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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

SEP 19 2013

S.C. Supreme Court

Appeal from Marion County
Thomas A. Russo, Circuit Court Judge

WAYNE MCLAUGHLIN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000348

A P P E N D I X

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STATE OF SOUTH CAROLINA)
COUNTY OF MARION)

IN THE CIRCUIT COURT
OF THE TWELFTH JUDICIAL CIRCUIT
2008-GS-33-137

STATE OF SOUTH CAROLINA,)

PLAINTIFF,)

MOTION TO SUPPRESS

vs)

WAYNE MCLAUGHLIN,)

DEFENDANT.)

MAY 22, 2008
MARION, SOUTH CAROLINA

BEFORE: THE HONORABLE HOWARD P. KING

APPEARANCES:

FOR THE PLAINTIFF
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*** ALL EXHIBITS FILED WITH THE CLERK OF COURT**

1 **THE COURT:** ALL RIGHT, MISTER JEPERTINGER. MISTER WILSON, DO
2 YOU WANT YOUR CLIENT TO COME AROUND AND HAVE A SEAT?

3 **MR. WILSON:** YES, SIR.

4 **MR. JEPERTINGER:** IF IT PLEASE THE COURT, YOUR HONOR.

5 **THE COURT:** YES, SIR.

6 **MR. JEPERTINGER:** THE STATE WOULD CALL 08-137, THE STATE
7 AGAINST WAYNE MCLAUGHLIN, YOUR HONOR. THIS IS IN REGARDS TO
8 COUNTS THREE AND FOUR OF THE INDICTMENT, WHICH WOULD BE
9 POSSESSION WITH THE INTENT TO DISTRIBUTE COCAINE BASE AND
10 POSSESSION WITH THE INTENT TO DISTRIBUTE COCAINE.

11 **THE COURT:** ALL RIGHT. MADAM CLERK, COULD I HAVE THE
12 INDICTMENT, PLEASE. (CLERK OF COURT COMPLIES) ALL RIGHT, THE
13 PRESENT STATUS OF THIS MATTER, AS I UNDERSTAND IT MISTER
14 JEPERTINGER, IS THAT IT IS ON THE TRIAL ROSTER FOR TRIAL NEXT WEEK
15 AND THAT THERE WERE SOME MOTIONS THAT NEEDED TO BE ATTENDED TO
16 BEFORE WE STARTED. IS THAT CORRECT?

17 **MR. JEPERTINGER:** THAT'S CORRECT, YOUR HONOR.

18 **THE COURT:** MISTER WILSON, I BELIEVE THAT'S WHERE WE ARE THEN.
19 DID YOU HAVE SOME MOTIONS WITH REGARD TO THE CHARGES AGAINST
20 MISTER MCLAUGHLIN? ARE YOU TALKING -- MISTER JEPERTINGER, I HAVE
21 THE INDICTMENT, JUST COUNTS THREE AND FOUR?

22 **MR. JEPERTINGER:** THAT'S CORRECT, YOUR HONOR.

23 **THE COURT:** ALL RIGHT. YES, SIR, YOU HAVE SOME MOTIONS, MISTER
24 WILSON?

25 **MR. WILSON:** I DO, YOUR HONOR. YOUR HONOR, I HAVE A MOTION TO

1 SUPPRESS AND I WOULD LIKE TO, IF I COULD, MAKE IT A PART OF THE
2 RECORD AND ALSO PASS...

3 (MISTER WILSON PASSES DOCUMENT TO THE JUDGE)

4 THE COURT: ALL RIGHT. GIVE ME JUST A MOMENT, THEN. LET ME
5 REVIEW YOUR MOTION, MISTER WILSON.

6 MR. WILSON: YES, SIR.

7 (JUDGE LOOKS AT DOCUMENT)

8 THE COURT: ALL RIGHT, MISTER WILSON. LET ME JUST SEE IF I CAN
9 SUMMARIZE, BASICALLY, WHERE WE ARE SO I'LL KNOW WHAT TO DO WHEN I
10 GET TO WHAT NEEDS RULING ON AND LOOKING AT, AS THE RECORD IS
11 PRESENTED AND MADE ON THIS CASE. BUT, IN READING YOUR MOTIONS TO
12 SUPPRESS, IT APPEARS BASICALLY THAT, IF THIS IS NOT AN OVER-
13 SIMPLIFICATION, THAT IT IS BASED ON THREE GROUNDS. 1) IS THE CHAIN OF
14 CUSTODY THAT YOU DON'T THINK THE STATE CAN ESTABLISH ON THE
15 DRUGS. 2) IS A VIOLATION OF THE CONFRONTATION CLAUSE AND 3) IS A
16 WARRANT-LESS SEARCH. WOULD THAT BE A CORRECT STATEMENT OF THE
17 GROUNDS OF YOUR MOTION?

18 MR. WILSON: YES, SIR. YES, SIR, I AGREE THOSE ARE THREE OF THEM.

19 THE COURT: WHAT ELSE?

20 MR. WILSON: THE OTHER THING IS, IS THAT, AND THIS IS PROBABLY A
21 PART OF THE FOURTH AMENDMENT ARGUMENT, WHICH IS THAT, IN ORDER
22 FOR THEM NOT TO HAVE CONDUCTED AN ILLEGAL SEARCH, WHICH IS ONE OF
23 THE THINGS THAT I ASSUME THEY ARE GOING TO HAVE TO TRY TO
24 ESTABLISH, AND THEY HAVE TO HAVE THE CONSENT OF THE SECOND
25 PERSON WHO IS A PART OF THE CONVERSATION. OBVIOUSLY, THE

1 DEFENDANT DIDN'T CONSENT TO THE BREACH OF HIS —

2 THE COURT: WELL, THAT'S THE WARRANT-LESS SEARCH, ISN'T IT?

3 MR. WILSON: YES, SIR. AND AS I SAID, THAT'S A PART OF MY
4 ARGUMENT.

5 THE COURT: RIGHT.

6 MR. WILSON: BUT, YES, SIR. IN GENERAL, THAT'S IT.

7 THE COURT: THOSE THREE GROUNDS, BUT THERE ARE SOME SUB-
8 PARTS, BUT BASICALLY IT'S THE CHAIN OF CUSTODY, THE CONFRONTATION
9 CLAUSE AND THE WARRANT-LESS SEARCH.

10 MR. WILSON: YES, SIR.

11 THE COURT: OKAY. ALL RIGHT. THAT BEING THE CASE THEN, MISTER
12 JEPERTINGER, I WILL ALLOW YOU TO PRESENT WHATEVER EVIDENCE THE
13 STATE WISHES TO PRESENT TO SUPPORT THE ADMISSION OF THE EVIDENCE
14 THAT YOU CLAIM, KEEPING IN MIND THAT WHAT THEY ARE LOOKING AT IS
15 CHAIN OF CUSTODY, CONFRONTATION AND WARRANT-LESS SEARCH.

16 MR. JEPERTINGER: YES, SIR. WELL, CAN WE JUST ADDRESS THOSE
17 THREE ISSUES?

18 THE COURT: SURE.

19 MR. JEPERTINGER: WELL, LET ME ADDRESS THE THIRD ISSUE, THE
20 SEARCH WARRANT.

21 THE COURT: WHAT'S THE THIRD ISSUE, YOU SAY?

22 MR. JEPERTINGER: THERE IS A SEARCH WARRANT.

23 THE COURT: OKAY.

24 MR. JEPERTINGER: WE ARE NOT DEALING WITH A WARRANT-LESS
25 SEARCH, YOUR HONOR.

1 THE COURT: ALL RIGHT.

2 MR. JEPERTINGER: IN LIGHT OF THAT, YOUR HONOR —

3 THE COURT: ALL RIGHT, WE'LL SAY — I WON'T SAY WARRANT-LESS
4 SEARCH, LET'S SAY THE SEARCH ITSELF AND WHETHER THE WARRANT WAS
5 VALID OR — WE WON'T CALL IT A WARRANT-LESS SEARCH, BUT WE'LL SAY
6 WHETHER THE DRUGS SEIZED IN THE SEARCH CAN BE ADMITTED BECAUSE
7 THE SEARCH — YOU CAN DEVELOP THE RECORD ON WHATEVER IT IS,
8 WHETHER THE SEARCH WARRANT IS OR IS NOT VALID OR THERE IS OR IS
9 NOT A SEARCH WARRANT.

10 MR. WILSON: WELL, JUDGE, I APOLOGIZE. I DON'T WANT TO
11 INTERRUPT COUNSEL, BUT MY CONCERN IS, IF THERE IS A SEARCH WARRANT
12 IN THIS CASE, THIS IS THE FIRST I'M AWARE OF IT. AND —

13 THE COURT: LET'S FIND OUT. OKAY?

14 MR. WILSON: ALL RIGHT, SIR.

15 MR. JEPERTINGER: THE FIRST ISSUE HE RAISED WAS THE CHAIN OF
16 CUSTODY AND IT WAS JUST THE POLICE DEALING WITH THE CHAIN OF
17 CUSTODY AND HE IS HERE PRESENT AND SO HE WILL BE ABLE TO QUESTION
18 EACH OFFICER IN TERMS OF CHAIN OF CUSTODY.

19 THE COURT: RIGHT.

20 MR. JEPERTINGER: OKAY. THAT'S THE SECOND ISSUE. THE THIRD
21 ISSUE, NORMALLY, IN TERMS OF CONFRONTATION OR CRAWFORD-TYPE
22 INFORMATION, I BELIEVE THE C-I'S INFORMATION PROVIDED FOR PROBABLE
23 CAUSE FOR A WARRANT WOULD CONSTITUTE NON-TESTIMONIAL EVIDENCE
24 NOT SUBJECT TO THE CONFRONTATION CLAUSE IN CRAWFORD VERSUS
25 WASHINGTON, YOUR HONOR.

1 THE COURT: ALL RIGHT.

2 MR. JEPERTINGER: BUT BEARING THAT IN MIND, I WILL PROCEED WITH
3 WHAT YOU WANT ME TO DO.

4 THE COURT: ALL RIGHT. PROCEED.

5 MR. JEPERTINGER: YES. I'LL CALL NEIL ROUSE TO THE STAND.

6 (AFTER BEING DULY SWORN BY THE CLERK OF COURT, NEIL ROUSE
7 TESTIFIED AS FOLLOWS:)

8 DIRECT EXAMINATION OF NEIL ROUSE BY MISTER JEPERTINGER:

9 Q STATE YOUR NAME, PLEASE.

10 A NEIL ROUSE.

11 Q AND WITH WHOM ARE YOU EMPLOYED?

12 A THE MARION COUNTY SHERIFF'S OFFICE.

13 Q HOW LONG HAVE YOU BEEN EMPLOYED WITH THE MARION COUNTY
14 SHERIFF'S OFFICE?

15 A SIX MONTHS.

16 Q PRIOR TO THAT, FOR WHOM WERE YOU EMPLOYED?

17 A THE MULLINS POLICE DEPARTMENT.

18 Q OKAY. WERE YOU A MEMBER OF THE COMBINED DRUG UNIT, MISTER
19 ROUSE?

20 A YES, SIR. I WAS A SUPERVISOR.

21 Q OKAY. WERE YOU SO EMPLOYED AS SUPERVISOR OF THE COMBINED
22 DRUG UNIT BACK ON JANUARY 19, 2007?

23 A YES. I WAS.

24 Q OKAY. AND WHAT WERE YOUR RESPONSIBILITIES IN TERMS OF THE
25 COMBINED DRUG UNIT?

1 A MY RESPONSIBILITIES WERE TO SUPERVISE FOUR AGENTS AND A
2 SECRETARY, TO MAKE SURE ALL THE PROCEDURES WERE CARRIED
3 OUT PERTAINING TO THE LAW, ALSO TO MAINTAIN AND TAKE CARE OF
4 THE BUDGET RULES.

5 Q WERE YOU INVOLVED ON JANUARY 12TH IN THE OBTAINING OF A
6 SEARCH WARRANT FOR THE BUSINESS KNOWN AS W.T.'S LOUNGE
7 LOCATED AT 501 NORTHEAST FRONT STREET, I BELIEVE THAT'S IN
8 MULLINS. IS THAT CORRECT?

9 A THAT'S CORRECT.

10 Q AND YOU WERE INVOLVED IN THAT?

11 A YES, SIR.

12 Q I'M GOING TO SHOW YOU A COPY OF A DOCUMENT. CAN YOU IDENTIFY
13 THAT, PLEASE.

14 A YES, SIR. THAT'S A COPY OF MY AFFIDAVIT AND A COPY OF THE
15 SEARCH WARRANT.

16 Q OKAY. DID YOU PROVIDE THE INFORMATION SET OUT IN THE
17 PROBABLE CAUSE SECTION OF THE SEARCH WARRANT TO THE
18 ISSUING MAGISTRATE AFTER BEING SWORN?

19 A I DID.

20 Q AND, YOUR HONOR, AT THIS TIME I WOULD ASK THAT THIS DOCUMENT
21 BE ADMITTED AS A COURT'S EXHIBIT.

22 THE COURT: ALL RIGHT. COURT'S EXHIBIT FOR THE PURPOSES OF
23 THIS HEARING ONLY. COURT'S EXHIBIT #1.

24 MR. JEPERTINGER: THERE ARE FOUR LOOSE PAGES, YOUR HONOR. I'D
25 ASK PERMISSION TO STAPLE THEM TOGETHER.

1 **THE COURT:** YES. STAPLE THEM TOGETHER. COURT'S EXHIBIT #1
2 CONSISTING OF FOUR PAGES ATTACHED TOGETHER AND IS THE AFFIDAVIT
3 AND SEARCH WARRANT TO WHICH THIS WITNESS HAS REFERRED.)

4 (WHEREUPON, MISTER ROUSE'S AFFIDAVIT AND A SEARCH WARRANT,
5 CONSISTING OF FOUR PAGES, WAS ADMITTED INTO EVIDENCE AS COURT'S
6 EXHIBIT #1)

7 Q COULD YOU TELL ME THE PROCESS, AND TELL THE COURT, THE
8 PROCESS OF PROCURING A WARRANT IN FRONT OF A MAGISTRATE.

9 A THE PROCESS IS TO GO BEFORE THE, MY PROCESS IS TO TYPE OUT AN
10 AFFIDAVIT, A SWORN AFFIDAVIT TO BE PRESENTED TO THE
11 MAGISTRATE, LUNETTE COX, WHO, ONCE I PRESENT IT TO HER, SHE
12 SWEARS ME IN AS TO THE TRUTH OF WHAT'S IN THE AFFIDAVIT.

13 Q OKAY. LET ME ASK YOU, DOES SHE ALSO ASK YOU ANY OTHER
14 QUESTIONS OR DO YOU PROVIDE ANY OTHER ORAL TESTIMONY TO THE
15 MAGISTRATE BEFORE SHE SIGNS THE SEARCH WARRANT?

16 A SHE DOES. IN THIS PARTICULAR CASE, SHE ASKED ME IF I KNEW THE
17 DEFENDANT, WHICH I DID. SHE ASKED ME WHERE, WAS THIS INSIDE
18 THE CLUB, WHICH IT WAS. SHE ASKED ME ALSO IF THE DEFENDANT
19 WAS PRESENT AT THE TIME, WHICH HE WAS. SHE ALSO ASKED ME
20 HOW I OBTAINED THE INFORMATION TO PROVIDE TO HER FOR THE
21 SEARCH WARRANT.

22 Q AND WHAT INFORMATION, IF YOU COULD JUST READ FROM YOUR
23 AFFIDAVIT, THAT YOU PROVIDED TO THE MAGISTRATE AND ANY OTHER
24 INFORMATION THAT YOU PROVIDED ORALLY TO THE MAGISTRATE.

25 A THAT ON TWO OCCASIONS, THE LAST BEING WITHIN THE LAST

1 SEVENTY-TWO HOURS, A RELIABLE CONFIDENTIAL INFORMANT HAS
2 PURCHASED A QUANTITY OF COCAINE BASE FROM WAYNE
3 MCLAUGHLIN FROM INSIDE THE CLUB KNOWN TO LAW ENFORCEMENT
4 AS W.T.'S LOUNGE, LOCATED AT 501 NORTHEAST FRONT STREET.
5 AGENTS OF THE MARION COUNTY COMBINED DRUG UNIT WIRED THE
6 CONFIDENTIAL INFORMANT WITH A TRANSMITTER, SEARCHED THE
7 CONFIDENTIAL INFORMANT PERSONALLY AND GAVE HIM OR HER
8 MARKED BUY MONEY. AGENTS THEN SENT THE INFORMANT TO THE
9 ABOVE LOCATION. AGENTS OF THE COMBINED DRUG UNIT HEARD THE
10 PURCHASE OF THE DRUGS VIA THE TRANSMITTER. THE INFORMANT
11 MET BACK WITH THE AGENTS AND WAS AGAIN SEARCHED AND FOUND
12 TO HAVE COCAINE BASE IN THE PLACE OF THE MARKED BUY MONEY.
13 THEREFORE, THE AGENT KNOWS THAT DRUGS ARE BEING SOLD FROM
14 THE CLUB.

15 Q OKAY. AND DID YOU OFFER ANY OTHER INFORMATION IN TERMS OF
16 MAYBE, A VIDEO?

17 A I DID.

18 Q AND CAN YOU TELL THE COURT WHAT INFORMATION YOU PROVIDED
19 ORALLY TO THE MAGISTRATE AS WELL AS ANY AUDIO TRANSMISSION
20 THAT AGENTS MIGHT HAVE HEARD?

21 A ONCE THE CONFIDENTIAL INFORMANT COME BACK, WE SECURED THE
22 DRUGS AT THAT TIME. THEN WE WENT BACK TO MY OFFICE WHERE I
23 VIEWED THE VIDEO TO VERIFY WHAT I WAS TELLING THE JUDGE. ONCE
24 I STOOD BEFORE THE JUDGE, I TOLD HER WE HAD THIS OVER A BODY
25 TRANSMITTER PLUS A VIDEO OF WHAT TOOK PLACE INSIDE THE CLUB.

1 Q AND DID YOU HAVE AN OPPORTUNITY TO PERSONALLY VIEW THAT
2 VIDEO YOURSELF?

3 A I DID.

4 Q AND BASED ON THAT INFORMATION, THAT WAS ALSO INFORMATION
5 PROVIDED TO THE MAGISTRATE?

6 A THAT'S CORRECT.

7 Q OKAY. AND DID YOU PROVIDE ANY OTHER ORAL TESTIMONY TO THE
8 MAGISTRATE ABOUT WAYNE MCLAUGHLIN AND THAT CLUB?

9 A I ALSO PROVIDED HER THAT THIS HAD BEEN GOING ON FOR SOME
10 NUMBER OF YEARS. THAT MISTER MCLAUGHLIN HAD BEEN ARRESTED
11 ON SEVERAL OCCASIONS FOR ILLEGAL DRUGS BY MY DEPARTMENT.
12 ALSO, THAT AFTER VIEWING THE VIDEO, THERE WAS NO DOUBT THAT
13 HE WAS IN THE CLUB AT THE TIME.

14 Q AND DID YOU EVER PROVIDE ANY INFORMATION THAT YOU HAD SEEN
15 HIM IN THAT CLUB PREVIOUSLY YOURSELF?

16 A THAT'S CORRECT.

17 Q AND WAS THAT ALL THE INFORMATION THAT YOU PROVIDED THE
18 MAGISTRATE BEFORE SHE SIGNED THE SEARCH WARRANT?

19 A YES, SIR.

20 Q THANK YOU VERY MUCH. PLEASE ANSWER ANY QUESTIONS THAT —
21 THE COURT: CROSS EXAMINATION, MISTER WILSON?

22 MR. WILSON: YES, SIR. IF IT PLEASE THE COURT.

23 CROSS EXAMINATION OF NEIL ROUSE BY MISTER WILSON:

24 Q OFFICER ROUSE, IN REGARDS TO THE SEARCH WARRANT, NOW, AS I
25 UNDERSTAND IT, YOU HAD SENT AN INFORMANT IN ON TWO PRIOR

1 OCCASIONS. RIGHT?

2 A CORRECT.

3 Q AND DID YOU HAVE A SEARCH WARRANT WHEN YOU DID THAT?

4 A WHEN I SENT HER IN?

5 Q YES.

6 A NO, SIR.

7 Q AND YOU DIDN'T BOTHER TO GET A SEARCH WARRANT. DID YOU GET
8 ANY KIND OF A WIRETAPPING ORDER FROM SLED OR FROM A JUDGE IN
9 ORDER TO MONITOR ELECTRONICALLY WHATEVER WAS GOING ON
10 INSIDE THOSE PREMISES?

11 A NO, SIR.

12 Q YOU DIDN'T DO THAT EITHER.

13 A NO, SIR.

14 Q ALL RIGHT. AND THE PERSON THAT YOU USED AS AN INFORMANT, DID
15 THE PERSON INDICATE TO YOU THAT THEY HAD KNOWN THE
16 DEFENDANT PRIOR TO GOING IN?

17 A YES, SIR. SHE DID.

18 Q AND WERE YOU PRESENT WHEN THE INDIVIDUAL WAS WIRED TO GO
19 IN?

20 A I WAS.

21 Q AND WERE YOU ONE OF THE PEOPLE WHO SEARCHED THE INDIVIDUAL
22 BEFORE THEY WENT IN?

23 A NO, SIR. MY SECRETARY IN MY OFFICE SEARCHED HER. HER BEING A
24 FEMALE, WE LET THE SECRETARY IN THE OFFICE SEARCH HER.

25 Q ALL RIGHT. SO, THE SECRETARY SEARCHED HER.

1 A CORRECT.

2 Q YOU DIDN'T SEARCH HER.

3 A CORRECT.

4 Q YOU DIDN'T SEARCH HER.

5 A NO, SIR.

6 Q ALL RIGHT. AND DID THE SECRETARY THEN FILL OUT AN AFFIDAVIT
7 SWEARING THAT THEY HAD SEARCHED HER AND WHAT THEY FOUND
8 OR WHAT THEY DIDN'T FIND?

9 A NO, SIR. SHE DID IT IN OUR OFFICE IN A ROOM BY HERSELF WITH THE
10 CONFIDENTIAL INFORMANT, COME OUT AND TOLD US NOTHING WAS
11 FOUND ON THE CONFIDENTIAL INFORMANT.

12 Q MY QUESTION TO YOU WAS, WAS AN AFFIDAVIT DONE ON THE PART OF
13 THE INDIVIDUAL WHO DID THE SEARCH OF THE INFORMANT TO SAY, TO
14 SWEAR UNDER OATH THAT, IN FACT, THEY SEARCHED THIS INDIVIDUAL,
15 AND THAT THE PERSON DID NOT HAVE ANY DRUGS OR ANY FOREIGN
16 MATERIAL ON THEM AT THAT TIME?

17 A NO, SIR. THE SECRETARY IS AVAILABLE FOR THE COURT TO CROSS
18 EXAMINE. NO, SIR. WE DIDN'T DO AN AFFIDAVIT.

19 Q DID YOU GET A SWORN STATEMENT FROM THE INFORMANT, AT THAT
20 TIME, INDICATING THAT SHE HAD BEEN SEARCHED AND THAT SHE HAD
21 NO DRUGS ON HER?

22 A NO, SIR.

23 Q NOW, LET ME ASK YOU IF -- AT SOME POINT IN TIME, THE INFORMANT, I
24 ASSUME, WAS THEN WIRED WITH SOME TYPE OF DEVICE. CORRECT?

25 A WITH A AUDIO AND VIDEO CAMERA.

1 Q AND WHERE WERE THEY PLACED?

2 A ON THE INDIVIDUAL HERSELF.

3 Q I KNOW THAT, BUT I MEAN, WHERE?

4 A IN HER POCKETBOOK.

5 Q ALL RIGHT. AND DID YOU PLACE THOSE ITEMS THERE OR DID

6 SOMEONE ELSE PLACE THEM THERE?

7 A I PLACED THEM THERE MYSELF.

8 Q ALL RIGHT. AND, NOW, I ASSUME THAT ONCE THE INFORMANT WAS

9 THEN SENT TO THE AREA WHERE SHE WAS TO MAKE THE BUY, THAT
10 SHE WAS BEING MONITORED IN SOME FORM OR FASHION.

11 A THAT IS CORRECT.

12 Q WOULD YOU EXPLAIN TO US THE TYPE OF MONITORING THAT WAS
13 BEING CONDUCTED.

14 A WE HAVE WHAT WE CALL A BODY TRANSMITTER TO BE PLACED ON THE
15 INDIVIDUAL HERSELF, THE VIDEO CAMERA, WHICH ALSO HAS A AUDIO
16 TRANSMITTER BUILT IN WITH THE VIDEO. WE ALSO THEN HAVE A
17 TRANSMITTER THAT WE USE TO LISTEN OVER THE WIRE AS TO WHAT'S
18 GOING ON.

19 Q OKAY. AND SO, AND IN THIS PARTICULAR CASE, SPECIFICALLY ON THE
20 TWO OCCASIONS THAT SHE WENT IN, THE MONITORS WERE HOW FAR
21 FROM THE LOCATION?

22 A AS CLOSE AS ME TO THE JUDGE OR EVEN CLOSER.

23 Q I'M SORRY?

24 A ARE YOU TALKING ABOUT FROM THE DEFENDANT?

25 Q NO, SIR. WHAT I'M ASKING, AND I APOLOGIZE. WHAT I'M ASKING IS, YOU

1 SAID THAT YOU WOULD HAVE OFFICERS WHO WOULD BE MONITORING
2 HER.

3 A CORRECT.

4 Q HOW FAR AWAY FROM THE CLUB WERE THEY AT THE TIME THAT THEY
5 WERE MONITORING?

6 A APPROXIMATELY A BLOCK AWAY.

7 Q OKAY. ABOUT A BLOCK AWAY. WERE THEY IN EYESIGHT OF THE CLUB?

8 A NO, SIR.

9 Q NOW, DID YOU HAVE VIDEO FEEDBACK INSIDE THE VEHICLE?

10 A NO, SIR.

11 Q BUT YOU HAD AUDIO FEED.

12 A THAT'S CORRECT.

13 Q AND THAT'S ON BOTH OCCASIONS THAT YOU WENT IN WITH AN
14 INFORMANT.

15 A THAT'S CORRECT.

16 Q NOW, THE INFORMANT, WHEN YOU GOT THE SEARCH WARRANT FROM
17 THE MAGISTRATE, WHAT INFORMATION DID YOU GIVE THE MAGISTRATE
18 ABOUT THE RELIABILITY OF THE INFORMANT THAT YOU WERE USING?

19 A WE HAD USED HER ON SEVERAL OCCASIONS AND ONE PRIOR
20 OCCASION BEFORE THE SECOND OCCASION ON THIS PARTICULAR
21 SEARCH WARRANT. WE'VE USED HER BEFORE.

22 Q OKAY. AND DID YOU TELL THE MAGISTRATE, AT THAT TIME, WHETHER
23 OR NOT THE INFORMANT WAS UNDER ANY CHARGE?

24 A YES, SIR. SHE WAS NOT.

25 Q ALL RIGHT. AND DID YOU TELL THE MAGISTRATE, AT THAT TIME,

1 WHETHER OR NOT THERE WERE CHARGES THAT HAD BEEN DISMISSED
2 WHICH WOULD ALLOW HER TO WORK AS AN INFORMANT?

3 A AS FAR AS I CAN REMEMBER, THERE WERE NO CHARGES AT ALL ON
4 HER AT THE TIME.

5 Q OKAY. WAS SHE PAID AS AN INFORMANT?

6 A YES, SIR. SHE WAS.

7 Q ALL RIGHT. HOW MUCH WAS SHE PAID?

8 A I'D HAVE TO PULL THE RECORD. I'M NOT SURE. PROBABLY FIFTY OR
9 SIXTY DOLLARS, SOMEWHERE AROUND THERE.

10 Q NOW, AS I UNDERSTAND IT, YOU'VE REVIEWED BOTH VIDEOS?

11 A THAT'S CORRECT.

12 Q ALL RIGHT. AND HOW LONG, FROM THE TIME THAT THE INFORMANT
13 LEFT THE PRESENCE OF THE MONITORING OFFICERS, HOW LONG WAS
14 SHE GONE BEFORE SHE RETURNED TO THE MONITORING OFFICERS?
15 ROUGHLY, WHAT LENGTH OF TIME?

16 A ROUGHLY, TEN, FIFTEEN MINUTES AT THE MOST.

17 Q ALL RIGHT. AND DURING THAT TEN TO FIFTEEN MINUTES, WAS SHE
18 OUT OF YOUR SIGHT?

19 A YES, SIR. SHE WAS.

20 Q AND DURING THAT TEN OR FIFTEEN MINUTES, DID SHE HAVE VERBAL
21 CONVERSATION WITH OTHER INDIVIDUALS AND PHYSICAL CONTACT
22 WITH OTHER INDIVIDUALS OTHER THAN THE DEFENDANT?

23 A YES, SIR. THERE WERE PEOPLE AT THE CLUB AT THE TIME SHE WENT
24 OUT THERE. YES, SIR.

25 Q AND, IN FACT, ON SOME OCCASIONS, SHE ACTUALLY USED SOMEONE

1 ELSE'S CELL PHONE TO MAKE CALLS WHILE SHE WAS OUT DOING THIS.

2 A YES, SIR, ON THE SECOND OCCASION. ON THE FIRST OCCASION, SHE
3 WAS THE ONLY ONE, HER, AND THE DEFENDANT, AT THE CLUB AT THE
4 TIME.

5 Q AND SHE ALSO WENT TO, WHEN HE WAS NOT PRESENT, WENT TO A
6 BUILDING BEHIND THE CLUB AND WENT TO SOMEBODY'S HOME. DID
7 SHE NOT?

8 A NO, SIR. SHE DIDN'T.

9 Q SHE DIDN'T GO TO A MOBILE HOME BEHIND THE CLUB IN ONE OF THOSE
10 BUYS?

11 A NO, SIR.

12 Q ALL RIGHT. AND THAT'S NOT ON ANY OF THE TAPES WHERE SHE IS
13 GOING BEHIND THE CLUB.

14 A THAT'S CORRECT.

15 Q OKAY. NOW, WHO WERE THE PEOPLE THAT SHE TALKED WITH
16 VERBALLY AND HAD PHYSICAL CONTACT WITH IN THE VIDEO? WHO
17 ARE THOSE PEOPLE THAT SHE HAD THAT CONTACT WITH?

18 A I DIDN'T KNOW EITHER OF THE INDIVIDUALS.

19 MR. JEPERTINGER: YOUR HONOR, I -- THIS MIGHT BE VERY GOOD IN
20 TERMS OF QUESTIONING AT TRIAL, BUT I THINK WE'RE HERE IN TERMS OF
21 THE SEARCH WARRANT AND INFORMATION PROVIDED THE ---

22 THE COURT: I WOULD AGREE. I'D LIKE TO ASK YOU THIS, MISTER
23 WILSON AND MAYBE I SIZED THIS THING UP WRONG, BUT HAVEN'T WE GOT
24 TWO DIFFERENT STANDARDS HERE? AS I UNDERSTAND THE EVIDENCE THAT
25 THE STATE IS PLANNING TO GET IN, IS WHAT WAS SEIZED AS A RESULT OF

CROSS EXAMINATION OF DET. NEIL ROUSE BY MR. WILSON

19

1 THIS SEARCH WARRANT, NOTHING TO DO WITH THE SALE OF THESE DRUGS
2 TO THE CONFIDENTIAL INFORMANT UNDER COUNTS ONE AND TWO. THAT'S
3 NOT WHAT THEY ARE CALLING, SO AREN'T WE DEALING HERE WITH ONLY
4 WHETHER OR NOT THE EVIDENCE PRESENTED TO THE MAGISTRATE OR
5 MUNICIPAL JUDGE, WHICHEVER ONE IT WAS, WAS SUFFICIENT TO GET THE
6 SEARCH WARRANT. ISN'T THAT THE ISSUE HERE? NOT THE -- AND THEN
7 WHETHER THE PROPERTY SEIZED AS A RESULT OF THE SEARCH WARRANT IS
8 ADMISSIBLE, NOT WHAT WAS DONE IN THE PREVIOUS SALES AS FAR AS THAT
9 BEING THE TRUTH OF THE MATTER.

10 MR. WILSON: WELL, THEN I MISUNDERSTOOD, BECAUSE IT WAS MY
11 UNDERSTANDING, AND MAYBE IT'S MY FAULT, I MISUNDERSTOOD WHAT THEY
12 WERE CALLING. BUT AS I UNDERSTAND --

13 THE COURT: AM I RIGHT, MISTER JEPERTINGER?

14 MR. JEPERTINGER: YES, SIR. ONLY COUNTS THREE AND FOUR.

15 THE COURT: THEY ARE CALLING COUNTS THREE AND FOUR FOR
16 POSSESSION OF COCAINE BASE WITH INTENT TO DISTRIBUTE ON JANUARY
17 19, 2007, AND ALSO POSSESSION OF COCAINE WITH INTENT TO DISTRIBUTE
18 ON JANUARY 19, 2007. THEY ARE NOT CALLING THE DISTRIBUTION CASES,
19 COUNTS ONE AND TWO.

20 MR. WILSON: THEN I MISUNDERSTOOD, BECAUSE THAT WAS MY
21 UNDERSTANDING, THAT THEY WERE ATTEMPTING TO CALL THOSE TWO
22 CASES ---

23 THE COURT: NO, THEY ARE NOT CALLING -- AND THAT'S WHERE I SEE A
24 MUCH DIFFERENT QUESTION REGARDING THE CONFRONTATION ISSUE.

25 MR. WILSON: NO QUESTION. I APOLOGIZE, BECAUSE I WAS TOTALLY

1 OFF BASE.

2 THE COURT: WE CAN SHORTEN IT UP, CAN'T WE. OKAY, GO AHEAD.

3 MR. WILSON: ALL RIGHT, SIR. I NEED TO READ THROUGH THIS. I

4 APOLOGIZE.

5 THE COURT: OKAY.

6 Q LET ME GO BACK THEN, AND ASK YOU, IN REGARDS TO THE SEARCH
7 WARRANT THEN, WHEN THE -- THE SEARCH WARRANT WAS CLEARLY
8 BASED ON THE TWO BUYS. IS THAT A FAIR STATEMENT?

9 A THAT'S CORRECT.

10 Q AND THEN YOU GO IN WITH THE SEARCH WARRANT, AND WHEN YOU
11 GO IN WITH THE SEARCH WARRANT, WAS THE DEFENDANT PRESENT
12 WHEN YOU WENT THERE WITH THE SEARCH WARRANT?

13 A YES, SIR.

14 Q HE WAS PRESENT AT THE LOCATION OF THE BUSINESS THE DAY THAT
15 YOU EXECUTED THE SEARCH WARRANT?

16 A CORRECT.

17 Q ALL RIGHT. AND YOU ARRESTED HIM THAT DAY AT THAT LOCATION?

18 A NO, SIR. WE ARRESTED HIM AWAY FROM THE CLUB AND BROUGHT HIM
19 BACK TO THE CLUB.

20 Q HE WAS AT THE CLUB, THEN HE LEFT, AND THEN YOU WENT AND GOT
21 HIM AND BROUGHT HIM BACK?

22 A NO, SIR. WE WERE OUT LOOKING FOR HIM FOR THE ARREST
23 WARRANTS ON THE DISTRIBUTION AND SALES, WE THEN LOCATED HIM
24 AT ANOTHER LOCATION, WE THEN PLACED HIM UNDER ARREST AND
25 THEN BROUGHT HIM BACK TO THE CLUB TO DO THE SEARCH WARRANT.

DIRECT EXAMINATION OF LT. BRIAN WALLACE BY MR. JEPERTINGER

21

1 Q OKAY. AND SO YOU FOUND HIM SOMEPLACE ELSE AND YOU BROUGHT
2 HIM TO THE CLUB AND YOU EXECUTED THE SEARCH WARRANT AT THAT
3 TIME.

4 A THAT'S CORRECT.

5 Q THAT'S WHAT YOU ARE SAYING.

6 A YES, SIR.

7 Q ALL RIGHT. I'M WITH YOU.

8 MR. WILSON: I DON'T THINK I HAVE ANY OTHER QUESTIONS, JUDGE.

9 THE COURT: ANY OTHER QUESTIONS OF THIS WITNESS MISTER
10 JEPERTINGER?

11 MR. JEPERTINGER: NOTHING OF THIS WITNESS, YOUR HONOR.

12 THE COURT: ALL RIGHT. THANK YOU, SIR. YOU MAY STEP DOWN. ANY
13 OTHER WITNESSES?

14 MR. JEPERTINGER: WE WOULD CALL BRIAN WALLACE TO THE STAND.

15 THE COURT: ALL RIGHT. COME AROUND PLEASE.

16 (AFTER BEING DULY SWORN BY THE CLERK OF COURT, BRIAN WALLACE
17 TESTIFIED AS FOLLOWS:)

18 DIRECT EXAMINATION OF LT. BRIAN WALLACE BY MISTER JEPERTINGER:

19 Q PLEASE STATE YOUR NAME FOR THE RECORD.

20 A BRIAN WALLACE.

21 Q FOR WHOM ARE YOU EMPLOYED MISTER WALLACE?

22 A MARION COUNTY SHERIFF'S OFFICE.

23 Q AND HOW LONG HAVE YOU BEEN EMPLOYED WITH THE MARION
24 COUNTY SHERIFF'S OFFICE?

25 A APPROXIMATELY NINE YEARS.

1 Q OKAY. ON JANUARY 19, 2007, DID YOU HAVE SOME INVOLVEMENT WITH
2 THIS CASE?

3 A YES.

4 Q OKAY. NOW, I'M GOING TO SHOW YOU WHAT HAS BEEN MARKED AS
5 COURT'S EXHIBIT #1, A FOUR-PAGE DOCUMENT. ARE YOU FAMILIAR
6 WITH THAT DOCUMENT, SIR?

7 A YES, SIR.

8 Q CAN YOU TELL THE COURT WHEN THAT -- THE SEARCH WARRANT WAS
9 ISSUED, I BELIEVE, ON JANUARY 12TH. IS THAT CORRECT?

10 A THAT IS CORRECT.

11 Q OKAY. WHEN DID YOU EXECUTE OR SERVE THAT WARRANT, PLEASE?

12 A JANUARY 19, 2007, AT APPROXIMATELY 4:50 P.M.

13 Q ALL RIGHT. AND WHEN WAS A RETURN MADE OF THE THINGS TAKEN?

14 A IT WAS MADE BY ME ON JANUARY 22, 2007, TO LUNETTE COX.

15 Q AND WHO IS LUNETTE COX?

16 A SHE IS THE CHIEF MAGISTRATE FOR THE, THE CHIEF COUNTY
17 MAGISTRATE.

18 THE COURT: WHAT WAS THE DATE OF THE RETURN?

19 MR. WALLACE: JANUARY THE 22ND.

20 Q SO, THAT WAS WITHIN TEN DAYS. IS THAT CORRECT?

21 A YES, SIR.

22 Q AND YOU WERE WITH MISTER ROUSE AND OTHER MEMBERS OF THE
23 DRUG UNIT. IS THAT CORRECT?

24 A THAT'S CORRECT.

25 Q AND YOU WENT INTO THIS ESTABLISHMENT KNOWN AS W.T.'S LOUNGE?

CROSS EXAMINATION OF LT. BRIAN WALLACE BY MR. WILSON

23

1 A WE DID.

2 Q AND WHILE YOU WERE IN THERE, WAS A QUANTITY OF BOTH COCAINE
3 AND CRACK SEIZED FROM THAT LOCATION?

4 A IT WAS.

5 Q OKAY. THANK YOU SO MUCH. PLEASE ANSWER ANY QUESTIONS THAT
6 MISTER WILSON MIGHT HAVE FOR YOU.

7 CROSS EXAMINATION OF BRIAN WALLACE BY MISTER WILSON:

8 Q JUST A COUPLE OF QUESTIONS. WHEN YOU GOT THERE, DID YOU GO
9 AT THE SAME TIME THAT OFFICER ROUSE WENT OR WERE YOU THERE
10 BEFORE HE GOT THERE?

11 A AT THE SAME TIME.

12 Q Y'ALL WENT AT THE SAME TIME?

13 A YES, SIR.

14 Q SO, YOU WERE WITH HIM WHEN Y'ALL WENT TO FIND THE DEFENDANT
15 TO TAKE HIM THERE?

16 A YES, SIR.

17 Q ALL RIGHT. AND WHEN YOU GOT BACK, WAS THE CLUB ALREADY
18 OPEN?

19 A IT WAS CLOSED.

20 Q THE CLUB WAS CLOSED?

21 A YES, SIR.

22 Q AND HOW DID YOU GET IN?

23 A AGENT ROUSE OBTAINED THE KEYS FROM MISTER WAYNE
24 MCLAUGHLIN.

25 Q AND NOW, DID YOU GO WITH AGENT ROUSE TO THE MAGISTRATE TO

1 GET THE SEARCH WARRANT?

2 A I DON'T RECALL IF I WAS THERE WITH HIM OR NOT.

3 Q OKAY. WERE YOU PRESENT AT THE TIMES THAT THE INFORMANT GAVE
4 INFORMATION TO DETECTIVE ROUSE, OR DEPUTY ROUSE, ABOUT THE
5 TWO BUYS THAT ALLEGEDLY OCCURRED?

6 A YES, SIR. I WAS THERE.

7 Q AND WERE YOU ALSO PRESENT WHEN THAT INFORMATION WAS
8 CONVEYED TO THE MAGISTRATE?

9 A I DON'T RECALL IF I WAS WITH HIM WHEN IT WAS CONVEYED TO THE
10 MAGISTRATE OR NOT.

11 **MR. WILSON:** I DON'T HAVE ANY OTHER QUESTIONS, YOUR HONOR.

12 **THE COURT:** ANYTHING FURTHER OF THIS WITNESS?

13 **MR. JEPERTINGER:** NO, SIR.

14 **THE COURT:** ALL RIGHT. THANK YOU, OFFICER WALLACE. YOU MAY
15 STEP DOWN.

16 **MR. JEPERTINGER:** I THINK THAT'S ALL WE HAVE IN TERMS OF THIS
17 ISSUE, YOUR HONOR.

18 **THE COURT:** ALL RIGHT. MISTER WILSON, THAT'S ON THIS ISSUE
19 PARTICULARLY, THAT IS, THE PROPERTY SEIZED AS A RESULT OF THE
20 SEARCH WARRANT, THAT'S WHAT WE ARE TALKING ABOUT HERE. YOUR
21 CLIENT HAS THE RIGHT, MISTER WILSON, TO PRESENT ANY TESTIMONY ON
22 THIS ISSUE THAT HE WISHES TO PRESENT WITHOUT WAIVING HIS FIFTH
23 AMENDMENT RIGHTS.

24 **MR. WILSON:** YES, SIR. JUDGE, WE DON'T HAVE ANY TESTIMONY THAT
25 WE WOULD LIKE TO INTRODUCE AT THIS TIME.

1 **THE COURT:** ALL RIGHT. I WILL BE GLAD TO HEAR FROM YOU , MISTER
2 WILSON, WITH REGARD TO WHERE WE ARE NOW. WE ARE TALKING ABOUT
3 WHETHER THE PROPERTY SEIZED AS A RESULT OF THE SEARCH WARRANT
4 WAS THE RESULT OF AN IMPROPER SEARCH.

5 **MR. WILSON:** JUDGE, I – AND AGAIN, I APOLOGIZE TO YOU, BECAUSE
6 MY UNDERSTANDING WAS THAT WE WERE TRYING COUNTS ONE AND TWO.

7 **THE COURT:** I COULD TELL BY YOUR QUESTIONS.

8 **MR. WILSON:** I HAD NO CLUE WE WERE TRYING THREE AND FOUR AND
9 SO I APOLOGIZE.

10 **THE COURT:** NO PROBLEM. I DIDN'T KNOW EITHER, SO...

11 **MR. WILSON:** AND WHAT I WOULD SAY TO THE COURT IS THIS, IS THAT
12 I DON'T PARTICULARLY HAVE A PROBLEM WITH THE SEARCH WARRANT. I
13 MEAN, I THINK THAT THE SEARCH WARRANT IS PROBABLY VALID AND SO
14 THEIR GOING THERE WOULD BE VALID. I HAVE SOME OTHER ISSUES, BUT
15 THAT'S PROBABLY FOR TRIAL, NOT FOR THIS.

16 **THE COURT:** ALL RIGHT. SO, THAT TAKES CARE OF THAT. WHAT
17 ABOUT THE CHAIN OF CUSTODY WITH REGARDS TO THOSE DRUGS THAT
18 WERE SEIZED AS A RESULT OF THE SEARCH WARRANT, NOT AS A RESULT OF
19 THE WARRANTS THAT WERE MADE ON THE BUY. DO YOU HAVE A PROBLEM
20 WITH THAT, MISTER WILSON?

21 **MR. WILSON:** NOT AT THIS TIME, BECAUSE, AGAIN, AS I SAID, AS FAR AS
22 I KNOW FROM LOOKING AT THE CHAIN OF CUSTODY SHEET, THERE IS A
23 DETECTIVE'S NAME ON THERE AND THE ONLY QUESTION WOULD BE IF HE
24 WAS THERE WHEN THE DRUGS WERE FOUND AND IF HE WAS, THEN THERE
25 SHOULDN'T BE AN ISSUE AS FAR AS I'M CONCERNED.

1 **MR. JEPERTINGER:** WE'RE GOING TO PUT UP LAW ENFORCEMENT
2 OFFICERS TO SAY —

3 **THE COURT:** ON ALL THE CHAIN ---

4 **MR. JEPERTINGER:** ON TAKING IT TO SLED. YES, SIR.

5 **THE COURT:** OKAY. ALL RIGHT. SO, THAT BEING THE CASE, MISTER
6 WILSON, WE DON'T HAVE ANY MOTIONS WITH REGARD TO THE SEARCH
7 WARRANT ISSUE AND THEY WILL HAVE TO PROVE THE CHAIN OF CUSTODY
8 WHEN THE TRIAL TIME COMES. IS THERE ANYTHING THAT YOU WOULD LIKE
9 TO ARGUE AT THIS TIME?

10 **MR. WILSON:** NO, SIR. I'M READY.

11 **THE COURT:** ALL RIGHT. THAT BEING THE CASE, I WOULD FIND THEN
12 THAT WITHOUT CONTEST BY THE DEFENSE THAT THE SEARCH WARRANT
13 WAS VALID AND VALIDLY OBTAINED AND THE ITEMS SEIZED AS A RESULT OF
14 THE SEARCH WARRANT WERE PROPERLY OBTAINED AS FAR AS THE SEARCH
15 WARRANT IS CONCERNED. THEIR ADMISSIBILITY WILL DEPEND ON WHAT
16 HAPPENED TO THEM AFTER THEY WERE SEIZED.

17 **MR. WILSON:** YES, SIR.

18 **THE COURT:** ALL RIGHT. AND WE DO WANT -- AND SINCE THAT IS THE
19 RULING, OF COURSE, COUNSEL, THAT WHEN THIS MATTER IS CALLED FOR
20 TRIAL, DURING THE PRESENTATION, MISTER JEPTERTINGER, BE SURE THAT
21 WE'RE NOT GOING TO REALLY GET INTO THE FACTS THAT GAVE RISE TO THE
22 SEARCH WARRANT, BUT WE DO WANT TO VERY CAREFULLY MAKE SURE
23 THAT THERE IS NO REFERENCE TO THESE PRIOR TWO BUYS AS PRIOR BAD
24 ACTS.

25 **MR. JEPERTINGER:** YES, SIR.

COURT'S RULING ON SEARCH WARRANT AND SEIZURE

27

1 **THE COURT:** I THINK THEY ARE CLEARLY INADMISSIBLE.

2 **MR. JEPERTINGER:** YES, SIR. AND I THINK IT'S ALSO IMPROPER,
3 EXCEPT UNDER VERY UNUSUAL CIRCUMSTANCES, TO ADMIT A SEARCH
4 WARRANT INTO EVIDENCE , YOUR HONOR, AND I WILL NOT DO THAT.

5 **MR. WILSON:** I AGREE.

6 **MR. JEPERTINGER:** I THINK THERE IS CASE LAW IN THE PAST THAT
7 GETS INTO IT AND IT IS REVERSIBLE ERROR AND I ONLY WANT TO DO
8 SOMETHING ONE TIME, YOUR HONOR.

9 **THE COURT:** SO, WE COULD JUST, WITHOUT EVEN MAKING A RULING
10 BEFORE THE JURY WITH REGARD TO THE SEARCH WARRANT, NOT EVEN
11 ADMIT THE SEARCH WARRANT, JUST ADMIT THAT A SEARCH WARRANT WAS
12 OBTAINED AND PURSUANT TO THAT SEARCH WARRANT THESE ITEMS WERE
13 FOUND.

14 **MR. WILSON:** YES, SIR.

15 **MR. JEPERTINGER:** THAT'S CORRECT.

16 **THE COURT:** AND THAT'S ALL WE NEED TO DO WITH THAT.

17 **MR. JEPERTINGER:** YES, SIR.

18 **THE COURT:** OKAY. YOU AGREE WITH THAT, MISTER WILSON?

19 **MR. WILSON:** YES, SIR.

20 **THE COURT:** COUNSEL, ANYTHING ELSE WE NEED TO ADDRESS THIS
21 AFTERNOON?

22 **MR. JEPERTINGER:** NOT THAT I'M AWARE OF OTHER THAN THE FACT, I
23 WILL SAY THIS, I DON'T THINK THIS WOULD FALL UNDER A MIRANDA
24 SITUATION, BUT I WILL, FOR WHATEVER IT'S WORTH. YOUR HONOR, WHEN
25 BOTH OFFICERS ROUSE AND WALLACE WENT INTO THE CLUB AND HE KNEW

1 THAT THERE WAS A SEARCH WARRANT THERE, PRIOR TO ANY QUESTIONING
2 ONE WAY OR THE OTHER, HE STATED, "THE STUFF IS IN THERE," REFERRING
3 TO THE KITCHEN.

4 THE COURT: SO, WE ARE TALKING ABOUT JACKSON V DENNO. AND SO
5 THE QUESTION IS WHETHER OR NOT -- SO WHAT YOU ARE SAYING IS, YOU
6 PLAN TO OFFER THAT STATEMENT.

7 MR. WILSON: YES, SIR.

8 THE COURT: ALL RIGHT. AND DO YOU CONTEST THE ADMISSIBILITY OF
9 THAT STATEMENT AS BEING NOT IN ACCORDANCE WITH HIS CONSTITUTIONAL
10 RIGHTS?

11 MR. WILSON: ABSOLUTELY, YOUR HONOR.

12 THE COURT: ALL RIGHT. THEN WE BETTER CONDUCT THE JACKSON V
13 DENNO RIGHT NOW.

14 MR. WILSON: YES, SIR, YOUR HONOR.

15 THE COURT: ALL RIGHT.

16 MR. JEPERTINGER: I'LL RECALL SOME OF THE OFFICERS.

17 THE COURT: ALL RIGHT.

18 MR. JEPERTINGER: I WILL RECALL OFFICER ROUSE FIRST.

19 THE COURT: SO, WE'RE TALKING ABOUT NOW A COMPLETELY
20 DIFFERENT ISSUE AND THAT IS THE ADMISSIBILITY OF ANY STATEMENTS
21 MADE BY THE DEFENDANT.

22 MR. JEPERTINGER: YES, SIR.

23 DIRECT EXAMINATION OF OFFICER ROUSE BY MISTER JEPERTINGER:

24 Q. MISTER ROUSE, YOU ARE STILL UNDER OATH.

25 A. YES, SIR.

1 Q COULD YOU TELL THE COURT KIND OF NOW, AND WE'RE FOCUSING IN
2 ON ONCE YOU GET INTO THIS ESTABLISHMENT, W.T.'S LOUNGE. IF YOU
3 KIND OF JUST TELL THE COURT WHAT WAS SAID, WHO WENT WHERE
4 AND IF, JUST IF ANY STATEMENTS WERE MADE TO YOU.

5 A AS WE ENTERED INTO THE CLUB, MISTER MCLAUGHLIN WAS THE FIRST
6 ONE IN AND THE OFFICERS, MYSELF, AGENT WALLACE, I'M NOT SURE IF
7 AGENT CRIBB WAS THERE AT THE TIME, OR BROWN EITHER ONE, AT
8 THAT PARTICULAR TIME, BUT JUST AS HE WALKED INTO THE DOOR, THE
9 DEFENDANT SAID, "IT'S IN THERE IN THE KITCHEN ON THE SHELF." NOT
10 PARTICULARLY SPEAKING TO ANYBODY.

11 Q NOW, AT THIS TIME HE WAS UNDER ARREST.

12 A THAT'S CORRECT.

13 Q OKAY. AND TO THE BEST OF YOUR KNOWLEDGE DID EITHER YOU, OR
14 MISTER WALLACE OR MISTER BASS OR ANY OTHER LAW
15 ENFORCEMENT GIVE HIM WHAT IS COMMONLY KNOWN AS HIS MIRANDA
16 WARNINGS?

17 A NO, SIR. WE HADN'T ASKED HIM ANY QUESTIONS, ONLY FOR THE KEY
18 TO THE BUILDING.

19 Q OKAY. NOW, THIS STATEMENT THAT HE SAID ABOUT THE OBJECTS
20 BEING IN THE KITCHEN ON THE SHELF, WERE THEY A RESPONSE TO
21 ANY QUESTION THAT YOU MIGHT HAVE ASKED HIM?

22 A NO, SIR.

23 Q WAS IT COMPLETELY WHAT WE CALL, JUST A SPONTANEOUS
24 STATEMENT BY THE ACCUSED IN THIS CASE?

25 A THAT'S CORRECT.

1 Q OKAY. THANK YOU. THAT'S ALL THE QUESTIONS I HAVE.

2 THE COURT: CROSS EXAMINATION, MISTER WILSON.

3 MR. WILSON: THANK YOU, YOUR HONOR.

4 CROSS EXAMINATION OF OFFICER ROUSE BY MISTER WILSON:

5 Q OFFICER ROUSE, AS I UNDERSTAND IT, YOU ARRESTED THE
6 DEFENDANT AT SOME OTHER LOCATION.

7 A THAT'S CORRECT.

8 Q HOW FAR AWAY FROM THE CLUB DID YOU ARREST HIM?

9 A PROBABLY TWO-AND-A-HALF, THREE MILES.

10 Q OKAY. AND YOU ARREST HIM, AND AT THAT TIME YOU ADVISED HIM
11 THAT HE HAD WARRANTS THAT WERE OUTSTANDING AND THAT YOU
12 WERE ARRESTING HIM FOR THOSE WARRANTS.

13 A THAT'S CORRECT.

14 Q ALL RIGHT. AND YOU CUFFED HIM AND YOU PLACED HIM IN YOUR
15 PATROL CAR. IS THAT CORRECT?

16 A THAT'S CORRECT.

17 Q AND THEN YOU DID NOT TAKE HIM TO JAIL AT THAT POINT.

18 A NO, SIR. WE TOLD HIM AT THAT POINT THAT WE HAD A SEARCH
19 WARRANT FOR HIS BUSINESS AND WE'D LIKE FOR HIM TO GO WITH US
20 TO THE CLUB.

21 Q YOU TOLD HIM YOU WOULD LIKE FOR HIM TO GO WITH YOU.

22 A THAT'S RIGHT.

23 Q ALL RIGHT. WELL, HE WASN'T IN A POSITION TO REFUSE YOU BECAUSE
24 HE WAS CUFFED AND IN THE BACKSEAT OF YOUR CAR.

25 A WELL, HE WAS IN ONE OF THE PATROL CARS, NOT REALLY IN MINE. HE

1 COULD HAVE EASILY SAID I DON'T WANT TO GO. WE COULD HAVE
2 WENT INTO THE BUILDING WITHOUT HIM BEING THERE OR NOT BEING
3 THERE.

4 Q WELL, MY POINT IS, HOW WAS HE GOING TO GET TO THE JAIL IF HE'S
5 CUFFED AND HE'S IN THE BACKSEAT OF YOUR CAR?

6 A WE COULD HAVE TRANSPORTED HIM TO JAIL.

7 Q WELL, DID YOU ASK HIM, DO YOU WANT ME TO GO AHEAD AND TAKE
8 YOU TO JAIL BEFORE I GO DO THIS, OR DID YOU GIVE HIM A CHOICE?

9 A I DON'T RECALL THAT WE DID. NO, SIR.

10 Q WELL, DO YOU NORMALLY GIVE A DEFENDANT WHO IS UNDER ARREST
11 A CHOICE ABOUT WHERE HE'S GOING TO GO?

12 A WE -- IN THIS PARTICULAR CASE, MISTER WILSON, WE ASKED HIM TO
13 GO WITH US TO THE CLUB TO VERIFY WHAT WAS FOUND IN THE CLUB.
14 WITHOUT HIM NOT BEING THERE -- WE LIKE PEOPLE TO BE THERE
15 WHEN WE DO SEARCH WARRANTS, YOU KNOW, BUT THEY DON'T
16 PARTICULARLY HAVE TO BE ACCORDING TO THE LAW, BUT WE, ON THIS
17 PARTICULAR CASE, WE ASKED HIM TO GO TO THE CLUB WITH US.

18 Q OKAY. BEFORE YOU ASKED HIM TO GO TO THE CLUB, KNOWING THAT
19 YOU WERE GOING THERE TO EXECUTE A SEARCH WARRANT, DID YOU
20 THINK TO READ HIM HIS MIRANDA RIGHTS AFTER YOU HAD ALREADY
21 PLACED HIM UNDER ARREST AND HAD HIM CUFFED?

22 A WE WEREN'T ASKING HIM ANY QUESTIONS ABOUT WHAT HE DID OR
23 WHAT WAS IN THE CLUB. WE JUST TOLD HIM WE HAD A SEARCH
24 WARRANT AND WE WOULD LIKE FOR HIM TO GO TO THE CLUB WITH US
25 FOR THE SEARCH WARRANT. WE WEREN'T ASKING HIM ANY

1 QUESTIONS ABOUT WHAT WAS IN THE CLUB, OR WHAT WE FOUND, OR
2 ANYTHING LIKE THAT.

3 Q SO, YOU DIDN'T ASK HIM IF HE WANTED TO GO. YOU TOLD HIM HE WAS
4 GOING. IS THAT CORRECT?

5 A I ASKED HIM IF HE WANTED TO GO TO THE CLUB WITH US. YEAH.

6 Q WELL, THAT'S MY POINT. SO, NOW YOU'RE ASKING HIM IF HE WANTS TO
7 GO, BUT YOU STILL HAVE NOT READ HIM HIS MIRANDA RIGHTS. THEN
8 YOU ASK HIM FOR THE KEYS TO OPEN THE BUSINESS THAT YOU ARE
9 GETTING READY TO SEARCH, BUT YOU STILL HAVEN'T READ HIM HIS
10 MIRANDA RIGHTS AND HE'S UNDER ARREST FOR THE SAME OFFENSES
11 INVOLVING DRUGS. RIGHT?

12 A THAT'S CORRECT.

13 Q AND HE WAS NOT IN A POSITION TO RESIST YOU IN ANY WAY
14 WHATSOEVER. WAS HE? HOW MANY OFFICERS WERE THERE?

15 A THERE WAS FOUR OR FIVE OFFICERS. HE COULD HAVE EASILY SAID,
16 "I'M NOT GOING IN THERE," AND NOT WENT.

17 Q WELL, IS THERE ANY PARTICULAR REASON WHY YOU DIDN'T READ HIM
18 HIS RIGHTS?

19 A I WASN'T HIM ASKING HIM ANY PARTICULAR QUESTIONS AS FAR AS THE
20 CRIMINAL ELEMENTS THAT HE HAD COMMITTED.

21 Q WELL, IF YOU'RE ASKING HIM TO GO WITH YOU TO A CRIME SCENE
22 WHERE YOU THINK HE IS COMMITTING A CRIME, YOU DON'T THINK THAT
23 THAT'S SOMEHOW INCRIMINATING ON HIM? YOU DON'T THINK THAT?

24 A NO, SIR.

25 Q AND YOU DON'T THINK THAT ASKING HIM FOR THE KEYS TO OPEN THE

1 BUILDING WHERE YOU CAN FIND DRUGS THAT YOU SUSPECT THAT HE
2 IS SELLING IS NOT INCRIMINATING TO HIM?

3 A PARTICULARLY ASKING HIM FOR THE KEYS, MISTER WILSON, WAS
4 SIMPLY TO KEEP US FROM HAVING TO CUT IT, BECAUSE IT WAS A
5 PADLOCKED DOOR, WE WOULD HAVE DESTROYED THE LOCK,
6 DESTROYED THE DOOR GOING IN, YOU KNOW, GIVING HIM THE
7 COURTESY OF OPENING THE DOOR FOR US.

8 Q BUT DON'T YOU UNDERSTAND, FROM A LEGAL STANDPOINT, THAT
9 HAVING THE KEYS COULD ACTUALLY BE EVIDENCE AGAINST YOU. THE
10 FACT THAT YOU GOT THE KEYS ON YOUR PERSON WHEN YOU GET
11 ARRESTED OR WHEN YOU GIVE IT TO THE LAW ENFORCEMENT TO
12 OPEN THE BUILDING WHERE THE DRUGS ARE THEN FOUND, THAT THAT
13 IS, IN FACT, EVIDENCE AGAINST YOU AND COULD BE.

14 A NO, SIR. IT WOULDN'T BE EVIDENCE AGAINST HIM BECAUSE HE WAS
15 THE OWNER OF THE CLUB. WE KNEW HE WAS THE OWNER OF THE
16 CLUB.

17 Q WELL, DID YOU CHECK THAT? BECAUSE THAT IS ANOTHER QUESTION.
18 DID YOU CHECK THE LICENSES TO SEE WHO THOSE LICENSES WERE
19 REGISTERED TO?

20 MR. JEPERTINGER: I THINK THIS IS - I OBJECT.

21 MR. WILSON: HE RAISED THE ISSUE.

22 THE COURT: WAIT. WAIT A MINUTE.

23 MR. JEPERTINGER: I OBJECT RESPECTFULLY. I THINK THIS IS BEYOND
24 THE SCOPE OF JACKSON VERSUS DENNO.

25 THE COURT: I AGREE. I THINK IT IS BEYOND THE SCOPE OF JACKSON

1 VERSUS DENNO. WELL, I'M NOT SURE IT IS YET, BECAUSE IT DOES HAVE
2 SOMETHING TO DO WITH THE VOLUNTARINESS. I'LL LET HIM GO A LITTLE BIT
3 FURTHER. GO AHEAD, MISTER WILSON.

4 **MR. WILSON:** JUDGE, I'M REALLY THROUGH. I THINK MY ARGUMENT
5 NOW IS TO THE COURT AND NOT TO THE OFFICER.

6 **THE COURT:** I AGREE. I THINK IT IS TO ME. OKAY. ALL RIGHT.
7 ANYTHING FURTHER?

8 **MR. JEPERTINGER:** NOTHING FURTHER ON THIS ISSUE, YOUR HONOR.

9 **THE COURT:** ALL RIGHT. YOU MAY STEP DOWN, PLEASE. ANY OTHER
10 WITNESSES ON THE JACKSON V DENNO?

11 **MR. JEPERTINGER:** I DON'T THINK SO.

12 **THE COURT:** IS THIS THE ONLY WITNESS THAT HEARD THAT
13 STATEMENT?

14 **MR. JEPERTINGER:** I BELIEVE OTHERS HEARD IT, YOUR HONOR, BUT IT
15 WOULD BE CUMULATIVE.

16 **THE COURT:** ALL RIGHT. MISTER WILSON, AGAIN, ON THE JACKSON
17 VERSUS DENNO ISSUE, YOU CLIENT HAS THE RIGHT TO PRESENT ANY
18 TESTIMONY THAT HE WISHES TO PRESENT REGARDING THAT MATTER
19 WITHOUT WAIVING HIS FIFTH AMENDMENT RIGHTS.

20 **MR. WILSON:** WE HAVE NO TESTIMONY TO PRESENT AT THIS TIME,
21 YOUR HONOR.

22 **THE COURT:** ALL RIGHT. ALL RIGHT, MISTER WILSON, I'LL BE GLAD TO
23 HEAR FROM YOU BY WAY OF ARGUMENT.

24 **MR. WILSON:** JUDGE, THE CONCERN I HAVE IS, THE WHOLE IDEA OF
25 MIRANDA IS THAT ONCE A DEFENDANT HAS BEEN ARRESTED AND ONCE HE'S

ARGUMENT - MISTER WILSON

35

1 BEEN PLACED IN CUSTODY, THAT HIS RIGHTS ARE READ TO HIM SO THAT HE
2 HAS THE OPPORTUNITY TO DECIDE IF HE WANTS TO INCRIMINATE HIMSELF.
3 WHAT THEY DID WAS, THEY ARRESTED HIM, CUFFED HIM, PUT HIM IN THE
4 SEAT OF THE CAR, THEN THEY ASKED HIM, ACCORDING TO THE OFFICER, AND
5 THIS IS WHERE I HAVE A REAL PROBLEM, BECAUSE NOW, HE'S IN CUSTODY.
6 WHAT'S HE GOING TO DO? HE'S IN CUSTODY. THEY SAY, "WELL, WE WANT
7 YOU TO GO WITH US BACK TO WHERE WE THINK THAT THERE ARE SOME
8 DRUGS THAT YOU'VE GOT STORED." SO, THEY TAKE HIM BACK THERE, STILL
9 UNDER ARREST, STILL UNDER CUSTODY AT THAT TIME. WELL THEN, WHEN
10 THEY GET HIM THERE, AND YOUR HONOR, I WOULD SUBMIT TO YOU THAT
11 BEING PRESENT IN THE FACILITY WHEN THE DRUGS ARE FOUND, IS
12 CERTAINLY INCRIMINATING. SECONDLY, WHAT THEY DO, IS THEY THEN ASK
13 HIM FOR THE KEYS - AND I SAY, THEY ASKED HIM. I DON'T KNOW IF THEY
14 ASKED HIM OR IF THEY JUST TOOK THEM OFF HIS PERSON - BUT WHATEVER
15 THEY DID, THEY GOT THE KEYS FROM HIM ACCORDING TO THE OFFICER, AND
16 THE OFFICER SAYS THAT HE ASKS HIM FOR THE KEYS. WELL, AGAIN, HE'S
17 NOW ASKING HIM FOR EVIDENCE AGAINST HIMSELF BECAUSE OBVIOUSLY
18 THEY BELIEVE THAT THERE ARE DRUGS THERE AND IF HE'S GOT THE KEY,
19 THINK ABOUT THAT FOR A SECOND, IF HE'S GOT THE KEY - AND I DON'T
20 KNOW IF THAT'S THE ONLY KEY OR THERE ARE FIFTY KEYS - BUT IF HE'S GOT
21 ONE OF THEM, IT CERTAINLY LOOKS LIKE HE'S GOT CONTROL AND ACCESS
22 TO THOSE DRUGS.

