

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Greenville County
R. Markley Dennis, Jr., Circuit Court Judge

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S.C. Supreme Court

ROBERT FRANK GRANT,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-213678

APPENDIX

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Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
 -VS-)
)
 ROBERT GRANT,)
)
 DEFENDANT.)
 _____)

2007-GS-23-2004 - 2006

TRANSCRIPT OF RECORD

MARCH 11 - 12, 2008
GREENVILLE, SOUTH CAROLINA

BEFORE:

THE HONORABLE EDWARD W. MILLER

APPEARANCES:

ATTORNEY FOR PLAINTIFF:

JENNIFER TESSITORE, ASSISTANT SOLICITOR
KATRINA SALISBURY, ASSISTANT SOLICITOR

ATTORNEYS FOR DEFENDANT:

CAROLINE HORLBECK, ESQUIRE
ELIZABETH WIYGUL, ESQUIRE

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

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Voir Dire

Case No.: 2007-GS-23-2004 - 2006

Judge: Edward Miller

Date: March 11-12, 2008

Court/County: Greenville

Plaintiff/State: State

Attorney: Jennifer Jossiter/Salisbury

Defendant: Robert ^{5th} F. Grant

Attorney: Caroline Harbeck

Court Reporter: Susan Hudgins

Juror #	Name	Race	Sex	Strikes			Accept
				Court	Plaintiff	Defendant	
125	James Lynch	W	M	X			
238	Samantha Young	W	F		X		
173	Mark Poston	W	M				✓
188	Elizabeth Roper	W	F			X	
244	Niles McCall	W	M		X		
129	James Madison	B	M				✓
55	Robert Durant	W	M			X	
192	Caryn Schook	W	F		X		
144	Hans Mickelson	W	M				✓
131	Lisa Mancini	W	F			X	
196	Daniel Seles	W	M				✓
35	Larry Chandler	W	M			X	
189	Amy Russo	W	F				✓
56	Stephen Eastland	W	M		X		
133	Cathy McCarson	W	F				✓
157	Christopher Olson	W	M				✓

*For the Court column, please indicate who made the motion to strike the juror "for cause" with a "C" for Court, "P" for Plaintiff, or "D" for Defense.

Voir Dire

Case No.: 2007-GS-23-2004-2006

Date: March 11-12, 2008

Plaintiff/State: State

Defendant: Robert E. Grant

Court Reporter: Susan Hudgins

Judge: Edward Miller

Court/County: Greenville

Attorney: Jennifer Jesperson Salisbury

Attorney: Caroline Horlbeck

Juror #	Name	Race	Sex	Strikes			Accept
				Court	Plaintiff	Defendant	
87	Cathy Holcombe	W	F				✓
222	James Turner	B	M		X		
10	Angela Baker	W	F				✓
200	Chris Smith	B	M				✓
105	Susan Kern	W	F			X	
212	Lamar Thomas	W	M				✓
79	William Hartzell	W	M				✓
58	Angela Elders	W	F			X	
22	Nancy Bower	W	F				✓

*For the Court column, please indicate who made the motion to strike the juror "for cause" with a "C" for Court, "P" for Plaintiff, or "D" for Defense.

1 (WHEREUPON STATE'S EXHIBITS 1 - 7 WERE MARKED FOR
2 IDENTIFICATION PRIOR TO COMMENCING THE TRIAL)

3 THE COURT: THANKS. PLEASE BE SEATED. ALL RIGHT.
4 WHAT DO WE HAVE?

5 MS. TESSITORE: YOUR HONOR, THIS IS STATE VERSUS ROBERT
6 GRANT. THE INDICTMENT IS ---

7 THE COURT: WAIT, WAIT, WAIT. I GUESS WE OUGHT TO --
8 LET'S GET HIM UP HERE BEFORE WE DO ANYTHING.

9 (PAUSE)

10 (WHEREUPON THE DEFENDANT, ROBERT GRANT, ENTERED THE
11 COURTROOM)

12 THE COURT: OKAY. SOLICITOR, CALL YOUR CASE.

13 MS. TESSITORE: THANK YOU, YOUR HONOR. THIS IS STATE
14 VERSUS ROBERT GRANT, INDICTMENT 2007-GS-23-2005 FOR
15 DISTRIBUTION OF CRACK COCAINE AND 2007-GS-23-2004 FOR
16 POSSESSION WITH INTENT TO DISTRIBUTE CRACK COCAINE WITHIN
17 PROXIMITY OF A SCHOOL AND 2007-GS-23-2006 FOR THREATENING A
18 PUBLIC OFFICIAL. THE STATE'S PREPARED TO PROCEED, YOUR
19 HONOR.

20 THE COURT: ALL RIGHT. ANYTHING? WHO'S TRYING THIS
21 CASE?

22 MS. HORLBECK: I AM TRYING ---

23 THE COURT: ALL RIGHT.

24 MS. HORLBECK: I'M DEFENDING THIS CASE. YOUR HONOR, WE
25 WOULD HAVE SOME PRETRIAL MOTIONS. AND I'M GOING TO START

1 OFF WITH MY CLIENT'S MOTION. HE WOULD ASK FOR A CONTINUANCE
2 AND ALSO, I BELIEVE, HAVE A MOTION TO HAVE ME RELIEVED AS
3 HIS COUNSEL. I'LL JUST SPEAK A LITTLE BIT ON THAT.

4 HE, YESTERDAY EXPLAINED TO US THAT HE BELIEVED SOMEONE
5 ELSE WAS ALSO ARRESTED AT THE SAME TIME AS HIM. AND IT
6 BEING YESTERDAY THAT HE TOLD US ABOUT THIS WE WERE UNABLE TO
7 LOOK INTO THIS. WE DON'T HAVE A NAME. I HAVE NOT HAD THE
8 TIME TO GET RECORDS AND FIND OUT WHO, IF ANYONE, WAS
9 ARRESTED AT THE SAME TIME AS MY CLIENT. AND WE WOULD ASK
10 FOR A CONTINUANCE AT THIS POINT.

11 OBVIOUSLY, I CAN'T BE PREPARED TO EFFECTIVELY REPRESENT
12 HIM ON THAT PART, ALTHOUGH I AM PREPARED FOR TRIAL TODAY.
13 AND THEN I'LL LET MY CLIENT DO THE REST OF THE TALKING.

14 THE COURT: ALL RIGHT.

15 MR. GRANT: HOW YOU DOING, JUDGE? MR. MILLER -- JUDGE
16 MILLER, APPARENTLY THE RELATIONSHIP THAT ME AND MY COUNSEL
17 HAVE IS FAR BEYOND REPAIR. AND I FEEL LIKE THAT I CAN'T
18 HAVE A FAIR -- A FAIR TRIAL, A JURY TRIAL WITH HER
19 REPRESENTING ME. YOU KNOW, 'CAUSE THERE'S A LOT OF THINGS I
20 ASKED HER TO DO ---

21 THE COURT: WOULD YOU PUT THE MICROPHONE OVER THERE SO
22 HE -- I CAN'T ---

23 MS. HORLBECK: YOU NEED TO SPEAK UP.

24 MR. GRANT: IT'S A LOT OF THINGS THAT I ASKED HER TO DO
25 ON MY BEHALF THAT SHE FAILED TO -- SHE FAILED TO DO. FOR

1 INSTANCE, MY MOTION, I JUST GOT MY MOTION, I THINK IT WAS
2 LIKE TUESDAY. AND SHE -- SHE LOOKED OVER A LOT OF -- SHE
3 BEEN HAVE MY MOTION OVER A YEAR. AND I FOUND SOME ERRORS,
4 SOME THINGS IN MY MOTION THAT SHE DIDN'T EVEN -- SHE LOOKED
5 OVER -- THAT WAS ---

6 THE COURT: WHAT MOTION ARE ---

7 MR. GRANT: --- PRIOR TO MY -- TO MY CASE.

8 THE COURT: WHAT MOTION ARE YOU REFERRING TO? I DON'T
9 KNOW WHAT YOU'RE TALKING ABOUT.

10 MR. GRANT: DISCOVERY, MY -- MY RULE 5.

11 THE COURT: OKAY. DISCOVERY?

12 MR. GRANT: YES, SIR. AND I JUST RECEIVED IT. AND SHE
13 BEEN HAD IT OVER A YEAR. AND I FOUND SOME THINGS IN MY RULE
14 5 THAT WAS REALLY VITAL TO MY CASE THAT SHE LOOKED OVER.
15 AND IT TELLS ME THAT SHE'S NOT PREPARED TO GO FORWARD WITH
16 -- WITH THE, YOU KNOW, THE REPRESENTATION OF ME ON MY
17 BEHALF. AND I JUST WISH THAT SHE BE REMOVED AS MY COUNSEL.

18 THE COURT: WELL, YOU TALKED ABOUT SOME IRREPARABLE
19 DAMAGE TO YOUR ATTORNEY/CLIENT RELATIONSHIP. WHAT ARE YOU
20 REFERRING TO?

21 MR. GRANT: JUST IN DISCUSSION, SHE GET OFFENDED ABOUT
22 EVERY -- SHE THINK I'M RAISING MY VOICE TO HER. SHE GET
23 OFFENDED ABOUT SOME OF THE THINGS I SAY AND TELLING ME THAT
24 SHE'S NOT GOING TO DO IT THAT WAY. AND THIS IS MY LIFE
25 THAT'S ON THE LINE. AND I FEEL THAT IF I'M NOT COMFORTABLE

1 WITH HER, THEN I SHOULDN'T, YOU KNOW, I'M NOT GOING TO GO
2 FORWARD.

3 THE COURT: WELL, MR. GRANT, LET ME JUST TELL YOU THIS,
4 SHE'S -- THIS IS AN APPOINTED CASE?

5 MS. HORLBECK: THAT'S CORRECT, YOUR HONOR.

6 THE COURT: YOU'RE ENTITLED TO AN ATTORNEY, A COMPETENT
7 ATTORNEY.

8 MR. GRANT: YES, SIR.

9 THE COURT: AND MY EXPERIENCE WITH MS. HORLBECK IS THAT
10 SHE IS A VERY COMPETENT ATTORNEY.

11 MR. GRANT: YES, SIR.

12 THE COURT: AND YOU -- WHEN YOU GET AN APPOINTED
13 ATTORNEY YOU DON'T GET TO PICK AND CHOOSE WHO. AND THIS
14 CASE -- HOW LONG HAS THIS CASE BEEN ON THE TRIAL DOCKET,
15 SOLICITOR?

16 MS. TESSITORE: YOUR HONOR, THIS IS THE THIRD TIME THAT
17 IT HAS BEEN ON THE TRIAL DOCKET.

18 THE COURT: OKAY. AND CAN YOU GIVE ME THE DATES?

19 MS. TESSITORE: YES, SIR. THE FIRST TIME IT WAS ON THE
20 TRIAL DOCKET WAS JANUARY 17TH. AND THE SECOND TIME WAS ON
21 FEBRUARY 12TH. AND NEITHER OF THOSE OCCASIONS DID THE
22 DEFENDANT SHOW UP. HE WAS NOT INCARCERATED AT THE TIME.
23 AND WE SENT THE BOND CARDS.

24 WE ACTUALLY HAD HIM PERSONALLY SERVED WITH A SUBPOENA
25 IN LAURENS COUNTY WHEN HE WAS IN DETENTION THERE SO THAT

1 WHEN HE GOT OUT HE WOULD KNOW THAT HE HAD A TRIAL ON THE
2 DOCKET. SO THAT WAS IN JANUARY. AND THEN AGAIN IN
3 FEBRUARY, WE WERE NOT REACHED, BUT HE DID NOT APPEAR.

4 THE COURT: OKAY.

5 MS. TESSITORE: WE DID NOT CALL THE CASE THOUGH, JUST
6 FOR CLARIFICATION. SO WE DID NOT GET A BENCH WARRANT.

7 THE COURT: ALL RIGHT. WHERE WERE YOU, MR. GRANT?

8 MR. GRANT: SHE DID MAKE CONTACT WITH ME WHEN I WAS IN
9 LAURENS COUNTY. AND I TOLD HER THAT I WASN'T PREPARED TO GO
10 TO -- TO GO TO TRIAL. AND I TOLD HER THAT I NEEDED TO FIND
11 SOME WITNESSES THAT WOULD BE, YOU KNOW, VITAL TO MY CASE.
12 AND AFTER I WAS RELEASED I CAME TO GREENVILLE HERE TO LOOK
13 -- TO LOOK FOR MY WITNESSES. AND THIS WAS WHEN I GOT
14 ARRESTED FOR TRESPASSING. AND THIS IS HOW, YOU KNOW ...

15 THE COURT: WELL, DID HE GIVE YOU NAMES OF WITNESSES?
16 NAMES AND ADDRESSES?

17 MS. HORLBECK: HE GAVE ME FIRST NAMES. AND WE WERE
18 ABLE TO AT LEAST DO SOMETHING ABOUT THAT AND TRY TO FIND
19 THOSE WITNESSES. BUT WHAT I'M DESCRIBING IS THE
20 INFORMATION HE GAVE ME LAST NIGHT. I'VE HAD -- I'VE HAD
21 ABSOLUTELY NO TIME TO TRY TO RUN THAT DOWN.

22 THE COURT: NO, I UNDERSTAND THAT.

23 MS. HORLBECK: BUT I'VE HAD -- I'VE HAD AMPLE
24 OPPORTUNITY TO TRY TO FIND THE WITNESSES THAT HE GAVE ME
25 UNSUCCESSFULLY. BUT WE WENT TO THE PLACE HE SAID THAT THEY

1 WOULD BE. WE, YOU KNOW, WE ASKED THE MANAGER THERE AND DID
2 ALL WE COULD TO TRY TO FIND THOSE WITNESSES. BUT I AM
3 MAKING -- I AM JOINING HIS MOTION JUST FOR THE INFORMATION
4 THAT HE GAVE ME YESTERDAY.

5 THE COURT: WELL, LET ME ASK YOU THIS. WHEN DID YOU
6 GET APPOINTED?

7 MS. HORLBECK: I'VE BEEN APPOINTED SINCE JANUARY THE
8 18TH OF 2007.

9 THE COURT: AND HE GAVE YOU A WITNESS LAST NIGHT?

10 MS. HORLBECK: YESTERDAY AFTERNOON, THAT'S CORRECT.
11 AND HE ---

12 THE COURT: NO, NO, WAIT A MINUTE. YOU SAID YOU'VE
13 BEEN -- SO IT'S BEEN A YEAR? YOU'VE BEEN ---

14 MS. HORLBECK: YES, THAT'S CORRECT. AND HE DIDN'T GIVE
15 ME A WITNESS, HE GAVE ME SOME INFORMATION HE WANTED ME TO
16 RUN DOWN. YOU KNOW, I JUST -- I OBVIOUSLY CAN'T BE PREPARED
17 TO ---

18 THE COURT: WELL, ---

19 MS. HORLBECK: --- TO DEAL WITH THAT.

20 MR. GRANT: EXCUSE ME.

21 THE COURT: ANYTHING ELSE? YEAH.

22 MR. GRANT: JUDGE, I WANTED TO ADD TO THE RECORD THAT I
23 KNOW WE'RE NOT TRYING THIS CASE, BUT THE INFORMATION THAT I
24 ---

25 THE COURT: WELL, BEFORE YOU SAY ANYTHING IN COURT ---

1 MR. GRANT: YES, SIR.

2 THE COURT: --- YOU'VE GOT THE PROSECUTION HERE AND, I
3 GUESS, THE INVESTIGATING OFFICERS ARE HERE. AND I WANT TO
4 TELL YOU THAT YOU HAVE, BEFORE YOU START TALKING ABOUT THE
5 FACTS OF YOUR CASE, WHICH MAY IMPACT YOUR DEFENSE, YOU HAVE
6 A CONSTITUTIONAL RIGHT TO REMAIN SILENT.

7 MR. GRANT: YES, SIR.

8 THE COURT: AND IF YOU DIVULGE THAT INFORMATION IN
9 COURT ---

10 MR. GRANT: YES, SIR.

11 THE COURT: --- IT MAY IMPACT YOUR DEFENSE. SO LET ME
12 JUST TELL YOU SOMETHING, MR. GRANT, YOU CANNOT WAIT TIL THE
13 EVE OF TRIAL TO GIVE INFORMATION TO YOUR ATTORNEY AND EXPECT
14 IT TO BE DONE AND HAVE ANY ATTORNEY BE READY.

15 MR. GRANT: YES, SIR.

16 THE COURT: YOU HAVE HAD -- I DON'T KNOW HOW MANY TIMES
17 YOU'VE MET WITH HER. I'M NOT GOING TO GET INTO THAT NOW.
18 BUT CLEARLY SHE CAME TO LAURENS COUNTY WHEN YOU WERE
19 INCARCERATED THEN.

20 MR. GRANT: SHE DIDN'T COME.

21 THE COURT: WELL, SHE MADE CONTACT ---

22 MS. HORLBECK: I CALLED HIM ON THE PHONE.

23 THE COURT: CALLED HIM ON THE PHONE, TALKED TO HIM.

24 YOU COULD HAVE TOLD HER THE INFORMATION THEN. DID YOU MEET
25 WITH HER LAST YEAR?

1 MR. GRANT: NO, SIR. I TOLD -- I TOLD ---

2 THE COURT: YOU NEVER MET WITH HER LAST YEAR?

3 MR. GRANT: I TOLD -- I TOLD HER WHERE THE WITNESS WAS
4 AT, BUT I DIDN'T KNOW THEIR NAME. IT'S THE SAME -- IT'S THE
5 SAME AS WHAT I TOLD HER THIS WEEK.

6 THE COURT: WELL, YOU KNOW, DID YOU MEET -- YOU MET
7 WITH HIM LAST YEAR?

8 MS. HORLBECK: YES, YOUR HONOR. WE MET DOWN IN THE
9 HOLDING CELL. HE WAS INCARCERATED IN LAURENS COUNTY. AND
10 HE AND I MET WHEN HE WAS FIRST ARRESTED. AND THEN WE MET
11 BACK IN OCTOBER. AND WE DISCUSSED THE CASE, WENT OVER
12 DISCOVERY.

13 AND HE PRESENTED A COUNTER OFFER TO THE STATE. I GOT
14 AN ANSWER FROM THE STATE. MR. GRANT WAS BACK IN LAURENS
15 COUNTY. SO I CONTACTED HIM BY PHONE AND PRESENTED THE
16 COUNTER OFFER. AND THEN AT THAT POINT CONTACT WAS LOST
17 UNTIL HE WAS PICKED UP ON A TRESPASSING WARRANT.

18 THE COURT: WELL, YOU KNOW, YOU CAN GO SO FAR AS TO
19 WAIVE YOUR RIGHT TO AN ATTORNEY WHEN YOU DON'T MAKE AN
20 EFFORT TO STAY IN TOUCH, BUT I'M NOT GOING TO CONTINUE THE
21 CASE. SO -- AND I'M NOT INCLINED TO CUT HER LOOSE.

22 MR. GRANT: YES, SIR.

23 THE COURT: SO WHAT -- OTHER THAN WHAT YOU'VE TOLD ME,
24 YOU GOT ANY OTHER PROBLEMS WITH HER REPRESENTING YOU?

25 MR. GRANT: IT'S JUST THAT -- IT'S LIKE I SAID, I THINK

1 OUR RELATIONSHIP AS ATTORNEY/CLIENT IS BEYOND REPAIR.

2 THE COURT: WELL, YOU WANT TO REPRESENT YOURSELF?

3 MR. GRANT: NO, SIR. I WISH TO HAVE ME APPOINTED A
4 COUNSEL.

5 THE COURT: NO, SIR, THIS CASE IS GOING FORWARD. YOU
6 HAVE NOT -- YOU HAVE AN OBLIGATION TO TAKE -- AVAIL YOURSELF
7 OF THE RIGHTS THAT YOU HAVE. AND PART OF THAT IS TO STAY IN
8 TOUCH WITH YOUR LAWYER. PART OF THAT IS, YOU KNOW, THIS
9 CASE HAS BEEN ON THE DOCKET BEFORE. YOU'VE NOT FILED A
10 MOTION TO HAVE HER RELIEVED, YOU'VE DONE NOTHING IN WRITING,
11 YOU SHOW UP ON THE DAY OF TRIAL. AND IT'S THE THIRD TIME
12 IT'S BEEN ON THE TRIAL DOCKET.

13 MR. GRANT: YOUR HONOR, I HAVE ASKED HER TO FILE AN
14 ANDY -- AN ANDY BRIEF AND RELIEVE HERSELF ON SEVERAL
15 OCCASIONS.

16 THE COURT: AN ANDERS BRIEF?

17 MR. GRANT: YES, SIR.

18 THE COURT: WELL, LET ME JUST SUGGEST TO YOU, MR.
19 GRANT, ---

20 MS. HORLBECK: HE -- HE DID ASK ME TO DO THAT. I WAS
21 -- I'M HESITANT TO DO THAT WHEN SOMEONE'S ON THE TRIAL
22 DOCKET. SO I TOLD HIM I THOUGHT THE BEST THING WAS TO
23 PRESENT THAT TO YOU. AND MAYBE THAT WAS MY MISTAKE. AND IF
24 THAT IS, THEN PLEASE DON'T TAKE IT OUT ON HIM. BUT I'M
25 HESITANT TO DO THAT JUST ON THE INSTRUCTIONS OF MY OFFICE

1 NOT TO LEAVE SOMEONE HANGING IN THE WIND WHEN THEY'RE ON THE
2 TRIAL DOCKET.

3 THE COURT: RIGHT. AND THAT'S WHERE YOU ARE RIGHT NOW,
4 MR. GRANT, IF I CUT HER LOOSE. I'M NOT INCLINED TO DO THAT.
5 I HAVEN'T HEARD ANYTHING THAT IN MY MIND WOULD ARISE TO THE
6 LEVEL WHERE SHE OUGHT TO BE CUT LOOSE. SHE'S A -- SHE'S A
7 -- HOW LONG YOU BEEN DOING THIS?

8 MS. HORLBECK: SINCE 1997, THE VERY END. THAT'S ABOUT
9 ---

10 THE COURT: SHE'S REPRESENTED THOUSANDS OF PERSONS
11 CHARGED WITH CRIMES. SHE IS, YOU KNOW, SHE IS FULLY
12 COMPETENT TO HANDLE YOUR CASE.

13 MR. GRANT: I DIDN'T, YOUR HONOR, I DIDN'T SAY SHE
14 WASN'T COMPETENT. I SAID THAT I DON'T THINK THAT SHE COULD
15 REPRESENT ME FAIRLY AND FAIRLY BECAUSE OF SOME OF THE THINGS
16 THAT WAS SAID IN DISCUSSIONS BETWEEN ME AND HER.

17 THE COURT: WELL, LET ME TELL YOU SOMETHING. THERE ARE
18 GOING TO BE TIMES IN A RELATIONSHIP BETWEEN AN ATTORNEY AND
19 A CLIENT WHERE THINGS GET TENSE. AND, YOU KNOW, THAT'S WHY
20 THEY CALL LAWYERS PROFESSIONALS.

21 MR. GRANT: BASICALLY SHE -- SHE SUGGESTED IT.

22 THE COURT: WELL, ---

23 MR. GRANT: SHE SUGGESTED THAT SHE BE -- THAT I ASK YOU
24 TO BE RELIEVED OF COUNSEL.

25 THE COURT: WELL, SO IN OTHER WORDS, IT'S OKAY WITH YOU

1 IF SHE REPRESENTS YOU? YOU'RE DOWN TO TWO CHOICES. YOU DO
2 IT YOUR OWN OR YOU GO WITH HER 'CAUSE WE'RE GOING FORWARD
3 WITH THE TRIAL. I'M NOT GOING TO CONTINUE IT.

4 MR. GRANT: TODAY?

5 THE COURT: YEAH. I'LL JUST TELL YOU, I MEAN, YOU KNEW
6 THIS CASE WAS ON THE TRIAL DOCKET BEFORE. FOR YOU TO WAIT
7 TIL THE LAST MINUTE LIKE THIS IS JUST UNACCEPTABLE. AND
8 IT'S A FORM OF MANIPULATING THE DOCKET, WHICH WE'RE JUST NOT
9 GOING TO TOLERATE. ANYTHING ELSE BEFORE WE GET THE JURY UP
10 HERE?

11 MR. GRANT: NO, SIR.

12 THE COURT: OKAY. Y'ALL HAVE ANY VOIR DIRE YOU WANT
13 ASKED?

14 MS. TESSITORE: NONE FROM THE STATE, YOUR HONOR.

15 MS. HORLBECK: NO. AND I DON'T KNOW IF THIS IS THE
16 TIME FOR ME TO GO THROUGH THE REST OF MY MOTIONS.

17 THE COURT: WHATEVER YOU WANT TO DO.

18 MS. HORLBECK: ALL RIGHT, YOUR HONOR. I BELIEVE THAT
19 THE STATE IS GOING TO -- HAS A MAP THAT THEY MAY USE IN
20 OPENING STATEMENT. I JUST WANTED TO OBJECT TO THAT AND
21 MAYBE THAT THAT SHOULD BE SAVED FOR A LATER TIME IN THE
22 CASE. OPENING STATEMENT IS NOT A TIME FOR ARGUMENT. SO I'D
23 JUST ASK THAT YOUR HONOR KEEP THAT OUT OF THE OPENING IF THE
24 STATE INTENDS TO USE THAT.

25 THE COURT: ALL RIGHT.

1 MS. SALISBURY: IF YOU'D LIKE FOR ME TO RESPOND TO
2 THAT, JUDGE? JUST THAT THE MAP IS AN AERIAL PHOTOGRAPH OF
3 THE AREA WHERE THE ARREST OCCURRED. IT'S PURELY FOR
4 DEMONSTRATIVE PURPOSES. AND WE FULLY EXPECT IT TO BE
5 ADMITTED AT TRIAL. THERE'S CERTAINLY NO ARGUMENT INVOLVED
6 WITH THE USE OF THE MAP, JUST TO ASSIST THE JURY IN
7 UNDERSTANDING THE SCENE AND THE AREA THAT THE CRIME
8 OCCURRED.

9 MS. HORLBECK: THE OTHER ISSUE WITH THE MAP AND THE
10 PHOTOS, I UNDERSTAND THE STATE'S CONTENTION IS THAT THEY
11 SHOWED ME THOSE PHOTOGRAPHS. I JUST DON'T RECALL IT. I
12 DON'T BELIEVE I WAS SHOWN THEM. I CERTAINLY HAVEN'T BEEN
13 PROVIDED ANY PHOTO COPIES OF THOSE PICTURES. SO I WOULD ASK
14 THAT THOSE BE KEPT OUT OF EVIDENCE SIMPLY AS A RULE 5
15 VIOLATION.

16 THE COURT: WHAT ABOUT THAT?

17 MS. TESSITORE: YOUR HONOR, WHEN WE DID HAVE IT ON THE
18 TRIAL DOCKET LAST TIME I HAD THE MAPS OR THE PHOTOGRAPHS,
19 THE PHOTOGRAPHS, THEY WERE ON THE BOARDS, AND I DID -- I DO
20 RECALL SHOWING THEM TO MS. HORLBECK AND INDICATING THAT WE
21 WERE INTENDING TO USE THOSE. AND THERE WAS NO OBJECTION OR
22 RESPONSE THAT WOULD SUGGEST THAT THEY WERE GOING TO BE
23 OBJECTED TO.

24 THEY'RE SIMPLY PHOTOGRAPHS THAT ARE JUST AS AVAILABLE
25 IF SHE WERE TO GO OUT TO THE SCENE, WHICH I'M SURE SHE HAS,

1 TO LOOK AT THAT AREA. IT'S -- THERE'S NO ELEMENT OF
2 SURPRISE OR ANYTHING LIKE THAT IN THESE. OBVIOUSLY THE
3 BUILDINGS THAT EXIST THERE AND THE PHOTOGRAPHS THEREOF
4 AREN'T ANYTHING THAT ARE JUST WITHIN OUR EXCLUSIVE
5 POSSESSION AND CUSTODY AND CONTROL THAT WOULD BE ONLY
6 AVAILABLE TO THE DEFENSE BY US SHOWING THEM TO THEM.

7 MS. HORLBECK: YOUR HONOR, THESE ARE AERIAL
8 PHOTOGRAPHS. I DON'T THINK THAT THEY ARE NECESSARILY
9 AVAILABLE TO US. WE DON'T HAVE THE MEANS OR THE MECHANISM
10 TO TAKE THOSE TYPES OF PHOTOGRAPHS FROM THE AIR. AND I ---

11 THE COURT: WELL, ARE THEY ---

12 MS. TESSITORE: THEY'RE RIGHT OFF OF THE ---

13 THE COURT: --- INTERNET?

14 MS. TESSITORE: --- TAX MAPS THAT ARE PROVIDED ON THE
15 COUNTY WEBSITE.

16 THE COURT: OKAY. ALL RIGHT. YOU KNOW, I'M NOT GOING
17 TO LET Y'ALL ARGUE IN YOUR OPENING STATEMENTS. SO, BUT THIS
18 IS AN INTERNET MAP FOR DEMONSTRATIVE PURPOSES. I'M GOING TO
19 OVERRULE THOSE MOTIONS.

20 MS. HORLBECK: AND OUR POSITION -- AND JUST FOR THE
21 RECORD, OUR POSITION IS THAT BEFORE THEY USE THAT THEY WOULD
22 HAVE TO LAY, PARTICULARLY IF THEY'RE INTERNET PHOTOGRAPHS,
23 THEY WOULD HAVE TO LAY THE PROPER FOUNDATION BEFORE ANY --
24 ANY PHOTOGRAPHS ARE INTRODUCED OR USED ---

25 THE COURT: WELL, I DON'T KNOW IF THEY'RE GOING TO BE

1 ALLOWED IN AS EVIDENCE, BUT, ---

2 MS. HORLBECK: ALL RIGHT.

3 THE COURT: --- YOU KNOW.

4 MS. HORLBECK: I UNDERSTAND, YOUR HONOR.

5 THE COURT: OKAY.

6 MS. HORLBECK: TWO MORE THINGS, YOUR HONOR, AND THEN
7 WE'LL GET GOING. THERE'S SOME STATEMENTS THAT ARE REFERRED
8 TO IN THE REPORT WRITTEN BY OFFICER TOLLISON. AND SOME OF
9 THEM ARE NOT OF AN INCRIMINATING NATURE. AND I WOULD ASK
10 THAT THOSE STATEMENTS NOT BE INTRODUCED, REFERRED TO IN ANY
11 SORT OF TESTIMONY.

12 IN OTHER WORDS, THEY WOULD NOT BE ADMISSIONS AGAINST --
13 THEY WOULD NOT BE -- THEY WOULD NOT COME IN OR BE ADMISSIBLE
14 AS AN ADMISSION AGAINST MY CLIENT. AND I WOULD ASK THAT
15 THOSE BE KEPT OUT.

16 I'M SPECIFICALLY REFERRING TO ANY REFERENCE TO FLAGGING
17 DOWN OF THE POLICE, THE QUESTION, ARE YOU STRAIGHT, AND THE
18 ANSWER TO THE QUESTION, DO YOU SMOKE? THOSE ARE THE THINGS
19 I'M REFERRING TO. I DON'T KNOW WHAT THE STATE'S PLANS ARE,
20 BUT I JUST -- I DON'T WANT THINGS FLYING OUT OF MOUTHS
21 BEFORE THE JURY.

22 THE COURT: SHE'S APPARENTLY QUESTIONING THE RELEVANCE
23 OF SOME STATEMENTS THAT HE MADE.

24 MS. TESSITORE: YES, YOUR HONOR. AND THOSE STATEMENTS
25 ARE ENTIRELY MATERIAL TO HIS INTENT, HIS STATE OF MIND, AND

1 AN ORCHESTRATION OF THE SALE OF THE CRACK COCAINE, AND HOW
2 HE APPROACHED THE OFFICERS AND INITIATED THAT CONTACT, AND
3 ---

4 THE COURT: OKAY. OH, SO THIS WAS PRIOR TO AN ARREST?

5 MS. TESSITORE: OH, YES, SIR.

6 THE COURT: IS THIS STUFF -- STATEMENTS MADE TO AN
7 UNDERCOVER OPERATIVE OR SOMETHING?

8 MS. TESSITORE: WELL, TO OFFICERS WHO WERE ACTING IN AN
9 UNDERCOVER CAPACITY ---

10 THE COURT: WELL, THAT'S WHAT I MEAN.

11 MS. TESSITORE: HE WASN'T IN CUSTODY AND THEY WERE PART
12 OF THE ---

13 THE COURT: OKAY.

14 MS. TESSITORE: --- RES GESTAE OF THE WHOLE DEAL.

15 MS. HORLBECK: AND, JUDGE, THEY HAVE -- THEY HAVE OTHER
16 STATEMENTS THEY CAN USE TO DEMONSTRATE THAT. THE STATEMENTS
17 I'M REFERRING TO ARE STATEMENTS THAT HE MADE AT THE VERY
18 BEGINNING OF ANY ALLEGED TRANSACTION. AND THEY WOULD HAVE
19 ABSOLUTELY NO RELEVANCE AND NO BEARING ON THIS CASE
20 ESPECIALLY IN LIGHT OF THE FURTHER COMMENTS THAT THE STATE'S
21 ALLEGING MY CLIENT MADE. IN REFERENCE TO THOSE COMMENTS, I
22 WOULD JUST ASK THAT THE STATE NOT GET INTO ANY INADMISSIBLE
23 HEARSAY.

24 THE COURT: WELL, OF COURSE NOT. THEY'RE UNDER AN
25 OBLIGATION. AND YOU'RE UNDER AN OBLIGATION IF YOU THINK

1 IT'S COMING TO OBJECT. I CAN'T GIVE --- I'M NOT GOING TO
2 GIVE ADVISORY OPINIONS ON THE EVIDENCE THAT'S GOING TO COME
3 IN. I CAN'T DO THAT UNTIL IT, YOU KNOW, WE DON'T EVEN HAVE
4 A SWORN JURY YET. SO ...

5 MS. HORLBECK: THE LAST THING THAT I WOULD ASK FOR THEN
6 IS FOR THE STATE TO DISCLOSE ANY AND ALL IMPEACHABLE
7 OFFENSES THAT THEY PLAN TO ADMIT AGAINST MY CLIENT SHOULD HE
8 TAKE THE STAND.

9 THE COURT: OKAY. YOU KNOW, THEY'RE GOING TO HAVE TO
10 DO THAT. YOU GOT THE ---

11 MS. TESSITORE: DO YOU WANT TO DO THAT NOW, YOUR HONOR?

12 THE COURT: YOU WANT TO DO IT NOW OR YOU WANT TO ---

13 MS. HORLBECK: SURE.

14 THE COURT: OKAY. IT'LL GIVE HIM TIME TO THINK ABOUT
15 WHETHER HE WANTS TO TESTIFY.

16 MS. HORLBECK: YES.

17 MS. TESSITORE: OKAY. YOUR HONOR, UNDER 60981 THE
18 STATE HAS CONVICTIONS FOR CRIMES OVER A YEAR, WHICH WOULD BE
19 RESISTING ARREST WITH ASSAULT. THE DATE OF THE CONVICTION
20 WAS JUNE 4TH, 2001. ON JULY 13TH, 2001, UNLAWFUL CONDUCT
21 TOWARDS A CHILD.

22 AND UNDER 60982, CONVICTIONS INVOLVING DISHONESTY,
23 FALSE STATEMENTS, DISPOSITION TO LIE, CHEAT OR STEAL, WE
24 HAVE SHOPLIFTING UNDER A THOUSAND, CONVICTION DATE JULY 2ND,
25 2007 AND USE OF VEHICLE WITHOUT OWNER'S CONSENT ON DECEMBER

1 14TH OF 2007.

2 THE COURT: OKAY. ANY OBJECTIONS TO ANY OF THOSE?
3 THEY ALL SOUND LIKE THEY'RE PROPERLY ADMISSIBLE FOR
4 IMPEACHMENT PURPOSES.

5 MS. TESSITORE: IF THE DEFENDANT DOES TAKE THE STAND
6 AND TESTIFIES AND PUTS THE QUESTION OF HIS DISPOSITION
7 TOWARDS DRUGS INTO ISSUE, THEN WE DO HAVE THE PRIOR
8 CONVICTIONS FOR DISTRIBUTION, CONSPIRACY TO DISTRIBUTE THAT
9 ARE WELL OUTSIDE THE TEN YEARS. SO I JUST WANTED TO ALERT
10 THE COURT AND THE DEFENSE TO THAT.

11 MS. HORLBECK: WELL, BACK TO THE FIRST -- FIRST FOUR
12 OFFENSES THAT SHE OUTLINED, WE WOULD JUST -- WE WOULD OBJECT
13 BASED ON RELEVANCE AND PREJUDICE AND UNDUE INFLUENCE ON THE
14 JURY. BUT THAT'S THE ONLY OBJECTION WE HAVE.

15 THE COURT: OKAY. OVERRULED.

16 MS. HORLBECK: AND WE'RE AWARE OF THE IMPLICATIONS OF
17 MY CLIENT TESTIFYING.

18 THE COURT: OKAY.

19 MS. HORLBECK: THAT'S ALL I HAVE, JUDGE.

20 THE COURT: ALL RIGHT. Y'ALL READY? LET'S BRING THEM
21 UP.

22 MS. TESSITORE: YES, SIR.

23 MS. HORLBECK: JUDGE, I WOULD OBJECT. I DIDN'T KNOW
24 EVERYONE WAS GOING TO BE SITTING IN THE COURTROOM.

25 THE COURT: SHE WANTS TO LOCK YOUR WITNESSES OUT. WHAT

1 DO YOU SAY?

2 MS. TESSITORE: WELL, YOUR HONOR, I'D ASK FOR HER TO AT
3 LEAST ARTICULATE A BASIS OR GROUNDS FOR THAT.

4 MS. HORLBECK: WELL, I THINK THE GROUNDS ARE OBVIOUS.
5 I MEAN, OBVIOUSLY IF WE HAVE EVERYONE LISTENING TO ONE
6 ANOTHER'S TESTIMONY THEY CAN USE THAT TO INFLUENCE THEIR OWN
7 TESTIMONY. AND I THINK IT'S JUST A FAIR WAY TO HANDLE
8 THINGS. I ASK THAT HER CLIENT -- THAT HER WITNESSES BE
9 OUTSIDE SO THAT THEY CAN TESTIFY FAIRLY WITHOUT BEING
10 INFLUENCED BY ANYONE ELSE'S TESTIMONY IN THIS CASE.

11 MS. TESSITORE: YOUR HONOR, I MEAN, AS FAR AS THE CASE
12 LAW THAT -- JUST THE OPPORTUNITY, THE MERE OPPORTUNITY FOR
13 THE WITNESSES TO BE ABLE TO COMPARE TESTIMONY IS
14 INSUFFICIENT TO COMPEL SEQUESTRATION. SO UNLESS THERE'S
15 SOME OTHER -- OTHER PREJUDICE THAT THEY ARE IN THE COURTROOM
16 ...

17 MS. HORLBECK: I THINK IT'S PREJUDICIAL TO HAVE A LARGE
18 NUMBER OF WITNESSES ON THAT SIDE SITTING NEXT TO THE JURY.

19 THE COURT: WELL, THAT'S NOT, I MEAN, I'M NOT TOO
20 WORRIED ABOUT THAT. THEY COULD BE IN HERE FOR THE SELECTION
21 ANYWAY. BUT I'LL -- WE'LL SEQUESTER THEM EXCEPT FOR YOUR
22 CASE OFFICER, YOUR CHIEF CASE OFFICER. BUT THEY CAN STAY IN
23 WHILE WE'RE ---

24 MS. HORLBECK: THAT'S FINE.

25 THE COURT: --- VOIR DIRING. AS A MATTER OF FACT IT'S

1 BETTER, THEN THEY CAN SEE WHO ---

2 MS. HORLBECK: WELL, I -- AND I -- I JUST WANTED TO
3 BRING THAT UP SO THAT WE WOULDN'T HAVE TO SEND THE JURY IN
4 AND OUT JUST FOR ---

5 THE COURT: OKAY.

6 MS. HORLBECK: --- JUST FOR EXPEDIENCY OF COURT TIME.

7 THE COURT: THANK YOU. I KNOW YOU'RE LOOKING OUT FOR
8 JUDICIAL ---

9 MS. HORLBECK: LOOKING OUT FOR YOU, JUDGE.

10 THE COURT: YEAH.

11 (PAUSE)

12 (WHEREUPON THE JURY PANEL ENTERED THE COURTROOM AT
13 12:10 PM)

14 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN, GOOD TO
15 SEE YOU AGAIN. WELCOME BACK, OR SOME OF YOU, I GUESS, TO
16 COURTROOM FOUR. WE'RE ABOUT TO BEGIN THE JURY QUALIFICATION
17 AND SELECTION PROCESS IN A CASE, WHICH IS ENTITLED THE STATE
18 OF SOUTH CAROLINA VERSUS ROBERT F. GRANT.

19 NOW THERE ARE THREE INDICTMENTS IN THIS CASE. THE
20 FIRST INDICTMENT ALLEGES THAT ROBERT F. GRANT DID IN
21 GREENVILLE COUNTY ON OR ABOUT THE 10TH DAY OF JANUARY, 2007
22 DISTRIBUTE, DISPENSE, DELIVER OR AID, ABET OR CONSPIRE TO
23 DISTRIBUTE, DISPENSE OR DELIVER TO AN UNDERCOVER OPERATIVE A
24 QUANTITY OF CRACK COCAINE IN VIOLATION OF THE STATUTES AND
25 LAWS OF THE STATE OF SOUTH CAROLINA.

1 THE NEXT INDICTMENT ALLEGES THAT ROBERT F. GRANT DID IN
2 GREENVILLE COUNTY ON OR ABOUT THE 10TH DAY OF JANUARY, 2007
3 WILFULLY AND UNLAWFULLY POSSESS WITH THE INTENT TO
4 DISTRIBUTE A QUANTITY OF CRACK COCAINE, A CONTROLLED
5 SUBSTANCE, WITHIN ONE HALF MILE OF OUR LADY OF THE ROSARY
6 CATHOLIC SCHOOL IN VIOLATION OF THE STATUTES AND LAWS OF THE
7 STATE OF SOUTH CAROLINA.

8 AND FINALLY THE LAST INDICTMENT ALLEGES THAT ROBERT F.
9 GRANT DID IN GREENVILLE COUNTY ON OR ABOUT JANUARY 10TH OF
10 2007 KNOWINGLY AND WILFULLY DELIVER OR CONVEY TO DEPUTY --
11 CAN EVERYBODY HEAR ME?

12 (AFFIRMATIVE NODS)

13 THE COURT: OKAY. TO DEPUTY BRIAN TOLLISON, A PUBLIC
14 OFFICIAL, A THREAT TO INFLICT BODILY HARM UPON OR TAKE THE
15 LIFE OF DEPUTY BRIAN TOLLISON OR MEMBERS OF HIS IMMEDIATE
16 FAMILY, AND THE THREAT WAS DIRECTLY RELATED TO DEPUTY BRIAN
17 TOLLISON'S PROFESSIONAL RESPONSIBILITIES IN VIOLATION OF THE
18 STATUTES AND LAWS OF THE STATE OF SOUTH CAROLINA.

19 NOW, LADIES AND GENTLEMEN, TO THESE INDICTMENTS MR.
20 GRANT HAS PLED NOT GUILTY. AND AS SUCH THAT -- CERTAIN
21 RIGHTS ATTACH TO MR. GRANT AS THEY DO TO ALL CITIZENS WHO
22 ARE CHARGED WITH AN OFFENSE OR OFFENSES, AND THAT IS THAT
23 MR. GRANT IS PRESUMED INNOCENT OF THESE CHARGES UNLESS AND
24 UNTIL THE STATE, WHO HAS THE BURDEN OF PROOF, CAN PROVE TO A
25 JURY BEYOND ANY REASONABLE DOUBT EACH AND EVERY ELEMENT OF

1 EACH OFFENSE. SO PLEASE KEEP THAT IN MIND THROUGHOUT THE
2 COURSE OF THESE PROCEEDINGS.

3 I WOULD ALSO TELL YOU THAT THESE INDICTMENTS ARE NO
4 MORE THAN WHAT THEY APPEAR TO BE. THEY'RE JUST PIECES OF
5 PAPER. AND YOU ALL SHOULD NOT TAKE ANY PRESUMPTION OR
6 INFERENCE OF GUILT OR INNOCENCE FROM THESE DOCUMENTS. THEY
7 ARE ONLY THE FORMAL DOCUMENTS WHICH ALLOW THIS CASE OR THESE
8 ALLEGATIONS TO BE PROCESSED AND BROUGHT TO COURT FOR
9 DISPOSITION.

10 NOW, LADIES AND GENTLEMEN, WE'RE GOING TO BEGIN THE
11 PROCESS IN JUST A MOMENT. AND I'M GOING TO HAVE TO ASK YOU
12 SOME QUESTIONS WHICH SPECIFICALLY RELATE TO THIS CASE. BUT
13 BEFORE I DO THAT, I'M GOING TO ASK THE ATTORNEYS TO IDENTIFY
14 THEMSELVES AND THEIR LAW OFFICES. MS. TESSITORE.

15 MS. TESSITORE: MAY IT PLEASE THE COURT? MY NAME IS
16 JENNIFER TESSITORE. AND I'M AN ASSISTANT SOLICITOR
17 REPRESENTING THE STATE IN THIS CASE ALONG WITH KATRINA
18 SALISBURY, ALSO AN ASSISTANT SOLICITOR, AND JENNY HILTON, MY
19 INVESTIGATOR.

20 THE COURT: ALL RIGHT. THANK YOU VERY MUCH. MS.
21 HORLBECK.

22 MS. HORLBECK: GOOD MORNING. MY NAME IS CAROLINE
23 HORLBECK. AND I AM AN ATTORNEY FROM LARRY CRANE'S OFFICE
24 REPRESENTING MY CLIENT, ROBERT GRANT. AND THIS IS MS.
25 ELIZABETH WIYGUL. SHE'S GOING TO BE ASSISTING ME IN THIS

1 CASE.

2 THE COURT: ALL RIGHT. NOW, LADIES AND GENTLEMEN OF
3 THE JURY, IS THERE ANY MEMBER OF THE JURY PANEL WHO IS
4 RELATED BY BLOOD OR MARRIAGE OR HAVE A BUSINESS, PERSONAL OR
5 SOCIAL RELATIONSHIP WITH ANY OF THE ATTORNEYS INVOLVED, ANY
6 MEMBER OF THEIR LAW FIRM OR ANY MEMBER OF THE 13TH CIRCUIT
7 SOLICITOR'S OFFICE? IF SO, PLEASE STAND.

8 (NO RESPONSE)

9 THE COURT: IS THERE ANY MEMBER OF THE JURY PANEL WHO
10 IS RELATED BY BLOOD OR MARRIAGE OR HAVE A BUSINESS, PERSONAL
11 OR SOCIAL RELATIONSHIP WITH MR. ROBERT F. GRANT? IF SO,
12 PLEASE STAND.

13 (NO RESPONSE)

14 THE COURT: I'M GOING TO READ A LIST OF POTENTIAL
15 WITNESSES IN THIS CASE. PLEASE PAY ATTENTION BECAUSE I'M
16 GOING TO WANT TO KNOW THE SAME INFORMATION ABOUT THESE
17 FOLKS. BRIAN TOLLISON WITH THE GREENVILLE COUNTY SHERIFF'S
18 OFFICE, PATRICK SWIFT WITH THE GREENVILLE COUNTY SHERIFF'S
19 OFFICE, STEVEN RHEA, R-H-E-A, WITH THE GREENVILLE COUNTY
20 SHERIFF'S OFFICE, RENEE PRUITT WITH THE PROPERTY AND
21 EVIDENCE UNIT, KARA BENNICK WITH THE PROPERTY AND EVIDENCE
22 UNIT, SEAN COLLINS, CRIME LAB ANALYST, ROBERT GRANT, WHO
23 WE'VE ALREADY SPOKEN ABOUT, AND BRIAN SMITH.

24 NOW IS THERE ANY MEMBER OF THE JURY PANEL WHO IS
25 RELATED BY BLOOD OR MARRIAGE OR HAVE A BUSINESS, PERSONAL OR

1 SOCIAL RELATIONSHIP WITH ANY OF THOSE POTENTIAL WITNESSES
2 WITH WHOSE NAMES I HAVE JUST READ? IF SO, PLEASE STAND..
3 YES, SIR. YOUR NAME, PLEASE, SIR?

4 JUROR: JIM LYNCH.

5 THE COURT: OKAY, MR. LYNCH. TELL ME WHO IT IS AND ...

6 MR. LYNCH: MR. RHEA.

7 THE COURT: ALL RIGHT. OKAY. AND HOW DO YOU KNOW MR.
8 RHEA?

9 MR. LYNCH: A FRIEND.

10 THE COURT: HE'S A FRIEND?

11 MR. LYNCH: YES, SIR.

12 THE COURT: OKAY. AND LET ME ASK YOU THIS. WOULD THE
13 FACT THAT YOU KNOW HIM AND HE'S A FRIEND, WOULD THAT IMPAIR
14 YOUR ABILITY TO BE FAIR AND IMPARTIAL IN THIS CASE TO BOTH
15 THE STATE AND THE DEFENSE?

16 MR. LYNCH: NO, SIR.

17 THE COURT: WOULD YOU GIVE HIS TESTIMONY ANYMORE -- ANY
18 GREATER OR LESS BELIEVABILITY OR CREDIBILITY THAN ANY OTHER
19 WITNESS BECAUSE YOU KNOW HIM AND YOU'RE A FRIEND?

20 MR. LYNCH: NO, SIR.

21 THE COURT: AND COULD YOU UNDER YOUR OATH FOLLOW THE
22 LAW AS I WOULD GIVE IT TO YOU?

23 MR. LYNCH: YES, SIR.

24 THE COURT: OKAY. THANK YOU VERY MUCH. ALL RIGHT.
25 NOW IS THERE ANY MEMBER OF THE JURY PANEL WHO HAS ANY

1 KNOWLEDGE ABOUT THE EVENTS THAT I'VE -- THAT ARE ALLEGED IN
2 THESE INDICTMENTS THAT I'VE READ TO YOU?

3 (NO RESPONSE)

4 THE COURT: IS THERE ANY MEMBER OF THE JURY PANEL OR
5 FAMILY MEMBER OR FRIEND WHO'S EVER BEEN A VICTIM OF OR
6 CHARGED WITH THIS TYPE OF OFFENSE? IF SO, PLEASE STAND.

7 (NO RESPONSE)

8 THE COURT: IS THERE ANY MEMBER OF THE JURY PANEL OR --
9 WHO IS A CONTRIBUTOR TO OR A MEMBER OF A GROUP WHOSE PRIMARY
10 FUNCTION IS THE PROMOTION OF LAW ENFORCEMENT OR VICTIM'S
11 RIGHTS SUCH AS MADD, SADD OR CAV? IF SO, PLEASE STAND.

12 (NO RESPONSE)

13 THE COURT: IS THERE ANY MEMBER OF THE JURY PANEL THAT
14 HAS SUCH A RELIGIOUS OR MORAL OPPOSITION TO THE ALLEGATIONS,
15 JUST ALLEGATIONS, OF ILLEGAL DRUG USE THAT THEY COULD NOT
16 FOLLOW THE LAW AS I WOULD GIVE IT TO THEM UNDER THEIR OATH
17 AND BE FAIR AND IMPARTIAL TO BOTH THE STATE AND THE DEFENSE?
18 IF SO, PLEASE STAND.

19 (NO RESPONSE)

20 THE COURT: IS THERE ANY JUROR WHO KNOWS OF ANY REASON
21 WHATSOEVER WHY YOU SHOULD NOT SERVE IN THIS CASE WITH
22 PARTICULAR EMPHASIS UPON YOUR ABILITY TO BE FAIR AND
23 IMPARTIAL? IF SO, PLEASE STAND.

24 (NO RESPONSE)

25 THE COURT: ALL RIGHT. LET ME TALK TO THE ATTORNEYS

1 FOR JUST ONE SECOND.

2 (WHEREUPON A BENCH CONFERENCE WAS HELD OFF THE RECORD
3 IN THE PRESENCE OF THE JURY PANEL, BUT OUT OF THEIR HEARING)

4 (WHEREUPON JUROR NUMBER 125 WAS DISMISSED FOR CAUSE)

5 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, WE'RE
6 GOING TO COMMENCE THE PROCESS OF WHAT WE SOMETIMES CALL
7 STRIKING THE JURY. AND SO Y'ALL GET YOUR DEFENSES UP.
8 ACTUALLY, I'M JUST KIDDING WITH YOU. BUT WHEN THE CLERK
9 CALLS YOUR NAME, PLEASE STAND IN PLACE. THANK YOU VERY
10 MUCH.

11 MADAME CLERK: NUMBER 238, SAMANTHA YOUNG. WHAT SAYS
12 THE STATE?

13 MS. TESSITORE: PLEASE EXCUSE THIS JUROR.

14 MADAME CLERK: YOU'RE EXCUSED FROM THIS CASE. NUMBER
15 173, MARK POSTON. WHAT SAYS THE STATE?

16 MS. TESSITORE: PLEASE PRESENT -- PLEASE PRESENT THE
17 JUROR.

18 MADAME CLERK: WHAT SAYS THE DEFENDANT?

19 MS. HORLBECK: PLEASE SWEAR THE JUROR.

20 MADAME CLERK: PLEASE HAVE A SEAT IN THE JURY BOX.
21 NUMBER 188, ELIZABETH ROPER. WHAT SAYS THE STATE?

22 MS. TESSITORE: PLEASE PRESENT THE JUROR.

23 MADAME CLERK: WHAT SAYS THE DEFENDANT?

24 MS. HORLBECK: PLEASE EXCUSE THE JUROR.

25 MADAME CLERK: YOU HAVE BEEN EXCUSED FROM THIS CASE.

1 NUMBER 244, NILES McCALL. WHAT SAYS THE STATE?

2 MS. TESSITORE: PLEASE EXCUSE THE JUROR.

3 MADAME CLERK: YOU ARE EXCUSED. NUMBER 129, JAMES

4 MADISON. WHAT SAYS THE STATE?

5 MS. TESSITORE: PLEASE PRESENT THE JUROR.

6 MADAME CLERK: WHAT SAYS THE DEFENDANT?

7 MS. HORLBECK: PLEASE SWEAR THE JUROR.

8 MADAME CLERK: PLEASE HAVE A SEAT IN THE JURY BOX.

9 NUMBER 55, ROBERT DURANT. WHAT SAYS THE STATE?

10 MS. TESSITORE: PLEASE PRESENT THE JUROR.

11 MADAME CLERK: WHAT SAYS THE DEFENDANT?

12 MS. HORLBECK: PLEASE EXCUSE THE JUROR.

13 MADAME CLERK: SIR, YOU ARE EXCUSED. NUMBER 192, CARYN

14 SCHOOK. WHAT SAYS THE STATE?

15 MS. TESSITORE: PLEASE EXCUSE THE JUROR.

16 MADAME CLERK: YOU ARE EXCUSED. NUMBER 144, HANS

17 MICKELSON. WHAT SAYS THE STATE?

18 MS. TESSITORE: PLEASE PRESENT THE JUROR.

19 MADAME CLERK: WHAT SAYS THE DEFENDANT?

20 MS. HORLBECK: PLEASE SWEAR THE JUROR.

21 MADAME CLERK: PLEASE HAVE A SEAT IN THE JURY BOX.

22 NUMBER 131, LISA MANCINI. WHAT SAYS THE STATE?

23 MS. TESSITORE: PLEASE PRESENT THE JUROR.

24 MADAME CLERK: WHAT SAYS THE DEFENDANT?

25 MS. HORLBECK: PLEASE EXCUSE THE JUROR.

1 MADAME CLERK: YOU ARE EXCUSED. NUMBER 196, DANIEL
2 SILEO. WHAT SAYS THE STATE?
3 MS. TESSITORE: PLEASE PRESENT THE JUROR.
4 MADAME CLERK: WHAT SAYS THE DEFENDANT?
5 MS. HORLBECK: PLEASE SWEAR THE JUROR.
6 MADAME CLERK: SIR, PLEASE HAVE A SEAT IN THE JURY BOX.
7 NUMBER 35, LARRY CHANDLER. WHAT SAYS THE STATE?
8 MS. TESSITORE: PLEASE PRESENT THE JUROR.
9 MADAME CLERK: WHAT SAYS THE DEFENDANT?
10 MS. HORLBECK: PLEASE EXCUSE THE JUROR.
11 MADAME CLERK: THANK YOU. YOU'RE EXCUSED FROM THIS
12 CASE. NUMBER 189, AMY RUSSO. WHAT SAYS THE STATE?
13 MS. TESSITORE: PLEASE PRESENT THE JUROR.
14 MADAME CLERK: WHAT SAYS THE DEFENDANT?
15 MS. HORLBECK: PLEASE SWEAR THE JUROR.
16 MADAME CLERK: PLEASE HAVE A SEAT IN THE JURY BOX.
17 NUMBER 56, STEPHEN EASTLAND. WHAT SAYS THE STATE?
18 MS. TESSITORE: PLEASE EXCUSE THE JUROR.
19 MADAME CLERK: THANK YOU. YOU'RE EXCUSED FROM THIS
20 CASE. NUMBER 133, CATHY McCARSON. WHAT SAYS THE STATE?
21 MS. TESSITORE: PLEASE PRESENT THE JUROR.
22 MADAME CLERK: WHAT SAYS THE DEFENDANT?
23 MS. HORLBECK: PLEASE SWEAR THE JUROR.
24 MADAME CLERK: PLEASE HAVE A SEAT IN THE JURY BOX.
25 NUMBER 157, CHRISTOPHER OLSON. WHAT SAYS THE STATE?

1 MS. TESSITORE: PLEASE PRESENT THE JUROR.

2 MADAME CLERK: WHAT SAYS THE DEFENDANT?

3 MS. HORLBECK: PLEASE SWEAR THE JUROR.

4 MADAME CLERK: PLEASE HAVE A SEAT IN THE JURY BOX, SIR.

5 NUMBER 87, CATHY HOLCOMBE. WHAT SAYS THE STATE?

6 MS. TESSITORE: PLEASE PRESENT THE JUROR.

7 MADAME CLERK: WHAT SAYS THE DEFENDANT?

8 MS. HORLBECK: PLEASE PRESENT THE JUROR.

9 MADAME CLERK: PLEASE HAVE A SEAT IN THE JURY BOX.

10 NUMBER 222, JAMES TURNER. WHAT SAYS THE STATE?

11 MS. TESSITORE: PLEASE EXCUSE THE JUROR.

12 MADAME CLERK: THANK YOU. YOU ARE EXCUSED FROM THIS

13 CASE. NUMBER 10, ANGELA BAKER. WHAT SAYS THE STATE?

14 MS. TESSITORE: PLEASE PRESENT THE JUROR.

15 MADAME CLERK: WHAT SAYS THE DEFENDANT?

16 MS. HORLBECK: PLEASE SWEAR THE JUROR.

17 MADAME CLERK: PLEASE HAVE A SEAT IN THE JURY BOX.

18 NUMBER 200, CHRIS L. SMITH. WHAT SAYS THE STATE?

19 MS. TESSITORE: PLEASE PRESENT THE JUROR.

20 MADAME CLERK: WHAT SAYS THE DEFENDANT?

21 MS. HORLBECK: PLEASE -- PLEASE SWEAR THE JUROR.

22 MADAME CLERK: PLEASE HAVE A SEAT IN THE JURY BOX.

23 NUMBER 105, SUSAN KERN. WHAT SAYS THE STATE?

24 MS. TESSITORE: PLEASE PRESENT THE JUROR.

25 MADAME CLERK: WHAT SAYS THE DEFENDANT?

1 MS. HORLBECK: PLEASE EXCUSE THE JUROR.

2 MADAME CLERK: THANK YOU. YOU'RE EXCUSED FROM THIS

3 CASE. NUMBER 212, LAMAR THOMAS. WHAT SAYS THE STATE?

4 MS. TESSITORE: PLEASE PRESENT THE JUROR.

5 MADAME CLERK: WHAT SAYS THE DEFENDANT?

6 MS. HORLBECK: PLEASE SWEAR THE JUROR.

7 MADAME CLERK: PLEASE HAVE A SEAT IN THE JURY BOX.

8 NUMBER 79, WILLIAM HARTZELL. WHAT SAYS THE STATE?

9 MS. TESSITORE: PLEASE PRESENT THE JUROR.

10 MADAME CLERK: WHAT SAYS THE DEFENDANT?

11 MS. HORLBECK: PLEASE SWEAR THE JUROR.

12 MADAME CLERK: PLEASE HAVE A SEAT IN THE JURY BOX.

13 THE COURT: ONE -- ONE AND ONE.

14 MADAME CLERK: NUMBER 58, ANGELA ELDERS. WHAT SAYS THE
15 STATE?

16 MS. TESSITORE: PLEASE PRESENT THE JUROR.

17 MADAME CLERK: WHAT SAYS THE DEFENDANT?

18 MS. HORLBECK: PLEASE EXCUSE THE JUROR.

19 MADAME CLERK: THANK YOU. YOU ARE EXCUSED FROM THIS

20 CASE. NUMBER 22, NANCY BOWER. WHAT SAYS THE STATE?

21 MS. TESSITORE: PLEASE PRESENT THE JUROR.

22 MADAME CLERK: WHAT SAYS THE DEFENDANT?

23 MS. HORLBECK: PLEASE SWEAR THE JUROR.

24 MADAME CLERK: PLEASE HAVE A SEAT IN THE JURY BOX.

25 THE COURT: ALL RIGHT. ANY EXCEPTION OR OBJECTION TO

1 THE JURY AS A PANEL PURSUANT TO JEB OR BATSON?

2 MS. TESSITORE: YOUR HONOR, IF WE CAN JUST TAKE UP ONE
3 MATTER OUTSIDE THE PRESENCE OF THE JURY?

4 THE COURT: Y'ALL COME UP HERE.

5 (WHEREUPON A BENCH CONFERENCE WAS HELD OFF THE RECORD
6 IN THE PRESENCE OF THE JURY, BUT OUT OF THEIR HEARING)

7 THE COURT: OKAY. ALL RIGHT. LADIES AND GENTLEMEN,
8 THOSE FOLKS OUT THERE, SORRY YOU DIDN'T GET AN OPPORTUNITY
9 TO SERVE. I HOPE YOU GET A CHANCE LATER IN THE WEEK. I AM
10 TO TELL YOU THAT YOU ARE -- YOU ALL ARE RELEASED FOR THE
11 REMAINDER OF THE DAY. PLEASE CALL BACK AFTER 6:00, OKAY?
12 THANK YOU.

13 (WHEREUPON THE REMAINDER OF THE JURY PANEL EXITED THE
14 COURTROOM AT 12:41 PM)

15 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN OF THE
16 JURY, THANK Y'ALL FOR BEING HERE. AND I WANT TO TELL Y'ALL
17 THAT I THINK THAT YOU ARE RECIPIENTS OF A WONDERFUL
18 RESPONSIBILITY AND HONOR TO SERVE AS A MEMBER OF A JURY AT
19 ANY TIME. AND I HOPE THAT AT THE END OF THE CASE I'LL BE
20 PROVED RIGHT IN EACH OF YOUR MINDS.

21 I WANT TO TELL YOU WE HAVE A DISPUTE ABOUT THE FACTS IN
22 THIS CASE. IT'S A DISPUTE THAT COULDN'T BE RESOLVED ANY
23 OTHER WAY THAN TO ASK A JURY OF GREENVILLE COUNTY TO COME
24 UP, SIT AND LISTEN TO THE FACTS IN THE CASE AS THEY'RE
25 PRESENTED IN THIS COURTROOM AND TO RENDER A DECISION WHICH

1 WILL RESOLVE THIS DISPUTE ABOUT THESE FACTS.

2 I WOULD REMIND YOU, AND THIS IS A CRIMINAL TRIAL, THAT
3 EVERY CITIZEN, SO THESE RIGHTS BELONG TO EVERY ONE OF US,
4 EVERY CITIZEN CHARGED WITH A CRIME IS PRESUMED INNOCENT
5 UNLESS AND UNTIL THE STATE, WHO HAS THE BURDEN OF PROOF
6 ALWAYS, CAN PROVE THEM GUILTY BEYOND ANY REASONABLE DOUBT OF
7 EACH AND EVERY ELEMENT OF EACH OFFENSE THAT THEY'RE CHARGED
8 WITH AND -- TO THE SATISFACTION OF A JURY. SO PLEASE KEEP
9 THAT IN MIND. THESE RIGHTS ATTACH SIGNIFICANTLY TO MR.
10 GRANT TODAY THROUGHOUT THE COURSE OF THIS TRIAL.

11 I WOULD ALSO AGAIN REMIND YOU THAT THE INDICTMENTS HAVE
12 ALLEGATIONS, WHICH ARE NOT EVIDENCE AND YOU SHOULD TAKE NO
13 INFERENCE OR PRESUMPTION OF EITHER GUILT OR INNOCENCE FROM
14 THE ALLEGATIONS MADE IN THOSE PIECES OF PAPER WHICH ALLOW
15 THIS CASE, THESE ALLEGATIONS, TO WIND THEIR WAY THROUGH THE
16 JUSTICE SYSTEM TO ARRIVE HERE AT COURT FOR A DISPOSITION.

17 I WANT TO GIVE YOU A LITTLE BRIEF ROAD MAP. YOU CAN
18 DIVIDE A CASE INTO AS MANY -- A TRIAL INTO AS MANY PARTS AS
19 YOU'D LIKE. THEY WRITE BOOKS ABOUT THEM, NOVELS, TELEVISION
20 SHOWS, MOVIES, BUT FOR OUR PURPOSES I COULD BREAK IT UP INTO
21 FIVE PARTS. AND THEY'RE SORT OF THE FIVE MAIN PARTS OF A
22 TRIAL.

23 THE FIRST PART WE'RE SORT OF ENGAGED IN RIGHT NOW, IT'S
24 OPENING STATEMENTS. THE LAWYERS WILL MAKE THEIR OPENING
25 STATEMENTS TO YOU. AFTER THEY FINISH THE OPENING STATEMENTS

1 WE GO RIGHT INTO PART TWO, WHICH IS THE MEAT AND POTATOES OF
2 EVERY CASE, AND THAT IS THE PRESENTATION OF THE TESTIMONY
3 AND THE EVIDENCE. THE THIRD PART OF THE CASE AT THE CLOSE
4 OF THE EVIDENCE WILL BE THE ARGUMENTS OF THE ATTORNEYS WHEN
5 THEY ADVOCATE FOR THEIR POSITIONS AND URGE YOU TO RESOLVE
6 THE DISPUTE IN THEIR FAVOR.

7 THE FOURTH PART OF THE TRIAL WILL BE WHEN I CHARGE YOU
8 AS TO WHAT THE LAW IS AS IT RELATES TO THIS CASE. AND THE
9 FIFTH PART OF THE CASE -- OF THE TRIAL WILL BE WHEN YOU ALL
10 RETIRE TO YOUR JURY ROOM TO DELIBERATE THE CASE AND MAKE A
11 DECISION AND RESOLVE THE DISPUTE. SO THEY'RE NOT OF EQUAL
12 LENGTHS, THOSE FIVE PARTS, BUT THAT'S SORT OF A ROAD MAP YOU
13 CAN KEEP IN MIND AS WE GO THROUGH THE COURSE OF THE TRIAL.

14 I'M SURE I'LL ASK YOU TO DO MANY THINGS THROUGHOUT THE
15 COURSE OF THE CASE, BUT THERE ARE THREE MAIN THINGS I WOULD
16 ASK YOU TO DO. THE FIRST ONE IS TO KEEP AN OPEN MIND.
17 DON'T COME IN HERE WITH ANY PRECONCEIVED NOTION ABOUT HOW A
18 CASE SHOULD BE TRIED, ABOUT HOW THE RESULTS SHOULD BE, ABOUT
19 HOW YOU SHOULD RESOLVE THE DISPUTE. KEEP AN OPEN MIND
20 THROUGHOUT THE COURSE OF THE ENTIRE TRIAL. LISTEN TO THE
21 EVIDENCE AND DON'T MAKE UP YOUR MIND. THE SECOND THING --
22 UNTIL YOU'RE AT THE END OF THE CASE.

23 THE SECOND THING I WOULD TELL YOU OR ASK YOU TO DO IS
24 TO PAY ATTENTION. IT SEEMS PRETTY FUNDAMENTAL, AND IT IS
25 FUNDAMENTAL. BUT IMAGINE IF -- WE'VE ALL DONE IT, MAYBE IN

1 SCHOOL YOU LOOK OUT THE WINDOW AND YOU DON'T PAY ATTENTION
2 TO WHAT'S GOING ON, YOU MISS A QUESTION ON THE TEST WHEN THE
3 TEACHER GIVES IT TO YOU.

4 BUT HERE IN COURT IF YOU LOOK OUT THE WINDOW OR
5 DAYDREAM, SOMETHING LIKE THAT AND MISS SOME TESTIMONY OR
6 EVIDENCE, LADIES AND GENTLEMEN, THAT WHEN YOU'RE
7 DELIBERATING AT THE END OF THE CASE YOU'LL BE AT A
8 DISADVANTAGE WITH RESPECT TO YOUR FELLOW JURORS. AND THAT
9 MIGHT TURN OUT TO BE A CRUCIAL LINCHPIN PIECE OF EVIDENCE
10 THAT YOU'VE MISSED OUT ON. SO I ASK YOU TO PAY CLOSE
11 ATTENTION AND JUST USE YOUR COMMON SENSE AS YOU LISTEN TO
12 THE TESTIMONY AND THE EVIDENCE.

13 THE LAST THING I'LL ASK YOU TO DO IS NOT TO TALK ABOUT
14 THIS CASE. YOU GO, WHAT? WELL, THAT'S OUR JOB. DON'T TALK
15 ABOUT IT UNTIL THE END OF THE CASE WHEN YOU'RE DELIBERATING,
16 OKAY? WE'LL BREAK FOR LUNCH IN JUST A SECOND. Y'ALL ARE
17 GOING TO BE ON YOUR OWN. YOU MAY CALL A SPOUSE OR A FRIEND
18 TO TELL THEM WHAT'S GOING ON, BUT DON'T TALK ABOUT THE CASE.

19 DON'T TALK ABOUT IT WITH SOMEONE YOU MIGHT SEE ON THE
20 STREET. DON'T TALK ABOUT IT WITH OUR BAILIFFS OR ANYBODY
21 ELSE YOU SEE. WHY IS THAT, LADIES AND GENTLEMEN? THAT'S
22 BECAUSE AN INNOCENT COMMENT FROM SOMEBODY WHO YOU LOVE AND
23 TRUST OR LIKE OR DON'T LIKE MIGHT HAVE AN IMPACT ON YOUR
24 MIND-SET, WHAT YOU THINK ABOUT THIS CASE. AND THAT WOULDN'T
25 BE FAIR TO THE PARTIES INVOLVED IN THE CASE. IT WOULDN'T BE

1 FAIR TO YOUR FELLOW JURORS. AND IT WOULDN'T BE FAIR TO
2 YOURSELVES.

3 WE DON'T WANT THE OPINION OF SOMEBODY OUTSIDE THIS
4 COURTROOM WHO IS NOT PERFORMING THEIR CIVIC DUTY AND MAKING
5 THE SACRIFICES THAT YOU'RE MAKING TO HAVE AN IMPACT ON THE
6 RESULT OF THIS TRIAL. IT SHOULD ONLY COME -- WE ONLY WANT
7 YOU JURORS TO CONTRIBUTE. WE ONLY WANT YOUR MIND-SETS AND
8 WHAT YOU THINK AND KNOW AND HEAR ABOUT THIS CASE TO RESOLVE
9 THE DISPUTE.

10 AND ALONG THOSE LINES, LADIES AND GENTLEMEN, DON'T DO
11 INDEPENDENT RESEARCH. DON'T GO ON THE INTERNET AND LOOK
12 SOMETHING UP. DON'T GO VISIT A SCENE THAT YOU MIGHT HEAR
13 ABOUT HERE.

14 EVERYTHING THAT YOU NEED TO KNOW AND ONLY -- THE ONLY
15 THINGS YOU NEED TO KNOW TO RESOLVE THIS DISPUTE SHOULD COME
16 FROM THE TESTIMONY AND THE EVIDENCE PRESENTED IN THIS
17 COURTROOM. AND -- WHICH ARE SUBJECT TO CONSTITUTIONAL
18 PROTECTIONS AND SCRUTINIES.

