 A Yes, sir.

20 Q Were you involved in a stop that Ms. Melanie McClain
21 was involved in?

22 A Yes, sir, I was.

23 Q Do you see her in the courtroom?

24 A Yes, sir. That's her over there.

25 Q Okay. Can you describe what led you to get involved

1 in that stop?

2 A Yes, sir. My partner at the time, Deputy Daw,
3 conducted a traffic stop. Within -- probably within
4 minutes, I responded to back him up on that traffic stop.

5 Q Okay. Were you wearing a body camera at the time
6 that you arrived at the stop?

7 A Yes, sir, I was.

8 Q If I showed it to you, would you recognize it?

9 A Yes.

10 MR. HOFFERTH: Pat, would you put it on the
11 projector?

12 THE CLERK: Yes, sir.

13 MR. HOFFERTH: I'm showing the witness what's been
14 pre-marked as State's Exhibit No. 1, specifically, Van
15 Massingill's BC.

16 (WHEREUPON, a portion of State's Exhibit No. 1 was
17 played in open court.)

18 BY MR. HOFFERTH:

19 Q Is this what you recognize as your body camera
20 footage?

21 A Yes, sir.

22 Q How do you know that?

23 A That's [inaudible].

24 Q But you recognize it?

25 A Yes, sir.

1 MR. HOFFERTH: Your Honor, at this time, the State
2 would move into evidence Van Massengill BC, which is on
3 State's Exhibit No. 1.

4 THE COURT: All right. Any objection?

5 MR. HELLAMS: No objection, Your Honor.

6 THE COURT: All right. It's in without objection.

7 BY MR. HOFFERTH:

8 Q Deputy Massingill, I'll just play it and we'll walk
9 through it together, stop at certain points and talk about
10 it.

11 A Yes, sir.

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

14 BY MR. HOFFERTH:

15 Q Is that Detective Daw speaking to the driver?

16 A Yes, sir, it is.

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

19 BY MR. HOFFERTH:

20 Q So here -- so here, what side of the vehicle are you
21 on?

22 A That's the passenger side.

23 Q Okay. So this is while Deputy Daw is on the driver's
24 side?

25 A Yes, sir.

1 Q Why do you do that? Why do you go on the other side
2 of the vehicle?

3 A Just to get different angles of who's in the car.
4 (WHEREUPON, State's Exhibit No. 1 continued to be
5 played in court.)

6 BY MR. HOFFERTH:

7 Q You were running information here?

8 A Yes, sir. I'm trying to identify the back passenger.
9 (WHEREUPON, State's Exhibit No. 1 continued to be
10 played in court.)

11 BY MR. HOFFERTH:

12 Q So at that time when you opened the door, is Deputy
13 Daw still speaking with Ms. McClain in the front?

14 A Yes, sir, just right on the other side of the car.
15 (WHEREUPON, State's Exhibit No. 1 continued to be
16 played in court.)

17 BY MR. HOFFERTH:

18 Q Now, I want to -- what are you noticing here? What's
19 going on here?

20 A Well, there's a couple of things. Obviously, the
21 passenger that I'm talking to, she's just sitting on the
22 metal. There's no seats in the back. She's just sitting
23 on the floor of the vehicle.

24 Also, the driver, which was Ms. McClain, she was --
25 at the time while I was talking to her, she was making

1 some kind of movement with her hand while looking out the
2 window. So it appears she was trying to conceal something
3 with this right hand.

4 Q All right. Now, I'm going to play it and I'll
5 probably go through it again so it seamlessly flows
6 through. What's this movement here that you're describing
7 with what we see on Ms. McClain right here?

8 A So the angle that I had, which is right here, it's
9 like she was trying to have a distraction, like, look out
10 the window, but doing something else with this hand.

11 Q Which hand?

12 A The right hand. The right hand just kept going back
13 and forth on her leg. At one point, you'll see on the
14 video, when I call her out on it, she -- she kind of,
15 like, No, I'm not doing nothing, trying to make me not see
16 the right hand.

17 Q Okay. I'm going to play it starting at 3:28 and
18 we'll play it completely through.

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

21 BY MR. HOFFERTH:

22 Q What did you do right there?

23 A That's when I called out Ms. McClain about the
24 movement that she did with this hand. Because she was
25 looking out the window. She was doing something with this

1 hand. And it just appeared she was concealing something.

2 Q And then with your flashlight, what were you doing?

3 A I tried to see what she had.

4 Q Okay. I mean, specifically, right there?

5 A Oh, trying to get Deputy Daw's attention to come back
6 to the car, or somebody come back to the car.

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

9 BY MR. HOFFERTH:

10 Q At this time, did another officer arrive on scene?

11 A Yes, sir. That would be Deputy Cassell.

12 Q On the driver's side of the car?

13 A Yes, sir.

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

16 BY MR. HOFFERTH:

17 Q So what is she saying here regarding the actions that
18 took place?

19 A Basically, she's not taking responsibility at all for
20 getting caught trying to hide the dope.

21 Q She was saying she wasn't hiding it?

22 A Yeah. She wasn't hiding -- she wasn't hiding it.

23 Q Okay. But then what does she say right there?

24 A Can you play it again?

25 Q I'm sorry. I'm chopping it up.

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

3 BY MR. HOFFERTH:

4 Q So what did she just say?

5 A It wasn't in between her legs, it was on the side of
6 her leg.

7 Q But she wasn't trying to hide anything?

8 A Yes, sir. She wasn't trying to hide anything.

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

11 BY MR. HOFFERTH:

12 Q What was that right there?

13 A So the meth bowl that was collected, he said it was
14 handed to him.

15 Q But he was found with marijuana; correct?

16 A I believe so, in that zippered case.

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

19 BY MR. HOFFERTH:

20 Q Now, Deputy Massingill, in the whole exchange from
21 when you come up to the car until when everybody is
22 outside of the car, was somebody watching the inside of
23 the car the entire time?

24 A Yes. For just that short period of time, Deputy
25 Cassell was still on the driver's side.

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

3 BY MR. HOFFERTH:

4 Q So at this point, Deputy Daw had found the camo
5 bookbag?

6 A Yes, sir. That's in the video right there.

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

9 BY MR. HOFFERTH:

10 Q What's the point of separating individuals at a
11 traffic stop?

12 A Just one of the main reasons is to see if everybody
13 has the same story.

14 Q Right.

15 A Where they came from, that kind of thing.

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

18 BY MR. HOFFERTH:

19 Q So is he describing Ms. McClain's movements at the
20 time, I guess, the lights were hit on them?

21 A Yes. He said she jumped and became very nervous.

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

24 BY MR. HOFFERTH:

25 Q So y'all are describing Ms. McClain's movements right

1 there from the start of the stop; correct?

2 A Yes, sir.

3 Q Okay. And those included -- I mean, just a recap,
4 opening the door?

5 A Yes, sir. The -- so, like I said before, it appeared
6 that she was just the whole time trying to look out the
7 window, distract me from what she was doing on this end.
8 It looked like she was trying to conceal it between her
9 legs.

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

12 BY MR. HOFFERTH:

13 Q So in response to her saying the bag was not there at
14 the time she was getting her license or whatnot, you say,
15 yes, it was?

16 A Yes, it was. Because the -- like I said, the vehicle
17 was covered during -- during that little brief stretch,
18 nobody made any movements, or anything like that.

19 Q Are you looking for that at a traffic stop?

20 A Yeah. That's one of the purposes of a -- like, a
21 partner or something standing on the other side of the car
22 to, you know, get ahead of that if somebody is trying to
23 throw a bag on somebody.

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

1 BY MR. HOFFERTH:

2 Q In your opinion, was she honest with you guys
3 throughout that stop?

4 A No, sir.

5 Q Why is that?

6 A Just again, not trying to claim responsibility for
7 something she was caught red-handed in her hand for one
8 thing.

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

11 BY MR. HOFFERTH:

12 Q So Officer Massingill -- or Deputy Massingill,
13 ultimately, nobody claimed ownership of that camo bag;
14 right?

15 A No, sir.

16 Q So everybody in the car was charged?

17 A Yes, sir.

18 MR. HOFFERTH: Okay. I have no further questions for
19 you.

20 Thank you.

21 THE COURT: Cross-examination.

22 CROSS-EXAMINATION

23 BY MR. HELLAMS:

24 Q Good morning, Deputy Massingill.

25 A Good morning.

1 Q You already covered a lot of my questions on his
2 direct. So you've been in law enforcement for a few
3 years; right?

4 A Yes, sir.

5 Q And, obviously, you're on the CAT team, which is a
6 specialized team; correct?

7 A Yes, sir.

8 Q You've been through a lot of training; right?

9 A A good bit, yes, sir.

10 Q And y'all review on policies, procedures, stuff like
11 that pretty regularly; correct?

12 A Yes, sir.

13 Q Okay. Now, some of this investigation is based on
14 your training and experience; correct?

15 A Yes, sir.

16 Q Officer safety is a pretty big thing for you guys;
17 correct?

18 A It is.

19 Q Especially when you're doing narcotics work?

20 A Yes, sir.

21 Q People involved in the narcotics trade are often
22 armed?

23 A Sometimes.

24 Q Well, often, sometimes not, sometimes so; correct?

25 A Yes, sir.

1 Q And they're then armed for a multitude of reasons.
2 Some of them don't want to go to jail; correct?

3 A Yes, sir.

4 Q But drug dealers run a real risk of being robbed as
5 well; right?

6 A Yes, sir.

7 Q By other drug dealers, users --

8 MR. HOFFERTH: Judge, I'm going to object to this. I
9 don't understand the relevance of this line of
10 questioning. There's no weapon involved in this case. I
11 don't know where this is going.

12 MR. HELLAMS: Well, Your Honor, we were talking about
13 his training and experience. I'm covering his experience.
14 There is, in fact, a knife involved in this case. We saw
15 it yesterday.

16 THE COURT: I'll give you a little bit of latitude.

17 BY MR. HELLAMS:

18 Q So to prevent other people from taking what's theirs,
19 sometimes drug dealers will be armed; correct?

20 A Possibly, yes, sir.

21 Q Okay. And you said earlier y'all -- you deal with a
22 lot of community complaints, problem areas; is that right?

23 A Yes.

24 Q On the CAT team?

25 A Part of the job, yes, sir.

1 Q Part of its visibility, too, though; right? The CAT
2 team is being out there visible, that keeps some of these
3 issues down?

4 A It does help, yes, sir.

5 Q Y'all are in marked vehicles?

6 A I'm not. I'm in an unmarked.

7 Q Is everybody on the CAT team in an unmarked vehicle?

8 A No, sir. It's just -- well, our K9 guy is -- I guess
9 it's unmarked.

10 Q Okay.

11 A So me and him.

12 Q And you said you work with other agencies pretty
13 regularly, the state, you testified to that earlier?

14 A Yes, sir, the state. Local, yes, sir.

15 Q Do you ever work with federal agencies?

16 A A couple of times, yes, sir.

17 Q So if you were to come into possession of some
18 counterfeit money, you could refer that to a federal
19 agency, if that's not something you prosecute?

20 A It's possible, yes, sir.

21 Q Okay. On the night of the incident, you were around
22 Hester Store and Jim Hunt Road; is that correct?

23 A Yes, sir.

24 Q Were y'all, like, doing a saturation patrol over
25 there or had you received some specific complaint? Were

1 y'all just roving?

2 A As far as I know, just working that area that night,
3 that part of the county.

4 Q Were you in charge that evening?

5 A No, sir.

6 Q Was -- you, Deputy Daw -- or Agent Daw now and Deputy
7 Cassell, y'all all had the same rank that evening?

8 A Yes, sir.

9 Q Okay. Was there a supervisor on scene?

10 A I don't recall, no, sir.

11 Q Now, at some point that evening, you got called as
12 backup for Deputy Daw, you testified earlier; correct?

13 A Yes, sir.

14 Q When you get there, Deputy Daw is talking to Melanie.
15 So you start talking to the other two passengers?

16 A Yes, sir. After I seen there were [sic] more than
17 one person in the vehicle, that's when I made my trip
18 around the car to the passenger side.

19 Q And those passengers -- just for clarification,
20 Dustin Pace was in the front seat and Shawna Johnston was
21 on the bare metal floorboard of the back seat?

22 A Yes, sir, sitting on the floor --

23 Q Just kind of right up behind his seat?

24 A In the middle -- like, right there in the middle of
25 the vehicle on the floor.

1 Q Oh, she was in the middle of the vehicle?

2 A Sorry, closer to the door. You see what I'm saying?

3 Q No. I'm confused now. She was in the middle of the
4 vehicle or she was closer to the door?

5 A Back up on that one. You open the door. She was
6 right there in the floor of the vehicle.

7 Q All right. While you were talking from the outside,
8 Dustin, he never rolled down the window for you, did he?

9 A I don't believe so, no, sir.

10 Q He wasn't real talkative at all, was he?

11 A No, sir. I was concentrating on Shawna at the time.

12 Q He didn't look up or pay much attention to you at
13 all; right?

14 A I don't believe so, no, sir.

15 Q He just went on about scratching his lottery ticket?

16 A Yes, sir.

17 Q And Shawna, did she talk to you a lot?

18 A We had a little brief conversation, yes, sir.

19 Q Did you ever learn that Shawna was Dustin's
20 girlfriend during the course of this stop?

21 A I don't believe so. I never connected the two.

22 Q At some point, you saw Melanie moving around. You
23 thought she was trying to hide something?

24 A Yes, sir. That was during the conversation I was
25 having with Shawna.

1 Q And you signaled Daw with your flashlight to get her
2 out of the van?

3 A Yes, sir.

4 Q And after he pulled her out, she had a little bit of
5 methamphetamine in her hand; correct?

6 A She wasn't doing that. She was still trying to
7 conceal it.

8 Q No. I'm just doing it for the sake of demonstration.
9 No, I know she wasn't out there like this. But she had it
10 in her hand?

11 A Yes, sir.

12 Q She passed it back and forth, from what you were
13 told?

14 A Passed it back and forth?

15 Q Between her hands?

16 A From what I observed, yes, it appeared that way, yes.

17 Q Okay. Now, there was some dispute as to whether it
18 was beside her leg or between her legs; right?

19 A Yes.

20 Q She told you it was beside her leg?

21 A Yes, sir. She was pretty adamant about it not being
22 in between her legs.

23 Q Isn't that taking responsibility for having it,
24 telling you it's not where you said it was, it was right
25 here?

1 A She was not taking responsibility for trying to
2 conceal it. That's how I got -- what I got out of that
3 conversation.

4 Q So we're splitting hairs over whether she admitted
5 that she put it between her legs and beside her leg;
6 correct?

7 A Yes, sir. Yes.

8 Q But, ultimately, she told you she had it beside her
9 leg?

10 A Yes, sir. I would say that.

11 Q And after all this goes down, you decide to get
12 Dustin and Shawna out of the van; correct?

13 A Yes, sir.

14 Q And Dustin, he popped right out. He didn't give you
15 any problems; right?

16 A I wouldn't say popped right out. It took a second.
17 Because he had that zippered case up under his leg. He
18 was worried about the meth pipe that he had.

19 Q And he looked around back toward the center console
20 before he got out. Do you remember seeing that on the
21 video?

22 A Also, on the video, when I told him to step out, it
23 did take him a second. Like, his body was halfway out. I
24 couldn't really see what he was doing with that right
25 hand.

1 Q When he, finally, starts to get out, you see him try
2 to hide something?

3 A He was doing some kind of movement that kind of -- I
4 wanted his hands behind his back pretty quickly. I didn't
5 know what he was doing.

6 Q You weren't sure if he was grabbing for a weapon or
7 trying to hide something?

8 A It's not, like, a real quick movement. It was more,
9 like, a what do I need to do type of --

10 Q Trying to figure out where to go next?

11 A It appeared that way, yes, sir.

12 Q And, eventually, you find he's got a meth pipe in his
13 hand?

14 A I believe it was located in his hand, yes, sir.
15 That's when he said it was handed to him.

16 Q And then when he stands up, it looks like the other
17 deputy -- Deputy Cassell, is that his name?

18 A Yes, sir.

19 Q He's the one that found the black zipper pouch under
20 his leg?

21 A Yes, sir.

22 Q Did you later learn the contents of that pouch?

23 A I did not. I didn't ever look in the contents. I
24 was just talking to Dustin about it, about it just being
25 marijuana.

1 Q At one point, you ask Dustin if there's
2 methamphetamine in that bag?

3 A I did. When I was talking to him separately, I did,
4 yes, sir.

5 Q And he said definitively, there's no methamphetamine
6 in that bag?

7 A If I recall the way he said it is he don't believe
8 so, or something to that nature.

9 Q Or shouldn't be?

10 A Shouldn't be. He didn't really definitively say yes.

11 Q But he claimed what was in that pouch?

12 A The zipper case on his leg?

13 Q Yeah. The one under his leg?

14 A Yes, sir.

15 Q And you later learned there was, in fact, marijuana
16 in that pouch?

17 A I believe just marijuana. To my knowledge, it was
18 just marijuana in that zipper pouch.

19 Q And I believe you talked about on the video that
20 there were some empty baggies in that pouch as well?

21 A I believe Deputy Cassell mentioned that when we were
22 at the back of the vehicle.

23 Q But that was -- it may not have been you saying it.
24 My apologies. That was on your video, though, that there
25 were some empty bags?

1 A Yes. It was on the video.

2 Q So then you learned it from him, the contents of the
3 bag?

4 A That's, initially, the first time I heard what else
5 might have been in the case, yes, sir.

6 Q Now, Dustin was, eventually, charged with that
7 marijuana; correct?

8 A I -- I can't recall that either. Deputy Daw, that
9 was his traffic stop. So the charges would have come from
10 Deputy Daw.

11 Q So you can't recall what -- everything that happened
12 that evening?

13 A I can't recall the charges. I wasn't the charging
14 officer on that traffic stop.

15 Q Okay. Did you write a report that evening?

16 A No, sir. I didn't do a supplemental for that, no,
17 sir.

18 Q You didn't do any kind of supplemental?

19 A I don't believe so, no, sir.

20 Q That would probably help you with your memory;
21 correct?

22 A Well, thankfully for body cams.

23 Q Well, speaking of that, are you aware how long you
24 were involved in this incident that evening?

25 A Total time, no, sir. Body cam time, I believe it was

1 17 minutes.

2 Q Body cam was 17 minutes and 56 seconds long?

3 A Yes, sir.

4 Q Would it surprise you to learn that your total
5 involvement in this call was one hour, 36 minutes, and 18
6 seconds?

7 A That's news to me.

8 Q If I showed you a CAD log, would it refresh your
9 memory?

10 A Yes, sir.

11 MR. HELLAMS: May I approach, Your Honor?

12 THE COURT: You may.

13 BY MR. HELLAMS:

14 Q Would it surprise you to know that you were on scene
15 that evening for 58 minutes and 21 seconds?

16 A No, sir, not surprised.

17 Q You testified earlier that you go over your policies
18 and procedures. You have a policy about body-worn
19 cameras; correct?

20 A Yes, sir.

21 Q So this -- in following with that policy, there only
22 being 17 minutes and 56 seconds of video?

23 A The -- that year, probably not. It's been revised
24 since then.

25 Q To clarify your answer, you said that year "yes" or

1 that year "no"? I'm sorry.

2 A According to the policy that year, I believe I was in
3 violation, yes, sir.

4 Q Okay. So you should have had it activated throughout
5 a traffic stop; correct?

6 A The whole time, yes, sir.

7 Q And you should have had it activated the entire time
8 for any arrests or investigative detention; is that
9 correct?

10 A Yes, sir.

11 Q So there's a lot of what went on that evening that we
12 really don't know; right? We can't rely on your memory?

13 A I wouldn't say a lot. When my body camera was cut
14 off, the investigation for that traffic stop we were
15 finishing up, so.

16 Q Do you remember who you took to the jail that
17 evening?

18 A I believe I took Mr. Dustin -- Mr. Pace.

19 Q Did you have to tell the jail what he was being
20 booked in for, or you just dropped him off?

21 A I'm pretty sure that day I just dropped him off. I'm
22 not sure if I filled out the triage or not.

23 Q Now, at one point on this video, you're talking to
24 Dustin. And you ask him what's going on in the van. Do
25 you remember that part? You separated them all and, like,

1 you were in front of the vehicle?

2 A Yes, sir. That conversation, yes, sir.

3 Q You asked him why he's so nervous?

4 A Yes, sir.

5 Q And then you start to say because everybody is going
6 to get hemmed up for whatever you don't want to -- and
7 then you just stopped?

8 A Yes, sir.

9 Q You thought what was in that bag belonged to Dustin,
10 did you not? You thought what was in this bag belonged to
11 Dustin, did you not?

12 A I -- according to that conversation, it was just a
13 blanket question whatever was in the car, he might get
14 hemmed up for. That's what the purpose of that
15 conversation was.

16 Q So you were trying to get him to take responsibility
17 for this?

18 A If that was his bag, I would prefer him to take
19 responsibility, yes, sir.

20 Q But you didn't ask him if it was his bag?

21 A No, sir.

22 Q You said everybody is going to get hemmed up for
23 whatever you don't want to -- where were you going with
24 that?

25 A Again, just a blanket question of whatever was found

1 in the vehicle, if nobody claims it, then everybody goes.

2 MR. HELLAMS: I beg the Court's indulgence, Your
3 Honor.

4 (Pause.)

5 BY MR. HELLAMS:

6 Q Okay. So there's no notes about this stop that you
7 wrote?

8 A As far as supplemental, no, sir.

9 Q No supplemental? No report?

10 A No, sir.

11 Q And only 17 minutes of body cam?

12 A Yes, sir.

13 MR. HELLAMS: I have nothing further, Your Honor.

14 THE COURT: All right. Any redirect?

15 MR. HOFFERTH: Yes, Your Honor, briefly.

16 REDIRECT EXAMINATION

17 BY MR. HOFFERTH:

18 Q Deputy Daw, just to be clear, at no point in the
19 entirety of this investigation, before, after, at any
20 point did anybody take ownership of that bag and the
21 contents of it?

22 A No, sir.

23 Q Was everybody charged with it?

24 A Yes, sir.

25 Q There was a lot made about the fact that on the CAD

1 report, it lists your involvement being an hour and
2 36 minutes; right, as opposed to the 17 minutes that is on
3 the body camera?

4 A Yes, sir.

5 Q Is it possible that the time that is not on the body
6 cam could be waiting on a tow truck?

7 A Yes, sir.

8 Q Transporting somebody to jail?

9 A Yes, sir.

10 MR. HOFFERTH: I have no further questions.

11 THE COURT: All right. You may step down.

12 THE WITNESS: Thank you.

13 THE COURT: Call your next witness.

14 MR. HOFFERTH: The State would call Cory Cassell.

15 Your Honor, could Deputy Massengill stay in the
16 courtroom now that he's finished?

17 THE COURT: Let's have him sit outside.

18 MR. HOFFERTH: Okay.

19 WHEREUPON,

20 COREY CASSELL,

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

22 THE CLERK: Thank you, sir.

23 Have a seat.

24 And state your name for the record, please.

25 THE WITNESS: Corey Cassell.

DIRECT EXAMINATION

BY MR. HOFFERTH:

Q Agent Cassell, could you, please, explain to the jury what your current role is at the Pickens County Sheriff's Office and a little bit about your experience getting there?

A Yes, sir. So, currently, I am a -- my title is agent. I work within the special operations division of the sheriff's office. We do everything -- mostly, vice-related offenses, anything from narcotics trafficking, firearms trafficking, prostitution stings.

We, also, work as a support role for other agencies within the -- or other divisions within the sheriff's office, whether it be the criminal investigation detective division. I was, also, uniform road patrol.

Q So what year did you start in law enforcement?

A I started in law enforcement in May of 2016. I started out working in the jail. I worked there for about a year and a half before being promoted to deputy. I moved to uniform road patrol and worked there for, roughly, a year and a half. And I was promoted to deputy first class and moved to the Community Action Team.

Q Okay. And on the evening of October 20th, 2021, were you working?

A Yes, sir.

1 Q Did you respond to a call on Hester Store Road?

2 A I did, to a traffic stop.

3 Q Was it a traffic stop involving Ms. Melanie McClain?

4 A Yes, sir.

5 Q Is she in the courtroom today?

6 A She is.

7 Q Okay. Can you describe how you were called out
8 there, if you remember, or what led you to go out there?

9 A I don't remember if I was, specifically, called or I
10 just happened to be in the area. At that time, we were
11 comprised mainly of an eight -- I believe it was an
12 eight-man team at that point. And we, generally, would
13 work in the same areas together.

14 So I don't recall if I was called to that area or I
15 heard the -- I definitely heard the traffic stop being
16 called out and just responded to the scene to assist.

17 Q Okay.

18 A Which is typical for us to do.

19 Q When you arrived on scene, was Deputy Daw and Deputy
20 Massingill already on scene?

21 A Yes, they were.

22 Q Okay. When you arrived on scene, do you remember
23 what -- like, what your first action was in relation to
24 the traffic stop?

25 A My first action?

1 Q Yep.

2 A When I first arrived, I got out of my car. And as I
3 was approaching the back of Ms. McClain's Van, I believe
4 it was at that point -- I started to go to the right side,
5 to the passenger side. But I heard a discussion of
6 something about getting the driver out, who was
7 Ms. McClain. And I, basically, passed by. I switched to
8 the driver's side and, basically, changed spots with
9 Deputy Daw, who was getting the driver, Ms. McClain, out
10 at the time.

11 Q So, to your knowledge, when you arrived on scene,
12 somebody was looking at -- or, I guess, keeping an eye on
13 the occupants of the car --

14 A Correct.

15 Q -- at all times past that point?

16 A Yeah. When I arrived on scene, Deputy Daw was on the
17 left driver's side of the vehicle. And Deputy Massingill
18 was on the passenger side of the vehicle. They were both
19 up at the window at the time. But I was walking up.

20 Q Okay.

21 A And I, basically, just traded spots with Deputy Daw.

22 Q Did you observe any movements from the passengers
23 moving anything around, shuffling the contents of the car,
24 anything like that?

25 A No, sir, I did not.

1 Q Okay. And in the course of you arriving on scene,
2 you spoke to, at least, a few of the occupants of the
3 vehicle; right?

4 A Yes, I did.

5 Q Did you -- did you Mirandize them at some point?

6 A So Deputy Massingill had already read Miranda rights
7 to them. A lot of times, I'll just practice and have
8 it -- I will just kind of re-emphasize their Miranda
9 rights to ensure they know they don't have to speak to me.
10 So I did do that. I kind of re-emphasized Miranda that
11 had already been read by Deputy Massingill. And then I
12 spoke to each one of them individually.

13 Q And at any point, did any occupants of the vehicle
14 take ownership of this bag, State's Exhibit No. 8?

15 A No, sir.

16 Q So were all occupants of that vehicle charged with
17 the contents of that bag?

18 A Yes, sir, they were.

19 MR. HOFFERTH: I have no further questions for you.

20 THE COURT: Cross-examination.

21 MR. GRAVLEE: May it please the Court, Judge.

22 Judge, I put that bid in too early.

23 CROSS-EXAMINATION

24 BY MR. GRAVLEE:

25 Q So, Deputy Cassell, you started out in 2016 down at

1 the jail?

2 A Yes, sir.

3 Q Okay. Again, how long were you at the jail?

4 A I don't know exact timeframes. I'm only estimating
5 when I say between a year and a half to two years,
6 somewhere in that range as a detention officer. I don't
7 know exact timeframes on how long I was -- I would say
8 around a year and a half to two years in the detention
9 center.

10 Q Okay. And then you went -- from there, you went to
11 road patrol after that?

12 A Yes, sir. That's correct.

13 Q And how long were you on road patrol?

14 A Estimating a year and a half to two years.

15 Q And then you got elevated to CAT Team?

16 A Yes, sir, Community Action Team.

17 Q And then after that, you got into the vice narcs
18 unit?

19 A Correct.

20 Q As your colleague testified yesterday, y'all were
21 kind of the best of the best; right?

22 A I would like to think that.

23 Q Right. So y'all have loads of training every year.
24 We've kind of been through that here. But y'all have
25 training every year?

1 A We do have annual training, yes, sir, that we're
2 required to keep up with.

3 Q And you've been to the academy?

4 A Yes, sir.

5 Q You've been annually -- you know, you go to the range
6 shooting firearms?

7 A Yes, sir.

8 Q Learning how to -- y'all have discussions on law,
9 training on law, legal matters?

10 A Yeah. We have legal updates that's issued through
11 the police academy, usually, twice a year or three times a
12 year.

13 Q At the academy, they teach you to write reports;
14 right?

15 A There's a very generic basic report writing class that
16 we go through.

17 Q So they don't teach you to write reports?

18 A I wouldn't say they teach us to write reports.
19 There's a very basic general report writing class that we
20 have to attend.

21 Q Right.

22 A Because every agency is different how they do the
23 system. So they kind of leave it very broad.

24 Q Sure. But they teach you how to, at least, document
25 a case. They want to teach you to be complete in an

1 investigation?

2 A Right.

3 Q They want you to be thorough?

4 A Right.

5 Q They want you to be accurate?

6 A Uh-huh.

7 Q Because whenever an arrest happens, it might be two
8 years down the line?

9 A Correct.

10 Q Correct. You're human. Everybody in here is human.
11 I can't remember what I had for breakfast yesterday, much
12 less two years ago. But you write reports because the
13 human memory is fleeting; correct?

14 A Yes, sir.

15 Q It's not set in stone; right?

16 A (There was no response.)

17 Q So that's the point of writing reports; correct?

18 A Correct.

19 Q So something is documented?

20 A Right.

21 Q So that there is, you know, written information of
22 this is what I did; correct?

23 A Yes, sir.

24 Q You write down -- you know, your report would say
25 when you arrived on scene and who you talked to; correct?

1 A I wouldn't write when I arrived on scene. But there
2 would be a log that would, typically, dictate when you
3 arrived on scene.

4 Q Sure.

5 A But I wouldn't have that in the report.

6 Q And, you know, you would -- you would necessarily
7 document what you -- what you had done or who you had
8 talked to; correct?

9 A Sometimes, yes, sir.

10 Q What you collected?

11 A Uh-huh.

12 Q Okay. And two years later here, you've still got the
13 same human memory?

14 A Yes, sir."

15 Q Okay. You didn't write a report?

16 A This was not my case. I was just assisting the
17 officer who did write the report.

18 Q But you didn't write a report?

19 A I did not write a separate report, no, you're
20 correct.

21 Q Okay. And in y'all's -- in your policy, y'all are
22 required to write reports, are you not?

23 A Certainly, if an arrest is made, yes. I don't know
24 the terminology in there.

25 Q Was there an arrest made here?

1 A Yes. And there was a report written as well, just
2 not by me.

3 Q Not you. That night, all -- all three officers
4 involved in the case separately took -- each separately
5 transported someone to the jail --

6 A Yes. That is correct.

7 Q -- correct?

8 And you're familiar with your -- the policies and
9 procedures that you've been trained on; right?

10 A Uh-huh.

11 Q And at the time you transported -- that night you
12 transported Ms. Shawna Johnston, did you not?

13 A Yes, I did.

14 Q And she's a female; correct?

15 A Correct.

16 Q And in your policy, it notes that any time you
17 transport a female and you're a male officer, you're
18 supposed to document that; correct?

19 A Yes.

20 Q And you're supposed to document the mileage of when
21 you leave the scene?

22 A Yes.

23 Q And when you get to the jail?

24 A Yes.

25 Q And that's to protect you?

1 A Sure.

2 Q Just as it is the person that you're transporting?

3 A Uh-huh.

4 Q It's -- it's not just to make you do heavy paperwork
5 or administrative matters; correct?

6 A Right. Yeah.

7 Q That wasn't done here?

8 A I can't testify whether it was or not. Typically,
9 it -- we call that in over the radio and our communication
10 center logs that into a command log. That's how we keep
11 track of that. They should have done that.

12 Q Right. No report of that?

13 A I -- there may be. I don't know. Outside of
14 reviewing the CFS, the command log, I may be able to
15 determine whether it's in there.

16 Q Personally, your report, though?

17 A Yeah. We don't have a way to -- we don't note that
18 in a report system. It's done through communications and
19 CFS log.

20 Q Sure. But you personally?

21 A I personally did not type anything in with that
22 mileage.

23 Q There wasn't a letter typed in this case?

24 A No, not by me of that nature. No.

25 Q Okay. At the time -- you learned through the

1 investigation that there were baggies in that little
2 marijuana bag?

3 A Yes.

4 Q The black zipper bag that Dustin claimed?

5 A Yes.

6 Q And you saw the -- what was in that bag -- what was
7 inside the zipper -- the black zipper bag?

8 A Yes.

9 Q Okay. And that was -- that was logged into evidence?

10 A I believe it was logged into evidence, yes.

11 Q And in that black zipper bag, there was marijuana?

12 A Yes, sir.

13 Q We saw you on Deputy Massingill's body cam across on
14 the driver's side?

15 A Yes, sir.

16 Q And you're pulling out plastic baggies as well?

17 A Yes, sir.

18 Q Empty?

19 A Yeah. Most of the plastic baggies -- or all the
20 plastic baggies were empty.

21 Q In Dustin's bag?

22 A Correct, in the little zipper case that was under his
23 leg.

24 Q You learned that he had a drug smoking device on him
25 as well?

1 A Uh-huh.

2 Q A meth bowl?

3 A I remember it being a pipe. I don't know what type
4 of pipe. I believe it was a meth pipe, but I don't recall
5 exactly.

6 Q Not for tobacco?

7 A Not -- not for tobacco.

8 Q Not a corn cob pipe?

9 A Definitely not.

10 Q No button nose. So did you -- did you document that
11 in any report?

12 A I -- I did not document that in a report, no, sir.

13 Q So I guess from the time -- from the jail -- or I'm
14 sorry, from the scene of the stop --

15 A Yes, sir.

16 Q -- to the jail, it's about 10, 15 miles?

17 A Something like that.

18 Q Maybe 12?

19 A Somewhere in that range.

20 Q I mean, I think there are -- but the -- that time
21 that it takes, it's about 10 to 15 minutes?

22 A Yeah. I'd say 10 to 15 minutes.

23 Q So you're in the car with Shawna Johnston for about
24 10 to 15 minutes?

25 A Correct.

1 Q And you know the importance of separating witnesses;
2 right?

3 A Uh-huh.

4 Q When you talk to them?

5 A Right.

6 Q Training and experience. You want them isolated so
7 you can try to get what their -- what their story is if
8 it's different from anybody else's?

9 A Sometimes that's advantageous to do that, yeah.

10 Q Correct. And in this case -- in your car, do you
11 have a dash cam?

12 A No, sir. I didn't do any kind of questioning or
13 anything of her beyond the scope of the stop.

14 Q So just silence?

15 A Silence or small talk. No investigative at that
16 point. She was already under arrest. I didn't question
17 her about anything.

18 Q Right. So no dash cam in this case?

19 A No, sir.

20 Q And then, certainly, no report?

21 A No report from me. There is a report.

22 Q Correct. Yes. Personally?

23 A Right.

24 Q I know Agent Daw did write one and we're all thankful
25 for that. But in this case, you did -- you did have one

1 other item, but you failed to turn it over; correct?