23 THE COURT: WELL, NOW YOU'RE TALKING ABOUT APPLES AND
24 ORANGES HERE. YOU'RE NOT CONTESTING THE RIGHT THAT THEY HAD TO
25 TAKE THE KEYS FROM HIM AND OPEN THE LOCK. THAT'S NOT THE ISSUE

1 HERE. THE ISSUE IS ABOUT THE STATEMENT.

2 **MR. WILSON:** YES, SIR.

3 **THE COURT:** I MEAN, I DON'T SEE THAT THERE IS ANY ISSUE FROM THE
4 JACKSON V DENNO STANDPOINT ABOUT THE PHYSICAL FACT THAT THEY MAY
5 HAVE TAKEN THE KEYS AND OPENED THE DOOR, GOT THE KEYS FROM HIM
6 AND OPENED THE DOOR WITH THEM, I DON'T THINK THAT'S A JACKSON
7 VERSUS DENNO ISSUE.

8 **MR. WILSON:** NO, SIR. IT'S —

9 **THE COURT:** THE ONLY ISSUE IS WHETHER OR NOT THE STATEMENT
10 THAT HE SAID, "IT'S IN THE THERE ON THE KITCHEN SHELF." THAT'S WHAT
11 WE'RE TALKING ABOUT.

12 **MR. WILSON:** WELL, YES, SIR. BUT, JUDGE, THE ISSUE IS WHETHER OR
13 NOT, UNDER MIRANDA, THEY WERE ACTUALLY QUESTIONING HIM TO GET, TO
14 ELICIT SOME INFORMATION THAT COULD BE USED AGAINST HIM.

15 **THE COURT:** THE VERBAL STATEMENT.

16 **MR. WILSON:** AND ASKING FOR THE KEYS, I THINK, IS TANTAMOUNT TO
17 SOLICITING, ON THE PART OF LAW ENFORCEMENT, INFORMATION FROM HIM
18 THAT CAN BE INCRIMINATING. BECAUSE THOSE KEYS, AND I PROMISE YOU,
19 DURING THE COURSE OF THE TRIAL, THEY WILL BE SAYING, "OH, YEAH, HE
20 HAD THOSE KEYS IN HIS POCKET AND WE TOOK THEM FROM HIM, WE ASKED
21 HIM FOR THEM, AND HE GAVE THEM TO US."

22 **THE COURT:** BUT THAT'S NOT THE ISSUE HERE. I THOUGHT THE ISSUE
23 HERE, WHAT YOU WERE CONTESTING IS THEIR STATEMENT THAT HE SAID,
24 SUPPOSEDLY, SPONTANEOUSLY, AND WITHOUT BEING QUESTIONED, "IT'S IN
25 THERE ON THE SHELF." I THOUGHT THAT'S WHAT WE WERE ARGUING ABOUT.

ARGUMENT - MISTER WILSON

37

1 **MR. WILSON:** IT IS. IT IS. MY POINT, THOUGH IS, ALL OF THIS VIOLATES
2 MIRANDA SO THAT BECAUSE HE HAD NOT BEEN GIVEN HIS MIRANDA PRIOR
3 TO MAKING THAT STATEMENT, IF IN FACT IT WAS MADE, THEN EVERYTHING
4 ELSE SHOULD NOT COME IN ANYWAY, BECAUSE IT WAS ALL IN VIOLATION TO
5 MIRANDA. BECAUSE ONCE —

6 **THE COURT:** WHAT'S THE VIOLATION OF MIRANDA IN GETTING THE
7 KEYS FROM HIM? YOU LOST ME THERE.

8 **MR. WILSON:** I WOULDN'T HAVE A PROBLEM IF THEY SAID, "WHEN WE
9 ARRESTED HIM, WE TOOK THE KEYS OFF HIS PERSON." I WOULDN'T HAVE A
10 PROBLEM. THAT IS NOT WHAT HE SAID. WHAT HE SAYS IS, "WE ASKED HIM
11 TO GIVE US THE KEYS. HE, THEN, GIVES US THE KEYS." THERE'S A HUGE
12 DIFFERENCE, BECAUSE ONCE HE'S IN CUSTODY, THEY HAVE THE RIGHT TO
13 TAKE HIS POSSESSIONS FROM HIM. I DON'T HAVE ANY PROBLEM WITH THAT.
14 WHAT THEY DON'T HAVE THE RIGHT TO DO, WITHOUT MIRANDA, IS TO ASK
15 HIM FOR INFORMATION THAT IS GOING TO INCRIMINATE HIM AND ASKING HIM
16 TO GIVE THEM THE KEYS DOES THAT.. AND THEY ARE GOING TO USE THAT
17 AGAINST HIM IN THE COURSE OF HIS TRIAL.

18 **THE COURT:** WELL, WHAT DOES THE WITNESS SAY WITH REGARDS TO
19 HOW THEY GOT THE KEYS? I DIDN'T MAKE A NOTE OF THAT BECAUSE I DIDN'T
20 THINK THAT WAS WHAT THE ISSUE WAS THAT WE ARE TALKING ABOUT HERE.
21 I THOUGHT THE ISSUE WE WERE TALKING ABOUT WAS THE STATEMENT THAT
22 HE ACTUALLY MADE.

23 **MR. WILSON:** BUT I WAS TRYING, BUT MY POINT JUDGE IS, WHAT I WAS
24 TRYING TO DO THOUGH, WAS SHOW THE COURT HOW THEY VIOLATED
25 MIRANDA EVEN BEFORE THE STATEMENT WAS MADE. SO THAT ANYTHING

1 THAT CAME AFTER THAT, HE WAS ALREADY, THEY WERE ALREADY IN
2 VIOLATION OF MIRANDA. THAT'S MY POINT.

3 THE COURT: I GO BACK TO MY QUESTION, WHAT WAS THE STATEMENT
4 THAT WAS MADE ABOUT HOW THEY CAME INTO THE POSSESSION OF THE
5 KEYS? WHAT WAS THE WITNESS' TESTIMONY REGARDING THAT?

6 MR. WILSON: HIS TESTIMONY, AS BEST I RECALL WAS, WAS THAT HE
7 ASKED THE DEFENDANT TO GIVE HIM, ASKED THE DEFENDANT FOR THE KEYS
8 FOR THE BUILDING AND THAT THE DEFENDANT THEN, I ASSUME
9 VOLUNTARILY, GAVE HIM THE KEYS TO THE BUILDING SO HE COULD GO IN.
10 THAT'S WHAT HIS TESTIMONY WAS.

11 THE COURT: MY RECOLLECTION WAS, HE ASKED HIM FOR THE KEYS
12 SO THAT, "WE HAVE A SEARCH WARRANT AND THEREFORE, WE'RE GOING TO
13 EXECUTE THIS SEARCH WARRANT, GIVE US THE KEYS SO WE CAN EXECUTE
14 THE SEARCH WARRANT. WHAT'S THE DIFFERENCE BETWEEN THAT AND
15 GOING UP TO SOMEBODY'S DOOR, KNOCKING ON THE DOOR, SAYING WE
16 HAVE A SEARCH WARRANT, LET US IN, THEY OPEN THE DOOR?

17 MR. WILSON: WELL, AND THAT'S THE WHOLE POINT. THE THING HERE
18 IS, HE WASN'T THERE TO OPEN THE DOOR AND THEY BROUGHT HIM THERE.
19 THEY BROUGHT HIM THERE.

20 THE COURT: WHAT DIFFERENCE DOES THAT MAKE?

21 MR. WILSON: WELL, IT MAKES A HUGE DIFFERENCE JUDGE, IN TERMS
22 OF THE FACT THAT WHEN THEY ARE -- AND I'M GETTING OFF MY POINT,
23 BECAUSE MY POINT WAS, AGAIN, JUDGE, THAT WHAT THEY DID WAS, ONCE
24 HE WAS ARRESTED AND IN CUSTODY, INSTEAD OF ASKING HIM ANYTHING
25 WHICH MIGHT INCRIMINATE HIM, YOU READ HIM MIRANDA, AND THEY DIDN'T.

ARGUMENT - MISTER WILSON

39

1 AND THEN THEY STARTED TO ASK HIM DIFFERENT THINGS. 1)DO YOU WANT
2 TO GO WITH US BACK TO WHERE WE ARE LOOKING FOR THESE DRUGS THAT
3 WE THINK YOU[VE GOT AND THEN 2) DO YOU WANT —

4 THE COURT: THEY DIDN'T SAY THAT. THAT'S NOT THE TESTIMONY.

5 MR. WILSON: WELL, HE DIDN'T USE THE WORD "GO WITH ME TO LOOK
6 FOR THE DRUGS" BUT JUDGE HE HAD A SEARCH WARRANT TO GO SEARCH
7 FOR THE DRUGS AND HE'S TAKING THE DEFENDANT BACK WITH HIM AND
8 THEN HE, BUT NOT ONLY DOES HE DO THAT, BUT HE GETS HIM THERE AND
9 ONCE HE GETS HIM THERE, HE SAYS TO HIM, "OH, WELL, HOW ABOUT GIVE
10 ME THE KEYS, OR CAN YOU GIVE ME THE KEYS, OR WILL YOU GIVE ME THE
11 KEYS" OR WHATEVER THE WORDING WAS, "SO THAT I CAN OPEN THE DOOR
12 TO GET IN HERE."

13 THE COURT: ALL RIGHT. STOP RIGHT THERE JUST A MINUTE, MISTER
14 WILSON. LET'S USE A HYPOTHETICAL. THE LAW ENFORCEMENT OBTAINED,
15 AS YOU HAVE NOW CONCEDED, A VALID SEARCH WARRANT. THEY SEE A
16 DEFENDANT IN FRONT OF HIS HOUSE AND THE HOUSE THAT THEY ARE
17 SUPPOSED TO SEARCH IS FIFTY YARDS AWAY, RIGHT BEHIND HIM, AND THEY
18 WALK UP TO HIM AND THEY SAY, "I'VE GOT A SEARCH WARRANT TO YOUR
19 HOUSE, OR THIS RESIDENCE, LET ME IN OR WOULD YOU LET ME IN." AND HE
20 LETS THEM IN. WHAT'S THE DIFFERENCE BETWEEN THAT AND THE FACT
21 THAT THEY TAKE THE KEYS AND LET THEMSELVES IN?

22 MR. WILSON: THE DIFFERENCE, TO ME JUDGE, IS THAT HE IS IN
23 CUSTODY. IN THE SCENARIO THAT YOU GIVE, THE PERSON IS NOT IN
24 CUSTODY. HERE, THE GUY IS IN CUSTODY, HE'S UNDER ARREST.

25 THE COURT: AND THAT GOES AS FAR — THAT'S NOT A MIRANDA

1 PROTECTION, BECAUSE IT'S NOT A STATEMENT AS I SEE IT. I THINK THAT
2 MIRANDA, ALL MIRANDA DOES IS PROTECT VERBAL STATEMENTS.

3 **MR. WILSON:** IT PROTECTS INTERROGATION BY LAW ENFORCEMENT.
4 ONCE THE, WHAT MIRANDA IS DESIGNED TO DO IS THAT ONCE YOU ARE IN
5 CUSTODY IS HAVE YOU PROTECT YOUR RIGHTS.

6 **THE COURT:** ALL RIGHT. I UNDERSTAND YOUR POINT. LET'S GO TO
7 THE NEXT ISSUE. LET'S GO TO THE ACTUAL STATEMENT THAT WAS MADE
8 WHICH IS WHAT I THOUGHT THE WHOLE HEARING WAS ABOUT. "IT'S IN
9 THERE ON THE KITCHEN SHELF." DO YOU CONTEST OR OBJECT TO THEIR
10 BEING ABLE TO TESTIFY TO THAT STATEMENT?

11 **MR. WILSON:** YES, SIR. AND I --

12 **THE COURT:** ALL RIGHT. WHAT IS THE BASIS FOR YOUR OBJECTION?

13 **MR. WILSON:** THE REASON THAT I DO IS BECAUSE I, AGAIN, MY POINT
14 IS, THEY ARE IN VIOLATION OF MIRANDA FROM THE VERY BEGINNING. ONE,
15 AND THAT'S THE WHOLE POINT, JUDGE. THEY WERE IN VIOLATION OF
16 MIRANDA, THEY NEVER READ HIM HIS MIRANDA RIGHTS, THEY --

17 **THE COURT:** I UNDERSTAND.

18 **MR. WILSON:** -- AND DURING ALL THESE THINGS, AND SO IF HE MADE
19 THE STATEMENT, IT WAS ALREADY AFTER HE HAD BEEN QUESTIONED IN
20 SOME FORM.

21 **THE COURT:** ALL RIGHT. LET ME TELL YOU, AND I'M ANTICIPATING
22 WHAT MISTER JEPERTINGER IS GOING TO SAY, HE'S GOING TO CONCEDE
23 THAT THEY DIDN'T GIVE HIM MIRANDA RIGHTS. I KNOW THAT; BUT HE'S
24 GOING TO CONTEND THAT IT WAS NOT IN RESPONSE TO INTERROGATION
25 BUT WAS A VOLUNTARY STATEMENT, WITHOUT ANY INTERROGATION,

ARGUMENT - MISTER WILSON

41

1 WHAT'S YOUR POSITION ON THAT?

2 MR. WILSON: BECAUSE ONCE MIRANDA HAS BEEN VIOLATED,
3 EVERYTHING THAT COMES AFTER THAT IS FRUIT OF THE POISONOUS TREE
4 AND SO YOU CAN'T THEN BENEFIT FROM THE FACT THAT YOU DIDN'T DO IT.

5 THE COURT: AREN'T THERE, ISN'T THERE CASE LAW THAT SAYS THAT A
6 VOLUNTARY STATEMENT, NOT IN RESPONSE TO INTERROGATION, IS
7 ADMISSIBLE?

8 MR. WILSON: YES, SIR. YES, SIR.

9 THE COURT: ALL RIGHT, WHAT'S THE DIFFERENCE?

10 MR. WILSON: BECAUSE HERE, THE DIFFERENCE IS, ONCE THEY
11 VIOLATED MIRANDA, UNLESS THERE IS SOME INTERVENING, UNLESS THERE
12 IS SOME INTERVENING ACT WHICH RESTORES THE MIRANDA ISSUE, THEN
13 EVERYTHING THAT HAPPENS IN REGARDS TO ANY STATEMENT THAT THIS
14 DEFENDANT MAKES, IS IN VIOLATION OF MIRANDA. AND ONCE IT WAS
15 VIOLATED, YOU CAN'T RESTORE IT, UNLESS THERE WAS SOME INTERVENING
16 ACT. THERE IS NO INTERVENING ACT.

17 THE COURT: ALL RIGHT. I MAY DISAGREE WITH YOU A LITTLE BIT. MY
18 POINT, I THINK, IS THIS MISTER WILSON, AND WHAT I'M GOING TO ASK MISTER
19 JEPERTINGER ABOUT. MISTER JEPERTINGER, I WILL AGREE, AND I THINK
20 THERE IS CASE LAW TO THE EFFECT THAT A VOLUNTARY STATEMENT, MADE
21 NOT IN RESPONSE TO INTERROGATION, DOES NOT REQUIRE A MIRANDA
22 WARNING. HOWEVER, DO YOU HAVE ANY CASES THAT ALLOW SUCH A
23 SPONTANEOUS OR VOLUNTARY STATEMENT MADE AFTER A DEFENDANT IS
24 ARRESTED AND NOT BEFORE HE'S ARRESTED? IT SEEMS LIKE TO ME THAT
25 AFTER HE IS ARRESTED, HE CAN'T EVEN MAKE A VOLUNTARY STATEMENT

1 WITHOUT HAVING HAD MIRANDA RIGHTS. NOW, I KNOW THAT SPONTANEOUS
2 STATEMENTS MADE BEFORE ARREST, THEY JUST BRING SOMEBODY INTO
3 THE POLICE STATION AND HE BLURTS OUT SOMETHING AND THEY HAVEN'T
4 ARRESTED HIM, I KNOW THOSE SORTS OF SPONTANEOUS STATEMENTS ARE
5 ADMISSIBLE. BUT WHAT ABOUT THE SPONTANEOUS STATEMENTS THAT ARE
6 MADE AFTER HE'S UNDER ARREST. DON'T THEY HAVE TO GIVE HIM A
7 MIRANDA WARNING AT THE TIME OF THE ARREST TO GET IN ANY KIND OF
8 STATEMENT MADE AFTER HE'S ARRESTED, SPONTANEOUS OR NOT?

9 **MR. JEPERTINGER:** I UNDERSTAND THE COURT'S POSITION. I WASN'T
10 PREPARED TO GO THROUGH THAT ASPECT OF IT, YOUR HONOR. BUT LET ME
11 LOOK—

12 **THE COURT:** TAKE A MINUTE.

13 **MR. JEPERTINGER:** THANK YOU.

14 (BRIEF BREAK)

15 **MR. JEPERTINGER:** YOUR HONOR, I WAS JUST GOING THROUGH THE
16 CURRENT LAW THAT I HAVE, GOING THROUGH, OBVIOUSLY, VOLUNTARINESS
17 OF CONFESSION AND TOTALITY OF CIRCUMSTANCES. I WOULD ASK THE
18 COURT FOR TWENTY MINUTES TO COME BACK TO THIS ISSUE, YOUR HONOR.
19 I WOULD LIKE TO LOOK ON CASE MAKER FOR —

20 **THE COURT:** I CERTAINLY WANT TO RULE IN ACCORDANCE WITH THE
21 LAW, BUT I WILL TELL YOU WHAT MY THINKING IS AT THIS TIME, AND I'M NOT
22 RULING AT THIS TIME AND I WILL GIVE YOU A CHANCE TO SEE IF YOU CAN
23 PRESENT ANYTHING TO ME THAT'S DIFFERENT FROM THIS. BUT, IN MY VIEW,
24 ANY POST-ARREST STATEMENTS, SPONTANEOUS OR IN RESPONSE TO
25 INTERROGATION, MADE WITHOUT MIRANDA WARNINGS IS INADMISSIBLE.

ARGUMENT - MISTER JEPERTINGER

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1 NOW, I'M AWARE OF THE CASE LAW THAT SAYS SPONTANEOUS STATEMENTS
2 MADE NOT IN RESPONSE TO ANY KIND OF INTERROGATION ARE ADMISSIBLE,
3 BUT IN MY VIEW, ONCE A DEFENDANT IS UNDER ARREST, HE MUST
4 IMMEDIATELY BE GIVEN THOSE MIRANDA WARNINGS AND ANYTHING THAT HE
5 SAYS AFTER THAT IS INADMISSIBLE UNLESS THE MIRANDA WARNINGS WERE
6 GIVEN. THAT'S THE WAY I VIEW THE LAW. BUT I'M NOT RULING AT THIS
7 POINT.

8 MR. JEPTERTINGER: YES, SIR.

9 THE COURT: I'LL GIVE YOU A CHANCE IF YOU'VE GOT A CASE ANY
10 DIFFERENT THAN THAT, I'LL GIVE YOU A CHANCE TO TELL ME. NOW, THE
11 OTHER SIDE OF THE COIN IN REGARD TO THE KEYS, I DON'T THINK THAT'S
12 INCRIMINATING AT ALL. I DON'T THINK THE MIRANDA WARNINGS GO TO
13 OBTAINING THE KEYS. FOR EXAMPLE, HE COULD HAVE BEEN SEARCHED
14 INCIDENTAL TO HIS ARREST, THE KEYS TAKEN OUT OF HIS POCKET, THE
15 KEYS USED TO OPEN THE DOOR AND THE OFFICERS COULD TESTIFY, THIS IS
16 WHERE THEY GOT THE KEYS, THEY GOT THEM FROM HIM, THEY TOOK THEM
17 FROM HIM WHETHER HE GAVE THEM TO THEM OR WHETHER THEY TOOK
18 THEM FROM HIM, THEY CAME OFF OF HIS PERSON, THEY OPENED THE DOOR
19 WITH THEM AND I DON'T SEE HOW THAT IN ANY WAY IS PROTECTED BY
20 MIRANDA. AND SO, THOSE ARE, THAT'S KIND OF WHAT MY VIEW ON IT IS
21 RIGHT NOW.

22 MY PRELIMINARY RULING IS THAT THE STATEMENT IS INADMISSIBLE
23 AND THE KEYS ARE NO PROBLEM, BUT I'LL SEE IF THERE'S ANYTHING
24 DIFFERENT ON THAT AND I'LL WAIT FIFTEEN MINUTES.

25 MR. JEPERTINGER: YES, SIR. THANK YOU.

1 (BRIEF BREAK)

2 THE COURT: ALL RIGHT. MISTER JEPERTINGER, LET'S GET THIS
3 MATTER TAKEN CARE OF. WE'RE ON THE RECORD WITH THE JACKSON V
4 DENNO MOTION ON MISTER WAYNE MCLAUGHLIN IN CASE NUMBER 08-137. I
5 ADJOURNED FOR A FEW MINUTES TO GIVE MISTER JEPERTINGER AN
6 OPPORTUNITY TO SEE IF THERE WAS ANY LAW THAT WOULD CHANGE MY
7 MIND.

8 MR. JEPERTINGER: YOUR HONOR, WE HAVE A PRINTER THAT IS AS
9 SLOW AS A TORTOISE, BUT I WOULD ASK THE COURT, AND I WOULD ASK YOU
10 TO AT LEAST WRITE DOWN THESE SITES AND WE WILL LOOK THEM UP. I ASK
11 YOU TO LOOK UP PENNSYLVANIA VERSUS MUNIZ. PENNSYLVANIA IS EASY.
12 MUNIZ IS SPELLED M-U-N-I-Z. IT'S CITED AT 496 U.S. 582, AND
13 110 S.Ct. 2638(1990). AND I BELIEVE THE PROPOSITION, YOUR HONOR, IN
14 LOOKING AT THAT CASE IS THAT "MIRANDA DOES NOT APPLY IF A SUSPECT IS
15 SIMPLY TAKEN INTO CUSTODY, ONLY IF HE'S SUBJECTED TO INTERROGATION,
16 AND IT ONLY APPLIES WHERE THERE IS A PSYCHOLOGICAL COERCION BY
17 THE POLICE." I THINK THAT WOULD GO INTO THE POINT OF SOMETHING THAT
18 WE DON'T HAVE HERE. I THINK IT WAS A VOLUNTARY STATEMENT GIVEN, BUT
19 IN THAT CASE, HE WAS TAKEN INTO CUSTODY AND SO I WOULD ASK THAT —

20 THE COURT: THERE'S A DIFFERENCE BETWEEN CUSTODY AND
21 ARREST, EVEN. YOU KNOW, I THINK IF YOU'VE GOT SOMEBODY —

22 MR. WILSON: YOU'RE NOT FREE TO LEAVE, JUDGE, AND THAT WOULD
23 BE MY POSITION. I MEAN, YOU'RE UNDER ARREST. IF THERE IS AN EXERCISE
24 IN THE SHOWING OF AUTHORITY AND YOU'RE TAKEN INTO CUSTODY, THAT IS
25 TANTAMOUNT TO ARREST, YOUR HONOR.

ARGUMENT - MISTER JEPERTINGER

45

1 **THE COURT:** ALL RIGHT. HERE'S WHAT WE'RE GOING TO DO. GIVE ME
2 THE CASE NAME. I'VE GOT 496 U.S. 582 —

3 **MR. JEPERTINGER:** YES. IT'S A 1990 CASE AND IT'S PENNSYLVANIA
4 VERSUS M-U-N-I-Z. AND I JUST HAVE SOMETHING THAT THEY'VE BROUGHT ME
5 UP HERE. I'VE NOT HAD A CHANCE TO LOOK OVER —

6 **THE COURT:** WELL, THE POINT IS, THIS IS NOT SOMETHING THAT WILL
7 HOLD UP THE TRIAL. IT'S NOT SOMETHING THAT REALLY CHANGES. IT'S
8 SOMETHING I JUST NEED TO RULE ON BEFORE THE MATTER ACTUALLY GOES
9 TO TRIAL AND SO I WILL DO THAT AND I WILL CHECK THAT LAW. I DON'T
10 REALLY HAVE A WAY OF PRINTING THAT OUT AND SO SEE IF YOU CAN GET IT
11 FOR ME AND FURNISH A COPY FOR MISTER WILSON AND THE MATTER WILL
12 BE SET FOR TRIAL AS IT IS NOW FOR TUESDAY MORNING AND I WILL INFORM
13 COUNSEL PRIOR TO TUESDAY MORNING WHETHER OR NOT I'M GOING TO LET
14 THAT STATEMENT IN. IT'S THAT EASY.

15 **MR. JEPERTINGER:** THANK YOU, JUDGE.

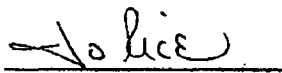
16 **MR. WILSON:** THANK YOU.

C-E-R-T-I-F-I-C-A-T-E

I, THE UNDERSIGNED JO RICE, OFFICIAL COURT REPORTER FOR THE EIGHTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING FORTY-FIVE PAGE TRANSCRIPT IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF THE HEARING IN THE CAPTIONED CASE, IN THE COURT OF GENERAL SESSIONS FOR MARION COUNTY, SOUTH CAROLINA ON MAY 22, 2008, AT THE MARION COUNTY COURTHOUSE TO THE BEST OF MY SKILL AND ABILITIES.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

JANUARY 29, 2009

A handwritten signature in cursive script, appearing to read "Jo Rice", is written over a horizontal line.

JO RICE

STATE OF SOUTH CAROLINA)
COUNTY OF MARION)

IN THE CIRCUIT COURT
OF THE TWELFTH JUDICIAL CIRCUIT
2008-GS-33-137

STATE OF SOUTH CAROLINA,)

PLAINTIFF,)

vs)

WAYNE MCLAUGHLIN,)

DEFENDANT.)

MAY 27- 28, 2008
MARION, SOUTH CAROLINA

BEFORE: THE HONORABLE HOWARD P. KING

APPEARANCES:

FOR THE PLAINTIFF
JOHN C. JEPERTINGER, ESQUIRE
12TH CIRCUIT SOLICITOR'S OFFICE
180 NORTH IRBY STREET
FLORENCE, SC 29501

FOR THE DEFENSE

RALPH J. WILSON, ESQUIRE
P.O. BOX 1827
CONWAY, SC 29526

JO RICE
CIRCUIT COURT REPORTER

EXHIBITSSTATE

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MOTIONS

5

1 THE COURT: ALL RIGHT, MISTER JEPERTINGER.

2 MR. JEPERTINGER: IF IT PLEASES THE COURT, YOUR HONOR, THE
3 STATE CALLS THE CASE OF THE STATE VERSUS WAYNE MCLAUGHLIN,
4 08-GS-33-137 FOR TRIAL, YOUR HONOR.

5 (MISTER JEPERTINGER HANDS DOCUMENTS TO THE JUDGE)

6 (BRIEF BENCH CONFERENCE)

7 (JURY SELECTION)

8 (JURY OUT AT 12:31 P.M.)

9 THE COURT: ALL RIGHT, AT THE PRE-TRIAL HEARING THAT WE HAD
10 LAST WEEK, WE DEALT WITH THE MATTERS OF THE MOTION TO SUPPRESS
11 AND THEN WENT ON INTO A JACKSON V. DENNO HEARING WITH REGARD TO
12 THE ALLEGED STATEMENTS MADE BY THE DEFENDANT AND, OF COURSE, I
13 HEARD FROM COUNSEL WITH REGARD TO THAT AND INDICATED I WOULD
14 RULE ON THAT. MISTER WILSON DID HAVE A PROBLEM WITH THE HANDING
15 OVER OF THE KEYS, AS THAT BEING CONSTITUTIONALLY PROTECTED AS
16 WELL AS THE STATEMENT THAT THE STATE CONTENDS WAS A
17 SPONTANEOUS STATEMENT AND WAS NOT IN RESPONSE TO
18 INTERROGATION.

19 BUT IN ANY EVENT, COUNSEL, I WILL BE GLAD TO HEAR FROM YOU
20 WITH REGARD TO ANY ADDITIONAL ARGUMENT THAT YOU WOULD LIKE TO
21 MAKE, MISTER WILSON, BOTH WITH REGARD TO THE POLICE COMING INTO
22 POSSESSION OF THE KEYS AND WITH REGARD TO THE STATEMENT -- AND
23 LET ME SEE IF WE CAN GET, SO THERE WON'T BE ANY QUESTION ABOUT IT --
24 I BELIEVE THE STATEMENT IS, AND I PUT IT DOWN AS A QUOTE AND YOU TELL
25 ME IF THERE IS ANY MORE TO IT THAN THIS MISTER JEPERTINGER. "IT'S IN

MOTIONS

6

1 THERE ON THE KITCHEN SHELF."

2 MR. JEPERTINGER: SOMETHING OF THAT NATURE. YES, SIR.

3 THE COURT: "IT'S IN THERE IN THE KITCHEN ON THE SHELF," OR
4 SOMETHING TO THAT EFFECT. OKAY?

5 MR. JEPERTINGER: YES, SIR.

6 THE COURT: ALL RIGHT, MISTER WILSON.

7 MR. WILSON: YOUR HONOR, THE SOLICITOR SENT ME -- OVER THE
8 WEEKEND OR MAYBE HE SENT IT FRIDAY I'M NOT REALLY SURE -- A COPY OF
9 496 U.S. 582, PENNSYLVANIA VERSUS MUNIZ.

10 THE COURT: YES, SIR, I HAVE A COPY.

11 MR. WILSON: AND ONE OF THE PARAGRAPHS IN THERE, I THINK, IS
12 REALLY ALMOST DIRECTLY ON POINT, IN THAT THE COURT IN THAT
13 PARTICULAR CASE POINTS IN THIS PARAGRAPH, AND IF I MIGHT READ IT INTO
14 THE RECORD: "IN CONTRAST, THE SIXTH BIRTHDAY QUESTION IN THIS CASE
15 REQUIRED A TESTIMONIAL RESPONSE WHEN OFFICER HOSTERMAN' -- AND
16 THEN THEY CITE 496 U.S. 599 ASKING IF HE KNEW THE DATE OF HIS SIXTH
17 BIRTHDAY AND MUNIZ, FOR WHATEVER REASON, COULD NOT REMEMBER OR
18 CALCULATE THAT DATE -- 'HE WAS CONFRONTED WITH A TRILEMMA, BY
19 HYPOTHESIS BY THE INHERENTLY COERCIVE ENVIRONMENT CREATED BY
20 THE CUSTODIAL INTERROGATION PRECLUDED THE OPTION OF REMAINING
21 SILENT. MUNIZ WAS LEFT WITH THE CHOICE OF INCRIMINATING HIMSELF BY
22 ADMITTING THAT HE DID NOT THEN KNOW THE DATE OF HIS SIXTH BIRTHDAY
23 OR ANSWERING UNTRUTHFULLY BY REPORTING A DATE THAT HE DID NOT
24 THEN BELIEVE TO BE ACCURATE AND AN INCORRECT GUESS WOULD BE
25 INCRIMINATING AS WELL." THE CONTENT OF HIS TRUTHFULNESS IN

MOTIONS

7

1 ANSWERING SUPPORTED AN INFERENCE THAT HIS MENTAL FACULTIES WERE
2 IMPAIRED BECAUSE OF HIS ASSERTION; 'HE DID NOT KNOW THE DATE OF HIS
3 SIXTH BIRTHDAY' WAS DIFFERENT FROM THE ASSERTION 'HE KNEW THE
4 DATE WAS CORRECT,' THAT THE TRIER OF FACT MIGHT REASONABLY HAVE
5 EXPECTED A LUCID PERSON TO PROVIDE. HENCE, AN INCRIMINATING
6 INFERENCE OF IMPAIRED MENTAL FACULTIES STEM NOT JUST FROM THE
7 FACT THAT HE NOW SLURRED HIS RESPONSE BUT ALSO FROM A
8 TESTIMONIAL ASPECT OF THAT RESPONSE.

9 AND I THINK, AS I UNDERSTAND WHAT THE COURT IS SAYING, NOT
10 ONLY WORDS BUT THE FUNCTIONAL EQUIVALENT OF WORDS IS TESTIMONY.
11 AND THE FUNCTIONAL EQUIVALENT HERE IS THE FACT THAT THEY HAVE HIM
12 GIVE THEM THE KEYS, WHICH WILL COME UP IN THE COURSE OF THIS TRIAL.
13 DURING THE COURSE OF THIS TRIAL, I PROMISE YOU, WHAT IS GOING TO
14 HAPPEN IS THAT THEY ARE GOING TO -- THE STATE WILL ATTEMPT TO SAY
15 THAT THE FACT THAT HE HAD THOSE KEYS AND THAT HE GAVE THEM THE
16 KEYS, SHOWS THAT HE HAD OWNERSHIP AND INTEREST IN THAT BUILDING.
17 AND -- WHICH IS THE VERY ISSUE, WHICH IS THE CORE ISSUE HERE, IN THIS
18 CASE, IS THAT MUST NOW -- BECAUSE THIS WAS DONE WITH A SEARCH
19 WARRANT AND BECAUSE THE DRUGS WERE FOUND IN THE BUILDING -- WHAT
20 THEY ARE HAVING TO DO IS TIE HIM TO THE BUILDING. THEY ARE GOING TO
21 ATTEMPT TO TIE HIM TO THE BUILDING, IN ONE WAY, BY THE USE OF THOSE
22 KEYS AND I SUBMIT TO THE COURT THAT THAT'S TESTIMONIAL IN NATURE.

23 THE COURT: WHAT'S THE DIFFERENCE IN THAT AND SCHMERBER
24 WHERE THEY CAN BE REQUIRED TO GIVE BLOOD?

25 MR. WILSON: WELL, ONE OF THE DIFFERENCES, ONE OF THE PRIMARY

MOTIONS

8

1 DIFFERENCES WITH SCHMERBER IS, THAT THERE IS A COURT ORDER, THERE
2 IS A COURT ORDER USED IN SCHMERBER REQUIRING THAT YOU GIVE THE
3 BLOOD AFTER A HEARING HAS BEEN HELD. THERE HAS BEEN NO HEARING,
4 THERE'S BEEN NOTH - WHICH IS, THE VERY ISSUE IS THAT HE WAS NOT READ
5 HIS MIRANDA.

6 THE COURT: BUT CONSTITUTIONALLY, THE COURT HAS HELD THAT
7 THAT IS NOT TESTIMONIAL EVIDENCE, THAT THAT IS A - SOMETHING THAT
8 CAN BE REQUIRED THAT IS NOT TESTIMONIAL AND I DON'T SEE WHERE
9 REQUIRING SOMEBODY TO GIVE UP KEYS IS TESTIMONIAL.

10 MR. WILSON: JUDGE, LET ME READ YOU THIS PART: "THUS CUSTODIAL
11 - THIS IS THE NEXT PARAGRAPH - THUS, CUSTODIAL INTERROGATIONS FOR
12 THE PURPOSES OF MIRANDA INCLUDES BOTH EXPRESS QUESTIONING AND
13 ALSO WORDS OR ACTIONS THAT GIVEN THE OFFICER'S KNOWLEDGE OF ANY
14 SPECIAL SUSCEPTIBILITIES OF THE SUSPECT, THE OFFICER KNOWS OR
15 REASONABLY SHOULD KNOW, ARE LIKELY TO HAVE THE FORCE OF A
16 QUESTION ON THE ACCUSED."

17 THE COURT: BUT LET'S GO BACK BEHIND THAT ONE STEP THOUGH AND
18 I THINK THAT, I DON'T EVEN THINK WE GET TO THAT POINT. WHERE WAS
19 THERE AN INTERROGATION IN THIS CASE? IF THERE IS NO INTERROGATION,
20 THERE IS NO MIRANDA RIGHT.

21 MR. WILSON: AND THAT'S MY POINT, THERE WAS AN INTERROGATION.

22 THE COURT: WHEN?

23 MR. WILSON: 1) - TWO THINGS. 1) - AND I THINK THAT THIS IS -- THE
24 REASON THAT THIS IS AN INTERROGATION, JUDGE, IS: 1) THIS DEFENDANT
25 WAS ARRESTED NOT FOR THIS CHARGE, BUT FOR SOMETHING TOTALLY

MOTIONS

9

1 UNRELATED. THE OFFICERS THEN TAKE HIM BACK, IN CUSTODY, TO THE
2 LOCATION. WHEN THEY GET HIM TO -- AND THEY SAY, ACCORDING TO THEM,
3 THEY ASK HIM, "DO YOU WANT TO GO WITH US?" WELL, WHAT'S HE TO SAY?
4 HE'S IN CUSTODY. AND THAT'S THE WHOLE IDEA OF THIS CASE. IT'S THAT
5 YOU CAN'T PUT THE GUY IN CUSTODY, HAVE HIM ARRESTED, AND THEN
6 EXPECT THAT HE'S GOT TO ANSWER YOUR QUESTIONS. THEY EVEN, THE
7 COURT EVEN SAYS THAT EVEN ASKING, AND THIS IS THE U.S. SUPREME
8 COURT, THEY SAY --

9 **THE COURT:** I'VE READ THE CASE.

10 **MR. WILSON:** THEY SAY, "WE DISAGREE WITH THE COMMONWEALTH'S
11 CONTENTION THAT OFFICER HOSTERMAN'S FIRST SEVEN QUESTIONS
12 REGARDING MUNIZ'S NAME -- AND THAT'S HOW SIMPLE IT WAS; NAME,
13 ADDRESS, HEIGHT, WEIGHT, EYE COLOR, DATE OF BIRTH AND CURRENT AGE -
14 - DO NOT QUALIFY AS CUSTODIAL INTERROGATION. AS WELL, AS WE DEFINE
15 THE TERM "IN INNOCENCE" MERELY BECAUSE THE QUESTIONS WERE NOT
16 INTENDED TO ILLICIT INFORMATION FOR INVESTIGATORY PURPOSES AS
17 EXPLAINED ABOVE." I MEAN, THEY ARE SAYING THERE THAT EVEN THOSE
18 QUESTIONS ARE -- BUT THEY ARE SAYING THAT BECAUSE THEY WERE USED,
19 BECAUSE THOSE QUESTIONS WERE USED FOR THE BOOKING PROCESS,
20 THAT THAT MADE A DIFFERENCE AND BECAUSE THEY WERE USED FOR THE
21 BOOKING PROCESS THAT THAT WAS OKAY AND THAT THAT WAS GOING TO
22 ESSENTIALLY BE AN EXCEPTION TO MIRANDA.

23 **THE COURT:** ALL RIGHT. LET ME READ YOU A STATEMENT FROM
24 MIRANDA, THEN. YOU ARE READING ONE, LET ME READ ONE FROM MIRANDA.
25 "ANY STATEMENT GIVEN FREELY AND VOLUNTARILY WITHOUT ANY

MOTIONS

10

1 COMPELLING INFLUENCE IS, OF COURSE, PERMISSIBLE IN EVIDENCE. THE
2 FUNDAMENTAL IMPORT OF THE PRIVILEGE WHILE AN INDIVIDUAL IS IN
3 CUSTODY IS NOT WHETHER HE IS ALLOWED TO TALK TO THE POLICE
4 WITHOUT BENEFIT OF WARNINGS AND COUNSEL, BUT WHETHER HE CAN BE
5 INTERROGATED. THERE IS NO REQUIREMENT THAT POLICE STOP A PERSON
6 WHO ENTERS A POLICE STATION AND STATES THAT HE WISHES TO CONFESS
7 TO A CRIME OR A PERSON CALLS THE POLICE TO OFFER A CONFESSION OR
8 ANY OTHER STATEMENT HE DESIRES TO MAKE. VOLUNTARY STATEMENTS
9 OF ANY KIND ARE NOT BARRED BY THE FIFTH AMENDMENT AND THEIR
10 ADMISSIBILITY IS NOT AFFECTED BY OUR HOLDING TODAY." AND THIS IS
11 FROM MIRANDA. "THE PRIVILEGE AGAINST SELF-INCRIMINATION PROTECTS
12 THE INDIVIDUAL FROM BEING COMPELLED TO INCRIMINATE HIMSELF IN ANY
13 MANNER." BUT THAT IS IN RESPONSE TO WHAT MIRANDA SAYS IN RESPONSE
14 TO INTERROGATION. NOW, WHERE'S THE INTERROGATION HERE? I DON'T
15 SEE THE INTERROGATION.

16 **MR. WILSON:** THE INTERROGATION, JUDGE, ANY TIME – MY POINT IS
17 THIS: IS THAT WHENEVER THEY ASK HIM A QUESTION AND THAT QUESTION
18 ELICITS TESTIMONIAL INFORMATION FROM HIM, INFORMATION THAT COULD
19 AND WILL BE USED AGAINST HIM, IN THIS CASE THE KEYS WHICH OCCURRED
20 – WHICH I WANT TO SAY, YOU KNOW, YOUR HONOR, OCCURRED PRIOR TO,
21 PRIOR TO THE ALLEGED VOLUNTARY STATEMENT, IF YOU WILL, BECAUSE
22 THAT'S WHAT THEY ARE SAYING. THEY ARE SAYING OH, YEAH, WE ASKED
23 HIM FOR THE KEYS AND THEN HE GAVE US THE KEYS. WELL, MY POSITION IS
24 THAT ONCE THEY DID THAT, THAT BREACHED OR BROKE MIRANDA AT THAT
25 POINT. MIRANDA CAME INTO PLAY AT THAT POINT BECAUSE THEY HAD NOT

MOTIONS

11

1 MIRANDIZED HIM AND NOW HE IS GIVING TESTIMONIAL EVIDENCE AGAINST
2 HIMSELF WHICH ARE THE KEYS. NOW THEY ARE SAYING, "WELL, YEAH,
3 AFTER WE DID THAT AND HE GAVE US THE KEYS AND WE GOT INSIDE THE
4 BUILDING AND THEN ONCE HE GOT INSIDE THE BUILDING HE JUST BLURTED
5 OUT, "OH, WELL, YOU KNOW, BY THE WAY, THOSE DRUGS ARE RIGHT THERE
6 ON THE COUNTER." AND MY POINT IS, THAT ONCE MIRANDA IS VIOLATED AND
7 ONCE THEY HAD A DUTY TO GIVE IT TO HIM, THEN WHATEVER GROWS FROM
8 THAT IS THROUGH THE FRUIT FROM THE POISONOUS TREE AND WOULD NOT
9 BE ADMISSIBLE ANYWAY.

10 THE COURT: ALL RIGHT. LET ME HEAR FROM MISTER JEPERTINGER.

11 MR. JEPERTINGER: YOUR HONOR, I THINK IT IS CLEAR, FIRST OF ALL,
12 THAT THERE WAS NO CUSTODIAL INTERROGATION HERE. AND I THINK WHEN
13 WE TALK ABOUT FUNCTIONAL EQUIVALENT, YOUR HONOR, I DON'T THINK
14 WHEN THEY HAVE A SEARCH WARRANT AND CAN BREAK DOWN DOORS,
15 YOUR HONOR, AND – IT IS MORE A REQUEST. THAT WE HAVE A SEARCH
16 WARRANT, HE KNOWS THEY HAVE A SEARCH WARRANT, THEY ARE GOING TO
17 EXECUTE THE SEARCH WARRANT, THEY ARE GOING INTO THIS
18 ESTABLISHMENT, INSTEAD OF BREAKING DOWN THE DOORS, YOUR HONOR,
19 THEY ASK FOR KEYS, YOUR HONOR. I DON'T THINK THAT IS A FUNCTIONAL
20 EQUIVALENT OF GUILT. TO GIVE YOU A GOOD EXAMPLE, YOUR HONOR – FOR
21 EXAMPLE, IF A PERSON IS AN EMPLOYEE OF A CONVENIENCE STORE AND
22 HAS KEYS AND HE OPENS THE DOOR, THAT DOES NOT NECESSARILY EQUATE
23 WITH THE FACT THAT HE HAS DOMINION AND CONTROL OR POSSESSION OF
24 THINGS THAT THE OWNER OWNS, YOUR HONOR, THAT ARE IN THE STORE.
25 THAT IS NOT INCRIMINATING ONE WAY OR THE OTHER AND NOR DO I THINK IT

MOTIONS

12

1 IS A FUNCTIONAL EQUIVALENT OF AN INTERROGATION, YOUR HONOR. I
2 THINK WHEN THE DUST SETTLES OVER THE ARGUMENTS OF COUNSEL HERE,
3 THAT WHAT WE MERELY HAVE IS A VOLUNTEERED STATEMENT, YOUR
4 HONOR, AND ACTIONS BY THE DEFENDANT IN TERMS OF THE KEYS AND
5 WHAT HE SAID GOING INTO THE ESTABLISHMENT, YOUR HONOR.

6 THE COURT: OKAY. MISTER WILSON, LET ME ASK YOU ONE THING
7 THAT I AM REAL CURIOUS ABOUT FROM YOUR ARGUMENT STANDPOINT.
8 LET'S SUPPOSE THAT AS A PART OF THE ARREST AS THEY ORIGINALLY
9 ARRESTED HIM ON, THEY HAD PATTED HIM DOWN AS THEY WOULD HAVE A
10 RIGHT TO DO FOR THE OFFICER'S SAFETY AND HAD FOUND A BULGE AND THE
11 BULGE TURNED OUT TO BE THE KEYS AND THEY USED THESE KEYS TO OPEN
12 THE DOOR. HE DOESN'T OPEN HIS MOUTH, HE DOESN'T SAY ANYTHING.
13 COULDN'T THE STATE INTRODUCE THE FACT THAT THEY TOOK THE KEYS
14 FROM THIS MAN'S POCKET AND THEY OPENED THE DOOR TO THAT BUILDING?

15 MR. WILSON: YES, SIR.

16 THE COURT: WHAT'S THE DIFFERENCE?

17 MR. WILSON: BECAUSE THAT IS ONE OF THE RECOGNIZED
18 EXCEPTIONS. IN THAT CASE, BECAUSE THEY HAVE THE RIGHT TO FRISK HIM
19 AND TO MAKE SURE THAT HE'S NOT ARMED AND TO MAKE SURE THAT HE
20 CAN'T DO THEM HARM, AND IN THE PROCESS OF DOING THAT —

21 THE COURT: WELL, SUPPOSE THEY HADN'T FRISKED HIM. LET'S
22 SUPPOSE THAT THEY HAD TAKEN HIM TO THE JAIL AND IN THE PROCESS OF
23 BOOKING HIM IN, HE REACHES INTO HIS POCKET, PULLS OUT THE KEYS, PUTS
24 THEM ON THE TABLE, THEY PICK THEM UP, THEY GO AND OPEN THE DOOR.
25 WOULDN'T ALL THAT BE ADMISSIBLE?

MOTIONS

13

1 **MR. WILSON:** YES, SIR. ABSOLUTELY JUDGE, AND THAT, THAT'S A
2 GREAT POINT BECAUSE THAT IS EXACTLY WHAT THE CASE LAW SAYS. THE
3 COURT DEFINED THE PHRASE, "FUNCTIONAL EQUIVALENT" OF EXPRESSED
4 QUESTIONING TO INCLUDE ANY WORDS OR ACTIONS ON THE PART OF THE
5 POLICE IN "OTHER THAN THOSE NORMALLY ATTENDED TO ARREST AND
6 CUSTODY." AND THIS IS NOT NORMALLY ATTENDED TO ARREST AND
7 CUSTODY TO ASK THE DEFENDANT TO PRODUCE THE KEYS SO THAT YOU
8 CAN GO IN AND CONDUCT A SEARCH. IF THEY WERE DOING BOOKING AND
9 THEY GOT THOSE KEYS FROM HIM, NO PROBLEM. IF THEY HAD ARRESTED
10 HIM AT THE TIME AND TAKEN THEM FROM HIM AT THAT LOCATION BECAUSE
11 THEY THOUGHT THAT THEY WERE WEAPONS, NO PROBLEM. THAT IS NOT
12 WHAT HAPPENED. THEY SPECIFICALLY ASKED HIM, "WE WANT THE KEYS SO
13 THAT WE CAN GO IN THIS BUILDING AND CONDUCT THIS SEARCH." AND IF HE
14 DOESN'T PRODUCE THE KEYS, THEN THEY YOU KNOW, THEN HE'S MADE TO
15 HAVE A PROBLEM BY NOT PRODUCING THEM. ON THE OTHER HAND, IF HE
16 DOES PRODUCE THEM FOR THEM THEN THAT'S EVIDENCE THAT MAY BE USED
17 AGAINST HIM WHEN HE GETS TO COURT WHICH IS THE WHOLE IDEA ABOUT
18 MIRANDA. THEY KEEP THAT FROM EVER BEING. WHEN THEY TALK ABOUT
19 THIS TRILOGY, THIS IS THE IDENTICAL SITUATION THAT THEY ARE SPEAKING
20 OF BECAUSE WHAT ARISES IS, NOW HE'S GOT TO EITHER LIE AND SAY TO
21 THEM "WELL, I DON'T HAVE THE KEYS." OR HE'S GOT TO 1) PRODUCE THE
22 KEYS AND GIVE THEM TO THEM AND IF HE GIVES THEM TO THEM, THEN THEY
23 TURN AROUND WHEN THEY GET TO COURT AND SAY, "AH —

24 **THE COURT:** WHAT ABOUT MISTER JEPERTINGER'S ARGUMENT THAT
25 THE FACT HE GAVE THEM THE KEYS IS NOT PROOF OF ANYTHING WITH

MOTIONS

14

1 REGARD TO THE DRUGS?

2 **MR. WILSON:** JUDGE, WHAT IT DOES IS IT TIES HIM TO THE BUILDING.
3 THE DRUGS ARE FOUND IN THE BUILDING. WHAT THEY NOW HAVE TO DO –
4 THERE'S NO QUESTION ABOUT THE FACT THAT THE DRUGS WERE FOUND.
5 THAT IS NOT THE ISSUE OF THIS TRIAL. THE ISSUE IN THIS TRIAL IS WHO DO
6 THOSE DRUGS BELONG TO? WHAT THEY HAVE GOT TO DO NOW IS SHOW
7 OWNERSHIP OF THOSE DRUGS. THEY ARE GOING TO DO THAT, ONE, I
8 PROMISE YOU DURING THE COURSE OF THIS TRIAL, BY SAYING HE HAD
9 THOSE KEYS IN HIS POCKET.

10 **THE COURT:** WELL, YOU KNOW, WHAT'S THE DIFFERENCE IF HE HAD
11 BEEN AT THE BUILDING AND HE OPENED THE DOOR AND LET THEM IN? YOU
12 KNOW, I FAIL TO SEE THE DIFFERENCE.

13 **MR. WILSON:** WELL, FIRST OF ALL, IF HE HAD BEEN IN THE BUILDING
14 AND OPENED HE DOOR, HE WOULDN'T HAVE BEEN UNDER ARREST. HE WAS
15 NOT UNDER ARREST IF THAT WERE THE CASE. HERE, HE'S UNDER ARREST
16 AND JUDGE, I THINK WHAT MAKES IT EVEN MORE EGREGIOUS IS, NOT ONLY IS
17 HE UNDER ARREST, THEY ACTUALLY TAKE HIM, THEY DON'T FOLLOW THE
18 NORMAL BOOKING PROCESSES WHICH, ONCE HE'S ARRESTED, THEY TAKE
19 HIM DOWN TO THE STATION, BOOK HIM IN AND PUT HIM IN A CELL. NO, WHAT
20 DO THEY DO? THEY TAKE HIM, THEY CREATE THE SITUATION BY TAKING HIM
21 TO THE LOCATION WHERE THEY ARE GOING TO SERVE A SEARCH WARRANT.

22 **THE COURT:** OKAY. I UNDERSTAND. ALL RIGHT, I HAVE REASONED – I
23 FELT KIND OF THE SAME WAY YOU FELT, MISTER WILSON, AND WHEN I
24 HEARD THIS MATTER LAST WEEK, THAT I WAS THINKING THAT ANYBODY THAT
25 WAS UNDER ARREST AND ANY STATEMENT MADE AFTER THAT – OF COURSE

MOTIONS

15

1 WE ARE TALKING ABOUT DIFFERENT THINGS BECAUSE IT IS YOUR POSITION
2 IS THAT THE PRODUCING OF THE KEYS WAS THE MATTER THAT IS
3 PROTECTED BY MIRANDA AND I'M NOT SURE THAT I AGREE WITH THAT
4 BECAUSE THE -- MIRANDA SAYS ANY STATEMENT GIVEN FREELY AND
5 VOLUNTARILY WITHOUT ANY COMPELLING INFLUENCE IS, OF COURSE,
6 ADMISSIBLE AND THEN WE COME TO THE NEXT POINT AND THAT IS WHAT HE
7 ACTUALLY SAID. BUT IN LOOKING AT MUNIZ, THE SUPREME COURT CASE,
8 JUSTICE BRENNAN SAID, "THE PRIVILEGE AGAINST SELF-INCRIMINATION
9 PROTECTS THE ACCUSED FROM BEING COMPELLED TO TESTIFY AGAINST
10 HIMSELF OR OTHERWISE PROVIDE THE STATE WITH EVIDENCE OF A
11 TESTIMONIAL OR COMMUNICATIVE NATURE" AND HE CITES SCHMERBER, OF
12 COURSE, AS NOT BEING THAT VIOLATION. SPECIFICALLY, JUSTICE BRENNAN
13 SAID, "WE HAVE LONG HELD THAT THE PRIVILEGE DOES NOT PROTECT A
14 SUSPECT FROM BEING COMPELLED BY THE STATE TO PRODUCE REAL OR
15 PHYSICAL EVIDENCE RATHER, THE PRIVILEGE PROTECTS THE ACCUSED
16 ONLY FROM BEING COMPELLED TO TESTIFY AGAINST HIMSELF OR
17 OTHERWISE PROVIDE THE STATE WITH EVIDENCE OF A TESTIMONIAL OR
18 COMMUNICATIVE NATURE. IN ORDER TO BE TESTIMONIAL, AN ACCUSED
19 COMMUNICATION MUST ITSELF, EXPRESSLY OR IMPLIEDLY RELATE A
20 FACTUAL ASSERTION OR DISCLOSE INFORMATION. ONLY THEN IS A PERSON
21 COMPELLED TO BE A WITNESS AGAINST HIMSELF AND CITES THE CASE OF
22 DOE VERSUS THE UNITED STATES, A 1988 CASE FOUND IN 487 U.S. 201. THAT
23 HAS BEEN PICKED UP ON BY BOTH, TWO CASES IN THE SOUTH CAROLINA
24 SUPREME COURT, THE STATE VERSUS REDDING 252 S.C. 312; 166 S.E. 2d, 219,
25 WHERE OUR SUPREME COURT HELD THAT A DEFENDANT'S SPONTANEOUS

MOTIONS

16

1 AND VOLUNTARY EXPLANATION AT A POLICE STATION THAT WHILE IT WAS
2 FOUND UPON HIS PERSON WAS NOT HIS AND THAT HE HAD FOUND IT ON A
3 SCHOOL BUS, WAS NOT INADMISSIBLE UNDER THE MIRANDA DOCTRINE
4 SINCE THE DOCTRINE, SINCE THAT DOCTRINE, ANY STATEMENT GIVEN
5 FREELY OR VOLUNTARILY WITHOUT COMPELLING INFLUENCE IS ADMISSIBLE
6 AS EVIDENCE. AND I THINK THAT PRETTY WELL ADEQUATELY COVERS THE
7 STATEMENT SITUATION. AND THEN AGAIN IN STATE VERSUS FRANKLIN,
8 299 S.C. 133; 282 S.E. 2d, 911, THE SUPREME COURT, OUR SUPREME COURT,
9 CLEARLY HELD THAT ANY STATEMENT GIVEN FREELY AND VOLUNTARILY
10 WITHOUT ANY COMPELLING INFLUENCE IS, OF COURSE, ADMISSIBLE IN
11 EVIDENCE. THE FUNDAMENTAL IMPORT OF THE PRIVILEGE WHILE AN
12 INDIVIDUAL IS IN CUSTODY IS NOT WHETHER HE IS ALLOWED TO TALK TO THE
13 POLICE WITHOUT THE BENEFIT OF WARNINGS AND COUNSEL BUT WHETHER
14 HE CAN BE INTERROGATED. VOLUNTEERED STATEMENTS OF ANY KIND ARE
15 NOT BARRED BY THE FIFTH AMENDMENT AND THE ADMISSIBILITY IS NOT
16 AFFECTED BY OUR HOLDING TODAY.

17 NOW, IT SEEMS LIKE TO ME THAT WHAT WE ARE TALKING ABOUT HERE
18 ARE TWO DIFFERENT THINGS. NUMBER ONE, IT'S YOUR POSITION THAT
19 REQUIRING HIM OR ASKING HIM, THE REQUESTING, OR HOWEVER THEY CAME
20 INTO THE KEYS, IS A MATTER THAT IS PROTECTED BY MIRANDA AND I
21 DISAGREE. I DON'T THINK THAT THAT IS A MATTER THAT IS PROTECTED BY
22 MIRANDA AND I PREFER TO HOLD THAT THE STATEMENT THAT HE MADE
23 WORKS TO THE EFFECT THAT, "IT'S IN THERE ON THE KITCHEN SHELF," WAS
24 NOT AS A RESULT OF THE CUSTODIAL INTERROGATION AND NOT THE
25 FUNCTIONAL EQUIVALENT OF A CUSTODIAL INTERROGATION, BUT WAS A

MOTIONS

17

1 VOLUNTARY STATEMENT ON HIS PART MADE WITHOUT ANY QUESTIONING OR
2 WITHOUT ANY PROMPTING AND SO I DON'T THINK THAT THE SURRENDERING
3 OF THE KEYS IS A PROTECTION OF MIRANDA IN THIS CASE NOR DO I THINK
4 THAT THE STATEMENT THAT WAS MADE IS PROTECTED BY MIRANDA
5 BECAUSE IT WAS VOLUNTARY EVIDENCE. STATEMENT ALLOWED, BOTH TO
6 THE TESTIMONY WITH REGARD TO THE KEYS AND WITH REGARD TO THE
7 STATEMENT MADE BY THE DEFENDANT. ALL RIGHT. COUNSEL LETS TAKE
8 ABOUT AN HOUR.

9 MR. WILSON: YOUR HONOR, JUST FOR THE RECORD, AND, I MEAN,
10 I DON'T KNOW IF I HAVE TO DO THIS, BUT I NEED TO TAKE EXCEPTION TO THE
11 COURT'S RULING JUST FOR THE RECORD. THANK YOU, YOUR HONOR.

12 THE COURT: BE MY GUEST.

13 MR. WILSON: THANK YOU.

14 MR. WILSON: YES, SIR.

15 5/27 AFTERNOON

16 THE COURT: ALL RIGHT, WE'RE BACK ON THE RECORD WITH REGARDS
17 TO THE MATTER OF THE STATE VERSUS WAYNE MCLAUGHLIN 08-GS-33-137.
18 ANYTHING BEFORE THE JURY IS BROUGHT IN THIS MORNING ON BEHALF OF
19 THE STATE? MISTER JEPERTINGER?

20 MR. JEPERTINGER: NO. SIR.

21 THE COURT: ON BEHALF OF THE DEFENDANT, MISTER WILSON?

22 MR. WILSON: NO, SIR, YOUR HONOR.

23 THE COURT: ALL RIGHT, BRING THE JURY IN PLEASE.

24 (JURY IN AT 2:07 P.M.)

25 THE COURT: ALL RIGHT. GOOD AFTERNOON, LADIES AND GENTLEMEN,

OPENING JURY INSTRUCTIONS

18

1 AND THANK YOU FOR YOUR PROMISE IN BEING BACK HERE. WE HAVE TAKEN
2 CARE OF PRELIMINARY MATTERS AND WE ARE NOW READY TO BEGIN. I AM
3 GOING TO ASK THE CLERK IF SHE WOULD SWEAR THE JURY FOR ME, PLEASE.

4 (JURY SWORN IN BY THE CLERK OF COURT)

5 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN, BEFORE WE BEGIN
6 THE ACTUAL TRIAL IN THIS CASE, I THOUGHT IT MIGHT BE HELPFUL IF I
7 EXPLAIN TO YOU BASICALLY HOW A TRIAL PROCEEDS. I KNOW ALL OF YOU
8 HAVE SEEN TRIALS ON TELEVISION, BUT I THINK YOU ARE GOING TO FIND
9 THAT IT IS A GREAT DEAL DIFFERENT IN REAL LIFE.

10 FIRST OF ALL, THE STATE WILL MAKE AN OPENING STATEMENT. THE
11 OPENING STATEMENT IS NOT EVIDENCE. IT IS SIMPLY AN OUTLINE TO HELP
12 YOU UNDERSTAND WHAT THE STATE EXPECTS THE EVIDENCE WILL SHOW.
13 THE DEFENDANT MAY, IF HE WISHES TO, MAKE AN OPENING STATEMENT, BUT
14 HE DOESN'T HAVE TO FOR REASONS THAT I WILL EXPLAIN LATER.
15 FOLLOWING THE OPENING STATEMENTS, YOU WILL HEAR THE TESTIMONY IN
16 EVIDENCE IN THIS CASE. THIS WILL CONSIST OF TESTIMONY FROM THE
17 STATE'S WITNESSES AS WELL AS ANY PHYSICAL EXHIBITS WHICH MAY BE
18 INTRODUCED INTO EVIDENCE. FOLLOWING THE COMPLETION OF THE
19 TESTIMONY, THE ATTORNEYS WILL AGAIN HAVE AN OPPORTUNITY TO MAKE
20 WHAT IS CALLED A CLOSING STATEMENT OR A SUMMATION TO YOU. THIS IS
21 AN OPPORTUNITY FOR THE ATTORNEYS TO SUMMARIZE THE CASE FROM
22 THEIR RESPECTIVE POINTS OF VIEW. AGAIN, THESE ARGUMENTS ARE NOT
23 EVIDENCE.

24 FOLLOWING THE CLOSING STATEMENTS BY THE ATTORNEYS, I WILL
25 INSTRUCT YOU ON THE LAW IN SOUTH CAROLINA AS IT PERTAINS TO THE

OPENING JURY INSTRUCTIONS

19

1 ISSUES THAT HAVE ARISEN IN THIS CASE. WHEN I HAVE COMPLETED MY
2 INSTRUCTIONS TO YOU, YOU WILL BE PERMITTED TO BEGIN YOUR
3 DELIBERATIONS IN ORDER TO REACH A VERDICT.

4 NOW, LADIES AND GENTLEMEN, YOU ARE NOW THE JURY IN THIS CASE
5 AND I WANT TO TAKE A FEW MINUTES TO TELL YOU SOMETHING ABOUT YOUR
6 DUTY AS JURORS AND TO GIVE YOU SOME PRELIMINARY INSTRUCTIONS. AT
7 THE END OF THIS TRIAL I WILL GIVE YOU MORE DETAILED INSTRUCTIONS AND
8 THOSE INSTRUCTIONS WILL CONTROL YOUR DELIBERATIONS. IT WILL BE
9 YOUR DUTY TO DECIDE FROM THE EVIDENCE WHAT THE FACTS ARE. YOU,
10 AND YOU ALONE, ARE THE JUDGES OF THE FACTS. YOU WILL HEAR THE
11 EVIDENCE, DECIDE WHAT THE FACTS ARE, AND THEN APPLY THOSE FACTS
12 TO THE LAW WHICH I WILL GIVE TO YOU. THAT IS HOW YOU REACH A
13 VERDICT. IN DOING SO, YOU MUST FOLLOW THE LAW WHETHER YOU AGREE
14 WITH IT OR NOT. THE EVIDENCE WILL CONSIST OF TESTIMONY OF
15 WITNESSES, DOCUMENTS AND OTHER THINGS RECEIVED INTO EVIDENCE AS
16 EXHIBITS AND ANY FACTS ON WHICH THE LAWYERS AGREE ON WHICH I MAY
17 INSTRUCT YOU TO ACCEPT.

