### “The”---T/L

#### “The” isn’t all or nothing---it can refer to particulars

United States District Court for the Eastern District of Wisconsin 22. “United States v. Nash”; 21-CR-105-JPS; April 1, 2022; Lexis //BY

Magistrate Judge [Duffin](https://advance-lexis-com.proxy.lib.umich.edu/document/?pdmfid=1516831&crid=bd30ef98-eea9-4240-a465-a60483485c4d&pddocfullpath=%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A6550-KS41-F2TK-21T4-00000-00&pdcontentcomponentid=6417&pdshepid=urn%3AcontentItem%3A654R-5533-GXF7-3207-00000-00&pdteaserkey=sr1&pditab=allpods&ecomp=rzznk&earg=sr1&prid=061113ce-b4f2-48ee-a749-639c50629bed) analyzed Question 11.a's grammar and usage to determine whether it was fundamentally ambiguous. He wrote,

[t]he question did not ask, "Are you the actual transferee/buyer of a firearm(s) listed on this form...?" or "Are you an actual transferee/buyer of the firearm(s) listed on this form ...?" [Rather, it asked: Are you the actual transferee/buyer of the firearm(s) listed on this form . . . ?]

The question obviously contemplated the purchase of multiple firearms in that each time "firearm" is used in the question i[t] appears with the parenthetical plural as "firearm(s)." (ECF No. 17-1 at 1.) The use of the definitive article "the" made clear that the question posed an all-or nothing proposition; a "Yes" answer was appropriate only if the person completing the form was purchasing all of the firearms for herself. In a transaction involving multiple firearms, if the transferee was not the actual purchaser of all of those firearms,[[\*10]](https://advance-lexis-com.proxy.lib.umich.edu/document/?pdmfid=1516831&crid=bd30ef98-eea9-4240-a465-a60483485c4d&pddocfullpath=%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A6550-KS41-F2TK-21T4-00000-00&pdcontentcomponentid=6417&pdshepid=urn%3AcontentItem%3A654R-5533-GXF7-3207-00000-00&pdteaserkey=sr1&pditab=allpods&ecomp=rzznk&earg=sr1&prid=061113ce-b4f2-48ee-a749-639c50629bed) the transfer could not proceed. It was unnecessary for the form to have asked, "Are you the actual transferee/buyer of all the firearm(s) listed on this form...?" as Nash suggests it could have (ECF No. 17 at 7). The addition of the word "all" may add emphasis but would not change the meaning.

ECF No. 22 at 3-4.

The Court respectfully disagrees with Magistrate Judge [Duffin](https://advance-lexis-com.proxy.lib.umich.edu/document/?pdmfid=1516831&crid=bd30ef98-eea9-4240-a465-a60483485c4d&pddocfullpath=%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A6550-KS41-F2TK-21T4-00000-00&pdcontentcomponentid=6417&pdshepid=urn%3AcontentItem%3A654R-5533-GXF7-3207-00000-00&pdteaserkey=sr1&pditab=allpods&ecomp=rzznk&earg=sr1&prid=061113ce-b4f2-48ee-a749-639c50629bed)'s analysis. The word "the" is a determiner "denoting one or more people or things already mentioned or assumed to be common knowledge." "The," New Oxford American Dictionary (3d ed. 2010).[2](https://advance-lexis-com.proxy.lib.umich.edu/document/?pdmfid=1516831&crid=bd30ef98-eea9-4240-a465-a60483485c4d&pddocfullpath=%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A6550-KS41-F2TK-21T4-00000-00&pdcontentcomponentid=6417&pdshepid=urn%3AcontentItem%3A654R-5533-GXF7-3207-00000-00&pdteaserkey=sr1&pditab=allpods&ecomp=rzznk&earg=sr1&prid=061113ce-b4f2-48ee-a749-639c50629bed) Magistrate Judge [Duffin](https://advance-lexis-com.proxy.lib.umich.edu/document/?pdmfid=1516831&crid=bd30ef98-eea9-4240-a465-a60483485c4d&pddocfullpath=%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A6550-KS41-F2TK-21T4-00000-00&pdcontentcomponentid=6417&pdshepid=urn%3AcontentItem%3A654R-5533-GXF7-3207-00000-00&pdteaserkey=sr1&pditab=allpods&ecomp=rzznk&earg=sr1&prid=061113ce-b4f2-48ee-a749-639c50629bed) concluded that the Form must have used "the" to denote an all-or-nothing proposition because the Form could have used "a," but did not. But this conclusion layers a definition onto the humble word "the" that it simply does not have.