2 A No, sir.

3 Q You failed to turn it over when the Defense asked for
4 it?

5 A That is incorrect.

6 Q Two years after the arrest, you decided, initially,
7 that you didn't have any camera footage, any body-worn
8 camera footage?

9 A No, sir. That's incorrect.

10 Q So the Prosecutor's request for your body camera
11 footage -- okay -- he reaches out to the law enforcement
12 agency, maybe who's over P&E -- who's over property and
13 evidence -- sorry -- and they ask for body camera?

14 A Yes, sir.

15 Q And you're an agency that talks to each other
16 necessarily. You've got to have communications; right?

17 A Sure.

18 Q And that had been requested, initially, when our
19 office was appointed to represent Ms. Melanie McClain?

20 A Uh-huh.

21 Q And at that time, we asked for all of the evidence in
22 the case; correct? You know how it works?

23 A It did not come to me, nor does it. It goes through,
24 as you mentioned, our property and evidence. I wouldn't
25 know that you guys requested that because that request

1 does not come to me, specifically.

2 Q So in this case, you did -- you did have a body
3 camera?

4 A Yes, sir, I did.

5 Q Okay.

6 A And it has been there ever since -- it's been on our
7 server since within days after this traffic stop. It's
8 been there ever since.

9 Q When you prepare for trial, you do -- you meet
10 with -- you talk about the case, you prepare for the
11 trial, you discuss testimony?

12 A Yes, sir.

13 Q You talk to the other officers?

14 A Uh-huh.

15 Q You talk to the Prosecutor?

16 A Yes, sir.

17 Q And you discuss what's in evidence?

18 A Uh-huh.

19 Q And at that point in time, you discuss we have X, we
20 have Y, and we have Z in evidence. And at no point in
21 time did it cross your mind that the body camera had not
22 been turned over?

23 A So I'd be happy to elaborate, if you'd like me to.

24 Q Just a simple question. It had not been turned over
25 until just recently?

1 A Right. The -- the morning that I found out that
2 there was body cam on there that was not in evidence, I
3 immediately contacted the solicitor's office.

4 Q Sure. And if you'd had maybe something written down,
5 something would have jogged your memory? Maybe to
6 indicate as policy states that any time you use body
7 camera, you're supposed to indicate that in the report?

8 A Uh-huh.

9 Q But we didn't have a report that you wrote?

10 A Correct.

11 Q So about -- over two years later, that's when it
12 occurred to you that you had a body camera?

13 A Like I said, I found it and -- when I -- you know,
14 getting ready for trial, I was reviewing everything. And
15 I located the body cameras there. I contacted the
16 solicitor's office. We determined it was not in evidence
17 and -- and took the proper steps to move forward to -- up
18 until that point, I had no knowledge that they did or did
19 not have it or it did or did not exist. You know, dealing
20 with hundreds and thousands of body cams, I can't remember
21 where I have body cam and where I do not have body cam.

22 Q Right. Because memory is fleeting?

23 A Sure.

24 Q And it would be nice to have those notes?

25 A Right.

1 Q But it was turned over to -- and, heck, we're in
2 2024?

3 A I don't know the exact date. But, like I said,
4 within minutes of me learning there was body cam, I
5 immediately contacted the solicitor's office.

6 Q Sure.

7 A I was, actually, still sitting at the computer when I
8 saw it.

9 Q After two years after the arrest?

10 A Yeah. I guess that would be something about that --
11 somewhere around that range.

12 MR. GRAVLEE: No further questions.

13 THE COURT: Redirect?

14 MR. HOFFERTH: Briefly, Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. HOFFERTH:

17 Q Deputy Cassell, you didn't write a report in this
18 case because Agent Daw wrote one?

19 A Correct.

20 Q You had a chance -- or excuse me. Let's start with
21 this. How many officers were on scene that night?

22 A There was three of us total.

23 Q Did you have a chance to review Officer Massingill --
24 or Deputy Massingill's and Deputy Daw's body camera
25 footage from that night?

1 A Yes, sir.

2 Q Does it accurately represent all the substantial and
3 significant events that transpired?

4 A Absolutely.

5 Q Okay. Did anything that happened outside that body
6 camera footage impact the investigation, to your
7 knowledge?

8 A No, sir, not at all.

9 Q Did anybody admit to possession of the
10 methamphetamine in question today outside the parameters
11 of the body camera footage that's been presented?

12 A No, sir, they did not.

13 Q Okay. And just to be clear, in the police report, it
14 does accurately reflect your mileage from that night?

15 A Yes, sir, it should, absolutely.

16 MR. HOFFERTH: Okay. I have no further questions.

17 THE COURT: You may step down.

18 MR. GRAVLEE: Judge, briefly on redirect -- or
19 re-exam.

20 THE COURT: There wasn't anything addressed -- it
21 wasn't addressed on cross. You didn't object and there
22 wasn't any new matters, so, no.

23 MR. GRAVLEE: But can we address it outside the
24 presence of the jury, Judge?

25 THE COURT: It's my discretion.

1 MR. GRAVLEE: Thank you, Judge.

2 THE COURT: Ladies and gentlemen, we're going to take
3 a short break. Don't discuss the case. We'll bring you
4 back out in just a few minutes.

5 (WHEREUPON, the jury was excused from open court at
6 approximately 11:24 a.m.)

7 THE COURT: Yes.

8 MR. GRAVLEE: Thank you, Judge.

9 On -- on redirect, he did raise the issue that at no
10 point in time did he learn that there was any other
11 admission or claim of the bag. And my recross on that
12 matter is directly related to his responses that he did
13 speak to the officers in the case, was involved in the
14 case, did learn and would have learned through that
15 discussion and communication in the case that Shawna did
16 claim, which we objected to yesterday, but was allowed in.
17 That was hearsay that she said that it was Melanie's.

18 And, Judge, under Rule 608 -- I mean, I'm sorry. I'm
19 flipping that around. Rule 806, when a hearsay statement
20 has been admitted into evidence, the credibility of the
21 declarant may be attacked. And if attacked, it may be
22 supported by any evidence which would be admissible for
23 those purposes of declarant had testified as a witness.

24 And in this case, him testifying that nobody else
25 claimed the admission of that hearsay yesterday and then

1 the ability to impeach -- just as Ms. Johnston would have
2 been in here. But my understanding is not that we're
3 allowed to challenge that and introduce evidence of
4 impeachment not only of his testimony in and of itself,
5 but, also, the co-defendant, who is not here, who has pled
6 already, and did have meth on her in her bra as she gets
7 booked into the jail and is charged with contraband. She
8 pleads to possession in this case. The trafficking is
9 dismissed.

10 And to support that, I, also, bring it to Your
11 Honor's attention, it's United States vs. Freidman. It's
12 8 --

13 THE COURT: So is all this an argument on whether you
14 should be allowed to recross?

15 MR. GRAVLEE: Yes, sir, Judge.

16 THE COURT: Well, I've already ruled. I'm not going
17 to allow you because you could have gone into all that on
18 cross-examination of this witness.

19 MR. GRAVLEE: Judge, when he --

20 THE COURT: And the redirect was -- all right. I
21 mean, I've ruled on that. And you've got the record and
22 you've made your point. So that's the ruling of the
23 Court.

24 MR. GRAVLEE: I can't make a record, Judge?

25 THE COURT: We've made a record. You've objected to

1 my objection -- I mean, my ruling. I'm not sure --

2 MR. GRAVLEE: Is this -- does 806 not apply and
3 Freidman not apply?

4 THE COURT: I'm not sure that applies to the ruling
5 of the discretion of the Court as to whether you're
6 allowed to recross. The normal rule is direct,
7 cross-examination, and then redirect. If any new
8 information is brought out on redirect, then that is
9 subject to your objection and only allowed to recross at
10 the discretion of the Court.

11 MR. GRAVLEE: Thank you, Your Honor.

12 THE COURT: So, I mean, I'll be glad to put whatever
13 you want on the record, though. You can continue. I just
14 wasn't sure where you were headed with that.

15 MR. GRAVLEE: And, Judge, I think because it is
16 that -- I would say it's the new information that he
17 brought out on recross that I didn't address in cross -- I
18 mean, in redirect [sic], excuse me -- about that he never
19 learned about anybody else -- anybody else claiming
20 anything, or saying anything else is new. And I should
21 be -- I should be able to cross him on that.

22 And I know it is a -- it is a discretionary call. I
23 do not argue with that, Judge. But I was just trying to
24 put on the record that United States vs. Friedman, 854
25 F.2d 535, it talks about the ability to use that -- the

1 hearsay -- that if hearsay is admitted from a, like,
2 testifying co-defendant, then I can use information --
3 impeachment material just as if that witness were on the
4 stand.

5 And because that was raised in redirect and not in
6 response, I think we're prejudiced, Judge, and the
7 Defendant is to not be allowed to, at least, enter into
8 that matter just briefly on that specific issue. It's not
9 some fishing expedition where I get back up and have a
10 full on cross-examination. That specific issue --

11 THE COURT: I'm not sure that what you're saying
12 would have been admissible of your recross of this witness
13 anyway.

14 MR. GRAVLEE: Through Rule 806, Judge?

15 THE COURT: Yeah. I don't think that that would
16 apply to what you're saying, at least, the way I
17 understand what you're saying. All right.

18 MR. GRAVLEE: Thank you, Judge.

19 THE COURT: All right. We'll take a short 10-minute
20 break.

21 (WHEREUPON, a break was taken.)

22 THE COURT: What are we looking at schedule-wise?

23 MR. HOFFERTH: Judge, my plan is to call the evidence
24 custodian next. And then if we were to break for lunch,
25 that's fine. I have Dustin Pace here. And I have the

1 chemist, who will be here after lunch, who's traveling
2 from Beaufort, a four-hour drive. My one pressing, I
3 guess, concern is to make sure she goes today so she
4 doesn't have to drive back.

5 THE COURT: We should be --

6 MR. HOFFERTH: I think we'll be fine.

7 THE COURT: Seems like I saw she's now in Beaufort
8 County.

9 MR. HOFFERTH: She is.

10 THE COURT: And just for planning purposes -- and,
11 again, I'm not going to hold y'all to it, do y'all plan on
12 putting anything up, or do you know yet?

13 MR. GRAVLEE: We may, Your Honor.

14 THE COURT: Okay.

15 MR. GRAVLEE: We'll have to see.

16 THE COURT: Okay. Is the State ready for the jury?

17 MR. HOFFERTH: Ready, Judge.

18 THE COURT: Well, let's get the evidence custodian --

19 MR. HOFFERTH: I think it would be a good one before
20 lunch.

21 THE COURT: Is the Defense ready?

22 MR. GRAVLEE: Ready, Your Honor.

23 THE COURT: Bring the jury in.

24 (WHEREUPON, the jury came into open court at
25 approximately 11:47 a.m.)

1 THE COURT: State, call your next witness.

2 MR. HOFFERTH: The State calls Anthony Raines.

3 WHEREUPON,

4 ANTHONY RAINES,

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

6 THE CLERK: Thank you, sir.

7 If you will have a seat.

8 And state your name for the record, please.

9 THE WITNESS: My name is Anthony Raines.

10 DIRECT EXAMINATION

11 BY MR. HOFFERTH:

12 Q Lieutenant Raines, can you tell the jury a little bit
13 about what you do with the sheriff's office, and a little
14 bit about your background, and getting into that position?

15 A I am a lieutenant with the sheriff's office. I'm a
16 lieutenant over the forensics property and evidence
17 division of the sheriff's office. I've been with the
18 sheriff's office 17 and a half years now.

19 I started out in road patrol. I worked road patrol
20 for a while. I moved into investigations. I worked in
21 investigations for several years. I got into forensics
22 property and evidence in 2017 and became the lieutenant
23 over the division in, I believe, it was 2021. And I've
24 been the lieutenant in there ever since.

25 We do all the forensics, the photography, crime scene

1 investigations. We, also, house and store all the
2 property and evidence that comes into the sheriff's office
3 for investigations on multiple different types of crimes.

4 Q Okay. So were you working in this position in
5 October of 2021?

6 A I believe in October of 2021, I was a lieutenant.
7 I'm not a hundred percent sure. It may have been January
8 of 2020 when I took over as a lieutenant.

9 Q In any case, you've been over the department for a
10 while now?

11 A Yes, sir.

12 Q You handle when evidence comes into -- or, I guess,
13 when evidence comes into the sheriff's office, their
14 custody and sending things off to SLED, stuff like that --

15 A Correct. Yes.

16 Q Okay. So I'm going to show you what's pre-marked as
17 State's Exhibit No. 7. And I'm going to show you what's
18 already been entered into evidence as State's Exhibit
19 Nos. 5 and 6.

20 A Okay.

21 Q Do you recognize State's Exhibit Nos. 5 and 6?

22 A I do.

23 Q What are they?

24 A Those are chain of custody forms that are computer
25 generated through our computer program, central square,

1 jerker, whatever it's called now, our computer program.
2 When a piece of property is entered in as evidence, the
3 deputy would bring the evidence in. They would enter it
4 into the computer. They have to log into the computer
5 with a user name and password. And they log in and say,
6 I'm putting this piece of evidence in on my case. And I
7 will be placing it in a temporary custody locker.

8 We have lockers outside of our office in a secured
9 area of the sheriff's office that they can put those in.
10 There are four people that have keys to those lockers.
11 Myself and my other three employees that work there at the
12 sheriff's office have keys to those lockers. We're the
13 only ones that have keys to them.

14 So the deputy would put whatever the evidence is in a
15 locker. And then it stays there overnight or the weekend,
16 whatever it is until we come back in the next time. And
17 we'll go to the locker, open the locker up, take the
18 evidence out, and then we'll transfer it.

19 In this case, we transferred to what's called the
20 SLED bin. In our evidence storage area, we have shelves,
21 bins, things like that. So it's just different ways we
22 store things.

23 In this case, the evidence would be turned in in a
24 sealed evidence package that we call SLED BEST kits, or
25 BEST evidence kits is what SLED calls them. So that will

1 come in. We'll take it out of the locker. We'll log that
2 we've moved it from the locker to the SLED bin. The SLED
3 bin is just a Tupperware bin of sorts that we put these
4 things in so that we can store them.

5 Every three weeks, we make appointments with SLED.
6 Sometimes, it may be four or five weeks, depending on days
7 off, things like that. But most of the time, we try every
8 three weeks to schedule a trip to go to the South Carolina
9 Law Enforcement Division. That's where we have all our
10 drugs tested.

11 And we will take those from the SLED bin to SLED. It
12 may be me that takes it out of the locker and puts it in
13 the SLED bin, it may be one of my other employees. But
14 whoever moves it from the locker to the SLED bin, that
15 employee has to log into the computer using a password.
16 And they log I moved this from here to the SLED bin.

17 In this case here, it was Detective Albrecht, who's
18 one of my employees. So the initial start of the chain
19 would be when Deputy Daw put the evidence into the locker.
20 Then it appears that it was the next morning when Albrecht
21 came in, he took it out of the locker and put it in the
22 SLED bin.

23 Then it would remain in the SLED bin for, it looks
24 like, seven days before our next trip to SLED. And I took
25 it out of the SLED bin and took it to SLED, in which case,

1 then I logged into the computer and moved it to SLED. So
2 you have each one of those moves in there. And then
3 Albrecht went back to SLED almost a year later. And
4 that's when SLED released it to us to come back to our
5 office.

6 And then it was put on a shelf we call the drug file.
7 And all the drugs go in the drug file. So, basically,
8 just a shelf where we categorize everything. It goes in
9 by case number. And it's sorted and stored there. It
10 stayed there until it came up here yesterday, actually.

11 Q Okay. So on State's Exhibit Nos. 5 and 6, which
12 detail the custody for the methamphetamine, which is
13 State's Exhibit No. 9?

14 A Correct. Yes.

15 Q Do those chains of custody -- chains of custody
16 detail every individual who handled that evidence up to
17 this point in time?

18 A These would detail every -- every person who handled
19 that evidence from Deputy Daw up to when we took it to
20 SLED. My chain does not cover what SLED does when they
21 have it in their custody.

22 Q Right. Good point.

23 A But every person that works for the Pickens County
24 Sheriff's Office that handled those drugs would have been
25 detailed in this. There are certain instances where

1 there's a -- when it doesn't leave our custody.

2 Q Right.

3 A Such as if you come in to examine or if the Defense
4 comes in to examine, one of us may take it from the shelf
5 and put it on the table for y'all to examine. But someone
6 is there with you. So it never leaves the custody of the
7 Pickens County Sheriff's Office at that time.

8 Q Got it. So I guess to refine my question, those
9 detail everybody in the Pickens County Sheriff's Office as
10 far as movements and any activity relating to that
11 evidence?

12 A Correct. Yes.

13 Q Okay. And it details the date it was taken to SLED?

14 A Correct.

15 Q And it details the date it was picked up from SLED?

16 A Correct, it does.

17 Q And that was for testing?

18 A For testing purposes, yes, sir.

19 Q I want to transfer your attention to State's Exhibit
20 No. 7.

21 A Okay.

22 Q What is that?

23 A This is just a listing of the evidence that -- that
24 was in custody on this case.

25 Q Okay.

1 A So this right here lists --

2 Q Well, let me -- to refine your view here. This
3 bookbag, State's Exhibit No. 8, is it detailed in some way
4 in there?

5 A It is. The bookbag would be listed as camo zippered
6 pouch is what they called it when they turned it in. That
7 would be item number seven.

8 Q Okay. And that was never sent for testing, or
9 anything like that?

10 A No.

11 Q It just sat --

12 A It just sat in our evidence.

13 MR. HOFFERTH: At this time, the State would move
14 into evidence State's Exhibit No. 7.

15 THE COURT: All right. Any objection?

16 MR. GRAVLEE: That this -- just confirm this is
17 State's Exhibit No. 7?

18 MR. HOFFERTH: Yes.

19 MR. GRAVLEE: No objection, Judge.

20 THE COURT: Okay. It's in without objection.

21 (WHEREUPON, State's Exhibit No. 7 was admitted into
22 evidence.)

23 MR. HOFFERTH: Lieutenant Raines, I just want to make
24 sure I have everything with you.

25 (Pause.)

1 MR. HOFFERTH: No further questions.

2 THE COURT: Cross-examination.

3 MR. GRAVLEE: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. GRAVLEE:

6 Q Lieutenant Raines, you've been doing this a hot
7 minute; right?

8 A A little while, yes, sir.

9 Q And you've been over property and evidence for the
10 past couple of years?

11 A Yes, sir.

12 Q Okay. And in this case, when you're involved in
13 property and evidence, you're not necessarily on the
14 scene --

15 A No, no.

16 Q -- of anything?

17 You're just the custodian, the caretaker --

18 A Correct.

19 Q -- to ensure the chains are properly established and
20 ready for court so that they can be admissible?

21 A Correct.

22 Q So in this particular case, you did take items into
23 evidence on -- from State's Exhibit No. 7?

24 A Correct.

25 Q And all of those were in the same shape -- I mean, I

1 came down and spoke with you and looked at it -- at the
2 evidence as well. It's all in the same shape that it was
3 when you got it?

4 A The only thing we do differently is for court
5 purposes, we'll package a little differently for it to
6 come up here.

7 Q Right. So I guess before your -- you know, to head
8 up forensics, and whatnot, and your experience there, you
9 do have a good bit of training in that as well just in the
10 area of forensics?

11 A Yes.

12 Q Which covers a lot of times physical evidence and
13 circumstantial evidence that may be used together. But
14 can you just tell us more about forensic evidence?

15 A Can you be a little more specific?

16 Q Just in general. When you're trained on forensic
17 evidence, what kind of training do you go through?

18 A Well, it just depends. I've got some blood stain
19 pattern recognition training, crime scene reconstruction
20 training, photography training. We photograph things.
21 Some things, you're just taught in-house that you don't,
22 actually, go through a training class for. You just get
23 taught in-house how to collect, and package, and store
24 evidence.

25 Q So some of the training is through the sheriff's

1 office in Pickens?

2 A Some of it, yes, is just on the job training. It's
3 like anything else, you get trained on the job on how to
4 do things.

5 Q I guess there's annual recertifications, and things
6 like that?

7 A For the forensic part of it, no. For just basic
8 sheriff's office and law enforcement functions, yeah.
9 There's yearly certifications, yes.

10 Q I guess one of those -- we're not dealing with any
11 blood spatter, fortunately, or anything like that in this
12 case --

13 A Yeah.

14 Q -- or crime scene reconstruction. But in your
15 training, you, also, are trained how to collect and
16 analyze fingerprints?

17 A Correct.

18 Q Whether they can be pulled from an object or not?

19 A Correct.

20 Q But you as the -- as the custodian, the head of
21 property and evidence, you don't just go around
22 fingerprinting everything?

23 A No.

24 Q You don't walk in here and just start dusting the
25 tile behind the bench there. It's only if requested;

1 correct?

2 A Normally, yes. If it's requested, we'll print
3 something.

4 Q And you had no requests in this case for any
5 fingerprints?

6 A Not that I recall, no, sir.

7 Q And fingerprints aren't -- you can't pull a
8 fingerprint from carpet; right?

9 A From what?

10 Q Carpet.

11 A Carpet, no.

12 Q So, like, rocks?

13 A It depends --

14 Q Not shiny --

15 A If the rock was really smooth and wasn't porous, you
16 might could.

17 Q Yes, sir. Not dirt?

18 A Not dirt, no, sir.

19 Q So it's got to be non-porous?

20 A Non-porous, clean, smooth surface.

21 Q So, like, metal? Like, sheet metal?

22 A Correct.

23 Q Like, a blade, like, on a knife can have one?

24 A Yes.

25 Q Plastic?

1 A Some plastic, yes. Some plastics won't hold a print.
2 It just depends on the plastic itself.

3 Q Right. And let's see, plastic, metal. Glass?

4 A Glass is a good surface.

5 Q And then in your training and experience, you're,
6 also, familiar with the forensics that you do, how touch
7 DNA works?

8 A Yes.

9 Q And that's the transfer of any type of human, I
10 suppose, fluid or just skin cells?

11 A Yes.

12 Q Those are a source of DNA --

13 A Correct.

14 Q -- anything like that?

15 And when you collect that and through your training
16 and experience with touch DNA, if somebody touches an
17 object, you can have -- that person can transfer DNA to an
18 item?

19 A It can. It's possible. It doesn't happen every
20 time, but it's possible.

21 Q Sure. And so you can -- you can pull that off of
22 lots of items; correct?

23 A Correct. Yes.

24 Q It's not necessarily the same as a fingerprint, and
25 whatnot?

1 A Correct.

2 Q In this case, there was no request for touch DNA?

3 A No.

4 Q No --

5 A Not to my knowledge. I don't recall that being a
6 request.

7 Q Yes, sir. No requests for any fingerprints --

8 A Not that I recall.

9 Q -- on this?

10 Let me turn your attention to State's Exhibit No. 7.

11 A Okay.

12 Q So we've got -- we've got 11 items; correct?

13 A Correct. There were 11 items listed.

14 Q That you had. You had a marijuana THC analysis kit?

15 A Correct.

16 Q That's for the marijuana collected in the case?

17 A Correct.

18 Q So they collected some marijuana?

19 A A little bit, yeah. I don't know exactly how much.
20 We don't weigh it, or anything. It comes in and much like
21 the -- if it was methamphetamine, heroin, whatever the
22 other drug was that went in this SLED BEST kit, it comes
23 to us, generally, sealed.

24 Q Okay. But then there was, also -- there was some
25 marijuana kept. But there was some marijuana that was,

1 also, destroyed just, you know, not -- just was not kept;
2 correct?

3 A Correct.

4 Q Okay. And would that be, I guess, at the request of
5 the officer that is saying whether or not they think it's
6 good or bad or --

7 A Well, I don't know that it would be just based on
8 whether it was good or bad. I don't think there's an
9 eyesight test for that. It may have been -- and I don't
10 know in this case. Purely speculation, if I may?

11 Q No. Proceed.

12 A In some cases, it might be what we call shake in a
13 cigarette wrapper, or something of that sort. It's just a
14 small amount. It's not something they want tested.

15 Q Right. You don't know in this case?

16 A I don't know in this case what it was.

17 Q That's fair.

18 A It's, generally, some reason. And it's not just
19 because it's good or bad because there's no way to tell
20 that.

21 Q And I understand good or bad is kind of vague there.
22 But just in terms of it was taken into custody at one
23 point in time, but was decided to be destroyed for one
24 reason or the other?

25 A Yes.

1 Q So that wasn't able to be analyzed, or anything. It
2 wasn't sent off?

3 A Correct.

4 Q Another item mentioned on here is two glass smoking
5 pipes; correct?

6 A Correct.

7 Q Not corn cob pipes?

8 A Not what?

9 Q Corn cob pipes.

10 A No. They're glass. I mean, they're like little
11 beaker bowls with a hole in the top of them and a tube
12 that comes off. They're solid.

13 Q Commonly used to smoke methamphetamine?

14 A Smoking methamphetamine, yes.

15 Q Okay. And then you took into -- into custody that
16 black zippered pouch?

17 A Correct.

18 Q And you've seen what's in that black zippered pouch,
19 too?

20 A Little baggies, I think, is what it was.

21 Q A bunch of empty Ziploc baggies?

22 A Yeah. Little tiny -- jewel bags is what we call
23 them.

24 Q When you checked them out, did you see there was a
25 little bit of dust or residue in there?

1 A I didn't examine them. I mean, it's not what I do.
2 We don't examine those things. Sometimes, we'll -- you
3 know, the only time I've ever really looked at those is
4 when you were there looking at them. And I didn't examine
5 them either. I just see what's there.

6 Q Right. You're the custodian?

7 A Correct.

8 Q You're not in charge of analyzing their case or their
9 evidence?

10 A Correct.

11 Q And then in that -- you know, we've got little Ziploc
12 bags and that black zipper pouch. And in that camo zipper
13 pouch, there's, also, little plastic bags; right?

14 A I couldn't tell you for certain. I believe there
15 were, but I'm not a hundred percent. I know there was,
16 like, a little makeup case, I believe, that was in there
17 or something, a little pink zipper thing. But I can't
18 recall right off the top of my head, but it's possible
19 that there were.

20 Q Sure. So -- and then I don't know if that's in
21 there. But that was in with part of it, a little makeup
22 looking thing, that's what you're referring to?

23 A Yeah. Yeah, that little thing.

24 Q And that's a scale. It looks to be plastic; right?

25 A A little plastic digital scale.

1 Q On the inside of that --

2 MR. GRAVLEE: Judge, can I have permission to be able
3 to take this out? I can use gloves. I brought some.

4 THE COURT: No. I mean, what particular reason do
5 you --

6 MR. GRAVLEE: Just to be able to open this up so the
7 jury can see it as well.

8 THE COURT: I mean, I think they can see it with
9 that.

10 MR. GRAVLEE: The inside of it, too.

11 BY MR. GRAVLEE:

12 Q Did you --

13 A I can explain it.

14 Q Did you have an opportunity to open this up?

15 A Not that one, but it's a digital scale. If you take
16 the cover off of it, it's got a little metal plate on
17 there. I believe it's stainless steel even.

18 Q Okay.

19 A It's a little metal plate you sit your item on to
20 weigh it.

21 Q From that stainless steel, you'd be able to pull
22 prints off of that, theoretically?

23 A Stainless steel, probably not, probably not. But I'd
24 give it a shot. But stainless steel generally -- its --
25 properties don't absorb the -- the -- the fluids from your

1 hand, the oil, and stuff from your hand. It's kind of a
2 forced metal. So the print doesn't stay very long.

3 Q Sure. But plastic outside?

4 A Plastic outside, possibly. I couldn't guarantee it,
5 but possibly. Those are things we will sometimes try.

6 Q So this right here, it's, like, a little two cut
7 straws?

8 A Yeah.

9 Q And those were -- those were taken into evidence;
10 correct?

11 A Correct. Yes.

12 Q And during that time, did you learn that those came
13 from Ms. Johnston?

14 A I didn't -- I don't know who they came from. I know
15 that Deputy Daw turned the stuff in. As far as who it
16 comes from, I don't know. He'll list suspects in the --
17 in his report.

18 Q Yes, sir.

19 A And when we pre-log things with SLED, there's a
20 website you go to that's a secured website. And we'll put
21 the names of the suspects in, but we may or may not read
22 the report.

23 In this case, I did not take the drugs from the
24 locker to put them in. Detective Albrecht did that. So
25 with him doing that, I wouldn't have read through the

1 report.

2 Q Sure. And that's fair. Those two little cut straws,
3 in your training and experience, what would those,
4 generally, be used for?

5 A Snorting some type of drug.

6 Q Okay. I, also, mentioned there's a folded paper
7 towel that the straws came out of?

8 A I did see that, yes.

9 Q And then, also, in this case, it looks like there
10 were 36 counterfeit \$20 bills?

11 A Correct.

12 Q Okay. Do you have -- do you know, you know, that I
13 guess -- were you aware that three of them -- or four of
14 them came off of Dustin Pace?

15 MR. HOFFERTH: I'm going to object to this line of
16 questioning, Judge. He's done this before. It's not
17 proper, not tied to the case.

18 THE COURT: Sustained.

19 BY MR. GRAVLEE:

20 Q But you don't know where they particularly --

21 A I don't know, no, sir.

22 Q -- came from?

23 MR. HOFFERTH: Judge --

24 MR. GRAVLEE: I'm not getting into -- he doesn't --
25 he's not aware, Judge.

1 THE COURT: All right. Move on.

2 BY MR. GRAVLEE:

3 Q And then in this case, there was, also, taken into
4 evidence -- I didn't bring it in because the State had
5 it -- correct -- the purple notebook?

6 A Yes. Purple notebook, yes.

7 Q Okay. And you don't know the content --

8 MR. HOFFERTH: Same objection, Judge.

9 MR. GRAVLEE: I was just asking his knowledge, Judge.

10 THE COURT: He can tell whether he -- he can't
11 testify about what's in it.

12 MR. GRAVLEE: I -- so the question is just did he
13 know of the contents of it or the knowledge --

14 THE COURT: I mean, I'll let him answer.

15 THE WITNESS: I do not know the contents of the
16 notebook, no, sir.

17 BY MR. GRAVLEE:

18 Q Thank you.

19 So just to -- just to recap, the only -- the only
20 forensic testing or whatnot you would have performed in
21 this case would have only been if the arresting officers
22 or a prosecutor had asked you to test those?

23 A Other than sending it -- sending the drugs to SLED
24 for testing, no, we -- we -- if someone would have
25 requested it, we would have tried to do whatever testing

1 that they asked us to do.

2 MR. GRAVLEE: Okay. Thank you.

3 THE COURT: Any redirect?

4 MR. HOFFERTH: Very briefly, Judge.

5 REDIRECT EXAMINATION

6 BY MR. HOFFERTH:

7 Q Lieutenant Raines, in your experience as an evidence
8 custodian, how often are drugs -- or, I guess, the
9 evidence associated with drug investigations tested for
10 fingerprints and DNA?

11 A It's very rare. Normally, if there is -- if
12 something is found and there's no suspect around, it's not
13 found in the custody of one or more people, then we may be
14 asked to test it to see who might have had it if it's --
15 for instance, if there's a search warrant done on a house
16 and we find something and there's no one there to -- that
17 could claim it or it could be attributed to that person,
18 then we may be asked to test that for fingerprints or --
19 honestly, I've never been asked to test any type of drugs
20 or anything for touch DNA. Because there -- there's a lot
21 that goes into the testing for touch DNA. And there's a
22 lot of contamination that comes with things of this sort
23 with touch DNA.

24 MR. HOFFERTH: Understood. I have no further
25 questions for you.

1 THE COURT: Thank you.

2 You may step down.

3 MR. HOFFERTH: If we may approach briefly just to
4 plan here.

5 THE COURT: Yes.

6 (WHEREUPON, a bench conference was held.)

7 THE COURT: Ladies and gentlemen, we're going to go
8 ahead and break for lunch. So it's 10 after 12:00. So if
9 you'll be back in the jury room at 1:40.

10 Don't discuss the case. Don't do any type of
11 research. Don't pay any attention to any media coverage.
12 If anybody contacts you, other than somebody from the
13 clerk's office, please, let the bailiffs know.

14 Y'all have a good lunch. We'll see you are at 1:40.

15 (WHEREUPON, the jury was excused from open court at
16 approximately 12:15 p.m.)

17 THE COURT: All right. Sorry to cut you off. But
18 y'all looked like you were going to have a long range
19 conversation and I needed to let the jury go.

20 MR. GRAVLEE: No, Judge. I was saying I don't -- I
21 didn't want to have that type of conversation up there.
22 What I was mentioning is we have -- just for planning
23 purposes, one of the co-defendants is here. But it
24 appears the other one is in the wind. I -- I would ask
25 the Prosecutor --

1 MR. HOFFERTH: Yeah. She -- so Shawna Johnston was
2 on both of our witness lists. We have -- and Brian
3 Bolding from our office is our investigator. He can
4 probably elaborate on it in more detail. But based on my
5 conversations with him, he's been in contact with her --
6 or he was in contact with her for a period leading up to,
7 at least, last week.

8 She lives with her mother, to our understanding.
9 He's been in contact with her mother. He issued a
10 subpoena to her mother on the understanding that she would
11 get it to her because he can't physically find her. But
12 we're still in the process of trying to find her as well.

13 THE COURT: Have you all got Tickner [phonetic]
14 involved? He usually can find anybody.

15 MR. HOFFERTH: We've got to send somebody out. But,
16 I guess, the State's position is we have two more
17 witnesses, the SLED chemist and the other co-defendant,
18 you know. We can address this after we finish with them
19 and see what we can do.

20 THE COURT: All right.

21 MR. GRAVLEE: Judge, we attempted the same -- I
22 believe the same manner of service to her -- to her
23 mother's home. The investigator with our office,
24 Ms. Yamka Jones --

25 THE COURT: What's momma saying?

1 MR. GRAVLEE: It sounds like momma says she don't
2 know. Momma says she don't know when she's going to see
3 her daughter again.

4 MR. HOFFERTH: She's about as elusive --

5 MR. GRAVLEE: Sorry for the course language. But,
6 no, it doesn't sound like she is findable, Judge.

7 But it would be our position that she's a material
8 witness in this case. And the fact that she was attempted
9 service by both parties to be here the Monday of trial,
10 throughout the trial, I'd ask that a bench warrant be
11 issued for a material witness to --

12 THE COURT: Well, I mean, y'all have attempted. But
13 I guess here's the question, has the subpoena, actually,
14 been served on her? Do I have the right to do a bench
15 warrant just because both of y'all want her?

16 MR. HOFFERTH: Judge, to be --

17 THE COURT: I'm asking.

18 MR. GRAVLEE: I'm not trying to dodge the question.
19 I don't know the answer right now, Judge, offhand. I can
20 look into it over lunch, whether the attempted service is
21 sufficient or whether actual service is necessary.

22 THE COURT: What does a bench warrant get you?

23 MR. GRAVLEE: Well, to have that material witness
24 present that is crucial to our defense under a
25 constructive possession case.

1 THE COURT: But what I'm saying is what does a bench
2 warrant get you that you're not going to get from Brian
3 Bolding going out trying to find her?

