

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Appeal from Anderson County  
Clifton Newman, Circuit Court Judge

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S.C. Supreme Court

ANTHONY L. MATTISON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000585

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A P P E N D I X

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INDEX

INDEX ..... i

TRIAL TRANSCRIPT (dated January 11, 13, 14, 2010) ..... 1

APPLICATION FOR POST-CONVICTION RELIEF ..... 207

RETURN ..... 235

POST-CONVICTION RELIEF HEARING TRANSCRIPT (dated October 3, 2012) ..... 241

ORDER OF DISMISSAL ..... 276

MOTION TO ALTER/AMEND JUDGMENT ..... 287

ORDER DENYING MOTION TO ALTER OR AMEND ..... 291

INDICTMENT AND SENTENCE SHEET ..... 292

COURT OF APPEALS OPINION ..... 295

REMITTITUR ..... 296

STATE OF SOUTH CAROLINA )  
COUNTY OF ANDERSON )

STATE OF SOUTH CAROLINA, )

PLAINTIFF, )

vs )

ANTHONY LEROY MATTISON, )

DEFENDANT. )

IN THE CIRCUIT COURT  
OF THE TENTH JUDICIAL CIRCUIT  
2007-GS-04-1889

TRANSCRIPT OF RECORD

JANUARY 11, 13-14, 2010  
ANDERSON, SOUTH CAROLINA

BEFORE: THE HONORABLE R. LAWTON MCINTOSH

FOR THE STATE:

LAUREN SUTTON HOGAN  
AL MEANS  
ATTORNEYS AT LAW  
TENTH CIRCUIT SOLICITOR'S OFFICE  
POST OFFICE BOX 8002  
ANDERSON, SC 29622

FOR THE DEFENSE:

KURT TAVERNIER, ESQUIRE  
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ANDERSON, SC 29624

JO RICE  
COURT REPORTER

INDEX

	<u>DIRECT</u>	<u>CROSS</u>	<u>RE-DIRECT</u>	<u>RE-CROSS</u>
PRE-TRIAL MOTIONS .....				5-32
JURY SELECTION .....				33-44
MOTIONS .....				45-52
INTRODUCTORY STATEMENTS BY THE COURT .....				52-60
OPENING STATEMENT - MS. HOGAN .....				61-63
OPENING STATEMENT - MR. TAVERNIER .....				63-64
<u>CASEY FOUTS</u>				
MS. HOGAN	64-68			
MR. TAVERNIER		69-70		
<u>JOEL MCKEE</u>				
MS. HOGAN	71-76		83	
MR.. TAVERNIER		77-83		83-84
<u>MIKE CLARDY</u>				
MS. HOGAN	85-97			
MR. TAVERNIER		97		
<u>MIKE BASKIN</u>				
MS. HOGAN	98-105			
MR. TAVERNIER		105-110		
MOTION - MISTER TAVERNIER .....				110-112
<u>CONTINUE MIKE BASKIN</u>				
MS. HOGAN			113	
<u>AMY STEPHENS</u>				
MS. HOGAN	114-117			
<u>NIKKI PERRY</u>				
MS. HOGAN	117-119			
<u>CARMEN TUCKER</u>				
MS. HOGAN	120-127			
DISCUSSION CONCERNING EXPERT TESTIMONY .....				128-137

	<u>DIRECT</u>	<u>CROSS</u>	<u>RE-DIRECT</u>	<u>RE-CROSS</u>
<u>KEVIN MARSEE</u>				
MS. HOGAN	138-150			
MR. TAVERNIER		150-160		
MOTIONS - MISTER TAVERNIER .....				161-162
FIFTH AMENDMENT RIGHTS .....				162-166
DISCUSSION ON THE CHARGE OF THE COURT .....				169-170
MOTIONS .....				171
CLOSING ARGUMENT - MS. HOGAN .....				173-180
CLOSING ARGUMENT - MR. TAVERNIER .....				180-185
CHARGE OF THE COURT .....				185-200
VERDICT .....				200-201
MOTIONS .....				201
SENTENCING .....				202-205
CERTIFICATE .....				206

**EXHIBITS**

**STATE'S EXHIBITS**

**S-1 SCALES ..... 90**  
**S-2 DRUGS ..... 125**  
**S-3 WINE ..... 89**  
**S-4 CUP ..... 90**  
**S-5 CHAIN OF EVIDENCE PAPERWORK ..... 101**

**DEFENSE EXHIBITS**

**D-1 SLED LAB REPORT ..... 14**

**COURT'S EXHIBITS**

**C-1 NOTE FROM JURY - ELECTION OF FOREPERSON**

**\* ALL EXHIBITS FILED WITH THE ANDERSON COUNTY CLERK OF COURT**

1 PRE-TRIAL MOTIONS

2 THE COURT: MISTER TAVERNIER, ARE THESE YOUR MOTIONS?

3 MR. TAVERNIER: THEY ARE, YOUR HONOR.

4 MR. MATTISON: EXCUSE ME, YOUR HONOR. BEFORE WE PROCEED ANY  
5 FURTHER, I WOULD LIKE TO RELEASE MISTER TAVERNIER FROM THIS CASE.

6 THE COURT: SIR -- FIRST, IS THERE ANYBODY ON THE JURY PANEL IN  
7 THE COURTROOM? AT ALL? (NO ONE RESPONDS) IF YOU THINK THAT THAT  
8 IS GOING TO LET YOUR CASE CONTINUE, IT WILL NOT.

9 MR. MATTISON: WELL, I'VE SPOKEN WITH MISTER BYRHOLDT THIS  
10 MORNING.

11 THE COURT: SIR?

12 MR. MATTISON: I SPOKE WITH MISTER BYRHOLDT THIS MORNING.

13 THE COURT: LET ME TELL YOU SOMETHING. YOUR CASE IS GOING TO  
14 TRIAL THIS WEEK IF IT'S CALLED AND IF YOU WANT TO RELEASE MISTER  
15 TAVERNIER, THAT WILL BE YOUR OPPORTUNITY TO DO THAT AND I'M GOING  
16 TO GO OVER SOME QUESTIONS WITH YOU, BUT I AM NOT GOING TO  
17 CONTINUE THIS CASE. IT'S GOING TO TRIAL THIS WEEK.

18 MR. MATTISON: YES, SIR.

19 THE COURT: DO YOU UNDERSTAND THAT?

20 MR. MATTISON: YES, SIR.

21 THE COURT: NOW, DO YOU UNDERSTAND THAT THIS ATTORNEY IS  
22 EXPERIENCED AND HE WAS AN ASSISTANT SOLICITOR FOR YEARS, HE'S BEEN  
23 A CRIMINAL ATTORNEY FOR YEARS. HE'S A GOOD LAWYER.

24 MR. MATTISON: YES, SIR.

25 THE COURT: YOU UNDERSTAND THAT?

1           **MR. MATTISON:** YES, SIR.

2           **THE COURT:** ALL RIGHT. AND LET ME TELL YOU – AND YOU'RE MISTER  
3 MATTISON?

4           **MR. MATTISON:** YES, SIR.

5           **THE COURT:** YOU CAN HAVE A SEAT, PLEASE. I GET FACED WITH  
6 PEOPLE ON A REGULAR BASIS WHO, WHEN IT COMES TIME FOR THEM TO GO  
7 TO COURT AND IT'S TIME TO FACE THE MUSIC, THEY WANT TO CONTINUE IT  
8 AND THEY WANT TO DELAY THEIR CASE FROM GOING AND I'M NOT SAYING  
9 THAT'S WHAT YOU'RE TRYING TO DO, BUT I'M TELLING YOU, THAT IS NOT  
10 GOING TO HAPPEN. MISTER BYRHOLDT WILL HAVE TO BE READY TO GO AND  
11 TRY THIS CASE THIS WEEK, IF IT COMES. DO YOU UNDERSTAND THAT?

12          **MR. MATTISON:** YES, SIR. I UNDERSTAND WHAT YOU'RE SAYING, SIR, I --

13          **THE COURT:** LET ME FINISH, TOO. AND IF NOT, THEN I'M GOING TO  
14 REQUIRE YOU TO GO FORWARD AND REPRESENT YOURSELF.

15          **MR. MATTISON:** YES, SIR.

16          **THE COURT:** OKAY?

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

18          **THE COURT:** NOW, IT'S YOUR RIGHT TO DISCHARGE AN ATTORNEY IF  
19 YOU WANT TO.

20          **MR. MATTISON:** YES, SIR.

21          **THE COURT:** BUT I WOULD SUGGEST TO YOU THAT YOU CONSIDER IT  
22 FIRST. HAVE YOU SPOKEN TO MISTER TAVERNIER AT ALL BEFORE YOU MADE  
23 THIS MOTION?

24          **MR. MATTISON:** NO, SIR. I HARDLY EVER SPEAK TO MISTER TAVERNIER.  
25 THEREFORE, I'M UNDER THE IMPRESSION THAT HE'S NOT INTERESTED IN

1 REPRESENTING ME. I DON'T THINK HE'S GOING TO BE TO MY BEST  
2 INTERESTS, SO THEREFORE, I WANT TO GO AHEAD AND PROCEED ON WITH  
3 MISTER BYRHOLDT. I TALKED TO HIM THIS MORNING. HE STATED HE'D  
4 SPEAK TO MISTER TAVERNIER. HE SAY I'M GOING TO BE UNABLE TO ATTEND  
5 TODAY BECAUSE HE'S GOT COURT DOWN THERE IN ABBEVILLE.

6 THE COURT: HE'S GOT COURT IN ABBEVILLE?

7 MR. MATTISON: YES, SIR.

8 THE COURT: HE DOES?

9 MR. MATTISON: YES, SIR.

10 THE COURT: OKAY. I'LL TELL YOU WHAT. IS MISTER MATTISON OUT ON  
11 BOND?

12 MR. MATTISON: YES, SIR.

13 THE COURT: LET ME DO THIS. NOW, I'VE SPOKEN WITH ALL THREE OF  
14 THESE ATTORNEYS BEFORE COMING IN HERE AND THERE'S SOME MOTIONS  
15 THAT MISTER TAVERNIER WANTS TO MAKE ON YOUR BEHALF.

16 MR. MATTISON: YES, SIR.

17 THE COURT: NOW, MY THOUGHT WOULD BE THAT YOU GO AHEAD AND  
18 LET HIM MAKE THAT MOTION. IT WILL BE WITHOUT PREJUDICE TO YOU OR TO  
19 MISTER BYRHOLDT. OKAY?

20 MR. MATTISON: EXCUSE ME, SIR?

21 THE COURT: I'M GOING TO LET MISTER TAVERNIER PROCEED WITH THE  
22 MOTION NOW. OKAY?

23 MR. MATTISON: WHY MISTER BYRHOLDT CAN'T PROCEED WITH IT?

24 THE COURT: LET ME -- WOULD YOU LISTEN TO ME AND NOT ARGUE  
25 WITH ME?

1           **MR. MATTISON:** YES, SIR.

2           **THE COURT:** DO YOU UNDERSTAND?

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

4           **THE COURT:** OKAY. FIRST, SIT DOWN. MISTER TAVERNIER IS GOING TO  
5 MAKE A MOTION. I'M GOING TO ALLOW THAT. I JUST TOLD YOU THAT IT'S  
6 GOING TO BE WITHOUT PREJUDICE. DO YOU UNDERSTAND THAT?

7           **MR. MATTISON:** YES, SIR.

8           **THE COURT:** DO NOT ARGUE WITH ME AGAIN. DO YOU UNDERSTAND?

9           **MR. MATTISON:** YES, SIR. I'M SORRY.

10          **THE COURT:** OKAY.

11          **MR. MATTISON:** YES, SIR.

12          **THE COURT:** IT'S WITHOUT PREJUDICE TO MISTER BYRHOLDT OR TO  
13 YOURSELF TO RENEW THE MOTION. DO YOU UNDERSTAND THAT?

14          **MR. MATTISON:** YES, SIR. I UNDERSTAND, SIR.

15          **THE COURT:** DO YOU UNDERSTAND THAT IF I ALLOW AFTER THAT, I'M  
16 GOING TO LISTEN TO YOUR MOTION -- IF I ALLOW MISTER TAVERNIER TO BE  
17 OFF THE CASE.

18          **MR. MATTISON:** YES, SIR.

19          **THE COURT:** AND MISTER BYRHOLDT FOR SOME REASON OR THE  
20 OTHER, CANNOT BE AVAILABLE THIS WEEK, YOU ARE GOING TO REPRESENT  
21 YOURSELF *PRO SE*. YOUR CASE IS GOING FORWARD. DO YOU UNDERSTAND  
22 THAT?

23          **MR. MATTISON:** YES, SIR.

24          **THE COURT:** YOU DO UNDERSTAND THAT?

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

1 THE COURT: HOW OLD ARE YOU?

2 MR. MATTISON: I'M FORTY-FOUR.

3 THE COURT: FORTY-FOUR. HOW FAR DID YOU GET IN SCHOOL?

4 MR. MATTISON: I GRADUATED THEN WENT IN THE NAVY.

5 THE COURT: YOU GRADUATED, WHAT?

6 MR. MATTISON: I GRADUATED HIGH SCHOOL AND WENT, DID FOUR  
7 YEARS IN THE NAVY.

8 THE COURT: HAVE YOU EVER BEEN TO A CRIMINAL TRIAL BEFORE?

9 MR. MATTISON: YES, SIR.

10 THE COURT: HAVE YOU BEEN A CRIMINAL DEFENDANT BEFORE?

11 MR. MATTISON: EXCUSE ME, SIR?

12 THE COURT: HAVE YOU BEEN A CRIMINAL DEFENDANT OR A  
13 DEFENDANT IN A CRIMINAL TRIAL BEFORE?

14 MR. MATTISON: YES, SIR.

15 THE COURT: HAVE YOU REPRESENTED YOURSELF ON PRIOR  
16 OCCASIONS?

17 MR. MATTISON: NO, SIR.

18 THE COURT: OKAY, SIR. DO YOU KNOW THE NATURE OF THE CHARGE  
19 AND THE PENALTIES AGAINST YOU IN THIS CASE?

20 MR. MATTISON: YES, SIR.

21 THE COURT: YOU ARE CHARGED WITH POSSESSION WITH THE INTENT  
22 TO DISTRIBUTE CRACK, PROXIMITY OF A SCHOOL AND POSSESSION OF A  
23 STOLEN PISTOL. IS THAT CORRECT?

24 MR. MATTISON: YES, SIR.

25 THE COURT: DO YOU UNDERSTAND THE NATURE OF THE CHARGES AND

1 THE PENALTIES TO THOSE CHARGES?

2 MR. MATTISON: YES, SIR. I DO.

3 THE COURT: HAVE THEY BEEN EXPLAINED TO YOU?

4 MR. MATTISON: YES, SIR.

5 THE COURT: BY WHOM?

6 MR. MATTISON: BY MISTER TAVERNIER ---

7 THE COURT: MISTER TAVERNIER.

8 MR. MATTISON: --- AND MISTER BYRHOLDT.

9 THE COURT: AND MISTER BYRHOLDT. BOTH?

10 MR. MATTISON: YES, SIR.

11 THE COURT: SO, YOU UNDERSTAND THAT.

12 MR. MATTISON: YES, SIR.

13 THE COURT: AND DO YOU UNDERSTAND THE RANGE OF SENTENCES  
14 YOU COULD POSSIBLY GET?

15 MR. MATTISON: YES, SIR. I DO.

16 THE COURT: AND DO YOU UNDERSTAND THAT IF I SO CHOSE AND THE  
17 JURY FOUND YOU GUILTY, I COULD MAKE THOSE BE CONSECUTIVE.

18 MR. MATTISON: YES, SIR.

19 THE COURT: DO YOU UNDERSTAND WHAT CONSECUTIVE MEANS?

20 MR. MATTISON: YES, SIR.

21 THE COURT: WHAT IS THAT?

22 MR. MATTISON: ONE AFTER ANOTHER.

23 THE COURT: OKAY. DO YOU KNOW THAT IF YOU WILL BE REQUIRED TO  
24 GO FORWARD WITH THIS CASE, YOU WILL HAVE TO BE FAMILIAR WITH THE  
25 RULES OF EVIDENCE, THE RULES OF CRIMINAL PROCEDURE. DO YOU

1 UNDERSTAND THAT? AND I'M SPEAKING IN TERMS OF YOU REPRESENTING  
2 YOURSELF. THIS CASE IS NOT GOING TO BE CONTINUED PAST THIS TERM.  
3 YOU DO UNDERSTAND THAT?

4 MR. MATTISON: YES, SIR.

5 THE COURT: OKAY. NOW, ARE YOU FAMILIAR WITH THE RULES OF  
6 EVIDENCE?

7 MR. MATTISON: SAY AGAIN?

8 THE COURT: ARE YOU FAMILIAR WITH THE RULES OF EVIDENCE?

9 MR. MATTISON: YES, SIR.

10 THE COURT: AND YOU UNDERSTAND THAT YOU WILL HAVE TO COMPLY,  
11 IF YOU HAVE TO GO FORWARD WITH THIS CASE BY YOURSELF, YOU WILL  
12 HAVE TO COMPLY WITH THE RULES OF EVIDENCE JUST LIKE THESE  
13 ATTORNEYS WILL.

14 MR. MATTISON: YES, SIR.

15 THE COURT: AND YOU WILL BE REQUIRED TO BE KNOWLEDGEABLE  
16 WITH THE RULES OF CRIMINAL PROCEDURE JUST LIKE THESE ATTORNEYS  
17 WILL.

18 MR. MATTISON: YES, SIR.

19 THE COURT: YOU UNDERSTAND THAT?

20 MR. MATTISON: YES, SIR.

21 THE COURT: ALL RIGHT. LET ME DO THIS. I'M GOING TO LET MISTER  
22 TAVERNIER PROCEED WITH HIS MOTIONS, AND AGAIN, MISTER MATTISON, IT  
23 IS WITHOUT PREJUDICE TO YOU OR TO MISTER BYRHOLDT OR ANY OTHER  
24 ATTORNEY YOU MAY GET TO RENEW THOSE MOTIONS OR ANY OTHER  
25 MOTIONS, BUT I WANT HIM TO DO THAT FOR THE RECORD, BUT BEFORE THAT

1 -- AND MISTER TAVERNIER, I WILL LET YOU RESPOND TO MISTER MATTISON'S  
2 MOTION BUT WE ARE GOING TO DO THAT AFTER YOU DO YOUR MOTIONS.  
3 OKAY, SIR?

4 **MR. TAVERNIER:** VERY GOOD, SIR.

5 **THE COURT:** DO YOU UNDERSTAND?

6 **MR. TAVERNIER:** YES, SIR.

7 **THE COURT:** OKAY. GO AHEAD.

8 **MR. TAVERNIER:** YOUR HONOR, THE FIRST MOTION THAT I HAVE IS A  
9 *MOTION IN LIMINE* TO WHICH THE STATE HAS AGREED. IT IS ALLEGED IN THE  
10 INCIDENT REPORT AND, BASED ON OFFICERS REPORTS, THAT A C.I., A  
11 CONFIDENTIAL INFORMANT, HAD CONTACT WITH THE DEFENDANT AND  
12 INSTRUCTED TO MEET HIM AT A SPECIFIC LOCATION TO EITHER BUY OR SELL  
13 ILLICIT SUBSTANCES. I HAVE SPOKEN WITH MS. HOGAN AND SHE IS IN  
14 AGREEMENT THAT NO MENTION WHATSOEVER OF THE ALLEGED  
15 CIRCUMSTANCES THAT PRECEDED THE APPEARANCE OF MISTER MATTISON  
16 AT THE LOCATION WILL BE RAISED IN THE TRIAL PROCEEDINGS.

17 **THE COURT:** OKAY. YOU WANT TO BE A LITTLE MORE SPECIFIC?

18 **MR. TAVERNIER:** NO MENTION OF THE C.I., NO MENTION THAT THERE IS  
19 AN ALLEGED DRUG TRANSACTION THAT'S TO TAKE PLACE, NOTHING OF THAT  
20 MAGNITUDE IN ORDER -- THAT WOULD PREJUDICE MISTER MATTISON  
21 BECAUSE HE'S CHARGED WITH POSSESSION WITH INTENT TO DISTRIBUTE.

22 **THE COURT:** RIGHT.

23 **MR. TAVERNIER:** AND THE WHOLE PRECURSOR FOR ALL THE OFFICERS  
24 BEING AT THE LOCATION WAS, WAS A SET-UP AND THEY APPROACHED HIM  
25 UPON HIS ARRIVAL, IMMEDIATELY UPON HIS ARRIVAL AND BASED ON THAT, I

1 DON'T WANT ANY EVIDENCE AND NO MENTION WHATSOEVER THAT THERE  
2 WAS A C.I., A PRIOR CONVERSATION REGARDING WHAT WAS TO HAVE TAKEN  
3 PLACE AT THAT SPECIFIC LOCATION ON THAT SPECIFIC DATE.

4 THE COURT: OKAY. MS. HOGAN, DO YOU AGREE WITH THAT?

5 MS. HOGAN: YES, SIR, YOUR HONOR. WE DO. WE WILL NOT BE  
6 MENTIONING ANYTHING REGARDING A C.I. WE WILL BE SAYING THAT THE  
7 OFFICER WAS THERE FOR AN ONGOING CRIMINAL INVESTIGATION AND SO,  
8 NOT INVOLVING MISTER MATTISON, INVOLVING A C.I. OR ANYTHING RELATED  
9 TO THAT.

10 THE COURT: IS THE SOLICITOR'S OFFICE AGREEABLE TO THAT  
11 STIPULATION CONTINUING OVER TO MISTER MATTISON IF HE'S REQUIRED TO  
12 TRY THIS CASE HIMSELF OR HIS NEW ATTORNEY IF I WERE TO GRANT THE  
13 MOTION TO RELIEVE MISTER TAVERNIER?

14 MS. HOGAN: YES, SIR, YOUR HONOR.

15 THE COURT: SO, IT'S JUST FOR THIS TRIAL.

16 MS. HOGAN: YES, YOUR HONOR. WE HAD PLANNED ON GOING  
17 FORWARD THAT WAY BEFORE THE *MOTION IN LIMINE* WAS GOING TO BE  
18 MADE. ALSO, YOUR HONOR, JUST SO THE COURT IS AWARE, WE ARE JUST  
19 GOING FORWARD ON THE POSSESSION WITH INTENT TO DISTRIBUTE. WE  
20 WILL NOT BE GOING FORWARD ON THE PROXIMITY OR THE POSSESSION OF A  
21 STOLEN GUN. MISTER TAVERNIER AND I TALKED ABOUT THAT AS WELL AND  
22 I'M JUST GOING FORWARD ON THE POSSESSION WITH INTENT TO DISTRIBUTE  
23 CRACK COCAINE.

24 THE COURT: AND THAT'S PURSUANT TO THE WORK THAT MISTER  
25 TAVERNIER HAS DONE ON THIS CASE?

1           **MS. HOGAN:** YES, SIR.

2           **THE COURT:** VERY WELL. MISTER TAVERNIER.

3           **MR. TAVERNIER:** THANK YOU, YOUR HONOR. THE SECOND MATTER  
4           PERTAINS TO A --

5           (MISTER TAVERNIER HAS THE COURT REPORTER MARK A DOCUMENT  
6           AS DEFENDANT'S EXHIBIT #1 FOR IDENTIFICATION)

7           **MR. TAVERNIER:** YOUR HONOR, I'M HANDING UP TO YOU WHAT HAS  
8           BEEN MARKED AS DEFENDANT'S EXHIBIT #1 FOR IDENTIFICATION AT THIS  
9           TIME, A SOUTH CAROLINA LAW ENFORCEMENT DIVISION LAB REPORT AND  
10          ALSO THE CHAIN OF CUSTODY DOCUMENTS THAT ACCOMPANY THAT  
11          REPORT. THE BASIS FOR THIS MOTION, YOUR HONOR, IS TO SUPPRESS THE  
12          DRUGS AND THE BASIS OF MY MOTION PRIMARILY RESTS ON PAGE FOUR OF  
13          THE DOCUMENT THAT I HAVE HANDED TO YOU.

14          **THE COURT:** IT SAYS, "FORM "C", RULE SIX"?

15          **MR. TAVERNIER:** FORM "C", RULE SIX, YOUR HONOR. AND ON THAT  
16          FORM, YOUR HONOR, AT THE BOTTOM, IT IS NOTARIZED BY MS. AMY SEXTON  
17          ON APRIL 11, 2007. THAT NOTARIZATION IS VERIFYING THE SIGNATURE OF  
18          MICHAEL BASKIN, WHO WAS A SERGEANT WITH THE ANDERSON POLICE  
19          DEPARTMENT AT THAT TIME, THAT HE, IN FACT, DELIVERED THE DRUGS THAT  
20          ARE THE SUBJECT EVIDENCE OF THIS CASE ON APRIL 16, 2007.

21          **THE COURT:** FIVE DAYS LATER?

22          **MR. TAVERNIER:** FIVE DAYS PRIOR TO HIS DELIVERY, THE FORM IS  
23          BEING NOTARIZED THAT HE, IN FACT, WAS GOING TO MAKE THE DELIVERY.

24          **THE COURT:** OKAY.

25          **MR. TAVERNIER:** NOW, ADMITTED, BASED ON MY EXPERIENCE, I AM

1 GOING TO ADMIT TO THE COURT THAT I DON'T BELIEVE IT CHANGES THE  
2 CHARACTER OR NATURE OF THE DRUGS THEMSELVES. I DON'T BELIEVE  
3 THEY HAVE BEEN TAINTED OR TAMPERED WITH IN ANY MANNER BASED ON  
4 MY KNOWLEDGE OF MISTER BASKIN, OKAY? AND PROCEDURES FOLLOWING.  
5 WHAT I AM ATTACKING IS THAT THIS IS A CHAIN OF CUSTODY FORM THAT  
6 VERIFIES THE DRUGS AND THE PROCEDURE, THE MANNER IN WHICH THEY  
7 HAVE BEEN HANDLED AND IT, IN FACT, IS ILLEGAL. YOU CANNOT NOTARIZE A  
8 DOCUMENT FIVE DAYS IN ADVANCE OF THAT CIRCUMSTANCE OCCURRING  
9 AND HAVE IT STAND UP TO LEGAL SCRUTINY. IF I WERE TO NOTARIZE A DEED  
10 FIVE DAYS PRIOR TO THE CONVEYANCE AND IT WAS GOING TO TAKE PLACE  
11 FIVE DAYS HENCEFORTH, THAT CONVEYANCE IS ILLEGAL. THIS IS ILLEGAL.  
12 (INDICATING DOCUMENT) AND THAT'S THE BASIS FOR MY MOTION, YOUR  
13 HONOR. THE CHAIN OF CUSTODY HAS FAILED DUE TO THIS ILLEGAL  
14 DOCUMENT.

15 THE COURT: SO, THE VIEW OF YOUR MOTION IS TO THE CHAIN OF  
16 CUSTODY ITSELF.

17 MR. TAVERNIER: YES, YOUR HONOR. I CANNOT, IN GOOD FAITH, STATE  
18 THAT THE DRUGS HAVE BEEN TAMPERED WITH IN ANY FORM OR FASHION,  
19 KNOWING THE INDIVIDUAL'S WHO I KNOW AND HAVE DEALT WITH BEFORE. I  
20 AM NOT QUESTIONING THEIR INTEGRITY AS FAR AS TAMPERING WITH THE  
21 EVIDENCE. I AM QUESTIONING THE INTEGRITY OF THEIR ADHERENCE TO THE  
22 RULES REGARDING THE CHAIN OF CUSTODY, THE NOTARIZATION OF THIS  
23 FORM. HAVING BEEN INVOLVED IN PRIOR CASES, I'M AWARE OF WHY IT WAS  
24 DONE. IT DOESN'T MAKE IT ANY LESS ILLEGAL.

25 THE COURT: MS. HOGAN?

1           **MS. HOGAN:** YOUR HONOR, IF IT PLEASURES THE COURT. THE STATE WILL  
2 ADMIT THAT THIS IS NOT A GOOD PAPER CHAIN IN THIS CASE. THERE WERE  
3 CASES IN 2007 THAT THE CITY WAS TAKING EVIDENCE DOWN TO SLED AND  
4 THIS IS THE WAY THEY WERE TOLD TO DO IT AND THIS WAS THE WAY THEY  
5 WERE DOING IT EVEN THOUGH IT WAS NOT PROPER.

6           **THE COURT:** AND THEY WERE TOLD BY SLED?

7           **MS. HOGAN:** YES, SIR. TO BE ABLE TO TURN IT IN, THEY HAD TO HAVE IT  
8 NOTARIZED BEFORE IT WENT DOWN TO SLED, SO THAT THIS IS THE WAY  
9 THAT THEY HAD TO DO IT FOR ANYTHING TO BE TESTED BY SLED.

10           **THE COURT:** DID SLED EXPLAIN WHY THEY WANTED IT THIS WAY?

11           **MS. HOGAN:** I'M NOT SURE THEY SAID WHY. IT WAS JUST SOMETHING  
12 THEY SAID THEY HAD TO HAVE BEFORE THE EVIDENCE WAS COLLECTED BY  
13 THEM. I DO HAVE MIKE BASKIN HERE WHO WAS THE ONE IN CHARGE OF  
14 TAKING THE EVIDENCE TO SLED AND BRINGING IT BACK DURING THIS, WHEN  
15 THIS WAS GOING ON IN 2007 BY THE CITY IF YOU WOULD LIKE TO HEAR  
16 TESTIMONY, YOUR HONOR.

17           **THE COURT:** WHY WOULD SLED -- LET ME ASK THIS GENTLEMAN RIGHT  
18 HERE, WHY WOULD SLED REQUIRE THAT THEY NOTARIZE SOMETHING IN  
19 ADVANCE THEY KNOW IS GOING TO BE USED IN A LAWSUIT, IN LEGAL  
20 PROCEEDINGS?

21           **MR. BASKIN:** WHY?

22           **THE COURT:** YES, SIR.

23           **MR. BASKIN:** SLED ONLY TOLD ME THAT THEY WERE NO LONGER GOING  
24 TO NOTARIZE MY SIGNATURE WHEN I GOT THERE. WHY I DIDN'T FILL THE  
25 FORM OUT ON THE DATE -- I FILLED OUT THE DRUGS AND PUT SLED ON

1 THERE. I DIDN'T PUT THE DATE ON THERE. WHAT I HAVE DONE IS HAVE IT  
2 NOTARIZED AND THEN FILLED THE DATE IN WHEN I GOT THERE. THERE'S NO  
3 DOUBT THE DATE THAT IT GETS THERE BECAUSE IT'S AUTOMATICALLY DONE  
4 WHEN I SIGNED IT, BUT FOR YEARS, SLED NOTARIZED MY SIGNATURE WHEN I  
5 WENT DOWN THERE. I WENT DOWN THERE ONE DAY AND THEY SAID THEY  
6 NO LONGER WERE GOING TO DO IT. THE ONLY OTHER CHOICE I HAD, WAS TO  
7 GET IT NOTARIZED BEFORE I GOT THERE, OR NOT GET IT NOTARIZED AT ALL.

8 **THE COURT:** AND YOU'RE MISTER BASKIN?

9 **MR. BASKIN:** YES, SIR.

10 **THE COURT:** I'M SORRY. I SHOULD HAVE ASKED. WOULD YOU STATE  
11 YOUR NAME FOR THIS COURT REPORTER FOR THE RECORD FOR ME?

12 **MR. BASKIN:** WILLIAM MICHAEL BASKIN.

13 **THE COURT:** OKAY, SIR. DID —

14 **MR. BASKIN:** THIS HAS CAUSED A PROBLEM BEFORE. I CALLED SLED  
15 AND THEY HAVE SINCE STARTED NOTARIZING THE SIGNATURES WHEN THEY  
16 COME, BUT THEY WOULD NOT AT THAT TIME.

17 **THE COURT:** AT THAT POINT. SO, THAT PROBLEM HAS BEEN DEALT  
18 WITH?

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

20 **THE COURT:** THAT'S NOT THE CURRENT PRACTICE. THAT'S WHAT I  
21 WANTED TO FIND OUT.

22 **MR. BASKIN:** IT TOOK THREE OR FOUR MONTHS, BUT THEY FINALLY  
23 GOT IT TAKEN CARE OF.

24 **THE COURT:** OKAY. THANK YOU, SIR. ALL RIGHT, GO AHEAD. I'M  
25 SORRY, MS. HOGAN.

1           **MS. HOGAN:** YOUR HONOR, MISTER BASKIN ACTUALLY WORKS WITH  
2 THE SOLICITOR'S OFFICE NOW, BUT THIS IS A PROBLEM TAKEN CARE OF. HE  
3 NO LONGER WORKS THERE, BUT IT IS MY UNDERSTANDING THAT THEY ARE  
4 NOW NOTARIZING SIGNATURES WHEN THEY GET THERE. I DON'T THINK THEY  
5 UNDERSTOOD NECESSARILY THE RAMIFICATIONS OF DEALING WITH THIS IN  
6 COURT. SO, I DON'T KNOW WHY THAT HAPPENED. HOWEVER, THE STATE  
7 WOULD ARGUE THAT THIS GOES TO CREDIBILITY AND NOT ADMISSIBILITY OF  
8 THE DRUG REPORT. WE WILL CERTAINLY BE PUTTING MISTER BASKIN UP AS  
9 FAR AS THE CHAIN GOES. HE WILL BE ABLE TO TESTIFY THAT HE HAD  
10 CONTROL OF THE DRUGS. WHILE THERE MIGHT BE A DIFFERENCE IN THE  
11 DATES, THE AFFIDAVIT IS THERE IN CASE WE CANNOT PROVIDE LIVE  
12 TESTIMONY, BUT WE WILL HAVE LIVE TESTIMONY AS TO WHAT HAPPENED TO  
13 THE DRUGS, WHAT WAS HAPPENING TO THE DRUGS DURING THIS TIME  
14 PERIOD, THAT THERE MIGHT BE SOME MISINTERPRETATION THERE. AND SO  
15 WE WOULD ARGUE THAT THE DRUG REPORT SHOULD STILL COME IN AND  
16 THAT THE SLED AGENT SHOULD STILL BE ABLE TO TESTIFY THAT THIS WAS,  
17 IN FACT, CRACK COCAINE, YOUR HONOR.

18           **THE COURT:** WELL, AND I WAS GOING TO ASK YOU THAT WOULDN'T IT,  
19 THAT IN FACT, THE PAPER CHAIN, THAT YOU ARE USING IT JUST TO AVOID  
20 HAVING TO REQUIRE LIVE TESTIMONY IN THE COURTROOM?

21           **MS. HOGAN:** RIGHT.

22           **THE COURT:** AND YOU ARE GOING TO HAVE THE LIVE ---

23           **MR. HOGAN:** WE ARE GOING TO HAVE EVERY SINGLE PERSON THAT  
24 TOUCHED THESE DRUGS HERE IN COURT, YOUR HONOR. I'VE GOT, I THINK,  
25 FOUR PEOPLE COMING FROM SLED AND THEN THE OFFICER, MISTER BASKIN

1 AND THEN THE PERSON WHO REPLACED MISTER BASKIN AT THE CITY IS  
2 ACTUALLY BRINGING THE DRUGS HERE. SO, I WILL HAVE, I THINK, SEVEN  
3 CHAIN WITNESSES TO TESTIFY.

4 **THE COURT:** OKAY. MISTER TAVERNIER, MISTER MATTISON, I'M GOING  
5 TO FIRST DENY YOUR MOTION TO SUPPRESS, WITHOUT PREJUDICE MISTER  
6 MATTISON, TO RENEW THAT MOTION OR FOR YOUR ATTORNEY. I'M GOING TO  
7 FIND THAT IF YOU HAVE THE LIVE TESTIMONY, SUBJECT TO THE PROPER  
8 WITNESSES BEING BROUGHT FORWARD AND THE CHAIN BEING  
9 ESTABLISHED, THAT THAT WOULD JUST GO TO THE CREDIBILITY OF THE  
10 EVIDENCE AND NOT TO ITS ADMISSIBILITY, CERTAINLY SUBJECT TO, MISTER  
11 MATTISON, YOUR RIGHT OR YOUR ATTORNEY'S RIGHT TO VIGOROUSLY  
12 CROSS EXAMINE THESE WITNESSES ABOUT THE CHAIN OF EVIDENCE HERE  
13 IN OPEN COURT. ALL RIGHT. ANY OTHER MOTIONS, MISTER TAVERNIER?

14 **MR. TAVERNIER:** YOUR HONOR, I DO HAVE ONE TO A LESSER EXTENT  
15 PERTAINING TO, THE BASIS FOR THE ARREST OF MISTER MATTISON WAS AN  
16 OPEN CONTAINER. THE ALLEGED DRUGS WERE LOCATED, ACCORDING TO  
17 THE OFFICER, DURING BOOKING. HOWEVER, THE CHARGE AT THE TIME OF  
18 BOOKING WAS OPEN CONTAINER.

19 **THE COURT:** WAS IT A BEER OR AN OPEN DRINK OR WHAT --

20 **MR. TAVERNIER:** IT'S ALLEGED HE HAD A BLUE SOLO CUP WHICH  
21 CONTAINED A RED-COLORED BEVERAGE, WHICH WHEN APPROACHED BY  
22 OFFICERS, MISTER MATTISON IS ALLEGED TO HAVE Poured THAT OUT. ONE  
23 OF THE OFFICERS CLAIMED IN THE INCIDENT REPORT TO HAVE SMELLED THE  
24 BEVERAGE AND DETECTED AN ODOR OF ALCOHOL. HOWEVER, BASED ON  
25 ALL REPORTS AND IN THE DISCOVERY, ITEMS THAT I HAVE SEEN, THAT

1 BEVERAGE WHICH WAS LOCATED IN THE CUP HAS NOT BEEN TESTED TO, IN  
2 FACT, VERIFY IT WAS, IN FACT, AN ALCOHOLIC BEVERAGE AND THAT IS THE  
3 SOLE BASIS FOR THEIR ARREST IN ORDER TO TAKE MISTER MATTISON INTO  
4 CUSTODY AND SET INTO FLOW THE SEQUENCE OF EVENTS WHICH GAVE RISE  
5 TO THE DISCOVERY OF THE ALLEGED DRUGS.

6 THE COURT: AND YOU ARE SEEKING TO HAVE THAT THROWN OUT SO  
7 THAT THE REST OF THE EVIDENCE WOULD GO OUT AS WELL.

8 MR. TAVERNIER: THAT'S CORRECT, YOUR HONOR. IF THEY CANNOT  
9 PROVE THAT WAS AN ALCOHOLIC BEVERAGE, THEN THE WHOLE CHAIN FALLS  
10 APART.

11 THE COURT: YOU'RE SAYING THERE WASN'T PROBABLE CAUSE. MS.  
12 HOGAN.

13 MS. HOGAN: YOUR HONOR, IF IT PLEASES THE COURT. WE ARE NOT  
14 TRYING TO PROVE THAT THERE WAS AN OPEN CONTAINER IN THIS CASE. WE  
15 WILL HAVE TESTIMONY THAT THE OFFICERS SMELLED THE ALCOHOLIC  
16 BEVERAGE ON MISTER MATTISON AND AS SOON AS HE WALKED UP, MISTER  
17 MATTISON DUMPED IT OUT. WE WILL ALSO HAVE TESTIMONY THAT THERE  
18 WAS, THAT THE REST OF -- THAT A BOTTLE OF WINE WAS IN THE TRUNK OF  
19 THE CAR AS WELL, YOUR HONOR. SO, I BELIEVE THAT THE OFFICER HAD  
20 PROBABLE CAUSE AND A REASONABLE REASON TO BELIEVE THAT IT WAS AN  
21 ALCOHOLIC BEVERAGE. SO, WE WOULD ARGUE THAT IT SHOULD COME IN.

22 MR. TAVERNIER: YOUR HONOR, IF I MAY RESPOND. JUST BASED ON  
23 WHAT MS. HOGAN SAID, SHE SAID THEY HAD THE REST OF THE ALCOHOLIC  
24 BEVERAGE IN A BOTTLE THAT WAS LOCATED IN THE TRUNK. THEY CAN'T  
25 PROVE THAT THAT WAS THE SAME BEVERAGE. THAT'S MY WHOLE POINT. IF

1 THEY WANT TO DRAW THAT NEXUS, THEY CAN'T DO IT. THEY HAVE NO  
2 PROOF.

3 THE COURT: LET ME TELL YOU THIS. I DON'T BELIEVE THAT IT'S  
4 NECESSARY FOR YOU TO HAVE EXPERT TESTIMONY TO ESTABLISH THE  
5 PRESENCE OF ALCOHOL. I THINK THAT IS SOMETHING A PERSON, WHO IN  
6 THEIR COMMON EXPERIENCE, DEPENDING ON WHAT THEIR EXPERIENCES  
7 MIGHT BE, BUT I THINK THAT AN OFFICER IN A COMMON EXPERIENCE CAN  
8 DETECT ALCOHOL OR REASONABLY SUSPECT THE PRESENCE OF ALCOHOL  
9 AND NOT HAVE TO GO TEST IT. I WOULD THINK THAT IF YOU HAVE A TESTING  
10 REQUIREMENT, THEN ALL THE CASES THAT WE HAVE OUT THERE FOR DUI'S  
11 AND OTHER RELATED INFORMATION, IT JUST NEVER WOULD WORK. I THINK A  
12 PERSON WITH A COMMON EXPERIENCE AND KNOWLEDGE COULD DETECT AN  
13 ODOR OF ALCOHOL, BE IT BEER, WINE OR LIQUOR AND THEREFORE, HAVE A  
14 SUSPICION THAT A CRIME IS TAKING PLACE AND SO I AM GOING DENY YOUR  
15 MOTION THERE.

16 MR. TAVERNIER: THANK YOU, YOUR HONOR.

17 THE COURT: ANYTHING FURTHER? ARE YOU FINISHED WITH YOUR  
18 MOTIONS ON BEHALF OF MISTER MATTISON?

19 MR. TAVERNIER: THAT COVERS THE THREE THAT I HAD PREPARED FOR  
20 TODAY, YOUR HONOR. YES, SIR.

21 THE COURT: ANY MOTIONS FROM THE STATE?

22 MS. HOGAN: NOTHING FROM THE STATE, YOUR HONOR.

23 THE COURT: ALL RIGHT. NOW, MISTER MATTISON.

24 MR. MATTISON: YES, SIR.

25 THE COURT: NOW, YOU MAY STAND UP AND THIS IS YOUR

1 OPPORTUNITY TO FILE YOUR MOTION THAT YOU JUST DID TO RELIEVE  
2 MISTER TAVERNIER ON THIS CASE. OKAY, SIR? I WANT YOU TO ARTICULATE  
3 THE REASON WHY AND TELL ME WHAT YOUR MOTION IS. OKAY, SIR?

4 **MR. MATTISON:** YES, SIR. THE REASON BEING, I DON'T THINK HE'S  
5 REPRESENTING ME IN MY BEST INTERESTS.

6 **THE COURT:** YOU DON'T THINK HE'S REPRESENTING YOU IN YOUR BEST  
7 INTERESTS?

8 **MR. MATTISON:** YES, SIR.

9 **THE COURT:** OKAY. I WANT YOU TO TELL US WHY.

10 **MR. MATTISON:** HE NEVER CONTACTS ME. HE'S ALWAYS GOT  
11 SOMETHING NEGATIVE TO SAY. HE DON'T TALK IN A WAY LIKE HE'S IN FAVOR  
12 OF ME. HE TALKS LIKE HE'S TALKING AGAINST ME. ALL BECAUSE I HAVEN'T  
13 PAID HIM ANYTHING OR HE'S MAD BECAUSE THE FEDS AREN'T IN IT, BUT IT'S  
14 NOT MY FAULT.

15 **THE COURT:** HE'S MAD BECAUSE OF WHAT NOW?

16 **MR. MATTISON:** THIS CASE HAS BEEN GOING ON FOR SO LONG, IT WENT  
17 ON FOR EIGHTEEN MONTHS. THE STATE DROPPED THE CASE AND GIVE IT TO  
18 THE FEDERAL. THE FEDS DIDN'T PICK IT UP AND NOW IT'S IN THE STATE  
19 COURT. I WAS ON PROBATION AND I WAS ON PROBATION, TOO, DURING ALL  
20 THIS RIGHT HERE. YOU KNOW WHAT I'M SAYING? IT'S BEEN GOING ON FOR  
21 THREE YEARS. HE WANTS TO GET MAD AT ME BECAUSE I WON'T PLEAD OR  
22 BECAUSE I WON'T DO WHAT THEY TELL ME TO DO.

23 **THE COURT:** WELL, LET ME ADDRESS THE THINGS THAT YOU SAID  
24 FIRST, THAT MISTER TAVERNIER NEVER SPOKE TO YOU. DIDN'T YOU JUST  
25 TELL ME A MINUTE AGO THAT HE EXPLAINED THE CONSEQUENCES OF EACH

1 OF THESE CHARGES TO YOU?

2 **MR. MATTISON:** THE ONLY TIMES HE SPEAKS TO ME IS WHEN WE COME  
3 TO COURT. I MEAN, I BEEN SITTING HERE ALL MORNING LONG AND HE'S SAID  
4 NOT ONE WORD TO ME. I HAVE TO TALK TO HIS SECRETARY TO FIND OUT  
5 WHAT'S REALLY GOING ON.

6 **THE COURT:** ALL RIGHT. ANY OTHER BASIS FOR YOUR MOTION?

7 **MR. MATTISON:** I'D BE MORE COMFORTABLE WITH MISTER BYRHOLDT,  
8 SIR.

9 **THE COURT:** OKAY. ANYTHING FURTHER, MISTER MATTISON?

10 **MR. MATTISON:** NO, SIR.

11 **THE COURT:** WELL, HAVE A SEAT, PLEASE, SIR. MISTER TAVERNIER?

12 **MR. TAVERNIER:** YOUR HONOR, I HAVE SPOKEN WITH MISTER  
13 MATTISON ON AT LEAST FIVE OCCASIONS. HE HAS BEEN OUT TO THE OFFICE  
14 AT LEAST TWICE, UP AT THE PUBLIC DEFENDER'S OFFICE. FOR THE RECORD,  
15 WE WERE NOT ASSIGNED THIS CASE, OR DID NOT PICK IT UP AT THE PUBLIC  
16 DEFENDER'S OFFICE -- I'M ON A CONTRACT BASIS WITH THEM AND HAVE  
17 BEEN SINCE 2002 -- THIS CASE WAS PICKED UP BY THE OFFICE, DISCOVERY  
18 WAS SENT OUT ON JULY 7TH OF THIS YEAR. PRIOR TO THAT --

19 **THE COURT:** JULY 7TH OF 2009?

20 **MR. TAVERNIER:** OF 2009. PRIOR TO THAT DATE, HE WAS  
21 REPRESENTED BY MISTER LUSK.

22 **THE COURT:** WAS HE DOING IT IN A PRIVATE CAPACITY?

23 **MR. TAVERNIER:** I BELIEVE SO, YOUR HONOR. I THINK THERE WAS, AT  
24 SOME POINT, A FAILURE TO PAY THE SUFFICIENT RETAINER. THAT IS --  
25 THERE WERE SOME OTHER PENDING CHARGES AGAINST MISTER MATTISON

1 AND MISTER LUSK, IN MY INITIAL INTERVIEW, STATED, ALL RIGHT, THAT BACK  
2 ON JULY 16TH, HE CAME IN AND WE TALKED ABOUT PROBABLE CAUSE AND  
3 WHAT PRECIPITATED THIS CASE. I HAD A SUBSEQUENT INTERVIEW WHERE  
4 WE TALKED. MY INITIAL NOTE PERTAINS TO WHAT WAS OFFERED, WHAT  
5 WAS ON THE TABLE. EXCUSE ME, IT WASN'T JULY 16TH, YOUR HONOR, IT  
6 WAS APRIL 25TH. EXCUSE ME. AND THAT ---

7 THE COURT: HOW COULD YOU HAVE RECEIVED THE CASE IN APRIL IF  
8 YOU WEREN'T ASSIGNED THE CASE UNTIL JUNE?

9 MR. TAVERNIER: THEY OPENED THE CASE FILE IN APRIL AND THAT'S  
10 WHEN HE INITIALLY CAME TO THE PUBLIC DEFENDER'S OFFICE AND WAS  
11 INTERVIEWED OR AT THE JAIL OR WHATEVER WITH WAYNE MCCARTHY.

12 THE COURT: JUST ONE SECOND. MISTER MATTISON, YOU TRIED TO  
13 STAND UP AND ATTEMPTED TO SAY SOMETHING. I'M GOING TO ALLOW YOU  
14 TO SPEAK ---

15 MR. MATTISON: OKAY.

16 THE COURT: --- BUT YOU'RE GOING TO ALLOW MISTER TAVERNIER TO  
17 SPEAK FIRST. OKAY, SIR?

18 MR. MATTISON: YES, SIR.

19 THE COURT: ALL RIGHT. GO AHEAD, SIR.

20 MR. TAVERNIER: THE DISCOVERY REQUEST WAS SENT OUT JULY 7TH  
21 OF 2009 AND THERE WERE TWO DISCUSSIONS THAT I HAD WITH BOB LUSK  
22 BECAUSE THERE WAS A QUESTION ABOUT WHETHER BOB WAS GOING TO  
23 REPRESENT HIM OR WHETHER WE WERE GOING TO REPRESENT HIM AND  
24 THEN IT WAS ALSO DISCUSSIONS REGARDING A JOINT PLEA WITH ME TAKING  
25 THE DRUG CHARGE AND BOB REPRESENTING HIM ON THE ABWIK. THOSE

1 THINGS APPARENTLY -- EVERYTHING KIND OF FELL APART. CAN WE WAIVE  
2 CERTAIN ISSUES? BECAUSE YOUR HONOR, WE HAD A DISCUSSION OF THREE  
3 YEARS ON THE TABLE TO ALL CHARGES.

4 THE COURT: HOLD ON. LET ME DO SOMETHING. CERTAINLY, I CAN'T  
5 COUNSEL YOU, BUT IF THIS IS A MATTER OF ATTORNEY/CLIENT PRIVILEGE.

6 MR. TAVERNIER: THIS, I THINK, IS NOT SOMETHING OF  
7 ATTORNEY/CLIENT PRIVILEGE, YOUR HONOR, BECAUSE MS. HOGAN WAS  
8 ALSO IN ON THE DISCUSSIONS.

9 THE COURT: OKAY. THEN, IT WOULDN'T BE SO.

10 MR. TAVERNIER: OKAY? THAT'S WHY I'M BEING VERY CAREFUL. ALL  
11 RIGHT?

12 THE COURT: ALL RIGHT.

13 MR. TAVERNIER: THERE WAS AN OFFER OF THREE YEARS ON THE  
14 TABLE. THAT WASN'T GOOD ENOUGH AND SO THAT WAS WHAT BROUGHT US  
15 IN HERE TODAY. AS OF FRIDAY, WE HAD DISCUSSIONS -- EXCUSE ME,  
16 THURSDAY -- I WAS ON THE PHONE WITH HIM AND TOLD HIM WHAT WAS  
17 GOING TO TRANSPIRE, WHAT WAS GOING TO TAKE PLACE. WITHOUT BEING  
18 ABLE TO DIVULGE ANYTHING FURTHER INVOLVING DISCUSSIONS, I CAN TELL  
19 YOU, BECAUSE I'VE GONE THROUGH THE CASE FILE, I'VE REVIEWED IT, I'VE  
20 TALKED TO THE OFFICERS. I HAVE TALKED *AD NAUSEUM* TO MS. HOGAN. IT  
21 HAS BEEN BECAUSE OF THE NATURE OF WHERE THE DRUGS WERE  
22 LOCATED, THIS CASE HAS BEEN DISCUSSED AND REHASHED OVER AND OVER  
23 REGARDING ALL THE FACTS. I DISCUSSED THE FACTS WITH MISTER POTTER,  
24 MISTER GAMBLE, KENDRICK EARLY WHO WAS MY INVESTIGATOR OUT OF THE  
25 PUBLIC DEFENDER'S OFFICE. I GONE THIS OVER WITH SCOTT MCELHANNON,

1 WHO'S AN ATTORNEY, BASED ON WHAT I'VE GOT, WHAT KIND OF CASE I  
2 HAVE. THAT IS IN RESPONSE TO WHAT MISTER MATTISON SAYS THAT,  
3 "BECAUSE I AM NEGATIVE." IT'S BECAUSE I HAVE NOT BEEN ABLE TO COME  
4 UP WITH A VIABLE DEFENSE FOR HIM AND HE REFUSED TO ACCEPT THE  
5 REALITIES OF THE SITUATION. HE'S FACING A MANDATORY MINIMUM OF  
6 FIFTEEN YEARS IF HE GOES TO TRIAL AND GETS CONVICTED. I HAD THREE  
7 YEARS ON THE TABLE AND THAT WASN'T GOOD ENOUGH. IF HE COULDN'T DO  
8 THREE YEARS, HOW IS HE GOING TO DO FIFTEEN? WE HAD THOSE  
9 DISCUSSIONS, SO WHEN I TRY TO BEAT INTO HIM THE REALITIES OF WHAT  
10 HE'S FACING AND WHY I AM NEGATIVE, IT'S NOT THAT I'M NEGATIVE, IT'S THAT  
11 HE DOESN'T WANT TO UNDERSTAND WHAT THE REALITIES ARE THAT HE IS  
12 FACING AND HE UNDERSTOOD IT AND WE HAVE GONE OVER IT. I HAVE TWO  
13 SETS OF NOTES IN MY FILE THAT CLEARLY STATE THAT I HAVE GONE OVER  
14 EVERYTHING AND EXPLAINED WHAT HE IS FACING. MS. HOGAN WAS ALSO  
15 PRESENT TO ONE CONVERSATION THAT WE HAD WHILE I WENT OVER  
16 EVERYTHING. SO, FOR HIM TO STATE THAT HE IS UNAWARE AND THAT WE  
17 HAVE NOT DISCUSSED ANYTHING, I'M GOING TO TAKE SEVERE, VERY SEVERE  
18 UMBRAGE WITH THAT BECAUSE PROBABLY MORE SO THAN SEVERAL  
19 CLIENTS, THE MAJORITY OF CLIENTS THAT I'VE HAD IN THE PAST SEVERAL  
20 MONTHS, HE HAS, IN FACT, BEEN INFORMED OF WHAT THE RAMIFICATIONS  
21 ARE BECAUSE OUR OFFICE HAD WANTED HIM EVALUATED BECAUSE HE  
22 REFUSED TO ACCEPT WHAT THE REALITIES WERE.

23 THE COURT: ALL RIGHT.

24 MR. TAVERNIER: SO, IF HE THINKS IT'S NEGATIVE, I CAN'T HELP IT. IT'S  
25 THE WAY I AM. I TELL HIM WHAT HE NEEDS TO HEAR, NOT NECESSARILY

1 WHAT HE WANTS TO HEAR. IF YOU DECIDE THAT YOU WANT TO RELIEVE ME  
2 OR THAT I SHOULD BE RELIEVED, I WILL BE HAPPY TO SIT WITH HIM, TO  
3 ADVISE HIM DURING TRIAL, IF THAT'S THE WAY HE WANTS IT, BUT...

4 THE COURT: I'VE GOT YOU.

5 MR. TAVERNIER: I'M BASICALLY THROUGH.

6 THE COURT: I WANT YOU TO BE CLEAR AND THOROUGH ON THE  
7 RECORD. NOW, FOR THE RECORD, LET ME POINT OUT THAT MISTER  
8 BYRHOLDT HAS ENTERED THE COURTROOM AND MISTER BYRHOLDT...

9 MR. BYRHOLDT: I APOLOGIZE, YOUR HONOR. I'VE BEEN IN ABBEVILLE  
10 IN GENERAL SESSIONS.

11 THE COURT: RIGHT. AND THAT'S FINE, BUT MISTER MATTISON MADE  
12 THE MOTION, MISTER BYRHOLDT, JUST A MINUTE AGO, WE ARE DOING SOME  
13 PRE-TRIAL MOTIONS AND HE MADE A MOTION TO DISMISS MISTER TAVERNIER  
14 AND HE INFORMED ME THAT HE HAS RETAINED YOUR SERVICES.

15 MR. BYRHOLDT: THAT IS INCORRECT, YOUR HONOR. HE CAME IN THIS  
16 MORNING AND TALKED TO ME. I TOLD HIM I WOULD TRY TO GET OVER HERE  
17 TO TALK TO KURT BECAUSE I DON'T KNOW ANYTHING ABOUT THE CASE OR  
18 ANYTHING ELSE. THAT IS THE EXTENT OF MY INVOLVEMENT. HE CAME TO  
19 MY OFFICE. HE DID APPEAR AT MY OFFICE AT 8:15 THIS MORNING. I SENT HIM  
20 UP HERE TO THE FOURTH FLOOR. BEFORE I WENT TO GENERAL SESSIONS IN  
21 ABBEVILLE, I WAS GOING TO TRY TO SEE MISTER TAVERNIER, BUT I RAN OUT  
22 OF TIME BECAUSE JUDGE HILL WANTED ME IN ABBEVILLE.

23 THE COURT: AND ALSO, I INFORMED MISTER MATTISON THAT IF THIS IS  
24 AN ATTEMPT TO GET THIS CASE CONTINUED BEYOND THIS TERM, IT'S NOT  
25 GOING TO HAPPEN. HE'S GOING TO GO FORWARD THIS WEEK AND THERE'S A

1 GOOD POSSIBILITY HE'LL GO THIS WEEK.

2 MR. BYRHOLDT: MY RECOMMENDATION FOR HIM IS TO STAY WITH  
3 MISTER TAVERNIER BECAUSE HE KNOWS MORE ABOUT THE CASE. I HAVEN'T  
4 EVEN LOOKED AT THE FILE, YOUR HONOR.

5 THE COURT: WELL, MAY I ASK BOTH OF YOU ATTORNEYS DO ONE  
6 THING FOR ME?

7 MR. BYRHOLDT: YES, SIR.

8 MR. TAVERNIER: YES, SIR.

9 THE COURT: WOULD YOU ESCORT MISTER MATTISON TO SOME ROOM  
10 IN HERE AND EXPLAIN TO HIM THE DANGERS OF SELF REPRESENTATION,  
11 BECAUSE IF MISTER TAVERNIER IS EXCUSED FROM THIS CASE AND YOU  
12 DON'T TAKE HIS CASE, HE'S GOING TO BE REPRESENTING HIMSELF AND I  
13 WANT HIM TO UNDERSTAND THE DANGERS OF DOING THAT. WOULD YOU DO  
14 THAT?

15 MR. BYRHOLDT: IF YOU WILL GIVE US FIVE MINUTES, YOUR HONOR.  
16 WE'LL TAKE HIM BACK HERE TO THE P.D.'S ROOM.

17 THE COURT: MISTER MATTISON, IF YOU WILL GO WITH THEM.

18 (BREAK)

19 THE COURT: MISTER MATTISON, I GAVE YOU A FEW MINUTES TO SPEAK  
20 WITH BOTH MISTER TAVERNIER AND MISTER BYRHOLDT ABOUT THE  
21 DANGERS OF SELF REPRESENTATION.

22 MR. MATTISON: YES, SIR.

23 THE COURT: AND HAVE YOU HAD ADEQUATE TIME TO DISCUSS WITH  
24 BOTH MISTER TAVERNIER AND MISTER BYRHOLDT THE DANGERS OF  
25 REPRESENTING YOURSELF?

1           **MR. MATTISON:** YES, SIR.

2           **THE COURT:** NOW, IF YOU GET IN HERE -- AND I'VE HAD A  
3 CONVERSATION OFF THE RECORD WITH MISTER TAVERNIER AND MISTER  
4 BYRHOLDT AND MY UNDERSTANDING IS, THAT MISTER BYRHOLDT HAS NOT  
5 BEEN RETAINED, IS NOT GOING TO BE RETAINED AND IS, IN FACT, IN TRIAL AT  
6 ANOTHER LOCATION, OR UP FOR TRIAL THIS WEEK.

7           **MR. MATTISON:** YES, SIR.

8           **THE COURT:** IS THAT CORRECT, MISTER BYRHOLDT?

9           **MR. BYRHOLDT:** THAT'S CORRECT, YOUR HONOR.

10          **THE COURT:** AND YOU UNDERSTAND THAT?

11          **MR. MATTISON:** YES, SIR.

12          **THE COURT:** AND DO YOU STILL WANT TO PROCEED WITH YOUR  
13 MOTION TO RELIEVE MISTER TAVERNIER OR DO YOU WANT TO PROCEED  
14 WITH HIM AS YOUR ATTORNEY?

15          **MR. MATTISON:** I HAVE RECEIVED HIM AS MY ATTORNEY, SIR.

16          **THE COURT:** OKAY. AND YOU'VE HAD ADEQUATE TIME TO SPEAK WITH  
17 MISTER TAVERNIER?

18          **MR. MATTISON:** YES, SIR. I JUST DID. YES, SIR.

19          **THE COURT:** AND YOU'VE HAD ADEQUATE TIME TO PREPARE YOUR  
20 CASE WITH MISTER TAVERNIER?

21          **MR. MATTISON:** YES, SIR.

22          **THE COURT:** AND YOU ARE READY TO PROCEED TO TRIAL TODAY OR  
23 TOMORROW OR THIS WEEK?

24          **MR. MATTISON:** YES, SIR.

25          **THE COURT:** IF NECESSARY.

1           **MR. MATTISON:** YES, SIR.

2           **THE COURT:** OKAY. SO, YOU HAVE VOLUNTARILY AND INTENTIONALLY  
3 AND KNOWINGLY WAIVED YOUR MOTION AND ARE WITHDRAWING YOUR  
4 MOTION TO HAVE MISTER TAVERNIER WITHDRAWN AS YOUR ATTORNEY,  
5 RELIEVED AS YOUR ATTORNEY. CORRECT?

6           **MR. MATTISON:** EXCUSE ME?

7           **THE COURT:** YOU HAVE KNOWINGLY WITHDRAWN YOUR MOTION TO  
8 HAVE YOUR ATTORNEY, MISTER TAVERNIER, RELIEVED AS YOUR ATTORNEY?

9           **MR. MATTISON:** YES, SIR. I'M WITHDRAWING THE MOTION BECAUSE  
10 MISTER BYRHOLDT DON'T SEEM TO HAVE NO TIME IF MY CASE WERE TO  
11 COME TO TRIAL.

12           **THE COURT:** BUT YOU WITHDRAW IT FREELY AND VOLUNTARILY?

13           **MR. MATTISON:** YES, SIR.

14           **THE COURT:** OKAY. AND YOU ARE KNOWINGLY AND INTENTIONALLY  
15 GOING FORWARD WITH MISTER TAVERNIER AS YOUR ATTORNEY AT THIS  
16 POINT?

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

18           **THE COURT:** AND YOU JUST ADVISED ME THAT YOU'VE HAD MORE THAN  
19 ADEQUATE TIME TO PREPARE YOUR CASE WITH MISTER TAVERNIER.  
20 CORRECT?

21           **MR. MATTISON:** YES, SIR.

22           **THE COURT:** OKAY, SIR. THANK YOU. YOU WILL STILL BE ON THE  
23 CONDITIONS OF BOND. MISTER TAVERNIER, I'M GOING TO HEAR YOU, BUT I  
24 REQUIRE THAT YOU STAY ON AS HIS ATTORNEY.

25           **MR. TAVERNIER:** YES, SIR, YOUR HONOR.

1           **THE COURT:** AND MISTER MATTISON, ALL THE CONDITIONS THAT  
2 YOU'RE OUT ON BOND NOW STILL APPLY RIGHT NOW. DO YOU  
3 UNDERSTAND?

4           **MR. MATTISON:** YES, SIR.

5           **THE COURT:** MISTER TAVERNIER?

6           **MR. TAVERNIER:** YOUR HONOR, BASED ON MISTER MATTISON'S  
7 STATEMENTS PRIOR TO US LEAVING THE COURTROOM, I WOULD ASK YOUR  
8 HONOR HAVE HIM CLARIFY, NUMBER ONE, DOES HE HAVE ANY COMPLAINTS  
9 AGAINST ME, IS THERE ANYTHING -- I HAVE MADE INQUIRY WHETHER HE HAD  
10 ANY WITNESSES AND WHAT HE WANTED ME TO PRESENT AND I'M TOLD HE  
11 HAS NONE, THAT KIND OF THING. IF THERE IS ANYTHING ELSE THAT HE  
12 WANTED DONE THAT I HAVEN'T DONE UP UNTIL THIS POINT TO WARRANT HIS  
13 INITIAL MOTION, BECAUSE I THINK I NEED TO KNOW THAT, OTHER THAN THE  
14 FACT THAT WHEN HE DID TALK WITH ME, I WAS NEGATIVE.

15           **THE COURT:** WELL, LET ME DO THIS. MY UNDERSTANDING, IN ASKING  
16 QUESTIONS OF MISTER MATTISON, IS THAT AS WE SIT HERE IN THE  
17 COURTROOM TODAY, MISTER MATTISON SAYS THAT HE HAS MORE THAN  
18 ADEQUATE TIME FOR YOU TO PREPARE THE CASE. IS THAT CORRECT,  
19 MISTER MATTISON?

20           **MR. MATTISON:** YES, SIR.

21           **THE COURT:** OKAY. NOW, I DON'T THINK THAT I CAN HAVE HIM GO  
22 THROUGH AND EXPLAIN ANY COMPLAINTS HE HAS FROM A GRIEVANCE  
23 STANDPOINT OR SOMETHING LIKE THAT. HOWEVER, MY UNDERSTANDING  
24 FROM MISTER MATTISON AND MY IMPRESSION HAS BEEN UP HERE, A LOT OF  
25 TIMES WE SEE THEM, THEY COME UP AND IT'S TIME TO GO TO TRIAL AND

1    THEY'RE TRYING TO MAKE A LAST DITCH EFFORT TO CONTINUE AN  
2    INEVITABLE TRIAL THAT'S ABOUT TO HAPPEN. THAT'S WHAT I'VE ASSUMED  
3    WAS GOING ON. BUT MISTER MATTISON, ARE THERE ANY WITNESSES OR IS  
4    THERE ANY EVIDENCE OUT THERE THAT YOU FEEL LIKE MISTER TAVERNIER  
5    HAS NOT EXPLORED ON YOUR BEHALF?

6           **MR. MATTISON:** NO, SIR.

7           **THE COURT:** SO, YOU ARE SATISFIED WITH THAT?

8           **MR. MATTISON:** YES, SIR.

9           **THE COURT:** AND HE HAS TALKED TO EVERYBODY AND LOOKED AT ALL  
10   THE EVIDENCE THAT NEEDS TO BE LOOKED AT?

11          **MR. MATTISON:** YES, SIR.

12          **THE COURT:** AND HE'S HAD TIME AND HAS PREPARED YOUR CASE, TO  
13   YOUR KNOWLEDGE, TO MAKE IT GO FORWARD. RIGHT?

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

15          **THE COURT:** OKAY. ANYTHING FURTHER?

16          **MR. TAVERNIER:** NOTHING FROM THE DEFENSE, YOUR HONOR.

17          **THE COURT:** MISTER BYRHOLDT, THANK YOU FOR COMING OVER. WE  
18   APPRECIATE IT. WE'LL RECESS -- WELL, YOUR CASE IS NEXT ON THE  
19   DOCKET AND WE'LL START GOING AT TWO. MISTER MATTISON, YOU ARE  
20   STILL OUT ON THE ORIGINAL CONDITIONS OF YOUR BOND. OKAY?

21          **MR. MATTISON:** YES, SIR.

22          **THE COURT:** THANK YOU, MISTER TAVERNIER.

23          **MR. TAVERNIER:** THANK YOU, YOUR HONOR.

24          **MS. HOGAN:** THANK YOU, YOUR HONOR.

25          **THE COURT:** THANK YOU, MS. HOGAN.

1 JURY SELECTION

2 THE COURT: LADIES AND GENTLEMEN, I HOPE YOU'RE HAVING A NICE  
3 MORNING AND I KNOW YOU'RE ALL THRILLED TO BE HERE. WE'RE ABOUT TO  
4 BEGIN THE TRIAL OF THE STATE OF SOUTH CAROLINA VERSUS ANTHONY  
5 MATTISON. I HAVE A FEW PRELIMINARY QUESTIONS TO ASK AND YOU'VE ALL  
6 BEEN SWORN PREVIOUSLY. REMEMBER THAT YOUR ANSWERS NEED TO BE  
7 TRUTHFUL AND ACCURATE. CAN EVERYBODY HEAR ME OKAY?

8 ALL RIGHT. THE FIRST QUESTION THAT I HAVE, HAS ANYBODY EVER  
9 BEEN RELATED BY BLOOD OR MARRIAGE, EVER BEEN RELATED BY BLOOD OR  
10 MARRIAGE, TO ANTHONY MATTISON? IF SO, WOULD YOU PLEASE STAND. (NO  
11 ONE STANDS)

12 HAS ANYONE EVER HAD A CLOSE, PERSONAL OR SOCIAL RELATIONSHIP  
13 WITH ANTHONY MATTISON? IF SO, WOULD YOU PLEASE STAND. (NO ONE  
14 STANDS)

15 THE FOLLOWING IS A LIST OF POSSIBLE, AND I EMPHASIZE POSSIBLE,  
16 WITNESSES IN THIS CASE. I WILL READ THE LIST TO YOU. PLEASE LISTEN  
17 CLOSELY TO MAKE SURE THAT YOU HEAR ALL OF THE NAMES. FIRST IS  
18 CASEY FOUTS, F-O-U-T-S. SERGEANT JOEL MCKEE, SERGEANT MIKE CLARDY,  
19 MIKE BASKIN, AMY STEPHENS, NIKKI PERRY, CARMEN TUCKER, CAPTAIN  
20 KEVIN MARSEE. HAS ANYONE EVER BEEN RELATED BY BLOOD OR MARRIAGE  
21 TO ANY OF THE WITNESSES OR POSSIBLE WITNESSES THAT I JUST READ? IF  
22 SO, WOULD YOU PLEASE STAND. (NO ONE STANDS)

23 HAS ANYONE EVER HAD A CLOSE PERSONAL OR SOCIAL RELATIONSHIP  
24 WITH ANY OF THE POSSIBLE WITNESSES THAT I JUST READ? IF SO, WOULD  
25 YOU PLEASE STAND. (NO ONE STANDS)

1 MISTER TAVERNIER, WOULD YOU PLEASE STAND AND INTRODUCE  
2 YOURSELF, PLEASE SIR, AND YOUR AND YOUR FIRM.

3 MR. TAVERNIER: THANK YOU, YOUR HONOR, MY NAME IS KURT  
4 TAVERNIER, I HAVE A PRIVATE PRACTICE HERE IN ANDERSON COUNTY.