In this case, the Form uses "the" before the words "firearm" and "actual transferee/buyer" to denote "one or more of the people or things already mentioned"—i.e., the buyer who filled out the identifying information and the firearms that are the subject of the Form. The determiner "a"[[\*11]](https://advance-lexis-com.proxy.lib.umich.edu/document/?pdmfid=1516831&crid=bd30ef98-eea9-4240-a465-a60483485c4d&pddocfullpath=%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A6550-KS41-F2TK-21T4-00000-00&pdcontentcomponentid=6417&pdshepid=urn%3AcontentItem%3A654R-5533-GXF7-3207-00000-00&pdteaserkey=sr1&pditab=allpods&ecomp=rzznk&earg=sr1&prid=061113ce-b4f2-48ee-a749-639c50629bed) is used "when referring to someone or something for the first time in a text or conversation." "A," New Oxford American Dictionary (3d ed. 2010). Using "a" in Question 11.a—when the identity of the transferee/buyer has been established and the subject of the form is commonly understood to be the firearms to be transferred—would be odd. Thus, use of the word "the" in lieu of "a" does not introduce an all-or-nothing proposition. It merely indicates that the Question 11.a referred to previously identified or commonly understood people or things (the buyer, the firearm(s) subject to transfer).

Moreover, because the word "the" can be used to refer to "one or more" people or things, its use in Question 11.a does not make "clear that the question posed an all-or-nothing proposition." Far from it, in fact. Imagine, for example, that a host has a dinner party and makes two dishes. Guests add two more dishes to the table, so now there are four dishes. Another guest asks the host, "Did you make the food?" The host would most likely say, "yes, some of it," but could also, in a moment of humility, say, "no, just these two items." "The food" does not clearly mean "all the food," it just refers to[[\*12]](https://advance-lexis-com.proxy.lib.umich.edu/document/?pdmfid=1516831&crid=bd30ef98-eea9-4240-a465-a60483485c4d&pddocfullpath=%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A6550-KS41-F2TK-21T4-00000-00&pdcontentcomponentid=6417&pdshepid=urn%3AcontentItem%3A654R-5533-GXF7-3207-00000-00&pdteaserkey=sr1&pditab=allpods&ecomp=rzznk&earg=sr1&prid=061113ce-b4f2-48ee-a749-639c50629bed) one or more of the food items assumed to be common knowledge. Accordingly, without an explanatory clause, the host could not 100% truthfully and accurately say either yes or no—while she did make some of the food, she did not make all of it. (Another way of looking at it: she could not 100% falsely say yes or no, either). The questioner and answerer must take another step before reaching a mutual understanding of what is being asked and answered. [Manapat, 928 F.2d at 1100](https://advance-lexis-com.proxy.lib.umich.edu/document/?pdmfid=1516831&crid=bd30ef98-eea9-4240-a465-a60483485c4d&pddocfullpath=%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A6550-KS41-F2TK-21T4-00000-00&pdcontentcomponentid=6417&pdshepid=urn%3AcontentItem%3A654R-5533-GXF7-3207-00000-00&pdteaserkey=sr1&pditab=allpods&ecomp=rzznk&earg=sr1&prid=061113ce-b4f2-48ee-a749-639c50629bed). On the other hand, if that same guest asked, "Did you make all of the food," the only appropriate answer would be, "no."

This example gets to the heart of why Magistrate Judge [Duffin](https://advance-lexis-com.proxy.lib.umich.edu/document/?pdmfid=1516831&crid=bd30ef98-eea9-4240-a465-a60483485c4d&pddocfullpath=%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A6550-KS41-F2TK-21T4-00000-00&pdcontentcomponentid=6417&pdshepid=urn%3AcontentItem%3A654R-5533-GXF7-3207-00000-00&pdteaserkey=sr1&pditab=allpods&ecomp=rzznk&earg=sr1&prid=061113ce-b4f2-48ee-a749-639c50629bed)'s grammatical explanation for the Form is unsatisfying, and why the question was ambiguous as a matter of law. It shows that there was no way for Nash to answer Question 11.a in a simple yes/no format: was she the actual buyer or transferee of the firearms that are the subject of the Form? Yes, for one of them; no, not for the second gun. Perhaps she was being evasive, or perhaps she was confused, but she had a basis in fact to provide either answer. As in the example above, to be fully truthful, both potential answers require an explanatory clause. If the Government[[\*13]](https://advance-lexis-com.proxy.lib.umich.edu/document/?pdmfid=1516831&crid=bd30ef98-eea9-4240-a465-a60483485c4d&pddocfullpath=%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A6550-KS41-F2TK-21T4-00000-00&pdcontentcomponentid=6417&pdshepid=urn%3AcontentItem%3A654R-5533-GXF7-3207-00000-00&pdteaserkey=sr1&pditab=allpods&ecomp=rzznk&earg=sr1&prid=061113ce-b4f2-48ee-a749-639c50629bed) sought an all-or-nothing response, then it should have phrased its question accordingly.