4 MR. HOFFERTH: He's been trying for a month.

5 THE COURT: Yeah. So I issue a bench warrant --
6 okay -- if they still don't find her, where does that get
7 you?

8 MR. GRAVLEE: I mean, I guess that depends on whether
9 we, actually, have gotten in touch with Tickner.

10 THE COURT: I'm sure he's --

11 MR. GRAVLEE: I don't have access to Tickner's
12 capabilities personally.

13 THE COURT: I was being facetious on that.

14 MR. GRAVLEE: Judge, I know, but I think if we had
15 some more information and try to see if we can find maybe
16 from her mother any last known place to have somebody
17 go -- with the sheriff's office to try and go locate her.

18 MR. HOFFERTH: Just to be clear, I completely
19 understand the Defense's position. I understand. But if
20 push comes to shove, the State is ready to go without her,
21 just so the Court is aware.

22 THE COURT: I think you're asking me to go look for
23 her, but I'm not going to do that.

24 MR. GRAVLEE: Judge, just to be clear, I was not
25 asking for you to hop in the car. I just wanted to

1 clarify on the record.

2 THE COURT: All right. See y'all back about -- about
3 1:30.

4 (WHEREUPON, a lunch break was taken.)

5 (WHEREUPON, State's Exhibit Nos. 10, 11, and 12 were
6 marked for identification only.)

7 THE COURT: All right. Is the State ready?

8 MR. HOFFERTH: The State's ready.

9 THE COURT: Is the Defense ready?

10 MR. GRAVLEE: The Defense is ready.

11 THE COURT: All right. Bring the jury in.

12 (WHEREUPON, the jury came into open court at
13 approximately 1:53 p.m.)

14 THE COURT: All right. Ladies and gentlemen, I hope
15 everybody had a good lunch.

16 As you will recall, the State is still in its case in
17 chief.

18 State, you can call your next witness.

19 MR. HOFFERTH: Thank you, Your Honor.

20 At this time, the State would call Lynn Black.

21 WHEREUPON,

22 LYNN BLACK,

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

24 THE CLERK: Thank you, ma'am.

25 If you would have a seat.

1 And state your name for the record, please.

2 THE WITNESS: My name is Lynn Black.

3 DIRECT EXAMINATION

4 BY MR. HOFFERTH:

5 Q Ms. Black, good afternoon.

6 First of all, could you tell the jury where you
7 currently work?

8 A I currently work at the Beaufort County Sheriff's
9 Office in the forensic laboratory where I'm a drug
10 analyst.

11 Q And how long have you been working in Beaufort?

12 A I've been working there a little over a year.

13 Q Okay. Where were you employed before that?

14 A Prior to that, I worked for the South Carolina Law
15 Enforcement Division, commonly known as SLED, in the
16 forensic laboratory there where I was a drug chemist as
17 well.

18 Q What kind of training and education did you take part
19 in to come to the position that you're in today when you
20 were at SLED?

21 A I have a Bachelor's Degree in Chemistry from Kentucky
22 Wesleyan College, a certificate of medical technology from
23 the University of Louisville, and a Master of Science
24 Degree in Forensic Science from Marshall University.

25 Prior to my job at SLED, I, actually, worked at the

1 Georgia Bureau of Investigations in their laboratory in
2 Atlanta, Georgia, for about eight years. And I was with
3 SLED for about 14.

4 Q Do you still receive ongoing training and education
5 for your role?

6 A I do. I regularly attend conferences or online
7 seminars every year, multiple times a year, sometimes.

8 Q And when you were working at SLED, what,
9 specifically, were the tasks that you were assigned with
10 completing?

11 A At SLED as well as GBI and now, Beaufort County, I
12 received and analyzed substances brought in by law
13 enforcement personnel. And I determine whether they are
14 controlled substances or not. I prepare reports from my
15 findings and, also, testify in courts, federal and state,
16 to those results.

17 Q And I know it will be difficult, just a ballpark
18 number, in your time you've worked as a lab chemist,
19 approximately how many cases have you analyzed chemical
20 substances?

21 A Gosh. I haven't looked at that in a while. I'm
22 thinking it's over -- probably over 20,000 something cases
23 that I've worked in my career, yeah.

24 Q And have you ever testified in court before per your
25 findings?

1 A Yes, I have.

2 Q Approximately how many times?

3 A About 150 times. That's both Georgia and South
4 Carolina.

5 Q And have you ever been qualified as an expert in
6 chemical analysis?

7 A Yes.

8 Q Do you know about how many times?

9 A All those 150, yes, sir.

10 MR. HOFFERTH: Your Honor, at this time, the State
11 would offer Ms. Black as an expert in the field of
12 chemical analysis.

13 THE COURT: Any objection or voir dire?

14 MR. GRAVLEE: No objection, Judge.

15 THE COURT: All right. Ladies and gentlemen,
16 Ms. Black had been qualified as an expert in the field of
17 chemical analysis. Now, normally, a person cannot testify
18 about anything other than what they saw, or heard, or just
19 kind of direct testimony. The exception to that is when
20 somebody has been qualified as an expert. They can
21 testify about their conclusions and opinions on things
22 that fall within their field of expertise based on their
23 training, their expertise, their experience, education,
24 and so forth.

25 So -- but you're to give -- just like every piece of

1 evidence, you're to give it the weight and value you feel
2 is appropriate.

3 MR. HOFFERTH: Thank you.

4 BY MR. HOFFERTH:

5 Q Now, Ms. Black, were you asked back in 2021 to
6 analyze chemical substances for this case?

7 A I was, yes.

8 Q Okay. I'm showing the witness what's been premarked
9 as State's Exhibit Nos. 10, 11, and 12. And I have given
10 a copy to Defense Counsel.

11 MR. GRAVLEE: Mr. Hofferth, just to be clear --

12 MR. HOFFERTH: 10 is the receipt, and 11 is the chain
13 of custody, and 12 is the lab.

14 MR. GRAVLEE: Thank you.

15 MR. HOFFERTH: Yep.

16 BY MR. HOFFERTH:

17 Q How did you obtain the substances that you tested in
18 today's case?

19 A I received them from the evidence control section
20 at -- at SLED from the forensic technicians.

21 Q Okay. So looking at State's Exhibit No. 10, which is
22 the lab receipt -- let's just start with this. Is that
23 the lab receipt from SLED?

24 A Yes, it is.

25 Q And I believe it's on the second page. Does it

1 indicate a date that substances were received by SLED?

2 A It does.

3 MR. HOFFERTH: Your Honor, at this time, the State
4 would move into evidence State's Exhibit No. 10.

5 THE COURT: Any objection?

6 MR. GRAVLEE: No objection, Judge.

7 THE COURT: All right. It's in without objection.

8 (WHEREUPON, State's Exhibit No. 10 was admitted into
9 evidence.)

10 BY MR. HOFFERTH:

11 Q And then as to State's Exhibit No. 11, what is that?

12 A That is a copy of the chain of custody that SLED
13 provides for -- and in particular for this case where the
14 piece of evidence goes while at SLED, you know, who has
15 contact with it, and where it's placed, in a vault, or a
16 locker, or in a person's possession.

17 Q To your knowledge, does it accurately identify
18 everyone involved in handling that evidence at SLED?

19 A It does.

20 Q Okay. Are you identified on that?

21 A I am.

22 MR. HOFFERTH: Your Honor, at this time, the State
23 would move into evidence State's Exhibit No. 11.

24 THE COURT: Any objection?

25 MR. GRAVLEE: I'm sorry, Your Honor. I beg the

1 Court's indulgence just for a moment so I can discuss with
2 co-counsel here.

3 (Pause.)

4 MR. GRAVLEE: No objection, Judge.

5 THE COURT: All right. It's in without objection.

6 (WHEREUPON, State's Exhibit No. 11 was admitted into
7 evidence.)

8 BY MR. HOFFERTH:

9 Q And then I'm going to direct your attention to
10 State's Exhibit No. 12. Is that the lab report of the
11 tests you conducted pursuant to today's case?

12 A Yes. It's a copy of the lab report when I completed
13 my examination of this evidence.

14 Q Okay. And I'm going to show you what's already in as
15 State's Exhibit No. 9.

16 Now, when you received -- well, first of all, to your
17 knowledge, is the methamphetamine that's contained in
18 State's Exhibit No. 9 the substance that you tested at
19 SLED?

20 A Yes. This is the evidence in this case that has the
21 methamphetamine. And it has my initials and lab numbers
22 on all the pieces of evidence inside.

23 Q Okay. When you first received the contents of what
24 are contained in State's Exhibit No. 9, was it sealed in a
25 BEST kit?

1 A It was, yes, sir.

2 Q Okay. So after you get the substances, can you
3 describe to the jury your process of what you do to
4 produce State's Exhibit No. 12?

5 A When I received it, as I said, it was in a BEST kit.
6 And that's what -- this blue trimmed tamper evidence bag
7 inside this outer bag. That's what we consider a BEST
8 kit. And inside of it was some items of evidence. It had
9 some Ziploc bags that contained some crystal substances.

10 So when I first receive that when I'm ready to
11 analyze it, I'm going to, first, look at the BEST kit bag
12 and make sure that it hasn't been tampered with, that it's
13 sealed, and everything. So once I'm satisfied with
14 that -- you know, if it's not sealed or anything, I will
15 make a note, put a note in my notes. Also, I'll make a
16 note on the bag as well. It was all sealed and intact
17 because I have on my bag "sealed and intact" and my
18 initiates and date.

19 So then I'll open it. I'll open it away from -- the
20 seal is really up here at the top of this bag above that
21 blue. And I'll open it on the other side and take out
22 everything and make an inventory of it on my worksheet.
23 And then I'll determine how I'm going to proceed.

24 So in this particular case, I had several Ziploc bags
25 that contained a crystal substance.

1 Do you want me to go by them one by one or just
2 generally?

3 Q I think for the sake -- for our purposes and for the
4 jury's purposes to explain the testing procedure for the
5 methamphetamine involved in State's Exhibit No. 9.

6 A Yes. And I did do the same tests on all the bags I
7 tested, which ended up being -- let's see. I believe I
8 tested four total bags that were Ziploc bags with a
9 crystal substance. In that case, I would have taken them
10 out of the bags and taken a net weight of each of the
11 substances.

12 So that's just the substance itself. It's not the
13 bag, which means I put a piece of weigh paper or weigh
14 boat on my balance, teared it out, which means zeroing out
15 that paper or that boat so that weigh is not incorporated
16 into any weight of the substance. Then I put the
17 substance on there and I get a net weight of that. So I
18 record all the net weights.

19 And then I took a small sample for what we call a
20 color test or chemical test. It's just a preliminary
21 test. It just kind of gives me an indication of what the
22 substance can be. It's not going to tell me exactly what
23 it is because it's not -- like I said, it's a preliminary
24 test. But it will give me a direction to go.

25 And then I took a small portion of that -- of the

1 substance and used an instrument to determine what the
2 substance was. And I used the same instrument for all
3 four tests in this case, which is called a -- it's a big
4 mouthful, Fourier Transform Infrared Spectrometer. FTIR
5 is a lot easier to say. So I used that instrument to
6 identify the compound as methamphetamine in all four of
7 these bags.

8 MR. HOFFERTH: Your Honor, at this time, the State
9 would move into evidence State's Exhibit No. 12.

10 THE COURT: Any objection?

11 MR. GRAVLEE: I don't have any -- I think I can
12 address it on cross. But no objection to State's Exhibit
13 No. 12.

14 THE COURT: It's in without objection.

15 (WHEREUPON, State's Exhibit No. 12 was admitted into
16 evidence.)

17 BY MR. HOFFERTH:

18 Q Ms. Black, going into the findings of your report on
19 State's Exhibit No. 12, can you read for the jury what was
20 tested on item 1.1?

21 A That was a Ziploc bag containing a crystal substance.
22 And methamphetamine was found in the sample tested. And
23 the net weight was 1.26 grams.

24 Q Okay. And it says "confidence level" there. Can you
25 explain a little bit about what that means or, I guess,

1 translate that more for the jury?

2 A The confidence level is just for the weight itself.
3 Because we, also, record what we call a measurement of
4 uncertainty. Not that we're uncertain about the .
5 measurement. But every measurement anywhere, anything you
6 do has an uncertainty. Like, if you go to the grocery
7 store and you're weighing your produce, there's an
8 uncertainty in how much that weighs. We have -- we, at
9 SLED, and most forensic laboratories have done extensive
10 studies on how that affects the weight.

11 So in this case, the total net weight was 1.26 grams.
12 But I have a little plus or minus after that of 0.01
13 grams. That's the uncertainty. So that means that this
14 weight was, actually, between 1.25 and 1.27 because the
15 uncertainty was at 0.01. But the weight that I recorded
16 from my balance was 1.26. So we put that uncertainty so
17 you know the weight was somewhere in between those two.

18 In this particular case, it doesn't really matter
19 because we're well over what we call a statutory
20 threshold, a weight threshold that's in the law. At SLED,
21 they decided that we would put this uncertainty on every
22 report just so it would always be there in case somebody
23 needed it. But the competence level just means that we're
24 99.7 confident that that's where that weight lies in
25 between there. And it doesn't mean we're not confident

1 about what the substance is, it's only for the weight.

2 Q Let's move on to item 1.2. Can you describe for the
3 jury what's detailed there?

4 A 1.2 was a Ziploc bag containing five Ziploc bags that
5 each of them contained a crystal substance. In that case,
6 I tested three of the bags and found methamphetamine in
7 all three. And the total net weight of all three of those
8 bags was 10.38 grams.

9 Q Okay. Now, I don't want to get too far into the
10 weeds. But I believe you explained to the jury the name
11 of the procedure used for testing the methamphetamine.
12 But is that the standard used by SLED by all the chemists
13 when they are testing such substances?

14 A The FTIR test that I performed is one of two tests
15 that we could use at SLED. The other one would have been
16 the gas chromatograph mass spectrometer, which is a
17 different technique.

18 I chose FTIR because it's a lot faster. And it gives
19 me very good results, especially when I'm dealing with
20 crystal methamphetamine. It's available to any chemist
21 there at SLED. And most forensic laboratories have those
22 instruments as well. They've been around for a long, long
23 time, probably as long as GCMS.

24 MR. HOFFERTH: Ms. Black, I have no further questions.
25 Thank you for making the trip up here.

1 THE COURT: Cross-examination.

2 MR. GRAVLEE: Thanks, Judge.

3 CROSS-EXAMINATION

4 BY MR. GRAVLEE:

5 Q Ms. Black, I won't be too long with this. The --
6 when you received the drugs in this case, you got them
7 submitted from a law enforcement agency?

8 A That's correct. They are submitted to SLED from law
9 enforcement agencies, correct.

10 Q Not necessarily mailed attention Lynn Black?

11 A No, sir. No, sir. Usually, they bring them in. I
12 don't get them, specifically, right from the law
13 enforcement personnel. Because they're brought in and our
14 forensic technicians would receive them and then put them
15 in the vault before I would ever come down to retrieve them.

16 Q Yes, ma'am. And what -- what is sent to SLED is
17 whatever the local agency chooses to send to SLED. So
18 it's -- there's not -- if there's anything that's not
19 sent, you don't -- you're not aware of that?

20 A Correct.

21 Q It's just only what you receive?

22 A Yes.

23 Q And, generally speaking, in a drug case, have you
24 ever gotten a bag or a package of drugs that has
25 somebody's name on it on the drugs themselves?

1 A Occasionally, but not very often.

2 Q Like somebody said, hi, my name is Dustin, or Shawna,
3 or whoever?

4 A I don't think I've ever seen one like that. But I
5 have had somebody that has had their driver's license in
6 there.

7 Q That's handy. So when you -- when you received this,
8 did you receive a certification of proof of chain of
9 physical custody or control? Did you receive documents
10 titled like that?

11 A Not usually. Are you speaking, like, from the law
12 enforcement agency --

13 Q Yes, ma'am.

14 A -- that kind of chain of custody?

15 Q Yes, ma'am. It would be from the local law
16 enforcement agency.

17 A They do submit those documents. And our -- as I
18 said, the forensic technicians in the evidence control
19 section, if they get them, they will scan them in so they
20 will be in the case file. So I can see them. But I don't
21 normally, get them, a physical copy of it.

22 Q Okay. Do you remember -- if I showed you these from
23 this case, would it jog your memory if you saw it?

24 A Possibly.

25 MR. GRAVLEE: Permission to approach, Judge.

1 (WHEREUPON, there was no response.)

2 THE WITNESS: Yeah. I've seen these before, yes.

3 And, like I said, it was probably in the case file. But
4 that's not anything I'm concerned with usually. So I just
5 leave it there. And I'm more concerned with the chain of
6 custody once it's inside SLED.

7 BY MR. GRAVLEE:

8 Q Yes, ma'am. And then on -- all right. And so these
9 types of forms, you do come across it. Do you frequently
10 see a defendant's name beside it, or do you see sometimes
11 it has a suspect's name beside it?

12 A I believe -- like I said, I haven't seen one of those
13 in a while. So I don't recall if they, actually, put
14 those on there. Sometimes they'll say received from and
15 they'll put the defendant's name. Most of the time, it's
16 the officer who's received it somehow and he puts his name
17 or her name.

18 Q Right. And in your -- in State's Exhibit No. 12, you
19 tested -- you tested three different items?

20 A Correct.

21 Q And on the proof of custody, it's got a Johnston name
22 and the dollar bill. Can you tell me what item 1.3 is in
23 State's Exhibit No. 12?

24 A 1.3 was a folded \$1 bill that contained a powder
25 substance.

1 Q And you tested that substance?

2 A I did.

3 Q And can you tell me what those results were?

4 A Methamphetamine was found in the sample tested. The
5 net weight was less than 0.10 grams.

6 Q Okay. And then on the top of State's Exhibit No. 12,
7 again, can you -- it's got on there the Defendant in this
8 case. It's got my client, Ms. Melanie McClain, over
9 there. Can you read the two other names that are
10 listed -- listed there?

11 A The other ones are Shawna Johnston and Albert Pace.

12 Q All right. Thank you very much.

13 Now, you were sent for this -- in this case -- did
14 you receive the marijuana as well?

15 A No, sir, I did not.

16 Q So you didn't perform any testing on any marijuana?

17 A I'm sorry?

18 Q You didn't perform any testing on any marijuana?

19 A I did not, not for this case, no, sir.

20 Q In the meth testing that you did, you mentioned notes
21 and whatnot that you would take, too. Are those -- do you
22 have those notes?

23 A I do.

24 Q Okay. And what do those notes contain?

25 A My descriptions of the evidence, the tests that I

1 ran, and the results of those tests and the weights.

2 MR. GRAVLEE: Judge, I believe we have a matter of
3 law to take up outside the presence of the jury.

4 THE COURT: Ladies and gentlemen, I'm going to ask
5 you at this time to step back in your jury room. Don't
6 discuss the case. We'll bring you back out in just a few
7 minutes.

8 (WHEREUPON, the jury was excused from open court at
9 approximately 2:15 p.m.)

10 MR. GRAVLEE: Judge, there's testimony on the record
11 that includes information concerning the testing receipt.
12 And we can -- I can have Ms. Black proffer some testimony,
13 too, as to what she has, but I haven't received it.

14 I imagine -- I mean, as an agent of the state that
15 they have possession of it, too. But that has not been
16 turned over in this case. I've not seen the first bit of
17 any notes or anything else that would concern the testing
18 of this and how it would be tested that I would,
19 otherwise, use to be able to prepare this and prepare our
20 cross, or to see if there's any holes or whatnot in here.

21 I don't -- I asked to see what these notes contain.
22 Failure to turn over that evidence, Judge, is, yet,
23 another Brady violation.

24 THE COURT: Mr. Hofferth.

25 MR. HOFFERTH: Judge, I haven't seen these notes. We

1 provided everything we got from SLED, the lab, the chain
2 of custody, and the SLED submission receipt. It seems
3 like Mr. Gravlee has something he wants to get into on
4 cross-examination, if he wants to proffer testimony
5 regarding what the notes are.

6 What she just testified to was it's her notes that
7 help her conduct the tests. He has the tests. If he
8 wants to get into what process was gone into and see if he
9 can fish something he's looking for by way of a Brady
10 violation instead of throwing the word around like it's --
11 you know, everything that he doesn't like in this case is
12 a Brady violation. He's welcome to do that. But we
13 don't -- we didn't have them. He had the labs the entire
14 time. We turned over everything we had from SLED.

15 THE COURT: Do you want to proffer?

16 MR. GRAVLEE: Judge, I think just in response
17 briefly, if there's -- it's, again, you can't just say
18 that you don't have it and not -- and do the head bearing
19 thing on here.

20 As far as the proffer, I suppose I can go ahead and
21 begin.

22 CROSS-EXAMINATION

23 BY MR. GRAVLEE:

24 Q Ms. Black, those notes, you have those as part of
25 your case file?

1 A Yes.

2 Q Those are generated at the time of the -- your
3 testing?

4 A Yes.

5 Q I guess, like, contemporaneous notes with the
6 testing?

7 A That's correct.

8 Q And they help inform your overall decision or your
9 analysis of the chemicals or the substances?

10 A Yes, sir.

11 Q And you -- you mentioned the order in which you test
12 them. Is that -- that -- I genuinely don't know. Do you
13 mention them in order of how they are tested?

14 A I mention them in the order, like, they're on the
15 report, like, item 1, item 1.1, 1.2. So that's how
16 they're listed on my worksheet and that's how I approach
17 the case. I'll start with number 1, 1.1, and so on.

18 Q And then in this case, item 1.2, there were five
19 Ziploc baggies sent down; correct?

20 A Correct.

21 Q And only three of the five were tested?

22 A That's correct.

23 Q Do you have notes on which ones were tested from
24 those?

25 A They are identified as 1, 2, and 3. And then in the

1 evidence, they're so labeled.

2 Q All right. For lack of not knowing what is in the
3 contents of the notes, can you explain anything else or
4 even if you have those, maybe we can --

5 MR. GRAVLEE: Judge, if we could review those just
6 briefly.

7 THE COURT: Yeah. Let's mark them as a State's
8 Exhibit -- I mean, a Court's Exhibit.

9 THE WITNESS: Do you want them opened up?

10 THE COURT: No, no. I'm talking about the notes.

11 THE WITNESS: You scared me there for a minute, sir.

12 All right. So I'm sorry. Tell me what it is you
13 want me to do.

14 BY MR. GRAVLEE:

15 Q Just for the notes or whatever else you have so we
16 can mark those as a Court's Exhibit?

17 A My case file is my -- you know, the whole thing is a
18 cover sheet, the request, the worksheet, the balance
19 information, and then each of the FTIR.

20 Q And those are the originals?

21 A Well, these are, you know, copies that were sent to
22 me from SLED.

23 Q Okay.

24 A But, I mean, original as in nobody else has done
25 anything to them.

1 Q Yes, ma'am. And I'm not alleging any tampering with
2 those notes at all. Just those were not provided, though,
3 to the -- to the State?

4 A No, sir. I bring those of my own accord when I
5 testify so I can refer to them if I need to.

6 Q So those were not shared with the Prosecutor?

7 A No, sir, not unless they ask for them. And they
8 rarely, if ever, do ask for them.

9 MR. GRAVLEE: Judge, I think if we wanted to make a
10 copy of those maybe for the Court's Exhibit.

11 THE COURT: Okay. We can either mark them and then
12 provide you with a copy since they're not the originals.

13 THE WITNESS: The original originals are gone. This
14 is what was scanned into our computer system. And then
15 this is printed out.

16 THE COURT: Do you mind if we mark that as a Court's
17 Exhibit and then give you a copy of it so you'll have it
18 for your records?

19 THE WITNESS: That's fine. When I'm done with them,
20 I shred them anyway.

21 THE COURT: Let's mark the whole packet as Court's
22 Exhibit No. 1.

23 (WHEREUPON, Court's Exhibit No. 1 was marked for
24 identification and admitted into evidence.)

25 MR. GRAVLEE: I beg the Court's indulgence just a

1 moment so I can look through this.

2 (Pause.)

3 MR. GRAVLEE: Judge, the -- to be clear, we do have
4 the initial page outside the table of contents. It is --
5 that is the SLED drug request. Outside of that single
6 sheet of paper, there's 12 additional pages, 13 with the
7 table of contents. But I'm not too concerned about that.

8 But this has some very technically complex stuff that
9 is, frankly, outside of my ability to fully comprehend,
10 Judge. And, certainly, not in the moment in trial here.

11 The fact that these can be turned over and used and
12 sent off for an expert -- because I would have to have an
13 expert. There's no way to -- I don't -- I can't pronounce
14 half the words that she said. And there's a good reason I
15 went to law school. But these -- these results here --
16 it's hard to make sense of what it is with not receiving
17 it until in court here, including some --

18 BY MR. GRAVLEE:

19 Q I can read, it says, Georgia State Crime Lab sample
20 library that I presume some of that stuff is a sample for
21 Pearson, or how is that?

22 A Yes, sir. There's various libraries that go with the
23 instrument. SLED has its own library that I was part
24 of -- one of the persons that helped create that library.
25 We ran our own samples. So that what we -- you compare

1 them to other libraries to see if they match up with your
2 sample.

3 MR. GRAVLEE: Judge, I -- without receiving these
4 within enough time to even know what -- how this is
5 going -- how -- what the significance of it is or isn't, I
6 mean, I think this is the first time I've ever seen these
7 in all the drug cases that I've done. And the fact that
8 they're used to inform the expert's opinion testimony and,
9 ultimately, the -- the drugs --

10 THE COURT: First of all, I guess let Mr. Hofferth
11 look at it.

12 Do you want to look at it?

13 MR. HOFFERTH: Judge, I don't need --

14 THE COURT: I need to look at them.

15 MR. HOFFERTH: Judge, I don't need to look at them.
16 The State didn't request them. The Defense can request
17 them.

18 And just to be clear on what the Brady standard is,
19 we need to start with the threshold matter, is it
20 exculpatory or not? It's not; right? We have the
21 ultimate test. Those -- whatever those notes are that
22 Ms. Black uses to come up with the ultimate outcome of her
23 test, it's her work product.

24 The State is not required to go and dig up everything
25 the Defense might possibly want to see at the time of

1 trial. The State digs up what it needs to. If they want
2 to, specifically, request the work product leading into
3 Ms. Black's end product of the lab result, they can
4 request it. But we're not at a duty to dig up every
5 minute thing that they may possibly want at trial.

6 They had the end result. They had everything the
7 State intended to introduce. If they had questions at the
8 time they got it, they can ask for it, specifically. They
9 did not. If they want to ask her about the findings of
10 this lab result that, as Ms. Black testified and as I will
11 reiterate and as Mr. Gravlee just reiterated, never in a
12 drug trial that he's ever done before has he seen those
13 notes before and never have they been required.

14 Ms. Black just reiterated never has she ever had to
15 produce those work notes before in a trial up until this
16 moment right now. This is, yet, another example, to use
17 his language, of them fishing for some reason to get away
18 from the merits of this case and to kick the can down the
19 road on this pedantic nonsense.

20 If he wants to look at it, if he wants to question
21 her about it, be my guest. If he wants to take a few
22 minutes to look at it so he can get more informed, be my
23 guest. But this is ridiculous. It's just every little
24 thing over the course of this case is a Brady violation,
25 is a mistrial. It's got to stop. It's got to stop.

1 THE COURT: Mr. Gravlee.

2 MR. GRAVLEE: Thank you, Judge.

3 I think he's got Brady mixed up. It's not just
4 exculpatory. It applies to impeachment material as well.
5 This is, also, impeachment material. I'm not going to sit
6 up here and yell. I'm just raising the fact in this
7 objection that this is material, that it is imputed to the
8 State, that is part of the evidence and should be
9 disclosed when we filed our Brady motions and our Rule 5s
10 well over two years ago.

11 It is nice to be able to keep kicking the can down
12 the road for the State when they keep having this stuff
13 pop up that we don't have, that they share late. And they
14 get patted on the back and get excused for the missing
15 evidence that would just be nice to have everything in a
16 case during a trial. But it keeps happening over and over
17 again.

18 Judge, this is another reason -- this is another
19 Brady violation. And I move to dismiss, Judge, dismiss
20 the charges. This is the third time that this has
21 happened in this trial, at least, the third time. But for
22 those reasons, Judge, this is the third time that we have
23 new stuff pop up during trial. And this is the third time
24 it's been on the docket. This is the second time it's
25 been called to trial and I get it mid testimony, Judge.

1 THE COURT: Well, I mean, I think that based on the
2 testimony that's been presented, it's not something that
3 the Prosecution was aware of. I realize this is, also, a
4 state agency. But I don't think there was any definitely
5 intentional suppression by the State.

6 The fact that it's underlying information about
7 tests, which she did have, and the method by which those
8 tests were performed that -- I'm going to find you've not
9 established a Brady violation for those materials.

10 And I'm going to deny your request for a mistrial.

11 MR. GRAVLEE: Thank you, Judge.

12 Can I add one more sentence in?

13 THE COURT: I'm sure you will.

14 MR. GRAVLEE: Just -- just citing this because Your
15 Honor raised it. In State vs. Gibson -- and that cite 334
16 S.C. 515, it doesn't matter whether the prosecutor's
17 misconduct in failing to reveal Brady evidence is due to
18 negligence or an intentional act. Because the Court may
19 find a Brady violation irrespective of the good faith or
20 bad faith of the Prosecutor. And that doesn't necessarily
21 matter, the intent.

22 THE COURT: All right. Anything else?

23 MR. HOFFERTH: Nothing from the State.

24 THE COURT: All right. Any --

25 MR. GRAVLEE: Nothing from the Defense, Your Honor.

1 THE COURT: Will you make copies --

2 Do you want a copy of these?

3 MR. GRAVLEE: Yes, sir.

4 THE COURT: Do you want a copy, Mr. Hofferth?

5 MR. HOFFERTH: I don't need one.

6 THE COURT: Make two copies. And that will be the
7 original. And she'll get one back and Mr. Gravlee will
8 get one.

9 THE CLERK: Yes, sir.

10 (WHEREUPON, a break was taken.)

11 THE COURT: Are we ready to bring the jury back in?

12 MR. GRAVLEE: Just one second, Judge.

13 THE COURT: Okay.

14 (Pause.)

15 THE COURT: All right. Are we ready for the jury to
16 come in?

17 I'm not sure what you want to do, Mr. Gravlee, at
18 this point.

19 MR. GRAVLEE: Judge, I think I just have got one
20 brief question.

21 THE COURT: With her or with the jury in here?

22 MR. GRAVLEE: With her with the jury in here.

23 THE COURT: Okay. So you're ready for the jury to
24 come back in?

25 MR. GRAVLEE: Yes, sir.

1 THE COURT: All right. Bring the jury back in.

2 (WHEREUPON, the jury came into open court at
3 approximately 2:41 p.m.)

4 THE COURT: All right. Mr. Gravlee, you can resume
5 your cross-examination.

6 MR. GRAVLEE: Thank you, Your Honor.

7 CONTINUED CROSS EXAMINATION

8 BY MR. GRAVLEE:

9 Q Ms. Black, just one brief question. On State's
10 Exhibit No. 12, item 1.2, you -- you tested three baggies
11 in there?

12 A Correct.

13 Q And on the items I just received in court today, this
14 SLED drug analysis department balance summary, I believe
15 it's the fourth page in what is now Court's Exhibit No. 1?

16 A Yes, sir.

17 Q Can you read to me the weights of all three of the
18 baggies that were tested in 1.2?

19 A 1.2-1 was 3.484 grams, 1.2-2 was 3.450 grams, and
20 1.2-3 was 3.453 grams.

21 Q So all three of those were about 3.4 grams?

22 A Yes, sir.

23 Q And -- and the other one, the 1.1, the one that we
24 have addressed in court today that -- that Ms. McClain had
25 in her hand. I know you're not aware of that. But 1.1,

1 what's the weight of that one?

2 A 1.26.

3 MR. GRAVLEE: Thank you.

4 No further questions.

5 THE COURT: Mr. Hofferth.

6 MR. HOFFERTH: I have no redirect, Judge.

7 THE COURT: Thank you.

8 You may step down.

9 All right. Call your next witness.

10 MR. HOFFERTH: The State will call Albert Dustin
11 Pace.

12 THE CLERK: Come on up here, sir.

13 I'll bring you around and swear you in over here in
14 just a minute.

15 MR. ALBERT DUSTIN PACE: Okay.

16 (WHEREUPON, a bench conference was held.)

17 THE COURT: Ladies and gentlemen, we have a matter we
18 need to address before this next witness.

19 THE CLERK: Do you want him to exit the courtroom?

20 THE COURT: Yes.

21 THE CLERK: Sir, if you would, return back to the
22 lobby.

23 (WHEREUPON, the jury was excused from open court at
24 approximately 2:47 p.m.)

25 MR. HOFFERTH: Your Honor, we're going to pull the

1 form right now.

2 MR. GRAVLEE: And, Judge, just to be clear, this
3 isn't a Brady violation. We're used to whenever a witness
4 is called on a co-defendant --

5 THE COURT: Did he say he was going to provide it?

6 MR. GRAVLEE: Yes, sir.

7 THE COURT: Okay. That's all I need to know. And
8 that follows that rule and you're good.

9 MR. GRAVLEE: Just letting the Court know.

10 THE COURT: The Court knows. That's why I took the
11 break.

12 (Pause.)

13 THE COURT: This is an NCIC report? Are you going to
14 read it into the record? Is that what you're going to do?

15 MR. HOFFERTH: I'm happy to, if you'd like me to.

16 THE COURT: Has he had a chance to review it?

17 MR. GRAVLEE: The question, Your Honor --

18 THE COURT: I guess, what are we doing?

19 MR. GRAVLEE: It doesn't appear that he's -- he's got
20 a dismissed meth charge from 2020.

21 MR. HOFFERTH: He has 20 -- July 30th of 2015, he has
22 a possession of methamphetamine charge. That's a
23 non-conviction. And then this pending charge -- or
24 charges. And then a March 5th of 2023 pending charge for
25 distribution of methamphetamine out of Anderson County

1 that is not resolved.

2 THE COURT: It doesn't sound like there's anything
3 subject to cross-examination as far as criminal record.

4 MR. HOFFERTH: That's my understanding.

5 MR. GRAVLEE: I guess it depends, Judge.

6 THE COURT: What did you say?

7 MR. GRAVLEE: I guess it depends on his testimony,
8 and how he would testify, and any responses to questions
9 about it. Because you can get into charges that may not
10 necessarily be convictions for purposes of impeachment,
11 especially on cross, especially because this case entirely
12 hinges on constructive possession within these three being
13 charged and the circumstantial evidence that's, also, with
14 the other two co-defendants as well.

15 So in State -- there's State vs. Whitner [phonetic],
16 Judge.

17 THE COURT: Have we got to that point yet?

18 MR. GRAVLEE: I just --

19 THE COURT: What you'll have to do is proffer.
20 You're going to have to proffer -- if you get to the point
21 where you have to ask him questions about any of the
22 records there, you're going to have to proffer testimony.
23 And I'll hear it at that time.

