

PRESENTATION ON “WHEN TO INTERVENE”

STATEMENTS OF FACTS

In this hypothetical case, the defendant Clyde Barrow is charged with possession with intent to sell or deliver methamphetamine, maintaining a dwelling for the purpose of selling controlled substances and being an habitual felon. The defendant has entered pleas of not guilty.

The State’s evidence in this case tends to show that a search warrant was issued for the search of a house located at 100 Bundy Drive in Brentwood, North Carolina. Detective Steve McGarrett executed the search warrant on March 3, 2022. After entering the house, detective McGarrett searched the premises. During the search, detective McGarrett discovered approximately 6 grams of a white granular substance in a bedroom. The white substance, according to the detective, was in a large plastic bag that contained 2 separate smaller clear plastic bags. There was also a set of digital scales seized that was located on a dresser in the same bedroom. The detective indicated that there were both men’s and women’s clothing in the bedroom where the white substance was located. There were also photographs of the defendant and utilities and credit card bills addressed to the defendant that bore an address of 100 Bundy Drive found in the same bedroom.

The defendant’s attorney, in her opening statement, informed the jury that the evidence would show that three people, the defendant, his girlfriend Bonnie Parker and Kato Kaelin, lived in the house located at 100 Bundy Drive. The defendant’s attorney further indicated that the defendant would offer evidence that proved that the white substance found in the house was possessed by Kato Kaelin and not the defendant.

CAST OF CHARACTERS

ADA ZEALOUS

ROBERT BROADIE

ATTORNEY PLEAD’EM OUT

ALYSON GRINE

DEFENDANT CLYDE BARROW

TIM WILSON

TRIAL JUDGE

DAVID STRICKLAND

APPELLATE COURT

BOB ERVIN

DETECTIVE MCGARRETT

REGGIE MCKNIGHT

BONNIE PARKER

BRENDA BRANCH

HYPOTHETICAL NUMBER ONE: JURY SELECTION PROCEDURES

- COURT: What case does the State desire to call for trial?
- ADA ZEALOUS: The State calls the case of State of North Carolina v. Clyde Barrow.
- COURT: Are the parties ready to proceed?
- ADA ZEALOUS: ADA Zealous for the State. The State is prepared to proceed.
- PLEAD'EM OUT: Your, honor, I'm Penelope Plead'Em Out for the defendant. We are ready to go...
- COURT: Before we start jury selection, I want to make a couple of things crystal clear. First, I am going to ask the jurors some basic questions. These questions will elicit information about their employment, their spouse's employment, where they live and their experience with the court system. Don't ask them any more questions about the matters that I inquire about. Do you understand that?
- ZEALOUS: Yes, sir.
- PLEAD'EM OUT: You betcha.
- COURT: The second thing is we are short of both jurors and time. The jury pool is smaller than usual and we have to finish this trial by tomorrow afternoon. I've got to make sure that I get to the Pattern Jury Instruction meeting on Friday so that I can keep Judge Gottlieb from messing up the patterns again. So, when the State finishes with a group of jurors, even if they aren't a full group of 12, we're going to pass them to the defense while the Sheriff goes out to Wal-Mart to find some volunteers to fill out the jury pool. Any objections to this expedited approach.
- ZEALOUS: No, sir.
- PLEAD'EM OUT: Is it my understanding there's a possibility that, if we run out of jurors, then they would be passed to me with what we've got even if there are less than a full group of 12 jurors.
- COURT: You betcha. There's that possibility.

HYPOTHETICAL NUMBER TWO: EVIDENCE OF CONTROLLED SUBSTANCES

- ZEALOUS: Detective McGarrett, did you seize anything from the house located at 100 Bundy Drive?
- DETECTIVE: Yes, I did.
- ZEALOUS: (Approaching the witness) I am now showing you State's Exhibit Number Four, do you recognize it?
- DETECTIVE: This is the white substance that I found in the bedroom at 100 Bundy Drive.
- ZEALOUS: What is inside the large plastic bag?
- DETECTIVE: Methamphetamine.
- PLEAD'EM OUT: (Playing with her cell phone acting like she's texting)
- ZEALOUS: Detective, I'm showing you State's Exhibit Number Five. Do you recognize it?
- DETECTIVE: Yes I do. It is a lab report from the State Bureau of Investigation Crime Lab that analyzes the material in State's Exhibit Number Four.
- ZEALOUS: What did the SBI lab conclude?
- DETECTIVE: The SBI lab determined that the white substance was methamphetamine and that it weighed 5.69 grams.
- ZEALOUS: The State moves to admit State's Exhibits Four and Five.
- COURT: What says the defense?
- PLEAD'EM OUT: No problem, judge.
- COURT: Let State's Exhibits Four and Five be admitted into evidence.