18 NOW YOU SHOULD NOT TAKE ANYTHING THAT I MAY SAY OR DO
19 DURING THIS TRIAL AS INDICATING WHAT I THINK OF THE EVIDENCE OR WHAT
20 YOUR VERDICT SHOULD BE. THAT IS A MATTER THAT IS TOTALLY UP TO YOU.
21 THE SAME LAW THAT MAKES YOU THE JUDGE OF THE FACTS, MAKES ME THE
22 JUDGE OF THE LAW. YOU MUST TAKE THE LAW AS I GIVE IT TO YOU,
23 REGARDLESS OF WHAT YOU THINK THE LAW IS OR WHAT THE LAW OUGHT TO
24 BE. IF I AM WRONG ON THE LAW THERE IS ANOTHER TIME AND PLACE FOR
25 THAT ERROR TO BE CORRECTED, BUT FOR THIS CASE YOU MUST ACCEPT

OPENING JURY INSTRUCTIONS

20

1 THE LAW AS I CHARGE IT TO YOU.

2 NOW, THIS IS A CRIMINAL CASE BROUGHT BY THE STATE OF SOUTH
3 CAROLINA. THE STATE CHARGES THE DEFENDANT WITH TWO CHARGES:
4 THAT OF POSSESSION OF COCAINE BASE, SOMETIMES REFERRED TO AS
5 CRACK, WITH INTENT TO DISTRIBUTE AND POSSESSION OF COCAINE WITH
6 INTENT TO DISTRIBUTE. THE CHARGES AGAINST THE DEFENDANT ARE
7 CONTAINED IN THIS INDICTMENT. THE INDICTMENT IS NOT EVIDENCE OF
8 ANYTHING. IT IS SIMPLY A DESCRIPTION OF THE CHARGES MADE BY THE
9 STATE AGAINST THE DEFENDANT. THE DEFENDANT HAS PLED NOT GUILTY
10 TO THESE CHARGES AND HE IS PRESUMED INNOCENT UNLESS OR UNTIL
11 PROVEN GUILTY BEYOND A REASONABLE DOUBT. A REASONABLE DOUBT IS
12 A KIND OF DOUBT THAT WOULD CAUSE A REASONABLE PERSON TO HESITATE
13 TO ACT. A DEFENDANT HAS THE RIGHT NOT TO TESTIFY. HE DOESN'T HAVE
14 TO PROVE INNOCENCE OR PRESENT ANY EVIDENCE. THE BURDEN OF PROOF
15 IS ALWAYS ON THE STATE OF SOUTH CAROLINA.

16 NOW, THERE ARE CERTAIN THINGS THAT ARE NOT EVIDENCE AND YOU
17 MUST NOT CONSIDER THEM AS EVIDENCE IN DECIDING THE FACTS IN THIS
18 CASE. STATEMENTS AND ARGUMENTS OF THE ATTORNEYS ARE NOT
19 EVIDENCE. QUESTIONS AND OBJECTIONS OF THE ATTORNEYS ARE NOT
20 EVIDENCE AND TESTIMONY THAT I INSTRUCT YOU TO DISREGARD IS NOT
21 EVIDENCE. EVIDENCE MAY BE DIRECT OR CIRCUMSTANTIAL. DIRECT
22 EVIDENCE IS TESTIMONY BY A WITNESS ABOUT WHAT THAT WITNESS
23 PERSONALLY SAW OR HEARD OR DID. CIRCUMSTANTIAL EVIDENCE IS
24 INDIRECT EVIDENCE. THE LAW PERMITS YOU TO GIVE EQUAL WEIGHT TO
25 BOTH, BUT IT IS FOR YOU TO DECIDE HOW MUCH WEIGHT TO GIVE TO ANY

OPENING JURY INSTRUCTIONS

21

1 OF THE EVIDENCE.

2 NOW, THERE ARE RULES OF EVIDENCE WHICH CONTAIN, WHICH
3 CONTROL WHAT CAN BE RECEIVED INTO COURT. WHEN A LAWYER ASKS A
4 QUESTION OR OFFERS AN EXHIBIT INTO EVIDENCE, AND THE LAWYER ON THE
5 OTHER SIDE THINKS THAT IT IS NOT PERMITTED BY THE RULES, THAT
6 LAWYER MAY OBJECT. IF I OVERRULE THE OBJECTION, THE QUESTION MAY
7 BE ANSWERED OR THE EXHIBIT MAY BE RECEIVED. IF I SUSTAIN THE
8 OBJECTION, THE QUESTION CAN NOT BE ANSWERED OR THE EXHIBIT CAN
9 NOT BE RECEIVED. WHENEVER I SUSTAIN AN OBJECTION TO A QUESTION OR
10 DENY A MOTION TO ADMIT AN EXHIBIT INTO EVIDENCE, YOU MUST IGNORE
11 THE QUESTION OR THE EXISTENCE OF THE EXHIBIT AND YOU MUST NOT
12 GUESS WHAT THE ANSWER WOULD HAVE BEEN OR WHAT THE EXHIBIT
13 WOULD HAVE SHOWN. SOMETIMES IT MAY BE NECESSARY FOR ME TO
14 REQUEST THAT YOU LEAVE THE COURTROOM WHILE I DISCUSS WITH THE
15 ATTORNEYS LEGAL QUESTIONS THAT COME UP DURING THE TRIAL. IF THIS
16 OCCURS, YOU SHOULD NOT SPECULATE ABOUT OUR DISCUSSIONS OR THE
17 REASONS THAT YOU ARE ASKED TO LEAVE THE ROOM. THIS IS SIMPLY A
18 PROCEDURE THAT THE LAW REQUIRES WHEN CERTAIN LEGAL ISSUES ARISE.
19 THERE ALSO MAY BE OCCASIONS WHEN I ASK THE ATTORNEYS TO
20 APPROACH THE BENCH SO THAT I CAN DISCUSS A LEGAL ISSUE WITH THEM
21 IN PRIVATE. I WILL DO THIS AS OFTEN AS POSSIBLE SO THAT YOU WILL NOT
22 BE REQUIRED TO LEAVE THE COURTROOM MORE THAN IS ABSOLUTELY
23 NECESSARY. AGAIN, IF I ASK THE ATTORNEYS TO STEP UP TO THE BENCH OR
24 I ASK YOU TO LEAVE THE COURTROOM, PLEASE DON'T THINK THAT ANYBODY
25 IS TRYING TO HIDE ANYTHING OR KEEP ANY EVIDENCE FROM YOU. THIS IS

OPENING JURY INSTRUCTIONS

22

1 SIMPLY A PROCEDURE USED BY ALL LAWYERS AND BY ALL COURTS TO
2 DETERMINE AND DECIDE LEGAL QUESTIONS.

3 NOW, IN DECIDING THE FACTS IN THIS CASE YOU MAY HAVE TO DECIDE
4 WHICH WITNESSES TO BELIEVE AND WHICH WITNESSES NOT TO BELIEVE.
5 YOU MAY BELIEVE EVERYTHING A WITNESS SAYS OR ONLY PART OF IT OR
6 NONE OF IT. IN DECIDING WHAT TO BELIEVE, YOU MAY CONSIDER A NUMBER
7 OF FACTORS INCLUDING: THE WITNESSES ABILITY TO KNOW OR SEE THE
8 THINGS THAT THE WITNESS TESTIFIED TO, THE QUALITY OF THE WITNESS'S
9 MEMORY, THE WITNESS'S MANNER OR Demeanor WHILE TESTIFYING,
10 WHETHER THE WITNESS HAS AN INTEREST IN THE OUTCOME OF THE CASE
11 OR ANY MOTIVE, BIAS, OR PREJUDICE, WHETHER THE WITNESS WAS
12 CONTRADICTED BY ANYTHING THE WITNESS SAID BEFORE THE TRIAL OR BY
13 ANY OTHER EVIDENCE AND HOW REASONABLE WAS THE WITNESS'
14 TESTIMONY WHEN CONSIDERED IN THE LIGHT OF OTHER EVIDENCE WHICH
15 YOU DO BELIEVE.

16 NOW, JUST A FEW WORDS TO YOU ABOUT YOUR CONDUCT AS JURORS
17 AND I HAVE ALREADY MENTIONED SOME OF THESE THINGS TO YOU, BUT
18 THEY ARE IMPORTANT ENOUGH THAT THEY BEAR REPEATING. FIRST OF ALL,
19 DO NOT TALK TO EACH OTHER ABOUT THIS CASE UNTIL THE END OF THE
20 CASE WHEN YOU GO TO THE JURY ROOM TO DECIDE ON YOUR VERDICT. DO
21 NOT TALK TO ANYONE ELSE ABOUT THIS CASE UNTIL THE TRIAL IS ENDED
22 FOLLOWING YOUR VERDICT AND YOU HAVE BEEN DISCHARGED AS JURORS
23 BY ME. THIS MEANS DO NOT DISCUSS THE CASE WITH MEMBERS OF YOUR
24 FAMILY OR YOUR FRIENDS OR WITH ANYONE ELSE. YOU CAN TELL THEM
25 THAT YOU ARE A JUROR, BUT DON'T TELL THEM ANYTHING ABOUT THE CASE

OPENING JURY INSTRUCTIONS

23

1 UNTIL YOU HAVE BEEN DISCHARGED BY ME AND YOU WILL RECALL I TOLD
2 YOU, IT IS PRETTY APPARENT, THAT THE REASON FOR THAT IS THAT YOU
3 HAVE TO DECIDE THIS CASE BASED UPON WHAT YOU HEAR IN THIS
4 COURTROOM AND NOT ON THE BASIS OF WHAT ANYONE ELSE MIGHT SAY.
5 DO NOT LET ANYONE TALK TO YOU ABOUT THE CASE. IF ANYONE SHOULD
6 APPROACH YOU OR TRY TO TALK TO YOU ABOUT THE CASE, GET THEIR NAME
7 OR THEIR DESCRIPTION, REPORT IT TO THE BAILIFFS OR REPORT IT TO ME
8 AND I WILL DEAL WITH THEM. DO NOT READ ANY NEWS STORIES OR
9 ARTICLES OR LISTEN TO ANY RADIO OR TELEVISION REPORTS ABOUT THE
10 CASE. YOU ARE NOT TO CONSIDER AS EVIDENCE ANYTHING THAT YOU MAY
11 SEE OR HEAR WHEN COURT IS NOT IN SESSION. DO NOT DO ANY RESEARCH
12 SUCH AS CONSULT A DICTIONARY OR ANY OTHER REFERENCE MATERIALS
13 OR THE INTERNET AND DO NOT MAKE ANY INVESTIGATION ABOUT THE CASE
14 ON YOUR OWN. IF YOU NEED TO COMMUNICATE WITH ME, JUST GIVE A
15 SIGNED NOTE TO THE BAILIFF AND THE BAILIFF WILL GIVE IT TO ME AND I
16 WILL TRY TO RESOLVE YOUR PROBLEM.

17 AND FINALLY, AND PROBABLY MOST IMPORTANT, DO NOT MAKE UP
18 YOUR MIND ABOUT WHAT YOUR VERDICT SHOULD BE UNTIL YOU HAVE
19 HEARD ALL THE TESTIMONY IN EVIDENCE IN THIS CASE AND THE CHARGE OR
20 INSTRUCTIONS BY ME. YOU WILL BE INSTRUCTED WHEN TO BEGIN YOUR
21 DELIBERATIONS BY EITHER ME OR THE BAILIFF.

22 NOW, JUST A COUPLE OF HOUSEKEEPING MATTERS. LATER ON IN THIS
23 CASE I WILL NAME ONE OF THE TWELVE MEMBERS OF THE PRINCIPLE JURY
24 AS THE FOREPERSON OF THIS JURY. WHEN I DO THAT, THAT FOREPERSON
25 SHOULD ALWAYS SIT AT THE FIRST SEAT HERE ON THE FRONT ROW. THE

OPENING ARGUMENT BY MISTER JEPERTINGER

24

1 ALTERNATE SHOULD ALWAYS SIT IN THE SEAT WHERE SHE IS SITTING. THE
2 REST OF THE SEATS ARE NOT RESERVED AND IT DOES NOT MATTER WHAT
3 ORDER YOU COME AND GO FROM THE COURTROOM. IT DOES NOT MATTER
4 WHERE YOU SIT IN THE JURY BOX. I WOULD SIMPLY ASK THAT YOU GO ALL
5 THE WAY DOWN SO THERE WILL NOT BE A SITUATION OF CRAWLING OVER
6 ONE ANOTHER, BUT YOU CAN SIT IN ANY OF THE SEATS IN THE JURY BOX,
7 RESERVING THE FIRST SEAT ON THE FRONT ROW FOR THE FOREPERSON
8 WHEN I NAME THAT FOREPERSON, AND THE FIRST SEAT BACK HERE FOR THE
9 ALTERNATE, THE SEAT BACK HERE WHERE THE ALTERNATE IS SEATED,
10 BECAUSE SHE WILL ALWAYS SIT IN THAT POSITION.

11 ARE THERE ANY OBJECTIONS TO MY INITIAL INSTRUCTIONS ON BEHALF
12 OF THE STATE, MISTER JEPERTINGER?

13 MR. JEPERTINGER: NO, SIR.

14 THE COURT: MISTER WILSON?

15 MR. WILSON: NONE, YOUR HONOR.

16 THE COURT: ALL RIGHT. ALL RIGHT, THE FIRST ORDER OF BUSINESS IN
17 CONNECTION WITH THE TRIAL IS THE OPENING STATEMENT BY THE STATE
18 AND FOR THAT PURPOSE I WILL RECOGNIZE MISTER JEPERTINGER.

19 MR. JEPERTINGER: IF IT PLEASES THE COURT. COUNSELOR.

20 THE COURT: YES, SIR.

21 OPENING STATEMENT BY MISTER JEPERTINGER:

22 MR. JEPERTINGER: LADIES AND GENTLEMEN OF THE JURY, FIRST OF
23 ALL, I DO WANT TO THANK YOU. I KNOW THAT NO ONE VOLUNTEERED AND I
24 USUALLY DON'T THANK FOLKS THAT DON'T VOLUNTEER FOR SOMETHING,
25 BUT I DO WANT TO THANK YOU. MY NAME IS JOHN JEPERTINGER AND I AM AN

OPENING ARGUMENT BY MISTER JEPERTINGER

25

1 ATTORNEY WITH THE SOLICITOR'S OFFICE. ONE THING, AND I THINK THE
2 JUDGE KIND OF HIT ON IT IN HIS OPENING REMARKS, THIS IS NOT TELEVISION.
3 I AM NOT JACK MCCOY ON LAW AND ORDER NOR IS MISTER WILSON PERRY
4 MASON. THESE CASES ARE NOT MADE TO BE DONE IN 25 MINUTES OR 30
5 MINUTES, EXCLUDING COMMERCIALS. THEY'RE DONE IN YOUR COMMUNITY.
6 AND I WOULD LIKE TO SAY, INITIALLY, THAT YOU HAVE ALREADY HEARD SOME
7 TERMS AND YOU ARE GOING TO HEAR SOME LEGAL TERMS. YOU CAN'T GET
8 AWAY FROM IT. THERE ARE GOING TO BE TERMS LIKE "A REASONABLE
9 DOUBT" AND "PERMISSIVE INFERENCES", THINGS OF THAT NATURE. BUT I
10 WANT YOU TO LISTEN VERY CAREFULLY TO WHAT WE PRESENT.

11 AND QUITE SIMPLY, THIS IS A PRETTY SIMPLE MATTER. ON JANUARY
12 19, 2007 OFFICERS WITH THE MARION COUNTY COMBINED DRUG UNIT
13 EXECUTED A SEARCH WARRANT. THAT DOESN'T MEAN THAT THEY KILLED
14 THE SEARCH WARRANT, BUT THEY DELIVERED A SEARCH WARRANT AT A
15 PLACE CALLED W. T.'S LOUNGE. IT IS ON THE CORNER OF NORTHEAST
16 FRONT STREET AND HAYES STREET THERE IN MULLINS. ONE OF THE
17 CO-OWNERS OF THAT CLUB IS WAYNE MCLAUGHLIN. HE OPERATES THAT
18 CLUB. THEY DETAINED HIM A LITTLE BIT DOWN FROM THE CLUB AND
19 BROUGHT HIM TO W. T.'S LOUNGE, TOLD HIM ABOUT THE SEARCH WARRANT
20 AND GOT A KEY FROM HIM TO OPEN THE DOOR TO W. T.'S LOUNGE. WHEN HE
21 WAS WALKING INTO W. T.'S LOUNGE, HIS PLACE, WITH THE OFFICERS HE
22 STATED SOMETHING TO THE EFFECT THAT "IT'S IN THE KITCHEN ON THE
23 SHELF." WELL, HE WASN'T TALKING ABOUT SALT, OR PEPPER, OR FOR
24 COOKING DÉLICATESSES. HE WASN'T TALKING ABOUT THE EFFORTS OF
25 EMERIL. WHAT HE WAS TALKING ABOUT WAS ILLEGAL NARCOTICS.

OPENING ARGUMENT BY MISTER JEPERTINGER

26

1 FOR WHAT THE OFFICERS FOUND IN THAT KITCHEN AREA WAS 3.55
2 GRAMS OF WHAT WE CALL POWDER COCAINE OR EQUIVALENTLY, 54.78
3 GRAINS OF COCAINE. NOW, YOU SAY WHAT IS THE DIFFERENCE BETWEEN
4 GRAMS AND GRAINS. WELL, WE ARE GOING TO HAVE AN EXPERT FROM SLED
5 TELL YOU THE DIFFERENCE AND THE SIGNIFICANCE OF THAT -- AND HERE IS
6 THAT LEGAL TERM -- THERE IS A PERMISSIVE INFERENCE OF DISTRIBUTION,
7 OR POSSESSION WITH INTENT TO DISTRIBUTE, WHAT WE CHARGED HIM
8 WITH, IF THE QUANTITY EXCEEDS 10 GRAINS OF COCAINE AND HERE WE ARE
9 TALKING ABOUT 54.78 GRAINS.

10 THEN THEY ALSO FOUND THERE 8.67 GRAMS OF COCAINE BASE, ALSO
11 KNOWN COMMONLY AS CRACK COCAINE. NOW, THERE IS A PERMISSIVE
12 INFERENCE THAT YOU WILL HEAR ABOUT, THAT ANYTHING MORE THAN
13 1 GRAM FOR CRACK COCAINE, THERE IS PERMISSIVE INFERENCE THAT
14 PERSON HAD AN INTENT TO DISTRIBUTE THOSE DRUGS. ONE OF THE OTHER
15 THINGS THAT YOU WILL BE ABLE TO CONSIDER IN THIS CASE IS HOW THINGS
16 WERE PACKAGED AND SO ON AND SO FORTH.

17 NOW, IN THIS CASE YOU WILL HEAR FROM THE OFFICERS HOW THEY
18 EXECUTED THAT SEARCH WARRANT. WHAT THEY HEARD. WHAT THEY SAW.
19 YOU WILL ALSO HEAR FROM THE PERSON FROM SLED, YOU WILL HEAR FROM
20 HER FIRST, HOW SHE RECEIVED THE DRUGS FROM AN OFFICER FROM THE
21 COMBINED DRUG UNIT. YOU WILL HEAR FROM THE CHEMIST SECONDLY
22 ABOUT HOW HE TESTED, WHAT HE TESTED AND WHAT THEY FOUND AND HIS
23 ANALYSIS. THEN YOU WILL HEAR LATER TODAY OR TOMORROW FROM THE
24 COUNTY TAX ASSESSOR'S OFFICE THAT IS REPRESENTED THERE, THAT WILL
25 TELL YOU THAT W. T.'S LOUNGE IS OWNED OR CO-OWNED BY THIS

OPENING ARGUMENT BY MISTER WILSON

1 INDIVIDUAL, THE ACCUSED IN THIS CASE, WAYNE MCLAUGHLIN.

2 THEN FOLKS, I AM GOING TO ASK YOU AFTER YOU HEAR ALL THAT
3 EVIDENCE, I AM GOING TO INVITE YOU TO MAKE A DETERMINATION. THAT
4 THE WAY THESE DRUGS WERE PACKAGED, THE PLACE WHERE THESE
5 DRUGS WERE FOUND, AND THE INDIVIDUAL WITH WHOM WE ASSOCIATE
6 THESE DRUGS, LEAD YOU TO ONE INEVITABLE CONCLUSION; THAT WAYNE
7 MCLAUGHLIN IS GUILTY BEYOND A REASONABLE DOUBT OF POSSESSION
8 WITH THE INTENT TO DISTRIBUTE BOTH COCAINE AND COCAINE BASE.
9 THANK YOU SO MUCH.

10 THE COURT: MISTER WILSON, DOES THE DEFENSE CARE TO MAKE AN
11 OPENING STATEMENT?

12 MR. WILSON: THANK YOU, YOUR HONOR.

13 THE COURT: YES, SIR.

14 **OPENING STATEMENT BY MISTER WILSON:**

15 WAYNE MCLAUGHLIN IS NOT GUILTY AND HE IS NOT NOT-GUILTY
16 BECAUSE RALPH WILSON SAYS HE'S NOT GUILTY. HE IS NOT GUILTY
17 BECAUSE THE STATE OF SOUTH CAROLINA AND THE LAW OF THIS STATE
18 SAYS THAT HE IS NOT GUILTY. HE IS NOT GUILTY EVEN THOUGH AN
19 INDICTMENT HAS BEEN READ, BECAUSE THAT INDICTMENT IS MERELY A
20 PIECE OF PAPER BY WHICH YOU ARE PUT ON NOTICE OF THE ALLEGATIONS
21 AGAINST YOU. AND UNLESS AND UNTIL THE TWELVE OF YOU HEAR EVIDENCE
22 WHICH CONVINCES YOU BEYOND A REASONABLE DOUBT THAT, IN FACT,
23 WAYNE MCLAUGHLIN AND NOBODY ELSE, NO ONE ELSE, WAYNE MCLAUGHLIN
24 AND NO ONE ELSE, PUT THOSE DRUGS THERE, OWNED THOSE DRUGS,
25 CONTROLLED THOSE DRUGS, HE IS STILL NOT GUILTY. AND I SUBMIT TO YOU

OPENING ARGUMENT BY MISTER WILSON

28

1 THAT AFTER THE STATE HAS FINISHED, THEY WILL NOT HAVE PROVEN THAT,
2 NOT EVEN CLOSE TO BEYOND A REASONABLE DOUBT AND WAYNE
3 MCLAUGHLIN WILL STILL BE NOT GUILTY.

4 LET ME TAKE THIS MOMENT, LADIES AND GENTLEMEN, TO THANK YOU
5 FOR YOUR SERVICE. AND I KNOW YOU ARE SAYING WELL, YOU KNOW, WE
6 DIDN'T HAVE MUCH CHOICE. WE GOT A SUBPOENA. WE HAD TO COME UP
7 HERE WHETHER WE LIKE IT OR DON'T LIKE IT. BUT LET ME ASSURE YOU,
8 YOUR PRESENCE HERE TODAY MAKES THE SYSTEM WORK, BECAUSE
9 WITHOUT YOU, IT DOESN'T WORK. IT DOESN'T WORK. THE JURY IS THE
10 BACKBONE OF OUR JUDICIAL SYSTEM. IT IS WHAT REALLY DIFFERENTIATES
11 US FROM SAY, RUSSIA OR CHINA OR SOME OF THE OTHER COUNTRIES,
12 WHERE YOU JUST GO IN FRONT OF A JUDGE WHO IS APPOINTED BY THE
13 GOVERNMENT AND THAT JUDGE AND THAT POLICE OFFICER DECIDE
14 WHETHER YOU ARE GUILTY OR WHETHER YOU ARE NOT GUILTY. WELL, WE
15 DON'T DO THAT HERE. YOU GET A JURY OF TWELVE UNBIASED PEOPLE.
16 PEOPLE WHO HAVE NO AX TO GRIND. PEOPLE WHO HAVE NO REASON TO DO
17 ANYTHING BUT FIND THE TRUTH AND THAT'S ALL YOU HAVE BEEN ASKED TO
18 DO, TO FIND THE TRUTH. IT DOESN'T MATTER WHERE THE TRUTH COMES
19 FROM. IT DOESN'T MATTER IF IT COMES FROM A WITNESS FOR THE STATE
20 OR WHETHER IT COMES FROM A WITNESS FROM THE DEFENSE. YOU ARE
21 INTERESTED ONLY IN THE TRUTH.

22 THE BURDEN OF IT, THE BURDEN RESTS WITH THE STATE OF SOUTH
23 CAROLINA. THE LAW PROVIDES THAT WHENEVER THE STATE OF SOUTH
24 CAROLINA ELECTS TO CHARGE AN INDIVIDUAL WITH A CRIME -- I DON'T CARE
25 HOW SMALL OR HOW GREAT THAT CRIME MIGHT BE -- WHEN THEY ELECT TO

OPENING ARGUMENT BY MISTER WILSON

29

1 DO THAT, THEY AUTOMATICALLY ASSUME THE BURDEN OF COMING INTO THIS
2 COURTROOM AND PROVING BEYOND A REASONABLE DOUBT THAT THE
3 INDIVIDUAL THAT THEY CHARGED, AND NO ONE ELSE, TO THE EXCLUSION OF
4 EVERY OTHER PERSON, THAT THAT PERSON IS GUILTY.

5 I SUBMIT TO YOU THAT THIS CASE WILL FAIL TO DO THAT AND THEY
6 WILL FAIL TO DO THAT MISERABLY, BECAUSE THEY CAN NOT DELIVER IT IN
7 THIS CASE. THAT DOES NOT STOP THE STATE OF SOUTH CAROLINA FROM
8 CHARGING AN INDIVIDUAL, ANYBODY CAN BE CHARGED. THE QUESTION IS,
9 CAN THEY PROVE WHAT THEY ALLEGE. I TELL YOU SOMETIMES IT IS ALMOST
10 IMPOSSIBLE FOR A DEFENDANT TO PROVE HE OR SHE IS NOT GUILTY.
11 SOMEBODY SAYS THAT, "OH, RALPH WILSON WAS AT SUCH AND SUCH A
12 PLACE LAST NIGHT," AND I WAS HOME ALONE. HOW AM I GOING TO PROVE
13 THAT I WASN'T THERE? I CAN SAY I WAS HOME, BUT HOW AM I GOING TO
14 PROVE THAT I WAS THERE? SO, THAT IS WHY THE LAW PLACES THE BURDEN
15 ON THE STATE WHEN THEY MAKE THE ALLEGATION, TO ACTUALLY PROVE
16 WHAT THEY SAY AND TO PROVE IT, NOT JUST PROVE IT, NOT LIKE THEY DO
17 IN CIVIL CASES WHERE IT IS THE PREPONDERANCE OF THE EVIDENCE,
18 WHERE WHOEVER COMES UP WITH 50.1% OF THE EVIDENCE WINS. WELL NO,
19 NOT HERE. IN THIS CASE AND IN ALL CRIMINAL CASES, THE BURDEN IS
20 BEYOND A REASONABLE DOUBT. THAT IS A DOUBT THAT HAS BEEN
21 DESCRIBED AS A DOUBT IN WHICH YOU, AS AN HONEST JUROR WHO IS
22 SEEKING THE TRUTH, CAN GIVE A REASON OR YOU MIGHT HESITATE TO ACT
23 BASED ON THE INFORMATION THAT YOU HAVE.

24 LADIES AND GENTLEMEN, THE ONLY THING THAT I ASK OF YOU AT THIS
25 TIME, IS YOUR TIME AND YOUR PATIENCE AS WE GO THROUGH THIS

1 PROCESS. THERE WILL NEVER BE A DAY MORE IMPORTANT THAN THIS DAY
2 IN THE LIFE OF WAYNE MCLAUGHLIN. WAYNE MCLAUGHLIN AS HE SITS
3 THERE, THERE WILL NEVER BE A DAY MORE IMPORTANT IN HIS LIFE THAN
4 THIS DAY. THIS DAY IS IMPORTANT TO THE STATE OF SOUTH CAROLINA AND
5 TO JUSTICE AND FAIRNESS. WE SIMPLY ASK YOU TO BEAR WITH US AS WE
6 GO THROUGH THIS PROCESS. THE STATE, BECAUSE THEY HAVE THE
7 BURDEN, WILL GO FIRST. THEN, IF THE DEFENDANT ELECTS TO PUT UP
8 EVIDENCE, HE WILL GO NEXT. I SIMPLY ASK YOU FOR YOUR PATIENCE AS WE
9 GO THROUGH THIS PROCESS. THANK YOU.

10 THE COURT: ALL RIGHT, MISTER JEPERTINGER, YOU MAY CALL YOUR
11 FIRST WITNESS.

12 MR. JEPERTINGER: THE STATE WOULD CALL AMMIE STEPHENS TO THE
13 STAND.

14 (AFTER BEING DULY SWORN, AMMIE STEPHENS TESTIFIED AS FOLLOWS:)

15 DIRECT EXAMINATION OF AMMIE STEPHENS BY MISTER JEPERTINGER:

16 Q WOULD YOU PLEASE STATE YOUR FULL NAME FOR THE RECORD.

17 A AMMIE ELIZABETH STEPHENS.

18 Q OKAY, MS. STEPHENS FOR WHOM ARE YOU EMPLOYED?

19 A I WORK FOR THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION.

20 Q AND WHAT ARE YOUR RESPONSIBILITIES AT THE SOUTH CAROLINA LAW
21 ENFORCEMENT DIVISION?

22 A I AM A FORENSIC TECHNICIAN IN THE EVIDENCE CONTROL
23 DEPARTMENT. I LOG IN EVIDENCE THROUGHOUT THE STATE OF SOUTH
24 CAROLINA FOR DIFFERENT AGENCIES FOR FORENSIC EXAMINATION.

25 Q ALL RIGHT. AND I AM GOING TO SHOW YOU WHAT'S BEEN MARKED AS

DIRECT EXAMINATION OF AMMIE STEPHENS BY MR. JEPERTINGER

31

1 STATE'S EXHIBIT #13 FOR IDENTIFICATION. CAN YOU IDENTIFY THIS
2 OBJECT THAT I'VE JUST HANDED YOU?

3 A I CAN.

4 Q AND CAN YOU TELL THE JURY WHAT THAT OBJECT IS PLEASE.

5 A IT IS AN EVIDENCE COLLECTION KIT. IT'S KNOWN AS A BEST KIT, AND I
6 IDENTIFY IT BY THE LAB NUMBERS WHICH IS L071836, ITEM #1.

7 Q ALL RIGHT. AND WHO SUBMITTED THAT TO YOU PLEASE?

8 A I RECEIVED ITEM #1 FROM SIMON BROWN OF THE MARION COUNTY
9 COMBINED DRUG UNIT.

10 Q OKAY. AND AFTER YOU RECEIVED ITEM #1 FROM MISTER BROWN OF
11 THE COMBINED DRUG UNIT, WHAT DID YOU DO WITH ITEM #1?

12 A WHEN WE RECEIVED THE ITEM IT WAS LOGGED INTO OUR COMPUTER
13 SYSTEM WHICH ASSIGNS IT A UNIQUE LAB NUMBER, WHICH IN THIS
14 CASE, IT WAS L071836. WE LOG IT ITO OUR COMPUTER SYSTEM AND
15 WE PUT ALL THE INFORMATION INTO THE SYSTEM AND THEN WE PUT IT
16 INTO OUR DRUG INTAKE STORAGE UNIT WHICH IS IN A LOCKED ROOM.

17 Q OKAY. WHEN YOU RECEIVED THAT ITEM IS IT IN THAT PLASTIC BAG
18 ALREADY, MA'AM?

19 A NOT IN THIS OUTSIDE PLASTIC BAG. THE ACTUAL EVIDENCE IS
20 CONTAINED IN THIS BAG WITH THE GREEN STRIP RIGHT HERE. THAT IS
21 CONTAINED IN A MANILLA ENVELOPE THAT HAS DIRECTIONS ON THE
22 OUTSIDE WHICH IS CALLED A BEST KIT.

23 Q OKAY. NOW IN TERMS OF THAT OUTER BAG, TO YOUR KNOWLEDGE DO
24 YOU KNOW WHO WOULD PUT IT IN THAT OUTER BAG, MA'AM?

25 A THE CHEMIST.

1 Q OKAY. AND THAT WOULD BE MISTER SMITH, WHO IS HERE PRESENT IN
2 THE COURTROOM TODAY?

3 A YES, SIR.

4 Q AND WERE THOSE YOUR ONLY RESPONSIBILITIES IN TERMS OF THIS
5 CASE, MA'AM?

6 A YES, SIR.

7 Q ALL RIGHT. PLEASE ANSWER ANY QUESTIONS THAT MISTER WILSON
8 MIGHT HAVE FOR YOU.

9 THE COURT: CROSS EXAMINATION, MR. WILSON?

10 MR. WILSON: THANK YOU, YOUR HONOR.

11 CROSS EXAMINATION OF AMMIE STEPHENS BY MISTER WILSON:

12 Q I JUST HAVE A COUPLE OF QUESTIONS MA'AM. YOU DON'T KNOW
13 MISTER MCLAUGHLIN?

14 A NO, SIR.

15 Q YOU HAVE NEVER MET HIM?

16 A NO, SIR.

17 Q AND YOU ARE NOT SAYING THAT THOSE DRUGS CAME FROM HIM?

18 A NO, SIR.

19 Q ALL RIGHT, I HAVE NO OTHER QUESTIONS.

20 THE COURT: ANYTHING ELSE?

21 MR. JEPERTINGER: NOTHING FURTHER YOUR HONOR. I WOULD ASK
22 THAT MS. STEPHENS BE ALLOWED TO RETURN TO COLUMBIA. I KNOW, I
23 THINK SHE DROVE WITH MISTER SMITH. SO.....

24 THE COURT: ARE THERE ANY OBJECTIONS TO THE WITNESS BEING
25 EXCUSED?

DIRECT EXAMINATION OF WILLIE SMITH BY MR. JEPERTINGER

33

1 MR. WILSON: WE HAVE NO OBJECTIONS.

2 THE COURT: ALL RIGHT. THANK YOU MS. STEPHENS AND YOU ARE
3 EXCUSED.

4 MR. JEPERTINGER: I WOULD CALL WILLIE SMITH, YOUR HONOR.

5 THE COURT: ALL RIGHT, MISTER SMITH COME AROUND PLEASE.

6 (AFTER BEING DULY SWORN BY THE CLERK OF COURT, WILLIE SMITH
7 TESTIFIED AS FOLLOWS:)

8 DIRECT EXAMINATION OF WILLIE SMITH BY MISTER JEPERTINGER:

9 Q PLEASE STATE YOUR NAME FOR THE RECORD.

10 A MY NAME IS WILLIE C. SMITH, III.

11 Q MISTER SMITH, FOR WHOM ARE YOU EMPLOYED?

12 A I AM EMPLOYED BY SOUTH CAROLINA LAW ENFORCEMENT DIVISION,
13 ALSO KNOWN AS SLED.

14 Q AND WHAT ARE YOUR RESPONSIBILITIES AT SLED?

15 A I AM A SPECIAL AGENT, A CHEMICAL ANALYST, ASSIGNED TO THE DRUG
16 ANALYSIS DEPARTMENT.

17 Q WOULD YOU TELL THE JURY AND THE COURT, WHAT IS YOUR
18 EDUCATIONAL BACKGROUND?

19 A I HAVE BACHELOR OF SCIENCE DEGREES IN BIOLOGY AND CHEMISTRY
20 FROM THE UNIVERSITY OF SOUTH CAROLINA. I WENT THROUGH THE
21 CRIMINAL JUSTICE ACADEMY TO BECOME A SWORN LAW
22 ENFORCEMENT OFFICER OF THE STATE OF SOUTH CAROLINA. I HAVE
23 TAKEN ADDITIONAL GRADUATE COURSE WORK AND SEMINARS IN
24 CHEMICAL DRUG ANALYSIS AND I ALSO YEARLY ATTEND MEETINGS
25 UPDATING MY KNOWLEDGE ON DRUG ANALYSIS.

1 Q IN TERMS OF DRUG ANALYSIS, HOW MANY TIMES HAVE YOU
2 CONDUCTED DRUG ANALYSES ON SUBSTANCES SUBMITTED TO SLED?

3 A OVER 7,000 TIMES.

4 Q HAVE YOU EVER HAD TO TESTIFY IN A COURT OF LAW IN TERMS OF
5 DRUG ANALYSIS BEFORE?

6 A YES, I HAVE. OVER 45 TIMES.

7 Q OKAY, AND IN EACH OF THOSE INSTANCES, OF THOSE 45 TIMES YOU
8 HAVE HAD TO TESTIFY, HAVE YOU BEEN QUALIFIED AS AN EXPERT IN
9 THE FIELD OF DRUG ANALYSIS OR NARCOTICS ANALYSIS?

10 A YES, IN ALL 45 TIMES.

11 Q YOUR HONOR, AT THIS TIME I WOULD MOVE TO HAVE MISTER SMITH
12 QUALIFIED AS AN EXPERT IN THE FIELD OF DRUG AND/OR NARCOTIC
13 ANALYSIS.

14 THE COURT: VOIR DIRE IN REGARDS TO QUALIFICATIONS, MISTER
15 WILSON?

16 MR. WILSON: NO, SIR, YOUR HONOR. HE IS QUALIFIED.

17 THE COURT: ALL RIGHT. ALL RIGHT, LADIES AND GENTLEMEN OF THE
18 JURY, LET ME TELL YOU WHAT THAT MEANS. IF A WITNESS IS NOT
19 TESTIFYING AS AN EXPERT, THE WITNESS' TESTIMONY IN THE FORM OF
20 OPINIONS OR INFERENCES, IS LIMITED TO THOSE THINGS WHICH ARE
21 RATIONALLY BASED ON THE PERCEPTION OF THE WITNESS OR HELPFUL TO A
22 CLEAR UNDERSTANDING OF THE WITNESS' TESTIMONY OR TO THE
23 DETERMINATION OF FACT AND ISSUE AND DO NOT REQUIRE SPECIAL
24 KNOWLEDGE, SKILL, EXPERIENCE, OR TRAINING. HOWEVER, IF A SCIENTIFIC,
25 TECHNICAL, OR OTHER SPECIALIZED KNOWLEDGE WILL ASSIST THE TRIER OF

DIRECT EXAMINATION OF WILLIE SMITH BY MR. JEPERTINGER

35

1 FACT, AND THAT IS YOU IN THIS CASE, TO UNDERSTAND THE EVIDENCE OR
2 TO DETERMINE THE FACT AND ISSUE, THEN A WITNESS QUALIFIED AS AN
3 EXPERT BY KNOWLEDGE, SKILL, EXPERIENCE, TRAINING, OR EDUCATION MAY
4 TESTIFY IN THE FORM OF AN OPINION. SO BASICALLY, THE DIFFERENCE
5 BETWEEN AN EXPERT WITNESS AND ONE WHO IS NOT CONSIDERED AN
6 EXPERT WITNESS, IS THAT AN EXPERT WITNESS IS ALLOWED TO GIVE AN
7 OPINION. AND I HAVE QUALIFIED THIS WITNESS BY STIPULATION OF
8 COUNSEL AS AN EXPERT IN THE FIELD OF DRUG OR CHEMICAL ANALYSIS OF
9 DRUGS AND, AS SUCH, HE MAY TESTIFY TO HIS OPINION. ALL RIGHT, YOU
10 MAY PROCEED.

11 MR. JEPERTINGER: THANK YOU, YOUR HONOR.

12 Q MR. SMITH, I AM GOING TO SHOW YOU WHAT HAS BEEN MARKED
13 STATE'S EXHIBIT #13 FOR IDENTIFICATION PURPOSES AT THIS TIME.
14 WOULD YOU EXAMINE THAT, PLEASE?

15 (WITNESS COMPLIES)

16 A ALL RIGHT.

17 Q YES?

18 A THIS IS A BEST BAG WHICH THE SOUTH CAROLINA LAW ENFORCEMENT
19 AGENCY USES. WHAT WE DO IS, WE HAVE A BEST EVIDENCE
20 ASSEMBLAGE SYSTEM WHICH WE PROVIDE BEST BAGS ACROSS THE
21 STATE SO THEY CAN SUBMIT IT TO OUR LABORATORY IN A SECURE
22 FORM. IN THIS CASE, THIS EVIDENCE WAS SUBMITTED TO ME IN A BEST
23 BAG WHICH IS THIS BAG RIGHT HERE, WHICH HAS A UNIQUE LAB
24 NUMBER AND A CONTROL NUMBER TO IT.

25 Q IS THAT THE INNER BAG? EXCUSE ME?

1 A THIS IS THE INNER BAG WITH THE TAMPER INDICATIVE SEAL ON IT AND
2 ON THIS SEAL RIGHT HERE, YOU CAN SEE WHEN I STARTED TO DO MY
3 ANALYSIS ON MAY 25, 2007, I WRITE THE WORDS SEALED AND INTACT
4 WITH THE LAB NUMBER STATING THAT IT WAS SEALED AND INTACT
5 WHEN I RECEIVED THIS EVIDENCE BEFORE I DID MY ANALYSIS ON IT.

6 Q SO THE OBJECT CAME TO YOU IN THAT SEALED BAG. CORRECT?

7 A THAT'S CORRECT. AND IT WAS SEALED PROPERLY INSIDE THE BAG.

8 Q NOW, AT THAT POINT YOU RETRIEVED THOSE -- THAT OBJECT FROM
9 THE LOCKER MS. STEPHENS HAD SPOKE ABOUT?

10 A YES, SIR. I WENT DOWN TO THE LOG-IN DEPARTMENT AND WAS GIVEN
11 THE ACTUAL BEST EVIDENCE SUBMISSION KIT TO TEST, WHICH WAS
12 SEALED PROPERLY.

13 Q AND DID YOU CONDUCT AN ANALYSIS ON THE OBJECTS THAT WERE
14 FOUND IN STATE'S EXHIBIT #13?

15 A YES, I DID. I DID MY ANALYSIS ON MAY 25, 2007.

16 Q OKAY. NOW, LET ME ASK YOU DID YOU FIND ANYTHING OTHER THAN
17 DRUGS? AND WHEN I SAY THAT, I AM ASKING DID YOU FIND ANYTHING
18 THAT PACKAGED DRUGS IN THERE? REFER TO YOUR REPORT, PLEASE.

19 A WELL, THE WAY THIS EVIDENCE WAS PACKAGED, I RECEIVED A
20 PLASTIC BAG THAT CONTAINED AN M-T PLASTIC BAG AND IT HAD NINE
21 ZIP-LOCK BAGS IN IT WITH POWDERED SUBSTANCES. THEN I HAVE
22 ANOTHER PLASTIC BAG THAT WAS IN THERE THAT CONTAINED A ZIP-
23 LOCK BAG THAT CONTAINED RESIDUE AND AN ADDITIONAL THIRTY ZIP-
24 LOCK BAGS THAT EACH CONTAINED A ROCK SUBSTANCE AND THEN I
25 RECEIVED ANOTHER PLASTIC BAG THAT WAS IN THERE THAT

DIRECT EXAMINATION OF WILLIE SMITH BY MR. JEPERTINGER

37

1 CONTAINED A ROCK SUBSTANCE.

2 Q NOW LET ME ASK YOU, WHEN YOU ARE TALKING ABOUT THOSE
3 ZIP-LOCK BAGS IN THAT ARTICLE, ARE YOU REFERRING TO ALL THESE
4 SMALL INDIVIDUAL BAGS?

5 A THAT IS CORRECT. THERE WERE INDIVIDUAL SMALL ZIP-LOCK BAGS IN
6 THERE AND ALSO THEY HAD A TOTAL OF THIRTY-NINE INDIVIDUAL
7 ZIP-LOCK BAGS IN THERE AND THAT'S THE PLASTIC BAGS WE DID
8 ANALYSIS ON IN THIS CASE.

9 Q ALL RIGHT. NOW, YOU HAD AN OPPORTUNITY TO OPEN THOSE ZIP-
10 LOCK BAGS. DID YOU NOT?

11 A DEFINITELY. I DID OPEN THEM AND LOOKED AT THE EVIDENCE.

12 Q AND YOU STUCK THEM BACK IN THE INDIVIDUAL BAGS AFTER YOU
13 WERE DONE WITH YOUR ANALYSIS?

14 A YES. BECAUSE THE WAY I DO MY ANALYSIS, I TEST EVERY SINGLE ITEM
15 SEPARATELY, WHICH I DO A CHEMICAL TEST AND/OR AN
16 INSTRUMENTAL TEST ON EVERY SINGLE ITEM SEPARATELY.

17 Q OKAY. NOW, IN TERMS OF DOING YOUR CHEMICAL TEST, IF YOU CAN IN
18 LAYMAN'S TERMS, WHAT DO YOU DO?

19 A ALL A CHEMICAL TESTING IS, IS SOME REAGENTS WHERE WE JUST
20 DROP THE SUBSTANCE IN AND DETECT THE PRESENCE OF A CERTAIN
21 GROUP THAT IT BELONGS TO. IN THIS CASE WE WERE LOOKING FOR
22 COCAINE AND IT SHOWED A POSITIVE PRESENCE OF EACH GROUP
23 THAT WAS IN EVERY SINGLE BAG.

24 Q FOR COCAINE?

25 A IT COULD BE COCAINE IN PART OF THE CASE AND IN THE OTHER PART

1 OF THE CASE IT WAS CRACK IN THIS CASE.

2 Q OKAY. NOW, WHAT OTHER TEST DO YOU CONDUCT ON THESE THINGS
3 OTHER THAN THAT CHEMICAL TEST?

4 A BESIDES THE CHEMICAL TEST, I WANTED CHECK IT TO PROVE THAT IT
5 IS WHAT IT IS SUPPOSED TO BE AND IN THIS CASE I USED TWO TYPES
6 OF INSTRUMENTATION TO TEST THE ITEMS. FOR THE
7 CONTRACEPTORS IN THIS CASE I USED INFRARED SPECTROSCOPY.
8 FOR THE, I'M SORRY, FOR THE POWDER I USED IN THIS CASE I USED
9 GAS CHROMATOGRAPHY AND MASS SPECTROSCOPY. FOR THE ROCK
10 SUBSTANCE IN THIS CASE I USED INFRARED SPECTROSCOPY.

11 Q NOW THOSE TESTS ARE INDIVIDUALLY SET UP TO MAKE SURE ON A
12 MOLECULAR LEVEL THAT THE SUBSTANCES THAT YOU ARE DEALING
13 WITH ARE THE SUBSTANCES THAT YOU WRITE DOWN IN YOUR
14 ANALYSIS?

15 A THAT IS CORRECT. IT TESTED ON A MOLECULAR LEVEL.

16 Q ALL RIGHT. NOW, HOW LONG DOES IT TAKE YOU TO DO A TEST LIKE
17 THAT ON THOSE SUBSTANCES? DOES IT HAPPEN IN A MATTER OF
18 MINUTES OR HOURS OR HOW DOES THAT WORK, SIR?

19 A WELL, FOR THE TOTAL NUMBER OF SAMPLES THAT I HAD IN THIS CASE,
20 I WAS ABLE TO PREP THE CASE IN ABOUT 4 HOURS, BUT AS FAR AS
21 INTRICATE ANALYSIS GOES I WAS ABLE TO PREP MY SAMPLES AND IT
22 USUALLY TAKES A COUPLE OF DAYS FOR IT TO RUN AUTOMATICALLY
23 ON THE INSTRUMENTATION.

24 Q SO, IT TOOK YOU A COUPLE OF DAYS TO RUN THE ANALYSIS IN TOTAL.
25 CORRECT?

DIRECT EXAMINATION OF WILLIE SMITH BY MR. JEPERTINGER

39

1 A YES. IN THIS CASE.

2 Q NOW, LET ME ASK YOU. IN TERMS OF THE RESULTS, WHAT DID YOU
3 FIND?

4 A IN THIS CASE I FOUND WHERE IT WAS A PLASTIC BAG THAT CONTAINED
5 THE M-T BAG AND 9 ZIP-LOCK BAGS. IT WAS FOUND TO BE COCAINE IN
6 ALL 9 OF THE ZIP-LOCK BAGS THAT CONTAINED THE POWDER
7 SUBSTANCE WITH THE COMBINED WEIGHT OF 3.55 GRAMS IN 54.74
8 GRAINS. AND THEN I HAD ANOTHER PLASTIC BAG --

9 Q LET ME STOP YOU RIGHT THERE BEFORE WE GET INTO THAT. IN
10 TERMS OF A GRAIN, AM I CORRECT THAT A GRAIN -- THERE ARE 15.432
11 GRAINS TO A GRAM?

12 A THAT IS CORRECT. IT IS 15.432 GRAINS PER GRAM.

13 Q SO, THAT IS 54.78 GRAINS OF COCAINE. IS THAT CORRECT?

14 A THAT IS CORRECT AND IN THIS CASE IT WAS FOUND TO BE 54.78
15 GRAINS OF COCAINE.

16 Q AND THAT EQUALS TO 3.55 GRAMS?

17 A THAT IS CORRECT.

18 Q SO THERE IS A DIFFERENCE BETWEEN GRAINS AND GRAMS?

19 A DEFINITELY. YES, SIR.

20 Q ALL RIGHT. VERY GOOD. NOW THE NEXT -- I CUT YOU OFF, I AM SORRY.
21 WHAT WERE YOU GOING TO SAY?

22 A THE NEXT ITEM WAS A PLASTIC BAG WHICH CONTAINED A ZIP-LOCK
23 BAG WHICH CONTAINED RESIDUE AND I TESTED THE RESIDUE AND IT
24 CAME UP POSITIVE IN THE CHEMICAL TEST FOR COCAINE AND THE
25 INSTRUMENTAL TEST DERIVED IT TO BE COCAINE ALSO. THEN I HAD 30

1 INDIVIDUAL ZIP-LOCK BAGS OF ROCK SUBSTANCES. EACH AND EVERY
2 ONE OF THE ZIP-LOCK BAGS TESTED POSITIVE FOR COCAINE CRACK.
3 AND THEN I HAD ANOTHER PLASTIC BAG THAT CONTAINED A ROCK
4 SUBSTANCE AND IT TURNED OUT TO BE COCAINE CRACK. AND IN THE
5 30 ZIP-LOCK BAGS, THE COCAINE CRACK WAS FOUND TO BE WITH A
6 COMBINED WEIGHT OF 5.98 GRAMS WHICH IS 92.28 GRAINS. AND THE
7 PLASTIC BAG THAT CONTAINED A ROCK SUBSTANCE OF COCAINE BASE
8 CRACK FOUND WAS 2.69 GRAMS AND 41.51 GRAINS, IN THAT CASE.

9 Q OKAY. NOW IF WE ADD UP THE 5.98 GRAMS OF CRACK AND THE 2.69
10 GRAMS OF CRACK, DO YOU GET A TOTAL OF 8.67 GRAMS?

11 A THAT IS CORRECT. THAT IS WHAT I RECEIVED. THAT IS MY ANSWER,
12 THAT IS WHAT I RECEIVED.

13 Q AT THAT POINT, ONCE YOU DID YOUR ANALYSIS AND RAN THE TESTS
14 THAT YOU RAN THAT TOOK A COUPLE OF DAYS, WHAT DID YOU DO WITH
15 THE SUBSTANCES? WHAT -- HOW DID YOU HANDLE THE SUBSTANCES
16 AFTER THAT?

17 A WELL, EVERY SINGLE ITEM THAT I TOUCHED, I PUT MY INITIAL ON AND I
18 MADE THE PROPER NUMBER THAT CORRESPONDS TO IT. AFTER I
19 FINISHED DOING MY ANALYSIS ON IT, I PUT IT IN A LARGER HEAT-
20 SEALED PACKAGE WHICH IS THIS RIGHT HERE, AND I PUT MY INITIALS
21 AND THE DATE ON IT WHEN I SEALED THE BAG AND THIS BAG IS STILL
22 IN THE SAME CONDITION AS WHEN I DID MY ANALYSIS BACK ON
23 MAY 25, 2007.

24 Q AND YOU SENT THOSE DRUGS BACK TO MARY CONNOLLY. IS THAT
25 CORRECT?

CROSS EXAMINATION OF WILLIE SMITH BY MR. WILSON

41

1 A THAT IS CORRECT.

2 Q AND THE LAB NUMBER ON THAT ONCE AGAIN?

3 A THE LAB NUMBER ON THIS EVIDENCE IS L0701836.

4 Q OKAY, THANK YOU VERY MUCH. PLEASE ANSWER ANY QUESTIONS
5 THAT MR. WILSON MIGHT HAVE.

6 A YES, SIR.

7 MR. WILSON: I JUST HAVE A FEW QUESTIONS.

8 CROSS EXAMINATION OF WILLIE SMITH BY MISTER WILSON:

9 Q I WAS LISTENING TO YOU, YOU HAVE OBVIOUSLY NEVER MET WAYNE
10 MCLAUGHLIN. IS THAT CORRECT?

11 A THAT IS CORRECT.

12 Q ALL RIGHT, AND YOU DON'T KNOW WHERE THESE DRUGS CAME FROM
13 OTHER THAN THEY WERE PACKAGED AND SENT TO YOU?

14 A THAT IS CORRECT.

15 Q ALL RIGHT. AND YOU HAVE NO PERSONAL KNOWLEDGE OF WHAT ---
16 WELL, LET ME RE-PHRASE THAT. YOU HAVE NO PERSONAL
17 KNOWLEDGE OF THE CONTENTS OTHER THAN WHAT WAS MAILED TO
18 YOU OR DELIVERED TO YOU? IS THAT CORRECT?

19 A THE ONLY THING I KNOW ABOUT THIS CASE IS WHAT WAS SUBMITTED
20 TO SLED FOR ANALYSIS FOR A SUBSTANCE FOR ANALYSIS IN THE DRUG
21 ANALYSIS DEPARTMENT.

22 Q ALL RIGHT, AND LET ME ASK YOU, IN REGARDS TO, YOU SAID THAT
23 THERE WERE 30 LITTLE SMALL ZIP-LOCK BAGS INSIDE THE BAG THAT
24 YOU HAVE THERE? DID I UNDERSTAND YOU TO SAY THAT?

25 A THERE WERE 9 ZIP-LOCK BAGS THAT CONTAINED POWDER

1 SUBSTANCES AND THERE WERE 30 SMALL ZIP-LOCK BAGS THAT
2 CONTAINED THE ROCK SUBSTANCE.

3 Q OKAY. SO THERE WERE 39 TOTAL?

4 A ZIP-LOCK BAGS BUT THERE WERE ADDITIONAL -- THERE WAS AN
5 ADDITIONAL ZIP-LOCKED BAG THAT CONTAINED RESIDUE AND THERE
6 WAS ANOTHER BAG, A PLASTIC BAG THAT CONTAINED A ROCK
7 SUBSTANCE.

8 Q SO, IT'S 40 OR 41? HOW MANY HAVE YOU GOT THERE?

9 A WE HAVE 9 PLUS ONE, THAT'S 10. PLUS THE 30, IS 40 AND 41.

10 Q SO, WE HAVE GOT 41 PLASTIC ZIP-LOCK BAGS. IS THAT CORRECT?

11 A WE HAVE 40 ZIP-LOCK BAGS AND 1 PLASTIC BAG.

12 Q OKAY, SO YOU HAVE 40 ZIP-LOCKS AND 1 PLASTIC BAG THAT IS NOT A
13 ZIP-LOCK?

14 A THAT IS CORRECT.

15 Q IS THAT WHAT YOU ARE SAYING?

16 A YES.

17 Q OKAY. AND NOW, DID YOU TEST THOSE BAGS FOR FINGERPRINTS?

18 THOSE PLASTIC BAGS? TO SEE IF WAYNE MCLAUGHLIN'S PRINTS WERE
19 ON ANY OF THOSE 40 BAGS THAT YOU GOT?

20 A FINGERPRINTS WOULD HAVE BEEN DONE IF IT WAS REQUESTED, BUT IT
21 WASN'T SENT TO THAT DEPARTMENT.

22 Q WASN'T SENT TO THAT DEPARTMENT. ALL RIGHT. SO, WE DON'T
23 KNOW? RIGHT?

24 A I DID NOT SEND IT TO THE LATENT'S DEPARTMENT.

25 Q IS THERE ANY PARTICULAR REASON YOU DIDN'T SEND IT?

DIRECT EXAMINATION OF NEIL ROUSE BY MR. JEPERTINGER

43

1 A IF IT HAD BEEN REQUESTED FOR LATENT PRINTS, I WOULD HAVE SENT
2 IT TO THE LATENT PRINT DEPARTMENT.

3 Q SO IF THE COMBINED DRUG UNIT HAD ASKED YOU OR THE SOLICITOR'S
4 OFFICE OR THE SHERIFF OR WHOEVER, IF THEY HAD ASKED YOU TO
5 HAVE THOSE 39 BAGS FINGERPRINTED, YOU WOULD HAVE HAD IT
6 DONE. WOULD YOU NOT?

7 A YES.

8 Q I DON'T HAVE ANY OTHER QUESTIONS.

9 THE COURT: RE-DIRECT MISTER JEPERTINGER?

10 MR. JEPERTINGER: NO, SIR. AND I WOULD ASK THAT MISTER SMITH BE
11 ALLOWED TO GO BACK TO COLUMBIA WITH MS. STEPHENS.

12 THE COURT: ANY OBJECTIONS, MISTER WILSON?

13 MR. WILSON: NO, YOUR HONOR.

14 THE COURT: ALL RIGHT. MISTER SMITH, YOU ARE EXCUSED. THANK
15 YOU FOR COMING.

16 MR. SMITH: THANK YOU.

17 MR. JEPERTINGER: YOUR HONOR THE STATE WOULD CALL NEIL
18 ROUSE TO THE STAND.

19 THE COURT: ALL RIGHT. ALL RIGHT, MISTER ROUSE.

20 (AFTER BEING DULY SWORN BY THE CLERK OF COURT, MISTER ROUSE
21 TESTIFIED AS FOLLOWS:)

22 **DIRECT EXAMINATION OF NEIL ROUSE BY MISTER JEPERTINGER:**

23 Q GOOD AFTERNOON. WOULD YOU PLEASE STATE YOUR NAME FOR THE
24 RECORD.

25 A NEIL ROUSE.

1 Q OKAY. AND MISTER ROUSE, YOU HAVE AN OFFICIAL DESIGNATION. CAN
2 YOU TELL THE JURY WHAT YOUR POSITION IS AND WHAT DO YOU DO?

3 A I AM A DETECTIVE WITH THE MARION COUNTY SHERIFF'S OFFICE.

4 Q AND HOW LONG HAVE YOU BEEN A DETECTIVE WITH THE MARION
5 COUNTY SHERIFF'S OFFICE?

6 A SEVEN MONTHS.

7 Q ALL RIGHT. AND PRIOR TO WORKING AS A DETECTIVE WITH THE
8 MARION COUNTY SHERIFF'S OFFICE, WHAT DID YOU DO?

9 A I WAS A SUPERVISOR FOR THE MARION COUNTY COMBINED DRUG UNIT.

10 Q AND HOW LONG HAD YOU DONE THAT?

11 A FOURTEEN YEARS.

12 Q AND PRIOR TO THAT?

13 A I WAS WITH THE DILLON COUNTY SHERIFF'S OFFICE FOR FIVE YEARS.

14 Q IS IT SAFE TO SAY YOU HAVE OVER 20 YEARS OF LAW ENFORCEMENT
15 EXPERIENCE?

16 A NINETEEN GOING ON TWENTY.

17 Q VERY GOOD. I DIDN'T DO THE MATH IN MY HEAD. LET ME ASK YOU,
18 BACK ON JANUARY 19, 2007, WHAT WERE YOUR RESPONSIBILITIES, SIR?

19 A I WAS A SUPERVISOR WITH MARION COUNTY COMBINED DRUG UNIT.

20 Q OKAY, AND THE COMBINED DRUG UNIT, CAN YOU GIVE THE JURY JUST A
21 BASIC, WHAT THE COMBINED DRUG UNIT DOES?

22 A THE COMBINED DRUG UNIT CONSISTS OF THREE AGENCIES. THE
23 MARION COUNTY SHERIFF'S OFFICE, THE MARION POLICE DEPARTMENT
24 AND THE MULLINS POLICE DEPARTMENT. EACH HAVE AN AGENT. WE
25 ARE RESPONSIBLE FOR, -- WELL, THEY ARE AND I WAS, AT THE TIME --

DIRECT EXAMINATION OF NEIL ROUSE BY MR. JEPERTINGER

45

1 RESPONSIBLE FOR DOING CONTROLLED BUYS AND WORKING
2 NARCOTICS IN THE MARION COUNTY AREA.

3 Q ON JANUARY 19, 2007, AS SUPERVISOR OF THE MARION COUNTY
4 COMBINED DRUG UNIT, DID YOU HAVE ANY RESPONSIBILITIES, OR DID
5 YOU TAKE ANY ACTIONS I GUESS IS A BETTER WAY TO PUT IT, WITH A
6 PLACE CALLED W. T.'S LOUNGE?

7 A YES, SIR. I DID.

8 Q OKAY. NOW, FOR THOSE THAT ARE NOT FROM THE MULLINS AREA
9 COULD YOU TELL US -- FIRST OF ALL IS W. T.'S LOUNGE IN MARION
10 COUNTY?

11 A YES, SIR. IT IS.

12 Q OKAY. NOW, COULD YOU TELL US COULD YOU TELL US WHERE THAT
13 ESTABLISHMENT IS LOCATED?

14 A IT IS LOCATED JUST OUTSIDE THE CITY LIMITS OF MULLINS, PROBABLY I
15 WOULD SAY, PROBABLY A HALF-MILE FROM THE RED LIGHT AT FRONT
16 AND PARK STREET.

17 Q IS IT SAFE TO SAY THAT IT IS ON THE CORNER OF NORTHEAST FRONT
18 STREET AND HAYES STREET?

19 A THAT IS CORRECT.

20 Q ALL RIGHT. AND DID YOU -- WHAT DID YOU DO IN TERMS OF W.T.'S
21 LOUNGE ON THAT DAY? WHAT WAS YOUR PURPOSE OF DEALING WITH
22 W. T.'S LOUNGE ON THAT DATE?

23 A ON THE 19TH, WAS TO CONDUCT A SEARCH WARRANT.

24 Q OKAY. NOW YOU PROCURED A SEARCH WARRANT FOR THAT
25 LOCATION?

1 A YES, I DID.

2 Q ALL RIGHT. AND DID YOU COME IN CONTACT WITH WAYNE
3 MCLAUGHLIN, THE DEFENDANT IN THIS CASE?

4 A YES, I DID.

5 Q WHAT DID Y'ALL DO WITH MR. MCLAUGHLIN AND THE SEARCH
6 WARRANT?

7 A WE DETAINED MISTER MCLAUGHLIN SEVERAL MILES FROM THE CLUB.
8 WE THEN BROUGHT MISTER MCLAUGHLIN TO THE CLUB TO CONDUCT A
9 SEARCH OF THE CLUB.

10 Q OKAY. AND IS IT IMPORTANT, IN YOUR MIND, TO HAVE THE OWNER OR
11 CO-OWNER OF THE ESTABLISHMENT THERE WHEN YOU EXECUTE A
12 SEARCH WARRANT?

13 A YES, SIR. IT IS. THE REASON FOR THAT IS, WE LIKE THE OWNER OF
14 THE CLUB OR HOUSE OR WHATEVER WE DO THE SEARCH ON TO BE
15 THERE TO MAKE SURE THAT WHEN WE CONDUCT THE SEARCH
16 WARRANT, THAT THE HOUSE OR PLACE IS NOT REALLY DAMAGED.
17 SOMETIMES WE HAVE TO KICK THE DOORS IN AND STUFF LIKE THAT
18 AND WE LIKE TO HAVE THE OWNER THERE TO PREVENT THAT IF THERE
19 IS ANY WAY POSSIBLE.

20 Q NOW, I AM GOING TO SHOW YOU WHAT'S BEEN MARKED AS STATE'S
21 EXHIBIT #2 AND STATE'S EXHIBIT #3, FOR IDENTIFICATION, AT THIS TIME.
22 CAN YOU TELL THE JURY IF YOU RECOGNIZE THOSE PHOTOGRAPHS?

23 A YES, I DO.

24 Q OKAY. AND WHAT ARE THEY PHOTOGRAPHS OF?

25 A THOSE ARE PHOTOGRAPHS OF THE CLUB ITSELF.

DIRECT EXAMINATION OF NEIL ROUSE BY MR. JEPERTINGER

47

1 Q IS THAT W. T.'S LOUNGE?

2 A THAT IS CORRECT.

3 Q DO THOSE PHOTOGRAPHS FAIRLY AND ACCURATELY PORTRAY WHAT
4 W. T.'S LOUNGE LOOKED LIKE ON JANUARY 19, 2007?

5 A EXACTLY.

6 Q AT THIS TIME, YOUR HONOR, I WOULD MOVE STATE'S EXHIBITS #2 AND
7 #3 INTO EVIDENCE.

8 MR. WILSON: I HAVE NO OBJECTIONS, YOUR HONOR.

9 THE COURT: ALL RIGHT. IT IS ADMITTED INTO EVIDENCE, STATE'S
10 EXHIBITS #2 AND #3, WITHOUT OBJECTION. LET THE COURT REPORTER IF
11 SHE HASN'T TAKEN IT -- DO THEY HAVE I-D MARKINGS ON THEM? LET HER
12 TAKE THE I-D MARKING OFF OF THEM.

13 (WHEREUPON, TWO PHOTOGRAPHS ARE ENTERED INTO EVIDENCE AS
14 STATE'S EXHIBITS #2 AND #3, WITHOUT OBJECTION)

15 Q NOW, WHEN YOU -- DID YOU DETAIN MISTER MCLAUGHLIN FIRST, OR
16 DID YOU GO TO THE LOCATION?

17 A I DETAINED HIM FIRST.

18 Q OKAY. AND WHAT TYPE OF -- WHEN YOU DETAINED HIM WAS HE
19 WALKING, ON A BICYCLE, OR RIDING IN HIS CAR, OR WHAT WAS THE
20 SITUATION?