#### “The” does not mean “all”---it varies per specific application.

Michael Dewine 15. Attorney General of Ohio. “Gillie v. Law Office of Eric A. Jones, LLC: ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT BRIEF FOR THE PETITIONERS. 2015. Lexis //EM

Duties Of The Office.

The Sixth Circuit next read “the duties of the office” to require the person to perform “all duties associated with the office.” Pet. App. 35a. Special counsel, the court added, do not perform all of the Attorney General’s duties. Id.

Yet “the” does not mean “all.” The Dictionary Act uses the definite article to identify the specific duties delegated by the specific authorizing law. Here, that law permits special counsel to perform the debt-collection duties of the Attorney General’s Office. Read otherwise, the Dictionary Act would exclude any inferior officer in an office who could not perform all of the superior’s duties.

#### “The” means one or more.

Oxford ND – The OED is the definitive record of the English language, featuring 600000 words, 3 million quotations, and over 1000 years of English. ("THE English Definition and Meaning," Lexico, https://www.lexico.com/en/definition/the, Accessed 7-5-2022, LASA-SC)

[The] Denoting one or more people or things already mentioned or assumed to be common knowledge.

#### **The most precise definition of “The” specifies particulars**

Supreme Court of Minnesota 12. “State v. Hohenwald”; A10-1986; July 11, 2012; Lexis //BY

With regard to Minn. R. Crim. P. 20.01, the definite article "the" is a word of limitation that indicates a reference to a specific object. The definite article "the" particularizes the subject which it precedes. "The" is used before singular or plural nouns and noun phrases that denote particular, specified persons or things Applying the word "the" as a word of limitation, Rule 20.01 requires the suspension of the proceedings in the then-existing case in which the court orders the suspension, not in an unspecified or indefinite number of cases. The word "the" is a word of limitation, not a word of indefinite or generalizing force. If the drafters of the criminal rules intended to suspend all proceedings brought against a particular criminal defendant, including those not yet in existence, they could have easily used words to that effect by suspending "all criminal proceedings" or "any criminal proceedings." Thus, the most natural reading of Rule 20.01 is that it requires district courts to suspend the proceedings in only the particular case in which it orders the suspension, not in all prospective actions that could possibly arise during the period of suspension.

#### “The” can determine specifics

Supreme Court of Michigan 21. “Ricks v. State”; July 8, 2021; Lexis //BY

In its review of the threshold-eligibility requirements in MCL 691.1755(1), the Court of Appeals aptly recognized that the Legislature repeatedly used the word [\*\*440] "the" in front of "crimes," "charges," and "judgment of conviction" in MCL 691.1755(1)(a) to (c) in setting forth when a plaintiff is eligible for compensation under the WICA. On the other hand, the Legislature uses the word "another" before "criminal offense" in MCL 691.1755(1)(b) and [\*\*\*27] "conviction" in MCL 691.1755(4)—other subsections of MCL 691.1755 that explain when a plaintiff is not eligible for compensation. We have previously defined "the" as a "definite article . . . (used, especially before a noun, with a specifying or particularizing effect, as opposed to the indefinite or generalizing force of the indefinite article a or an)."20Link to the text of the note As an adjective, "another" is defined as "different or distinct from the one first considered"; "some other"; or "being one more in addition to one or more of the same kind."21Link to the text of the note Accordingly, the Legislature's use of "the" before "crimes," "charges," and "judgment of conviction" throughout MCL 691.1755(1)(a) to (c) means those provisions refer to the specific crimes and charges leading to a plaintiff's wrongful conviction and imprisonment that gave rise to a WICA claim. The Legislature's use of "another" before "criminal offense" in MCL 691.1755(1)(b) and "conviction" in MCL 691.1755(4) [\*413] means those provisions refer to some other offense or conviction that is different or distinct from the wrongful conviction and imprisonment, and which therefore does not warrant compensation under the WICA. Thus, MCL 691.1755 reflects the overall structure of the WICA in only providing compensation for the specific crimes, charges, or convictions [\*\*\*28] that the plaintiff was wrongfully convicted of and imprisoned for, and which ultimately form the basis of the WICA claim—not "another" crime, charge, or conviction.