5 THE COURT: SOLICITOR, WOULD YOU DO THE SAME, PLEASE?

6 MS. HOGAN: YES, SIR, YOUR HONOR. MY NAME IS LAUREN HOGAN. I AM  
7 AN ASSISTANT SOLICITOR HERE IN THE ANDERSON COUNTY SOLICITOR'S  
8 OFFICE AND SITTING HERE WITH ME IS AL MEANS, ANOTHER ASSISTANT  
9 SOLICITOR IN THE SOLICITOR'S OFFICE AND SERGEANT JOEL MCKEE  
10 REPRESENTING THE ANDERSON COUNTY POLICE DEPARTMENT.

11 THE COURT: HAS ANY MEMBER OF THE JURY PANEL EVER BEEN  
12 REPRESENTED BY ANY OF THE ATTORNEYS INVOLVED IN THIS CASE OR BY  
13 THEIR FIRMS? IF SO, WOULD YOU PLEASE STAND? (NO ONE STANDS)

14 HAS ANYONE EVER HAD A CLOSE, PERSONAL OR SOCIAL RELATIONSHIP  
15 WITH ANY OF THE ATTORNEYS INVOLVED IN THIS CASE OR THEIR FIRMS? IF  
16 SO, PLEASE STAND. (NO ONE STANDS)

17 HAS ANY MEMBER OF THE JURY FORMED OR EXPRESSED AN OPINION  
18 ABOUT ANY ISSUE OR MATTER INVOLVED IN THE CASE OF THE STATE OF  
19 SOUTH CAROLINA VERSUS ANTHONY MATTISON, CHARGED WITH THE  
20 POSSESSION OF CRACK COCAINE WITH INTENT TO DISTRIBUTE? IF SO,  
21 WOULD YOU PLEASE STAND? (NO ONE STANDS)

22 IS ANY MEMBER OF THE JURY PANEL AWARE OF ANY BIAS OR  
23 PREJUDICE EITHER TOWARDS THE STATE OR THE DEFENDANT IN THIS CASE?  
24 IF SO, WOULD YOU PLEASE STAND. (NO ONE STANDS)

25 IS THERE ANY MEMBER OF THE JURY PANEL A MEMBER OF THE GRAND

1 JURY, THE ANDERSON COUNTY GRAND JURY, THAT ISSUED THE INDICTMENT  
2 IN THIS MATTER? IF SO, WOULD YOU PLEASE STAND? (NO ONE STANDS)

3 IS THERE ANY MEMBER OF THE JURY PANEL WHO IS A MEMBER OF OR  
4 A CONTRIBUTOR TO ANY GROUP WHICH HAS AS ITS PRIMARY CONCERN THE  
5 PROMOTION OF LAW ENFORCEMENT OR VICTIM'S RIGHTS? THESE GROUPS  
6 WOULD INCLUDE, BUT LIMITED TO; MADD, SADD OR CAVE? IF SO, WOULD  
7 YOU PLEASE STAND. (NO ONE STANDS)

8 DOES ANY MEMBER OF THE JURY PANEL KNOW OF ANY REASON  
9 WHATSOEVER WHY HE OR SHE SHOULD NOT SERVE AS A JUROR IN THIS  
10 CASE, WITH PARTICULAR EMPHASIS BEING PLACED ON THE ABILITY TO BE  
11 FAIR AND IMPARTIAL TO BOTH THE DEFENDANT AND THE STATE OF SOUTH  
12 CAROLINA? IF SO, WOULD YOU PLEASE STAND. (NO ONE STANDS)

13 IS THERE ANY ADDITIONAL VOIR DIRE FROM THE STATE?

14 **MS. HOGAN:** NO, SIR, YOUR HONOR.

15 **THE COURT:** NONE FROM THE DEFENSE?

16 **MR. TAVERNIER:** NO, SIR, YOUR HONOR.

17 **THE COURT:** ARE YOU READY TO STRIKE THE JURY?

18 **MS. HOGAN:** YES, SIR.

19 **MR. TAVERNIER:** YES, YOUR HONOR.

20 **THE COURT:** MADAM CLERK.

21 IF YOU RECALL FROM THE FIRST PART OF THE WEEK, IF YOUR NAME IS  
22 CALLED, PLEASE COME UP IN FRONT OF THE GATES, STAND BETWEEN THESE  
23 TWO TABLES, TURN AND FACE THE SOLICITOR'S AND THE DEFENDANT'S  
24 TABLES, SO THEY CAN DETERMINE WHETHER YOU WILL BE PICKED OR NOT.

25 AS STANDARD FARE WITH COMPUTERS, WE'RE HAVING A LITTLE

1 DIFFICULTY UP HERE. I'M GOING TO LET YOU GO OUT AND WANDER AND  
2 JUST EXCUSE YOU FOR TEN MINUTES. SO, IF YOU WILL COME BACK HERE  
3 ABOUT 10:33 OR 10:34, WE WILL BEGIN WITH THE JURY STRIKE.

4 (JURY PANEL OUT AT 9:34)

5 (A MEMBER OF THE JURY POOL COMES FORWARD)

6 THE COURT: MS. FREEMAN DIDN'T QUITE UNDERSTAND THE QUESTION  
7 ABOUT THE RELATIONSHIPS. JUROR 62, JEAN FREEMAN.

8 MS. FREEMAN: WE GO TO THE SAME CHURCH.

9 THE COURT: AS MISTER MATTISON?

10 MS. FREEMAN: YES.

11 THE COURT: DO YOU SOCIALIZE WITH HIM?

12 MS. FREEMAN: NO.

13 THE COURT: ARE YOU FRIENDS WITH HIS FAMILY?

14 MS. FREEMAN: NO. I WORK WITH HIS GIRLFRIEND.

15 THE COURT: WHERE IS THAT AT?

16 MS. FREEMAN: AT THE ANDERSON COUNTY FIRST STEPS.

17 THE COURT: WOULD THAT PREVENT YOU FROM GIVING BOTH THE  
18 DEFENDANT AND THE STATE A FAIR AND IMPARTIAL TRIAL? COULD YOU BE  
19 FREE OF BIAS TO BOTH SIDES?

20 MS. FREEMAN: IT WOULDN'T BOTHER ME.

21 THE COURT: ANY QUESTIONS?

22 MR. TAVERNIER: NO, SIR.

23 THE COURT: MS. HOGAN.

24 MS. HOGAN: NO, SIR.

25 THE COURT: YOU SURE?

1 **MS. HOGAN:** YES, SIR.

2 **THE COURT:** I THINK IT WOULD BE BETTER IN THIS CASE TO EXCUSE  
3 YOU. SHE'S EXCUSED. CHECK WITH THE CLERK BEFORE YOU GET OUT OF  
4 HERE.

5 (PLACED ON THE RECORD BY THE JUDGE) JUROR 112, JONATHAN  
6 MITCHELL, HAS AN OUT-OF-TOWN OBLIGATION. HE'S GOT TO LEAVE BY THE  
7 CLOSE OF BUSINESS ON THURSDAY. HE TOLD ME THAT MONDAY AND I  
8 ASKED HIM TO STICK AROUND, BUT I'M GOING TO GO AHEAD AND EXCUSE HIM  
9 FOR THE REMAINDER OF THE TERM AND I THINK THAT IS WITH THE CONSENT  
10 OF THE SOLICITOR AND THE DEFENSE ATTORNEY. MISTER TAVERNIER, YOU  
11 HAVE NO OBJECTION TO ME EXCUSING MISTER MITCHELL, DO YOU?

12 **MR. TAVERNIER:** NO, SIR.

13 **THE COURT:** ALL RIGHT. THANK YOU. IF YOU NEED AN EXCUSE, THEY  
14 WILL GIVE YOU ONE RIGHT THERE. GOOD LUCK ON YOUR TRAVELS.

15 NUMBER 23, IS GREGORY M. BUMGARNER AND I AM GOING TO EXCUSE  
16 HIM FOR CAUSE. I ALLOWED HIM TO STAY IN THE COURTROOM AND WATCH  
17 THE PRIOR TRIAL AND SO OUT OF AN ABUNDANCE OF CAUTION, I AM GOING  
18 TO GO AHEAD AND STRIKE HIM FOR CAUSE, ON MY OWN, AND IS THAT WITH  
19 THE CONSENT OF THE SOLICITOR'S OFFICE, MS. HOGAN?

20 **MS. HOGAN:** YES, SIR.

21 **THE COURT:** MISTER TAVERNIER, YOU HAVE NO OBJECTION TO ME  
22 EXCUSING MISTER BUMGARNER?

23 **MR. TAVERNIER:** NO, SIR.

24 **THE COURT:** OKAY. THANKS.

25 (JURY RETURNS AT 9:35 A.M.)

1           **THE COURT:** ARE YOU READY TO STRIKE?

2           **MS. HOGAN:** YES, SIR.

3           **THE COURT:** MADAM CLERK.

4           **CLERK OF COURT:** LADIES AND GENTLEMEN, AS I CALL YOUR NAME, IF  
5 YOU WILL PLEASE COME FORWARD AND BRING ANY PERSONAL BELONGINGS  
6 THAT YOU HAVE WITH YOU. BRING THEM AS YOU COME UP AND PRESENT  
7 YOURSELF TO THE TWO TABLES. JUROR NUMBER 12, CHARLTON  
8 BLACKWELL, JUNIOR. #12.

9           (WHEREUPON, CHARLTON BLACKWELL, JR., A WHITE MALE, COMES  
10 FORWARD)

11          **CLERK OF COURT:** WHAT SAY YOU FOR THE STATE?

12          **MS. HOGAN:** PLEASE PRESENT THIS JUROR.

13          **CLERK OF COURT:** WHAT SAY YOU FOR THE DEFENDANT?

14          **MR. TAVERNIER:** SEAT MISTER BLACKWELL, PLEASE.

15          **CLERK OF COURT:** WOULD YOU PLEASE HAVE A SEAT OVER HERE IN  
16 THE JURY BOX. NUMBER 28, JOHNNIE BURTON. JUROR #28.

17          (WHEREUPON, JOHNNIE BURTON, A WHITE FEMALE, COMES FORWARD)

18          **CLERK OF COURT:** WHAT SAY YOU FOR THE STATE?

19          **MS. HOGAN:** PLEASE EXCUSE THIS JUROR.

20          **CLERK OF COURT:** YOU MAY RETURN TO YOUR SEAT. THANK YOU.  
21 JUROR NUMBER 148, DAVID SIMS. #148.

22          (WHEREUPON, DAVID SIMS, A WHITE MALE, COMES FORWARD)

23          **CLERK OF COURT:** WHAT SAY YOU FOR THE STATE?

24          **MS. HOGAN:** PLEASE PRESENT THIS JUROR.

25          **CLERK OF COURT:** WHAT SAY YOU FOR THE DEFENDANT?

1           **MR. TAVERNIER:** PLEASE EXCUSE MISTER SIMS, PLEASE.

2           **CLERK OF COURT:** RETURN TO YOUR SEAT. THANK YOU, SIR.

3           **JUROR NUMBER 69, SHARON GUNDRUM. #69.**

4           (WHEREUPON, SHARON GUNDRUM, A WHITE FEMALE, COMES FORWARD)

5           **CLERK OF COURT:** WHAT SAY YOU FOR THE STATE?

6           **MS. HOGAN:** PLEASE EXCUSE THIS JUROR.

7           **CLERK OF COURT:** YOU MAY RETURN TO YOUR SEAT. THANK YOU, MS.

8           **GUNDRUM. JUROR NUMBER 47, DAVID DICKARD. #47.**

9           (WHEREUPON, DAVID DICKARD, A WHITE MALE, COMES FORWARD)

10          **CLERK OF COURT:** WHAT SAY YOU FOR THE STATE?

11          **MS. HOGAN:** PLEASE PRESENT THIS JUROR.

12          **CLERK OF COURT:** WHAT SAY YOU FOR THE DEFENDANT?

13          **MR. TAVERNIER:** SEAT MISTER DICKARD, PLEASE.

14          **CLERK OF COURT:** HAVE A SEAT IN THE JURY BOX, PLEASE, SIR.

15          **NUMBER 52, JOHN DRAKE. JUROR #52.**

16          (WHEREUPON, JOHN DRAKE, A WHITE MALE COMES FORWARD)

17          **CLERK OF COURT:** WHAT SAY YOU FOR THE STATE?

18          **MS. HOGAN:** PLEASE PRESENT THIS JUROR.

19          **CLERK OF COURT:** WHAT SAY YOU FOR THE DEFENDANT?

20          **MR. TAVERNIER:** SEAT THIS JUROR, PLEASE.

21          **CLERK OF COURT:** PLEASE HAVE A SEAT IN THE JURY BOX, MISTER

22          **DRAKE. #140, RUBY RICKETTS. NUMBER 140.**

23          (WHEREUPON, RUBY RICKETTS, A WHITE FEMALE, COMES FORWARD)

24          **CLERK OF COURT:** WHAT SAY YOU FOR THE STATE?

25          **MS. HOGAN:** PLEASE PRESENT THIS JUROR.

1           **CLERK OF COURT: WHAT SAY YOU FOR THE DEFENDANT?**

2           **MR. TAVERNIER: SEAT MS. RICKETTS, PLEASE.**

3           **CLERK OF COURT: HAVE A SEAT IN THE JURY BOX. NUMBER 60,**

4           **KATHERINE FISHER. JUROR #60.**

5           **(WHEREUPON, KATHERINE FISHER, A WHITE FEMALE, COMES FORWARD)**

6           **CLERK OF COURT: WHAT SAY YOU FOR THE STATE?**

7           **MS. HOGAN: PLEASE PRESENT THIS JUROR.**

8           **CLERK OF COURT: WHAT SAY YOU FOR THE DEFENDANT?**

9           **MR. TAVERNIER: SEAT MS. FISHER, PLEASE.**

10          **CLERK OF COURT: HAVE A SEAT IN THE JURY BOX, PLEASE.**

11          **NUMBER 161, PAULA VOLRATH . #161.**

12          **CLERK OF COURT: WHAT SAY YOU FOR THE STATE?**

13          **MS. HOGAN: PLEASE PRESENT THIS JUROR.**

14          **CLERK OF COURT: WHAT SAY YOU FOR THE DEFENDANT?**

15          **MR. TAVERNIER: PLEASE EXCUSE MS. VOLRATH FROM THIS CASE,**

16          **PLEASE.**

17          **CLERK OF COURT: PLEASE RETURN TO YOUR SEAT. NUMBER 115,**

18          **RICKEY MOORE. #115.**

19          **(WHEREUPON, RICKEY MOORE, A WHITE MALE COMES FORWARD)**

20          **CLERK OF COURT: WHAT SAY YOU FOR THE STATE?**

21          **MS. HOGAN: PLEASE EXCUSE THIS JUROR.**

22          **CLERK OF COURT: YOU MAY RETURN TO YOUR SEAT. THANK YOU.**

23          **NUMBER 80, BILLY HUDSON. JUROR #80.**

24          **(WHEREUPON, BILLY HUDSON, A WHITE MALE, COMES FORWARD)**

25          **CLERK OF COURT: WHAT SAY YOU FOR THE STATE?**

1 MS. HOGAN: PLEASE PRESENT THIS JUROR.

2 CLERK OF COURT: WHAT SAY YOU FOR THE DEFENDANT?

3 MR. TAVERNIER: SEAT MR. HUDSON, PLEASE.

4 CLERK OF COURT: HAVE A SEAT IN THE JURY BOX, PLEASE, MISTER  
5 HUDSON. NUMBER 56, DAVID EPTING. #56.

6 (WHEREUPON, DAVID EPTING, A WHITE MALE, COMES FORWARD)

7 CLERK OF COURT: WHAT SAY YOU FOR THE STATE?

8 MS. HOGAN: PLEASE PRESENT THIS JUROR.

9 CLERK OF COURT: WHAT SAY YOU FOR THE DEFENDANT?

10 MR. TAVERNIER: PLEASE EXCUSE MISTER EPTING FROM THIS CASE.

11 CLERK OF COURT: THANK YOU, SIR. JUROR #NUMBER 79, ROSA  
12 HUDGENS. #79.

13 (WHEREUPON, ROSA HUDGENS, A BLACK FEMALE, COMES FORWARD)

14 CLERK OF COURT: WHAT SAY YOU FOR THE STATE?

15 MS. HOGAN: PLEASE PRESENT THIS JUROR.

16 CLERK OF COURT: WHAT SAY YOU FOR THE DEFENDANT?

17 MR. TAVERNIER: SEAT MS. HUDGENS, PLEASE.

18 CLERK OF COURT: HAVE A SEAT IN THE JURY BOX, PLEASE.

19 NUMBER 125, JAMES PAYTON. #125.

20 (WHEREUPON, JAMES PAYTON, A WHITE MALE, COMES FORWARD)

21 CLERK OF COURT: WHAT SAY YOU FOR THE STATE?

22 MS. HOGAN: PLEASE EXCUSE THIS JUROR.

23 CLERK OF COURT: THANK YOU, MISTER PAYTON. NUMBER 105, MAC  
24 MCGEE. #105.

25 (WHEREUPON, MAC MCGEE, A WHITE MALE, COMES FORWARD)

1           **CLERK OF COURT: WHAT SAY YOU FOR THE STATE?**

2           **MS. HOGAN: PLEASE PRESENT THIS JUROR.**

3           **CLERK OF COURT: WHAT SAY YOU FOR THE DEFENDANT?**

4           **MR. TAVERNIER: EXCUSE MISTER MCGEE FROM THIS CASE, PLEASE.**

5           **NUMBER 53, ANN EAVES. #53.**

6           **(WHEREUPON, ANN EAVES, A WHITE FEMALE, COMES FORWARD)**

7           **CLERK OF COURT: WHAT SAY YOU FOR THE STATE?**

8           **MS. HOGAN: PLEASE PRESENT THIS JUROR.**

9           **CLERK OF COURT: WHAT SAY YOU FOR THE DEFENDANT?**

10          **MR. TAVERNIER: SEAT MS. EAVES, PLEASE.**

11          **CLERK OF COURT: HAVE A SEAT IN THE JURY BOX, PLEASE, MA'AM.**

12          **NUMBER 103, DEMIKA MARTIN. #103.**

13          **(WHEREUPON, DEMIKA MARTIN, A BLACK FEMALE, COMES FORWARD)**

14          **CLERK OF COURT: WHAT SAY YOU FOR THE STATE?**

15          **MS. HOGAN: PLEASE EXCUSE THIS JUROR.**

16          **CLERK OF COURT: YOU MAY RETURN TO YOUR SEAT. NUMBER 149,**

17          **LINDA SLATON. #149.**

18          **(WHEREUPON, LINDA SLATON, A WHITE FEMALE, COMES FORWARD)**

19          **CLERK OF COURT: WHAT SAY YOU FOR THE STATE?**

20          **MS. HOGAN: PLEASE PRESENT THIS JUROR.**

21          **CLERK OF COURT: WHAT SAY YOU FOR THE DEFENDANT?**

22          **MR. TAVERNIER: PLEASE EXCUSE MS. SLATON FROM THIS CASE.**

23          **CLERK OF COURT: YOU MAY RETURN TO YOUR SEAT. NUMBER 27,**

24          **SAMUEL BURNS. #27.**

25          **(WHEREUPON, SAMUEL BURNS, A WHITE MALE, COMES FORWARD)**

1           **CLERK OF COURT:** WHAT SAY YOU FOR THE STATE?

2           **MS. HOGAN:** PLEASE PRESENT THIS JUROR.

3           **CLERK OF COURT:** WHAT SAY YOU FOR THE DEFENDANT?

4           **MR. TAVERNIER:** SEAT MISTER BURNS, PLEASE.

5           **CLERK OF COURT:** HAVE A SEAT IN THE JURY BOX, PLEASE.

6           NUMBER 13, ADDIE BLANDING. JUROR #13.

7           (WHEREUPON, ADDIE BLANDING, A BLACK FEMALE, COMES FORWARD)

8           **CLERK OF COURT:** WHAT SAY YOU FOR THE STATE?

9           **MS. HOGAN:** PLEASE PRESENT THIS JUROR.

10          **CLERK OF COURT:** WHAT SAY YOU FOR THE DEFENDANT?

11          **MR. TAVERNIER:** SEAT MS. BLANDING, PLEASE.

12          **CLERK OF COURT:** HAVE A SEAT, PLEASE MA'AM, IN THE JURY BOX.

13          NUMBER 129, TRAVIS POORE. #129.

14          (WHEREUPON, TRAVIS POORE, A WHITE MALE, COMES FORWARD)

15          **CLERK OF COURT:** WHAT SAY YOU FOR THE STATE?

16          **MS. HOGAN:** PLEASE PRESENT THIS JUROR.

17          **CLERK OF COURT:** WHAT SAY YOU FOR THE DEFENDANT?

18          **MR. TAVERNIER:** SEAT MISTER POORE, PLEASE.

19          **CLERK OF COURT:** HAVE A SEAT IN THE JURY BOX, PLEASE, SIR.

20          NUMBER 141, JASON RIGGIN. #141.

21          (WHEREUPON, JASON RIGGIN, A WHITE MALE, COMES FORWARD)

22          **CLERK OF COURT:** WHAT SAY YOU FOR THE STATE?

23          **MS. HOGAN:** PLEASE PRESENT THIS JUROR.

24          **CLERK OF COURT:** WHAT SAY YOU FOR THE DEFENDANT?

25          **MR. TAVERNIER:** SEAT MISTER RIGGIN, PLEASE.

1           **CLERK OF COURT:** HAVE A SEAT IN THE JURY BOX, PLEASE. ONE  
2 ALTERNATE, YOUR HONOR?

3           **THE COURT:** ONE ALTERNATE FINE WITH THE DEFENSE?

4           **MR. TAVERNIER:** YES, SIR.

5           **THE COURT:** ONE ALTERNATE FINE WITH THE STATE?

6           **MS. HOGAN:** YES, SIR.

7           **CLERK OF COURT:** JUROR NUMBER 151, PATTI STAHL SMITH. #151.

8 (WHEREUPON, PATTI STAHL SMITH, A WHITE FEMALE, COMES FORWARD)

9           **CLERK OF COURT:** WHAT SAY YOU FOR THE STATE?

10          **MS. HOGAN:** PLEASE PRESENT THIS JUROR.

11          **CLERK OF COURT:** WHAT SAY YOU FOR THE DEFENDANT?

12          **MR. TAVERNIER:** SEAT MS. STAHL SMITH, PLEASE.

13          **CLERK OF COURT:** MS. STAHL SMITH, YOU WILL BE OUR ALTERNATE  
14 JUROR. THANK YOU.

15          **THE COURT:** LADIES AND GENTLEMEN OF THE JURY, FIRST, MS.  
16 STAHL SMITH, YOU ARE THE ALTERNATE. IF YOU WOULD, THROUGHOUT  
17 THIS TRIAL, THE SEAT THAT IS IMMEDIATELY BEHIND YOU, YOU DON'T HAVE  
18 TO MOVE NOW, YOU'RE FINE. BUT IN ALL THE TIMES WHEN YOU COME INTO  
19 THE COURTROOM, I'M GOING TO ASK THAT YOU SIT THERE. BEFORE WE GET  
20 STARTED, I HAVE SOME PRELIMINARY MOTIONS I NEED TO TAKE CARE OF  
21 WITH THESE ATTORNEYS AND I'M GOING TO ASK YOU TO STEP BACK TO THE  
22 JURY ROOM AND ELECT A FOREPERSON AND ONCE YOU DO, IF YOU WOULD  
23 WRITE IT DOWN ON A PIECE OF PAPER WITH A JUROR NUMBER AND A NAME  
24 AND PASS IT TO THE BAILIFF AND THEY WILL GIVE THAT TO ME AND WE WILL  
25 PROCEED. AT THIS TIME I WILL EXCUSE YOU TO THE JURY ROOM.

1 (JURY OUT AT 9:54 A.M.)

2 THE COURT: AND THE REST OF THE FOLKS ON THE JURY PANEL, THE  
3 GOOD NEWS IS THAT YOU ARE DONE FOR THIS WEEK AND YOU ARE GOING  
4 TO BE EXCUSED FOR THE REMAINDER OF THE WEEK AND THE BETTER NEWS  
5 IS THAT YOU CAN'T BE CALLED BACK FOR THREE YEARS. IF YOU DO, YOU  
6 NEED TO TELL WHOEVER IS SITTING HERE WHERE I AM THAT YOU'VE BEEN IN  
7 WITHIN THE LAST THREE YEARS AND YOU HAVE A RIGHT TO BE EXCUSED.  
8 WE WANT TO THANK YOU FOR YOUR SERVICE HERE TO ANDERSON COUNTY  
9 AND TO THE STATE OF SOUTH CAROLINA. WITHOUT YOUR PARTICIPATION IN  
10 THE PROCESS, IT DOESN'T WORK. YOUR SERVICE IS A FUNDAMENTAL PART  
11 OF OUR DEMOCRACY AND WE CERTAINLY APPRECIATE YOUR BEING HERE  
12 AND YOUR WILLINGNESS TO BE HERE. THANK YOU AND YOU ARE EXCUSED.

13 (JURY PANEL OUT AT 9:55 A.M.)

14 MR. TAVERNIER: FIRST, YOUR HONOR, REGARDING THE JURY, AND I  
15 WOULD HAVE BEFORE, IF I HAD A VALID OBJECTION PURSUANT TO BATSON,  
16 BUT I WAS INQUIRING OF MS. HOGAN REGARDING HER STRIKING OF JUROR  
17 #103, A THIRTY-THREE-YEAR-OLD BLACK FEMALE, BUT I AM INFORMED THAT  
18 THE STATE DOES HAVE A RAP SHEET OR RECORD ON HER AND THEREFORE I  
19 HAVE NO BATSON MOTION, BUT I WANTED TO RAISE THAT FOR THE COURT.

20 THE COURT: AND I WOULD NOTE, ALSO, THAT THE STATE DID NOT  
21 OBJECT TO #79, WHO IS AFRICAN AMERICAN, AS WELL AS #13, WHO IS ALSO  
22 AFRICAN AMERICAN.

23 MR. TAVERNIER: YES, SIR. FOR THE RECORD, I NEEDED TO MAKE THAT.

24 THE COURT: ABSOLUTELY.

25 MR. TAVERNIER: YOUR HONOR, I'M SURE I'M PRESERVED FROM THE

1 MOTIONS THAT WERE MADE MONDAY, BUT JUST IN CASE, I WOULD LIKE TO  
2 RENEW MY MOTION REGARDING SUPPRESSION OF THE DRUGS DUE TO THE  
3 ILLEGAL NOTARIZATION OF FORM "C". RENEWING MY MOTION REGARDING MY  
4 MOTION *IN LIMINE*, AND SO I'M PICKING MY BATTLES, BUT THEN THE THIRD  
5 MOTION I HAVE FOR TODAY, YOUR HONOR, THE STATE AS I AM AWARE,  
6 INTENDS TO INTRODUCE EVIDENCE REGARDING A GUN THAT WAS FOUND IN  
7 THE TRUNK OF THE VEHICLE AND A SET OF SCALES FOUND IN THE TRUNK OF  
8 THE VEHICLE. YOUR HONOR, IT IS MY UNDERSTANDING THAT BOTH OF  
9 THESE ITEMS WERE TESTED FOR LATENT PRINTS AND CAME BACK NEGATIVE  
10 FOR THE DEFENDANT. HE IS NOT BEING CHARGED, OR THE CHARGES HAVE  
11 BEEN WITHDRAWN REGARDING THE PISTOL AND YOUR HONOR, IT IS MY  
12 BELIEF IT WOULD BE UNDULY PREJUDICIAL TO PRESENT EVIDENCE  
13 REGARDING A GUN THAT HE IS NOT BEING CHARGED WITH NOR IS THE STATE  
14 ABLE TO PROVIDE ANY NEXUS TO HIM OTHER THAN IT WAS IN THE VEHICLE  
15 HE WAS DRIVING WHICH WAS NOT TITLED TO HIM. THE VEHICLE WAS TITLED  
16 TO A MISTER EDDIE ETHRIDGE AND SINCE THERE WERE NO FINGERPRINTS  
17 THAT COULD TIE HIM TO IT, I THINK IT WOULD BE UNFAIRLY PREJUDICIAL.  
18 ALSO, THE SCALES THAT WERE FOUND, THERE WERE NO FINGERPRINTS OF  
19 THE DEFENDANT ON THOSE SCALES AND SINCE WE ARE HERE FOR A  
20 DETERMINATION BETWEEN POSSESSION AND POSSESSION WITH INTENT TO  
21 DISTRIBUTE, I THINK IT WOULD BE HIGHLY PREJUDICIAL TO THE DEFENDANT  
22 FOR THOSE SCALES TO BE INTRODUCED WHEN THERE WAS NO NEXUS  
23 OTHER THAN HE WAS DRIVING A VEHICLE IN WHICH THE WERE LOCATED AND  
24 THEY WERE IN THE TRUNK. THAT'S THE ONLY TIE THEY HAVE TO HIM.

25 THE COURT: MS. HOGAN?

1           **MS. HOGAN:** YOUR HONOR, IF IT PLEASURES THE COURT, THE GUN AND  
2 THE SCALES WERE FOUND IN THE TRUNK OF THE CAR THAT MISTER  
3 MATTISON WAS DRIVING. HE WAS THE ONLY PERSON IN THE CAR AND SO WE  
4 WOULD ARGUE THAT ALTHOUGH THERE ARE NO PRINTS ON THE GUN NOR  
5 THE SCALES THAT THIS IS A RELEVANT QUESTION THAT SHOULD GO TO THE  
6 JURY, NOT NECESSARILY AS TO ADMISSIBILITY, BUT AS TO THE WEIGHT OF  
7 THE EVIDENCE, YOUR HONOR. ALSO, WE WILL HAVE TESTIMONY BY ONE OF  
8 THE OFFICERS THAT THE REASON THAT MISTER MATTISON WAS ARRESTED  
9 WAS FOR OPEN CONTAINER, HE HAD SOME ALCOHOL IN A CUP. WHAT WE  
10 BELIEVE, WHERE THE ALCOHOL CAME FROM, THE BOTTLE OF RED WINE WAS  
11 ALSO IN THE TRUNK WITH THE GUN AND THE SCALES. WE ARGUE THAT HE  
12 KNEW THE GUN AND THE SCALES WERE IN THE TRUNK BECAUSE HE PLACED  
13 THE ALCOHOL THAT HE WAS POURING INTO HIS CUP IN THE TRUNK, YOUR  
14 HONOR. AGAIN, WE BELIEVE THIS GOES TO THE WEIGHT OF THE EVIDENCE  
15 AND IS A JURY QUESTION AND NOT OFFERED AS TO ADMISSIBILITY.

16           **THE COURT:** WHAT WOULD BE THE RELEVANCE OF THE GUN? IS IT  
17 RELEVANT IN ANY FORM OR FASHION TO PWID FOR PROSECUTION?

18           **MS. HOGAN:** IT'S NOT NECESSARY -- I TAKE THAT BACK. WE'RE GOING  
19 TO HAVE AN EXPERT THAT MISTER TAVERNIER IS PROBABLY GOING TO HAVE  
20 AN OBJECTION TO, WHO SAYS THAT THERE IS A DIRECT CORRELATION  
21 BETWEEN GUNS AND DISTRIBUTING DRUGS, YOUR HONOR. AND SO, WE  
22 BELIEVE THERE IS A CORRELATION BETWEEN HAVING THE GUN, THE SCALES  
23 AND THE DRUGS ALL IN A CASE TOGETHER. IT IS SOMETHING THAT ALL  
24 GOES TOGETHER WITH DISTRIBUTION, SO THAT WOULD GO TO OUR  
25 ARGUMENT OF PWID AND THAT'S THE CHARGE. HE'S TESTIFIED MANY TIMES

1 AS AN EXPERT AND I BELIEVE THAT THERE IS SOME CASE LAW ON THAT,  
2 SOME CORRELATION BETWEEN GUNS AND DRUGS.

3 THE COURT: DO YOU HAVE ANY OF THOSE CASES?

4 MS. HOGAN: I DON'T HAVE ---

5 THE COURT: CAN YOU CITE THEM TO ME?

6 MS. HOGAN: YES, SIR. I DON'T HAVE THEM WITH ME RIGHT NOW, BUT  
7 MY EXPERT THIS AFTERNOON WILL TESTIFY TO ALL THAT, YOUR HONOR.

8 THE COURT: WHEN DO YOU INTEND, AND I'M NOT TRYING TO GET YOU  
9 TO DROP YOUR GUARD NOW, BUT WHEN DO YOU INTEND TO INTRODUCE  
10 YOUR EVIDENCE?

11 MS. HOGAN: AS TO THE EXPERT ON THE GUNS?

12 THE COURT: OR JUST THE GUN TESTIMONY AND SCALES TESTIMONY.  
13 IS THAT GOING TO BE EARLY ON?

14 MS. HOGAN: PRETTY EARLY ON, YOUR HONOR. I MEAN, THE SECOND  
15 OFFICER TESTIFYING IS THE ONE WHO, WHEN THEY INVENTORIED THE CAR,  
16 POPPED THE TRUNK OPEN AND SAW THE DRUGS.

17 THE COURT: WHY WOULD NOT THE FACT THAT THERE IS A GUN IN THE  
18 CAR THAT YOU CANNOT CONNECT TO THIS DEFENDANT, OTHER THAN HE  
19 WAS THE DRIVER OF SOMEBODY ELSE'S CAR NOT, THE PREJUDICIAL EFFECT  
20 OF THAT NOT OUTWEIGH ANY PROBATIVE VALUE THAT MIGHT BE OUT  
21 THERE?

22 MS. HOGAN: WE BELIEVE THAT THE EVIDENCE OTHER THAN  
23 DISTRIBUTION, THAT HE HAD THE DRUGS ON HIM. I KNOW I'M GOING IN  
24 CIRCLES THERE, BUT WE BELIEVE THAT -- YOUR HONOR, WE WOULD ARGUE  
25 THAT IT WOULD BE ONE MORE PIECE OF EVIDENCE THAT HE -- WE'RE NOT

1 SAYING THAT IT WOULD BE, WE'RE NOT SAYING THAT IT IS NECESSARILY  
2 PURE FACT THAT HE WAS GOING TO DISTRIBUTE THE DRUGS, YOUR HONOR,  
3 BUT WE ARE SAYING THAT IT'S AN ELEMENT TO PROVE THAT HE WAS GOING  
4 TO AT THIS POINT.

5 **THE COURT:** THAT GOES TO THE SCALES AS WELL?

6 **MS. HOGAN:** YES, SIR. WHAT THEY WEIGH THE DRUGS WITH WHEN  
7 THEY ARE ABOUT TO SELL THEM.

8 **THE COURT:** IS THERE ANY EVIDENCE THAT THE DEFENDANT HAD  
9 ACCESS TO THIS CAR ON AN ONGOING BASIS?

10 **MS. HOGAN:** NOT THAT I'M AWARE OF. I DON'T KNOW ANYTHING ABOUT  
11 THE CAR OTHER THAN IT WAS NOT TITLED IN HIS NAME AND THAT HE WAS  
12 THE ONE DRIVING THE CAR WHEN HE PULLED UP.

13 **THE COURT:** IF I UNDERSTAND WHAT YOU'RE SAYING, MS. HOGAN, YOU  
14 HAVE A BOTTLE OF, WHAT SOUNDS TO ME LIKE WINE OR SOMETHING RED OR  
15 BURGUNDY IN COLOR, WHICH MATCHES THE COLOR OF WHAT THE  
16 SUBSTANCE WAS IN THE CUP. IT WAS NEVER TESTED. THAT WAS ONE OF  
17 THE ARGUMENTS EARLIER.

18 **MR. TAVERNIER:** THAT WAS MY ARGUMENT EARLIER, YOUR HONOR.  
19 THEY HAVEN'T TESTED IT. THERE'S NO, OTHER THAN THE OFFICER  
20 TESTIFYING THAT THE COLOR IS CONSISTENT, THERE'S NO EVIDENCE  
21 WHATSOEVER THAT TIES IT TOGETHER AND THAT WAS PART OF MY  
22 ARGUMENT THE OTHER DAY.

23 **THE COURT:** OKAY. FIRST, JUST FOR THE RECORD, I KNOW YOU  
24 RENEWED YOUR PRIOR MOTIONS. I'M DENYING THOSE MOTIONS JUST SO  
25 IT'S CLEAR ON THE RECORD. I WANT Y'ALL TO GIVE ME ABOUT TEN MINUTES,

1 MAYBE LONGER. I WANT TO LOOK AT IT. GIVE ME THOSE CASE CITES. I AM  
2 CONCERNED THAT THE PROBATIVE VALUE, ESPECIALLY THE GUN, IS  
3 OUTWEIGHED BY THE PREJUDICIAL IMPACT. BUT I WANT TO SEE WHAT YOU  
4 HAVE, LET ME LOOK AT IT AND THEN I'LL MAKE A RULING BEFORE WE GET  
5 STARTED. IF YOU COULD GO AHEAD AND GET ME THAT CITE.

6 MS. HOGAN: OKAY. I DON'T HAVE IT WITH ME. IT'S DOWNSTAIRS, YOUR  
7 HONOR.

8 THE COURT: THAT'S FINE. IF YOU WOULD JUST LET ARREN KNOW. I'M  
9 GOING TO BE DOWN IN MY CHAMBERS LOOKING AT THIS AND THEN I'LL GET  
10 BACK WITH YOU. IF YOU WOULD SEND IT OVER TO HER.

11 MS. HOGAN: YES, SIR. THANK YOU.

12 (BREAK)

13 THE COURT: I CONSIDERED MISTER TAVERNIER'S MOTION AND THIS IS  
14 THE WAY I'M GOING TO RULE: AS FAR AS THE GUN, I BELIEVE, SINCE THERE IS  
15 ABSOLUTELY NO NEXUS THAT I'VE HEARD ABOUT THE GUN TO THE CRIME  
16 THAT THE PREJUDICIAL VALUE OUTWEIGHS ANY PROBATIVE OR PREJUDICIAL  
17 IMPACT AND SO I'M GOING TO EXCLUDE THE GUN. ON THE CONTRARY, I  
18 THINK THE SCALES WOULD SHOW A NEXUS TO THE CHARGE AND SO I'M  
19 GOING TO ALLOW YOU TO INTRODUCE THE SCALES. OKAY? YOU GUYS  
20 READY TO DO OPENINGS?

21 MS. HOGAN: I HAVEN'T MARKED THE EVIDENCE YET.

22 THE COURT: PLEASE. OKAY. WHY DON'T YOU DO THAT.

23 (BREAK)

24 THE COURT: ALL RIGHT. IN THE COURTROOM -- ARE OFFICERS MCKEE,  
25 CLARDY AND FOUTS HERE?

1           **OFFICER MCKEE:** YES, SIR, YOUR HONOR.

2           **THE COURT:** ALL RIGHT. I JUST WANT TO REMIND YOU, BECAUSE OF  
3 THE NATURE OF THE RULINGS THAT HAVE GONE ON MONDAY AND UP UNTIL  
4 TODAY, THAT WHEN YOU GET UP TO TESTIFY, I UNDERSTAND THERE WAS  
5 SOME INFORMATION BEING USED, BUT I WANT YOU TO PUT YOURSELF ON  
6 THE SCENE PURSUANT TO ANOTHER INVESTIGATION. DO NOT REFER BACK  
7 TO ANYTHING OTHER THAN YOU WERE SENT THERE PURSUANT TO ANOTHER  
8 INVESTIGATION. YOU DON'T GO BEYOND THAT. DO YOU UNDERSTAND WHAT  
9 I'M SAYING?

10          **OFFICER MCKEE:** YES, SIR.

11          **THE COURT:** AND IF YOU NEED ANY MORE INFORMATION ABOUT IT,  
12 MS. HOGAN CAN CERTAINLY EXPLAIN IT TO YOU WHAT WE'RE LOOKING FOR.  
13 WE ARE JUST TRYING TO MAKE SURE WE KEEP EVERYTHING BALANCED AND  
14 FAIR. OKAY? FAIR ENOUGH?

15          **OFFICER MCKEE:** YES, SIR.

16          **THE COURT:** YOU GUYS READY?

17          **MS. HOGAN:** YES, SIR.

18          **MR. TAVERNIER:** YES, YOUR HONOR. BUT FOR THE RECORD, I THINK IN  
19 LIGHT OF YOUR RULING, I THINK I NEED TO RENEW MY MOTION AND  
20 OBJECTION TO THE INTRODUCTION OF THE SCALES, FOR THE RECORD.

21          **THE COURT:** OKAY. AND WHAT WE'LL DO, BECAUSE YOU BROUGHT  
22 THAT UP, I TOLD YOU THAT I THOUGHT YOU NEEDED TO RENEW YOUR  
23 MOTION AT THE TIME OF THE INTRODUCTION OF EVIDENCE, HOWEVER, I  
24 THINK THAT YOU'VE DONE IT TWICE NOW AND I THINK YOU ARE PROTECTED  
25 ON THE RECORD AND THAT'S GOING TO BE MY RULING SO AT THE TIME THAT

1 IT IS GOING TO BE INTRODUCED, YOU DO NOT HAVE TO RENEW YOUR  
2 MOTION. FAIR ENOUGH, MISTER TAVERNIER?

3 MR. TAVERNIER: YES, SIR, YOUR HONOR.

4 THE COURT: ALL RIGHT. READY TO GO?

5 MR. TAVERNIER: READY TO PROCEED, YOUR HONOR.

6 (JURY IN AT 10:48 A.M.)

7 THE COURT: GOOD MORNING, LADIES AND GENTLEMEN. THANK YOU  
8 FOR YOUR PATIENCE AND I UNDERSTAND THAT THE JURY HAS SELECTED  
9 MISTER BURNS TO BE THE JURY FOREPERSON. IS THAT CORRECT?

10 MR. BURNS: YES, SIR.

11 THE COURT: MISTER BURNS, I KNOW THAT YOU WERE HERE  
12 PREVIOUSLY, AND AS YOU KNOW, I'M GOING TO ASK THAT YOU SIT IN THAT  
13 SAME SEAT AS WELL AS MS. STAHLSMITH, IF YOU'D STAY THERE.

14 WE'RE ABOUT TO BEGIN THE TRIAL OF THE STATE VERSUS ANTHONY  
15 LEROY MATTISON. I KNOW SOME OF YOU MAY HAVE HEARD THIS BEFORE,  
16 BUT I DON'T KNOW WHETHER OR NOT THE JURORS IN THIS CASE HAVE EVER  
17 BEEN INVOLVED IN ANY KIND OF CRIMINAL OR CIVIL CASE. THIS IS A CRIMINAL  
18 CASE, BUT I WILL TELL YOU THAT THIS CASE IS NOT LIKE T.V. AND ITS NOT  
19 LIKE MOVIES AND I WOULD IMAGINE THAT EACH AND EVERY ONE OF YOU  
20 HAVE PROBABLY SEEN SOMETHING LIKE *LAW AND ORDER* OR SOMETHING  
21 ALONG THOSE LINES. THIS CASE IS GOING TO BE VASTLY DIFFERENT. CASES  
22 IN CIRCUIT COURT, IN OUR COURTS, ARE SOMETIMES VERY SLOW AND THEY  
23 ARE VERY METHODICAL AND SOMETIMES THEY ARE DELIBERATE AND  
24 REPETITIVE. I WILL TRY TO CUT DOWN ON THE REPETITIVE NATURE OF THE  
25 TRIAL, HOWEVER, IT IS NOT ENTERTAINMENT. THIS IS NOT ENTERTAINMENT

1 AND THIS IS A FUNDAMENTAL PART OF OUR SYSTEM THAT WAS CREATED BY  
2 OUR FOREFATHERS AND YOU PLAY AN INTEGRAL ROLE IN THAT. YOUR ROLE  
3 TODAY IS SIMPLY TO SEARCH FOR THE TRUTH. YOU ARE NOT HERE TO  
4 PUNISH OR REWARD ONE SIDE OR THE OTHER. I WILL TELL YOU THAT THESE  
5 ATTORNEYS IN THIS CASE ARE VERY FINE ATTORNEYS. THEY ARE GOOD AND  
6 WELL SEASONED ATTORNEYS. THEY ARE ADVOCATES FOR THEIR CLIENTS.  
7 AS SUCH, THEY PUSH THEIR SIDE OF THE CASE, BUT THEY ARE ALSO  
8 OFFICERS OF THIS COURT. AS SUCH, YOU CAN EXPECT THESE ATTORNEYS  
9 TO BE ETHICAL, YOU CAN EXPECT THEM TO BE PREPARED, YOU CAN EXPECT  
10 THEM TO BE COMPETENT IN WHAT THEY DO. IN JUST A MOMENT, YOU ARE  
11 GOING TO TAKE AN OATH TO BE A JUROR AND TO REACH A FAIR AND  
12 IMPARTIAL VERDICT. AS SUCH, THESE ATTORNEYS, THESE PARTIES, AND  
13 THIS COURT HAVE A RIGHT TO EXPECT OF YOU, THAT YOU WILL BE  
14 REASONABLE, THAT YOU WILL BE AS PROFESSIONAL AS YOU CAN BE, BUT  
15 YOU WILL BE ETHICAL IN YOUR DEALINGS WITH THIS CASE.

16 WHAT I'M ABOUT TO TELL YOU IS NOT A CHARGE ON THE LAW. AT THE  
17 END OF THIS CASE, I WILL TELL YOU WHAT THE LAW THAT APPLIES TO THIS  
18 CASE IS AND THE LAW THAT YOU WILL HAVE TO ACCEPT BEFORE YOU BEGIN  
19 YOUR DELIBERATIONS, BUT I'M ABOUT TO EXPLAIN TO YOU GENERALLY, THE  
20 PROCESS AND THE PROCEDURES THAT WE'RE ABOUT TO GO THROUGH AND  
21 THAT YOU CAN EXPECT TO HAPPEN.

22 AS I TOLD YOU, THIS IS THE CASE OF THE STATE VERSUS ANTHONY  
23 LEROY MATTISON. HE IS CHARGED WITH POSSESSION OF CRACK COCAINE  
24 WITH INTENT TO DISTRIBUTE. THE ELEMENTS OF THE CHARGE WILL BE  
25 GIVEN TO YOU LATER WHEN I CHARGE YOU ON THE LAW. YOU SEE THAT I

1 HAVE WHAT IS CALLED AN INDICTMENT IN MY HAND. THIS INDICTMENT IS  
2 SIMPLY A PIECE OF PAPER. IT'S SIMPLY A MEANS BY WHICH THE STATE  
3 BRINGS CHARGES AGAINST AN INDIVIDUAL AND THE PROCESS TO GET THEM  
4 HERE BEFORE THE COURT. THIS INDICTMENT IS NOT, IN ANY SENSE OF THE  
5 WORD, EVIDENCE. THE FACT OF THE MATTER IS, IN THIS CASE, THE  
6 DEFENDANT HAS PLED NOT GUILTY. THAT MEANS THAT THE STATE OF  
7 SOUTH CAROLINA HAS THE BURDEN OF PROVING THE DEFENDANT OF EACH  
8 ELEMENT OF THE CHARGES AGAINST THE DEFENDANT BEYOND A  
9 REASONABLE DOUBT. IT WILL BE YOUR BURDEN AT THE END OF THIS CASE  
10 WHETHER OR NOT THE STATE HAS MET THAT BURDEN. AS I'VE TOLD YOU  
11 AND I WILL TELL YOU REPEATEDLY THROUGH THIS CASE, YOUR JOB IS TO  
12 FIND FACTS AS JURORS. YOU ARE THE SOLE JUDGES OF THE FACTS IN THIS  
13 CASE.

14 IF, AT ANY TIME, I MAKE A COMMENT, I MAKE A GESTURE, OR I DO  
15 ANYTHING THAT INDICATES TO YOU THAT I HAVE A FEELING, ONE WAY OR  
16 THE OTHER, OF HOW YOU ARE TO RULE, I WILL ASK YOU TO DISREGARD  
17 THAT. FIRST OF ALL, I HAVE NO FEELING WHATSOEVER. I HAVE NOT SEEN  
18 THIS CASE BEFORE TODAY AND MY JOB, SOLELY, IS TO ACT AS A REFEREE  
19 TO MAKE SURE THAT THE PROCESS IS FOLLOWED AND THAT BOTH SIDES OF  
20 THIS CASE RECEIVE A FAIR AND IMPARTIAL TRIAL.

21 NOW, I WILL ALSO TELL YOU REPEATEDLY THAT YOU ARE TO  
22 DETERMINE THE FACTS IN THIS CASE FROM THE JURY STAND. THAT IS, FROM  
23 THE SWORN TESTIMONY THAT IS PRESENTED THAT I ALLOW INTO EVIDENCE  
24 AS WELL AS THE EXHIBITS THAT IT ALLOW INTO EVIDENCE. YOU ARE NOT TO  
25 BE INFLUENCED WHATSOEVER FROM ANYTHING THAT YOU HAVE HEARD

1 OUTSIDE THIS COURTROOM WHEN COURT IS NOT IN SESSION. NOW, DURING  
2 THIS TRIAL, I DON'T ANTICIPATE IT WILL TAKE TERRIBLY LONG. I DO  
3 ANTICIPATE THAT IT WILL GO INTO TOMORROW. I WILL ASK THAT YOU PAY  
4 CLOSE ATTENTION AND CONSCIENTIOUSLY LISTEN TO THESE LAWYERS AND  
5 LISTEN TO THE WITNESSES AND WATCH THE EVIDENCE, BECAUSE AT THE  
6 END OF THE DAY, YOU ARE GOING TO BE CALLED UPON TO MAKE A DECISION  
7 AND IF YOU PAID CLOSE ATTENTION AND YOU'VE PAID CLOSE ATTENTION,  
8 AND YOU'VE BEEN CONSCIENTIOUS IN YOUR DUTIES AS JURORS, YOU WILL  
9 BE ABLE TO DO THAT.

10 NOW, IN ALL TRIALS THAT I HAVE, UNLESS THEY ARE PARTICULARLY  
11 COMPLEX, I DO NOT ALLOW MY JURORS TO TAKE NOTES AND THIS CASE IS  
12 NO DIFFERENT. I'M GOING TO ASK THAT YOU NOT TO TAKE ANY NOTES, I'M  
13 GOING TO INSTRUCT THAT YOU NOT TAKE ANY NOTES IN THIS CASE. WHAT  
14 THAT MEANS IS, NOT ONLY WHILE YOU'RE IN THE COURTROOM ARE YOU NOT  
15 TO TAKE NOTES, BUT AT ANY TIME DURING THIS TRIAL, I DO NOT WANT YOU  
16 INDIVIDUALLY OR COLLECTIVELY TO TAKE NOTES.

17 NOW, THE LAW MAKES YOU THE SOLE FINDERS OF THE FACTS AND  
18 WITH THE SAME EMPHASIS, MAKES ME THE INSTRUCTOR OF THE LAW. WHAT  
19 THAT SIMPLY MEANS IS, YOU MUST ACCEPT THE LAW AS I CHARGE IT TO YOU  
20 AT THE END OF THIS CASE. YOU ARE NOT TO BE CONCERNED AND YOU  
21 SHALL NOT BE CONCERNED WITH WHAT YOU THINK THE LAW SHOULD BE OR  
22 WHAT THE LAW IS. YOU SHALL ONLY CONCERN YOURSELF WITH WHAT THE  
23 LAW IS AS I GIVE IT TO YOU. JUST LIKE I CANNOT DISAGREE WITH YOU ON  
24 WHAT I THINK THE FACTS ARE, YOU CANNOT DISAGREE WITH ME ON WHAT  
25 YOU THINK THE LAW IS OR SHOULD BE.

1           NOW, THROUGHOUT THIS CASE, THERE WILL BE OCCASION WHEN I  
2 SEND YOU OUT. WE WILL HAVE OBJECTIONS AND I'LL TELL YOU ABOUT THAT  
3 IN A MINUTE. WE WILL HAVE BREAKS, OVERNIGHT BREAKS MORE THAN  
4 LIKELY, UNTIL I TELL YOU THAT IT'S OKAY TO BEGIN YOUR DELIBERATIONS,  
5 YOU'RE NOT TO DISCUSS THIS CASE AMONGST YOURSELVES. YOU ARE NOT  
6 TO DISCUSS THIS CASE WITH ANYONE ELSE. THAT MEANS, YOU ARE NOT TO  
7 DISCUSS IT, OBVIOUSLY, WITH YOUR FELLOW JURORS, WITH YOUR FRIENDS,  
8 WITH YOUR FAMILY, WITH YOUR SPOUSE. YOU'RE CERTAINLY NOT ALLOWED  
9 TO DISCUSS THIS CASE WITH ANYONE INVOLVED IN THIS CASE. IT MAY BE  
10 THAT YOU HAVE SOME INCIDENTAL CONTACT WITH ONE OF THESE  
11 ATTORNEYS, ONE OF THE WITNESSES IN THIS CASE. IF YOU DO, YOU'RE NOT  
12 TO SPEAK TO THEM. IT'S OKAY IF YOU NOD, AND THAT'S IT, BUT WE DON'T  
13 WANT SOMEBODY SEEING A COMMUNICATION THAT MAY BE TOTALLY  
14 INNOCENT AND INFER THAT THERE IS SOMETHING IMPROPER GOING ON, AND  
15 SO IF YOU RUN INTO ANY OF THE PARTIES IN THIS MATTER, THE ATTORNEYS,  
16 NOD YOUR HEAD AND KEEP GOING. LIKEWISE, THESE ATTORNEYS HAVE  
17 BEEN INSTRUCTED, AND IF THEY BUMP INTO YOU, THEY ARE NOT ALLOWED  
18 TO HAVE ANY COMMUNICATION WITH YOU EITHER. SO, IF YOU RUN INTO ANY  
19 OF THESE ATTORNEYS, THESE PARTIES, THESE WITNESSES, AND THEY  
20 DON'T SPEAK TO YOU, THEY'RE NOT BEING RUDE. THEY ARE DOING WHAT  
21 I'VE TOLD THEM TO DO.

22           NOW, OUR CHIEF JUSTICE OF THE SUPREME COURT OF SOUTH  
23 CAROLINA HAS ISSUED INSTRUCTIONS TO ALL THE CIRCUIT COURT JUDGES  
24 IN THE STATE OF SOUTH CAROLINA TO ADVISE ALL JURIES THAT  
25 THROUGHOUT THIS CASE OR ANY CASE, THEY ARE NOT TO READ OR LISTEN

1 TO OR HEAR ANY INFORMATION ABOUT THIS CASE. THAT MEANS THAT IF  
2 YOU SEE SOMETHING IN THE NEWSPAPER, YOU ARE NOT TO READ IT. IF YOU  
3 HEAR SOMETHING ON THE RADIO, YOU'RE TO CUT IT DOWN. IF YOU HEAR  
4 SOMEBODY IN THE HALLWAY OR SOMEWHERE SPEAKING ABOUT THIS CASE,  
5 WHICH I DOUBT YOU WILL, BUT IF YOU DO, YOU ARE TO REMOVE YOURSELF  
6 FROM THAT SITUATION. YOU'RE NOT TO SEEK ANY OUTSIDE INFORMATION  
7 ABOUT THIS CASE. THAT NOT ONLY INCLUDES THE STATE AND THE  
8 DEFENDANT IN THIS MATTER, BUT ALSO INCLUDES THE ATTORNEYS, THE  
9 WITNESSES, THESE COURT OFFICIALS HERE AND MYSELF. IF YOU HEAR AN  
10 ISSUE RAISED IN THIS CASE, YOU'RE NOT TO GO OUT AND RESEARCH THAT  
11 ISSUE YOURSELF. IF YOU SEE AN ISSUE THAT SHOULD BE A PART OF THIS  
12 CASE THAT YOU THINK WOULD BE HELPFUL, YOU'RE NOT TO RESEARCH THAT  
13 EITHER. THE REASON BEING, IS WE WANT YOU TO HAVE AN OPEN MIND TO  
14 THE EVIDENCE PRESENTED DURING TRIAL UNTAINTED BY ANY OUTSIDE  
15 INFLUENCES. SO, IF YOU WILL LIMIT THE INFORMATION THAT YOU RECEIVE  
16 ABOUT THIS CASE SOLELY TO THE INFORMATION THAT YOU HEAR FROM THIS  
17 WITNESS STAND AND THE EXHIBITS THAT ARE ADMITTED INTO EVIDENCE,  
18 THEN WE'LL BE ON THE SAME PAGE.

19 NOW, TYPICALLY IN A TRIAL, THERE ARE OBJECTIONS RAISED BY THE  
20 ATTORNEYS. I WILL TELL YOU THAT THE ATTORNEYS ARE REQUIRED UNDER  
21 THEIR PROFESSIONAL RULES OF CONDUCT AND AS ADVOCATES FOR THEIR  
22 RESPECTIVE SIDE OF THE CASE, TO RAISE OBJECTIONS IF THEY BELIEVE  
23 THAT SOMETHING IS IMPROPER DURING THE CONDUCT OF A TRIAL.  
24 NORMALLY, I WILL SEND YOU OUT OF THE COURTROOM, SOMETIMES I WON'T.  
25 I INSTRUCT YOU NOT TO DRAW ANY INFERENCES OR CONCLUSIONS BY THE

1 FACT THAT AN ATTORNEY RAISES AN OBJECTION NOR OR YOU TO DRAW ANY  
2 INFERENCES OR CONCLUSIONS BASED ON MY RULINGS. THAT IS SIMPLY  
3 PART OF THE PROCESS AND AN ATTORNEY WOULD BE REMISS NOT TO RAISE  
4 OBJECTIONS.

5 NOW, IN EACH AND EVERY CASE IN CIRCUIT COURT, THERE ARE FIVE  
6 DIFFERENT SECTIONS. ONE, THERE'S AN OPENING STATEMENT. THERE'S A  
7 PRESENTATION OF THE EVIDENCE. THERE ARE CLOSING ARGUMENTS BY  
8 THE ATTORNEYS. THERE'S A CHARGE ON THE LAW FROM ME AND THEN YOU  
9 BEGIN YOUR DELIBERATIONS. I TELL YOU THAT JUST SO YOU KNOW  
10 TYPICALLY WHERE YOU ARE DURING THE CONDUCT OF THIS TRIAL.

11 IN JUST A MOMENT, THE SOLICITOR IS GOING TO MAKE AN OPENING  
12 STATEMENT. WHAT SHE SAYS IS SIMPLY HER CONTENTION ABOUT WHAT  
13 THE CASE IS ABOUT. THE ATTORNEY FOR THE DEFENDANT MAY ALSO, BUT IS  
14 NOT REQUIRED, TO MAKE AN OPENING STATEMENT. I'LL TELL YOU THAT  
15 WHAT THESE ATTORNEYS TELL YOU IN THEIR OPENING STATEMENTS IS NOT  
16 EVIDENCE. THEY ARE NOT WITNESSES. THEY HAVE NOT BEEN SWORN. IT IS  
17 SIMPLY THEIR CONTENTION ABOUT WHAT THIS CASE IS GOING TO BE ABOUT.  
18 IT IS HELPFUL AND YOU SHOULD LISTEN TO THEM VERY CLOSELY, BUT I  
19 REMIND YOU THAT THE ONLY EVIDENCE PRESENTED IN THIS CASE IS THE  
20 EVIDENCE PRESENTED FROM THIS WITNESS STAND.

21 NOW, PART OF YOUR FUNCTIONS AS FINDERS OF THE FACTS IS TO  
22 DETERMINE WHAT THE FACTS ARE. IN DOING THAT, YOU WILL HAVE TO  
23 WATCH AND LISTEN TO WITNESSES AND YOU WILL HAVE TO DETERMINE  
24 WHAT WE CALL THE CREDIBILITY OF THE WITNESSES. NOW, I'M GOING TO  
25 GIVE YOU A FEW HELPFUL HINTS THAT YOU CAN ACCEPT OR YOU CAN

1 REJECT AT THE END OF THIS TRIAL WHEN YOU SIT DOWN TO MAKE YOUR  
2 DETERMINATION, BUT IN MAKING A DECISION ON THE FACTS AND  
3 DETERMINING CREDIBILITY, YOU HAVE A RIGHT TO CONSIDER THE  
4 FOLLOWING FACTORS ABOUT THESE WITNESSES TESTIMONY AND YOU HAVE  
5 A RIGHT NOT TO, BUT YOU CAN CONSIDER: THE INTERESTS THIS WITNESS  
6 MAY HAVE IN THIS CASE. YOU CAN CONSIDER THE BIAS THAT ANY WITNESS  
7 MAY HAVE IN THE CASE OR ANY PREJUDICE THAT ANY WITNESS MAY HAVE IN  
8 THE CASE. YOU CAN CONSIDER THE OPPORTUNITY FOR THE WITNESS TO  
9 HAVE SEEN THE MATTERS ABOUT WHICH THEY ARE TESTIFYING TO. YOU  
10 CAN ALSO CONSIDER HOW THE WITNESS ACTS ON THE WITNESS STAND. IN  
11 OTHER WORDS, YOU CAN CONSIDER THEIR Demeanor WHILE TESTIFYING.  
12 YOU HAVE THE RIGHT TO CONSIDER ANYTHING THAT HAS BEEN ADMITTED  
13 INTO THE RECORD IN THIS CASE AND THAT IS, FROM THE WITNESS STAND,  
14 THAT WILL HELP YOU EVALUATE THE TESTIMONY THAT YOU WILL HEAR. I  
15 ASK YOU AND REMIND YOU AGAIN, PLEASE DO NOT LET YOUR THOUGHTS  
16 WANDER DURING THIS TRIAL. PAY CLOSE ATTENTION, BECAUSE ORDINARILY  
17 IF YOU MAKE AN INAPPROPRIATE FINDING OF FACT, IT CANNOT BE  
18 CORRECTED ON APPEAL.

19 NOW, MISTER BURNS, I KNOW THAT YOU HAVE BEEN HERE, BUT YOU  
20 HAVE ADDITIONAL DUTIES AS FOREPERSON. IF AT ANY TIME YOU WANT TO  
21 HAVE COMMUNICATION WITH THIS COURT, I'M GOING TO ASK YOU TO WRITE  
22 IT DOWN AND SIGN IT AND PASS IT TO THE BAILIFF AND GIVE IT TO ME. YOUR  
23 JOB IS TO BE THE SPOKESPERSON FOR THE JURY. YOU WILL ALSO CHAIR  
24 THE DELIBERATIONS IN THIS CASE. FOR THE REST OF THE JURORS, IF AT  
25 ANY TIME YOU FEEL LIKE YOU NEED TO HAVE COMMUNICATION WITH THIS

1 COURT AND MISTER BURNS REFUSES TO DO SO, YOU WRITE IT DOWN AND  
2 PASS IT TO THE BAILIFF YOURSELF. I DO NOT ANTICIPATE THAT BEING A  
3 PROBLEM AT ALL. BEFORE WE GET STARTED WITH OPENING STATEMENTS, I  
4 WANT TO GO OVER WITH THIS FINE COUNSEL WHETHER OR NOT THEY HAVE  
5 ANYTHING ADDITIONAL THAT THEY WANT ME TO ADD TO MY OPENING  
6 STATEMENT TO YOU, SO IF YOU WILL RETIRE BACK TO THE JURY ROOM ONE  
7 MORE TIME, WE WILL BEGIN THIS CASE SHORTLY.

8 (JURY OUT AT 11:04 A.M.)

9 THE COURT: MS. HOGAN, ANY ADDITIONS OR EXCEPTIONS FROM THE  
10 STATE?

11 MS. HOGAN: NOTHING FURTHER, YOUR HONOR.

12 THE COURT: FROM THE DEFENSE, MISTER TAVERNIER?

13 MR. TAVERNIER: NOTHING, YOUR HONOR.

14 THE COURT: DO YOU NEED A FEW SECONDS BEFORE WE GET  
15 STARTED? DO YOU WANT TO COME BACK ABOUT TEN AFTER? THAT GIVE  
16 YOU ENOUGH TIME?

17 MR. TAVERNIER: READY TO GO NOW, SIR.

18 THE COURT: I NEED TO TAKE A LITTLE QUICK BREAK AND THEN WE  
19 WILL GET STARTED. LET ME ASK YOU THIS, MS. HOGAN, YOU SAID  
20 SOMETHING EARLIER THAT YOU HAD SOME WITNESSES COMING IN ABOUT  
21 1:30.

22 MS. HOGAN: YES, SIR

23 THE COURT: NORMALLY, I BREAK AT 1:00. WE COULD BREAK AT 12:30  
24 AND COME BACK AT 2:00. IS THAT ACCEPTABLE TO EVERYBODY?

25 MS. HOGAN: I THINK THAT THEY WOULD BE OKAY WITH THAT, YOUR

1 HONOR. I JUST TOLD THEM 1:30 JUST TO BE SAFE.

2 THE COURT: MISTER TAVERNIER?

3 MR. TAVERNIER: WHATEVER YOU DECIDE, I'M FINE WITH IT.

4 THE COURT: OKAY.

5 MS. HOGAN: THE REST OF MY EXHIBITS ARE LABELED AND SO IT  
6 SHOULDN'T BE A PROBLEM.

7 THE COURT: ALL RIGHT. I'M GOING TO TRY TO GIVE YOU A HEADS UP  
8 THEN CALL IT OFF ABOUT 12:30 FOR A LUNCH BREAK. I KNOW THESE  
9 BAILIFFS NEED TO HAVE TIME FOR A LUNCH BREAK AND ME, TOO. WE'LL  
10 CRANK IT BACK UP AROUND 2:00. ALL RIGHT. WE'LL BE IN RECESS UNTIL  
11 ABOUT TEN AFTER.

12 (BRIEF BREAK)

13 THE COURT: EVERYONE READY TO PROCEED?

14 MS. HOGAN: YES, YOUR HONOR.

15 MR. TAVERNIER: WE'RE READY, YOUR HONOR.

16 THE COURT: ALL RIGHT. BUCK, WILL YOU BRING THE JURY IN, PLEASE.

17 (JURY IN AT 11:15 A.M.)

18 THE COURT: MADAM CLERK, WILL YOU PLEASE SWEAR THE JURY.

19 (THE JURY IS DULY SWORN BY THE CLERK OF COURT OF COURT)

20 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN WE WILL BEGIN WITH  
21 OPENING STATEMENTS. MS. HOGAN?

22 MS. HOGAN: YOUR HONOR, MAY IT PLEASE THE COURT.

23 OPENING STATEMENT - MS. HOGAN

24 GOOD MORNING. ON APRIL 10, 2007, OFFICERS WITH THE ANDERSON  
25 POLICE DEPARTMENT ARRESTED THIS DEFENDANT, ANTHONY MATTISON,

1 FOR OPEN CONTAINER. WHILE HE WAS BEING BOOKED AND SEARCHED AT  
2 THE DETENTION CENTER, HE WAS FOUND TO BE IN THE POSSESSION OF  
3 WHAT WAS MORE THAN FIVE GRAMS OF CRACK COCAINE. BECAUSE OF HIS  
4 POSSESSION OF MORE THAN ONE GRAM, HE WAS ACTUALLY CHARGED WITH  
5 POSSESSION WITH INTENT TO DISTRIBUTE CRACK COCAINE OR WHAT IS  
6 COMMONLY CALLED PWID CRACK, WHICH IS A SHORT ACRONYM FOR THAT.  
7 THE LAW ALLOWS, AS THE JUDGE WILL EXPLAIN LATER, A PERMISSIVE  
8 INFERENCE THAT THE WEIGHT OF THE DRUGS ALONE IS EVIDENCE OF THE  
9 DEFENDANT'S INTENT TO DISTRIBUTE OR SELL THE DRUGS THAT HE HAD IN  
10 HIS POSSESSION. NOW, I MUST PROVE THIS TO YOU BEYOND A REASONABLE  
11 DOUBT, AND IN ORDER TO DO SO, I WILL HAVE TO PROVE THREE ELEMENTS  
12 OF THIS CRIME TO YOU. FIRST, I AM GOING TO HAVE TO PROVE TO YOU THAT  
13 THE DEFENDANT, THAT WHAT HE HAD IN HIS POSSESSION, THE SUBSTANCE  
14 HE HAD IN HIS POSSESSION, WAS IN FACT, CRACK COCAINE. YOU ARE GOING  
15 TO HEAR TESTIMONY FROM THE CHEMIST WHO ACTUALLY TESTED THESE  
16 DRUGS AND FOUND THAT THEY WERE, IN FACT, CRACK COCAINE. I AM ALSO  
17 GOING TO HAVE TO PROVE THAT THE DEFENDANT HAD POSSESSION OF  
18 THESE DRUGS. YOU ARE GOING TO HEAR TESTIMONY THAT HE ACTUALLY  
19 HAD THESE DRUGS ON HIS PERSON. AND THEN THIRDLY, I AM GOING TO  
20 HAVE TO PROVE THAT HE POSSESSED THESE DRUGS WITH THE INTENT TO  
21 DISTRIBUTE THEM. AS I SAID, THE LAW ALLOWS A PERMISSIVE INFERENCE  
22 THAT THE WEIGHT OF THE DRUGS ALONE IS EVIDENCE THAT HE WAS GOING  
23 TO DISTRIBUTE THE DRUGS IN HIS POSSESSION, BUT I AM GOING TO  
24 PRESENT ADDITIONAL EVIDENCE TO YOU, I AM GOING TO SHOW YOU, THAT  
25 MISTER MATTISON POSSESSED THESE DRUGS FOR MORE THAN PERSONAL

1 USE. IN THIS CASE, I MUST ALSO PROVE WHAT IS CALLED A CHAIN OF  
2 CUSTODY OF THE DRUGS AND THAT JUST MEANS THAT I MUST PUT EVERY  
3 PERSON WHO TOUCHED THESE DRUGS UP ON THE WITNESS STAND TO  
4 PROVE TO YOU THAT THEY WERE NOT ALTERED OR TAMPERED WITH  
5 BEFORE THEY WERE ANALYZED. IT MIGHT SEEM REPETITIVE AT TIMES, BUT  
6 IT IS NECESSARY IN THIS CASE. I WOULD LIKE YOU TO KEEP ALL OF THIS IN  
7 MIND WHILE YOU LISTEN TO THE TESTIMONY IN THIS CASE AND AT THE  
8 CLOSE OF ALL OF THE EVIDENCE, YOU WILL HAVE NO CHOICE BUT TO FIND  
9 MISTER MATTISON GUILTY BEYOND A REASONABLE DOUBT OF POSSESSION  
10 WITH INTENT TO DISTRIBUTE CRACK COCAINE.

