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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

SC Court of Appeals

Appeal from Anderson County

Honorable Alexander S. Macaulay, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

COLE BROOKS GRAY,

APPELLANT

APPELLATE CASE NO. 2017-002265

RECORD ON APPEAL

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
State's Exhibit #1 (Dash Camera Recording); State's Exhibit #2 (Dash Camera Recording);
State's Exhibit #4 (Jail Phone Call Recording)

State of South Carolina

Court of General Sessions

County of Anderson

State of South Carolina)

)

Transcript of Record

v.)

2017-GS-04-01220

)

2017-GS-04-01850

Cole Brooks Gray)

2017-GS-04-01851

)

Defendant.)

October 16, 2017

Anderson, South Carolina

B E F O R E:

The Honorable Alexander Macaulay, Judge; and a jury.

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

David Wagner, Solicitor
Attorney for the State

Mary Holahan, Assistant Solicitor
Attorney for the State

R. Joseph Oppermann, Assistant Public Defender
Attorney for the Defendant

Lisa Scott
Circuit Court Reporter

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
1	Defense - E-mails	X	
2	Defense - Stipulation	X	
1	State's - DVD		X
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3	State's - evidence bag		X
31	State's - lab results		X
4	State's - CD		X

P R O C E E D I N G S

* * * * *

THE COURT: All right. Let's see. Solicitor, if you would, publish the indictment.

MR. WAGNER: Your Honor, the defendant's charged with three charges of trafficking meth -- methamphetamine. That is 2017-GS-04-01220.

He's also got a failure to stop for a blue light, second or subsequent offense. That would be Indictment No. 2017-GS-04-01850.

And last, receipt of stolen goods valued at more than 2,000 but less than 10,000, that being a stolen vehicle. Docket No. 2017-GS-04-1851.

THE COURT: And when was the indictment -- indictments returned?

MR. WAGNER: The trafficking of meth, that's all part of the same instance, Judge, from November 12, 2016. The trafficking methamphetamine was returned May 23, 2017.

The other two charges, I sent back to the Grand Jury for clarification on the language in the indictment. They were returned on August 22, 2017.

THE COURT: All right. Are you ready to proceed with the trial of the case?

MR. WAGNER: Yes, sir.

1 THE COURT: Any objection, Mr. Oppermann?

2 MR. OPPERMANN: No, Your Honor.

3 THE COURT: I understand there's some pending
4 motions?

5 MR. OPPERMANN: That's correct, Your Honor.

6 THE COURT: That's right. You did. In other
7 words, we're not ready.

8 MR. OPPERMANN: We have a motion to continue
9 the case.

10 THE COURT: Beg your pardon?

11 MR. OPPERMANN: We do have a motion to continue
12 the case.

13 THE COURT: Well, that's what I'm asking.
14 Any -- any motions or anything you want the Court to
15 consider before the jury is drawn?

16 MR. OPPERMANN: Yes, Your Honor. We have a
17 motion to continue the case.

18 Pending the Court's ruling on that motion, we
19 will follow-up with a motion to enforce the previous
20 plea offer.

21 And we're -- we're prepared to argue that
22 motion.

23 THE COURT: Which one do you want to argue
24 first?

25 MR. OPPERMANN: We would like to argue the

1 continuance motion first, Your Honor.

2 THE COURT: All right. I'll hear you.

3 MR. OPPERMANN: Thank you, Your Honor.

4 In Rule 7(c) of the South Carolina Rules of
5 Criminal Procedure, "If good sufficient cause for a
6 continuance is shown, a continuance may be granted
7 by the chief administrative judge or the presiding
8 judge," Your Honor.

9 In the case, we do believe that good cause has
10 been shown. I have briefed the issue and submitted
11 that to the Court, and I'll speak to the several
12 reasons why a continuance is appropriate in this
13 case.

14 First, Your Honor, during my preparations for
15 this case, I happened to speak to my supervising
16 attorney and Chief Public Defender, Ms. Johnson.
17 This was last week as I was finishing my
18 preparations for the case.

19 She shared with me a study by Dr. Albert Dukes
20 at Landrum University that suggest there's some
21 flaws on common testing procedures by South Carolina
22 law enforcement agencies dealing with weight and
23 chemical analysis. Suggested it might be a good
24 idea to speak to Dr. Dukes.

25 Ms. Johnson had -- had the opportunity to be

1 present during the presentation on this study. I
2 have not and was unaware of it. When I became aware
3 of it, I reached out to Dr. Dukes via e-mail and
4 asked him what sort of documents he might need to
5 review the States's testing procedures.

6 He responded by suggesting that he and I could
7 speak some time this week. Obviously, since the
8 trial is scheduled this week, I have not been able
9 to retain him.

10 Despite making diligent efforts to prepare for
11 the case, I just became aware of this very important
12 potential issue last week. And when I became aware
13 of it, I made efforts to secure the, what may be,
14 necessary expert testimony.

15 However, as I've shared with the Court and
16 noted in the brief, that isn't within the time frame
17 that we have possible. We believe that alone would
18 be good cause shown and would draw the Court's
19 attention to the ruling of South Carolina Supreme
20 Court 2016, *Winkler v. State*.

21 In that case, the Supreme Court found that a
22 trial judge erred in grant -- failing to grant the
23 defendant an extension of time to investigate
24 evidence of brain damage.

25 We do believe that's analogous in this case.

1 The chemical composition of the substance found,
2 whether or not it's methamphetamine of course, is an
3 essential element in the case, but the weight is
4 also and the method for determining the weight is
5 also an essential element in the case.

6 According to the discovery that the State has
7 shared, the weight they allege is very close to the
8 statutory minimum which is 100 grams. Given the
9 closeness of that, we believe it is critical that
10 the defendant have an opportunity to have an
11 independent expert assess whether or not this
12 testing procedure is sound and appropriate and that
13 a jury have the opportunity to hear from that expert
14 testimony.

15 I will also note, Your Honor, that for the
16 State to call this case in this fashion, it does
17 violate the South Carolina Constitution. The South
18 Carolina Supreme Court has ruled in the Winkler case
19 that the statute giving solicitors the power to set
20 a docket is unconstitutional.

21 One of the concerns that's been expressed is
22 that it gives an adversary ---

23 THE COURT: Did the Supreme Court say who
24 should set the cases?

25 MR. OPPERMANN: The solicitor.

1 THE COURT: The Supreme Court certainly didn't
2 suggest an unconstitutional result. Didn't you tell
3 me that Winkler says the solicitor was not supposed
4 to ---

5 MR. OPPERMANN: That -- that -- that is
6 correct, Your Honor.

7 THE COURT: So who did the Supreme Court say
8 should do it?

9 MR. OPPERMANN: The Court argued that that is a
10 judicial function and that the Court has the
11 authority to make that decision.

12 However, in this scenario, the State has
13 scheduled it and put before the judge, despite the
14 objection, which I have shared with Mr. Wagner,
15 proceeding at this time.

16 THE COURT: So you're saying that I'm supposed
17 to call cases?

18 MR. OPPERMANN: Yes, Your Honor. That you --
19 you have the authority to do that. I am arguing
20 that ---

21 THE COURT: But so the solicitor is no longer
22 involved?

23 MR. OPPERMANN: Yes, Your Honor, but the
24 solicitor put the case in front of you today.

25 THE COURT: Well, interfering with any other

1 party. Where is it no longer does the solicitor
2 have control?

3 MR. OPPERMANN: The solicitor does have control
4 because we're here today. If he didn't have
5 control, we wouldn't be standing here.

6 THE COURT: So you're saying it's here on an
7 unconstitutional exercise of authority?

8 MR. OPPERMANN: Yes, Your Honor. We would
9 argue that scheduling a trial today requests an
10 unconstitutional ---

11 THE COURT: Well, somebody has to do that or
12 the all -- or all the dockets in General Sessions
13 Court in South Carolina in limbo now?

14 MR. OPPERMANN: Yes, Your Honor, they are. If
15 I may?

16 THE COURT: Did they advise Chief Justice
17 Beatty of that?

18 MR. OPPERMANN: The Supreme Court, it's my
19 understanding, is developing a method for addressing
20 this problem. Absent an objection from defense
21 counsel, the method that works if for the solicitor
22 to continue scheduling.

23 However, I am providing an objection. This is
24 an unconstitutional statute as outlined by the South
25 Carolina Supreme Court. Part of the reason that the

1 Supreme Court ruled that a solicitor controlled
2 docket is unconstitutional primarily found that it
3 violates separation of powers. The solicitor is a
4 member of the executive branch, and this is, stating
5 the obvious, a judicial function.

6 But part of the reason that it is so repugnant
7 to the Constitution is that it allows an adversarial
8 party to control the process by which a person is
9 brought into court.

10 In this instance, this would be a definitive
11 example of unfair advantage taken by the executive
12 branch with respect to my client, and I'll give you
13 a reason for that, Your Honor.

14 Currently, there are at least, according to my
15 research, the research that went through my office,
16 at least 25 persons in the Anderson County Detention
17 Center who were arrested and charged prior to my
18 client who are pretrial detainees waiting trial.

19 Now, there is no harm to the State at all by
20 continuing this case. There is significant harm to
21 my client given that there is potential expert
22 testimony that could be valuable to his case and
23 very important to the jury's decision about whether
24 or not the State could meet its burden.

25 There -- there is no reason not to continue the

1 case. The State is not in any way disadvantaged by
2 continuing the case right now.

3 THE COURT: All right.

4 MR. OPPERMANN: The defendant is severely
5 disadvantaged.

6 Your Honor, additionally, there's a good reason
7 to continue the case based on judicial economy.

8 Mr. Gray does have other state charges. They are
9 not connected with this incident, but he does have
10 additional state charges.

11 It is possible that, at least with respect to
12 the State aspect of the case, that these things
13 could be wrung together and worked out in some sort
14 of agreement. That cannot be done today obviously
15 if we go forward with the trial.

16 Additionally, Mr. Gray has a pending Federal
17 charge. And while I have communicated with his
18 attorney, Mr. James Loggins of the Federal Public
19 Defender's Office in Greenville, by telephone, he
20 and I have not been able to meet extensively and
21 compare notes.

22 They do -- that case arises from a separate
23 incident, but as Your Honor is aware, Federal
24 sentencing guidelines are affected by prior State
25 convictions, and so there is some cross-relevancy in

1 this case. And so it's critical for my client in
2 order to receive effective assistance of counsel at
3 both Federal and State levels, we have more time,
4 not just with respect to the issue of that
5 composition of the substance and the weight of the
6 substance that was located, but because of this
7 entire cluster of issues.

8 Your Honor, as we argue in the brief, we
9 believe that not granting our continuance at this
10 time, based on what the Court's been made aware of,
11 would violate Mr. Gray's rights under the Fifth
12 Amendment, the Sixth Amendment, and the Fourteenth
13 Amendment of the United States Constitution and also
14 the South Carolina Constitution, specifically
15 Article 1, Sections 3 and Section 14, of the South
16 Carolina Constitution.

17 THE COURT: We have a stronger alleged in 14th
18 in that of due process than the Federal
19 Constitution.

20 MR. OPPERMANN: Yes, we do, Your Honor.

21 THE COURT: All right. Anything else on the
22 question of continuance?

23 MR. OPPERMANN: Yes, Your Honor. I would note
24 that the language of Rule 7(c) states that if there
25 is good sufficient cause for a continuance, I

1 believe we've shown that, the Court may grant it.

2 Your Honor, it is a well-settled maxim in South
3 Carolina that Courts have the -- and this is from
4 ex-parte Dibble, Judge Sanders maxim. "Courts have
5 the inherent power to do all things reasonably
6 necessary to ensure a just resolve is reached to the
7 fullest extent possible." That certainly reaches
8 the Court's ability to grant a continuance.

9 Now, we've shared with the Court that there is
10 a critical item of evidence that we could shed
11 further light on by retaining an expert. We assure
12 to the Court that we've made efforts to investigate
13 this issue. And despite that, it was only last week
14 that we became aware of this, that we made efforts
15 to contact that person. That was ---

16 THE COURT: You're talking about Dr. Dukes?

17 MR. OPPERMANN: Umm ---

18 THE COURT: You're talking about Dr. Dukes?

19 MR. OPPERMANN: That's correct, Your Honor.

20 Balancing the equities of the situation, the State
21 doesn't have anything to lose. My client has a
22 great deal to lose, and we'd ask for the Court to
23 grant the continuance.

24 THE COURT: Now, when -- when were you noticed
25 of the case being called at this time in court?

1 MR. OPPERMANN: I believe that was at the end
2 of August, Your Honor.

3 THE COURT: The end of August? And ---

4 MR. OPPERMANN: I will also note that the
5 defense would seek the final items of discovery in
6 October, and I can show that to the Court.

7 THE COURT: Well, I'm not curious -- I'm
8 curious about the continuance motion. And was it
9 not heard?

10 MR. OPPERMANN: Your Honor, we made Mr. Wagner
11 aware that we intended to move for a continuance. I
12 did this orally based on witness -- I have some
13 discovery received and I can share that with the
14 Court.

15 THE COURT: All right. Well, when did ---

16 MR. OPPERMANN: When I became of the potential
17 expert testimony which was last week, I immediately
18 proceeded to -- I put that notice of motion for
19 continuance, and this is the first time I've been
20 able to bring it in front of a judge.

21 THE COURT: But it was never presented to the
22 chief administrative judge for administrative
23 purposes?

24 MR. OPPERMANN: Your Honor, I became aware of
25 it last week, and this is the first time I was ---

1 THE COURT: No. You were aware that it was set
2 for trial August -- in August I think you said?

3 MR. OPPERMANN: At the end of the August,
4 Mr. Wagner informed me that the case would be set
5 for trial.

6 THE COURT: All right. And you didn't -- and
7 you knew about everything else except Dr. Fields? I
8 mean, the Sixth, Ninth, and Fourteenth Amendment are
9 all ---

10 MR. OPPERMANN: That -- yes, sir. That is --
11 that is correct, Your Honor. I will note that
12 because I'm a public defender and because I have a
13 number of cases before the Court ---

14 THE COURT: Well, I'm just curious, you quoted,
15 you know, Rule 7(c) and it says that a continuance
16 can be granted by a chief judge for administrative
17 purposes. I'm not the chief judge for
18 administrative purposes.

19 MR. OPPERMANN: That's correct, Your Honor, but
20 you do have the authority to grant the continuance.

21 THE COURT: I don't know. I mean, I'm reading
22 your rule. I mean, that's -- I think there's a
23 reason for that. In other words, we don't come to
24 the date that the case has been set for trial to
25 have a continuance and something exciting.

1 MR. OPPERMANN: Your Honor ---

2 THE COURT: That could be forum shock -- forum
3 shocker. It could be that you don't want me to hear
4 this case, and so you waited until this morning to
5 run and file it.

6 MR. OPPERMANN: Your Honor, we ---

7 THE COURT: Well, not file it, to have it
8 heard.

9 MR. OPPERMANN: Your Honor ---

10 THE COURT: I mean, I know that's not -- not
11 possible because I'm sure you had a plea conference.

12 MR. OPPERMANN: Specifically, with respect to
13 the issue of the expert because we came -- we became
14 aware of it, and Ms. Johnson is present in the
15 courtroom and can verify that. Because we became
16 aware it last week, there wasn't an opportunity to
17 have a motion heard.

18 THE COURT: No. You told me that you wanted a
19 continuance when you found out that once you had
20 this case to be tried, and you only found out you
21 have a grounds for it last week.

22 MR. OPPERMANN: Well, I had notified Mr. Wagner
23 that I will move for a continuance ---

24 THE COURT: Well, that's what I'm saying.

25 MR. OPPERMANN: --- to be heard based upon that

1 lateness of the discovery offer.

2 THE COURT: Then why didn't you have it -- but
3 you didn't have it heard. You just told him, but
4 he -- he is not the one that grants it because
5 you're telling me the Supreme Court says he doesn't
6 have the authority to grant it.

7 MR. OPPERMANN: He could consent to the
8 fact ---

9 THE COURT: Consent, but only to the chief
10 judge for administrative purposes.

11 MR. OPPERMANN: Your Honor, as I've noted and
12 it's well settled, the presiding judge does have the
13 authority to grant a continuance in the case.

14 THE COURT: I don't -- don't know. I don't
15 know. I mean, I'm not clear. I'm just -- I'm just
16 reading the rule. It doesn't say the presiding
17 judge.

18 MR. OPPERMANN: The practicality of it.

19 THE COURT: I think the reason they say the
20 chief judge for administrative purposes, that's why
21 they created that so all of these procedural matters
22 could be taken care of, rather than after the jury
23 panel has been qualified and waiting to draw a jury.

24 MR. OPPERMANN: Your Honor, we did discuss this
25 matter last week. I had shared a lot of concerns

1 with Mr. Wagner. We agreed that I would place the
2 motion before the presiding judge today. Last week
3 was a trial week. The judge's time with lawyers and
4 we had agreed and I discussed this ---

5 THE COURT: Well, again, I don't know who was
6 the trial judge last week.

7 MR. WAGNER: Judge McIntosh.

8 THE COURT: Well, he's not the chief judge for
9 administrative purposes.

10 MR. WAGNER: No, sir.

11 MR. OPPERMANN: That would be Judge Maddox,
12 Your Honor. And Judge Maddox ---

13 THE COURT: And Judge Maddox was here last
14 week.

15 MR. OPPERMANN: --- to be here today.

16 THE COURT: No. But he was here last week.

17 THE CLERK: No, Your Honor. He was in
18 Lexington last week.

19 THE COURT: His office was here though.

20 THE CLERK: Yes, sir.

21 MR. OPPERMANN: Yes, Your Honor.

22 THE COURT: All right. I understand from his
23 law clerk that he was in Lexington last week, but,
24 again, I have my -- I guess I'm a little concerned
25 when we start being very particular about the

1 requirements under the rules and yet be selective.

2 MR. OPPERMANN: Yes, Your Honor. And while I
3 do note 7(c) is a source for the Court's authority
4 to grant a continuance in this matter, it is not the
5 only source.

6 THE COURT: Not what?

7 MR. OPPERMANN: I -- well, I know Rule 7(c) is
8 an example of the Court's authority to grant a
9 continuance in this matter, it is certainly not the
10 only source.

11 THE COURT: All right. Mr. Wagner, you want me
12 to grant their motion for continuance?

13 MR. WAGNER: Your Honor, we're opposed to that.
14 We've got everybody on stand -- on standby and ready
15 to go. I understand Mr. Oppermann's position, and I
16 think it's probably coming more from his client who
17 just really doesn't want his day in court at this
18 time would be my guess.

19 But this -- this Dr. Albert Dukes, obviously I
20 don't know anything about him. It's the first time
21 I've heard his name is today. And he's got some
22 sort of study on laws and testing and procedures.
23 My guess would be that it's got nothing to do with
24 the testing procedures here in the Tenth Circuit.

25 Our -- our chemist has testified as an expert

1 many, many times. She's been an expert in forensic
2 chemistry. She does the testing and procedures on
3 that. My guess is that Dr. Dukes doesn't know or
4 hasn't looked into that, whether it's something that
5 was going on at SLED, I don't know, but this sounds
6 to me like it's not -- it's not going to be a good
7 enough reason to continue the case, but ---

8 THE COURT: Well, tell me a little bit about
9 this case because I'm familiar with the *State v.*
10 *Cheeks*, I think it is, where they tried to make a
11 trafficking or did make a trafficking charge based
12 on the materials going into cocaine or trafficking
13 crack cocaine.

14 And I think the witness there testified they
15 could -- they could produce that amount of --
16 where -- what's -- I just -- I just drew -- got this
17 after hearing the case. But that's not -- is
18 that what this is based on, ingredients?

19 MR. WAGNER: Your Honor, it was based on, he --
20 he is charged with after an extended car chase, he
21 threw a bag of white crystals out the car, landed in
22 the roadway. He also had some white crystals on his
23 seat.

24 They -- they gathered both of those up. The
25 total weight on the stuff in the roadway was 109.34

1 grams, with 3.3 grams being the methamphetamine
2 found in the seat. So it's -- it's actually close
3 to 12 or 13 percent higher than the 100 grams ---

4 THE COURT: So you're actually talking about
5 the testimony would be based solely on a package of
6 what has been identified, analyzed that it's meth?

7 MR. WAGNER: Yes, sir.

8 THE COURT: Not ingredients?

9 MR. WAGNER: Yes, sir. No. This is actual
10 methamphetamine. It's the actual ---

11 THE COURT: Contained in the package?

12 MR. WAGNER: Yes, sir.

13 THE COURT: So I guess maybe the Cheeks case is
14 whether this is relevant. Of course, they are
15 the -- said that -- well, the issues before us was
16 if whether or not the charge that the Court, as to
17 the amount of evidence or amount of the quantity
18 unduly, what is it, questioned the mere presence
19 charge.

20 In other words, they are -- there was no
21 question about the presence of the materials, but
22 when is it whether or not -- the issue or whether or
23 not it was sufficient for the trafficking charge.

24 Here it sounds like more presence -- mere
25 presence. Are you -- are you contesting the --

1 whether or not it was methamphetamine?

2 MR. OPPERMANN: The State will have to prove
3 that beyond a reasonable doubt, Your Honor.

4 THE COURT: Well, I -- I -- well, of course. I
5 know they would have to, but are you challenging?
6 You're -- I thought you were challenging the ---

7 MR. OPPERMANN: Well, we would like to have the
8 opportunity to do that, Your Honor.

9 THE COURT: So you're saying it wasn't. They,
10 of course, have to prove beyond a reasonable doubt
11 that it was methamphetamine, not some derivative,
12 not some, what is it, components ---

13 MR. WAGNER: Yes, sir.

14 THE COURT: --- that might render the ---

15 MR. WAGNER: The burden will be on us to prove
16 that it was more than 100 grams of methamphetamine
17 in his possession.

18 THE COURT: All right. Was it in his
19 possession?

20 MR. WAGNER: Yes, sir. Or had been in his
21 possession. He threw it out the window.

22 THE COURT: Well, tell me a little bit more
23 about that. I mean, did he have it on him in a
24 pocket or something?

25 MR. WAGNER: He -- he had some that was on his

1 seat where he was sitting when they pulled him out
2 of the car.

3 THE COURT: Is that 100 grams?

4 MR. WAGNER: No. That -- that was actually
5 3.3. But right before he was stopped and removed
6 from the car, he threw the other bag out the window
7 that was on videotape. You can see him throw the
8 bag out the window.

9 They stopped him about 2- or 300 feet later on
10 the same road. It's right down there. And they
11 went back and secured the methamphetamine that had
12 been thrown out. They field tested it. It was
13 field tested for methamphetamine. And now it's been
14 confirmed by the chemist.

15 THE COURT: See really the case is whether it's
16 based on whether or not it was in his possession?

17 MR. WAGNER: Yes, sir.

18 THE COURT: You're not saying that it -- but
19 you're going to have to establish beyond a
20 reasonable doubt that it was methamphetamine.

21 MR. WAGNER: Yes, sir.

22 THE COURT: And that the weight was such that
23 would -- addressed under the statute ---

24 MR. WAGNER: Yes, sir.

25 THE COURT: --- as to the quantity. Is that

1 not correct?

2 But now Dr. Dukes, as I understand, is more on
3 the other side that he's talking about can you
4 extrapolate whether or not it is ---

5 MR. OPPERMANN: As I understand it, Your Honor,
6 Dr. Dukes could provide insight as to the soundness
7 of the testing procedure. And, again, I haven't
8 spoken with him extensively about it. I just only
9 asked him what documents he would need to evaluate
10 the testing procedure when I reached out to him
11 after I found out about him.

12 But what he could provide would be the
13 soundness of the State's testing procedure, both for
14 the substance and the weight. And he may be able to
15 provide his own independent testing procedure as
16 well. I -- I need to have further contact with him
17 in order to get that information.

18 I would respectfully like the opportunity to
19 respond to a couple of things Mr. Wagner said.

20 THE COURT: You most certainly will be given
21 that opportunity as I heard you. I'm going to hear
22 Mr. Wagner, and then I'll come back to you.

23 MR. OPPERMANN: Thank you, Your Honor.

24 THE COURT: That's how we usually do argument.

25 MR. OPPERMANN: Thank you, Your Honor.

1 THE COURT: We have rebuttal and reply. You
2 may sit down.

3 MR. OPPERMANN: Thank you, Your Honor.

4 THE COURT: Not you. Wait till your finished.

5 MR. WAGNER: Your Honor, that's all I've got.
6 I mean, like I say, as far as the language itself
7 and all that goes, the Supreme Court tells me I
8 don't have the authority the call cases. We're
9 calling this one. This one's close to a year old.
10 It's right at 11 months, so he's about 6 weeks
11 notice that it was coming.

12 THE COURT: All right. Now, on this
13 continuance motion, what's your reply?

14 MR. OPPERMANN: Yes, Your Honor. Mr. Wagner is
15 correct in that Mr. Gray was charged about a year
16 ago. It was noteworthy in determining what the
17 burden the State faces in not proceeding with this
18 case today, but there are at least 25 pretrial
19 detainees at the Anderson County Detention Center,
20 not including the other trials called this week that
21 were charged prior to that and have been sitting
22 long enough waiting for a trial and the taxpayers of
23 Anderson County have been paying for it longer than
24 my client.

25 I would like to respectfully disagree with a

1 couple of characterizations that Mr. Wagner made.
2 We are not filing this motion or making this motion
3 to avoid Mr. Gray's day in court. I believe very
4 strongly that this is critical in order to ensure
5 that his constitutional right to effective defense
6 is -- is secure. And this is not a whiny client
7 issue. This is a lawyer wanting to make sure that
8 he's protecting his client's rights issue.

9 THE COURT: Well, I'm not talking about
10 personalities or anything or even, what is it,
11 temperament, but I don't know if it's an accident of
12 law, but Aaron Burr, the Vice President of the
13 United States who was tried for treason, but anyway,
14 once said that the lawyer acting in this particular
15 defense, "Never do anything today that you might put
16 off until tomorrow because it might go away." And
17 that's why motions for continuances are usually
18 bureaucracy.

19 MR. OPPERMANN: Thank you for sharing that.

20 THE COURT: And I don't know if Aaron Burr was
21 a whiner or not. He was a defendant at one time.
22 He was acquitted by the way.

23 MR. OPPERMANN: There is a good story about him
24 whining to some folks in Chester County on a tree
25 stump.

1 THE COURT: Yeah, oh, not on a tree stump, a
2 rock.

3 MR. OPPERMANN: Was it a rock?

4 THE COURT: Yeah, and the rock was brought
5 to -- not Chester -- yeah, it's Chester. It was
6 brought to Main Street and it's still there.

7 MR. OPPERMANN: Yes, sir.

8 THE COURT: And it's gotten smaller from the
9 first time I saw it when I was three years old.

10 All right. There is a reason for a continuance
11 and usually it is not to do anything today that you
12 might put off till tomorrow.

13 MR. OPPERMANN: I would also note, Your Honor,
14 if I may, Mr. Wagner stated that he guessed that
15 Dr. Dukes' research may not be applicable to the
16 procedures used in the Tenth Circuit, but he doesn't
17 know. And, Your Honor, I don't ---

18 THE COURT: Well, let me ask you something. If
19 I'm not mistaken, I think I heard Mr. Wagner say
20 that you were going to use your global atlas.

21 MR. WAGNER: Yes, sir. Meredith Lanford, she's
22 our -- she's our local ---

23 THE COURT: You're not using SLED?

24 MR. WAGNER: No, sir.

25 THE COURT: Did Dr. Dukes address the local

1 analyst?

2 MR. OPPERMANN: His research, to my knowledge,
3 addressed SLED, but those are commonly used
4 procedures in South Carolina. Because we don't
5 know, there is nothing lost by finding out. And
6 that's what ---

7 THE COURT: We've got a jury panel ready to try
8 this case.

9 MR. OPPERMANN: Your Honor, this is not the
10 only case on the docket this week. And as we've
11 shared, we've placed this motion before the Court as
12 soon as we were able.

13 THE COURT: That's exactly right. As soon as I
14 had notice of it, I set it. And I'm -- well,
15 let's -- all right. I'll take the motion for
16 continuance under advisement, but you also have a
17 second motion?

18 MR. OPPERMANN: Yes, Your Honor. We have a
19 motion to enforce the offer that was previously
20 made.

21 At this time, if I may approach the bench, I'd
22 like to share with the Court some correspondence
23 between myself and the Solicitor's office. I've
24 provided Mr. Wagner with a copy, but I'm happy to
25 hand it up at this time.

1 THE COURT: All right. Which is that? Is that
2 the Federal case?

3 MR. OPPERMANN: This is actually
4 correspondence ---

5 THE COURT: Oh, all right.

6 MR. OPPERMANN: --- and in support of my motion
7 if I may.

8 (Showing to Mr. Wagner.)

9 MR. OPPERMANN: May I approach, Your Honor. May
10 I approach?

11 THE COURT: Yes.

12 MR. OPPERMANN: Thank you, Your Honor.

13 Contained in this packet, Your Honor, is the
14 written correspondence, the plea that's available
15 here or that was available.

16 The case that I cite is *Cooper v. United*
17 *States*. The written correspondence will demonstrate
18 that the Solicitor's office through Assistant
19 Solicitor Chelsea Moore extended an offer to
20 Mr. Gray that he plead to failure to stop for a blue
21 light, second; receiving stolen goods; trafficking
22 methamphetamine, 28 to 100 grams. And the State's
23 recommendation would be eight years with referral
24 for ATU.

25 Now, in my conversations with Ms. Moore in

1 court when we first discussed this in person, I had
2 just received the discovery and I think that the
3 e-mails will -- will note -- note that. The -- the
4 first time when he was in court once that offer had
5 been made was March 15th. I had just received
6 discovery at that time.

7 Also, at that time as Your -- as Your Honor
8 is -- is aware, due to a large staffing turn --
9 turnover in the public defender's office, we were
10 badly understaffed. And the opportunity was very
11 limited to visit all of our clients who were in
12 jail, discuss discovery, and discuss offers. As I
13 noted, I had just received the offer.

14 Later Mr. Gray came back to court, but during
15 the period of March and April and even in May, we
16 were still adding staff. For instance, in March I
17 did not have a legal assistant. I think by May I
18 did, but we still had a significant backlog of
19 cases.

20 When I spoke to Ms. Moore the second time
21 Mr. Gray came to court, what I told her is we don't
22 think this is an unreasonable offer, but I want to
23 make sure that Mr. Gray and I have a chance to
24 review the case before we accept your offer. We
25 haven't been able to do that yet.

1 Subsequent to that, Mr. Gray bonded out and did
2 receive some new charges. Before I was able to
3 speak to him and review the discovery with him, he
4 was brought back to the Anderson County Detention
5 Center.

6 The case came before the Court. Mr. Wagner
7 made a motion to revoke bond so that he wouldn't
8 bond out again. And at that time I became aware
9 that Mr. Wagner was now the assigned prosecutor on
10 the case.

11 I reached out to him because he had set it for
12 trial. I reached out to him, made an offer which he
13 declined. I then asked him if the offer the
14 Solicitor's office had made to my client was still
15 on the table. At this time I was engaged in
16 determining whether or not it was, and he stated
17 that it wasn't.

18 Had I received notice that there was a sunset
19 on that offer with a specific date, that I would've
20 been able to discuss that with Mr. Gray, but part of
21 the reason I reached out to Mr. Wagner at this time
22 was because I wanted to let him know what the
23 State's position was.

24 And if the State's position was that it could
25 not come down on its previous offer, then I would of

1 course advise him that it was appropriate at that
2 time to accept the offer. The opportunity wasn't
3 there to do that because I was informed that the
4 State's offer was taken away.

5 The reason I move to enforce the offer and
6 believe I have good legal grounds to do that is
7 because the case of *Cooper v. United States*, which
8 was a decision by the Fourth Circuit Court of
9 Appeals in 1979.

10 In South Carolina, the traditional way of
11 looking whether or not plea negotiations were
12 enforceable is through the contract law principles
13 where detrimental alliance, much like promissory
14 estoppel.

15 We don't allege that the facts in this case
16 meet South Carolina's standard for contract law
17 principles and detrimental alliance, but we do rely
18 on a Federal Constitutional Right as enumerated by
19 *Cooper v. United States*.

20 In that decision, the Fourth Circuit Court of
21 Appeals found that above and beyond contract law
22 principles and detrimental alliance principles,
23 certain constitutional rights were implicated,
24 specifically the right to fundamental fairness under
25 due process laws and the right to effective

1 assistance of counsel.

2 The Fourth Circuit did not and, specifically,
3 but it did not anywhere in clear test for
4 determining when those principles were implicated
5 and when that right attached. And they actually
6 cautioned against having a very precise ruling for
7 that, but some of the language is instructive and
8 I'll share that.

9 The Fourth Circuit wrote in *Cooper v. United*
10 *States*, "We hold under appropriate circumstances the
11 constitutional right to enforcement of plea
12 proposals may arise before any technical 'contract'
13 has been formed, and on the basis alone of
14 expectations reasonably formed in reliance upon the
15 honor of the government in making and abiding by its
16 proposals." That reliance there refers to the
17 constitutional right, not the detrimental alliance
18 principles.

19 The Court goes on to say, "Two distinct sources
20 of constitutional right are involved here: Most
21 obviously and directly, the right to fundamental
22 fairness embraced within the substantive due process
23 guarantees; less directly perhaps, but nonetheless
24 most important -- nonetheless importantly, the Sixth
25 Amendment right to effective assistance of counsel."

1 In this case, Your Honor, the facts are
2 somewhat distinct, as they always are, from the
3 facts in the *Cooper v. United States*; however, the
4 Court contemplated a flexible application of this
5 principle in that case involved. Here we had a
6 Federal crime and some fairly serious charges.

7 What's different in this case is Mr. Gray is
8 represented by a public defender. He's represented
9 by a public defender who was in an office that was
10 drastically understaffed in the early portion of the
11 plea negotiations. Had that not been the case, it
12 is very likely that the discovery would've been
13 reviewed, the offer would've been accepted.

14 It is further likely that the offer would've
15 been accepted had Mr. Gray, through his attorney,
16 been given a sunset for the offer. We were not.
17 And when we attempted to resume those negotiations,
18 and we were told the offer was off the table.

19 At this time we move to enforce that offer,
20 Ms. Moore's initial offer. Mr. Gray would've
21 accepted that offer, and he would like due process
22 clause put in the there, the Sixth Amendment and the
23 Fourth Amendment of the United States Constitution,
24 and Article 1, Section 3, Section 21 of the South
25 Carolina Constitution.

1 We're happy to answer any questions the Court
2 may have for us.

3 THE COURT: All right. Now, the -- let's go
4 ahead and have this marked as the next Exhibit 1 in
5 this hearing. This is apparently a composition of
6 e-mails between the Solicitor's office and -- is
7 that right, Mr. Oppermann?

8 MR. OPPERMANN: That's correct.

9 THE COURT: Mr. Gray's case?

10 MR. OPPERMANN: And I want to clarify. We
11 don't allege that Mr. Wagner was aware of the offer
12 when he cancelled it, but when he became aware,
13 these principles would've been triggered. I don't
14 allege any bad faith on the Solicitor's office side.
15 It's simply that -- this would be our argument --
16 when the Solicitor's office became aware that there
17 had been a previous offer on the table, it should've
18 remained on the table or it should've been given a
19 sunset date.

20 THE COURT: All right. Well, Mr. Wagner?

21 MR. WAGNER: Your Honor, the offer -- the offer
22 apparently was made by Ms. Moore as the e-mails
23 show.

24 THE COURT: Just a moment. All right. Let's
25 go off the record so the court reporter can mark the

1 exhibit.

2 (Brief recess.)

3 THE COURT: All right. We're back on the
4 record.

5 MR. WAGNER: Your Honor, she offered that on
6 March 3rd for the two weeks in March term of court.
7 Two weeks there the defendant had a chance to take
8 it. I understand that Mr. Oppermann had just gotten
9 discovery and probably hadn't had a chance to go
10 over it with him.

11 She offered it again, looks like from her
12 e-mails, on April the 10th. That was two weeks in
13 March, two weeks in April, they didn't take it.

14 We had two weeks in May, and we had two weeks
15 in June that he had an opportunity to take it.

16 It looks like she offered it again on July the
17 3rd, and it looks like she kept forwarding basically
18 the same e-mail with the same offer.

19 Right around that time in July is where
20 Mr. Cole came on my radar because I had some
21 complaints from the Sheriff's Office from people in
22 the public, some of these people that kept getting
23 back out on bond. And at the time Mr. Cole was out
24 on -- somewhere around 10 to 12 bonds ---

25 THE COURT: It's Mr. Gray, isn't it?

1 MR. WAGNER: Excuse me, Mr. Gray, Cole Gray.

2 I'm sorry.

3 --- 10 to 12 bonds he was out on, including the
4 charges that we're here for today. He was out on a
5 \$230,000 surety bond. He was out on multiple surety
6 bonds and multiple PR bonds that were here in
7 magistrate's court.

8 He -- he had many, many terms there where he
9 could've accepted the offer. I -- I took the case
10 from Ms. Moore and was to handle it personally and
11 filed a motion to revoke his bond. We had that in
12 front of Judge McIntosh, and Judge McIntosh revoked
13 his bond.

14 But in the meantime between when all that
15 happened, he was rearrested June the 1st on another
16 failure to stop and unlawful carrying of a pistol.
17 I don't think Ms. Moore quite knew that when she
18 re -- re-upped the offer on July 3rd. I don't think
19 that the charges had come in yet.

20 He also got rearrested July the 13th on another
21 failure to stop for a blue light, so he has three
22 pending at this time. He had two of those after
23 June -- June and July.

24 He got rearrested for the other one on July the
25 12th, so he's got -- he's got at least three

1 pending. It may be four. I'll have to look at my
2 files.

3 August the 4th, he got rearrested for receiving
4 stolen goods.

5 August the 5th, he got charged with
6 manufacturing; PWID, marijuana; distribution of
7 meth, third, a subsequent offense.

8 Got a \$510,000 surety on that, so that's --
9 he's been involved in -- in there on bond and now
10 off bond due to Judge McIntosh's ruling since
11 August the 5th, but it was in July we filed the
12 notice to revoke his bond.

13 Your Honor, he just can't -- and people can't
14 go out and keep committing crimes and expect to get
15 the same offer. He never took it. He had a chance,
16 to take it. He could've signed up. He could've
17 done a number of things for 10 to 12 weeks there,
18 but he chose to stay out on the streets and keep
19 committing more crimes. And that's why I revoked
20 the offer and that's why we're here today.

21 I do note, Your Honor, for the record, that's
22 basically what the case that we passed up, State's
23 case, 333 S.C. 676, *Thomas and Maureen Reed and the*
24 *State of South Carolina v. Jeffrey Thomas Becka.*

25 The wording of the Court on that was basically

1 that until there's an actual plea in front of the
2 Court, then the offer is able to be revoked by
3 either one.

4 If we came up here and he wanted to plead
5 guilty and take the offer and back out, we can't
6 enforce it. We've got no repercussions there. He's
7 entitled to back out on that offer that we made.

8 If he has not accepted that offer and he has
9 not pled guilty the way this case reads, we're
10 entitled to revoke that too, and that's what I've
11 done.

12 THE COURT: All right. Mr. Oppermann.

13 MR. OPPERMANN: Several things, Your Honor. We
14 don't disagree with Mr. Wagner's analysis under
15 state law. There is a Federal right implicated
16 here, which is not addressed by the *Reed v. Becka*
17 case.

18 It's important when we're getting fact specific
19 here to recognize that during the period of time
20 that the offer was made, I was in discussion with
21 Ms. Moore. We would meet and the offer remained
22 open. The understanding was once I had an
23 opportunity to discuss the case with my client, we
24 would get back to her.

25 The practical reality toward myself and for a

1 public defender ---

2 THE COURT: Let me ask you something. Reading
3 your e-mail of September 6, 2017, at 2:06, you don't
4 accept the offer.

5 MR. OPPERMANN: That's correct, Your Honor. I
6 was trying to determine ---

7 THE COURT: You made a counteroffer.

8 MR. OPPERMANN: I did, Your Honor. I wanted to
9 see before advising my client of the status of the
10 case if it was something that Mr. Wagner would
11 accept. When he did not, I asked if he would accept
12 the offer that had been made, and he informed me
13 that that was no longer on the table.

14 I will note that the practical reality,
15 especially in that period of time, was that clients
16 whose offers are approaching expiration receive
17 priority for an attorney with an immense case load.
18 And I would certainly say that that was the case
19 with me at that period of time.

20 I would've met with Mr. Gray if I'd known there
21 was a sunset period on that offer, and we would've
22 responded. That's not Mr. Gray's fault. I didn't
23 go see him during that period of time.

24 THE COURT: Well, you made a counteroffer.

25 MR. OPPERMANN: Say again?

1 THE COURT: You made a counteroffer.

2 MR. OPPERMANN: Yes. I'm talking -- I'm
3 talking about ---

4 THE COURT: So you did that without consulting
5 with Mr. Gray?

6 MR. OPPERMANN: Mr. Gray and I had discussed
7 this case early on. I sensed a ---

8 THE COURT: So he knew that there was an offer
9 on the table?

10 MR. OPPERMANN: I spoke with Mr. Gray about
11 this. My recollection is that we discussed this
12 over there in that jury box and ---

13 THE COURT: Well, I'm looking at September the
14 6th e-mail.

15 MR. OPPERMANN: Yes. My discussion with
16 Mr. Gray that I recall was that I said, "Here's the
17 offer. We shouldn't take it right now because we
18 need to go over your discovery." Mr. Gray ---

19 THE COURT: So he did know about the offer that
20 was in September?

21 MR. OPPERMANN: Forgive me, Your Honor. I'm
22 speaking about the spring right now.

23 THE COURT: Do what?

24 MR. OPPERMANN: I'm speaking about the spring
25 right now, the period in April.

1 THE COURT: Oh, I'm not. I'm talking about you
2 not having notice about it would've been was not
3 ineffective or had not been accepted.

4 MR. OPPERMANN: I was attempting to determine
5 what the status of the State's position was, and
6 before I spoke to my client so I could give him a
7 proper update. I was not notified that there was an
8 expiration made on the offer.

9 THE COURT: Let's not talk about the expiration
10 date. Let's just talk about your -- your client
11 accepting the offer. He knew it was out there and
12 you knew it was out there, and he didn't accept it.

13 MR. OPPERMANN: And, Your Honor, frankly, I
14 advised him -- the last time we spoke about this
15 prior to us knowing that the offer was being
16 revoked, I advised him, I said, "This is not a bad
17 offer, but we need to discuss it."

18 THE COURT: Well, that's what I'm saying,
19 you -- you had ---

20 MR. OPPERMANN: But that's not on my client.
21 That's on me, Your Honor.

22 THE COURT: I'm sorry. You're -- you're
23 representing your client and you've represented that
24 he knew the offer and you had recommended the offer
25 and he -- and he didn't accept it.

1 MR. OPPERMANN: I did -- I did not recommend
2 the offer. I told him ---

3 THE COURT: Oh, I'm sorry. But you're not
4 disputing the fact that he knew about the offer?

5 MR. OPPERMANN: He tells me that he doesn't
6 recall me telling him what the -- the year was, and
7 it is possible being in court with 50 people as was
8 the case, but that's not my recollection.

9 THE COURT: Forgive me, but I think your
10 Exhibit 1 is replete back to March about the offer
11 made to your client, including Mr. Cole Gray, eight
12 years active time.

13 MR. OPPERMANN: I advised relying on the
14 State's position that the offer was open. I advised
15 my client ---

16 THE COURT: Well, there again, so you knew the
17 offer was out there, but you never had once, you or
18 your client, accepted that offer. In fact, you had
19 a counteroffer in your e-mail to Mr. Wagner
20 September the 6th, 2017, at 2:06 p.m.

21 MR. OPPERMANN: I was attempting to determine
22 what his position was in doing that.

23 THE COURT: Well, he told you on September the
24 7, 2017, at 11:48 a.m., "It's not much I can do for
25 him with his prior record. I can't help him with

1 this one."

2 MR. OPPERMANN: The context for that as I
3 understood it was that because there was an offer on
4 the table ---

5 THE COURT: Well, then -- excuse me then, on
6 September the 7th, 2017, at 2:10, some two hours or
7 three hours later, you said, "The last offer we had
8 from Chelsea was trafficking, eight years active.
9 Is this offer still on the table?"

10 And he wrote -- I mean, he e-mailed you back at
11 2:37, some 20 minutes later, "I cannot keep that
12 offer on the table." So in September you knew that
13 that was definitely off. You never accepted it up
14 until that time. And now you come in October and
15 say it was -- that you want it to be enforced.

16 MR. OPPERMANN: Yes, Your Honor.

17 THE COURT: What do you want me to enforce,
18 your counteroffer to him or the offer that you
19 agreed back in September?

20 MR. OPPERMANN: The offer that was withdrawn.
21 And the reason for that is I believe that
22 substantive due process rights, procedural process
23 rights, under *Cooper v. United States*, I've attached
24 and this negotiation.

25 Had Mr. Gray been aware that there was a sun --

1 that there was an expiration or sunset on the offer,
2 we would have accepted it. The reason we didn't
3 accept it in the time in the spring was because I
4 advised Mr. Gray that it would not be a good idea to
5 enter a plea in court without having reviewed the
6 discovery and discussed it extensively with his
7 attorney, and so he didn't.

8 I would have done so had I known there was
9 sunset date. The reason I did not do so is because
10 of the very heavy case load that the public
11 defender's office was experiencing during that
12 period of time.

13 That is not Mr. Gray's fault. He did not
14 reject an offer. He took the advice of his
15 client -- of his attorney that it was not
16 appropriate to accept an offer without an overview
17 of discovery. Those things have been accomplished
18 now and Mr. Gray would accept that offer.

19 And the way the conversation was going in the
20 e-mails, if you'll note, would've been that if -- I
21 was attempting to determine Mr. Wagner's position.
22 If that offer had been on the table and it was a
23 sunset, I would've immediately advised Mr. Gray. We
24 would've accepted it, but we did not have the
25 opportunity to do that, Your Honor. And that's not

1 Mr. Gray's fault; that's my fault if anyone.

2 THE COURT: But the fact is, he did not accept
3 it. You knew he hadn't accepted it. You made a
4 counteroffer.

5 MR. OPPERMANN: He didn't have -- he didn't
6 have an opportunity to accept it.

7 THE COURT: You mean, you didn't commune --
8 communicate with him about the offer that you'd got
9 in the e-mail on ---

10 MR. OPPERMANN: Mr. Gray states that he does
11 not ---

12 THE COURT: --- March the 3rd?

13 MR. OPPERMANN: Mr. Gray states that he does
14 not recollect that. I recollect making him aware of
15 the offer and advising him not to take it on that
16 day and to await further discussions so we could
17 determine whether or not it was appropriate.

18 THE COURT: Okay.

19 MR. OPPERMANN: Had I been aware in the *People*
20 *v. United States*, a strong emphasis -- emphasizes
21 the role of defense counsel as the mediator between
22 what the State is offering as to the defendant. Had
23 I been aware and had the knowledge necessary to show
24 my client, I would've done so, but I didn't.

25 My argument is as a result of that, his rights

1 to due process under *Cooper v. United States* are
2 violated. Had I been given that knowledge by the
3 State, I certainly would've communicated it to
4 Mr. Gray, but this is not a platonic, I feel where
5 it's one lawyer and one client and ample times where
6 you get to go speak to the client.

7 This is a scenario where our caseload being in
8 the hundreds and a number of those folks were going
9 before the Court and a number of those folks had
10 expiring offers.

11 As a result of that, Mr. Gray was not on the
12 top of my priority list. Had I been given the
13 information that there was a sunset on the offer, he
14 would've immediately gone as a priority as the
15 public defender in this circuit and the State of
16 South Carolina, and that's not Mr. Gray's fault.

17 THE COURT: Anything else?

18 MR. OPPERMANN: No, Your Honor.

19 THE COURT: Reading from *Cooper v. United*
20 *States*, Fourth Circuit, September the 15, 1978, 594
21 F.2d 12.

22 When as here in the *Cooper* case, such a
23 proposal -- specific, unambiguous and not
24 unreasonable on its face -- is offered by the
25 government to a defendant through his counsel,

1 constitutional fairness requires that it be
2 fulfilled if within a reasonable time the defendant
3 unequivocally -- unequivocally communicates his
4 assent to it, and unless in the intervening --
5 interval extenuating circumstances affecting the
6 propriety of the proposal that were unknown to and
7 not reasonably discovered by the government when the
8 proposal was made have supervened or become known.
9 This necessarily means that once presented, such a
10 proposal may not be withdrawn -- withdrawn in the
11 face of proffered acceptance if for no other reason
12 than a superior disagrees with an apparent
13 authorizing an appellate case.

14 The gentleman that made the offer was an
15 Assistant District Attorney, and I think his
16 superior told him to withdraw it.

17 Here you were dealing with the Solicitor. But
18 more importantly, he advised you very subsequently
19 that no counterproposal was going to be accepted.

20 MR. OPPERMANN: The status quo at that time,
21 Your Honor, was that our understanding was based
22 upon our Solicitor's office -- I've never had a
23 situation during the limited time that I've been
24 here that an offer is taken off the table without
25 some sort of prior notice or given a notice that

1 there's a sunset.

2 And I'll note ---

3 THE COURT: Do you have -- I couldn't find the
4 word "sunset" in -- in this opinion.

5 MR. OPPERMANN: That -- that is not a word
6 that's used in the opinion.

7 THE COURT: But they -- but does use the word
8 "withdraw."

9 MR. OPPERMANN: Yes, Your Honor.

10 THE COURT: And they -- and, yet, I have not
11 heard either you or your client or anyone else
12 saying that they had accepted the offer ---

13 MR. OPPERMANN: We were -- Your Honor, I ---

14 THE COURT: --- much less an unambiguous and
15 not unreasonable and on his face has offered if the
16 defendant unequivocally communicates his assent to
17 it.