19 SO DON'T DO ANY INDEPENDENT RESEARCH. DON'T LET ANYONE
20 -- DON'T TALK TO ANYBODY ABOUT THE CASE. AND IT WILL, YOU
21 KNOW, IT'S DIFFICULT. IT'S HUMAN NATURE TO WANT TO TALK
22 ABOUT WHAT YOU'RE DOING. BUT PROTECT THOSE RIGHTS FOR THIS
23 CITIZEN AND YOU PROTECT THEM FOR ALL CITIZENS. SO I ASK YOU
24 TO DO THAT.

25 I WANT TO TELL YOU, YOU ALL ARE THE SOLE JUDGES OF THE

1 FACTS. I CAN'T -- THE LAW DOESN'T ALLOW ME TO HAVE AN
2 OPINION ABOUT THE FACTS. I DON'T HAVE AN OPINION ABOUT THE
3 FACTS. YOU ALL WILL BE THE SOLE JUDGES OF WHAT TO BELIEVE,
4 WHO TO BELIEVE, WHAT THE TRUTH IS FROM THE EVIDENCE THAT'S
5 PRESENTED IN THIS CASE.

6 THE SAME LAW THAT MAKES YOU THE SOLE JUDGES OF THE
7 FACTS MAKES ME THE SOLE JUDGE OF THE LAW. SO IF YOU THINK
8 YOU HAVE SOME IDEA ABOUT WHAT THE LAW IS OR WHAT THE LAW
9 SHOULD BE, YOU'LL SWEAR AN OATH IN JUST A MOMENT TO SET THAT
10 ASIDE AND APPLY THE LAW PRECISELY AS I GIVE IT TO YOU.

11 I'M GOING TO GET Y'ALL TO TAKE AN OATH IN JUST A
12 SECOND. AND THEN I'M GOING TO EXCUSE YOU FOR LUNCH AND ASK
13 YOU TO BE BACK AT 2:30. I ACTUALLY HAVE ANOTHER JURY OUT
14 THAT I'M GOING TO HAVE TO DEAL WITH.

15 BUT WHEN YOU COME BACK I'M GOING TO ASK YOU TO DO ONE
16 OTHER THING FOR ME, AND THAT IS TO ELECT A FOREPERSON. THE
17 FOREPERSON IS THE JURY'S MODERATOR DURING THE DISCUSSIONS AT
18 THE END OF THE CASE AND ALSO THE JURY SPOKESPERSON SHOULD
19 THAT BECOME NECESSARY IF YOU -- IN THE COURTROOM.

20 SO IF Y'ALL CAN DO THAT FOR ME, THAT WOULD BE GREAT.
21 IF YOU CAN'T, I CAN HELP YOU OUT AND APPOINT SOMEBODY. BUT
22 I'D RATHER HAVE IT BE A DEMOCRATIC SELECTION PROCESS RATHER
23 THAN A DICTATORIAL SELECTION, I GUESS, WOULD BE THE WAY TO
24 PUT IT.

25 ANYWAY -- SO, LADIES AND GENTLEMEN, IF YOU WILL RISE AT

1 THIS TIME, AND I'D ASK THE CLERK TO PLACE YOU UNDER OATH.

2 MADAME CLERK: PLEASE RAISE YOUR RIGHT HAND. YOU SHALL
3 WELL AND TRULY TRY THE CASE, 2007-GS-23-2004, STATE VERSUS
4 ROBERT F. GRANT, INDICTED FOR POSSESSION OF CRACK COCAINE
5 WITH INTENT TO DISTRIBUTE WITHIN HALF MILE OF A SCHOOL,
6 2007-GS-23-2005, INDICTED FOR DISTRIBUTION OF CRACK COCAINE,
7 2007-GS-23-2006, INDICTED FOR THREATENING A LIFE AND A TRUE
8 VERDICT RENDERED ACCORDING TO THE LAW AND THE EVIDENCE SO
9 HELP YOU GOD. I WILL?

10 THE JURY: I WILL.

11 MADAME CLERK: THANK YOU. YOU MAY BE SEATED.

12 THE COURT: WELL, NO, Y'ALL DON'T HAVE TO SIT DOWN.
13 Y'ALL CAN -- Y'ALL CAN GO AHEAD AND GO TO LUNCH. PLEASE BE
14 BACK AT 2:30. THANK YOU VERY MUCH.

15 (WHEREUPON THE JURY EXITED THE COURTROOM AT 12:50 PM)

16 THE COURT: ALL RIGHT. ANYTHING ELSE? SEE Y'ALL AT
17 2:30.

18 (WHEREUPON COURT WAS IN RECESS AT 12:50 PM)

19 THE COURT: THANKS. PLEASE BE SEATED. ALL RIGHT.
20 EVERYBODY READY?

21 MS. TESSITORE: YES, JUDGE.

22 MS. HORLBECK: AND I JUST WOULD RENEW -- AT THIS POINT,
23 I'D JUST RENEW MY OBJECTION TO THE STATE'S USE OF THE -- ANY
24 SORT OF DEMONSTRATIVE EVIDENCE IN THEIR OPENING.

25 THE COURT: OVERRULED, DENIED, WHATEVER.

OPENING STATEMENTS - MS. SALISBURY

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1 MS. HORLBECK: OKAY.

2 THE COURT: OKAY. YOU WANT ME TO JUST PUT THEM IN A
3 STRAIGHT JACKET SO THEY CAN'T GESTICULATE EITHER OR ---

4 MS. HORLBECK: PLEASE.

5 THE COURT: OKAY.

6 (LAUGHTER)

7 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 2:45 PM)

8 THE COURT: ALL RIGHT. MS. HOLCOMBE, THANK YOU FOR
9 AGREEING TO SERVE AS THE FOREPERSON OF THE JURY. ALL RIGHT,
10 LADIES AND GENTLEMEN, WE'RE READY TO START THE TRIAL OF THE
11 CASE. I'LL TURN IT OVER TO THE ATTORNEYS AT THIS TIME FOR
12 THEIR OPENING STATEMENTS.

13 (WHEREUPON COURT'S EXHIBIT 1 WAS MARKED)

14 MS. SALISBURY: MAY IT PLEASE THE COURT, JUDGE?

15 THE COURT: OKAY.

16 MS. SALISBURY: GOOD AFTERNOON, LADIES AND GENTLEMEN.

17 AS I WAS INTRODUCED TO YOU EARLIER TODAY, MY NAME IS KATRINA
18 SALISBURY. THIS IS MY CO-COUNSEL, JENNIFER TESSITORE. AND
19 WE PROSECUTE CASES HERE IN GREENVILLE COUNTY.

20 NOW BEFORE WE BEGIN THE TRIAL OF THIS CASE I WANTED TO
21 BRIEFLY TELL YOU THREE THINGS, WHAT THIS CASE IS ABOUT, WHAT
22 THE STATE IS REQUIRED AND INTENDS TO PROVE AND HOW WE INTEND
23 TO PROVE IT.

24 LADIES AND GENTLEMEN, THIS CASE IS VERY SIMPLY ABOUT A
25 DRUG DEAL. THE DEFENDANT INITIATED AND ORCHESTRATED A DRUG

OPENING STATEMENTS - MS. SALISBURY

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1 DEAL WITH TWO PEOPLE WHO HAPPENED TO BE SHERIFF'S OFFICE
2 DEPUTIES. YOU SEE, THE DEFENDANT KNEW WHERE TO BUY CRACK
3 COCAINE. THE DEFENDANT KNEW WHERE TO FIND CUSTOMERS. AND
4 THE DEFENDANT KNEW WHERE TO LEAD THOSE CUSTOMERS. WELL, THE
5 TRIAL TODAY IS ABOUT WHAT THE DEFENDANT DIDN'T KNOW, THAT HE
6 WAS DEALING WITH TWO OFFICERS WHO WERE OUT THAT NIGHT TO
7 STOP THIS KIND OF DRUG ACTIVITY.

8 THE DEFENDANT'S CHARGED WITH DISTRIBUTION OF CRACK
9 COCAINE. TO PROVE THAT THE STATE MUST SHOW THAT THE
10 DEFENDANT DISPENSED, DELIVERED OR DISTRIBUTED CRACK COCAINE.

11 THE DEFENDANT'S CHARGED WITH POSSESSION WITH INTENT TO
12 DISTRIBUTE CRACK COCAINE WITHIN A HALF MILE OF A SCHOOL. TO
13 PROVE THAT THE STATE MUST SHOW THAT THE DISTRIBUTION
14 OCCURRED WITHIN A HALF MILE RADIUS OF A SCHOOL.

15 AND THE DEFENDANT IS ALSO CHARGED WITH THREATENING A
16 PUBLIC OFFICIAL. AND TO PROVE THAT THE STATE MUST SHOW THAT
17 THE DEFENDANT MADE A THREAT OF BODILY INJURY AGAINST SOMEONE
18 SERVING AS A PUBLIC OFFICIAL.

19 NOW TO PROVE ALL THAT AND THAT THE DEFENDANT IS GUILTY
20 OF THOSE CRIMES YOU'LL HEAR THE TESTIMONY OF SEVERAL
21 WITNESSES. FIRST, YOU'LL HEAR THE TESTIMONY FROM DEPUTY
22 BRIAN TOLLISON THAT WORKS WITH THE GREENVILLE COUNTY
23 SHERIFF'S OFFICE.

24 DEPUTY TOLLISON WILL TESTIFY THAT HE AND HIS PARTNER
25 WERE ON UNDERCOVER FOOT PATROL ON THE NIGHT OF JANUARY 10TH,

OPENING STATEMENTS - MS. SALISBURY

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1 2007 AT THE SUPER LODGE MOTEL ON MAULDIN ROAD. DEPUTY
2 TOLLISON WILL TESTIFY THAT HE AND HIS PARTNER WERE
3 APPROACHED BY THIS DEFENDANT WHO ASKED IF THEY WOULD LIKE TO
4 PURCHASE CRACK COCAINE.

5 YOU'LL HEAR THAT DEPUTY TOLLISON AGREED TO PURCHASE
6 CRACK COCAINE AND THAT THE DEFENDANT LED THE TWO OFFICERS
7 FROM THE SUPER LODGE TO THE INNTOWN SUITES JUST NEXT DOOR.
8 DEPUTY TOLLISON WILL TESTIFY THAT ONCE THEY ARRIVED AT THE
9 INNTOWN SUITES THE DEFENDANT ENTERED A HOTEL ROOM AND
10 EMERGED WITH CRACK COCAINE, WHICH HE GAVE TO DEPUTY
11 TOLLISON.

12 IN ADDITION DEPUTY TOLLISON WILL TESTIFY THAT ONCE THE
13 DEFENDANT WAS ARRESTED AND TRANSPORTED TO THE DETENTION
14 CENTER THE DEFENDANT, EXCUSE ME, THE DEFENDANT THREATENED TO
15 PHYSICALLY INJURE DEPUTY TOLLISON.

16 AFTER THAT YOU'LL HEAR TESTIMONY FROM DEPUTY PATRICK
17 SWIFT, WHO ALSO WORKS WITH THE SHERIFF'S DEPARTMENT. DEPUTY
18 SWIFT WILL TESTIFY THAT HE WAS ON FOOT PATROL WITH DEPUTY
19 TOLLISON THAT NIGHT AND THAT THE DEFENDANT APPROACHED THE
20 TWO OFFICERS AND ASKED IF THEY WOULD LIKE TO PURCHASE CRACK
21 COCAINE.

22 YOU'LL HEAR FROM DEPUTY SWIFT THAT THEY AGREED TO
23 PURCHASE CRACK COCAINE AND THAT THE DEFENDANT LED THE TWO
24 OFFICERS FROM THE SUPER LODGE TO THE INNTOWN SUITES. DEPUTY
25 SWIFT WILL ALSO TESTIFY THAT HE OBSERVED THE DEFENDANT ENTER

OPENING STATEMENTS - MS. SALISBURY

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1 THE HOTEL ROOM, EMERGE WITH CRACK COCAINE, WHICH HE HANDED
2 TO DEPUTY TOLLISON. DEPUTY SWIFT WILL ALSO TESTIFY THAT HE
3 OBSERVED THE DEFENDANT THREATEN TO PHYSICALLY INJURE DEPUTY
4 TOLLISON ONCE THE DEFENDANT WAS AT THE JAIL.

5 NEXT YOU'LL HEAR TESTIMONY FROM DEPUTY STEVE RHEA.
6 DEPUTY RHEA ALSO WORKS WITH THE SHERIFF'S DEPARTMENT. AND
7 DEPUTY RHEA WAS PARKED IN AN UNMARKED CAR ON THE NIGHT OF
8 JANUARY 10TH WHILE DEPUTY SWIFT AND TOLLISON WERE ON FOOT
9 PATROL.

10 DEPUTY RHEA WAS PARKED AT THE STEAK-OUT PARKING LOT,
11 WHICH SITS JUST BETWEEN THE SUPER LODGE AND THE INNTOWN
12 SUITES. DEPUTY RHEA WILL TESTIFY THAT HE OBSERVED THE
13 DEFENDANT LEADING DEPUTIES SWIFT AND TOLLISON FROM THE SUPER
14 LODGE ACROSS THE STEAK-OUT PARKING LOT AND TO THE INNTOWN
15 SUITES.

16 AFTER THAT YOU'LL HEAR TESTIMONY FROM MS. RENEE PRUITT,
17 WHO WORKS WITH PROPERTY AND EVIDENCE. MS. PRUITT WILL
18 TESTIFY ABOUT THE WAY THAT THIS EVIDENCE HAS BEEN STORED
19 SINCE THE TIME THAT THE DEFENDANT WAS ARRESTED UNTIL TODAY
20 AT TRIAL.

21 AND FINALLY WE'LL HEAR FROM ERIC COLLINS, EXCUSE ME,
22 SEAN COLLINS. MR. COLLINS IS A CRIME LAB CHEMIST. AND HE'S
23 GOING TO TESTIFY THAT HE TESTED THE SUBSTANCE OBTAINED BY
24 DEPUTY TOLLISON AND THAT IT TESTED POSITIVE AS CRACK
25 COCAINE.

OPENING STATEMENTS - MS. HORLBECK

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1 LADIES AND GENTLEMEN, THE EVIDENCE IN THIS CASE IS VERY
2 STRAIGHT FORWARD. THE EVIDENCE WILL SHOW THAT THE DEFENDANT
3 INITIATED AND ORCHESTRATED A DRUG DEAL, BUT WHAT HE DID NOT
4 KNOW WAS THAT HE WAS DEALING WITH TWO SHERIFF'S DEPUTIES.

5 AND AT THE END OF THIS TRIAL WE'LL ASK YOU TO RETURN A
6 VERDICT WHERE THE DEFENDANT IS GUILTY OF DISTRIBUTING CRACK
7 COCAINE, THAT THAT DISTRIBUTION OCCURRED WITHIN A HALF MILE
8 OF A SCHOOL AND THAT THE DEFENDANT IS GUILTY OF THREATENING
9 A PUBLIC OFFICIAL. THANK YOU.

10 MS. HORLBECK: GOOD AFTERNOON, LADIES AND GENTLEMEN.
11 LET ME START BY INTRODUCING MY CLIENT, MR. ROBERT GRANT. HE
12 IS FORTY-THREE YEARS OLD. HE IS A NATIVE OF THE UPSTATE.
13 YOU CAN SIT -- YOU CAN SIT DOWN. HE'S A NATIVE OF THE
14 UPSTATE AREA. AND HE IS A LICENSED WELDER. AND THAT'S HOW
15 HE MAKES HIS LIVING.

16 WE'RE NOT HERE TO TELL YOU THAT HE'S A PERFECT PERSON.
17 HE'S MADE MISTAKES. AND HE'S JUST LIKE ANYBODY ELSE, HE'S
18 GOT SKELETONS IN HIS CLOSET TOO. SO WE'RE NOT HERE TO TELL
19 YOU TODAY THAT HE IS A PERFECT PERSON INCAPABLE OF ANY KIND
20 OF MISTAKE.

21 BUT ON JANUARY THE 10TH, 2007 MR. GRANT DID NOT SELL
22 ANY DRUGS TO THE OFFICERS. AND HE DID NOT THREATEN THE
23 OFFICERS. NOW HE MAY HAVE POSSESSED SOME OF THE DRUG FOR
24 HIS OWN PERSONAL USE, BUT THAT'S ALL.

25 THE GOVERNMENT, THE ONLY EVIDENCE YOU'RE GOING TO HEAR

OPENING STATEMENTS - MS. HORLBECK

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1 FROM THE GOVERNMENT IS THE TESTIMONY OF TWO OFFICERS.
2 THAT'S ALL THE EVIDENCE THEY HAD WHEN THEY ARRESTED MR.
3 GRANT. YOU'RE NOT GOING TO SEE A VIDEO OF A DRUG DEAL.
4 THERE'S NO EVIDENCE OF AN AUDIO TAPE OF THE DRUG DEAL.
5 THERE'S NO FINGERPRINT EVIDENCE CONNECTING MY CLIENT TO ANY
6 OF THIS. AND THERE'S NO STATEMENT AND NO CONFESSION.

7 EVER SINCE THIS CASE FIRST STARTED MY CLIENT HAS PLED
8 NOT GUILTY. FROM THE MOMENT HE WAS ARRESTED HE'S PLED NOT
9 GUILTY. AND HE'S UNDER THE PRESUMPTION OF INNOCENCE.

10 I KNOW THE JUDGE HAS TOLD YOU A LITTLE BIT ABOUT THE
11 PRESUMPTION OF INNOCENCE, BUT LET ME TELL YOU A LITTLE BIT
12 MORE. WE ALWAYS LEARNED IN LAW SCHOOL THAT THE PRESUMPTION
13 OF INNOCENCE COVERS EVERYONE. IF I WERE TO STAND TRIAL, THE
14 PRESUMPTION OF INNOCENCE WOULD COVER ME. IF YOU OR YOUR
15 FAMILY MEMBERS OR THE JUDGE EVEN, IF HE STOOD TRIAL, THE
16 PRESUMPTION OF INNOCENCE COVERS ANYONE WHO STANDS TRIAL. IT
17 COVERS THAT PERSON LIKE A CLOAK. AND IT'S -- IT'S GOT TO BE
18 REMOVED.

19 THE OTHER THING ABOUT THE PRESUMPTION OF INNOCENCE IS
20 THAT IT'S A HEAVY, HEAVY BURDEN. IT'S A VERY WEIGHTY
21 BURDEN. IT'S VERY DIFFICULT TO REMOVE. THE PRESUMPTION OF
22 INNOCENCE STAYS WITH YOU FROM THE TIME YOU'RE ARRESTED ALL
23 THE WAY THROUGH.

24 PRESUMPTION OF INNOCENCE IS GOING TO COVER MR. GRANT
25 WHILE WE GO ON BREAK. IT'S GOING TO COVER MR. GRANT IF WE

OPENING STATEMENTS - MS. HORLBECK

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1 CONTINUE ON INTO THE EVENING IF WE'RE NOT DONE WITH THIS
2 TRIAL. IT'LL COVER MR. GRANT ALL THROUGH THE MORNING,
3 TOMORROW MORNING IF WE GO THAT FAR. IT COVERS THE PERSON
4 FROM THE TIME OF ARREST ALL THE WAY THROUGH. BUT IT'S A
5 VERY WEIGHTY BURDEN. IT'S VERY TOUGH TO REMOVE.

6 FOR EXAMPLE, IF MY HANDS ARE A SET OF SCALES, IF WE
7 WERE TO PUT INNOCENCE IN ONE SET OF THE SCALES, THAT SCALE
8 WOULD GO ALL THE WAY DOWN. IT WOULD TIP ALL THE WAY DOWN TO
9 THIS TABLE. THAT'S HOW HEAVY IT IS.

10 AND INNOCENCE IS NOT OUTWEIGHED BY A SUSPICION THAT
11 SOMEBODY'S GUILTY. IT'S NOT OUTWEIGHED BY A THOUGHT THAT
12 MAYBE SOMEBODY'S GUILTY. IT'S NOT OUTWEIGHED BY ANY SORT OF
13 NOTION THAT MAYBE POSSIBLY SOMEBODY'S GUILTY. THE ONLY
14 THING THAT OUTWEIGHS INNOCENCE IS PROOF. AND IT'S THE
15 GOVERNMENT'S BURDEN TO BRING YOU THAT PROOF.

16 WE SUBMIT TO YOU THAT THEY DIDN'T -- THAT THE
17 GOVERNMENT DIDN'T HAVE THEIR PROOF THE DAY THEY ARRESTED MR.
18 GRANT, AND THAT THEY DON'T HAVE IT TODAY. AND AT THE END OF
19 THIS TRIAL AFTER YOU'VE HAD PLENTY OF TIME TO LISTEN TO THE
20 EVIDENCE AND AFTER YOU'VE KEPT AN OPEN MIND, YOU'VE SEEN THE
21 EVIDENCE, LISTENED TO THE TESTIMONY, WE BELIEVE THAT YOU'LL
22 FIND MR. GRANT NOT GUILTY OF ALL THE CHARGES TODAY.

23 THE COURT: ALL RIGHT. CALL YOUR FIRST WITNESS.

24 MS. TESSITORE: THANK YOU, YOUR HONOR. MAY IT PLEASE
25 THE COURT? THE STATE CALLS DEPUTY BRIAN TOLLISON.

BRIAN TOLLISON - DIRECT EXAMINATION BY MS. TESSITORE

50

1 BRIAN TOLLISON, BEING

2 DULY SWORN TESTIFIES AS FOLLOWS:

3 MADAME CLERK: PLEASE STATE YOUR NAME FOR THE RECORD.

4 MR. TOLLISON: IT'S BRIAN D. TOLLISON.

5 DIRECT EXAMINATION BY MS. TESSITORE:

6 Q. WHERE DO YOU WORK, DEPUTY TOLLISON?

7 A. WITH THE GREENVILLE COUNTY SHERIFF'S OFFICE.

8 Q. AND WHAT IS YOUR TITLE THERE?

9 A. JUST A DEPUTY.

10 Q. AND WERE YOU ALSO A DEPUTY BACK IN JANUARY OF 2007?

11 A. I WAS.

12 Q. WHAT WERE -- WELL, HOW LONG HAVE YOU BEEN WITH THE
13 GREENVILLE COUNTY SHERIFF'S OFFICE?

14 A. A LITTLE OVER SEVEN YEARS.

15 Q. AND WHAT KIND OF TRAINING HAVE YOU HAD?

16 A. THE BASIC TRAINING YOU GO THROUGH IN THE CRIMINAL
17 JUSTICE ACADEMY, FORTY HOURS OF A DRUG INTERDICTION COURSE,
18 COMPLETED EIGHTY HOURS OF A BASIC NARCOTICS INVESTIGATIVE
19 COURSE WITH THE DEA, AND STANDARD TRAINING THAT COMES ALONG
20 WITH EVERY OTHER DEPUTY.

21 Q. SO THAT'S THE TRAINING THAT YOU'VE HAD IN THE AREA OF
22 NARCOTICS?

23 A. YES, MA'AM.

24 Q. AND HAVE YOU MADE UNDERCOVER BUYS BEFORE?

25 A. YES, MA'AM, WE HAVE.

BRIAN TOLLISON - DIRECT EXAMINATION BY MS. TESSITORE

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1 Q. APPROXIMATELY HOW MANY?

2 A. ROUGHLY TWENTY.

3 Q. SO DO YOU WORK IN THE NARCOTICS DIVISION?

4 A. NO, MA'AM. MY UNIT'S REFERRED TO AS A DIRECTED PATROL
5 UNIT. WE GO TO SPECIFIC AREAS, HIGH CRIME AREAS AND DEAL
6 WITH THOSE SITUATIONS ON A -- BASICALLY A NIGHTLY BASIS. WE
7 DON'T DO LONG-TERM INVESTIGATIONS.

8 Q. AND WHAT'S THE NAME OF THE UNIT?

9 A. A DIRECTED PATROL UNIT.

10 Q. AND HOW LONG HAVE YOU BEEN IN THAT SPECIFIC UNIT ---

11 A. OVER THREE YEARS.

12 Q. AND WHAT ARE YOUR DUTIES SPECIFICALLY IN THAT DIVISION?

13 A. PRIMARILY WE DEAL WITH PROSTITUTION AND THEN STREET
14 LEVEL DRUG CRIMES, EITHER POSSESSION OR SELLING.

15 Q. OKAY. AND FOCUSING ON JANUARY 10TH OF 2007 IN THE
16 EARLY EVENING HOURS WERE YOU WORKING THAT EVENING?

17 A. YES, MA'AM, I WAS.

18 Q. WHAT KIND OF WORK WERE YOU DOING THAT NIGHT?

19 A. WE WERE IN A PLAIN CLOTHES OPERATION AROUND THE HOTELS
20 OF 85 AND AUGUSTA.

21 Q. AND IS THAT IN GREENVILLE COUNTY?

22 A. YES, MA'AM, IT IS.

23 Q. WHEN YOU SAY PLAIN CLOTHES, WHAT DOES THAT MEAN?
24 DESCRIBE FOR THE JURY WHAT ---

25 A. JUST ---

BRIAN TOLLISON - DIRECT EXAMINATION BY MS. TESSITORE

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1 Q. --- YOU MEAN BY PLAIN CLOTHES.

2 A. TYPICAL WORK CLOTHES, BLUE JEANS, SWEATSHIRTS, IF IT'S
3 COLD, A JACKET, STOCKING CAP.

4 Q. DO YOU CONCEAL YOUR FACE IN ANY WAY OR ANYTHING LIKE
5 THAT?

6 A. NO. NO.

7 Q. AND WHAT ABOUT -- HOW DID YOU GET TO THAT AREA THAT
8 NIGHT?

9 A. WE HAVE AN UNMARKED VEHICLE. IT'S A S.U.V. WE DROVE
10 THERE IN THAT.

11 Q. OKAY. AND WHO WAS DRIVING THAT NIGHT?

12 A. DEPUTY GRICE WAS DRIVING. IT WAS FOUR OF US IN THE
13 VEHICLE.

14 Q. WHO ELSE WAS WITH YOU?

15 A. MASTER DEPUTY RHEA, PATRICK SWIFT, AND MYSELF AND
16 DEPUTY GRICE.

17 Q. YOU SAID YOU WERE IN PLAIN CLOTHES. WHAT ABOUT THE
18 OTHER DEPUTIES?

19 A. THEY WERE ALSO IN PLAIN CLOTHES.

20 Q. AND THE CAR, YOU SAID IT WAS A S.U.V.?

21 A. YES, MA'AM.

22 Q. JUST GENERALLY DESCRIBE THAT S.U.V. DID IT HAVE ANY
23 MARKINGS ON IT OR ANYTHING?

24 A. NO MARKINGS. ACTUALLY IT'S A FORD EXPEDITION. AT THE
25 TIME IT WAS BLACK IN COLOR.

BRIAN TOLLISON - DIRECT EXAMINATION BY MS. TESSITORE

53

1 Q. SO WAS THERE ANYTHING ABOUT THE CAR THAT WOULD INDICATE
2 THAT YOU WERE OFFICERS RIDING IN THAT CAR?

3 A. NO, MA'AM.

4 Q. AND WAS THERE ANYTHING ABOUT YOUR CLOTHING THAT WOULD
5 INDICATE THAT YOU WERE OFFICERS?

6 A. NO, MA'AM.

7 Q. SO IS IT FAIR TO SAY THAT YOU WERE ACTING IN AN
8 UNDERCOVER CAPACITY?

9 A. YES, MA'AM.

10 Q. DID YOU HAVE ANY RECORDING EQUIPMENT ON YOURSELF?

11 A. NO, WE DIDN'T.

12 Q. OKAY. WHAT ABOUT ANY OF THE OTHER OFFICERS?

13 A. NO, WE DIDN'T HAVE ANY.

14 Q. DID YOU HAVE ANY IN THE VEHICLE?

15 A. NO, MA'AM.

16 Q. SO NO VIDEO OR NO AUDIO?

17 A. NO, MA'AM.

18 Q. WHAT WAS -- DID YOU -- DID YOU END UP AT THE INN TOWN
19 SUITES, THAT AREA THAT NIGHT?

20 A. YES, MA'AM. WHAT WE DID, WE DROVE THROUGH THE AREA, WE
21 PARKED AT THE STEAK-OUT, WHICH IS A FAST FOOD RESTAURANT.
22 MYSELF AND DEPUTY SWIFT GOT OUT OF THE CAR, AND WE WALKED TO
23 THE SUPER LODGE MOTEL WITH DEPUTIES RHEA AND GRICE KEEPING A
24 VISUAL SURVEILLANCE ON US.

25 Q. HOW FAR IS THE SUPER LODGE FROM THE STEAK-OUT

BRIAN TOLLISON - DIRECT EXAMINATION BY MS. TESSITORE

54

1 RESTAURANT APPROXIMATELY?

2 A. TWO HUNDRED YARDS OR LESS.

3 Q. IT WAS WITHIN WALKING DISTANCE?

4 A. OH, YEAH. OH, EASILY, YES.

5 Q. AND WHAT HAPPENED AS YOU WERE IN THAT AREA?

6 A. WE WERE WALKING TOWARDS THE BUILDING. WE ENTERED A

7 BREEZE-WAY THAT CUTS FROM THE PARKING LOT AND GOES ALL THE

8 WAY TO AN INNERCOURT. WE JUST STEPPED INTO THIS BREEZE-WAY.

9 Q. AT WHICH -- AT WHICH BUILDING ARE YOU AT AT THIS POINT?

10 A. THIS IS THE SUPER LODGE MOTEL. IT'S 412 MAULDIN ROAD.

11 Q. AND YOU SAID WE, WHO WAS THERE WITH YOU?

12 A. DEPUTY SWIFT. HE WAS WALKING WITH ME.

13 Q. OKAY. AND WHAT HAPPENED?

14 A. WE'D JUST ENTERED A BREEZE-WAY. WE HEARD A NOISE FROM

15 BEHIND. IT WAS THE DEFENDANT. HE HAD GOTTEN OUR ATTENTION,

16 WALKED UP BEHIND US. ENTERED THE BREEZE-WAY WITH US. WE

17 STOPPED. AND HE ASKED IF WE WERE STRAIGHT.

18 MS. HORLBECK: AND I WOULD OBJECT TO THAT AS HEARSAY.

19 THE COURT: I'M SORRY. I DIDN'T -- GO AHEAD. I'M NOT

20 GOING TO -- I'LL HAVE TO OVERRULE THAT. I DON'T UNDERSTAND

21 QUITE WHAT THAT IS, BUT GO AHEAD.

22 Q. SO AS YOU WERE SAYING, HE APPROACHED YOU AND HE ASKED

23 YOU A QUESTION. AND WHAT WAS THAT QUESTION?

24 MS. HORLBECK: AND ---

25 A. HE ASKED IF WE WERE STRAIGHT.

BRIAN TOLLISON - DIRECT EXAMINATION BY MS. TESSITORE

55

1 MS. HORLBECK: THIS IS WHERE I WOULD OBJECT, YOUR
2 HONOR, ON THE BASIS OF HEARSAY.

3 THE COURT: WELL, I BELIEVE YOU'RE TALKING ABOUT THE
4 ...

5 MS. TESSITORE: THE DEFENDANT.

6 THE COURT: THE DEFENDANT. OKAY. OVERRULED. ALL
7 RIGHT, GO AHEAD.

8 Q. SO ONE MORE TIME, WHAT DID HE SAY?

9 A. ARE YOU STRAIGHT?

10 Q. OKAY. AND WHAT -- ARE YOU STRAIGHT, WHAT DID THAT MEAN
11 TO YOU?

12 A. IN OUR ---

13 MS. HORLBECK: I OBJECT AS TO SPECULATION.

14 MS. TESSITORE: HE'S GOT TRAINING ---

15 THE COURT: WELL, HE CAN -- OKAY. HE CAN TESTIFY TO
16 HIS OWN STATE OF MIND. I THINK THAT'S WHAT SHE ASKED HIM.
17 OKAY. ALL RIGHT, GO AHEAD.

18 A. IN OUR EXPERIENCE DEALING WITH STREET LEVEL DRUG USE
19 WHEN SOMEONE SAYS, ARE YOU STRAIGHT, IS DO YOU HAVE DRUGS.
20 THAT'S BASICALLY WHAT IT MEANS.

21 Q. OKAY. AND HOW DID YOU RESPOND TO HIM?

22 A. I ASKED HIM IF HE SMOKED. HE SAID HE DID. AND THEN HE
23 ASKED ME WHAT WE NEEDED. AND I TOLD HIM ---

24 Q. AND HOW'D YOU -- HOW DID YOU RESPOND TO THAT?

25 A. I TOLD HIM I NEEDED A TWENTY.

BRIAN TOLLISON - DIRECT EXAMINATION BY MS. TESSITORE

56

- 1 Q. OKAY. WHAT DOES THAT MEAN?
- 2 A. A TWENTY IS BASICALLY A GRAVEL SIZED PIECE OF CRACK
- 3 COCAINE. IT SELLS FOR TWENTY DOLLARS.
- 4 Q. AND DID YOU HAVE MONEY TO BUY THAT CRACK COCAINE?
- 5 A. I DID.
- 6 Q. HOW MUCH DID YOU HAVE?
- 7 A. I HAD TWENTY DOLLARS.
- 8 Q. AND HOW MANY BILLS? ONE?
- 9 A. JUST ONE.
- 10 Q. AND WHERE DID THAT MONEY COME FROM?
- 11 A. IT'S GREENVILLE COUNTY FUNDS. IT'S SUPPLIED BY THE
- 12 SHERIFF'S OFFICE.
- 13 Q. AND DID YOU HAVE ANY RECORD OF THE SERIAL NUMBER ON
- 14 THAT BILL?
- 15 A. NO, MA'AM, I DIDN'T.
- 16 Q. DID YOU HAVE ANY PROCEDURE IN PLACE AT THAT TIME FOR
- 17 TRACKING MONEY?
- 18 A. NO. AT THE TIME OUR UNIT HAD JUST STARTED BEING
- 19 ALLOWED TO GET BUY MONEY. AND IT'S MY FAULT. I DIDN'T
- 20 WRITE THE SERIAL NUMBER DOWN.
- 21 Q. OKAY. NOW HAD YOU BEEN WATCHING THIS DEFENDANT BEFORE
- 22 HE APPROACHED YOU THAT NIGHT?
- 23 A. NO, MA'AM. I'D NEVER MET HIM BEFORE.
- 24 Q. HAD YOU BEEN WATCHING THE AREA FROM WHICH HE CAME OR
- 25 ---

BRIAN TOLLISON - DIRECT EXAMINATION BY MS. TESSITORE

57

1 A. NO, MA'AM. WE HAD NO SET SURVEILLANCE FOR THAT AREA.
2 WE'D WORKED THAT AREA COMMONLY, BUT WE HAD NOT BEEN SITTING
3 THERE WATCHING ANY PARTICULAR THING THAT NIGHT.

4 Q. SO WITH THIS TWENTY DOLLAR BILL YOU HAD, WHAT DID YOU
5 DO WITH THAT TWENTY DOLLAR BILL?

6 A. WELL, AFTER I TOLD HIM I NEEDED A TWENTY, HE SAID, THIS
7 AREA'S HOT, MEANING POLICE PRESENCE. HE SAID, I KNOW WHERE
8 I CAN GET IT, BUT YOU'VE GOT TO FOLLOW ME. SO AT THAT TIME
9 WE BEGAN WALKING TOWARDS THE INNTOWN SUITES, WHICH IS ---

10 Q. WAS OFFICER, EXCUSE ME, WAS DEPUTY SWIFT WITH YOU WHEN
11 THAT CONVERSATION TOOK PLACE?

12 A. YES, MA'AM.

13 Q. AND HOW MANY TIMES DID YOU HAVE TO ASK HIM FOR A
14 TWENTY?

15 A. JUST THE ONCE.

16 Q. OKAY. SO YOU DIDN'T HAVE TO ASK MORE THAN ONCE?

17 A. UH-UH (NEGATIVE).

18 Q. DID -- DID HE SEEM TO UNDERSTAND WHAT YOU SAID?

19 A. OH, YEAH. HE STATED THAT -- HE SAID THAT AREA WAS HOT,
20 MEANING POLICE PRESENCE IN THAT PARTICULAR HOTEL. HE SAID
21 WE'D HAVE TO GO TO THE NEXT HOTEL TO GET IT.

22 Q. OKAY. SO WHERE DID HE TAKE YOU AT THAT POINT?

23 A. WE WALKED TO THE INNTOWN SUITES, WHICH IS LOCATED AT
24 408 MAULDIN ROAD, WHICH IS NEXT DOOR.

25 Q. AND WHAT HAPPENED WHEN YOU GOT OVER THERE?

BRIAN TOLLISON - DIRECT EXAMINATION BY MS. TESSITORE

58

1 A. WALKED INTO A LITTLE BREEZE-WAY. I GAVE HIM THE TWENTY
2 DOLLAR BILL. HE WALKED ACROSS THE PARKING LOT TO ROOM 105,
3 WENT INSIDE. HE WAS THERE FOR LESS THAN FIVE MINUTES. CAME
4 BACK OUT, WALKED DIRECTLY TO US IN THE BREEZE-WAY. AND AS
5 WE WERE WALKING THROUGH THE BREEZE-WAY HE HANDED ME A PIECE
6 OF CRACK COCAINE, WHITE, ROCK-LIKE SUBSTANCE THAT WAS
7 CONSISTENT WITH CRACK COCAINE.

8 Q. AND WHEN YOU SAY HE HANDED -- HANDED IT TO YOU HOW DID
9 HE DO THAT?

10 A. AS WE WERE WALKING HE JUST REACHED OVER AND SAID, HERE.
11 I LAID OUT MY HAND AND PLACED IT RIGHT IN MY HAND.

12 Q. AND HE LET GO OF IT?

13 A. YES, MA'AM.

14 Q. OKAY. AND WHAT DID YOU DO AT THAT POINT?

15 A. WE CONTINUED WALKING. WE WENT RIGHT JUST OUTSIDE THE
16 BREEZE-WAY. AT THAT TIME WE STOPPED. DEPUTY RHEA WAS OUT
17 ON FOOT. WE IDENTIFIED OURSELVES AS LAW ENFORCEMENT, SHOWED
18 HIM OUR BADGE, TOOK HOLD OF HIS ARMS, TOLD HIM HE WAS UNDER
19 ARREST, HANDCUFFED HIM. WHEN WE HANDCUFFED HIM WE NOTICED
20 THAT HIS LEFT HAND WAS BALLED UP. EVENTUALLY GOT HIM TO
21 UNBALL HIS LEFT HAND AND ANOTHER SMALLER PIECE OF CRACK
22 COCAINE FELL OUT TO THE GROUND.

23 Q. AND DID YOU RETRIEVE THAT?

24 A. YES, MA'AM, WE DID.

25 Q. OKAY. JUST TAKING YOU BACK TO WHEN HE HANDED THE ROCK

BRIAN TOLLISON - DIRECT EXAMINATION BY MS. TESSITORE

59

1 TO YOU, WHERE WAS DEPUTY SWIFT AT THAT TIME?

2 A. HE WAS STANDING RIGHT BESIDE US.

3 Q. OKAY. WHERE WAS DEPUTY RHEA?

4 A. DEPUTY RHEA WAS -- HE WAS ON THE FAR END OF THE BREEZE-
5 WAY. HE WAS JUST AROUND THE CORNER.

6 Q. COULD YOU SEE HIM FROM WHERE YOU WERE?

7 A. NO, MA'AM.

8 Q. AND WHAT ABOUT DEPUTY GRICE?

9 A. DEPUTY GRICE WAS IN A VEHICLE. HE WAS PARKED AROUND
10 THE CORNER TOO.

11 Q. NOW THIS AREA THAT YOU'RE DESCRIBING, THE BREEZE-WAY IN
12 THE INNTOWN SUITES, IS THAT IN GREENVILLE COUNTY RIGHT
13 THERE?

14 A. YES, MA'AM.

15 Q. DID YOU -- WHAT DID YOU DO WHILE HE WAS GOING INTO THIS
16 ROOM, WHAT YOU BELIEVED TO BE ROOM 105?

17 A. YES, MA'AM.

18 Q. WHAT DID YOU DO WHILE HE WENT IN THERE?

19 A. NOT KNOWING IF HE WAS ACTUALLY GOING IN TO PURCHASE
20 CRACK COCAINE FOR US I WALKED UP THE SIDEWALK JUST IN CASE
21 HE CAME OUT OF THE ROOM AND TRIED TO RUN WITH OUR TWENTY
22 DOLLARS. BUT ONCE HE CAME BACK OUT OF THE ROOM HE WENT
23 RIGHT TO THE BREEZE-WAY AND I JUST FOLLOWED HIM.

24 Q. NOW YOU'RE FAMILIAR WITH THE INNTOWN SUITES AT THAT
25 LOCATION?

BRIAN TOLLISON - DIRECT EXAMINATION BY MS. TESSITORE

60

1 A. YES, MA'AM.

2 Q. IS THAT AN AREA WHERE YOU PATROL REGULARLY OR HOW OFTEN
3 WOULD YOU SAY?

4 A. WE WORK COUNTY-WIDE, BUT WE SPEND A GREAT DEAL OF TIME
5 AROUND THE MOTELS OF AUGUSTA AND I-85. THEY TEND TO BE HIGH
6 DRUG AREAS AND PROSTITUTION AREAS.

7 Q. ALL RIGHT. JUST GIVE ME ONE MOMENT, PLEASE.

8 (PAUSE)

9 Q. OKAY. DEPUTY TOLLISON, IF YOU COULD JUST LOOK AT
10 WHAT'S BEEN MARKED AS STATE'S EXHIBIT NUMBER 1. DO YOU
11 RECOGNIZE THAT?

12 A. YES, MA'AM.

13 Q. AND WHAT IS THAT?

14 A. JUST ---

15 Q. GENERALLY?

16 A. GENERALLY IT'S TWO HOTELS, HOME DEPOT AROUND THE I-85,
17 MAULDIN ROAD AREA.

18 Q. AND IS THIS THE AREA THAT YOU SAID YOU'RE FAMILIAR
19 WITH?

20 A. YES, MA'AM.

21 Q. OKAY. IS IT A FAIR AND ACCURATE DEPICTION OF THAT
22 AREA?

23 A. IT IS.

24 Q. AND YOU'RE FAMILIAR WITH THOSE BUSINESSES THERE?

25 A. I AM.

BRIAN TOLLISON - DIRECT EXAMINATION BY MS. TESSITORE

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1 Q. OKAY. DO YOU KNOW HOW THIS -- THIS PICTURE WAS
2 GENERATED?

3 A. IT APPEARS TO BE FROM THE GREENVILLE COUNTY GOVERNMENT
4 WEBSITE. THEY HAVE AN OVERVIEW, FLY OVER THAT ANYONE HAS
5 ACCESS TO ON THE INTERNET.

6 Q. OKAY. AND YOU'RE FAMILIAR WHERE THE BI-LO IS THERE AND
7 THE HOME DEPOT?

8 A. I AM.

9 Q. AND THE INN TOWN SUITES?

10 A. UM-HUM (AFFIRMATIVE).

11 Q. AND THE SUPER LODGE?

12 A. I AM.

13 Q. OKAY.

14 MS. TESSITORE: YOUR HONOR, AT THIS TIME I WOULD SEEK
15 TO MOVE THIS INTO EVIDENCE.

16 THE COURT: ANY OBJECTION? JUST PREVIOUSLY STATED?

17 MS. HORLBECK: YES. AND I DON'T BELIEVE THAT THEY'VE
18 LAID THE PROPER FOUNDATION AS TO AGE OF THE PICTURE, WHO
19 TOOK THE PICTURE. I THINK THEY NEED TO HAVE THE
20 PHOTOGRAPHER AVAILABLE.

21 THE COURT: WELL, THAT'S A SUBJECT FOR CROSS
22 EXAMINATION. OVER THAT OBJECTION I'M GOING TO ADMIT IT.

23 (WHEREUPON STATE'S EXHIBIT 1 WAS ENTERED INTO EVIDENCE)

24 MS. TESSITORE: THANK YOU.

25 Q. IF YOU COULD STEP DOWN. IF YOU DON'T MIND CARRYING

BRIAN TOLLISON - DIRECT EXAMINATION BY MS. TESSITORE

62

1 THIS BASEL.

2 THE COURT: KEEP YOUR VOICE UP NOW, SIR.

3 A. YES, SIR.

4 Q. OKAY. DEPUTY TOLLISON, IF YOU COULD STEP UP TO THE
5 PICTURE THERE. AND JUST DESCRIBE TO THE JURY WHAT THIS
6 DEPICTS.

7 A. WELL, WHAT WE HAVE HERE IS MAULDIN ROAD. THIS IS 412
8 MAULDIN ROAD. THIS IS THE SUPER LODGE MOTEL. WE HAVE THE
9 STEAK-OUT FAST FOOD RESTAURANT. WE HAVE 408 MAULDIN ROAD,
10 WHICH IS THE INN TOWN SUITES. THAT'S THE BI-LO AND THE HOME
11 DEPOT HERE.

12 Q. OKAY. AND GOING BACK TO WHERE YOU FIRST BEGAN THAT
13 NIGHT AS FAR AS YOUR SURVEILLANCE OF THIS AREA AND THE
14 PATROL, WHERE DID YOU START?

15 A. ORIGINALLY PARKED OUR VEHICLE HERE AT THE STEAK-OUT.
16 THIS IS WHERE MYSELF AND DEPUTY SWIFT EXITED THE VEHICLE.
17 WE WALKED RIGHT DOWN HERE TO THIS PARKING LOT. THERE IS A
18 BREEZE-WAY RIGHT HERE THROUGH -- WHICH ENDS HERE AT THE
19 COURTYARD. SO IT JUST GOES ALL THE WAY THROUGH.

20 Q. OKAY. AND YOU JUST -- YOU MENTIONED THE STEAK-OUT
21 RESTAURANT BEFORE. AS FAR AS THE VEHICLE, COULD YOU POINT
22 THAT OUT?

23 A. IT WAS PARKED RIGHT HERE IN A PARKING SPOT JUST LIKE A
24 NORMAL CAR WOULD DO.

25 Q. OKAY. AND WHERE DID THE DEFENDANT TAKE YOU? JUST IF

BRIAN TOLLISON - DIRECT EXAMINATION BY MS. TESSITORE

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1 YOU COULD DESCRIBE THE PATH?

2 A. OKAY. WELL, AS WE ENTERED THIS BREEZE-WAY THE
3 DEFENDANT CAME UP BEHIND US. ONCE WE NEGOTIATED THE DEAL
4 HERE WE WALKED BACK PAST OUR SURVEILLANCE VEHICLE. WE
5 WALKED THROUGH THE PARKING LOT OVER TO HERE. THIS IS THE
6 INNTOWN SUITES.

7 Q. OKAY. AND IF YOU COULD WITH THIS MARKER JUST INDICATE
8 THE STARTING POINT AND PUT YOUR INITIALS JUST WITH -- NEXT
9 TO A LITTLE "X" ON WHERE THE STARTING POINT WAS AND THEN
10 WHERE THE ENDING POINT WAS.

11 A. OKAY. THE STARTING POINT WAS HERE, CAME RIGHT TO THIS.
12 THERE'S A BREEZE-WAY RIGHT HERE. IT GOES ALL THE WAY
13 THROUGH TO THE PARKING LOT.

14 Q. AND WHERE WAS ROOM 105 APPROXIMATELY?

15 A. IT'S APPROXIMATELY IN THIS AREA RIGHT HERE. IT'S ON
16 THE GROUND LEVEL.

17 Q. OKAY. ALL RIGHT. NOW IF YOU COULD, I'M JUST GOING TO
18 SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT NUMBER 2 ON
19 THE BACK OF THIS. I'M GOING TO ASK YOU IF YOU RECOGNIZE
20 THAT?

21 A. I DO.

22 Q. OKAY. WHAT IS THAT?

23 A. IT'S THE INNTOWN SUITES AT 408 MAULDIN ROAD.

24 Q. OKAY. AND YOU'RE FAMILIAR WITH THAT AREA?

25 A. I AM.

BRIAN TOLLISON - DIRECT EXAMINATION BY MS. TESSITORE

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1 Q. AND LOOKING AT THAT IS THAT A FAIR AND ACCURATE
2 DEPICTION OF THE PARKING LOT AND THE BUILDINGS AS TO WHERE
3 THEY WERE ON JANUARY 10TH, 2007?

4 A. THEY ARE.

5 Q. OKAY. AND AT THIS TIME, YOUR HONOR, I WOULD MOVE TO
6 ADMIT STATE'S EXHIBIT NUMBER 2.

7 MS. HORLBECK: I'VE JUST GOT THE SAME OBJECTIONS THAT
8 I'VE ALREADY PUT ON THE RECORD.

9 THE COURT: ALL RIGHT. SAME RULING.

10 (WHEREUPON STATE'S EXHIBIT 2 WAS ENTERED INTO EVIDENCE)

11 Q. OKAY. DEPUTY TOLLISON, COULD YOU EXPLAIN TO THE JURY
12 WHAT THIS SHOWS AND WHEN YOU GOT OVER TO THE INNTOWN SUITES
13 JUST DESCRIBE WHERE YOU WENT AND ORIENT THEM TO ROOM 105 AND
14 THE BREEZE-WAY?

15 A. AGAIN, MAULDIN ROAD. WE HAD APPROACHED FROM THIS AREA
16 OVER HERE. WE COME THROUGH HERE. LIKE I SAID, THERE'S A
17 BREEZE-WAY THAT CUTS THROUGH FROM ONE PARKING LOT TO THE
18 OTHER. I'D GIVEN HIM A TWENTY DOLLAR BILL HERE IN THE
19 BREEZE-WAY. HE WENT ACROSS TO ROOM 105, WENT INSIDE. AND
20 AS HE WENT INSIDE DEPUTY SWIFT STAYED IN THE BREEZE-WAY, AND
21 I STEPPED UP THE SIDEWALK HERE PROBABLY TWENTY FEET, THIRTY
22 FEET.

23 THE DEFENDANT WAS INSIDE THE APARTMENT OR HOTEL ROOM
24 FOR LESS THAN FIVE MINUTES. AND ONCE HE CAME BACK OUT I
25 JUST STARTED WALKING BACK DOWN TOWARDS THE BREEZE-WAY. WE

BRIAN TOLLISON - DIRECT EXAMINATION BY MS. TESSITORE

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1 MET RIGHT THERE, ENTERED THE BREEZE-WAY. HE SAID, YOU'RE
2 GOOD. I HELD MY HAND OUT. HE PUT A WHITE ROCK-LIKE PIECE
3 OF CRACK COCAINE IN MY HAND.

4 AND WE CONTINUED WALKING THROUGH THE BREEZE-WAY. AND
5 RIGHT HERE ON THE SIDEWALK RIGHT WHEN WE EXITED THE BREEZE-
6 WAY IS WHEN WE IDENTIFIED OURSELVES AND INFORMED HIM HE WAS
7 UNDER ARREST.

8 Q. OKAY. AND CAN YOU TAKE THIS MARKER AND ALSO MARK THERE
9 WITH YOUR INITIALS AS TO WHERE YOU WERE WHEN HE HANDED YOU
10 THE -- APPROXIMATELY ---

11 A. WELL, YEAH, THERE'S -- THE BREEZE-WAY RUNS THROUGH
12 HERE. AND WE WERE APPROXIMATELY RIGHT IN THE MIDDLE OF THE
13 BREEZE-WAY.

14 Q. OKAY. AND JUST APPROXIMATELY WHERE ROOM 105 WOULD HAVE
15 BEEN ---

16 A. IT'S IN THIS ---

17 Q. --- IN RELATION TO ---

18 A. IT'S IN THIS AREA. IT'S RIGHT IN HERE.

19 Q. OKAY. OKAY. YOU CAN TAKE THE STAND. THANK YOU.

20 DEPUTY TOLLISON, I'M HANDING YOU WHAT'S BEEN MARKED AS

21 STATE'S EXHIBIT NUMBER 3. IF YOU COULD TAKE A MOMENT AND

22 LOOK AT THAT.

23 A. UM-HUM (AFFIRMATIVE).

24 Q. DO YOU RECOGNIZE THAT?

25 A. I DO.

BRIAN TOLLISON - DIRECT EXAMINATION BY MS. TESSITORE

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1 Q. OKAY. WHAT IS THAT?

2 A. IT'S A PHOTO OF THE BREEZE-WAY THERE AT THE INN TOWN
3 SUITES.

4 Q. OKAY. AND IS THAT -- WHAT DIRECTION IS IT LOOKING AT
5 THAT BREEZE-WAY? FROM WHICH POINT? ON THE INSIDE OF THE
6 TWO BUILDINGS OR THE OUTSIDE?

7 A. THIS IS -- APPEARS TO BE THE INSIDE. THIS IS WHERE WE
8 HAD -- HE HAD COME -- COME INTO THIS PORTION.

9 Q. OKAY.

10 A. IT'S KIND OF HARD TO -- THIS IS THE INSIDE PORTION,
11 WHICH WOULD BE EASIER.

12 Q. WELL, LET ME ASK YOU THIS FIRST. IS THIS A FAIR AND
13 ACCURATE DEPICTION OF THE BREEZE-WAY WHERE HE HANDED YOU THE
14 ROCK OF ---

15 A. OH, IT IS.

16 Q. --- CRACK COCAINE?

17 A. YEAH.

18 Q. OKAY.

19 MS. TESSITORE: YOUR HONOR, AT THIS TIME I WOULD MOVE
20 THIS INTO EVIDENCE.

21 MS. HORLBECK: AGAIN, I DON'T BELIEVE THE FOUNDATION'S
22 BEEN LAID.

23 THE COURT: SAME RULING.

24 (WHEREUPON STATE'S EXHIBIT 3 WAS ENTERED INTO EVIDENCE)

25 Q. ALL RIGHT. IF YOU COULD LOOK BACK AT THAT. IF YOU

BRIAN TOLLISON - DIRECT EXAMINATION BY MS. TESSITORE

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1 WANT TO STEP DOWN AND JUST POINT OUT TO THE JURY, DESCRIBE
2 WHAT THAT PICTURE SHOWS THERE.

3 A. IT'S THE ONLY BREEZE-WAY IN THAT BUILDING. THIS SIDE
4 OVER HERE, THE FAR SIDE, THAT'S WHERE WE WERE COMING FROM.
5 WE WALKED THROUGH THIS BREEZE-WAY. THE DEFENDANT TOOK THE
6 MONEY RIGHT HERE, CONTINUED ON AS I WENT UP THIS SIDEWALK
7 HERE. AND HE ENTERED THE MOTEL ROOM.

8 Q. OKAY. THANK YOU. NOW GOING BACK TO THE ITEM THAT HE
9 HANDED YOU THAT YOU -- WHAT YOU BELIEVED TO BE A ROCK OF
10 CRACK COCAINE, WAS IT IN ANY KIND OF WRAPPING?

11 A. NO, MA'AM, IT WAS LOOSE. NO. TYPICALLY WE SEE THOSE
12 THINGS IN PLASTIC BAGS, BUT THERE WAS NO PLASTIC BAG WITH
13 IT. IT WAS JUST LOOSE FROM HIS HAND INTO MY HAND.

14 Q. OKAY. AND WHAT DID -- DESCRIBE GENERALLY WHAT IT
15 LOOKED LIKE.

16 A. IT'S A WHITE -- IT LOOKS LIKE A ROCK. THAT'S GENERALLY
17 WHERE THE NAME COMES FROM. IF YOU THREW IT IN A -- IF YOU
18 THREW IT ON THE GROUND AROUND PEBBLES, YOU'D HAVE A HARD
19 TIME FINDING IT. IT'S PROBABLY THE SIZE -- A LITTLE BIGGER
20 THAN AN ERASER THAT COMES ON A PENCIL, WHITE IN COLOR.

21 Q. HOLD ON ONE SECOND, PLEASE.

22 (PAUSE)

23 Q. DEPUTY TOLLISON, I'M SHOWING YOU WHAT'S BEEN MARKED AS
24 STATE'S EXHIBIT NUMBER 4. IF YOU'D TAKE A LOOK AT THAT.

25 A. UM-HUM (AFFIRMATIVE).

BRIAN TOLLISON - DIRECT EXAMINATION BY MS. TESSITORE

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1 Q. AND DO YOU RECOGNIZE THAT?

2 A. I DO.

3 Q. WHAT IS THAT?

4 A. IT'S THE PIECE OF CRACK COCAINE THAT HE HANDED ME AND
5 ALSO THE OTHER SMALLER PIECE THAT WAS FOUND IN HIS HAND
6 INCIDENT TO HIS ARREST.

7 Q. OKAY. TELL US -- TELL THE JURY ABOUT THE SECOND ROCK
8 OF CRACK COCAINE. HOW DID YOU FIND THAT ONE?

9 A. ONCE WE IDENTIFIED OURSELVES, ADVISED HIM HE WAS UNDER
10 ARREST, WE HANDCUFFED HIM. LIKE I SAID, WHEN WE HANDCUFFED
11 HIM, NOTICED HIS HAND WAS BALLED UP. ONCE HE OPENED HIS
12 HAND UP THE SMALLER OF THE TWO PIECES FELL TO THE GROUND.
13 IT WAS IMMEDIATELY SEIZED. AND I KEPT POSSESSION OF BOTH.

14 Q. NOW EARLIER WHEN YOU TESTIFIED YOU SAID THAT YOU HAD
15 ASKED TO BUY ONE ROCK OF CRACK COCAINE, IS THAT CORRECT?

16 A. THAT'S CORRECT.

17 Q. BUT, IN FACT, HE HAD TWO WHEN HE CAME OUT OF ROOM 105?

18 A. (AFFIRMATIVE NOD).

19 Q. IN YOUR TRAINING AND EXPERIENCE WHY WOULD HE HAVE HAD
20 TWO WHEN YOU ASKED FOR ONLY ONE?

21 MS. HORLBECK: CALLS FOR SPECULATION.

22 THE COURT: I'M GOING TO SUSTAIN THAT.

23 Q. WHAT HAPPENED TO THE ROCK THAT WAS IN HIS OTHER HAND?
24 WHAT DID YOU DO WITH THAT ONE?

25 A. OH, WE SEIZED IT IMMEDIATELY. I PLACED BOTH -- PLACED

BRIAN TOLLISON - DIRECT EXAMINATION BY MS. TESSITORE

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1 BOTH ROCKS INTO A SMALL ZIPLOC PLASTIC BAG THAT WE CARRY.

2 Q. OKAY. DID YOU DO ANYTHING WITH THE -- WITH THE ROCKS
3 TO DETERMINE ---

4 A. YEAH.

5 Q. OKAY. WHAT DID YOU DO?

6 A. WE HAVE A -- IT BASICALLY LOOKS LIKE A SWAB. IT'S A
7 COCAINE TEST KIT. IT WORKS THE SAME AS KIND OF THESE WET
8 NAPS. YOU TEAR IT OPEN, YOU WIPE IT ACROSS THE SUSPECTED
9 DRUG. AND IN THIS CASE WE GET A LIGHT BLUE DISCOLORATION ON
10 THE CRACK COCAINE. AND THAT INDICATES A POSITIVE TEST
11 RESULT.

12 Q. IS THAT WHAT YOU CALL FIELD TESTING?

13 A. YES, MA'AM.

14 Q. OKAY. AND DID YOU DO THAT AS TO BOTH ROCKS THERE?

15 A. YES, MA'AM, WE DID.

16 Q. AND WHAT DID YOU DO AFTER YOU DID THAT? WHAT DID YOU
17 DO WITH THE BAG?

18 A. OH, I PUT IT IN MY POCKET. I KEEP IT -- KEPT IT WITH
19 ME.

20 Q. OKAY. AND IS -- LOOKING AT STATE'S EXHIBIT NUMBER 4,
21 IS THAT IN SUBSTANTIALLY THE SAME CONDITION AS WHEN YOU SAW
22 IT ON JANUARY 10TH, 2007?

23 A. YES, MA'AM.

24 Q. OKAY. DID YOU GIVE THAT SUBSTANCE TO DEPUTY RHEA?

25 A. I DID. ONCE WE HAD TRANSPORTED THE DEFENDANT TO THE

BRIAN TOLLISON - DIRECT EXAMINATION BY MS. TESSITORE

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1 JAIL DEPUTY RHEA TOOK POSSESSION OF THE EVIDENCE SO HE COULD
2 DROP IT INTO P&E. I WENT INTO THE JAIL WITH THE DEFENDANT.

3 Q. AND WHEN YOU SAY P&E, WHAT DOES THAT STAND FOR?

4 A. IT'S PROPERTY AND EVIDENCE. IT'S WHERE WE STORE OUR --
5 OUR EVIDENCE.

6 Q. OKAY. SO THIS PERSON WHO HANDED YOU THE CRACK COCAINE,
7 DO YOU SEE THAT PERSON IN THE COURTROOM TODAY?

8 A. HE'S SITTING RIGHT THERE.

9 Q. COULD YOU DESCRIBE WHAT HE'S WEARING?

10 A. WHITE LONG SLEEVE COLLARED SHIRT.

11 MS. TESSITORE: LET THE RECORD REFLECT THAT THE WITNESS
12 HAS POINTED TO THE DEFENDANT, ROBERT GRANT.

13 Q. NOW DID YOU EVER GO BACK TO ROOM 105 AFTER HE WAS
14 SECURED?

15 A. YES, MA'AM.

16 Q. OKAY. DESCRIBE WHAT HAPPENED THERE.

17 A. WE MADE CONTACT WITH A WHITE MALE, LAST NAME OF
18 WILKINS. HE'S THE -- WAS THE RENTER OF THAT ROOM. WE ASKED
19 FOR PERMISSION TO SEARCH THAT ROOM. PERMISSION WAS GIVEN,
20 AND A SEARCH WAS CONDUCTED.

21 Q. OKAY. WERE THERE OTHER INDIVIDUALS IN THAT ROOM?

22 A. AT THE TIME I DON'T RECALL ANYONE ELSE BEING IN THERE.

23 Q. OKAY. AND DID -- DID THAT SEARCH REVEAL ANYTHING?

24 A. NO, MA'AM. WE DIDN'T FIND ANYTHING.

25 Q. WHAT WERE YOU LOOKING FOR IN THERE?

BRIAN TOLLISON - DIRECT EXAMINATION BY MS. TESSITORE

71

- 1 A. LOOKING FOR CRACK COCAINE.
- 2 Q. LET ME TAKE STATE'S EXHIBIT NUMBER 4 BACK. NOW LET ME
- 3 TAKE YOU BACK TO THE LOCATION AREA. ARE YOU FAMILIAR WITH
- 4 THE OUR LADY OF THE ROSARY SCHOOL?
- 5 A. I AM, MA'AM.
- 6 Q. OKAY. AND IT'S LOCATION WITH RESPECT TO THE INNTOWN
- 7 SUITES?
- 8 A. YEAH, I'M FAMILIAR WITH IT. IT'S 2 JAMES DRIVE IS THE
- 9 ADDRESS.
- 10 Q. OKAY. ARE YOU FAMILIAR WITH THE GROUNDS THERE?
- 11 A. YES, MA'AM, I AM.
- 12 Q. AND THE PHYSICAL LAYOUT OF IT GENERALLY?
- 13 A. I AM.
- 14 Q. OKAY. AND HOW MANY ENTRANCES OR EXITS ARE THERE AROUND
- 15 THAT SCHOOL GROUNDS AND CHURCH GROUNDS THERE?
- 16 A. THERE ARE THREE, ONE OFF OF JAMES DRIVE, ONE OFF OF
- 17 AUGUSTA. AND THEN THE OTHER IS OFF OF THE FRONTAGE ROAD,
- 18 WHICH FRONTAGE AND AUGUSTA BORDER THE PROPERTY.
- 19 Q. AND HAVE YOU DRIVEN AROUND THAT AREA BEFORE?
- 20 A. I HAVE.
- 21 Q. AS PART OF YOUR PATROLLING?
- 22 A. YES, MA'AM.
- 23 Q. OKAY. AND ARE YOU FAMILIAR WITH THE GENERAL CONTOURS
- 24 OF THE GROUNDS THERE?
- 25 A. YES, MA'AM.

BRIAN TOLLISON - DIRECT EXAMINATION BY MS. TESSITORE

72

1 Q. ONE MOMENT, PLEASE.

2 (PAUSE)

3 Q. I'M SHOWING YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT
4 NUMBER 5. A BIT BULKY AGAIN. I'M SORRY.

5 A. NO.

6 Q. DO YOU RECOGNIZE THAT?

7 A. I DO, MA'AM.

8 Q. OKAY. WHAT IS THAT?

9 A. IT'S AN OVER-FLY VIEW OF, AGAIN, THE AUGUSTA ROAD,
10 SOUTH PLEASANTBURG AREA.

11 Q. OKAY. AND HOW DID THAT PICTURE TAKEN IN ...

12 A. I'M SORRY?

13 Q. HOW WAS THAT PICTURE TAKEN?

14 A. GREENVILLE COUNTY GOVERNMENT HIRED SOMEONE SEVERAL
15 YEARS AGO TO MAKE A FLY-OVER.

16 Q. OKAY.

17 A. AND THAT'S HOW IT IS.

18 Q. AND AS THEY FLY OVER ---

19 A. BASICALLY ---

20 Q. --- MAKES A PHOTOGRAPH?

21 A. YES, MA'AM. THEY FLY OVER AND PHOTOGRAPH THE ENTIRE
22 COUNTY.

23 Q. OKAY. AND DO YOU RECOGNIZE THE ROADS ON THERE?

24 A. I DO.

25 Q. IS IT A FAIR AND ACCURATE DEPICTION OF THE AREA

BRIAN TOLLISON - DIRECT EXAMINATION BY MS. TESSITORE

73

1 INCLUDING THE OUR LADY OF THE ROSARY SCHOOL GROUNDS?

2 A. IT IS.

3 Q. AND AS WELL AS THE INNTOWN SUITES WHERE THIS INCIDENT
4 OCCURRED?

5 A. IT IS.

6 Q. OKAY.

7 MS. TESSITORE: AT THIS TIME THE STATE WOULD MOVE
8 STATE'S EXHIBIT NUMBER 5 INTO EVIDENCE.

9 MS. HORLBECK: AND I WOULD JUST MAKE THE PREVIOUS
10 OBJECTIONS.

11 THE COURT: THE SAME? OKAY. THE SAME RULING.

12 (WHEREUPON STATE'S EXHIBIT 5 WAS ENTERED INTO EVIDENCE)

13 MS. TESSITORE: OKAY.

14 Q. IF YOU COULD, DEPUTY TOLLISON, STEP DOWN. AND I'D ASK
15 YOU TO BRING THE EASEL OVER, IF YOU DON'T MIND. AND AGAIN,
16 SPEAK NICE AND LOUD. AND DESCRIBE FOR THE JURY, JUST GET
17 THEM ORIENTED, IF YOU COULD, WITH RESPECT TO WHERE THE
18 INNTOWN SUITES WAS AND WHERE THE OUR LADY OF THE ROSARY
19 CHURCH AND THE SCHOOL IS.

20 A. INNTOWN SUITES, HERE, 408 MAULDIN ROAD. OUR LADY OF
21 THE ROSARY IS THIS PROPERTY HERE, AUGUSTA ROAD, FRONTAGE
22 ROAD, AND THEN JAMES DRIVE. THE ADDRESS COMES UP AS 2 JAMES
23 DRIVE. THERE ARE THREE ENTRANCES. ONE IS HERE OFF OF
24 AUGUSTA. THERE'S ONE HERE NOW. AND THEN THERE'S ONE HERE
25 AT JAMES DRIVE.

BRIAN TOLLISON - DIRECT EXAMINATION BY MS. TESSITORE

74

1 Q. OKAY. AND I ASSUME THE SCHOOL WAS THERE ON JANUARY
2 10TH, 2007?

3 A. IT WAS. IT WAS.

4 Q. SO WITH RESPECT TO THE DISTANCE BETWEEN THE LOCATION OF
5 THE INNTOWN SUITES WHERE HE HANDED YOU THE ROCK OF CRACK
6 COCAINE AND THIS SCHOOL, DO YOU KNOW WHAT THE DISTANCE IS?

7 A. YES, MA'AM. DRIVEN, THE DISTANCE IS POINT FOUR MILES,
8 BUT IN A STRAIGHT LINE AS THE CROW FLIES IT'S ACTUALLY LESS
9 THAN -- LESS THAN THAT.

10 Q. OKAY. HOW DO YOU KNOW IT'S POINT FOUR MILES?

11 A. I'VE DRIVEN IT IN MY PATROL CAR.

12 Q. OKAY. HOW DID YOU MEASURE IT?

13 A. WITH MY ODOMETER.

14 Q. AND WAS YOUR ODOMETER WORKING IN THE PROPER CONDITION
15 AT THAT TIME?

16 A. IT IS.

17 Q. ALL RIGHT. I'LL ASK YOU TO TAKE YOUR SEAT BACK. NOW
18 GOING BACK TO WHEN YOU SECURED THE DEFENDANT WHAT HAPPENED
19 AFTER -- AFTER HE WAS ARRESTED? WHERE DID YOU GO FROM
20 THERE?

21 A. WE DROVE TO THE DETENTION CENTER, WENT INSIDE, AND DID
22 THE ARRAIGNMENT PROCESS, WENT AND TOOK HIM BEFORE THE JUDGE,
23 GOT THE APPROPRIATE WARRANTS.

24 Q. OKAY. NOW WHEN YOU -- NOW WHEN YOU -- YOU SAID WE TOOK
25 HIM BACK THERE. WHO'S WE?

BRIAN TOLLISON - DIRECT EXAMINATION BY MS. TESSITORE

75

1 A. MYSELF, DEPUTY SWIFT, DEPUTY GRICE, DEPUTY RHEA. WE
2 WERE ALL IN THE SAME VEHICLE.

3 Q. SO Y'ALL TOOK HIM BACK TO THE LAW ENFORCEMENT CENTER.
4 AND THIS BOOKING PROCESS THAT YOU'RE TALKING ABOUT, IS THIS
5 PART OF YOUR ORDINARY DUTIES?

6 A. OH, YES, MA'AM. IT'S A MUST.

7 Q. OKAY. AND WHAT HAPPENED -- DESCRIBE WHEN YOU TOOK HIM
8 INTO THE SALLY-PORT. FIRST OF ALL, WHAT IS A SALLY-PORT?

9 A. THE SALLY-PORT IS A -- IT'S AN ENTRY POINT WITH TWO
10 DOORS. THEY'LL OPEN ONE DOOR AND ALLOW US IN AND SHUT THE
11 DOOR BEHIND US AND THEN OPEN THE OTHER DOOR AND THE
12 DETENTION PEOPLE COME IN. IT'S BASICALLY A DOOR TO KEEP
13 PEOPLE FROM ESCAPING. AND THERE'S NEVER TWO DOORS OPEN AT
14 ONE TIME. IT'S ALWAYS ONE DOOR OPEN, ONE DOOR CLOSED.

15 Q. AND DID YOU GO INTO THAT AREA?

16 A. OH, WE DID, MYSELF AND DEPUTY SWIFT.

17 Q. WHO WAS IT?

18 A. MYSELF AND DEPUTY SWIFT WITH THE DEFENDANT.

19 Q. AND WHAT HAPPENED AS YOU WENT IN THERE?

20 A. WENT IN. DETENTION PERSONNEL, THEY'LL COME IN. THEY
21 WILL SEARCH THE PRISONERS TO MAKE SURE THERE'S NO
22 CONTRABAND, NO WEAPONS. AFTER THEY GIVE US THE OKAY, WE
23 TAKE THE HANDCUFFS OFF. WHEN WE DID, THAT IS WHEN THE
24 DEFENDANT TURNED AND HE BALLED HIS FIST UP AND KIND OF BOWED
25 UP, SAID, I'LL WHIP YOUR ASS IN HERE.

BRIAN TOLLISON - CROSS EXAMINATION BY MS. HORLBECK

76

1 Q. OKAY. AND WHEN HE -- WHAT DID YOU DO IN RESPONSE TO
2 THAT?

3 A. I IMMEDIATELY GRABBED HIS ARM AND PUT A HANDCUFF ON IT
4 AND TURNED IT BACK TOWARDS THE WALL. WELL, AS I DID THAT HE
5 STARTED TURNING AGAIN TOWARDS ME. AND THE DETENTION GUARD
6 WAS ABLE TO GRAB AHOLD OF HIS RIGHT ARM TO PREVENT HIM FROM
7 TURNING.