HYPOTHETICAL NUMBER THREE: MOTION TO DISMISS

COURT: Will there be any more evidence for the State?

ZEALOUS: The State rests, your Honor.

COURT: Anything for the defense?

PLEAD'EM OUT: (Pretends to text something on a cell phone).

COURT: Any evidence for the defense?

PLEAD'EM OUT: I'd like to make a motion at this time.

COURT: I'll put a ruling in the record to that later. Do you have any witnesses?

PLEAD'EM OUT: Yes, your Honor.

COURT: All right, you may proceed.

HYPOTHETICAL NUMBER FOUR: TRIAL COURT'S EXPRESSION OF OPINION

PLEAD'EM OUT: The defense calls Bonnie Parker.

COURT: Come around and be sworn. (Swear witness).

PLEAD'EM OUT: What is your name?

WITNESS: Bonnie Parker.

PLEAD'EM OUT: Do you know Clyde Barrow?

WITNESS: Yes sir.

PLEAD'EM OUT: How do you know him?

WITNESS: He's my boyfriend. We've been seeing each other for five blissful years.

PLEAD'EM OUT: Where did you live on March 3, 2022?

WITNESS: At 100 Bundy Drive with Clyde.

PLEAD'EM OUT: Do you know Kato Kaelin?

WITNESS: Yes, sir.

PLEAD'EM OUT: How do you know him?

WITNESS: He stayed at 100 Bundy Drive for about two months prior to the search.

ZEALOUS: Objection, Your Honor. Where Kato Kaelin stayed or didn't stay has nothing to do with these charges.

COURT: Sustained. Ms. Plead'em Out, move on to something else.

PLEAD'EM OUT: Are you aware though of Kato Kaelin staying...

COURT: Move on to another area. Kaelin has no involvement with these charges.

HYPOTHETICAL NUMBER FIVE: IMPROPER JURY ARGUMENT

COURT: Is the State ready to make its final argument to the jury?

ZEALOUS: Ladies and Gentleman, in my first argument, I explained the State's evidence to you and showed you why you should return a verdict of guilty on both counts. Now you have heard the defendant's argument that the defendant should be found not guilty because Kato Kaelin possessed the methamphetamine.

Did the defendant ever have the guts to tell you that himself. What would be wrong when you're represented by a lawyer with calling up the detective or having his lawyer call him up and say "let me tell you some more, let me tell you the rest of this?" He didn't do that. He didn't call the DA's office. He didn't call any police officer. He didn't call the detective. He didn't do any of that.

(DURING THE ARGUMENT, DEFENDANT SHOULD PRETEND TO POKE OR PROD HIS ATTORNEY TO GET HER TO OBJECT. THE ATTORNEY SHOULD IGNORE THE DEFENDANT OR BRUSH HIM OFF.)

Ladies and gentlemen of the jury, ask yourselves now "Why on earth would I wait until now to try to tell that story if I had that kind of story? Why would I do that?"

Well, that's because of who he is. You got this quitter, this loser, this worthless piece of—who's mean...He's as mean as they come. He's lower than the dirt on a snake's belly." Hiding behind his friend here. Find him guilty on both charges.

HYPOTHETICAL NUMBER SIX: COURT'S CHARGE OMITTING AN ELEMENT

COURT

Ladies and gentlemen of the jury, the defendant has been charged with maintaining a building which is used for the purpose of unlawfully selling controlled substances.

For you to find the defendant guilty of this offense, the State must prove two things beyond a reasonable doubt:

First, that the defendant maintained a building which was used for the purpose of unlawfully selling methamphetamine. Methamphetamine is a controlled substance, the selling of which is unlawful.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant maintained a building which was used for the unlawful selling of controlled substances, then it would be your duty to return a verdict of guilty of this offense. If you do not so find, or have a reasonable doubt as to one or both of these things, you would not find the defendant guilty of this offense.