11 **THE COURT:** MISTER TAVERNIER?

12 **MR. TAVERNIER:** THANK YOU, YOUR HONOR. MAY IT PLEASE THE  
13 COURT.

14 **OPENING STATEMENT - MISTER TAVERNIER**

15 MADAME SOLICITOR, MISTER FOREMAN, LADIES AND GENTLEMEN OF  
16 THE JURY, THE SOLE ISSUE BEFORE YOU TODAY THAT YOU ARE GOING TO  
17 HAVE TO DETERMINE IS NOT WHETHER MISTER MATTISON HAD DRUGS IN HIS  
18 POSSESSION. THE ISSUE IS GOING TO BE WHETHER THEY WERE FOR HIS  
19 OWN PERSONAL USE OR WHETHER THEY WERE POSSESSED WITH THE  
20 INTENT TO DISTRIBUTE. AS MS. HOGAN TOLD YOU, THEY HAVE THE BURDEN  
21 OF PROOF, TO PROVE BEYOND A REASONABLE DOUBT THAT THE DRUGS  
22 THAT HE POSSESSED ON THAT DATE WERE NOT FOR PERSONAL USE. THEY  
23 HAVE TO PROVE BEYOND A REASONABLE DOUBT THAT HE INTENDED TO  
24 DISTRIBUTE THE DRUGS TO AN INDIVIDUAL. THAT'S THE SOLE ISSUE. WE ARE  
25 NOT GOING TO BELABOR THE FACT TODAY. I AM NOT GOING TO WASTE

1 YOUR TIME. WE ARE GOING TO TRY TO BE AS BRIEF AS POSSIBLE BECAUSE  
2 WE KNOW YOU WOULD RATHER BE ELSEWHERE, BUT YOU DO HAVE A DUTY,  
3 AS HIS HONOR CHARGED YOU EARLIER, TO LISTEN TO THE TESTIMONY AND  
4 TO DETERMINE THE EVIDENCE, AND ONCE YOU HAVE DETERMINED THOSE  
5 TWO THINGS AND THEN APPLY THAT TO THE LAW THAT THE JUDGE WILL  
6 CHARGE YOU WITH AT THE END OF THIS CASE, AND WHEN YOU DO THAT, I  
7 ASK THAT YOU COME BACK WITH A VERDICT THAT SPEAKS THE TRUTH AND  
8 THAT IS THE VERDICT OF POSSESSION OF CRACK, NOT POSSESSION WITH  
9 THE INTENT TO DISTRIBUTE CRACK COCAINE. THANK YOU.

10 **THE COURT:** YOU MAY CALL YOUR FIRST WITNESS.

11 **MS. HOGAN:** YOUR HONOR, IF IT PLEASES THE COURT, THE STATE  
12 CALLS CASEY FOUTS TO THE STAND.

13 (AFTER BEING DULY SWORN BY THE CLERK OF COURT, CASEY FOUTS  
14 TESTIFIED AS FOLLOWS:)

15 **CLERK OF COURT:** YOU CAN GO UP AND HAVE A SEAT IN THE WITNESS  
16 CHAIR, PLEASE. IF YOU WILL STATE YOUR FULL NAME AND SPELL YOUR LAST  
17 NAME FOR THE RECORD.

18 **MR. FOUTS:** DAVID CASEY FOUTS. F-O-U-T-S.

19 **DIRECT EXAMINATION OF DAVID CASEY FOUTS BY MS. HOGAN**

20 Q MISTER FOUTS, WHAT IS YOUR CURRENT OCCUPATION?

21 A I AM CURRENTLY A GRADUATE STUDENT AT ANDERSON UNIVERSITY AS  
22 WELL AS AN ASSISTANT BASEBALL COACH.

23 Q OKAY. AND WHERE WERE YOU EMPLOYED BEFORE BECOMING A FULL  
24 TIME STUDENT?

25 A ANDERSON POLICE DEPARTMENT.

## DIRECT EXAMINATION OF CASEY FOUTS BY MS. HOGAN

65

1 Q OKAY. AND HOW LONG DID YOU WORK WITH THE APD?

2 A I BEGAN AT THE ANDERSON POLICE DEPARTMENT IN MARCH OF 2006.  
3 SO, A LITTLE OVER THREE YEARS.

4 Q AND WHAT WAS YOUR POSITION WHILE YOU WERE WITH THE POLICE  
5 DEPARTMENT?

6 A I WAS A NARCOTICS INVESTIGATOR FOR NOT QUITE THREE YEARS.

7 Q OKAY. AND HOW LONG WERE YOU IN LAW ENFORCEMENT?

8 A I BEGAN IN THE SHERIFF'S OFFICE IN 2000.

9 Q OKAY. SO, FOR ABOUT THREE YEARS YOU WERE WITH THE NARCOTICS  
10 UNIT.

11 A UH-HUH.

12 Q WHAT DID YOUR DUTIES INCLUDE AS A NARCOTICS INVESTIGATOR?

13 A AS A NARCOTICS INVESTIGATOR WITH ANDERSON CITY, WE DID DRUG  
14 INVESTIGATIONS AND DIFFERENT CRIMINAL INVESTIGATIONS OF THAT  
15 SORT.

16 Q WERE YOU EMPLOYED WITH THE APD ON APRIL 10, 2007?

17 A YES. I WAS.

18 Q OKAY. AND WERE YOU INVOLVED IN AN ARREST AT THE CAROLINA INN  
19 HERE IN ANDERSON COUNTY?

20 A YES. I WAS.

21 Q AND THAT IS LOCATED WITHIN THE CITY OF ANDERSON?

22 A YES, MA'AM.

23 Q OKAY. CAN YOU DESCRIBE WHAT, IF ANYTHING, LED TO YOUR  
24 INVOLVEMENT THAT DAY?

25 A YES, MA'AM. MYSELF AND OTHER MEMBERS OF THE ANDERSON CITY

1 NARCOTICS UNIT WERE ACTUALLY IN THE AREA OF THE CAROLINA INN,  
2 WHICH IS AT 700 MURRAY AVENUE. WE WERE IN THE AREA OF THE  
3 CAROLINA INN THAT DAY FOR ANOTHER CRIMINAL INVESTIGATION THAT  
4 WE WERE DOING.

5 Q AND WHILE YOU WERE THERE WHAT HAPPENED NEXT?

6 A WHILE WE WERE THERE AT THE CAROLINA INN, WE OBSERVED A BLUE  
7 FOUR-DOOR CADILLAC PULL INTO THE UPPER PARKING LOT OF THE  
8 CAROLINA INN DRIVEN BY THE DEFENDANT.

9 Q OKAY. AND WHAT HAPPENED NEXT?

10 A AT THAT TIME, I OBSERVED THE DEFENDANT EXIT THE DRIVER'S SEAT  
11 OF THAT BLUE CADILLAC. WHEN HE EXITED THE VEHICLE HE WAS  
12 CARRYING A BLUE PLASTIC DRINKING CUP. AT THAT TIME, THE  
13 DEFENDANT TOOK A FEW STEPS FROM THE VEHICLE INTO THE  
14 PARKING LOT AND HE OBSERVED US, WHICH APPEARED TO BE POLICE  
15 OFFICERS, AND HE DISCARDED THAT CUP INTO THE PARKING LOT.

16 Q OKAY. AND WHAT DID YOU DO AFTER YOU SAW HIM DISCARD THE CUP?

17 A WE APPROACHED THE DEFENDANT AT THAT TIME. WHEN HE  
18 DISCARDED THAT BLUE CUP ON THE GROUND, THERE WAS AN  
19 APPARENT DRINK IN IT THAT HAD SPILLED ONTO THE GROUND. THE  
20 DRINK WAS KIND OF RED AND AS WE APPROACHED AND SPOKE TO THE  
21 DEFENDANT, YOU COULD SMELL THAT IT SMELLED OF ALCOHOL.

22 Q OKAY. SO YOU COULD SMELL THE ALCOHOL FROM THE CUP?

23 A YES, MA'AM.

24 Q OKAY. WHAT HAPPENED NEXT AFTER YOU SMELLED THE ALCOHOL?

25 A AT THAT TIME, AFTER SPEAKING WITH THE DEFENDANT AND

1 DETERMINING THAT THAT WAS AN OPEN CONTAINER OF ALCOHOL, HE  
2 WAS ARRESTED FOR THE OPEN CONTAINER OF ALCOHOL AT THAT  
3 TIME.

4 Q AND AFTER HE WAS PLACED UNDER ARREST WHERE DID YOU PUT HIM?

5 A HE WAS ARRESTED. WE WERE ON THE SCENE THERE,  
6 APPROXIMATELY, A FEW MINUTES. I WAS ACTUALLY SPEAKING WITH  
7 THE DEFENDANT AT THAT TIME AND ANOTHER UNIT ACTUALLY CAME  
8 AND TRANSPORTED THE DEFENDANT TO THE JAIL.

9 Q SO, AFTER HE WAS ARRESTED, HE WAS PLACED INTO A PATROL CAR?

10 A YES, MA'AM. A MARKED PATROL CAR.

11 Q AND DID YOU ACCOMPANY HIM TO THE DETENTION CENTER WHEN HE  
12 WAS TRANSPORTED?

13 A PATROLMAN HODGES ACTUALLY TRANSPORTED THE DEFENDANT IN  
14 THE MARKED PATROL CAR AND MYSELF AND INVESTIGATOR CLARDY  
15 FOLLOWED BEHIND THAT PATROL CAR TO THE DETENTION CENTER.

16 Q AND WHAT HAPPENED AFTER YOU REACHED THE DETENTION CENTER?

17 A WHEN WE ARRIVED AT THE DETENTION CENTER, WE WENT IN TO BEGIN  
18 THE BOOKING PROCESS OF THE DEFENDANT AND ON THE SCENE AS  
19 WE WERE TALKING TO THE DEFENDANT AS WELL AS AT THE JAIL, THE  
20 DEFENDANT WAS VERY NERVOUS, SWEATY, ERRATIC BREATHING,  
21 WHICH I BELIEVED, BASED ON MY EXPERIENCE AS A NARCOTICS  
22 OFFICER AND AS A POLICE OFFICER, THAT HE POSSIBLY HAD  
23 SOMETHING ELSE ON HIS PERSON. AT THAT TIME, HE WAS SEARCHED  
24 AND WHEN HE WAS SEARCHED, AT THAT TIME, WE DID FIND TWO  
25 PLASTIC BAGGIES OF THE WHITE, OFF-WHITE SUBSTANCE, THAT

1 TESTED FOR COCAINE BASE LATER.

2 Q OKAY. AND WHEN THE DEFENDANT WAS SEARCHED, WERE YOU THE  
3 ONE THAT ACTUALLY SEARCHED HIM OR WAS SOMEONE HELPING?

4 A I WAS THERE, BUT IT WAS ACTUALLY INVESTIGATOR CLARDY THAT  
5 ACTUALLY CONDUCTED THE SEARCH.

6 Q OKAY, SO OFFICER CLARDY WAS WITH YOU AND HE ACTUALLY  
7 CONDUCTED THE SEARCH.

8 A YES, MA'AM.

9 Q WHAT HAPPENED AFTER THE OFF-WHITE ROCK-LIKE SUBSTANCE WAS  
10 FOUND?

11 A AFTER IT WAS FOUND, AT THAT TIME OF COURSE, DETECTIVE CLARDY  
12 COLLECTED THAT EVIDENCE AND AT THAT TIME THE DEFENDANT,  
13 MYSELF AS THE OFFICER, HE WAS CHARGED WITH THAT PWID.

14 Q DID YOU HAVE ANY OTHER INVOLVEMENT RELATED TO THIS CASE?

15 A NO, MA'AM. I AM THE CASE OFFICER ON THIS PARTICULAR CASE.  
16 AFTER MAKING THE INITIAL ARREST OF THE OPEN CONTAINER OF THE  
17 DEFENDANT, I STOOD ON THE SCENE AND SPOKE WITH HIM JUST FOR A  
18 FEW MINUTES AND AFTER HE WAS TRANSPORTED, I WENT WITH  
19 INVESTIGATOR CLARDY TO THE DETENTION CENTER AND THAT WAS  
20 PRETTY MUCH THE EXTENT OF WHAT I DID.

21 MS. HOGAN: NOTHING FURTHER FROM THE STATE, YOUR HONOR.

22 THANK YOU.

23 THE COURT: THANK YOU. MISTER TAVERNIER?

24 MR. TAVERNIER: THANK YOU, YOUR HONOR. MAY IT PLEASE THE  
25 COURT.

**1 CROSS-EXAMINATION OF CASEY FOUTS BY MISTER TAVERNIER**

2 Q MISTER FOUTS, NORMAL PROCEDURE WHEN SOMEBODY HAS AN OPEN  
3 CONTAINERS IS, NORMALLY THEY ARE JUST GIVEN A BLUE COURTESY  
4 SUMMONS TICKET AND RELEASED. HE WASN'T CHARGED WITH DUI  
5 WAS HE?

6 A NO, SIR. HE WASN'T.

7 Q HIS DRIVER'S LICENSE WAS CLEAR?

8 A I DON'T RECALL, SIR, IF HIS DRIVERS LICENSE WAS CLEAR OR NOT.

9 Q AS THE ARRESTING OFFICER, WOULD IT HAVE BEEN YOUR  
10 RESPONSIBILITY TO CHECK HIS DRIVER'S LICENSE TO DETERMINE  
11 WHETHER HE HAD A VALID DRIVER'S LICENSE?

12 A YES, SIR. AND I MAY HAVE. I JUST DON'T REMEMBER.

13 Q OKAY. BUT IF HE WAS DRIVING UNDER SUSPENSION, OR WHATEVER,  
14 HE PROBABLY WOULD HAVE BEEN CHARGED WITH THAT ALSO.  
15 CORRECT?

16 A YES, SIR. PROBABLY SO.

17 Q DID YOU EVER ASK HIM WHETHER THE DRUGS HE HAD IN HIS  
18 POSSESSION WERE FOR HIS OWN PERSONAL USE OR WHETHER HE  
19 INTENDED TO DISTRIBUTE THOSE?

20 A NO, SIR. BASED ON HIS BEHAVIOR, I ASKED HIM IF HE HAD ANYTHING  
21 ON HIS PERSON THAT WOULD BE ILLEGAL AND HE TOLD ME THAT, NO,  
22 HE DIDN'T HAVE ANYTHING ON HIS PERSON AT ALL.

23 Q BUT THE ANSWER TO MY QUESTION IS, YOU NEVER ASKED HIM  
24 WHETHER IT WAS FOR HIS PERSONAL USE OR FOR WHETHER HE  
25 INTENDED TO DISTRIBUTE THEM. DID YOU?

- 1 A NO, SIR.
- 2 Q DID YOU, IN FACT, WRITE THE COURTESY SUMMONS?
- 3 A YES, SIR. I BELIEVE SO.
- 4 Q OKAY. DID YOU EXAMINE THE CUP?
- 5 A WE WERE ALL THERE ON THE SCENE. YES, SIR, I COULD SMELL IT, IT
- 6 SMELLED OF ALCOHOL, YES, SIR. I DIDN'T COLLECT THE CUP FROM THE
- 7 GROUND. NO, SIR.
- 8 Q YOU COULD SMELL ALCOHOL?
- 9 A YES, SIR.
- 10 Q ALCOHOL DOESN'T HAVE A SMELL. DID YOU DISCERN IT WAS AN
- 11 ALCOHOLIC BEVERAGE IN THE CUP?
- 12 A YES, SIR. IT WAS THE SMELL OF AN ALCOHOLIC BEVERAGE. YES, SIR.
- 13 Q THAT IS ALL I HAVE. THANK YOU.
- 14 THE COURT: RE-DIRECT?
- 15 MS. HOGAN: NOTHING FROM THE STATE, YOUR HONOR.
- 16 THE COURT: MAY MISTER FOUTS BE EXCUSED?
- 17 MS. HOGAN: YES, SIR.
- 18 MR. TAVERNIER: NO OBJECTION, YOUR HONOR.
- 19 THE COURT: THANK YOU. YOU MAY BE EXCUSED. YOU MAY CALL YOUR
- 20 NEXT WITNESS.
- 21 MS. HOGAN: YOUR HONOR, IF IT PLEASURES THE COURT, THE STATE
- 22 CALLS JOEL MCKEE.
- 23 (AFTER BEING DULY SWORN BY THE CLERK OF COURT, JOEL MCKEE
- 24 TESTIFIED AS FOLLOWS:)
- 25 CLERK OF COURT: GO UP AND HAVE A SEAT IN THE WITNESS CHAIR.

DIRECT EXAMINATION OF JOEL MCKEE BY MS. HOGAN

71

1           OFFICER MCKEE: THANK YOU.

2           CLERK OF COURT: IF YOU WILL STATE YOUR FULL NAME AND SPELL  
3 YOUR LAST NAME FOR THE RECORD, PLEASE.

4           OFFICER MCKEE: JOEL YATES MCKEE. M-C-K-E-E.

5           DIRECT EXAMINATION OF SERGEANT JOEL MCKEE BY MS. HOGAN

6           Q     SERGEANT, WHERE ARE YOU CURRENTLY EMPLOYED?

7           A     ANDERSON CITY POLICE DEPARTMENT.

8           Q     AND HOW LONG HAVE YOU WORKED WITH THE APD?

9           A     TEN YEARS AND NINE MONTHS.

10          Q     AND WHAT IS YOUR CURRENT POSITION?

11          A     I'M SERGEANT OF THE VICE AND NARCOTICS DIVISION.

12          Q     AND HOW LONG HAVE YOU WORKED IN THAT CAPACITY?

13          A     AS SERGEANT FOR THREE YEARS AND IN VICE AND NARCOTICS, SEVEN  
14 YEARS TOTAL.

15          Q     AND AS SERGEANT OF NARCOTICS, WHAT ARE YOUR DUTIES?

16          A     MY DUTIES INCLUDE, I ALSO CONTINUE TO MAKE DRUG AND VICE  
17 RELATED CASES ALONG WITH THE PERSONNEL THAT I SUPERVISE AND  
18 ALONG WITH THAT, I SUPERVISE PERSONNEL, MAKING SURE THEY  
19 MAKE THE SAME CASES. AND WE ALSO, AS A SUPERVISOR,  
20 COORDINATE EFFORTS WITH LOCAL AND STATE AND FEDERAL  
21 AUTHORITIES ON MULTIPLE CASES AT THE SAME TIME.

22          Q     WHAT KIND OF TRAINING HAVE YOU PARTICIPATED IN AS A NARCOTICS  
23 AGENT?

24          A     AS A NARCOTICS AGENT, I PARTICIPATED IN BASIC NARCOTICS AND  
25 VICE-RELATED FIELD COURSES AND ALSO ADVANCED, AND I HAVE

1 ALSO BEEN TO THE SUPERVISORY COURSES IN VICE AND NARCOTICS.

2 Q WERE YOU APPOINTED SERGEANT OF NARCOTICS IN APRIL OF 2007?

3 A YES. I WAS.

4 Q AND MORE SPECIFICALLY, ON APRIL 10TH OF 2007?

5 A YES, MA'AM.

6 Q WERE YOU INVOLVED IN THE ARREST AT THE CAROLINA INN HERE IN  
7 ANDERSON COUNTY WITHIN THE CITY OF ANDERSON?

8 A THAT IS CORRECT ALSO.

9 Q OKAY. CAN YOU TELL ME WHAT, IF ANY, YOUR INVOLVEMENT WAS ON  
10 THAT DATE?

11 A I ASSISTED INVESTIGATOR FOUTS, WHO WAS THE CASE AGENT ON  
12 THIS CASE. WE WERE HAVING ABOUT A TWO WEEK PERIOD OF  
13 SATURATION OF LOCATIONS WHERE THE OFFENSE OCCURRED. WE  
14 WERE RECEIVING MULTIPLE COMPLAINTS OF DRUG ACTIVITY IN THE  
15 AREA. SO, WE HAD BEEN THERE FOR A PERIOD OF TIME MAKING  
16 MULTIPLE CASES AND I WAS ALSO PRESENT WHEN THIS CASE, WITH  
17 INVESTIGATOR FOUTS, TOOK PLACE WITH THE DEFENDANT.

18 Q SO, WERE YOU PRESENT WHEN THE DEFENDANT DROVE UP?

19 A THAT'S CORRECT. AND HE WAS OPERATING A, NOT A LATE MODEL, BUT  
20 I GUESS A 80'S TO EARLY 90'S MODEL, LIGHT BLUE CADILLAC.

21 Q OKAY. AND WERE YOU PRESENT WHEN THE DEFENDANT WAS  
22 ARRESTED FOR OPEN CONTAINER?

23 A YES, MA'AM.

24 Q OKAY. WHAT HAPPENED AFTER -- WHAT WAS YOUR INVOLVEMENT  
25 AFTER MISTER MATTISON WAS ARRESTED FOR OPEN CONTAINER?

- 1 A AFTER HE WAS ARRESTED, WE DO WHAT WE CALL AN IMPOUND OF THE  
2 VEHICLE OF THE ARRESTED PERSON THAT OPERATED THE VEHICLE.  
3 SO, WE NOTIFIED OUR CITY IMPOUND LOT AND THEY SENT OUT A  
4 WRECKER. SO, WE TOOK A BRIEF INVENTORY OF THE VEHICLE.  
5 DURING THE COURSE OF THAT INVENTORY, I OPENED THE TRUNK OF  
6 THE VEHICLE AND WHEN I OPENED THE TRUNK, I OBSERVED A SET OF  
7 DIGITAL SCALES SITTING IN THE TRUNK. I DIDN'T HAVE TO ALTER  
8 ANYTHING TO GET TO THEM. THEY WERE JUST LAYING THERE. AND  
9 ALSO, I LOCATED ON THE RIGHT HAND COMPARTMENT OF THE TRUNK,  
10 A BOTTLE OF COLD DUCK WINE.
- 11 Q I AM GOING TO BACK UP A SECOND. BECAUSE YOU PLACED HIM UNDER  
12 ARREST FOR OPEN CONTAINER, YOU HAVE TO INVENTORY THE CAR  
13 BECAUSE IT IS GOING TO BE TOWED?
- 14 A WE TOW IT TO CITY IMPOUND. THAT'S CORRECT.
- 15 Q BECAUSE YOU ARE HAVING IT TOWED, THEN YOU INVENTORY THE CAR  
16 TO BE ABLE TO WRITE DOWN EVERYTHING THAT WAS IN IT?
- 17 A CORRECT. AND ALSO TO MAKE SURE THAT WE HAVEN'T LOCATED OR  
18 MISSED ANYTHING OF VALUE OR ANYTHING THAT COULD BE REMOVED  
19 FROM THE VEHICLE.
- 20 Q OKAY. AND IS THAT PART OF YOUR PROTOCOL OF THE ANDERSON  
21 CITY POLICE DEPARTMENT?
- 22 A YES, MA'AM.
- 23 Q AND THEN EXPLAIN TO ME AGAIN WHAT YOU FOUND IN THE TRUNK, AS  
24 YOU OPENED THE TRUNK.
- 25 A UPON OPENING THE TRUNK OF THE CADILLAC, I LOCATED A SET OF

1           DIGITAL SCALES AND A BOTTLE OF COLD DUCK WINE. AT THAT POINT  
2           IN TIME, I HAD SERGEANT CLARDY, WHO WAS OUR EVIDENCE  
3           COLLECTION PERSON AT THAT POINT IN TIME, DESIGNATED BEFORE  
4           THAT TO COME OVER AND TAKE PHOTOS OF THAT AND ALSO COLLECT  
5           IT AND PLACE IT INTO EVIDENCE,

6    Q    ALL RIGHT. CAN YOU EXPLAIN TO US WHAT A DIGITAL SCALE IS?

7    A    DIGITAL SCALES ARE AN INSTRUMENT USED TO COMMONLY BE  
8           ASSOCIATED WITH WEIGHING DRUGS TO GET THEIR PROPER WEIGHT  
9           FOR WHEN YOU ARE GOING TO SELL DRUGS. YOU ARE GOING TO HAVE  
10          TO HAVE A WAY TO WEIGH AND MEASURE THEM BY AND THAT IS WHAT  
11          YOU USE THE DIGITAL SCALES FOR.

12   Q    AND THE COLD DUCK WINE. CAN YOU DESCRIBE WHAT THAT LOOKED  
13          LIKE?

14   A    I WAS ALSO PRESENT WHEN THE DEFENDANT DISCARDED THE PLASTIC  
15          CUP AND IN THE CUP YOU COULD SEE, WHEN OFFICER CLARDY PICKED  
16          IT UP, YOU COULD SEE THE COLORATION OF WHAT WAS IN THE CUP.  
17          YOU COULD SMELL THAT IT WASN'T WATER. IT SMELLED OF  
18          SOMETHING WITH ALCOHOL IN IT AND THAT'S WHAT WAS ALSO  
19          LOCATED IN THE BOTTLE IN THE TRUNK OF THE COLD DUCK.

20   Q    WHAT COLOR OF ALCOHOL DID IT LOOK LIKE IN THE BOTTLE?

21   A    SOME PEOPLE WOULD CALL IT BURGUNDY OR MAROON OR RED IN  
22          COLOR.

23   Q    AND THAT WAS THE SAME COLOR AS IN THE BOTTOM OF THE CUP?

24   A    CORRECT.

25   Q    WHAT HAPPENED AFTER YOU FINISHED THE INVENTORY OF THE CAR?

1 A AFTER THE INVENTORY, OFFICER CLARDY AND FOUTS LEFT THE SCENE  
2 TO GO TO THE CITY DETENTION WHERE THEY WERE GOING TO DO THE  
3 PROCESSING. MYSELF AND CAPTAIN MARSEE AND TWO OTHER  
4 INVESTIGATORS WHO WERE PRESENT WITH US AT THE TIME, WE  
5 ALWAYS STAND BY WHILE THE CITY VEHICLE, THE WRECKER, WHO  
6 WAS IMPOUNDING THE CAR, WE ALWAYS STAND BY TO HELP WHILE  
7 THEY LOAD IT AND ASSIST BECAUSE IT IS A HIGH CRIME AREA AND WE  
8 DON'T WANT SOMETHING TO HAPPEN TO OUR CITY WRECKER DRIVER,  
9 SO WE WERE STILL ON THE SCENE AND AS WE WERE ON SCENE  
10 SERGEANT CLARDY CALLED ME BACK AND ADVISED ME AND CAPTAIN  
11 MARSEE THAT THEY HAD LOCATED CRACK ON THE DEFENDANT.

12 Q BASED ON YOUR PRIOR TRAINING AND EXPERIENCE AS A SERGEANT IN  
13 NARCOTICS, WHAT DID YOUR FINDINGS IN THE TRUNK OF THE CAR  
14 INDICATE TO YOU, WITH THE KNOWLEDGE THAT YOU RECEIVED FROM  
15 SERGEANT CLARDY?

16 A THROUGH MY TRAINING AND EXPERIENCE, THERE'S NO REASON TO  
17 HAVE THAT AMOUNT OF CRACK AND A SET OF DIGITAL SCALES IF YOU  
18 DON'T HAVE ANY OTHER INTENTION BUT TO DISTRIBUTE IT. THAT'S  
19 BEEN EVERYTHING THAT I HAVE RECEIVED IN TRAINING THROUGH THE  
20 LAST SEVEN YEARS AND ALSO IN ALL THE CASES I HAVE WORKED. IT  
21 JUST GOES HAND AND HAND. YOU DON'T HAVE ONE, NORMALLY,  
22 WITHOUT THE OTHER UNLESS YOU ARE GOING AHEAD AND WEIGHING  
23 IT UP AHEAD OF TIME.

24 Q SERGEANT MCKEE, I AM GOING TO SHOW YOU WHAT HAS BEEN  
25 MARKED AS STATE'S EXHIBIT #3. I KNOW YOU DIDN'T COLLECT THIS,

1 BUT DOES THIS APPEAR TO BE WHAT YOU SAW IN THE TRUNK OF THE  
2 CAR THAT DAY?

3 A YES, MA'AM.

4 Q AND HOW CAN YOU TELL?

5 A BECAUSE IT'S THE FIRST TIME I HAD SEEN COLD DUCK WINE AND IT  
6 LOOKS IDENTICAL TO WHAT WAS ACTUALLY LOCATED WHEN  
7 SERGEANT CLARDY COLLECTED IT.

8 Q IS THERE ANY OTHER IDENTIFICATION ON THAT THAT WOULD LET YOU  
9 KNOW THAT THAT PARTICULAR BOTTLE WENT WITH THIS CASE? AS  
10 FAR AS THE PACKAGING?

11 A THE PACKAGING OF THE EVIDENCE BAG OR THE PACKAGING OF --

12 Q THE PACKAGING OF THE EVIDENCE BAG.

13 A THIS IS SERGEANT CLARDY'S HANDWRITING AND IT IS ALSO THE BAG  
14 THAT HE PLACED IT IN ON THE SCENE WHEN WE WERE ON LOCATION.

15 Q THANK YOU. SERGEANT MCKEE, THE SAME THING WITH THIS. DO YOU  
16 RECOGNIZE THAT PIECE OF EVIDENCE?

17 A IT APPEARS TO BE THE SAME CUP THAT WAS COLLECTED THE SAME  
18 NIGHT.

19 Q AND HOW DO YOU KNOW THAT?

20 A BECAUSE THAT WAS THE CUP WE WATCHED HIM DISCARD FROM HIS  
21 HAND ON OUR APPROACH AND I WATCHED SERGEANT CLARDY BAG IT  
22 UP.

23 Q OKAY. AND SO THERE IS ALSO IDENTIFICATION ON THE BAG?

24 A YES, MA'AM. THAT IS CORRECT, ALSO.

25 THE COURT: WHAT IS THE IDENTIFICATION NUMBER ON THAT?

CROSS EXAMINATION OF JOEL MCKEE BY MR. TAVERNIER

77

1 Q THAT WAS STATE'S EXHIBIT #2. THANK YOU, YOUR HONOR.

2 COURT REPORTER: #4.

3 MS. HOGAN: OR #4. NOTHING FURTHER FROM THE STATE,

4 YOUR HONOR.

5 THE COURT: MISTER TAVERNIER?

6 MR. TAVERNIER: THANK YOU, YOUR HONOR. MAY IT PLEASE THE

7 COURT.

8 **CROSS-EXAMINATION OF SERGEANT JOEL MCKEE BY MISTER TAVERNIER**

9 Q SERGEANT MCKEE, WHEN YOU'RE SET UP FOR OBSERVING CRIMINAL  
10 ACTIVITY AND THE LIKE, THE DEPARTMENT HAS THE ABILITY TO SET UP  
11 SURVEILLANCE EQUIPMENT. DO THEY NOT?

12 A ON VARIOUS CASES, WE DO.

13 Q OKAY. AND SINCE THIS IS A HEAVY CRIMINAL ACTIVITY AREA AND YOU  
14 DIDN'T KNOW WHAT YOU WERE GOING TO RUN INTO, WOULDN'T IT  
15 HAVE BEEN PRUDENT TO SET UP SURVEILLANCE ACTIVITY SO THAT  
16 THE THINGS THAT OCCURRED THAT EVENING OR ANY OTHER TIME  
17 WOULD HAVE BEEN RECORDED SO THAT PEOPLE COULD SEE THEM?

18 A WE DO IT ON CASE BY CASE, SIR. WE WERE THERE AS A SATURATION  
19 FOR A TWO-WEEK PERIOD, SO WE WERE JUST DOING MULTIPLE  
20 OPERATIONS. SO, IT WASN'T DETERMINED, AT THAT TIME DURING THAT  
21 OPERATION FOR THAT TWO WEEKS, THAT WE NEEDED ANY OF THE  
22 SURVEILLANCE OR WHAT YOU ARE REFERRING TO.

23 Q BUT IT WOULD HAVE BEEN BENEFICIAL IF SURVEILLANCE HAD BEEN  
24 SET UP ON THE PARKING LOT FOR THE CAROLINA INN WHERE A LOT OF  
25 YOUR ALLEGED CRIMINAL ACTIVITY TOOK PLACE. CORRECT?

- 1 A YES, SIR. IT WOULD HAVE. IF WE HAD THAT CAPABILITY, IT SURE  
2 WOULD.
- 3 Q WHEN MISTER MATTISON WAS APPROACHED, HE JUST DIDN'T SPILL  
4 OUT THE CUP. HE ACTUALLY DROPPED IT WHEN HE WAS TOLD TO  
5 RAISE HIS HANDS, PLACE HIS HANDS ON HIS HEAD. WASN'T HE?
- 6 A TO THE BEST OF MY RECOLLECTION.
- 7 Q SO, AS SOON AS HE GOT OUT OF THE CAR AND HE HAD THE CUP, HE  
8 DIDN'T JUST POUR IT OUT. HE WAS TOLD, "PUT YOUR HANDS ON YOUR  
9 HEAD," AND HE DROPPED THE CUP. CORRECT?
- 10 A MISTER TAVERNIER, TO THE BEST OF MY RECOLLECTION, WHEN WE  
11 APPROACHED HIM HE WAS HOLDING THE CUP IN HIS HAND AND I CAN'T  
12 BE SPECIFIC WHO, BUT SOMEONE SAID, "POLICE OFFICER, WE NEED TO  
13 TALK TO YOU," AND THEN THAT IS WHEN HE LET GO OF THE CUP.
- 14 Q BUT HE WAS TOLD TO PUT HIS HANDS ON HIS HEAD?
- 15 A AFTER HE LET GO OF THE CUP. THAT IS CORRECT. OR, "LET ME SEE  
16 YOUR HANDS," IS, I BELIEVE, WHAT THEY ASKED.
- 17 Q SERGEANT MCKEE, WHEN YOU LOCATED THE SCALES IN THE TRUNK OF  
18 THE VEHICLE.
- 19 A YES, SIR.
- 20 Q OKAY. THEY WERE TAKEN INTO CUSTODY OR SEIZED BY ANOTHER  
21 OFFICER. CORRECT?
- 22 A THAT'S CORRECT.
- 23 Q OKAY. BUT YOU ARE AWARE THAT THEY WERE TESTED FOR  
24 FINGERPRINTS, ARE YOU NOT?
- 25 A NOT AWARE.

- 1 Q THEY WEREN'T HELD FOR FINGERPRINTS?
- 2 A I -- ONCE THAT PROCESS OF COLLECTIONS, THEN THAT GOES WITH  
3 THE PERSON WHO TAKES IT AND TURNS IT INTO EVIDENCE FOR WHAT  
4 REQUESTS THEY MAKE. I HAVE BEEN MADE AWARE THIS MORNING  
5 THAT Y'ALL SAID THAT Y'ALL HAD THINGS TESTED FOR PRINTS, BUT I  
6 WASN'T AWARE THAT NIGHT THAT THEY WERE BEING TESTED FOR  
7 PRINTS.
- 8 Q ALL RIGHT. THAT Y'ALL -- WE DIDN'T -- I DIDN'T -- I WASN'T.
- 9 A NO. I MEAN, THE CITY OF ANDERSON POLICE DEPARTMENT. THAT IS  
10 CORRECT.
- 11 Q YOUR DEPARTMENT HAD THAT ITEM TESTED FOR FINGERPRINTS.  
12 CORRECT?
- 13 A TO THE BEST OF MY KNOWLEDGE, RIGHT NOW. YES.
- 14 Q AND THERE WERE NO FINGERPRINTS OF THE DEFENDANT ON THOSE  
15 SCALES. WERE THERE?
- 16 A THAT WOULD BE BETWEEN WHOEVER TESTED IT. I AM NOT AWARE OF  
17 THAT PART, EXCEPT FOR TODAY BEING AWARE THAT Y'ALL MADE  
18 FINDINGS THEY WERE TESTED AND SOMEONE TESTED IT.
- 19 Q AS WE STAND HERE TODAY, THE DEFENDANT'S FINGERPRINTS ARE  
20 NOT ON THESE SCALES.
- 21 A IF THAT'S WHAT YOU ARE TELLING ME, THEN THAT'S WHAT I WILL HAVE  
22 TO AGREE TO.
- 23 Q DO YOU HAVE ANY EVIDENCE OR ARE YOU AWARE OF ANY OFFICER  
24 WITH THE DEPARTMENT, OR FORMERLY WITH THE DEPARTMENT, THAT  
25 THEY HAVE ANY EVIDENCE THAT THE DEFENDANT'S FINGERPRINTS ARE

- 1 ON THESE SCALES?
- 2 A NOT TO MY RECOLLECTION OR AWARENESS.
- 3 Q OKAY. JUST BECAUSE IT SAYS HERE IT WAS FOUND IN THE TRUNK OF
- 4 THE CAR, IT IS NOT INDICATIVE THAT HE IS, IN FACT, A DEALER OR
- 5 INTENDS TO DISTRIBUTE THOSE DRUGS. CORRECT?
- 6 A NOT BY THEMSELVES. NO.
- 7 Q OKAY. BASED ON YOUR TRAINING, YOUR SEVEN YEARS, WEIGHT OF
- 8 DRUGS DOES NOT SPECIFICALLY INDICATE WHETHER AN INDIVIDUAL
- 9 INTENDS TO KEEP DRUGS FOR HIMSELF OR TO SELL. CORRECT?
- 10 A BASED ON MY TRAINING?
- 11 Q YES, SIR.
- 12 A BASED ON MY TRAINING, I HAVE NEVER DEALT WITH SOMEONE THAT
- 13 WAS A USER THAT HAD THAT MUCH WEIGHT ON THEM, BASED ON MY
- 14 TRAINING.
- 15 Q IN YOUR ENTIRE CAREER, YOU HAVE NEVER HAD ANYBODY THAT WAS
- 16 ARRESTED THAT WAS A USER THAT --
- 17 A JUST A MERE USER ALONE? NO, SIR. MOST OF MY USERS HAVE A
- 18 GRAM OR LESS, BASED ON MY TRAINING AND EXPERIENCE, A GRAM OR
- 19 LESS --
- 20 Q MOST OF YOUR USERS ARE NOT EMPLOYED. ARE THEY?
- 21 A MOST OF THE PEOPLE THAT I DEAL WITH ARE UNEMPLOYED.
- 22 Q OKAY. MISTER MATTISON WORKED AT E.T.'S GROCERY. DIDN'T HE? HE
- 23 HAD A FULL TIME JOB.
- 24 A IF YOU SAY SO. I DON'T KNOW ANYTHING ABOUT HIS EMPLOYMENT.
- 25 Q ON THE BOOKING SHEET, I AM GOING TO SHOW YOU A DOCUMENT

1 ENTITLED, "POLICE CENTRAL, ANDERSON POLICE DEPARTMENT." ARE  
2 YOU FAMILIAR WITH THAT DOCUMENT?

3 A YES. I AM.

4 Q OKAY. AND THIS IS WHAT IS COMMONLY REFERRED TO AS A BOOKING  
5 SHEET. CORRECT?

6 A CORRECT.

7 Q OKAY?

8 A OKAY.

9 Q AND DOES IT STATE HIS EMPLOYMENT?

10 A YES. IT DOES.

11 Q AND E.T.'S GROCERY?

12 A YES, SIR.

13 Q IS THAT WHAT IT STATES?

14 A YES, SIR.

15 Q SO, IT'S POSSIBLE FOR SOMEONE WHO IS GAINFULLY EMPLOYED TO  
16 HAVE THIS AMOUNT OF DRUGS ON HIM AND INTEND TO USE THOSE FOR  
17 HIS PERSONAL USE. CORRECT?

18 A YOU ARE ASKING ME IF IT'S POSSIBLE OR PROBABLE?

19 Q HE COULD AFFORD IT. HE WORKED. HE COULD AFFORD IT.

20 A I DON'T KNOW HIS MEANS OF INCOME EXCEPT FOR WHAT HE HAS PUT  
21 ON HIS RECORD, BUT WE HAVE ALSO, MISTER TAVERNIER, HAD PEOPLE  
22 PUT ON THEIR RECORD THEY WERE EMPLOYED AND THEY NEVER HAVE  
23 BEEN EMPLOYED.

24 Q ALL RIGHT. BUT THE VALUE OF THESE DRUGS, BASED ON THE REPORT,  
25 IS \$620.00, CORRECT?

- 1 A BASIC STREET VALUE COMES AND GOES, BUT THAT IS ABOUT THE  
2 THEORY OF AVERAGE.
- 3 Q OKAY. THAT'S WHAT IS ON -- THAT'S WHAT IS IN YOUR REPORT.  
4 \$620.00.
- 5 A AT THE TIME OF THE ARREST, THAT WOULD BE ABOUT RIGHT.
- 6 Q SO, IF HE HAD JUST PURCHASED THESE DRUGS. NOT EVERYBODY  
7 WHO -- AND IF YOU WANTED TO MAKE THE ARGUMENT THAT THE  
8 SCALES ARE HIS, IT'S NOT UNCOMMON FOR PEOPLE WHO PURCHASE  
9 DRUGS TO HAVE SCALES. IS IT?
- 10 A FOR PEOPLE WHO PURCHASE THEM TO HAVE SCALES?
- 11 Q TO BE ABLE TO VERIFY THAT THEY ARE BUYING WHAT THEY ARE  
12 BUYING?
- 13 A TO VERIFY WHAT THEY'RE BUYING. THAT'S CORRECT.
- 14 Q AND THAT GOES FOR WHETHER HE'S SELLING OR FOR HIS OWN  
15 PERSONAL USE. RIGHT, SERGEANT?
- 16 A ASK ME THE QUESTION AGAIN?
- 17 Q AND THAT WOULD PERTAIN -- THAT WOULD GO FOR WHETHER HE'S  
18 BUYING IT FOR HIS OWN PERSONAL USE OR BUYING IT TO SELL?
- 19 A WHAT WOULD PERTAIN?
- 20 Q HAVING HIS OWN PERSONAL SET OF SCALES.
- 21 A I GUESS THAT COULD BE CORRECT.
- 22 Q SO, BASED ON YOUR TRAINING THEN, THERE IS A MORE LIKELIHOOD  
23 THAN NOT, THAT IT MIGHT HAVE BEEN POSSESSION WITH INTENT TO  
24 DISTRIBUTE, BUT THAT'S NOT ABSOLUTELY THE WAY IT IS. THERE  
25 COULD BE A POSSIBILITY, THERE COULD BE THE EXCEPTION.

RE-DIRECT EXAMINATION OF JOEL MCKEE BY MS. HOGAN

83

1 CORRECT?

2 A THERE IS ALWAYS AN EXCEPTION.

3 Q THANK YOU.

4 MR. TAVERNIER: THAT'S ALL I HAVE.

5 MS. HOGAN: YOUR HONOR, IF IT PLEASES THE COURT.

6 **RE-DIRECT EXAMINATION OF SERGEANT JOEL MCKEE BY MS. HOGAN**

7 Q SERGEANT MCKEE, YOU SAID THAT IT IS POSSIBLE, BUT IS IT  
8 PROBABLE?

9 A NOT PROBABLE. POSSIBLE, BUT NOT PROBABLE. MOST PEOPLE WHO  
10 HAVE THAT KIND OF EMPLOYMENT CAN'T AFFORD THAT KIND OF  
11 WEIGHT WITHOUT THE MEANS OF BUYING AND SELLING. I COULDN'T  
12 AFFORD THAT KIND OF WEIGHT AND I HAVE BEEN EMPLOYED FOR  
13 ALMOST ELEVEN YEARS. SO, IT'S MORE PROBABLE THAN POSSIBLE.

14 Q THAT IS BASED ON YOUR TRAINING AND EXPERIENCE?

15 A BASED ON MY TRAINING AND EXPERIENCE, NO ONE WOULD HAVE THAT  
16 WEIGHT UNLESS THEY INTENDED TO DISTRIBUTE IT.

17 Q THANK YOU. I HAVE NOTHING FURTHER.

18 MR. TAVERNIER: I WOULD LIKE TO FOLLOW-UP, YOUR HONOR. I AM  
19 SORRY.

20 **RE-CROSS OF SERGEANT MCKEE BY MISTER TAVERNIER**

21 Q SERGEANT MCKEE, YOU SAID THAT YOU COULDN'T AFFORD THE  
22 DRUGS, BUT AN INDIVIDUAL WHO HAS A PRIORITY OR AN ADDICTION TO  
23 THE DRUGS AT THAT PARTICULAR TIME, HIS PRIORITIES ARE  
24 DIFFERENT. HE DOESN'T NECESSARILY PAY HIS INSURANCE. HE  
25 DOESN'T NECESSARILY WANT TO BUY HIS FOOD. HE DOESN'T HAVE

1           THOSE KINDS OF EXPENSES THAT HAVE PRIORITIES. SO, IF HE NEEDS  
2           THE DRUGS AND WANTS TO HAVE THEM, THEN HE IS GOING TO MAKE  
3           SURE HE CAN AFFORD THEM. CORRECT?

4    A       ASK ME THAT -- BECAUSE YOU WENT THROUGH A LONG SPIEL, SO I  
5           WANT TO MAKE SURE I UNDERSTAND WHAT YOU WANT.

6    Q       YOU SAID YOU COULDN'T NECESSARILY AFFORD THOSE KINDS OF  
7           DRUGS, AND THAT IS WORKING FOR THE POLICE DEPARTMENT?

8    A       THAT IS CORRECT.

9    Q       ALL RIGHT. BUT YOU HAVE DIFFERENT PRIORITIES THAN SOMEBODY  
10          WHO USES DRUGS. CORRECT?

11   A       CORRECT.

12   Q       YOU ARE GOING TO MAKE SURE THAT YOU PAY YOUR LIGHT BILL, YOU  
13          ARE GOING TO MAKE SURE YOU PAY CAR PAYMENT. ALL THAT.  
14          CORRECT?

15   A       CORRECT. BASED ON MY EXPERIENCE --

16   Q       ALL RIGHT. THESE THINGS BECOME MOST IMPORTANT TO A USER.

17   A       BASED ON MY EXPERIENCE, MOST PEOPLE ARE NOT GAINFULLY  
18          EMPLOYED NOR CAN THEY MAINTAIN GAINFUL EMPLOYMENT IF THEY  
19          ARE A USER.

20   Q       OKAY. BUT THE FACT THAT HE IS EMPLOYED AND HAS HAD A JOB, THAT  
21          IS AN EXCEPTION. CORRECT?

22   A       IT IS EITHER AN EXCEPTION OR A FRONT.

23   Q       YOUR OPINION.

24           **MR. TAVERNIER:** NOTHING FURTHER, YOUR HONOR.

25           **MS. HOGAN:** NOTHING FURTHER FROM THE STATE, YOUR HONOR.

DIRECT EXAMINATION OF MIKE CLARDY BY MS. HOGAN

85

1 THE COURT: MAY THIS WITNESS BE EXCUSED?

2 MS. HOGAN: NO OBJECTION, YOUR HONOR.

3 MR. TAVERNIER: NO OBJECTION.

4 MS. HOGAN: IF IT PLEASURES THE COURT, THE STATE CALLS SERGEANT  
5 MIKE CLARDY TO THE STAND.

6 (AFTER BEING DULY SWORN BY THE CLERK OF COURT, SERGEANT MIKE  
7 CLARDY TESTIFIED AS FOLLOWS:)

8 CLERK OF COURT: YOU MAY HAVE A SEAT IN THE WITNESS CHAIR.  
9 WOULD YOU PLEASE STATE YOUR FULL NAME AND SPELL YOUR LAST NAME  
10 FOR THE RECORD.

11 SERGEANT CLARDY: MICHAEL DENDY CLARDY. C-L-A-R-D-Y.

12 DIRECT EXAMINATION OF SERGEANT MIKE CLARDY BY MS. HOGAN

13 Q SERGEANT CLARDY, WHERE ARE YOU CURRENTLY EMPLOYED?

14 A AT THE ANDERSON POLICE DEPARTMENT.

15 Q AND HOW LONG HAVE YOU WORKED WITH THE APD?

16 A I HAVE BEEN THERE SINCE 2003.

17 Q SO, ABOUT SIX OR SEVEN YEARS?

18 A YES, MA'AM.

19 Q WHAT IS YOUR CURRENT POSITION?

20 A FOR THE PAST SEVEN OR EIGHT WEEKS, I'VE TRANSFERRED TO THE  
21 PATROL SHIFT AS PATROL SERGEANT ON NIGHTS.

22 Q AND WHAT WAS YOUR POSITION BEFORE YOU BECAME THE PATROL  
23 SHIFT SUPERVISOR?

24 A FOR MOST OF MY CAREER, I'VE WORKED IN THE SPECIAL OPERATIONS  
25 IN THE VICE NARCOTICS DIVISION, SPECIALIZING IN NARCOTICS AND

- 1           GANG ACTIVITY.
- 2    Q    AND WHAT WAS YOUR TITLE MOST RECENTLY BEFORE YOU
- 3           TRANSFERRED TO THE SHIFT SUPERVISOR?
- 4    A    I WAS THE SERGEANT ASSIGNED TO THE FBI'S VIOLENT GANG TASK
- 5           FORCE.
- 6    Q    AS A NARCOTICS INVESTIGATOR, WHAT DID YOUR DUTIES INCLUDE?
- 7    A    THE INVESTIGATION OF CRIMINAL ACTIVITY SURROUNDING VICE,
- 8           NARCOTICS, AND ILLEGAL FIREARMS WITHIN THE CITY AND COUNTY
- 9           AND WITHIN THE UNITED STATES WITH THE FBI.
- 10   Q    WHAT KIND OF TRAINING DID YOU PARTICIPATE IN AS A NARCOTICS
- 11          OFFICER?
- 12   A    I HAVE HAD NUMEROUS EXPERIENCE AND TRAINING IN THE DETECTION
- 13          OF ILLEGAL NARCOTICS IN VEHICLES, STASH HOUSES, THE
- 14          IDENTIFICATION OF ILLEGAL NARCOTICS, AS WELL AS OTHER
- 15          CONTRABAND.
- 16   Q    AND WERE YOU EMPLOYED AS A NARCOTICS OFFICER ON
- 17          APRIL 10, 2007?
- 18   A    YES, MA'AM. I WAS.
- 19   Q    AND WERE YOU INVOLVED IN THE ARREST AT THE CAROLINA INN HERE
- 20          IN ANDERSON COUNTY AND MORE SPECIFICALLY IN THE CITY OF
- 21          ANDERSON?
- 22   A    YES, MA'AM. I WAS THE COLLECTION AGENT.
- 23   Q    OKAY.
- 24   A    CAN YOU DESCRIBE, AS COLLECTION AGENT, WHAT YOUR
- 25          INVOLVEMENT WAS ON THAT DAY?

## DIRECT EXAMINATION OF MIKE CLARDY BY MS. HOGAN

87

1 A UPON THE ARREST OF A SUSPECT OR THE LOCATION OF EVIDENCE, IT  
2 IS THE AGENT'S RESPONSIBILITY TO DOCUMENT AND COLLECT ALL THE  
3 EVIDENCE AND PRESERVE IT, MAINTAIN THE CHAIN OF CUSTODY, AND  
4 BE THE EVIDENCE CUSTODIAN, AND TO DOCUMENT THESE RECORDS.

5 Q OKAY. SO WERE YOU PRESENT WHEN MISTER MATTISON WAS  
6 ARRESTED FOR OPEN CONTAINER?

7 A YES, MA'AM. I WAS.

8 Q OKAY. AND AFTER HE WAS ARRESTED, WHAT WAS YOUR  
9 INVOLVEMENT THAT AFTERNOON?

10 A I COLLECTED THE EVIDENCE FROM THE VEHICLE THE DEFENDANT  
11 DROVE UP IN, AS WELL AS ON THE SCENE, AND AT THE DIRECTION OF  
12 CAPTAIN KEVIN MARSEE, I FOLLOWED THE DEFENDANT, WHO WAS IN A  
13 MARKED VEHICLE, ALONG WITH OFFICER FOUTS BACK TO THE  
14 ANDERSON POLICE DEPARTMENT WHERE I CONDUCTED A SEARCH OF  
15 HIS PERSON.

16 Q OKAY. I'M GOING TO BACK UP A SECOND TO WHEN YOU WERE  
17 COLLECTING EVIDENCE. WAS THERE A PROTOCOL THAT YOU WERE  
18 SUPPOSED TO FOLLOW WHILE YOU WERE COLLECTING EVIDENCE  
19 FROM A CRIME SCENE?

20 A YES, MA'AM. WE MAKE EVERY ATTEMPT TO PHOTOGRAPH WHERE  
21 EVIDENCE IS LOCATED, WE DOCUMENT THE CHAIN OF CUSTODY, WHAT  
22 WAS COLLECTED WITH SPECIFICS AS TO WHERE, WHEN, AND HOW  
23 MUCH, AND THEN WE MAINTAIN THAT AND TURN IT IN WITH THE  
24 EVIDENCE TO THE EVIDENCE CUSTODIAN.

25 Q AND YOU FOLLOWED PROTOCOL THAT DAY WHEN YOU WERE

1 COLLECTING EVIDENCE FROM THIS CRIME SCENE?

2 A YES, MA'AM. I DID.

3 Q AND THEN YOU DOCUMENTED THEM -- OR WHAT IS THAT SHEET  
4 CALLED THAT YOU REFERRED TO THAT YOU DOCUMENTED?

5 A THIS IS A RECEIPT FOR PROPERTY FROM THE ANDERSON POLICE  
6 DEPARTMENT.

7 Q AND AFTER YOU COLLECTED THE EVIDENCE, WHAT DID YOU DO WITH IT  
8 AT THAT POINT?

9 A IT WAS -- A COPY OF THE ORIGINAL AND ALL THE NOTES OF WHAT I  
10 COLLECTED AS WELL AS THE EVIDENCE WAS DROPPED TO MIKE  
11 BASKIN, WHO, AT THE TIME, WAS OUR EVIDENCE CUSTODIAN.

12 Q OKAY.

13 A NOW, THE ILLEGAL NARCOTICS WHICH CAME UP LATER, THAT WAS  
14 PLACED INTO A BEST KIT WHICH IS A KIT FROM SLED, THE STATE LAW  
15 ENFORCEMENT DIVISION. THAT NUMBER WAS B(BRAVO)186867. THAT  
16 IS A SEPARATE KIT THAT IS SEALED AND IT IS TAMPER-PROOF AND  
17 THAT WAS ALSO DELIVERED TO SERGEANT BASKIN.

18 Q OKAY. I AM GOING TO BACK UP TO THE EVIDENCE YOU COLLECTED AT  
19 THE SCENE. DO YOU RECOGNIZE THIS ITEM THAT HAS BEEN MARKED  
20 AS STATE'S EXHIBIT #3?

21 A YES, MA'AM. THIS IS THE BOTTLE OF ALCOHOLIC BEVERAGE WHICH  
22 WAS IN THE TRUNK OF THE DEFENDANT'S VEHICLE. IT HAS MY  
23 INFORMATION AND WHERE I HAVE FILLED OUT THE EVIDENCE  
24 PROPERTY.

25 Q SO, DID YOU RECOGNIZE IT BECAUSE OF THE BAG THAT IT WAS IN?

1 A YES, MA'AM. IT'S NOT OFTEN IN MY CAREER THAT I HAVE SEEN COLD  
2 DUCK. I KNOW WHAT IT IS, BUT IT'S JUST NOT SOMETHING WE  
3 NORMALLY SEE.

4 Q IS THERE ANY TYPE OF IDENTIFYING NUMBER ON THERE THAT WOULD  
5 SHOW YOU THAT THIS WAS ATTRIBUTED TO THIS CASE?

6 A YES, MA'AM. THERE IS THE CASE NUMBER THAT WAS ASSIGNED TO  
7 THIS PARTICULAR INCIDENT. WHICH IS CASE NUMBER 2007-17963. IT  
8 HAS THE DEFENDANT'S NAME AS SUSPECT, ANTHONY LEROY  
9 MATTISON, AND THE DATE AND TIME OF RECOVERY. IT WAS  
10 RECOVERED BY MYSELF AND IT GIVES A BRIEF DESCRIPTION AND THE  
11 CHAIN OF CUSTODY ON THE BOTTLE.

12 **MS. HOGAN:** YOUR HONOR, AT THIS POINT THE STATE WOULD LIKE TO  
13 MOVE STATE'S EXHIBIT #3 INTO EVIDENCE.

14 **THE COURT:** ANY OBJECTIONS?

15 **MR. TAVERNIER:** NO OBJECTION.

16 **THE COURT:** IT IS ADMITTED WITHOUT OBJECTION.

17 (WHEREUPON, A WINE BOTTLE IS ENTERED INTO EVIDENCE AS STATE'S  
18 EXHIBIT #3, WITHOUT OBJECTION.)

19 Q SERGEANT CLARDY, IF YOU WOULD LOOK AT THIS PIECE OF EVIDENCE.  
20 LET ME KNOW IF YOU RECOGNIZE IT.

21 A YES, MA'AM. I DO.

22 Q OKAY. HOW DO YOU RECOGNIZE IT?

23 A THIS IS THE CUP THAT THE DEFENDANT THREW DOWN ONTO THE  
24 GROUND PRIOR TO HIS ARREST. IT ALSO HAS THE CASE NUMBER, IT  
25 HAS AN ITEM NUMBER, IT IS IN MY HANDWRITING WITH THE

1           DEFENDANT'S NAME ON IT AND THE DATE AND TIME OF COLLECTION,  
2           AS WELL AS A BRIEF DESCRIPTION.

3           **MS. HOGAN:** YOUR HONOR, THE STATE WOULD MOVE STATE'S  
4           EXHIBIT #4 INTO EVIDENCE AT THIS POINT.

5           **MR. TAVERNIER:** NO OBJECTION.

6           **THE COURT:** ADMITTED WITHOUT OBJECTION.

7           (WHEREUPON, A CUP IS ADMITTED INTO EVIDENCE AS STATE'S  
8           EXHIBIT #4, WITHOUT OBJECTION.)

9    Q     SERGEANT CLARDY, WOULD YOU TAKE A LOOK AT STATE'S EXHIBIT #1  
10           AND LET ME KNOW IF YOU RECOGNIZE IT.

11   A     YES, MA'AM. I DO.

12   Q     AND HOW DO YOU RECOGNIZE IT?

13   A     THIS IS THE ITEM #2 ON OUR EVIDENCE LIST FROM CASE NUMBER  
14           0717963, WITH DEFENDANT ANTHONY LEROY MATTISON WITH HIS  
15           BLACK IN COLOR, SUB DIGITAL SCALES, WHICH I RETRIEVED FROM THE  
16           TRUNK OF THE DEFENDANT'S VEHICLE.

17   Q     AND THE IDENTIFYING CASE NUMBER MATCHES?

18   A     YES, MA'AM. IT DOES.

19           **MS. HOGAN:** YOUR HONOR, WE MOVE THAT STATE'S EXHIBIT #1 BE  
20           INTRODUCED INTO EVIDENCE.

21           **MR. TAVERNIER:** NO OBJECTION, YOUR HONOR.

22           **THE COURT:** ADMITTED WITHOUT OBJECTION.

23           (WHEREUPON, DIGITAL SCALES IS ENTERED INTO EVIDENCE AS  
24           STATE'S EXHIBIT #1, WITHOUT OBJECTION)

25   Q     SO, AFTER YOU WERE DONE COLLECTING THIS EVIDENCE, WHAT

1 HAPPENED AFTER THAT?

2 A WELL, I NOTICED AS WE WERE SPEAKING WITH THE DEFENDANT AND  
3 AS I WAS COLLECTING EVIDENCE, HE WAS VERY NERVOUS. THIS WAS  
4 APRIL THE 10TH. I DON'T RECALL THE EXACT TEMPERATURE, BUT I DO  
5 RECALL IT WAS NOT PARTICULARLY HOT LIKE IT WOULD BE IN THE  
6 SUMMER TIME. THE DEFENDANT WAS SWEATING PROFUSELY. AS I  
7 STOOD BESIDE HIM I COULD SEE THE VEIN IN HIS NECK THROBBING. HE  
8 WAS VERY NERVOUS, FIDGETING, HE WAS ATTEMPTING TO MOVE HIS  
9 HANDS AROUND. THAT LED ME TO BELIEVE THAT HE COULD POSSIBLY  
10 BE CONCEALING SOMETHING ON OR ABOUT HIS PERSON.

11 Q AND AT THIS POINT, YOU ACCOMPANIED OFFICER FOUTS TO THE  
12 DETENTION CENTER.

13 A YES, AT THE DIRECTION OF CAPTAIN MARSEE. WE DISCUSSED THIS  
14 AND IT WAS OBVIOUS THAT THE DEFENDANT WAS VERY NERVOUS AND  
15 ATTEMPTING TO MOVE AROUND AND THE FURTIVE MANNERS AND  
16 BASED UPON THE EXPERIENCE THAT I'VE RECEIVED AND THE TRAINING  
17 FROM YEARS OF EXPERIENCE IN NARCOTICS, LED US TO BELIEVE THAT  
18 HE WAS POSSIBLY CONCEALING SOMETHING UPON HIS PERSON. I DID  
19 ADVISE HIM THAT HE WAS BEING TAKEN TO A CITY DETENTION FACILITY  
20 WHICH WAS A DETENTION FACILITY AND IF HE HAD ANYTHING ON HIS  
21 PERSON AT THAT TIME THAT WAS ILLEGAL, HE SHOULD TELL ME. HE  
22 SAID HE DID NOT.

23 Q WAS THERE ANYTHING ELSE BESIDES HIS NERVOUSNESS THAT YOU  
24 NOTICED THAT LED YOU TO BELIEVE THAT THERE WAS ANYTHING ELSE  
25 GOING ON?

- 1 A WELL, YES, MA'AM. HE HAD THE DIGITAL SCALES IN THE VEHICLE,  
2 WHICH HE WAS IN CONTROL OF. AS I HAVE SAID, HE WAS SWEATING  
3 PROFUSELY. I COULD SEE THE VEIN IN HIS NECK THROBBING. HIS  
4 RESPIRATIONS WERE EXTREMELY RAPID. HE WAS VERY FIDGETY AND  
5 BASED UPON MY EXPERIENCE, THAT LED ME TO BELIEVE THAT HE WAS  
6 CONCEALING SOMETHING.
- 7 Q SO, YOU WERE RIDING WITH OFFICER FOUTS TO THE DETENTION  
8 CENTER. AFTER YOU ARRIVE THERE, WHAT HAPPENS NEXT?
- 9 A THE DEFENDANT WAS IN HANDCUFFS. I ADVISED HIM AT THAT POINT IN  
10 TIME THAT HE WOULD BE SEARCHED. I ASKED HIM AGAIN, DID HE HAVE  
11 ANYTHING ON HIS PERSON, HE NEEDED TO TELL ME ABOUT IT NOW. HE  
12 SAID, "NO." SO I SAID, "SIR, AT THIS POINT IN TIME WE ARE GOING TO  
13 SEARCH YOU." HE LOOKED ME IN THE EYE AND SAID, "DO WHAT YOU  
14 HAVE TO DO." AT THAT POINT IN TIME, WE REMOVED THE HANDCUFFS  
15 AND ASKED HIM TO PLACE HIS HANDS ON THE WALL AND ONE ARTICLE  
16 OF CLOTHING AT A TIME WE BEGAN TO REMOVE.
- 17 Q OKAY. SO, YOU WERE SUPERVISING WHILE THE SEARCH WAS GOING  
18 ON?
- 19 A YES, MA'AM. I WAS WEARING GLOVES AND AT MY DIRECTION, THE  
20 DEFENDANT WOULD REMOVE ONE ARTICLE OF CLOTHING AT A TIME  
21 AND HE WOULD HAND IT TO ME FOR INSPECTION TO MAKE SURE THAT  
22 THERE WAS NOTHING ILLEGAL UPON HIM.
- 23 Q OKAY. AND WHAT HAPPENED WHILE YOU WERE SEARCHING THE  
24 DEFENDANT?
- 25 A WE GOT DOWN TO THE DEFENDANT'S UNDERWEAR, AT WHICH TIME I

1 ASKED HIM TO REMOVE HIS UNDERWEAR, AND HE DID SO. AS I LOOKED  
2 DOWN, I OBSERVED A CLEAR PLASTIC BAGGIE PROTRUDING FROM THE  
3 UNDERSIDE OF THE FORESKIN OF THE DEFENDANT'S PENIS. AT THAT  
4 TIME I MOTIONED TO OFFICER FOUTS, AND VERY DELICATELY, I  
5 GRABBED THE TIP OF THE BAGGIE AND I REMOVED IT.

6 Q AND WHEN YOU REMOVED THE BAGGIE, WHAT DID IT APPEAR TO BE IN  
7 THE BAGGIE?

8 A THERE WERE OFF-WHITE ROCK-LIKE SUBSTANCES IN THE LARGER  
9 BAG. INSIDE OF THAT BAG WAS A SECOND BAGGIE CONTAINING  
10 OFF-WHITE ROCK-LIKE SUBSTANCES, BOTH OF WHICH LATER FIELD  
11 TESTED POSITIVE FOR COCAINE BASE.

12 Q AND SO WHILE YOU ARE CONDUCTING A STRIP SEARCH, YOU FIND  
13 PLASTIC BAGGIES HANGING OUT FROM UNDERNEATH THE  
14 UNCIRCUMCISED FORESKIN OF THE DEFENDANT'S PENIS?

15 A IT WAS HANGING FROM UNDERNEATH THE FORESKIN OF HIS PENIS.  
16 YES, MA'AM.

17 Q WHAT DID YOU DO WITH THE SUBSTANCE THAT YOU BELIEVED TO BE  
18 DRUGS AT THIS POINT?

19 A I FIELD TESTED THEM WITH POSITIVE RESULTS FOR COCAINE BASE. I  
20 NOTIFIED SERGEANT MCKEE AND CAPTAIN MARSEE OF MY FINDINGS. I  
21 ENTERED THEM INTO A BEST KIT AND THEY WERE PLACED IN  
22 EVIDENCE.

23 Q OKAY. WHEN YOU SAID THAT YOU FILLED OUT A BEST KIT COULD YOU  
24 DESCRIBE WHAT THAT IS A LITTLE BIT. IS THAT SOMETHING THAT YOU  
25 HAVE TO FOLLOW PROTOCOL WITH?

- 1 A YES, MA'AM. THE BEST KIT IS A MANILLA ENVELOPE WITH A CONTROL  
2 NUMBER FROM THE STATE LAW ENFORCEMENT DIVISION. IT HAS A  
3 CONTROL NUMBER ON THE OUTSIDE. IT HAS A TAMPER-PROOF BAG ON  
4 THE INSIDE WITH THE SAME CONTROL NUMBER ON IT. WE VERIFY THAT  
5 BOTH CONTROL NUMBERS MATCH AND INSIDE IS A GREEN FORM  
6 WHICH TELLS WHAT YOU HAVE COLLECTED, DATE, AND TIME AND YOU  
7 FILL THAT OUT, PUT YOUR INITIALS, WHO YOU TOOK IT FROM, AND  
8 THERE ARE SEPARATE FORMS THAT GO INSIDE THE BAGGIE, TWO OF  
9 WHICH ARE SEALED AND ONE WHICH IS LEFT OUTSIDE FOR SLED.  
10 ONCE THESE ARE SEALED, THEY ARE TAMPER-PROOF, THEY GO  
11 STRAIGHT TO THE CHEMIST OR THEY ARE TAKEN BY THE EVIDENCE  
12 CUSTODIAN TO THE CHEMIST AT SLED FOR ANALYSIS. THOSE  
13 NUMBERS ARE -- THE BAG IS OPENED BY SLED TO PREVENT  
14 TAMPERING AND THAT MAINTAINS THE CHAIN OF CUSTODY AND THEN  
15 YOU GET YOUR RESULTS FROM THE CHEMIST FROM SLED.
- 16 Q SO, AFTER YOU FIND THE DRUGS YOU FILL OUT THIS BEST KIT. WHAT  
17 DID YOU DO WITH THE BEST KIT AFTER YOU FILLED IT OUT?
- 18 A I MAINTAINED CONTROL OF IT IN A LOCKED VAULT, WHICH I AM THE  
19 ONLY PERSON WHO HAS A KEY TO AND ON THE FOLLOWING MORNING,  
20 APRIL 11, OR FOLLOWING AFTERNOON, APRIL 11, AT 2 P.M. WHEN WE  
21 CAME BACK TO WORK, I TURNED THIS EVIDENCE IN TO SERGEANT  
22 BASKIN, WHO WAS THE EVIDENCE CUSTODIAN AT THE TIME AND HE  
23 ENTERED IT INTO EVIDENCE AND MAINTAINED CUSTODY UNTIL IT WENT  
24 TO SLED IN THE EVIDENCE ---
- 25 Q YOU MAINTAINED CONTROL AFTER YOU COLLECTED THE EVIDENCE

## DIRECT EXAMINATION OF MIKE CLARDY BY MS. HOGAN

95

1 UNTIL YOU TURNED IT IN TO MIKE BASKIN THE NEXT AFTERNOON?

2 A THAT'S CORRECT.

3 Q BY USING A LOCKED VAULT THAT YOU HAD, THAT YOU WERE THE ONLY  
4 ONE WHO HAD A KEY?

5 A YES. I HAD THE SOLE KEY.

6 Q YOU SAID THAT IT FIELD TESTED POSITIVE. CAN YOU EXPLAIN THAT A  
7 LITTLE BIT MORE?

8 A WE ARE PROVIDED WITH A SIRCHIE, I THINK IS THE NAME, S-I-R-C-H-I-E,  
9 WHICH IS A NARCOTICS TEST KIT. IT IS A PLASTIC VIAL WHICH  
10 CONTAINS CHEMICALS THAT WILL REACT TO COCAINE BASE. IT HAS  
11 TWO VIALS, ONE ON THE TOP AND ONE ON THE BOTTOM. YOU BREAK  
12 OFF A SMALL AMOUNT OF THE SUBSTANCE, PLACE IT INTO THE VIAL,  
13 PUT THE TOP ON, AND THEN YOU BREAK THE BOTTOM VIAL. THERE IS A  
14 PINKISH LIQUID. YOU SHAKE THAT UP, WAIT ABOUT TEN SECONDS, AND  
15 BREAK THE TOP. WHEN THE TWO AGENTS COMBINE, IF THERE IS  
16 POSITIVE COCAINE BASE WITHIN THERE, THE COLOR WILL TURN TO A  
17 BLUE COLOR. AT WHICH TIME IT TESTED -- IT FIELD TESTED POSITIVE  
18 FOR COCAINE BASE.