24 MR. GRAVLEE: And that's fine, Judge. I just didn't
25 want to bring them in and send them out.

1 THE COURT: It sounds like that's what we're going to
2 have to do.

3 MR. GRAVLEE: We may get there, Judge.

4 THE COURT: All right. Is the State ready?

5 MR. HOFFERTH: Ready.

6 THE COURT: Is the Defense ready?

7 MR. GRAVLEE: Ready to proceed, Judge.

8 THE COURT: Bring the jury in.

9 (WHEREUPON, the jury came into open court at
10 approximately 3:02 p.m.)

11 THE COURT: All right. Are you ready to call your
12 next witness?

13 I'm not sure what's going on over here.

14 MR. HOFFERTH: I'm not either.

15 MR. GRAVLEE: Just cords and computers, not my thing.

16 THE COURT: Turn this off.

17 All right. Call your next witness.

18 MR. HOFFERTH: Thank you, Your Honor.

19 The State would call Albert Dustin Pace.

20 THE COURT: All right.

21 THE CLERK: Place your left hand on the Bible and
22 raise your right hand.

23 WHEREUPON,

24 ALBERT DUSTIN PACE,

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

1 THE CLERK: Thank you.

2 If you would have a seat.

3 And state your name for the record, please.

4 THE WITNESS: Albert Dustin Pace.

5 DIRECT EXAMINATION

6 BY MR. HOFFERTH:

7 Q Mr. Pace, just to start off, make sure you speak up,
8 too, for the jury.

9 Do you know who the Defendant is?

10 A Yeah.

11 Q Okay. How do you know her?

12 A Just lives close by and has -- has helped me out
13 several times with a ride to the store or, you know,
14 anything I might need to go do, pay a bill.

15 Q So you're neighbors -- or you were neighbors?

16 A Yeah, we are.

17 Q Okay. Were you in the vehicle -- or were you in her
18 vehicle on the evening of October 20th of 2021?

19 A Yes.

20 Q The night that is the subject of why you're here
21 today?

22 A Yes.

23 Q Okay. Why were you in the vehicle with her that
24 night?

25 A She had come by. And at the time, I was hungry. And

1 she said she had to go run somewhere. I said, Well, okay.
2 I said, Ain't no way you could take me by and get
3 something eat, is there?

4 She said, Well, I wasn't going near a grocery --

5 MR. GRAVLEE: Judge, I would object to hearsay.

6 He -- he's saying she said, or otherwise.

7 BY MR. HOFFERTH:

8 Q Without saying what you said to her, why were you in
9 the car with her that night?

10 A To go get something to eat.

11 Q Okay. So was it your vehicle that you were in?

12 A No, sir.

13 Q Okay. Where, specifically, were you going to get
14 something to eat?

15 A At -- there's a gas station that used to be called
16 Handy Andy's. That's the older name for it, but that's
17 what I know of it as, or whatever. So that's what I call
18 it.

19 Q Where were you before getting into the vehicle?

20 A My house.

21 Q Okay. Now, can you explain to the jury what happened
22 upon that vehicle getting stopped by police?

23 A I mean, I got in the vehicle and we took off. And
24 we're on the way to wherever she had to go or to get me a
25 bite to eat, which I had a female with me -- a friend, or

1 whatever, a female friend.

2 Q Is that Shawna Johnston?

3 A Yes. And I told her, Come on. Let's go get
4 something to eat right quick. Because I ain't got any
5 groceries, and stuff. I said, This is about the best
6 chance we going --

7 Q Now, let's just to get to the subject of the
8 question.

9 A Okay.

10 Q What happened upon the police hitting lights on the
11 car and the police coming to the vehicle that you can
12 remember?

13 A Not -- I mean, I don't remember a whole lot. I mean,
14 she had -- I don't know -- picked her phone up, or
15 whatever. And I don't know. I think the best I can
16 remember, the steering wheel slipped or something with her
17 hand, like, just a little bit, not much. The vehicle
18 might have, you know, swerved a little bit. But she got
19 control of it and corrected it.

20 And the next thing I know the police was behind us,
21 or whatever, with lights.

22 Q How long were you in the vehicle before the police
23 stopped y'all?

24 A Not long. I mean, we had went across -- we was a few
25 miles from where I live. And I just had got in the

1 vehicle. And I -- honestly, I can't remember how long.

2 Q If you had to give a ballpark timeframe?

3 A The best of my memory serves me, 15 minutes maybe.

4 Q Is that both you and Ms. Johnston? Did you get in at
5 the same time?

6 A Yes.

7 Q What did you bring into the vehicle that night?

8 A A cell phone, my wallet. And I was -- but, I mean,
9 as far as after that, I mean, I had -- do you mean like in
10 my pockets and everything total? I don't understand the
11 question.

12 Q Well, as related to the stop and why we're here
13 today, what did you bring into the vehicle?

14 A I had some --

15 Q Or what did you have --

16 A -- I had some marijuana.

17 MR. HOFFERTH: Okay. I'm showing the witness what's
18 been pre-marked as State's Exhibit No. 8.

19 BY MR. HOFFERTH:

20 Q Is this familiar to you from that night?

21 A No.

22 Q Is this yours?

23 A Not that I recall, but.

24 Q Is this your makeup pouch?

25 A No, sir.

1 Q Is this your camouflage bookbag with zippers and
2 straps?

3 A No, sir, I mean, not that I can remember.

4 Q How about this meth?

5 A No, sir.

6 Q State's Exhibit No. 9, is any of that methamphetamine
7 yours from that night?

8 A No, sir.

9 Q How do you know that? How do you know that's not
10 yours? Or how should the jury know that's not yours?

11 A Well, I was unaware of it being in the vehicle as I
12 thought everybody was. But it was -- I -- like I said, I
13 had some marijuana on me. And when -- you know, I -- you
14 know, I claimed it. And I felt bad because I had it on
15 me, of course. But I thought that was going to be it.

16 I mean, I had done asked the officers, you know,
17 okay, So what's going to happen now?

18 And he said, Well, if everything else checks out all
19 right, we're going to issue a ticket.

20 Q All right. I'm going to stop you there.

21 A Okay.

22 Q But you're saying the marijuana in the car was yours?

23 A Yes.

24 Q Did Ms. McClain take any action as it relates to
25 you -- after the stop, did Ms. McClain say anything to

1 you, give you anything, anything along those lines?

2 A Just that she didn't know of nothing in the vehicle.
3 I said, Yeah, you know, I'm sorry, you know, because
4 that's -- they had done discovered the marijuana. And I
5 told her, I'm sorry. I didn't mean to bring it with me.
6 And that's when they went to search the vehicle, you know,
7 or whatever.

8 Q Now, to your knowledge, you said you got in the car
9 with Shawna Johnston; right?

10 A Yeah.

11 Q Did she bring this bookbag into that car?

12 A I -- I mean, it seems like the pink bag -- I mean, I
13 don't know. It seems like she might have had that, I
14 mean, I --

15 Q Do you know after the stop if she said it was hers?

16 A No. Because she -- as far as after the stop, she
17 didn't really -- I mean, the only time I talked to her
18 after that was down at the jail.

19 Q Okay. I don't want to talk about --

20 A And that was just --

21 Q I'm talking about at the scene of the stop. Do you
22 remember her, specifically, bringing this bookbag into the
23 car? When was the first time you saw this?

24 A Whenever they were discovering it.

25 Q Okay. You're talking about the police?

1 A Yeah.

2 Q Now, everybody in the car was charged with the
3 methamphetamine that was found in there; right?

4 A Yes, sir.

5 Q Because none of y'all admitted to it or, at least,
6 said it was theirs; right?

7 A Right.

8 Q So you got charged with the methamphetamine; right?

9 A Yes, sir.

10 Q In fact, you're still charged for that?

11 A Yes, sir.

12 Q And just to be clear, was anything offered to you by
13 the State in exchange for you testifying today?

14 A No, sir, not at all.

15 MR. HOFFERTH: Just one moment, Judge, if that's all
16 right.

17 (Pause.)

18 MR. HOFFERTH: I have no further questions for this
19 witness.

20 THE COURT: Cross-examination.

21 MR. GRAVLEE: May it please the Court, Judge.

22 CROSS-EXAMINATION

23 BY MR. GRAVLEE:

24 Q Mr. Pace, let me start where Mr. Hofferth said, Let
25 me stop you right there. You mentioned that the officer

1 said that if you -- everything worked out, you'd just get
2 a blue ticket?

3 MR. HOFFERTH: Objection, Your Honor. That's
4 hearsay.

5 MR. GRAVLEE: It's going directly to the question
6 that he --

7 THE COURT: That's why he stopped him, because it was
8 hearsay.

9 MR. GRAVLEE: All right, Judge.

10 THE COURT: Sustained.

11 BY MR. GRAVLEE:

12 Q So, Mr. Pace, is it your understanding that you were
13 going to have just a blue ticket if everything worked out?

14 A Right after -- yeah. Because, I mean -- because, I
15 mean, I asked, you know, right as soon as, you know, I
16 told them it was mine that I didn't want nobody else
17 getting in trouble for something of mine that I should
18 have left at home.

19 Q All right. So you're just claiming the marijuana?

20 A Yes, sir.

21 Q Just the three grams of marijuana in your little
22 pouch?

23 A I can't -- if that's what -- I don't know how much,
24 but, yeah.

25 Q Well, would it refresh your recollection if I told

1 you that you had a black zipper pouch with you that night
2 that you claimed?

3 A I can't honestly remember.

4 Q Okay.

5 A But, I mean, yeah. I claimed whatever, you know...

6 Q And then within that black zipper pouch that you had
7 little baggies in there as well?

8 A I can't remember the black baggy, to be honest. But
9 my memory ain't the best.

10 Q So with your -- with the marijuana that you claimed
11 in there, you do remember that?

12 A Yeah, I mean...

13 Q You don't remember the empty plastic baggies that
14 were inside of the pouch with the marijuana?

15 A I just remember the marijuana. Because I said here,
16 you know -- and I willingly handed it over. And I said,
17 Look, this is...

18 Q And you had a drug smoking pipe on you, too; right?

19 A A pipe to smoke marijuana -- I was going to smoke the
20 marijuana with it.

21 Q The glass -- the glass bowl -- the burnt glass bowl
22 pipe thing, you don't recall having that in your
23 possession either?

24 A I had something to smoke the marijuana that I had on
25 me, or that was going to be my intent.

1 Q Okay. The night we're here about, you were
2 getting -- you were getting a ride to the store?

3 A Yes, sir.

4 Q And Melanie, Ms. McClain, my client over here, she
5 gave you a ride?

6 A Yeah.

7 Q She picked you up. And you had your girlfriend -- or
8 your female friend, Ms. Shawna Johnston; correct?

9 A Yeah.

10 Q Okay. So y'all wanted to get a ride to get something
11 to eat?

12 A Yeah, Hunts Brothers Pizza.

13 Q She got a ride with you, hopped in with you?

14 A Yeah.

15 Q And she was staying at your home at that time?

16 A She had been having to hunt somewhere to stay. She,
17 for whatever reason, couldn't stay no longer where she had
18 been. And I had talked to her some on the phone. And I
19 said, Well, you know, I really hate you ain't got nowhere
20 to go. I mean, I don't want you to be homeless. If you
21 need somewhere to stay, you know, a day or two until you
22 get a better -- you know, at least, a place established
23 to, you know, stay that's safe.

24 Q Okay. And at the time of the stop, you were in the
25 front seat; correct?

1 A Yes.

2 Q Do you remember that?

3 A Yes, sir.

4 Q The center console was between you and Ms. McClain?

5 A (There was no response.)

6 Q Correct?

7 A Yes, sir.

8 Q And Shawna, she was sitting in the middle back behind
9 you on the floorboard; right?

10 A Yeah. I remember --

11 Q You remember that?

12 A -- she was on the floor behind -- behind me in the
13 very back.

14 Q So, Mr. Pace, let's just get down to it here, I
15 guess. Your charges -- your trafficking charge -- you
16 were charged that night, too, because you had memory
17 issues that night as well?

18 A Yeah. I have a brain injury, traumatic brain injury.

19 Q And at that time, you were charged with trafficking
20 methamphetamine as well; correct?

21 A Yeah.

22 Q Okay. And you were, also, charged with that
23 possession of marijuana; correct?

24 A Yeah.

25 Q Okay. That night, you, also, had counterfeit bills

1 on you?

2 MR. HOFFERTH: Judge, objection. We've gotten into
3 this several times. He can tie no nexus --

4 THE COURT: Sustained.

5 MR. GRAVLEE: Not to just ask the question, Judge?

6 THE COURT: Yes. Sustained.

7 And disregard that, jury.

8 BY MR. GRAVLEE:

9 Q So, Mr. Pace, you have that trafficking charge
10 pending; correct?

11 A Yeah.

12 Q Would you like to spend years of your life away?

13 A No, sir.

14 Q Possession of marijuana, that carries a minimum --
15 you know, worst case scenario, it's a 30-day charge. Do
16 you know that?

17 A No, sir. I didn't know that.

18 Q Do you know the best case scenario, it only carries a
19 hundred dollar fine?

20 A Well, see, I've had a traumatic brain injury --

21 Q Yes, sir. And I understand that.

22 A I've had doctors nearly kill me with being a guinea
23 pig, pretty much, with medicines and stuff, and had me on
24 high powered narcotics and stuff --

25 Q But, Mr. Pace, I'm just asking you about what

1 marijuana -- what the penalties are for marijuana.

2 A Okay.

3 Q Would it surprise you that a hundred dollar fine is,
4 actually, the lowest. You might just get a hundred dollar
5 fine if you were just convicted of just marijuana
6 possession -- simple possession of marijuana. Did you
7 know that?

8 A I didn't -- I mean, no, not fully.

9 Q But your charge is -- this methamphetamine charge is
10 still pending; right?

11 A Yes, sir.

12 Q You haven't been to court to -- for a guilty plea to
13 own that, have you?

14 A For what exactly?

15 Q The trafficking methamphetamine charge.

16 A No, I've not.

17 Q Okay. Are you on trial today?

18 A No, sir.

19 Q You're not on trial today?

20 A No. I mean, a witness.

21 Q Yes, sir. You hired an attorney. You're not over
22 there with your attorney?

23 A My attorney ain't even here.

24 Q So this charge hasn't been dismissed?

25 A No. I mean, as far as I know, it hasn't. But, like

1 I said, my lawyer's not here. And I ain't...

2 Q And your charge hasn't been reduced that you know of?

3 A No. I mean, I've not been contacted.

4 Q And -- and Shawna, do you see her anywhere in this
5 courtroom here today?

6 A No, sir.

7 Q She ain't here?

8 A No, sir.

9 Q Shawna isn't on trial for it right now either?

10 A No.

11 Q You hadn't seen Shawna in the courthouse today?

12 A I ain't seen her since that night -- or that
13 afternoon or shortly after that. It's been a long...

14 Q Okay. So your charge hasn't been dismissed. It's
15 still pending. So you're just here to testify out of the
16 goodness of your heart?

17 A Well, I mean, I had a subpoena to come. And that's
18 what I'm --

19 Q You're not expecting any benefit --

20 A Not at all.

21 Q -- by testifying here today?

22 A Not at all. Just coming for the three subpoenas I
23 received.

24 Q And have you spoken with the Prosecutor about this
25 case?

1 A No.

2 Q Have you spoken with any prosecutor about this case?

3 A No, sir.

4 Q Have you spoken with your attorney about it?

5 A Well, yeah.

6 Q Okay. And you're aware that although the Prosecutor
7 said it's not in exchange for testimony, you have a plea
8 offer in this case, don't you?

9 A What would that be? Because I'm not aware.

10 Q Your plea offer --

11 MR. HOFFERTH: Judge, no, objection.

12 THE COURT: He said he's not aware of it.

13 MR. HOFFERTH: Absolutely not.

14 BY MR. GRAVLEE:

15 Q So you're unaware of any type of reduction --

16 MR. HOFFERTH: Objection. Asked and answered.

17 THE COURT: Sustained.

18 THE WITNESS: No.

19 BY MR. GRAVLEE:

20 Q Any offers of leniency whatsoever, whether it's for
21 your testimony or not?

22 A No, sir.

23 Q Okay. So just out of the goodness of your heart is
24 why you're on the stand here today?

25 A It's because I received subpoenas.

1 Q So, Mr. Pace, I'm going to bring your attention to
2 what is some body cam footage.

3 MR. GRAVLEE: We're going to try to pull this up
4 here.

5 I beg the Court's indulgence for a moment.

6 (Pause.)

7 MR. GRAVLEE: Do you mind if I pull up
8 Mr. Massingill's body cam? I'll just turn it to the side.

9 MR. HOFFERTH: Okay.

10 THE CLERK: I've got to switch back to that one.

11 MR. GRAVLEE: We could bring it over there, too.

12 Mr. Hofferth, do you mind? I'm going to get my
13 co-counsel to help drive this thing.

14 BY MR. GRAVLEE:

15 Q All right. So, Dustin, while we're getting that
16 prepared and pulling up this body cam here, that night in
17 the car, they found several things in your possession.
18 They found marijuana?

19 A (There was no verbal response.)

20 Q I'm sorry. We're trying to make a record here so I
21 just need you to speak up and answer the question. Just
22 "yes" or "no."

23 A Yes. I handed marijuana over, yes, sir.

24 Q Okay. They found your drug smoking device pipe
25 thing?

1 A Yeah. I handed it over.

2 Q Okay. And you tried to hide that -- that bowl when
3 you were getting out?

4 A Well, I mean --

5 Q Do you remember?

6 A I was nervous. Yeah, I mean, I was just in shock, I
7 guess you would say, and...

8 Q You didn't hop out real quick from that car, did you?

9 A Well, no. I didn't want to be shot, or tasered, or
10 nothing like that, you know.

11 Q So you decided to slow roll it and just not get out
12 quick?

13 A Well, I mean, for one, I've had a brain injury and
14 was in a coma 28 days and nearly lost my life.

15 Q Sure.

16 A Therefore, I like to think things through a little
17 bit more so before I just jump and do it, especially when
18 it's with police officers with guns, and tasers, and mace,
19 or, you know, any of that kind of stuff.

20 Q So -- and I'm sorry, Mr. Pace. I'm sorry to hear
21 about the traumatic brain injury. I'm not -- I don't want
22 to rehash that anymore. You've brought that up several
23 times. And you've talked about you didn't recall some
24 things.

25 But you do remember that you didn't get out very

1 quick from the car that night?

2 A I -- in general, I don't jump to do anything real
3 quick as -- I mean, I'm getting older now, too, so, you
4 know. And I've had the brain injury.

5 Q You don't jump to doing things real quick?

6 A I try not to, I mean.

7 Q You claimed the marijuana pretty quick, didn't you,
8 right off the bat?

9 A Yeah. Because I didn't want nobody else -- I mean,
10 for a mistake I done, which was didn't leave it at home.
11 And --

12 Q With the other baggies that were in your pocket, too?

13 THE COURT: Hold on. When he's talking, you have to
14 stop. You can't both --

15 MR. GRAVLEE: Judge, I -- yes, sir.

16 BY MR. GRAVLEE:

17 Q Go ahead, Mr. Pace.

18 A I lost my -- what I was even talking about.

19 Q I'm sorry about that. That you had with you -- with
20 that marijuana, you had those little baggies as well in
21 there?

22 A Not that I -- I mean, my memory ain't the best. I
23 can't remember. I just remember I had some marijuana on
24 me that I messed up and didn't leave at home.

25 Q Well, do you recall --

1 MR. GRAVLEE: If you don't mind going to nine minutes
2 and 50 seconds.

3 BY MR. GRAVLEE:

4 Q This will help refresh your recollection of what
5 happened that night.

6 (WHEREUPON, a portion of State's Exhibit No. 1 was
7 played in open court.)

8 BY MR. GRAVLEE:

9 Q So when he asked you there, he said, What about all
10 those little dope bags in there? Did you hear what you
11 said there?

12 A No, sir, I didn't.

13 Q I don't -- I don't -- I don't know, there shouldn't
14 be. And then that's when they stopped you there from
15 arguing with them. Do you recall that?

16 A Honestly, no, I mean. But I don't quite understand
17 exactly what you're asking.

18 Q The little bags that were in your possession at the
19 time that night. They're talking about the little bags
20 that were in your possession.

21 A I don't -- I don't remember the bigger bag, to be
22 honest. But I do remember -- like I said, I remember what
23 I had on me and what I claimed, which was the marijuana.

24 Q Just the marijuana?

25 A I mean, obviously, something to smoke it with -- I

1 was going to smoke it in.

2 Q So, Mr. Pace, you don't want to claim -- you didn't
3 want to claim the marijuana that was found in the
4 camouflage bag that had methamphetamine in it, or are you?

5 A Camouflage bag with what in it?

6 Q Yeah. They're talking about this thing. There's
7 marijuana in this bag, too. Are you claiming --

8 A I didn't -- the marijuana I had I handed over -- or
9 I, you know -- and I claimed it, like I said. You know,
10 when I gave it up, I said, you know, I got this on me. I
11 didn't mean to bring it with me.

12 Q But you had it on you anyway?

13 A Yes, sir.

14 Q I mean, is that a "yes"?

15 A Right. I mean, it was mine. I had it on me. And I
16 claimed it, but...

17 Q I didn't mean to say, Yes, sir. I meant to say, yes.
18 I meant to say, sir. I'm sorry. I didn't mean for it to
19 come off that way. But you had the marijuana on you that
20 night; correct?

21 A Yeah.

22 Q And that's all you're here to claim?

23 A I mean, I claimed what was mine. And that's all I
24 know about, I mean.

25 Q You're not on trial for possession of paraphernalia?

1 A I mean, I'm just being a witness. I mean, I come to
2 give my story.

3 Q It's just a "yes" or "no" question.

4 A I'm sorry. I don't understand --

5 Q You're not on trial right now?

6 A No.

7 Q And you're not in jail right now?

8 A No, sir.

9 Q You're out on bond right now?

10 A Yes, sir.

11 Q Right. You paid to get out and have been out on
12 bond. And you're glad you're not on trial for trafficking
13 methamphetamine; right?

14 A Well, I mean, yeah. I mean, obviously, anybody
15 would.

16 Q Right. Because, you know, you're facing years if
17 you're convicted of trafficking; right? A minimum of
18 three? A maximum of 10 years in prison?

19 A I didn't know that.

20 Q And your trafficking charge hasn't been dismissed?

21 A No, sir.

22 Q It's still pending?

23 A Yes, sir.

24 Q It's still out there?

25 A Yeah.

1 Q They could try you, too. Why you aren't, I don't
2 know. Are you working for the police?

3 A No, sir.

4 Q No?

5 A No way. That's...

6 Q No?

7 A No, sir.

8 Q Okay. So is -- is it just marijuana that's your
9 thing? Is that just -- is -- you don't do meth?

10 A I mean, I have before. But -- I mean, in my younger
11 days. But the marijuana -- and the reason I have it at
12 any time -- or have had it at any time in my past or
13 whatever is the posttraumatic brain injury headaches I get
14 that last for, like, weeks at a time.

15 I've had neurologists, and doctors, pain management
16 doctors put me on things such as ketamine, gave me a
17 ketamine infusion, which almost killed me. I was about to
18 have a stroke. I had done lost my vision and everything
19 because of it. And they just rushed me out the back door
20 after that. I mean, I've had two or three experiences
21 like that, you know, terrify me of doctors.

22 Q Sure. But, Mr. Pace, let's kind of get back on track
23 here. You've -- you know, you were saying it's just
24 marijuana. You don't -- you haven't been charged with any
25 other kind of methamphetamine charge?

1 MR. HOFFERTH: Objection, Judge.

2 THE COURT: Sustained.

3 MR. GRAVLEE: Judge, I'd like to be heard.

4 THE COURT: Ladies and gentlemen, just step out of
5 the room and go to the jury room. Do not discuss the
6 case.

7 (WHEREUPON, the jury was excused from open court at
8 approximately 3:38 p.m.)

9 THE COURT: I thought we talked about this before
10 we -- we had the break.

11 MR. GRAVLEE: That was what I was mentioning, Judge,
12 just before the jury came back in as to that issue. It's
13 State vs. Whitner.

14 THE COURT: Right. But I said if you wanted to
15 proffer that, but it was not proper to say, have you been
16 charged with meth after that's what we exactly -- what we
17 discussed, and he was charged, and there was no
18 conviction.

19 MR. HOFFERTH: It's a non-conviction.

20 THE COURT: And I said if you need to proffer that,
21 you can proffer that, but not bring it up in front of the
22 jury.

23 MR. GRAVLEE: Judge, he just opened the door when he
24 said, I used to do meth in my younger days.

25 THE COURT: Okay. Listen to me, though. I said if

1 you had to get there, you needed to proffer it and not
2 just ask the question in front of the jury after we
3 discussed it. The door -- if you think the door is open,
4 then that's when you say, Judge, we have a matter to take
5 up outside the jury, not just blatantly violate what we
6 discussed and I told you not to do before the break.

7 MR. GRAVLEE: Judge, as far as -- my understanding
8 from what we were discussing with State vs. Whitner is
9 that if this issue did come up that we were going to send
10 the jury out, not that I can't get into a -- a question
11 that is absolutely relevant on impeachment of him when it
12 is a co-defendant trial.

13 He's on -- his charge is still pending. He's got a
14 pending charge as well in Anderson that's all the more
15 important that I be able to cross him. Because a
16 conviction here in Pickens necessarily enhances and can
17 enhance that charge for it to be a second in Anderson as
18 well.

19 My understanding was that I was restricted from just
20 bringing it up. It was just we're going to have to
21 potentially litigate whether I can bring in the specific
22 charge itself.

23 MR. HOFFERTH: No, Judge. The rules are clear, it's
24 convictions. He just in front of the jury stated -- asked
25 him the question, Don't you have charges for

1 methamphetamine? It's not charges. It's convictions.

2 Okay.

3 Him saying that he has done methamphetamine in the
4 past is not tantamount to him having a conviction or
5 having charges for methamphetamine in the past. The
6 proffer -- my understanding -- and I believe the Court's
7 was as well was if he wants to explore the area about
8 charges, which the State's intention is absolutely not,
9 impermissible, he needed to do so outside the presence of
10 the jury. That's wholly improper.

11 MR. GRAVLEE: Judge, I've got State vs. Martin here,
12 too, that allows for impeachment establishing a motive to
13 lie when -- when somebody is denying the drug use, the
14 knowledge. He just -- he himself -- I didn't bring that
15 out. He said, In my younger days, I used to do meth. I
16 had no idea that he was about to say, in my younger days.

17 This charge is pending from March of 2023. At that
18 point in time, it becomes directly relevant to his
19 testimony and impeachment of his credibility. And that's
20 exactly what the purpose of cross is to bring out.

21 THE COURT: Okay. And, as I said before the break,
22 before -- you can proffer this testimony outside the
23 presence of the jury, not asking the question in front of
24 the jury. That was the whole purpose of that discussion,
25 so we could go over that outside the presence of the jury

1 and make a determination.

2 MR. HOFFERTH: Judge, and I don't know the details of
3 Whitner. But based on what he was explaining in the case
4 law, if a witness gets on the stand and denies use of
5 methamphetamine in the past and maybe we reach the
6 question of talking about prior charges, it's my stance
7 absolutely not if it's a non-conviction.

8 And then he wants to now parlay that into a charge
9 that took -- after this incident that is still pending
10 that he knows nothing about the details of, and neither do
11 I. But it's completely irrelevant to the subject that
12 took place on October 20th of 2021, talking about a
13 pending charge from 2023, I believe it was. But
14 absolutely not. And he's already talked about it in front
15 of the jury.

16 THE COURT: All right. Would you like to proffer?

17 MR. GRAVLEE: I would, Judge. And I will bring --
18 here's a copy of State vs. -- this is Martin, and one for
19 the Court as well.

20 CROSS-EXAMINATION

21 BY MR. GRAVLEE:

22 Q So, Mr. Pace, your testimony is that you haven't used
23 methamphetamine since your younger days; correct?

24 A Yes.

25 Q However, in March of 2023, you were charged with

1 possession with intent to distribute methamphetamine;
2 correct?

3 A When? When is that?

4 Q Just this past year in Anderson County. You and --
5 it appears -- let's see. The driver and the passenger.
6 But you were the passenger on Highway 8 in Pelzer.

7 A Okay. I didn't -- I think...

8 Q And that charge is still pending; right? You haven't
9 pled to that?

10 A No, I ain't.

11 Q You ain't had a trial on it?

12 A No.

13 Q Okay. And they also -- and they located what they
14 believed to be about, you know, seven grams of that
15 crystal substance?

16 A I don't know what -- what -- or how much it was. It
17 wasn't even my vehicle. I was simply getting a ride to my
18 house from my girlfriend's house since I'm without a
19 vehicle and had the brain injury, and stuff. I mean, I
20 don't drive that much. But the vehicle I -- you know,
21 about the time I can get in touch with a ride home, I was
22 ready to go. I had a dog with me, which was sick.

23 Q That's correct.

24 A And I was just trying to get home. I don't know what
25 he had in the vehicle.

1 Q And in that -- during that stop, you had several
2 glass pipes used to smoke methamphetamine with that dog
3 bag of yours?

4 A That dog bag?

5 Q With the -- with the dog food bag for the dog that
6 you were holding?

7 THE COURT: Hold on here. Are we not getting into
8 some areas without his attorney here? First of all,
9 looking at Martin, it was a quick review, but all they're
10 talking about here is convictions to go along with the
11 prior drug use.

12 MR. GRAVLEE: Judge, in Martin --

13 THE COURT: What you just handed me talks about
14 convictions.

15 MR. GRAVLEE: -- the use was logically relevant and
16 was not to impute character, but to establish motive --

17 THE COURT: Okay.

18 MR. GRAVLEE: -- as well as his intent to use it.
19 You know, it's --

20 THE COURT: And they said the convictions could be
21 used. They don't have anything about charges, though.

22 MR. GRAVLEE: Judge, give me a -- just a second here.
23 I think when they were talking about the -- in this case
24 as well, they were talking about the -- the circumstances
25 of it.

1 THE COURT: Which involved convictions.

2 MR. GRAVLEE: Well, and in this case, Judge, they --
3 it's not -- they're not talking about on -- I'll bring to
4 the Court's attention 533 of the South Carolina Reporter.
5 That's subsection -- or the section three evidence of
6 marijuana use, you know. Because he -- the Court found no
7 error there where the Court ruled that the State could
8 cross-examine Martin about his marijuana use if he denied
9 being in possession of marijuana on the night of his
10 arrest.

11 THE COURT: But how can you get to that -- from that
12 to bringing in charges?

13 MR. GRAVLEE: Because if he's denying ever being a
14 user in his younger days --

15 THE COURT: Charges does not equate -- I mean, a
16 conviction, yes. Charges do not go -- does not show
17 somebody is a user because they're not -- they're still
18 pending. He's not pled to them. He's not been found
19 guilty.

20 MR. GRAVLEE: The probative value, Judge, of this on
21 cross is -- absolutely outweighs any prejudicial effect of
22 him. I'm not trying to convict --

23 THE COURT: He still doesn't have a conviction. It
24 has nothing to do with probative versus prejudicial.

25 MR. GRAVLEE: It can be charges.

1 THE COURT: I'm ruling in my review of State vs.
2 Martin that his charges are not admissible or any
3 questions regarding his charges are not admissible based
4 on your case.

5 MR. HOFFERTH: Judge, I'd ask for a curative
6 instruction as it relates to the question that he asked
7 before the jury went out. He opened the door for the jury
8 to, you know, contemplate whether or not he has charges.
9 The Court knows he doesn't have any --

10 THE COURT: Well, he has charges pending now.

11 MR. HOFFERTH: Excuse me. I meant convictions.

12 THE COURT: Yeah.

13 MR. HOFFERTH: I think something needs to be said as
14 to the unfoundedness of that question.

15 THE COURT: All right. Anything else you want to put
16 on the record?

17 MR. GRAVLEE: Judge, just that -- that I think that
18 Martin doesn't just apply to convictions. It does apply
19 to extrinsic evidence concerning use about it when he
20 denied from his younger days.

21 THE COURT: The trial court failed to properly weigh
22 the probative value of his prior convictions against the
23 prejudicial effect. They're weighing the prior
24 convictions.

25 MR. GRAVLEE: That section, Judge, is --

1 THE COURT: Anyway, I mean, I've made a ruling on it.
2 You're protected.

3 MR. GRAVLEE: That section is about evidence of prior
4 convictions. The one that I'm pointing to is the next
5 section that talks about --

6 THE COURT: Prior drug use.

7 MR. GRAVLEE: Yes, sir.

8 THE COURT: There's still a difference.

9 MR. GRAVLEE: Nothing further, Judge.

10 THE COURT: Are we ready for the jury?

11 MR. HOFFERTH: Yes, sir.

12 MR. GRAVLEE: Yes, sir, Judge.

13 THE COURT: All right. Bring the jury in.

14 (WHEREUPON, the jury came into open court at
15 approximately 3:52 p.m.)

16 THE COURT: All right. Ladies and gentlemen, the
17 last question has been stricken from the record. And
18 y'all are to disregard that during your deliberations.

19 MR. GRAVLEE: Thank you, Your Honor.

20 CONTINUED CROSS EXAMINATION

21 BY MR. GRAVLEE:

22 Q Earlier, Mr. Pace, you mentioned when Mr. Hofferth,
23 the Prosecutor, asked you about -- about that bag if you
24 recalled anything about that bag. And you testified when
25 he asked about Shawna, your girlfriend, female friend,

1 that she might have had that; correct?

2 A I mean, possibly, yeah. I mean, I don't know. Like
3 I said, I don't know hardly what I had myself, you know,
4 beyond what I -- nothing beyond what I claimed, I didn't
5 remember.

6 Q Okay. And then do you remember the officer asking
7 you -- and the officer at one point asked you, Is that the
8 only bag you own in that van? He was talking about what
9 you had with the marijuana and the baggies in that little
10 pouch that you had. Do you recall what you said?

11 A No.

12 Q Okay. Would it refresh your recollection if we
13 played it on body cam for you?

14 A I mean, like I said, all -- I stated what I claimed.
15 And that was because it was mine. And anything beyond
16 that --

17 Q You didn't mention there's other people in the car
18 that have used it in the past or some explanation like
19 that?

20 A I don't -- I can't speak on nobody else's behalf but
21 my own because I don't know. I'm not with them 24/7. And
22 I don't -- you know, I was just getting a ride to the gas
23 station to get a bite to eat.

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

1 BY MR. GRAVLEE:

2 Q So you hesitated when he said, Is that your only bag
3 in there?

4 A Like I said, I try to think about stuff more. So my
5 mental ain't quite what it was before, you know, the
6 traumatic brain injury and coma.

7 Q Sure. Yes, sir. We've discussed that.

8 A Yeah, sure have.

9 Q So, you know, Mr. Pace, I think we can kind of wrap
10 this up a little bit. You hopped in together with -- with
11 Shawna -- with Ms. Johnston; correct?

12 A Yeah, I mean...

13 Q And Ms. McClain was giving you a ride? You didn't
14 pick her up?

15 A No.

16 Q She was just giving you a ride?

17 A Right.

18 Q Trying to get you from point A to point B?

19 A Exactly.

20 Q Right. And you're here to testify; right? Today,
21 you're here to testify?

22 A Yeah.

23 Q And I appreciate you showing up. But you're hoping
24 to get from point A to point B again; right? You're
25 hoping to, actually, get something out of testifying?