21 A HE WAS IN HS PERSONAL CAR.

22 Q OKAY. IS IT SAFE TO SAY IT WAS A RED CHRYSLER?

23 A THAT IS CORRECT.

24 Q OKAY. NOW -- AND I AM NOT TOO SURE ABOUT THE COLOR OF THE
25 CAR, BUT IT WAS A CHRYSLER.

1 A YES, SIR.

2 Q YOU BROUGHT HIM BACK TO THE SCENE. CORRECT?

3 A NO, SIR. I DIDN'T.

4 Q OKAY.

5 A ANOTHER OFFICER DID.

6 Q AND THAT WOULD HAVE BEEN MISTER BASS, CHIEF BASS.

7 A CORRECT.

8 Q OF THE MARION POLICE DEPARTMENT. OKAY. AND WHEN YOU GOT TO

9 THE SCENE, I AM GOING TO SHOW YOU -- IS IT OKAY IF HE STEPS

10 DOWN?

11 THE COURT: YES, SIR.

12 Q I AM GOING TO SHOW YOU EXHIBIT #2. WHEN YOU GOT THERE, DID

13 YOU GO TO THE -- IS THAT THE FRONT OF THE --

14 A THIS IS THE FRONT OF THE BUILDING RIGHT HERE.

15 Q DID YOU GO TO THE FRONT OF THE BUILDING?

16 A YES, SIR. I DID.

17 Q OKAY. AND WHAT IS, IN FRONT OF THE FRONT DOOR, WHAT IS THAT?

18 A STEEL BARS.

19 Q OKAY. AND DID YOU FIND THAT -- IS THAT A STORM DOOR THAT WAS

20 OPEN OR CLOSED OR HOW DID THAT LOOK?

21 A THESE RIGHT HERE ARE STEEL BARS WITH A PADLOCK ON IT.

22 Q AND IT WAS LOCKED?

23 A YES, SIR.

24 Q ALL RIGHT. AT THAT POINT -- YOU CAN SIT BACK DOWN.

25

(WITNESS COMPLIES)

DIRECT EXAMINATION OF NEIL ROUSE BY MR. JEPERTINGER

49

1 Q AT THAT POINT, WHEN YOU GOT HIM THERE, HOW DID YOU GET IN?

2 A I ASKED MISTER MCLAUGHLIN FOR THE KEYS TO THE CLUB AND HAD
3 ALREADY CALLED THE FIRE DEPARTMENT TO COME WITH BOLT
4 CUTTERS TO CUT THE LOCK OFF. BEING COURTEOUS TO MISTER
5 MCLAUGHLIN TO NOT DAMAGE THE DOOR, WE GAVE HIM AN
6 OPPORTUNITY FOR HIM TO FIND US A KEY TO GET IN.

7 Q ALL RIGHT. AND DID YOU HAVE TO USE THE FIRE DEPARTMENT'S
8 SERVICES TO GET IN OR WERE YOU GIVEN A KEY?

9 A MISTER MCLAUGHLIN GIVE ME A KEY TO GET IN.

10 Q ALL RIGHT. AND DID YOU UNLOCK THE DOOR OR DID HE UNLOCK THE
11 DOOR OR WHAT WAS THE SITUATION?

12 A HE UNLOCKED THE DOOR HIMSELF.

13 Q ALL RIGHT. AND WHO WAS WITH YOU WHEN -- WERE YOU ALONE OR
14 DID YOU HAVE OTHER OFFICERS WITH YOU?

15 A THERE WAS SEVERAL OFFICERS WITH US AT THAT TIME.

16 Q WOULD THAT INCLUDE MISTER WALLACE?

17 A CORRECT.

18 Q WOULD THAT INCLUDE MISTER CRIBB?

19 A NO, SIR. HE WASN'T THERE. HE WAS ON ACTIVE DUTY AT THAT TIME.

20 Q ALL RIGHT. VERY GOOD. WAS CHIEF BASS WAS WITH YOU?

21 A YES, SIR.

22 Q ALL RIGHT.

23 A AND SIMON BROWN WAS WITH US.

24 Q AND SIMON BROWN?

25 A YES, SIR.

1 Q OKAY.

2 THE COURT: WAIT JUST A MINUTE. (A SIREN IS GOING BY) OKAY.

3 Q NOW, WHEN HE OPENED THE DOOR WITH THE KEY, WHAT DID Y'ALL
4 DO?

5 A WE FOLLOWED IN BEHIND HIM AS HE WENT IN THROUGH THE DOOR.
6 HE UTTERED, "IT IS ON THE SHELF IN THE KITCHEN."

7 Q WHEN HE SAID, "IT IS ON THE SHELF IN THE KITCHEN," DID HE KNOW
8 WHY YOU WERE OUT THERE?

9 A YES, SIR. I THINK SO.

10 THE COURT: WAIT JUST A SECOND. (A SIREN PASSING) ALL RIGHT, GO
11 AHEAD.

12 Q DID YOU GO TO THE KITCHEN AREA?

13 A YES, SIR. I DID.

14 Q I AM GOING TO SHOW YOU STATE'S EXHIBIT #12. CAN YOU IDENTIFY
15 THAT?

16 A THAT IS THE CRACK COCAINE THAT WAS FOUND AND THE POWDER
17 COCAINE FOUND ON THE STOVE ITSELF.

18 Q I SHOW YOU STATE'S EXHIBIT #11.

19 A THAT IS CRACK COCAINE IN ZIP-LOCK BAGS ALREADY BAGGED UP ON
20 THE COUNTER BESIDE THE STOVE.

21 Q I AM GOING TO SHOW YOU STATE'S EXHIBIT #10.

22 A THAT IS A BAG OF CRACK COCAINE ALREADY BAGGED UP WHICH WAS
23 ON THE SHELF IN THE KITCHEN.

24 Q I'LL SHOW YOU STATE'S EXHIBIT #9.

25 A THAT IS THE CLEAR PLASTIC BAG THAT THE CHEMIST WAS TALKING

DIRECT EXAMINATION OF NEIL ROUSE BY MR. JEPERTINGER

51

1 ABOUT A WHILE AGO WHICH WAS ALSO ON THE SHELF IN THE KITCHEN.

2 Q I'LL SHOW YOU STATE'S EXHIBIT #8.

3 A THIS IS THE ITEMS THAT WERE ON THE SHELF WHERE WE TOOK THE
4 PICTURES OF THE ACTUAL ROOM ITSELF AND THE ITEMS THAT WERE
5 LOCATED ON THE SHELF.

6 Q THIS IS STATE'S EXHIBIT #7.

7 A THIS WAS CRACK COCAINE IN A BAG AND WAS LAYING ON THE FLOOR
8 WHEN WE WENT IN.

9 Q OF THE KITCHEN?

10 A YES, SIR.

11 Q STATE'S EXHIBIT #6.

12 A THIS IS A PICTURE OF OTHER ITEMS THAT WERE ON THE SHELF.
13 FITTED BLUNTS, ALSO A CIGAR BOX THAT HAD SOME CASH IN IT.

14 Q STATE'S EXHIBIT #5.

15 A THAT IS THE DIGITAL SCALES THAT WAS FOUND IN THE KITCHEN.

16 Q WHAT IS THE PURPOSE OF DIGITAL SCALES?

17 A IT IS USED FOR A NUMBER OF THINGS. IN THIS PARTICULAR CASE, AND
18 IN OTHER CASES IT'S FOR DRUGS, THEY USE IT TO WEIGH OUT THE
19 DRUGS.

20 Q STATE'S EXHIBIT #4.

21 A THIS IS A FAN THAT WAS IN THE KITCHEN WITH CASH MONEY IN IT.

22 Q ALL RIGHT. AT THIS TIME, YOUR HONOR -- LET ME ASK YOU ONE
23 QUESTION. ARE ALL OF THESE PHOTOGRAPHS I JUST SHOWED YOU
24 THAT YOU'VE DESCRIBED, DO THEY FAIRLY AND ACCURATELY
25 PORTRAY WHAT YOU OBSERVED ON JANUARY 19, 2007 INSIDE OF

1 W. T.'S LOUNGE?

2 A THAT'S CORRECT.

3 Q AT THIS TIME, YOUR HONOR, THE STATE WOULD MOVE STATE'S #12,
4 #11,#10,#9,#8,#7,#6,#5 AND #4 INTO EVIDENCE.

5 THE COURT: ANY OBJECTIONS, MISTER WILSON?

6 MR. WILSON: I HAVE NO OBJECTIONS.

7 THE COURT: ENTERED INTO EVIDENCE, WITHOUT OBJECTION.

8 (WHEREUPON, NINE 4x6 PHOTOGRAPHS ARE ENTERED INTO EVIDENCE
9 AS STATE'S EXHIBITS #4, #5, #6, #7, #8, #9, #10, #11, AND #12, WITHOUT
10 OBJECTION.)

11 Q ALL RIGHT. NOW, ONCE YOU FOUND THOSE SUBSTANCES, WHAT DID
12 YOU DO, AGENT ROUSE?

13 A ONCE WE COLLECTED ALL THE EVIDENCE, I THEN BROUGHT THEM
14 BACK TO THE COMBINED DRUG UNIT WHERE WE PLACED THEM IN A
15 BEST BAG.

16 Q NOW DID YOU DO THAT YOURSELF OR DID SOMEONE ELSE DO THAT?

17 A I DID THAT MYSELF.

18 Q OKAY. I AM GOING SHOW YOU WHAT HAS BEEN MARKED AS STATE'S
19 EXHIBIT#13, FOR IDENTIFICATION PURPOSES AT THIS TIME. I WANT YOU
20 TO LOOK AT IT AND SEE IF YOU CAN IDENTIFY IT.

21 A YES, SIR. THIS IS THE BEST BAG THAT I PREPARED AND SENT TO SLED
22 FOR ANALYSIS.

23 Q NOW, PER PROTOCOL, DID YOU SEAL THAT BAG WITH THE CONTENTS
24 THAT YOU FOUND IN THERE?

25 A YES, SIR. IT SAYS, "AGENCY, DATE OF SEAL IS 1-19-07, MY SIGNATURE,

DIRECT EXAMINATION OF NEIL ROUSE BY MR. JEPERTINGER

53

1 AND AGAIN, A PRINTED SIGNATURE.

2 Q ALL RIGHT. AND THE NUMBER OF BAGS THAT AGENT SMITH FROM SLED
3 TESTIFIED TO, OF 41 SEPARATE BAGS, IS THAT WHAT YOU FOUND
4 THERE AT W. T.'S LOUNGE ON JANUARY 19TH?

5 A THAT'S CORRECT.

6 Q ALL RIGHT. AND AT THAT POINT, WHEN YOU SEALED ALL THOSE ITEMS
7 IN THAT BEST BAG TO SEND IT OFF TO SLED, WHAT DO YOU DO? DO
8 YOU SEND IT IMMEDIATELY TO SLED, DO YOU MAIL IT, DO YOU FED EX
9 IT? HOW DOES IT GET FROM POINT A TO POINT B?

10 A ONCE, I HAD DONE MY PRELIMINARY WORK AND GOT ALL THESE
11 THINGS PACKAGED UP, I THEN TOOK IT AND PUT IT IN OUR DRUG VAULT
12 AT THE OFFICE TO BE LOCKED UP AND SECURED UNTIL MYSELF OR
13 ANOTHER AGENT WAS GOING TO COLUMBIA TO DELIVER THE DRUGS
14 TO SLED.

15 Q OKAY. AND ONCE YOU DID THAT, THAT WAS YOUR INVOLVEMENT WITH
16 THIS CASE, CORRECT? OTHER THAN WRITING REPORTS AND SO ON
17 AND SO FORTH. IS THAT CORRECT?

18 A NO, SIR. ONCE I, ONCE I FOUND OUT WHAT AGENT WAS MAKING THE
19 TRIP TO COLUMBIA, I THEN TOOK THEM OUT OF THE VAULT MYSELF
20 AND SIGNED THEM OVER TO THAT AGENT.

21 Q AND IN THIS CASE THAT AGENT WOULD HAVE BEEN MISTER SIMON
22 BROWN. IS THAT CORRECT?

23 A THAT'S CORRECT.

24 Q ALL RIGHT. NOW EARLIER, AND I DON'T WANT THERE TO BE ANY
25 CONFUSION, WHEN YOU STOPPED MISTER MCLAUGHLIN, YOU

CROSS EXAMINATION OF NEIL ROUSE BY MR. WILSON

54

1 DETAINED HIM, HE WAS IN A VEHICLE WITH ANOTHER INDIVIDUAL. IS
2 THAT CORRECT?

3 A NO, SIR. THERE WAS -- HE WAS IN A VEHICLE BY HIMSELF AND THEN
4 THERE WAS ANOTHER FEMALE BEHIND HIM IN ANOTHER CAR.

5 Q OKAY. SO HE WAS ALONE BY HIMSELF?

6 A THAT'S CORRECT.

7 Q ALL RIGHT. AND AFTER YOU TURNED YOUR DRUGS OVER, TURNED THE
8 DRUGS OVER TO MISTER BROWN DID YOU DO ANYTHING ELSE IN THIS
9 CASE OTHER THAN WRITE A REPORT?

10 A NO, SIR.

11 Q OKAY. PLEASE ANSWER ANY QUESTIONS THAT MISTER WILSON MIGHT
12 HAVE FOR YOU.

13 THE COURT: CROSS EXAMINATION, MISTER WILSON?

14 MR. WILSON: THANK YOU, YOUR HONOR.

15 CROSS EXAMINATION OF NEIL ROUSE BY MISTER WILSON:

16 Q AGENT ROUSE, AS I UNDERSTAND IT, DID YOU ACTUALLY STOP THE
17 VEHICLE THAT MISTER MCLAUGHLIN WAS DRIVING? WHEN I SAY YOU, I
18 MEAN THE PERSON. WAS IT YOU OR WAS IT ANOTHER OFFICER?

19 A IT WAS MYSELF.

20 Q OKAY. AND THE CAR THAT YOU STOPPED HIM IN WAS NOT A PONTIAC,
21 A RED PONTIAC OR CHRYSLER. WAS IT?

22 A I DON'T RECALL WHAT COLOR IT WAS. AT THAT TIME, THERE WERE
23 TWO VEHICLES STOPPED RIGHT ABOUT THE SAME TIME.

24 Q WELL, DID I UNDERSTAND YOUR TESTIMONY --

25 A I DON'T RECALL WHICH VEHICLE HE WAS IN AT THAT TIME.

CROSS EXAMINATION OF NEIL ROUSE BY MR. WILSON

55

1 Q YOU DON'T RECALL WHICH VEHICLE HE WAS IN?

2 A NO, SIR.

3 Q WELL, YOU TESTIFIED EARLIER, IF I MAKE NO MISTAKE, WHEN YOU
4 FIRST TESTIFIED AS I REMEMBER, THAT YOU STOPPED HIM IN THAT
5 ONCE YOU STOPPED HIM, THAT AT THAT POINT IN TIME HE WAS
6 DRIVING A RED CHRYSLER. NOW WHEN THE SOLICITOR ASKED YOU
7 ABOUT IT LATER ON YOU SAID, NO HE WAS BY HIMSELF AND HE WASN'T
8 DRIVING HIS CAR. SO NOW ---

9 A THERE WERE TWO VEHICLES STOPPED AND THERE WAS A FEMALE
10 DRIVING ONE AND HE WAS DRIVING THE OTHER ONE.

11 Q ALL RIGHT. WELL, WHICH ONE WAS HE DRIVING?

12 A I -- I -- HE WAS DRIVING A GREEN CAR. THAT IS WHAT HE WAS DRIVING.

13 Q HE WAS DRIVING A GREEN CAR.

14 A YES, SIR. THE FEMALE WAS IN THE RED CAR.

15 Q SHE WAS IN A RED CAR?

16 A RIGHT.

17 Q AND WHAT WAS HER NAME?

18 A I DON'T RECALL.

19 Q WELL, DID YOU WRITE IT DOWN IN YOUR REPORT?

20 A NO, SIR. WE DIDN'T WRITE A REPORT ON HER. WE DIDN'T CHARGE HER
21 WITH ANYTHING, SO WE DIDN'T WRITE IT IN THE REPORT.

22 Q WELL, BUT YOU DID WRITE IT DOWN DIDN'T YOU? IN FACT, HER NAME
23 IN YOUR REPORT IS NAMED TO DONNA CALDWELL.

24 A THAT COULD HAVE BEEN HER NAME. I DON'T RECALL WHAT HER NAME
25 WAS.

1 Q WELL, LET ME ASK YOU THIS. THIS IS YOUR REPORT. (MISTER WILSON
2 HANDS WITNESS A REPORT) JUST TELL ME IF THAT'S YOUR REPORT. I
3 DON'T WANT YOU TO READ IT OR ANYTHING.

4 A YES, SIR. IT'S MY REPORT.

5 Q AND JUST TO REFRESH YOUR RECOLLECTION, IF YOU WILL LOOK AT
6 PAGE TWO AT THE BOTTOM OF THE PAGE. DO YOU SEE HER NAME
7 DOWN THERE? IN YOUR REPORT? DONNA CALDWELL IN THE
8 HIGHLIGHTED AREA?

9 A YES, SIR.

10 Q SO, THE LADY THAT YOU STOPPED, NAME WAS DONNA CALDWELL. SHE
11 WAS DRIVING THE RED CHRYSLER. IS THAT CORRECT?

12 A YES, SIR.

13 Q NOW THAT'S IMPORTANT BECAUSE YOU ENDED UP SAYING THAT YOU
14 GOT SOME KEYS FROM MISTER MCLAUGHLIN. RIGHT? SOME KEYS TO
15 THE BUILDING?

16 A YES, SIR. HE OPENED - HE HAD KEYS TO THE BUILDING.

17 Q WELL, NOW DID THE KEYS COME FROM HIM OR DID THEY COME FROM
18 THE RED CHRYSLER? OR DO YOU KNOW?

19 A I DON'T RECALL WHERE THEY COME FROM. ALL I KNOW IS HE HAD
20 THEM AND WHEN I ASKED HIM FOR THEM, HE GOT THEM FOR US.

21 Q WELL NOW YOU SAY....

22 A I'M NOT SURE WHERE THEY COME FROM.

23 Q WELL, YOU SAY HE GOT THEM FOR YOU?

24 A YES, SIR.

25 Q NOW, HE WAS IN CUSTODY BECAUSE HE WAS HANDCUFFED. RIGHT?

CROSS EXAMINATION OF NEIL ROUSE BY MR. WILSON

57

1 A THAT IS CORRECT.

2 Q AND YOU FOUND HIM SOME PLACE ELSE AND THEN YOU DROVE HIM
3 FROM WHEREVER IT WAS YOU FOUND HIM. HOW MANY MILES AWAY
4 WAS IT FROM WHERE YOU STOPPED HIM?

5 A APPROXIMATELY 3 MILES.

6 Q THREE MILES. AND YOU DROVE HIM FROM WHEREVER IT WAS THAT
7 YOU FOUND HIM ALL THE WAY BACK TO THE CLUB. RIGHT?

8 A NO, SIR, I DIDN'T. ONE OF THE OTHER OFFICERS DID.

9 Q WELL, WHEN I SAY YOU, YOU OR ONE OF THE OFFICERS UNDER YOUR
10 SUPERVISION. YOU ARE THE CHIEF OF THIS UNIT. RIGHT?

11 A YES, SIR.

12 Q AT THAT TIME.

13 A THAT'S CORRECT.

14 Q AND Y'ALL HAD HIM TRANSFERRED FROM WHEREVER YOU FOUND HIM
15 ON THE STREET ALL THE WAY BACK TO THE CLUB.

16 A THAT'S CORRECT.

17 Q AND HE WAS IN CUSTODY. IT AIN'T NO QUESTION ABOUT THAT IS
18 THERE?

19 A THAT'S RIGHT.

20 Q HE WAS HANDCUFFED.

21 A THAT'S RIGHT.

22 Q ALL RIGHT. SO, NOW HOW DID HE GET THE KEYS TO GIVE THEM TO
23 YOU IF HE IS HANDCUFFED?

24 A I DON'T RECALL IF HE CALLED SOMEBODY TO BRING THEM TO HIM OR IF
25 WE TOOK HIM BACK TO THE CAR TO GET THEM. I DON'T RECALL HOW

1 HE OBTAINED THE KEYS FROM THE VEHICLE, BUT I KNOW HE HAD THE
2 KEYS FROM THE VEHICLE TO GET IN THE DOOR.

3 Q WELL, WHEN YOU GOT THERE AND YOU HAD HIM -- HOW LONG -- YOU
4 GOT THERE HOW MANY MINUTES BEFORE HE GOT THERE? OR DID HE
5 GET THERE BEFORE YOU DID?

6 A WE ARRIVED PROBABLY WITHIN MINUTES OF EACH OTHER.

7 Q OKAY. AND HOW LONG DID IT TAKE YOU TO GET THE FIRE OR RESCUE
8 PEOPLE THERE TO TRY TO KICK THE DOOR IN?

9 A APPROXIMATELY TEN MINUTES.

10 Q OKAY. SO THERE WAS A TEN-MINUTE GAP IN THERE FROM THE TIME
11 Y'ALL GOT THERE UNTIL YOU SAY HE GAVE YOU THE KEYS. IS THAT
12 RIGHT?

13 A THAT'S CORRECT

14 Q OKAY. AND DURING THIS WHOLE TEN-MINUTE TIME PERIOD WHEN HE'S
15 THERE, HE IS HANDCUFFED, HE IS WITHIN YOUR CUSTODY, BUT HE
16 DOESN'T GIVE YOU THE KEYS. RIGHT?

17 A THAT'S CORRECT.

18 Q AND THEN SOMEHOW YOU END UP WITH THE KEYS, BUT YOU DON'T
19 KNOW HOW HE GOT THEM?

20 A WE TOLD HIM WE WERE GOING TO CUT THE LOCK OR HE COULD GET
21 US THE KEYS OR WE COULD JUST GO AHEAD AND CUT THE LOCK AND
22 SOME WAY OR ANOTHER THE KEYS WAS-- I DON'T KNOW WHETHER HE
23 HAD THEM ON HIM OR HE CALLED SOMEBODY TO BRING THEM TO HIM,
24 BUT ANYWAY HE HAD THE KEY TO GET IN.

25 Q ALL RIGHT. WELL, YOU DIDN'T HAVE THE KEYS BEFORE YOU CALLED

CROSS EXAMINATION OF NEIL ROUSE BY MR. WILSON

59

1 FOR THE FIRE PEOPLE AND THE EMERGENCY PEOPLE TO COME?

2 A MY RECOLLECTION WAS THAT HE TOLD US HE DON'T HAVE THE KEYS,
3 THAT WE WERE GOING TO CUT THE LOCK AND THIS WENT ON TEN
4 MINUTES OR SO AND THEN ALL OF A SUDDEN THE KEYS COME UP.

5 Q ALL RIGHT. NOW, WHICH OFFICER WITH YOU, PRODUCED THE KEYS
6 FOR YOU?

7 A I DON'T RECALL WHICH ONE IT WAS.

8 Q AND YOU DON'T RECALL WHERE THE KEYS WERE RETRIEVED FROM?

9 A NO, SIR.

10 Q BUT THERE AIN'T NO QUESTION ABOUT IT, IS THERE? BECAUSE HE IS
11 HANDCUFFED BEHIND HIS BACK SO HE DIDN'T GET THEM OUT OF HIS
12 POCKET BECAUSE HE WAS HANDCUFFED.

13 A THAT'S CORRECT.

14 Q ALL RIGHT. SO, SOMEBODY ELSE EITHER HAD TO GET THEM OR
15 PRODUCE THEM, BECAUSE HE COULDN'T HAVE. COULD HE?

16 A NO, SIR.

17 Q BUT WE DON'T KNOW WHO?

18 A NO.

19 Q THAT IS WHAT YOU ARE SAYING?

20 A NO, SIR.

21 Q ALL RIGHT. LET ME ASK YOU THIS. YOU GO INSIDE AND YOU TAKE HIM
22 INSIDE WITH YOU?

23 A HE GOES IN FIRST.

24 Q ALL RIGHT. SO, YOU PUT HIM IN FIRST? OR, I MEAN, HOW DID IT
25 HAPPEN? BECAUSE HE IS IN CUSTODY NOW, SO HOW DID HE GET IN

1 FIRST?

2 A THE HANDCUFFS WERE IN FRONT OF HIM. WE TOOK ONE LOOSE FOR
3 HIM TO OPEN THE DOOR AND THEN HE WALKS IN.

4 Q OKAY. ALL RIGHT. SO, YOU GET HIM, BRING HIM TO THE SCENE, WAIT
5 FOR THE E-M-S OR THE FIRE PEOPLE OR WHATEVER, THE KEYS GETS
6 PRODUCED, AND THEN YOU PUT HIM IN FIRST?

7 A WE WERE RIGHT THERE RIGHT BEHIND HIM WALKING RIGHT IN WITH
8 HIM.

9 Q WELL, NOW --

10 A HE'S THE FIRST ONE IN THE CHAIN THAT WENT IN. YES, SIR.

11 A YES, SIR.

12 Q THE FIRST ONE IN THE DOOR, THE GUY WHO IS HANDCUFFED AND YOU
13 HAVE HIM, AND Y'ALL GET THE KEYS AND OPEN THE DOOR AND PUT HIM
14 IN FIRST.

15 A THAT IS CORRECT.

16 Q ALL RIGHT. AND THEN YOU SAY -- NOW, WHEN IS IT THAT HE
17 SUPPOSEDLY MAKES HIS STATEMENT TO YOU THAT IT IS IN THE
18 KITCHEN? NOW IS THAT BEFORE YOU PUT HIM INSIDE THE DOOR OR
19 AFTER YOU GET HIM INSIDE THE DOOR?

20 A ONCE HE IS INSIDE THE BUILDING.

21 Q ALL RIGHT. SO, HE GETS INSIDE THE BUILDING. SO, WHO ELSE IS
22 INSIDE THE BUILDING NOW -- BECAUSE I ASSUME THAT THERE ARE A
23 WHOLE LOT OF OFFICERS OUT THERE?

24 A THAT'S CORRECT.

25 Q ALL RIGHT. HOW MANY OFFICERS ARE WE TAKING ABOUT?

CROSS EXAMINATION OF NEIL ROUSE BY MR. WILSON

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1 A I WOULD SAY PROBABLY AT LEAST SIX OF US.

2 Q ALL RIGHT. SO, AT LEAST SIX OFFICERS. ALL RIGHT. AND THEN THE
3 FIRE PEOPLE COME OR WHOEVER YOU CALLED IN ORDER TO KICK IN
4 THE DOOR. RIGHT?

5 A THAT'S CORRECT.

6 Q THEY WERE THERE TOO, BY THIS POINT. RIGHT?

7 A YES, SIR.

8 Q ALL RIGHT. AND SO YOU PUT HIM IN THE DOOR FIRST AND THEN HE
9 JUST SAYS, "IT'S ON THE KITCHEN TABLE" ---

10 A HE STILL ---

11 Q NO PROMPTING --- I'M SORRY. GO AHEAD.

12 A HE STEPPED INSIDE. I MAKE A RIGHT TURN, AGENT BROWN, AGENT
13 ROUSE WAS RIGHT BEHIND HIM, AT SOME POINT RIGHT THERE WAS
14 WHEN HE MADE THAT UTTERANCE.

15 Q THAT IS WHEN HE MADE THE UTTERANCE. AND IT JUST -- YOU DIDN'T
16 ASK HIM ANYTHING?

17 A NO, SIR.

18 Q HE JUST SAID THAT.

19 A YES, SIR.

20 Q FOR NO PARTICULAR REASON?

21 A YES, SIR.

22 Q ALL RIGHT. AND LET ME ASK YOU THIS. NOW, YOU GO IN THERE AND
23 YOU SAY YOU FIND 41 BAGS. RIGHT?

24 A THAT'S CORRECT.

25 Q AND THEY ARE ALL PLASTIC BAGS. RIGHT?

- 1 A THAT'S CORRECT.
- 2 Q AND NOW, YOU HAVE BEEN AN OFFICER FOR HOW MANY YEARS?
- 3 A AT THAT TIME, I HAD BEEN AN OFFICER FOR SEVENTEEN YEARS.
- 4 Q SEVENTEEN YEARS AND HAD BEEN ON THE COMBINED DRUG UNIT
- 5 FOR?
- 6 A FOURTEEN.
- 7 Q FOURTEEN YEARS OF THOSE YEARS. AND WHEN YOU ARE GOING TO
- 8 SEND DRUGS TO SLED, YOU KNOW THAT YOU CAN GET FINGERPRINTS,
- 9 SOMETIMES, IF NOT MOST OF THE TIME, OFF A PLASTIC BAG. RIGHT?
- 10 A NO, SIR. YOU CAN'T.
- 11 Q YOU CAN NOT GET FINGERPRINTS OFF A PLASTIC BAG?
- 12 A NO, SIR. PLASTIC ABSORBS THE FINGERPRINT AND YOU CAN'T LIFT
- 13 THEM OFF OF THE PLASTIC.
- 14 Q IS THAT YOUR TESTIMONY UNDER OATH THAT YOU DENY THAT YOU
- 15 CAN GET FINGERPRINTS OFF A PLASTIC BAG? IS THAT WHAT YOU ARE
- 16 TELLING US?
- 17 A I HAVE NEVER BEEN ABLE TO LIFT THEM OFF OF A PLASTIC BAG.
- 18 Q THAT IS NOT WHAT I ASKED YOU. WHAT I ASKED YOU, UNDER OATH,
- 19 ARE YOU DENYING THAT YOU CAN GET FINGERPRINTS OFF OF A
- 20 PLASTIC BAG?
- 21 A TO MY KNOWLEDGE, YES, SIR.
- 22 Q ALL RIGHT, OKAY.
- 23 MR. WILSON: YOUR HONOR, I WANT TO, IF I CAN —
- 24 THE COURT: NO ORAL ARGUMENTS. COME UP HERE.
- 25 (BRIEF BENCH CONFERENCE)

CROSS EXAMINATION OF NEIL ROUSE BY MR. WILSON

63

1 Q ALL RIGHT. NOW, AS I UNDERSTAND IT, YOUR TESTIMONY IS THAT YOU
2 CAN'T DO THAT, THAT THAT'S JUST IMPOSSIBLE, YOU CAN NOT GET
3 FINGERPRINTS OFF A PLASTIC BAG. THAT IS WHAT YOU ARE SAYING.
4 RIGHT?

5 A MY DEALINGS WITH PLASTIC, IT ABSORBS THE OIL AND PIGMENT OF
6 THE SKIN INTO THE PLASTIC. I HAVE NEVER BEEN ABLE TO LIFT IT OFF
7 THE PLASTIC.

8 Q WELL, YOU —

9 A IN MY YEARS OF FINGERPRINTING, I HAVE NEVER BEEN ABLE TO LIFT
10 THEM OFF PLASTIC.

11 Q ALL RIGHT. AND SO BECAUSE YOU CAN'T DO IT, YOU DECIDED NOT TO
12 SEND IT TO SLED. IS THAT WHAT YOU ARE SAYING?

13 A NO, SIR. IT WAS SENT TO SLED, BUT WE DIDN'T SEND IT TO BE
14 FINGERPRINTED. NO, SIR.

15 Q WELL, THAT IS WHAT I AM ASKING YOU ABOUT. AND ARE YOU A
16 FINGERPRINT EXPERT?

17 A NO, SIR.

18 Q AND YOU DIDN'T SEND IT TO THE PEOPLE WHO ARE THE EXPERTS WHO
19 ARE IN COLUMBIA. DID YOU?

20 A NO, SIR.

21 Q AND BECAUSE YOU DECIDED THAT YOU COULDN'T DO IT, SO YOU
22 FIGURED IF YOU COULDN'T DO IT THEN THEY PROBABLY CAN'T DO IT
23 EITHER. RIGHT?

24 A I DID NOT OFFER IT UP TO FINGERPRINTS WHEN I SENT IT TO SLED.

25 Q ALL RIGHT. NOW, ONCE YOU FINISHED WITH THE -- ONCE YOU

CROSS EXAMINATION OF NEIL ROUSE BY MR. WILSON

64

1 FINISHED THERE THAT DAY, MS. CALDWELL, DONNA CALDWELL, THE
2 LADY WHO WAS DRIVING THE OTHER CAR, WAS SHE CHARGED?

3 A I THINK SHE WAS CHARGED BY OFFICER SIMON BROWN. YES, SIR.

4 Q SHE WAS CHARGED WITH THE CONTENTS OF THE SEARCH AT W. T.'S
5 LOUNGE?

6 A NO, SIR. WE FOUND ONE ROCK-LIKE SUBSTANCE UNDER THE SEAT OF
7 THE CAR.

8 Q I'M SORRY?

9 A WE FOUND ONE ROCK-LIKE SUBSTANCE UNDER THE SEAT OF HER
10 CAR ---

11 Q UNDER THE SEAT OF HER CAR SHE WAS DRIVING?

12 A --- THE CAR SHE WAS DRIVING.

13 Q SO, SHE WAS CHARGED WITH THAT?

14 A YES, SIR.

15 Q NOW THAT WAS A RED CAR AND WHO WAS THAT CAR REGISTERED TO?

16 A WAYNE MCLAUGHLIN.

17 Q ALL RIGHT. AND SHE WAS DRIVING IT?

18 A YES, SIR.

19 Q WAYNE WAS NOT IN IT.

20 A NO, SIR.

21 Q IN FACT, HE WAS IN ANOTHER VEHICLE.

22 A THAT'S CORRECT.

23 Q DID YOU FIND ANY DRUGS IN THAT VEHICLE THAT HE WAS DRIVING?

24 A NO, SIR.

25 Q NOW, I ASSUME YOU SEARCHED HIM. RIGHT?

RE-DIRECT EXAMINATION OF NEIL ROUSE BY MR. JEPERTINGER

65

1 A THAT'S CORRECT.

2 Q DID YOU FIND ANY DRUGS IN HIS POCKETS?

3 A NO, SIR.

4 Q NOW, LET'S TALK ABOUT THE CLUB FOR A MINUTE. NOW, YOU
5 EXECUTED A SEARCH WARRANT THERE ON THE CLUB. RIGHT?

6 A THAT'S CORRECT.

7 Q AND YOU DID THAT WITH THE BELIEF THAT THE CLUB IS, YOU SAID --
8 AND I THINK YOUR TESTIMONY WAS -- HE WAS A PART OWNER OF THE
9 CLUB?

10 A THAT'S CORRECT.

11 Q ALL RIGHT. WHAT DOCUMENTS DO YOU HAVE TO SHOW THAT HE WAS
12 PART-OWNER OF THE CLUB?

13 A WE WENT TO THE COUNTY ASSESSOR'S OFFICE AND PULLED THE
14 FILES.

15 Q ALL RIGHT. AND WHERE DOES IT SAY HE WAS A PART OWNER OF THE
16 CLUB?

17 A I DON'T HAVE IT IN FRONT OF ME AT THIS TIME.

18 Q WELL, DO YOU KNOW WHO THE LIQUOR LICENSE IS REGISTERED TO?

19 A NO, SIR. I DIDN'T LOOK AT THE LICENSE ON THE CLUB.

20 Q I'M SORRY?

21 A I DIDN'T LOOK AT THE LIQUOR LICENSE ON THE CLUB.

22 Q WELL, DO YOU KNOW WHO THE BEER LICENSES ARE REGISTERED TO?

23 A NO, SIR. I DON'T.

24 Q DO YOU KNOW WHO THE LEASE'S NAME IS IN?

25 A NO, SIR. I DON'T KNOW WHO THE LEASE'S NAME IS IN.

RE-CROSS EXAMINATION OF NEIL ROUSE BY MR. WILSON

66

1 Q DO YOU KNOW WHO HAD KEYS TO THE BUILDING?

2 A NO, SIR. I DON'T KNOW WHO ALL HAD KEYS TO THE BUILDING.

3 Q DO YOU KNOW HOW MANY PEOPLE HAD KEYS TO THE BUILDING?

4 A NO, SIR.

5 Q I HAVE NO MORE QUESTIONS.

6 THE COURT: RE-DIRECT?

7 RE-DIRECT EXAMINATION OF NEIL ROUSE BY MISTER JEPERTINGER:

8 Q LET ME ASK YOU SOMETHING. IN TERMS OF FINGERPRINTS, WHEN DO
9 YOU NORMALLY TRY TO RETRIEVE FINGERPRINTS IN A CASE? WHEN A
10 SUBJECT IS KNOWN OR UNKNOWN?

11 A WHEN THE SUBJECT IS UNKNOWN.

12 Q AND HOPEFULLY, BY GETTING THE FINGERPRINTS YOU CAN DEVELOP
13 WHO A SUSPECT IS. CORRECT?

14 A THAT'S CORRECT.

15 Q WOULD YOU HAVE HAD ANY NEED UNDER YOUR POLICE INVESTIGATION
16 TO, IN THIS CASE, TO GET FINGERPRINTS WHEN SOMEONE HAS MADE
17 AN ADMISSION TO YOU THAT THE STUFF IS ON A SHELF IN THE
18 KITCHEN?

19 A NO, SIR. I WOULDN'T HAVE HAD TO HAVE DONE THAT.

20 Q THAT'S ALL I HAVE. THANK YOU.

21 THE COURT: RE-CROSS.

22 MR. WILSON: JUST A RE-DIRECT ON THAT.

23 RE-CROSS EXAMINATION OF NEIL ROUSE BY MISTER WILSON:

24 Q THIS DEFENDANT HAS PLED NOT GUILTY TO THESE CHARGES.
25 CORRECT?

RE-CROSS EXAMINATION OF NEIL ROUSE BY MR. WILSON

67

1 A THAT'S CORRECT.

2 Q WOULDN'T IT BE HELPFUL IF YOU HAD SENT THOSE TO SLED THERE
3 AND FOUND HIS FINGERPRINTS ON THEM? WOULDN'T THAT MAKE IT
4 EASY?

5 A IT WOULD HAVE IF HE HADN'T UTTERED THE FACT THAT THE STUFF
6 WAS ON THE SHELF AND THE FACT THAT HE WAS THE SUBJECT THAT
7 WAS UNDER INVESTIGATION AT THAT TIME.

8 Q MY QUESTION THOUGH, AND I THINK YOU MISUNDERSTOOD MY
9 QUESTION, MY QUESTION IS SIMPLY THIS: YOU WANT TO BLAME THIS
10 DEFENDANT FOR THE DRUGS THAT WERE FOUND IN THIS LOCATION.
11 CORRECT?

12 A THAT'S CORRECT.

13 Q AND WOULDN'T IT MAKE SENSE THEN, THAT YOU WOULD WANT TO GET
14 AS MUCH EVIDENCE AS YOU POSSIBLY COULD, NOT HAVE TO TAKE
15 YOUR WORD FOR IT BUT TO HAVE PHYSICAL EVIDENCE WHICH PROVES
16 THAT HE OWNED, THAT HE HAD THOSE DRUGS?

17 A WE HAD THE PHYSICAL EVIDENCE. WE FOUND THE DRUGS INSIDE THE
18 CLUB.

19 Q MY QUESTION --

20 A I UNDERSTAND YOUR -- I UNDERSTAND.

21 Q WELL, MY QUESTION SIMPLY IS, THAT IF YOU HAVE HIS FINGERPRINTS
22 ON THE BAGS, WOULDN'T THAT BE EVIDENCE THAT HE HAD
23 POSSESSION OF THOSE DRUGS?

24 A YES, SIR. IT WOULD HAVE.

25 Q BUT YOU DIDN'T DO THAT.

1 A NO, SIR.

2 Q ALL RIGHT.

3 THE COURT: ALL RIGHT, THANK YOU SIR. YOU MAY STEP DOWN.

4 ALL RIGHT, LADIES AND GENTLEMEN YOU HAVE BEEN IN THE

5 COURTROOM ABOUT AN HOUR AND TWENTY-FIVE MINUTES OR SO AND I

6 THINK IT IS TIME WE TAKE OUR AFTERNOON RECESS AT THIS TIME. SO, I AM

7 GOING TO ALLOW YOU GO TO YOUR JURY ROOM AND RELAX FOR ABOUT TEN

8 TO FIFTEEN MINUTES. I WILL TELL YOU NOW AS I DID IN MOST OF THIS CASE

9 AND I WILL TELL YOU THROUGHOUT THIS CASE, DON'T DISCUSS THE CASE

10 WHILE YOU ARE IN THE JURY ROOM. YOU CAN TALK ABOUT ANYTHING YOU

11 WANT TO TALK ABOUT, BUT DON'T TALK ABOUT THIS CASE. JUST RELAX FOR

12 A FEW MINUTES AND WHILE WE TAKE A BRIEF RECESS THEN WE WILL BE

13 READY TO GO FORWARD. THANK YOU AND GO WITH THE BAILIFF.

14 (JURY OUT AT 3:23 P.M.)

15 THE COURT: ALL RIGHT. NOW COUNSEL, LET'S TAKE FIFTEEN MINUTES

16 AND BE READY TO START BACK AT TWENTY MINUTES TO FOUR.

17 5-27 AFTERNOON - 3:30 PM

18 THE COURT: ALL RIGHT. READY TO PROCEED, MISTER JEPERTINGER?

19 MR. JEPERTINGER: YES, SIR.

20 THE COURT: MISTER WILSON?

21 MR. WILSON: YES, SIR.

22 THE COURT: OKAY. BRING THE JURY IN, PLEASE.

23 (JURY IN AT 3:40 P.M.)

24 THE COURT: ALL RIGHT. THANK YOU VERY MUCH, LADIES AND

25 GENTLEMEN, AND WE ARE NOW READY TO PROCEED. MISTER JEPERTINGER,

DIRECT EXAMINATION OF BRIAN WALLACE BY MR. JEPERTINGER

69

1 YOU MAY CALL YOUR NEXT WITNESS.

2 MR. JEPERTINGER: WE CALL BRIAN WALLACE TO THE STAND.

3 THE COURT: ALL RIGHT, MISTER WALLACE.

4 (AFTER BEING DULY SWORN BY THE CLERK OF COURT, MISTER
5 WALLACE TESTIFIED AS FOLLOWS:)

6 DIRECT EXAMINATION OF BRIAN WALLACE BY MISTER JEPERTINGER:

7 Q PLEASE STATE YOUR NAME FOR THE RECORD.

8 A BRIAN WALLACE.

9 Q OKAY. AND FOR WHOM ARE YOU EMPLOYED?

10 A I'M EMPLOYED WITH THE MARION COUNTY SHERIFF'S OFFICE,
11 ASSIGNED TO THE MARION COUNTY COMBINED DRUG UNIT.

12 Q HOW LONG HAVE YOU BEEN WORKING FOR THE COMBINED DRUG UNIT,
13 PLEASE?

14 A A LITTLE OVER THREE YEARS.

15 Q AND PRIOR TO THAT, WHAT DID YOU DO?

16 A I WAS A DETECTIVE FOR THE MARION COUNTY SHERIFF'S OFFICE FOR
17 FOUR YEARS. I WORKED ON PATROL FOR APPROXIMATELY A YEAR.

18 Q COULD YOU KEEP YOUR VOICE UP A LITTLE BIT, PLEASE?

19 A OKAY.

20 Q IT'S MY PROBLEM, I HAVE A LITTLE TROUBLE HEARING. DID YOU HAVE
21 AN OCCASION ON JANUARY 19, 2007 TO BE INVOLVED WITH THE
22 EXECUTION OF A SEARCH WARRANT AT W.T.'S LOUNGE?

23 A YES, I DID.

24 Q AND CAN YOU TELL THE JURY WHAT YOUR INVOLVEMENT WAS AND
25 WHAT YOU DID?

1 A ON THE DAY IN QUESTION, I WORKED RESPONSE FOR EXECUTION OF A
2 SEARCH WARRANT. WE WENT TO THE CLUB, WE GAINED ENTRY INTO
3 THE CLUB, I EXECUTED A SEARCH WARRANT AS THE EXECUTING
4 OFFICER AND INVENTORIED PROPERTY THAT WAS TAKEN FROM THE
5 LOCATION, FROM THE CLUB.

6 Q OKAY. NOW, I WANT YOU TO KIND OF BREAK THAT STUFF DOWN HERE.
7 WHEN YOU GOT TO THE CLUB, YOU SAID THAT YOU GAINED ENTRY.
8 NOW, TELL ME HOW YOU GAINED ENTRY INTO THIS CLUB.

9 A WHEN WE GAINED ENTRY, MISTER MCLAUGHLIN PROVIDED THE KEYS
10 TO THE CLUB FOR US.

11 Q AND WAS HE THE FIRST ONE INTO THE CLUB?

12 A PROBABLY THE FIRST OR THE SECOND. HE COULD VERY WELL HAVE
13 BEEN THE FIRST. I DON'T RECALL.

14 Q ALL RIGHT. WHO OPENED THE DOOR?

15 A I RECALL HIM OPENING THE DOOR AND GOING IN.

16 Q ALL RIGHT. AND WERE YOU IN CLOSE PROXIMITY TO HIM WHEN HE DID
17 THAT?

18 A YES, SIR. I WAS PROBABLY RIGHT BEHIND HIM OR NEXT IN LINE.

19 Q DID HE SPONTANEOUSLY SAY SOMETHING TO Y'ALL?

20 A ONCE WE WENT INTO THE CLUB – THE CLUB ACTUALLY IS A TWO-
21 STORY BUILDING. THERE'S A DOWNSTAIRS AND AN UPSTAIRS. ONCE
22 WE MADE ENTRY INTO THE CLUB, HE UTTERED A STATEMENT,
23 PARAPHRASING, "IT'S IN THE KITCHEN OR IT'S ON THE KITCHEN SHELF."
24 I DON'T REMEMBER THE EXACT WORDING, BUT THAT'S PARAPHRASING
25 WHAT HE SAID.

DIRECT EXAMINATION OF BRIAN WALLACE BY MR. JEPERTINGER

71

1 Q DID HE KNOW WHY YOU GUYS WERE THERE?

2 A YES. HE WAS AWARE THAT THERE WAS A SEARCH WARRANT FOR THE
3 BUSINESS.

4 Q ALL RIGHT. AND I GUESS THE PURPOSE OF THE SEARCH WARRANT
5 WAS TO LOOK FOR DRUGS. IS THAT CORRECT?

6 A YES, SIR. DRUGS, WEAPONS, MONEY, ANYTHING INVOLVED WITH
7 ILLICIT DRUGS.

8 Q NOW, LET ME ASK YOU THIS, AND ARE YOU FAMILIAR WITH, I GUESS
9 NOT ON A PERSONAL LEVEL, BUT WITH WAYNE MCLAUGHLIN? DO YOU
10 KNOW WHO HE IS?

11 A YES, SIR. I DO.

12 Q HAVE YOU EVER HAD TO GO LOOK FOR ANYBODY ELSE, IN TERMS OF
13 POLICE WORK, AT W.T.'S LOUNGE?

14 A I'VE BEEN TO THE LOCATION, W.T.'S LOUNGE, ON SEVERAL OCCASIONS.

15 Q OKAY. INCLUDING IN 2007?

16 A YES, SIR.

17 Q ALL RIGHT. AND LET ME ASK YOU THIS, YOU WENT INSIDE W.T.'S
18 LOUNGE?

19 A I HAVE ON SEVERAL OCCASIONS.

20 Q AND WHO DID YOU FIND BEHIND THE COUNTER AT W.T.'S LOUNGE?

21 A THE DEFENDANT, WAYNE MCLAUGHLIN.

22 Q DID YOU EVER SEE ANY OTHER SOUL BEHIND THE COUNTER AT
23 W.T.'S LOUNGE?

24 A ON THE TIMES I WENT TO THE CLUB, I NEVER SEEN ANYBODY ELSE
25 BEHIND THE COUNTER.

1 Q ALL RIGHT. WHAT DID YOU DO AND WHAT DID YOU OBSERVE WHEN
2 YOU WENT INTO THE CLUB?

3 A ONCE WE WENT INTO THE CLUB, AGENT GRIMES WENT INTO THE
4 KITCHEN AREA ALONG WITH MYSELF AND NOTICED BAGGIES IN A
5 COUPLE OF DIFFERENT LOCATIONS INSIDE THE KITCHEN AREA THAT
6 CONTAINED A WHITE POWDER SUBSTANCE ALSO AND BAGGIES THAT
7 CONTAINED A ROCK-LIKE SUBSTANCE, BELIEVED TO BE COCAINE BASE,
8 REFERRED TO AS CRACK COCAINE.

9 Q NOW, LET ME ASK YOU, BASED ON YOUR EXPERIENCE IN LAW
10 ENFORCEMENT, INCLUDING BEING A DETECTIVE, DID YOU SEE ANY
11 REASON FOR DETECTIVE ROUSE TO ASK FOR FINGERPRINTS ON THESE
12 PLASTIC BAGS, ZIP-LOCK BAGS?

13 A NO, SIR. DURING THE TIME I'VE BEEN AN INVESTIGATOR AND A
14 DETECTIVE, IT'S VERY DIFFICULT TO OBTAIN FINGERPRINTS.

15 Q OKAY. WAS THERE ANY REASON TO OBTAIN FINGERPRINTS IN THIS
16 CASE?

17 A FROM MY PERSONAL EXPERIENCE, I DID NOT SEE A REASON TO.

18 Q AND CAN YOU TELL THE JURY, BASED ON YOUR PERSONAL
19 EXPERIENCE IN LAW ENFORCEMENT, WHY YOU WOULDN'T NEED
20 FINGERPRINTS IN THIS TYPE OF CASE?

21 A BECAUSE WAYNE MCLAUGHLIN WAS THE OWNER OF THE CLUB,
22 CONTROLLER OF THE CLUB AND THE KITCHEN AREA WAS OUTSIDE THE
23 GENERAL AREA WHERE PEOPLE WOULD GATHER INSIDE THE CLUB.
24 THERE WAS A SECTION AT THE END, WHEN YOU WALK INTO THE VERY
25 FAR RIGHT BEHIND THE BAR, THE KITCHEN AREA IS BEHIND THE BAR, IT

DIRECT EXAMINATION OF BRIAN WALLACE BY MR. JEPERTINGER

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1 WAS AN AREA I WOULD FEEL NOBODY ELSE WOULD HAVE ACCESS TO.

2 Q WOULD THE -- WAS HIS MAKING A STATEMENT THAT "THEY ARE IN THE
3 KITCHEN, ON THE SHELF" HAVE ANY SIGNIFICANCE IN WHETHER YOU
4 OBTAINED FINGERPRINTS OR NOT?

5 A THAT WOULD -- I WOULD INFER FROM THE FACT OF HIM SAYING THAT,
6 THAT HE KNEW WHAT WE WERE LOOKING FOR AND INSTEAD OF US
7 SEARCHING THE CLUB, GOING AND TEARING UP THE CLUB, HE JUST
8 TOLD US WHERE IT WAS.

9 Q ALL RIGHT. AND BASED ON THAT FACT, YOU FELT YOU HAD THE GUY
10 WHO HAD POSSESSION WITH INTENT TO DISTRIBUTE. CORRECT?

11 A YES, SIR.

12 Q NOW, LET ME ASK YOU, I'M GOING TO SHOW YOU ITEM, STATE'S EXHIBIT
13 #13, FOR IDENTIFICATION. DO YOU RECOGNIZE THAT OBJECT?

14 A YES, SIR.

15 Q IT CONTAINS SEVERAL BAGS. THAT'S CORRECT, ISN'T IT?

16 A THAT'S CORRECT.

17 Q HOW LONG HAVE YOU WORKED NARCOTICS?

18 A I'VE WORKED WITH THE DRUG UNIT THREE-AND-A-HALF YEARS AND
19 DURING MY TENURE AS AN INVESTIGATOR WITH THE SHERIFF'S OFFICE,
20 I WORKED NARCOTICS ABOUT A YEAR, PROBABLY ABOUT FOUR YEARS,
21 FOUR-AND-A-HALF YEARS.

22 Q I'M GOING TO ASK YOU, IS IT USUAL OR UNUSUAL, IF YOU KNOW THE
23 ANSWER, TO HAVE A DRUG IN A ZIP-LOCK BAG?

24 A IT'S VERY USUAL TO HAVE THE DRUG IN WHAT WE REFER TO AS A
25 BAGGIE. A LOT OF TIMES, FROM MY EXPERIENCE AND THE SCHOOLS I

1 HAVE ATTENDED, YOU KNOW, FOR EXAMPLE, IF YOU GO AND YOU
2 WANT TO BUY SOME DRUGS, IF YOU ASK FOR A FORTY, THEY WEIGH IT
3 OUT. WHEN IT'S IN BAGGIES LIKE THAT, THEY ARE ALREADY WEIGHED
4 OUT AND THEY CAN DISTRIBUTE IT WITHOUT HAVING TO WEIGH IT
5 EACH TIME SOMEBODY MAKES A TRANSACTION.

6 Q WHEN YOU SAY, FORTY, THAT'S A TERM MEANING FORTY DOLLARS
7 WORTH OF CRACK?

8 A YES. CRACK COCAINE.

9 Q DO YOU KNOW HOW MUCH A GRAM OF CRACK IS GOING AT NOW?

10 A SOMEWHERE AROUND APPROXIMATELY \$50.00.

11 Q FIFTY DOLLARS. SO, IF YOU HAD EIGHT, ALMOST NINE GRAMS OF
12 CRACK, THAT WOULD BE ABOUT \$450.00, A LITTLE LESS?

13 A GIVE OR TAKE, IT ALL DEPENDS ON THE AVAILABILITY OF DRUGS AT
14 THE TIME. IT'S KIND OF LIKE A SUPPLY AND DEMAND TYPE THING. YOU
15 COULD GET IT A LITTLE CHEAPER OR IT COULD BE A LITTLE HIGHER,
16 DEPENDING ON WHAT AREA YOU'RE IN.

17 Q NOW, I NOTICED THAT IN STATE'S EXHIBIT #5, THAT'S A DIGITAL SCALE?

18 A IT APPEARS TO BE FROM THE PICTURE. YES, SIR.

19 Q ALL RIGHT. IN ALL OF YOUR SEARCHING, DID YOU FIND ANY CRACK
20 PIPES OR ANYTHING TO SMOKE THIS STUFF OR WHATEVER, HOWEVER
21 YOU SMOKE THIS STUFF OR USE THIS STUFF?

22 A NO, SIR. I DIDN'T FIND ANY CRACK PIPES OR CUT STRAWS OR
23 ANYTHING LIKE THAT.

24 Q BASED ON YOUR EXPERIENCE, WOULD YOU CONSIDER THIS A
25 DISTRIBUTION SITE?

DIRECT EXAMINATION OF BRIAN WALLACE BY MR. JEPERTINGER

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1 A YES, SIR. I WOULD.

2 MR. WILSON: YOUR HONOR, I OBJECT. I OBJECT TO THAT.

3 THE COURT: YES, SIR. I'M GOING TO SUSTAIN THE OBJECTION AND
4 ASK THAT THE ANSWER BE STRICKEN. JURY WILL DISREGARD THE ANSWER
5 TO THE QUESTION AND THE QUESTION.

6 Q AFTER, AFTER YOU GOT ALL THESE DRUGS, DID YOU WATCH
7 DETECTIVE ROUSE BAG THEM IN THE BEST PACKS?

8 A I DIDN'T WATCH HIM BAG THEM. NO, SIR.

9 Q VERY GOOD. NOW, IN TERMS OF THE KEY SITUATION, OF GETTING INTO
10 THE PLACE, DID THIS GENTLEMAN HAVE A KEY ON HIM WHEN HE WAS
11 BROUGHT TO W.T.'S LOUNGE OR DID SOMEONE BRING THE KEY FOR
12 HIM OR WHAT DO YOU RECALL?

13 A I DON'T RECALL. I THINK, I REMEMBER SPEAKING WITH HIM AND
14 EXPLAINING TO HIM THAT THE FIRE DEPARTMENT WAS GOING TO CUT
15 THE BOLT OR IF HE COULD GET THE KEYS AND I REMEMBER HIM
16 OBTAINING THE KEYS, BUT I DON'T RECALL EXACTLY HOW HE GOT THE
17 KEYS.

18 Q OKAY. AND AFTER YOU DID WHAT YOU DID, WHAT DID YOU DO WITH
19 THE KEYS?

20 A IF I RECALL CORRECTLY, I THINK A FAMILY MEMBER WHO WAS THERE
21 WITH HIM AT THE TIME TOOK CONTROL OF THE KEYS AT HIS REQUEST.

22 Q OKAY. AND WAS THAT YOUR ONLY INVOLVEMENT IN THIS CASE?

23 A YES, SIR.

24 Q OKAY. THANK YOU. ANSWER ANY QUESTIONS THAT MISTER WILSON
25 MIGHT HAVE FOR YOU.

1 THE COURT: CROSS EXAMINATION, MISTER WILSON?

2 MR. WILSON: YES. THANK YOU, YOUR HONOR.

3 CROSS EXAMINATION OF BRIAN WALLACE BY MISTER WILSON:

4 Q THE KEYS, NOW DURING THE TEN-MINUTE PERIOD THAT WE ARE
5 WAITING FOR THE FIRE PEOPLE TO COME TO KICK THE DOOR IN,
6 WHERE IS MISTER MCLAUGHLIN?

7 A STANDING OUTSIDE.

8 Q WHERE?

9 A LET ME THINK - I DON'T KNOW. HE WAS STANDING OUTSIDE WITH
10 SOME OF US.

11 Q I KNOW, BUT WHO? US, WHO?

12 A IT'S BEEN OVER A YEAR AGO. I DON'T RECALL EXACTLY WHO HE WAS
13 STANDING WITH. IT MAY HAVE BEEN A FAMILY MEMBER. I DON'T KNOW
14 IF THE FAMILY MEMBER HAD GOTTEN TO THE LOCATION YET OR NOT.

15 Q WELL, NOW, YOU'RE NOT TELLING US THAT YOU HAD HIM IN CUFFS AND
16 YOU TURNED HIM OVER TO A FAMILY MEMBER AND JUST LEFT HIM OUT
17 THERE. YOU'RE NOT SUGGESTING THAT AT ALL?

18 A HE WAS IN CUSTODY OF US THE WHOLE TIME.

19 Q ALL RIGHT. WELL, THAT'S MY QUESTION.

20 A OH, I'M SORRY.

21 Q WHICH OFFICERS, WHICH OFFICERS WERE WITH HIM DURING THIS
22 TEN-MINUTE PERIOD THAT WE'RE TALKING ABOUT, WHILE WE'RE
23 WAITING FOR THE FIRE PEOPLE TO COME AND KICK THE DOOR IN OR
24 BREAK IT DOWN OR WHATEVER IT IS.

25 A I'D SAY THAT OUTSIDE IN THE PARKING LOT, MYSELF, AGENT ROUSE,

CROSS EXAMINATION OF BRIAN WALLACE BY MR. WILSON

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1 AGENT SIMON BROWN, CHIEF BASS AND THERE COULD HAVE BEEN
2 ANOTHER COUPLE OF OFFICERS. I'M NOT SURE OF ALL THE PERSON'S
3 NAMES.

4 Q SO, AT LEAST FOUR OF YOU WERE THERE WITH HIM.

5 A YEAH. I DON'T KNOW IF WE WERE STANDING RIGHT BESIDE HIM OR IN
6 THE GENERAL AREA.

7 Q ALL RIGHT. MAYBE I'M NOT MAKING MYSELF CLEAR, BECAUSE I JUST
8 WANTED TO – WHAT I'M SIMPLY ASKING YOU IS, THERE HAD TO HAVE
9 BEEN AT LEAST ONE OFFICER ASSIGNED TO THE DEFENDANT BECAUSE
10 HE'S IN CUFFS.

11 A SURE.

12 Q SO, WHO WAS ASSIGNED TO HIM?

13 A I DON'T RECALL WHO WAS ASSIGNED TO HIM.

14 Q SO, YOU DON'T RECALL WHO WAS ASSIGNED TO HIM?

15 A I DON'T KNOW IF THERE WAS ONE PARTICULAR PERSON ASSIGNED TO
16 HIM. IT COULD HAVE BEEN —

17 Q WELL, MORE THAN ONE. IF IT WAS FIVE, WHO WERE THE FIVE?

18 A I DON'T THINK THERE WAS A PERSON SPECIFICALLY ASSIGNED TO HIM.

19 Q OKAY. SO, FIVE, SIX OFFICERS ALL OUT THERE, NOBODY IS
20 PARTICULARLY ASSIGNED TO THE DEFENDANT, HE'S JUST OUT THERE
21 IN CUFFS, STANDING AROUND, TALKING TO HIS FAMILY. IS THAT WHAT
22 YOU'RE SAYING?

23 A HE TALKED TO HIS FAMILY MEMBER. YES.

24 Q ALL RIGHT. AND LET'S GO BACK TO THE KEYS. THE KEYS WERE
25 PRODUCED AT SOME POINT AFTER THE FIRE PEOPLE GET THERE.

1 A I DON'T RECALL IF IT WAS FOUR OR FIVE PEOPLE AFTER THE FIRE
2 PEOPLE GOT THERE.

3 Q YOU DON'T RECALL IF THEY CAME BEFORE OR AFTER?

4 A NO, SIR.

5 Q ALL RIGHT. THEN DO YOU KNOW WHO PRODUCED THEM?

6 A I DON'T REMEMBER WHO BROUGHT THEM TO THE LOCATION. I DO
7 REMEMBER THAT THE KEYS, THAT WE WERE ABLE TO OBTAIN THE
8 KEYS.

9 Q DO YOU KNOW WHETHER OR NOT THE KEYS WERE ACTUALLY IN THE
10 RED CAR THAT WE'VE BEEN TALKING ABOUT, THE CHRYSLER OR
11 PONTIAC OR WHATEVER IT WAS THAT MS. CALDWELL WAS DRIVING.

12 A THAT MS. CALDWELL WAS DRIVING?

13 Q UH-HUH.

14 A I DON'T KNOW IF THEY WERE IN THAT VEHICLE OR HE HAD THEM
15 SOMEWHERE ELSE.

16 Q WELL, SOMEBODY HAD TO GO GET THEM FROM WHEREVER THEY
17 WERE, WHICH IS WHY IT'S IMPORTANT. WHERE DID THEY COME FROM?

18 A I DON'T RECALL.

19 Q DON'T RECALL.

20 A I REMEMBER HE CALLED TO GET THEM AND HE WAS ABLE TO GAIN
21 ACCESS TO THEM.

22 Q ALL RIGHT. ONCE THE KEYS WERE PRODUCED FROM WHEREVER, WE
23 DON'T KNOW, BUT FROM WHEREVER THEY WERE PRODUCED, THE
24 KEYS WERE THEN GIVEN TO WHO?

25 A I DON'T RECALL.

CROSS EXAMINATION OF BRIAN WALLACE BY MR. WILSON

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1 Q YOU DON'T RECALL WHO THEY WERE GIVEN TO?

2 A NO, SIR.

3 Q WELL, WHO OPENED THE DOOR WITH THEM?

4 A IF I REMEMBER, I THINK MISTER MCLAUGHLIN OPENED THE DOOR.

5 Q MISTER MCLAUGHLIN? YOU SURE ABOUT THAT?

6 A IF I RECALL CORRECTLY. YES.

7 Q YOU SURE IT WASN'T DETECTIVE ROUSE?

8 A IT COULD HAVE BEEN.

9 Q WELL, I'M JUST ASKING YOU. I MEAN, IF YOU DON'T KNOW, JUST SAY,
10 "I DON'T KNOW."

11 A I DON'T RECALL. I'M NOT SURE 100% WHO ACTUALLY OPENED THE
12 DOOR.

13 Q SO, YOU DON'T KNOW WHO OPENED THE DOOR?

14 A IT WASN'T THAT RELEVANT AT THE TIME.

15 Q OKAY. ALL RIGHT. NOW, LET'S TALK ABOUT THE CLUB. YOU TOLD THE
16 SOLICITOR THAT YOU'D BEEN OUT TO THE CLUB ON SEVERAL
17 OCCASIONS IN THE PAST FEW YEARS.

18 A YES, SIR. THAT'S CORRECT.

19 Q ALL RIGHT. AND ON THOSE SEVERAL OCCASIONS THAT YOU WENT OUT
20 THERE, YOU SAW MISTER MCLAUGHLIN OUT THERE WORKING. RIGHT?

21 A HE WAS BEHIND THE BAR. YES.

22 Q OKAY. AND YOU NEVER SAW ANYBODY ELSE. AND HOW MANY TIMES
23 DID YOU SAY YOU'VE BEEN OUT THERE?

24 A I DON'T KNOW AN EXACT NUMBER.

25 Q WELL, MAKE A GUESS, OVER THE LAST - WE'RE TALKING 2006, IS THAT

1 WHEN WE'RE TALKING ABOUT?

2 A THAT'S ABOUT -- I'VE PROBABLY BEEN THERE APPROXIMATELY FIVE, TO
3 TEN, TO FIFTEEN TIMES.

4 Q OKAY. FIVE, TEN, FIFTEEN TIMES OVER A PERIOD OF HOW MANY
5 YEARS?

6 A THREE OR FOUR YEARS.

7 Q OVER A PERIOD OF THREE OR FOUR YEARS. AND YOU ALWAYS GO AT
8 NIGHT, YOU WENT DURING THE DAY, YOU WENT ON SUNDAYS, YOU
9 WENT IN THE AFTERNOON? WHEN DID YOU GO?

10 A MAINLY AT NIGHT.

11 Q MAINLY AT NIGHT. ALL RIGHT. NOW, AFTER YOU ARRESTED MISTER
12 MCLAUGHLIN FOR THIS, DID YOU BOTHER TO CHECK TO FIND OUT WHO
13 ACTUALLY OWNED THE PLACE?

14 A WE WENT OVER THE CLUB, THE LOCATION, IF I RECALL CORRECTLY, IS
15 THAT THE CLUB IS IN HIS NAME.

16 Q OKAY. YOU WENT TO THE DEED OFFICE, TAX ASSESSOR'S OFFICE?

17 A YES, SIR.

18 Q ALL RIGHT. AND THIS IS PROPERTY HE INHERITED FROM HIS MOTHER.
19 RIGHT?

20 A THAT'S MY UNDERSTANDING.

21 Q OKAY. AND DID YOU CHECK TO FIND OUT WHO ACTUALLY HAS THE
22 LEASE ON THE CLUB? OR IF ANYBODY DOES HAVE A LEASE ON THE
23 PLACE AND HAS HAD IT FOR YEARS?