### AT: Kotila

#### Kotila is not good law. It was overruled [that’s the red dot next to the case in the picture below]

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#### That was because the definition of “the” did violence to common sense

Supreme Court of Kentucky 6. “Matheney v. Commonwealth”; 2002-SC-0920-MR; March 23, 2006; Lexis //BY

In [Kotila v. Commonwealth, 114 S.W.3d 226 (Ky. 2003)](https://advance-lexis-com.proxy.lib.umich.edu/document/?pdmfid=1516831&crid=849d3182-5ba6-4c04-afa9-d06b2d0290dd&pddocfullpath=%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A4JJ9-5VM0-TVV9-0200-00000-00&pdcontentcomponentid=7240&pdshepid=urn%3AcontentItem%3A7XW4-F4J1-2NSF-C3VF-00000-00&pdteaserkey=sr5&pditab=allpods&ecomp=rzznk&earg=sr5&prid=ef50c0ae-9882-4e7b-b6fd-23b8257a21e8), this Court held that the version of [KRS 218A.1432(1)(b)](https://advance-lexis-com.proxy.lib.umich.edu/document/?pdmfid=1516831&crid=849d3182-5ba6-4c04-afa9-d06b2d0290dd&pddocfullpath=%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A4JJ9-5VM0-TVV9-0200-00000-00&pdcontentcomponentid=7240&pdshepid=urn%3AcontentItem%3A7XW4-F4J1-2NSF-C3VF-00000-00&pdteaserkey=sr5&pditab=allpods&ecomp=rzznk&earg=sr5&prid=ef50c0ae-9882-4e7b-b6fd-23b8257a21e8) then in effect required possession of all the chemicals or equipment necessary to manufacture methamphetamine. Essentially, this Court found that the statute's use of the word[[\*\*5]](https://advance-lexis-com.proxy.lib.umich.edu/document/?pdmfid=1516831&crid=849d3182-5ba6-4c04-afa9-d06b2d0290dd&pddocfullpath=%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A4JJ9-5VM0-TVV9-0200-00000-00&pdcontentcomponentid=7240&pdshepid=urn%3AcontentItem%3A7XW4-F4J1-2NSF-C3VF-00000-00&pdteaserkey=sr5&pditab=allpods&ecomp=rzznk&earg=sr5&prid=ef50c0ae-9882-4e7b-b6fd-23b8257a21e8) "the" meant that a person could be convicted under [subpart (1)(b)](https://advance-lexis-com.proxy.lib.umich.edu/document/?pdmfid=1516831&crid=849d3182-5ba6-4c04-afa9-d06b2d0290dd&pddocfullpath=%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A4JJ9-5VM0-TVV9-0200-00000-00&pdcontentcomponentid=7240&pdshepid=urn%3AcontentItem%3A7XW4-F4J1-2NSF-C3VF-00000-00&pdteaserkey=sr5&pditab=allpods&ecomp=rzznk&earg=sr5&prid=ef50c0ae-9882-4e7b-b6fd-23b8257a21e8) of the statute only for possession of all the chemicals or equipment (as opposed to "any" or "some" of the chemicals or equipment) for the manufacture of methamphetamine. The Kotila majority based this conclusion on grammatical construction and subsequent statutory enactments by the General Assembly. While attempting to discern the General Assembly's intent by analyzing subsequent legislation, the majority opinion conceded that the precise intent of the General Assembly was ambiguous.