18 MR. OPPERMANN: Your Honor, that -- if you go
19 on to page 11, as the Court is articulating this
20 measure here.

21 THE COURT: Actually, I was reading from page
22 20.

23 MR. OPPERMANN: If -- oh, excuse me. Page --
24 thank/you. Page 20. So if you look at ---

25 THE COURT: That's -- that's closer to the

1 conclusion.

2 MR. OPPERMANN: If you'll look at 21, Your
3 Honor. It's marked page 11 of 12 from the top of
4 that page.

5 THE COURT: Oh, you're talking about your pages
6 there. What I quoted from was from page 11.

7 MR. OPPERMANN: Yes. If you'll look, Your
8 Honor, and I'll quote from the opinion.

9 "We conclude this analysis of Constitutional
10 right by which looking at the practical consequences
11 on the one hand, but recognizing the right, and on
12 the other failing to recognize it. We do so because
13 in the final analysis, the defendant's
14 Constitutional entitlement here is only to that
15 process reasonably due under the circumstance."

16 It goes on to talk about what that means.

17 And the limits of reasonableness, and this is
18 critical, are to be found precisely in the way and
19 the practical burdens by the government by expecting
20 issue against a practical consequences for this
21 defendant and other similarly situated beyond
22 recognition.

23 If Mr. Gray had been told this offer will
24 expire at this period of time, that information
25 would've been communicated to him.

1 As I said, he was represented by a public
2 defender with a very high caseload and making
3 decisions about what's the priority, who to talk to
4 and implicate.

5 When I know that an offer is going to -- in a
6 particular period of time expire, I make a decision
7 to use time with the client. And, again, that's not
8 Mr. Gray's fault he's represented by a public
9 defender.

10 In this case, that appears to endanger his
11 Constitutional rights because if he had been made
12 aware that that offer was coming off the table, I
13 have no doubt that he would've accepted it.

14 But the fact that didn't happen is a function
15 of the practical reality of he was represented by a
16 public defender with a high caseload that had
17 experienced a great deal of turnover in the office.

18 When we look at the language of the opinion,
19 the practical consequences that that implies that
20 the Court deems it appropriate to look at each
21 circumstances. That was the practical reality
22 Mr. Gray faced.

23 And because he did not have an opportunity to
24 comprehend the risk of not accepting the offer, it
25 would not be appropriate in this case to deny him

1 the offer -- the opportunity to do that. The fact
2 that he didn't have an opportunity is a function of
3 the case of his attorney.

4 THE COURT: We're marching to whatever was done
5 when you finally advised him in July that the
6 Solicitor couldn't help you and it had to be
7 withdrawn.

8 He did nothing through you or by him from March
9 the -- March the 3rd, 2017, when it was first
10 proposed until in response to your counteroffer on
11 September the 6th.

12 Mr. Wagner three hours later said, "Not much I
13 can do for him with the prior record and the amount
14 that he has charged -- amount -- amount -- the
15 amount of meth charged with, I can't him on this
16 one."

17 And then you responded with, let's see, about
18 30 minutes later, "Last offer we had was trafficking
19 eight years active. Is that still on the table?"

20 "I cannot keep that offer on the table," he
21 responded within ---

22 MR. OPPERMANN: That ---

23 THE COURT: --- 30 minutes.

24 MR. OPPERMANN: --- that -- that's -- that's --
25 that's when we knew that the offer was withdrawn at

1 that time.

2 THE COURT: Well, how do you get around the
3 language? And I'm not arguing with you. I'm just
4 trying to do the best I can with what I've been
5 given today.

6 The constitutional fairness requires that the
7 offer that has been -- excuse me -- the
8 Constitutional fairness requires that it be
9 fulfilled, meaning acceptance, or the offer is
10 fulfilled if within a reasonable time that -- but at
11 the time the defendant unequivocally communicates
12 his assent to it.

13 No time, now you're telling me, since March
14 the 15th to the time that he will unequivocally
15 appear and he was told that it was withdrawn in
16 July -- did or September -- that he -- that the
17 defendant through you, his attorney, or he in any
18 sense assent to or as Mr. Cooper did in his case.

19 Moreover, the caveat is unless in the interval
20 extenuating circumstances effecting the propriety or
21 proposed -- or other proposed and therefore unknown
22 to and not reasonably discovered by the government.

23 Here all of the intervening was the drug
24 charges that Mr. Wagner has just recounted, and I
25 can't remember, apparently were discovered by the

1 government from the time of the original offer and
2 the time that when it was -- when you asked if you
3 could get a counterproposal. So, again, unless it's
4 anything else, I'm going to have to deny your
5 motion.

6 MR. OPPERMANN: Your Honor, supposing I do get
7 around that -- that language.

8 THE COURT: It's not how you get around it.
9 It's just that is the language of the Court. That's
10 what the Court was ruling on. In this case and
11 that's the Cooper case that you're relying on.

12 MR. OPPERMANN: Yes, Your Honor. That language
13 is modified by process reasonably due under the ---

14 THE COURT: Unequivocal acceptance.

15 MR. OPPERMANN: And, yes, Your Honor. And that
16 language is modified by what the Court subsequently
17 says. "Process reasonably with one of the
18 circumstance in the limits of reasonableness are to
19 be found precisely in weighing the practical
20 burdens." That's the modified language that you've
21 shared, Your Honor.

22 It's found in weighing the practical burdens of
23 most on appellant and the practical consequences for
24 this defendant in other similarly situated limits,
25 Your Honor, by permission. That suggests almost

1 equitable analysis in determining each case-by-case.

2 What's different about Mr. Gray's case and the
3 person here is, the person here had an attorney with
4 a clear timeline, accepted that offer, or went to
5 the client. Made an attempt to accept that offer.
6 What's different about Mr. Gray's case, Mr. Gray is
7 represented by the public defender.

8 THE COURT: Wait a minute. If I'm not
9 mistaken, before he accepted it, is it the superior
10 attorney told him to take it off the table.

11 MR. OPPERMANN: That -- that's -- that's
12 correct, Your Honor.

13 THE COURT: So they wouldn't have a chance to
14 accept it.

15 MR. OPPERMANN: But the language of the case
16 suggests ---

17 THE COURT: Well, I'm just reading.

18 MR. OPPERMANN: Yes.

19 THE COURT: That'll be for somebody else, I'm
20 afraid, to interpret the language. I don't know.
21 All I can do is read it.

22 MR. OPPERMANN: Yes, Your Honor. And you were
23 correct. My position is that language is modified
24 by the phrase, the limited reasonable necessary we
25 found precisely in weighing the practical burdens

1 imposed against the practical consequences for this
2 defendant because that suggests an equitable
3 analysis is appropriate to look at the equities in
4 this case.

5 Mr. Gray is not represented by a member of the
6 private bar. Mr. Gray was represented by a public
7 defender with a very high caseload and whose
8 priorities were informed by representations made by
9 the Solicitor's office. Representations made to me
10 by the Solicitor's office were that the offer would
11 remain open.

12 Had I had known that the offer was not going to
13 remain open, I would've certainly communicated that
14 to Mr. Gray so that he had meaningful opportunity to
15 respond, but he didn't. Those are the equities in
16 this case. And that's what *Cooper v. United States*
17 would seem to urge, the analysis to be determined
18 whether or not his rights were attached.

19 THE COURT: I understand. Any sir rebuttal,
20 Mr. Wagner?

21 MR. WAGNER: Your Honor, just the fact that
22 he -- he kept breaking the law. He kept getting
23 rearrested. Every two weeks, every three weeks,
24 he'd get locked up again for the same or similar
25 type charges.

1 That's why his offer was pulled. It wasn't
2 pulled on anything other than the fact that he'd
3 keep breaking the law. That's going to happen with
4 anybody. They're going to keep -- they're going to
5 keep doing it while they're out on bond and while
6 they've got a pending charge, then that offer is
7 going to come off the table, and I don't think we
8 have any choice.

9 With all due respect to Mr. Oppermann, he
10 couldn't -- I mean, nobody could control him. He
11 was -- he was out there running wild and that's why
12 it got pulled.

13 THE COURT: All right. Sir, sir rebuttal?

14 MR. OPPERMANN: Thank you, Your Honor. I'll
15 note that my client is charged with breaking the law
16 subsequent and I'd say bonding out, but he has not
17 been convicted and he has not pled guilty. In fact,
18 one of those charges come out in the preliminary
19 hearing and I would ask the Court to consider that.
20 Thank you.

21 THE COURT: Thank you. I find that the facts
22 of this particular motion that apparently that the
23 offer was clear. The proposed offer was specific,
24 unambiguous, and not unreasonable on its face.

25 It was offered by the government to the

1 defendant through his counsel, and that it was
2 not -- and the defendant did not unequivocally
3 communicate his assent to it. And there were
4 extenuating circumstances effecting the propriety of
5 the proposal that let him know that they had been
6 committed at the time, were not unreasonably
7 discovered by the government.

8 The proposal was made and that the motion to
9 enforce the rejected or unaccepted fully proposal is
10 denied.

11 MR. OPPERMANN: Your Honor, for the record?

12 THE COURT: Sir?

13 MR. OPPERMANN: May I? I'd like to place
14 something on the record at this time.

15 THE COURT: Yes, sir.

16 MR. OPPERMANN: We respectfully object to the
17 Court's ruling and believe that it violates
18 Mr. Gray's rights under the Fifth, the Sixth, the
19 Fourteenth Amendment of the United States
20 Constitution, Article 1, Section 3, and Section 21
21 of the South Carolina Constitution.

22 THE COURT: Thank you very much.

23 All right. So that means that we're going
24 forward at 2:30 in this case?

25 MR. OPPERMANN: Your Honor, the Court has not

1 ruled on the motion to continue.

2 THE COURT: Oh, unfortunately, I have now
3 because the motion to continue comes too late.

4 MR. OPPERMANN: Your Honor, if I may ---

5 THE COURT: Yes, sir.

6 MR. OPPERMANN: --- put something on the record
7 about that.

8 THE COURT: Please.

9 MR. OPPERMANN: We believe the Court's ruling
10 denying the defendant's motion for a continuance
11 violates his rights to due process, effective
12 assistance of counsel, Article 5 -- excuse me --
13 Fifth Amendment, Sixth Amendment, Fourteenth
14 Amendment of the United States Constitution, Article
15 1, Section 3, and Section 21 of the South Carolina
16 Constitution.

17 THE COURT: Well, I have not heard anything
18 about Dr. Dukes or anything that connects with the
19 SLED lab, at least the Anderson lab that this case
20 will be based on.

21 It was that the State's case is going to be
22 subject to all examination by the defendant and his
23 attorney. If there is some imperfection there, then
24 of course it'll be addressed at the time that it is.

25 MR. OPPERMANN: And, Your Honor, respectfully,

1 it was our position that the Court should have the
2 opportunity to hear from the expert because we
3 simply don't know. We wouldn't know if the
4 opportunity for a test and analysis, but given the
5 late discovery of this research, the Court ---

6 THE COURT: You haven't given me anything that
7 suggests this research is anywhere addressed to the
8 witness that will be testifying in this case.

9 MR. OPPERMANN: Because his research addresses
10 the testing procedures ---

11 THE COURT: Of this -- of this department here
12 in Anderson County?

13 MR. OPPERMANN: I don't know.

14 THE COURT: Well, if you don't know then how am
15 I supposed to know it's going to be relevant?

16 MR. OPPERMANN: Because, Your Honor, his
17 research does pertain to practices commonly used in
18 the State of South Carolina.

19 THE COURT: Well, that's not going to -- that's
20 not -- address that if you want to put him up as an
21 expert.

22 MR. OPPERMANN: Your Honor, we don't have the
23 opportunity to bring him up as an expert because
24 just having discovered him last week, he's not able
25 to conduct any independent analysis to try to let

1 us make sure a basis for our motion. We'd just like
2 to have the opportunity to do that and we haven't.

3 THE COURT: Well, you had the opportunity
4 apparently. When did you find out about him?

5 MR. OPPERMANN: Last week on Wednesday, Your
6 Honor.

7 THE COURT: So you had Thursday and Friday.
8 You could've even probably taken him out to supper
9 on Saturday.

10 MR. OPPERMANN: And, Your Honor, I made contact
11 with him. Heard back from him on Friday and said,
12 "When can we talk?" He said, "We can talk on
13 Monday."

14 THE COURT: Well, you'll have a chance to talk
15 to him. We're not going to start until 2:30. I'm
16 sure we're not going to complete the case today.

17 MR. OPPERMANN: Your Honor, with respect, it's
18 likely that it would be necessary to provide some
19 funding. Because we just became aware of this
20 issue, Your Honor, we do not have the funds.

21 THE COURT: That is not my problem. I'm sorry.
22 When did you -- notwithstanding what you're saying
23 as far as his -- this term of court as far as
24 funding through Indigent Defendant Agency or
25 whatever. That's something you'll have to submit

1 your request, and then it will be approved by the
2 agency.

3 MR. OPPERMANN: Thank you, Your Honor.

4 THE COURT: You don't have anything now, do
5 you?

6 MR. OPPERMANN: Not at this time, Your Honor.
7 We haven't had the opportunity.

8 THE COURT: Very good.

9 MR. OPPERMANN: But we do renew our objections
10 to the Court's ruling.

11 THE COURT: Very good. Thank you, sir.

12 MR. OPPERMANN: Thank you, Your Honor.

13 THE COURT: Anything else?

14 (No responses.)

15 THE COURT: All right. See you back at 2:30.

16 (From 1:22 to 2:30 p.m., lunch recess.)

17 THE COURT: All right. Ladies and gentlemen,
18 as I mentioned earlier today, this is a term of
19 General Sessions court, sometimes called criminal
20 court. The purpose is to resolve questions of
21 alleged criminal conduct arising between the State
22 of South Carolina and the defendant, in a fashion
23 which will ensure that justice under the law is
24 accomplished.

25 The trial of the case begins with the selection

1 of the jury. Both the State and the defendant are
2 entitled to jurors that would approach the case with
3 an open mind. The trial jury -- judge -- excuse
4 me -- the trial jury must be as free as humanly
5 possible from any bias, prejudice, or sympathy for
6 either side and free from any preconceived ideas on
7 the facts of the case and on the law of the case.

8 Therefore, certain questions will be asked of
9 you during paneling. The questions which will be
10 asked are designed to ensure that each side has a
11 fair and impartial jury.

12 I might note further as I did this morning, if
13 any person should talk with you or attempt to talk
14 with you about any case scheduled for this term of
15 court, it would be your solemn duty to immediately
16 report that matter to the Court.

17 I now will begin the selection of the jury. If
18 anyone cannot hear me, would you please raise your
19 right hand.

20 PROSPECTIVE JURORS: (Indicating.)

21 THE CLERK: I don't think your microphone's on.

22 THE COURT: Thank you. May I ask if anybody
23 cannot hear me, if you would please, raise your
24 right hand or left hand.

25 PROSPECTIVE JURORS: (No responses.)

1 THE COURT: Now, that's an interesting question
2 because if you couldn't hear me, you wouldn't know
3 to raise your hand. However, if there's anybody
4 that cannot hear me or understand what I'm saying,
5 please indicate and I'll try to be more complete in
6 my expressions and more accurate.

7 Solicitor, you may call your -- you may bring
8 your first action.

9 MR. WAGNER: Your Honor, the State calls the
10 trial *State v. Cole Brooks Gray* with the following
11 indictments: 2017-GS-04-1851 for receipt of stolen
12 goods valued at more than \$2,000 but less than
13 10,000; 2017-1850 for failure to stop for a blue
14 light; 2017-01220 for trafficking in
15 methamphetamine.

16 THE COURT: May I have a copy of the
17 indictments, please? Thank you.

18 Oh, could counsel approach? I just want to be
19 sure of something.

20 (Sidebar discussion.)

21 THE COURT: Ladies and gentlemen of the jury
22 panel, please give me your attention. We are about
23 to commence the trial of the case of *State of South*
24 *Carolina v. Cole Brooks Gray*, charged in indictment
25 with failure to stop for a blue light, second or

1 subsequent offense; another indictment, receiving
2 stolen goods valued at more than \$2,000 but less
3 than \$10,000; and a third indictment, traffic --
4 trafficking in methamphetamine.

5 The State will be represented by Mr. Wagner.

6 Mr. Wagner, if you would please, stand and
7 introduce yourself and introduce anyone else that
8 will be assisting you in the trial of this case.

9 MR. WAGNER: Your Honor, I'm David Wagner. I'm
10 the Solicitor here Anderson and Oconee Counties. I
11 have seated with me Anthony Stipe of the Sheriff's
12 Office, the arresting officer in this case; Mary
13 Holahan, who's with me from my office assisting me.

14 THE COURT: Thank you very much. Mr. Gray is
15 represented by Mr. Oppermann.

16 Mr. Oppermann, if you would please, stand and
17 introduce yourself and your client.

18 MR. OPPERMANN: Thank you, Your Honor.

19 Ladies and gentlemen, my name is Joseph
20 Oppermann. I'm an Assistant Public Defender with
21 the Anderson County Public Defender's Office. I
22 represent Mr. Cole Brooks Gray who is here.

23 Mr. Cole, would you stand?

24 THE DEFENDANT: (Complying.)

25 MR. OPPERMANN: This is my client, Mr. Gray.

1 Thank you, ladies and gentlemen.

2 THE COURT: Thank you very much.

3 Again, I will also be reading some names and
4 potential witnesses. If you are, ask that you stand
5 and look upon the jury so they can see you. I
6 understand and it's been my experience that they --
7 we might not know someone's name, but we might
8 recognize their face. So when I ask you to stand,
9 please look upon the jury.

10 Is there any member of the jury panel related
11 by blood or marriage to the defendant, Cole Brooks
12 Gray? If so, please stand.

13 PROSPECTIVE JURORS: (No responses.)

14 THE COURT: Has any member of the jury panel or
15 members of their immediate family ever been employed
16 by or represented by or had cases involving the
17 Solicitor's office with the Tenth Judicial Circuit
18 in Anderson County or the public defender's office
19 here in Anderson County? If so, please stand.

20 PROSPECTIVE JURORS: (Standing.)

21 THE COURT: All right. We'll start on this
22 side. Yes, ma'am.

23 PROSPECTIVE JUROR: I'm Susan Jones, and my
24 brother-in-law works for the Solicitor's Office.

25 THE COURT: All right. Would that in any way

1 interfere with your ability to give both the State
2 and defense a fair and impartial trial?

3 PROSPECTIVE JUROR: It might.

4 THE COURT: All right. Very good. I'm going
5 to excuse you on the trial of this case. Just
6 remain with us if you would, please.

7 PROSPECTIVE JUROR: (Complying.)

8 THE COURT: Yes, sir.

9 PROSPECTIVE JUROR: My father was represented
10 by the public defender a few times.

11 THE COURT: Excuse me?

12 PROSPECTIVE JUROR: My father ---

13 THE COURT: Yes, sir.

14 PROSPECTIVE JUROR: --- was represented by the
15 public defender's office a good few times.

16 THE COURT: All right. Let me ask you -- and
17 your name, please.

18 PROSPECTIVE JUROR: Jacob Stewart.

19 THE COURT: All right. And would that in any
20 way interfere with your ability to give both the
21 State and the defendant a fair and impartial trial?

22 PROSPECTIVE JUROR: It would.

23 THE COURT: All right. I'm going to excuse you
24 on the trial of this case too, but just please stay
25 with us if you would.

1 PROSPECTIVE JUROR: (Complying.)

2 THE COURT: By the way, I want to thank both of
3 the potential jurors in this case for their
4 response. Of course, the reason for that question
5 is twofold:

6 One, as I explained, both parties, the
7 defendant and the State of South Carolina, are
8 entitled to fair and impartial jurors.

9 But more importantly, none of you asked to be
10 here; and therefore, why is it for you to be able to
11 perform your duties as jurors here in the court of
12 General Sessions in Anderson County. I want to make
13 sure that none of you are compromised in any way.

14 In other words, if there's any reason you feel
15 that you cannot be fair and impartial, I don't want
16 to put you in a position to where you have to
17 overcome any reluctance or any acceptance to that;
18 so therefore, please tell me if you do have any
19 reservations about serving as a juror in the
20 particular case because that's exactly what I would
21 want -- want you to do.

22 All right. As I said earlier, I'm going to
23 call out a list of names of potential witnesses in
24 this case. Now, they do not have to be called.
25 They could be called. They are potential witnesses.

1 And if they are in the courtroom as I call their
2 name, please stand and look upon the jury.

3 John William "Billy" Davis. Brenda -- oh,
4 excuse me -- Belinda Lee. Josh Payne. Kenny
5 Lollis. Chris Beusse; is that correct, Mr. Wagner?

6 MR. WAGNER: Yes, sir.

7 THE COURT: Chris Beusse. Now, all of these,
8 Ms. Lee, Mr. Payne, Mr. Lollis, and Mr. Beusse, and
9 the others I'll be naming, are from the Anderson
10 County Sheriff's Office.

11 Pansy Allen. Meredith Lanford. Matthew
12 Stipe -- "Stip" -- "STIPE"? Did I pronounce your
13 name correctly, sir?

14 THE WITNESS: "STIPE." Yes, sir.

15 THE COURT: "STIPE"?

16 THE WITNESS: Yes, sir.

17 THE COURT: Very good. Thank you.

18 Casey Purdy. Andy Hyslop. J.T. Smith. Matt
19 Grant. David Stipe. Rob Gebing. Jonathan Velez.
20 Stephen Wideman. Jan Robinson. Kevin Matheson.

21 Is any member of the jury panel related by
22 blood or marriage or close personal friends of any
23 of the potential witnesses in this case?

24 John William "Billy" Davis, Belinda Lee, Josh
25 Payne, Kenny Lollis, Chris Beusse, Pansy Allen,

1 Meredith Lanford, Matthew Stipe, Casey Purdy, Andy
2 Hyslop, U.T. Smith, Matt Grant, David Stipe, Robert
3 Gebing, Jonathan Velez, Stephen Wideman, Jan
4 Robinson, or Kevin Matheson? If so, please stand at
5 this time.

6 PROSPECTIVE JURORS: (No responses.)

7 THE COURT: Was any member of the jury panel a
8 member of the Grand Jury for Anderson County in the
9 year 2017? If so, please stand.

10 PROSPECTIVE JURORS: (No responses.)

11 THE COURT: Has any member of the panel formed
12 or expressed an opinion about this case? If so,
13 please stand.

14 PROSPECTIVE JURORS: (No responses.)

15 THE COURT: Is there any member of the jury
16 panel aware of any interest, bias, or prejudice
17 towards either the defendant or the State of South
18 Carolina? If so, please stand.

19 PROSPECTIVE JURORS: (No responses.)

20 THE COURT: Does any member of the panel
21 know -- know of any reason why he or she could not
22 give both the State of South Carolina and the
23 defendant a fair and impartial trial? If not,
24 please stand.

25 PROSPECTIVE JURORS: (No responses.)

1 THE COURT: Any -- has either the State or the
2 defendant have any additional questions they would
3 like to have the Court ask the panel from the State?

4 MR. WAGNER: No, sir, Your Honor. Jan, I
5 think, Robinson is what I typed on there. I think
6 it's actually Roberson possibly, Jan Roberson.

7 THE COURT: All right. Jan Roberson,
8 R-o-b-i-n-s-o-n [sic], with the Anderson County
9 Sheriff's Office. Is there any member of the jury
10 panel related by blood or marriage or close personal
11 friends of Ms. Jan Roberson of the Anderson County
12 Sheriff's Office? If so, please stand.

13 PROSPECTIVE JURORS: (No responses.)

14 THE COURT: All right. Any further questions
15 from the State?

16 MR. WAGNER: No, sir.

17 THE COURT: From the defense?

18 MR. OPPERMANN: No, Your Honor.

19 THE COURT: All right. Mr. Clerk, if you would
20 please, give us a jury.

21 THE CLERK: How many alternates?

22 THE COURT: Let's do two alternates. And the
23 strikes in this case are?

24 THE CLERK: Five. Five is what we do.

25 THE COURT: And with two alternates on the

1 strikes, it'll be two and one; is that correct,
2 Mr. Wagner?

3 MR. WAGNER: Yes, sir.

4 THE COURT: Mr. Oppermann?

5 MR. OPPERMANN: Yes, Your Honor.

6 THE COURT: Very good. All right. The way we
7 draw a jury in General Sessions now is that the
8 computers produce a random list of your names. In
9 other words, it's done in a way where there's no
10 format to it. And as your name is called, if you
11 would please, come to the front of the room.

12 Let's see. Can I have a bailiff, please?

13 When we get a bailiff, then I'll ask you to
14 come to the front of the room, and then come into
15 the room into the court part of the courtroom and
16 look upon the attorneys.

17 And the way we do that was -- is that the State
18 goes first and either says, "Present the witness or
19 the juror" or "Excuse the juror." And then the
20 defendant will then say either, "Swear the juror" or
21 "Excuse the juror."

22 All right. Mr. Clerk.

23 THE CLERK: If it pleases the Court?

24 THE COURT: Yes, sir.

25 THE CLERK: Our first potential juror is Number

1 20, Sandra Brown.

2 PROSPECTIVE JUROR: (Approaching.)

3 THE CLERK: What say you for the State?

4 MR. WAGNER: Present the juror.

5 THE CLERK: What say you for the defendant?

6 MR. OPPERMANN: Please present the juror.

7 THE CLERK: Our next potential juror is Number

8 7, Michael W. Bakley.

9 PROSPECTIVE JUROR: (Approaching.)

10 THE CLERK: What say you for the State?

11 MR. WAGNER: Present the juror.

12 THE CLERK: What say you for the defense?

13 MR. OPPERMANN: Swear the juror.

14 THE CLERK: Juror No. 146, Lydia S. Parnell.

15 PROSPECTIVE JUROR: (Approaching.)

16 THE CLERK: What say you for the State?

17 MR. WAGNER: Present the juror.

18 THE CLERK: What say you for the defense?

19 MR. OPPERMANN: Present the juror.

20 THE CLERK: Juror No. 137, Adam J. Mosso.

21 PROSPECTIVE JUROR: (Approaching.)

22 THE CLERK: What say you for the State?

23 MR. WAGNER: Present the juror.

24 THE CLERK: What say you for the defense?

25 MR. OPPERMANN: Please swear the juror.

1 THE CLERK: Juror No. 54, Jordan S. Ellenberg.

2 PROSPECTIVE JUROR: (Approaching.)

3 THE CLERK: What say you for the State?

4 MR. WAGNER: Present the juror.

5 THE CLERK: What say you for the defense?

6 MR. OPPERMANN: Please swear the juror.

7 THE CLERK: Juror No. 177, Ricky K. Smith.

8 PROSPECTIVE JUROR: (Approaching.)

9 THE CLERK: What say you for the State?

10 MR. WAGNER: Present the juror.

11 THE CLERK: What say you for the defense?

12 MR. OPPERMANN: Please swear the juror.

13 THE CLERK: Juror No. 98, Rodney D. Johnson.

14 PROSPECTIVE JUROR: (Approaching.)

15 THE CLERK: What say you for the State?

16 MR. WAGNER: Present the juror.

17 THE CLERK: What say you for the defense?

18 MR. OPPERMANN: Please swear the juror.

19 THE CLERK: Juror No. 128, Matthew R. McKee.

20 PROSPECTIVE JUROR: (Approaching.)

21 THE CLERK: What say you for the State?

22 MR. WAGNER: Present the juror.

23 THE CLERK: What say you for the defense?

24 MR. OPPERMANN: Please swear the juror.

25 THE CLERK: Juror No. 71, Tammy M. Fuller.

1 PROSPECTIVE JUROR: (Approaching.)

2 THE CLERK: What say you for the State?

3 MR. WAGNER: Present the juror.

4 THE CLERK: What say you for the defense?

5 MR. OPPERMANN: Please swear the juror?

6 THE CLERK: Juror No. 34, Matthew D. Chambers.

7 PROSPECTIVE JUROR: (Approaching.)

8 THE CLERK: What say you for the State?

9 MR. WAGNER: Present the juror.

10 THE CLERK: What say you for the defense?

11 MR. OPPERMANN: Please swear the juror.

12 THE CLERK: Juror No. 194, Terry W. Urban.

13 PROSPECTIVE JUROR: (Approaching.)

14 THE CLERK: What say you for the State?

15 MR. WAGNER: Present the juror.

16 THE CLERK: What say you for the defense?

17 MR. OPPERMANN: Please swear the juror.

18 THE CLERK: And Juror No. 36, Jacob A.

19 Charping.

20 PROSPECTIVE JUROR: (Approaching.)

21 THE CLERK: What say you for the State?

22 MR. WAGNER: Present the juror.

23 THE CLERK: What say you for the defense?

24 MR. OPPERMANN: Please swear the juror.

25 THE CLERK: Your Honor, that is 12 jurors.

1 We'll continue now with our alternates.

2 THE COURT: Please do.

3 THE CLERK: Juror No. 1, Dave S. Ajwani.

4 PROSPECTIVE JUROR: (Approaching.)

5 THE CLERK: What say you for the State?

6 MR. WAGNER: Present the juror.

7 THE CLERK: What say you for the defense?

8 MR. OPPERMANN: Please swear the juror.

9 THE CLERK: Juror No. 112, Norlene A. Leake.

10 PROSPECTIVE JUROR: (Approaching.)

11 THE CLERK: What say you for the State?

12 MR. WAGNER: Present the juror.

13 THE CLERK: What say you for the defense?

14 MR. OPPERMANN: Please swear the juror.

15 THE CLERK: Your Honor, that is 12 jurors and

16 two alternates.

17 THE COURT: All right. Is there any reason
18 that the jury cannot be sworn for the trial of this
19 case from the State?

20 MR. WAGNER: No, sir.

21 THE COURT: From the defense?

22 MR. OPPERMANN: No, Your Honor.

23 THE COURT: Very good. Ms. Fuller, I'm going
24 to ask you to serve as the foreperson of this jury,
25 if you would, please.

1 Now, I'm going to ask you to go with the
2 bailiff, and he'll show you the jury room that we'll
3 be using during the trial of the case. But when you
4 come back, I want the forelady to sit in the first
5 seat on the front row. And the two alternates can
6 sit in the seats that you are on the second -- on
7 the outside seats. And those are the only three
8 seats that are reserved in the box.

9 So in other words, the forelady will seat in
10 the first row, first seat. The two alternates sit
11 at the end of the second and third row. Everybody
12 else can sit wherever they want to.

13 With that, I'm going to excuse you to go with
14 the bailiff and he'll show you where you'll be --
15 the jury room you'll be using. Again, do not
16 undertake the discussion of this case among
17 yourselves in any way.

18 (At 3:13, jury was excused from the courtroom.)

19 THE COURT: Let's see. Could I see the
20 Solicitor and Mr. Oppermann and the clerk too?

21 (Sidebar discussion.)

22 (At 3:15 p.m., the prospective jurors that were
23 not selected were released for the day.)

24 THE COURT: All right. Is there anything from
25 the State before we bring the jury back in?

1 MR. WAGNER: Your Honor, if I could, I need to
2 get a few things marked.

3 THE COURT: Okay. Well, let's do that. Let's
4 go off the record and have your exhibits marked.
5 Are they agreed to or are they just marked for
6 identification?

7 MR. WAGNER: Just for identification.

8 THE COURT: All right. Then if the defense has
9 any, unless you think you might be using them on
10 cross-examination or something like that? Defense
11 exhibits marked too for identification.

12 MR. OPPERMANN: That won't be necessary, Your
13 Honor.

14 THE COURT: Very good. All right. We're off
15 the record. /

16 (Brief recess.)

17 MR. WAGNER: I'm ready.

18 THE COURT: All right. I understand we have
19 some matters to put on the record before we have the
20 jury return.

21 MR. OPPERMANN: Yes, Your Honor. Thank you.

22 At this time, Your Honor, the defense renews
23 its motion for a continuance and we have new
24 grounds.

25 Just a few moments ago, I received this

1 document, the potential witness list from Mr. Wagner
2 of the Solicitor's office. Unless I'm very much
3 mistaken, and I would invite the Solicitor's office
4 to correct me if I am mistaken, this is the first
5 time I've seen this potential witness list.

6 On that basis, the defense renews its motion
7 for a continuance so that we have the opportunity to
8 determine -- I recognize some of these names from
9 the discovery, but to determine who these folks are
10 and what they intend to testify to. We believe
11 that's a reasonable motion and we ask the Court to
12 grant our motion.

13 THE COURT: Mr. Wagner.

14 MR. WAGNER: Your Honor, we actually did just
15 give that to him today, but it's just a list of what
16 we may call out. A lot of those aren't even going
17 to be called out I think, so a lot of them are
18 duplicative. Every name in there was in the
19 discovery at some -- at some point when they were
20 turned over to the defense.

21 I realize it's just kind of an internal
22 document from my standpoint for you to be able to
23 call it out in front of the jury so we don't have
24 any confidential people that they might know, so I
25 just put everybody possible on there. Probably

1 about half of them aren't going to need.

2 THE COURT: All right. Mr. Oppermann.

3 MR. OPPERMANN: In order for Mr. Gray to have
4 effective assistance of counsel, I do need to have
5 the opportunity to know who these folks are and what
6 they're going to say. Having just been presented
7 with this list, I'm not able to do that absent a
8 continuance at this time.

9 THE COURT: Well, now you say that the names
10 that are on that list were furnished within the
11 discovery; is that correct, Mr. Wagner?

12 MR. WAGNER: Yes, sir.

13 THE COURT: All right. I don't know of any
14 requirement prior to trial that the -- in fact, the
15 State's the only one I know that is required to
16 furnish their jury list, but I can assure you're the
17 defense would have to, so ---

18 MR. OPPERMANN: Your Honor ---

19 THE COURT: --- I'm just -- first of all, I'm
20 looking for the authority that requires that the
21 defendant in a criminal case provide the defense
22 with a list of jurors prior to trial.

23 MR. OPPERMANN: Oh, it's not a list of jurors,
24 Your Honor.

25 THE COURT: Sorry. Witnesses. Well, I hope

1 they wouldn't have a list of jurors.

2 MR. OPPERMANN: We believe that would be
3 complicit in Rule 5 that if there's a list of
4 witnesses that are going to be called, that that
5 would be discoverable. We have filed for discovery
6 and, you know, just here on the day of trial
7 receiving this list of witnesses.

8 You can get a long, big 'ole stack of incident
9 reports when you ask for discovery that necessary,
10 doesn't necessarily know -- I mean, you know who's
11 going to be called, what they're going to be called
12 to say. And in light of this, Your Honor, we do
13 believe a continuance would be appropriate.

14 THE COURT: So you're relying on Rule 5?

15 MR. OPPERMANN: Yes, Your Honor. *Brady v.*
16 *Maryland.*

17 MR. WAGNER: Your Honor, State's position would
18 be it's not -- it's not covered under Rule 5 and
19 it's not Brady material. All of those names were
20 people that were there at some point in time having
21 something to do with the case, even if it's just
22 being a bystander.

23 THE COURT: I find under Rule 5 that you do
24 have a duty to provide.

25 Now, normally a matter it says, and this Court

1 has previously said, "Information not subject to
2 disclosure the State has made by prosecution
3 witnesses or State prosecution witness provided and
4 after prosecution witnesses testified under direct
5 or examination, the Court shall on a motion from the
6 defendant or prosecution produce these statements of
7 the witnesses."

8 So I don't find any -- again, I'm looking for
9 the authority.

10 MR. OPPERMANN: Your Honor, also under 7(c),
11 "The Court may grant a continuance for good cause
12 shown." Receiving a list of witnesses on the day of
13 trial, respectfully, Your Honor, if that's not good
14 cause shown, I don't know what is. That language is
15 purposely vague to give the Court discretion.

16 This is the first time I'm seeing this list of
17 witnesses.

18 THE COURT: Well, good cause is usually
19 something that's found in the rules or the
20 authorities or the sources, rather than just the
21 statement.

22 Very good. I deny -- deny the motion for
23 continuance.

24 MR. OPPERMANN: For the record, Your Honor.

25 THE COURT: It's noted for the record.

1 MR. OPPERMANN: We object to the Court's ruling
2 and believe it violates the defendant's rights under
3 the Fifth, Sixth, and Fourteenth Amendments of the
4 United States Constitution, Article 1, Section 3,
5 and Article 1, Section 21, of the South Carolina
6 Constitution.

7 THE COURT: Also noted.

8 MR. OPPERMANN: Thank you, Your Honor.

9 THE COURT: All right. Anything else from the
10 defense?

11 MR. OPPERMANN: Not at this time, Your Honor.

12 THE COURT: All right. Anything from the
13 State?

14 MR. WAGNER: No, sir.

15 THE COURT: All right. We do need to swear
16 them. All right. Ask the jury to join us, please.

17 THE BAILIEF: (Complying.)

18 (At 3:46 p.m., the jury entered the courtroom.)

19 THE CLERK: If it pleases the Court.

20 THE COURT: Mr. Shirley.

21 THE CLERK: If I could have you stand and raise
22 your right hand, please.

23 THE JURORS: (Complying.)

24 THE CLERK: Do you and each of you solemnly
25 swear or affirm that you shall well and truly try

1 and a true deliverance make for the State of South
2 Carolina and the defendant whom you shall have been
3 charged and a true verdict rendered according to the
4 law and evidence? If you will, say "I do."

5 THE JURORS: (Collectively:) I do.

6 THE CLERK: Have a seat. Thank you very much.

7 THE JURORS: (Complying.)

8 THE COURT: Madam forelady, ladies and
9 gentlemen of the jury, I'm sure each of you now
10 fully appreciates that this Court -- the Court of
11 General Sessions of Anderson County exists for the
12 purpose of resolving questions of alleged criminal
13 conduct arising between the State of South Carolina
14 and the defendant.

15 It is a guaranteed right of every citizen that
16 the charge of the defendant's conduct be presented
17 in open court according to certain rules of
18 procedure. The State has not only an equal right,
19 but the duty to present a charge of criminal matter
20 in open court according to the same rules of
21 procedure.

22 Each of those parties, therefore, both the
23 State and the defendant, then have an equal right
24 and opportunity in this judicial proceeding and to
25 have you as the jury selected and now sworn for the

1 trial of this case.

2 One of the most important aspects of your duty
3 as the jury lies essentially in the oath that you
4 have now taken to well and truly try and determine
5 the facts of the case. That oath in a very
6 essential way says that you are the sole judges of
7 the facts in this case.

8 Obviously, any case tried in court will involve
9 a question about what happened or how something came
10 to happen or whom, if anyone, did anything in the
11 particular current circumstance.

12 From this point forward, there are no one
13 concerning this trial has the right to decide any
14 question of facts in the trial except you the jury.
15 The facts are for your resolution and your decision
16 and yours alone. And after you hear all the
17 evidence in the case, it will be your duty by your
18 -- duty you'll enjoy especially concerning the
19 fact -- facts of this case by deciding the weight
20 and believability of each party of the evidence and
21 by applying the law of the case thereto.

22 As the trial judge, I am the judge of the law
23 in the case. It is also -- it is my responsibility,
24 among other duties, to preside over this trial, to
25 rule on the admissibility of evidence during the

1 progress of the trial, and to state to you the jury
2 the law applicable to this case.

3 The Constitution says there are mandates that I
4 as the trial judge cannot directly or indirectly
5 comment about the facts in the case. The process
6 and the verdict then is simply that you the jury
7 first determine the facts and apply to that state of
8 facts the principle of law applicable, and by that
9 process determine the Court the -- the Court your
10 final verdict in the case.

11 The Court will more fully and completely state
12 to you laws -- to you and the principles of law
13 applicable to the issues in this case the Court has
14 submitted to you the jury for your decision.

15 However, there are certain principles of law
16 applicable to the framework of every case in General
17 Sessions court.

18 Now, in a very basic way, I will outline
19 several of these basic principles to you for your
20 guidance. The defendant has entered a plea of not
21 guilty to the charges contained in the indictment.

22 Now, the indictments in this case are not
23 evidence and they are simply the written instruments
24 that contain the charges or charge against the
25 defendant, and it serves -- and each serves as the

1 formal document of which the case is processed into
2 this court.

3 The plea of not guilty places upon the State
4 the burden of proof in this case. As to what is
5 meant by the term "burden of proof," the defendant
6 is presumed by law innocent of all charges contained
7 in each indictment.

8 The burden of proof requires the State to prove
9 guilt beyond a reasonable doubt; and therefore,
10 consistent with that burden, the defendant or the
11 accused party shall be presumed to be innocent. And
12 that presumption of innocence is sufficient to
13 compel a verdict of not guilty or a verdict of
14 acquittal, unless you the jury conclude the State
15 has satisfied its obligation to prove the defendant
16 guilty beyond a reasonable doubt on each indictment.

17 The term "reasonable doubt" means the kind of
18 doubt that would cause a reasonable person to
19 hesitate to act.

20 Now, this case will be opened by the Solicitor,
21 after which the same opportunity will be afforded to
22 the defendant to make an opening statement.

23 When all of the evidence has been received by
24 the Court; counsel for the State and counsel for the
25 defendant must state to the jury their respective

1 positions, after which the Court will fully state
2 the applicable law in the case.

3 Obviously, all parts of a case are important.
4 You do not know which wit. -- which witness in a case
5 will most impress you, whether the first witness or
6 the last witness.

7 Reaching your final conclusion, you will need
8 the guidance and judgment of the other jurors. You
9 will need the guidance of the principles of law that
10 will be stated to you by the Court.

11 For all these reasons then, when we have the
12 recess period when you retire to your jury room or
13 during the overnight when you'll recess, I instruct
14 you that you must not undertake to discuss this case
15 among yourselves until the case is finally given to
16 you for your deliberations, nor are you to discuss
17 the case with anyone or permit anyone else to
18 discuss the case with you. If anyone should try to
19 do so, report them and I'll take the appropriate
20 action.

21 Now, the verdict in each of these cases must be
22 a unanimous verdict of all 12 jurors. A few other
23 additional comments I need to make before the case
24 begins:

25 First, as I mentioned earlier, although I am

1 the only person who can tell you what the law is,
2 you and you alone are the only ones who can
3 determine the facts. I do not have the right to
4 indicate how I feel about the evidence is presented.
5 Throughout this trial, my intent will be to act
6 impartially towards each party.

7 Second, from time to time, an attorney may
8 object to some bit of testimony or evidence which
9 the other side is seeking to present. As in sports
10 or business or any other structured activity, there
11 are certain rules that both sides must obey in
12 presenting evidence. These rules have a definite
13 purpose. They ensure that the information you
14 receive is the most trustworthy and reliable
15 evidence available.

16 An objection is the procedure that we use for
17 an attorney to qualify as a violation of the rules
18 to the judge's attention. For this reason, you
19 should not hold an attorney's objection against his
20 client, nor should you conclude from my ruling I'm
21 indicating that I favor one side or the other.

22 Finally, I would ask that you pay close
23 attention as possible to the evidence presented to
24 you. I will ask that you do not take notes. If the
25 note taker makes an error in his notes or her notes,

1 it could be more detrimental than helpful during the
2 deliberations. The entire system is for each of you
3 to listen carefully, and I'm sure that each of you
4 will do that.

5 Now, having all -- said all of that, I do take
6 notes. And the reason for that is, I am not
7 concerned about the facts of the case or the
8 evidence of the case. I am more concerned about
9 certain things that need to be done during the
10 course of the trial. In other words, I'm jotting
11 down what had happened -- what happens, not the
12 significance of it.

13 The significance is for you and you alone to
14 determine the value to be given to any testimony or
15 other evidence. All I'm doing is keeping track of
16 what occurs so that I know that each little point
17 that needs to be done is reached. And for that
18 reason, I suggest that jurors do not take notes.

19 More importantly, like I said earlier, when you
20 take the note, you're in essence writing down what
21 you think you hear. And sometimes you might miss
22 something. And I use the example of the word "not."
23 If you insert the word not in the statement when it
24 wasn't there, of course it changes the meaning all
25 together, or if you miss the word not; so therefore,

1 I suggest that we do not take notes.

2 And if you do have a question as to what the
3 testimony was or what the evidence was, you would
4 use the same procedures that you use in reaching the
5 verdict itself, you consult with each other and
6 whenever is most persuasive, and, again, almost a
7 unanimous verdict as to the accuracy of the
8 statement of one of them, then that is what the jury
9 does as it adequately reaches the credibility of the
10 witness.

11 Now, with that, we'll commence the trial of the
12 case and I recognize the Solicitor for his opening
13 statement.

14 MR. WAGNER: Thank you, Judge.

15 Back on November 12, 2016, just a little -- a
16 little less than a year ago, the defendant in this
17 case, Cole Gray, was charged with having in his
18 possession over a hundred grams of methamphetamine.

19 Officer Stipe from the sheriff's office noticed
20 the vehicle that he was driving that morning.

21 Officer Stipe will tell you he was on the way to
22 work. He noticed the defendant run a stop sign.
23 The vehicle was in the opposite oncoming lane of
24 travel and drew his attention to it.

25 He proceeded to activate his blue lights and

1 his siren and chased him for about 25, 30 minutes.
2 It's a long chase all through town. A couple of
3 vehicles got struck. You get to see this and he was
4 charged with failure to stop for a blue light, so
5 it's the second charge he's charged with.

6 He's charged with trafficking, which is
7 basically having actual possession or constructive
8 possession of more than a hundred grams of
9 methamphetamine of the drug that's in question.

10 Failure to stop for a blue light. That's when
11 the officer activated his siren and blue light and
12 this defendant ran.

13 He's also charged with possession of a stolen
14 vehicle, more than 2,000 but less than 10,000,
15 because when he actually got stopped, they
16 determined that the truck was a stolen vehicle.

17 You'll hear from a number of witnesses from the
18 State. All will go to show different elements of
19 the crime. I've got to prove each and every element
20 of these three crimes to you. We've got the burden
21 of proof. That's the way it is in this country and
22 the state, the State of South Carolina, Anderson
23 County, Tenth Circuit, that falls on us. We welcome
24 that burden.

25 I appreciate, number one, y'all being here and

1 taking the time out of your week to come in here and
2 hear cases for us. Without jurors, without people
3 willing to sit, the cases would sit here forever.
4 And we're doing it in the correct way, so I
5 appreciate you're being here and y'all taking your
6 time.

7 The evidence in this case is going to come from
8 the witness stand by way of their testimony and
9 evidence that we put in through them. It's not by
10 what I say, not by what the defense attorneys say.
11 It comes from the witness stand that has been
12 charged in that.

13 So at the end of this thing, I'll ask for one
14 thing. I'm going to ask you to return a verdict
15 that speaks the truth and I-- and I appreciate your
16 time. Thank you.

17 THE COURT: Mr. Oppermann.

18 MR. OPPERMANN: Thank you, Your Honor.

19 Ladies and gentlemen, my name is Joseph
20 Oppermann. I represent Mr. Cole Gray and I work for
21 the Anderson County Public Defender's Office.

22 And this may surprise you a little bit, but I
23 want to echo what my colleague Mr. Wagner said. The
24 burden in a case like this is on the State. They
25 have to prove each and every element beyond a

1 reasonable doubt. And it's your job -- it's your
2 sacred duty in our system American justice to hold
3 the State to that burden, and I think Mr. Wagner
4 described that very accurately and I appreciate
5 that.

6 Ladies and gentlemen, in this case, the
7 testimony, the evidence as Mr. Wagner said, is going
8 to come from the witness stand. We want you -- we
9 want to let you know we're not afraid of what's
10 going to be said. We believe that if you hear the
11 truth, you will be able to make an accurate
12 determination. We believe that if you hold the
13 State to its burden, you'll be able to make an
14 accurate determination of what happened in this
15 case.

16 Are y'all familiar with the nursery rhyme for
17 kids Humpty Dumpty? Humpty Dumpty sat on a wall.
18 Humpty Dumpty had a great fall. All the king's
19 horses and all the king's men couldn't put Humpty
20 together again.

21 The State in this case is going try to put
22 Humpty Dumpty back together again. They're going to
23 bring in all the king's horses and all the king's
24 men. And it will be up to you to decide if they
25 have put Humpty back together again.

1 I want to get something out of the way because /
2 I think the less we fight about, the more light
3 you're able to see as the jury. One of the things
4 Mr. Gray is charged with is failure to stop for a
5 blue light.

6 Mr. Gray, we've submitted this to Mr. Wagner
7 and submitted it to the Court, stipulates that is
8 accurate. The elements and nature of the charge of
9 failure to stop for a blue light, he did those
10 things. He wants to make sure that you know. He
11 wants to share that with you, and that's not
12 something he's trying to hide.

13 He's not afraid of the truth and we believe
14 that when you've heard all the evidence, you will
15 find that the State cannot prove beyond a reasonable
16 doubt that Mr. Gray is guilty of trafficking 100 to
17 200 grams of methamphetamine and cannot prove that
18 Mr. Gray is guilty of trafficking -- pardon me --
19 receiving stolen goods 2,000 to 10,000. That's the
20 other charge.

21 Now, when we talk about looking at all of those
22 elements, what does that mean? Judge McCauley's
23 right. He's the one who decides what the law is and
24 explains what the law is. And I'm not going to try
25 to do that right now, but I do want to give you an

1 illustration of what we mean by the elements of an
2 offense.

3 Have y'all ever heard of a common law --
4 common-law burglary? You may have heard that
5 expression. It used to be something that we dealt
6 with now that a lot of old common-law offenses are
7 codified in the State Code of Laws. We don't rely
8 on that as much anymore. But I bring up common-law
9 burglaries because it's a good way to illustrate the
10 idea of elements and why the State has to prove each
11 element beyond a reasonable doubt.

12 Common-law burglary meant that person had to
13 entered the dwelling of another of somebody's house.
14 They had to do it in the nighttime. They had to do
15 in a trespassory way. In other words, without
16 permission. And that they had to do it with the
17 intention of committing a felony in South Carolina.

18 So let's suppose you hear about -- at a trial,
19 a fellow named Ed. Ed's walking down the street.
20 Goes into Ms. Tallulah's house twelve o'clock at
21 night. It's dark. He doesn't have permission. He
22 does that. He scares the living daylights ought of
23 her. Goes into her bathroom and relieves himself.
24 Breaks something while he's in there and walks on
25 out.