8 Q. AND WERE YOU ABLE TO GAIN CONTROL AT THAT POINT?

9 A. YES, MA'AM. WE HANDCUFFED HIM AGAIN. TOOK HIM BACK
10 OUT TO THE MAGISTRATE, EXPLAINED THE SITUATION TO THE
11 MAGISTRATE AND OBTAINED ANOTHER WARRANT.

12 Q. OKAY. AND THAT WARRANT WAS FOR?

13 A. THE THREATENING A PUBLIC OFFICIAL.

14 Q. AND SPECIFICALLY THE THREAT THAT HE SAID WAS?

15 MS. HORLBECK: ASKED AND ANSWERED.

16 THE COURT: THAT'S ALL RIGHT. OVERRULED. GO AHEAD.

17 Q. SPECIFICALLY WHAT DID HE SAY TO YOU?

18 A. I'LL WHIP YOUR ASS IN HERE.

19 Q. DID YOU HAVE ANY OTHER INVOLVEMENT IN THIS CASE?

20 A. NO, MA'AM, OTHER THAN TAKING HIM BACK INTO THE SALLY-
21 PORT AND TURNING HIM OVER TO DETENTION PERSONNEL.

22 Q. ONE MOMENT, PLEASE. ANSWER ANY QUESTIONS THAT MS.
23 HORLBECK MIGHT HAVE FOR YOU. THANK YOU.

24 CROSS EXAMINATION BY MS. HORLBECK:

25 Q. DEPUTY, YOU'VE BEEN A DEPUTY FOR SEVEN YEARS, IS THAT

BRIAN TOLLISON - CROSS EXAMINATION BY MS. HORLBECK

77

1 FAIR TO SAY?

2 A. YES, MA'AM.

3 Q. AND YOU'VE COMPLETED, IS IT, OVER EIGHTY HOURS ON THE
4 DIRECTED PATROL UNIT? IS THAT WHAT YOU TESTIFIED?

5 A. NO, MA'AM. I'VE BEEN ON THE DIRECTED PATROL UNIT FOR
6 OVER THREE YEARS. THERE WAS AN EIGHTY HOUR BASIC NARCOTICS

7 ---

8 Q. I'M SORRY.

9 A. --- COURSE THAT DEA PROVIDED FOR US.

10 Q. OKAY. SO YOU'VE BEEN TRAINED FOR EIGHTY HOURS IN A
11 NARCOTICS COURSE OFFERED BY THE DEA?

12 A. YEAH, BASIC, YES, COURSE.

13 Q. OKAY. AND BEFORE THAT YOU WENT TO THE -- AND I'M SORRY
14 IF I'M MESSING UP THE NAME, BUT YOU WENT TO THE -- I KNOW
15 IT'S NOT -- I KNOW IT'S GOT A MORE OFFICIAL NAME, BUT FOR
16 LACK OF A BETTER TERM, THE POLICE ACADEMY?

17 A. YEAH, THE CRIMINAL JUSTICE ACADEMY IN COLUMBIA.

18 Q. ALL RIGHT. HOW LONG DID YOU GO THROUGH THAT TRAINING
19 IN COLUMBIA?

20 A. IT'S AN EIGHT WEEK.

21 Q. SAY THAT AGAIN.

22 A. EIGHT WEEK COURSE.

23 Q. OKAY. AND IN THAT TRAINING DO THEY TEACH YOU THE
24 BASICS OF INVESTIGATION?

25 A. VERY BASICS.

BRIAN TOLLISON - CROSS EXAMINATION BY MS. HORLBECK

78

- 1 Q. AND THEY TEACH YOU THE BASICS OF WRITING REPORTS?
- 2 A. UM-HUM (AFFIRMATIVE).
- 3 Q. THEY CERTAINLY TEACH YOU TO INCLUDE ALL THE IMPORTANT
- 4 FACTS IN REPORTS?
- 5 A. UM-HUM (AFFIRMATIVE).
- 6 Q. IS THAT A YES? I JUST ---
- 7 A. CORRECT.
- 8 Q. --- NEED YOU TO ANSWER FOR THE RECORD.
- 9 A. OH, YEAH.
- 10 Q. OKAY. SO THAT WAS A YES?
- 11 A. YES.
- 12 Q. OKAY. THEY TEACH YOU THE IMPORTANCE OF ACCURATE RECORD
- 13 KEEPING, IS THAT TRUE?
- 14 A. THEY DO.
- 15 Q. AND THEY TEACH YOU TO KEEP YOUR REPORTS ACCURATE
- 16 BECAUSE PEOPLE RELY ON THOSE REPORTS, ISN'T THAT TRUE?
- 17 A. UM-HUM (AFFIRMATIVE).
- 18 Q. THE COURTS RELY ON THOSE REPORTS, CORRECT?
- 19 A. CORRECT.
- 20 Q. AND THE JURY RELIES ON THOSE REPORTS, DON'T THEY?
- 21 A. UM-HUM (AFFIRMATIVE).
- 22 Q. ALL RIGHT. AND IF YOU KNOW THIS, HOW LONG DO YOU THINK
- 23 THE GREENVILLE COUNTY SHERIFF'S OFFICE HAS BEEN IN
- 24 EXISTENCE? JUST APPROXIMATELY?
- 25 A. I DON'T KNOW THE APPROXIMATE ---

BRIAN TOLLISON - CROSS EXAMINATION BY MS. HORLBECK

79

1 Q. IS IT ---

2 THE COURT: WAIT A MINUTE. WAIT A MINUTE. WHAT'S YOUR
3 OBJECTION?

4 MS. TESSITORE: WELL, SHE'S ASKING HIM HOW LONG HE
5 THINKS THEY'VE BEEN -- THE GREENVILLE COUNTY SHERIFF'S
6 OFFICE HAS BEEN IN EXISTENCE. I THINK THE QUESTION IS DOES
7 HE KNOW, IF HE DOES ---

8 THE COURT: THAT'S ALL RIGHT. GO AHEAD. GO AHEAD.
9 OVERRULED.

10 Q. IS IT FAIR TO SAY THE GREENVILLE COUNTY SHERIFF'S
11 OFFICE HAS BEEN IN EXISTENCE FOR QUITE SOME TIME?

12 A. I DON'T KNOW WHAT QUITE SOME TIME -- I DON'T KNOW THE
13 ANSWER TO YOUR QUESTION.

14 Q. FIFTY YEARS? TWENTY ---

15 A. FIFTY YEARS, YES.

16 Q. OKAY. ALL RIGHT. WOULD YOU SAY THAT'S QUITE SOME
17 TIME?

18 A. IT'S FIFTY YEARS, ---

19 Q. AT LEAST FIFTY ---

20 A. --- MORE THAN FIFTY.

21 Q. --- YEARS? OKAY. AND IS IT FAIR TO SAY THAT THE
22 SHERIFF'S OFFICE HAS A PARTICULAR METHOD OF KEEPING RECORDS,
23 DON'T THEY?

24 A. WE HAVE OPERATING PROCEDURES, YES.

25 Q. ALL RIGHT. AND THEY HAVE A PARTICULAR METHOD THAT THEY

BRIAN TOLLISON - CROSS EXAMINATION BY MS. HORLBECK

80

1 FOLLOW WHEN YOU'RE USING GREENVILLE COUNTY FUNDS IN AN
2 UNDERCOVER BUY, DON'T THEY?

3 A. WE DO.

4 Q. ALL RIGHT. WELL, WHAT IS THAT -- WHAT IS THAT
5 PARTICULAR PROCEDURE THAT THE GREENVILLE COUNTY SHERIFF'S
6 OFFICE DIRECTS THAT YOU USE WHEN YOU'RE USING COUNTY FUNDS
7 IN A UNDERCOVER BUY?

8 A. YOU WOULD -- YOU WOULD DOCUMENT THE FACT THAT YOU USED
9 THE FUNDS, THE P&E SHEETS THAT YOU TAKE FROM -- WHEN YOU
10 DROP THE DOPE THERE'S A GREEN COPY, THAT -- YOU WOULD PUT
11 THAT WITH THE -- IN THE FILE THAT YOU WOULD KEEP THE MONEY
12 IN SHOWING THAT THOSE FUNDS WERE USED TO BUY THAT AMOUNT OF
13 DRUGS.

14 Q. OKAY. AND THE SIMPLE REASON FOR THAT RECORD KEEPING IS
15 THAT MONEY DOESN'T BELONG TO YOU, DOES IT?

16 A. NO, IT DOESN'T.

17 Q. AND ON THOSE P&E SHEETS YOU WOULD RECORD THE SERIAL
18 NUMBERS OF THE MONEY YOU USED, CORRECT?

19 A. NO, NOT NECESSARILY.

20 Q. IS IT UNUSUAL FOR THOSE SERIAL NUMBERS TO BE RECORDED?

21 A. IT DEPENDS ON THE DEPUTY.

22 Q. RIGHT. THE SERIAL NUMBERS ON THE -- ON THE BILLS,
23 THOSE HELP TRACK THE MONEY, CORRECT?

24 A. NO. WHAT THEY DO IS PROVIDE YOU WITH EVIDENCE IF YOU
25 HAPPEN TO RECOVER THE MONEY.

BRIAN TOLLISON - CROSS EXAMINATION BY MS. HORLBECK

81

1 Q. CORRECT. AND IF YOU USE MONEY WITH A PARTICULAR SERIAL
2 NUMBER ON IT AND YOU WRITE THE SERIAL NUMBER DOWN, AND WHEN
3 YOU FIND THE MONEY YOU COULD USE THAT SERIAL NUMBER TO TRACK
4 THE MONEY, CORRECT?

5 A. NO, YOU CAN USE THAT AS EVIDENCE AGAINST THE PERSON YOU
6 FIND THE MONEY ON. AS FAR AS TRACKING THE MONEY, NO. WHAT
7 YOU DO IS, THEY DRAW MONEY, SAY THREE HUNDRED DOLLARS. NOW
8 OUR SERGEANT HANDLES THAT. AND MASTER DEPUTY RHEA HANDLES
9 THAT. BUT THEY DRAW THE MONEY, AND THEN THEY ISSUE THE
10 MONEY OUT. YOU GOT TWENTY DOLLARS. IF YOU USE THAT MONEY,
11 I NEED A P&E SHEET BACK FROM YOU THAT SAYS I SPENT TWENTY
12 DOLLARS ON THIS AMOUNT OF CRACK.

13 Q. ALL RIGHT. EACH DOLLAR BILL HAS A SERIAL NUMBER,
14 CORRECT?

15 A. CORRECT.

16 Q. THAT SERIAL NUMBER IS SPECIFIC TO EACH DOLLAR BILL OR
17 IN YOUR CASE A TWENTY DOLLAR BILL, CORRECT?

18 A. CORRECT. UM-HUM (AFFIRMATIVE).

19 Q. ALL RIGHT. THAT SERIAL NUMBER IS SPECIFIC TO THAT
20 TWENTY DOLLAR BILL, CORRECT?

21 A. CORRECT.

22 Q. OKAY. IF YOU -- IN A CONTROLLED BUY YOU WOULD HAVE A
23 TWENTY DOLLAR BILL, CORRECT?

24 A. WE HAD A TWENTY.

25 Q. THAT TWENTY DOLLAR BILL THAT YOU USED HAD A SERIAL

BRIAN TOLLISON - CROSS EXAMINATION BY MS. HORLBECK

82

- 1 NUMBER, CORRECT?
- 2 A. YES, IT DID.
- 3 Q. ALL RIGHT. AND THEN WHEN YOU FIND THAT TWENTY DOLLAR
- 4 BILL YOU CAN LOOK AT THE SERIAL NUMBER AND SEE IF IT'S THE
- 5 SAME MONEY YOU USED, CORRECT?
- 6 A. CORRECT.
- 7 Q. SO YOU CAN TRACK THE MONEY, ---
- 8 A. UM-HUM (AFFIRMATIVE).
- 9 Q. --- CORRECT? AND YOU CAN SEE WHERE THE MONEY'S BEEN
- 10 AND WHO'S GOT IT NOW, CORRECT?
- 11 A. THAT'S CORRECT.
- 12 Q. AND YOU CAN USE THAT SERIAL NUMBER TO SEE IF THAT MONEY
- 13 STARTED OFF FROM YOU GUYS OR NOT, CORRECT?
- 14 A. CORRECT.
- 15 Q. AND YOU CAN USE THAT SERIAL NUMBER TO DETERMINE IF
- 16 SOMEONE ON TRIAL HAS THAT MONEY ON THEM, CORRECT?
- 17 A. CORRECT.
- 18 Q. ALL RIGHT. AND YOU SAID THAT A P&E SHEET HAS TO BE
- 19 FILLED OUT AND PLACED IN A FOLDER, CORRECT?
- 20 A. YEAH, THE COPY, THE OFFICER'S COPY ---
- 21 Q. ALL RIGHT.
- 22 A. --- GOES IN ---
- 23 Q. AND IN YOUR CASE NO P&E SHEET WAS EVER FILLED OUT?
- 24 A. YES, IT WAS.
- 25 Q. DO YOU HAVE IT TODAY?

BRIAN TOLLISON - CROSS EXAMINATION BY MS. HORLBECK

83

1 A. NO, SHE HAS IT ON THE DESK.

2 Q. DO YOU HAVE A P&E SHEET WITH THE TWENTY DOLLAR BILL
3 SERIAL NUMBER ON IT?

4 A. NO.

5 Q. OKAY.

6 A. LIKE I SAID, WE DIDN'T RECORD IT.

7 Q. ALL RIGHT. THE SERIAL NUMBER WAS NOT RECORDED?
8 CORRECT?

9 A. CORRECT.

10 Q. THE P&E SHEET WITH THAT TWENTY DOLLAR BILL ON IT WAS
11 NOT RECORDED, CORRECT?

12 A. WE DON'T JUST DO THAT. THE P&E SHEET, THE OFFICER'S
13 COPY OF THE P&E SHEET THAT THE DOPE WAS BOUGHT -- THE DOPE
14 WAS DROPPED IS PUT IN THE FILE, THE SAME FILE THAT THE MONEY
15 COMES IN. THAT SHOWS WE'RE MISSING TWENTY DOLLARS, HERE'S
16 THE P&E SHEET WITH THE DOPE ON IT, HERE'S THE CASE NUMBER,
17 THEY SPENT THE TWENTY DOLLARS HERE.

18 Q. DO YOU HAVE A P&E SHEET WITH THE SERIAL NUMBER OF THIS
19 TWENTY DOLLAR BILL ON IT?

20 A. NO, WE DON'T.

21 Q. BECAUSE YOU DIDN'T RECORD IT?

22 A. WE DIDN'T RECORD IT.

23 Q. AND THERE'S NO FOLDER WITH ANY P&E SHEET ON IT WITH ANY
24 TWENTY DOLLAR BILL USED BY YOURSELF, CORRECT?

25 A. WITH A SERIAL NUMBER FOR THAT DOLLAR, ---

BRIAN TOLLISON - CROSS EXAMINATION BY MS. HORLBECK

84

1 Q. YES.

2 A. --- FOR THAT TWENTY DOLLAR BILL?

3 Q. THE MONEY YOU ALLEGEDLY USED.

4 A. NO.

5 Q. SO THERE'S ABSOLUTELY NO -- NO RECORD WHATSOEVER OF ANY
6 MONEY THAT WAS EVER USED, ALLEGEDLY USED BY YOURSELVES ON
7 THAT NIGHT?

8 A. JUST THE MONEY THAT DEPUTY RHEA GAVE ME.

9 Q. YOU DON'T HAVE IT, DO YOU?

10 A. NO, WE DIDN'T ---

11 Q. AND YOU DON'T HAVE THE SERIAL NUMBER, DO YOU?

12 A. NO, ---

13 Q. ALL RIGHT.

14 A. --- WE DON'T HAVE IT.

15 Q. YOU ALSO DON'T HAVE A P&E SHEET WITH ---

16 MS. TESSITORE: OBJECTION, YOUR HONOR. THIS HAS BEEN
17 ASKED AND ANSWERED AT LEAST TWICE ALREADY.

18 THE COURT: ALL RIGHT. LET'S -- OKAY.

19 MS. HORLBECK: WELL, YOUR HONOR, I'M JUST HAVING A HARD
20 TIME GETTING AN ANSWER OUT OF HIM. I WOULD JUST ASK THAT HE
21 ANSWER ---

22 THE COURT: OKAY. WELL, GO AHEAD. JUST RESPOND TO HER
23 QUESTIONS AND THEN LET'S MOVE TO THE NEXT SUBJECT.

24 Q. YOU DON'T HAVE A P&E SHEET WITH ANY OF THAT
25 INFORMATION, DO YOU?

BRIAN TOLLISON - CROSS EXAMINATION BY MS. HORLBECK

85

1 A. NO, WE DON'T.

2 Q. ALL RIGHT. AND YOU SAID THAT THE DIRECTED PATROL UNIT
3 WAS KIND OF A NEW UNIT?

4 A. NO, MA'AM, I DIDN'T.

5 Q. WHAT DID YOU TESTIFY TO?

6 A. I SAID THAT WE HAD JUST STARTED GETTING MONEY TO MAKE
7 BUYS WITH. THAT'S NEW TO OUR UNIT.

8 Q. OKAY. BUT YOU'VE ALREADY TESTIFIED THE GREENVILLE
9 COUNTY SHERIFF'S OFFICE HAS BEEN IN EXISTENCE FOR QUITE SOME
10 TIME, CORRECT?

11 A. CORRECT.

12 Q. ALL RIGHT. YOU ALSO TESTIFIED THAT YOU'VE DONE ABOUT
13 TWENTY BUYS IN YOUR EXPERIENCE, UNDERCOVER BUYS?

14 A. CORRECT.

15 Q. ALL RIGHT. AND IN UNDERCOVER BUYS YOU CERTAINLY KNOW
16 THAT YOU HAVE THE ABILITY TO RECORD CONVERSATIONS, DON'T
17 YOU?

18 A. GENERALLY WE DO, YEAH.

19 Q. OKAY.

20 A. WHEN WE'RE RUNNING A CONFIDENTIAL INFORMANT WE DO.

21 Q. OKAY. BUT YOU HAVE THAT ABILITY TO RECORD A
22 CONVERSATION IF YOU WANT TO, DON'T YOU?

23 A. WE DO HAVE THE EQUIPMENT.

24 Q. OKAY. AND THE EQUIPMENT IS A -- IS THE -- IS A WIRE
25 WHERE THE -- WHERE SOMEONE IS WIRED UP? EXPLAIN THE

BRIAN TOLLISON - CROSS EXAMINATION BY MS. HORLBECK

86

1 EQUIPMENT ---

2 A. THAT'S CORRECT.

3 Q. --- THAT YOU USE TO THE JURY.

4 A. IT'S A WIRE. SO IT SENDS A SIGNAL TO A CAR NEARBY
5 WHERE WE HAVE A RECEIVER.

6 Q. OKAY. AND THE WIRE GOES WHERE THE WEARER GOES,
7 CORRECT?

8 A. CORRECT.

9 Q. ALL RIGHT. DO YOU ALSO HAVE A SMALL RECORDING DEVICE
10 THAT SOMEONE CAN CARRY IF THEY DON'T WANT TO BE WIRED UP?

11 A. NO, WE DON'T.. NOT OUR UNIT.

12 Q. YOU JUST HAVE A WIRE?

13 A. YES. WE HAVE A, ---

14 Q. AND YOU MENTIONED THAT THE ---

15 A. --- ONE WIRE.

16 Q. I'M SORRY. GO AHEAD.

17 A. JUST ONE WIRE.

18 Q. YOU MENTIONED THAT THE WIRE SENDS A SIGNAL TO A DEVICE
19 IN A NEARBY AUTOMOBILE, CORRECT?

20 A. CORRECT.

21 Q. AND YOU HAD A NEARBY AUTOMOBILE IN THE PARKING LOT OF
22 THE STEAK-OUT, CORRECT?

23 A. UM-HUM (AFFIRMATIVE).

24 Q. ALL RIGHT. BUT YOU GUYS -- NO ONE OUT OF THE FOUR OF
25 YOU WAS WEARING A WIRE THAT NIGHT, CORRECT?

BRIAN TOLLISON - CROSS EXAMINATION BY MS. HORLBECK

87

1 A. NO ONE.

2 Q. SO NO SIGNAL WOULD HAVE BEEN TRANSMITTED FROM THE WIRE
3 TO THE -- A NEARBY -- THE NEARBY VEHICLE AT THE STEAK-OUT,
4 CORRECT?

5 A. YEAH. NO ONE HAD A WIRE.

6 Q. AND YOU ALL HAVE NO -- YOU HAVE NO RECORDING OF THIS
7 ALLEGED TRANSACTION WHATSOEVER?

8 A. NO.

9 Q. ALL RIGHT. YOU ALSO HAVE THE ABILITY TO VIDEO TAPE
10 TRANSACTIONS OR A STOP OR A CONTROLLED BUY, DON'T YOU?

11 A. NO, NOT OUR UNIT.

12 Q. BUT THAT TECHNOLOGY ACTUALLY EXISTS, DOESN'T IT?

13 A. I WOULD HAVE TO SPECULATE IT DOES. WE DON'T HAVE ANY
14 WITH OUR UNIT.

15 Q. YOUR UNIT IS PART OF THE GREENVILLE COUNTY SHERIFF'S
16 OFFICE?

17 A. THAT'S TRUE.

18 Q. OKAY. THE GREENVILLE COUNTY SHERIFF'S OFFICE HAS THAT
19 TECHNOLOGY, DON'T THEY?

20 A. I WOULD ASSUME OUR NARCOTICS INVESTIGATORS HAVE THAT,
21 BUT OUR UNIT DOESN'T.

22 Q. OKAY. YOUR UNIT AND THE NARCOTICS INVESTIGATORS, Y'ALL
23 ARE ALL UNDER THE UMBRELLA OF THE GREENVILLE COUNTY
24 SHERIFF'S OFFICE, CORRECT?

25 A. THAT'S CORRECT.

BRIAN TOLLISON - CROSS EXAMINATION BY MS. HORLBECK

88

1 Q. OKAY. AND Y'ALL HAVE VEHICLES THAT ARE EQUIPPED WITH
2 VIDEO SURVEILLANCE, CORRECT?

3 A. NO, THAT'S NOT CORRECT. WE DON'T HAVE ANY VEHICLES
4 EQUIPPED LIKE THAT.

5 Q. NO ONE IN THE SHERIFF'S OFFICE HAS A VEHICLE THAT'S
6 EQUIPPED WITH VIDEO SURVEILLANCE?

7 A. NO ONE IN THE DIRECTED PATROL UNIT HAS A VEHICLE
8 EQUIPPED WITH THAT.

9 Q. BUT SOMEONE IN THE SHERIFF'S OFFICE HAS A VIDEO THAT'S
10 EQUIPPED WITH VIDEO SURVEILLANCE, CORRECT?

11 A. I DON'T KNOW, MA'AM. THEY COULD.

12 Q. YOU'VE ONLY BEEN PART OF THE DIRECTED PATROL UNIT FOR A
13 FEW YEARS, CORRECT?

14 A. THREE YEARS.

15 Q. AND BEFORE THAT YOU WERE WITH -- YOU WERE JUST PART OF
16 THE GENERAL SHERIFF'S DEPARTMENT?

17 A. I WAS.

18 Q. OKAY. BUT YOU DON'T HAVE ANY IDEA WHETHER OR NOT THE
19 PATROL CARS THAT Y'ALL USE ARE EQUIPPED WITH ---

20 A. SURE, PATROL CARS. I THOUGHT YOU WERE TALKING ABOUT
21 UNDERCOVER CARS. PATROL CARS HAVE CAMERAS IN THEM.

22 Q. OKAY. PATROL CARS HAVE CAMERAS IN THEM, BUT YOU'RE NOT
23 SURE IF THE NARCOTICS CARS HAVE CAMERAS IN THEM?

24 A. I DON'T WORK IN THAT UNIT, MA'AM.

25 Q. BUT Y'ALL ARE ALL UNDER THE SAME UMBRELLA OF THE

BRIAN TOLLISON - CROSS EXAMINATION BY MS. HORLBECK

89

1 GREENVILLE COUNTY SHERIFF'S ---

2 A. I DON'T ---

3 Q. --- OFFICE, CORRECT?

4 A. WE DON'T WORK WITH THEM. A VERY LIMITED BASIS.

5 Q. WHO PAYS YOU?

6 A. THEY DON'T TAKE US OUT ON THEIR BUYS, AND THEY DON'T GO
7 OUT ON OUR BUYS.

8 Q. WHO PAYS YOU? WHO WRITES YOUR CHECK?

9 A. THE GREENVILLE COUNTY SHERIFF'S OFFICE DOES.

10 Q. OKAY. ALL RIGHT. IN ANY CASE, YOU DON'T HAVE A VIDEO
11 OF ANYTHING -- OF ANY ALLEGED TRANSACTION, DO YOU?

12 A. NO, MA'AM.

13 Q. AND YOU HAD A CAR NEARBY WITH SOME OF YOUR OTHER
14 OFFICERS IN THAT CAR, DIDN'T YOU?

15 A. YES, MA'AM.

16 Q. BUT THERE'S ABSOLUTELY NO VIDEO IN THIS CASE OF ANY
17 TRANSACTION THAT OCCURRED THAT NIGHT?

18 A. NO, MA'AM, THERE ISN'T.

19 Q. ALL RIGHT. ROOM 105, WHO -- WHAT IS THE NAME OF THE
20 PERSON WHO RENTED ROOM 105?

21 A. THE LAST NAME IS WILKINS.

22 Q. CAN YOU SPELL THAT?

23 A. W-I-L-K-I-N-S.

24 Q. OKAY. DID YOU TAKE A STATEMENT FROM THAT PERSON?

25 A. NO, I DIDN'T.

BRIAN TOLLISON - CROSS EXAMINATION BY MS. HORLBECK

90

- 1 Q. DID YOU SEARCH THAT PERSON?
- 2 A. YES, WE DID.
- 3 Q. DID YOU FIND ANYTHING ON HIM?
- 4 A. NO DRUGS.
- 5 Q. DID YOU GET AN ADDRESS?.
- 6 A. NO.
- 7 Q. IS THAT PERSON -- IS MR. WILKINS HERE TODAY TO TESTIFY?
- 8 A. NO, HE'S NOT.
- 9 Q. ALL RIGHT. AND YOU ALSO TESTIFIED THAT YOU SEARCHED
- 10 ROOM 105. DID YOU FIND ANY LARGE QUANTITY OF DRUGS IN THAT
- 11 ROOM?
- 12 A. NO, WE DIDN'T.
- 13 Q. DID YOU FIND ANY MONEY WHATSOEVER IN THAT ROOM?
- 14 A. I DON'T REMEMBER ANY LARGE SUMS OF MONEY, BUT THERE
- 15 COULD HAVE BEEN SOME MONEY.
- 16 Q. DID YOU ---
- 17 A. I JUST DON'T RECALL.
- 18 Q. DO YOU HAVE ANY MONEY HERE TODAY?
- 19 A. NO, MA'AM.
- 20 Q. OKAY. SO YOU DON'T RECALL IF ANY MONEY WAS FOUND, BUT
- 21 YOU DON'T HAVE ANY HERE TODAY TO PUT INTO EVIDENCE, DO YOU?
- 22 A. NO, MA'AM. WE NEVER RECOVERED ANY MONEY OFF THE
- 23 DEFENDANT.
- 24 Q. ALL RIGHT. AND YOU DIDN'T RECOVER ANY MONEY OFF OF
- 25 THIS MR. WILKINS, DID YOU?

BRIAN TOLLISON - CROSS EXAMINATION BY MS. HORLBECK

91

1 A. NO, MA'AM. WE COULDN'T IDENTIFY THE TWENTY DOLLAR BILL
2 BECAUSE WE DIDN'T WRITE THE SERIAL NUMBER DOWN.

3 Q. OKAY. BUT YOU DIDN'T RECOVER ANYTHING OFF OF HIM, DID
4 YOU?

5 A. NO, WE DIDN'T.

6 Q. OKAY. HE WAS NOT ARRESTED?

7 A. NO.

8 Q. MR. WILKINS WAS NOT ARRESTED?

9 A. HE WAS NOT.

10 Q. OKAY. WAS ANYONE ELSE ARRESTED IN CONNECTION WITH THIS
11 BESIDES MY CLIENT?

12 A. THIS CASE?

13 Q. UM-HUM (AFFIRMATIVE).

14 A. NO, JUST YOUR CLIENT.

15 Q. ALL RIGHT. DID YOU FIND ANY SCALES COMMONLY ASSOCIATED
16 WITH WEIGHING OUT DRUGS?

17 A. NO, MA'AM.

18 Q. DID YOU FIND ANY BAGGIES ASSOCIATED WITH BAGGING UP
19 DRUGS?

20 A. NOT THAT I RECALL.

21 Q. DID YOU -- YOU DIDN'T FIND ANY LARGE SUM OF MONEY ON
22 MR. GRANT, DID YOU?

23 A. NO. WHAT I RECALL HE DIDN'T HAVE ANY MONEY.

24 Q. ALL RIGHT. AND YOU DON'T HAVE ANY FINGERPRINT EVIDENCE
25 TO LINK MY CLIENT TO THIS ALLEGED TRANSACTION?

BRIAN TOLLISON - CROSS EXAMINATION BY MS. HORLBECK

92

1 A. NO. I DON'T THINK THEY CAN GET FINGERPRINTS OFF THE
2 CRACK.

3 Q. DID ANYBODY TRY?

4 A. I DON'T THINK SO.

5 Q. OKAY. NOW WHEN YOU ALL GOT TO THE -- WHEN YOU TOOK MR.
6 GRANT TO THE DETENTION CENTER YOU SAID THAT MR. GRANT SAID
7 SOME THINGS. AFTER THAT YOU CUFFED HIM RIGHT AWAY, DIDN'T
8 YOU?

9 A. WHICH PART ARE YOU TALKING ABOUT?

10 Q. YOU SAID THAT MR. GRANT SAID SOME THINGS TO YOU, SOME
11 THINGS ---

12 A. YOU TALKING ABOUT WHEN HE THREATENED ME IN THE SALLY-
13 PORT?

14 Q. THAT'S WHAT YOU TESTIFIED TO.

15 A. OKAY. YEAH.

16 Q. ALL RIGHT. AFTER THAT DID YOU CUFF HIM?

17 A. I GOT ONE CUFF ON HIM.

18 Q. OKAY. AND WAS THERE A DETENTION OFFICER THERE?

19 A. YES, THERE WAS.

20 Q. AND THAT DETENTION OFFICER PREVENTED MR. GRANT FROM
21 MOVING ANY FURTHER, CORRECT?

22 A. THE DETENTION OFFICER STEPPED OVER AND GRABBED THE
23 RIGHT ARM.

24 Q. OKAY. WAS IT NECESSARY TO TASE MR. GRANT OR SHOCK HIM
25 IN ANY WAY?

BRIAN TOLLISON - CROSS EXAMINATION BY MS. HORLBECK

93

1 A. NO, WE'RE NOT ALLOWED TO TAKE TASERS INTO THE DETENTION
2 CENTER.

3 Q. ALL RIGHT. DO YOU HAVE THE NAME OF THE DETENTION
4 OFFICER?

5 A. NO, MA'AM.

6 Q. YOU DON'T HAVE -- DID YOU GET A STATEMENT FROM THE
7 DETENTION OFFICER?

8 A. UH-UH (NEGATIVE). DID NOT.

9 Q. THESE PHOTOGRAPHS, DID YOU TAKE THESE PHOTOGRAPHS?

10 A. NO, MA'AM.

11 Q. AND BY THESE I MEAN STATE'S EXHIBIT 1, AND I THINK THIS
12 IS 2. DO YOU HAVE ANY IDEA OF WHO TOOK THOSE PHOTOGRAPHS?

13 A. NO, MA'AM.

14 Q. YOU DON'T HAVE A NAME TO PRESENT US?

15 A. NO, MA'AM. SOMEONE IN THE GOVERNMENT HIRED SOMEONE TO
16 TAKE THEM. I DON'T KNOW. THEY'RE ON THE COUNTY WEBSITE.

17 Q. DO YOU HAVE ANY IDEA HOW OLD THOSE PHOTOGRAPHS ARE?

18 A. NO, MA'AM.

19 Q. IS IT POSSIBLE THAT THEY'RE SEVERAL YEARS OLD?

20 A. IT'S POSSIBLE.

21 Q. COULD THEY BE FIVE YEARS OLD?

22 A. I DON'T KNOW.

23 Q. SO YOU REALLY DON'T KNOW IF THE THINGS IN THESE
24 PHOTOGRAPHS ARE EVEN -- IF THEY'RE REALLY ACCURATE OR NOT?

25 MS. TESSITORE: OBJECTION, YOUR HONOR. HE'S ALREADY

BRIAN TOLLISON - CROSS EXAMINATION BY MS. HORLBECK

94

1 TESTIFIED THAT IT WAS A FAIR AND ACCURATE DEPICTION OF THE
2 AREA AS HE -- WHEN HE WAS THERE ON JANUARY 10, 2007.

3 MS. HORLBECK: AND ---

4 THE COURT: OKAY. WELL, IT'S CROSS EXAMINATION AND SHE
5 CAN EXPLORE THAT. THANK YOU.

6 Q. DO YOU EVEN KNOW IF THE REPRESENTATIONS IN THESE
7 PHOTOGRAPHS, IF THEY'RE FROM THREE YEARS AGO, DO YOU EVEN
8 KNOW IF THEY'RE THE SAME THINGS YOU WERE DEALING WITH AND
9 LOOKING AT THAT NIGHT?

10 A. ARE YOU ASKING ME IF THE BUILDINGS ARE STILL -- WERE
11 THERE THAT NIGHT?

12 Q. I'M ASKING YOU -- YOU TESTIFIED THAT YOU DIDN'T KNOW
13 HOW OLD THESE PHOTOGRAPHS WERE.

14 A. OKAY.

15 Q. AND I'M ASKING YOU IF YOU DON'T KNOW HOW OLD THEY ARE
16 DO YOU EVEN KNOW IF THEY'RE A FAIR AND ACCURATE
17 REPRESENTATION OF WHAT YOU WERE DEALING WITH THAT NIGHT?

18 A. YES, MA'AM. ON THAT NIGHT THE INN TOWN SUITES WAS WHERE
19 IT'S AT EXACTLY IN THAT PHOTOGRAPH. OUR LADY THE ROSARY HAS
20 ALWAYS BEEN THERE. IT'S STILL THERE. IT WAS THERE A YEAR
21 AGO. IT WAS THERE SEVEN YEARS AGO WHEN I FIRST STARTED
22 WORKING THAT AREA AS A UNIFORM DEPUTY.

23 Q. DID YOU TAKE THOSE PHOTOGRAPHS?

24 A. NO, I DIDN'T.

25 Q. DO YOU KNOW WHO TOOK THEM?

BRIAN TOLLISON - CROSS EXAMINATION BY MS. HORLBECK

95

1 A. NO, I DON'T.

2 Q. ALL RIGHT. AND I THINK YOU TESTIFIED THAT THE ADDRESS
3 ON THE SCHOOL -- WHAT WAS THE ADDRESS ON THE SCHOOL THAT YOU
4 TESTIFIED TO?

5 A. 2 JAMES DRIVE.

6 Q. ALL RIGHT. I'LL HAND YOU A COPY OF THE WARRANT AND ASK
7 YOU JUST TO TAKE A LOOK AT IT AND ASK YOU WHAT IS THE
8 ADDRESS THAT YOU LISTED IN THE WARRANT?

9 A. IT COMES UP AS 3710 AUGUSTA ROAD.

10 Q. ALL RIGHT.

11 A. IT COMES UP AS TWO ADDRESSES WHEN YOU PUNCH IT IN.

12 Q. BUT THIS ADDRESS AS YOU LISTED ON THE WARRANT, THAT'S
13 NOT THE SPECIFIC ADDRESS OF THE SCHOOL, IS IT?

14 A. IT COMES UP AS TWO.

15 Q. IS THAT THE SPECIFIC ADDRESS OF THE CHURCH OR IS THAT
16 THE SCHOOL?

17 A. IT'S ALL THE SAME BUILDING.

18 Q. WHY WOULD IT HAVE TWO ADDRESSES THEN?

19 A. I DON'T KNOW THE ANSWER TO THAT QUESTION.

20 Q. SO WHICH ADDRESS IS WHICH?

21 A. WE GENERALLY USE 2 JAMES DRIVE, BUT IT'S NOT UNCOMMON
22 TO SEE THAT ADDRESS COME UP.

23 Q. BUT IN YOUR WARRANT IT DOESN'T LIST 2 JAMES DRIVE, DOES
24 IT?

25 A. NO.

BRIAN TOLLISON - CROSS EXAMINATION BY MS. HORLBECK

96

1 Q. CORRECT?

2 A. CORRECT.

3 Q. IT LISTS AN AUGUSTA ROAD ADDRESS.

4 A. YES.

5 Q. OKAY.

6 MS. HORLBECK: I BEG THE COURT'S INDULGENCE.

7 THE COURT: ALL RIGHT.

8 (PAUSE)

9 Q. WAS ANYONE ELSE ARRESTED AND TRANSPORTED WITH MY CLIENT
10 TO THE DETENTION CENTER?

11 A. YES. THERE WAS A WHITE MALE ARRESTED PROBABLY TWENTY,
12 THIRTY MINUTES AFTERWARDS. HE WAS TRANSPORTED ALONG WITH
13 THE DEFENDANT.

14 Q. WHERE WAS THE WHITE MALE LOCATED WHEN HE WAS
15 TRANSPORTED? WHERE DID Y'ALL PUT HIM TO TRANSPORT HIM TO
16 THE DETENTION CENTER, THE WHITE MALE?

17 A. BACK SEAT OF THE VEHICLE.

18 Q. THE BACK -- WAS IT THE BACK SEAT WHERE MY -- WHERE MR.
19 GRANT WAS LOCATED?

20 A. I BELIEVE IT WAS. SITTING RIGHT BESIDE HIM, I THINK.

21 Q. OKAY. IS THERE ANY SEPARATION BETWEEN MR. GRANT AND
22 THE WHITE MALE TRANSPORTED WITH HIM?

23 A. NO.

24 Q. OKAY. DO YOU RECALL WHAT THE WHITE MALE WAS ARRESTED
25 FOR?

BRIAN TOLLISON - REDIRECT EXAMINATION BY MS. TESSITORE

97

1 A. I BELIEVE IT WAS LOITERING TO ENGAGE IN DRUG ACTIVITY.

2 Q. OKAY.

3 (PAUSE)

4 MS. HORLBECK: I DON'T HAVE ANY FURTHER QUESTIONS.

5 THE COURT: ALL RIGHT.

6 MS. TESSITORE: JUST A FEW QUESTIONS ON REDIRECT, YOUR
7 HONOR.

8 THE COURT: OKAY.

9 REDIRECT EXAMINATION BY MS. TESSITORE:

10 Q. DEPUTY TOLLISON, WHEN YOU WERE IN THE BREEZE-WAY AT THE
11 POINT OR, I GUESS, JUST BEYOND THE BREEZE-WAY ON THE OTHER
12 SIDE OF THE BUILDING MAKING THE ARREST AFTER THE HAND TO
13 HAND TRANSFER DID YOU HAVE ANY VISUAL CONTACT WITH ROOM 105?

14 A. NO, MA'AM, WE DIDN'T.

15 Q. OKAY. ACTUALLY, IF YOU DON'T MIND, IF YOU'D STEP DOWN
16 AGAIN. BRING THE BASEL WITH YOU. OKAY. IF YOU COULD, JUST
17 POINT OUT AGAIN WHERE YOU WERE AT THE POINT WHEN YOU WERE
18 SECURING THE DEFENDANT, PICKING UP THE ROCK OF CRACK OFF THE
19 GROUND AND OUT OF HIS HAND.

20 A. WE WERE RIGHT HERE ON THE SIDEWALK.

21 Q. OKAY. AND WHERE WAS ROOM 105?

22 A. IT'S ACROSS HERE.

23 Q. AND COULD YOU -- SO YOU COULDN'T SEE FROM HERE TO THERE
24 AT THE TIME YOU ---

25 A. NO, WE HAD EVENTUALLY -- WE WERE RIGHT OUT HERE ON THE

BRIAN TOLLISON - REDIRECT EXAMINATION BY MS. TESSITORE

98

1 SIDEWALK. WE HAD OUR BACKS TO -- WE HAD OUR BACKS TO ALL
2 THIS.

3 Q. OKAY. SO YOU DON'T KNOW WHO CAME IN OR WHO WENT OUT OF
4 ROOM 105 ---

5 A. NO, MA'AM.

6 Q. --- DURING THAT TIME? AND ABOUT APPROXIMATELY HOW LONG
7 WAS IT BETWEEN AFTER YOU FINISHED -- WELL, FROM THE TIME
8 THAT YOU WERE DEALING WITH HIM OVER HERE, THE DEFENDANT, AND
9 WHEN YOU WENT BACK TO ROOM 105, HOW MUCH TIME APPROXIMATELY
10 HAD PASSED?

11 A. PROBABLY FIFTEEN MINUTES.

12 Q. SO PLENTY OF TIME FOR PEOPLE TO COME AND GO?

13 A. YES, MA'AM.

14 Q. OKAY. ALL RIGHT. AND THEN IF YOU'D JUST STAY RIGHT
15 THERE AND PUT THAT ONE UP THERE. THANK YOU. AND THAT WAS
16 STATE'S EXHIBIT 2 THAT YOU JUST BROUGHT DOWN. NOW WE'RE
17 LOOKING AT NUMBER 5. IF YOU COULD JUST PUT YOUR FINGER ON
18 THE GROUND WHERE OUR LADY OF THE ROSARY CATHOLIC SCHOOL AND
19 CHURCH IS?

20 A. IT'S THIS ENTIRE AREA HERE.

21 Q. OKAY. AND WHAT ROADS BORDER THAT SCHOOL AND CHURCH
22 GROUNDS RIGHT THERE?

23 A. YOU'VE GOT JAMES DRIVE AND THEN YOU'VE GOT AUGUSTA.

24 Q. AND THOSE ARE THE TWO ADDRESSES THAT MS. HORLBECK WAS
25 TALKING ABOUT?

BRIAN TOLLISON - REDIRECT EXAMINATION BY MS. TESSITORE

99

1 A. YES, MA'AM.

2 Q. SO THAT WOULD EXPLAIN WHY THERE'S TWO STREETS LINKED
3 WITH THOSE GROUNDS?

4 A. THAT'S CORRECT.

5 Q. AND THERE'S ENTRANCES NOT JUST ON ONE ROAD, BUT ON MORE
6 THAN ONE?

7 A. YES, MA'AM. THERE'S AN ENTRANCE RIGHT HERE. YOU CAN
8 SEE THE ROAD WAY UP. AND THEN THERE'S AN ENTRANCE HERE ON
9 JAMES.

10 Q. OKAY. ALL RIGHT. AND JUST LOOKING AT -- BACK AT THE
11 INNTOWN SUITES AND THE SUPER LODGE AND THIS AREA HERE HAVE
12 ANY OF THESE BUILDINGS GOTTEN UP AND MOVED, LOOKING AT THIS
13 HERE, IS THIS A FAIR AND ACCURATE DEPICTION OF WHERE THOSE
14 HOTELS WERE ON JANUARY 10TH OF 2007?

15 A. YES, MA'AM.

16 Q. IS THERE ANY QUESTION IN YOUR MIND?

17 A. NO, MA'AM.

18 Q. OKAY. THANK YOU.

19 A. THEY WERE THERE, AND THEY'RE STILL THERE.

20 MS. HORLBECK: I JUST HAVE ---

21 MS. TESSITORE: I'M NOT DONE YET.

22 MS. HORLBECK: I'M SORRY.

23 MS. TESSITORE: SORRY.

24 REDIRECT EXAMINATION CONTINUED BY MS. TESSITORE:

25 Q. NOW, DEPUTY TOLLISON, WHEN -- AT THE BEGINNING OF THIS

BRIAN TOLLISON - REDIRECT EXAMINATION BY MS. TESSITORE

100

1 ENCOUNTER WHEN THE DEFENDANT INITIATED AND ASKED YOU WHAT
2 YOU WANTED, DO YOU -- BASED ON THE TOTALITY OF THE
3 CIRCUMSTANCES AS YOU STOOD THERE, DO YOU THINK HE WOULD HAVE
4 WAITED WHILE YOU ASKED TO GO GET A TAPE RECORDER TO RECORD
5 THE INCIDENT?

6 MS. HORLBECK: CALLS FOR SPECULATION.

7 THE COURT: YEAH, I SUSTAIN THAT.

8 MS. TESSITORE: WITHDRAWN.

9 Q. REGARDING THIS OTHER ARREST THAT MS. HORLBECK TALKED
10 ABOUT AND THIS WHITE MALE THAT WAS ARRESTED WAS HE INVOLVED
11 IN THE HAND TO HAND TRANSFER OF THAT ROCK OF CRACK COCAINE?

12 A. NO, MA'AM, NOT AT ALL.

13 Q. WAS HE IN ANY WAY INVOLVED IN THIS CASE THAT WE'RE HERE
14 TALKING ABOUT TODAY?

15 A. NO, MA'AM.

16 Q. OKAY. AND SO WAS -- WHERE WAS DEPUTY GRICE DURING THIS
17 WHOLE INCIDENT WHEN YOU WERE DOING -- DEALING WITH MR.
18 GRANT?

19 A. DEPUTY GRICE WAS IN THE VEHICLE. I BELIEVE HE WAS THE
20 ONE WHO ARRESTED THIS -- I DON'T EVEN KNOW THIS PERSON'S
21 NAME, THIS WHITE MALE THAT WAS EVENTUALLY ARRESTED. HE
22 COULD HAVE BEEN DEALING WITH HIM AT THE TIME. I'M NOT SURE.
23 HE WASN'T -- HE WASN'T THERE WHEN WE WERE ARRESTING THE
24 DEFENDANT.

25 Q. OKAY. DID -- WAS HE IN 105 WHEN YOU WENT BACK THERE TO

BRIAN TOLLISON - RECROSS EXAMINATION BY MS. HORLBECK

101

1 SEARCH IT?

2 A. WHO?

3 Q. THE WHITE MALE?

4 A. NO, MA'AM.

5 MS. TESSITORE: THAT'S ALL I HAVE. THANK YOU, YOUR
6 HONOR.

7 THE COURT: ALL RIGHT. BRIEFLY.

8 RECROSS EXAMINATION BY MS. HORLBECK:

9 Q. YOU TESTIFIED YOU COULDN'T TELL WHO WAS COMING IN AND
10 OUT OF ROOM 105.

11 A. WHEN WE WERE ARRESTING THE DEFENDANT?

12 Q. AT SOME POINT ON JANUARY THE 10TH, 2007 WHILE YOU WERE
13 IN THE BREEZE-WAY YOU TESTIFIED THAT YOU COULD NOT SEE WHO
14 WAS COMING IN AND OUT OF ROOM 105, CORRECT?

15 A. YEAH, WHEN WE WERE ARRESTING THE DEFENDANT ON THE OTHER
16 SIDE OF THE BUILDING. THAT'S CORRECT.

17 Q. ALL RIGHT. AND YOU ARRESTED MR. GRANT BEFORE YOU
18 SEARCHED ROOM 105, CORRECT?

19 A. THAT'S CORRECT.

20 Q. ALL RIGHT. AND THE DRUG THAT YOU SEIZED, YOU PLACED IT
21 IN YOUR POCKET?

22 A. IN A PLASTIC BAG ---

23 Q. OKAY.

24 A. --- IN MY POCKET.

25 Q. AND THAT PLASTIC BAG WAS PUT IN YOUR POCKET?

PATRICK SWIFT - DIRECT EXAMINATION BY MS. TESSITORE

102

1 A. YEAH. I KEEP IT ON ME. I DON'T JUST LAY IT AROUND.

2 Q. OKAY. DID ANYONE SEARCH YOUR POCKET BEFORE YOU PLACED
3 A BAG IN IT?

4 A. NO.

5 Q. OKAY.

6 MS. HORLBECK: NOTHING FURTHER.

7 THE COURT: ALL RIGHT. THANK YOU, SIR. YOU CAN STEP
8 DOWN.

9 A. THANK YOU, SIR.

10 THE COURT: ALL RIGHT. MADAME FORELADY, LADIES AND
11 GENTLEMEN OF THE JURY, LET'S TAKE A BRIEF RECESS, GET A
12 STRETCH, AND WE'LL BE BACK WITH YOU SHORTLY. PLEASE DON'T
13 TALK ABOUT THE CASE. THANK YOU.

14 (WHEREUPON THE JURY EXITED THE COURTROOM AT 3:54 PM)

15 THE COURT: ALL RIGHT. TAKE A BREAK.

16 (WHEREUPON COURT WAS IN RECESS AT 3:55 PM)

17 THE COURT: OKAY.

18 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 4:25 PM)

19 THE COURT: ALL RIGHT. WELCOME BACK, LADIES AND
20 GENTLEMEN. YES, MA'AM.

21 MS. TESSITORE: THANK YOU, YOUR HONOR. THE STATE CALLS
22 DEPUTY PATRICK SWIFT.

23 PATRICK SWIFT, BEING DULY

24 SWORN TESTIFIED AS FOLLOWS:

25 MADAME CLERK: PLEASE STATE YOUR FULL NAME FOR THE

PATRICK SWIFT - DIRECT EXAMINATION BY MS. TESSITORE

103

1 RECORD.

2 MR. SWIFT: PATRICK WILLIAM SWIFT.

3 DIRECT EXAMINATION BY MS. TESSITORE:

4 Q. DEPUTY SWIFT, WHERE DO YOU WORK?

5 A. I WORK AT THE GREENVILLE COUNTY SHERIFF'S OFFICE.

6 Q. AND WHAT DO YOU DO THERE?

7 A. I'M A DEPUTY. AND I WORK WITH THE DIRECTED PATROL
8 UNIT.

9 Q. HOW LONG HAVE YOU BEEN WORKING WITH THE DIRECTED PATROL
10 UNIT?

11 A. JUST OVER A YEAR, A YEAR AND THREE MONTHS NOW.

12 Q. AND WERE YOU WORKING IN THE SAME UNIT ON JANUARY 10TH
13 OF 2007?

14 A. YES, MA'AM, I WAS.

15 Q. HOW LONG HAVE YOU BEEN WITH THE GREENVILLE COUNTY
16 SHERIFF'S OFFICE ALTOGETHER?

17 A. ALMOST FOUR YEARS.

18 Q. AND WHAT DID YOU DO BEFORE YOU BECAME PART OF THE
19 DIRECTED PATROL UNIT?

20 A. I WORKED AS A PATROL DEPUTY ON THE ROAD WITH A MARKED
21 CAR.

22 Q. WHAT KIND OF TRAINING HAVE YOU HAD?

23 A. I'VE HAD SEVERAL DIFFERENT COURSES ON DRUGS AND
24 NARCOTICS. ONE WAS SPONSORED BY THE DEA. IT'S A ONE WEEK
25 COURSE HERE IN GREENVILLE. I HAD ANOTHER ONE, IT WAS A TWO

PATRICK SWIFT - DIRECT EXAMINATION BY MS. TESSITORE

104

1 WEEK COURSE. IT WAS IN MERIDIAN, MISSISSIPPI. IT WAS
2 SPONSORED BY HOMELAND SECURITY. AND I'VE VARIOUS OTHER
3 COURSES ON GANGS AND DIFFERENT TYPE OF NARCOTICS AND VICE
4 RELATED CLASSES.

5 Q. AND ALSO THE CRIMINAL JUSTICE ACADEMY?

6 A. YES, MA'AM.

7 Q. THE -- WITH REGARD TO YOUR POSITION WITH THE DIRECTED
8 PATROL UNIT, WHAT EXACTLY ARE YOUR DUTIES AND
9 RESPONSIBILITIES IN THAT UNIT?

10 A. A LOT OF WHAT WE SPEND OUR TIME DEALING WITH IS STREET
11 LEVEL NARCOTICS AND ALSO PROSTITUTION, JUST STREET -- BASIC
12 STREET LEVEL CRIMES.

13 Q. NOW WHAT EXACTLY DO YOU MEAN WHEN YOU SAY STREET LEVEL?
14 AS OPPOSED TO WHAT?

15 A. IN DEALING WITH NARCOTICS WHEN I SAY STREET LEVEL I
16 MEAN -- THE SHERIFF'S OFFICE ALSO HAS ANOTHER UNIT, VICE AND
17 NARCOTICS. AND THEY DEAL WITH LONG-TERM INVESTIGATIONS THAT
18 DEAL WITH MANY MONTHS OF INVESTIGATION AND -- WE'RE MORE
19 FOCUSED ON SHORT-TERM INVESTIGATIONS WHERE IT MAY TAKE US A
20 WEEK TO COMPLETE AN INVESTIGATION, IF THAT LONG.

21 Q. AND HAVE YOU BEEN INVOLVED IN UNDERCOVER BUYS?

22 A. YES, MA'AM, I HAVE.

23 Q. APPROXIMATELY HOW MANY HAVE YOU BEEN INVOLVED IN?

24 A. BY MYSELF BUYING FROM A DEFENDANT, PROBABLY THREE TO
25 FIVE TIMES. AND WITH ANOTHER -- OTHER BUYS INCLUDED WITH A

PATRICK SWIFT - DIRECT EXAMINATION BY MS. TESSITORE

105

1 CONFIDENTIAL INFORMANT THAT WE'VE USED ON OTHER CASES,
2 PROBABLY UP TO TWENTY TIMES.

3 Q. NOW I'M GOING TO TAKE YOU BACK TO JANUARY 10TH OF 2007
4 IN THE EARLY EVENING HOURS. WERE YOU WORKING THAT EVENING?

5 A. YES, MA'AM.

6 Q. WHO WERE YOU WORKING WITH?

7 A. I WAS WORKING WITH THE OTHER MEMBERS OF MY UNIT THAT
8 WERE WORKING THAT NIGHT. WE WERE IN A VEHICLE TOGETHER,
9 DEPUTY TOLLISON, MASTER DEPUTY STEVE RHEA AND DEPUTY BRAD
10 GRICE. WE WERE RIDING TOGETHER.

11 Q. OKAY. AND WHAT KIND OF WORK WERE YOU DOING THAT NIGHT?

12 A. WE WERE DOING BASICALLY WHAT -- WHAT I JUST TALKED
13 ABOUT. WE WERE DOING OUR BASIC STREET LEVEL NARCOTICS AND
14 PROSTITUTION, TRYING TO HIT SOME HIGH CRIME AREAS IN
15 GREENVILLE COUNTY.

16 Q. OKAY. AND DID THAT BRING YOU TO THE AREA AROUND THE
17 INNTOWN SUITES?

18 A. YES, IT DID, SPECIFICALLY THE SUPER LODGE MOTEL, 412
19 MAULDIN ROAD.

20 Q. OKAY. AND IS THAT IN GREENVILLE COUNTY?

21 A. YES, MA'AM.

22 Q. AS WELL AS THE INNTOWN SUITES?

23 A. YES, MA'AM.

24 Q. ALL RIGHT. PLEASE TELL THE JURY WHAT HAPPENED AS YOU
25 WERE PATROLLING THAT AREA THAT NIGHT.

PATRICK SWIFT - DIRECT EXAMINATION BY MS. TESSITORE

106

1 A. AS I'VE SAID, THE FOUR OF US WERE IN AN UNMARKED
2 VEHICLE TOGETHER. WE WERE ALL WEARING CIVILIAN CLOTHES THAT
3 NIGHT. AND WE SAW SOME -- THERE WAS SOME FOOT ACTIVITY
4 AROUND THE SUPER LODGE MOTEL, WHICH IS 412 MAULDIN ROAD.

5 WE DECIDED TO GET OUT ON FOOT, MYSELF AND DEPUTY
6 TOLLISON. WE PARKED THE VEHICLE WE WERE IN AT THE STEAK-OUT
7 RESTAURANT THAT WAS DIRECTLY IN BETWEEN THE TWO HOTELS THAT
8 I'M TALKING ABOUT, THE INNTOWN SUITES AND THE SUPER LODGE
9 MOTEL. DEPUTY TOLLISON AND I GOT OUT. WE EXITED THE
10 VEHICLE. DEPUTY GRICE AND DEPUTY RHEA STAYED IN THE
11 VEHICLE.

12 MYSELF AND DEPUTY TOLLISON WALKED DOWN INTO THE PARKING
13 LOT OF THE SUPER LODGE MOTEL. AND AS WE WERE WALKING IN --
14 AS WE WERE WALKING INTO THE PARKING LOT WE NOTICED THE
15 DEFENDANT WAS IN THE PARKING LOT. WE DIDN'T TRY TO -- I
16 DIDN'T TRY TO MAKE -- I DIDN'T TRY TO CALL HIM OUT OR
17 ANYTHING LIKE THAT.

18 WE WALKED INTO A BREEZE-WAY THAT WAS THERE AT THE
19 MOTEL. WHEN WE DID THIS HE APPROACHED US FROM BEHIND US.

20 Q. NOW JUST STOPPING YOU RIGHT THERE FOR A SECOND. HOW
21 WERE YOU DRESSED, YOU AND DEPUTY TOLLISON?

22 A. I WAS -- I WAS DRESSED IN BLUE JEANS. I HAD ON SOME
23 TENNIS SHOES, A T-SHIRT. AND I THINK I HAD ON A HEAVY
24 SWEATSHIRT. IT WAS IN JANUARY. IT WAS KIND OF COLD THAT
25 NIGHT.

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1 Q. OKAY. SO YOU WERE IN PLAIN CLOTHES?

2 A. YES, MA'AM.

3 Q. AND WHAT ABOUT THE VEHICLE THAT YOU GOT OUT OF, WAS
4 THAT A MARKED VEHICLE?

5 A. NO. IT'S AN UNMARKED FORD EXPLORER.

6 Q. OKAY. AND WHY WOULD YOU BE WEARING PLAIN CLOTHES
7 INSTEAD OF YOUR UNIFORM?

8 A. IT'S -- WE WERE WORKING IN AN UNDERCOVER CAPACITY THAT
9 NIGHT. SO WE WERE ---

10 Q. ALL RIGHT. NOW AS THIS INDIVIDUAL APPROACHED YOU,
11 DESCRIBE WHAT HAPPENED IN THE BREEZE-WAY.

12 A. WE WERE -- WE'D JUST WALKED INTO THE BREEZE-WAY. THE
13 DEFENDANT CAME IN BEHIND US. AND WE TURNED AROUND AS WE
14 HEARD HIM APPROACHING. AND HE ASKED US, HE SAID, ARE YOU
15 STRAIGHT?

16 Q. AND WHAT DOES THAT MEAN?

17 A. GENERALLY, IN MY EXPERIENCE, I'VE BEEN THERE FOR A YEAR
18 AND THREE MONTHS NOW, WHEN YOU SAY, ARE YOU STRAIGHT, THAT
19 DENOTES WHAT ARE YOU LOOKING -- EITHER YOU'RE LOOKING FOR
20 SOMETHING OR YOU'RE TRYING TO SELL SOMETHING. AND IT'S IN
21 TERMS OF ILLEGAL, EITHER NARCOTICS, OR YOU'RE LOOKING FOR
22 PROSTITUTION OR IT'S ALMOST LIKE A GREETING, BUT AT THE SAME
23 TIME IT'S A QUESTION OF, WELL, WHAT ARE YOU LOOKING FOR?

24 Q. OKAY. AND DID DEPUTY TOLLISON RESPOND?

25 A. HE DID.

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1 Q. AND HOW DID HE RESPOND?

2 MS. HORLBECK: CALLS FOR HEARSAY.

3 THE COURT: YEAH, SUSTAINED.

4 Q. OKAY. WHEN -- AFTER HE ASKED, ARE YOU STRAIGHT, THEN
5 WHAT DID HE SAY AT THAT POINT?

6 A. HE AND DEPUTY TOLLISON HAD A CONVERSATION. AND THE
7 DEFENDANT TOLD US THAT HE KNEW WHERE TO GET SOME OF WHAT WE
8 WERE LOOKING FOR, SOME -- AND THEIR CONVERSATION HAD BEEN
9 ABOUT CRACK COCAINE.

10 Q. AND WHAT DID -- DID DEPUTY TOLLISON HAVE ANY MONEY?

11 A. YES, HE DID.

12 Q. OKAY. DID HE GIVE HIM THE MONEY?

13 A. NOT AT THAT TIME.

14 Q. OKAY. DESCRIBE WHAT HAPPENED AFTER HE SAID THAT HE
15 KNEW WHERE TO GET SOME.

16 A. HE TOLD US HE KNEW WHERE HE COULD GET US SOME, BUT THAT
17 IT -- WE COULDN'T GET IT THERE BECAUSE IT WAS TOO HOT, THE
18 POLICE WERE AROUND THE AREA, THERE'S COPS IN THE AREA AND HE
19 JUST COULDN'T DO IT THERE. HE TOLD US HE COULD WALK US
20 ACROSS THE STREET TO THE INNTOWN SUITES AND WE COULD BUY IT
21 THERE.

22 Q. OKAY. AND SO WHAT DID YOU DO?

23 A. SO WE DID. WE WALKED WITH HIM UP THROUGH -- BACK UP
24 THROUGH THE PARKING LOT, ACROSS THE PARKING LOT OF THE
25 STEAK-OUT RESTAURANT, ACROSS CHALMERS ROAD, I BELIEVE IT IS,

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1 AND THEN INTO THE PARKING LOT OF THE INNTOWN SUITES.

2 Q. AND WHEN YOU GOT TO THE INNTOWN SUITES WHAT HAPPENED
3 THERE?

4 A. WHEN WE GOT THERE THE DEFENDANT AND DEPUTY TOLLISON HAD
5 SOME MORE CONVERSATION. DEPUTY TOLLISON GAVE THE DEFENDANT
6 THE TWENTY DOLLAR BILL AT THAT POINT.

7 Q. WHERE WERE YOU IN RELATION TO DEPUTY TOLLISON WHEN HE
8 GAVE HIM THE MONEY?

9 A. I WAS RIGHT BESIDE HIM. I WAS BESIDE BOTH THE
10 DEFENDANT AND DEPUTY TOLLISON AT THIS POINT.

11 Q. AND THEN WHERE DID THE DEFENDANT GO?

12 A. THE DEFENDANT -- WE WERE AT THE INNTOWN SUITES AT THIS
13 POINT. WE WERE IN A BREEZE-WAY OF THE INNTOWN SUITES AT
14 THIS POINT. THE DEFENDANT TOOK THE MONEY, WENT ACROSS A
15 SMALL PARKING LOT INTO ANOTHER BUILDING. THERE'S TWO
16 BUILDINGS ACTUALLY OF THE INNTOWN SUITES. AND HE WENT INTO
17 A ROOM THAT'S ROOM 105 THAT HE WENT INTO.

18 Q. AND WHAT DID YOU DO WHILE HE WAS IN THIS ROOM 105?

19 A. I STAYED IN THE BREEZE-WAY. DEPUTY TOLLISON AND I ---
20 MS. HORLBECK: OBJECT.

21 A. --- TALKED ABOUT ...

22 MS. HORLBECK: AND I WOULD OBJECT AS TO ANY -- ANYTHING
23 SAID BY DEPUTY TOLLISON.

24 THE COURT: WELL, ---

25 A. OKAY.

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1 THE COURT: --- DON'T SAY WHAT HE SAID, BUT YOU CAN GO
2 AHEAD AND TELL WHAT YOU DID.

3 A. I STAYED IN THE BREEZE-WAY. DEPUTY TOLLISON MOVED DOWN
4 THE SIDEWALK FURTHER UP BACK UP TOWARDS MAULDIN ROAD IN CASE
5 THE SUSPECT TRIED TO EXIT THE ROOM AND TRY TO RUN WITH OUR
6 MONEY OR JUST TRIED TO GET AWAY FROM US AT THAT POINT.

7 Q. SO YOU WERE SECURING THOSE TWO AREAS THERE?

8 A. (AFFIRMATIVE NOD).

9 Q. I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS STATE'S
10 EXHIBIT NUMBER 2 AND ASK YOU TO STEP BACK DOWN FROM THE
11 STAND, PLEASE.

12 THE COURT: OFFICER, JUST KEEP YOUR VOICE UP SO WE CAN
13 RECORD.

14 A. YES, YOUR HONOR.

15 THE COURT: OKAY.

16 Q. IF YOU COULD STEP UP HERE, PLEASE. ALL RIGHT. LOOKING
17 AT STATE'S EXHIBIT NUMBER 2 DO YOU RECOGNIZE THIS?

18 A. YES, I DO.

19 Q. OKAY. WHAT IS THAT?

20 A. THIS IS THE INNTOWN SUITES MOTEL, MAULDIN ROAD. AND
21 HERE'S CHALMERS ROAD I WAS TALKING ABOUT WE WALKED ACROSS TO
22 GET INTO THE PARKING LOT.

23 Q. OKAY. AND CAN YOU DESCRIBE TO THE JURY TO GET THEM
24 ORIENTED WHERE YOU CAME FROM AND WHERE YOU -- WHERE THE
25 BREEZE-WAY WAS?

PATRICK SWIFT - DIRECT EXAMINATION BY MS. TESSITORE

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1 A. UM-HUM (AFFIRMATIVE). YES. WE ---

2 Q. AND I'LL ASK YOU, IF YOU COULD, JUST TO MARK WITH YOUR
3 INITIALS IN THIS HERE WHERE ROOM 105 WAS AS WELL.

4 A. WHEN WE CAME ACROSS THE STREET WE CAME INTO THIS --
5 THROUGH THIS PARKING LOT HERE. THE BREEZE-WAY WAS IN THIS
6 GENERAL AREA HERE. WE WALKED IN THROUGH THIS BREEZE-WAY.
7 THIS IS WHERE THE MONEY WAS EXCHANGED AT FIRST IN THE
8 BREEZE-WAY FROM DEPUTY TOLLISON OVER TO THE DEFENDANT.

9 Q. SO YOU'RE DRAWING A LINE. IS THAT THE ROOF RIGHT
10 THERE?

11 A. THAT'S ACTUALLY A BREEZE-WAY THAT GOES -- YOU CAN'T SEE
12 IT FROM ON TOP. THERE'S A BREEZE-WAY THAT GOES -- THIS IS A
13 TWO LEVEL MOTEL. THERE'S A BOTTOM FLOOR AND THE TOP FLOOR.
14 ON THE BOTTOM FLOOR THERE'S A BREEZE-WAY THAT GOES ALL THE
15 WAY THROUGH TO THE OTHER SIDE INTO THIS PARKING LOT AND
16 CONNECTS THESE TWO PARKING LOTS.

17 Q. OKAY. LET ME JUST ASK YOU IF YOU LOOK AT STATE'S
18 EXHIBIT NUMBER 3 DOES THAT APPEAR TO BE THE BREEZE-WAY?

19 A. YES, IT DOES.

20 Q. OKAY. GOING BACK TO THIS AREA HERE, WHERE WAS ROOM
21 105?

22 A. 105 WAS BASICALLY -- WHEN WE CAME OUT OF THE BREEZE-WAY
23 105 WAS OFF TO THE LEFT SLIGHTLY OF WHERE WE WERE LOOKING
24 OUT. SO I BELIEVE IT WAS IN THIS GENERAL AREA HERE.

25 Q. OKAY. AND IF YOU COULD JUST PUT YOUR INITIALS RIGHT

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1 THERE WHERE YOU'VE WRITTEN OUT THERE. OKAY. AND SO WHERE
2 WERE YOU POSITIONED WHEN HE WENT INTO 105?

3 A. I STAYED HERE, RIGHT HERE AT THE OPENING -- RIGHT HERE
4 AT THE OPENING OF THE BREEZE-WAY.

5 Q. AND WHERE WAS DEPUTY TOLLISON?

6 A. DEPUTY TOLLISON WALKED DOWN BACK UP TOWARDS THIS
7 DIRECTION, BACK UP TOWARDS MAULDIN ROAD IN CASE THE SUSPECT
8 DECIDED TO COME OUT AND TRY TO ...

9 Q. OKAY.

10 A. TRIED NOT TO COME BACK TO US.

11 Q. AND WHERE WAS THE UNMARKED VEHICLE AT THIS TIME?

12 A. THE UNMARKED VEHICLE WAS STILL -- WE ACTUALLY PASSED BY
13 IT WHEN WE WERE WALKING WITH THE SUSPECT AT THE STEAK-OUT
14 RESTAURANT. THE STEAK-OUT RESTAURANT IS RIGHT HERE ON THIS
15 CORNER, MAULDIN ROAD AND CHALMERS ROAD. THIS IS GOING INTO
16 IT ACTUALLY. SO IT'S RIGHT HERE, THE STEAK-OUT IS.

17 Q. OKAY. AND DEPUTY RHEA AND DEPUTY GRICE, WERE THEY
18 ANYWHERE AROUND HERE?

19 A. THE LAST -- THE LAST TIME I REMEMBER SEEING THEM THEY
20 WERE SITTING IN THE VEHICLE WHEN WE WALKED BY.

21 Q. OKAY.

22 A. AT THE STEAK-OUT.

23 Q. AND APPROXIMATELY HOW LONG WAS HE IN ROOM 105?

24 A. JUST NOT EVEN A MINUTE PROBABLY, THIRTY SECONDS, THIRTY
25 SECONDS TO A MINUTE. IT WAS A SHORT AMOUNT OF TIME. IT

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1 WASN'T THAT LONG.

2 Q. OKAY. WHAT HAPPENED? DID HE COME OUT?

3 A. HE DID.

4 Q. AND WAS HE BY HIMSELF?

5 A. YES, HE WAS.

6 Q. AND WHAT HAPPENED THEN?

7 A. HE CAME BACK OVER TO WHERE I WAS STANDING. DEPUTY

8 TOLLISON WALKED BACK AND WE MET HIM HERE AGAIN IN THE

9 BREEZE-WAY. AND WHEN WE WERE IN THE BREEZE-WAY IS WHEN HE

10 ACTUALLY PRODUCED A PIECE OF CRACK COCAINE, WHAT APPEARED TO

11 ME AT THAT TIME TO BE CRACK COCAINE TO ---

12 Q. AND HOW DID HE ---

13 A. --- DEPUTY TOLLISON.

14 Q. --- PRODUCE IT? WHAT DO YOU MEAN BY PRODUCED IT?

15 A. HE HAD IT IN HIS HAND, AND HE GAVE IT TO DEPUTY

16 TOLLISON.

17 Q. OKAY. AND THEN WHAT HAPPENED?

18 A. WE WAITED. WE WALKED WITH HIM UNTIL WE GOT AROUND TO

19 THIS CORNER HERE. WE CAME BACK THROUGH THE BREEZE-WAY. AND

20 ONCE WE WERE RIGHT HERE IS WHEN WE IDENTIFIED OURSELVES TO

21 BE DEPUTIES WITH THE SHERIFF'S OFFICE.

22 Q. AND WHAT WAS HIS RESPONSE?

23 A. HIS INITIAL RESPONSE WAS -- THE BEST WAY I CAN SAY, I

24 THINK HE WAS STARTLED MORE THAN ANYTHING ELSE. HE JUST KIND

25 OF TIGHTENED UP AND JUST KIND OF FROZE FOR A MINUTE. HE

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1 DIDN'T TRY TO RESIST OR ANYTHING OF THAT NATURE AT THAT
2 POINT. HE JUST -- HE SEEMED LIKE TO ME HE WAS STARTLED.

3 Q. OKAY. I'D ASK YOU TO GO BACK AND TAKE THE STAND. AND
4 AFTER THAT POINT OF SURPRISE, THEN WHAT HAPPENED?

5 A. DEPUTY TOLLISON AND I HELD ONTO THE -- TO THE
6 DEFENDANT. WE GOT ON EITHER SIDE OF HIM. WE HELD ONTO HIS
7 ARMS UNTIL HE STARTED TO RELAX A LITTLE BIT AND WE WERE ABLE
8 TO PLACE HIM IN HANDCUFFS BEHIND HIS BACK.

9 WE NOTICED AT THAT TIME THAT -- I BELIEVE IT WAS IN HIS
10 LEFT HAND, HE WAS BALLING HIS LEFT HAND UP REAL TIGHT. AND,
11 YOU KNOW, WE INSTRUCTED HIM TO OPEN UP HIS HAND TO SEE WHAT
12 WAS IN IT. IT TOOK HIM A FEW MOMENTS TO OPEN UP THE HAND.
13 AND WHEN HE DID ANOTHER PIECE OF CRACK COCAINE FELL OUT ONTO
14 THE SIDEWALK.