19 Q OKAY. SO, THEN AT THAT POINT YOU FILLED OUT THE BEST KIT TO  
20 SEND TO THE EXPERT AT SLED TO BE ANALYZED?

21 A YES, MA'AM. I DID.

22 Q AND DID YOU -- YOU MENTIONED SOMETHING ABOUT THE WEIGHT OF  
23 THE DRUGS. DID YOU WEIGH THE DRUGS?

24 A YES, MA'AM. I DID. THERE WERE TWO SEPARATE BAGGIES. THE  
25 LARGER BAGGIE CONTAINED A SMALLER BAGGIE, BUT INSIDE THE

1 LARGER BAGGIE WAS APPROXIMATELY 5.4 GRAMS. THE SMALLER  
2 BAGGIE HAD 0.8 GRAMS AND BOTH FIELD TESTED POSITIVE FOR  
3 COCAINE BASE.

4 Q SO, A COMBINED WEIGHT OF 6.2, BUT THAT WAS INCLUDING THE  
5 BAGGIE THAT THEY WERE PACKAGED IN?

6 A YES, MA'AM.

7 Q OKAY. BECAUSE YOU WEIGH IT WITH WHAT IT WAS PACKAGED IN?

8 A YES, MA'AM.

9 Q OKAY. BASED ON YOUR TRAINING AND EXPERIENCE, WHAT DID THE  
10 AMOUNT OF DRUGS FOUND ON MISTER MATTISON INDICATE?

11 A THE SALE AND/OR DISTRIBUTION OF CRACK COCAINE.

12 Q AND WHAT LEADS YOU TO BELIEVE THAT?

13 A WELL, \$620.00 IN THE DRUG WORLD, IS A GOOD BIT OF DOPE. IT'S NOT  
14 A KINGPIN, BUT YOUR AVERAGE STREET USER WALKS AROUND WITH A  
15 GRAM OR LESS. AT \$100.00 A GRAM, IT'S A HABIT TO SUPPORT AND I  
16 BELIEVE OFFICER MCKEE SAID HIMSELF, HE COULDN'T SPEND SIX  
17 HUNDRED BUCKS. I CERTAINLY COULDN'T. THAT'S A TWO-WEEK PAY  
18 PERIOD, AFTER TAXES, WITH THE CITY OF ANDERSON FOR A  
19 SERGEANT.

20 Q OKAY. AND ALSO, THE FACT THAT THEY HAD FOUND THE SCALES IN  
21 THE CAR AS WELL, —

22 A YES.

23 Q — DID THAT LEAD YOU TO BELIEVE THAT HE WAS A PLAYER?

24 A YES, MA'AM. IT'S CONSISTENT FOR PERSONS WHO ARE SELLING OR  
25 DISTRIBUTING ILLEGAL NARCOTICS TO HAVE SCALES IN THEIR

## CROSS EXAMINATION OF MIKE CLARDY BY MR. TAVERNIER

97

1 POSSESSION OR IN THE GENERAL VICINITY. AND AS WELL, THIS WAS  
2 TWO SEPARATE BAGGIES. IT WAS NOT ONE BAGGIE WITH 5.4 GRAMS.  
3 IT WAS TWO BAGS, WITH ADDITIONAL QUANTITIES OF CRACK COCAINE.

4 **MS. HOGAN:** BEG THE COURT'S INDULGENCE.

5 **THE COURT:** YES, MA'AM.

6 **MS. HOGAN:** NOTHING FURTHER FROM THE STATE.

7 **THE COURT:** MISTER TAVERNIER.

8 **MR. TAVERNIER:** THANK YOU, YOUR HONOR. MAY IT PLEASE THE  
9 COURT.

10 **CROSS-EXAMINATION OF OFFICER MIKE CLARDY BY MISTER TAVERNIER**

11 Q SERGEANT CLARDY, YOU HAD THE OPINION THAT THIS INDICATES THAT  
12 IT'S FOR SALE. BUT IT'S POSSIBLE THAT IT COULD BE FOR PERSONAL  
13 USE. CORRECT?

14 A THAT'S ENTIRELY POSSIBLE.

15 Q OKAY. THAT'S ALL I HAVE. THANK YOU.

16 **MS. HOGAN:** NOTHING FURTHER FROM THE STATE, YOUR HONOR.

17 **THE COURT:** MAY THIS OFFICER BE EXCUSED?

18 **MS. HOGAN:** YES, SIR.

19 **THE COURT:** CALL YOUR NEXT WITNESS, PLEASE.

20 **MS. HOGAN:** YOUR HONOR, IF IT PLEASES THE COURT, THE STATE  
21 CALLS MIKE BASKIN TO THE STAND.

22 (AFTER BEING DULY SWORN BY THE CLERK OF COURT, MIKE BASKIN  
23 TESTIFIED AS FOLLOWS:)

24 **CLERK OF COURT:** HAVE A SEAT IN THE WITNESS CHAIR. IF YOU WILL  
25 STATE YOUR FULL NAME AND SPELL YOUR LAST FOR THE RECORD, PLEASE

1 SIR.

2 MR. BASKIN: WILLIAM MICHAEL BASKIN. B-A-S-K-I-N.

3 DIRECT EXAMINATION OF MIKE BASKIN BY MS. HOGAN

4 Q MISTER BASKIN, WHERE ARE YOU CURRENTLY EMPLOYED?

5 A SOLICITOR'S OFFICE.

6 Q AND HOW LONG HAVE YOU WORKED FOR THE SOLICITOR'S OFFICE?

7 A A LITTLE OVER TWO YEARS.

8 Q OKAY. AND WHAT IS YOUR POSITION?

9 A I AM AN INVESTIGATOR.

10 Q OKAY. WHERE DID YOU WORK PRIOR TO COMING TO THE SOLICITOR'S  
11 OFFICE?

12 A THE ANDERSON POLICE DEPARTMENT.

13 Q AND HOW LONG DID YOU WORK WITH THE APD?

14 A OVER THIRTY YEARS.

15 Q AND WHAT WAS YOUR LAST POSITION WITH THE APD?

16 A CRIME SCENE AND EVIDENCE.

17 Q OKAY. HOW LONG DID YOU WORK IN THAT CAPACITY?

18 A APPROXIMATELY NINE-AND-A-HALF, TEN YEARS.

19 Q AND WHAT DID YOUR DUTIES INCLUDE AS THE EVIDENCE CUSTODIAN?

20 A ALL THE EVIDENCE WAS TURNED IN TO ME. IT WAS SECURED IN THE  
21 EVIDENCE OFFICE AND IF IT NEEDED TO BE, TAKEN TO SLED.

22 Q OKAY. AND WHY WOULD ANYTHING BE NEEDED TO BE TAKEN TO  
23 SLED?

24 A FOR ANALYSIS. DIFFERENT TYPES OF EVIDENCE FOR DIFFERENT  
25 ANALYSIS.

## DIRECT EXAMINATION OF MIKE BASKIN BY MS. HOGAN

99

1 Q THE APD USES SLED TO ANALYZE ANY OF THE EVIDENCE THAT THEY  
2 HAVE?

3 A YES, I TAKE -- ANY EVIDENCE THAT NEEDS TO BE ANALYZED WOULD BE  
4 TAKEN TO SLED.

5 Q OKAY. WERE YOU WORKING AS EVIDENCE CUSTODIAN IN APRIL OF  
6 2007?

7 A YES, MA'AM.

8 Q OKAY. DID YOU COME INTO CONTACT WITH ANY EVIDENCE COLLECTED  
9 IN CONNECTION WITH THE CASE INVOLVING ANTHONY MATTISON?

10 A YES, MA'AM. I DID.

11 Q OKAY. AND HOW SO?

12 A IT WAS BROUGHT TO ME BY SERGEANT CLARDY.

13 Q AND HOW -- WHAT WAS BROUGHT TO YOU BY SERGEANT CLARDY?

14 A HE WAS -- THEY BROUGHT ME DRUGS, AND THE SCALES, AND THE CUP,  
15 AND THE BLUE DUCK.

16 Q OKAY.

17 A COLD DUCK, EXCUSE ME.

18 Q AND WHEN IT WAS TURNED IN TO YOU, YOU TAKE CONTROL OF IT AT  
19 THAT POINT?

20 A YES, MA'AM.

21 Q OKAY. AND WHAT DO YOU DO WITH IT WHEN IT IS TURNED IN TO YOU?

22 A THE DRUGS WERE TAKEN TO SLED.

23 Q OKAY. AND HOW ARE THE DRUGS TAKEN TO SLED?

24 A THEY ARE TAKEN IN A BEST KIT. THIS PARTICULAR -- THE DRUGS WERE  
25 IN AN EVIDENCE BAG, PUT IN A BEST KIT, AND TAKEN TO SLED FOR

- 1 ANALYSIS.
- 2 Q OKAY. SO AFTER SERGEANT CLARDY TURNED THE DRUGS IN TO YOU,  
3 YOU TURN AROUND AND TAKE IT TO SLED?
- 4 A CORRECT.
- 5 Q DID YOU ALTER OR TAMPER WITH IT IN ANY WAY, --
- 6 A NO, MA'AM.
- 7 Q -- WHAT WAS IN THE BAG?
- 8 A NO, MA'AM.
- 9 Q OKAY. HOW DO YOU KNOW THE -- HOW DO YOU RECOGNIZE THE  
10 PACKAGE THAT WAS TAKEN TO SLED?
- 11 A IT WOULD HAVE A NUMBER ON IT, PLUS IT WOULD HAVE MY -- COULD  
12 YOU HAND ME THE BAG AND I CAN EXPLAIN IT. (MS. HOGAN COMPLIES)
- 13 Q I AM HANDING YOU WHAT HAS BEEN MARKED AS STATE'S EXHIBIT #2.
- 14 A THIS HAS MY WRITING ON IT. IT HAS A LAB NUMBER THAT WAS  
15 ASSIGNED TO IT. IT ALSO HAS A CONTAINER NUMBER AND IT HAS MY  
16 SIGNATURE, ANDERSON P-D, AND IT IS DATED.
- 17 Q WHAT IS THE DATE THAT IS ON THAT BAG?
- 18 A THE DATE THAT IT WAS SEALED IS 04-11-2007, AND THE DATE I -- IT  
19 ALSO HAS AN EVIDENCE BAG WHICH THESE DRUGS WERE IN BEFORE  
20 BEING PLACED IN THE BEST KIT, A SEALED EVIDENCE BAG.
- 21 Q SO YOU RECEIVED IT ON APRIL 11, 2007?
- 22 A YES, MA'AM.
- 23 Q OKAY. AND IT WAS, FROM YOUR TESTIMONY, IT WAS HAND DELIVERED  
24 TO YOU BY MIKE CLARDY?
- 25 A YES, MA'AM.

## DIRECT EXAMINATION OF MIKE BASKIN BY MS. HOGAN

101

- 1 Q OKAY. AND THEN WHAT DID YOU DO AFTER THEY WERE TURNED IN TO  
2 YOU BY MIKE CLARDY? WHAT DO YOU DO AT THAT POINT?
- 3 A THEN I STORED IT UNTIL SUCH TIME THAT I WENT TO SLED.
- 4 Q OKAY. AND DO YOU FILL OUT PAPERWORK?
- 5 A YES, MA'AM.
- 6 Q OKAY.
- 7 **MS. HOGAN:** BEG THE COURT'S INDULGENCE.
- 8 **THE COURT:** YES, MA'AM.
- 9 Q I WANT TO SHOW YOU WHAT HAS BEEN MARKED STATE'S EXHIBIT #5.  
10 (MS. HOGAN SHOWS DOCUMENT TO MISTER TAVERNIER) DO YOU  
11 RECOGNIZE THIS PAPERWORK? (HANDS DOCUMENT TO MR. BASKIN)
- 12 A YES, MA'AM. THIS IS THE PAPERWORK I FILLED OUT.
- 13 Q OKAY. AND WHAT -- CAN YOU EXPLAIN THAT FORM TO US, WHAT IT  
14 MEANS?
- 15 A IT IS A CHAIN OF EVIDENCE FORM. WHEN I RECEIVED IT, IT HAS GOT  
16 THAT I RECEIVED IT ON THE DATE I RECEIVED IT, IN PERSON FROM MIKE  
17 CLARDY AND IT HAS WHAT I RECEIVED. THEN I GOT MY SIGNATURE  
18 NOTARIZED THAT DAY, BUT THE DATE OF TAKING TO SLED AND SLED  
19 ITSELF, IS NOT FILLED IN UNTIL I GET TO SLED.
- 20 Q OKAY, SO YOU GOT IT NOTARIZED ON APRIL 11, 2007.
- 21 A YES, MA'AM.
- 22 Q SAYING THAT YOU HAD RECEIVED THESE DRUGS?
- 23 A YES, MA'AM.
- 24 Q BUT THEN YOU DID NOT TAKE IT TO SLED UNTIL...  
25 A THE 16TH.

1 Q THE 16TH. OKAY. SO, IT LOOKS LIKE THERE IS SOME DISCREPANCY  
2 BETWEEN THE TWO DATES. WHY IS THAT?

3 A BECAUSE SLED, AT ONE TIME, NOTARIZED MY SIGNATURE WHEN I TOOK  
4 THE DRUGS TO SLED. THEY STOPPED DOING THAT AND WOULD NOT  
5 DO IT. SO, I HAD EITHER ONE OF TWO CHOICES; GET MY SIGNATURE  
6 NOTARIZED BEFORE I WENT TO SLED OR LEAVE IT BLANK, ONE OF THE  
7 TWO.

8 Q OKAY.

9 A LEAVE THE NOTARY BLANK, NOT MY SIGNATURE.

10 Q SO, IN ORDER FOR SLED TO TEST THE DRUGS THAT YOU WANTED TO  
11 SEND DOWN THERE, IT HAD TO BE NOTARIZED HERE, BECAUSE THEY  
12 WOULD NOT NOTARIZE IT FOR YOU WHEN YOU GOT TO COLUMBIA.

13 A THEY WOULD NOT NOTARIZE MY SIGNATURE AT SLED. NOW, THEY  
14 WOULD HAVE TESTED THE DRUGS WITHOUT A NOTARIZATION ON IT  
15 BUT THEY WILL NOT – THEY WOULD NOT AT THAT TIME. THAT HAS  
16 BEEN CHANGED SINCE THEN, BUT AT THAT TIME THEY WOULD NOT  
17 NOTARIZE MY SIGNATURE.

18 Q EVEN THOUGH THE NOTARY DATES ARE ARGUABLY WRONG, BECAUSE  
19 YOU DID NOT TAKE THEM TO SLED THAT DAY, IT IS THE WAY YOU HAD  
20 TO FILL IT OUT IN ORDER TO TAKE IT TO SLED?

21 A YES, MA'AM. BUT THE DATE THAT I TOOK THEM TO SLED, WHEN I GOT  
22 IT NOTARIZED, WAS NOT ON THERE BECAUSE SLED – TAKING IT TO  
23 SLED IS NOT ON THERE, BECAUSE IT WAS NOT AT SLED AND I DIDN'T  
24 KNOW WHEN I WAS GOING TO SLED.

25 Q OKAY. SO, AT NO POINT THOUGH, DID YOU TAMPER OR ALTER WITH

## DIRECT EXAMINATION OF MIKE BASKIN BY MS. HOGAN

103

1 THE EVIDENCE IN ANY WAY?

2 A NO, MA'AM.

3 Q OKAY. DID YOU -- AND YOU HAD CUSTODY AND CONTROL OF THE BEST  
4 KIT BETWEEN APRIL 11TH AND APRIL 16TH?

5 A CORRECT.

6 Q SO THAT NO ONE COULD HAVE TAMPERED OR ALTERED IT IN ANY  
7 WAY. --

8 A NO, MA'AM.

9 Q --- DURING THAT DATE DISCREPANCY THAT WE HAVE BETWEEN THE  
10 11TH AND THE 16TH ON THE PAPERWORK?

11 A YES, MA'AM.

12 Q OKAY. WHO -- WHEN YOU TOOK THE DRUGS DOWN TO SLED, WHO DID  
13 YOU LEAVE THE DRUGS WITH?

14 A AMY STEPHENS.

15 Q OKAY. AND HOW DO YOU KNOW THAT?

16 A BECAUSE SHE SIGNED FOR THEM.

17 Q OKAY. AGAIN, DID THE PACKAGING OR CONTAINER SEEM BE  
18 TAMPERED WITH OR ALTERED WITH IN ANY WAY WHEN YOU TOOK  
19 THEM DOWN TO SLED?

20 A NO, MA'AM.

21 Q AFTER DROPPING THE EVIDENCE OFF DID YOU HAVE ANY OTHER  
22 CONTACT WITH THE EVIDENCE FROM THIS CASE?

23 A I PICKED IT BACK UP.

24 Q WHO DID YOU PICK IT BACK UP FROM?

25 A AMY STEPHENS.

- 1 Q OKAY. SHE WAS THE AGENT THAT GAVE IT BACK TO YOU AND FILLED  
2 OUT THE PAPERWORK WHEN YOU PICKED IT UP?
- 3 A I'M SORRY?
- 4 Q SHE WAS THE AGENT AT SLED WHO HANDED YOU THE DRUGS BACK  
5 AFTER THEY HAD BEEN ANALYZED?
- 6 A YES, MA'AM.
- 7 Q OKAY. AND HOW DO YOU KNOW THAT'S WHO PICKED IT UP FROM YOU  
8 -- OR WHO YOU PICKED IT UP FROM?
- 9 A IT'S DOCUMENTED.
- 10 Q OKAY. WHAT DO YOU DO WITH THE EVIDENCE AFTER PICKING IT UP  
11 FROM SLED?
- 12 A IT'S PUT IT IN A LOCKED EVIDENCE ROOM.
- 13 Q OKAY.
- 14 A AND LOG IT BACK INTO THE COMPUTER.
- 15 Q AND WHEN YOU PICKED IT BACK UP, WAS IT SEALED?
- 16 A YES, MA'AM.
- 17 Q AND WAS IT ALTERED OR TAMPERED WITH IN ANY WAY AT THAT POINT?
- 18 A IT HAS TO BE OPENED. THE ORIGINAL BEST KIT HAS TO BE OPENED,  
19 BUT IT IS HEAT SEALED WHEN IT IS GIVEN BACK TO ME.
- 20 Q THEY HAVE TO ANALYZE IT, SO THEY HAVE TO ARGUABLY OPEN IT TO  
21 ANALYZE IT.
- 22 A YES, MA'AM.
- 23 Q BUT AT THAT POINT THAT YOU RECEIVED IT AND IT WAS SEALED BACK,  
24 YOU NEVER OPENED IT OR ALTERED IT?
- 25 A NO, MA'AM. IT WAS STILL SEALED.

## CROSS EXAMINATION OF MIKE BASKIN BY MR. TAVERNIER

105

1 Q OKAY. SO, AT NO POINT, DO YOU KNOW OF ANY TAMPERING OR  
2 ALTERING OF THESE DRUGS --

3 A NO, MA'AM.

4 Q -- WHILE IN YOUR POSSESSION?

5 A NO, MA'AM.

6 Q WHEN DID YOU PICK THE DRUGS BACK UP?

7 A (MR. BASKIN LOOKS THROUGH DOCUMENTS) AUGUST 07, 2007.

8 Q OKAY.

9 MS. HOGAN: NOTHING FURTHER FROM THE STATE, YOUR HONOR.

10 THE COURT: CROSS-EXAMINATION?

11 MR. TAVERNIER: MAY IT PLEASE THE COURT.

12 **CROSS-EXAMINATION OF MIKE BASKIN BY MISTER TAVERNIER**

13 Q MISTER BASKIN, WHAT YOU ARE TELLING THE JURY IS THAT ON  
14 APRIL 11TH, YOU HAVE A DOCUMENT NOTARIZED BASED ON WHAT YOU  
15 ARE GOING TO DO ON APRIL 16TH. IS THAT WHAT --

16 A NO, SIR. I DIDN'T SAY THAT. I SAID I HAD MY SIGNATURE NOTARIZED.

17 Q YOUR SIGNATURE WAS NOTARIZED ON APRIL 11TH, --

18 A YES. SIR.

19 Q -- PERTAINING TO SOMETHING THAT YOU WERE GOING TO DO FIVE  
20 DAYS LATER.

21 A I DIDN'T KNOW WHEN I WAS GOING TO DO IT.

22 Q THAT IS EVEN WORSE. OKAY? YOU DON'T KNOW WHAT YOU ARE

23 GOING TO DO IN THE FUTURE. YOUR SIGNATURE IS NOTARIZED FOR

24 SOMETHING THAT YOU ARE GOING TO DO IN THE FUTURE, BUT THE

25 AFFIDAVIT STATES THAT UNDER SWORN TESTIMONY YOU ARE TELLING

- 1 THE NOTARY THAT YOU ARE GOING TO DELIVER A PACKAGE TO SLED  
2 ON SOME GIVEN DATE.
- 3 A THE DATE IS NOT ON THERE. SLED IS NOT ON THERE. ONLY THING  
4 THAT IS ON THERE AT THAT TIME IS WHEN I RECEIVED IT, WHO I  
5 RECEIVED IT FROM, AND THE PLASTIC BAGGIES OF WHAT IT  
6 CONTAINED. THIS LOWER PART IS NOT FILLED OUT EXCEPT FOR MY  
7 SIGNATURE.
- 8 Q DO YOU KNOW THAT'S ILLEGAL?
- 9 A I AM JUST TELLING YOU THAT THEY WOULD NOT NOTARIZE MY  
10 SIGNATURE. SLED REFUSED TO DO IT. THAT'S THE ONLY WAY I COULD  
11 GET MY SIGNATURE NOTARIZED AT THAT TIME.
- 12 Q MY QUESTION IS, DO YOU KNOW THAT'S ILLEGAL?
- 13 A NO, SIR.
- 14 Q YOU DON'T?
- 15 A NO, SIR.
- 16 Q THEN WHAT IS THE PURPOSE OF THE NOTARY SIGNATURE? A NOTARY  
17 SIGNATURE IS TO VERIFY THE CONTENTS OF THE DOCUMENT AND  
18 YOUR SIGNATURE AT THE BOTTOM. CORRECT?
- 19 A YES, SIR. BUT THE DATE OF SLED AND TAKING IT TO SLED IS NOT ON  
20 THERE WHEN I HAD IT NOTARIZED.
- 21 Q YOU ARE SWEARING TO THE NOTARY THAT ON SUCH A DATE --
- 22 A NO, SIR.
- 23 Q -- YOU HAVE A --
- 24 A THE DATE IS NOT --
- 25 THE COURT: STOP. STOP. YOU ASK THE QUESTION. YOU PROVIDE THE

1 ANSWER. DO NOT BEGIN YOUR ANSWER UNTIL HE FINISHES THE QUESTION  
2 AND LIKEWISE, DO NOT BEGIN THE QUESTION UNTIL HE FINISHES HIS  
3 ANSWER. OKAY?

4 MR. TAVERNIER: YES, SIR.

5 Q YOU ARE TELLING A NOTARY THAT ON SUCH AND SUCH A DATE, YOU  
6 PERFORMED THIS ACT AND YOUR SIGNATURE VERIFIES THAT THAT  
7 OCCURRED. CORRECT?

8 A NO, SIR.

9 Q NO?

10 A NO.

11 Q THEN WHY HAVE IT NOTARIZED?

12 A I DON'T KNOW. A LOT OF DEPARTMENTS DON'T EVEN HAVE THEIR  
13 SIGNATURE NOTARIZED, BUT IT'S ON THE FORM.

14 Q IT HAS TO BE NOTARIZED WHEN YOU RECEIVE IT FROM MISTER CLAR --  
15 FROM SERGEANT CLARDY WHEN HE PUT IT IN EVIDENCE. CORRECT?  
16 AMY SEXTON NOTARIZED IT THEN. RIGHT?

17 A THAT IS WHEN I HAD IT NOTARIZED. YES.

18 Q ALL RIGHT. AND THEN YOU HAVE HER NOTARIZE IT THE SAME TIME  
19 THAT YOU ARE GOING TO TAKE IT TO SLED FIVE DAYS LATER OR  
20 WHENEVER IT SUITS YOU. CORRECT?

21 A THAT PART IS NOT FILLED IN, SIR.

22 Q FOR AN ACT THAT OCCURRED ON APRIL 16TH, YOU HAVE IT NOTARIZED  
23 THAT IT OCCURRED ON APRIL 11TH. AM I MISSING SOMETHING HERE?

24 A I HAD IT NOTARIZED. WILL YOU BRING THE FORM TO ME? (MISTER  
25 TAVERNIER COMPLIES) WHAT I HAD NOTARIZED WAS THE PART DOWN

1 TO WHERE THE DRUGS WERE. THE DATE THAT I TOOK IT TO SLED, AND  
2 SLED WAS NOT ON THE THING, THE REASON I HAD IT DONE IS BECAUSE  
3 SLED REFUSED TO DO MY SIGNATURE AND THERE WAS A NOTARY  
4 WHERE MY SIGNATURE WAS SUPPOSED TO BE NOTARIZED. AS I SAID,  
5 THE ONLY CHOICE I HAD TO DO HAD WAS TO GET IT NOTARIZED  
6 BEFORE I WENT TO SLED OR LEAVE IT BLANK.

7 Q YOUR REASONING IS IRRELEVANT BECAUSE IT'S AN ILLEGAL ACT. IF  
8 YOU CAN'T NOTARIZE IT, YOU AREN'T GOING TO SIGN A MORTGAGE ON  
9 APRIL 1ST AND HAVE IT NOTARIZED ON MARCH 15TH. CAN YOU?

10 A NO, SIR. BUT I DON'T KNOW HOW TO GET MY SIGNATURE NOTARIZED  
11 AT SLED IF THEY WILL NOT NOTARIZE IT.

12 Q THE BASIS FOR YOUR ACT IS IRRELEVANT. THE FACT THAT IT  
13 OCCURRED IS WHAT'S RELEVANT AND IT IS ILLEGAL. IT IS IMPROPER  
14 AND IT IS AGAINST THE LAW, BECAUSE THAT INDIVIDUAL CAN LOSE HER  
15 NOTARY LICENSE FOR NOTARIZING SOMETHING THAT'S INCOMPLETE.  
16 CORRECT?

17 A I DON'T KNOW.

18 Q YOU DON'T KNOW THAT?

19 A NO, SIR. I DON'T.

20 Q HOW LONG HAVE YOU BEEN A LAW ENFORCEMENT OFFICER?

21 A THIRTY-THREE YEARS.

22 Q AND YOU DON'T KNOW THE SIGNIFICANCE OF HAVING SOMETHING  
23 NOTARIZED, OF HAVING AN AFFIDAVIT NOTARIZED?

24 A YES, I KNOW. BUT SLED AND THE DATE THAT I TOOK IT TO SLED WAS  
25 NOT ON THERE WH --

## CROSS EXAMINATION OF MIKE BASKIN BY MR. TAVERNIER

109

- 1 Q BASED ON -- I'M SORRY. GO AHEAD AND COMPLETE IT.
- 2 A I DID COMPLETE IT.
- 3 Q OKAY. BASED ON WHAT YOUR LOGIC IS IN HAVING THAT DOCUMENT
- 4 NOTARIZED AND DATED, WHAT SIGNIFICANCE CAN WE PUT ON ANY OF
- 5 THE DATES THAT ARE PUT ON THIS PACKAGE?
- 6 A THE DATES --
- 7 Q THE SAME LOGIC APPLIES. DOES IT NOT?
- 8 A WHEN I TAKE THIS STUFF TO SLED, IT'S ELECTRONICALLY DOWN TO
- 9 THE SECOND, OF WHEN I TAKE IT TO SLED. THERE IS NO QUESTION OF
- 10 THE DATE THAT I TOOK IT TO SLED.
- 11 Q YOU RECORDED IT ON HERE. CORRECT? YOU HAVE RECORDED DATES
- 12 ON HERE. CORRECT?
- 13 A I HAVE --
- 14 Q YOU HAVE WRITTEN IT?
- 15 A YES, SIR.
- 16 Q ALL RIGHT. THE SAME LOGIC APPLIES TO THIS.
- 17 A THE DATE I TOOK IT TO SLED --
- 18 Q YOU CAN'T JUST --
- 19 A --- IS ON THERE.
- 20 Q -- FILL IT IN WHEN YOU WANT TO. CORRECT?
- 21 A I'M SORRY?
- 22 Q YOU JUST CAN'T FILL IT IN WHEN YOU WANT TO.
- 23 A I HAD NO OTHER WAY OF DOING IT.
- 24 Q BUT THAT'S IRRELEVANT. IT'S ILLEGAL. YOU CAN'T DO IT. CORRECT?
- 25 YOU DID IT, BUT IT'S ILLEGAL. SO, WHY SHOULD WE BELIEVE THE

1 DATES THAT ARE ON HERE?

2 A THE DATE THAT I TOOK IT TO SLED IS ELECTRONICALLY RECORDED.

3 Q IT IS NOT ELECTRONICALLY RECORDED ON THIS AFFIDAVIT. IS IT?

4 A NO, SIR. IT IS NOT.

5 Q AND WHEN THIS AFFIDAVIT WAS NOTARIZED, IT WAS INCOMPLETE.

6 A YES, SIR. IT WAS INCOMPLETE.

7 MR. TAVERNIER: YOUR HONOR, I HAVE A MOTION TO MAKE OUTSIDE  
8 THE PRESENCE OF THE JURY.

9 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN OF THE JURY WE  
10 WILL TAKE THIS -- I WILL TELL YOU WHAT. IT WAS MY INTENTION TO GO  
11 AHEAD AND BREAK FOR LUNCH AT TWELVE-THIRTY TODAY AND I AM GOING  
12 AHEAD AND HAVE THAT LUNCH BREAK. I'M GOING TO ASK YOU TO BE BACK IN  
13 YOUR JURY ROOM NO LATER THAN TWO O'CLOCK, PREFERABLY FIVE  
14 MINUTES UNTIL. IT'S MY INTENTION TO START BACK PROMPTLY AT  
15 TWO O'CLOCK. REMEMBER, DO NOT DISCUSS THIS CASE AMONGST  
16 YOURSELVES OR ANYONE ELSE, PLEASE.

17 (JURY OUT AT 12:23 P.M.)

18 THE COURT: STATE YOUR MOTION, PLEASE SIR.

19 MR. TAVERNIER: YOUR HONOR, BASED ON THE TESTIMONY OF MISTER  
20 BASKIN, I WOULD RESPECTIVELY ASK THAT ALL TESTIMONY REGARDING THE  
21 EVIDENCE, THAT IT BE STRICKEN, REGARDING THE DRUGS, BE STRICKEN DUE  
22 TO THE ILLEGAL NOTARIZATION OF THE DOCUMENT WHICH VERIFIES,  
23 ACCORDING TO MISTER BASKIN, THAT THE DRUGS WERE DELIVERED ON  
24 AUGUST 16TH, EXCUSE ME, ON APRIL 16TH WHEN, IN FACT, IT WAS  
25 NOTARIZED ON APRIL 11TH. THAT IS CLEARLY AN ILLEGAL ACT THAT TOOK

MOTION - MISTER TAVERNIER

111

1 PLACE FOR A FALSE NOTARIZATION AND AS SUCH, IT TAINTS THE CHAIN OF  
2 CUSTODY AND THEREFORE, I THINK BASED ON THAT ILLEGAL ACT, THE CHAIN  
3 IS TAINTED AND THE DRUGS SHOULD BE SUPPRESSED IN FAVOR OF THE  
4 DEFENDANT.

5 THE COURT: MS. HOGAN?

6 MS. HOGAN: YOUR HONOR, IF IT PLEASERS THE COURT. ARGUABLY, IT  
7 TAINTS THE CREDIBILITY OF THE EVIDENCE, BUT WE DO BELIEVE THE  
8 EVIDENCE SHOULD COME IN AT THIS POINT. WE HAVE PRIOR TESTIMONY AS  
9 TO WHAT HAPPENED. WE ARE NOT RELYING SOLELY ON THIS AFFIDAVIT  
10 WHICH HAS THE WRONG DATE. SO, WE BELIEVE THAT THE DRUGS SHOULD  
11 COME IN AND SHOULD GO TO THE JURY AT THIS POINT, YOUR HONOR.

12 THE COURT: WHAT I AM GOING TO DO, BECAUSE THIS IS FOLLOWING  
13 UP ON OUR PRIOR MOTION, I AM GOING TO DENY THE MOTION PRESENTLY  
14 SUBJECT TO MISTER TAVERNIER'S RIGHT TO RENEW THE MOTION, BASED ON  
15 THE FAILURE OF THE STATE TO TIE IT UP. I THINK IT GOES TO CREDIBILITY AT  
16 THIS STAGE, BUT I WILL ALLOW YOU TO RENEW YOUR MOTION BASED ON  
17 WHATEVER IS PRESENTED LATER.

18 MR. TAVERNIER: THANK YOU, YOUR HONOR. AND I DO WANT TO MAKE  
19 CLEAR, I AM NOT IN ANY WAY INSINUATING THAT THE DRUGS HAVE BEEN  
20 TAMPERED WITH, THAT THE EVIDENCE WAS TAMPERED WITH.

21 THE COURT: YOU'VE BEEN CLEAR ON THE RECORD ON THAT AND I  
22 THINK THAT YOUR ARGUMENT, AS I UNDERSTAND IT, AND CORRECT ME  
23 BECAUSE I WANT TO MAKE SURE YOU ARE CLEAR ON THE RECORD, IS THAT  
24 YOUR ARGUMENT GOES TO THE CHAIN OF CUSTODY, THEREFORE THE  
25 ADMISSIBILITY OF THE DRUGS, NOT THAT IT HAS BEEN TAMPERED WITH. IS

MOTION - MISTER TAVERNIER

112

1 THAT CORRECT?

2 MR. TAVERNIER: I AM NOT GOING TO IMPUGN THE FACT THE DRUGS  
3 HAVE BEEN TAMPERED WITH. I AM NOT GOING THERE. RIGHT. THANK YOU.

4 THE COURT: I THINK THAT'S CLEAR. OKAY. ARE YOU FINISHED WITH  
5 MR. BASKIN?

6 MS. HOGAN: I WILL HAVE A COUPLE ON RE-DIRECT, YOUR HONOR.

7 THE COURT: OKAY. (SPEAKING TO MISTER BASKIN) I AM GOING TO ASK  
8 YOU TO STICK AROUND AND YOU WILL BE FIRST UP WHEN WE COME BACK  
9 FROM LUNCH.

10 WE ARE IN RECESS UNTIL TWO O'CLOCK AND I DO INTEND TO START AT  
11 TWO O'CLOCK, IF WE CAN. OKAY? MISTER BASKIN, AS YOU KNOW, DO NOT  
12 TALK ABOUT YOUR TESTIMONY WITH ANYONE, PLEASE, SIR. THANK YOU.

13 MS. HOGAN: THANK YOU, YOUR HONOR.

14 THE COURT: WE ARE IN RECESS.

15 (LUNCH BREAK AT 12:30 P.M.)

16 THE COURT: MISTER BURNS, LADIES AND GENTLEMEN, DID Y'ALL HAVE  
17 A NICE LUNCH?

18 MR. BURNS: YES, SIR.

19 THE COURT: ALL RIGHT. ARE YOU READY TO PROCEED THIS  
20 AFTERNOON?

21 MR. BURNS: YES, SIR.

22 THE COURT: AND I BELIEVE WE HAVE THE RE-DIRECT OF MISTER  
23 BASKIN? IS THAT CORRECT?

24 MS. HOGAN: YES SIR, YOUR HONOR.

25 THE COURT: MS. HOGAN, YOU MAY PROCEED.

RE-DIRECT EXAMINATION OF MIKE BASKIN BY MS. HOGAN

113

1           **MS. HOGAN:** MAY IT PLEASE THE COURT.

2           **RE-DIRECT EXAMINATION OF MIKE BASKIN BY MS. HOGAN**

3           Q     MISTER BASKIN, IF YOU WANTED TO FORGE THE DATES ON THIS SHEET  
4           AND BE DISHONEST, YOU COULD HAVE DONE SO. CORRECT?

5           A     YES, MA'AM. I GUESS.

6           Q     OKAY. YOU WERE JUST FILLING THEM OUT THE WAY YOU WERE TOLD  
7           TO DO SO?

8           A     I WAS FILLING THEM OUT THE ONLY WAY I KNEW TO DO SO. YES.

9           Q     SO, YOU COULD HAVE MADE YOUR DATES MATCH?

10          A     I COULD HAVE FORGED THE DATE ON IT, YES, I GUESS.

11          Q     DO YOU KNOW THIS DEFENDANT, MISTER MATTISON?

12          A     I HAVE COME IN CONTACT WITH THOUSANDS OF PEOPLE IN THIRTY  
13          YEARS. I DO NOT REMEMBER MISTER MATTISON.

14          Q     OKAY. WOULD YOU HAVE ANY INTEREST IN WHETHER THE DRUGS  
15          CAME BACK POSITIVE OR NEGATIVE ONCE YOU SENT THEM DOWN TO  
16          SLED?

17          A     NOT IN THIS CASE OR ANY CASE.

18          Q     NOTHING FURTHER FROM THE STATE, YOUR HONOR.

19          **THE COURT:** ANY REASON WHY MISTER BASKIN CAN'T BE EXCUSED?

20          **MR. TAVERNIER:** HE MAY BE EXCUSED, YOUR HONOR. I HAVE NO  
21          OBJECTIONS.

22          **THE COURT:** THANK YOU, SIR. YOU MAY STEP DOWN. CALL YOUR NEXT  
23          WITNESS, PLEASE MA'AM.

24          **MS. HOGAN:** MAY IT PLEASE THE COURT. THE STATE CALLS AMY  
25          STEPHENS TO THE STAND.

1 (AFTER BEING DULY SWORN BY THE CLERK OF COURT, AMY STEPHENS  
2 TESTIFIED AS FOLLOWS:)

3 CLERK OF COURT: YOU CAN HAVE A SEAT IN THE WITNESS CHAIR. IF  
4 YOU WILL STATE YOUR FULL NAME AND SPELL YOUR LAST FOR THE RECORD,  
5 PLEASE.

6 A AMY STEPHENS. S-T-E-P-H-E-N-S.

7 DIRECT EXAMINATION OF AMY STEPHENS BY MS. HOGAN

8 Q MS. STEPHENS, WHERE DO YOU WORK?

9 A I AM EMPLOYED WITH THE SOUTH CAROLINA LAW ENFORCEMENT  
10 DIVISION.

11 Q AND HOW LONG HAVE YOU WORKED WITH SLED?

12 A I HAVE WORKED WITH SLED SINCE MARCH OF 2006.

13 Q AND WHAT IS YOUR POSITION WITH SLED?

14 A I AM AN EVIDENCE FORENSIC TECHNICIAN IN THE EVIDENCE CONTROL  
15 DEPARTMENT.

16 Q OKAY. AND IN THAT CAPACITY, WHAT DO YOUR DUTIES INCLUDE?

17 A WE LOG IN CASES THAT COME TO US FROM AGENCIES THROUGHOUT  
18 THE STATE OF SOUTH CAROLINA. WE LOG THEM IN TO OUR COMPUTER  
19 SYSTEM WHICH PROVIDES A LAB NUMBER. WE WILL PACKAGE THE  
20 EVIDENCE APPROPRIATELY AND STORE THE EVIDENCE IN OUR  
21 EVIDENCE ROOM.

22 Q OKAY. DID YOU COME INTO ANY CONTACT RELATED TO THE CASE  
23 INVOLVING ANTHONY MATTISON?

24 A I DID.

25 Q OKAY. AND HOW SO?

## DIRECT EXAMINATION OF AMY STEPHENS BY MS. HOGAN

115

- 1 A APRIL 16, 2007, I LOGGED THE EVIDENCE IN FROM SERGEANT MIKE  
2 BASKIN OF THE ANDERSON POLICE DEPARTMENT.
- 3 Q AND WHAT EVIDENCE DID YOU LOG IN? WHAT WAS IT ACTUALLY THAT  
4 YOU LOGGED IN?
- 5 A IT WAS A BEST KIT.
- 6 Q OKAY. AND WHO DID YOU RECEIVE THIS BEST KIT FROM?
- 7 A MIKE BASKIN.
- 8 Q OKAY. SO HE BROUGHT IT TO YOU AT SLED AND TURNED IT IN?
- 9 A CORRECT.
- 10 Q OKAY. WHAT DID YOU DO WITH THE BEST KIT ONCE YOU RECEIVED IT?
- 11 A I TYPED THE INFORMATION IN ON OUR REQUEST FORM INTO OUR  
12 COMPUTER SYSTEM WHICH PROVIDED A LAB NUMBER WHICH IS  
13 L0705594, AND THEN I PUT THE EVIDENCE INTO OUR LOCKED EVIDENCE  
14 ROOM.
- 15 Q OKAY. WAS THE BEST KIT SEALED WHEN YOU RECEIVED IT?
- 16 A YES. IT WAS.
- 17 Q OKAY. WAS IT SEALED WHEN YOU PUT IT IN THE LOCKED EVIDENCE  
18 ROOM?
- 19 A YES. IT WAS.
- 20 Q DID YOU TAMPER WITH IT IN ANY WAY?
- 21 A NO. I DID NOT.
- 22 Q DID ANYONE ELSE, TO YOUR KNOWLEDGE, TAMPER WITH IT?
- 23 A NOT TO MY KNOWLEDGE. NO.
- 24 Q DID YOU COME INTO CONTACT AT ANY OTHER TIME WITH THE  
25 EVIDENCE IN THE CASE OF ANTHONY MATTISON?

- 1 A YES. I DID.
- 2 Q OKAY. HOW SO?
- 3 A AUGUST 02, 2007, I RETRIEVED THE EVIDENCE FROM OUR RETURN FILE
- 4 CABINET AND ALSO RETURNED THE EVIDENCE TO MIKE BASKIN.
- 5 Q OKAY. WHAT IS THE POLICY FOR RETURNING THE DRUGS BACK TO THE
- 6 AGENCY?
- 7 A WE WILL TAKE IT FROM THE RETURN FILE CABINET, SCAN THE
- 8 EVIDENCE INTO OUR CUSTODY, AND THEN RETURN THE EVIDENCE TO
- 9 THE AGENCY.
- 10 Q AFTER YOU SCAN IT, YOU THEN GIVE IT TO THE PERSON WHO HAS
- 11 COME TO PICK IT UP?
- 12 A CORRECT.
- 13 Q OKAY. WAS IT SEALED WHEN YOU RETRIEVED IT FROM THE VAULT?
- 14 A YES. IT WAS.
- 15 Q OKAY. AND WAS IT SEALED WHEN YOU RETURNED IT TO MIKE BASKIN
- 16 OF THE APD?
- 17 A YES. IT WAS.
- 18 Q AND DID YOU TAMPER WITH IT IN ANY WAY?
- 19 A NO. I DID NOT.
- 20 Q DID ANYONE ELSE TO YOUR KNOWLEDGE?
- 21 A NOT TO MY KNOWLEDGE. NO.
- 22 Q I AM GOING TO SHOW YOU WHAT HAS BEEN MARKED STATE'S
- 23 EXHIBIT #2. DO YOU RECOGNIZE THIS PACKAGE?
- 24 A YES, I RECOGNIZE THE LAB NUMBER, L0705594, ITEM #1.
- 25 Q OKAY. AND WHAT IS IT?

## DIRECT EXAMINATION OF NIKKI PERRY BY MS. HOGAN

117

1 A IT IS -- ALL THAT WE KNOW WHEN WE LOG IT IN IS THAT IT IS A BEST KIT  
2 CONTAINING DRUG EVIDENCE.

3 Q OKAY. AND HAD IT BEEN ALTERED IN ANY WAY?

4 A NOT TO MY KNOWLEDGE. NO.

5 **MS. HOGAN:** NOTHING FURTHER FROM THE STATE, YOUR HONOR.

6 **MR. TAVERNIER:** NO QUESTIONS, YOUR HONOR.

7 **THE COURT:** ANY REASON WHY MS. STEPHENS CAN'T BE EXCUSED?

8 **MS. HOGAN:** NO SIR, YOUR HONOR.

9 **MR. TAVERNIER:** NO OBJECTIONS, YOUR HONOR.

10 **THE COURT:** THANK YOU, MA'AM. YOU MAY BE EXCUSED.

11 **MS. STEPHENS:** THANK YOU.

12 **THE COURT:** YES, MA'AM.

13 **MS. HOGAN:** YOUR HONOR, IF IT PLEASURES THE COURT, THE STATE  
14 CALLS NIKKI PERRY TO THE STAND.

15 (AFTER BEING DULY SWORN BY THE CLERK OF COURT, NIKKI PERRY  
16 TESTIFIED AS FOLLOWS:)

17 **CLERK OF COURT:** YOU CAN GO AROUND AND HAVE A SEAT IN THE  
18 WITNESS CHAIR. IF YOU WILL PLEASE STATE YOUR FULL NAME AND STATE  
19 YOUR LAST NAME FOR THE RECORD.

20 **MS. PERRY:** NICOLE RENEE PERRY. P-E-R-R-Y.

21 **DIRECT EXAMINATION OF NIKKI PERRY BY MS. HOGAN**

22 Q MS. PERRY, WHERE DO YOU WORK?

23 A I AM EMPLOYED WITH THE SOUTH CAROLINA LAW ENFORCEMENT  
24 DIVISION, COMMONLY KNOWN AS SLED.

25 Q OKAY. HOW LONG HAVE YOU WORKED WITH SLED?

- 1 A I HAVE WORKED FOR SLED SINCE JUNE OF 2006.
- 2 Q OKAY. AND WHAT IS YOUR POSITION WITH SLED?
- 3 A I'M ALSO A FORENSIC TECHNICIAN IN THE EVIDENCE CONTROL  
4 DEPARTMENT.
- 5 Q OKAY. AND WHAT DO YOUR DUTIES INCLUDE?
- 6 A MY DUTIES INCLUDE LOGGING IN EVIDENCE AND PACKAGING EVIDENCE  
7 BROUGHT INTO THE LAB BY AGENCIES ACROSS THE STATE OF SOUTH  
8 CAROLINA.
- 9 Q OKAY. AND DID YOU COME INTO CONTACT WITH ANY OF THE EVIDENCE  
10 FROM THE CASE INVOLVING ANTHONY MATTISON?
- 11 A I DID.
- 12 Q OKAY. AND HOW SO?
- 13 A ON APRIL 18, 2007, I RETRIEVED THE SEALED BEST KIT FROM OUR DRUG  
14 EVIDENCE INTAKE STORAGE, WHICH IS LOCATED IN OUR LOCKED  
15 EVIDENCE ROOM, AND I GAVE IT TO CARMEN TUCKER.
- 16 Q OKAY. AND HOW DID YOU KNOW TO GIVE IT TO CARMEN TUCKER?
- 17 A CARMEN USUALLY WILL EMAIL US DOWN IN EVIDENCE CONTROL, A LIST  
18 OF THE EVIDENCE THAT SHE WOULD LIKE TO COME DOWN TO  
19 EVIDENCE CONTROL AND RETRIEVE FROM OUR EVIDENCE ROOM.
- 20 Q SO, SHE COMES DOWN TO GET IT FROM YOU AND YOU SIGN IT OUT TO  
21 HER WHEN SHE NEEDS TO ANALYZE IT?
- 22 A YES, MA'AM.
- 23 Q OKAY. HOW IS THE EVIDENCE PACKAGED WHEN IT IS GIVEN TO  
24 MS. TUCKER?
- 25 A IT IS IN A BEST KIT ENVELOPE, AND THE TAMPER EVIDENT POUCH THAT

1 THE EVIDENCE IS SUBMITTED TO US, IS LOCATED INSIDE THE BEST KIT  
2 MANILLA ENVELOPE THAT IS STORED IN OUR EVIDENCE ROOM AND I  
3 WOULD TAKE THAT ENTIRE MANILLA ENVELOPE AND SCAN IT IN TO MY  
4 CUSTODY AND THEN SCAN IT INTO THE CUSTODY OF CARMEN TUCKER  
5 AND SHE WILL SIGN FOR IT.

6 Q SO, IT WAS SEALED WHEN YOU RECEIVED IT?

7 A IT WAS SEALED. YES, MA'AM.

8 Q AND THEN IT WAS SEALED WHEN YOU GAVE IT TO MS. TUCKER?

9 A YES, MA'AM.

10 Q AND DID YOU TAMPER WITH IT IN ANY WAY?

11 A NO. I DID NOT.

12 Q DID ANYONE ELSE TO YOUR KNOWLEDGE?

13 A NOT TO MY KNOWLEDGE.

14 Q I WANT TO SHOW YOU WHAT HAS BEEN MARKED STATE'S EXHIBIT #2.

15 DO YOU RECOGNIZE THIS ITEM?

16 A I RECOGNIZE THE LAB NUMBER L0705594, ITEM #1.

17 Q OKAY. AND WHAT IS THAT PACKAGE?

18 A IT IS -- IT CONTAINS INSIDE, THE HEAT FILLED POUCH, THE BEST KIT  
19 ENVELOPE THAT IS LOCATED INSIDE OF THE MANILLA ENVELOPE.

20 Q OKAY. HAD IT BEEN ALTERED IN ANY WAY TO YOUR KNOWLEDGE?

21 A NOT TO MY KNOWLEDGE.

22 Q NOTHING FURTHER FROM THE STATE, YOUR HONOR.

23 MR. TAVERNIER: NO QUESTIONS, YOUR HONOR.

24 THE COURT: MAY MS. PERRY BE EXCUSED?

25 MS. HOGAN: YES, SIR.

1 THE COURT: ANY OBJECTION, MISTER TAVERNIER?

2 MR. TAVERNIER: NONE, YOUR HONOR.

3 THE COURT: THANK YOU, MA'AM.

4 MS. HOGAN: YOUR HONOR, IF IT PLEASURES THE COURT, THE STATE  
5 CALLS CARMEN TUCKER TO THE STAND.

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

8 CLERK OF COURT: YOU CAN GO UP AND HAVE A SEAT IN THE WITNESS  
9 CHAIR. STATE YOUR FULL NAME AND SPELL YOUR LAST NAME FOR THE  
10 RECORD, PLEASE.

11 MS. TUCKER: CARMEN JANINE TUCKER. T-U-C-K-E-R.

12 DIRECT EXAMINATION OF CARMEN TUCKER BY MS. HOGAN

13 Q MS. TUCKER, WHERE DO YOU WORK?

14 A I WORK AT THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION,  
15 OTHERWISE KNOWN AS SLED.

16 Q AND HOW LONG HAVE YOU BEEN EMPLOYED BY SLED?

17 A I HAVE BEEN EMPLOYED BY SLED SINCE JUNE 02, 2006.

18 Q OKAY. AND WHAT POSITION DO YOU HOLD AT SLED?

19 A I AM A FORENSIC SCIENTIST IN THE DRUG ANALYSIS DEPARTMENT  
20 WHERE WE ANALYZE CONTROLLED SUBSTANCES.

21 Q HOW LONG HAVE YOU WORKED IN THAT POSITION?

22 A SINCE JUNE 02, 2006.

23 Q AND WHAT DO YOUR DUTIES INCLUDE?

24 A WE ANALYZE EVIDENTIARY EVIDENCE FOR THE POSSIBILITY OF  
25 CONTROLLED SUBSTANCES, THE PRESENCE OF CONTROLLED

1 SUBSTANCES. WE ALSO DO MARIJUANA ANALYSIS THERE, TOO. WE  
2 SEPARATE THOSE OUT ON OUR FORM "A" CERTIFICATION.

3 Q OKAY. WHAT TYPE OF TRAINING DO YOU HAVE TO HAVE IN ORDER TO  
4 QUALIFY FOR YOUR POSITION AT SLED?

5 A WELL, YOU HAVE TO HAVE THE EDUCATIONAL BACKGROUND, WHICH I  
6 HAVE A CHEMISTRY DEGREE, A BACHELOR'S IN CHEMISTRY AND A  
7 MASTER'S IN CHEMISTRY AND I ALSO HAVE TWO-AND-A-HALF YEARS OF  
8 EXPERIENCE IN DRUG CHEMISTRY AT RESEARCH TRIANGLE INSTITUTE  
9 IN NORTH CAROLINA AND THEN THEY PUT YOU THROUGH A  
10 CERTIFICATION TO ANALYZE CONTROLLED SUBSTANCES TRAINING AT  
11 SLED AND THEN YOU ALSO HAVE TO HAVE MARIJUANA ANALYSIS  
12 CERTIFICATION.

13 Q OKAY. HAVE YOU HAD MANY CASES WHERE YOU HAD TO ANALYZE  
14 SUBSTANCES TO DETERMINE WHETHER THAT SUBSTANCE IS OR  
15 CONTAINS A NARCOTIC OR IS A NARCOTIC-TYPE DRUG?

16 A YES. I HAVE.

17 Q AND HOW MANY TIMES, ABOUT?

18 A IT WOULD PROBABLY BE UPWARDS OF JUST OVER A THOUSAND CASES  
19 A YEAR SINCE I HAVE BEEN THERE, SEVERAL THOUSAND.

20 Q HAVE YOU HAD AN OCCASION TO CHEMICALLY ANALYZE SUBSTANCES  
21 TO DETERMINE WHETHER THE SUBSTANCE WAS CRACK COCAINE?

22 A YES. I HAVE.

23 Q OKAY. AND HOW MANY TIMES?

24 A I HAVE TO SAY CRACK COCAINE IS PROBABLY 75% TO 80% OF WHAT WE  
25 SEE.

1 Q OKAY. HOW MANY CRACK COCAINE ANALYSES DO YOU MAKE IN A  
2 GIVEN WEEK?

3 A IN A GIVEN WEEK, WE DO ANYWHERE BETWEEN 20 AND 30 CASES FOR  
4 ANALYSIS. SO, I WOULD HAVE TO SAY PROBABLY, MAYBE, 20 TO 25 OF  
5 THOSE ARE GOING TO BE EITHER CRACK OR COCAINE IN  
6 HYDROCHLORIDE FORM.

7 Q DO YOU MAKE ANALYSES AS A REGULAR PART OF YOUR DUTIES?

8 A YES.

9 Q HAVE YOU HAD AN OCCASION TO QUALIFY AS AN EXPERT IN THIS AREA  
10 IN ANDERSON COUNTY?

11 A YES. I HAVE.

12 Q OKAY. DO YOU KNOW HOW MANY TIMES?

13 A I CAN'T REMEMBER HOW MANY TIMES IN ANDERSON COUNTY, BUT I  
14 HAVE QUALIFIED NINE TIMES SO FAR IN THE YEARS SINCE I HAVE BEEN  
15 THERE.

16 Q OKAY.

17 **MS. HOGAN:** YOUR HONOR, AT THIS POINT THE PEOPLE WOULD MOVE  
18 THAT CARMEN TUCKER BE DECLARED AN EXPERT IN THE FIELD OF  
19 CHEMISTRY AND ANALYSIS OF NARCOTICS.

20 **THE COURT:** CHEMISTRY AND ANALYSIS OF NARCOTICS?

21 **MS. HOGAN:** YES SIR, YOUR HONOR.

22 **MR. TAVERNIER:** NO OBJECTION, YOUR HONOR.

23 **THE COURT:** ALL RIGHT, LADIES AND GENTLEMEN OF THE JURY,  
24 NORMALLY A PERSON CAN ONLY TESTIFY ABOUT WHAT THEY'VE SEEN,  
25 WHAT THEY'VE HEARD, WHAT THEY SMELLED. IN OTHER WORDS, THEIR

DIRECT EXAMINATION OF CARMEN TUCKER BY MS. HOGAN

123

1 SENSES. THEY ARE NOT ALLOWED TO GIVE THEIR OPINION, BUT IN SOME  
2 OCCASIONS, BECAUSE OF A PERSON'S EDUCATION OR THEIR EXPERIENCE,  
3 THE COURT MAY QUALIFY THEM AS AN EXPERT AND IN THAT EVENT, THAT  
4 PERSON IS ALLOWED TO GIVE THEIR OPINION IN THE FIELD OF THEIR  
5 EXPERTISE. NOW, IT HAS BEEN STIPULATED THAT MS. TUCKER IS AN EXPERT  
6 IN THE FIELD OF CHEMISTRY AND ANALYSIS OF NARCOTICS AND SHE WILL BE  
7 ALLOWED TO GIVE HER OPINION IN THAT AREA, BUT THAT EVIDENCE DOESN'T  
8 MEAN THAT YOU MUST ACCEPT IT. IT IS EVIDENCE LIKE ANY OTHER  
9 EVIDENCE IN THIS CASE. YOU CAN DO WITH IT WITH ANYTHING YOU SEE FIT,  
10 WHICH WAY YOU THINK IS THE PROPER WAY TO HANDLE IT. OKAY? THANK  
11 YOU, MA'AM.

12 MS. HOGAN: THANK YOU, YOUR HONOR.

13 Q MS. TUCKER, I AM GOING TO SHOW YOU WHAT HAS BEEN MARKED AS  
14 STATE'S EXHIBIT #2. DO YOU RECOGNIZE THIS ITEM?

15 A YES. I DO.

16 Q AND HOW CAN YOU IDENTIFY IT?

17 A WHENEVER WE PROCESS EVIDENCE IN THIS INNER BAG IN THIS BEST  
18 KIT, WE ALWAYS LABEL IT. I MARKED "OKAY" TO LET MYSELF KNOW  
19 THAT I CHECKED ALL SIDES TO MAKE SURE THIS KIT IS SEALED AND  
20 HAS NOT BEEN TAMPERED WITH. WE PUT THE DATE AND OUR INITIALS.  
21 WE ALSO, WHEN WE SEAL THIS RE-SEALABLE BAG WHEN WE ARE  
22 FINISHED WITH OUR ANALYSIS, WE WILL PUT OUR INITIALS AND THE  
23 DATE ON THE INSIDE AND THEN HEAT SEAL OVER IT AND I HEAT SEAL  
24 OVER IT TWICE SO THAT IT CAN'T BE TAMPERED WITH.

25 Q AND CAN YOU TELL ME WHEN YOU WORKED ON THE EXHIBIT AS TO

1           WHEN IT WAS "OKAYED"?

2    A       YES. THIS WAS JUNE 14, 2007.

3    Q       OKAY. AND WHEN DID YOU RECEIVE THE EXHIBIT?

4    A       THIS EXHIBIT CAME INTO MY CUSTODY ON APRIL 18, 2007.

5    Q       OKAY. AND WHERE DID YOU RECEIVE THE EXHIBIT FROM?

6    A       I RECEIVED IT FROM THE LOG-IN DEPARTMENT, OUR EVIDENCE  
7           CONTROL DEPARTMENT DOWNSTAIRS ON THE FIRST FLOOR, FROM  
8           NIKKI PERRY.

9    Q       OKAY. AND CAN YOU TELL WHO SUBMITTED THE ITEM TO SLED FOR  
10           ANALYSIS?

11   A       YES. IT'S ACTUALLY ON THE BAG HERE AND IT'S ALSO IN THIS PART OF  
12           THE PAPERWORK THAT WE KEEP ON THE CHAIN OF CUSTODY, AND IT'S  
13           MIKE BASKIN.

14   Q       OKAY. IS THIS EXHIBIT IN THE SAME, OR SUBSTANTIALLY THE SAME  
15           CONDITION NOW AS IT WAS WHEN IT WAS FIRST RECEIVED?

16   A       WHEN I FIRST RECEIVED IT, OBVIOUSLY IT WAS SEALED IN THIS INNER  
17           BAG, AND THEN I HAVE TO CUT THE END OF THE BAG AWAY FROM THE  
18           TAMPER EVIDENCE SEAL AND THEN PROCESS THE EVIDENCE AND  
19           THEN I'LL RE-SEAL IT IN THIS OUTER BAG AND THIS IS IN THAT SAME  
20           CONDITION AS IT WAS WHEN I TURNED IT BACK OVER TO LOG-IN.

21   Q       SO, OTHER THAN THE ANALYSIS, IT APPEARS THAT THAT WAS NOT  
22           TAMPERED WITH OR ALTERED AT ALL, IN ANY WAY?

23   A       THAT'S CORRECT.

24           **MS. HOGAN:** YOUR HONOR, THE PEOPLE WOULD MOVE STATE'S  
25           EXHIBIT #2 INTO EVIDENCE AT THIS TIME.

1           **MR. TAVERNIER:** NO OBJECTION, YOUR HONOR.

2           **THE COURT:** ADMITTED WITHOUT OBJECTION.

3           (WHEREUPON, A BEST KIT CONTAINING DRUGS IS ENTERED INTO  
4 EVIDENCE AS STATE'S EXHIBIT #2, WITHOUT OBJECTION.)

5    Q       FOR WHAT PURPOSE DID THIS ITEM COME INTO YOUR POSSESSION?

6    A       THIS ITEM CAME INTO MY POSSESSION SO THAT I COULD ANALYZE IT  
7           FOR THE POTENTIAL POSSIBILITY OF IT CONTAINING CONTROLLED  
8           SUBSTANCES.

9    Q       OKAY. AND WHEN DID YOU MAKE THE ANALYSIS?

10   A       I ACTUALLY PROCESSED THE EVIDENCE ON JUNE 14, 2007, THE SAME  
11           DATE THAT I INITIALED AND DATED IT ON THIS PACKAGE AND THE  
12           ACTUAL WRITING UP FOR THE CASE WOULD COME LATER.

13   Q       OKAY. WHAT TESTS WERE PERFORMED WHEN YOU ANALYZED IT?

14   A       TO ANALYZE THIS TYPE OF SUBSTANCE WE WOULD DO AN INITIAL SPOT  
15           TEST WITH REAGENTS THAT WE ARE LOOKING FOR A SPECIFIC COLOR  
16           CHANGE. IT IS SPECIFIC TO THIS TYPE OF COMPOUND. AND THEN WE  
17           WOULD TAKE A SAMPLE OF THE COMPOUND ON TO A GAS  
18           CHROMATOGRAPHY-MASS SPECTROMETRY OR A (GC-MS), WHICH IS AN  
19           INSTRUMENTATION THAT WE USE TO GIVE A POSITIVE IDENTIFICATION  
20           AGAINST A KNOWN CONTROL FOR THIS COMPOUND.

21   Q       OKAY. AND SO YOU ARE LOOKING FOR A POSITIVE RESULT THAT  
22           WOULD LET YOU KNOW THAT IT CONTAINS SOMETHING ILLEGAL?

23   A       RIGHT.

24   Q       OKAY. FROM THESE TESTS, WERE YOU ABLE TO FORM AN EXPERT  
25           OPINION AS TO WHAT THE EXHIBIT IS AND WHAT IT CONTAINS?

- 1 A YES. I WAS.
- 2 Q OKAY. DID YOU CREATE A REPORT BASED ON YOUR OPINION?
- 3 A YES. I DID.
- 4 Q OKAY. CAN YOU GIVE US YOUR EXPERT OPINION AS TO WHAT THE  
5 SUBSTANCE IS?
- 6 A I CAN. IT'S COCAINE-BASED CRACK FOUND WITH A COMBINED WEIGHT  
7 OF 5.54 GRAMS AND IT IS A SCHEDULE II SUBSTANCE.
- 8 Q OKAY. CAN YOU EXPLAIN WHAT COCAINE BASE MEANS?
- 9 A COCAINE BASE AND COCAINE HYDROCHLORIDE. COCAINE BASE IS  
10 JUST A BASE FORM OF THE COCAINE HYDROCHLORIDE OR THE  
11 POWDER, WHICH IS NORMALLY WHAT IT'S SEEN IN. THAT IS THE SALT  
12 FORM. THAT'S BASICALLY THE DIFFERENCE. IT'S JUST YOU'VE GOT  
13 ONE IN THE BASE FORM, WHICH WOULD BE IN LIKE A CRACK ROCK-  
14 LOOKING-SUBSTANCE. IT CAN BE CRUSHED UP INTO A POWDER, SO  
15 WE SEE THEM IN ALL DIFFERENT FORMS.
- 16 Q OKAY. SO, COCAINE WOULD BE IN A POWDER FORM AND THE COCAINE  
17 BASE IS WHEN IT'S IN ROCK FORM.
- 18 A THAT'S CORRECT. AND THE DIFFERENCE IS ALSO IN HOW THEY ARE  
19 CONSUMED.
- 20 Q OKAY. CAN YOU EXPLAIN WHAT YOU MEAN BY A COMBINED WEIGHT.
- 21 A A COMBINED WEIGHT. IN THIS PARTICULAR CASE, THERE ARE TWO  
22 INDIVIDUAL PLASTIC BAGS WHICH ARE IN HERE. ONE IS SMALLER AND  
23 ONE IS A LITTLE BIT BIGGER AND EACH ONE CONTAINED A ROCK  
24 SUBSTANCE AND EACH ONE WAS TESTED AND RE-BAGGED IN A  
25 SEPARATE ZIP-LOCK BAG, AND THEY ARE MARKED #1 AND #2.

DIRECT EXAMINATION OF CARMEN TUCKER BY MS. HOGAN

127

1 Q OKAY. CAN YOU TELL ME THE SPECIFIC WEIGHT OF EACH OF THOSE  
2 INDIVIDUAL BAGGIES?

3 A SURE. #1, WHICH WAS IN THE LARGER LITTLE PLASTIC BAG, WAS  
4 4.81 GRAMS AND SAMPLE #2, WHICH IS IN THE SMALLER PLASTIC BAG,  
5 WAS .73 GRAMS.

6 Q OKAY. AND WITH THE TOTAL WEIGHT OF?

7 A 5.54 GRAMS.

8 Q AFTER YOU FINISHED TESTING THE CRACK COCAINE, WHAT DID YOU  
9 DO WITH IT AT THAT POINT?

10 A WE TEST EACH SAMPLE SEPARATELY SO THAT WE DON'T CROSS-  
11 CONTAMINATE AND THEN WE RE-PACKAGE THEM OR RE-SEAL THEM  
12 AND LABEL THEM IN THE ZIP-LOCK BAGS JUST SO IT WON'T COME  
13 LOOSE IN HERE IN CASE WE NEED TO OPEN IT AT A LATER DATE AND  
14 THEN ALL OF THIS IS LABELED AND RE-SEALED IN THOSE HEAT  
15 SEALABLE BAGS AND THEN THIS ENTIRE THING IS KEPT IN OUR  
16 LOCKABLE VAULT -- WE HAVE A VAULT ROOM IN OUR LAB -- AND LOCK  
17 THOSE IN THERE UNTIL THE REPORT IS FINALIZED. WE HAVE A PEER  
18 REVIEW OF THE REPORT TO MAKE SURE EVERYTHING CORRELATES  
19 AND THEN WHEN THE CASE IS CONSIDERED LOCKED, OR IN OUR CASE,  
20 IS CONSIDERED COMPLETE, THEN WE ARE ABLE TO ISSUE A REPORT.  
21 AND THEN THESE CASES ARE TAKEN BACK DOWN TO LOG-IN EVIDENCE  
22 CONTROL AND SCANNED BACK OVER TO THE GIRLS DOWN THERE FOR  
23 THEIR CUSTODY AND THEY PUT IT BACK IN LOCK-UP. AT SUCH TIME AN  
24 AGENCY WILL COME AND PICK THEM UP WHENEVER THEY WANT.

25 Q OKAY.

1           **MS. HOGAN:** NOTHING FURTHER FROM THE STATE, YOUR HONOR.

2           **THE COURT:** ANY CROSS?

3           **MR. TAVERNIER:** NO QUESTIONS.

4           **THE COURT:** ANY REASON WHY MS. TUCKER CAN NOT BE EXCUSED?

5           **MS. HOGAN:** NO SIR, YOUR HONOR.

6           **MR. TAVERNIER:** NONE, YOUR HONOR.

7           **THE COURT:** THANK YOU, MA'AM. YOU MAY BE EXCUSED.

8           **MS. HOGAN:** YOUR HONOR, MAY WE APPROACH?

9           **THE COURT:** YES, MA'AM.

10                                    **(BRIEF BENCH CONFERENCE)**

11           **THE COURT:** LADIES AND GENTLEMEN, THIS IS ONE OF THOSE TIMES IN  
12 A TRIAL WHEN I NEED TO SEND YOU OUT. WE HAVE TO BRING UP A FEW  
13 MATTERS THAT IT WOULD BE MORE APPROPRIATE THAT YOU NOT BE IN THE  
14 COURTROOM TO HEAR OR SEE. SO IF YOU WOULD, MISTER BURNS, IF YOU  
15 WOULD LEAD THE JURY BACK TO THE JURY ROOM. AGAIN, PLEASE DO NOT  
16 DISCUSS THIS CASE WHILE YOU ARE OUT AMONGST YOURSELVES OR  
17 ANYONE ELSE. WE SHOULDN'T BE TERRIBLY LONG. THANK YOU.

18                                    **(JURY OUT AT 2:23 P.M.)**

19           **THE COURT:** ALL RIGHT, MS. HOGAN?