1 A (There was no response.)

2 Q Or do you want to go to prison?

3 A No, I don't. But, I mean, I'm not -- I come because
4 I had subpoenas to come here and tell my behalf -- my
5 story, or whatever.

6 Q But you don't want to go to prison?

7 A No, sir.

8 MR. GRAVLEE: All right. Thank you.

9 No further questions.

10 THE COURT: Any redirect?

11 MR. HOFFERTH: Very briefly, Judge.

12 REDIRECT EXAMINATION

13 BY MR. HOFFERTH:

14 Q Mr. Pace, the first time you saw this bag that night
15 was when the officers pulled it out of the car; right?

16 A Yeah.

17 Q You don't know who brought it in?

18 A No.

19 MR. HOFFERTH: I have no further questions.

20 THE COURT: All right. You may step down. You may
21 be excused.

22 MR. HOFFERTH: Judge, it may be a good time to let
23 the jury out, at least, for a minute so we can discuss the
24 next steps of the case. Or if we can approach real quick
25 and fill you in.

1 THE COURT: Okay.

2 (WHEREUPON, a bench conference was held.)

3 THE COURT: All right. Mr. Hofferth.

4 MR. HOFFERTH: Your Honor, at this time, the State
5 rests.

6 THE COURT: All right. Ladies and gentlemen, the
7 State has rested their case in chief. So that's all the
8 evidence the State is going to present at this time.
9 There's some things I have to go over with the lawyers at
10 this point.

11 So go back to your jury room. Do not discuss the
12 case. And I'll bring you back out in just a few minutes.

13 (WHEREUPON, the jury was excused from open court at
14 approximately 3:59 p.m.)

15 THE COURT: All right. We'll be on break for 10
16 minutes.

17 (WHEREUPON, a break was taken.)

18 THE COURT: All right. The State has rested.
19 Anything from the State?

20 MR. HOFFERTH: Nothing from the State, Judge.

21 THE COURT: From the Defense?

22 MR. GRAVLEE: Nothing -- well, I mean, I think we
23 need to talk about charges, and whatnot.

24 MOTIONS

25 THE COURT: Any motions?

1 MR. GRAVLEE: Judge, I just renew all prior
2 objections and motions at this point in time.

3 THE COURT: Okay. And I'm -- will stand on my
4 previous rulings.

5 How about go through with -- are you going to present
6 any testimony or evidence?

7 MR. GRAVLEE: At this point in time, Your Honor, we
8 did hope to have the other co-defendant, who's not on
9 trial today and who's already pled to possession for the
10 methamphetamine that was found in her bra --

11 THE COURT: Are you going to present any evidence or
12 not? That's a very simple "yes" or "no" question.

13 MR. GRAVLEE: Judge, I'm just trying to make a record
14 here.

15 THE COURT: I'm just -- what record are you trying to
16 make of whether you present evidence or not?

17 MR. GRAVLEE: Basically, getting into why I would
18 want that witness here. She's not here. It's the same
19 one that the State had and it helps provide the picture in
20 a full defense that my client is entitled to in crossing
21 the defendants in this case who have somehow not -- are
22 not being tried today.

23 She's not here. I think she's a material witness.
24 We do have some information that she's been here and I'd
25 like to have her here. But based on Your Honor's rulings,

1 I don't believe that -- I'd like to have her here, Judge.

2 THE COURT: I mean, I don't know how I can make her
3 come in here. I don't have the ability to go out and find
4 her..

5 MR. GRAVLEE: Other than continue tomorrow to see if
6 we can find her. But based on your prior rulings you
7 discussed, it doesn't sound like that's going to be the
8 case. But I would ask that we potentially continue it
9 until tomorrow morning to see if we can find her.

10 THE COURT: That's a long ways around to get to that
11 request right there.

12 MR. GRAVLEE: Judge, I just want to put it in. If
13 it's denied, then I need to have --

14 THE COURT: But don't you need to say -- don't you
15 need to put in the request first and if it's denied, then
16 put your record in?

17 MR. GRAVLEE: I think it would be just easier at that
18 point in time, you know, the reasoning and questioning.
19 And you can rule upon it and have the rational at the same
20 time, too.

21 THE COURT: I mean, I don't -- the State has rested.
22 I mean, I don't have a problem with you waiting until
23 tomorrow. That's what I'm -- but I -- you know, we need
24 to be ready to go in the morning if you're not going to
25 present a case.

1 MR. GRAVLEE: I don't believe we're going to call
2 Ms. McClain at this point in time, Judge.

3 THE COURT: I guess can I go through all the
4 information with her?

5 MR. GRAVLEE: Let me just confirm with her as well.

6 THE COURT: Sure.

7 MR. GRAVLEE: Because I didn't -- we didn't discuss
8 whether -- we were about to proceed on what we are going
9 to do a -- you know, stop and continue until tomorrow and
10 the charges, and whatnot. But I'll talk with her right
11 now to see if she wants to, Judge.

12 THE COURT: While he's thinking, what kind of
13 criminal record does she have to be used possibly?

14 MR. HOFFERTH: Ms. McClain?

15 THE COURT: Yes.

16 MR. HOFFERTH: Just two prior drug convictions, I
17 believe, both out of Georgia.

18 Yes. They're both from 2018, a possession of
19 methamphetamine and possession of methamphetamine with
20 intent to distribute.

21 MR. GRAVLEE: Judge, it's, actually, two possessions,
22 not a possession with intent to distribute. They gave me
23 certified convictions. Both of them are possessions.

24 THE COURT: I'll tell you what, Mr. Gravlee, let's do
25 it this way. I'll explain to her her rights and you can

1 talk to her. And she can tell me first thing in the
2 morning.

3 MR. GRAVLEE: Judge, we just had an opportunity to
4 talk. I think we're ready to proceed. And her decision
5 is that she does not want to testify.

6 THE COURT: Okay. Ms. McClain, if you could stand at
7 this point and raise your right hand.

8 WHEREUPON,

9 MELANIE CROMER MCCLAIN,

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

11 THE COURT: All right. How old are you?

12 DEFENDANT MCCLAIN: 50, just turned 50 last month.

13 THE COURT: Are you under the influence of alcohol,
14 drugs, or medication?

15 DEFENDANT MCCLAIN: No.

16 THE COURT: Do you have any health or mental issues
17 which would keep you from understanding what's going on?

18 DEFENDANT MCCLAIN: No, not from understanding what's
19 going on, no, sir.

20 THE COURT: I'm sorry. What?

21 DEFENDANT MCCLAIN: No, sir, not from understanding
22 what's going on.

23 THE COURT: Okay. You do understand what's going on?

24 DEFENDANT MCCLAIN: I do.

25 THE COURT: Okay. Do you -- do you understand that

1 at this point the State has rested. So as your attorney
2 has discussed with you, you have the right -- you have the
3 right to testify. And you, also, have the right to
4 present evidence. Okay.

5 Now, as far as your right to testify, that is -- you
6 have the right. But you, also, have the right not to
7 testify. And that is your Constitutional right.

8 And the fact that if you decide not to testify, then
9 I'll instruct the jury that you're merely exercising your
10 Constitutional right and that you -- that cannot be used
11 against you in any way. It cannot even be considered by
12 them.

13 But if you did testify, you'd be subject to the same
14 cross-examination of anyone else.

15 And I'm not sure that this prior record would be
16 admissible against her.

17 MR. HOFFERTH: I'm not sure it would, I mean, no.

18 THE COURT: I wouldn't think it would be.

19 So you realize you could take the stand and be
20 subject to cross-examination. So, also, kind of in
21 conjunction with that, you have the right to present any
22 evidence.

23 As I'm sure your attorney has discussed with you,
24 there's certain procedural advantages to not presenting
25 evidence in that you get the -- your attorney would get

1 the last argument. But that's one of the things that's
2 usually a consideration.

3 So do you understand your rights under the
4 Constitution to not testify and, also, the right to
5 testify?

6 DEFENDANT MCCLAIN: Yes, sir, I do.

7 THE COURT: All right. And have you discussed it
8 with your attorney?

9 DEFENDANT MCCLAIN: As far as?

10 THE COURT: Have you discussed this with your attorney?

11 DEFENDANT MCCLAIN: Testifying or not testifying?

12 THE COURT: Yes.

13 DEFENDANT MCCLAIN: Yes.

14 THE COURT: Do you need any additional time to
15 discuss it with him?

16 DEFENDANT MCCLAIN: Excuse me?

17 THE COURT: Do you need any additional time to
18 discuss it with him?

19 DEFENDANT MCCLAIN: Yes, yes, sir, please.

20 THE COURT: All right. So I've discussed your
21 rights. And what I will do is in the morning, I'll ask
22 you if you've made a final decision. And then we can
23 proceed at that point.

24 And if she doesn't -- y'all don't present anything,
25 then we'll go straight into argument and charge.

1 DEFENDANT MCCLAIN: Okay. Thank you.

2 MR. GRAVLEE: Thank you, Your Honor.

3 MR. HOFFERTH: Judge, I just think I have to bring to
4 the Court's attention that the Defense has not moved for a
5 directed verdict.

6 THE COURT: I asked him, but he said he renews all
7 his objections.

8 MR. GRAVLEE: Yes, Judge. The standard is any
9 evidence. We've conceded that.

10 MR. HOFFERTH: I just want the record to be clear.

11 MR. GRAVLEE: They're very concerned about that these
12 days. I get that. But I don't know why I would move for
13 a directed verdict --

14 THE COURT: We don't have to discuss it. Everything
15 thrown up does not have to involve a discussion.

16 So all right. Okay. We'll bring the jury in and go
17 ahead and release them.

18 Let's start back at 9:30.

19 Okay. Bring the jury in.

20 (WHEREUPON, the jury came into open court at
21 approximately 4:21 p.m.)

22 THE COURT: All right. Ladies and gentlemen, the
23 State has rested. So at this time, we need to break for
24 the day and determine -- it looks like we're at the final
25 stages of the trial. So the case will be getting to you

1 sometime in the morning for y'all to begin your deliberations.

2 Just to be -- I'm not exactly sure of the timing --
3 we'll start back at 9:30. I'm not sure exactly the timing
4 of when you'll get it, but I expect that we will be
5 providing lunch for you. So I just tell y'all that so
6 y'all can make plans accordingly. So if you plan on going
7 to the grocery store during lunch or something, you may
8 not be able to do that. So, like I say, you can get to
9 deliberations and finish up with the case.

10 So 9:30 tomorrow. Don't discuss the case. Don't do
11 any type of research on the case. Make sure that you
12 don't pay any attention to any media coverage, including
13 social media. And, finally, if somebody should contact
14 you, other than somebody from the clerk's office, please,
15 let the bailiffs know. Otherwise, we'll see you at 9:30
16 in the morning.

17 Y'all have a good evening.

18 (WHEREUPON, the jury was excused from open court at
19 approximately 4:22 p.m.)

20 THE COURT: All right. Anything from the State?

21 MR. HOFFERTH: Nothing from the State.

22 THE COURT: From the Defense?

23 MR. GRAVLEE: Nothing from the Defense, Judge.

24 THE COURT: Do y'all have any charges?

25 MR. GRAVLEE: I do. I mean, if you would like to

1 discuss that now.

2 THE COURT: No. Why don't you e-mail me your
3 proposed charges.

4 MR. GRAVLEE: I've got some printed out.

5 THE COURT: I'd rather have e-mail so I can --

6 MR. GRAVLEE: I can, sure, Judge.

7 THE COURT: That way -- somebody at your table should
8 have known that.

9 MR. GRAVLEE: Well, he didn't tell me. I couldn't be
10 John DeJong with four copies of everything.

11 THE COURT: No. We're going to include them. We can
12 just paste them in, see. And the verdict form will be
13 pretty simple. Well, possibly, I guess we -- we'll
14 discuss all that first thing in the morning -- well, let's
15 discuss it tonight. We can do it in chambers and put
16 anything on the record that y'all need. How about that?

17 MR. HOFFERTH: Okay.

18 THE COURT: We can have a general discussion because
19 I don't believe it's going to be too complicated.

20 All right. Do y'all want to gather your stuff and
21 head back to my office?

22 (WHEREUPON, the proceedings were concluded at
23 approximately 4:24 p.m., to be reconvened on
24 Wednesday, February 7, 2024.)
25

1 WEDNESDAY, FEBRUARY 7, 2024

2 THE COURT: We're back on the record.

3 First of all, I guess -- the State had rested. We
4 had motions. .

5 And Defense?

6 MR. GRAVLEE: Your Honor, I think we just had to
7 clarify from yesterday that Ms. McClain has decided that
8 she is not going to testify today -- is not going to
9 testify at all. And the Defense is not submitting any
10 evidence.

11 THE COURT: Okay. Let me just kind of confirm with
12 you. Stand again, Ms. McClain. Raise your right hand.
13 WHEREUPON,

14 MELANIE CROMER MCCLAIN,
15 after first having been duly sworn, testified as follows:

16 THE COURT: All right. It's kind of like the
17 preliminary information I asked you yesterday.

18 Are you under the influence of any alcohol, drugs, or
19 medication today?

20 DEFENDANT MCCLAIN: No, sir.

21 THE COURT: Do you have any health or mental issues
22 which would keep you from understanding what's going on?

23 DEFENDANT MCCLAIN: No, sir.

24 THE COURT: Have you had -- or my question when I
25 left you yesterday was, basically, you understand your

1 rights, that you have the right to testify?

2 DEFENDANT MCCLAIN: Yes, sir.

3 THE COURT: Do you, also, understand that you have
4 the right not to testify and that cannot be used against
5 you?

6 DEFENDANT MCCLAIN: Correct.

7 THE COURT: All the information I explained to you
8 yesterday.

9 DEFENDANT MCCLAIN: Yes.

10 THE COURT: And do you need any additional time to
11 discuss with your attorneys whether you should testify or
12 not?

13 DEFENDANT MCCLAIN: No, sir.

14 THE COURT: And do you wish to testify or not?

15 DEFENDANT MCCLAIN: No, sir. I do not wish to
16 testify.

17 THE COURT: Okay. Well, I will find that that was
18 voluntarily made with the understanding of your rights in
19 consultation with counsel.

20 So -- and the Defense rested. Do you want me to just
21 tell the jury when we bring them out, say the Defense has
22 elected not to present any evidence? Or how do you want
23 me to word that? Do you want to say something when they
24 come in?

25 MR. GRAVLEE: Judge, I think I -- excuse me. I think

1 I would say just that I'm -- that the Defense rests.

2 THE COURT: Okay.

3 MR. GRAVLEE: Just kind of leave it at that. And
4 then --

5 THE COURT: And then we'll go straight into argument
6 and charge.

7 MR. GRAVLEE: Yes, sir, Judge.

8 THE COURT: Okay. As to the verdict form, I've
9 showed it to y'all. I added -- on the one, I added the
10 word unanimously so it will be consistent.

11 I'm sorry. Yes, sit down.

12 DEFENDANT MCCLAIN: I can sit down?

13 THE COURT: So it will be consistent with all the
14 others. And I don't believe there's any objection to the
15 verdict form from the State?

16 MR. HOFFERTH: There is, Your Honor.

17 THE COURT: I guess -- yes, let me hear from you. I
18 guess the issue then is whether it should be -- and in our
19 discussions in chambers, we talked about trafficking in
20 methamphetamine. I think everybody -- both sides agree
21 that possession with intent to distribute was a lesser
22 included offense in this case.

23 The issue that came up was whether possession of
24 methamphetamine was a lesser included offense as well.
25 And the State objected to that. And I'll be glad to hear

1 from you.

2 MR. HOFFERTH: That's correct, Your Honor.

3 And thank you.

4 To start, I guess the basis of my argument,
5 Ms. McClain is indicted for and is on trial for
6 trafficking methamphetamine. I think both the State and
7 the Defense agree that there is evidence to support the
8 departure to possession with intent to distribute
9 methamphetamine simply because of the methamphetamine that
10 is in her hand versus the methamphetamine that was in the
11 bookbag that I believe we both agree is the real issue or,
12 at least, the crux of the issue, the factual issue for the
13 jury to decide as to possession as to what Ms. McClain
14 possessed.

15 The Court made the parties aware of State vs.
16 Andrews, 324 S.C. 516, which I do believe is directive in
17 this case as to this specific issue. But I believe the
18 interpretation on this specific point is misguided and
19 including possession in a specific case.

20 Turning to that case, the language of the Court there
21 states that the trial court's instruction that possession
22 of -- it was marijuana in that case. And it states on how
23 the prima facie language was improper. But the fact that
24 the lesser included charge of possession was warranted in
25 that instance and the language is because, "There was some

1 evidence presented at trial tending to rebut the
2 presumption of intent to distribute."

3 As the Court knows, when you get from trafficking to
4 possession with intent to distribute, you then open the
5 door to a two front -- or two-prong burden on the State
6 the previous not just the quantity, not just the
7 possession, but the intent to distribute element to
8 distinguish it from mere possession.

9 In that specific case, the Defendant did testify.
10 And the Court notes it when they go to approach this
11 specific issue. And they note that the Defendant did
12 testify. And there was some evidence of mere possession
13 because the Defendant said, I only used it for personal
14 use.

15 This -- I want to distinguish this from burden
16 shifting this issue to the Defense because it doesn't
17 require them to introduce evidence. In this case,
18 specifically, if they would have just asked an officer, if
19 they would have asked anybody who testified.

20 There were three officers they could have asked,
21 through their training and experience, does this in her
22 hand, the 1.26 grams, isn't it common that individuals use
23 this for just their own possession? They're not
24 distributing it. To my knowledge, there was no such
25 question, no such introduction of that statement.

1 So as opposed to shifting the burden to them to
2 prove, you know --

3 THE COURT: Let me ask you this.

4 MR. HOFFERTH: Okay.

5 THE COURT: There is evidence by way of video where
6 the Defendant says this isn't mine, it was handed to me.

7 MR. HOFFERTH: Okay. So --

8 THE COURT: Then --

9 MR. HOFFERTH: I'm sorry.

10 THE COURT: -- is that not evidence there was no
11 intent to distribute it if it wasn't hers, it was merely
12 possessed by her?

13 MR. HOFFERTH: No, Your Honor. I don't think so,
14 respectfully. Because I don't think you even get to that
15 question. Because you only get to that question when you
16 answer the question of, yes, it's mine or it's not. She's
17 saying it's not mine, period. It's not mine at all.

18 THE COURT: Well, then how can she have the intent to
19 distribute if it wasn't hers?

20 MR. HOFFERTH: Well, she couldn't possess it if it
21 wasn't hers.

22 THE COURT: You can possess something that's not
23 yours.

24 MR. HOFFERTH: I understand the Court's point. I
25 think this case is unique. It's different because we're

1 talking about two different quantities, the
2 methamphetamine in her hand and the methamphetamine that's
3 the constructive possession in the bookbag that's in the
4 car. I understand the Court's reasoning. I think, you
5 know, precedent and many other similar cases provide that
6 the possession should be included as a lesser included
7 charge. I just think it's improper.

8 I will make the Court aware of another case, State
9 vs. Grandy, which, actually, the Defense cited in one of
10 their requested charges. It's 306 S.C. 224. This does
11 deal with -- it's a trafficking case where they find that
12 the possession with intent to distribute was not proper to
13 include as a lesser included. I realize we're talking
14 about trafficking going to PWID, as opposed to PWID going
15 to possession. But I believe the same logic applies.

16 I understand the Court's ruling. I just wanted to
17 get that on the record.

18 THE COURT: Right. And it looks like Grandy, the
19 part that you've highlighted, it's your typical case where
20 it's going solely on amount. Like you said in your
21 argument, here, you have two different amounts.

22 I think it's a little bit different than what Grandy
23 is talking about. But I believe it's very apodeictic to
24 the phrase prima facie because it's kind of anathema to a
25 jury charge. I just had to quote that language from State

1 vs. Andrews.

2 MR. GRAVLEE: I just want to put on the record those
3 are great words, Judge.

4 THE COURT: But your argument is well taken. I
5 believe this is a little unusual. But I believe in light
6 of the language in State vs. Andrews, if the jury finds
7 the State did not meet their burden on intent and they get
8 to PWID, then the lesser included would be possession.
9 And I'm going to go -- I'm going to charge that.

10 So, therefore, with your objection as to being --
11 charging possession of methamphetamine as a lesser
12 included. Otherwise, is the verdict form acceptable to
13 the State?

14 MR. HOFFERTH: Yes, Your Honor."

15 Thank you.

16 THE COURT: Any objection to the verdict form from
17 the Defense?

18 MR. GRAVLEE: No objection, Judge.

19 THE COURT: And we, also, went through the charge.
20 Any objection to the charge from the State?

21 MR. HOFFERTH: I don't believe so, Your Honor, no.

22 THE COURT: From the Defense, any charges you want to
23 include in the record?

24 MR. GRAVLEE: I don't believe that I need to, Judge.
25 I feel like we addressed everything. And the charges that

1 Your Honor has come up with and crafted from the law are
2 consistent with what we've asked for. So no objection,
3 Judge.

4 THE COURT: All right. Then as we, also, discussed
5 the State will argue first and in full. And then the
6 Defense will have final closing argument and then we'll
7 charge the jury.

8 Anything before we bring the jury in?

9 MR. HOFFERTH: Nothing from the State.

10 THE COURT: Anything from the Defense?

11 MR. GRAVLEE: Nothing from the Defense.

12 THE COURT: Bring them in.

13 (WHEREUPON, the jury came into open court at
14 approximately 10:04 a.m.)

15 THE COURT: Good morning, ladies and gentlemen.

16 We had a few things we had to go over and you'll
17 understand in just a minute. The State rested yesterday.
18 The Defense has, also, rested.

19 So, therefore, we will now go into the final stages
20 of the trial. We'll have closing arguments by the
21 attorneys. The State will have the first argument. The
22 Defense will have the last argument. And when they've
23 completed their arguments, I will charge you on the law.
24 And then at that point, you can, finally, begin discussing
25 the case in your jury room.

1 But at this time, I'd ask that you give your full
2 attention to the attorneys for closing arguments.

3 Mr. Hofferth.

4 MR. HOFFERTH: Thank you, Your Honor.

5 May it please the Court.

6 I just need a second to set up.

7 (Pause.)

8 MR. GRAVLEE: Your Honor, permission to move to the
9 other seating.

10 THE COURT: I don't think you need my permission, but
11 you're welcome to do that.

12 MR. GRAVLEE: I appreciate it, Judge. I'm just going
13 to move over by the flag.

14 THE COURT: I thought you were talking about -- move
15 back over there.

16 CLOSING ARGUMENTS

17 MR. HOFFERTH: Members of the jury, good morning.

18 And I'm a little closer than I like to be, but we're
19 in tight quarters here. So I'm going to make it work.

20 But thank you for your attention and your
21 participation throughout this week's trial. I know it's
22 been a long three days. But I just want to thank you for
23 your participation. We, finally, made it to closing
24 arguments.

25 What happened over the last course of three days? I

1 stood up here on Monday morning and I explained to you how
2 I thought the evidence would be unfolding, the things you
3 were going to see, and the fact that Melanie McClain is
4 here before you this week on trial for trafficking in .
5 methamphetamine.

6 Now, you learned the facts; right? You learned what
7 happened the night of October 20, 2021. The fact that
8 Deputy Daw initiated a traffic stop on Hester Store Road.
9 Van Massingill and Corey Cassell followed him up and the
10 events that unfolded. And it's pretty plain and clear;
11 right? I saw y'all watching the body camera footage. The
12 actions that took place are pretty clear; right?

13 So what happened? Melanie McClain stopped. She
14 opens her door immediately. Deputy Daw comes up to the
15 door and starts to get her information. She gives some
16 pause, not able to provide registration, insurance,
17 whatever it may be. He goes back, tries to figure it out.

18 By that time, Van Massingill has arrived. And you
19 saw the movements of her in the car. One of these; right?
20 A movement. Van said, No, no, you need to get out of the
21 car. What's going on? Sure enough, we find it; right?
22 She's swapping a bag of methamphetamine from one hand to
23 the other. They get their hands on it.

24 What's the first thing she says? It's not mine.
25 It's not mine, over and over again. Okay. It's not mine.

1 They get everybody outside of the car. Four minutes into
2 their search, what do they find? This, tools of the
3 trade, and the rest of the methamphetamine. It's not in
4 the trunk, not in the passenger seat, not in the back.
5 It's directly next to her seat, directly next to it, right
6 on top of, beside of that very bag -- or the one bag she
7 says is mine.

8 I told you on Monday pay attention to what she says.
9 There's nothing more valuable. And I cannot stress that
10 enough. You all know that. There's nothing more valuable
11 than the footage from that night, but, more specifically,
12 the things she says, the things she doesn't say, the
13 actions that she takes, and the contradictions that
14 develop among those things. Because she wants to start
15 that night, October 20th, 2021, with meth in her hand.
16 It's not mine. It's not mine. It's not mine. I don't
17 know.

18 Developed the course of the night, developed the
19 course of the night, I wasn't trying to hide it. It was
20 between my legs. It wasn't between my legs. It was to
21 the right of my legs. I wasn't trying to hide it. I
22 wasn't trying to hide it. She lets it slip. It wasn't
23 between my legs. It was to the right of my legs. What's
24 to the right of her legs? She says it, at least, two
25 times.

1 The State is required to prove to you today for
2 trafficking methamphetamine -- it's two elements. It's
3 very simple. And we talked about actual versus
4 constructive possession. So let's go through it today.

5 So we have to prove possession. And that can be
6 actual -- my handwriting is terrible, but that's all
7 right -- or constructive. Actual, on your person, in your
8 hand, in your pocket.

9 Now, we know that that meth in her hand, like it or
10 not, it's not mine, it's not mine, whatever she wants to
11 say, satisfied. Bang. It's 1.26 grams of
12 methamphetamine. You heard that from the report from Lynn
13 Black, in her hand. Okay.

14 Then we get to the real issue, the bookbag. I'm
15 going to circle back to this a couple of times. But I
16 find it kind of hilarious the Defense's stance in this
17 case. Because we start October 20th, it's not my meth;
18 right? But as we get to trial, of course, the meth in my
19 hand is my meth. I'm your friendly neighborhood drug
20 user. I'm not a dealer. I'm taking my friends for a
21 ride. This is my meth. I don't know what that is in my
22 car right next to my seat. Does that make any sense?
23 Does that make a lick of sense? I offer to you that it
24 doesn't.

25 But we get to our second element. Knowledge.

1 Knowledge and intent are kind of intertwined; right?

2 Because in an ideal world, if I'm driving in my car and I
3 have a bag of methamphetamine in it and an officer or
4 somebody asks me, is this your methamphetamine? I say,
5 yes, it is, check the tag on the bag. This is Jake
6 Hofferth's methamphetamine. But when we're in the real
7 world, that never happens. Drug dealers, drug users do
8 not label their product. They try to hide that to the
9 best of their ability.

10 I use the word hide, specifically, here because when
11 we talk about intent, you can look to the Defendant's --
12 and you should look to the Defendant's actions, their
13 words, their statements, their contradictions to be able
14 to determine whether they intended to use, sell, hide,
15 move, do whatever they want to do to control or possess
16 those drugs; right?

17 They don't have to be smoking a bowl of meth at the
18 time the police show up. You just have to use their
19 common sense to put their actions, their words, and lack
20 thereof together to show this intent. Okay.

21 So we start from the glaring -- the glaringly
22 obvious. How do we figure out intent that night as it
23 relates to her possessing this bookbag?

24 Now, this trial was three days; right? We spent a
25 lot of time with a lot of witnesses, asked a lot of

1 questions. And I guarantee you -- and you saw it. Nobody
2 from the Defense wants to look at the glaringly obvious.
3 Nobody from the Defense wants to talk about there's meth
4 in her hand getting out of the car. Nobody wants to talk
5 about that she lies about it. She says, It's not mine and
6 goes back and forth saying, oh, I wasn't trying to hide
7 it. Oh, it wasn't between my legs. Oh, it was beside me.

8 They're going to try to say to you, no. What does
9 that have to do with this? She's a drug user. It has
10 nothing to do with this. It absolutely does. It's the
11 most blatantly obvious piece of evidence that that bag is
12 hers.

13 That's the car. Forget my handwriting again. That's
14 Melanie McClain driving the car. That's the meth. They
15 don't want to talk about it. They don't want to ask the
16 officers about the positioning of the bag in the car.
17 They don't want to ask them about her actions when she
18 gets out of the car. They don't want to ask them about
19 what she said when she gets out of the car. A, because
20 it's on body cam; but B, because it doesn't look very
21 good. They don't want you to hear about that.

22 Now, I want to talk about reasonable doubt. The
23 State has the burden of proving this to you. Now, there's
24 a lot of definitions to reasonable doubt. There's not
25 just one. The Judge is going to give you one. There's

1 multiple. There's no set definition.

2 What I believe reasonable doubt is, is 12 individuals
3 going back into a deliberation room using their reason,
4 their logic, their common sense, and their shared
5 experience to figure out what happened and to become
6 firmly convinced what happened on the night of -- of
7 October 20th of 2021; right?

8 And, thankfully, you don't have to jump to
9 conclusions in this case. You don't have to sit there and
10 rely on what Agent Daw said, or what Van Massingill said,
11 or what Corey Cassell said. You saw it. You saw what
12 happened that night. You saw her actions. You saw what
13 took place.

14 But she is entitled to the presumption of innocence.
15 She absolutely is. As she sits there, she's innocent.
16 I'll stress that as much as the Defense. But that doesn't
17 mean you have to blind yourselves to the events that
18 night.

19 So let's start; right? I want to give her every
20 benefit of the doubt when I go through this argument. I
21 want to take every story she used, every explanation she
22 gave that night, even the ones that contradict. But we'll
23 go through that and then work towards reality; right?

24 So what are the possible outcomes here where
25 Ms. McClain -- where this isn't Ms. McClain's bag; right?

1 So let's start with the general premise that people don't
2 leave -- well, let's say meth users, meth dealers don't
3 leave these around. That's just a fact; right? You
4 heard -- you heard it on the body camera footage. These
5 don't appear out of thin air. Friends don't leave these
6 in cars. And if they do, it's part of a transaction.

7 So what does Ms. McClain say? It's not mine. Let's
8 start with that. Why isn't that true? Because when
9 Deputy Daw or Van Massingill is talking to her, she keeps
10 reiterating, it's not mine, it's not mine, it's not mine.
11 Well, if it's not mine and it's my car, I'm sure as you
12 can bet going to tell the officers whose it is, or whose I
13 think it is, or whose it could be. But, no, no, it's not
14 mine. No, it's not mine.

15 But, of course, we get to the next step. There are
16 two other people in the car. It could be theirs; right?
17 It could be Shawna Johnston's or it could be Dustin
18 Pace's. Why isn't that true? Because if I'm the friendly
19 neighborhood drug user who's just giving my neighbors a
20 ride out of the kindness of my heart and they bring a bag
21 of methamphetamine or what I come to find is
22 methamphetamine in my car, guess what the first thing is
23 I'm going to say? It's yours or it's his. This is not
24 mine, but I gave them a ride. This is theirs. But she
25 doesn't say that. Because it's hers.

1 The Defense is going to get up here and they are
2 going to -- they're going to get into a number of things,
3 I'm certain. But I guarantee you they're going to focus a
4 lot of their argument on Ms. Johnston and Mr. Pace.

5 Here's what you need to know from the starting point,
6 you know. The phrase everybody gets their day in court
7 comes around a lot. That's absolutely true. And for this
8 charge, you can find multiple people were culpable.

9 So if you're sitting back there deliberating and
10 thinking Ms. Johnston didn't testify. What was her role?
11 She could have very well been in on that bag. I would
12 revert back to what I just told you. I don't think that's
13 the case. I proffer to you that's not the case because
14 she would have outed her that night.

15 But in any case, you say I think she was kind of
16 responsible. She was probably doing meth, too. That's
17 fine. That needs to be judged separately from
18 Ms. McClain. Ms. McClain is on trial today. It has --
19 her guilt, Johnston's, Pace's guilt or innocence has no
20 bearing, none on Ms. McClain's. That's a fact.

21 Now, let me tell you -- so let's cover all of her
22 narratives. It's not mine. Oh, oh, oh, it wasn't there
23 when I got out of the driver's seat when I was giving my
24 information. Well, how do we know that's not true? You
25 heard from Van Massingill. You saw his body camera

1 footage. What happens when she gets out of the car? So
2 Van flags down Devin and his car. Agent Daw in his car,
3 Come back here. You need to get her out of the car.
4 Check her out. She gets out. But as soon as she gets
5 out -- before she gets out, who had arrived? Corey
6 Cassell. He's on one side. Van is on the other. I asked
7 them both, Did you see any movements in the car? No.
8 That's what we're looking for. That's what we look for in
9 these stops. None.

10 And, again, take that, give her the credit, say it
11 was moved. Say Shawna Johnston or Dustin Pace moved that
12 bag right next to her in the middle of the stop. You
13 can't look at that on its own; right? Because what do we
14 know? She has meth in her hand getting out of the car.

15 If any of them had moved that bag towards her, why
16 isn't she telling law enforcement one of them and/or both
17 moved that bag, had to have moved that bag next to me?
18 She chooses the fantastical, the impossible. It wasn't
19 there when I got out. It wasn't there. It came from the
20 clouds. I'm being punished by some divine force. It's
21 not possible. It's not possible.

22 So I'm offering to you, members of the jury, if you
23 go back in that deliberation room and you start talking
24 about this case, you start talking about the body cam
25 footage, you start talking about what the officers said,

1 and you start talking about the questions that may arise
2 in this case, you can always come back here and watch that
3 body camera footage. There is nothing more valuable.
4 There's no evidence the State could put up that's more
5 valuable than seeing what happened that night. There's
6 nothing more valuable. And there's nothing more valuable
7 than what she says and does. Because everything she said
8 and did contradicted itself.

9 She went from a starting point. She -- all I could
10 think about in thinking about this case is everybody has
11 been told the story of the kid caught with their hand in
12 the cookie jar; right? We're even passed that.
13 Ms. McClain wasn't caught with her hand in the cookie jar.
14 She had a cookie in her hand, her hand in the cookie jar,
15 stopped, got out of the car, and then mom in that
16 scenario, but Agent Daw says, what is this? I don't know.
17 I don't know. I don't know. I don't know. She's passed
18 that of a child. She's in pure denial, sheer denial of
19 the circumstances around her.

20 You're entitled -- you are to presume her innocent.
21 But you are, also, entitled to use her words and actions
22 in your deliberations to put two and two together; right?

23 And the Defense in this case -- I think it's
24 fascinating. What do we hear from the Defense? Again,
25 nothing on Melanie McClain. Nothing on the fact that she

1 lied about having meth in her hand. Nothing about the
2 fact that she lied about her movements. Nothing about the
3 fact that the bag is right next to her.

4 What do we hear? We heard, oh, about Dustin Pace's
5 marijuana that he admitted to that night. We heard on
6 questioning of law enforcement, why wasn't fabric and
7 plastic distribution bags fingerprinted and DNA tested?
8 And we heard why. Because it's impractical and it's never
9 done.

10 And the writing is on the wall as it relates to those
11 videos. Oh, why weren't you worried about transdermal
12 exposure when you were going through the inventory of that
13 car? To Van Massingill, why wasn't your body camera on
14 when you were towing the car? To Corey Cassell, why
15 didn't you log in when you were transporting a female
16 inmate.

17 Do any of these questions have anything to do with
18 why we're here? Anything to do with Melanie McClain being
19 charged with trafficking and the evidence that relates to
20 her being charged with trafficking? Nothing.

21 And we kept reverting back to the body camera footage
22 as if police stops should be directed by Steven Spielberg.
23 And they want an alternate helicopter angle of the stop
24 just to make sure we leave nothing out; right?

25 This is the real world. Deputy Daw, as he testified,

1 has done hundreds of these traffic stops. He doesn't have
2 time to make sure that it's in 4K. He needs to figure out
3 what's going on. He needs to make accurate assessments.
4 And he needs to make accurate charges. And that's what he
5 did. And that's what all three of them did.

6 But they don't want you to see the writing on the
7 wall. They want you to look at and think about anything
8 else than Ms. McClain, anything else. Because they know
9 the facts of the case. You know the facts of the case.
10 You saw what happened that night. All they want to do is
11 confuse you and get you thinking about the greater world,
12 but nothing relating to her.

13 Now, the Judge is going to charge you on multiple
14 things. He's going to charge you on trafficking, which is
15 the level of methamphetamine here being above 10 grams.
16 We have the drug labs here. She tested the meth that was
17 in her hand, 1.26 grams, and the meth that was in the
18 bookbag, 10.38 grams. The methamphetamine in the bookbag
19 alone is over trafficking quantity. Obviously, this
20 together with what's in her hand is over trafficking
21 quantity.

22 But I'm sure as they -- as the Defense digresses in
23 their arguments to you, they're going to want you to
24 entertain possession with intent to distribute, A/K/A only
25 the meth in her hand and possession.

1 So when we talk about possession with intent to
2 distribute, the standard changes. The State has to prove
3 to you not only that the meth was over one gram in that
4 particular instance, but there's evidence of intent to
5 distribute. Evidence of intent to distribute, same thing.
6 Going to intent, plastic baggies, scales, driving around
7 with individuals with marijuana, any evidence that you may
8 put together to the fact that she was distributing this
9 methamphetamine, which I offer to you there is no
10 question.

11 And then, of course, possession of methamphetamine is
12 going to be charged, which the Defense is going to offer
13 to you, this is your friendly neighborhood drug user.
14 She's not a drug dealer. She didn't know it was in her
15 hand. She was confused. That's what you need to convict
16 her of. But I offer to you, members of the jury, that's
17 entirely inappropriate. Because it doesn't fit the facts.
18 It doesn't fit what happened. It doesn't fit her
19 statements. It doesn't fit her actions. It doesn't fit
20 the actions of the occupants of the vehicle. It doesn't
21 fit what happened.

22 So I ask you, finally, in summation here don't --
23 don't follow the Defense's tactics here. They're going to
24 get up here and they're going to say, don't look at what's
25 in her hand. Okay. If you're going to look at what's in

1 her hand, don't listen to what she says. And if you're
2 not -- if you're going to listen to what she says, don't
3 look at her actions. Don't look at where the bag is.
4 Somebody put it there. It came from the clouds. They
5 can't prove it. Don't look at the body camera footage.
6 Don't listen to common sense. Don't listen to reason.
7 It's not enough.

8 But the fact is Melanie McClain is on trial, not
9 anybody else. Melanie McClain is the one that you have to
10 think about these simple elements for. Melanie McClain is
11 where the evidence applies and where your discussions
12 should go in the jury room.

13 Now, members of the jury, Mr. Hellams said something
14 very accurate in his opening statement. I'm no artist.
15 The State's not here to paint you a picture, to get
16 creative, to play who done it. I'm simply here -- the
17 State is simply here to show you the writing on the wall,
18 to tell you to follow your senses, to follow your common
19 sense, and to follow your shared experience.

20 And what's the writing on the wall? Melanie McClain
21 is guilty of trafficking, not possession with intent to
22 distribute, not of possession, not of being confused, not
23 of lying. She's guilty of trafficking.

24 Thank you.

25 THE COURT: All right. Mr. Gravlee.

1 MR. GRAVLEE: Thank you, Your Honor.

2 (WHEREUPON, a bench conference was held.)

3 THE COURT: Ladies and gentlemen, there's one issue
4 we need to bring up -- to discuss before we continue with
5 the arguments. So just step back in your jury room. And
6 don't discuss the case yet.

7 (WHEREUPON, the jury was excused from open court at
8 approximately 10:32 a.m.)

9 THE COURT: All right.

10 MR. GRAVLEE: Thank you, Judge.

11 I didn't want to object during Mr. Hofferth's closing
12 because I wasn't sure if he was, actually, going to pull
13 it around from the demonstrative that he had just as far
14 as he wrote and in describing the law, possession and then
15 just had knowledge. But to prove possession, you have --
16 it's knowledge and then you have dominion or control. And
17 I thought the number three or maybe an offshoot was going
18 to come on there. But it's an inaccurate description of
19 the law to the jury. And I take exception to it, Judge.

20 MR. HOFFERTH: Judge, if I can clarify. Possession,
21 actual, constructive, dominion and control is instructed
22 to the jury by you.

23 THE COURT: And the knowledge relates to intent.

24 MR. HOFFERTH: Yes.

25 THE COURT: Intent is intertwined with knowledge.

1 MR. GRAVLEE: And dominion and control, I mean,
2 I -- I figured --

3 THE COURT: Okay. What are -- what is your
4 objection? State your objection, please.

5 MR. GRAVLEE: It's to the fact that it's not -- the
6 description of the law was inaccurate as far as being in
7 possession requires knowledge and dominion and control.
8 And dominion and control, I think he's tried to conflate
9 between both of them with like intent and actual and
10 constructive.

11 THE COURT: Well, I will tell the jury that --

12 MR. GRAVLEE: And this is why I didn't want to bring
13 it up in front of the jury, Judge. I wasn't going to
14 stand up and cut him off, or anything there. Because I
15 wanted to make sure that that was clear, that I wasn't
16 misinterpreting or hadn't misheard it when it seemed it
17 was inaccurate, Judge, when he does not mention dominion
18 and control here. And I, of course, will get into that in
19 my closing as well.

20 MR. HOFFERTH: Is the --

21 THE COURT: This is argument. I'm the one who will
22 charge them on the law. So I'm not sure -- I still don't
23 understand your objection.

24 MR. GRAVLEE: I think the question would be whether
25 you can have a curative instruction.

1 THE COURT: On what? I'm having trouble --

2 MR. GRAVLEE: As to not mentioning the dominion and
3 control element --

4 THE COURT: I will tell them this is the charge on
5 the law. And if the lawyers say anything differently,
6 then they are to disregard that --

7 MR. GRAVLEE: Thank you, Judge.

8 THE COURT: -- like I say in every charge.
9 Bring the jury back in.

10 MR. GRAVLEE: And one more thing briefly, just from
11 State's Exhibit No. 7, just to not run afoul of anything
12 else, Judge. From this evidence list, we do have the
13 mention, obviously, of the counterfeit bills that were
14 taken into evidence by the State. So I would like to be
15 able to mention those as well, Judge. It's in evidence.
16 It's State's Exhibit No. 7.

17 Mr. Welborn, would you mind turning on the...

18 THE COURT: Will you move that?

19 MR. GRAVLEE: Judge, as far as that goes, I wanted to
20 make sure I'm not running afoul of any other prior
21 rulings. We don't want to draw an objection in mine, too.
22 But I think I need to be able to mention it and argue it
23 to the jury as these are the things -- I will use this
24 exhibit in closing.

25 THE COURT: And I guess as long as you're not arguing

1 third-party guilt.

2 MR. GRAVLEE: No, sir, Your Honor.

3 THE COURT: That's in evidence. I'm not sure --

4 MR. HOFFERTH: Judge, I -- I believe the extent of
5 the commenting on this evidence is simply saying those
6 were put into evidence. I mean, commenting on them
7 substantively would be improper. Because, I mean, they're
8 not in evidence as it relates to this trial. That's -- I
9 mean, evidence for the case is entirely distinct. I
10 realize it's the chain of custody. It's the --

11 MR. GRAVLEE: It forms the overall circumstances.
12 There was testimony to, you know, money being used and
13 drug transactions. I believe Mr. Hellams brought it out
14 as far as the bills being found on -- on Shawna and
15 Dustin.

16 And then when Shawna was booked in, when Agent Daw
17 was testifying, he mentioned that those were retrieved.
18 He had to go back and retrieve those from evidence, along
19 with the purple notebook. So I just wanted to make sure
20 that --

21 THE COURT: Again, is that not -- I mean, what is
22 your --

23 MR. GRAVLEE: I mean, it's relevant to the
24 circumstantial evidence in this case. And this case is --
25 as far as the State's position with what's in the middle

1 is --

2 THE COURT: Are you not arguing third-party guilt?
3 You're saying, no, this isn't ours. I mean, regardless of
4 all that, are you still -- how does that negate
5 constructive possession? And are you not arguing
6 third-party guilt in that?

7 MR. GRAVLEE: No, sir, Judge. It's not third-party
8 guilt when you're raising suspicion as to --

9 THE COURT: Other people, is that not the exact
10 definition of third-party guilt?

11 MR. GRAVLEE: No, sir. Because it has to be facts
12 that are -- just that I'm saying that I -- that it is
13 absolutely this person, or that person, or --

14 THE COURT: The case law says raising a suspicion of
15 another person doing it when it does not negate your
16 person doing it. The fact that those counterfeit dollars
17 in there have nothing whatsoever to do with negating
18 whether your client was in actual or constructive
19 possession of this. So --

20 MR. GRAVLEE: Well, she wasn't in actual -- or
21 constructive possession of those bills, Judge.

22 THE COURT: I know. That's why they're not relevant
23 and you can't talk about them in some kind of third-party
24 guilt argument.

25 MR. GRAVLEE: So I wouldn't be able to get into what

1 the others had in their possession as he --

2 THE COURT: As long as you don't argue that that's
3 some kind of suspicion on their part, that they're the
4 drug dealers.

5 MR. GRAVLEE: So, Judge, to be clear, his closing
6 focused on don't look at Shawna, don't look at Dustin,
7 just look at Melanie. They've only chosen to try one and
8 not the other co-defendants, one of whose charge is still
9 pending. The inability to not get into that when there is
10 a co-defendant trial, three of them all constructively
11 charged and is charged based on the officers investigation
12 of the circumstances of the case -- and if I'm not able to
13 get into the circumstantial evidence, then the Defense of
14 a constructive possession case is completely obliterated.

15 THE COURT: No, it's not. You can get into the
16 circumstances as long as you don't use third-party guilt.
17 I'm sorry that's the way this case is set up.

18 But I think the rule on third-party guilt says you
19 cannot put suspicions on somebody else unless the evidence
20 clearly rules out -- negates your client's participation.
21 And the talking about these bills. You say they were put
22 in. But as far as arguing that that somehow means they're
23 a drug dealer when there's no evidence of that...

24 MR. GRAVLEE: Judge, I think, you know, with -- with
25 State vs. Gregory that we've mentioned, the evidence

1 offered by the accused as to the commission of the crime
2 by another person must be limited to such facts as are
3 inconsistent with his own guilt.

4 He just said in his closing -- the Prosecutor just
5 said that that is -- that just because she's -- you know,
6 just because she's guilty doesn't mean that they are.
7 They'll have their day in court too, which I don't know
8 the docket, to my knowledge, they, certainly, aren't on
9 trial.

10 And Shawna has already pled, Judge, to the
11 methamphetamine in her bra and the trafficking charge
12 being dismissed. And her pleading to another prior
13 manufacturing before that, but I was unable to get into
14 that because she's not here. So the State would be able
15 to get the benefit of not calling that -- that
16 co-defendant in a case and preventing the Defense from
17 arguing it by picking and choosing co-defendants.

18 MR. HOFFERTH: Judge, he would -- if she's so
19 material, he could have called her.

20 THE COURT: Well, we're not going all morning on
21 this. I've ruled that you cannot argue third-party guilt.
22 And that's the ruling of the Court. And you know -- so
23 you've made your record.

24 MR. GRAVLEE: Judge, I just don't -- I just don't
25 want to run a foul of Your Honor's ruling. But, I mean, I

1 don't understand if you're saying I can't get into
2 anything in their possession.

3 THE COURT: I'm just saying you can't get in there
4 and say, okay, you have all these bills, obviously,
5 they're the drug dealers and -- in this matter.

6 MR. GRAVLEE: I'm not -- that's not the -- that's not
7 the intent to say they're drug dealers. It's just
8 pointing out evidence and things that have been taken into
9 evidence to draw --

10 THE COURT: I mean, you've got to walk the tight
11 line, I realize that.

12 MR. GRAVLEE: Oh, yeah, Judge, I do. And I'm going
13 to do my absolute -- hardest not to --

14 THE COURT: I wasn't the one that created how this
15 fell out. But I've just got to rule on what I feel like
16 the law says.

17 MR. GRAVLEE: I do understand, Judge. I just want to
18 make sure that I'm not running afoul of any ruling.
19 Certainly, just like yesterday, I don't want to do
20 anything that's -- I wanted to make sure --

21 THE COURT: I understand. I know that.

22 MR. GRAVLEE: -- to get as much clarification as
23 possible. And I appreciate that.

24 THE COURT: Do you need a few minutes?

25 MR. GRAVLEE: Just a second with co-counsel here.

1 THE COURT: Okay.

2 (Pause.)

3 MR. GRAVLEE: Judge, I think we're ready to proceed.

4 THE COURT: Is the State ready?

5 MR. HOFFERTH: Yes, sir.

6 THE COURT: All right. Bring the jury in.

7 (WHEREUPON, the jury came into open court at
8 approximately 10:47 a.m.)

9 THE COURT: We're just making sure everybody gets
10 their steps in today.

11 At this time, the Defense has their closing argument.

12 Mr. Gravlee, you may proceed.

13 MR. GRAVLEE: Thank you, Your Honor.

14 Ladies and gentlemen of the jury, the State opened
15 this case discussing a lack of accountability on my
16 client, Ms. Melanie McClain's part. A lack of
17 accountability is what they claim. Ms. McClain, no
18 accountability.

19 But like we told you from the start, reasonable doubt
20 and the State's very high burden of proof that they were
21 very confident in their words that they would prove to you
22 beyond a reasonable doubt that she was guilty of
23 trafficking. Trafficking, not possession with intent to
24 distribute, not possession, trafficking.

25 They didn't mention lack of accountability here in

1 the closing. They didn't bring up that term.
2 Accountability, it's kind of a funny word to choose in
3 this case. The Government charged three individuals that
4 night, three. There's only one right there. One on trial
5 today, this week. They wanted to pick and choose what
6 they've wanted you to hear, how they've wanted you to hear
7 it, what they're showing you, more importantly, what
8 they're not showing you.

9 We started the trial telling you about how reasonable
10 doubt -- they start with a blank canvas. I understand
11 that's not the nicest stretched canvas over a wood frame,
12 but that poster board will have to do. But reasonable
13 doubt is that question mark on that blank canvas. That
14 big, bold, black permanent ink question mark that they
15 needed to paint you a clear picture of what's going on in
16 this case to cover-up every smidge of that question mark.
17 So that at the end of their case, you don't have a single
18 question about what's going on in this case, whether
19 Melanie McClain is guilty beyond a reasonable doubt of
20 trafficking.

21 They've wanted to tell you -- the Government is
22 wanting to tell you what to do with this entire case, how
23 to think. Don't think for yourself, just let them tell
24 you what it is. And give that information to you in a
25 nice neat little box. Classic big government. Trust us.

1 It's fine.

2 The Government told you today and this week that the
3 narcotics team that stopped Ms. McClain's car that they're
4 the best at what they do, the best. Don't think about it.
5 They're the best. Okay. Well, hold them accountable.
6 The State is very confident about that burden. Hold them
7 accountable for being the best of the best if that's what
8 they're saying.

9 Now, let's talk about the best of the best. The
10 State made a big stink about us asking about fingerprints
11 from a backpack. We didn't ask for that. Nobody gets
12 fingerprints off of a backpack. And they said they rarely
13 test the baggies or, I guess, a bowl, or something like
14 that. You, also, heard that they can. If they're
15 requested to, they can. They're trained in fingerprint
16 evidence. They can do that. There's touch DNA. That's a
17 different thing from fingerprints altogether. So swab for
18 that to see who's is what.

19 But the best of the best did not even follow their
20 own policies, their own procedures. Those procedures and
21 policies are in place, you heard, to protect you, to
22 protect me, to protect all of us. You want to have
23 accountability. It's, also, to protect the police
24 officers in here that do have a dangerous job.

25 And it's nice to be able to have that camera footage

1 to be able to protect themselves against any allegations
2 of improper conduct. And that's why I agree with the
3 Government that that body camera evidence is extremely
4 important. That's why they have them. That's why they
5 turn it over.

6 Now, Agent Daw had his body camera on. But even he
7 didn't follow the policy to a T. He mentioned, yes,
8 technically, you're not supposed to mute the camera
9 footage, you know, except for -- there is the exception
10 for, like, personal matters. And that makes sense, you
11 know. You know, if his wife called, kid got hurt on the
12 playground, I got to run go do that. Mute that all day.
13 Bad chili at the restaurant, let's not get into that.
14 Nobody wants to hear about that.

15 But you know what happened here? It's a good thing
16 we have body-worn cameras because it comes back to that
17 funny word again, accountability. And when it was muted
18 at first, you know, it wasn't a personal matter. Because
19 what came back was that he mentions -- that you hear on
20 Agent Daw's body camera Van Massingill talking to him
21 across in the car and whispering. I'm surprised he didn't
22 have more. Because, normally, you know, it's his. And he
23 says, I know who it is. I know who it is.

24 Who's he talking about? Is he talking about this
25 case? Is he talking about some other case? I don't know.

1 Why he would be talking about another case while he's
2 working this case that night in question? Y'all think for
3 yourselves.

4 What is it? It's their burden, they told you. They
5 just want you to just eat what they're serving you. To
6 not think, to not figure out whether -- why smell this,
7 it's just in the back?

8 One thing you heard about, you know, some of the
9 camera -- excuse me, not camera, fingerprint evidence.
10 One thing we did talk about, no, you're not going to test
11 fabric. But that plastic on a scale that a dealer uses,
12 yeah, you can check that for fingerprints. Did they ask
13 them? No.

14 This little makeup bag, it looks like that's plastic,
15 too. It could probably, also, be tested. And did you
16 hear any testimony that that was tested? No. I don't
17 know if y'all have noticed that night or through this
18 trial, Ms. McClain is more -- I think we've talked about
19 the natural beauty of Ms. McClain. She doesn't use
20 makeup, never has, wasn't that night. But they don't want
21 to get into that.

22 They tell you we're just trying to draw smoke and
23 mirrors. No. Their job was to give you the case. Give
24 you the evidence in the case that covers up entirely that
25 question mark, that reasonable doubt. In this case, they

1 found in this bookbag -- they found -- yeah, there was
2 meth in here. I don't dispute that one bit. It's meth.
3 The SLED analyst is fully capable of testifying.

4 Do you know what was one funny thing that the SLED
5 analyst talked about? It wasn't the science or the
6 training that was important in the case. No. It was
7 about how the drugs and the weight of the drugs that were
8 found. Ms. McClain is accountable, she is. The State's
9 right, holding that in her hand. We make no bones about
10 it, where it came from and you're holding it. Under the
11 law, that's actual possession. I'm in actual possession
12 of this bookbag and the drugs right now. Right now,
13 that's constructive possession.

14 Okay. We both see it and know it's there. But you
15 can also -- if you have this bag, you can't see through
16 it. It's not some clear Ziploc bag or a purse at a
17 Clemson game where they make you come in with the clear
18 bags, clear bag policy. You can see what's in there right
19 away sitting on the dashboard, no bones about that. No.
20 But that's not the case.

21 The SLED analyst testified what she found the weight
22 to be and what we can see was in Ms. McClain's hand is 1.2
23 grams. The three baggies that she tested, you heard her
24 testimony. How funny was it that all three of those bags
25 were almost right on 3.4 grams, each of those bags.

1 Melanie's not holding 3.4, 3.1, 3.7, anything even
2 remotely close to that. No, 1.2 -- 1.26. I almost forgot
3 the .06 grams, y'all.

4 When they searched the car,, they don't want to bring
5 and draw attention to the fact that -- you know, they're
6 talking about the marijuana. That's not important. They
7 don't want to bring that up because that's circumstantial.

8 As the Judge is going to charge you, the
9 circumstances in a case have to conclusively point to the
10 guilt of the accused beyond a reasonable doubt,
11 conclusively point. But they want you to disregard the
12 circumstances that are inconvenient for them, for the
13 Government. They don't want to be held -- they don't want
14 you to hold them accountable for that very confident high
15 burden that they mentioned to you from the start.

16 Also, in that car, they find not only Melanie, they
17 find some straws that Lieutenant Raines from property and
18 evidence testified to. These are, like, some kind of
19 drug-snorting-type straws. That's not found on Melanie,
20 not hers.

21 State's Exhibit No. 7 right here, it goes through
22 things that are found in the car, that are found -- well,
23 you heard. Think about what was testified to that was
24 found illegal in Melanie's purse. That's right, nothing,
25 not a baggy, not a scale, not even a nickel. But in the

1 car in the search, what did they find? This ain't real,
2 y'all. 36 counterfeit --

3 MR. HOFFERTH: Judge, I hesitate here, but I think we
4 need to approach.

5 THE COURT: Okay.

6 (WHEREUPON, a bench conference was held.)

7 MR. GRAVLEE: Some of the policies that we mentioned,
8 too, that the officers discussed was, you know, they
9 mention some of the marijuana found. Some of it was
10 destroyed. But they, also, saved some. They destroy it
11 when they -- when they don't need it for a meth case, but
12 then they, also, save it.

13 So which one -- which one is it? Which policy is it
14 that you don't follow? I'd argue to you that the best of
15 the best get to pick and choose what policies they want to
16 follow and then they get to abandon the rest. Because
17 that seems to be a common theme here.

18 The accountability is not from -- from Ms. McClain.
19 It is not from Ms. McClain. She's accountable. It is --
20 that's in her hand, y'all. Under the law, that is
21 possession. That is actual possession. So right here --
22 here's some of it that's -- that part is destroyed. But
23 maybe one of these, that's, also, the marijuana, too. So
24 which one is it?

25 In this car, they, also, found other things. They

1 find all these small baggies. Both seats as they're
2 dumping them out in the search. They find -- let's see if
3 this is a little clearer there. It's a knife. That's not
4 your grandfather's case knife. It ain't the old timer
5 that he used to carry in his pocket. Oh, no. It sure
6 isn't.

7 Deputy Daw testified to this pill bottle here, right
8 here. He said that label was torn. He couldn't see who
9 was on it. Does that look torn to you?

10 You heard Dustin. Goodness gracious, I mean,
11 normally, in trial, a lot of times, you put up your
12 strongest witness last. But heavens to Betsy, Dustin.
13 Dustin testified he just had a marijuana bowl, just a
14 marijuana bowl. But he -- you could hear on the body
15 camera, the officers confirmed it's a meth bowl.

16 Bless you.

17 THE CLERK: Excuse me.

18 MR. GRAVLEE: It's right there on the camera next to
19 his wallet. You hear in this case -- you heard from
20 Deputy Massingill's body camera, too, talking about all --
21 everybody -- nobody wants to claim the bag. Dustin's
22 playing dumb trying to distance himself from the bag.
23 Heck, it's within arms reach of all of them. Heck, it's
24 even within arms reach of Shawna. I'm just mentioning all
25 three that were in the car.

1 But over and over again, it's been just picking and
2 choosing who to try, what to show, how to show it, when to
3 show it, where to show it. And it feels like Star Wars
4 when Obi-Wan Kenobi -- I can't remember which movie it
5 was -- comes in. You don't need to see any ID of that
6 evidence. No. You don't need to pay attention to where
7 the baggies are found or that there's a pill bottle that's
8 crushed up. The pipe, the pills, nothing. No, don't pay
9 attention to that.

10 The State had the burden of proving to you beyond a
11 reasonable doubt that she was guilty of trafficking.
12 That's what they argued, trafficking. Trafficking. She's
13 got it in her hand. That 1.2 grams has to be related to
14 what was in there -- to that zip closed bag that Agent
15 Daw -- you saw Agent Daw open it on camera, unzip it, go
16 through it, pull out all the baggies in there.

17 He talked to Dustin. He talked to Shawna. He talked
18 to Melanie. He tried to separate them. But this trial is
19 about Melanie.

20 And for Melanie, the proof that the Government has to
21 meet is that the circumstances have to prove that she's
22 not just possibly or probably innocent, or that she's --
23 you know, her innocence is likely or she's probably
24 innocent or even suspected innocent, maybe even, perhaps,
25 innocent. She may not be innocent, unlikely innocent,

1 probably not innocent, less than likely innocent, highly
2 unlikely innocent. For trafficking beyond a reasonable
3 doubt, not even close. They haven't covered up a smidge
4 of that question mark. In fact, it seems that we're just
5 left with more question marks than when we started.

6 On possession with intent to distribute, the other
7 charge, they want you to throw out another charge to see
8 if we can just convict her of that instead. But you'll
9 hear from the Judge, possession with intent to distribute,
10 you need to find evidence that it was in her possession
11 and that she's got that points to some sort of intent to
12 distribute. She's got 1.2 grams in her hand. Y'all,
13 she's guilty of possession of methamphetamine.

14 Now, I'm going to circle back around to that. But
15 that's what you should convict her of. That is what she
16 is guilty of. That is accountability.

17 From the start, we've claimed and Melanie has owned
18 what was in her hand. Does she say he handed it to me?
19 Yes. Does she try to hide it? Yeah. Because like the
20 State said, that is what a user is going to do. They're
21 not going to throw that down because they're living for
22 that next hit.

23 Otherwise, Dustin just -- somebody would have tossed
24 it on the floorboard, back to him, hot potato. No, she's
25 holding onto it for dear life. But possession with intent

1 to distribute? Melanie doesn't have bags, no baggies,
2 multiple little baggies, or scales, fake money, ledgers,
3 or a knife, or even real money. Not a nickel was
4 testified to that she had in her possession.

5 With the limited information that the Government has
6 given you today, they talked about possession on their
7 board. Possession. And they had actual and constructive.
8 You know what's funny? Actual was checked. We're in
9 agreement on that point. Actually in possession of that
10 1.2. Constructive, he put the question mark next to that
11 one because it is.

12 What they have not been able to show you a shred of
13 is that she had evidence in her possession, in her purse,
14 on her person of anything, of any of this money, or bags,
15 or scales, or anything like that of some sort of
16 indicators of intent to distribute. No. Did somebody
17 wear a name tag that says, Hi, my name is Melanie, I have
18 intent to distribute? No. It has to be proved by the
19 circumstances. And when circumstantial evidence is used,
20 it has to point conclusively to that conclusion that she's
21 guilty of possession with intent to distribute beyond a
22 reasonable doubt. There's a smidge of that question mark
23 again, y'all. The answer is not guilty.

24 Now, Dustin got on -- on the stand. He wasn't sure
25 what he got in the car with, much less anything else. I

1 don't know. Everything -- just like on the stand as it
2 was testified to that night, he mentioned part of -- a
3 brain injury. Maybe he does. But it seemed awful
4 convenient what he liked to pick and choose what he
5 remembered, and what he could claim, and what he couldn't.

6 And that was supposed to be, you know, the ending
7 star witness up there. Heavens to Betsy. Dustin, bless
8 him, but he doesn't know -- I think -- I think what he
9 said -- if something -- I don't know. She might have had
10 it or I don't know. He can't even tell you. It's the
11 State's witness. Where is Shawna? She's not here today.
12 You didn't hear from her up there. It's just another
13 question mark, y'all.

14 Reasonable doubt. And if this isn't enough -- okay.
15 You only need one of them for reasonable doubt. If that
16 isn't enough -- reasonable doubt is the missing videos.
17 Deputy Massingill had 17 minutes. But his total
18 involvement on the scene, there's an additional, I
19 believe, 87 minutes, maybe 79 minutes. Let's go lower
20 just to give him the benefit of the doubt, leave it at 79.
21 You didn't have that.

22 Deputy Cassell, no report, no body cam. It didn't
23 get turned over until two years later. Y'all, if that's
24 the single most important thing, where's it been? What is
25 it? Why is there 17 minutes of Deputy Massingill's? Why

1 is there muted portions when it's definitely not talking
2 about bad chili or having to pick your kids up at school?

3 One of these issues -- like I mentioned, one of these
4 questions is enough to find Ms. McClain not guilty.
5 Because the State has not proven and met its high burden
6 of proving the case beyond a reasonable doubt. The
7 Government just wants you to take it as they feed it to
8 you. Don't think for yourselves.

9 Y'all, if my painting analogy ain't your cup of tea,
10 I get it. I'll put it this way for you, in the spirit of
11 Super Bowl Sunday coming up, I'll give it to you in
12 football terms. In this Super Bowl coming up, like any
13 other football game really, there's going to be,
14 inevitably, some questionable call on the field. And when
15 referees review the questionable call in a football game,
16 they -- that call is presumed to be -- the call made on
17 the field is presumed to be correct. And it can't be
18 overturned absent indisputable video evidence.

19 In a trial, you, the jury, are the referees. And
20 y'all are asked to review that questionable call on the
21 field. And the call on the field at the start of this
22 trial through now and into your deliberations is not
23 guilty. And Ms. McClain is presumed innocent on the
24 trafficking charge and the possession with intent to
25 distribute. We make no bones about the possession. She's

1 guilty of that.

2 But the reasonable doubt, just like in football,
3 unless you, the referees, reviewing the call on the field
4 are provided with a clear picture, basically, the football
5 version of indisputable video evidence, then the call on
6 the field stands. It's not going to be overturned. And
7 you won't overturn it because it's not there.

8 For that reason, y'all, she's not guilty of
9 trafficking. She's not guilty of possession with intent
10 to distribute. She's guilty of possession. She is, no
11 bones about it. That's accountability. I ask that you
12 find her guilty of possession.

13 Thank you.

14 THE COURT: If you'll turn off the video and remove
15 your board.

16 Go ahead.

17 CHARGE ON THE LAW

18 THE COURT: All right. Ladies and gentlemen, now,
19 you get to hear from me. I will remind you -- a couple of
20 things that I'm going to be telling you, and I kind of
21 summarized to some extent when we started this trial.

22 The first thing is the difference between our duties.
23 Your duty is to determine the facts. And how you
24 determine the facts will be based on the evidence
25 presented. And you're to give the weight and value which

1 you feel is appropriate. And you're to apply the law
2 which I'm giving you now.

3 Now, as to evidence, anything that I ordered stricken
4 or any questions that I ordered stricken are not to be
5 considered by you. Otherwise, the evidence would be by
6 way of testimony, any stipulations of counsel, any
7 exhibits. Those -- that's the evidence. Okay. And,
8 again, you give it the weight and value that you feel is
9 appropriate.

10 Now, as far as the law is concerned -- my duty,
11 again, is to rule on evidence, to preside over the trial,
12 and give you the law of the case. And that's what we call
13 our jury charge, which I'm doing at this time.

14 Now, if you came into this Court and you had an idea
15 of what you thought the law was or maybe you have an idea
16 of what the law should be, if it contradicts what I'm
17 telling you now, then you're to disregard that. Because
18 you took an oath that said I will accept the law of the
19 case. And that's what this is now.

20 So this is the law you must apply. And if anything
21 the attorneys said in the presentation of evidence or in
22 their closing that differs from what I'm telling you,
23 you're to accept this law.

24 Now, in this particular case, as I told you in the
25 beginning, we have an indictment for trafficking

1 methamphetamine, which is 10 grams or more, but less than
2 28 grams of methamphetamine. I remind you the fact that
3 someone is arrested, charged, and indicted is not
4 evidence. Those are merely allegations. Those are --
5 that's the manner which brings this matter to court, which
6 the Defendant has pled not guilty.

7 And the Defendant has no burden in this matter to
8 prove themselves not guilty. The burden clearly lies on
9 the State. And that's what we call the presumption of
10 innocence.

11 Now, the presumption of innocence is a very important
12 foundation, a block of our criminal justice system. And
13 that says that every defendant no matter what court
14 they're in comes in with the presumption of innocence.
15 And that presumption stays with them throughout the time
16 they're charged and the time that they're indicted.

17 They come into this courtroom, closing arguments. Up
18 to now, that presumption of innocence is still with them.
19 And it stays with them in your jury room until or unless
20 you find that the State has met its burden beyond a
21 reasonable doubt that they're guilty. Only then does that
22 presumption fall off.

23 And if you do not find that the State has met its
24 burden in this case or any case, then the presumption
25 remains. And, again, that's not just merely a legal

1 theory. That's a very important part of our judicial
2 system on the criminal side.

3 Now, you've heard a lot of references to reasonable
4 doubt. And I'm going to give you some definitions of what
5 reasonable doubt is. And, again, the State has the burden
6 on each element of the charge to prove beyond a reasonable
7 doubt.

8 And it's a little bit different in a civil case. In
9 a civil case, it's a much lesser standard. I always like
10 to make sure everybody realizes that. Because you may
11 have been involved in a civil case, either maybe on a jury
12 or maybe as a party, or something. That has nothing to do
13 with here. Here, we're talking about reasonable doubt.

14 Proof of reasonable doubt is the kind of doubt that
15 would make a reasonable person hesitate to act. Proof
16 beyond a reasonable doubt is proof that leaves you firmly
17 convinced of the Defendant's guilt. There are very few
18 things in this world that we know with absolute certainty.
19 And our law does not require the State to overcome every
20 possible doubt.

21 Based on your consideration of the evidence, if
22 you're firmly convinced that the Defendant is guilty of
23 the charges, then you're to find the Defendant guilty.
24 But, on the other hand, if you find there's a possibility
25 that the Defendant is not guilty, you must give the

1 Defendant the benefit of that doubt and find her not
2 guilty. Facts and circumstances which merely place upon
3 the Defendant some suspicion or raises speculation that
4 they're guilty, then that's not sufficient for a -- a
5 conviction.

6 Now, there's two types of evidence that the State can
7 rely upon in their proof, direct evidence and
8 circumstantial evidence. And they may be used in
9 combination. They may use direct evidence. They may use
10 circumstantial evidence. They may use a combination of
11 the two. But, regardless, with the burden of proof, the
12 standard is the same. It's still beyond a reasonable
13 doubt. Direct evidence is, basically, evidence that you
14 can see, hear, observe, or feel. That's direct evidence.

15 Circumstantial evidence is maybe a series of facts, a
16 chain of facts and circumstances to prove a particular
17 point. In that case, you may infer a particular fact
18 based on that chain of facts. Crimes may be proven by
19 circumstantial evidence. The law makes no distinction
20 upon the weight and value that you're supposed to give
21 them.