15 Q. OKAY. AND WAS SOMEONE ABLE TO RETRIEVE THAT?

16 A. YES.

17 Q. OKAY. WHO DID THAT?

18 A. DEPUTY TOLLISON DID THAT.

19 Q. NOW WHILE THIS WAS HAPPENING WHERE YOU WERE ON THE
20 SIDEWALK THERE DID YOU HAVE ANY VISUAL CONTACT WITH ROOM
21 105?

22 A. NO, WE DIDN'T. AS A MATTER OF FACT THAT'S THE REASON
23 WE WENT BACK TO THAT SIDE WAS SO THAT IF THERE WERE PEOPLE
24 LOOKING OUT THE WINDOW THEY WOULDN'T SEE US ARRESTING THE
25 DEFENDANT IN THEIR VIEW.

PATRICK SWIFT - DIRECT EXAMINATION BY MS. TESSITORE

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1 Q. OKAY.

2 A. SO THEY WOULDN'T KNOW THERE WAS POLICE IN THE AREA.

3 Q. AND ABOUT -- WELL, WHAT HAPPENED AFTER HE WAS SECURED
4 AT THAT POINT? WHERE DID YOU GO FROM THERE?

5 A. ONCE WE HAD HIM HANDCUFFED WE PUT HIM IN OUR VEHICLE.
6 DEPUTY GRICE CAME DOWN WITH THE VEHICLE. WE PUT HIM IN OUR
7 VEHICLE. WE TRANSPORTED HIM TO THE JAIL, WHICH IS AT 20
8 MCGEE STREET.

9 Q. BEFORE YOU -- BEFORE YOU GOT TO THE JAIL THOUGH WITH
10 RESPECT TO -- WHEN YOU GOT HIM -- TAKING YOU BACK TO WHEN
11 YOU GOT HIM IN THE VEHICLE, ---

12 A. UM-HUM (AFFIRMATIVE).

13 Q. --- DID YOU GO BACK TO ROOM 105?

14 A. I DID NOT.

15 Q. OKAY. DID ANY ---

16 A. I STAYED WITH ---

17 Q. --- OF THE OTHER OFFICERS?

18 A. I STAYED WITH THE DEFENDANT IN THE VEHICLE AT THAT
19 TIME.

20 Q. OKAY. DID ANY OF THE OTHER OFFICERS GO BACK TO ROOM
21 105?

22 A. YES.

23 Q. WHO WENT OVER THERE?

24 A. DEPUTY TOLLISON AND DEPUTY GRICE, I BELIEVE, WENT TO
25 THE ROOM 105.

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1 Q. HOW MUCH TIME APPROXIMATELY WOULD YOU SAY PASSED
2 BETWEEN THE TIME THAT HE CAME OUT OF ROOM 105 AND WALKED
3 THROUGH THE BREEZE-WAY AND THE HAND-TO-HAND OCCURRED AND
4 THEN WHEN THEY WENT BACK TO 105? APPROXIMATELY HOW MUCH
5 TIME WOULD YOU SAY PASSED?

6 A. MAYBE TEN TO FIFTEEN MINUTES, ---

7 Q. OKAY.

8 A. --- IN THAT BALLPARK.

9 Q. AND SO YOU WEREN'T INVOLVED WITH THE SEARCH OF 105?

10 A. NO, MA'AM.

11 Q. YOU WERE WITH -- WERE YOU WITH THE DEFENDANT THE WHOLE
12 TIME?

13 A. YES, I WAS.

14 Q. UNTIL THEY CAME BACK?

15 A. WE STAYED IN THE VEHICLE. AND WE JUST SAT THERE IN THE
16 VEHICLE TOGETHER.

17 Q. OKAY. DID -- WAS ANOTHER INDIVIDUAL ARRESTED THAT
18 NIGHT?

19 A. YES.

20 Q. DO YOU KNOW WHO HE IS?

21 A. NO. I DON'T KNOW -- DEPUTY GRICE HANDLED THAT -- THAT
22 PART OF THE CASE.

23 Q. WAS HE IN ANY WAY INVOLVED IN THE HAND-TO-HAND
24 TRANSACTION THAT OCCURRED IN THE BREEZE-WAY?

25 A. NO, HE WAS NOT.

PATRICK SWIFT - DIRECT EXAMINATION BY MS. TESSITORE

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1 Q. DID -- HAD YOU BEEN WATCHING THE DEFENDANT THAT NIGHT
2 BEFORE HE APPROACHED YOU?

3 A. NO.

4 Q. SO THERE WAS NO SURVEILLANCE OF HIM LEADING UP TO THIS?

5 A. NO. THIS -- THE FIRST TIME I HAD SEEN HIM WAS THAT
6 NIGHT WHEN HE CAME UP TO US IN THE BREEZE-WAY OF THE OTHER
7 HOTEL.

8 Q. SO IT WASN'T A PLANNED BUY OR ANYTHING LIKE THAT?

9 A. NOT -- NO, NOT -- WE DIDN'T HAVE ANY KIND OF SPECIAL
10 OPERATION GOING OR ANY KIND OF SURVEILLANCE OR ---

11 Q. WEREN'T TARGETING HIM?

12 A. --- ANYTHING GOING ON HIM. NO.

13 Q. IS IT COMMON PRACTICE WHEN YOU ARE DOING THIS KIND OF
14 STREET LEVEL INTERDICTION TO BE WIRED YOURSELF FOR AUDIO
15 RECORDING OR ANYTHING LIKE THAT?

16 A. NO. IT'S -- WE DON'T -- WE VERY RARELY WIRE OURSELVES.

17 Q. AND WHEN WOULD YOU USE A WIRING TYPICALLY?

18 A. WE WOULD USE A WIRE OR AN AUDIO DEVICE ON AN INFORMANT
19 THAT WE HAVE THAT WE -- IT'S A MORE PLANNED OUT OPERATION
20 WHERE WE'RE ACTUALLY GOING TO SEND THAT INFORMANT INTO A
21 HOUSE OR INTO A HOTEL ROOM OR OTHER STRUCTURE TO BUY
22 NARCOTICS FOR US.

23 Q. NOW WHY DO THEY WEAR THE WIRE?

24 A. A LOT OF IT'S TO -- FOR THEIR PROTECTION IN CASE
25 SOMETHING HAPPENS INSIDE AND ALSO JUST TO VERIFY WHAT THEY

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1 ACTUALLY DO INSIDE, SO WE CAN -- WE CAN HEAR WHAT THEY'RE
2 DOING INSIDE AND MAKE SURE, YOU KNOW, WHAT THEY TELL US WHEN
3 THEY COME OUT OF THE HOUSE IS WHAT WE ACTUALLY HEARD ON THE
4 WIRE OR THE AUDIO DEVICE.

5 Q. AS PART OF THE DIRECTED PATROL UNIT ARE YOU ASSIGNED
6 EACH OFFICER -- ARE EACH OF YOU ASSIGNED VIDEO EQUIPMENT,
7 AUDIO EQUIPMENT AND ALL OF THESE -- ALL THAT TECHNOLOGY?

8 A. NOT IN OUR -- NOT IN OUR UNDERCOVER CARS. OUR UNMARKED
9 CARS, THERE'S NO -- WE HAVE NO VIDEO. THERE'S NO -- THERE'S
10 NO VIDEO IN OUR UNMARKED CARS, NO.

11 Q. OKAY. AND IF YOU HAD DRIVEN A MARKED CAR IS IT LIKELY
12 THAT YOU WOULD HAVE BEEN CONFRONTED BY THE DEFENDANT?

13 A. NO, MA'AM.

14 MS. HORLBECK: AND I -- THAT CALLS FOR SPECULATION. I
15 OBJECT.

16 THE COURT: I'LL SUSTAIN IT.

17 Q. TAKING YOU BACK TO THE SCENE AFTER YOU -- HE WAS
18 SECURED IN THE VEHICLE WHERE DID YOU GO FROM THERE?

19 A. AFTER HE WAS SECURED AND THE NARCOTICS HAD BEEN SECURED
20 HE WAS TRANSPORTED TO 20 MCGEE STREET. THAT'S THE DETENTION
21 CENTER AT THE LAW ENFORCEMENT CENTER.

22 Q. OKAY. AND FOR WHAT PURPOSE IS THAT?

23 A. THAT WAS FOR THE PURPOSE OF OBTAINING THE PAPERWORK,
24 THE NECESSARY PAPERWORK, THE COMMITMENTS, THE ARREST
25 WARRANTS.

PATRICK SWIFT - DIRECT EXAMINATION BY MS. TESSITORE

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1 Q. IS THAT PART OF THE NORMAL PROCESS WHEN YOU'VE ARRESTED
2 SOMEBODY?

3 A. YES, IT IS.

4 Q. AND PART OF YOUR DUTIES?

5 A. YES.

6 Q. AND WHAT HAPPENED WHEN YOU GOT THERE?

7 A. WHEN WE GOT THERE HE WAS ARRAIGNED BEFORE THE NIGHT
8 MAGISTRATE. I CAN'T RECALL WHO THAT WAS AT THIS TIME. HE
9 WAS ARRAIGNED AND HE WAS GIVEN -- A BOND WAS SET ON HIM. HE
10 WAS TAKEN INTO THE SALLY-PORT AREA OF THE DETENTION CENTER.
11 AND THAT'S WHERE WE ACTUALLY TRANSFER THE CUSTODY OF THE
12 DEFENDANT OVER TO THE JAIL, THE DETENTION CENTER.

13 Q. OKAY. AND WHAT IS INVOLVED IN THAT PROCESS OF
14 TRANSFERRING HIM, PHYSICALLY AND ---

15 A. WE ---

16 Q. --- HANDCUFFS?

17 A. HE'S HANDCUFFED BEHIND HIS BACK WHEN WE GO INTO THE
18 SALLY-PORT. WE TAKE HIM IN. HE'S SEARCHED AGAIN BY A
19 DETENTION OFFICER INSIDE THE DETENTION. AND THEY DO ONE
20 LAST FINAL SEARCH TO MAKE SURE HE HAS NO NARCOTICS, NO
21 WEAPONS OF ANY TYPE ON HIS PERSON THAT HE CAN BRING INTO THE
22 JAIL.

23 AND AFTER THEIR SEARCH IS COMPLETE WE'LL TAKE OFF THE
24 HANDCUFFS. AND THEY TAKE CUSTODY OF HIM. THEY TAKE ALL OF
25 HIS PAPERWORK. THEY TAKE ALL OF HIS PERSONAL BELONGINGS

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1 THAT HE MIGHT HAVE HAD ON HIM THAT NIGHT. AND THEY TAKE ALL
2 THAT. AND THEY GO INTO THE JAIL WITH HIM AND CLOSE THE DOOR
3 BEHIND HIM.

4 Q. OKAY. WERE HIS HANDCUFFS TAKEN OFF THAT NIGHT?

5 A. WE STARTED TO TAKE HIS HANDCUFFS OFF, YES.

6 Q. OKAY. AND WHAT HAPPENED AS YOU STARTED THAT PROCESS?

7 A. HE GOT INTO A VERY DEFENSIVE POSTURE. AND HE STATED TO
8 DEPUTY TOLLISON THAT HE WAS GOING TO -- HE SAID, I'M GOING
9 TO BEAT YOUR ASS IN HERE. AND ---

10 Q. IF YOU COULD STEP DOWN AND JUST DEMONSTRATE FOR THE
11 JURY HOW HE PHYSICALLY ACTED AS HE WAS UTTERING THESE WORDS.

12 A. WELL, HE HAD HIS HANDCUFFS -- HE STILL HAD ONE HANDCUFF
13 -- ONE HANDCUFF WAS COMING OFF. AND HE BOWED HIS CHEST AND
14 CLINCHED HIS FIST LIKE THIS AND SAID, I'LL BEAT YOUR ASS IN
15 HERE ---

16 Q. DID HE MOVE AT ALL?

17 A. HE, I MEAN, HE TOOK A STEP TOWARDS -- THE DETENTION
18 OFFICER WAS THERE. HE DIDN'T GET VERY FAR. THE DETENTION
19 OFFICER WAS THERE, PUT HANDS ON HIM, AND WE SECURED HIM BACK
20 IN THE HANDCUFFS AGAIN.

21 Q. OKAY. AND WHAT WERE HIS WORDS EXACTLY THAT HE SAID?

22 MS. HORLBECK: ASKED AND ANSWERED.

23 THE COURT: THAT'S ALL RIGHT. GO AHEAD. ANSWER IT ONE
24 MORE TIME.

25 A. HE SAID, I'LL BEAT YOUR ASS IN HERE.

PATRICK SWIFT - CROSS EXAMINATION BY MS. HORLBECK

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1 Q. AND WHAT WAS THE RESPONSE AT THAT POINT?

2 A. WE PLACED HIM BACK IN THE HANDCUFFS AGAIN.

3 Q. GOT HIM UNDER CONTROL?

4 A. RIGHT.

5 Q. OKAY. AND THEN DID YOU HAVE ANY OTHER INVOLVEMENT WITH
6 HIM?

7 A. NO, AT THAT POINT I DID NOT.

8 Q. OKAY. ANSWER ANY QUESTIONS THAT MS. HORLBECK MAY HAVE.

9 CROSS EXAMINATION BY MS. HORLBECK:

10 Q. DEPUTY SWIFT, YOU TESTIFIED THAT YOU'D BEEN WITH THE
11 SHERIFF'S OFFICE FOR A YEAR AND THREE MONTHS?

12 A. NO. IT'S -- I'VE BEEN WITH THE DIRECTED PATROL UNIT
13 FOR A YEAR AND THREE MONTHS.

14 Q. OKAY. AND THAT WOULD MEAN THAT AS OF LAST JANUARY,
15 2000, I'M SORRY, IN JANUARY OF 2007 YOU WOULD HAVE BEEN WITH
16 THE DIRECTED PATROL UNIT FOR THREE MONTHS?

17 A. NO. LET'S SEE, THIS IS MARCH NOW. I'D BEEN THERE FOR
18 -- I CAME DOWN IN JANUARY. I THINK JANUARY 1ST WAS MY FIRST
19 DAY IN THE UNIT.

20 Q. ALL RIGHT. SO YOU'D BEEN ON THE DIRECTED PATROL UNIT
21 FOR APPROXIMATELY TEN DAYS?

22 A. THAT'S RIGHT.

23 Q. ALL RIGHT. AND AT THAT POINT HAD YOU -- YOU CERTAINLY
24 HADN'T ENGAGED IN MANY BUYS, IF ANY, CORRECT?

25 A. THAT'S CORRECT.

PATRICK SWIFT - CROSS EXAMINATION BY MS. HORLBECK

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1 Q. ALL RIGHT. AND YOU TESTIFIED THAT YOU HAD SEVERAL
2 COURSES IN DRUG INTERDICTION OFFERED BY THE DEA?

3 A. THAT'S RIGHT.

4 Q. AND YOU ALSO HAD A DRUG COURSE OFFERED BY HOMELAND
5 SECURITY, IS THAT CORRECT?

6 A. THAT'S RIGHT. IT'S SPONSORED BY HOMELAND SECURITY.
7 IT'S DONE THROUGH REGIONAL COUNTER DRUG, I THINK, IS THE
8 ACTUAL NAME OF IT.

9 Q. AND YOU OBVIOUSLY GRADUATED FROM THE CRIMINAL JUSTICE
10 ACADEMY, CORRECT?

11 A. YES, MA'AM.

12 Q. ALL RIGHT. IN ALL OF THOSE COURSES AND AT THE CRIMINAL
13 JUSTICE ACADEMY THEY ALSO TAUGHT YOU HOW TO INVESTIGATE A
14 CASE, CORRECT?

15 A. YES, MA'AM.

16 Q. AND DID THEY TEACH YOU TO GATHER EVIDENCE?

17 A. YES, MA'AM.

18 Q. AND DID THEY TEACH YOU THAT THE WHOLE POINT OF THE
19 GATHERING OF THE EVIDENCE AND THE SPEAKING TO WITNESSES AND
20 THE WRITING OF THE REPORTS, THAT WAS TO BUILD A CASE,
21 CORRECT?

22 A. YES, MA'AM.

23 Q. ALL RIGHT. YOU TESTIFIED ON DIRECT ABOUT THE USE OF
24 VIDEO EQUIPMENT AND WIRES TO AUDIO TAPE AN ALLEGED
25 TRANSACTION, CORRECT?

PATRICK SWIFT - CROSS EXAMINATION BY MS. HORLBECK

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1 A. YES, MA'AM.

2 Q. ALL RIGHT. THOSE ARE TYPES OF EQUIPMENT THAT YOU WOULD
3 USE TO BUILD YOUR CASE, CORRECT?

4 A. YES, MA'AM.

5 Q. AND THOSE TYPES OF EQUIPMENT WERE NOT USED IN YOUR CASE
6 ON JANUARY 10TH OF 2007, IS THAT RIGHT?

7 A. THAT'S RIGHT, NOT IN THIS PARTICULAR CASE.

8 Q. YOU DIDN'T WEAR A WIRE?

9 A. NO, MA'AM.

10 Q. NONE OF THE OTHER THREE FELLOWS ON YOUR TEAM WORE A
11 WIRE?

12 A. NO, MA'AM.

13 Q. AND I UNDERSTAND THAT YOU DROVE AN UNDERCOVER -- WAS IT
14 A FORD?

15 A. FORD EXPLORER.

16 Q. FORD EXPLORER, ALL RIGHT. THAT FORD EXPLORER, IT'S NOT
17 A PERSONAL CAR, IS THAT CORRECT?

18 A. NO, IT'S NOT.

19 Q. IT'S -- THAT FORD EXPLORER IS ACTUALLY IN THE FLEET OF
20 AUTOMOBILES OWNED BY THE GREENVILLE COUNTY SHERIFF'S OFFICE?

21 A. YES.

22 Q. SO EXCEPT FOR THE FACT THAT THAT FORD EXPLORER IS NOT
23 MARKED THERE'S REALLY NO DIFFERENCE BETWEEN THAT FORD
24 EXPLORER AND ANY OTHER PATROL CAR USED BY THE SHERIFF'S
25 OFFICE, CORRECT?

PATRICK SWIFT - CROSS EXAMINATION BY MS. HORLBECK

124

1 A. IT DOESN'T HAVE LIGHTS IN IT. IT DOESN'T HAVE ANY TYPE
2 OF CAPABILITY TO STOP A VEHICLE TO RUN WHAT WE CALL SIGNAL
3 ONE, IT'S EMERGENCY RESPONSE. IT DOESN'T HAVE LIGHTS AND
4 SIREN. IT DOESN'T HAVE THAT TYPE OF ...

5 Q. THAT'S BECAUSE -- THAT'S BECAUSE -- I'M SORRY. I
6 DIDN'T MEAN TO SPEAK OVER YOU. FINISH YOUR SENTENCE.

7 A. I WAS JUST -- IT DOESN'T HAVE THAT KIND OF CAPABILITY.

8 Q. OKAY.

9 A. WE DON'T HAVE THAT CAPABILITY FOR THAT VEHICLE.

10 Q. BUT IT IS AN AUTOMOBILE MAINTAINED IN THE FLEET OF
11 AUTOMOBILES MAINTAINED IN THE GREENVILLE COUNTY SHERIFF'S
12 OFFICE, CORRECT?

13 A. YES.

14 Q. ALL RIGHT. AND IT'S USED -- THIS SPECIFIC FORD WAS
15 USED IN AN UNDERCOVER CAPACITY?

16 A. YES.

17 Q. SO THAT YOU COULD DO YOUR JOB TO BUILD A CASE?

18 A. YES.

19 Q. ALL RIGHT. AND THERE'S ABSOLUTELY NO VIDEO EQUIPMENT
20 CONTAINED IN IT?

21 A. NO.

22 Q. NO WAY THAT Y'ALL CAN VIDEO TAPE ANYTHING IN THESE
23 CARS?

24 A. NO.

25 Q. AND YOU KNOW FOR YOURSELF FROM BEING IN A MARKED PATROL

PATRICK SWIFT - CROSS EXAMINATION BY MS. HORLBECK

125

1 CAR FOR A TIME THAT THAT IS EQUIPPED WITH A VIDEO TAPE,

2 CORRECT?

3 A. YES.

4 Q. ALL RIGHT. AND YOUR UNDERCOVER CAR HAS NOTHING IN IT,

5 CORRECT?

6 A. CORRECT.

7 Q. YOU EXPLAINED THAT THERE WAS A HIGHER LEVEL OF TEAM IN

8 THE COUNTY, IN THE GREENVILLE COUNTY SHERIFF'S OFFICE CALLED

9 THE VICE AND NARCOTICS UNIT?

10 A. THEY'RE A DIFFERENT TYPE OF -- THEY DO A DIFFERENT TYPE

11 OF INVESTIGATION.

12 Q. THEY DO A LONGER INVESTIGATION?

13 A. THAT'S RIGHT.

14 Q. IS YOUR DIRECTED PATROL UNIT, IS THAT UNDER THE

15 UMBRELLA OF THE VICE AND NARCOTICS UNIT?

16 A. WE FALL UNDER A DIFFERENT CHAIN OF COMMAND. SO IT'S

17 NOT -- IF YOU'RE TALKING ABOUT CHAIN OF COMMAND AT THE

18 SHERIFF'S OFFICE, WE DON'T ACTUALLY FALL UNDER VICE AND

19 NARCOTICS.

20 Q. ALL RIGHT. IF I'M NOT TALKING ABOUT CHAIN OF COMMAND,

21 IS THERE ANY ASSOCIATION BETWEEN YOUR UNIT AND VICE AND

22 NARCOTICS?

23 A. WE DEAL WITH NARCOTICS. WE DEAL WITH PROSTITUTION. SO

24 WE MAKE SIMILAR TYPE CASES.

25 Q. OKAY.

PATRICK SWIFT - CROSS EXAMINATION BY MS. HORLBECK

126

1 A. THEY JUST -- THEY TAKE IT MORE LONG-TERM THAN WHAT WE
2 DO.

3 Q. OKAY. SO ASIDE FROM THE LENGTH OF TIME OF THE
4 INVESTIGATION THERE'S REALLY NO DIFFERENCE BETWEEN YOUR UNIT
5 AND THE VICE AND NARCOTICS UNIT?

6 A. THERE'S -- THERE'S A LOT -- THERE'S ACTUALLY A LOT OF
7 OTHER -- THEY HAVE MORE RESOURCES BECAUSE THEY CARRY CASES
8 OUT FURTHER. THEY GET MORE INTO SEIZING ASSETS THAN WHAT WE
9 DO, ASSETS THAT WERE DERIVED FROM NARCOTIC TRADE AND MONIES
10 THAT ARE GOTTEN FROM NARCOTICS. AND -- BUT, I MEAN, WE DEAL
11 WITH NARCOTICS.

12 Q. BOTH YOUR UNITS ---

13 A. YES.

14 Q. --- DEAL WITH NARCOTICS, AND Y'ALL ARE BOTH EMPLOYED BY
15 THE GREENVILLE COUNTY ---

16 A. YES.

17 Q. --- SHERIFF'S OFFICE?

18 A. YES.

19 Q. ALL RIGHT. WHO DID YOU -- WHO DID YOU RIDE WITH TO THE
20 HOTEL? WHO WAS IN YOUR -- IN YOUR FORD?

21 A. MYSELF, DEPUTY TOLLISON, DEPUTY GRICE AND DEPUTY RHEA.

22 Q. ALL RIGHT. AND AFTER THE ARREST WAS MADE MR. GRANT WAS
23 TRANSPORTED TO THE LAW ENFORCEMENT CENTER IN THE SAME
24 AUTOMOBILE THAT Y'ALL -- THAT YOU AND YOUR TEAM ARRIVED IN?

25 A. YES.

PATRICK SWIFT - CROSS EXAMINATION BY MS. HORLBECK

127

1 Q. ALL RIGHT. MR. GRANT WENT TO THE LAW ENFORCEMENT
2 CENTER AND WITH HIM IN THE SAME BACK SEAT WAS ANOTHER
3 SUSPECT WHO WAS ALSO PUT UNDER ARREST?

4 A. I BELIEVE SO, YES.

5 Q. ALL RIGHT. AND YOU -- YOU DID NOT PARTICIPATE IN THE
6 SEARCH OF ROOM 105, DID YOU?

7 A. NO, MA'AM.

8 Q. AND THE DIRECTED PATROL UNIT, YOU ALSO TESTIFIED THAT
9 IT ALSO DEALS WITH PROSTITUTION?

10 A. YES, MA'AM.

11 Q. AND WHEN YOU AND DEPUTY TOLLISON FIRST ENCOUNTERED MR.
12 GRANT YOU'VE TESTIFIED THAT HE ASKED, ARE YOU STRAIGHT?

13 A. YES, MA'AM.

14 Q. AND YOU'VE ALSO TESTIFIED ON DIRECT THAT THAT COULD BE
15 A GREETING?

16 A. UM ---

17 Q. SOUNDS LIKE A GREETING?

18 A. IT'S -- IT'S KIND OF A -- IT'S NOT REALLY AS -- IT'S --
19 IT'S KIND OF HARD TO EXPLAIN IT UNLESS YOU PUT IT IN THE
20 CONTEXT THAT YOU'RE IN.

21 Q. DID YOU TESTIFY ON DIRECT THAT IT SOUNDS LIKE A
22 GREETING?

23 A. YES, MA'AM, I SAID THAT. YES.

24 Q. ALL RIGHT. I'LL HAND YOU A COPY OF THIS AND ASK YOU IF
25 YOU CAN IDENTIFY THAT?

PATRICK SWIFT - CROSS EXAMINATION BY MS. HORLBECK

128

- 1 A. YES. THIS IS THE -- THIS IS THE SUPPLEMENT THAT I
2 WROTE TO DEPUTY TOLLISON'S REPORT ---
3 Q. ALL RIGHT.
4 A. --- THAT NIGHT.
5 Q. DOES THAT HAVE YOUR NAME AT THE BOTTOM OF THAT
6 SUPPLEMENT?
7 A. YES, IT DOES.
8 Q. AND THAT'S A REPORT THAT YOU DRAFTED?
9 A. YES.
10 Q. AND THAT REPORT HAS TO DO WITH THIS CASE?
11 A. YES, IT DOES.
12 Q. ALL RIGHT. IN THAT REPORT -- IS THERE ANYTHING IN THAT
13 REPORT WHERE YOU DESCRIBE ANY SORT OF THREATS MADE BY MR.
14 GRANT AGAINST DEPUTY TOLLISON?
15 A. NO, MA'AM.
16 Q. IS THAT AN IMPORTANT FACT THAT YOU WOULD NORMALLY KEEP
17 IN YOUR REPORT?
18 A. YES, MA'AM.
19 Q. AND IT'S NOT IN THERE, IS IT?
20 A. NO, MA'AM, IT'S NOT.
21 Q. DID YOU HAVE CONSTANT VISUAL CONTACT WITH ROOM 105?
22 A. WHEN THE DEFENDANT WAS IN ROOM 105, YES.
23 Q. ALL RIGHT. AFTER -- BUT WERE THERE TIMES WHERE YOU
24 DIDN'T HAVE A VISUAL CONTACT WITH -- LET ME JUST PUT THIS IN
25 NORMAL SPEECH. WERE THERE TIMES WHERE YOU WERE UNABLE TO

PATRICK SWIFT - CROSS EXAMINATION BY MS. HORLBECK

129

1 SEE WHO WAS COMING IN AND OUT OF ROOM 105?

2 A. CERTAINLY BEFORE WE GOT THERE. I HAVE NO WAY OF

3 KNOWING WHO WENT IN BEFORE THE DEFENDANT WENT IN. AND THEN

4 AFTERWARDS WHEN HE CAME OUT HE MET US BACK IN THE BREEZE-WAY

5 WHERE HE HANDED DEPUTY TOLLISON THE CRACK COCAINE. WE

6 STEPPED AROUND THE SIDE OF THE BUILDING AND WE -- I DIDN'T

7 -- I COULDN'T SEE ROOM 105 AT THAT POINT.

8 Q. ALL RIGHT. SO AT THAT POINT YOU HAVE NO IDEA WHO MAY

9 HAVE COME IN OR MAY HAVE COME OUT OF ROOM -- IF ANYONE?

10 A. NO, I DON'T KNOW.

11 Q. OUT OF ROOM 105?

12 A. NO, I DON'T.

13 Q. OKAY. AND ---

14 MS. HORLBECK: BEG THE COURT'S INDULGENCE.

15 THE COURT: UH-HUH (AFFIRMATIVE).

16 Q. HOW MANY ARRESTS WERE MADE THAT NIGHT?

17 A. ONE IN THIS CASE. THERE WAS ANOTHER CASE THAT HAPPENED

18 AND THAT DEFENDANT WAS ALSO TRANSPORTED IN THE SAME VEHICLE.

19 SO THERE WERE -- THERE WERE TWO ARRESTS MADE WITHIN A PERIOD

20 OF A FEW MINUTES, BUT THEY WERE TWO SEPARATE CASES.

21 Q. ALL RIGHT. DO YOU HAVE -- IS IT FAIR TO SAY THAT ON

22 JANUARY 10TH, 2007 YOU WERE BEING TRAINED BY DEPUTY

23 TOLLISON?

24 A. NO, MA'AM.

25 Q. ALL RIGHT. BUT YOU WERE -- IS IT FAIR TO SAY THAT YOU

PATRICK SWIFT - CROSS EXAMINATION BY MS. HORLBECK

130

1 WERE NEW ON THE JOB AT THAT POINT?

2 A. I WAS NEW TO THE UNIT, NEW TO THE DIRECTED PATROL UNIT.

3 Q. AND WAS DEPUTY TOLLISON A VETERAN, MORE OF A VETERAN OF
4 THAT UNIT?

5 A. YES. HE'S BEEN THERE FOR -- I DON'T KNOW HOW LONG HE'S
6 BEEN THERE. HE'S BEEN THERE BEFORE I WAS THERE.

7 Q. AND YOU WERE WORKING WITH DEPUTY TOLLISON THAT NIGHT?

8 A. RIGHT.

9 Q. OKAY.. DO YOU KNOW IF THERE'S ANY VIDEO FROM THE
10 DETENTION CENTER REFLECTING ANYTHING DONE OR SAID BY MR.
11 GRANT IN THE SALLY-PORT OF THE DETENTION CENTER?

12 A. I DON'T KNOW.

13 Q. DO YOU HAVE A VIDEO TODAY TO SHOW TO THE JURY?

14 A. NO, I DON'T.

15 Q. ALL RIGHT. DO YOU RECALL THE NAME OF THE DETENTION
16 CENTER EMPLOYEE WHO MAY HAVE -- WHO YOU'VE TESTIFIED WAS
17 PRESENT ---

18 A. NO, I DON'T.

19 Q. --- WHEN THERE WERE THREATS MADE?

20 A. I DON'T KNOW HIS NAME.

21 Q. ALL RIGHT. DO YOU HAVE A CELL PHONE THAT HAS VIDEO
22 CAPABILITY?

23 A. NO.

24 Q. AND -- OKAY. YOU DON'T HAVE ONE OF THOSE AT ALL?

25 A. I HAVE A CELL PHONE, BUT IT DOESN'T HAVE VIDEO

PATRICK SWIFT - REDIRECT EXAMINATION BY MS. TESSITORE

131

1 CAPABILITY.

2 Q. ALL RIGHT. DID ANYBODY ON THE TEAM?

3 A. I DON'T KNOW. I REALLY DON'T.

4 Q. BUT THERE'S CERTAINLY NO VIDEO FROM A CELL PHONE IN
5 EVIDENCE TODAY, CORRECT, THAT YOU KNOW OF?

6 A. NOT THAT I KNOW OF.

7 Q. ALL RIGHT.

8 MS. HORLBECK: I DON'T HAVE ANYTHING FURTHER.

9 THE COURT: ALL RIGHT. ANY REDIRECT?

10 MS. TESSITORE: VERY BRIEFLY, YOUR HONOR.

11 REDIRECT EXAMINATION BY MS. TESSITORE:

12 Q. FROM THE BREEZE-WAY WHERE THE HAND-TO-HAND TRANSACTION
13 OCCURRED COULD YOU SEE THE FORD EXPLORER FROM THERE?

14 A. NO.

15 Q. SO IF THE CAR HAD BEEN EQUIPPED WITH VIDEO WOULD THAT
16 TRANSACTION HAVE BEEN CAPTURED ON THE VIDEO?

17 A. NO.

18 Q. DID YOU EVEN KNOW WHERE -- WELL, DID YOU KNOW THAT THE
19 DEFENDANT WOULD EVEN APPROACH YOU AND DEPUTY TOLLISON THAT
20 EVENING?

21 A. NO, WE DID NOT.

22 Q. AND DID YOU KNOW WHERE HE WOULD TAKE YOU FROM THERE?

23 A. NO. NO.

24 Q. AND THIS GREETING, ARE YOU STRAIGHT, IS THAT SOMETHING
25 THAT YOU NORMALLY GREET YOUR FRIENDS AND FAMILY MEMBERS

PATRICK SWIFT - RECROSS EXAMINATION BY MS. HORLBECK

132

1 WITH?

2 A. NO, MA'AM.

3 Q. IN WHAT CONTEXT HAVE YOU HEARD THAT USED AS A GREETING?

4 A. THE ONLY TIME I'VE HEARD IT USED IS DEALING WITH
5 NARCOTICS OR PROSTITUTION. ARE YOU LOOKING FOR NARCOTICS OR
6 PROSTITUTION? OR DO YOU HAVE NARCOTICS AND PROSTITUTION
7 THAT YOU'LL SELL ME? THAT'S THE ONLY TIME I'VE HEARD THAT
8 USED.

9 Q. OKAY. NO FURTHER QUESTIONS. YOU MAY STEP DOWN. THANK
10 YOU.

11 MS. HORLBECK: WELL, I JUST BRIEFLY ...

12 THE COURT: ALL RIGHT. GO AHEAD.

13 RECROSS EXAMINATION BY MS. HORLBECK:

14 Q. AND, DEPUTY, HIDDEN CAMERA TECHNOLOGY CERTAINLY EXISTS,
15 DOESN'T IT?

16 A. YEAH. YES.

17 Q. IT WASN'T USED IN THIS CASE, WAS IT?

18 A. NO.

19 Q. ALL RIGHT. AND YOU'VE JUST TESTIFIED, AM I CORRECT,
20 THAT THE GREETING, ARE YOU STRAIGHT, IS A GREETING THAT IS
21 USED IN PROSTITUTION?

22 A. PROSTITUTION AND NARCOTICS.

23 Q. ALL RIGHT.

24 MS. HORLBECK: I DON'T HAVE ANYTHING FURTHER.

25 THE COURT: ALL RIGHT. THANK YOU, OFFICER. YOU CAN

1 STEP DOWN.

2 WOW, LADIES AND GENTLEMEN, IT'S 5:00. AND WE'RE AT A
3 GREAT BREAKING POINT. THAT JUST RARELY EVER HAPPENS. SO WE
4 WILL -- I'LL TAKE THE OPPORTUNITY TO BREAK FOR THE EVENING.
5 YOU ALL, OF COURSE, ARE FREE TO GO HOME.

6 AND PLEASE REMEMBER WHAT I'VE INSTRUCTED YOU AND ASKED
7 YOU TO DO AND NOT TO DO, AND THAT IS, DON'T TALK ABOUT THE
8 CASE. IT'S GOT TO BE VERY TEMPTING TO DO THAT, TO DISCUSS
9 WHAT YOU'VE HEARD, BUT DON'T DO THAT. SAVE IT FOR YOUR
10 DELIBERATIONS. AND OTHER THAN THAT, WE'LL ASK Y'ALL TO BE
11 BACK AT 9:30. THANK YOU VERY MUCH.

12 (WHEREUPON THE JURY EXITED THE COURTROOM AT 5:03 PM)

13 THE COURT: ALL RIGHT. ANYTHING BEFORE WE BREAK?

14 MS. TESSITORE: NOTHING FROM THE STATE, YOUR HONOR.

15 MS. HORLBECK: AND I'D JUST RENEW ALL MY PRIOR MOTIONS
16 AND OBJECTIONS.

17 THE COURT: WELL, OKAY, BUT THAT'S -- NOW IS NOT THE
18 TIME.

19 MS. HORLBECK: WELL, ---

20 THE COURT: THEY HAVEN'T RESTED. HAVE YOU? ARE YOU
21 RESTING?

22 MS. HORLBECK: NO.

23 MS. TESSITORE: NO, SIR.

24 THE COURT: I DIDN'T ASK YOU.

25 (LAUGHTER)

1 THE COURT: HAVE YOU RESTED?

2 MS. TESSITORE: NO, YOUR HONOR. WE STILL HAVE THREE
3 WITNESSES.

4 THE COURT: OKAY. ALL RIGHT. JUST INSTRUCT YOUR
5 WITNESSES NOT TO DISCUSS THEIR TESTIMONY IN THE COURTROOM.
6 ALL RIGHT.

7 MS. TESSITORE: YES, SIR.

8 THE COURT: SEE Y'ALL AT 9:30.

9 (WHEREUPON COURT WAS IN RECESS AT 5:04 PM)

STEVEN RHEA - DIRECT EXAMINATION BY MS. TESSITORE

135

1 WEDNESDAY, MARCH 12, 2008:

2 THE COURT: THANKS. PLEASE BE SEATED. Y'ALL READY?

3 MS. TESSITORE: YES, SIR.

4 MS. HORLBECK: YES, SIR.

5 THE COURT: OKAY.

6 MS. HORLBECK: YOUR HONOR, I DON'T KNOW IF WE'RE --

7 WE'RE STILL UNDER OUR SEQUESTRATION ORDER, CORRECT?

8 THE COURT: WELL, IF THEY SIT IN HERE THEY CAN'T GET

9 BACK ON THE STAND IF THEY'VE ALREADY TESTIFIED. IS THAT

10 WHAT YOU'RE ASKING? YEAH, OKAY.

11 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 9:54 AM)

12 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN, WELCOME

13 BACK. I HOPE Y'ALL HAD A PLEASANT EVENING. AND WE ARE

14 READY TO RESUME TESTIMONY.

15 MS. TESSITORE: THANK YOU, YOUR HONOR. MAY IT PLEASE

16 THE COURT? THE STATE CALLS DEPUTY STEVE RHEA.

17 THE COURT: OKAY.

18 STEVEN RHEA, BEING DULY

19 SWORN TESTIFIED AS FOLLOWS:

20 MADAME CLERK: PLEASE STATE YOUR FULL NAME FOR THE

21 RECORD.

22 MR. RHEA: STEVEN EUGENE RHEA.

23 MADAME CLERK: HAVE A SEAT, PLEASE.

24 DIRECT EXAMINATION BY MS. TESSITORE:

25 Q. GOOD MORNING, DEPUTY RHEA.

STEVEN RHEA - DIRECT EXAMINATION BY MS. TESSITORE

136

- 1 A. GOOD MORNING.
- 2 Q. COULD YOU TELL THE JURY WHERE YOU WORK?
- 3 A. I WORK FOR THE GREENVILLE COUNTY SHERIFF'S OFFICE.
- 4 Q. AND HOW LONG HAVE YOU BEEN WITH THE GREENVILLE COUNTY
- 5 SHERIFF'S OFFICE?
- 6 A. SINCE SEPTEMBER 2001.
- 7 Q. WHAT IS YOUR POSITION NOW?
- 8 A. I AM A MASTER DEPUTY IN THE DIRECTED PATROL UNIT.
- 9 Q. AND WAS THAT THE SAME POSITION YOU HAD IN JANUARY OF
- 10 2007?
- 11 A. THAT'S CORRECT.
- 12 Q. WHAT KIND OF TRAINING HAVE YOU HAD?
- 13 A. I'VE ATTENDED A -- DRUG ENFORCEMENT AGENCY PUT ON A
- 14 CLASS, REFERENCED A TWO WEEK'S BASIC NARCOTICS INVESTIGATION
- 15 SCHOOL. THAT WAS ABOUT A YEAR AGO. AND THEN I'VE ALSO BEEN
- 16 TO A CLASS IN MERIDIAN, MISSISSIPPI THAT DEALT WITH PHYSICAL
- 17 SURVEILLANCE BOTH ON FOOT AND IN A VEHICLE. PRIOR TO THAT
- 18 JUST LITTLE CLASSES HERE AND THERE DEALING WITH JUST BASIC
- 19 STREET LEVEL DRUGS THROUGHOUT MY CAREER.
- 20 Q. OKAY. AND THE CRIMINAL JUSTICE ACADEMY?
- 21 A. AND THE -- YES, THE ACADEMY.
- 22 Q. SO REGARDING -- HAVE YOU BEEN INVOLVED IN UNDERCOVER
- 23 BUYS?
- 24 A. I'VE DONE A FEW, PROBABLY THREE TO FOUR.
- 25 Q. OKAY. SO ARE YOU IN THE NARCOTICS DIVISION?

STEVEN RHEA - DIRECT EXAMINATION BY MS. TESSITORE

137

1 A. WE ARE NOT. THE UNIT THAT I'M IN DEALS MAINLY WITH
2 JUST STREET LEVEL PROBLEMS. WE'RE NOT NO LONG-TERM TYPE
3 INVESTIGATIONS. WE NORMALLY JUST GO OUT AND -- IF THERE'S
4 AN AREA THAT'S HAVING A LOT OF PROBLEMS WITH CRIME THAT'S
5 BRINGING A LOT OF ATTENTION TO ITSELF, WE USUALLY JUST GO
6 OUT AND WE JUST SATURATE THE AREA. WE'RE JUST -- DAY TO DAY
7 WE'RE MAKING INVESTIGATIONS. WE'RE NOT LONG-TERM.

8 Q. AND WHAT KIND OF INVESTIGATIONS OR ACTIVITIES ARE YOU
9 LOOKING FOR IN THE DP UNIT?

10 A. MAINLY PROSTITUTION AND JUST STREET LEVEL DRUGS WHETHER
11 IT'S PEOPLE THAT ARE SELLING IT AND SMOKING IT, THEIR
12 PERSONAL USE, OR IF IT'S THE PEOPLE THAT ARE HANGING AROUND
13 MOTELS WITH THE INTENT TO DISTRIBUTE.

14 Q. SO AS FAR AS THE TYPE OF DRUG TRADE, IS THIS WHERE
15 WE'RE TALKING ABOUT TRAFFICKING LEVEL OR WHAT KIND OF LEVEL
16 OF DRUG -- DRUG TRADE ARE WE TALKING ABOUT?

17 A. WE'RE TALKING PROBABLY THE LOWER ECHELON, THE PEOPLE
18 THAT ARE JUST OUT THERE DAY TO DAY WALKING BY TRYING TO
19 EITHER GET A ROCK FOR THEMSELF TO SMOKE OR TO GET A FEW
20 ROCKS AND TURN AND SELL IT JUST SO THEY CAN HAVE ENOUGH
21 MONEY TO PAY THE NEXT DAY'S RENT AT THE MOTEL OR JUST TO
22 MAKE A FEW DOLLARS HERE AND THERE.

23 Q. AND WERE YOU CONDUCTING THIS TYPE OF PATROLLING IN THE
24 AREA OF THE SUPER LODGE MOTEL AND THE INNTOWN SUITES ON
25 JANUARY 10TH OF 2007?

STEVEN RHEA - DIRECT EXAMINATION BY MS. TESSITORE

138

1 A. THAT'S CORRECT.

2 Q. THAT'S -- IS THAT RIGHT OFF OF INTERSTATE I-85?

3 A. IT IS. IT'S OFF OF 85. IT'S ACTUALLY AT THE
4 INTERSECTION OF MAULDIN ROAD NEAR SOUTH PLEASANTBURG AND
5 291.

6 Q. AND ARE YOU FAMILIAR WITH THAT AREA?

7 A. I AM.

8 Q. HOW LONG HAVE YOU BEEN FAMILIAR WITH THAT AREA?

9 A. I WENT TO THE UNIT, DIRECTED PATROL UNIT IN NOVEMBER OF
10 '06. SO FOR THE LAST EIGHTEEN MONTHS ROUGHLY WE'VE BEEN
11 DOWN THERE MAKING CASES OFF AND ON.

12 Q. OKAY. AND THOSE ARE MOTELS THAT ARE RIGHT OFF OF I-85
13 WHERE TRAVELERS COULD EASILY FIND THEY WERE GETTING OFF THE
14 HIGHWAY ---

15 MS. HORLBECK: OBJECT TO LEADING.

16 THE COURT: YEAH, DON'T LEAD. WHO, WHAT, WHEN, WHERE,
17 WHY.

18 Q. OKAY. HOW QUICKLY WOULD SOMEONE BE ABLE TO GET OFF 85
19 AND FIND THESE MOTELS ---

20 MS. HORLBECK: CALLS FOR SPECULATION.

21 THE COURT: WELL, DON'T SPECULATE. IF HE'S GOT ANY IN
22 HIS PERSONAL EXPERIENCE, KNOWS ---

23 MS. HORLBECK: AND I ---

24 THE COURT: --- GO AHEAD. HE CAN TALK ABOUT THAT.

25 MS. HORLBECK: I WOULD ALSO OBJECT AS TO RELEVANCE.

STEVEN RHEA - DIRECT EXAMINATION BY MS. TESSITORE

139

1 THE COURT: I'LL OVERRULE THAT. GO AHEAD.

2 Q. SO APPROXIMATELY HOW FAR ARE THESE MOTELS FROM I-85,
3 THE EXIT THERE?

4 A. SOME ARE WITHIN SEVERAL HUNDRED YARDS.

5 Q. OKAY. AND WHAT BROUGHT YOUR ATTENTION, YOUR DPU UNIT
6 ATTENTION TO THAT SPECIFIC AREA ON THAT -- ON THAT -- ON
7 THAT DAY?

8 MS. HORLBECK: OBJECT TO RELEVANCE.

9 THE COURT: OVERRULED. GO AHEAD.

10 A. WE GET A LOT OF COMPLAINTS FROM CITIZENS. WE GET
11 COMPLAINTS THAT ARE FORWARDED TO OUR UNIT. SO IT WAS
12 PROBABLY COMPLAINTS AND ALSO JUST -- JUST BEING PROACTIVE.

13 Q. AND YOU'RE FAMILIAR WITH THAT PARTICULAR AREA, THOSE
14 TWO MOTELS?

15 A. I AM.

16 Q. OKAY. NOW LET ME ASK YOU -- JUST FOCUSING ON
17 WEDNESDAY, JANUARY 10TH IN THE EARLY EVENING HOURS WERE YOU
18 WORKING IN THAT AREA?

19 A. I WAS.

20 Q. AND WHO WERE YOU WORKING WITH?

21 A. I WAS WORKING WITH DEPUTY GRICE, DEPUTY TOLLISON AND
22 DEPUTY SWIFT.

23 Q. AND HOW DID YOU GET THERE?

24 A. WE DROVE AN UNDERCOVER COUNTY VEHICLE.

25 Q. WHY -- WHY WERE YOU DRIVING AN UNDERCOVER VEHICLE?

STEVEN RHEA - DIRECT EXAMINATION BY MS. TESSITORE

140

1 A. WE FIND THAT IT'S EASIER FOR US TO BE APPROACHED BY
2 PEOPLE WHETHER IT'S PROSTITUTES OR WHETHER IT'S PEOPLE OUT
3 TRYING TO FIND PLACES TO SMOKE OR TO SELL DRUGS WHEN WE'RE
4 IN AN UNDERCOVER VEHICLE. OBVIOUSLY IF WE'RE IN A MARKED
5 UNIT THEY'RE NOT GOING TO COME NEAR US.

6 Q. AND DESCRIBE YOUR APPEARANCE AND THAT OF YOUR FELLOW
7 OFFICERS ON THAT DAY.

8 A. JUST NORMAL, TYPICAL STREET CLOTHES, JEANS, T-SHIRTS.
9 WE DON'T USUALLY SHAVE, A COUPLE OF DAYS OF GROWTH, A BEARD.
10 JUST TRY TO BLEND IN WITH THE ENVIRONMENT THAT WE'RE IN.

11 Q. AND WAS THERE ANY RECORDING EQUIPMENT IN THE VEHICLE?

12 A. NO.

13 Q. EXPLAIN WHEN WIRES AND RECORDING IS USED IN THESE TYPES
14 OF SITUATIONS.

15 A. WE'D USE A WIRE IF WE DID NOT HAVE TWO OFFICERS
16 TOGETHER. IT'S MAINLY FOR OFFICER SAFETY. IF WE HAVE TWO
17 OFFICERS THAT ARE OUT WALKING, LIKE WE DID THIS NIGHT IN
18 PARTICULAR, WE DON'T USE RECORDING DEVICES. WE ALSO USE A
19 RECORDING DEVICE AND AUDIO DEVICE IF WE PUT OUT A
20 CONFIDENTIAL INFORMANT WHO'S NOT A LAW ENFORCEMENT OFFICER,
21 BUT WHO'S WORKING FOR US. THIS PARTICULAR NIGHT WE DIDN'T
22 HAVE A CONFIDENTIAL INFORMANT WORKING. IT WAS JUST TWO
23 UNDERCOVER OFFICERS.

24 Q. OKAY. SO WAS -- WAS THIS PARTICULAR -- ON THIS
25 PARTICULAR DAY HAD YOU BEEN WATCHING ANYBODY?

STEVEN RHEA - DIRECT EXAMINATION BY MS. TESSITORE

141

1 A. NO.

2 Q. OR TARGETING ANY AREA OR PERSON WITH RESPECT TO ANY
3 ROOM OR ANY PERSON THERE?

4 A. NO.

5 Q. AND DESCRIBE WHAT HAPPENED WHILE YOU WERE OUT IN THAT
6 AREA THAT NIGHT. FIRST OF ALL, WHERE DID YOU PARK THE
7 UNDERCOVER VEHICLE?

8 A. WE PULLED INTO THE PARKING LOT OF THE STEAK-OUT
9 RESTAURANT, WHICH IS BETWEEN BOTH MOTELS. I WAS A PASSENGER
10 IN THE FRONT SEAT. DEPUTY GRICE WAS DRIVING. AND DEPUTY
11 SWIFT AND DEPUTY TOLLISON WERE IN THE BACK SEAT AS
12 PASSENGERS. THEY DECIDED TO GET OUT ON FOOT AND JUST TO
13 WALK DOWN TO THE 412 MAULDIN ROAD, WHICH IS THE MOTEL JUST
14 TO SEE ---

15 MS. HORLBECK: AND I OBJECT TO FURTHER TESTIMONY TO
16 PERSONAL KNOWLEDGE. HE WOULD HAVE NO PERSONAL KNOWLEDGE OF
17 WHAT THE OTHER DEPUTIES ARE DOING.

18 THE COURT: OKAY. ALL RIGHT. JUST TESTIFY TO WHAT YOU
19 ...

20 A. I WATCHED THEM WALK FROM THE VEHICLE DOWN TO THE MOTEL.

21 Q. TO WHICH MOTEL?

22 A. IT WAS CALLED THE GARDEN INN. IT WAS CALLED THE
23 COMFORT INN. I FORGET THE NAME OF IT NOW, BUT IT'S 412
24 MAULDIN ROAD.

25 Q. OKAY. LET'S GO BACK TO WHO -- FIRST OF ALL, DID ANYONE

STEVEN RHEA - DIRECT EXAMINATION BY MS. TESSITORE

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1 HAVE ANY MONEY?

2 A. I HAD BUY MONEY. I BELIEVE AT THE TIME THAT THEY
3 EXITED THE VEHICLE I GAVE DEPUTY TOLLISON A TWENTY DOLLAR
4 BILL JUST IN CASE HE WAS APPROACHED.

5 Q. OKAY. AND WHERE DID YOU GET THAT TWENTY DOLLAR BILL?

6 A. IT'S -- IT'S GOVERNMENT MONEY. IT COMES FROM OUR
7 SUPPLY OFFICE. WE'RE ISSUED SO MUCH MONEY. AT THE TIME WE
8 WERE BEING ISSUED MONEY PER MONTH.

9 Q. OKAY. AND THAT MONEY IS TO -- IS FOR WHAT PURPOSE?

10 A. IT'S TO BUY NARCOTICS.

11 Q. AND DID YOU DOCUMENT THAT THAT MONEY WAS USED THAT
12 EVENING?

13 A. I DID ON MY REPORT THAT I GAVE DEPUTY TOLLISON TWENTY
14 DOLLARS OF GOVERNMENT FUNDS.

15 Q. OKAY. AND THAT REPORT IS THE ONE THAT YOU PREPARED ON
16 JANUARY 10TH?

17 A. THAT'S CORRECT.

18 Q. OKAY. AND WHEN YOU GAVE IT TO DEPUTY TOLLISON WHERE
19 DID HE -- WHERE DID THEY -- WHERE DID TOLLISON AND DEPUTY
20 SWIFT THEN GO?

21 A. THEY WALKED FROM THE STEAK-OUT PARKING LOT DOWN TO THE
22 PARKING LOT OF -- THE 412 MAULDIN ROAD, WHICH IS -- I CAN'T
23 REMEMBER THE NAME OF THE MOTEL.

24 Q. OKAY. IF YOU COULD STEP DOWN. I'LL ASK YOU TO STAND
25 RIGHT THERE. OKAY. I'M SHOWING YOU WHAT'S BEEN MARKED AS

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143

1 EXHIBIT NUMBER 1, STATE'S EXHIBIT NUMBER 1, AND ASK YOU TO
2 LOOK AT THAT. AND DO YOU RECOGNIZE THAT?

3 A. I DO.

4 Q. OKAY. WHAT IS THAT?

5 A. THIS IS AN AERIAL MAP OF BOTH MOTELS THAT WE WERE AT
6 THAT NIGHT.

7 Q. OKAY. WHY DON'T YOU FIRST DESCRIBE WHERE YOU -- WHERE
8 YOU STARTED AND EXPLAIN TO THE JURY ---

9 A. WE BASICALLY PARKED OUR UNDERCOVER VEHICLE RIGHT HERE
10 FACING THE SUPER LODGE, WHICH IS 412 MAULDIN ROAD. WHEN
11 DEPUTY SWIFT AND DEPUTY TOLLISON EXITED THE VEHICLE THEY
12 WALKED DIRECTLY DOWN THE HILL, ACROSS THE PARKING LOT, DOWN
13 TO THE FIRST BREEZE-WAY.

14 Q. AND THAT'S THE FIRST BREEZE-WAY OF WHICH MOTEL?

15 A. SUPER LODGE.

16 Q. OKAY. AND DID YOU MAINTAIN VISUAL CONTACT WITH THEM?

17 A. I LOST VISUAL CONTACT AT SOME POINT AFTER THEY ENTERED
18 THE BREEZE-WAY BECAUSE IT -- THE DISTANCE AND IT KIND OF --
19 THE BREEZE-WAY KIND OF, I BELIEVE, KIND OF GOES UP AT AN
20 ANGLE. PROBABLY WITHIN A MINUTE OR TWO THEY RETURNED BACK
21 OUT AND WALKED STRAIGHT BACK UP THE HILL BY OUR VEHICLE AND
22 PROCEEDED OVER TO INNTOWN SUITES.

23 Q. OKAY. WHEN YOU SAID THEY WALKED, WHO WAS WALKING?

24 A. DEPUTY TOLLISON, DEPUTY SWIFT AND THE DEFENDANT.

25 Q. OKAY. AND COULD YOU TELL WHAT -- WHERE WAS THE

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1 DEFENDANT IN RELATION TO THE TWO OFFICERS AT THAT POINT?

2 A. WELL, I NOTICED WHEN THEY WALKED PAST THE VEHICLE THAT
3 WE WERE SITTING IN THEY WERE SORT OF FOLLOWING THE
4 DEFENDANT. HE WAS SORT OF LEADING THE WAY.

5 Q. AND WHAT DID YOU DO WHEN YOU WERE IN THE CAR?

6 A. TRIED NOT TO LOOK SUSPICIOUS OR CONSPICUOUS OR KIND OF
7 JUST SUNK DOWN IN THE SEAT 'CAUSE THEY WALKED RIGHT PAST IT.

8 Q. OKAY. AND DID YOU SEE WHERE THEY WENT TO?

9 A. I REMEMBER LOOKING IN MY REARVIEW MIRROR AND LOSING
10 SIGHT OF THEM SOMEWHERE IN THIS AREA RIGHT HERE. ONCE THEY
11 WERE OUT OF SIGHT DEPUTY GRICE THEN DROVE THE VEHICLE OVER
12 TO THIS POINT. I GOT OUT ON FOOT. THERE'S A STEEL ROD GATE
13 THAT BLOCKS TRAFFIC FROM COMING IN OR OUT. I THEN GOT ON
14 FOOT, WALKED THROUGH THIS AREA INTO THE PARKING LOT AS
15 DEPUTY GRICE CONTINUED ON AND WENT IN TOWARD THE FRONT
16 PARKING LOT.

17 Q. OKAY. AND WHEN DID YOU NEXT SEE THEM?

18 A. AS SOON AS I GOT TO THE BREEZE-WAY I WALKED THE
19 SIDEWALK. AND AS SOON AS I GOT TO THE BREEZE-WAY THE
20 DEFENDANT AND BOTH DEPUTY TOLLISON AND DEPUTY SWIFT WERE
21 COMING OUT. AND I PASSED BY BRIEFLY JUST TO MAKE SURE THAT
22 THEY WERE OKAY.

23 Q. I'M GOING TO FLIP THIS OVER AND TRY NOT TO HIT YOU IN
24 THE PROCESS. OKAY. AND NOW WE'RE LOOKING AT STATE'S
25 EXHIBIT NUMBER 2. TAKE A MINUTE TO LOOK AT THAT. AND DO

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145

1 YOU RECOGNIZE THAT?

2 A. I DO. IT'S THE -- AGAIN, IT'S AN AERIAL PHOTOGRAPH OF
3 THE INNTOWN SUITES ON MAULDIN ROAD.

4 Q. AND IS THAT HOW IT APPEARED, WHERE THE BUILDINGS ARE,
5 ON JANUARY 10TH, 2007?

6 A. IT DOES.

7 Q. OKAY. AND IF YOU COULD, JUST USE THIS RED MARKER AND
8 -- WELL, I GUESS IN RELATION TO -- WHERE WOULD THE SUPER
9 LODGE BE LOOKING AT IT FROM THIS ANGLE?

10 A. OVER HERE AT THE STEAK-OUT, WHICH IS RIGHT ABOUT -- I
11 GUESS, ACTUALLY THIS IS PART OF THE STEAK-OUT, THE PARKING
12 LOT OF STEAK-OUT RIGHT HERE. SO THEN THE SUPER LODGE WOULD
13 BE OVER HERE.

14 Q. OKAY. AND IF YOU COULD WITH THAT PEN, JUST SHOW WHERE
15 YOU FIRST SAW DEPUTY TOLLISON, DEPUTY SWIFT AND THE
16 DEFENDANT.

17 A. (WHEREUPON THE WITNESS MARKED ON THE PHOTOGRAPH).

18 Q. OKAY. AND IF YOU'D JUST PUT YOUR INITIALS THERE.

19 A. (WHEREUPON THE WITNESS MARKED ON THE PHOTOGRAPH).

20 Q. OKAY. AND WHAT DIRECTION HAD THEY COME FROM?

21 A. AS I -- AS I APPROACHED THEY WERE ACTUALLY COMING OUT
22 -- THEY HAD COME FROM THE DIRECTION OF THE BREEZE-WAY. THEY
23 WERE COMING OUT. ACTUALLY CONTINUED ON PAST A COUPLE OF
24 STEPS AS THEY WERE STARTING TO TURN, HEADED BACK IN THIS
25 DIRECTION.

STEVEN RHEA - DIRECT EXAMINATION BY MS. TESSITORE

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1 Q. OKAY. AND WHAT DID YOU OBSERVE -- WELL, FIRST OF ALL,
2 COULD YOU SEE THROUGH HERE TO ROOM 105 WHEN YOU WERE
3 STANDING OVER THERE?

4 A. I WASN'T PAYING ATTENTION. I WAS MAINLY MAKING SURE
5 THAT THEY WERE OKAY. I DIDN'T KNOW WHERE THEY WERE GOING TO
6 GO NEXT. SO I WAS JUST MAKING SURE -- I WAS CONCENTRATING
7 ON RIGHT HERE.

8 Q. OKAY. AND AT THAT TIME DID YOU KNOW WHERE THEY HAD
9 GONE WHEN THEY WENT ON THIS SIDE OF THE BREEZE-WAY?

10 A. NO.

11 Q. OKAY. SO WHEN YOU FIRST SAW THEM DESCRIBE WHAT YOU
12 OBSERVED.

13 A. AGAIN, AS I WAS WALKING DOWN THE SIDEWALK, I WALKED
14 PAST, THEY'RE COMING OUT ---

15 MS. HORLBECK: YOUR HONOR, I'M GOING TO OBJECT AS ASKED
16 AND ANSWERED.

17 THE COURT: I'M SORRY, I COULDN'T HEAR IT.

18 MS. HORLBECK: THE OBJECTION?

19 THE COURT: NO, I HEARD THE OBJECTION. WHAT WAS THE
20 QUESTION?

21 MS. TESSITORE: THE QUESTION WAS WHEN HE FIRST SAW THE
22 TWO DEPUTIES WITH THE DEFENDANT WHAT DID HE OBSERVE? WE
23 WERE PICKING IT UP FROM WHERE HE HAD LEFT OFF.

24 THE COURT: GO AHEAD, ANSWER IT.

25 A. I OBSERVED THEM WALKING. THEY WERE WALKING TOWARD ME.

STEVEN RHEA - DIRECT EXAMINATION BY MS. TESSITORE

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1 Q. OKAY. AND IF YOU'D LIKE TO TAKE A SEAT BACK THERE.

2 I'LL TAKE THIS DOWN. AND WHAT HAPPENED AS YOU WALKED UP?

3 A. I LOOKED OVER MY SHOULDER AND I SAW THAT DEPUTY

4 TOLLISON WAS FOLLOWING THE DEFENDANT. AND ABOUT THE SAME

5 TIME WE MADE EYE CONTACT HE THEN ANNOUNCED WE'RE WITH THE

6 SHERIFF'S OFFICE, YOU'RE UNDER ARREST. SO I IMMEDIATELY

7 STOPPED, TURNED AROUND TO MAKE SURE THAT THE SUSPECT WASN'T

8 GOING TO TRY TO RUN, FIGHT. AND BASICALLY WE TOOK HIM INTO

9 CUSTODY WITHOUT ANY INCIDENT.

10 Q. OKAY. SO DID YOU SEE WHAT HAD HAPPENED IN THE BREEZE-

11 WAY AS FAR AS HIM HANDING HIM ANYTHING?

12 A. WHO HANDING WHO?

13 Q. THE DEFENDANT. DID THE DEFENDANT HAND ANYTHING -- DID

14 YOU SEE THE DEFENDANT HAND ANYTHING TO DEPUTY TOLLISON?

15 A. NOT THE ACTUAL DISTRIBUTION CHARGE, NO.

16 Q. OKAY. SO YOU CAME UP WHEN HE WAS ANNOUNCING WHO HE

17 WAS, DEPUTY TOLLISON?

18 A. DEPUTY TOLLISON SAW THAT WE HAD THREE UNDERCOVER

19 DEPUTIES. AND I BELIEVE AT THAT POINT HE FELT COMFORTABLE

20 WITH GOING AHEAD AND MAKING THE ARREST FOR THE DISTRIBUTION.

21 SO HE ANNOUNCED, YOU'RE UNDER ARREST, WE'RE WITH THE

22 SHERIFF'S OFFICE. HE SHOWED HIM THE BADGE AND ...

23 Q. OKAY. AND WHAT HAPPENED AS HE DID THAT?

24 A. THE INITIAL RESPONSE FROM THE DEFENDANT WAS SORT OF A

25 STARTLED, MAYBE DAZED, CONFUSED. AND THEN ONCE WE

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1 REITERATED WHO WE WERE AND WHAT WE WERE DOING, THEN I
2 NOTICED THAT HIS HANDS CLINCHED UP. DEPUTY TOLLISON
3 CONTINUED TO ORDER HIM TO -- TO LET GO OF HIS HANDS. AND AT
4 THAT POINT DEPUTY TOLLISON WAS ABLE TO RETRIEVE ANOTHER
5 CRACK ROCK THAT WAS IN HIS POSSESSION.

6 Q. OKAY. AND WHAT HAPPENED AT THAT POINT?

7 A. HE WAS CUFFED. AND THEN WE BASICALLY ESCORTED HIM BACK
8 TO THE FRONT OF THE PARKING LOT WHERE DEPUTY GRICE WAS AT IN
9 THE VEHICLE.

10 Q. OKAY. AND SO WAS HE TAKEN INTO CUSTODY AT THAT POINT?

11 A. HE WAS.

12 Q. AND DID YOU SEE WHAT -- LET'S GO BACK AND TALK ABOUT
13 THE TWO -- THE ROCKS OF CRACK COCAINE. DID YOU -- DID YOU
14 SEE WHAT DEPUTY TOLLISON DID WITH THOSE?

15 A. HE TOOK POSSESSION OF THE -- I ONLY SAW THE ONE AT THE
16 TIME. HE'D ALREADY HAD POSSESSION OF THE FIRST ONE. ONCE
17 WE GOT BACK TO THE VEHICLE HE PLACED THEM IN A -- EITHER A
18 PLASTIC BAG OR A MANILLA ENVELOPE THAT WE USUALLY CARRY WITH
19 US MAKING SURE THAT THEY WERE IN A SAFE PLACE.

20 Q. OKAY. AND WHAT DID YOU DO AFTER YOU SECURED THE OR
21 WHERE DID YOU SECURE THE DEFENDANT?

22 A. IN AN UNDERCOVER COUNTY VEHICLE.

23 Q. OKAY. AND WHO STAYED WITH -- DID ANYONE STAY WITH HIM?

24 A. YEAH. I BELIEVE DEPUTY SWIFT STAYED WITH HIM.

25 Q. AND WHAT DID YOU DO WHILE HE STAYED WITH HIM?

STEVEN RHEA - DIRECT EXAMINATION BY MS. TESSITORE

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1 A. WE GOT CONSENT TO GO BACK TO ROOM 105. AND I ASSISTED
2 DEPUTY TOLLISON. AND I BELIEVE DEPUTY GRICE CAME DOWN THERE
3 WITH US AS WELL TO CONDUCT A SEARCH OF THE ROOM.

4 Q. OKAY. AND WHAT HAPPENED WHEN YOU WENT TO 105?

5 A. THERE WAS A BLACK GENTLEMAN THERE, I BELIEVE HIS NAME
6 WAS WILKINS, AND GAVE US CONSENT. AND WE WENT IN AND THE
7 SEARCH PRODUCED NOTHING. WE DIDN'T FIND NO MONEY, NO MORE
8 NARCOTICS OR ANYTHING ILLEGAL.

9 Q. OKAY. WHAT WERE YOU LOOKING FOR WHEN YOU WENT IN
10 THERE?

11 A. NARCOTICS.

12 Q. AND WAS THE INDIVIDUAL COOPERATIVE?

13 A. YEAH.

14 Q. OKAY. AND HOW LONG WOULD YOU SAY YOU WERE IN THERE?

15 A. MAYBE TEN, FIFTEEN MINUTES.

16 Q. AND WHAT DID YOU DO AFTER THAT SEARCH DID NOT REVEAL
17 ANYTHING?

18 A. THE DEFENDANT WAS LATER TRANSPORTED TO THE JAIL.

19 Q. NOW DID -- DID THIS INDIVIDUAL WHO ANSWERED THE DOOR,
20 DID HE, AS FAR AS YOU KNOW, HAVE ANYTHING TO DO WITH THE
21 HAND-TO-HAND TRANSACTION WITH DEPUTY TOLLISON?

22 A. I HAVE NO ---

23 MS. HORLBECK: OBJECTION.

24 A. --- KNOWLEDGE OF THAT.

25 MS. HORLBECK: HE HAS NO PERSONAL KNOWLEDGE.

STEVEN RHEA - DIRECT EXAMINATION BY MS. TESSITORE

150

1 THE COURT: HE -- I THINK THAT'S WHAT HE SAID. ISN'T
2 THAT WHAT YOU SAID?

3 A. THAT'S CORRECT. I HAVE ---

4 THE COURT: OKAY.

5 A. --- NO KNOWLEDGE OF THAT.

6 Q. ALL RIGHT. NOW YOU SAID -- YOU TESTIFIED EARLIER THAT
7 YOU'RE FAMILIAR WITH THIS AREA. ARE YOU ALSO FAMILIAR WITH
8 WHERE THE OUR LADY OF THE ROSARY SCHOOL IS?

9 A. THAT'S CORRECT.

10 Q. AND DO YOU KNOW HOW FAR THAT IS FROM THE INN TOWN
11 SUITES?

12 A. MYSELF AND DEPUTY TOLLISON LATER WENT BACK AND RETRACED
13 USING A COUNTY VEHICLE. AND IT WAS APPROXIMATELY FOUR
14 TENTHS OF A MILE.

15 Q. SO LESS THAN HALF A MILE?

16 A. YES. AND AS THE STRAIGHT LINE, AS THE CROW FLIES, IT
17 WOULD BE EVEN LESS THAN THAT.

18 Q. OKAY.

19 MS. TESSITORE: ONE MOMENT, PLEASE.

20 Q. OKAY. WHEN YOU GOT TO THE LAW ENFORCEMENT CENTER --
21 WELL, LET ME BACK UP ONE STEP. WHO ELSE WAS IN THE CAR WITH
22 MR. GRANT AND THE OTHER DEPUTIES? WAS THERE ANOTHER
23 INDIVIDUAL WITH YOU THAT HAD BEEN ARRESTED?

24 A. THERE WAS. IT WAS A SEPARATE CASE. AS WE WERE LEAVING
25 THERE WAS A LOITERING CASE THAT WAS MADE. I DON'T REMEMBER

STEVEN RHEA - DIRECT EXAMINATION BY MS. TESSITORE

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1 HIS NAME. IT'S A SEPARATE CASE.

2 Q. OKAY. WHO MADE THAT ARREST?

3 A. DEPUTY GRICE.

4 Q. OKAY. SO THAT DIDN'T HAVE ANYTHING TO DO WITH THIS
5 CASE?

6 A. IT DID NOT.

7 Q. AND WHEN YOU GOT TO THE LAW ENFORCEMENT CENTER WHAT DID
8 YOU DO AS YOU ARRIVED THERE?

9 A. I BASICALLY TOOK THE EVIDENCE FROM DEPUTY TOLLISON.

10 Q. WHEN YOU SAY THE EVIDENCE, WHAT ARE YOU REFERRING TO?

11 A. IT WAS THE TWO ROCKS OF COCAINE BASE SUBSTANCE.

12 Q. OKAY. AND HOW WOULD -- WHEN HE GAVE THEM TO YOU HOW
13 WERE THEY PACKAGED OR WERE THEY PACKAGED?

14 A. I BELIEVE THEY WERE IN THE MANILLA ENVELOPE LIKE THE
15 ONE YOU SEE ON YOUR DESK.

16 Q. OKAY.

17 A. AND TRANSPORTED ---

18 Q. SO SOMETHING LIKE THIS?

19 A. EXACTLY. SOMETHING LIKE THAT. AND OFTENTIMES INSIDE
20 THAT HE'LL EVEN HAVE A SMALL PLASTIC ZIPLOC BAG SO THEY
21 DON'T FALL OUT.

22 Q. OKAY.

23 A. ONCE I GO DOWN -- I THEN TOOK THE DRUGS AND WENT TO THE
24 PROPERTY AND EVIDENCE ROOM WHILE HE TOOK THE DEFENDANT
25 INSIDE TO BE ARRAIGNED.

STEVEN RHEA - DIRECT EXAMINATION BY MS. TESSITORE

152

1 Q. I'M SHOWING YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT
2 NUMBER 4. IF YOU COULD TAKE A LOOK AT THAT. DO YOU
3 RECOGNIZE THAT?

4 A. I DO.

5 Q. HOW DO YOU RECOGNIZE IT?

6 A. THIS IS THE -- SIMILAR -- IT'S THE SAME PRETTY MUCH OF
7 WHAT I DROPPED THE NIGHT AS EVIDENCE. IT'S THE TWO CRACK
8 ROCKS THAT I TOOK POSSESSION OF FROM DEPUTY TOLLISON.