1 She can testify to that. Several of her
2 neighbors who saw him go in can testify to that,
3 allege that he did something bad and he's probably
4 broken the law, but the question is in this example,
5 did he commit common-law burglary? Would the State
6 be able to prove beyond a reasonable doubt each of
7 those elements?

8 He went in without permission. That can be
9 established. He went in at nighttime. That can be
10 established. But if 'ole Ed was drunk and he went
11 in there to pee, he didn't commit a felony, unless
12 he did it in front of Ms. Tallulah which would not
13 be appropriate.

14 The reason I share that story, I'm just not
15 colorful with you, is it's an example of the
16 difference between being able to prove beyond a
17 reasonable doubt all the elements of something and
18 not being able to prove it.

19 Now, if the State puts a case like that up,
20 they're going to be able to prove that Ed in this
21 example committed a crime, but they're not going to
22 be able to prove that he committed common-law
23 burglary.

24 I share that story as an example or
25 illustration. All we ask is that you listen to what

1 the witnesses say, keep an impartial mind, and hold
2 the State to its burden. That's what makes our
3 system of justice great. Thank you very much,
4 ladies and gentlemen.

5 THE COURT: Mr. Wagner, you may call your first
6 witness.

7 MR. WAGNER: Your Honor, we call Matthew Stipe.

8 THE WITNESS: (Approaching.)

9 THE CLERK: Right here, please, sir. If you
10 would please raise your right hand.

11 THE WITNESS: (Complying.)

12 THE CLERK: Do you solemnly swear or affirm the
13 testimony you give the Court today in this case to
14 be the truth, the whole truth, and nothing but the
15 truth?

16 THE WITNESS: I do.

17 THE CLERK: If you would take the witness
18 stand, please, sir, and state your name and spell
19 your last name for the reporter, please.

20 THE WITNESS: My name is Matthew Stipe. Last
21 name is S-t-i-p-e.

22 OFFICER MATTHEW STIPE,
23 having been produced and first duly sworn as a
24 witness on behalf of the State, then testified as
25 follows:

1 DIRECT EXAMINATION

2 BY MR. WAGNER:

3 Q. Officer, who did you work for?

4 A. Anderson County Sheriff's Office.

5 Q. How long have you worked for the Sheriff's
6 Office.

7 A. Approximately, six years.

8 Q. Are you from Anderson originally?

9 A. I am.

10 Q. Okay. Did you work anywhere else in law
11 enforcement before you went to the Sheriff's Office?

12 A. Yes, sir, I did.

13 Q. And where was that?

14 A. I started off at Iva Police Department. I
15 worked there for a couple of years. And then I
16 worked for the City for about four years.17 Q. Okay. So all in total, you've been in law
18 enforcement?

19 A. About 12 years.

20 Q. Okay. Were you working back on 11/12 of 2016?

21 A. Yes, sir.

22 Q. Were you working in Anderson County?

23 A. Yes, sir.

24 Q. What was your location approximately at the
25 time this incident occurred, and what was your job

1 duties there? Did they change between last year and
2 this year?

3 A. Yes, sir. At that time I was actually assigned
4 to the catch team. We were a traffic unit. And I
5 was in the area of Martin Road and Travis Lane on
6 that date in time.

7 Q. Okay. What part of the county is that?

8 A. It's just south of Homeland Park, kind of
9 between Homeland Park and Starr.

10 Q. Okay. Still in Anderson County though?

11 A. Yes, sir.

12 Q. Maybe not all the way down, but ---

13 A. Yes, sir.

14 Q. --- thereabouts? Okay.

15 Okay. About what time -- what time did your
16 shift start that day?

17 A. I honestly don't remember. I remember it being
18 later in the day because I think we were on -- on
19 second, coming in later that afternoon, working
20 later in the evening.

21 Q. At approximately 1:30, were you on patrol down
22 on that southern end of the county?

23 A. Yes, sir. I was headed in to work.

24 Q. And did you see a black truck or another
25 vehicle violating any traffic laws?

1 A. Yes, sir.

2 Q. What -- what did you see? Explain it to us.

3 A. What I observed was a black pickup truck
4 disregard the stop sign at Travis Lane and Martin
5 Road. The truck ---

6 MR. OPPERMANN: I respectfully object.

7 THE COURT: State your objection.

8 MR. OPPERMANN: On the grounds of relevance and
9 Rule 403. The defense has stipulate to failure to
10 stop for a blue light. The State appears to be
11 attempting to elicit testimony to establish that
12 offense; however, the offense has been established.
13 This testimony, if that's what it's designed to do,
14 is duplicative.

15 THE COURT: Well, let's hear the testimony from
16 the stand. At this point I overrule the objection.

17 MR. OPPERMANN: Thank you, Your Honor.

18 THE COURT: You may develop the testimony.

19 BY MR. WAGNER:

20 Q. Okay. So you -- I believe you just stated he
21 disregarded the stop sign and went into the wrong
22 lane of travel on the opposite of the road?

23 A. That's correct.

24 Q. Was there a double yellow line there too?

25 A. That's correct.

1 Q. Okay. What did you do?

2 A. Once I observed the vehicle disregard the stop
3 sign and go into the wrong lane of traffic, I then
4 initiated my blue lights and sirens. At which time
5 I observed the vehicle to speed up. At that time I
6 advised my dispatcher that I was in pursuit of a
7 vehicle that wasn't stopping, and also I advised my
8 lieutenant that I was pursuing a vehicle and I
9 advised him of my -- of the traffic conditions and
10 my speeds, which is something that we normally do
11 when we're involved in a pursuit.

12 Q. How many people were in there?

13 A. Just one that I saw.

14 Q. Is this a pickup truck with like a big rear
15 cab? Was this a pickup truck that's got like a
16 bench seat?

17 A. A bench seat, just a standard cab pickup truck.

18 Q. One person in it and what did that person look
19 like?

20 A. It looked like the defendant, Mr. Gray.

21 Q. Do you know the defendant in this case?

22 A. I do.

23 Q. Did you see him driving the vehicle?

24 A. Yes, sir.

25 Q. Okay. You say he accelerated. How fast and

1 which direction?

2 A. Our speeds got up to approximately ---

3 THE COURT: Just a -- do you renew your
4 objection?

5 MR. OPPERMANN: Yes..

6 THE COURT: Overruled.

7 THE WITNESS: Our speeds got up to
8 approximately 70, 80 miles an hour, and we were
9 headed south on Martin Road.

10 BY MR. WAGNER:

11 Q. Okay. And did you call it in?

12 A. I did. As we were -- as I was chasing the
13 truck, I -- I continued to advise dispatch as well
14 as my lieutenant of the direction of travel, the
15 speeds, and what was going on throughout the
16 pursuit.

17 Q. And did you keep chasing him?

18 A. I did. The traffic was light. Like I said,
19 the speeds never got more than about 70, 80 miles an
20 hour because it was a very curvy road. And we
21 continued south on Martin Road until we got to
22 Mountain Creek Church Road which is when we took a
23 left.

24 Q. Did you cross Rhody Farm Road and 81 South?

25 A. Yes, sir.

1 Q. Okay. And at some point in time, did the truck
2 you were chasing strike another vehicle?

3 A. Yes, sir. We actually ---

4 MR. OPPERMANN: Your Honor, I'm going to renew
5 my objection under Rule 403. The elements and the
6 offense, failure to stop for a blue light, have been
7 met by our stipulation. This testimony violates 403
8 and be happy to approach and discuss that at
9 sidebar.

10 THE COURT: All right. Very well.

11 Madam forelady, I'm going to ask that you and
12 the jury retire to the jury room so I might take up
13 a matter of law with the attorneys. Thank you very
14 much. Do not -- again, do not undertake discussing
15 the case among yourselves in any way.

16 (At 4:09 p.m., the jury left the courtroom.)

17 THE COURT: All right. Mr. Oppermann, if you
18 would, please state your objection.

19 MR. OPPERMANN: Your Honor, we object to the
20 testimony under Rule 403.

21 THE COURT: I can't hear you.

22 MR. OPPERMANN: I'm sorry. I'll speak up, Your
23 Honor.

24 We object to the testimony under Rule 403
25 because the defense has stipulated to the elements

1 of the offense of failure to stop for a blue light.

2 THE COURT: Just a moment. Let's -- I don't
3 think that's been introduced in the case yet, but
4 I'm holding, I think, a handed-up stipulation by the
5 defense.

6 MR. OPPERMANN: Yes, Your Honor.

7 THE COURT: All right. Let's do this, have
8 that marked as defense exhibit.

9 MR. OPPERMANN: Thank you, Your Honor.

10 THE COURT: And we'll go off the record.

11 (Defense Exhibit No. 2 marked for
12 identification.)

13 MR. OPPERMANN: At this time, Your Honor, we'd
14 like to the enter this as Defense -- Defendant's
15 Exhibit No. 1.

16 THE COURT: All right. I tell you, we have
17 those are -- oh, Number 1 for the -- this was Number
18 1 for the ---

19 MR. OPPERMANN: For the motion hearing.

20 THE COURT: --- for the motion.

21 MR. OPPERMANN: Yes, sir.

22 THE COURT: This will be Number 2.

23 MR. OPPERMANN: Thank you, Your Honor. I
24 apologize for the confusion, Your Honor.

25 THE COURT: You're fine.

1 MR. OPPERMANN: Our objection is based on Rule
2 403 that this testimony seems to be designed to
3 provide a description of the -- the chase that is
4 the basis for the charge of failure to stop for blue
5 light. We have stipulated to that. It is not in
6 dispute.

7 The only facts before the jury, and therefore,
8 these facts pertaining to the trafficking charge and
9 to the receiving stolen goods charge. If Deputy
10 Stipe has testimony relating to those, then
11 certainly it would be appropriate to ask him about
12 that, but a description of this chase, which we
13 believe will be very prejudicial, the prejudicial
14 impact far outweighs the probative value, and
15 that -- that's the basis for our objection.

16 In other words, testimony about failure to stop
17 for blue light is not necessary. It's been
18 stipulated to. And this can only damage the
19 defendant in the eyes of the jury in a way that
20 doesn't -- it isn't necessary for the elements of
21 the defense.

22 MR. WAGNER: Your Honor, from the State's
23 standpoint, I haven't agreed necessarily to the
24 stipulation. He -- we -- he's still on trial for
25 failure to stop for a blue light, and I'll try to

1 minimize, but he's still -- I still have to prove
2 those elements to this jury beyond a reasonable
3 doubt.

4 It also goes, I think, to the fact that the
5 bigger charge that he has is the trafficking in
6 methamphetamine charge, would be -- would be a big
7 reason why he would be running in the first place at
8 this rate of speed and trying to get away. So all
9 of this goes all to part of the res gestae of the
10 crime. It all kind of happened at one time and it's
11 all part of the crime.

12 THE COURT: Well, as I understand, the State
13 has not agreed to the stipulation.

14 MR. WAGNER: Yes, sir.

15 THE COURT: The stipulation is made in order to
16 avoid any further discussion of the elements of
17 failure to stop for a blue light, but yet that has
18 become a part of the event that night where the
19 probable cause was established to make a stop ---

20 MR. OPPERMANN: Your Honor, we would like to
21 suggest a way ---

22 THE COURT: --- so I'm going to overrule the
23 objection. Pardon?

24 MR. OPPERMANN: Your Honor, we would like to
25 suggest a way to cure the 403 concerns that might be

1 acceptable to the State.

2 The State, based on its discovery and based on
3 our conversation, will introduce evidence that
4 during the course of the chase, some object exited
5 by client's vehicle and that object contained a
6 crystal-like substance. That will form the basis
7 for the trafficking charge.

8 Now, we could proceed to the moments before
9 that, rather than having a full description of the
10 chase and that would cure the prejudicial impact.

11 Certainly, there's no reasonable objection on
12 the basis of 403 with the description of the chase
13 and the moments leading up to that. I would have no
14 403 objection there, but an extended discussion of
15 the chase that has been stipulated to and that is
16 conclusive proof and it's purely prejudicial and
17 lacks probative value, Your Honor.

18 THE COURT: Of course, I can't instruct the
19 Solicitor to agree to a stipulation. The
20 stipulation's made by the defendant.

21 MR. OPPERMANN: Does the Solicitor not agree
22 with our stipulation?

23 MR. WAGNER: No, sir. We haven't agreed to it.

24 THE COURT: I haven't heard you agree.

25 MR. OPPERMANN: So we might need to switch

1 tables then.

2 THE COURT: Pardon?

3 MR. OPPERMANN: I said we might need to switch
4 tables then.

5 THE COURT: Well, the thing is, obviously, it's
6 a rather -- if I remember and I don't have it before
7 me now. It's a rather simple conclusively --
8 conclusive statement without any description as to
9 what was the actual event that led to it.

10 In other -- and, again, I'm just overruling
11 your objection and note it for the record.

12 MR. OPPERMANN: Thank you, Your Honor.

13 THE COURT: Very good. All right. Anything
14 else from the defendant?

15 MR. OPPERMANN: No, Your Honor.

16 THE COURT: From the State?

17 MR. WAGNER: No, sir.

18 THE COURT: All right. Ask the jury to join
19 us, please.

20 THE BAILIFF: (Complying.)

21 THE COURT: I might note that it's 4:15. I
22 don't know what you have planned for us this
23 afternoon, but usually I like to break about 5:00
24 because they've been here all day.

25 MR. WAGNER: Yes, sir.

1 THE COURT: Any objection?

2 MR. OPPERMANN: No, Your Honor.

3 THE COURT: Very good. And this will be an
4 opportunity to do any further investigation you
5 might need to do.

6 MR. OPPERMANN: Yes, Your Honor.

7 (At 4:16 p.m., the jury entered the courtroom.)

8 THE COURT: All right. Let the record reflect
9 the jury is in the jury box.

10 Solicitor, you may proceed.

11 BY MR. WAGNER:

12 Q. Officer Stipe, forgive me. I'm trying to
13 remember where we were when we broke. It seems like
14 the last question I asked you was, did he collide
15 with a truck along that part of the chase?

16 A. That's correct, sir. What actually happened
17 was we had went down Agnew Road and turned left onto
18 Rhody Farm Road. At which time, we continued
19 straight to the end of Rhody Farm Road where it
20 intersects with Highway 81 South.

21 I then observed the black truck collide with
22 another vehicle as he disregarded the stop sign
23 going into Highway 81 South traffic.

24 At that point the black truck briefly stalled.

25 MR. OPPERMANN: Your Honor, I respectfully

1 object to the relevance of this testimony.

2 THE COURT: I think I overruled based on the
3 prior ruling by the Court in this case.

4 BY MR. WAGNER:

5 Q. While you're -- while you're in the chase,
6 while you're chasing, did you run the tag number of
7 the truck?

8 A. Yes, sir, I did.

9 Q. What was the outcome of that? Was it something
10 suspicious?

11 A. Well, it was in fact that it came back on a
12 different vehicle. It didn't come back on a
13 Chevrolet pickup truck. It was some type of sedan,
14 which also caught my attention in that, you know, a
15 lot of times when we see that, it's common with a
16 stolen vehicle or something of that nature, and
17 that's one of the reasons that we continued.

18 Q. Okay. And did you continue the chase up 81?

19 A. Yes, sir, I did. Like I said, the truck had
20 stalled after the first crash briefly. And then
21 once he was able to get the vehicle going again, we
22 continued north on Highway 81 South for several
23 miles.

24 Q. Was your car equipped with a video camera?

25 A. Yes, sir, it was.

1 Q. Was it operable on that day?

2 A. Yes, sir. The video was working, just not good
3 audio.

4 Q. What -- tell us a little bit about the camera.
5 What -- what starts -- running all the time or does
6 it start at a concern point in time? What triggers
7 it?

8 A. Sure. It actually -- it cuts on when I cut my
9 blue lights on. I can cut it on manually, but
10 normally I don't do that. I normally let the camera
11 come on when I cut my blue lights on.

12 Q. Okay. Did you actually get a video of the
13 chase that day?

14 A. Yes, sir.

15 Q. And I'm going to show you what's been marked as
16 State's Exhibit for identification No. 1, I think.
17 I don't have my glasses on. Do you recognize that?

18 A. Yes, sir, I do.

19 Q. And what is that?

20 A. This is a copy of my in-car video.

21 Q. Is it a true and accurate copy?

22 A. Yes, sir.

23 Q. As it been altered or tampered with in any
24 manner?

25 A. No, sir.

1 Q. And how do you know that?

2 A. Because I watched the video, and then I
3 initialed it after I watched it.

4 Q. Okay. And is that the same disk that you
5 watched that bears your initials?

6 A. Yes, sir.

7 MR. WAGNER: Your Honor, at this time we would
8 move to introduce State's Exhibit No. 1.

9 THE COURT: Any objection?

10 MR. OPPERMANN: Your Honor, we do believe ---

11 THE COURT: Sir?

12 MR. OPPERMANN: We do believe that this
13 evidence is irrelevant and violates Rule 403. It's
14 been testified to. It's uncontradicted. It's been
15 stipulated to.

16 THE COURT: Very well. Overruled.

17 (State's Exhibit No. 1 was admitted into
18 evidence.)

19 MR. WAGNER: Your Honor, ask that we publish
20 this to the jury. And it's -- for the Court's
21 information, it's about ten minutes long, so I think
22 we can finish with this witness for the day.

23 THE COURT: All right.

24 MR. WAGNER: Your Honor, we'd ask while this is
25 playing if the officer can step down here.

1 THE COURT: Any objection? It's so he can see
2 the screen.

3 MR. OPPERMANN: No, Your Honor.

4 MR. WAGNER: Your Honor, we'd like if the
5 officer can testify from here.

6 THE COURT: Any objection?

7 MR. OPPERMANN: No, Your Honor.

8 THE COURT: You may do so.

9 (Playing DVD.)

10 BY MR. WAGNER:

11 Q. Officer Stipe, what road are you on here?

12 A. Right here, we're on Martin Road and we're
13 headed toward Mountain Creek Church Road.

14 (Playing DVD.)

15 BY MR. WAGNER:

16 Q. And what's happening there? What road are you
17 on?

18 A. Right there, we took a left onto Mountain Creek
19 Church Road.

20 (Playing DVD.)

21 BY MR. WAGNER:

22 Q. What road is this?

23 A. This is Rhody Farm. And he's fix -- he's
24 coming up Highway 81 South now.

25 (Playing DVD.)

1 BY MR. WAGNER:

2 Q. You've got those two trucks colliding there
3 just a minute ago?

4 A. Yes, sir. At this point I advised dispatch
5 that we're heading north on 81 so the oncoming units
6 could maybe get down to me and help me out as far as
7 getting stop sticks set up.

8 Q. And what are stop sticks?

9 A. Those are the sticks that we deploy across the
10 roadway to flatten tires.

11 (Playing DVD.)

12 BY MR. WAGNER:

13 Q. And, approximately, how fast were y'all going?

14 A. The fastest that we ever got going on 81 right
15 here was about 90.

16 MR. OPPERMANN: Your Honor, I respectfully
17 object. The speed is not relevant to the elements
18 of the offense and Rule 403, Your Honor.

19 THE COURT: Reason?

20 MR. WAGNER: Your Honor, if I could say, it
21 goes to the res gestae.

22 THE COURT: All right. I'm going to overrule
23 the objection.

24 (Playing DVD.)

25 THE WITNESS: At this point right here, I had

1 another officer actually join in. And by our
2 policy, he started doing the radio traffic by our
3 department policy. We've had -- when we have two
4 vehicles involved, the second car back calls the
5 chase and handles the radio traffic so that's what's
6 going on right here.

7 (Playing DVD.)

8 BY MR. WAGNER:

9 Q. And what just happened there?

10 A. One of my coworkers had deployed stop sticks
11 across the highway, at which time the suspect
12 vehicle was able to go around them. And then he
13 actively pulled in front of me and it flattened both
14 of my passenger set of tires. That's when I pulled
15 into the travel lane where you see me sitting here
16 and called for a wrecker.

17 Q. And what -- what intersection is this?

18 A. That's Highway 81 South and 28 Bypass.

19 MR. WAGNER: Thank you. You can have a seat.

20 THE WITNESS: (Complying.)

21 BY MR. WAGNER:

22 Q. At that point in time when your tires went flat
23 when the stop sticks -- explain how the stop sticks
24 work. What are they designed to do and what do they
25 do?

1 A. Sure. ... Actually, what happens is there -- it's
2 a -- it's a piece of plastic and there's actually
3 different models. They work pretty much the same,
4 but there's a piece of plastic on the outside and
5 there's metal spikes, for lack of a better word,
6 that inside the plastic. And when the vehicle tire
7 runs over the plastic spike, it goes through the
8 tire and lets the air out.

9 Q. Does it let -- let it out like in a controlled
10 manner?

11 A. It does. It lets it out pretty slow. And if
12 the vehicle pulls over, then a lot of times the
13 actual tire will still be intact and it just --
14 it'll be flat.

15 Sometimes when the vehicles continue to go for
16 miles and miles, it'll just, you know, obviously
17 with no air, it will shred the tire and won't be
18 anything left of it.

19 Q. When your tires went flat and you pulled over
20 at that intersection, did your involvement in the
21 chase end at that time?

22 A. That's correct.

23 Q. And did you later obtain warrants for the
24 defendant?

25 A. Yes, sir, I did.

1 Q. Did you actually sign those warrants?

2 A. Yes, sir.

3 Q. Okay. And that ended your involvement at least
4 as far as what went on in this case?

5 A. At that particular time, yes. I briefly met
6 with Deputy Purdy in evidence and kind of stood by.
7 I did overhear some radio traffic that went on, you
8 know, as the chase was continuing.

9 Then like I said, I met with Deputy Purdy a
10 little while later after I had got my vehicle picked
11 up by the wrecker. I met him in evidence while he
12 was getting everything logged in.

13 Q. But you continued on, I guess, as the case
14 officer was signing all the warrants and follow-up,
15 correct?

16 A. Yes, sir.

17 MR. WAGNER: Okay. Thank you. That's all the
18 questions I have.

19 THE COURT: Cross-examination?

20 MR. OPPERMANN: I have no questions for this
21 witness, Your Honor.

22 THE COURT: All right. You may step down.
23 Thank you, sir.

24 (Witness excused.)

25 MR. WAGNER: Your Honor, if we may?

1 (Sidebar discussion.)

2 THE COURT: All right. Madam forelady, ladies
3 and gentlemen of the jury, as I mentioned earlier or
4 I discussed with the attorneys, I think I mentioned.
5 it here too, my philosophy is to start some time in
6 the morning after people have an opportunity to do
7 those things they need to do before they get started
8 on their own business, and then once it usually
9 stopped before five o'clock.

10 The reason for that is, that not only do we
11 have two -- two lives, it seems one that starts
12 early in the morning and goes throughout five
13 o'clock. But then at five o'clock, another one
14 picks up and it seems to go on forever; therefore, I
15 usually try to, as I say, stop before 5:00 or a
16 little bit after 5:00.

17 When I say before 5:00, if we take a witness
18 that's going to be a long witness -- in other words,
19 takes -- the testimony takes some time -- then we go
20 beyond 5:00 because I do not like to split a
21 witness. In other words, direct exam,
22 cross-examine, and then come back. I'd rather have
23 the witness testify one time throughout or
24 completely.

25 And so, therefore, like today, we're going to

1 stop before 5:00. And it could be that we go into
2 tomorrow that we might go beyond 5:00, but that was
3 just for your planning, that that's usually what my
4 philosophy is.

5 And I usually -- I come from Oconee, so it
6 takes me about an hour, plus I have things I have to
7 do before I get, you know, here. So I usually start
8 at 10:00, and we go through -- we'll have a lunch
9 break and then go through the afternoon.

10 Today we had breaks because we had to take up
11 some matters of law and things of that nature, but
12 we'll continue and just that's the rough estimate of
13 the schedule that we'll be doing, start at 10:00
14 and out at 5:00. When I say start, so we need to be
15 here a little bit before 10:00.

16 Now, with that, I tell the jurors and most --
17 in all cases really, this is the most difficult time
18 of your service as jurors because you're going home
19 tonight. And soon as you get home, they're going to
20 say, "What are you doing?"

21 And you'll say, "I've been drawn on a jury."

22 "Well, what's it about?"

23 And you can say, "I can't talk to you about it.
24 I can't tell you." Say, "I can't discuss it with
25 you."

1 Say, "Well, why not?"

2 "Because the judge said so."

3 And they're usually going to say something to
4 the effect, "Well, that's ridiculous."

5 Well, the fact is, I think you know by now that
6 this is an important case to everybody involved.

7 All of the parties, all the witnesses, everything,
8 they are concerned about the right thing being done.

9 And the ones who have to make that decision, of
10 course, is collectively you the jury.

11 And I don't want anybody to interfere with the
12 proper exercise of your duties as jurors in
13 determining the facts and apply to those facts the
14 law that was given to you. And no one who has not
15 set with you or will sit with you in the jury box or
16 in that jury room, when you do retire to deliberate
17 a verdict, can help you because they haven't heard
18 the first bit of testimony or evidence or seen
19 anything. They can only confuse you or at least
20 confuse the process and interfere with the proper
21 resolution in the matter.

22 For that reason, I will tell you that if
23 anybody discuss -- tries to discuss it with you and
24 they -- and you tell them why you can't discuss it
25 because I said so, if they need further explanation,

1 I will be here a little before ten o'clock in the
2 morning and I'll be glad to explain it to them.

3 But with that, I am going to excuse you for
4 this afternoon. And then if you would please,
5 return to the jury room that you were in tomorrow
6 morning when you do report, and the bailiff will
7 show you how you can get back to the jury room.

8 All right. With that, I'm going to excuse you
9 for the day and look forward to seeing you in the
10 morning.

11 Everyone else remain seated while the jury
12 retires from the courtroom.

13 (At 4:38 p.m., jury was excused for the day.)

14 THE COURT: All right. I understand the
15 defendant had an objection to a bit of the testimony
16 and evidence of the last witness.

17 MR. OPPERMANN: Could you state that again,
18 Your Honor?

19 THE COURT: I said I understand you had an
20 objection to the testimony and the evidence of the
21 last witness that you would like to be heard on.

22 MR. OPPERMANN: Yes, Your Honor. Our -- our
23 position is that because the defense has stipulated
24 that Mr. Gray performed the elements of the offense
25 of failure to stop for a blue light, be willing to

1 stipulate to the State charged as second or
2 subsequent, willing to stipulate that there is a
3 prior conviction on that.

4 That evidence pertaining to that offense at
5 this point is not necessary, and it can only have a
6 prejudicial impact. Our concern is that by playing
7 long videos and having long testimony of the chase,
8 the State is able to create a narrative whose sole
9 purpose is the prejudice the minds of the jury
10 against my client before proceeding with actual
11 facts that are going to be in dispute, the facts
12 pertaining to the charge of trafficking 100 to 200
13 grams and the facts relating to the receiving stolen
14 goods.

15 That given that, the elements of failure to
16 stop have been stipulated to and is not necessary
17 and not -- this type of prejudicial in the presence
18 of the jury and continue to have testimony and
19 have -- continue to have video evidence that does
20 not pertain to the charges which are in dispute, the
21 trafficking, receiving stolen goods.

22 So we'd renew the objections that were
23 previously made, each of them sever them
24 individually, and ask the Court to take those into
25 consideration.

1 THE COURT: Rule 403 and the ---

2 MR. OPPERMANN: Rule 403 and relevance.

3 THE COURT: I believe you stated probative
4 value?

5 MR. OPPERMANN: Yes, sir.

6 THE COURT: Very good. All right. Mr. Wagner.

7 Is that all? I do want to hear the other
8 side ---

9 MR. OPPERMANN: Yes, Your Honor.

10 THE COURT: --- but if there's -- but if you
11 have further:

12 MR. OPPERMANN: On the matters so far come
13 before the jury, no, Your Honor. We expect the
14 issue may recur and will make appropriate objections
15 at that time.

16 MR. WAGNER: Your Honor, our position is, we
17 did not stipulate to that. The defendant is still
18 on trial for failure to stop for a blue light.
19 Those videos would show, and I'll need to prove
20 those elements still, unless they get a continuation
21 of the evidence.

22 But there's also some other things involved in
23 this next portion. The officer will be testifying
24 that actually saw the defendant trying to reach down
25 and was reaching in the seat to try to -- looked

1 like he was trying to grab something.

2 THE COURT: But not this officer?

3 MR. WAGNER: No, sir. This would be the next
4 one. He had a camera also.

5 THE COURT: I understand, but I just want to be
6 sure that when we say that this officer's testimony
7 is complete. As I understand, there's no
8 cross-examination.

9 MR. WAGNER: Yes, sir. Your Honor ---

10 THE COURT: Unless he's called on reply.

11 MR. WAGNER: And I don't know what his defense
12 is, but, I mean, I think it's -- it's all -- I think
13 that's it's -- the res gestae case, the entire case
14 put together for the jury to consider exactly why he
15 is running so hard and so, you know, so wild.

16 THE COURT: All right. Anything further?

17 MR. OPPERMANN: No Your Honor.

18 THE COURT: Now, of course, do understand that
19 your objections are a matter of record now and can
20 be argued as with great skill and, what is it,
21 opportunity really because this is in the middle of
22 a trial and it's -- it has to be -- well, it has to
23 be moved along.

24 MR. OPPERMANN: Your Honor, with respect to a
25 different matter if I may?

1 THE COURT: Certainly.

2 MR. OPPERMANN: Tomorrow we expect the State to
3 offer another video into evidence. The defense will
4 have an objection to playing that video in its
5 entirety. We'd ask for the Court to review that
6 video in limine before making its ruling to
7 determine the merits of the defense's objection.

8 THE COURT: Well, state your objection so if I
9 do that -- I mean, how long is this second video?

10 MR. WAGNER: It's about, I think, 18 minutes.

11 MR. OPPERMANN: That's correct.

12 THE COURT: I'll try to be here at 9:30 and
13 that'll give us some chance to -- all right. I'll
14 try to be here at 9:30, so go ahead and state your
15 objection, but that -- that also means that both
16 attorneys will be here too.

17 MR. OPPERMANN: Yes, Your Honor.

18 MR. WAGNER: Yes, sir.

19 THE COURT: All right. What's the objection?

20 MR. OPPERMANN: Well, the State hadn't offered
21 the evidence yet, so I don't feel like I can make
22 the objection. Just wanted the Court to be aware as
23 a matter of courtesy that they'll be intending to
24 make that.

25 THE COURT: Well, again, it would help me to

1 know what I'm supposed to be looking for.

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

3 THE COURT: If a pelican is supposed to be in
4 the thing, I'll start looking for a pelican. And if
5 it's not a pelican, then I'll sustain the objection
6 with that foundation.

7 MR. OPPERMANN: Our objection to the
8 introduction of that piece of evidence when it comes
9 along will also be a 403 connection. We will argue
10 that the State has proven -- setting aside the
11 defense's stipulation through Officer Stipe's
12 testimony, which has not been contradicted, and we
13 haven't asked him anything on cross and enter the
14 video for argument, the State has proven the
15 elements of failure to stop for a blue light.

16 And that the first 16 minutes of the video the
17 State would seek to introduce is simply duplicative
18 on that charge and does not pertain to the other
19 charge, which are receiving stolen goods and
20 trafficking.

21 Now, from minute 16 forward -- you could argue
22 from minute 17 forward, but I'm trying to be a
23 little bit liberal with the State because I
24 understand that they do want to have some to listen
25 to the jury.

1 From minute 16 forward, you can see in the
2 video that the -- the -- the vehicle is continuing
3 to flee from the police, and you'll see an object
4 appearing to exit my client's vehicle, which the
5 State will offer testimony that it's a crystal-like
6 substance. That will go to their case as to
7 trafficking.

8 The stop and the identification of the vehicle
9 which happens afterwards and is at the end video
10 around 1745, 1750, 18 minutes, will go to whether or
11 not my client is in possession of the vehicle.

12 Now, there's also a mens rea analogy, but we'll
13 argue that at the appropriate time. But we'll argue
14 that the first 16 minutes serves no purpose other
15 than to create a prejudicial merit and to prejudice
16 the minds of the jury to make it difficult for my
17 client to receive fair consideration on the other
18 two charges.

19 THE COURT: Very good. I appreciate you giving
20 the Court ---

21 MR. OPPERMANN: Thank you, Your Honor.

22 THE COURT: --- an instruction as to what it
23 should be considering and will consider.

24 All right. Anything further from the State?

25 MR. WAGNER: No, Your Honor.

1 THE COURT: All right. We'll stand in recess
2 until 9:30 in the morning.

3 (At 4:46 p.m., the proceedings concluded for
4 the day.)

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State of South Carolina

Court of General Sessions

County of Anderson

State of South Carolina)

)

Transcript of Record

v.)

2017-GS-04-01220

)

2017-GS-04-01850

Cole Brooks Gray)

2017-GS-04-01851

)

Defendant.)

October 17, 2017

Anderson, South Carolina

B E F O R E:

The Honorable Alexander Macaulay, Judge; and a jury.

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

David Wagner, Solicitor
Attorney for the State

Mary Holahan, Assistant Solicitor
Attorney for the State

R. Joseph Oppermann, Assistant Public Defender
Attorney for the Defendant

Lisa Scott
Circuit Court Reporter

P R O C E E D I N G S

1
2
3 THE COURT: All right. We're back on the case
4 of the *State v. Cole Brooks Gray*. Is the State
5 ready, Mr. Wagner?

6 MR. WAGNER: We're ready, Judge.

7 THE COURT: Is the defense ready?

8 MR. OPPERMANN: We are, Your Honor.

9 THE COURT: All right. As I understand, we're
10 to view a video; is that right, Mr. Wagner?

11 MR. WAGNER: Your Honor, the next witness we --
12 we have the other -- the video we watched yesterday
13 was the first kind of half of that chase.

14 This next video is the second half, along with
15 some stuff there at the end involves the drugs, the
16 drugs that get thrown out the window.

17 MR. OPPERMANN: Regarding our motion that the
18 portion of the video that relates to the white
19 crystal object appearing to exit the vehicle is
20 relevant to the State's case for the charge of
21 trafficking.

22 Also, the stop where Mr. Gray is identified as
23 the driver of the vehicle is relevant in the State's
24 case for receiving stolen goods because they allege
25 the vehicle was stolen.

1 However, the rest of the chase is only relevant
2 to the charge of failure to stop for a blue light
3 and the State -- the evidence introduced through
4 testimony yesterday and through the video yesterday,
5 coupled with Mr. Gray's admission through me to the
6 jury that he is guilty of failure to stop for a blue
7 light, would -- would only be cumulative. That
8 charge has already been established by the State of
9 the elements of that charge beyond a reasonable
10 doubt.

11 THE COURT: All right. Mr. Wagner, what do you
12 say?

13 MR. WAGNER: Your Honor, it's still -- it's
14 still part of our evidence. I think we need to show
15 that and the jury has the right to see the entire
16 chase. I still have to prove. He's still on trial
17 for that too.

18 Also, the fact that he ran and then the manner
19 that he ran. When I say "ran the vehicle," I think
20 it goes to two things. I think it goes to knowledge
21 that he was driving a stolen vehicle. And I won't
22 say how he drove the thing, but he drove this thing
23 like he stole it and it shows on the video.

24 Also, it shows that -- I mean, I think anybody
25 with over 100 grams of methamphetamine in the car

1 would have a reason to drive in the manner that he
2 did, and I think it's relevant for those two
3 reasons.

4 Plus, it's relevant because we've still got to
5 prove this charge. And I don't think it's fair to
6 limit the State in the amount of evidence that we
7 put up to show that when it's all part of the same
8 chase.

9 THE COURT: Well, that's the question I had.
10 Now, this is a part of the same chase?

11 MR. WAGNER: Yes, sir.

12 THE COURT: So you don't have a gap that's
13 unexplained that you're going to put the last part
14 in, the very last part.

15 MR. WAGNER: We would have -- we would have a
16 gap there. When -- when we ended the video
17 yesterday is when the first officer hit the stop
18 sticks and had to drop out of the chase.

19 This next one continues on. Well, it actually
20 starts prior to that because he's behind this
21 officer for just a little bit. It continues on
22 after that up until the time that this defendant is
23 caught and pulled out of the vehicle.

24 THE COURT: All right. The motion is noted for
25 the record, but denied. All right.

1 MR. OPPERMANN: Your Honor, respectfully, the
2 defense has shared with the Court what its motion
3 would be after viewing the video, but we haven't
4 made our motion.

5 THE COURT: Oh, I understand.

6 MR. OPPERMANN: I want the Court to know before
7 we watch the video.

8 THE COURT: Very good. All right. I
9 understand. All right. Let's view the video.
10 Now, y'all are going to have the officer
11 present while it's ---

12 MR. WAGNER: Yes, sir.

13 THE COURT: All right. Well, it would help me
14 at least to have it played. I'm sure a little of
15 background if he could narrate what's happening.

16 MR. WAGNER: Yes, sir.

17 THE COURT: Now?

18 MR. WAGNER: Oh, yes, sir. Your Honor, for the
19 record, this is Casey Purdy from the sheriff's
20 office.

21 (At 9:53 a.m., began playing DVD.)

22 THE WITNESS: Your Honor, at this point I'm
23 attempting to get in position to assist in the
24 pursuit. Trying to get through traffic and where
25 they're at.

1 (Playing DVD.)

2 THE WITNESS: At this point I'm turning onto
3 Highway 81 South, and this is where they're at right
4 now. They're proceeding in the opposite direction.
5 I'm trying to get in front of them to maybe deploy
6 stop sticks.

7 (Playing DVD.)

8 THE WITNESS: Deputy Stipe just advised over
9 the radio that he believed the subject was Mr. Gray.

10 (Playing DVD.)

11 THE WITNESS: At this point I see the vehicle
12 that Deputy Stipe is attempting to stop and pass,
13 and I turned around in an attempt to come and
14 pursuit.

15 (Playing DVD.)

16 THE WITNESS: At this point I'm the second
17 vehicle involved in the pursuit. By our policy, the
18 second vehicle calls the radio traffic and allows
19 the first deputy to focus on chasing the vehicle.

20 (Playing DVD.)

21 THE COURT: Is that the deputy's car in front
22 of you?

23 THE WITNESS: Yes, sir. The vehicle in front
24 of me is Deputy Stipe. The black truck that's in
25 front of Deputy Stipe is the vehicle -- it's the

1 truck that he was chasing.

2 THE COURT: Thank you.

3 (Playing DVD.)

4 THE WITNESS: At this point in the pursuit,
5 another deputy attempts to deploy stop sticks,
6 misses the vehicle that Deputy Stipe is pursuing,
7 but accidentally strikes Deputy Stipe's vehicle. At
8 that point he's eliminated from the pursuit, and I
9 take over the lead in the pursuit.

10 (Playing DVD.)

11 THE WITNESS: As the black truck makes a left
12 onto Lewis Street, it strikes another vehicle and
13 continues to flee.

14 (Playing DVD.)

15 THE WITNESS: At this point the vehicle crosses
16 over New Pond Road, goes through a backyard, and
17 makes a left-hand turn onto Lyonswood Drive.

18 (Playing DVD.)

19 THE WITNESS: We're back out on Highway 28
20 Bypass headed towards Highway 24.

21 At this point Deputy Velez, who was the
22 secondary unit in the pursuit calling the radio
23 traffic, gets lost and I begin calling the radio
24 traffic again.

25 (Playing DVD.)

1 THE WITNESS: At this point Mr. Gray takes a
2 right-hand turn onto Ryder Lane to avoid a deputy
3 that's attempting to deploy stop sticks on 28
4 Bypass.

5 (Playing DVD.)

6 THE WITNESS: Also, at this point, Deputy
7 Matthew Grant becomes the secondary vehicle in the
8 pursuit and begins to call the radio traffic.

9 (Playing DVD.)

10 THE WITNESS: We were on Morningside Drive. We
11 make a right-hand turn on West Whitner Street, head
12 back towards Highway 28 Bypass.

13 At this point I can look through the rearview
14 mirror and see the occupant of the vehicle -- the
15 sole occupant of the vehicle is looking down,
16 looking around in the seat, and moving towards the
17 center of the vehicle. I advised over the radio
18 that he's messing with something in the seat in case
19 he decides to flee on foot.

20 (Playing DVD.)

21 THE WITNESS: We just made a right back onto
22 Pearman Dairy Road, and Sergeant Hyslop attempted to
23 deploy stop sticks but is unsuccessful.

24 (Playing DVD.)

25 THE WITNESS: At this point Deputy Matthew

1 Grant was falling behind. Deputy Kenny Lollis had
2 become the secondary vehicle in the pursuit and was
3 calling radio traffic.

4 (Playing DVD.)

5 THE WITNESS: We just made a left onto Old
6 Pearman Dairy Road headed towards Dunn Road.

7 (Playing DVD.)

8 THE WITNESS: We just made a left onto Dunn
9 Road from Old Pearman Dairy Road.

10 (Playing DVD.)

11 THE WITNESS: Deputy David Stipe has advised on
12 the radio that he has stop sticks set up in the
13 middle of Dunn Road which were successfully
14 deployed.

15 (Playing DVD.)

16 THE WITNESS: At the point the tires on the
17 right-hand side of the subject vehicle are slowly
18 deflating. We made a left on to Dixon Road.

19 (Playing DVD.)

20 THE WITNESS: As we pass the house on the
21 left-hand side, I see a bag of crystal substance
22 thrown from the driver's window of the truck, landed
23 in the roadway.

24 THE COURT: Is that what that was?

25 THE WITNESS: Yes, sir.

1 Sergeant Hyslop is able to effectively deploy
2 stop sticks and bring the pursuit to a stop.

3 Several deputies converge on the driver's side
4 of the vehicle, remove the driver from the vehicle.
5 I put the car into park.

6 (Playing DVD.)

7 THE WITNESS: As I approach the driver's side,
8 I'm able to identify the driver as Cole Brooks Gray,
9 the defendant.

10 Sergeant Andy Hyslop, Deputy Kenny Lollis, and
11 Deputy Jordan Smith all place him into custody.

12 Once he's in custody, I return to my vehicle
13 and assist in the collection of the substance which
14 he threw from the vehicle.

15 (At 10:11 a.m., finished watching DVD.)

16 THE COURT: Mr. Wagner.

17 MR. WAGNER: Your Honor, that's -- that's the
18 video. We -- we can authenticate that through this
19 officer. It was actually, it was his car video.
20 It's actually a video that he had purchased. The
21 video camera he purchased himself, and they don't
22 have videos in all the cars. And he wanted one, so
23 he actually went out and bought his own video and
24 he -- at the end of this chase, he put the video
25 into evidence.

1 THE COURT: All right. Anything further from
2 the State?

3 MR. WAGNER: No, sir.

4 THE COURT: All right. Mr. Oppermann.

5 MR. OPPERMANN: Your Honor, we move that the
6 first 16 minutes of that video not be placed before
7 the jury because we believe that it would violate
8 Rule 403 of the South Carolina Rules of Evidence.

9 The reason for that is the State, through video
10 evidence yesterday and through testimony, has
11 established -- has met its burden with respect to
12 the charge of failure to stop for a blue light.

13 The primary charge in this case is trafficking
14 100 grams to 200 grams, and the jury's ultimate
15 verdict is going to hinge on its determination of
16 whether or not the substance is methamphetamine,
17 what's the weight of that substance? Those are the
18 critical issues in this trial.

19 The 16 minutes of a chase when the offense of
20 failure to stop for a blue light has already been
21 conclusively proven can only serve to enflame the
22 jury's prejudice against my client when it
23 determines those very specific issues of substance
24 and weight.

25 The Rule states that if the prejudicial impact

1 outweighs the probative value, the evidence should
2 be suppressed. We believe our suggested remedy here
3 that the video be played from minute 16 ---

4 THE COURT: So you're going to eliminate
5 evidence?

6 MR. OPPERMANN: Umm ---

7 THE COURT: You're going to eliminate evidence?

8 MR. OPPERMANN: Well, what I would say ---

9 THE COURT: You're not -- you're not, what is
10 it, excluding evidence. You're going to eliminate
11 it because the jury won't see that chase. They will
12 think that he started over here on one side of the
13 county and ended up over here.

14 MR. OPPERMANN: That's -- that's not correct,
15 Your Honor.

16 THE COURT: What does this video do? It picks
17 up where the one from yesterday stopped.

18 MR. OPPERMANN: Yes, Your Honor. The remedy
19 here in order to avoid ---

20 THE COURT: Well, I didn't ask you what's the
21 remedy. I'm asking you what does this video do?

22 MR. OPPERMANN: The video enflames the
23 jury's prejudice.

24 THE COURT: Well, no, it enflames. I didn't
25 say enflame. I saw a car chase from one end of the

1 county to the other part of the county.

2 MR. OPPERMANN: And, Your Honor ---

3 THE COURT: And it was all continuous.

4 MR. OPPERMANN: And, Your Honor, our position
5 is that lacks probative value.

6 THE COURT: That's right. The fact that this
7 is an ongoing event ---

8 MR. OPPERMANN: And that could ---

9 THE COURT: --- that has no probative value.

10 MR. OPPERMANN: That could be established
11 through testimony, but it doesn't -- it hasn't ---

12 THE COURT: Well, if it's going to establish in
13 testimony, why -- what -- what is better, testimony
14 or visual evidence?

15 MR. OPPERMANN: The visual evidence is more
16 likely to enflame prejudice, Your Honor.

17 THE COURT: In what regard?

18 MR. OPPERMANN: Currently, in Anderson County
19 and certainly the crime of failure to stop for a
20 blue light is offensive and heinous and dangerous.
21 There has been extensive press coverage of loss of
22 life as a result of these types of crimes. Public
23 concern over this sort of behavior is high. So to
24 show the video when it's not necessary to prove the
25 elements of the case ---

1 THE COURT: What do you mean it's not
2 necessary? Because you've got something that
3 started here and something that ended here, and you
4 want to cut out the middle.

5 MR. OPPERMANN: Yes, Your Honor, because ---

6 THE COURT: Why?

7 MR. OPPERMANN: --- because it lacks probative
8 value. And the State ---

9 THE COURT: And it gets you from one place to
10 the other.

11 MR. OPPERMANN: The State ---

12 THE COURT: That has no probative value?

13 MR. OPPERMANN: And we would respectfully
14 request the Court allow us to finish stating our
15 motion and the grounds for it.

16 THE COURT: I'll be glad to if you'll give me
17 something new rather than repeating ---

18 MR. OPPERMANN: Yes, Your Honor.

19 THE COURT: --- things over and over. I
20 understand you say it's enflamed. You say it's --
21 you've got now and you brought up something about
22 something that has never been brought up before,
23 public knowledge. I didn't know it was anything
24 record about public knowledge.

25 MR. OPPERMANN: Not -- not -- not this specific

1 case. With other cases in failure to stop for a --
2 for a blue light. The -- the -- the facts ---

3 THE COURT: So let's start with something new.

4 MR. OPPERMANN: The facts -- the facts that are
5 in dispute and are before the jury related to the
6 charges of receiving stolen goods and trafficking
7 methamphetamine.

8 THE COURT: Well, isn't there something about
9 trafficking that you do -- or is it first of all you
10 have to establish possession?

11 MR. OPPERMANN: Yes. And that is established,
12 Your Honor. The State can establish that at 1720 in
13 the video.

14 What we would suggest is showing the video from
15 moment 16 so that the jury can see the chase is
16 continuous and the State has the opportunity to
17 demonstrate possession. That would allow the jury
18 to -- that would allow the State to get in its
19 evidence, what establishes possession.

20 We're not trying to keep them from showing
21 what's appropriate for these charges. We simply ask
22 that the Court look to Rule 403. If 403 does not
23 apply in this situation, the probative value is so
24 minimal based on what's already been presented and
25 the prejudicial impact is so high. If 403 does not

1 apply in this situation, it is a meaningless rule,
2 Your Honor. The State ---

3 THE COURT: Well, let's -- I don't want to cut
4 you off.

5 MR. OPPERMANN: The State can establish what it
6 wishes to establish, that this is a continuous
7 chase, although that itself is not particularly
8 relevant since failure to stop for a blue light has
9 already been established through the State's
10 testimony and video evidence yesterday.

11 But the State can establish what it wants to
12 establish from moment 16 forward. That -- that is
13 easily done; therefore, the intervening 16 minutes
14 have minimal probative impact, but very, very, very
15 high prejudicial impact. That's the basis for our
16 motion, Your Honor.

17 THE COURT: Anything else?

18 MR. OPPERMANN: No, Your Honor.

19 THE COURT: Mr. Wagner, do you agree?

20 MR. WAGNER: No, sir, Your Honor. We disagree.

21 Your Honor, it's an essential part of our case.
22 Under 403(b), everything that we do from my -- from
23 our standpoint of the State is -- is prejudicial to
24 him, that's why we're putting it in. That's why
25 it's evidence against him in court.

1 This is a continuous chase. And I think to not
2 allow this part of the video, I think would confuse
3 the jury or have potential to confuse the jury, but
4 I think it takes away from them being able to gauge
5 the whole case to make a decision on -- on the
6 merits.

7 We have -- we have a defendant in a stolen
8 truck driving at a high rate of speed who's charged
9 with failure to stop. We still have to prove those
10 elements and that crime because he's charged with
11 it. Up until the point where he throws the drugs
12 out the window, then they're weighed and measured,
13 but all of that goes to, like I said yesterday, the
14 res gestae that brings the whole -- the whole case
15 put together.

16 I think taking chunks out of the middle is
17 obviously going to confuse the jury, but I don't
18 think it's too prejudicial as far as the probative
19 value. I think it's very probative and it is
20 prejudicial. But like I say, everything we do here,
21 everything we put in is prejudicial. That's why
22 we're seeking to put it in.

23 MR. OPPERMANN: Your Honor, may we respond?

24 THE COURT: Certainly.

25 MR. OPPERMANN: Thank you, Your Honor.

1 THE COURT: Please do.

2 MR. OPPERMANN: Clearly, everything in the
3 State's case is intended to be prejudicial with
4 respect to the defendant. We don't dispute that.