20           **MS. HOGAN:** YES SIR, YOUR HONOR. WE ARE GOING TO ASK THAT  
21 YOUR HONOR QUALIFY CAPTAIN KEVIN MARSEE AS AN EXPERT IN DRUG  
22 DISTRIBUTION AND THE STREET VALUE OF DRUGS, YOUR HONOR. HE HAS  
23 TESTIFIED MANY TIMES BEFORE AND I THINK THERE WAS GOING TO BE AN  
24 OBJECTION BY THE DEFENSE ATTORNEY QUALIFYING HIM AS AN EXPERT.  
25 HOWEVER, I THINK HE WANTED TO HEAR WHAT HE WAS GOING TO HAVE TO

## DISCUSSION CONCERNING EXPERT TESTIMONY

129

1 SAY BEFORE HE OBJECTED, YOUR HONOR.

2 MR. TAVERNIER: YOUR HONOR, I HAVE NO IDEA WHAT CAPTAIN MARSEE  
3 IS GOING TO TESTIFY TO. AS TO BEING A QUALIFIED EXPERT FOR DRUG  
4 DISTRIBUTION, IF HE WANTS TO BE -- IF HE IS GOING TO TESTIFY AS TO  
5 WHAT, IN THE NORMAL COURSE, AND YOU HAVE MANY FACTORS; YOU HAVE  
6 THE IMPORTERS, YOU HAVE BIG DEALERS, SMALL DEALERS, STREET  
7 DISTRIBUTION, YOU KNOW, THAT TYPE ACTIVITY GOING ON, I HAVE NO  
8 PROBLEM WITH THAT. WHAT I HAVE A PROBLEM WITH IS, THAT FOR HIM TO  
9 BE QUALIFIED AS AN EXPERT BASED ON THE FACTS AND CIRCUMSTANCES  
10 SURROUNDING THIS CASE, AND IN HIS PROFESSIONAL OPINION, THE  
11 DEFENDANT IS A DEALER, THAT I TAKE ISSUE WITH BECAUSE HE IS  
12 TESTIFYING, YOU KNOW. BASICALLY HE IS SAYING UNEQUIVOCALLY HE IS,  
13 YOU KNOW, HE IS A DEALER. HE IS GUILTY.

14 THE COURT: WHAT YOU ARE SAYING IS YOU OBJECT TO THE FACT THAT  
15 HE IS TESTIFYING TO AN ULTIMATE QUESTION IN THE CASE THAT YOU --

16 MR. TAVERNIER: THE ONLY QUESTION WE HAVE, THE JURY MUST  
17 DETERMINE AND BASED ON THAT, IF HE IS IN FACT KNOWN AS AN EXPERT,  
18 THEN HE OUGHT TO BE ABLE TO GO OUT ON THE STREET AND LOOK AT AN  
19 INDIVIDUAL AND SAY, "HE'S A DEALER." JUST -- ANYBODY WHO HAS MORE  
20 THAN A COUPLE OF GRAMS, BECAUSE OF THE INFERENCE THAT'S GIVEN  
21 PURSUANT TO THE STATUTE, ANYBODY WHO POSSESSES MORE THAN A  
22 COUPLE OF GRAMS OF DRUGS IS, IN FACT, A DEALER. AS FAR AS -- IT'S MY  
23 UNDERSTANDING HE'LL TESTIFY AS TO AS FAR AS THE STREET VALUE IS  
24 CONCERNED. WE ALREADY HAVE THAT ESTABLISHED ON THE REPORT, THAT  
25 IT'S VALUED AT \$620.00.

1           **THE COURT:** MY UNDERSTANDING IS THAT JUST BECAUSE AN EXPERT  
2 IS GOING TO TESTIFY TO AN ULTIMATE ISSUE, THAT DOESN'T NECESSARILY  
3 PRECLUDE THEIR TESTIMONY. HOWEVER, THEY CANNOT MAKE A LEGAL  
4 CONCLUSION. NOW, AND I AM NOT SAYING THAT THAT IS NECESSARILY  
5 PROBATIVE, BUT IF THE ULTIMATE ISSUE IS TO BE DETERMINED, FOR  
6 EXAMPLE, IN A LEGAL MALPRACTICE CASE, THAT HE TESTIFY THAT THEY  
7 DEVIATED FROM THE STANDARD OF CARE, BUT CAN HE SAY THIS IS, IN FACT,  
8 MALPRACTICE.

9           **MR. TAVERNIER:** CORRECT.

10          **THE COURT:** IS THAT IT?

11          **MR. TAVERNIER:** THAT'S CORRECT, YOUR HONOR. THAT IS A VERY  
12 GOOD ANALOGY.

13          **THE COURT:** WHAT IS THE RULE? LET ME LOOK AT IT. MS. HOGAN, I AM  
14 CERTAINLY GOING TO LISTEN TO YOU ON IT.

15          **MS. HOGAN:** YES SIR, YOUR HONOR. THE STATE WOULD ARGUE THAT  
16 THIS GOES STRAIGHT TO THE, I GUESS WHAT Y'ALL WERE SAYING, THE  
17 ELEMENT OF PWID IN THIS CASE THAT WE HAVE THE BURDEN OF PROVING.  
18 HE HAS BEEN QUALIFIED AS AN EXPERT AND APPEARED HERE BEFORE AND  
19 WE WOULD JUST BE ASKING HIM WHETHER HE THINKS THIS IS CONSISTENT  
20 WITH A DEALER AT THIS POINT, IF THAT WOULD CHANGE THE WORDING.  
21 BECAUSE --

22          **THE COURT:** I AM JUST -- I AM LISTENING TO YOU.

23          **MS. HOGAN:** YES, SIR. WE BELIEVE THAT THE EXPERT TESTIMONY IN  
24 THE GENERAL SENSE IS PROBATIVE, YOUR HONOR. BUT WE ALSO BELIEVE --

25          **THE COURT:** YES. I THINK CLEARLY THE PROBATIVE -- THE ISSUE IS

## DISCUSSION CONCERNING EXPERT TESTIMONY

131

1 NOT, AND I DIDN'T ARTICULATE IT THE WAY IT SHOULD BE, BUT IT'S NOT  
2 WHETHER IT'S PROBATIVE, BUT CLEARLY IT IS IN THIS CASE BECAUSE THE  
3 ISSUE -- THE QUESTION IS NOT WHETHER IT'S PROBATIVE OR RELEVANT, THE  
4 QUESTION IS WHETHER OR NOT IT GOES BEYOND THE SCOPE OF WHAT THE  
5 EXPERT TESTIMONY IS ALLOWED.

6 MS. HOGAN: YES, SIR.

7 THE COURT: AND YOUR POSITION IS THAT...

8 MS. HOGAN: MY POSITION IS THAT I WOULD AT LEAST LIKE TO BE ABLE  
9 TO ASK HIM, IN HIS TRAINING AND EXPERIENCE, WHAT DO ALL OF THE FACTS  
10 AND CIRCUMSTANCES OF THIS CASE MEAN TO MISTER MATTISON.

11 MR. TAVERNIER: THAT, I HAVE NO PROBLEM WITH, YOUR HONOR.

12 MS. HOGAN: BUT I STILL WANT HIM TO COME IN AS AN EXPERT ON THE  
13 OTHER STUFF. IF YOU WON'T -- IF I CAN ARTICULATE MY QUESTION WITHOUT  
14 INCLUDING HIM AS AN EXPERT OPINION OF THAT QUESTION. I DON'T WANT  
15 TO BE ABLE TO NOT FEEL IF I CALL HIM AS AN EXPERT WITNESS ON THE  
16 OTHER ISSUES.

17 THE COURT: ALL RIGHT. LET'S DO THIS. NUMBER ONE, LET'S GO BACK  
18 AND ADDRESS THE ISSUE OF THE SUBJECT MATTER OF HIS ANTICIPATED  
19 TESTIMONY AND THAT IS, THAT THIS GENTLEMAN'S A DEALER. AND TELL ME,  
20 ARTICULATE FOR THE RECORD, WHY THAT SHOULD NOT BE ALLOWED. WHY  
21 IS THAT DIFFERENT FROM SOMEBODY LOOKING AT A DOCTOR AND SAYING  
22 YOU DEVIATED FROM THE STANDARD OF CARE IN THESE PARTICULARS AND  
23 THEREFORE THAT IS MALPRACTICE.

24 MR. TAVERNIER: YOUR HONOR, BASED ON WHAT WE HAVE BEFORE US,  
25 FOR HIM TO BE ABLE TO SIT HERE, BASED ON HIS TRAINING AND BEING

1 CLASSIFIED AS AN EXPERT IN DRUG DISTRIBUTION, FOR HIM TO BE ABLE TO  
2 ARTICULATE, THAT BASED ON THESE FACTORS, THAT INDIVIDUAL'S, IN FACT,  
3 A DEALER, I BELIEVE IS BEYOND ANYONE'S EXPERTISE, BECAUSE THAT  
4 BECOMES A QUESTION OF FACT FOR THE JURY. THE -- IF HE WANTS TO  
5 STATE THAT, AS A PRACTICAL MATTER AS AN EXPERT THIS IS WHAT, BASED  
6 ON MY TRAINING AND KNOWLEDGE OCCURS, AND THIS IS WHAT OCCURS  
7 THROUGH THE TRICKLE DOWN OF THE DRUG INDUSTRY AND HOW IT IS  
8 NORMALLY HANDLED ON THE STREET, I HAVE NO PROBLEM. BUT FOR HIM TO  
9 SAY THAT, BASED ON THIS PARTICULAR SET OF FACTS, THIS INDIVIDUAL IS A  
10 DRUG DEALER AS AN EXPERT, I THINK EXCEEDS THE SCOPE OF ANYBODY'S  
11 EXPERTISE.

12 **MS. HOGAN:** YOUR HONOR, IF IT PLEASES THE COURT. LOOKING AT  
13 THE RULES OF EVIDENCE, IT LOOKS LIKE UNDER RULE 702, "THAT AN EXPERT  
14 MAY TESTIFY THERETO IN THE FORM OF AN OPINION OR OTHERWISE." AND  
15 THEN UNDER RULE 704, AS TO THE OPINION ON ULTIMATE ISSUE, IT SAYS,  
16 "TESTIMONY IN THE FORM OF AN OPINION OR INFERENCE OTHERWISE  
17 ADMISSIBLE, IS NOT OBJECTIONABLE BECAUSE IT EMBRACES AN ULTIMATE  
18 ISSUE DECIDED BY THE TRIER OF FACT." SO, I WOULD ARGUE THAT EVEN  
19 THOUGH HE IS SAYING SOMETHING THAT IS, YOUR KNOW, GOES TO THE  
20 FACTS OF THE CASE, THE ISSUE OF THE CASE, THAT UNDER THAT RULE, HE  
21 WOULD STILL BE ALLOWED TO SAY THAT.

22 **THE COURT:** AND I AGREE WITH YOU. MY CONCERN IS, AND I CAN'T  
23 PUT MY FINGERS ON IT, THERE IS A LINE OF WHICH AN EXPERT CAN'T GO  
24 OVER AND MY GUT IS, THAT THIS IS NOT ONE OF THOSE CASES. BUT, I AM  
25 GOING TO TAKE ABOUT A FIFTEEN MINUTE BREAK. I AM GOING TO LOOK IT

## DISCUSSION CONCERNING EXPERT TESTIMONY

133

1 UP, BECAUSE I KNOW WHERE TO PUT MY FINGERS ON IT WHEN I GET DOWN  
2 IN MY CHAMBERS, BUT I CAN'T DO IT RIGHT HERE.

3 MS. HOGAN: YES, SIR.

4 THE COURT: I AM RESERVING MY RULING. BEFORE WE DO THAT, DO  
5 YOU HAVE A CHALLENGE TO THE GENERAL EXPERTISE IN THE AREA, NOT  
6 NECESSARILY THE FACT THAT HE IS OR MAY TESTIFY THAT YOUR CLIENT IS A  
7 DRUG DEALER BECAUSE OF THESE FACTS?

8 MR. TAVERNIER: NO, YOUR HONOR. I HAVE KNOWN CAPTAIN MARSEE  
9 FOR PROBABLY CLOSE TO, PROBABLY CLOSE TO FIFTEEN, SIXTEEN YEARS,  
10 EASY.

11 THE COURT: OKAY.

12 MR. TAVERNIER: AND I KNOW OF HIS ACTIVITIES PRIMARILY IN THE  
13 AREA OF DRUG ENFORCEMENT AND IN CHARGE OF THE DRUG UNIT IN THE  
14 ANDERSON POLICE DEPARTMENT. I KNOW HE HAS EXTENSIVE EXPERIENCE  
15 IN THAT AREA. I HAVE BEEN INVOLVED WITH DRUGS FOR TWELVE YEARS,  
16 DOING DRUG CASES. DOESN'T MAKE ME AN EXPERT AS FAR A MY CLIENT IS  
17 CONCERNED, WHETHER THEY ARE DEALERS OR USERS OR WHATEVER, TO  
18 BE ABLE TO MAKE THAT DETERMINATION AND I THINK THAT IS MY  
19 DISTINCTION, THAT HE CAN'T SPECIFICALLY SAY, BASED ON A SET OF FACTS,  
20 THAT INDIVIDUAL MIGHT BE A DEALER.

21 THE COURT: WHAT -

22 MR. TAVERNIER: I'M SORRY?

23 THE COURT: NO, THAT'S MY BAD. GO AHEAD.

24 MR. TAVERNIER: I THINK HE CAN TESTIFY AS TO WHAT TYPICALLY  
25 HAPPENS AND WHAT HE HAS LEARNED, AND WHAT HIS TRAINING IS

1 REGARDING THAT, AND WHAT OCCURS, BUT FOR HIM TO SAY, SPECIFICALLY,  
2 THAT BASED ON THIS CERTAIN SET OF FACTS, THAT INDIVIDUAL IS THEN A  
3 DEALER, YOU KNOW, I THINK EXCEEDS THE SCOPE OF ANYBODY'S  
4 EXPERTISE.

5 **THE COURT:** WHAT -- HOW ARE YOU GOING TO ARTICULATE THE AREA  
6 THAT YOU ARE ASKING ME TO HAVE HIM QUALIFIED AS AN EXPERT IN? WHAT  
7 WOULD BE THE AREA?

8 **MS. HOGAN:** THE -- AN EXPERT IN THE DISTRIBUTION OF A DEALER OF  
9 NARCOTICS AND THEIR STREET VALUE, WOULD BE WHAT I WOULD...

10 **THE COURT:** SAY THAT AGAIN.

11 **MS. HOGAN:** THE DISTRIBUTION OF ILLEGAL NARCOTICS AND THEIR  
12 STREET VALUE WOULD BE HOW I WOULD TRY TO GET HIM IN, WHICH GOES  
13 TO MY PWID.

14 **THE COURT:** WELL --

15 **MS. HOGAN:** THERE IS A LOT THAT THAT WOULD GO INTO AT THAT  
16 POINT, YOUR HONOR.

17 **THE COURT:** WELL, LET ME ASK YOU THIS, MS. HOGAN. IF, ASSUMING  
18 THAT THE FIELD OF THE DISTRIBUTION OF ILLEGAL NARCOTICS AND THE  
19 STREET VALUE IS THE PROPER FIELD OF EXPERTISE, WHICH I ASSUME IT IS,  
20 HOW DO YOU TAKE THAT FIELD IN AND OF ITSELF AND GO TO THE NEXT STEP  
21 AND SAY THAT UNDER THESE FACTS THAT WE PRESENTED IN THIS CASE,  
22 THIS MAN IS A DRUG DEALER?

23 **MS. HOGAN:** I BELIEVE IT'S MY BURDEN TO PROVE BEYOND A  
24 REASONABLE DOUBT THAT HE'D ACTUALLY DISTRIBUTE IT, SO HE'S GOING  
25 TO, CAPTAIN MARSEE, WILL BE ABLE TO GO INTO DETAILS ABOUT ALL THE

## DISCUSSION CONCERNING EXPERT TESTIMONY

135

1 ELEMENTS IN THIS CASE THAT IN HIS OPINION, HIS EXPERT OPINION, THAT  
2 WOULD LEAD HIM TO BEING A SELLER OR DISTRIBUTER IN THIS CASE, YOUR  
3 HONOR.

4 THE COURT: BASED ON STUDIES AND RESEARCH AND ON --

5 MS. HOGAN: YES, SIR. BASED ON HIS TRAINING AND EXPERIENCE.

6 THE COURT: OKAY.

7 MS. HOGAN: AND THE PACKAGING. THERE IS A LOT THAT IS GOING TO  
8 GO INTO HIS TESTIMONY AS TO WHY HE THINKS MISTER MATTISON WAS.

9 THE COURT: OKAY.

10 MS. HOGAN: AND HE WAS PRESENT AT THE SCENE THAT DAY AS WELL,  
11 YOUR HONOR, SO HE WOULD BE ABLE TO --

12 THE COURT: HE'S A FACT WITNESS, AS WELL.

13 MS. HOGAN: YES, SIR. HE WAS GOING TO ---

14 THE COURT: WELL, GIVE ME FIFTEEN MINUTES AND LET ME LOOK IT UP.  
15 IT MAY TAKE A LITTLE BIT LONGER, BUT I KNOW WHERE TO PUT MY HANDS  
16 ON WHAT I WANT TO FIND AND I THINK THAT YOU ARE PROBABLY RIGHT, BUT  
17 I WANT TO LOOK AT IT FIRST.

18 MS. HOGAN: YES, SIR, YOUR HONOR.

19 THE COURT: AND AGAIN, FOR THE RECORD, I KNOW THAT YOU  
20 BROUGHT IT UP, YOU WANT TO BE PROTECTED ON THE ISSUE OF THE BASKIN  
21 CHAIN OF EVIDENCE.

22 MR. TAVERNIER: THAT IS CORRECT, YOUR HONOR.

23 THE COURT: AND YOU CERTAINLY SHOULD BE. IT'S THE THIRD TIME  
24 AND I HAVE ALREADY RULED THAT YOU DON'T HAVE TO BRING IT UP AGAIN,  
25 SO YOU SHOULD BE PROTECTED, MISTER TAVERNIER.





1     FACTS OF THIS CASE.

2             **MS. HOGAN:** YES, SIR.

3             **THE COURT:** OKAY. OTHER THAN THAT THERE ARE NO LIMITATIONS.

4     ARE YOU GUYS READY TO GO?

5             **MS. HOGAN:** YES SIR, YOUR HONOR.

6             **MR. TAVERNIER:** READY, YOUR HONOR.

7             **THE COURT:** WOULD YOU BRING THE JURY IN, BUCK?

8                             (JURY IN AT 2:57 P.M.)

9             **THE COURT:** THANK YOU, LADIES AND GENTLEMEN OF THE JURY. ARE  
10    YOU READY TO PROCEED, MS. HOGAN?

11            **MS. HOGAN:** YES, SIR, YOUR HONOR.

12            **THE COURT:** CALL YOUR NEXT WITNESS.

13            **MS HOGAN:** YOUR HONOR, IF IT PLEASES THE COURT, THE STATE  
14    CALLS CAPTAIN KEVIN MARSEE TO THE STAND.

15            (AFTER BEING DULY SWORN BY THE CLERK OF COURT, CAPTAIN KEVIN  
16    MARSEE TESTIFIED AS FOLLOWS:)

17            **CLERK OF COURT:** GO UP AND HAVE A SEAT IN THE WITNESS CHAIR.

18    IF YOU WILL STATE YOUR FULL NAME AND SPELL YOUR LAST NAME FOR THE  
19    RECORD, PLEASE.

20            **MR. MARSEE:** MY NAME IS KEVIN MARSEE. LAST NAME IS SPELLED  
21    M-A-R-S-E-E.

22    **DIRECT EXAMINATION OF CAPTAIN KEVIN MARSEE BY MS. HOGAN**

23    **Q**     CAPTAIN MARSEE, WHERE ARE YOU CURRENTLY EMPLOYED?

24    **A**     I AM CURRENTLY EMPLOYED WITH THE ANDERSON CITY POLICE  
25    DEPARTMENT.

## DIRECT EXAMINATION OF KEVIN MARSEE BY MS. HOGAN

139

1 Q AND HOW LONG HAVE YOU WORKED WITH THE APD?

2 A I HAVE WORKED FOR THE ANDERSON POLICE DEPARTMENT FOR 25  
3 YEARS. MY CURRENT POSITION IS, I AM THE CAPTAIN OVER THE  
4 TRAINING DIVISION. I SUPERVISE TRAINING AS WELL AS PARTICIPATE  
5 IN TEACHING OFFICERS THE SKILLS THEY NEED TO, ONCE THEY ARE  
6 CERTIFIED, THE SKILLS TO DO THEIR JOBS.

7 Q HOW LONG HAVE YOU WORKED IN THAT CAPACITY?

8 A I WAS JUST TRANSFERRED TO THE TRAINING DIVISION BACK IN  
9 AUGUST. SO, I HAVE ONLY BEEN IN THIS CAPACITY FOR ABOUT 90  
10 DAYS.

11 Q AND BEFORE YOU WERE CAPTAIN OF TRAINING, WHAT WAS YOUR  
12 POSITION?

13 A I SPENT 20 YEARS IN THE SPECIAL OPERATIONS DIVISION, BACK THEN  
14 IT WAS CALLED VICE AND NARCOTICS. DURING THE LATTER YEARS OF  
15 THE TIME UNDER THIS DIVISION, I WAS THE SUPERVISOR OF THE  
16 SPECIAL OPERATIONS DIVISION. THAT COVERED GANGS, DRUGS, AND  
17 FUGITIVES.

18 Q OKAY. AND HOW LONG DID YOU WORK IN THAT CAPACITY?

19 A 20 YEARS IN DRUG ENFORCEMENT, 11 YEARS AS SUPERVISOR.

20 Q OKAY. AND AS A SUPERVISOR IN NARCOTICS WHAT WERE YOUR  
21 DUTIES?

22 A MY JOB WAS TO SUPERVISE SUCH THINGS AS FUGITIVE RETRIEVAL. WE  
23 WORKED CLOSELY WITH THE U.S. MARSHAL'S SERVICE TO CATCH  
24 PEOPLE WHO WERE WANTED. I SUPERVISED THE VICE AND  
25 NARCOTICS SECTION WHICH COVERED NARCOTICS, PROSTITUTION,

1 ILLEGAL ALCOHOL, GUN RUNNING, AND I ALSO SUPERVISED THE GANG  
2 UNIT UNDER A PROJECT CALLED PROJECTS IN NEIGHBORHOODS.

3 Q AND HOW LONG WERE YOU SUPERVISOR OF THOSE UNITS?

4 A FOR ABOUT FIVE YEARS.

5 Q OKAY. WHAT KIND OF TRAINING SPECIFIC TO NARCOTICS DID YOU  
6 PARTICIPATE IN?

7 A I GRADUATED FROM THE POLICE ACADEMY AS A POLICE OFFICER.  
8 AFTER THAT I ATTENDED THE BASIC AND ADVANCED DRUG  
9 ENFORCEMENT CLASSES THROUGH THE SOUTH CAROLINA CRIMINAL  
10 JUSTICE ACADEMY. ADDITIONALLY, I WENT THROUGH TRAINING WITH  
11 THE DRUG ENFORCEMENT ADMINISTRATION. I BECAME CERTIFIED  
12 THROUGH THEM. I ATTENDED THE DRUG LAW ENFORCEMENT  
13 TRAINING THROUGH WHAT IS CALLED "FLETC" OR THE FEDERAL LAW  
14 ENFORCEMENT TRAINING CENTER. I ATTENDED VARIOUS DRUG  
15 TRAINING THROUGH THE FBI IN TERMS OF MONEY LAUNDERING AND  
16 DRUG RUNNING. AFTER THAT I WENT THROUGH THE DEA'S CLASS AND  
17 BECAME A CERTIFIED INSTRUCTOR AND I TEACH DRUG ENFORCEMENT  
18 THROUGHOUT THE UNITED STATES, WEST VIRGINIA, AND ALSO HERE  
19 AT THE POLICE DEPARTMENT.

20 Q OKAY. HAVE YOU PARTICIPATED IN ANY ARRESTS THAT RESULTED IN  
21 CONVICTIONS IN DISTRIBUTION CASES OVER YOUR LAST TWENTY-ODD  
22 YEARS IN LAW ENFORCEMENT?

23 A I PARTICIPATED IN BEYOND A THOUSAND CASES ON BOTH THE LOCAL,  
24 STATE, AND FEDERAL LEVELS. I HAVE WORKED AS AN UNDERCOVER  
25 OFFICER, BOUGHT AND SOLD DRUGS IN FURTHERANCE OF CRIMINAL

1 INVESTIGATIONS, AS WELL AS INVESTIGATED CASES AS AN AGENT FOR  
2 THE POLICE DEPARTMENT.

3 Q HAVE YOU BEEN QUALIFIED IN ANDERSON COUNTY AS AN EXPERT IN  
4 THE FIELD OF DRUG ENFORCEMENT, AND MORE SPECIFICALLY, IN THE  
5 DISTRIBUTION OF ILLEGAL NARCOTICS AND THEIR STREET VALUE?

6 A YES. I HAVE IN THIS COURT.

7 Q AND DO YOU RECALL HOW MANY TIMES?

8 A BY MORE THAN 20 TIMES.

9 Q AND HAVE YOU BEEN QUALIFIED BY OTHER COURTS AS WELL?

10 A YES. I HAVE TESTIFIED IN FEDERAL COURT, AT ANDERSON MUNICIPAL  
11 COURT, AND ALSO IN SOME OTHER STATES AS AN EXPERT.

12 **MS. HOGAN:** AT THIS POINT, YOUR HONOR, WE WOULD OFFER TO  
13 MOVE CAPTAIN KEVIN MARSEE TO BE DECLARED AN EXPERT IN THE  
14 DISTRIBUTION OF ILLEGAL NARCOTICS AND THEIR STREET VALUE.

15 **THE COURT:** MISTER TAVERNIER?

16 **MR. TAVERNIER:** FOR THAT PURPOSE, YOUR HONOR, I HAVE NO  
17 OBJECTIONS.

18 **THE COURT:** LADIES AND GENTLEMEN OF THE JURY, AS BEFORE,  
19 NORMALLY A PERSON IS NOT ALLOWED TO GIVE THEIR OPINION AS FROM  
20 THE WITNESS STAND. THEY MUST -- THEY ARE LIMITED TO WHAT THEY FELT,  
21 WHAT THEY HEARD, WHAT THEY SAW, WHAT THEY TASTED, THEIR SENSES.  
22 IN THIS CASE, OR IN OTHER CASES, CERTAIN PEOPLE MAY BE QUALIFIED  
23 BECAUSE OF THEIR EDUCATION, OR THEIR EXPERIENCE, OR BOTH, TO GIVE  
24 AN OPINION IN CERTAIN AREAS. IT HAS BEEN STIPULATED THAT CAPTAIN  
25 MARSEE IS AN EXPERT IN THE AREA OF DISTRIBUTION OF ILLEGAL

1 NARCOTICS AND STREET VALUES OF THE DRUGS AND HE WILL BE ALLOWED  
2 TO GIVE AN OPINION IN THAT AREA. THAT DOES NOT MEAN THAT YOU MUST  
3 ACCEPT HIS OPINION, BUT IT IS EVIDENCE, AND LIKE ANY OTHER EVIDENCE IN  
4 THIS CASE, TO USE AS ANY WAY YOU SEE FIT. THANK YOU.

5 MS. HOGAN: THANK YOU, YOUR HONOR.

6 Q CAPTAIN MARSEE, WERE YOU EMPLOYED AS CAPTAIN OF NARCOTICS  
7 ON APRIL 10, 2007?

8 A YES. I WAS.

9 Q AND WERE YOU INVOLVED IN AN ARREST AT THE CAROLINA INN HERE  
10 IN ANDERSON COUNTY?

11 A YES. I WAS.

12 Q OKAY. CAN YOU DESCRIBE WHAT, IF ANY, YOUR INVOLVEMENT WAS  
13 THAT DAY?

14 A THAT SPECIFIC DAY, I WAS NOTIFIED BY THOSE WHO WORKED FOR ME  
15 THAT MY HELP WAS NEEDED AT THE CAROLINA INN IN SOME  
16 SATURATION ON-GOING INVESTIGATION ACTIVITIES AND I WAS  
17 WORKING WITH JOEL MCKEE, OTHER OFFICERS, AND WE WERE  
18 PHYSICALLY LOCATED OFF MURRAY AVENUE IN VISUAL CONTACT WITH  
19 A HOTEL WHICH IS COMMONLY CALLED CAROLINA INN, IT USED TO BE  
20 CALLED CAROLINA TERRACE. IT IS LOCATED ON MURRAY, PAST  
21 GREENVILLE. WE SAW A BLUE CADILLAC PULL UP WHICH WAS DRIVEN  
22 BY THE DEFENDANT. UPON OBSERVING THE CAR, WE SAW THE  
23 DEFENDANT GET OUT OF THE VEHICLE, HE HAD A BLUE CUP IN HIS  
24 HAND. IT WAS NOTICED THAT HE PARKED OUTSIDE THE PARKING LOT  
25 OF THE HOTEL. IT'S REALLY TWO PARKING LOTS. THERE'S ONE ON

- 1 THE INTERIOR AND THERE'S ANOTHER PARKING LOT ON THE OUTSIDE.  
2 THERE WEREN'T MANY CARS PARKED IN THE PARKING LOT ON THE  
3 INTERIOR PART. THE DEFENDANT PARKED ON THE OUTSIDE. AT THAT  
4 TIME, WE DECIDED TO MAKE AN INVESTIGATIVE APPROACH. UPON  
5 APPROACH, I OBSERVED THAT THE DEFENDANT HAD STEPPED FROM  
6 HIS VEHICLE AND WAS LOOKING AROUND INSTEAD OF IMMEDIATELY  
7 GOING TO WHATEVER LOCATION HE MAY HAVE BEEN GOING TO. AS WE  
8 MADE OUR APPROACH, HE MADE EYE CONTACT WITH US. HE TOOK  
9 THE CUP, HE THREW IT DOWN. WE DETAINED MISTER MATTISON, AT  
10 WHICH TIME, ONE OF THE OFFICERS TOLD ME THAT THE CUP SMELLED  
11 OF ALCOHOL. MISTER MATTISON HAD COMMITTED TWO OFFENSES AT  
12 THAT TIME, SO HE WAS TAKEN INTO CUSTODY. I ORDERED OFFICERS  
13 TO DO AN INVENTORY SEARCH OF THE VEHICLE. THE TRUNK WAS  
14 OPENED, AT WHICH TIME THERE WAS A SET OF DIGITAL SCALES IN  
15 PLAIN VIEW IN THE TRUNK AREA AND GIVEN THOSE SETS OF  
16 CIRCUMSTANCES, I ORDERED THAT THE DEFENDANT BE TAKEN TO THE  
17 JAIL WHERE HE WAS SEARCHED AND I LATER LEARNED THAT HE WAS  
18 IN POSSE4SSION OF A QUANTITY OF CONTROLLED SUBSTANCES.
- 19 Q WAS THERE ANYTHING ELSE, ANY OTHER PARAPHERNALIA, IN THE CAR  
20 THAT DAY AFTER IT WAS -- WHEN IT WAS SEARCHED?
- 21 A THERE WAS SOME WINE, WHICH WAS CONSISTENT WITH WHAT WAS  
22 SMELLED IN THE CUP, AND THERE WAS THE SET OF SCALES.
- 23 Q NOTHING ELSE TO YOUR KNOWLEDGE?
- 24 A NO.
- 25 Q SO BASED ON WHAT YOU HAD SEEN THAT DAY, YOU REQUESTED THAT

1 MISTER MATTISON BE SEARCHED AT THE DETENTION CENTER?

2 A THAT IS CORRECT.

3 Q OKAY. AND WHO DID YOU INSTRUCT TO SEARCH MISTER MATTISON?

4 A OFFICER CLARDY HAD ACCOMPANIED THE DEFENDANT ON THE WAY TO  
5 JAIL. HE WAS ONE OF THE PEOPLE THAT I TOLD TO SEARCH THE  
6 DEFENDANT.

7 Q OKAY. AND THEN AT THAT POINT, THEY NOTIFIED YOU THAT HE HAD  
8 BEEN FOUND IN POSSESSION OF WHAT Y'ALL BELIEVED TO BE A  
9 ROCK-LIKE SUBSTANCE THAT YOU BELIEVED TO BE CRACK COCAINE?

10 A THAT IS CORRECT.

11 Q I AM GOING TO SHOW YOU WHAT HAS BEEN MARKED STATE'S  
12 EXHIBIT #2. I'LL ASK YOU TO LOOK AT THAT.

13 A THESE ARE THE SAME DRUGS. IT HAS OFFICER CLARDY'S NAME AND  
14 THE DEFENDANT'S NAME ON THE DRUGS.

15 Q SO THOSE ARE THE SAME DRUGS THAT WERE TAKEN OFF MISTER  
16 MATTISON'S PERSON ---

17 A CORRECT.

18 Q --- THE DAY HE WAS ARRESTED.

19 A THAT'S CORRECT.

20 Q CAN YOU, IN YOUR EXPERT OPINION, EXPLAIN A LITTLE BIT ABOUT THE  
21 WAY THAT THOSE DRUGS WERE PACKAGED?

22 A THIS IS CRACK COCAINE. (INDICATING) CRACK COCAINE IS USUALLY  
23 CONVERTED FROM COCAINE POWDER. COCAINE POWDER IS USUALLY  
24 PURCHASED ELSEWHERE, BROUGHT TO ANDERSON, WHERE IT IS  
25 COOKED DOWN INTO A SUBSTANCE KNOWN AS CRACK. BASICALLY,

1           WHAT THAT DOES IS TAKE IT FROM A POWDERED FORM TO A ROCK  
2           FORM AND SOMETIMES IT'S PURCHASED IN OTHER LOCATIONS AS  
3           CRACK, BUT WHEN BUYING IN LARGER QUANTITIES IT IS COOKED  
4           DOWN HERE. THESE ARE THE REMNANTS OF, OBVIOUSLY CRACK,  
5           THAT'S BEEN CUT DOWN INTO SMALLER ROCKS. CRACK COMMONLY IS  
6           SOLD ON THE STREETS IN ROCK FORM IN VARIOUS AMOUNTS. YOU  
7           HAVE \$10.00 ROCKS, \$20.00 ROCKS, \$50.00 ROCKS, AND IT DEPENDS ON  
8           THE WEIGHT OF THE DRUGS. I NOTICED THAT THESE DRUGS,  
9           SPECIFICALLY, WERE PACKAGED IN TWO DIFFERENT BAGS. ONE  
10          LARGER BAG CONTAINED SEVERAL DIFFERENT SIZED ROCKS. THE  
11          SMALLER BAG HAD, WHAT I OBSERVED EARLIER WAS, ALMOST A  
12          .8 GRAMS OF CRACK. SO, I NOTICED THEY WERE PACKAGED IN TWO  
13          DIFFERENT PACKAGES AND I NOTICED THAT THIS SPECIFIC CRACK  
14          APPEARS TO BE CUT DOWN FOR DISTRIBUTION.

15    Q       SO IN YOUR EXPERT OPINION, THE FACT THAT THE SMALLER ROCK  
16            WAS IN A DIFFERENT PACKAGE LEADS YOU TO BELIEVE THAT IT WAS  
17            PACKAGED THAT WAY WITH THE INTENT TO SELL?

18    A       WELL, YOU HAVE TWO DIFFERENT BAGS. YOU HAVE ONE SMALLER  
19            ROCK IN ONE BAG AND YOU HAVE ALL THESE DIFFERENT SIZED ROCKS  
20            IN A SEPARATE BAG. CRACK IS NOT COMMONLY PURCHASED IN BULK  
21            THIS WAY. USUALLY CRACK IS BOUGHT AS A COOKIE. WHEN YOU BUY  
22            IN QUANTITY SUCH AS QUARTER OUNCE, HALF OUNCE, OUNCE, YOU  
23            USUALLY GET WHAT IS CALLED A SLAB ON THE STREET, WHICH IS A  
24            SOLID PIECE. IN FURTHERANCE OF SELLING THE DRUGS, A PERSON  
25            WOULD TAKE THE LARGER SLAB THEN CUT IT DOWN INTO ROCKS AND

1            THAT'S HOW IT IS COMMONLY DISTRIBUTED, ROCK BY ROCK, AND I  
2            MADE THE OBSERVATION THAT THERE ARE TWO DIFFERENT BAGS.  
3            ONE CONTAINING NUMEROUS ROCKS, DIFFERENT SIZES AND THE  
4            OTHER CONTAINING ONE SINGLE ROCK.

5    Q        OKAY. WHEN THEY ARE NORMALLY SOLD, WHAT SIZES ARE THEY  
6            NORMALLY SOLD IN, THE ROCKS THAT YOU ARE REFERRING TO?

7    A        THE MOST COMMON WEIGHT IS BETWEEN 1/8 OF A GRAM, 1/10 OF A  
8            GRAM. THAT IS A \$20.00 ROCK. SOMETIMES THEY ARE A LITTLE  
9            LARGER. THEY CAN BE, YOU KNOW, \$30.00, \$50.00 ROCKS IF THEY ARE  
10           A LITTLE BIT LARGER, BUT THE MOST COMMON ROCK IS .8 TO .1 GRAMS  
11           AND BY LOOKING AT THIS, YOU KNOW, FIVE-AND-A-HALF GRAMS, YOU  
12           ARE LOOKING AT THE STREET VALUE OF SOMEWHERE OF ABOUT  
13           \$1050.00. YOU CAN BUY IT WHOLESALE CHEAPER, BUT THAT'S HOW  
14           YOU MAKE MONEY IS YOU CUT IT DOWN INTO SMALLER AMOUNTS AND  
15           SELL IT ROCK BY ROCK. THAT WAY YOU CAN MAKE MORE MONEY THAN  
16           WHAT YOU PAID FOR THE DRUGS.

17   Q        SO WHEN YOU SAY WHOLESALE VALUE, HOW WOULD YOU SELL  
18            WHOLESALE? HOW WOULD IT BE PACKAGED DIFFERENTLY OR HOW  
19            WOULD IT BE DIFFERENT FOR WHOLESALE VALUE?

20   A        FOR WHOLESALE VALUE, IF YOU WENT TO SOMEONE AND PURCHASED  
21            EITHER A QUARTER OUNCE, HALF OUNCE, OR AN OUNCE, YOU WOULD  
22            SEE USUALLY A LARGE CHUNK AND, YOU KNOW, YOU MAY HAVE A FEW  
23            EXTRA ROCKS ADDED IN IF THE WEIGHT'S NOT CORRECT, WHICH MOST  
24            OF THE TIME IT'S NOT CORRECT, BUT IT'S NOT USUALLY CUT DOWN  
25            INTO THIS MANY ROCKS.

1 Q AND SO, IN YOUR EXPERT OPINION, WHEN IT'S BROKEN DOWN INTO  
2 THAT MANY ROCKS, WHAT DOES THAT MEAN TO YOU?

3 A THAT MEANS THAT SOMEONE, YOU KNOW, IS INTENDING TO SELL THE  
4 CRACK AND THAT, COUPLED WITH SCALES FOR WEIGHING UP, TO  
5 INSURE THAT THE PERSON IS GETTING ADEQUATE WEIGHT, THAT  
6 LEADS ME TO BELIEVE THAT SOMEONE WOULD BE ENGAGED IN THE  
7 SALE OF CRACK COCAINE.

8 Q WHEN YOU -- WHEN THERE'S ALSO POSSESSION OF SCALES AS THERE  
9 WAS IN THIS CASE, WHAT DOES THAT MEAN TO YOU, IN YOUR EXPERT  
10 OPINION, AS FAR AS LOOKING AT DISTRIBUTORS?

11 A IN MOST EVERY CASE THAT WE HAVE BEEN INVOLVED IN, WHEN THERE  
12 IS A QUANTITY OF CRACK THERE FOR SALE, YOU USUALLY SEE SCALES,  
13 BECAUSE YOU HAVE TO WEIGH UP THE DRUGS TO MAKE SURE YOU  
14 ARE GETTING YOUR MONEY'S WORTH AND WHEN YOU DISTRIBUTE  
15 THEM OUT, AGAIN, YOU USUALLY NEED A SET OF SCALES. THOSE  
16 SCALES ARE EXPENSIVE. THEY ARE NOT CHEAP. DIGITAL SCALES  
17 USUALLY RUN SOMEWHERE BETWEEN \$100.00 AND \$150.00 A SET. THE  
18 TYPE SCALES THAT ARE USED ARE USUALLY FOUND IN LABORATORIES  
19 TO WEIGH OUT DIFFERENT SUBSTANCES TO MIX CHEMICALS, OR USED  
20 AS POSTAL SCALES TO WEIGH MAIL THAT HAS BEEN MAILED, BUT THEY  
21 ARE NOT USUALLY FOUND IN THE TRUNK OF A CAR.

22 Q OKAY. IN YOUR EXPERT OPINION, IS IT TYPICAL FOR A USER TO CARRY  
23 AROUND A SET OF DIGITAL SCALES THEY WOULD USE TO WEIGH THE  
24 DRUGS?

25 A NO. THAT'S NOT USUAL AT ALL.

1 Q OKAY. WHAT WOULD A TYPICAL USER HAVE ON THEM IF THEY ARE  
2 USING DRUGS?

3 A MOST OF THE CRACK USERS THAT WE COME ACROSS ON THE STREET,  
4 THEY WILL HAVE SOMETHING TO USE THE DRUGS SUCH AS A CRACK  
5 PIPE. WE CALL THEM CRACK CANS, WHERE THEY HAVE TAKEN A CAN  
6 AND POKED HOLES IN IT FOR THE PURPOSE OF CONSUMING THE  
7 DRUGS. THERE ARE THINGS THAT YOU CAN BUY IN GROCERY STORES  
8 AND CONVENIENCE STORES THAT WE CALL STEM ROSES AND THEY  
9 ARE NOTHING MORE THAN GLASS VIALS THAT THE USER WILL PACK  
10 WITH BRILLO PAD ON THE END AND YOU USE THAT TO ACTUALLY  
11 SMOKE THE CRACK. THAT'S WHAT A USER USUALLY HAS ON THEM.

12 Q BUT NOT DIGITAL SCALES, USUALLY?

13 A NOT USUALLY DIGITAL SCALES. NO.

14 Q OKAY. IN THIS CASE, TO YOUR KNOWLEDGE, WAS THERE ANY DRUG  
15 PARAPHERNALIA THAT WOULD BE USED TO SMOKE OR CONSUME  
16 CRACK COCAINE THAT WAS FOUND ON MISTER MATTISON OR IN HIS  
17 SURROUNDINGS?

18 A I'VE REVIEWED THESE REPORTS AND I'VE ALSO SPOKEN WITH  
19 OFFICERS INVOLVED IN THIS CASE AND THERE WERE NO  
20 PARAPHERNALIA FOUND THAT THEY, OTHER THAN THE SCALES, THAT I  
21 AM AWARE OF.

22 Q ALL RIGHT. CAPTAIN MARSEE, OTHER THAN WEIGHT, WHAT ARE OTHER  
23 THINGS THAT YOU WOULD BE CONSIDERED -- YOU WOULD CONSIDER  
24 THE BEHAVIOR OF A DISTRIBUTOR?

25 A I WOULD LOOK AT THE LOCATION THAT A PERSON'S IN, I WOULD LOOK

1 AT WHAT THE PERSON WAS DOING AT THE TIME, THE PERSON'S  
2 BEHAVIOR WHEN YOU FIRST SPOT THEM, I WOULD LOOK AT WHERE  
3 THE DRUGS WERE CONCEALED AT, I WOULD LOOK TO SEE IF THERE  
4 WAS PRESENCE OF THINGS THAT A PERSON WOULD USE TO SMOKE OR  
5 USE DRUGS, I WOULD LOOK AT THE CONDITION OF THE PERSON'S  
6 CLOTHING, AND THE PARAPHERNALIA THAT IS ASSOCIATED WITH  
7 WHAT'S FOUND.

8 Q IS IT UNUSUAL FOR A USER TO ALSO BE A DISTRIBUTOR?

9 A IT IS POSSIBLE FOR A USER TO BE A DISTRIBUTOR BECAUSE  
10 SOMETIMES, IN ORDER TO SUPPORT YOUR HABIT, YOU HAVE TO SELL  
11 DRUGS AS WELL AND IT DEPENDS ON HOW FAR ALONG THE PERSON IS  
12 WITH USING CRACK. USUALLY, YOU'LL SEE THAT PEOPLE USING  
13 CRACK WILL GO DOWNHILL RELATIVELY QUICKLY. YOU KNOW, THEY  
14 START PAWNING THINGS THAT BELONG TO THEM. THEY RUN OUT OF  
15 MONEY. SO DEPENDING ON WHERE THEY ARE IN THEIR STAGE OF LIFE  
16 IN USING DRUGS, SOMETIMES PEOPLE DO USE AND SELL DRUGS BOTH.  
17 THEY SELL IT TO SUPPORT THEIR HABIT.

18 Q WOULD IT BE TYPICAL FOR SOMEONE WHO HAS THAT AMOUNT OF  
19 CRACK, WORTH THAT MUCH MONEY BROKEN UP THE WAY THAT IT IS,  
20 WOULD THAT BE SOMETHING THAT A USER WOULD TYPICALLY DO?

21 A NO. BECAUSE THE CRACK IS BROKEN DOWN. IT'S BROKEN DOWN  
22 INTO INDIVIDUAL ROCKS. THESE DRUGS ARE PACKAGED FOR SALE.  
23 YOU HAVE TWO BAGS. ONE BAG WITH ONE DOSAGE UNIT AND THE  
24 OTHER BAG WITH NUMEROUS DOSAGE UNITS. THE AMOUNT OF MONEY  
25 IT WOULD TAKE TO BUY THIS IS NOT TYPICAL WITH A USER. IT'S VERY

1 EXPENSIVE.

2 Q IN YOUR EXPERT OPINION, ARE THE FACTS IN THIS CASE CONSISTENT  
3 WITH SOMEONE WHO WOULD BE DEALING DRUGS?

4 A THEY ARE CONSISTENT WITH SOMEONE THAT WOULD SELL DRUGS.  
5 YES.

6 MS. HOGAN: NOTHING FURTHER AT THIS POINT, YOUR HONOR.

7 THE COURT: CROSS-EXAMINATION?

8 MR. TAVERNIER: THANK YOU, YOUR HONOR. MAY IT PLEASE THE  
9 COURT.

10 CROSS-EXAMINATION OF CAPTAIN KEVIN MARSEE BY MISTER TAVERNIER

11 Q CAPTAIN MARSEE, ONE OF THE THINGS THAT YOU SAID WAS ABOUT  
12 HOW THINGS WERE PACKAGED AND THE SMALLER PACKAGE  
13 CONTAINED A ROCK THAT WEIGHED, ACCORDING TO WHAT MS.  
14 TUCKER TESTIFIED TO, WAS A LITTLE OVER .7 GRAMS. CORRECT?

15 A THAT IS CORRECT.

16 Q AND YOU SAID THE NORMAL DISTRIBUTION IS POINT  $-1/10$  OF A GRAM.  
17 CORRECT?

18 A I SAID .8 TO .1, USUALLY.

19 Q NO. YOU SAID A \$20.00 ROCK IS A TENTH OF A GRAM.

20 A I SAID, USUALLY .8 TO .1. IT COULD BE SMALLER, COULD BE LARGER.  
21 WHEN YOU CUT THE ROCKS DOWN IT'S ---

22 Q BUT YOU CAN ---

23 A --- HARD TO GET THE WEIGHT EXACTLY RIGHT.

24 Q MOST OF THE TIME IT IS A \$20.00 ROCK. CORRECT?

25 A CORRECT.

1 Q OKAY. NOW, ONE OF THE THINGS THAT YOU DIDN'T FIND IN THE CAR  
2 WAS YOU DIDN'T FIND ANY OTHER CELLOPHANE, YOU DIDN'T FIND ANY  
3 OTHER BAGGIES, YOU DIDN'T FIND ANY OTHER ZIP WRAPS OR  
4 ANYTHING ELSE THAT THE REST OF THOSE ALLEGED DRUGS THAT HE  
5 IS INTENDING TO SELL COULD BE PACKAGED IN. DID YOU? THE ONLY  
6 TWO BAGGIES IN THE ENTIRE CAR THAT WERE ON HIS PERSON WERE  
7 THOSE TWO BAGGIES RIGHT THERE. CORRECT?

8 A CORRECT. BUT YOU DON'T HAVE TO ---

9 Q NOT ---

10 A -- YOU DON'T HAVE TO HAVE BAGGIES TO SELL CRACK. YOU CAN PULL  
11 IT OUT OF THE BAG AND SELL THEM ROCK BY ROCK.

12 THE COURT: HOLD ON. GENTLEMEN, IF YOU ASK A QUESTION, LET HIM  
13 EXPLAIN IT ---

14 MR. TAVERNIER: I UNDERSTAND.

15 THE COURT: -- AND ONCE HE GETS THROUGH EXPLAINING IT, YOU CAN  
16 ASK THE NEXT QUESTION, PLEASE.

17 Q BUT YOU SAID THAT'S INDICATIVE OF SOMEBODY WHO WANTS TO SELL,  
18 BECAUSE HE'S GOT TWO BAGGIES. RIGHT?

19 A YOU HAVE ONE SEPARATED OUT.

20 Q BUT YOU SAID, BECAUSE HE'S GOT TWO BAGGIES, THAT'S AN  
21 INDICATOR THAT HE WANTS TO SELL, BUT YOU SAID HE DOESN'T HAVE  
22 TO DO IT THAT WAY AND HE HAS GOT A, YOU KNOW, HE HAS GOT A  
23 BUNCH OF ROCKS IN THAT ONE BAG.

24 A IF A PERSON WANTED TO SEPARATE OUT ONE ROCK FOR DELIVERY TO  
25 SOMEONE, THEY WOULD HAVE IT PACKAGED SEPARATELY, BUT YOU

- 1 DON'T HAVE TO PACKAGE IT SEPARATELY TO SELL, BUT IT'S  
2 INDICATIVE. THESE ROCKS ARE SOLD ONE BY ONE AS \$20.00 ROCKS,  
3 BUT YOU DON'T HAVE TO PACKAGE IT IN A BAG TO SELL IT. YOU CAN  
4 JUST HAND IT TO THE PERSON AS A ROCK.
- 5 Q AND IF AN INDIVIDUAL WAS GOING TO BUY DRUGS FOR HIS USE, IT  
6 COULD BE PACKAGED THIS WAY ALSO. CORRECT?
- 7 A NOT THAT MUCH. NO, SIR.
- 8 Q WHY NOT? WHAT'S THE CARDINAL RULE THAT SAYS THAT HE CAN'T  
9 BUY DRUGS IN THIS CONDITION?
- 10 A YOU CAN, BUT YOU'D PAY A LOT MORE MONEY FOR IT PACKAGED LIKE  
11 THAT. IF YOU WANTED TO BUY WHOLESALE IT MOST LIKELY WOULD BE  
12 PACKAGED AS A MUCH LARGER COOKIE. THOSE ARE BROKEN DOWN  
13 FOR SELL.
- 14 Q IF HE BOUGHT IT AND BROKE IT DOWN FOR HIS OWN PERSONAL USE, IT  
15 WOULD BE PACKAGED LIKE THIS. WOULD IT NOT?
- 16 A NOT USUALLY, IF HE BOUGHT IT WHOLESALE. IF HE PAID FULL RETAIL  
17 VALUE FOR IT, WHICH MOST PEOPLE DON'T DO, I MEAN YEAH, IT WOULD  
18 BE, BUT THERE'S NO REASON TO BREAK DOWN A SLAB OF CRACK  
19 OTHER THAN TO SELL IT ROCK BY ROCK.
- 20 Q WHAT IF THIS IS THE WAY HE WANTS TO USE IT? HE DOESN'T USE A  
21 WHOLE COOKIE, DOES HE? HE USES A PIECE. WHEN HE USES IT FOR  
22 PERSONAL USE AND GRINDS IT UP IN ORDER TO SMOKE IT, IT'S BROKEN  
23 UP INTO LITTLE PIECES. IS IT NOT?
- 24 A YES, SIR. BUT PEOPLE DON'T USE THAT MUCH CRACK AT ONE TIME.  
25 IT'S USED ROCK BY ROCK. THAT'S A LOT OF CRACK.

## CROSS EXAMINATION OF KEVIN MARSEE BY MR. TAVERNIER

153

- 1 Q AGREED. BUT IF HE WANTS -- IF HE IS WORKING AND IS MAKING MONEY  
2 AND DOESN'T WANT TO PAY STREET VALUE FOR A LOT OF CRACK THAT  
3 HE IS GOING TO USE OVER A PERIOD OF TIME, HE CAN BUY IT IN BULK.  
4 CAN HE NOT?
- 5 A HE COULD, BUT IT DOESN'T MAKE SENSE TO BUY IT THAT WAY.
- 6 Q NO. IT DOESN'T MAKE SENSE BECAUSE THAT'S WHAT YOU WANT TO  
7 BELIEVE AND INFER, BUT IT'S POSSIBLE. ISN'T IT?
- 8 A IT'S POSSIBLE, BUT NOT PROBABLE.
- 9 Q IF HE HAS THE MONEY AND HE WANTS TO GO OUT AND BUY ENOUGH  
10 CRACK TO SATISFY HIS NEEDS FOR A MONTH, AND HE HAS THE  
11 WHEREWITHAL TO DO IT BECAUSE HE IS EMPLOYED, HE CAN DO IT.  
12 RIGHT?
- 13 A HE CAN DO IT. BUT IT'S NOT NORMAL.
- 14 Q I'M NOT SAYING IT'S NORMAL, BUT HE CAN DO IT.
- 15 A YES, SIR.
- 16 Q AND IF HE BOUGHT A COOKIE AND BROKE IT UP SO THAT IT'S  
17 AVAILABLE FOR HIS PERSONAL USE, ALL RIGHT, BROKE IT UP INTO  
18 THESE LITTLE THINGS BECAUSE HE DOESN'T USE THE WHOLE COOKIE,  
19 HE USES A LITTLE BIT AT A TIME. RIGHT?
- 20 A RIGHT.
- 21 Q HE CAN BREAK IT UP ON HIS OWN, PACKAGE IT IN ONE PACKAGE AND  
22 CARRY IT AROUND WITH HIM. COULDN'T HE?
- 23 A YES. BUT HE DIDN'T. HE PACKAGED IT INTO TWO PACKAGES AND HAD  
24 IT SECRETED IN HIS GENITAL AREA.
- 25 Q HOW DO YOU KNOW HE DIDN'T BUY IT THIS WAY? DO YOU HAVE ANY

1 EVIDENCE, OF YOUR OWN PERSONAL KNOWLEDGE, THAT SHOWS YOU,  
2 AND YOU CAN PROVE TO THE JURY, THAT HE DIDN'T BUY IT THIS WAY?

3 A NO, SIR. I WAS ONLY ---

4 Q OKAY.

5 A --- STATING WHAT IS NORMAL.

6 Q YOU ARE GOING WITH PROBABILITIES. RIGHT? BUT THERE ARE  
7 EXCEPTIONS.

8 A YES, SIR. THERE ARE EXCEPTIONS, AT TIMES.

9 Q AND I'M NOT POSTING YOU AGAINST, I AM NOT PITTING YOU AGAINST  
10 SERGEANT MCKEE, BUT HE SAID IT IS POSSIBLE, TOO. RIGHT?

11 A YES, SIR. POSSIBLE, BUT NOT PROBABLE.

12 Q OKAY. EVERYONE THAT YOU ARREST THAT HAS OVER A GRAM OF  
13 CRACK COCAINE IS A DEALER? IS THAT WHAT YOU WANT TO TELL THIS  
14 JURY?

15 A NO, SIR. I LOOK AT PARAPHERNALIA, I LOOK AT PACKAGING, NUMBERS  
16 OF ROCKS, AND OTHER CONTRIBUTING FACTORS.

17 Q IT WASN'T HIS VEHICLE. WAS IT?

18 A NO, SIR.

19 Q OKAY. SO YOU CAN'T CONCLUSIVELY SAY THAT THE SCALES THAT  
20 WERE LOCATED IN THE TRUNK OF THE CAR WERE HIS EITHER, COULD  
21 YOU?

22 A HE HAD DOMINION AND CONTROL OVER THEM WHICH ---

23 Q YOU CAN NOT CONCLUSIVELY SAY THAT THE SCALES THAT WERE  
24 LOCATED IN THE TRUNK OF THE CAR WERE HIS SCALES. CAN YOU?

25 A NO. BUT HE HAD CONTROL OF THEM.

## CROSS EXAMINATION OF KEVIN MARSEE BY MR. TAVERNIER

155

1 Q BECAUSE HE HAD CONTROL OF THE CAR?

2 A YES, SIR. HE HAD THE KEYS TO THE CAR.

3 Q NO FINGERPRINTS OF HIS WERE FOUND ON THESE SCALES. WERE  
4 THERE?

5 A NO, SIR.

6 Q OKAY. SO IT IS POSSIBLE FOR HIM TO BUY A QUANTITY OF CRACK THAT  
7 IS ABOVE WHAT YOU CONSIDER TO BE NORMAL FOR HIS OWN  
8 PERSONAL USE?

9 A IF HE DID, HE WOULD PAY A THOUSAND FIFTY FOR SOMETHING THAT  
10 HE COULD NORMALLY GET FOR ABOUT FOUR TO SIX HUNDRED  
11 DOLLARS.

12 Q WE HAVE TESTIMONY FROM SERGEANT MCKEE THAT THE VALUE OF  
13 THESE DRUGS LISTED IN THE REPORT WAS \$620.00.

14 A YES, SIR.

15 Q DO YOU DISPUTE THAT?

16 A WHOLESALE VALUE? YES, FOUR TO SIX HUNDRED DOLLARS.

17 Q NO, I'M NOT -- NO. IN YOUR OWN CASE REPORT, VALUE OF DRUGS,  
18 \$620.00.

19 A THAT IS THE WHOLESALE, NOT THE STREET VALUE.

20 Q IS THERE A DISTINCTION THERE?

21 A THAT REPORT'S NOT CREATED FOR DISTINCTION.

22 Q AGENT, CASE AGENT IS C. FOUTS AND IT SAYS VALUE OF DRUGS,  
23 \$620.00. CORRECT?

24 A THAT'S CORRECT. WE CALCULATE BASED ON THE WHOLESALE VALUE.

25 Q NO, YOU DON'T, BECAUSE YOU WANT TO INFLATE NUMBERS, YOU WANT

- 1 BIGGER NUMBERS. SO YOU WANT -- WHEN YOU GIVE A VALUE FOR  
2 DRUGS AND IT'S REPORTED IN THE NEWSPAPER, YOU GIVE STREET  
3 VALUE, BECAUSE YOU WANT THE INFLATED NUMBER.
- 4 A THE AVERAGE --
- 5 Q YOU WANT THIS JURY --
- 6 A THE ANDERSON POLICE DEPARTMENT DOES NOT HAVE A COMMON  
7 PRACTICE OF INFLATING NUMBERS, SIR.
- 8 Q SERGEANT MCKEE SAID THAT THE NORMAL GOING RATE IS \$100.00 PER  
9 GRAM. YOU DISPUTE THAT?
- 10 A WHOLESALE? NO, SIR, I DON'T DISPUTE THAT.
- 11 Q OKAY. AND IF AN INDIVIDUAL WERE TO BUY FOUR, FIVE, OR SIX GRAMS,  
12 HE WOULD GET A BREAK ON PRICE AS OPPOSED TO SPENDING RETAIL  
13 PRICE. CORRECT?
- 14 A SURE HE WOULD.
- 15 Q OKAY. HOW MUCH MONEY DID MISTER MATTISON HAVE ON HIM WHEN  
16 HE WAS FOUND?
- 17 A I DON'T RECALL HOW MUCH HE HAD, SIR.
- 18 Q IF THE REPORT STATES THAT THERE WAS \$90.00, DOES THAT SOUND  
19 ABOUT RIGHT?
- 20 A IF THE REPORT STATES IT, I'M SURE IT PROBABLY IS CORRECT, SIR.
- 21 Q HOW MUCH DOES THE TYPICAL MARIJUANA USER CARRY OR MAINTAIN  
22 AT HIS HOUSE?
- 23 A WELL, MARIJUANA IS DIFFERENT FROM CRACK, BUT IT COULD BE  
24 ANYWHERE FROM SEVEN TO AN EIGHTH OF A GRAM ON UP TO  
25 ONE-HALF OUNCE.

## CROSS EXAMINATION OF KEVIN MARSEE BY MR. TAVERNIER

157

- 1 Q ALL RIGHT. HOW MANY CIGARETTES CAN YOU GET OUT OF A HALF  
2 OUNCE OF MARIJUANA?
- 3 A IT DEPENDS ON HOW BIG THE CIGARETTE ARE. IF YOU ARE MAKING  
4 BLUNTS OR MAKE IT WITH ROLLING PAPERS...
- 5 Q AND THEY SELL MARIJUANA IN DIFFERENT QUANTITIES. DON'T THEY?
- 6 A SURE THEY DO.
- 7 Q AND IT'S NOT HARD TO GO OUT AND BUY A HALF POUND OF  
8 MARIJUANA. IS IT?
- 9 A NO.
- 10 Q FOR AN INDIVIDUAL TO BUY IT FOR HIS OWN PERSONAL USE.
- 11 A A HALF POUND?
- 12 Q A HALF POUND. THAT'S EIGHT OUNCES.
- 13 A I'VE NEVER ARRESTED A USER OF MARIJUANA FOR A HALF POUND OF  
14 MARIJUANA, SIR.
- 15 Q YOU'VE NEVER?
- 16 A NOT A USER, SIR.
- 17 Q YOU HAVE NEVER COME UPON A USER WHO BUYS MARIJUANA IN A  
18 HALF-POUND QUANTITY?
- 19 A NO, SIR.
- 20 Q NOT IN 20 YEARS?
- 21 A NO, SIR.
- 22 Q OKAY. NONE OF YOUR OFFICERS HAVE EVER MADE A CASE WHERE A  
23 USER HAS A HALF-POUND OF MARIJUANA ON THEM?
- 24 A NO, SIR.
- 25 Q SO, IF THEY HAVE IT IN ONE CONTAINER AND THEY HAVE EIGHT

1           OUNCES OF MARIJUANA IN IT, IN ONE BAGGIE, THEN THEY ARE A  
2           DISTRIBUTOR?

3    A    I WOULD SAY IF THEY HAD THAT WEIGHT, YES, THEY WOULD PROBABLY  
4           BE A DISTRIBUTOR, SIR.

5    Q    A HALF-POUND OF MARIJUANA?

6    A    YES, SIR.

7    Q    IF A PERSON HAS MORE THAN TEN PILLS OF AN ILLICIT SUBSTANCE,  
8           ARE THEY A DISTRIBUTOR?

9    A    THERE'S A DIFFERENCE BETWEEN PILLS AND MARIJUANA AND CRACK.  
10           SOME THINGS ARE BIODEGRADABLE, OTHER THINGS AREN'T.  
11           MARIJUANA IS BIODEGRADABLE. PILLS, YOU KNOW, THE LEAST  
12           AMOUNT OF PILLS THAT YOU GET USUALLY IS AROUND 90, 30 TO 90  
13           PILLS. SO NATURALLY, WHEN THEY GET THEM FROM A PHARMACY  
14           THEY ARE GOING TO HAVE A LARGER AMOUNT OF PILLS.

15   Q    SO ON THE STREET, IF THEY ARE GOING TO BUY ONE PILL AT A TIME,  
16           AND SO IF AN INDIVIDUAL GETS IT FROM A PHARMACY AND HE HAS  
17           MORE THAN 90 PILLS OF ANY GIVEN SUBSTANCE, HE'S A DEALER?

18   A    HE'S VIOLATED THE LAW BECAUSE CONTROLLED SUBSTANCES ARE  
19           SOLD IN THE MAXIMUM DOSAGE OF 90 PILLS. SO IF HE HAS MORE THAN  
20           THAT ON A CONTROLLED SUBSTANCE, HE'S USUALLY IN VIOLATION BY  
21           GETTING TWO PRESCRIPTIONS OF THE SAME THING FROM DIFFERENT  
22           PHARMACIES.

23   Q    YOU CAN ORDER OVER THE INTERNET. HE'S IN VIOLATION?

24   A    ABSOLUTELY.

25   Q    ARE YOU GOING TO ARREST HIM AS BEING A DEALER WITH

## CROSS EXAMINATION OF KEVIN MARSEE BY MR. TAVERNIER

159

1 POSSESSION WITH INTENT TO DISTRIBUTE?

2 A IF HE ORDERS IT, CONTROLLED SUBSTANCES, THROUGH THE INTERNET  
3 AND HAS THEM BROUGHT INTO THIS STATE AND THIS LOCATION,  
4 WITHOUT A PROPER PRESCRIPTION, WITH THE ---

5 Q NO. NO. HE HAS A PROPER PRESCRIPTION. IF HE HAS MORE THAN 90  
6 PILLS, AND HE HAS A PROPER PRESCRIPTION, YOU ARE GOING TO  
7 CHARGE HIM WITH BEING A DEALER?

8 A IF IT'S A CONTROLLED SUBSTANCE, YES.

9 Q SO YOU ARE SAYING, UNDER THIS CIRCUMSTANCE, ANYBODY WHO HAS  
10 MORE THAN A GRAM OF CRACK IN THEIR POSSESSION, REGARDLESS  
11 OF HOW IT IS PACKAGED, HE'S A DEALER?

12 A NO, SIR. I SAID THAT THESE DRUGS ARE PACKAGED IN A MANNER  
13 CONSISTENT WITH THOSE WHO SELL DRUGS. THAT'S A LARGER  
14 QUANTITY BROKEN DOWN INTO SMALLER ROCKS, SIR.

15 Q BUT YOU DIDN'T FIND ANOTHER BAGGIE. WE HAVE NO FINGERPRINTS  
16 ON THE SCALES, NOT THE INDIVIDUAL'S CAR, AND YOU ARE SAYING  
17 BECAUSE OF THIS, HE'S A DEALER?

18 A ABSOLUTELY.

19 Q JUST CURIOUS. HOW MANY GRAMS COULD A PERSON POSSESS  
20 WITHOUT BEING CONSIDERED BEING A DEALER UNDER YOUR THEORY?

21 A THERE'S AN INFERENCE, BY STATE LAW, IN GRAMS.

22 Q I UNDERSTAND THE INFERENCE. I AM NOT ASKING ABOUT THAT. I AM  
23 ASKING UNDER YOUR THEORY, HOW MANY GRAMS OF CRACK COULD A  
24 PERSON POSSESS WITHOUT BEING CONSIDERED TO BE A DEALER?

25 A IT'S NOT ABOUT THE WEIGHT, SIR. THERE'S NO LIMIT ON THE WEIGHT.

1 IT'S HOW IT'S PACKAGED. ALL FACTORS ARE CONSIDERED IN EACH  
2 INDIVIDUAL CASE, WHAT PARAPHERNALIA WAS THERE, HOW THE  
3 DRUGS WERE PACKAGED, AND OTHER EVIDENCE THAT YOU MAY OR  
4 MAY NOT FIND.

5 Q SO THE ONLY EVIDENCE WE HAVE IS A SET OF SCALES THAT YOU CAN'T  
6 TIE TO THE INDIVIDUAL OTHER THAN THE FACT THAT THEY ARE IN THE  
7 TRUNK OF HIS CAR AND YOU HAVE TWO BAGGIES, ONE CONTAINING  
8 ONE ROCK AND THE OTHER CONTAINING MULTIPLE ROCKS. THAT'S IT.

9 A YES, SIR.

10 Q AND YOU ARE SAYING THAT HE'S A DEALER?

11 A YES, SIR.

12 Q OKAY. NOTHING FURTHER.

13 MR. TAVERNIER: THANK YOU, YOUR HONOR.

14 THE COURT: MS. HOGAN, RE-DIRECT?

15 MS. HOGAN: NOTHING FURTHER FROM THE STATE, YOUR HONOR.

16 THE COURT: CAN CAPTAIN MARSEE BE EXCUSED?

17 MS. HOGAN: YES, SIR.

18 THE COURT: THANK YOU, SIR.

19 MS. HOGAN: MAY WE APPROACH, YOUR HONOR?

20 THE COURT: YES MA'AM.

21 (BRIEF BENCH CONFERENCE)

22 MS. HOGAN: YOUR HONOR, THE STATE WOULD REST AT THIS POINT.

23 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN OF THE JURY, THAT IS

24 THE END OF THE STATE'S CASE. I AM GOING TO ASK YOU TO STEP BACK TO

25 THE JURY ROOM. WE HAVE A FEW TECHNICAL MATTERS TO TAKE CARE OF

1 AND THEN WE WILL RESUME TESTIMONY IN JUST A FEW MINUTES,  
2 POTENTIALLY. OKAY.

3 (JURY OUT AT 3:33 P.M.)

4 THE COURT: OKAY, MISTER TAVERNIER, YOU HAVE A MOTION AT THIS  
5 TIME?

6 MR. TAVERNIER: I DO, YOUR HONOR. I MOVE FOR A DIRECTED VERDICT.  
7 THE EVIDENCE TAKEN IN THE LIGHT MOST FAVORABLE TO THE STATE  
8 DOESN'T MEET THE BURDEN THAT THE DEFENDANT HAD THE INTENT TO  
9 DISTRIBUTE THE CRACK IN WHICH HE POSSESSED ON APRIL 10TH. THEY  
10 HAVE THE OPINION, OR THEORY, OF CAPTAIN MARSEE. OTHER THAN THAT,  
11 THEY HAVE NO OTHER EVIDENCE WHATSOEVER, I THINK, THAT MEETS THE  
12 BURDEN THEY HAVE TO MEET IN ORDER TO SHOW THE INTENT TO  
13 DISTRIBUTE. THANK YOU.