9 Q. OKAY. ARE THEY IN SUBSTANTIALLY THE SAME CONDITION AS
10 WHEN YOU RECEIVED THEM FROM DEPUTY TOLLISON?

11 A. THEY ARE.

12 Q. OKAY. AND -- AND AS FAR AS THE COLOR, DESCRIBE THE
13 COLOR.

14 A. THEY'RE AN OFF-WHITE ROCK-LIKE SUBSTANCE, BUT YOU CAN
15 ALSO SEE THAT THERE'S A BLUE TINT ON EACH OF THE ROCKS. AND
16 WHAT THAT BASICALLY COMES FROM IS THE FIELD TEST KIT THAT
17 DEPUTY TOLLISON USES. ANYTHING THAT HAS A COCAINE BASE
18 AUTOMATICALLY TURNS BLUE.

19 Q. AND IS THERE BLUE ON BOTH OF THOSE ROCKS OR JUST ONE?

20 A. THERE'S BLUE ON BOTH ROCKS.

21 Q. OKAY. NOW LET ME SHOW YOU WHAT'S BEEN MARKED AS
22 STATE'S EXHIBIT NUMBER 6. DO YOU RECOGNIZE THAT?

23 A. THIS IS THE PROPERTY AND EVIDENCE REPORT THAT I PUT IN
24 THE NIGHT ALONG WITH THE TWO ROCKS.

25 Q. OKAY. AND HOW DO YOU -- WELL, DO YOUR -- DOES YOUR

STEVEN RHEA - DIRECT EXAMINATION BY MS. TESSITORE

153

1 NAME APPEAR ON THAT SHEET?

2 A. IT'S ON THE FIRST LINE WHEN I ACTUALLY PUT IT IN
3 BECAUSE OF THE DROP BOX. WHENEVER PROPERTY AND EVIDENCE IS
4 CLOSED FOR THE DAY AND YOU HAVE TO MAKE A DROP THEREAFTER
5 YOU HAVE TO PUT IT INTO A SEPARATE -- THERE'S A STEEL DOOR
6 WITH A LITTLE WINDOW, I GUESS, LIKE A MAIL SLOT. AND ONCE
7 YOU SEAL UP THE EVIDENCE AND FILL OUT THE FORM YOU HAVE TO
8 SIGN THAT YOU DROPPED IT IN THE DROP BOX. AND IT HAS THE
9 DATE AND THE TIME WHICH I PLACED IT IN THE DROP BOX.

10 Q. OKAY. WHEN YOU DID PLACE IT IN THE DROP BOX -- WELL,
11 LET'S JUST BACK UP FIRST. WHEN YOU FIRST GOT THERE WHAT WAS
12 THE FIRST THING YOU DID WITH STATE'S EXHIBIT NUMBER 4?

13 A. I WEIGHED IT.

14 Q. OKAY. AND HOW DID YOU WEIGH IT?

15 A. I WEIGHED IT IN THE PACKAGE ITSELF. IT'S A PACKAGE
16 WEIGHT.

17 Q. AND DID YOU PUT IT IN A -- DID YOU KEEP IT IN THE SAME
18 PACKAGING THAT DEPUTY TOLLISON HAD GIVEN IT TO YOU IN?

19 A. I BELIEVE I DID NOT. WHAT I DID IS I -- THERE'S --
20 WHICH YOU CAN SEE THERE'S -- BASICALLY THERE'S THREE PLASTIC
21 BAGS, THE OUTSIDE, THEN THERE'S THE SMALLER ONE, WHICH IS
22 THE MIDDLE SIZE. THE MIDDLE SIZE BAG IS WHAT'S THERE WHEN
23 WE GET THERE TO PUT STUFF IN EVIDENCE.

24 I TOOK ONE OF THESE BAGS. THERE'S A BUNCH OF WRITING
25 ON IT. YOU'VE GOT THE DATE, MY INITIALS AND THE CASE NUMBER

STEVEN RHEA - DIRECT EXAMINATION BY MS. TESSITORE

154

1 ON THE INSIDE AS WELL ---

2 Q. WHAT DOES THAT INDICATE?

3 A. --- AS ON THE OUTSIDE.

4 Q. WHY DO YOU PUT YOUR INITIALS AND DATE?

5 A. IT SHOWS THAT I'M THE ONE WHO ACTUALLY SEALED THE BAG,
6 AND I'M THE ONE WHO PLACED IT INTO PROPERTY AND EVIDENCE.

7 Q. OKAY.

8 A. THE REASON I SEAL IT IS TO MAKE SURE THAT IT'S NOT
9 LOST, IT'S NOT DAMAGED, IT'S NOT CONTAMINATED, BASICALLY
10 TRIES TO STAY THE EXACT SAME WAY THAT WHEN WE PUT IT IN.
11 AND ONCE I HEAT-SEAL IT I THEN RECORD ON THE PAPER WHAT IT
12 IS, HOW MUCH IT WEIGHS AND PUT IT IN THE DROP BOX.

13 Q. OKAY. WHEN YOU -- YOU DESCRIBE THIS AS A DROP BOX. IS
14 IT ACTUALLY A BOX THAT YOU SEE OR WHAT DO YOU SEE ---

15 A. THE ONLY THING I SEE IS TWO METAL DOORS. AND IT SAYS
16 -- I THINK IT SAYS DROP OR DROP BOX ABOVE THE LITTLE METAL
17 SLOT. I PUT IT IN THE MANILLA PACKAGE LIKE THAT, I PULL IT
18 DOWN, STICK IT IN THERE AND PUSH THE THING BACK UP TO LET IT
19 DROP INTO WHATEVER RECEIVES IT ON THE OTHER SIDE OF THE
20 DOOR. AND THEN I CHECK TO MAKE SURE THAT IT ACTUALLY DROPS.
21 YOU CAN HEAR IT DROP IN THERE.

22 Q. CAN YOU GET BACK INTO THE BOX WHERE IT DROPS?

23 A. NO.

24 Q. CAN YOU OPEN THAT DOOR?

25 A. NO.

STEVEN RHEA - DIRECT EXAMINATION BY MS. TESSITORE

155

1 Q. WHERE DOES IT GO AT THAT POINT AND WHO HAS ACCESS TO
2 IT?

3 A. BASICALLY THE PROPERTY AND EVIDENCE CLERKS. WHEN THEY
4 COME BACK THE FOLLOWING DAY, THE NEXT MORNING, THEN THEY CAN
5 RETRIEVE IT. BUT ONCE IT GOES THROUGH THAT SLOT AND BEHIND
6 THE DOOR IT'S OUT OF MY CUSTODY.

7 Q. OKAY. SO WHEN YOU GOT THERE THIS EVENING WAS THE
8 PROPERTY AND EVIDENCE -- WAS IT ALREADY CLOSED FOR THE
9 NIGHT?

10 A. IT WAS.

11 Q. AND AT WHAT POINT -- WHAT TIME DID YOU PUT THAT IN THE
12 DROP BOX?

13 A. I PUT IT IN ROUGHLY AT 7:40 PM.

14 Q. OKAY. AND WHAT DID YOU DO WHEN YOU PUT IT IN? DID YOU
15 -- DO YOU INDICATE ON THAT FORM?

16 A. YEAH. THERE'S A TIME AND A DATE THAT IT'S PUT IN THE
17 DROP BOX.

18 Q. AND DID YOU BRING THIS ITEM TO COURT FOR TRIAL?

19 A. I DID.

20 Q. DID YOU HAVE ANY OTHER CONTACT WITH THIS SUBSTANCE
21 UNTIL YOU BROUGHT IT TO COURT?

22 A. NO.

23 Q. WHERE HAS IT BEEN SINCE -- SINCE YOU DROPPED IT OFF?

24 A. THE NIGHT I DROPPED IT OFF?

25 Q. YEAH.

STEVEN RHEA - CROSS EXAMINATION BY MS. HORLBECK

156

1 A. WELL, IT SHOWS ON HERE THAT THE PROPERTY AND EVIDENCE
2 CLERK ---

3 MS. HORLBECK: AND I WOULD OBJECT.

4 A. IT'S BEEN ---

5 MS. HORLBECK: HE DOESN'T HAVE PERSONAL ---

6 THE COURT: WAIT, WAIT.

7 MS. HORLBECK: --- KNOWLEDGE.

8 THE COURT: I'M SORRY?

9 MS. HORLBECK: I WOULD OBJECT. I DON'T BELIEVE HE HAS
10 PERSONAL KNOWLEDGE OF THIS. IF SHE WANTS TO PLACE OTHERS ON
11 THE STAND ---

12 THE COURT: OKAY. ALL RIGHT. JUST WHATEVER HE KNOWS
13 OF HIS OWN PERSONAL KNOWLEDGE.

14 Q. OKAY. SO YOU LEFT IT THERE THAT NIGHT?

15 A. THAT'S CORRECT.

16 Q. IN THE DROP BOX?

17 A. THAT'S CORRECT.

18 Q. OKAY.

19 MS. TESSITORE: JUST ONE MOMENT.

20 THE COURT: OKAY.

21 Q. ANSWER ANY QUESTIONS THAT MS. HORLBECK MIGHT HAVE,
22 PLEASE.

23 A. YES, MA'AM.

24 CROSS EXAMINATION BY MS. HORLBECK:

25 Q. DEPUTY, YOU'VE OBVIOUSLY COMPLETED THE -- I DON'T MEAN

STEVEN RHEA - CROSS EXAMINATION BY MS. HORLBECK

157

1 TO SAY POLICE ACADEMY, BUT I JUST CANNOT THINK OF THE
2 CORRECT TERM ---

3 A. THE CRIMINAL JUSTICE ACADEMY.

4 Q. ALL RIGHT. AND THAT'S LOCATED IN COLUMBIA?

5 A. YES, MA'AM.

6 Q. ALL RIGHT. AND YOU ALSO COMPLETED THE -- A BASIC
7 NARCOTICS INVESTIGATION SCHOOL PUT ON BY THE DEA?

8 A. THAT'S CORRECT.

9 Q. YOU ALSO COMPLETED A PHYSICAL SURVEILLANCE SEMINAR, YOU
10 TESTIFIED TO THAT?

11 A. YES, MA'AM.

12 Q. AT THAT PHYSICAL SURVEILLANCE SEMINAR THEY TAUGHT YOU
13 THE ART OF SURVEILLANCE IN NARCOTICS CASES, DIDN'T THEY?

14 A. THE TECHNIQUES, YES.

15 Q. ALL RIGHT. ONE OF THOSE TECHNIQUES IS EYE OBSERVATION?

16 A. THAT'S CORRECT.

17 Q. ONE OF THOSE TECHNIQUES IS VIDEO SURVEILLANCE, CORRECT?

18 A. THAT'S AN OPTION.

19 Q. AND ANOTHER OPTION IS RECORDING OR WIRING SOMEONE AND
20 SURVEILLING THE SITUATION THAT WAY, CORRECT?

21 A. THAT'S CORRECT.

22 Q. ALL RIGHT. AND IN THIS CASE YOU DIDN'T HAVE -- YOU
23 DON'T HAVE ANY VIDEO OR AUDIO SURVEILLANCE, DO YOU?

24 A. WE DO NOT.

25 Q. ALL RIGHT. AND I UNDERSTAND THAT YOU TESTIFIED THAT

STEVEN RHEA - CROSS EXAMINATION BY MS. HORLBECK

158

1 THE WIRE WASN'T DONE MAINLY FOR OR THE WIRE IS DONE MAINLY
2 FOR OFFICER'S SAFETY, CORRECT?

3 A. IT IS OR WHEN WE USE A CONFIDENTIAL INFORMANT.

4 Q. ALL RIGHT. NOW IN THIS SITUATION ON JANUARY THE 10TH,
5 2007 YOU AND THE REST OF THE MEMBERS OF YOUR TEAM, YOU
6 DRESSED TO BLEND IN WITH OTHER PEOPLE THAT MAY BE AT THE
7 HOTEL, CORRECT?

8 A. THAT'S CORRECT.

9 Q. ALL RIGHT. YOU DRESSED IN STREET CLOTHING,
10 SWEATSHIRTS, IS THAT CORRECT?

11 A. YEAH, THAT'S CORRECT.

12 Q. WHATEVER ---

13 A. YEAH, THAT'S CORRECT.

14 Q. WHATEVER A NORMAL PERSON WOULD WEAR ON A WEEKEND OR --
15 CORRECT?

16 A. THAT'S CORRECT.

17 Q. ALL RIGHT. IS IT FAIR TO SAY THAT Y'ALL AREN'T ARMED,
18 THE MEMBERS OF YOUR TEAM, SPECIFICALLY DEPUTY TOLLISON AND
19 DEPUTY SWIFT WERE NOT ARMED WITH THEIR SERVICE WEAPONS?

20 A. WE'RE ARMED.

21 Q. WERE THEY ARMED AT THE TIME WHEN THEY WERE ---

22 A. I CAN'T TESTIFY TO THAT NIGHT IF THEY WERE ARMED, BUT,
23 YOU KNOW, OUR NORMAL PRACTICE IS THAT WE'RE ARMED.

24 Q. OKAY. ALL RIGHT. NOW BUT FOR OFFICER SAFETY ONE WAY
25 YOU CAN KEEP YOUR OFFICERS SAFE IS IF YOU HAVE CONSTANT

STEVEN RHEA - CROSS EXAMINATION BY MS. HORLBECK

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1 CONTACT WITH THEM?

2 A. THAT'S CORRECT.

3 Q. AND YOU ALSO KEEP THEM SAFE IF YOU HAVE A CONSTANT LINK
4 TO THEM, CORRECT?

5 A. THAT'S CORRECT.

6 Q. ALL RIGHT. BUT ON THAT PARTICULAR NIGHT YOU DIDN'T
7 HAVE ANY KIND OF LINK WITH THEM WHATSOEVER. NO VIDEO LINK,
8 NO AUDIO LINK.

9 A. WE ALSO HAVE CELL PHONES.

10 Q. OKAY.

11 A. AND THAT'S -- THAT'S ONE OF THE WAYS THAT IF WE DON'T
12 SEE THEM FOR A FEW MINUTES OR IF WE DON'T -- IF WE SUSPECT
13 MAYBE SOMETHING'S WRONG, WE'LL CALL THEIR CELL PHONE.

14 Q. DID YOU USE YOUR CELL PHONE THAT NIGHT TO ---

15 A. I DON'T ---

16 Q. --- VIDEO TAPE ANYTHING THAT WAS GOING ON?

17 A. MY CELL PHONE DOESN'T HAVE ANY VIDEO CAPABILITIES.

18 Q. ALL RIGHT. DO YOU HAVE ANY CELL PHONE RECORDS TO ENTER
19 IN TODAY TO DEMONSTRATE OR TO BUILD YOUR EVIDENCE TODAY
20 AGAINST MR. GRANT?

21 A. I DON'T BELIEVE WE USED OUR CELL PHONES THAT NIGHT, NO.

22 Q. ALL RIGHT. SO BASICALLY YOU HAVE NO AUDIO
23 SURVEILLANCE, NO VIDEO SURVEILLANCE, NO VIDEO OR AUDIO LINK
24 WITH TOLLISON AND SWIFT?

25 A. JUST OUR OWN EYE VISUAL CONTACT.

STEVEN RHEA - CROSS EXAMINATION BY MS. HORLBECK

160

1 Q. SO THAT'S A YES THEN?

2 A. YES, THAT'S CORRECT.

3 Q. ALL RIGHT. NOW WHEN YOU WENT THROUGH THE ACADEMY IN
4 COLUMBIA AND YOUR DEA TRAINING THEY TAUGHT YOU TO MAKE
5 ACCURATE RECORDS, DIDN'T THEY?

6 A. THAT'S CORRECT.

7 Q. AND THE GREENVILLE COUNTY SHERIFF'S OFFICE, YOU HAVE A
8 FUND THAT YOU USE FOR THESE BUYS?

9 A. YEAH. THERE'S A FUND THAT WE GET ALLOTTED SO MUCH
10 MONEY PER MONTH.

11 Q. ALL RIGHT. AND THAT MONEY IS -- YOU MENTIONED THAT
12 THAT MONEY WAS ISSUED PER MONTH, CORRECT?

13 A. AT THE TIME IT WAS. WE NO LONGER HAVE ANY.

14 Q. OKAY. BUT THAT MONEY IS ISSUED TO YOU FROM THE
15 GREENVILLE COUNTY SHERIFF'S OFFICE. IT'S NOT YOUR PERSONAL
16 MONEY, IS THAT CORRECT?

17 A. THAT'S CORRECT.

18 Q. ALL RIGHT. AND YOU DIDN'T FILL OUT ANY DOCUMENTATION
19 ASIDE FROM YOUR REPORT THAT Y'ALL USED ANY MONEY THAT NIGHT,
20 CORRECT?

21 A. THERE WAS ACTUALLY A FORM THAT'S CALLED A BUY MONEY
22 REPORT THAT WHEN OUR SERGEANT DRAWS IT FROM THE SUPPLY THAT
23 WHEN THAT MONEY IS SPENT OR THAT MONEY IS ACTUALLY USED UP,
24 HE TURNS IT BACK IN. SO IT'S ---

25 Q. ALL RIGHT. WHERE IS THAT REPORT?

STEVEN RHEA - CROSS EXAMINATION BY MS. HORLBECK

161

1 A. SHOULD BE EITHER WITH OUR SUPPLY OFFICER THAT WE GET
2 THE MONEY FROM OR -- I DON'T KNOW IF RECORDS HAS A COPY OR
3 NOT.

4 Q. DO YOU HAVE THAT REPORT TODAY?

5 A. I DON'T BECAUSE I'M NOT THE SERGEANT. I DON'T -- I
6 DON'T HAVE IT. IT'S SOMETHING HE ---

7 Q. IS YOUR ---

8 A. --- HE TURNS IT IN.

9 Q. ALL RIGHT. DO YOU HAVE THAT COPY OF THAT RECORD HERE
10 TODAY?

11 A. NOT TO MY KNOWLEDGE.

12 Q. DO YOU HAVE YOUR SERGEANT HERE TODAY?

13 A. NO, HE'S NOT HERE.

14 Q. ALL RIGHT. DID YOU RECORD THE SERIAL NUMBER OFF OF THE
15 TWENTY DOLLAR BILL THAT WAS USED?

16 A. WE DIDN'T THAT NIGHT BECAUSE IT WASN'T SOMETHING WE
17 PLANNED ON DOING. IT WAS JUST SPARE OF THE MOMENT.

18 NORMALLY IF WE GO OUT, WE DO A BUY WITH A CI, WE MAKE SERIAL
19 COPIES OF THE MONEY. THAT WAY WE HAVE A CI PACK. IT GOES
20 IN THERE WITH THE PACK.

21 Q. THE FOUR OF -- THE FOUR OF YOU, YOU, SWIFT, TOLLISON
22 AND GRICE?

23 A. THAT'S CORRECT.

24 Q. Y'ALL ALL GOT INTO THE SAME FORD AUTOMOBILE ---

25 A. THAT'S CORRECT.

STEVEN RHEA - CROSS EXAMINATION BY MS. HORLBECK

162

1 Q. --- TO GO TO THIS HOTEL, CORRECT?

2 A. NOT TO THAT PARTICULAR HOTEL. WE JUST HAPPENED TO BE
3 IN THE AREA.

4 Q. AND EVERYBODY PLANNED THAT NIGHT TO WEAR THEIR PLAIN
5 CLOTHES, CORRECT?

6 A. WE WEAR THE SAME CLOTHES -- WE WEAR THAT TYPE OF
7 CLOTHING ALL THE TIME.

8 Q. RIGHT. AS A PART OF YOUR JOB?

9 A. YEAH.

10 Q. AND THAT NIGHT Y'ALL TOOK OUT MONEY FOR THIS CONTROLLED
11 BUY, CORRECT?

12 A. I DIDN'T TAKE IT OUT. I ALREADY HAD IT FOR -- I
13 ALREADY HAD IT WITH ME.

14 Q. WELL, YOU HAD IT WITH YOU KNOWING THAT YOU WERE GOING
15 TO MAKE THE CONTROLLED BUY.

16 A. NOT KNOWING THAT WE WERE GOING TO MAKE -- WE REALLY
17 DON'T KNOW WHAT WE'RE GOING TO GET INTO EVERY NIGHT. IT
18 JUST HAPPENED THAT WE MADE A CONTROLLED BUY THAT NIGHT.

19 Q. ALL RIGHT. YOU DON'T GO OUT THERE JUST TO HANG OUT IN
20 THE PARKING LOT, DO YOU? YOU GO OUT THERE BECAUSE YOU'VE
21 GOT A JOB, CORRECT?

22 A. THAT'S CORRECT. BUT MY JOB CAN BE A WIDE VARIETY. YOU
23 KNOW, WE COULD HAVE GOTTEN OUT WITH A PROSTITUTE THAT NIGHT.
24 WE COULD HAVE GOTTEN OUT WITH SOMEBODY WHO HAD A WARRANT FOR
25 THEIR ARREST. IT JUST SO HAPPENED THAT WE WERE APPROACHED

STEVEN RHEA - CROSS EXAMINATION BY MS. HORLBECK

163

1 THAT NIGHT AND THEN WE WERE ACTUALLY ABLE TO MAKE A BUY.

2 Q. BUT YOU HAVE THE MONEY IN CASE YOU'RE GOING TO MAKE
3 THAT BUY, CORRECT?

4 A. WE DO.

5 Q. AND IF YOU HAVE THAT MONEY THERE SHOULD BE A RECORD OF
6 IT SOMEWHERE, SHOULDN'T IT?

7 A. YEAH, WE DO HAVE A RECORD OF IT.

8 Q. AND -- BUT YOU DON'T HAVE THAT RECORD HERE TODAY?

9 A. NOT TODAY.

10 Q. AND YOU DON'T HAVE THE TWENTY DOLLAR BILL HERE TODAY,
11 DO YOU?

12 A. NO. WE WEREN'T TRYING TO GET THAT TWENTY DOLLAR BILL
13 BACK THAT NIGHT.

14 Q. BUT YOU DON'T KNOW WHERE THAT TWENTY DOLLAR BILL WENT,
15 DO YOU?

16 A. NO.

17 Q. AND IT CERTAINLY WASN'T FOUND ON MR. GRANT, WAS IT?

18 A. I DON'T BELIEVE IT WAS FOUND ON HIM, NO.

19 Q. AND IT WASN'T FOUND IN ROOM 105 EITHER, WAS IT?

20 A. NO.

21 Q. NOW AT TIMES YOU LOST VISUAL SIGHT OF DEPUTY TOLLISON
22 AND DEPUTY SWIFT?

23 A. THAT'S CORRECT.

24 Q. AND YOU COULD HAVE MAINTAINED THAT -- SOME SORT OF
25 CONTACT WITH THEM IF THEY'D BEEN WIRED, CORRECT?

STEVEN RHEA - CROSS EXAMINATION BY MS. HORLBECK

164

- 1 A. POSSIBLY. THE WIRE ONLY GOES SO FAR. THERE'S ---
- 2 Q. ALL RIGHT.
- 3 A. --- TIMES THAT WE'LL LOSE THE WIRE.
- 4 Q. ALL RIGHT. BUT WE'LL NEVER KNOW BECAUSE WE DON'T HAVE
- 5 THAT TODAY, CORRECT?
- 6 A. CORRECT.
- 7 Q. ALL RIGHT. NOW DEPUTY -- YOU TESTIFIED THAT DEPUTY
- 8 TOLLISON, YOU ONLY SAW HIM TAKE ONE OF THE ALLEGED CRACK
- 9 ROCKS?
- 10 A. YEAH, WELL, THAT WAS WHEN HE WAS ARRESTED, THE SECOND
- 11 ROCK.
- 12 Q. ALL RIGHT. AND HE PLACED IT IN AN ENVELOPE?
- 13 A. I DON'T RECALL EXACTLY WHAT HE PLACED IT IN. I SAID
- 14 IT'S OUR NORMAL PRACTICE THAT WE'LL PUT IT IN A PLASTIC OR A
- 15 PAPER TYPE MANILLA FOLDER. WE HAVE -- WE HAVE THOSE IN OUR
- 16 POSSESSION THAT WE'LL PLACE THEM IN.
- 17 Q. ALL RIGHT.
- 18 A. I CAN'T RECALL EXACTLY WHAT HE PUT IT IN THAT NIGHT.
- 19 Q. ALL RIGHT. DO YOU -- DO YOU KNOW WHAT HAPPENED TO THE
- 20 PAPER TYPE MANILLA ENVELOPE THAT THE DRUG WAS PLACED IN?
- 21 A. IF IT WAS PLACED IN A MANILLA ENVELOPE, CHANCES ARE
- 22 IT'S THE SAME ONE THAT'S ON THAT TABLE.
- 23 Q. DO YOU KNOW FOR SURE?
- 24 A. NO, I DON'T KNOW FOR SURE, NOT A HUNDRED PERCENT SURE.
- 25 MY HANDWRITING IS ON THERE, I BELIEVE. IT SAYS CRACK

STEVEN RHEA - CROSS EXAMINATION BY MS. HORLBECK

165

1 COCAINE. SO I ASSUME THAT'S THE ONE WE USED THAT NIGHT.

2 Q. DID YOU INITIAL IT?

3 A. NO. WE DON'T HAVE TO INITIAL -- WHAT WE INITIAL IS

4 WHEN WE ACTUALLY HEAT-SEAT IT TO PUT IT INTO THE ACTUAL P&E.

5 Q. YOU DON'T HAVE TO INITIAL THIS?

6 A. NO. THAT'S JUST SOMETHING WE TRANSPORT IT FROM THE

7 SCENE DOWN TO THE SUPPLY -- THE -- TO PROPERTY AND EVIDENCE.

8 Q. AND WHEN YOU'RE TRANSPORTING DRUGS YOU DON'T TRANSPORT

9 THEM IN YOUR POCKET, DO YOU? IS THAT PART OF YOUR

10 PROCEDURE?

11 A. WHEN WE MAKE THE ARREST AND ONCE WE GET BACK TO OUR

12 VEHICLE WE'LL TRY TO PUT IT INTO A SECURED AREA.

13 Q. SO THAT -- IS THAT A -- IS THAT A NO TO MY -- TO MY

14 QUESTION?

15 A. NO, WE DON'T NORMALLY CARRY THEM IN OUR POCKET.

16 Q. ALL RIGHT. AND YOU TRANSPORTED MR. GRANT TO THE LAW

17 ENFORCEMENT CENTER AFTER HIS ARREST, CORRECT?

18 A. THAT'S CORRECT.

19 Q. HE WASN'T THE ONLY ONE THAT YOU -- YOU ALL TRANSPORTED

20 TO THE LAW ENFORCEMENT CENTER, RIGHT?

21 A. THAT'S CORRECT.

22 Q. THERE WAS ANOTHER MAN IN THE BACK SEAT WITH MY CLIENT?

23 A. YES. HE WAS IN OUR CUSTODY AS WELL.

24 Q. ALL RIGHT. AND WHEN YOU SEARCHED -- YOU SEARCHED ROOM

25 105, CORRECT? OR ---

STEVEN RHEA - CROSS EXAMINATION BY MS. HORLBECK

166

- 1 A. I ASSISTED.
- 2 Q. DID YOU FIND ANYTHING IN THAT ROOM?
- 3 A. NO.
- 4 Q. YOU DIDN'T FIND ANY SCALES FOR WEIGHING OUT DRUGS?
- 5 A. NO.
- 6 Q. DIDN'T FIND ANY MONEY?
- 7 A. NO.
- 8 Q. DID YOU FIND A STASH OF ANY KIND OF DRUG WHATSOEVER?
- 9 A. NOT THAT I RECALL, NO.
- 10 Q. ALL RIGHT. DID YOU FIND ANY ITEMS ON MR. GRANT LIKE
- 11 SCALES?
- 12 A. I DIDN'T SEARCH MR. GRANT.
- 13 MS. HORLBECK: I BEG THE COURT'S INDULGENCE.
- 14 (PAUSE)
- 15 Q. WHEN DID YOU GO THROUGH YOUR DRUG TRAINING
- 16 APPROXIMATELY?
- 17 A. YOU TALKING ABOUT THE DEA CLASS?
- 18 Q. YES.
- 19 A. I BELIEVE IT WAS -- MIGHT HAVE BEEN JANUARY OF '07.
- 20 Q. ALL RIGHT.
- 21 A. I DON'T REMEMBER THE EXACT DATES. IT WAS ABOUT --
- 22 ABOUT A YEAR AGO, A LITTLE OVER A YEAR AGO.
- 23 Q. WAS IT BEFORE OR AFTER?
- 24 A. I DON'T RECALL. HONESTLY I DON'T RECALL THE DATES.
- 25 Q. ALL RIGHT. AND YOU SAID THAT YOU MAINLY -- THAT YOUR

STEVEN RHEA - REDIRECT EXAMINATION BY MS. TESSITORE

167

1 UNIT MAINLY DEALS WITH STREET LEVEL PROSTITUTION AND DRUG

2 USE?

3 A. YEAH.

4 Q. ALL RIGHT. AND THE PERCENTAGE OF THE PEOPLE THAT

5 YOU'RE DEALING WITH ARE USERS? IS THAT FAIR TO SAY?

6 A. YEAH, THAT'S FAIR TO SAY.

7 Q. ALL RIGHT. AND DO YOU KNOW WHERE MR. GRANT LIVES OR IS

8 FROM? DO YOU HAVE ANY IDEA? IF YOU DON'T, THAT'S FINE.

9 A. NO, MA'AM.

10 Q. OKAY. YOU DON'T KNOW HIS ADDRESS?

11 A. NO, MA'AM.

12 Q. ALL RIGHT. THAT'S ALL I HAVE. THANK YOU, DEPUTY.

13 THE COURT: ANY REDIRECT?

14 MS. TESSITORE: JUST BRIEFLY, YOUR HONOR.

15 REDIRECT EXAMINATION BY MS. TESSITORE:

16 Q. DEPUTY RHEA, WAS ROOM 105 BEING WATCHED WHILE YOU WERE

17 AROUND THE CORNER DEALING WITH MR. GRANT AS HE WAS BEING

18 ARRESTED?

19 MS. HORLBECK: AND I WOULD OBJECT AS TO PERSONAL

20 KNOWLEDGE OF THAT. HOW WOULD HE KNOW IF IT'S BEING WATCHED

21 ---

22 THE COURT: WELL, ---

23 MS. HORLBECK: --- IF HE WAS SOMEWHERE ELSE?

24 THE COURT: I'M GOING TO LET HIM TESTIFY TO WHAT HE

25 KNOWS. GO AHEAD.

RENEE PRUITT - DIRECT EXAMINATION BY MS. SALISBURY

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1 A. I DON'T BELIEVE THAT IT WAS BEING WATCHED. I KNOW
2 DEPUTY GRICE HAD DRIVEN TO THE TOP PARKING LOT. THE REASON
3 WE SPLIT UP WAS TO KIND OF KEEP AN EYE ON BOTH SIDES OF THE
4 PARKING LOT. DEPUTY GRICE MIGHT HAVE BEEN WATCHING DOWN
5 TOWARDS THAT ROOM, BUT I PERSONALLY DON'T KNOW IF SOMEBODY
6 WAS WATCHING THE ROOM ---

7 Q. BUT YOU ---

8 A. --- WHILE THE ARREST WAS MADE.

9 Q. --- WEREN'T WATCHING THE ROOM?

10 A. I WAS NOT.

11 MS. TESSITORE: NO FURTHER QUESTIONS.

12 THE COURT: OKAY. ANYTHING ELSE?

13 (NO RESPONSE)

14 THE COURT: ALL RIGHT. THANK YOU, SIR. YOU CAN STEP
15 DOWN.

16 MS. SALISBURY: THE STATE CALLS MS. RENEE PRUITT.

17 THE COURT: ALL RIGHT.

18 MS. SALISBURY: MS. PRUITT, IF YOU COULD COME UP AND BE
19 SWORN, PLEASE.

20 RENEE PRUITT, BEING DULY

21 SWORN TESTIFIED AS FOLLOWS:

22 MADAME CLERK: THANK YOU. PLEASE STATE YOUR FULL NAME
23 FOR THE RECORD.

24 MS. PRUITT: RENEE PRUITT.

25 DIRECT EXAMINATION BY MS. SALISBURY:

RENEE PRUITT - DIRECT EXAMINATION BY MS. SALISBURY

169

1 Q. GOOD MORNING, MS. PRUITT.

2 A. GOOD MORNING.

3 Q. COULD YOU TELL THE JURY WHERE YOU'RE EMPLOYED?

4 A. GREENVILLE COUNTY LAW ENFORCEMENT CENTER.

5 Q. HOW LONG HAVE YOU BEEN WORKING THERE?

6 A. SINCE 1996.

7 Q. YES, MA'AM. WHAT'S YOUR CURRENT POSITION AT THE LAW
8 ENFORCEMENT CENTER?

9 A. PROPERTY AND EVIDENCE TECHNICIAN.

10 Q. SO GENERALLY WHAT ARE YOUR DUTIES AND RESPONSIBILITIES
11 AS TO PROPERTY AND EVIDENCE TECHNICIAN DAY TO DAY?

12 A. I TAKE IN THE PROPERTY THAT'S BROUGHT IN BY THE CITY
13 AND THE COUNTY.

14 Q. SO YOU'RE A TECHNICIAN AT PROPERTY AND EVIDENCE. WHAT
15 IS PROPERTY AND EVIDENCE PHYSICALLY SPEAKING?

16 A. THE CITY EMPLOYEES -- WELL, THE POLICE OFFICERS AND THE
17 DEPUTIES OF THE COUNTY BRING IN THEIR PROPERTY THAT THEY
18 TAKE FROM THE PEOPLE, SAY THE DEFENDANTS OR THE -- THE
19 DEFENDANTS OUT ON THE STREETS OR EITHER PEOPLE BRING INTO
20 THE LAW ENFORCEMENT CENTER. THEY BRING IT IN. CASE NUMBERS
21 ARE GENERATED, AND THEY BRING IT DOWN TO US.

22 Q. OKAY. IS PROPERTY AND EVIDENCE A SECURED AREA?

23 A. YES, IT IS.

24 Q. WHO HAS ACCESS TO THIS SECURED AREA?

25 A. THERE ARE FOUR EMPLOYEES.

RENEE PRUITT - DIRECT EXAMINATION BY MS. SALISBURY

170

1 Q. CAN ANYONE, JUST ANYONE IN THE BUILDING ENTER PROPERTY
2 AND EVIDENCE ---

3 A. NO.

4 Q. --- OTHER THAN THOSE FOUR PEOPLE?

5 A. NO.

6 Q. ALL RIGHT. WHERE DO YOU KEEP EVIDENCE INSIDE THE
7 PROPERTY AND EVIDENCE PART OF THE LAW ENFORCEMENT CENTER?

8 A. THERE'S SEVERAL SECURED AREAS.

9 Q. OKAY. SO HOW DO YOU -- HOW DO YOU GET EVIDENCE? HOW
10 DOES ANY ITEM OF EVIDENCE COME INTO YOUR POSSESSION AT THE
11 PROPERTY AND EVIDENCE CENTER?

12 A. EITHER THE DEPUTIES OR THE POLICE OFFICERS BRING IT IN.

13 Q. OKAY. NOW WHAT DO YOU DO WITH AN ITEM OF EVIDENCE
14 THAT'S RECEIVED?

15 A. DEPENDING ON WHAT TYPE OF EVIDENCE IT IS, IT IS PUT
16 INTO SEVERAL SECURED AREAS.

17 Q. OKAY. NOW WHAT HAPPENS -- WE'VE HEARD A LITTLE BIT
18 ABOUT A DROP BOX. WHAT HAPPENS WHEN EVIDENCE IS DROPPED OFF
19 IN THE DROP BOX DURING THE NIGHT WHEN PROPERTY AND EVIDENCE
20 IS CLOSED?

21 A. OKAY. ONCE PROPERTY AND EVIDENCE IS CLOSED AT 6:00 WE
22 HAVE WHAT'S CALLED A DROP BOX. THAT IS WHERE THE POLICE
23 OFFICERS OR THE DEPUTIES PUT EVIDENCE AFTER HOURS. ONLY THE
24 PEOPLE WHO WORK THERE, THE FOUR EMPLOYEES, ARE THE ONES WHO
25 CAN TAKE IT OUT.

RENEE PRUITT - DIRECT EXAMINATION BY MS. SALISBURY

171

1 Q. OKAY. WHAT'S THE STANDARD PROCEDURE FOR DEALING WITH
2 EVIDENCE THAT THE EMPLOYEES RETRIEVE FROM THE DROP BOX?
3 WHAT DO YOU DO WITH EVIDENCE THAT YOU FIND THE NEXT MORNING
4 THAT'S BEEN PLACED IN THE DROP BOX?

5 A. ONCE WE ARRIVE THE NEXT MORNING WE INVENTORY WHAT'S
6 BROUGHT IN. WE CHECK IT IN AND WE PLACE IT INTO SECURED
7 AREAS.

8 Q. OKAY. NOW CHANGING GEARS A LITTLE BIT, WHAT'S A
9 PROPERTY AND EVIDENCE SHEET? WHAT IS THAT?

10 A. THAT'S AN INVENTORY SHEET. WE CHECK WHAT'S BROUGHT IN
11 TO MAKE SURE THAT WHAT'S ON THAT P&E SHEET IS EXACTLY WHAT
12 WE HAVE.

13 Q. OKAY. DOES THAT PROPERTY AND EVIDENCE SHEET THAT LISTS
14 WHAT THE ITEM OF EVIDENCE IS, DOES THAT ALWAYS ACCOMPANY THE
15 ITEM OF EVIDENCE THAT IT GOES WITH?

16 A. YES, IT DOES.

17 Q. OKAY. NOW I'M GOING TO SHOW YOU STATE'S EXHIBIT NUMBER
18 4 AND 6. I'M GOING TO ASK YOU TO TAKE A LOOK AT THESE ITEMS
19 AND TELL ME, DO YOU RECOGNIZE THOSE ITEMS?

20 A. OKAY. IT'S MY SIGNATURE ON THE PROPERTY AND EVIDENCE
21 SHEET.

22 Q. OKAY. IS THAT THE PROPERTY, EXCUSE ME, EXHIBIT NUMBER
23 6, THE PROPERTY AND EVIDENCE SHEET THAT GOES ALONG WITH
24 EXHIBIT NUMBER 4?

25 A. YES, IT IS.

RENEE PRUITT - DIRECT EXAMINATION BY MS. SALISBURY

172

1 Q. NOW YOU MENTIONED THAT YOU NOTICED THAT YOUR SIGNATURE
2 IS ON EXHIBIT NUMBER 6. WHAT DOES IT MEAN THAT YOUR
3 SIGNATURE APPEARS ON THAT PROPERTY AND EVIDENCE SHEET?

4 A. THIS IS THE EVIDENCE THAT I CHECKED IN.

5 Q. OKAY. THAT YOU CHECKED IT IN?

6 A. YES.

7 Q. DO YOU KNOW WHEN AND WHERE YOU TOOK POSSESSION OF
8 EXHIBIT NUMBER 4?

9 A. I TOOK IT OUT OF THE DROP BOX.

10 Q. OKAY. WHEN YOU RECEIVED NUMBER 4 OUT OF THE DROP BOX
11 WAS IT SEALED?

12 A. YES, IT WAS.

13 Q. HOW DO YOU KNOW?

14 A. BECAUSE I MARKED IT AS BEING SEALED.

15 Q. OKAY. WHAT WOULD YOU HAVE DONE WITH EXHIBIT NUMBER 4
16 OR ANY ITEM OF EVIDENCE THAT WASN'T SEALED?

17 A. I WOULD NOT HAVE MARKED IT AS BEING SEALED.

18 Q. OKAY. DID YOU BREAK ANY OF THE SEALS ON EXHIBIT NUMBER
19 4?

20 A. NO, I DID NOT.

21 Q. OKAY. WHAT DID YOU DO NEXT? AFTER YOU TOOK IT FROM
22 THE DROP BOX AND AFTER YOU VERIFIED THAT THE SHEET PROPERLY
23 CORRESPONDED WITH IT, WHAT DID YOU DO WITH EXHIBIT NUMBER 4
24 NEXT?

25 A. I PLACED IT IN THE ENVELOPE, MARKED IT WITH WHAT WE

RENEE PRUITT - DIRECT EXAMINATION BY MS. SALISBURY

173

1 USE. WE USE DOTS FOR CERTAIN AREAS WITHIN PROPERTY AND
2 EVIDENCE THAT -- WE HAVE CODES THAT I PLACE IT INTO OUR
3 VAULT. AND I -- WELL, IT'S CALLED THE NARCOTICS VAULT. AND
4 THAT'S WHERE IT REMAINED UNTIL IT WAS TIME FOR IT TO GO TO
5 THE DRUG LAB.

6 Q. OKAY. INSIDE THAT NARCOTICS VAULT IS THERE AN AREA, A
7 LAB ANALYSIS BOX THAT EVIDENCE IS PLACED INTO ---

8 A. YES, IT IS.

9 Q. --- OR PROPERTY IS PLACED INTO? OKAY. DID YOU PLACE
10 EXHIBIT NUMBER 4 INTO THIS LAB ANALYSIS BOX?

11 A. YES, I DID.

12 Q. OKAY. HOW LONG AFTER YOU TOOK EXHIBIT NUMBER 4 FROM
13 THE DROP BOX, CATALOGUED IT, PLACED THE DOT ON IT MARKING IT
14 AS A NARCOTIC, HOW LONG FROM THAT POINT DID YOU PUT IT INTO
15 THE LAB ANALYSIS BOX INSIDE YOUR VAULT?

16 A. IT WAS THERE FOR SIX DAYS BEFORE MR. COLLINS CAME AND
17 TOOK IT OUT.

18 Q. OKAY. OKAY. DID YOU PLACE IT INTO THE LAB ANALYSIS
19 BOX STRAIGHT AWAY OR DID YOU WAIT SIX DAYS WITH IT IN THE
20 VAULT BEFORE YOU PUT IT IN THE LAB ---

21 A. IT WAS THERE STRAIGHT AWAY. ONCE I'VE SIGNED IT IN, IT
22 WAS PLACED INTO THE LAB ANALYSIS BOX.

23 Q. ALL RIGHT. YOU MENTIONED THAT IT WAS PICKED UP FOR LAB
24 ANALYSIS. AFTER YOU PLACED EXHIBIT NUMBER 4 INTO -- INTO
25 THE LAB ANALYSIS BOX WHEN WAS IT CHECKED OUT OF PROPERTY AND

RENEE PRUITT - DIRECT EXAMINATION BY MS. SALISBURY

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1 EVIDENCE AGAIN?

2 A. ON 1/17/07.

3 Q. WHY WAS EXHIBIT NUMBER 4 CHECKED OUT OF PROPERTY AND
4 EVIDENCE?

5 A. FOR LAB ANALYSIS.

6 Q. BY WHOM?

7 A. MR. COLLINS.

8 Q. OKAY. NOW AFTER IT WAS CHECKED OUT ON THE 17TH FOR
9 ANALYSIS DID YOU RECEIVE EXHIBIT NUMBER 4 AGAIN?

10 A. YES, I DID.

11 Q. WHEN?

12 A. ON 1/18/07.

13 Q. THE VERY NEXT DAY?

14 A. THE VERY NEXT DAY.

15 Q. WHO BROUGHT IT TO YOU?

16 A. MR. COLLINS.

17 Q. WAS IT AGAIN SEALED WHEN YOU RECEIVED IT?

18 A. YES, IT WAS.

19 Q. HOW DO YOU KNOW?

20 A. BECAUSE IT WAS IN A DIFFERENT SEALED BAG.

21 Q. OKAY. DID YOU INDICATE AGAIN ON PROPERTY AND EVIDENCE
22 SHEET WHETHER IT WAS SEALED?

23 A. YES, I DID.

24 Q. ALL RIGHT. DID YOU BREAK ANY OF THESE SEALS WHEN YOU
25 RECEIVED IT FROM MR. COLLINS?

RENEE PRUITT - CROSS EXAMINATION BY MS. HORLBECK

175

1 A. NO, I DID NOT.

2 Q. ALL RIGHT. HAS EXHIBIT NUMBER 4 BEEN STORED IN THE
3 SAME PLACE SINCE IT WAS RETURNED TO YOU ON JANUARY 18TH BY
4 MR. COLLINS?

5 A. YES.

6 Q. ALL RIGHT. JUST ONE MOMENT.

7 (PAUSE)

8 Q. THANK YOU, MS. PRUITT. PLEASE ANSWER ANY QUESTIONS MS.
9 HORLBECK MAY HAVE FOR YOU.

10 CROSS EXAMINATION BY MS. HORLBECK:

11 Q. GOOD MORNING, MS. PRUITT.

12 A. GOOD MORNING.

13 Q. YOU WORK AT THE PROPERTY AND EVIDENCE SECTION OF THE
14 LAW ENFORCEMENT CENTER, IS THAT RIGHT?

15 A. YES.

16 Q. ALL RIGHT. NOW YOU HAVE A SPECIFIC PROCEDURE THAT YOU
17 FOLLOW AS AN EMPLOYEE IN PROPERTY AND EVIDENCE, IS THAT
18 RIGHT?

19 A. RIGHT.

20 Q. ALL RIGHT. AND YOU HAVE THOSE SPECIFIC PROCEDURES SO
21 THAT -- THAT YOU'RE TO FOLLOW SO THAT YOU CAN KEEP THE
22 EVIDENCE STORED IN THAT AREA SAFELY AND SECURELY, CORRECT?

23 A. YES.

24 Q. ALL RIGHT. AND THERE'S A REASON OF LIMITED -- A
25 LIMITED NUMBER OF PEOPLE HAVE ACCESS TO THAT SECURED AREA,

RENEE PRUITT - CROSS EXAMINATION BY MS. HORLBECK

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1 CORRECT?

2 A. YES.

3 Q. I'M SORRY. I SPOKE OVER YOU. IS THAT CORRECT?

4 A. YES.

5 Q. AND IS IT -- IS IT FAIR TO SAY THAT IT'S VERY IMPORTANT
6 TO KEEP THIS EVIDENCE IN THAT SECURED AREA SAFE?

7 A. YES.

8 Q. ALL RIGHT. IS A POCKET CONSIDERED A SAFE AREA FOR YOU
9 TO PLACE EVIDENCE ONCE IT COMES INTO PROPERTY AND EVIDENCE?

10 A. A POCKET?

11 Q. YES. WOULD YOU HAVE PLACED THAT EVIDENCE ONCE YOU
12 RECEIVED IT IN YOUR POCKET?

13 A. NO.

14 Q. OKAY. WHERE DO YOU PLACE IT THEN?

15 A. ONCE IT COMES IN IT'S PLACED INTO THE NARCOTICS VAULT.

16 Q. DO YOU ALSO STORE OTHER TYPES OF EVIDENCE BESIDES
17 ALLEGED DRUGS?

18 A. YES.

19 Q. ALL RIGHT. DO YOU, FOR INSTANCE, WOULD YOU HAVE THE
20 CAPABILITY TO STORE MONEY USED IN AN UNDERCOVER NARCOTICS
21 BUY?

22 A. YES.

23 Q. HAVE -- DO YOU HAVE ANY MONEY IN YOUR PROPERTY AND
24 EVIDENCE SECTION WITH RESPECT TO THIS CASE?

25 A. THIS CASE?

RENEE PRUITT - CROSS EXAMINATION BY MS. HORLBECK

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- 1 Q. YES.
- 2 A. I DON'T THINK SO.
- 3 Q. ALL RIGHT. DO YOU HAVE ANY EVIDENCE OF A SERIAL NUMBER
- 4 IN THIS CASE?
- 5 A. A SERIAL NUMBER?
- 6 Q. YES. USED ON A TWENTY DOLLAR BILL.
- 7 A. I DON'T THINK SO.
- 8 Q. ALL RIGHT. AND IN OTHER WORDS, THERE'S NOTHING ON YOUR
- 9 PROPERTY AND EVIDENCE SHEET RESPECTING ANY OTHER EVIDENCE,
- 10 IS THAT TRUE?
- 11 A. ONLY THING ON THIS SHEET HAS IS JUST THIS.
- 12 Q. ALL RIGHT. WHEN AN ENVELOPE COMES INTO YOUR PROPERTY
- 13 AND EVIDENCE SECTION DO YOU INITIAL IT?
- 14 A. AN ENVELOPE?
- 15 Q. YES.
- 16 A. NO.
- 17 Q. DO YOU -- WHEN A DRUG COMES TO YOUR SECTION IN AN
- 18 ENVELOPE, DO YOU KEEP THAT ENVELOPE OR DO YOU THROW IT AWAY?
- 19 A. WE KEEP THAT ENVELOPE.
- 20 Q. ALL RIGHT. DO YOU PLACE THAT ENVELOPE IN A PLASTIC
- 21 BAG?
- 22 A. NO.
- 23 Q. OKAY. DO YOU JUST STORE THAT ENVELOPE?
- 24 A. IF THE ENVELOPE COMES WITH THIS WITH IT, ---
- 25 Q. UM-HUM (AFFIRMATIVE).

RENEE PRUITT - CROSS EXAMINATION BY MS. HORLBECK

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- 1 A. --- SAY MR. RHEA HAD HIS OWN ENVELOPE, THESE DRUGS WERE
2 IN THAT ENVELOPE, ---
3 Q. YES.
4 A. --- THESE DRUGS WOULD STAY IN THE ENVELOPE IN WHICH HE
5 HAD THEM IN.
6 Q. OKAY.
7 A. WE WOULD STILL USE THAT ENVELOPE.
8 Q. OKAY. WOULD YOU INITIAL ANY PART OF IT?
9 A. WE WILL STILL -- WE'LL PUT HIS CASE -- WE WILL PUT THE
10 CASE NUMBER ON IT.
11 Q. ALL RIGHT.
12 A. WE PUT THE LOCATION ON IT.
13 Q. ALL RIGHT.
14 A. AND WE'LL STILL CONTINUE ON WITH IT.
15 Q. ALL RIGHT.
16 MS. HORLBECK: BEG THE COURT'S INDULGENCE.
17 (PAUSE)
18 Q. THAT'S ALL I HAVE. THANK YOU.
19 THE COURT: ANY REDIRECT?
20 MS. TESSITORE: ONE MOMENT, YOUR HONOR.
21 MS. SALISBURY: NOTHING FROM THE STATE, JUDGE. MS.
22 PRUITT, YOU CAN STEP DOWN.
23 THE COURT: ALL RIGHT. THANK YOU, MA'AM. YOU CAN STEP
24 DOWN. CAN WE RELEASE HER?
25 MS. HORLBECK: WITHOUT OBJECTION.

SEAN COLLINS - DIRECT EXAMINATION BY MS. SALISBURY

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1 THE COURT: OKAY. YOU'RE FREE TO GO, MA'AM. THANK
2 YOU.

3 MS. SALISBURY: THE STATE CALLS MR. SEAN COLLINS. MR.
4 COLLINS, IF YOU WOULD, PLEASE COME UP AND BE SWORN.

5 SEAN COLLINS, BEING DULY
6 SWORN TESTIFIED AS FOLLOWS:

7 MADAME CLERK: THANK YOU. PLEASE HAVE A SEAT. STATE
8 YOUR FULL NAME FOR THE RECORD, PLEASE.

9 MR. COLLINS: IT'S SEAN FRANKLIN COLLINS.

10 DIRECT EXAMINATION BY MS. SALISBURY:

11 Q. GOOD MORNING, MR. COLLINS.

12 A. GOOD MORNING.

13 Q. IF YOU COULD, TELL THE JURY WHERE YOU'RE EMPLOYED.

14 A. I'M EMPLOYED BY THE GREENVILLE COUNTY DEPARTMENT OF
15 PUBLIC SAFETY CRIME LABORATORY.

16 Q. NOW WHAT'S YOUR POSITION THERE?

17 A. MY TITLE IS PRINCIPAL CRIMINALIST. I'M CURRENTLY THE
18 LABORATORY MANAGER. AND IN ADDITION TO THAT I ANALYZE
19 CONTROLLED SUBSTANCES.

20 Q. HOW LONG HAVE YOU BEEN IN THAT POSITION?

21 A. I'VE BEEN THE MANAGER FOR TWO YEARS. I'VE BEEN IN THE
22 LABORATORY FOR SIXTEEN AND A HALF NOW.

23 Q. OKAY. NOW WHAT KIND OF TRAINING HAVE YOU RECEIVED
24 LEADING UP TO THIS, BEFORE YOU BECAME A CHEMICAL ANALYSIS?

25 A. I HAVE A BACHELOR ---

SEAN COLLINS - DIRECT EXAMINATION BY MS. SALISBURY

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1 Q. ANALYST?

2 A. I'M SORRY. I HAVE A BACHELOR OF SCIENCE DEGREE IN
3 CHEMISTRY FROM CLEMSON UNIVERSITY. I'VE ATTENDED THE DRUG
4 ENFORCEMENT ADMINISTRATION'S FORENSIC CHEMIST SEMINAR. I'VE
5 COMPLETED SEVERAL INSTRUMENTAL SCHOOLS FOR THE EQUIPMENT I
6 USE IN MY ANALYSIS. AND I'VE RECEIVED OVER SEVEN HUNDRED
7 HOURS OF SPECIALIZED TRAINING.

8 Q. DO YOU STILL RECEIVE TRAINING OR EDUCATION AS PART OF
9 YOUR CONTINUING EDUCATION?

10 A. YES, MA'AM, WE DO.

11 Q. OKAY. NOW WHAT TASKS GENERALLY DO YOU PERFORM AS A --
12 A CRIME LAB CHEMIST?

13 A. IT'S PRIMARILY CONTROLLED SUBSTANCE ANALYSIS. IT'S
14 RETRIEVING THE ITEMS AND DETERMINING WHAT THEY MIGHT BE.

15 Q. OVER THE YEARS THAT YOU'VE DONE THAT AND BEEN EMPLOYED
16 AS A CHEMIST IN APPROXIMATELY HOW MANY CASES HAVE YOU BEEN
17 ASKED TO ANALYZE CHEMICAL SUBSTANCES?

18 A. SEVERAL THOUSANDS. POSSIBLY OVER TEN THOUSAND.

19 Q. NOW HOW MANY TIMES HAVE YOU TESTIFIED IN COURT ABOUT
20 THE RESULTS OF A CHEMICAL ANALYSIS THAT YOU'VE PERFORMED?

21 A. I'VE TESTIFIED AS AN EXPERT ONE HUNDRED AND FORTY-EIGHT
22 TIMES.

23 Q. SO YOU'VE BEEN QUALIFIED A HUNDRED AND FORTY-EIGHT
24 TIMES AS AN EXPERT?

25 A. YES, MA'AM.

SEAN COLLINS - DIRECT EXAMINATION BY MS. SALISBURY

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1 Q. HAVE YOU EVER NOT BEEN QUALIFIED BY A COURT AS AN
2 EXPERT IN CHEMICAL ANALYSIS?

3 A. NO, MA'AM.

4 MS. SALISBURY: YOUR HONOR, THE STATE OFFERS MR.
5 COLLINS AS AN EXPERT IN THE FIELD OF CHEMICAL ANALYSIS.

6 THE COURT: ANY VOIR DIRE?

7 MS. HORLBECK: NO.

8 THE COURT: ANY OBJECTION?

9 MS. HORLBECK: I'M SORRY. NO OBJECTION, YOUR HONOR.

10 THE COURT: ALL RIGHT. GO AHEAD.

11 MS. SALISBURY: THANK YOU, JUDGE.

12 Q. MR. COLLINS, WERE YOU ASKED TO ANALYZE A CHEMICAL
13 SUBSTANCE IN THIS CASE?

14 A. YES, I WAS.

15 Q. HOW DID YOU OBTAIN THIS SUBSTANCE THAT YOU TESTED?

16 A. I RETRIEVED IT FROM THE PROPERTY AND EVIDENCE ROOM,
17 WHICH IS LOCATED IN THE BASEMENT OF THE LAW ENFORCEMENT
18 CENTER JUST DOWN THE HALLWAY FROM THE LABORATORY.

19 Q. DO YOU REMEMBER WHEN YOU CHECKED THAT SUBSTANCE OUT OF
20 PROPERTY AND EVIDENCE?

21 A. I RECEIVED IT ON JANUARY 10TH, 2007.

22 Q. OKAY. NOW I'M GOING TO SHOW YOU -- WELL, IT'S ALREADY
23 UP THERE, STATE'S EXHIBIT NUMBER 4. THIS PACKAGE HERE.
24 HAVE YOU EVER SEEN THAT BEFORE?

25 A. YES, MA'AM, I HAVE.

SEAN COLLINS - DIRECT EXAMINATION BY MS. SALISBURY

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1 Q. IS THE INNER BAG AND THE SUBSTANCE THAT YOU TESTED THE
2 SAME BAG AND SUBSTANCE THAT YOU CHECKED OUT OF PROPERTY AND
3 EVIDENCE ON JANUARY 10TH?

4 A. YES, MA'AM, IT IS.

5 Q. HOW DO YOU KNOW?

6 A. THE INNER BAG HAS MY INITIALS AND DATE ON IT WHERE I
7 OPENED IT. THE ITEM ITSELF HAS MY INITIALS ON IT. AND THE
8 OUTER BAG HAS MY INITIALS AND THE DATE WHERE I RESEALED IT.

9 Q. NOW WHEN YOU FIRST RECEIVED STATE'S EXHIBIT 4 WHAT
10 CONDITION WAS IT IN?

11 A. THE ITEM WAS SEALED IN THIS INNER PLASTIC BAG.

12 Q. NOW IF ANY ITEM OF EVIDENCE THAT YOU PICK UP TO
13 CHEMICALLY TEST IS NOT SEALED WHAT DO YOU DO WITH IT?

14 A. IF SOMETHING WASN'T SEALED, WE WOULD NOT SIGN IT OUT.
15 WE'D NOTIFY THE CLERK ON DUTY, AND THEY WOULD INVESTIGATE IT
16 OR TAKE CARE OF IT.

17 Q. AFTER YOU GOT THE SUBSTANCE FROM PROPERTY AND EVIDENCE
18 WHAT DID YOU DO WITH IT?

19 A. I RETURNED TO THE CRIME LABORATORY. IN THIS CASE I
20 PLACED IT IN MY LOCKER, I RECEIVE MORE THAN ONE CASE AT A
21 TIME, AND WAITED UNTIL IT WAS TIME FOR THE ANALYSIS OF THIS
22 ONE.

23 Q. NOW AFTER YOU TESTED IT WHAT DID YOU DO WITH IT?

24 A. I RESEALED IT AND RETURNED IT TO THE LAW OR TO THE
25 PROPERTY AND EVIDENCE ROOM.

SEAN COLLINS - DIRECT EXAMINATION BY MS. SALISBURY

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1 Q. SO YOU SEALED IT BEFORE YOU TURNED IT BACK INTO
2 PROPERTY AND EVIDENCE THEN?

3 A. YES, MA'AM.

4 Q. OKAY. WHAT -- WHAT WAS THE DATE THAT YOU RETURNED IT
5 TO PROPERTY AND EVIDENCE AFTER HAVING TESTED IT?

6 A. IT WOULD BE JANUARY 18TH OF 2007.

7 Q. ALL RIGHT. NOW IS STATE'S EXHIBIT NUMBER 4 IN THE SAME
8 CONDITION TODAY AS WHEN YOU RETURNED IT TO PROPERTY AND
9 EVIDENCE ON JANUARY 18TH?

10 A. YES, IT IS.

11 Q. OKAY.

12 MS. SALISBURY: YOUR HONOR, THE STATE OFFERS EXHIBIT
13 NUMBER 4 INTO EVIDENCE.

14 MS. HORLBECK: WITHOUT OBJECTION.

15 THE COURT: ALL RIGHT. NO OBJECTION.

16 (WHEREUPON STATE'S EXHIBIT 4 WAS ENTERED INTO EVIDENCE)

17 Q. MR. COLLINS, WOULD YOU PLEASE TELL THE JURY HOW YOU
18 ANALYZED STATE'S EXHIBIT NUMBER 4?

19 A. THE FIRST THING WE DO IS TAKE THE WEIGHT OF THE ITEM.
20 AFTER THAT WE DO A CHEMICAL AND INSTRUMENTAL ANALYSIS TO
21 DETERMINE WHAT IT IS.

22 Q. WHAT WERE THE RESULTS OF YOUR ANALYSIS?

23 A. I FOUND IT TO BE CRACK COCAINE WITH A WEIGHT OF ZERO
24 POINT THREE TWO (0.32) GRAMS.

25 Q. NOW IS THERE -- IS THERE ANY OTHER NAME FOR CRACK

SEAN COLLINS - CROSS EXAMINATION BY MS. HORLBECK

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1 COCAINE? ANY OTHER CHEMICAL NAME FOR CRACK COCAINE?

2 A. IT'S ALSO KNOWN AS COCAINE BASE.

3 Q. ARE THOSE EXACTLY THE SAME THING?

4 A. YES, MA'AM.

5 Q. ALL RIGHT. JUST ONE MOMENT, PLEASE.

6 (PAUSE)

7 Q. NOW I JUST WANT TO -- WANT TO CLARIFY ONE THING ABOUT

8 THE DATE THAT YOU -- I'M GOING TO SHOW YOU STATE'S EXHIBIT

9 6, THE DATE THAT YOU CHECKED IT OUT FROM PROPERTY AND

10 EVIDENCE, THE FIRST TIME BEFORE YOU TESTED IT.

11 A. YES, MA'AM.

12 Q. WHAT -- WHAT IS THE DATE THAT YOU CHECKED IT OUT

13 INITIALLY BEFORE YOU PERFORMED THE CHEMICAL ANALYSIS?

14 A. JANUARY 17TH.

15 Q. OKAY. AND WHEN DID YOU TEST THE SUBSTANCE?

16 A. JANUARY 18TH.

17 Q. AND WHEN DID YOU RETURN IT TO PROPERTY AND EVIDENCE?

18 A. ON THE 18TH.

19 Q. OKAY. I DON'T HAVE ANY OTHER QUESTIONS. IF YOU WOULD,

20 ANSWER ANY QUESTIONS MS. HORLBECK MAY HAVE FOR YOU.

21 A. THANK YOU.

22 CROSS EXAMINATION BY MS. HORLBECK:

23 Q. MR. COLLINS, YOU TESTIFIED THAT YOU HAVE AN EVIDENCE

24 LOCKER?

25 A. YES, MA'AM.

SEAN COLLINS - CROSS EXAMINATION BY MS. HORLBECK

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1 Q. WHAT'S THE PURPOSE OF YOUR EVIDENCE LOCKER?

2 A. TO KEEP THINGS STORED SO THAT ONLY I HAVE ACCESS TO
3 THEM WHEN THEY'RE IN THE LABORATORY.

4 Q. OKAY.

5 A. EACH CHEMIST HAS THEIR OWN LOCKER.

6 Q. ALL RIGHT. THE PURPOSE OF YOUR -- OF YOUR EVIDENCE
7 LOCKER IS TO KEEP THE DRUGS SAFELY AND SECURELY?

8 A. YES, MA'AM.

9 Q. ALL RIGHT. AND AFTER -- WHERE WAS THE DRUG BEFORE YOU
10 TESTED IT?

11 A. AFTER I RECEIVED IT?

12 Q. YES.

13 A. I WOULD RETURN TO THE LABORATORY AND PLACE EVERYTHING
14 IN MY EVIDENCE LOCKER.

15 Q. ALL RIGHT. AND I THINK -- DID I JUST ASK YOU -- WHERE
16 WAS THE DRUG BEFORE YOU TESTED IT? DID I JUST ---

17 A. YES, MA'AM.

18 Q. OKAY.

19 A. IN THE EVIDENCE LOCKER.

20 Q. ALL RIGHT. AFTER YOU TESTED IT WHERE DID YOU PUT THE
21 DRUG?

22 A. I PUT IT BACK IN THE EVIDENCE LOCKER.

23 Q. ALL RIGHT. AND IN YOUR EXPERT OPINION IS IT VERY, VERY
24 IMPORTANT FOR THE SECURITY OF THE DRUG THAT YOU KEEP IT
25 SAFELY IN YOUR LOCKER?

SEAN COLLINS - CROSS EXAMINATION BY MS. HORLBECK

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1 A. YES, MA'AM.

2 Q. AND HAS THERE EVER BEEN AN OCCASION, ESPECIALLY WITH
3 REGARD TO THIS CASE, THAT YOU PUT THAT DRUG IN YOUR POCKET?

4 A. NO, MA'AM.

5 Q. ALL RIGHT. ARE THERE ANY -- IS THERE ANY INDICATION ON
6 ANY OF THE TESTS THAT YOU'VE PERFORMED, DO YOU HAVE ANY WAY
7 OF LINKING THAT DRUG TO MR. GRANT?

8 A. NO, MA'AM.

9 Q. ALL RIGHT. THAT'S ALL I HAVE. THANK YOU.

10 THE COURT: ANY REDIRECT?

11 MS. TESSITORE: NONE, YOUR HONOR.

12 THE COURT: ALL RIGHT. CAN WE RELEASE MR. COLLINS?

13 MS. HORLBECK: WITHOUT OBJECTION.

14 THE COURT: ALL RIGHT. THANKS. YOU'RE RELEASED FROM
15 SUBPOENA.

16 A. THANK YOU, SIR.

17 MS. TESSITORE: YOUR HONOR, THE STATE RESTS.

18 THE COURT: OKAY. ALL RIGHT. MADAME FORELADY, LADIES
19 AND GENTLEMEN OF THE JURY, I NEED TO DISCUSS SOME LEGAL
20 MATTERS WITH THE ATTORNEYS AT THIS TIME. SO IF YOU ALL
21 WOULD -- IT'S A GOOD TIME FOR A BREAK ANYWAY. BUT Y'ALL
22 RETIRE TO YOUR ROOM, JURY ROOM. PLEASE DON'T DISCUSS THE
23 CASE. THANK YOU.

24 (WHEREUPON THE JURY EXITED THE COURTROOM AT 10:53 AM)

25 THE COURT: OKAY. YOU WANT TO TAKE A LITTLE BREAK

1 BEFORE WE DO THE -- NO? YOU READY? OKAY, GO.

2 MS. HORLBECK: YEAH, LET ME JUST -- IF YOU DON'T MIND.

3 I'LL TAKE A BREAK IF YOUR HONOR NEEDS TO. I JUST ---

4 THE COURT: WELL, WE WILL IN A MINUTE. LET'S -- GO
5 AHEAD.

6 MS. HORLBECK: I JUST FEEL LIKE A LOT'S IN MY SYSTEM I
7 MAY AS WELL GET OUT.

8 THE COURT: YEAH, ---

9 MS. HORLBECK: YOUR HONOR, WE WOULD ASK ---

10 THE COURT: --- PURGE IT.

11 (LAUGHTER)

12 MS. HORLBECK: WE WOULD ASK FOR A DIRECTED VERDICT ON
13 ALL CHARGES. IN THE LIGHT MOST FAVORABLE TO THE STATE WE
14 BELIEVE THAT THERE'S A FAILURE OF COMPETENT EVIDENCE TENDING
15 TO PROVE ALL THE CHARGES, ESPECIALLY WITH REGARD TO THE
16 THREAT -- THE THREATENING THE LIFE OF A PUBLIC OFFICIAL.

17 THESE OFFICERS ARE TRAINED TO KILL. THERE'S ABSOLUTELY
18 NO EVIDENCE THAT THEY WERE PUT IN ANY FEAR OF INJURY.
19 THERE'S NO EVIDENCE THAT THEY TASED, HAD TO TASE MY CLIENT.
20 THERE'S NO EVIDENCE THAT THEY HAD TO TAKE STEPS TO STEP BACK
21 FROM MY CLIENT. IN FACT, THE OFFICER PUT THE CUFF RIGHT
22 BACK ON THE CLIENT. THERE'S ABSOLUTELY NO EVIDENCE
23 WHATSOEVER THAT HE WAS EVER IN ANY FEAR OF HIS LIFE OR
24 INJURY.

25 THE COURT: THAT'S NOT AN ELEMENT OF THE OFFENSE

1 THOUGH.

2 MS. HORLBECK: I'VE GOT -- WELL, THAT'S MY -- THAT'S
3 JUST MY MOTION, YOUR HONOR.

4 THE COURT: YEAH, I KNOW.

5 MS. HORLBECK: I DON'T BELIEVE THE STATE'S PRESENTED
6 ANY DIRECT EVIDENCE THAT THE THREAT WAS MADE WITH RESPECT TO
7 DEPUTY TOLLISON'S POSITION OR JOB.

8 THE COURT: WELL, HE WAS ACTING IN HIS OFFICIAL
9 CAPACITY AS A WHAT?

10 MS. TESSITORE: YOUR HONOR, IF I COULD JUST ELABORATE.
11 THERE WAS TESTIMONY FROM DEPUTY TOLLISON THAT THIS IS PART
12 OF HIS RESPONSIBILITIES WHEN HE MAKES AN ARREST. AND ---

13 THE COURT: YEAH. OKAY.

14 MS. TESSITORE: --- HE SPECIFICALLY STATED THAT.

15 THE COURT: HE IS NOT A PUBLIC OFFICIAL, HOWEVER, IS
16 HE?

17 MS. TESSITORE: YOUR HONOR, THE CASE LAW -- AND I HAVE
18 PREPARED A MEMORANDUM OF LAW ON THAT ISSUE SPECIFICALLY
19 ANTICIPATING THAT THAT MAY BE SOMETHING THAT WOULD BE
20 RAISED. AND THAT MAY BE SOMETHING THAT YOU COULD REVIEW
21 DURING THE BREAK.

22 THE COURT: OKAY.

23 MS. TESSITORE: BUT THE CASE LAW SEEMS PRETTY CLEAR
24 THAT A HIGHWAY PATROL OFFICER HAVE BEEN CONSIDERED PUBLIC
25 OFFICIAL IN THE MEANING OF 16 3 1040 IN STATE VERSUS

1 BRIDGES, 329 SC 11, A 1997 CASE. AND IN STATE VERSUS
2 CARTER, MUNICIPAL OFFICERS WERE CONSIDERED PUBLIC OFFICIALS.
3 AND THAT'S 324 SC 383 BOTH OF WHICH ARE DISCUSSED IN THE
4 MEMO.

5 AND JUST LOOKING AT THE COMMON LAW AS WELL AS THE
6 PUBLIC POLICY CONSIDERATIONS THAT THE STATE WOULD SUBMIT
7 THAT A COUNTY DEPUTY WOULD ALSO BE CONSIDERED A PUBLIC
8 OFFICIAL FOR THE PURPOSES OF 16 3 1040. AND I CAN TELL YOU
9 THAT THERE HAVE BEEN A FEW CASES, WILLIS VERSUS AIKEN
10 COUNTY, A 1943 CASE WHERE A WORKER'S -- IT WAS A WORKER'S
11 COMPENSATION CASE WHERE A DEPUTY SHERIFF WAS CONSIDERED TO
12 BE A PUBLIC OFFICIAL IN THAT CONTEXT.

13 MOREOVER IN STATE VERSUS COOPER, 291 SC 332, THAT WAS
14 THE ISSUE OF THE QUALIFICATION OF A PATROLMAN WITH THE SOUTH
15 CAROLINA HIGHWAY PATROL TO DETERMINE WHETHER HE SHOULD BE
16 QUALIFIED AS A JUROR. AND IN THAT CASE THE SUPREME COURT
17 HELD THAT THE HIGHWAY PATROLMEN ARE, QUOTE, FUNCTIONALLY
18 EQUIVALENT TO DEPUTY SHERIFFS.

19 THE COURT REASONED THAT THEY EXERCISED SIMILAR DUTIES,
20 RESPONSIBILITIES AND THEIR RESPECTIVE FUNCTIONS ENTAILED
21 CONSTANT RECIPROCITY. AND THE COURT THERE ENDORSED A
22 FUNCTIONAL APPROACH RATHER THAN A RIGID FORMALISTIC APPROACH
23 IN INTERPRETING AND APPLYING THE TERM, EXCUSE ME, THE
24 STATUTE IN THAT CASE.

25 AND THE COURT CONCLUDED THAT THERE WAS NO RATIONAL

1 BASIS TO TREAT DEPUTY SHERIFFS DIFFERENTLY THAN TROOPERS
2 THAN CITY OFFICERS UNDER SOUTH CAROLINA CODE 16 3 1040. AND
3 SO, THEREFORE, THE STATE WOULD SUBMIT THAT A COUNTY DEPUTY
4 SHOULD BE CONSIDERED A PUBLIC OFFICIAL UNDER SOUTH CAROLINA
5 CODE 16 3 1040.