24 A I DIDN'T CHECK FOR A LEASE. EVERY TIME I WENT THERE, HE WAS
25 THERE.

CROSS EXAMINATION OF BRIAN WALLACE BY MR. WILSON

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- 1 Q SO, YOU DIDN'T CHECK FOR A LEASE. DID YOU CHECK WITH ALCOHOL
2 AND BEVERAGE TO FIND OUT WHO THE ALCOHOL AND BEVERAGE
3 LICENSE MIGHT BE IN THE NAME OF TO SEE IF THEY MIGHT HAVE
4 SOMEBODY DIFFERENT HOLDING THAT CLUB?
- 5 A WELL, I DON'T KNOW IF ALCOHOL AND BEVERAGE WOULD ACTUALLY
6 SAY WHO OWNED THE CLUB, BUT IT COULD BE, THE BEER AND LIQUOR
7 LICENSE COULD BE IN SOMEBODY'S NAME DIFFERENT THAN THE
8 OWNER.
- 9 Q OKAY. WELL, DID YOU CHECK WITH THEM TO FIND OUT IF SOMEBODY
10 ELSE OWNED THOSE LICENSES OTHER THAN MISTER MCLAUGHLIN?
- 11 A NO, SIR. I DIDN'T.
- 12 Q ALL RIGHT. YOU CHECK WITH THE POWER COMPANY TO SEE WHO'S
13 NAME THE POWER MIGHT BE IN? SEE IF IT MIGHT BE SOMEBODY
14 OTHER THAN MISTER MCLAUGHLIN?
- 15 A AGAIN, I DID NOT CHECK WITH THEM BASED ON THE FACT THAT HE HAD
16 CONTROL OVER THE CLUB.
- 17 Q YOU SAW HIM WORKING IN THERE AND SO YOU ASSUMED HE HAD
18 CONTROL OF IT. RIGHT?
- 19 A WELL, THE CLUB IS IN HIS NAME.
- 20 Q WELL, THAT'S WHY I'M ASKING YOU, YOU ARE SAYING THAT THE
21 PROPERTY IS IN HIS NAME. RIGHT?
- 22 A YES, SIR.
- 23 Q AND WHAT I'M ASKING YOU IS, IS THERE ANY OF THE OTHER SERVICES
24 PROVIDED TO THE CLUB IN HIS NAME?
- 25 A I'M NOT SURE.

1 Q BUT YOU DIDN'T BOTHER TO CHECK EITHER, DID YOU?

2 A I DIDN'T CHECK. NO, SIR.

3 Q DID YOU BOTHER TO ASK HOW MANY PEOPLE WORK THERE AT THAT
4 CLUB?

5 A NO, SIR.

6 Q WOULD IT SURPRISE YOU TO KNOW THAT THERE WERE EIGHT OR NINE
7 DIFFERENT PEOPLE WORKING?

8 A YES, SIR. IT WOULD SURPRISE ME.

9 Q ALL RIGHT. WELL, LET'S - WHAT ABOUT LAQUILLA JORDAN. DID YOU
10 EVER GO THERE AND SEE HER THERE? DO YOU KNOW WHO SHE IS?

11 A NO, SIR.

12 Q WHAT ABOUT LAVERNE WILLIAMS. DID YOU EVER GO THERE AND SEE
13 HIM THERE?

14 A NO, SIR.

15 Q WHAT ABOUT IVAN -

16 A I DON'T KNOW THOSE PEOPLE.

17 Q AGAIN, DID YOU EVER SEE HIM THERE?

18 A NO.

19 Q LEE NELSON?

20 A NO.

21 Q JOE PARNELL?

22 A I MAY HAVE. AGAIN, I'M NOT SURE.

23 Q SONYA NIXON?

24 A I DON'T KNOW THEM BY NAME. I MAY KNOW THEM BY FACE.

25 Q FRANCES MARTIN?

CROSS EXAMINATION OF BRIAN WALLACE BY MR. WILSON

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- 1 A AGAIN, I MAY KNOW THEM BY FACE.
- 2 Q DONNA CALDWELL, THE ONE THAT Y'ALL ARRESTED THE NIGHT THIS
3 ALL HAPPENED?
- 4 A I KNOW DONNA. I'VE SEEN DONNA THERE BEFORE.
- 5 Q ALL RIGHT. AND NOW, WERE YOU IN COURT EARLIER WHEN MISTER,
6 WHEN DETECTIVE ROUSE TESTIFIED?
- 7 A I WAS HERE FOR PART OF IT.
- 8 Q SO, THAT NIGHT Y'ALL ARRESTED HER FOR POSSESSION OF CRACK
9 COCAINE. RIGHT?
- 10 A THAT EVENING. YES, SIR.
- 11 Q OKAY. AND YOU DON'T KNOW WHETHER OR NOT SHE HAD THOSE KEYS
12 TO THE CLUB? DON'T KNOW FOR SURE ABOUT THAT. RIGHT?
- 13 A NO, SIR.
- 14 Q AND IS THAT WHY WE DON'T WANT THE KEYS TO BE IN THE RED CAR
15 BECAUSE SHE HAD THEM? AND SHE HAD THOSE DRUGS?
- 16 A SHE WAS DRIVING, BUT I KNOW THAT'S MISTER MCLAUGHLIN'S CAR.
- 17 Q OKAY. BUT HE WASN'T IN IT.
- 18 A HE WAS IN ANOTHER CAR RIGHT BEHIND IT.
- 19 Q HE WAS IN ANOTHER CAR. OKAY. AND YOU DIDN'T FIND ANY DRUGS N
20 HIS CAR?
- 21 A NO, SIR.
- 22 Q AND YOU DIDN'T FIND NO DRUGS ON HIS PERSON WHEN YOU
23 ARRESTED HIM?
- 24 A NO. BUT THAT DOESN'T SURPRISE ME.
- 25 Q OKAY. NOW, LET ME ASK YOU, AFTER -- WELL, LET ME GO BACK TO THE

1 LITTLE BAGGIES THAT WE'VE BEEN TALKING ABOUT. AND I THINK YOU
2 TOLD THE JURY THAT, AND THE SOLICITOR, THAT THEY ARE VERY
3 DIFFICULT TO GET FINGERPRINTS OFF OF THE BAGS. IS THAT WHAT
4 YOUR TESTIMONY IS?

5 A IT'S SUCH A SMALL BAGGIE. YES, SIR.

6 Q BUT IT'S NOT IMPOSSIBLE. IS IT?

7 A IT'S NOT IMPOSSIBLE. I WOULDN'T SAY IT'S PROBABLE EITHER.

8 Q OKAY. BUT IN THIS CASE, WE DIDN'T EVEN MAKE AN EFFORT, DID WE?

9 A NO, SIR.

10 Q AND WE DIDN'T MAKE AN EFFORT BECAUSE WE DECIDED THAT WAYNE
11 MCLAUGHLIN MUST BE GUILTY, SO WHY WASTE THE TIME AND DO
12 ANYTHING ELSE, WHY CHECK ON ANYTHING ELSE? WE'VE GOT WHAT
13 WE WANT. RIGHT? NO POINT IN DOING ANYTHING ELSE.

14 A I DIDN'T SEE WHERE IT WOULD BE PRACTICAL. I WOULDN'T HAVE
15 FINGERPRINTED IT.

16 Q WELL, WOULD YOU AGREE WITH ME THAT WHEN YOU COME TO COURT
17 YOU WOULD WANT TO BRING AS MUCH EVIDENCE AS YOU CAN
18 POSSIBLY PRODUCE IN ORDER TO PROVE BEYOND A REASONABLE
19 DOUBT THAT THE PERSON THAT YOU —

20 THE COURT: ALL RIGHT, LET'S NOT HAVE ARGUMENT, JUST ASK THE
21 QUESTION, PLEASE, MISTER WILSON.

22 MR. WILSON: OKAY.

23 Q WOULD YOU WANT TO BRING AS MUCH EVIDENCE AS YOU CAN TO
24 COURT?

25 A YES, SIR.

DIRECT EXAMINATION OF SIMON BROWN BY MR. JEPERTINGER

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1 Q AND THE DEFENDANT CERTAINLY COULD NOT HAVE SENT THESE
2 THINGS TO SLED. COULD HE?

3 A NO, SIR.

4 Q I DON'T HAVE ANY OTHER QUESTIONS.

5 THE COURT: RE-DIRECT?

6 MR. JEPERTINGER: NOTHING FURTHER, YOUR HONOR.

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

9 MR. JEPERTINGER: WE CALL SIMON BROWN TO THE STAND.

10 THE COURT: ALL RIGHT. COME AROUND, PLEASE.

11 (AFTER BEING DULY SWORN BY THE CLERK OF COURT, SIMON BROWN
12 TESTIFIED AS FOLLOWS:)

13 **DIRECT EXAMINATION OF SIMON BROWN BY MISTER JEPERTINGER:**

14 Q OKAY. PLEASE STATE YOUR NAME FOR THE RECORD.

15 A SIMON BROWN.

16 Q OKAY. AND MISTER BROWN, WHERE DO YOU WORK?

17 A I WAS EMPLOYED WITH THE MARION COUNTY SHERIFF'S OFFICE AS A
18 DRUG AGENT.

19 Q AND I BELIEVE YOU ARE RUNNING FOR HIGH SHERIFF OF
20 WILLIAMSBURG COUNTY RIGHT NOW. IS THAT CORRECT?

21 A YES.

22 Q AND ELECTIONS ARE JUNE 10TH?

23 A YES, SIR.

24 Q OKAY. ALL RIGHT. WERE YOU EMPLOYED WITH THE SHERIFF'S OFFICE
25 BACK IN JANUARY OF 2007?

DIRECT EXAMINATION OF SIMON BROWN BY MR. JEPERTINGER

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1 A YES, SIR.

2 Q OKAY. WERE YOU A PART OF THE COMBINED DRUG UNIT AT THAT
3 TIME?

4 A YES, SIR.

5 Q DO YOU RECALL GOING TO W.T.'S LOUNGE AND BEING INVOLVED IN
6 THAT SITUATION?

7 A YES, SIR.

8 Q ALL RIGHT. AND I'M GOING TO ASK YOU, HAD YOU EVER BEEN OUT TO
9 W.T.'S LOUNGE BEFORE LIKE MISTER WALLACE HAS?

10 A DRIVE-BY'S, YOU KNOW, PERTAINING TO THE PEOPLE THAT'S HANGING
11 OUT IN THAT AREA.

12 Q OKAY. HAVE YOU EVER SEEN WAYNE MCLAUGHLIN AT W.T.'S LOUNGE?

13 A YES.

14 Q AND WHAT WAS HE DOING THERE WHEN YOU WERE THERE?

15 A MOSTLY, SOMETIMES HE WAS OUTSIDE, SOMETIMES HE GOES IN THE
16 BUILDING.

17 Q OKAY. AND HAVE YOU EVER BEEN IN THE CLUB YOURSELF? THE
18 LOUNGE YOURSELF?

19 A NOT INSIDE OTHER THAN PERTAINING TO THIS INCIDENT.

20 Q OKAY. ALL RIGHT. NOW, LET ME ASK YOU THIS, DID YOU HAVE AN
21 OCCASION TO RECEIVE A BEST PACK FROM OFFICER ROUSE?

22 A YES.

23 Q OKAY. CAN YOU TELL THE JURY HOW YOU CAME INTO CONTACT WITH
24 IT AND WHAT YOU DID?

25 A AS A DRUG AGENT, WE HAVE A CHANCE TO TAKE POSSESSION OF THE

DIRECT EXAMINATION OF SIMON BROWN BY MR. JEPERTINGER

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1 DRUGS THAT HAVE BEEN CONFISCATED AND TAKE IT UP TO SLED BY
2 DRIVING UP THERE AND DELIVERING IT TO THEM PERSONALLY.

3 Q OKAY. AND DID YOU DO THAT IN THIS CASE?

4 A YES, SIR.

5 Q OKAY. WAS THE INSIDE THE BEST PACK SEALED WHEN YOU RECEIVED
6 IT?

7 A YES.

8 Q AND WHEN YOU TRANSPORTED IT, WAS IT STILL SEALED WHEN YOU
9 GOT TO SLED?

10 A YES.

11 Q AND YOU TURNED IT OVER TO MS. STEPHENS WHO TESTIFIED EARLIER
12 THIS MORNING?

13 A YES, SIR.

14 MR. JEPERTINGER: ALL RIGHT. AT THIS TIME, YOUR HONOR, I WOULD
15 MOVE STATE'S #13 INTO EVIDENCE.

16 THE COURT: ALL RIGHT. MISTER WILSON?

17 MR. WILSON: I HAVE NO OBJECTION, YOUR HONOR.

18 THE COURT: ALL RIGHT. TO BE ADMITTED INTO EVIDENCE AS STATE'S
19 #13, WITHOUT OBJECTION.

20 (WHEREUPON, A LARGE PLASTIC BAG IS ADMITTED INTO EVIDENCE AS
21 STATE'S EXHIBIT #13, WITHOUT OBJECTION)

22 Q LET ME ASK YOU, ON THE DAY IN QUESTION HERE, DID YOU GO INSIDE
23 THE CLUB WITH WALLACE AND ROUSE?

24 A YES, SIR.

25 Q OKAY. AND WHAT DID YOU SEE WHEN YOU GOT INSIDE THE CLUB?

1 A MAINLY, JUST IN REFERENCE TO A STATEMENT THAT WAS MADE —

2 Q WHAT WAS THE STATEMENT THAT WAS MADE?

3 A IF I CAN RECALL, I'D HEARD MISTER MCLAUGHLIN STATED THAT "IT WAS
4 ON THE COUNTER IN THE KITCHEN."

5 Q ALL RIGHT. AND DID Y'ALL GO TO THE KITCHEN AT THAT POINT?

6 A YES. THE OFFICERS WENT TOWARDS THE KITCHEN.

7 Q I ASKED YOU IF YOU WENT.

8 A YES.

9 Q AND THEN WHAT DID YOU DO, WHAT DID YOU SEE?

10 A JUST PLASTIC ZIP-LOC BAGS CONTAINING ROCK-LIKE SUBSTANCE,
11 POWDER SUBSTANCES.

12 Q ALL RIGHT. WERE YOU THERE WHEN THE, WHEN THE DOOR WAS
13 OPENED TO THE CLUB?

14 A MAINLY AT A DISTANCE UNTIL THEY WERE GETTING READY TO GO IN
15 AND THAT'S WHEN THE OFFICERS CAME UP TO ENTER.

16 Q DID YOU SEE WHO OPENED THE DOOR?

17 A NO. NOT AT THAT TIME.

18 Q WHO OPENED THE DOOR, DID THAT HAVE ANY SIGNIFICANCE TO YOU,
19 WHO OPENED THE DOOR?

20 A NO.

21 Q THEY DIDN'T...

22 A SIR?

23 Q THEY USED A KEY TO GET INTO THE DOOR. CORRECT?

24 A YES.

25 Q OKAY. OTHER THAN THAT, HAVE YOU ANY OTHER INVOLVEMENT IN

CROSS EXAMINATION OF SIMON BROWN BY MR. WILSON

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1 THIS CASE?

2 A NO, JUST TRANSPORTING THE DRUGS TO SLED AND OTHERWISE IN
3 REFERENCE TO BEING AT THAT PLACE, PROVIDING SECURITY.

4 Q ALL RIGHT. PLEASE ANSWER ANY QUESTIONS THAT MISTER WILSON
5 MIGHT HAVE.

6 THE COURT: CROSS EXAMINATION?

7 MR. WILSON: YES, SIR.

8 CROSS EXAMINATION OF SIMON BROWN BY MISTER WILSON:

9 Q AS I UNDERSTAND IT, YOU ARE RUNNING FOR ELECTIVE OFFICE NOW
10 SO THAT YOU ARE NOT ON THE FORCE AS WE SPEAK. IS THAT RIGHT?

11 A YES, SIR.

12 Q YOU'VE TAKEN A LEAVE OF ABSENCE, YOU'VE RETIRED OR QUIT OR...

13 A RESIGNED.

14 Q RESIGNED?

15 A YES.

16 Q NOW, THAT NIGHT, OR THAT AFTERNOON -- LET'S CLEAR THAT UP, TOO.
17 WHAT TIME OF DAY OR AFTERNOON OR MORNING OR WHATEVER IT
18 WAS, THAT WE ARE TALKING ABOUT?

19 A ROUGHLY IN THE AFTERNOON, APPROXIMATELY 4:30 PERTAINING TO
20 THE INCIDENT.

21 Q OKAY. ALL RIGHT. AND THIS IS IN JANUARY. CORRECT?

22 A YES.

23 Q NOW, I SEE THAT YOU KEEP LOOKING DOWN. YOU DON'T HAVE ANY
24 PARTICULAR RECOLLECTION? IS THAT WHY YOU'RE LOOKING ON THE
25 PAPER OR ARE YOU JUST TRYING TO BE CERTAIN? WHICH IS IT?

1 A JUST TRYING TO GO OVER MY WORK. I'VE BEEN CAMPAIGNING FOR
2 SHERIFF AND SINCE THEN, IT'S BEEN OVER A YEAR, AND SO I NEED A
3 REFRESHER COURSE.

4 Q ALL RIGHT, SIR. LET ME ASK YOU, IN REGARDS TO THE KEYS, WAS IT
5 YOUR RESPONSIBILITY TO KEEP UP WITH MISTER MCLAUGHLIN ON
6 THAT EVENING ONCE HE WAS BROUGHT FROM WHEREVER HE WAS AT
7 TO THE CLUB? WAS THAT YOUR RESPONSIBILITY?

8 A AT THAT TIME, NOT MY RESPONSIBILITY, BUT A LOT OF OFFICERS WAS
9 THERE IN THE PRESENCE, SO.

10 Q OKAY. AND WERE YOU ONE OF THE OFFICERS THAT WERE KEEPING AN
11 EYE ON HIM?

12 A YES. I WAS.

13 Q OKAY. AND SO THEN - TELL US THEN WHEN IT WAS THAT THE KEYS
14 WERE PRODUCED.

15 A TO MY KNOWLEDGE, I CANNOT TELL YOU WHEN IT WAS PRODUCED,
16 BUT IT WAS PRODUCED.

17 Q OKAY. AND IT WAS PRODUCED BY MISTER MCLAUGHLIN.

18 A TO MY KNOWLEDGE, I DON'T KNOW.

19 Q OKAY. YOU DON'T KNOW?

20 A NO, SIR.

21 Q BUT SOMEHOW MISTER MCLAUGHLIN - AND THERE'S NO QUESTION
22 ABOUT THE FACT THAT HE'S HANDCUFFED. RIGHT?

23 A YES, SIR.

24 Q ALL RIGHT. AND HIS CUFFS ARE BEHIND HIS BACK?

25 A TO MY KNOWLEDGE, I'M NOT SURE IF IT WAS IN THE FRONT OR THE

CROSS EXAMINATION OF SIMON BROWN BY MR. WILSON

91

1 BACK TO MY KNOWLEDGE.

2 Q WELL, REGARDLESS, HE WAS CUFFED. RIGHT?

3 A YES.

4 Q AND SO HE WOULDN'T HAVE HAD USE OF HIS HANDS?

5 A IF IT WAS – I'M NOT SURE, SIR.

6 Q WELL, I MEAN, CAN YOU EXPLAIN TO ME A WAY THAT IF HIS HANDS ARE
7 EITHER CUFFED BEHIND HIS BACK OR CUFFED IN FRONT OF HIM, THAT
8 HE'S GOING TO HAVE ACCESS TO HIS POCKETS?

9 A I'M NOT SURE, SIR, FROM MY KNOWLEDGE. IN MY EXPERIENCE I'VE
10 SEEN SOME PEOPLE STANDING IN THE PARK, GET OUT OF THE WAY.

11 Q ALL RIGHT. BE THAT AS IT MAY, LET ME ASK YOU THIS, THE RED –
12 WHEN YOU ARRIVED, WAS THE RED CAR ALREADY THERE, THE ONE
13 THAT MS. CALDWELL WAS DRIVING, WAS THAT CAR ALREADY THERE?
14 WHEN YOU ARRIVED?

15 A I DON'T UNDERSTAND YOUR QUESTION. WHERE?

16 Q AT THE SCENE. AT THE CLUB.

17 A ON THE – APPROXIMATELY, APPROXIMATELY 4:30, THAT RED VEHICLE
18 WAS STOPPED BY MYSELF.

19 Q ALL RIGHT. SO, YOU'RE THE OFFICER THAT ACTUALLY STOPPED THE
20 RED VEHICLE.

21 A YES.

22 Q IS THAT CORRECT?

23 A YES.

24 Q AND THAT'S THE VEHICLE THAT MS. CALDWELL WAS DRIVING?

25 A YES.

CROSS EXAMINATION OF SIMON BROWN BY MR. WILSON

92

1 Q AND MS. CALDWELL WAS LATER CHARGED WITH POSSESSION OF
2 DRUGS FROM THAT CAR?

3 A YES.

4 Q AND MS. CALDWELL HAD KEYS TO THE CAR THAT SHE WAS DRIVING?

5 A YES. SHE WAS DRIVING THE CAR.

6 Q AND NOW, MY QUESTION IS, DID THE RED CAR END UP AT THE CLUB?

7 A TO MY KNOWLEDGE, I DON'T RECALL IF IT WAS THERE LATER.

8 Q WELL, WHAT DID YOU DO WITH MS. CALDWELL?

9 A IF I CAN RECALL, SHE WAS ARRESTED FOR POSSESSION OF COCAINE..
10 BASE.

11 Q OKAY. BUT WHAT DID YOU DO WITH IT? DID YOU TAKE HER, LIKE YOU
12 DID MISTER MCLAUGHLIN, TO THE CLUB OR DID YOU TAKE HER SOME
13 DIFFERENT PLACE?

14 A I'M NOT - TO MY KNOWLEDGE I'M NOT - TO MY KNOWLEDGE, I'M NOT
15 THE ONE WHO TRANSPORTED HER.

16 Q OKAY. WELL, WHAT HAPPENED TO THE KEYS TO THE CAR THAT SHE
17 WAS DRIVING?

18 A I DON'T KNOW WHAT HAPPENED.

19 Q AND YOU DON'T KNOW WHAT HAPPENED TO THE RED CAR? YOU DON'T
20 KNOW IF IT ENDED UP AT THE CLUB?

21 A I DON'T KNOW IF IT ENDED UP TO THE CLUB.

22 Q OKAY. ALL RIGHT. NOW, AFTER YOU ARREST MS. CALDWELL, YOU
23 THEN GO TO THE CLUB?

24 A AT THAT TIME WHEN SHE WAS ARRESTED ALSO, WITHIN THAT TIME
25 FRAME, MISTER MCLAUGHLIN HAD PASSED BY WHILE WE WERE OUT

CROSS EXAMINATION OF SIMON BROWN BY MR. WILSON

93

1 THERE AND LIEUTENANT NEIL ROUSE INITIATED THAT STOP AND
2 INFORMED HIM ABOUT THE SITUATION AND I GUESS THAT'S WHEN
3 EVERYBODY GOT PREPARED TO GO OUT TO THE CLUB.

4 Q OKAY. ALL RIGHT. BUT, I'M BACK TO THE ORIGINAL QUESTION. WHAT
5 HAPPENED, THEN, TO THE RED CAR AND THE KEYS FROM THE RED
6 CAR?

7 A TO MY KNOWLEDGE, I DON'T KNOW.

8 Q OKAY. AND WHAT KIND OF CAR, THEN, WAS MISTER MCLAUGHLIN
9 DRIVING?

10 A IT WAS A GREEN IN COLOR CAR. I CAN'T REMEMBER WHAT BRAND IT
11 WAS.

12 Q ALL RIGHT. AND THEN HIS CAR WAS PULLED OVER. CORRECT?

13 A YES.

14 Q AND NOW, DID YOU GO WITH MISTER MCLAUGHLIN AND DETECTIVE
15 ROUSE TO THE CLUB OR DID YOU GO SOME DIFFERENT PLACE?

16 A I WENT NOT WITH THEM EXACTLY BUT WHEN IN ROUTE THERE, WHILE
17 THEY WERE IN THE PROCESS OF GOING THERE.

18 Q OKAY. ALL RIGHT. AND WHO TRANSPORTED MS. CALDWELL FOR YOU?

19 A TO MY KNOWLEDGE, I DON'T KNOW. THERE WERE A LOT OF OFFICERS
20 OUT THERE. TO MY KNOWLEDGE, I DON'T KNOW.

21 Q OKAY. SO, WE DON'T KNOW WHAT HAPPENED TO HER, WHETHER SHE
22 WENT TO THE CLUB OR WHETHER SHE WENT DOWNTOWN TO BE
23 BOOKED, WE DON'T REALLY KNOW. IS THAT RIGHT?

24 A FROM MY UNDERSTANDING, I ARRESTED HER FOR THE POSSESSION OF
25 COCAINE BASE, SO AT THAT TIME SHE WAS ARRESTED, SO...

1 Q I UNDERSTAND. BUT WE DON'T KNOW WHERE SHE WENT FROM THAT
2 POINT?

3 A TO MY KNOWLEDGE, NO.

4 Q OKAY. AND WE DON'T KNOW WHERE THE CAR WENT FROM THAT
5 POINT?

6 A TO MY KNOWLEDGE, NO.

7 Q OKAY. AND WHAT ABOUT THE CAR THAT MISTER MCLAUGHLIN HAD
8 BEEN DRIVING? DID THAT CAR GO TO THE CLUB OR WAS IT LEFT
9 ALONG SIDE THE ROAD OR WHAT HAPPENED TO THAT CAR AND THE
10 KEYS FROM IT?

11 A TO MY KNOWLEDGE, I DON'T KNOW, SIR.

12 Q I DON'T HAVE ANY OTHER QUESTIONS.

13 MR. WILSON: THANK YOU, THAT'S ALL I HAVE.

14 THE COURT: ALL RIGHT. THANK YOU, SIR. YOU MAY STEP DOWN.

15 MR. JEPERTINGER: AND MAY I ASK IF HE CAN BE EXCUSED?

16 MR. WILSON: WITHOUT OBJECTION, YOUR HONOR.

17 MR. JEPERTINGER: HE NEEDS TO GET OUT AND CAMPAIGN AGAIN.

18 THE COURT: ALL RIGHT. YOU ARE EXCUSED. THANK YOU FOR
19 COMING.

20 MR. JEPERTINGER: WE CALL REUBEN BUTLER TO THE STAND.

21 THE COURT: ALL RIGHT. MISTER BUTLER.

22 (AFTER BEING DULY SWORN BY THE CLERK OF COURT, REUBEN
23 BUTLER TESTIFIED AS FOLLOWS:)

24 DIRECT EXAMINATION OF REUBEN BUTLER BY MISTER JEPERTINGER:

25 Q OKAY. MISTER BUTLER, WHAT DO YOU DO FOR A LIVING?

1 A I'M THE TAX ASSESSOR OF MARION COUNTY.

2 Q AND WHAT ARE YOUR RESPONSIBILITIES?

3 A KEEPING UP WITH ALL THE REAL ESTATE IN MARION COUNTY.

4 Q ALL RIGHT. AND YOU'RE NOT THE ONE THAT SENDS OUT THE TAX
5 BILLS, ARE YOU?

6 A PART OF IT.

7 Q ALL RIGHT. WE'RE NOT GOING TO STONE YOU OVER THAT. I'M GOING
8 TO SHOW YOU WHAT'S MARKED AS STATE'S EXHIBIT #14.

9 A IT'S A PART OF A TAX RECORD, A MARION COUNTY TAX RECORD.

10 Q AND YOU KEEP THOSE DOCUMENTS?

11 A ON EVERY PARCEL IN THE COUNTY. YES.

12 Q LET ME ASK YOU, YOU PROVIDED ME WITH THAT COPY. IS THAT
13 CORRECT?

14 A CORRECT.

15 Q ALL RIGHT. AND CAN YOU IDENTIFY THAT PIECE OF PROPERTY BASED
16 ON THOSE DOCUMENTS?

17 A IT'S A TAX DOCUMENT IN THE NAME OF WAYNE AND GREGORY
18 MCLAUGHLIN LOCATED ON HAYES STREET AND NORTHEAST FRONT
19 STREET, LOT 90' BY 100', KNOWN AS W.T.'S LOUNGE.

20 Q ALL RIGHT.

21 MR. JEPERTINGER: I WOULD LIKE TO MOVE THIS INTO EVIDENCE AT
22 THIS TIME.

23 THE COURT: HAVE YOU SEEN THIS MISTER WILSON?

24 MR. WILSON: I HAVE SEEN IT. I HAVE NO OBJECTIONS.

25 THE COURT: ALL RIGHT. THIS IS MARKED – WHAT'S THE NUMBER?

1 MR. JEPERTINGER: IT'S #14, YOUR HONOR.

2 THE COURT: ALL RIGHT. STATE'S #14 ADMITTED INTO EVIDENCE
3 WITHOUT OBJECTION.

4 (WHEREUPON, A FOUR-PAGE TAX RECORD IS ENTERED INTO EVIDENCE
5 AS STATE'S EXHIBIT #14, WITHOUT OBJECTION.)

6 Q NOW, I WANT YOU TO GO THROUGH THIS THING AND TELL ME IF YOU
7 KNOW FROM YOUR RESEARCH – HAVE YOU RESEARCHED THIS AT MY
8 REQUEST?

9 A RIGHT.

10 Q CAN YOU TELL US HOW MISTER MCLAUGHLIN AND, I BELIEVE, HIS
11 BROTHER AND OTHERS GOT TO BE THE OWNERS OF THIS PROPERTY?

12 A BASED ON THE TAX RECORDS, IT LOOKS LIKE IT WAS A DEED FROM HIS
13 MOTHER, NANCY MCLAUGHLIN TO GREG AND WAYNE GREGORY IN 1992,
14 AND THEY WERE LEFT THROUGH A WILL THROUGH THE DEED.

15 Q ALL RIGHT. AND SO THE REGISTERED OWNER IS WHO AGAIN?

16 A ON THE TAX RECORD, WE'VE GOT THE NAME OF WAYNE AND GREGORY
17 MCLAUGHLIN.

18 Q ALL RIGHT. THANK YOU SO MUCH. PLEASE ANSWER ANY QUESTIONS
19 MISTER WILSON MIGHT HAVE.

20 THE COURT: CROSS EXAMINATION?

21 MR. WILSON: YES, SIR.

22 CROSS EXAMINATION OF REUBEN BUTLER BY MISTER WILSON:

23 Q LET ME ASK YOU, AS THE ASSESSOR, WHAT ABOUT BUSINESS
24 LICENSES? DO YOU HAVE ANYTHING TO DO WITH THAT?

25 A NO, SIR.

DIRECT EXAMINATION OF REUBEN BUTLER BY MR. JEPERTINGER

97

1 Q YOU DON'T?

2 A NO.

3 Q SO, IF A PERSON OWNED A BUSINESS AND HAD A BUSINESS LICENSE
4 THROUGH THE COUNTY, YOU WOULDN'T BE THE PERSON TO ISSUE THE
5 LICENSE?

6 A NO.

7 Q AND YOUR OFFICE WOULDN'T HAVE ANY RECORD OF THAT LICENSE?

8 A NO. IT COMES THROUGH THE BUILDING INSPECTOR.

9 Q OKAY. NOW, WERE YOU ASKED TO CHECK TO SEE IF THERE WAS A
10 BUSINESS LICENSE TO W.T.'S LOUNGE? DID ANYBODY ASK YOU TO DO
11 THAT?

12 A NOBODY ASKED ME, BUT I DID CHECK.

13 Q YOU DID CHECK? OKAY. AND IS THERE A BUSINESS LICENSE FOR IT?

14 A NO.

15 Q THERE IS NO BUSINESS LICENSE FOR IT? HAS THERE EVER BEEN A
16 BUSINESS LICENSE FOR IT?

17 A NOT THAT THEY HAD ON RECORD; I DIDN'T SEE ONE. I DIDN'T GO BACK
18 TWO YEARS, I DIDN'T GO BACK BUT A YEAR.

19 Q WHAT?

20 A I DIDN'T GO BACK BUT FOR ONE YEAR.

21 Q OKAY. WELL, LET ME SHOW YOU THIS. DO YOU KNOW WHAT THAT IS?

22 (MISTER WILSON HANDS DOCUMENT TO WITNESS)

23 A DEPARTMENT OF REVENUE?

24 Q UH-HUH. YOU'VE SEEN THOSE BEFORE IN YOUR BUSINESS, HAVEN'T
25 YOU?

1 A A BEER AND WINE LICENSE.

2 Q YES, SIR. AND IS THAT FOR THE SAME PROPERTY THAT YOU ARE
3 TALKING ABOUT? OR DO YOU KNOW? IF YOU DON'T KNOW, JUST SAY
4 YOU DON'T KNOW AND THAT'S FINE.

5 A BASED ON THE ADDRESS, IT IS.

6 Q OKAY. AND IS IT REGISTERED TO WAYNE MCLAUGHLIN?

7 A NO, SIR.

8 Q OKAY. AND WHAT YEAR IS THIS LICENSE FOR, START DATE AND END
9 DATE?

10 A IT'S GOT AN '08 STAMP ON IT.

11 Q OKAY. WHEN DOES IT START?

12 A IT LOOKS LIKE 6-1-06.

13 Q TO '08.

14 A 5-31-08.

15 Q I HAVE NO OTHER QUESTIONS.

16 THE COURT: RE-DIRECT, MISTER JEPERTINGER?

17 RE-DIRECT EXAMINATION OF REUBEN BUTLER BY MISTER JEPERTINGER:

18 Q YOU'VE NEVER HAD ANY - I BELIEVE THE NAME OF FRANCES MARTIN IS
19 ON THIS BEER AND WINE THING THAT'S ISSUED BY THE DEPARTMENT
20 OF REVENUE. IS THAT CORRECT?

21 A RIGHT.

22 Q YOU'VE NEVER HAD ANY DEALINGS WITH MS. MARTIN BEFORE, HAVE
23 YOU, IN TERMS OF THIS CASE?

24 A NOT AT ALL.

25 Q THANK YOU SO MUCH. I APPRECIATE IT.

RE-CROSS EXAMINATION OF REUBEN BUTLER BY MR. WILSON

99

1 MR. JEPERTINGER: ALL RIGHT. I HAVE NOTHING FURTHER OF THIS
2 WITNESS.

3 THE COURT: ANYTHING FURTHER, MISTER WILSON?

4 MR. WILSON: YES, I HAVE JUST ONE OTHER QUESTION.

5 RE-CROSS EXAMINATION OF REUBEN BUTLER BY MISTER WILSON:

6 Q YOU SAID THAT YOU LOOKED FOR A BUSINESS LICENSE?

7 A FOR '07. YES.

8 Q FOR '07?

9 A YES. NOW, AGAIN, I LOOKED IN WAYNE'S NAME, I LOOKED UP BASED
10 HIS ADDRESS.

11 Q OKAY. WELL, LET ME SHOW YOU THIS AND SEE IF YOU RECOGNIZE IT.

12 A I DON'T HAVE ANYTHING TO DO WITH BUSINESS LICENSES. THAT'S
13 ANOTHER DEPARTMENT WITH THE COUNTY.

14 Q THAT'S WHAT I ASKED YOU ABOUT, BUSINESS LICENSES. AND THAT'S A
15 COUNTY ISSUED BUSINESS LICENSE, A COPY OF ONE. IS IT NOT?

16 A YES.

17 Q OKAY. AND IS THE BUSINESS LICENSE REGISTERED TO WAYNE
18 MCLAUGHLIN?

19 A NO.

20 Q NO?

21 MR. WILSON: I DON'T HAVE ANYTHING ELSE.

22 MR. JEPERTINGER: NOTHING FURTHER, YOUR HONOR.

23 THE COURT: ALL RIGHT. THANK YOU, YOU MAY STEP DOWN.

24 MR. JEPERTINGER: THAT WILL BE THE STATE'S CASE, YOUR HONOR.

25 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, YOU HAVE HEARD

MOTION FOR DIRECTED VERDICT

100

1 THE STATE ANNOUNCE THAT THEY ARE RESTING THEIR CASE AT THIS POINT.
2 THERE ARE CERTAIN MATTERS OF LAW WHICH I NOW NEED TO TAKE UP WITH
3 THE ATTORNEYS THAT ARE INVOLVED IN THIS MATTER. IT WILL TAKE US
4 JUST A FEW MINUTES TO DO THAT. SO, I AM GOING TO ASK YOU TO GO TO
5 YOUR JURY ROOM AND RELAX A FEW MINUTES WHILE I TAKE UP THESE
6 MATTERS OF LAW AND THEN WE WILL BE READY TO GO FORWARD. DO NOT
7 DISCUSS THE CASE AMONG YOURSELVES. WE WILL SEND FOR YOU VERY
8 SHORTLY. THANK YOU. YOU MAY GO WITH THE BAILIFF.

9 (JURY OUT AT 4:23 P.M.)

10 THE COURT: ALL RIGHT, MISTER WILSON, I WILL BE GLAD TO HEAR
11 FROM YOU IF YOU HAVE ANY MOTIONS ON BEHALF OF THE DEFENDANT.

12 MR. WILSON: YES, SIR. YOUR HONOR, AT THIS TIME, THE DEFENSE
13 WOULD MOVE FOR A DIRECTED VERDICT ON THE CHARGES OF POSSESSION
14 WITH INTENT TO DISTRIBUTE CRACK COCAINE AND POSSESSION WITH
15 INTENT TO DISTRIBUTE POWDER COCAINE.

16 AND YOUR HONOR, I DO THAT ON THE GROUNDS THAT I BELIEVE THAT
17 THE STATE HAS FAILED IN SEVERAL INSTANCES TO PROVE THE CASE OR TO
18 PRESENT EVIDENCE FOR WHICH I BELIEVE IS SUFFICIENT FOR THE JURY IN
19 ORDER TO DETERMINE GUILT BEYOND A REASONABLE DOUBT AND ONE
20 WOULD BE THAT THERE REALLY IS NO TESTIMONY IN THE RECORD ABOUT
21 ANY INTENT TO DISTRIBUTE. NOW, I ASSUME THAT THEY ARE ATTEMPTING
22 TO RELY ON THE PACKAGING AND/OR THE QUANTITY, BUT I THINK THAT EVEN
23 WITH THAT, THAT AT LEAST IN MY INTERPRETATION IS STILL INSUFFICIENT
24 FOR THE JURY TO BRING BACK A VERDICT OF GUILTY AS TO POSSESSION
25 WITH INTENT TO DISTRIBUTE.

MOTION FOR DIRECTED VERDICT

101

1 SECONDLY, I MAKE THIS MOTION, YOUR HONOR, IN REGARDS TO THE
2 MOTIONS THAT I HAVE MADE AT THE BEGINNING OF THE TRIAL, THAT THE
3 ISSUE OF THE MIRANDA ISSUE THAT I RAISED EARLIER ABOUT THE
4 INTERROGATION OF THE DEFENDANT, OR AT LEAST THAT'S MY WORD, THE
5 INTERROGATION OF THE DEFENDANT DURING THE COURSE OF HIS CUSTODY,
6 SPECIFICALLY IN REGARDS TO THE STATEMENT THAT HE MADE THAT WAS
7 SUPPOSED TO BE A SPONTANEOUS STATEMENT, BUT WHICH, AGAIN IN MY
8 WORDS, ARE MADE AFTER THERE WAS A MIRANDA VIOLATION BECAUSE
9 THEY ASKED HIM FOR KEYS WHICH HAS TURNED OUT TO BE AN INTEGRAL
10 PART OF THIS VERY TRIAL, AS I SUSPECTED IT WOULD BE. AND AGAIN,
11 BECAUSE I BELIEVE THAT'S TESTIMONIAL, CONSIDERING ALL THOSE THINGS
12 TOGETHER, I WOULD ASK THE COURT TO DIRECT A VERDICT OF NOT GUILTY
13 FOR THE DEFENDANT.

14 **THE COURT:** MISTER JEPERTINGER?

15 **MR. JEPERTINGER:** I AM GOING TO HAVE A GREAT LEGAL ARGUMENT
16 AND JUST SAY THAT I DISAGREE WITH ALL OF THAT.

17 **THE COURT:** THAT'S A BIG SURPRISE TO ME. WHY IS THAT?

18 **MR. JEPERTINGER:** OKAY. JUDGE, OBVIOUSLY, YOU KNOW, YOU LOOK
19 AT, IN THESE DIRECTED VERDICT MOTIONS, YOU HAVE TO TAKE IT IN THE
20 LIGHT MOST FAVORABLE TO THE STATE AND I WILL SAY THAT: 1) THERE IS
21 PERMISSIVE INFERENCE, YOUR HONOR, BASED ON QUANTITY THAT THE --
22 UNDER THE LAW THAT A PERMISSIVE INFERENCE CAN BE DRAWN THAT
23 THERE IS AN INTENT TO DISTRIBUTE, YOUR HONOR, IF THE QUANTITY
24 EXCEEDS ONE GRAM OF CRACK AND TEN GRAINS OF POWDER AND SO I'VE
25 HANDLED THAT.

MOTION FOR DIRECTED VERDICT

102

1 NOW, WE GET TO THE ISSUE OF POSSESSION, YOUR HONOR, WHICH IS
2 THE OTHER HALF OF THAT, YOUR HONOR. IN TERMS OF POSSESSION, WE
3 ARE LOOKING AT THE ABILITY TO EXERCISE DOMINION AND CONTROL OVER
4 SUBSTANCES WITH THE INTENT TO POSSESS IT, YOUR HONOR.
5 CIRCUMSTANTIALLY, WHAT WE HAVE HERE IS A PERSON THAT BRIAN
6 WALLACE SAYS HE HAS SEEN THERE ON SEVERAL OCCASIONS. HE DID GET
7 THE KEYS, YOUR HONOR, ONE WAY OR THE OTHER, THE KEYS WERE THERE.
8 THEY DID NOT HAVE TO BUST INTO THE PLACE AND THEN THERE'S THE
9 STATEMENT THAT, AND I THINK THIS IS WHERE CIRCUMSTANTIALLY, YOU CAN
10 INFER THAT HE KNEW THEY WERE THERE, YOUR HONOR. THEREBY, WITH
11 THE ABILITY TO EXERCISE DOMINION AND CONTROL AND BY SAYING, "IT'S IN
12 THE KITCHEN ON THE COUNTER OR ON THE SHELF," YOUR HONOR. I CAN'T
13 REMEMBER THE EXACT LANGUAGE, BUT I THINK THAT SHOWS
14 CIRCUMSTANTIALLY THAT THERE WAS THE ABILITY TO EXERCISE DOMINION
15 AND CONTROL OVER THE SUBSTANCES SOUGHT FOR, BECAUSE I ASKED
16 WALLACE DID HE KNOW WHY YOU WERE THERE AND THEN I ASKED HIM IF IT
17 WAS FOR DRUGS AND HE SAID, "YES".

18 SO, I WOULD SAY IN TOTALITY, YOUR HONOR, THAT THE STATE BOTH
19 THROUGH DIRECT AND CIRCUMSTANTIAL EVIDENCE, HAS SHOWN BOTH
20 POSSESSION WITH THE INTENT TO DISTRIBUTE. AND YES, YOUR HONOR, THE
21 WAY THAT THE OBJECTS WERE PACKAGED WOULD ALSO, EVEN IF IT WERE
22 UNDER THE THRESHOLD OR INFERENTIAL AMOUNT, WOULD SHOW AN INTENT
23 TO DISTRIBUTE, YOUR HONOR.

24 THE COURT: ALL RIGHT. REPLY MISTER WILSON?

25 MR. WILSON: NO, SIR.

COURT'S RULING

103

1 THE COURT: ALL RIGHT. UNDER RULE 19 OF THE SOUTH CAROLINA
2 RULES OF CRIMINAL PROCEDURE, THE LAW PROVIDES OR THE RULES
3 PROVIDE THAT THE COURT SHALL DIRECT A VERDICT IN THE DEFENDANT'S
4 FAVOR ON ANY OFFENSE CHARGED IN THE INDICTMENT AFTER THE
5 EVIDENCE ON EITHER SIDE IS CLOSED, IF THERE IS A FAILURE OF
6 COMPETENT EVIDENCE TENDING TO PROVE THE CHARGE IN THE
7 INDICTMENT. IN RULING ON THE MOTION, THE TRIAL JUDGE SHALL CONSIDER
8 ONLY THE EXISTENCE OR NON-EXISTENCE OF THE EVIDENCE AND NOT ITS
9 WEIGHT. AND, OF COURSE, BY COMPETENT EVIDENCE, IT IS REFERRING TO
10 ADMISSIBLE EVIDENCE, NOT WHETHER THE JURY SHOULD OR SHOULD NOT
11 BELIEVE IT. I BELIEVE THAT THERE IS, THAT THE STATE HAS PROVEN EITHER
12 BY DIRECT OR CIRCUMSTANTIAL EVIDENCE, SUFFICIENT EVIDENCE IN THE
13 RECORD, THAT I WOULD BE COMPELLED TO DENY THE MOTION FOR
14 DIRECTED VERDICT.

15 FIRST OF ALL, THERE IS THE PERMISSIBLE INFERENCE THERE IN THE
16 AMOUNT OF DRUGS SEIZED. THERE IS AN INFERENCE THERE THAT THE,
17 BOTH THE COCAINE AND THE CRACK COCAINE, WERE BEING KEPT OR IN THE
18 POSSESSION WITH THE INTENT TO DISTRIBUTE BY THE STATUTORY
19 INFERENCE. ALSO, THE PACKAGING IS CIRCUMSTANTIAL EVIDENCE THAT
20 THERE WAS AN INTENT TO DISTRIBUTE.

21 I'VE ALREADY RULED ON THE MIRANDA ISSUE WITH REGARD TO THE
22 INTERROGATION AND I THINK THAT THERE WAS NO INTERROGATION. I THINK
23 HE DID MAKE A STATEMENT AND AS I HEARD MISTER WILSON'S MOTION, I DID
24 NOT HEAR HIM ARGUE ABOUT POSSESSION, WHETHER HE WAS IN DOMINION
25 OR CONTROL, ALTHOUGH I'M SURE HE'S GOING TO ARGUE THAT TO THE

FIFTH AMENDMENT RIGHTS

104

1 JURY. IN ANY EVENT, I DO THINK THAT THERE IS EVIDENCE IN THE RECORD,
2 BOTH DIRECT AND CIRCUMSTANTIAL THAT WOULD PRECLUDE ME FROM
3 GRANTING A DIRECTED VERDICT AND IF I DID I WOULD BE PUTTING MY VIEWS
4 IN WEIGHING THE EVIDENCE, WHICH I AM NOT PERMITTED TO DO, THAT IS A
5 MATTER FOR THE JURY'S DETERMINATION, AND SO I WOULD RESPECTFULLY
6 DENY THE MOTION FOR DIRECTED VERDICT.

7 NOW, MISTER WILSON, IF YOU WOULD HAVE MISTER MCLAUGHLIN
8 STAND FOR JUST A MINUTE AND LET ME TALK TO HIM ABOUT HIS FIFTH
9 AMENDMENT RIGHTS.

10 (MISTER WILSON AND THE DEFENDANT COMPLY)

11 THE COURT: MISTER MCLAUGHLIN, YOU MAY BE CALLED AS A WITNESS
12 TO TESTIFY ON YOUR OWN BEHALF. I NOW ADVISE YOU THAT YOU HAVE THE
13 RIGHT TO INVOKE THE PROTECTIONS GIVEN TO YOU BY THE FIFTH
14 AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES AND A SIMILAR
15 COUNTERPART PROVISION OF THE CONSTITUTION OF THE STATE OF SOUTH
16 CAROLINA. THE FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED
17 STATES PROVIDES, IN PART, THAT NO PERSON SHALL BE COMPELLED IN ANY
18 CRIMINAL CASE TO BE A WITNESS AGAINST HIMSELF. THIS PROVISION OF
19 CONSTITUTIONAL LAW MEANS THAT YOU CANNOT BE COMPELLED OR
20 REQUIRED TO TESTIFY IN THIS CASE. THIS IS A RIGHT AND A PRIVILEGE
21 WHICH THE LAW EXTENDS TO YOU. IT IS A PERSONAL PRIVILEGE AND NO
22 ONE CAN WAIVE THIS RIGHT EXCEPT YOU. YOU HAVE THE RIGHT NOT TO
23 TESTIFY BUT YOU ALSO HAVE A RIGHT TO TESTIFY. THE COURT WILL GRANT
24 YOU THE RIGHT TO CONSULT WITH YOUR LAWYER BEFORE YOU MAKE A
25 DECISION. IF YOU ELECT NOT TO TESTIFY, YOUR FAILURE TO TESTIFY

FIFTH AMENDMENT RIGHTS

105

1 CANNOT BE USED BY THE JURY AS AN INFERENCE OF GUILT AND YOUR
2 FAILURE TO TESTIFY CANNOT BE CONSIDERED BY THE JURY IN ITS
3 DELIBERATIONS AND I WOULD SO INSTRUCT THE JURY. IF YOU ELECT TO
4 TESTIFY AND WAIVE THE PRIVILEGE EXTENDED TO YOU BY THE
5 CONSTITUTION, I ADVISE YOU THAT YOU WOULD THEN ASSUME THE ROLE OF
6 A WITNESS IN THIS CASE AND YOU WAIVE OR GIVE UP YOUR
7 CONSTITUTIONAL PRIVILEGE AGAINST SELF-INCRIMINATION. THIS MEANS
8 THAT IF YOU VOLUNTARILY TAKE THE STAND AND TESTIFY, YOU WILL
9 SUBJECT YOURSELF TO THE SAME RULES THAT GOVERN OTHER WITNESSES
10 AND YOU MAY BE EXAMINED AND CROSS EXAMINED ON ANY RELEVANT ISSUE
11 IN THIS CASE AND YOU MAY BE IMPEACHED TO THE SAME EXTENT AS ANY
12 OTHER WITNESS, ALL OF WHICH IS SUBJECT TO THE RULES OF LAW. I
13 WOULD FURTHER ADVISE YOU THAT IF YOU ELECT TO TAKE THE WITNESS
14 STAND AND TESTIFY, THIS DECISION ON YOUR PART MUST BE MADE FREELY,
15 VOLUNTARILY, INTELLIGENTLY AND WITH KNOWLEDGE OF THE PROTECTIONS
16 GIVEN TO YOU BY THE CONSTITUTION AND WITH KNOWLEDGE OF THE
17 CONSEQUENCES OF YOUR ELECTION TO TESTIFY. HAVE YOU UNDERSTOOD
18 WHAT I HAVE DISCUSSED WITH YOU?

19 MR. MCLAUGHLIN: YES, SIR.

20 THE COURT: HAVE YOU DISCUSSED WITH YOUR LAWYER WHETHER
21 YOU SHOULD OR SHOULD NOT TESTIFY IN THIS MATTER?

22 MR. MCLAUGHLIN: YES, SIR.

23 THE COURT: DO YOU NEED TO TALK WITH HIM ANY MORE?

24 MR. MCLAUGHLIN: NO, SIR.

25 THE COURT: HAVE YOU MADE A DECISION AS TO WHETHER YOU DO OR

FIFTH AMENDMENT RIGHTS

106

1 DO NOT WISH TO TESTIFY IN THIS CASE?

2 MR. MCLAUGHLIN: YES.

3 THE COURT: AND IS THAT DECISION ON YOUR PART FREELY AND
4 VOLUNTARILY MADE?

5 MR. MCLAUGHLIN: YES.

6 THE COURT: ALL RIGHT. AND WHAT IS THAT DECISION?

7 MR. MCLAUGHLIN: I'M NOT GOING TO TESTIFY.

8 THE COURT: DO NOT WISH TO TESTIFY? ALL RIGHT. THE COURT
9 WOULD FIND THEN THAT THE DEFENDANT, AFTER HAVING BEEN ADVISED BY
10 BOTH THE COURT AND HIS COUNSEL OF HIS FIFTH AMENDMENT RIGHTS HAS
11 MADE A FREE, VOLUNTARY AND KNOWING DECISION TO EXERCISE THAT
12 PRIVILEGE AGAINST SELF-INCRIMINATION AND DOES NOT WISH TO TESTIFY IN
13 THIS MATTER. THANK YOU.

14 MR. WILSON: JUDGE, CAN I HAVE MAYBE FIVE TO TEN MINUTES? I
15 REALLY WANT TO TALK TO A COUPLE OF PEOPLE BEFORE I DECIDE WHAT
16 WE'RE DOING HERE.

17 THE COURT: ALL RIGHT. THAT'S WHAT I WANTED TO ASK YOU. I DIDN'T
18 KNOW IF YOU WERE GOING TO PRESENT ANY OTHER TESTIMONY AND I TAKE
19 IT YOU WANT TO TAKE A FEW MINUTES TO SEE.

20 MR. WILSON: YES, SIR.

21 THE COURT: ALL RIGHT. WE'LL TAKE A FEW MINUTES, SAY ABOUT TEN
22 MINUTES.

23 MR. WILSON: THANK YOU.

24 MR. JEPERTINGER: YOUR HONOR, IF WE MISTER WILSON COMES TO
25 THE DECISION TO PUT WITNESSES UP IN THIS CASE, I WOULD ASK FOR

1 DATES OF BIRTH AND SOCIAL SECURITY NUMBERS TO VERIFY WHETHER
2 THESE PEOPLE HAVE IMPEACHABLE OFFENSES UNDER 609.

3 **THE COURT:** HE'S ENTITLED TO THAT INFORMATION WHEN YOU MAKE
4 THAT DECISION.

5 **MR. WILSON:** ALL RIGHT.

6 **THE COURT:** IF YOU WILL GIVE HIM THAT INFORMATION.

7 **MR. WILSON:** JUDGE, MAY I ASK JUST ONE QUESTION? IN TERMS OF
8 IMPEACHMENT ARE WE OPERATING UNDER THE RULE THAT IF A CONVICTION
9 IS MORE THAN TEN YEARS OLD THAT IT IS NOT ADMISSIBLE FOR
10 IMPEACHMENT PURPOSES?

11 **THE COURT:** WELL, WE'RE OPERATING UNDER 609 AND I WILL
12 EVALUATE IT ON THE BASIS OF 609. OKAY? BECAUSE IT MAKES A
13 DISTINCTION BETWEEN THE WITNESS AND THE ACCUSED. I HAVE TO LOOK
14 AT THE RULE, I HAVE TO LOOK AT IT EVERY TIME I DO THIS. YES, I WILL
15 EVALUATE IT UNDER 609, AND IT APPLIES UNDER (a), (b), AND © SO, I'LL JUST
16 LOOK AT IT AND SEE WHAT THE SITUATION IS AT THE TIME WE DETERMINE
17 WHAT THE CRIME IS AND HOW LONG AGO IT'S BEEN.

18 **MR. WILSON:** THANK YOU, YOUR HONOR.

19 **THE COURT:** ALL RIGHT. WE'LL TAKE ABOUT TEN MINUTES.

20 (BRIEF BREAK)

21 **THE COURT:** ALL RIGHT, WE'RE BACK ON THE RECORD WITH REGARDS
22 TO THE MATTER OF THE STATE VERSUS WAYNE MCLAUGHLIN AND THE
23 STATE HAS RESTED THEIR CASE AND NOW MISTER WILSON HAS HAD AN
24 OPPORTUNITY TO DISCUSS THE MATTER WITH HIS CLIENT AND HIS CLIENT
25 HAS DECIDED NOT TO TESTIFY. MISTER WILSON, WILL THE DEFENSE

1 PRESENT ANY OTHER TESTIMONY?

2 MR. WILSON: WE WILL NOT, YOUR HONOR. WE WILL REST.

3 THE COURT: ALL RIGHT. THAT BEING THE CASE THEN, I'M GOING TO
4 BRING THE JURY IN AND ALLOW THE -- CALL ON THE DEFENSE TO PRESENT
5 ANY TESTIMONY THAT IT WISHES TO PRESENT AND LET HIM REST ON THE
6 RECORD AND THEN I WILL EXCUSE THE JURY FOR THE EVENING, ALLOW
7 THEM TO GO HOME AND THEN COME BACK IN THE MORNING AT 10:00. I HAVE
8 SOME MATTERS AT 9:30. I TOLD MISTER CLEMENTS THAT I WOULD TAKE TWO
9 PLEAS TOMORROW MORNING AT 9:30 AND SO WE WILL BE READY TO GO
10 FORWARD WITH ARGUMENTS AND CHARGE AT 10:00 TOMORROW MORNING. I
11 ALSO HAVE, AFTER HAVING CONFERRED WITH COUNSEL IN CHAMBERS, THE
12 COURT HAS CONCLUDED, I THINK WITH AGREEMENT, THAT THE PROPER
13 VERDICT FORM WOULD BE TO GIVE THE JURY THREE OPTIONS ON EACH
14 CHARGE. THAT WOULD BE GUILTY OF POSSESSION WITH INTENT TO
15 DISTRIBUTE, GUILTY OF POSSESSION OR NOT GUILTY. AGREEABLE WITH
16 THAT MISTER JEPERTINGER?

17 MR. JEPERTINGER: YES, I GUESS AGREEABLE IS THE WORD, YOUR
18 HONOR.

19 THE COURT: ALL RIGHT. MISTER WILSON?

20 MR. WILSON: YES, SIR.

21 THE COURT: ALL RIGHT. ALSO, THE COURT WILL CHARGE, I THINK IT'S
22 SECTION 4-11 AND 4-12 FROM JUDGE ANDERSON'S CHARGE BOOK, WHICH IS
23 THE TWO P-W-I-D CHARGES, ONE ON CRACK AND ONE ON POWDER, ALSO
24 THE DEFENDANT'S RIGHT NOT TO HAVE TO TESTIFY AND THE GRIPPON
25 CIRCUMSTANTIAL EVIDENCE CHARGE. ARE THERE ANY OTHER REQUESTS TO

1 CHARGE ON BEHALF OF THE STATE?

2 MR. JEPERTINGER: NO, SIR.

3 THE COURT: ON BEHALF OF THE DEFENSE?

4 MR. WILSON: NO, SIR YOUR HONOR.

5 THE COURT: ALL RIGHT. AND THEN LET'S TALK JUST A MINUTE ABOUT
6 ARGUMENTS. MISTER JEPERTINGER, YOU'LL GO FIRST AND MISTER WILSON
7 WILL HAVE THE RIGHT TO CLOSE. HOW MUCH TIME WILL YOU NEED?

8 MR. JEPERTINGER: YOUR HONOR, I'LL TAKE THE BAPTIST'S THIRTY.

9 MR. WILSON: I WON'T BE MORE THAN THIRTY.

10 THE COURT: ALL RIGHT. LET'S HOLD IT TO NOT MORE THAN THIRTY
11 MINUTES ON EACH SIDE. I'LL TELL YOU BOTH LIKE I TELL MY PREACHER,
12 ANYTHING OVER TWENTY MINUTES IS LOST ANYHOW, SO IF YOU CAN KEEP IT
13 DOWN, YOU'LL BE BETTER TO DO IT. ALL RIGHT. BRING THE JURY IN.

14 (JURY IN AT 5:03 P.M.)

15 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN, THANK YOU FOR
16 YOUR PROMPTNESS AND WE HAVE HANDLED ALL THE MATTERS THAT WE
17 NEED TO HANDLE NOW AND AT THIS TIME THE COURT WOULD GIVE THE
18 DEFENSE AN OPPORTUNITY TO PRESENT ANY EVIDENCE THAT YOU WISH TO
19 PRESENT. MISTER WILSON?

20 MR. WILSON: YOUR HONOR, THE DEFENSE RESTS AT THIS TIME.

21 THE COURT: ALL RIGHT. THE DEFENSE HAS RESTED. LADIES AND
22 GENTLEMEN, THAT MEANS THAT YOU HAVE NOW HEARD ALL THE TESTIMONY
23 THAT YOU WILL HEAR IN CONNECTION WITH THIS MATTER AND THERE ARE
24 ONLY TWO THINGS THAT REMAIN TO BE DONE. THOSE ARE THE ARGUMENTS
25 OF COUNSEL AND INSTRUCTIONS ON THE LAW BY THE COURT. HOWEVER, IT

1 IS 5:00 IN THE AFTERNOON AND THOSE WILL TAKE AN HOUR AND HOUR-AND-
2 A-HALF AND THAT MEANS THAT IT WOULD BE 6:00 TO 6:30 BEFORE YOU
3 WOULD EVER GET THIS CASE AND SO I THINK THE PROPER THING TO DO IS
4 TO RECESS FOR THE AFTERNOON, ALLOW YOU TO GO ABOUT YOUR
5 BUSINESS AND COME BACK TOMORROW MORNING REFRESHED AND READY
6 TO HEAR THE COUNSEL'S ARGUMENTS AND MY INSTRUCTIONS AFTER WHICH
7 YOU WILL BE GIVEN AN OPPORTUNITY TO GO TO YOUR JURY ROOM AND
8 DELIBERATE YOUR VERDICT.

9 I WILL TELL YOU NOW AS I DID AT THE FIRST OF THIS CASE THAT OVER
10 THIS RECESS DO NOT DISCUSS THE CASE AMONG YOURSELVES. IT WOULD
11 BE IMPROPER FOR YOU TO DISCUSS THIS CASE AMONG YOURSELVES WHEN
12 YOU ARE REASSEMBLING IN THE JURY ROOM. ALSO DO NOT ALLOW ANYONE
13 TO TALK TO YOU ABOUT THE CASE. IF ANYONE SHOULD APPROACH YOU OR
14 TRY TO TALK TO YOU ABOUT THE CASE OVER THE EVENING RECESS, GET
15 THEIR NAME AND THEIR DESCRIPTION, REPORT IT TO ME AND I WILL DEAL
16 WITH THEM. AND ALSO DO NOT DISCUSS IT WITH YOUR FAMILY OR YOUR
17 FRIENDS WHEN YOU SEE THEM OVER THE EVENING RECESS. THAT -- YOU'VE
18 GOT TO DECIDE THE CASE BASED UPON WHAT YOU HEAR IN THE
19 COURTROOM AND NOT ON THE BASIS OF WHAT ANY ONE ELSE MIGHT SAY.
20 FINALLY, MS. WATSON, SINCE YOU HAPPEN TO BE SITTING IN THE FORELADY
21 SEAT, YOU ARE NOW THE FORELADY.

22 MS. WATSON: THANK YOU.

23 THE COURT: SO, I WILL MAKE YOU THE FORELADY OF THIS JURY AND,
24 OF COURSE, THE ALTERNATE WILL SIT THERE. MS. WATSON WILL SIT HERE
25 DURING THE REMAINDER OF THE TRIAL. WITH THOSE ADMONITIONS, THEN, I

1 AM GOING TO EXCUSE YOU AND ALLOW YOU TO GO TO YOUR HOMES AND
2 FAMILIES AND PLEASE REPORT BACK AT 10:00 TOMORROW MORNING
3 INSTEAD OF 9:30. I HAVE SOME THINGS THAT I HAVE TO DO AT 9:30, I WILL BE
4 HERE BY 9:00 OR A FEW MINUTES AFTER, BUT I DO NOT WANT TO KEEP YOU
5 WAITING IN THE JURY ROOM UNNECESSARILY. SO, IT MAY BE THAT IT WOULD
6 BE BUSY IN THE COURTROOM AND THEY KEEP YOU OUT IN THE HALL FOR A
7 FEW MINUTES, BUT YOU WILL NOT NEED TO REPORT UNTIL 10:00 AND SO IF
8 YOU WOULD, PLEASE BE IN THE JURY ROOM TOMORROW MORNING AT 10:00
9 AND WE WILL BE READY TO GO FORWARD. THANK YOU. WITH THOSE
10 ADMONITIONS THEN, YOU ARE EXCUSED FOR THE EVENING. HAVE A
11 PLEASANT EVENING.

12 (JURY OUT AT 5:06 P.M.)

13 THE COURT: ALL RIGHT. COUNSEL, THEN, WE WILL BE AT RECESS
14 UNTIL 10:00 TOMORROW MORNING ON THIS CASE. COURT PERSONNEL UNTIL
15 9:30. I DO HAVE SOME MATTERS THAT I AM GOING TO HANDLE IN THE
16 MORNING AT 9:30, BUT THIS, WE WILL RESUME ON THIS MATTER TOMORROW
17 MORNING AT 10:00. THANK YOU.

18 **MORNING 5/28 CLOSINGS AND CHARGE OF THE COURT**

19 THE COURT: ALL RIGHT, BACK ON THE RECORD WITH REGARD TO THE
20 MATTER OF THE STATE VERSUS WAYNE MCLAUGHLIN. MISTER MCLAUGHLIN
21 IS PRESENT WITH HIS COUNSEL, MISTER WILSON AND MISTER JEPERTINGER
22 IS HERE ON BEHALF OF THE STATE. I'M ADVISED THAT ALL THE JURORS ARE
23 HERE. COUNSEL, STEP UP HERE JUST A MINUTE AND LET ME SHOW YOU
24 THIS, MISTER WILSON. I'VE SHOWN IT TO MISTER JEPERTINGER, BUT JUST
25 WANT TO MAKE SURE YOU'RE OKAY WITH IT.

1 **MR. WILSON:** YES SIR, YOUR HONOR.

2 **THE COURT:** THE REASON FOR SETTING IT UP THAT WAY WAS
3 BECAUSE IT IS ACTUALLY COUNTS THREE AND FOUR OF THE INDICTMENT
4 AND I DIDN'T WANT TO PUT ON THERE COUNTS THREE AND FOUR AND MAKE
5 THE JURY WONDER WHAT WERE COUNTS ONE AND TWO.

6 **MR. WILSON:** I UNDERSTAND.

7 **THE COURT:** ALL RIGHT. ANYTHING BEFORE WE BRING THE JURY IN
8 MISTER JEPERTINGER?

9 **MR. JEPERTINGER:** NO, SIR.

10 **THE COURT:** MISTER WILSON?

11 **MR. WILSON:** NO, SIR, YOUR HONOR.

12 **THE COURT:** ALL RIGHT. BRING THE JURY IN.

13 (JURY IN AT 10:02 A.M.)

14 **THE COURT:** ALL RIGHT. GOOD MORNING, LADIES AND GENTLEMEN
15 AND THANK YOU FOR YOUR PROMPTNESS IN BEING BACK HERE AND WE ARE
16 NOW READY TO PROCEED. WE HANDLED SOME OTHER MATTERS IN COURT
17 THIS MORNING AT 9:30, BUT WE ARE NOW READY TO PROCEED WITH THIS
18 CASE.