14 THE COURT: MS. HOGAN?

15 MS. HOGAN: YOUR HONOR, IF IT WOULD PLEASE THE COURT. THE  
16 STATE WOULD ARGUE BASED ON THE INFERENCE ALONE THAT WE HAVE MET  
17 THE BURDEN FOR PWID AT THIS POINT. WE'VE GOT THE WEIGHT OF THE  
18 DRUGS AT FIVE- AND-A-HALF GRAMS BY CARMEN TUCKER WITH SLED AND  
19 WHEN YOU PUT IN THE OTHER ELEMENTS, SUCH AS THE SCALES AND  
20 EXPERT TESTIMONY, WE BELIEVE THAT THE JURY COULD DRAW THE  
21 CONCLUSION THAT MISTER MATTISON WAS, IN FACT, A DEALER IN THIS CASE.  
22 WE BELIEVE WE'VE PUT UP ENOUGH TO DEFEAT A DIRECTED VERDICT  
23 MOTION.

24 THE COURT: I AM GOING TO DENY YOUR MOTION, MISTER TAVERNIER.  
25 I THINK THAT MS. HOGAN IS CORRECT. UNDER THE STATUTE ALONE, ONCE

1 YOU ESTABLISH THE AMOUNT AND THIS IS GIVEN TO THE JURY, I THINK THIS  
2 IS SUFFICIENT. I'M NOT CONCERNED WITH THE WEIGHT, JUST ITS EXISTENCE  
3 IN EVIDENCE SO I AM GOING TO DENY YOUR MOTION. NOW, AT THIS STAGE  
4 MY UNDERSTANDING, AND CORRECT ME IF I AM WRONG BECAUSE I AM APT  
5 TO BE WRONG, IS THAT THE DEFENDANT INTENDS TO TESTIFY OR WISHES TO  
6 TESTIFY. IS THAT CORRECT?

7 **MR. TAVERNIER:** YOUR HONOR, I NEED ABOUT TWO MINUTES AND I  
8 THINK WE WILL BE ABLE TO CLARIFY IT. I THINK WE ARE LEANING THAT WAY.  
9 I THINK I NEED ABOUT TWO MINUTES TO DISCUSS SOME DETAILS WITH HIM  
10 AND THEN I THINK I CAN TELL YOU.

11 **THE COURT:** TAKE YOUR TIME. WE WILL BE AT EASE.

12 (BRIEF BREAK)

13 **THE COURT:** MISTER TAVERNIER, HAS YOUR CLIENT HAD AN  
14 OPPORTUNITY TO DISCUSS WITH YOU WHETHER OR NOT HE WANTS TO  
15 TESTIFY?

16 **MR. TAVERNIER:** HE HAS, YOUR HONOR, AND MISTER MATTISON, BASED  
17 ON THE INFORMATION WE HAVE AVAILABLE TO US IS PREPARED TO TESTIFY.

18 **THE COURT:** WELL, I HAVE A FEW QUESTIONS, MISTER MATTISON. I  
19 WANT TO ASK YOU, AND YOU CAN REMAIN SEATED OR STAND, WHATEVER  
20 YOU PREFER, BUT I'M SURE THAT YOUR ATTORNEY HAS TOLD YOU THAT AT  
21 THIS STAGE OF THE TRIAL IT IS TIME, IF YOU ARE GOING TO DO SO, FOR  
22 YOUR SIDE OF THE CASE TO PUT UP A DEFENSE. AND, YOU KNOW, YOU HAVE  
23 A RIGHT TO CLAIM THE PROTECTIONS THAT ARE AFFORDED TO YOU BY THE  
24 FIFTH AMENDMENT, THE RIGHT AGAINST SELF INCRIMINATION. DO YOU  
25 UNDERSTAND THAT?

1           **MR. MATTISON:** YES, SIR.

2           **THE COURT:** NOW MISTER MATTISON, IF YOU DON'T UNDERSTAND  
3 ANYTHING THAT I AM EXPLAINING TO YOU, I WANT YOU TO SPEAK UP AND LET  
4 ME KNOW.

5           **MR. MATTISON:** OKAY.

6           **THE COURT:** AND I WILL BE GLAD TO DO SO IN A MANNER THAT YOU  
7 CAN UNDERSTAND, BUT JUST TO LET YOU KNOW, THE UNITED STATES  
8 CONSTITUTION PROVIDES THIS: THAT NO PERSON SHALL BE COMPELLED IN  
9 ANY CRIMINAL CASE TO BE A WITNESS AGAINST HIMSELF. ARE YOU AWARE  
10 OF THAT?

11          **MR. MATTISON:** YES, SIR.

12          **THE COURT:** DO YOU UNDERSTAND THAT MEANS THAT THEY CAN'T  
13 FORCE YOU TO TESTIFY?

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

15          **THE COURT:** NOW, THAT IS A DECISION THAT YOUR ATTORNEY CAN'T  
16 MAKE FOR YOU, YOUR MOTHER, OR YOUR CHILDREN, OR THE SOLICITOR.  
17 NOBODY CAN MAKE THAT DECISION FOR YOU EXCEPT FOR YOUR SELF. DO  
18 YOU UNDERSTAND THAT?

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

20          **THE COURT:** AND IT CAN ONLY BE WAIVED BY YOU, AS WELL. THAT  
21 MEANS, THAT IF YOU DECIDE TO TESTIFY, YOU HAVE TO DO SO IN A  
22 KNOWING, INTELLIGENT, AND VOLUNTARY MANNER KNOWING THE  
23 PROTECTIONS AFFORDED TO YOU BY THE 5TH AMENDMENT. DO YOU  
24 UNDERSTAND THAT?

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

1           **THE COURT:** I WILL TELL YOU THAT IF YOU DO DECIDE TO TESTIFY,  
2 THAT YOU WILL BE SUBJECT TO THE SAME RULES THAT APPLIES TO ANY  
3 OTHER WITNESS IN THIS CASE AND YOU WILL BE EXAMINED BY YOUR  
4 ATTORNEY, YOU WILL BE CROSS-EXAMINED BY THE SOLICITOR'S OFFICE. IF  
5 YOU HAVE ANY CONVICTIONS INVOLVING DISHONESTY, FALSE STATEMENTS,  
6 OR CRIMES THAT ARE PUNISHABLE BY IMPRISONMENT OF MORE THAN ONE  
7 YEAR --

8           **MR. MATTISON:** YES, SIR.

9           **THE COURT:** --- AND I FIND THAT THE PROBATIVE VALUE OF THOSE  
10 CRIMES OUTWEIGHS THE PREJUDICIAL IMPACT ON YOU, THEN THE  
11 SOLICITOR'S OFFICE CAN BE ALLOWED TO TALK TO YOU ABOUT THAT AND  
12 ASK YOU QUESTIONS ABOUT THAT AND ATTACK YOUR CREDIBILITY ON THAT.  
13 DO YOU UNDERSTAND THAT?

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

15           **THE COURT:** NOW, CONSIDERING ALL THIS, IS IT YOUR DESIRE TO  
16 FREELY, VOLUNTARILY, AND KNOWINGLY WAIVE YOUR FIFTH AMENDMENT  
17 RIGHTS AND GO AHEAD AND TESTIFY?

18           **MR. MATTISON:** YES, SIR.

19           **THE COURT:** HAS ANYBODY COMPELLED YOU TO DO SO?

20           **MR. MATTISON:** NO, SIR.

21           **THE COURT:** HAVE YOU HAD MORE THAN AMPLE TIME TO DISCUSS THIS  
22 MATTER WITH YOUR ATTORNEY?

23           **MR. MATTISON:** YES, SIR.

24           **THE COURT:** IS THERE ANYONE ELSE THAT YOU FEEL LIKE THAT YOU  
25 WOULD LIKE TO DISCUSS THIS MATTER WITH BEFORE YOU DECIDE TO GET

1 ON THE STAND?

2 MR. MATTISON: NO, SIR.

3 THE COURT: IS THERE ANYTHING ABOUT THE RIGHTS UNDER THE  
4 FIFTH AMENDMENT THAT I EXPLAINED TO YOU THAT YOU HAVE NOT  
5 UNDERSTOOD?

6 MR. MATTISON: I UNDERSTAND EVERYTHING YOU SAID, SIR.

7 THE COURT: DO YOU NEED ANY FURTHER CLARIFICATION FROM ME?

8 MR. MATTISON: NO, SIR.

9 THE COURT: NOW, I AM GOING TO CALL THE JURY BACK AND HAVE YOU  
10 GET ON THE STAND, UNLESS YOU WANT A FEW MORE MINUTES TO SPEAK  
11 WITH YOUR ATTORNEY ABOUT, OR ANYONE ELSE, ABOUT WHETHER OR NOT  
12 YOU WANT TO TAKE THE STAND.

13 (THE DEFENDANT CONSULTS WITH HIS ATTORNEY)

14 MR. MATTISON: WE'RE GOOD. WE'RE READY, SIR.

15 THE COURT: YOU ARE READY?

16 MR. MATTISON: YES, SIR.

17 THE COURT: OKAY. BRING THE JURY BACK. TALK TO MISTER  
18 MATTISON.

19 MR. TAVERNIER: JUST FOR CLARIFICATION, MISTER MATTISON, DOES  
20 AS FAR AS, AND I HAVE GONE OVER THIS WITH MS. HOGAN, --

21 THE COURT: WELL, HANG ON A MINUTE.

22 MR. TAVERNIER: THERE IS ONE CONVICTION THAT HE HAS POSSESSION  
23 OF CRACK IN 2000 AND IT WAS POSSESSION OF CRACK FROM A TRIAL THAT  
24 HE WENT TO IN 2000. CONVICTION DATE WAS 11-21-2000. THAT IS, AS FAR AS  
25 I AM AWARE, WHAT HIS RECORD REVEALS, WITH WHAT I HAVE DISCUSSED

1 WITH MS. HOGAN, THE ONLY CONVICTION HE HAS WHICH WOULD BE SUBJECT  
2 TO AN IMPEACHMENT.

3 THE COURT: WELL, LET ME SHOW YOU ONE THING AND MAKE SURE  
4 YOU ARE OKAY. (JUDGE MCINTOSH GIVES MISTER TAVERNIER A DOCUMENT,  
5 WHO THEN SHARES IT WITH MS. HOGAN AND THEN THE DEFENDANT)

6 MR. TAVERNIER: YOUR HONOR, THIS IS THE INCIDENT THAT OCCURRED  
7 IN 2000.

8 THE COURT: THAT IS THE CASE?

9 MR. TAVERNIER: THAT IS THE CASE.

10 THE COURT: OKAY. I JUST WANTED TO MAKE SURE YOU ARE AWARE  
11 OF IT. MY ASTUTE LAW CLERK CAME UP WITH THAT.

12 MR. TAVERNIER: HE IS REQUESTING FIVE MINUTES RIGHT NOW, YOUR  
13 HONOR. IF WE MAY?

14 THE COURT: YES, SIR. YOU MAY HAVE IT.

15 MR. TAVERNIER: THANK YOU.

16 THE COURT: WE WILL BE IN RECESS FOR FIVE MINUTES.

17 (BRIEF BREAK)

18 MR. TAVERNIER: YOUR HONOR?

19 THE COURT: GO AHEAD, MISTER TAVERNIER.

20 MR. TAVERNIER: YOUR HONOR, I HAVE HAD FURTHER CONVERSATION  
21 WITH MISTER MATTISON AND BASED ON THAT CONVERSATION HE HAS  
22 DECIDED THAT HE IS NOT GOING TO TESTIFY.

23 THE COURT: HE IS GOING TO EXERCISE HIS FIFTH AMENDMENT RIGHT?

24 MR. TAVERNIER: HE IS GOING TO EXERCISE HIS FIFTH AMENDMENT  
25 RIGHT AND HE IS NOT GOING TO TESTIFY.

1 THE COURT: OKAY. SO, DO YOU PLAN ON PRESENTING ANY EVIDENCE?

2 MR. TAVERNIER: NO, SIR. NO EVIDENCE, YOUR HONOR.

3 THE COURT: THEN WHAT I WOULD LIKE TO DO IS GO AHEAD AND  
4 EXCUSE THE JURY TODAY. I KNOW THAT BREAKS YOUR HEART.

5 MS. HOGAN: IT DOES. IT REALLY DOES.

6 THE COURT: AND LET'S GO OVER THE CHARGE. HAVE YOU HAD A  
7 CHANCE TO LOOK AT THAT? JUST MAKE SURE WE ARE OKAY, THEN WE CAN  
8 GO AHEAD AND DO CLOSING ARGUMENTS AND CHARGE THE JURY IN THE  
9 MORNING.

10 MR. TAVERNIER: VERY GOOD.

11 THE COURT: OKAY.

12 MS. HOGAN: YES SIR, YOUR HONOR.

13 THE COURT: FAIR ENOUGH. NOW, SOMETHING THAT I HAVE BEEN  
14 DOING. I DID IT BY MISTAKE, BUT IT'S TURNED OUT TO BE OKAY, AT LEAST IN  
15 SOME CASES, I THINK THAT BRADLEY CAN VERIFY THIS, BUT I WAS OVER IN  
16 GREENVILLE IN A CIVIL CASE AND I ENDED UP CHARGING THE JURY BEFORE I  
17 LET THE LAWYERS DO THEIR CLOSING ARGUMENTS AND THEN THEY DID  
18 THEIR CLOSING ARGUMENTS. NOW, I ALWAYS GIVE EVERYBODY A SHOT AT  
19 WHICH WAY THEY WANT TO GO. IF YOU WANT TO-- IF YOU WANT ME TO GO  
20 AHEAD AND INSTRUCT THE JURY ON THE LAW FIRST, THEN YOU DO YOUR  
21 CLOSING ARGUMENTS, OR YOU CAN DO YOUR STANDARD CLOSING  
22 ARGUMENTS AND THEN I WILL INSTRUCT THEM ON THE LAW. EITHER WAY IS  
23 FINE WITH ME. MY RULE IS THIS, WE ARE GOING TO DO IT IN THE STANDARD  
24 FASHION, UNLESS Y'ALL AGREE TO DO IT THE OTHER WAY. YOU DON'T HAVE  
25 TO MAKE UP YOUR MIND NOW. THAT'S FOR EVERYBODY.

1 MS. HOGAN: SO, WE CAN JUST LET YOU KNOW IN THE MORNING?

2 THE COURT: YES MA'AM, ABSOLUTELY.

3 MS. HOGAN: OKAY. YES, SIR.

4 THE COURT: WOULD YOU BRING THE JURY BACK FOR ME?

5 (JURY IN AT 3:51 P.M.)

6 MR. TAVERNIER: YOUR HONOR, BEFORE THE JURY COMES IN, CAN HE  
7 REMAIN OUT ON BOND?

8 THE COURT: THE SAME CONDITIONS, MISTER MATTISON.

9 MR. TAVERNIER: YES, SIR.

10 THE COURT: NINE O'CLOCK IN THE MORNING.

11 MR. TAVERNIER: YES, SIR.

12 THE COURT: LADIES AND GENTLEMEN, WE ACTUALLY ARE FINISHED  
13 WITH ALL THE TESTIMONIAL PART OF THIS CASE. WE HAVE, THE ATTORNEYS  
14 AND I, HAVE ABOUT ANOTHER HOUR OR SO OF SOME PREPARATION BEFORE  
15 THE CLOSING ARGUMENTS IN THE MORNING. SO WHAT I AM GOING TO DO IS  
16 EXCUSE YOU FOR THE REMAINDER OF THE AFTERNOON. I AM GOING TO ASK  
17 YOU TO COME BACK AND BE IN YOUR JURY ROOM NO LATER THAN NINE  
18 O'CLOCK, PREFERABLY FIVE UNTIL, SO WE CAN PROMPTLY RESUME AT NINE  
19 O'CLOCK IN THE MORNING. AND IF YOU RECALL, I AM GOING TO INSTRUCT  
20 YOU AGAIN, TO PLEASE NOT DISCUSS THIS CASE WITH ANYBODY, AMONGST  
21 YOURSELVES, YOUR FAMILY, OR ANYONE ELSE. THANK YOU VERY MUCH AND  
22 YOU ARE EXCUSED FOR THE AFTERNOON.

23 (JURY OUT AT 3:52 P.M.)

24 THE COURT: ARE THERE ANY QUESTIONS ON THE LAW AS FAR AS  
25 POSSESSION WITH INTENT TO DISTRIBUTE AND POSSESSION?

1           **MS. HOGAN:** YES, YOUR HONOR. WE HAVE NO PROBLEM.

2           **MR. TAVERNIER:** NONE, YOUR HONOR. NO OBJECTIONS AT ALL.

3           **THE COURT:** OKAY. THEN, LET ME JUST GO OVER WITH YOU WHAT MY  
4   GENERAL CHARGE IS. I DO IT IN THREE PARTS. THE FIRST PART JUST HAS  
5   ~~TO DO WITH THE GENERAL RULES AND TO DEFINE THE DUTIES TO THE~~  
6   JURORS. I TELL THEM WHAT IS EVIDENCE AND WHAT IS NOT EVIDENCE. I  
7   DESCRIBE FOR THEM WHAT IS DIRECT AND CIRCUMSTANTIAL EVIDENCE. I  
8   DISCUSS WITH THEM THE CREDIBILITY OF WITNESSES. I GO OVER WITH  
9   THEM THE FACT THAT THE INDICTMENT IS NOT EVIDENCE AND THAT THERE IS  
10  NO INFERENCE OR CONCLUSIONS TO BE DRAWN FROM THAT, THE FACT OF  
11  THE INDICTMENT. I GIVE THEM THE CHARGE ON PRESUMPTION OF  
12  INNOCENCE. REASONABLE DOUBT. INTENT. IN THIS CASE, I WOULD TELL  
13  THEM THE FAILURE TO TESTIFY CAN'T BE USED IN ANY FORM OR FASHION.  
14  THEN I GO TO THE SECOND PHASE AND THEN I WOULD GIVE THE  
15  POSSESSION WITH INTENT TO DISTRIBUTE CHARGE AND POSSESSION  
16  CHARGE. I MEAN, IS THERE ANY PARTICULAR ORDER? YOU KNOW, I THINK  
17  PWID WOULD BE THE PROPER FIRST ONE AND THEN POSSESSION SECOND.  
18  THEN THE NEXT, THE LAST PART IS JUST THE DISCUSSION WITH THEM ABOUT  
19  THEIR DELIBERATIONS. NOW, IT SEEMS TO ME THAT WE ARE GOING TO HAVE  
20  TO HAVE A SPECIAL VERDICT FORM IN THIS CASE BECAUSE OF THE ISSUE OF  
21  WHETHER IT'S POSSESSION OR POSSESSION WITH INTENT TO DISTRIBUTE. I  
22  AM GLAD TO HEAR FROM YOU.

23           **MR. TAVERNIER:** YOUR HONOR, I THINK BASED ON THE FACTS THERE  
24  ARE TWO POSSIBLE VERDICTS, EITHER POSSESSION WITH INTENT TO  
25  DISTRIBUTE OR POSSESSION, PERIOD. THERE IS NO ACQUITTAL. NO

1 NOT-GUILTY. HE IS GUILTY OF ONE OR GUILTY OF THE OTHER.

2 THE COURT: OKAY. SO, IN OTHER WORDS YOU SAY HE IS GUILTY OF  
3 POSSESSION WITH INTENT TO DISTRIBUTE OR GUILTY OF POSSESSION.

4 MR. TAVERNIER: YES, SIR. BECAUSE HE HAS ADMITTED TO THE  
5 POSSESSION OF DRUGS, SO IT'S EITHER POSSESSION OR PWID.

6 THE COURT: I AGREE WITH THAT.

7 MR. TAVERNIER: I DON'T THINK I CAN ARGUE NOT GUILTY.

8 THE COURT: I AGREE WITH THAT. MS. HOGAN?

9 MS. HOGAN: SOUNDS GOOD TO ME, YOUR HONOR.

10 THE COURT: SOUNDS LIKE YOU GET A USED CAR OR A NEW CAR, HUH?  
11 OKAY, THAT'S WHAT I WILL DO. WE WILL PREPARE A VERDICT FORM, GUILTY  
12 OR GUILTY. OKAY. NOW, MISTER MATTISON, YOUR ATTORNEY HAS ASKED  
13 ME AND I HAVE ALLOWED YOU TO STAY OUT WITH THE SAME CONDITIONS  
14 UNDER YOUR BOND.

15 MR. MATTISON: YES, SIR.

16 THE COURT: YOU DO UNDERSTAND THAT THEY STILL APPLY?

17 MR. MATTISON: YES, SIR.

18 THE COURT: IF YOU WILL BE HERE BEFORE NINE O'CLOCK IN THE  
19 MORNING.

20 MR. MATTISON: YES, SIR.

21 THE COURT: WE WILL RESUME THE CASE.

22 MR. MATTISON: ALL RIGHT. THANK YOU, SIR.

23 THE COURT: ALL RIGHT. Y'ALL HAVE A GOOD EVENING.

24 MS. HOGAN: THANK YOU, YOUR HONOR.

1 (OUT AT 3:56 P.M.)

2 **MORNING - JANUARY 14, 2010**

3 **THE COURT:** MISTER TAVERNIER, BEFORE WE GET STARTED, I  
4 UNDERSTAND YOU HAVE SOME MOTIONS YOU WANT TO PUT ON THE  
5 RECORD, PLEASE SIR.

6 **MR. TAVERNIER:** YOUR HONOR, THE DEFENSE HAS NOT PRESENTED  
7 ANY EVIDENCE, THEREFORE WE DON'T HAVE TO PRESENT A CASE IN CHIEF,  
8 AND BASED ON THAT IT'S MY UNDERSTANDING THAT I NEED TO RENEW MY  
9 MOTIONS THAT WERE MADE AT THE END OF THE STATE'S CASE IN CHIEF AND  
10 RENEW ANY OTHER MOTIONS THAT HAVE BEEN MADE JUST TO PROTECT THE  
11 RECORD.

12 **THE COURT:** AND THAT WOULD INCLUDE YOUR PRE-TRIAL MOTIONS  
13 THAT YOU DID ON MONDAY.

14 **MR. TAVERNIER:** CORRECT, YOUR HONOR. NOW THAT YOU'VE HEARD  
15 ALL THE EVIDENCE BASED ON THE MOTION TO SUPPRESS THE EVIDENCE  
16 AND EVERYTHING, NOW THAT YOU'VE HEARD ALL THE EVIDENCE I THINK IT'S  
17 REQUIRED OF ME TO RENEW MY MOTIONS, UNDERSTANDING THAT I HAVE  
18 NOT PRESENTED ANY EVIDENCE, I DID PRESENT MY MOTIONS AT THE END OF  
19 THE STATE'S CASE IN CHIEF, BUT I JUST WANTED TO MAKE SURE THE  
20 RECORD IS PROTECTED.

21 **THE COURT:** ALL RIGHT. AND I'M GOING TO DENY YOUR MOTIONS AND  
22 JUST FOR THE RECORD, WHEN YOU ATTEMPTED TO RENEW YOUR MOTIONS, I  
23 RULED THAT YOU WERE PROTECTED ON THE RECORD AND ESSENTIALLY  
24 DIDN'T ALLOW YOU TO MAKE THE ACTUAL MOTION ITSELF OTHER THAN THE  
25 FACT THAT YOU WERE RENEWING THEM AND SO I THINK YOU ARE

1 PROTECTED ON THE RECORD.

2 MR. TAVERNIER: THANK YOU, YOUR HONOR.

3 THE COURT: MY UNDERSTANDING IS, COUNSEL, IS THAT THE DEFENSE  
4 PUT UP NO EVIDENCE IN THIS CASE AND THEY HAVE THE LAST ARGUMENT. IS  
5 THAT RIGHT, MS. HOGAN?

6 MS. HOGAN: YES, SIR, YOUR HONOR.

7 MR. TAVERNIER: CORRECT, YOUR HONOR.

8 THE COURT: YOU READY TO DO YOUR ARGUMENT?

9 MS. HOGAN: YES, SIR.

10 THE COURT: ALL RIGHT. LET'S GO. BRING THE JURY IN.

11 (JURY IN AT 9:12 A.M.)

12 THE COURT: GOOD MORNING, LADIES AND GENTLEMEN. DID Y'ALL  
13 HAVE A GOOD EVENING? WE'RE ABOUT TO BEGIN THE CLOSING ARGUMENT  
14 PHASE OF THE CASE. THE ATTORNEYS WILL PRESENT THEIR CLOSING  
15 ARGUMENTS. AS I TOLD YOU AT THE BEGINNING OF THIS TRIAL, THEIR  
16 ARGUMENTS ARE THEIR CONCLUSIONS, IT IS NOT EVIDENCE, BUT THEIR  
17 CONTENTION IS HELPFUL, SO LISTEN CAREFULLY. AFTER WHICH, DEPENDING  
18 ON HOW LONG WE GO, WE MAY TAKE A BREAK OR I MAY GO AHEAD AND  
19 CHARGE ON THE LAW, BUT NOTWITHSTANDING, I WILL CHARGE YOU ON THE  
20 LAW AND THEN I'LL HAVE A BRIEF CONFERENCE WITH THE ATTORNEYS AND  
21 THEN YOU WILL BE ABLE TO BEGIN YOUR DELIBERATIONS THIS MORNING.  
22 OKAY? READY TO PROCEED COUNSEL?

23 MS. HOGAN: YES, SIR, YOUR HONOR.

24 THE COURT: MS. HOGAN.

25 MS. HOGAN: THANK YOU, YOUR HONOR, IF IT PLEASES THE COURT.

1 **CLOSING ARGUMENT BY MS. HOGAN**

2 GOOD MORNING. THANK YOU FOR YOUR SERVICE ON THE JURY THIS  
3 WEEK. WE APPRECIATE ALL YOUR ATTENTION AND PARTICIPATION IN EVERY  
4 CRIMINAL CASE THAT COMES TO TRIAL IN ANDERSON COUNTY. WE ARE  
5 HERE TODAY BECAUSE THIS DEFENDANT, MISTER ANTHONY MATTISON HAS  
6 BEEN CHARGED WITH POSSESSION WITH INTENT TO DISTRIBUTE CRACK  
7 COCAINE AND IT IS MY BURDEN TO PROVE TO YOU THAT HE DID SO BEYOND A  
8 REASONABLE DOUBT.

9 BEFORE WE GO INTO THE ELEMENTS OF THE CRIME THAT I EXPLAINED  
10 TO YOU IN MY OPENING STATEMENT, I'M GOING TO TALK TO YOU A LITTLE BIT  
11 ABOUT WHAT REASONABLE DOUBT IS. REASONABLE DOUBT IS NOT DOUBT  
12 BEYOND ALL DOUBT. THERE ARE VERY FEW THINGS IN THIS LIFE THAT WE  
13 KNOW WITH ABSOLUTE CERTAINTY AND THE STATE DOES NOT REQUIRE  
14 THAT I GIVE YOU PROOF TO OVERCOME EVERY POSSIBLE DOUBT.  
15 REASONABLE DOUBT IS THE KIND OF DOUBT THAT WOULD CAUSE A  
16 REASONABLE PERSON TO HESITATE TO ACT IN A SITUATION. DON'T  
17 CONFUSE THE HESITATION TO ACT WITH THE CAREFUL CONSIDERATION OF  
18 THE EVIDENCE IN THIS CASE DURING YOUR DELIBERATIONS. DELIBERATIONS  
19 ARE NOT THE SAME THING AS A HESITATION TO ACT. BEYOND A  
20 REASONABLE DOUBT MEANS THAT, BASED ON THE EVIDENCE YOU'VE HEARD  
21 AND THE TESTIMONY THAT YOU'VE HEARD TODAY THAT YOU ARE CONVINCED  
22 OF THE DEFENDANT'S GUILT. I SUBMIT TO YOU THAT THE STATE HAS  
23 PROVED BEYOND A REASONABLE DOUBT THE ELEMENTS OF THE CRIME  
24 MISTER MATTISON IS CHARGED WITH AND YOU SHOULD FIND HIM GUILTY  
25 BEYOND A REASONABLE DOUBT.

1           NOW, LET'S TALK ABOUT THE ELEMENTS OF THIS CHARGE, PWID  
2   CRACK COCAINE. THAT'S AN ACRONYM OF THAT. THE FIRST ELEMENT  
3   INVOLVED IS PROVING IT WAS CRACK COCAINE AND YOU HEARD TESTIMONY  
4   FROM CARMEN TUCKER UP HERE ON THE WITNESS STAND THAT SHE  
5   ANALYZED THE DRUGS WHEN THEY WERE SENT DOWN TO SLED TO HER AND  
6   THAT THEY WERE, IN FACT, COCAINE AND THAT THE TWO BAGGIES SENT  
7   DOWN TO HER, THE TWO BAGGIES RIGHT HERE THAT SHE TESTIFIED TO,  
8   WERE, IN FACT, CRACK COCAINE, AND THAT IT HAD A COMBINED WEIGHT OF  
9   5.54 GRAMS OF CRACK.

10           YOU ALSO HEARD TESTIMONY FROM MULTIPLE WITNESSES WHO EACH  
11   TOLD YOU THEY HAD HANDLED THIS PACKET OF DRUGS WHICH MEANS THAT  
12   WHEN MISTER MATTISON WAS ARRESTED AND TAKEN OFF HIS PERSON, THEY  
13   WERE HANDLED AND ANALYZED AND THAT'S WHAT WE CALL THE CHAIN OF  
14   CUSTODY. OBVIOUSLY, THERE WAS A LITTLE MIX UP WITH THE PAPERWORK,  
15   BUT I SUBMIT TO YOU THAT THE CHAIN OF CUSTODY HAS BEEN ESTABLISHED  
16   BECAUSE I PRESENTED TESTIMONY BY EVERY SINGLE PERSON THAT  
17   TOUCHED THOSE DRUGS TO SAY THAT THEY DID NOT ALTER THEM IN ANY  
18   WAY AND THAT I'VE PROVED TO YOU EVERY DAY FROM THE DAY THEY WERE  
19   TAKEN OFF OF MISTER MATTISON AND THEY WERE ANALYZED, I  
20   ESTABLISHED WHO HAD CUSTODY AND CONTROL OF THOSE DRUGS AND I  
21   WAS ABLE TO PRESENT THEM TO YOU UP ON THE STAND AND PROVE TO YOU  
22   THAT THEY WERE NOT TAMPERED OR ALTERED WITH IN ANY WAY.

23           SECONDLY, I HAD TO PROVE THAT THE DEFENDANT WAS IN  
24   POSSESSION OF THE CRACK COCAINE. YOU HEARD TESTIMONY FROM  
25   SERGEANT CLARDY, THAT HE WAS THE ONE WHO SEARCHED THE

1 DEFENDANT AND THAT HE SEARCHED HIM AT THE DETENTION CENTER AND  
2 THAT HE LITERALLY HAD THE CRACK COCAINE ON HIS PERSON, THAT THEY  
3 WERE IN THE BAGGIES UNDER THE UNCIRCUMCISED FORESKIN OF HIS PENIS.  
4 THERE IS NO DOUBT THAT THAT IS POSSESSION OF CRACK COCAINE RIGHT  
5 THERE AND THAT EVEN THE DEFENSE ATTORNEY, MISTER TAVERNIER,  
6 ADMITTED SO IN HIS OPENING STATEMENT.

7 SO, THEN WE COME TO THE THIRD ELEMENT OF THE CRIME WHICH IS,  
8 ARGUABLY, THE MOST IMPORTANT IN THIS CASE, THAT THE DEFENDANT  
9 ACTUALLY POSSESSED THIS CRACK COCAINE WITH THE INTENT TO  
10 DISTRIBUTE IT. NOW, THE LAW ALLOWS A PERMISSIVE INFERENCE THAT  
11 WEIGHT ALONE IS EVIDENCE OF THE DEFENDANT'S INTENT TO DISTRIBUTE  
12 THIS CRACK COCAINE. WHAT THIS MEANS IS, THAT AFTER YOU'VE HEARD ALL  
13 THE TESTIMONY IN THIS CASE, YOU ARE ALLOWED, BUT NOT REQUIRED, TO  
14 ASSUME THAT THE DEFENDANT WAS ATTEMPTING TO SELL THE DRUGS  
15 SIMPLY BECAUSE HE WAS IN THE POSSESSION OF MORE THAN A GRAM OF  
16 CRACK COCAINE. NOW, I WOULD ARGUE TO YOU THAT NOT ONLY DO YOU  
17 HAVE THIS INFERENCE BECAUSE HE WAS IN POSSESSION OF FIVE-AND-A-  
18 HALF GRAMS OF CRACK COCAINE, BUT WE PROVIDED ADDITIONAL  
19 TESTIMONY TO SHOW YOU THAT MISTER MATTISON INTENDED TO  
20 DISTRIBUTE THOSE DRUGS THAT HE HAD ON HIS PERSON.

21 LET'S TALK ABOUT THAT EVIDENCE A SECOND. FIRST OF ALL, WE HAVE  
22 THIS SET OF DIGITAL SCALES. YOU WILL BE ALLOWED TO TAKE THESE BACK  
23 IN THE JURY ROOM WITH YOU WHEN YOU DELIBERATE, STATE'S EXHIBIT #1, A  
24 SET OF DIGITAL SCALES TO SEE WHAT IT IS, BUT YOU HEARD TESTIMONY  
25 FROM THE OFFICERS THAT THESE DIGITAL SCALES ARE TYPICALLY USED BY

1 CRACK DEALERS TO WEIGH THE DRUGS BEFORE THEY SELL THEM. THEY  
2 GET A CERTAIN AMOUNT OF MONEY FOR A PARTICULAR AMOUNT OF DRUGS  
3 AND THIS IS HOW THEY WEIGH THEM. THIS WAS FOUND IN THE TRUNK OF  
4 THE CAR THAT THE DEFENDANT WAS DRIVING AND HE WAS THE ONLY  
5 PASSENGER AND THE DEFENSE WILL TRY TO ARGUE THAT HE WAS  
6 BORROWING THE CAR AND THAT HE DID NOT KNOW THE SCALES WERE IN  
7 THE TRUNK OF THE CAR, BUT WE HEARD TESTIMONY FROM SERGEANT  
8 MCKEE, WHO FOUND THE SCALES, THAT HE ALSO FOUND THIS BOTTLE WITH  
9 A LITTLE BIT OF WINE IN THE TRUNK OF THE CAR. WE HEARD TESTIMONY  
10 THAT THE COLD DUCK WINE AND THE CONSISTENCE, THE WAY THAT IT  
11 LOOKED AND THE WAY THAT IT SMELLED, WAS CONSISTENT WITH WHAT  
12 MISTER MATTISON Poured OUT OF HIS CUP WHEN HE ARRIVED AND SAW  
13 THE OFFICERS IN THE PARKING LOT. AND WHERE WAS THIS BOTTLE OF  
14 COLD DUCK WINE? IN THE TRUNK WITH THE SET OF SCALES IN THE BACK OF  
15 THE CAR. YOU ALSO HEARD TESTIMONY FROM SERGEANT MCKEE AND  
16 SERGEANT CLARDY THAT THE SCALES ARE TYPICALLY USED BY DEALERS TO  
17 SELL THE DRUGS, AND THAT TYPICALLY, BUYERS DO NOT HAVE A SET OF  
18 SCALES ON THEM WHEN THEY BUY THE DRUGS THAT ARE SOLD TO THEM BY  
19 A DEALER WHO DOES HAVE A SET OF SCALES TO WEIGH THEM WHILE THEY  
20 ARE BUYING THEM. ALSO, YOU HEARD EXPERT TESTIMONY FROM CAPTAIN  
21 MARSEE, THE LAW ENFORCEMENT OFFICER WITH TWENTY-FIVE OR MORE  
22 YEARS EXPERIENCE. HE SAID THAT IT WOULD BE UNUSUAL FOR A BUYER TO  
23 HAVE A SET OF SCALES BECAUSE THEY ARE SO EXPENSIVE TO BUY,  
24 BETWEEN \$100.00 AND \$150.00. USERS TYPICALLY DO NOT HAVE THAT KIND  
25 OF CASH TO BUY A SET OF SCALES TO WEIGH THE DRUGS THEY ARE BEING

1 SOLD.

2 NOW, I'LL TALK ABOUT THIS CRACK ITSELF (HOLDING UP DRUGS) AND  
3 WE'VE GOT TWO BAGGIES AND IT'S HARD TO TELL BECAUSE THEY ARE  
4 OVERLAPPING, BUT WE'VE GOT TWO BAGGIES AND YOU CAN SEE A RED LINE  
5 IS AT THE TOP OF THIS BAGGIE AND THE RED LINE IS AT THE TOP OF THE BAG  
6 WITH MORE COCAINE IN IT. WE HEARD TESTIMONY THAT ONE BAG HAD .73  
7 GRAMS OF CRACK COCAINE FROM MS. TUCKER, THE ANALYST FROM SLED  
8 AND THEN ALSO THE BAG WITH MORE WEIGHT IN IT HAD AROUND 4.8 GRAMS  
9 OF COCAINE IN IT. TWO SEPARATE BAGGIES, ONE WITH ALMOST FIVE GRAMS  
10 AND THE OTHER ONE WITH A LITTLE MORE THAN HALF A GRAM IN IT. YOU  
11 HEARD EXPERT TESTIMONY FROM CAPTAIN MARSEE THAT BAGGIES LIKE  
12 THIS ARE TYPICALLY FOUND ON DEALERS BECAUSE YOU'VE GOT THE BAGGIE  
13 WITH MORE CRACK IN IT, THEIR STASH AND THEN YOU'VE GOT THE BAGGIE  
14 WITH ONE ROCK IN IT THAT'S EASY FOR SALE. SO THIS IS SOMETHING THAT  
15 THEY TYPICALLY CARRY AROUND WITH THEM READY FOR SALE AND THEN  
16 THEY WOULD HAVE THE REST OF THE STASH LEFT ON THEM. YOU ALSO  
17 HEARD TESTIMONY THAT A BAGGIE WITH THIS MUCH CRACK IS ANYWHERE  
18 BETWEEN \$500.00 AND \$1000.00. OFFICER MCKEE AND CLARDY TESTIFIED  
19 THAT THE STREET VALUE OF THIS COULD BE ANYWHERE FROM \$400.00 TO  
20 \$600.00 AND YOU ALSO HEARD EXPERT TESTIMONY FROM CAPTAIN MARSEE  
21 THAT THAT WOULD BE WHOLESALE VALUE. IF YOU BOUGHT WHAT HE  
22 CALLED A "COOKIE" BEFORE THIS IS BROKEN UP, A COOKIE LIKE THIS BEFORE  
23 IT'S BROKEN UP, THAT WOULD BE THE WHOLESALE PRICE, THAT HE WOULD  
24 BREAK IT UP AND SELL IT AS INDIVIDUAL ROCKS AS IT IS HERE OR YOU  
25 COULD EVEN GO SMALLER AND DO A TENTH OF A GRAM OR SOMETHING LIKE

1 THAT, THAT YOU'D TYPICALLY GET \$20.00 FOR AND YOU COULD MAKE  
2 UPWARDS OF A THOUSAND DOLLARS FOR FIVE-AND-A-HALF GRAMS OF  
3 CRACK COCAINE. CAPTAIN MARSEE TESTIFIED THAT IN HIS OPINION, AN  
4 EXPERT OPINION, THAT USERS TYPICALLY DON'T HAVE THIS MUCH DRUGS ON  
5 THEM. ONE, THEY DON'T HAVE THIS KIND OF CASH, \$500.00, TO SPEND ON  
6 THIS MUCH CRACK AT ANY GIVEN TIME, NOR DO THEY BUY IN BULK LIKE THIS  
7 BECAUSE USERS, WHAT THEY DO IS USE, IF THEY HAD THIS BAGGIE, THEY  
8 WOULDN'T HAVE IT VERY LONG AT ALL. THEY WOULD USE IT AS QUICKLY AS  
9 THEY BOUGHT IT AND SO YOU WON'T USUALLY FIND A USER WITH THIS MUCH  
10 CRACK ON THEM. HOWEVER, IT WOULDN'T BE UNUSUAL FOR A USER TO  
11 BECOME A DEALER TO SUPPORT HIS HABIT, SO IT WOULDN'T BE UNUSUAL  
12 FOR SOMEONE TO HAVE SOME CRACK ON THEM, BUT TO ALSO BE SELLING IT  
13 TO BE ABLE TO SUPPORT THE HABIT THAT THEY'VE CREATED FOR SMOKING  
14 THE CRACK, THAT IT WOULDN'T BE UNUSUAL FOR A PERSON TO BE A USER  
15 AND A DEALER AT THE SAME TIME. CAPTAIN MARSEE ALSO STATED THAT IN  
16 HIS EXPERT OPINION, TAKING IN ALL THE FACTUAL INFORMATION IN THIS  
17 CASE, THAT HE BELIEVED THAT THIS WAS CONSISTENT WITH SOMEONE WHO  
18 IS A DEALER IN CRACK COCAINE AND NOT JUST A USER.

19 NOW, THE DEFENSE IS GOING TO ARGUE THAT MISTER MATTISON IS A  
20 USER AND THAT HE IS NOT A DEALER AND HE'S GOING TO TRY TO ARGUE  
21 THAT HE'S CREATED SOME KIND OF REASONABLE DOUBT BECAUSE HE HAD  
22 GOTTEN OFFICERS TO SAY THAT MISTER MATTISON WAS JUST A USER AND  
23 NOT A DEALER, BUT OFFICERS ALSO SAID IT'S POSSIBLE, BUT NOT  
24 PROBABLE, THAT TAKING EVERYTHING THAT THEY KNOW INTO ACCOUNT,  
25 THEIR TRAINING AND EXPERIENCE AND THE FACTS IN THIS CASE, THAT IT IS

1 POSSIBLE, BUT IT'S NOT PROBABLE WITH WHAT THEY KNOW. AND ALSO, I  
2 DON'T HAVE TO OVERCOME EVERY LITTLE POSSIBLE DOUBT. BUT IF THE  
3 DEFENDANT WAS ONLY A USER, WHY DID HE PACKAGE HIS CRACK INTO TWO  
4 SEPARATE BAGGIES? WHY DID HE HAVE ONE ROCK SET APART FROM THE  
5 REST OF THE ROCKS? IF HE'S JUST USING THESE DRUGS, WHY DIDN'T HE  
6 KEEP THEM ALL IN THE SAME PACKAGE? WHAT WOULD BE THE PURPOSE OF  
7 SEPARATING THEM INTO SEPARATE BAGGIES? WHERE IS THE  
8 PARAPHERNALIA THAT HE WOULD HAVE USED TO SMOKE THIS CRACK  
9 COCAINE IF HE'S JUST A USER? THERE'S NO TESTIMONY THAT HE HAD  
10 ANYTHING ON HIM, THAT ANYTHING WAS IN THE CAR. CERTAINLY THEY  
11 FOUND ALCOHOL ON HIM, BUT WHERE WAS THE CRACK PIPE OR THE CAN  
12 THAT CAPTAIN MARSEE TESTIFIED TO THAT CRACK USERS TYPICALLY HAD  
13 ON THEM WHEN THEY ARE SMOKING CRACK? IF HE'S A USER, WHERE IS ALL  
14 THIS? ALSO, WHY DOES HE HAVE \$500.00 ON THE CONSERVATIVE SIDE, OF  
15 CRACK COCAINE ON HIM? IF HE'S A USER, A HIGHLY ADDICTIVE DRUG, HOW  
16 DID HE HAVE THE WILLPOWER TO OVERCOME NOT USING THIS STASH AS  
17 QUICKLY AS EVERYONE ELSE? HE HAS THIS MUCH STASH ON HIM, THERE  
18 MAYBE WILL BE AN ARGUMENT THAT HE HAD THIS MUCH CRACK ON HIM TO  
19 LAST HIM A MONTH. WHAT YOU'VE HEARD TESTIMONY IS HOW UNLIKELY IT  
20 WOULD BE FOR A CRACK USER TO BE ABLE TO RATION HIMSELF OUT USING  
21 THE CRACK THAT THEY HAVE ON THEM. TYPICALLY, THIS IS SOMETHING  
22 THAT THEY WOULD GET RID OF PRETTY QUICKLY OR HE WAS HAVING TO  
23 SPEND THIS MUCH MONEY ON A REGULAR BASIS, SAY WEEKLY OR  
24 BI-WEEKLY, AND \$500.00 WOULD BE CONSERVATIVE, SO AT LEAST A \$1000.00  
25 A MONTH FOR CRACK COCAINE FOR HIS HABIT AND EVEN WITH SOMEONE

1 WITH A REGULAR PAYING JOB IS GOING TO HAVE A HARD TIME KEEPING UP  
2 WITH THAT, THEY ARE GOING TO HAVE TO SUPPLEMENT THEIR INCOME  
3 SOMEHOW TO COME UP WITH THIS KIND OF CRACK TO SUPPORT A HABIT.

4 LADIES AND GENTLEMEN, THIS DEFENDANT, ANTHONY MATTISON, IS  
5 NOT A USER. HE IS A DEALER AND HE IS GUILTY BEYOND A REASONABLE  
6 DOUBT OF POSSESSION WITH INTENT TO DISTRIBUTE CRACK COCAINE  
7 BECAUSE THAT IS WHAT THE EVIDENCE SHOWS. THANK YOU.

8 THE COURT: MISTER TAVERNIER.

9 MR. TAVERNIER: THANK YOU, YOUR HONOR. MAY IT PLEASE THE  
10 COURT.

11 CLOSING ARGUMENT BY MISTER TAVERNIER

12 MADAM SOLICITOR, MISTER FOREMAN, LADIES AND GENTLEMEN OF  
13 THE JURY, A LOT OF WHAT MS. HOGAN SAID IS CORRECT. REASONABLE  
14 DOUBT IS THAT DOUBT WHICH WOULD CAUSE A REASONABLE PERSON TO  
15 HESITATE. THAT'S AS FAR AS WE GET, THOUGH, IN THAT PARTICULAR AREA  
16 BECAUSE SHE HAS THE BURDEN OF PROOF BEYOND A REASONABLE DOUBT.  
17 THERE ARE SEVERAL THINGS THAT I'M GOING TO ASK YOU TO CONSIDER,  
18 BUT FIRST OFF, I WANT TO CLEAR THE AIR A LITTLE BIT. YESTERDAY, YOU  
19 SAW ME BEAT UP MISTER BASKIN PRETTY WELL. OKAY? MISTER BASKIN IS A  
20 GOOD GUY. WHAT HE DID WAS WRONG AND IT HAD TO BE DONE FOR LEGAL  
21 PURPOSES THAT DON'T PERTAIN TO YOU, BECAUSE THOSE ISSUES WILL NOT  
22 BE BEFORE YOU. THOSE ARE MATTERS OF LAW THAT MUST BE PRESERVED  
23 SO I DON'T WANT YOU TO ASSUME FOR ONE SECOND THAT WHAT I WAS  
24 DOING WAS BEATING SOMEONE UP TO IMPUGN HIS CHARACTER BECAUSE  
25 THE EVIDENCE WAS NOT TAMPERED WITH. ALL RIGHT? I'M NOT ARGUING

1 THAT. THERE ARE CERTAIN THINGS THAT HAVE TO BE DONE TO ESTABLISH A  
2 CHAIN OF CUSTODY PURSUANT TO THE LAW AND BECAUSE OF THAT, THAT  
3 WAS IRREGULAR AND I DID THAT TO BEAT UP ON MISTER BASKIN, NOT TO  
4 CLOUD THE ISSUE, SOME OF YOU MAY UNDERSTAND THE SIGNIFICANCE,  
5 SOME OF YOU MAY NOT, BUT I WANT TO CLEAR THE AIR. MISTER BASKIN IS A  
6 GOOD GUY. I'VE KNOWN HIM FOR A LOT OF YEARS. I WILL VOUCH FOR AND  
7 NOT ATTACK THE INTEGRITY OF THE DRUGS. WE STIPULATED THAT THE  
8 DRUGS ARE CRACK COCAINE AND THAT THEY WERE ON MISTER MATTISON  
9 ON APRIL 10, 2007. THAT IS NOT AN ISSUE BEFORE YOU. OKAY? I HAD TO DO  
10 THAT TO PRESERVE THE RECORD. SO, DON'T MISINTERPRET THAT AND I ASK  
11 YOU NOT TO MISINTERPRET BECAUSE MISTER BASKIN IS A GOOD GUY. I  
12 HAVE TO DO WHAT I HAVE TO DO. THAT'S DONE.

13 NOW, LET'S GET TO THE FACTS. ONE OF THE KEY THINGS THAT, OTHER  
14 THAN THE WEIGHT OF THE DRUGS THAT WERE FOUND ON MISTER MATTISON,  
15 THAT THE STATE IS RELYING UPON, IS BECAUSE OF THE FACT THAT SCALES  
16 WERE FOUND IN THE TRUNK OF THE VEHICLE. ONE OF THE THINGS THAT  
17 THEY CANNOT ESTABLISH OTHER THAN THE FACT THAT THERE WAS  
18 DOMINION AND CONTROL -- AND I WANT YOU TO REMEMBER WHAT CAPTAIN  
19 MARSEE SAID YESTERDAY REGARDING DOMINION AND CONTROL -- THERE IS  
20 NO, WHAT WE CALL IN THE LEGAL PROFESSION, A CONNECTION BETWEEN  
21 MISTER MATTISON AND THOSE SCALES OTHER THAN THE FACT THAT THEY  
22 WERE IN THE TRUNK, BECAUSE THEY HAD NO FINGERPRINTS OF MISTER  
23 MATTISON ON THEM AND LADIES AND GENTLEMEN, I WOULD SUBMIT TO YOU  
24 THAT IF THOSE SCALES BELONGED TO HIM AND HE WERE TO USE THEM, HIS  
25 FINGERPRINTS WOULD HAVE BEEN FOUND SOMEWHERE ON THOSE SCALES

1 BECAUSE THEY ARE SMALL IN NATURE AND IT WOULD BE VERY DIFFICULT  
2 FOR ANYONE TO PULL THIS OUT, OPEN IT UP AND SET IT UP  
3 (DEMONSTRATING) WITHOUT HIS FINGERPRINTS BEING ON THEM  
4 SOMEWHERE ON THIS DEVICE. REASONABLE DOUBT. REASONABLE DOUBT  
5 NUMBER ONE. CAPTAIN MARSEE SAID BECAUSE, I'M BACK TO DOMINION AND  
6 CONTROL, BECAUSE HE HAD DOMINION AND CONTROL OF THE VEHICLE, HE  
7 HAD TO BE IN DOMINION AND CONTROL AND IN POSSESSION OF THE SCALES.  
8 IF YOU WENT TO THE GROCERY STORE AND BOUGHT A CASE OF BEER OR  
9 WENT TO THE LIQUOR STORE AND BOUGHT A BOTTLE OF WINE, A BOTTLE OF  
10 LIQUOR, AND HAD IT IN THE TRUNK OF YOUR CAR AND THOSE OF YOU WHO  
11 ARE FORTUNATE ENOUGH TO HAVE TEENAGERS, IF YOU HAD LEFT THAT  
12 BOTTLE OR CASE IN THE TRUNK OF THE CAR, YOUR TEENAGER IS DEEMED  
13 TO HAVE DOMINION AND CONTROL OVER THAT CASE OF BEER, THAT BOTTLE  
14 OF LIQUOR AND HAVE OWNERSHIP AND COULD BE CHARGED CRIMINALLY  
15 WITH HAVING POSSESSION. THAT IS DOMINION AND CONTROL. DOESN'T  
16 MEAN THEY OWN IT. DOESN'T MEAN THEY ARE IN CONTROL. THEY ARE IN  
17 CONSTRUCTIVE POSSESSION. THAT'S WHAT THEY CALL IT, AND AS HIS  
18 HONOR WILL CHARGE YOU, THAT'S CONSTRUCTIVE POSSESSION, BUT IT  
19 DOES NOT MEAN THAT THEY OWN IT OR THAT IT'S THEIRS. THAT ANALOGY,  
20 LADIES AND GENTLEMEN, IS WHAT PROVIDES THE SECOND ELEMENT OF  
21 REASONABLE DOUBT. JUST BECAUSE IT'S IN THE VEHICLE DOES NOT MEAN  
22 IT BELONGED TO THE DEFENDANT, TO MISTER MATTISON, BECAUSE IT WAS  
23 NOT IN HIS VEHICLE. AS YOU HEARD, THE VEHICLE WAS TITLED IN THE NAME  
24 OF EDDIE ETHRIDGE AND SO EVERYTHING THAT WAS IN THAT VEHICLE DID  
25 NOT NECESSARILY BELONG TO MISTER MATTISON. THAT'S THE SECOND

1 ELEMENT OF REASONABLE DOUBT THAT YOU HAVE AND ON WHICH YOU CAN  
2 BASE YOUR VERDICT TODAY.

3 PERSONAL USE. MISTER MATTISON WAS EMPLOYED. HE HAD A JOB  
4 AND, AS SUCH, AS STATED, MOST USERS DON'T HAVE A JOB, BUT HE DID.  
5 MOST INDIVIDUALS, MOST PEOPLE WHO BUY AT SAM'S CLUB AREN'T  
6 NECESSARILY BUSINESS OWNERS. THEY TAKE ADVANTAGE OF BUYING IN  
7 BULK BECAUSE THERE IS A DISCOUNT WHEN YOU BUY IN BULK. BOTH  
8 SERGEANT MCKEE AND CAPTAIN MARSEE ACKNOWLEDGED THAT THERE IS A  
9 BENEFIT IN BUYING IN BULK AND WHEN YOU HAVE A HABIT AND YOU WANT  
10 TO BUY IN BULK TO TAKE ADVANTAGE OF THAT, YOU DO, IF YOU HAVE THE  
11 WHEREWITHAL. YOU DON'T JUST BUY A SINGLE SERVING EVERY TIME YOU  
12 GO TO THE STORE AS OPPOSED TO GOING TO BI-LO OR PUBLIX, YOU GO TO  
13 SAM'S CLUB, YOU BUY IN BULK AND YOU TAKE ADVANTAGE OF THE  
14 DISCOUNT, IF YOU HAVE THE WHEREWITHAL.

15 THE THIRD ELEMENT OF A REASONABLE DOUBT, FOURTH ELEMENT. IN  
16 MISTER MATTISON'S VEHICLE, THERE WERE NO ADDITIONAL BAGGIES OR ANY  
17 OTHER INDICATOR THAT HE WAS A DEALER OTHER THAN THE TWO BAGGIES  
18 THAT ARE LOCATED RIGHT HERE. CAPTAIN MARSEE WOULD HAVE YOU  
19 BELIEVE THAT THEY SELL THESE ROCKS AND THAT THEY DON'T  
20 NECESSARILY HAVE TO BE PACKAGED, BUT YET, THIS ONE IS PACKAGED.  
21 WHAT THEY CAN'T SHOW IS THAT MISTER MATTISON MAY HAVE JUST  
22 PURCHASED THESE DRUGS. THIS WAS WHAT WAS LEFT FROM THE PRIOR  
23 PURCHASE AND THIS WAS HIS NEW PURCHASE. THEY HADN'T BEEN PUT  
24 TOGETHER YET. THEY HAVE THE BURDEN TO PROVE BEYOND A  
25 REASONABLE DOUBT THAT HE HAD THE INTENT TO SELL. AND LADIES AND

1 GENTLEMEN, YOU HAVE AT LEAST FOUR ELEMENTS OF REASONABLE DOUBT  
2 THAT YOU CAN POINT TO, TO NEGATE THAT.

3 NOW, HIS HONOR IS GOING TO GIVE TO YOU, PROBABLY TO MISTER  
4 BURNS, THE FOREMAN, A VERDICT SHEET AND THAT VERDICT SHEET IS  
5 GOING TO CONTAIN THREE POSSIBLE VERDICTS. IT'S GOING TO CONTAIN  
6 NOT GUILTY, POSSESSION, POSSESSION WITH INTENT TO DISTRIBUTE.  
7 LADIES AND GENTLEMEN, YOU DON'T NEED -- AND I'VE ALREADY CLEARED  
8 THIS WITH MISTER MATTISON, HE UNDERSTANDS IT -- YOU DON'T NEED TO  
9 CONSIDER THE NOT GUILTY. HE READILY ADMITS HE HAD DRUGS IN HIS  
10 POSSESSION. BUT THERE IS A DISTINCTION BETWEEN POSSESSION WITH  
11 INTENT TO DISTRIBUTE AND THE POSSESSION AND YOU'RE GOING TO BE  
12 ALLOWED TO DETERMINE ONE OF THOSE TWO, BECAUSE IF YOU FIND "NOT  
13 GUILTY" THEN YOU HAVEN'T LISTENED TO THE EVIDENCE AND CONSIDERED  
14 IT AS YOUR DUTY PROVIDES THAT YOU DO. THE OBLIGATION THAT YOU  
15 HAVE, BASED ON THE LAW THAT HIS HONOR WILL GIVE YOU, IS TO APPLY THE  
16 TESTIMONY AND THE EVIDENCE TO THE LAW AS HE WILL CHARGE IT HERE  
17 SHORTLY.

18 CONSIDER WHAT THE STATE'S BURDEN IS. CONSIDER THE EVIDENCE.  
19 APPLY IT TO THE LAW AND I SUBMIT TO YOU THAT WHEN YOU DO THAT, THE  
20 ONLY PLAUSIBLE VERDICT THAT YOU CAN ARRIVE AT IN THIS PARTICULAR  
21 CASE IS A VERDICT OF POSSESSION OF CRACK COCAINE. THANK YOU FOR  
22 YOUR ATTENTION.

23 **THE COURT:** LADIES AND GENTLEMEN, I NEED TO GO OVER ONE BRIEF  
24 THINGS WITH THESE ATTORNEYS. I'M GOING TO ASK YOU TO STEP BACK TO  
25 YOUR JURY ROOM FOR ABOUT FIVE MINUTES. MAKE YOURSELF

1 COMFORTABLE AND THEN I'LL BRING YOU BACK IN HERE AND GIVE YOU THE  
2 CHARGE ON THE LAW AND THEN LET YOU BEGIN YOUR DELIBERATIONS. BUT  
3 IF YOU'LL STEP BACK TO YOUR JURY ROOM AT THIS POINT, PLEASE.

4 (JURY OUT AT 9:30 A.M.)

5 (BRIEF BENCH CONFERENCE)

6 **THE COURT:** LET THE RECORD REFLECT THAT WE REVIEWED THE  
7 VERDICT FORM AND BOTH ATTORNEYS AGREE TO THE FORMAT. ALSO, LET  
8 ME GO AHEAD AND PUT ON THE RECORD THAT WE HAD A PRE-TRIAL  
9 CONFERENCE AND THE ATTORNEYS AGREED THAT THE OPTION OF "NOT  
10 GUILTY" WOULD BE ADDED TO THE VERDICT FORM. IS THAT CORRECT, MS.  
11 HOGAN?

12 **MS. HOGAN:** YES, SIR, YOUR HONOR.

13 **THE COURT:** MISTER TAVERNIER?

14 **MR. TAVERNIER:** YES, YOUR HONOR.

15 **THE COURT:** ALL RIGHT. YOU GUYS TAKE ABOUT FIVE MINUTES AND  
16 THEN WE WILL GO AHEAD AND DO THE CHARGE.

17 (BRIEF BREAK)

18 **CHARGE ON THE LAW**

19 **THE COURT:** LADIES AND GENTLEMEN, NOW IT'S TIME FOR ME TO  
20 CHARGE YOU ON THE LAW THAT'S APPLICABLE TO THIS CASE. BEFORE I DO,  
21 LET ME THANK YOU FOR YOUR ATTENTIVENESS DURING THIS TRIAL. I'VE  
22 WATCHED EACH AND EVERY ONE OF YOU AND YOU PAID CLOSE ATTENTION.  
23 IT'S CLOSE TO THE TIME WHEN WE PUT THE MATTER INTO YOUR HANDS, BUT  
24 BEFORE WE DO, IT'S MY JOB TO CHARGE YOU ON THE LAW THAT'S  
25 APPLICABLE TO THIS CASE AND IF AT ANY TIME I BEGIN TO GO TOO FAST OR

1 YOU DON'T UNDERSTAND WHAT I'M SAYING, RAISE YOUR HAND AND I'LL BE  
2 GLAD TO STOP AND GO BACK OVER WHAT I WENT OVER BECAUSE I WANT  
3 YOU TO UNDERSTAND WHAT I'M TELLING YOU.

4 THESE INSTRUCTIONS WILL BE IN THREE PARTS. THE FIRST PART HAS  
5 TO DO WITH JUST THE GENERAL RULES THAT DEFINE AND CONTROL YOUR  
6 DUTIES AS JURORS. THE SECOND PART OF THE CHARGE, AND I'LL LET YOU  
7 KNOW WHERE WE ARE WHEN IT'S TIME, IS THE ACTUAL LAW THAT YOU WILL  
8 BE APPLYING TO THE FACTS OF THIS CASE AND THEN THE THIRD HAS TO DO  
9 WITH YOUR DELIBERATIONS. OKAY?

10 SO, THE FIRST PART JUST IS IN REGARDS TO THE GENERAL RULES,  
11 AND LET ME TELL YOU THIS, THE FIRST THING THAT WE DO BEFORE WE DO  
12 ANYTHING ELSE IS, IT'S YOUR DUTY TO FOLLOW THE LAW AS I GIVE IT TO  
13 YOU. YOU ARE NOT TO BE CONCERNED WITH WHAT THE LAW ISN'T, YOU  
14 SHOULDN'T BE CONCERNED WITH WHAT THE LAW SHOULD BE, YOU WILL AND  
15 SHALL APPLY THE LAW AS I GIVE IT TO YOU. ALSO, YOU'RE NOT TO BE  
16 INFLUENCED BY ANY PERSONAL DISLIKES, OPINIONS, ANY PREJUDICE OR  
17 SYMPATHY FOR ONE SIDE OR THE OTHER. WHAT THAT SIMPLY MEANS IS  
18 THIS, THAT YOU ARE TO DECIDE THIS CASE SOLELY FROM THE EVIDENCE  
19 THAT'S BEEN PRESENTED TO YOU FROM THIS WITNESS STAND, AS I TOLD  
20 YOU AT THE BEGINNING OF THIS CASE, THE TESTIMONY, THE SWORN  
21 TESTIMONY AND THE EXHIBITS THAT WERE ADMITTED. IF YOU RECALL, AT  
22 THE BEGINNING OF THIS CASE, YOU TOOK AN OATH TO DO JUST THAT.

23 NOW, IN FOLLOWING MY INSTRUCTIONS, YOU MUST FOLLOW ALL OF  
24 THEM. YOU MAY NOT SINGLE OUT ANY SINGLE PART OF MY INSTRUCTIONS  
25 AND IGNORE OTHERS. ALL THESE INSTRUCTIONS ARE EQUALLY IMPORTANT

1 AND YOU MUST NOT READ INTO THESE INSTRUCTIONS OR ANYTHING THAT I  
2 HAVE SAID OR ANYTHING THAT I HAVE DONE AS A SUGGESTION AS TO WHAT  
3 YOUR VERDICT SHOULD BE. THAT MATTER IS ENTIRELY FOR YOU TO DECIDE  
4 BECAUSE UNDER OUR CONSTITUTION I'M NOT ALLOWED TO HAVE AN  
5 OPINION ON THE FACTS OF THIS CASE AS I TOLD YOU AT THE BEGINNING.  
6 AND I WILL TELL YOU, I HAVE NO OPINION AS TO THE FACTS OF THIS CASE.

7 LADIES AND GENTLEMEN, YOU AND YOU ALONE, ARE THE JUDGES OF  
8 WHAT THE FACTS ARE AND YOU DECIDE THOSE FACTS BY EVALUATING AND  
9 WEIGHING THE EVIDENCE THAT YOU HEARD FROM THIS WITNESS STAND  
10 DURING THE TRIAL. NOW, THERE'S NO WAY YOU CAN WEIGH EVIDENCE IN  
11 THE LITERAL SENSE. I CAN'T GIVE YOU A SET OF SCALES. WEIGHING FACTS  
12 IS ENTIRELY A MENTAL PROCESS. YOU WEIGH AND EVALUATE THE EVIDENCE  
13 SIMPLY BY USING YOUR COMMON SENSE AND SOUND JUDGMENT AND I'M  
14 SURE EACH OF YOU HAVE THAT.

15 WHAT IS EVIDENCE? THE EVIDENCE THAT YOU WILL USE TO DECIDE  
16 THE FACTS FROM THIS CASE CONSIST OF THE SWORN TESTIMONY OF THE  
17 WITNESSES, BOTH ON DIRECT AND CROSS EXAMINATION. THAT IS,  
18 WHOEVER CALLED THAT WITNESS. YOU ARE TO DECIDE IT ON THE EXHIBITS  
19 THAT HAVE BEEN RECEIVED INTO EVIDENCE. YOU ALSO ARE TO DECIDE ON  
20 ANY FACTS IN WHICH THE LAWYERS HAVE AGREED OR STIPULATED OR  
21 WHICH I'VE TOLD YOU TO FIND.

22 NOW, WHAT IS NOT EVIDENCE IN THIS CASE? CERTAIN THINGS  
23 CERTAINLY ARE NOT EVIDENCE AND I TOLD YOU THAT IN THE BEGINNING.  
24 FIRST, ARGUMENTS AND STATEMENTS BY THE ATTORNEYS CERTAINLY ARE  
25 NOT EVIDENCE AND WHAT'S IMPORTANT, THESE LAWYERS ARE NOT

1 WITNESSES. WHAT THEY'VE SAID IN THEIR OPENING STATEMENTS AND  
2 CLOSING STATEMENTS AND AT ANY OTHER TIME IS INTENDED TO BE  
3 HELPFUL AND IS HELPFUL TO YOU BUT IT'S NOT EVIDENCE. IF THE FACTS IN  
4 THIS CASE, IF YOU REMEMBER THEM DIFFERENTLY THAN WHAT THESE  
5 ATTORNEYS HAVE TOLD YOU, THEN YOUR MEMORY CONTROLS AS TO THOSE  
6 FACTS.

7 NOW, ALSO, QUESTIONS AND OBJECTIONS BY THE ATTORNEYS IS NOT  
8 EVIDENCE. AS I TOLD YOU AT THE BEGINNING OF THIS CASE, THE  
9 ATTORNEYS HAVE AN OBLIGATION AND PROFESSIONAL DUTY TO OBJECT ANY  
10 TIME THEY FEEL THAT THERE'S IMPROPER EVIDENCE OR IMPROPER  
11 PROCEDURE BEING FOLLOWED BY THE COURT. YOU'RE NOT TO BE  
12 INFLUENCED AND YOU SHALL NOT BE INFLUENCED BY THE FACT THAT THERE  
13 MAY HAVE BEEN AN OBJECTION RAISED BY ANY OF THESE ATTORNEYS, NOR  
14 SHALL YOU BE INFLUENCED BY MY RULINGS ON THOSE OBJECTIONS. THAT IS  
15 SIMPLY PART OF THE PROCESS THAT WE GO THROUGH.

16 ANYTHING THAT YOU MAY HAVE HEARD OR THAT YOU MAY HAVE SEEN  
17 WHILE THIS COURT WAS NOT IN SESSION, AND BY THAT I MEAN WHILE YOU  
18 ARE IN THE JURY BOX AND THERE IS TESTIMONY BEING DELIVERED FROM  
19 THE WITNESS STAND, IS NOT EVIDENCE. YOU ARE TO DECIDE THIS CASE  
20 SOLELY FROM THE EVIDENCE AND THE TESTIMONY THAT'S BEEN PRESENTED  
21 IN THIS TRIAL.

22 NOW, THERE ARE TWO TYPES OF EVIDENCE, BOTH OF WHICH ARE  
23 EQUALLY AS VALUABLE. FIRST, THERE IS DIRECT EVIDENCE. DIRECT  
24 EVIDENCE IS TESTIMONY OF A PERSON WHO ASSERTS OR CLAIMS TO HAVE  
25 ACTUAL AND DIRECT KNOWLEDGE OF A FACT, SUCH AS AN EYE WITNESS.

1 THERE IS ALSO CIRCUMSTANTIAL EVIDENCE. CIRCUMSTANTIAL EVIDENCE IS  
2 INDIRECT EVIDENCE, OR PUT ANOTHER WAY, CIRCUMSTANTIAL EVIDENCE IS  
3 PROOF OF A CHAIN OF FACTS AND CIRCUMSTANCES FROM WHICH YOU CAN  
4 FIND THAT ANOTHER FACT EXISTS EVEN THOUGH THAT FACT HAS NOT BEEN  
5 PROVEN DIRECTLY. I CHARGE YOU THAT THE LAW MAKES ABSOLUTELY NO  
6 DISTINCTION BETWEEN THE WEIGHT OR THE VALUE TO BE GIVEN EITHER  
7 DIRECT OR CIRCUMSTANTIAL EVIDENCE. YOU ARE TO CONSIDER BOTH KINDS  
8 AND THERE IS NOT A GREATER DEGREE OF CERTAINTY REQUIRED OF  
9 CIRCUMSTANTIAL EVIDENCE. AFTER WEIGHING ALL THE EVIDENCE OF THIS  
10 CASE, IF YOU ARE NOT CONVINCED OF THE GUILT OF THE DEFENDANT  
11 BEYOND A REASONABLE DOUBT, YOU MUST FIND THE DEFENDANT NOT  
12 GUILTY.

13 NOW, IN DECIDING THE FACTS OF THIS CASE, YOU MUST CONSIDER ALL  
14 THE EVIDENCE THAT'S BEEN PRESENTED. IN DOING THIS, YOU MUST DECIDE  
15 WHICH TESTIMONY TO BELIEVE AND WHICH TESTIMONY NOT TO BELIEVE.  
16 YOU MAY DISBELIEVE ALL OR PART OF ANY WITNESS' TESTIMONY. YOU MAY  
17 BELIEVE ALL OF IT. IN MAKING THAT DECISION ON THE CREDIBILITY OF  
18 WITNESSES, YOU MAY TAKE INTO ACCOUNT A NUMBER OF FACTORS  
19 INCLUDING, BUT NOT LIMITED TO THE FOLLOWING: WAS A WITNESS ABLE TO  
20 SEE OR HEAR OR KNOW THE THINGS ABOUT WHICH THE WITNESS TESTIFIED,  
21 HOW WELL WAS THE WITNESS ABLE TO RECALL AND DESCRIBE THOSE  
22 THINGS, WHAT WAS THE WITNESS' MANNER WHILE TESTIFYING OR WHAT WE  
23 TYPICALLY CALL WHAT WAS THEIR Demeanor, IS THERE SOME REASON A  
24 WITNESS WOULD WANT TO GIVE TESTIMONY TO HELP OR HURT ONE SIDE OR  
25 THE OTHER, DID THE WITNESS HAVE AN INTEREST IN THE OUTCOME OF THIS

1 CASE OR ANY BIAS OR ANY PREJUDICE CONCERNING ANY PARTY OR ANY  
2 MATTER INVOLVED IN THIS CASE, HOW REASONABLE WAS THE WITNESS'  
3 TESTIMONY IN LIGHT OF ALL THE EVIDENCE IN THIS CASE, WAS THE WITNESS'  
4 TESTIMONY CONTRADICTED BY WHAT THE WITNESS SAID OR HAD DONE AT  
5 ANOTHER TIME OR BY THE TESTIMONY OF OTHER WITNESSES OR BY  
6 EVIDENCE. NOW, THOSE ARE JUST SOME AND CERTAINLY NOT ALL OF THE  
7 FACTORS THAT YOU MAY CONSIDER IN DETERMINING THE CREDIBILITY OF  
8 WITNESSES AND, OF COURSE, YOU DIDN'T CHECK YOUR COMMON SENSE AT  
9 THE DOOR WHEN YOU BECAME JURORS AND YOU SHOULD CALL ON YOUR  
10 COMMON SENSE AND TAKE INTO ACCOUNT THOSE THINGS THAT, IN YOUR  
11 DAY TO DAY EXPERIENCES, YOU FIND THAT ARE INDICATIVE OF  
12 TRUTHFULNESS.

13 LADIES AND GENTLEMEN, IN THIS CASE, THE DEFENDANT HAS BEEN  
14 CHARGED AND INDICTED WITH POSSESSION OF CRACK COCAINE WITH  
15 INTENT TO DISTRIBUTE. A LESSER INCLUDED CHARGE OF THAT WOULD BE  
16 POSSESSION OF CRACK COCAINE. I WILL GIVE YOU THE LAW ON BOTH  
17 THOSE CHARGES IN JUST A MINUTE. I WILL REMIND YOU, HOWEVER, THAT  
18 THE FACT THAT THE DEFENDANT WAS ARRESTED, CHARGED, AND INDICTED  
19 IN THIS CASE IS NOT EVIDENCE IN THIS CASE AND CANNOT BE CONSIDERED  
20 BY YOU AS EVIDENCE OF GUILT NOR DOES IT CREATE ANY KIND OF  
21 PRESUMPTION OR EMPHASIS OF THE DEFENDANT'S GUILT. THE INDICTMENT  
22 IS SIMPLY A MECHANISM BY WHICH THE STATE BRINGS THE CHARGES TO  
23 THIS COURT FOR A JURY, SUCH AS YOURSELVES, TO DECIDE.

24 NOW, IN THIS CASE, THE DEFENDANT HAS PLED NOT GUILTY TO THE  
25 INDICTMENT AND THAT PUTS THE BURDEN ON THE STATE TO PROVE THE

1 DEFENDANT GUILTY. A PERSON CHARGED WITH COMMITTING A CRIMINAL  
2 OFFENSE IN SOUTH CAROLINA IS NEVER REQUIRED TO PROVE HIMSELF  
3 INNOCENT. I CHARGE YOU THAT IS AN IMPORTANT RULE OF LAW, THAT A  
4 DEFENDANT IN A CRIMINAL CASE, NO MATTER WHAT THE SERIOUSNESS OF  
5 THE CHARGE MAY BE, WILL ALWAYS BE PRESUMED INNOCENT OF THE CRIME  
6 BY WHICH THE INDICTMENT WAS ISSUED, UNLESS GUILT WAS PROVEN BY  
7 EVIDENCE SATISFYING YOU OF GUILT BEYOND A REASONABLE DOUBT. THIS  
8 PRESUMPTION OF INNOCENCE DOES NOT END WHEN YOU BEGIN YOUR  
9 DELIBERATIONS, BUT IT ACCOMPANIES THE DEFENDANT THROUGHOUT THE  
10 TRIAL UNTIL YOU REACH A VERDICT OF GUILT BASED ON EVIDENCE  
11 SATISFYING YOU THEIR GUILT HAS BEEN PROVEN BEYOND A REASONABLE  
12 DOUBT. THE PRESUMPTION OF INNOCENCE IS LIKE A ROBE OF  
13 RIGHTEOUSNESS PLACED ABOUT THE SHOULDERS OF THE DEFENDANT THAT  
14 REMAINS WITH THE DEFENDANT UNTIL IT HAS BEEN STRIPED FROM THE  
15 DEFENDANT BY EVIDENCE SATISFYING YOU OF THE DEFENDANT'S GUILT  
16 BEYOND A REASONABLE DOUBT. THE PRESUMPTION OF INNOCENCE IS NOT  
17 A MERE LEGAL THEORY, IT IS NOT JUST A LEGAL PHRASE, IT IS A  
18 SUBSTANTIAL RIGHT IN WHICH EVERY DEFENDANT IS ENTITLED UNLESS YOU,  
19 THE JURY, ARE SATISFIED FROM THE EVIDENCE OF THE DEFENDANT'S GUILT  
20 BEYOND A REASONABLE DOUBT.

21 SO, WHAT IS REASONABLE DOUBT? A REASONABLE DOUBT IS THE KIND  
22 OF DOUBT THAT WOULD CAUSE A REASONABLE, SINCERE, HONEST AND  
23 CONSCIENTIOUS PERSON TO HESITATE TO ACT IN AN IMPORTANT MATTER IN  
24 THEIR OWN AFFAIRS. PROOF BEYOND A REASONABLE DOUBT IS PROOF THAT  
25 LEAVES YOU FIRMLY CONVINCED OF THE DEFENDANT'S GUILT. THERE ARE

1 VERY FEW THINGS IN THIS WORLD THAT WE KNOW WITH ABSOLUTE  
2 CERTAINTY AND IN CRIMINAL CASES, THE LAW DOES NOT REQUIRE PROOF  
3 THAT OVERCOMES EVERY POSSIBLE DOUBT. IF, BASED ON YOUR  
4 CONSIDERATION OF THE EVIDENCE, YOU ARE FIRMLY CONVINCED THAT THE  
5 DEFENDANT IS GUILTY OF THE CRIME CHARGED, YOU MUST FIND THE  
6 DEFENDANT GUILTY. IF, ON THE OTHER HAND, YOU THINK THERE IS A REAL  
7 POSSIBILITY THAT THE DEFENDANT IS NOT GUILTY, YOU MUST GIVE THE  
8 DEFENDANT THE BENEFIT OF THE DOUBT AND FIND HIM NOT GUILTY. A  
9 REASONABLE DOUBT MAY ARISE FROM THE EVIDENCE OR FROM THE LACK  
10 OF EVIDENCE. I FURTHER INSTRUCT YOU THAT A DEFENDANT IS ENTITLED  
11 TO EVERY REASONABLE DOUBT THAT MAY ARISE IN THE CASE. WHAT THAT  
12 SIMPLY MEANS IS THIS: IF UPON ANY ISSUE OF FACT ESSENTIAL TO A  
13 CONVICTION AND A VERDICT OF GUILTY TO THE OFFENSE CHARGED, IF YOU  
14 HAVE A REASONABLE DOUBT AS TO HOW THAT ISSUE SHOULD BE RESOLVED,  
15 IT IS YOUR DUTY TO RESOLVE THAT DOUBT IN FAVOR OF THE DEFENDANT.

16 LADIES AND GENTLEMEN, IN ORDER TO ESTABLISH CRIMINAL LIABILITY,  
17 CRIMINAL INTENT IS REQUIRED. FOR EXAMPLE, THE MENTAL STATE  
18 REQUIRED TO BE PROVEN BY THE STATE FOR A PARTICULAR CRIME MIGHT  
19 BE PURPOSE, IT MIGHT BE INTENT, KNOWLEDGE, RECKLESSNESS OR  
20 CRIMINAL NEGLIGENCE. CRIMINAL INTENT MUST BE PROVEN BY THE STATE  
21 BEYOND A REASONABLE DOUBT. CRIMINAL INTENT IS ALWAYS A MATTER  
22 THAT MUST BE DETERMINED BY THE JURY FROM THE CIRCUMSTANCES  
23 SURROUNDING THE SITUATION. THERE IS NO WAY TO PROVE INTENT TO A  
24 MATHEMATICAL CERTAINTY. THERE'S NO WAY FOR MEDICAL SCIENCE TO  
25 DISSECT A PERSON'S BRAIN AND DETERMINE WHAT THAT PERSON HAD IN

1 MIND. SO, THE LAW SAYS THAT CRIMINAL INTENT MAY BE INFERRED FROM  
2 THE CIRCUMSTANCES SHOWN TO HAVE EXISTED. THIS IS HOW YOU MAKE A  
3 DETERMINATION OF WHETHER OR NOT THE ELEMENT REQUIRING INTENT  
4 WAS PRESENT. IT IS NOT NECESSARY TO ESTABLISH INTENT BY DIRECT OR  
5 POSITIVE EVIDENCE BUT INTENT MAY BE ESTABLISHED BY INFERENCE IN THE  
6 SAME WAY AS ANY OTHER FACT BY TAKING INTO CONSIDERATION THE ACTS  
7 OF THE PARTIES AND ALL THE FACTS AND CIRCUMSTANCES OF THE CASE.  
8 CRIMINAL INTENT IS A MENTAL STATE, A CONSCIOUS WRONGDOING. IT IS UP  
9 TO YOU TO DETERMINE WHAT THE DEFENDANT INTENDED TO DO BASED ON  
10 THE CIRCUMSTANCES SHOWN TO HAVE EXISTED.

11 LADIES AND GENTLEMEN, IN THIS CASE, THE DEFENDANT DID NOT  
12 TESTIFY. THAT IS HIS FIFTH AMENDMENT RIGHT NOT TO DO SO. I INSTRUCT  
13 AND EMPHASIZE TO YOU THAT THE FACT THAT THE DEFENDANT DID NOT  
14 TESTIFY IS NOT AND SHALL NOT BE A FACTOR TO BE CONSIDERED BY YOU IN  
15 ANY WAY IN YOUR DELIBERATIONS.

16 LADIES AND GENTLEMEN, THOSE ARE THE GENERAL RULES ABOUT  
17 YOUR DUTIES AND OBLIGATIONS AS JURORS. THAT BRINGS ME TO THE  
18 SECOND PART OF MY CHARGE AND THAT IS THE LAW THAT YOU WILL APPLY  
19 IN THIS CASE.

20 THE FIRST PART IS THE LAW ON POSSESSION WITH INTENT TO  
21 DISTRIBUTE. THE DEFENDANT IS CHARGED WITH POSSESSION WITH INTENT  
22 TO DISTRIBUTE CRACK COCAINE. THE STATE MUST PROVE BEYOND A  
23 REASONABLE DOUBT THE DEFENDANT POSSESSED CRACK COCAINE WITH  
24 THE INTENT TO DISTRIBUTE IT. TO PROVE POSSESSION, THE STATE MUST  
25 PROVE BEYOND A REASONABLE DOUBT THE DEFENDANT HAD BOTH THE

1 POWER AND THE INTENT TO CONTROL THE DISPOSITION OR USE OF THE  
2 CRACK COCAINE. POSSESSION MAY BE EITHER ACTUAL OR CONSTRUCTIVE.  
3 ACTUAL POSSESSION MEANS THAT THE CRACK COCAINE WAS IN THE  
4 ACTUAL, PHYSICAL CUSTODY OF THE DEFENDANT. CONSTRUCTIVE  
5 POSSESSION MEANS THE DEFENDANT HAD DOMINION AND CONTROL OR THE  
6 RIGHT TO EXERCISE DOMINION AND CONTROL OVER THE CRACK COCAINE  
7 ITSELF OR THE PROPERTY ON WHICH THE CRACK COCAINE WAS FOUND. THE  
8 MERE PRESENCE AT THE SCENE WHERE THE DRUGS WERE FOUND IS NOT  
9 ENOUGH TO PROVE POSSESSION. ACTUAL KNOWLEDGE OF THE PRESENCE  
10 OF THE CRACK COCAINE IS STRONG EVIDENCE OF THE DEFENDANT'S INTENT  
11 TO CONTROL ITS DISPOSITION OR USE. THE DEFENDANT'S KNOWLEDGE AND  
12 POSSESSION MAY BE INFERRED WHEN THE SUBSTANCE IS FOUND ON THE  
13 PROPERTY UNDER THE DEFENDANT'S CONTROL. HOWEVER, THIS  
14 INFERENCE IS SIMPLY AN EVIDENTIARY FACT THAT CAN BE TAKEN INTO  
15 CONSIDERATION BY YOU ALONG WITH OTHER EVIDENCE IN THIS CASE AND  
16 GIVEN THE WEIGHT THAT YOU DECIDE IT SHOULD HAVE.

17 THE STATE MUST ALSO PROVE BEYOND A REASONABLE DOUBT THE  
18 DEFENDANT MEANT TO DISTRIBUTE THE CRACK COCAINE. DISTRIBUTION  
19 MEANS TO DELIVER OTHER THAN BY ADMINISTERING OR DISPENSING A  
20 DRUG. INTENT MAY BE SHOWN BY ACTS AND CONDUCT BY THE DEFENDANT  
21 AND OTHER CIRCUMSTANCES FROM WHICH YOU MAY NATURALLY AND  
22 REASONABLY INFER INTENT. IN DETERMINING WHETHER THE DEFENDANT  
23 HAD THE INTENT TO DISTRIBUTE COCAINE, YOU MAY CONSIDER THE  
24 CIRCUMSTANCES SURROUNDING THE DEFENDANT'S ALLEGED POSSESSION,  
25 YOU MAY CONSIDER THE AMOUNT OF THE SUBSTANCE ALLEGED TO HAVE

1 BEEN POSSESSED, THE MANNER IN WHICH IT WAS ALLEGEDLY POSSESSED,  
2 THE PLACE WHERE IT WAS ALLEGEDLY POSSESSED AND OTHER FACTORS  
3 WHICH YOU CONSIDER TO BE IMPORTANT. YOU MUST FIND THAT THE  
4 DEFENDANT DID NOT INTEND TO HAVE THE CRACK COCAINE SOLELY FOR HIS  
5 OWN USE. POSSESSION OF MORE THAN ONE GRAM OF CRACK COCAINE  
6 CREATES AN INFERENCE THAT THE DEFENDANT POSSESSED CRACK  
7 COCAINE WITH INTENT TO DISTRIBUTE IT. THIS INFERENCE DOES NOT  
8 RELEASE THE STATE FROM PROVING BEYOND A REASONABLE DOUBT THAT  
9 THE DEFENDANT HAD THE INTENT TO DISTRIBUTE. IT'S SIMPLY AN  
10 EVIDENTIARY FACT TO BE TAKEN INTO CONSIDERATION BY YOU ALONG WITH  
11 THE OTHER EVIDENCE IN THIS CASE AND GIVE IT THE WEIGHT YOU DECIDE IT  
12 SHOULD HAVE. THAT IS THE LAW OF POSSESSION WITH INTENT TO  
13 DISTRIBUTE.

14 THIS IS THE LAW ON POSSESSION OF CRACK COCAINE: TO PROVE  
15 POSSESSION, THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT  
16 THE DEFENDANT HAD BOTH THE POWER AND THE INTENT TO CONTROL THE  
17 DISPOSITION OR USE OF THE CRACK COCAINE. POSSESSION MAY BE EITHER  
18 ACTUAL OR CONSTRUCTIVE. ACTUAL POSSESSION MEANS THAT THE CRACK  
19 COCAINE WAS IN THE ACTUAL, PHYSICAL CUSTODY OF THE DEFENDANT.  
20 CONSTRUCTIVE POSSESSION MEANS THAT THE DEFENDANT HAD DOMINION  
21 AND CONTROL OR THE RIGHT TO EXERCISE DOMINION AND CONTROL OVER  
22 EITHER THE CRACK COCAINE ITSELF OR THE PROPERTY ON WHICH THE  
23 CRACK COCAINE WAS FOUND. MERE PRESENCE AT THE SCENE WHERE THE  
24 DRUGS WERE FOUND IS NOT ENOUGH TO PROVE POSSESSION. ACTUAL  
25 KNOWLEDGE OF THE PRESENCE OF CRACK COCAINE IS STRONG EVIDENCE

1 OF THE DEFENDANT'S INTENT TO CONTROL ITS DISPOSITION OR USE. THE  
2 DEFENDANT'S KNOWLEDGE OR POSSESSION MAY BE INFERRED WHEN THE  
3 SUBSTANCE IS FOUND ON THE PROPERTY UNDER THE DEFENDANT'S  
4 CONTROL. HOWEVER, THIS INFERENCE IS SIMPLY AN EVIDENTIARY FACT TO  
5 BE TAKEN INTO CONSIDERATION BY YOU ALONG WITH THE OTHER EVIDENCE  
6 IN THIS CASE AND TO BE GIVEN THE WEIGHT YOU THINK IT SHOULD HAVE.  
7 THAT IS THE LAW APPLICABLE TO POSSESSION OF CRACK COCAINE.

8 NOW, THE FINAL PART OF MY CHARGE TO YOU HAS TO DO WITH YOUR  
9 DELIBERATIONS AND I WILL POINT OUT TO YOU, LADIES AND GENTLEMEN,  
10 YOU ARE NOT PARTISANS, YOU ARE NOT ADVOCATES FOR EITHER SIDE OF  
11 THIS CASE. YOU HAVE NOBODY TO REWARD, YOU HAVE NOBODY TO PUNISH.  
12 YOU WERE CHOSEN BECAUSE BOTH SIDES OF THIS CASE FELT LIKE YOU  
13 COULD BE FAIR AND IMPARTIAL TO BOTH SIDES WITHOUT PREJUDICE OR BIAS  
14 TO EITHER SIDE. IN FACT, YOU HAVE TAKEN AN OATH TO DO JUST THAT. BUT  
15 DURING YOUR DELIBERATIONS, YOU BRING TO BEAR YOUR COMMON  
16 EXPERIENCES IN LIFE, YOUR GOOD COMMON SENSE AND YOUR LOGIC AND  
17 YOUR REASON.

18 NOW, IN YOUR DELIBERATIONS I WILL TELL YOU THAT THE TERM,  
19 "DELIBERATION" MEANS THIS: CAREFUL CONSIDERATION, WEIGHING UP, WITH  
20 A VIEW TO A DECISION. THE GENIUS OF OUR JURY SYSTEM IS THAT IS  
21 ALLOWS TWELVE MEN AND WOMEN SUCH AS YOURSELVES FROM DIFFERENT  
22 BACKGROUNDS, FROM DIFFERENT LIFE EXPERIENCES, AND WITH DIFFERENT  
23 PERSPECTIVES TO CONSIDER THE EVIDENCE, TO TALK ABOUT IT AND TO  
24 ULTIMATELY REACH A VERDICT. WE CALL THEM DELIBERATIONS FOR A  
25 REASON. YOU ARE TO CONSIDER THE EVIDENCE CAREFULLY, YOU ARE TO

1 CONSIDER IT FULLY AND YOU ARE TO CONSIDER IT DELIBERATELY. YOU ARE  
2 TO DISCUSS IT AMONGST YOURSELVES IN A CALM, THOROUGH AND  
3 COURTEOUS MANNER. REMEMBER, AGAIN, YOU ARE NOT PARTISANS OR  
4 ADVOCATES FOR EITHER SIDE, YOU ARE JUDGES, JUDGES OF THE FACTS.  
5 YOUR SOLE INTEREST AS JURORS IS TO FIND THE TRUTH IN THIS MATTER  
6 FROM THE EVIDENCE THAT YOU HEARD IN THIS CASE. I WILL INSTRUCT YOU  
7 AND I WILL ASK YOU AS WELL, TO LISTEN TO THE VIEWS OF YOUR FELLOW  
8 JURORS, CONSIDER THE OTHER PEOPLE'S POINTS OF VIEW, BE WILLING TO  
9 TALK WITH OTHER PEOPLE, HEAR THEIR SIDE, DO NOT DO SO IN A RUDE OR  
10 UNCOURTEOUS MANNER, BUT TALK THROUGH THE CASE THOROUGHLY.  
11 TALK THROUGH THE EVIDENCE THOROUGHLY. REMEMBER, IF YOU ARE  
12 DOING SOMETHING DELIBERATELY, YOU ARE NOT DOING SOMETHING IN A  
13 HURRY AND YOU SHOULDN'T BE IN A HURRY IN THIS CASE. THIS CASE IS  
14 EXTREMELY IMPORTANT TO BOTH THE STATE AND THE DEFENDANT IN THIS  
15 MATTER. WHEN YOU RETIRE TO YOUR JURY ROOM, YOU ARE TO DISCUSS  
16 THIS CASE WITH AN EYE TOWARDS REACHING A VERDICT.

17 IN ORDER TO BE VALID, YOUR VERDICT IS REQUIRED TO BE  
18 UNANIMOUS. THAT MEANS ALL TWELVE OF YOU MUST AGREE. BUT EACH OF  
19 YOU MUST DECIDE THIS CASE FOR YOURSELF, BUT YOU SHOULD ONLY DO SO  
20 AFTER YOU HAVE IMPARTIALLY LISTENED TO ALL THE EVIDENCE, DISCUSSED  
21 THE ISSUES WITH EACH OTHER, DISCUSSED EACH PERSON'S POINTS OF  
22 VIEW AND COME TO YOUR OWN RESOLUTION ABOUT WHAT THE FINDING OF  
23 FACT SHOULD BE. I WILL ASK YOU AND INSTRUCT YOU NOT TO BE AFRAID TO  
24 CHANGE YOUR OPINION IF THE DISCUSSION PERSUADES YOU THAT YOU  
25 SHOULD CHANGE YOUR OPINION, BUT DO NOT COME TO A DECISION SIMPLY

1 BECAUSE YOUR FELLOW JURORS SAY THAT IS THE RIGHT THING TO DO. AS I  
2 TOLD YOU, IT'S IMPORTANT THAT YOU REACH A UNANIMOUS VERDICT BUT  
3 YOU CAN ONLY DO SO AFTER YOU HAVE MADE YOUR OWN DECISION. DO  
4 NOT CHANGE AN HONEST BELIEF ABOUT THE WEIGHT, THE EFFECT OF THE  
5 EVIDENCE SIMPLY TO REACH A VERDICT. IN OTHER WORDS, DO NOT CHANGE  
6 YOUR OPINION SOLELY FOR THE SAKE OF REACHING A UNANIMOUS VERDICT.

7 NOW, AFTER YOU HAVE REACHED A UNANIMOUS VERDICT, MISTER  
8 BURNS, I'M GOING TO ASK THAT YOU FILL OUT THE VERDICT FORM AND I'LL  
9 GO OVER THAT WITH YOU. SIGN IT, AND I WILL GO OVER THAT WITH YOU AND  
10 LET THE BAILIFF KNOW AND HE WILL BRING IT TO OUR ATTENTION. IF, AT ANY  
11 TIMES DURING YOUR DELIBERATIONS YOU FEEL IT NECESSARY TO  
12 COMMUNICATE WITH THE COURT, REMEMBER AT THE BEGINNING, I TOLD YOU  
13 ABOUT WRITING DOWN WHATEVER INFORMATION YOU WANT US TO  
14 CONSIDER, SIGN IT, PASS IT TO THE BAILIFF AND HE WILL BRING IT TO OUR  
15 ATTENTION AND WE WILL REVIEW IT HERE IN OPEN COURT, BUT I REMIND  
16 YOU THAT YOU ARE NOT TO TELL ANYONE, INCLUDING ME, THE BAILIFF OR  
17 ANYONE ASSOCIATED WITH THIS CASE, WHERE THIS JURY STANDS  
18 NUMERICALLY, I.E., WE STAND SIX, SIX OR EIGHT, FOUR. WHEREVER YOU  
19 STAND IN THE DISPOSITION OF THIS CASE, THAT IS SOLELY INFORMATION  
20 THAT YOU KEEP TO YOURSELF AND WE WILL GO OVER THE INFORMATION  
21 THAT YOU WISH US TO CONSIDER AT THE APPROPRIATE TIME.

22 THIS IS THE VERDICT FORM IN THIS CASE AND YOU WILL HAVE IT BACK  
23 WITH YOU IN JUST A FEW MINUTES, BUT THE VERDICT FORM IS THIS: THE  
24 CAPTION, THE STATE OF SOUTH CAROLINA VERSUS ANTHONY LEROY  
25 MATTISON. YOU HAVE SEVERAL OPTIONS. IT SAYS, "IN THE MATTER OF THE

1 STATE OF SOUTH CAROLINA, PLAINTIFF VERSUS ANTHONY LEROY MATTISON,  
2 DEFENDANT, CASE NUMBER 2007-GS-04-1889. ON THE CHARGE OF  
3 POSSESSION OF CRACK OF COCAINE, IT SAYS, "WE, THE JURY, FIND THE  
4 DEFENDANT, ANTHONY LEROY MATTISON NOT GUILTY OR GUILTY." OR ON  
5 THE CHARGE OF POSSESSION WITH INTENT TO DISTRIBUTE CRACK COCAINE,  
6 "WE, THE JURY, FIND THE DEFENDANT, ANTHONY LEROY MATTISON, NOT  
7 GUILTY OR GUILTY." NOW, YOU'LL NOTICE MISTER BURNS, THERE'S AN "OR"  
8 BETWEEN THOSE TWO OPTIONS. YOU HAVE TO FIND ONE WAY OR THE  
9 OTHER. HE CANNOT BE GUILTY OF BOTH.

10 NOW, THE ORDER IN WHICH THE OPTIONS APPEAR IS OF NO  
11 CONSEQUENCE. THEY HAVE TO COME IN SOME FORM OR THE OTHER AND IN  
12 THE ORDER THEY APPEAR IS JUST SIMPLY THAT. I'M GETTING READY TO  
13 EXCUSE YOU TO GO BACK TO YOUR JURY ROOM. I HAVE A COUPLE OF  
14 MATTERS THAT I NEED TO BRING UP WITH THESE ATTORNEYS BEFORE I  
15 TURN THE CASE OVER TO YOU AND SO, DO NOT BEGIN YOUR DELIBERATIONS  
16 AT THIS STAGE. THE BAILIFF WILL LET YOU KNOW WHEN YOU ARE TO BEGIN  
17 YOUR DELIBERATIONS. THEY WILL SEND BACK THE EVIDENCE AND THEY  
18 WILL SEND BACK THE VERDICT FORM. I WILL INSTRUCT YOU AND REMIND  
19 YOU, YOUR DELIBERATIONS AND YOUR VERDICT IS AND IS REQUIRED TO BE  
20 LIMITED SOLELY TO THE RECORD AND TO THE EVIDENCE WHICH HAS BEEN  
21 PRESENTED FROM THIS WITNESS STAND AND THE EXHIBITS THAT HAVE BEEN  
22 ADMITTED INTO THIS CASE. THANK YOU. IF YOU WILL RETIRE BACK TO YOUR  
23 JURY ROOM.

24 (JURY OUT AT 10:12 A.M.)

25 THE COURT: ANY ADDITIONS OR EXCEPTIONS FROM THE STATE?

1           **MS. HOGAN:** NOTHING, YOUR HONOR.

2           **THE COURT:** FROM THE DEFENSE?

3           **MR. TAVERNIER:** YOUR HONOR, I THINK EARLY ON YOU MADE  
4 REFERENCE THAT POSSESSION IS A LESSER INCLUDED OF POSSESSION  
5 WITH INTENT TO DISTRIBUTE AND I WANTED JUST TO MAKE SURE I HEARD  
6 THAT CORRECTLY.

7           **THE COURT:** YOU DID. WHEN I WAS GOING OVER THE INDICTMENT, I  
8 SAID THERE'S A CHARGE OF THIS, BUT THERE IS A LESSER INCLUDED OF  
9 POSSESSION OF CRACK COCAINE.

10          **MR. TAVERNIER:** I THOUGHT I HEARD IT, BUT -- NO EXCEPTIONS.

11          **THE COURT:** OKAY. GOOD. SO, YOU'RE READY TO GO AHEAD AND  
12 CHECK YOUR EVIDENCE AND SEND IT BACK?

13          **MS. HOGAN:** YES, YOUR HONOR.

14          **THE COURT:** LET'S DO IT. YOU DID A VERY GOOD JOB, MS. HOGAN AND  
15 MISTER TAVERNIER, BOTH OF YOU. THANK YOU.

16                   (EVIDENCE AND VERDICT FORM GOES TO THE JURY)

17          **THE COURT:** MY UNDERSTANDING IS, THE JURY HAS A VERDICT.  
18 WOULD YOU BRING THE JURY IN, PLEASE SIR.

19                                   (JURY IN AT 11:11 A.M.)

20          **VERDICT**

21          **THE COURT:** MISTER BURNS, MY UNDERSTANDING IS, THE JURY HAS  
22 REACHED A VERDICT. IS THAT CORRECT?

23          **MR. BURNS:** YES, SIR, YOUR HONOR.

24          **THE COURT:** AND IS IT UNANIMOUS?

25          **MR. BURNS:** YES, SIR.





1           **MR. TAVERNIER:** E.T.'S GROCERY, YOUR HONOR.

2           **THE COURT:** HOW LONG HAS HE BEEN THERE?

3           **MR. MATTISON:** FOUR YEARS.

4           **THE COURT:** FORTY?

5           **MR. MATTISON:** FOUR YEARS, SIR. ABOUT.

6           **MR. TAVERNIER:** AND FOR THE RECORD, YOUR HONOR, I'M NOT SURE IF  
7 THIS PERTAINS TO ANY COSTS OR ASSESSMENTS, BUT THIS IS A PUBLIC  
8 DEFENDER CASE. I WAS APPOINTED TO THIS CASE.

9           **THE COURT:** ALL RIGHT. I WAS AWARE OF THAT. ANYTHING YOU WANT  
10 TO ADD? MISTER MATTISON, DO YOU HAVE ANYTHING YOU WANT TO ADD?

11           **MR. MATTISON:** JUST THAT BE LENIENT AS POSSIBLE, SIR AND I  
12 RESPECTFULLY ASK THAT YOU RULE IN MY FAVOR.

13           **THE COURT:** YOU HAVE TEN CHILDREN THAT UNDER THE AGE OF  
14 EIGHTEEN THAT ARE DEPENDANT ON YOU?

15           **MR. MATTISON:** ONLY ONE IS UNDER EIGHTEEN.

16           **THE COURT:** OH, THE REST OF THEM ARE OLDER AND ONLY ONE IS  
17 UNDER EIGHTEEN. I GOTCHA.

18           **MR. MATTISON:** I HAVE A COUPLE IN COLLEGE.

19           **THE COURT:** MS. HOGAN, GIVE ME HIS CRIMINAL BACKGROUND, PLEASE  
20 MA'AM.

21           **MS. HOGAN:** YES, SIR, YOUR HONOR. FROM 1986, HE HAS A  
22 CONVICTION FOR SHOPLIFTING AND PETIT LARCENY. FROM 1987, GRAND  
23 LARCENY. FROM 1989, THREE COUNTS OF FORGERY AND A SHOPLIFTING.  
24 FROM 1991 HE HAS A PWID COCAINE FOR WHICH HE RECEIVED TWELVE  
25 YEARS FOR, YOUR HONOR. HE HAS ASSAULT AND BATTERY ALSO FROM 1991.

1 HE ALSO HAS A DUI AND OPEN CONTAINER FROM 1998 AND IN 2000, HE ALSO  
2 HAD A POSSESSION OF CRACK, WHICH HE RECEIVED TEN YEARS,  
3 SUSPENDED TO SIX YEARS OF INCARCERATION AND FIVE YEARS OF  
4 PROBATION, YOUR HONOR AND THEN NO CONVICTIONS THAT I CAN SEE  
5 FROM THAT POINT, YOUR HONOR.

6 THE COURT: UNTIL THIS ONE?

7 MS. HOGAN: I'M SORRY?

8 THE COURT: UNTIL THIS ONE?

9 MS. HOGAN: YES, SIR, YOUR HONOR. THERE COULD BE MORE ON THE  
10 RAP SHEET, BUT I DON'T SEE WHERE THERE'S ANY CONVICTIONS. NO SIR,  
11 NOT SINCE THIS POINT. I DO HAVE A CERTIFIED CONVICTIONS INVOLVING  
12 THE TWO PRIOR DRUG ARRESTS, DRUG CONVICTIONS, I'M SORRY. SO, THIS  
13 COULD BE CONSIDERED A THIRD, YOUR HONOR. WE BELIEVE THAT HE'S  
14 DONE SIGNIFICANT TIME ON BOTH OF THOSE PRIOR DRUG CONVICTIONS AND  
15 WE BELIEVE THAT HE DESERVES THE MAXIMUM SENTENCE IN THIS CASE,  
16 YOUR HONOR. THIS IS A PWID THAT CARRIES UP TO THIRTY YEARS AND WE  
17 BELIEVE THAT HE HASN'T LEARNED HIS LESSON AFTER TWO TIMES AND WE  
18 BELIEVE HE SHOULD GET THE MAXIMUM ON THIS CASE.

19 THE COURT: THE RANGE IS MINIMUM OF FIFTEEN?

20 MS. HOGAN: YES, SIR, YOUR HONOR.

21 THE COURT: AND THE MAXIMUM THIRTY?

22 MS. HOGAN: YES, SIR.

23 THE COURT: AND IS THIS A MANDATORY FINE? IS THAT CORRECT?

24 MS. HOGAN: I BELIEVE SO, YOUR HONOR. I DON'T HAVE -- YES, SIR. IT'S  
25 JUST AN "AND/OR".

1           **THE COURT:** OKAY. AND MY UNDERSTANDING IS THAT THE  
2 MANDATORY MINIMUM, YOU CAN'T SUSPEND ANY OF THAT. CORRECT?

3           **MR. TAVERNIER:** NO, YOUR HONOR. THAT'S WHY WE TRIED SO HARD IN  
4 PRE-TRIAL.

5           **THE COURT:** I UNDERSTAND. MISTER MATTISON, LET ME DO THIS. ARE  
6 YOU SURE YOU DON'T HAVE ANYTHING ELSE YOU WANT TO ADD?

7           **MR. MATTISON:** NO, SIR.

8           **THE COURT:** ARE YOU SURE?

9           **MR. MATTISON:** I DON'T WANT TO SAY SOMETHING.

10          **THE COURT:** YOU'RE NO STRANGER TO THE SYSTEM AND ESPECIALLY  
11 WITH THE DRUGS AND THE DISTRIBUTION OF THE DRUGS, THAT'S A BIG  
12 PROBLEM AND AS MUCH AS I HATE TO DO THIS TO YOU, I'M GOING TO  
13 SENTENCE YOU TO TWENTY-FIVE YEARS AND THAT WILL BE THE SENTENCE  
14 OF THIS COURT.

15          **MR. MATTISON:** YOU'RE NOT GOING TO SUSPEND IT DOWN, SIR?

16          **THE COURT:** SIR?

17          **MR. MATTISON:** YOU'RE NOT GOING TO SUSPEND IT DOWN?

18          **THE COURT:** I'M NOT SUSPENDING ANYTHING. TWENTY-FIVE YEARS.

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

20          **THE COURT:** OKAY, SIR?

21          **MS. HOGAN:** THANK YOU, YOUR HONOR.

22          **MR. TAVERNIER:** THANK YOU, YOUR HONOR.

**CERTIFICATE**

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 TWO HUNDRED FIVE PAGED TRANSCRIPT IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF THE HEARING IN THE CAPTIONED CASE, IN THE COURT OF GENERAL SESSIONS FOR ANDERSON COUNTY, SOUTH CAROLINA ON JANUARY 11,13,14, 2010, AT THE ANDERSON 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.

**MAY 4, 2010**

A handwritten signature in cursive script that reads "Jo Rice". The signature is written in black ink and is positioned above a horizontal line.

**JO RICE**

STATE OF SOUTH CAROLINA )  
 )  
County of Anderson )

IN THE COURT OF COMMON PLEAS

Anthony L. Mattison, #270904 )  
Full name and prison number (if any) of Applicant )

**A TRUE COPY**  
APR 12 2013  
*Richard X. Kuley*  
CLERK OF COURT

v. )

APPLICATION FOR

State of South Carolina )

POST-CONVICTION RELIEF

2012 - CP - 04 - 01045

**INSTRUCTIONS B READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

- County of Anderson
1. Place of detention \_\_\_\_\_
  2. Name and location of Court which imposed sentence Anderson County General Sessions Court
  3. Name(s) of co-defendant(s) (if any) N/A
  4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:  
(a) 2007-GS-04-1889

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2012 MAR 21 P 2:40  
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(b) \_\_\_\_\_  
(c) \_\_\_\_\_

5. The date upon which sentence was imposed and the terms of the sentence:  
(a) January 14, 2010  
(b) \_\_\_\_\_  
(c) \_\_\_\_\_

6. Check whether a finding of guilty was made:  
(a) after a plea of guilty \_\_\_\_\_  
(b) after a plea of not guilty Yes  
(c) after a plea of nolo contendere \_\_\_\_\_

7. Did you appeal from the judgment of conviction or the imposition of sentence?  
Yes

8. If you answered Ayes@ to (7), list:  
(a) the name of each Court to which you appealed:  
i. S.C. Court Appeals  
ii. \_\_\_\_\_  
iii. \_\_\_\_\_  
(b) the result in each such Court to which you appealed:  
i. Denied February 22, 2012  
ii. \_\_\_\_\_  
iii. \_\_\_\_\_  
(c) the date of each such result:  
i. Feb. 22, 2012  
ii. \_\_\_\_\_  
iii. \_\_\_\_\_  
(d) if known, citations of any written opinion or orders entered pursuant to such results:  
i. N/A  
ii. \_\_\_\_\_  
iii. \_\_\_\_\_

9. If you answered Ano@ to (7), state your reasons for not so appealing:  
(a) N/A

(b) \_\_\_\_\_

(c) \_\_\_\_\_

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) See Attached Pages.

(b) \_\_\_\_\_

(c) \_\_\_\_\_

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) See Attached Pages

(b) \_\_\_\_\_

(c) \_\_\_\_\_

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? NO

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO

(d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:  
i. N/A

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(b) the name and location of the Court in which each was filed:

i. N/A

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(c) the disposition thereof:

N/A

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(d) the date of each such disposition:

N/A

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

N/A

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

N/A

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

N/A

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(b) the proceedings in which each ground was raised:

N/A

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) N/A
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? \_\_\_\_\_
- (b) your trial, if any? Yes
- (c) your sentencing? \_\_\_\_\_
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? \_\_\_\_\_

18. If you answered Ayes@ to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

- i. Kurt Tavernier, 110 E. Benson St.  
Anderson, S.C. 29624
- ii. Katherine Hudgins, P.O. Box 11589  
Columbia, S.C. 29211
- iii. \_\_\_\_\_

(b) the proceedings at which each such attorney represented you:

- i. Trial
- ii. Appeal
- iii. \_\_\_\_\_

19. State clearly the relief you seek in filing this application:

Vacate and immediate Release

20. Are you now under sentence from any other court that you have not challenged?

No

Revised 3/2003

STATE OF SOUTH CAROLINA )  
 )  
County of Anderson )

VERIFICATION

I, Anthony L. Mattison, #270904, 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.

Anthony L. Mattison

SWORN to and subscribed before me this 16th day of March, 2012

[Signature] (L.S.)  
Notary Public

My Commission Expires: Jan 28, 2018

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APPLICATION TO PROCEED WITHOUT PAYMENT  
OF COSTS AND AFFIDAVIT  
IN SUPPORT THEREOF

I, Anthony L. Mattison, #270904, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Anthony L. Mattison  
Applicant

SWORN or affirmed to and subscribed before me this  
16 day of March, 2018

Dave M... ..  
Notary Public

My Commission Expires: Jan 28, 2018

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214 .      APPLICANT CONTENDS CAN SHOW THAT HIS CONVICTION SENTENCE  
WAS IN VIOLATION OF THE U.S. CONSTITUTION, S.C. CONSTITUTION AND THE  
LAWS OF THIS STATE.

The applicant is asserting a 4th, 5th, 6th, and 14th Amendment violation which sets forth a prima facie violations of his constitutional rights. The applicant's grounds are constitutional dimensions. The fundamental defects alleged are standards that require establishment of a complete miscarriage of justice and an omission inconsistent with the rudimentary demands of fair procedure.

It would be a denial of due process not to give the applicant an evidentiary hearing on the State & Federal Constitutional claims.

## ANSWER TO QUESTION #10 ON PCR APPLICATION

- 1) My conviction and sentence was in violation of the Constitution of the United States and the Constitution and laws of this state.
- 2) Trial Court lacked subject matter jurisdiction, Counsel failed to object to the defective indictment #2007-GS-04-01889
- 3) Applicant was denied effective assistance of Appellate Counsel in violation of the 6th Amendment. See Anders Brief/Record on Appeal.
- 4) Appellate Counsel failed to raise my amended indictment issue on appeal.
- 5) Appellate Counsel failed to raise my illegal and excessive sentence claim on appeal/and Motion to Suppress.
- 6) Counsel ineffective for conceding guilt on applicant's behalf, without consent.
- 7) Counsel failed to put the state's case through adversarial testing.
- 8) Counsel failed to challenge the alleged drugs in the state's possession. Tampering/chain of custody/admissibility.
- 9) Counsel failed to object to the Reasonable Doubt jury charge.
- 10) Counsel's failure to object to trial judges comments which invited jury to prematurely discuss case.
- 11) Counsel failed to object to the pitting of witnesses.
- 12) Counsel ineffective for denying applicant a full and fair consideration of his Fourth Amendment claims at trial and on direct review.
- 13) Counsel ineffective for vouching for a police officer.
- 14) Counsel failed to object to solicitor bolstering of Captain Marsee.

- 1) My attorney never intended to offer any defense to the Court on my behalf.
- 2) My attorney never explained to me or discussed with me any kind of defense strategy.
- 3) My attorney dictated to me exactly how my case was going to be handled and he gave me no alternative options.
- 4) My attorney did not subject the prosecution's case to any adversarial litigation.
- 5) My attorney acted as a friend of the Court.
- 6) My attorney did not try to have my case settled in a manner that would have been to my best advantage.
- 7) My Attorney did not do the necessary factual investigation on my behalf.
- 8) My attorney did not conscientiously gather any information to protect my rights.
- 9) My attorney failed to give me his complete loyalty.
- 10) My attorney failed to serve my cause in good faith.

COUNSEL INEFFECTIVE FOR ALLOWING APPLICANT TO BE TRIED ON A CHARGE  
NOT ALLEGED IN THE INDICTMENT

Applicant was charged in the indictment with possession of crack cocaine with intent to distribute which charge in relevant part, as follows:

That on or about April 10, 2007, in Anderson County, South Carolina, the Applicant Anthony Leon Mattison in said indictment with intent to distribute a quantity of Crack Cocaine...All in violation of Section 44-53-0375(B)(1) S.C. Code of Law.

I was tried in Anderson County General Sessions Court January 11, 2010 by Judge R. Lawton McIntosh to twenty-five (25) years. Which my indictment did not charge the statutory amount of Crack Cocaine to convict me of a felony under Title 44 of the S.C. Drug Statute.

Specifically, to be charged with a PWID Crack Cocaine felony offense under S.C. Code § 44-53-375(B)(1), a defendant's indictment must charge an amount that is more than 10 grams, but less than twenty-eight grams: Since a first offense charge only carry a penalty of not more than fifteen years and fined not less than twenty-five thousand dollars: The charge in my indictment to which I was found guilty. See State v. Knuckles, 560 S.E.2d 426 (S.C. App. 2002) (on indictment must state an amount of Crack Cocaine that is more than 10 grams.

(Although defendant failed to preserve issue of excessive sentence for direct appeal by failing to raise it to trial Court, he would be required to seek PCR relief, where state conceded that trial court imposed a sentence that exceeded Statutory Maximum, and there was threat the applicant would remain in prison beyond legal sentence.)

Accordingly, in this case the Statutory language of § 44-53-375(b)(1) unless there is something in a statute requiring a different interpretation, the words must be their ordinary meaning. Williams v. Williams, 517 S.E.2d 689 (S.C. 1998). Moreover, a statute which is penal in nature must be strictly construed against the State and in favor of the applicant. State v. Bridges, 473 S.E.2d 829 (S.C. App. 1996).

Finally, I was convicted by a jury and sentence by Honorable R. Lawton McIntosh, on January 11, 2010. Therefore, in accordance with the statutory laws and the Supreme Court's holdings cited above, the

State should concede that the trial court imposed an illegal twenty-five (25) year sentence that far exceeded the fifteen (15) years of first offense charge to which the trial Court impose, which should entitle applicant relief of this issue.

TRIAL COURT LACKS SUBJECT MATTER JURISDICTION CONVICT  
 APPLICANT FOR AN OFFENSE WHEN THERE WAS NO INDICTMENT  
 CHARGING HIM WITH THAT OFFENSE AT TIME JURY IS SWORN.  
 COUNSEL SHOULD HAVE OBJECTED TO INDICTMENT.

A defendant in a criminal case is entitled to be tried only on the charges set forth in the indictment. S.C. Code Ann. § 17-19-10 (1976). The test of sufficiency of an indictment is whether or not it contains the necessary elements of the offense intended to be charged and sufficiently apprises the defendant of what he must be prepared to defend. S.C. Code Ann. § 17-19-20.

However, a reference to the statute in the caption does not validate an invalid indictment. The caption of an indictment is not a part of the finding of the grand jury. State v. Lark, 42 S.E. 175, 176-77. Rather, it is the body of the indictment that is controlling. If the body specifically states the essential elements of the crime and is otherwise free from defect, a defect in the caption will not invalidate the indictment. Tate v. State, 549 S.E.2d 601. See indictment.

COUNSEL INEFFECTIVE FOR ALLOWING TRIAL COURT TO AMEND  
 INDICTMENT # 2007-GS-04-1889.

Where an Amendment to an indictment charges an offense to one with increased punishment, the circuit court is deprived of subject matter jurisdiction. See S.C. Code Ann. § 17-19-100; See also State v. Lynch, 545 S.E.2d 511, Hopkins v. State, 317 S.C. 7, 451 S.E.2d 389 and State v. Riddle, 301 S.C. 211, 391 S.E.2d 253.

The amendment of the indictment #2007-GS-04-1889 substituted an entirely different [offense] for the one charged. Sowell, 85 S.C. at 284, 677 S.E. at 318. The amendment was a material charge which modified what the defendant was called upon to answer. Browning, 320 S.C. at 368, 465 S.E.2d at 359, which produced being convicted and sentence to an illegal sentence. See indictment & sentence sheet, and pg. #62 Ln. 2-3, pg. #96 Ln. 1-5.

However, because the caption is not part of the indictment, a designation in the caption cannot enlarge or diminish the offense charged in the body of the

indictment. See State v. Wilkes, 346 S.C. 67, 550 S.E.2d 332 (Ct. App. 2001)(citing 42 C.J.S. Indictments and Informations § 113 (1991)). The references to the statute in the caption does not make the indictment sufficient.

COUNSEL FAILED TO OBJECT TO THE ENTERING OF INADMISSIBLE EVIDENCE WHEN PRESENTED. CUP, WINE, SCALE, DRUGS, SHOULD HAVE MOVED TO SUPPRESS EVIDENCE.

#### ARGUMENT

DIID THE TRIAL JUDGE ERR IN REFUSING TO SUPPRESS ALL EVIDENCE BASED ON UNLAWFUL ARREST AND SEARCH OF DEFENDANT.

Prior to trial Mattison moved to suppress all evidence, discovered pursuant to a search incident to arrest for open container. (Tr. pg. 19, Lns. 14-18). The substance in a blue solo cup was never identified, as Mattison pour out the substance, however, the officer claim in the incident report to have smelled the beverage and detected an odor of alcohol. However, based on all reports and discovery, items that beverage which was located in the cup has not been tested to, in fact, verify it was, in fact, an alcoholic beverage and that is the basis for their arrest, and subsequent search of Mattison while in custody. (Tr. Pg. 19, Lns. 20-25, pg. 20, Lns. 1-5.)

Mr. Hogan testified there was a bottle of wine in the trunk of the car, so I believe that the officer has probable cause and a reason to believe that it was an alcoholic beverage. (Tr. pg. Lns. 13-21). Defense counsel argue that there is no proof that the same beverage in the trunk (Tr. pg. 20, lns. 22-25, pg. 21, lns. 1-2. The open container charge is still pending.

In criminal case, an appellate court sits to review errors of law only. Therefore, an appellate court is bound by the trial court's factual findings unless they are clearly erroneous. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). The same standard of review applies to preliminary factual finding in determining the admissibility of certain evidence in criminal cases. State

v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 8 (2001).  
(Tr. pg. 21, Lns. 3-15).

The police, however, may also stop and briefly detain a vehicle if they have a reasonable suspicion that the occupants are involved in criminal activity. State v. Butler, 343 S.C. 198, 201, 539 S.E.2d 414, 416 (Ct. App. 2000). (Tr. pg. 20, Lns. 17-21. "Reasonable suspicion" requires a 'particularized and objective basis that would lead one to suspect another of criminal activity". State v. Khingratsaiphon, 352 S.C. 62, 69, 572 S.E.2d 456, 459 (2002) (quoting) United States v. Cortez, 449 U.S. 411, 418 (1981). In determining whether reasonable suspicion exists, the court must consider the totality of the circumstances. State v. Rogers, 368 S.C. 529, 534, 629 S.E.2d 679, 682 (Ct. App. 2006) Reasonable suspicion is more than a general hunch but less than what is required for probable cause. Butler, 343 S.C. at 202, 539 S.E.2d at 416.

The judge erred in refusing to suppress all evidence based on unlawful arrest and search of Defendant.

Applicant's trial attorney violated his Sixth Amendment right to the effective assistance of counsel when he conceded during the closing argument, without Petitioner's knowledge or approval, and despite Petitioner taking a jury trial and clothing himself with the role of innocence.

Applicant contended that his attorney argued to the jury in closing argument without Petitioner's knowledge or consent.

Not even a prosecutor can express such a personal opinion as to the defendant's guilt. Francis v. Spraggins, 720 F.2d 1190, citing U.S. v. Morris, 568 F.2d 396, 401.

What was presented to the jurors, and the court, as an admission of Petitioner's guilt was in fact nothing more than defense counsel's opinion of the case. See canon 7 (EC 7-24) of Code of Professional Responsibility of the American Bar Association, which provides, The expression by a lawyer of his personal opinion as to the justness of a cause, as to the credibility of a witness, as to the culpability of a civil litigant or as to the guilt or innocence of an accused is not a proper subject for argument to the trier of fact.

Counsel violated the Code of Professional Responsibility and breached the duty of loyalty that she owed Petitioner when, despite Petitioner taking a jury trial and claiming his innocence, his counsel expressed her opinion to the jury that the Petitioner had possessed drugs.

While law tradition allocate to counsel the right to make binding decisions of trial strategy in many areas, Foretto v. CA, 422 U.S. 806, 95 S.Ct. 2525 (1975), the accused retains the ultimate authority to make certain fundamental decisions regarding the case such as whether to plead guilty, to testify in his own behalf, or take and appeal. Jones v. Barnes, 463 U.S. 745.

When a lawyer concedes a client's guilt during the guilt-innocence phase of trial in spite of their client's plea of not guilty (jury trial request) and without the

defendant's consent, counsel provided ineffective assistance of counsel regardless of the weight of evidence against the defendant or the wisdom of counsel's credibility approach strategy. See Francis v. Spraggins, 720 F.2d 1190; Wiley v. Sowders, 647 F.2d 642; N.C. Harbison, 315 N.C. 175 (1985).

The gravity of the consequences of a decision to plead or to admit one's guilt demands that the decision remain in the defendant's hands. An attorney cannot deprive his or her client of the right to have the issue of guilt or innocence presented to the jury as an adversarial issue on which the state bears the burden of proof without committing ineffective assistance of counsel. See U.S. v. Cronie, 466 U.S. 648. The due process clause does not permit the attorney to enter a guilty plea or admit facts that amount to a guilty plea without the client's consent. See Bookhart v. Jarvis, 384 U.S. 1, 86 S.Ct. 1245.

Clearly trial record void of petitioner's permission for his trial lawyer to concede his guilt to any of the charges he was on trial for can't be valid. Only a defendant can plead himself guilty, not his lawyer. So when a lawyer's admission of their client's guilt amount to a guilty plea the record must support petitioner wanted to plead guilty and in fact consented to pleading guilty. See Brookhart Supra, and Boykin v. Alabama, 395 U.S. 239.

The United States of America Justice System Court on the adversarial process to procedure just results. Petitioner contended that his counsel acted less like an adversary and more like an advocate for the state when she made his unsolicited and unaseeting to declaration of defendant's guilt. By effectively assisting the state in convincing the jury that petitioner of the charge he was on trial for (admitted guilt without consent) counsel caused a breakdown in the adversarial process that rendered the outcome of the trial unreliable and thereby violated petitioner's 6th Amendment right to effective assistance of counsel.

Admission of guilt constituted ineffective assistance of counsel in violation of his right to a fair trial under the Sixth and Fourteenth Amendments to the Constitution

224 of the United States. See Wiley v. Sowers, 642 F.2d 642.

When a defendant enters a plea of not guilty he preserves two fundamental rights. (1) He preserves the right to a fair trial as provided by the Sixth Amendment. (2) He preserves the right to hold the government to proof beyond a reasonable doubt, Wiley supra.

An attorney may not stipulate to facts which amount to the functional equivalent of a guilty plea. U.S. v. Brown, 428 F.2d 1100 (D.C. Cir. 1970) See transcript pg. #26 Ln. 3-4 pg. #27 Ln. 5; pg. #63 Ln. 15-20; pg. #64 Ln. 1-9; pg. #170 Ln. 4-5; pg. #175 Ln. 5-6; pg. #184 Ln. 9-10.

COUNSEL FAILED TO PUT THE STATE'S CASE THROUGH ADVERSARIAL TESTING. COUNSEL FAILED TO RENEW MOTION FOR PROBABLE CAUSE TO PRESERVE FOR APPELLATE REVIEW.

Nervousness is generally included as one of several grounds for finding reasonable suspicion and not a ground sufficient in and out of itself. Counsel failed to challenge the state's case. U.S. v. Hernandez-Alvarado, 891 F.2d 1414 a defendant's alleged nervousness is insufficient to create reasonable suspicions, See U.S. v. Saperstein, 723 F.2d 1221, 1228 (nervousness is inherently unsuspecting behavior trait).

A hunch may provide the basis for solid police work; it may trigger an investigation that uncovers facts that establish reasonable suspicion probable cause, or even grounds for a conviction. A hunch, however is not a substitute for the necessary specific articulable facts required to justify a Fourth Amendment intrusion.

Because the search violated the 4th Amendment, Trial Court was required to suppress the evidence that resulted from the search as the fruit of the poisonous tree. Wong Sun v. United States, 371 U.S. 471, 484-85. The fruit of the poisonous tree doctrine holds that where evidence would not have come to light, but for the illegal actions of the police, and the evidence has been obtained by the exploitation of that illegality, evidence must be excluded. See State v. Plath, 284 S.E.2d 221.

Counsel was ineffective for failure to review my probable cause motion/motion to suppress for appellate review. Counsel failed to argue the probable cause in his case.

A determination as to whether Mattison was prejudiced under Strickland by counsel's failure to file a motion to suppress the relevant evidence involves an examination of two questions: Was there a meritorious Fourth Amendment claim that necessitated the filing of such a motion. If there was a valid Fourth Amendment claim that counsel should have raised in a motion to suppress, was the evidence that should have been excluded at trial so critical that, but for counsel's failure to file the suppression motion, there is a reasonable probability that the verdict would have been different.

On street questioning, even though no probable cause exists for an arrest, does not include a trip to the police station. In Davis v. Mississippi, 394 U.S. 721, the court held that a rape suspect who was taken into custody as part of a dragnet investigation without probable cause was illegally detained so that fingerprints obtained as a result of the unlawful detention could not be used against him. Same analogy as the case at bar. The state's case relied on a faulty open container charge. All evidence to prosecute that misdemeanor had been obtained.

It is held that where defense counsel's failure to articulate a Fourth Amendment claim on motion to suppress, completely is a principle allegation of ineffectiveness. Applicant's Fourth Amendment claim is meritorious and the result would have been different, absent evidence that should have been excluded. Sikes, 448 S.E.2d 560. Kimmelman v. Morrison, 477 U.S. 365, 106 S.Ct. 2574.

Counsel failed to articulate on the Fourth Amendment issues and back them with precedent case law that would have clearly proven the drug evidence seized should have been suppressed. There is a reasonable probability that the outcome would have been different. See Wong Sun Supra, Counsel failed to argue the fruit of the poisonous tree doctrine.

## CHAIN OF CUSTODY

Counsel failed to challenge the chain of custody, Benton v. Pellum, 100 S.E.2d 534, while proof need not negative all possibility of tampering, it is generally held that the party offering such specimen is required to establish, at least as far as practicable, a complete chain of evidence, tracing possession from the time the specimen is taken from the human body to the final custodian by whom it is analyzed.

As stated in Rogers v. Commonwealth, 197 Va. 527, 90 S.E.2d 257, 260, where the substance analyzed has passed through several hands, the evidence must not leave it to conjecture as to who had it and what was done with it between the taking and the analysis. See also Sate v. Chisolm, 584 S.E.2d 401, See pages \_\_\_\_\_

In the case at bar evidence was tampered with and an illegal notary signature was not argued. See transcript page \_\_\_\_\_. The evidence is unaccounted for between the 11th and 15th.

In State v. Jones, 536 S.E.2d 675, the court found that a false affidavit in support of a search warrant required suppression of evidence found pursuant to that search warrant. The notarization error in the present case should be treated in the same way that the false affidavit in support of the search warrant was treated in Jones. The judge erred in refusing to suppress the drugs based on the notarization error.

## COUNSEL FAILED TO OBJECT TO THE REASONABLE DOUBT CHARGE.

Trial Court, when defining reasonable doubt for jury, should give no further instructions than that "reasonable doubt" is the kind of doubt that would cause a reasonable person to hesitate to act.

Trial counsel's failure to object to trial judge's comments which invited jury to prematurely discuss case not strategic.

A jury should not begin discussing the case nor deciding the issues, until all the evidence has been introduced, the arguments of counsel complete, and the applicable law charged. State v. Pierce, 346 S.E.2d 707, State v. Joyner, 346 S.E.2d 711. Jurors should be admonished not to discuss the case with anyone, including each other, prior to the submission of the case to them. See Mcguire, 253 S.E.2d 103, 105. A fair trial is more likely if each juror keeps his own counsel until the appropriate time for deliberation. See Transcript pages #60 Ln. 7, pg. #61 Ln. 10-11, pg. #161 Ln. 1-3, pg. #185 Ln. 3.

COUNSEL FAILED TO OBJECT TO THE "PITTING" OF WITNESSES BY THE SOLICITOR.

Burgess v. State, 91 S.E.2d 245, 495 S.E.2d 445. No matter how a question is worded, anytime a solicitor ask a defendant in a trial, such as myself to comment on the truthfulness or explain the testimony of an adverse witness, the defendant such as myself is an effect being pitted against the adverse witness and alleged co-defendant. See questions asked by the solicitor, See pg. #155 Ln. 12-23, pg. #177 Ln. 16-21. This kind of argumentative questioning is improper. See State v. Bryant, 316 S.C. 216, 447 S.E.2d 852; State v. Brown, 297 S.C. 27, 374 S.E.2d 669; State v. Sapps, 295 S.C. 484, 369 S.E.2d 145.

Counsel failed to object to the solicitor's questioning. Particularly when credibility is the crucial issue in a case, such as the case at bar, improper pitting of witnesses is prejudicial and cannot be deemed harmless. Sapp and Brown, Supra.

Anthony L. Mattison, 0904,  
 Appellant,  
 v.  
 State of South Carolina,  
 Respondent.

AFFIDAVIT

2012-CP-04-01045

The ACPD used a open container as a pretext to take the applicant to jail without any proof of alcohol content in the cup.

The applicant was taken to jail and charged with open container and then strip searched.

In the meantime, Police officer's impounded the applicant's car and searched it. The contents, gun, wine bottle and scales were fruit of the poisonous tree, because the officers did not have probable cause to tow/impound and search vehicle. Vehicle had nothing to do with the open container charge.

This case originated from an alleged confidential informant's tip or discussion, which was over ruled by stipulation to not mention in trial. See pg. #12 Ln. 8-25, pg. #13 Ln. 1-13. No probable case from CI. No probable case from the open container because it was not established or proven that alcohol was in the applicant's cup.

This affidavit is true and correct.

I, Anthony L. Mattison, #270904 certify and verify under the penalty of perjury that the foregoing is true and correct. 28 U.S.C.A. § 1746.

*Anthony L. Mattison*  
 Anthony L. Mattison

FILED-CLERK'S OFFICE  
 ANDERSON SC  
 2012 MAR 21 P 2:40  
 COMMON PLEAS AND  
 GENERAL SESSIONS

THE STATE OF SOUTH CAROLINA

Race B Sex M

DOB \_\_\_\_\_ SSN \_\_\_\_\_

vs.

SID # \_\_\_\_\_

ANTHONY LEROY MATTISON  
Defendant

Charges were disposed of in the court indicated below

Magistrate  Municipal

Address  
ANDERSON, SC 29621

**COPY**

AKA

IT APPEARS that, pursuant to Sections 17-22-950 and 17-1-40 of the South Carolina Code of Laws, the defendant is entitled to have all records relating to this offense expunged and destroyed at no cost to the defendant. Summary Court expungements pursuant to S.C. Code of Laws Section 17-22-950 have been preapproved by SLED.

Warrant/Ticket/  
Courtesy Summons 15804DT Date of Arrest/Service 04-10-07 Place of Arrest/Service ANDERSON County, S.C

Warrant/Ticket/  
Courtesy Summons \_\_\_\_\_ Date of Arrest/Service \_\_\_\_\_ Place of Arrest/Service \_\_\_\_\_ County, S.C

Charge(s) OPEN CONTAINER/VEHICLE

The above charge is eligible for expungement because it is a summary level offense and:

The charge was dismissed on \_\_\_\_\_ (Date).

The charge was *not* proessed on 02-17-11 (Date).

The defendant was found not guilty on \_\_\_\_\_ (Date).

The defendant was charged pursuant to Section 34-11-90, made restitution, and paid the administrative fee to the County resulting in a dismissal on \_\_\_\_\_ (Date).

IT IS ORDERED that all records relating to such arrest/court summons and subsequent discharge pursuant to the above-referenced section be dismissed, expunged and immediately destroyed and that no evidence of such records pertaining to such charge shall be retained by any municipal, county or state agency except nonpublic information retained by SC Law Enforcement Division (SLED).

ANDERSON MUNICIPAL COURT  
401 SOUTH MAIN STREET  
ANDERSON, S.C. 29624

TRUE AND CERTIFIED COPY OF ORIGINAL  
DOCUMENT ON FILE AT ANDERSON MUNICIPAL COURT  
SIGNED Louise  
COURT COORDINATOR

3-8-12

Signed this 21 day of March 2011  
[Signature]  
Summary Court Judge

[Signature]  
Prosecutor/ Prosecuting Officer/ Affiant (Circle One)  
(To Verify Accuracy of Disposition)

Expunged by SLED by: \_\_\_\_\_ Date: \_\_\_\_\_ (For SLED internal use only)

79-06-202  
SCCA 2228 (07/2000)

**EXPUNGED**

OWL  
3-2-12

WITNESSES  
FOUTS - APD

DOCKET NO 2007-GS-04-1889

**The State of South Carolina,**  
ANDERSON

County of \_\_\_\_\_

COURT OF GENERAL SESSIONS  
JUN 19 2007 TERM \_\_\_\_\_

MSM THE STATE

ANTHONY LEROY MATTISON

I716154

ARREST WARRANT NO. \_\_\_\_\_

COMMITMENT

01-14-12/emo

ACRUE COPY  
MAR 21 2012  
Clerk of Court  
CLERK OF COURT

ACTION OF GRAND JURY

**TRUE BILL**

JUN 19 2007

Foreman of Grand Jury

*[Signature]*  
Foreperson

VERDICT

*Guilty*

**Indictment for**

POSSESSION OF CRACK COCAINE  
WITH INTENT TO DISTRIBUTE  
44-53-0375 (B)(1) [3039]

*[Signature]*  
Foreman of Petit Jury

1/14/2010

Date: \_\_\_\_\_

STATE OF SOUTH CAROLINA )  
ANDERSON )  
COUNTY OF \_\_\_\_\_ )

INDICTMENT FOR  
POSSESSION OF CRACK COCAINE  
WITH INTENT TO DISTRIBUTE  
44-53-0375(B)(1)[3039]

At a Court of General Sessions, convened on JUN 19 2007

the Grand Jurors of ANDERSON County present upon their oath:

POSSESSION OF CRACK COCAINE WITH INTENT TO DISTRIBUTE

THAT ANTHONY LEON MATTISON DID IN ANDERSON COUNTY ON OR ABOUT APRIL 10, 2007 POSSESS WITH INTENT TO DISTRIBUTE A QUANTITY OF CRACK COCAINE, A CONTROLLED SUBSTANCE UNDER PROVISIONS OF 44-53-110, et, seq. Code of Laws of South Carolina(1976), AS AMENDED, 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.

*[Signature]*  
SOLICITOR

A TRUE COPY

MAR 21 2012

*[Signature]*  
CLERK OF COURT

COUNTY OF Anderson  
STATE

INDICTMENT/CASE#: 2007GS0401889

VS.  
Anthony Leroy Mattison

AW#: 1716154

Date of Offense: 4/11/2007

S.C. Code §: 44-53-0375 (B) (1)

CDR Code #: 3014

AKA:  
Race: B Sex: M Age: 44  
DOB: SS#:  
Address:  
City, State, Zip: Anderson, SC 29621  
DL# \* SID# SC00565289

SENTENCE SHEET

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

In disposition of the said indictment comes now the Defendant who was

TO: DRUGS/MANUFACTURE, DIST. ETC. OF METH OR (PWID crack 3rd) max: 15-30 y

In violation of § 44-53-0375 (B) (1) of the S.C. Code of Laws, bearing CDR Code # 3014

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS (CSC w/minor 1<sup>st</sup> or Lewd Act)  \$17-25-45

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST:

*Laura L. Hogan*  
Solicitor

SC Bar # 72613

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the  State Department of Corrections  County Detention Center, for a determinate term of 25 days/months/years or  under the Youthful Offender Act not to exceed years and/or to pay a fine of \$ ; provided that upon the service of days/months/years and or payment of \$ ; plus costs and assessments as applicable\*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon 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 Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered PTUP

Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms: Obtain GED

Set by SCDPPPS Attend Voc. Rehab. Or Job Corp.

Recipient: May serve W/E beginning Substance Abuse Counseling

\*Fine: \$ Random Drug/Alcohol Testing   
\$14-1-206 (Assessments 107.5%) \$  
\$14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00  
\$14-1-211 (A)(2)(DUI Surcharge) \$100 \$  
\$56-5-2995 (DUI Assessment) \$12 \$  
\$56-1-286 (DUI Breath Test) \$25 \$  
\$47.12 (Public Def/Prob) \$500 \$  
\$14-1-212 (Law Enforce. Funding) \$25 \$ 25.00  
\$14-1-213 (Drug Court Surcharge) \$100 \$ 100.00  
\$50-21-114 (BUI Breath Test Fee) \$50 \$  
\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$  
\$90.7 (SCCJA Surcharge) \$5 \$ 5.00  
3% to County (if paid in installments) \$

TOTAL \$ Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ Beginning \$ Paid to Public Defender Fund

Other:  Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge: *[Signature]*  
Judge Code: 255  
Sentence Date: 7-19-10

Clerk of Court/Deputy Clerk: *Cathy M. Phillips*  
Court Reporter: *Go Rice*

SCCA/217 (11/2009)

A TRUE COPY  
MAR 21 2010  
*Linda A. Hulley*  
CLERK OF COURT

*DLS*

233

ARREST WARRANT

I-716154

STATE OF SOUTH CAROLINA

County/ Municipality of

Anderson Municipal Court FILED - CLERK'S OFFICE ANDERSON SC

2007-17963

THE STATE

2007 APR 18 A 9 56

Anthony Leroy Mattison

Address: COMMON PLEAS AND Anderson, SC 29621 GENERAL SESSIONS

Sex: M Race: B Height: 5 8 Weight: 175

DL State: SC DL #: Agency ORI #:

Prosecuting Agency: Anderson Police Department

Prosecuting Officer: Casey Fouts

Offense: PWID CRACK COCAINE

Offense Code: 44-53-375 (2)

Code/Ordinance Sec: 44-53-375 (2)

This warrant is CERTIFIED FOR SERVICE in the

County/ Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant on 4-11-07

Signature of Constable or Enforcement Officer

RETURN WARRANT TO:

Anderson Municipal Court

401 South Main Street

Anderson, SC 29624

STATE OF SOUTH CAROLINA

County/ Municipality of

Anderson Municipal Court

AFFIDAVIT

Form Approved by S.C. Attorney General April 21, 2003 SCCA 516

Personally appeared before me the affiant Casey Fouts who being duly sworn deposes and says that defendant Anthony Leroy Mattison did within this county and state on 04/10/2007 violate the criminal laws of the State of South Carolina (or ordinance of Anderson Municipal Court) in the following particulars:

DESCRIPTION OF OFFENSE: PWID CRACK COCAINE

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on 04/10/07 at approximately 2052 Hrs., the defendant was found to be in possession of approximately 6.2 grams of an offwhite, rocklike substance in 2 clear plastic baggies which did field test positive for cocaine base. The defendant did have the substance upon his person at 700 N. Murray Ave. and it was recovered by Inv. M.D. Clardy and your affiant at 401 S.Main Street. This incident did occur within the corporate city limits of Anderson, SC and within 1/2 mile proximity of the Anderson Recreation Department located at 1107 N. Murray Ave. Case#2007-17963

Signature of Affiant

STATE OF SOUTH CAROLINA

County/ Municipality of

Anderson Municipal Court

Affiant's Address 401 South Main Street

Anderson, SC 29621-

Affiant's Telephone

A TRUE COPY 3024 MAR 21 2007 Clerk of Court

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on 04/10/2007 defendant Anthony Leroy Mattison

did violate the criminal laws of the State of South Carolina (or ordinance of

County/ Municipality of Anderson Municipal Court) as set forth below:

DESCRIPTION OF OFFENSE: PWID CRACK COCAINE

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me

on 04/11/2007

Signature of Issuing Judge (L.S.)

Signature of Issuing Judge

Judge Code: 099

Judge's Address

Anderson, SC -

Judge's Telephone

Issuing Court: Magistrate Municipal Circuit

ORIGINAL

234

To: Clerk of Court of Anderson County

I ANTHONY L. MATTHEW would like for you to inform  
me as to when you have processed my P.C.R.  
Application. IT would be A great thanks if  
you do this. I am mailing it as of this  
Day 3-19-12 to your office.

2012-CP-04-01045

Thank you,

Anthony L. Matthew

FILED-CLERK'S OFFICE  
ANDERSON SC  
2012 MAR 21 P 2:40  
COMMON PLEAS AND  
GENERAL SESSIONS

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF ANDERSON )  
 )  
 Anthony Leroy Mattison, )  
 S.C.D.C. No. 270904, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 C.A. No. 2012-CP-04-1045

FILED-CLERK'S  
 ANDERSON  
 2012 MAY 24  
 COMMON PLEAS AND  
 GENERAL SESSIONS

RETURN

**TRUE COPY**  
 APR 12 2013  
 Richard X. Hixey  
 CLERK OF COURT

In response to the post-conviction relief application filed March 21, 2012, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Anderson County Clerk of Court's orders of commitment. The Applicant was indicted at the July 2007 term of the Anderson County Grand Jury for possession of crack cocaine with intent to distribute (2007-GS-04-1889). Kurt Tavernier, Esquire represented the Applicant.

The State took the case to trial, and on January 14, 2010 the Applicant was found guilty. The Honorable R. Lawton McIntosh sentenced the Applicant to twenty five (25) years imprisonment.

A notice of appeal was filed at the South Carolina Court of Appeals. Katherine Hudgins, Esquire perfected the appeal. The Court of Appeals affirmed the Applicant's conviction and sentence. State v. Anthony Leroy Mattison, Op. No. 2012-UP-084 (S.C. Ct. App. filed February 22, 2012). The Remittitur was sent on March 15, 2012.

Attached herewith and incorporated herein by reference are the records of the Anderson County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and the appellate records.

## II.

In his application for post-conviction relief the Applicant alleges he is being held in custody unlawfully for the following reason:

1. Ineffective assistance of counsel.
  - a. "My attorney never intended to offer any defense to the Court on my behalf."
  - b. "My attorney never explained to me or discussed with me any kind of defense strategy."
  - c. "My attorney dictated to me exactly how my case was going to be handled and he gave me no alternative options."
  - d. "My attorney did not subject the prosecution's case to any adversarial litigation."
  - e. "My attorney acted as a friend of the Court."
  - f. "My attorney did not try to have my case settled in a manner that would have been to my best advantage."
  - g. "My attorney did not do the necessary factual investigation on my behalf."
  - h. "My attorney did not conscientiously gather any information to protect my rights."
  - i. "My attorney failed to give me his complete loyalty."
  - j. "My attorney failed to serve my cause in good faith."
  - k. Counsel conceded Applicant's guilt.
  - l. Counsel failed to object to chain of custody.
2. Lack of subject matter jurisdiction.

## III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a criminal defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland

v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

#### IV.

Defects in the indictment do not affect subject matter jurisdiction. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); See also U.S. v. Cotton, 535 U.S. 625, 122 S.Ct. 1781 (2002). The indictment is a notice document, and any challenges to its sufficiency must be made in accordance with S.C. Code Ann. § 17-19-90 (2003). See also S.C. Code § 17-19-20 (2003). Subject matter jurisdiction is the power of a court to hear a particular class of cases, and it has nothing to do with the indictment document. See Gentry, 363 S.C. 93, 610 S.E.2d 494; Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994).

In post-conviction relief, an Applicant wishing to raise challenges to the sufficiency of an indictment must do so in the context of ineffective assistance of counsel, basically alleging that his trial counsel failed to properly move to quash the indictment in accordance with S.C. Code Ann. § 17-19-90 (2003). A claim of this nature is subject to the procedural bars in the Uniform Post-Conviction Procedure Act – notably the statute of limitations and successiveness. See S.C. Code §§ 17-27-45, -90 (2003).

An Applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), overruled in part by Gentry, 363 S.C. 93, 610 S.E.2d 494. However, “[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.” Gentry, 363 S.C. at

101, 610 S.E.2d at 499; See also S.C. Const. Art. V, § 7. Thus, Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. Applicant's conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction.

V.

The Respondent denies each allegation not expressly admitted, qualified or explained.

VI.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held.

Respectfully submitted,

ALAN WILSON  
Attorney General

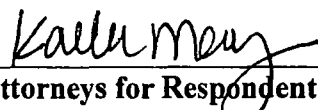
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By:

  
Attorneys for Respondent

May 22, 2012



STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF ANDERSON )  
 )  
 )  
 )  
 ANTHONY L. MATTISON, #270904, )  
 )  
 )  
 )  
 Applicant, )  
 )  
 vs )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS

2012-CP-04-1045

AFFIDAVIT OF SERVICE BY MAIL

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 L. Draisen, Esquire**  
**207 E. Calhoun St.**  
**Anderson, SC 29621**

DATED this 23<sup>rd</sup> day of May, 2012.

*Lena Pelishenko*  
 \_\_\_\_\_  
 Lena Pelishenko, Legal Assistant  
 For Respondent

FILED-CLERK'S OFFICE  
 ANDERSON SC  
 2012 MAY 24 A 10:47  
 COMMON PLEAS AND  
 GENERAL SESSIONS

State of South Carolina

In the Court of Common Pleas

County of Anderson

Anthony Mattison,

Applicant,

-vs-

State of South Carolina,

Respondent.

2012-CP-04-335

October 3, 2012

Transcript of Record

BEFORE:

The Honorable Clifton Newman, Judge

APPEARANCES:

Daniel Draisen, Esquire  
Attorney for the Applicant

Karen Ratigan, Esquire  
Attorney the State

Renee H. Tollison  
Circuit Court Reporter

INDEX

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
Anthony Mattison Draisen	6			

<<-->>

	PAGE
Opening Statements	3
Closing Arguments	
Ratigan	30
Draisen	32
Certificate of Reporter	35

EXHIBITS

No	DESCRIPTION	ID	EV
	<i>No exhibits were presented during the hearing</i>		

*Anthony Mattison v. State of South Carolina* 2012-CP-04-335  
*PCR Hearing October 3, 2012*  
*Opening Statements*

3

1 (WHEREUPON, court convened with all parties present  
2 and the following proceedings were had commencing at  
3 approximately 10:32 a.m.)

4 THE COURT: Good morning, Your Honor.

5 THE AUDIENCE: (In unison) Good morning.

6 THE COURT: I had a ten o'clock teleconference  
7 regarding an upcoming seminar that I had scheduled this  
8 morning in addition to this, so I'm sorry for the delay  
9 in starting.

10 I'm ready to proceed if you are, Madam Attorney  
11 General.

12 MS. RATIGAN: Thank you, Your Honor. May it  
13 please the Court.

14 The first case is Anthony Mattison versus the State.  
15 The docket number is 2012-CP-04-335. Mr. Mattison was  
16 indicted for possession with intent to distribute crack  
17 cocaine back in 2007. He was represented on that charge  
18 by Kurt Tavernier. The case was brought to trial January  
19 14th of 2010, and Mr. Mattison was found guilty. Judge  
20 McIntosh sentenced him to twenty-five years for P.W.I.D.  
21 crack, third offense. He did file an appeal and it was  
22 perfected as an Anders appeal. The Court of Appeals  
23 dismissed it in February of 2012. The State's ready to  
24 proceed.

25 I would note, Your Honor, this is a case that was

*Anthony Mattison v. State of South Carolina* 2012-CP-04-335  
*PCR Hearing October 3, 2012*  
*Opening Statements*

4

1 originally scheduled for yesterday. And then the  
2 Department of Corrections did not bring him yesterday,  
3 instead planned to bring him today. So Counsel and I  
4 agreed to move the case to today. Based on Mr.  
5 Mattison's application -- which we believe the issues he  
6 raises can be refuted by the trial transcript. Because  
7 we moved to the case to today, Mr. Tavernier could not be  
8 here. So yesterday we agreed that the since the issues  
9 raised could be refuted -- they're basically legal issues  
10 -- that we'd proceed today without Mr. Tavernier. So  
11 with that, at this point I'll turn it over to Counsel.

12 THE COURT: All right.

13 Counsel?

14 MR. DRAISEN: Thank you, Your Honor. May it  
15 please the Court. Daniel Draisen on behalf of Anthony  
16 Mattison. Mr. Mattison and I have only communicated one  
17 time by a written document. Mr. Mattison's application  
18 is fairly sophisticated in regard to some of the others  
19 that I've seen. He has enumerated his concerns  
20 succinctly in two pages of the application and then gone  
21 on to make the specific legal arguments in his  
22 application. So certainly, Judge, we would invite your  
23 attention to his application for the specifics. And we  
24 would like to call Anthony Mattison to address each one  
25 of his P.C.R. issues so he can explain to the Court what

*Anthony Mattison v. State of South Carolina* 2012-CP-04-335  
*PCR Hearing October 3, 2012*  
*Opening Statements*

5

1 his concerns are.

2 THE COURT: All right.

3 Mr. Mattison, give me one moment to get your  
4 application in front of me. All right. Mr. Mattison,  
5 I'll be glad to hear from you. If you will stand for me,  
6 please.

7 MS. RATIGAN: Judge, he needs to be sworn if  
8 he's going to testify from counsel table.

9 THE APPLICANT: Yes, sir.

10 THE COURT: All right. Mr. Draisen, is this in  
11 the nature of testimony or -- of course, we don't have  
12 hybrid representation.

13 MR. DRAISEN: I understand, Your Honor. And I  
14 don't want to represent to the Court that he isn't going  
15 to testify as a portion of his legal argument. I don't  
16 know exactly what he's going to say specifically. But  
17 what he's invited to do is to explain to the Court each  
18 of the bases that he's outlined. I'm assuming that's  
19 going to require him to go into some testimony about what  
20 he believed happened. But rather than me question him  
21 and examine him -- you know, obviously, I read the  
22 transcript. I wasn't present for trial. I don't know  
23 the facts as well as he does. So he -- you know, we can  
24 do that. It may be more expedient for you to -- if you  
25 want me to read and announce the grounds and then have

1 him -- say, Mr. Mattison, why do you believe this is the  
2 basis for this -- you know, I could do them one-by-one,  
3 and that may be the appropriate way to do it. And then  
4 we swear him.

5 THE COURT: Well, we will swear him and then I  
6 have no objection to the narrative manner in which he  
7 makes his presentation, but it needs to be pursuant to a  
8 question so that the adversarial process is preserved.

9 And so, Mr. Mattison, if you'll raise your right  
10 hand at this time to be sworn.

11 (WHEREUPON, the witness was duly sworn.)

12 THE COURT: All right. If you'll lead him on,  
13 in the beginning at least.

14 MR. DRAISEN: All right.

15 **ANTHONY MATTISON,**

16 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

17 DIRECT EXAMINATION

18 BY MR. DRAISEN:

19 Q. Mr. Mattison, in your P.C.R. application, you first  
20 asserted that your conviction and sentence was in  
21 violation of the Constitution of the United States and  
22 the Constitution and laws of the State of South Carolina.  
23 Would you please tell the Court why you believe that your  
24 conviction and sentence was in violation of the U.S.  
25 Constitution and the South Constitution and laws of the

1 state?

2 A. Well, the indictment as charged was amended entirely  
3 different from the offense. And counsel was ineffective  
4 on that indictment.

5 THE COURT: All right. Let's see, now. It's  
6 going to be difficult to understand what you're saying  
7 with your head down reading and the court reporter  
8 attempting to understand what you're saying, with me  
9 attempting to understand the words you're using. Let's  
10 see. Just be aware that though you may be reading  
11 something we have to understand what you're saying, so  
12 you'll need to talk in a manner -- and there's a mike in  
13 front of you.

14 Is it on?

15 THE CLERK: It is on, but the mike may work  
16 better on the witness stand.

17 MR. DRAISEN: It wasn't on.

18 THE COURT: Oh, the mike wasn't on. Okay. All  
19 right. Let's try it again.

20 Go ahead. You may proceed.

21 A. Okay. The court lacks the subject-matter  
22 jurisdiction where there was no indictment charging me  
23 with the offense at the time the jury was sworn. Counsel  
24 should have objected to the indictment. Also, Counsel  
25 was ineffective at trial to amend -- he didn't amend the

1 indictment.

2 THE COURT: You said there was no indictment?

3 THE WITNESS: He didn't amend the indictment.

4 There was an indictment on one thing -- I was indicted on  
5 a first, but I was tried and sentenced on a third.

6 THE COURT: All right.

7 A. Counsel failed to object to any of the admissible  
8 evidence that was presented, cup, scale and drugs.  
9 Should have been moved for suppression.

10 Q. What happened at the trial -- what didn't happen  
11 that should have happened at the trial that you believe?

12 A. What happened he motioned -- my counsel motioned for  
13 all the evidence contained within the trunk of the car to  
14 be dismissed. And they dismissed the pistol, but they  
15 allowed the cup and the scales.

16 Q. And why should the cup and scales not have been  
17 allowed?

18 A. (No verbal response).

19 Q. What was different about them and the pistol, if you  
20 know?

21 A. The cup and scales should not have been allowed --  
22 nothing in the trunk should have been allowed because the  
23 car was not my car as well as -- they tested, there was  
24 no -- my fingerprints was nowhere on none of the evidence  
25 they got out of the trunk of the car.

*Anthony Mattison v. State of South Carolina 2012-CP-04-335*  
*Anthony Mattison - Direct Examination by Mr. Draisen*

9

1 Q. Did your attorney object to those being admitted  
2 during the trial?

3 A. Yes, he objected.

4 Q. And that was initially at the beginning of the trial  
5 before any witnesses were called; is that right?

6 A. Yes, sir.

7 Q. Did your counsel renew the objection?

8 A. No, sir.

9 Q. At any point in time during the trial?

10 A. No, sir.

11 Q. After the testimony of the officers, did he renew  
12 the objection that any evidence should be suppressed?

13 A. He tried to renew it, but the judge denied it.

14 Q. Okay. All right. I think you've covered a few  
15 things in your application.

16 (Off record discussion)

17 THE COURT: Did your trial take place here in  
18 this courthouse?

19 THE WITNESS: Yes, sir.

20 MR. DRAISEN: Judge, do you need a copy of the  
21 indictment that he's talking about?

22 THE COURT: I have the indictment and all the  
23 copy of the court file. The -- that's what we're looking  
24 for, the -- all right. You may proceed.

25 Q. All right. Now, you covered briefly the fact that

1 you believe that the indictment was defective. I think  
2 that what your issue was that when you look at the face  
3 of the indictment itself, that it is -- it says it's an  
4 indictment for possession of crack cocaine with intent to  
5 distribute. It says, Anthony Leon Mattison did in  
6 Anderson County on or about April 10th, 2007, possess  
7 with intent to distribute a quantity of crack cocaine, a  
8 controlled substance under provisions § 44-53-110 as  
9 amended, such possession not having been authorized by  
10 law. And the code was cited as § 44-53-370(b)(1) on the  
11 face of the true-bill indictment, yet your sentence sheet  
12 says that you were sentenced to -- convicted of P.W.I.D.  
13 crack third. And drugs slash manufacture, distribution,  
14 et cetera, of meth or -- and then it's written in  
15 P.W.I.D. third. So your objection is, I believe, that  
16 your counsel didn't state a sufficient objection or make  
17 enough of an argument about the fact that you were being  
18 tried for an offense for which you were not indicted; is  
19 that right?

20 A. Yes, sir.

21 THE COURT: You're not suggesting you want the  
22 jury to know that this was a third offense you were on  
23 trial for?

24 THE WITNESS: Yes, sir.

25 THE COURT: You want the jury to know that

*Anthony Mattison v. State of South Carolina 2012-CP-04-335*  
*Anthony Mattison - Direct Examination by Mr. Draisen*

11

1 you're on trial for a third offense?

2 THE WITNESS: No. I was indicted under first  
3 offense and a tried under first offense, but I was  
4 sentenced under the third offense.

5 THE COURT: Oh. Well, the indictment doesn't  
6 say first offense. It doesn't say any offense. It just  
7 said you were -- you had possession of crack with intent  
8 to distribute it.

9 THE WITNESS: Well, under the code, the code  
10 that it's written under, it's a first offense code. And  
11 it only carries less than ten grams and carries zero to  
12 fifteen years.

13 THE COURT: All right. So your objection is  
14 that you shouldn't have received an enhanced sentence  
15 based on it being a third offense? You don't dispute  
16 that it was a third offense?

17 THE WITNESS: Yes, sir, I dispute it was a  
18 third. It was supposed to have been a second offense.

19 THE COURT: Okay. All right. You may proceed.

20 MR. DRAISEN: Thank you, Your Honor.

21 Q. All right. And the next position that you have in  
22 your application is that you were denied effective  
23 assistance of appellate counsel in violation of the Sixth  
24 Amendment. And you point to the *Anders* brief that was  
25 filed and is in the record on appeal. Is your argument

1 there that you believe that your appellate counsel, by  
2 filing an *Anders* brief, which essentially says that  
3 counsel didn't find or have any legal argument to make on  
4 your behalf, that counsel was not effective because he  
5 didn't make a legal argument?

6 A. Yes, sir.

7 Q. Is that essentially what you're asserting there?

8 A. Yes, sir.

9 Q. And I'm doing that -- but, I mean, I'm asking the  
10 question. So your appellate counsel failed to argue,  
11 make legal arguments, advancing the things you just told  
12 the Court about problems with the indictment, problems  
13 with things you're telling the Court. So you believe  
14 that because they submitted an *Anders* brief rather than  
15 making legal arguments about defective indictments, about  
16 the enhancement to third offense and about the failure to  
17 suppress the evidence ---

18 A. Yes, sir.

19 Q. --- that you believe your appellate counsel was  
20 ineffective?

21 A. Yes, sir, I do.

22 Q. Okay. Anything else you want to tell the Court  
23 about that? Because I don't have the appellate record.

24 So you'd have to tell me what you know about the -- what  
25 the brief says.

1 A. On the brief, me and counsel for the appellate court  
2 discussed it, tells me in writing about what she was  
3 going to discuss on my case on appeal. She never got  
4 around to the case I recommended to speak on probable  
5 cause. But she went on and filed an *Anders* brief on  
6 something that she said it had no merit, which is the  
7 chain of custody.

8 Q. She didn't make the argument that you wanted made?

9 A. Right.

10 Q. And I believe you then listed a number of those,  
11 that appellate counsel failed to raise the amended  
12 indictment issue on appeal. Is that what you just  
13 discussed before about it from a first offense to a third  
14 offense?

15 A. Yes, sir.

16 Q. And then the appellate counsel failed to raise the  
17 illegal excessive sentence claim and the motion to  
18 suppress. So you are asserting that that sentence was  
19 illegal and excessive because it should have been a  
20 second offense?

21 A. Should have been ---

22 Q. First offense or a second offense, but not a third  
23 offense?

24 A. Yes, sir. Yes, sir.

25 Q. And also, because she failed to dispute the denial

1 of the motion to suppress evidence?

2 A. Yes, sir.

3 Q. Okay. Anything else you want to add on those  
4 issues?

5 A. No, sir.

6 Q. You next assert that counsel was ineffective for  
7 conceding guilt on the Applicant's behalf without  
8 consent. Are you talking about Mr. Tavernier?

9 A. Yes, sir.

10 Q. Can you explain what happened? Because I read the  
11 transcript. Was this in closing argument?

12 A. Throughout the whole trial.

13 Q. Okay. Can you give an example of something that  
14 happened that you believe is where you think he conceded  
15 guilt to the jury?

16 A. Yes, sir. Throughout the whole trial he constantly  
17 went towards the jury and said you can find my client  
18 guilty, but find him guilty of something less so he don't  
19 get the full punishment or the sentence that he should --  
20 that he might be facing.

21 THE COURT: Was it your defense that you were  
22 guilty of having possession of the drugs, but that you  
23 didn't intend to distribute it?

24 THE WITNESS: Say it again, sir.

25 THE COURT: Was it your defense that you -- are

1 you telling me that the lawyer was saying that you might  
2 have been guilty of possession ---.

3 THE WITNESS: Yeah. He said I should have been  
4 guilty of simple possession because it was only five  
5 grams. And five grams is five grams..

6 THE COURT: But not possession with intent to  
7 distribute?

8 THE WITNESS: Intent to distribute. That was  
9 the case he was fighting for.

10 THE COURT: All right. And you disagree with  
11 that?

12 THE WITNESS: Yes, sir.

13 MR. DRAISEN: Well, and I think actually, if I  
14 understood from the transcript -- and again, Judge,  
15 forgive me. I wasn't there and I wasn't part of his  
16 strategy, his defense strategy. But, A, he argued it's  
17 not my car.

18 THE COURT: Right.

19 MR. DRAISEN: So, you know, you've got the  
20 issue of constructive possession. Because if he says,  
21 I'm driving somebody else's car, I don't know what's in  
22 the trunk, you know, his lawyer might have said to him, I  
23 understand how they can argue you were in constructive  
24 possession of something in a vehicle you were operating.  
25 But then when they open the trunk later and took

1 inventory -- in fact, it wasn't even part of any original  
2 search. It was part of an inventory of a seized vehicle,  
3 I believe, based on what the transcript said. He wasn't  
4 in the car when the police came. I mean, he was out of  
5 the vehicle entirely.

6 THE WITNESS: Out of the vehicle.

7 MR. DRAISEN: And so they only found drugs upon  
8 inventorying the vehicle itself. So I think the defense  
9 counsel's strategy was, as he stated, to essentially  
10 argue that. And I think his complaint is the manner in  
11 which counsel approached that with the jury, to have  
12 asserted you might find him guilty of a lesser offense.  
13 Maybe that would have been appropriate during some  
14 argument, closing argument or whatnot, but apparently  
15 he's asserting that a number of times through the trial.  
16 And it wasn't effectively handled by his counsel.  
17 Instead of making the case and arguing the case directly  
18 that there might be an issue of possession, but certainly  
19 no evidence of intent to distribute, you know, making  
20 that as a closing argument, essentially an opening and  
21 closing issue, it was something that kept being raised  
22 throughout the course of trial which may have confused  
23 the jurors. I believe that's essentially what he's  
24 asserting.

25 THE COURT: All right. Is that correct?

*Anthony Mattison v. State of South Carolina 2012-CP-04-335*  
*Anthony Mattison - Direct Examination by Mr. Draisen*

17

1 THE WITNESS: Yes, sir.

2 THE COURT: All right.

3 Q. Your next issue of contention is that Mr. Tavernier  
4 failed to put the State's case through adversarial  
5 testing. I'm not familiar with the term adversarial  
6 testing. Can you tell me what you meant by that?

7 A. Through adversarial testing, he was saying  
8 throughout the trial about the blue cup, open container,  
9 that there was never a test for alcohol as well as it was  
10 never tested for fingerprints.

11 Q. So you're saying your counsel was ineffective  
12 because he never challenged the admissibility of evidence  
13 related to the cup?

14 A. The cup, yes, sir.

15 Q. And its contents?

16 A. Yes, sir.

17 Q. And because he didn't raise the issue and bring  
18 anybody forward or ask anybody if there had been any  
19 effective testing of that cup and its contents?

20 A. He asked that during the trial. And they said there  
21 was no fingerprints were found. The smell of the cup was  
22 odorless. They only went off of the container they found  
23 out of the trunk of the car saying that's what was in the  
24 cup.

25 Q. And I think that Mr. Tavernier, looking at the

1 transcript -- tell me if I'm wrong -- he raised the issue  
2 again during the suppression motion at the beginning of  
3 the trial. And the judge said essentially that he  
4 believed that the smell of alcohol, whether or not there  
5 was alcohol in the cup, would be within the ordinary  
6 knowledge of an average person and didn't require an  
7 expert.

8 A. Yes, sir.

9 Q. And so he'd overruled your lawyer's objection at  
10 that point. What you're saying is that your lawyer  
11 didn't then later bring any evidence forward or call any  
12 witnesses to testify on your behalf that -- or even do  
13 any testing of the cup to establish whether or not there  
14 was or was not alcohol in the cup?

15 A. Yes, sir.

16 Q. The only testimony that was allowed was the  
17 officer's testimony about whether or not they smelled, at  
18 the time of the arrest ---

19 A. Yes, sir.

20 Q. --- alcohol in the cup?

21 A. Yes, sir.

22 Q. And you believe your counsel was ineffective for not  
23 challenging that by testing?

24 A. Yes, sir.

25 Q. Okay. Anything else you want to add?

*Anthony Mattison v. State of South Carolina 2012-CP-04-335*  
*Anthony Mattison - Direct Examination by Mr. Draisen*

19

1 A. No, sir.

2 Q. I want to make sure I'm covering ---

3 A. Yes, sir.

4 Q. Okay. Your next allegation is that counsel failed  
5 to challenge the alleged drugs in the State's possession.  
6 You said tampering, chain of custody, admissibility. You  
7 want to explain what the problems were -- what didn't  
8 your lawyer do with regard to any issue with tampering or  
9 chain of custody or admissibility of drugs?

10 A. During the trial he had a guy, Mr. Sebastian, the  
11 fellow who tested the drugs, on the stand. Instead of  
12 him attacking him saying he might have or might not have  
13 tampered with the drugs, he cosigned that he didn't think  
14 he was that type of a person or neither did he feel that  
15 the drugs had been tampered with. He ruled that his  
16 self, and he's supposed to have been my counsel.

17 Q. And I think in the transcript there's a provision  
18 where Mr. Tavernier says -- and I don't remember the  
19 exact page. But he does say that he doesn't have any  
20 evidence or reason to believe that somebody would have  
21 tampered with it; is that right?

22 A. Yes, sir.

23 MR. DRAISEN: Let me see if I can find that,  
24 Judge.

25 Q. It looks like to me that -- it's page 111 of the

1 transcript, I believe, where Mr. Tavernier says at line  
2 18, thank you, Your Honor. And I do want to make clear  
3 I'm not in anyway insinuating the drugs have been  
4 tampered with, that the evidence was tampered with. Is  
5 that the part you're talking about?

6 A. Yes, sir.

7 Q. And this is when he's talking with -- he's  
8 questioning ---

9 A. Mike Baskin.

10 Q. --- Mike Baskin about the chain of custody?

11 A. Yes, sir.

12 Q. And there's a motion that's made because there was  
13 some problem about notarizing or signing some portion of  
14 the evidence form?

15 A. Yes, sir. He tested it one week, but it only was  
16 signed into SLED the following week.

17 Q. So he didn't make a motion to suppress the evidence  
18 on that basis?

19 A. Yes, sir.

20 Q. And then they made an argument. And as part of that  
21 argument, he said that he's not asserting that somebody  
22 tampered with it, but that there's obviously some problem  
23 with chain of custody?

24 A. Yes, sir.

25 Q. So he challenged the chain of custody but didn't

1 advocate that it could have been tampered with?

2 A. Yes, sir.

3 Q. And your complaint is your counsel was ineffective  
4 for not -- for conceding the fact that he didn't believe  
5 it was tampered with instead of asserting that it may  
6 have been tampered with?

7 A. Yes, sir.

8 Q. Okay. Your next issue is that counsel failed to  
9 object to the reasonable doubt jury charge. You want to  
10 explain what the problem was with the jury charge?

11 A. In explaining to the jury, he didn't try -- even try  
12 to build a case to help me in no kind of way. He spoke  
13 as he was a friend of everyone else that was testifying  
14 against me.

15 Q. Well, did you have a problem with the court's  
16 charge, specifically about whether or not there was  
17 reasonable doubt? You seem to be indicating that Mr.  
18 Tavernier should have objected to a jury charge about  
19 reasonable doubt. Do you feel like the court didn't  
20 explain reasonable doubt correctly or clearly enough?

21 A. I don't think he explained it clearly enough.

22 Q. You don't think Mr. Tavernier did?

23 A. No, sir.

24 Q. The jury charge was given by the judge though,  
25 right?

1 A. Yes, sir.

2 Q. Okay. But he didn't -- you don't think that your  
3 lawyer, in his closing remarks, did enough to clarify for  
4 the jury what would constitute reasonable doubt on your  
5 behalf or the facts of your case?

6 A. Yes, sir.

7 Q. Is that what you want to say?

8 A. Yes, sir.

9 Q. All right. You next assert that counsel's failure  
10 to object to the trial judge's comments which invited the  
11 jury to prematurely discuss the case. Can you explain  
12 what you think happened in that regard?

13 A. Often during our recess, as they went out, he was  
14 speaking to the jury as if they could go ahead on and  
15 discuss the case before the case had been handed to the  
16 jury.

17 Q. You're asserting there were times during the trial  
18 when the judge -- the judge said the jury could discuss  
19 the case?

20 A. Yes, sir.

21 Q. And are you sure that it's not that the judge said,  
22 don't discuss the case?

23 A. He said they could discuss the case.

24 Q. Do you have any idea where that occurred  
25 specifically or at what point in the trial?

1 A. It had to be during the second day of trial.

2 Q. Okay.

3 (Off record discussion)

4 MR. DRAISEN: Judge, reference is invited to  
5 the transcript for what the judge said or didn't say to  
6 the jury each time. I don't know where there's a  
7 specific example to point to, but Mr. Mattison says that  
8 he thinks it was during the second day. And it would  
9 have been after this motion was made that I referred to  
10 previously on page 110 and 111 where there was a point at  
11 page 110 the jury left and was instructed not to discuss  
12 the case at that time. He believes it was after that  
13 point in time. Without taking the time to go through the  
14 transcript specifically, we'll just refer to the  
15 transcript, Your Honor.

16 THE COURT: All right.

17 Q. Next, you assert that counsel failed to object to  
18 the pitting of witnesses. Which witnesses do you believe  
19 were pitted against each other?

20 A. (No verbal response)

21 Q. Do you want to tell the Court about that pitting of  
22 witnesses you believe occurred?

23 A. Pitting of witnesses occurred when asked -- when he  
24 asked me -- when he asked the -- the pitting of witnesses  
25 occurred when counsel failed to -- solicitor questioning,

1 particularly when credibility of crucial issues in any  
2 case\$ such as the case at the bar. Improper pitting of  
3 witnesses is prejudicial and cannot be deemed harmless.

4 Q. And you're referring to Saap and Brown cases?

5 A. Yes, sir.

6 Q. As cited in your application?

7 A. Uh-huh (affirmative).

8 Q. And you believe that during the case that the  
9 solicitor used multiple witnesses where credibility was  
10 the main issue?

11 A. Yes, sir.

12 Q. And pitted one against the other. If they didn't  
13 get an answer they wanted from one witness, they called  
14 another witness and asked the same question to them and  
15 give a different answer at a later time?

16 A. Yes, sir.

17 Q. And your counsel didn't object to that?

18 A. No, sir.

19 Q. You're talking about the calling of multiple police  
20 officers. Is that what we're talking about?

21 A. Yes, sir.

22 Q. So if a police officer was called to testify and an  
23 answer was not given that the solicitor wanted, the  
24 solicitor would call another officer and testify to the  
25 same thing and get the answer they wanted. And counsel

1 didn't object to that?

2 A. Yes, sir.

3 Q. That's what you're asserting?

4 A. Yes, sir.

5 Q. Okay. And that basically pursuant to Saap and  
6 Brown, that improper pitting is prejudicial and cannot be  
7 deemed harmless, so you're asserting that failure to  
8 object is not a harmless error in this case and that that  
9 was ineffective of counsel by not objecting to that and  
10 raising that objection during trial?

11 A. Yes, sir.

12 Q. Okay. Number twelve, counsel was ineffective for  
13 denying Applicant a full and fair consideration of your  
14 Fourth Amendment claims at trial and on direct review.  
15 What specifically with regard to the Fourth Amendment  
16 were you asserting that counsel didn't raise your rights,  
17 your constitutional rights?

18 A. Yes, sir.

19 Q. Are you saying basically that Mr. Tavernier did not  
20 raise any objections based on the Fourth Amendment on  
21 your behalf and he was ineffective for not doing that?

22 A. Yes, sir.

23 Q. Okay. Next, you asserted that counsel was  
24 ineffective for vouching for a police officer. Do you  
25 recall specifically what happened in that regard?

1 A. For a time he often spoke of each officer's  
2 testimony as they was a expert witness.

3 Q. And he didn't challenge their testimony, and he  
4 seemed to indicate that he knew them and they were good  
5 guys?

6 A. Yes, sir.

7 Q. Versus being your advocate and just cross-examining  
8 them and attacking the evidence?

9 A. Yes, sir.

10 Q. You next assert that counsel failed to object to  
11 solicitor's bolstering of Captain Marcy. Do you want to  
12 explain what happened with regard to that?

13 A. Throughout Captain Marcy's testimony, he praised him  
14 about how long he'd been -- served as an officer as well  
15 as how good he thought his testimony would be and how  
16 much credibility that he had.

17 Q. And cross-examination of Mr. Marcy occurred at page  
18 150 and 51 of the transcript. That's what you're  
19 referring to?

20 A. Yes, sir.

21 Q. The cross-examination of Mr. Marcy?

22 A. Yes, sir.

23 Q. Okay. Anything else you want to add about that?

24 A. No, sir.

25 Q. Okay. The next assertion is that your attorney

1 never attempted to offer any defense to the court on your  
2 behalf. You want to explain?

3 MS. RATIGAN: Your Honor, I object to this.  
4 The application, paragraph ten, is the grounds and the  
5 issues which we have just spent a great deal of time  
6 going over. Paragraph eleven is just the facts to  
7 support those issues. I don't believe that these are  
8 issues that have been raised. They're just facts in  
9 support of what he's arguing.

10 MR. DRAISEN: I'm sorry. You're right. She's  
11 right, Your Honor. I didn't realize it changed  
12 questions, but I thought it was in continuation. I'll  
13 withdraw that. All right.

14 Q. Mr. Mattison, have we covered all the issues and  
15 grounds upon which you based your P.C.R. application?

16 A. Yes, sir.

17 Q. Is there anything that you would like to add  
18 specifically or to tell the Court about how you believe  
19 your lawyer was ineffective in representing you during  
20 the trial of your case that you have not covered today?

21 A. On the probable cause on the open container case,  
22 even though at the time of trial on the open container  
23 case, which was the case that was basically built on, he  
24 didn't charge them the case was still pending at that  
25 moment. And it had also been expunged from my record.

1 Q. The ---

2 MS. RATIGAN: We would object, Your Honor.  
3 This is an issue not raised in the application. And we  
4 agreed yesterday that the issues we would discuss today  
5 were those raised in the application. This is a late  
6 amendment.

7 MR. DRAISEN: I don't think he's adding  
8 anything. I think he's just explaining further his  
9 bases. And he did challenge specifically an issue raised  
10 in there about the admissibility of evidence and also,  
11 about whether or not his lawyer was effective in regard  
12 to the amending of the indictment issue. And I believe  
13 that all of those things relate to the open container  
14 charge upon which the original basis of the stop and the  
15 probable cause was.

16 He raised an issue that he didn't believe that you  
17 can get from a probable cause stop for an open container  
18 issue to an inventory of the vehicle and make the jump  
19 from that to a possession with intent to distribute  
20 charge. I think he did raise that, and that's the whole  
21 point of the indictment issue that was raised in his  
22 application that he's testified about.

23 THE COURT: All right. I overrule the  
24 objection, though I don't see how it can possibly impact  
25 the P.C.R. ruling. Because if the officers had probable

1 cause to believe that you had an open container and  
2 arrested you for that, then the fact that you might have  
3 later been found not guilty of it because you poured the  
4 contents out or because you didn't have it, that wouldn't  
5 have any bearing on whether or not you were guilty or not  
6 guilty of this charge.

7 MR. DRAISEN: I just want to give Mr. Mattison  
8 an opportunity, Your Honor, to say whatever it is he  
9 feels like he needs to address with the Court.

10 THE COURT: All right. Go ahead, sir.

11 Q. Is there anything else you want to add?

12 A. No, sir.

13 MR. DRAISEN: Your Honor, that's all we have.  
14 Thank you.

15 THE COURT: All right.

16 MS. RATIGAN: Your Honor, the State has no  
17 witnesses to call. I would just, in lieu of calling  
18 witnesses make a brief, I guess, closing or legal  
19 argument to address Mr. Mattison's issues.

20 THE COURT: All right. Before you do that ...

21 Mr. Mattison, were you interested in having Mr.  
22 Tavernier testify in this case, or are you going to be  
23 your only witness?

24 THE APPLICANT: No, sir, I don't need Mr.  
25 Tavernier. I'm the only witness.

1 THE COURT: All right.

2 MR. DRAISEN: May I have just a minute, Your  
3 Honor?

4 THE COURT: Yes.

5 MR. DRAISEN: Judge, he's not going to call Mr.  
6 Tavernier. We're not going to call Mr. Tavernier.

7 THE COURT: Is that right, Mr. Mattison?

8 THE APPLICANT: Yes, sir.

9 THE COURT: All right. Okay. We'll hear  
10 closing arguments then.

11 MS. RATIGAN: Very briefly, Your Honor. I'll  
12 just hit each of Mr. Mattison's points.

13 CLOSING ARGUMENT

14 BY MS. RATIGAN:

15 His first issue about the indictment, as Your Honor  
16 knows, you don't need to specify the offense number on  
17 the indictment. The overriding statutory section number  
18 is adequate.

19 The issue about failing to move to suppress the  
20 evidence, Mr. Tavernier did move to suppress the cup, the  
21 bottle of wine, the scales and the gun. At the start of  
22 trial, the gun was suppressed and everything else came  
23 in.

24 Let's see. The ineffective assistance of appellate  
25 counsel issue. Raising issues is within the discretion

*Anthony Mattison v. State of South Carolina* 2012-CP-04-335  
*PCR Hearing October 3, 2012*  
*Closing Argument by Ms. Ratigan*

31

1 of the appellate attorney based on their experience and  
2 education. An *Anders* brief actually is the -- it allows  
3 the Court to review the entire record, not just the issue  
4 raised by counsel. So the Court actually reviewed the  
5 entire record before they dismissed the appeal.

6 The issue about conceding guilt throughout trial, we  
7 argue that that is absolutely incorrect. The strategy  
8 from the beginning was to argue that Mr. Mattison --  
9 these drugs were for personal use, not for distribution,  
10 especially since the drugs were not found in the car and  
11 they were actually found on his person during the strip  
12 search at the jail when he was booked for open container.

13 Did not put the case through adversarial testing.  
14 Mr. Mattison's arguing about the blue cup not being  
15 tested. Mr. Tavernier argued and elicited through cross-  
16 examination both that the cup was not tested for alcohol  
17 and that there were no prints on the cup.

18 Argument about not challenging chain. All the chain  
19 witnesses were there that day. Mr. Tavernier did, in  
20 fact, move to dismiss the case based on an improper  
21 notarization date on the SLED document. He did move to  
22 dismiss. That was denied.

23 There's no error with the reasonable doubt charge.  
24 There's no evidence that's been pointed out today about  
25 the judge inviting the jury to discuss the case.

1 There's no evidence in the record that's been  
2 pointed out as to pitting of witnesses.

3 The accusation that Mr. Tavernier did not make  
4 Fourth Amendment objections is incorrect. He moved to  
5 dismiss and he moved to suppress based on the search that  
6 occurred after Mr. Mattison had actually exited the  
7 vehicle. So he did make those Fourth Amendment  
8 objections.

9 There's no evidence in the record of Mr. Tavernier  
10 vouching for police officers. There's no evidence in the  
11 record of the solicitor bolstering Mr. Marcy's testimony.  
12 Rather, Mr. Marcy is actually admitted as an expert. So  
13 there is no bolstering in talking about his education,  
14 qualification and training as he was admitted as an  
15 expert.

16 So we'd argue the transcript refutes each of these  
17 issues. He hasn't met his burden under *Strickland* and  
18 the case should be dismissed.

19 CLOSING ARGUMENT

20 BY MR. DRAISEN: Your Honor, if I could just add one  
21 thing briefly to the record. And it does have to do with  
22 his allegations about his lawyer's ineffective counsel.  
23 And I just wanted to point out that at the beginning of  
24 the trial, if you look at the transcript, that Mr.  
25 Mattison did move to relieve Mr. Tavernier as his lawyer

*Anthony Mattison v. State of South Carolina* 2012-CP-04-335  
*PCR Hearing October 3, 2012*  
*Closing Argument by Mr. Draisen*

33

1 and that that was denied. So that in terms of adding or  
2 lending some credibility to the issues about Mr.  
3 Mattison's concerns that his lawyer was ineffective, he  
4 did raise that issue at the beginning. He felt like Mr.  
5 Tavernier -- it's in the transcript -- was not meeting  
6 with him often enough to discuss his case, was not going  
7 to present the case in a manner which Mr. Mattison wanted  
8 the case presented and initially asked at the beginning  
9 of the trial if he could be relieved, and that was  
10 denied. And Mr. Tavernier was allowed to proceed and  
11 represent Mr. Mattison at the trial of the case. I would  
12 just point that out in regard to each of the issues of  
13 ineffective counsel that he raised.

14 THE COURT: All right. Any further arguments  
15 on behalf of Mr. Mattison, Mr. Draisen?

16 MR. DRAISEN: No, Your Honor. Thank you.

17 THE COURT: Anything else you would like to  
18 say, Mr. Mattison?

19 THE APPLICANT: No, sir.

20 THE COURT: All right. Based on all of the  
21 issues raised, I'm going to take the matter under  
22 advisement to have an opportunity to review the  
23 transcript and the indictment and the application before  
24 issuing an order. I will advise the parties as to my  
25 decision.

*Anthony Mattison v. State of South Carolina 2012-CP-04-335*  
*PCR Hearing October 3, 2012*  
*Closing Argument by Mr. Draisen*

1 MS. RATIGAN: Thank you, Your Honor.

2 MR. DRAISEN: Thank you, Your Honor.

3 THE COURT: Thank you.

4 (WHEREUPON, the hearing ended at approximately 11:18

5 a.m.)

6 \*\*\* END OF REQUESTED TRANSCRIPT OF RECORD \*\*\*

*Anthony Mattison v. State of South Carolina* 2012-CP-04-335  
*PCR Hearing October 3, 2012*  
*Closing Argument by Mr. Draisen*

35

## 1 CERTIFICATE OF REPORTER

2 I, the undersigned Renee H. Tollison, Official Court  
3 Reporter for the Tenth Judicial Circuit of the State of  
4 South Carolina, do hereby certify that the foregoing is a  
5 true, accurate, and complete transcript of record of all  
6 the proceedings had and evidence introduced in the  
7 trial/hearing of the captioned case, relative to appeal,  
8 in the Circuit Court for Anderson County, South Carolina,  
9 on the 3rd day of October 3, 2012.

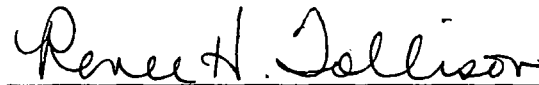
10 This transcript may contain quoted material. Such  
11 material is reproduced as read by the speaker.

12 I do further certify that I am neither of kin,  
13 counsel, nor interest to any party hereto.

14 May 24, 2013

15

16



17

Circuit Court Reporter

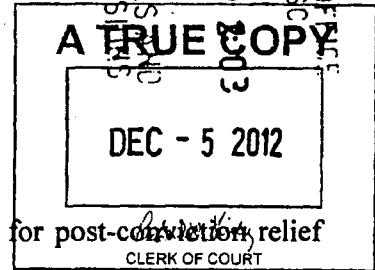
STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF ANDERSON )  
 )  
 Anthony Mattison, )  
 S.C.D.C. No. 270904, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS

2012-CP-04-0335

ORDER OF DISMISSAL

FILED-CLERK'S OFFICE  
 ANDERSON SC  
 2012 DEC - 3 P 2:03  
 COMMON PLEAS AND  
 GENERAL SESSIONS



This matter comes before the Court by way of an application for post-conviction relief (PCR) filed March 21, 2012. The Respondent made its return on May 22, 2012. An evidentiary hearing into the matter was held on October 3, 2012 at the Anderson County Courthouse. The Applicant was present at the hearing and represented by Daniel L. Draisen, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. The Court had before it the trial transcript, the records of the Anderson County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the Respondent's return, and the appellate records.

**PROCEDURAL HISTORY**

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Anderson County Clerk of Court. The Applicant was indicted at the July 2007 term of the Anderson County Grand Jury for possession with intent to distribute (PWID) crack cocaine (2007-GS-04-1889). He was represented by Kurt Tavernier, Esquire.

*W.*  
 11/16

After the State called the case to trial, the Applicant was found guilty. On January 14, 2010, the Applicant was sentenced by the Honorable R. Lawton McIntosh to twenty-five years for PWID crack cocaine, third offense.

A notice of appeal was filed at the South Carolina Court of Appeals. Kathrine H. Hudgins, Esquire of the South Carolina Office of Appellate Defense perfected the appeal in the form of an Anders<sup>1</sup> brief. The South Carolina Court of Appeals dismissed the appeal. State v. Mattison, Op. No. 2012-UP-084 (S.C. Ct. App. filed February 22, 2012).

### ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. The "conviction and sentence was in violation of the Constitution of the United States and the Constitution and laws of this state."
2. Ineffective assistance of trial counsel:
  - a. Failed to object to defective indictment.
  - b. Conceded the Applicant's guilt.
  - c. Failed to put the State's case through adversarial testing.
  - d. Failed to challenge the chain of custody and admissibility of the drugs.
  - e. Failed to object to the reasonable doubt charge.
  - f. Failed to object to the trial judge's comments that invited the jury to prematurely discuss the case.
  - g. Failed to object to pitting of witnesses.
  - h. Denied the Applicant "a full and fair consideration of his Fourth Amendment claims."
  - i. Vouched for a police officer.
  - j. Failed to object to the solicitor's bolstering of Captain Marsee.
3. Ineffective assistance of appellate counsel:
  - a. Failed to raise the issue of an amended indictment.
  - b. Failed to raise the issue of an "illegal and excessive sentence."

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the

<sup>1</sup> Anders v. California, 386 U.S. 738, 87 S. Ct. 1396 (1967).

testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe the witness who testified at the hearing and to closely pass upon his credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

**Ineffective Assistance of Trial Counsel**

The Applicant alleges he received ineffective assistance of trial counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected to the indictment in this case. The Applicant argues he was indicted for a first offense but went to trial on a third offense. This Court has examined the PWID crack cocaine indictment and does not find the Applicant was specifically indicted under the statutory section for a first offense. As such, there was no basis for trial counsel to have objected to the

indictment. To the extent the Applicant is arguing the CDR code for first offense was noted on his indictment, this Court finds CDR codes are administrative designations and do not affect subject matter jurisdiction.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have moved to suppress the evidence in this case. This Court has examined the trial transcript and finds that trial counsel did, in fact, moved for suppression of the following evidence: the drugs found on the Applicant's person, the items found in the trunk (gun, scales, wine bottle), and the cup the Applicant dropped outside the vehicle. (Trial transcript, p.14; pp.19-21; p.46). The trial judge suppressed the gun and allowed the remaining evidence to be admitted. This Court notes trial counsel renewed his objection several times. The Applicant's argument is without merit.

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This Court finds the Applicant failed to meet his burden of proving trial counsel conceded his guilt at trial. The Applicant argued trial counsel told the jury to convict him of simple possession instead of PWID. (Trial transcript, p.184). It is clear from the record that trial counsel's strategy was to argue the 5.54 grams of crack cocaine found on his person was for personal use and not for distribution. This strategy was made clear in his cross-examination of Sergeant Clardy and Captain Marsee, for example. There was no resulting prejudice from trial counsel's comment, as the drugs were found underneath the foreskin of the Applicant's penis while being processed for a lawful arrest on an open container charge. (Trial transcript, p.93).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have argued the blue cup he dropped at the scene should have been tested. This Court finds, however, that trial counsel argued to the trial judge that – as the open container charge and arrest led to the PWID charge – it should be dismissed because the cup was not tested to verify there

was alcohol in the cup. (Trial transcript, pp.19-21). Regardless, the Applicant failed to seek a discovery order for an independent test of evidence. As such, this Court cannot speculate as to what the result of such a test of the cup would have been. Cf. Palacio v. State, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (holding that, since the contents of challenged documents were not presented at the PCR hearing, the Applicant could not demonstrate how the failure of counsel to obtain these documents prejudiced the defense).

This Court finds the Applicant failed to meet his burden of proving trial counsel did not properly challenge the chain of custody of the drug evidence.<sup>2</sup> This contention is refuted by the trial record. Trial counsel's pre-trial motion for suppression of the drug evidence was based on an argument that an incorrect notarization date tainted the entire chain of custody. (Trial transcript, pp.14-19). Trial counsel renewed this motion at the appropriate time. (Trial transcript, pp.110-11). The Applicant has failed to demonstrate any potential problems with the chain of custody that trial counsel should have investigated. See Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998) (finding the failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected to the reasonable doubt jury charge. (Trial transcript, pp.191-92). This Court notes the Applicant was unable to articulate why he believed the charge was deficient. Regardless, this Court notes this particular jury charge has been found to be adequate. See State v. Simmons, 384 S.C. 145, 178-79, 682 S.E.2d 19, 37 (Ct. App. 2009).

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<sup>2</sup> The Applicant stated it was improper for trial counsel to state his belief that former Investigator Baskin did not tamper with the evidence. (Trial transcript, p.111). This Court notes, however, this statement was made outside the presence of the jury and was in keeping with trial counsel's trial strategy.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected when the trial court “invited he jury to prematurely discuss the case.” This Court notes the Applicant was unable to point to this statement in the trial transcript. As such, he cannot meet his burden of proof on this issue. See Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (finding the applicant bears the burden of proving the allegations in their PCR application).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected to the solicitor’s pitting of witnesses. The Applicant argued an objection was necessary because the State called several police officers as witnesses in order to get “the right answer.” Initially, this Court notes the officers’ testimony was consistent. Regardless, this Court finds that, as the Applicant’s contention does not constitute pitting witnesses, it was not error for trial counsel not to have objected. See State v. McKinley, 397 S.C. 461, 464, 725 S.E.2d 139, 141 (Ct. App. 2012) (noting pitting is improper because witnesses are generally not allowed to testify whether another witness is telling the truth).

This Court finds the Applicant failed to meet his burden of proving trial counsel did not make Fourth Amendment objections. This Court finds this issue is refuted by the trial transcript. Trial counsel challenged the State’s decision not to prosecute the open container charge because it led to the discovery of the crack cocaine. (Trial transcript, pp.19-21). Trial counsel also moved to suppress the evidence found in the trunk of the car – which led to the suppression of the gun. (Trial transcript, pp.46-50). The Applicant has failed to articulate what other Fourth Amendment challenges should have been made. See Butler, 286 S.C. at 442, 334 S.E.2d at 814.

This Court finds the Applicant failed to meet his burden of proving trial counsel was ineffective because he vouched for police officers’ testimony. The Applicant stated trial counsel

spoke of the officers as if they were experts and did not challenge their testimony. Initially, this Court notes one of the officers – Captain Marsee – was qualified as an expert witness. Regardless, this Court finds the Applicant failed to show trial counsel vouched for State witnesses. While trial counsel may have mentioned that he did not suspect the officers of tampering with the drug evidence, this does not equate to vouching. Cf. Vaughn v. State, 362 S.C. 163, 169, 607 S.E.2d 72, 75 (2004) (“A prosecutor improperly vouches for a witness’ credibility and places the government’s prestige behind a witness by making explicit personal assurances, or indicating that information not presented to the jury supports the testimony.”).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected to the State bolstering its witness, Captain Marsee.<sup>3</sup> This Court notes the Applicant failed to point to a specific point in the record to support his assertion. This Court finds there is no evidence in the record that the State bolstered Marsee. While Marsee may have been qualified (based on his years of experience and training) as an expert witness regarding the distribution and street value of illegal narcotics, this does not constitute either bolstering of or vouching for the witness. (Trial transcript, pp.138-41). See id.; see also Matthews v. State, 350 S.C. 272, 276, 565 S.E.2d 766, 768 (2002) (“A solicitor may argue the credibility of the State’s witnesses if the argument is based on the record and its reasonable inferences.”).

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence

---

<sup>3</sup> The Applicant also argued trial counsel should not have praised Marsee about his credibility. This Court finds there is no evidence of this in the trial transcript. Rather, the trial record reflects trial counsel aggressively cross-examined Marsee in an effort to demonstrate the drugs on the Applicant’s person were for his personal use and not to be sold. (Trial transcript, pp.150-60).

*id.*  
742

that trial counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel’s performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

### Ineffective Assistance of Appellate Counsel

The Applicant alleges he received ineffective assistance of appellate counsel. A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S. Ct. 830 (1985). In analyzing a claim of ineffective assistance of appellate counsel, the Court applies the Strickland test just as it would when analyzing a claim of ineffective assistance of trial counsel. See Bennett v. State, 383 S.C. 303, 309, 680 S.E.2d 273, 276 (2009); Southerland v. State, 337 S.C. 610, 616, 524 S.E.2d 833, 836 (1999) (noting courts apply the Strickland test to determine if appellate counsel was deficient for failing to raise an issue and whether the defendant was prejudiced from the failure to raise the issue). Appellate counsel, however, is not required to raise every non-frivolous claim, but instead may select among them in order to maximize the likelihood of a favorable outcome. Smith v. Robbins, 528 U.S. 259, 288, 120 S. Ct. 746, 765 (2000).

The Applicant stated appellate counsel should not have filed an Anders brief. The Applicant stated appellate counsel should have instead raised issues related to his indictment, enhancement of his charge, and denial of the suppression motion. This Court finds the Applicant failed to meet his burden of proving appellate counsel was ineffective. Initially, this Court notes there were no objections at trial to the indictment or enhancement of the PWID charge so they could not have been raised at issues on appeal. See Legge v. State, 349 S.C. 222, 225, 562

S.E.2d 618, 620 (2002) (noting if an issue is not preserved for appeal, then appellate counsel cannot be ineffective for failing to raise the issue). In any event, the result of appellate counsel's decision to file an Anders brief is that the trial court's ruling on the suppression motion was able to be reviewed by the appellate court. See State v. McKennedy, 348 S.C. 270, 279, 559 S.E.2d 850, 855 (2002) ("The purpose of filing a brief under Anders is to ensure the merits of the appeal are not overlooked. The court has to conclude independently, regardless of counsel's conclusion, whether or not the appeal has merit before it can dismiss the appeal.").

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that appellate counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that appellate counsel committed either errors or omissions in her representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by appellate counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

#### All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

aw  
9/9/10

CONCLUSION

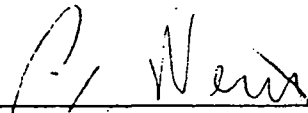
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial, sentencing, or appellate proceedings. Counsel were not deficient and the Applicant was not prejudiced by their representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

**IT IS THEREFORE ORDERED:**

1. That the application for post-conviction relief be denied and ~~dismissed with prejudice; and~~
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 25<sup>th</sup> day of November, 2012.

  
 \_\_\_\_\_  
 Clifton Newman  
 Presiding Judge

Columbia, South Carolina.

FILED-CLERK'S OFFICE  
 ANDERSON SC  
 2012 DEC - 3 P 2:04  
 COMMON PLEAS AND  
 GENERAL SESSIONS

STATE OF SOUTH CAROLINA )  
 )  
 County of Anderson )  
 )  
 Anthony Mattison, )  
 Applicant, )  
 )  
 vs. )  
 )  
 State of South Carolina, )  
 Respondent. )

COURT OF COMMON PLEAS  
 Case No: #2012-CP-04-~~9995~~ 1045

FILED  
 MAR.

AFFIDAVIT  
 COMMON PLEAS AND  
 GENERAL SESSIONS  
 2012 DEC 17 P 1:57  
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 ANDERSON SC

- 1) The applicant was found guilty on January 14, 2010 and was sentenced to a term of twenty-five years for PDID crack cocaine, third offense.
- 2) Applicant was represented at trial by Kurt Tavernier of the Anderson County Bar.
- 3) Applicant was represented by Katherine Hudgins on Appeal.
- 4) Applicant raised thirteen issues in his PCR application that was filed on March 21, 2012.
- 5) Applicant's PCR hearing was held on October 3, 2012 in the Anderson County Common Pleas Court.
- 6) Attorney Daniel Draisen represented the applicant in his PCR hearing.
- 7) Trial attorney Kurt Tavernier and Kathringe Hudgins were not present for the applicant's hearing.
- 8) Applicant did not get a full bite of the apple in his PCR matter.
- 9) Applicant's probable cause issue was not addressed in the judges order.
- 10) Applicant's conviction and sentence was in violation of the U.S. Constitution, S.C. Constitution and laws of this State. A new hearing should be scheduled in the interest of justice.
- 11) I received copy of order on December 10, 2012.

A TRUE COPY  
 APR 12 2013  
 Direct  
 Clerk of Court

I, Anthony Mattison #270904, certify and verify under the penalty of perjury that the foregoing is true and correct.

Anthony Mattison


STATE OF SOUTH CAROLINA )  
 County of Anderson )  
 Anthony Mattison, )  
 Applicant, )  
 vs. )  
 State of South Carolina, )  
 Respondent. )

COURT OF COMMON PLEAS  
 Case No: #2012-CP-04-~~0335~~ <sup>1045</sup>

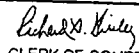
59(e)  
 MOTION TO ALTER/  
 AMEND JUDGMENT

COMMON PLEAS AND  
 GENERAL SESSIONS

2012 DEC 17 P 1:57

FILED-CLERK'S OFFICE  
 ANDERSON SC  


This matter comes before the Court by way of an application for Post-Conviction Relief filed March 21, 2012. The Respondent made it's Return on May 22, 2012. An evidentiary hearing into the matter was held on October 3, 2012, at the Anderson County Courthouse. The Applicant was present at the hearing and was represented by Daniel L. Draisen, Esquire, Karen C. Ratigan, of the Attorney General represented the Respondent.

A TRUE COPY  
 APR 12 2013  
  
 CLERK OF COURT

The applicant is respectfully requesting this Honorable Court to Alter/Amend his final judgment attached because the Order of Dismissal that was signed by Honorable Clifton Newman on November 25, 2012 do not address the fact that trial counsel Kurt Tavernier that represented the applicant in his jury trial was not present at the PCR hearing on October 3, 2012. Nor was appellate Counsel K. Hudgins of the Appellate Defense Office.

The S.C. Supreme Court held that if opposing counsel is not there for testimony and the PCR Court cannot determine his credibility then he concedes to the allegations/claims against him. Trial counsel cannot and did not articulate a strategy because he (Kurt Tavernier) trial attorney did not testify at the PCR hearing on October 3, 2012. Nowhere in the record did the applicant acquiesce to a waiver that counsel should not attend a PCR hearing that was mandatory that he be present.

PCR Counsel Daniel L. Draisen denied the applicant the right to have crucial issues considered on collateral effectively renders the already narrowed provision for a superficial remedy and denies applicant his equal protection rights under the Federal and State Constitution.

This violation which in the setting constitutes a denial of fundamental fairness shocking to the universal sense of justice.

The applicant made the claim in his post-conviction application that trial counsel was deficient and there is a reasonable probability that, but for counsel's errors, the outcome would have been different.

The state did not make or offer any evidence to the contrary and the state failed to provide the testimony of trial counsel at the PCR hearing on October 3, 2012. Further, the PCR Court did not have an opportunity to review the trial transcript because neither party presented it to the court. Therefore, the applicant should be granted another PCR hearing or the case should be vacated and remanded for a new trial.

Allegations in applicant's application for post-conviction relief must be deemed true until those allegations are controverted by the state, until allegations contained in verified application for post-conviction relief are controverted by the state, they are deemed to be true for purpose of determining whether relief should be granted.

The applicant questions whether he effectively waived his right to confront and cross examine witnesses by entering through counsel, a stipulation to a statement of facts which comprised the states case, he would be permitted to show that the stipulation was against his will or that he had no knowledge, however acquired of his right to confrontation of witnesses against him.

The Uniform Post-Conviction Act provides for the making of a complete record which fully and carefully records the proceedings so that the evidentiary basis for finding of fact will be available on review.

The applicant's allegations for PCR is premised on fundamental and statutory rights. The PCR Court must assume facts presented by an applicant are true and view those facts in the light most favorable to the applicant.

Trial counsel and appellate counsel cannot waive attending a PCR hearing that they are a party to. PCR counsel cannot stipulate to waive confronting trial counsel and appellate counsel because the PCR statutes consist

of claims of ineffective assistance of appellate counsel.

Trial counsel Kurt Tavernier and appellate counsel K. Hudgins of the appellate defense office failed to give testimony at my PCR hearing, thereby denying me a full bite at the apple.

Not only does this deprive the applicant a proper ruling on the issues raised and the non-attendance of trial counsel and appellate counsel, but it makes review by the appellate court more difficult and ultimately increases the work load of all involved where, as in this case, a new hearing is required to secure the ruling which should have been made initially. Counsel preparing proposed orders should be meticulous in doing so, opposing counsel should call any omissions to the attention of the PCR judge prior to issuance of the order and the PCR judge should carefully review the order prior to signing it. Even after an order is filed, counsel has an obligation to review the order and file a Rule 59(e), SCRCP, motion to alter or amend if the order fails to set forth the findings and the true reasons for those findings as required by §17-27-80 and Rule 52(a) SCRCP.

Applicant requesting that this Court Alter or Amend his judgment to make the order reflect that opposing counsel Kurt Tavernier and appellate counsel was not present at the PCR hearing on October 3, 2012, and or grant a new PCR hearing so that the applicant can get a full bite of the apple.

STATE OF SOUTH CAROLINA )  
 )  
 County of Anderson )  
 )  
 Anthony Mattison, )  
 Applicant, )  
 )  
 vs. )  
 )  
 State of South Carolina, )  
 Respondent. )

COURT OF COMMON PLEAS  
 Case No: #2012-CP-04-~~8555~~ **1045**

**MAK**

CERTIFICATE OF SERVICE

I, Anthony Mattison, #270904, certify that I have served the below parties with a copy of my Motion to Alter or Amend by placing a copy in the hands of the Perry Correctional Institution mailroom for mailing postage prepaid.

Clifton Newman  
 Court House  
 125 W. Main St.  
 Kingstree, S.C.  
 29556

Daniel Draisen  
 Attorney at Law  
 207 E. Calhoun St.  
 Anderson, S.C. 29621

Attorney General  
 P.O. Box 11549  
 Columbia, S.C.  
 29211

Richard A. Shirley  
 Clerk of Court  
 P.O. Box 8002  
 Anderson, S.C. 29622

COMMON PLEAS AND  
 GENERAL SESSIONS

2012 DEC 17 P 1:57

FILED-CLERK'S OFFICE  
 ANDERSON SC

Anthony D. Mattison

STATE OF SOUTH CAROLINA FILED - CLERK'S OFFICE THE COURT OF COMMON PLEAS  
COUNTY OF ANDERSON ANDERSON SC CIVIL ACTION NO.: 2012-CP-04-1045

2013 FEB 15 P 12:09

Anthony Mattison,  
S.C.D.C. No. 270904

COMMON PLEAS AND  
GENERAL SESSIONS

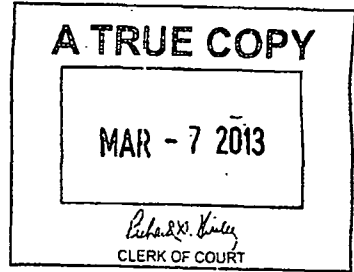
Applicant,

**ORDER DENYING MOTION  
TO ALTER OR AMEND**

vs.

State of South Carolina,

Respondent.

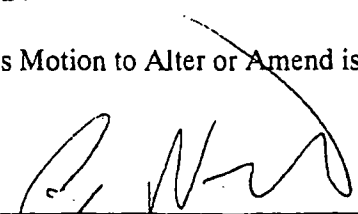


This matter comes before the Court by way of Applicant's Motion to Alter or Amend the Order of Dismissal dated November 25, 2012 and filed December 3, 2012.

Having carefully considered the arguments submitted and applicable law, the Court finds that the Motion to Alter or Amend should be DENIED.

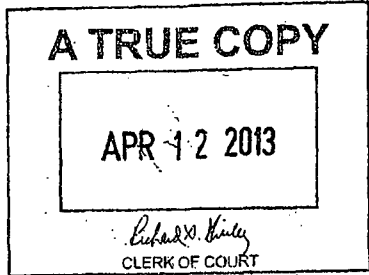
It is therefore ORDERED that the Applicant's Motion to Alter or Amend is DENIED.

AND, IT IS SO ORDERED.

  
Clifton Newman  
Presiding Judge

February 13, 2013  
Walterboro, SC

DOCKET NO. 2007-GS-04-1889



**The State of South Carolina,**  
ANDERSON  
County of \_\_\_\_\_

COURT OF GENERAL SESSIONS  
JUN 19 2007 TERM

MSM THE STATE

ANTHONY LEROY MATTISON

COMMITMENT

01-14-10 / camp

WITNESSES  
FOUTS - APD

1716154

ARREST WARRANT NO.

ACTION OF GRAND JURY

**TRUE BILL**

JUN 19 2007

Foreman of Grand Jury

Foreperson

VERDICT

**Indictment for**

POSSESSION OF CRACK COCAINE  
WITH INTENT TO DISTRIBUTE  
44-53-0375 (B)(1) [3039]

202 Foreman of Petit Jury

Date:

1/14/2010

COUNTY OF Anderson

STATE

VS. Anthony Leroy Mattison



INDICTMENT/CASE#: 2007GS0401889

AW#: 1716154

Date of Offense: 4/11/2007

S.C. Code §: 44-53-0375 (B) (1)

CDR Code #: 3014

AKA: Race: B Sex: M Age: 44 DOB: SS#: Address: City, State, Zip: Anderson, SC 29621 DL# SID# SC00565289

SENTENCE SHEET

\*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was

CONVICTED OF or PLEADS

TO: DRUGS/MANUFACTURE/DIST. ETC. OF METHOR (PWID crack 3rd) max: 15-30 yr In violation of § 44-53-0375 (B) (1) of the S.C. Code of Laws, bearing CDR Code # 3014

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45 (CSC w/minor 1st or Lewd Act)

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury, Negotiated Sentence, Recommendation by the State.

ATTEST: Lauren L. Hogan 72613 Solicitor SC Bar #

Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the State Department of Corrections or 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 Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135. Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS: RESTITUTION: Deferred Def. Waives Hearing Ordered

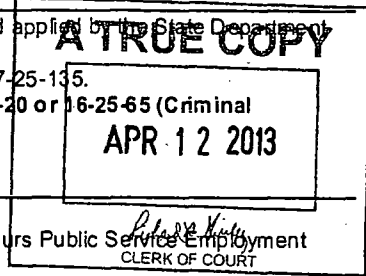
Total: \$ plus 20% fee: \$

Payment Terms:

Set by SCDPPPS

Recipient:

Table with 3 columns: Description, Amount, Total. Includes items like §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, §56-1-286 (DUI Breath Test) \$25, §47.12 (Public Def/Prob) \$500, §14-1-212 (Law Enforce. Funding) \$25, §14-1-213 (Drug Court Surcharge) \$100, §50-21-114 (BUI Breath Test Fee) \$50, §56-5-2942(J) (Vehicle Assessment) \$40/ea, §90.7 (SCCJA Surcharge) \$5, 3% to County (if paid in installments), TOTAL \$236.90



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, \$47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/Deputy Clerk: Cathy M. Phillips Court Reporter: Jo Rice

Presiding Judge: Judge Code: Sentence Date: 1-14-10

DLS

STATE OF SOUTH CAROLINA )  
ANDERSON )  
COUNTY OF \_\_\_\_\_ )

INDICTMENT FOR  
POSSESSION OF CRACK COCAINE  
WITH INTENT TO DISTRIBUTE  
44-53-0375(B)(1)[3039]

At a Court of General Sessions, convened on JUN 19 2007,  
the Grand Jurors of ANDERSON County present upon their oath:

POSSESSION OF CRACK COCAINE WITH INTENT TO DISTRIBUTE

THAT ANTHONY LEON MATTISON DID IN ANDERSON COUNTY ON OR ABOUT APRIL 10, 2007 POSSESS WITH INTENT TO DISTRIBUTE A QUANTITY OF CRACK COCAINE, A CONTROLLED SUBSTANCE UNDER PROVISIONS OF 44-53-110, *et, seq. Code of Laws of South Carolina* (1976), AS AMENDED, 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

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

The State,

Respondent,

v.

Anthony L. Mattison,

Appellant.

---

Appeal From Anderson County  
R. Lawton McIntosh, Circuit Court Judge

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Unpublished Opinion No. 2012-UP-084  
Submitted February 1, 2012 – Filed February 22, 2012

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**APPEAL DISMISSED**

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Appellate Defender Kathrine H. Hudgins, of Columbia; and Anthony L. Mattison, pro se, for Appellant.

Attorney General Alan Wilson, Chief Deputy Attorney General John W. McIntosh, and Assistant Deputy Attorney General Salley W. Elliott, all of Columbia; and Solicitor Christina T. Adams, of Anderson, for Respondent.



RECEIVED

MAR 13 2012

*Close*

ATTORNEY GENERALS  
OFFICE

**The South Carolina Court of Appeals**

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CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1015 SUMTER STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
www.sccourts.org

March 12, 2012

**REMITTITUR**

The Honorable Richard A. Shirley  
PO Box 8002  
Anderson, SC 29622

Re: The State v. Mattison, Anthony  
2007-GS-04-01889

Dear Mr. Shirley:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

Sincerely,

Renee S. Johnson  
Case Specialist II

*VGK*  
TAG/rj

cc: Appellate Defender Kathrine Hudgins  
Anthony Leroy Mattison #270904  
Assistant Deputy Attorney General Salley W. Elliott