6 THE COURT: OKAY.

7 MS. HORLBECK: AND IF I COULD JUST BRIEFLY RESPOND. I
8 BELIEVE STATE VERSUS BRIDGES, WHICH I HAVE AS 323 SC 185,
9 STATES THAT A HIGHWAY PATROL OFFICER IS NOT A PUBLIC
10 OFFICIAL. AND IF A DEPUTY SHERIFF IS THE FUNCTIONAL
11 EQUIVALENT OF A HIGHWAY PATROL OFFICER, THEN I WOULD SUBMIT
12 THAT A -- SINCE A HIGHWAY PATROL OFFICER IS NOT A PUBLIC
13 OFFICIAL, THEN NEITHER IS A DEPUTY. AND HE CLEARLY
14 TESTIFIED THAT HE WAS A DEPUTY WITH THE GREENVILLE COUNTY
15 SHERIFF'S OFFICE. AND I WOULD ASK FOR A DIRECTED VERDICT
16 BASED ON THAT.

17 THE COURT: WELL, YOU KNOW, THEY DIDN'T SPECIFY WHICH
18 SUBSECTION OF THE STATUTE THAT THEY WERE PROCEEDING UNDER.
19 SO ---

20 MS. TESSITORE: YOUR HONOR, ---

21 THE COURT: --- A OR B.

22 MS. TESSITORE: --- COULD I RESPOND?

23 THE COURT: YEAH.

24 MS. TESSITORE: I THINK MS. HORLBECK IS REFERRING TO
25 THE OTHER BRIDGES CASE, WHICH WAS OVERRULED. AND I'M

1 REFERRING TO THE STATE VERSUS BRIDGES THREE, WHICH IS THE
2 DECEMBER 1997 CASE, WHICH ACTUALLY WAS THE ONE THAT HELD
3 THAT HIGHWAY PATROL OFFICERS AND TROOPERS ARE PUBLIC
4 OFFICIALS. SO I THINK -- IF THE ANNOTATION -- THAT MAY BE
5 THE ---

6 MS. HORLBECK: IT WAS REVERSED. I'M SORRY. BUT I
7 STILL MAKE THAT ARGUMENT AS A -- JUST 'CAUSE I GOT TO MAKE
8 IT. AND IF -- IF THEY DIDN'T SPECIFY ...

9 THE COURT: ALL RIGHT. AT THIS TIME ---

10 MS. HORLBECK: THEN I ASK THAT IT BE ---

11 THE COURT: AT THIS, I MEAN, THERE'S NO DISTINCTION
12 UNDER THE -- ON THE INDICTMENT AS TO WHICH SUBSECTION
13 THEY'RE GOING UNDER. SO I DON'T KNOW THAT IT'S NECESSARY AT
14 THIS TIME TO CONSIDER THE ISSUE AS TO WHETHER THEY ARE A
15 PUBLIC OFFICIAL OR A PUBLIC EMPLOYEE. CERTAINLY THEY FIT AS
16 ONE OF THOSE TWO UNDER THE STATUTE. SO IT MAY BE MORE
17 APPROPRIATE TO CONSIDER THIS AT A LATER TIME. ALL RIGHT.
18 OKAY. ANYTHING ELSE?

19 MS. TESSITORE: YOUR HONOR, JUST ON THE ISSUE OF THE
20 DIRECTED VERDICT, WHICH I DON'T THINK YOU'VE RULED ON THAT
21 YET, DID I MISS ...

22 THE COURT: DENIED. HOW'S THAT?

23 MS. TESSITORE: I DON'T NEED TO RESPOND THEN.

24 THE COURT: OKAY.

25 MS. TESSITORE: THANK YOU.

1 THE COURT: ALL RIGHT. LET'S TAKE JUST -- WELL, LET ME
2 -- DO YOU HAVE ANYTHING TO ...

3 MS. HORLBECK: MY CLIENT'S NOT GOING TO TESTIFY, BUT WE
4 DO HAVE ---

5 THE COURT: OKAY.

6 MS. HORLBECK: --- A VERY SHORT WITNESS TO PRESENT.

7 THE COURT: ALL RIGHT. WELL, LET'S TAKE ABOUT A
8 FIFTEEN MINUTE BREAK.

9 MS. TESSITORE: YOUR HONOR, DID YOU WANT THE LAW ON THE
10 THREATENING ---

11 THE COURT: SURE. THAT'D BE GREAT.

12 (WHEREUPON COURT WAS IN RECESS AT 10:59 AM)

13 THE COURT: OKAY. IS EVERYBODY READY?

14 MS. HORLBECK: YES, SIR.

15 MS. TESSITORE: YOUR HONOR, WE DO HAVE ONE MATTER I
16 THINK WE NEED TO TAKE UP OUTSIDE THE PRESENCE OF THE JURY.
17 WITH RESPECT TO THE WITNESS THAT I BELIEVE MS. HORLBECK
18 INTENDS TO CALL, BRIAN SMITH, I ASKED IF SHE WAS PLANNING TO
19 INTRODUCE ANY DOCUMENTS WITH THIS WITNESS BECAUSE WE HAVE
20 BEEN PROVIDED WITH NONE.

21 WE FILED FOR A RECIPROCAL DISCOVERY ON JULY 13TH OF
22 2007. WE PREPARED THE DISCOVERY AND PROVIDED THAT TO MS.
23 HORLBECK. AND JUST FIVE MINUTES AGO WAS THE FIRST MENTION
24 ON MY QUESTION AS TO WHETHER THERE WAS ANY EVIDENCE. SHE
25 INDICATED THAT THERE WAS, IN FACT, A RECORD FROM THE INNTOWN

1 SUITES THAT DATES BACK TO A YEAR AGO, WHICH, YOU KNOW, WE
2 HAVE NOT SEEN AND HAS NOT BEEN PROVIDED TO US. SO WE WOULD
3 TAKE THE POSITION THAT THEY'RE NOT ENTITLED TO INTRODUCE
4 THAT INTO EVIDENCE AT THIS TIME.

5 MS. HORLBECK: AND I'D LIKE TO POINT OUT THAT WE WERE
6 NOT PROVIDED WITH COPIES OF THE PHOTOS, AND THOSE ARE IN
7 EVIDENCE AT THIS POINT. WHAT I'M TALKING ABOUT IS A RECORD
8 THAT IS MAINTAINED BY INNTOWN SUITES. IT IS A RECORD THAT'S
9 MAINTAINED IN THEIR POSSESSION. AND IT'S A RECORD THAT HE
10 BROUGHT -- THAT MY WITNESS BROUGHT WITH HIM TODAY THAT HE
11 WANTED TO USE TO, YOU KNOW, ASSIST WITH HIS TESTIMONY.

12 I DID SHOW THAT RECORD TO MS. TESSITORE THIS MORNING.
13 THEY CERTAINLY AS PART OF THEIR INVESTIGATION COULD HAVE
14 DONE THE SAME THING THAT I DID AND TALKED TO THAT WITNESS
15 AND FOUND THE SAME THING OUT.

16 THE COURT: YOU NEVER HAD POSSESSION OF THE DOCUMENT?

17 MS. HORLBECK: NO. IT NEVER WAS FAXED TO MY OFFICE
18 EITHER. HE JUST BROUGHT IT WITH HIM TODAY.

19 THE COURT: ALL RIGHT. WELL, WHY IS THAT SUBJECT TO
20 5(B)(1)(A)? IT WASN'T WITHIN HER POSSESSION, CUSTODY OR
21 CONTROL.

22 MS. TESSITORE: WELL, I MEAN, THERE WAS -- IT IS THIS
23 MORNING. AND AT THIS POINT IT WASN'T UNTIL JUST NOW THAT IT
24 WAS PROVIDED. IT COULD HAVE BEEN PROVIDED EARLIER THIS
25 MORNING SO WE COULD HAVE HAD A CHANCE TO AT LEAST LOOK INTO

1 IT AND BE ABLE TO BE PREPARED TO RESPOND TO IT.

2 THE COURT: WELL, I DON'T KNOW IF IT'S GOING TO BE
3 INTRODUCED OR NOT, BUT IF IT'S A BUSINESS RECORD KEPT IN THE
4 NORMAL, ORDINARY COURSE OF BUSINESS BY THE HOTEL ...

5 MS. TESSITORE: WELL, THE OTHER CONCERN, YOUR HONOR, IS
6 IT'S GOING TO CONTAIN HEARSAY WITHIN IT.

7 THE COURT: WELL, WE'LL HAVE TO CHECK IT OUT. IT'S
8 GOING TO HAVE TO FIT WITHIN THE 803 EXCEPTIONS. BUT, I
9 MEAN, I DON'T ---

10 MS. HORLBECK: IF IT'S A BUSINESS RECORD, I THINK THAT
11 THAT'S AN EXCEPTION.

12 THE COURT: WELL, -- YEAH, WELL, WE'LL SEE WHAT -- SEE
13 WHAT'S IN IT. I DON'T KNOW WHAT'S -- WE'LL JUST -- I DON'T
14 KNOW WHAT'S IN THE THING. IF YOU'VE GOT A COPY OF IT, LET
15 ME LOOK AT IT.

16 MS. HORLBECK: SURE.

17 MS. TESSITORE: YOUR HONOR, THE STATE WOULD REQUEST A
18 COPY OF IT AS WELL TO BE ABLE TO -- WE STILL HAVEN'T GOTTEN
19 A COPY.

20 (PAUSE)

21 THE COURT: WELL, SHOW IT TO THE STATE AND LET THEM
22 TAKE A LOOK AT IT.

23 MS. HORLBECK: THEY'VE SEEN IT. I CAN TAKE A QUICK
24 BREAK AND MAKE A QUICK COPY OF IT DOWN AT THE OFFICE.

25 THE COURT: THEY CAN -- JUST MAKE A COPY RIGHT HERE,

1 WOULD YOU, PLEASE?

2 (PAUSE)

3 MS. HORLBECK: I'M GOING TO RETURN THIS TO MY WITNESS.

4 THE COURT: OKAY. THAT'S FINE.

5 (PAUSE)

6 THE COURT: ALL RIGHT. I REVIEWED IT. I DIDN'T SEE
7 ANYTHING THAT VIOLATED 803 6, IS IT, YEAH, IN THERE. IS
8 THERE SOMETHING IN THERE THAT VIOLATES IT? IS THERE A
9 SUBJECTIVE OPINION OR JUDGMENT? I DON'T SEE IT. IT'S JUST
10 A RECORD OF ROOM PAYMENTS AND, I MEAN, I'LL LET YOU VOIR
11 DIRE THE GUY ABOUT ITS RELIABILITY IF YOU'D LIKE. I MEAN,
12 WHATEVER ...

13 MS. TESSITORE: NO, WE'RE FINE WITH IT, YOUR HONOR.

14 THE COURT: OKAY. ALL RIGHT. MR. GRANT, WOULD YOU
15 RAISE YOUR RIGHT HAND FOR ME? YOU SWEAR TO TELL THE TRUTH?

16 MR. GRANT: YES, SIR.

17 THE COURT: OKAY. YOU CAN PUT YOUR HAND DOWN. I WANT
18 TO EXPLAIN TO YOU AT THIS TIME THAT YOU HAVE AN ABSOLUTE
19 CONSTITUTIONAL RIGHT TO TESTIFY IN THIS CASE ---

20 MR. GRANT: YES, SIR.

21 THE COURT: --- IN YOUR OWN DEFENSE. IF YOU DO
22 TESTIFY, THEN YOU'D BE SUBJECT TO CROSS EXAMINATION. AND I
23 DON'T KNOW IF YOU HAVE A PRIOR CRIMINAL HISTORY THAT
24 CONTAINS ANY IMPEACHABLE OFFENSES. I BELIEVE YOU -- I MAY
25 HAVE HEARD THAT YOU DO. BUT IF YOU DO, THEN THEY ARE

1 ALLOWED UNDER CERTAIN SCRUTINY TO IMPEACH YOUR CREDIBILITY
2 OR BELIEVABILITY WITH YOUR PRIOR RECORD.

3 I WANT TO TELL YOU ALSO THAT YOU HAVE AN EQUAL
4 CONSTITUTIONAL RIGHT NOT TO TESTIFY. AND NO INFERENCE CAN
5 BE -- THAT CANNOT BE CONSIDERED BY THE JURY. AND IF YOU
6 REQUEST ME, YOU AND YOUR ATTORNEY, REQUEST ME TO INSTRUCT
7 THE JURY TO THAT EFFECT, I WILL DO IT. AND IT'S A PRETTY
8 STRONG INSTRUCTION. THEY ARE NOT TO CONSIDER YOUR FAILURE
9 TO TESTIFY IN ANY MANNER WHATSOEVER.

10 BUT THE DECISION TO TESTIFY CONTAINS -- GOES, YOU KNOW,
11 THERE'S STRATEGIC DECISIONS THAT NEED TO BE MADE. AND A LOT
12 OF -- ON A CASE BY CASE BASIS DETERMINATIONS HAVE TO BE
13 MADE. DO YOU UNDERSTAND ALL THOSE RIGHTS?

14 MR. GRANT: YES, SIR.

15 THE COURT: AND HAVE YOU MADE A DECISION ABOUT WHAT YOU
16 WANT TO DO IN THIS MATTER?

17 MR. GRANT: YES, SIR. I'VE COME TO THE CONCLUSION THAT
18 I JUST -- I DON'T WANT TO TAKE THE STAND.

19 THE COURT: YOU DON'T WANT TO TAKE THE STAND?

20 MR. GRANT: NO, SIR.

21 THE COURT: IS THAT YOUR OWN DECISION?

22 MR. GRANT: YES, SIR.

23 THE COURT: HAS ANYONE FORCED YOU IN ANY WAY TO MAKE
24 YOU ---

25 MR. GRANT: NO, SIR.

BRIAN SMITH - DIRECT EXAMINATION BY MS. HORLBECK

197

1 THE COURT: --- DECIDE THAT?

2 MR. GRANT: NO, SIR.

3 THE COURT: OKAY. DO YOU HAVE ANY QUESTIONS YOU'D LIKE
4 TO ASK ME ABOUT YOUR RIGHT TO TESTIFY OR REMAIN SILENT?

5 MR. GRANT: NO, SIR.

6 THE COURT: OKAY. ALL RIGHT. THANK YOU VERY MUCH.

7 ALL RIGHT. WE READY TO GO?

8 MS. TESSITORE: YES, YOUR HONOR.

9 MS. HORLBECK: YES, YOUR HONOR.

10 THE COURT: OKAY. I WANT TO MAKE, ON THE RECORD, JUST
11 STATE THAT THE OBJECTION RAISED TO THIS DOCUMENT, I AM
12 ALLOWING IT TO GO FORWARD AT THIS POINT BASED ON -- I DO NOT
13 FIND THAT THERE IS A VIOLATION OF RULE 5, BUT I AM NOT
14 LETTING THEM GO FORWARD WITH IT BECAUSE THE DEFENSE HAS
15 ASSERTED THAT I LET THE STATE GO FORWARD WITH THINGS THAT
16 WEREN'T DISCLOSED. THIS IS NOT A TIT FOR TAT ANALYSIS.
17 OKAY.

18 MS. HORLBECK: UNDERSTOOD, YOUR HONOR.

19 THE COURT: OKAY.

20 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 11:35 AM)

21 THE COURT: ALL RIGHT. MS. HORLBECK.

22 MS. HORLBECK: YOUR HONOR, DEFENSE CALLS BRIAN SMITH TO
23 THE STAND.

24 THE COURT: OKAY.

25 BRIAN SMITH, BEING DULY

BRIAN SMITH - DIRECT EXAMINATION BY MS. HORLBECK

198

1 SWORN TESTIFIED AS FOLLOWS:

2 MADAME CLERK: PLEASE HAVE A SEAT. STATE YOUR FULL
3 NAME FOR THE RECORD, PLEASE.

4 MR. SMITH: BRIAN DAVID SMITH.

5 DIRECT EXAMINATION BY MS. HORLBECK:

6 Q. MR. SMITH, HOW OLD ARE YOU?

7 A. THIRTY-NINE.

8 Q. WHERE DO YOU LIVE?

9 A. , EASLEY, SOUTH CAROLINA.

10 Q. HOW LONG HAVE YOU LIVED IN THE UPSTATE AREA?

11 A. ALL MY LIFE.

12 Q. WHERE ARE YOU EMPLOYED?

13 A. INNTOWN SUITES.

14 Q. WHAT'S YOUR POSITION AT INNTOWN SUITES?

15 A. I'M A MARKET MANAGER. I EFFECTIVELY CONTROL THE WHOLE
16 STATE OF SOUTH CAROLINA.

17 Q. ALL RIGHT. AND WHAT IS -- WHAT ARE YOUR DUTIES?

18 A. THE MANAGERS WORK FOR ME. I HIRE THE MANAGERS. I
19 WRITE THE BUDGETS FOR THE HOTELS. YOU KNOW, JUST GENERAL
20 STUFF LIKE THAT.

21 Q. DO YOU HAVE ACCESS AND CONTROL OF THE RECORDS IN THE
22 OFFICE?

23 A. I DO.

24 Q. ALL RIGHT. DO YOU KEEP THE RECORDS AS PART OF YOUR
25 DUTIES?

BRIAN SMITH - DIRECT EXAMINATION BY MS. HORLBECK

199

1 A. I DO.

2 Q. DID YOU BRING SOME RECORDS WITH YOU TODAY?

3 A. I DO.

4 Q. ALL RIGHT. LET ME HAVE THOSE MARKED AS DEFENSE EXHIBIT

5 1.

6 (WHEREUPON DEFENDANT'S EXHIBIT 1 WAS MARKED FOR

7 IDENTIFICATION)

8 Q. MR. SMITH, I'M HANDING YOU WHAT'S BEEN MARKED AS

9 DEFENSE EXHIBIT 1. AND I'D ASK YOU TO LOOK OVER THAT

10 EXHIBIT, PLEASE. DO YOU RECOGNIZE THAT EXHIBIT?

11 A. I DO.

12 Q. CAN YOU IDENTIFY IT?

13 A. IT'S A FOLIO FOR A -- FOR A GUEST THAT CHECKED INTO ONE

14 OF OUR HOTELS.

15 Q. WHAT IS A FOLIO EXACTLY? CAN YOU DESCRIBE THAT FOR THE

16 JURY?

17 A. IT'S BASICALLY A -- A RECORD OF WHO WAS ACTUALLY IN THE

18 ROOM, WHO ACTUALLY PRESENTED THEIR IDENTIFICATION TO CHECK

19 INTO THE ROOM.

20 Q. OKAY. WAS THAT ENTRY OR A FOLIO MADE AT OR NEAR THE

21 TIME OF JANUARY THE 10TH, 2007?

22 A. THIS PERSON CHECKED IN ON DECEMBER THE 11TH OF 2006.

23 Q. ALL RIGHT. IS THIS A RECORD THAT WAS KEPT AT OR NEAR

24 JANUARY 10TH, 2007?

25 A. YES.

BRIAN SMITH - DIRECT EXAMINATION BY MS. HORLBECK

200

1 Q. ALL RIGHT. AND WAS THAT RECORD MADE BY SOMEONE WITH
2 KNOWLEDGE OF PEOPLE CHECKING IN AND CHECKING OUT?

3 A. ABSOLUTELY.

4 Q. AND WAS THAT RECORD KEPT AS PART OF THE REGULAR
5 BUSINESS PRACTICE OF INN-TOWN SUITES?

6 A. YES.

7 Q. AND IS THAT A -- IS THAT EXHIBIT, DEFENSE EXHIBIT 1, IS
8 THAT KEPT IN THE REGULAR COURSE OF YOUR BUSINESS?

9 A. YES.

10 Q. ALL RIGHT. NOW WHAT ROOM DOES THAT RECORD DEAL WITH?

11 A. ROOM 105.

12 Q. AND WHO WAS THE -- WHAT IS THE NAME OF THE PERSON WHO
13 RENTED ROOM 105?

14 MS. TESSITORE: OBJECTION, YOUR HONOR.

15 THE COURT: BASIS?

16 MS. TESSITORE: CAN WE APPROACH?

17 THE COURT: OKAY.

18 (WHEREUPON A BENCH CONFERENCE WAS HELD OFF THE RECORD
19 IN THE PRESENCE OF THE JURY, BUT OUT OF THEIR HEARING)

20 Q. MR. SMITH, LET ME ASK YOU A FEW MORE QUESTIONS ABOUT
21 HOW YOU KEEP THOSE RECORDS. HOW DID -- IN YOUR -- TO YOUR
22 KNOWLEDGE HOW DID YOU GET THAT -- HOW DID THE -- HOW DOES --
23 HOW DO YOU GET THE NAMES OF PEOPLE CHECKING IN?

24 A. WHEN SOMEBODY COMES TO CHECK IN THEY HAVE TO PRESENT A
25 STATE ISSUED IDENTIFICATION CARD, BEING AN ID OR A DRIVER'S

BRIAN SMITH - DIRECT EXAMINATION BY MS. HORLBECK

201

1 LICENSE.

2 Q. ALL RIGHT.

3 A. AND THE INFORMATION IS TYPED IN THE COMPUTER FROM THAT
4 ID.

5 Q. AND THE STATE ISSUED IDENTIFICATION CARD, DO THOSE
6 CARDS HAVE THE NAME OF THE PERSON ON IT?

7 A. ABSOLUTELY.

8 Q. AND WHERE DO YOU -- WHEN YOU TYPE IN THE NAME, AGAIN,
9 WHERE DOES THAT NAME COME FROM?

10 A. THE ID. IT ---

11 Q. ALL RIGHT.

12 A. --- COMES FROM THE ID.

13 Q. IS THERE EVER AN OCCASION WHERE YOU ALL WOULD JUST TYPE
14 IN A NAME RANDOMLY?

15 A. NO.

16 Q. ALL RIGHT. THERE'S ALWAYS GOT TO BE SOME SORT OF
17 IDENTIFICATION? IS THAT TRUE?

18 A. YES.

19 Q. ALL RIGHT.

20 MS. HORLBECK: AND, YOUR HONOR, I WOULD OFFER THAT AS
21 AN EXHIBIT TO BE ENTERED INTO EVIDENCE.

22 THE COURT: OKAY.

23 MS. TESSITORE: NO OBJECTION, YOUR HONOR.

24 THE COURT: ALL RIGHT. WITHOUT OBJECTION.

25 (WHEREUPON DEFENDANT'S EXHIBIT 1 WAS ENTERED INTO

BRIAN SMITH - DIRECT EXAMINATION BY MS. HORLBECK

202

1 EVIDENCE)

2 Q. BEFORE I FORGET, WHAT INNTOWN SUITES DO YOU WORK AT?

3 A. I CONTROL THE -- THE ENTIRE STATE OF SOUTH CAROLINA.

4 Q. ALL RIGHT. AND WHAT RECORD -- WHAT INNTOWN SUITES IS
5 THAT A RECORD FROM?

6 A. THIS IS FROM THE INNTOWN SUITES ON MAULDIN ROAD HERE IN
7 GREENVILLE.

8 Q. WHAT'S THE -- DO YOU KNOW THE STREET ADDRESS OF THE
9 INNTOWN SUITES ON MAULDIN ROAD?

10 A. NOT OFF THE TOP OF MY HEAD. I HAVE A LOT OF THEM. SO
11 I CAN'T REMEMBER ALL THE ADDRESSES.

12 Q. OKAY. ALL RIGHT. WOULD IT SURPRISE YOU IF IT WERE 412
13 MAULDIN ROAD?

14 A. NO, THAT SOUNDS PRETTY ACCURATE.

15 Q. ALL RIGHT. NOW THAT RECORD THAT YOU HOLD IN YOUR HAND,
16 I WANT TO BACK UP A LITTLE BIT. WHAT ROOM DOES THAT -- DOES
17 THAT RECORD CONCERN?

18 A. 105.

19 Q. WHAT IS THE NAME OF THE PERSON WHO RENTED ROOM 105?

20 A. ELLIOTT WATKINS.

21 Q. AND CAN YOU SPELL THE LAST NAME SLOWLY?

22 A. W-A-T-K-I-N-S.

23 Q. IS THERE ANYTHING -- IS THERE ANY RECORD OF THE NAME
24 WILKINS ON THAT SHEET BEFORE YOU, ON EXHIBIT 1?

25 A. NO.

BRIAN SMITH - DIRECT EXAMINATION BY MS. HORLBECK

203

1 Q. ALL RIGHT. WHEN DID MR. WATKINS CHECK OUT OF ROOM 105?

2 A. JANUARY THE 11TH, 2007.

3 Q. THAT'S THE DAY AFTER -- IS THAT THE DAY AFTER JANUARY
4 THE 10TH OF 2007?

5 A. YES.

6 Q. ALL RIGHT.

7 MS. HORLBECK: ONE MOMENT, YOUR HONOR.

8 (PAUSE)

9 Q. I'M GOING TO ASK YOU TO STEP DOWN FOR JUST A SECOND.
10 CAN YOU IDENTIFY THIS ROAD BY LOOKING AT THIS MAP?

11 A. THAT'S MAULDIN ROAD.

12 Q. ALL RIGHT. AND THEN WHAT IS THIS RIGHT THERE?

13 A. INNTOWN SUITES, ONE ---

14 Q. ALL RIGHT.

15 A. --- OF MY HOTELS.

16 Q. IS THAT THE INNTOWN SUITES THAT THAT RECORD CAME FROM?

17 A. YES.

18 Q. ALL RIGHT. AND BY RECORD I MEAN EXHIBIT -- DEFENSE
19 EXHIBIT 1?

20 A. YES.

21 Q. ALL RIGHT. YOU CAN RESUME YOUR SEAT, PLEASE.

22 THE COURT: DEFENSE EXHIBIT 1 OR, I'M SORRY, IDENTIFY
23 FOR THE RECORD WHAT THAT EXHIBIT IS.

24 MS. HORLBECK: I APOLOGIZE, YOUR HONOR. THIS IS

25 STATE'S EXHIBIT 5 THAT MR. SMITH WAS LOOKING AT.

BRIAN SMITH - CROSS EXAMINATION BY MS. TESSITORE

204

1 THE COURT: OKAY. ALL RIGHT. THANK YOU.

2 Q. DO YOU KNOW MR. GRANT?

3 A. NO.

4 Q. DO YOU KNOW WHO HE IS IN THIS ROOM?

5 A. ABSOLUTELY NOT.

6 Q. ALL RIGHT. AND, MR. SMITH, DO YOU HAVE A FRAUDULENT
7 CHECK CONVICTION ON YOUR RECORD?

8 A. YES.

9 Q. DO YOU KNOW WHEN THAT -- APPROXIMATELY WHEN THAT WAS
10 FROM?

11 A. NO, ACTUALLY I DON'T.

12 Q. ALL RIGHT.

13 A. IT WAS QUITE SOME TIME AGO. I MEAN, WHAT -- WHAT
14 HAPPENED WAS I WAS IN A MOTORCYCLE ACCIDENT, MY CHECKBOOK
15 WAS STOLEN. IT WAS ON MY BIKE. AND IN -- IN MY HASTE TO
16 CLEAR ALL THAT STUFF UP, SOMEONE -- WHOEVER RETRIEVED MY
17 CHECKBOOK WROTE A BUNCH OF CHECKS. AND IN MY HASTE TO CLEAR
18 IT ALL UP SOME OF THEM WAS PAID. AND I CAN'T GET IT
19 EXPUNGED BECAUSE THE CHECK WAS PAID, THAT'S TO MY KNOWLEDGE.

20 Q. ALL RIGHT. I DON'T HAVE ANYTHING FURTHER, MR. SMITH.

21 THANK YOU. ANSWER ANY -- PLEASE ANSWER ANY QUESTIONS THAT
22 THE STATE MAY HAVE FOR YOU.

23 A. SURE.

24 CROSS EXAMINATION BY MS. TESSITORE:

25 Q. MR. SMITH, YOU TESTIFIED THAT YOU'RE THE MARKET MANAGER

BRIAN SMITH - CROSS EXAMINATION BY MS. TESSITORE

205

1 OVER SEVERAL INNTOWN SUITES?

2 A. THAT'S CORRECT.

3 Q. AND SO YOUR OFFICE IS NOT LOCATED AT THE INNTOWN SUITES

4 ---

5 A. NO, IT'S NOT.

6 Q. SORRY.

7 A. NO, MY OFFICE IS NOT THERE. NO.

8 Q. OKAY. WHERE IS YOUR OFFICE?

9 A. IN MY HOUSE.

10 Q. OKAY. AND WHERE IS YOUR HOUSE?

11 A. , EASLEY.

12 Q. SO YOU WEREN'T OUT AT THE INNTOWN SUITES ON JANUARY

13 10TH, 2007?

14 A. I'M NOT SURE. I REALLY COULDN'T ANSWER THAT. I COULD

15 HAVE BEEN. I DON'T KNOW. I MEAN, I SPEND A LOT OF TIME AT

16 ALL THE HOTELS I CAN. I MEAN, I COULD LOOK AT MY SCHEDULE

17 AND SEE IF I WAS THERE, BUT I CAN'T ANSWER ---

18 Q. WERE YOU ---

19 A. --- YES OR NO.

20 Q. I'M SORRY.

21 A. NO, I COULDN'T ANSWER YES OR NO. I WOULDN'T KNOW OFF

22 THE TOP OF MY HEAD.

23 Q. WELL, ISN'T IT TRUE THAT YOU WEREN'T THERE WHEN THIS

24 MR. WATKINS CHECKED IN ---

25 A. THAT'S TRUE.

BRIAN SMITH - CROSS EXAMINATION BY MS. TESSITORE

206

1 Q. OKAY. AND SO THE ID WAS NOT PRESENTED TO YOU?

2 A. NO, IT WASN'T.

3 Q. AND DO YOU KNOW WHICH EMPLOYEE MAY HAVE SEEN THAT ID OR
4 TALKED TO THIS MR. WATKINS?

5 A. IT WOULD HAVE BEEN THE MANAGER AT THAT TIME, WHO'S NO
6 LONGER WITH OUR COMPANY.

7 Q. ISN'T IT POSSIBLE THAT THE PERSON WHO RENTS A ROOM, I
8 MEAN, THIS IS THE PERSON WHO'S JUST PROVIDING THEIR
9 INFORMATION AND AGREEING TO PAY FOR THEIR ROOM, RIGHT?

10 A. YES.

11 Q. THAT THEY NEVER EVEN SPEND A NIGHT IN THAT ROOM? THEY
12 NEVER BRUSH THEIR TEETH IN THE ROOM?

13 A. OH, THAT'S POSSIBLE.

14 Q. THEY NEVER PUT THEIR HEAD ON THE PILLOW IN THAT ROOM?

15 A. THAT'S POSSIBLE.

16 Q. AND THE -- AND YOU DON'T KNOW WHO WENT IN OR OUT OF
17 THAT ROOM?

18 A. NO.

19 Q. AND YOU WEREN'T THERE TO SEE THE TRANSACTION BETWEEN
20 DEPUTY TOLLISON AND ROBERT GRANT, WERE YOU?

21 MS. HORLBECK: IT CALLS FOR ---

22 A. NO.

23 MS. HORLBECK: --- AN ULTIMATE -- AN ULTIMATE ---

24 THE COURT: NO, IT DOESN'T. SO OVERRULED. GO AHEAD.

25 A. NO, I WASN'T.

BRIAN SMITH - CROSS EXAMINATION BY MS. TESSITORE

207

1 Q. AND MR. GRANT WASN'T STAYING AT THAT MOTEL, WAS HE?

2 A. I HAVE NO IDEA.

3 Q. WELL, YOU DON'T HAVE ANY RECORDS SHOWING THAT YOU
4 BROUGHT WITH YOU TODAY ALONG WITH THESE RECORDS SHOWING THAT
5 HE STAYED THERE, RIGHT?

6 A. I DO NOT.

7 Q. OKAY. WOULDN'T YOU AGREE THAT THE NAME WATKINS AND
8 WILKINS SOUNDS PRETTY SIMILAR?

9 MS. HORLBECK: CALLS FOR SPECULATION.

10 THE COURT: WELL, I'M GOING TO LET HIM ANSWER AS TO
11 WHAT HIS OPINION IS AS TO THAT. THAT'S ALL RIGHT. IT'S A
12 LAY OPINION. GO AHEAD.

13 A. TO ME, NO.

14 Q. WELL, AREN'T THEY ONLY DIFFERENT BY TWO LETTERS?
15 WATKINS, A-T, ---

16 A. WELL, ---

17 Q. --- WILKINS?

18 A. ALPHABETICALLY, YES, BUT WHEN THEY'RE PUT INTO THE
19 COMPUTER THEY'RE PUT IN BY THE ID.

20 Q. OKAY. NO FURTHER QUESTIONS.

21 THE COURT: ALL RIGHT. ANY REDIRECT?

22 MS. HORLBECK: I DON'T HAVE ANY. THANK YOU, MR. SMITH.

23 THE COURT: OKAY. ALL RIGHT. THANK YOU, SIR. YOU CAN
24 STEP DOWN.

25 MS. HORLBECK: MAY HE BE RELEASED?

1 THE COURT: ANY OBJECTION?

2 MS. TESSITORE: NO OBJECTION, YOUR HONOR.

3 THE COURT: THANK YOU, SIR. YOU'RE RELEASED FROM
4 SUBPOENA. ALL RIGHT.

5 MS. HORLBECK: DEFENSE RESTS.

6 THE COURT: ALL RIGHT. LET ME SEE Y'ALL UP HERE A
7 SECOND.

8 (WHEREUPON A BENCH CONFERENCE WAS HELD OFF THE RECORD
9 IN THE PRESENCE OF THE JURY, BUT OUT OF THEIR HEARING)

10 THE COURT: MADAME FORELADY, LADIES AND GENTLEMEN OF
11 THE JURY, THIS IS ANOTHER ONE OF THOSE TIMES WHEN WE -- I
12 NEED TO SPEAK WITH THE ATTORNEYS OUTSIDE YOUR PRESENCE. BUT
13 I DO BELIEVE THAT WE HAVE FINISHED OR CONCLUDED THE SECOND
14 PART OF THE TRIAL, WHICH IS THE PRESENTATION OF THE
15 TESTIMONY AND THE EVIDENCE. SO IF Y'ALL WILL STEP BACK TO
16 YOUR JURY ROOM, WE'LL GET BACK WITH YOU IN JUST A MINUTE.
17 THANK YOU VERY MUCH.

18 (WHEREUPON THE JURY EXITED THE COURTROOM AT 11:48 AM)

19 THE COURT: ALL RIGHT. ANY -- WELL, I KNOW YOU'RE
20 GOING TO -- WELL, ANY MOTIONS AT THIS TIME?

21 MS. HORLBECK: YES, YOUR HONOR. I WOULD RENEW ALL
22 PREVIOUS MOTIONS AND ANY OBJECTIONS THAT I MADE THAT WERE
23 DENIED OR OVERRULED OR ---

24 THE COURT: OKAY. SAME RULINGS.

25 MS. HORLBECK: ALL RIGHT.

1 THE COURT: ALL RIGHT. ANY REQUESTS TO CHARGE?

2 MS. TESSITORE: YOUR HONOR, I THINK JUST TO CLARIFY
3 WHERE WE LEFT OFF ON THE THREATENING A PUBLIC OFFICIAL
4 CHARGE INDICTMENT, EXCUSE ME, IN THE INDICTMENT ITSELF THE
5 STATE DID ALLEGE THAT THE -- THAT THE THREAT WAS MADE TO
6 DEPUTY BRIAN TOLLISON, A PUBLIC OFFICIAL, AND THAT THAT WAS
7 RELATED, DIRECTLY RELATED TO HIS PROFESSIONAL
8 RESPONSIBILITIES. THE STATE HAS SUBMITTED ITS REQUEST TO
9 CHARGE ---

10 THE COURT: I DON'T HAVE IT.

11 MS. TESSITORE: I HANDED UP THE MEMO OF LAW ---

12 THE COURT: OH, THAT'S -- YEAH, OKAY.

13 MS. TESSITORE: --- IN THE MEMO, INCORPORATED THEREIN.

14 THE COURT: ALL RIGHT.

15 MS. TESSITORE: SO THE STATE WOULD REQUEST THAT THEY BE
16 CHARGED ON -- THAT A DEPUTY SHERIFF IS A PUBLIC OFFICIAL FOR
17 PURPOSES OF THE -- OF THAT STATUTE.

18 THE COURT: ALL RIGHT.

19 MS. HORLBECK: AND, JUDGE, I WOULD ASK THAT THEY BE
20 CHARGED ON BOTH. I THINK IT'S A QUESTION FOR THE JURY TO
21 DETERMINE WHETHER HE'S A PUBLIC OFFICIAL OR A PUBLIC
22 EMPLOYEE OR JUST A REGULAR PERSON.

23 THE COURT: ALL RIGHT. JUST LOOK AT ONE QUICK THING
24 AND I'LL MAKE A RULING. ANY OTHER REQUESTS TO CHARGE ON
25 THAT? I'LL LET Y'ALL KNOW ABOUT THAT IN A SECOND. ANYTHING

1 ELSE?

2 MS. HORLBECK: I WOULD REQUEST A LESSER OFFENSE OF
3 POSSESSION, SIMPLE POSSESSION. I WOULD REQUEST SPOILIATION
4 OF EVIDENCE, A MERE PRESENCE CHARGE.

5 THE COURT: WHAT EVIDENCE WAS SPOILED?

6 MS. HORLBECK: THE EVIDENCE -- A LOT OF EVIDENCE WAS
7 SPOILED. AND I THINK ---

8 THE COURT: NO, NO. THAT'S JUST ABSENT ---

9 MS. HORLBECK: I WOULD ---

10 THE COURT: THAT'S ABSENT EVIDENCE. THAT'S NOT -- THEY
11 HAVEN'T DONE ANYTHING TO ...

12 MS. HORLBECK: JUST FOR THE RECORD ---

13 THE COURT: OKAY. ALL RIGHT.

14 MS. HORLBECK: I WOULD ASK FOR THE SPOILIATION ---

15 THE COURT: I'M NOT GOING TO CHARGE THAT.

16 MS. HORLBECK: --- OF EVIDENCE REGARDING THE CASH
17 THAT'S MISSING.

18 THE COURT: I'M NOT GOING TO CHARGE THAT.

19 MS. HORLBECK: IS YOUR HONOR GOING TO CHARGE MERE
20 PRESENCE AND MULTIPLE CHARGES, CREDIBILITY?

21 THE COURT: WELL, YEAH, I'LL ---

22 MS. HORLBECK: ALL RIGHT.

23 THE COURT: YOU KNOW, CREDIBILITY, THE INDICTMENT'S NOT
24 EVIDENCE, MULTIPLE CHARGES, FAILURE -- DO YOU WANT A CHARGE
25 ABOUT HIM NOT TESTIFYING?

1 MS. HORLBECK: YES.

2 THE COURT: PRESUMPTION OF INNOCENCE, REASONABLE DOUBT.
3 WHAT -- SIMPLE POSSESSION, WHAT'S YOUR ...

4 MS. TESSITORE: WELL, YOUR HONOR, OUR POSITION ON THAT
5 IS THAT THEY'RE NOT ENTITLED TO -- THAT'S NOT A LESSER
6 INCLUDED OF DISTRIBUTION OF CRACK COCAINE. AND ---

7 THE COURT: I THINK IT'S AN ALL OR NOTHING ISSUE.

8 MS. TESSITORE: YES, SIR.

9 MS. HORLBECK: WELL, OUR POSITION IS THAT THE EVIDENCE
10 IS -- HAS MORE THAN ONE INFERENCE FOR THE JURY TO DRAW AND A
11 QUESTION OF FACT REMAINS FOR THE JURY TO DECIDE WHETHER OR
12 NOT THE MAN WAS IN POSSESSION OR WHETHER OR NOT THERE WAS --
13 THERE WAS A SALE. SO I WOULD ASK FOR THE LESSER CHARGE.

14 THE COURT: NO, HE EITHER -- WELL, THEY DID FIND HIM IN
15 POSSESSION OF A PIECE AT THE LAW ENFORCEMENT CENTER.

16 MS. TESSITORE: WELL, THAT ACTUALLY -- THE PIECE THAT
17 THEY FOUND WAS ON THE SCENE IN HIS -- CLINCHED IN HIS FIST.

18 THE COURT: OKAY. WELL, THAT'S ---

19 MS. HORLBECK: THE POINT WAS THAT IT WAS IN HIS FIST.

20 THE COURT: SO I DON'T THINK I WOULD CHARGE IT AS A
21 LESSER INCLUDED.

22 MS. HORLBECK: WELL, MAYBE I USED THE WRONG WORD. I'M
23 A LITTLE BIT TIRED. I JUST ---

24 THE COURT: IDENTIFY -- I DON'T THINK IT'S A LESSER
25 INCLUDED OFFENSE OF DISTRIBUTION. AM I WRONG ABOUT THAT?

1 MS. TESSITORE: I DON'T BELIEVE SO, YOUR HONOR.

2 MS. HORLBECK: WHAT I'M TALKING ABOUT IS THE STATE
3 VERSUS COTTRELL CASE. IT'S ACTUALLY A JANUARY 28TH, 2008
4 CASE, NUMBER 26424 AND JUST ASK THAT THE COURT ---

5 THE COURT: JANUARY WHAT?

6 MS. HORLBECK: JANUARY THE 28TH, 2008.

7 THE COURT: WHAT'S THE NAME OF IT?

8 MS. HORLBECK: STATE VERSUS COTTRELL, C-O-T-T-R-E-L-L.

9 THE COURT: ALL RIGHT. I'LL GO LOOK AT THAT. WHAT
10 DOES IT SAY?

11 MS. HORLBECK: JUST WHAT I TOLD YOU, IF THE EVIDENCE IS
12 SUSCEPTIBLE -- IF IT IS NOT SUSCEPTIBLE ONLY ONE INFERENCE,
13 A QUESTION OF FACT FOR THE JURY EXISTS AND A LESSER INCLUDED
14 OFFENSE SHOULD BE CHARGED. YOU KNOW, IF IT'S NOT A LESSER
15 INCLUDED OFFENSE, I STILL JUST THINK IT'S OUT -- IT'S AN
16 INFERENCE THAT THE JURY CAN DRAW, AND THEY'RE ENTITLED TO
17 FIND HIM GUILTY OF THAT IF THEY WANT TO ESPECIALLY IN LIGHT
18 OF THE EVIDENCE THAT HE WAS IN POSSESSION OF A PIECE AT THE
19 SCENE.

20 THE COURT: THE PROBLEM IS -- I THINK THE LAW IS I
21 DON'T THINK IT'S A LESSER INCLUDED OF DISTRIBUTION. LET ME
22 -- ALL RIGHT. WE'LL GET BACK TO YOU ON THAT. ANYTHING
23 ELSE?

24 MS. HORLBECK: NO.

25 THE COURT: ALL RIGHT. Y'ALL TAKE A FEW MINUTES.

1 MS. TESSITORE: THANK YOU.

2 (WHEREUPON COURT WAS IN RECESS AT 11:55 AM)

3 THE COURT: WEIGHING WHETHER OR NOT WE SHOULD BREAK FOR
4 LUNCH BEFORE WE ARGUE AND CHARGE. I'M ON THE FENCE.

5 I'M NOT GOING TO CHARGE SIMPLE POSSESSION. I JUST
6 DON'T THINK -- I CAN'T FIND ANYTHING THAT SAYS IT'S A
7 LESSER INCLUDED OF DISTRIBUTION. AND IF I CHARGE IT THEY
8 COULD FIND HIM GUILTY OF BOTH. AND THAT, OF COURSE, WOULD
9 BE OUT, YOU KNOW, TOTALLY INAPPROPRIATE. SO I'M NOT GOING
10 TO CHARGE IT AS A LESSER INCLUDED. AND I'M GOING TO -- I'M
11 GOING TO CHARGE SUBSECTION (A) OF 1040.

12 SO DO Y'ALL WANT TO BREAK OR DO IT NOW?

13 MS. TESSITORE: WELL, YOUR HONOR, JUST FOR
14 CLARIFICATION, THEN YOU'RE NOT GOING TO CHARGE MERE
15 PRESENCE, RIGHT?

16 THE COURT: YEAH, THIS IS AN ALL OR NOTHING DEAL.

17 MS. TESSITORE: THAT'S OUR POSITION.

18 THE COURT: I JUST DON'T SEE IT. I MEAN, THEY -- THE
19 TESTIMONY IS, HE GAVE IT TO THEM. THERE'S NO TESTIMONY THAT
20 HE WAS JUST THERE. THERE WAS NO ONE ELSE PRESENT.

21 MS. TESSITORE: IN FACT, YOUR HONOR, THERE'S ---

22 MS. HORLBECK: I DISAGREE. I THINK THERE'S A LOT OF
23 TESTIMONY THAT WE DON'T KNOW WHO WAS EXACTLY PRESENT.

24 THE COURT: WELL, THAT'S CREDIBILITY. I DON'T HAVE
25 ANY, I MEAN, THAT ...

1 MS. HORLBECK: AND I JUST WOULD -- I UNDERSTAND YOUR
2 HONOR'S DECISION. I JUST WANT MY OBJECTION ---

3 THE COURT: OKAY.

4 MS. HORLBECK: --- PROTECTED FOR THE RECORD.

5 THE COURT: ALL RIGHT.

6 MS. HORLBECK: BUT I WOULD ASK THAT THOSE THINGS BE
7 CHARGED.

8 THE COURT: OKAY. I'M JUST -- I'M NOT GOING TO DO IT.

9 MS. HORLBECK: AND I -- I'LL GO WITH WHATEVER THE COURT
10 DECIDES ABOUT LUNCH.

11 THE COURT: OKAY. WELL, DO YOU WANT TO JUST GET IT
12 OVER WITH?

13 MS. HORLBECK: I MEAN, IF THE -- IS THE JURY HUNGRY? I
14 DON'T WANT THEM TO SIT HERE IF THEY'RE STARVING. I DON'T,
15 YOU KNOW ...

16 THE COURT: THEY HUNGRY?

17 THE BAILIFF: PROBABLY, BUT I'LL SEE.

18 MS. HORLBECK: WELL, LET'S JUST ORDER LUNCH THEN.

19 THE COURT: SEE, I DON'T WANT THEM TO GET IN THERE AND
20 FEEL PRESSURED TO GO EAT, THEN WE'D HAVE TO WAIT FORTY-FIVE
21 MINUTES TO GET LUNCH UP HERE IF THEY GET IT AT 1:00. SO
22 LET'S -- WE'LL BREAK. LET'S GO AHEAD AND BRING THEM BACK.

23 (PAUSE)

24 THE COURT: ASK THEM IF THEY WANT TO -- WHY DON'T WE GO
25 AHEAD AND LET THEM ORDER LUNCH AND THEN DO IT? HOW'S THAT?

1 MS. HORLBECK: THAT'S FINE.

2 THE COURT: YEAH, TELL THEM -- LET'S DO IT AT SAVORY
3 CORNER.

4 (PAUSE)

5 THE COURT: JUST BE AT EASE FOR A FEW MORE MINUTES.

6 (WHEREUPON COURT WAS IN RECESS AT 12:10 PM)

7 THE COURT: ALL RIGHT. Y'ALL READY?

8 MS. HORLBECK: YES.

9 THE COURT: OKAY.

10 MS. TESSITORE: JUDGE, CAN WE JUST COVER ONE VERY QUICK
11 MATTER BEFORE THEY COME IN? JUST BASED ON SOMETHING MS.
12 HORLBECK SAID ABOUT ---

13 THE COURT: WAIT A MINUTE. HANG ON ONE SECOND, MR.
14 LYNCH.

15 MS. TESSITORE: --- ABOUT HER POSITION THAT THREATENING
16 A PUBLIC OFFICIAL WAS A FACTUAL MATTER FOR THE JURY TO
17 DETERMINE. I JUST DON'T WANT TO OBJECT IF THAT WERE TO COME
18 OUT DURING HER CLOSING. I JUST WANTED TO ADDRESS IT NOW IN
19 ANTICIPATION BECAUSE IT'S OUR POSITION THAT THAT'S NOT A
20 FACTUAL QUESTION ---

21 THE COURT: WELL, IF SHE ARGUES THAT HE'S, I MEAN, I
22 DON'T KNOW WHAT SHE'S GOING TO ARGUE, BUT THAT'S WHAT I'M
23 GOING TO CHARGE. I'M NOT GOING TO CHARGE ANYTHING ABOUT THE
24 EMPLOYEE SECTION.

25 MS. TESSITORE: RIGHT. OKAY. THANK YOU.

CLOSING ARGUMENTS - MS. HORLBECK

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1 THE COURT: OKAY. ALL RIGHT. OKAY.

2 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 12:17 PM)

3 THE COURT: ALL RIGHT. MADAME FORELADY, LADIES AND

4 GENTLEMEN OF THE JURY, I WANT TO THANK YOU FOR YOUR

5 PATIENCE. AND AS I TOLD YOU WHEN YOU WENT OUT I THOUGHT

6 WE'D CONCLUDED THE SECOND PART OF THE TRIAL. WELL, WE HAVE

7 CONCLUDED THE SECOND PART.

8 AND IF YOU CAN REMEMBER THE THIRD PART ARE THE CLOSING

9 ARGUMENTS OF THE ATTORNEYS. SO Y'ALL HAVE PAID CLOSE

10 ATTENTION THROUGHOUT THE COURSE OF THIS TRIAL. AND I ASK

11 YOU TO CONTINUE TO DO THAT THROUGH THE ARGUMENTS OF THESE

12 FINE ATTORNEYS. THANK YOU.

13 MS. HORLBECK: LADIES AND GENTLEMEN, WHEN WE STARTED

14 OFF ON TUESDAY I SPOKE TO YOU A LITTLE BIT ABOUT THE

15 PRESUMPTION OF INNOCENCE. WE START OFF EVERY CASE WITH THE

16 PRESUMPTION OF INNOCENCE. I SPOKE TO YOU A LITTLE BIT ABOUT

17 HOW IF MY HANDS WERE A SET OF SCALES THAT THE PRESUMPTION OF

18 INNOCENCE WOULD TIP THE SCALES IN FAVOR OF MR. GRANT.

19 WELL, IN THIS SCALE, AND I DON'T HAVE A SET OF SCALES

20 TODAY, BUT IF THIS IS THE PRESUMPTION OF INNOCENCE SET OF

21 THE SCALES, WE START OFF WITH AT LEAST ONE ROCK ON MR.

22 GRANT'S SIDE.

23 PRESUMPTION OF INNOCENCE IS A HEAVY, HEAVY BURDEN.

24 IT'S A HEAVY, HEAVY THING TO OVERCOME. IT'S SOMETHING THAT

25 WE DEAL WITH IN THIS CASE. EVERY FAMILY HAS DEALT WITH IT.

CLOSING ARGUMENTS - MS. HORLBECK

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1 FOR EXAMPLE, A COUPLE OF YEARS AGO AT THANKSGIVING I
2 HAD SOME NEPHEWS, AND THEY WERE ALL PLAYING ON A GOLF CART.
3 THEY WERE GIVEN STRICT INSTRUCTIONS, DON'T RELEASE THE BRAKE
4 ON THE GOLF CART. WELL, OF COURSE, SOMEONE DID. AND ONE OF
5 THE OTHER LITTLE CHILDREN THAT WAS PLAYING GOT KNOCKED OVER.

6 TWO OF THE NEPHEWS, THEY'RE REALLY CLOSE AND FRIENDS,
7 SAID, IT WASN'T US, IT WAS THE YOUNGER NEPHEW. WELL, THE
8 YOUNGER NEPHEW SAID THE SAME THING, IT'S NOT ME, I DIDN'T DO
9 IT. WELL, FORTUNATELY ANOTHER MEMBER OF MY FAMILY HAD A
10 VIDEO CAMERA AND WAS VIDEO TAPING THE PLAYING. SO WE WERE
11 ABLE TO GO BACK AND LOOK AT THE VIDEO TAPE AND FIND OUT WHAT
12 HAPPENED.

13 OTHERWISE, HOW WOULD WE HAVE BEEN -- AND WE'RE A BUNCH
14 OF -- WE'RE A FAMILY OF LAWYERS, HOW WOULD WE HAVE EVALUATED
15 THE CREDIBILITY OF ALL THE BOYS INVOLVED? THEY WERE ALL
16 GOOD CHILDREN. THEY WERE -- THEY WERE ALL DECENT PEOPLE.
17 THEY ALL HAD THE SAME RIGHTS. YOU KNOW, A FAMILY WITH
18 LAWYERS, EVERYBODY HAS THE SAME RIGHTS. HOW WOULD WE HAVE
19 BEEN ABLE TO EVALUATE THEIR CREDIBILITY, THEIR BELIEVABILITY
20 IF WE DIDN'T HAVE THAT VIDEO? AND THIS CASE IS THE SAME.

21 THE GOVERNMENT IN OUR OPENING STATEMENT ASKED YOU TO
22 FIND MR. GRANT GUILTY. AND WHAT THEY'RE ASKING YOU TO DO IS
23 TO EVALUATE THE CREDIBILITY OF ALL THE WITNESSES. AND
24 THEY'RE ASKING YOU TO TAKE THEIR TESTIMONY, 'CAUSE REMEMBER,
25 WE STARTED OUT WITH THE DATE OF THE ARREST WITH JUST THE

CLOSING ARGUMENTS - MS. HORLBECK

218

1 TESTIMONY OF THE OFFICERS. AND THEY'RE ASKING YOU TO TAKE
2 THEIR -- THE OFFICERS' CREDIBILITY AND GIVE IT A THUMBS UP.
3 BUT WHAT THEY'VE DEMONSTRATED -- THE GOVERNMENT HAS
4 DEMONSTRATED NO EVIDENCE THAT THEIR OFFICERS' TESTIMONY IS
5 CREDIBLE. AND WHAT WE'VE SEEN YESTERDAY AND TODAY ARE MANY
6 INSTANCES OF INCREDIBILITY, MANY INSTANCES OF UN-
7 BELIEVABILITY.

8 YOU ARE THE TRIERS OF THE FACT. IT IS YOUR DUTY TO
9 JUDGE THE CREDIBILITY, THE BELIEVABILITY OF THE WITNESSES
10 AND DETERMINE IF THEY'VE OFFERED YOU -- IF THOSE WITNESSES
11 HAVE OFFERED YOU ANYTHING THAT'S BELIEVABLE. THAT'S YOUR
12 JOB. THAT'S A JOB THAT IS EXCLUSIVE TO YOU ALL. IT'S A
13 VERY PRECIOUS JOB THAT YOU HOLD IN YOUR HANDS.

14 YOU CAN TAKE THAT TESTIMONY OF ANY WITNESS AND YOU CAN
15 ACCEPT IT ALL, YOU CAN ACCEPT OR REJECT PART OF IT OR YOU
16 CAN REJECT THE WHOLE THING AND THROW IT OUT. WE SUBMIT TO
17 YOU THAT THE TESTIMONY OF THE OFFICERS SHOULD BE REJECTED
18 COMPLETELY. AND THERE ARE MANY REASONS WHY. LET ME GO
19 THROUGH SOME OF THOSE REASONS:

20 ONE REASON IS THAT YOU SHOULD REJECT THE TESTIMONY IS
21 BECAUSE OF THE DISCUSSIONS WE HAD ABOUT OFFICER TOLLISON'S
22 POCKET. IT'S HARD TO IMAGINE A SET OF CIRCUMSTANCES WHERE A
23 POCKET IS AN APPROPRIATE PLACE TO PUT EVIDENCE AT ALL AT ANY
24 TIME DURING AN INVESTIGATION.

25 WE SPECIFICALLY HEARD TESTIMONY FROM OFFICER RHEA THAT

CLOSING ARGUMENTS - MS. HORLBECK

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1 WHATEVER DRUGS WERE COLLECTED THAT THOSE DRUGS WERE NOT
2 PLACED INTO AN ENVELOPE OF ANY KIND UNTIL THE OFFICERS
3 RETURNED TO THE FORD EXPLORER. NONE OF THE OTHER WITNESSES
4 -- YOU HEARD TESTIMONY FROM THE PROPERTY AND EVIDENCE CLERK
5 AND ALSO THE CHEMIST THAT TESTED THE DRUG. NONE OF THOSE
6 WITNESSES INDICATED THAT IT WAS APPROPRIATE -- THAT A POCKET
7 WAS AN APPROPRIATE PLACE TO PUT EVIDENCE.

8 YOU'RE ENTITLED TO CONSIDER THAT THAT EVIDENCE WAS
9 PLACED IN A POCKET. YOU'RE ENTITLED TO WONDER IF THIS
10 DIRECTED PATROL UNIT FOLLOWS THE NORMAL PROCEDURES OF THE
11 GREENVILLE COUNTY SHERIFF'S OFFICE. WE'VE HEARD A LOT OF
12 TESTIMONY THAT THEY DON'T -- THAT THIS DIRECTED PATROL UNIT
13 DOESN'T SEEM TO FOLLOW THE RULES AND REGULATIONS THAT ARE
14 SET FORTH BY THE SHERIFF'S OFFICE.

15 YOU'RE ENTITLED TO WONDER HOW MANY OTHER TIMES HAVE
16 THERE BEEN DRUGS PLACED IN A POCKET. YOU'RE ENTITLED TO
17 WONDER, WAS THAT POCKET CLEANED OUT? WAS IT EMPTIED OUT
18 FROM THE LAST TIME THAT SHIRT WAS WORN ON A CONTROLLED BUY?
19 IS THERE A POSSIBILITY THAT THE DRUGS IN THIS CASE GOT MIXED
20 UP WITH A -- WITH SOMETHING FROM ANOTHER CASE AND IS THAT
21 APPROPRIATE?

22 WE SUBMIT TO YOU IT'S NOT. IT'S SLOPPY INVESTIGATION.
23 SLOPPY INVESTIGATION IS NOT PROOF OF GUILT. SLOPPY
24 INVESTIGATION IS ANOTHER ROCK ON THE FAVOR ON THE SIDE OF
25 INNOCENCE.

CLOSING ARGUMENTS - MS. HORLBECK

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1 WE HEARD SOME TESTIMONY ABOUT THE NAME OF THE PERSON
2 THAT RENTED ROOM 105 AT THE INNTOWN SUITES. AT LEAST TWO,
3 AND YOU ARE -- YOU NEED TO TRUST YOUR MEMORY BETTER THAN
4 MINE, BUT AT LEAST TWO OF THE OFFICERS TESTIFIED THAT THE
5 NAME OF THE RENTER WAS WILKINS. AND YOU CAN GO BACK ON THE
6 RECORD. I HAD THOSE OFFICERS SPELL THE NAME OUT. IT WAS
7 CLEARLY WILKINS.

8 THEY TESTIFIED THEY TALKED TO THE MAN, THAT THEY
9 SEARCHED HIS ROOM. AND THE BEST THEY COULD DO WAS GET THE
10 WRONG NAME AND INCLUDE THAT INCORRECT NAME ON THEIR REPORT.
11 IT'S NOT A DIFFICULT THING TO CONTACT THE INNTOWN SUITES AND
12 SPEAK TO THEIR RECORDS CUSTODIAN. ANYBODY COULD HAVE DONE
13 IT TO GET THAT -- TO GET THE CORRECT INFORMATION, BUT THEY
14 DIDN'T. AND THAT'S SLOPPY INVESTIGATION.

15 AGAIN, SLOPPY IS NOT PROOF OF GUILT. IT'S PROOF OF
16 INNOCENCE. IT'S PROOF THAT THERE'S A HOLE IN THE
17 GOVERNMENT'S THEORY, THAT ANY SORT OF DRUG DEAL, ANY SORT OF
18 EVENTS WENT ON THAT DAY.

19 IF YOU HAVE A DOUBT, IF YOU HAVE A HOLE IN THE
20 GOVERNMENT'S THEORY, THAT DOESN'T AMOUNT TO PROOF OF GUILT
21 BEYOND A REASONABLE DOUBT. AND IT'S A -- IT'S A DOUBT THAT
22 MUST BE RESOLVED IN FAVOR OF MR. GRANT.

23 WE DISCUSSED AT LENGTH THE SUBJECT OF THE TWENTY DOLLAR
24 BILL. WE HEARD A COUPLE OF WITNESSES TESTIFY THAT THERE WAS
25 A PROPER PROCEDURE THAT MUST BE FOLLOWED WHENEVER MONEY IS

CLOSING ARGUMENTS - MS. HORLBECK

221

1 DEALT WITH. THAT MONEY, IT'S NOT -- IT'S NOT IN A PAIL FOR
2 GENERAL USE AT THE DIRECTED PATROL UNIT. THIS IS MONEY THAT
3 BELONGS TO ALL OF YOU, ME, EVERYBODY IN THIS COURTROOM.
4 IT'S MONEY THAT CAME FROM OUR TAXES. IT'S NOT MONEY THAT
5 CAN BE USED TO BUY SNACKS. IT'S MONEY THAT IF IT'S USED IT
6 MUST BE DOCUMENTED.

7 OFFICER RHEA TESTIFIED THAT HIS BOSS IS SUPPOSED TO
8 MAKE A RECORD OF THAT, OF THE MONEY THAT'S USED, THE MONEY
9 THAT'S WITHDRAWN JUST LIKE YOU WOULD IF YOU WITHDREW MONEY
10 FROM A BANK. THAT RECORD IS NOT IN EVIDENCE TODAY. WHERE
11 IS IT?

12 DEPUTY TOLLISON SAID IT WAS HIS FAULT THAT THE SERIAL
13 NUMBER ON THE TWENTY DOLLAR BILL WASN'T RECORDED. THERE'S
14 NO PROPERTY AND EVIDENCE SHEET FOR THE SERIAL NUMBER. AND
15 THERE'S NOT A TWENTY DOLLAR BILL OR ANY MONEY IN EVIDENCE AT
16 ALL. IF THERE'S NO PAPER TRAIL, THERE'S NO EVIDENCE OF A
17 SALE.

18 THE LAW SAYS THAT THERE DOESN'T HAVE TO BE EVIDENCE OF
19 MONEY, THERE DOESN'T HAVE TO BE EVIDENCE OF AN EXCHANGE IN
20 ORDER FOR THERE TO BE A DELIVERY OR A SALE. DON'T LET THE
21 GOVERNMENT GET AWAY WITH THAT EXCUSE. THAT'S THE -- THAT'S
22 WHAT THE JUDGE IS GOING TO INSTRUCT YOU ABOUT WHETHER OR NOT
23 THERE NEEDS TO BE MONEY.

24 BUT THAT TWENTY DOLLAR BILL BECAME AN ISSUE THE MINUTE
25 THEY WITHDREW IT AND DECIDED TO TAKE IT TO ONE OF THESE

CLOSING ARGUMENTS - MS. HORLBECK

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1 HOTELS AND USE IT IN AN UNDERCOVER BUY. THAT MONEY IS
2 IMPORTANT. WHERE IS IT? WHY IS IT NOT DOCUMENTED? THEY
3 SEARCHED EVERYONE -- EVERY PLACE THAT THAT MONEY COULD HAVE
4 BEEN, AND IT'S NOT THERE. IF THERE'S NO PAPER TRAIL,
5 THERE'S NO EVIDENCE OF A SALE. AND THAT IS A DOUBT IN THE
6 STATE'S THEORY OF THE CASE THAT NEEDS TO BE RESOLVED IN
7 FAVOR OF MR. GRANT'S INNOCENCE.

8 ALSO, WHEN MR. GRANT WAS SEARCHED AND WHEN ROOM 105 WAS
9 SEARCHED THERE WAS NO EVIDENCE OF TOOLS OF THE TRADE FOUND.
10 I'M A LAWYER. I NEVER GO ANYWHERE WITHOUT PENS, PAPER, LAW
11 BOOKS. NEITHER DOES A DRUG DEALER. A TRUE DRUG DEALER,
12 THERE'S NO EVIDENCE OF SCALES. NO EVIDENCE OF BAGGIES TO
13 BAG UP THE DRUG AND SELL IT. NO EVIDENCE OF A LARGE SUM OF
14 MONEY, HUNDREDS OF DOLLARS OF BILLS USED IN THE SALE OF
15 DRUGS. NONE OF THAT EVIDENCE WHATSOEVER. YOU'RE ENTITLED
16 TO CONSIDER THAT HOLE IN THE EVIDENCE AND RESOLVE IT IN
17 FAVOR OF INNOCENCE.

18 GREENVILLE COUNTY IS A LARGE COUNTY. IT'S A COUNTY
19 THAT'S WELL FUNDED. IT'S A COUNTY WHERE IT'S DIFFICULT TO
20 IMAGINE THE GREENVILLE COUNTY SHERIFF'S OFFICE CREATING A
21 DIRECTED PATROL UNIT AND SENDING THAT UNIT OUT POORLY
22 EQUIPPED. THESE OFFICERS HAVE ACCESS TO VIDEO TECHNOLOGY
23 AND TO HIDDEN CAMERA TECHNOLOGY AND TO THE CAPABILITY. THEY
24 HAVE ACCESS AND ARE ABLE TO RECORD A DRUG DEAL. THEY HAVE
25 THAT ABILITY.

CLOSING ARGUMENTS - MS. HORLBECK

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1 AND CERTAINLY THE MORE SURVEILLANCE, THE MORE VIDEO,
2 THE MORE RECORDINGS YOU HAVE, THE SAFER EVERYONE IS. BUT
3 THERE'S ABSOLUTELY NO EVIDENCE THAT THAT WAS DONE.

4 YOU'RE ENTITLED TO REJECT THE EXCUSE THAT THE OFFICERS
5 DIDN'T HAVE ACCESS TO THAT TYPE OF EQUIPMENT. OF COURSE
6 THEY DID. OF COURSE THEY DID. IT WASN'T USED.

7 YOU'RE ALSO ENTITLED TO REJECT THE EXCUSE THAT THEY
8 DIDN'T FEEL THAT THE USE OF THAT EQUIPMENT WAS NECESSARY.
9 THAT -- THEIR -- THE GOVERNMENT'S JOB IS TO BUILD A CASE AND
10 TO DEVELOP THE EVIDENCE. THEY BUILD -- THEY'RE TAUGHT FROM
11 DAY ONE AT THAT POLICE ACADEMY IN THEIR SEMINARS, THEY'RE
12 TAUGHT TO BUILD THE CASE, DEVELOP THE EVIDENCE.

13 YOU DO THOSE THINGS BECAUSE THE PROSECUTOR RELIES ON
14 THAT EVIDENCE. YOU RELY ON THAT EVIDENCE TO MAKE YOUR
15 DECISION. IF THE EVIDENCE IS NOT PROVIDED TO YOU, YOU CAN'T
16 MAKE YOUR DECISION IN GOOD CONSCIENCE. YOU HAVE TO RESOLVE
17 THAT DOUBT IN FAVOR OF MR. GRANT'S INNOCENCE. AND YOU HAVE
18 TO RESOLVE THE HOLES IN THAT EVIDENCE IN FAVOR OF INNOCENCE.

19 WE HEARD A LOT OF TESTIMONY ABOUT THE POSITIONING OF
20 THE CAR, THAT THE CAR WASN'T POSITIONED IN THE CORRECT
21 PLACE. SO HOW COULD WE HAVE -- HOW COULD THE OFFICERS HAVE
22 GOTTEN PROPER VIDEO SURVEILLANCE? DEPUTY TOLLISON TESTIFIED
23 THAT DEPUTY GRICE, I MEAN, THAT DEPUTY GRICE AND RHEA WERE
24 IN THE CAR AND THAT THEY KEPT CONSTANT SURVEILLANCE OF
25 DEPUTY TOLLISON WHILE THE WHOLE THING WAS GOING ON. ON THE

CLOSING ARGUMENTS - MS. HORLBECK

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1 OTHER HAND, DEPUTY SWIFT TESTIFIED THAT THEY -- THAT HE AND
2 DEPUTY TOLLISON WERE NOT INSIDE OF THE CAR.

3 YOU'RE ENTITLED TO LISTEN -- TO CONSIDER THOSE
4 INCONSISTENCIES AND RESOLVE THOSE INCONSISTENCIES AND ANY
5 OTHERS THAT YOU REMEMBER IN FAVOR OF INNOCENCE.
6 INCONSISTENCIES AREN'T PROOF OF GUILT. INCONSISTENCIES IN
7 EVIDENCE, HOLES IN EVIDENCE, PROOF OF INNOCENCE.

8 ADDITIONALLY, AT THE LAW ENFORCEMENT CENTER, WE HAVE NO
9 TAPE. WE DON'T KNOW THE NAME OF THE DETENTION OFFICER WHO
10 COULD HAVE WITNESSED ANYTHING THAT WENT ON. AND YOU'RE
11 ENTITLED TO CONSIDER THE TRAINING THAT THESE OFFICERS HAVE
12 UNDERGONE. YOU'RE ENTITLED TO CONSIDER THAT THEY'RE USED TO
13 DEALING WITH PEOPLE AND BEING OUT ON THE STREET AND BEING IN
14 SITUATIONS.

15 YOU'RE ENTITLED TO NOTE AND REMEMBER WHAT DEPUTY
16 TOLLISON SAID HAPPENED AFTER THE ALLEGED THREAT. HE SAID
17 THAT HE PUT -- HE DIDN'T TAKE A STEP BACK. HE PUT THE CUFF
18 RIGHT BACK ON MR. GRANT. HOW FRIGHTENED DO YOU THINK HE
19 WAS? HOW MUCH DANGER WAS HE -- HOW MUCH DANGER WAS THERE TO
20 HIS LIFE OR TO -- TO HIS -- TO HIS PERSON?

21 COULD HE HAVE REALLY BEEN BODILY INJURED WHEN THE
22 DEPUTY WASN'T EVEN SCARED ENOUGH TO STEP BACK OR MOVE BACK
23 OR TASE HIM AND WHEN THE DETENTION OFFICER, WHATEVER HIS
24 NAME WAS, DIDN'T EVEN HAVE TO BECOME FURTHER INVOLVED? AND
25 DID THAT REALLY HAPPEN IN LIGHT OF ALL THE OTHER MISTAKES

CLOSING ARGUMENTS - MS. HORLBECK

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1 AND MISHAPS AND HOLES AND SLOPPY INVESTIGATION THAT WE'VE
2 SEEN IN THE PAST TWO DAYS?

3 VERY FEW THINGS CAN BE PROVEN BEYOND A REASONABLE
4 DOUBT. BUT YOU, ALL OF YOU COME INTO THIS COURTROOM WITH
5 YOUR LIFE EXPERIENCES AND YOUR COMMON SENSE. YOU DON'T
6 LEAVE THOSE OUTSIDE THE COURTROOM WHEN YOU COME IN HERE.
7 AND YOU DON'T LEAVE THEM IN THE COURTROOM WHEN YOU GO TO
8 YOUR JURY ROOM TO CONSIDER AND TALK ABOUT THIS CASE.

9 YOU KNOW WHETHER OR NOT THIS CASE HAS BEEN PROVEN. YOU
10 KNOW WHETHER OR NOT THERE WAS A SLOPPY INVESTIGATION DONE
11 AND WHETHER THE OFFICERS' TESTIMONY IS BELIEVABLE. YOU KNOW
12 WHETHER OR NOT THE STATE HAS PRESENTED EVIDENCE THAT MAKES
13 THEIR TESTIMONY MORE BELIEVABLE THAN MR. GRANT'S ASSERTION
14 FROM DAY ONE THAT HE'S NOT GUILTY AND DIDN'T DO THESE
15 CHARGES. IN YOUR GUT YOU KNOW WHETHER OR NOT THIS CASE IS
16 PROVEN. YOU KNOW WHETHER OR NOT THE CASE HAS BEEN SLOPPILY
17 DEALT WITH.

18 FIFTY YEARS AGO MAYBE WE COULD HAVE BELIEVED THAT
19 EVERYTHING AN OFFICER SAID WAS TRUE. BUT ALL YOU HAVE TO DO
20 IS READ THE FRONT PAGE OF THE GREENVILLE NEWS AND YOU KNOW
21 THAT THAT'S NOT NECESSARILY TRUE THESE DAYS.

22 WE STARTED A CASE WITH AN ARREST BASED ON NOTHING. AND
23 WE'RE FINISHING THIS CASE WITH NOTHING MORE THAN EXCUSES AND
24 HOLES IN EVIDENCE. THERE'S NOTHING ON THE STATE'S SIDE.
25 MR. GRANT HAS ALL THESE ROCKS IN FAVOR OF HIS INNOCENCE.

CLOSING ARGUMENTS - MS. TESSITORE

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1 A CASE THAT'S NOT PROVEN, A CASE WHERE THE EVIDENCE AND
2 PROOF OF GUILT IS MISSING IS A CASE THAT'S UNPROVEN, AND
3 IT'S A CASE WHERE YOU MUST FIND MR. GRANT NOT GUILTY.