5 The question is the probative value balance
6 against the prejudicial impact. We argue that the
7 probative value is minimal because the State has
8 established that Mr. Gray was in the vehicle. He's
9 been identified.

10 They will be able to establish that from moment
11 16 forward because he's apprehended.

12 They'll be able to establish that he was in a
13 vehicle that was reported stolen from minute 16
14 forward.

15 They'll be able to establish that a substance
16 that they say tested positive for methamphetamine
17 exited my client's vehicle from moment 16 forward.

18 Everything from the beginning of that video
19 from moment 16 does nothing except show a car chase.
20 That lacks probative value, Your Honor. And if
21 there is probative value, it is minimal compared to
22 the prejudicial impact. 403 calls for a balancing.
23 This doesn't pass the balancing test.

24 THE COURT: I understand. All right. Anything
25 else?

1 MR. OPPERMANN: No, Your Honor.

2 THE COURT: Anything from the State?

3 MR. WAGNER: No, sir.

4 THE COURT: All right. And you renew your
5 motion?

6 MR. OPPERMANN: Yes, Your Honor.

7 THE COURT: All right. And I deny the motion.

8 MR. OPPERMANN: Thank you, Your Honor.

9 THE COURT: But for the record, be sure that
10 you have everything on the record that you want
11 dealing with the motion.

12 MR. OPPERMANN: Thank you, Your Honor.

13 THE COURT: All right. Anything else before we
14 bring the jury back?

15 MR. WAGNER: No, sir.

16 THE COURT: All right. Let's take a short
17 break until about five minutes.

18 (From 10:19 to 10:32 a.m., a recess was taken.)

19 THE COURT: The State ready?

20 MR. WAGNER: Yes, sir.

21 THE COURT: Is the defense ready?

22 MR. OPPERMANN: Yes, sir.

23 THE COURT: All right. Ask the jury to join
24 us, please.

25 (At 10:33 a.m., jury entered the courtroom.)

1 THE COURT: All right. Let the record reflect
2 that the jury and alternates are in the jury box.

3 Madam forelady, ladies and gentlemen of the
4 jury, I'm sorry it took me some time to go through
5 some matters of law with the attorneys before we
6 started this morning, but I do appreciate your
7 patience. We'll now continue with the State's case.

8 MR. WAGNER: Thank you, Judge. Call Casey
9 Purdy.

10 THE WITNESS: (Approaching.)

11 THE CLERK: If you'll please raise your right
12 hand.

13 THE WITNESS: (Complying.)

14 THE CLERK: Do you solemnly swear or affirm the
15 testimony you give the Court today in this case will
16 be the truth, the whole truth, and nothing but the
17 truth?

18 THE WITNESS: Yes, sir, I do.

19 THE CLERK: If you would take the witness
20 stand, please, sir, and state your name and spell
21 your last name for the reporter, please.

22 THE WITNESS: My name is Casey Purdy,
23 P-u-r-d-y.

24 OFFICER CASEY PURDY,
25 having been produced and first duly sworn as a

1 witness on behalf of the State, then testified as
2 follows:

3 DIRECT EXAMINATION

4 BY MR. WAGNER:

5 Q. Officer Purdy, what are your current job duties
6 and how long have you been working with the
7 Sheriff's Office?

8 A. I'm a deputy sheriff at Anderson County
9 Sheriff's Office, and I have been employed by the
10 sheriff's office for three-and-a-half years.

11 Q. Okay. Are you from Anderson?

12 A. Yes, sir.

13 Q. Was your dad a police officer?

14 A. Yes, sir, he was.

15 Q. And was that kind of what -- how you ended up
16 being in law enforcement?

17 A. Yes, sir.

18 Q. What are your job duties now, and what were
19 they back in November 12, 2016?

20 A. Now, I am assigned to the crime suppression
21 unit, a patrol unit within the sheriff's office.

22 During the time of November the 12th, 2016, I
23 was assigned to Delta shift of the uniform patrol
24 division.

25 Q. Back on November the 12th, 2016, did you get a

1 call over the radio from Deputy Stipe or to go help
2 Deputy Stipe?

3 A. I overheard radio traffic. He was involved in
4 a motor vehicle pursuit, and I proceeded in that
5 direction to assist.

6 Q. Okay. Which way did you go and what happened?

7 A. I proceeded to the area of Highway 81 South,
8 which was the direction in which Deputy Stipe was
9 persuing the vehicle.

10 At that time I was attempting to get into
11 position to deploy stop sticks and help terminate
12 the pursuit.

13 Q. Okay. Did you end up catching -- or just
14 catching up with Deputy Stipe and the vehicle?

15 A. Yes, sir. On 81 South around Flat Rock Road I
16 believe. They passed me before I was able to deploy
17 stop sticks. At that point in time I turned around
18 and became the secondary vehicle in the pursuit.

19 Q. Okay. And who was driving the suspect vehicle?

20 A. Deputy Stipe advised over the radio that he had
21 identified the driver of the truck as Cole Brooks
22 Gray, the defendant.

23 Q. Do you know Cole Brooks Gray?

24 A. Yes, sir.

25 Q. Were you there when the vehicle finally got

1 stopped?

2 A. Yes, sir.

3 Q. And who was in the vehicle?

4 A. Once he was pulled from the vehicle, I was able
5 to identify the driver and sole occupant as Cole
6 Brooks Gray.

7 Q. Okay. Is he seated here at the defense table
8 in the white shirt?

9 A. Yes, sir.

10 MR. WAGNER: Your Honor, I would like the
11 record to reflect that he's identified the defendant
12 as being pulled out of the truck.

13 THE COURT: (No response.)

14 MR. WAGNER: We're just -- the officer just
15 testified, and I'd like -- we'd like the record to
16 reflect that the officer identified the defendant as
17 coming out of that truck at the end of the stop.

18 THE COURT: Very well. The record will so
19 reflect.

20 BY MR. WAGNER:

21 Q. Did you have a camera in your vehicle?

22 A. Yes, sir, I did.

23 Q. And are there cameras in all sheriff's office
24 vehicles? Tell us about your camera and how it did
25 it come to be.

1 A. No, sir. Not all of our vehicles are equipped
2 with dash cameras. I had purchased one myself to
3 record traffic stops; pedestrian interactions;
4 vehicle pursuits.

5 Q. Okay. And how's it -- how does it work? Do
6 you have to cut it on manually?

7 A. Yes, sir. You have to press a button on the
8 camera to turn it on.

9 Q. When you responded to help Deputy Stipe, did
10 you go ahead and cut it on?

11 A. Yes, sir.

12 Q. And at the end of the chase, did you actually
13 pull the video and make a copy of it and turn it
14 into evidence?

15 A. Yes, sir, I did.

16 Q. Let me show you what's marked as State's
17 Exhibit No. 2 for identification. Do you recognize
18 that?

19 A. Yes, sir, I do.

20 Q. And what is that?

21 A. It's a copy of the video footage from my dash
22 camera.

23 Q. Is that a true and accurate copy of the video
24 footage from 11/12/2016?

25 A. Yes, sir, it is.

1 Q. Has it been altered or tampered with in any
2 way?

3 A. No, sir.

4 Q. And how do you know that?

5 A. Because we watched it prior to trial, and I
6 initialed on the disk.

7 Q. Okay. It's substantially in the same condition
8 as it was?

9 A. Yes, sir.

10 MR. WAGNER: Your Honor, at this time we would
11 move to admit State's Exhibit No. 2 and ask if we
12 could publish that to the jury.

13 THE COURT: Any objection?

14 MR. OPPERMANN: We renew our objection under
15 Rule 403.

16 THE COURT: Certainly. Objection overruled and
17 it will be admitted.

18 (State's Exhibit No. 2 was admitted into
19 evidence.)

20 MR. WAGNER: Your Honor, if I could, would ask
21 Deputy Purdy to step down so he can tell us what
22 we're seeing.

23 THE WITNESS: (Complying.)

24 (Playing DVD.)

25 THE WITNESS: At this point I overheard the

1 radio traffic from Deputy Matthew Stipe advising
2 he's in a vehicle pursuit, and I'm attempting to get
3 into position to assist in the pursuit.

4 BY MR. WAGNER:

5 Q. And what road are you on here?

6 A. East Shockley Ferry Road headed towards South
7 Main Street.

8 (Playing DVD.)

9 BY MR. WAGNER:

10 Q. At this point did you have your sirens and blue
11 lights on?

12 A. Yes, sir. My blue lights and sirens were
13 activated.

14 Q. Did they remain on the entire time?

15 A. Yes, sir.

16 (Playing DVD.)

17 THE WITNESS: Just turned left onto South Main
18 Street approaching the intersection of South Main
19 Street and Highway 28 Bypass.

20 (Playing DVD.)

21 THE WITNESS: Make a right onto Highway 28
22 Bypass and a left onto Highway 81 South. That's the
23 direction in which the pursuit was headed according
24 to Deputy Matthew Stipe's radio traffic.

25 (Playing DVD.)

1 THE WITNESS: At this point in the video,
2 Deputy Stipe advises over the radio that the subject
3 vehicle was involved in a traffic accident and he
4 was able to identify the driver as Cole Brooks Gray.

5 (Playing DVD.)

6 THE WITNESS: At that point Deputy Stipe is
7 pursuing the vehicle in the opposite direction. I
8 turned around in an attempt to become involved in
9 the pursuit as the secondary unit. Per our policy,
10 the secondary unit involved in a vehicle pursuit
11 calls the radio traffic so that the first vehicle
12 can focus on pursuing. The vehicle he's pursuing is
13 a black truck, a black Chevrolet Silverado.

14 (Playing DVD.)

15 THE WITNESS: During the pursuit, I continued
16 to call the speed and traffic conditions. At this
17 point the traffic was medium and the speeds were
18 approximately 60 to 70 miles an hour, passing
19 vehicles in the median in an attempt to continue
20 evading Deputy Stipes.

21 (Playing DVD.)

22 THE WITNESS: The vehicle you see just in front
23 of me with the blue lights is Deputy Stipe's Tahoe.
24 The vehicle in front of him is the black Chevy
25 Silverado.

1 (Playing DVD.)

2 THE WITNESS: What you're about to see is
3 another deputy attempting to deploy stop sticks on
4 the suspect vehicle. At that point Deputy Matthew
5 Stipe attempted to maneuver around the stop sticks
6 unsuccessfully and strikes them with his vehicle.
7 That takes him out of the pursuit. And as the
8 secondary vehicle, I take over leading the pursuit.

9 (Playing DVD.)

10 THE WITNESS: As Mr. Gray attempts to make a
11 left-hand turn onto Lewis Street, another vehicle he
12 turned in front of strikes the back of his truck.
13 He continues to flee.

14 Mr. Gray makes a right onto Curtis Street,
15 almost striking a man on a moped.

16 (Playing DVD.)

17 THE WITNESS: Mr. Gray crosses New Pond Road
18 and goes through a backyard of a residence and turns
19 left onto Lyonswood Drive still fleeing the pursuit.

20 (Playing DVD.)

21 THE WITNESS: On Lyonswood Drive crossing Sayre
22 Street.

23 (Playing DVD.)

24 THE WITNESS: On Franklin Street, Mr. Gray
25 makes a right back onto Highway 28 Bypass.

1 (Playing DVD.)

2 THE WITNESS: On Highway 28 Bypass passing
3 Market Street. Speeds at that point were
4 approximately 80 miles per hour.

5 (Playing DVD.)

6 THE WITNESS: On Pearman Dairy Road, Mr. Gray
7 makes a right-hand turn onto Ryder Lane attempting
8 to avoid a deputy trying to utilize stop sticks to
9 end the pursuit.

10 (Playing DVD.)

11 THE WITNESS: Mr. Gray makes a right-hand turn
12 onto Morningside Drive approaching West Whitner
13 Street. At this point Deputy Matthew Grant becomes
14 secondary in the pursuit and is calling radio
15 traffic.

16 (Playing DVD.)

17 THE WITNESS: Mr. Gray makes a right-hand turn
18 onto West Whitner Street approaching Pearman Dairy
19 Road. At this point I'm able to see through the
20 back window in the mirror and observed that Mr. Gray
21 is reaching around towards the center of the seat
22 and looking down into his lap.

23 I advised over the radio in case Mr. Gray "push
24 bonds," which is a common law enforcement term for
25 "fleeing a vehicle on foot," that he was messing

1 with something in his lap.

2 (Playing DVD.)

3 THE WITNESS: Mr. Gray makes a right-hand turn
4 back onto Pearman Dairy Road. Sergeant Andy Hyslop
5 attempts to deploy the stop sticks unsuccessfully.

6 (Playing DVD.)

7 THE WITNESS: Continuing on Pearman Dairy Road
8 approaching Michelin Boulevard. Traffic goes from
9 medium to heavy and speeds are approximately 70 to
10 80 miles an hour.

11 (Playing DVD.)

12 THE WITNESS: At this point Deputy Kenny Lollis
13 takes over as the secondary in the pursuit and
14 begins to call the radio traffic.

15 (Playing DVD.)

16 THE WITNESS: We're on Pearman Dairy still
17 crossing the intersection at Whitehall Road.

18 (Playing DVD.)

19 THE WITNESS: Mr. Gray makes a left-hand turn
20 onto Old Pearman Dairy Road off of Pearman Dairy
21 Road.

22 (Playing DVD.)

23 THE WITNESS: Continuing on Old Pearman Dairy
24 Road towards Dunn Road. Traffic is light to medium
25 at times and speeds were approximately 70 to

1 80 miles an hour. Made a left onto Dunn Road.

2 (Playing DVD.)

3 THE WITNESS: At this point Deputy David Stipe
4 advises over the radio that he has deployed stop
5 sticks in the middle of Dunn Road.

6 Mr. Gray has just struck the stop sticks on
7 both of his right side tires. At this point his
8 tires began to deflate as he makes a left onto Dixon
9 Road.

10 (Playing DVD.)

11 THE WITNESS: Right after we come through this
12 curve, there's a house on the left-hand side of the
13 road. If you'll watch the driver's side window,
14 Mr. Gray throws a bag containing a clear substance
15 into the roadway.

16 At this point Sergeant Hyslop and Deputy Jordan
17 Smith successfully deploy another set of stop
18 sticks, bringing the pursuit to an end. They pull
19 Mr. Gray from the driver's seat of the vehicle.

20 I go through the passenger's side, put the
21 vehicle into park.

22 (Playing DVD.)

23 THE WITNESS: I move around to the driver's
24 side and able to identify the driver as Cole Brooks
25 Gray. Assisting placing him into custody.

1 (Playing DVD.)

2 THE WITNESS: I return to my vehicle. Advise
3 other deputies that I'm going back to secure what
4 Mr. Gray threw from the vehicle, which was
5 approximately 100 to 200 yards from where the
6 pursuit ended lying in the middle of the roadway.

7 (At 10:59 a.m., DVD concluded.)

8 MR. WAGNER: If you could have a seat, sir,
9 please.

10 THE WITNESS: (Complying.)

11 BY MR. WAGNER:

12 Q. Deputy Purdy, there at the end, did you see the
13 defendant throw a white -- a white bag out there on
14 the road?

15 A. Yes, sir.

16 Q. And you saw that come out of the driver's side
17 window?

18 A. Yes, sir, I did.

19 Q. Okay. And there at the end when your car is
20 backing up again, is that you going to secure the
21 thing that was thrown out?

22 A. Yes, sir.

23 Q. When you got back up there, was it still in the
24 same spot that it was laying there on the video?

25 A. Yes, sir, it was.

1 Q. Approximately, how much time had transpired
2 from the time you saw him throw it out and you got
3 stopped and you went back up there?

4 A. Approximately, a minute. As soon as we had him
5 successfully in custody, I returned to my vehicle to
6 secure that evidence.

7 Q. Okay. And when you got back up there, did you
8 stay there with that stuff until you later took
9 custody of it?

10 A. Yes, sir, I did.

11 Q. Did anybody tamper with it or alter it in any
12 manner?

13 A. No, sir.

14 Q. Did you have anybody come out and take
15 pictures?

16 A. Yes, sir. We requested Investigator Beusse
17 with the forensics division to come photograph and
18 assist in collection.

19 Q. Did you stay there with it while he took
20 pictures?

21 A. Yes, sir.

22 Q. Did you stay there with it while they collected
23 it?

24 A. Yes, sir.

25 Q. Was it all -- everything -- explain what it was

1 as far as what -- what it appeared -- was it a
2 crystal substance?

3 A. Yes, sir. It was a clear Ziploc bag containing
4 a large amount of clear crystal substance. I
5 recognized that substance through training and prior
6 experience to be consistent with methamphetamine.

7 Q. Was it scattered out on -- on the pavement?

8 A. Yes, sir. The bag had busted and there was a
9 substantial amount that had come out of the bag onto
10 the pavement.

11 Q. Did you watch while they secured it back into
12 the bag?

13 A. Yes, sir, I did.

14 Q. Then what did you do?

15 A. I took possession of the clear crystal
16 substance and returned to the vehicle.

17 Q. Okay. And did you see anything in the vehicle?

18 A. I did. In the seat of the vehicle, there was
19 another small bag of a clear crystal substance,
20 which I also recognized to be consistent with
21 methamphetamine.

22 Q. All right. And what did you do with that?

23 A. I also collected it. At that point, once all
24 the substance was collected, I transported it to the
25 evidence department with the sheriff's office.

1 Q. The -- let me show you what's been marked
2 State's Exhibit No. 3. Let me hand this up to you,
3 Officer, and see if you recognize State's Exhibit
4 No. 3 for identification.

5 A. Can I open it?

6 Q. Yes. You can open it.

7 A. Yes, sir. I do recognize it.

8 Q. And what is that?

9 A. This is the substance that we collected from
10 both in the roadway and from the -- that I
11 collected -- I'm sorry -- from the roadway and from
12 the seat of the vehicle. The clear crystal
13 substance that was submitted into evidence in a Best
14 Kit.

15 Q. Okay. Explain what a Best Kit is?

16 A. It's our method for securing and having
17 suspected narcotics tested.

18 Q. So did you take the substance off the road, and
19 you took possession of it from Investigator Beusse?

20 A. Yes, sir.

21 Q. Okay. And then you went to the truck and got
22 some more substance off the seat?

23 A. Yes, sir.

24 Q. Where on the seat was it?

25 A. Just laying on the seat, right around the

1 driver's area where he was seated.

2 Q. Okay. Where the defendant had been sitting?

3 A. Yes, sir.

4 Q. Did you combine those into a plastic bag ---

5 A. Yes, sir.

6 Q. --- called a Best Kit?

7 A. Yes, sir.

8 Q. Okay. Then what did you do with it?

9 A. At that point it was submitted into evidence to
10 be tested.

11 Q. Is there any particular steps that you take
12 before you submit it into evidence to make sure that
13 it's contained?

14 A. Yes, sir. It was weighed. The plastic bag in
15 the Best Kit is sealed.

16 Q. Okay. Did you seal it?

17 A. Yes, I did.

18 Q. When you turn it into evidence, is it like a
19 locker that you put it in?

20 A. Yes, sir.

21 Q. Okay. And you did that with any -- anybody in
22 particular? Was there any other officers with you
23 when you turned that into evidence?

24 A. Yes, sir. Deputy Matthew Stipe was also at
25 evidence with me when I sealed it into the Best Kit

1 and submitted it into the locker to be placed into
2 evidence and tested.

3 Q. Okay. And have you had anything to do with
4 that substance -- with what you put into evidence
5 there, State's Exhibit for identification No. 3, and
6 have you had anything to do with that since?

7 A. No, sir.

8 Q. Okay. Does it still appear to be in
9 substantially the same condition as it was ---

10 A. Yes, sir.

11 Q. --- when you sealed it?

12 A. Yes, sir, it does.

13 Q. Did you alter it or anybody in your presence
14 while you were standing there alter it or tamper
15 with it in any manner whatsoever?

16 A. No, sir.

17 MR. WAGNER: Okay. Your Honor, if we could,
18 I'd like to roll the video back to the point where
19 this State's Exhibit No. 3 for identification came
20 out the window. I think we can kind of slow that
21 down on the video just to play it again.

22 MR. OPPERMANN: We have no objection. If it's
23 helpful to the State, that's about 17:19, 17:20.

24 MR. WAGNER: Your Honor, if we could, we'd like
25 to ask the officer to step down again.

1 THE COURT: Very well.

2 THE WITNESS: (Complying.)

3 (Playing DVD.)

4 BY MR. WAGNER:

5 Q. Are you getting closer, Officer?

6 A. Yes, sir. Right around that part of the mail
7 box on the left-hand side. As he passes, this is
8 where he throws the substance.

9 (Playing DVD.)

10 THE WITNESS: Next driveway on the left.

11 (Playing DVD.)

12 THE WITNESS: At this point he's throwing the
13 substance from the window and it lands in the
14 roadway, just to the left of the yellow line.

15 MR. WAGNER: And then you stop shortly after
16 that.

17 (At 11:11 a.m., DVD concluded and the witness
18 retakes the witness stand.)

19 BY MR. WAGNER:

20 Q. Deputy Purdy, let me show you some photographs
21 here.

22 A. Yes, sir.

23 Q. State's Exhibit No. 5 for identification.

24 Might ask you to step down because I know you can't
25 see from...

1 A. (Complying.)

2 Q. The quality is not good there, but can you tell
3 us what that is?

4 A. Yes, sir. Right there on the side of the
5 yellow line just past the driveway is the bag of
6 clear crystal substance which Mr. Gray threw from
7 the driver's window of the vehicle during the
8 pursuit.

9 THE COURT: What number -- which exhibit was
10 that?

11 MR. WAGNER: That was Number 5, Your Honor.
12 This is Number 8 for identification.

13 BY MR. WAGNER:

14 Q. It's a little bit better light on that one.
15 And is that how it looked when you backed up and
16 went back up there to secure it?

17 A. Yes, sir.

18 Q. Look at State's Exhibit No. 9. Is that a true
19 and accurate picture?

20 A. Yes, sir.

21 Q. What's the stuff scattered around the bag
22 there?

23 A. Loose pieces of clear crystal substance that
24 came out of the bag when it landed in the roadway
25 and busted.

1 Q. State's Exhibit No. 12. Is that a true and
2 accurate picture?

3 A. Yes, sir, it is.

4 Q. Okay. And is that what we just looked at up
5 here, State's Exhibit No. 3?

6 A. Yes, sir.

7 MR. WAGNER: That's all I've got there. If
8 you'll just have a seat again, please.

9 THE WITNESS: (Complying.)

10 BY MR. WAGNER:

11 Q. So, Officer, that picture of the photograph
12 that we just looked at there, that is what you saw
13 come out of the driver's side and hit the ground?

14 A. Yes, sir.

15 Q. Did you actually see it burst?

16 A. Yes, sir, I did.

17 Q. Okay. And that's what you took possession of?

18 A. Yes, sir.

19 Q. Sealed it up along with the other stuff, I
20 believe you testified, from the seat ---

21 A. Yes, sir.

22 Q. --- of the suspect vehicle? And then you
23 turned that into evidence and that's the last you've
24 seen it?

25 A. Yes, sir.

1 Q. Okay. Did this entire chase, entire
2 everything, occur inside the county limits of
3 Anderson County?

4 A. Yes, sir, it did.

5 MR. WAGNER: That's all the questions I have.
6 If you would answer questions from the defense.

7 MR. OPPERMANN: Thank you.

8 CROSS-EXAMINATION

9 BY MR. OPPERMANN:

10 Q. Deputy, thank you for being here today. Let's
11 cut right to Dixon Road. You stated that you saw an
12 object exit my client's vehicle?

13 A. Yes, sir, I did.

14 Q. And that object landed in the road just on the
15 left side of that yellow line?

16 A. Yes, sir.

17 Q. And it burst?

18 A. Yes, sir, it did.

19 Q. What road was on that?

20 A. On Dixon Road.

21 Q. Are you pretty familiar with Dixon Road?

22 A. Yes, sir, I am.

23 Q. There's a lot of cars that go up and down Dixon
24 Road through the course of the day?

25 A. Yes, sir. There's mostly residential traffic.

1 Q. It's -- it's an important thoroughfare in the
2 Centerville community, isn't it?

3 A. I -- I -- yes, sir. I believe so.

4 Q. And there are farms right there on Dixon Road
5 where this took place; isn't that right?

6 A. I believe there was one where the pursuit
7 ended. Yes, sir.

8 Q. Well, there's a farm on the right side and a
9 farm on the left side; isn't that correct?

10 A. Yes, sir.

11 Q. Okay. And don't farm vehicles occasionally
12 come onto Dixon Road?

13 A. I've never seen it. I can't testify to...

14 Q. Doesn't it stand to reason that on a road who
15 has a farm, a farm vehicle would periodically come
16 on the road?

17 A. It's possible. Yes, sir.

18 Q. Like a tractor?

19 A. It's possible.

20 Q. Thank you. Now, you stated that when the stop
21 occurred that you went back to where the object had
22 exited the vehicle and landed in the road; isn't
23 that right?

24 A. Yes, sir.

25 Q. You said it's about a minute that transpired

1 from when you went back to that object?

2 A. Yes, sir.

3 Q. And you stated that at that time you called the
4 photographer to come take some pictures; isn't that
5 right?

6 A. I believe another deputy requested forensics.

7 Q. Okay. Well, from the time you got to that
8 object, how long did it take for that photographer
9 to arrive?

10 A. I -- I do not know.

11 Q. You don't know?

12 A. No.

13 Q. Do you have an estimate?

14 A. Maybe around 10 to 15 minutes.

15 Q. Okay. Who was that photographer?

16 A. Investigator Chris Beusse.

17 Q. Okay. How long did Investigator Beusse take
18 taking pictures?

19 A. I do not know.

20 Q. Do you have an estimate?

21 A. I -- I really don't know how long he took.

22 Maybe five to ten minutes.

23 Q. All right. After Investigator Beusse took
24 pictures of that object in the road, how long did it
25 take before that object was taken out of the road?

1 A. Maybe a few minutes. As soon as he finished
2 photographing, we collected it.

3 Q. When you say you "collected it," what do you
4 mean by that?

5 A. I took possession of the narcotics, but several
6 deputies assisted in collecting the substance that
7 had bust from the bag placing it back in the bag.

8 Q. So you took what came out of the bag and put it
9 back in the bag?

10 A. Yes.

11 Q. That stuff that was laying in the road?

12 A. Yes.

13 Q. You put it back in the bag?

14 A. Yes, sir.

15 Q. Did you, during the course of this process,
16 have the opportunity to personally apprehend
17 Mr. Gray? Seemed like that was some other deputies
18 that did that, right?

19 A. I assisted in placing him in handcuffs once he
20 was pulled from the vehicle.

21 Q. Did you find any drugs or narcotics on
22 Mr. Gray's person?

23 A. At that time I did not. No, sir.

24 Q. Okay. Did you at any subsequent time find any
25 drugs or narcotics on Mr. Gray's person related to

1 this incident?

2 A. I located another small bag of suspected
3 methamphetamine.

4 Q. On his person?

5 A. A clear crystal substance that was in the seat
6 where Mr. Gray had been seated.

7 Q. But not on him personally?

8 A. Not in his pockets. I did not, no, sir.

9 Q. Okay. Now, you testified and you've just
10 stated that you found a small bag inside the
11 vehicle; is that correct?

12 A. Correct.

13 Q. About how big was it?

14 A. Small enough to fit in your hand.

15 Q. Okay. And where was that in the vehicle?

16 A. In the driver's side seat.

17 MR. OPPERMANN: Okay. Thank you, Deputy.

18 That's all I have.

19 THE COURT: Re-exam?

20 MR. WAGNER: Nothing further, Your Honor, and
21 we'd ask that this witness be excused.

22 THE COURT: Any objection?

23 MR. OPPERMANN: No objection, Your Honor.

24 THE COURT: Very good. You may be excused.

25 (Witness excused.)

1 THE COURT: Call your next witness.

2 MR. WAGNER: Andy Hyslop.

3 (Witness approaching.)

4 THE CLERK: Can you please your right hand,
5 please, sir?

6 THE WITNESS: (Complying.)

7 THE CLERK: Do you solemnly swear or affirm the
8 testimony you'll give the Court today in this case
9 would be the truth, the whole truth, and nothing but
10 the truth?

11 THE WITNESS: I do.

12 THE CLERK: If you would take the witness
13 stand, please, sir, and state your name and spell
14 your last name for the reporter, please.

15 THE WITNESS: Sergeant Hyslop, H-y-s-l-o-p.

16 SERGEANT ANDY HYSLOP,
17 having been produced and first duly sworn as a
18 witness on behalf of the State, testified as
19 follows:

20 DIRECT EXAMINATION

21 BY MR. WAGNER:

22 Q. Sergeant Hyslop, who do you work for?

23 A. I work for Anderson County Sheriff's Office.

24 Q. How long have you been working for the Anderson
25 County Sheriff's Office?

1 A. Total, almost 21 years.

2 Q. You've been in law enforcement prior to that?

3 A. Yes, sir.

4 Q. And how long have you been in law enforcement
5 total?

6 A. About 22. Almost 22.

7 Q. All right. And you're currently a sergeant?

8 A. Staff sergeant.

9 Q. Staff sergeant. What are your job duties today
10 and what were they back on November the 12th of
11 2016?

12 A. Back then, I was a sergeant. Been promoted to
13 staff sergeant the first of this year. Basically
14 the same duties, oversee the shift.

15 Q. Were you listening to radio traffic that day?

16 A. I was.

17 Q. Did you hear radio traffic about a chase
18 involving Deputy Stipe and Deputy Purdy?

19 A. I did. I was in the office when the chase
20 first started. And when it started, it was -- it
21 was going on down in Starr. So I made my way up to
22 the patrol car out in the back parking lot, and I
23 just started heading in that direction in case it
24 did come up towards the office.

25 Q. Was it your shift of these guys? Were you

1 their supervisor or were you a supervisor on another
2 shift?

3 A. I was a supervisor on Delta shift at that time.

4 Q. What did you do? Did you go try to set up stop
5 sticks?

6 A. When it first started, it was down in the Starr
7 area, but I started heading that way.

8 Shortly thereafter, started coming up 81. Came
9 up the Bypass. And at that time I had turned onto
10 the Bypass off of Whitehall. Made my way towards
11 Whitner Street.

12 Prior to getting to Whitner Street, the chase
13 made a right -- or the pursuit made a right. I
14 believe it was on Ryder Lane. Took it over to
15 Morningside.

16 At that time I stopped on 28 Bypass in front of
17 the old Lakeside school. In case it did come back
18 towards me again, I'd be ready with stop sticks. I
19 monitored the radio, and it did come back in my
20 direction.

21 MR. OPPERMANN: Your Honor, respectfully, I
22 object to the relevance of this testimony. Based on
23 what's already been presented, it's unclear.

24 THE COURT: What -- what's -- what's the
25 objection?

1 MR. OPPERMANN: The object -- the objection is
2 relevance, Your Honor. This testimony does seem to
3 be restating what's already been introduced.

4 THE COURT: Not the relevance. It's -- it's
5 cumulative?

6 MR. OPPERMANN: It's cumulative.

7 THE COURT: In whichever way? Which one?

8 MR. OPPERMANN: Cumulative, Your Honor.

9 THE COURT: So it's obviously relevant.

10 MR. OPPERMANN: And under Rule 403. We would
11 renew that objection, as well. Deputy Hyslop is
12 testifying to things that have already testified
13 about.

14 THE COURT: But he's testifying to his
15 knowledge.

16 MR. OPPERMANN: That is correct, but those
17 elements do seem to have been addressed by previous
18 testimony. So under 403 and a cumulative basis, we
19 do believe this is evidence that should allow a
20 sustained objection.

21 THE COURT: Mr. Wagner?

22 MR. WAGNER: Your Honor, this is his
23 perspective. He had a little bit different
24 involvement than the officers that have testified.

25 MR. OPPERMANN: Your Honor ---

1 THE COURT: Anything further?

2 MR. OPPERMANN: --- it is uncertain what the
3 State is attempting to establish here that hasn't
4 already been established.

5 THE COURT: Well, let's listen and find out.

6 MR. OPPERMANN: Thank you, Your Honor. May we
7 renew our objection?

8 THE COURT: Certainly. Your objection is
9 renewed. Very well.

10 BY MR. WAGNER:

11 Q. Sergeant Hyslop, so you -- you set up stop
12 sticks near Lakeside school?

13 A. Yeah, I had stopped my vehicle in the center
14 median listening to the pursuit, and it was coming
15 back up West Whitner Street. I heard them. They
16 made a right back onto 28 Bypass.

17 As I was pulling up, I tried to deploy my stop
18 sticks as soon as possible. I was just a few
19 seconds late and I missed -- missed the black Chevy
20 pickup truck.

21 At that time they went by me. I picked up my
22 sticks, threw them back in the car, and followed
23 behind the pursuit.

24 At that time I was approaching Whitehall. I
25 think I just crossed over Whitehall when they made a

1 left onto Old Pearman Dairy.

2 I knew I wouldn't be able to catch up to them,
3 so I thought -- I tried to think ahead and think
4 where he might -- may possibly be where I could put
5 myself in a good position to help in the pursuit.

6 I turned around at that time when they made a
7 left onto Old Pearman Dairy, and I went back up to
8 Whitehall and made a right on Dixon hoping he would
9 come back this way where we could end this pursuit.

10 I was listening to the pursuit. They did make
11 a left onto Dunn Road. At that time I was pulling
12 onto Dixon. I was trying to find a safe spot where
13 I could deploy stop sticks in case they did come my
14 way.

15 They went to the end of Dunn Road. They did
16 make a left onto Dixon. At that time myself and
17 Deputy Smith, who was behind me, got out of the
18 vehicle. We set up stop sticks, and the suspect
19 vehicle driven by Mr. Cole approached. We had our
20 weapons drawn. The stop sticks were deployed.
21 There was really -- there was gullies on each side
22 of the road.

23 At that time the Chevy truck he was in had a --
24 it was either one or two flat tires. As he
25 approached me, he had his hands up and the car

1 rolled to the right a little bit. He did stop at
2 that time. We approached the door and removed
3 Mr. Cole from the vehicle.

4 Q. Okay. So the spot you picked ended up being a
5 good one?

6 A. Yes, sir.

7 Q. Okay. Did he -- did the vehicle stop when the
8 stop sticks flattened all the tires?

9 A. I think he ran them over with his left -- left
10 tires, but that was it.

11 Q. Okay. Did you know -- do you know the
12 defendant in this case, Cole Brooks Gray?

13 A. Yes, I do.

14 Q. Is that him seated here?

15 A. He's seated right there in the white shirt.

16 Q. Is he the guy you pulled out of the truck?

17 A. He was the guy that we removed out of the
18 vehicle.

19 Q. Let me show you what's marked State's Exhibit
20 for identification No. 30. Do you know what these
21 are?

22 A. Yes, sir. Those are what we refer to as stop
23 sticks. It's an instrument used. Actually, there's
24 three pieces in here. After we get them out of our
25 vehicle, they become one long -- I'd say almost an

1 8, maybe a 9-foot piece of equipment we put in the
2 roadway. And we can either pull the string or -- or
3 wind it like this. Pull it across the roadway as
4 the vehicle approaches that we're trying to stop.

5 There's little tubes in here that deploy into
6 their tire and let air out gradually rather than all
7 at one time so the -- whoever is driving the vehicle
8 does -- does not lose control of that vehicle.

9 Q. They're commonly called spikes, but they're
10 designed ---

11 A. They're like -- they're about the size of a
12 straw, maybe a little thinner than a straw and
13 they're about that long and they're inserted in
14 these.

15 And as the tire runs over, those tubes are
16 inserted into the tire and they stay in the tire
17 mostly and the air gradually is let out of the tire
18 through these tubes.

19 Q. What's that -- what's it made out of? Is it
20 like Styrofoam?

21 A. There's Styrofoam inside the stop stick itself,
22 and the tubes are placed -- I'm not sure how many
23 inches, maybe every three inches inside that tube.

24 Q. Okay. So when we hear stop sticks, y'all carry
25 those in your trunks?

1 A. Most every vehicle does, yes, sir, that I know
2 of.

3 Q. And you use them for instances like we're
4 dealing with here?

5 A. Safely stopping the vehicle. Yes, sir.

6 MR. WAGNER: Thank you, sir. That's all the
7 questions I have.

8 THE WITNESS: Thank you.

9 THE COURT: Cross-examination?

10 MR. OPPERMANN: Just very briefly, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. OPPERMANN:

13 Q. First of all, thank you for being here today
14 and thank you for your service and bringing this
15 chase to a safe conclusion where no one was hurt.

16 I have one question for you just for
17 clarification. You stated that when the vehicle was
18 stopped, Mr. Gray put his hands up?

19 A. As he was approaching about this distance, the
20 vehicle was slowing down. There was stop sticks
21 clearly in the roadway. And I guess that -- I can
22 only guess what his intentions are, that he decided
23 to end the pursuit and just -- he was showing us his
24 hands because he saw us draw weapons.

25 Q. Did he -- when he put his hands up, did he

1 resist you in any way? Was he physically
2 apprehended once he had his hands up?

3 A. Excuse me?

4 Q. Once he had his hands up and the vehicle was
5 stopped, did he resist you in any way in being
6 physically apprehended?

7 A. No, sir.

8 MR. OPPERMANN: Thank you. Nothing further,
9 Your Honor.

10 MR. WAGNER: Ask that Sergeant Hyslop be
11 excused.

12 THE COURT: Any objection?

13 MR. OPPERMANN: No objection, Your Honor.

14 THE COURT: You may be excused. Thank you,
15 sir.

16 (Witness excused.)

17 THE COURT: All right. The jury's been there
18 in the box about an hour, so I'm going to suggest we
19 take a morning break at this time.

20 MR. WAGNER: Yes, sir.

21 THE COURT: Any questions about it?

22 MR. WAGNER: No, sir.

23 THE COURT: All right. Very good. Madam
24 forelady, ladies and gentlemen of the jury, again, I
25 instruct you throughout the trial is going to be

1 whenever you are alone or with other people, do not
2 discuss this case. You will have to wait until you
3 finally get the whole case, all of the testimony and
4 all of the evidence and charge on the law and all
5 that before you undertake any deliberations.

6 At this time I'm going to ask that you retire
7 to the jury room. And if we have any refreshments,
8 let them have that. And then when you're ready to
9 come back, just knock on the door and we'll come
10 back and continue the trial.

11 Everybody else remain seated while the jury
12 retires from the courtroom.

13 (At 11:31 a.m., jury was excused from the
14 courtroom.)

15 THE COURT: All right. Anything from the State
16 before we take a break?

17 MR. WAGNER: No, sir.

18 THE COURT: From the defense?

19 MR. OPPERMANN: No objection, Your Honor.

20 THE COURT: Very good. Could I see the
21 attorneys, please?

22 (Sidebar discussion.)

23 (From 11:31 to 11:49 a.m., recess taken.)

24 THE COURT: All right. Is there anything from
25 the State before we bring the jury back?

1 MR. WAGNER: No, Your Honor.

2 THE COURT: From the defense?

3 MR. OPPERMANN: No, Your Honor.

4 THE COURT: Very good. Ask the jury to join
5 us, please.

6 THE BAILIFF: (Complying.)

7 (At 11:49 a.m., jury entered the courtroom.)

8 THE COURT: All right. Let the record reflect
9 that the jury and alternates are in the jury box.

10 Madam forelady, ladies and gentlemen of the
11 jury, we will now continue with the State's case.
12 Solicitor.

13 MR. WAGNER: Your Honor, I would call John
14 William or "Billy" Davis.

15 (Witness approached.)

16 THE CLERK: I just need for you to raise your
17 right hand.

18 THE WITNESS: (Complying.)

19 THE CLERK: Do you solemnly swear or affirm the
20 testimony you'll give to the Court today in this
21 case to be the truth, the whole truth, and nothing
22 but the truth?

23 THE WITNESS: Yes, sir.

24 THE CLERK: If you would take the witness
25 stand, please, sir, and state your name and spell

1 your last name for the reporter, please.

2 THE WITNESS: John William Davis, D-a-v-i-s.

3 JOHN WILLIAM DAVIS,

4 having been produced and first duly sworn as a

5 witness on behalf of the State, then testified as

6 follows:

7 DIRECT EXAMINATION

8 BY MR. WAGNER:

9 Q. Mr. Davis, where do you live?

10 A. Westminster, South Carolina.

11 Q. Okay. So you're in Oconee County?

12 A. Yes.

13 Q. Back in 2016, did you own a black Chevrolet --

14 1994 Chevrolet pickup truck?

15 A. Yes, I did.

16 Q. Is it the same truck that was involved in this

17 chase ---

18 A. Yes.

19 Q. --- and wrecked? Let me show you a picture of

20 it to be sure. State's Exhibit No. 19. You may

21 have to step down here, sir, so you can see.

22 A. (Complying.)

23 Q. If you would look to see it there.

24 A. (Complying.)

25 Q. Do you recognize that?

1 A. Yes, I do.

2 Q. Is that your truck?

3 A. That's my truck.

4 Q. On November the 12th, 2016, had you reported
5 that truck stolen from Oconee County?

6 A. Yes.

7 Q. And did you get it back from the sheriff's
8 office here after -- after it ended up on the side
9 of the road there?

10 A. Yes.

11 Q. What was the value of your truck when it was
12 stolen and when it was in operable condition without
13 all the damage and the flat tires and stuff?

14 A. I had \$6,000 in the truck.

15 Q. Okay. And that -- you arrived at that figure
16 from how?

17 A. The amount I paid 4500 for it from a friend of
18 mine, John Evans, and I put another \$1500 in the
19 truck.

20 Q. Okay. So you feel it's worth \$6,000?

21 A. Yes.

22 Q. You think that's a fair market value?

23 A. Yes.

24 MR. WAGNER: Okay. Thank you, sir. That's all
25 the questions I have. If you would, if the defense

1 attorney has anything for you.

2 CROSS-EXAMINATION

3 BY MR. OPPERMANN:

4 Q. Mr. Davis, thank you for being here today.

5 When -- when was your vehicle stolen, Mr. Davis?

6 A. Almost a year ago.

7 Q. Do you remember ---

8 A. October, November.

9 Q. Do you remember what day or what month it was
10 in?

11 A. No, I don't.

12 Q. If it was November -- you said October to
13 November. You feel like it would've been late
14 October or November?

15 A. October.

16 Q. It was October you think?

17 A. I think.

18 Q. Probably late October sounds like?

19 A. Yeah.

20 MR. OPPERMANN: Okay. Thank you. I have no
21 further questions, Your Honor.

22 MR. WAGNER: Your Honor, we ask that Mr. Davis
23 be excused.

24 MR. OPPERMANN: No objections.

25 THE COURT: All right. Mr. Davis, thank you,

1 sir.

2 (Witness excused.)

3 MR. WAGNER: Call Chris Beusse.

4 (Witness approaching.)

5 THE CLERK: Just need for you to raise your
6 right hand.

7 THE WITNESS: (Complying.)

8 THE CLERK: Do you solemnly swear or affirm the
9 testimony you give the Court today in this case will
10 be the truth, the whole truth, and nothing but the
11 truth?

12 THE WITNESS: Yes, sir.

13 THE CLERK: If you'll take the witness stand,
14 please, sir, and state your name and spell your last
15 name for the reporter, please.

16 THE WITNESS: Chris Beusse, B-e-u-s-s-e.

17 SERGEANT CHRIS BEUSSE,
18 having been produced and first duly sworn as a
19 witness on behalf of the State, then testified as
20 follows:

21 DIRECT EXAMINATION

22 BY MR. WAGNER:

23 Q. What are your job duties currently, and where
24 do you work?

25 A. I work at Anderson County Sheriff's Office, and

1 I'm currently the staff sergeant over the property
2 and evidence division.

3 Q. Okay. Is it part of your job duty to keep up
4 control of the evidence in the evidence locker?

5 A. Yes, sir.

6 Q. Okay. Do you also go out and take pictures and
7 process crime scenes?

8 A. I did at that current time. I was in the crime
9 scene unit.

10 Q. Okay. Did you get called out to the scene on
11 Dixon Road where this -- the chase had ended and the
12 truck was stopped?

13 A. Yes, sir.

14 Q. Did you get called out to process that scene?

15 A. Yes, sir.

16 Q. And did you go out there that day?

17 A. I did.

18 Q. How long after you got called did you respond?

19 A. I think it was probably like 15 minutes. I
20 think I was on Whitehall Road that day when I got
21 the call.

22 Q. Okay. And how far is Whitehall from Dixon
23 right there?

24 A. It's 10 or 15 minutes, depending on where
25 you're at.

1 Q. Okay. What did you do when you got out there?

2 A. I spoke with the officers on scene and just
3 asked them what they needed.

4 Q. Okay. Did you talk to Officer Purdy?

5 A. I did.

6 Q. As a result of your discussion with him, was he
7 near where a bag of crystal substance had been
8 thrown in the road?

9 A. Yes, sir.

10 Q. Okay. And did you take pictures of that?

11 A. I did.

12 Q. All right.

13 A. I took pictures of what was in the roadway and
14 the surrounding area.

15 Q. Did you also take pictures of the truck?

16 A. Yes, sir.

17 Q. Let me show you these pictures and ask if you
18 recognize them. We'll start -- try to keep them in
19 some sort of an order. I might've gotten them out
20 of order here.

21 Let's start with -- now, I'm going to read them
22 by order just for the record so you'll know. This
23 is number -- State's Exhibit No. 6. If you would,
24 I'm going to ask -- ask you to step down if you
25 would.

1 A. (Complying..)

2 Q. So you can see what's on there.

3 A. Okay.

4 Q. Do you recognize that?

5 A. Yes, sir. That's the mailbox in front of the
6 residence where the bag was laying in the roadway.

7 Q. Okay. Is that a true and accurate copy of that
8 picture ---

9 A. Yes, sir.

10 Q. --- and how it looked that day?

11 A. Yes, sir.

12 Q. State's No. 7.

13 A. That is the residence if you're standing in the
14 roadway and the bag of substance was in the roadway.
15 And that's the residence right in front of it.

16 Q. Is that a true and accurate depiction as it
17 looked that day?

18 A. Yes, sir.

19 Q. Number 9.

20 A. That's the bag laying in the roadway.

21 Q. Okay. Is that a true and accurate depiction of
22 the bag in the roadway as it looked that day?

23 A. Yes, sir.

24 Q. Number 8.

25 A. That's just another photo I took. I was backed

1 up a little bit to show the remnants of where it was
2 in the roadway to the house to the side of the road.

3 Q. Number 5.

4 A. That's just another picture where I backed up a
5 little bit more to show the remnants.

6 Q. It's hard to see on that screen, but right here
7 where my finger is, there's a mailbox on the actual
8 picture. It just shows up on a picture well, but it
9 doesn't show up on the screen.

10 A. Yeah, it looks better on the computer.

11 Q. So between that mailbox and that driveway is
12 where the crystal substance was laying ---

13 A. Yes, sir.

14 Q. --- approximately? A close up view; Number 12.

15 A. Yes, sir. That is just a close up picture of
16 the bag that was in the roadway.

17 Q. Number 11.

18 A. That's just a different angle from the side of
19 the road.

20 Q. Number 13.

21 A. Yes, sir. That just shows some of the
22 substance around the bag.

23 Q. And how was the -- the white things you see
24 right up there on the road, were those -- those were
25 crystals?

1 A. Yeah, that was the crystal-like substance that
2 came out the bag.

3 Q. Did you pick those up?

4 A. I picked those up.

5 Q. Individually and put them back in that bag?

6 A. Yes, sir.

7 Q. Okay. Number 14.

8 A. That's just another picture.

9 Q. When you picked those up and put them in the
10 bag, what -- what ended up happening with them?
11 Who did -- who did you give them to?

12 A. Deputy Purdy.

13 Q. Okay. He took possession of it there at the
14 scene?

15 A. Yes, sir.

16 Q. And when you were picking those up and while
17 you were photographing them, did anybody alter or
18 tamper with any of the crystals or anything there at
19 the scene?

20 A. No, sir.

21 Q. Has it been in your custody, other than when
22 somebody else had checked it out, was it in your
23 custody between the time Deputy Purdy put it into
24 evidence and the time it went to the lab? Tell me
25 how -- how y'all do things as far as keeping it

1 secure.

2 A. Yeah, that -- Deputy Purdy took possession of
3 it at the scene and he turned it into a Best Kit.

4 And then it gets turned into evidence, and we hold
5 it until we send it to the lab to get it tested.

6 Q. Okay. And it -- it's secured under lock and
7 key there?

8 A. Yes, sir.

9 Q. Okay. And has it been -- when it's been in
10 your custody, has it been secured under lock and
11 key?

12 A. Yes, sir.

13 Q. Let's see, Number 28.

14 A. That's the picture of the vehicle that was
15 involved in the pursuit.

16 Q. Twenty-six.

17 A. That's the picture of the tag that was on the
18 vehicle.

19 Q. Twenty-five.

20 A. I believe that's a picture of a tag that was in
21 the bed of the truck.

22 Q. So there were two tags there?

23 A. Yes, sir.

24 Q. Nineteen.

25 A. That's just a picture of the front angle of the

1 vehicle where it stopped in the roadway."

2 Q. Twenty.

3 A. That is the VIN number on the truck in
4 question.

5 Q. Twenty-two.

6 A. That's a picture of the passenger's side of the
7 vehicle. It shows the damage to the truck.

8 Q. Twenty-seven.

9 A. That's a picture on the passenger's side of the
10 truck, and it shows the contents inside the truck.

11 Q. Twenty-one.

12 A. That's just a closer up view of the bag that
13 was in the passenger's side seat.

14 Q. Is that like a backpack or something?

15 A. I'm not sure if it's a backpack or a regular
16 bag.

17 Q. Twenty-three.

18 A. That's a flat -- a picture of the rear
19 passenger tire that was deflated by the stop sticks.

20 Q. Twenty-four.

21 A. That is a closer up picture and it shows the
22 puncture in the tire from the stop stick and the
23 tubes that are inserted. It's hard to see on that
24 projector, but that's what it is.