At the conclusion of the court's charge and in the absence of the jury, are there any objections, corrections or additions to the Court's charge, from the State?

ZEALOUS:

No, your honor.

COURT:

From the defense?

PLEAD'EM OUT:

Can we be at ease now? I've got some cases in another courtroom that I need to go handle.

HYPOTHETICAL NUMBER SEVEN: JURY REQUEST FOR A TRANSCRIPT

COURT: Counsel, I've just received a note from the jury asking for a transcript of the detective's testimony. What is the State's position on that request?

ZEALOUS: The State will leave that matter to the Court.

COURT: What says the defense?

PLEAD'EM OUT: However you want to handle it is okay with us.

COURT: Bring the jury in, please. Ladies and Gentlemen of the jury, I have received your note requesting a transcript of the testimony of Detective McGarrett.

There is no transcript to bring back there. She might get one typed up in a month. You see what I mean; we don't have the fancy equipment that you might see on TV. I don't think it's out there, but if it was, I can assure you the State of North Carolina won't spend the money for it. I don't mind putting that in the record because higher judges agree with me on that. So, we don't have anything that can bring it back there to you. The Court doesn't have the ability to now present to you the transcription of what was said during the course of the trial.

What does counsel say about those additional comments to the jury?

PLEAD'EM OUT: Tell it like it is brother.

HYPOTHETICAL NUMBER EIGHT: HABITUAL FELON PLEA

COURT: The jury having returned as its unanimous verdict that the defendant is guilty of possession with intent to sell and deliver methamphetamine and maintaining a dwelling for the purpose of selling methamphetamine, how does the defendant desire to proceed on the habitual felon status?

PLEAD'EM OUT: Your Honor, may I confer with Mr. Barrow briefly?

COURT: Yes, Madam.

(DEFENDANT AND PLEAD'EM OUT HUDDLE BRIEFLY WITH DEFENDANT SHAKING HIS HEAD AND LOOKING DISGUSTED)

PLEAD'EM OUT: The defendant will skip the jury trial and admit being an habitual felon.

COURT: Is that correct, Mr. Barrow? What do you have to say?

DEFENDANT: What I say doesn't matter in this courthouse. Given what's happened already and since I got appointed "Penitentiary Penny" here, I don't guess I have much choice or much of a chance anyway. I admit it.

COURT: Alright, I'll discharge the jury and then we can have a sentencing hearing.

PLEAD'EM OUT: We're ready to be heard on sentencing.

HYPOTHETICAL NUMBER NINE: OUT OF STATE CONVICTION

COURT: The State may proceed with its presentation at the sentencing hearing.

ZEALOUS: I have a worksheet which I am handing to the Court, and the worksheet indicates that the defendant has prior convictions in Pennsylvania in 1989. The most serious conviction would be the two counts of armed robbery, Class D felony. He also had an unauthorized use of a motor vehicle in '88 in Pennsylvania, and a domestic violence conviction in South Carolina in 2002.

The worksheet does not include the felonies that the State relied upon to establish his status as an habitual felon.

So, we would contend he has eight points, he's a prior record Level III for sentencing.

COURT: Does the defendant stipulate that he would have eight prior record level points, therefore, for sentencing purposes, he would be a record Level III?

PLEAD'EM OUT: Yes, sir.

COURT: Based on that stipulation, the Court will conclude that the defendant has eight prior record level points and he will be sentenced in Prior Record Level III? The Court will assign six points for the armed robbery conviction and one point for the two other convictions.

HYPOTHETICAL NUMBER TEN: RESTITUTION ISSUE

ZEALOUS: Your Honor, there is one more thing we need to address.

COURT: What is that, Mr. Zealous?

ZEALOUS: You may recall that the search warrant was obtained using the assistance of a confidential and reliable informant who purchased methamphetamine at the defendant's residence on three prior occasions. The drug task force officers paid this informant for his or her services and there is also the buy money for the three purchases from the defendant's residence prior to the search. The State is seeking restitution of \$ 400 for the informant's services and \$ 200 for the buy money. I have a worksheet to hand up for that.

COURT: Does the defendant want to be heard?

PLEAD'EM OUT: Judge, he's going to be in so long that it won't matter.

COURT: The Court will grant the restitution request and tax it as a civil judgment.