The majority also rejected the applicability of criminal attempt under [KRS 506.010](https://advance-lexis-com.proxy.lib.umich.edu/document/documentlink/?pdmfid=1516831&crid=3a8e040e-84fe-4663-a0f3-ed97f4fd2ad4&pddocfullpath=%2Fshared%2Fdocument%2Fstatutes-legislation%2Furn%3AcontentItem%3A5D87-S411-66PR-P4S2-00000-00&pdcontentcomponentid=7244&pddoctitle=KRS+506.010&pdproductcontenttypeid=urn%3Apct%3A83&pdiskwicview=false&ecomp=4sk8k&prid=849d3182-5ba6-4c04-afa9-d06b2d0290dd) unless all the chemicals or equipment necessary to manufacture methamphetamine were present. Justice Keller concurred in the Court's opinion relating to [KRS 218A.1432(1)(b)](https://advance-lexis-com.proxy.lib.umich.edu/document/?pdmfid=1516831&crid=849d3182-5ba6-4c04-afa9-d06b2d0290dd&pddocfullpath=%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A4JJ9-5VM0-TVV9-0200-00000-00&pdcontentcomponentid=7240&pdshepid=urn%3AcontentItem%3A7XW4-F4J1-2NSF-C3VF-00000-00&pdteaserkey=sr5&pditab=allpods&ecomp=rzznk&earg=sr5&prid=ef50c0ae-9882-4e7b-b6fd-23b8257a21e8). However, he believed [[\*603]](https://advance-lexis-com.proxy.lib.umich.edu/document/?pdmfid=1516831&crid=849d3182-5ba6-4c04-afa9-d06b2d0290dd&pddocfullpath=%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A4JJ9-5VM0-TVV9-0200-00000-00&pdcontentcomponentid=7240&pdshepid=urn%3AcontentItem%3A7XW4-F4J1-2NSF-C3VF-00000-00&pdteaserkey=sr5&pditab=allpods&ecomp=rzznk&earg=sr5&prid=ef50c0ae-9882-4e7b-b6fd-23b8257a21e8) that [KRS 506.010](https://advance-lexis-com.proxy.lib.umich.edu/document/?pdmfid=1516831&crid=849d3182-5ba6-4c04-afa9-d06b2d0290dd&pddocfullpath=%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A4JJ9-5VM0-TVV9-0200-00000-00&pdcontentcomponentid=7240&pdshepid=urn%3AcontentItem%3A7XW4-F4J1-2NSF-C3VF-00000-00&pdteaserkey=sr5&pditab=allpods&ecomp=rzznk&earg=sr5&prid=ef50c0ae-9882-4e7b-b6fd-23b8257a21e8) applied to "defendants who intend to manufacture methamphetamine and who undertake 'substantial steps' towards manufacturing methamphetamine by knowingly accumulating materials necessary to do so, but who are apprehended before they can complete the [KRS 218A.1432(1)(b) [\*\*6]](https://advance-lexis-com.proxy.lib.umich.edu/document/?pdmfid=1516831&crid=849d3182-5ba6-4c04-afa9-d06b2d0290dd&pddocfullpath=%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A4JJ9-5VM0-TVV9-0200-00000-00&pdcontentcomponentid=7240&pdshepid=urn%3AcontentItem%3A7XW4-F4J1-2NSF-C3VF-00000-00&pdteaserkey=sr5&pditab=allpods&ecomp=rzznk&earg=sr5&prid=ef50c0ae-9882-4e7b-b6fd-23b8257a21e8) Manufacturing Methamphetamine offense by knowingly possessing all of the chemicals or all of the equipment necessary to manufacture methamphetamine." [Kotila, 114 S.W.3d at 251](https://advance-lexis-com.proxy.lib.umich.edu/document/?pdmfid=1516831&crid=849d3182-5ba6-4c04-afa9-d06b2d0290dd&pddocfullpath=%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A4JJ9-5VM0-TVV9-0200-00000-00&pdcontentcomponentid=7240&pdshepid=urn%3AcontentItem%3A7XW4-F4J1-2NSF-C3VF-00000-00&pdteaserkey=sr5&pditab=allpods&ecomp=rzznk&earg=sr5&prid=ef50c0ae-9882-4e7b-b6fd-23b8257a21e8) (Keller, J., concurring in part and dissenting in part).

Chief Justice Lambert authored a dissent, which was joined by Justice Wintersheimer. Chief Justice Lambert argued that if the General Assembly had intended the statute to be construed as the majority did, "it would surely have used the word 'all' rather than the more general 'the.'" [Kotila, 114 S.W.3d at 256](https://advance-lexis-com.proxy.lib.umich.edu/document/?pdmfid=1516831&crid=849d3182-5ba6-4c04-afa9-d06b2d0290dd&pddocfullpath=%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A4JJ9-5VM0-TVV9-0200-00000-00&pdcontentcomponentid=7240&pdshepid=urn%3AcontentItem%3A7XW4-F4J1-2NSF-C3VF-00000-00&pdteaserkey=sr5&pditab=allpods&ecomp=rzznk&earg=sr5&prid=ef50c0ae-9882-4e7b-b6fd-23b8257a21e8) (Lambert, C.J., dissenting). One member of the Kotila majority has subsequently admitted that he "was seduced by a metaphysical infatuation which led to an absurdity" and concluded that Kotila "does violence to the concept of common sense." [Fulcher v. Commonwealth, 149 S.W.3d 363, 381 (Ky. 2004)](https://advance-lexis-com.proxy.lib.umich.edu/document/?pdmfid=1516831&crid=849d3182-5ba6-4c04-afa9-d06b2d0290dd&pddocfullpath=%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A4JJ9-5VM0-TVV9-0200-00000-00&pdcontentcomponentid=7240&pdshepid=urn%3AcontentItem%3A7XW4-F4J1-2NSF-C3VF-00000-00&pdteaserkey=sr5&pditab=allpods&ecomp=rzznk&earg=sr5&prid=ef50c0ae-9882-4e7b-b6fd-23b8257a21e8) ([Graves, J.](https://advance-lexis-com.proxy.lib.umich.edu/document/?pdmfid=1516831&crid=849d3182-5ba6-4c04-afa9-d06b2d0290dd&pddocfullpath=%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A4JJ9-5VM0-TVV9-0200-00000-00&pdcontentcomponentid=7240&pdshepid=urn%3AcontentItem%3A7XW4-F4J1-2NSF-C3VF-00000-00&pdteaserkey=sr5&pditab=allpods&ecomp=rzznk&earg=sr5&prid=ef50c0ae-9882-4e7b-b6fd-23b8257a21e8), dissenting).

In Fulcher, despite the fact that the defendant possessed a plethora of equipment and chemicals to make methamphetamine, the Court held that since there was no evidence of sodium metal or lithium, the defendant did not possess all the chemicals necessary to manufacture[[\*\*7]](https://advance-lexis-com.proxy.lib.umich.edu/document/?pdmfid=1516831&crid=849d3182-5ba6-4c04-afa9-d06b2d0290dd&pddocfullpath=%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A4JJ9-5VM0-TVV9-0200-00000-00&pdcontentcomponentid=7240&pdshepid=urn%3AcontentItem%3A7XW4-F4J1-2NSF-C3VF-00000-00&pdteaserkey=sr5&pditab=allpods&ecomp=rzznk&earg=sr5&prid=ef50c0ae-9882-4e7b-b6fd-23b8257a21e8) methamphetamine. In addition, since there were no mixing bowls, stirring devices or pliers, the defendant also failed to possess all the equipment necessary to manufacture methamphetamine.