25 Q. Twenty-nine.

1 A. That's the tire on the front driver's side.

2 Q. And all those tires, could you see the stop
3 stick tubes or things that deflate them, you could
4 see those in there on the pictures?

5 A. Yes, sir.

6 Q. I know they're hard to see here, but...
7 Fifteen.

8 A. That's a picture of the contents laying in the
9 seat on the driver's side.

10 Q. And what did you take a picture of there?

11 A. There is a cell phone, some money, and a small
12 baggy of a crystal-like substance. And there's some
13 sunglasses and a lighter.

14 Q. It's a little bit broader view.

15 A. That's a different view. That's from the
16 passenger's side, but it shows the driver's side
17 seat where the items were laying.

18 Q. Okay. And that's 16.

19 Seventeen.

20 A. That's just another close up view of the items
21 in the driver's seat.

22 Q. Is the plastic bag there the other point where
23 there was a crystal substance?

24 A. Yes, sir.

25 Q. Number 18.

1 A. That's just another -- another view of the
2 items. They usually take several just in case one
3 of them is better than the other.

4 Q. And last, Number 12. Just I had it left out.

5 A. Oh, that's just another view of the bag that
6 was in the roadway with the crystal substance around
7 it.

8 Q. Did you take all these pictures?

9 A. Yes, sir, I did.

10 Q. And did they all truly and accurately depict
11 the scene that you photographed that day?

12 A. Yes, sir.

13 MR. WAGNER: Your Honor, at this time we would
14 move these pictures into evidence. And I've kind of
15 got them out of order. I apologize. State's
16 Exhibit ---

17 THE COURT: You started with Number 6.

18 MR. WAGNER: It's 5 through 29. I just got
19 them out of order. I apologize for that.

20 THE COURT: Any objection?

21 MR. OPPERMANN: No objection.

22 THE COURT: All right. Then State's Exhibit
23 Nos. 6, 7, 8, 9, 5, 12, 11, 13, 14, 28, 25, 19, 20,
24 27, 21, 22, 24, 29, 15, 22, 16, 17, 18, and 12.

25 What was the first picture of the license tag?

1 The one on the -- on the truck. It should be close
2 to 25. It's the license tag in the bed.

3 MR. WAGNER: The first one is State's
4 Exhibit 26.

5 THE COURT: All right. So then that'll be
6 26 are admitted into evidence.

7 MR. WAGNER: Thank you, Your Honor. Just so
8 we're sure because I got them out of order, 5
9 through 29. Is that -- I think 5 through 29 covers
10 it.

11 THE COURT: Well, I think I covered it.

12 MR. WAGNER: Yes, sir.

13 THE COURT: The intent was to cover exhibits --
14 State's Exhibit No. 5 through State's Exhibit 29.

15 MR. WAGNER: Thank you, Your Honor.

16 (State's Exhibit Nos. 5 through 29 was admitted
17 into evidence.)

18 MR. WAGNER: Officer Beusse, if you could have
19 another seat back up here, please.

20 THE WITNESS: (Complying.)

21 BY MR. WAGNER:

22 Q. So were you -- at the time you were in the
23 crime scene ---

24 A. Yes, sir.

25 Q. --- stuff? Now, when did you get it put into

1 the actual evidence custodian portion of it until
2 now?

3 A. About two months ago ---

4 Q. Okay.

5 A. --- of this year.

6 Q. Okay. After you pick -- picked the crystals
7 off the road, were they just sitting there? How did
8 Purdy take possession of them? Did you -- did you
9 let him take custody of them there at the scene?
10 How did that happen?

11 A. When I got there, they showed me the bag in the
12 roadway and it was spread out all around it. So
13 myself and Deputy Velez and Corporal Wideman and
14 Kenny Lollis, we picked it all up and put it in the
15 bag and gave it to Deputy Purdy.

16 Q. Okay. Did you ask them why -- were you there
17 the entire time and was Purdy there the entire time?

18 A. Yes, sir.

19 Q. And while y'all were there, did anybody tamper
20 with anything or alter it or ---

21 A. No, sir.

22 Q. --- add anything to it or do anything?

23 A. No, sir.

24 Q. Y'all simply picked up each crystal and put it
25 back in the bag?

1 A. Yes, sir.

2 Q. And then you turned it over to Purdy?

3 A. Yes, sir.

4 Q. Okay. Were you present with him when he
5 actually put the Best Kit and all together?

6 A. I was not.

7 Q. Okay. Well, let me show you State's
8 Exhibit No. 3 for identification. Did you bring
9 that to court with you today?

10 A. Yes, sir.

11 Q. And is that the exhibit -- has that been in
12 your custody and control while you've been the
13 custody -- custodian?

14 A. Yes, sir.

15 Q. And was it there when you took over that job?

16 A. It was.

17 Q. And has it been altered or tampered with at all
18 since you've been there?

19 A. No, sir.

20 MR. WAGNER: Okay. Thank you. That's all the
21 questions I have.

22 THE COURT: Cross-examination?

23 MR. OPPERMANN: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. OPPERMANN:

1 Q. I just wanted to go over a couple of things to
2 make sure I have all these things accurate earlier.
3 You said that it was spread out all over the road
4 around the bag?

5 A. Around the bag, in that general area.

6 Q. In that general area?

7 A. Yes, sir.

8 Q. Okay. And you said it wasn't just you
9 collecting the -- the material upon the road; is
10 that right? You said it was Velez, Wideman, and
11 Kinlaw; is that correct?

12 A. Lollis; Kenny Lollis.

13 Q. Kenny Lollis. Okay. Thank you. So it was
14 Kenny Lollis was down there picking those up,
15 whatever it was, and you said Wideman was helping
16 pick that stuff up too?

17 A. Yes, sir.

18 Q. Kenny Lollis was picking it up. Wideman was
19 picking it up. And you said Velez was picking it
20 up?

21 A. Yes, sir.

22 Q. And you were picking it up?

23 A. Yes, sir.

24 Q. How did -- how did you do that? Could you sort
25 of demonstrate how that was done? Were you able

1 to ---

2 A. We -- we had on gloves, and we picked it up
3 with our fingers ---

4 Q. Okay.

5 A. --- and put it back in the bag.

6 Q. All right.

7 A. There was a lot in the roadway, so, you know.

8 MR. OPPERMANN: That answers my question.

9 Thank you very much. Thank you for being here.

10 THE WITNESS: Okay.

11 THE COURT: Re-examine?

12 MR. WAGNER: Nothing further. I'd ask that he
13 be excused.

14 THE COURT: Any objection?

15 MR. OPPERMANN: No objection, Your Honor.

16 THE COURT: You may be excused. Thank you,
17 sir..

18 (Witness excused.)

19 MR. WAGNER: Your Honor, could we approach for
20 scheduling?

21 THE COURT: Certainly.

22 (Sidebar discussion.)

23 THE COURT: All right. Very good. Madam
24 forelady, ladies and gentlemen, there's something
25 the Court has to take up with the attorneys before

1 we continue with the trial, so I'm going to suggest
2 that it'll take me about a half an hour. So I'm
3 going suggest that we go to lunch at this time and
4 be back at two o'clock in the jury room and we'll
5 continue the trial at that time.

6 Again, do not undertake the discussion of the
7 case among yourselves or permit anybody to discuss
8 it with you. You will be excused until two o'clock.

9 Everyone else remain seated while the jury
10 retires from the courtroom.

11 (At 12:13 p.m., jury was excused for the lunch
12 recess.)

13 THE COURT: All right. Anything from the
14 State? Well, you want me to listen to the tape now?

15 MR. WAGNER: Your Honor, we intend to offer
16 into evidence a taped phone call from the Anderson
17 County jail made by the defendant. I'll have an
18 officer here after lunch that can authenticate the
19 call. He actually pulled it or, I mean, downloaded
20 it from the system. He'll be able to authenticate
21 it.

22 However, Mr. Oppermann, brought up yesterday
23 and then reminded me again today that he wants Your
24 Honor to hear that phone call before making a
25 decision before I put the officer up and go down

1 that road. I just thought since we got the chain
2 people coming after -- after lunch, we could go
3 ahead and knock that out before lunch.

4 THE COURT: Right now. Mr. Oppermann.

5 MR. OPPERMANN: I think that's a good idea,
6 Your Honor.

7 THE COURT: Very good. All right. Set up the
8 phone call.

9 MR. WAGNER: (Complying.)

10 MR. OPPERMANN: I would ask that he puts that
11 as loud as possible so we'll understand certain
12 items. I want to make sure that we can all hear
13 precisely what's being said.

14 THE COURT: Mr. Wagner.

15 MR. WAGNER: Your Honor, we're trying to get it
16 as loud as we can.

17 THE COURT: Okay.

18 MR. WAGNER: And just for the record, this is
19 State's Exhibit No. 4.

20 THE COURT: State's Exhibit 4?

21 MR. WAGNER: Yes, sir.

22 (Playing jail call.)

23 MR. OPPERMANN: Your Honor, may I stop that and
24 replay that briefly?

25 THE COURT: You can do that.

1 (Playing jail call.)

2 MR. OPPERMANN: Right here, Your Honor.

3 Mr. Gray appears to be saying, "They said they
4 found me with 120 grams." I want to make sure that
5 it's clear that that's what he's saying, "They said
6 they found me with 120 grams," but it's not an
7 admission. It's a description of what law
8 enforcement is saying. For our purposes here, is
9 that -- is that undisputed, Mr. Wagner, that that's
10 what he says?

11 MR. WAGNER: Yeah, I think that's what he's
12 talking about.

13 MR. OPPERMANN: Okay. I -- I just want to make
14 sure that's clear on the record that what Mr. Gray
15 says there is, "They said they found me with 120
16 grams." And that's undisputed that's what he says
17 there?

18 MR. WAGNER: Yeah, I think that was his -- I
19 think that was about the initial weight.

20 THE COURT: Do you anticipate interrupting the
21 telephone call to make that statement or ---

22 MR. OPPERMANN: I -- I -- I don't know that I
23 will or not. I just want it to be clear that we
24 agree on the record that that brief period of
25 dialog -- in that brief period of dialog what

1 Mr. Gray says is, "They said they found me with 120
2 grams."

3 The reason that's important is because "they
4 said" appears to be said through a yawn, and I want
5 to make sure that we're clear there that that's what
6 Mr. Gray said. Are we in agreement about that?

7 MR. WAGNER: Yes.

8 MR. OPPERMANN: Okay. That's ---

9 THE COURT: Very good.

10 MR. OPPERMANN: Thank you. Please continue.

11 (Playing jail call.)

12 THE COURT: All right. Anything else from the
13 State?

14 MR. WAGNER: No, Your Honor. That's the phone
15 call. If you need me to explain anything, I'll be
16 glad to do it.

17 THE COURT: Well, let's find out if the defense
18 wants any explanation ---

19 MR. OPPERMANN: Thank you, Your Honor.

20 THE COURT: --- other than the agreement that
21 it was, quote, They said they found me with
22 120 grams, close quotes.

23 MR. OPPERMANN: Your Honor, we do object to the
24 introduction of this phone call in its entirety for
25 several reasons.

1 The first reason is we believe that it violates
2 403. In other words, the prejudicial impact of the
3 jail phone call, including some profane language
4 that might be offensive to some of the jurors, would
5 be highly prejudicial and without probative value
6 given what's already been introduced on the elements
7 of the offenses my client has been charged with.

8 In addition to that, there are statements
9 contained in the phone call which are hearsay and we
10 believe inadmissible. I'll specifically address
11 them. The two statements that we have hearsay
12 concerns about are when Mr. Gray -- Mr. Gray states
13 that the officers said, "Look at this -- I won't use
14 the profane language -- POS. He's got all these
15 drugs and somebody's EPT card."

16 Now, that is not -- that is not Mr. Gray's
17 statement. That's an out-of-court statement that in
18 this case would be offered for its truth. And I
19 apologize. I believe that's in the process ---

20 THE COURT: In -- in the conversation he says,
21 "They took food stamp card and my money."

22 MR. OPPERMANN: Yes. That's correct, Your
23 Honor.

24 THE COURT: Is that what you're referring to?

25 MR. OPPERMANN: Yes, Your Honor.

1 THE COURT: That's his statement.

2 MR. OPPERMANN: And after that he's says, "They
3 said, 'Look at this, and you know, POS. He's got
4 all of these drugs and stuff.'" So the statement
5 where he paraphrases the officer would be hearsay,
6 and we believe it, therefore, would be inadmissible.

7 THE COURT: Well, it's his statement.

8 MR. OPPERMANN: It's not his statement, Your
9 Honor.

10 THE COURT: He -- he's made it. That's his
11 phone call.

12 MR. OPPERMANN: He's stating what someone else
13 said, and because of that -- the -- that contains
14 the ---

15 THE COURT: Apparently, he's giving credibility
16 to it. So if it's a statement by the party ---

17 MR. OPPERMANN: It -- it is an out-of-court
18 statement.

19 THE COURT: It was not his statement out of
20 court. His statement was while he was on the phone.

21 MR. OPPERMANN: The statement out of court
22 that's being offered is the statement that my client
23 is paraphrasing and that's all.

24 THE COURT: If it's being offered into
25 evidence, you're right. He just -- and he made it.

1 MR. OPPERMANN: My argument is that his
2 paraphrase is the hearsay. Not the statement ---

3 THE COURT: I'm not -- it's not paraphrased
4 what he said. That is what his statement is, even
5 though he was paraphrasing somebody else.

6 MR. OPPERMANN: That's correct, but he is
7 communicating a statement, Your Honor, and that, we
8 believe, is hearsay. We do have another hearsay
9 objection.

10 THE COURT: Well, good. I do not find that
11 it's hearsay. I find it -- because he made the
12 statement, even though he was quoting somebody else
13 that what he adopted it and then presented it.

14 MR. OPPERMANN: Your Honor, may I present a
15 hypothetical?

16 THE COURT: Certainly.

17 MR. OPPERMANN: If I were to testify in court
18 and answer to a question, I said -- the issue is,
19 let's say, an assault. And the facts are someone
20 objected to the way I was dressed and, therefore,
21 assaulted me. This is my hypothetical.

22 Suppose I testified and said, "And she said she
23 hated my tie and she was going to punch me in the
24 face about it," or suppose there was a recording of
25 me saying that. Now, would that be hearsay? It is

1 my statement.

2 THE COURT: It's her -- it's your statement
3 that you said.

4 MR. OPPERMANN: My -- my -- the -- the
5 communication of another statement.

6 THE COURT: Forgive me. One thing about
7 hearsay is when we're quoting somebody else for the
8 fact -- for the truth, but when you -- when I say
9 adopt that statement by saying that this is what
10 they said, then you're -- you're authenticating.

11 MR. OPPERMANN: Our position is ---

12 THE COURT: I know what your position is. I'm
13 giving you my understanding of the law ---

14 MR. OPPERMANN: Thank you, Your Honor.

15 THE COURT: --- and would be the basis of my
16 ruling.

17 MR. OPPERMANN: And we just want to clarify our
18 position for the record that the State is offering
19 that statement for the truth of the matter asserted.

20 THE COURT: The truth of the matter that he
21 asserted ---

22 MR. OPPERMANN: That's my ---

23 THE COURT: --- and he asserted that statement.

24 MR. OPPERMANN: We understand the Court's
25 ruling, but that's not our position. We just

1 want to make ---

2 THE COURT: Oh, it's not.

3 MR. OPPERMANN: --- that noted for the record.

4 THE COURT: Oh, okay.

5 MR. OPPERMANN: Thank you, Your Honor.

6 THE COURT: But, no, you're -- you're doing
7 exactly right, so don't -- please don't make any
8 apology really because you're doing your job. I'm
9 just trying to give you the basis of how I have to
10 accept it.

11 MR. OPPERMANN: Thank you, Your Honor.

12 THE COURT: Yes, sir.

13 MR. OPPERMANN: Our hearsay objection comes at
14 8:15. That's a similar ground. Mr. Gray says,
15 "They said they found me with 120 gams." We believe
16 that -- that -- that -- that is also a hearsay
17 statement because it's an out-of-court statement
18 offered for its truth.

19 THE COURT: Well, also if -- if I'm not
20 mistaken, "They said they found me with 120 grams to
21 get me with a 100 to 200 grams" ---

22 MR. OPPERMANN: Yes, sir.

23 THE COURT: And they want to discuss what that
24 means.

25 MR. OPPERMANN: That -- that would be the full

1 statement, Your Honor.

2 THE COURT: And they discuss that, what is it,
3 that it was apparently what they said.

4 MR. OPPERMANN: Yes, Your Honor.

5 THE COURT: So he adopted again what they said.

6 MR. OPPERMANN: He -- he hasn't adopted it,
7 Your Honor.

8 THE COURT: Oh, excuse me. I'm sorry. He did
9 not. They were not talking. It was not the
10 officers that were being on the telephone. It was
11 the defendant.

12 MR. OPPERMANN: And our position would be the
13 introduction of that statement embedded in
14 Mr. Gray's conversation would constitute an
15 out-of-court statement offered for its truth coming
16 before the jury and, therefore, would be hearsay.
17 And that's the basis of our objection.

18 THE COURT: Your -- in other words, your --
19 your client was not telling the truth when he said,
20 "They said I had 120 grams."

21 MR. OPPERMANN: Your Honor, I'm not commenting
22 on that one way or the other.

23 THE COURT: Well, that's what I'm saying,
24 he's -- he's offering it for the truth. The truth
25 is that that's what he heard.

1 MR. OPPERMANN: It's -- it's offered in court
2 for the truth of the matter asserted. It's entered
3 into evidence for the truth. That's our position.

4 THE COURT: But it is the party making the
5 statement that was it's being offered into court.

6 MR. OPPERMANN: Mr. Gray did make that
7 statement apparently from the phone call, yes, but
8 our hearsay objection rests upon the fact ---

9 THE COURT: I see.

10 MR. OPPERMANN: --- that it's being entered
11 into evidence for the truth of the matter asserted.

12 THE COURT: Well, do you object to the
13 telephone call?

14 MR. OPPERMANN: I -- I do object to the
15 introduction of the telephone call in its entirety.

16 THE COURT: On what grounds?

17 MR. OPPERMANN: 403 and our hearsay.

18 THE COURT: Well, I know that, but on what
19 grounds?

20 MR. OPPERMANN: The -- the 403 and hearsay
21 problems could be cured by pairing those portions of
22 the phone call that the State believes to be
23 relevant to the elements of the offenses that he's
24 been charged with. By playing it in its
25 entirety ---

1 THE COURT: They charged him with trafficking.

2 MR. OPPERMANN: That's correct, Your Honor.

3 And if the State desires to pare down the phone call
4 to an ---

5 THE COURT: Apparently, they don't desire to,
6 so what I want to know what is your grounds for
7 doing it?

8 MR. OPPERMANN: Those portions of the phone
9 call that are not hearsay -- excuse me. Those
10 portions of the phone call that are hearsay and that
11 do not go to the elements of the offense would
12 violate 403 if presented before the jury.

13 Those portions of the phone call which do go to
14 the elements of the offense and do not violate the
15 rule against hearsay, I have no reasonable objection
16 against those portions. And if the State would like
17 to identify those portions, I don't think I would
18 have a reasonable objection to those.

19 However, to play the phone call in its entirety
20 in the environment of which my client is in jail
21 speaking to someone, profane language is being used,
22 discussion of hiring an attorney, suggesting that a
23 crime has been committed, all of those things that
24 don't go to the elements of the offense would be
25 more prejudicial than probative.

1 THE COURT: But you do admit that everything
2 attributed to the defendant on that telephone call
3 was, in fact, made by the defendant?

4 MR. OPPERMANN: It does sound like him and does
5 appear to be him, Your Honor.

6 THE COURT: So you're not challenging that?

7 MR. OPPERMANN: No.

8 THE COURT: Very good. Mr. Wagner.

9 MR. WAGNER: Your Honor, we -- we seek to
10 introduce it. He -- the -- Officer Gebing from the
11 sheriff's office pulled the call. He can
12 authenticate it. They give a unique PIN number to
13 each defendant. He also identifies himself on the
14 phone call by name.

15 THE COURT: Well, they conceded I think that
16 that was your client or the defendant making the
17 telephone call.

18 MR. OPPERMANN: Yes, Your Honor.

19 MR. WAGNER: I mean, he is charged with
20 trafficking which was the biggest case. During the
21 course of that, he talks about at one point in time
22 he says he was just trying to get rid of -- excuse
23 my language -- that shit. That was his verbiage.
24 He talks about how they had him charged with 120
25 grams. Actually, the warrant said 123. That's what

1 it initially field tested for the weight.

2 So under his impression at the time, he thought
3 he had been charged with that much and he
4 actually -- actually was. It just dried out a
5 little bit before they weighed it.

6 He talked multiple times about where he started
7 it; where he ended up; that he went all over the
8 place; t-boned; hit a few times. He talked about --
9 multiple times about the failure to stop aspect of
10 his case. He admits going through the -- he said it
11 was his grandmother's backyard that he rode through.
12 He did go through a backyard.

13 Anyway, makes multiple statements throughout
14 the course of that that are incriminating and
15 against his interest. He was also warned before and
16 at the end of the thing, he was warned those taped
17 phone calls are recorded and that's common -- common
18 place in law enforcement, circles around not only
19 the State, but the country that they record them all
20 and make them into a system that they can ac -- they
21 can access them. That's what happens.

22 The portion we're introduce, I think I -- I
23 don't agree with the hearsay aspect. I think it's
24 his statements and I think that -- you know,
25 anything like that will go to the weight of the

1 jury, not necessarily the admissibility.

2 THE COURT: Anything further?

3 MR. OPPERMANN: Yes, Your Honor. Mr. Wagner
4 has given an example of a portion of the tape that
5 would be admissible based on the objections that
6 we've shared, our 403 hearsay.

7 Specifically, he refers to Mr. Gray saying, "I
8 was trying to get rid of that 'S.'" I can think of
9 no reasonable objection under the rules of evidence
10 that would preclude that particular piece being
11 introduced.

12 My objection is to the phone call in its
13 entirety. There is a very small burden on the State
14 to exercise that portion and play it. The
15 prejudicial danger of playing most of that tape,
16 most of which does not have anything to do with the
17 elements of the offense.

18 It's high. It's probative value as to that
19 statement is low and, therefore, we believe we
20 have -- we have a solid basis for our 403 objection
21 and our hearsay objections.

22 THE COURT: Well, as they say, all of the
23 statements are the statements of the defendant.
24 Perhaps we wouldn't use the same language as other
25 people use, but when we use it, it becomes our

1 language; so therefore, I have to overrule your
2 objection.

3 MR. OPPERMANN: Thank you, Your Honor. We do
4 renew our objection for the record.

5 THE COURT: Certainly. The last time I think
6 we changed the rules. It used to be we had to renew
7 our objections each time that it appeared, but I
8 understand now there's a continuing objection if I'm
9 not mistaken. Very good.

10 MR. OPPERMANN: Just trying to be careful, Your
11 Honor.

12 THE COURT: All right. Anything further from
13 the State?

14 MR. WAGNER: No, sir, Your Honor. We'll be
15 ready to start on the next witness at whatever time.

16 THE COURT: All right. Didn't we tell the jury
17 to be back at 2:00?

18 MR. WAGNER: Yes, sir.

19 THE COURT: All right. Let's -- let's try to
20 be ready -- be ready to go forward at 2:00.

21 All right. Anything from the defense?

22 MR. OPPERMANN: No.

23 THE COURT: All right. I do want your charges.
24 If you want specific charges such as mere presence
25 or possession or anything of that nature, I would

1 like to have it.

2 MR. OPPERMANN: Your Honor, I'll -- I'll try to
3 have those for you when we get back.

4 THE COURT: That'll be good. Thank you.

5 (From 12:46 to 2:13 p.m., lunch recess.)

6 THE COURT: All right. Anything from the State
7 before we bring the jury back?

8 MR. WAGNER: No, sir.

9 THE COURT: From the defense?

10 MR. OPPERMANN: No, Your Honor.

11 THE COURT: All right. Very well. Ask the
12 jury join us, please.

13 THE BAILIFF: (Complying.)

14 (At 2:14 p.m., the jury entered the courtroom.)

15 MR. OPPERMANN: Your Honor, may I approach?

16 THE COURT: Certainly.

17 (Sidebar discussion.)

18 THE COURT: Madam forelady, ladies and
19 gentlemen of the jury, something's come up that I
20 need to have one of the attorneys make a phone call
21 for to find out about a particular situation. So
22 rather than send you back to the jury room, I'm just
23 going to ask that you stay in place and we'll see if
24 we can't get this resolved.

25 (Brief recess.)

1 MR. OPPERMANN: That has been addressed.

2 THE COURT: All right. Very good.

3 All right. Madam forelady, ladies and
4 gentlemen of the jury, we will continue with the
5 trial of the case.

6 Solicitor, call your next witness.

7 MS. HOLAHAN: Your Honor, the State calls Pansy
8 Allen.

9 THE COURT: Very good. Madam Solicitor.

10 (Witness approached.)

11 THE CLERK: Just need to raise your right hand,
12 please.

13 THE WITNESS: (Complying.)

14 THE CLERK: Do you solemnly swear or affirm the
15 testimony you give the Court today in this case will
16 be the truth, the whole truth, and nothing but the
17 truth?

18 THE WITNESS: I do.

19 THE CLERK: If you would take the witness
20 stand, please, ma'am, and state your name and spell
21 your last name for the reporter, please.

22 THE WITNESS: My name is Pansy Allen,
23 A-l-l-e-n.

24 PANSY ALLEN,
25 having been produced and first duly sworn as a

1 witness on behalf of the State, then testified as
2 follows:

3 DIRECT EXAMINATION

4 BY MS. HOLAHAN:

5 Q. Ms. Allen, where are you currently employed?

6 A. Anderson County Sheriff's Office.

7 Q. And what is your position at the sheriff's
8 office?

9 A. I'm an evidence technician.

10 Q. How long have you worked as an evidence
11 technician?

12 A. About six years.

13 Q. And what do your duties as an evidence
14 technician entail?

15 A. We're responsible for evidence once it enters
16 our building until it is eventually destroyed or
17 returned to the owner or whatever happens to it.

18 Q. Okay. And did you come into any contact with
19 the evidence collected in this case against Cole
20 Gray?

21 A. Yes, I did.

22 Q. I'm going to show you what's been marked as
23 State's Exhibit No. 3. Do you recognize this?

24 A. Yes, ma'am.

25 Q. And how are you able to recognize it?

1 A. Well, we have -- each piece of evidence is
2 marked with a label with a unique barcode on it, and
3 so our label is here. It tells me what it is and
4 who turned it in and, you know, and just briefly the
5 barcode number.

6 Q. Okay. Now, on November 14th, are you the one
7 that put this envelope into the evidence room or
8 logged it into evidence?

9 A. Yes, I did.

10 Q. Okay. And where did you get this evidence
11 from?

12 A. Evidence is dropped in several different
13 locations in the building, depending on what that
14 officer brings it in. So we -- the evidence staff
15 picks it up from those locations and enters it into
16 the computer, the evidence computer, and we store it
17 from there or whatever needs to be done with it from
18 that point.

19 Q. Okay. And where do you store it? What kind of
20 facility is it stored in?

21 A. Depends on the type evidence it is. Certain
22 things have a more secure storage vault that we call
23 it, other things are -- we have a large evidence
24 room. We have some off-site locations.

25 Q. When you receive this evidence from the locker,

1 did the packaging appear to be tampered with in any
2 way?

3 A. Not that I noticed.

4 Q. And did you alter or change these items in any
5 way?

6 A. No, ma'am.

7 Q. So on the 14th, you checked the evidence and
8 did you have any other dealings with it after that?

9 A. It was stored at that point in what we -- in
10 our vault since it was drugs. I personally had no
11 more contact with it until the first of February
12 when it was brought back to our building from the
13 lab, and I restored it at that point.

14 Q. And have you had any other contact with that
15 evidence besides that?

16 A. No, ma'am.

17 MS. HOLAHAN: I have no further questions.
18 Please answer any questions Mr. Oppermann may have.

19 MR. OPPERMANN: I have no questions for this
20 witness, Your Honor. Thank you.

21 MS. HOLAHAN: Your Honor, we ask that Ms. Allen
22 be allowed to step down.

23 THE COURT: All right. And be excused?

24 MS. HOLAHAN: And be excused, yes, sir.

25 THE COURT: Any objection?

1 MR. OPPELMANN: No, Your Honor.

2 THE COURT: Without objection, you may be
3 excused. Thank you so much, ma'am.

4 (Witness excused.)

5 THE COURT: Call your -- you may call your next
6 witness.

7 MS. HOLAHAN: Your Honor, the State calls
8 Ms. Belinda Lee.

9 (Witness approached.)

10 THE CLERK: Just need for you to raise your
11 right hand.

12 THE WITNESS: (Complying.)

13 THE CLERK: Do you solemnly swear or affirm the
14 testimony you'll give the Court today in this case
15 will be the truth, the whole truth, and nothing but
16 the truth?

17 THE WITNESS: I do.

18 THE CLERK: If you would take the stand,
19 please, ma'am, and state your name and spell your
20 last name for the reporter, please.

21 THE WITNESS: Belinda Lee, L-e-e.

22 BELINDA LEE,

23 having been produced and first duly sworn as a
24 witness on behalf of the State, then testified as
25 follows:

1 DIRECT EXAMINATION

2 BY MS. HOLAHAN:

3 Q. Ms. Lee, where are you currently employed?

4 A. I'm retired.

5 Q. You're retired. And prior to retiring, where
6 did you work?

7 A. Anderson County Sheriff's Office.

8 Q. And what was your position there?

9 A. Evidence clerk.

10 Q. And how long had you worked in that capacity?

11 A. Nine years.

12 Q. And what did your duties entail?

13 A. When the evidence is turned in, we log it in
14 and store it in the appropriate places.15 Q. Did you come into contact with any of the
16 evidence collected against Mr. Cole Gray?

17 A. I did.

18 Q. I'm going to show you what's been marked as
19 State's Exhibit 3. If you would, please take a look
20 at it and let me know if you're able to recognize
21 it.

22 A. Yes, I do.

23 Q. And how do you recognize it?

24 A. It has the barcode with the case number on it,
25 the officer's name, and the contents.

1 Q. Okay. How did this exhibit or how did this
2 evidence first come into your possession?

3 A. I transferred it to the Anderson-Oconee
4 Forensic Lab to be tested.

5 Q. Was this on November 30, 2016?

6 A. Yes, it was.

7 Q. And when you picked up the package from
8 evidence, did anything appear to be tampered with?

9 A. No.

10 Q. And did you change or alter the items inside in
11 any way?

12 A. No.

13 Q. Once you dropped it off at the forensic lab,
14 did you have any other contact with it?

15 A. No.

16 MS. HOLAHAN: I have no further questions.

17 THE COURT: Cross-examination?

18 MR. OPPERMANN: No questions, Your Honor.

19 Thank you.

20 MS. HOLAHAN: May Ms. Lee be excused, Your
21 Honor?

22 THE COURT: Any objection?

23 MR. OPPERMANN: No objection.

24 THE COURT: Without objection, you may be
25 excused. Thank you, ma'am.

1 THE WITNESS: Thank you.

2 (Witness excused.)

3 MS. HOLAHAN: Your Honor, the State calls
4 Meredith Lanford.

5 (Witness approached.)

6 THE CLERK: Just need you to raise your right
7 hand.

8 THE WITNESS: (Complying.)

9 THE CLERK: Do you solemnly swear or affirm the
10 testimony you'll give the Court today in this case
11 will be the truth, the whole truth, and nothing but
12 the truth?

13 THE WITNESS: I do.

14 THE CLERK: If you would take the stand,
15 please, ma'am, and state your name and spell your
16 last name for the reporter, please.

17 THE WITNESS: Meredith Lanford, L-a-n-f-o-r-d.

18 MEREDITH LANFORD,
19 having been produced and first duly sworn as a
20 witness on behalf of the State, then testified as
21 follows:

22 DIRECT EXAMINATION

23 BY MS. HOLAHAN:

24 Q. Ms. Lanford, where are you currently employed?

25 A. I am employed with the Anderson-Ocone

1 Forensics Laboratory.

2 Q. And what is your position at the forensics lab?

3 A. I am a forensic drug chemist.

4 Q. How long have you been a chemist with the
5 forensic lab?

6 A. About 12 years.

7 Q. And what are your duties as a forensic chemist?

8 A. My primary job function is to analyze evidence
9 that's brought to our laboratory for controlled
10 substances.

11 Q. Do you have any specialized training or
12 educational background in forensic chemistry?

13 A. I graduated from Clemson University with a
14 bachelors of science degree in chemistry.

15 I then went on to complete the forensic science
16 certificate program at Greenville Technical College.

17 I was trained and certificated as a forensic
18 chemist with the Charleston City Police Lab, my
19 former employer. And I have received training in
20 the area of forensic drug chemistry from the Drug
21 Corp Administration.

22 I'm a member of the American Chemical Society
23 and the Clandestine Laboratory Investigating Chemist
24 Organization.

25 And every year I have to pass a proficiency

1 test, as well as take 4 -- 40 hours of continuing
2 education.

3 Q. How often do you analyze substances presented
4 to the lab?

5 A. Just about every day.

6 Q. And, roughly, how many times over the course of
7 your career do you think you've tested substances?

8 A. How many actual substances?

9 Q. Or testings?

10 A. Over 8,000.

11 Q. And how many times do you estimate that you've
12 testified in court as an expert in forensic
13 chemistry?

14 A. Twenty-eight.

15 MS. HOLAHAN: Your Honor, at this time I move
16 to declare Ms. Lanford an expert in forensic
17 chemistry.

18 THE COURT: Any voir dire?

19 MR. OPPERMANN: I do have one question.

20 Actually, it's not appropriate at this time, Your
21 Honor. No voir dire.

22 THE COURT: No voir dire?

23 MR. OPPERMANN: No, sir.

24 THE COURT: So you don't object to qualify ---

25 MR. OPPERMANN: No objection to her being an

1 expert.

2 THE COURT: Okay. Madam forelady, ladies and
3 gentlemen of the jury, normally witnesses can only
4 testify to what they know of their own knowledge and
5 exercise of their own senses such as see, hear,
6 touch, feel, or taste or something of that nature.

7 However, if an -- a witness has particular
8 expertise in an area, a region, background,
9 training, or experience, then they can be qualified
10 as an expert witness.

11 An expert witness can not only testify what
12 they know of their knowledge, but also what they can
13 acquire from this experience and study. And in
14 doing so, they can give their opinion based on what
15 they have learned during the exercises or their
16 experiences.

17 And so in this case, I've qualified the
18 witness, Ms. Lanford, as a forensic chemist. She'll
19 be able to give her opinion as to matters that she's
20 addressed as such a witness -- actually, what is it
21 as, a forensic chemist. You may proceed.

22 MS. HOLAHAN: Thank you, Your Honor.

23 BY MS. HOLAHAN:

24 Q. Ms. Lanford, Exhibit 3 I believe is still on
25 the witness stand. Can you take a look at that and

1 tell me if you're able to recognize it?

2 A. Yes, I do.

3 Q. And how are you able to identify it?

4 A. It has my initials on it, as well as our
5 laboratory issued labels.

6 Q. And when did you write your initials on it?

7 A. This would be November 30, 2016.

8 Q. And is that the day that you received it at the
9 lab?

10 A. Yes, it is.

11 Q. Now, when you received the evidence, did the
12 packaging appear to be tampered with at all?

13 A. No, it did not.

14 Q. And once Ms. Lee dropped off the evidence at
15 the lab, what did you do with it? Do you store it
16 somewhere at your ---

17 A. Yes. I store it in an evidence -- evidence
18 locker that I have the only key to, and it stays in
19 there until I'm ready to analyze it.

20 Q. Is the item today substantially in the same
21 condition as when you received it?

22 A. Yes.

23 Q. And for what purpose did this come into your
24 possession?

25 A. In order to test if there was any controlled

1 substances in it.

2 Q. And did you perform a chemical analysis on
3 these items?

4 A. I did.

5 Q. And what day was that?

6 A. I analyzed this on January 11, 2017.

7 Q. Can you kind of walk us through the process of
8 how you go about analyzing drugs that are submitted?

9 A. Yes. The first thing I do is to remay -- to
10 remove any packaging that is present, and I take a
11 weight of just the substance itself.

12 I then perform two screening tests to help me
13 determine what type of substance may be present.

14 And then I perform two confirmatory tests on
15 our instruments in the lab to identify what
16 controlled substance is present.

17 Q. Okay. So how many separate bags did you weigh?
18 Do you recall?

19 A. Two separate bags.

20 Q. Two separate bags. And when you go to weigh
21 the substance, you say you removed them from the
22 bags. How do you remove them from the bags?

23 A. In this case, the first bag was knotted so I
24 undid the knot and poured it out on a wipe.

25 Q. Okay. And what was the weight for that first

1 bag?

2 A. It was 3.30 grams.

3 Q. And for the second bag, did you weigh that as
4 well?

5 A. I did.

6 Q. What was the weight for that?

7 A. 109.34 grams.

8 Q. Now, when you emptied the contents of the
9 bag -- contents of the bag onto the scales, did you
10 notice any debris or foreign objects beside the
11 crystal-like substance in the bag?

12 A. No, I did not.

13 Q. And for the scales that you used, do you
14 calibrate those before each weigh?

15 A. Yes. Every day we have to perform a validation
16 check. And if the balance does not pass, it
17 actually shuts down where we cannot use it and we
18 have to call a service engineer to perform
19 maintenance.

20 Q. From your testing, were you able to form an
21 expert opinion as to what these bags contained?

22 A. Yes, I did.

23 Q. And what is your opinion?

24 A. I found that both bags contain methamphetamine.

25 Q. And what do you base that opinion on?

1 A. On the tests that I performed.

2 MS. HOLAHAN: Your Honor, at this time I ask

3 that State's Exhibit 3 be moved into evidence.

4 THE COURT: Any objection?

5 MR. OPPERMANN: No objection, Your Honor.

6 THE COURT: All right. Without objection, this
7 is State's Exhibit No. 3?

8 MS. HOLAHAN: Yes, Your Honor.

9 THE COURT: All right. Will be admitted into
10 evidence.

11 (State's Exhibit No. 3 was received into
12 evidence.)

13 BY MS. HOLAHAN:

14 Q. Ms. Lanford, did you write a report detailing
15 the test results?

16 A. I did.

17 Q. All right. Ms. Lanford, I'm going to show you
18 what's been marked as State's Exhibit 31. Can you
19 please take a look at it?

20 A. Okay.

21 Q. And what is that?

22 A. This is our lab -- our lab report that we issue
23 on every case with the results.

24 Q. And is that a true and accurate copy of your
25 report?

1 A. Yes.

2 MS. HOLAHAN: Your Honor, at this time we ask
3 that State's 31 be admitted into evidence.

4 THE COURT: Any objection?

5 MR. OPPERMANN: No objection.

6 THE COURT: Without objection, State's 31 is
7 admitted into evidence.

8 (State's Exhibit No. 31 admitted into
9 evidence.)

10 MS. HOLAHAN: One moment, please. All right.
11 No further questions of Ms. Lanford.

12 THE COURT: Cross-examination?

13 MR. OPPERMANN: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. OPPERMANN:

16 Q. Ms. Lanford, I don't have many questions. It
17 shouldn't take very long.

18 How many times did you say you testified in
19 cases of this nature?

20 A. Twenty-eight times.

21 Q. How many times have you testified for the State
22 in cases of this nature?

23 A. Twenty-six.

24 Q. And how many times have you testified for the
25 defense on cases of this nature?

1 A. Defense? None.

2 MR. OPPERMANN: Thank you, Ms. Lanford. I have
3 no further questions.

4 MS. HOLAHAN: Your Honor, just one follow-up
5 question.

6 THE COURT: Okay. Please.

7 REDIRECT EXAMINATION

8 BY MS. HOLAHAN:

9 Q. Ms. Lanford, so you were employed by the county
10 forensic lab, correct?

11 A. Correct.

12 Q. So your job is to test evidence that's provided
13 by the county?

14 A. Correct.

15 MS. HOLAHAN: No further questions, Your Honor.

16 THE COURT: Any recross?

17 MR. OPPERMANN: No, Your Honor.

18 THE COURT: May the witness be excused?

19 MR. OPPERMANN: Yes, Your Honor.

20 THE COURT: Very good. Thank you, ma'am.

21 (Witness excused.)

22 MR. OPPERMANN: Your Honor, at this time I
23 would -- with the witness, I would ask for a
24 five-minute research -- recess for the purpose of a
25 bathroom break.

1 THE COURT: Certainly.

2 MR. OPPERMANN: Thank you, Your Honor.

3 THE COURT: Madam forelady, ladies and
4 gentlemen of the jury, I will ask you to retire to
5 the jury room just for a few minutes, and then we'll
6 come back. Again, do not undertake discussing the
7 case among yourselves in any way.

8 (From 2:36 to 2:43 p.m., recess was taken.)

9 THE COURT: Any objection to asking additional
10 questions?

11 MS. HOLAHAN: No, Your Honor.

12 THE COURT: Ms. Lanford, if you would, please.
13 The defense does have some questions for you, so if
14 you would take the stand.

15 THE WITNESS: (Complying.)

16 THE COURT: Do you understand that you're still
17 under oath?

18 THE WITNESS: Yes.

19 THE COURT: Okay. Thank you, ma'am.

20 All right. Anything from the State before we
21 bring the jury back?

22 MR. WAGNER: No, Your Honor.

23 THE COURT: Anything from the defense?

24 MR. OPPERMANN: No, Your Honor.

25 THE COURT: Let the record reflect that the

1 last witness, Ms. Meredith Lanford of the Anderson
2 County Sheriff's Office and Oconee-Anderson Lab, has
3 retaken the stand and that -- does the State have
4 any questions at this time before Mr. Oppermann does
5 his cross-examination?

6 MR. WAGNER: No, sir.

7 MS. HOLAHAN: No, Your Honor.

8 THE COURT: All right. Very good. All right.
9 Ask the jury to join us, please.

10 THE BAILIFF: (Complying.)

11 (At 2:44 p.m., jury entered the courtroom.)

12 THE COURT: All right. Madam forelady, ladies
13 and gentlemen of the jury, we'll continue. I think
14 we're going to -- the defense has its
15 cross-examination.

16 RECROSS-EXAMINATION

17 BY MR. OPPERMAN:

18 Q. I do have just a few questions for you,
19 Ms. Lanford, and I appreciate your patience.

20 It's my understanding you've only performed
21 what's called a mass spectrometer analysis; is that
22 correct?

23 A. Yes. That's a confirmatory test.

24 Q. Okay. And in doing so, did you compare the
25 unknown sample here to a known sample?

1 A. Yes. We had a standard that we used.

2 Q. Okay. If you performed a test like this, would
3 you be able to determine in the test -- assuming
4 that it correctly identified the substance as
5 methamphetamine, would the test be able to tell what
6 was methamphetamine that was originally in the bag
7 versus methamphetamine that might otherwise
8 incidentally have been in the road?

9 A. It's going to tell me whatever was in this Best
10 Kit.

11 Q. So whatever had been collected together and put
12 into that Best Kit, it's going to tell you what that
13 is?

14 A. Correct.

15 MR. OPPERMANN: Okay. I think that's all I
16 have for you, Ms. Lanford. Thank you so much for
17 your time.

18 THE WITNESS: Thank you.

19 THE COURT: Any further questions? I think
20 this was...

21 MS. HOLAHAN: We have no questions for
22 Ms. Lanford.

23 THE COURT: All right.

24 MR. OPPERMANN: No further questions, Your
25 Honor.

1 THE COURT: May the witness be excused?

2 MR. OPPERMANN: Yes, Your Honor.

3 THE COURT: All right. You may be excused.

4 Thank you.

5 (Witness excused.)

6 THE COURT: All right. Sir, call your next
7 witness.

8 MR. WAGNER: Your Honor, the State calls Rob
9 Gebing.

10 (Witness approached.)

11 THE CLERK: Can I ask you to raise your right
12 hand?

13 THE WITNESS: (Complying.)

14 THE CLERK: Do you solemnly swear or affirm the
15 testimony you'll give to the Court today in this
16 case will be the truth, the whole truth, and nothing
17 but the truth?

18 THE WITNESS: I do.

19 THE CLERK: If you'll take the stand, please,
20 and state your name and spell your last name for the
21 reporter, please.

22 THE WITNESS: My name is Robert Gebing,
23 G-e-b-i-n-g.

24 LIEUTENANT ROBERT GEBING,
25 having been produced and first duly sworn as a

1 witness on behalf of the State, then testified as
2 follows:

3 DIRECT EXAMINATION

4 BY MR. WAGNER:

5 Q. Sir, could you give us your -- your rank and
6 where you work?

7 A. I'm a lieutenant with the Anderson County
8 Sheriff's Office in criminal investigations
9 division.

10 Q. What are your duties there?

11 A. I supervise the detective division currently,
12 oversee their work, a lot of administrative
13 functions, and just oversee the day-to-day
14 operations in the division.

15 Q. How long have you been an investigator with the
16 sheriff's office?

17 A. As an investigator, since 2005.

18 Q. Prior to that, were you in law enforcement in
19 other capacities?

20 A. From 2001 until I moved to investigations, I
21 was with the uniform patrol division. And then
22 prior to that from 1996 to 2001, I was in the Army
23 military police.

24 Q. Okay. As part of your job duties right now, do
25 you have access to the -- access to the phone calls

1 that are tape recorded at the jail?

2 A. I do.

3 Q. Okay. And does the jail tape record every
4 phone call made from there?

5 A. Everything made out line, yes, sir.

6 Q. And does it go into a database that you have
7 authority to access and that you access on a regular
8 basis?

9 A. It's -- it's through a system like a vendor,
10 and then we have usage through it. We have like
11 licenses through it and get a username and password,
12 and then we can access any of the phone calls that
13 an inmate makes from the jail. Yes, sir.

14 Q. Did you access a phone call made by this
15 defendant regarding this case?

16 A. I did. Yes, sir.

17 MR. OPPERMANN: Objection, Your Honor. At this
18 time I wish to renew our objection under Rule 403
19 and also as to hearsay.

20 THE COURT: More general, what -- what's your
21 objection?

22 MR. OPPERMANN: The State appears to be
23 attempting to introduce a recorded phone call. We
24 believe that phone call upon review contains hearsay
25 information that would violate Rule 403. Just state

1 that objection.

2 THE COURT: Okay. Overruled because I've
3 listened to the phone call and ruled on it before.

4 By the way, I think it's Rule 43(c)(1),
5 protects the defendant from any kind of objections
6 made that it would be continued.

7 MR. OPPERMANN: Thank you, Your Honor.

8 THE COURT: Reservation of rights unnecessary.
9 Rule 43(c)(1).

10 MR. OPPERMANN: Thank you, Your Honor.

11 THE COURT: Very good. Thank you. You may
12 proceed.

13 BY MR. WAGNER:

14 Q. When the -- when the defendant at the jail
15 makes a phone call from the jail, are they told they
16 were tape recording? Is there a warning there that
17 all calls are being recorded?

18 A. Yes. When they try to make a phone call, they
19 have to enter a personal number and a PIN number,
20 and it goes through an automated recording that
21 tells them these calls are being monitored. And
22 that's on every call.

23 Q. So it's not like you're being sneaky and trying
24 to eavesdrop on somebody? They're told in advance
25 when you make a call, it's going to be recorded?

1 A. Every -- yes. Every call that a recording is
2 part of it.

3 Q. Okay. The call that you pulled on the
4 defendant, was it made two days after this incident?

5 A. It was made November 14th. Yes, sir.

6 Q. On the 14th on November of 2016?

7 A. Yes, sir.

8 Q. The first call being made from the jail?

9 A. Not the first one from the jail. The first one
10 during that particular arrest, sir.

11 Q. Okay. All right. Would you access the phone
12 call -- let me show you what's been marked State's
13 Exhibit No. 4.

14 MR. OPPERMANN: Objection, Your Honor. May we
15 approach?

16 THE COURT: Yes. Just a moment.

17 (Sidebar discussion.)

18 THE COURT: Very good. All right. Madam
19 forelady, ladies and gentlemen of the jury, I do
20 need to take some matters up with the attorneys,
21 please. If you would retire to the jury room.
22 Again, do not undertake the discussion of the case
23 among yourselves.

24 (At 2:52 p.m., jury left the courtroom.)

25 THE COURT: All right. If you would, please,

1 Mr. Oppermann?

2 MR. OPPERMANN: Your Honor, at this time the
3 defense moves for a mistrial, and we're going to
4 state the grounds for that.

5 In response to the questions the Solicitor just
6 asked the lieutenant, responded, "Not the first
7 time, but the first time related to this incident."

8 That answer introduced character evidence not
9 permitted by the South Carolina Rules of Evidence
10 into the record before the jury. And we believe
11 that's grounds for a mistrial, and we request that
12 at this time. It's a bell that can't be unring.

13 THE COURT: Let's see. Do you object to
14 State's Exhibit 3; the -- or excuse me -- not
15 State's 3, Exhibit 4, the telephone call?

16 MR. OPPERMANN: I did make that objection, Your
17 Honor, yes.

18 THE COURT: And do you object to it because it
19 was hearsay?

20 MR. OPPERMANN: I -- my objection stated that
21 there were instances of hearsay in the telephone
22 call.

23 THE COURT: All right. That was your objection
24 to it?

25 MR. OPPERMANN: That's correct.

1 THE COURT: And the Court ruled that it was
2 admissible because the defendant had adopted the
3 statements that you refer to as hearsay because he
4 was making them. He was repeating them.

5 MR. OPPERMANN: That -- that -- that was the
6 Court's ruling. Yes, Your Honor.

7 THE COURT: Well, in as much as the Court has
8 ruled that the telephone call would come in, I think
9 in that telephone call he refers to other incidents
10 of his own incarceration, so -- oh, excuse me. Go
11 ahead.

12 MR. OPPERMANN: Yes, Your Honor. And that is
13 part of something that's going to come into the
14 record because of the Court's ruling, but the Court
15 did not make that ruling with respect to testimony
16 by the lieutenant. The lieutenant has made that
17 reference. It's before the jury. It can't be
18 unrun.