19 AS I TOLD YOU YESTERDAY BEFORE WE RECESSED, YOU HAVE NOW
20 HEARD ALL OF THE TESTIMONY IN EVIDENCE IN THIS CASE AND THERE ARE
21 ONLY TWO THINGS THAT REMAIN TO BE DONE. THOSE ARE THE ARGUMENTS
22 OF COUNSEL OR THE CLOSING SUMMATIONS OF COUNSEL AND THE
23 INSTRUCTIONS ON THE LAW BY THE COURT. I WILL TELL YOU NOW AS I DID
24 YESTERDAY, THAT THE ARGUMENTS OF COUNSEL ARE NOT EVIDENCE IN THIS
25 CASE. THEY ARE SIMPLY THE LAWYER'S VIEWS OF WHAT THEY THINK THE

CLOSING ARGUMENT - MISTER JEPERTINGER

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1 EVIDENCE SHOWS. YOU WILL DECIDE THIS CASE BASED UPON THE
2 EVIDENCE THAT YOU HAVE HEARD FROM THIS WITNESS STAND PLUS ANY
3 EXHIBITS THAT HAVE BEEN INTRODUCED INTO EVIDENCE THAT YOU WILL BE
4 ALLOWED TO TAKE TO YOUR JURY ROOM WITH YOU. AS I SAY, THE LAWYER'S
5 ARGUMENTS ARE NOT EVIDENCE BUT THE LAWYERS DO HAVE THE RIGHT,
6 NOT ONLY THE RIGHT, BUT THE DUTY ON BEHALF OF THEIR CLIENT TO
7 ADDRESS YOU NOW ON THEIR VIEWS OF WHAT THEY THINK THE EVIDENCE
8 SHOWS. WHEN THEY HAVE CONCLUDED THAT, I WILL INSTRUCT YOU ON THE
9 LAW OF SOUTH CAROLINA AS IT PERTAINS TO THE FACTS OF THIS CASE AS
10 YOU MAY FIND THOSE FACTS TO BE AND YOU WILL BE ALLOWED TO GO TO
11 YOUR JURY ROOM TO DELIBERATE YOUR VERDICT. YOU WILL HEAR FIRST
12 FROM MISTER JEPERTINGER ON BEHALF OF THE STATE AND THEN MISTER
13 WILSON ON BEHALF OF THE DEFENDANT. MISTER JEPERTINGER.

14 MR. JEPERTINGER: IF IT PLEASES THE COURT, YOUR HONOR.

15 THE COURT: YES, SIR.

16 CLOSING ARGUMENT OF MISTER JEPERTINGER:

17 COUNSEL. FIRST OF ALL, GOOD MORNING MADAM FORELADY, LADIES
18 AND GENTLEMEN OF THE JURY. I HAVE TWO SONS AND THEY ACCUSE ME
19 AND RIGHTFULLY SO -- THEY SAY, "DAD -- WHENEVER I DO ANYTHING
20 MECHANICAL -- "YOU ALWAYS FIND THE HARD WAY OF DOING THINGS." THAT
21 STATEMENT OF MEASURING TWICE AND CUTTING ONCE I THINK WAS SET
22 OUT FOR ME, BECAUSE I CAN'T TELL YOU HOW MANY TIMES I'VE HAD TO
23 MEASURE FIFTEEN TIMES AND CUT ABOUT SIXTEEN TIMES. AND THEY
24 THROW OUT THIS ACCUSATION, RIGHTFULLY SO, AS I TOLD YOU, "DAD,
25 YOU'VE GOT TO USE YOUR COMMON SENSE." AND IT'S SO TRUE. WHAT'S

1 EMBARRASSING IS, MY FATHER WAS A CARPENTER AND MY GRANDFATHER
2 WAS A CARPENTER AND I DID NOT INHERIT ANY OF THOSE SKILLS. MY OLDER
3 BROTHER GOT ALL THE MECHANICAL ABILITY IN THE FAMILY. COMMON
4 SENSE. ABRAHAM LINCOLN SAID, "IF YOU HAVE COMMON SENSE, THAT'S THE
5 ONLY SENSE YOU NEED." I'M GOING TO ASK YOU AND CHALLENGE YOU TO
6 USE YOUR COMMON SENSE TODAY WHEN YOU WEIGH AND EVALUATE THE
7 EVIDENCE IN THIS CASE.

8 FIRST OF ALL, I'M GOING TO DISCUSS WITH YOU WHAT I THINK IS THE
9 PERTINENT LAW, IF YOU WILL GIVE ME THAT OPPORTUNITY. ACTUALLY,
10 WHAT WE ARE TALKING ABOUT HERE IS POSSESSION OF DRUGS WITH THE
11 INTENT TO DISTRIBUTE, BOTH FOR COCAINE AND FOR CRACK. LET ME JUST
12 STOP A MOMENT HERE AND SAY THAT WHAT YOU SAW AND WHAT YOU WILL
13 SEE IN YOUR JURY ROOM AND IN THE PHOTOGRAPHS IS BOTH COCAINE AND
14 CRACK. NOW, I LOVE OLD MOVIES AND I'M FAMILIAR WITH DASHIELL
15 HAMMETT'S THE MALTESE FALCON WITH HUMPHREY BOGART AND PETER
16 LORRE AND MARY ASTER. BOGART TELLS ASTER, "YOU KNOW, THAT
17 MALTESE FALCON, THAT'S THE STUFF THAT DREAMS ARE MADE OF." WELL,
18 THIS IS THE STUFF THAT NIGHTMARES ARE MADE OF. AND THERE IS ONLY
19 ONE REASON YOU HAVE THIS TYPE STUFF AND IT'S FOR PROFIT OR TO GET
20 HIGH IF YOU ARE A USER. BUT THERE IS NO ALLEGATION OF USE IN THIS
21 CASE, IT'S MERELY FOR PROFIT.

22 NOW, AS AN ELEMENT OF POSSESSION. THERE ARE TWO TYPES OF
23 POSSESSION AND THE COURT IS GOING TO DISCUSS THIS WITH YOU IN A
24 LITTLE BIT. THERE'S SOMETHING CALLED ACTUAL POSSESSION UNDER THE
25 LAW. THAT IS, FOR EXAMPLE, I HAVE THIS BOOK ON ME. I'M ACTUALLY

CLOSING ARGUMENT - MISTER JEPERTINGER

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1 POSSESSING IT. IT IS UNDER MY PHYSICAL CONTROL, IT'S ON MY PERSON.
2 WELL, THAT DOES NOT APPLY IN THIS CASE. THERE'S ANOTHER TYPE OF
3 POSSESSION UNDER THE LAW. IT'S CALLED CONSTRUCTIVE POSSESSION.
4 IT'S WHEN A PERSON HAS DOMINION OR CONTROL OR THE RIGHT TO
5 EXERCISE DOMINION OR CONTROL OVER EITHER THE OBJECT OR THE
6 PREMISES, OR THE PREMISES, UPON WHICH THE OBJECT IS LOCATED. AND
7 POSSESSION MAY BE INFERRED FROM THE CIRCUMSTANCES, IT MAY BE
8 IMPUTED TO ANY ONE WHO HAS THE POWER AND INTENT TO CONTROL THE
9 DISPOSITION AND THE USE OF THE OBJECT. IN OTHER WORDS, POSSESSION
10 OF AN OBJECT OR PREMISES GIVES RISE -- AGAIN, HERE'S ANOTHER LEGAL
11 WORD -- TO AN INFERENCE, THAT YOU INFER SOMETHING. THAT THE
12 PERSON CHARGED HAS BOTH THE POWER AND INTENT TO CONTROL THE
13 USE AND DISPOSITION OF THE OBJECT. ACTUAL KNOWLEDGE OF THE
14 PRESENCE OF A CONTROLLED SUBSTANCE IS STRONG EVIDENCE OF INTENT
15 TO CONTROL ITS DISPOSITION OR USE.

16 NOW, THE SECOND HALF OF THE CHARGE IS INTENT TO DISTRIBUTE.
17 THERE IS, WHAT THE JUDGE WILL DESCRIBE TO YOU, A PERMISSIVE
18 INFERENCE THAT ANY ONE THAT HAS MORE THAN ONE GRAM OF CRACK
19 COCAINE, YOU MAY INFER THAT HE HAS THE INTENT TO DISTRIBUTE. HERE,
20 THERE WERE 8.67 GRAMS OF CRACK, AS THE SLED CHEMIST TESTIFIED TO.
21 HE WILL ALSO TELL YOU LIKEWISE, FOR COCAINE IF THERE ARE OVER TEN
22 GRAINS, THAT THAT SAME INFERENCE APPLIES. AND IN THIS CASE, THE SLED
23 CHEMIST TESTIFIED THAT THERE WERE 54.78 GRAINS. BUT I DON'T JUST
24 WANT YOU TO LOOK AT THE WEIGHT. USE YOUR COMMON SENSE. USE
25 YOUR COMMON SENSE AS TO HOW THIS MATERIAL WAS PACKAGED. THOSE

1 WERE INDIVIDUAL BAGS. DID YOU HEAR WHAT BRIAN WALSH TESTIFIED TO?
2 HOW THAT NORMALLY, HOW THESE THINGS ARE USUALLY DISTRIBUTED? IF
3 THEY WANT \$40.00 WORTH OF COCAINE AND CRACK YOU DON'T HAVE TO BAG
4 IT, THEY'RE BAGGED INDIVIDUALLY. AND I WOULD SAY THAT THIS CASE IS
5 MORE THAN JUST A POSSESSION TYPE OF CASE WHERE A PERSON IS GOING
6 TO USE IT FOR HIS OWN PERSONAL USE FOR THE VERY REASON, THAT WHAT
7 DID BRIAN WALSH SAY? WE DIDN'T FIND ANY STRAWS TO USE COCAINE.
8 DIDN'T FIND ANY PIPES TO SMOKE CRACK. THERE WERE NO IMPLEMENTS
9 THERE FOR PERSONAL USE. THERE WAS A DIGITAL SCALE. YOU CAN SEE IT
10 IN ONE OF THE PHOTOGRAPHS AND WHAT IS THAT DIGITAL SCALE USED
11 FOR? WEIGHING OUT THE DRUGS TO READY FOR SALE.

12 NOW, THE KEY ELEMENT, OBVIOUSLY, THAT YOU HAVE TO ANSWER IS
13 WHO WAS IN CONTROL OF THOSE PREMISES? USE YOUR COMMON SENSE. I
14 KNOW THAT MISTER WILSON WILL GET UP HERE -- AND THIS IS THE LAST
15 OPPORTUNITY I WILL HAVE TO SPEAK TO YOU. MISTER WILSON WILL
16 FOLLOW ME -- AND HE BROUGHT UP DURING CROSS EXAMINATION, THE
17 NAMES LAQUELLA JORDAN AND LAVERNE WILLIAMS AND LEE NELSON, JOE
18 PARNELL AND SONYA MIXON AND IVY MCGANEY. ALL THOSE NAMES AND HE
19 ASKED, "DO YOU KNOW THEY WERE EMPLOYEES THERE AS WELL AT W.T.'S
20 LOUNGE?" FOLKS, THIS STUCK OUT IN MY MIND. IF THEY WERE EMPLOYEES,
21 IF THEY WERE IN CONTROL OF THAT SHOP, CAN I ASK YOU A QUESTION?
22 WHY WEREN'T ANY OF THOSE PEOPLE THERE WHEN THEY EXECUTED THAT
23 VALID SEARCH WARRANT FOUNDED ON PROBABLE CAUSE? WHY DIDN'T
24 THEY FIND ANY OF THOSE OTHER INDIVIDUALS THERE? PLAIN AND SIMPLE.
25 THE PERSON THAT RAN THE STORE WAS ON THE OUTSIDE OF THAT STORE.

CLOSING ARGUMENT - MISTER JEPERTINGER

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1 WHAT DID WALLACE SAY? ON AT LEAST TEN TO FIFTEEN OCCASIONS, WHO
2 DID HE SEE BEHIND THE COUNTER THERE WHEN HE WENT TO DEAL WITH
3 OTHER PEOPLE AT W.T.'S LOUNGE? WAYNE MCLAUGHLIN. NO ONE ELSE.
4 MISTER WILSON WILL SAY, HEY, BUT WAIT A MINUTE, THOUGH. WAIT A
5 MINUTE. THERE WAS A BEER AND WINE LICENSE THAT I SHOWED REUBEN
6 BUTLER THAT WAS IN THE NAME OF FRANCES MARTIN. FRANCES MARTIN
7 WASN'T THERE.

8 YOU KNOW, I THOUGHT ABOUT THIS HAVING THE NAME OF A PIECE OF
9 PROPERTY IN SOMEONE ELSE'S NAME OR A LICENSE IN SOMEONE ELSE'S
10 NAME. THAT OLDEST SON OF MINE THAT ACCUSES ME OF NOT HAVING ANY
11 COMMON SENSE, YOU KNOW, HE'S DRIVING A TRUCK THIS MORNING. IT'S
12 BASICALLY HIS TRUCK. HE PAYS FOR THE GAS AND I'M RESPONSIBLE FOR
13 BUYING THAT INSURANCE. THAT'S COMMON. BUT YOU KNOW WHO'S NAME
14 THAT TRUCK IS IN? IF YOU WENT DOWN TO THE MOTOR VEHICLE
15 REGISTRATION TODAY? JOHN JEPERTINGER. DO YOU KNOW WHO'S NAME
16 THE INSURANCE IS IN? JOHN JEPTERTINGER. IT ISN'T IN MY SON MATTHEW'S
17 NAME, IT'S IN MY NAME. WHAT'S IN THAT TRUCK IS HIS. IT HAPPENS ALL THE
18 TIME, LADIES AND GENTLEMEN. YOU SAW AND YOU HEARD REUBEN BUTLER
19 AND YOU WILL SEE THE EVIDENCE THAT THAT PROPERTY WAS DEEDED AS
20 HE SAID TO WAYNE MCLAUGHLIN AND HIS BROTHER GREGORY MCLAUGHLIN
21 AND *ET AL*. THAT MEANS AND OTHERS IN LATIN. AND *ET AL* GREGORY
22 MCLAUGHLIN. YOU DIDN'T SEE GREGORY MCLAUGHLIN AT THAT STORE.
23 FOLKS, THE ONLY PERSON THAT RAN THOSE PREMISES WAS THE
24 DEFENDANT IN THIS CASE. AND DO YOU KNOW WHO KNOWS THAT MORE
25 THAN ANY BODY ELSE IN THIS COURTROOM TODAY? IT'S WAYNE

1 MCLAUGHLIN. BEFORE HE HAD TIME TO REFLECT, BEFORE HE HAD TIME TO
2 THINK OF AN ANSWER WHEN THEY EXECUTED THAT SEARCH WARRANT,
3 WHAT WAS THE FIRST THING OUT OF HIS MOUTH? THAT YOU HEARD FROM
4 THREE DIFFERENT OFFICERS, ONE RUNNING TO BE THE SHERIFF OF
5 WILLIAMSBURG COUNTY AND TO HIS CREDIT, WHEN HE DIDN'T REMEMBER
6 SOMETHING HE SAID, "I DON'T REMEMBER. I CAN'T TRUTHFULLY TESTIFY TO
7 THAT OF MY OWN KNOWLEDGE." WHAT DID HE REMEMBER HIM SAYING AS
8 WELL AS NEIL ROUSE AND BRIAN WALLACE? WHEN THEY EXECUTED THE
9 SEARCH WARRANT FOR DRUGS, BRIAN WALLACE SAID WHAT WAS SAID BY
10 WAYNE MCLAUGHLIN. HE SAID, "IT'S IN THE KITCHEN ON THE SHELF OR THE
11 COUNTER." YOU KNOW, USE YOUR COMMON SENSE LADIES AND
12 GENTLEMEN, USE YOUR COMMON SENSE. IF HE WAS JUST THE LESSOR, THE
13 LEASE HOLDER, AND HE DIDN'T RUN THAT BUSINESS, WHY WOULD HE MAKE
14 THAT TYPE STATEMENT, "IT'S IN THE KITCHEN ON THE SHELF ON THE
15 COUNTER." WOULDN'T YOU THINK THAT UNDER THE STRESS OF THE
16 CIRCUMSTANCES THAT HE WOULD DO WHAT MOST OF US WOULD DO IF WE
17 ARE NOT TO BLAME FOR SOMETHING, "HEY, I DON'T KNOW WHAT'S IN HERE. I
18 JUST RENT THE PROPERTY FROM SOMEONE." THAT'S THE MOST UNUSUAL
19 THING HE COULD HAVE SAID. OH, THE POLICE JUST MADE THAT UP, HE
20 DIDN'T SAY THAT. "OH, THE POLICE JUST MADE THAT UP. HE DIDN'T SAY
21 THAT." WELL, IF THEY WERE GOING TO CONSPIRE TO GET HIM TO SAY IT,
22 THEN WHY DIDN'T THEY SAY, "WELL, I'VE BEEN SELLING CRACK OUT OF THIS
23 LOCATION FOR DECADES. YOU JUST HAVEN'T CAUGHT ME." WHY DON'T YOU
24 ADD ON. IT HAS THE AIR AND RING OF CREDIBILITY. BEFORE HE HAD TIME
25 TO SIT DOWN AND REFLECT. YOU KNOW WHAT THEY CALL THAT FOLKS?

CLOSING ARGUMENT - MISTER JEPERTINGER

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1 THEY CALL IT CONSCIOUSNESS OF GUILT. I HAVE BEEN CAUGHT WITH MY
2 HAND IN THE COOKIE JAR AND THEY ARE GOING TO FIND IT ANYHOW, WHY
3 SHOULD I ALLOW THEM TO WRECK THIS PLACE THAT IS MY PROPERTY.
4 "WHAT YOU'RE LOOKING FOR IS IN THERE" AND THEY DID FIND IT EXACTLY
5 WHERE HE SAID IT WOULD BE.

6 NOW, MISTER WILSON IS HOPING THAT ALL OF YOU WATCH C-S-I
7 BECAUSE HE HAS STRESSED, I DON'T KNOW HOW MANY TIMES, WHY DIDN'T
8 YOU SEARCH FOR FINGERPRINTS? NOW, I CAN'T TELL YOU TRUTHFULLY. WE
9 DIDN'T HAVE AN EXPERT COME IN FROM SLED TO TESTIFY THAT
10 FINGERPRINTS CAN BE LIFTED FROM PLASTIC GLASSINE BAGS. I CAN'T TELL
11 YOU THAT MYSELF. I DON'T KNOW. BUT YOU KNOW THE BASIC PREMISE OF
12 ALL THESE T.V. SHOWS THAT YOU SEE, WHEN THEY COME AND START
13 LOOKING FOR THINGS LIKE THAT, IT'S A WHODONIT. YOU DON'T KNOW WHO
14 DID IT TO BEGIN WITH. THEY ARE NORMALLY TRYING TO CATCH A MURDERER
15 OR A RAPIST AND SO THEY START LOOKING TRYING TO FIND EVIDENCE TO
16 GET A SUSPECT AND THAT'S THE PURPOSE FOR TRYING TO GET THAT TYPE
17 OF EVIDENCE, WHEN YOU DON'T KNOW WHO DID THE CRIME. BUT THAT WAS
18 NOT NECESSARY IN THIS CASE. 1) THEY KNEW HE RAN THE STORE. 2) OUT
19 OF HIS OWN MOUTH, ONCE AGAIN, "IT'S IN THE KITCHEN ON THE SHELF."
20 THERE WAS NO NEED TO GO TRYING TO FIND OUT WHO DID IT. HE ADMITTED
21 IT. HE CONFESSED. HIS OWN WORDS CONDEMNED HIM. MISTER WILSON
22 SAID, "WELL, YOU'RE NOT GOING TO GET A COMPLETE PICTURE. THEY
23 SHOULD HAVE DONE IT ANYHOW. THEY SHOULD HAVE KNOWN BETTER."

24 YOU KNOW, I'VE LOOKED AT THAT PICTURE OF GENERAL FRANCIS
25 MARION ON THAT WALL EVERY TIME I COME TO THIS COURTROOM. I DON'T

1 KNOW IF IT'S TO KEEP US HUMBLE, BECAUSE WE'VE GOT A GOOD VIEW OF
2 THAT HORSE'S BEHIND. I DON'T KNOW IF THAT'S FOR LAWYERS OR JUDGES,
3 BUT I'M TELLING YOU, YOU KNOW, IF EVERYTHING WAS PAINTED ON THAT
4 HORSE EXCEPT ITS RIGHT REAR LEG, FOLKS, I COULD STILL TELL YOU
5 FRANCIS MARION IS ON A HORSE, BECAUSE I'VE GOT THE MANE, I'VE GOT THE
6 TAIL, I'VE GOT THE SADDLE, I'VE GOT THE REINS. NO, IT'S NOT A COMPLETE
7 PICTURE, BUT SOMETIMES YOU DON'T NEED A COMPLETE PICTURE WHEN
8 THE EVIDENCE IS CLEAR, WHEN THE EVIDENCE SHOWS BEYOND A
9 REASONABLE DOUBT THAT THE PERSON IS GUILTY AS IN THIS CASE.

10 THE NEXT ASPECT THAT WE LOOK AT IN THIS CASE, THE KEYS. TO
11 TELL YOU THE TRUTH THEY ARE WHAT WE WOULD CALL A RED HERRING,
12 REALLY, INCONSEQUENTIAL BUT FOR THE FACT THAT IF YOU HAVE KEYS TO A
13 LOCATION, YOU PROBABLY HAVE AN INTEREST IN THAT LOCATION. NOW,
14 WHAT'S INTERESTING ABOUT THE KEY ASPECT IS, THAT IT REALLY DOESN'T
15 MATTER IF DEBORAH CALDWELL HAD THE KEYS OR IF WAYNE MCLAUGHLIN
16 HAD THE KEYS BECAUSE ONCE AGAIN, DEBORAH CALDWELL WASN'T THERE
17 AT THE STORE. IN FACT, OF ALL THE NAMES HE LISTED, LAQUILLA LAVERNE
18 WILLIAMS, LEE NELSON, VERNELLE, SONYA MASON, FRANCIS MARTIN, IVAN
19 MCGANEY. HE NEVER LISTED DEBORAH CALDWELL DURING HIS CROSS
20 EXAMINATION OF NEIL ROUSE AS EMPLOYEES OF THAT STORE WHO WOULD
21 HAVE ACCESS TO IT. WHAT DID YOU LEARN FROM NEIL ROUSE? HE SAID
22 THIS: FIRST, I TOLD HIM WE ARE GOING TO GET THE FIRE DEPARTMENT TO
23 BUST DOWN THE DOOR. I DON'T HAVE A KEY. NEXT THING YOU KNOW, THIS
24 CHRYSLER, RED CHRYSLER THAT CALDWELL WAS DRIVING. WE KNOW THE
25 RED CHRYSLER IS MCLAUGHLIN'S CAR FROM ROUSE AND WALLACE. THE

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1 KEYS ARE PRODUCED AND THE DOOR IS OPENED AND IT REALLY DOESN'T
2 MATTER IF HIS HANDCUFFS WERE RELEASED OR THEY WERE HERE AND
3 THEY RELEASED THEM OR THEY WERE IN FRONT AND HE OPENED THE DOOR
4 AND IT REALLY DOESN'T MATTER IF NEIL ROUSE TOOK THE KEYS AND
5 OPENED IT. THAT DOESN'T MATTER. THE FACT IS HE GOT THE KEYS. HE
6 DIDN'T SAY, "WO HO, FRANCES MARTIN, WHO GOT THAT BEER AND WINE
7 PERMIT, SHE'S THE LESSEE. I GAVE HER THE KEYS." NONE OF THAT. I ASK
8 YOU TO USE YOUR COMMON SENSE, FOLKS. THIS ISN'T VERY HARD TO THIS
9 EXTENT, IT IS HARD TO MAKE A DECISION ABOUT ONE OF YOUR FELLOW
10 CITIZENS THAT HE'S TAKEN A LEGITIMATE BUSINESS AND USING IT AS A
11 FRONT FOR DRUG DISTRIBUTION. BUT, FOLKS, WHETHER IT'S HARD OR NOT,
12 IT'S THE TRUTH AND I WOULD ASK YOU TO WEIGH THE EVIDENCE, USE YOUR
13 COMMON SENSE AND COME TO THE ONLY CONCLUSION THAT IS
14 REASONABLE IN THIS CASE, THAT WAYNE MCLAUGHLIN POSSESSED BOTH
15 CRACK AND COCAINE WITH THE INTENT TO DISTRIBUTE THEM. THANK YOU.

16 THE COURT: MISTER WILSON?

17 CLOSING ARGUMENT BY MISTER WILSON:

18 MADAM FORELADY, LADIES AND GENTLEMEN, I SAID TO YOU AT THE
19 OUTSET OF THIS TRIAL THAT WAYNE MCLAUGHLIN IS NOT GUILTY. HE IS
20 STILL NOT GUILTY. HE HAS PLED NOT GUILTY BEFORE THIS COURT. WHEN
21 THAT OCCURS, THEN THE BURDEN THEN RESTS WITH THE STATE OF SOUTH
22 CAROLINA TO PROVE BEYOND A REASONABLE DOUBT THAT THE ACCUSED IS
23 GUILTY OF THE CRIME FOR WHICH HE OR SHE HAS BEEN CHARGED. ALL THE
24 YELLING IN THE WORLD WON'T CHANGE THAT. ALL THE SCREAMING, ALL OF
25 THE PLATITUDES WON'T CHANGE THAT. HE IS STILL NOT GUILTY AS WE SIT

1 HERE, AS WE SPEAK. HIS HONOR WILL CHARGE YOU THAT THAT IS THE LAW.

2 I TOLD YOU AT THE OUTSET, IT IS TRULY EXTREMELY DIFFICULT TO
3 PROVE THAT YOU DID NOT DO SOMETHING. IF YOU ARE AT HOME AT THREE
4 O'CLOCK IN THE MORNING, SOMEBODY GETS SHOT IN MYRTLE BEACH ON THE
5 BOULEVARD AND YOU HAPPEN TO BE HOME ALONE, AND THEY SAY, OH,
6 RALPH WILSON SHOT HIM AT THREE O'CLOCK IN THE MORNING DOWN ON THE
7 BOULEVARD. HOW IN THE WORLD IF I'M HOME BY MYSELF, HOW IN THE
8 WORLD DO I PROVE THAT I DIDN'T DO IT? I'VE GOT NO WITNESSES, I'M THERE
9 ALONE. THEY SAY I DID IT. SO, DOES THAT MEAN I'M AUTOMATICALLY GUILTY
10 SIMPLY BECAUSE THEY SAY I DID IT? WHAT KIND OF SYSTEM OF JUSTICE
11 WOULD THAT BE? SO, INSTEAD THE LAW PROVIDES THAT WHEN THE
12 PROSECUTORS ELECT, CHOOSE, TO CHARGE YOU, THEN THEY MUST BRING
13 IN EVIDENCE, NOT INNUENDOS, NOT SUGGESTIONS, NOT SURMISE, OR WILL
14 NOT USE YOUR COMMON GOOD SENSE AND LET'S MAKE UP SOMETHING WITH
15 THAT. NO. EVIDENCE. PROOF.

16 THEY BROUGHT YOU A LOT OF STUFF, WHAT THEY HAVEN'T BROUGHT
17 YOU IS PROOF. NOT ONE SINGLE WITNESS TOOK THIS STAND AND SAID THAT
18 THOSE DRUGS BELONG TO WAYNE MCLAUGHLIN. HOW DO I KNOW THAT
19 THEY BELONGED TO WAYNE MCLAUGHLIN? I SAW HIM WITH THEM, I SAW HIM
20 PUT THEM THERE, I SAW HIM CONTROLLING THEM, I SAW THEM USING THEM, I
21 SAW HIM DOING WHATEVER WITH IT. I SAW HIM EXERCISING AUTHORITY AND
22 CONTROL OVER THOSE DRUGS. NOT ONE SINGLE WITNESS. NOT ONE.
23 WHAT WE HAVE HERE IS A RUSH TO JUDGMENT.

24 REMEMBER. THE SOLICITOR MAKES A BIG DEAL. HE SAYS, "OH WELL,
25 YOU KNOW MS. CALDWELL, SHE WASN'T THERE AND MS. FRANCES, SHE

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1 WASN'T THERE. WELL, WAYNE WASN'T THERE EITHER. LEST WE FORGOT,
2 HE WAS NOT THERE. THEY PICKED HIM UP THREE TO FOUR MILES AWAY AND
3 BROUGHT HIM THERE. HE DIDN'T COME THERE ON HIS OWN. HE WASN'T
4 THERE IN THE STORE WITH THE DRUGS. THEY BROUGHT HIM THERE AND
5 DON'T YOU THINK - AND IS WHY I ASKED ALL THOSE QUESTIONS - DON'T YOU
6 THINK IT'S PECULIAR THAT THEY WOULD BRING HIM FROM THREE MILES
7 AWAY, FIND HIM AND BRING HIM THERE AND THEN THEY SAY THEY SENT HIM
8 IN FIRST. WHY DO YOU THINK THAT IS? BECAUSE THEY WANT HIM TO BE
9 THERE WHEN THOSE DRUGS ARE THERE. THAT WAY THEY CAN SAY THEY
10 MUST BE HIS BECAUSE HE WAS THERE AND THESE OTHER PEOPLE, THEY
11 WEREN'T THERE. IT'S GOTTA BE OLD WAYNE BECAUSE HE WAS THE ONLY
12 ONE THERE. THESE OTHER EIGHT PEOPLE WHO WORKED THERE, WHO HAD
13 KEYS, THEY WEREN'T THERE. YOU KNOW WHY THEY WEREN'T THERE?
14 BECAUSE THE POLICE DIDN'T GO OUT AND GET THEM AND TAKE THEM BACK
15 THERE LIKE THEY DID WAYNE.

16 LET'S TALK ABOUT MS. CALDWELL FOR A MINUTE. AND THOSE KEYS
17 ARE IMPORTANT. THE SOLICITOR SAID, "OH WELL, YOU KNOW I DON'T KNOW
18 WHAT THE BIG DEAL IS ABOUT KEYS." WELL, I'LL TELL YOU WHY THEY ARE
19 IMPORTANT. BECAUSE WHAT HE'S STANDING HERE TELLING YOU IS THAT
20 THE FACT THAT WAYNE HAD THOSE KEYS MEANS HE HAD ACCESS AND
21 CONTROL AND OWNERSHIP OF THAT BUILDING. THAT'S WHY IT'S IMPORTANT.
22 THAT IS WHY IT IS IMPORTANT TO DETERMINE WHERE THOSE KEYS CAME
23 FROM. WHICH NOBODY COULD TELL US. NOT ONE SINGLE WITNESS COULD
24 SAY HOW HE GOT THOSE KEYS OTHER THAN TO SAY, "WELL WAYNE, YOU
25 KNOW, WE HAD TO GET THEM FROM WAYNE." WELL, HOW DID HE GET THEM?

1 HE'S HANDCUFFED, HE'S UNDER ARREST AND HANDCUFFED. HOW IN THE
2 WORLD COULD HE PRODUCE THOSE KEYS? WITH SIX OFFICERS, NOBODY
3 COULD TELL US WHICH ONE OF THEM, AND SO THEY SAY ALL SIX OF THEM
4 HAD HIM IN CUSTODY AND CONTROL. SO, WITH SIX OFFICERS HAVING HIM IN
5 CUSTODY AND CONTROL, DO YOU HONESTLY BELIEVE FOR ONE SECOND
6 THAT HE HAD A POCKETFUL OF KEYS? AND HE'S UNDER ARREST AND
7 HANDCUFFED? NOT ON YOUR LIFE. IF THAT AIN'T ENOUGH, FOLKS, TALK
8 ABOUT A RUSH TO JUDGMENT. DID YOU KNOW THAT NOT A SINGLE ONE OF
9 THESE OFFICERS, NOT A SINGLE ONE OF THEM, KNEW THAT THE ALCOHOL
10 AND BEVERAGE LICENSE WAS ISSUED TO SOMEBODY ELSE. THAT ALL THESE
11 PEOPLE ARE WORKING IN THERE AND THAT THERE ARE ALL THESE KEYS
12 THAT ALL THESE PEOPLE HAVE AND NOT A SINGLE ONE OF THEM KNEW
13 THAT THIS BUSINESS LICENSE, THE BUSINESS LICENSE FOR THIS BUSINESS
14 IS IN SOMEBODY ELSE'S NAME AND HAS BEEN FOR YEARS. DO YOU THINK
15 THIS IS UNIMPORTANT ABOUT WHO OWNS AND CONTROLS WHAT GOES ON IN
16 IT OUT OF THAT CLUB? AND WHAT THEY ARE SAYING TO YOU IS, "LOOK, WE
17 DON'T HAVE ANY PROOF, JUST USE YOUR COMMON SENSE AND IMAGINE HE
18 MUST HAVE DONE IT BECAUSE WE ARRESTED HIM. SO, HE MUST HAVE DONE
19 IT, OTHERWISE WE WOULDN'T HAVE ARRESTED HIM. YOU DON'T NEED ANY
20 PROOF OR EVIDENCE, JUST GO AHEAD AND CONVICT HIM." WELL, IT DOESN'T
21 WORK THAT WAY, BECAUSE THEY HAVE TO PROVE TO YOUR SATISFACTION
22 BEYOND A REASONABLE DOUBT THAT THOSE DRUGS WERE PUT THERE AND
23 UNDER THE CONTROL AND DOMINION OF WAYNE MCLAUGHLIN. THEY HAVE
24 NOT DONE THAT.

25 MS. CALDWELL, AND I STARTED ON THIS A SECOND AGO, REMEMBER

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1 THEY SAID THEY WERE LOOKING AND FIRST, DETECTIVE ROUSE SAID, "OH,
2 YOU KNOW, WE ARRESTED WAYNE MCLAUGHLIN, HE WAS DRIVING HIS RED
3 CAR AND WE ARRESTED HIM AND WE GOT HIM." AND I SAID, "WELL, THAT
4 AIN'T REALLY TRUE, IS IT." OH, YEAH, YEAH, THAT'S TRUE, THAT'S TRUE. AND
5 SO I GOT HIS REPORT AND READ IT TO HIM WHERE HE ACTUALLY ARRESTED
6 MS. CALDWELL AND WAYNE WASN'T IN THE CAR WITH HER. BUT IF I HADN'T
7 READ THAT REPORT, DO YOU THINK THAT HE WOULD HAVE CHANGED THAT?
8 NO. IT WOULD STILL HAVE BEEN WAYNE DRIVING THAT RED CAR. SHE HAD
9 HIS CAR, BUT WHAT ELSE IS MORE IMPORTANT? DO YOU REMEMBER I ASKED
10 HIM, HE SAID, "WELL, I DON'T KNOW WHAT HAPPENED TO MS. CALDWELL."
11 WHEN THE OTHER OFFICER GOT UP AND I ASKED HIM ABOUT IT, "OH, YEAH
12 WE PLACED HER UNDER ARREST FOR IT." "FOR WHAT?" "SHE HAD CRACK
13 COCAINE IN THAT CAR." DO YOU THINK IT MIGHT BE SOME OF THAT SAME
14 CRACK COCAINE OUT OF THE STORE? WE DON'T KNOW. WHY DON'T WE
15 KNOW? BECAUSE THEY DIDN'T TAKE HER BACK TO THE STORE. YOU
16 HAVEN'T HEARD ONE WITNESS SAY THEY TOOK HER BACK TO THE STORE.
17 NOW, HERE'S A LADY WHO'S GOT THE KEYS, SHE'S DRIVING THIS RED CAR
18 WHICH THEY SAY BELONGED TO WAYNE. SHE'S GOT THE KEYS. THEY ADMIT
19 THAT MUCH AND ON TOP OF THAT SHE HAS CRACK COCAINE AND THEY JUST
20 LET HER GO. NOT ONE OF THESE OTHER EIGHT PEOPLE WHO HAVE KEYS
21 AND WORKED AT THAT CLUB WAS EVER TALKED TO. NOT ONE OF THEM
22 EVER WAS BROUGHT IN HERE FOR YOU. NOT A SINGLE ONE OF THEM. NOT A
23 SINGLE ONE OF THEM WAS BROUGHT BACK THAT DAY TO THE CLUB. NOT A
24 SINGLE ONE OF THEM. THEY'D MADE UP THEIR MINDS. THEY HAD HIM IN
25 CUFFS BEFORE THEY EVER TOOK HIM THERE AND THEY KEPT HIM AND AFTER

1 THEY ARRESTED HIM THEY MADE ABSOLUTELY NO EFFORT TO DETERMINE
2 WHO OWNED THE CLUB. WHO OWNED IT, WHO OPERATED IT. NOTHING.
3 NOTHING.

4 YOU KNOW, I AGREE WITH THE SOLICITOR ABOUT ONE THING. YOU
5 SHOULD USE YOUR GOOD COMMON SENSE. YOU KNOW, WE ALL HAVE THAT
6 AND I TELL PEOPLE ALL THE TIME, GOD GIVES US GOOD COMMON SENSE FOR
7 A REASON, SO THAT WE CAN MAKE GOOD JUDGMENTAL DECISIONS, WHICH
8 WE ARE CALLED UPON TO DO EVERY DAY OF OUR LIVES ABOUT DIFFERENT
9 THINGS, WHETHER IT'S ABOUT OUR CHILDREN, WHETHER IT'S IN BUSINESS
10 OR WHETHER IT'S IN OUR FAMILY OR WHATEVER, WE'RE CALLED UPON TO
11 USE THOSE FACULTIES EVERY SINGLE DAY OF OUR LIVES. AND YOU USE
12 YOUR GOOD COMMON SENSE AND YOU ASK YOURSELVES, HAS THE STATE
13 OF SOUTH CAROLINA PROVEN TO YOU BEYOND A REASONABLE DOUBT THAT
14 WAYNE MCLAUGHLIN AND NO OTHER PERSON HAD CONTROL AND DOMINION
15 OVER THOSE DRUGS ON THAT DAY. THAT'S THE DECISION. THAT'S WHAT
16 THEY ARE SAYING. THAT THEY HAVE PROVEN TO YOU BEYOND A
17 REASONABLE DOUBT THAT THOSE DRUGS BELONGED TO HIM. THAT'S
18 ESSENTIALLY WHAT THEY ARE SAYING.

19 AND HE TALKS ABOUT ACTUAL AND CONSTRUCTIVE POSSESSION.
20 WELL, ACTUAL POSSESSION IS YEAH, I ACTUALLY HOLD THIS YELLOW PIECE
21 OF PAPER IN MY HAND. IT'S MINE, I HAVE POSSESSION OF IT. PHYSICALLY, I
22 HAVE POSSESSION OF IT. I LAY IT OVER HERE, IT'S NO LESS MINE. I DON'T
23 HAVE PHYSICAL POSSESSION OF IT ANYMORE, BUT CONSTRUCTIVELY, IT IS
24 MINE. I STILL OWN IT, I STILL HAVE THE RIGHT TO CONTROL IT. I STILL HAVE
25 THE RIGHT TO DISPOSE OF IT AS I SEE FIT BECAUSE IT'S MINE. THEY HAVE

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1 NOT BROUGHT YOU THAT KIND OF PROOF IN HERE.

2 AND LET ME SAY THIS TO YOU, LADIES AND GENTLEMEN, DOING THE
3 RIGHT THING IS NOT ALWAYS EASY. IT'S NOT ALWAYS EASY. BUT YOU
4 KNOW, THE THING IS, IT'S STILL ALWAYS RIGHT. IT'S STILL ALWAYS RIGHT
5 AND IT'S NOT YOUR FAULT IF THE STATE DOESN'T PROVE ITS CASE. THAT'S
6 NOT YOUR RESPONSIBILITY. YOUR RESPONSIBILITY IS NOT, WELL, TO HELP
7 OUT THE STATE IF THEY -- NO, IT'S NOT. YOU HAVE NO ENEMIES TO PUNISH,
8 YOU HAVE NO FRIENDS TO REWARD. YOUR JOB IS SIMPLY TO JUDGE
9 WHETHER OR NOT THE STATE OF SOUTH CAROLINA HAS PROVEN BEYOND A
10 REASONABLE DOUBT THE GUILT OF WAYNE MCLAUGHLIN. IT'S AS SIMPLE AS
11 THAT. THEY EITHER HAVE OR THEY HAVEN'T. AND THE REASON THEY
12 HAVEN'T IS BECAUSE THEY RUSHED TO JUDGMENT. BEFORE THE FIRST
13 PIECE OF DRUGS WERE EVER FOUND, THEY HAD HIM UNDER ARREST,
14 HANDCUFFED, TAKEN BACK TO A PLACE AND THEN SAYING, "WELL, WE GOT
15 THE KEYS, BUT WE DON'T KNOW WHERE WE GOT THEM FROM AND THEN WE
16 HAD HIM OPEN THE DOOR AND SENT HIM IN FIRST. YOU KNOW, THE
17 SOLICITOR SAYS, "YOU KNOW, MAYBE YOU OUGHT NOT WATCH C-S-I." WELL,
18 MAYBE WE SHOULD WATCH C-S-I. AND DOES THE LACK OF FINGERPRINTS
19 PROVE THAT WAYNE DIDN'T PUT THE DRUGS THERE? NO. BUT I'LL TELL YOU
20 WHAT, IF HIS FINGERPRINTS WERE ON THOSE DRUGS, THERE WOULDN'T BE
21 ANY QUESTION ABOUT WHO PUT THEM THERE AND YOU WOULDN'T HAVE TO
22 GUESS. YOU WOULDN'T HAVE TO THINK ABOUT, "OH, OKAY, WELL, LET ME
23 USE MY COMMON SENSE AND MAYBE HE DID, MAYBE HE DIDN'T." NO, IF HIS
24 FINGERPRINTS ARE ON THOSE BAGS, HE PUT THEM THERE BECAUSE THAT
25 MEANS HE HAD TO HAVE TOUCHED THEM WITHOUT QUESTION. THAT'S WHY

1 IT'S IMPORTANT, BECAUSE THEN YOU DON'T HAVE TO TAKE ANYBODY'S
2 WORD FOR IT, YOU WILL HAVE PHYSICAL PROOF ABOUT WHAT OCCURRED.
3 THAT'S WHY WE DO THESE THINGS. THAT'S WHY WE HAVE FINGERPRINTS,
4 THAT'S WHY WE HAVE D-N-A, SO YOU DON'T HAVE TO TAKE ANYBODY'S
5 WORD, YOU WILL HAVE ACTUAL PROOF. BUT THEY DECIDED FOR WHATEVER
6 THEIR REASONS WERE, THAT THEY WERE NOT GOING TO GIVE IT TO YOU.
7 MAYBE THEY KNEW THAT IT WASN'T THERE. SO, WHY SEND IT.

8 I WANT, BEFORE I SIT DOWN, TO BE CLEAR ABOUT ONE THING. WE ARE
9 NOT CONTESTING WHETHER OR NOT THERE WERE DRUGS IN THAT BAG.
10 THAT IS NOT THE ISSUE HERE. IF YOU NOTICED, THROUGHOUT THIS TRIAL I
11 NEVER RAISED ONE OBJECTION TO ANYTHING THAT THEY TRIED TO PUT INTO
12 EVIDENCE BECAUSE WE HAVE NOTHING TO HID BECAUSE THAT IS NOT THE
13 ISSUE WHETHER THERE WERE DRUGS IN THERE. I DON'T CARE IF THERE
14 WERE FIVE MILLION DOLLARS WORTH OF DRUGS THERE, THE ISSUE IS NOT
15 WHETHER THE DRUGS WERE THERE, THE ISSUE IS, "DID THOSE DRUGS
16 BELONG TO WAYNE MCLAUGHLIN AND DID THE STATE OF SOUTH CAROLINA
17 PROVE THAT TO YOUR SATISFACTION BEYOND A REASONABLE DOUBT. THAT
18 IS THE ONLY ISSUE IN THIS CASE, FOLKS AND THE REST OF IT IS JUST
19 SMOKING MIRRORS. SMOKING MIRRORS, BECAUSE THERE IS NO PROOF.
20 THERE IS NO EVIDENCE.

21 LASTLY, AND I'LL BE THROUGH. I WANT TO THANK YOU AS I DID AT THE
22 OUTSET FOR YOUR WILLINGNESS TO SERVE. I HONESTLY BELIEVE THAT
23 THERE IS NO BETTER SYSTEM THAN THE ONE WE HAVE. IT'S NOT PERFECT,
24 BECAUSE WE ARE NOT PERFECT AS PEOPLE. BUT I TELL YOU WITHOUT
25 QUESTION AFTER HAVING DONE THIS FOR THIRTY YEARS, BOTH AS A

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1 PROSECUTOR AND AS A DEFENSE LAWYER, THAT THERE IS NO BETTER
2 SYSTEM AND IF I HAD TO CHOOSE A SYSTEM, THIS IS THE ONE THAT I WOULD
3 CHOOSE EVERY SINGLE TIME. BUT THE SYSTEM THAT WE HAVE IS NO
4 BETTER THAN THE PEOPLE WHO SERVE, BECAUSE FOR A LONG TIME I
5 BELIEVED THAT FAIRNESS AND JUSTICE WAS METED OUT BY THE
6 GOVERNMENT AND BY LAW ENFORCEMENT AND AS A YOUNG BOY GROWING
7 UP, THAT'S WHAT I BELIEVED. BUT I LEARNED OVER THE YEARS THAT'S NOT
8 TRUE AT ALL. FAIRNESS, JUSTICE, IT COMES FROM THE HEARTS AND MINDS
9 OF THE PEOPLE OF THE COMMUNITY IN WHICH WE LIVE. DOESN'T MATTER IF
10 YOU'RE BLACK OR WHITE, RED OR YELLOW, THAT'S NOT IMPORTANT. IT'S
11 THE HEART THAT'S IMPORTANT. BECAUSE AS LONG AS YOU BELIEVE WHAT'S
12 RIGHT, AS LONG AS YOU'RE WILLING TO STAND UP AND DO WHAT'S RIGHT
13 SIMPLY BECAUSE IT'S RIGHT AND FOR NO OTHER REASON, THEN THE
14 SYSTEM WORKS. BUT THE MINUTE, THE MINUTE AS CITIZENS, WE DECIDE
15 THAT WE ARE GOING TO SUPPORT ONE GROUP OVER ANOTHER SIMPLY
16 BECAUSE THAT GROUP REPRESENTS SOMETHING THAT WE LIKE, WE FAIL AS
17 A SOCIETY. AND I KNOW WHERE YOU SIT IS NOT COMFORTABLE, IT'S NOT
18 PLEASANT. NONE OF US PREFER TO PASS JUDGMENT ON OUR FELLOW
19 CITIZENS OR ON LAW ENFORCEMENT, OR ON THE SOLICITOR. BUT IT'S WHAT
20 WE ARE CALLED UPON TO DO JUST AS OUR SOLDIERS ARE CALLED UPON TO
21 GO FIGHT WARS TO PROTECT US AND YOUR SERVICE IS NO LESS VALUABLE.
22 I SIMPLY ASK YOU, I URGE YOU, AND I IMPORE YOU TO DO WHAT YOU KNOW
23 IN YOUR HEART IS THE RIGHT THING TO DO AND THE ONLY RIGHT THING TO
24 DO IN THIS CASE IS TO RENDER A VERDICT THAT SPEAKS THE TRUTH. NOT
25 GUILTY. THANK YOU.

1 **THE COURT:** ALL RIGHT, LADIES AND GENTLEMEN, AND MADAM
2 FORELADY, IF YOU WOULD GIVE ME YOUR ATTENTION. YOU HAVE FOLLOWED
3 VERY PATIENTLY AND LISTENED VERY ATTENTIVELY TO THE PRESENTATION
4 OF THE EVIDENCE IN THIS CASE AND TO THE ABLE ARGUMENTS MADE BY THE
5 SOLICITOR, MISTER JEPERTINGER ON BEHALF OF THE STATE AND MISTER
6 WILSON ON BEHALF OF THE DEFENDANT AND I THANK YOU FOR THAT. AND
7 NOW IT BECOMES THE DUTY OF THE TRIAL JUDGE UNDER THE CONSTITUTION
8 OF THIS STATE TO CHARGE AND INSTRUCT YOU ON THE LAW APPLICABLE TO
9 THIS CASE. AND IT IS YOUR DUTY AS JURORS TO ACCEPT AND APPLY THE
10 LAW AS THE COURT WILL NOW STATE IT TO YOU. AND AS JURORS, IT IS
11 YOUR EXPLICIT DUTY TO DECIDE ALL OF THE ISSUES OF FACT IN THIS CASE
12 AND FOR THAT PURPOSE TO DETERMINE THE EFFECT, THE VALUE, THE
13 WEIGHT AND THE TRUTH OF THE EVIDENCE. BOTH THE STATE AND THE
14 DEFENDANT HAVE THE RIGHT TO EXPECT THAT YOU WILL CONSCIENTIOUSLY
15 CONSIDER AND EVALUATE THE EVIDENCE AND APPLY THE LAW IN THE CASE
16 THERETO, TO THE END THAT BOTH THE STATE OF SOUTH CAROLINA AND
17 THIS DEFENDANT WILL RECEIVE AND OBTAIN A FAIR AND IMPARTIAL TRIAL.
18 NOW, WHEN I USE THE WORD DEFENDANT, I REFER, OF COURSE, TO
19 MISTER WAYNE MCLAUGHLIN. NOW, THE STATE OF SOUTH OF CAROLINA BY
20 THE BILL OF INDICTMENT IN THIS CASE CHARGES THE DEFENDANT WITH TWO
21 OFFENSES. ONE IS POSSESSION OF COCAINE BASE WITH INTENT TO
22 DISTRIBUTE ON JANUARY 19, 2007 AND THE OTHER IS POSSESSION OF
23 COCAINE WITH INTENT TO DISTRIBUTE, ALSO ON JANUARY 19, 2007. TO
24 THESE CHARGES AND TO THIS INDICTMENT, THE DEFENDANT HAS ENTERED
25 A PLEA OF NOT GUILTY. THIS PLEA OF NOT GUILTY BY THE DEFENDANT

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1 PLACES THE BURDEN OF PROOF ON THE STATE TO PROVE BY EVIDENCE THE
2 GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT BEFORE YOU,
3 THE JURY, CAN FIND THE DEFENDANT GUILTY. THE DEFENDANT, MISTER
4 MCLAUGHLIN, IS PRESUMED IN THE LAW, INNOCENT OF THE CHARGE
5 CONTAINED IN THE INDICTMENT, OR THE CHARGES CONTAINED IN THE
6 INDICTMENT. IT IS A CARDINAL AND FUNDAMENTAL RULE OF THE LAW OF
7 EVIDENCE THAT A DEFENDANT, IRRESPECTIVE OF THE ENORMITY OF THE
8 CHARGES AGAINST HIM, WILL ALWAYS BE PRESUMED INNOCENT OF THE
9 CRIME OR CRIMES FOR WHICH HE IS INDICTED UNLESS AND UNTIL THE GUILT
10 OF THE DEFENDANT HAS BEEN PROVEN BY EVIDENCE WHICH SATISFIES YOU,
11 THE JURY, OF THE GUILT OF THE DEFENDANT BEYOND A REASONABLE
12 DOUBT.

13 THE PRESUMPTION OF INNOCENCE IS NOT A MERE LEGAL THEORY. IT
14 IS NOT JUST A LEGAL PHRASE. THE PRESUMPTION OF INNOCENCE IS A
15 SUBSTANTIAL RIGHT TO WHICH EVERY ACCUSED IS ENTITLED. OUR
16 SUPREME COURT HAS DECLARED THAT THE PRESUMPTION OF INNOCENCE IS
17 LIKE A ROBE OF RIGHTEOUSNESS PLACED ABOUT THE SHOULDERS OF THIS
18 DEFENDANT AND IT REMAINS WITH HIM AND ASSIGNS TO HIM THAT CLASS,
19 THE INNOCENT, UNTIL THAT PRESUMPTIVE ROBE OF RIGHTEOUSNESS HAS
20 BEEN STRIPPED FROM HIS PERSON BY EVIDENCE SATISFYING YOU, THE
21 JURY, OF HIS GUILT BEYOND A REASONABLE DOUBT.

22 THE PRESUMPTION OF INNOCENCE ACCOMPANIES THE DEFENDANT
23 FROM THE TIME OF HIS ARRAIGNMENT AND APPEARANCE IN THIS COURT AND
24 CONTINUES WITH THE DEFENDANT AFTER YOU'VE RETIRE TO THE JURY
25 ROOM TO DELIBERATE YOUR VERDICT. THE PRESUMPTION OF INNOCENCE

1 CONTINUES IN EXISTENCE TO THE BENEFIT OF THE DEFENDANT UNTIL YOU,
2 THE JURY, REACH THE CONCLUSION THAT THE STATE HAS PROVEN THE
3 GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT.

4 NOW, THE STATE IS NOT REQUIRED TO PROVE THE GUILT OF THE
5 DEFENDANT BEYOND ALL DOUBT OR BEYOND EVERY DOUBT, BUT BEYOND A
6 REASONABLE DOUBT. WHAT IS A REASONABLE DOUBT? IT IS NOT AN
7 IMAGINARY OR FANCIFUL DOUBT OR A WEAK DOUBT, IT IS A SUBSTANTIAL
8 DOUBT. IT IS A DOUBT WHICH THE WORDS APPLY, A DOUBT FOR WHICH YOU
9 CAN GIVE OR ASSIGN A REASON BASED ON THE TESTIMONY AND THE
10 EVIDENCE IN THIS CASE. A REASONABLE DOUBT IS NOT ANY SORT OF A
11 DOUBT. YOU AND I KNOW THAT IN EVERYDAY LIFE EXPERIENCES THAT YOU
12 MAY HAVE A SORT OF DOUBT ABOUT ANY MATTER THAT ARISES NO MATTER
13 HOW TRIVIAL OR HOW SERIOUS IT MAY BE. A REASONABLE DOUBT IS A
14 DOUBT THAT MAKES AN HONEST, SINCERE, CONSCIENTIOUS JUROR IN
15 SEARCH OF THE TRUTH HESITATE TO ACT. PROOF BEYOND A REASONABLE
16 DOUBT IS PROOF WHICH LEAVES YOU FIRMLY CONVINCED OF THE
17 DEFENDANT'S GUILT. IF YOU HAVE A DOUBT FOR WHICH YOU CAN GIVE OR
18 ASSIGN A REASON AS TO THE GUILT OF THE DEFENDANT, THEN HE IS
19 ENTITLED TO A VERDICT OF NOT GUILTY. REASONABLE DOUBT MAY ARISE
20 FROM THE EVIDENCE WHICH IS IN THE CASE OR FROM THE LACK OF
21 EVIDENCE IN THE CASE. YOU, THE JURY, MUST MAKE THE DETERMINATION
22 OF WHETHER OR NOT REASONABLE DOUBT EXISTS AS TO THE GUILT OF THE
23 DEFENDANT.

24 THE VERY FACT, HOWEVER, THAT THE JURY ENGAGES IN A FULL AND
25 FREE DISCUSSION ON THE ISSUE OF GUILT OR NON-GUILT IN THIS CASE,

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1 WITH A NORMAL CONVERSATIONAL EBB AND FLOW ON THE ISSUES, DOES
2 NOT AUTOMATICALLY MEAN THAT A REASONABLE DOUBT EXISTS IN THIS
3 CASE OR IN ANY OTHER CASE. I CHARGE YOU THAT THE DEFENDANT IS
4 ENTITLED TO EVERY REASONABLE DOUBT ARISING IN THE WHOLE CASE. IF
5 UPON ANY ISSUE OR FACT ESSENTIAL TO CONVICTION AND A VERDICT OF
6 GUILTY YOU HAVE A REASONABLE DOUBT AS TO HOW THAT ISSUE SHOULD
7 BE RESOLVED, IT WOULD BE YOUR DUTY TO RESOLVE THAT DOUBT IN FAVOR
8 OF THE DEFENDANT.

9 A DEFENDANT, LADIES AND GENTLEMEN, IS NOT REQUIRED TO PROVE
10 HIS INNOCENCE, BUT THE STATE IS REQUIRED BY LAW TO PROVE EVERY
11 ESSENTIAL ELEMENT OF THE OFFENSE CHARGED AGAINST THE DEFENDANT
12 BY EVIDENCE WHICH SATISFIES YOU, THE JURY, OF THE GUILT OF THE
13 DEFENDANT BEYOND A REASONABLE DOUBT BEFORE YOU CAN CONVICT HIM
14 AND FIND HIM GUILTY. IF, THEN, UPON THE WHOLE CASE YOU HAVE A
15 REASONABLE DOUBT AS TO THE GUILT OR INNOCENCE OF THE DEFENDANT,
16 HE IS ENTITLED TO THAT REASONABLE DOUBT AND WOULD BE ENTITLED TO
17 AN ACQUITTAL AND A VERDICT OF NOT GUILTY. BUT, ON THE OTHER HAND,
18 IF, UPON THE WHOLE CASE YOU FIND THAT THE STATE HAS PROVEN BY
19 EVIDENCE WHICH SATISFIES YOU, THE JURY, OF THE GUILT OF THE
20 DEFENDANT BEYOND A REASONABLE DOUBT, THEN IN SUCH
21 CIRCUMSTANCES IT WOULD EQUALLY BE YOUR DUTY TO CONVICT THE
22 DEFENDANT AND FIND HIM GUILTY.

23 NOW, IF YOU FIND THE DEFENDANT GUILTY BUT YOU HAVE A
24 REASONABLE DOUBT AS TO WHETHER THE DEFENDANT BE GUILTY OF THE
25 GREATER CRIME CHARGED OR A LESSER CRIME CHARGED, THEN YOU

1 WOULD RESOLVE THAT REASONABLE DOUBT IN FAVOR OF THE DEFENDANT
2 AND RENDER A VERDICT OF GUILTY ONLY AS TO THE LESSER CRIME
3 CHARGED. BUT, OF COURSE, YOU MAY NOT WRITE A VERDICT OF GUILTY TO
4 ANY CHARGE UNLESS YOU FIND THAT ALL OF THE ELEMENTS OF THE
5 CHARGE HAVE BEEN PROVEN BY THE STATE BEYOND A REASONABLE DOUBT.

6 NOW, I CHARGE YOU NOW AS I DID AT THE FIRST OF THIS CASE, THAT
7 THE INDICTMENT IS NOT EVIDENCE IN THIS CASE. IT CANNOT BE
8 CONSIDERED BY THE JURY AS EVIDENCE AND IT IS SIMPLY THE FORMAL
9 WRITTEN INSTRUMENT WHICH CONTAINS THE CHARGES AGAINST THE
10 DEFENDANT AND IT SERVES AS THE FORMAL DOCUMENT BY WHICH THIS
11 CASE IS BROUGHT TO TRIAL.

12 NOW, DURING THIS TRIAL, EACH OF US, YOU AND I LADIES AND
13 GENTLEMEN, HAVE CERTAIN DUTIES TO PERFORM. AS THE TRIAL JUDGE, IT
14 IS MY RESPONSIBILITY TO PRESIDE OVER THE TRIAL OF THIS CASE AND I
15 ALSO HAVE THE DUTY TO RULE UPON OR PASS UPON THE ADMISSIBILITY OF
16 EVIDENCE OFFERED DURING THE PROGRESS OF THE TRIAL. YOU ARE TO
17 CONSIDER ONLY THE COMPETENT EVIDENCE BEFORE YOU AND YOU ARE TO
18 DISREGARD AND DISABUSE FROM YOUR MIND ANY TESTIMONY ORDERED
19 STRICKEN FROM THE RECORD OF THIS CASE DURING THE PROGRESS OF THE
20 TRIAL, IF THERE BE ANY, AND YOU ARE TO CONSIDER ONLY THE TESTIMONY
21 WHICH HAS BEEN PRESENTED FROM THE WITNESS STAND TOGETHER WITH
22 ANY EXHIBITS ADMITTED INTO THE RECORD OF THIS CASE AND ANY
23 STIPULATIONS MADE BY COUNSEL IF THERE ARE ANY.

24 I HAVE THE ADDITIONAL DUTY TO CHARGE YOU THE APPLICABLE LAW
25 OF THE CASE. AS THE PRESIDING JUDGE, I AM THE SOLE JUDGE OF THE LAW

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1 OF THE CASE AND IT IS YOUR DUTY TO ACCEPT AND APPLY THE LAW AS I
2 NOW STATE IT TO YOU. IF YOU HAVE A PRECONCEIVED IDEA AS TO WHAT
3 THE LAW IS OR WHAT THE LAW OUGHT TO BE AND IT DOES NOT AGREE WITH
4 WHAT I TELL YOU THE LAW IS, YOU ARE OBLIGATED UNDER YOUR OATH TO
5 ABANDON THIS PRECONCEPTION ON YOUR PART BECAUSE YOU ARE SWORN
6 TO ACCEPT AND APPLY THE LAW PRECISELY AS I GIVE IT TO YOU.

7 NOW, IN EVERY CASE TRIED IN THIS COURT BEFORE A JURY, THE JURY
8 BECOMES THE SOLE AND EXCLUSIVE JUDGE OF THE FACTS. YOU, THE JURY,
9 ARE THE JUDGES OF THE FACTS IN THIS CASE. THE COURT IS THE JUDGE OF
10 THE LAW. THE CONSTITUTION OF THIS STATE HAS DECLARED THAT THE
11 TRIAL JUDGE SHALL NOT INTIMATE, STATE, COMMENT UPON OR MAKE ANY
12 STATEMENT TO A TRIAL JURY ABOUT THE FACTS. YOU ARE NOT TO INFER
13 ANYTHING THAT I HAVE SAID DURING THE PROGRESS OF THIS TRIAL IN
14 RULING UPON THE ADMISSIBILITY OF EVIDENCE, OR OTHERWISE, OR
15 ANYTHING THAT I SAY TO YOU NOW DURING THE COURSE OF THESE
16 INSTRUCTIONS TO YOU, THAT I HAVE ANY OPINION ABOUT THE FACTS. I DO
17 NOT. THE LAW DOES NOT PERMIT ME TO HAVE AN OPINION ABOUT THE
18 FACTS OF THIS CASE. THIS IS A MATTER SOLELY FOR YOU, THE JURY, TO
19 DETERMINE. AS JURORS THEN, IT IS YOUR DUTY TO DETERMINE AS I HAVE
20 STATED, THE EFFECT, THE VALUE, THE WEIGHT AND THE TRUTH OF THE
21 EVIDENCE PRESENTED DURING THE COURSE OF THIS TRIAL.

22 NECESSARILY THEN, YOU MUST ASSESS THE CREDIBILITY OF THE
23 WITNESSES WHO HAVE TESTIFIED IN THIS CASE. CREDIBILITY IS SIMPLY A
24 LEGALISTIC WORD MEANING BELIEVABILITY. IT BECOMES YOUR DUTY THEN
25 TO ANALYZE AND EVALUATE THE EVIDENCE AND TO DETERMINE THAT

1 EVIDENCE WHICH CONVINCES YOU OF ITS TRUTH. I CHARGE YOU THAT IN
2 DETERMINING THE QUESTION OF CREDIBILITY OR BELIEVABILITY OF THE
3 WITNESSES, YOU MAY BELIEVE ONE WITNESS AS AGAINST SEVERAL
4 WITNESSES OR SEVERAL WITNESSES AS AGAINST ONE WITNESS. YOU MAY
5 BELIEVE ONLY A PART OF THE TESTIMONY OF A WITNESS AND REJECT THE
6 REMAINING PART OF THE TESTIMONY OF THAT SAME WITNESS. YOU MAY
7 BELIEVE A PART OF THE TESTIMONY OF A WITNESS AND REJECT THE
8 REMAINING PART OF THE TESTIMONY. YOU MAY BELIEVE THE TESTIMONY OF
9 A WITNESS IN ITS ENTIRETY OR REJECT THE TESTIMONY OF A WITNESS IN ITS
10 ENTIRETY. YOU MAY CONSIDER WHETHER ANY WITNESS HAS EXHIBITED ANY
11 INTEREST, ANY BIAS, OR ANY PREJUDICE IN THE CASE. AND YOU MAY
12 CONSIDER THE Demeanor OF A WITNESS, THAT IS THE APPEARANCE OF A
13 WITNESS ON THE WITNESS STAND. AND YOU MAY ALSO CONSIDER THE
14 OPPORTUNITY FOR KNOWLEDGE CONCERNING THOSE THINGS ABOUT WHICH
15 A WITNESS TESTIFIES. THESE CONSIDERATIONS YOU DO NOT EXERCISE
16 ARBITRARILY BUT IF IN YOUR GOOD JUDGMENT THERE IS SOUND REASON IN
17 THE RECORD FOR SO DOING, BECAUSE YOUR OBJECTIVE, LADIES AND
18 GENTLEMEN, IS TO FIND THE TRUTH WHETHER IT COMES FROM ONE OR
19 MORE WITNESSES AND IN DOING SO, IN EXERCISING YOUR MENTAL
20 PROCESSES AND IN DETERMINING WHAT YOU CONSIDER TO BE TRUE, THE
21 LAW SIMPLY REQUIRES THAT YOU EXERCISE YOUR GOOD JUDGMENT, YOUR
22 COMMON SENSE, YOUR SENSE OF LOGIC AND REASON AND YOUR
23 EXPERIENCES IN LIFE. YOU THEN APPLY THESE ATTRIBUTES AND ABILITIES
24 TO THE EVIDENCE AND DETERMINE WHAT YOU CONSIDER TO BE THE
25 TRUTHFUL EVIDENCE AND TO THESE TRUE STATEMENTS OF FACT THAT YOU

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1 DETERMINE BY YOU THE JURY, YOU TAKE AND APPLY THE LAW AS THE
2 COURT WILL NOW GIVE IT TO YOU AND THUS ARRIVE AT A VERDICT IN THIS
3 CASE.