This Court has struggled with the effects of Kotila from day one. This is clear from the fact that the bright line rule of Kotila survived for only about six months. In [Varble v. Commonwealth, 125 S.W.3d 246, 254 (Ky. 2004)](https://advance-lexis-com.proxy.lib.umich.edu/document/?pdmfid=1516831&crid=849d3182-5ba6-4c04-afa9-d06b2d0290dd&pddocfullpath=%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A4JJ9-5VM0-TVV9-0200-00000-00&pdcontentcomponentid=7240&pdshepid=urn%3AcontentItem%3A7XW4-F4J1-2NSF-C3VF-00000-00&pdteaserkey=sr5&pditab=allpods&ecomp=rzznk&earg=sr5&prid=ef50c0ae-9882-4e7b-b6fd-23b8257a21e8), this Court upheld a conviction under [KRS 218A.1432(1)(b)](https://advance-lexis-com.proxy.lib.umich.edu/document/?pdmfid=1516831&crid=849d3182-5ba6-4c04-afa9-d06b2d0290dd&pddocfullpath=%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A4JJ9-5VM0-TVV9-0200-00000-00&pdcontentcomponentid=7240&pdshepid=urn%3AcontentItem%3A7XW4-F4J1-2NSF-C3VF-00000-00&pdteaserkey=sr5&pditab=allpods&ecomp=rzznk&earg=sr5&prid=ef50c0ae-9882-4e7b-b6fd-23b8257a21e8) where all the chemicals except anhydrous ammonia and all the equipment except for a filter were present. The Court held that "the odor of anhydrous ammonia" and a "filter of unspecified nature and a dust filter mask" were sufficient evidence to satisfy Kotila. [Id. at 254](https://advance-lexis-com.proxy.lib.umich.edu/document/?pdmfid=1516831&crid=849d3182-5ba6-4c04-afa9-d06b2d0290dd&pddocfullpath=%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A4JJ9-5VM0-TVV9-0200-00000-00&pdcontentcomponentid=7240&pdshepid=urn%3AcontentItem%3A7XW4-F4J1-2NSF-C3VF-00000-00&pdteaserkey=sr5&pditab=allpods&ecomp=rzznk&earg=sr5&prid=ef50c0ae-9882-4e7b-b6fd-23b8257a21e8). Chief Justice Lambert remarked that the holding in Varble represented "a significant departure from the bright line rule announced in Kotila." [Id. at 257](https://advance-lexis-com.proxy.lib.umich.edu/document/?pdmfid=1516831&crid=849d3182-5ba6-4c04-afa9-d06b2d0290dd&pddocfullpath=%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A4JJ9-5VM0-TVV9-0200-00000-00&pdcontentcomponentid=7240&pdshepid=urn%3AcontentItem%3A7XW4-F4J1-2NSF-C3VF-00000-00&pdteaserkey=sr5&pditab=allpods&ecomp=rzznk&earg=sr5&prid=ef50c0ae-9882-4e7b-b6fd-23b8257a21e8) (Lambert, C.J., concurring).

Additionally, with Justice Graves's express disavowal of Kotila in his dissent in [Fulcher](https://advance-lexis-com.proxy.lib.umich.edu/document/?pdmfid=1516831&crid=849d3182-5ba6-4c04-afa9-d06b2d0290dd&pddocfullpath=%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A4JJ9-5VM0-TVV9-0200-00000-00&pdcontentcomponentid=7240&pdshepid=urn%3AcontentItem%3A7XW4-F4J1-2NSF-C3VF-00000-00&pdteaserkey=sr5&pditab=allpods&ecomp=rzznk&earg=sr5&prid=ef50c0ae-9882-4e7b-b6fd-23b8257a21e8), four members of this Court have cast votes that necessarily demonstrate their disagreement with Kotila's[[\*\*8]](https://advance-lexis-com.proxy.lib.umich.edu/document/?pdmfid=1516831&crid=849d3182-5ba6-4c04-afa9-d06b2d0290dd&pddocfullpath=%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A4JJ9-5VM0-TVV9-0200-00000-00&pdcontentcomponentid=7240&pdshepid=urn%3AcontentItem%3A7XW4-F4J1-2NSF-C3VF-00000-00&pdteaserkey=sr5&pditab=allpods&ecomp=rzznk&earg=sr5&prid=ef50c0ae-9882-4e7b-b6fd-23b8257a21e8) holding regarding the application of [KRS 506.010](https://advance-lexis-com.proxy.lib.umich.edu/document/?pdmfid=1516831&crid=849d3182-5ba6-4c04-afa9-d06b2d0290dd&pddocfullpath=%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A4JJ9-5VM0-TVV9-0200-00000-00&pdcontentcomponentid=7240&pdshepid=urn%3AcontentItem%3A7XW4-F4J1-2NSF-C3VF-00000-00&pdteaserkey=sr5&pditab=allpods&ecomp=rzznk&earg=sr5&prid=ef50c0ae-9882-4e7b-b6fd-23b8257a21e8) (Criminal Attempt) to methamphetamine manufacturing offenses. See [Kotila, 114 S.W.3d at 249](https://advance-lexis-com.proxy.lib.umich.edu/document/?pdmfid=1516831&crid=849d3182-5ba6-4c04-afa9-d06b2d0290dd&pddocfullpath=%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A4JJ9-5VM0-TVV9-0200-00000-00&pdcontentcomponentid=7240&pdshepid=urn%3AcontentItem%3A7XW4-F4J1-2NSF-C3VF-00000-00&pdteaserkey=sr5&pditab=allpods&ecomp=rzznk&earg=sr5&prid=ef50c0ae-9882-4e7b-b6fd-23b8257a21e8) (Keller, J., concurring in part and dissenting in part); [id. at 256](https://advance-lexis-com.proxy.lib.umich.edu/document/?pdmfid=1516831&crid=849d3182-5ba6-4c04-afa9-d06b2d0290dd&pddocfullpath=%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A4JJ9-5VM0-TVV9-0200-00000-00&pdcontentcomponentid=7240&pdshepid=urn%3AcontentItem%3A7XW4-F4J1-2NSF-C3VF-00000-00&pdteaserkey=sr5&pditab=allpods&ecomp=rzznk&earg=sr5&prid=ef50c0ae-9882-4e7b-b6fd-23b8257a21e8) (Lambert, C.J., dissenting in part, joined by [Wintershiemer, J.); Fulcher v. Commonwealth, 149 S.W.3d 363, 381 (Ky. 2004)](https://advance-lexis-com.proxy.lib.umich.edu/document/?pdmfid=1516831&crid=849d3182-5ba6-4c04-afa9-d06b2d0290dd&pddocfullpath=%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A4JJ9-5VM0-TVV9-0200-00000-00&pdcontentcomponentid=7240&pdshepid=urn%3AcontentItem%3A7XW4-F4J1-2NSF-C3VF-00000-00&pdteaserkey=sr5&pditab=allpods&ecomp=rzznk&earg=sr5&prid=ef50c0ae-9882-4e7b-b6fd-23b8257a21e8) ([Graves, J.](https://advance-lexis-com.proxy.lib.umich.edu/document/?pdmfid=1516831&crid=849d3182-5ba6-4c04-afa9-d06b2d0290dd&pddocfullpath=%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A4JJ9-5VM0-TVV9-0200-00000-00&pdcontentcomponentid=7240&pdshepid=urn%3AcontentItem%3A7XW4-F4J1-2NSF-C3VF-00000-00&pdteaserkey=sr5&pditab=allpods&ecomp=rzznk&earg=sr5&prid=ef50c0ae-9882-4e7b-b6fd-23b8257a21e8), dissenting).

Since Kotila was rendered, over two years ago, it has become increasingly clear that Justice Graves was correct in that requiring possession of all the chemicals or equipment to uphold a conviction under [KRS 218A.1432(1)(b)](https://advance-lexis-com.proxy.lib.umich.edu/document/?pdmfid=1516831&crid=849d3182-5ba6-4c04-afa9-d06b2d0290dd&pddocfullpath=%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A4JJ9-5VM0-TVV9-0200-00000-00&pdcontentcomponentid=7240&pdshepid=urn%3AcontentItem%3A7XW4-F4J1-2NSF-C3VF-00000-00&pdteaserkey=sr5&pditab=allpods&ecomp=rzznk&earg=sr5&prid=ef50c0ae-9882-4e7b-b6fd-23b8257a21e8) defies common sense. And though considerations of stare decisis would normally guide us to adhere to Kotila, we simply cannot overlook the fact that the Court's reasoning in subsequent decisions addressing [KRS 218A.1432(1)(b)](https://advance-lexis-com.proxy.lib.umich.edu/document/?pdmfid=1516831&crid=849d3182-5ba6-4c04-afa9-d06b2d0290dd&pddocfullpath=%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A4JJ9-5VM0-TVV9-0200-00000-00&pdcontentcomponentid=7240&pdshepid=urn%3AcontentItem%3A7XW4-F4J1-2NSF-C3VF-00000-00&pdteaserkey=sr5&pditab=allpods&ecomp=rzznk&earg=sr5&prid=ef50c0ae-9882-4e7b-b6fd-23b8257a21e8) has already departed significantly from the bright-line rule. Therefore, we go one step further and hold that HN2 Kotila's construction of KRS 218A.1432(1)(b) was incorrect.

[\*604] We do not reverse Kotila lightly. As the dissent observes in its extensive [\*\*9] discussion, HN3 stare decisis is an important guiding principle in American jurisprudence. On that point, we are in complete agreement. However, as this Court has noted recently, the doctrine of stare decisis does not commit us to the sanctification of ancient or relatively recent fallacy. While we recognize this Court should decide cases with a respect for precedent, this respect does not require blind imitation of the past or unquestioned acceptance ad infinitum. Rather, in many ways, respect for precedent demands proper reconsideration when we find sound legal reasons to question the correctness of our prior analysis.