19 THE COURT: Well, the lieutenant's ---

20 MR. OPPERMANN: It's not an element of any of
21 the offenses.

22 THE COURT: Very good. Thank you very much.
23 The lieutenant's -- I think I mentioned that you at
24 the sidebar -- response was not -- his statement was
25 not in response to a question.

1 MR. OPPERMANN: That much more reason ---

2 THE COURT: So I find that unless you want to
3 emphasize it, that it would harm us. So I deny ---

4 MR. OPPERMANN: Thank you, Your Honor.

5 THE COURT: --- excuse me. I deny your
6 mistrial.

7 MR. OPPERMANN: Thank you, Your Honor. I guess
8 my objection is continuing under 43(c)(1). Thank
9 you, Your Honor.

10 THE COURT: And also 46.

11 MR. OPPERMANN: Yes, Your Honor.

12 THE COURT: All right. Anything from the State
13 before we bring the jury back in?

14 MR. WAGNER: No, sir.

15 THE COURT: Anything from the defense?

16 MR. OPPERMANN: No, Your Honor.

17 THE COURT: Very good. Ask the jury to join
18 us, please.

19 THE BAILIFF: (Complying.)

20 (At 2:56, the jury entered the courtroom.)

21 THE COURT: Now, let the record reflect the
22 jury and alternates are in the jury box.

23 All right. You may proceed, Mr. Wagner.

24 BY MR. WAGNER:

25 Q. Lieutenant Gebing, do you recognize the exhibit

1 I handed you, State's Exhibit No. 4 for
2 identification?

3 A. I do.

4 Q. And what is that?

5 A. This is a CD. This is a copy of the phone call
6 made November 14, 2016. I know what this is because
7 I marked it with the case number, the defendant's
8 name, that it was a paid telephone call, and it's in
9 my writing with my initials on it as well.

10 Q. Did you listen to that prior to court?

11 A. I have.

12 Q. And has it been altered or tampered with in any
13 manner?

14 A. It has not.

15 Q. It's still in the same condition as when you
16 downloaded it?

17 A. Yes.

18 MR. WAGNER: Your Honor, at this time we would
19 move State's Exhibit No. 4 into evidence.

20 THE COURT: All right. Subject to prior
21 rulings by the Court, the exhibit will be admitted,
22 and that is exhibit -- State's Exhibit No. 4.

23 MR. WAGNER: Yes, sir.

24 (State's Exhibit No. 4 was admitted in
25 evidence.)

1 MR. WAGNER: Your Honor, we would ask to
2 publish it.

3 THE COURT: Very well.
4 (Playing the CD.)

5 MR. WAGNER: Lieutenant Gebing, that's all the
6 questions I have. Thank you for being here.

7 THE WITNESS: Yes, sir.

8 THE COURT: Cross-examination?

9 CROSS-EXAMINATION

10 BY MR. OPPERMANN:

11 Q. Yes. If you would please, do you want to go
12 back a little bit through that call. Just bring
13 that back up.

14 Lieutenant, what was the date of this call
15 again?

16 A. This one in particular was November 14, 2016.

17 Q. November 14th, so that's two days after the
18 arrest?

19 A. Yes, sir.

20 MR. OPPERMANN: Okay. Can we take that call
21 back to 8 minutes and 10 seconds and start it from
22 there and stop at 8:25?

23 (Playing CD.)

24 MR. OPPERMANN: You can stop there.

25 MR. WAGNER: (Complying.)

1 BY MR. OPPERMANN:

2 Q. Mr. Gray says there, "They said I had 120
3 grams"; is that right?

4 A. That's what it appears that he said, yes, sir.

5 Q. And they charged me with trafficking 100 to
6 200?

7 A. That's what it sounds like, yes, sir.

8 Q. Would he have access to his warrant at this
9 point?

10 A. I believe so. I'm not sure at what point he
11 was served with that, but the procedure ---

12 Q. But typically within two days ---

13 A. Yeah.

14 Q. --- he would've seen that? And to you
15 knowledge, what did that warrant say? What -- what
16 amount did the State initially allege?

17 A. I've not -- I've not seen the warrant. As I
18 recall from reading the incident report, I thought
19 it was 123 grams, but I may be -- I may have
20 misspoken.

21 Q. Thank you. So he's probably relying on making
22 that statement "they said" on a warrant that he
23 probably would've seen at that point? Probably
24 based on your experience.

25 A. I mean, is that a question?

1 Q. Yes.

2 A. I'm not -- rephrase that.

3 Q. I appreciate that. He would've had access to
4 his warrant, most likely, within ten days of his
5 arrest, right?

6 A. More than likely he probably went before the
7 judge ---

8 Q. So he would've known at that point what he had
9 been charged with?

10 A. Yes, sir.

11 Q. And what the warrant alleged?

12 A. Yes, sir.

13 MR. OPPERMANN: Thank you very much. That's
14 all the questions I have. Thank you, Lieutenant.

15 THE WITNESS: Certainly.

16 MR. OPPERMANN: And thank you for your service.

17 MR. WAGNER: Nothing further, Your Honor. We'd
18 ask that Lieutenant Gebing be excused.

19 THE COURT: Any objection?

20 MR. OPPERMANN: No objection, Your Honor.

21 THE COURT: Without objection, you may be
22 excused. Thank you, sir.

23 THE WITNESS: Thank you, Your Honor.

24 (Witness excused.)

25 MR. WAGNER: Your Honor, do you have that phone

1 call, State's Exhibit No. 4, now is in evidence?
2 Just trying to make sure we've got all our exhibits
3 here.

4 THE COURT: You're moving for its admission?

5 MR. WAGNER: Yes, sir. If I didn't already. I
6 think I did, but if I didn't, I would now.

7 THE COURT: Well, you're moving for its
8 admission now?

9 MR. WAGNER: Yes, sir.

10 THE COURT: Any objection?

11 MR. OPPERMANN: Our objection is continuing.

12 THE COURT: Without objection, State's Exhibit
13 4 is admitted.

14 (State's Exhibit No. 4 is admitted into
15 evidence.)

16 MR. OPPERMANN: Your Honor, we're not going to
17 put the stop sticks in, but everything else to my
18 knowledge has been admitted into evidence, and
19 that's the case. The State rests.

20 THE COURT: All right. Madam forelady, ladies
21 and gentlemen of the jury, the State has rested, but
22 that means this is only part of the trial; and so,
23 therefore, I'm going to ask you to retire to the
24 jury room so I can take up some matters with the
25 attorneys.

1 But do not undertake discussion of the case
2 among yourselves in anyway, and I will ask you to
3 come back in just a few minutes.

4 (At 3:18 p.m., the jury left the courtroom.)

5 THE COURT: All right. Anything further from
6 the State?

7 MR. WAGNER: No, sir.

8 THE COURT: All right. Any motions?

9 MR. OPPERMANN: Yes, Your Honor. The defense
10 does have some motions.

11 As to the charge of trafficking methamphetamine
12 between 100 and 200 grams, at this time the defense
13 moves for a directed verdict, particularly on the
14 element of weight. We argue the State has not
15 introduced sufficient evidence that would allow the
16 jury to conclude that there were over 100 grams of
17 methamphetamine.

18 We've heard testimony and we've seen video
19 evidence that the object the State claims was
20 methamphetamine burst in the street, burst on Dixon
21 Road, and had to be collected by hand by several
22 deputies and that object -- those objects that were
23 collected from a filthy road were placed back into a
24 bag that that was what was weighed.

25 That method, given the weight the State alleges

1 in the chemist report is about 109 grams, is
2 insufficient to allow the jury to conclude that the
3 weight was over 100 grams, 100 grams or more. It
4 might be sufficient for a lesser weight, but it is
5 not sufficient given what we've heard, given the
6 description, given the evidence that we've seen, the
7 condition of that evidence, it's not sufficient for
8 a reasonable jury to find that element. That's our
9 motion with respect to trafficking, Your Honor.

10 We also have a motion for a directed verdict on
11 the charge of receiving stolen goods. The State has
12 introduced evidence that the vehicle Mr. Gray was
13 travelling in was stolen. Their witness testified
14 that the vehicle was stolen, he believed, some time
15 in late October.

16 Mr. Gray, according to the State's evidence,
17 was found in the vehicle on November 12th. That's
18 about the passage of at least two weeks. There has
19 been no evidence introduced by the State as to
20 whether or not Mr. Gray had any knowledge that that
21 vehicle was stolen. There is no evidence of that
22 nature that has been introduced. And so at this
23 time we also ask the Court to give a directed
24 verdict on the charge of receiving stolen goods.

25 Additionally, for purposes of the record, we

1 renew our evidentiary objections we made during the
2 course of the State's case. We'd also renew our
3 objections that we made at pretrial as to our motion
4 for a continuance and as to our motion for the offer
5 that was previously made.

6 THE COURT: Mr. Wagner?

7 MR. WAGNER: Your Honor, as far as the
8 possession of the stolen vehicle, I think the
9 evidence the State's put forward, the truck was
10 stolen. It was a stolen vehicle. It was valued at
11 more than 2,000 but less than 10,000, so it does fit
12 that statute.

13 While it's awful hard to get in somebody's head
14 and prove that he knew something was stolen, I think
15 we can look at it from the aspect that he was
16 driving it and had two different vehicle tags, one
17 that didn't match it, another one in the bed of the
18 truck. I think that shows that he was trying to
19 hide the actual identity of the truck.

20 He also took on basically a 30-minute super
21 long, super dangerous chase trying to get away with
22 that stolen vehicle. I think the jury -- I'm sure
23 there's enough evidence there to go to the jury as
24 far as whether or not he actually knew that truck
25 was stolen. I think the evidence would suggest that

1 he did.

2 The same -- same facts there basically apply
3 to, you know, failure to stop for a blue light. I
4 think that's pretty strong.

5 The amount of the weight as far as the
6 methamphetamine, the only -- the only testimony in
7 the record was from the State's expert witness
8 Meredith Lanford who upon testing the drugs, found
9 that they were methamphetamine and weighed them.
10 And just the part that came from the road was 109 --
11 109 grams plus, and the three point something
12 from -- from the other stuff that was in his seat,
13 and she did testify that it was free of debris and
14 that that was the weight of the drugs as she
15 determined them, and I think that's ample.

16 Looking at the light most favorable to the
17 State, that's enough to go to the jury for sure on
18 the trafficking methamphetamine between 100 grams
19 and 200 grams.

20 THE COURT: All right. Mr. Oppermann.

21 MR. OPPERMANN: Your Honor, we would note we
22 have not moved for a directed verdict on the charge
23 of failure to stop for a blue light. We would like
24 the matter stipulated on the record that Mr. Gray
25 has engaged in conduct that meets all the elements

1 of failure to stop for a blue light. If I can note
2 that since it's been addressed.

3 But regarding the intent ---

4 THE COURT: You move for a directed verdict?

5 MR. OPPERMANN: I did not, Your Honor. I want
6 to make that clear on that particular charge.

7 THE COURT: So that charge is still out there?

8 MR. OPPERMANN: Yes, Your Honor. With respect
9 to receiving stolen goods -- with respect to
10 receiving stolen goods, we would restate that
11 there's a period of at least two weeks between the
12 time the vehicle was reported stolen and that
13 Mr. Gray was in possession of it.

14 There's all sort of things that you could
15 infer, but those are covered by the aspects in the
16 case. There -- there's simply no evidence that
17 suggests that Mr. Gray -- we're going to go with the
18 statutory -- that he knew that it was stolen or had
19 reason to believe that it was stolen. No evidence
20 placed on the record at all.

21 We said -- what we're going to say to the
22 weight issue, our contention is that the condition
23 of the evidence was such that it could not be
24 realistically reasonable and properly measured. The
25 condition -- the State alleges that this object was

1 in possession of my client.

2 And if it was, if it indeed exited the vehicle,
3 the condition that it was in when it exited the
4 vehicle cannot be reassembled or determined after it
5 had been shattered upon the ground. That's our
6 position and that's why we move for a directed
7 verdict.

8 THE COURT: Well, of course, there is some
9 testimony as far as weight and identity of the
10 controlled substance. One bag -- the first bag was
11 3.30 grams, and the second bag was 109.34 grams.

12 As far as any contamination, I think we would
13 seek -- I think we talked about farm vehicles and
14 the like. I don't know if there's any testimony --
15 there's been -- there had been farm vehicles through
16 there, or if there was any evidence of farm vehicles
17 or other residential traffic on that road that
18 would've contaminated it. I'm not sure the witness
19 was even asked that, other than you suggested that
20 could have been, but there was not any testimony
21 that there was contamination.

22 There was testimony as to the carefulness of
23 the retrieving officers putting on gloves and
24 picking up each little bit that had spilled back in
25 the bag as far as the trafficking.

1 Now, as far as receiving stolen goods, you
2 obviously understand of course that you can't be
3 guilty of larceny as well as receiving the goods.

4 MR. OPPERMANN: Yes, Your Honor.

5 THE COURT: They're mutually exclusive.

6 MR. OPPERMANN: Yes, Your Honor.

7 THE COURT: So in other words, it doesn't
8 matter when it was stolen. It's the fact of whether
9 he had possession of an item that was stolen.

10 MR. OPPERMANN: Yes, sir.

11 THE COURT: Go ahead. You can finish.

12 MR. OPPERMANN: I didn't mean to interrupt,
13 Your Honor.

14 THE COURT: No, that's all right.

15 MR. OPPERMANN: Our position is that the
16 statute requires some knowledge and that's an
17 element of the offense. There has to be evidence
18 that goes to that element. What the statute says is
19 there has to be knowledge that the goods are stolen
20 or the person have had reason to believe the goods
21 were stolen when they came into the person's
22 possession, and there has been no evidence
23 introduced on that element of the statute.

24 THE COURT: Well, of course, you say no
25 evidence, whereas, the evidence statute is a factual

1 thing, but, whereas, the vehicle had one license tag
2 on it and had another one in the trunk -- or not the
3 trunk -- excuse me -- in the bed open to view.

4 Now, unless you're aware of some provision that
5 provides that a dealer can lawfully have two license
6 tags, then I would suggest it's evidence that
7 perhaps if he didn't know that you couldn't have two
8 license tags, that he knew that there were two
9 license tags that perhaps that both of them weren't
10 applicable. And if they both weren't applicable,
11 then perhaps it was an unlawful possession.

12 All I know is that's evidence. And it's up to
13 good lawyers, that both of you are, to persuade a
14 jury that either that's unbelievably credible or
15 that is sufficient evidence to find that there was
16 knowledge, something was wrong with the truck when
17 he got it or passed -- passed the -- passed the bed
18 and would've seen something in open view that would
19 suggest that maybe it was being operated unlawfully
20 and it's not in the lawful possession of whoever put
21 him in possession of it.

22 Now, of course we all know that pursuant to the
23 Rules of Criminal Procedure that I am not to weigh
24 the evidence, only determine if there's sufficient
25 evidence to go forward.

1 So I do find there's sufficient evidence to go
2 forward on the trafficking. I find that it is
3 sufficient to go forward on the trafficking between
4 100 to 200. And if some reason that based on
5 testimony that that amount can be reduced below 100,
6 then I find perhaps the finding that they were
7 trafficking 28, to 100.

8 Now, then of course, you have a separate bag,
9 was it 3.4 -- 3.3, that could be found in his
10 possession of 28 or less -- or even less than that.
11 In order words, a simple possession.

12 And as far as the possession of stolen goods,
13 there's been no mention in here that the vehicle was
14 not stolen. It's been established that it was
15 stolen and that he was in possession of it. And
16 having been in possession of it and like you pointed
17 out, that was two weeks after it was stolen then,
18 obviously, he didn't receive stolen goods and wasn't
19 involved in the actual appropriation.

20 Then as you said, stipulated to a failure to
21 stop for a blue light. So, although, I can't direct
22 a verdict against the defendant, I grant a directed
23 verdict to the State, if the State chooses to,
24 proceed on that charge, I think there's sufficient
25 evidence for all three of the indictments, so

1 motions are denied.

2 MR. OPPERMANN: Thank you, Your Honor.

3 THE COURT: Yes, sir. All right. How many
4 witnesses does the defense have?

5 MR. OPPERMANN: Your Honor, the defense does
6 not intend to present the case. We're going to
7 argue whether or not the State met its burden.

8 THE COURT: All right. So he's not going to
9 testify?

10 MR. OPPERMANN: No, Your Honor.

11 THE COURT: Have you counseled with him?

12 MR. OPPERMANN: Yes, Your Honor. Mr. Gray and
13 I agree it would not be in his best interest to
14 testify.

15 THE COURT: All right. Mr. Gray, if you would,
16 please stand and raise your right hand.

17 THE DEFENDANT: (Complying.)

18 THE COURT: Do you solemnly swear or affirm the
19 testimony you're about to give is the truth, the
20 whole truth, and nothing but the truth?

21 THE DEFENDANT: I do, Your Honor.

22 THE COURT: Very good. Thank you, sir.

23 At this time I'm going to explain to you
24 certain of your rights, and you are Cole Brooks
25 Gray?

1 THE DEFENDANT: I am, Your Honor.

2 THE COURT: If you do not understand anything I
3 say, please let me know. If you want me to explain
4 anything to you in more detail, please let me know.
5 Do you understand?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: We have now reached that stage of
8 the trial where you may present your defense. You
9 have the right to -- you have the right to claim the
10 protections given to you by the Fifth Amendment of
11 the Constitution of the United States. This
12 amendment in part provides, quote, No person shall
13 be compelled in any criminal case to be a witness
14 against himself, closed quote.

15 This means you cannot be required to testify in
16 this case. You have the right to testify on your
17 own behalf; however, no one can make you testify.
18 This is a personal right and no one can waive this
19 right except you. If you decide to testify, you
20 will be subject to the same rules that govern other
21 witnesses. You may be -- and you may be examined
22 and cross-examined on any relevant issue of the
23 case.

24 In addition, if you have any convictions
25 involving dishonesty or false statements or crimes

1 punishable by imprisonment for more than one year
2 and this Court -- this Court determines that the
3 probative value of admitting this evidence is
4 outweighs the prejudicial effect to you, the
5 solicitor will be able to introduce your record to
6 attack your credibility.

7 And if you decide to testify, this decision on
8 your part must be freely, voluntarily, and
9 intelligently made with the knowledge and
10 protections given to you by the Fifth Amendment and
11 the consequences of your decision.

12 Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: If you decide not to testify, I'll
15 instruct the jurors that they cannot give the fact
16 that you did not testify any consideration --
17 consideration whatsoever and that there is to be
18 absolutely no prejudice to you because you did not
19 testify. You may talk with your attorney, your
20 family, friends, or anyone else, but the final
21 decision will be left entirely to up to you.

22 Now, do you understand what I've explained to
23 you?

24 THE DEFENDANT: I do, Your Honor.

25 THE COURT: Do you have any questions about

1 what I've explained to you?

2 THE DEFENDANT: No, Your Honor, I do not.

3 THE COURT: Have you discussed with your lawyer
4 whether you should testify or not?

5 THE DEFENDANT: I have, Your Honor.

6 THE COURT: Do you wish to talk to your lawyer
7 anymore at this time?

8 THE DEFENDANT: I do not.

9 THE COURT: Do you wish to testify in this
10 case?

11 THE DEFENDANT: I do not.

12 THE COURT: I find that the defendant
13 knowingly, intelligently, freely, and voluntarily
14 makes the decision, his own decision, not to testify
15 in this case. You may be seated. Thank you, sir.

16 THE DEFENDANT: Thank you, Your Honor.

17 THE COURT: All right. Tell you what, why
18 don't we take a break? I need to go over the
19 charge, so stand at ease. You can stay in place or
20 otherwise move around.

21 (From 3:35 to 4:00 p.m., recess was taken.)

22 THE COURT: We're back on the record.

23 MR. OPPERMANN: Your Honor, it's getting awful
24 close to four o'clock right now. The charge and
25 closing arguments, it'll probably be about five

1 o'clock, if not later when we conclude.

2 I wonder if it might not better part to recess
3 for the remainder of the charge, charge later
4 tomorrow so the jury could deliberate after that.

5 THE COURT: Well, that would be better for the
6 Court because I'll be honest with you, I only got
7 the charges -- the requested charges after lunch.
8 And we could use the time between now and five
9 o'clock or after four o'clock to go have the charge
10 conference to get those things settled so we could
11 go to the jury immediately in the morning.

12 What does the State say?

13 MR. WAGNER: Your Honor, we're ready to
14 proceed. I'll leave that in your discretion.

15 THE COURT: All right. Well, do you have any
16 objection to that?

17 MR. WAGNER: No, sir.

18 THE COURT: And, obviously, that's your motion?

19 MR. OPPERMANN: Our motion is to wait.

20 THE COURT: All right. Why don't we do that?
21 We'll just let the jury go and then come here at ten
22 o'clock in the morning, but we'll get all of our
23 things out of the way this afternoon as far as the
24 charge conference and any motions or anything else
25 that needs to be considered.

1 MR. WAGNER: Yes, sir.

2 THE COURT: All right. I tell you what though,
3 why don't you -- why don't the defense rest, and
4 then I'll give them my charge, the limited charge,
5 about the defendant's right to not testify.

6 MR. OPPERMANN: That's fine with us, Your
7 Honor. Thank you.

8 THE COURT: And then that -- then that means
9 that we'll go to the jury in the morning and that's
10 what they'll expect. They'll understand that's what
11 we're trying to do is use the time more efficiently.

12 MR. OPPERMANN: Thank you, Your Honor.

13 THE COURT: All right. Very good. Let's see.
14 All right. Nothing else from the State?

15 MR. WAGNER: No, sir.

16 THE COURT: From defense?

17 MR. OPPERMANN: No, Your Honor.

18 THE COURT: All right. Ask the jury to come
19 in, please.

20 THE BAILIFF: (Complying.)

21 (At 4:02 p.m. the jury entered the courtroom.)

22 THE COURT: All right. Let the record reflect
23 the that jury and alternates are in the jury box.

24 Madam forelady, ladies and gentlemen of the
25 jury, we will now go forward with the defense case.

1 MR. OPPERMANN: Thank you, Your Honor.

2 Ladies and gentlemen of the jury, the defense
3 rests.

4 THE COURT: Very well. Thank you.

5 Madam forelady, ladies and gentlemen of the
6 jury, the law does not compel a defendant in a
7 criminal trial to take the witness stand and
8 testify, and no presumption of guilt may be raised
9 and no inference of any kind may be drawn from the
10 defendant's decision not to testify.

11 The law never imposes upon a defendant in a
12 criminal case the burden of being or calling any
13 witnesses or producing any evidence or testifying.
14 Therefore, the decision of the defendant not to take
15 the stand and call a witness to testify in his
16 behalf cannot be taken, held, or discussed or even
17 considered against the defendant in any manner.
18 He's exercising his right under the State's
19 constitution.

20 That completes the testimony and other evidence
21 in this case. However, the most important part of
22 the case is now going to be given to you, and that
23 is that we'll have the argument by counsel for the
24 defense and the State. The State will open, the
25 defense will then argue, and the State will close.

1 Then I will give you the charge on the law. And the
2 case at that time will be given to you for your
3 deliberation.

4 As I mentioned yesterday, I do not like to go
5 beyond five o'clock if I can afford it; so
6 therefore, I'm going to suggest that we retire for
7 the evening -- at least you retire for the evening.

8 I've got plenty of work to do with the
9 attorneys because what I want to do is get out of
10 the way all the matters that deal with the law and
11 the procedure and the presentation to you as the
12 jury this afternoon, so that at ten o'clock in the
13 morning, we can start the final stage which is the
14 argument and then the charge, and you will have a
15 fresh start to do that.

16 So with that, I'm going to ask you to retire
17 for the evening and come back at ten o'clock in the
18 morning and we'll complete the trial of the case at
19 that time.

20 Again, you have not heard the whole case at all
21 because the argument by counsel, as well as the
22 charge on the law that will be necessary in order
23 for you to make an informed decision in this case.

24 And with that, I excuse you for the evening,
25 and everyone else will remain seated while the jury

1 retires.

2 (At 4:06 p.m., jury excused for the day.)

3 THE COURT: All right. I think I got the
4 charge put together. Let me just go through them as
5 I have them.

6 General charge, of course, on the law by the
7 judge and the jury.

8 Also, the credibility of charges.

9 And I will specifically instruct that they are
10 not in any way to consider the exercise by the
11 defendant of his right -- his Constitutional right
12 to remain silent.

13 Expert witness.

14 I am to instruct on the law.

15 Also, the presumption of innocence and
16 reasonable doubt. Now, reasonable doubt, I use the
17 *State v. Manning* which is what a reasonable doubt or
18 reasonable doubt is a kind of doubt that would
19 hesitate -- would cause a reasonable person to
20 hesitate to act.

21 Now, in the event that they should ask for a
22 more definite definition of reasonable doubt, then I
23 would give them the list of Nebraska charge, which
24 has also been adopted by a state here, all right,
25 and *State v. Mahoney*, which is, of course, a little

1 more expansive, but I find that any time we try to
2 be too expansive in reasonable doubt, we create more
3 questions than answers.

4 But then -- and I do -- if they come back --
5 and by the way, that's another thing. I do not
6 change any -- I send my charges back to the jury. I
7 tell them if they have a question to write the
8 question out so we can consider what the question is
9 and our response, and then bring them out so the
10 record reflects not only what they were interested
11 in, but what they were told. Otherwise, we have 12
12 lay people trying to decide what the law and the
13 facts are. The facts they can decide, but the law,
14 I'm afraid, may come back open to error.

15 Now, then direct and circumstantial evidence.

16 Criminal intent.

17 And anyone -- if you have any questions
18 about what I'm talking because these are just
19 general charges on the different topics.

20 Multiple indictments. In this case, we have
21 first indictment is failure to stop for a blue
22 light.

23 Second -- by the way, the indictment reads
24 second or subsequent offense. Now, we haven't had
25 any evidence as to any prior offenses, so I'm

1 going -- not to charge -- the charge won't contain
2 the language "second or subsequent offense."

3 Any questions about that, Solicitor?

4 MR. WAGNER: No, sir. Your Honor, I kind of
5 looked at that like that was a sentencing that was
6 kind of after the fact.

7 THE COURT: Well, it is. It's an enhancement
8 really more than anything ---

9 MR. WAGNER: Yes.

10 THE COURT: --- if it is a conviction.

11 MR. WAGNER: And I think it should go and don't
12 mention the second. It should go ---

13 THE COURT: By the way, I've done a verdict
14 form too that has all the various offenses, or
15 various potential verdicts.

16 And then, what is it, the Indictment No. 1851,
17 receiving stolen goods, 2,000 but less than 10,000.

18 And then Indictment No. 1220 alleges
19 trafficking in methamphetamine. The -- and our
20 charge are separate and distinct and you have to
21 treat each one separately.

22 And then as far as the verdict, guilty or not
23 guilty for each indictment.

24 And also charge that the defendant having been
25 arrested, charged, and indicted, which this is not

1 evidence in the case.

2 So I give the first charge inasmuch as the
3 indictment is...

4 All right. The first indictment would be for a
5 blue light or the charge of failure to stop for a
6 blue light, 1756 -- 56-5 and it's 750.

7 And then the second is receiving stolen goods.
8 Is this theirs or ours? So let me -- "The
9 defendant's charged with receiving stolen goods.
10 The State must prove beyond a reasonable doubt that
11 the defendant -- the defendant bought, received, or
12 possessed goods, chattels, or other property and
13 that the defendant knew or had reason to believe
14 that the property was stolen. Whether the defendant
15 knew or had reason to believe that the property was
16 stolen may be shown by the record as circumstantial
17 evidence.

18 "The State must prove the defendant knew or had
19 reason to believe the item was stolen by showing
20 that the defendant knew facts that would make a
21 reasonable person believe the property was stolen."

22 All right. Then the blue light. That's pretty
23 much from the statute.

24 And then trafficking methamphetamine. "I
25 charge the defendant is charged rather with

1 trafficking methamphetamine. The State must prove
2 beyond a reasonable doubt that the defendant
3 knowingly sold, manufactured, cultivated, delivered,
4 purchased, or brought into this state, provided
5 financial assistance or otherwise aided and abetted
6 or attempted or conspired to sell, manufacture,
7 cultivate, deliver, or purchase or bring in the
8 state was knowingly and -- knowingly in actual or
9 constructive possession, knowingly attempted to
10 become in actual constructive possession of
11 methamphetamine.

12 "The State must also prove beyond a reasonable
13 doubt that the amount of that methamphetamine was
14 for 100 grams or more but less than 200 grams."

15 Then on the charge of trafficking, I charge, of
16 course, that "If you find beyond a reasonable doubt
17 the defendant possessed methamphetamine or there is
18 reasonable doubt as to whether the amount was more
19 than 100 grams, then you consider the following
20 crimes.

21 "If you find beyond a reasonable doubt that the
22 defendant knowingly and actual personally
23 constructed possession more than 100 grams -- no --
24 less than 100 grams, then you should find the
25 defendant guilty of a lesser level of violation,

1 lesser levels including trafficking between 28 grams
2 and 100 grams of methamphetamine and 10 grams and 28
3 grams.

4 "If you find beyond a reasonable doubt the
5 defendant possessed methamphetamine with the intent
6 to distribute in the case and there's reasonable
7 doubt as to whether the defendant possessed 10 grams
8 of methamphetamine at a given point, then you should
9 consider the defendant guilty of possession of
10 methamphetamine with intent to distribute.

11 "If you find a reasonable doubt that the
12 defendant possessed methamphetamine or it's
13 reasonableness as to whether he intended to
14 distribute methamphetamine, you should find the
15 defendant guilty of possession of methamphetamine.

16 "If you find -- have a reasonable doubt as to
17 whether the State has met its burden of proof and
18 shown all the elements of the crime of possession
19 with intent to distribute methamphetamines, then you
20 would consider the lesser included possession with
21 intent to distribute.

22 "Possession of one or more grams of
23 methamphetamine creates an inference that the
24 defendant -- defendant possessed the methamphetamine
25 with intent to distribute. This inference does not

1 relieve the State from proving beyond a reasonable
2 doubt that the defendant had the intent to
3 distribute. It's simply an evidentiary fact to be
4 taken into consideration with the other evidence in
5 the case and to be given such weight as you decide."

6 And I give -- I think this is your -- one on
7 the possession charge. "To prove possession, the
8 State must prove beyond a reasonable doubt that the
9 defendant had both power and intent to control the
10 disposition and use after possession and was in
11 actual physical custody of the defendant.

12 "Constructive possession means the defendant
13 had dominion and control over the right to exercise
14 dominion and control over either the methamphetamine
15 or the property of which the methamphetamine was
16 found. Mere presence at the scene where the drugs
17 were found is not enough to prove possession."

18 And then I have, as I said, a verdict form here
19 to be used in this case, so if you would come
20 forward and get one so you can look over it with me.

21 (Counsel approached.)

22 THE COURT: All right. As you can see, I've
23 followed the indictments as far as the numbers.

24 First indictment is 1850. "We the jury
25 unanimously find the defendant Cole Brooks Gray

1 guilty of failure to stop for a blue light or not
2 guilty."

3 Indictment No. 2017-1851. "We the jury
4 unanimously find the defendant Cole Brooks Gray
5 guilty of receiving stolen goods valued at more than
6 2,000 but less than 2,000 [sic] or not guilty."

7 And the reason I do the guilty verdict first is
8 because the burden of proof is upon the State to
9 prove guilty, or if they can't prove all the
10 elements of the offense, then of course the verdict
11 has to be not guilty.

12 And then Indictment No. 1220. "We the jury
13 unanimously find the defendant Cole Brooks Gray
14 guilty of trafficking methamphetamine in the amount
15 of 100 grams or more but less than 200 grams, 28
16 grams or more but less than 100 grams, 10 grams or
17 more but less than 28 grams. Possession with intent
18 distribute methamphetamine, possession of
19 methamphetamine, or not guilty."

20 Now, any questions, Mr. Oppermann or the State?

21 MR. WAGNER: No, sir.

22 MR. OPPERMANN: No, Your Honor.

23 THE COURT: Any suggestions?

24 MR. WAGNER: Your Honor, not at this juncture.

25 THE COURT: All right. I almost feel like

1 taking a ten-minute break and then just start
2 exercising your thoughts. And then if we don't have
3 any, then we'll leave at 4:30.

4 MR. OPPERMANN: I do have a question.

5 THE COURT: There we go.

6 MR. OPPERMANN: Thank you.

7 THE COURT: I would be sorely disappointed.

8 MR. OPPERMANN: You spoke a little bit about
9 what you do in regards to reasonable doubt, and you
10 stated that you use the language you spoke about
11 earlier.

12 THE COURT: You're not familiar with *Victor v.*
13 *Nebraska*?

14 MR. OPPERMANN: That's what I wanted to ask you
15 about. You listed the Nebraska charge and you
16 listed a South Carolina case, and I want to make
17 sure I had that case right. It was *State v. ---*

18 THE COURT: Well, there's two South Carolina
19 cases. The first one, the one I like is within the
20 trial judge's discretion to define reasonable doubt
21 at all. That's *State v. Adams*. It's 322 S.C. 114.
22 And then the other is, when as I say, it follows the
23 *Victor v. Nebraska*.

24 "The State has the burden of proving the
25 defendant guilty beyond a reasonable doubt. Some of

1 you may have served as jurors in a civil case where
2 you were told that it's only necessary to prove that
3 it's more likely true than not troth, such as the
4 greater weight of the preponderance of evidence.

5 "In criminal cases, the State's proof must be
6 more powerful than that. It must be beyond a
7 reasonable doubt. Proof beyond a reasonable doubt
8 is proof that leaves you firmly convinced of the
9 defendant's guilt. There are very few things in
10 this world that we know with absolute certainty.
11 And in criminal cases, the law does not require
12 proof that overcomes every possible doubt.

13 "If based on your consideration of the
14 evidence, you're firmly convinced the defendant is
15 guilty of the crime charged, you must find the
16 defendant guilty.

17 "If on the other hand you think there's a
18 reasonable possibility the defendant's not guilty,
19 you must give the defendant the benefit of the doubt
20 and find him not guilty."

21 And that's *State v. McHoney*, M-c, capital H,
22 o-n-e-y.

23 MR. OPPERMANN: Your Honor, I hate to be
24 persnickety, but could you give the citations again.

25 THE COURT: That's what I was going to give

1 you.

2 MR. OPPERMANN: Yes, sir.

3 THE COURT: The case name and avenue is cite
4 344 S.C. 885, and then *State v. Needs*, 333 S.C. 134.

5 MR. OPPERMANN: Thank you, Your Honor.

6 THE COURT: All right.

7 MR. OPPERMANN: I did have another question.

8 THE COURT: Very good.

9 MR. OPPERMANN: For purposes of clarification:
10 When you were speaking to the jury about what
11 we were going to do tomorrow, you mentioned -- if I
12 heard correctly -- that the State would close, I
13 would close, and then the State would have something
14 to say.

15 I believe since I haven't put up a case for the
16 defense that -- and I may be mistaken by this -- but
17 I believe I have the right to give a closing
18 argument without rebuttal under these circumstances.

19 THE COURT: Oh, all right. What do you say
20 about that, Mr. Wagner?

21 MR. WAGNER: Your Honor, I'm happy with that.
22 If he hasn't put any evidence in, I don't believe he
23 has.

24 THE COURT: I think perhaps the Supreme Court
25 just recently had taken that up in the last year. I

1 guess it was last because, first of all, I think
2 Chief Justice Perconus (phonetic) wrote -- I don't
3 know if it's a consent or concurring opinion. And
4 I -- I'll look it up and I'll see if I can find it
5 over the evening, but it notes that the idea about
6 the defendant having the closing argument, there's
7 not necessarily one that is founded in our prior
8 decisions or at least the prior law and is only
9 recent findings of opportunity.

10 However, the tradeoff is, is that also that the
11 State must open fully, not only on the law, but the
12 facts. And so what we have is a situation that we
13 have under the Code of Civil Procedure, that the
14 party having the burden of proof happens -- has to
15 open fully both on the law and the facts.

16 Then the responding party has the right to
17 argue against both law and the facts. However, the
18 State having the burden -- having the burden of
19 proof then can only respond to new matter brought up
20 by the defense, which is the rule under the Code of
21 Civil Procedure.

22 Now, they did not have a majority, I don't
23 think, on that particular issue. And -- but I find
24 that it is the law -- the appropriate law because
25 that was the law under *State v. Atelberry*, all the

1 way back to 1918, when both the State and the
2 defense had to follow the same rules which was
3 whoever had the burden of proof being the State in a
4 criminal case open fully on the law.

5 And then what is it, the defense would argue,
6 and then anything new that the State would be
7 limited to is any new matter.

8 And then in 1970, might have been there was a
9 case out of Lexington that had changed the statute
10 or the rules, but they were under the old pleading
11 at the time that said that that was the law that was
12 both -- it was the same in both criminal and civil
13 court.

14 They added a different statute for criminal for
15 General Sessions that said that -- that the State
16 only had to open on the law, and that was what we
17 were using from that point on in 1970, but then we
18 adopted the Rules of Civil Procedure and Criminal
19 Procedure. We abolished all those rules or all of
20 those statutes and the -- and the rules of court
21 under those statutes.

22 So I think that the -- and what I will do, I'll
23 note your objection, whoever decides to object, if
24 any, that we would follow where the State will open,
25 but fully on law and evidence or facts and

1 evidence -- the facts and the law. The defense will
2 respond fully, but the only thing that the State can
3 respond to in closing is any new matter brought up
4 by the defense.

5 MR. OPPERMANN: Thank you, Your Honor.

6 THE COURT: I mean, that's -- that is a --
7 right now, if I'm not mistaken, I should know this,
8 *State v. Baty*. You would know that, wouldn't you?

9 MS. HOLAHAN: I did, Your Honor.

10 THE COURT: All right. That's the rest of it,
11 we're under now *State v. Baty* and it's March 24,
12 2017. I don't have it on my cite, *State v. Baty*.
13 *Baty* is B-a-t-y.

14 All right. Any questions?

15 MR. WAGNER: None from the State, Your Honor.

16 MR. OPPERMANN: No, Your Honor.

17 THE COURT: All right. I'll see you at ten
18 o'clock. A little bit before 10:00 if you have any
19 matters to bring to the Court's attention, and y'all
20 have a good evening.

21 (At 4:29 p.m., proceedings concluded for the
22 day.)

23 - - -

24

25

State of South Carolina

Court of General Sessions

County of Anderson

State of South Carolina)

Transcript of Record

v.)

2017-GS-04-01220

Cole Brooks Gray)

2017-GS-04-01850

2017-GS-04-01851

Defendant.)

October 18, 2017

Anderson, South Carolina

B E F O R E:

The Honorable Alexander Macaulay, Judge; and a jury.

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

David Wagner, Solicitor
Attorney for the State

Mary Holahan, Assistant Solicitor
Attorney for the State

R. Joseph Oppermann, Assistant Public Defender
Attorney for the Defendant

Lisa Scott
Circuit Court Reporter

P R O C E E D I N G S

1
2
3 THE COURT: All right. Is the State ready?

4 MR. WAGNER: Yes, sir.

5 THE COURT: Is the defense ready?

6 MR. OPPERMANN: Your Honor, before the jury
7 comes in there are a couple of things we should
8 probably put on the record.

9 THE COURT: Okay.

10 MR. OPPERMANN: First of all, I believe we've
11 preserved our issues because the defense didn't put
12 up anything yesterday.

13 But before we proceed to the next section of
14 the trial just to ensure that we preserve, the
15 defense wishes to renew its motion for directed
16 verdict with respect to the charges of trafficking
17 methamphetamine 100 to 200 and receiving stolen
18 goods.

19 THE COURT: Okay. Very good. So recorded.

20 MR. OPPERMANN: The second matter, Your Honor,
21 is the defense wishes to use demonstrative aids
22 during our closing. It's my understanding that the
23 State doesn't have any objection to two of them, but
24 may have an objection to the third and we need the
25 Court's guidance on that.

1 THE COURT: Well, let's see what the two -- is
2 that correct, Solicitor? There's no objection to
3 two of these?

4 MR. WAGNER: Yes, sir. I mean, I -- I think
5 they're basically stating what's -- what is the law,
6 but there's ---

7 MR. OPPERMANN: Your Honor, shall I bring them
8 a little closer?

9 THE COURT: I'd like to see them too.

10 MR. OPPERMANN: Okay. This is one, Your Honor.

11 (Sidebar discussion.)

12 THE COURT: In other words, it's not an
13 absolute certainty. In other words, a reasonable
14 doubt is something that is not absolute. It's a
15 fact that lies that you have reason to do ---

16 MR. OPPERMANN: That is correct.

17 THE COURT: --- but you can give it and that
18 doesn't mean that it's beyond a reasonable doubt.

19 MR. OPPERMANN: That's correct, Your Honor.

20 And if -- if ---

21 THE COURT: Well, if you need to explain it, a
22 statement that says that would suggest it has to be
23 100 percent.

24 MR. OPPERMANN: And -- and -- well, all we're
25 saying is if there's any reasonable doubt ---

1 THE COURT: You can explain to the jury, but
2 not -- not with demonstrative evidence.

3 MR. OPPERMANN: Our position, Your Honor, is
4 that this statement states that ---

5 THE COURT: Well, let's have it marked, and
6 we'll have it on the record.

7 Have you ---

8 MR. WAGNER: No. We've -- I've -- I've got an
9 issue with that one, and I think the other one
10 doesn't even say guilty. The third one I think
11 is -- is probably okay.

12 THE COURT: That's correct.

13 MR. WAGNER: So assuming that's -- assuming
14 that's number one, I've got no problem with number
15 one.

16 Number two I think does need to say guilty, but
17 I do think it's kind of fringy the way the pyramids
18 line up and I understand it does need to say -- I
19 think it needs to say guilty in our -- from our
20 perspective.

21 And number three, we don't have an objection
22 to.

23 THE COURT: Let's do mark them.

24 MR. OPPERMANN: Can you mark them as
25 demonstrative aid rather than ---

1 THE COURT: Let's go off the record to do that.

2 MR. OPPERMANN: In order to properly cure this
3 demonstrative aid, Your Honor, I would ask if any of
4 the clerks have a sticky note that I can put here.

5 (Brief recess.)

6 MR. OPPERMANN: Your Honor, my understand is
7 that -- that the Court does not believe this
8 correctly reflects its instruction, therefore ---

9 THE COURT: No. It doesn't completely reflect
10 it. In other words, it speaks in absolutes,
11 100 percent, which is not reasonable doubt.

12 MR. OPPERMANN: Your Honor, would that be cured
13 by my letting the jury know ---

14 THE COURT: No, sir. No, sir. That
15 demonstrative evidence is for the purposes of
16 assisting the jury making their deliberations.

17 MR. OPPERMANN: Thank you, Your Honor. Given
18 that that's the Court's position, we will not offer
19 this.

20 THE COURT: Very good. But I'll note your
21 objection that it is not being admitted.

22 MR. OPPERMANN: Thank you, Your Honor. This
23 has been marked as Defense Exhibit 3 for
24 identification as a demonstrative aid. With the
25 Court's direction, we're going to ask that the

1 circled needs to be -- this has been marked as
2 Defense Exhibit No. 4 for purposes of identification
3 as a demonstrative aid. I'll bring this forward at
4 the appropriate time.

5 THE COURT: Any objection to the two?

6 MR. WAGNER: No, sir. Just as long as he
7 properly affixes the one where it can be legibly
8 read by the jury.

9 THE COURT: Trying to find...

10 MR. OPPERMANN: For the record, Your Honor, I
11 affixed a sticky note indicating that the red circle
12 in contrast to the others that means guilty. And I
13 tried to make sure that the size of the letters is
14 about the same as the size of the letters in the
15 other steps. I'm going to show that to the State
16 now.

17 THE COURT: Now, do you need a tripod?

18 MR. OPPERMANN: Yes, Your Honor. It appears
19 there's an easel over here that I could use.

20 THE COURT: Well, you might want to get it so
21 you can use it.

22 MR. WAGNER: I've -- I've got the law on
23 trafficking, Your Honor, but I'll have it up there
24 so he can ---

25 THE COURT: Oh, so you'll already have it?

1 MR. WAGNER: I'll move it up there.

2 THE COURT: Okay.

3 MR. OPPERMANN: And that concludes the defense.

4 THE COURT: All right. Anything further from
5 the State?

6 MR. WAGNER: No, sir.

7 THE COURT: From the defense?

8 MR. OPPERMANN: No, Your Honor.

9 THE COURT: All right. Ask the jury to join
10 us, please.

11 THE BAILIFF: (Complying.)

12 (At 10:13 a.m., jury entered the courtroom.)

13 THE COURT: All right. Let the record reflect
14 that the jury and alternates are in the jury box.

15 Madam forelady, ladies and gentlemen of the
16 jury, we will now conclude the trial of the case
17 with the argument by counsel. The State will open
18 on the law and the evidence, and then the defense
19 will argue, and then the State will close. After
20 that, I will give you the charge on the law
21 applicable to this case.

22 All right. With that, I'd recognize the
23 Solicitor.

24 CLOSING ARGUMENTS

25 MR. WAGNER: I appreciate y'all's patience for

1 the last couple of days. We're -- we're almost
2 done. The judge just told you I'll give you my
3 closing argument, and then the defense, and I'm
4 going to try to keep it brief. Thank you for
5 everyone's patience.

6 The defendant back on November the 12th, 2016,
7 based on what we've seen here the last couple of
8 days, I think it's pretty clear exactly what went
9 on.

10 Deputy Stipe was on patrol heading into the
11 office. Just happened to cross paths with the
12 defendant. Defendant rolled through a stop sign and
13 proceeded up the wrong lane of travel on a double
14 yellow line. He turned around. Went and pulled him
15 over for a traffic violation.

16 Recognizing who he was, he knew him, anyway, so
17 the chase began. Obviously, for 29 or 30 minutes at
18 super high rates of speed, in and out running red
19 lights, running into cars, doing everything he could
20 do to get away from the blue lights and sirens and
21 from getting caught. I think the failure to stop
22 for the blue lights is pretty obvious.

23 He's also charged with possession of stolen
24 vehicle. I think it's pretty clear he was obviously
25 driving the stolen vehicle. I've got to prove

1 possession of a stolen vehicle. He possessed it. I
2 think that's pretty clear. We had the victim in
3 here who had had it stolen a couple weeks prior. It
4 was more than \$2,000, but less than 10,000 which is
5 what the range here is.

6 Property crimes in South Carolina are most all
7 the time dictated by how much something is worth.
8 If you steal something valued at \$2,000 or more,
9 that's grand larceny. If you steal a \$400 TV,
10 that's called petty larceny. It's delineated, the
11 difference in the charges based on how much
12 something is worth or how much the stolen property
13 which you possess is worth essentially.

14 Here we have a case where the truck was worth
15 between 2- and \$10,000. And we know it was stolen
16 because we had the victim here.

17 How do we know this defendant knew it was
18 stolen? You can't ever get inside the mind of
19 somebody obviously. You really can't prove
20 knowledge of something.

21 When you're looking at the truck that had a
22 fake tag on it. We know that Deputy Stipe ran the
23 tag, and it came back to a different vehicle. That
24 immediately alerted him there was something going on
25 there too. And then you've got another tag in the

1 bed of the truck which the pictures show.

2 We had that license plate in the bed of the
3 tag -- in the bed of the truck. And we had another,
4 I wouldn't say "fake license plate," but it was a
5 license plate that didn't belong to that truck on
6 there. So there were two different ones on there.
7 And this defendant is driving that vehicle on
8 roughly a 30-minute chase with these in there.

9 And I submit to you that's evidence in itself
10 that he knew it was stolen. I mean, it hadn't been
11 stolen for two weeks and just didn't come in his
12 possession with two different tags without knowing.

13 If you buy a thousand dollar shotgun in the
14 parking lot of the Home Depot for 100 bucks, you
15 have a reason to know that shotgun is stolen. And
16 you're driving a truck like this with a tag, no
17 telling what we know about that, where it came from.
18 You have a reason to know it was stolen. That was
19 an issue enough for a guilty verdict on that charge.

20 Plus, the fact that he ran. I think you can
21 take that into consideration that he's trying to get
22 away with the stolen vehicle.

23 But the big charge, the main charge, and the
24 main reason we're probably here, is the possession
25 of methamphetamine, the trafficking of

1 methamphetamine. In South Carolina, the law just
2 like the property laws, are set up to where it's by
3 the amount of the property that's stolen, by the
4 dollar amount value.

5 The drug laws are set up by basically the
6 weight of the drug. And depending on how much the
7 drugs that somebody has in their possession weighs,
8 that's the severity of the charge. And so just a
9 joint of marijuana obviously is not worth near as
10 much of a charge as, say, a bail of marijuana.

11 A couple hits of methamphetamine, a couple
12 crystals somebody might do, would be basically less
13 than a gram, is simple possession. That's the
14 lowest level.

15 If you've got 1 gram to 9.9 grams, almost 10
16 grams, that's called possession with intent to
17 distribute. And on that, 10 grams and up is called
18 trafficking. And trafficking, the State must show
19 that the person in this case possessed or was
20 transporting, possessing either by constructive
21 possession or actual possession. He actually had it
22 in his hand or actually had dominion and control,
23 but it's not actually on his person. It was on the
24 seat right next to him. That's constructive
25 possession. Actual possession means I got it here

1 in my pocket and it's on my person.

2 Either one of those possession under the law is
3 sufficient. So if a person has it in his truck,
4 say, in a backpack or something like that and is
5 being chased by the police and he throws it out the
6 window, at one point in time it was constructive
7 possession when it's in his backpack. When he picks
8 it up and throws it out, he actually had actual
9 possession of it at that point. Even before that,
10 he had possession.

11 So for this defendant, if he's got more than a
12 hundred grams, which he's charged with here, this
13 level, 10 to 28, 28 to 100, 100 to 200. We know how
14 much drugs were in the vehicle or at least in the
15 bag because we sent it to the lab and the expert,
16 Meredith Lanford. She tested it. She's tested --
17 actually said about 8,000 substances in her career.
18 It's what she does for a living. She tests drugs
19 and substances to see if they are illegal substances
20 and narcotics.

21 Well, she tested this and you'll have a copy of
22 her report. She found in the small bag that was
23 found on the seat of the truck, 3.3 grams of
24 methamphetamine found. In the big bag that was
25 thrown on the road, she found a 109.34 grams of

1 methamphetamine. So the bag on the road in and of
2 itself was enough to get it to this level, 100 grams
3 to 200 grams.

4 Add 3.3 grams for the stuff on the seat, now
5 together it's obviously over a hundred grams.
6 That's the level and that's what he's charged with
7 and that's the level that I submit to you is the
8 proper charge. We know she weighed it. We know it
9 weighs that much.

10 You can take a look at the drugs yourself and
11 you'll get a chance to look at them. The officers
12 did a good job. After Deputy Stipe dropped out of
13 the chase and Deputy Purdy took it up, he saw -- and
14 we'll watch it here again in a second -- saw it come
15 out of the driver's side window. That was thrown
16 out after the defendant had already had tires
17 punctured from one of those stop sticks. He was
18 losing and it was on that road and had nowhere to
19 go.

20 I submit to you he knew what he had in the car.
21 He kept on. He held onto it, probably a little too
22 long. Probably should've ditched it out a lot
23 quicker than that. When he come out there and he
24 cut around that house and his driver's side was not
25 visible from that camera, if he had of ditched it

1 then, he might not have been caught. This, however,
2 the crystals, the methamphetamine, I submit to you
3 is worth a lot of money.

4 Didn't want to let it go. Held on to it a
5 little too long. Wasn't able to get away. And at
6 that point in time, chucked it out the window. Now,
7 it hit and burst, and they had to pick it up
8 piece-by-piece and put it back in there.

9 But they picked it up with gloves. They did it
10 the way the evidence custodian guy, who Chris Beusse
11 was at the time, he knew how to handle the stuff.
12 So he passed that over. They all picked it up and
13 put it back in the bag, and he turned it over to
14 Deputy Purdy.

15 Deputy Purdy took possession of it then. It
16 was always protected. You saw Deputy Purdy when he
17 stops, when they finally caught the defendant, he,
18 within a minute or so got right back in his car and
19 went up there to secure those drugs that he had seen
20 thrown out the window to make sure nothing happened.

21 And I submit to you, we didn't see any. There
22 weren't any farm vehicles that came through there.
23 Nobody else came through there. He stopped. Nobody
24 else came through. He went back and secured the
25 drugs and took possession of it.

1 Some of the people we had up here were chain of
2 custody people. We have to put these people up and
3 did put those people up so you can be sure that they
4 followed the right steps, that nobody messed with
5 the drugs, nobody added anything to it, nobody --
6 nobody did anything like that.

7 So Purdy took possession of it. He turned it
8 into the lock box in evidence. The evidence
9 custodian who testified pulled it out and marked it,
10 put it in the locker room. You know, they have it
11 sealed in there under lock and key. Nobody can go
12 in there except people who work in there. Nobody
13 else can go in there.

14 They took it down to the lab and put it in
15 their lock box. So it was under lock and key with
16 Meredith Lanford. She accessed it. She tested it.
17 Tested it for 109, roughly, grams and 3.3. So it
18 met the level of 100 grams to 200 grams for
19 trafficking methamphetamine.

20 At that point in time it was returned to the
21 sheriff's office evidence room where it's been kept
22 until court this week. And that Chris Beusse who
23 actually picked this stuff up, put it back in the
24 bag, and ended up being the custodian that's kept it
25 for the last couple of months because his job has

1 changed a little bit there.

2 So that's the principle charge here, and that's
3 the one -- we're going to look at this video here
4 for a second. It's -- you know, the quality of the
5 camera is decent. It's not the best and that's what
6 you get when a deputy has to go out and buy his own
7 camera for his vehicle. I don't know -- I don't
8 know much about cameras. Don't know much about the
9 quality, but let's look it.

10 (Playing DVD.)

11 MR. WAGNER: We have to look at it a few times
12 because I know you just got to see it once or twice
13 the other day. It's hard. What -- what's important
14 to notice is that it's not in the roadway and then
15 it is. And it's hard to see it actually come out of
16 the window. He did because he was right behind and
17 seeing it in realtime. You see it wasn't in the
18 roadway and there it is.

19 Let's go back and watch it a couple more times.

20 (Playing DVD.)

21 MR. WAGNER: There it is. Wasn't there and
22 there it is. And it's hard to see any arm or
23 anything moving out the window. He saw it. Had to
24 come out that window.

25 That's more than we get a lot of times. It's

1 not that he actually took the time to put that
2 camera in himself or else we, you know, wouldn't
3 have this evidence, but that was then spread out and
4 you can see it on this picture, the crystals where
5 they burst. The crystals, that's what they had to
6 pick up and put back in the bag.

7 You can look at this and tell, and the chemist
8 testified there was no debris in here. I mean, it's
9 all solid crystals. There's not chunks of asphalt.
10 There's not sand. They pick up it with gloves and
11 put it right back in while it laid there on a nice
12 clear day. So the weight, I submit to you, is
13 accurate as far as being 109 grams for that level of
14 trafficking.

15 So looking at that, even if that's not clear,
16 as far as our evidence goes to prove this case
17 beyond a reasonable doubt, the judge is going to
18 charge you what reasonable doubt is: It's not a
19 level of 100 percent or total. We have to prove
20 everything of that level.

21 There's different levels of proof in the legal
22 system. There's civil court which is basically
23 preponderance of the evidence, and that's where one
24 side just has just a little bit more than the other
25 side. That's a much lower standard than criminal

1 court.

2 Criminal court is beyond a reasonable doubt.
3 I've got to prove to you that this defendant ran
4 from the police under blue lights and sirens. He
5 knew that truck was stolen by -- either by his
6 actions or what he did or actual knowledge that he
7 had possession of that truck. And that during the
8 process, while he's there and he had active or
9 constructive possession trafficking 1- to 200 grams
10 of methamphetamine.

11 Beyond a reasonable doubt, the judge is going
12 charge you is a doubt that would cause a reasonable
13 person to hesitate to act. That's one way to look
14 at it.

15 There's another definition of reasonable doubt
16 too, that basically says if you think there's a real
17 possibility, it's a doubt that leaves you firmly
18 convinced of the defendant's guilt. Based upon your
19 consideration of the evidence, you are firmly
20 convinced that the defendant is guilty of the crimes
21 charged, then you must find him guilty. So if
22 you're firmly convinced of this defendant's guilt,
23 that's beyond a reasonable doubt. So it's not a
24 hundred percent, but it is a high level and that's
25 on us to prove.

1 You know, we've got to prove to you that he did
2 it, that they dragged him out of the truck, that
3 this is what he had. So in that, like I say, in
4 itself doesn't get us there. He was throwing that
5 out and you've got a chemist that weighed it, and it
6 weighed more than a 100 grams.

7 Then we're a little I guess on the fortunate
8 side because we have the phone call that he made, so
9 if you could listen to a portion of that phone call.
10 You can listen -- when you go back in the jury room,
11 you're welcome to watch any of these videos as many
12 times as you need to. You're welcome to listen to
13 the phone calls, look at any of the exhibits that we
14 have, any of the pictures, anything you need to make
15 your decision. I think you've got a lot of tools
16 available to you here.

17 This phone call was from Officer -- Lieutenant
18 Gebing testified. He pulled it up a couple of days
19 after the defendant was arrested on this charge, and
20 it was his phone call to a friend. Y'all listened
21 to it yesterday, but let's hear the one part again I
22 think that's most pertinent at least to the
23 trafficking aspect of this.

24 (Playing CD.)

25 MR. WAGNER: Pardon my French, as they say, and

1 pardon my language, "I was just trying to get rid of
2 that shit," and that's -- that's what you got here.

3 Anyway, I told y'all at the beginning of this
4 thing I was going to ask you just for one thing and
5 one thing only, and that's when you go back to the
6 jury room and deliberate and come out here, deliver
7 a verdict that speaks the truth. And the truth here
8 is that he's guilty of trafficking 100 or more grams
9 of methamphetamine, failure to stop for a blue
10 light, and possession of a stolen vehicle.

11 Thank you for your attention.

12 THE COURT: Mr. Oppermann.

13 MR. OPPERMANN: May it please the Court, Your
14 Honor?

15 THE COURT: Yes, sir.

16 MR. OPPERMANN: With the Court's permission,
17 I'd like to adjust. ---

18 THE COURT: Certainly.

19 MR. OPPERMANN: --- the demonstrative aid.

20 Ladies and gentlemen, I'm going to have some
21 things I'm going to show you as well. As I said
22 before, my name is Joseph Oppermann and I'm a lawyer
23 with the Anderson County Public Defender's Office,
24 and I represent Mr. Cole Gray.

25 When we started out a few days ago, I told you

1 that this was a case about Humpty Dumpty. And sure
2 enough, all the king's horses and all the king's men
3 have been in this courtroom trying everything they
4 can to salvage the Government's overreach in this
5 case. They've stooped and crawled all over Dixon
6 Road to see if what they put together might look
7 like Humpty.

8 I also told you about the example of 'ole Ed
9 going into Ms. Tallulah's house as an example of how
10 important it is with the Government when they charge
11 someone with a crime they meet every element of what
12 they're charged with and meet each of those elements
13 beyond a reasonable doubt.

14 Let's go over that a little bit. I've got it
15 on the easel, but I'm going to hold it up for you to
16 see it. As we said, the Government must prove every
17 element of every charge by proof beyond and to the
18 exclusion of every reasonable doubt.

19 Judge Macaulay told you when we started out and
20 he's going to speak to you a little bit later about
21 what reasonable doubt is, and that is, and this is
22 what Judge McCauley says, it's doubt that would
23 cause a reasonable person to hesitate to act.

24 Remember, as we said earlier, and this is very
25 important to remember to protect the integrity of

1 our process, a wrongfully accused citizen does not
2 have to prove innocence. And anyone accused of a
3 crime is presumed innocent by law.

4 I want to go through that analysis as it
5 applies to 'ole Ed, the one we talked about earlier.
6 And then we're going to talk about what we've heard
7 here in the courtroom today.

8 Remember I told you in the story of Ed, Ed's
9 walking down the street one night drunk. It's late
10 at night. Ed goes into a house that isn't his. He
11 does it without permission. The house belongs to
12 Ms. Tallulah. And he scares Ms. Tallulah to death
13 and damages her door when going into that house. He
14 goes into her house, uses the bathroom in the
15 bathroom, and then stumbles out and gets caught.

16 There's witnesses. He goes to court. The
17 State can prove in this case because of testimony
18 that 'ole Ed went in there in the nighttime. That's
19 an element of common law we talked about. They can
20 prove that beyond a reasonable doubt. People saw
21 it. It's not in dispute.

22 The State can prove that he went into
23 Ms. Tallulah's house without permission. They can
24 do that because there's damage to the door. And
25 Ms. Tallulah can tell the jury when this case goes

1 to trial that Mr. Ed didn't have permission to come
2 into her house.

3 But what the State couldn't prove in a case
4 like that is that Ed had an intention to commit a
5 felony when he went into that house. They would
6 fail to convict 'ole Ed of common-law burglary
7 because they would not be able to prove beyond a
8 reasonable doubt that he intended to commit a felony
9 going into that house.

10 That's an example of where some elements are
11 present and can be proved and there's some evidence
12 that a crime is committed. Because every element
13 has not been met beyond a reasonable doubt, Ed can't
14 be convicted of common-law burglary.

15 Now, he probably committed a malicious injury
16 to property because he damaged her door and he
17 probably committed a trespass. Probably committed a
18 public drunkenness. Those are crimes he could pay
19 for, but he couldn't get convicted of the common-law
20 burglary charge.

21 I share that story to illustrate how important
22 it is to understand that the State must prove each
23 element beyond a reasonable doubt.

24 Now, there's three charges in this case, and I
25 spoke briefly about the first. I'll speak briefly

1 about the first two, and then we'll talk most of the
2 time on that trafficking charge. The Government's
3 lawyer, Mr. Wagner, correctly states that that is a
4 credible charge in this case.

5 The first charge in this case is failure to
6 stop for a blue light. And when we first started on
7 Monday, I told you at Mr. Gray's request that he's
8 guilty of failure to stop for a blue light. There's
9 no question of that. He admits it. The evidence is
10 present. The Government has proved that beyond a
11 reasonable doubt.

12 Let's go through our analysis on that. For
13 failure to stop for a blue light, there's several
14 elements. The Government must prove that they
15 signaled the driver that they're accusing of failure
16 to stop for a blue light, either through a siren or
17 through activating a blue light. They've proven
18 that. You say it on the video. They've proven that
19 element. It's clear from the context of the video,
20 the testimony, and from Mr. Gray's admission through
21 his lawyer that they knew -- or rather that he knew
22 that he had been signaled.

23 The second element of failure to stop for a
24 blue light is that despite being signaled by the
25 light or the siren, the person fails to stop. And

1 there's no question that both of those elements have
2 been proven beyond a reasonable doubt. That's what
3 reasonable doubt looks like. Knowing all of that, a
4 reasonable person wouldn't hesitate to act in saying
5 that those elements are present.

6 Now, despite the fact that we admitted that in
7 the outset, the Government has spent a majority of
8 its time in this case showing you picture after
9 picture, having to hear from witness after witness
10 about that failure to stop for a blue light chase.
11 Why would they do that? Why would they waste your
12 time? Why would they spend taxpayer time and money
13 belaboring an issue that's already been established?
14 That's a very good question.

15 I'm going to suggest to you that there's a
16 reason for that, even though they didn't need to.
17 They want you to be so aggravated at Cole for what
18 he did in that chase, and you should be aggravated
19 at him. You should convict him for failure to stop
20 for a blue light.

21 They want you to be so aggravated, so fired up,
22 so angry, so enflamed and upset with him for doing
23 that that you're not able to make a reasonable
24 decision when you look at the elements on each of
25 those other charges, specifically the trafficking

1 charge.

2 And there's some very technical stuff there.
3 They want you so mad at him that you can't make a
4 fair decision. That's why they spent all of that
5 time on those issues, and you ought to keep that in
6 mind when you make your decision.

7 The second element I want to talk about the
8 charge briefly of receiving stolen goods. It's
9 another good illustration of what we mean by meeting
10 each element beyond a reasonable doubt.

11 He's charged with receiving stolen goods. I
12 believe the Solicitor said possession of a stolen
13 vehicle. I think that's a misstatement on his part.
14 The actual indictment of receiving stolen goods
15 valued in the range of \$2,000 to \$10,000. And it's
16 really helpful to look clearly at this charge
17 because as I said, it gives us a chance to talk
18 about what we mean when we say the Government must
19 prove the defendant guilty beyond a reasonable doubt
20 on each element.

21 What are the elements of receiving stolen
22 goods? First, the defendant must be in possession
23 of something that's stolen. Well, they found Cole
24 in the truck, so we've got that element. There's no
25 question about that. They have met that piece of it

1 beyond a reasonable doubt. That's possession.

2 Second, Mr. Davis, who was the owner of that
3 truck, testified that it was his truck and that it
4 had been stolen at least two weeks before, maybe
5 more.

6 It was stolen late October he said, and the day
7 they found Cole in it was November 12th. We'll come
8 back to that. If you believe Mr. Davis and he was
9 pretty credible, I don't see any reason why you
10 wouldn't believe him. If you believe him that
11 someone stole that truck, then that truck was stolen
12 and that element was met beyond a reasonable doubt.

13 Now, he testified, Mr. Davis, that he got that
14 the truck valued at \$4,500. Put some improvements
15 on it. That's more than \$2,000. That's the range
16 that they talk about 2 to 10.

17 But you could reasonably conclude that the
18 truck had depreciated in value too. You don't have
19 to, but you could. I share that because it is
20 important to go through each element and find the
21 person guilty beyond a reasonable doubt if that's
22 what you're going to do.

23 But if you do believe it was worth at least
24 2,000, that still leaves one more element in the
25 charge of receiving stolen goods. With receiving

1 stolen goods, the Government must prove beyond a
2 reasonable doubt that the person found in possession
3 of these stolen goods knew they were stolen or had
4 reason to know they were stolen.

5 Now, let's talk about levels of proof for a
6 minute. And as I said, I'm not going to belabor
7 receiving stolen goods too much because the main
8 issue in this case is trafficking. This is just
9 very important to illustrate what we mean, and it's
10 also important to ensure that justice is done today.

11 There are different levels of proof. A little
12 bit of evidence. A scintilla of evidence. There's
13 probably more than that when it comes to intent. He
14 did have a truck that was stolen. He could've known
15 it was stolen. That would even give you reasonable
16 suspicion of probable cause to believe that -- that
17 he knew that vehicle was stolen.

18 The State would probably argue that because
19 there were licence plates in the bed of that truck,
20 that gives you a preponderance of evidence to
21 believe that he knew it was stolen. You might
22 believe that; you might not.

23 Now, the truck was missing for at least two
24 weeks based on Mr. Davis' testimony. A lot can
25 happen in two weeks. It's possible Mr. Gray

1 could've purchased that truck from someone else.
2 It's possible he could've borrowed it from a friend.
3 That's what we mean by reasonable doubt.

4 And as Judge Macaulay has said, if you have a
5 reasonable doubt, if a reasonable person would
6 hesitate to act given certain information, that's
7 reasonable doubt. And if you have a reasonable
8 doubt on an element of the charge, you must find the
9 defendant not guilty.

10 As I said before, I don't want to spend a lot
11 of time on failure to stop for a blue light or
12 receiving stolen goods because those are not the
13 primary charges in the case. Although, based on
14 what the State's presented in our argument, we would
15 urge to find Mr. Gray not guilty of receiving stolen
16 goods because the State has not proven that element.

17 Let's move on to what's really important in
18 this case. And we're not going to have to talk a
19 little while about it. I don't like to keep y'all
20 here too long, but for Mr. Gray, a person who came
21 into this courtroom presumed innocent like all the
22 rest of us, this may be the most important day of
23 his life. And we owe it to our system of justice
24 and to this man who walked into the courtroom
25 presumed innocent, that we give him a fair hearing.

1 and it's worked as thoroughly as possible. That's
2 how our system of justice works in here.

3 As I talk about this, I think it's important
4 for you to know a little bit about me, how I
5 understand the case and how I analyze it, and I
6 think you'll understand what I'm sharing with you a
7 little bit better if I do that.

8 I told you before, my name is Joey Oppermann.
9 I work for the Anderson Public Defender's Office,
10 but I grew up here in Anderson County. I grew up
11 about a mile from where this stop happened. And I
12 got to be honest with you, I personally don't like
13 the idea of someone going at a high rate of speed
14 and having a collision and evading police officers a
15 mile from where my parents grew up. It makes me
16 upset. Just sharing my honest feelings about that.

17 And as I said before, Mr. Gray believes the
18 State's proven and y'all will find him guilty for
19 failure to stop for a blue light beyond a reasonable
20 doubt.

21 I told you I grew up in Anderson County, a
22 little bit about my background. My mother was a
23 social worker. And when I was a pretty young kid, I
24 would ride with her when she'd go pick up a kid and
25 take that child to foster care. And so I knew at a

1 very young age that there were things going on in
2 our community, in our state, and in our country that
3 broke-up families had a negative impact on children.

4 And I also began to understand from riding in
5 the backseat with kids that were going to foster
6 care, trying to keep them distracted, play with them
7 and keep their minds positive and keep their hopes
8 up as they were in a dark and difficult situation,
9 that when a kid goes through something like that,
10 life's going to be hard for them going forward and
11 something happened previous to that put that kid in
12 that position. I grew up with that. I grew up
13 knowing about that.

14 My dad had a couple of different jobs. He
15 worked for what's now the Department of Juvenile
16 Justice. Back then, it was Teen Services. He
17 worked with kids who were in trouble. We call them
18 juvenile delinquents usually. And most of the time,
19 they were in trouble for missing school or fighting
20 or being involved with some kind of drugs.

21 Later on, he went to work for the Vocational
22 Rehabilitation Department and ran a drug and alcohol
23 rehabilitation center. That was a very important
24 job to him and it supported our family and we're
25 proud of him. I think it was important to him

1 because his sister, my aunt, was addicted to drugs
2 for about 30 years. It did incalculable damage to
3 her life and the life of the family and something
4 that we struggle with, but she's been clean for
5 about 20 years now. I'm proud of her for that.
6 She's been able to turn her life around.

7 As I grew up -- that's the background on me.
8 As I grew up in Anderson and began to reach the end
9 of high school, I saw people who were close to me,
10 friends, family members, begin to diverge and go on
11 different paths.

12 Tell you about a few folks that were close to
13 me. Three of my best friends in high school became
14 drug addicts. One of them is dead. He died of an
15 overdose the day before he was going to rehab. I
16 don't know this for sure, but best I can put
17 together, he was going to have one more blowout and
18 that took his life. He's gone now and his son
19 doesn't have a father and I don't have a friend.

20 Among a few other friends that I mentioned to
21 you, one of them beat his addiction. It wasn't just
22 drugs. It was alcohol. And now he runs an AA group
23 and also helps folks who are addicted to drugs, and
24 he's got a successful career and his own house and
25 he's doing fine and I'm grateful for that. I thank

1 God for it every day.

2 My other friend had a similar story. After
3 almost dying and potentially getting in a lot of
4 trouble with the police a few times, he turned his
5 life around and now he runs an AA group and he helps
6 other people get off drugs and alcohol.

7 I shared that with you because I'm sure y'all
8 know folks who've got a problem with drugs. I want
9 you to know that I take this problem very seriously.
10 I'm not here to sell you a load of BS about what
11 happened. I told you in our opening statement that
12 we were not afraid of the evidence the State was
13 going to present.

14 Part of the reason we didn't put up our own
15 case is because we were satisfied that upon seeing
16 the evidence the State presented, you would make a
17 reasonable verdict.

18 Now, let's talk about that. Let's talk about
19 that. The State has charged my client with
20 trafficking.

21 Excuse me. I had to refer to something while
22 I'm speaking to y'all about this.

23 The State has charged my client with
24 trafficking methamphetamine of 100 grams to
25 200 grams. Let's talk about what that involves. We

1 can use the statutory language to see if the State
2 has proven that beyond a reasonable doubt. There's
3 a number of things that can be involved in
4 trafficking.

5 Let's talk about what the State didn't show,
6 and we'll talk about what we know because that's
7 fair. The State did not show my client selling
8 drugs to anyone. There was no testimony of that
9 happening. There's no video evidence of that
10 happening. You didn't see it. The State didn't
11 show it.

12 The State did not show my client delivering
13 drugs to anyone. There was no video evidence of it.
14 There was no testimony of it.

15 The State did not show my client taking drugs
16 over the state line. There was no testimony of it.
17 There was no video evidence of it.

18 What the State did show is that there was a bag
19 in his car. You call that constructive possession
20 of what they say was about 3.3 grams and that --
21 that bag was intact with methamphetamine. That's
22 enough as has been described for him to be charged
23 with either possession of methamphetamine or
24 possession with intent to distribute
25 methamphetamine. You would have to believe that he

1 intended to distribute that 3.3 grams in order to
2 find him guilty of it, but that would be enough to
3 find him guilty of those charges.

4 If you think he's guilty of possession of
5 methamphetamine and that the State has proven him
6 guilty of that beyond a reasonable doubt, look at
7 this pyramid here. If you think the State has
8 proven that possession of methamphetamine beyond a
9 reasonable doubt, you must find him guilty. That's
10 justice. And we're not hiding from it.

11 Now, the State also has introduced evidence
12 through testimony that suggests an object exited my
13 client's vehicle. They say that he threw something
14 out his vehicle while it was going down the road.
15 And y'all saw it on the video. It appears that an
16 object comes out of the window of his truck and
17 bursts on Dixon Road.

18 You heard from I believe it was Officer Purdy
19 that that is a road that's trafficked very
20 consistently, cars are going up and down there all
21 the time. Like I said, I grew up in Centerville.
22 That's the case. There's also farm vehicles that go
23 up and down it all the time. Every road is dirty,
24 but that one is especially dirty. That's just the
25 nature of the road.

1 The State wants you to conclude that the matter
2 that was burst on Dixon Road can be accurately
3 measured so that they can fit their facts into the
4 regroup of trafficking 100 to 200 grams.

5 Now here's the question, y'all: Did they put
6 Humpty back together again? Officer Purdy testified
7 and Investigator Beusse testified that they scraped
8 off of the road what they had seen burst there and
9 put it back in the bag. They didn't have to do
10 that. Y'all saw the picture. There was an intact
11 piece of something in a bag that could've been
12 measured. It did not appear to have been
13 contaminated. It didn't burst on the road, but they
14 didn't do that.

15 All of the king's horses and all the king's men
16 scraped Humpty, tried to put him into that bag. And
17 why did they do that? Why did they do that when
18 they didn't need it to prove a case against my
19 client? They found a bag of what appeared to be
20 methamphetamine and tested positive for
21 methamphetamine in his car.

22 They found a chunk in a bag that was intact,
23 not spread all over the road. You saw it in the
24 picture. They found that. That tested positive for
25 methamphetamine, so why did they scrape up all those

1 crystals? Why did they run the risk of
2 contaminating their evidence?

3 Is it because he ran from them? That would
4 make me mad too, but it's not a reason to bring
5 something like this in front of you and waste the
6 Court's time, the taxpayer's time, and the
7 taxpayer's money. Is it because they were mad at
8 him? Were they mad at him because he ran? Were
9 they mad at him because he got past them the first
10 time they put the sticks out, the second time, and
11 the third time, and the fourth time? Maybe so. I
12 don't know.

13 If you're mad at him for that, as I said,
14 there's something you can do about it. You can find
15 him guilty of failure to stop for a blue light and
16 you should.

17 The State wants you to believe that after they
18 scraped that matter off a dirty, highly trafficked
19 farm road, that it can be accurately tested and
20 accurately weighed at a certain amount.

21 Now, y'all know, this is practically common
22 sense, that if you spill a bag of flour on the
23 floor, you cannot put it back together and have what
24 you had at the beginning. If you drop a Jolly
25 Rancher on the ground and you forget, you can wipe

1 as much dirt of it as you want to, but that's still
2 a dirty Jolly Rancher. That just the truth. That's
3 common sense.

4 The State did not have to do that. The
5 Government did not have to do that. They had
6 evidence to put him away in his car. They had an
7 intact chunk in that bag that you saw in those
8 pictures. Instead, they ran the risk. They wanted
9 more pages to put in a bigger book to throw at my
10 client.

11 And they spent your time, your money to do
12 that, and they didn't have to do it. It would have
13 been an easy case, but here we have them running the
14 risk, wasting your time, wasting your money,
15 overreaching to put this man away.

16 Now, what do we have going on in Anderson
17 County? We have murderers. We have burglaries.
18 What have arsons. We have beatings. We have
19 violence going on every day, but instead in this
20 courtroom, we have a strung out, druggy running in a
21 pickup truck in front of you because the State wants
22 to throw the book at him, and they've used unsound
23 procedures to do that.

24 There's something you can do about that too,
25 ladies and gentlemen. Given the procedure the State

1 used, they scraped those bits of Humpty off the road
2 and they didn't have to do that. They sifted what
3 would have been contaminated flour or a dirty Jolly
4 Rancher off the road, and they didn't have to do
5 that.

6 And they want you believe that that method can
7 prove beyond a reasonable doubt that that means
8 there was more than 100 grams of that substance.
9 They want you to believe that.

10 Now, you may find, and I hope you do because I
11 think the evidence requires you to find, that there
12 is reasonable doubt as to whether or not that's an
13 accurate weight. You may find that the State hasn't
14 proven that that was a hundred grams of
15 methamphetamine.

16 Now, what can you do about it if you do?
17 Because it's pretty clear that Mr. Gray had some
18 meth on him, and it's reasonable to think that what
19 he threw out of the car was methamphetamine. What
20 can you do? Because I imagine you want to see
21 justice done here.

22 As Mr. Wagner told you, there are other levels
23 that you can find Mr. Gray guilty of. You can find
24 him guilty of possession of methamphetamine. You
25 can find him guilty of possession with intent to

1 distribute methamphetamine. You can find him guilty
2 of trafficking 10 to 28 grams of methamphetamine.
3 You can find him guilty of trafficking 28 to 100
4 grams of methamphetamine.

5 In order to do that, you would have to believe
6 beyond a reasonable doubt that he had a substance in
7 his possession, actual or constructive, and that
8 that substance was methamphetamine. And if you
9 believe that, you feel the State's established that,
10 you can find that.

11 But if you find that evidence collection method
12 unsound, if you think it's a waste of your time and
13 money and a dangerous risk for the State to take and
14 scrape Humpty off the road when they didn't have to,
15 you can find the defendant guilty of one of those
16 lesser included offenses. You have that power, and
17 it's a very important power.

18 In our American system of justice, the facts of
19 the case are decided by a jury, 12 average citizens.
20 And that's important now. It's been important for
21 the history of our country. It's especially
22 important now.

23 As I said, we have a lot of chaos in our
24 community, in our state, and in our country. Folks
25 have a hard time getting along. A lot of us feel on

1 all points of the political spectrum that we have
2 less and less control over our lives, what goes on
3 in our community, and how we solve our problems.

4 But right now, all that aside, you have a very
5 special, a very important, and a very sacred power
6 in our American system of justice. You get to hold
7 the Government to its burden and decide whether
8 they've proven their case beyond a reasonable doubt.
9 You get to ensure that a just result is reached
10 under the law that Mr. Wagner has described, and
11 I've described, and most importantly Judge Macaulay
12 is going to explain to you. Because as the judge,
13 he says what the law is. You have that power.

14 I talked to you a little bit earlier about
15 those folks we grew up with. Some of y'all, it may
16 have been you at one point. Those folks who
17 struggle. Those folks who've had an addiction.
18 Those folks who did terrible things and drove us
19 crazy while they were addicted. Those lost boys and
20 girls that we knew. Some of them are with us; some
21 of them are not. We always hope for their
22 redemption.

23 You get to decide today if you're going to hold
24 the Government to its burden, give Mr. Gray -- give
25 Cole a just hearing. You get to decide what we do

1 with this lost boy. Please listen to the judge when
2 he explains to you what the law is.

3 We believe when you come back and return your
4 verdict and return a just verdict, we believe you'll
5 find Mr. Gray not guilty of trafficking over a
6 hundred because the State has not proven beyond a
7 reasonable doubt that their method can show it was a
8 hundred grams.

9 If they're off by a few, as I said, 28 to 100
10 is an option; 10 to 20 is an option. That's up to
11 you. Thank you, ladies and gentlemen.

12 THE COURT: Mr. Wagner.

13 MR. WAGNER: The definition of trafficking is a
14 lot of different things.

15 MR. OPPERMANN: Your Honor, if I may?

16 THE COURT: Is there a problem?

17 MR. OPPERMANN: May we approach?

18 THE COURT: Certainly.

19 (Sidebar discussion.)

20 MR. WAGNER: Trafficking would be sell,
21 manufacture, deliver, purchase, or bring into the
22 State, to provide financial assistance or otherwise
23 aid, abet, attempt, or conspire to sell,
24 manufacture, deliver, purchase, or bring into this
25 State, or who is knowingly in actual or constructive

1 possession and knowingly attempts to become in
2 actual or constructive possession of a quantity of
3 methamphetamine.

4 So, yeah, we didn't say anything about him
5 selling it, nor does it sound like that doesn't fit
6 here. He knowingly possessed over 100 grams of
7 methamphetamine. That's under the trafficking
8 statute and that's why we're -- we're here.

9 These crystals are not like flour. They didn't
10 get scraped up off the road. They got meticulously
11 picked up by an evidence technician and officers
12 with gloves put it back in that bag. And I submit
13 to you there's no flour in here, there's no road
14 debris, and it was not scraped up.

15 The weight is 109.34 grams and 3.30 grams in
16 the other baggy, and that's got nothing to do with
17 road debris or anything else. That's strictly pure
18 methamphetamine.

19 MR. OPPERMANN: Your Honor, may -- may we
20 approach?

21 THE COURT: Certainly.

22 (Sidebar discussion.)

23 JURY CHARGE

24 THE COURT: Madam forelady, ladies and
25 gentlemen of the jury, as jurors in this case you

1 have certain functions and responsibilities to
2 perform which are entirely separate and distinct as
3 those of mine as the trial judge.

4 I am prohibited by the Constitution of our
5 state with charging you on the facts of this case.
6 I'm also prohibited from discussing the facts of the
7 case with you or in anyway indicate what my
8 feelings, if there are, about the facts of this
9 case.

10 It is your responsibility and yours alone to
11 pass upon all the issues of fact presented in the
12 case. I would, therefore, charge you that if during
13 the course of this trial or during my charge, you
14 have been given or left with the impression or
15 feeling that I do have a personal feeling about the
16 facts of this case, I would specifically instruct
17 you to disregard that feeling or impression.

18 Moreover, you are the sole judges of what the
19 testimony was and not the argument of counsel. It
20 is also your duty and yours alone to weigh the
21 testimony and evidence in the case and to pass upon
22 the credibility of the witnesses or believability of
23 the witnesses.

24 In this connection, you have the right to
25 believe all that a witness tells you or to

1 disbelieve all that a witness tells you. You have a
2 right to believe a part of what a witness tells you
3 and to disbelieve a part of what a witness tells
4 you.

5 You have the right to take into consideration
6 any bias or prejudice or interest you feel the
7 witness might have had in the case. I say this
8 merely to emphasize that the weight you see fit to
9 give the testimony to the credibility of the witness
10 as well as all of the issues of fact are yours and
11 your sole -- are yours and yours alone for your sole
12 determination.

13 As judges of the facts, you are the judges of
14 the credibility, that is the believability of the
15 witnesses who've testified in this case. In passing
16 upon their credibility, you may take into
17 consideration many things such as:

18 The appearance and manner of the witness on the
19 stand. Sometimes referred to as the demeanor of the
20 witness.

21 Was the witness forthright or hesitant?

22 Was the witness's testimony consistent or did
23 it contain discrepancies?

24 What was the ability of the witness to know the
25 facts about which he or she testified?

1 Did the witness have a cause or a reason to be
2 biased and prejudiced in favor of the testimony
3 which he gave?

4 Or was the testimony of the witness
5 corroborated and made strong through another
6 testimony in evidence?

7 Or was it made weak or impeached by such other
8 testimony in evidence?

9 As jurors, you have the right to believe a
10 small portion of a witness's testimony and discard
11 the larger and vice versa.

12 You may believe all of the witness's testimony,
13 or you may believe the testimony of a single witness
14 against that of many witness's or the other way
15 around.

16 You most certainly do not determine the matter
17 of credibility or believability by counting up the
18 number of witnesses who may have testified on behalf
19 of the parties.

20 Now, I instruct you and emphasize that the fact
21 that the defendant did not testify is not a factor
22 to be considered by you in any way in your
23 deliberations and in your consideration of the
24 questions of guilt or the innocence of the
25 defendant. It must not be considered by you in any

1 manner whatsoever.

2 The defendant has a Constitutional right to
3 remain silent and that assertion of that right must
4 not be considered by you in your deliberations. I
5 repeat, under your oath you are to draw no
6 conclusion whatsoever with the fact the defendant in
7 this case did not testify. The fact that the
8 defendant did not testify should not even be
9 discussed in the jury room.

10 The burden of proof, as I have stated to you,
11 is on the State. The defendant is not required to
12 prove his innocence. The burden of proof remains on
13 the State to prove guilt beyond a reasonable doubt.

14 Now, the rules of evidence ordinarily do not
15 permit witnesses to testify to opinions or
16 conclusions. The exception to this rule exists for
17 a witness we call expert witnesses. The witness who
18 by education and experience has been -- has become
19 an expert in forensic law, science, or professional
20 calling may state an opinion as to the relevant
21 material matter which the witness claims to be an
22 expert and may also state the reason for that
23 opinion.

24 You should consider any expert -- excuse me.
25 You should consider any expert opinion received in

1 evidence in this case and like any like other
2 evidence, give it the weight you think it deserves.

3 If you decide that the opinion of an expert is
4 not based on sufficient education and experience or
5 you conclude that the reasons given in support of
6 the opinion are not sound or that the opinion is
7 outweighed by other evidence, you may disregard the
8 opinion entirely.

9 An expert witness's testimony is to be given no
10 greater weight than other witnesses simply -- simply
11 because the witness is an expert. Further, you are
12 not required to accept an expert's opinion even
13 though it is not contradicted.

14 Now, by the same Constitution and law which are
15 required by the facts and the evidence as I
16 discussed with you, I am the judge made -- as the
17 trial judge, I'm the sole and only instructor on the
18 law. You must accept this as correct law I charge
19 and apply to it the evidence as you find it and
20 reach your verdict.

21 If I should make an error in the law as I
22 instruct it to you today, there's another time and
23 place that that error can be considered and if
24 necessary corrected. But for the purposes of this
25 case today, you must accept the law as I charge you

1 to be the correct law.

2 Now, the defendant has pled not guilty to each
3 of these indictments, and those pleas put the burden
4 upon the State to prove the defendant guilty under
5 those indictments.

6 The person charged with committing a criminal
7 offense in South Carolina is never required to prove
8 himself innocent. —I charge you that it is an
9 important rule of the law that the defendant in a
10 criminal trial, no matter what the seriousness of
11 the charge may be, will always be presumed innocent
12 of the crime for which the indictment was issued,
13 unless the guilt has been proven by evidence
14 satisfying you of that guilt beyond a reasonable
15 doubt.

16 Now, the presumption of innocence does not end
17 when you begin your deliberations, but it
18 accompanies the defendant throughout the trial until
19 you reach a verdict of guilt based upon evidence
20 satisfying you of that guilt beyond a reasonable
21 doubt.

22 The presumption of innocence is like a robe of
23 righteousness placed about the shoulders of the
24 defendant which remains with the defendant until it
25 has been stripped from the defendant by evidence

1 satisfying you of the defendant's guilt beyond a
2 reasonable doubt.

3 The presumption of innocence is not a mere
4 legal theory. It is not just a legal phrase. It is
5 a substantial right to which every defendant is
6 entitled, unless you the jury are satisfied from the
7 evidence of the defendant's guilt beyond a
8 reasonable doubt.

9 Now, what is a reasonable doubt? A reasonable
10 doubt is a kind of doubt that would cause a
11 reasonable person to hesitate to act. The State has
12 the burden of proving the defendant guilty beyond a
13 reasonable doubt.

14 Some of you may have served as jurors in civil
15 cases where you were told that it's only necessary
16 to prove that a fact is more likely true than not
17 true, such as by the greater weight of the
18 preponderance of the evidence.

19 In criminal cases, the State's proof must be
20 more powerful than that. It must be beyond a
21 reasonable doubt. Proof beyond a reasonable doubt
22 is proof that leaves you firmly convinced of the
23 defendant's guilt. There are very few things in
24 this world that we know with absolute certainty.
25 And in criminal cases, the law does not require

1 proof that overcome -- overcomes every possible
2 doubt.

3 If based -- if -- if based on your
4 consideration of the evidence you are firmly
5 convinced that the defendant is guilty of the crimes
6 charged in each of these indictments, you must find
7 the defendant guilty on those indictments.

8 If on the other hand you think there's a real
9 possibility that the defendant is not guilty, you
10 must give the defendant the benefit of the doubt and
11 find him not guilty on those indictments.

12 Now, there are two types of evidence which we
13 generally present during a trial -- direct evidence
14 and circumstantial evidence.

15 Direct evidence is testimony of a person that
16 claims to have actual knowledge of a fact, such as
17 an eyewitness. It is evidence that immediately
18 establishes the main fact to be proven does not
19 require deduction.

20 Circumstantial evidence is proof of a chain of
21 facts and circumstances indicating the existence of
22 a fact. It is evidence which immediately
23 establishes collateral facts in which the main fact
24 being took inferred. Circumstantial evidence is
25 based upon an inference, not on personal knowledge

1 or observation.

2 Crimes may be proven by circumstantial
3 evidence. The law makes no distinction between the
4 weight or value to be given to either direct or
5 circumstantial evidence. However, to the extent the
6 State relies on circumstantial evidence, all of the
7 circumstances must be consistent with each other and
8 when taken together point conclusively to the guilt
9 of the accused beyond a reasonable doubt. If these
10 circumstances merely portray the defendant's
11 behavior as suspicious, that proof has failed.

12 The State has the burden of proving the
13 defendant guilty beyond a reasonable doubt. This
14 burden rests upon the State regardless of whether
15 the State relies on direct evidence, circumstantial
16 evidence, or some combination of the two.

17 You should weigh all the evidence in the case.
18 After weighing all the evidence, if you are not
19 convinced of guilt of the defendant beyond a
20 reasonable doubt, you must find the defendant not
21 guilty on that indictment.

22 In order to establish criminal liability,
23 criminal intent is required. Criminal intent may --
24 must be proven by the State beyond a reasonable
25 doubt. Criminal intent is always a matter that must

1 be determined by the jury from the circumstances
2 surrounding the situation.

3 There is no way to prove intent to a
4 mathematical certainty. There's no way medical
5 science can dissect a person's brain and determine
6 what the person had in mind, so the law says that
7 criminal intent may be inferred from the
8 circumstances shown to have existed.

9 This is how you make a determination of whether
10 or not the element requiring intent was present. It
11 is not necessary to establish intent by direct and
12 positive evidence, but may be established by the
13 inference in the same manner and weighed as any
14 other fact by taking into consideration the acts of
15 the party and the act -- and the facts and
16 circumstances of the case.

17 Criminal intent is a mental state, the
18 conscious wrongdoing, and it's up to you to
19 determine what the defendant intended to do based --
20 intended to do based on the circumstances shown to
21 exist.

22 Criminal intent is a state of mind that
23 operates jointly with an act or a commission or
24 omission of a criminal -- of a crime. Criminal
25 intent is a mental state.

1 Criminal liability is normally -- normally
2 based upon the occurrence of two factors -- and evil
3 meaning mind and an evil doing hand. A person who
4 is said to act knowingly if he's aware that the
5 result of a particular -- particularly certain to
6 follow from his conduct whatever his desire may be
7 to -- to -- to that result.

8 Now, the indictments in this case allege three
9 different offenses against the defendant, Cole
10 Brooks Gray. Indictment No. 2017-GS-04-1850 alleges
11 failure to stop for a blue light; Indictment No.
12 2017-GS-04-1851 alleges receiving stolen goods --
13 stolen goods valued more than \$2,000 but less than
14 \$10,000; and Indictment No. 2017-GS-04-1220 alleges
15 trafficking in methamphet -- methamphetamine.

16 Now, each of these three indictments are
17 charged as a separate and distinct offense. You
18 must decide each indictment separately and on the
19 evidence and the law applicable to it uninfluenced
20 by your decision as to the other indictment or
21 indictments.

22 The defendant may be convicted or acquitted on
23 one or all -- excuse me. The defendant may be
24 convicted or acquitted on one or all the offenses
25 charged. You will be asked to write a separate

1 verdict of guilty or not guilty for each indictment.

2 I remind you that the fact that the defendant
3 was arrested, charged, and indicted in this case is
4 not evidence in this case and cannot be considered
5 by you as evidence of guilt in this case, nor does
6 it create any presumption or inference of guilt.

7 The indictments are simply the formal written
8 instruments which contain the charges which made
9 against the defendant and are the formal documents
10 for which the case was brought into this court.

11 Now, the defendant is charged with receiving
12 stolen goods. The State must prove beyond a
13 reasonable doubt that the defendant brought --
14 bought, received, or possessed goods, chattels, or
15 other property and that the defendant knew or had
16 reason to believe that the property was stolen.

17 Whether the defendant knew or had reason to
18 believe that the property was stolen may be shown by
19 direct or circumstantial evidence. The State must
20 prove that the defendant knew or had reason to
21 believe that the property was stolen by showing that
22 the defendant knew facts that would make a
23 reasonable person believe that the property was
24 stolen.

25 And the defendant is charged with failure to

1 stop for a blue light. In order to prove this
2 crime, the defendant must prove -- or excuse me --
3 the State must prove beyond a reasonable doubt that
4 the defendant was driving a motor vehicle, that the
5 defendant was driving a motor vehicle on a road,
6 street, or highway of this state, that the defendant
7 was signalled to stop by a law enforcement officer
8 and a vehicle by means of a siren or flashing light
9 and the defendant did not stop.

10 In determining whether or not there are
11 mitigating circumstances which would justify the
12 defendant's failure to stop for the blue light, you
13 may consider actual road conditions, actual roadside
14 conditions, other conditions such as lightening --
15 lighting and weather, officer, driver, or -- and/or
16 passenger safety, and any other circumstances you
17 believe to reasonably mitigate the alleged
18 violation, an official signal requiring the motorist
19 to stop via a siren or flashing light, but
20 neither -- but you do not have to have both in use.

21 An attempt to increase the speed of a vehicle
22 or in some other manner avoid pursuing law
23 enforcement vehicle when signaled by a siren or a
24 flashing light may be considered as evidence of
25 failure to stop for a blue light; however, it is

1 merely an evidentiary fact to be taken into
2 consideration by you along with all the other
3 evidence in the case and to be given the weight that
4 you decide that you receive.

5 Now, the defendant is also charged with
6 trafficking in methamphetamine. The State must
7 prove beyond a reasonable doubt the defendant
8 knowingly sold, manufactured, cultivated, delivered,
9 purchased, brought into this state, provided
10 financial assistance, or otherwise aiding, abetted,
11 or attempted, or conspired to sell, cultivate,
12 manufacture, deliver, purchase, or bring into the
13 state was knowingly in actual constructive
14 possession, knowingly attempted to become -- or to
15 become an actual or constructive possession of the
16 methamphetamine..

17 The State can also prove -- the State must also
18 prove beyond a reasonable doubt that the amount of
19 the -- what the amount of the methamphetamine was.
20 In order to convict a defendant of trafficking
21 methamphetamine, the State must prove beyond a
22 reasonable doubt the defendant was in actual
23 constructive possession of at least 100 grams of
24 methamphetamine, and that he knew he was in actual
25 constructive possession of methamphetamine and a

1 reasonable person would have known that at least 100
2 grams of methamphetamine were involved.

3 If you find a reasonable doubt the defendant
4 possessed methamphetamine, but there is reasonable
5 doubt as to whether the amount involved was more
6 than 100 grams, then you should consider which of
7 the following crimes this involved.

8 If you find a reasonable doubt the defendant
9 was knowingly -- or knowingly in actual constructive
10 possession of less than 100 grams at any given point
11 in time, then you should find the defendant guilty
12 of a lesser included level of trafficking in
13 violation of the Code of Laws of South Carolina.

14 The lesser level of trafficking includes
15 trafficking between 28 grams and 100 grams and
16 trafficking between 10 grams and 28 grams. If you
17 find a reasonable doubt that the defendant possessed
18 the meth -- methamphetamine with an intent to
19 distribute, but there is reasonable doubt as to
20 whether the defendant possessed 10 grams of
21 methamphetamine at a given point in time, you should
22 find the defendant guilty of possession of meth --
23 methamphetamine with intent to distribute.

24 If you find a reasonable doubt that the
25 defendant possessed methamphetamine, but there is

1 reasonable doubt as to whether he intended to
2 distribute the methamphetamine, you should find the
3 defendant guilty of possession of methamphetamine.

4 If you determine the State has not proven
5 trafficking methamphetamine beyond a reasonable
6 doubt, you should then consider whether the State
7 has proven a reasonable doubt that the defendant is
8 guilty of possession with intent to distribute
9 methamphetamine. Possession with intent to
10 distribute contains all the evidence of trafficking,
11 except the amount of the methamphetamine.

12 In addition, the State must prove beyond a
13 reasonable doubt that the defendant had intent to
14 distribute the methamphetamine. Distribute means to
15 deliver other than by administering or dispensing a
16 drug for medical treatment. Intent may be shown by
17 acts and conduct of the defendant and other
18 circumstances which you may naturally, reasonably
19 infer intent.

20 In determining whether the defendant had an
21 intent to distribute methamphetamine, you must
22 consider the circumstances surrounding the
23 defendant's alleged possession. You may consider
24 the amount of the substance alleged to have been
25 possessed, the manner in which it was allegedly

1 possessed, the place where it was allegedly
2 possessed, and other factors you consider to be
3 important.

4 You must find the defendant -- you must find
5 that the defendant did not intend to have the
6 methamphetamine solely for his own use. Possession
7 of one or more bags of methamphetamine creates an
8 inference that the defendant possessed the
9 methamphetamine with intent to distribute.

10 The inference does not relieve the State from
11 proving beyond a reasonable doubt that the defendant
12 had the intent to distribute. It is simply an
13 evidentiary fact to be taken into consideration by
14 you along with other evidence in the case and to be
15 given the weight you decide it should have.

16 Now, to prove possession, the State must prove
17 beyond a reasonable doubt that the defendant had
18 both the power and the intent to control the
19 disposition or use of the methamphetamine.
20 Possession may be either actual or constructive.

21 Actual possession means that the
22 methamphetamine was in actual physical custody of
23 the defendant. Constructive possession means that
24 the defendant had dominion and control or the right
25 to exercise dominion and control over either the

1 methamphetamine itself or the property on which the
2 methamphetamine was found. Mere presence at the
3 scene where the drugs were found is not enough to
4 prove possession.

5 Actual knowledge of the presence of the
6 methamphetamine is strong evidence of the
7 defendant's intent to control its disposition or
8 use. The defendant's knowledge and possession may
9 be inferred when its presence is found on the
10 property under the defendant's control; however, the
11 inference is simply an evidentiary fact to be taken
12 into consideration by you with the other evidence in
13 the case and to be given the weight you decide it
14 should have.

15 Now, ladies and gentlemen of the jury, you have
16 been selected as fair and impartial jurors, sworn to
17 impartially try and determine the facts of this
18 case. When you comply with your oath to do so, then
19 no one will have the right to criticize your
20 verdict. You will have put aside your duties as
21 jurors. You should not be influenced by opinions or
22 expressions of opinions, if any, which you may have
23 heard on the outside, but you'll decide this case
24 according to the testimony you've heard from the
25 lips of sworn witnesses, along with the other

1 evidence that may have been introduced.

2 You must not consider as evidence any statement
3 of counsel made during the trial; however, if
4 counsel for the parties have stipulated to any fact
5 that's been admitted by counsel, you regard that
6 fact as being conclusively prove -- proved as to the
7 party or parties making the stipulation or
8 admission.

9 As to those questions which an objection was
10 sustained, you must not speculate as to what the
11 answer might have been or as to the reasoning of the
12 objection. You must not consider for any purpose
13 any offer of evidence that has been rejected or any
14 evidence that was stricken by the Court. Such
15 matter is to be treated as though you have never
16 known it..

17 You must never speculate to be true any
18 insinuation suggested by a question asked of a
19 witness. A question is not evidence and may be
20 considered only as it supplies meaning to the
21 answer.

22 As I said earlier, you are the judge -- the
23 judges of the facts in this case and you're to
24 determine only if the defendant is guilty or not
25 guilty based on the testimony and evidence presented

1 in the trial after applying to the law as I've --
2 after applying the law as I have given it to you as
3 to each of the indictments.

4 It's from the evidence you have a -- if from
5 the evidence you have a reasonable doubt as to
6 whether or not the defendant is guilty, it is your
7 duty to acquit him and write the two words "not
8 guilty."

9 Under the oath you took, you swore to try this
10 case based only and solely on the testimony and
11 evidence involved and presented and heard in this
12 courtroom. It is your duty to lay aside all bias or
13 prejudice and sympathy you may have in reaching your
14 verdict. You have no friends to reward or enemies
15 to punish.

16 Now, I have prepared a -- the verdict form and
17 I'm going to ask the bailiff if you will hand it to
18 the forelady.

19 THE BAILIFF: (Complying.)

20 THE COURT: As you'll note, there are three
21 indictments charging three separate offenses. The
22 Indictment No. 2017-GS-04-1850 -- and each verdict
23 on each indictment is -- must be unanimous. That
24 means all 12 members have to agree to that
25 particular verdict on that indictment.

1 On Indictment No. 2017-GS-04-1850, "We the jury
2 unanimously find defendant Cole Brooks Gray either
3 guilty of the failure to stop for a blue light or
4 not guilty." Again, it has to be a unanimous
5 verdict, but whatever that verdict is, check the
6 appropriate blank if you would, madam forelady.

7 On Indictment No. 2017-GS-04-1851, "We the jury
8 unanimously find the defendant Cole Brooks Gray
9 either guilty of receiving stolen goods valued more
10 that 2,000 but less than 10,000 or not guilty."

11 And then Indictment No. 2017-GS-04-1220, as
12 provided that, "We the jury unanimously find the
13 defendant Cole Brooks Gray guilty of trafficking in
14 meth -- in methamphetamine," and then you also must
15 find which. If you find that he was guilty of
16 trafficking methamphetamine, how much was it or what
17 was the weight of that methamphetamine. Was it a
18 100 grams or more but less than 200 grams; or what
19 it 28 grams or more but less than 10 -- less than
20 100 grams; or was it 10 grams or more but less than
21 28 grams?

22 And if you find that they have not established
23 the amount, then it can be possession with intent to
24 distribute methamphetamine or simple possession if
25 it's less than 10 -- 10 grams or not guilty.

1 Whatever the appropriate marks to be made first on
2 the whether or not it's guilty, but then if it is
3 guilty, then you must decide what the possession
4 sizes of methamphetamine would be or not guilty as
5 to the entire indictment.

6 Once you have completed the -- reach your
7 verdict on each of these indictments and you
8 complete the verdict form, if you'd sign your name
9 and date it in the space provided.

10 Now, I'm going to ask the bailiff to bring back
11 the verdict form, and I'm going to ask you once
12 again to retire to the jury room. Do not begin your
13 deliberations until the bailiff brings in all the
14 evidence that's been introduced in this case.

15 Now, there have been videos and audios in this
16 case. You will have the disk, but you will not have
17 a player. If you want any of the video or audio
18 played, I'll ask you to come back and we'll do it
19 here in the courtroom so I'll be sure that, what is
20 it, nothing will happen to the recordings.

21 None of you are old enough to remember, but we
22 had a case one time involving the President of the
23 United States and some tapes or whatever were made
24 of conversations. And his secretary was supposed to
25 transcribe them, but Ms. Wood said that she hit the

1 wrong button and she deleted 19 minutes. So I don't
2 want any chance of, what is it, things being
3 damaged, and if it is, I want to know who did it and
4 out here in open court. But, anyway, for that
5 reason, but if you do want to hear any part of
6 the -- or see any of the audio or video, we will
7 play it here.

8 Also, if you have any questions about my
9 instructions or anything else as far as that would
10 help you in making your determination in this case,
11 write the question down, madam forelady, for the
12 jury and knock on the door, and we'll bring you back
13 out and we'll have that also put on the record so
14 we'll be sure what your question was and what the
15 answer to that question might be.

16 Now, with that, as I say, I'm going to ask you
17 to retire to the jury room, and I've got some
18 matters I need to take up with the attorneys. And
19 once I have completed that, then I'll send in all
20 the evidence and the verdict form and you can begin
21 your deliberation once you receive the evidence and
22 the verdict form.

23 Everyone else remain seated while the jury
24 retires from the courtroom.

25 Now, the alternates, I'm going to ask y'all to

1 stay if you would, please. But the remaining of the
2 jury, retire to the jury room.

3 (At 11:33 a.m., the jury exited the courtroom.)

4 THE COURT: All right. Are there any
5 exceptions to the charge or any additional requested
6 charge from the State?

7 MR. WAGNER: No, sir.

8 THE COURT: From the defense?

9 MR. OPPERMANN: No, Your Honor.

10 THE COURT: All right. We do have some matters
11 we're going to put on the record, but not as far as
12 the charge.

13 MR. OPPERMANN: That's correct, Your Honor.

14 THE COURT: All right.. Let's do collect all
15 the evidence and be sure that nothing goes back
16 that's not supposed to and everything that's
17 supposed to does go back.

18 (Brief recess.)

19 THE COURT: Any objection to the verdict form?

20 MR. WAGNER: No, sir.

21 MR. OPPERMANN: No, Your Honor..

22 THE COURT: Very good.

23 (At 11:36 a.m., the jury began deliberations.)

24 THE COURT: All right. Anything from the State
25 before the defense motion?

1 MR. WAGNER: No, Your Honor.

2 THE COURT: All right. Mr. Oppermann.

3 MR. OPPERMANN: Your Honor, should we make the
4 motion outside the presence of the alternate jurors?

5 THE COURT: Well, the alternate jurors are
6 going to be released. Well, I can release them now.
7 I'm sorry.

8 I think you do understand why you were selected
9 as alternates. This case has gone now for three
10 days, and it could've been that something could've
11 happened to one of the jurors who are there. And so
12 one of you would -- or both of you if there were
13 two jurors that couldn't complete the case, you
14 would've sat in place of them on the jury.

15 Fortunately, this case did not require any excuse of
16 any jurors, so your service is now complete.

17 Now, I know that, what is it, you would rather
18 have been somewhere else these three days, but
19 although it looks like I'm doing everything else
20 except playing -- paying attention, I've developed a
21 certain ability or knack or whatever to keep up
22 what's going on in the courtroom. And I noticed
23 that both of you were very attentive during all the
24 testimony and evidence or either counsel during the
25 course of the trial. And if you had had to serve,

1 you would be excellent jurors in this case.

2 But as I said, now your service as jurors is
3 completed and you will be excused. In fact, I think
4 excused for the balance of the week. The other
5 matters that were necessary are being disposed of
6 without jurors. And so as I say, you will be
7 excused.

8 I wish there was something I could do for you,
9 but only thing I can say if you remember, when I
10 qualified the entire jury panel on Monday, I asked
11 if you had -- how many had served, if any, on the
12 jury and some of the jury duty in the last three
13 years. So the only thing I can say now with this,
14 you won't be called for another -- at least another
15 three years.

16 But, again, I hope that this has been some
17 benefit to you because without participation of
18 citizens in our justice system, it would not be what
19 it is which is perhaps not perfect, but the most
20 admired system of justice we have in a civilized
21 world and I thank you for that.

22 Now, with that, I will excuse you.

23 And, madam clerk, is there anything that you
24 have for the jurors?

25 THE CLERK: I have their statements. Yes, sir.

1 THE COURT: All right. If you would -- all
2 right. With that, you're excused for the week and I
3 hope you have a wonderful weekend.

4 ALTERNATE JURORS: Thank you.

5 THE COURT: Thank you.

6 (At 11:42 a.m., alternates released.)

7 THE COURT: Yes, sir.

8 MR. OPPERMANN: Your Honor, we wish to object
9 on the record that the State was given an
10 opportunity to respond after the defense made its
11 closing argument. It's our position that since the
12 defense did not put up a case, the defense should
13 have the right to close out with its arguments. We
14 do believe this may have caused some prejudice and
15 at this time we request a mistrial.

16 THE COURT: Okay. I will direct your attention
17 to *State v. Baty* where the procedure is recognized
18 and say that, "In a criminal trial where the party
19 with the middle argument," meaning the defendant,
20 "requests the party with the first and last closing
21 arguments open fully on the law and the facts and
22 then respond in full to the other party's argument,
23 but not raise new matter," which is what the ruling
24 of the Court was here.

25 Now, of course, the -- there was a certain

1 reluct -- reluctance in here by the Court in Baty to
2 promulgate that as a rule inasmuch as the rule had
3 been submitted by the -- the Courts for -- to the
4 legislature had not been approved and it died for
5 lack of approval.

6 But they also make this statement, that the
7 adoption of this rule governing the contents of the
8 closing arguments, we restore what had been largely
9 by the Court the rule, the practice in the state for
10 many years until 1971.

11 Of course in 1971, the case of *State v. Lee*,
12 after a rule change under then current rules, said
13 that the State only had to open on the law. And so
14 it goes back to what the law was before 1971. And
15 for your consideration, I'll give you the case of
16 *State v. Attelberry* (phonetic) if you want to write
17 it down.

18 MR. OPPERMANN: Thank you, Your Honor.

19 THE COURT: And that is 124 -- 129 S.C. 464,
20 124 S.E. 648, and I think it's 1918. But it is
21 cited also in the *State v. Lee* where the rule was
22 changed to provide that the State -- the State only
23 had to open on the law and the *State v. Lee* is 255
24 S.C. 309, 178 S.E.2d 652. It's a 1971.

25 And the -- so the law or the rule is noted also

1 in our Rules of Civil Procedure and Criminal
2 Procedure that where the rules weren't changed by
3 the new Rules of Civil Procedure or Criminal
4 Procedure, then they remain as the practice before
5 that time, and since the rules that were adopted in
6 1971 for Lee were specifically repealed by the Rules
7 of Criminal Procedure and Civil Procedure.

8 So with that, then the Court as I understand it
9 and the practice would be Attelberry, which
10 provides exactly what the Supreme Court says is the
11 law once approved.

12 MR. OPPERMANN: Thank you, Your Honor.

13 THE COURT: All right. So that's -- I'm glad
14 you brought it up because I've waited for years for
15 a defendant to bring it up, but fortunately once
16 they brought it up in Baty, but I've just been
17 waiting on Attelberry. We should deal with it
18 there. Very good.

19 MR. OPPERMANN: Thank you, Your Honor.

20 THE COURT: All right. Anything else? By the
21 way, your motion for mistrial was denied.

22 MR. OPPERMANN: Thank you, Your Honor.

23 THE COURT: Anything else?

24 MR. WAGNER: No, sir.

25 THE COURT: All right. We'll wait a verdict.

1 By the way, I do want to thank both attorneys
2 for a very forcibly presented -- not both attorneys,
3 but all attorneys, also the Assistant Solicitor in
4 presentation of their cases and representing their
5 parties and I thank you for doing it in a most
6 professional way. Thank you.

7 All right. We'll wait the return of the
8 jury verdict.

9 (At 11:47 a.m., recess waiting on a verdict.)

10 (At 12:10 p.m., a verdict was reached.)

11 THE COURT: My understanding is that the jury
12 has reached a verdict. Is there anything from the
13 State before we bring the jury back?

14 MR. WAGNER: No, Your Honor.

15 THE COURT: From the defense?

16 MR. OPPERMANN: No, Your Honor.

17 THE COURT: Very good.

18 (At 12:11 p.m., jury entered the courtroom.)

19 THE COURT: All right. Let the record reflect
20 that the jury is in the jury box.

21 Madam forelady, I understand the jury has
22 reached a verdict?

23 THE FORELADY: Yes, sir.

24 THE COURT: If you would please, pass it up.

25 THE FORELADY: (Complying.)

1 THE COURT: Madam clerk, publish the verdict if
2 you would, please -- the verdicts.

3 THE CLERK: This is the State of South
4 Carolina, County of Anderson, Court of General
5 Sessions, *State of South Carolina v. Cole Gray*
6 *Brooks -- Brook -- Cole Brooks Gray*, this is the
7 verdict.

8 Indictment No. 2017-GS-04-01850, we the jury
9 unanimously find the defendant Cole Brooks Gray
10 guilty of failure to stop for a blue light.

11 Indictment No. 2017-GS-04-01851, we the jury --
12 jury unanimously find the defendant Cole Brooks Gray
13 guilty of receiving stolen goods valued more than
14 2,000 but less than 10,000.

15 Indictment No. 2017-GS-04-01220, we the jury
16 unanimously find the defendant Cole Brooks Gray
17 guilty of trafficking methamphetamines in the amount
18 of 100 grams or more but less than 200 grams.

19 And it is signed by the foreperson, Tammy
20 Fuller, on October 18, 2017.

21 THE COURT: Madam forelady, is this the verdict
22 of the jury so say you and all members of the jury?
23 If so, indicate by raising your right hand.

24 THE JURORS: (Indicating.)

25 THE COURT: Very good. Thank you. And it is

1 still your verdict?

2 THE JURORS: (Affirmative responses.)

3 THE COURT: Very good. All right. Anything
4 from the State before we proceed?

5 MR. WAGNER: No, sir.

6 THE COURT: From the defense?

7 MR. OPPERMANN: Your Honor, we have motions.

8 THE COURT: All right. You want to poll the
9 jury?

10 MR. OPPERMANN: Umm ---

11 THE COURT: What's the motion then? If not,
12 I'm going to let the jury go.

13 MR. OPPERMANN: We have motions to -- for
14 judgment notwithstanding the verdict.

15 THE COURT: Well, they're not going to act on
16 that.

17 MR. OPPERMANN: That's correct, Your Honor.
18 They want to leave the court, they can.

19 THE COURT: Thank you. By the way, you don't
20 make that -- I don't think that's an appropriate
21 motion in General Sessions.

22 Madam forelady, ladies and gentlemen of the
23 jury, I want to thank you for your service. As I
24 told the alternates when I dismissed them, that I'm
25 very much aware that none of you asked to be here,

1 but having been willing to serve and done your
2 service as you have, that as a matter of doing that,
3 I know it looks like I'm doing everything else but
4 paying attention up here, but I do notice -- I've
5 kind of been at it so long now, that I kind of keep
6 up with what goes on in the courtroom.

7 I noticed all of you paid very careful and
8 close attention to the testimony, evidence, and the
9 argument of counsel, as well as the charge on the
10 law. And these are complicated cases, but yet
11 obviously you were satisfied as to your verdict.

12 And in reaching -- in having reached a --
13 consciously reached a verdict that you found was
14 appropriate on each of these cases, I want to thank
15 you and also note you have no one to talk to,
16 explain, or whatever about your service as jurors.

17 And one thing you need to remember, that a jury
18 verdict is not one person's verdict. It's a
19 unanimous verdict. It's 12 people. So, what is it,
20 you don't need to -- unless you're going to bring
21 the other 11 along with you, you don't need to
22 discuss anything about your verdict.

23 And, in fact, if anybody should attempt to
24 discuss your verdict or your actions as jurors and
25 you -- and they refuse to stop in their pursuit,

1 you -- if you would please, contact the Clerk of
2 Court and I'll take the appropriate action because
3 that is improper.

4 But more importantly, if we did not have
5 citizen participation in our system of justice, it
6 would not be what it is. It might not be perfect,
7 but it's a whole lot better than any other that has
8 been devised and actually worked in the history of
9 the world really. As I say, it's not perfect, but
10 there again, the fact that we have citizens
11 participating and you all have the strength of the
12 jury system or the justice system.

13 I might note that, what is it, Winston
14 Churchill, the late Prime Minister during the second
15 World War of Great Britain, once said that, "No
16 greater duty can a citizen perform in peacetime than
17 that as a juror," because our whole system does rely
18 on citizen participation. I think it would be
19 mediocre in this case and I thank you for your
20 service.

21 But the thing is, also, when we -- as I said,
22 you do -- you don't ask to do it, but you do it.
23 That's so much -- that's so often the case in being
24 a part of this country. We arise to the occasion.
25 And as I said earlier, having performed this -- in

1 this particular case, I want to thank you and you
2 will be excused.

3 Now, I hope your service has not been without
4 some benefit to you because I think you do
5 understand how serious our system is in order to
6 meet its obligation to all the citizens necessary,
7 that we do approach it with a proper attitude. And
8 with that, you'll be excused.

9 Now, in fact, we -- I think all the jurors have
10 been released this week. We've got plenty of work
11 to do, but it doesn't require the service of the
12 jury so this will complete your service this week.

13 And, although, I can't do anything for you
14 other than, what is it, you'll remember the other
15 day, I think Monday, when I qualified the jury and
16 when I asked how many had served on a jury in the
17 last three years, at least you won't receive a call
18 for another three years so I hope that, what is it,
19 that your service has not been burdensome. With
20 that, you will be excused.

21 Madam clerk, do you have anything for the jury?

22 THE CLERK: I have their statements, Your
23 Honor.

24 THE COURT: All right. Very good. All right.
25 Thank you and you are excused. Again, it's been a

1 real pleasure working with you and I thank you. All
2 right. With that, you are excused.

3 Everyone else remain seated while the jury
4 leave the courtroom.

5 (At 12:19 p.m., the jury was excused from
6 further service.)

7 THE COURT: All right. Anything from the
8 State?

9 MR. WAGNER: No, sir.

10 THE COURT: All right. Mr. Oppermann, I
11 understand you have a motion.

12 MR. OPPERMANN: Yes, Your Honor. I have
13 several matters for the record.

14 THE COURT: Very good.

15 MR. OPPERMANN: We renew our objection to the
16 Court's ruling as to our motion for continuance
17 prior to trial on the grounds we stated previously.

18 We renew our objection of the Court's ruling as
19 to our motion to enforce the offer on the grounds
20 that were previously stated in the record.

21 We renew each and all of our objections during
22 the course of the State's case based on the
23 introduction of several items in evidence.

24 And we renew our motion for a directed verdict
25 of the counts of trafficking over 200 and receiving

1 stolen goods.

2 Your Honor, we also -- I believe the
3 appropriate point to ask for a directed verdict, but
4 I appreciate the Court's indulgence. This actually
5 has been my first jury trial and trying to make sure
6 I get everything right.

7 We will be making at this time a motion for
8 judgment, notwithstanding the verdict, with respect
9 to the charge of receiving stolen goods and
10 trafficking, 100 to 200.

11 Specifically, that we will argue that the
12 State -- we do argue that the State did not prove
13 the element of knowledge of the required charge that
14 a hundred grams were in his possession and a
15 reasonable person would have known that.

16 We also argue that the State did not prove and
17 a reasonable jury could not find given the tested
18 measure that was given the State of what the State
19 has said was methamphetamine when it was collected
20 in the street, that a reasonable jury could not find
21 under the circumstances that that could accurately
22 be weighted as a hundred, so that it's measurement
23 issue as to weight.

24 And there's also the issue of whether or not a
25 reasonable person would have known the weight was.

1 The State didn't offer any evidence as to that.
2 That's the basis for our motion for a post-directed
3 verdict, notwithstanding the verdict.

4 THE COURT: Solicitor, is he correct?

5 MR. WAGNER: No, sir, Your Honor. Of course,
6 we disagree, but we agree with the jury's verdict
7 and respectfully request to go to the sentencing.

8 THE COURT: I can't hear you.

9 MR. WAGNER: We would agree with the jury's
10 verdict.

11 THE COURT: Okay. So you say there wasn't --
12 not entitled to a JNOV in a criminal case?

13 MR. WAGNER: No, sir.

14 THE COURT: All right. I quote from *State v.*
15 *Taylor*, that is 348 S.C. 152, 558 S.E.2d. 97 -- 917,
16 2000 -- the Court of Appeals is 2000.

17 We note that a motion for JNOV in a criminal
18 case is not recognized in this state. However, as
19 you say, you're renewing really your directed
20 verdict, or made it at the end ---

21 MR. OPPERMANN: Yes, Your Honor.

22 THE COURT: --- close in testimony.

23 All right. So -- but I will just note for the
24 record that I'm denying your JNOV, as well as the
25 directed verdict because under our rule that, I

1 think it's 19, the Criminal Procedure, that Courts
2 are not concerned with the weight of the testimony,
3 but whether or not there was sufficient evidence to
4 go forward. I find that there was sufficient
5 evidence of substantial compliance and acceptance as
6 to the proof to all three indictments.

7 All right. Anything else? It is noted for the
8 record. Anything else?

9 MR. WAGNER: No, sir.

10 THE COURT: All right. Are you ready for the
11 sentence?

12 MR. WAGNER: Yes, sir. We've got sheets here.

13 MR. OPPERMAN: Your Honor, we have some
14 disagreement about the failure to stop for a blue
15 light. What we sent to the jury, as I understand
16 it, was failure to stop for a blue light. What's on
17 the -- while it was originally indicted as second,
18 it's my understanding that what you sent to the jury
19 was failure to stop for a blue light. The
20 sentencing sheet reflects second and we do have a
21 problem with that.

22 THE COURT: Well, that's what the
23 indictments -- the indictment was second. I didn't
24 send the indictment to the jury. I sent them with
25 the sole purpose of finding out if there was a

1 violation of failure to stop for a blue light
2 statute.

3 Now, if he's going to have an enhancement, then
4 you'll have to establish that.

5 MR. WAGNER: He's -- he's got a prior
6 conviction for that, Your Honor.

7 THE COURT: Well, you're going to have to
8 establish it for the record.

9 MR. WAGNER: Okay.

10 MR. OPPERMANN: Once that's established, it
11 would be our duty to sign the sentencing sheet, but
12 we'll wait for that.

13 THE COURT: All right. That's understandable.

14 All right. In other words, it's not -- it's
15 not -- the number of offenses are not the part of
16 the offense. In other words, unlike a burglary, you
17 have to establish as a matter of going for the first
18 degree burglary, you have to establish that it was
19 more than one.

20 MR. WAGNER: Your Honor, here's
21 2016-GS-04-00406. Convicted him of failure to stop
22 for a blue light back in last year. It's a -- it's
23 a certified true copy from our clerk's office.

24 THE COURT: Show it to him.

25 MR. WAGNER: (Complying.) Do you want to make

1 that a Court's exhibit?

2 THE COURT: Certainly. Yes, sir. Particularly
3 on that indictment ---

4 MR. WAGNER: Yes, sir.

5 THE COURT: --- because the indictment -- the
6 indictment reflects a second offense, so he was --
7 he was noticed that it would be a second offense if
8 found guilty. All right.

9 MR. WAGNER: Your Honor, pass up the sentencing
10 sheets?

11 THE COURT: Yes, sir. Do you have the
12 sentencing sheet on the enhancement?

13 MR. WAGNER: She's got the -- we've got them
14 marked right here. He's actually got another one
15 too if you need two of them, but I think we only
16 need one.

17 THE COURT: Well, you only need one.

18 MR. WAGNER: Yes, sir.

19 THE COURT: That is Court's Exhibit No. 1. All
20 right. The Court's Exhibit No. 1 is the sentencing
21 sheet on *State v. Cole Brooks Gray* for failure to
22 stop for a blue light under Indictment
23 2016-GS-04-406, dated March the 16th, 1916 -- 2016,
24 excuse me, and a certified true copy, reflected that
25 the defendant was -- pled guilty.

1 All right. Defendant, come around, please.

2 THE DEFENDANT: (Complying.)

3 THE COURT: All right. Mr. Wagner, what do you
4 have on the ---

5 MR. WAGNER: Your Honor, he's got a ---

6 THE COURT: --- matter of sentencing?

7 MR. WAGNER: --- he's got a very extensive
8 criminal record. It goes back a number of years.
9 He just -- this past year, he was convicted of that
10 failure to stop, the enhancement there; unlawful
11 carrying of a pistol; possession of a controlled
12 substance, schedule one to five; distribution PWID
13 of methamphetamine.

14 He's also been convicted -- he got 18 months at
15 that time. He's been convicted of receiving stolen
16 goods more than 2,000 but less than 10,000;
17 possession of methamphetamine, second offense, that
18 was 2014; failure to stop for a blue light, 2013;
19 criminal domestic violence, high and aggravated;
20 conspiracy to distribute methamphetamine, that was
21 in 2006; unlawful carrying of a pistol, 2006.

22 Your Honor, he's got hundreds of other
23 magistrate-level stuff. It's really not worth
24 mentioning.

25 As far as just for Court purposes time, I'm not

1 asking the Court also either to consider it. He's
2 got probably five other pending charges in our
3 office, as well as two failure to stop for a blue
4 lights that occurred after he got out on bond on
5 these charges, as well as new Federal charges too.

6 Just suffice to say, he's been quite a thorn in
7 the side of law enforcement here in Anderson County
8 for the past decade or so, especially the last few
9 years and just doesn't seem like he can quit it. So
10 that's why we're here today on what we are.

11 THE COURT: All right. Now, let me see.
12 What's the maximum sentence on trafficking 100 grams
13 or more but less than 200 grams?

14 MR. WAGNER: Your Honor, I think it's just a
15 straight 25-year period and \$50,000 fine.

16 THE COURT: No part of which may be suspended
17 on probation, correct?

18 MR. WAGNER: Yes, sir.

19 THE COURT: And I'm not sure about the fine, if
20 it can't be suspended, but all right. Any
21 restitution being sought?

22 MR. WAGNER: Yes, sir. I put that on the
23 receiving stolen goods charge. The victim's out
24 \$4200 and that was what it's going to cost for him
25 to get his car fixed.

1 As -- as we saw on that video, it was struck by
2 two different vehicles in two different parts of the
3 car or the truck, as well as all four tires got
4 flattened and other damage, so he is asking for
5 \$4200.

6 THE COURT: All right. Mr. Oppermann.

7 MR. OPPERMANN: Your Honor, we'd ask the Court
8 to impose the minimum sentence allowable under the
9 statutes, that period to do 25 years. Mr. Gray is
10 35 years old right now. He has served a number of
11 days. I think it's a good bit over six months. If
12 you could give him credit for that.

13 THE COURT: On this charge -- on these ---

14 MR. OPPERMANN: Yes, sir.

15 THE COURT: --- charges?

16 MR. OPPERMANN: Yes, Your Honor. He was in
17 jail for a good while in November and then came back
18 in, so we ask that he receive credit for time
19 served.

20 And that with respect to the charges of failure
21 to stop for a blue light and receiving stolen goods,
22 given that the minimum sentence for trafficking is
23 25 years, that he receive time served on those
24 charges and they be concurrent with the 25-year
25 charge for trafficking methamphetamine, 100 to 200.

1 We will note that when Mr. Gray had the exact
2 same record as Mr. Wagner just cited, the
3 Solicitor's office was going to offer him eight
4 years. His previous record, other than these
5 charges, has not changed.

6 At that time the Solicitor's office apparently
7 thought that was appropriate. So at this time, Your
8 Honor, we don't think it would be necessary to give
9 him anything more than the 25 required by law given
10 his conviction.

11 THE COURT: I've got no choice about the 25.
12 But the only thing I would say, when a counteroffer
13 was made on the eight years, Mr. Wagner advised the
14 defendant that that was off the table.

15 MR. OPPERMANN: And, Your Honor, I'm not
16 getting back into that motion.

17 THE COURT: So what I'm saying is that
18 apparently I'm not sure the eight-year offer was
19 made by an assistant.

20 MR. WAGNER: Yes, sir, Your Honor. An
21 assistant who's got probably 500 pending cases and
22 made it very early in the game, also before he got
23 rearrested about five more times.

24 THE COURT: So in other words, the -- the eight
25 years was not based on the -- the record that is

1 before the Court now? So ---

2 MR. WAGNER: Right.

3 THE COURT: --- I understood you. He had, what
4 is it, another -- I mean, a failure to stop.

5 MR. WAGNER: He had two more. He's got two
6 more pending.

7 MR. OPPERMANN: We would agree with the
8 Solicitor that having a high case load is unpleasant
9 and distracting.

10 THE COURT: Now, as far as the restitution,
11 would he waive his right to a restitution hearing?
12 It's for \$4,200 plus a 20 percent fee.

13 MR. OPPERMANN: Your Honor, there doesn't seem
14 to be any need to -- to have a restitution hearing.

15 THE COURT: I was going to say that the victim
16 was on the stand and nobody asked him, other than
17 questioning as to what his figures were. And I
18 think his total figure was 6,000, but he did say
19 they were 4200.

20 MR. WAGNER: Yes, sir. That's what he
21 returned. That's our discussions with him.

22 THE COURT: All right. So I'll note that he
23 waives his restitution hearing on the receiving.

24 All right. What -- what do you have to say
25 now, Mr. Oppermann? Mr. Oppermann, what do you have

1 to say now on behalf of Mr. Gray? I'm sorry.

2 MR. OPPERMANN: Your Honor, Mr. Gray is a drug
3 addict. His criminal activity relates to his
4 addiction. The Court is limited in what it can
5 sentence him to by what he's been convicted of.

6 The Court should consider making a referral to
7 an addiction treatment unit for him. That would be
8 helpful so that when he is able to come back into
9 the community, that he's received the benefit of
10 that treatment and can be a productive citizen to
11 the fullest extent possible.

12 Present in the courtroom today and throughout
13 the trial are members of Mr. Gray's family, his
14 mother, and his son, and his sister. They may wish
15 to speak on his behalf.

16 THE COURT: I will let them speak, including
17 Mr. Gray if he'd like to.

18 MR. OPPERMANN: And this is a very emotional
19 time for them. I don't know if they necessarily
20 wish to address the Court, but, again, the Court is
21 pretty limited on what they can sentence him on, but
22 we ask that the Court take into consideration that
23 Mr. Gray has had a very serious addiction problem
24 that relies in criminal activity that he's been
25 involved in.

1 THE COURT: All right. Mr. Gray, is there
2 anything you'd like to tell the Court?

3 THE DEFENDANT: Yes. This -- this thing
4 started at a young age for me and, you know, the
5 only clear thinking time that I had was while I was
6 incarcerated. Just old haunts and friends that --
7 so-called friends that couldn't wait to get you back
8 on the drugs, whether it be for the sake of just
9 being -- I don't know how to explain it.

10 I'm not good at articulating my feelings, Your
11 Honor, but I've had some time to think about the
12 crimes that I've committed over the course of this
13 past year and the burden that I put on law
14 enforcement.

15 I came across a Bible verse, and I know that
16 there is a separation of church and state, but it
17 relates to my feelings with Government. And it
18 says, "Let every soul be subject to governing
19 authorities for they're not put there for terror,
20 but to do good works, and that they do not bear the
21 sword in vain."

22 This has caused me to rethink how I feel about
23 law enforcement. And since my clear-thinking
24 time -- and I know a lot of people say that people
25 have what they call "jailhouse religion." I don't

1 feel like I have jailhouse religion. I feel like
2 it's the only time I've been sober enough to be
3 clear thinking to -- to have enough common sense to
4 pick up a book of directions or spiritual, you know,
5 relevance.

6 And it caused me to think back on mine and
7 Mr. Stipe's involvement over the years. This is not
8 the first time. And for a long time, I felt like
9 maybe he was just birddogging me, so to speak, but I
10 realize now that he had a job to do, just like
11 Mr. Wagner, and the rest of these law enforcement
12 agents that are out here in this courtroom.

13 I would've loved a chance to take a plea so
14 that I could have spoke and at least showed some
15 humility as to the maturity I was trying to show
16 throughout this whole ordeal. And I realize now
17 that -- that that -- that offer was taken off the
18 table, and I wasn't -- I wasn't aware of that, but
19 that's neither here nor there now.

20 My family, you know, they -- I want them to see
21 this as in its true light, you know. In Jeremiah,
22 Chapter 3, he speaks of the pollution of the land
23 and how he wasn't ashamed of it, and that's where
24 I'm at today because I realize that those things
25 that I was doing, I was not ashamed of it while I

1 was under the influence of methamphetamines.

2 But since -- but since -- since then, I've come
3 to understand that there was a separation between me
4 and my God. Under Isaiah 59, Verse 1 and 2, it says
5 that the Lord's hand is not short and it cannot
6 save, and his ears are not heavy that he cannot
7 hear, but your iniquity has separated you between
8 you and your god, and your sins have caused him to
9 hide his face from you so that he cannot hear.

10 That lead me to -- to look into this repentance
11 thing and going into things with a pure heart. And
12 I realized that because I wasn't sorry of those
13 things, that there was no way that God was going to
14 look on me and show me any kind of favor or even
15 hear any of my -- or hear any of my prayers. They
16 was just going to bounce off the ceiling because I
17 wasn't really sorry for those things.

18 But now that I've had the chance to come to
19 know Jesus Christ in a personal relationship,
20 those -- those actions that I took, I'm truly sorry
21 for. And I know that it's a little bit late, but
22 I'd like to apologize to you and everyone here
23 today. Thank you.

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

25 Anything else?

1 MR. WAGNER: No, sir.

2 THE COURT: Mr. Oppermann.

3 MR. OPPERMANN: No, Your Honor.

4 THE COURT: All right. There was no great
5 bodily harm or injury or death in this failure to
6 stop?

7 MR. WAGNER: No, sir.

8 MR. OPPERMANN: And the defense's position,
9 Your Honor, that the sentences be concurrent.

10 THE COURT: All right. Anything further from
11 the State?

12 MR. WAGNER: No, sir.

13 THE COURT: Anything further from defense?

14 MR. OPPERMANN: No, Your Honor.

15 THE COURT: Anything else, Mr. Gray?

16 THE DEFENDANT: No, Your Honor.

17 SENTENCING

18 THE COURT: Indictment No. 2017-GS-04-1850,
19 sentence of the Court that the defendant Cole Brooks
20 Gray be committed to the State Department of
21 Corrections for a term of five years, plus pay the
22 cost and assessments as applicable.

23 Indictment No. 2017-GS-04-1851, the sentence of
24 the Court that the defendant Cole Brooks Gray be
25 committed to the State Department of Corrections for

1 a term of three years, plus pay the cost and
2 assessments as applicable. Restitution in the
3 amount of \$4,200 will be paid to the victim John
4 William Davis as a part of the sentence.

5 Indictment No. 2017-GS-04-1220, the sentence of
6 the Court will be the defendant Cole Brooks Gray be
7 committed to the State Department of Corrections for
8 a term of 25 years, plus pay the cost and
9 assessments as applicable.

10 All sentences -- and excuse me -- and to
11 undergo ATU while incarcerated. All sentences are
12 to run concurrent. The sentence -- and the
13 defendant be given credit for time served as
14 calculated by the State Department of Corrections.

15 All right. Good luck to you, sir.

16 THE DEFENDANT: Thank you, Your Honor.

17 MR. WAGNER: Thank you, Your Honor.

18 (The proceedings concluded at 12:52 p.m.)

19 - - -
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21
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23
24
25

C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

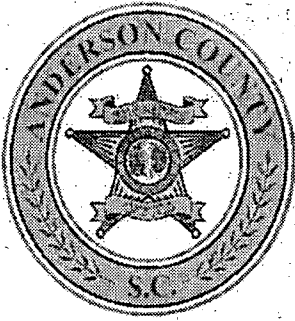
I, the undersigned, Lisa Scott, Circuit Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the trial of the captioned cause, relative to appeal in the Criminal Court for Anderson County, South Carolina, on the 18th day of October, 2017.

I do further certify that I am neither of kin,
counsel, nor interest to any party hereto.

February 4, 2018

/s/Lisa Scott

Lisa Scott
Circuit Court Reporter



Anderson-Oconee Regional Forensics Laboratory

Matthew Stipe
Anderson County Sheriff's Office
305 Camson Road
Anderson, SC 29625

DRUG ANALYSIS DEPARTMENT

Date: 01/17/2017
Lab Number: L16-000886
Incident Date: 11/12/2016
Agency Case #: 2016-019716
Control #: C0022939
(S): Gray, Cole Brooks

This is an official report issued by a certified analyst. The items in this report were examined with the assurance that the submitted specimens have not, nor will be submitted to any other laboratory or agency for examination.

ITEMS OF EVIDENCE:

L16-000886

The following evidence was submitted to the Anderson/Oconee Regional Forensics Laboratory by Belinda Lee of the Anderson County Sheriff's Office on 11/30/2016:

Item A: Sealed drug evidence kit Control #: C0022939

Item A.01: Knotted clear plastic bag containing crystalline substance.

Results:

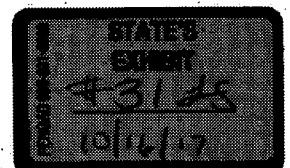
Methamphetamine found 3.30 grams Schedule: II

Item A.02: Clear plastic ziploc bag containing crystalline substance.

Results:

Methamphetamine found 109.34 grams Schedule: II

FILED-CLERK'S OFFICE
ANDERSON, SC
2017 OCT 20 AM 10:37
COMMON PLEAS AND
GENERAL SESSIONS



I am a Forensic Chemist employed by the Anderson/Oconee Regional Forensics Laboratory at the Anderson County Sheriff's Office, and certified by the Anderson/Oconee Regional Forensics Laboratory as a chemical analyst qualified to perform testing and analysis for controlled and/or dangerous substances prohibited by law in the State of South Carolina by Title 44, Chapter 53 of the SC Code of Laws and Rule 61-4 of the SC Department of Health and Environmental Control. I have 11 years and 11 months experience and have been qualified as an expert witness in recognized courts of law no less than 25 times.

The following legally reliable forensic laboratory procedures were used to conduct this analysis:

UV-Vis Spectroscopy

Mass Spectroscopy

Gas Chromatography

FT-IR Spectroscopy

Color Tests

Meredith Lanford

Meredith Lanford

Forensic Chemist

01/17/2017

Date

385

WITNESSES

Anderson Co. Sheriff's Office

Matthew T. Stipe

ARREST WARRANT NUMBER

2016A0410201564

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

MAY 23 2017

Foreperson

VERDICT

Guilty

Foreperson of Grand Jury

Date: 10-18-17

DOCKET NO. 2017-GS-04-01220

The State of South Carolina

County of Anderson

COURT OF GENERAL SESSIONS

MAY 23 2017

TERM

THE STATE

VS.

COLE BROOKS GRAY

INDICTMENT FOR

TRAFFICKING IN METHAMPHETAMINE

SC Code: § 44-53-375(C)

CDR Code: 0368

A TRUE COPY

NOV 29 2017

Richard M. Kiley
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

INDICTMENT

MAY 23 2017

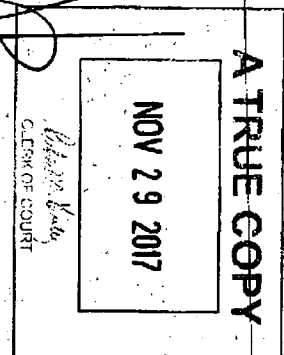
At a Court of General Sessions, convened on _____, the Grand
Jurors of Anderson County present upon their oath:

TRAFFICKING IN METHAMPHETAMINE

The defendant, Cole Brooks Gray, did on or about November 12, 2016, in Anderson County, South Carolina, knowingly sell, manufacture, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of one hundred (100) grams or more of Methamphetamine, as defined and otherwise limited in Section 44-53-110, 44-53-210(d)(1), or 44-53-210(d)(2). All in violation of 44-53-375(C) of the South Carolina Code of Laws (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


CHELSEY L. MOORE
ASSISTANT SOLICITOR



387

WITNESSES

Anderson Co. Sheriff's Office
Matthew T. Stipe

ARREST WARRANT NUMBER

DIRECT INDICTMENT

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: AUG 22 2017

Foreperson

VERDICT

Guilty

James Full
Foreperson of Grand Jury
Date: 10-18-17

DOCKET NO. 2017-GS-04- 01850

The State of South Carolina
County of Anderson

COURT OF GENERAL SESSIONS

AUG 22 2017, TERM

THE STATE

VS.

COLE BROOKS GRAY

INDICTMENT FOR

**FAILURE TO STOP FOR A BLUE LIGHT,
2ND OR SUBSEQUENT OFFENSE**

SC Code: § 56-05-0750(B)(2)
CDR Code: 2396

A TRUE COPY

NOV 29 2017

Robert Kelly
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

INDICTMENT

AUG 22 2017

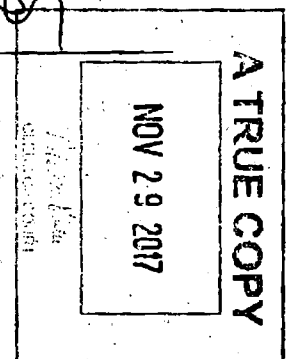
At a Court of General Sessions, convened on _____, the
Grand Jurors of Anderson County present upon their oath:

FAILURE TO STOP FOR A BLUE LIGHT 2ND OR SUBSEQUENT OFFENSE

The defendant, Cole Brooks Gray, did on or about November 12, 2016 in Anderson County, while driving on a road street or highway of the State, fail to stop when signaled by a law enforcement vehicle by means of a siren or flashing light. Defendant having been convicted of one or more prior offenses. All in violation of 56-05-0750(B)(2), Code of Laws of South Carolina, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


DAVID R. WAGNER
SOLICITOR



389

WITNESSES

Anderson Co. Sheriff's Office
Matthew T. Stipe

ARREST WARRANT NUMBER

DIRECT INDICTMENT

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: AUG 22 2017

Foreperson

VERDICT

Guilty

Foreperson of Grand Jury
Date: 10-18-17

DOCKET NO. 2017-GS-04- 1051

The State of South Carolina
County of Anderson

COURT OF GENERAL SESSIONS

AUG 22 2017, TERM

THE STATE

VS.

COLE BROOKS GRAY

INDICTMENT FOR

**RECEIVING STOLEN GOODS, VALUE
MORE THEN \$2,000 BUT LESS THEN
\$10,000**

SC Code: § 16-13-0180(A) & 16-13-0180(C)(2)
CDR Code: 3740

A TRUE COPY

NOV 29 2017

Richard K. Kelly
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

INDICTMENT

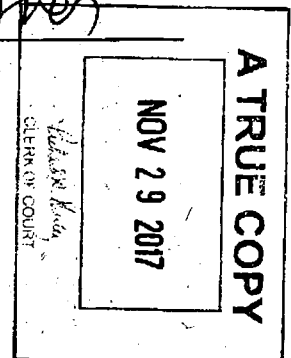
At a Court of General Sessions, convened on AUG 22 2017 the
Grand Jurors of Anderson County present upon their oath:

**RECEIVING STOLEN GOODS, VALUE MORE THAN \$2,000 BUT LESS THAN
\$10,000**

The defendant, Cole Brooks Gray, did on or about November 12, 2016, in Anderson County, South Carolina, buy, receive, or possess stolen goods, chattels, or other property and knew or had reason to believe the goods, chattels, or property was stolen, to wit: a 1994 Chevrolet C1500, having a value of more than \$2,000.00 but less than \$10,000.00. All in violation of 16-13-0180(A) & 16-13-0180(C)(2) 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.

David R. Wagner
DAVID R. WAGNER
SOLICITOR



COUNTY OF ANDERSON
STATE VS.

COLE BROOKS GRAY

AKA: Cole Brook Gray, Cole Brooks Gray

Race: White Sex: M Age: 35

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Anderson, SC 29625

DL# [REDACTED] SID# SC01304631

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or☐ PLEADSTO: Traff Meth/Crack 100g but <200gIn violation of § 44-53-375(C) of the S.C. Code of Laws, bearing CDR Code # 0368☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)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:

David Rhys Wagner, Solicitor
64068
SC Bar #Cole Brooks Gray
DefendantAttorney for Defendant
77943
SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender and _____

Other: ATU

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 61.6 (Public Def/Prob) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§14-1-213 (Drug Court Surcharge) \$150 \$ 150.00

§50-21-114 (BUI Breath Test Fee) \$50 \$ _____

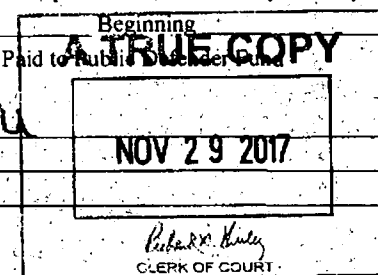
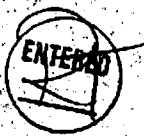
§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ 8.25TOTAL \$ 283.25Clerk of Court/Deputy Clerk: Richard A. HuileyCourt Reporter: L. Scott

SCCA/217 (07/2016)

Presiding Judge: R. MacalJudge Bar ID: _____ Judge Code: 03Sentence Date: 10/18/17

SENTENCE SHEET



392

COUNTY OF ANDERSON

STATE VS.

COLE BROOKS GRAY

AKA: Cole Brook Gray, Cole Brooks Gray

Race: White Sex: M Age: 35

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Anderson, SC 29625

DL# [REDACTED] SID#: SC01304631

INDICTMENT/CASE#: 2017GS0401850

A/W: 2017GS0401850

Date of Offense: 11/12/2016

S.C. Code §: 56-05-0750(B)(2)

CDR Code #: 2396



SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or☐ PLEADS

TO: Failure To Stop For A Blue Light

In violation of § 56-05-0750(B)(2) of the S.C. Code of Laws, bearing CDR Code # 2396

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)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

David Rhys Wagner, Solicitor 64068 SC Bar #

x Cole Gray Defendant

Attorney for Defendant 77943 SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$, plus costs and assessments as applicable*, the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives HearingTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Ordered PTUP days/hours Public Service EmploymentObtain GED ☐☐ Set by SCDPPPSAttend Voc. Rehab. Or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning \$ Paid to Public Defender Fund

A TRUE COPY

Other:

NOV 29 2017

☐ Appointed PD or appointed other counsel.

Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge: Judge Bar ID: Sentence Date: 10/18/17Judge Code: 63

TOTAL

Clerk of Court/Deputy Clerk: Richard S. HickeyCourt Reporter: L. SCOTT

SCCA/217 (07/2016)

*Fine:		\$	
§14-1-206 (Assessments 107.5%)		\$	
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$	100.00
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$	
§56-5-2995 (DUI Assessment)	\$12	\$	
§56-1-286 (DUI Breath Test)	\$25	\$	
Proviso 61.6 (Public Def/Prob)	\$500	\$	
§14-1-212 (Law Enforce. Funding)	\$25	\$	
§14-1-213 (Drug Court Surcharge)	\$150	\$	
§50-21-114 (BUI Breath Test Fee)	\$50	\$	
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$	
3% to County (if paid in installments)	\$	\$	3.00

\$ 103.00

COUNTY OF ANDERSON
STATE VS.COLE BROOKS GRAYAKA: Cole Brook Gray, Cole Brooks GrayRace: White Sex: M Age: 35DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: Anderson, SC 29625DL# [REDACTED] SID# SC01304631*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Receiving Stolen Goods 72000 < 10,000In violation of § 16-13-0180(A) & 16-13-0180(C)(2) of the S.C. Code of Laws, bearing CDR Code # 3740INDICTMENT/CASE#: 2017GS0401851A/W: 2017GS0401851Date of Offense: 11/12/2016S.C. Code §: 16-13-0180(A) & 16-13-0180(C)(2)CDR Code #: 3740

SENTENCE SHEET

☒ CONVICTED OF or☐ PLEADS☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)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:

David Rhys Wagner 64068
David Rhys Wagner, Solicitor SC Bar #+ Cole Gray
Defendant[Signature] 77943
Attorney for Defendant SC Bar #WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 3 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☒ RESTITUTION:☐ Deferred☒ Def. Waives Hearing☒ Ordered

PTUP

Total: \$ 4700.00 plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____Recipient: John William Davis

*Fine:		\$
§14-1-206 (Assessments 107.5%)		\$
§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	\$
Proviso 61.6 (Public Def/Prob)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§14-1-213 (Drug Court Surcharge)	\$150	\$
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$ <u>3.75</u>

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender

Other: _____

NOV 29 2017

☐ Appointed PD or appointed other counsel,

Proviso 61.6 requires \$500 be paid to Clerk

during probation and shall be collected before any other fees.

Presiding Judge: [Signature]

Judge Bar ID: _____

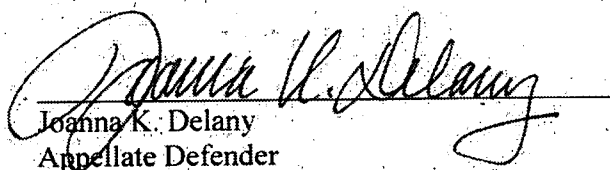
Sentence Date: 10/19/17Judge Code: 63Clerk of Court/Deputy Clerk: [Signature]Court Reporter: [Signature]

SCCA/217 (07/2016)

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,


Joanna K. Delany
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

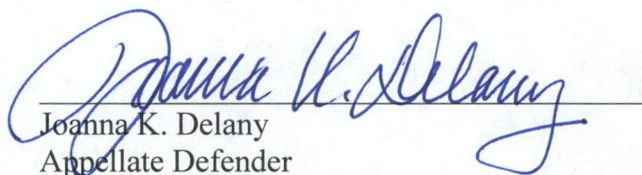
ATTORNEY FOR APPELLANT

This 14th day of February, 2019.

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,


Joanna K. Delany
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 14th day of February, 2019.

RECEIVED

FEB 14 2019

SC Court of Appeals