4 THIS IS YOUR COURTROOM. YOU PAY FOR THIS COURTROOM.
5 AND YOU'RE HERE DOING YOUR DUTY, YOUR CONSTITUTIONAL DUTY AS
6 JURORS. THIS IS YOUR PLACE. THIS IS WHERE YOU HAVE A VOICE
7 PROBABLY -- MAYBE MORE THAN ANY OTHER DAY OF YOUR LIVES.

8 ROBERT GRANT HAS THE RIGHT TO A THOROUGH INVESTIGATION.
9 HE HAS THE RIGHT TO HAVE HIS CASE PROVEN. AND YOU HAVE THE
10 RIGHT TO HAVE POLICE OFFICERS THAT ARE INVESTIGATING
11 THOROUGHLY AND DOING ALL THEY CAN AND NOT MAKING THE
12 DECISION THAT WE -- THAT THIS PARTICULAR PIECE OF EVIDENCE
13 ISN'T NECESSARY. THAT'S YOUR DECISION. DON'T LET THEM MAKE
14 THAT DECISION FOR YOU. THAT'S YOUR DECISION.

15 YOU PROTECT THE RIGHTS OF ALL -- PROTECT THE RIGHTS OF
16 ONE CITIZEN AND YOU PROTECT THE RIGHTS OF ALL CITIZENS.
17 WE'RE ASKING YOU TO PROTECT MR. GRANT'S RIGHTS AND FIND HIM
18 NOT GUILTY.

19 THE COURT: MS. TESSITORE.

20 MS. TESSITORE: MAY IT PLEASE THE COURT?

21 THE COURT: YES, MA'AM.

22 MS. TESSITORE: LADIES AND GENTLEMEN OF THE JURY? THE
23 DEFENDANT WENT OUT TO MAKE A DEAL ON WEDNESDAY, JANUARY
24 10TH, 2007. HE KNEW WHERE TO FIND HIS CUSTOMERS IN A HIGH
25 CRIME AREA AT THE INNTOWN SUITES AND THE SUPER LODGE AREA.

CLOSING ARGUMENTS - MS. TESSITORE

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1 AND HE KNEW WHERE TO LEAD THOSE CUSTOMERS TO GO GET SOME
2 CRACK COCAINE BECAUSE HE ASKED THEM WHAT THEY WANTED, AND
3 THEY SAID, A TWENTY, AND HE KNEW WHERE HE COULD GET IT. AND
4 THAT'S WHERE HE TOOK THEM.

5 HE JUST DID NOT KNOW THAT THE TWO CUSTOMERS THAT HE WAS
6 DEALING WITH WERE THE VERY PEOPLE WHO MAKE IT THEIR CAREER,
7 THEY PUT THEIR LIVES ON THE LINE TO DO THIS TO STOP THE DRUG
8 TRADE, TO STOP THIS KIND OF ACTIVITY AT THIS LEVEL.

9 AND THEY DESCRIBED TO YOU WHAT THAT LEVEL OF ACTIVITY
10 IS. IT'S THE STREET LEVEL. IT'S NOT THE TRAFFICKERS. IT'S
11 THOSE PEOPLE THAT THEY MIGHT BE ABLE TO GO OUT AND FIND JUST
12 LIKE THEY SAID, PLAIN CLOTHES, KIND OF LOOKING SCRUFFY, JUST
13 BEING IN THAT AREA, SEEING IF AN OPPORTUNITY WOULD ARISE.
14 AND IT DID.

15 MR. GRANT, HOWEVER, WAS SURPRISED -- WHEN HE WAS
16 SURPRISED BY WHO THEY WERE HE -- HE RESPONDED WITH ANGER,
17 WITH SURPRISE. YOU'VE HEARD THE OFFICER TESTIFY -- TESTIFY
18 ABOUT HIS ---

19 MS. HORLBECK: AND I OBJECT TO THE MISCHARACTERIZATION
20 OF ANGER. THERE WAS NO TESTIMONY ABOUT ANGER.

21 THE COURT: ALL RIGHT. WELL, THAT'S FOR THE JURY TO
22 DETERMINE. THANK YOU.

23 MS. TESSITORE: INITIALLY THERE WAS SHOCK. THE OFFICER
24 TESTIFIED ABOUT THAT. HE LOOKED REALLY SURPRISED. AND THEN
25 LATER THAT SURPRISE TURNED TO ANGER WHEN HE GOT TO THE LAW

CLOSING ARGUMENTS - MS. TESSITORE

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1 ENFORCEMENT CENTER AND THEY WERE TRANSFERRING CUSTODY AS
2 PART OF THEIR PROFESSIONAL RESPONSIBILITIES WHEN THEY MAKE
3 AN ARREST. AND AT THAT POINT IN TIME HE ISSUED THE THREAT
4 WHEN HE SAID, I'LL WHIP YOUR ASS IN HERE. AND HE CLINCHED
5 HIS FIST AND HE STEPPED TOWARDS HIM.

6 HE GOT ANGRY BECAUSE HE REALIZED THAT AT THAT POINT IT
7 WAS -- WHAT WAS DONE WAS DONE. IT WAS A FINAL SALE. THERE
8 WERE NO RETURNS, NO EXCHANGES. IT WAS A FINAL DEAL. THERE
9 WAS NO TURNING BACK.

10 NOW YOU HAVE THREE CHARGES TO CONSIDER. YOU HAVE
11 DISTRIBUTION OF CRACK COCAINE, POSSESSION OF CRACK COCAINE
12 WITH THE INTENT TO DISTRIBUTE WITHIN A HALF MILE OF A SCHOOL
13 AND YOU HAVE THREATENING THE LIFE OR THREATENING TO -- LET
14 ME READ THE INDICTMENT, THREATENING TO INFLICT BODILY HARM
15 UPON DEPUTY BRIAN TOLLISON. THOSE ARE THE THREE
16 INDICTMENTS.

17 AND AS THE JUDGE TOLD YOU AT THE BEGINNING OF THIS
18 CASE, THESE INDICTMENTS, THEY'RE JUST PIECES OF PAPER. BUT
19 THEY DO HAVE A USEFUL PURPOSE. AND THAT IS, YOU CAN USE
20 THESE AS A GUIDE WHEN YOU GO BACK INTO THE ROOM TO
21 DELIBERATE. AND THESE INDICTMENTS WILL SERVE AS YOUR GUIDE
22 FOR EACH OFFENSE AS YOU CONSIDER THEM SEPARATELY.

23 SO WHAT I'M GOING TO DO IS TALK ABOUT THESE ONE AT A
24 TIME AS YOU MAY WHEN YOU DELIBERATE. AND THEN WHEN YOU DO
25 DELIBERATE YOU WILL HAVE ALL THE TOOLS THAT YOU NEED WHEN

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1 YOU GO BACK THERE.

2 YOU'RE GOING TO HAVE THE FACTS AS YOU FIND THEM BECAUSE
3 YOU ARE THE FINDERS OF FACT. YOU ARE THE JUDGES OF THE
4 FACTS IN THIS CASE. AND JUDGE MILLER IS THE JUDGE OF THE
5 LAW. YOU ALSO HAVE THE LAW AS THE JUDGE GIVES IT TO YOU.
6 THAT'S ANOTHER TOOL.

7 YOU HAVE THE PHYSICAL EVIDENCE IN THIS CASE. YOU HAVE
8 THE PICTURES THAT HAVE BEEN PROVIDED AND USED IN THE
9 TESTIMONY OF THE OFFICERS OF THIS AREA, OF THE PROXIMITY
10 BETWEEN THE INNTOWN SUITES AND THE OUR LADY OF THE ROSARY
11 SCHOOL. AND YOU HAVE A PICTURE OF THE BREEZE-WAY THAT THE
12 OFFICERS WERE TALKING ABOUT SO YOU CAN LOOK IN THAT BREEZE-
13 WAY AND SEE WHAT THE OFFICERS WERE TALKING ABOUT.

14 YOU CAN -- ALSO YOU WILL BE ABLE TO TAKE BACK THESE TWO
15 ROCKS OF CRACK COCAINE. AND YOU WILL BE ABLE TO LOOK AT
16 THEM AND COMPARE THEM AND THINK ABOUT THE FACT THAT THEY ARE
17 IN THREE SEALED PLASTIC BAGS AND OFFICER'S TESTIMONY THAT --
18 WHAT WAS THESE DRUGS AS THEY TESTIFIED HOW THEY HANDLED THEM
19 AND HOW THEY PUT THEM IN BAGS, BROUGHT THEM TO THE LAW
20 ENFORCEMENT CENTER, SEALED THEM THERE, PUT THEM IN THE DROP
21 BOX THAT'S SECURE, AND THEN WHEN -- THEY WERE SECURED UNTIL
22 SEAN COLLINS TESTIFIED ABOUT HOW HE TESTED THEM, AND THEY
23 WERE, IN FACT, BOTH ROCKS OF CRACK COCAINE.

24 NOW AS YOU GO THROUGH EACH INDICTMENT, THE FIRST ONE IS
25 THE DISTRIBUTION OF CRACK COCAINE. AND SIMPLY DID MR. GRANT

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1 HAND DEPUTY TOLLISON A ROCK, ONE OF THESE ROCKS OF CRACK
2 COCAINE? THAT'S SIMPLY THE QUESTION THAT YOU MUST ANSWER IN
3 DETERMINING WHETHER ROBERT GRANT DID DISTRIBUTE TO AN
4 UNDERCOVER OPERATIVE A QUANTITY OF CRACK COCAINE IN
5 VIOLATION OF THE LAW AS IT'S STATED IN THIS INDICTMENT.

6 AND WHAT DO YOU HAVE TO CONSIDER AS YOU EXAMINE THAT
7 QUESTION? WELL, YOU HAVE THE MEMORIES OF NOT ONE OFFICER
8 WITH MR. GRANT, YOU'VE GOT TWO OFFICERS WHO WERE STANDING
9 THERE WITH HIM. AND THEY TESTIFIED ABOUT THEIR MEMORY OF
10 THE EVENTS AS HE HANDED THEM THE ROCK OF CRACK COCAINE. AND
11 BECAUSE THIS WASN'T RECORDED DOESN'T MEAN THEY DON'T HAVE
12 THE MEMORIES. THEY HAVE THOSE MEMORIES JUST LIKE WE ALL
13 HAVE MEMORIES FROM OUR LIFE AND OUR CHILDHOOD.

14 NOW THE FACT THAT THEY'RE NOT ALL RECORDED ON VIDEO AND
15 WE CAN'T POP THEM IN A MACHINE AND SEE THEM, DOES THAT MEAN
16 THEY DIDN'T HAPPEN? DOES THAT MEAN ALL OF YOUR MEMORIES
17 MUST BE WIPED OUT COMPLETELY? AND THAT'S WHAT THE DEFENSE
18 IS ASKING YOU TO DO BECAUSE THE OFFICERS' MEMORIES OR THE
19 EVENTS THAT THEY ARE DESCRIBING TO YOU FROM THEIR OWN
20 PERSONAL RECOLLECTION OF THE EVENTS ARE NOT ON AN AUDIO OR
21 VIDEO, THEN THEY MUST NOT HAVE HAPPENED. SHE WANTS YOU TO
22 THROW OUT ALL OF THEIR TESTIMONY. THAT DOESN'T MAKE SENSE,
23 LADIES AND GENTLEMEN.

24 CONSIDER THAT NOT ONLY DID YOU -- DO YOU HAVE THE TWO
25 OFFICERS WHO WERE THERE STANDING THERE WATCHING HIM HAND

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1 THAT ROCK OF CRACK COCAINE TO DEPUTY TOLLISON, BUT YOU ALSO
2 HAVE DEPUTY RHEA WHO TESTIFIED ABOUT HOW THE TWO OFFICERS
3 LEFT HIS PRESENCE WITH THE MONEY THAT HE DOCUMENTED IN HIS
4 REPORT.

5 THEY'RE NOT TRYING TO HIDE THE FACT THAT THEY HAVE THIS
6 TWENTY DOLLARS, THAT THEY -- THEY LEFT ON FOOT. THEY
7 WEREN'T WATCHING THIS PARTICULAR INDIVIDUAL, MR. GRANT.
8 THEY WEREN'T WATCHING ROOM 105. THEY WERE JUST SEEING IF AN
9 OPPORTUNITY WOULD ARISE. AND SPONTANEOUSLY, AN OPPORTUNITY
10 DID ARISE. HE APPROACHED THEM. THEY DIDN'T GO SEEK HIM
11 OUT. HE WALKED UP FROM BEHIND. AND HE SAID, ARE YOU
12 STRAIGHT?

13 DEPUTY SWIFT TESTIFIED, AND DEPUTY TOLLISON, THAT
14 THAT'S NOT A GREETING THAT WE ORDINARILY USE, YOU KNOW, WHEN
15 YOU SEE A FELLOW CHURCH MEMBER, HEY, ARE YOU STRAIGHT?
16 THAT'S NOT SOMETHING THAT YOU'RE TYPICALLY GOING TO HEAR
17 UNLESS YOU'RE IN THIS ENVIRONMENT WHERE OBVIOUSLY THE
18 PEOPLE, THEY KNOW THE LINGO. HE KNEW THE LINGO. HE KNEW
19 WHAT TO SAY TO SEE IF THEY WERE GOING TO BITE. AND THEY DID
20 BITE. THEY SAW AN OPPORTUNITY.

21 SO WHAT DID THEY DO? THEY SAID, WE'D LIKE -- WE WANT A
22 TWENTY. AND HE SAID, OKAY, COME WITH ME. AND SO WHERE DID
23 THEY GO? THEY WENT OVER ACROSS THE STEAK-OUT AND PASSED BY
24 DEPUTY RHEA. AND HE SAID HE SAW HIM WALKING AHEAD OF THE
25 TWO OFFICERS AND LEADING THEM OVER TO THE INNTOWN SUITES.

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1 NOW HE DIDN'T SEE THE TRANSACTION. AND AGAIN, NO, IT
2 WASN'T ON VIDEO. BUT THAT DOESN'T MEAN IT DIDN'T HAPPEN.
3 THOSE OFFICERS WERE THERE. THEY WERE HERE. THEY TOLD YOU
4 WHAT HAPPENED.

5 NOW THE OFFICER THAT WAS MENTIONED, BRAD GRICE, MS.
6 HORLBECK ASKED ABOUT DEPUTY GRICE. WE TALKED ABOUT DEPUTY
7 GRICE. YOU DIDN'T HEAR FROM DEPUTY GRICE HERE TODAY OR
8 YESTERDAY. HE WASN'T THERE DURING THIS TRANSACTION. HE
9 WASN'T THERE WHEN DEPUTY RHEA WALKED UP AND THEY WERE
10 ACTUALLY ARRESTING HIM AND HE HAD THE OTHER ROCK. HE WAS
11 DEALING WITH THIS OTHER FELLOW, WHO IS IN THE CAR AND
12 BROUGHT TO THE LAW ENFORCEMENT CENTER AT THE SAME TIME, A
13 DIFFERENT CASE. HE'S NOT ON TRIAL HERE. MR. GRANT IS. SO
14 THAT HAS NOTHING TO DO WITH THIS CASE.

15 AND SO YOU'VE HEARD FROM THE OFFICERS THAT WE'VE -- THE
16 STATE WOULD SUBMIT HAVE THE MOST IMPORTANT INFORMATION TO
17 PROVIDE TO YOU INSTEAD OF JUST PUTTING OFFICER AFTER OFFICER
18 FOR THE PURPOSE OF JUST CALLING EVERY OFFICER. YOU'VE HEARD
19 FROM THE OFFICERS WHO WERE MOST INTIMATELY INVOLVED WITH
20 THIS DEFENDANT AND THESE ROCKS OF CRACK COCAINE.

21 NOW THE SECOND INDICTMENT IS POSSESSION OF CRACK
22 COCAINE WITHIN PROXIMITY OF A SCHOOL. AND THE SCHOOL WE'RE
23 TALKING ABOUT IS OUR LADY OF THE ROSARY SCHOOL GROUNDS. AND
24 THE JUDGE WILL INSTRUCT YOU THAT THAT ACT HAS TO INCUR --
25 HAS TO OCCUR WITHIN A HALF MILE.

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1 AND YOU HEARD DEPUTY TOLLISON TESTIFY THAT HE WAS IN
2 POSSESSION OF THE CRACK COCAINE AND THAT IT WAS WITHIN ONE
3 HALF MILE, AND THAT HE DROVE IT HIMSELF AND DEPUTY RHEA WAS
4 WITH HIM. HE TESTIFIED THAT HE WAS WITH TOLLISON WHEN THEY
5 WENT OUT AND THEY MEASURED THIS. AND YOU CAN SEE ON THE
6 MAP, HE SAID, EVEN AS THE CROW FLIES, IT'S MUCH CLOSER. SO
7 YOU CAN LOOK AT THAT MAP AND YOU MAKE THAT DETERMINATION
8 BASED ON THE TESTIMONY, BASED ON THE EVIDENCE THAT'S BEFORE
9 YOU.

10 NOW THE THIRD ONE IS DID HE THREATEN TO INFLICT BODILY
11 HARM UPON DEPUTY TOLLISON, A PUBLIC OFFICIAL? AND THAT'S
12 THE THIRD INDICTMENT. THE BODY OF THAT INDICTMENT READS
13 EXACTLY THAT WAY. DID HE THREATEN TO INFLICT BODILY HARM?

14 NOW THERE'S NO REQUIREMENT THAT THE STATE MUST PROVE
15 FEAR. THIS IS NOT AN ASSAULT CHARGE. YOU DON'T HAVE TO --
16 WE DON'T HAVE TO PROVE FEAR. WE DON'T HAVE TO PROVE EVEN
17 THAT HE TOOK A STEP TOWARDS HIM. THE MERE WORDS TO THREATEN
18 BODILY HARM TO A PUBLIC OFFICIAL, A DEPUTY WITH THE
19 GREENVILLE COUNTY SHERIFF'S OFFICE WHO'S CARRYING OUT HIS
20 DUTIES, JUST THE MERE WORDS ALONE ARE ENOUGH TO VIOLATE THAT
21 LAW.

22 LADIES AND GENTLEMEN, THIS CASE DOES BOIL DOWN TO
23 CREDIBILITY. AND WHEN YOU MAKE THAT DETERMINATION THE JUDGE
24 WILL INSTRUCT YOU HOW YOU ASSESS CREDIBILITY. BUT YOU
25 PROBABLY ALL KNOW THAT ALREADY. YOU LOOK AT HOW THOSE

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1 WITNESSES, WHEN THEY GOT UP THERE, HOW THEY APPEARED, THEIR
2 DEMEANOR, THEIR APPEARANCE, HOW THE WITNESSES CAME TO KNOW
3 THE FACTS THAT THEY TESTIFIED TO.

4 WELL, THESE WITNESSES ON BEHALF OF THE STATE, THEY
5 TESTIFIED BECAUSE THEY WERE THERE. THEY SAW IT HAPPEN.
6 BRIAN SMITH, WHO TESTIFIED, HE WASN'T EVEN THERE THAT DAY.
7 HE DIDN'T SEE ANYTHING HAPPEN. HE'S JUST TALKING ABOUT
8 SOMEONE WHO PAID FOR ROOM 105.

9 YOU ALSO NEED TO CONSIDER IN DETERMINING CREDIBILITY,
10 THE JUDGE WILL INSTRUCT YOU THAT BIAS IS SOMETHING ELSE THAT
11 YOU CAN CONSIDER IN DETERMINING THAT. YOU KNOW, WHAT DO THE
12 OFFICERS HAVE TO LOSE OR GAIN HERE? CONSIDER THREE OFFICERS
13 WHO CAME IN TO TESTIFY. WOULD THEY RISK THEIR PROFESSIONAL
14 REPUTATION AND THEIR CAREER OVER TWO ROCKS OF CRACK COCAINE,
15 TWENTY DOLLARS WORTH?

16 I SUBMIT THAT TO BELIEVE WHAT THE DEFENSE IS SUGGESTING
17 THAT YOU THROW OUT ALL THEIR TESTIMONY, IT WASN'T RECORDED,
18 IT DIDN'T HAPPEN, THEN THEY MUST BE CONSPIRING, ALL THREE OF
19 THEM, AND SO THAT THEY CAN GET A CONVICTION ON THESE TWO
20 ROCKS OF CRACK COCAINE. IT DOESN'T MAKE SENSE.

21 THE TASK AT HAND FOR YOU IS TO LOOK TO DETERMINE WHAT
22 REALLY HAPPENED HERE. AND TO DO THAT YOU NEED TO LOOK INTO
23 THE HANDS OF ROBERT GRANT. IN THE HANDS OF ROBERT GRANT WAS
24 ONE ROCK OF CRACK COCAINE THAT HE HANDED TO DEPUTY TOLLISON.
25 IN HIS OTHER HAND CLINCHED TIGHTLY WAS THE OTHER ROCK OF

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1 CRACK COCAINE, HIS OWN STASH. AND THEN WHEN HE GOT TO THE
2 JAIL HE ALSO USED HIS SAME FIST TO THEN CLINCH IT AND MAKE
3 THE THREAT TO THE OFFICER.

4 SO BY HIS OWN HANDS HE VIOLATED THREE DIFFERENT LAWS.
5 THE FIRST LAW, THE FIRST INDICTMENT, THE SECOND LAW ON THE
6 SECOND ONE AND THE THIRD ONE. EACH ONE OF THOSE LAWS WERE
7 VIOLATED BY HIS OWN HANDS.

8 NOW THE DEFENSE HAS SUGGESTED THAT YOU LOOK BEHIND
9 CERTAIN DOORS, IF YOU WILL, IN THE METAPHORICAL SENSE.
10 FIRST, REALIZE THAT THIS, AS YOU HEARD THE TESTIMONY, THIS
11 DIDN'T HAPPEN BEHIND CLOSED DOORS. IT HAPPENED OUT IN THE
12 OPEN IN THE BREEZE-WAY, BUT NOT BEHIND A DOOR, NOT IN SOME
13 ROOM THAT WAS CONTAINED THAT COULD HAVE BEEN PLANTED WITH
14 ALL SORTS OF RECORDING DEVICES.

15 THEY DIDN'T KNOW WHERE HE WAS GOING TO LEAD THEM THAT
16 NIGHT. SO UNLESS THEY TOOK OUT SOME SPECIAL CAMERA AND
17 STARTED FOLLOWING HIM WITH THE VIDEO, THERE WAS NO WAY TO
18 KNOW WHERE THIS WAS GOING TO END UP. AGAIN, A SPONTANEOUS
19 OPPORTUNITY.

20 BUT LOOKING BEHIND THESE DOORS THAT SHE HAS PRESENTED,
21 THESE DOORS LEAD NOWHERE. SO I'M JUST GOING TO SIMPLY
22 ADDRESS A FEW OF THOSE. THE FIRST ONE IS ROOM 105. WELL,
23 WE DON'T KNOW ACTUALLY WHAT HAPPENED BEHIND THE DOOR OF ROOM
24 105 THAT NIGHT. AND, IN FACT, IT REALLY DOESN'T MATTER WHAT
25 HAPPENED.

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1 ALL WE KNOW IS THAT MR. GRANT WENT BEHIND THAT DOOR,
2 AND WHEN HE CAME BACK AND EMERGED WITH THE OFFICERS HE HAD A
3 ROCK OF CRACK COCAINE. SO WHAT HAPPENED -- AND THAT'S WHEN
4 HE BROKE THE LAW. WHAT HAPPENED BEHIND THOSE DOORS, WE
5 DON'T KNOW. WE DON'T KNOW IF HE ALREADY HAD IT ON HIM AND
6 HE JUST GOT ALL SITUATED AND GOT THE ROCKS OUT AND HAD ONE
7 IN ONE HAND AND ONE IN THE OTHER, WHETHER HE GOT IT FROM
8 SOMEWHERE ELSE. WE DON'T KNOW EXACTLY WHAT HAPPENED.

9 BUT WE DO KNOW THAT THERE WAS ABOUT TEN TO FIFTEEN
10 MINUTES THAT THE OFFICERS TALKED ABOUT WHERE THEY WERE
11 DEALING WITH MR. GRANT AROUND THE CORNER TRYING TO GET HIM
12 AWAY FROM THAT WINDOW SO THAT THEY WOULDN'T KNOW THAT THEY
13 WERE TAKING HIM DOWN, AS THEY SAY, THEY WERE ARRESTING HIM.

14 BUT DURING THOSE TEN TO FIFTEEN MINUTES THEY DON'T KNOW
15 WHO WAS COMING OR WHO WAS GOING. THEY DON'T KNOW HOW MANY
16 PEOPLE LEFT OR HOW MANY PEOPLE WENT IN OR WHAT THEY TOOK
17 WITH THEM WHEN THEY WENT OUT.

18 SO WHEN THEY DID GET BACK TO THAT ROOM, WHAT DID THEY
19 DO? THEY KNOCKED ON THE DOOR, THE GUY, WHETHER IT WAS MR.
20 WATKINS OR MR. WILKINS, OR MR. WILSON OR WHOEVER IT WAS, MR.
21 "W", HE, YOU KNOW, HE SAID, COME ON IN AND LOOK AROUND. AND
22 WHEN THEY DID, THEY DIDN'T FIND ANYTHING.

23 SO WHAT HAPPENED BEHIND 105 SUGGESTS TO YOU THAT THAT
24 DOOR -- THAT LEADS NOWHERE. IT DOESN'T ANSWER THE QUESTION
25 AS TO WHETHER MR. GRANT, IN FACT, HANDED DEPUTY TOLLISON THE

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1 ROCK OF CRACK COCAINE.

2 SECONDLY, WHERE'S THE MONEY? WELL, WE DON'T HAVE THE
3 MONEY. BUT DEPUTY RHEA TESTIFIED THAT HE DOCUMENTED --
4 THERE WAS NO SECRET TO HIDE ABOUT THIS MONEY. THEY HAD THE
5 MONEY. HE DOCUMENTED IT IN HIS REPORT, THAT THEY DIDN'T
6 RECORD THE SERIAL NUMBER. THEY WOULD NOW AND THEY DO NOW,
7 BUT THAT'S SOMETHING THAT THEY DIDN'T DO. THAT DOESN'T MEAN
8 THAT IT WASN'T THERE.

9 THAT MONEY, WE DON'T KNOW WHERE IT ENDED UP. AGAIN,
10 THAT TEN TO FIFTEEN MINUTES IN THAT ROOM, WHO WENT IN, WHO
11 WENT OUT, MIGHT HAVE GONE OUT WITH SOMEBODY THERE. WE DON'T
12 KNOW. BUT THE FACT THAT WE DON'T HAVE THAT MONEY, THAT'S
13 NOT -- THAT'S DISTRACTING YOU FROM THE LAW, WHICH IS WHAT
14 MS. HORLBECK TALKED ABOUT AS WELL.

15 THE MONEY IS NOT AT ISSUE IN THIS CASE BECAUSE THERE'S
16 NO REQUIREMENT UNDER THE LAW THAT THE STATE MUST PROVE THAT
17 MONEY CHANGED HANDS. SO IF WE -- THE FACT THAT WE -- THE
18 OFFICER COULD NOT PRODUCE THAT TWENTY DOESN'T MEAN THAT HE
19 DIDN'T HAND THAT ROCK TO HIM. IT'S SIMPLY THE TRANSFER OF
20 THE DRUGS THAT IS THE COMMISSION OF THE CRIME.

21 NOW THE NEXT DOOR THE DEFENSE WANTS YOU TO LOOK AT IS
22 THE ISSUE OF FINGERPRINTS. SHE BROUGHT THAT UP IN A
23 QUESTION. WELL, WHY WOULD YOU NEED -- FIRST OF ALL, DEPUTY
24 TOLLISON SAID, YOU KNOW, IT'D BE PRETTY HARD TO GET A
25 FINGERPRINT OFF OF A PIECE OF ROCK, CRACK COCAINE. IF YOU

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1 LOOK AT THIS, IT'S SMALLER THAN YOUR FINGERTIP.

2 BUT MORE IMPORTANTLY, WHY WOULD THEY NEED A FINGERPRINT
3 ANALYSIS WHEN THEY HAVE TWO OFFICERS WHO SAW HIM HAND IT TO
4 THE OFFICER AND HE'S HOLDING IT RIGHT THERE, WHEN THERE'S NO
5 SUGGESTION THAT, AND NO TESTIMONY, THAT THEY TOOK IT
6 ANYWHERE AND THEN CAME BACK WITH IT OR THAT THERE WAS
7 ANYBODY'S FINGERPRINTS OTHER THAN THE DEFENDANTS ON THOSE
8 ROCKS?

9 NEXT, THE NEXT DOOR THAT DEFENSE HAS TRIED TO GET YOU
10 TO KNOCK ON AND OPEN UP IS THIS WHOLE IDEA OF THE VIDEO AND
11 THE AUDIO RECORDING. AND I TALKED ABOUT THAT ALREADY. BUT
12 BASICALLY, AS YOU'VE HEARD, IT WAS A SPONTANEOUS
13 TRANSACTION. SO UNLESS THEY WERE PREPARED TO PULL OUT THE
14 VIDEO CAMERAS AND FOLLOW HIM AROUND, THAT JUST WASN'T
15 PRACTICAL. AND IF THERE HAD BEEN ONE IN THE CAR IT WOULDN'T
16 HAVE CAPTURED WHAT HAD HAPPENED HERE. SO THAT'S JUST A DOOR
17 THAT LEADS NOWHERE.

18 THIS OTHER MAN THAT WAS ARRESTED WITH MR. GRANT, AGAIN,
19 TOTALLY SEPARATE CHARGE, DIFFERENT CASE. THAT DOOR LEADS
20 NOWHERE TO ANSWER THE QUESTION AS TO MR. GRANT AND WHAT HE
21 DID.

22 FINALLY, LADIES AND GENTLEMEN, THE DEPUTIES WERE THERE
23 WORKING UNDER COVER IN THEIR PLAIN CLOTHES TRYING TO STOP
24 THE CRIMINAL ACTIVITY THAT WAS GOING ON IN THIS AREA, WHICH
25 IS IN GREENVILLE COUNTY AND PART OF OUR COMMUNITY. THEY

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1 WERE OUT THERE RISKING THEIR LIVES AND TRYING TO DO WHAT
2 THEY COULD TO STOP THE DRUG TRADE SPECIFICALLY AND ALSO THEY
3 MENTIONED PROSTITUTION. IN THIS CASE, OBVIOUSLY, DRUG
4 ACTIVITY IS OUR FOCUS HERE.

5 AND THEY WERE TRYING TO DO THAT ONE ROCK AT A TIME.
6 AND THAT'S WHAT WE HAVE RIGHT HERE, TWO ROCKS OFF THE STREET
7 THAT NIGHT THAT THEY WERE ABLE TO GET BECAUSE OF AN
8 OPPORTUNITY THAT AROSE AND THEY TOOK ADVANTAGE OF THAT
9 OPPORTUNITY TO TRY TO STOMP OUT THE DRUG ACTIVITY IN OUR
10 COMMUNITY.

11 LADIES AND GENTLEMEN, NOW IT'S YOUR TURN TO STOP THIS
12 DEFENDANT AND HOLD HIM RESPONSIBLE FOR WHAT HE DID ON
13 WEDNESDAY NIGHT AT 6:40 ON JANUARY 10TH, 2007 AT THE INNTOWN
14 SUITES WHEN HE BROKE THE LAW AND HE DISTRIBUTED CRACK
15 COCAINE. THANK YOU.

16 THE COURT: ALL RIGHT, MADAME FORELADY, LADIES AND
17 GENTLEMEN OF THE JURY, DURING THIS TRIAL YOU AND I HAVE
18 CERTAIN DUTIES TO PERFORM. AND AS THE TRIAL JUDGE IT IS MY
19 RESPONSIBILITY TO PRESIDE OVER THE TRIAL OF THE CASE AND TO
20 RULE ON THE ADMISSIBILITY OF THE EVIDENCE THAT'S OFFERED
21 DURING THE TRIAL.

22 IT'S ALSO MY DUTY TO CHARGE YOU THE LAW THAT APPLIES TO
23 THIS CASE. AND AS I TOLD YOU IN MY OPENING COMMENTS, IT IS
24 YOUR DUTY AS JURORS TO ACCEPT AND APPLY THE LAW AS I NOW
25 GIVE IT TO YOU. AND IF YOU THINK YOU HAVE ANY IDEA AS TO

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1 WHAT THE LAW IS OR WHAT THE LAW SHOULD BE, YOU'VE SWORN AN
2 OATH TO SET THAT ASIDE AND APPLY THE LAW PRECISELY AS I
3 STATE IT TO YOU NOW.

4 AND I'D ALSO REMIND YOU THAT IN EVERY -- EVERY CASE
5 TRIED IN THIS COURT BEFORE A JURY, YOU, THE JURORS, ARE THE
6 SOLE AND EXCLUSIVE JUDGES OF THE FACTS. AND A TRIAL JUDGE
7 IS NOT ALLOWED BY LAW TO HAVE AN OPINION ABOUT THE FACTS.
8 SO DON'T THINK BY ANYTHING THAT I MAY HAVE SAID OR DONE
9 THROUGHOUT THE COURSE OF THIS TRIAL THAT I HAVE AN OPINION
10 ABOUT THE FACTS BECAUSE I DO NOT, AND THE LAW DOES NOT ALLOW
11 THAT.

12 I'D ALSO AGAIN INSTRUCT YOU THAT THE FACT THAT THE
13 DEFENDANT WAS ARRESTED, CHARGED AND INDICTED IN THIS CASE IS
14 NOT EVIDENCE OF GUILT, NOR DOES IT CREATE ANY PRESUMPTION OR
15 INFERENCE OF GUILT. THOSE DOCUMENTS OR THESE DOCUMENTS ARE
16 SIMPLY THE FORMAL WRITTEN INSTRUMENTS WHICH ALLOW THIS CASE
17 TO WIND ITS WAY THROUGH THE JUSTICE SYSTEM. THEY CONTAIN
18 THE FORMAL CHARGE AGAINST A DEFENDANT. AND THEY SERVE AS
19 THE MATTER BY WHICH A CASE IS PROCESSED AND BROUGHT INTO
20 COURT FOR RESOLUTION BEFORE YOU, THE JURY.

21 NOW THERE ARE THREE INDICTMENTS IN THIS CASE, AND THEY
22 ALLEGE SEPARATE AND DISTINCT OFFENSES AGAINST THE DEFENDANT.
23 THOSE INDICTMENTS ARE FOR DISTRIBUTION OF CRACK COCAINE,
24 DISTRIBUTION OF CRACK COCAINE WITHIN THE PROXIMITY OF A
25 SCHOOL OR PLAYGROUND AND THREATENING THE LIFE OF A PUBLIC

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1 OFFICIAL.

2 NOW I REMIND YOU AND EMPHASIZE THAT EACH INDICTMENT
3 CHARGES A SEPARATE AND DISTINCT OFFENSE. AND YOU MUST
4 DECIDE EACH INDICTMENT SEPARATELY ON THE EVIDENCE AND THE
5 LAW APPLICABLE TO IT UNINFLUENCED BY YOUR DECISION AS TO ANY
6 OTHER INDICTMENT IN THIS CASE. AND THE DEFENDANT MAY BE
7 CONVICTED OR ACQUITTED ON ANY OR ALL OF THE INDICTMENTS OR
8 OFFENSES THAT ARE CHARGED. AND YOU'LL BE ASKED TO WRITE A
9 SEPARATE VERDICT OF GUILTY OR NOT GUILTY FOR EACH SEPARATE
10 INDICTMENT.

11 NOW NECESSARILY YOUR JOB IS TO -- IS TO DETERMINE THE
12 CREDIBILITY OR BELIEVABILITY OF THE WITNESSES WHO HAVE
13 TESTIFIED IN THIS CASE. AND IT BECOMES YOUR DUTY -- IT
14 BECOMES YOUR DUTY AS JURORS TO EVALUATE THE EVIDENCE AND
15 DETERMINE WHICH EVIDENCE CONVINCES YOU THAT IT IS TRUE.

16 NOW IN DETERMINING THE BELIEVABILITY OF THE WITNESSES,
17 YOU MAY BELIEVE ONE WITNESS OVER SEVERAL OR SEVERAL OVER
18 ONE. YOU MAY BELIEVE THE PART -- A PART OF THE TESTIMONY OF
19 A WITNESS AND REJECT THE REMAINING PART. YOU MAY BELIEVE
20 THE TESTIMONY OF A WITNESS IN ITS ENTIRETY OR REJECT IT IN
21 ITS ENTIRETY.

22 AND YOU MAY CONSIDER WHETHER A WITNESS HAS AN INTEREST
23 IN THE RESULT OF THE TRIAL, WHETHER THE WITNESS IS
24 PREJUDICED TOWARDS EITHER THE STATE OR THE DEFENSE AND THE
25 OPPORTUNITY FOR THE WITNESS TO HAVE SEEN AND VIEWED THE

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1 MATTERS ABOUT WHICH THAT WITNESS HAS TESTIFIED. AND YOU MAY
2 ALSO CONSIDER THE WAY A WITNESS ACTS ON THE WITNESS STAND OR
3 WHAT WE CALL A WITNESS' Demeanor.

4 NOW I INSTRUCT YOU AND I EMPHASIZE TO YOU THAT THE FACT
5 THAT MR. GRANT DID NOT TESTIFY -- DID NOT TESTIFY IN THIS
6 CASE IS NOT A FACTOR TO BE CONSIDERED BY YOU IN YOUR
7 DELIBERATIONS ON THE QUESTION OF GUILT OR INNOCENCE. IT
8 MUST NOT BE CONSIDERED BY YOU IN ANY MANNER WHATSOEVER.

9 EVERY CITIZEN HAS THE CONSTITUTIONAL RIGHT TO REMAIN
10 SILENT. AND THE ASSERTION OF THIS RIGHT MUST NOT BE
11 CONSIDERED BY YOU IN YOUR DELIBERATIONS. THE BURDEN OF
12 PROOF IS -- ALWAYS REMAINS ON THE STATE. AND A DEFENDANT IS
13 NEVER REQUIRED TO PROVE THEMSELVES INNOCENT.

14 NOW TO THESE INDICTMENTS MR. GRANT HAS PLED NOT GUILTY.
15 AND THAT PLEA PUTS THE BURDEN ON THE STATE TO PROVE THE
16 DEFENDANT GUILTY. AND A PERSON CHARGED WITH COMMITTING A
17 CRIMINAL OFFENSE IN SOUTH CAROLINA IS NEVER REQUIRED TO
18 PROVE THEMSELVES INNOCENT. IT IS A CARDINAL AND AN
19 IMPORTANT RULE OF THE LAW THAT A DEFENDANT IN A CRIMINAL
20 TRIAL WILL ALWAYS BE PRESUMED TO BE INNOCENT OF THE CRIME
21 FOR WHICH AN INDICTMENT HAS ISSUED UNLESS AND UNTIL GUILT
22 HAS BEEN PROVEN BY EVIDENCE SATISFYING YOU OF THAT GUILT AND
23 BEYOND A REASONABLE DOUBT.

24 NOW WHAT IS A REASONABLE DOUBT? A REASONABLE DOUBT IS
25 THE KIND OF DOUBT WHICH WOULD CAUSE A REASONABLE PERSON TO

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1 HESITATE TO ACT. AND REASONABLE DOUBT MAY ARISE FROM THE
2 EVIDENCE WHICH IS IN A CASE OR FROM THE LACK OR ABSENCE OF
3 EVIDENCE IN A CASE. AND YOU, THE JURY, MUST DETERMINE
4 WHETHER OR NOT REASONABLE DOUBT EXISTS AS TO THE GUILT OF
5 THIS DEFENDANT.

6 THE STATE HAS THE BURDEN OF PROVING EACH AND EVERY
7 ELEMENT OF A CRIME BEYOND A REASONABLE DOUBT. AND ANY
8 REASONABLE DOUBT THAT YOU MAY HAVE IN YOUR DELIBERATIONS
9 SHOULD BE RESOLVED IN FAVOR OF THE DEFENDANT.

10 NOW HE IS CHARGED WITH DISTRIBUTION OF CRACK COCAINE.
11 THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE
12 DEFENDANT DISTRIBUTED CRACK COCAINE. AND THE STATE MUST
13 ALSO PROVE BEYOND A REASONABLE DOUBT THAT THE SUBSTANCE
14 WHICH WAS DISTRIBUTED OR ALLEGEDLY DISTRIBUTED IS, IN FACT,
15 CRACK COCAINE.

16 DISTRIBUTE MEANS TO DELIVER OR TO ACTUALLY,
17 CONSTRUCTIVELY OR ATTEMPT TO TRANSFER A DRUG OTHER THAN BY
18 LAWFUL ADMINISTRATION OR DISPENSING. AND DELIVER MEANS TO
19 ACTUALLY, CONSTRUCTIVELY OR ATTEMPT TO TRANSFER A DRUG. AND
20 A TRANSFER CAN INVOLVE AN EXCHANGE FOR MONEY, A BARTER OR A
21 GIFT. THERE DOES NOT HAVE TO BE ANYTHING GIVEN IN EXCHANGE
22 FOR THE DRUGS FOR A TRANSFER TO CONSTITUTE DISTRIBUTION.

23 THE DEFENDANT IS ALSO CHARGED WITH DISTRIBUTION OF
24 CRACK COCAINE WITHIN THE PROXIMITY OF A SCHOOL OR PARK. AND
25 THE STATE MUST FIRST PROVE BEYOND A REASONABLE DOUBT THAT

CHARGE OF THE COURT

244

1 THE SUBSTANCE INVOLVED WAS, IN FACT, CRACK COCAINE.

2 THE STATE MUST ALSO PROVE BEYOND A REASONABLE DOUBT
3 THAT THE DEFENDANT DISTRIBUTED, SOLD, PURCHASED,
4 MANUFACTURED OR UNLAWFULLY POSSESSED WITH THE INTENT TO
5 DISTRIBUTE CRACK COCAINE WHILE IN, ON OR WITHIN ONE HALF
6 MILE OF THE GROUNDS OF A PUBLIC OR PRIVATE ELEMENTARY,
7 MIDDLE OR SECONDARY SCHOOL, A PUBLIC PLAYGROUND OR PARK, A
8 PUBLIC VOCATIONAL OR TRADE SCHOOL, OR TECHNICAL EDUCATION
9 CENTER, OR A PUBLIC OR PRIVATE COLLEGE OR UNIVERSITY.

10 AND FINALLY THE DEFENDANT IS CHARGED WITH THREATENING
11 THE LIFE OF A PUBLIC OFFICIAL. NOW IT IS UNLAWFUL FOR A
12 PERSON KNOWINGLY AND WILFULLY TO DELIVER OR CONVEY TO A
13 PUBLIC OFFICIAL OR TO A TEACHER OR PRINCIPAL OF AN
14 ELEMENTARY OR SECONDARY SCHOOL IN A LETTER OR PAPER,
15 WRITING, PRINT, MISSIVE, DOCUMENT OR ELECTRONIC
16 COMMUNICATION OR VERBAL OR ELECTRONIC COMMUNICATION WHICH
17 CONTAINS A THREAT TO TAKE THE LIFE OR TO INFLECT THE BODILY
18 HARM UPON THE PUBLIC OFFICIAL OR HIS -- OR MEMBERS OF HIS
19 IMMEDIATE FAMILY IF THE THREAT IS DIRECTLY RELATED TO THE
20 PUBLIC OFFICIALS PROFESSIONAL RESPONSIBILITIES. AND FOR THE
21 PURPOSES OF THIS SECTION A DEPUTY SHERIFF IS CONSIDERED TO
22 BE A PUBLIC OFFICIAL.

23 NOW, LADIES AND GENTLEMEN, I WANT TO TELL YOU, MADAME
24 FORELADY, THERE ARE THREE SEPARATE INDICTMENTS. AND ON EACH
25 INDICTMENT THERE ARE TWO POSSIBLE VERDICTS WHICH YOU MAY --

CHARGE OF THE COURT

245

1 MAY REACH. YOU NEED TO REACH ONE OF THESE TWO VERDICTS ON
2 EACH INDICTMENT. AND I EMPHASIZE, THEY'RE EACH TO STAND
3 ALONE AND TO BE CONSIDERED INDEPENDENTLY AND SEPARATELY
4 BASED ON THE EVIDENCE THAT RELATES -- AND THE LAW THAT
5 RELATES TO THAT INDICTMENT.

6 THERE'S NO IMPORTANCE IN THE ORDER IN WHICH I STATE
7 THESE VERDICTS. ONE HAS -- I HAVE TO STATE ONE FIRST. BUT
8 THEY'RE EITHER GUILTY OR NOT GUILTY. AND I WANT TO TELL
9 YOU, LADIES AND GENTLEMEN, THAT ALL TWELVE OF YOU MUST AGREE
10 ON YOUR VERDICT ON EACH SEPARATE INDICTMENT. YOUR VERDICT
11 MUST BE UNANIMOUS.

12 AND YOU MUST CONSIDER -- WELL, I WOULD TELL YOU YOUR
13 VERDICT CANNOT BE BASED ON PASSION, PREJUDICE, EMOTION,
14 SYMPATHY OR ANY OTHER CONSIDERATION THAT IS NOT IN EVIDENCE
15 IN THIS CASE. YOU BASE YOUR DECISION ON THE EVIDENCE THAT
16 HAS BEEN PRESENTED. AND REMEMBER, YOU HAVE NO ENEMIES TO
17 PUNISH, AND YOU HAVE NO FRIENDS TO REWARD.

18 NOW, LADIES AND GENTLEMEN, I'M GOING TO EXCUSE YOU BACK
19 TO YOUR JURY ROOM IN JUST A SECOND. AND I'LL ASK YOU FOR
20 ONE MORE TIME NOT TO BEGIN YOUR DELIBERATIONS UNTIL YOU
21 RECEIVE THE EVIDENCE WITH THIS VERDICT FORM BACK IN THE JURY
22 ROOM. WHEN THAT COMES BACK YOU CAN BEGIN YOUR
23 DELIBERATIONS.

24 I HOPE BY NOW THAT Y'ALL WILL HAVE SOME LUNCH WAITING
25 ON YOU. YOU ALL DECIDE HOW YOU WANT TO, YOU KNOW, DEAL WITH

CHARGE OF THE COURT

246

1 THAT. EAT NOW, DECIDE LATER OR DO IT ALL AT ONCE, WHATEVER
2 YOU WANT TO DO.

3 BUT AT THIS TIME I'M GOING TO EXCUSE YOU. PLEASE DON'T
4 BEGIN DELIBERATIONS UNTIL I SEND THIS STUFF BACK TO YOU.
5 MS. BOWER, I'M GOING TO HAVE TO ASK YOU TO WAIT IN THE
6 COURTROOM. OKAY. THANK YOU VERY MUCH.

7 (WHEREUPON THE JURY EXITED THE COURTROOM AT 1:05 PM)

8 THE COURT: ALL RIGHT. ANY EXCEPTION OR OBJECTION TO
9 THE CHARGE OTHER THAN THOSE PREVIOUSLY NOTED?

10 MS. TESSITORE: NONE FROM THE STATE, YOUR HONOR.

11 MS. HORLBECK: NONE FROM THE DEFENSE, BUT I DO HAVE ONE
12 ADDITIONAL THING. I WOULD -- AND I ---

13 THE COURT: UH-HUH (AFFIRMATIVE).

14 MS. HORLBECK: OKAY. I WOULD ASK THAT YOUR HONOR NOT
15 SEND BACK THE INDICTMENTS AS THEY ARE NOT ---

16 THE COURT: NO, I DON'T EVER SEND THEM BACK.

17 MS. HORLBECK: OKAY.

18 THE COURT: OKAY. MS. BOWER, YOU ARE EQUALLY QUALIFIED
19 AS A JUROR. YOU'VE PAID JUST AS CLOSE ATTENTION AS ALL
20 THOSE OTHER FOLKS THAT YOU SERVED WITH. YOU HAVE THE
21 ABILITY AND THE, I MEAN, YOU KNOW, YOU'RE JUST AS GOOD AS
22 THEY ARE. THE LAW ONLY ALLOWS TWELVE TO DECIDE. SO I CAN'T
23 LET YOU GO BACK.

24 BUT I -- IF SOMEONE HAD FALLEN ILL, YOU WERE THERE.
25 AND WE NEEDED YOU. AND I APPRECIATE -- YOUR SERVICES IS NO

1 LESS BECAUSE I -- THE LAW DOESN'T ALLOW ME TO LET YOU GO
2 BACK THERE.

3 YOU DO -- THERE IS A LUNCH BACK THERE. AND WE'LL ASK
4 THE BAILIFFS TO GET THAT OUT FOR YOU. AND YOU CAN TAKE IT
5 WITH YOU OR STAY HERE AND EAT IT. YOU MAY COME, GO AS YOU
6 PLEASE. AND I BELIEVE I NEED TO ASK YOU TO CALL BACK AFTER
7 6:00 THIS EVENING TO FIND OUT INSTRUCTIONS FOR WHEN TO
8 REPORT NEXT. OKAY? THANK YOU VERY MUCH.

9 (WHEREUPON MS. BOWER, THE ALTERNATE, EXITED THE
10 COURTROOM)

11 THE COURT: ALL RIGHT. IF I COULD GET THE LAWYERS TO
12 MAKE SURE ALL THE EVIDENCE IS RIGHT.

13 (PAUSE)

14 THE COURT: AND YOU ALL, I'M SORRY WE CAN'T PROVIDE
15 LUNCH FOR EVERYBODY. BUT YOU ALL ARE FREE TO GO, BUT LEAVE
16 YOUR CELL PHONES SO WE CAN GET IN TOUCH WITH YOU. AND I
17 JUST WANT TO TELL -- EVERYBODY OUGHT TO BE HAPPY WITH THE
18 PRESENTATIONS OF THEIR ATTORNEYS. IT WAS EXCELLENT ADVOCACY
19 ON BEHALF OF BOTH PARTIES. ALL RIGHT.

20 (WHEREUPON THE JURY BEGAN DELIBERATING AT 1:09 PM)

21 (WHEREUPON COURT WAS IN RECESS AT 1:09 PM)

22 THE COURT: OKAY. YOU GOT A QUESTION. PLEASE CLARIFY
23 CHARGE FOR THREATENING THE LIFE AND THE LAW AND HOW IT
24 PERTAINS. SO I GUESS I'LL JUST READ THAT TO THEM AGAIN.
25 AND I CAN -- ALL RIGHT. ANYTHING? Y'ALL HAVE ANYTHING YOU

1 WANT TO ...

2 (PAUSE)

3 THE COURT: NO?

4 MS. HORLBECK: NO, NONE ---

5 MS. TESSITORE: NOTHING FROM THE STATE.

6 MS. HORLBECK: --- NONE FROM DEFENSE.

7 THE COURT: OKAY.

8 (WHEREUPON COURT'S EXHIBIT 2 WAS MARKED)

9 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 2:08 PM)

10 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN. I'VE GOT

11 YOUR QUESTION. AND I'LL READ IT INTO THE RECORD. PLEASE

12 CLARIFY THE CHARGE FOR THREATENING A LIFE AND THE LAW AND

13 HOW IT PERTAINS. SO WHAT I WILL DO IS RECHARGE YOU ON --

14 AND SEE IF I CAN SATISFY YOUR CURIOSITY HERE.

15 I'M GOING TO READ TO YOU A SECTION OF SOUTH CAROLINA

16 CODE OF LAWS, A PORTION OF SOUTH CAROLINA CODE OF LAWS,

17 SECTION 16-3-1040 AS IT APPLIES TO THIS CASE AND TELL YOU

18 THAT IT IS UNLAWFUL FOR A PERSON KNOWINGLY AND WILFULLY TO

19 DELIVER OR CONVEY TO A PUBLIC OFFICIAL ANY LETTER OR PAPER,

20 WRITING, PRINT, MISSIVE, DOCUMENT OR ELECTRONIC

21 COMMUNICATION OR VERBAL OR ELECTRONIC COMMUNICATION WHICH

22 CONTAINS A THREAT TO TAKE THE LIFE OR TO INFLICT BODILY HARM

23 UPON THE PUBLIC OFFICIAL OR MEMBERS OF HIS OR HER IMMEDIATE

24 FAMILY IF THE THREAT IS DIRECTLY RELATED TO THE PUBLIC

25 OFFICIAL'S PROFESSIONAL RESPONSIBILITIES.

VERDICT OF THE JURY

249

1 FOR THE PURPOSES OF THIS CASE THE LAW PRESUMES THAT A
2 DEPUTY SHERIFF SHOULD BE INCLUDED AS A OR CONSIDERED A
3 PUBLIC OFFICIAL. IMMEDIATE FAMILY MEANS THE SPOUSE, CHILD,
4 GRANDCHILD, MOTHER, FATHER, SISTER OR BROTHER OF THE PUBLIC
5 OFFICIAL.

6 AND I WOULD TELL YOU THAT THREAT IS AN EXPRESSION OF
7 INTENTION TO INFLICT EVIL, INJURY OR DAMAGE, AN INDICATION
8 OF SOMETHING IMPENDING, TO PORTEND EVIL. OKAY? IS THAT
9 GOING TO SATISFY -- WELL, Y'ALL GO BACK TO YOUR ROOM AND SEE
10 IF THAT'S WHAT YOU WERE LOOKING FOR. IF NOT, PLEASE LET ME
11 KNOW. OKAY. THANK YOU.

12 (WHEREUPON THE JURY EXITED THE COURTROOM AT 2:11 PM)

13 THE COURT: ALL RIGHT. ANY EXCEPTION TO THE RECHARGE?

14 MS. TESSITORE: NONE FROM THE STATE, YOUR HONOR.

15 MS. HORLBECK: NONE FROM DEFENSE.

16 THE COURT: OKAY. Y'ALL BE AT EAST FOR A FEW MINUTES
17 THEN.

18 (WHEREUPON COURT WAS IN RECESS AT 2:11 PM)

19 THE COURT: OKAY. Y'ALL READY?

20 (PAUSE)

21 (WHEREUPON THE JURY ENTERED THE COURTROOM AT 3:18 PM)

22 THE COURT: ALL RIGHT. MADAME FORELADY, I UNDERSTAND
23 Y'ALL HAVE REACHED A VERDICT?

24 MADAME FORELADY: YES, SIR.

25 THE COURT: WOULD YOU PLEASE HAND IT TO THE BAILIFF?

VERDICT OF THE JURY

250

1 MADAME CLERK: YOUR HONOR, THIS IS THE STATE VERSUS
2 ROBERT F. GRANT, INDICTED FOR 2007-GS-23-2004, 2007-GS-23-
3 2005, 2007-GS-23-2006, VERDICT, AS TO THE CHARGE FOR
4 DISTRIBUTION OF CRACK COCAINE WITHIN ONE HALF MILE FROM A
5 SCHOOL, WE, THE JURY, FIND THE DEFENDANT, ROBERT F. GRANT,
6 GUILTY.

7 AS TO THE CHARGE FOR DISTRIBUTION OF CRACK COCAINE, WE,
8 THE JURY, FIND THE DEFENDANT, ROBERT F. GRANT, GUILTY. AS
9 TO THE CHARGE FOR THREATENING A LIFE, WE, THE JURY, FIND THE
10 DEFENDANT, ROBERT F. GRANT, NOT GUILT. SIGNED BY THE
11 FOREPERSON, CATHY HOLCOMBE. THIS IS YOUR VERDICT, SO SAY
12 YOU ALL?

13 THE COURT: PLEASE SIGNIFY BY RAISING YOUR RIGHT HAND,
14 IF YOU WOULD, IF THAT'S YOUR VERDICT.

15 (WHEREUPON ALL JURORS RAISED THEIR RIGHT HAND)

16 THE COURT: OKAY. THANK YOU. ALL RIGHT. MADAME
17 FORELADY, LADIES AND GENTLEMEN OF THE JURY, THANK YOU VERY
18 MUCH FOR YOUR SERVICE. Y'ALL WANT SOME GOOD NEWS OR -- GOOD
19 NEWS?

20 (LAUGHTER)

21 THE COURT: WE -- I'M GOING TO CUT YOU LOOSE FOR THE
22 REST OF THE WEEK. WE'VE GOT JURORS COMING IN FOR TOMORROW.
23 AND WE'LL -- SO Y'ALL ARE FREE. YOU'RE DONE. AND I'M GOING
24 TO EXCUSE Y'ALL BACK TO YOUR JURY ROOM. AND I'M GOING TO
25 TRY AND GET BACK THERE AND SPEAK WITH YOU BEFORE YOU LEAVE.

SENTENCE OF THE COURT

251

1 BUT THANK YOU VERY MUCH FOR YOUR SERVICE.

2 IS THERE ANYTHING FURTHER OF THIS JURY FROM ANYBODY?

3 MS. HORLBECK: NO.

4 MS. TESSITORE: NO, YOUR HONOR.

5 THE COURT: OKAY. THANK YOU.

6 (WHEREUPON THE JURY EXITED THE COURTROOM AT 3:21 PM)

7 THE COURT: ALL RIGHT. Y'ALL GOING TO GET THE

8 PAPERWORK TOGETHER, AND I'LL ---

9 MADAME CLERK: YES. IT'LL TAKE JUST ONE MINUTE.

10 THE COURT: OKAY. I'LL STEP BACK, AND I'LL BE RIGHT

11 BACK.

12 (WHEREUPON COURT WAS IN RECESS AT 3:21 PM)

13 THE COURT: ALL RIGHT. Y'ALL READY? COME ON AROUND.

14 ALL RIGHT. ANYTHING THE STATE WANTS TO TELL ME?

15 MS. TESSITORE: WELL, YOUR HONOR, OBVIOUSLY THE JURY

16 HAS SPOKEN, BUT I WOULD LIKE TO READ YOU THE PRIOR RECORD

17 FOR ---

18 THE COURT: YEAH, ---

19 MS. TESSITORE: --- THE DEFENDANT.

20 THE COURT: --- PLEASE LET ME HAVE THAT.

21 MS. TESSITORE: WHEN YOU'RE READY.

22 THE COURT: YEAH, GO AHEAD.

23 MS. TESSITORE: ALL RIGHT. IN 1983, TRESPASSING, 1985,

24 AUTO BREAKING, 1985, TRESPASSING, 1987, TRESPASSING AND

25 ASSAULT AND BATTERY, 1989, GRAND LARCENY, OCTOBER 11TH OF

SENTENCE OF THE COURT

252

1 1990, DISTRIBUTION OF COCAINE, ON NOVEMBER 29TH, 1990,
2 ANOTHER DISTRIBUTION OF COCAINE AND A DRIVING UNDER
3 SUSPENSION, 1994, UNLAWFUL CARRYING OF A PISTOL AND
4 TRESPASSING, 1995, USE OF VEHICLE WITHOUT OWNER'S CONSENT
5 AND TRESPASSING, 1996, ANOTHER USE OF VEHICLE WITHOUT
6 OWNER'S CONSENT, DRIVING UNDER SUSPENSION, 1999, IN GEORGIA,
7 OBSTRUCTION OF OFFICERS AND BATTERY.

8 IN 2000, CDV AND TRESPASSING, PUBLIC DISORDERLY
9 CONDUCT, 2001, RESISTING ARREST WITH ASSAULT, ALSO UNLAWFUL
10 NEGLECT OF CHILD, OF A CHILD FOR WHICH HE RECEIVED EIGHT
11 YEARS, IN JULY OF 2007 FOLLOWING THIS INCIDENT THAT OCCURRED
12 ON JANUARY 10TH OF '07 HE WAS CONVICTED OF SHOPLIFTING. AND
13 THEN IN DECEMBER OF '07, USE OF VEHICLE WITHOUT OWNER'S
14 CONSENT.

15 AND ON MARCH 5TH OF THIS YEAR, 2008, EARLIER THIS
16 MONTH HE WAS ARRESTED FOR TRESPASSING AT THE VERY SAME
17 LOCATION AT INNTOWN SUITES. AND HE WAS SENTENCED TO THAT
18 ALREADY. I THINK IT WAS THIRTY DAYS. AND I DO HAVE COPIES
19 OF THE INDICTMENTS FROM LAURENS, THE CONVICTIONS THERE IF
20 YOU'D LIKE TO SEE THOSE.

21 THE COURT: ALL RIGHT. YEAH.

22 MS. TESSITORE: SO THIS IS A THIRD OFFENSE, YOUR HONOR.

23 THE COURT: ALL RIGHT. ANYTHING Y'ALL WANT TO TELL ME?

24 MS. HORLBECK: YES, YOUR HONOR, JUST BRIEFLY.

25 OBVIOUSLY YOU KNOW MR. GRANT, BUT YOU MAY NOT KNOW THAT HIS

SENTENCE OF THE COURT

253

1 WIFE IS SEATED BEHIND HIM.

2 THE COURT: OKAY.

3 MS. HORLBECK: AND HAS BEEN IN COMPLETE SUPPORT OF HIM.
4 HE'S FORTY-TWO YEARS OLD. HE'S A NATIVE OF LAURENS COUNTY.
5 AND HE'S GOT AN ELDERLY AND SICK MOTHER THERE. HE HAS BEEN
6 GAINFULLY EMPLOYED AT FLUOR DANIEL AND ALSO JENNINGS AND
7 DILL AS A CERTIFIED WELDER.

8 JUST FOR CLARIFICATION PURPOSES, WE DO UNDERSTAND THAT
9 THE JURY'S SPOKEN, BUT AT ONE TIME WHEN WE WERE STILL -- WE
10 WERE STILL NEGOTIATING A POSSIBLE -- PRE-TRIAL NEGOTIATIONS
11 SOMETIME AGO, THERE WAS AN OFFER FOR DISTRIBUTION OF
12 COCAINE, FIRST, WHICH AS YOUR HONOR KNOWS WOULD NOT HAVE
13 CARRIED A MINIMUM SENTENCE. WHAT HE'S BEEN CONVICTED OF
14 TODAY DEFINITELY CARRIES A MINIMUM SENTENCE. AND HE'LL
15 LIKELY DO EIGHTY-FIVE PERCENT OF THAT.

16 AND WE WOULD ASK THAT YOU CONSIDER GIVING HIM THE
17 MINIMUM SENTENCE TODAY AND ALSO CONSIDER A CONCURRENT
18 SENTENCE. WE COMPLETELY UNDERSTAND THAT THE JURY'S SPOKEN,
19 BUT WE DID HAVE SOME ISSUES THAT WE FELT WERE WORTH TRYING
20 TO GO TO TRIAL ON.

21 THE COURT: OKAY.

22 MS. HORLBECK: THAT'S ALL WE HAVE. I DON'T KNOW IF MR.
23 GRANT HAS ANYTHING TO SAY.

24 THE COURT: GO AHEAD. WHAT YOU WANT TO TELL ME?

25 MR. GRANT: YES, SIR. JUDGE, I WAS A LOT YOUNGER WHEN

SENTENCE OF THE COURT

254

1 I DID A LOT OF THIS STUFF. AND I PAID FOR IT. AND, YOU
2 KNOW, I'M SORRY FOR THE PROBLEM THAT I PUT PEOPLE THROUGH.

3 BUT, YOU KNOW, HERE IN THE LAST YEAR OR SO, TWO YEARS,
4 I JUST GOT MARRIED IN APRIL. AND, YOU KNOW, I'VE BEEN
5 TRYING TO GET MY LIFE STRAIGHTENED OUT.

6 AND I JUST, THE MISTAKE, YOU KNOW, THAT I MADE, I KNOW
7 I CAN'T TAKE IT BACK, BUT I ASK YOU TO HAVE MERCY ON ME AND
8 THAT YOU JUST SEE FIT THAT, YOU KNOW, JUST TAKE IT IN
9 CONSIDERATION THAT MY MOM AND MY WIFE IS -- AND MY KIDS, YOU
10 KNOW, I LOVE THEM ALL.

11 AND, YOU KNOW, IT'S NOT LIKE I KILLED ANYBODY OR
12 ANYTHING. EVERYTHING I'VE DONE, I ONLY HURT MYSELF. AND I
13 ASK THAT YOU TAKE THAT INTO CONSIDERATION AND JUST -- JUST
14 HAVE MERCY ON ME AS FAR AS THE SENTENCING PHASE. AND I'D
15 JUST RATHER FOR THE COURT TO TAKE A LOT OF STUFF INTO
16 CONSIDERATION.

17 THE COURT: ALL RIGHT. ANYTHING ELSE?

18 MS. HORLBECK: NO, YOUR HONOR.

19 THE COURT: ALL RIGHT. WELL, ON THE DISTRIBUTION,
20 TWENTY YEARS. ON THE PROXIMITY CASE, FIFTEEN. GOOD LUCK TO
21 YOU.

22 MR. GRANT: THAT'S CONCURRENT?

23 THE COURT: YEAH. ALL RIGHT.

24 MS. TESSITORE: THANK YOU, YOUR HONOR.

25 (HEARING ENDED AT 3:35 PM)

1.

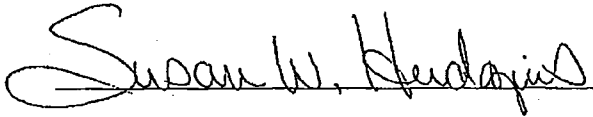
(END OF REQUESTED TRANSCRIPT OF RECORD)

1 CERTIFICATE OF REPORTER

2 I, THE UNDERSIGNED, SUSAN W. HUDGINS, OFFICIAL COURT
3 REPORTER FOR THE THIRTEENTH JUDICIAL CIRCUIT OF THE STATE OF
4 SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
5 TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
6 PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL/HEARING
7 OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT
8 COURT FOR GREENVILLE COUNTY, SOUTH CAROLINA, ON THE 11TH -
9 12TH DAY OF MARCH 2008.

10 I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL,
11 NOR INTEREST TO ANY PARTY HERETO.

12 OCTOBER 2, 2008

13 
14

15 CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA)

In the Court of Common Pleas

County of GREENVILLE)ROBERT F. GRANT)

Full name and prison number, if any, of applicant.)

v.)

THE STATE OF South Carolina)

Name of Respondent)

APPLICATION FOR

POST-CONVICTION RELIEF

2010-CP-23- 5933

2010 JUL 21 PM 2:32
 RECEIVED
 CLERK OF COURT
 GREENVILLE
 SOUTH CAROLINA

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly, handwritten, or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the applicant is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention McCormick C.I. 386 Redemption way
McCormick, South Carolina 29899
2. Name and location of Court which imposed sentence court of General
Session County of Greenville, S.C. Thirteenth Judicial Circuit
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2007-ES-23-002005, Distribution of crack cocaine
 - (b) 2007-ES-23-002004, possession of crack cocaine
 - (c) w/I to Dist, 1/2 mile from school
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) MARCH 12, 2008 20 year for Distribution
 - (b) 15 year for possession w/I
 - (c) to Dist 1/2 mile school to run concurrent

5. Check whether a finding of guilty was made

- (a) after a plea of guilty N/A
 (b) after a plea of not guilty not Guilty
 (c) after a plea of nolo contendere N/A

6. Did you appeal from the judgment of conviction or the imposition of sentence? yes

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

- i. South CAROLINA Court of Appeals
 ii. _____
 iii. _____

(b) the result in each such Court to which you appealed:

- i. Dismissed
 ii. _____
 iii. _____

(c) the date of each such result:

- i. February, 12, 2010
 ii. _____
 iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. 2010 - CP - 105
 ii. _____
 iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a) N/A
 (b) N/A
 (c) N/A

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective counsel for failing to Investigate
 (b) Ineffective counsel for failing to suppress Evidence/Testimo.
 (c) Ineffective counsel for ~~challenge~~ failing to challenge
officer credibility on back ground Record.
 (d) Counsel Trial strategy

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) see #9 on page 2

(b) see #9 on page 2

(c) see #9 on page 2

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law ?

N/A

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

N/A

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)

N/A

(d) any other petitions, motions or applications in this or any other Court?

N/A

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(b) the name and location of the Court in which each was filed:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(c) the disposition thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(d) the date of each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? No

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. N/A
- ii. N/A
- iii. N/A

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. N/A
- iii. N/A

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) Not proper Forum
- (b) _____
- (c) _____

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? N/A
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? No

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. Ms. CAROLINE HORTHECK, Esquire TRIAL P.D., OF
- ii. Ms. ELIZABETH WILLY, Esquire TRIAL P.D., OF
- iii. Greenville, South CAROLINA, 305 E. North St, Suite 12i

(b) the proceedings at which each such attorney represented you. ²⁰¹⁶

- i. Robert M. PACHAK Appellate Defender
- ii. Columbia South CAROLINA 29201-3332
- iii. 1330 Lady Street, Suite 401

18. State clearly the relief you seek in filing this application.

VACATE sentence AND conviction
OF New TRIAL

19. Are you now under sentence from any other court that you have not challenged?

No

2019 JUL 21 PM 2:32
FILED-CLERK OF COURT
PAUL B. MCNEIDER
GREENVILLE, SC

D. Warden att;
retained.

FORM 5

STATE OF SOUTH CAROLINA

County of GREENVILLE) SEP 21 10 11 IN THE COURT OF COMMON PLEAS

FILED COMPUTER

ROBERT S. GRANT 277198

Full name and prison number (if any) of Applicant

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
KENSINGER

2010-CP-23- 7770

v.

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

INSTRUCTIONS B READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention MCCORMICK CORRECTIONAL INSTITUTION,
RT. 2 BOX 100, MCCORMICK SC 29835
2. Name and location of Court which imposed sentence GREENVILLE COUNTY
GENERAL SESSIONS, COURT, GREENVILLE, SC
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) 2007-63-2004-2006, 15 yrs

SCANNED

- (b) _____
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) MARCH 12, 2008
- (b) 20 yrs, distribution, 15 yrs, on proximity
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty xx
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered Ayes@ to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Appeal Dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. 2-4-10
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered Ano@ to (7), state your reasons for not so appealing:
- (a) _____

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) ineffective assistance of council
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) attorney failed to object to improper instructions by judge
- (b) failed to properly prepare and investigate
- (c) gave bad advice, failed to investigate and bring in witness
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? _____
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____
 (b) your trial, if any? _____
 (c) your sentencing? _____
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered Ayes@ to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. Carolina HOrlbeck, 101 Whitsett Street, Greenville, SC
Elizabeth Wiygul, 101 Whitsett, Street, Greenville, SC
 ii. Robert Pachak, Appellate Defense, P.O. Box 11589
Columbia, SC 29211-1589
 iii. _____

 (b) the proceedings at which each such attorney represented you:
 i. _____

 ii. _____

 iii. _____

19. State clearly the relief you seek in filing this application:

New Trial

20. Are you now under sentence from any other court that you have not challenged?

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Greenville)

VERIFICATION

I, Richard H. Warder, Attorney, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Richard H. Warder

SWORN to and subscribed before me this 21st day of September, 2010.

Dina Collier (L.S.)
Notary Public

My Commission Expires: 10-31-13

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Applicant

SWORN or affirmed to and subscribed before me this _____ day of _____, _____.

Notary Public

My Commission Expires: _____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE 13TH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	
	)	2010-CP-23-5933
	)	2010-CP-23-7770
Robert Frank Grant, Jr.,	)	
S.C.D.C. No. 277198,	)	
	)	
Applicant,	)	MOTION FOR MERGER
	)	
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

The Applicant in the above-captioned matter has filed two applications for post-conviction relief, one of which was filed July 21, 2010 (2010-CP-23-5933) and another filed September 21, 2010 (2010-CP-23-7770). The Respondent notes these two applications raise issues related to the same convictions.

Since an applicant is not generally allowed to have two PCR proceedings in regard to the same conviction, the Respondent hereby moves to have the two proceedings merged and have the application for PCR filed September 21, 2010 (2010-CP-23-7770) be considered an amendment to the initial application for PCR filed July 21, 2010 (2010-CP-23-5933). See S.C. Code Ann. § 17-27-90 (2003); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981).

The Respondent therefore moves to merge these two cases, with docket number 2010-CP-23-5933 being the surviving case.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

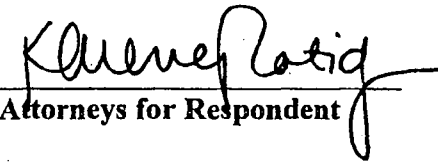
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

December 16, 2010

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

2010-CP-23-5933

2010-CP-23-7770

ROBERT FRANK GRANT, JR., 277198)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

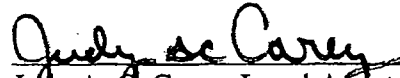
STATE OF SOUTH CAROLINA,)

Respondent.)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Motion for Merger** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Richard H. Warder, Esquire
Post Office Box 26133
Greenville SC 29616

DATED this 16th day of December, 2010.


 Judy A. Carey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2010-CP-23-5933
COUNTY OF GREENVILLE	)	
	)	
Robert Frank Grant, Jr.,	)	
S.C.D.C. No. 277198,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed July 21, 2010, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the March 2007 term of General Sessions for possession with intent to distribute (PWID) crack cocaine within proximity of a school (2007-GS-23-2004) and distribution of crack cocaine (2007-GS-23-2005). Caroline Horlbeck, Esquire represented the Applicant.

After the State called the case to trial, the Applicant was found guilty. On March 12, 2008, the Honorable Edward W. Miller sentenced the Applicant to fifteen (15) years for PWID crack cocaine within proximity of a school and twenty (20) years for distribution of crack cocaine, third offense.

A notice of appeal was filed at the South Carolina Court of Appeals. Robert M. Pachak, Esquire of the South Carolina Office of Appellate Defense perfected the appeal in the form of an

Anders¹ brief. The Court of Appeals dismissed the appeal. State v. Grant, Op. No. 2010-UP-105 (S.C. Ct. App. filed February 4, 2010).

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the appellate records.

II.

In his application for post-conviction relief the Applicant alleges he is being held in custody unlawfully for the following reason:

1. Ineffective assistance of trial counsel:
 - a. Failure to investigate.
 - b. Failure to suppress evidence/testimony.
 - c. Failure to challenge officer credibility on background record.
 - d. Trial strategy.

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a criminal defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

¹ Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held on the issues raised in the PCR application.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

December 16, 2010

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

2010-CP-23-5933

ROBERT FRANK GRANT, JR.)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,)

Respondent.)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Richard H. Warder, Esquire
Post Office Box 26133
Greenville SC 29616

DATED this 16th day of December, 2010.


 Judy A.C. Carey, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
2 COUNTY OF GREENVILLE) 2010-CP-23-5933
3)
4 Robert F. Grant, Jr.) TRANSCRIPT OF RECORD
5)
6 -vs-)
7 State of South Carolina)

8 October 31, 2012
9 Greenville, South Carolina

10 B E F O R E:

11 THE HONORABLE MARKLEY DENNIS, JR., Judge.

12 A P P E A R A N C E S

13 Richard Warder, Esquire
Attorney for the Applicant

14 Karen Ratigan, Esquire
Assistant Attorney General
15 Attorney for the State

16
17 CAROLINE HISKELL
18 Thirteenth Circuit Court Reporter
19
20
21
22
23
24
25

I N D E X

WITNESSES

Robert Grant

Caroline Horlbeck

Robert Grant (Recalled)

DIR

4

26

CROSS

20

33

REDIRECT

25

E X H I B I T S

IDENTIFICATION

Applicant's

1 Correspondence

ID

IN EVD.

Robert Grant vs. State of South Carolina

P R O C E E D I N G S

THE COURT: Ms. Ratigan.

MS. RATIGAN: Thank you, Your Honor, may it please the Court. This is the case of Robert Grant versus the State of South Carolina. Docket Number is 2010-CP-23-5933. Mr. Grant was initially indicted for possession with intent to distribute crack cocaine in proximity of a school, distribution of crack cocaine and threatening the life of a public official.

He was represented on these charges by Ms. Horlbeck who is seated to my right. After the case was brought to trial, he was found guilty of the PWID charge and PWID within proximity and not guilty of threatening the life of public official.

On March 12, 2008, Judge Miller levied concurrent sentences of 15 years for the proximity charge and 20 years for distribution of crack cocaine third offense. I believe that was later reduced to 15 years but I don't have any documentation that 20 years was later reduced to 15 to serve the 15 year sentence.

A notice of appeal for filed to the Court of Appeals. It was perfected as an Anders Brief and it was dismissed in February of 2010.

Ms. Horlbeck just handed me an order from Judge Miller. The sentenced was reduced March 31, 2008

Robert Grant vs. State of South Carolina

1 down to that 15 year sentence.

2 THE COURT: All right. Mr. Grant, you're
3 here today on your application. Is it your desire today
4 to go forward with the understanding that all I can do is
5 return you to square one.

6 DEFENDANT GRANT: Yes.

7 THE COURT: You face some exposure to
8 potentially a longer sentence. Do you understand that?

9 DEFENDANT GRANT: Yes, sir.

10 THE COURT: And it's still your desire to go
11 forward?

12 DEFENDANT GRANT: Yes.

13 THE COURT: You may proceed, sir.

14 MR. WARDER: We call Robert Grant.

15 THE CLERK: Mr. Grant, please place your left
16 hand on the Bible and raise your right hand.

17 ROBERT FRANK GRANT, JR., having been duly
18 sworn, testified as follows:

19 Thank you. You may be seated. State your
20 name for the record.

21 THE WITNESS: Robert Grant.

22 DIRECT EXAMINATION

23 BY MR. WARDER:

24 Q. Mr. Grant, when were you arrested on these
25 charges that you are now serving a sentence for?

Robert Grant vs. State of South Carolina.

1 A. I was arrested in '07, January 10th.

2 Q. When were you appointed a lawyer? When did you
3 first see your lawyer?

4 A. She made contact with -- when I first seen her?
5 She came to Greenville County jail seven days after I was
6 picked up on pending charges.

7 Q. What subject did you discuss?

8 A. At that time we were talking about the bail and
9 the reduction of my bail and I had told her I wanted a
10 preliminary hearing.

11 Q. Now, she was successful in getting your bail
12 reduced from hundred thousand dollars and you ultimately
13 signed a person recognizance bond?

14 A. Yes, sir, she was.

15 Q. And after you got out, did you have occasion to
16 get re-arrested again?

17 A. Yes, sir. What had happened was Ms. Horlbeck had
18 made contact with me over the phone and told me they was
19 planning on taking me to trial.

20 Q. Slow down a little bit. Did you get re-arrested?

21 A. Sir?

22 Q. You got re-arrested in another county.

23 A. Yes, sir, in Laurens County.

24 Q. And you were incarcerated after that arrest?

25 A. Yes, sir.

Robert Grant vs. State of South Carolina

1 Q. And while you were incarcerated, did you have
2 contact with your lawyer?

3 A. She contacted me by phone.

4 Q. Tell us about that conversation.

5 A. What she was basically talking about was the
6 State had offered me a eight-year straight up plea with a
7 cap on it and so I was telling her about the \$20 bill that
8 was supposed to be used during the purchase of the thing
9 -- the distribution. And she never said anything to me no
10 more about the plea no more than it was just a straight up
11 eight year plea.

12 Q. And how long did that conversation last on the
13 telephone?

14 A. We may have talked at the most probably 10
15 minutes.

16 Q. And you were telling her about the facts in your
17 case and the fact that there was some buy money that was
18 alleged that you had never got.

19 A. Yes, sir. I mentioned that to her because I know
20 that the charge was a distribution charge and I knew that
21 nobody -- it wasn't no \$20 bill ever transpired. I was
22 kind of confused about that so I told her to ask the
23 solicitor about that \$20 that was supposed to be used in
24 the purchase. And we discussed mainly the plea, which she
25 never finished discussing it with me in full detail.

Robert Grant vs. State of South Carolina

1 Q. You got out of the Laurens County jail.

2 A. Yes, sir.

3 Q. Do you know when you got out?

4 A. She made contact with me in October and I got out
5 of the county jail like in December. I stayed like until
6 December.

7 Q. After you got out of jail, when was the next time
8 you saw your lawyer?

9 A. They released me and she told me they was
10 supposed to be taking me to trial and they wanted me to go
11 to trial.

12 Q. Who told you that?

13 A. Ms. Horlbeck.

14 Q. Was that in person or a phone call?

15 A. That was over the phone.

16 Q. She called you a second time?

17 A. No, sir. She just talked to me that first time
18 but she said that I needed -- I wanted her to contact some
19 witnesses, you know, that I had said something to her
20 about.

21 Q. All that took place in the 10 minute phone call?

22 A. Yes, sir.

23 Q. Now, my question is when you got out of jail when
24 was the next time she contacted you?

25 A. She came to Greenville County. I was picked up

Robert Grant vs. State of South Carolina

1 on a trespassing charge.

2 Q. Now, that was a trespassing charge that arose
3 from the incident location that this first arrest
4 happened?

5 A. Yes, sir.

6 Q. On that occasion did she give you anything?

7 A. She gave me this letterhead that was faxed to her
8 from the Solicitor's Office and it contained some
9 information about the \$20 bill that I asked her about and
10 the fact that the eight year straight up plea. That was
11 the first time I had ever seen it in writing or anything
12 like that.

13 Q. What did you notice about the straight up plea
14 thing when you got the paper that had it on it?

15 A. I just basically, you know, I was thinking that
16 it was jus a mandatory eight. I was, you know -- my
17 assumption of the paper was that it was just a straight up
18 eight years I was going to have to do. She didn't say
19 anything about parole. She didn't say anything about
20 probation. It didn't say anything like that.

21 Q. Now, in fact, they were offering eight years on a
22 first offense?

23 A. Yes, sir.

24 Q. Is that the first time you learned that?

25 A. That was the first time that I learned that. She

Robert Grant vs. State of South Carolina.

1 never said anything about how they was going to reduce it
2 or whatever not over the phone. This was my first time
3 ever witnessing that.

4 Q. Had that offer expired at that time?

5 A. Yeah, it had expired then because it was from
6 October 29 to November 9 that I had to accept that plea
7 and it was on the table until November 9. After I talked
8 to her, it was off the table and when she gave me this
9 right here, it was off the table.

10 Q. By the time you learned that they were letting
11 you plead to a first offense, had anybody ever explained
12 to you the advantage of pleading to a first offense as
13 opposed to a third offense?

14 A. No, sir.

15 Q. Did anyone talk to you about in terms of what a
16 violent crime and a non-violent crime was?

17 A. No, sir. We never discussed none of that.

18 Q. Did anyone ever discuss with you the difference
19 between a Serious and Most Serious crime?

20 A. No, sir. Like I said in the little 10 minutes
21 that we talked she never mentioned anything about the --
22 stipulated anything about the plea. All she said it was a
23 straight up eight years with a cap on it. That's the only
24 thing we discussed.

25 Q. At that point in time, you knew you were charged

Robert Grant vs. State of South Carolina

1 with a third offense?

2 A. Yes, sir.

3 Q. And she didn't tell you whether the plea offer
4 was to a first offense or a third?

5 A. No, sir.

6 Q. You went to trial in this case.

7 A. Yes, sir.

8 Q. Would you have pled guilty if you were explained
9 what the difference between a third offense that you went
10 to trial for and a first offense that you had been offered
11 a plea for?

12 A. Of course, of course. I was man enough to accept
13 my part in it and I would have accepted the eight if she
14 had a explained that to me. She never explained it to me.
15 He never explained the plea to me. I didn't know what I
16 was faced with. I would have accepted that plea with
17 ease.

18 Q. Now that's your principal complaint against your
19 attorney.

20 A. Yes, sir.

21 Q. You've had some other complaints and I want to go
22 through them because this is your only occasion and I want
23 you to get everything said.

24 A. Yes, sir.

25 Q. You complained about her strategy in this case.

Robert Grant vs. State of South Carolina

1 A. Yes, sir.

2 Q. What didn't you like about her strategy? Why do
3 you think she was wrong?

4 A. Well, there was a lot of things that happened in
5 my case that I was needing to talk to her about as far as
6 my case was concerned. I had said something to her about
7 the officers disciplinary records. I wanted her to gather
8 that information and the witnesses.

9 Q. Was there witnesses you talked to her about that
10 you wanted her to talk to?

11 A. Yes, sir. The witness was the one that was on
12 the scene.

13 Q. And the particular one witness that had in the
14 jail with you.

15 A. Yes. It was an inmate that I had told her about,
16 a person that they had picked her up that same night that
17 was in the same vehicle I was in. He was there. They
18 took him to jail, I think, for loitering the engage. He
19 observed the whole thing, the whole incident.

20 Q. And you would have told her about it at the
21 second visit, the one that occurred in the Greenville
22 County Detention Center after your release from Laurens?

23 A. Yes, sir.

24 Q. Is that the same when you say failed to
25 investigate, is that what you mean?

Robert Grant vs. State of South Carolina

1 A. Yes, sir.

2 Q. Is there anything else in failing to investigate?

3 A. Like I say if she had gathered these officers
4 records, the same officer that we're referring to he's
5 been fired for excessive force on a person that supposedly
6 selling drugs or something like that.

7 Q. You wanted to get the disciplinary records from
8 the officer that arrested you.

9 A. Yes, sir.

10 Q. And that's an officer that's since been fired for
11 misconduct.

12 A. Yes, sir.

13 Q. And you wanted her to get those for what purpose?

14 A. Because when I got arrested that night, those two
15 people I was telling you about which was Wayne and the
16 other one was Betty, they witnessed it and they knew what
17 happened, they knew this officer prior to this incident
18 and they was telling me that he was a corrupt officer and
19 if I needed them, they would be there for me. That's the
20 reason why I gave her those two peoples names.

21 Q. Did she say she'd get the disciplinary records or
22 she couldn't get them.

23 A. Well, she came to see me in Greenville County
24 jail to discuss the case. Me and her got into a big
25 argument about what I had asked her, you know, to get and

Robert Grant vs. State of South Carolina

1 my witnesses. She gets mad at me and storms out and we
2 never discussed my case. We never discussed the case
3 period.

4 Q. In that second meeting when you talked to her
5 about these things and then got into an argument, you
6 threatened to fire her?

7 A. Yes, sir. I told her that I would ask the judge
8 that she be relieved.

9 Q. And she agreed with that?

10 A. Yes, sir. It's in the transcript. She said if
11 you want, she said, you tell him whenever we go out there
12 and she would follow up on it, which she did. It's in my
13 transcript.

14 Q. Did you ever have another discussion before
15 trial?

16 A. No, sir. No, sir. When they brought me to the
17 courthouse she called me out and basically she just said
18 that she was ready to go to trial, that's basically all
19 she said. It didn't take two minutes.

20 Q. When you say called you out, what do you mean?

21 A. From the holding cell to where the lawyers and
22 the inmates talk.

23 Q Now, you say that she failed to suppress
24 testimony about the \$20 bill and you thought that was a
25 mistake?

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1 A. Yes, sir. The reason is I think it was highly
2 prejudicial as far as -- the officer said that he used a
3 \$20 bill. I'm a drug user, why would I come out from
4 somewhere when I'm going to get my dope and give it to
5 him, you know. It just didn't make sense, man.

6 Q. The \$20 bill, so we're on the same subject, they
7 couldn't produce it. They couldn't find it.

8 A. No, sir. It wasn't never a \$20 bill. I never
9 seen a \$20 bill.

10 Q. And you felt there was someway she could suppress
11 that testimony?

12 A. Yes, sir. And I even said something to her about
13 that and it never happened.

14 Q. And you say she was also ineffective for failing
15 to attack the witness, the officer?

16 A. Yes, sir. And, also, if I could -- Mr. Waders,
17 it was a lot of discrepancy in the case as far as the
18 officer saying where he got the \$20 bill from. We asked
19 Brian Tollison where he got the \$20 bill from and he said
20 he got it from his master deputy. We asked the master
21 deputy did he give Mr. Tollison the \$20 bill to purchase
22 crack cocaine, Mr. Reil(ph) testified that he think he
23 gave Mr. Tollison the \$20 bill. How can you think that
24 you gave a person a \$20 bill to purchase crack cocaine on
25 a drug buy. You know it is just a lot of discrepancy. We

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1 asked Mr. Reil where did he get the \$20 bill from and he
2 said he got it from his sergeant and we asked him if the
3 sergeant was here at trial today and he said no.

4 I felt like that testimony was about a \$20
5 bill was harmful because I think it inflamed the jury as
6 far as on the buy.

7 Q. You next told me that you thought she was
8 ineffective because she had her assistant advise you not
9 to testify?

10 A. Yes, sir, Ms. Wygul. Elizabeth Wygul.

11 Q. She was the co-counsel in your case.

12 A. She was the one that was between me and
13 Ms. Horlbeck. I never talked to Ms. Horlbeck during the
14 trial at all.

15 Q. Ms. Wygul was kind of a buffer?

16 A. Yes, she was the one that was sitting between me
17 and Ms. Horlbeck. We went on break and she was going to
18 wait and find out whether I wanted to take the stand or
19 not and Ms. Elizabeth she came out to the area right
20 before they take me back in there and put me in the
21 holding cell and she told me it would be in my best
22 interest not to take the stand because the burden of proof
23 was on the State to prove that I did it and so far the
24 State hadn't done that.

25 Q. You say that you thought she was ineffective for

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1 opening the door for testimony that was prejudicial. Tell
2 us what you mean by that.

3 A. What happening in opening argument the State
4 never said anything about at \$20. They said they was
5 going to prove that a transfer transpired by testimony
6 from the officers and she put -- she called Brian Tollison
7 who was the first person who took the stand and she asked
8 him about a \$20 bill. She knew that it wasn't a \$20 bill
9 and they couldn't produce a \$20 bill. I felt that
10 testimony was harmful, you know, being that the jury heard
11 that.

12 Q. And you felt she somehow opened the door that.

13 A. She opened the door for highly prejudicial
14 testimony.

15 Q. You say that she was ineffective for failing to
16 object and properly preserve lesser included charges for
17 review.

18 A. Yes, sir.

19 Q. What did she do there that you think was wrong?

20 A. She asked the judge for the lesser included
21 offense because it was an inference that could have been
22 drawn from statements and the fact that it was less than
23 gram and that they didn't find no other tricks of the
24 trade on me. They didn't find no baggies, they didn't
25 find no large amount of money. They didn't find no money.

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1 They went in and searched the house and they didn't find no
2 marked money. They didn't find nothing of the trade and a
3 matter of fact it was testimony from Officer Tollison that
4 I told him that I was a user from the very beginning.

5 I think all those inferences that could have
6 been drawn from the evidence that was presented at the
7 trial, I think that she should have checked into that and
8 preserved that for review.

9 Q. And you say she was ineffective for failing to
10 object to an improper comment. Can you tell us about
11 that?

12 A. In closing arguments I think it was Ms. Tessitore
13 or one of the solicitors, they made a comment as far as
14 the officer's credibility was concerned. She actually
15 said in front of the jury that, do you think that this
16 officer, the one that was on the stand which was Brian
17 Tollison, would risk his job to testify on Mr. Grant for
18 these two little pieces of crack. Now this man is fired.
19 He fired from his job. It think it was vouching. I think
20 she was kind of vouching for his credibility and I think
21 that inflamed in the jury mind. I think that played a
22 part in it.

23 Q. You also allege that she was ineffective for
24 failing to object and preserve certain things for review
25 on appeal.

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1 A. Yes, sir.

2 Q. Tell the Court what those were.

3 A. Well, I think the Judge gave a erroneous
4 instruction on the law.

5 Q. Do you remember what you think was erroneous?

6 A. I think he said in reference to the lesser
7 included he said he didn't think that possession was a
8 lesser included offense to distribution and possession
9 with intent to distribute, which I think I've learned that
10 he could have charged the jury with the lesser included.

11 Q. And you think counsel was ineffective for not
12 getting that charge?

13 A. Yes, I think she was ineffective for not
14 objecting and preserving it for review.

15 Q. Now, the last thing you asked me to bring forth
16 was prosecution misconduct. She's not responsible for
17 things the solicitor did wrong, is she?

18 A. She didn't elaborate on it. She didn't object to
19 it. As a matter of fact, during the whole trial,
20 basically I think she was just going along. Because the
21 questions she asked basically made me feel like she was
22 vouching for the State. She was asking the officers like
23 how long you worked there or how many times -- I know it
24 goes along with the job but you don't leave it just at
25 that. I feel like she was vouching in a lot of ways and

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1 she could have argued that fact or objected to that fact
2 in closing argument.

3 Q. We've talked about all the grounds you wanted me
4 to bring forward, correct?

5 A. I just wanted to get this on the record. I think
6 the prosecutor committed misconduct. She knew when she
7 allowed these officers to get up and testify to some
8 evidence that wasn't there. She allowed -- I know he has
9 to testify and fail to suppress and stuff, but I still
10 think if the prosecutor had investigated her client, she
11 knew that it wasn't a \$20 bill because she the one that
12 sent the letterhead to my lawyer saying that they failed
13 to -- it's right here on the paper. "The officer response
14 to a \$20 bill to purchase crack cocaine, the officer
15 confronted the money was not recovered nor was the serial
16 number documented."

17 Why would she allow that officer to testify
18 to a \$20 that they couldn't produce? The whole case was
19 sloppy and I'm trapped off during a violent 15 years for
20 something I know didn't occur.

21 Q. You're doing 85 percent?

22 A. 85 percent of 15 years for mere possessing two
23 little pieces of crack which is 0.32 grams of crack
24 cocaine. I'm talking about after all this information was
25 given that I was a user, I never was offered help. They

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1 never offer me help ---

2 THE COURT: This is not relevant to this
3 proceeding. Thank you, sir.

4 THE WITNESS: Yes, sir.

5 BY MR. WARDER:

6 Q. If you had understood the plea agreement you were
7 originally offered, you would have done a non-violent
8 eight.

9 A. Yes, I would have took the eight if she would
10 have explained.

11 Q. Thank you. Please answer any questions the
12 attorney general has.

13 A. Yes, sir.

14 CROSS-EXAMINATION

15 BY MS. RATIGAN:

16 Q. Let me just make sure I have the time line right.
17 So you got arrested in January of 2007?

18 A. Yes, ma'am.

19 Q. When did you bond out?

20 A. I bonded out like in May of 2007.

21 Q. And when did you get arrested in Laurens?

22 A. Back in October -- no, I got arrested around
23 September.

24 Q. So September of 2007. I believe you testified
25 then you were released from Laurens in 2007; is that

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1 correct?

2 A. Somewhere around there. It may be the first of
3 the year or December or something like that.

4 Q. And then you ended up back at the Detention
5 Center here because of the trespass charge?

6 A. They picked me up. I had come back to try and
7 find my witnesses and things and they picked me up for
8 trespassing.

9 Q. When was that?

10 A. 2008, around March of 2008, like a week before I
11 went to trial.

12 Q. Okay. Now, before you had gone to trial, how
13 many in-person meetings did you have with your attorney?

14 A. I made two physical contacts with her, but she
15 did call me when I was in the Laurens County jail.

16 Q. Well, how many phone calls did you say you had
17 with Ms. Horlbeck?

18 A. Two. She called my wife one time and I was at
19 work. She called my wife and told her to tell me to get
20 in contact with her and I called her back. I called her
21 office.

22 Q. And both of the in-person meetings were they down
23 at the Detention Center?

24 A. Well, one was at the Detention Center and one was
25 right here at this court house.

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1 Q. You got bond carded in maybe or did you meet with
2 her in her office?

3 A. No, I never met with her at her office.

4 Q. So you met up here somewhere at the court house?

5 A. No, they had me to come here about six month ago
6 for it because I was supposed to come to a hearing.

7 Q. But you never had any meetings with her in her
8 office?

9 A. No, ma'am.

10 Q. And when you were out on bond, did you ever call
11 Ms. Horlbeck and try to set up a meeting to talk to her
12 about your charges?

13 A. No. The reason why I didn't make contact with
14 her is because I had got out and I got a new job.
15 Basically she told me when I was in the county jail that
16 she would get back with me. She said she would get back
17 with me and let me know what was going on. The last call
18 I got was when my wife told me she had contacted and I
19 called her office.

20 Q. Around when did you have that conversation about
21 the eight-year plea offer? Do you remember when it was?
22 Was it when you were in Laurens?

23 A. Yes, ma'am.

24 Q. So it was sometime between September and December
25 of 2007 is when y'all talked about the plea offer?

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1 A. It was -- okay. This letterhead said October
2 23rd so it had to have been received on 10/23/07 so it had
3 to have been shortly after you had gave it to her that she
4 talked to you about the \$20 bill or whatever. Because it
5 mentioned about the \$20 bill on it and I hadn't said
6 nothing about the \$20 bill until I talked to her?

7 Q. And you just had a phone conversation with her?
8 She didn't come see you?

9 A. No, ma'am.

10 Q. And she didn't tell you it was reduced for a
11 first offense? She just told you it was eight years?

12 A. She didn't say anything stipulation about that.
13 She just said it was straight up eight years with a cap on
14 it.

15 Q. And when she talked to her about this on the
16 phone, did you tell her you wanted to accept the offer or
17 reject the offer?

18 A. Well, at the time I think what I did was I asked
19 her to get in contact with Ms. Tessitore and ask her about
20 a five year non violent and she said that she would get
21 back with me and the next time I talked to her I guess the
22 deal was off the table or whatever.

23 Q. So you rejected the offer and made a counter
24 offer?

25 A. Yes, ma'am, because I was under the assumption

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1 that it was a mandatory eight or a straight up eight year
2 sentence.

3 Q. And at some point did you and Ms. Horlbeck review
4 the incident reports and things of that nature in this
5 case?

6 A. Did she review them?

7 Q. Yes. Did you talk about them with Ms. Horlbeck,
8 the State's evidence?

9 A. No. We didn't never get into details or anything
10 like that. What she did is she came into the Greenville
11 County jail and she handed me a folder which contained two
12 statements from both of the officers and this letterhead
13 from your office and I think it may have had an inventory
14 sheet in it and that was all. I asked her how was she
15 going to go about it and she told me she was the lawyer
16 and that she would do it the way she wanted to do it.

17 Q. So you didn't talk about the evidence. She just
18 gave you copies?

19 A. We didn't discuss nothing about the case. She
20 got mad and jumped up and stormed out.

21 Q. It was at that meeting that you gave her names of
22 witnesses to contact.

23 A. I gave her names of witnesses when I first talked
24 to her at Laurens County and I called her office and left
25 message on her answering machine for her to come back and

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1 talk to me after she had stormed out. She sends
2 investigator. When they called me out I told them that I
3 needed to discuss my case with her and that I needed to
4 contact these people.

5 Q. Did you give her specific names of people to
6 contact?

7 A. Yes, ma'am.

8 Q. Did you tell her where you could find them?

9 A. Yes, ma'am.

10 Q. And do you recall tell the judge during
11 sentencing that you had made a mistake?

12 A. A mistake as far as what?

13 Q. Do you remember telling the judge that you made a
14 mistake?

15 A. Oh, yeah, I told her that I accept the part of me
16 having the dope on me and that's the only thing I remember
17 telling her I made a mistake.

18 MS. RATIGAN: That's all I have, Your Honor.

19 THE COURT: Redirect?

20 REDIRECT EXAMINATION

21 BY MR. WARDER:

22 Q. The agreement that you referred to in your direct
23 and your cross-examination testimony is that agreement
24 right there?

25 A. Yes, sir. This is letterhead from her office.

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1 MR. WARDER: I would move that into evidence.

2 THE COURT: Any objection?

3 MS. RATIGAN: No, Your Honor.

4 THE COURT: Applicant's 1 in evidence.

5 (Correspondence marked as Applicant's Exhibit
6 No. 1 for identification was admitted into evidence.)

7 MR. WARDER: Your Honor, if it please the
8 Court, that would be applicant's case.

9 THE COURT: You may come down, sir.

10 THE WITNESS: Thank you, sir.

11 THE COURT: Does the State wish to call any
12 witnesses?

13 MS. RATIGAN: Yes, Your Honor. The State
14 would call Ms. Horlbeck.

15 THE CLERK: Ms. Horlbeck, place your left
16 hand on the Bible and raise your right hand.

17 CAROLINE HORLBECK, having been duly sworn,
18 testified as follows:

19 Thank you. You may be seated. Please state
20 your name for the record.

21 THE WITNESS: Caroline Horlbeck.

22 DIRECT EXAMINATION

23 BY MS. RATIGAN:

24 Q. Ms. Horlbeck, do you recall representing
25 Mr. Grant on these charges?

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1 A. I do.

2 Q. Were you appointed in this case or retained?

3 A. I was appointed on -- looks like we opened our
4 file on January 18, 2007.

5 Q. Did you file Brady and Rule 5 motions?

6 A. Yes, I did and it looks like we had them served
7 on the Solicitor's Office 24th of January 2007.

8 Q. Did you receive those materials from the State?

9 A. Yes.

10 Q. Do you recall whether you reviewed them with
11 Mr. Grant?

12 A. I did.

13 Q. Did you provide him with a copy, do you recall?

14 A. I don't -- he seems to say I did. I don't
15 independently recall I did and I don't think I have any
16 notes about that. I know after the trial was over I sent
17 him all of the discovery that was in the file.

18 Q. Did he tell you during your meetings with him his
19 version of what had happened that night.

20 A. Yes. I tried to get him in for an appointment
21 March the 16th and he did not come into the office that
22 day. He was then scheduled for court August 6, 2007 and
23 he didn't come in for court. I believe we finally were
24 able to talk on the first of October. I think he was
25 incarcerated in Laurens at that point. I've got notes of

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1 her version and what he had to say about witnesses.

2 Q. Did he give you specific names of witnesses to
3 contact?

4 A. I asked him if he had any witnesses that he
5 wanted me to contact and he says he will contact me with
6 this witness information and he says he can't remember his
7 witness names right now. I did ask him and I never got a
8 witness list from him.

9 Q. If he had provided you with a witness list, what
10 would you have done?

11 A. What I do when I get a contact information for
12 witnesses is I send my investigator to usually start with
13 a phone call and we follow up with a letter if I can't get
14 any results from the phone call and if my investigator is
15 successful in speaking with the witness and the
16 information provided is helpful, then I will subpoena them
17 to court.

18 Q. The transaction in this case, was there any video
19 or audio tape of the transaction?

20 A. No, there was none of that, no evidence of any
21 audio or video.

22 Q. Did you bring that out on cross-examination at
23 trial?

24 A. Yes. That was a big focus of the case.

25 Q. Did the State use any kind of documented funds in

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1 the case?

2 A. No. There was no paper trial and Mr. Grant was
3 very concerned about that and all of my notes about his
4 version of what happened contained the fact that there was
5 no paper trial and no documented funds that anybody could
6 track down.

7 Q. Again, is that something else you brought out at
8 trial?

9 A. Yes, because I thought that was extremely helpful
10 in underlining the officer's credibility the fact that
11 they said that there was this sale and they had nothing,
12 no money.

13 Q. What was your trial strategy?

14 A. It was to show that no sale of drugs had happened
15 and I tried to do that by bringing out the fact that there
16 was no video or audio and the best thing about it was
17 there was no money. Usually when money is involved,
18 you'll get a photocopy of the funds that were involved and
19 usually some serial numbers and there was just wasn't any
20 of that, no evidence of that.

21 Q. And do you recall Mr. Grant asking you to obtain
22 disciplinary information on the officers in this case.

23 A. I don't recall that. I'm not saying it didn't
24 happen I'm just saying I don't recall. That particular
25 officer, I don't think I was aware of any disciplinary

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1 problems at that point.

2 Q. I believe Ms. Wygul sat with you during the
3 trial; is that correct?

4 A. I was looking through the trial and I did find
5 some of her notes. I believe that's correct.

6 Q. And Mr. Grant testified that Mr. Wygul spoke to
7 him about whether or not he should testify, do you recall
8 asking her to do that?

9 A. No, I don't and I'm not saying she didn't speak
10 to him about it but what I normally do if I have
11 co-counsel or someone sitting with me taking notes,
12 usually I will address that issue with the client.

13 Q. So in this case did you discuss with Mr. Grant
14 his right to testify in his own defense?

15 A. I don't have specific notes about it, but that's
16 what I always do. That's my custom, that's what I do.

17 Q. And in the course of that discussion would you
18 also have gone through his prior record?

19 A. Yes.

20 Q. And did you, in fact, ask the judge for a lesser
21 included charge in this case?

22 A. Yes, I believe I did.

23 Q. Around to the plea offer, how many plea offers in
24 this case did you receive?

25 A. I got two.

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1 Q. And when did you receive the first one.

2 A. The first one is dated July 13, 2007 and that
3 offer was to have Mr. Grant plead guilty to threatening a
4 public official, possession with intent to distribute
5 within proximity of a school and then she would reduce the
6 distribution of crack cocaine second offense to a first
7 offense. She recommended a cap of 10 years and that offer
8 would have expired September 29, 2007.

9 Q. Do you recall conveying that offer to your
10 client?

11 A. I tried to. I couldn't get him to come -- he
12 didn't come to court. He was supposed to come to court
13 August 6th and he did not come into court, but the
14 prosecutor -- he may have been incarcerated at that time I
15 just don't know -- but the prosecutor was aware of
16 problems that I was having getting in touch with him and I
17 think that's why she sent another offer. It was dated the
18 day after the first offer would have expired -- I'm sorry
19 the day before. The second offer is dated 9/28/07. This
20 one she agreed to dismiss the proximity charge. She was
21 still going to reduce the distribution second offense to
22 distribution first offense. He could plead to that and
23 threatening the life of a public official.

24 She reduced the offer to a cap of eight years
25 instead of a cap of ten years which was the original

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1 offer. And the expiration date on this was November 3,
2 2007.

3 Q. So that would have been a better offer than the
4 first offer?

5 A. Yes..

6 Q. And were you able to convey that to Mr. Grant?

7 A. My notes show that, yes, I talked about it twice
8 with him. I saw him on October 1st and then again on
9 October 27th.

10 Q. Did you explain all of the kind of terms and
11 condition, I guess we'll call it, of the offer?

12 A. Yes, I did.

13 Q. What was Mr. Grant's response?

14 A. He wanted a recommendation for probation and
15 would not plead without the recommendation for probation.

16 Q. Did you make that kind of offer to the
17 Solicitor's Office?

18 A. Yes.

19 Q. And they're response was?

20 A. They didn't want to do that.

21 Q. And did you convey that to Mr. Grant?

22 A. I believe I did, yes. He was pretty definitive
23 on wanting a trial at that point?

24 Q. Once he rejected the offer, would it have been
25 placed on the trial docket at that point?

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1 A. I guess it would have been subject to scheduling
2 for trial after the expiration date of November 3, 2007.

3 Q. But at that point would it be fair to say that
4 Mr. Grant knew it was going to trial instead of a plea at
5 that point?

6 A. Yes.

7 Q. Did you notify him of the trial coming up?

8 A. I did, yes.

9 Q. And were you adequately prepared for trial that
10 day?

11 A. Yes.

12 Q. Was there anything else you think you could have
13 done to prep the case for trial?

14 A. No.

15 MS. RATIGAN: That's all I have, Your Honor.

16 THE COURT: Cross.

17 CROSS-EXAMINATION

18 BY MR. WARDER:

19 Q. When you contacted Mr. Grant about this plea
20 offer, how did you do that?

21 A. I believe he was at the Detention Center but the
22 not that I have ---

23 Q. Was that Greenville or Laurens?

24 A. I'm sorry. On the 27th of October I wrote in
25 there I spoke to him by phone at the Laurens Law

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1 Enforcement Center.

2 Q. Would that have been the only conversation you
3 had with him in Laurens?

4 A. Throughout the entire representation?

5 Q. Yes.

6 A. No, that was not the only conversation I had with
7 him.

8 Q. Did you go to Laurens to see him?

9 A. No, I did not go to Laurens to see him. I didn't
10 feel that was necessary because he seemed to understand
11 very clearly the offer.

12 Q. Did you place more than one phone call to the
13 Laurens Detention Center?

14 A. I believe so, yes. I think I called him on
15 October 1st and I think he was in the Laurens Detention
16 Center. My notes says he states he is about to make bond
17 from Laurens. I believe I contacted him at the Detention
18 Center on October 1st and then again on the 27th.

19 Q. Were they calls to the Detention Center?

20 A. Both of them would have been calls to the
21 Detention Center in Laurens.

22 Q. Did you have to pre-arrange those calls?

23 A. I don't recall, I would think so, but I don't
24 recall.

25 Q. My question is would they go and get him out of

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1 the cell and take him to the cell?

2 A. They must have, yeah. I wrote it in my notes.

3 It says, "Spoke to defendant by phone at Laurens LEC."

4 Q. So there was just one notation.

5 A. No. I mean I've got that one notation, yes, in
6 my file which is where I write my notes or a lot of them
7 anyway but this was dated October 27th and then I got
8 another one dated October 1st which says he's about the
9 make bond from Laurens.

10 Q. Did you explain all the differences between the
11 Serious ---

12 A. Yes.

13 Q. You explained the difference on Violent?

14 A. Yes.

15 Q. Told him the maximum he was facing?

16 A. Yes.

17 Q. Told him what he would face under the deal?

18 A. Yes.

19 Q. Was the prosecutor cooperating with you in
20 working with a client in Laurens County jail?

21 A. Yes. Her second offer says, "Since your client
22 was not brought over from the Laurens Detention Center
23 last month, I will extend the deadline and agree to drop
24 the proximity charge," so I believe she understood he was
25 in the Detention Center in Laurens and it can be difficult

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1 to transport someone to another county for court
2 sometimes. So, yes, I believe she was working with me.

3 Q. Did the prosecution know that he was in jail when
4 they made the bond cards where he was supposed to appear
5 in court?

6 A. I don't know, you'd have to ask them. I really
7 don't know.

8 Q. You didn't make any arrangement for him to be
9 brought up here to make that court appearance?

10 A. No.

11 Q. When you and Robert had the falling out at the
12 jail ---

13 A. I don't recall that. I just don't recall that,
14 I'm sorry.

15 Q. Were there any meetings after the jail before the
16 trial?

17 A. Well, he was scheduled for trial on January 17
18 and he didn't show and no bench warrant was issued because
19 if inclement weather and before that his wife had called
20 on January 14th asking for continuance. I make sure I
21 told her that that would be very difficult to get a
22 continuance. He did not show was trial on the 17th
23 although it was bad weather. I think everyone had trouble
24 getting to where they were supposed to be on that day. He
25 was rescheduled for trial on February 12th and he did not

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1 show.

2 Q. Did he answer you that there was any reason why
3 he did not show?

4 A. He didn't come to court when he was supposed to
5 and it was difficult to get in touch with him?

6 Q. How did you notify him? Did you notify him or
7 the prosecutor notify him?

8 A. The prosecutor sends out bond cards.

9 Q. But you didn't send anything?

10 A. I don't believe so.

11 Q. Did you call him on those occasions and ask him
12 why he wasn't at trial?

13 A. I don't recall.

14 Q. Thank you.

15 THE COURT: Redirect.

16 MS. RATIGAN: No redirect and the State would
17 rest, Your Honor.

18 THE COURT: Is there any reply testimony,
19 Mr. Warder?

20 MR. WARDER: Yes, sir.

21 THE COURT: Mr. Grant, I would remind you
22 that you are still under oath, sir.

23 THE WITNESS: Yes, sir.

24 (Defendant Grant retakes the stand.)

25 BY MR. WARDER:

Robert Grant vs. State of South Carolina

1 Q. Mr. Grant, how many phone calls did you receive
2 in Laurens?

3 A. Just that one, that one call that she mentioned
4 the eight year straight up plea. That's the only time I
5 ever talked to her on the phone. There is no paperwork
6 that would ever show -- I only talked to her that one
7 time. The came and got to me and I talked to her that one
8 time.

9 Q. Is that pre-arranged? Is there a special room
10 that they take you to?

11 A. No, I was just in the pods and they just came and
12 got me. I don't think they set up no schedule or anything
13 like that. They just came and got me that day and they
14 just hand me the phone and said your lawyer was on the
15 phone.

16 Q. After the meeting when you were in jail, you had
17 kind of a falling out with your attorney. Did you ever
18 meet with her after that?

19 A. Sir?

20 Q. Did you ever have another meeting with her?

21 A. No, sir. Me and her never talked anymore after
22 she got up and stormed out of Greenville County jail. I
23 don't know why she can't recall. She got up and got her
24 stuff together and she said she the lawyer and she'll do
25 it the way she wanted to do it. I don't see why she can't

Robert Grant vs. State of South Carolina

1 recall that and it happened.

2 Q. There's been some testimony here today that you
3 missed court. Did that happen?

4 A. No, sir. I was picked up on a trespassing charge
5 and another a shoplifting charge. It was in Greenville
6 County. If they was looking for me or anything like that,
7 I was in Greenville County. I was in jail. They let me
8 out twice and nobody never said anything about they had a
9 bench warrant or anything or anything of that sort. So
10 what she saying about me missing court or anything like
11 that, nobody never notified me or anything about that?

12 Q. Were you ever picked up on a bench warrant?

13 A. No, sir, there was never a bench warrant issued
14 on me.

15 Q. You can from the street to the trial.

16 A. No, sir. To go to trial I think they had picked
17 me up on that trespassing charge on that Wednesday. He
18 came to see me that Friday and said we're going to trial
19 that Monday morning. They had picked me up on that
20 trespassing charge and I went to court from there.

21 Q. So you were picked up on a trespassing charge and
22 not active warrants and you stayed in jail until the
23 trial.

24 A. Yes, sir.

25 MR. WARDER: Thank you.

Robert Grant vs. State of South Carolina

1 MR. RATIGAN: Nothing for Mr. Grant.

2 THE COURT: Thank you, Mr. Grant. You may
3 come down.

4 Any closing, Mr. Warder?

5 MR. WARDER: I guess the most grievous of the
6 errors of which my client complains is the failure to
7 explain the length of the sentence he was facing as
8 opposing to the benefits of the plea. He would have been
9 facing on a third offense which would have been 30 years.

10 THE COURT: That's correct.

11 MR. WARDER: And he's been offered a sentence
12 that would actually be non violent which would have a max
13 out date of four years and a parole eligibility date of
14 about two years. Those are such a giant that it would
15 make almost no sense in this case.

16 THE COURT: I agree with you.

17 MR. WARDER: I think any lawyer would advise
18 in the case of that kind but you have to look at the
19 benefit versus the possible maximum sentence and when he
20 says he would take that, I think that clearly has a ring
21 of truth and it would certainly be important and I urge
22 you to consider that.

23 MS. RATIGAN: Very briefly, Your Honor, I
24 think that the key issue in this case is that plea
25 agreement. That's all I'm going to really focus on.

Robert Grant vs. State of South Carolina

1 Ms. Horlbeck had notes in her file and very specific
2 recollections of having conveyed that plea offer for the
3 eight year cap, discussing the sentence exposure on the
4 charges, and the difference between Violent and
5 Non-Violent, Serious and Most Serious. She also has
6 specific recollection that Mr. Grant only wanted a
7 recommendation of probation. That's all he would accept
8 and the State rejected that counter offer.

9 I think what we have here is a case of
10 buyer's regret. I think Mr. Grant received a 15-year
11 sentence and is wishing now he had taken the plea. I
12 don't think he's met the prongs of Stricklen.

13 THE COURT: Any response, Mr. Warder?

14 MR. WARDER: No response.

15 THE COURT: I couldn't agree with both of you
16 any more and I think all of us that have worked on this
17 side of our judicial system probably have scratched our
18 heads a number of times think what in the world, why is my
19 client acting this way. But as we all do and I'm sure
20 every lawyer who has ever practiced criminal defense law
21 we give them our recommendation and say it's your
22 decision. In this case it's not a question of Mr. Grant
23 saying I didn't get it, it's a question of I bet he'd like
24 to have that opportunity and why didn't he say you get the
25 transport order and let's transport me immediately and

Robert Grant vs. State of South Carolina

1 I'll take the plea now. I'll waive presentment and I'll
2 do whatever I've got to do to accept that, but he didn't
3 do that.

4 He acknowledge and gave a counter offer. He
5 was bargaining and he lost. It happens everyday in the
6 business world. Unfortunately, he was gambling that's
7 something that's near and dear to him and I couldn't agree
8 with him more, it's a long time, but he pulled that lever.
9 She didn't. She couldn't have forced that any more than
10 any lawyer could.

11 I think it's consistent with just the
12 testimony as a whole. Mr. Grant has a definitely opinion.
13 He wants to be in control and he wanted to be in control
14 here and it's very clear, but unfortunately, he steered
15 the ship in the wrong direction. He asked for it and he
16 got it.

17 I don't find that counsel did anything
18 improper. The trial strategy was very appropriate and it
19 was consistent and it was consistent with what Mr. Grant
20 was saying. So I think the applicant fails on both
21 points.

22 So if you would prepare the appropriate
23 order, please. Thank you.

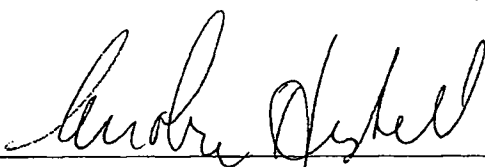
24 ---END OF TRANSCRIPT RECORD---

25

Robert Grant vs. State of South Carolina

1 I, the undersigned Caroline Hiskell, Official
2 Court Reporter for the Thirteenth Judicial Circuit of the
3 State of South Carolina, do hereby certify that the
4 foregoing is a true, accurate, and complete transcript of
5 record of all the proceedings had and evidence introduced
6 in the trial of the captioned case, relative to appeal, in
7 the Court of Common Pleas, Greenville, South Carolina on
8 the 31st day of October, 2012.

9 I do further certify that I am neither of
10 kin, counsel, nor interest to any party hereto.

11
12
13 

14 Caroline Hiskell
15
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24
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State of South Carolina
Solicitor, Thirteenth Judicial Circuit

Telephone: 864-467-8647
Telefax: 864-467-8610



Solicitor
Robert M. Ariail

Greenville County Courthouse
305 E. North Street, Suite 325
Greenville, SC 29601-2185

RECEIVED
10-23-07

SENT BY FAX

October 23, 2007

Attorney Caroline Horlbeck
Asst. Public Defender
Greenville County Courthouse
Greenville, SC 29601

SENT BY FAX to 467-8521

Re: State v. Robert Grant, Ind. 2007-2004, -2005, -2006

Dear Caroline,

In response to your question about the \$ 20 that was used to purchase the rock of crack cocaine, the officers confirmed that the money was not recovered nor was the serial number documented. Enclosed please find a copy of the completed chain of custody.

Your client has one more opportunity to plead to the reduced charge of Distribution of Cocaine (reduced from crack), 1st offense, and Threatening Public Official, with either a cap of 8 years or straight up as reduced. **He would have to enter that plea during the next court term between October 29 and November 9, 2007.** Obviously, since he is in Laurens Detention Center, an order for transport needs to be done **as soon as possible**, and no later than the end of this week. Let me know if he is going to definitely take the offer or not. If you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,


Jennifer A.R. Tessitore
Assistant Solicitor

Enclosures



STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2010CP2305933

FILED-CLERK OF COURT
GREENVILLE CO., S.C.
PAUL B. WICKENSIMER

2012 DEC 17 AM 11:30

Robert F Grant vs. South Carolina State Of

CHECK ONE:

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard at a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:
Dated at Greenville, South Carolina, this 17th day of December, 2012.

Court Reporter: _____

PRESIDING JUDGE - R Markley Dennis, jr

This judgment was entered on the 17th day of December, 2012, and a copy mailed first class this 17th day of December, 2012, to attorneys of record or to parties (when appearing pro se) as follows:

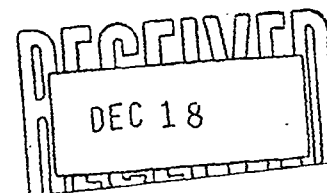
Richard Harold Warder PO Box 26133 Greenville,
SC 29616

ATTORNEY(S) FOR THE PLAINTIFF(S)

Karen Christine Ratigan PO Box 11549 Columbia,
SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court



322

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
Robert Frank Grant, Jr.,)
S.C.D.C. No. 277198,)
Applicant,)
v:)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
C.A. No. 2010-CP-23-5933

ORDER OF DISMISSAL

2012 DEC 17 AM 11:40
FILED-CLERK OF COURT
GREENVILLE CO, S.C.
PAUL R. HENDERSON

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed July 21, 2010. The Respondent made its return on December 16, 2010. An evidentiary hearing into the matter was convened on October 31, 2012 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Richard H. Warder, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's trial counsel, Caroline Horlbeck, Esquire. The Court had before it the trial transcript, the records of the Greenville County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the Respondent's return, the appellate records, and the Applicant's exhibit from the PCR hearing.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the March 2007 term of the Greenville County Grand Jury for possession with intent to

distribute (PWID) crack cocaine within proximity of a school (2007-GS-23-2004), distribution of crack cocaine (2007-GS-23-2005), and threatening the life of a public official (2007-GS-23-2006). He was represented by Caroline Horlbeck, Esquire.

After the State called the case to trial, the Applicant was found guilty of PWID crack cocaine within proximity of a school and distribution of crack cocaine. On March 12, 2008, the Honorable Edward W. Miller sentenced the Applicant to concurrent terms of fifteen (15) years for PWID crack cocaine within proximity of a school and twenty (20) years for distribution of crack cocaine, third offense. After a motion to reconsider the sentence, Judge Miller reduced the distribution of crack cocaine sentence to fifteen (15) years on March 21, 2008.

A notice of appeal was filed at the South Carolina Court of Appeals. Robert M. Pachak, Esquire of the South Carolina Office of Appellate Defense perfected the appeal in the form of an Anders¹ brief. The Court of Appeals dismissed the appeal. State v. Grant, Op. No. 2010-UP-105 (S.C. Ct. App. filed Feb. 4, 2010).

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel:
 - a. Failure to investigate.
 - b. Failure to suppress evidence/testimony.
 - c. Failure to challenge officer credibility on background record.
 - d. Trial strategy.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the

¹ Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

RMD712

opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

The Applicant stated he was arrested on this charge in January 2007 and bonded out in May 2007. The Applicant then stated he was in the Laurens County detention center from September – December 2007. The Applicant stated he was arrested for trespass in March 2008 (the week before trial). The Applicant stated that he and trial counsel never really discussed his case before it went to trial. The Applicant stated trial counsel called him in October 2007 (while he was in Laurens County) to discuss an eight year plea offer. The Applicant stated plea counsel

did not tell him the offer included a reduction to first offense. The Applicant stated he would have accepted the eight year offer if trial counsel had more thoroughly explained it to him. The Applicant stated he did not agree with trial counsel's defense strategy. The Applicant stated trial counsel should have investigated the officer involved because he has since been terminated. The Applicant stated trial counsel should have followed up on the name of an eyewitness that he provided her while he was in Laurens County. The Applicant stated trial counsel failed to suppress testimony about the \$20 bill used in this case on the basis that there was a discrepancy about where the money came from. The Applicant stated trial counsel should have objected when the solicitor vouched for the officer's credibility during closing argument.

Trial counsel testified she filed discovery motions in this case, received those materials, and reviewed them with the Applicant. Trial counsel testified they also discussed the Applicant's version of events. Trial counsel testified the State made a plea offer on July 13, 2007 for ten years and to reduce the distribution charge to first offense. Trial counsel testified she attempted to convey the offer to the Applicant but he never came to meet with her before it expired. Trial counsel testified the State understood her difficulties and made a second plea offer on September 28, 2007 in which they would recommend an eight year sentence. Trial counsel testified she discussed the eight year offer with the Applicant twice while he was in Laurens County and that she explained the sentencing ranges and the differences between violent and non-violent offenses and serious and most serious offenses. Trial counsel testified the Applicant wanted to counteroffer for a probationary sentence, which the State rejected. Trial counsel testified she conveyed this to the Applicant, who wanted a trial at that point. Trial counsel testified the trial strategy was to argue no transaction ever occurred and to highlight the sale was not recorded (either audio or video) and did not use documented funds. Trial counsel testified

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she made these points during cross-examination. Trial counsel testified she did not recall any disciplinary information or problems regarding the police officer in this case. Trial counsel testified she did not recall the Applicant giving her the name of an eyewitness and that she would have sent an investigator to speak to such an individual.

This Court finds the Applicant's testimony is not credible, while also finding trial counsel's testimony is credible. This Court further finds trial counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in her representation.

This Court finds the Applicant failed to meet his burden of proving trial counsel failed to properly convey and discuss plea offers. Trial counsel testified the Applicant was a difficult client and she was unable to meet with him to convey the original ten year plea offer before it expired. Trial counsel testified, however, that the State made an eight year offer, which she discussed with the Applicant while he was in Laurens County. Trial counsel testified she fully explained the offer, including the reduced distribution charge and the sentencing ranges. This Court notes trial counsel is an experienced criminal defense attorney and finds she is more credible than the Applicant on this issue. This Court notes trial counsel's file contained the plea offer letters from the State. This Court also notes trial counsel had a specific recollection of relaying the eight year offer to the Applicant and the Applicant opting to refuse it. This Court finds trial counsel fulfilled her responsibilities in this regard. Cf. Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009) (holding counsel's failure to convey the State's plea offer to defendant constituted deficient performance).

This Court finds the Applicant failed to meet his burden of proving trial counsel did not pursue a proper trial strategy. The Applicant stated he did not agree with trial counsel's defense

RNDT/5

strategy. Trial counsel testified the Applicant never asked her to investigate the police officer's disciplinary history and that she was not aware there was any such history. Trial counsel testified the trial strategy was to point out the transaction had not been recorded in any manner, the police did not use documented funds, and no drugs were found in the motel room. Based on the nature of this case, this Court finds this was a valid trial strategy. See Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (finding where trial counsel articulates a valid reason for employing a certain strategy, such conduct should not be deemed ineffective assistance of counsel). This Court further finds that, as the Applicant failed to present any evidence that the police officer in this case had disciplinary issues that resulted in his termination, this Court cannot speculate on what potential effect such information may have had upon this case. See, e.g., Palacio v. State, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (holding that, since the contents of challenged documents were not presented at the PCR hearing, the Applicant could not demonstrate how the failure of counsel to obtain these documents prejudiced the defense).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have investigated a potential eyewitness. Trial counsel testified she did not recall the Applicant asking her to speak to any witnesses and that she would have sent an investigator if she had been given such information. Regardless, as the alleged eyewitness did not testify at the evidentiary hearing, this Court finds any discussion regarding what he would have testified about at trial is purely speculative. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (the South Carolina Supreme Court "has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial.") (emphasis in original).

RMD/16

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected during the State's closing argument. The Applicant stated the solicitor vouched for the police officer's credibility. The Applicant, however, failed to note a specific instance of such during the solicitor's closing argument. Regardless, this Court finds there was no improper vouching during closing argument. See Vaughn v. State, 362 S.C. 163, 169, 607 S.E.2d 72, 75 (2004) ("A prosecutor improperly vouches for a witness' credibility and places the government's prestige behind a witness by making explicit personal assurances, or indicating that information not presented to the jury supports the testimony."). This Court notes the solicitor is allowed to comment on the testimony presented at trial. See State v. Huggins, 325 S.C. 103, 107, 481 S.E.2d 114, 116 (1997) (finding a solicitor's argument must stay within the record and its reasonable inferences); see also State v. Cooper, 334 S.C. 540, 553, 514 S.E.2d 584, 591 (1999) (noting a solicitor has a right to state his version of the testimony and to comment on the weight to be given such testimony).

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in her representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this

Rm 07/17

matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

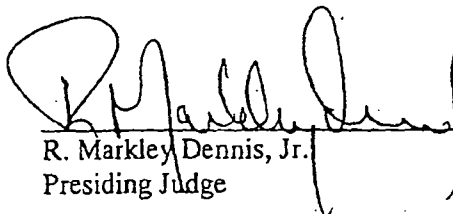
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 5 day of December, 2012.


 R. Markley Dennis, Jr.
 Presiding Judge

Moncks Corner South Carolina.

RM07/18

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

Robert S. Grant,

Appellant.

Appeal from Greenville County
Edward W. Miller, Circuit Court Judge

Unpublished Opinion No. 2010-UP-105
Submitted January 4, 2010 – Filed February 4, 2010

APPEAL DISMISSED

Appellate Defender Robert M. Pachak, of Columbia,
for Appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh,
Assistant Deputy Attorney General Salley W. Elliott,
all of Columbia, and Solicitor Robert M. Ariail, of
Greenville, for Respondent.

PER CURIAM: Robert S. Grant appeals his conviction and sentence for distribution of crack cocaine and possession with intent to distribute within proximity of a school. On appeal, counsel maintains the trial court erred in refusing to charge the jury on mere presence. Grant also filed a pro se brief. After a thorough review of the record, counsel's brief, and Grant's pro se brief pursuant to Anders v. California, 386 U.S. 738 (1967), and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss the appeal and grant counsel's motion to be relieved.¹

APPEAL DISMISSED.

WILLIAMS, PIEPER, and LOCKEMY, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

WITNESSES

BD Tollison

/Patton's

Greenville County Sheriffs Office

1/10/2007

DOCKET NO. 2007-GS-23-

MDD

The State of South Carolina

002005

County of Greenville

Jail

COURT OF GENERAL SESSIONS

MARCH TERM 2007

THE STATE

VS.

ROBERT F GRANT

ARREST WARRANT NUMBER
1797514

ACTION OF GRAND JURY

TRUE BILL

Butter Hughes
FOREPERSON GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

Indictment for

3014
DISTRIBUTION OF CRACK COCAINE

VIOLATION § 44-53-0375

Cathy Holscomb 3/12/08
Foreperson of Petit Jury Date:

185

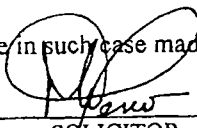
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
DISTRIBUTION OF CRACK COCAINE

At a Court of General Sessions, convened on MARCH 20, 2007 the Grand Jurors of Greenville County present upon their oath:

That ROBERT F GRANT did in Greenville County, on or about the 10th day of January, 2007, distribute, dispense, deliver, or aid, abet, or conspire to distribute, dispense or deliver to an undercover operative a quantity of Crack Cocaine, a controlled substance, such distribution not having been authorized by law. This is in violation of §44-53-375 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.Robert Grant

AKA: _____

Race: B Sex: M Age: 41

DOB: _____ SS# _____

Address: _____

DL#: _____ SID#: _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007GS2302005A/W#: 1797514Date of Offense: 1/10/2007S.C. Code § : 44-53-0370 (B) (1)CDR Code #: 3014

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADS
TO: DRUGS: MFG/DIST/METH OR COCAINE BASE 3RD OFFENSEin violation of § 44-53-0375(B)(3) of the S.C. Code of Laws, bearing CDR Code # 3039☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (Defendant initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor:

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 20 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 Services 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 the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$

§ 14-1-206 (Assessments 107.5 %) _____ \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 35.13 (Public Def/Prob) \$500 \$

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ 100

§ 50-21-114(BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

3% to County (if paid in installments) \$

TOTAL \$

_____ 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 Fund

Other: _____

☐ Appointed PD or appointed other counsel §35.13 TP
Requires \$500 be paid to Clerk during probation.PRESIDING JUDGE [Signature]Judge Code: 2111310Sentence Date: 3-12-08

SCCA/217 (10/2007)

Clerk of Court/ Deputy Clerk

Court Reporter: [Signature]

ARREST WARRANT

5531

1-797514

2-19-07

Greenville

☒ County/
☐ Municipality of

 ALL FOR THE STATE
 07-009578

Robert F Grant

Address:

against

Phone:

Sex: M

Race: B

DL #: SC

Height: 5

Weight: 200

SSN:

DOB:

Agency ORI #: SC0230000

Prosecuting Agency: Greenville County Sheriff's Office

Prosecuting Officer: B D Tollison

Offense: DISTRIBUTION OF CRACK COCAINE

Offense Code: 3014

Code/Ordinance Sec: 44-53-0375(B)(1)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/
☐ Municipality of

 is to be arrested and brought before me to be
 dealt with according to the law. The accused

(L.S.)

Signature of Judge

Date:

RETURN

 A copy of this arrest warrant was delivered to
 defendant on 1-10-07

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

 West Greenville Summary Court
 6247 White Horse Road
 Greenville, SC 29611

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/
☐ Municipality of

Greenville

Personally appeared before me the affiant B D Tollison

being duly sworn deposes and says that defendant Robert F Grant

did within this county and state on or about 01/10/2007

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of

in the following particulars:

DESCRIPTION OF OFFENSE DISTRIBUTION OF CRACK COCAINE

 I further state that there is probable cause to believe that the defendant named above did commit
 the crime set forth and that probable cause is based on the following facts:

 THE DEFENDANT DID DISTRIBUTE A QUANTITY OF A WHITE ROCK-LIKE SUBSTANCE, WHICH DID FIELD TEST
 POSITIVE FOR CRACK COCAINE, TO AN UNDERCOVER DEPUTY WITH THE GREENVILLE COUNTY SHERIFF'S
 OFFICE. THIS OFFENSE OCCURRED WITHIN 1/2 MILE OF OUR LADY OF THE ROSARY CATHOLIC SCHOOL, 3710
 AUGUSTA ROAD, IN GREENVILLE COUNTY, SC.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/
☐ Municipality of

Greenville

Affiant's Address 4 McGee Street

Greenville, SC 29601-

Affiant's Telephone (864)271-510 x

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 1/10/2007 defendant Robert F Grant

☒ County/
☐ Municipality of Greenville

 GREENVILLE COUNTY
 SHERIFF'S OFFICE

) as set forth below.

DESCRIPTION OF OFFENSE: DISTRIBUTION OF CRACK COCAINE

 Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
 her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
 soon thereafter as is practicable. Sworn to and subscribed before me on 01/10/2007

Judge's Address

Signature of Issuing Judge

Judge Code: 5068

Judge's Telephone

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

 Noted by
 S. J. O'Connell
 01/10/2007
 SOCA 518

who

violate the criminal laws of the

WITNESSES

BD Tollison

Patton 13

Greenville County Sheriff's Office

1/10/2007

DOCKET NO. 2007-GS-23-

MDD

002004

The State of South Carolina

County of Greenville

Soil

COURT OF GENERAL SESSIONS

MARCH TERM 2007

THE STATE

VS.

ROBERT F GRANT

Guilty

ARREST WARRANT NUMBER

1797515

ACTION OF GRAND JURY

TRUE BILL

Butt Murphy

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

0108

Indictment for

POSSESSION OF CRACK COCAINE W/IN TO
DIST. 1/2 MILE FROM SCHOOL

VIOLATION § 44-53-445

Cathy H. Leane 3/12/08
Foreperson of Petit Jury Date:

184

STATE OF SOUTH CAROLINA)
) INDICTMENT FOR
) POSSESSION OF CRACK COCAINE W/I TO DIST. 1/2 MILE
COUNTY OF GREENVILLE) FROM SCHOOL

At a Court of General Sessions, convened on MARCH 20, 2007 the Grand Jurors of Greenville
County present upon their oath:

That ROBERT F GRANT did in Greenville County, on or about the 10th day of January, 2007, willfully and unlawfully possess with the intent to distribute a quantity of Crack Cocaine, a controlled substance. The incident occurred within one-half (½) mile from Our Lady of the Rosary Catholic School. This is in violation of §44-53-445 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.

to the statute in such case made and provided.



SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.

Robert Grant

AKA:

Race: B Sex: M Age: 41

DOB: SS#:

Address:

DL#: SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007GS2302004

A/W#: I797515

Date of Offense: 1/10/2007

S.C. Code § : 44-53-0370 (B) (1)

CDR Code #: 3014

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADS TO: DISTRIBUTION OF CRACK WITHIN PROXIMITY OF SCHOOL

in violation of § 44-53-0445(B)(2) of the S.C. Code of Laws, bearing CDR Code # 0108

☒ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45 w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:



Solicitor:

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center, for a determinate term of 15 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 ~~suspended~~ with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.☒ 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 the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 35.13 (Public Def/Prob)	\$500	\$
§ 73.3, 1B TP (Law Enforce. Funding)	\$25	\$ 25
§ 33.7, 1B TP (Drug Court Surcharge)	\$100	\$ 100
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$
TOTAL		\$

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

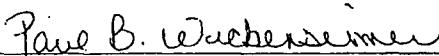
Substance Abuse Counseling

Random Drug/Alcohol testing

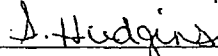
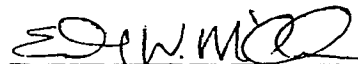
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: PRESIDING JUDGE 

Judge Code: 2 1 1 1 3 10

Sentence Date: 3-18-08

SCCA/217 (10/2007)

ARREST WARRANT

1-797515

5531
2-19-07

ORIGINAL

Form
S.C.
App 2
SC04.518

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
Greenville

THE STATE
against
Robert F Grant
07-009578

STATE OF SOUTH CAROLINA)
☒ County/ ☐ Municipality of)
Greenville)
Personally appeared before me the affiant B D Tollison
being duly sworn deposes and says that defendant Robert F Grant
did within this county and state on or about 01/10/2007
State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Greenville
in the following particulars:
violate the criminal laws of the)
DESCRIPTION OF OFFENSE PWID CRACK COCAINE WITHIN 1/2 MILE OF A SCHOOL

Phone: SSN:
Sex: M Race: B DL #: 5 9 Weight: 200
DL State: SC
DOB: Agency ORI #: SC0230000
Prosecuting Agency: Greenville County Sheriff's Office
Prosecuting Officer: B D Tollison
Offense: PWID CRACK COCAINE WITHIN 1/2 MILE OF
A SCHOOL

Offense Code: 3014
Code/Ordinance Sec: 44-53-0375(B)(1)

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of
is to be arrested and brought before me to be
dealt with according to the law. The accused.

Date: Signature of Judge (L.S.)

RETURN

A copy of this arrest warrant was delivered to
defendant Robert F Grant
on 1-10-07

Signature of Constable/Law Enforcement Officer
1088-897
B. G. L. C.

RETURN WARRANT TO:

West Greenville Summary Court
6247 White Horse Road
Greenville, SC 29611

ORIGINAL ORIGINAL

Signature of Affiant

STATE OF SOUTH CAROLINA)
☒ County/ ☐ Municipality of)
Greenville)
Affiant's Address 4 McGehee Street
Greenville, SC 29601-
Affiant's Telephone (864)271-510 x

B. Tollison 491

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY ADJACENT COUNTY:

on or about 1/10/2007 defendant Robert F Grant
did violate the criminal laws of the State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Greenville
DESCRIPTION OF OFFENSE: PWID CRACK COCAINE WITHIN 1/2 MILE OF A SCHOOL
Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable
Sworn to and subscribed before me on 01/10/2007)
Judge's Address)
Judge's Telephone)
Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

Signature of Affiant
Darrell Fisher
Judge's Telephone

ORIGINAL ORIGINAL ORIGINAL ORIGINAL

WITNESSES

BD Tollison

Ratton 15

Greenville County Sheriff's Office

1/10/2007

DOCKET NO. 2007-GS-23-

MDD

002006

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

MARCH TERM 2007

THE STATE

VS.

ROBERT F GRANT

NOT GUILTY

ARREST WARRANT NUMBER

1797516

ACTION OF GRAND JURY

TRUE BILL

Betty Murphy

GREENEVILLE GRAND JURY

Foreperson of Grand Jury

VERDICT

not guilty

Indictment for

0541

THREATENING A LIFE

VIOLATION § 16-03-1040

Cathy Holcombe

Foreperson of Petit Jury

Date: *3/12/08*

186

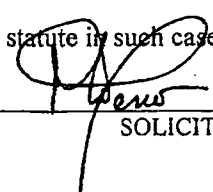
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
THREATENING A LIFE

At a Court of General Sessions, convened on MARCH 20, 2007 the Grand Jurors of Greenville County present upon their oath:

That ROBERT F GRANT did in Greenville County, on or about the 10th day of January, 2007, knowingly and willfully deliver or convey to DEPUTY BRIAN TOLLISON, a public official a threat to inflict bodily harm upon or take the life of DEPUTY BRIAN TOLLISON or members of his immediate family and the threat was directly related to DEPUTY BRIAN TOLLISON's professional responsibilities. This is in violation of §16-3-1040 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State; and contrary to the statute in such case made and provided.



SOLICITOR

Created by the South Carolina Department of Probation, Parole and Pardon Services

STATE OF SOUTH CAROLINA

County of Laurens
STATE VS.Robert Frank Grant
AKA: Robert Frank Grant, III
Race: B Sex: M
DOB: _____
SSN: _____
SID#: 00417140

IN THE COURT OF GENERAL SESSIONS

INDICTMENT#: 07-GS-30-0288 WB
Probation C/W#s: W-30-08-1164 (2-26-08) maxeName of Original Offense: Use of Vehicle w/o Consent
Original AWW#: I-806530
Date of Original Offense: 8-31-06
Conviction S.C. Code §: 16-21-0060 (A)
Conviction CDR Code #: 017 15 16
Original Sentence: 3 yrs; 33; 2 yrs prob.

ORDER

The above named defendant has been charged with violating the conditions of probation ordered on 12/19/07 in the Court of General Sessions of Laurens County, and/or the additional conditions ordered by the Court in probation continuation order(s) issued on 02/26/08, as set forth in the attached warrant(s) or citation(s) dated 2-26-08. After hearing the evidence and being duly advised, in the (presence/absence) of the defendant, I find that the above named defendant has violated the following condition(s) of probation: (List by number or indicate special conditions as provided in the affidavit) 12, 5, 6, 7, 9, 10, 11, and special conditions

Therefore, IT IS ORDERED that:

- ☒ the suspended sentence be revoked and the above named defendant be required to serve 24yrs + 74 days months/years, the remainder of the original sentence, and/or pay \$ _____.
- ☐ the suspended sentence be revoked and the above named defendant be required to serve _____ months/years of the original sentence and/or pay \$ _____; thereupon to be reinstated on probation, subject to the conditions set forth in the attached order and not inconsistent with this order.
- ☐ the above named defendant is continued on probation as provided for in the original sentence, subject to the conditions set forth therein and not inconsistent with this order.
- ☐ probation is reduced to time served under supervision and the defendant is discharged from supervision on this date.
- ☐ the above named defendant is placed on active electronic monitoring pursuant to §23-3-540 (mandatory if convicted of first degree criminal sexual conduct with a minor or lewd act, discretionary if convicted of any other applicable sex offense against a minor).
- ☒ Additional Conditions ordered by the Court: Time to run concurrent with time now serving in SCDC. Civil Judgement for balance of restitution.

☒ The defendant is given credit for pre-revocation hearing detention time on current probation violation to be calculated and applied by the SC Department of Corrections. Since 3/12/08

☐ The defendant has previously served 291 days months/years on this sentence.
(split sentence time and/or prior partial revocation time)

☐ The defendant was previously placed on active electronic monitoring pursuant to §23-3-540.

This 15th day of December, 2008.Laurens

SC

Presiding Judge

Hon. Edward W. MillerEighth Judicial Circuit

You are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation; impose any lawful conditions it deems proper; or extend your period of probation not to exceed five (5) years. At any time within the period of your probation, the Court may require you to serve any part of the original sentence imposed.

This is to certify that I have read, or have had read to me, the order and the conditions set out therein. I agree to comply with such conditions and the conditions of my attached probation order during the period of my probation. I have received a copy of this Court's order and all attachments.

Offender's Signature

Witnessed by

Signed this _____ day of _____, _____, at _____, SC

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

IN THE 13TH JUDICIAL CIRCUIT

Robert Frank Grant, Jr.,
S.C.D.C. No. 277198,

2010-CP-23-5933 ✓

2010-CP-23-7770

Applicant,

ORDER

v.

State of South Carolina,

Respondent.

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
JAN 8 WICKENSHER

2010 DEC 28 A 10:21

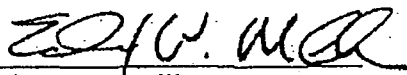
This matter comes before the Court by way of the State's motion for merger. The Applicant has filed two applications for post-conviction relief (PCR), one of which was filed July 21, 2010 (2010-CP-23-5933) and another filed September 21, 2010 (2010-CP-23-7770). These two applications raise allegations about the same set of convictions. Since an applicant is not generally allowed to have two PCR proceedings in regard to the same conviction, this Court hereby orders that the two proceedings be merged. See S.C. Code Ann. § 17-27-90 (2003); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981). The application for PCR filed September 21, 2010 (2010-CP-23-7770) will be considered an amendment to the initial application for PCR filed July 21, 2010 (2010-CP-23-5933).

The Greenville County Clerk of Court is therefore ordered to merge the two cases, with docket number 2010-CP-23-5933 being the surviving case. Hereafter, the word "Application" will refer to docket number 2010-CP-23-5933. The word "Amendment" will refer to docket number 2010-CP-23-7770, which will be considered an amendment to the PCR application.

IT IS THEREFORE ORDERED:

1. That the Greenville County Clerk of Court merge docket number 2010-CP-23-7770 into docket number 2010-CP-23-5933, with file 2010-CP-23-5933 being the surviving file and all further pleadings bearing docket number 2010-CP-23-5933. Docket number 2010-CP-23-7770 will be dismissed upon the merger.

AND IT IS SO ORDERED this ____ day of 12/23, 2010.



Edward W. Miller
Administrative Judge
Thirteenth Judicial Circuit



_____, South Carolina.