22 But in the event the State relies on circumstantial
23 evidence as part or all of their proof, all of the
24 circumstances must be consistent with each other, and when
25 taken together point conclusively to the guilt of the

1 Defendant beyond a reasonable doubt. If these
2 circumstances, again, merely portray the Defendant's
3 behavior as suspicious, then that proof fails.

4 Now, let's talk about another tool that you have in
5 making your determination. And that is determining the
6 credibility or believability of witnesses. Now, in
7 evaluating each of the witnesses, you're to give that
8 testimony the weight and value that you feel is
9 appropriate. You can -- you can make -- you can consider
10 how that witness acted on the stand and what the
11 presentation was. Does that particular witness have a
12 bias or an interest or some -- you know, interest in the
13 outcome of the matter before you? All of those are to be
14 considered.

15 In your evaluation, you may accept part of a
16 witness's testimony and reject the remaining portion. You
17 may accept several witnesses over one witness. And you
18 may accept one witness over several witnesses. Again, it
19 is up to you to evaluate all the pieces of evidence,
20 including credibility of witnesses, and give it the weight
21 and value that you feel is appropriate.

22 Now, the exception, as I told you, to a witnesses
23 testimony and what they can testify about is an expert
24 witness. They have a little bit broader latitude than a
25 regular -- what we call a lay witness, which means

1 non-expert.

2 In a particular case where a person is designated as
3 an expert, they can testify about their opinions and
4 conclusions in their field of study or their field of
5 work. And that is based on their experience, their
6 education, their training. All of that can go into your
7 decision to determine whether -- to accept -- give it the
8 weight and value that you feel is appropriate.

9 Now, just because somebody has been designated as an
10 expert and they testify, you're still -- just like all
11 pieces of evidence, give it the weight and value you feel
12 is appropriate. And you do not have to accept that
13 expert's testimony, even if it is uncontradicted, if you
14 do not feel that it is appropriate. Again, that is your
15 decision to make.

16 Now, very -- another kind of cornerstone of our
17 criminal justice system is the -- as I told you, the
18 Defendant has a presumption of innocence and has no burden
19 in this matter. Therefore, the Defendant has the absolute
20 right not to present any evidence and not to testify.
21 That is a Constitutional right. That is a right that is
22 protected by our Constitution. First of all, they don't
23 have a burden of proof in this matter.

24 The fact that the Defendant did not testify is not
25 something that should be considered by you in any way. In

1 fact, it's something that should not even be discussed by
2 you in the jury room. Because the Defendant has no
3 burden. And you're not to consider that as any type of
4 conclusion. You must look at the State and the evidence
5 that the State presented in this matter.

6 Now, let me talk to you a little bit about intent.
7 In order to establish criminal liability, criminal intent
8 is required. And there's -- this will be something that
9 you can consider in -- when I discuss the charges in more
10 detail. Because it may be that you have to consider
11 intent when I break down the charges for you. For
12 example, the mental state required to be proven for a
13 particular crime must be intent, knowledge, recklessness,
14 or criminal negligence.

15 Criminal intent must be proven by the State beyond a
16 reasonable doubt. And that is an element of the charge.
17 Criminal intent is always a matter that must be determined
18 by the jury, based on the circumstances surrounding the
19 situation.

20 You know, there's no way to determine criminal intent
21 with any absolute certainty or with some scientific way.
22 It has to be viewed in all the circumstances surrounding
23 the matter. And it is not necessary to establish intent
24 by direct evidence. It's, again, something that can be
25 proven by the circumstances surrounding the matter.

1 Criminal intent is a mental state, a conscious wrongdoing.
2 And it's up to you to determine what the Defendant
3 intended to do based on the circumstances existing at the
4 time.

5 Criminal intent can arise from action or failure to
6 act. It can arise from negligence, recklessness, or an
7 indifference to duty or to consequences that is considered
8 by the law the equivalent of criminal intent.

9 All right. Now, I'm going to charge you on the --
10 actually, to give you the elements of the charge that is
11 being presented to you. And I'm going to, first, talk
12 about trafficking. Okay. But the way our law is set up,
13 I will, also, have to charge you on two other charges,
14 which are what we call lesser included offenses.

15 And, basically, it says if you find that the State's
16 met its burden on trafficking, then you would stop right
17 there. But if you do not find the State has met its
18 burden, then you would go down to the next level, which is
19 possession of methamphetamine with intent to distribute
20 and make an analysis there. And if you find that was not
21 appropriate, then you would step down to the next level of
22 possession of methamphetamine.

23 So that's kind of -- I'm going to charge you with
24 three separate matters. And that's why when I talk to you
25 about intent that that may be something that comes into

1 play in your analysis.

2 Let's talk about trafficking methamphetamine, which
3 is the charge under the indictment. Here's a list of
4 things which constitute trafficking. Each of these
5 events -- you don't have to prove all of them, but each of
6 these events -- this list of things is what is considered
7 trafficking. The State must prove beyond a reasonable
8 doubt that the Defendant knowingly sold, manufactured,
9 cultivated, delivered, purchased, brought into the State,
10 provided financial assistance, or otherwise evaded,
11 attempted, abetted -- I'm sorry, otherwise, aided,
12 abetted, attempted, or conspired to sell, manufacture,
13 cultivate, deliver, purchase, or bring into this State or
14 was knowingly in actual or constructive possession.

15 So, therefore, you have a whole list of them. But,
16 pretty much, what we've been dealing with here today is
17 knowingly in actual or constructive possession, or
18 knowingly attempted to become in actual or constructive
19 possession of methamphetamine. So you have either the --
20 one on the list included actual or constructive possession
21 of methamphetamine.

22 Now, I will define for you in a minute what actual or
23 constructive means. The State must, also, prove beyond a
24 reasonable doubt that the amount of methamphetamine was
25 more than 10 grams. Okay. So what you -- the elements to

1 be proven are actual or constructive possession of 10
2 grams or more of methamphetamine. That is the burden of
3 proof for the State with the trafficking charge. Okay.

4 Now, let me talk to you about actual or constructive.
5 To prove possession, the State must prove beyond a
6 reasonable doubt the Defendant had both the power and the
7 intent to control the disposition or use of
8 methamphetamine. Possession may be either actual or
9 constructive. Actual means that the methamphetamine was
10 in the actual physical custody of the Defendant.

11 Constructive possession means that the Defendant had
12 dominion and control or the right to exercise dominion or
13 control over either the methamphetamine itself or the
14 property on which the methamphetamine was found. Mere
15 presence at the scene where the drugs were found is not
16 enough to prove possession. Two or more persons may have
17 joint possession of a drug. So that's the actual -- the
18 definition of actual and constructive possession.

19 Now, in the event that you find the State has not met
20 its burden in proving the charge of trafficking
21 methamphetamine, then you can consider whether the State
22 has met its burden on possession with intent to distribute
23 methamphetamine. And this is a little bit different
24 elements, but it is what we call a lesser included
25 offense.

1 And in this case, the State must prove beyond a
2 reasonable doubt that the Defendant is guilty of
3 possession with intent to distribute methamphetamine.
4 Possession with intent to the distribute contains all of
5 the elements of trafficking, except the amount of
6 methamphetamine and the actual intent. In addition, the
7 State must prove, again, the intent to distribute -- to
8 distribute the methamphetamine.

9 Distribute means to deliver other than by
10 administering or dispensing a drug. Intent may be shown
11 by acts and conduct of the Defendant and other
12 circumstances from which you may naturally and reasonably
13 infer intent.

14 In determining whether the Defendant had the intent
15 to distribute methamphetamine, you may consider the
16 circumstances surrounding the Defendant's alleged
17 possession. You may consider the amount of the substance
18 alleged to have been possessed, the manner in which it was
19 allegedly possessed, the place where it was possessed, and
20 other factors which you consider to be important.

21 You must find that the Defendant did not intend to
22 have the methamphetamine solely for her own use.
23 Possession of more than one -- and this is under our law.
24 Possession of more than one gram of methamphetamine
25 creates an inference that the Defendant possessed the

1 methamphetamine with the intent to distribute it. This
2 inference does not relieve the State from proving beyond a
3 reasonable doubt that the Defendant had the intent to
4 distribute. It is simply an evidentiary fact to be taken
5 into consideration by you, along with all the other
6 evidence in the case, and given the weight and value you
7 feel is appropriate.

8 So if you find that the State has met its burden on
9 trafficking, then you would not have to consider this
10 other one. But if you find that you -- they did not meet
11 their burden on trafficking, then you go to possession
12 with intent to distribute.

13 If you find that the State has not met its burden on
14 possession with intent to distribute, then you would drop
15 down to the third and final lesser included offense, and
16 that is possession of methamphetamine. And that is --
17 again, the State has to prove that.

18 And simple possession is what it is usually referred
19 to. It does not require intent to distribute. It is --
20 the elements there is that the Defendant was in
21 possession, actual or constructive, of methamphetamine.
22 Okay.

23 Now, at this time, I'm going to provide you with --
24 I'm going to show you what the jury verdict form is. I'm
25 going to go over this with you. And this will help you

1 with kind of going through the analysis.

2 The first charge is -- as to indictment number -- for
3 trafficking methamphetamine 10 grams or more, We, the
4 jury, unanimously find the Defendant, Melanie McClain --
5 and it has two choices. And there's no meaning into the
6 choice. You have to put them in some order, guilty or not
7 guilty. The top part is just the actual caption of the
8 case.

9 If you find that the State, again, has met its burden
10 on the elements of trafficking methamphetamine, then you
11 would check guilty. If you find the Defendant [sic] has
12 not met its burden there, then you would check not guilty.
13 And, again, on trafficking, the elements would be actual
14 or constructive of 10 grams or more.

15 MR. HOFFERTH: Judge --

16 THE COURT: I'm sorry.

17 MR. HOFFERTH: -- just to clarify, I think you
18 said -- instead of saying the State has met its burden,
19 you said "the Defendant" --

20 THE COURT: I'm sorry. Yes. Please -- yeah. I'm
21 sorry.

22 Again, the Defendant has no burden whatsoever. When
23 I said that, please, disregard that.

24 The State has the burden of proof here. And if you
25 find the State has not met its burden, then you would go

1 to 1A. Okay.

2 And that is the possession with intent to distribute.
3 And that is of methamphetamine. And if you find the State
4 has met its burden there, the elements that I mentioned to
5 you of possession with intent to distribute, then you
6 would check guilty.

7 If you find, again, that the State has not met its
8 burden on the possession with intent to distribute, you
9 would check not guilty.

10 Then, again, if you check guilty on the first one,
11 you do not need to go to 1A or 1B. If you check not
12 guilty on one and you check guilty on the second one here,
13 you don't need to go to the next one. But if you find not
14 guilty on the first two questions, then you would go to
15 the final question, again, which is the possession of
16 methamphetamine.

17 If you find the -- the State -- I keep -- I'm sorry.
18 Like I said, clearly, the State has the burden here. If
19 you find that the State has met its burden on proving
20 possession of methamphetamine -- again, there's no amount
21 that we're talking about here. That is just any -- that
22 is anything -- you know, they possessed methamphetamine.
23 If you find the State has met its burden beyond a
24 reasonable doubt, then you -- and you've gotten to this
25 point, you check guilty. If you find they have not met

1 their burden, you would check not guilty.

2 Now, the answer to each of these questions must be
3 unanimous. That means all 12 of you must agree on the
4 answers that you've put on this verdict form. So in
5 your -- and your verdict should be based on the evidence
6 presented and the law which I have given to you. It
7 should not be based on any sympathy, any passion, any
8 prejudice, anything outside the record, just strictly on
9 what's been presented here in court.

10 Once you have completed your verdict form, then you
11 would give it to the bailiff -- I mean, you would let the
12 bailiff know and the bailiff will bring it -- then we'll
13 come back in here.

14 All right. Now, if you have any questions, that's
15 something that you, Mr. Foreman, would write on a piece of
16 paper, sign your name, and date it, and give it to the
17 bailiff.

18 The bailiff will bring it to me. I'll look at it.
19 And there can be two ways for me to respond. I can either
20 respond in writing back to you, or I can bring you back in
21 for an additional charge.

22 Now, I cannot answer factual questions. A lot of
23 times people will, say, well, there was a reference to
24 some other report or to some other witness, what did that
25 person say? What did that person know about this? Of

1 course, we can't answer that. We cannot give you any
2 additional information that's not already been put into
3 the record.

4 Now, one of the things that -- it's 20 until 12:00.
5 At some point, lunch will be delivered. And I have not
6 checked. Usually, it's pizza. So if you need something
7 other than that, please, let the bailiffs know. But that
8 is the usual fare for jury's here.

9 Now, when the pizza does come, it's up to you, if you
10 want to continue your deliberations during that -- while
11 you're eating, that's fine. If you want to take a break,
12 that's fine.

13 But at this point -- and I, also, want to talk to my
14 alternates. Y'all have worked just as hard as everybody
15 else here. But once the deliberation process begins, you
16 will not be able to participate in that and will have to
17 step out of the room.

18 But I want to say that your role is just as important
19 as the other 12. Because if somebody could not have
20 returned or completed their duties as jurors, which all of
21 these things -- these different sicknesses going around,
22 that's a very likely chance. Because, in fact, I'm
23 surprised all 14 were able to make it back. But in that
24 case, you would have had to step in that role as a juror
25 or we would not be able to complete the trial. So the

1 fact that we're kicking you out at the last of it doesn't
2 mean your role isn't very important.

3 Okay. I'm going to send you back to your jury room.
4 You can't discuss the case yet because I need to make sure
5 I haven't made any other mistakes, other than the one
6 they've already pointed out to me. And if so, then I will
7 bring you back in here and clear anything up.

8 Otherwise, you can begin your deliberations. And the
9 signal will be the bailiffs will bring you the verdict
10 form, and they'll bring you the evidence, and ask the
11 alternates to step out.

12 So, at this point, go back in your jury room and wait
13 for further instructions.

14 (WHEREUPON, the jury was excused from open court at
15 approximately 11:49 a.m.)

16 THE COURT: Thank y'all for bringing that out.

17 MR. GRAVLEE: I'm --

18 THE COURT: Any objection from the State?

19 MR. HOFFERTH: No objection from the State.

20 THE COURT: Any objection from the Defense?

21 MR. GRAVLEE: No, Judge. I'm not going to throw any
22 papers in the air. I think that was sufficient. And I'm
23 glad Mr. Hofferth caught it because it went over my head.

24 THE COURT: You get to say that so much. It's, like,
25 sufficient. That's all you can come up with?

1 MR. GRAVLEE: I think the --

2 THE COURT: I'm just kidding. I'm sorry, Pat Sajak.
3 But all right.

4 MR. GRAVLEE: I take exception to that.

5 THE COURT: No. It was really more of a slight at
6 your side kick. I just didn't want to call him that.

7 MR. GRAVLEE: I take exception to that, too.

8 THE COURT: Let's make sure we've got all the
9 evidence.

10 (Pause.)

11 THE COURT: Bring the jury in.

12 (WHEREUPON, the jury came into open court at
13 approximately 11:55 a.m.)

14 THE COURT: One very brief thing to follow-up on. I
15 realized I didn't give you really any information on the
16 exhibits. You'll have the exhibits back in your room.
17 Obviously, one of the exhibits -- yeah. The exhibits
18 include a bag of methamphetamine. And just make sure -- I
19 mean, it's in a separate bag and it's safely concealed. I
20 always have to warn -- do not break that seal in any way.
21 That has happened, believe it or not. So I just always
22 like to warn you about that.

23 The other thing I wanted to tell you about, in the
24 event you needed to see any of the videos that were
25 presented, we're not really set up to have anything sent

1 back there to you. So in the event that you needed to
2 view anything, we'd have to bring you back in for that.

3 And, also, too, in the event that you wanted to
4 discuss it while looking at the video, there's ways we can
5 kind of do that as well, too. But, anyway, so if you need
6 to see the video, then just let the bailiffs know.

7 So with that being said -- I just wanted to cover up
8 those two things. With that being said, you can go back.
9 In just a minute, the bailiff will bring the evidence and
10 ask the alternates to step out.

11 All right. This time, you can retire back to your
12 jury room.

13 (WHEREUPON, the jury was excused from open court at
14 approximately 11:57 a.m.)

15 THE COURT: All right. Any exceptions to that from
16 the State?

17 MR. HOFFERTH: No, Your Honor.

18 THE COURT: And from the Defense?

19 MR. GRAVLEE: No, Your Honor.

20 THE COURT: All right. Take that back and ask the
21 alternates to step out.

22 All right. We'll be at ease. Be around and
23 available, generally available.

24 (WHEREUPON, Defendant's Exhibit Nos. 9 and 10 were
25 marked for identification only.)

1 (WHEREUPON, the proceedings were recessed at
2 approximately 11:58 p.m.)

3 QUESTIONS FROM THE JURY

4 THE COURT: All right. We're back on the record.

5 We have a question, Need to see video of front seat
6 when Daw first arrives at front of vehicle to see bags at
7 right of driver's seat.

8 Do you have that lined up?

9 MR. HOFFERTH: Yeah. I assume they're meaning Daw
10 coming up to the car, the first body cam video, up until
11 when he goes back to his car.

12 MR. GRAVLEE: I don't have any objection to that.

13 THE COURT: And what we can do is I'll --

14 MR. HOFFERTH: Play it and then see if --

15 THE COURT: We'll play it and say, is that what you
16 were talking about? And if they need additional, they'll
17 have to go back and make another note.

18 And we've got that marked as a Court's Exhibit, too.

19 So you're ready? Is the State ready?

20 MR. HOFFERTH: I'll just get it to the point where he
21 gets out of the car. So just play it from --

22 THE COURT: Well, it says, Need to see video of front
23 seat when Daw first arrives.

24 MR. HOFFERTH: Oh, so I don't know if they're talking
25 about --

1 THE COURT: Seems like they're talking about the
2 front seat of the vehicle. Yeah, Need to see front seat
3 when Daw first arrives at the front of vehicle.

4 MR. HOFFERTH: So it would have to be this video
5 because -- okay. We'll just play them this and then if
6 they --

7 THE COURT: I don't think -- they don't want to see
8 the whole thing.

9 MR. GRAVLEE: No.

10 THE COURT: They just want to see --

11 MR. HOFFERTH: Right, right. I just mean, you know,
12 from here where he approaches the vehicle, talks to her.
13 And then he goes back to his vehicle at four minutes. So,
14 I assume, I'd pause when he goes back to his vehicle. If
15 they want to see --

16 THE COURT: Okay. I see your point. That should
17 cover it.

18 Bring the jury in.

19 Is the State ready?

20 MR. HOFFERTH: Ready.

21 THE COURT: Is the Defense ready for the jury?

22 MR. GRAVLEE: Yes, sir, Your Honor.

23 THE COURT: All right.

24 (WHEREUPON, the jury came into open court at
25 approximately 12:54 p.m.)

1 THE COURT: All right. Ladies and gentlemen, I'm
2 sorry about the delay. We had a little bit of technical
3 difficulties.

4 But I received a note, Need to see video of front
5 seat when Daw first arrives at front of vehicle to see
6 bags at right of driver's seat.

7 All right. So what we're going to do is we've got it
8 set up to play, I believe, the first four minutes of this
9 video here. And if that -- and he's going to pause it
10 after Daw comes back. And if y'all need anything further,
11 just let me know.

12 MR. HOFFERTH: This is Devin Daw BC1, 28 seconds.
13 (WHEREUPON, a portion of State's Exhibit No. 1 was
14 played in open court.)

15 MR. HOFFERTH: Stopping at four minutes.

16 THE COURT: All right. Was that the portions that
17 you needed to see?

18 JUROR #18, FRANKLYN BOBBY: Evidently, it's the one
19 after everybody was out of the vehicle. Just before they
20 got out, one of the officers went to the passenger side
21 and his camera showed the bags in between the seats.

22 THE COURT: Okay. I'm going to ask you to step back
23 there. And we'll see if we can find that portion.

24 (WHEREUPON, the jury was excused from open court at
25 approximately 12:59 p.m.)

1 THE COURT: Do you know what he's talking about?

2 MR. HOFFERTH: I think this is what they're
3 referencing. I could be wrong.

4 THE COURT: Is that still part of the same one?

5 MR. HOFFERTH: It's still part of the same one. But
6 when -- they're talking about when they find the position
7 of the bags. Because Massingill doesn't search the car.
8 He's out of it.

9 THE COURT: So where does this one start when they
10 come up to the car? This is still Daw?

11 MR. HOFFERTH: It's Daw's. He goes from here to
12 searching the passenger side of the car.

13 MR. GRAVLEE: And, Judge, I -- because I heard one of
14 the jurors say, too -- it could very well be both. But
15 one of them was like, Yeah, it was Van Massingill, whether
16 it is or isn't.

17 THE COURT: Right. But it sounds like --

18 MR. HOFFERTH: If the question is related to the
19 location of the bag, this is where it shows it. If they
20 want --

21 THE COURT: Let's start it where he walks up. Let's
22 let him see this part and see if this is what they're
23 talking about. And if not, we can go back and see.

24 MR. GRAVLEE: Yeah. I'm not sure where --

25 THE COURT: There's no -- the muted part here, is it?

1 MR. HOFFERTH: No. That is 8:54 to 8:57. Well, I
2 think for court we did 8:50 to 8:57, but this is
3 afterwards.

4 (WHEREUPON, a portion of State's Exhibit No. 1 was
5 played in open court.)

6 THE COURT: Is that --

7 MR. HOFFERTH: I think that's what they're talking
8 about.

9 THE COURT: Well, start it right when he walks up to
10 the car. Right there.

11 MR. HOFFERTH: Well, I think that's a police vehicle.

12 THE COURT: Oh, okay.

13 MR. HOFFERTH: So right here.

14 THE COURT: Just so -- I don't want the -- they
15 didn't request anything about the conversation with the
16 people.

17 MR. HOFFERTH: All right. Right here.

18 THE COURT: All right. Any comments from the
19 Defense?

20 MR. GRAVLEE: Judge, I mean, I think that
21 conversation that is happening before then is kind of
22 informing what he's doing before then. So I would say
23 from that 9:30 spot we, initially, just addressed, rather
24 than --

25 THE COURT: Well, they asked to see the video of the

1 front seat when Daw first arrives at the front seat.

2 MR. HOFFERTH: Yeah.

3 THE COURT: All right. Bring the jury in.

4 Is the State ready for the jury?

5 MR. HOFFERTH: Ready, Judge.

6 THE COURT: Is the Defense ready for the jury?

7 MR. GRAVLEE: Ready, Judge.

8 (WHEREUPON, Court's Exhibit No. 2 was marked for
9 identification and admitted into evidence.)

10 (WHEREUPON, the jury came into open court at
11 approximately 1:03 p.m.)

12 MR. HOFFERTH: Can we come up real quick?

13 THE COURT: Yes.

14 (WHEREUPON, a bench conference was held.)

15 THE COURT: All right. This is -- based on your
16 original request of Daw's video and based on your
17 description, this is what we think you were asking about.
18 I'm going to turn down the lights a little bit so we can
19 see. I kind of feel like the spotlight over here.

20 MR. HOFFERTH: Are we ready, Judge?

21 THE COURT: Yes.

22 MR. HOFFERTH: Detective Daw BC1 playing at nine
23 minutes and 51 seconds.

24 (WHEREUPON, a portion of State's Exhibit No. 1 was
25 played in open court.)

1 MR. HOFFERTH: Stopping at 10:45.

2 THE COURT: All right.

3 JUROR #18, FRANKLYN BOBBY: That was it.

4 THE COURT: That was what y'all needed to see?

5 JUROR #18, FRANKLYN BOBBY: Yes.

6 THE COURT: Do you need to see any more of the video?

7 JUROR #18, FRANKLYN BOBBY: No, Judge.

8 THE COURT: If you'll continue to your jury room and
9 continue deliberating, or eating, or both.

10 (WHEREUPON, the jury was excused from open court at
11 approximately 1:06 p.m.)

12 THE COURT: All right. Any objections or comments
13 from the State?

14 MR. HOFFERTH: Nothing from the State.

15 THE COURT: Defense?

16 MR. GRAVLEE: Your Honor, co-counsel and I were just
17 discussing that we might need to put it on the record that
18 the evidence that was just viewed was different than that
19 which was first presented to the jury. So I just wanted
20 to put an objection on the record based on it being
21 presented in a different light than it was the first time.

22 THE COURT: Are you talking about the lighting?

23 MR. GRAVLEE: Yes, sir. Like, the cutting off of the
24 lights, just to make sure we have that on the record,
25 Judge.

1 THE COURT: If I get reversed on that, I'm quitting.

2 MR. GRAVLEE: It's on the record, Judge.

3 MR. HOFFERTH: It's truly a different light.

4 THE COURT: I want to elaborate on that. Okay. At
5 first, the lights were not as -- were not dim. And so
6 that the jury could see the video better since the video
7 screen is across the room, at the suggestion of one of the
8 counsel, we did turn the lights down so that they could
9 see the video. And I felt that was fairly reasonable
10 based on the request that the jury made to see that
11 portion of the video.

12 MR. GRAVLEE: All right, Judge.

13 THE COURT: Okay.

14 THE COURT: Be at ease and available until further
15 notice.

16 (WHEREUPON, the proceedings were recessed at
17 approximately 1:03 p.m.)

18 (WHEREUPON, Court's Exhibit No. 3 was marked for
19 identification and admitted into evidence.)

20 THE COURT: We have a question, Criteria for
21 trafficking versus distribution charge? And, Does the
22 camo bag with methamphetamine belong to everybody?

23 It's Court's Exhibit 3.

24 And I think in light of that, I just kind of recharge
25 them on the trafficking, actual versus constructive,

1 possession, and possession with intent to distribute.

2 MR. HOFFERTH: Does that contain the quip about it --
3 I think it's joint --

4 THE COURT: My actual and constructive says at the
5 very end of it, two or more persons may have joint
6 possession of the drug.

7 All right. Any --

8 MR. GRAVLEE: I just -- Judge, in light of possession
9 being a lesser included, I'd just request all three --

10 THE COURT: They haven't asked for that. So I'm not
11 going to give them that.

12 MR. GRAVLEE: Thank you, Judge.

13 THE COURT: All right. Bring the jury in.

14 (WHEREUPON, the jury came into open court at
15 approximately 1:33 p.m.)

16 THE COURT: All right. Ladies and gentlemen, I'm
17 sorry about the delay.

18 All right. We've got the question. It says,
19 Criteria for trafficking versus distribution charge? And,
20 Does the bag with methamphetamine, in parentheses came
21 bag, end parentheses, belong to everybody?

22 So the way to answer that is for me to recharge you
23 on trafficking, actual or constructive possession, and
24 possession with intent to distribute methamphetamine, so.

25 All right. The Defendant is charged with trafficking

1 in methamphetamine. List of things which constitute
2 trafficking that the State must prove beyond a reasonable
3 doubt, that the Defendant knowingly sold, manufactured,
4 cultivated, delivered, purchased, brought into this state,
5 provided financial assistance or, otherwise, aided,
6 abetted, attempted, or conspired to sell, manufacture,
7 cultivate, deliver, purchase, or bring into the State, or
8 was knowingly in actual or constructive possession,
9 knowingly attempted to become in actual or constructive
10 possession of methamphetamine.

11 For trafficking, the State must, also, prove beyond a
12 reasonable doubt that the amount of methamphetamine was
13 more than 10 grams. And that's the actual elements for
14 trafficking.

15 And then as to actual versus constructive possession,
16 to prove possession, the State must prove beyond a
17 reasonable doubt that the Defendant had both the power and
18 the intent to control the disposition or use of the
19 methamphetamine. Possession may be either actual or
20 constructive.

21 Actual possession means that the methamphetamine was
22 in the actual custody of the Defendant. Constructive
23 possession means that the Defendant had dominion and
24 control or the right to exercise dominion and control over
25 the -- either the methamphetamine or the property in which

1 the methamphetamine was found.

2 Mere presence at the scene where the drugs were found
3 is not enough to prove possession. Two or more persons
4 may have joint possession of the drug.

5 Now, if you determine the State has not proven
6 trafficking in methamphetamine beyond a reasonable doubt,
7 you should then consider whether the State has proven
8 beyond a reasonable doubt that the Defendant is guilty of
9 possession with intent to distribute methamphetamine.

10 Possession with intent to distribute contains all the
11 elements of trafficking, except for the amount and the
12 requirement of intent. In addition, the State must prove
13 beyond a reasonable doubt that the Defendant had the
14 intent to distribute the methamphetamine. The State must,
15 also, prove beyond a reasonable doubt that the Defendant
16 intended to distribute the methamphetamine -- well, I just
17 said that twice.

18 Distribute means to deliver other than by
19 administering or dispensing a drug. Intent may be shown
20 by acts and conduct of the Defendant and other
21 circumstances from which you may naturally and reasonable
22 infer intent.

23 In determining whether the Defendant had the intent
24 to distribute the methamphetamine, you may consider the
25 circumstances surrounding the Defendant's alleged

1 possession. You may consider the amount of the substance
2 alleged to have been possessed, the manner in which it was
3 allegedly possessed, the place where it was allegedly
4 possessed, and other factors which you consider to be
5 important. You must find that the Defendant did not
6 intend to have the methamphetamine solely for her own use.

7 Possession of more than one gram of methamphetamine
8 creates an inference that the Defendant possessed the
9 methamphetamine with the intent to distribute it. This
10 inference does not relieve the State from proving beyond a
11 reasonable doubt that the Defendant had the intent to
12 distribute. It is simply an evidentiary fact to be taken
13 into consideration by you, along with the other evidence
14 in the case, and to be given the weight you decide it
15 should have.

16 And then the other lesser included offense was
17 possession of methamphetamine.

18 I think that should answer your question.

19 At this time, I'd ask that you go back to your jury
20 room and continue deliberations. And let us know if you
21 have any other questions or need anything else.

22 THE BAILIFF: Your Honor, I believe he has another
23 question.

24 THE COURT: Can you write it down?

25 JUROR #18, FRANKLYN BOBBY: It's already written down.

1 THE COURT: Oh, Does the bag with meth, camo bag,
2 belong to everybody?

3 As I said, I can charge you on the law and you have
4 to apply the law I've given you. I can't answer the
5 actual factual question. Okay.

6 (WHEREUPON, the jury was excused from open court at
7 approximately 1:38 p.m.)

8 THE COURT: All right. Any objection from the State?

9 MR. HOFFERTH: No objection.

10 THE COURT: From the Defense?

11 MR. GRAVLEE: Judge, just subject to my earlier one.

12 THE COURT: Which I kind of did anyway. So I'm not
13 sure what it would be subject to.

14 MR. GRAVLEE: No. Just, I guess, mentioning the
15 objection on the record, Judge.

16 THE COURT: Okay.

17 MR. GRAVLEE: Okay. That would be my only objection.

18 THE COURT: I mean, I did say the other was
19 possession of methamphetamine, so.

20 (WHEREUPON, the proceedings were recessed at
21 approximately 1:40 p.m.)

22 THE COURT: All right. I understand we have a
23 verdict.

24 Anything from the State before I bring the jury in?

25 MR. HOFFERTH: Nothing from the State.

1 THE COURT: Anything from the Defense?

2 MR. GRAVLEE: Nothing from the Defense, Judge.

3 THE COURT: All right. Bring the jury in.

4 (WHEREUPON, the jury came into open court at
5 approximately 1:50 p.m.)

6 THE COURT: All right. Mr. Foreman, I understand
7 you've reached a verdict.

8 JUROR #18, FRANKLYN BOBBY: Yes, Judge.

9 THE COURT: If you will hand that to the clerk,
10 please.

11 All right. You can publish the verdict, please. It
12 looks like it's in proper order.

13 VERDICT

14 THE CLERK: Yes, sir.

15 As to indictment number 2022-GS-39-0264 for
16 trafficking methamphetamine, 10 grams to 28 grams, we, the
17 jury, unanimously find the Defendant, Melanie McClain,
18 guilty.

19 If this your verdict and still your verdict, so say
20 you all by raising your right hand.

21 Thank you very much.

22 THE COURT: Anything from the State?

23 MR. HOFFERTH: Nothing from the State.

24 THE COURT: Anything from the Defense?

25 MR. GRAVLEE: Nothing from the Defense.

1 THE COURT: Ladies and gentlemen, thank you for your
2 service this week.

3 We're going to let you go home now. And you're,
4 also, good for three years now. At this point, you can
5 step back in the jury room and I'll step back in just a
6 few minutes and answer any questions. You don't have to
7 stick around, but I'll be glad to speak a little further
8 with you.

9 Thanks again.

10 (WHEREUPON, the jury was excused from open court at
11 approximately 1:52 p.m.)

12 THE COURT: While he's getting all that together,
13 y'all have a few minutes to get your thoughts together.

14 MR. GRAVLEE: Thank you, Judge.

15 THE COURT: And we'll entertain any motions. Any
16 motions from the State at this point?

17 MR. HOFFERTH: Nothing from the State.

18 MOTIONS

19 THE COURT: Any motions from the Defense?

20 MR. GRAVLEE: Yeah, Judge. I just -- based on the
21 questions that came back, I would like to put on the
22 record that it came back as a trafficking. The question
23 about the bag, where it was and the limitations that was
24 placed in terms of the co-defendants and referencing, you
25 know, their control of it and them being able to raise the

1 inference to the -- to the jury about them, I would
2 have -- I would have said that Shawna at the time seemed
3 to be the trafficker, based on the ledger that she had,
4 and the counterfeit bills, and the knife she had in her
5 pocket.

6 And you could not see the bag that they looked at in
7 that video until after everybody was out of the car. I
8 think that Shawna put it there or, at least, Dustin had.
9 And that I would, also, argue that that 1.2 grams was
10 payment for that ride that was given that night for the
11 guy that's the dealer.

12 So I just take exception to the verdict, the Court's
13 ruling. I just wanted to put that on the record for
14 appeal. And I object to the -- the Court's ruling,
15 initially, on that matter.

16 THE COURT: All right. I'm going to stick with my
17 ruling. I believe there were based on the law applicable
18 to this case. And I'm going to deny your motion.

19 I'll give you a few minutes to just gather things.

20 MR. GRAVLEE: Thank you, Your Honor.

21 (WHEREUPON, a break was taken.)

22 THE COURT: All right. I will hear from the State
23 first. And I'll be glad to hear anything the Defense
24 wants to tell me.

25 MR. HOFFERTH: Judge, I believe we've -- Mr. Welborn

1 has passed up the sentencing sheet, along with certified
2 convictions out of the State of Georgia warranting the
3 third offense as far as the trafficking.

4 I think it's really important to be thorough on how
5 we got here today. Because when you look at this case on
6 its face and you see that we're here on just over the
7 threshold for trafficking, for probably around 11 grams of
8 methamphetamine, I would expect the Court to look at that
9 and then ask the State, is 25 years really warranted in
10 this instance? And that on its own, I understand that
11 question. But you have to understand the circumstances
12 here.

13 And the circumstances are that in the negotiations
14 with Ms. McClain, we have been in the course of trying to
15 get a plea worked out between Pickens County and
16 Greenville County where Ms. McClain has another
17 trafficking charge pending in Pickens County and another
18 trafficking charge pending in Greenville County. All of
19 which are 25-year minimum sentences.