4 NOW, AS I TOLD YOU, THE DEFENDANT IN THIS INDICTMENT IS
5 CHARGED WITH TWO OFFENSES. ONE IS POSSESSION OF CRACK COCAINE
6 WITH INTENT TO DISTRIBUTE. THE OTHER IS POSSESSION OF COCAINE WITH
7 INTENT TO DISTRIBUTE AND I NOW AM GOING TO DEFINE THESE OFFENSES
8 FOR YOU AND TO TELL YOU WHAT THE LAW OF SOUTH CAROLINA IS WITH
9 REGARD TO THOSE TWO OFFENSES.

10 FIRST OF ALL, WITH REGARD TO THE POSSESSION OF CRACK COCAINE
11 WITH INTENT TO DISTRIBUTE WHICH THE DEFENDANT IS CHARGED WITH,
12 §44-53-375(b) OF THE SOUTH CAROLINA CODE OF LAWS PROVIDES THAT A
13 PERSON WHO POSSESSES WITH INTENT TO DISTRIBUTE, DISPENSE, OR
14 DELIVER COCAINE BASE IS GUILTY OF A CRIME.

15 THERE ARE THREE ELEMENTS OF THE OFFENSE OF POSSESSION OF
16 CRACK COCAINE WITH INTENT TO DISTRIBUTE THE STATE MUST PROVE
17 BEYOND A REASONABLE DOUBT: 1) THAT THE SUBSTANCE INVOLVED WAS
18 CRACK COCAINE. 2) THAT THE DEFENDANT HAD POSSESSION OF THE CRACK
19 COCAINE, EITHER ACTUAL POSSESSION OR CONSTRUCTIVE POSSESSION
20 AND 3) THAT THE DEFENDANT POSSESSED THE CRACK COCAINE WITH
21 INTENT TO DISTRIBUTE. §44-53-210(b)(4) OF THE CODE OF LAWS OF SOUTH
22 CAROLINA PROVIDES THAT COCAINE IN ANY FORM IS A CONTROLLED
23 SUBSTANCE UNDER THE LAW OF THIS STATE. §44-53-110 STATES : COCAINE
24 BASE MEANS AN ALKALOIDAL COCAINE OR FREE BASE FORM OF COCAINE
25 WHICH IS THE END PRODUCT OF A CHEMICAL ALTERATION WHEREBY THE

1 COCAINE IN SALT FORM IS CONVERTED TO A FORM SUITABLE FOR SMOKING.
2 COCAINE BASE IS COMMONLY REFERRED TO AS ROCK OR CRACK COCAINE.
3 THE SUBSTANCE MUST BE CRACK COCAINE. THE DEFENDANT MUST HAVE
4 ACTUAL OR CONSTRUCTIVE POSSESSION OF CRACK COCAINE AND THE
5 DEFENDANT MUST POSSESS THAT CRACK COCAINE WITH INTENT TO
6 DISTRIBUTE.

7 NOW, THE DEFENDANT IS ALSO CHARGED WITH POSSESSION OF
8 COCAINE WITH INTENT TO DISTRIBUTE AND AGAIN, SOUTH CAROLINA CODE
9 §44-53-370(a)(1) PROVIDES: EXCEPT AS AUTHORIZED BY THIS ARTICLE, IT
10 SHALL BE UNLAWFUL FOR ANY PERSON TO POSSESS WITH INTENT TO
11 DISTRIBUTE A CONTROLLED SUBSTANCE.

12 THERE ARE THREE ELEMENTS TO THE OFFENSE OF POSSESSION OF
13 COCAINE WITH INTENT TO DISTRIBUTE THAT THE STATE MUST PROVE
14 BEYOND A REASONABLE DOUBT: 1) THAT THE SUBSTANCE INVOLVED WAS IN
15 FACT COCAINE. 2) THAT THE DEFENDANT HAD POSSESSION OF THAT
16 COCAINE; EITHER ACTUAL POSSESSION OR CONSTRUCTIVE POSSESSION
17 AND 3) THAT THE DEFENDANT POSSESSED THE COCAINE WITH INTENT TO
18 DISTRIBUTE. ANOTHER CODE SECTION, §44-53-210(b)(4) PROVIDES THAT
19 COCAINE IN ANY FORM IS A CONTROLLED SUBSTANCE UNDER THE LAW OF
20 THIS STATE. THE SUBSTANCE MUST BE COCAINE. THE DEFENDANT MUST
21 HAVE ACTUAL OR CONSTRUCTIVE POSSESSION OF THE COCAINE AND THE
22 DEFENDANT MUST POSSESS THE COCAINE WITH INTENT TO DISTRIBUTE.

23 NOW, WITH REGARD TO BOTH THE CRACK COCAINE AND THE COCAINE,
24 THE STATE MUST FURTHER PROVE THAT THE DEFENDANT HAD ACTUAL OR
25 CONSTRUCTIVE POSSESSION OF THE CRACK OR THE COCAINE. WHAT DOES

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1 POSSESSION OF CRACK OR COCAINE MEAN UNDER THE LAW? THE LAW
2 SAYS COCAINE IN ANY FORM IS A CONTROLLED SUBSTANCE. POSSESSION
3 MEANS MORE THAN SIMPLY HAVING A CONTROLLED SUBSTANCE IN ONE'S
4 POSSESSION. THERE MUST BE KNOWING POSSESSION. THE DEFENDANT
5 MUST PROVE POSSESSION OF THE CRACK COCAINE OR THE COCAINE BY THE
6 DEFENDANT AND FURTHER, THE FACT THAT THE DEFENDANT KNEW HE HAD
7 THE CRACK COCAINE OR THE COCAINE IN HIS POSSESSION. BY WAY OF
8 ILLUSTRATION, SOMETHING MAY BE FOUND IN THE POSSESSION OF A
9 PERSON AND IF THE PERSON DID NOT KNOW THAT HE HAD POSSESSION OF
10 THAT ITEM AND HAD NOT EXERCISED ANY AFFIRMATIVE ACT TO GET
11 POSSESSION OF THE ITEM, BUT BY SOME ACCIDENT IT CAME INTO HIS
12 POSSESSION WITHOUT HIS KNOWLEDGE, THERE WOULD BE NO VIOLATION
13 OF THE LAW. HOWEVER, IF ONE KNOWINGLY HAS THE POSSESSION OF A
14 CONTROLLED SUBSTANCE, THEN HE IS UNLAWFULLY IN POSSESSION OF THE
15 ITEM. THE STATE MUST DEMONSTRATE BEYOND A REASONABLE DOUBT
16 THAT THE DEFENDANT WAS IN POSSESSION OF THE CRACK OR THE COCAINE,
17 THAT HE KNEW HE HAD IT IN HIS POSSESSION AND THAT HE KNEW THE ITEM
18 WAS A CONTROLLED SUBSTANCE UNDER THE LAW OF THIS STATE. THE
19 STATE IS NOT REQUIRED TO SHOW THE PURPOSE FOR WHICH THE
20 DEFENDANT MAY HAVE HAD POSSESSION OF THE CRACK COCAINE OR THE
21 COCAINE. THAT IS NOT A PART OF THE STATE'S REQUIRED DEGREE OF
22 PROOF. THE STATE MUST SHOW BEYOND A REASONABLE DOUBT THAT
23 THERE WAS POSSESSION OF CRACK COCAINE OR COCAINE AS THE CASE
24 MAY BE, AND THE DEFENDANT KNEW THAT HE HAD THE CRACK COCAINE OR
25 THE COCAINE IN HIS POSSESSION.

1 NOW, THERE ARE TWO KINDS OF POSSESSION RECOGNIZED IN THE
2 LAW OF THIS STATE, ACTUAL POSSESSION AND CONSTRUCTIVE
3 POSSESSION. ACTUAL POSSESSION OCCURS WHEN A CONTROLLED
4 SUBSTANCE IS FOUND TO BE IN THE ACTUAL PHYSICAL CUSTODY OF THE
5 PERSON CHARGED WITH POSSESSION. CONSTRUCTIVE POSSESSION IS
6 WHEN A PERSON HAD DOMINION OR CONTROL OR THE RIGHT TO EXERCISE
7 DOMINION OR CONTROL OVER EITHER THE OBJECT OR THE PREMISES UPON
8 WHICH THE OBJECT IS LOCATED. POSSESSION MAY BE INFERRED FROM THE
9 CIRCUMSTANCES AND MAY BE IMPUTED TO ANYONE WHO HAS THE POWER
10 AND INTENT TO CONTROL THE DISPOSITION AND USE OF THE ITEM. IN OTHER
11 WORDS, POSSESSION OF AN OBJECT OR THE PREMISES GIVES RISE TO AN
12 INFERENCE THAT THE PERSON CHARGED HAS BOTH THE POWER AND INTENT
13 TO CONTROL THE USE AND DISPOSITION OF THE OBJECT. ACTUAL
14 KNOWLEDGE OF THE PERSON OF THE CONTROLLED SUBSTANCE IS A
15 STRONG EVIDENCE OF INTENT TO CONTROL THE DISPOSITION OR USE. THE
16 MERE PRESENCE OF A PERSON IN AN AREA WHERE THE OBJECT IS FOUND IS
17 NOT ENOUGH, IN AND OF ITSELF, TO GIVE RISE TO THE NECESSARY
18 INFERENCE. PROOF OF POSSESSION REQUIRES MORE THAN PROOF OF
19 MERE PRESENCE AT THE PLACE WHERE THE CONTROLLED SUBSTANCE IS
20 FOUND. THE STATE MUST PROVE THE DEFENDANT HAD BOTH: 1) THE
21 POWER, THAT IS ACTUAL OR CONSTRUCTIVE CONTROL AND 2) THE INTENT
22 TO CONTROL ITS DISPOSITION OR USE. ACTUAL CONTROL OCCURS WHEN
23 THE CONTROLLED SUBSTANCE IS FOUND TO BE IN THE ACTUAL PHYSICAL
24 CUSTODY OF THE PERSON CHARGED. CONSTRUCTIVE CONTROL OCCURS
25 WHEN A PERSON CHARGED WITH POSSESSION HAS DOMINION AND CONTROL

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1 OVER EITHER THE CONTROLLED SUBSTANCE OR THE PREMISES UPON
2 WHICH THE CONTROLLED SUBSTANCE IS FOUND. CONSTRUCTIVE CONTROL
3 MEANS THE DEFENDANT'S KNOWLEDGE AND POSSESSION MAY BE INFERRED
4 IF THE CONTROLLED SUBSTANCE WAS FOUND ON PREMISES UNDER THE
5 DEFENDANT'S CONTROL. THIS IS A PERMISSIVE INFERENCE. THE JURY IS
6 FREE TO ACCEPT OR REJECT THIS PERMISSIVE INFERENCE OF KNOWLEDGE
7 AND POSSESSION DEPENDING ON YOUR VIEW OF THE EVIDENCE.
8 CONSTRUCTIVE CONTROL MAY BE ESTABLISHED BY CIRCUMSTANTIAL
9 EVIDENCE AS WELL AS BY DIRECT EVIDENCE AND CONSTRUCTIVE CONTROL
10 MAY BE JOINTLY SHARED BY TWO OR MORE INDIVIDUALS. AND IN JUST A
11 MINUTE I'M GOING TO TELL YOU A LITTLE BIT ABOUT WHAT CIRCUMSTANTIAL
12 EVIDENCE IS.

13 BECAUSE ACTUAL KNOWLEDGE OF THE PRESENCE OF THE
14 CONTROLLED SUBSTANCE IS STRONG EVIDENCE OF INTENT TO CONTROL ITS
15 DISPOSITION OR USE, THAT KNOWLEDGE MAY BE EQUATED WITH OR
16 SUBSTITUTED FOR THE INTENT ELEMENT. HOWEVER, ACTUAL KNOWLEDGE
17 OF THE PRESENCE OF A CONTROLLED SUBSTANCE IS NOT THE ONLY
18 CIRCUMSTANCES UNDER WHICH THIS INTENT TO CONTROL THE DISPOSITION
19 OR THE USE MAY BE INFERRED.

20 THE MERE PRESENCE OF THE DEFENDANT WHERE THE CONTROLLED
21 SUBSTANCE IS FOUND OR THE MERE ASSOCIATION BY A DEFENDANT WITH
22 PERSONS WHO POSSESS THE CONTROLLED SUBSTANCE IS INSUFFICIENT
23 PROOF THAT THE DEFENDANT HIMSELF POSSESSED THE CONTROLLED
24 SUBSTANCE. POSSESSION REQUIRES MORE THAN MERE PRESENCE.
25 EVIDENCE THAT AN INDIVIDUAL IS PRESENT AT THE TIME A CONTROLLED

1 SUBSTANCE IS FOUND OR LOCATED IS NOT IN AND OF ITSELF SUFFICIENT
2 PROOF THAT THE INDIVIDUAL HAD ACTUAL OR CONSTRUCTIVE POSSESSION
3 OF THE CONTROLLED SUBSTANCE. PROOF OF CONSTRUCTIVE POSSESSION
4 BY THE DEFENDANT REQUIRES THAT THE DEFENDANT SHOW BEYOND A
5 REASONABLE DOUBT THAT THE DEFENDANT HAD DOMINION AND CONTROL
6 OVER THE CONTROLLED SUBSTANCE OR HAD THE RIGHT TO EXERCISE
7 DOMINION AND CONTROL OVER THE CONTROLLED SUBSTANCE. STATED IN
8 OTHER TERMS, THE STATE MUST PROVE BEYOND A REASONABLE DOUBT
9 THAT THE DEFENDANT HAD BOTH THE POWER AND INTENT TO CONTROL THE
10 DISPOSITION OR USE OF THE CONTROLLED SUBSTANCE. IF YOU FIND FROM
11 THE EVIDENCE OR THE LACK OF EVIDENCE THAT THE DEFENDANT WAS
12 MERELY PRESENT AT THE SCENE WHEN THE CRACK COCAINE OR COCAINE
13 WAS FOUND OR MERELY ASSOCIATED WITH PERSONS WHO POSSESSED
14 CRACK COCAINE OR COCAINE AND DO NOT FIND BEYOND A REASONABLE
15 DOUBT THAT THE DEFENDANT HAD DOMINION OR CONTROL OR THE RIGHT TO
16 EXERCISE DOMINION AND CONTROL OVER THE CRACK OR THE COCAINE,
17 THEN THE DEFENDANT WOULD BE NOT GUILTY.

18 FINALLY, THE STATE MUST PROVE THE DEFENDANT POSSESSED THE
19 CRACK OR THE COCAINE WITH THE INTENT TO DISTRIBUTE. UNDER THIS
20 CHARGE THE STATE IS NOT REQUIRED TO PROVE A DISTRIBUTION OR SALE.
21 THE STATE IS ONLY REQUIRED TO SHOW AN INTENT TO DISTRIBUTE.

22 WHAT IS AN INTENT TO DISTRIBUTE UNDER THE LAW? CRIMINAL
23 INTENT IS A STATE OF MIND WHICH OPERATES JOINTLY WITH AN ACT OR
24 OMISSION IN THE COMMISSION OF A CRIME. CRIMINAL INTENT IS A MENTAL
25 STATE OF CONSCIOUS WRONGDOING. CRIMINAL INTENT INCLUDES THOSE

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1 CONSEQUENCES WHICH A) REPRESENT THE VERY PURPOSE FOR WHICH THE
2 ACT IS DONE OR B) ARE KNOWN TO BE SUBSTANTIALLY CERTAIN TO RESULT
3 REGARDLESS OF ONE'S DESIRE. INTENT MAY BE SHOWN BY ACTS AND
4 CONDUCT OF A DEFENDANT AND OTHER CIRCUMSTANCES FROM WHICH YOU
5 MAY NATURALLY AND REASONABLY INFER INTENT. NOW, §44-53-110 OF THE
6 SOUTH CAROLINA LAW PROVIDES THAT DISTRIBUTE MEANS "TO DELIVER A
7 CONTROLLED SUBSTANCE. IT MEANS ACTUAL OR CONSTRUCTIVE TRANSFER
8 OF THE CONTROLLED SUBSTANCE WITH OR WITHOUT PAYMENT." §44-53-110
9 FURTHER STATES "DELIVER OR DELIVERY" MEANS THE ACTUAL
10 CONSTRUCTIVE OR ATTEMPTED TRANSFER OF A CONTROLLED DRUG OR
11 PARAPHERNALIA WHETHER OR NOT THERE EXISTS AN AGENCY
12 RELATIONSHIP. SO, IN SUMMARY, BEFORE YOU CAN FIND THE DEFENDANT
13 GUILTY OF POSSESSION OF CRACK COCAINE OR THE OTHER CHARGE OF
14 POSSESSION OF POWDER COCAINE WITH INTENT TO DISTRIBUTE, THE STATE
15 MUST PROVE THE FOLLOWING ELEMENTS BEYOND A REASONABLE DOUBT: 1)
16 THAT THE SUBSTANCE WAS, IN FACT, CRACK COCAINE OR COCAINE AS THE
17 CASE MAY BE, A CONTROLLED SUBSTANCE UNDER THE LAW OF THE STATE.
18 2) THE DEFENDANT HAD POSSESSION OF THE CRACK COCAINE OR THE
19 COCAINE AS THE CASE MAY BE EITHER ACTUAL OR CONSTRUCTIVE AND 3)
20 THE DEFENDANT POSSESSED THE CRACK COCAINE OR COCAINE WITH
21 INTENT TO DISTRIBUTE.

22 NOW, THERE IS ONE FURTHER PROVISION IN THE LAW IN REGARD TO
23 POSSESSION WITH INTENT TO DISTRIBUTE BOTH CRACK AND POWDER
24 COCAINE. 1) WITH REGARD TO CRACK §44-53-375(b) OF THE CODE CREATES A
25 PERMISSIVE INFERENCE THAT POSSESSION OF ONE OR MORE GRAMS OF

1 CRACK COCAINE CONSTITUTES POSSESSION WITH INTENT TO DISTRIBUTE.
2 THUS, §44-53-375(b) PROVIDES THAT POSSESSION OF ONE OR MORE GRAMS
3 OF CRACK COCAINE GIVES RISE TO A PERMISSIVE INFERENCE OF A
4 VIOLATION OF THE STATUTE. THE INFERENCE OF VIOLATION OF THE LAW BY
5 POSSESSION OF ONE OR MORE GRAMS OF CRACK COCAINE MAY BE DRAWN
6 FROM PROOF OF THE QUANTITY OF THE DRUGS.

7 WITH REGARD TO POWDER COCAINE, §44-53-470(d)(4) OF THE SOUTH
8 CAROLINA CODE OF LAWS CREATES A PERMISSIVE INFERENCE THAT
9 POSSESSION OF MORE THAN 10 GRAINS OF COCAINE CONSTITUTES
10 POSSESSION OF COCAINE WITH INTENT TO DISTRIBUTE. THUS,
11 §44-53-470(d)(4) PROVIDES THAT POSSESSION OF MORE THAN 10 GRAINS OF
12 COCAINE GIVES RISE TO A PERMISSIVE INFERENCE THAT THE DEFENDANT
13 POSSESSED THE COCAINE WITH INTENT TO DISTRIBUTE. THE INFERENCE OF
14 A VIOLATION OF LAW BY POSSESSION OF MORE THAN 10 GRAINS OF COCAINE
15 MAY BE DRAWN FROM THE PROOF OF THE QUANTITY OF THE DRUGS.

16 NOW, THE RESULTING IMPLICATION ONLY PERMITS, RATHER THAN
17 REQUIRES, THE JURY TO INFER A VIOLATION OF THE LAW. THIS IS ANOTHER
18 PIECE OF EVIDENCE FOR YOU TO CONSIDER AND EVALUATE. THESE
19 PERMISSIVE INFERENCES DO NOT RELIEVE THE STATE FROM ACTUALLY
20 PROVING BEYOND A REASONABLE DOUBT THE ELEMENT OF INTENT TO
21 DISTRIBUTE. PERMISSIVE INFERENCES ARE OF AN EVIDENTIARY NATURE
22 AND THE PERMISSIVE INFERENCES DO NOT REQUIRE THE JURY TO INFER A
23 VIOLATION OF THE LAW. IN OTHER WORDS, THE PERMISSIVE INFERENCES OF
24 AN EVIDENTIARY FACT TO BE TAKEN INTO CONSIDERATION -- ARE AN EVIDENTIARY
25 FACT TO BE TAKEN INTO CONSIDERATION BY THE JURY ALONG WITH OTHER

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1 EVIDENCE IN THIS CASE AND IT IS FOR THE JURY TO GIVE IT SUCH WEIGHT AS
2 YOU DETERMINE IT SHOULD BE. YOU ARE FREE TO ACCEPT OR REJECT A
3 PERMISSIVE INFERENCE DEPENDING ON YOUR VIEW OF THE EVIDENCE.

4 NOW, I TOLD YOU THAT I WANTED TO TALK WITH YOU FOR JUST A
5 MINUTE ABOUT DIRECT VERSUS CIRCUMSTANTIAL EVIDENCE. THERE ARE
6 GENERALLY TWO TYPES OF EVIDENCE WHICH ARE PRESENTED IN A TRIAL,
7 DIRECT EVIDENCE AND CIRCUMSTANTIAL EVIDENCE.

8 DIRECT EVIDENCE IS TESTIMONY OF A PERSON WHO ASSERTS OR
9 CLAIMS TO HAVE ACTUAL KNOWLEDGE OF A FACT, SUCH AS AN EYEWITNESS.
10 CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN OF FACTS AND
11 CIRCUMSTANCES INDICATING THE EXISTENCE OF A FACT. THE LAW MAKES
12 ABSOLUTELY NO DISTINCTION BETWEEN THE WEIGHT OR VALUE TO BE
13 GIVEN TO EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE. NOR IS A
14 GREATER DEGREE OF CERTAINTY REQUIRED OF CIRCUMSTANTIAL EVIDENCE
15 THAN OF DIRECT EVIDENCE. YOU SHOULD WEIGH ALL OF THE EVIDENCE IN
16 THIS CASE AND AFTER WEIGHING ALL OF THE EVIDENCE, IF YOU ARE NOT
17 CONVINCED OF THE GUILT OF THE DEFENDANT BEYOND A REASONABLE
18 DOUBT, YOU WOULD FIND THE DEFENDANT GUILTY. ON THE OTHER HAND,
19 AFTER WEIGHING ALL OF THE EVIDENCE, IF YOU ARE CONVINCED OF THE
20 GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT, IT WOULD
21 EQUALLY BE YOUR DUTY TO FIND THE DEFENDANT GUILTY.

22 NOW, I WANT TO TELL YOU NOW AND I WANT TO EMPHASIZE TO YOU
23 THAT EVEN THOUGH A DEFENDANT HAS NOT TESTIFIED, THIS IS NOT A FACT
24 TO BE CONSIDERED BY YOU. THE DEFENDANT IN THIS CASE HAS NOT
25 TESTIFIED. THIS IS HIS CONSTITUTIONAL RIGHT. IT IS NOT A CIRCUMSTANCE

1 YOU CAN TAKE INTO CONSIDERATION OR EVEN ALLOW TO ENTER INTO YOUR
2 DISCUSSIONS IN THE JURY ROOM. UNDER THE CONSTITUTION OF SOUTH
3 CAROLINA AND THE UNITED STATES' CONSTITUTION, IT IS A DEFENDANT'S
4 RIGHT NOT TO TESTIFY. THE BURDEN OF PROOF IS ON THE STATE TO PROVE
5 THE GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT BY
6 COMPETENT EVIDENCE. THE FACT THAT THE DEFENDANT DID NOT TAKE THE
7 WITNESS STAND AND TESTIFY IN HIS OWN BEHALF DOES NOT CREATE ANY
8 INFERENCE AGAINST HIM AND YOU, THE JURY, MUST NOT PERMIT THAT FACT
9 TO WEIGH IN THE SLIGHTEST DEGREE AGAINST THIS DEFENDANT NOR
10 SHOULD THE FACT EVEN BE DISCUSSED IN YOUR DELIBERATIONS IN THE
11 JURY ROOM.

12 NOW, LADIES AND GENTLEMEN, I HAVE JUST ABOUT FINISHED MY
13 INSTRUCTIONS TO YOU, BUT I WOULD TELL YOU NOW THAT YOU ARE NOT
14 PARTISANS OR ADVOCATES OF THE STATE OF SOUTH CAROLINA NOR FOR
15 THIS DEFENDANT. YOU DO NOT SERVE ON THE JURY TO REWARD YOUR
16 FRIENDS OR PUNISH YOUR ENEMIES. OBVIOUSLY, SUCH A PERVERTED
17 SYSTEM OF JUSTICE WOULD BE INTOLERABLE. YOU HAVE BEEN SELECTED
18 BY BOTH THE STATE AND THIS DEFENDANT AS FAIR AND IMPARTIAL JURORS.
19 IT IS YOUR DUTY THEN, BY YOUR JOINT DELIBERATIONS, TO DETERMINE THE
20 TRUTH IN THIS CASE GIVING TO THE DEFENDANT THE BENEFIT OF EACH AND
21 EVERY REASONABLE DOUBT ON EACH AND EVERY ISSUE AND THEN TO THE
22 FACTS WHICH YOU DETERMINE TO BE TRUE, YOU THEN TAKE AND APPLY THE
23 LAW WHICH THE COURT HAS JUST GIVEN TO YOU AND ARRIVE AT A VERDICT
24 WHICH DOES SPEAK THE TRUTH. BECAUSE YOUR – THE WORD VERDICT,
25 LADIES AND GENTLEMEN, IT HAS A LATIN DERIVATIVE, IT COMES FROM THE

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1 LATIN PHRASE "VERIDICTO" MEANING "TO SPEAK THE TRUTH OR TRUTH
2 SAYING." AND WHEN YOU HAVE ACCOMPLISHED THESE RESPONSIBILITIES,
3 YOU WILL HAVE SATISFIED YOUR OATH AS JURORS AND YOU WILL HAVE
4 DISCHARGED YOUR DUTY TO THIS COURT.

5 NOW, I WANT TO INSTRUCT YOU ON YOUR FORMS OF VERDICT IN THIS
6 CASE AND I WILL TELL YOU THAT THERE ARE THREE FORMS OF VERDICT
7 WITH REGARD TO EACH CHARGE, ONE IS WITH REGARD TO COCAINE BASE
8 AND ONE IS IN REGARD TO THE COCAINE. AND I WILL TELL YOU THAT I HAVE
9 PREPARED A VERDICT FORM FOR YOUR USE, MADAM FORELADY, WHEN YOU
10 GO TO THE JURY ROOM, BUT I WANT TO EMPHASIZE TO YOU THAT THE
11 ORDER IN WHICH I HAVE PUT THE POSSIBLE VERDICTS ON THIS VERDICT
12 FORM HAVE ABSOLUTELY NO SIGNIFICANCE WHATSOEVER. YOU SHOULD
13 NOT INFER FROM THE ORDER IN WHICH I HAVE PUT THE POSSIBLE VERDICTS
14 ON HERE THAT I HAVE ANY OPINION AS TO WHAT YOUR VERDICT SHOULD BE.
15 I DO NOT. BUT OBVIOUSLY, BY PUTTING SOMETHING DOWN ON PAPER I HAD
16 TO PUT SOMETHING FIRST AND PUT SOMETHING SECOND.

17 AND ALSO I WOULD TELL YOU THAT ON THE PRINCIPLE THAT THE
18 GREATER OFFENSE INCLUDES A LESSER OFFENSE, THAT IS WHERE THE
19 THIRD POSSIBLE VERDICT COMES IN THIS CASE. WITH REGARD TO THE
20 CRACK OR THE COCAINE BASE CHARGE, THERE ARE THREE POSSIBLE
21 VERDICTS: YOU CAN FIND THE DEFENDANT GUILTY OF POSSESSION WITH
22 THE INTENT TO DISTRIBUTE COCAINE BASE OR GUILTY OF POSSESSION OF
23 COCAINE BASE OR NOT GUILTY. ONE OF THE THREE. THE GUILTY OF
24 POSSESSION OF COCAINE BASE BEING THE LESSER INCLUDED OFFENSE OF
25 THE ACTUAL CHARGE OF GUILTY OF POSSESSION WITH THE INTENT TO

1 DISTRIBUTE COCAINE BASE.

2 AND THE SAME IS TRUE ON THE COCAINE. YOU CAN FIND THE
3 DEFENDANT EITHER ONE OF THREE: GUILTY OF POSSESSION WITH INTENT
4 TO DISTRIBUTE COCAINE, OR GUILTY OF POSSESSION OF COCAINE OR NOT
5 GUILTY.

6 AND AGAIN, MADAM FORELADY, I WILL TELL YOU, ON THIS VERDICT
7 FORM HERE IS: "THE STATE OF SOUTH CAROLINA IN THE COUNTY OF MARION
8 IN THE COURT OF GENERAL SESSIONS, THE NAME OF THE CASE AND THE
9 VERDICT, WE THE JURY BY UNANIMOUS AGREEMENT FIND THE DEFENDANT
10 WAYNE MCLAUGHLIN" AND THE FIRST ITEM I HAVE PUT HERE IS COCAINE
11 BASE OR CRACK, EITHER ONE OF THOSE THREE: GUILTY OF POSSESSION
12 WITH INTENT TO DISTRIBUTE COCAINE BASE, GUILTY OF POSSESSION OF
13 COCAINE BASE OR NOT GUILTY AND THEN DOWN AGAIN THE SAME THING
14 WITH COCAINE: GUILTY OF POSSESSION WITH INTENT TO DISTRIBUTE -
15 SOMETIMES WE LAWYERS REFER TO IT AS P-W-I-D - COCAINE OR GUILTY OF
16 POSSESSION OF COCAINE OR NOT GUILTY. BUT YOU WOULD HAVE ONE
17 VERDICT ON NUMBER ONE AND ONE VERDICT ON NUMBER TWO.

18 NOW, LADIES AND GENTLEMEN, I'M GOING TO SEND YOU TO THE JURY
19 ROOM. I'M GOING TO ASK THAT YOU NOT BEGIN YOUR DELIBERATIONS JUST
20 YET. THE LAW DOES REQUIRE THAT I TAKE UP CERTAIN MATTERS OF LAW
21 WITH THE ATTORNEYS INVOLVED IN THIS CASE AND IF IT IS NOT NECESSARY
22 FOR ME TO BRING YOU BACK INTO THE COURTROOM, I WILL HAVE THE
23 BAILIFF BRING YOU THE VERDICT FORM, ALSO WILL BRING YOU THE EXHIBITS
24 AND TELL YOU TO BEGIN YOUR DELIBERATIONS. WHEN YOU HAVE REACHED
25 A VERDICT, SIMPLY KNOCK ON THE DOOR AND WE WILL RETURN YOU TO THE

OBJECTIONS TO COURT'S CHARGE

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1 COURTROOM AS SOON AS POSSIBLE. AND WITH THE EXCEPTION OF THE
2 ALTERNATE, I'M GOING TO ASK THAT YOU ALL GO TO THE JURY ROOM, BUT
3 DO NOT BEGIN YOUR DELIBERATIONS JUST YET. THANK YOU.

4 (JURY OUT AT 11:18 A.M.)

5 THE COURT: ANY ADDITIONS OR EXCEPTIONS ON BEHALF OF THE
6 STATE, MISTER JEPERTINGER?

7 MR. JEPERTINGER: NO, SIR.

8 THE COURT: ON BEHALF OF THE DEFENDANT, MISTER WILSON?

9 MR. WILSON: JUDGE, CAN WE, BEFORE WE DO THIS, THE ALTERNATE IS
10 PRESENT AND I NEED TO SAY SOMETHING OUTSIDE THE PRESENCE OF —

11 THE COURT: WELL, COME ON UP. I'LL TELL YOU WHAT I'M GOING TO
12 DO.

13 (BRIEF BENCH CONFERENCE)

14 THE COURT: ALL RIGHT, LET ME ASK THE BAILIFF IF YOU WILL JUST
15 ASK THE ALTERNATE TO STEP OUTSIDE FOR JUST A MOMENT WHILE WE
16 TAKE UP A MATTER ON THE RECORD.

17 (ALTERNATE LEAVES THE ROOM)

18 THE COURT: FIRST OF ALL, LET'S GO TO THE CHARGE AND WE WILL
19 COME BACK TO THAT MISTER WILSON.

20 MR. WILSON: YES, SIR.

21 THE COURT: ANY EXCEPTIONS TO THE CHARGE?

22 MR. WILSON: YES, SIR. JUDGE, IN YOUR CHARGE ON TWO OCCASIONS,
23 ONE AND I KNOW IT WAS AN ERROR, I KNOW YOU MEANT TO SAY THE STATE,
24 BUT YOU SAID THE DEFENDANT MUST PROVE AND YOU WERE ACTUALLY
25 REFERRING TO THE STATE AND THAT WAS BACK WHEN I THINK YOU WERE

1 TALKING ABOUT THE ELEMENTS OF COCAINE OR THE ELEMENTS OF CRACK
2 COCAINE AND YOU WERE ATTEMPTING TO SAY THAT THE STATE MUST
3 PROVE BUT YOU SAID THE DEFENDANT MUST PROVE.

4 THE OTHER OCCASION WAS WHEN YOU WERE GIVING YOUR CHARGE
5 ON CIRCUMSTANTIAL EVIDENCE, YOU SAID ON BOTH OCCASIONS WHEN YOU
6 WERE SAYING THAT THE STATE MUST PROVE, YOU WERE SAYING, "THAT
7 THEY COULD FIND THE DEFENDANT GUILTY BUT YOU NEVER SAID THAT THEY
8 COULD FIND HIM NOT GUILTY. BOTH TIMES YOU SAID GUILTY AND I KNOW
9 YOU MEANT TO SAY NOT GUILTY ON ONE OF THEM, THE FIRST ONE ACTUALLY
10 WHEN YOU FIRST SAID IT, YOU MEANT TO SAY NOT GUILTY, THEY COULD
11 EITHER FIND THE DEFENDANT NOT GUILTY OR IF THEY ACCEPTED THE
12 EVIDENCE THAT THEY COULD FIND THE DEFENDANT GUILTY, BUT BOTH TIMES
13 YOU ACTUALLY SAID GUILTY AND THAT WAS DURING THE CIRCUMSTANTIAL
14 EVIDENCE CHARGE AND I KNOW IT WAS JUST A MIS-WORDING, BUT ANYWAY,
15 I JUST...

16 THE COURT: ALL RIGHT. WELL, I CAN CLARIFY THAT. THE LAST
17 SENTENCE OF THE CIRCUMSTANTIAL EVIDENCE CHARGE SIMPLY IS: AFTER
18 WEIGHING ALL THE EVIDENCE IF YOU ARE NOT CONVINCED OF THE GUILT OF
19 THE DEFENDANT BEYOND A REASONABLE DOUBT, YOU MUST FIND THE
20 DEFENDANT NOT GUILTY. ON THE OTHER HAND, IF YOU ARE, AFTER
21 WEIGHING ALL THE EVIDENCE CONVINCED OF THE GUILT OF THE DEFENDANT
22 BEYOND A REASONABLE DOUBT, YOU WOULD FIND HIM GUILTY.

23 MR. WILSON: YES, SIR.

24 THE COURT: I DON'T MIND RE-GIVING THAT STATEMENT. NOW, WHAT
25 WAS THE OTHER ONE? I, OF COURSE, WAS SIMPLY READING DIRECTLY FROM

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1 JUDGE ANDERSON'S BOOK.

2 MR. WILSON: THE OTHER ONE, I WILL WITHDRAW, IF YOU ARE GOING
3 TO CHARGE THAT, I WILL FIND -- I WAS JUST CONCERNED BECAUSE I THINK, I
4 KNOW IT WASN'T -- YOU SAID IT RIGHT EXCEPT FOR DEFENDANT AND STATE.

5 THE COURT: I MUST HAVE JUST STUMBLED OVER THAT, BUT I THINK I
6 SAID IT ENOUGH TIMES --

7 MR. WILSON: YOU DID. I MEAN, I'M NOT SAYING --

8 THE COURT: ALL RIGHT. NOW, TELL ME WHAT'S THE SITUATION WITH
9 THE ALTERNATE BEFORE -- I PROPOSE TO EXCUSE THE ALTERNATE AT THIS
10 POINT. WE'VE HEARD ALL THE TESTIMONY AND THE TWELVE JURORS ARE
11 ALL HERE.

12 MR. WILSON: JUDGE, MY CONCERN IS, THAT WE HAD A JUROR WHO
13 HAS BEEN SLEEPING PRETTY MUCH ALL DAY. I WATCHED HER, YOU KNOW,
14 WHEN THE SOLICITOR WAS MAKING HIS CLOSING STATEMENT AND SHE WAS
15 NODDING BACK AND FORTH THEN, AND THEN WHEN I GOT UP, I THOUGHT
16 THAT MAYBE I WAS JUST BORING AND SO SHE SLEEP THROUGHOUT MY
17 ENTIRE -- BUT THEN I DIDN'T FEEL SO BAD BECAUSE SHE THEN SLEPT
18 THROUGH HIS HONOR'S ENTIRE CHARGE.

19 THE COURT: SHE DIDN'T SLEEP THROUGH ALL OF IT, SHE WAS UP AND
20 DOWN. I WATCHED HER, TOO.

21 MR. WILSON: AND THAT'S MY CONCERN, THOUGH, JUDGE, IS THAT THE
22 CHARGE IS, ESPECIALLY IN THIS PARTICULAR CASE, BECAUSE IT'S
23 CONSTRUCTIVE POSSESSION IS VERY TECHNICAL AND YOU'VE GOT TO
24 LISTEN AND YOU'VE GOT TO PAY ATTENTION AND IF SHE'S SLEEPING IN AND
25 OUT, EVEN IF SHE'S ONLY GOING BACK AND FORTH, THE PROBLEM WITH

1 THAT IS THAT YOU MISS BITS AND PIECES, WHICH MAY VERY WELL BE
2 CRITICAL WHEN THEY GET INTO THE JURY ROOM AND THEN IF THERE IS ANY
3 DISCUSSION IN THE JURY ROOM ABOUT WHAT THE COURT SAID AND WHAT
4 THE INSTRUCTIONS WERE, SHE'S CERTAINLY NOT IN A POSITION TO KNOW
5 WHAT THEY WERE. AND I WOULD ASK THE COURT TO CONSIDER REMOVING
6 HER FROM THE PANEL, REPLACING HER WITH THE ALTERNATE, YOU KNOW,
7 AT THIS TIME.

8 THE COURT: MISTER JEPERTINGER?

9 MR. JEPERTINGER: YOUR HONOR, IT APPEARED, AND I WOULD SAY
10 APPEARED -- YOU KNOW, SHE COULD HAVE BEEN LISTENING WITH HER EYES
11 CLOSED, YOUR HONOR. HOWEVER, IT APPEARED AS MISTER WILSON SAID
12 THAT SHE WAS NODDING OFF. NOW, I CAN'T TELL YOU WHETHER MY FIRST
13 SCENARIO IS CORRECT OR MY SECOND SCENARIO IS CORRECT.

14 THE COURT: WHAT'S YOUR POSITION WITH REGARD TO HIS REQUEST
15 THAT SHE BE REPLACED BY THE ALTERNATE?

16 MR. JEPERTINGER: I THINK IT'S EXTREME AND I'D BE OPPOSED TO IT.

17 THE COURT: ALL RIGHT. I'M GOING TO DENY YOUR MOTION, MISTER
18 WILSON. I'VE WATCHED THIS SAME JUROR. SHE, AT TIMES, DID HAVE HER
19 EYES CLOSED, BUT SHE WATCHED ME AND SHE LISTENED THROUGHOUT THE
20 TRIAL AND SO THAT WE ALL KNOW WHO WE ARE TALKING ABOUT, I DON'T
21 KNOW THE INDIVIDUAL BY NAME, BUT I ASSUME YOU'RE TALKING ABOUT THE
22 LADY ON THE SECOND ROW ON THE VERY END.

23 MR. WILSON: DIRECTLY BEHIND THE FOREPERSON.

24 THE COURT: RIGHT.

25 MR. WILSON: THAT IS CORRECT.

COURT'S RE-CHARGE TO THE JURY

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1 **THE COURT:** I WATCHED HER BOTH DURING THE ARGUMENTS AND
2 DURING THE CHARGE. SOME TIMES SHE HAD HER HEAD DOWN AND SOME
3 TIMES SHE HAD HER HEAD BACK, SHE HAD HER EYES OPEN, LISTENING. SHE
4 MAY NOT HAVE BEEN THE MOST ALERT JUROR, BUT I BELIEVE THAT SHE WAS
5 ALERT AND WAS LISTENING TO WHAT WAS SAID AND I WILL, THEREFORE,
6 RESPECTFULLY DENY THE MOTION TO REPLACE HER WITH THE ALTERNATE.
7 I CANNOT CONCLUDE THAT SHE WAS SLEEPING THROUGH THE ARGUMENTS
8 AND THE CHARGE BASED UPON MY OBSERVATIONS. ALL RIGHT. I'M GOING
9 TO DENY THAT MOTION.

10 ALL RIGHT. LET ME ASK YOU TO HAVE THE ALTERNATE COME BACK IN
11 AND HAVE A SEAT AND BRING THE JURY BACK IN AND TELL THEM I NEED TO
12 GIVE THEM SOME BRIEF ADDITIONAL INSTRUCTIONS.

13 (JURY IN AT 11:24 A.M.)

14 **THE COURT:** ALL RIGHT. LADIES AND GENTLEMEN, I JUST NEED TO
15 CLARIFY, VERY BRIEFLY, AN INSTRUCTION THAT I GAVE YOU WHERE I MAY
16 HAVE MIS-SPOKE AND I WANT TO MAKE SURE THAT I DID NOT MIS-SPEAK OR
17 MAKE SURE THAT YOU CLEARLY UNDERSTAND WHAT THE LAW IS AND THIS
18 HAS TO DO WITH THE DIRECT AND CIRCUMSTANTIAL EVIDENCE
19 INSTRUCTIONS THAT I GAVE YOU.

20 YOU WILL RECALL THAT I TOLD YOU THAT THERE ARE TWO TYPES OF
21 EVIDENCE THAT ARE GENERALLY PRESENTED DURING A TRIAL, DIRECT
22 EVIDENCE AND CIRCUMSTANTIAL EVIDENCE. DIRECT EVIDENCE IS THE
23 TESTIMONY OF A PERSON WHO ASSERTS OR CLAIMS TO HAVE ACTUAL
24 KNOWLEDGE OF A FACT, SUCH AS AN EYEWITNESS. CIRCUMSTANTIAL
25 EVIDENCE IS PROOF OF A CHAIN OF CIRCUMSTANCES, IS PROOF OF THE

1 CHAIN OF FACTS AND CIRCUMSTANCES, INDICATING THE EXISTENCE OF THE
2 FACT. THE LAW MAKES ABSOLUTELY NO DISTINCTION BETWEEN THE
3 WEIGHT OR VALUE TO BE GIVEN TO EITHER DIRECT OR CIRCUMSTANTIAL
4 EVIDENCE. NOR IS A GREATER DEGREE OF CERTAINTY REQUIRED OF
5 CIRCUMSTANTIAL EVIDENCE THAN OF DIRECT EVIDENCE. YOU SHOULD
6 WEIGH ALL OF THE EVIDENCE IN THIS CASE. AFTER WEIGHING ALL THE
7 EVIDENCE, IF YOU ARE NOT CONVINCED OF THE GUILT OF THE DEFENDANT
8 BEYOND A REASONABLE DOUBT, YOU MUST FIND THE DEFENDANT NOT
9 GUILTY. ON THE OTHER HAND, AFTER WEIGHING ALL OF THE EVIDENCE, IF
10 YOU ARE CONVINCED OF THE GUILT OF THE DEFENDANT BEYOND A
11 REASONABLE DOUBT, YOU WOULD FIND THE DEFENDANT GUILTY.

12 ALL RIGHT. WITH THOSE ADDITIONAL INSTRUCTIONS ON THE TWO
13 TYPES OF EVIDENCE, I'M GOING TO ASK YOU TO GO TO YOUR JURY ROOM,
14 BUT AGAIN, DON'T BEGIN YOUR DELIBERATIONS JUST YET. THANK YOU.

15 (JURY OUT AT 11:27 A.M.)

16 THE COURT: ALL RIGHT, MISTER JEPERTINGER, ANY ADDITIONS OR
17 EXCEPTIONS TO THE ADDITIONAL INSTRUCTIONS?

18 MR. JEPERTINGER: NO, SIR.

19 THE COURT: MISTER WILSON?

20 MR. WILSON: NOTHING FURTHER, YOUR HONOR.

21 THE COURT: ALL RIGHT. IF Y'ALL CAN CHECK THE EXHIBITS AND
22 MISTER BAILIFF, HERE IS THE VERDICT FORM, AND GO AHEAD AND GIVE THE
23 EXHIBITS TO THE JURY, GIVE THEM A PAD AND TELL THEM TO BEGIN THEIR
24 DELIBERATIONS.

25 (ATTORNEYS CHECK THE EXHIBITS)

1 **THE COURT:** ALL RIGHT. TELL THE JURY TO BEGIN THEIR
2 DELIBERATIONS.

3 (EXHIBITS AND VERDICT FORM ARE SENT TO JURY)

4 **THE COURT:** MADAM ALTERNATE, THE LAW DOES NOT PERMIT ME TO
5 HAVE MORE THAN TWELVE JURORS. THE PURPOSE OF DRAWING AN
6 ALTERNATE IS IN THE EVENT THAT SOMEONE DOES NOT REMAIN HEALTHY
7 OR HAS TO BE EXCUSED BECAUSE OF SICKNESS OR FOR OTHER REASONS
8 SO THAT WE WOULD NOT HAVE A MIS-TRIAL. YOU'VE HEARD ALL THE
9 TESTIMONY IN THIS CASE, BUT YOU ARE NOT GOING TO PARTICIPATE IN THE
10 DECISION. SO, I'M GOING TO EXCUSE YOU FROM ANY FURTHER
11 PARTICIPATION IN THIS CASE AND ALLOW YOU TO GO ABOUT YOUR
12 BUSINESS. WHAT I'M GOING TO ASK YOU TO DO, YOUR FELLOW JURORS ARE
13 COMING BACK HERE AT 2:00 AND I'M GOING TO ASK THAT YOU BE BACK AT
14 2:00. WE'RE GOING TO BE READY TO GO FORWARD WITH ANOTHER CASE AT
15 THAT TIME. AS FAR AS THIS CASE IS CONCERNED, YOU ARE EXCUSED FROM
16 ANY FURTHER SERVICE ON THIS CASE AND PLEASE BE BACK IN THE
17 COURTROOM AT 2:00 THIS AFTERNOON. OKAY? THANK YOU.

18 ALL RIGHT. WE'LL TAKE A RECESS. IF THE STATE HAS GOT ANYTHING,
19 WE'LL TAKE IT UP AS SOON AS THEY ARE READY.

20 (BREAK)

21 **THE COURT:** WE'RE BACK ON THE RECORD WITH THE MATTER OF THE
22 STATE VERSUS WAYNE MCLAUGHLIN. LET THE RECORD REFLECT MISTER
23 MCLAUGHLIN IS PRESENT IN COURT WITH HIS ATTORNEY MISTER WILSON.
24 THE STATE IS PRESENT WITH MISTER CLEMENTS AND MISTER JEPERTINGER.
25 I'VE BEEN ADVISED THAT THE JURY HAS REACHED A VERDICT. ANYTHING

1 BEFORE WE BRING THE JURY IN, MISTER JEPERTINGER?

2 MR. JEPERTINGER: NO, SIR.

3 THE COURT: MISTER WILSON?

4 MR. WILSON: NO SIR, YOUR HONOR.

5 THE COURT: ALL RIGHT. BRING THE JURY IN PLEASE.

6 (JURY IN AT 12:15 A.M.)

7 THE COURT: ALL RIGHT. MADAM FORELADY, HAVE YOU REACHED A
8 VERDICT?

9 MADAM FORELADY: WE HAVE, YOUR HONOR.

10 THE COURT: HAND THE DOCUMENT TO THE BAILIFF, PLEASE.

11 (MADAM FORELADY COMPLIES AND THE BAILIFF HANDS
12 THE DOCUMENT TO THE JUDGE)

13 THE COURT: ALL RIGHT. FROM THE STANDPOINT OF FORM, THE
14 VERDICT APPEARS TO BE CORRECT. MISTER WILSON, WOULD YOU AND
15 YOUR CLIENT STAND, PLEASE. AND MADAM CLERK, YOU MAY PUBLISH THE
16 VERDICT.

17 CLERK OF COURT: THANK YOU, SIR. THE STATE OF SOUTH CAROLINA,
18 COUNTY OF MARION. THE STATE OF SOUTH CAROLINA VERSUS WAYNE
19 MCLAUGHLIN. VERDICT: WE, THE JURY, BY UNANIMOUS AGREEMENT FIND
20 THE DEFENDANT WAYNE MCLAUGHLIN 1) COCAINE BASE, CRACK. GUILTY OF
21 POSSESSION WITH INTENT TO DISTRIBUTE CRACK COCAINE, EXCUSE ME,
22 COCAINE BASE. I'M SORRY. GUILTY OF POSSESSION WITH INTENT TO
23 DISTRIBUTE COCAINE BASE. 2) COCAINE. GUILTY OF POSSESSION WITH
24 INTENT TO DISTRIBUTE COCAINE. SIGNED: DEBRA D. WATSON,
25 FOREPERSON. DATED MAY 28, 2008. IS THIS YOUR VERDICT, SAY YOU ONE

VERDICT

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1 SAY YOU ALL?

2 THE COURT: RAISE YOUR RIGHT HANDS PLEASE IF THIS BE YOUR
3 VERDICT.

4 (ALL JURORS COMPLY)

5 THE COURT: ALL RIGHT.

6 CLERK OF COURT: THANK YOU.

7 THE COURT: ALL RIGHT, MISTER WILSON, YOU MAY BE SEATED.
8 ANYTHING BEFORE THE JURY IS EXCUSED, MISTER WILSON?

9 MR. WILSON: NO, SIR.

10 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN OF THE JURY, THIS
11 WILL CONCLUDE YOUR SERVICES IN CONNECTION WITH THIS CASE AND I AM
12 GOING TO DISCHARGE YOU FROM ANY FURTHER SERVICE IN CONNECTION
13 WITH THIS MATTER. I WILL TELL YOU THAT ONCE YOU HAVE BEEN
14 DISCHARGED AS A JUROR, THERE IS NOTHING ILLEGAL ABOUT YOUR TALKING
15 WITH ANYONE ABOUT THIS CASE. THERE IS NOTHING ILLEGAL ABOUT ANY
16 ONE TALKING TO YOU ABOUT YOUR SERVICE ON THIS CASE. IT'S A PRACTICE
17 IN WHICH I STRONGLY DISAPPROVE AND I STRONGLY DISCOURAGE, BUT IT'S
18 NOT ILLEGAL. YOU MAY TALK WITH ANY ONE OR YOU HAVE THE RIGHT NOT
19 TO TALK WITH ANY ONE BUT IF ANYONE SHOULD APPROACH YOU AND WANT
20 TO TALK TO YOU ABOUT YOUR SERVICE ON THIS CASE AND YOU DON'T WANT
21 TO TALK TO THEM ABOUT IT AND YOU TELL THEM THAT AND THEY CONTINUE
22 TO HARASS YOU OR BOTHER YOU, YOU LET THE COURT PERSONNEL KNOW
23 AND WE WILL DEAL WITH THEM.

24 I WILL ALSO TELL YOU THAT, IN MY VIEW, THE JURY'S ROLE IN THE
25 FACT-FINDING PROCESS IS SO IMPORTANT THAT THE TRIAL JUDGE SHOULD

1 NOT COMMENT ON THE VERDICT OF THE JURY EVEN AFTER A JURY HAS
2 REACHED A DECISION ON THE ISSUES IN THE CASE AND I MAKE IT A
3 PRACTICE NEVER TO COMMENT ON THE VERDICT OF THE JURY EVEN AFTER
4 A JURY HAS REACHED A DECISION ON THE ISSUES OF THE CASE BECAUSE I
5 THINK THAT IS THE JURY'S PREROGATIVE. I WILL TELL YOU THAT THERE WAS
6 EVIDENCE IN THE RECORD THAT YOU COULD HAVE REACHED THE DECISION
7 THAT YOU DID. SO, I AM GOING TO DISCHARGE YOU FROM ANY FURTHER
8 SERVICE IN THIS CASE. WE HAVE ONE MATTER WE NEED TO DO AND WE ARE
9 GOING TO TAKE CARE OF THAT NOW, BUT I AM GONG TO EXCUSE YOU FROM
10 ANY FURTHER SERVICE. I WILL TELL YOU THAT YOUR FELLOW JURORS WILL
11 BE BACK AT 2:00 THIS AFTERNOON AND I'M GOING TO ASK YOU TO COME
12 BACK TO THE COURTROOM AT 2:00. WE ARE GOING TO BE READY TO GO
13 FORWARD WITH ANOTHER MATTER AT THAT TIME, SO IF YOU WOULD, GET
14 YOUR LUNCH AND REPORT BACK TO THE COURTROOM AT 2:00 THIS
15 AFTERNOON. I WILL SEE YOU AT THAT TIME. THANK YOU, YOU ARE
16 DISCHARGED FROM ANY FURTHER SERVICE IN THIS CASE.

17 (JURY OUT AT 12:18 P.M.)

18 THE COURT: ALL RIGHT, MISTER WILSON, MOTIONS ON BEHALF OF THE
19 DEFENDANT?

20 MR. WILSON: THANK YOU, YOUR HONOR. YOUR HONOR, AT THIS TIME I
21 WOULD MAKE THE MOTION FOR A JUDGMENT NOTWITHSTANDING THE
22 VERDICT OR IN THE ALTERNATIVE FOR A NEW TRIAL AND I BASE THAT ON
23 SEVERAL THINGS: 1) THE JURY WAS OUT PROBABLY THIRTY-FIVE, FORTY
24 MINUTES TOTAL BEFORE THEY REACHED THE DECISION AND THAT, FIRST OF
25 ALL, GIVES ME SOME CONCERN. 2) I THINK THAT THERE WERE FACTUAL

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1 ISSUES AT PLAY IN THIS PARTICULAR TRIAL AND I THINK THAT THE JURY'S
2 VERDICT IS INCONSISTENT WITH THOSE FACTS AND ON TOP OF THAT, I THINK
3 ADDED TO THE FACT THAT AT THE OUTSET OF THIS TRIAL, ONE OF THE
4 THINGS THAT I ASKED THIS COURT WAS THAT WHEN WE WERE DISCUSSING
5 THE MIRANDA ISSUE AND WHETHER OR NOT THE STATE COULD INTRODUCE
6 THE EVIDENCE TOWARDS THE QUESTIONING ABOUT KEYS AND THE OTHER
7 ISSUE INVOLVING THE STATEMENT THAT WAS MADE BY THE DEFENDANT
8 ALLEGEDLY AT THE SCENE THAT, I THINK THAT ALL THOSE THINGS
9 TOGETHER, HAS DENIED THE DEFENDANT A FAIR TRIAL IN THIS PARTICULAR
10 CASE AND I THINK CONTRIBUTED TO THE JURY'S VERDICT, WHICH I BELIEVE
11 IS AGAINST THE GREATER WEIGHT OF THE EVIDENCE. AND I THINK THAT
12 THERE WAS MORE THAN AMPLE REASONABLE DOUBT IN THIS CASE AND FOR
13 WHATEVER REASON, I THINK THAT THE JURY IGNORED THAT AND BROUGHT
14 BACK THE VERDICT WHICH I WOULD SUGGEST TO THE COURT IS MAYBE THE
15 RESULT OF SOME KIND OF CAPRICE ON THEIR PART, BUT OBVIOUSLY, I
16 WASN'T IN THE JURY ROOM AND I DON'T KNOW WHAT WAS DISCUSSED
17 THERE, BUT HAVING SAID ALL THAT, I SIMPLY ASK THE COURT TO GRANT US -
18 TO SET ASIDE THE VERDICT OF THE JURY AND GRANT US A NEW TRIAL.

19 THE COURT: ALL RIGHT, THANK YOU MISTER WILSON. I CERTAINLY
20 APPRECIATE YOUR ARGUMENTS IN CONNECTION WITH THIS AND, OF
21 COURSE, WHEN YOU MAKE A STATEMENT AGAINST THE WEIGHT OR
22 REASONABLE DOUBT, THOSE ARE FACTUAL ISSUES THAT THE JURY MUST
23 WEIGH AND DECIDE AND IF I WERE TO GRANT A NEW TRIAL BASED UPON
24 THOSE ISSUES, I WOULD BE PUTTING MYSELF IN THE SHOES OF THE JURY
25 AND THAT I CANNOT DO.

1 I ALSO FEEL THAT AFTER THE MOTIONS THAT WERE MADE LAST WEEK
2 WITH REGARD TO SUPPRESSION AND ALSO JACKSON VERSUS DENNO, I TOOK
3 THOSE MATTERS UNTIL ADVISEMENT AND I READ THOSE CASES OVER THE
4 LONG MEMORIAL DAY WEEKEND. WE HAD FURTHER DISCUSSION AND
5 ARGUMENT WITH IT YESTERDAY MORNING AND I AM CONVINCED THAT MY
6 RULING ON THOSE MATTERS IS CORRECT. IF I'M NOT, THEN THAT'S WHAT
7 WE'VE GOT THE COURT OF APPEALS AND THE SUPREME COURT IN COLUMBIA
8 FOR AND SO I WOULD THEREFORE RESPECTFULLY DENY THE MOTION FOR
9 JUDGMENT NOTWITHSTANDING THE VERDICT OR JUDGMENT AND ARRESTED
10 VERDICT AS WELL AS A NEW TRIAL. I BELIEVE THAT THE JURY HAS MADE THE
11 DECISION BASED UPON EVIDENCE WHICH THEY PROPERLY HAD BEFORE
12 THEM AND PROPERLY CONSIDERED AND SO I RESPECTFULLY DENY THE
13 MOTIONS.

14 **MR. WILSON:** YOUR HONOR, THANK YOU VERY MUCH, BUT I - ONE
15 OTHER MATTER AND THAT IS THE MATTER OF THE JUROR WHO WAS
16 SLEEPING AND I THINK I REPORTED TO THE COURT DURING THE TIME THAT -
17 AFTER THE COURT HAD FINISHED IT'S CHARGE, THAT THE JUROR WAS
18 SLEEPING DURING MY CLOSING ARGUMENT, I KNOW THAT BECAUSE I WAS
19 CLOSE TO HER, AND SHE KEPT NODDING IN AND OFF, SHE WOULD NOD IN
20 AND NOD OFF, HOLD HER HEAD UP, LOOK AT ME, AND NOD BACK OFF AGAIN.
21 WHEN MISTER - WHEN THE SOLICITOR WAS DOING HIS CLOSING ARGUMENT,
22 SHE WASN'T QUITE AS SLEEPY, BUT WHEN THE COURT STARTED DOING ITS
23 CHARGE OF THE LAW, I NOTICED THAT SHE WAS AGAIN DOING THE SAME
24 THING, NODDING IN AND OFF. I EVEN PASSED A MESSAGE OVER TO THE
25 SOLICITOR, THE NOTE IS RIGHT HERE, WHICH IS EARLY ON IN THE COURT'S

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1 CHARGE THAT SHE WAS SLEEPING AND YOU KNOW OBVIOUSLY WE WEREN'T
2 GOING TO INTERRUPT THE COURT DURING THE CHARGE AND TELL HER TO
3 WAKE UP, BUT I JUST THINK THAT AGAIN THAT'S ONE OF THOSE THINGS THAT
4 I'M FEARFUL OF THIS VERDICT AND I THINK THAT AT A MINIMUM BECAUSE OF
5 HER SLEEPING THAT THAT MAY HAVE CONTRIBUTED TO THIS VERDICT AND
6 SHE MAY NOT HAVE UNDERSTOOD THE LAW OR HEARD ALL OF THE LAW AND
7 SO I WOULD ASK THE COURT TO EITHER DECLARE A MIS-TRIAL BECAUSE OF
8 THAT OR AGAIN TO GRANT US A NEW TRIAL AS A RESULT OF THAT.

9 THE COURT: ALL RIGHT. AGAIN, I WOULD RESPECTFULLY DENY THAT
10 MOTION. I DID WATCH THIS PARTICULAR JUROR AND I DID NOT THINK THAT --
11 AND I WATCHED HER DURING ARGUMENTS AND DURING MY INSTRUCTIONS
12 AND WHILE SHE WAS NOT THE MOST ALERT JUROR THAT WAS THERE, SHE
13 CERTAINLY, I FELT LIKE, WAS FAR FROM SLEEPING TO THE POINT WHERE
14 SHE WAS NOT LISTENING OR UNDERSTANDING WHAT WAS GOING ON. HAD I
15 FELT THAT WAY, I WOULD HAVE STOPPED ON MY OWN AND DONE
16 SOMETHING ABOUT IT, BUT I DID NOT SEE THAT THAT WAS THE CASE,
17 ESPECIALLY DURING THE COURSE OF THE CHARGE, SHE DID LOOK DOWN
18 SOME, SHE WAS LOOKING UP, BUT SHE WAS LOOKING AT ME AS WELL. I
19 CANNOT CONCLUDE THAT SHE WAS NOT AWARE OF WHAT WAS GOING ON
20 AND I WOULD RESPECTFULLY DENY THE MOTION ON THAT GROUNDS AS
21 WELL.

22 DO YOU HAVE THE SENTENCING SHEETS?

23 MR. JEPERTINGER: YES, SIR.

24 THE COURT: ALL RIGHT. MISTER WILSON, WOULD YOU AND MISTER
25 MCLAUGHLIN COME AROUND, PLEASE?

SENTENCE OF THE COURT

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1 **MR. WILSON:** YES, SIR.

2 **MR. JEPERTINGER:** AND BEFORE YOU TAKE THE SENTENCE YOUR
3 HONOR, I WOULD JUST LIKE TO PUT HIS RECORD ON THE RECORD.

4 **THE COURT:** YES, SIR. I WAS GOING TO ASK YOU FOR HIS CRIMINAL
5 RECORD.

6 **MR. JEPERTINGER:** YOUR HONOR, THIS WOULD CONSTITUTE A THIRD
7 DRUG OFFENSE, YOUR HONOR. LET ME GO OVER, FIRST OF ALL, HE WAS
8 ARRESTED AND CONVICTED OF ARMED ROBBERY IN 1977, YOUR HONOR.
9 YOUR HONOR, THAT WAS 1977. IN 1985, HE WAS CONVICTED OF RECEIVING
10 STOLEN GOODS. IN 1988, YOUR HONOR, HE WAS CONVICTED OF
11 POSSESSION OF COCAINE WITH THE INTENT TO DISTRIBUTE FOR WHICH HE
12 RECEIVED FIFTEEN YEARS CONFINEMENT AND A \$20,000.00 FINE.

13 **THE COURT:** LET'S GO BACK JUST A MINUTE TO THE '77 ARMED
14 ROBBERY. WHAT DID HE GET ON THAT?

15 **MR. JEPERTINGER:** A YOUTHFUL OFFENDER SENTENCE.

16 **THE COURT:** BACK IN THOSE DAYS —

17 **MR. JEPERTINGER:** YOU COULD. AND I BELIEVE THAT'S —

18 **THE COURT:** ALL RIGHT. AND WHAT ABOUT '85, WHAT DID HE RECEIVE?

19 **MR. JEPERTINGER:** '85, NINETY DAYS CONFINEMENT, ONE YEAR
20 PROBATION AND A \$300.00 FINE. CONFINEMENT OF THREE YEARS AND
21 \$750.00 SUSPENDED ACCORDING TO THIS.

22 **THE COURT:** ALL RIGHT. AND THAT '88 P-W-I-D COCAINE, HE GOT A
23 FIFTEEN YEAR ACTIVE SENTENCE?

24 **MR. JEPERTINGER:** THAT IS CORRECT, YOUR HONOR.

25 **THE COURT:** OKAY.

SENTENCE OF THE COURT

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1 **MR. JEPERTINGER:** AND THE COURT DATE THAT HE PLED GUILTY WAS
2 FEBRUARY 14, 1989. YOUR HONOR, IN 1998, HE HAD DISTRIBUTION OF
3 MARIJUANA, FOUR COUNTS, YOUR HONOR. HE WAS CONVICTED, IT LOOKS
4 LIKE IT SAID, THE COURT CHARGE WAS MANUFACTURED POSSESSION OF
5 OTHER SUBSTANCES, SCHEDULE I, II, III WITH INTENT TO DISTRIBUTE, FIRST
6 OFFENSE. HE WAS CONVICTED, RECEIVED TEN YEARS AND \$10,000.00
7 CONCURRENT AND THE COURT DATE ON THAT WAS 8-25-98. HE WAS
8 RECEIVED IN THE DEPARTMENT OF CORRECTIONS AS A DISTRIBUTION OF
9 MARIJUANA FOUR COUNTS. THAT'S THE EXTENT OF THE RECORD WE HAVE
10 ON THIS INDIVIDUAL. I WOULD SAY, YOUR HONOR, IN TERMS OF
11 PROSPECTIVE STATE, YOU KNOW, NORMALLY WE SEE PEOPLE UP HERE GET
12 INVOLVED IN THIS DRUG BUSINESS BECAUSE OF AN ECONOMIC SITUATION,
13 YOUR HONOR. THOSE ARE THE COLD, HARD REALITIES. THEY CAN'T FIND
14 JOBS. JOBS ARE LEAVING MARION COUNTY BY THE DROVES. HOWEVER,
15 THAT DOESN'T APPLY TO THIS INDIVIDUAL, YOUR HONOR. AS YOU HEARD
16 FROM REUBEN BUTLER, THIS INDIVIDUAL HAD A PIECE OF PROPERTY, WAS
17 LEGITIMATELY INVOLVED WITH THAT BUSINESS, WHETHER HE WAS THE
18 OWNER, LESSOR OR CONDUCTED BUSINESS THERE. HE WAS USING THIS
19 BUSINESS AS A FRONT TO SELL DRUGS, YOUR HONOR. HE'S GOT A TERRIBLE
20 RECORD FOR VIOLENCE, HE'S GOT A TERRIBLE RECORD FOR DRUGS AND
21 NOTHING HAS BEEN LEARNED BY THIS INDIVIDUAL THROUGHOUT THE
22 COURSE OF HIS LIFE. HE'S FORTY-EIGHT YEARS OLD AND HE HASN'T
23 LEARNED THAT. HE'S DECIDED TO MAKE THE EASY BUCK. AND, YOUR
24 HONOR, WE HAVE TO DEAL WITH PEOPLE WHO GET HOOKED ON THIS STUFF
25 DAY IN AND DAY OUT. THE STATE IS FED UP WITH IT. THE STATE WOULD ASK

1 FOR MAXIMUM, CONSECUTIVE SENTENCES.

2 THE COURT: ALL RIGHT. MISTER WILSON.

3 MR. WILSON: IT IT PLEASES THE COURT, YOUR HONOR. WAYNE IS
4 FORTY-EIGHT YEARS OF AGE AND REGARDLESS OF WHAT SENTENCE THE
5 COURT GIVES WAYNE IN THIS PARTICULAR CASE, HE'S GOING TO BE IN
6 PRISON FOR A SUBSTANTIAL PERIOD OF TIME AND BECAUSE OF THE
7 MANDATORY MINIMUM SENTENCE ON THE OFFENSE IN THE FIRST INSTANCE.
8 AND SECONDLY, BECAUSE UNDER THE STATUTES, AS I UNDERSTAND THEM,
9 IT WOULD BE CONSIDERED A VIOLENT CRIME ON TOP OF THAT WHICH
10 WOULD NECESSITATE EIGHT-FIVE PERCENT.