20 Negotiations got to the point with myself and
21 Mr. Gravlee where for a span of a few months, the offer
22 was for Ms. McClain to plead to one count of trafficking
23 10 to 28 second offense for a 10-year sentence. If she
24 would have entered that plea, the other trafficking
25 charges would have been dismissed.

1 So we're looking at 75 years of exposure where she
2 could have gotten a 10-year sentence on a second offense
3 and gotten them all taken care of. I -- I'm confident
4 that Mr. Gravlee did all he could to explain the gravity
5 of the situation to Ms. McClain and to understand the
6 value of the plea deal that was being offered.

7 But, Judge, the value of plea deals in the criminal
8 justice system lies in not just the gravity of the
9 consequences if you choose not to take them, but the
10 assurance that it's going to happen if you don't choose to
11 take them. She exercised her right to a trial in this
12 case, which, obviously, she has more than a right to do.

13 But, to be quite frank, I believe she has chosen to
14 treat the criminal justice system like a service industry
15 to where if she didn't like the time that she was looking
16 at, if she didn't like the plea deal, if she didn't think
17 that she was getting the right cut that she deserved,
18 facts aside and charges aside, she wasn't going to do it.
19 And she was going to waste time in the court system. She
20 was going to either get a not guilty on this, get tried
21 again on another, and just kick the can down the road.

22 So I think it's outrageous on its face when you see
23 11 grams of methamphetamine and the corresponding sentence
24 is 25 years. But that's not the whole story here. It's
25 not the whole story. And there needs to come a time where

1 the value of a plea deal is displayed. And I think this
2 is that circumstance.

3 So the previous convictions speak for themselves.
4 They warrant the -- the sentencing being that of a third
5 offense on a trafficking 10 to 28. And the cards just
6 have to fall where they may.

7 And I will say on a last note, law enforcement, they
8 can't be here today just for sentencing. But they've
9 reiterated to me that they've gotten numerous complaints
10 from Ms. McClain's residence and cars going in and out,
11 suspected drug activity, suspected drug dealings. And if
12 that's not just smoke, the fact is she has those other two
13 pending traffickings to substantiate that.

14 So, you know, I understand the disparity on its face
15 between the sentencing she's looking at and the facts of
16 this case. But that's not the whole story.

17 THE COURT: Well, let me ask you, I'm trying to
18 figure this out. I know these forms are a lot different
19 down in -- where is this, Georgia?

20 MR. HOFFERTH: Georgia.

21 MR. GRAVLEE: Yes, sir.

22 THE COURT: We've got three sets of records and, I
23 guess, the pleas were all on May 3rd of 2018.

24 MR. HOFFERTH: Yes, sir. And if you need some -- the
25 law in the State of South Carolina as far as stacking

1 offenses, there's a case, Robinson vs. State, 387 South
2 Carolina 568, that addresses the specific point on whether
3 offenses are stackable if they are pled to on the same
4 day. And they are so long as the date of the offense is
5 different. I'll pass up a copy to Your Honor, if you'd
6 like to review.

7 THE COURT: I was trying to figure out when the --

8 MR. HOFFERTH: It says on the second or third page of
9 the indictment, specifically.

10 THE COURT: We've got one March the 8th, 2018, one
11 February 27th, 2018, and then one -- one incident
12 September 20th, 2017. And they were all pled on May 3rd,
13 2018. Okay. I just wanted to clarify that.

14 All right. Anything else from the State?

15 MR. HOFFERTH: Nothing from the State, Your Honor.

16 THE COURT: I mean, so based on the fact this is a
17 third offense, then it's a mandatory 25 with no --

18 MR. HOFFERTH: It is, Your Honor.

19 THE COURT: All right. Mr. Gravlee.

20 MR. GRAVLEE: And, Judge, it's a mandatory 25. I
21 don't know why we're getting into all of that. But the --
22 both -- I don't know what's going on with the Greenville
23 part of it. I know what she's got in Pickens. I do
24 represent her on both of those.

25 And both of those cases, Judge, I know, at least, in

1 this one -- and I hate to comment on the facts of the
2 other one. But in this one, she was given that 1.2 grams.
3 I was trying to share that with the jury, but was
4 prevented from doing so. That was payment for them
5 getting rides around. Dustin owed her. And he was just
6 paying her as an addict with that 1.2. That 3.4, 3.4, and
7 3.4 was Dustin and Shawna's.

8 Shawna had that drug ledger in the back and all the
9 notes and everything in there regarding, you know, she
10 owes 5,800 to somebody, and all this and that. I couldn't
11 get into that. She had 620 some odd dollar bills on her
12 as well.

13 She is not a drug trafficker, Judge. I stand by that
14 she was holding onto that for dear life as a user who
15 doesn't throw it down as they're walking back to the cops
16 to ditch it somehow. Her two prior convictions that she
17 has were not trafficking or distributions. It's a
18 possession. It's two possessions.

19 THE COURT: Well, one is a possession with intent to
20 distribute, isn't it?

21 MR. GRAVLEE: No, sir, Your Honor.

22 THE COURT: That's how it was indicted.

23 MR. GRAVLEE: I think there was an indictment on
24 that. And I think how they do it is -- I think it's under
25 two grams or something in Georgia. And that's how it was

1 pled that way.

2 But I'd submit it would be a similar argument for the
3 other case as well where I know in that case, there's --
4 again, she is the driver. It's the car. The officers
5 know this car. It's a Ford Windstar with a Cadillac badge
6 on the back. That doesn't exactly lay low. But there's
7 another passenger in her car in that matter.

8 And I wasn't planning on getting into this, but
9 Mr. Hofferth raised the issue. And in that case, there's
10 a baggie with the other guy and it's in the passenger side
11 pocket with that passenger sitting up front. So these
12 aren't two cases where she's just sitting around there. I
13 tried to work out a deal for her and tried to discuss it
14 with her and, yes -- and relay the gravity of the
15 situation, sure, Judge.

16 But I do want to say she's been married for 22 years.
17 Judge, I've been asking her for well over the past year
18 and a half to go to the hospital. I think she's got --
19 she, certainly, appears -- I'm no doctor, but appears to
20 have the symptoms of MS. It's not -- since I've known
21 her, she's gone downhill physically.

22 She's been out on bond since May 23rd of 2022. She
23 was arrested on 4/21/22 and spent 33 days in the jail on
24 that charge with the other passenger, not in this case.
25 But -- and she's had no violations since her release on

1 5/23/22.

2 So I think from my calculations, Judge, on my date
3 and time from 4/21 while she was in jail until today is
4 658 days of credit. And then I guess in the -- she had
5 eight days -- she was in jail eight days originally on
6 this charge before getting a bond to get out.

7 Her husband has got some health issues --

8 THE COURT: So that would be eight days added to
9 that?

10 MR. GRAVLEE: I think so, Judge.

11 THE COURT: So it would be 666?

12 DEFENDANT MCCLAIN: I don't know.

13 MR. GRAVLEE: 665, Judge.

14 THE COURT: How about I give you 667?

15 DEFENDANT MCCLAIN: Either way. It doesn't matter.

16 MR. GRAVLEE: Thanks, Judge.

17 She's got nine dogs. She does -- but she wants --
18 that she wants to take care of. She has waitressed for a
19 long time, and whatnot.

20 Co-counsel just pointed out to me that this Robinson
21 vs. State case, he's just checking it out. It does show
22 some overruling in part, case law. So we might need to --

23 MR. HOFFERTH: It was as to the de novo review, not
24 to the issue, specifically.

25 MR. GRAVLEE: Judge, yeah. We're going to check it

1 out on our own here.

2 But as far as this case goes, Judge, I think if --
3 out of these two convictions that were the prior
4 sentencing date, if the case law does support that -- and
5 my understanding from my co-counsel, Mr. Hellams, he's
6 done some research on this issue in the past. And it has
7 shown -- and I don't have the case right now, Judge, but
8 that it would be one collective offense.

9 So this would be a second, which would mean seven to
10 25, instead of 25 to 30. And so we would ask for the
11 minimum, Judge, on that because she's a user who's taken
12 people around for payment, Judge. She ain't no
13 trafficker.

14 THE COURT: All right. Ms. McClain, anything you
15 want to tell me? I'll be glad to hear from you.

16 DEFENDANT MCCLAIN: Yes, sir. Like he said, me and
17 my husband both are in bad health. I -- I don't sell
18 drugs. I do use. I have used -- well, I have used.
19 And -- and up until I got out with this ankle monitor, I
20 was using.

21 As far as the cars coming down to my yard, you have
22 to realize, I'm on house arrest. So I really can't go
23 anywhere. So the people --

24 MR. GRAVLEE: Ms. McClain, I didn't want to -- I
25 don't mean to cut you off.

1 It was an issue. I did -- when I was speaking to
2 Agent Daw at one point, it was like -- if she is --
3 actually, it does seem like sometime over the past 626
4 days, they would have swung by because they know where she
5 is at all times with that ankle monitor.

6 I'm sorry. Continue, Ms. McClain.

7 DEFENDANT MCCLAIN: People come down there and bring
8 me stuff, like, as far as groceries, and stuff. I don't
9 have any transportation. So they bring -- different
10 people bring me different things from the store or just
11 come by to visit me because I am on house arrest. I can't
12 go anywhere. If I leave my house, I have to go straight
13 where I'm going and straight back home. I don't get no in
14 between stopping at a friend's house, or anything like
15 that.

16 He said I've been married. I have been with my
17 husband for 23 years. And I just don't think either one
18 of us will make it with that much time apart. And he's
19 here. He's outside.

20 THE COURT: All right. Thank you, Ms. McClain.

21 All right. Anything else?

22 MR. GRAVLEE: Nothing from the Defense, Judge.

23 THE COURT: Well, in looking at this, I mean, we have
24 three separate instances from Georgia. Under
25 44-53-375(c)(1), trafficking is 10 grams or more. And for

1 a third or subsequent offense, it's a mandatory minimum of
2 25 years, which no part can be suspended, and a fine of
3 \$50,000. I'm not sure that I have any discretion as far
4 as the minimum.

5 SENTENCING

6 THE COURT: So the sentence of the Court is 25 years
7 and \$50,000. And credit for 667 days.

8 Good luck to you, Ms. McClain.

9 I'm going to mark the exhibits -- I mean, Court's
10 Exhibits, the three.

11 MR. GRAVLEE: Sir?

12 THE COURT: I'm going to mark these as exhibits, the
13 prior records as Court's Exhibits.

14 MR. GRAVLEE: Thank you, Your Honor.

15 (WHEREUPON, Court's Exhibit No. 4 was marked for
16 identification and admitted into evidence.)

17 *****END OF TRANSCRIPT OF RECORD*****
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth 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 trial of the captioned case, relative to appeal, in the Court of General Sessions for Pickens County, South Carolina, on the 5th, 6th, and 7th days of February, 2024.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

August 22, 2023

Hollie M. Jenkins, Court Reporter

DOCKET NO. 2022-GS-39-
TBP
02604
The State of South Carolina
County of Pickens

COURT OF GENERAL SESSIONS
JUL 25 2023 TERM 2022

THE STATE
vs.
MELANIE CROMER MCCLAIN

0452
Indictment for
TRAFFICKING METHAMPHETAMINE
VIOLATION § 44-53-0375(C)(1)

WITNESSES

Devin S Daw
Pickens County Sheriff's Office

10/21/2021

Presenting Officer: Andy Robinson
Date: 07-25-2023

ARREST WARRANT NUMBER
2021A3910101160

ACTION OF GRAND JURY

TRUE BILL
Date: 25 JUL 2023

Frank P. Bell
Foreperson of Grand Jury

VERDICT

Guilty

Frank P. Bell
Foreperson of Petit Jury
Date: 2/7/24

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)

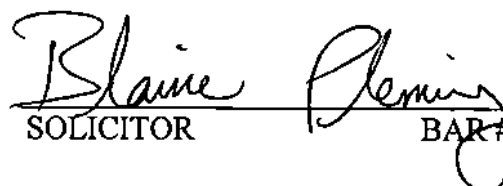
INDICTMENT FOR
TRAFFICKING METHAMPHETAMINE

At a Court of General Sessions, convened on **JUL 25 2023** the Grand Jurors of Pickens

County present upon their oath:

That MELANIE CROMER MCCLAIN did in Pickens County, on or about the 20th day of October, 2021, knowingly sell, manufacture, deliver or bring into the State of South Carolina or did knowingly provide financial assistance or otherwise aid, abet, attempt or conspire to sell, manufacture, deliver or bring into the State or was knowingly in actual or constructive possession of more than ten grams of Methamphetamine. This is in violation of §44-53-375 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 # 78406

STATE OF SOUTH CAROLINA

COUNTY OF Pickens

STATE

VS.

Melanie Cromer McClain

AKA:

Race: WHITE Sex: F Age: 50DOB: 74 SS#: Address: RdCity, State, Zip: Marietta, SC 29661-9425DL#: SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2022 - GS - 39 - 00264A/W#: 2021A3910101160Date of Offense: 10/20/2021S.C. Code § 44-53-0375(C)(1)(CDR Code #: 0452

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the above indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADSTO: Drugs / Trafficking Methamphetamine 10-28g 3rd Offensein violation of § 44-53-0375(C)(1)(of the S.C. Code of Laws, bearing CDR Code # 0452

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Hofferth, Jacob 105007
SC Bar #

Defendant

GRAVLEE, JOHN MAXWELL
Attorney for Defendant

101214
SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Correction, ☐ County Detention Center,for a determinate term of 25 days/months/years/Time Served ☐ Youthful Offender Act not to exceed years

and/or to pay a fine of \$ 50,000; provided that upon the service of days/months/years/Time Served and or payment of \$; plus costs and assessments as applicable*; the balance is suspended with **probation** for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDoc. 667 days/months

☐ To include time spent on monitored house arrest prior to trial and sentencing.☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

25-30yr.

STATE VS. Melanie Cromer McClain INDICTMENT/CASE#: 2022 - GS - 39 - 00264**SPECIAL CONDITIONS:**☐ **PTUP** after _____ months/years**And Other Terms Listed Below:**

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing
- ☐ Attend Voc. Rehab. or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program
- ☐ Mental Health Counseling ☐ May serve W/E beginning: _____
- ☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours
- ☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- ☐ Other: _____

☐ **RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

***Fine:**

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ Beginning _____ \$ 50,900.00

§14-1-206 (Assessments 107.5 %)		\$ <u>53,750.00</u>
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$ _____
§56-5-2995 (DUI Assessment)	\$12	\$ _____
§56-1-286 (DUI Breath Test)	\$25	\$ _____
§14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§14-1-213 (Drug Court Surcharge)	\$150	\$ <u>150.00</u>
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41	\$ _____
§50-21-114(BUI Breath Test Fee)	\$50	\$ _____
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ _____
3% to County (if paid in installments)	TBD	\$ <u>3120.75</u>
☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.	\$500	\$ _____
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD	\$ _____

TOTAL \$ 107,145.75, 5Clerk of Court/ Deputy Clerk: _____
Court Reporter: _____Hollie JenkinsPresiding Judge: _____
Judge Code: _____
Sentence Date: _____275
2/7/2024

CLERK OF COURT
PICKENS COUNTY

THE STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)
2024 FEB 16 PM 5:06)
THE STATE)
v.)
MELANIE CROMER MCCLAIN,)
DEFENDANT.)

IN THE COURT OF GENERAL SESSIONS
THIRTEENTH JUDICIAL CIRCUIT
Warrant/Indictment Nos.: 2021A3910101160

MOTION FOR NEW TRIAL

MELANIE CROMER MCCLAIN, by and through her undersigned counsels, and, pursuant to Rule 29 of the S.C. Rules of Criminal Procedure, respectfully moves this Honorable Court to grant McClain a new trial following her recent trial from February 5-7th, 2024.¹

McClain's motion to reconsider is limited to addressing the Court's alleged error in misinterpreting the distinction between evidence of Third-Party-Guilt versus McClain's constitutional right to present a defense that draws into question facts, testimony, and evidence concerning the two other co-Defendants' knowledge, dominion, and control over a bag of narcotics — the key elements of the offense for which McClain was convicted. The Court prevented Defense Counsel from presenting a meaningful defense — and in a constructive possession case, the only defense — by restricting Counsel from a making meaningful argument on mere presence, reasonable doubt, and permissive inferences about McClain's lack of knowledge, dominion, and control from the facts and circumstances in this case.

The State, by choosing to only prosecute McClain — and not the other two co-Defendants — was able to use the Court's ruling to compartmentalize the evidence presented to the jury, which prevented McClain from pointing out the glaring juxtaposition between what McClain actually possessed and the drug-distribution evidence attributable to the other two co-

¹ This motion for a new trial is made while still preserving and not abandoning other issues raised and ruled upon during trial.

Defendants in the vehicle. The Court's ruling eviscerated a meaningful opportunity for McClain to present a complete and fair defense on cross-examination under the Sixth Amendment and the Confrontation Clause. It further prevented McClain from arguing facts and inferences from the evidence to the jury — the only defense McClain could present throughout the trial — in violation of her right to Due Process under the Fourteenth Amendment of the United States Constitution, and under Article 1, Section 10 of the South Carolina Constitution.

McClain respectfully requests this Court vacate the conviction and sentence, and grant McClain a new trial. Specifically, in support of this motion, McClain would show the Court the following facts and law governing this case:

1. McClain was one of three occupants in a vehicle stop from this case on October 20, 2021.

2. McClain was the driver of the car, and the car was registered to McClain. However, all three occupants were charged with Trafficking Methamphetamine.

3. McClain was the only co-Defendant called to trial.

4. Defense Counsel conceded, and testimony made it apparent that McClain was in actual possession of around 1.2 grams of methamphetamine that she was holding in her hand upon exiting the vehicle in the traffic stop.

5. McClain's entire theory of the defense revolved around the concession that McClain was a "user," but the other co-Defendants *actually possessed* evidence indicating drug distribution and sales, and thus knowledge, dominion, and control over the bag alleged to be in constructive possession of all three occupants.

6. There was literal evidence of drug-distribution activity found in the co-Defendants' actual possession or claimed belongings, as explained below.

7. McClain intended, but was restricted by the Court's ruling from asking a jury to infer mere presence (with respect to the un-claimed bag) or arguing the evidence of drug distribution attributable to the other co-Defendants. That distribution evidence was in fact found in the co-Defendants' possession and was indicative of one (or both acting in concert) being "drug dealers." This evidence demonstrated a stark contrast to McClain's lack of drug-distribution-evidence found in her actual possession. Thus, McClain was restricted from highlighting this distinction to argue that McClain neither had knowledge or control of the 10+ grams found in a zipped-closed, opaque camouflage-print bag in an open area between the front passenger bucket-seats, and also in immediate proximity to where the rear passenger was seated. Defense counsel still maintains McClain held 1.2 grams of methamphetamine in her *actual* possession, but the Court restricted McClain from arguing that the entirely separate 10+ grams of methamphetamine with the totality of the evidence — especially the evidence of the co-Defendants' engagement in drug distribution — demonstrated the co-Defendants were in exclusive control of the trafficking amount of methamphetamine.

8. Importantly, although the bag with 10+ grams of methamphetamine appeared to be found closer to the driver's side than the passenger side, the bag was found in an open area, accessible to all in the vehicle; not within a closed center console, or within another closed compartment of McClain's vehicle, like a glove compartment.

9. But for the Court's limiting instructions, Defense counsel would have argued, among other assertions, that the other co-Defendants had the opportunity to plant the bag with 10+ grams of methamphetamine when McClain complied with law enforcement and exited the vehicle, but while the co-Defendants remained in the dark vehicle the night of the stop. This opaque bag with the 10+ grams of methamphetamine also included small empty baggies, a

pocket-sized weight scale, and marijuana. The State conceded the marijuana in the methamphetamine bag was destroyed after arrest; however, co-Defendant Dustin Pace testified and admitted possession of small baggies in a bag he claimed that also had marijuana, as well as at least one (or possibly two) drug pipe(s) on his person.

10. Defense counsel attempted to introduce evidence of a purple notebook, found in co-Defendant Johnston's purse. The Court limited McClain's cross-examination, which would have addressed the importance of that notebook found in Johnston's purse, and the clear link of marijuana and empty baggies found on co-Defendant Pace. The limitation obliterated McClain's ability to ask the jury to draw the reasonable inference that the co-Defendant with counterfeit bills, the marijuana, and small, empty baggies in his possession was more likely to be the one with the exclusive knowledge, dominion, and control of the 10+ grams methamphetamine bag that also contained marijuana and small empty baggies. Simultaneously, McClain was prevented from raising inferences about the rear passenger co-Defendant's control and knowledge of the methamphetamine bag, when that co-Defendant was in possession of counterfeit bills, the ledger notebook, a knife, and methamphetamine later found after arrest in her bra during booking.

11. The Court's limitations — based on the misinterpretation of the evidence as "Third-Party Guilt" — eviscerated McClain's complete defense regarding the elements of constructive possession that McClain is entitled to present at trial through the effective and meaningful ability to cross-examine the co-Defendants in this case, and argue these reasonable inferences to the jury in closing argument.

12. The Court's ruling prevented McClain from arguing these facts as reasonable inferences the jury could draw — calling into question McClain's lack of knowledge, dominion and control, and the more likely scenario that the other co-Defendants were either jointly or

individually guilty as the occupants in the car that possessed items indicating they were “dealers.” Necessarily, in a constructive possession case, where all occupants and co-Defendants deny knowledge and possession of the drugs, the co-Defendants are pitted against each other. The Court’s limitation is all the more prejudicial to McClain because of the distinction argued from the beginning by Defense Counsel between the 1.2 grams of methamphetamine in McClain’s hand, compared to the 10+ grams of methamphetamine found in the unclaimed bag after McClain exited the vehicle, while the other two co-Defendants remained within arms-reach of where the bag was found.

13. The Court’s reasoning, which erased McClain’s defense, essentially evaluated the strength of only one party’s evidence, and the Court’s “Third Party Guilt” limitation prevented the jury from hearing arguments regarding McClain’s strength of contrary circumstantial evidence to rebut or cast doubt on the State’s theory of constructive possession. See *Holmes v. South Carolina*, 547 U.S. 319 (2006) (citing *Crane v. Kentucky*, 476 U.S. 683, 690 (1986)).

14. There was testimony and evidence presented that the untried co-Defendants were the front seat passenger and rear passenger, who got in the car together, were living together at the time, and were boyfriend/girlfriend (or in a similar relationship). McClain was prevented from drawing the meaningful inference that this relationship linked the two co-Defendants, and that either of them were more likely the ones with control over the drug bag, exclusive of McClain’s control. An officer acknowledged in his testimony at trial that the rear passenger in the vehicle was in possession of “a ledger.” This ledger was a purple notebook containing memos documenting debts owed, and appeared to document additional illegal activity.

Importantly, the officer conceded the co-Defendant's² notebook contained a note stating "\$80 for counterfeit bills." (These bills were also taken into custody and evidence by police)

15. Both co-Defendant Johnston and Co-Defendant Pace were found to be in possession of counterfeit bills, totaling thirty-six (36) counterfeit \$20 bills³; however, the court severely restricted counsel on cross-examination and in closing to properly argue the significance of counterfeit money, the knives on both co-defendants, the similarities in what co-Defendants *actually* possessed and what was also in the constructive-evidence bag. Importantly, co-Defendants claimed possession and ownership of these items (and the bag/purse/pockets in which these items were found) on body-cam, and these items were exclusively in the possession of the co-Defendants.

16. Further, McClain was limited from arguing the armed⁴ co-defendant dealer or dealers would have had exclusive dominion and control over the constructive possession bag with a weapon in tow — control over the bag, exclusive over anyone else that is not a dealer. Testimony was elicited from officers during trial that dealers would have knowledge, dominion, and control over their own "stash," and dealer(s) are often armed and dangerous to prevent others from exercising dominion and control of their drugs.

17. This Court found that the third-party-guilt exclusionary rule in *Gregory*⁵

² The referenced Co-Defendant was Shawna Marie Johnston, the rear passenger in McClain's vehicle.

³ State's Exhibit 7 lists the counterfeit bills in evidence and the purple notebook.

⁴ Testimony was presented at trial establishing co-Defendant Johnston was in actual possession of a switchblade-looking knife during the stop, and possibly one other knife. It is unclear if the other knife in view may be Johnston's or Pace's; regardless, the knife was not McClain's. Aside from the 1.2 grams of methamphetamine in McClain's hand, there was *zero* testimony or evidence presented that McClain was in actual possession, either on her person or in her claimed purse, of *any* weapons or *any* evidence indicating drug distribution.

⁵ *State v. Gregory*, 198 S.C. 98, 104-05 (1941) ("... [T]he evidence offered by accused as to the commission of the crime by another person must be limited to such facts as are inconsistent with

prevented McClain from arguing facts and inferences to the jury concerning the co-Defendants' apparent possession drug-distribution evidence. For the sake of argument, even if McClain's argument on facts and inferences against the co-Defendants in a constructive possession case is "third-party-guilt-evidence, *Gregory*'s rule would still not exclude McClain from arguing this evidence to the jury. McClain maintains that *Gregory*'s exclusionary rule was designed to limit a defendant from pointing to a proverbial "boogie man in the bushes" as a scapegoat to the crime with which McClain was charged. *See Gregory*, 198 S.C. at 104-05. Understandably, *Gregory* was intended to prevent a defendant from getting into facts and evidence that casts bare suspicion and only raises conjectural inferences that some other unconnected person "might have committed the offense for which [s]he is on trial, or by fanciful analogy to say the jury that someone other than [s]he is more probably guilty." *Id.*

In this case, there is nothing conjectural about arguing the drug-distribution evidence, *inter alia*, was directly linked to the co-Defendants when these individuals were also charged

his own guilt, and to such facts as raise a reasonable inference or presumption as to his own innocence; evidence which can have (no) other effect than to cast a bare suspicion upon another, or to raise a conjectural inference as to the commission of the crime by another, is not admissible. . . . Remote acts, disconnected and outside the crime itself, cannot be separately proved for such a purpose. An orderly and unbiased judicial inquiry as to the guilt or innocence of a defendant on trial does not contemplate that such defendant be permitted, by way of defense, to indulge in the conjectural inferences that some other person might have committed the offense for which he is on trial, or by fanciful analogy to say to the jury that someone other than he is more probably guilty.").

McClain argues this *Gregory* exclusionary rule does not apply, even if the Court has found Third-Party-Guilt evidence applies in this constructive evidence case. McClain maintains that *Gregory* was designed to limit a defendant from pointing to a "boogie man in the bushes" as a scapegoat when there is only a conjectural inference "that some other person might have committed the offense for which [s]he is on trial, or by fanciful analogy to say the jury that someone other than [s]he is more probably guilty." *Id.* The co-Defendants in this case were also charged with the same crime, were present in the car, and, therefore, McClain's argument was never based on a "fanciful analogy" of Third-Party-Guilt, i.e., McClain is not and has not argued that an unknown scapegoat is guilty, disconnected and outside the crime itself. *See id.*

with the same crime and were both present in the car. By the State's own decision to charge and prosecute the other two co-Defendants,⁶ the State implicitly acknowledges the co-Defendants' criminal connection to McClain's same charge. Therefore, McClain's argument to raise facts and inferences about these co-Defendants has never been based on a "fanciful analogy" that an unknown scapegoat is guilty, disconnected and outside the crime itself. *See id.*

18. Because *Gregory* was misapplied, McClain's right to raise reasonable facts and inferences to the jury was eradicated, and denied McClain from presenting a meaningful and complete defense. The dangers of misapplying the *Gregory* rule was addressed by the United States Supreme Court in *South Carolina v. Holmes*:

The [*Gregory*] rule applied in this case is no more logical than its converse would be, *i.e.*, a rule barring the prosecution from introducing evidence of a defendant's guilt if the defendant is able to proffer, at a pretrial hearing, evidence that, if believed, strongly supports a verdict of not guilty. In the present case, for example, petitioner proffered evidence that, if believed, squarely proved that White, not petitioner, was the perpetrator. It would make no sense, however, to hold that this proffer precluded the prosecution from introducing its evidence, including the forensic evidence that, if credited, provided strong proof of petitioner's guilt.

The point is that, by evaluating the strength of only one party's evidence, no logical conclusion can be reached regarding the strength of contrary evidence offered by the other side to rebut or

⁶ At the time of trial, the trafficking charge was still pending against co-Defendant Pace. Co-Defendant Johnston did not appear for trial, although McClain and the State attempted to subpoena Johnston as a witness at trial. In this case, in total, co-Defendant Johnston was charged with trafficking methamphetamine, and introducing contraband to the jail through the failure to disclose methamphetamine and snorting straws found wrapped in a dollar bill, and hidden in her bra during the booking process. Importantly, co-Defendant Johnston can be heard denying anything illegal in her possession during the roadside stop in this case. In March 2023, Johnston's trafficking charge was dismissed after she pled to a possession of methamphetamine 1st offense in March 2023 for the hidden amount of methamphetamine in a dollar bill and "snorting straws" that were found in Johnston's bra when she was booked in jail on the trafficking charge. In the same March 2023 plea in Pickens, co-Defendant Johnston also pled to an unrelated Manufacturing Methamphetamine charge in a constructive possession "one-pot" meth case in an unrelated individual's car to which she was connected.

cast doubt. Because the rule applied by the State Supreme Court in this case did not heed this point, the rule is "arbitrary" in the sense that it does not rationally serve the end that the *Gregory* rule and other similar third-party guilt rules were designed to further. Nor has the State identified any other legitimate end that the rule serves. It follows that the rule applied in this case by the State Supreme Court violates a criminal defendant's right to have "a meaningful opportunity to present a complete defense." *Crane*, 476 U.S., at 690, 106 S. Ct. 2142, 90 L. Ed. 2d 636 (quoting *Trombetta*, 467 U.S., at 485, 104 S. Ct. 2528, 81 L. Ed. 2d 413).

19. Following the conclusion of the trial, and with McClain's emphasis to the Court of the greater picture of a gutted defense at trial, McClain urges this Court to reconsider the rulings which denied McClain a meaningful opportunity to present a complete defense. Similar to the rationale in *Holmes*, if this Court applied the converse ruling to the State's case, it would have barred the prosecution from introducing evidence of McClain's guilt, which McClain concedes such a ruling would "not rationally serve the end that the *Gregory* rule and other similar third-party guilt rules were designed to further." *Id.* Under the converse application of *Gregory* to the other side, the State would only be able to present incriminating evidence against the co-Defendants, without drawing inferences to McClain's guilt, and would have limited a jury from logically reaching any other conclusion than "not guilty" under the totality of the evidentiary circumstances. *See id*

20. The Court's exclusion of McClain's defense permitted and encouraged the State to limit the evidence and the full picture presented to the jury, while ensuring McClain could not raise any contrary inferences against the untried co-Defendants in this constructive possession case. Hypothetically, if all co-Defendants were tried together, the Court's as-applied third-party-guilt exclusionary rule would similarly restrict each co-Defendants' attorney from asking a jury to draw any inferences, for example, concerning paraphernalia found on another co-Defendant, or raise inferences as to the evidence of the vehicle being registered to McClain, and not their

client. Applied in that hypothetical, the Court's ruling would restrict all co-Defendants' defense attorneys from making any evidentiary arguments that could cast an inference of reasonable doubt as to their client, if the argument in any way mentioned circumstantial *and* actual evidence found on another co-Defendant.

21. As the sole defendant at trial, McClain, and McClain alone, was convicted of Trafficking in Methamphetamine, Third Offense⁷, without a meaningful opportunity to present a complete defense — and her only defense — against a conviction resulting in McClain's mandatory minimum sentence of twenty-five (25) years in prison.

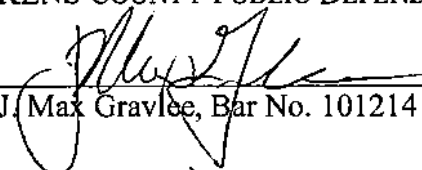
WHEREFORE, for the foregoing reasons, Ms. McClain prays that this Court:

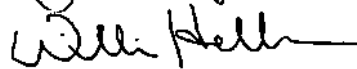
- (1) Reconsider the Court's prior rulings and grant a hearing on this motion;
- (2) Grant Defendant a New Trial;
- (3) Order Any Additional Relief the Court deems just and proper.

Respectfully submitted,

PICKENS COUNTY PUBLIC DEFENDER

By:


J. Max Gravlee, Bar No. 101214



William Hellams, Bar No. 105776

Attorneys for McClain
13th Circuit Public Defender Office
Pickens County Courthouse
Pickens, SC 29671

Pickens, SC

Date: February 16, 2024

⁷ McClain's only prior drug convictions were possession-level offenses.

Mar 28 2024

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

The State of South Carolina

vs.

Melanie Cromer McClain,

Defendant.

IN THE COURT OF GENERAL SESSIONS
THIRTEENTH JUDICIAL CIRCUIT

Indictment No.: 2021A3910101160

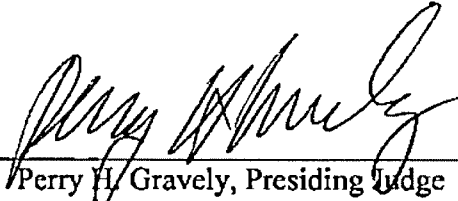
**ORDER DENYING DEFENDANT'S
MOTION FOR A NEW TRIAL**

This matter comes before the Court upon the Defendant's Motion for a New Trial filed on February 16, 2024. The Defendant is represented by Max Gravlee and William Hellams of the 13th Circuit Public Defender's Office. The case came on for a jury trial the week of February 5, 2024, and the jury returned a guilty verdict on February 7, 2024. The Defendant now moves for a new trial on based on the Court's ruling relating to third-party guilt and the admissibility of certain evidence and restricting the argument by Defendant's counsel. The Defendant claims the ruling prevented Defense counsel from presenting a meaningful defense. The Court finds that a hearing on these issues is not necessary and Defendant's Motion is denied.

It is well settled that the grant or refusal of a new trial is within the sound discretion of the trial judge. *State v. Simmons*, 279 S.C. 165, 303 S.E.2d 857 (1983). "Where there is no evidence to support a conviction, an order granting a new trial should be upheld." *State v. Smith*, 316 S.C. 53, 55, 447 S.E.2d 175, 176 (1993) (citation omitted). "However, where there is competent evidence to sustain the jury's verdict, the judge may not substitute his judgment for that of the jury." *State v. Prince*, 316 S.C. 57, 63, 447 S.E.2d 177, 181 (1993) (citation omitted). Based on this standard, the Court stands by its previous rulings and finds that there was sufficient competent evidence to support the conviction by the jury. Therefore, the Court denies Defendant's Motion for a New Trial.



It is so Ordered.



Perry H. Gravely, Presiding Judge
Thirteenth Judicial Circuit

March 6, 2024

Pickens, South Carolina

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,

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Aug 27 2025

SC Court of Appeals



Kathrine H. Hudgins
Senior Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 27th day of August, 2025.

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Aug 27 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Pickens County

Honorable Daniel McLeod Coble, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MELANIE CROMER MCCLAIN,

APPELLANT

APPELLATE CASE NO. 2024-000472

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 Ambree M. Muller, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 27th day of August, 2025.


Kathrine H. Hudgins
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PO Box 11589
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ATTORNEY FOR APPELLANT