11 THE COURT: IT'S EIGHT-FIVE PERCENT, NO PAROLE UNDER THE
12 STATUTE FOR ANYTHING THAT CARRIES MORE THAN TWENTY YEARS IS
13 EIGHT-FIVE PERCENT. HE WOULD SERVE EIGHTY-FIVE PERCENT OF
14 WHATEVER I SENTENCE HIM TO.

15 MR. WILSON: YES, SIR. AND MY POINT, YOUR HONOR, IS THIS, AT
16 FORTY-EIGHT YEARS OF AGE, I DON'T KNOW HOW MUCH LONGER HIS LIFE IS
17 GOING TO BE, BUT I WOULD ASK THE COURT, I MEAN YOU'VE HEARD THE
18 EVIDENCE, YOU HEARD THE TESTIMONY, THERE'S NOTHING I CAN TELL YOU
19 THAT YOU HAVEN'T ALREADY HEARD DURING THE COURSE OF THIS TWO-DAY
20 TRIAL AND I WOULD SIMPLY SAY, THOUGH, THAT THE JURY HAS FOUND HIM
21 GUILTY. IT'S POINTLESS FOR ME TO STAND HERE AT THIS POINT AND ARGUE
22 ABOUT WHETHER THEY SHOULD HAVE OR THEY SHOULDN'T HAVE OR
23 WHETHER I AGREE WITH IT OR DISAGREE WITH IT. THAT'S ALL AT THIS
24 POINT, ACADEMIC. THE DECISION HAS BEEN MADE AND THE COURT NOW
25 HAS THE RESPONSIBILITY OF SENTENCING HIM BASED ON THAT JURY'S

SENTENCE OF THE COURT

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1 VERDICT. YOU KNOW, I EXPLAINED TO HIM AT THE OUTSET THAT THE VERY
2 MINIMUM SENTENCE THAT THIS COURT COULD GIVE HIM UNDER THE MOST
3 OPTIMAL CIRCUMSTANCES IS FIFTEEN YEARS AND THAT'S VIOLENT AND OF
4 THAT HE'S GOING TO SERVE A MINIMUM OF EIGHT-FIVE PERCENT IF NOT THE
5 WHOLE FIFTEEN YEARS AND EVEN IF HE SERVES FIFTEEN YEARS, I MEAN,
6 HE'S GOING TO BE WELL INTO HIS SIXTIES BY THE TIME HE WOULD GET OUT
7 OF JAIL AND IF HE GETS MORE THAN THAT, THEN HE PROBABLY WON'T LIVE
8 THROUGH IT ANYWAY. I'D JUST ASK THE COURT TO TAKE THAT INTO
9 CONSIDERATION, YOU KNOW, WHEN THE COURT IS PASSING SENTENCE IN
10 THIS PARTICULAR CASE. YOU KNOW, AND I UNDERSTAND THE SOLICITOR'S
11 CONCERN ABOUT DRUGS. YOU KNOW, WE ALL SHARE THOSE CONCERNS
12 ABOUT DRUGS AND THE HARM THAT DRUGS CAN DO TO PEOPLE. AND IN THIS
13 CASE, YOU LOOK AT THE HARM THAT IT'S DONE TO HIS LIFE BECAUSE HE'S
14 BEEN TO PRISON BEFORE FOR DRUGS AND HE'S GETTING READY TO GO TO
15 PRISON AGAIN.

16 UNFORTUNATELY, YOUR HONOR, THERE'S MORE THAN ONE WAY TO BE
17 A VICTIM OF DRUGS AND SOMETIMES WHAT HAPPENS IS, WHEN PEOPLE GET
18 HOOKED ON DRUGS, THEN THEY DO THINGS THAT THEY PROBABLY
19 WOULDN'T DO OR WISH THAT THEY HADN'T DONE, BUT THEY DO THEM
20 ANYWAY. AND AGAIN, WE CAN ALL SIT HERE AND ARGUE AND SURMISE
21 ABOUT WHETHER IT'S GOOD OR BAD OR RIGHT AND WRONG OR WHATEVER,
22 BUT FOR WHATEVER REASON, THAT CONTINUES TO HAPPEN IN THIS
23 SOCIETY. I DON'T SEE IT ENDING THIS WEEK AND NO MATTER HOW LONG WE
24 PUT THIS MAN IN JAIL FOR, NO MATTER HOW LONG IT IS, IT'S NOT GOING TO
25 STOP DRUGS FROM MARION COUNTY OR HORRY COUNTY. AND IF WE ARE

SENTENCE OF THE COURT

166

1 TRYING TO SET AN EXAMPLE, WE ARE WAY, WAY TOO LATE FOR THAT
2 BECAUSE THOUSANDS, LITERALLY HUNDREDS OF THOUSANDS OF YOUNG
3 PEOPLE ALL OVER THIS COUNTRY ARE ALREADY INVOLVED IN DRUGS. I'M
4 NOT OFFERING THAT AS AN EXCUSE, I'M SIMPLY SAYING, TO TRY TO MAKE AN
5 EXAMPLE OR TRYING TO PUNISH HIM FOR WHAT WE WANT OTHER PEOPLE'S
6 CONDUCT TO BE LIKE OR TO TRY TO CHANGE OTHER PEOPLE'S CONDUCT, I
7 WOULD SUBMIT TO THE COURT, IN THIS PARTICULAR CASE, I WOULD ASK THE
8 COURT NOT TO DO THAT IN THIS CASE. I THINK THAT, THAT THE COURT HAS
9 TO GIVE HIM A SENTENCE. HE UNDERSTANDS THAT. I WOULD JUST ASK
10 THAT YOU BE MERCIFUL UNDER THE CIRCUMSTANCES AND TAKE INTO
11 CONSIDERATION HIS AGE AND THE FACT THAT WHATEVER SENTENCE THE
12 COURT GIVES HIM, MAY VERY WELL BE A LIFE SENTENCE REGARDLESS OF
13 HOW MUCH IT IS.

14 THE COURT: OKAY. THANK YOU, MISTER WILSON. MISTER
15 MCLAUGHLIN, WHAT WOULD YOU LIKE TO TELL ME?

16 MR. MCLAUGHLIN: HAVE MERCY UPON ME.

17 THE COURT: SIR?

18 MR. MCLAUGHLIN: HAVE MERCY UPON ME.

19 THE COURT: MISTER WILSON, I AGREE WITH YOU THAT LOCKING UP,
20 FROM A PHILOSOPHICAL STANDPOINT, LOCKING UP THESE PEOPLE
21 INVOLVED IN SELLING DRUGS DOES NOT SOLVE THE DRUG PROBLEM AND I
22 DON'T KNOW WHAT THE ANSWER TO IT IS. I'M SURE IN YOUR EXPERIENCE
23 YOU'VE TRIED TO COME UP WITH SOLUTIONS AND I THINK EVERYBODY'S
24 TRIED TO COME UP WITH SOLUTIONS AND PEOPLE SMARTER THAN ME HAVE
25 TRIED TO COME UP WITH SOLUTIONS, BUT THEY HAVEN'T DONE SO.

SENTENCE OF THE COURT

167

1 NONETHELESS, THE LEGISLATURE HAS DECREED, AND I HAVE TO ENFORCE
2 THE MANDATES OF THE LEGISLATURE WITH REGARD TO PEOPLE WHO JUST
3 CONTINUE TO VIOLATE THE DRUG LAWS AND TO REALLY JUST FLOUT IT
4 RIGHT IN FRONT OF EVERYBODY. THE THING THAT TROUBLES ME ABOUT
5 THIS INDIVIDUAL AND TROUBLES ME ABOUT YOU, MISTER MCLAUGHLIN, IS
6 THAT YOU ARE FORTY-EIGHT YEARS OLD. YOU'VE BEEN IN TROUBLE BEFORE
7 WITH DRUGS AND WITH OTHER THINGS. YOU OUGHT TO KNOW BETTER AND
8 YOU ARE ONE OF THEM THAT ARE CAUSING THESE YOUNG PEOPLE TO GET
9 INVOLVED IN DRUGS BECAUSE YOU ARE FORTY-EIGHT YEARS OLD AND
10 PROBABLY SELLING DRUGS TO THESE EIGHTEEN, NINETEEN, TWENTY,
11 TWENTY-THREE YEAR OLDS AND JUST CONTRIBUTING AND MAKING THE
12 PROBLEM WORSE. YOU'VE GOT A BAD CRIMINAL RECORD THAT HASN'T
13 TAUGHT YOU ANYTHING STARTING WITH A Y-O-A BACK IN 1977, RECEIVING
14 STOLEN GOODS, STARTED WITH THE FIRST DRUG OFFENSE TWENTY YEARS
15 AGO WITH P-W-I-D COCAINE AND THEN AGAIN TEN YEARS LATER WITH
16 DISTRIBUTION OF MARIJUANA. AND IT SEEMS LIKE IN THE YEARS OF 08,
17 YOU'VE JUST MANAGED TO KEEP GETTING CONVICTED ON DRUG CHARGES.
18 '88, '98 AND NOW '08. I DO AGREE PHILOSOPHICALLY THAT PUTTING THE
19 DRUG DEALERS AND PEOPLE LIKE YOU IN JAIL IS NOT GOING TO SOLVE THE
20 PROBLEM, BUT AT THE SAME TIME, IT WILL SOLVE A SMALL PROBLEM HERE IN
21 MARION COUNTY. IT'S A BIG PROBLEM FOR MARION COUNTY, BUT A SMALL
22 PROBLEM IN THE OVERALL SCHEME OF THINGS.

23 SENTENCE OF THE COURT ON BOTH CHARGES IS, THEY ARE TO RUN
24 CONCURRENT, THE SENTENCE OF THE COURT IS THE DEFENDANT IS
25 COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS FOR A TERM OF

SENTENCE OF THE COURT

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1 TWENTY-FIVE YEARS TO RUN CONCURRENT WITH EACH OTHER, GIVING
2 CREDIT FOR WHATEVER JAIL TIME HE'S DONE.

3 MR. WILSON: THANK YOU VERY MUCH, YOUR HONOR.

4 MR. JEPERTINGER: THANK YOU.

C-E-R-T-I-F-I-C-A-T-E

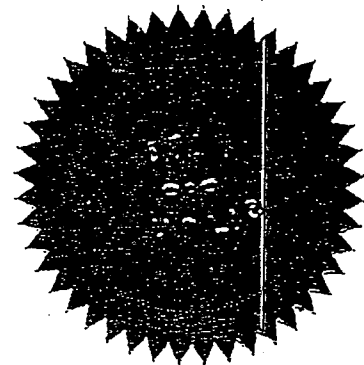
I, THE UNDERSIGNED JO RICE, OFFICIAL COURT REPORTER FOR THE EIGHTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING ONE HUNDRED SIXTY-EIGHT PAGE TRANSCRIPT IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF THE HEARING IN THE CAPTIONED CASE, IN THE COURT OF GENERAL SESSIONS FOR MARION COUNTY, SOUTH CAROLINA ON MAY 27 AND 28, 2008, AT THE MARION COUNTY COURTHOUSE TO THE BEST OF MY SKILL AND ABILITIES.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

SEPTEMBER 30, 2008

Jo Rice

JO RICE



BOOK _____ PAGE _____
 was *Henry J. Allen*
 CLERK OF COURT, MARION COUNTY
 SOUTH CAROLINA

STATE OF SOUTH CAROLINA)

County of MARION

Wayne McLaughlin 156148

Full name and prison number, if any, of applicant.

Y.

STATE OF South Carolina

Name of Respondent:

In the Court of Common Pleas

CLERK OF COURT, MARION COUNTY
SOUTH CAROLINA

OCT 25 P 1:41

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APPLICATION FOR

POST-CONVICTION RELIEF

2011-CP-33-1785

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 Lee Correction Institution 990 WISAKY Highway
Bishopville, S.C. 29010 Kershaw South 2151
2. Name and location of Court which imposed sentence MARION COUNTY GENERAL
SESSION COURT
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
(a) 2008-05-33-00137 (CAW08E001 (1); CAW08E002 (2); CAW08E003 (3)
(b) CAW08E004 (4)
(c) K-105839 K-105840 WARRANT NUMBER
4. The date upon which sentence was imposed and the terms of the sentence:
(a) MARCH 28, 2008 (2) 25 YRS CONCURRENT
(b) "
(c) "

5. Check whether a finding of guilty was made
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓ _____
- (c) after a plea of nolo contendere _____
6. Did you appeal from the judgment of conviction or the imposition of sentence? yes _____
Division of Appellate Defense for South Carolina _____
7. If you answered "yes" to (6), list
- (a) the name of each Court to which you appealed:
- i. Division of Appellate Defense, P.O. Box 11589 Columbia SC 29211
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. unpublished opinion NO. 2010 - up - 503
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Submitted Oct 1, 2010 - Filed November 12, 2010
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. UNKNOWN
- ii. _____
- iii. _____
8. If you answered "no" to (6), state your reasons for not so appealing:
- (a) N/A
- (b) _____
- (c) _____
9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel (Trial Lawyer)
- (b) Ineffective Assistance of Counsel (Appellant Lawyer)
- (c) Prosecutorial Misconduct

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) Counsel was ineffective for not challenging his
Client S.C. Const. ART. 1 § 10

(b) Counsel ineffective for failure to make a sufficient
record for review on direct appeal

(c) Prosecutor Statement that Police officer witness
had no reason to lie improper. (See Attachment -3-).

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law ?

yes

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

NO

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any,
already specified in (7) NO

(d) any other petitions, motions or applications in this or any other Court?

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. Motion for Rehearing

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. South Carolina Court of Appeals/ Columbia SC 29211

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. No Response

ii. _____

iii. _____

iv. _____

10. State Concisely and in the Same order the facts which support each ground set out in (9)

- (a) Counsel ineffective for not Preserving the issues of the Sleeping Juror, Miranda, Evidence, for review on direct appeal.
- (a) Counsel ineffective for failing to object to the Solicitors closing argument, Portions in (10) (c).
- (c) Solicitors Statement that defendant was guilty improper because it implied Personal belief rather than government Position.
- (c) Solicitors may not vouch for the credibility of the states witness. based on Personal Knowledge or information out Side the record.

(ATTACHMENT-3-).

(d) the date of each such disposition:

- i. NO RESPONSE
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. NONE
- ii. _____
- iii. _____
- iv. _____

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. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. _____
- iii. _____

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) Ineffective Assistance of Trial Lawyer / New grounds
- (b) Ineffective Assistance of Appellant Lawyer / New grounds
- (c) Prosecutorial Misconduct / New grounds

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (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?
DIRECTED Appeal / yes
- (e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? S.C. Commission of Indigent Defense

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. Ralph J. Wilson, Esquire P.O. Box 1827
Conway South Carolina 29526
- ii. Wanda H. Carter, Division of Appellate Defense
1330 Lady Street, Suite 401 Columbia, S.C. 29201-1589
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. (TRIAL Lawyer)
- ii. (Appellate Lawyer)
- iii. _____

18. State clearly the relief you seek in filing this application.

Sentences reversed and this case remanded to lower
court for new trial.

19. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)

VERIFICATION

COUNTY OF Marion)

I, Wayne McLaughlin, 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.

Wayne McLaughlin

Sworn to and subscribed before me

This 19 day of Oct, 2011.

Debra Sims L.S.

Notary Public for South Carolina

My Commission Expires 11-4-2015

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Wayne McLaughlin, 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 proceeding or give security therefor.

Wayne McLaughlin
Applicant

Sworn to and subscribed before me

This 19 day of Oct, 2011.

Debra Sims L.S.

Notary Public for South Carolina

My Commission Expires: 11-4-2015

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF MARION	)	
	)	
	)	2011-CP-33-785
	)	
Wayne McLaughlin, 156168,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the application for Post Conviction Relief filed October 25, 2011, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Marion County Clerk of Court. The Applicant was indicted by the Marion County Grand Jury for Manufacturing of Cocaine Base, First offense, and Manufacture, distribution, etc. of cocaine base, Third offense, Indictment 2008GS3300137. Applicant was represented by James Galmore, Esquire. On March 28, 2008, a jury found Applicant guilty as charged. The Honorable Howard P. King sentenced Applicant to twenty-five years imprisonment on each charge, to run concurrently. Applicant appealed his conviction and sentence and was represented by Wanda H. Carter, Esquire of Appellate Defense. Applicant's conviction and sentence were affirmed in unpublished opinion No. 2010-UP-503, and the Petition for Rehearing was denied on or around March 2011. The matter was remitted to the lower court April 11, 2011.

Attached herewith and incorporated herein are the Applicant's records from the South Carolina Department of Corrections and the trial transcript. Any of the above not so attached will be forwarded upon receipt. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective assistance of counsel (Trial Lawyer)";
 - a. "counsel ineffective for not preserving the issues of the sleeping juror, Miranda, evidence for review on direct appeal."
 - b. "counsel ineffective for failing to object to the Solicitors closing argument, portions in (10)(c)."
 - c. "Solicitors statement that defendant was guilty improper because it implied personal belief rather than government position."
 - d. "Solicitors may not vouch for the credibility of the states witness based on personal knowledge or information outside the record."
 - e. "Counsel was ineffective for not challenging his client S.C. Const. Art 1 section 10."
 - f. "Counsel ineffective for failure to make a sufficient record for review on direct appeal."
 - g. "Prosecutor statement that police officer witness had no reason to lie improper."
2. "Ineffective assistance of counsel (Appellant Lawyer)";
3. "Prosecutorial Misconduct."

The Applicant is asking as his relief requested that his sentence be reversed and remanded for a new trial.

III.

Respondent asserts that the Applicant's allegation of ineffective assistance of trial

counsel is without merit. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

Respondent asserts that 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 Petitioner must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland v. Washington. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, *citing* Strickland v. Washington. 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 v. State, *Id.*.

A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

The Respondent submits that 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. Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Applicant's "Prosecutorial Misconduct" allegation concerns issues that could or should have been raised at trial and/or on appeal. Thus, they/it are/is not a proper matters for PCR. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1975): Therefore, it/they must be summarily dismissed.

V.

Applicant also contends his appointed appellate attorney was ineffective for failing to raise certain issues in his direct appeal. The State submits this allegation is without merit. Appellate counsel appointed to represent an indigent defendant in his appeal from a criminal conviction does not have a constitutional duty to raise every non-frivolous issue requested by the defendant. Jones v. Barnes, 463 U.S. 745 (1983). Indeed, an indigent defendant has no constitutional right to compel appointed counsel to press non-frivolous points requested by the client, if counsel, as a matter of professional judgement, decides not to present those points. Id. Appellate counsel's representation will not be deemed ineffective if he makes an informed decision based on reasonable professional judgement not to pursue a particular issue on appeal. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985). Furthermore, under the two part test of Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), an Applicant

must show not only that counsel's performance was deficient, but that this deficiency prejudiced his defense.

The State submits that the Applicant's appellate attorney's performance was not deficient and that the Applicant was not prejudiced in any way by his appellate attorney's performance.

VI.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VII.

WHEREFORE, having made its Return, the Respondent requests that the Application be denied and the matter dismissed with prejudice.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

TYSON ANDREW JOHNSON, SR.
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General

P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

2/7, 2012.

STATE OF SOUTH CAROLINA)

COUNTY OF MARION)

IN THE COURT OF COMMON PLEAS

2011-CP-33-785

WAYNE MCLAUGHLIN, #156168)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

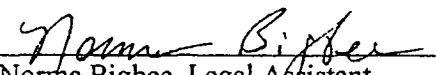
STATE OF SOUTH CAROLINA,)

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:

Daniel A. Selwa, II, Esquire
 1053 London St., Suite A
 Myrtle Beach, SC 29577

DATED this 7th day of February, 2012.


 Norma Bigbee, Legal Assistant

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF MARION	)	CASE NO. 2011-CP-33-785
	)	
WAYNE MCLAUGHLIN,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	TRANSCRIPT OF RECORD
	)	
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Defendant.	)	
	)	

October 18, 2012
Florence, South Carolina

B E F O R E:

THE HONORABLE THOMAS A. RUSSO, Judge

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

DANIEL A. SELWA, II, Esquire
Attorney for the Plaintiff

TYSON ANDREW JOHNSON, SR., Solicitor
Office of the Attorney General
Attorney for the Defendant

KRYSTAL J. SMITH
Court Reporter

I N D E X

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
(No Exhibits Presented)			

1 OCTOBER 18, 2011

2 (WHEREAS this matter was scheduled for a PCR hearing, the
3 applicant appeared along with his counsel of record. The
4 hearing began at 11:23 a.m.)

5 THE COURT: All right, Mr. Johnson.

6 MR. JOHNSON: Your Honor, this is Wayne McLaughlin versus
7 South Carolina. It's 2011-CP-33-785. Mr. McLaughlin was
8 indicted for manufacturing cocaine base first offense, and
9 manufacture and distribution of cocaine base third offense.
10 He was represented by James Elmore. I got that wrong.

11 MR. SELWA: Ralph Wilson.

12 THE COURT: Nope, Mr. Wilson.

13 MR. JOHNSON: He was represented by Mr. Ralph Wilson.

14 Excuse me. On March 28th, 2008, he was tried before a jury.
15 The jury found him guilty as charged. Judge Howard King
16 sentenced him to 25 years imprisonment on each charge to run
17 concurrently. He appealed. His conviction and sentence were
18 affirmed on appeal. He's represented today by Mr. Daniel
19 Selwa.

20 THE COURT: Let's see. All right. Mr. Selwa, I'd be
21 happy to hear from you, sir.

22 MR. SELWA: Thank you, Your Honor. May it please the
23 Court. I'd like to call Wayne McLaughlin to the stand.

24 THE COURT: All right. Mr. McLaughlin, if you would,
25 please come around to the witness stand, sir.

1 MR. SELWA: Your Honor? Before we start, Your Honor, my
2 client wanted me to ask the Court to continue this. I do
3 apologize. I forgot to -- to make that motion.

4 THE COURT: Oh, okay.

5 MR. SELWA: I'm sorry.

6 THE COURT: You can go ahead and make that motion and
7 just let me know what -- what the basis is.

8 MR. SELWA: Your Honor, my client states that he's just
9 not ready to proceed and would like more time to ---

10 THE COURT: Mr. McLaughlin ---

11 MR. SELWA: --- flesh out some issues.

12 THE APPLICANT: Yes, sir.

13 THE COURT: What -- what -- what -- your case is on the
14 roster ready to go. You -- you -- what -- what do you need
15 more time for, sir?

16 THE APPLICANT: Well, sir, at the law library we don't --
17 our -- the institution be getting locked down a lot and when
18 I -- when they do let you go to the library, I don't have
19 nothing but like an hour and just only one day a week and
20 owing to the fact that we be locked down all the time, I just
21 -- I just didn't had enough time to prepare ---

22 THE COURT: Well ---

23 THE APPLICANT: --- for my case and then I ---

24 THE COURT: Let me ask you. You -- I mean you've got a
25 lawyer. That's what Mr. Selwa is for. What -- what -- what

1 -- what -- I mean obviously it's okay for you to do some of
2 your own research and to look at things like that, but you got
3 a lawyer who has unlimited access to law libraries and -- and
4 stuff of that nature. Mr. Selwa, are you -- are you prepared
5 to go forward, sir?

6 MR. SELWA: Yes, sir.

7 THE COURT: Well, Mr. McLaughlin, I'm not understanding
8 what -- what do you need to be ready for? Because you're not
9 -- I mean you're not representing yourself.

10 THE APPLICANT: No, sir.

11 THE COURT: Well, can you tell me what it is you don't
12 feel you're ready for? I mean ---

13 THE APPLICANT: I'd just like to research the time ---

14 THE COURT: Well, that -- that -- that's your lawyer's
15 job. He -- he'll -- he'll do your legal research for you. I
16 -- I'm going to respectfully deny the motion to continue and
17 -- and everybody is here ready to go. We're going to proceed.
18 Come on around, Mr. McLaughlin, and be sworn, sir.

19 (Whereupon, the applicant complies and approaches the
20 witness stand.)

21 THE CLERK: Please place your left hand on the Bible and
22 raise your right hand.

23 THE APPLICANT: Okay.

24 THE CLERK: Put your paperwork down. There you go. Do
25 you swear or affirm the testimony you give in this case will

DIRECT EXAMINATION OF WAYNE MCLAUGHLIN BY MR. SELWA

1 be the truth, the whole truth, and nothing but the truth, so
2 help you God?

3 THE APPLICANT: Yes.

4 THE CLERK: Please be seated, then state your name for
5 the record.

6 THE APPLICANT: Wayne McLaughlin.

7 THE COURT: Yes, sir.

8 WAYNE MCLAUGHLIN, being first duly
9 sworn, testifies as follows:

10 DIRECT EXAMINATION

11 BY MR. SELWA:

12 Q: Mr. McLaughlin, you were -- you were tried in 2007 --
13 2008 for the crimes that Mr. Johnson had mentioned to the
14 Court earlier; is that correct?

15 A: Correct.

16 Q: And did you hire Mr. Ralph Wilson or was he appointed?

17 A: I hired him.

18 Q: You hired him? Okay and you proceeded to trial; is that
19 correct?

20 A: Yes, sir.

21 Q: What were -- what did you -- what was the outcome of that
22 -- that trial?

23 A: I was found guilty.

24 Q: And -- and how long did you get?

25 A: Twenty-five years.

DIRECT EXAMINATION OF WAYNE MCLAUGHLIN BY MR. SELWA

- 1 Q: Okay. On how many counts?
- 2 A: Two counts.
- 3 Q: Two counts? Did you appeal that decision?
- 4 A: Yes.
- 5 Q: Was the appeal timely? Did you file it in time?
- 6 A: Not at first.
- 7 Q: Not at first? Did -- did it go through though
- 8 eventually?
- 9 A: Eventually, yes.
- 10 Q: Okay. Do you know what the outcome of -- of the
- 11 Appellate Court was on your issue?
- 12 A: It was -- I can't think -- it was an opinion, an
- 13 unpublished opinion.
- 14 Q: Okay and -- and did they -- did they decide to agree with
- 15 you or did they deny your -- your appeal?
- 16 A: Yeah, they denied it.
- 17 Q: Okay. Do you know what the grounds for the denial were?
- 18 A: Excuse me?
- 19 Q: Do you know why they denied your appeal?
- 20 A: No, I don't know why.
- 21 Q: Okay. Why are you before the Court today?
- 22 A: For a new trial.
- 23 Q: For a new trial? And why are you asking the Court for a
- 24 new trial?
- 25 A: I -- I feel like a lot of issues weren't brought to court

DIRECT EXAMINATION OF WAYNE MCLAUGHLIN BY MR. SELWA

1 and they weren't properly introduced.

2 Q: . Okay. In your petition for PCR, you claim, among other
3 things, that your -- your counsel was ineffective; is that
4 correct?

5 A: Yes.

6 Q: And -- and you claim that Mr. Ralph Wilson was
7 ineffective and also your appellate lawyer was ineffective; is
8 that correct?

9 A: Well, I don't know too much about -- I wasn't there with
10 the appellate counsel.

11 Q: Okay. So do you -- you don't wish to proceed against the
12 ---

13 A: No.

14 Q: --- appellate counsel today?

15 A: No.

16 Q: Okay. So your claim is -- is that Mr. Wilson was
17 ineffective; is that correct?

18 A: Right.

19 Q: Okay. Why was Mr. Wilson ineffective?

20 A: Well, at first I -- we didn't -- he didn't -- we didn't
21 have time enough to go through the case. I didn't -- I didn't
22 -- well, both of us didn't know really what cases was being
23 heard. We went on a Friday. I forget the date. We went to a
24 trial and he didn't know which case was being heard at the
25 time ---

DIRECT EXAMINATION OF WAYNE MCLAUGHLIN BY MR. SELWA

- 1 Q: How many ---
- 2 A: --- by the judge.
- 3 Q: How many charges did you have against you at this point?
- 4 A: Well, we had four. It was four. Count four.
- 5 Q: Okay. Which ones did you proceed on?
- 6 A: Three and four. Number one was supposed to be heard, but
- 7 we thought that it -- I guess he thought that it was one and
- 8 two.
- 9 Q: Okay. What were those charges stemming from?
- 10 A: Excuse me?
- 11 Q: What were those charges stemming from?
- 12 A: A buy.
- 13 Q: A controlled buy?
- 14 A: Yes.
- 15 Q: And those two charges were thrown out to your knowledge?
- 16 A: Thrown out.
- 17 Q: What -- the two charges that you were convicted on, what
- 18 -- what did those stem from? Can you tell us about the facts
- 19 of that situation?
- 20 A: They was possession of crack and cocaine.
- 21 Q: I'm sorry. I couldn't hear you. Speak up just a little
- 22 bit.
- 23 A: Possession.
- 24 Q: Possession of cocaine?
- 25 A: Mm-hmm.

DIRECT EXAMINATION OF WAYNE MCLAUGHLIN BY MR. SELWA

1 Q: Okay. With an -- with an intent to distribute; is that
2 right?

3 A: Right.

4 Q: Okay. Back in 2007 when the police arrested you, how --
5 you were about three miles away from your club; is that
6 correct?

7 A: Right.

8 Q: Okay and -- and when they took you to your club, can you
9 tell us a little bit about what happened then?

10 A: Well, they took me to the club and the door was -- well,
11 it was -- it was closed, you know, because I had leased the
12 club out to somebody else. It wasn't in my name. I didn't --
13 I wasn't running it at the time and he asked me for the key
14 and I didn't have a key to give to them and the officer kept
15 saying he would -- he would break it down or tear it down or
16 get the fire department to cut it down.

17 Q: Were they asking for your consent to search the -- the
18 premises?

19 A: No, no. It wasn't for my consent. They was asking for
20 the key.

21 Q: Did they have a search -- search warrant for it?

22 A: I think they supposed -- I think they did. I ain't seen
23 nothing.

24 Q: Okay and -- and so what happened? Did they break the
25 door down?

DIRECT EXAMINATION OF WAYNE MCLAUGHLIN BY MR. SELWA

- 1 A: No.
- 2 Q: How did they get the door open?
- 3 A: Well, they got a key from somewhere -- someone.
- 4 Q: But the key didn't come from you?
- 5 A: No. I didn't have a key.
- 6 Q: Once you got in the building, what happened then?
- 7 A: Well, once we got in the building, we walked in and they
- 8 said I said -- well, the solicitor said I said the stuff is in
- 9 the kitchen on the shelf, which I did not say that. I was
- 10 talking to my stepdaughter about a number she was looking for
- 11 to -- to get a person to get me out on bond and being that the
- 12 number was at my house, it was in the kitchen on a little
- 13 shelf on the side of the wall and I didn't know the number
- 14 exactly and when she was asking for it, then I remembered
- 15 where I put it at and that's why I stated that. I wasn't
- 16 talking about no drugs.
- 17 Q: Okay and subsequently they did find drugs in the kitchen;
- 18 is that correct?
- 19 A: Yeah, drugs in the -- in the ---
- 20 Q: Okay.
- 21 A: In there.
- 22 Q: And so they -- they wanted to use that statement against
- 23 you; is that right?
- 24 A: Against me. Yeah, mm-hmm.
- 25 Q: At that point, they had not given you Miranda warnings;

DIRECT EXAMINATION OF WAYNE MCLAUGHLIN BY MR. SELWA

1 is that right?

2 A: Oh, no, no.

3 Q: And to your knowledge, was that an issue that was brought
4 up to the Court at your trial?

5 A: Yes.

6 Q: Okay and Mr. Wilson made a motion to address this ---

7 A: Yes.

8 Q: --- issue before the trial went underway; is that
9 correct?

10 A: Right.

11 Q: Okay. Was he successful in -- in -- in suppressing that
12 evidence?

13 A: I think the judge denied it.

14 Q: The -- okay, denied it. And -- and during the course of
15 the trial to your knowledge, did that evidence come in for the
16 jury to hear?

17 A: Yes.

18 Q: And -- and did Mr. Wilson object to that?

19 A: Yes, he did.

20 Q: To your knowledge, he objected to it?

21 A: Yes.

22 Q: Okay. Did he renew his -- his motion at the end of the
23 trial? Did they argue it again?

24 A: I'm -- I'm thinking -- I think they did.

25 Q: Okay.

DIRECT EXAMINATION OF WAYNE MCLAUGHLIN BY MR. SELWA

1 A: I can't -- I can't remember.

2 Q: Okay. At the end of the trial, there was an issue with
3 one of the jurors; is that correct?

4 A: Yes, a sleeping juror.

5 Q: Okay. Tell me about that situation?

6 A: Well, during the time, my lawyer noticed that she was
7 sleeping during the solicitor's statements and ---

8 Q: The solicitor's closing statements?

9 A: During the -- all during the -- during in and out the
10 whole trial.

11 Q: Okay.

12 A: And all the statements and the closing arguments and all
13 and she was asleep.

14 Q: Okay. To your knowledge, when did Mr. Wilson bring that
15 up to the Court?

16 A: It was -- it was on in the trial. I can't really say
17 when. It been about five years now. I can't -- it was on in
18 the trial.

19 Q: Okay. All right. Anything else you'd like to say to the
20 Court?

21 A: I don't know.

22 Q: I'm sorry?

23 A: No. I can't think of another thing. That's it.

24 Q: Okay. Please answer any questions Mr. Johnson will have
25 for you.

CROSS EXAMINATION OF WAYNE MCLAUGHLIN BY MR. JOHNSON

CROSS EXAMINATION

1
2 BY MR. JOHNSON:

3 Q: I'm going to try to go back through the issues in reverse
4 order. The most recent one that you talked about was the
5 sleeping juror issue. Now, Mr. Wilson addressed this; didn't
6 he?

7 A: Yes.

8 Q: What else could he have done?

9 A: Huh?

10 Q: He -- he took the sleeping juror issue up with the Court;
11 did he not?

12 A: Yeah, he talked to the judge about it.

13 Q: What else could he have done?

14 A: Well ---

15 Q: What is it that you allege that he should have done?

16 A: Well, you know, something else about it in front of the
17 witness.

18 Q: Okay. All right and then there was some evidence about a
19 statement that you made ---

20 A: Right.

21 Q: --- that you allege came in and the jury was able to hear
22 this statement that you made, but didn't Mr. Wilson object to
23 this as well?

24 A: Yes, he did, but he did not -- he just -- he didn't
25 object to the solicitor saying that I said the stuff is on the

CROSS EXAMINATION OF WAYNE MCLAUGHLIN BY MR. JOHNSON

1 -- in the kitchen.

2 Q: He didn't object to that?

3 A: No, he did not to that.

4 Q: Didn't he try to keep that statement out?

5 A: What?

6 Q: Didn't he try to keep that statement out?

7 A: He tried to keep the -- what? About the stuff?

8 Q: Yes, sir.

9 A: He never said nothing about it.

10 Q: And you claim -- you claim that the phrase "the stuff"
11 somehow prejudiced you?

12 A: It did, yeah.

13 Q: And you're waiving any claims against your appellate
14 counsel?

15 A: Yeah.

16 MR. JOHNSON: No further questions, Your Honor.

17 THE COURT: Anything further, Mr. Selwa?

18 MR. SELWA: No redirect, Your Honor.

19 THE COURT: Thank you, sir. You may step down.

20 (Whereupon, the applicant leaves the stand at 11:39 a.m.)

21 MR. SELWA: Your Honor, I'd call Mr. Ralph Wilson to the
22 stand.

23 THE COURT: All right. Mr. Wilson, if you would, come
24 around to be sworn, please, sir.

25 (Whereupon, the witness complies.)

DIRECT EXAMINATION OF RALPH WILSON, SR. BY MR. SELWA

1 THE CLERK: Do you swear or affirm the testimony you give
2 in this case will be the truth, the whole truth, and nothing
3 but the truth, so help you God?

4 THE WITNESS: I do.

5 THE CLERK: Please be seated and then state your name for
6 the record.

7 THE WITNESS: My name is Ralph J. Wilson, Sr.

8 RALPH WILSON, SR., being first duly
9 sworn, testifies as follows:

10 DIRECT EXAMINATION

11 BY MR. SELWA:

12 Q: Mr. Wilson, you put on a trial for Mr. McLaughlin; is
13 that correct?

14 A: I did, yes, sir.

15 Q: And one of the issues that you took up before the Court
16 was the suppression of some evidence; is that right?

17 A: Yes, sir.

18 Q: You submitted a motion -- a written motion and had oral
19 arguments on it; correct?

20 A: Yes, sir.

21 Q: Okay. What was the outcome of the -- of -- of that
22 effort?

23 A: The judge denied the motion, but there were several
24 issues that we raised, objections that we had, procedural
25 objections that we had and he's correct and there was the

DIRECT EXAMINATION OF RALPH WILSON, SR. BY MR. SELWA

1 issue about him making a -- a voluntary statement at the time
2 of his arrest, which was about -- one was about the keys and
3 then secondly there was a -- there was some issue about
4 whether he said the stuff is on the kitchen speaking to the
5 officers. Now, there were several officers there. They all
6 testified and it's in the transcript that that's what he said.
7 We argued it and the judge ruled against us and said that it
8 could come in, but in a limited form. He changed the form
9 that the statement could come in, but he did allow the
10 statement to come in.

11 Q: Okay. Now, with the -- the issues that you took up
12 regarding the Miranda rights ---

13 A: Yes, sir.

14 Q: --- not being given, when that evidence was introduced at
15 trial, specifically the drugs, and when the testimony
16 referenced his statements, did you object to the entry of that
17 evidence?

18 A: I'm not following your question. Would you -- I'm sorry.

19 Q: When they introduced the -- the cocaine, did you object
20 to that -- that entry?

21 A: Did I object to the -- to the introduction of the cocaine
22 itself?

23 Q: Yes.

24 A: I don't remember specifically saying that I object to the
25 offering of the cocaine because my theory of the case was and

DIRECT EXAMINATION OF RALPH WILSON, SR. BY MR. SELWA

1 always was, was that he didn't own -- that he owned the
2 building, but that he wasn't in control of it. So we didn't
3 care whether or not the drugs were there or whether it was, in
4 fact, cocaine. That was never the issue. The issue was
5 whether he owned and/or controlled the premises and -- which
6 is apparently what the jury believed.

7 Q: And had you won per se -- let's -- let's take it
8 hypothetical. Had you won that motion to begin with at the
9 beginning of trial trying to suppress that evidence, had you
10 won that, that evidence would not have come in; is that
11 correct?

12 A: I'm not clear what you're asking me. I'm sorry.

13 Q: Had the Court found that his Miranda rights should have
14 been read, would the cocaine have come in?

15 A: Well, yeah. The cocaine would have still come in because
16 there -- the issue -- the Miranda issue was with regarding the
17 keys. Let me -- I think there's some confusion. Let me see
18 if I can clear this up. The motion was that they asked him
19 for his keys. I objected to them asking him that, claiming
20 that he hadn't been Mirandized at that time and, therefore,
21 his -- them asking him for the keys was a violation of Miranda
22 and -- in that it was incriminating. Of course, as I said,
23 the judge denied that motion and said I'm going to allow it
24 anyway, which is what he did.

25 Q: Okay.

DIRECT EXAMINATION OF RALPH WILSON, SR. BY MR. SELWA

1 A: If I may and I hope I'm answering your question. I'm
2 trying ---

3 Q: Yes, you are.

4 A: Okay.

5 Q: And the second part of that question is -- is the same
6 question with the -- the -- the -- the entry of his statement
7 that, paraphrasing it, the stuff is over in the kitchen.

8 A: The same -- exactly the same thing. Yes, sir.

9 Q: Okay. So did you object when the officers made those
10 statements about what they heard Mr. McLaughlin say?

11 A: I didn't have to. I had already -- the judge had already
12 ruled that they could say it. So what we did was we -- we did
13 a hearing. We actually had a hearing on that.. The judge
14 ruled and once he makes that final ruling, then there's no
15 point in objecting after that because he had already ruled
16 that it's admissible.

17 Q: Okay.

18 A: And -- and so if there is an appeal, then you are
19 actually appealing from the judge ruling that that could not
20 come in.

21 Q: Have you had a chance to review the appeal?

22 A: No, I have not seen that appeal.

23 Q: Okay. So you wouldn't know why the -- the appeal was
24 denied?

25 A: No, sir. I have no clue.

DIRECT EXAMINATION OF RALPH WILSON, SR. BY MR. SELWA

1 Q: Would it surprise you to know that they denied it because
2 the issues were not properly preserved?

3 A: I don't -- I don't know which issues you're talking
4 about, but I'll look at it.

5 MR. SELWA: May I approach, Your Honor?

6 THE COURT: Yes, sir.

7 Q: Can you tell me what this is?

8 A: This says State of South Carolina versus Wayne
9 McLaughlin, opinion and it's an unpublished opinion, which is
10 affirmed, dated -- submitted October 1, 2010, filed November
11 12, 2010. It says -- you want me to read this?

12 Q: If you could. It's just a page, yes.

13 A: Read it in the record? All right. It says, Per curiam,
14 Wayne McLaughlin was convicted of possession with intent to
15 distribute cocaine base and possession with intent to
16 distribute cocaine and was sentenced to two concurrent terms
17 of 25 years. McLaughlin appeals asserting the trial judge
18 erred in, 1) admitting incriminating evidence at trial based
19 on the arresting officer's failure to advise him of his
20 Miranda rights and 2) refusing to remove and replace a
21 sleeping juror.

22 We affirm pursuant to Rule 220(b)(1) and the following
23 authorities. As to whether the trial judge erred in -- by
24 admitting incriminating evidence at trial when the arresting
25 officer failed to advise McLaughlin of his Miranda rights

DIRECT EXAMINATION OF RALPH WILSON, SR. BY MR. SELWA

1 while he was in police custody. And then they cite *State v.*
2 *Forrester*, 340 C. -- 343 S.C. 637, 642; 541 S.E.2d 837, 840
3 (2001), noting that generally a motion *in limine* is not a
4 final determination and a contemporaneous objection must be
5 made when the evidence is introduced at trial unless the
6 ruling on the motion *in limine* is made immediately prior to
7 the introduction of the evidence in question.

8 And then they cite *Doe v. U.S.*, 487 U.S. 201, 211 (1988),
9 providing it is the extortion of information from the accused,
10 the attempt to force him to disclose the content of his own
11 mind that implicates the self-incrimination clause. Internal
12 quotation marks and citations omitted. And then they go on to
13 say at 210(n)(9) implying that being forced to surrender a key
14 to a strongbox containing incriminating documents would not
15 amount to testimony or communication.

16 As to whether a trial judge erred in refusing to remove
17 and replace a sleeping juror, noting a showing of prejudice
18 must be made to warrant relief in juror misconduct cases.
19 Finding where the trial judge concluded the juror was awake
20 and listening with her eyes closed, the trial judge made the
21 requisite factual finding regarding whether or not the juror
22 was asleep and need to take no further action. We decided
23 this case without oral argument pursuant to -- pursuant to
24 holding -- pursuant to holding because defendant bore the
25 burden to show the juror was actually asleep. Failure to

DIRECT EXAMINATION OF RALPH WILSON, SR. BY MR. SELWA

1 request direct examination of the juror waived any complaint
2 on appeal.

3 Q: Okay. So again, I ask you -- you stated earlier -- and
4 correct me if I'm wrong -- you did not object to the entry of
5 the statement when the officers testified that Mr. McLaughlin
6 said the stuff is over there or it's in the kitchen; is ---

7 A: No.

8 Q: --- that correct?

9 A: I did not and -- and if you look at this opinion, what
10 they're saying is it wouldn't have mattered anyway because
11 they're saying that that testimony was not incriminating.
12 That's what they say here.

13 MR. SELWA: I have no further questions.

14 THE COURT: Mr. Johnson?

15 CROSS EXAMINATION

16 BY MR. JOHNSON:

17 Q: Mr. Wilson?

18 A: Yes, sir.

19 Q: I guess I want to ask you about the timing of the motion
20 *in limine* as compared with the admission of the evidence.
21 What was the -- what was the time between when you made the
22 motion and the motion was -- was heard and ruled on and then
23 the State tried to move that evidence in?

24 A: Immediately. They immediately -- we immediately went
25 into the trial.

CROSS EXAMINATION OF RALPH WILSON, SR. BY MR. JOHNSON

1 Q: So it would not have made sense at this point ---

2 A: No.

3 Q: --- for you to go back and argue?

4 A: No.

5 Q: Now, in your mind, had you made the motion *in limine*
6 let's say as a preliminary pre-trial matter long before the
7 trial was heard, among other issues it was ruled on, denied,
8 and then maybe sometime later you start the trial, would you
9 have felt the need to renew that objection?

10 A: Absolutely.

11 Q: But that was not the case in this matter?

12 A: No. This was not objectionable.

13 Q: And in addition, what was your trial strategy regarding
14 how prejudicial this information was to you?

15 A: Right. Again, our position in this trial was, was that
16 he did not -- that he was not in control of this facility and
17 that whatever was there did not belong to him and so we were
18 never challenging whether or not the substances that were
19 found were actually drugs or not because our -- that would be
20 -- we'd have to care about that and we didn't care about that
21 because what we were presenting was, was look, somebody else
22 was running this place, they're responsible for the contents
23 of this place, and -- and that was our strategy from day one.
24 That was always our position.

25 Q: So going back through these issues in the same order that

CROSS EXAMINATION OF RALPH WILSON, SR. BY MR. JOHNSON

1 I -- that I dealt with them with Mr. McLaughlin, the sleeping
2 juror, you -- you dealt with this issue; did you not?

3 A: I raised that to the Court. The -- the -- the judge and
4 the solicitor both disagreed with me that there was -- and --
5 and, you know, that they both disagreed that, in fact, the
6 juror was not paying attention. The judge was very clear
7 about it. I raised it to him. I sent a note to the solicitor
8 even before I raised it to the Court indicating that I was
9 concerned about it. I raised it to the judge.

10 The judge was not going to bring that juror and put them
11 on the witness stand and then put them back on the jury, which
12 I wouldn't have wanted to happen anyway because if you take a
13 juror out of the trial, accuse them of something, and then put
14 them back into the panel, which is what would have happened, I
15 mean you're asking for trouble, you know.

16 So as a tactical matter, there's absolutely no way that I
17 would have wanted to do that anyway, which is why I didn't go
18 any further with it because it would put you in a really bad
19 position. Here is the defense questioning the juror's
20 integrity and questioning whether the juror is listening and
21 paying attention and following the judge's instructions and
22 then the judge has already told you that I'm not going to
23 disqualify the jury and put the juror back on the panel and
24 then leave him there waiting for him to render a decision. Do
25 you think that that juror might very well be prejudiced?

CROSS EXAMINATION OF RALPH WILSON, SR. BY MR. JOHNSON

1 Absolutely.

2 Q: All right. So there were three issues that were raised
3 today: the sleeping juror, which you've just discussed; the
4 statement about the stuff, to quote Mr. McLaughlin, the stuff
5 is over there. You made a motion *in limine* to exclude that?

6 A: Yes, sir.

7 Q: The other -- the other issue -- the third issue that I've
8 heard today was regarding cocaine, the admission into evidence
9 of the cocaine, and on direct examination I think you talked
10 about your trial strategy.

11 A: Right.

12 Q: And how your trial strategy played a role in your
13 decision to not object to this. Would you -- would you tell
14 the Court ---

15 A: Yes, sir.

16 Q: --- what -- what your trial strategy was in regards to
17 this decision?

18 A: Yeah. Again, at the sound -- at the -- at the risk of
19 being repetitious, the -- the idea and the strategy was from
20 the very beginning -- and we discussed this -- that Wayne
21 didn't control or run this business. Somebody else was
22 running it and controlling it and that we were -- in fact, we
23 tried to get in the fact that -- that the -- I think some of
24 the utility bills and things like that were in other people's
25 names and we wanted to convince the Court that that was what

CROSS EXAMINATION OF RALPH WILSON, SR. BY MR. JOHNSON

1 was going on and that whatever was in there, whatever the
2 substance was, it wasn't -- it didn't belong to Wayne and that
3 he didn't put it there.

4 Q: Okay and with regard to your trial strategy, you
5 discussed this with Mr. McLaughlin; didn't you?

6 A: Absolutely.

7 Q: And he didn't object at that time; did he?

8 A: No, sir.

9 Q: Did he have any other ideas for how you should proceed?

10 A: No, sir, and that was the best one we could come up with.

11 Q: And he accepted it as a -- as his own trial strategy as
12 well; did he not?

13 A: No question.

14 Q: Please answer any other questions Mr. Selwa may have.

15 THE COURT: Anything further, Mr. Selwa?

16 MR. SELWA: Just one question.

17 REDIRECT EXAMINATION

18 BY MR. SELWA:

19 Q: There was an alternative juror; was there not?

20 A: Yes, sir. There was. Yes, sir.

21 MR. SELWA: That is the only question I had.

22 THE COURT: All right. Thank you very much.

23 MR. SELWA: Thank you, Your Honor.

24 THE COURT: Mr. Wilson, you may step down, sir.

25 (Whereupon, the witness leaves the stand at 11:55 a.m.)

REDIRECT EXAMINATION OF RALPH WILSON, SR. BY MR. SELWA

1 MR. SELWA: I have no further witnesses, Your Honor.

2 THE COURT: All right. Anything further from the State?

3 MR. JOHNSON: Nothing further, Your Honor.

4 MR. WILSON: May I be excused, Your Honor?

5 MR. JOHNSON: Thank you, sir.

6 THE COURT: Any objections?

7 MR. SELWA: No objections..

8 MR. JOHNSON: None.

9 THE COURT: Thank you, Mr. Wilson.

10 MR. WILSON: You're welcome.

11 THE COURT: I appreciate you being over here. All right.

12 I'll be happy to hear from the attorneys with any closing
13 remarks you'd like to make.

14 MR. SELWA: Sure. Your Honor, Mr. McLaughlin -- he
15 didn't -- he didn't get a fair shake at his appeal and part of
16 that reason was -- it was noted in -- in the -- the appeals
17 order or the appeal order stating that -- that the objection
18 should have been timely raised and Mr. Wilson testified that
19 -- that he did not and obviously the Court felt that the
20 motion hearing was far enough apart that an objection was
21 required.

22 The issue that the Appellate Court could have addressed
23 was one which they spent a lot of time on. They spent a lot
24 of time arguing back and forth whether Miranda applied to this
25 situation and, Your Honor, Mr. McLaughlin -- they got the

1 search warrant based on two controlled buys. Okay? They were
2 there to search the place. He was already under arrest. He
3 was already in custody. He should have been read his Miranda
4 rights. Had he not been read his -- had he been read his
5 Miranda rights, maybe he would not have made that
6 incriminating statement or hadn't produced the keys.

7 That was a hotly contested issue and it led to his
8 conviction. Had Mr. Wilson objected in a timely fashion, who
9 knows what the Appellate Court would have found? They could
10 have disagreed with the trial judge. You know, we don't know,
11 but he didn't get that opportunity and that's what we're
12 asking for today, Your Honor.

13 THE COURT: All right, sir.

14 MR. JOHNSON: If we had a case where we're asking who
15 knows what the Appellate Court would have found, we don't meet
16 the standard of proof of prejudice. We have to go further
17 than asking the question who knows what would have happened.
18 We have to -- the applicant has got to be in a position to say
19 this is what would have happened. He would have gotten his
20 appeal reversed or would have had his conviction reversed or
21 he would have been found not guilty and that's -- that's the
22 standard that the evidence has got to meet today.

23 But I -- I looked at this opinion again and Mr. -- Mr.
24 Wilson read it. I'd like to zoom in on one section and give
25 it maybe a different inflection. I think it will have a

1 different meaning and I'm looking at the second page about
2 halfway down.

3 "Noting that generally a motion in *limine* is not a final
4 determination and a contemporaneous objection must be made
5 when the evidence is introduced at the trial unless the ruling
6 on the motion in *limine* is made immediately prior to the
7 introduction of the evidence."

8 Well, that's what happened. The Court here is saying
9 that normally you have the situation where you have to object
10 unless you have a unique circumstance where the motion is made
11 immediately prior to the evidence being admitted, which is
12 exactly what happened here. You heard Mr. Wilson testify to
13 that. So here the Court is -- is not saying we can't hear
14 this because it wasn't preserved; they're saying that there's
15 another circumstance why we wouldn't hear it and that is that
16 it wouldn't qualify under the rules.

17 And in number two, *State v. Smith*, third line down,
18 noting a showing of prejudice must be made to warrant relief.
19 Well, that's -- that's key. I mean what they're saying here
20 is where is the prejudice. No prejudice has been shown,
21 neither when the argument was made below or today in the PCR
22 hearing.

23 So Mr. Selwa has done an incredible job of being thorough
24 and diligent, but those three issues do not overcome the
25 presumption that counsel rendered effective assistance in this

1 case. So we would ask that the case be denied and dismissed.

2 THE COURT: All right. If you don't mind, let me -- let
3 me look at the appeal -- the appeal record there.

4 (Whereupon, there is a pause in the proceedings.)

5 THE COURT: I'm going to respectfully deny the motion --
6 the application. It -- it does appear that there has been a
7 failure to show that but for counsel's ineffective assistance
8 the result would have been different. The issues that were
9 raised -- I -- I think based on the testimony I've heard here
10 today, counsel actually did address those issues and I -- and
11 I think addressed them well. When you look at the transcript
12 and the record -- record on appeal, the sleeping juror issue,
13 the statement which the Court --

14 Unfortunately, you know, with regards for Mr.
15 McLaughlin's position, the Court entertained those objections
16 and -- and overruled them and just disagreed with -- with Mr.
17 Wilson's arguments on those matters. However, those matters
18 were addressed and I think addressed effectively and -- and
19 based on the evidence before this Court, I don't -- I find
20 that the applicant has failed to carry his burden as to any
21 errors of counsel that would have resulted in a -- in a
22 different outcome and I'm going to respectfully deny the
23 motion or deny the application.

24 MR. JOHNSON: Thank you, Your Honor.

25 THE COURT: I'm going to return this to you, Mr. Johnson.

1 Thank you for letting me read that.

2 (Whereupon, the proceedings end at 12:01 p.m.)

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4 --- END REQUESTED TRANSCRIPT ---

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1 STATE OF SOUTH CAROLINA)
2) CERTIFICATE
3 COUNTY OF FLORENCE)
4

5 I, the undersigned, Krystal J. Smith, Official Court
6 Reporter for the Twelfth Judicial Circuit of the State of
7 South Carolina, do hereby certify that the foregoing is a
8 true, accurate, and complete Transcript of Record of all the
9 proceedings had and evidence introduced in the hearing of the
10 above captioned case, relative to appeal, in the Court of
11 Common Pleas for Marion County/12th Judicial Circuit held in
12 Florence, South Carolina, on the 18th day of October, 2012.

13 I do further certify that I am neither of kin, counsel,
14 nor interest to any party hereto.

15
16 Krystal J. Smith

17 Court Reporter

18
19 Florence, South Carolina

20 April 22, 2013
21
22
23
24
25

STATE OF SOUTH CAROLINA
COUNTY OF MARION

Wayne McLaughlin, # 156168,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

11-CP-33-785

ORDER OF DISMISSAL

3006
2012 FEB 15 A 9:33

This matter comes before the Court by way of an Application for Post-Conviction Relief filed October 25, 2011. Respondent made a timely Return. The Court convened an evidentiary hearing into the matter on October 18, 2012, at the Florence County Courthouse. The Applicant was present at the hearing and was represented by Daniel A. Selwa, Esquire. Tyson Andrew Johnson, Sr., Esquire of the South Carolina Attorney General's Office represented Respondent.

At the hearing, Applicant testified on his own behalf. Also testifying was Ralph Wilson Jr., Esquire. This Court had before it the PCR Application, the State's Return, the records of the County Clerk of Court, the transcript, and the Applicant's records from the South Carolina Department of Corrections.

PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Florence County Clerk of Court's orders of commitment. Applicant was indicted by the Marion County Grand Jury for Manufacturing of Cocaine Base, First offense, and Manufacture, distribution, etc. of cocaine base, Third offense, Indictment 2008GS3300137. Applicant was represented by

RECEIVED FEB 11 2013

Ralph Wilson, Jr., Esquire. On March 28, 2008, a jury found Applicant guilty as charged. The Honorable Howard P. King sentenced Applicant to twenty-five years imprisonment on each charge, to run concurrently. Applicant appealed his conviction and sentence and was represented by Wanda H. Carter, Esquire of Appellate Defense. Applicant's conviction and sentence were affirmed in unpublished opinion No. 2010-UP-503, and the Petition for Rehearing was denied on or around March 2011. The matter was remitted to the lower court April 11, 2011.

ALLEGATIONS

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective assistance of counsel (Trial Lawyer)";
 - a. "counsel ineffective for not preserving the issues of the sleeping juror, Miranda, evidence for review on direct appeal."
 - b. "counsel ineffective for failing to object to the Solicitors closing argument, portions in (10)(c)."
 - c. "Solicitors statement that defendant was guilty improper because it implied personal belief rather than government position."
 - d. "Solicitors may not vouch for the credibility of the states witness based on personal knowledge or information outside the record."
 - e. "Counsel was ineffective for not challenging his client S.C. Const. Art 1 section 10."
 - f. "Counsel ineffective for failure to make a sufficient record for review on direct appeal."
 - g. "Prosecutor statement that police officer witness had no reason to lie improper."
2. "Ineffective assistance of counsel (Appellant Lawyer)";
3. "Prosecutorial Misconduct."

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 at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. 17-27-80.

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) (citing Rule 71.1(e), SCRCP). 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 upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland, supra). 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).

Ineffective Assistance of Counsel allegation

Applicant testified that he was waiving his prior claim of ineffective assistance of counsel against appellate counsel, and was proceeding against his trial counsel. Applicant testified his counsel was ineffective for failing to object to the use of Applicant's voluntary statement to law enforcement that "the stuff's over there." Applicant claimed there was a sleeping juror that was not addressed, and that he did not know why the court of Appeals denied his appeal. He indicated that he had four charges pending and that when his case was called for trial, that he was not sure which of the four cases were being called.

Counsel testified that he made a motion to suppress this statement but that he was not successful, as the trial judge allowed the statement in. Though the evidence came in, counsel objected to it. Counsel further renewed his motion at the end of the trial. Regarding the sleeping juror, counsel testified that he did address this issue with the State and with the Judge. On each matter raised by Applicant, counsel made a timely objection but was overruled by the trial judge.

I find that counsel's performance was not deficient under these circumstances. Applicant has not overcome the presumption that counsel rendered effective assistance, nor has he proven prejudice in this case. I find counsel's actions were a result of reasonable trial strategy, and were

otherwise reasonable under prevailing professional norms, and therefore this claim is denied.

Other Allegations

No other allegations were raised or testified to at the PCR hearing. Therefore, any additional allegations raised in the PCR Application or amendment are deemed waived because no evidence was presented.

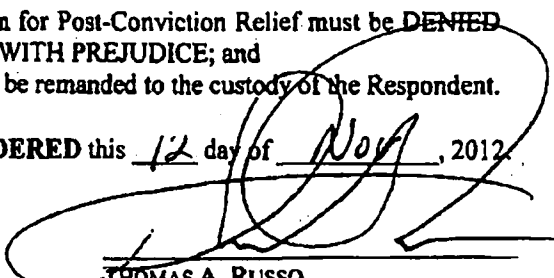
CONCLUSION

Based on the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief is denied and dismissed with prejudice.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be **DENIED AND DISMISSED WITH PREJUDICE**; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 12 day of Nov, 2012.


THOMAS A. RUSSO
Presiding Judge
12th Judicial Circuit

Flower, South Carolina.

WITNESSES
 LT. NEIL ROUSE MCDU
 Rouse

PROS:

D/O: 01-19-2007

ARREST WARRANT NO.
 CAW08E001 (1); CAW08E002 (2);
 CAW08E003 (3); CAW08E004 (4).

ACTION OF GRAND JURY

VERDICT

Foreman of Grand Jury

Foreman of Petit Jury

Date:

DOCKET NO. 2008-GS-33-00137
 The State of South Carolina,
 County of MARION

COURT OF GENERAL SESSIONS

MAY TERM 2008

THE STATE
 vs.

WAYNE MCLAUGHLIN

Indictment for

UNLAWFUL DRUGS

MARION COUNTY SS
 CLERK OF COURT
 2008 MAY 15 P 12:39

BOOK PAGE

FILED

INDICTMENT FOR

STATE OF SOUTH CAROLINA)
) UNLAWFUL DRUGS
 COUNTY OF MARION)

At a Court of General Sessions, convened on MAY 15, 2008, the Grand Jurors of MARION

County present upon their oath:

COUNT ONE - DISTRIBUTION OF COCAINE BASE 3RD

That WAYNE MCLAUGHLIN did in MARION County on or about January 10, 2007, violate Section 44-53-0375(B)(3) of the Code of Laws of South Carolina (1976), as amended, in that he did distribute to a confidential informant of the Marion County Combined Drug Unit a quantity of cocaine base, a controlled substance; such distribution not having been authorized by law.

COUNT TWO - DISTRIBUTION OF COCAINE BASE 3RD

That WAYNE MCLAUGHLIN did in MARION County on or about January 15, 2006, violate Section 44-53-0375(B)(3) of the Code of Laws of South Carolina (1976), as amended, in that he did distribute to a confidential informant of the Marion County Combined Drug Unit a quantity of cocaine base, a controlled substance; such distribution not having been authorized by law.

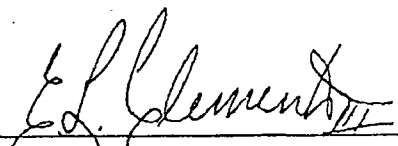
COUNT THREE - POSSESSION OF COCAINE BASE WITH INTENT TO DISTRIBUTE

That WAYNE MCLAUGHLIN did in MARION County on or about January 19, 2007, violate Section 44-53-0375(B)(3) of the Code of Laws of South Carolina (1976), as amended, in that he did knowingly and intentionally possess with intent to distribute a quantity of cocaine base, a controlled substance; such possession not having been authorized by law.

COUNT FOUR - POSSESSION OF COCAINE WITH INTENT TO DISTRIBUTE

That WAYNE MCLAUGHLIN did in MARION County on or about January 19, 2007, violate Section 44-53-0375(b)(1) of the Code of Laws of South Carolina (1976), as amended, in that he did knowingly and intentionally possess with intent to distribute a quantity of cocaine, a controlled substance; such possession not having been authorized by law.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



SOLICITOR

15-30 / 100,000

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

MARION

VS.

AKA:

Wayne McLaughlin

Race:

R

Sex:

M

Age:

48

DOB:

SS#:

er

Address:

City, State, Zip

Mullins, SC 29574

DL#

SID#

INDICTMENT/CASE#:

08

GS- 33

137

AW#:

K 105839

Date of Offense:

1/19/07

S.C. Code §:

44-53-375(B)

CDR Code #:

3 1 0 13 19

☐ CASE RESTORED

SENTENCE

☐ PLEA☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADS

TO:

PWID C/B 2nd

in violation of § 44-53-375(B) of the S.C. Code of Laws, bearing CDR Code # 3 1 0 13 19

☐ NON-VIOLENT☐ VIOLENT☒ SERIOUS☐ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.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 25 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon 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: ☐ Heard, ☐ Waived, ☐ Ordered

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 \$ _____

\$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 \$ _____

\$33.7, 1B TP (Drug Court Surcharge) \$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 \$ _____

PTUP

_____ 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

Judge Code:

Sentence Date:

Clerk of Court/ Deputy Clerk

Court Reporter:

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

STATE

AKA:

Race:

Sex:

Age:

DOB:

SS#:

Address:

City, State, Zip

DL#

SID#

INDICTMENT/CASE#:

A/W#:

Date of Offense:

S.C. Code §:

CDR Code #:

☐ CASE RESTORED

SENTENCE

☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: DAVID FRANKLIN COLEMAN JR.in violation of § 17-53-370 of the S.C. Code of Laws, bearing CDR Code # 011815☐ NON-VIOLENT☐ VIOLENT☒ SERIOUS☐ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.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 25 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon 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: ☐ Heard, ☐ Waived, ☐ Ordered

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
\$14-1-211(A)(2) (DUI Surcharge)	\$100
\$56-5-2995 (DUI Assessment)	\$12
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\$33.7, 1B TP (Drug Court Surcharge)	\$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	\$

Court Reporter:

PTUP

_____ 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

Judge Code:

Sentence Date: