

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

G. Edward Welmaker, Circuit Court Judge

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S.C. Supreme Court

CALVIN E. TODD,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001162

A P P E N D I X

LANELLE CANTEY DURANT
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

Karen C. Ratigan
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH) IN THE COURT OF GENERAL
CAROLINA) SESSIONS
COUNTY OF GREENVILLE) INDICTMENT NO:
2007-GS-23-8646

STATE OF SOUTH)
CAROLINA)
PLAINTIFF,) TRANSCRIPT OF RECORD
-VS-) TRIAL - VOLUME I
CALVIN E. TODD,)
DEFENDANT.)

MAY 19, 2008
GREENVILLE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE ALEXANDER S. MACAULAY, JUDGE; AND A
JURY.

A P P E A R A N C E S:

KATRYNA SALISBURY, ESQ.
ASSISTANT 13TH CIRCUIT SOLICITOR
JOYCE MONTS, ESQ.
ASSISTANT 13TH CIRCUIT SOLICITOR
ATTORNEYS FOR THE STATE

RANDY CHAMBERS, ESQ.
ATTORNEY FOR THE DEFENDANT

ROBIN SUE HILD, FCRR, RPR
CIRCUIT COURT REPORTER
POST OFFICE BOX 9
WALHALLA, SC 29691

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1 ***** START OF REQUESTED TRANSCRIPT *****

2 THE COURT: IS THE STATE READY?

3 MS. SALISBURY: YES, YOUR HONOR.

4 THE COURT: DEFENSE READY?

5 MR. CHAMBERS: YES, YOUR HONOR.

6 THE COURT: ASK THE JURY TO JOIN US, PLEASE.

7 (JURY PANEL ENTERED COURTROOM.)

8 THE COURT: STATE READY TO PROCEED?

9 MS. MONTS: YES, YOUR HONOR.

10 MR. CHAMBERS: YES, YOUR HONOR.

11 THE COURT: LADIES AND GENTLEMEN OF THE JURY

12 PANEL, MY NAME IS ALEC MACAULAY, I'M ONE OF THE RESIDENT

13 CIRCUIT JUDGES IN THE TENTH JUDICIAL CIRCUIT, WHICH

14 INCLUDES ANDERSON COUNTY AS WELL AS MY HOME IN OCONEE

15 COUNTY. THIS IS A TERM OF GENERAL SESSIONS, SOMETIMES

16 CALLED CRIMINAL COURT. ITS PURPOSE IS TO RESOLVE

17 QUESTIONS OF ALLEGED CRIMINAL CONDUCT ARISING BETWEEN

18 THE STATE OF SOUTH CAROLINA AND THE DEFENDANTS IN A

19 FASHION WHICH WILL ENSURE THAT JUSTICE IS ACCOMPLISHED.

20 NOW, THE TRIAL OF A CASE BEGINS WITH THE

21 SELECTION OF A JURY. BOTH THE STATE AND THE DEFENDANT

22 ARE ENTITLED TO JURORS WHO APPROACH THE CASE WITH AN

23 OPEN MIND. THE TRIAL JURY MUST BE AS FREE AS HUMANLY

24 POSSIBLE FROM ANY BIAS, PREJUDICE, OR SYMPATHY TO EACH

25 SIDE, AND FREE FROM ANY PRECONCEIVED IDEAS ON THE FACTS

1 OF THE CASE OR THE LAW OF THE CASE.

2 THEREFORE, CERTAIN QUESTIONS WILL BE ASKED
3 OF YOU, THE PETIT JURY PANEL. THE QUESTIONS WHICH WILL
4 BE ASKED ARE DESIGNED TO ASSURE THAT EACH SIDE DOES HAVE
5 A FAIR AND IMPARTIAL JURY. I MIGHT FURTHER NOTE THAT,
6 IF YOU HAVEN'T ALREADY BEEN INSTRUCTED, THAT IF ANYBODY
7 SHOULD ATTEMPT TO TALK TO YOU ABOUT THIS CASE OR ANY
8 CASE THAT MIGHT BE SCHEDULED FOR THIS TERM OF COURT, IT
9 IS YOUR SOLEMN DUTY TO IMMEDIATELY REPORT THAT MATTER TO
10 THE COURT SO IT MIGHT TAKE THE APPROPRIATE ACTION.

11 NOW WE WILL BEGIN THE SELECTION OF THE JURY
12 IN FIRST CASE. MADAM SOLICITOR, IF YOU WOULD, PLEASE,
13 CALL YOUR FIRST CASE.

14 **MS. SALISBURY:** YOUR HONOR, THE STATE CALLS
15 THE STATE OF SOUTH CAROLINA VERSUS CALVIN E. TODD,
16 INDICTMENT NUMBER 2007-GS-23-8646, INDICTED FOR
17 POSSESSION WITH INTENT TO DISTRIBUTE CRACK COCAINE.

18 **THE COURT:** NOW, LADIES AND GENTLEMEN OF THE
19 JURY, AS YOU HEARD, WE ARE ABOUT TO START THE TRIAL OF
20 THE CASE OF THE SOUTH CAROLINA VERSUS CALVIN E. TODD,
21 CHARGED IN INDICTMENT NUMBER 2007-GS-23-8646 WITH THE
22 INDICTMENT FOR POSSESSION OF CRACK COCAINE WITH INTENT
23 TO DISTRIBUTE. THE STATE WILL BE REPRESENTED BY
24 MS. SALISBURY AND MS. MONTES.

25 MS. SALISBURY, IF YOU WOULD PLEASE, STAND

1 AND INTRODUCE YOURSELF AND ALSO INTRODUCE MS. MONTS -- I
2 UNDERSTAND YOU WILL BE THE FIRST CHAIR -- AND ANYBODY
3 THAT WILL BE ASSISTING YOU IN THE TRIAL OF THIS CASE.
4 I'LL INTRODUCE THE WITNESSES LATER.

5 MS. SALISBURY: SURE. YES, YOUR HONOR.

6 GOOD MORNING, LADIES AND GENTLEMEN, OR I
7 SHOULD SAY GOOD AFTERNOON. MY NAME IS KATRYNA
8 SALISBURY, I WORK FOR THE 13TH CIRCUIT SOLICITOR'S
9 OFFICE PROSECUTING CASES HERE IN GREENVILLE COUNTY.

10 THIS IS MY CO-COUNSEL, MS. JOYCE MONTS, SHE
11 ALSO PROSECUTES CASES HERE.

12 OUR ASSISTANT HERE IS MS. SONYA BATS
13 (PHONETIC), SHE WORKS FOR THE 13TH CIRCUIT SOLICITOR'S
14 OFFICE AS WELL.

15 THE COURT: VERY GOOD. THE DEFENDANT IS
16 REPRESENTED BY MR. CHAMBERS.

17 MR. CHAMBERS, WOULD YOU STAND AND INTRODUCE
18 YOURSELF AND THE DEFENDANT, MR. CALVIN E. TODD.

19 MR. CHAMBERS: YES, SIR, YOUR HONOR.

20 MY NAME IS RANDY CHAMBERS. I PRACTICE LAW
21 HERE IN GREENVILLE. I PRACTICE WITH MY PARTNER, ROBBY
22 CHILDS, AND ALSO REPRESENT CLIENTS THROUGH THE OFFICE OF
23 INDIGENT DEFENSE. I REPRESENT CALVIN TODD --

24 STAND UP, CALVIN.

25 -- WHO IS SEATED HERE WITH ME THROUGH MY

1 CAPACITY AS A LAWYER WITH THE INDEPENDENT DEFENSE
2 OFFICE.

3 **THE COURT:** VERY GOOD. THANK YOU VERY MUCH.

4 NOW, LADIES AND GENTLEMEN OF THE JURY PANEL,
5 I NOW DIRECT YOU TO THE FOLLOWING QUESTIONS. FIRST, IS
6 ANY MEMBER OF THE JURY PANEL RELATED BY BLOOD OR
7 MARRIAGE, NOW OR FORMERLY, CLOSE PERSONAL FRIEND OR
8 BUSINESS ASSOCIATE OF THE DEFENDANT, CALVIN E. TODD? IF
9 SO PLEASE STAND. (NO RESPONSE.)

10 IS ANY MEMBER OF THE JURY PANEL A MEMBER OF
11 THE GRAND JURY THAT RETURNED THE INDICTMENTS IN THIS
12 CASE? IF SO PLEASE STAND. (NO RESPONSE.)

13 NOW I'M GOING TO BE CALLING OUT CERTAIN
14 NAMES OF POTENTIAL WITNESSES. NOW, POTENTIAL WITNESSES
15 ARE WITNESSES THAT MAY BE CALLED IN THE TRIAL OF THE
16 CASE, BUT THEY DO NOT HAVE TO BE CALLED. AND IF THEY
17 HAPPEN TO BE IN COURT WHEN THEIR NAMES ARE CALLED, IF
18 THEY WOULD STAND AND LOOK UPON THE JURY. THE REASON I
19 DO THAT, OF COURSE, IS THAT IN THESE DAYS AND TIMES WE
20 MIGHT NOT RECOGNIZE THE NAME WHERE WE DO RECOGNIZE THE
21 PERSON. SO AGAIN, IF YOU ARE IN THE COURTROOM AS YOUR
22 NAME IS CALLED, IF YOU WILL STAND AND LOOK UPON THE
23 JURY. NOW, THESE ARE THE POTENTIAL WITNESSES IN THE
24 CASE.

25 OFFICER TROY RICHARD MCBRIDE, FOUNTAIN INN

1 POLICE DEPARTMENT.

2 THANK YOU, SIR.

3 OFFICER TRAVIS GRAHAM, FOUNTAIN INN POLICE
4 DEPARTMENT.

5 THANK YOU, SIR.

6 CHEMIST JAMES ARMSTRONG, CRIME LAB CHEMIST.

7 SCOTT NELSON, FOUNTAIN INN POLICE DEPARTMENT
8 PROPERTY AND EVIDENCE.

9 RENEE PRUITT, GREENVILLE COUNTY PROPERTY AND
10 EVIDENCE.

11 INVESTIGATOR BRANDON BROWN, GREENVILLE
12 COUNTY SHERIFF'S OFFICE.

13 NOW, AGAIN, IS ANY MEMBER OF THE JURY PANEL
14 RELATED BY BLOOD OR MARRIAGE, NOW OR FORMERLY, CLOSE
15 PERSONAL FRIENDS OR BUSINESS ASSOCIATES OF ANY OF THE
16 POTENTIAL WITNESS IN THIS CASE: OFFICER TROY RICHARD
17 MCBRIDE, OFFICER TRAVIS GRAHAM, CHEMIST JAMES ARMSTRONG,
18 SCOTT NELSON OF THE FOUNTAIN INN POLICE DEPARTMENT,
19 RENEE PRUITT OF THE GREENVILLE COUNTY SHERIFF'S OFFICE,
20 AND INVESTIGATOR BRANDON BROWN OF THE GREENVILLE COUNTY
21 SHERIFF'S OFFICE? ANY MEMBER OF THE JURY PANEL RELATED
22 BY BLOOD OR MARRIAGE, CLOSE PERSONAL FRIEND OR BUSINESS
23 ASSOCIATE OF ANY OF THE POTENTIAL WITNESSES IN THIS
24 CASE? IF SO PLEASE STAND.

25 YES, SIR.

1 PROSPECTIVE JUROR: I'M A FRIEND OF BRANDON.

2 THE COURT: BRANDON BROWN?

3 PROSPECTIVE JUROR: YES.

4 THE COURT: ALL RIGHT. AND YOUR NAME, SIR?

5 PROSPECTIVE JUROR WILLIAMS: EUGENE

6 WILLIAMS.

7 THE COURT: IF BRANDON BROWN WOULD BE A
8 WITNESS IN THIS CASE, WOULD THAT AFFECT YOUR ABILITY TO
9 GIVE BOTH THE STATE AND THE DEFENDANT A FAIR AND
10 IMPARTIAL TRIAL?

11 PROSPECTIVE JUROR WILLIAMS: I DON'T THINK
12 SO.

13 THE COURT: WELL, I NEED TO KNOW FOR
14 CERTAIN.

15 PROSPECTIVE JUROR WILLIAMS: NO.

16 THE COURT: VERY WELL. THANK YOU VERY MUCH.
17 HAS ANY MEMBER OF THE JURY PANEL FORMED OR
18 EXPRESSED AN OPINION ABOUT THIS CASE? IF SO, PLEASE
19 STAND. (NO RESPONSE.)

20 IS ANY MEMBER OF THE PANEL AWARE OF ANY
21 INTEREST, BIAS, OR PREJUDICE TOWARDS EITHER THE
22 DEFENDANT OR THE STATE OF SOUTH CAROLINA? IF SO PLEASE
23 STAND. (NO RESPONSE.)

24 DOES ANY MEMBER OF THE PANEL KNOW OF ANY
25 REASON WHY HE OR SHE COULD NOT GIVE BOTH THE STATE OF

1 SOUTH CAROLINA AND THE DEFENDANT A FAIR AND IMPARTIAL
2 TRIAL? IF NOT, PLEASE STAND. (NO RESPONSE.)

3 ALL RIGHT. ANY ADDITIONAL QUESTIONS FROM
4 THE STATE?

5 MS. SALISBURY: NO, YOUR HONOR.

6 THE COURT: ANY ADDITIONAL QUESTIONS FROM
7 THE DEFENDANT?

8 MR. CHAMBERS: NO, YOUR HONOR.

9 THE COURT: THANK YOU. LADIES AND GENTLEMEN
10 OF THE JURY, THE WAY WE DRAW A JURY IN GENERAL SESSIONS
11 COURT IS THAT YOUR NAMES HAVE BEEN PUT ON A LIST,
12 THEY'VE BEEN PUT ON RANDOMLY, SO AS YOUR NAME IS CALLED
13 YOU WILL COME FORWARD AND STAND IN FRONT OF THE PODIUM
14 THERE AND LOOK BACK TOWARDS THE BACK OF THE COURTROOM.
15 IF YOU HAVE ANYTHING WITH YOU AT THE TIME, IF YOU WOULD
16 BRING IT WITH YOU.

17 IN A CRIMINAL CASE EACH SIDE HAS FIVE
18 STRIKES.

19 IS THAT CORRECT, MADAM SOLICITOR?

20 MS. SALISBURY: THAT'S CORRECT, JUDGE.

21 THE COURT: IS THAT CORRECT, MR. CHAMBERS?

22 MR. CHAMBERS: THAT IS CORRECT, YOUR HONOR.

23 THE COURT: AND THE STATE GOES FIRST. THE
24 STATE WILL EITHER SAY EXCUSE THE WITNESS OR PRESENT THE
25 WITNESS. IF THE WITNESS IS PRESENTED, THEN THE DEFENSE

1 WILL EITHER SAY EXCUSE THE WITNESS OR SEAT THE WITNESS.
2 AND SO THAT WAY WE'LL GET 12 JURORS. I UNDERSTAND THAT
3 WE WILL HAVE ONE ALTERNATE IN THIS CASE, AGAIN WITH THE
4 STATE HAVING ONE STRIKE AND THE DEFENSE HAVING TWO.

5 IS THAT CORRECT?

6 MS. SALISBURY: THAT'S CORRECT, JUDGE.

7 MR. CHAMBERS: THAT IS CORRECT.

8 THE COURT: THANK YOU VERY MUCH.

9 MADAM CLERK, IF YOU WOULD, PLEASE, GIVE US A
10 JURY.

11 THE CLERK: JUROR NUMBER 236. MARKING
12 RETAIL WALKER.

13 MS. SALISBURY: PLEASE ACCEPT THE JUROR.

14 MR. CHAMBERS: EXCUSE THE JURY FROM THIS
15 CASE.

16 THE CLERK: MS. WALKER YOU MAY BE SEATED.
17 YOU HAVE BEEN EXCUSED FROM THIS CASE.

18 NUMBER 156, ANTONIO ORELLANA.

19 (CLERK OF COURT CONFERRED WITH COURT.)

20 THE COURT: WOULD COUNSEL APPROACH?

21 (BENCH CONFERENCE.)

22 THE COURT: MR. ORELLANA -- IS THAT CORRECT,
23 SIR?

24 PROSPECTIVE JUROR ORELLANA: ORELLANA, YES.

25 THE COURT: ORELLANA. I UNDERSTAND YOU

1 MIGHT HAVE SOME PROBLEM WITH ---

2 PROSPECTIVE JUROR ORELLANA: YEAH.

3 THE COURT: --- UNDERSTANDING CERTAIN WORDS?

4 PROSPECTIVE JUROR ORELLANA: UH-HUH.

5 THE COURT: ALL RIGHT. I'M GOING TO EXCUSE
6 YOU ON THE TRIAL OF THIS CASE. THE REASON FOR THAT IS
7 THAT NOT ONLY DO BOTH PARTIES -- AND THIS IS TRUE FOR
8 ALL OF YOU THERE IN THE JURY PANEL -- BOTH PARTIES ARE
9 ENTITLED TO A FAIR AND IMPARTIAL JURY, IN OTHER WORDS,
10 THAT YOU COULD BE FAIR AND IMPARTIAL, AND I DON'T DOUBT
11 THAT WHATSOEVER. HOWEVER, THERE'S A SECOND PART TO
12 THAT, WHICH IS THAT THE JUROR SHOULD BE COMFORTABLE, IN
13 OTHER WORDS, NOT FEEL THAT THEY'RE SERVING, YOU KNOW, AT
14 A DISADVANTAGE OR SOMETHING OF THAT NATURE SO THAT --
15 AND BECAUSE OF YOUR PARTICULAR SITUATION AT THIS TIME
16 I'M GOING TO SUGGEST THAT, BECAUSE THE TESTIMONY COULD
17 BE INVOLVED OR SOMETHING OF THAT NATURE, THAT I'M GOING
18 TO EXCUSE YOU, BUT I DO WANT TO THANK YOU FOR YOUR
19 SERVICE. SO YOU WILL BE EXCUSED, EXCUSED FOR THE WEEK.

20 THE CLERK: ALL RIGHT, SIR.

21 THE COURT: WE HAVE GENERAL SESSIONS AND ---

22 THE CLERK: AND CIVIL, YES, SIR.

23 THE COURT: I'M GOING TO EXCUSE YOU FOR THE
24 WEEK. NOW, THAT MEANS THAT YOU WILL BE EXCUSED FOR
25 THREE YEARS, SO YOU WON'T HAVE TO SERVE AGAIN FOR THREE

1 YEARS, AND MAYBE BY THAT TIME YOU WILL BE MORE
2 COMFORTABLE.

3 PROSPECTIVE JUROR ORELLANA: I HOPE.

4 THE COURT: VERY GOOD, YES, SIR, I'M
5 CONFIDENT THAT YOU WILL. SO YOU WILL BE EXCUSED. THANK
6 YOU.

7 THE CLERK: WOULD YOU PLEASE GIVE YOUR NAME
8 BADGE TO THE BAILIFF? THANK YOU, SIR.

9 THE COURT: THANK YOU, SIR.
10 ALL RIGHT. ANYTHING FROM THE STATE?

11 MS. SALISBURY: NO, JUDGE.

12 THE COURT: FROM THE DEFENSE?

13 MR. CHAMBERS: NO, YOUR HONOR.

14 THE COURT: VERY GOOD. CALL THE NEXT NAME,
15 PLEASE.

16 THE CLERK: JUROR 162, BRUCE NOWAK.
17 WHAT SAYS THE STATE?

18 MS. SALISBURY: PLEASE PRESENT THE JUROR.

19 THE COURT: WHAT SAYS THE DEFENDANT?

20 MR. CHAMBERS: SWEAR MR. NOWAK.

21 THE COURT: MR. NOWAK, PLEASE HAVE A SEAT IN
22 THE JURY-BOX.

23 JUROR 66, RICCOE DURHAM.

24 WHAT SAYS THE STATE?

25 MS. SALISBURY: PLEASE PRESENT MR. DURHAM.

1 THE CLERK: WHAT SAYS THE DEFENDANT?

2 MR. CHAMBERS: SWEAR MR. DURHAM.

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

5 JUROR 90, CYDELLE GUTH.

6 WHAT SAYS THE STATE?

7 MS. SALISBURY: PRESENT THE JUROR.

8 THE COURT: WHAT SAYS DEFENDANT?

9 MR. CHAMBERS: SWEAR THE JUROR.

10 THE CLERK: MA'AM, PLEASE HAVE A SEAT IN THE
11 JURY-BOX.

12 JUROR 39, AMANDA BUTLER.

13 WHAT SAYS THE STATE?

14 MS. SALISBURY: PLEASE PRESENT THE JUROR.

15 THE CLERK: WHAT SAYS THE DEFENDANT?

16 MR. CHAMBERS: SWEAR MS. BUTLER, PLEASE.

17 THE CLERK: ALL RIGHT, MS. BUTLER, PLEASE
18 HAVE A SEAT IN THE JURY-BOX.

19 JUROR 199, BONNIE SCARBERRY.

20 WHAT SAYS THE STATE?

21 MS. SALISBURY: PLEASE PRESENT
22 MS. SCARBERRY.

23 THE CLERK: WHAT SAYS THE DEFENDANT?

24 MR. CHAMBERS: EXCUSE MS. SCARBERRY FROM
25 THIS CASE, PLEASE.

1 **THE CLERK:** MS. SCARBERRY, YOU MAY BE
2 SEATED, YOU HAVE BEEN EXCUSED FROM THIS CASE.
3 JUROR 164, JEREMIAH OLIVER.
4 WHAT SAYS THE STATE?
5 **MS. SALISBURY:** PLEASE PRESENT MR. OLIVER.
6 **THE CLERK:** WHAT SAYS THE DEFENDANT?
7 **MR. CHAMBERS:** SWEAR MR. OLIVER, PLEASE.
8 **THE CLERK:** MR. OLIVER PLEASE HAVE A SEAT IN
9 THE JURY-BOX.
10 JUROR 257, NATALIE PIERCE.
11 WHAT SAYS THE STATE?
12 **MS. SALISBURY:** PLEASE PRESENT MS. PIERCE.
13 **THE CLERK:** WHAT SAYS THE DEFENDANT?
14 **MR. CHAMBERS:** EXCUSE MS. PIERCE FROM THIS
15 CASE.
16 **THE CLERK:** ALL RIGHT, MS. PIERCE, YOU MAY
17 BE SEATED, YOU HAVE BEEN EXCUSED FROM THIS CASE.
18 JUROR 255, ELIZABETH HATHAWAY.
19 WHAT SAYS THE STATE?
20 **MS. SALISBURY:** PLEASE PRESENT THE JUROR.
21 **THE CLERK:** WHAT SAYS THE DEFENDANT?
22 **MR. CHAMBERS:** SWEAR MS. MATHAWAY, PLEASE.
23 **THE CLERK:** MS. HATHAWAY, IF YOU WOULD
24 PLEASE HAVE A SEAT IN THE JURY-BOX.
25 JUROR 136, DEYANIRA LOPEZ.

1 WHAT SAYS THE STATE?

2 MS. SALISBURY: PLEASE EXCUSE MS. LOPEZ.

3 THE CLERK: MS. LOPEZ, YOU MAY BE SEATED,
4 YOU HAVE BEEN EXCUSED FROM THIS CASE.

5 JUROR 37, SHARON BURTS.

6 WHAT SAYS THE STATE?

7 MS. SALISBURY: PLEASE EXCUSE MS. BURTS.

8 THE CLERK: MS. BURTS, YOU MAY BE SEATED,
9 YOU HAVE BEEN EXCUSED FROM THIS CASE.

10 JUROR 188, CATHERINE ROBERTS.

11 WHAT SAYS THE STATE?

12 MS. SALISBURY: PLEASE PRESENT MS. ROBERTS.

13 THE CLERK: WHAT SAYS THE DEFENDANT?

14 MR. CHAMBERS: SWEAR MS. ROBERTS, PLEASE.

15 THE CLERK: MS. ROBERTS, PLEASE HAVE A SEAT
16 IN THE JURY-BOX.

17 JUROR NUMBER 30, CATHERINE BULLOCK.

18 WHAT SAYS THE STATE?

19 MS. SALISBURY: PLEASE PRESENT MS. BULLOCK.

20 THE COURT: WHAT SAYS THE DEFENDANT?

21 MR. CHAMBERS: SWEAR MS. BULLOCK, PLEASE.

22 THE CLERK: MA'AM, PLEASE HAVE A SEAT IN THE
23 JURY-BOX.

24 JUROR 252, DEBRA CARROLL.

25 WHAT SAYS THE STATE?

1 MS. SALISBURY: PLEASE PRESENT MS. CARROLL.

2 THE CLERK: WHAT SAYS THE DEFENDANT?

3 MR. CHAMBERS: SWEAR MS. CARROLL, PLEASE.

4 THE CLERK: MS. CARROLL, PLEASE HAVE A SEAT
5 IN THE JURY-BOX.

6 JUROR 180, JASON RAVAN.

7 WHAT SAYS THE STATE?

8 MS. SALISBURY: PLEASE PRESENT MR. RAVAN.

9 THE COURT: WHAT SAYS THE DEFENDANT?

10 MR. CHAMBERS: EXCUSE MR. RAVAN FROM THIS
11 CASE, PLEASE.

12 THE CLERK: MR. RAVAN, YOU MAY BE SEATED,
13 YOU HAVE BEEN EXCUSED FROM THIS CASE.

14 JUROR 243, TERESA WHITE.

15 WHAT SAYS THE STATE?

16 MS. SALISBURY: PLEASE PRESENT MS. WHITE.

17 THE CLERK: WHAT SAYS THE DEFENDANT?

18 MR. CHAMBERS: SWEAR MS. WHITE, PLEASE.

19 THE CLERK: MS. WHITE, PLEASE HAVE A SEAT IN
20 THE JURY-BOX.

21 JUROR 60, JOHN CRABTREE.

22 WHAT SAY THE STATE?

23 MS. SALISBURY: PLEASE PRESENT MR. CRABTREE.

24 THE COURT: WHAT SAYS THE DEFENSE?

25 MR. CHAMBERS: EXCUSE MR. CRABTREE FROM THIS

1 CASE.

2 THE CLERK: SIR, YOU ARE EXCUSED FROM THIS

3 CASE.

4 JUROR 247, LARRY WILLIAMS.

5 WHAT SAYS THE STATE?

6 MS. SALISBURY: PLEASE PRESENT MR. WILLIAMS.

7 THE CLERK: WHAT SAYS THE DEFENDANT?

8 MR. CHAMBERS: SWEAR MR. WILLIAMS, PLEASE.

9 THE CLERK: PLEASE HAVE A SEAT IN THE

10 JURY-BOX.

11 JUROR 224, DEBORAH TRYKOWSKI.

12 WHAT SAYS THE STATE?

13 MS. SALISBURY: PLEASE PRESENT THE JUROR.

14 THE CLERK: WHAT SAYS THE DEFENDANT?

15 MR. CHAMBERS: SWEAR MS. TRYKOWSKI.

16 THE CLERK: MA'AM, PLEASE HAVE A SEAT IN THE

17 JURY-BOX.

18 ALL RIGHT. FOR OUR ALTERNATE, JUROR 219,

19 ALLYN STEINHARDT.

20 WHAT SAYS THE STATE?

21 MS. SALISBURY: PLEASE PRESENT

22 MR. STEINHARDT.

23 THE CLERK: WHAT SAYS THE DEFENDANT?

24 MR. CHAMBERS: SWEAR MR. STEINHARDT.

25 THE CLERK: PLEASE HAVE A SEAT IN THE

1 JURY-BOX.

2 THE COURT: IS THERE ANY REASON THIS JURY
3 CANNOT BE SWORN FOR THE TRIAL OF THIS CASE, FROM THE
4 STATE?

5 MS. SALISBURY: NO, JUDGE.

6 THE COURT: FROM THE DEFENSE?

7 MR. CHAMBERS: NO, YOUR HONOR.

8 THE COURT: VERY GOOD. MS. GUTH, I'M GOING
9 TO ASK YOU TO SERVE AS THE FOREPERSON OF THIS JURY, SO
10 WHEN WE COME BACK, IF YOU WOULD TAKE THE FIRST CHAIR ON
11 THE FRONT ROW THERE -- NOT THE -- WELL, THAT IS THE
12 FIRST CHAIR BECAUSE THERE ARE TWO VACANCIES. ALL RIGHT
13 VERY GOOD. SO YOU WILL TAKE THAT WHEN WE COME BACK.

14 AND YOU WILL ALWAYS -- YOU ARE THE ALTERNATE
15 SO YOU WILL ALWAYS SIT IN THAT CHAIR. SO THOSE ARE THE
16 ONLY TWO RESERVED SEATS, YOU MIGHT SAY. EVERYBODY ELSE
17 CAN SIT WHEREVER THEY WANT TO IN THE JURY-BOX. BUT YOU
18 IF THE FORELADY WOULD SIT IN THE FIRST CHAIR AND THE
19 ALTERNATE WOULD SIT IN THE END OF THE ROW THERE IN THE
20 SECOND.

21 AT THIS TIME I'M GOING TO EXCUSE YOU. LET
22 ME SEE COUNSEL AGAIN FOR A MOMENT, PLEASE.

23 (BENCH CONFERENCE.)

24 THE COURT: MADAM FORELADY, LADIES AND
25 GENTLEMEN OF THE JURY, I WAS TRYING TO DO SO SOME

1 SCHEDULING HERE. I NEED TO TAKE UP SOME MATTERS BEFORE
2 WE START THE TRIAL OF THE CASE, AS WELL AS THE STAFF AND
3 OTHERS NEED TO HAVE LUNCH. I'M GOING TO SUGGEST THAT
4 YOU COME BACK AT 2:30 AND WE'LL HAVE EVERYTHING --
5 HOPEFULLY HAVE EVERYTHING OUT OF THE WAY SO WE CAN START
6 THE TRIAL AT THAT TIME.

7 NOW, MY INSTRUCTIONS THROUGHOUT THE TRIAL OF
8 THE CASE IS GOING TO BE THAT YOU ARE NOT TO UNDERTAKE
9 THE DISCUSSION OF THIS CASE AMONG YOURSELVES OR PERMIT
10 ANYBODY TO DISCUSS IT WITH YOU. THE REASON FOR THAT IS
11 VERY SIMPLE, BECAUSE YOU NEVER KNOW WHAT'S GOING TO BE
12 THE MOST IMPORTANT PART OF THE CASE. IT MIGHT BE THE
13 OPENING STATEMENTS BY THE ATTORNEYS, THE FIRST WITNESS,
14 THE LAST WITNESS, OR THE CLOSING ARGUMENTS BY THE
15 ATTORNEYS OR THE CHARGE ON THE LAW, SO YOU NEED TO KEEP
16 AN OPEN MIND THROUGHOUT THE TRIAL OF THE CASE, SO,
17 THEREFORE, PLEASE DO NOT UNDERTAKE THE DISCUSSION OF THE
18 CASE AMONG YOURSELVES. PERSONALITIES OR ANYTHING ELSE.
19 TALK ABOUT THE WEATHER OR ANYTHING YOU WANT TO EXCEPT
20 THIS CASE UNTIL IT'S FINALLY GIVEN TO YOU AFTER YOU HAVE
21 ALL THE TESTIMONY AND EVIDENCE AND THE ARGUMENTS AND THE
22 CHARGE ON THE LAW FOR YOUR ULTIMATE DETERMINATION.

23 AND WITH THAT I'LL ASK YOU TO GO WITH THE
24 BAILIFF AND HE WILL SHOW YOU THE JURY ROOM YOU WILL BE
25 USING, AND SO WHEN YOU COME BACK AT 2:30 IF YOU WOULD GO

1 BACK TO THAT JURY ROOM AND I'LL SEE YOU AT THAT TIME.
2 VERY GOOD. THANK YOU.

3 (WHEREUPON, THE JURY LEFT THE COURTROOM AT
4 1:09 P.M.)

5 (THE COURT GAVE INSTRUCTIONS TO THE JURY
6 PANEL, AFTER WHICH THE JURY PANEL EXCUSED FOR
7 THE BALANCE OF DAY.)

8 THE COURT: ANYTHING FROM THE STATE BEFORE
9 WE RECEDE FOR LUNCH?

10 MS. SALISBURY: NO, JUDGE.

11 THE COURT: DEFENDANT?

12 MR. CHAMBERS: NO, YOUR HONOR.

13 THE COURT: VERY GOOD. I'LL SEE YOU ALL AS
14 MUCH BEFORE 2:00 AT POSSIBLE.

15 (A LUNCHEON RECESS OCCURRED AT 1:11 P.M.)
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17
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AFTERNOON PROCEEDINGS

(COURT'S EX. # 1, WAIVER OF RIGHTS FORM, WAS
MARKED FOR IDENTIFICATION.)

(COURT'S EX. # 2, DEFENDANT'S WRITTEN
STATEMENT, WAS MARKED FOR IDENTIFICATION.)

THE COURT: ALL RIGHT. ANYTHING FROM THE
STATE BEFORE WE PROCEED?

MS. SALISBURY: NO, JUDGE.

THE COURT: FROM THE DEFENSE?

MR. CHAMBERS: NO, YOUR HONOR.

THE COURT: ALL RIGHT. I UNDERSTAND THERE
ARE MOTIONS IN THIS CASE?

MR. CHAMBERS: YES, YOUR HONOR. THROUGH THE
DISCOVERY THAT I RECEIVED IT APPEARS THAT THERE WAS A
STATEMENT TAKEN OF MY CLIENT, SO OUR POSITION WOULD BE A
JACKSON V. DENNO HEARING WOULD BE NECESSARY TO ESTABLISH
WHETHER OR NOT THAT WAS TAKEN VOLUNTARILY.

AND ALSO WE WERE MOVING TO SUPPRESS THE
EVIDENCE THAT WAS SEIZED IN THIS CASE BASED ON A LACK OF
PROBABLE CAUSE FOR THE INITIAL TRAFFIC STOP THAT LED TO
THE DISCOVERY OF THE EVIDENCE, BUT ALSO, YOUR HONOR,
THAT THE SEARCH AND SEIZURE OF MY CLIENT WAS UNLAWFUL IN
THIS CASE.

THE COURT: ALL RIGHT. WHICH ONE DO YOU

1 WANT TO TAKE UP FIRST?

2 MR. CHAMBERS: THE JACKSON V. DENNO, I
3 GUESS, YOUR HONOR.

4 THE COURT: VERY WELL.

5 JACKSON V. DENNO HEARING:

6 MS. SALISBURY: ALL RIGHT, JUDGE, THE STATE
7 CALLS DETECTIVE TROY MCBRIDE.

8 (WHEREUPON, THE WITNESS WAS SWORN BY THE
9 CLERK.)

10 THE CLERK: PLEASE STATE YOUR FULL NAME AND
11 SPELL YOUR LAST NAME FOR THE RECORD.

12 THE WITNESS: TROY RICHARD MCBRIDE,
13 M-C-B-R-I-D-E.

14 WHEREUPON,

15 TROY MCBRIDE,

16 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS
17 FOLLOWS:

18 DIRECT EXAMINATION BY MS. SALISBURY:

19 Q. DETECTIVE, BY WHOM ARE YOU EMPLOYED?

20 A. WITH THE FOUNTAIN INN POLICE DEPARTMENT.

21 Q. IN WHAT CAPACITY?

22 A. I'M A DETECTIVE IN THE CRIMINAL INVESTIGATIVE
23 DIVISION.

24 Q. WERE YOU WORKING IN THAT CAPACITY ON JULY 28TH,
25 2007?

1 A. I WAS WORKING IN THE CAPACITY AS PATROLMAN AT
2 THAT NIGHT.

3 Q. ALL RIGHT. AS PART OF YOUR DUTIES THAT DAY AS A
4 PATROLMAN, DID YOU COME IN CONTACT WITH THE DEFENDANT,
5 MR. TODD?

6 A. I DID.

7 Q. WOULD YOU PLEASE DESCRIBE FOR THE COURT HOW YOU
8 BECAME INVOLVED WITH THE DEFENDANT?

9 A. MR. TODD WAS A PASSENGER IN A VEHICLE THAT WE
10 CONDUCTED A TRAFFIC STOP ON FOR LOUD MUSIC IN A
11 NEIGHBORHOOD. THE OTHER OFFICER, OFFICER GRAHAM, WENT
12 TO THE DRIVER'S SIDE, I WENT TO THE PASSENGER'S SIDE AND
13 BEGAN TO SPEAK WITH MR. TODD. AT THAT POINT I NOTICED
14 HE HAD AN OPEN CONTAINER OF BEER IN HIS LAP.

15 I ASKED HIM AT THAT POINT TO HAND IT TO ME, WHICH
16 HE DID, AND I PLACED IT ON TOP OF THE VEHICLE.

17 AFTER THAT I ASKED HIM TO STEP OUT OF THE
18 VEHICLE. AT THAT TIME HE VOLUNTARILY PLACED HIS HANDS
19 ON TOP OF THE HOOD OF THE CAR. IT WAS A DARK NIGHT, HE
20 WAS WEARING SOME DARK BAGGY CLOTHING, AND I ASKED FOR
21 CONSENT TO SEARCH. AFTER ASKING THAT, HE STATED THAT HE
22 HAD A PIPE IN HIS BACK POCKET. THAT WAS BEFORE I
23 SEARCHED, AND I IMMEDIATELY PLACED HIM UNDER ARREST AND
24 RETRIEVED THE PIPE AT THAT TIME.

25 Q. ALL RIGHT. AFTER THE DEFENDANT WAS PLACED UNDER

1 ARREST, WHERE WAS HE TAKEN?

2 A. HE WAS TAKEN TO THE FOUNTAIN INN POLICE
3 DEPARTMENT.

4 Q. ALL RIGHT. DID HE INDICATE TO YOU THAT HE WANTED
5 TO TALK TO YOU OR TO GIVE A STATEMENT?

6 A. I ASKED HIM IF HE DID. HE STATED YES.

7 Q. ALL RIGHT. AND WHEN DID YOU DO THAT?

8 A. I CAN'T REMEMBER THE APPROXIMATE TIME, I BELIEVE
9 IT WAS ABOUT 1:30.

10 Q. OKAY. DID YOU SPEAK WITH THE DEFENDANT?

11 A. AT THE FOUNTAIN INN POLICE DEPARTMENT IN THE
12 CONFERENCE ROOM.

13 Q. WAS HE IN HANDCUFFS?

14 A. NO, HE WAS NOT.

15 Q. WHO WAS PRESENT WITH YOU AND THE DEFENDANT?

16 A. IT WAS JUST ME AND HIM.

17 Q. OKAY. BEFORE SPEAKING WITH THE DEFENDANT, DID
18 YOU ADVISE THE DEFENDANT OF HIS MIRANDA RIGHTS?

19 A. I DID.

20 Q. DID YOU READ THOSE RIGHTS FROM A FORM OR DID YOU
21 RECITE THEM FROM MEMORY?

22 A. I READ THEM FROM A FORM.

23 Q. WAS HE GIVEN A COPY OF THAT FORM?

24 A. HE WAS.

25 Q. DID THE DEFENDANT HIMSELF READ THE FORM?

1 A. YES, HE DID.

2 Q. ALL RIGHT. I'M GONNA SHOW YOU COURT'S EXHIBIT
3 ONE. DO YOU RECOGNIZE THAT FORM?

4 A. YES, I DO.

5 Q. IS YOUR SIGNATURE ON THAT FORM?

6 A. IT IS.

7 Q. WHAT IS IT?

8 A. IT IS TROY R. MCBRIDE.

9 Q. WHAT IS THAT FORM?

10 A. THAT HIS THE FOUNTAIN INN POLICE DEPARTMENT
11 MIRANDA RIGHTS FORM, AND IT ALSO HAS A WAIVER OF RIGHTS
12 AS WELL.

13 MS. SALISBURY: YOUR HONOR, AT THIS POINT WE
14 WOULD COVER COURT'S EXHIBIT ONE INTO EVIDENCE.

15 MR. CHAMBERS: NO OBJECTION, YOUR HONOR.

16 THE COURT: WITHOUT OBJECTION, STATE'S
17 EXHIBIT ONE IS ADMITTED.

18 (STATE'S EX. NO. 1 WAS RECEIVED IN EVIDENCE.)
19 BY MS. SALISBURY:

20 Q. BEFORE THE DEFENDANT GAVE THAT STATEMENT, IS THAT
21 FORM WHAT YOU READ TO THE DEFENDANT?

22 A. IT IS.

23 Q. PLEASE READ WHAT YOU READ TO HIM.

24 A. IT SAYS (READING):

25 BEFORE WE ASK ANY QUESTIONS, YOU

1 MUST UNDERSTAND YOUR RIGHTS. YOU HAVE
2 THE RIGHT TO REMAIN SILENT. ANYTHING YOU
3 SAY CAN BE USED AGAINST YOU IN COURT.

4 YOU HAVE THE RIGHT TO TALK TO A
5 LAWYER FOR ADVICE BEFORE WE ASK YOU ANY
6 QUESTIONS, AND TO HAVE A LAWYER WITH YOU
7 DURING QUESTIONING.

8 IF YOU DO NOT HAVE THE MONEY TO
9 PAY A LAWYER'S FEE, THE COURT WILL
10 APPOINT ONE TO REPRESENT YOU WITHOUT COST
11 IF YOU WISH.

12 IF YOU DECIDE TO ANSWER QUESTIONS
13 NOW WITHOUT A LAWYER PRESENT, YOU WILL
14 STILL HAVE THE RIGHT TO STOP ANSWERING AT
15 ANY TIME. YOU ALSO HAVE THE RIGHT TO
16 STOP ANSWERING AT ANY TIME UNTIL YOU TALK
17 WITH A LAWYER.

18 Q. AFTER READING THAT, DID THE DEFENDANT INDICATE TO
19 YOU THAT HE UNDERSTOOD HIS *MIRANDA* RIGHTS?

20 A. YES. I ASKED HIM AND HE INITIALED BESIDE EACH
21 ONE STATING THAT HE DID UNDERSTAND. I EVEN ASKED HIM IF
22 I WENT TOO FAST OR WAS THERE ANYTHING THAT I NEEDED TO
23 GO OVER WITH HIM. HE STATED, NO, THAT HE UNDERSTOOD
24 EVERYTHING.

25 Q. DID HE PLACE HIS INITIALS NEXT TO EACH OF THOSE

1 RIGHTS AS YOU READ THEM?

2 A. HE DID.

3 Q. OKAY. DID THE DEFENDANT INDICATE TO YOU THAT HE
4 WISHED TO WAIVE HIS MIRANDA RIGHTS AND GIVE A STATEMENT?

5 A. HE DID. I ASKED HIM IF HE WAS WILLING TO WAIVE
6 HIS RIGHTS AFTER MIRANDIZING HIM. HE STATED HE WAS. I
7 THEN READ HIS WAIVER OF RIGHTS. HE STATED THAT HE
8 UNDERSTOOD AND HE INITIALED.

9 Q. SO HE INDICATED THAT HE WISHED TO WAIVE HIS
10 MIRANDA RIGHTS IN WRITING?

11 A. YES, BY INITIALING BESIDE THIS.

12 Q. OKAY. I'M GONNA SHOW YOU STATE'S EXHIBIT TWO
13 NOW. DO YOU RECOGNIZE THAT FORM?

14 A. YES. THAT IS HIS WRITTEN STATEMENT.

15 Q. DOES THAT FORM ALSO CONTAIN A WAIVER?

16 A. IT DOES.

17 Q. DID YOU READ THAT WAIVER TO THE DEFENDANT?

18 A. I DID.

19 Q. DID THE DEFENDANT INDICATE THAT HE UNDERSTOOD
20 THAT PARTICULAR WAIVER?

21 A. HE DID.

22 Q. PLEASE READ THAT WAIVER FOR ME.

23 A. IT SAYS (READING):

24 I, CALVIN E. TODD, DO HEREBY GIVE
25 FREELY AND VOLUNTARILY THIS STATEMENT TO

1 TROY R. MCBRIDE, WHO IDENTIFIED HIMSELF
2 TO BE A POLICEMAN THE CITY OF FOUNTAIN
3 INN, FOUNTAIN INN, SOUTH CAROLINA. I
4 HAVE BEEN ADVISED THAT I DO NOT HAVE TO
5 MAKE THIS OR ANY OTHER STATEMENT, AND
6 THAT WHAT I SAY CAN BE USED AGAINST ME IN
7 A COURT OF LAW. I HAVE BEEN ADVISED THAT
8 I HAVE THE RIGHT TO COUNSEL WITH AN
9 ATTORNEY OF MY CHOICE, THAT IF I AM
10 FINANCIALLY UNABLE TO OBTAIN AN ATTORNEY
11 THE COURT WILL APPOINT AN ATTORNEY TO
12 REPRESENT ME. I HAVE NOT BEEN THREATENED
13 OR PROMISED ANY AWARD TO MAKE THIS
14 STATEMENT.

15 Q. AFTER READING THAT WAIVER TO THE DEFENDANT, DID
16 HE INDICATE AGAIN TO YOU THAT HE UNDERSTOOD THOSE
17 RIGHTS?

18 A. HE DID.

19 Q. DID IT APPEAR TO YOU THAT THE DEFENDANT WANTED TO
20 WAIVE THOSE RIGHTS AND PROVIDE A STATEMENT?

21 A. HE DID.

22 Q. OKAY. DETECTIVE, HAVE YOU EVER DEALT WITH
23 INDIVIDUALS IN THE COURSE OF YOUR DUTIES WHO WERE UNDER
24 THE INFLUENCE OF DRUGS OR ALCOHOL?

25 A. YES, I HAVE.

1 Q. DID THE DEFENDANT APPEAR TO YOU THAT NIGHT TO BE
2 INTOXICATED BY EITHER?

3 A. NO. IN FACT, HE EVEN STATED THAT HE HAD JUST
4 OPENED THE BEER AND THAT WAS THE FIRST ONE HE HAD.

5 Q. OKAY. DID THE DEFENDANT RESPOND CLEARLY TO YOUR
6 QUESTIONS?

7 A. HE DID.

8 Q. DID HE APPEAR TO UNDERSTAND YOUR QUESTIONS
9 REGARDING HIS RIGHTS?

10 A. HE DID.

11 Q. WAS THE DEFENDANT'S SPEECH CLEAR AND COHERENT?

12 A. YES, IT WAS.

13 Q. DID YOU VERIFY THAT THE DEFENDANT COULD READ AND
14 WRITE?

15 A. I DID.

16 Q. DID YOU ASK THE DEFENDANT WHAT HIS LEVEL OF
17 EDUCATION WAS?

18 A. YES.

19 Q. DID HE INDICATE TO YOU WHAT?

20 A. AS FAR AS I CAN REMEMBER, I THINK IT WAS SOME
21 HIGH SCHOOL.

22 Q. OKAY. WAS THE DEFENDANT EVER THREATENED,
23 COERCED, OR PRESSURED OR IN ANY FASHION PROMISED ANY
24 REWARD IN EXCHANGE FOR PROVIDING A STATEMENT?

25 A. NO, HE WAS NOT.

1 Q. WAS THE DEFENDANT EVER DEPRIVED OF FOOD OR WATER?

2 A. NO.

3 Q. WAS THE DEFENDANT EVER PREVENTED FROM USING THE
4 RESTROOM?

5 A. NO.

6 Q. DID THE DEFENDANT FREELY AGREE TO SPEAK WITH YOU
7 WITHOUT AN ATTORNEY BEING PRESENT?

8 A. YES, HE DID AGREE TO THAT.

9 Q. DID IT EVER APPEAR TO YOU THAT THE DEFENDANT
10 WISHED TO INVOKE ANY OF HIS RIGHTS AND NOT SPEAK WITH
11 YOU OR PROVIDE A STATEMENT?

12 A. NO. HE DIDN'T GIVE ME ANY INDICATION OR MAKE ANY
13 STATEMENT AT THAT POINT.

14 Q. OKAY. DID THE DEFENDANT, IN FACT, GIVE A
15 STATEMENT?

16 A. YES, HE DID.

17 Q. WAS IT A WRITTEN STATEMENT?

18 A. YES, IT WAS.

19 Q. WAS IT IN DEFENDANT'S HANDWRITING?

20 A. IT WAS.

21 Q. IS YOUR SIGNATURE ON STATE'S EXHIBIT TWO?

22 A. YES, IT IS.

23 Q. WHAT IS STATE'S EXHIBIT TWO?

24 A. IT IS A STATEMENT FORM USED BY THE FOUNTAIN INN
25 POLICE DEPARTMENT. AND IT STATES THAT (READING):

1 I, CALVIN TODD, HAD POSSESSION OF
2 CRACK COCAINE IN LEFT POCKET SINCERELY,
3 CALVIN TODD.

4 MS. SALISBURY: AT THIS TIME WE WOULD OFFER
5 STATE'S EXHIBIT TWO IN EVIDENCE.

6 THE COURT: ANY OBJECTION?

7 MR. CHAMBERS: NO OBJECTION.

8 THE COURT: VERY WELL.

9 (STATE'S EXHIBIT # 2 WAS RECEIVED IN
10 EVIDENCE.)

11 BY MS. SALISBURY:

12 Q. WHAT WAS THE DEFENDANT'S PHYSICAL CONDITION WHEN
13 MAKING THAT STATEMENT?

14 A. HE SEEMED FINE TO ME.

15 Q. DID HE, DID HE APPEAR NERVOUS OR UPSET?

16 A. NO. HE JUST SEEMED A LITTLE BIT DOWN, BUT OTHER
17 THAN, THAT WAS ABOUT IT, LIKE...

18 Q. HOW LONG DID THAT PARTICULAR INTERVIEW LAST?

19 A. ABOUT 20 MINUTES.

20 Q. OKAY. DID IT APPEAR TO YOU DURING THE COURSE OF
21 THAT 20 MINUTES THE DEFENDANT UNDERSTOOD WHAT WAS GOING
22 ON DURING THE ENTIRE PROCESS?

23 A. YES.

24 Q. TO THE BEST OF YOUR KNOWLEDGE WAS THE DEFENDANT'S
25 STATEMENT FREELY AND VOLUNTARILY GIVEN?

1 A. YES, IT WAS.

2 Q. DID THE DEFENDANT SIGN THAT STATEMENT?

3 A. HE DID.

4 Q. AND YOU READ IT FOR US.

5 MS. SALISBURY: PLEASE ANSWER ANY QUESTIONS
6 OF MR. CHAMBERS.

7 CROSS-EXAMINATION BY MR. CHAMBERS:

8 Q. THIS STATEMENT (READING) I, CALVIN E. TODD, HAD
9 POSSESSION OF CRACK COCAINE IN LEFT POCKET, SINCERELY,
10 CALVIN TODD, DID HE WRITE ALL OF THAT?

11 A. YES, SIR.

12 Q. SO THAT'S ALL HIS HANDWRITING?

13 A. YES, SIR.

14 Q. AND SO HE SIGNED IT TWICE ESSENTIALLY?

15 A. YES, SIR.

16 Q. DID HE MAKE ANY OTHER STATEMENTS TO YOU THAT ARE
17 NOT INCLUDED IN HIS WRITTEN STATEMENT?

18 A. NO. AFTER HE FINISHED WRITING THAT STATEMENT, HE
19 SAID HE WAS DONE, I ENDED THE INTERVIEW AT THAT POINT
20 AND PLACED HIM BACK IN THE HOLDING CELL.

21 Q. SO EITHER OUT AT THE ARREST SCENE OR ON THE WAY
22 HE NEVER SAID ANYTHING ELSE TO YOU CONCERNING THE
23 OFFENSE?

24 A. NO, SIR.

25 MR. CHAMBERS: THANK YOU. THAT'S ALL THE

1. QUESTIONS I HAVE.

2. **THE WITNESS:** YOU'RE WELCOME.

3. **THE COURT:** ANY RE-EXAM?

4. **MS. SALISBURY:** NO, JUDGE.

5. **THE COURT:** ALL RIGHT. YOU MAY STEP DOWN.

6. **THE WITNESS:** THANK YOU, SIR.

7. (WHEREUPON, THE WITNESS WAS EXCUSED.)

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

9. **MS. SALISBURY:** JUDGE, THE STATE HAS NO
10. OTHER WITNESSES AS TO THIS PARTICULAR HEARING.

11. **THE COURT:** ALL RIGHT. DO THE DEFENDANTS
12. HAVE ANYTHING TO OFFER?

13. **MR. CHAMBERS:** NO, YOUR HONOR.

14. THE COURT'S RULING ON JACKSON V DENNO:

15. **THE COURT:** ALL RIGHT. THE COURT HAS
16. CAREFULLY CONSIDERED ALL THE EVIDENCE OFFERED BY THE
17. STATE, THERE BEING NO EVIDENCE OFFERED BY THE DEFENDANT
18. OTHER THAN THE EXAMINATION OF THE OFFICER. AND THE
19. COURT IS CONVINCED BY A PREPONDERANCE OF THE EVIDENCE
20. THAT THE DEFENDANT WAS READ HIS RIGHTS, WHICH APPARENTLY
21. ARE IN STATE'S EXHIBIT NUMBER ONE, AND FROM MY NOTES
22. IT'S CLEAR THAT HE WAS ADVISED OF HIS RIGHTS, THE RIGHTS
23. UNDER THE FIFTH AND SIXTH AMENDMENTS, THE RIGHT TO
24. REMAIN SILENT, THAT IF HE DID SPEAK, ANYTHING HE SAID
25. COULD BE USED AGAINST HIM; THE RIGHT TO AN ATTORNEY,

1 THAT IF HE COULDN'T AFFORD AN ATTORNEY, AN ATTORNEY
2 WOULD BE APPOINTED FOR HIM; THE RIGHT TO CONSULT WITH
3 THAT ATTORNEY, OF COURSE, AND TO CEASE THE INTERVIEW AT
4 ANY TIME IN ORDER TO CONSULT WITH AN ATTORNEY OR TO,
5 BEFORE IT WOULD CONTINUE THE INTERVIEW ANY FURTHER;

6 THAT HE INDICATED HE WAIVED THOSE RIGHTS;
7 THAT HE WAS FURTHER ADVISED AGAIN THAT TO REMAIN SILENT,
8 IT COULD BE USED AGAINST HIM, THAT AN ATTORNEY WOULD BE
9 APPOINTED IF HE COULDN'T AFFORD IT; HE COULD CONSULT,
10 INTERRUPT, OR CEASE THE INTERROGATION.

11 HE WAS NOT UNDER THE INFLUENCE OF ANY DRUGS
12 OR ALCOHOL AND NO PROMISES OR THREATS WERE MADE.

13 THE COURT FINDS THAT THE DEFENDANT KNOWINGLY
14 AND INTELLIGENTLY WAIVED HIS RIGHTS UNDER THE FIFTH AND
15 SIXTH AMENDMENTS, AND IT ALSO APPEARS THAT THE STATEMENT
16 WAS MADE BY THE DEFENDANT AND WRITTEN OUT BY THE
17 DEFENDANT AND SIGNED BY THE DEFENDANT. I THINK TWICE HE
18 ACKNOWLEDGED THE WARNINGS AS WELL AS HIS STATEMENT.

19 THEREFORE, THE COURT FINDS THAT THE
20 STATEMENT OBTAINED FROM THE DEFENDANT WAS FREELY AND
21 VOLUNTARILY GIVEN, WITHOUT DURESS, WITHOUT COERCION,
22 WITHOUT UNDUE INFLUENCE, WITHOUT REWARD OR WITHOUT
23 PROMISE OR HOPE OF REWARD, WITHOUT PROMISE OF LENIENCY,
24 WITHOUT THREAT OF INJURY, WITHOUT COMPULSION OR
25 INDUCEMENT OF ANY KIND, AND THAT SUCH ALLEGEDLY

1 INCRIMINATING STATEMENT OR CONFESSION WAS THE VOLUNTARY
2 PRODUCT OF THE FREE AND UNCONSTRAINED WILL OF THE
3 DEFENDANT. THE COURT FINDS ALL OF THESE CONCLUSIONS ARE
4 BEYOND A REASONABLE DOUBT.

5 ALL RIGHT. THAT STATEMENT WILL BE ADMITTED.

6 NEXT?

7 MOTION TO SUPPRESS:

8 MS. SALISBURY: JUDGE, IN RESPONSE TO
9 DEFENDANT'S MOTION TO SUPPRESS, WE WOULD JUST CALL
10 DETECTIVE MCBRIDE AGAIN.

11 THE COURT: ALL RIGHT, VERY GOOD. OFFICER,
12 YOU UNDERSTAND YOU ARE STILL UNDER OATH.

13 THE WITNESS: YES, YOUR HONOR.

14 WHEREUPON,

15 TROY MCBRIDE,
16 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS
17 FOLLOWS:

18 DIRECT EXAMINATION BY MS. SALISBURY:

19 Q. NOW, DETECTIVE, YOU DESCRIBED FOR US A FEW
20 MOMENTS AGO A SHORT VERSION OF WHAT HAPPENED WHEN YOU
21 PULLED OVER THIS DEFENDANT. I WOULD LIKE TO, I WOULD
22 LIKE YOU TO GET IN A LITTLE BIT MORE DETAIL ABOUT THAT.
23 WHERE WERE YOU ON PATROL, WHERE WERE YOU AND OFFICER
24 GRAHAM ON PATROL DURING THE EARLY MORNING HOURS OF JULY
25 8TH -- EXCUSE ME -- DURING THE EARLY MORNING HOURS OF

1 JULY 28TH, 2007?

2 A. IT WAS IN THE COUNTRY CHASE SUBDIVISION, WE WERE
3 NEAR GRAY MOUNTAIN, CATTERICK WAY, I BELIEVE. IF YOU
4 DON'T MIND, COULD I SEE THE REPORT ---

5 Q. SURE.

6 A. --- TO REFRESH MY MEMORY?

7 Q. (HANDING.)

8 A. YES, SO IT WAS BRISBANE DRIVE AND GRAY MOUNTAIN
9 DRIVE, WHICH WAS IN COUNTRY CHASE SUBDIVISION.

10 Q. ABOUT WHAT TIME OF NIGHT?

11 A. ABOUT 12:33.

12 Q. ALL RIGHT. AND WHAT, WHY DID YOU, WHY DID YOU
13 STOP THIS DEFENDANT, THE CAR IN WHICH THIS DEFENDANT WAS
14 DRIVING, RIDING?

15 A. LOUD MUSIC.

16 Q. OKAY. WHAT DID YOU TWO DO TO PULL OVER THE CAR,
17 TO INITIATE THE TRAFFIC STOP?

18 A. WE BOTH HEARD LOUD MUSIC EMANATING FROM HIS CAR
19 AS IT PASSED US. AT THAT POINT WE INITIATED BLUE LIGHTS
20 AND THEN WE CALLED IT IN AND GOT OUT OF THE CAR TO SPEAK
21 WITH THE PASSENGER AND THE DRIVER.

22 Q. OKAY. WHAT DID YOU DO IN PARTICULAR WHEN YOU
23 CONDUCTED THE TRAFFIC STOP AND ---

24 A. I APPROACHED THE --

25 Q. --- GOT OUT OF THE CAR?

1 A. -- PASSENGER'S SIDE OF THE VEHICLE WHERE MR. TODD
2 WAS SITTING.

3 Q. ALL RIGHT. WHAT DID YOU DO NEXT? WHAT DID YOU
4 OBSERVE?

5 A. I OBSERVED THAT HE HAD AN OPEN CONTAINER IN HIS
6 LAP AND I ASKED HIM TO HAND IT TO ME.

7 Q. ALL RIGHT. WHAT DID YOU DO NEXT?

8 A. I ASKED HIM TO STEP OUT OF THE VEHICLE. AND AT
9 THAT TIME HE TURNED AROUND AND PLACED HIS HANDS ON THE
10 HOOD OF THE VEHICLE.

11 I ASKED HIM IF HE HAD ANYTHING ON HIM -- EXCUSE
12 ME -- I ASKED HIM IF I COULD SEARCH HIM, AND AFTER THAT
13 HE STATED THAT HE HAD A PIPE IN HIS BACK POCKET. I
14 IMMEDIATELY PLACED HIM UNDER ARREST AND RETRIEVED THE
15 PIPE.

16 Q. ALL RIGHT. WHAT KIND OF CLOTHES WAS THE
17 DEFENDANT WEARING?

18 A. HE WAS WEARING BAGGY CLOTHING.

19 Q. ALL RIGHT. WAS IT -- HOW WELL LIT WAS THE AREA
20 IN WHICH YOU STOPPED THE DEFENDANT'S CAR?

21 A. IT WASN'T WELL LIT AT ALL. IT WAS AT NIGHT.
22 THERE WASN'T A LOT OF STREET LAMPS OUT.

23 Q. AND HOW MANY PEOPLE WERE INSIDE THAT CAR?

24 A. TWO.

25 Q. ALL RIGHT. NOW, AFTER YOU, AFTER YOU GOT THE

1 DEFENDANT OUT OF THE CAR, YOU SAY THAT HE, THAT HE TOLD
2 YOU, THAT HE VOLUNTEERED THAT HE HAD A CRACK PIPE IN HIS
3 POCKET?

4 A. YES.

5 Q. OKAY. WHAT HAPPENED AFTER THAT?

6 A. LIKE I SAID, I PLACED HIM UNDER ARREST,
7 HANDCUFFED HIM, AND WENT TO RETRIEVE THE PIPE. AND AT
8 THAT TIME I WAS SECURING THE PIPE, AND THE OPEN
9 CONTAINER, AND OFFICER GRAHAM OBSERVED HIM THROW DOWN
10 SOMETHING. HE TOLD ME ABOUT IT. OFFICER GRAHAM PLACED
11 MR. TODD ON THE GROUND, I WENT TO THE DRIVER AND
12 HANDCUFFED HIM FOR SAFETY REASONS AT THAT TIME.

13 Q. OKAY. AND DID YOU COLLECT THE ITEM THAT THE
14 DEFENDANT THREW TO THE GROUND?

15 A. OFFICER GRAHAM DID.

16 Q. OKAY. WITH WHAT CRIME, IF ANY, WAS THE DRIVER OF
17 THAT VEHICLE CHARGED?

18 A. I WOULD HAVE TO TAKE A LOOK AT THE REPORT TO TELL
19 YOU.

20 Q. (HANDING.)

21 A. (READS REPORT.)

22 Q. IF IT WOULD HELP YOU, I THINK I CAN DIRECT YOUR
23 ATTENTION TO THE FIRST PAGE OF THE REPORT.

24 A. OKAY.

25 Q. IT INDICATES THAT NICHOLAS JOHNSON WAS CHARGED

1 WITH A CRIME.

2 A. THERE SHOULD BE COPIES OF TICKETS. OKAY. I
3 BELIEVE IT WAS LOUD MUSIC, BUT I CAN'T BE SURE.

4 Q. LOUD MUSIC. AND WHAT PARTICULAR VIOLATION?

5 A. THAT IS A CITY ORDINANCE.

6 Q. A CITY ORDINANCE FOR HAVING MUSIC PLAYING TOO
7 LOUDLY IN A CAR?

8 A. YES, IN A COMMUNITY.

9 MS. SALISBURY: ALL RIGHT. THAT'S ALL THE
10 QUESTIONS I HAVE RIGHT NOW. ANSWER ANY QUESTIONS
11 MR. CHAMBERS MAY HAVE.

12 CROSS-EXAMINATION BY MR. CHAMBERS:

13 Q. SO THE REASON FOR STOPPING THE CAR WAS BECAUSE OF
14 THE LOUD MUSIC?

15 A. YES, SIR.

16 Q. HOW DOES THE PARTICULAR ORDINANCE READ THAT YOU
17 FELT LIKE THEY WERE VIOLATING, DO YOU KNOW?

18 A. I COULDN'T REPEAT IT TO YOU VERBATIM WITHOUT IT
19 IN FRONT OF ME.

20 Q. WELL, WHAT'S THE GIST OF IT?

21 A. WELL, LOUD MUSIC IN THE COMMUNITY AREA THAT
22 DISTURBS THE PUBLIC.

23 Q. OKAY. HAD YOU GOTTEN ANY PHONE CALLS, ANYBODY
24 COMPLAINING ABOUT LOUD MUSIC?

25 A. NOT AT THAT TIME.

1 Q. DID THESE GENTLEMEN HAVE THEIR WINDOWS ROLLED
2 DOWN OR WERE THEY UP?

3 A. THEY WERE ROLLED DOWN.

4 Q. AND SO WHEN YOU SAY THIS MUSIC WAS LOUD, DESCRIBE
5 THAT TO ME.

6 A. IT WAS LOUD ENOUGH TO WHERE IF YOU WERE SLEEPING
7 IN YOUR HOME, YOU WOULD POSSIBLY BE WOKEN UP BY IT.

8 Q. DID YOU FIND OUT IF ANYBODY WAS WOKEN UP BY IT?

9 A. NO, I DID NOT.

10 Q. IN YOUR REPORT WHICH I BELIEVE YOU NOW HAVE IN
11 FRONT OF YOU -- OF COURSE, THIS IS OFFICER GRAHAM -- BUT
12 HE SAYS THAT HE COULD HEAR A LOUD VIBRATORY BASS COMING
13 FROM THIS VEHICLE?

14 A. YES, SIR.

15 Q. SO IS THAT ALL YOU COULD -- YOU COULD JUST FEEL
16 THE VIBRATION OF THE BASS, IS THAT THE REASON FOR THE
17 STOP?

18 A. NO. THERE WAS WORDS TO IT AND THERE WAS MUSIC.

19 Q. HOW FAR AWAY FROM IT WERE YOU WHEN YOU HEARD THE
20 MUSIC? WERE YOU OUTSIDE?

21 A. NOT FAR, BUT I CAN'T GIVE YOU AN APPROXIMATE
22 DISTANCE RIGHT NOW.

23 Q. SO THEIR CAR WAS IN CLOSE PROXIMITY TO YOURS WHEN
24 YOU HEARD IT?

25 A. YES, SIR.

1 Q. ALL RIGHT. SO YOU DON'T KNOW WHETHER ANYBODY
2 ELSE IN THE AREA COULD HEAR IT OR NOT?

3 A. I COULDN'T TELL YOU THAT.

4 Q. DO YOU STOP EVERY CAR THAT, WHERE YOU HEAR LOUD
5 MUSIC LIKE THAT?

6 A. AT NIGHT WE DO.

7 Q. WHY ONLY AT NIGHT?

8 A. BECAUSE PEOPLE ARE SLEEPING, ESPECIALLY THAT LATE
9 AT NIGHT PEOPLE ARE SLEEPING.

10 Q. DOES THE ORDINANCE YOU ARE TALKING ABOUT ONLY
11 APPLY AT NIGHT?

12 A. NO. IT ONLY APPLIES DURING THE DAY, TOO. IT
13 ALSO APPLIES, EXCUSE ME.

14 Q. SO IT WOULD BE FAIR TO SAY THAT A LOT OF CARS
15 PASS YOU AND YOU HEAR LOUD MUSIC AND YOU DON'T STOP
16 THOSE?

17 A. NO, I DO STOP THOSE, TOO.

18 Q. BUT YOU JUST SAID THERE WERE SOME YOU DON'T STOP.

19 A. IT DEPENDS ON WHAT THE TIME OF DAY IS AND WHAT
20 I'VE GOT GOING ON.

21 Q. SO IT'S REALLY SORT OF ARBITRARY WHO YOU STOP AND
22 WHO YOU DON'T STOP, ACCORDING TO THE ORDINANCE?

23 A. I COULDN'T ANSWER THAT.

24 Q. OKAY. SO BASED ON THIS ORDINANCE, YOU MADE AN
25 ARBITRARY DECISION ON THIS EVENING TO STOP THIS

1 PARTICULAR CAR?

2 A. NO, I JUST MADE A DECISION.

3 Q. OKAY. AND YOU SAID THAT WHEN YOU STOPPED THEM, I
4 BELIEVE YOU WENT AROUND TO THE PASSENGER'S SIDE WHERE
5 MR. TODD WAS SITTING; IS THAT RIGHT?

6 A. YES, SIR.

7 Q. AND YOU OBSERVED THAT HE HAD AN OPEN CONTAINER OF
8 BEER IN HIS LAP?

9 A. YES, SIR.

10 Q. AND SO BECAUSE OF THIS YOU ASKED HIM TO GET OUT
11 OF THE CAR?

12 A. YES, SIR.

13 Q. AND WHEN HE GOT OUT OF THE CAR, HE JUST TURNED
14 AROUND AND PUT HIS HANDS ON THE CAR; IS THAT CORRECT?

15 A. HE DID.

16 Q. WOULD IT BE FAIR TO SAY HE THAT COOPERATED WITH
17 YOU?

18 A. HE DID.

19 Q. DID HE SEEM NERVOUS, ANY ERRATIC MOTIONS OR
20 ANYTHING OF THAT KIND?

21 A. I COULDN'T REMEMBER AT THIS TIME.

22 Q. DID HE GIVE YOU ANY REASON TO BE SCARED OF HIM?

23 A. I COULDN'T REMEMBER.

24 Q. WELL, I MEAN, YOU DON'T REMEMBER WHETHER YOU WERE
25 SCARED OR NOT? DID YOU WRITE A REPORT OR DID YOUR

1 FELLOW OFFICER WRITE A REPORT INDICATING THAT Y'ALL WERE
2 SCARED OR ANYTHING ABOUT MR. TODD?

3 A. I CAN'T GIVE YOU AN ANSWER ON THAT.

4 Q. OKAY. AND IF I'M READING THIS REPORT
5 CORRECTLY -- AND YOU CAN LOOK AT IT YOURSELF, YOU HAVE
6 IT IN FRONT OF YOU -- HE SAID HE ASKED IF HE COULD
7 SEARCH HIS PERSON AND HE SAID YES.

8 A. UH-HUH.

9 Q. SO THE FIRST THING YOU DID WHEN HE GOT OUT OF THE
10 CAR WAS ASK HIM IF YOU COULD SEARCH HIS PERSON, AND
11 ACCORDING TO REPORT HE SAID YES?

12 A. YES.

13 Q. IF I HEARD YOU CORRECTLY A FEW MINUTES AGO WHEN
14 YOU TESTIFIED, YOU INDICATED THAT WHEN YOU ASKED HIM
15 THAT QUESTION, HE SAID I GOT A CRACK PIPE OR I'VE GOT A
16 PIPE IN MY POCKET. IT'S A LITTLE BIT DIFFERENT. DO YOU
17 SEE WHAT I'M SAYING?

18 A. (PAUSES.) I'M SORRY, I DON'T UNDERSTAND.

19 Q. OKAY. WELL, IN YOUR TESTIMONY A FEW MINUTES AGO,
20 IF I HEARD IT CORRECTLY, YOU SAID THAT WHEN YOU ASKED
21 HIM IF YOU COULD SEARCH IT, THAT HE INDICATED TO YOU
22 THAT HE HAD A PIPE IN HIS POCKET.

23 A. YES, I DID. BUT I WAS GOING....

24 Q. BUT IN THIS REPORT IT SAYS THAT HE, BEING YOU,
25 ASKED IF HE COULD SEARCH HIS PERSON AND HE SAID YES,

1 MR. TODD SAID YES. SO WHICH WAS IT?

2 A. HE DID -- I ASKED HIM IF I COULD SEARCH HIS
3 PERSON AND HE STATED YES, AND THEN AT THAT POINT HE TOLD
4 ME HE HAD THE PIPE IN HIS POCKET.

5 Q. AND DID YOU, WHEN YOU ASKED HIM IF YOU COULD
6 SEARCH HIM, DID YOU GIVE HIM ANY INDICATION AS TO WHY
7 YOU WANTED TO SEARCH HIM?

8 A. NO.

9 Q. DID YOU INDICATE TO HIM AT ANY POINT THAT HE WAS
10 FREE TO DECLINE TO LET YOU SEARCH HIM?

11 A. I DID.

12 Q. YOU DID TELL HIM THAT?

13 A. I DID.

14 Q. AT WHAT POINT DID YOU TELL HIM THAT?

15 A. I ASKED HIM IF I COULD SEARCH HIM, AND I TOLD
16 HIM, I SAID, IF YOU DON'T WANT TO, YOU KNOW, IF YOU TELL
17 ME NOT TO SEARCH YOU, I'M NOT GONNA SEARCH YOU.
18 BASICALLY HE DID NOT HAVE TO CONSENT TO THAT.

19 Q. SO YOU ARE SAYING THAT YOU TOLD HIM THAT AND THEN
20 HE SAID, YOU CAN GO AHEAD AND SEARCH ME?

21 A. UH-HUH.

22 Q. AND IT WAS AT THAT POINT HE TOLD YOU THAT HE HAD
23 A PIPE?

24 A. YES, SIR.

25 Q. ALL RIGHT. AND IF I HEARD YOU CORRECTLY A MINUTE

1 AGO, YOU SAID THAT YOU -- THAT WHEN HE TOLD YOU THAT HE
2 HAD A PIPE, YOU RETRIEVED IT FROM HIS BACK POCKET?

3 A. I PLACED THE HANDCUFFS ON HIM AND THEN RETRIEVED
4 IT FROM HIS BACK POCKET.

5 Q. OKAY. HOW DID YOU PLACE HANDCUFFS ON MR. TODD?

6 A. BEHIND HIS BACK.

7 Q. SO YOU HANDCUFFED HIM BEHIND HIS BACK?

8 A. YES, SIR.

9 Q. WAS IT PRETTY GOOD AND TIGHT?

10 A. AS FAR AS I REMEMBER.

11 Q. I MEAN, WOULD HE HAVE BEEN ABLE TO SWING HIS ARMS
12 AT ALL LIKE THAT (DEMONSTRATING)?

13 A. HE WOULD HAVE BEEN.

14 Q. HOW FAR COULD HE HAVE DONE IT? I MEAN, COULD HE
15 JUST REACH AROUND (DEMONSTRATING) ---

16 A. I COULDN'T TELL YOU. I'M NOT MR. TODD, I DON'T
17 HAVE HIS ARMS.

18 Q. WELL, YOU WERE THERE. YOU DON'T HAVE TO HAVE
19 MR. TODD'S ARMS. I MEAN, YOU CAN SEE AND YOU KNOW HOW
20 TIGHT YOU PUT THE HANDCUFFS ON HIM. COULD YOU TELL?

21 A. NO.

22 Q. I MEAN, IS ONE OF THE REASONS THAT YOU HANDCUFF
23 PEOPLE'S HANDS BEHIND THEIR BACK SO THAT THEY CAN'T GET
24 THEIR HANDS IN FRONT?

25 A. YES.

1 Q. THAT'S A SAFETY MEASURE, AM I RIGHT?

2 A. IT IS.

3 Q. SO IT WOULD BE FAIR TO SAY THAT MR. TODD COULD
4 NOT MOVE HIS HANDS TO THE FRONT, WOULDN'T IT?

5 A. I HAVE SEEN PEOPLE MOVE THEIR HANDS TO THE FRONT
6 BY TAKING THEM OVER THEIR LEGS, AND DEPENDING ON HOW
7 LIMBER THEY ARE, THEY'VE ALSO BEEN ABLE TO BRING THEM
8 AROUND TO THEIR FRONT POCKET. IT HAPPENS.

9 Q. DID MR. TODD DO THAT? DID HE LIKE STEP OVER IT
10 AS YOU INDICATED?

11 A. NO, HE DID NOT.

12 Q. OKAY. AND SO WHEN YOU TESTIFIED THAT HE TOOK
13 SOMETHING OUT OF HIS FRONT POCKET AND THREW IT ON THE
14 GROUND, IT WOULD HAVE REALLY -- AT THE VERY LEAST IT
15 WOULD HAVE BEEN VERY DIFFICULT FOR HIM TO HAVE DONE IT,
16 WOULD IT NOT?

17 A. I COULDN'T GIVE YOU ANSWER ON THAT. I'M NOT
18 MR. TODD.

19 Q. WELL, WHY CAN'T YOU GIVE ME AN ANSWER? YOU WERE
20 THERE.

21 A. WELL, YOU ARE ASKING ME -- YOU'RE BASICALLY
22 ASKING ME IF I WERE IN MR. TODD'S SHOES, AND I'M NOT.

23 Q. I MEAN, WERE YOU NOT PAYING ANY ATTENTION WHAT HE
24 WAS DOING?

25 MS. SALISBURY: JUDGE, I THINK I NEED TO

1 OBJECT TO THIS LINE OF QUESTIONING. I THINK IT'S FAR
2 OUTSIDE THE SCOPE OF WHETHER THERE WAS PROBABLE CAUSE TO
3 STOP THIS CAR AND TO SEARCH THIS PARTICULAR DEFENDANT.

4 MR. CHAMBERS: IT GOES TO THE ELEMENTS OF
5 THE SEARCH ITSELF, YOUR HONOR. AND PART OF WHAT HE
6 TESTIFIED TO WAS THAT MY CLIENT TOOK THE DRUGS OUT OF
7 HIS POCKET AND THREW THEM ON THE GROUND. THAT'S THE
8 REASON FOR THAT LINE OF QUESTIONING.

9 THE COURT: I'M GOING TO OVERRULE THE
10 OBJECTION.

11 YOU MAY PROCEED.

12 BY MR. CHAMBERS:

13 Q. SO IS YOUR ANSWER TO ME THAT YOU JUST DON'T KNOW
14 WHAT HE DID?

15 A. HE WAS ABLE TO REACH AROUND TO THE FRONT POCKET.

16 Q. EVEN HANDCUFFED BEHIND HIS BACK ---

17 A.. YES, HE WAS.

18 Q. --- HE WAS ABLE TO REACH AROUND TO HIS FRONT
19 POCKET?

20 A. YES.

21 Q. AND YOU SAW HIM DO THAT?

22 A. OFFICER GRAHAM DID.

23 Q. OKAY. SO YOU DON'T KNOW?

24 A. (SHOOK HEAD.)

25 MR. CHAMBERS: OKAY. THANKS A LOT.

1 THE COURT: REDIRECT?

2 MS. SALISBURY: I DON'T HAVE ANY REDIRECT,
3 JUDGE.

4 THE COURT: YOU MAY STEP DOWN.

5 (WHEREUPON, THE WITNESS WAS EXCUSED.)

6 MS. SALISBURY: THE NEXT WITNESS IS
7 PATROLMAN TRAVIS GRAHAM.

8 (WHEREUPON, THE WITNESS WAS SWORN BY THE
9 CLERK.)

10 THE CLERK: PLEASE STATE YOUR FULL NAME AND
11 SPELL YOUR LAST NAME FOR THE RECORD.

12 THE WITNESS: ROY TRAVIS GRAHAM,
13 G-R-A-H-A-M.

14 WHEREUPON,

15 ROY TRAVIS GRAHAM,

16 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS
17 FOLLOWS:

18 DIRECT EXAMINATION BY MS. SALISBURY:

19 Q. OFFICER GRAHAM, BY WHOM ARE YOU EMPLOYED?

20 A. BY FOUNTAIN INN POLICE DEPARTMENT.

21 Q. IN WHAT CAPACITY?

22 A. I'M A TRAFFIC OFFICER.

23 Q. WERE YOU WORKING IN THAT CAPACITY DURING THE
24 EARLY MORNING HOURS OF JULY 28, 2007?

25 A. I WAS NOT. I WAS ON UNIFORM PATROL.

1 Q. I SEE. WITH WHOM WERE YOU ON PATROL?

2 A. MYSELF AND OFFICER MCBRIDE THAT TESTIFIED
3 EARLIER.

4 Q. ALL RIGHT. DURING, DURING THOSE EARLY MORNING
5 HOURS, DID YOU AND OFFICER MCBRIDE PERFORM A TRAFFIC
6 STOP?

7 A. WE DID.

8 Q. WOULD YOU PLEASE DESCRIBE FOR THE COURT THE
9 CIRCUMSTANCES LEADING TO THAT STOP?

10 A. SURE. WE JUST CAME OUT OF A SUBDIVISION CALLED
11 COUNTRY CHASE SUBDIVISION, AND WE TURNED ON TO GARRETT
12 STREET, WHICH HAS A PRETTY LARGE CURVE IN IT, AND I
13 HEARD LOUD VIBRATORY BASS COMING FROM A VEHICLE OR FROM
14 A HOUSE OR SOMETHING, AND THEN I IMMEDIATELY SAW A
15 VEHICLE COMING TOWARD US PROBABLY 150, 200 FEET AWAY.

16 AND AS THEY APPROACHED US, THE MUSIC GOT LOUDER,
17 AS IT GOT PASSED US WE CONFIRMED THAT'S WHERE THE
18 VEHICLE -- OR THAT'S WHERE THE MUSIC WAS COMING FROM WAS
19 THAT PARTICULAR VEHICLE. AND I TURNED THE VEHICLE
20 AROUND THAT WE WERE IN -- WE WERE IN AN UNMARKED PATROL
21 VEHICLE -- I TURNED IT AROUND AND STOPPED THE CAR IN THE
22 SUBDIVISION. THEY HAD TURNED INTO THAT SUBDIVISION WE
23 HAD JUST PULLED OUT OF.

24 Q. WHY DID YOU DECIDE TO STOP THAT CAR?

25 A. BECAUSE OF THE LOUD VIBRATORY BASS. WE DO HAVE

1 AN EXCESSIVE NOISE ORDINANCE IN THE CITY, AND
2 SPECIFICALLY BECAUSE OF THE TIME THAT THAT WAS GOING ON,
3 AND WE WERE IN A RESIDENTIAL AREA.

4 Q. ALL RIGHT. AND AFTER YOU STOPPED THE VEHICLE,
5 WHAT DID YOU DO?

6 A. I APPROACHED THE DRIVER'S SIDE OF THE VEHICLE AND
7 SPOKE TO THE DRIVER, AND GOT HIM OUT OF THE VEHICLE AND
8 SPOKE TO THE DRIVER FURTHER BECAUSE I HAD SMELLED
9 ALCOHOL IN THE VEHICLE, AND I HAD GOT HIM OUT AND SPOKE
10 TO HIM WHILE OFFICER MCBRIDE WENT TO THE PASSENGER'S
11 SIDE. AND I WAS ALSO, POSITIONED MYSELF WHERE I COULD
12 SEE OFFICER MCBRIDE WHILE HE WAS TALKING TO THE
13 DEFENDANT.

14 Q. SO WHILE YOU WERE SPEAKING WITH THE DRIVER, YOU
15 COULD ALSO SEE DETECTIVE MCBRIDE SPEAKING WITH THIS
16 DEFENDANT?

17 A. THAT'S RIGHT. I HAD POSITIONED MYSELF TO FACE
18 THE DEFENDANT'S CAR, OR THE CO-DEFENDANT'S VEHICLE, WITH
19 THE OTHER CO-DEFENDANT FACING ME, AND IN THAT POSITION I
20 WAS ABLE TO SEE TO THE, TO THE RIGHT SIDE OF THE VEHICLE
21 WHERE THE DEFENDANT WAS, I WAS ABLE TO SEE OFFICER
22 MCBRIDE SPEAKING TO THE DEFENDANT.

23 Q. WHAT DO YOU SEE TRANSPIRE AS DETECTIVE MCBRIDE
24 WAS SPEAKING WITH THE DEFENDANT?

25 A. I OBSERVED DETECTIVE MCBRIDE OR OFFICER MCBRIDE

1 TAKE AN OPEN CONTAINER OF ALCOHOL AND PLACE IT ON TOP OF
2 THE DEFENDANT'S -- THE CO-DEFENDANT'S VEHICLE. AND THEN
3 I ALSO OBSERVED THE, HIM OPEN THE DOOR OR THE DEFENDANT
4 GET OUT OF THE PASSENGER'S SIDE OF THE CAR AND TURN
5 AROUND AND PLACE HIS HANDS UP ON THE CAR.

6 THEN I OBSERVED OFFICER MCBRIDE PLACE HANDCUFFS
7 ON THE DEFENDANT. AND THEN I ALSO OBSERVED THE
8 DEFENDANT TAKE HIS HANDS THAT WERE HANDCUFFED AROUND TO
9 THE SIDE, REMOVE SOMETHING OUT OF HIS POCKET, IT FELL TO
10 THE GROUND AND HE STOMPED (DEMONSTRATING) ONE TIME ON
11 IT.

12 I LEFT THE CO-DEFENDANT, I LEFT SPEAKING WITH
13 HIM, WENT STRAIGHT TO THE DEFENDANT, GRABBED HIM AND
14 PLACED HIM ONTO THE GROUND, AND THAT'S WHERE I OBSERVED
15 THAT, THE BAG OF SUBSTANCE THAT DID FIELD TEST POSITIVE
16 FOR CRACK COCAINE. AND OFFICER MCBRIDE LEFT US THERE
17 AND WENT TO THE CO-DEFENDANT AND PLACED HIM IN HANDCUFFS
18 IN INVESTIGATIVE DETENTION.

19 Q. FROM WHERE YOU WERE STANDING WHILE SPEAKING TO
20 THE DRIVER OF THIS CAR, WERE YOU ABLE TO OVERHEAR THE
21 CONVERSATION THAT DETECTIVE MCBRIDE WAS HAVING WITH THE
22 DEFENDANT?

23 A. I COULD HEAR. I COULDN'T HEAR THE DEFENDANT'S
24 WORDS. I COULD HEAR SOME OF OFFICER MCBRIDE'S WORDS. I
25 HEARD HIM ASK FOR HIM TO HAND HIM THE, THE OPEN

1 CONTAINER, AND THEN I, YOU KNOW, I COULD HEAR THAT.

2 Q. DO YOU RECALL WHAT KIND OF CLOTHES THE DEFENDANT
3 WAS WEARING?

4 A. I DON'T RECALL THE CLOTHING HE WAS WEARING. I DO
5 RECALL IT BEING KIND OF COLD THAT NIGHT. I DON'T RECALL
6 THE CLOTHING THAT HE WAS WEARING.

7 Q. OKAY. IN THE SUBDIVISION OR THE STREET ON WHICH
8 YOU CONDUCTED THE TRAFFIC STOP, WHAT KIND OF LIGHTING IS
9 IN THAT AREA?

10 A. NOT A WHOLE LOT. IT'S A BRAND-NEW SUBDIVISION,
11 SO THEY DON'T HAVE A WHOLE LOT OF -- IT'S UNDEVELOPED OR
12 IT'S NOT FULLY DEVELOPED, AND I KNOW THEY DON'T HAVE A
13 WHOLE LOT OF LIGHTING OUT THERE, IT IS PRETTY DARK.

14 AND THE PATROL VEHICLE THAT I WAS DRIVING AT THE
15 TIME WAS A '98 FORD TAURUS UNMARKED VEHICLE AND IT
16 DIDN'T HAVE A SPOTLIGHT AND THE LIGHTING IS NOT VERY
17 WELL ON THAT. IT DIDN'T EVEN HAVE OVERHEAD LIGHTS OR
18 ANYTHING LIKE THAT, IT HAS INTERNAL LIGHTS.

19 Q. OKAY. AND I BELIEVE YOU TESTIFIED THERE WERE TWO
20 INDIVIDUALS IN THE CAR?

21 A. THERE WAS: THE CO-DEFENDANT AND THE DEFENDANT.

22 Q. OKAY. OFFICER GRAHAM, DO YOU KNOW WHETHER THIS
23 DEFENDANT WAS ALSO CHARGED WITH THE OPEN CONTAINER
24 VIOLATION?

25 A. OFF THE TOP OF MY HEAD I DON'T. I WANT TO SAY

1 YES, HE WAS CHARGED WITH THAT, THE PARAPHERNALIA AND
2 ALSO THE CRACK, BUT OFF THE TOP OF MY HEAD I CAN'T TELL
3 YOU HE WAS.

4 MS. SALISBURY: OKAY. I DON'T HAVE ANY
5 QUESTIONS RIGHT NOW. ANSWER ANY QUESTIONS MR. CHAMBERS
6 HAS.

7 THE COURT: CROSS-EXAMINE?

8 MR. CHAMBERS: THANK YOU, YOUR HONOR.

9 CROSS-EXAMINATION BY MR. CHAMBERS:

10 Q. WHAT DO YOU RECALL OFFICER MCBRIDE SAYING TO
11 CALVIN TODD WHEN HE ASKED HIM IF HE HAD PERMISSION TO
12 SEARCH HIM?

13 A. I DON'T RECALL. I COULD HEAR OFFICER MCBRIDE
14 SPEAKING TO THE DEFENDANT. I DO REMEMBER HIM ASKING FOR
15 THE OPEN CONTAINER OF ALCOHOL OR THE OPEN CONTAINER
16 BECAUSE HE PUT IT ON TOP OF THE CAR. I DON'T RECALL THE
17 CONVERSATION THAT THEY HAD.

18 Q. SO YOU DON'T KNOW WHAT HE SAID TO HIM?

19 A. NO, SIR, I DO NOT.

20 Q. AND YOU SAID YOU SAW HIM PUT HIS HANDCUFFS ON
21 HIM?

22 A. I DID.

23 Q. AND HE SECURED HIS HANDS BEHIND HIS BACK?

24 A. YES, SIR.

25 Q. AND YOUR TESTIMONY IS THAT HE SOMEHOW REACHED

1 AROUND WHILE HANDCUFFED BEHIND HIS BACK AND RETRIEVED
2 SOMETHING OUT OF HIS FRONT POCKET AND THREW IT ON THE
3 GROUND?

4 A. YES, SIR.

5 Q. ARE Y'ALL'S HANDCUFFS REALLY LOOSE?

6 A. IT'S STANDARD.

7 Q. I'M GRAPPLING?

8 A. I UNDERSTAND, I UNDERSTAND YOU'RE CONFUSED BY IT.
9 AND IT'S STANDARD HANDCUFFS. BUT IT HAPPENS OFTEN WHERE
10 PEOPLE ARE ABLE TO DO THAT.

11 Q. WOULD IT BE PEOPLE WHO HAD ABNORMALLY LONG ARMS?

12 A. NOT NECESSARILY. I'VE SEEN IT, I'VE SEEN IT DONE
13 SEVERAL TIMES BY PEOPLE.

14 Q. OKAY. IT DOESN'T SOUND LIKE -- IT SOUNDS LIKE
15 BOTH OF THESE FELLOWS COOPERATED WITH YOU PRETTY WELL.

16 A. YES, SIR.

17 Q. AND YOU WEREN'T IN ANY PARTICULAR FEAR THAT THEY
18 WERE A DANGER TO YOU, WERE YOU?

19 A. I WASN'T IN FEAR, NO, SIR. IT IS A DARK
20 NEIGHBORHOOD, THERE IS A PRETTY SIGNIFICANT AMOUNT OF
21 CRIME IN THAT PARTICULAR NEIGHBORHOOD, AND IT WAS LATE
22 AT NIGHT.

23 Q. OKAY. DO YOU ALWAYS STOP CARS WHERE YOU HEAR
24 LOUD MUSIC?

25 A. YES, SIR, I DO. I WRITE NUMEROUS CITATIONS FOR

1 EXCESSIVE NOISE.

2 Q. SO EVERY SINGLE TIME THAT YOU HEAR SOMEBODY'S
3 MUSIC COMING OUT OF THE CAR YOU STOP THEM?

4 A. EVERY SINGLE TIME THAT I'M ABLE TO, I WILL.

5 MR. CHAMBERS: OKAY. THANKS A LOT.

6 THE WITNESS: YEAH, YOU'RE WELCOME.

7 MS. SALISBURY: NO REDIRECT, JUDGE.

8 THE COURT: ALL RIGHT, YOU MAY STEP DOWN.

9 THE WITNESS: THANK YOU, YOUR HONOR.

10 (WHEREUPON, THE WITNESS WAS EXCUSED.)

11 MS. SALISBURY: THERE ARE NO OTHER WITNESSES
12 FROM THE STATE, JUDGE.

13 THE COURT: ANYTHING FROM THE DEFENSE?

14 MR. CHAMBERS: NO EVIDENCE, YOUR HONOR; JUST
15 AN OPPORTUNITY TO BE HEARD ON THE MOTION.

16 THE COURT: CERTAINLY.

17 MR. CHAMBERS: YOUR HONOR, REGARDING OUR
18 MOTION TO SUPPRESS, FIRST OF ALL, WE WOULD ALLEGE THAT
19 THERE WAS NO PROBABLE CAUSE TO STOP THE VEHICLE TO BEGIN
20 WITH. THE OFFICERS DID TESTIFY THAT THEY HEARD A LOUD
21 VIBRATORY BASS COMING FROM THE CAR. APPARENTLY THERE IS
22 A NOISE ORDINANCE IN FOUNTAIN INN.

23 ONE OFFICER SAYS THAT, YOU KNOW, THERE WERE
24 PLENTY TIMES HE DOESN'T STOP CARS, AND THIS PARTICULAR
25 TIME HE DECIDED TO STOP THE CAR, AND THE OTHER OFFICER

1 SAYS HE DOES IT EVERY SINGLE TIME.

2 THERE DOES APPEAR TO BE SOMETHING ARBITRARY
3 ABOUT THE FASHION IN WHICH THEY DECIDED TO STOP THIS
4 CAR. THERE WAS NO OTHER INDICATION THAT THESE FOLKS
5 WERE DOING ANYTHING WRONG, BREAKING THE LAW IN ANY WAY,
6 SIMPLY THEY COULD HEAR THIS BASS VIBRATING OUT OF THE
7 CAR. THERE WERE NO REPORTS FROM ANYBODY IN THE AREA
8 COMPLAINING ABOUT LOUD MUSIC, AND SO FOR THAT REASON WE
9 WOULD TAKE THE POSITION THAT THERE WAS A LACK OF
10 PROBABLE CAUSE.

11 GETTING PAST THAT PARTICULAR ISSUE, YOUR
12 HONOR, AS FAR AS THE SEARCH ITSELF GOES ---

13 **THE COURT:** DO YOU WANT TO TAKE THEM ONE AT
14 A TIME. BECAUSE IF THERE IS NO PROBABLE CAUSE FOR THE
15 STOP ---

16 **MR. CHAMBERS:** WE CAN DO THAT, JUDGE.

17 **THE COURT:** ALL RIGHT. FROM THE STATE, WHAT
18 DOES THE STATE SAY?

19 **MS. SALISBURY:** WELL, JUDGE, IT'S THE
20 STATE'S POSITION THAT THE VIOLATION OF THE STATUTE THAT
21 THE OFFICERS TESTIFIED, THAT -- AT LEAST OFFICER GRAHAM
22 IS EXTREMELY FAMILIAR WITH, CONSIDERING HE WRITES
23 NUMEROUS CITATIONS FOR THIS PARTICULAR VIOLATION, HE'S
24 FAMILIAR WITH THE STATUTE, FAMILIAR WITH WHAT HE
25 BELIEVES TO BE A VIOLATION OF THE STATUTE.

1 CERTAINLY THE VERY NATURE OF THE STATUTE,
2 THAT IT'S CHARACTERIZED AS AN UNLAWFUL EXCESSIVE NOISE
3 VIOLATION LENDS ITSELF TO SOMEWHAT OF A SUBJECTIVE
4 INTERPRETATION. BUT BASED ON WHAT THESE OFFICERS
5 TESTIFIED THAT THEY PERCEIVED THAT AT 12:30 IN THE
6 EVENING AND IN A SUBDIVISION PERCEIVED IT TO BE WHAT
7 THEY BELIEVE WAS EXCESSIVE AND UNLAWFUL NOISE, WE THINK
8 THAT'S SUFFICIENT, CERTAINLY SUFFICIENT FOR A VIOLATION
9 OF A STATUTE AND, THEREFORE, SUFFICIENT TO PERFORM A
10 TRAFFIC STOP.

11 THE COURT: MR. CHAMBERS, ANYTHING IN
12 RESPONSE?

13 MR. CHAMBERS: NO, YOUR HONOR.

14 THE COURT: WELL, LOUD NOISES HAVE BEEN, OR
15 LOUD MUSIC, I WON'T SAY NOISES, LOUD MUSIC HAS BEEN A
16 BASIS FOR LAW ENFORCEMENT ACTION. I THINK IT'S -- AND
17 IT WAS BASED ON A MUNICIPAL ORDINANCE, AND THAT'S TOWN
18 VERSUS SPRINGDALE -- WHAT'S THE -- TOWN OF SPRINGDALE
19 VERSUS BUTLER.

20 AND ONCE, IF THE INVOLVEMENT IS LAWFUL,
21 THEN, OF COURSE, IF YOU HAVE THE OPEN VIEW OF THE OPEN
22 CONTAINER, WHICH IS A VIOLATION OF LAW, AND THEN YOU
23 HAVE, OF COURSE, ASKED THE PASSENGER TO STEP OUT -- AND
24 I'VE FORGOTTEN THAT CASE. BUT BASED ON THE EVIDENCE
25 PRESENTED, I FIND THAT THERE IS -- THAT THE STOP WAS

1 PROPER AND THAT THE VIEW THAT THE OFFICERS HAD OF A
2 VIOLATION, THE OPEN CONTAINER LAW WAS SUFFICIENT TO ASK
3 THE DEFENDANT TO STEP OUT.

4 NOW, LET'S DO THE SECOND MOTION.

5 MR. CHAMBERS: YOUR HONOR, AS TO OUR MOTION
6 TO SUPPRESS BASED ON THE UNLAWFULNESS OF THE SEARCH,
7 THERE WAS CONFLICTING TESTIMONY GIVEN BY THE FIRST
8 OFFICER. FIRST HE SAYS THAT WHEN HE ASKED MY CLIENT IF
9 HE COULD SEARCH HIM, THAT MY CLIENT DID GIVE A RESPONSE
10 BUT, IN FACT, SAID, WELL, I HAVE A PIPE IN MY POCKET AND
11 THEN HE RETRIEVED IT. AND THEN WHEN I PUSHED HIM ON A
12 LITTLE BIT, AND HE HAD AN OPPORTUNITY TO LOOK AT HIS
13 REPORT AND SAYS, OH, YEAH HE TOLD ME THAT HE COULD -- OR
14 THAT I COULD SEARCH HIM. AT NO POINT UNTIL I ASKED HIM
15 ABOUT IT DID HE VOLUNTEER THAT, OH, YEAH AND I TOLD HIM
16 THAT HE DIDN'T HAVE TO CONSENT TO THE SEARCH.

17 THERE IS NOTHING -- AND AS WE HAVE WITH THE
18 STATEMENT THAT WAS GIVEN, THERE'S NOTHING TO INDICATE
19 THAT HE WAS EVER ADVISED THAT HE DIDN'T HAVE THE CONSENT
20 TO THE SEARCH, AND, OF COURSE, IF HE DOESN'T HAVE THE
21 CONSENT TO SEARCH, IF HE DOESN'T, THEN IN ALL LIKELIHOOD
22 THEY DON'T GET TO SEARCH HIM.

23 THE OFFICERS NEVER TESTIFIED THAT THERE WAS
24 ANY TYPE OF A PAT DOWN THAT WAS NECESSARY. THEY DIDN'T
25 INDICATE THAT THEY FELT LIKE THEY WERE IN ANY THREAT OF

1 HARM OR HAD ANY REASON TO CONDUCT A PAT DOWN FOR THEIR
2 SAFETY. AND SO THIS WAS, REALLY COMES DOWN TO WHETHER
3 OR NOT HE, CALVIN TODD, GAVE PERMISSION TO SEARCH, AND
4 THERE IS A BIT OF CONFLICTING TESTIMONY AS TO THAT.

5 I GUESS THE OFFICERS WOULD THEN SAY, WELL,
6 HE TOOK IT OUT OF HIS POCKET AND THREW IT ON THE GROUND,
7 AND THEY BOTH TESTIFIED TO THAT, YOUR HONOR, BUT AGAIN I
8 GO BACK TO THE FACT THAT HE WAS HANDCUFFED BEHIND HIS
9 BACK AND APPARENTLY WAS SUPPOSED TO HAVE REACHED INTO
10 HIS FRONT LEFT POCKET.

11 AND, YOU KNOW, THEY SAY THEY'VE SEEN THAT
12 HAPPEN ON NUMEROUS OCCASIONS, BUT, I MEAN, IT WOULD SEEM
13 TO BE ALMOST A PHYSICAL IMPOSSIBILITY TO ME JUST BASED
14 ON COMMON SENSE. AND YOU CAN SEE MR. TODD. HE DOESN'T
15 HAVE PARTICULARLY LONG ARMS, HE'S NOT A PARTICULARLY
16 TALL PERSON, AND HE WAS, IN FACT, HANDCUFFED BEHIND HIS
17 BACK. AND SO THERE'S ONLY SO MUCH RANGE OF MOTION THAT
18 A PERSON HAS. SO THEY WOULD HAVE HAD TO HAVE TAKEN IT
19 OUT OF HIS POCKETS, YOUR HONOR, EITHER THAT OR IT
20 SOMEHOW FELL OUT ON ITS OWN. BUT IT IS VERY UNLIKELY HE
21 REACHED IN AND PULLED IT OUT.

22 FOR ALL THOSE REASONS, YOUR HONOR, WE
23 BELIEVE THAT THIS WAS UNLAWFUL SEARCH AND SEIZURE, AND
24 FOR THAT REASON THAT THE EVIDENCE IN THIS CASE SHOULD BE
25 SUPPRESSED. THANK YOU, YOUR HONOR.

1 **THE COURT:** ALL RIGHT, MADAM SOLICITOR.

2 **MS. SALISBURY:** THANK YOU, JUDGE. I WOULD
3 LIKE TO RESPOND TO EACH OF THOSE POINTS IN TURN. BUT
4 THE FIRST ISSUE THAT MR. CHAMBERS SUGGESTS IS
5 PROBLEMATIC ABOUT THIS PARTICULAR SEARCH IS THAT
6 DETECTIVE MCBRIDE GAVE CONFLICTING TESTIMONY WITH REGARD
7 TO WHETHER THE DEFENDANT GAVE HIM CONSENT TO SEARCH AND
8 THEN VOLUNTEERED THAT HE HAD THIS PIPE IN HIS POCKET.

9 I CERTAINLY THINK THAT THE FACT THAT BOTH OF
10 THOSE REMARKS WERE MEMORIALIZED IN THE DETECTIVE'S
11 REPORT, AS WELL AS THE FACT THAT HE INDICATES BOTH WERE
12 SAID, DOES NOT SUGGEST THAT THAT IS CONFLICTING
13 INFORMATION, JUST THAT THE DEFENDANT, IN FACT, SAID
14 BOTH. THAT'S THE TESTIMONY AND THAT'S THE EVIDENCE
15 THAT'S BEFORE THE COURT, THAT THE DEFENDANT MADE BOTH
16 THE REMARK THAT HE HAD A CRACK PIPE IN HIS POCKET AND
17 ALSO THAT HE HAD NO PROBLEMS WITH THE OFFICER ACTUALLY
18 PERFORMING A SEARCH.

19 NOW, THAT CERTAINLY RELATES TO THE FACT THAT
20 MR. CHAMBERS THINKS THAT IT'S PROBLEMATIC THAT THE
21 DETECTIVE DOESN'T ADVISE THE DEFENDANT THAT HE DID NOT
22 HAVE TO CONSENT TO THE SEARCH. AND AS YOUR HONOR KNOWS,
23 IT'S NOT NECESSARY THAT OFFICERS ADVISE THE DEFENDANT
24 THAT THEY NEED NOT CONSENT TO THE SEARCH. THAT'S NOT
25 REQUIRED OF OFFICERS, IT'S NOT NECESSARY THAT THEY

1 INDICATE OR INFORM THE DEFENDANT THAT HE NEED NOT
2 NECESSARILY PROVIDE CONSENT. THEY NEED ONLY ASK.

3 AND, IN FACT, IN THIS PARTICULAR
4 CIRCUMSTANCE IT'S THE STATE'S POSITION THAT THE OFFICERS
5 HAD SUFFICIENT CAUSE TO PERFORM THE SEARCH THAT THEY
6 NEED NOT HAVE EVEN ASKED FOR CONSENT. BUT THE FACT THAT
7 THEY DID, THE FACT THAT THE DEFENDANT GAVE IT, AND MORE
8 THAN THAT, VOLUNTEERED THAT HE HAD THE CRACK PIPE IN HIS
9 POCKET CERTAINLY PUTS US IN A POSITION WHERE THE SEARCH
10 IS LAWFUL AND THE SEARCH IS LEGITIMATE.

11 NOW, THE OTHER ISSUE THAT MR. CHAMBERS
12 BROUGHT UP IS THE FACT THAT THE OFFICERS DIDN'T TESTIFY
13 THAT THEY WERE PARTICULARLY AFRAID OF THE DEFENDANT.
14 BUT AGAIN, JUDGE, I WOULD REMIND YOU AND POINT OUT, AS
15 I'M SURE YOU KNOW, THAT THE LAW DOES NOT REQUIRE THAT
16 THE OFFICERS NECESSARILY BE AFRAID OF THE DEFENDANT.

17 INSTEAD, WE CONSIDER THE FACT THAT IT WAS
18 DARK OUTSIDE, THAT IT WAS THE MIDDLE OF THE NIGHT, THAT
19 THERE WERE TWO OCCUPANTS OF THIS CAR, THAT THE DEFENDANT
20 MAY HAVE BEEN WEARING PARTICULARLY BAGGY CLOTHES. ALL
21 OF THOSE ISSUES TOGETHER AND THE TOTALITY OF THE
22 CIRCUMSTANCES CERTAINLY SUGGEST THAT THIS DEFENDANT
23 COULD HAVE BEEN ARMED AND COULD HAVE POSED A THREAT TO
24 THE OFFICERS' SAFETY.

25 SO IN SPITE OF THE FACT THAT THE OFFICERS

1 RECEIVED CONSENT TO SEARCH THIS DEFENDANT, THERE WERE
2 CERTAINLY LEGITIMATE OTHER SUSPICIONS THAT ALLOWED THESE
3 OFFICERS TO GO AHEAD AND PERFORM A PAT DOWN, TO PERFORM
4 A SEARCH, IN WHICH THEY WOULD HAVE INVARIABLY DISCOVERED
5 THIS CRACK PIPE IN THE DEFENDANT'S POCKET, EVEN IF THE
6 DEFENDANT HAD NOT VOLUNTEERED THAT HE HAD THIS CRACK
7 PIPE IN HIS POCKET.

8 AND MORE THAN THAT, JUDGE, MR. CHAMBERS'
9 FINAL CONTENTION IS THE FACT THAT THE PHYSICAL
10 IMPOSSIBILITY OF THE DEFENDANT TO REACH FROM HIS
11 HANDCUFFED POSITION INTO HIS LEFT POCKET GENERATES SOME
12 SORT OF ISSUE WITH WHETHER THE SEARCH WAS LEGITIMATE.
13 BUT, YOUR HONOR, IT'S THE STATE'S POSITION THAT WHETHER
14 THE DEFENDANT COULD HAVE REACHED INTO HIS POCKET IS
15 CERTAINLY A FACTUAL DETERMINATION FOR THE JURY RATHER
16 THAN AN ISSUE THAT'S PROPERLY BEFORE THE COURT WITH THIS
17 TYPE OF HEARING.

18 THE COURT: ALL RIGHT, MR. CHAMBERS?

19 MR. CHAMBERS: NOTHING IN RESPONSE, YOUR
20 HONOR.

21 THE COURT'S RULING ON MOTION TO SUPPRESS:

22 THE COURT: WELL, FIRST OF ALL, IT SEEMS
23 THAT ONCE THE STOP WAS MADE, THE OPEN CONTAINER WAS
24 OBSERVED IN CLEAR VIEW, THEN I THINK IT IS STATE VERSUS
25 MORRIS THAT SAYS THAT THE GROUNDS FOR ARREST, AND, OF

1 COURSE, THE GROUND FOR ARREST, YOU DON'T HAVE TO WAIT
2 UNTIL THE WEAPON IS DRAWN, YOU HAVE A SEARCH, AND SO
3 THEY REALLY DIDN'T HAVE TO ASK TO SEARCH, BUT OBVIOUSLY
4 IT WAS COMING. AND THE CONSENT, PARTICULARLY UNDER
5 THOSE CIRCUMSTANCES, WOULDN'T BE NECESSARY. AND SO
6 VOLUNTARILY MENTIONING THE CRACK PIPE.

7 NOW, AS FAR AS -- AND I'M CERTAINLY NOT
8 INVITING ANY SORT OF FORENSIC EXERCISES -- BUT AS FAR AS
9 THE CREDIBILITY OF HOW THE ALLEGED -- AND I THINK SOME
10 CONTAINER OF CRACK THAT GOT STOMPED ON CAME ABOUT,
11 THAT'S GOING TO HAVE TO BE FOR THE JURY. AT THIS POINT
12 THE OFFICERS HAVE TESTIFIED THAT HE SAW THE DEFENDANT
13 TAKE SOMETHING OUT OF A POCKET AND STOMPED ON IT, SO I'M
14 AFRAID THAT'S, THAT WILL BE FOR THE JURY TO DETERMINE
15 WHETHER OR NOT THAT IS CREDIBLE OR NOT.

16 BUT AT THIS POINT I FIND THAT THE EVIDENCE
17 IS SUFFICIENT TO HAVE NOT ONLY THE STOP BEING
18 APPROPRIATE, BUT ALSO TO WHAT RESULTED FROM THE STOP.
19 VERY GOOD. ALL RIGHT. SO YOUR MOTIONS TO SUPPRESS ARE
20 DENIED.

21 ALL RIGHT. IT'S ABOUT FIVE OF THREE.
22 THAT'S NOT TOO BAD. DID WE HAVE THE JURY COME BACK AT
23 2:30?

24 MS. SALISBURY: YES, JUDGE.

25 THE COURT: WOULD YOU LIKE TO TAKE A SHORT

1 BREAK BEFORE WE BRING THE JURY IN AND START THE CASE?

2 MR. CHAMBERS: YES, YOUR HONOR, WE CAN TAKE
3 A SHORT BREAK.

4 THE COURT: ALL RIGHT, VERY GOOD. LET'S
5 DON'T TAKE TOO LONG, MAYBE ABOUT FIVE MINUTES.

6 (A BREAK WAS TAKEN.)

7 THE COURT: IS THE STATE READY TO PROCEED?

8 MS. SALISBURY: YES, YOUR HONOR.

9 THE COURT: DEFENSE?

10 MR. CHAMBERS: YES, YOUR HONOR.

11 THE COURT: ALL RIGHT. ASK THE JURY TO JOIN
12 US.

13 (WHEREUPON, THE JURY ENTERED THE COURTROOM AT
14 3:08 P.M.)

15 THE COURT: MADAM CLERK, IF YOU WOULD,
16 PLEASE, SWEAR THE JURY.

17 (WHEREUPON, THE JURY WAS SWORN.)

18 PRELIMINARY INSTRUCTIONS OF THE COURT TO THE JURY:

19 THE COURT: MADAM FORELADY, LADIES AND
20 GENTLEMEN OF THE JURY, I'M SURE THAT EACH OF YOU NOW
21 FULLY APPRECIATES THAT THIS COURT, THE COURT OF GENERAL
22 SESSIONS FOR GREENVILLE COUNTY, EXISTS FOR THE PURPOSE
23 OF RESOLVING QUESTIONS OF ALLEGED CRIMINAL CONDUCT
24 ARISING BETWEEN THE STATE OF SOUTH CAROLINA AND THE
25 DEFENDANT.

1 IT IS A GUARANTEED RIGHT OF EVERY CITIZEN
2 THAT A CHARGE OF CRIMINAL CONDUCT BE PRESENTED IN OPEN
3 COURT ACCORDING TO CERTAIN RULES OF PROCEDURE. THE
4 STATE HAS NOT ONLY AN EQUAL RIGHT BUT THE DUTY TO
5 PRESENT A CHARGE OF CRIMINAL CONDUCT IN OPEN COURT
6 ACCORDING TO THE SAME RULES OF PROCEDURE. EACH OF THE
7 PARTIES, THEREFORE, BOTH THE STATE AND THE DEFENDANT,
8 THEN HAVE AN EQUAL RIGHT TO THE OPPORTUNITY OF THIS
9 JUDICIAL PROCEEDING AND TO HAVE YOU AS THE JURY SELECTED
10 AND NOW SWORN FOR THE TRIAL OF THIS CASE.

11 ONE OF THE MOST IMPORTANT ASPECTS OF YOUR
12 DUTY AS A JURY LIES ESSENTIALLY IN THE OATH THAT YOU
13 HAVE JUST TAKEN, TO WELL AND TRULY TRY AND DETERMINE THE
14 FACTS OF THE CASE. THAT OATH IN A VERY ESSENTIAL WAY
15 SAYS YOU ARE THE SOLE JUDGES OF THE FACTS IN THIS CASE.
16 OBVIOUSLY, ANY CASE TRIED IN COURT WILL INVOLVE A
17 QUESTION ABOUT WHAT HAPPENED OR HOW SOMETHING CAME TO
18 HAPPEN OR WHOM, IF ANYONE, DID ANYTHING IN A PARTICULAR
19 OCCURRENCE OR CIRCUMSTANCE. FROM THIS POINT FORWARD,
20 THEN, NO ONE CONCERNED WITH THE TRIAL HAS A RIGHT TO
21 DECIDE ANY QUESTION OF FACT IN THIS TRIAL, OR THE TRUTH
22 OF IT, EXCEPT FOR YOU, THE JURY. THE FACTS THEN ARE FOR
23 YOUR RESOLUTION AND YOUR DECISION AND YOURS ALONE, AND
24 AFTER YOU HEAR ALL THE EVIDENCE IN THE CASE, THEN IT
25 WILL BE YOUR DUTY BY YOUR MUTUAL AND JOINT DISCUSSIONS

1 TO DETERMINE THE TRUTH OF THIS CASE BY DECIDING THE
2 WEIGHT AND THE BELIEVABILITY OF EACH PART OF THE
3 EVIDENCE AND BY APPLYING THE LAW OF THE CASE TO IT.

4 NOW, THE TRIAL JUDGE IS THE JUDGE OF THE LAW
5 IN THIS CASE. IT IS ALSO MY RESPONSIBILITY, AMONG OTHER
6 DUTIES, TO PRESIDE OVER THIS TRIAL, TO RULE ON THE
7 ADMISSIBILITY OF EVIDENCE, OFFERED DURING THE PROGRESS
8 OF THE TRIAL AND TO STATE TO YOU, THE JURY, THE LAW
9 APPLICABLE TO THE CASE.

10 NOW, THE CONSTITUTION OF SOUTH CAROLINA
11 MANDATES AS THE TRIAL JUDGE CANNOT DIRECTLY OR
12 INDIRECTLY COMMENT ABOUT THE FACTS IN THE CASE. THE
13 PROCESS OF A VERDICT, THEN, IS SIMPLY THAT YOU, THE
14 JURY, FIRST DETERMINE THE TRUTH OF THE FACTS AND THEN
15 APPLY TO THAT TRUE STATE OF FACTS THE PRINCIPLE OF LAW
16 APPLICABLE, AND BY THAT PROCESS DETERMINE AND REPORT TO
17 THIS COURT YOUR FINAL VERDICT IN THE CASE, SPEAKING THE
18 TRUTH OF THE CASE AS YOU DETERMINE IT.

19 NOW, I WILL MORE FULLY AND COMPLETELY STATE
20 TO YOU THE PRINCIPLES OF LAW APPLICABLE TO THE ISSUES IN
21 THIS PARTICULAR CASE BEFORE THE CASE IS SUBMITTED TO YOU
22 FOR YOUR DECISION. HOWEVER, THERE ARE SOME CERTAIN
23 PRINCIPLES OF LAW APPLICABLE TO THE FRAMEWORK OF EVERY
24 CASE IN GENERAL SESSIONS COURT.

25 FIRST, THE DEFENDANT HAS ENTERED A PLEA OF

1 NOT GUILTY TO THE CHARGES CONTAINED IN THE INDICTMENT.
2 THE INDICTMENT IN A CASE IS NOT EVIDENCE AND IS SIMPLY
3 THE WRITTEN INSTRUMENT THAT CONTAINS THE CHARGE OR
4 CHARGES AGAINST THE DEFENDANT, AND IT SERVES AS THE
5 FORMAL DOCUMENT BY WHICH THIS CASE IS PROCESSED INTO THE
6 COURT.

7 THE PLEA OF NOT GUILTY PLACES UPON THE STATE
8 THE BURDEN OF PROOF IN THIS CASE. AS FOR WHAT IS MEANT
9 BY THE TERM BURDEN OF PROOF, THE DEFENDANT IS PRESUMED
10 IN LAW INNOCENT OF ALL CHARGES CONTAINED IN THE
11 INDICTMENT. THE BURDEN OF PROOF REQUIRES THE STATE TO
12 PROVE GUILT BEYOND A REASONABLE DOUBT AND, THEREFORE,
13 CONSISTENT WITH THAT BURDEN THE DEFENDANT OR THE ACCUSED
14 PARTY SHALL BE PRESUMED TO BE INNOCENT, AND THAT
15 PRESUMPTION OF INNOCENCE IS SUFFICIENT TO COMPEL A
16 VERDICT OF NOT GUILTY OR A VERDICT OF ACQUITTAL UNLESS
17 YOU, THE JURY, CONCLUDE THAT THE STATE HAS SATISFIED ITS
18 OBLIGATION TO PROVE THE DEFENDANT GUILTY BEYOND A
19 REASONABLE DOUBT. NOW, THE TERM "REASONABLE DOUBT"
20 MEANS THE KIND OF DOUBT THAT WOULD CAUSE A REASONABLE
21 PERSON TO HESITATE TO ACT.

22 THIS CASE WILL BE OPENED BY THE SOLICITOR,
23 AFTER WHICH THE SAME OPPORTUNITY WILL BE AFFORDED TO THE
24 DEFENDANT TO MAKE AN OPENING STATEMENT. WHEN ALL OF THE
25 EVIDENCE HAS BEEN RECEIVED BY THE COURT, COUNSEL FOR THE

1 STATE AND COUNSEL FOR THE DEFENDANT WILL STATE TO THE
2 JURY THEIR RESPECTIVE POSITIONS, AFTER WHICH THE COURT
3 WILL FULLY STATE THE APPLICABLE LAW IN THE CASE.
4 OBVIOUSLY, ALL PARTS OF THE CASE ARE IMPORTANT. YOU DO
5 NOT KNOW WHICH WITNESS IN A CASE WILL MOST IMPRESS YOU,
6 WHETHER THE FIRST WITNESS OR THE LAST WITNESS. IN
7 REACHING YOUR FINAL CONCLUSION YOU WILL NEED THE
8 GUIDANCE AND THE JUDGMENT OF OTHER JURORS. YOU WILL
9 NEED THE GUIDANCE OF THE PRINCIPLES OF LAW THAT WILL BE
10 STATED TO YOU BY THE COURT.

11 FOR ALL OF THESE REASONS, THEN, IF WE HAVE A
12 RECESS PERIOD WHEN YOU RETIRE TO THE JURY ROOM OR DURING
13 AN OVERNIGHT OR MEAL RECESS, I INSTRUCT YOU THAT YOU
14 MUST NOT UNDERTAKE TO DISCUSS THIS CASE AMONG YOURSELVES
15 UNTIL THE CASE IS FINALLY GIVEN TO YOU FOR YOUR
16 DELIBERATION. NOR ARE YOU TO DISCUSS THIS CASE WITH
17 ANYONE OR PERMIT ANYONE ELSE TO DISCUSS THE CASE WITH
18 YOU. IF THEY SHOULD TRY TO DO SO, YOU MUST REPORT THEM.

19 ALSO REMEMBER, THE VERDICT IN THIS CASE MUST
20 BE A UNANIMOUS VERDICT OF ALL 12 JURORS.

21 NOW, THERE ARE A FEW OTHER THINGS I NEED TO
22 MENTION BEFORE WE START. AS I SAID EARLIER, ALTHOUGH I
23 AM THE ONLY PERSON WHO CAN TELL YOU WHAT THE LAW IS, YOU
24 AND YOU ALONE ARE THE ONLY ONES WHO CAN DETERMINE THE
25 FACTS. I DO NOT HAVE THE RIGHT TO INDICATE HOW I MAY

1 FEEL ABOUT THE EVIDENCE PRESENTED, AND THROUGHOUT THIS
2 TRIAL MY INTENTION WILL BE TO ACT IMPARTIALLY TOWARDS
3 EACH PARTY.

4 SECONDLY, FROM TIME TO TIME AN ATTORNEY MAY
5 OBJECT TO SOME BIT OF TESTIMONY OR EVIDENCE WHICH THE
6 OTHER SIDE IS SEEKING TO PRESENT. AS IN SPORTS OR
7 BUSINESS OR ANY OTHER STRUCTURED ACTIVITY, THERE ARE
8 CERTAIN RULES THAT BOTH SIDES MUST OBEY IN PRESENTING
9 EVIDENCE. THESE RULES HAVE A DEFINITE PURPOSE. THEY
10 ENSURE THAT THE INFORMATION YOU RECEIVE IS THE MOST
11 TRUSTWORTHY AND RELIABLE EVIDENCE AVAILABLE. AN
12 OBJECTION IS A PROCEDURE WE USE FOR AN ATTORNEY TO CALL
13 A POSSIBLE VIOLATION OF THE RULES TO THE COURT'S
14 ATTENTION, AND FOR THIS REASON YOU SHOULD NOT HOLD AN
15 ATTORNEY'S OBJECTION AGAINST HIS OR HER CLIENT, NOR
16 SHOULD YOU CONCLUDE FROM MY RULING THAT I FAVOR ONE SIDE
17 OR THE OTHER.

18 FINALLY, I WOULD ASK THAT YOU PAY THE
19 CLOSEST ATTENTION POSSIBLE TO THE EVIDENCE PRESENTED TO
20 YOU.

21 NOW, I WILL ALSO ASK YOU NOT TO TAKE NOTES,
22 FOR IF THE NOTE TAKER MAKES AN ERROR, THOSE NOTES CAN BE
23 MORE DETRIMENTAL THAN HELPFUL DURING YOUR DELIBERATIONS.
24 THE TIME-TESTED SYSTEM IS FOR EACH OF YOU TO LISTEN
25 CAREFULLY AND I AM CONFIDENT THAT EACH OF YOU WILL DO

1 THAT.

2 NOW, I MIGHT NOTE THAT -- I SUGGEST THAT YOU
3 DO NOT TAKE NOTES. THE REASON FOR THAT IS FROM THIS
4 POINT ON YOU MAKE YOUR DECISION BASED ENTIRELY ON THE
5 TESTIMONY FROM THIS WITNESS STAND AND THE EXHIBITS AND
6 OTHER EVIDENCE INTRODUCED IN THIS COURTROOM, SO IT'S
7 ABSOLUTELY ESSENTIAL THAT YOU PAY ATTENTION TO NOT ONLY
8 WHO IS TALKING OR WHAT IS BEING SAID, BUT HOW IT'S BEING
9 SAID. IN OTHER WORDS, YOU NEED TO CONCENTRATE ENTIRELY
10 ON WHAT'S HAPPENING.

11 IT'S MY EXPERIENCE IF WE TAKE NOTES, WE HAVE
12 A TENDENCY TO CONCENTRATE ON THE NOTES, JUST, FIRST OF
13 ALL, TO BE SURE THAT WE PUT DOWN WHAT WE THINK WE HEAR;
14 AND SECOND, IT MAY BE THAT THE SYNTAX IS CORRECT OR THE
15 GRAMMAR AND EVEN SPELLING. FOR ALL THOSE REASONS YOU
16 HAVE A TENDENCY TO BE DISTRACTED FROM WHAT'S HAPPENING
17 IN THE COURTROOM AT THE TIME. SO, THEREFORE, I SUGGEST
18 THAT YOU CONCENTRATE ON WHAT IS TAKING PLACE AT THE
19 TIME. IF YOU HAVE A QUESTION ABOUT WHAT OCCURRED OR
20 WHATEVER, THEN USE THE COLLECTIVE RECOLLECTION OF ALL 12
21 MEMBERS OF THE JURY TO DETERMINE WHAT IS ACTUALLY
22 HAPPENING.

23 THE REASON I SUGGEST THAT IS THE BETTER
24 COURSE THAN TAKING NOTES IS BECAUSE IF YOU DO MAKE A
25 MISTAKE IN TAKING A NOTE, A VERY SIMPLE EXAMPLE, OF

1 COURSE, IS IF YOU MISS A WORD, A WORD LIKE "NOT." ALL
2 OF A SUDDEN THAT NOTE TAKES ON ENTIRELY -- IN FACT, JUST
3 THE OPPOSITE MEANING AS TO WHAT WAS HEARD. SO WHEN YOU
4 ARE JOTTING DOWN, IF YOU MISS "NOT" OR SOME OTHER WORD
5 OF SIGNIFICANCE, THEN IT CHANGES IT ENTIRELY. AND IF
6 SOMEBODY HAS IT WRITTEN DOWN, "WELL, I'VE GOT IT WRITTEN
7 DOWN," YOU HAVE TO BE SURE THAT IT'S WRITTEN DOWN
8 PROPERLY AND CORRECTLY. SO I SUGGEST RATHER THAN TAKE
9 NOTES THAT YOU DO CONCENTRATE ON WHAT'S HAPPENING IN THE
10 COURTROOM.

11 NOW, HAVING SAID THAT, I DO TAKE NOTES.
12 NOW, IT'S NOT ONE OF THOSE THINGS, DO AS I SAY, NOT AS I
13 DO. PLEASE REMEMBER, WE HAVE ENTIRELY DIFFERENT
14 PURPOSES IN THIS COURTROOM. YOU ARE THE ONLY ONES THAT
15 CAN DECIDE THE VALIDITY, THE VALUE OR THE WEIGHT OF THE
16 EVIDENCE. I'M NOT CONCERNED ABOUT THE VALUE OF THE
17 EVIDENCE IN ANY WAY. I AM JUST JOTTING DOWN WHAT IS
18 SAID OCCURS SO THAT IT MEETS THE REQUIREMENTS OF THE
19 LAW. IT HAS NOT A BIT OF SIGNIFICANCE WHATSOEVER AS TO
20 THE VALUE OF WHAT IS DONE, I JUST HAVE TO SHOW THAT
21 SOMETHING HAS BEEN DONE WHEN IT IS, AND FOR THAT REASON
22 I DO TAKE NOTES AND I SUGGEST THAT YOU NOT.

23 WITH THAT I'LL RECOGNIZE THE SOLICITOR FOR
24 HER OPENING STATEMENT.

25 MS. SALISBURY: THANK YOU, YOUR HONOR, MAY

1 IT PLEASE THE COURT.

2 THE COURT: MADAM SOLICITOR.

3 OPENING STATEMENT ON BEHALF OF THE STATE:

4 MS. SALISBURY: GOOD AFTERNOON, LADIES AND
5 GENTLEMEN. I WAS INTRODUCED TO YOU A FEW MOMENTS AGO.
6 MY NAME IS KATRINA SALISBURY, AND THIS IS MY CO-COUNSEL
7 JOYCE MONTS, AND WE PROSECUTE CASES HERE IN GREENVILLE
8 COUNTY.

9 NOW, BEFORE WE BEGIN THE TRIAL OF THIS CASE,
10 I WANT TO TELL YOU THREE THINGS: WHAT THIS CASE IS
11 ABOUT, WHAT THE STATE IS REQUIRED AND INTENDS TO PROVE
12 AND HOW WE INTEND TO PROVE IT.

13 LADIES AND GENTLEMEN, DURING THE EARLY
14 MORNING HOURS OF JULY 28, 2007, THIS DEFENDANT, CALVIN
15 TODD, WAS CARRYING CRACK COCAINE. AND THE EVIDENCE AS
16 YOU WILL HEAR TODAY WILL PROVE THAT WHETHER THE
17 DEFENDANT PLANNED TO SELL IT, TRADE IT, OR SHARE IT, HE
18 CERTAINLY PLANNED ON DISTRIBUTING THAT CRACK COCAINE
19 INTO OUR COMMUNITY.

20 NOW, AS YOU'VE HEARD, THE DEFENDANT IS
21 CHARGED WITH POSSESSION WITH INTENT TO DISTRIBUTE CRACK
22 COCAINE. TO PROVE THAT THE STATE MUST FIRST PROVE THAT
23 THE DEFENDANT WAS IN POSSESSION OF CRACK COCAINE. AND
24 THE STATE MUST ALSO PROVE THAT THE DEFENDANT PLANNED TO
25 DISTRIBUTE THAT CRACK COCAINE. AND AT THE END OF THIS

1 TRIAL THE JUDGE WILL INSTRUCT YOU THAT ONE OF THE FACTS
2 THAT YOU CAN CONSIDER WHEN DECIDING WHETHER THE
3 DEFENDANT PLANNED TO DISTRIBUTE THAT CRACK COCAINE IS
4 THE FACT THAT THE DEFENDANT WAS CARRYING MORE THAN ONE
5 GRAM.

6 NOW, TO PROVE THAT THE DEFENDANT IS GUILTY
7 OF THAT, OF THIS PARTICULAR CRIME, YOU WILL HEAR THE
8 TESTIMONY OF SEVERAL WITNESSES. FIRST YOU WILL HEAR THE
9 TESTIMONY OF DETECTIVE TROY MCBRIDE WHO WORKS FOR THE
10 FOUNTAIN INN POLICE DEPARTMENT. AT THE TIME OF THE
11 ARREST DETECTIVE MCBRIDE WAS WORKING AS A UNIFORM PATROL
12 OFFICER, AND DURING THE EARLY MORNING HOURS OF JULY 28,
13 2007, HE AND HIS PARTNER WERE ON ROUTINE PATROL IN
14 DOWNTOWN FOUNTAIN INN.

15 HE AND HIS PARTNER PERFORMED A TRAFFIC STOP
16 ON A VEHICLE IN WHICH THIS DEFENDANT WAS THE ONLY
17 PASSENGER. DETECTIVE MCBRIDE WILL TESTIFY HE WENT
18 AROUND TO THE PASSENGER'S SIDE TO SPEAK WITH THIS
19 DEFENDANT AND NOTICED THAT THE DEFENDANT HAD AN OPEN
20 CONTAINER OF ALCOHOL IN HIS LAP. AT THAT POINT
21 DETECTIVE MCBRIDE GOT THE DEFENDANT OUT OF THE CAR AND
22 SEARCHED HIM, DISCOVERING A CRACK PIPE IN THE
23 DEFENDANT'S POCKET.

24 NOW, DETECTIVE MCBRIDE WILL TESTIFY THAT HE
25 HANDCUFFED THE DEFENDANT AT THAT POINT AND BEGAN

1 PACKAGING THOSE ITEMS OF EVIDENCE. DETECTIVE MCBRIDE
2 LEARNED THAT THE DEFENDANT HAD, WAS ABLE TO REACH INTO
3 HIS POCKET AND THROW AN ITEM TO THE GROUND, AND HE
4 DISCOVERED THAT THERE WAS A CLEAR PLASTIC BAGGIE
5 CONTAINING A WHITE SUBSTANCE WHICH HE BELIEVED TO BE
6 CRACK COCAINE. DETECTIVE MCBRIDE WILL TESTIFY THAT HE
7 COLLECTED THAT MATERIAL AND TESTED IT AND THAT IT
8 FIELD-TESTED POSITIVE FOR CRACK COCAINE.

9 NOW, AFTER THAT YOU WILL HEAR THE TESTIMONY
10 OF OFFICER TRAVIS GRAHAM WHO ALSO WORKS FOR THE FOUNTAIN
11 INN POLICE DEPARTMENT. OFFICER GRAHAM WILL TESTIFY THAT
12 HE WAS ON PATROL WITH DETECTIVE MCBRIDE THAT NIGHT AND
13 THAT THE TWO CONDUCTED A TRAFFIC STOP. OFFICER GRAHAM
14 WILL TESTIFY THAT HE WAS INVOLVED IN THIS PARTICULAR
15 ARREST, AND THAT WHILE HE WAS SPEAKING WITH THE DRIVER
16 OF THE CAR, HE OBSERVED THIS DEFENDANT REACH INTO HIS
17 LEFT POCKET, IN SPITE OF BEING HANDCUFFED, AND PULL OUT
18 A PLASTIC BAGGIE WHICH HE THREW TO THE GROUND AND
19 IMMEDIATELY STOMPED ON. OFFICER GRAHAM WILL TESTIFY
20 THAT HE COLLECTED THE EVIDENCE AND TRANSPORTED IT TO
21 PROPERTY AND EVIDENCE.

22 NOW, AFTER THAT YOU WILL HEAR THE TESTIMONY
23 OF INVESTIGATOR BRANDON BROWN WHO WORKS AT THE
24 GREENVILLE COUNTY SHERIFF'S OFFICE VICE AND NARCOTICS
25 UNIT. IN PARTICULAR BROWN WILL TESTIFY ABOUT THE

1 PARTICULAR IDENTIFICATION AND SALE OF THE CRACK COCAINE
2 THAT GOES ON IN GREENVILLE COUNTY.

3 THEN YOU'LL HEAR THE TESTIMONY OF MS. RENEE
4 PRUITT AND MR. SCOTT NELSON WHO WORK WITH THE PROPERTY
5 AND EVIDENCE DEPARTMENT. THEY'LL TESTIFY ABOUT THE WAY
6 THAT THIS EVIDENCE WAS STORED FROM THE TIME THAT THIS
7 DEFENDANT WAS ARRESTED UNTIL TODAY AT TRIAL.

8 LADIES AND GENTLEMEN, THE EVIDENCE IN THIS
9 CASE WILL BE VERY STRAIGHTFORWARD. AND AT THE END OF
10 THIS TRIAL IT WILL BE CLEAR TO YOU THAT WHETHER THIS
11 DEFENDANT PLANNED TO SELL, TRADE, OR SHARE THAT CRACK
12 COCAINE, HE PLANNED TO DISTRIBUTE IT; AND AT THE END OF
13 THIS TRIAL WE'LL ASK YOU TO RETURN A VERDICT THAT THE
14 DEFENDANT IS GUILTY OF POSSESSION WITH INTENT TO
15 DISTRIBUTE CRACK COCAINE. THANK YOU.

16 THE COURT: MR. CHAMBERS?

17 MR. CHAMBERS: MAY IT PLEASE THE COURT, YOUR
18 HONOR.

19 OPENING STATEMENT ON BEHALF OF THE DEFENDANT:

20 MR. CHAMBERS: LADIES AND GENTLEMEN, AGAIN
21 MY NAME IS RANDY CHAMBERS, AND IT IS, IT IS MY PRIVILEGE
22 TO BE HERE TODAY TO REPRESENT CALVIN TODD. YOU GUYS MET
23 HIM A LITTLE BIT EARLIER. AND I SAY IT'S A PRIVILEGE
24 BECAUSE IN MY MIND IT IS AN IMPORTANT THING FOR A LAWYER
25 TO HAVE THE OPPORTUNITY TO WALK INTO A COURTROOM AND

1 REPRESENT SOMEBODY WHO'S BEEN ACCUSED OF A CRIME.
2 BECAUSE WITHOUT FOLKS DOING THEIR JOB IN THIS SYSTEM,
3 THEN THE CONSTITUTION DOESN'T WORK.

4 AND I DON'T WANT TO STAND HERE TODAY AND
5 GIVE YOU A CIVICS LECTURE BECAUSE ALL OF YOU AT THIS
6 POINT HAVE LIVED LONG ENOUGH TO UNDERSTAND THESE THINGS
7 AND TO KNOW THE IMPORTANCE OF THE CONSTITUTION. BUT I
8 DO WANT TO TALK JUST A LITTLE BIT ABOUT YOUR SERVICE
9 HERE.

10 YOU KNOW, I HAD A CYNICAL LAW PROFESSOR SAY
11 ONE TIME THAT THE JURY NEEDED TO BE REFORMED BECAUSE
12 JURIES ARE MADE UP OF 12 UNEMPLOYED PEOPLE WITH NOTHING
13 BETTER TO DO THAT DAY. WELL, LADIES AND GENTLEMEN, I
14 HAVE TRIED CASES NOW OVER THE YEARS AS A NAVY OFFICER,
15 AS A PROSECUTOR, AND NOW AS A DEFENSE COUNSEL; I'VE
16 TRIED CIVIL CASES, I'VE TRIED EVERY KIND OF CASE YOU CAN
17 TRY. I'VE STOOD IN COUNTLESS, IN FRONT OF COUNTLESS
18 NUMBERS OF JURORS, AND I CAN TELL YOU THAT I HAVE YET TO
19 FIND A JURY THAT IS MADE UP OF 12 UNEMPLOYED PEOPLE WITH
20 NOTHING BETTER TO DO THAT DAY. YOU KNOW, ALL YOU HAVE
21 TO DO IS SIT FOR JUST A FEW MINUTES WHEN THE JURY IS
22 BEING QUALIFIED TO KNOW THAT ALL OF YOU HAVE IMPORTANT
23 THINGS TO DO AND IMPORTANT PLACES TO BE.

24 BUT HAVING SAID THAT, I WOULD NOW TELL YOU
25 THAT, AS INCONVENIENT AS IT MIGHT BE, THERE'S REALLY NOT

1 A MORE IMPORTANT PLACE FOR YOU TO BE THAN WHERE YOU ARE
2 RIGHT NOW, BECAUSE AS LAID OUT BY OUR FOUNDING FATHERS,
3 TRIAL BY JURY IS ONE OF THE CORNERSTONES OF OUR
4 DEMOCRACY. THIS IS DEMOCRACY IN ACTION IN PERHAPS ITS
5 PUREST FORM, BECAUSE THE STATE HAS MADE AN ACCUSATION.
6 ALL THESE FOLKS WHO ARE GATHERED UP OVER HERE REPRESENT
7 THE AWESOME POWER OF THE STATE COMING DOWN ON THIS
8 INDIVIDUAL WHO IS SEATED OVER HERE WITH ME AT THIS
9 TABLE.

10 AND YOU WILL HEAR HIM REFERRED TO AS THE
11 DEFENDANT QUITE A BIT. BUT ONE OF THE THINGS I LIKE
12 ABOUT PRACTICING IN THE MILITARY WAS THEY ALWAYS REFER
13 TO THAT PERSON AS THE ACCUSED. AND THAT'S ALWAYS STRUCK
14 ME AS A MUCH MORE ACCURATE DESCRIPTION. HE IS ACCUSED
15 OF HAVING DONE SOMETHING WRONG. AND UNTIL THESE FOLKS
16 RIGHT HERE PROVE TO YOU BEYOND A REASONABLE DOUBT THAT
17 HE IS GUILTY OF EACH AND EVERY ELEMENT OF THE OFFENSE
18 THAT WAS DESCRIBED TO YOU EARLIER BY THE ASSISTANT
19 SOLICITOR, THEN HE REMAINS INNOCENT. THEY HAVE TO PROVE
20 IT.

21 NOW, ONE OF THE THINGS THAT JUDGES GENERALLY
22 DO WHEN THEY'RE GONNA DESCRIBE TO YOU THIS NOTION OF
23 BEYOND A REASONABLE DOUBT IS TO TALK ABOUT A SCALE AND
24 THE SCALES OF JUSTICE. AND AT THE BEGINNING OF THE
25 TRIAL THAT SCALE STARTS OUT WITH EACH SIDE PERFECTLY

1 EVEN, OKAY? THEY HAVE TO START PUTTING THE EVIDENCE ON
2 THERE THAT WILL MOVE THAT SCALE IN THEIR DIRECTION TO
3 SATISEY THAT BURDEN.

4 NOW, IF THIS WERE A CIVIL CASE, THEY
5 WOULDN'T HAVE TO MOVE THAT SCALE VERY FAR, BECAUSE ALL
6 THAT'S REQUIRED THERE IS PROOF BY A PREPONDERANCE OF THE
7 EVIDENCE. BUT IN THIS CASE IT'S PROOF BEYOND A
8 REASONABLE DOUBT.

9 YOU WILL HEAR ALL SORTS OF DEFINITIONS OF
10 WHAT'S BEYOND A REASONABLE DOUBT, AND HONESTLY I THINK
11 IT JUST COMES DOWN TO, YOU KNOW, WHAT, DO YOU FEEL
12 COMFORTABLE WITH THAT? IF YOU WERE IN THAT POSITION, DO
13 YOU FEEL COMFORTABLE THAT THEY HAVE PROVEN IT BEYOND A
14 REASONABLE DOUBT?

15 ONE OF THE THINGS THAT'S ALWAYS CONCERNED ME
16 THOUGH OVER THE YEARS IS THAT I THINK IT'S HUMAN NATURE
17 TO THINK, WELL, YOU KNOW, IF THE STATE CHARGED HIM, HE
18 MUST BE GUILTY. BUT I'VE ALWAYS FELT THE JURY RISES TO
19 THE OCCASION AND THEY DO WHAT THEY ARE SWORN TO DO, AND
20 THAT IS TO GIVE THE DEFENDANT THE BENEFIT OF THE DOUBT.

21 NOW, LADIES AND GENTLEMEN, IN THIS CASE I'M
22 GONNA DO SOMETHING A LITTLE OUT OF THE ORDINARY, AND I'M
23 GOING TO TELL YOU THAT AS MY CLIENT SITS HERE, HE IS NOT
24 INNOCENT, BECAUSE HE DID, IN FACT, POSSESS A SUBSTANCE
25 THAT HE BELIEVED TO BE CRACK COCAINE. NOW, WE WILL WAIT

1 TO HEAR FROM THE CHEMIST AND THE OTHER PEOPLE WHO ARE
2 GONNA TESTIFY, BECAUSE HONESTLY UNTIL THEY, YOU KNOW,
3 PUT THAT EVIDENCE UP, I DON'T KNOW FOR SURE THAT IT'S
4 CRACK COCAINE. BUT I WILL TELL YOU THAT MY CLIENT
5 BELIEVED THAT IT WAS AND HE DID HAVE IT IN HIS
6 POSSESSION, AND HE HAD MORE THAN ONE OUNCE. AND THE
7 ASSISTANT SOLICITOR IS CORRECT, THAT BY POSSESSING MORE
8 THAN AN OUNCE, YOU CAN INFER FROM THAT THAT HE POSSESSED
9 IT WITH INTENT TO DISTRIBUTE.

10 BUT LADIES AND GENTLEMEN, YOU DON'T HAVE TO
11 DRAW THAT INFERENCE. AND HIS HONOR IS GOING TO TELL YOU
12 LATER ON THAT ESTABLISHING THAT HE POSSESSED MORE THAN A
13 GRAM OF CRACK COCAINE ESTABLISHES WHAT'S CALLED A *PRIMA*
14 *FACIE* CASE THAT HE POSSESSED IT WITH INTENT TO
15 DISTRIBUTE. THAT CAN BE REBUTTED. AND I WILL TELL YOU
16 THAT WE ARE GOING TO REBUT IT.

17 CALVIN TODD HAS EVERY INTENTION OF GETTING
18 ON THE WITNESS STAND LATER ON AND TELLING YOU HIS SIDE
19 OF THE STORY, EVEN THOUGH HE DOESN'T HAVE TO, HE'S NOT
20 REQUIRED TO, BUT HE INTENDS TO GET UP THERE AND TELL YOU
21 THAT HE WAS A PERSON AT THE TIME THAT HE WAS STOPPED
22 THAT HAD A VERY SERIOUS DRUG PROBLEM.

23 NOW, MOST OF US ARE FORTUNATE IN THAT THE
24 FOLKS THAT WE KNOW, THE FOLKS THAT WE ASSOCIATE WITH,
25 FRIENDS, FAMILY AND OTHER PEOPLE, THEY DON'T HAVE

1 PROBLEMS LIKE THAT. I WOULD WAGER THAT WHEN THE
2 SOLICITOR INTRODUCES INTO EVIDENCE THE CRACK COCAINE,
3 THAT THAT WILL BE THE FIRST OPPORTUNITY THAT MOST IF NOT
4 ALL OF YOU HAVE EVER HAD TO LOOK AT CRACK COCAINE.

5 BUT THAT WAS, UNFORTUNATELY, A VERY
6 IMPORTANT PART OF THE DAILY LIFE OF CALVIN TODD. IT'S
7 NOT SOMETHING HE'S PROUD OF, AND AS HE SITS HERE TODAY
8 HE'S NOT USING CRACK COCAINE ANYMORE, BUT HE WAS AT THAT
9 TIME. AND HE HAD A, UNDER THE LAW A FAIRLY SIGNIFICANT
10 AMOUNT.

11 BUT LADIES AND GENTLEMEN, AS YOU LISTEN TO
12 THE STATE'S CASE -- AND THEY'LL CERTAINLY TELL YOU THAT
13 HE HAD MORE THAN A GRAM -- THERE ARE OTHER THINGS THAT
14 YOU NEED TO CONSIDER. THEY SAID THAT THEY WERE GOING TO
15 ESTABLISH THAT HE WAS INTENDING TO DISTRIBUTE, TO
16 TRANSFER, TO SELL, TO IN SOME WAY DISTRIBUTE THIS DRUG
17 TO SOMEONE ELSE.

18 SO WHAT ARE THE THINGS YOU CAN LOOK FOR AS
19 THEY PRESENT THEIR CASE, ALL RIGHT? WHERE WAS HE AT THE
20 TIME? WAS HE ON THE STREET SOMEPLACE? WAS HE AT SOME
21 LOCATION KNOWN FOR THIS SORT OF THING? HE WAS RIDING --
22 YOU WILL HEAR THAT HE WAS RIDING IN A CAR AND HE WAS
23 STOPPED BECAUSE OF AN ALLEGED NOISE VIOLATION.

24 YOU WILL HEAR THAT WHEN HE STOPPED, WHEN HE
25 WAS STOPPED, THAT HE COOPERATED FULLY WITH THE POLICE IN

1 THIS CASE. THEY GOT HIM OUT OF THE CAR, THEY ASKED HIM
2 IF THEY COULD SEARCH HIM. HE SAID YES. HE INDICATED
3 THAT HE HAD A PIPE IN HIS POCKET. HE LATER ON GAVE A
4 STATEMENT WHERE HE SAID I POSSESSED CRACK COCAINE, I HAD
5 POSSESSION OF CRACK COCAINE IN MY LEFT POCKET. YOU'RE
6 GONNA HEAR ALL ABOUT THIS.

7 BUT ASK YOURSELF AS THEY PRESENT THEIR CASE:
8 DID HE HAVE THE MEANS TO USE CRACK COCAINE? DID HE HAVE
9 ANY SORT OF LARGE AMOUNT OF MONEY THAT WOULD INDICATE
10 THAT HE WAS SELLING CRACK COCAINE? WAS THIS CRACK
11 COCAINE PACKAGED IN SUCH A WAY THAT IT WOULD INDICATE
12 THAT HE WAS GOING TO DISTRIBUTE IT TO SOMEONE ELSE?

13 JUST THE FACT THAT YOU HAVE A LOT DOESN'T
14 MEAN YOU INTEND TO DISTRIBUTE IT. YOU KNOW, A FRIEND OF
15 MINE ONCE SAID, YOU KNOW, MOST OF US WHEN WE GO TO THE
16 STORE TO BUY BEER, WE DON'T JUST BUY ONE, WE BUY A
17 SIX-PACK OR A 12-PACK OR EVEN A CASE.

18 YOU NEED TO ASK YOURSELF AS YOU CONSIDER ALL
19 OF THE EVIDENCE. LADIES AND GENTLEMEN, ALL I ASK YOU TO
20 DO AT THIS POINT IS AS YOU LISTEN TO THE STATE'S CASE
21 KEEP AN OPEN MIND, RESERVE JUDGMENT, WAIT UNTIL YOU HEAR
22 FROM CALVIN, WAIT UNTIL YOU HEAR EVERYTHING THAT THERE
23 IS TO HEAR IN THE CASE. I BELIEVE THAT WHEN YOU DO
24 THAT, YOU'RE GONNA COME BACK AND YOU'RE GONNA SAY, YOU
25 KNOW WHAT? HE MAY HAVE HAD POSSESSION OF CRACK COCAINE,

1 BUT HE DID NOT INTEND TO DISTRIBUTE THAT. AND LADIES
2 AND GENTLEMEN, IT IS THEIR BURDEN TO PROVE THAT TO YOU.
3 THE FACT THAT WE MAY HAVE TO REBUT THEIR *PRIMA FACIE*
4 CASE DOES NOT RELIEVE THEM OF THE BURDEN OF PROVING THAT
5 ELEMENT TO YOU.

6 AGAIN, I APPRECIATE THE FACT THAT Y'ALL ARE
7 HERE. I DON'T THINK THIS WILL BE A VERY LONG TRIAL.
8 WE'LL PROBABLY GO INTO TOMORROW SOMETIME. AND I KNOW
9 THAT ALL OF YOU HAVE THINGS YOU WOULD RATHER BE DOING.
10 BUT THIS IS A VERY IMPORTANT DAY FOR MY CLIENT, CALVIN
11 TODD, AND WE APPRECIATE THE FACT THAT YOU ARE HERE.
12 THANK YOU.

13 THE COURT: YOU MAY CALL YOUR FIRST WITNESS.

14 MS. SALISBURY: THANK YOU, YOUR HONOR. THE
15 STATE CALLS DETECTIVE MCBRIDE. DETECTIVE, PLEASE COME
16 AROUND AND BE SWORN.

17 (WHEREUPON, THE WITNESS WAS SWORN BY THE
18 CLERK.)

19 THE CLERK: PLEASE STATE YOUR FULL NAME AND
20 SPELL YOUR LAST NAME FOR THE RECORD.

21 THE WITNESS: TROY RICHARD MCBRIDE,
22 M-C-B-R-I-D-E.

23 WHEREUPON,

24 TROY MCBRIDE,
25 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS

1 FOLLOWS:

2 DIRECT EXAMINATION BY MS. SALISBURY:

3 Q. DETECTIVE, BY WHOM ARE YOU EMPLOYED?

4 A. I'M EMPLOYED WITH THE FOUNTAIN INN POLICE
5 DEPARTMENT.

6 Q. IN WHAT CAPACITY?

7 A. I'M A DETECTIVE IN THE CRIMINAL INVESTIGATION
8 DIVISION AT THIS TIME.

9 Q. HOW LONG HAVE YOU BEEN A DETECTIVE?

10 A. SINCE DECEMBER OF LAST YEAR.

11 Q. WHAT WERE YOU DOING BEFORE THAT?

12 A. I WAS IN UNIFORM PATROL.

13 Q. AS A UNIFORM PATROLMAN WHAT WERE YOUR DUTIES DAY
14 TO DAY?

15 A. ANSWERING SERVICE CALLS, ENFORCING TRAFFIC LAWS,
16 SERVICE OF WARRANTS, DAY-TO-DAY STUFF.

17 Q. ALL RIGHT. NOW, WERE YOU WORKING IN THAT
18 CAPACITY AS A PATROLMAN ON JULY 28TH, 2007?

19 A. I WAS.

20 Q. WERE YOU ALONE?

21 A. NO. I WAS WITH OFFICER TRAVIS GRAHAM.

22 Q. WHAT WERE THE TWO OF YOU DOING?

23 A. WE WERE ON, JUST WE WERE ON PATROL THAT NIGHT.

24 Q. ALL RIGHT. DURING YOUR PATROL THAT NIGHT, DID
25 YOU AND OFFICER GRAHAM CONDUCT A TRAFFIC STOP?

1 A. WE DID.

2 Q. WOULD YOU PLEASE EXPLAIN TO THE JURY THE
3 CIRCUMSTANCES OF THAT STOP?

4 A. WE HEARD LOUD MUSIC, AND WE LOOKED AROUND AND
5 OBSERVED LOUD MUSIC COMING FROM THE CAR THAT WAS IN
6 CLOSE VICINITY OF US WHICH WAS IN THE COUNTRY CHASE
7 SUBDIVISION AREA OF FOUNTAIN INN. THE MUSIC WAS LOUD
8 ENOUGH AND THE WINDOWS WERE DOWN IN THE CAR AS WE
9 INITIATED THE TRAFFIC STOP.

10 Q. WHAT TIME OF DAY WAS THIS?

11 A. IT WAS ABOUT 12:30, 12:44 AT NIGHT.

12 Q. ALL RIGHT. SO IN THE MIDDLE OF THE NIGHT, AT
13 MIDNIGHT?

14 A. YES.

15 Q. OKAY. NOW WHERE PRECISELY DID YOU STOP THIS CAR?

16 A. BRISBANE AND GRAY MOUNTAIN.

17 Q. NOW, IS THAT IN GREENVILLE COUNTY?

18 A. YES, IT IS.

19 Q. WHO WAS IN THAT CAR THAT YOU STOPPED?

20 A. MR. TODD WAS IN THE PASSENGER'S SEAT ALONG WITH A
21 CO-DEFENDANT WHO WAS IN THE DRIVER'S SEAT.

22 Q. NOW, WHEN YOU INITIATED THE TRAFFIC STOP, HOW DID
23 YOU STOP THE CAR, WHAT DID YOU DO?

24 A. OFFICER GRAHAM WAS THE ONE THAT WAS DRIVING. WE
25 OBSERVED THE CAR AND WE GOT BEHIND IT. OFFICER GRAHAM

1 INITIATED THE BLUE LIGHTS AND THE CAR STOPPED.

2 Q. OKAY. HOW DID YOU APPROACH THE CAR?

3 A. I APPROACHED THE PASSENGER'S SIDE OF THE VEHICLE
4 FROM THE, FROM THE REAR OF IT.

5 Q. AND WHAT HAPPENED FROM THERE?

6 A. AS I WAS APPROACHING THE PASSENGER'S SIDE OF THE
7 VEHICLE, I WALKED UP, I DIDN'T OBSERVE ANYTHING ON THE
8 GROUND AT THE TIME OR ANYTHING LAYING OUT ON THE SIDE..
9 I WALKED UP TO WHERE MR. CALVIN TODD WAS. I INTRODUCED
10 MYSELF AND WHO I WAS AND THE POLICE DEPARTMENT I WAS
11 WITH, AND AT THAT TIME I OBSERVED AN OPEN CONTAINER OF
12 BEER IN HIS LAP. I ASKED HIM TO HAND IT TO ME, WHICH HE
13 DID DO.

14 Q. WHAT DID YOU DO NEXT?

15 A. AT THAT POINT I ASKED HIM TO STEP OUT OF THE
16 VEHICLE. HE STEPPED OUT OF THE VEHICLE AND PUT HIS
17 HANDS ON TOP OF THE HOOD. I ASKED HIM FOR CONSENT TO
18 SEARCH HIS PERSON. HE SAID YES. AND, AND THEN AT THAT
19 POINT HE MADE A STATEMENT THAT HE HAD A PIPE IN HIS BACK
20 POCKET. I IMMEDIATELY PLACED HIM UNDER ARREST AND
21 RETRIEVED THE PIPE. AT THAT TIME I BEGAN TO SECURE THE
22 PIPE, AND CANISTER OF BEER, AND THEN OFFICER GRAHAM WILL
23 BE ABLE TO TESTIFY FROM THAT POINT.

24 Q. OKAY. WHAT, WHAT HAPPENED -- WHEN DID -- AT WHAT
25 POINT DID YOU SECURE THE DEFENDANT IN HANDCUFFS?

1 A. AFTER HE HAD TOLD ME THAT HE HAD A PIPE IN HIS
2 BACK POCKET.

3 Q. SO AT THAT POINT YOU SEARCHED THE DEFENDANT?

4 A. YES.

5 Q. WHERE DID YOU FIND THIS CRACK PIPE THAT HE HAD,
6 THAT HE TOLD YOU ABOUT?

7 A. IN HIS BACK POCKET, I CAN'T REMEMBER WHICH ONE.

8 Q. ALL RIGHT. WELL, WHAT HAPPENED NEXT, GENERALLY?

9 A. GENERALLY I PLACED HANDCUFFS. I TOOK, I
10 RETRIEVED THE PIPE OUT OF HIS BACK POCKET. I STARTED TO
11 SECURE THE PIPE AND THE CANISTER OF BEER, AND AT THAT
12 TIME OFFICER GRAHAM STATED THAT MR. TODD HAD THROWN
13 SOMETHING OUT OF HIS POCKET, AND THEN WE WENT FROM
14 THERE.

15 Q. WHAT DID YOU SEE, AFTER, AFTER OFFICER GRAHAM
16 TOLD YOU ABOUT WHAT HE HAD OBSERVED, WHAT DID YOU DO,
17 WHAT DID YOU SEE?

18 A. WHEN HE DID THAT, OFFICER GRAHAM PLACED MR. TODD
19 ON THE GROUND. I WENT OVER, HANDCUFFED THE DRIVER FOR
20 SAFETY REASONS, AND ONCE WE CALLED FOR ADDITIONAL
21 BACKUP, WE LOOKED ON THE GROUND, AND IN A CLEAR PLASTIC
22 BAG WAS AN OFF-WHITE ROCK-LIKE SUBSTANCE.

23 Q. DID YOU COLLECT THAT, THAT BAGGIE, THAT
24 SUBSTANCE?

25 A. OFFICER GRAHAM DID.

1 Q. OKAY. DID YOU TEST THAT ITEM, DID YOU FIELD-TEST
2 THAT ITEM TO DETERMINE WHETHER IT WAS CRACK COCAINE?

3 A. OFFICER GRAHAM DID, AND...

4 MS. SALISBURY: HOLD ON JUST ONE MOMENT.

5 (STATE'S EXHIBIT NO. 3, CRACK COCAINE, WAS
6 MARKED FOR IDENTIFICATION.)

7 BY MS. SALISBURY:

8 Q. DETECTIVE, I'M SHOWING YOU STATE'S EXHIBIT THREE.
9 IF YOU COULD OPEN UP THAT ENVELOPE WITHOUT SHOWING THAT
10 ITEM TO THE JURY, DO YOU RECOGNIZE WHAT IS INSIDE THAT
11 ENVELOPE?

12 A. YES, I DO.

13 Q. DOES THAT ITEM APPEAR TO BE THE ITEM THAT, THAT
14 YOU AND OFFICER GRAHAM COLLECTED FROM THE GROUND?

15 A. IT IS.

16 Q. ALL RIGHT. WHAT DID YOU DO WITH THAT ITEM? OR
17 AFTER IT WAS COLLECTED, WHAT HAPPENED TO THAT ITEM?

18 A. AFTER IT WAS COLLECTED, THIS ITEM WAS TAKEN, WAS
19 FIELD-TESTED BY OFFICER GRAHAM. IT WAS THEN, HE THEN
20 SEALED IT IN A BAG AND PLACED IT IN THE PROPERTY AND
21 EVIDENCE AT THE FOUNTAIN INN LAW ENFORCEMENT CENTER.

22 Q. WHAT HAPPENED AFTER THE COLLECTION? WHAT
23 HAPPENED WITH REGARD TO THE DEFENDANT? WHAT DID YOU,
24 WHAT DID YOU AND OFFICER GRAHAM DO?

25 A. I ASKED MR. TODD IF HE WAS WILLING TO MAKE A

1 STATEMENT AT THIS TIME; HE STATED THAT HE WAS.

2 Q. NOW, AT WHAT POINT -- DID YOU TRANSPORT THE
3 DEFENDANT TO THE POLICE DEPARTMENT?

4 A. NO, I DID NOT.

5 Q. SO BEFORE THE DEFENDANT WAS TRANSPORTED, YOU
6 ASKED HIM WHETHER HE WOULD BE WILLING TO MAKE A
7 STATEMENT?

8 A. NO, THAT WAS ONCE WE GOT BACK TO THE LAW
9 ENFORCEMENT CENTER.

10 Q. OKAY. WELL, WHO TRANSPORTED THE DEFENDANT TO THE
11 POLICE DEPARTMENT?

12 A. I BELIEVE IT WAS SERGEANT STEEL (PHONETIC) THAT
13 NIGHT.

14 Q. NOW, WHY, WHY WOULD SERGEANT STEEL HAVE DONE THAT
15 INSTEAD OF ---

16 A. WE WERE IN AN UNMARKED CAR AND WE DIDN'T HAVE A
17 CAGE IN THE BACK.

18 Q. OKAY. OKAY. SO DID YOU AND OFFICER GRAHAM
19 FOLLOW, SO TO SPEAK, SERGEANT STEEL TO THE POLICE
20 DEPARTMENT?

21 A. YES, WE DID.

22 Q. WHAT HAPPENED AFTER YOU GOT THERE?

23 A. MR. TODD WAS PLACED INTO A HOLDING CELL AT THAT
24 TIME.

25 Q. AND AT WHAT POINT DID THE DEFENDANT INDICATE TO

1 YOU THAT HE WANTED TO SPEAK WITH YOU AND TO WRITE A
2 STATEMENT?

3 A. WHEN I ASKED HIM.... I ASKED HIM IF HE WANTED TO
4 SPEAK WITH ME AND PROVIDE A WRITTEN STATEMENT. AT THAT
5 POINT HE STATED THAT HE DID.

6 Q. NOW, DETECTIVE, ARE YOU FAMILIAR WITH MIRANDA
7 WARNINGS WITH REGARD TO THE DEFENDANTS' CONSTITUTIONAL
8 RIGHTS?

9 A. I AM.

10 Q. HAVE YOU EVER HAD AN OCCASION TO ADVISE A
11 DEFENDANT OF THOSE RIGHTS DURING THE COURSE OF YOUR WORK
12 IN LAW ENFORCEMENT?

13 A. YES.

14 Q. HOW MANY TIMES?

15 A. I COULDN'T GIVE YOU AN EXACT NUMBER, BUT A LOT.

16 Q. ALL RIGHT. NOW, WHEN YOU ASKED THE DEFENDANT TO
17 PROVIDE A STATEMENT, WAS HE IN HANDCUFFS?

18 A. NO, HE WAS NOT.

19 Q. WAS ANYONE ELSE PRESENT WITH YOU AND THE
20 DEFENDANT WHILE YOU TWO WERE HAVING THIS CONVERSATION?

21 A. NO. IT WAS JUST ME AND HIM.

22 Q. NOW, BEFORE SPEAKING WITH THE DEFENDANT, DID YOU
23 READ HIM HIS MIRANDA RIGHTS?

24 A. I DID.

25 Q. DID YOU READ THOSE RIGHTS FROM A FORM OR DID YOU

1 RECITE THEM FROM MEMORY?

2 A. I READ THEM FROM A FORM.

3 Q. WAS THE DEFENDANT GIVEN A COPY OF THAT FORM?

4 A. HE WAS.

5 Q. DID THE DEFENDANT HIMSELF READ THAT FORM?

6 A. YES, HE DID.

7 MS. SALISBURY: CAN YOU MARK THIS AS STATE'S
8 EXHIBIT ONE AND THIS AS STATE'S EXHIBIT TWO?

9 (STATE'S EX. NO. 1, WAIVER OF RIGHTS FORM,
10 COURT'S EX. NO 1, WAS MARKED FOR
11 IDENTIFICATION.)

12 (STATE'S EX. NO. 2, DEFENDANT'S WRITTEN
13 STATEMENT, COURT'S EXHIBIT NO. 2, WAS MARKED
14 FOR IDENTIFICATION.)

15 BY MS. SALISBURY:

16 Q. I SHOW YOU STATE'S EXHIBIT ONE. DO YOU RECOGNIZE
17 THAT FORM?

18 A. YES, I DO.

19 Q. IS YOUR SIGNATURE ON THAT FORM?

20 A. IT IS.

21 Q. WHAT IS THAT FORM?

22 A. THIS IS THE FOUNTAIN INN POLICE DEPARTMENT RIGHTS
23 FORM AND WAIVER OF RIGHTS.

24 MS. SALISBURY: YOUR HONOR, AT THIS POINT
25 THE STATE OFFERS EXHIBIT ONE INTO EVIDENCE.

1 MR. CHAMBERS: NO OBJECTION, YOUR HONOR.

2 THE COURT: WITHOUT OBJECTION, STATE'S
3 EXHIBIT NUMBER ONE IS ADMITTED.

4 (STATE'S EXHIBIT # 1 WAS RECEIVED IN
5 EVIDENCE.)

6 MS. SALISBURY: THANK YOU, JUDGE.

7 BY MS. SALISBURY:

8 Q. BEFORE THE DEFENDANT GAVE A STATEMENT, IS THAT
9 FORM WHAT YOU READ THE DEFENDANT?

10 A. YES, IT IS.

11 Q. WOULD YOU PLEASE READ FOR THE JURY WHAT YOU READ
12 TO THE DEFENDANT?

13 A. YES, MA'AM. IT STATES THAT (READING):

14 BEFORE WE ASK YOU ANY QUESTIONS,
15 YOU MUST UNDERSTAND YOUR RIGHTS.

16 YOU HAVE THE RIGHT TO REMAIN
17 SILENT. ANYTHING YOU SAY CAN BE USED
18 AGAINST YOU IN COURT.

19 YOU HAVE THE RIGHT TO TALK TO A
20 LAWYER FOR ADVICE BEFORE WE ASK YOU ANY
21 QUESTIONS, AND TO HAVE A LAWYER WITH YOU
22 DURING QUESTIONING.

23 IF YOU DO NOT HAVE THE MONEY TO
24 PAY A LAWYER'S FEE, THE COURT WILL
25 APPOINT ONE TO REPRESENT YOU, ONE WITHOUT

1 COST IF YOU WISH.

2 IF YOU DECIDE TO ANSWER QUESTIONS
3 NOW, WITHOUT A LAWYER PRESENT, YOU STILL
4 HAVE THE RIGHT TO STOP ANSWERING AT ANY
5 TIME. YOU ALSO HAVE THE RIGHT TO STOP
6 ANSWERING AT ANY TIME UNTIL YOU TALK WITH
7 A LAWYER.

8 Q. DID THE DEFENDANT INDICATE TO YOU AFTER YOU READ
9 THOSE RIGHTS TO HIM THAT HE UNDERSTOOD THOSE MIRANDA
10 RIGHTS?

11 A. YES, HE DID.

12 Q. HOW DID HE DO THAT?

13 A. I ASKED HIM IF HE UNDERSTOOD HIS RIGHTS. I ALSO
14 ASKED HIM IF THERE WAS ANYTHING THAT HE DID NOT
15 UNDERSTAND, IF HE WANTED ME TO GO BACK OVER THEM OR IF
16 HE NEEDED ME TO EXPLAIN ANYTHING FURTHER ABOUT HIS
17 RIGHTS TO HIM. AT THAT TIME HE STATED THAT HE
18 UNDERSTOOD HIS RIGHTS.

19 Q. NOW, IT APPEARS THAT THERE ARE SOME MARKS OUT
20 BESIDE EACH OF THOSE RIGHTS THAT YOU JUST READ?

21 A. YES, MA'AM.

22 Q. WHAT DO THOSE MARKS MEAN?

23 A. THOSE ARE HIS INITIALS. I ASKED HIM THAT IF HE
24 UNDERSTOOD HIS RIGHTS, TO INITIAL BESIDE EACH ONE AFTER
25 WE WERE DONE.

1 Q. DID HE MAKE THOSE MARKS AS YOU READ EACH OF THOSE
2 SEQUENTIALLY?

3 A. NO. HE READ -- HE -- I DON'T RECALL AT THIS
4 TIME.

5 Q. OKAY. BUT HE, BUT HE PUT HIS INITIALS OUT TO ---

6 A. YES, MA'AM.

7 Q. --- EACH ONE OF THOSE INDIVIDUAL RIGHTS?

8 A. UH-HUH.

9 Q. OKAY. DID THE DEFENDANT INDICATE TO YOU THAT HE
10 WISHED TO WAIVE THOSE RIGHTS AND PROVIDE A STATEMENT?

11 A. YES, I ASKED HIM VERBALLY IF HE WISHED TO WAIVE
12 HIS RIGHTS AND MAKE A STATEMENT. HE DID SAY, HE DID
13 STATE THAT HE DID WISH TO WAIVE HIS RIGHTS.

14 AT THAT POINT I READ HIM HIS WAIVER. AND IT
15 STATES THAT (READING):

16 I HAVE READ THIS STATEMENT OF MY
17 RIGHTS, AND I UNDERSTAND WHAT MY RIGHTS
18 ARE. I AM WILLING TO MAKE A STATEMENT
19 AND ANSWER QUESTIONS. I DO NOT WANT A
20 LAWYER AT THIS TIME. I UNDERSTAND AND
21 KNOW WHAT I AM DOING. NO PROMISES OR
22 THREATS HAVE BEEN MADE TO ME AND NO
23 PRESSURE OR COERCION OF ANY KIND HAS BEEN
24 USED AGAINST ME.

25 Q. NOW, YOU JUST TESTIFIED THAT THE DEFENDANT

1 INDICATED TO YOU ORALLY THAT HE WISHED TO WAIVE HIS
2 RIGHTS. DID HE ALSO INDICATE TO YOU THAT HE WISHED TO
3 WAIVE HIS RIGHTS IN WRITING?

4 A. YES. BY INITIALING BESIDE THE WAIVER OF RIGHTS
5 STATEMENT ON THIS FORM AND THEN BY SIGNING IT.

6 Q. NOW AT THIS POINT I WOULD LIKE TO SHOW YOU
7 STATE'S EXHIBIT TWO. DO YOU RECOGNIZE THAT FORM?

8 A. YES, THIS IS OUR DEPARTMENTAL STATEMENT FORM.

9 Q. DOES THAT FORM ALSO CONTAIN A WAIVER?

10 A. YES, MA'AM.

11 Q. DID YOU READ THAT PARTICULAR WAIVER TO THE
12 DEFENDANT?

13 A. I DID.

14 Q. DID THE DEFENDANT INDICATE TO YOU THAT HE
15 UNDERSTOOD THAT WAIVER?

16 A. HE DID.

17 Q. WOULD YOU PLEASE READ THAT WAIVER FOR THE JURY?

18 A. YES, MA'AM (READING):

19 I, CALVIN TODD, DO HEREBY GIVE
20 FREELY AND VOLUNTARILY THIS STATEMENT TO
21 TROY MCBRIDE AND R.T. GRAHAM, WHO
22 IDENTIFIED THEMSELVES TO BE POLICEMEN OF
23 THE CITY OF FOUNTAIN INN, FOUNTAIN INN,
24 SOUTH CAROLINA. I HAVE BEEN ADVISED I DO
25 NOT HAVE TO MAKE THIS OR ANY OTHER

1 STATEMENT AND WHAT I SAY CAN BE USED
2 AGAINST ME IN A COURT OF LAW. I HAVE
3 BEEN ADVISED THAT I HAVE THE RIGHT TO
4 COUNSEL WITH AN ATTORNEY OF MY CHOICE,
5 THAT IF I AM FINANCIALLY UNABLE TO OBTAIN
6 AN ATTORNEY THE COURT WILL APPOINT AN
7 ATTORNEY TO REPRESENT ME. I HAVE NOT
8 BEEN THREATENED OR PROMISED ANY REWARD TO
9 MAKE THIS STATEMENT.

10 Q. NOW, AFTER READING THAT PARTICULAR ADVISEMENT TO
11 THE DEFENDANT, DID HE INDICATE AGAIN TO YOU THAT HE
12 UNDERSTOOD THOSE RIGHTS?

13 A. HE DID...

14 Q. DID IT APPEAR TO YOU AT THAT POINT THAT THE
15 DEFENDANT WISHED TO WAIVE HIS RIGHTS AND PROVIDE A
16 STATEMENT?

17 A. YES, HE DID.

18 Q. NOW, DETECTIVE, HAVE YOU EVER DEALT WITH
19 INDIVIDUALS IN THE COURSE OF YOUR DUTIES WHO WERE
20 INTOXICATED BY EITHER DRUGS OR ALCOHOL?

21 A. YES, MA'AM.

22 Q. DID THE DEFENDANT APPEAR TO YOU ON THAT DATE TO
23 BE INTOXICATED BY EITHER?

24 A. NO, HE DID NOT.

25 Q. DID THE DEFENDANT RESPOND CLEARLY TO ALL OF YOUR

1 QUESTIONS?

2 A. YES, HE DID.

3 Q. DID THE DEFENDANT APPEAR TO UNDERSTAND,
4 UNDERSTAND YOUR QUESTIONS REGARDING HIS RIGHTS?

5 A. YES, HE DID.

6 Q. WAS THE DEFENDANT'S SPEECH CLEAR AND COHERENT?

7 A. YES, IT WAS.

8 Q. DID YOU VERIFY THAT THE DEFENDANT COULD READ AND
9 WRITE?

10 A. I DID.

11 Q. DID YOU ASK THE DEFENDANT HIS LEVEL OF EDUCATION?

12 A. I DID.

13 Q. WAS THE DEFENDANT EVER THREATENED, COERCED OR
14 PRESSURED OR PROMISED ANY HOPE OF REWARD IN EXCHANGE FOR
15 PROVIDING THAT STATEMENT?

16 A. NO, MA'AM, HE WAS NOT.

17 Q. WAS THE DEFENDANT EVER DEPRIVED OF FOOD OR WATER?

18 A. NO, MA'AM.

19 Q. WAS THE DEFENDANT EVER DEPRIVED OF BEING ABLE TO
20 GO TO THE RESTROOM?

21 A. NO, MA'AM.

22 Q. DID THE DEFENDANT FREELY AGREE TO SPEAK TO YOU
23 WITHOUT AN ATTORNEY PRESENT?

24 A. YES, HE DID.

25 Q. DID IT EVER APPEAR TO YOU DURING THE COURSE OF

1 YOUR INTERVIEW WITH THE DEFENDANT THAT HE WISHED TO
2 INVOKE HIS RIGHT, ANY OF HIS RIGHTS, AND NOT SPEAK WITH
3 YOU OR PROVIDE A STATEMENT?

4 A. AT THE TIME, NO.

5 Q. DID THE DEFENDANT, IN FACT, GIVE A STATEMENT?

6 A. HE DID.

7 Q. WAS IT A WRITTEN STATEMENT?

8 A. YES, IT WAS.

9 Q. WAS IT IN THE DEFENDANT'S HANDWRITING?

10 A. YES, IT WAS.

11 Q. NOW, IS YOUR SIGNATURE ON STATE'S EXHIBIT TWO?

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

13 Q. WHAT IS IT?

14 A. MY SIGNATURE TROY R. MCBRIDE.

15 Q. WHAT IS STATE'S EXHIBIT TWO?

16 A. EXCUSE ME?

17 Q. WHAT IS STATE'S EXHIBIT TWO?

18 A. IT'S A STATEMENT FORM THAT MR. TODD SIGNED.

19 MS. SALISBURY: YOUR HONOR, AT THIS POINT WE
20 MOVE STATE'S EXHIBIT TWO INTO EVIDENCE.

21 THE COURT: ANY OBJECTION?

22 MR. CHAMBERS: NO OBJECTION, YOUR HONOR.

23 THE COURT: WITHOUT OBJECTION.

24 (STATE'S EXHIBIT # 2 WAS RECEIVED IN
25 EVIDENCE.)

1 BY MS. SALISBURY:

2 Q. NOW, DETECTIVE ---

3 THE COURT: JUST A MOMENT.

4 LADIES AND GENTLEMEN OF THE JURY, A
5 STATEMENT HAS BEEN ADMITTED INTO THE RECORD IN THIS
6 CASE, ALLEGEDLY BEING MADE BY THE DEFENDANT. BEFORE YOU
7 MAY CONSIDER THE STATEMENT AS EVIDENCE FOR ANY PURPOSE,
8 YOU MUST DETERMINE FOUR QUESTIONS:

9 DID THE DEFENDANT MAKE THE STATEMENT?

10 SECOND, WAS THE DEFENDANT WARNED OF HIS
11 CONSTITUTIONAL RIGHTS?

12 AND THIRD, DID THE DEFENDANT KNOWINGLY AND
13 INTELLIGENTLY WAIVE HIS CONSTITUTIONAL RIGHTS?

14 AND FOURTH, WAS THE STATEMENT GIVEN
15 VOLUNTARILY?

16 ABSENT ANY OF THESE REQUIREMENTS ABOUT WHICH
17 I HAVE INSTRUCTED YOU, THE ALLEGED STATEMENT MUST BE
18 DISREGARDED COMPLETELY, AND IN THAT EVENT YOU WILL
19 ACCORD NO EVIDENTIARY WEIGHT WHATSOEVER TO IT OR TO ANY
20 PART OF IT.

21 ON THE OTHER HAND, IF YOU FIND BEYOND A
22 REASONABLE DOUBT THAT THE DEFENDANT MADE THE STATEMENT,
23 THAT THE DEFENDANT WAS GIVEN THE REQUIRED CONSTITUTIONAL
24 WARNINGS BEFORE INTERROGATION AND THAT THE DEFENDANT
25 KNOWINGLY AND INTELLIGENTLY WAIVED HIS CONSTITUTIONAL

1 RIGHTS AND THEREAFTER GAVE A VOLUNTARY STATEMENT, THE
2 STATEMENT MAY BE CONSIDERED BY YOU TOGETHER WITH ALL THE
3 OTHER EVIDENCE IN THE CASE AND GIVEN SUCH WEIGHT AND
4 SUCH VALUE AND SUCH EFFECT TO WHICH YOU CONCLUDE THAT IT
5 IS ENTITLED.

6 YOU MAY PROCEED.

7 MS. SALISBURY: THANK YOU, JUDGE.

8 BY MS. SALISBURY:

9 Q. DETECTIVE, HOW LONG DID YOUR INTERVIEW WITH THE
10 DEFENDANT LAST?

11 A. I WOULD SAY ABOUT 20 MINUTES.

12 Q. NOW, DID THE DEFENDANT -- DID IT APPEAR TO YOU
13 THAT THE DEFENDANT UNDERSTOOD WHAT WAS GOING ON DURING
14 THE ENTIRE COURSE OF THAT INTERVIEW?

15 A. YES, IT DID.

16 Q. TO THE BEST OF YOUR KNOWLEDGE WAS THE DEFENDANT'S
17 STATEMENT FREELY AND VOLUNTARILY GIVEN?

18 A. YES, IT WAS.

19 Q. DID THE DEFENDANT SIGN THAT STATEMENT?

20 A. HE DID.

21 Q. PLEASE TELL THE JURY WHAT THE DEFENDANT WROTE IN
22 HIS STATEMENT.

23 A. HE WROTE THAT (READING): I, CALVIN TODD, HAD
24 POSSESSION OF CRACK COCAINE, LEFT POCKET. SINCERELY,
25 CALVIN TODD.

1 AT THAT POINT HE SAID THAT HE WASN'T GONNA,
2 WASN'T WILLING TO WRITE ANY MORE.

3 Q. OKAY. NOW, DETECTIVE, IS THE PERSON THAT YOU
4 ARRESTED ON JULY 28, 2007, FOR POSSESSION WITH INTENT TO
5 DISTRIBUTE CRACK COCAINE IN THE COURTROOM TODAY?

6 A. YES, MA'AM, HE IS.

7 Q. WHERE IS HE SEATED?

8 A. HE'S SITTING OVER THERE BESIDE HIS ATTORNEY IN
9 THE PURPLE SHIRT.

10 MS. SALISBURY: YOUR HONOR, I WOULD ASK THAT
11 THE RECORD REFLECT THAT THE DETECTIVE HAS IDENTIFIED THE
12 DEFENDANT.

13 THE COURT: THE RECORD WILL SO REFLECT.
14 BY MS. SALISBURY:

15 Q. NOW, DETECTIVE, WHICH CRIMES -- WITH WHICH CRIMES
16 WAS THE DEFENDANT CHARGED ON JULY 28TH?

17 A. POSSESSION WITH THE INTENT TO DISTRIBUTE, I
18 BELIEVE OPEN CONTAINER, AND DRUG PARAPHERNALIA.

19 MS. SALISBURY: ALL RIGHT, DETECTIVE, I
20 DON'T HAVE ANY OTHER QUESTIONS AT THIS TIME. WOULD YOU
21 PLEASE ANSWER ANY QUESTIONS THAT MR. CHAMBERS MAY HAVE.

22 THE WITNESS: YES, MA'AM.

23 CROSS-EXAMINATION BY MR. CHAMBERS:

24 Q. OKAY. THE REASON FOR THE STOP WAS JUST THAT LOUD
25 NOISE COMING FROM THE CAR; IS THAT CORRECT?

1 A. YES, SIR.

2 Q. AND THE DRIVER OF THE CAR WAS NICHOLAS JOHNSON;
3 IS THAT RIGHT?

4 A. YES, SIR.

5 Q. AND I BELIEVE THAT OFFICER GRAHAM TALKED TO HIM;
6 IS THAT RIGHT?

7 A. YES, SIR, HE DID.

8 Q. YOU, YOU WENT AROUND TO THE PASSENGER'S SIDE AND
9 YOU SPENT MOST IF NOT ALL YOUR TIME WITH CALVIN; IS THAT
10 RIGHT?

11 A. YES, SIR, I DID.

12 Q. OKAY. AND Y'ALL, IN FACT, CHARGED MR. JOHNSON
13 WITH THE NOISE VIOLATION AND LET HIM DRIVE ON; IS THAT
14 CORRECT?

15 A. I COULDN'T TELL YOU. I DON'T HAVE THE REPORT
16 RIGHT IN FRONT OF ME.

17 Q. DO YOU WANT TO LOOK AT THE REPORT?

18 A. IF YOU DON'T MIND, PLEASE.

19 MR. CHAMBERS: YEAH, THAT WOULD BE GREAT.
20 COULD HE HAVE HIS REPORT?

21 MS. SALISBURY: (HANDING.)

22 BY MR. CHAMBERS:

23 Q. TAKE ALL THE TIME YOU NEED, LOOK AT YOUR REPORT,
24 AND THEN LET ME KNOW IF, IN FACT, YOU LET MR. JOHNSON
25 GO.

1 A. THANK YOU. YES, MR. JOHNSON WAS GIVEN A UNIFORM
2 TRAFFIC TICKET FOR A NOISE ORDINANCE VIOLATION.

3 Q. SO HE WAS ABLE TO DRIVE AWAY, IS THAT RIGHT?

4 A. YES, SIR, HE WAS.

5 Q. Y'ALL DIDN'T FIND ANY DRUGS OR DRUG PARAPHERNALIA
6 OR ANYTHING LIKE THAT ON MR. JOHNSON?

7 A. NO, SIR, WE DID NOT.

8 Q. YOU DIDN'T FIND ANY DRUGS OR DRUG PARAPHERNALIA
9 OR ANYTHING LIKE THAT IN MR. JOHNSON'S CAR?

10 A. NO, SIR.

11 Q. THE ONLY DRUGS OR DRUG PARAPHERNALIA THAT YOU
12 FOUND WERE ON CALVIN ---

13 A. YES, SIR.

14 Q. --- IS THAT RIGHT?

15 A. YES, SIR, IT IS.

16 Q. AND I BELIEVE YOU SAID THAT ONCE YOU WENT AROUND
17 AND STARTED TALKING TO CALVIN, THAT, THAT HE PRETTY MUCH
18 COOPERATED WITH EVERYTHING YOU ASKED HIM TO DO, IS THAT
19 FAIR TO SAY?

20 A. YES, SIR.

21 Q. THAT YOU SMELLED AN ODOR OF ALCOHOL IN THE CAR
22 AND THEN YOU SAW THAT HE HAD AN OPEN CONTAINER I THINK
23 IN HIS LAP?

24 A. YES, SIR, HE HAD THE OPEN CONTAINER IN HIS LAP.

25 Q. AND YOU ASKED HIM TO REACH, TO GIVE THAT TO YOU

1 AND HE DID THAT?

2 A. YES, SIR.

3 Q. AND THEN I BELIEVE HE GOT OUT OF THE CAR AND JUST
4 IMMEDIATELY SORT OF WENT UP AND PUT HIS HANDS ON THE CAR
5 SO THAT YOU COULD, I GUESS, DO WHATEVER IT WAS YOU WERE
6 GONNA DO ONCE YOU GOT HIM OUT OF THE CAR; IS THAT RIGHT?

7 A. YES, SIR.

8 Q. AND THAT WAS WITHOUT EVEN A REQUEST FROM YOU HE
9 DID THAT; IS THAT RIGHT?

10 A. YES, SIR.

11 Q. AND THEN YOU ASKED HIM IF YOU COULD SEARCH HIM,
12 AND HE READILY SAID, YEAH, YOU CAN SEARCH ME?

13 A. YES, SIR, HE DID.

14 Q. AND AT THAT POINT HE TOLD YOU THAT HE HAD A PIPE
15 IN HIS POCKET?

16 A. YES, SIR.

17 Q. AND DID HE INDICATE TO YOU WHAT POCKET THE PIPE
18 WAS IN?

19 A. IF YOU WILL GIVE ME A MINUTE, PLEASE?

20 Q. SURE.

21 A. (WITNESS READS REPORT.) I'M UNABLE TO TELL YOU
22 WHICH POCKET IT WAS PULLED OUT OF.

23 Q. OKAY. BUT YOU KNOW THAT YOU TOOK A PIPE OUT OF
24 HIS POCKET?

25 A. YES, SIR.

1 Q. WAS THERE ALSO A METAL, WHAT WAS DESCRIBED AS A
2 METAL ROD, JUST A PIECE OF LIKE A COAT HANGER?

3 A. YES. IT WAS A METAL PIPE WITH RESIDUE THAT WAS
4 SEIZED.

5 Q. WHAT KIND OF RESIDUE, WHAT KIND OF RESIDUE ARE
6 YOU TALKING ABOUT?

7 A. OFF-WHITE RESIDUE.

8 Q. AND WHAT DID YOU BELIEVE THAT RESIDUE TO BE?

9 A. CRACK.

10 Q. AND WAS THAT BASED ON YOUR EXPERIENCE?

11 A. YES, SIR.

12 Q. YOU HAVE SEEN THAT BEFORE?

13 A. YES, SIR, I HAVE.

14 Q. SO YOU BELIEVE THAT THERE WAS CRACK RESIDUE IN
15 THE PIPE THAT WAS IN HIS POCKET?

16 A. YES, SIR.

17 Q. AND BASED ON YOUR EXPERIENCE, THAT GAVE YOU SOME
18 INDICATION THAT CALVIN PROBABLY SMOKED CRACK OUT OF THAT
19 PIPE?

20 A. YES, SIR, IT WOULD.

21 Q. OKAY. ANY IDEA WHAT THAT LITTLE METAL ROD WAS
22 FOR?

23 A. (NO RESPONSE.)

24 Q. DO YOU KNOW IF IT'S USED TO CLEAN THE PIPE?

25 A. I COULDN'T TELL YOU.

1 Q. OKAY. AND WAS IT -- AND THEN YOU SAID THAT I
2 BELIEVE AT THAT POINT YOU HANDCUFFED HIM BEHIND HIS
3 BACK?

4 A. YES, SIR.

5 Q. AND WHEN YOU PUT HANDCUFFS ON SOMEBODY, DO YOU DO
6 IT LOOSELY, DO YOU DO IT SECURELY, HOW DO YOU NORMALLY
7 DO THAT?

8 A. ABLE ENOUGH TO WHERE I CAN GET MY THUMB IN
9 BETWEEN THEIR HAND AND THE HANDCUFF.

10 Q. OKAY. BUT TIGHT ENOUGH THAT THEY CAN'T SLIP
11 THEIR HANDS OUT OF IT, WOULD THAT BE FAIR TO SAY?

12 A. YES, SIR.

13 Q. DO YOU HAVE HANDCUFFS WITH YOU?

14 A. YES, SIR, I DO.

15 Q. COULD I SEE THE HANDCUFFS YOU HAVE?

16 A. (HANDING.)

17 Q. WOULD THIS BE THE SAME HANDCUFFS THAT YOU USED OR
18 HANDCUFFS LIKE THAT?

19 A. THEY ARE LIKE THE HANDCUFFS THAT I USED THAT
20 NIGHT.

21 Q. OKAY. THEY WOULDN'T BE, THE ONES YOU USED
22 WEREN'T ANY LONGER THAN THAT?

23 A. NO. THEY WERE THE SAME LENGTH.

24 Q. SO YOU USED THOSE AND YOU PUT THEM BEHIND
25 SOMEBODY'S BACK LIKE THAT (DEMONSTRATING); IS THAT

1 RIGHT?

2 A. RIGHT.

3 Q. LIKE THAT (DEMONSTRATING)? I MEAN, OBVIOUSLY YOU
4 WOULD HAVE IT AROUND THEIR WRIST?

5 A. YES, SIR.

6 Q. BUT IT'S LIKE THAT (DEMONSTRATING)?

7 A. HIS HANDS WERE CLOSE TOGETHER.

8 Q. OKAY (DEMONSTRATING).

9 A. NO, NO, NO. HIS HANDS WERE LIKE THIS
10 (DEMONSTRATING).

11 Q. REALLY? IT WAS THAT CLOSE TOGETHER
12 (DEMONSTRATING)?

13 A. WELL, THE WAY YOU HAD YOUR HANDS, YOU HAD THEM
14 OUT LIKE THIS (DEMONSTRATING).

15 Q. I GOT YOU. OKAY. THANK YOU, BY THE WAY.

16 A. YOU'RE WELCOME, SIR.

17 Q. AND SOMETIME AFTER THAT, Y'ALL SEIZED THIS BAG
18 THAT YOU IDENTIFIED WITHOUT SHOWING US THAT HAD THIS
19 OFF-WHITE ROCK-LIKE SUBSTANCE IN IT?

20 A. YES, SIR.

21 Q. YOU DIDN'T ACTUALLY SEE IT ON THE GROUND OR
22 ANYTHING LIKE THAT?

23 A. I SAW IT ON THE GROUND AFTER OFFICER GRAHAM ---

24 Q. SO YOU LATER SAW IT ON THE GROUND, BUT YOU DIDN'T
25 SEE IT GET THERE ON THE GROUND?

1 A. NO, SIR.

2 Q. ALL RIGHT. BUT LATER ON WHEN YOU GOT DOWN THERE
3 TO THE LAW ENFORCEMENT CENTER AND YOU TOLD CALVIN THAT,
4 YOU ASKED HIM TO GIVE YOU THE STATEMENT, HE TOLD YOU
5 THAT IT WAS HIS, RIGHT?

6 A. YES, SIR.

7 Q. AND THAT IT WAS IN HIS LEFT FRONT POCKET?

8 A. YES, SIR.

9 Q. AND YOU TOLD CALVIN, I MEAN, OBVIOUSLY YOU NOT
10 ONLY TOLD HIM, BUT YOU HAD HIM INITIAL THIS FORM AND
11 SIGN IT, THAT, THAT HE DIDN'T HAVE TO TALK TO YOU?

12 A. YES, SIR.

13 Q. AND HE HAD THE RIGHT TO TALK TO A LAWYER BEFORE
14 HE TALKED TO YOU?

15 A. YES, SIR.

16 Q. AND EVEN ON THE, THE STATEMENT ITSELF, YOU WENT
17 ON AGAIN BASICALLY TO TELL HIM YOU DON'T HAVE TO TALK TO
18 ME?

19 A. YES, SIR.

20 Q. AND HE WAIVED HIS RIGHTS AND TALKED TO YOU?

21 A. YES, HE DID.

22 Q. SO HE CONTINUED TO COOPERATE FULLY WITH YOU AT
23 THIS POINT?

24 A. YES, SIR, HE DID.

25 Q. AND HE WROTE OUT IN HIS OWN HANDWRITING, I,

1 CALVIN TODD, HAD POSSESSION OF CRACK COCAINE IN LEFT
2 POCKET, AND THEN HE EVEN SIGNED IT FOR YOU: SINCERELY,
3 CALVIN TODD?

4 A. YES, SIR, HE DID.

5 Q. AND THEN HE SIGNED IT AGAIN DOWN HERE WHERE YOU
6 PUT AN X, AND HE SIGNED THAT CALVIN TODD?

7 A. YES, SIR.

8 Q. AND THEN HE SIGNED AGAIN WHERE IT SAID, I HAVE
9 RECEIVED A COPY OF THIS STATEMENT, AND AGAIN HE SIGNED
10 CALVIN TODD?

11 A. YES, SIR.

12 Q. OKAY. AND WHEN YOU SEIZE PROPERTY FROM SAY A
13 SUSPECT LIKE CALVIN, YOU HAVE TO INVENTORY WHAT YOU GOT,
14 RIGHT?

15 A. YES, SIR, WE DO.

16 Q. SO IF YOU GOT, IF YOU TOOK ANYTHING FROM HIM, IT
17 WOULD BE ON THIS INVENTORY?

18 A. YES, SIR.

19 Q. AND IF IT'S NOT ON THE INVENTORY, YOU DIDN'T GET
20 IT?

21 A. YES, SIR.

22 Q. SO ON THAT PARTICULAR EVENING YOU FOUND, IN
23 ADDITION TO THE OFF-WHITE ROCK-LIKE SUBSTANCE YOU FOUND
24 A METAL ROD AND THEN A METAL PIPE WITH RESIDUE. THAT'S
25 WHAT YOU TOOK FROM HIM?

1 A. YES, SIR.

2 Q. YOU DID NOT, DID YOU, FIND ANY MONEY IN THE
3 POSSESSION OF CALVIN TODD?

4 A. NO, SIR.

5 Q. AND YOU DID NOT FIND ANY SCALES IN HIS
6 POSSESSION?

7 A. NO, SIR.

8 Q. AND HE WAS JUST A PASSENGER IN A CAR DRINKING A
9 BEER THAT YOU STOPPED FOR HAVING LOUD MUSIC?

10 A. AT THE TIME, YES, SIR.

11 Q. YOU DIDN'T HAVE ANY KIND OF COMPLAINTS OR
12 ANYTHING TO INDICATE THAT HE WAS DISTRIBUTING DRUGS IN
13 THE AREA OR DOING ANYTHING LIKE THAT, DID YOU?

14 A. NO, SIR.

15 Q. ALL RIGHT. AND YOU ALREADY INDICATED WHEN THE
16 SOLICITOR WAS TALKING TO YOU THAT NEITHER ONE OF THESE
17 GENTLEMEN APPEARED TO BE UNDER THE INFLUENCE OF ANY
18 DRUGS OR ALCOHOL?

19 A. NO, SIR.

20 Q. BECAUSE HE FULLY UNDERSTOOD EVERYTHING THAT YOU
21 TALKED TO HIM ABOUT, SO HE WAS NOT UNDER THE INFLUENCE
22 OF ANY DRUGS OR ALCOHOL AT THE TIME?

23 A. YES, SIR.

24 Q. AND YOU DIDN'T SMELL ANYTHING BUT ALCOHOL IN THE
25 CAR?

1 A. YES, SIR.

2 Q. DO YOU KNOW WHAT CRACK, THE SMELL OF CRACK SMELLS
3 LIKE WHEN SOMEBODY SMOKES IT, ARE YOU FAMILIAR WITH IT?

4 A. I COULDN'T EXACTLY DESCRIBE IT TO YOU, BUT CRACK
5 WITHIN ITSELF DOESN'T HAVE A SMELL.

6 Q. OKAY. AND CERTAINLY YOU DIDN'T THINK THAT
7 MR. JOHNSON WAS UNDER THE INFLUENCE AT THAT TIME, OR YOU
8 WOULD NOT HAVE LET HIM DRIVE HIS CAR HOME, IS THAT FAIR
9 TO SAY?

10 A. YES, SIR, THAT'S CORRECT.

11 Q. SO YOU HAD NO INDICATION THAT HE HAD USED CRACK
12 COCAINE WITH CALVIN TODD ON THAT EVENING, DO YOU?

13 A. YES, SIR.

14 MR. CHAMBERS: THANK YOU VERY MUCH.

15 THE WITNESS: YOU'RE WELCOME.

16 THE COURT: CROSS-EXAMINE?

17 MS. SALISBURY: NO REDIRECT, YOUR HONOR.

18 THE COURT: ALL RIGHT. YOU MAY STEP DOWN.

19 THE WITNESS: THANK YOU, YOUR HONOR.

20 (WHEREUPON, THE WITNESS WAS EXCUSED.)

21 THE COURT: CALL YOUR NEXT WITNESS.

22 MS. SALISBURY: YOUR HONOR, THE STATE CALLS
23 OFFICER TRAVIS GRAHAM.

24 (WHEREUPON, THE WITNESS WAS SWORN BY THE
25 CLERK.)

1 **THE CLERK:** PLEASE STATE YOUR FULL NAME AND
2 SPELL YOUR LAST NAME FOR THE RECORD.

3 **THE WITNESS:** MY NAME IS ROY TRAVIS GRAHAM,
4 G-R-A-H-A-M.

5 WHEREUPON,

6 TRAVIS GRAHAM,
7 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS
8 FOLLOWS:

9 DIRECT EXAMINATION BY MS. SALISBURY:

10 Q. OFFICER GRAHAM, BY WHOM ARE YOU EMPLOYED?

11 A. BY THE FOUNTAIN INN POLICE DEPARTMENT.

12 Q. IN WHAT CAPACITY?

13 A. I'M THE TRAFFIC OFFICER RIGHT NOW.

14 Q. WERE YOU EMPLOYED IN THAT CAPACITY ON, DURING THE
15 EARLY MORNING HOURS OF JULY 28, 2007?

16 A. I WAS NOT. I WAS IN UNIFORM PATROL.

17 Q. AND HOW LONG HAD YOU BEEN IN THAT POSITION?

18 A. TOTAL I'VE BEEN DOING IT FOR, BEING A POLICE
19 OFFICER FOR OVER NINE YEARS, AND ABOUT EIGHT MONTHS OF
20 THAT I'VE BEEN A TRAFFIC OFFICER SO THE REST OF THAT WAS
21 IN UNIFORM PATROL.

22 Q. OKAY, GREAT. NOW, DURING THE EARLY HOURS OF JULY
23 28, 2007, WHAT WERE YOU DOING?

24 A. I WAS RIDING IN AN UNMARKED -- OR DRIVING IN AN
25 UNMARKED VEHICLE WITH OFFICER MCBRIDE, AND WE WERE IN

1 THE COUNTRY CHASE SUBDIVISION OR COMING OUT OF THE
2 COUNTRY CHASE SUBDIVISION BECAUSE WE GOT NUMEROUS
3 COMPLAINTS ABOUT DRUG ACTIVITY AND ILLEGAL ACTIVITY IN
4 THE AREA. THAT WAS THE REASON WE WERE IN THE UNMARKED
5 VEHICLE PATROLLING IT.

6 WE PULLED OUT OF THE SUBDIVISION AND ON TO
7 GARRETT STREET, AND WE, I HEARD A LOT OF VIBRATORY BASS
8 COMING FROM SOMEWHERE. SOON AFTER THAT AROUND THE
9 CORNER I SAW A VEHICLE APPROACHING US, AND THIS WAS
10 ABOUT 12:30 IN THE MORNING, EARLY MORNING, AND AS IT GOT
11 CLOSER WE HEARD THE MUSIC LOUDER. THE VEHICLE PASSED US
12 AND WE DETERMINED THAT'S EXACTLY WHERE IT WAS COMING
13 FROM, IT WAS THE ONLY VEHICLE ON THE ROADWAY AT THAT
14 TIME.

15 OFFICER MCBRIDE AND I TURNED AROUND AND WENT
16 AFTER THE VEHICLE TO CONDUCT A TRAFFIC STOP ON IT. THEY
17 PULLED INTO THE COUNTRY CHASE SUBDIVISION WHICH IS WHERE
18 WE JUST CAME FROM. IT'S A NEWER SUBDIVISION. THEY
19 HAVEN'T FINISHED IT YET, SO ALL THE LIGHTING IS NOT
20 AVAILABLE. THERE'S STILL, THE SEWERS ARE, THE SEWER
21 LINES ARE STILL UP IN THE ROAD, SO THEY'RE TWO OR THREE
22 INCHES HIGHER THAN THE ROAD BECAUSE THEY HAVEN'T
23 FINISHED PAVING THE ROAD YET, EITHER.

24 WE PULLED THE CAR OVER AND IDENTIFIED -- OR I
25 WENT UP AND SPOKE TO THE DRIVER, CO-DEFENDANT, AND

1 OFFICER MCBRIDE WENT TO THE PASSENGER AND SPOKE TO HIM.
2 I GOT THE DRIVER OUT OF THE VEHICLE BECAUSE I COULD
3 SMELL ALCOHOL COMING FROM INSIDE THE VEHICLE. I WANTED
4 TO MAKE SURE THAT HE WAS OKAY TO DRIVE. I GOT HIM OUT
5 AND WAS SPEAKING TO HIM AND I HAD HIM FACING MY VEHICLE
6 SO THAT I WOULD BE IN A POSITION IN BETWEEN OUR CARS TO
7 STILL BE ABLE TO SEE OFFICER MCBRIDE SPEAK TO THE
8 DEFENDANT HERE TODAY.

9 AS I WAS TALKING TO THE DRIVER OF THE VEHICLE I
10 COULD SEE THAT OFFICER MCBRIDE WAS REMOVING A CAN OF
11 ALCOHOL, AN OPEN CAN OF ALCOHOL AND PLACING IT ON TOP OF
12 THE CAR THAT THEY WERE DRIVING, AND THEN I ALSO SAW THE
13 DEFENDANT HERE TODAY GET OUT OF THE PASSENGER'S SIDE OF
14 THE CAR WITH OFFICER MCBRIDE, AND HE IMMEDIATELY TURNED
15 AROUND AND PLACED HIS HANDS ON TOP OF THE CAR.

16 OFFICER MCBRIDE HANDCUFFED THIS MR. TODD, AND I
17 WAS WATCHING HIM HANDCUFF HIM. AND THEN I SAW AS
18 OFFICER MCBRIDE WAS TRYING TO GET SOME, I THINK THERE
19 WAS A CRACK PIPE OUT OF HIS POCKET AND GET SOME MORE
20 EVIDENCE FROM ON TOP OF THE CAR, I WATCHED MR. TODD TAKE
21 HIS HANDS WHICH WERE HANDCUFFED FROM AROUND HIS BACK TO
22 HIS LEFT POCKET AND REMOVE SOMETHING OUT OF IT AND THREW
23 IT ON THE GROUND BESIDE HIM, STOMPED REAL HARD ON IT,
24 AND, THAT'S WHEN I IMMEDIATELY LEFT THE PERSON I WAS
25 SPEAKING TO AND WENT STRAIGHT OVER TO MR. TODD AND PUT

1 HIM ON THE GROUND, AND THAT'S WHEN WE DETERMINED THAT
2 THAT WAS A BAG OF OFF-WHITE ROCK SUBSTANCE.

3 Q. NOW, HOW WERE YOU POSITIONED PHYSICALLY SO THAT
4 YOU COULD WATCH ALL OF WHAT WAS GOING ON?

5 A. IN THE POLICE ACADEMY THEY TRAIN YOU WHEN YOU ARE
6 DOING THIS, TO BE A COVER OFFICER YOU NEED TO BE ABLE TO
7 SEE YOUR PARTNER. AND WHAT I HAD DONE WAS, IF YOU CAN
8 IMAGINE, THE DEFENDANT'S VEHICLE WOULD BE HERE
9 (DEMONSTRATING). I WAS PULLING OVER BEHIND IT.

10 I HAD HIM EXIT THE VEHICLE TO WHERE HIS BACK
11 WOULD HAVE BEEN TO HIS VEHICLE, HIS FRONT WOULD HAVE
12 BEEN FACING MY VEHICLE. I WAS IN FRONT OF HIM TO WHERE
13 I COULD SEE HIM, AND I WAS TO THE RIGHT OF THE VEHICLE
14 WHERE I COULD ALSO SEE A STRAIGHT LINE DOWN TO OFFICER
15 MCBRIDE WHERE HE WOULD HAVE BEEN TAKING MR. TODD OUT OF
16 THE VEHICLE. SO I COULD SEE THE PERSON I WAS TALKING TO
17 AS WELL AS MR. TODD AND OFFICER MCBRIDE.

18 Q. HOW FAR AWAY WERE DETECTIVE MCBRIDE AND THE
19 DEFENDANT FROM YOU?

20 A. I WOULD SAY APPROXIMATELY 15 FEET.

21 Q. COULD YOU OVERHEAR THEIR CONVERSATION?

22 A. I COULD HEAR A LITTLE BIT OF THEIR CONVERSATION.
23 I COULD HEAR OFFICER MCBRIDE ASK FOR THE CAN OF BEER
24 THAT HE TOOK AND PLACED ON TOP OF THE CAR. I COULDN'T
25 HEAR WHAT MR. TODD, IF, IF HE SAID ANYTHING, I COULDN'T

1 HEAR ANYTHING THAT MR. TODD SAID.

2 Q. NOW, YOU TESTIFIED THAT YOU OBSERVED THE
3 DEFENDANT, DESPITE BEING HANDCUFFED, REACH INTO HIS
4 POCKET AND THROW THIS BAGGIE TO THE GROUND?

5 A. YES.

6 Q. WHAT HAPPENED NEXT?

7 A. I IMMEDIATELY LEFT THE PERSON I WAS TALKING TO,
8 THE DRIVER OF THE VEHICLE, AND WENT STRAIGHT OVER TO
9 MR. TODD, GRABBED HIM AND PLACED HIM ONTO THE GROUND. I
10 DIDN'T KNOW WHAT HE HAD. I DIDN'T KNOW, IT COULD BE A
11 GUN OR ANYTHING. BUT I PLACED HIM ONTO THE GROUND.
12 THAT'S WHEN I SAW THAT THERE WAS A BAG OR BAGGIE OF
13 OFF-WHITE ROCK SUBSTANCE.

14 Q. DID YOU COLLECT THAT ITEM?

15 A. I DID.

16 Q. I'M SHOWING YOU STATE'S EXHIBIT THREE, IF YOU
17 COULD JUST OPEN THAT AND LOOK INSIDE, AND TELL ME
18 WHETHER YOU RECOGNIZE THAT ITEM.

19 A. YES.

20 Q. ARE YOUR INITIALS ON THAT ITEM?

21 A. YES, THEY ARE.

22 Q. WHAT DOES THAT MEAN?

23 A. WELL, WHEN WE SEAL AN ITEM, OR EVIDENCE, WHEN WE
24 SEAL IT, WE PUT OUR NAME ON IT, A CASE NUMBER. I'VE GOT
25 ON HERE ITEM 80, WHICH WAS ITEM 80 IN OUR INVENTORY LIST

1 THAT I PUT, AND I PUT THE DATE THAT IT HAPPENED ON.

2 Q. NOW, IS THAT THE ITEM THAT YOU RETRIEVED FROM THE
3 DEFENDANT'S FEET OUT ON THE SCENE?

4 A. IT IS THE SAME ITEM.

5 Q. NOW, WHAT DID YOU DO WITH THAT ITEM AFTER YOU
6 PACKAGED IT?

7 A. AFTER WE PACKAGED IT, OR AFTER I PACKAGED IT, I
8 FILLED OUT AN EVIDENCE SHEET THAT GOES ALONG WITH IT, A
9 LAB ANALYSIS SHEET THAT GOES ALONG WITH IT WHERE IT
10 COULD BE SENT OFF FOR TESTING, AND WE PHYSICALLY PLACE
11 IT INTO A SECURE LOCKER AT THE FOUNTAIN INN POLICE
12 DEPARTMENT.

13 Q. NOW, DID YOU SEAL THAT ITEM BEFORE YOU DEPOSITED
14 IT INTO THIS SECURE AREA?

15 A. I DID. I WAITED UNTIL THE ---

16 Q. HOW, HOW DID THAT WORK? HOW DID YOU SEAL THE
17 ITEM?

18 A. AFTER WE WEIGH IT, WE HAVE SCALES THERE AT THE
19 POLICE DEPARTMENT THAT WE USE TO WEIGH IT. WE HAVE AN
20 EVIDENCE TABLE, I GUESS YOU COULD SAY, THAT WE USE, AND
21 PLACED THIS SUBSTANCE, AFTER I FIELD-TESTED IT, PLACED
22 IT INTO A CLEAR BAGGIE AND THEN HEAT-SEALED IT BEFORE I
23 PUT ALL, MY NAME AND ALL THAT STUFF ON IT. THAT WAY NO
24 ONE ELSE CAN TAMPER WITH IT.

25 Q. NOW, YOU TESTIFIED THAT AFTER YOU SEALED THAT

1 ITEM, YOU PLACED IT INTO THIS SECURE EVIDENCE LOCKER.
2 CAN YOU DESCRIBE FOR THE JURY WHAT THIS SECURED AREA IS?

3 A. SURE. AT THE FOUNTAIN INN POLICE DEPARTMENT WE
4 HAVE A LOCKER SYSTEM IN THE HALLWAY AND THAT LOCKER HAS
5 NUMEROUS LOCKER SIZES THAT YOU COULD PUT EVIDENCE INTO.
6 AND AS AN OFFICER YOU ARE TRAINED THAT WHEN YOU COLLECT
7 EVIDENCE OF ANY NATURE, YOU PACKAGE IT IN CERTAIN WAYS
8 AND YOU FILL OUT EVIDENCE SHEETS AND THEN YOU PLACE IT
9 INTO THIS LOCKER.

10 NOW, IN ORDER TO PLACE SOMETHING IN THE LOCKER
11 YOU HAVE TO USE A KEY, ALMOST LIKE YOU WOULD GET AT
12 FRANKIE'S FUN PARK OR SOMETHING LIKE THAT. YOU PLACE IT
13 INTO A HOLE. WHEN YOU CLOSE A LOCKER, YOU TURN A KNOB
14 AND THAT REMOVES ANOTHER KEY, AND THAT KEY IS THE ONLY
15 THING YOU CAN USE TO GET BACK INTO THAT LOCKER.

16 THEN YOU WOULD TAKE THAT KEY AND PLACE IT INTO
17 ANOTHER SECURE LOCKER THAT ONLY AN EVIDENCE TECHNICIAN
18 HAS THE KEY TO. WE WOULDN'T HAVE ACCESS TO GET BACK
19 INTO IT, SO TO SAY, OR NO ONE COULD TAMPER WITH ANY
20 EVIDENCE THAT'S IN THERE, OTHER THAN AN EVIDENCE
21 TECHNICIAN BECAUSE YOU DON'T HAVE ACCESS TO IT ONCE YOU
22 DO THAT.

23 Q. SO ONCE YOU PLACE THIS ITEM INTO THIS LOCKER,
24 COULD YOU RETRIEVE IT BACK OUT?

25 A. ABSOLUTELY NOT. THE ONLY WAY, THE ONLY PERSON

1 THAT COULD IS SOMEONE THAT HAS A KEY TO IT, WHICH WOULD
2 BE AN EVIDENCE TECHNICIAN.

3 Q. NOW, WHO HAS ACCESS TO THIS AREA BEHIND THE
4 LOCKERS, OTHER THAN THE EVIDENCE TECHNICIANS, WHO CAN
5 ENTER THAT AREA?

6 A. OTHER THAN THE EVIDENCE TECHNICIAN, WHICH IS
7 OFFICER SCOTT NELSON, THAT'S THE ONLY PERSON THAT, I
8 MEAN, HE'S THE ONLY ONE THAT COULD TESTIFY WHO WOULD
9 HAVE ACCESS TO IT. NONE OF US CERTAINLY WOULDN'T HAVE
10 ACCESS TO IT.

11 Q. NOW, HAVE YOU HAD ANY CONTACT WITH STATE'S
12 EXHIBIT THREE SINCE THE TIME THAT YOU DROPPED IT OFF ON
13 THE MORNING OF JULY 28TH, 2007?

14 A. NO. NO, MA'AM.

15 MS. SALISBURY: I DON'T HAVE ANY FURTHER
16 QUESTIONS RIGHT NOW. PLEASE ANSWER ANY QUESTIONS
17 MR. CHAMBERS MAY HAVE FOR YOU.

18 THE WITNESS: THANK YOU.

19 CROSS-EXAMINATION BY MR. CHAMBERS:

20 Q. SO THE REASON FOR THE STOP WAS JUST NOISE
21 ORDINANCE; IS THAT CORRECT?

22 A. YES, SIR.

23 Q. AND, AND YOU WERE PRIMARILY CONCERNED WITH
24 MR. JOHNSON?

25 A. AT THE TRAFFIC STOP?

1 Q. YES.

2 A. YES, SIR.

3 Q. I MEAN, YOU WERE ON HIS SIDE OF THE CAR, THAT'S
4 WHO YOU WERE TALKING TO?

5 A. HE WAS THE DRIVER OF THE VEHICLE, AND I HAD HIM
6 EXIT THE VEHICLE BECAUSE I COULD SMELL ALCOHOL COMING
7 FROM THE VEHICLE, AND HE WAS INITIALLY WHO I WAS
8 SPEAKING TO DURING THE TRAFFIC STOP.

9 Q. DID YOU CHECK HIM OUT TO SEE, YOU KNOW, IF THERE
10 WAS ANY INDICATION THAT HE WAS UNDER THE INFLUENCE OF
11 ALCOHOL, DRUGS OR ANYTHING ELSE?

12 A. I DID. WHEN I GOT HIM OUT OF THE VEHICLE, THAT'S
13 WHAT WE WERE DOING, WAS BASICALLY I WANTED TO ESTABLISH
14 IF HE WAS INTOXICATED OR MAYBE THE SMELL MAY HAVE BEEN
15 COMING FROM THE PASSENGER OR MAYBE SPILLED ALCOHOL IN
16 THE VEHICLE. ALL I KNEW AT THE TIME WAS I DID SMELL AN
17 ALCOHOLIC BEVERAGE COMING FROM THE VEHICLE, AND I WANTED
18 TO REMOVE THE DRIVER OUT OF THE VEHICLE TO GET HIM AWAY
19 FROM THAT ENVIRONMENT SO THAT I COULD SPEAK TO HIM
20 FURTHER.

21 Q. AND DID YOU DETERMINE HE WAS OKAY?

22 A. YES, SIR.

23 Q. AND YOU GAVE HIM A UNIFORM TRAFFIC CITATION FOR
24 THIS NOISE VIOLATION AND JUST LET HIM DRIVE ON?

25 A. I DID. I WROTE HIM A UNIFORM TRAFFIC CITATION.

1 FOR THE NOISE ORDINANCE, AND THEN AT A LATER TIME HE
2 DROVE ON AFTER WE WERE DONE.

3 Q. OKAY. AND DID YOU AT ANY POINT PARTICIPATE IN
4 QUESTIONING OR SEARCH OF CALVIN TODD?

5 A. THE QUESTIONING OR THE SEARCH OF HIM?

6 Q. YEAH.

7 A. NOT QUESTIONING OR THE SEARCH. IT'S JUST LIKE I
8 TESTIFIED EARLIER. I OBSERVED HIM REMOVE SOMETHING,
9 THROW IT ON THE GROUND AND STOMP ON IT, AND THAT WAS THE
10 FIRST INTERACTION I'VE HAD WITH MR. TODD WHERE I WENT
11 AND PHYSICALLY GRABBED HIM AND PLACED HIM ON THE GROUND
12 AND DETERMINED WHAT THAT WAS.

13 Q. AND YOU SAID THAT HE HAD HIS HANDS HANDCUFFED
14 BEHIND HIM HERE (DEMONSTRATING)?

15 A. YES, SIR.

16 Q. AND HIS HANDS WERE FACING, AS WE HEARD THE OTHER
17 OFFICER SAID, PALMS IN, IS THAT RIGHT, LIKE THAT
18 (DEMONSTRATING)?

19 A. THAT'S WHAT HE TESTIFIED TO.

20 Q. IS THAT WHAT YOU RECALL?

21 A. WHETHER HE HAD PALMS IN?

22 Q. YEAH.

23 A. THAT'S THE WAY I HANDCUFF EVERYBODY.

24 Q. AND THEN SO IF HE SAID THAT, THAT WOULD BE
25 CONSISTENT WITH WHAT YOU DO?

- 1 A. THAT'S WHAT I DO, YES, SIR.
- 2 Q. OKAY. AND YOU SAID THAT HE THEN REACHED AROUND
- 3 AND INTO HIS LEFT FRONT POCKET (DEMONSTRATING)?
- 4 A. YES, SIR.
- 5 Q. AND HE WAS ABLE TO REACH IN THERE AND PULL
- 6 SOMETHING OUT AND THROW IT ON OH THE GROUND?
- 7 A. YES, SIR.
- 8 Q. AND THEN Y'ALL PUT HIM ON THE GROUND AND YOU
- 9 FOUND THE CONTENTS OF THIS PACKAGE; IS THAT RIGHT?
- 10 A. YES, SIR.
- 11 Q. AND, OF COURSE, THIS OUTSIDE, THAT'S YOUR BAG
- 12 THAT YOU SEALED IT IN; IS THAT CORRECT?
- 13 A. THE, THE SMALLER ONE IS MY BAG.
- 14 Q. OKAY. BUT SO YOU SEALED IT IN THAT. BUT THIS IS
- 15 THE ORIGINAL PACKAGE THAT IT WAS IN; IS THAT RIGHT?
- 16 A. THAT'S RIGHT, THE ONE THAT WAS ALREADY INSIDE MY
- 17 PACKAGE.
- 18 Q. OKAY. AND THAT'S HOW YOU FOUND IT, ALL IN THAT
- 19 ONE SINGLE BAG RIGHT THERE?
- 20 A. THAT'S RIGHT.
- 21 Q. OKAY. (PUTS BACK IN ENVELOPE.) AND YOU SAID YOU
- 22 WEIGHED IT AT THE -- DID YOU WEIGH IT WHEN YOU GOT BACK
- 23 TO THE POLICE STATION?
- 24 A. YES, SIR.
- 25 Q. AND IT WEIGHED I BELIEVE 9.5 GRAMS; IS THAT

1 RIGHT?

2 A. IT, IT HAD A TOTAL WEIGHT -- I WOULD HAVE TO
3 LOOK AT THE REPORT FOR THE TOTAL WEIGHT, BUT IT WAS
4 SOMEWHERE AROUND 9.5.

5 Q. OKAY. THAT'S YOUR RECOLLECTION?

6 A. YES, SIR.

7 Q. AND YOU FIELD-TESTED IT. WHAT DOES IT MEAN WHEN
8 YOU FIELD-TEST IT?

9 A. AT THE FOUNTAIN INN POLICE DEPARTMENT, AND JUST
10 ABOUT ANY JURISDICTIONS WE HAVE CHEMICAL FIELD TESTS WE
11 CAN USE TO TEST DRUGS. AND THIS PARTICULAR DRUG,
12 COCAINE OR CRACK COCAINE, WE HAVE SWABS THAT YOU WOULD
13 RUN OVER, IF IT'S CRACK COCAINE YOU WOULD RUN IT OVER
14 IT, IF IT'S POWDER COCAINE YOU COULD PUT IT ON IT AND
15 YOU COULD RUB IT TOGETHER.

16 BUT IT'S BASICALLY A SWAB KIND OF LIKE YOU WOULD
17 USE IF GO YOU EAT BARBECUE AND YOU GO CLEAN YOUR HANDS
18 OFF, IT'S THOSE TYPE OF SWABS, TO WHERE YOU WOULD JUST
19 RUB IT OVER IT AND IT WOULD TURN BLUE, IMMEDIATELY TURN
20 BLUE ON THE EITHER CRACK ROCK OR ON THE SWAB ITSELF TO
21 DETERMINE IF IT WAS POSITIVE FOR COCAINE.

22 Q. AND WERE YOU IN THE ROOM WITH OFFICER MCBRIDE AND
23 CALVIN TODD WHEN HE GAVE HIS STATEMENT?

24 A. I WAS NOT IN THE ROOM. I WALKED IN THERE AND
25 THEN BACK OUT.

1 Q. OKAY. WERE YOU AWARE OF THE FACT THAT HE SAID,
2 YEAH, I HAD CRACK IN MY FRONT POCKET?

3 A. I AM AWARE OF THAT.

4 Q. AND ARE YOU THE ONE THAT DID THE INVENTORY FOR
5 THE PROPERTY THAT Y'ALL TOOK FROM CALVIN TODD?

6 A. ARE YOU SPEAKING ABOUT THE DRUGS?

7 Q. NO. I'M TALKING ABOUT -- THIS IS CALLED A
8 PROPERTY REPORT, AND IT'S GOT YOUR SIGNATURE ON IT.

9 A. RIGHT.

10 Q. DO YOU RECOGNIZE THAT?

11 A. YES, SIR, I DID THIS.

12 Q. AND WHAT IS THAT?

13 A. WHY DO WE DO THIS?

14 Q. WELL, FIRST OF ALL, WHAT IS IT?

15 A. OKAY. THIS IS THE PROPERTY INVENTORY SHEET WHERE
16 WE WOULD ITEMIZE THINGS THAT WE SEIZE FROM THE DEFENDANT
17 TO BE PLACED INTO EVIDENCE.

18 Q. SO EVERYTHING THAT YOU TOOK FROM HIM IS LISTED
19 THERE?

20 A. IF WE SEIZED IT TO, TO USE, YES.

21 Q. OKAY.

22 A. THIS MAY OR MAY NOT HAVE BEEN ALL THE ITEMS HE
23 HAD ON HIS PERSON. THESE WERE ITEMS WE WOULD ONLY PUT
24 INTO EVIDENCE.

25 Q. BUT THAT'S EVERYTHING THAT YOU DEEMED IMPORTANT,

1 THAT YOU WOULD NEED; IS THAT CORRECT?

2 A. THERE'S TWO SHEETS. THERE'S THAT ONE AND ANOTHER
3 ONE WHICH WOULD HAVE THIS ON IT.

4 Q. OKAY. SO THAT ONE, YOU HAD A DIFFERENT ONE FOR
5 THE OFF-WHITE ROCK-LIKE SUBSTANCE, AND THEN YOU TOOK
6 FROM HIM A METAL ROD AND A METAL PIPE WITH RESIDUE?

7 A. YES, SIR.

8 Q. AND THE METAL PIPE WITH RESIDUE, DID THAT APPEAR
9 TO BE USED FOR SMOKING CRACK TO YOU?

10 A. YES, SIR.

11 Q. AND THE METAL ROD, ANY IDEA WHAT THAT'S FOR?

12 A. THEY'RE USED, THEY ARE USED TO CLEAN THE CRACK
13 PIPES WITH.

14 Q. TO CLEAN CRACK PIPES. SO THOSE THINGS WOULD BE
15 CONSISTENT WITH SOMEBODY THAT USES CRACK ON A REGULAR
16 BASIS TO CARRY SOMETHING LIKE THAT AROUND, IS THAT FAIR
17 TO SAY?

18 A. YES, SIR.

19 Q. YOU DID NOT SEIZE FROM MR. TODD ANY MONEY, DID
20 YOU?

21 A. NO, SIR.

22 Q. YOU DIDN'T FIND ANY SCALES OR ANYTHING LIKE THAT,
23 DID YOU?

24 A. NO, SIR.

25 Q. YOU DIDN'T FIND ANY PACKAGING MATERIAL OR

1 ANYTHING THAT WOULD BE USED TO PUT THESE CRACK ROCKS
2 INTO FOR DISTRIBUTION TO ANYBODY ELSE?

3 A. SURE. THAT BAG WOULD -- IN MY EXPERIENCE MOST
4 PEOPLE WHEN THEY SELL CRACK, THEY CAN SELL IT RIGHT OUT
5 OF ONE BAG, THEY DON'T NEED TO DISTRIBUTE IT INTO SMALL
6 BAGS.

7 Q. DID -- BUT HE WAS A PASSENGER IN A CAR. DID YOU
8 HAVE ANY REPORTS OR ANYTHING THAT CALVIN TODD WAS OUT
9 THERE SELLING DRUGS IN THE NEIGHBORHOOD?

10 A. THAT MR. TODD WAS OUT SELLING DRUGS?

11 Q. YEAH.

12 A. NO ONE TOLD ME THAT MR. TODD WAS SELLING DRUGS.

13 Q. SO YOU DIDN'T HAVE ANY COMPLAINTS, THAT WASN'T,
14 THAT DIDN'T HAVE ANYTHING TO DO WITH THE REASON YOU
15 STOPPED HIM?

16 A. OH, SURE, WE HAD COMPLAINTS ABOUT DRUGS, BUT
17 NOBODY SAID MR. TODD.

18 Q. AND WE ALREADY KNOW FROM WHAT YOU SAID EARLIER
19 YOU DIDN'T FIND ANY KIND OF DRUGS OR DRUG PARAPHERNALIA
20 ON MR. JOHNSON, DID YOU?

21 A. NO, SIR.

22 Q. AND YOU DIDN'T FIND ANYTHING LIKE THAT IN HIS
23 CAR?

24 A. NO, SIR.

25 Q. AND YOU LET HIM TAKE HIS CAR AND DRIVE AWAY AND

1 Y'ALL TOOK CALVIN DOWN TO THE LAW ENFORCEMENT CENTER; IS
2 THAT RIGHT?

3 A. YES, SIR.

4 Q. OKAY.

5 MR. CHAMBERS: THANKS A LOT. THAT'S ALL I
6 HAVE FOR YOU.

7 THE COURT: RE-EXAM?

8 MS. SALISBURY: NO REDIRECT, JUDGE.

9 THE COURT: ALL RIGHT. YOU MAY STEP DOWN.

10 THE WITNESS: YOUR HONOR, THE EVIDENCE, JUST
11 PLACE IT HERE?

12 THE COURT: LEAVE IT ON THE BENCH THERE.

13 (WHEREUPON, THE WITNESS WAS EXCUSED.)

14 THE COURT: APPROACH, PLEASE.

15 (BENCH CONFERENCE.)

16 THE COURT: YOU MAY CALL YOUR NEXT WITNESS.

17 MS. SALISBURY: THANK YOU, JUDGE. THE STATE
18 CALLS INVESTIGATOR BRANDON BROWN. INVESTIGATOR BROWN,
19 PLEASE COME AROUND AND BE SWORN.

20 (WHEREUPON, THE WITNESS WAS SWORN BY THE
21 CLERK.)

22 THE CLERK: PLEASE STATE YOUR FULL NAME AND
23 SPELL YOUR LAST NAME FOR THE RECORD.

24 THE WITNESS: BRANDON ANTHONY BROWN,
25 B-R-O-W-N.

1 WHEREUPON,

2 BRANDON BROWN,

3 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS

4 FOLLOWS:

5 DIRECT EXAMINATION BY MS. SALISBURY:

6 Q. INVESTIGATOR, BY WHOM ARE YOU EMPLOYED?

7 A. GREENVILLE COUNTY SHERIFF'S OFFICE.

8 Q. IN WHAT CAPACITY?

9 A. I'M A VICE AND NARCOTICS INVESTIGATOR.

10 Q. HOW LONG HAVE YOU BEEN WORKING WITH VICE AND
11 NARCOTICS?

12 A. I'VE BEEN WITH NARCOTICS SINCE OCTOBER OF 2006.

13 Q. WHERE DID YOU WORK BEFORE THAT?

14 A. I WAS EMPLOYED, ORIGINALLY EMPLOYED WITH
15 GREENVILLE COUNTY IN UNIFORM PATROL SINCE OCTOBER OF
16 2002.

17 Q. OVER THE COURSE OF YOUR SERVICE AS A LAW
18 ENFORCEMENT OFFICER, HAVE YOU RECEIVED ANY PARTICULAR
19 SPECIAL TRAINING IN THE FIELD OF NARCOTICS?

20 A. YES, MA'AM. WE, WE GET BASIC, BASIC NARCOTICS
21 TRAINING WHICH IS BASIC TWO-WEEK SCHOOL THAT'S GIVEN
22 THROUGH VARIOUS DIFFERENT ACADEMIES. FROM THERE WE GO
23 INTO MORE ADVANCED NARCOTICS AS FAR AS IDENTIFYING,
24 MANUFACTURING, ALL THE WAY FROM WHEN DIFFERENT VARIOUS
25 TYPES OF NARCOTICS ARE PROCESSED FROM OVERSEAS TO HOW

1 THEY GET HERE, TO HOW THEY ARE PACKAGED AND WEIGHED AND
2 SOLD AND NUMEROUS DIFFERENT TYPES.

3 Q. ASIDE FROM THAT TWO-WEEK COURSE, WHAT OTHER TYPES
4 OF TRAINING HAVE YOU RECEIVED WITH REGARD TO JUST
5 NARCOTICS?

6 A. THERE ARE ALL OTHER -- OTHER THAN THE TWO-WEEK
7 COURSE, THERE ARE VERY, PROBABLY I WOULD ESTIMATE 20 OR
8 30 DIFFERENT SPECIALIZED ADVANCED SCHOOLS PERTAINING TO
9 VARIOUS DIFFERENT TYPES OF NARCOTICS; PERTAINING TO
10 CRACK COCAINE, COCAINE, MARIJUANA, METHAMPHETAMINES,
11 ECSTASY, ALL YOUR CONTROLLED SUBSTANCE PILLS, I MEAN,
12 ANYTHING FROM IDENTIFYING TO MANUFACTURING.

13 Q. NOW, IN HOW MANY OF THOSE COURSES HAVE YOU
14 PERSONALLY PARTICIPATED IN?

15 A. I DON'T HAVE AN EXACT NUMBER WITH ME. IF I HAD
16 TO GUESS, SOMEWHERE BETWEEN 20 AND 30 OVER THE COURSE OF
17 MY CAREER.

18 Q. ALL RIGHT. NOW, HAVE YOU EVER PARTICIPATED IN AN
19 INVESTIGATION OF ILLEGAL NARCOTIC ACTIVITIES?

20 A. YES, MA'AM. THAT'S WHAT I DO ON A DAY-TO-DAY
21 BASIS IS ILLEGAL NARCOTICS.

22 Q. APPROXIMATELY HOW MANY INVESTIGATIONS?

23 A. SINCE OCTOBER 2006 I WOULD SAY APPROXIMATELY A
24 HUNDRED DIFFERENT INVESTIGATIONS RANGING FROM SHORT-TERM
25 STREET LEVEL BUYS TO LONG-TERM FEDERAL TYPE CASES.

1 Q. NOW, HOW MANY OF THOSE INVESTIGATIONS INVOLVED
2 PARTICULARLY CRACK COCAINE?

3 A. WITH WHAT I DO IN NARCOTICS, A LARGE MAJORITY OF
4 MINE PERTAIN SPECIFICALLY TO CRACK COCAINE. I WOULD
5 PROBABLY SAY THREE QUARTERS OF MY CASES ARE ALL CRACK
6 COCAINE, THE OTHERS, OTHER SHORT FEW WOULD BE MARIJUANA.

7 Q. NOW, HAVE YOU -- AS PART OF THOSE INVESTIGATIONS
8 OR AS A RESULT OF THOSE INVESTIGATIONS, HAVE YOU EVER
9 PARTICIPATED IN THE ARREST OF INDIVIDUALS THAT ARE
10 ENGAGED IN THOSE ILLEGAL NARCOTIC ACTIVITIES?

11 A. YES, MA'AM. SINCE OCTOBER 2006 I HAD BEEN
12 INVOLVED WITH AND EXECUTED NO LESS THAN 110 SEARCH
13 WARRANTS, I BELIEVE.

14 Q. NOW, HAVE ARRESTS ALWAYS RESULTED AS PART OF
15 THOSE SEARCH WARRANTS?

16 A. MOST ALL TIMES. EVERY NOW AND THEN WE GET
17 UNLUCKY AND SOMEONE IS NOT THERE WHEN WE GO KNOCK ON THE
18 DOOR.

19 Q. HOW MANY OF THOSE ARRESTS INVOLVED CRACK COCAINE
20 SPECIFICALLY?

21 A. I WOULD ESTIMATE AGAIN PROBABLY THREE QUARTERS OF
22 THAT AMOUNT WOULD BE CRACK COCAINE BASE, THAT'S ONE OF
23 OUR LARGEST PROBLEMS IN THE GREENVILLE AREA.

24 Q. NOW, PURSUANT TO THOSE ARRESTS, HAVE YOU EVER
25 SEIZED CRACK COCAINE?

1 A. YES, I HAVE.

2 Q. HOW OFTEN? HOW MANY TIMES?

3 A. WHILE IN NARCOTICS, ON AN ESTIMATE, AND OF COURSE
4 I DON'T HAVE ANY KIND OF NUMBERS IN FRONT OF ME, BUT ON
5 ESTIMATE PROBABLY 50 OR 60 DIFFERENT TIMES, AND PROBABLY
6 THREE TIMES THAT OVER THE COURSE OF MY UNIFORM PATROL
7 CAREER.

8 Q. NOW, AS PART OF THOSE INVESTIGATIONS, THE
9 EXECUTION OF THOSE SEARCH WARRANTS, AND THE ARRESTS THAT
10 YOU'VE MADE, HAVE YOU HAD AN OPPORTUNITY TO FAMILIARIZE
11 YOURSELF WITH CRACK COCAINE?

12 A. YES. I'VE FAMILIARIZED MYSELF ON A PRETTY
13 REGULAR BASIS WITH CRACK COCAINE.

14 Q. NOW, HAVE YOU EVER HAD ANY OCCASION TO SPEAK WITH
15 INDIVIDUALS ENGAGED IN ILLEGAL NARCOTIC ACTIVITIES?

16 A. JUST ABOUT EVERY DAY.

17 Q. HAVE YOU EVER PARTICIPATED IN ANY UNDERCOVER BUYS
18 PERSONALLY FOR CRACK COCAINE?

19 A. YES, I HAVE.

20 Q. APPROXIMATELY HOW MANY?

21 A. A HANDFUL.

22 Q. NOW, HAVE YOU EVER PERSONALLY CONDUCTED TESTS TO
23 DETERMINE THE CONTENT OF A NARCOTIC SUBSTANCE?

24 A. YES. THROUGHOUT MY CAREER, EVERY TIME I HAVE
25 COME ACROSS ANY NARCOTIC, I ALWAYS CONDUCTED FIELD

1 TESTS, WHETHER IT BE MARIJUANA, CRACK COCAINE,
2 METHAMPHETAMINES, WE ALWAYS DO A FIELD TEST BEFORE THE
3 SUBJECT IS ACTUALLY TAKEN INTO CUSTODY.

4 Q. NOW HOW MUCH TRAINING HAVE YOU HAD FOR CONDUCTING
5 THOSE FIELD TESTS?

6 A. BASIC TRAINING THROUGH THE, THROUGH THE LAW
7 ENFORCEMENT ACADEMY IS REALLY THE ONLY SPECIALIZED
8 TRAINING YOU GET IN FIELD TESTS. THEY'RE PRETTY SIMPLE.
9 AS OFFICER GRAHAM INSTRUCTED, IT'S KIND OF LIKE A LITTLE
10 MOIST WIPE AND YOU RUB IT TOGETHER AND IT CAUSES A
11 CHEMICAL REACTION THAT CAUSES IT TO CHANGE COLORS. I
12 MEAN, THERE'S NOT A WHOLE LOT TO IT.

13 Q. NOW, ARE YOU FAMILIAR WITH THE STREET LEVEL SALE
14 OF CRACK COCAINE?

15 A. YES, MA'AM, I AM.

16 Q. ARE YOU FAMILIAR WITH THE STREET LEVEL SALE,
17 PARTICULARLY IN GREENVILLE COUNTY?

18 A. YES, MA'AM, I AM.

19 Q. ARE YOU FAMILIAR WITH THE GENERAL PRACTICES AND
20 BEHAVIORS OF DRUG USERS AND DRUG DEALERS?

21 A. YES, MA'AM, I AM.

22 Q. NOW, THROUGH THE COURSE OF YOUR INVOLVEMENT WITH
23 THE USERS AND SELLERS OF CRACK COCAINE, ARE YOU FAMILIAR
24 WITH THE GENERAL DOLLAR VALUE OF CRACK COCAINE?

25 A. YES, MA'AM.

1 **MS. SALISBURY:** YOUR HONOR, AT THIS TIME THE
2 STATE OFFERS INVESTIGATOR BROWN AS AN EXPERT IN THE
3 FIELD OF IDENTIFICATION AND SALE OF CRACK COCAINE.

4 **THE COURT:** ANY VOIR DIRE?

5 **MR. CHAMBERS:** YOUR HONOR, I WOULD SAY HE
6 SOUNDS LIKE AN EXPERT TO ME. NO OBJECTION.

7 **THE COURT:** ALL RIGHT. SO HE WILL BE
8 QUALIFIED AS AN EXPERT IN SALE AND --

9 **MS. SALISBURY:** IDENTIFICATION, JUDGE.

10 **THE COURT:** -- IDENTIFICATION AND SALE OF
11 CRACK COCAINE.

12 MADAM FORELADY, LADIES AND GENTLEMEN OF THE
13 JURY, NORMALLY WITNESSES CAN ONLY TESTIFY WHAT THEY KNOW
14 OF THEIR OWN KNOWLEDGE, IN OTHER WORDS, BY THE EXERCISE
15 OF THEIR OWN SENSES, WHAT THEY SEE, TOUCH, FEEL, HEAR OR
16 SOMETHING.

17 HOWEVER, IF BY REASON OF BACKGROUND,
18 TRAINING AND EXPERIENCE IN A PARTICULAR AREA THEY
19 ACQUIRE A CERTAIN EXPERTISE, THEN THEY ARE FAMILIAR,
20 THAT QUALIFIES THEM AS AN EXPERT WITNESS, THEN THEY ARE
21 PERMITTED TO GIVE THEIR OPINION, AND IN THIS CASE THIS
22 WITNESS HAS BEEN QUALIFIED AS AN EXPERT IN
23 IDENTIFICATION AND SALE OF CRACK COCAINE.

24 **THE WITNESS:** THANK YOU, YOUR HONOR.

25 **THE COURT:** YOU MAY PROCEED.

1 MS. SALISBURY: THANK YOU, JUDGE.

2 BY MS. SALISBURY:

3 Q. NOW, INVESTIGATOR, BASED ON YOUR EXPERIENCE, WHAT
4 QUANTITY OF CRACK COCAINE DOES A MERE USER TYPICALLY
5 CARRY?

6 A. A BASIC USER IS, BECAUSE IT'S A HABIT, THEY
7 TYPICALLY AT MOST WILL CARRY MAYBE ONE TO TWO ROCKS.
8 WHEN I SAY A ROCK, A ROCK IS POINT 10 GRAMS OF CRACK
9 COCAINE.

10 Q. WOULD YOU EXPECT A CRACK USER TO CARRY A LARGER
11 QUANTITY, FOR EXAMPLE, EIGHT OR NINE GRAMS OF CRACK
12 COCAINE?

13 A. NO, MA'AM, I WOULD NOT. WHEN YOU ARE TALKING
14 ABOUT EIGHT GRAMS WORTH OF CRACK COCAINE, IF YOU BREAK
15 IT UP, BREAK EACH GRAM DOWN IN TENTHS, WHICH IS WHAT AN
16 ACTUAL STREET LEVEL ROCK IS, YOU ARE LOOKING AT 80 ROCKS
17 IF YOU'RE TALKING ABOUT EIGHT GRAMS. 80 ROCKS OF CRACK
18 SOLD ON THE STREET IS GONNA BE WELL OVER A USER'S COST,
19 WHAT HE CAN AFFORD. HE'S NOT GONNA CARRY THAT AMOUNT.

20 Q. WHAT DOES A ROCK, A TENTH OF A GRAM, WHAT DOES
21 THAT SELL FOR?

22 A. \$20.00 A ROCK.

23 Q. AND THERE ARE NATURALLY TEN ROCKS IN A GRAM?

24 A. NATURALLY.

25 Q. OKAY. NOW, IN YOUR EXPERIENCE IS IT UNCOMMON FOR

1 A DRUG SELLER TO ALSO BE A USER?

2 A. NO, IT'S NOT.

3 Q. SO IN YOUR EXPERIENCE YOU HAVE ENCOUNTERED
4 INDIVIDUALS THAT SMOKE CRACK THEMSELVES AS WELL AS SELL
5 IT?

6 A. YES.

7 Q. NOW, WOULD YOU NECESSARILY EXPECT A SELLER, A
8 DEALER OF CRACK COCAINE, TO PACKAGE THAT CRACK COCAINE
9 IN ANY PARTICULAR WAY?

10 A. NO. TYPICALLY IT'S NOT PACKAGED INTO INDIVIDUAL
11 BAGGIES LIKE WHAT YOU SOMETIMES SEE IN A MOVIE. IT'S,
12 FOR ONE, IT TAKES TOO LONG TO DISTRIBUTE. WHEN SOMEONE
13 COMES UP, THEY NEED TO BE ABLE TO GET IT OUT AND GET IT
14 TO THEM REAL QUICK. IF THEY'RE GONNA LEAVE, SAY, A
15 RESIDENCE TO SELL THESE NARCOTICS, THEY ARE ALREADY
16 GONNA HAVE THEM BROKE INTO HOWEVER THEY NEED TO TO BE
17 ABLE TO SELL THEM, THAT WAY IT SAVES TIME. I MEAN, THE
18 LONGER YOU SIT IN ONE PLACE, THE MORE CHANCE YOU HAVE OF
19 POLICE RIGHT AROUND THE CORNER AND FINDING YOU SELLING
20 ROCKS.

21 Q. BASED ON YOUR EXPERIENCE WOULD YOU EXPECT A
22 DEALER TO CARRY SCALES TO WEIGH OUT THOSE PARTICULAR
23 ROCKS OF CRACK COCAINE?

24 A. NO, YOU WOULDN'T, FOR THE SAME PURPOSES YOU WOULD
25 BREAK IT UP AT HOME. YOU WOULDN'T GET CAUGHT WITH YOUR

1 SCALES AND EVERYTHING ELSE. IT JUST KIND OF SIGNIFIES A
2 LITTLE MORE AND KIND OF MAKES IT A LITTLE EASIER FOR
3 EVEN ROOKIE OFFICERS TO RUN ACROSS A CRACK DEALER.

4 Q. NOW, IN YOUR EXPERIENCE DO ALL DEALERS AND
5 SELLERS CAREFULLY WEIGH AND PACKAGE EACH ROCK OR EACH
6 AMOUNT OF CRACK COCAINE THAT THEY SELL?

7 A. THEY ARE NOT VERY CAREFULLY PACKAGED. WHENEVER
8 YOU TALK ABOUT AN ACTUAL DEALER PURCHASING AN AMOUNT,
9 SAY EIGHT GRAMS, OR LET'S SAY AN OUNCE, MAKE EVEN, IF A
10 DEALER CALLS HIS SUPPLIER AND ASKS FOR AN OUNCE OF
11 COCAINE, OR AN OUNCE OF CRACK, WHAT THAT, WHAT THAT MAIN
12 SUPPLIER IS GONNA DO IS TAKE AN OUNCE OF COCAINE, JUST
13 POWDER FORM OF COCAINE, HE IS GONNA COOK UP THAT OUNCE,
14 WHICH IS GONNA MAKE JUST UNDER AN OUNCE OF CRACK. SO
15 IT'S ALMOST A ONE-TO-ONE VALUE, BUT YOU LOSE A LITTLE
16 BIT IN THE EVAPORATION IN THE COOKING PROCESS. AND IN A
17 GOOD COOK, IF 28 GRAMS AN OUNCE, A GOOD COOK COOKING
18 CRACK COCAINE -- COOKING COCAINE TO CRACK COCAINE WOULD
19 END UP BECOMING ABOUT 22 TO 24 GRAMS.

20 Q. NOW, WHAT IS THE STREET VALUE GENERALLY OF EIGHT
21 GRAMS OF CRACK COCAINE?

22 A. EIGHT GRAMS, 80 ROCKS, \$20.00 ROCK, SO \$1,600.00,
23 I BELIEVE, WOULD BE STREET PROFIT OFF OF THAT.

24 Q. HOW MUCH WOULD A DEALER, A SELLER, HAVE TO PAY TO
25 OBTAIN EIGHT GRAMS OF CRACK COCAINE TO THEN DISTRIBUTE?

1 A. IF A DEALER -- AND A DEALER IS ALWAYS GONNA GET,
2 HE'S NOT GONNA HAVE TO PAY A CRACK USER'S PRICE BECAUSE
3 HE'S BUYING LARGE QUANTITIES AT A MORE REGULAR TIME. IF
4 YOU ARE TALKING ABOUT EIGHT GRAMS FROM A SELLER -- OR
5 FROM A SUPPLIER TO A DEALER, YOU ARE POSSIBLY LOOKING,
6 DEPENDING ON WHAT TIME OF YEAR IT IS, HOW BAD THE SUPPLY
7 IS, HOW MUCH IS COOKED, SOMEWHERE BETWEEN THREE TO FIVE
8 HUNDRED DOLLARS.

9 Q. NOW, IN YOUR EXPERIENCE, DOES A CRACK USER CARRY
10 THIS VOLUME, EIGHT GRAMS, OF CRACK COCAINE?

11 A. NO, ABSOLUTELY NOT.

12 MS. SALISBURY: INVESTIGATOR, I DON'T HAVE
13 ANY FURTHER QUESTIONS. IF YOU COULD ANSWER ANY
14 QUESTIONS MR. CHAMBERS MAY HAVE.

15 THE WITNESS: THANK YOU, MA'AM.

16 CROSS-EXAMINATION BY MR. CHAMBERS:

17 Q. SO YOU SAID SOMEBODY WHO IS SELLING CRACK ON A
18 REGULAR BASIS, THEY USUALLY CHARGE ABOUT \$20.00 A ROCK?

19 A. I'M SORRY?

20 Q. SOMEBODY WHO IS SELLING CRACK CHARGES ABOUT
21 \$20.00 A ROCK?

22 A. YES, SIR.

23 Q. THAT'S THE STANDARD PRICE?

24 A. TYPICALLY, YES, SIR.

25 Q. THAT'S BEEN THE STANDARD PRICE FOR A LONG TIME,

1 HASN'T IT?

2 A. SINCE MID-EIGHTIES, YES, SIR.

3 Q. IT REALLY HASN'T CHANGED. UNLIKE GAS, THE PRICE
4 OF CRACK HASN'T GONE UP?

5 A. YES, SIR.

6 Q. AND TYPICALLY SOMEBODY WHO IS SELLING ANY KIND OF
7 QUANTITIES OF CRACK, THEY'RE GONNA HAVE \$20.00 BILLS ON
8 THEM, AREN'T THEY?

9 A. SOMETIMES. IT DEPENDS ON IF THEY'VE ACTUALLY
10 SOLD ANYTHING THAT DAY OR NOT.

11 Q. WELL, I MEAN, THAT WOULD BE THE REASON THEY WOULD
12 BE RUNNING AROUND WITH A LARGE QUANTITY OF CRACK, IF
13 SELLING IT, WOULD BE TO SELL IT; ISN'T THAT CORRECT?

14 A. YES, SIR. BUT YOU GOT TO GET STARTED AND FINISH
15 AT SOME POINT IN THE DAY.

16 Q. AND WHERE IS IT TYPICALLY SOLD, LIKE ON THE
17 STREET SOMEPLACE?

18 A. THERE IS NO LIMITATIONS TO WHERE CRACK IS SOLD.
19 IT IS SOLD IN ALL FOUR CORNERS OF THE COUNTY, IN GOOD
20 NEIGHBORHOODS, BAD NEIGHBORHOODS, ON THE STREET, IN
21 HOTELS, OUT OF CARS.

22 Q. TYPICALLY IT'S WHERE SOMEBODY IS LOCATED WHERE
23 THE PEOPLE WHO USE IT CAN COME TO THEM AND KNOW WHERE TO
24 FIND THEM, RIGHT?

25 A. TYPICALLY, TYPICALLY DEALERS DO HAVE THEIR CLIENT

1 BASE THAT KNOWS HOW TO GET IN TOUCH WITH THEM. THERE'S
2 NOT USUALLY A SPECIFIC AREA THEY SELL BECAUSE THEN IT
3 WOULD MAKE IT TOO EASY FOR LAW ENFORCEMENT TO FIND THEM.

4 Q. THE PEOPLE THEY WOULD BE SELLING TO WOULD NEED TO
5 KNOW WHERE HOW TO FIND THEM?

6 A. THEY WOULD KNOW HOW TO FIND THEM, NOT NECESSARILY
7 WHERE.

8 Q. YOU ARE FAMILIAR, OBVIOUSLY, HAVING BEEN
9 QUALIFIED AS AN EXPERT HERE TODAY, YOU ARE FAMILIAR WITH
10 THE LAWS THAT GOVERN THE USE AND SALE OF NARCOTICS,
11 CORRECT?

12 A. YES, SIR.

13 Q. IF SOMEBODY HAS MORE THAN TEN GRAMS JUST IN THEIR
14 POSSESSION, THAT AND THAT ALONE CONSTITUTES THE CRIME OF
15 TRAFFICKING, DOESN'T IT?

16 A. YES, SIR, IT DOES.

17 Q. YOU DON'T EVEN HAVE TO PROVE THAT THEY INTENDED
18 TO DISTRIBUTE IT OR DO ANYTHING ELSE, JUST THE FACT THAT
19 THEY POSSESSED IT MAKES IT TRAFFICKING?

20 A. YES, SIR.

21 Q. BUT THE STATUTE ON POSSESSION WITH INTENT TO
22 DISTRIBUTE, THE STATE STILL HAS TO PROVE THAT INTENT;
23 ISN'T THAT RIGHT?

24 A. I BELIEVE IT IS, YES, SIR.

25 Q. ALL RIGHT. AND IT IS WITHIN THE REALM OF

1 POSSIBILITY THAT IF SOMEBODY WHO IS AN AVID USER OF
2 CRACK COCAINE COULD GET AHOLD OF A LARGER AMOUNT, THAT
3 THEY WOULD DO THAT, IS THAT FAIR TO SAY?

4 A. IT'S POSSIBLE.

5 Q. I MEAN, IF I REALLY LIKE CRACK COCAINE, THE MORE
6 OF IT I CAN GET, THE BETTER, RIGHT?

7 A. IT'S NOT -- A TYPICAL USER IS NOT GONNA BE ABLE
8 TO COME ACROSS THAT AMOUNT AS A USER. HE WOULD HAVE TO
9 EITHER BE A DEALER OR HAVING HAD STOLE IT.

10 Q. WELL, I MEAN, THAT IS WHAT YOU SAY COMMONLY
11 HAPPENS. BUT AGAIN, YOU KNOW, THIS IS A COCAINE-BASED
12 DRUG, ISN'T IT?

13 A. YES, SIR, IT IS.

14 Q. SO IF YOU KNOW HOW TO COOK IT UP, YOU CAN MAKE
15 YOUR OWN CRACK.

16 A. YES, SIR.

17 Q. AND YOU COULD -- IT'S A LOT CHEAPER TO BUY
18 COCAINE THAN IT IS TO BUY CRACK IN ITS FINISHED FORM,
19 ISN'T IT?

20 A. TYPICALLY. HOWEVER, A DEALER IS NOT GONNA SELL
21 \$20.00 WORTH OF POWDER COCAINE, HE'S GONNA SELL A LARGE
22 AMOUNT BECAUSE HE KNOWS THAT STREET LEVEL DEALERS ARE
23 DOING JUST THAT: COOKING IT TO MAKE PROFIT.

24 Q. I UNDERSTAND THAT. BUT IN RESPONSE TO MY
25 QUESTION, ISN'T IT POSSIBLE THAT IT WOULD BE CHEAPER IF

1 YOU KNEW HOW TO COOK UP YOUR OWN CRACK, TO GO BUY THE
2 COCAINE?

3 A. YES, SIR, IT WOULD.

4 Q. COOK IT UP INTO CRACK AND THEN SMOKE ALL YOU
5 WANT?

6 A. YES, SIR. IF YOU HAD THE FUNDS AVAILABLE, YES,
7 SIR, IT WOULD BE.

8 Q. AND IT IS NOT AT ALL UNUSUAL FOR PEOPLE WHO ARE
9 USERS, IF THEY HAVE THE MONEY AND CAN BUY IT, TO BUY
10 LARGE AMOUNTS FOR THEMSELVES, ISN'T IT?

11 A. YES, IT'S VERY RARE. EVEN A TYPICAL USER IS NOT
12 GONNA BUY LARGE AMOUNTS OF CRACK COCAINE.

13 Q. I'M NOT AN EXPERT LIKE YOU ARE. BUT I REMEMBER A
14 FEW MONTHS AGO -- AND GRANTED THIS IS NOT HERE IN SOUTH
15 CAROLINA, THIS WAS DOWN IN MISSISSIPPI, I BELIEVE --
16 THAT THEY STOPPED WILLIE NELSON'S BUS, FOUND TWO POUNDS
17 OF MARIJUANA, AND, I MEAN, JUST A WHOLE TRUCKLOAD FULL
18 OF MUSHROOMS AND CHARGED HIM WITH POSSESSION. ARE YOU
19 FAMILIAR WITH THAT CASE?

20 A. NO, I'M NOT, BUT IT WOULDN'T SURPRISE ME.

21 Q. AND I GUESS IT'S JUST BECAUSE THEY FIGURED IT WAS
22 WILLIE, AND EVERYBODY KNOWS WILLIE GETS HIGH, AND SO
23 THEY CHARGED IT THAT WAY.

24 A. I'M NOT FAMILIAR, I'M NOT FAMILIAR WITH IT, BUT
25 OKAY.

1 Q. AND HAD THAT BEEN HERE IN SOUTH CAROLINA, TWO
2 POUNDS OF MARIJUANA, ISN'T THAT TRAFFICKING?

3 A. NO, SIR.

4 Q. IT'S NOT?

5 A. TEN POUNDS.

6 Q. OH, OKAY. BUT IT WOULD BE POSSESSION WITH INTENT
7 TO DISTRIBUTE, WOULDN'T IT?

8 A. YES, SIR.

9 Q. IN FACT, ANYTHING OVER AN OUNCE WOULD BE
10 POSSESSION WITH INTENT TO DISTRIBUTE?

11 A. YES, SIR.

12 Q. AND SO I GUESS BASED ON THAT LOGIC, NOBODY WHO
13 LIKES TO SMOKE REFER WOULD EVER POSSESS MORE THAN AN
14 OUNCE JUST FOR THEIR OWN USE?

15 A. MARIJUANA AND CRACK COCAINE ARE TWO COMPLETELY
16 DIFFERENT DRUGS WITH TWO COMPLETELY DIFFERENT REACTION
17 TIMES AND COMPLETELY REACTS TO THE BODY DIFFERENTLY.

18 Q. BUT TREATED THE SAME WAY, IN A MANNER OF
19 SPEAKING, UNDER THE LAW WHEN IT COMES TO POSSESSION WITH
20 INTENT TO DISTRIBUTE?

21 A. YES, SIR.

22 MR. CHAMBERS: THANKS A LOT, OFFICER, THOSE
23 ARE ALL THE QUESTIONS I HAVE.

24 THE COURT: RE-EXAM?

25 MS. SALISBURY: I DON'T HAVE ANY REDIRECT,

1 JUDGE.

2 THE COURT: ALL RIGHT. , YOU MAY STEP DOWN.

3 THE WITNESS: THANK YOU, YOUR HONOR.

4 THE COURT: MAY HE BE EXCUSED?

5 MS. SALISBURY: YES, YOUR HONOR.

6 THE COURT: ANY OBJECTION TO THE WITNESS
7 BEING EXCUSED?

8 MR. CHAMBERS: NO, YOUR HONOR.

9 THE COURT: ALL RIGHT. VERY GOOD.

10 THE WITNESS: THANK YOU, YOUR HONOR.

11 (WHEREUPON, THE WITNESS WAS EXCUSED.)

12 MS. SALISBURY: MAY WE APPROACH, JUDGE?

13 THE COURT: CERTAINLY.

14 (BENCH CONFERENCE.)

15 THE COURT: MADAM FORELADY, LADIES AND
16 GENTLEMEN OF THE JURY, WHAT WE HAVE BEEN TRYING TO DO IS
17 SORT OF COORDINATE THE PRESENTATION OF THE EVIDENCE IN
18 THE CASE.

19 ONE OF THE THINGS THAT I'VE LEARNED IS THAT
20 WE HAVE TWO LIVES IN THESE DAYS: ONE BEGINS EARLY IN THE
21 MORNING AND GOES TO ABOUT 5:00 AND ANOTHER ONE BEGINS AT
22 ABOUT 5:00 AND SEEMS TO GO ON FOREVER. FOR THAT REASON
23 I USUALLY DO NOT LIKE TO GO BEYOND FIVE, WHICH MEANS I
24 DON'T TAKE WITNESSES LATE IN THE AFTERNOON, LIKE 4:30,
25 THAT WOULD GO BEYOND 5:00, OR UNLESS WE ARE IN THE

1 MIDDLE OF A WITNESS, AND THEN I MIGHT GO A LITTLE BEYOND
2 5:00, AND THE REASON FOR THE LATTER IS BECAUSE I DON'T
3 LIKE TO SPLIT TESTIMONY, IN OTHER WORDS, DIRECT
4 EXAMINATION AND THEN TAKE A BREAK AND THEN FOR
5 CROSS-EXAMINATION. I FIND THAT THE TESTIMONY IS A
6 LITTLE BIT BETTER IF IT'S ALL DONE AT ONE TIME: DIRECT,
7 CROSS, AND THEN ANY REDIRECT.

8 I UNDERSTAND WE DO HAVE SOME OTHER
9 WITNESSES, BUT THEY COULD TAKE US BEYOND 5:00, SO I'M
10 GOING TO SUGGEST THAT WE TAKE A BREAK, OR BREAK FOR
11 TODAY AT THIS TIME, Y'ALL HAD A RATHER FULL DAY ALREADY,
12 I THINK, AND THEN COME BACK AT 9:30 IN THE MORNING AND
13 BEGIN WITH THE TRIAL AT THAT TIME.

14 NOW, I TELL JURIES THIS IS THE MOST
15 DIFFICULT PART OF THE CASE FOR YOU, BECAUSE YOU'LL GO
16 HOME AND SOMEBODY WILL ASK, WELL, WHAT YOU ARE DOING?

17 AND YOU WILL SAY, I'VE BEEN DRAWN ON A JURY.

18 THEY'LL SAY, WELL, WHAT IS IT ABOUT?

19 AND YOU'RE GOING TO SAY, WELL, I CAN'T TELL
20 YOU.

21 AND THEY'LL PROBABLY SAY, WELL, WHY NOT?

22 AND YOU WILL SAY BECAUSE THE JUDGE SAID SO.

23 AND THEY'LL PROBABLY SAY SOMETHING LIKE,
24 WELL, THAT'S RIDICULOUS.

25 I THINK YOU REALIZE NOW THAT THIS IS AN

1 IMPORTANT CASE TO EVERYBODY INVOLVED AND NEEDS TO BE
2 RESOLVED IN THE PROPER FASHION, AND NO ONE WHO HAS NOT
3 SAT IN THAT JURY-BOX TODAY WITH YOU OR WILL BE IN THAT
4 JURY-BOX WITH YOU TOMORROW, WHO HAS NOT HEARD THE FIRST
5 BIT OF EVIDENCE, SEEN THE FIRST BIT OF TESTIMONY, OR
6 SEEN THE FIRST EXHIBIT OR ANY OTHER EVIDENCE CAN HELP
7 YOU; THEY CAN ONLY INTERFERE WITH THE PROPER RESOLUTION
8 OF THE CASE. SO THEREFORE, PLEASE TELL THEM THAT YOU
9 CANNOT DISCUSS IT WITH THEM.

10 NOW, IF THEY INSIST, I'LL BE HERE ABOUT 8:30
11 IN THE MORNING AND I'LL BE GLAD TO EXPLAIN IT TO THEM,
12 BUT I THINK YOU UNDERSTAND THAT THIS CASE NEEDS TO BE
13 RESOLVED IN A PROPER FASHION, AND I KNOW THAT YOU WILL
14 DO THAT.

15 WITH THAT I'LL EXCUSE YOU FOR THE EVENING,
16 I'LL SEE YOU IN THE MORNING AT 9:30. AGAIN, COME BACK
17 TO THE JURY ROOM YOU HAVE BEEN USING THIS AFTERNOON.

18 EVERYONE ELSE REMAIN SEATED WHILE THE JURY
19 RETIRES FROM THE COURTROOM.

20 (WHEREUPON, THE JURY LEFT THE COURTROOM AT
21 4:35 P.M.)

22 **THE COURT:** ANYTHING ELSE FROM THE STATE
23 BEFORE WE BREAK FOR THE EVENING?

24 **MS. SALISBURY:** JUDGE, JUST ONE FINAL ISSUE
25 WITH REGARD TO SCHEDULING.

1 THE COURT: CERTAINLY.

2 MS. SALISBURY: I JUST LEARNED THAT OUR
3 FINAL WITNESS WILL NOT BE AVAILABLE UNTIL POSSIBLY 11:00
4 TOMORROW MORNING. I KNOW THAT THAT PUTS US IN SORT OF A
5 BIZARRE SITUATION IN TERMS OF WHETHER WE WILL BE READY
6 FOR HIM WHEN HE'S AVAILABLE OR...

7 THE COURT: I THINK YOU WILL BE READY FOR
8 HIM AT 11:00, IF WHAT YOU TOLD ME WAS CORRECT, WE ARE
9 JUST TALKING ABOUT CUSTODIAL?

10 MS. SALISBURY: IT'S JUST THAT I PERCEIVE IT
11 IF WE START AT 9:30, THE TWO WITNESSES THAT PRECEDE HIM
12 MAY NOT FULLY, MAY NOT TAKE THE HOUR AND A HALF, AND I
13 JUST WANTED TO ALERT YOU TO THAT POSSIBILITY.

14 THE COURT: WELL, I'D BE MORE THAN HAPPY,
15 BUT THE ONLY THING IS, THEY'RE GONE NOW.

16 MR. CHAMBERS: I DON'T HAVE ANY PROBLEM WITH
17 WAITING ON THEM UNTIL 11:00. YOU KNOW, WE'RE IN TRIAL
18 AND GOING INTO TOMORROW AND I'M NOT IN ANY PARTICULAR
19 HURRY.

20 THE COURT: ALL RIGHT. AND HOW LONG WOULD
21 HE BE?

22 MS. SALISBURY: YOUR HONOR, THE FINAL
23 WITNESSES ARE CHEMISTS, AND I EXPECT THAT TESTIMONY TO
24 BE 20 TO 30 MINUTES.

25 THE COURT: WELL, I MEAN, BUT STILL NOT

1 LENGTHY. WELL, LET'S DO THIS. GIVE ME ANY CHARGES THAT
2 YOU WANT IN THE MORNING, WE'LL HAVE THE CHARGE
3 CONFERENCE IN THE EVENT THAT IT GOES TO THE JURY, JUST
4 IN THE EVENT, AND DURING THE BREAK, WE MIGHT EVEN LET
5 THE JURY GO IF WE BREAK WITH A GOOD LITTLE TIME BEFORE
6 11:00, I'LL LET THEM GO AND STRETCH THEIR LEGS OR
7 SOMETHING LIKE THAT AND THEN COME BACK AT 11:00 FOR YOUR
8 WITNESS.

9 BUT LET US SEE WHAT WE CAN DO TO BE SURE
10 THAT THE CASE WILL GO TO THE JURY AS SOON AS POSSIBLE
11 AFTER WE FINISH THE TESTIMONY. SO IF YOU HAVE GOT ANY
12 CHARGES BRING THEM TO ME OR GIVE THEM TO THE LAW CLERK
13 IN THE MORNING BEFORE WE START.

14 MS. SALISBURY: OKAY. THANK YOU, JUDGE.

15 THE COURT: ALL RIGHT. ANYTHING ELSE?

16 MR. CHAMBERS: NO, YOUR HONOR.

17 THE COURT: FROM THE STATE? FROM THE
18 DEFENSE? ALL RIGHT.

19 MR. CHAMBERS: NO, YOUR HONOR.

20 THE COURT: ALL RIGHT. VERY GOOD.

21 (COURT ADJOURNED AT 4:37 P.M., TO RESUME ON
22 TUESDAY, MAY 20, 2008, AT 9:30 A.M.)

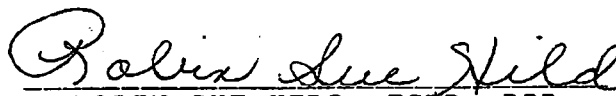
23 ***** END OF REQUESTED TRANSCRIPT *****
24
25

CERTIFICATE OF COURT REPORTER

I, THE UNDERSIGNED, ROBIN SUE HILD, FCRR, RPR,
OFFICIAL COURT REPORTER FOR THE THIRTEENTH JUDICIAL
CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY
CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND
COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND
THE EVIDENCE INTRODUCED IN THE TRIAL, VOLUME I, MAY 19,
2007, PAGES 1 THROUGH 146 OF THE CAPTIONED CASE,
RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR
GREENVILLE COUNTY, SOUTH CAROLINA, ON THE 19TH DAY AND
20TH DAY OF MAY, 2008.

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

AUGUST 12, 2008


ROBIN SUE HILD, FCRR, RPR
CIRCUIT COURT REPORTER

STATE OF SOUTH	)	IN THE COURT OF GENERAL
CAROLINA	)	SESSIONS
	)	
COUNTY OF GREENVILLE	)	INDICTMENT NO:
	)	2007-GS-23-8646

STATE OF SOUTH	)	
CAROLINA	)	
	)	
PLAINTIFF,	)	TRANSCRIPT OF RECORD
	)	TRIAL - VOLUME II
-VS-	)	
	)	
CALVIN E. TODD,	)	
	)	
DEFENDANT.	)	

MAY 20, 2008
GREENVILLE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE ALEXANDER S. MACAULAY, JUDGE; AND A
JURY.

A P P E A R A N C E S:

KATRYNA SALISBURY, ESQ.
ASSISTANT 13TH CIRCUIT SOLICITOR
JOYCE MONTS
ASSISTANT 13TH CIRCUIT SOLICITOR
ATTORNEYS FOR THE STATE

RANDY CHAMBERS, ESQ.
ATTORNEY FOR THE DEFENDANT

ROBIN SUE HILD, FCRR, RPR
CIRCUIT COURT REPORTER
POST OFFICE BOX 9
WALHALLA, SC 29691

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23

24

25

1 ***** START OF REQUESTED TRANSCRIPT *****

2 THE COURT: I UNDERSTAND THE JURY IS HERE.
3 IS THERE ANYTHING FROM THE DEFENSE BEFORE WE BRING THEM
4 BACK?

5 MR. CHAMBERS: NO, YOUR HONOR.

6 THE COURT: FROM THE STATE?

7 MS. SALISBURY: NO, JUDGE.

8 THE COURT: ALL RIGHT. THE LAW CLERK TELLS
9 ME I HAVEN'T GOTTEN ANY CHARGES. DOES THAT MEAN Y'ALL
10 DON'T HAVE ANYTHING?

11 MS. SALISBURY: JUDGE, YESTERDAY I HANDED UP
12 A CHARGE.

13 THE COURT: OH, YOU DO?

14 THE LAW CLERK: THEY GAVE ME ONE YESTERDAY.

15 MS. SALISBURY: I HAVE ANOTHER COPY IF YOU
16 WOULD LIKE TO SEE IT.

17 MR. CHAMBERS: YOUR HONOR, I DON'T HAVE ANY
18 SPECIAL CHARGES. I ASSUME THE COURT IS GONNA CHARGE THE
19 LESSER-INCLUDED OFFENSE OF POSSESSION, AND OTHER THAN
20 THAT...

21 THE COURT: ALL RIGHT.

22 (OFF-THE-RECORD DISCUSSION.)

23 (WHEREUPON, THE COURT CONSIDERED OTHER
24 MATTERS.)

25 (WHEREUPON, THE JURY ENTERED THE COURTROOM.)

1 AT 9:46 A.M.)

2 THE COURT: ALL RIGHT. LET THE RECORD
3 REFLECT THE JURY AND ALTERNATE ARE IN THE JURY-BOX.

4 MADAM FORELADY, LADIES AND GENTLEMEN, I
5 APOLOGIZE ABOUT THE DELAY APPARENTLY, BUT APPARENTLY
6 THERE WERE SOME THINGS THAT HAD TO BE TAKEN CARE OF, NOT
7 IN THIS CASE BUT IN OTHER CASES, SO I NEEDED TO DO THAT
8 BEFORE WE RECONVENED ON THIS CASE.

9 ALL RIGHT. I'LL RECOGNIZE NOW THE SOLICITOR
10 FOR HER NEXT WITNESS.

11 MS. SALISBURY: THANK YOU, YOUR HONOR. THE
12 STATE CALLS SCOTT NELSON. MR. NELSON, PLEASE COME
13 AROUND AND BE SWORN.

14 (WHEREUPON, THE WITNESS WAS SWORN BY THE
15 CLERK.)

16 THE CLERK: PLEASE STATE YOUR FULL NAME AND
17 SPELL YOUR LAST NAME FOR THE RECORD.

18 THE WITNESS: DANNY SCOTT NELSON,
19 N-E-L-S-O-N.

20 WHEREUPON,

21 SCOTT NELSON,
22 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS
23 FOLLOWS:

24 DIRECT EXAMINATION BY MS. SALISBURY:

25 Q. MR. NELSON, WHERE ARE YOU EMPLOYED?

1 A. WITH THE FOUNTAIN INN POLICE DEPARTMENT.

2 Q. IN WHAT CAPACITY?

3 A. I'M A CORPORAL IN THE COMMUNITY PATROL DIVISION.

4 Q. ALL RIGHT. WHAT IS YOUR, WHAT IS YOUR CURRENT
5 POSITIONS?

6 A. ONE OF MY CURRENT POSITIONS IS CURRENTLY EVIDENCE
7 TECHNICIAN.

8 Q. HOW LONG HAVE YOU BEEN PERFORMING THAT PARTICULAR
9 JOB?

10 A. FOR A LITTLE OVER SIX MONTHS NOW.

11 Q. OKAY. AS PART OF YOUR DUTIES AS AN EVIDENCE
12 TECHNICIAN, COULD YOU DESCRIBE FOR THE JURY GENERALLY
13 YOUR DUTIES DAY TO DAY?

14 A. IT USUALLY STARTS OFF IN THE MORNINGS, COMING IN
15 AND CHECK OUR EVIDENCE LOCKERS TO REMOVE ANY EVIDENCE
16 THAT HAS BEEN COLLECTED THROUGHOUT THE SHIFT WHILE I'VE
17 BEEN OFF. I LOG THE EVIDENCE IN AND SECURE IT IN A SAFE
18 PLACE WHERE MYSELF, THE CHIEF, AND MY LIEUTENANT ARE THE
19 ONES THAT ACTUALLY HAVE ACCESS TO THAT ROOM. THIS
20 EVIDENCE IS PUT AWAY, LOGGED IN, AND I KEEP RECORDS ON
21 IT THROUGHOUT THE TRANSITIONS.

22 Q. NOW, PHYSICALLY SPEAKING, WHAT DOES THIS EVIDENCE
23 ROOM AND EVIDENCE SET OF LOCKERS, WHAT DOES THAT LOOK
24 LIKE, WHAT IS IT PHYSICALLY?

25 A. THE FIRST SET WOULD BE THE SET WHERE THE OFFICERS

1 ACTUALLY PLACE THE EVIDENCE, THAT IS IN A HALLWAY, THE
2 FRONT SIDE FACES THE HALL, THE BACK SIDE IS MY OFFICE
3 AREA. THE OFFICERS COME IN WHEN THEY HAVE EVIDENCE,
4 THEY MAKE SURE IT'S SEALED PROPERLY. IT IS ACTUALLY, IT
5 HAS MARKINGS ON IT TO IDENTIFY THAT ALONG WITH CASE
6 NUMBER AND THE OFFICER'S NAME.

7 THEY TAKE AND PLACE IT INTO ONE OF THESE LOCK
8 BOXES. DEPENDING UPON THE SIZE, WE HAVE VARIOUS SIZE
9 LOCKERS. THEY PLACE IT IN THERE, PUT IN A COIN, TURN A
10 KEY, PULL THE KEY OUT, TAKE THE KEY AND PUT IT IN
11 ANOTHER BOX THAT HAS A PADLOCK ON IT, WHICH I AM THE
12 ONLY ONE WHO HAS A KEY TO THAT BOX.

13 Q. SO YOU MENTIONED THAT A FEW OTHER PEOPLE HAD
14 ACCESS TO THIS, TO THIS AREA. IS THAT GENERALLY A
15 SECURE AREA?

16 A. IT IS SECURE.

17 Q. IS THERE ANYONE OTHER THAN THOSE PEOPLE THAT ARE
18 SPECIFICALLY AUTHORIZED TO ACCESS THAT EVIDENCE, DOES
19 ANYBODY ELSE HAVE ACCESS TO THAT AREA?

20 A. NO, THEY DO NOT.

21 Q. OKAY. ONCE YOU RETRIEVE EVIDENCE FROM THE
22 EVIDENCE LOCKER WHERE AN OFFICER HAS PLACED IT, WHERE DO
23 YOU KEEP THE EVIDENCE?

24 A. IT DEPENDS WHAT I'M DEALING WITH. IF IT'S
25 AMMUNITION AND FIREARMS, I LOCK IT IN A SAFE. IF IT

1 PERTAINS TO ALCOHOL, I HAVE A LOCKER FOR ALCOHOL INSIDE
2 THERE. AND IF IT PERTAINS TO DRUGS, I HAVE A LOCKER FOR
3 DRUGS. AND THE OTHER, REST OF THE EVIDENCE GOES INTO
4 BINS WHICH IS LABELED BY THE OFFICER'S NAME.

5 Q. NOW, COULD YOU DESCRIBE FOR THE JURY WHAT, WHAT
6 IS THE SPECIFIC PROCESS FROM WHEN YOU REMOVE A PIECE OF
7 EVIDENCE FROM THAT EVIDENCE LOCKER, WHAT IS THE PROCESS
8 THAT YOU GO THROUGH TO SECURE THAT EVIDENCE?

9 A. FIRST OF ALL, I TAKE AND REMOVE THE EVIDENCE FROM
10 THERE, AND THERE SHOULD BE A PIECE OF PAPER WITH IT
11 WHICH IS A LOG SHEET OR A PROPERTY AND EVIDENCE SHEET.
12 ON THERE IT SHOULD BE IDENTIFIED AS TO WHAT IS IN THE
13 BOX PERTAINING TO THAT CASE. IF IT'S DRUGS, IT WILL BE
14 ON A SINGLE SHEET BY ITSELF. IF IT'S MONEY, IT WILL BE
15 ON A SHEET BY ITSELF. IF IT'S GUNS, IT'S ON A SHEET BY
16 ITSELF.

17 THE REASON FOR THIS BEING IS I HAVE TO TAKE AND
18 TRANSFER THIS PROPERTY TO DIFFERENT LOCATIONS FOR
19 EXAMINATIONS. THAT WAY I HAVE ONE SPECIFIC SHEET OF
20 PAPER IDENTIFYING EACH PIECE OF PROPERTY, AND IT TELLS
21 ME EXACTLY WHERE THAT PROPERTY HAS WENT TO AND WHO HAS
22 HANDLED IT. I TAKE AND I LOOK OVER IT AND MAKE SURE ALL
23 THE INFORMATION IS FILLED OUT CORRECTLY ON THERE, AND
24 AFTER LOOKING AT THAT SHEET, IF IT'S A PIECE OF PROPERTY
25 LABELED FOR EXAMINATION, IT SHOULD HAVE A LAB SHEET WITH

1 IT SAYING SPECIFICALLY WHERE IT NEEDS TO GO AND WHAT
2 EXAMINATION NEEDS TO BE PERFORMED ON IT.

3 AFTER THOSE TWO ARE CHECKED AND EVERYTHING IS
4 FILLED OUT PROPERLY, I THEN MAKE SURE THE EVIDENCE IS
5 SEALED CORRECTLY, AND I PLACE IT IN THE ENVELOPE AND
6 LABEL IT WITH THE CASE NUMBER AND THE OFFICER'S NAME
7 PERTAINING TO WHATEVER IT MAY BE. IF IT'S DRUGS, THEN I
8 PUT IT IN THE DRUG LOCKER AND THAT'S WHERE IT IS SECURED
9 AFTER I LABEL THE PROPERTY AND EVIDENCE SHEET STATING
10 THAT IT IS IN THE DRUG LOCKER ALONG WITH MY NAME, THE
11 DATE AND THE TIME.

12 Q. NOW, IS THIS PROPERTY REPORT, THE SHEET THAT YOU
13 ARE TALKING ABOUT, ALWAYS WITH THE PARTICULAR ITEM OF
14 EVIDENCE THAT IT'S ASSOCIATED WITH?

15 A. YES, IT IS.

16 Q. OKAY.

17 MS. SALISBURY: WOULD YOU MARK THIS?

18 (STATE'S EX. NO. 4, PROPERTY REPORT, WAS
19 MARKED FOR IDENTIFICATION.)

20 BY MS. SALISBURY:

21 Q. NOW, MR. NELSON, I'M SHOWING YOU STATE'S EXHIBITS
22 NUMBERS THREE AND FOUR. DO YOU RECOGNIZE THOSE ITEMS?

23 A. YES, I DO.

24 Q. IS EXHIBIT NUMBER FOUR THE PROPERTY AND EVIDENCE
25 SHEET THAT GOES ALONG WITH EXHIBIT NUMBER THREE?

1 A. YES, IT IS.

2 Q. DO YOU RECOGNIZE THE SIGNATURES ON STATE'S
3 EXHIBIT FOUR?

4 A. YES, I DO.

5 Q. WHAT DOES YOUR SIGNATURE ON THAT PARTICULAR SHEET
6 MEAN?

7 A. THE FIRST ONE WHERE, WHERE MY FIRST SIGNATURE IS
8 AT IS WHERE I CHECK IT INTO EVIDENCE. THAT'S WHERE THE
9 OFFICER PLACED IT IN THE EVIDENCE LOCKER, I THEN
10 RETRIEVED IT OUT OF THAT LOCKER, AND AFTER EXAMINING ALL
11 THE PAPERWORK, MADE SURE THAT IT WAS CLEAR AND READY TO
12 GO LOGGED INTO MY EVIDENCE ROOM.

13 Q. SO WHEN DID YOU TAKE, WHEN AND WHERE DID YOU TAKE
14 POSSESSION OF THAT PIECE OF EVIDENCE?

15 A. ON 7-30-2007 AT 7:30 IN THE MORNING.

16 Q. OKAY. WHEN YOU RECEIVED EXHIBIT THREE, THE PIECE
17 OF EVIDENCE THAT'S ASSOCIATED WITH THAT REPORT, WAS IT
18 SEALED?

19 A. YES, IT WAS.

20 Q. HOW DO YOU KNOW?

21 A. THAT IS ONE OF THE, THE PROCEDURES THAT MUST BE
22 FOLLOWED BEFORE I CAN ACTUALLY RECEIVE THE EVIDENCE.
23 THAT IS ONE OF MY CHECK-OFFS THERE THAT I CHECK OFF ON
24 EVERY PIECE OF EVIDENCE THAT PERTAINS TO DRUGS OR
25 ANYTHING THAT MUST BE SEALED.

1 Q. WHAT WOULD YOU HAVE DONE IF YOU HAD RECEIVED THAT
2 PIECE OF EVIDENCE AND IT HADN'T BEEN SEALED?

3 A. THE SHIFT SUPERVISOR OF THAT OFFICER WOULD HAVE
4 BEEN NOTIFIED IMMEDIATELY AND IT WOULD HAVE BEEN
5 RETURNED TO THE OFFICER TO MAKE SURE THAT HE SEALED THAT
6 PROPERTY AND ACTUALLY INITIALED IT.

7 Q. NOW, WHEN YOU RETRIEVED THAT, THAT PIECE OF
8 EVIDENCE FROM THE LOCKER, DID YOU BREAK ANY OF THIS, ANY
9 OF THE SEALS?

10 A. NO, I DO NOT.

11 Q. WHAT DID YOU DO WITH THAT PIECE OF EVIDENCE NEXT?

12 A. FROM THERE IT GOES, IT WAS LOGGED IN AND IT WAS
13 LABELED INTO THE DRUGS SECTION, AND IT WAS LOCKED AND
14 SECURED IN THAT AREA UNTIL THE DATE OF WHEN I WOULD BE
15 GOING TO GREENVILLE, WHO DOES OUR LAB TESTING ON DRUGS.
16 IT WAS TRANSPORTED THE NEXT DAY TO GREENVILLE ON 7-31-07
17 AT 9:30 IN THE MORNING, I TOOK IT OUT OF THAT LOCKER AND
18 THEN TRANSPORTED IT TO GREENVILLE TO THEIR PROPERTY AND
19 EVIDENCE ROOM.

20 Q. AFTER YOU TRANSPORTED THAT ITEM OF EVIDENCE TO
21 GREENVILLE, DID YOU RECEIVE EXHIBIT THREE AGAIN?

22 A. IT WAS AFTER IT HAD BEEN THROUGH THEIR PROCESS,
23 IT WAS LOGGED IN THERE, THEIR LAB PEOPLE DID WHAT THEY
24 NEEDED TO WITH IT, AND I THEN RETRIEVED IT BACK ON 8-9
25 OF 2007 AT 12:15 IN THE AFTERNOON.

1 Q. HOW DID YOU PICK THAT PIECE OF EVIDENCE UP?

2 A. I PICKED IT UP IN PERSON, WENT THERE AND
3 RETRIEVED IT MYSELF.

4 Q. WAS IT AGAIN SEALED?

5 A. YES, IT WAS.

6 Q. DID YOU BREAK ANY OF THOSE SEALS?

7 A. NO, I DID NOT.

8 Q. WHAT DID YOU DO WITH EXHIBIT THREE AFTER YOU
9 RETRIEVED IT FROM PROPERTY AND EVIDENCE HERE IN
10 GREENVILLE?

11 A. WHEN I RETRIEVED IT, I, I GO BACK AND OPEN UP THE
12 PACKAGE TO MAKE SURE THAT IT IS SEALED. AFTER MAKING
13 SURE IT'S SEALED AND SECURED, I THEN TAKE IT AND
14 TRANSPORT IT BACK TO THE FOUNTAIN INN POLICE DEPARTMENT
15 WHERE IT IS PUT BACK IN THE DRUG LOCKER.

16 Q. WHEN DID YOU RETURN IT BACK TO THE DRUG LOCKER
17 AFTER PICKING IT UP FROM GREENVILLE?

18 A. ON THAT DAY I LEFT IMMEDIATELY FROM THERE AND
19 WENT RIGHT BACK TO FOUNTAIN INN POLICE DEPARTMENT WITH
20 IT.

21 Q. I BELIEVE, IS THAT DATE AUGUST 9TH?

22 A. THAT WILL BE 8-9 OF 2007.

23 Q. HAS EXHIBIT THREE BEEN STORED IN THAT SAME
24 SECURED AREA TO WHICH YOU HAVE ACCESS SINCE IT WAS
25 TRANSPORTED FROM GREENVILLE BACK TO FOUNTAIN INN BY YOU

1 ON AUGUST 9TH?

2 A. YES, IT HAS BEEN.

3 Q. ALL RIGHT. DID YOU CHECK IT OUT OF THAT SECURED
4 EVIDENCE LOCKER TO BRING IT TO COURT FOR TRIAL?

5 A. YES, I DID.

6 Q. OKAY.

7 MS. SALISBURY: I DON'T HAVE ANY OTHER
8 QUESTIONS RIGHT NOW. ANSWER ANY QUESTIONS MR. CHAMBERS
9 MAY HAVE FOR YOU.

10 CROSS-EXAMINATION BY MR. CHAMBERS:

11 Q. SO ANY EVIDENCE THAT'S RECEIVED INTO THE FOUNTAIN
12 INN POLICE DEPARTMENT, ARE YOU THE ONE THAT'S
13 RESPONSIBLE FOR IT?

14 A. YES, SIR, I AM.

15 Q. AND IN THIS PARTICULAR CASE YOU HAVE TALKED ABOUT
16 THE -- LET ME SEE THAT.

17 A. (HANDING)

18 Q. AND THIS IS STATE'S EXHIBIT FOUR, AND IT SAYS
19 THAT YOU RECEIVED FROM OFFICER GRAHAM 9.5 GRAMS OF AN
20 OFF-WHITE, OFF-WHITE ROCK; IS THAT CORRECT?

21 A. THAT IS CORRECT, SIR.

22 Q. AND HAD HE ALREADY SEALED IT WHEN YOU GOT IT?

23 A. YES, SIR, IT WAS SEALED.

24 Q. AND INSIDE THAT SEALED PACKAGE, THAT WAS THE, OR
25 AS FAR AS YOU KNOW, WAS THE WAY THAT THE OFFICER

1 RETRIEVED IT?

2 A. THAT IS CORRECT.

3 Q. YOU DIDN'T DO ANYTHING TO ALTER IT ONCE YOU GOT
4 IT?

5 A. NO, SIR, NOT AT ALL, SIR.

6 Q. AND OTHER THAN THE PERSON WHO IS LATER GOING TO
7 TEST IT, NOBODY IN THIS PROCESS DOES ANYTHING TO ALTER
8 IT AT ANY POINT, DO THEY?

9 A. NOT AS FAR AS THE FOUNTAIN INN POLICE DEPARTMENT.
10 I CAN'T ATTEST FOR ANYBODY ELSE.

11 Q. WELL, IS THE REASON FOR THIS PROCESS THAT Y'ALL
12 GO THROUGH WITH ALL THESE SIGNATURES AND THE TIMES AND
13 THAT SORT OF THING, IS THAT TO MAINTAIN THE INTEGRITY OF
14 EVIDENCE THAT'S BEEN SEIZED?

15 A. WHAT THAT IS IS TO MAINTAIN THE CHAIN OF CUSTODY
16 AS TO WHO ALL HAS HANDLED IT AND WHAT THEIR, THEIR
17 ACTUAL DUTIES ARE WITH THAT PARTICULAR PIECE OF
18 EVIDENCE.

19 Q. OKAY. SO IT DOESN'T HAVE ANYTHING TO DO WITH
20 MAINTAINING THE INTEGRITY OF THE EVIDENCE THAT YOU HAVE
21 SEIZED?

22 A. WHAT IT DOES IS IT MAINTAINS THAT CHAIN OF
23 CUSTODY AS TO WHO WOULD HANDLE IT AND WHAT THEY DO WITH
24 IT AND WHY.

25 Q. OH, OKAY. SO IN THIS PARTICULAR CASE, OFFICER

1 GRAHAM WROTE IN HERE THAT HE HAD 9.5 GRAMS OF AN
2 OFF-WHITE ROCK-LIKE SUBSTANCE -- I'M ADDING THE
3 ROCK-LIKE SUBSTANCE, HE JUST SAID ROCK -- AND HE SAYS
4 THAT HE PUT THAT IN THE EVIDENCE LOCKER AT 0120?

5 A. IF I COULD CAN LOOK AT IT, I COULD VERIFY IT FOR
6 YOU. 0120, THAT IS CORRECT.

7 Q. AND THEN YOU RETRIEVED IT, OR YOU PUT IT INTO
8 EVIDENCE AT 0730. SO WHAT DOES THAT MEAN? HE PUT IT IN
9 THE EVIDENCE LOCKER AND THEN YOU ARE PUTTING IT INTO
10 EVIDENCE. WHAT ARE YOU DOING AT THAT POINT?

11 A. AT THAT POINT I AM RETRIEVING IT FROM THOSE
12 LOCKERS AND PLACING IT INTO EVIDENCE, WHICH IS THE AREA
13 THAT IS LABELED AS DRUGS. IN THE UPPER CORNER HERE YOU
14 CAN SEE IT'S LABELED. IT WENT INTO A DRUG LOCKER ON
15 THAT DATE AT THAT TIME.

16 Q. AND THEN YOU CARRIED IT OVER TO GREENVILLE P & E
17 ON JULY 31ST AT 9:30. WHAT IS THE REASON FOR THAT?

18 A. THAT IS TO TAKE IT TO THEM SO THEY CAN TRANSFER
19 IT TO THE LAB TO BE TESTED.

20 Q. ALL RIGHT. AND SO THAT EVERYBODY IN THE PROCESS
21 HAS TO SIGN IT OUT WHEN THEY TAKE IT OUT AND THEN GIVE
22 THE REASON WHY WE ARE DOING THAT?

23 A. THAT IS CORRECT.

24 Q. ALL RIGHT. AND IS THAT TRUE FOR ANY EVIDENCE
25 THAT IS SEIZED IN A CASE?

1 A. YES, SIR, IT IS.

2 Q. ALL RIGHT. I DON'T HAVE THE ORIGINAL, I ONLY
3 HAVE A COPY THAT THE SOLICITOR'S OFFICE GAVE ME PURSUANT
4 TO MY DISCOVERY REQUEST. SO I'M GONNA ASK YOU TO LOOK
5 AT THIS COPY AND TELL ME IF YOU RECOGNIZE THAT.

6 A. YES, SIR, I DO.

7 Q. AND WHAT IS THAT?

8 A. THIS IS ALSO ADDITIONAL EVIDENCE THAT IS OUTSIDE
9 OF THE DRUGS THAT WAS ALSO SEIZED WITH THIS SAME CASE.

10 Q. OKAY. AND WHAT IS THAT?

11 A. THIS HERE IS A PROPERTY AND EVIDENCE SHEET THAT
12 STATES THAT THERE WAS A METAL ROD, A METAL PIPE WITH
13 RESIDUE.

14 Q. OKAY. AND THAT WAS ALSO SIGNED IN BY OFFICER
15 GRAHAM?

16 A. THAT IS CORRECT.

17 Q. AND THAT WAS ALSO AT 0120, WHICH WOULD HAVE BEEN
18 THE SAME TIME AS THIS 9.5 GRAMS OF OFF-WHITE ROCK?

19 A. THAT IS CORRECT.

20 Q. AND THEN YOU RETRIEVED IT AT BASICALLY THE SAME
21 TIME AND PUT IT INTO EVIDENCE?

22 A. THAT IS CORRECT.

23 Q. AND THEN NOTHING ELSE WAS DONE WITH IT AT ANY
24 POINT AFTER THAT, AT LEAST ACCORDING TO THAT SHEET?

25 A. IT WAS NOTHING ELSE. IT WAS PLACED IN THE

1 OFFICER'S ACTUAL BIN.

2 Q. OKAY. DO YOU RECALL ON THIS PARTICULAR CASE
3 WHETHER THERE WAS, WERE ANY OTHER PROPERTY REPORTS?

4 A. THAT'S THE ONLY ONES THAT I HAVE.

5 Q. OKAY. SO IN CONNECTION WITH THIS CASE, THESE TWO
6 PROPERTY REPORTS WOULD CONTAIN THE ENTIRETY OF WHAT WAS
7 SEIZED FROM CALVIN TODD?

8 A. AS FAR AS EVIDENCE, YES.

9 Q. OKAY. THANK YOU.

10 MR. CHAMBERS: YOUR HONOR, I WOULD MOVE TO
11 HAVE THIS ADMITTED AS DEFENSE EXHIBIT ONE.

12 MS. SALISBURY: NO OBJECTION.

13 THE COURT: WITHOUT OBJECTION, DEFENSE
14 EXHIBIT ONE IS ADMITTED INTO EVIDENCE.

15 (DEFENDANT'S EXHIBIT # 1, PROPERTY REPORT,
16 WAS RECEIVED IN EVIDENCE.)

17 BY MR. CHAMBERS:

18 Q. OFFICER, I BELIEVE THAT ON OCCASION YOU SAID THAT
19 YOU WOULD RECEIVE MONEY AS EVIDENCE?

20 A. THAT IS CORRECT.

21 Q. YOU WOULD FILL OUT A SEPARATE SHEET FOR THAT?

22 A. THE ACTUAL P & E, PROPERTY AND EVIDENCE SHEET,
23 WHICH IS THE SAME AS THIS, WOULD SPECIFICALLY STATE CASH
24 AND HOW MUCH, BREAK IT DOWN INTO INDIVIDUAL BILLS,
25 WHETHER IT BE TEN ONE-DOLLAR BILLS, 20 FIVE-DOLLAR

1 BILLS, BREAKS IT DOWN SPECIFICALLY, ALSO LISTING SERIAL
2 NUMBERS WITH THAT.

3 Q. AND YOU DO THAT SPECIFICALLY BECAUSE YOU HAVE TO
4 PUT THAT IN A SEPARATE AREA; IS THAT CORRECT?

5 A. THAT IS THEN TRANSPORTED OVER TO CITY HALL AND
6 DEPOSITED INTO THE DRUG ACCOUNT.

7 Q. WAS THERE, WAS THERE ANY MONEY SEIZED IN THIS
8 CASE?

9 A. NO, SIR.

10 MR. CHAMBERS: THANKS A LOT, OFFICER.

11 MS. SALISBURY: NO REDIRECT, YOUR HONOR.

12 THE COURT: YOU MAY STEP DOWN.

13 (WHEREUPON, THE WITNESS WAS EXCUSED.)

14 THE COURT: YOU MAY CALL YOUR NEXT WITNESS.

15 MS. SALISBURY: THE STATE CALLS MS. RENEE
16 PRUITT. MS. PRUITT, PLEASE COME AROUND AND BE SWORN.

17 (WHEREUPON, THE WITNESS WAS SWORN BY THE
18 CLERK.)

19 THE CLERK: PLEASE STATE YOUR FULL NAME AND
20 SPELL YOUR LAST NAME FOR THE RECORD.

21 THE WITNESS: RENEE PRUITT, P-R-U-I-T-T.

22 WHEREUPON,

23 RENEE PRUITT,

24 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS

25 FOLLOWS:

1 DIRECT EXAMINATION BY MS. SALISBURY:

2 Q. MS. PRUITT, WHERE ARE YOU EMPLOYED?

3 A. GREENVILLE COUNTY DEPARTMENT OF PUBLIC SAFETY.

4 Q. HOW LONG HAVE YOU WORKED THERE?

5 A. 12 YEARS.

6 Q. NOW, WHAT'S YOUR CAPACITY AT THE DEPARTMENT OF
7 PUBLIC SAFETY?

8 A. I WORK IN THE PROPERTY AND EVIDENCE SECTION.

9 Q. COULD YOU DESCRIBE FOR THE JURY GENERALLY WHAT
10 YOUR DUTIES ARE AT PROPERTY AND EVIDENCE DAY TO DAY?

11 A. WE ARE CUSTODIANS OF THE PROPERTY AND EVIDENCE
12 THAT IS BROUGHT IN BY THE CITY AND COUNTY. WE ALSO HOLD
13 THE EVIDENCE THAT IS BROUGHT IN BY ALL THE AGENCIES OF
14 THE COUNTY AND OF PICKENS COUNTY, ALSO, THAT IS BROUGHT
15 IN TO BE TESTED FOR LATENT PRINTING AND FOR DRUG
16 TESTING.

17 Q. NOW, MS. PRUITT, WHAT IS PROPERTY AND EVIDENCE,
18 PHYSICALLY SPEAKING, WHAT IS IT?

19 A. IT'S JUST A STORAGE FACILITY, BASICALLY.

20 Q. OKAY. IS PROPERTY AND EVIDENCE A SECURED AREA?

21 A. VERY SECURE.

22 Q. CAN ANYONE ENTER THAT AREA?

23 A. NO.

24 Q. WHO HAS ACCESS TO PROPERTY AND EVIDENCE?

25 A. THERE ARE FOUR PEOPLE WHO WORK IN PROPERTY AND

1 EVIDENCE.

2 Q. OKAY. WHERE, INSIDE PROPERTY AND EVIDENCE WHERE
3 DO YOU KEEP EVIDENCE?

4 A. WE HAVE MULTIPLE LOCATIONS INSIDE THE FACILITY
5 AND WE HAVE A COUPLE LOCATIONS THAT ARE OUTSIDE THE
6 FACILITY.

7 Q. OKAY. HOW, HOW DOES A PARTICULAR PIECE, A
8 PARTICULAR ITEM OF EVIDENCE COME INTO YOUR POSSESSION?

9 A. IT IS BROUGHT IN BY EITHER DEPUTIES OR THE POLICE
10 OFFICERS.

11 Q. NOW, WHAT DO YOU DO WITH A PARTICULAR ITEM OF
12 EVIDENCE THAT'S RECEIVED, THAT'S GIVEN TO YOU, WHAT DO
13 YOU DO WITH IT?

14 A. WELL, ONCE IT'S BROUGHT IN, WE CHECK IT. WE
15 INVENTORY EVERYTHING THAT'S BROUGHT IN TO US TO MAKE
16 SURE THAT WHAT WE HAVE ON THE PROPERTY AND EVIDENCE
17 SHEETS IS ACTUALLY WHAT WE HAVE.

18 Q. NOW, CAN YOU TELL THE JURY, WHAT IS THE PURPOSE
19 OF A PROPERTY AND EVIDENCE SHEET?

20 A. A PROPERTY AND EVIDENCE SHEET IS BASICALLY, IF
21 IT'S NOT ON THAT PROPERTY AND EVIDENCE SHEET, WHAT THEY
22 BRING IN TO US, WE DON'T ACCEPT IT. THEY HAVE TO MAKE
23 SURE THAT WHAT THEY BRING IN IS ACTUALLY WHAT WE HAVE,
24 AND IT HAS TO BE CORRECT. WE DO NOT ACCEPT ANYTHING
25 THAT'S NOT CORRECT.

1 Q. ALL RIGHT. I WOULD LIKE TO SHOW YOU STATE'S
2 EXHIBIT THREE AND STATE'S EXHIBIT FOUR. DO YOU
3 RECOGNIZE BOTH OF THOSE ITEMS?

4 A. YES.

5 Q. IS STATE'S EXHIBIT THREE THE PROPERTY AND
6 EVIDENCE REPORT THAT GOES ALONG -- EXCUSE ME -- IS
7 STATE'S EXHIBIT FOUR THE PROPERTY AND EVIDENCE REPORT
8 THAT GOES ALONG WITH STATE'S EXHIBIT THREE?

9 A. YES.

10 Q. DO YOU RECOGNIZE THE SIGNATURES ON THAT PROPERTY
11 AND EVIDENCE REPORT?

12 A. YES, I DO.

13 Q. WHAT DOES IT MEAN THAT YOUR SIGNATURE IS ON THAT
14 SHEET?

15 A. IT MEANS THAT I ACCEPTED THIS EVIDENCE.

16 Q. OKAY. WHEN AND WHERE DID YOU TAKE POSSESSION OF
17 EXHIBIT THREE?

18 A. THIS EVIDENCE WAS BROUGHT TO ME ON JULY 31ST,
19 2007, AND I SIGNED IT IN AT 10:05 A.M.

20 Q. NOW, WHEN YOU RECEIVED THAT ITEM OF EVIDENCE, WAS
21 IT SEALED?

22 A. YES, IT WAS.

23 Q. HOW DO YOU KNOW?

24 A. HE WOULD NOT HAVE ACCEPTED IT HAD IT NOT BEEN
25 SEALED.

1 Q. DID YOU INDICATE ON THE PROPERTY AND EVIDENCE
2 REPORT WHETHER THE ITEM WAS SEALED WHEN YOU RECEIVED IT?

3 A. YES, I DID.

4 Q. OKAY. WHAT WOULD, WHAT WOULD HAVE BEEN DONE WITH
5 THAT PIECE OF EVIDENCE HAD IT BEEN GIVEN TO YOU AND IT
6 WASN'T SEALED?

7 A. I WOULD NOT HAVE ACCEPTED IT.

8 Q. OKAY. DID YOU BREAK ANY OF THOSE SEALS?

9 A. NO, I DID NOT.

10 Q. WHAT DID YOU DO WITH EXHIBIT THREE?

11 A. ONCE I SIGNED IT IN, WE HAVE WHAT'S CALLED AN
12 EVIDENCE TRANSFER SHEET. THAT'S USED FOR ALL AGENCIES
13 OUTSIDE OF THE CITY AND THE COUNTY. THAT'S SOMETHING
14 THAT WE USE JUST FOR OUTSIDE AGENCIES, JUST FOR TRACKING
15 PURPOSES. I SIGN THAT JUST SO I HAVE A RECORD THAT WE
16 HAD SOMETHING ELSE THAT CAME IN.

17 I ALSO TOOK THIS PIECE OF EVIDENCE, ONCE I SIGNED
18 IT IN, AND I PUT IT INTO WHAT WE CALL A PENDING AREA,
19 AND THAT WAS INSIDE OF OUR DRUG EVIDENCE VAULT, AND
20 THAT'S A WAITING AREA FOR THE LAB TO USE FOR WHEN THEY
21 COME TO TAKE EVIDENCE TO TEST.

22 Q. OKAY. SO, MS. PRUITT, HOW LONG AFTER YOU CHECKED
23 IN THAT ITEM OF EVIDENCE WAS IT PLACED INTO THIS LAB
24 ANALYSIS BOX, THIS PENDING AREA?

25 A. I PUT THAT IN THERE IMMEDIATELY.

1 Q. OKAY. SO AFTER EXHIBIT THREE WAS DROPPED OFF BY
2 MR. NELSON, AS HE TESTIFIED, AND YOU SIGNED FOR IT ON
3 THE 31ST, WAS IT CHECKED OUT OF PROPERTY AND EVIDENCE
4 AGAIN?

5 A. YES, IT WAS.

6 Q. WHY, ACCORDING TO THAT REPORT, WHY WAS IT CHECKED
7 OUT?

8 A. IT WAS CHECKED OUT FOR TESTING.

9 Q. OKAY. BY WHOM?

10 A. BY MR. JAMES ARMSTRONG.

11 Q. OKAY. DID YOU RECEIVE EXHIBIT NUMBER THREE AGAIN
12 AFTER IT WAS CHECKED OUT BY MR. ARMSTRONG?

13 A. YES, I DID.

14 Q. WHO BROUGHT IT TO YOU?

15 A. MR. ARMSTRONG HAD BROUGHT IT, BROUGHT IT -- YEAH,
16 MR. ARMSTRONG BROUGHT IT BACK TO ME.

17 Q. WAS IT AGAIN SEALED WHEN HE RETURNED IT TO YOU?

18 A. YES, IT WAS.

19 Q. HOW DO YOU KNOW?

20 A. HIS INITIALS ARE ON THE BAG.

21 Q. DID YOU AGAIN INDICATE ON THAT PROPERTY AND
22 EVIDENCE REPORT THE FACT THAT THE ITEM WAS SEALED WHEN
23 YOU RECEIVED IT?

24 A. YES, I DID.

25 Q. DID YOU BREAK ANY OF THOSE SEALS THIS TIME?

1 A. NO, I DID NOT.

2 Q. NOW, WAS STATE'S EXHIBIT THREE CHECKED OUT
3 ANOTHER TIME AFTER YOU RECEIVED IT FROM MR. ARMSTRONG?

4 A. YES, IT WAS.

5 Q. BY WHOM?

6 A. MR. NELSON.

7 Q. WHY?

8 A. MR. NELSON CAME TO TAKE THE EVIDENCE BACK TO
9 FOUNTAIN INN.

10 Q. OKAY.

11 MS. SALISBURY: THANK YOU, MS. PRUITT.
12 ANSWER ANY QUESTIONS MR. CHAMBERS MAY HAVE FOR YOU.

13 MR. CHAMBERS: YOUR HONOR, I DON'T HAVE ANY
14 QUESTIONS FOR THIS WITNESS.

15 THE COURT: ALL RIGHT. YOU MAY STEP DOWN.
16 THANK YOU VERY MUCH, MA'AM.

17 (WHEREUPON, THE WITNESS WAS EXCUSED.)

18 THE COURT: WILL COUNSEL APPROACH, PLEASE.
19 (BENCH CONFERENCE.)

20 THE COURT: MADAM FORELADY, LADIES AND
21 GENTLEMEN OF THE JURY, THE NEXT WITNESS IS NOT HERE AT
22 THIS TIME, HE'S ON THE WAY AND IT SHOULD TAKE JUST A FEW
23 MINUTES. BUT THE ONLY THING IS I'M GOING ASK YOU TO
24 TAKE A BREAK SO I CAN ALSO TAKE UP SOME OTHER MATTERS,
25 AS I SAID, THAT I'VE HAD TO DEAL WITH TODAY. IT SHOULD

1 BE A FAIRLY SHORT BREAK.

2 BUT SEE IF THEY DO HAVE SOME REFRESHMENTS.

3 AND WHEN YOU ARE READY, JUST LET THE BAILIFF
4 KNOW, KNOCK ON THE DOOR, AND THEN HOPEFULLY WE'LL HAVE
5 EVERYTHING READY FOR YOU AT THAT TIME.

6 AGAIN, DO NOT UNDERTAKE DISCUSSION OF THE
7 CASE AMONG YOURSELVES IN ANY WAY.

8 EVERYONE ELSE REMAIN SEATED WHILE THE JURY
9 RETIRES FROM THE COURTROOM.

10 (WHEREUPON, THE JURY LEFT THE COURTROOM AT
11 10:10 A.M.)

12 THE COURT: ALL RIGHT. IS THERE ANYTHING
13 FROM THE STATE BEFORE WE TAKE A BREAK IN THIS CASE?

14 MS. SALISBURY: NO, YOUR HONOR.

15 THE COURT: FROM THE DEFENSE?

16 MR. CHAMBERS: NO, YOUR HONOR.

17 THE COURT: IS THE STATE READY?

18 MS. SALISBURY: YES, YOUR HONOR.

19 THE COURT: ANYTHING FROM THE DEFENSE?

20 MR. CHAMBERS: NO, YOUR HONOR.

21 THE COURT: ALL RIGHT. ASK THE JURY TO JOIN
22 US.

23 (WHEREUPON, THE JURY ENTERED THE COURTROOM AT
24 10:26 A.M.)

25 THE COURT: ALL RIGHT. LET THE RECORD

1 REFLECT THE JURY AND ALTERNATE ARE IN THE JURY-BOX.

2 MADAM SOLICITOR, YOU MAY CALL YOUR NEXT
3 WITNESS.

4 MS. SALISBURY: THANK YOU, JUDGE. THE STATE
5 CALLS MR. JAMES ARMSTRONG. MR. ARMSTRONG, IF YOU WOULD
6 COME AROUND AND BE SWORN.

7 (WHEREUPON, THE WITNESS WAS SWORN BY THE
8 CLERK.)

9 THE CLERK: PLEASE STATE YOUR FULL NAME AND
10 SPELL YOUR LAST NAME FOR THE RECORD.

11 THE WITNESS: JAMES WILLIAMS ARMSTRONG,
12 A-R-M-S-T-R-O-N-G.

13 WHEREUPON,

14 JAMES ARMSTRONG,
15 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS
16 FOLLOWS:

17 DIRECT EXAMINATION BY MS. SALISBURY:

18 Q. WHERE ARE YOU EMPLOYED?

19 A. I'M EMPLOYED WITH THE GREENVILLE COUNTY
20 DEPARTMENT OF PUBLIC SAFETY, FORENSICS DIVISION CRIME
21 LABORATORY.

22 Q. AND WHAT IS YOUR SPECIFIC POSITION THERE?

23 A. I HAVE A DUAL RESPONSIBILITY AS A FORENSIC
24 CHEMIST AND A FIREARM EXAMINER.

25 Q. NOW, HOW LONG HAVE YOU BEEN WORKING SPECIFICALLY

1 AS A CHEMIST?

2 A. IT'S A LITTLE OVER 12 YEARS.

3 Q. NOW, WHAT KIND OF TRAINING AND EDUCATION DID YOU
4 RECEIVE BEFORE BECOMING A CHEMIST?

5 A. I HAVE A BACHELOR OF SCIENCE DEGREE IN CHEMISTRY
6 FROM ERSKINE COLLEGE. I'VE TRAINED IN THE AREA OF DRUG
7 IDENTIFICATION APPROXIMATELY ONE YEAR UNDER THE
8 DIRECTION OF OUR LAB SUPERVISOR. I'VE ATTENDED THE
9 FORENSIC CHEMIST SEMINAR SPONSORED BY THE DRUG
10 ENFORCEMENT ADMINISTRATION IN WASHINGTON, D.C.

11 I HAVE ATTENDED NUMEROUS INSTRUMENTAL ANALYSIS IN
12 SCHOOLS CONCERNING THE INSTRUMENTS I USE IN MY ANALYSIS.
13 I HAVE TESTIFIED NO FEWER THAN 106 TIMES AS AN EXPERT
14 IN DRUG IDENTIFICATION IN FEDERAL, STATE, AND LOCAL
15 COURTS.

16 Q. DO YOU CONTINUE TO RECEIVE EDUCATION AND TRAINING
17 IN THE FIELD OF CHEMISTRY?

18 A. YES, MA'AM, I DO.

19 Q. ALL RIGHT. NOW, WHAT PRECISE TASKS DO YOU
20 PERFORM AS A CHEMIST?

21 A. ONE OF MY MAIN PRIORITIES AS A CHEMIST IS TO
22 ANALYZE SUSPECTED CONTROLLED SUBSTANCES, WHITE POWDERS,
23 ROCK SUBSTANCES, PLANT MATERIALS. WE ALSO INVENTORY THE
24 CONTENTS AND WEIGHT AND RECORD A WEIGHT OF THE ITEM.

25 Q. NOW, OVER THE YEARS THAT YOU'VE WORKED AS A

1 CHEMIST, IN APPROXIMATELY HOW MANY CASES HAVE YOU BEEN
2 ASKED TO ANALYZE A CHEMICAL SUBSTANCE?

3 A. THOUSANDS.

4 Q. HOW MANY TIMES HAVE YOU TESTIFIED IN COURT ABOUT
5 THE RESULTS OF THE CHEMICAL ANALYSIS THAT YOU PERFORMED?

6 A. 106.

7 Q. HAVE YOU EVER BEEN QUALIFIED BY A COURT AS AN
8 EXPERT IN CHEMICAL ANALYSIS?

9 A. YES, MA'AM, 106 TIMES.

10 Q. 106 TIMES. HAVE YOU EVER NOT BEEN QUALIFIED AS
11 AN EXPERT IN CHEMICAL ANALYSIS?

12 A. NO, MA'AM.

13 MS. SALISBURY: YOUR HONOR, AT THIS TIME THE
14 STATE OFFERS MR. JAMES ARMSTRONG AS AN EXPERT IN THE
15 FIELD OF CHEMICAL ANALYSIS.

16 MR. CHAMBERS: NO OBJECTION AT ALL.

17 THE COURT: ALL RIGHT. WITHOUT OBJECTION
18 THE WITNESS WILL BE QUALIFIED AS AN EXPERT IN CHEMICAL
19 ANALYSIS.

20 MADAM FORELADY, LADIES AND GENTLEMEN OF THE
21 JURY, AS WE SAID WITH OUR OTHER EXPERT, THE WITNESS BY
22 REASON OF HIS BACKGROUND AND TRAINING AND EXPERIENCE
23 WILL BE QUALIFIED TO GIVE OPINIONS IN THE AREA OF
24 CHEMICAL ANALYSIS. HOWEVER, ALL TESTIMONY OF WITNESSES,
25 EXPERT OR OTHERWISE ARE FOR YOUR EVALUATION.

1 YOU MAY PROCEED.

2 **MS. SALISBURY:** THANK YOU, JUDGE.

3 BY MS. SALISBURY:

4 Q. MR. ARMSTRONG, WERE YOU ASKED TO ANALYZE A
5 CHEMICAL SUBSTANCE IN THIS CASE?

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

7 Q. HOW DID YOU OBTAIN THE SUBSTANCE THAT YOU TESTED?

8 A. I RECEIVED IT FROM THE PROPERTY AND EVIDENCE ROOM
9 IN THE BASEMENT OF THE LAW ENFORCEMENT CENTER.

10 Q. DO YOU KNOW WHEN YOU CHECKED OUT THIS ITEM FROM
11 PROPERTY AND EVIDENCE?

12 A. I RECEIVED IT ON AUGUST THE 6, 2007.

13 Q. ALL RIGHT. I'M GONNA SHOW YOU STATE'S EXHIBIT
14 THREE. HAVE YOU SEEN THAT ITEM BEFORE?

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

16 Q. IS THAT BAG AND THE SUBSTANCE THAT YOU TESTED THE
17 SAME BAG AND THE SUBSTANCE THAT YOU CHECKED OUT OF
18 PROPERTY AND EVIDENCE?

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

20 Q. HOW DO YOU KNOW?

21 A. THE OUTERMOST BAG HAS MY INITIALS AND THE DATE
22 WHICH I HAD SEALED IT, AND MY INITIALS AND DATE BETWEEN
23 A DOUBLE HEAT SEAL. THE INNERMOST BAG WHICH WAS
24 SUBMITTED AT OUR PROPERTY ROOM HAS BEEN CUT OPEN WITH MY
25 INITIAL AND DATE WHERE I OPENED THE SEAL, AND THE BAG

1 WHICH CONTAINS THE ROCK SUBSTANCE HAS MY INITIALS AND
2 ITEM NUMBER AND A WEIGHT WHICH I HAD WRITTEN IN BLUE
3 INK.

4 Q. WHEN YOU FIRST RECEIVED STATE'S EXHIBIT THREE
5 FROM PROPERTY AND EVIDENCE, WAS IT SEALED?

6 A. YES, MA'AM, IT WAS.

7 Q. IF ANY SUBSTANCE THAT YOU PICK UP FROM PROPERTY
8 AND EVIDENCE IS NOT SEALED IN A BAG, WHAT DO YOU YOU DO?

9 A. IF IT IS NOT SEALED AND I NOTICE IT AT THE
10 PROPERTY ROOM, I WILL GIVE IT BACK TO THE PROPERTY
11 CLERKS AND HAVE THE OFFICER COME AND CORRECT IT. IF I
12 SIGN OUT THE ITEM AND REALIZE IT IS NOT PROPERLY SEALED
13 WHEN I GET TO MY OFFICE, I WILL THEN MAKE A NOTATION ON
14 PROPERTY SHEET AS WELL AS THE BAG WHICH IT WAS
15 SUBMITTED, THE ITEM WAS NOT PROPERLY SEALED AT TIME OF
16 ANALYSIS.

17 Q. NOW, AFTER YOU PICKED UP THIS ITEM FROM PROPERTY
18 AND EVIDENCE, WHAT DID YOU DO WITH IT NEXT?

19 A. I TRANSPORTED IT TO MY OFFICE FOR EXAMINATION.

20 Q. AFTER YOU TESTED IT, WHAT DID YOU DO WITH THAT
21 SUBSTANCE?

22 A. ONCE MY ANALYSIS WAS COMPLETE, I HEAT SEALED THE
23 ITEM IN THIS DOUBLE HEAT-SEALED POUCH AND PLACED IT IN
24 MY, IN MY SAFETY LOCKER, WHICH IS IN MY OFFICE, WHICH
25 ONLY I HAVE THE COMBINATION TO, UNTIL MY REPORT WAS

1 PEER-REVIEWED BY ANOTHER CHEMIST, AND THEN IT WAS
2 TRANSPORTED BACK TO OUR PROPERTY AND EVIDENCE ROOM.

3 Q. WHERE DID YOU, WHERE PRECISELY DID YOU RETURN
4 THAT ITEM OF EVIDENCE AFTER IT WAS TESTED?

5 A. TO THE PROPERTY AND EVIDENCE ROOM.

6 Q. WHAT WAS THE DATE THAT YOU RETURNED IT TO
7 PROPERTY AND EVIDENCE?

8 A. IT WAS RETURNED ON AUGUST THE 8TH, 2007.

9 Q. NOW, IS STATE'S EXHIBIT THREE IN THE SAME
10 CONDITION TODAY AS IT WAS WHEN YOU RETURNED IT TO
11 PROPERTY AND EVIDENCE ON THE 8TH?

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

13 MS. SALISBURY: YOUR HONOR, THE STATE OFFERS
14 EXHIBIT THREE INTO EVIDENCE.

15 MR. CHAMBERS: NO OBJECTION, YOUR HONOR.

16 THE COURT: ALL RIGHT. WITHOUT OBJECTION
17 STATE'S EXHIBIT MARKED FOR IDENTIFICATION AS STATE'S
18 EXHIBIT NUMBER THREE IS NOW ADMITTED INTO EVIDENCE.

19 (STATE'S EXHIBIT # 3, CRACK COCAINE, WAS
20 RECEIVED IN EVIDENCE.)

21 MS. SALISBURY: THANK YOU, JUDGE.

22 BY MS. SALISBURY:

23 Q. MR. ARMSTRONG, WOULD YOU PLEASE TELL THE JURY HOW
24 YOU ANALYZED THAT SUBSTANCE?

25 A. WHEN I FIRST RECEIVED THE ITEM, I CUT THE, CUT

1 THE BAG OPEN AND INITIAL AND DATE THAT IT WERE THE
2 PROPER SEAL. I THEN INVENTORIED THE CONTENTS.

3 WHEN I RECEIVED IT, THERE WAS A BAG CONTAINING,
4 OR IT WAS A BAG CONTAINING A ROCK SUBSTANCE IN A PIECE
5 OF PLASTIC. I THEN WEIGHED THE ROCK SUBSTANCE. ONCE I
6 RECORDED -- THEN I RECORDED THE WEIGHT ON MY WORK SHEET.
7 THEN I PERFORMED A CHEMICAL SPOT TEST TO GIVE ME AN
8 INDICATION WHAT I MAY OR MAY NOT HAVE. IT'S A
9 PRESUMPTIVE TEST, IT IS NOT A CONCLUSIVE TEST.

10 AND THEN FROM THAT PRESUMPTIVE TEST I WENT TO AN
11 INSTRUMENTAL ANALYSIS WHERE I PERFORMED AN INFRARED
12 SPECTROSCOPY, IT'S WHERE YOU CAN SCAN WITH INFRARED
13 LIGHT. AND EVERY BOND IS UNIQUE AND GIVES OFF CERTAIN
14 ENERGY WHEN THAT BOND IS EXCITED BY THE INFRARED LIGHT.
15 AND THEN RECORD THAT AND THEN WE COMPARE IT TO A
16 STANDARD WHICH WE RUN ON THE INSTRUMENT OURSELVES, AND I
17 GOT FINDINGS FROM THAT.

18 Q. MR. ARMSTRONG, WHAT WERE THE ULTIMATE RESULTS OF
19 YOUR ANALYSIS?

20 A. I FOUND THE BAG CONTAINING ROCK SUBSTANCE IN A
21 PIECE OF PLASTIC TO CONTAIN CRACK COCAINE WITH A WEIGHT
22 OF 8.40 GRAMS.

23 Q. ALL RIGHT. I WOULD LIKE YOU TO TAKE A LOOK AT
24 STATE'S EXHIBIT FOUR. ON THAT SHEET THE OFFICER HAS
25 INDICATED THAT THE WEIGHT OF THE EVIDENCE THAT HE

1 RETURNED IN TO PROPERTY AND EVIDENCE WEIGHED 9.5 GRAMS,
2 BUT I UNDERSTAND THAT YOU JUST TESTIFIED THAT THE WEIGHT
3 OF THE CRACK COCAINE WAS 8.4 GRAMS. WHY IS THERE A
4 DIFFERENCE?

5 A. WELL, I ONLY WEIGH THE CONTENT OF THE ROCK
6 SUBSTANCE, I DO NOT WEIGH THE ENTIRE PACKAGE. A LOT OF
7 THE OFFICERS TEND TO WEIGH THE PACKAGING, LIKE THE BAGS
8 OR PLASTIC WHICH MAY BE WITH IT, BUT WE DO NOT. WE ONLY
9 WEIGH THE ACTUAL CONTENT OF THE BAG OR THE ROCK
10 SUBSTANCE ITSELF.

11 Q. WOULD YOU EXPECT OFFICERS TO REMOVE THE ITEM OF
12 EVIDENCE FROM ITS PACKAGING TO WEIGH IT?

13 A. NO, MA'AM.

14 Q. OKAY.

15 MS. SALISBURY: I DON'T THINK I HAVE ANY
16 OTHER QUESTIONS FOR YOU AT THIS TIME. IF YOU WOULD
17 ANSWER ANY QUESTIONS MR. CHAMBERS MAY HAVE FOR YOU.
18 CROSS-EXAMINATION BY MR. CHAMBERS:

19 Q. SO WHEN YOU GOT IT TO TEST IT, YOU, YOU DIDN'T
20 LEAVE IT SEALED IN THE BAG; IS THAT CORRECT?

21 A. I THEN CUT IT OPEN, YES, SIR.

22 Q. AND YOU ACTUALLY TOOK IT OUT OF EVERY CONTAINER
23 INCLUDING THE ORIGINAL CONTAINER THAT IT WAS IN; IS THAT
24 CORRECT?

25 A. THAT'S CORRECT.

1 Q. WHEN YOU SAID YOU DID AN INVENTORY, DID YOU COUNT
2 THE NUMBER OF ROCKS THAT WERE IN IT OR SIMPLY WEIGH IT?

3 A. NO. JUST SIMPLY WEIGHED IT.

4 Q. AND THE ROCKS THAT ARE IN HERE LOOK TO BE A
5 PRETTY GOOD SIZE. WOULD THAT BE FAIR TO SAY?

6 A. YES, SIR.

7 Q. IS THAT TYPICAL OF WHAT YOU SEE?

8 A. I SEE THOUSANDS OF CASES A YEAR. THAT'S PRETTY
9 TYPICAL, YES, SIR.

10 Q. SO JUST LOOKING AT ONE OF THOSE LARGER ROCKS, ANY
11 IDEA WHAT THE WEIGHT WOULD BE ON ONE OF THOSE?

12 A. THERE ARE A VARIETY OF SIZES. THERE ARE SOME IN
13 HERE THAT PROBABLY WEIGH ROUGHLY A QUARTER OF A GRAM,
14 AND THERE'S ONE HERE THAT MAY WEIGH APPROXIMATELY ONE
15 GRAM.

16 Q. OKAY. SO YOU MADE, YOU GOT ROCKS IN THERE THAT
17 WOULD BE AS MUCH AS A GRAM?

18 A. IT IS POSSIBLE, YES, SIR.

19 Q. AND THERE'S NO UNIFORMITY AT ALL TO THE ROCKS
20 THAT WERE INSIDE THAT BAG?

21 A. NO, SIR.

22 MR. CHAMBERS: THANKS A LOT. THAT'S ALL THE
23 QUESTIONS I HAVE FOR YOU.

24 THE COURT: RE-EXAM?

25 MS. SALISBURY: NO REDIRECT, JUDGE.

1 THE COURT: ALL RIGHT. YOU MAY STEP DOWN.
2 THANK YOU VERY MUCH.

3 MS. SALISBURY: MAY I ASK THAT THE WITNESS
4 BE EXCUSED.

5 MR. CHAMBERS: NO OBJECTION.

6 THE COURT: WITHOUT OBJECTION THE WITNESS
7 WILL BE EXCUSED. THANK YOU.

8 (WHEREUPON, THE WITNESS WAS EXCUSED.)

9 THE COURT: YOU MAY CALL YOUR NEXT WITNESS.

10 MS. SALISBURY: YOUR HONOR, THAT'S THE
11 STATE'S CASE. THE STATE RESTS.

12 THE COURT: ALL RIGHT. MADAM FORELADY,
13 LADIES AND GENTLEMEN OF THE JURY, I NEED TO TAKE SOME
14 MATTERS UP WITH THE ATTORNEYS, SO I'M GOING TO ASK YOU
15 TO RETIRE TO THE JURY ROOM JUST FOR PROBABLY, IT WON'T
16 TAKE THAT LONG, BUT AGAIN, DO NOT UNDERTAKE DISCUSSION
17 OF THE CASE AMONG YOURSELVES IN ANY WAY AS WE HAVEN'T
18 HAD THE FULL CASE AS YET. ALL RIGHT.

19 (WHEREUPON, THE JURY LEFT THE COURTROOM AT
20 10:36 A.M.)

21 THE COURT: ALL RIGHT. ANYTHING ELSE FROM
22 THE STATE?

23 MS. SALISBURY: NO, JUDGE.

24 THE COURT: ANYTHING FROM THE DEFENDANT?
25 MOTION FOR DIRECTED VERDICT ON BEHALF OF DEFENDANT:

1 **MR. CHAMBERS:** YOUR HONOR, I MAKE A MOTION
2 FOR A DIRECTED VERDICT AS TO POSSESSION WITH INTENT TO
3 DISTRIBUTE CRACK COCAINE, SPECIFICALLY THE ELEMENT WITH
4 THE INTENT TO DISTRIBUTE. CLEARLY THE STATE HAS
5 ESTABLISHED THAT MY CLIENT POSSESSED CRACK COCAINE, WE
6 ESSENTIALLY ADMITTED TO THAT.

7 BUT ON THE ADDITIONAL ELEMENT THEY ARE
8 REQUIRED TO PROVE, THEY HAVE ESTABLISHED AS REQUIRED BY
9 STATUTE THAT HE POSSESSED MORE THAN A GRAM, AND SO THAT
10 GIVES RISE TO A *PRIMA FACIE* CASE UNDER THE LAW. BUT
11 THAT DOES NOT, THAT IN AND OF ITSELF DOES NOT OVERCOME
12 THEIR BURDEN, AND HIS REBUTTAL, AND WE HAVE REBUTTED
13 THAT THROUGH OUR CROSS-EXAMINATION AND EVIDENCE THAT HAS
14 BEEN PRESENTED SPECIFICALLY THAT THERE WAS NO MONEY
15 FOUND AND THERE WERE NO OTHER INDICIA WHATSOEVER THAT HE
16 POSSESSED WITH THE INTENT TO DISTRIBUTE. THE ONE AND
17 ONLY THING WOULD BE THAT HE POSSESSED MORE THAN A GRAM.
18 THANK YOU, YOUR HONOR.

19 **THE COURT:** MADAM SOLICITOR?

20 **MS. SALISBURY:** YOUR HONOR, IT IS THE
21 STATE'S POSITION THAT WE PRESENTED CERTAINLY SOME
22 EVIDENCE OR ANY EVIDENCE THAT THE JURY COULD USE TO
23 DETERMINE THAT THE DEFENDANT INTENDED TO DISTRIBUTE IT.
24 I CALL THE JUDGE'S ATTENTION TO THE PARTICULARLY EXPERT
25 TESTIMONY THAT THE DEFENDANT WAS CARRYING WHAT COULD BE

1 BROKEN DOWN INTO 84 ROCKS OF CRACK COCAINE IF THE JURY
2 CHOOSES TO ACCEPT THE FACT THAT THAT QUANTITY IS MORE
3 THAN THE EXPERT TESTIFIED IS WHAT A USER WOULD CARRY.
4 THAT'S CERTAINLY THE KIND OF EVIDENCE THAT THEY COULD
5 USE TO DETERMINE THAT THE DEFENDANT PLANNED TO
6 DISTRIBUTE THAT LARGE QUANTITY OF CRACK COCAINE.

7 AND ON A RELATED NOTE I WOULD LIKE TO CALL
8 YOUR HONOR'S ATTENTION TO *JOHNSON VERSUS STATE*, WHERE
9 OUR SUPREME COURT HAS SPECIFICALLY SAID THAT THE
10 PERMISSIVE STATUTORY INFERENCE WHERE THE DEFENDANT
11 POSSESSES MORE THAN ONE GRAM IS PRECISELY THE KIND OF
12 ANY EVIDENCE THAT WOULD HELP THE STATE OVERCOME THE
13 DIRECTED VERDICT MOTION. THAT IS THE KIND OF EVIDENCE
14 THAT, THAT IS TO BE WEIGHED BY THE JURY AND CONSIDERED
15 BY THE JURY.

16 THE COURT: THANK YOU.

17 ANYTHING FURTHER FROM THE DEFENDANT?

18 MR. CHAMBERS: NO, YOUR HONOR.

19 THE COURT'S RULING ON MOTION FOR DIRECTED VERDICT:

20 THE COURT: WELL, OBVIOUSLY AT THIS STAGE ON
21 DIRECTED VERDICT THE COURT IS NOT CONCERNED ABOUT THE
22 WEIGHT OF EVIDENCE, BUT WHETHER THERE IS ANY EVIDENCE
23 THAT WOULD SUPPORT, REASONABLY SUPPORT A FINDING OF
24 GUILT IN THE CASE. AND I DO FIND FROM THE TESTIMONY OF
25 BRANDON ANTHONY BROWN, WHO WAS QUALIFIED AS AN EXPERT ON

1 IDENTIFICATION AND SALE OF CRACK COCAINE OR DRUGS, THAT
2 THE DISTINCTION IS MADE BETWEEN A USER OF ONE OR TWO
3 ROCKS AND A SELLER WITH EIGHT GRAMS, AND IT COULD BE AS
4 MUCH AS \$1,600.00 FOR EIGHT GRAMS IF BROKEN DOWN. THE
5 FACT THAT NO CASH WAS FOUND ON HIM IS SOMETHING THAT
6 COULD BE ARGUED. MAYBE IT WAS EARLY IN THE EVENING, I
7 DON'T KNOW, OR EARLY IN THE SELLING PERIOD. WHATEVER.
8 SO I DENY THE MOTION FOR DIRECTED VERDICT.

9 NOW, WE HAVE COME TO THAT TIME. WHAT DOES
10 THE DEFENDANT WANT TO DO?

11 MR. CHAMBERS: YOUR HONOR, THE DEFENDANT
12 INTENDS TO TESTIFY. I WOULD, HOWEVER, LIKE FOR THE
13 COURT OBVIOUSLY TO ADDRESS HIM REGARDING HIS RIGHTS TO
14 REMAIN SILENT OR TO TESTIFY.
15 COURT'S INSTRUCTIONS TO DEFENDANT RE TESTIFYING OR NOT:

16 THE COURT: ALL RIGHT. MR. TODD, IF YOU
17 WOULD, PLEASE, STAND. RAISE YOUR RIGHT HAND.

18 (WHEREUPON, THE DEFENDANT WAS SWORN BY THE
19 COURT.)

20 THE COURT: THANK YOU, SIR. ALL RIGHT.
21 LISTEN CAREFULLY. AT THIS TIME I AM GOING TO EXPLAIN TO
22 YOU CERTAIN OF YOUR RIGHTS. IF YOU DO NOT UNDERSTAND
23 ANYTHING I SAY, PLEASE LET ME KNOW. IF YOU WANT ME TO
24 EXPLAIN ANYTHING IN MORE DETAIL, PLEASE LET ME KNOW. DO
25 YOU UNDERSTAND?

1 THE DEFENDANT: YES, SIR.

2 THE COURT: AND WE HAVE REACHED THAT POINT
3 IN THE TRIAL WHERE YOU MAY PRESENT YOUR DEFENSE. YOU
4 HAVE THE RIGHT TO CLAIM THE PROTECTIONS GIVEN TO YOU BY
5 THE FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED
6 STATES. THIS AMENDMENT STATES IN PART: NO PERSON SHALL
7 BE COMPELLED IN ANY CRIMINAL CASE TO BE A WITNESS
8 AGAINST HIMSELF. THIS MEANS THAT YOU CANNOT BE REQUIRED
9 TO TESTIFY IN THIS CASE.

10 YOU HAVE THE RIGHT TO TESTIFY ON YOUR OWN
11 BEHALF. HOWEVER, NO ONE CAN MAKE YOU TESTIFY. THIS IS
12 A PERSONAL RIGHT AND NO ONE CAN WAIVE THIS RIGHT EXCEPT
13 YOU. DO YOU UNDERSTAND?

14 THE DEFENDANT: YES, SIR.

15 THE COURT: IF YOU DECIDE TO TESTIFY, YOU
16 WILL BE SUBJECT TO THE SAME RULES THAT GOVERN OTHER
17 WITNESSES AND YOU MAY BE EXAMINED AND CROSS-EXAMINED ON
18 ANY RELEVANT ISSUE IN THIS CASE. IN ADDITION, IF YOU
19 HAVE ANY CONVICTIONS INVOLVING DISHONESTY OR FALSE
20 STATEMENT OR FOR CRIMES PUNISHABLE BY IMPRISONMENT FOR
21 MORE THAN ONE YEAR, AND THIS COURT DETERMINES THAT THE
22 PROBATIVE VALUE FOR ADMITTING THIS EVIDENCE OUTWEIGHS
23 ITS PREJUDICIAL EFFECT TO YOU, THE SOLICITOR WILL BE
24 ABLE TO INTRODUCE YOUR RECORD TO ATTACK YOUR
25 CREDIBILITY. DO YOU UNDERSTAND?

1 **THE DEFENDANT:** YES, SIR.

2 **THE COURT:** IF YOU DECIDE TO TESTIFY, THIS
3 DECISION ON YOUR PART MUST BE FREELY, VOLUNTARILY, AND
4 INTELLIGENTLY MADE WITH THE KNOWLEDGE OF THE PROTECTIONS
5 GIVEN TO YOU BY THE FIFTH AMENDMENT AND THE CONSEQUENCES
6 OF YOUR DECISION TO TESTIFY. DO YOU UNDERSTAND THIS?

7 **THE DEFENDANT:** YES, SIR.

8 **THE COURT:** IF YOU DECIDE NOT TO TESTIFY, I
9 WILL INSTRUCT THE JURORS THAT THEY CANNOT GIVE THE FACT
10 THAT YOU DID NOT TESTIFY ANY CONSIDERATION WHATSOEVER
11 AND THAT THERE IS TO BE ABSOLUTELY NO PREJUDICE TO YOU
12 BECAUSE YOU DID NOT TESTIFY.

13 IT IS ENTIRELY UP TO YOU WHETHER OR NOT YOU
14 WISH TO TESTIFY. NOW, YOU MAY TALK WITH YOUR ATTORNEY
15 OR ANYONE ELSE, BUT THE FINAL DECISION WILL BE LEFT
16 ENTIRELY UP TO YOU.

17 DO YOU UNDERSTAND WHAT I HAVE EXPLAINED TO
18 YOU?

19 **THE DEFENDANT:** YES, SIR.

20 **THE COURT:** DO YOU HAVE ANY QUESTIONS ABOUT
21 WHAT I HAVE EXPLAINED TO YOU?

22 **THE DEFENDANT:** NO, SIR.

23 **THE COURT:** NOW, HAVE YOU DISCUSSED WITH
24 YOUR LAWYER WHETHER YOU SHOULD TESTIFY OR NOT TESTIFY?

25 **THE DEFENDANT:** YES, SIR.

1 THE COURT: DO YOU WISH TO TALK TO YOUR
2 LAWYER ANY MORE AT THIS TIME?

3 THE DEFENDANT: NO, SIR.

4 THE COURT: ALL RIGHT. DO YOU WISH TO
5 TESTIFY?

6 THE DEFENDANT: YES, SIR.

7 THE COURT: ALL RIGHT. IS THERE ANY
8 QUESTION IN YOUR MIND AS TO WHETHER OR NOT YOU WANT TO
9 TESTIFY?

10 THE DEFENDANT: NO, SIR.

11 THE COURT: VERY GOOD. ALL RIGHT. THANK
12 YOU VERY MUCH. YOU MAY BE SEATED.

13 MR. CHAMBERS: YOUR HONOR, I WOULD ASK THE
14 SOLICITOR TO IDENTIFY WHAT PRIOR CONVICTIONS SHE INTENDS
15 TO INTRODUCE.

16 THE COURT: WHAT SORT OF RECORD DO YOU HAVE?

17 MS. SALISBURY: JUDGE, THE STATE INTENDS TO
18 ELICIT THE FACT THAT THE DEFENDANT WAS CONVICTED OF
19 ARSON IN THE THIRD DEGREE IN 2000 AS WELL AS BURGLARY
20 SECOND. BOTH OF THOSE CARRY MORE THAN ONE YEAR, AND WE
21 BELIEVE THAT THEY ARE CERTAINLY RELEVANT FOR THE JURY TO
22 CONSIDER AS TO THE DEFENDANT'S CREDIBILITY IN REGARD TO
23 HIS TESTIMONY.

24 THE COURT: WHAT WERE THE CONVICTIONS? WHAT
25 YEAR?

1 MS. SALISBURY: 2000, JUDGE.

2 THE COURT: ALL RIGHT. WHAT DO YOU SAY,
3 MR. CHAMBERS?

4 MR. CHAMBERS: I DON'T HAVE ANY PROBLEM WITH
5 THAT, YOUR HONOR, I THINK IT FALLS WITHIN THE RULE.

6 THE COURT: I THINK SO, TOO. VERY WELL.
7 ALL RIGHT. DO YOU WANT SOME TIME BEFORE WE START WITH
8 THE DEFENSE CASE?

9 MR. CHAMBERS: WE'RE READY TO GO, YOUR
10 HONOR.

11 MS. SALISBURY: THE STATE IS PREPARED, JUDGE.

12 THE COURT: VERY GOOD. ASK THE JURY IF THEY
13 ARE READY TO RETURN.

14 (WHEREUPON, THE JURY ENTERED THE COURTROOM AT
15 10:45 A.M.)

16 THE COURT: ALL RIGHT. LET THE RECORD
17 REFLECT THAT THE JURY AND ALTERNATE ARE IN THE JURY-BOX.

18 MADAM FORELADY, LADIES AND GENTLEMEN OF THE
19 JURY, WE WILL NOW GO FORWARD WITH THE TRIAL. I
20 RECOGNIZE THE DEFENSE NOW AT THIS TIME. MR. CHAMBERS?

21 MR. CHAMBERS: YOUR HONOR, I CALL CALVIN
22 TODD.

23 (WHEREUPON, THE WITNESS WAS SWORN BY THE
24 CLERK.)

25 THE CLERK: PLEASE STATE YOUR FULL NAME AND

1 SPELL YOUR LAST NAME FOR THE RECORD.

2 THE WITNESS: CALVIN EARL TODD, T-O-D-D.

3 WHEREUPON,

4 CALVIN TODD,

5 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS

6 FOLLOWS:

7 DIRECT EXAMINATION BY MR. CHAMBERS:

8 Q. OKAY, CALVIN. I WANT YOU TO KEEP THAT MICROPHONE
9 FAIRLY CLOSE TO YOU AND I WANT YOU TO SPEAK UP SO
10 EVERYBODY CAN HEAR WHAT YOU'VE GOT TO SAY, OKAY?

11 A. YES, SIR.

12 Q. WHERE DO YOU LIVE?

13 A. GRAY COURT.

14 Q. IN LAURENS COUNTY?

15 A. YES, SIR.

16 Q. AND IS THAT WHERE YOU HAVE ALWAYS LIVED?

17 A. YES, SIR.

18 Q. YOU'RE FROM THAT AREA?

19 A. YES, SIR.

20 Q. AND WHAT, WHAT KIND OF WORK DO YOU TYPICALLY DO?

21 A. PLUMBING.

22 Q. IS THAT -- ARE YOU, ARE YOU A PLUMBER OR DO YOU
23 JUST DO PLUMBING WORK?

24 A. I'M A PLUMBING HELPER.

25 Q. AND HOW LONG HAVE YOU DONE THAT KIND OF WORK?

1 A. FOR THE LAST THREE, FOUR YEARS.

2 Q. OKAY. AND WERE YOU WORKING DOING THAT SORT OF
3 THING BACK AROUND JULY 28TH, 2007?

4 A. YES, SIR.

5 Q. DO YOU REMEMBER THAT EVENING OF JULY 28TH, 2007?

6 A. YES, SIR.

7 Q. OR ACTUALLY I SHOULD SAY THE MORNING. ABOUT
8 12:30 IN THE MORNING?

9 A. YES, SIR.

10 Q. JUST AFTER MIDNIGHT?

11 A. UH-HUH.

12 Q. WHO WERE YOU WITH?

13 A. NICHOLAS JOHNSON.

14 Q. AND HOW DO YOU KNOW NICHOLAS JOHNSON?

15 A. I GROWED UP IN THE NEIGHBORHOOD WITH HIM.

16 Q. OKAY. AND WHAT WERE YOU-ALL DOING?

17 A. WE WAS JUST RIDING, GOING TO HIS HOUSE.

18 Q. WHERE, WHERE HAD YOU BEEN AND WHERE WERE YOU
19 GOING AT THE TIME THAT YOU GOT STOPPED BY THE POLICE?

20 A. WE HAD BEEN DOWN ON CURRY LAKE ROAD IN GRAY
21 COURT.

22 Q. OKAY. AND DO YOU REMEMBER BEING STOPPED BY THE
23 POLICE?

24 A. YES, SIR.

25 Q. WERE YOU ALL LISTENING TO MUSIC THE WAY THEY

1 DESCRIBED?

2 A. WE WERE LISTENING TO MUSIC, WE DIDN'T THINK IT
3 WAS THAT LOUD.

4 Q. OKAY. BUT THE POLICE STOPPED YOU. AND WHEN THEY
5 CAME UP TO THE CAR, DID THEY TELL YOU WHY THEY HAD
6 STOPPED YOU?

7 A. I THINK HE SAID HE STOPPED ME FOR LOUD MUSIC.

8 Q. ALL RIGHT. TELL ME IN YOUR OWN WORDS WHAT
9 HAPPENED AFTER THE POLICE STOPPED YOU.

10 A. THERE WAS AN OPEN CONTAINER ON THE FLOOR ON THE
11 PASSENGER'S SIDE. THAT'S WHEN OFFICER MCBRIDE ASKED ME
12 TO GIVE HIM THE OPEN CONTAINER AND I GAVE IT TO HIM.

13 Q. ALL RIGHT. AND THEN WHAT DID YOU DO?

14 A. HE ASKED ME TO STEP OUT OF THE CAR.

15 Q. DID YOU DO THAT?

16 A. YES, SIR.

17 Q. WHAT DID YOU DO WHEN YOU STEPPED OUT OF THE CAR?

18 A. HE ASKED ME TO PUT MY HANDS ON THE CAR. I PUT MY
19 HANDS ON TOP OF THE CAR.

20 Q. OKAY. THEN WHAT HAPPENED?

21 A. HE ASKED ME DID I HAVE ANYTHING IN MY POSSESSION
22 THAT I NEEDED TO TELL HIM ABOUT.

23 Q. ALL RIGHT. AND WHAT DID YOU TELL HIM?

24 A. THAT'S WHEN I TOLD HIM ABOUT THE CRACK PIPE.

25 Q. OKAY. WHAT DID HE DO WHEN YOU TOLD HIM THAT YOU

1 HAD A CRACK PIPE?

2 A. HE IMMEDIATELY HANDCUFFED ME.

3 Q. OKAY. AND HOW DID HE HANDCUFF YOU?

4 A. BEHIND MY BACK.

5 Q. STAND UP AND DEMONSTRATE FOR ME THE BEST YOU
6 COULD.

7 A. (DEMONSTRATES.)

8 Q. ALL RIGHT. SO LIKE THAT (DEMONSTRATES)?

9 A. YES, SIR.

10 Q. OKAY. YOU CAN HAVE A SEAT.

11 WHAT WERE YOU WEARING, DO YOU REMEMBER?

12 A. I HAD ON SOME SHORT PANTS.

13 Q. OKAY. AND DID IT HAVE TWO FRONT POCKETS, TWO
14 BACK POCKETS, HOW WAS IT SITUATED?

15 A. TWO FRONT POCKETS, TWO BACK POCKETS, AND IT HAD A
16 LITTLE POCKET ON THE SIDE, YOU KNOW, A LITTLE, LIKE A
17 PAINTER'S-TYPE PANT.

18 Q. OKAY. SO HE ASKED YOU IF YOU HAD ANYTHING AND HE
19 DIDN'T EVEN KNOW ABOUT IT. YOU TOLD HIM YOU HAD A CRACK
20 PIPE. DID YOU TELL HIM WHERE IT WAS?

21 A. YES, SIR.

22 Q. WHERE DID YOU TELL HIM?

23 A. MY LEFT REAR POCKET.

24 Q. AND DID HE RETRIEVE IT AFTER HE HANDCUFFED YOU?

25 A. YES, SIR.

1 Q. THEN WHAT, WHAT HAPPENED?

2 A. SO HE FINISHED -- HE FINISHED SEARCHING ME, AND I
3 GUESS WHEN HE GOT MY STUFF OUT OF MY FRONT POCKET, MY
4 KEYS AND MY KNIFE, I GUESS HE LEFT THAT BAG, SAW IT
5 HANGING, AND HE DIDN'T GET IT OUT. AS HE TOLD ME TO
6 TURN AND GO OVER THERE AND SIT DOWN, THE BAG FELL ON THE
7 GROUND.

8 Q. OKAY. SO HE TOOK, HE TOOK A KNIFE OUT OF YOUR
9 POCKET AND YOUR KEYS?

10 A. YES, SIR.

11 Q. AND THEN THE CRACK FELL OUT ON THE GROUND?

12 A. YES, SIR.

13 Q. ALL RIGHT. WHAT HAPPENED AT THAT POINT?

14 A. THAT'S WHEN OFFICER GRAHAM FORCED ME TO THE
15 GROUND.

16 Q. ALL RIGHT. AND JUST KIND OF WALK ME THROUGH.
17 WHAT HAPPENED AFTER HE FORCED YOU DOWN ON THE GROUND?

18 A. WELL, HE PULLED ME DOWN ON THE GROUND AND REALLY
19 THREATENED TO TAZE ME. AFTER HE GOT ME ON THE GROUND,
20 THEY, HE RETRIEVED IT, AND OFFICER MCBRIDE, HE RETRIEVED
21 THE CRACK AND PUT IT ON TOP OF THE CAR WITH THE REST OF
22 THE STUFF. AND THEN THEY TOOK, THEY TOOK ME TO FOUNTAIN
23 INN POLICE DEPARTMENT.

24 Q. OKAY. WHAT HAPPENED WHEN YOU GOT DOWN THERE?

25 A. PLACED ME IN A HOLDING CELL.

1 Q. OKAY. AND THEN WHAT HAPPENED?

2 A. OFFICER MCBRIDE ASKED ME DID I WANT TO MAKE A
3 STATEMENT.

4 Q. WHAT DID YOU SAY?

5 A. I TOLD HIM I WOULD GIVE A STATEMENT.

6 Q. DID HE TELL YOU YOU DIDN'T HAVE TO MAKE A
7 STATEMENT?

8 A. NO, HE NEVER TOLD ME THAT.

9 Q. WELL, DID YOU SIGN THIS ACKNOWLEDGMENT OF RIGHTS?

10 A. I SIGNED THAT, BUT I WAS UNDER -- I WAS UNDER THE
11 THINKING THAT SINCE I WAS ALREADY UNDER ARREST THERE WAS
12 NO WAY TO RESIST.

13 Q. OKAY. BUT HE DID GO OVER THIS WITH YOU?

14 A. YEAH, WE WENT OVER IT.

15 Q. AND SO YOU INITIALED BY ALL THOSE?

16 A. YES, SIR.

17 Q. SO YOU UNDERSTOOD THAT YOU DIDN'T HAVE TO TALK TO
18 HIM IF YOU DIDN'T WANT TO?

19 A. YES, SIR.

20 Q. AND YOU UNDERSTOOD THAT YOU HAD A RIGHT TO TALK
21 TO A LAWYER BEFORE YOU MADE A DECISION ABOUT THAT?

22 A. RIGHT.

23 Q. AND SO AT THAT POINT DID YOU, DID YOU GIVE HIM A
24 STATEMENT?

25 A. YES, SIR.

1 Q. AND THIS STATEMENT RIGHT HERE, IS THIS WHAT YOU
2 WROTE OUT?

3 A. YES, SIR.

4 Q. WHAT DID YOU WRITE?

5 A. (READING): I, CALVIN TODD, HAD POSSESSION OF
6 CRACK COCAINE IN MY LEFT POCKET. SINCERELY, CALVIN
7 TODD.

8 Q. AND THEN THAT WAS ALL OF YOUR STATEMENTS THAT YOU
9 MADE TO HIM?

10 A. RIGHT.

11 Q. DID YOU HAVE CRACK COCAINE IN YOUR LEFT POCKET?

12 A. YES, SIR.

13 Q. NOW, IT'S SEALED INSIDE TWO OTHER BAGS, BUT IS
14 THAT, IS THAT THE ORIGINAL CONTAINER AND WHAT YOU HAD IN
15 YOUR FRONT POCKET?

16 A. IT COULD BE, YEAH.

17 Q. BUT DOES IT LOOK LIKE IT?

18 A. IT LOOKS LIKE IT.

19 Q. ALL RIGHT. SO THE BEST, THE BEST THAT YOU
20 RECOLLECT, THAT'S WHAT YOU HAD?

21 A. YES, SIR.

22 Q. HOW LONG HAD YOU HAD THAT IN YOUR POCKET?

23 A. UM, MAYBE AN HOUR.

24 Q. WHERE DID YOU GET IT?

25 A. A FRIEND GOT IT, ONE OF MY CO-WORKERS, WE HAD DID

1 A SIDE JOB, A PLUMBING JOB, AND WE MADE A GOOD BIT OF
2 MONEY, AND HE TOLD ME HIS NEPHEW COULD GET ME A BETTER
3 DEAL, KEEP ME FROM GOING IN AND OUT ALL NIGHT.

4 Q. WHAT DO YOU MEAN BY GOING IN AND OUT ALL NIGHT?

5 A. WELL, IF I BOUGHT IT 20 FOR 20, I'D SPEND
6 \$200.00, AND I'D HAVE BEEN DOING A LOT OF TRAVELLING.

7 Q. SO THIS GUY YOU DID THE PLUMBING JOB WITH THAT
8 YOU MADE THE MONEY ON TOLD YOU HE COULD GET YOU SOME AND
9 YOU WOULDN'T HAVE TO DO ANYTHING?

10 A. RIGHT.

11 Q. DID HE DO THAT FOR YOU?

12 A. YES, SIR.

13 Q. AND THAT'S WHAT YOU HAD GOTTEN ABOUT AN HOUR
14 BEFORE?

15 A. YES, SIR.

16 Q. WHAT DID YOU INTEND TO DO WITH THAT CRACK
17 COCAINE?

18 A. USE.

19 Q. ALL RIGHT. AND AT THAT POINT IN YOUR LIFE WERE
20 YOU A FREQUENT USER OF CRACK COCAINE?

21 A. YES, SIR.

22 Q. HOW MUCH DID YOU SMOKE?

23 A. UM, SOMETIMES TWO, THREE HUNDRED, MAYBE FOUR
24 HUNDRED DOLLARS A DAY AT TIMES.

25 Q. REALLY? AND YOU WERE DOING THAT AROUND THIS

1 TIME, THAT WOULD HAVE BEEN CONSISTENT WITH WHAT WERE
2 WERE DOING?

3 A. YES, SIR.

4 Q. OKAY. HOW MUCH DID YOU PAY FOR THAT QUANTITY OF
5 CRACK COCAINE RIGHT THERE?

6 A. \$200.00.

7 Q. OKAY. SO YOU GOT ALL THAT FOR \$200.00?

8 A. 200, YES, SIR.

9 Q. DID YOU INTEND TO SHARE THAT WITH ANYBODY?

10 A. NO, SIR.

11 Q. DID YOU INTEND TO SELL IT TO ANYBODY?

12 A. NO, SIR.

13 Q. HAD YOU SHARED IT WITH JOHNSON, THE GUY THAT WAS
14 DRIVING THE CAR?

15 A. HE DIDN'T EVEN KNOW I HAD IT.

16 Q. ALL RIGHT. AND HAD YOU SHARED IT WITH ANYBODY
17 ELSE?

18 A. NO, SIR.

19 Q. HAD YOU SOLD ANY OF IT TO ANYBODY ELSE?

20 A. NO, SIR.

21 Q. DID YOU AT ANY POINT HAVE ANY INTENTION OF
22 SELLING IT OR GIVING IT TO ANYBODY ELSE?

23 A. NO, SIR.

24 Q. AND WHAT WAS YOUR INTENTION WITH THAT CRACK
25 COCAINE?

1 A. TO USE IT.

2 Q. ALL RIGHT.

3 A. MAYBE IT WOULD HAVE LASTED ME A COUPLE OF DAYS.

4 Q. OKAY. SO THAT WOULD HAVE LASTED YOU FOR A COUPLE
5 OF DAYS?

6 A. YES, SIR.

7 MR. CHAMBERS: THAT'S ALL THE QUESTIONS I
8 HAVE. PLEASE ANSWER ANY THE SOLICITOR HAS FOR YOU.
9 CROSS-EXAMINATION BY MS. SALISBURY:

10 Q. MR. TODD, YOU CAN AGREE YOU WERE RIDING AROUND
11 DURING THE EARLY MORNING HOURS OF JULY 28, 2007, RIGHT?

12 A. UH-HUH.

13 Q. PARDON?

14 A. YES, MA'AM.

15 Q. AND YOU CAN AGREE THAT YOU WERE RIDING AROUND
16 WITH MR. JOHNSON?

17 A. YES, MA'AM.

18 Q. OKAY. YOU CAN AGREE THAT THE FOUNTAIN INN POLICE
19 PULLED YOU-ALL OVER?

20 A. YES, MA'AM.

21 Q. AND NATURALLY YOU WOULD AGREE THAT THEY PULLED
22 YOU OUT OF THE CAR AND PLACED YOU UNDER ARREST?

23 A. YES, MA'AM, AT SOME POINT IN TIME.

24 Q. ALL RIGHT. AND I THINK YOU WOULD AGREE WITH ME
25 THAT THAT CRACK COCAINE, THIS CRACK COCAINE (HOLDS UP

1 DRUGS), WAS IN YOUR POCKET?

2 A. I AGREE.

3 Q. OKAY. NOW, WHERE DID YOU BUY THIS?

4 A. IN MAULDIN.

5 Q. IN MAULDIN. WHO DID YOU BUY IT FROM?

6 A. TONY.

7 Q. TONY?

8 A. THAT'S ALL I KNOW HIM AS.

9 Q. WHERE IN MAULDIN?

10 A. WE MET HIM AT SOME APARTMENT.

11 Q. SOME APARTMENT, OKAY. SO YOU PAID TONY HOW MUCH
12 FOR THAT?

13 A. TWO HUNDRED BUCKS.

14 Q. TWO HUNDRED BUCKS. I SEE. SO HAD YOU SMOKED ANY
15 OF THAT YET?

16 A. NO, MA'AM.

17 Q. BUT YOU HAD BEEN RIDING AROUND WITH IT FOR AN
18 HOUR?

19 A. WE HAD JUST FINISHED A JOB, WE WORKED LATE ON A
20 JOB TO GET IT FINISHED.

21 Q. WORKING LATE. WELL, IT WAS 12:30. HOW LATE DID
22 YOU WORK?

23 A. WE WORKED TILL 10:00.

24 Q. WORKED TILL 10:00 ON A PLUMBING JOB?

25 A. YEAH.

1 Q. WHERE WAS THIS JOB?

2 A. IN SIMPSONVILLE.

3 Q. IN SIMPSONVILLE.. SO YOU FINISHED THAT PLUMBING
4 JOB AT 10:00 AT NIGHT?

5 A. UH-HUH.

6 Q. AND WHERE DID YOU MEET UP WITH MR. JOHNSON?

7 A. MR. JOHNSON PICKED ME UP.

8 Q. HE PICKED YOU UP FROM THE JOB?

9 A. NO, NO, NO, NO. NOT FROM THE JOB.

10 Q. OKAY. WHERE DID MR. JOHNSON PICK YOU UP?

11 A. I GOT WITH HIM AT THE STORE AT APPROXIMATELY A
12 QUARTER TILL 11:00.

13 Q. WELL, I'M CONFUSED. HOW DID YOU GET FROM YOUR
14 JOB TO THE STORE? WHAT STORE ARE WE TALKING ABOUT?

15 A. THE STORE IN GRAY COURT.

16 Q. OKAY. SO HOW DID YOU GET FROM YOUR JOB IN
17 SIMPSONVILLE THAT YOU FINISHED AT 10:00 DOWN TO GRAY
18 COURT?

19 A. WITH MY CO-WORKER.

20 Q. WITH YOUR CO-WORKER, OKAY. HE DROVE YOU TO THE
21 STORE?

22 A. RIGHT.

23 Q. AND DROPPED YOU OFF?

24 A. RIGHT.

25 Q. AND MR. JOHNSON MET YOU THERE?

1 A. HE WAS ALREADY AT THE STORE.

2 Q. HE WAS ALREADY THERE. WELL, THAT'S CONVENIENT.

3 MR. JOHNSON IS 28 YEARS OLD, ISN'T HE?

4 A. YEAH.

5 Q. HOW DO YOU KNOW HIM?

6 A. HE GREW UP IN MY NEIGHBORHOOD.

7 Q. I SEE. DO YOU-ALL HANG OUT A LOT?

8 A. SOME.

9 Q. DO YOU-ALL SMOKE CRACK TOGETHER?

10 A. NO, MA'AM.

11 Q. HE DOESN'T SMOKE CRACK, DOES HE?

12 A. HE DIDN'T EVEN KNOW I HAD CRACK.

13 Q. WELL, WHETHER OR NOT HE KNEW YOU HAD THAT THAT
14 NIGHT, DOES HE SMOKE CRACK HIMSELF?

15 A. I DON'T KNOW. I NEVER SAW HIM SMOKE ANY.

16 Q. OKAY. SO AT WHAT POINT IN THE EVENING AFTER YOU
17 FINISHED THIS PLUMBING JOB AT 10:00, SOMEONE DRIVES YOU
18 TO THE STORE AT 11:00, MR. JOHNSON HAPPENS TO BE AT THE
19 STORE, AT WHAT POINT DURING THIS TIME PERIOD DID YOU
20 ACTUALLY BUY THAT CRACK FROM TONY?

21 A. I ALREADY HAD IT.

22 Q. YOU ALREADY HAD IT. WHEN DID YOU GET IT?

23 A. AFTER WE FINISHED THE PLUMBING JOB.

24 Q. OKAY. ALL RIGHT. NOW I'M GETTING CONFUSED. TELL
25 ME, FROM THE TIME THAT WHOEVER THIS CO-WORKER IS TOOK

1 YOU FROM YOUR JOB AT 10:00 TO THE STORE IN GRAY COURT,
2 WHEN DID YOU BUY THE CRACK?

3 A. WE WENT TO MAULDIN WHEN WE LEFT THE JOB.

4 Q. OKAY. SO YOU SHOWED UP AT THE STORE AND
5 MR. JOHNSON WAS THERE, AND WHAT DID YOU-ALL DECIDE TO
6 DO?

7 A. GET A SIX-PACK OF BEER.

8 Q. AND THEN WHAT, RIDE AROUND AND DRINK IT?

9 A. YES, MA'AM.

10 Q. OKAY. THAT'S WHAT YOU WERE DRINKING WHEN THE
11 OFFICERS PULLED YOU OVER?

12 A. YES, MA'AM.

13 Q. OKAY. SO YOU HADN'T SMOKED ANY OF THAT YET WHEN
14 YOU MET MR. JOHNSON?

15 A. NO, MA'AM.

16 Q. NOW, I BELIEVE THAT YOU JUST TESTIFIED THAT YOU
17 WERE A PRETTY SERIOUS CRACK ADDICT. I MEAN, IF YOU ARE
18 GOING THROUGH THAT QUANTITY OF CRACK YOURSELF, I THINK
19 YOU -- WEREN'T YOU RATHER ADDICTED TO THAT CRACK?

20 A. I WAS KIND OF TIRED. I HADN'T STARTED SMOKING
21 YET.

22 Q. KIND OF TIRED. ALL RIGHT. NOW, HOW LONG HAD YOU
23 BEEN SITTING ON THAT CRACK? HOW LONG HAD THAT BEEN IN
24 YOUR POCKET FROM THE TIME THAT YOU BOUGHT IT FROM TONY
25 IN MAULDIN?

1 A. MAYBE 25, 30 MINUTES.

2 Q. SO FROM THE TIME THAT YOU BOUGHT IT, LET'S SAY
3 10:30, SINCE THAT WAS WHEN YOU FINISHED YOUR JOB AND
4 THAT WAS WHEN?

5 A. I DON'T KNOW.

6 Q. OKAY. WELL, WHEN -- TELL ME, WHEN DID YOU BUY
7 IT? WHAT TIME DO YOU THINK YOU BOUGHT IT?

8 A. MAYBE ABOUT 10:15, 10:20.

9 Q. OKAY. SO FROM 10:15 UNTIL THE OFFICERS PULLED
10 YOU OVER AT 12:30, IT HAD JUST BEEN SITTING IN YOUR
11 POCKET?

12 A. YES, MA'AM.

13 Q. IT SEEMS LIKE AN AWFUL LONG TIME FOR AN ADDICT
14 LIKE YOU TO JUST SIT ON THAT QUANTITY OF CRACK. WEREN'T
15 YOU WANTING IT, WEREN'T YOU WANTING TO SMOKE IT?

16 A. I HAD SMOKED SOME EARLIER.

17 Q. DID YOU SOME OF THAT EARLIER?

18 A. NO, NO.

19 Q. NO, YOU SMOKED ALL YOUR SUPPLY DRY. YOU NEEDED,
20 YOU NEEDED MORE.

21 A. I HAD SMOKED SOME EARLIER WHILE WE WERE WORKING,
22 YES, MA'AM.

23 Q. WHILE YOU WERE WORKING. OKAY. ALL RIGHT. NOW,
24 \$200.00, EVEN, IF THAT'S WHAT YOU PAID FOR THAT, THAT
25 SEEMS LIKE A LOT OF MONEY TO INVEST EVERY COUPLE OF

1 DAYS. I BELIEVE YOU SAID YOU NEEDED TO RE-UP AND GET
2 MORE CRACK EVERY TWO DAYS. HOW WELL DOES THAT PLUMBING
3 JOB PAY?

4 A. I SAID THAT WOULD LAST ME A COUPLE OF DAYS, BUT
5 WE MADE ABOUT \$400.00 OFF THE JOB.

6 Q. \$400.00 EVERY JOB. YOU WORK EVERY DAY?

7 A. NO, NOT EVERY JOB WE DON'T MAKE \$400.00, NO,
8 MA'AM.

9 Q. WELL, NOW, HOW DO YOU MAKE ENOUGH MONEY TO SPEND
10 \$200.00 OR \$500.00 ON THAT QUANTITY OF DRUGS EVERY FEW
11 DAYS?

12 A. SOMETIMES YOU DON'T HAVE TO HAVE MONEY.

13 Q. SO PEOPLE JUST GIVE YOU CRACK TO BE GENEROUS,
14 THEY DON'T NEED YOUR MONEY?

15 A. IT ALL DEPENDS ON WHO HAS IT.

16 Q. WELL, SEE, THAT SOUNDS LIKE SOME VERY GENEROUS
17 PEOPLE THAT YOU HANG OUT WITH. NOW, DO YOU PAY RENT
18 WHERE YOU LIVE?

19 A. NO, MA'AM.

20 Q. YOU DON'T PAY RENT?

21 A. NO, MA'AM.

22 Q. YOU DON'T HAVE, DO YOU HAVE ANY BILLS THAT YOU
23 HAVE TO PAY?

24 A. NO, MA'AM.

25 Q. SO YOU CAN DEDICATE A HUNDRED PERCENT OF EVERY

1 DIME YOU MAKE TO SMOKING CRACK?

2 A. MOST OF IT, THE MAJORITY.

3 Q. I SEE. NOW, WAS ALL \$200.00 OF THAT YOUR MONEY?

4 A. YES, MA'AM.

5 Q. NOBODY ELSE KICKED IN ANY MONEY FOR THAT, FOR
6 THAT AMOUNT?

7 A. NO, MA'AM. NO, MA'AM. NO, MA'AM.

8 Q. OKAY. NOW, WHY WAS MR. JOHNSON, WHO WAS
9 CONVENIENTLY AT THE STORE THAT NIGHT TO MEET YOU, WHY
10 WAS HE DRIVING YOU AROUND?

11 A. WE WAS GOING TO HIS HOUSE TO MEET, HE WAS TAKING
12 ME TO MEET A YOUNG LADY AT HIS HOUSE.

13 Q. WHY WERE YOU GONNA DO THAT?

14 A. MAYBE GO OUT.

15 Q. MAYBE GO OUT. I SEE.

16 A. YEAH.

17 Q. MAYBE SMOKE A LITTLE CRACK TOGETHER?

18 A. NO, MA'AM.

19 Q. I SEE.

20 A. NO, MA'AM.

21 Q. SO Y'ALL WERE HEADED TO HIS HOUSE WHERE YOU WERE
22 GONNA MEET THIS LADY?

23 A. YES, MA'AM.

24 Q. MAYBE GO OUT, HAVE A DATE. AT WHAT POINT WERE
25 YOU PLANNING ON HITTING THIS CRACK THAT YOU WANTED SO

1 BADLY EARLIER IN THE EVENING, THAT YOU HAD TO HAVE
2 EARLIER THAT EVENING, WHEN WERE YOU PLANNING ON GETTING
3 AROUND TO SMOKING IT?

4 A. AFTER I GOT BACK.

5 Q. AFTER YOU GOT BACK FROM THE DATE?

6 A. YES, MA'AM.

7 Q. SO A FEW MORE HOURS?

8 A. MAYBE AN HOUR, AN HOUR AND A HALF.

9 Q. I SEE. NOW, DO YOU KNOW WHETHER SHE SMOKED
10 CRACK?

11 A. NO, MA'AM, I DON'T.

12 Q. WHAT IF AS PART OF YOUR DATE SHE HAD WANTED A
13 HIT?

14 A. SHE WOULDN'T HAVE HAD IT.

15 Q. YOU WOULDN'T HAVE GIVEN HER A HIT?

16 A. WE WOULDN'T HAVE HAD IT.

17 Q. WHAT DO YOU MEAN YOU WOULDN'T HAVE HAD IT?

18 A. BECAUSE I WOULD HAVE PUT IT UP WHEN I GOT TO HIS
19 HOUSE.

20 Q. OKAY. SO YOU WOULD HAVE PUT OFF SMOKING IT FOR
21 HER BENEFIT SO THAT YOU COULD GO ON A DATE?

22 A. YES, MA'AM.

23 Q. WELL, WHAT IF SHE SMOKES CRACK, WHAT IF SHE
24 WANTED SOME?

25 A. SHE WOULD HAVE BEEN OUT OF LUCK.

1 Q. I SEE. YOU WOULDN'T HAVE SHARED ANY WITH HER TO
2 GET YOURSELF ANYWHERE ON THAT DATE?

3 A. NO, MA'AM.

4 Q. I SEE. NOW, I'M STILL JUST, I'M HUNG UP ON
5 MR. JOHNSON. WHY WOULD HE DRIVE YOU AROUND, RISK BEING
6 ARRESTED FOR THAT CRACK, AND EXPECT NOTHING IN RETURN?

7 A. HE, HE NEVER KNEW I HAD IT.

8 Q. SO HE DRIVES YOU AROUND ALL THE TIME?

9 A. WE RIDE AROUND FREQUENTLY.

10 Q. JUST OUT OF THE KINDNESS OF HIS HEART?

11 A. JUST OUT OF THE KINDNESS OF HIS HEART.

12 Q. DO YOU EVER, DO YOU EVER PAY HIM, THROW HIM A
13 COUPLE DOLLARS FOR DOING YOU THE FAVOR OF DRIVING YOU
14 HOME?

15 A. I BUY HIM GAS SOMETIME, GIVE HIM MONEY FOR GAS.

16 Q. BUY HIM GAS. HOW WERE YOU PLANNING ON PAYING HIM
17 BACK THIS NIGHT?

18 A. WELL, I WAS GONNA STAY AT HIS HOUSE THAT NIGHT
19 AND DO SOME WORK FOR HIM THE NEXT MORNING.

20 Q. I SEE. YOU WOULDN'T HAVE BROKEN OFF A PIECE OF
21 THAT TO GIVE TO HIM IF HE HAD ASKED, WOULD YOU?

22 A. NO, MA'AM.

23 Q. SO MR. JOHNSON, WHO IS ALMOST 20 YEARS YOUNGER
24 THAN YOU, JUST LIKES YOUR COMPANY SO MUCH THAT HE DRIVES
25 YOU AROUND FOUNTAIN INN IN THE MIDDLE OF THE NIGHT?

1 A. WELL, YOU COULD SAY THAT.

2 Q. I DID SAY THAT.

3 NOW, YOU EXPECT THIS JURY TO BELIEVE THAT YOU
4 HAVE \$400.00, OR SAY \$200.00 TO INVEST IN THAT AMOUNT OF
5 CRACK EVERY FEW DAYS?

6 A. SOME DAYS YOU DON'T HAVE THAT MUCH.

7 Q. WHEN'S THE LAST TIME YOU BOUGHT CRACK BEFORE
8 THAT?

9 A. EARLIER THAT DAY.

10 Q. HOW MUCH DID YOU BUY?

11 A. \$30.00 WORTH.

12 Q. WELL, THEN, SO AFTER YOU GOT PAID THIS GREAT
13 AMOUNT ON THIS PLUMBING JOB, YOU HAD, YOU HAD \$400.00 TO
14 SPEND, \$200.00 TO SPEND?

15 A. YES, MA'AM.

16 Q. SO HOW MUCH DID YOU BUY? WHAT WAS THE QUANTITY
17 THAT YOU BOUGHT WITH THAT \$30.00? WHAT DID IT LOOK
18 LIKE? HOW BIG WAS IT?

19 A. TWO, TWO ROCKS.

20 Q. TWO ROCKS?

21 A. UH-HUH,

22 Q. WHAT, WHAT SIZE WERE THEY? WERE THEY BIG PIECES?
23 DID THEY FIT INSIDE YOUR CRACK PIPE?

24 A. YEAH.

25 Q. SO THEY WERE SMALL ENOUGH TO FIT INSIDE THE PIPE.

1 THOSE ARE WORTH \$30.00?

2 A. UH-HUH.

3 Q. WHY DID YOU DECIDE THAT YOU ALL OF A SUDDEN
4 NEEDED EIGHT GRAMS AND THAT YOU WERE WILLING TO MAKE
5 THIS INVESTMENT INTO THIS LARGE QUANTITY OF CRACK IN THE
6 MIDDLE OF THE NIGHT? WHY THEN? WHY NOT, WHY NOT BUY
7 THAT QUANTITY REGULARLY IF YOU HAD ALL THIS MONEY TO
8 SPEND?

9 A. YOU DON'T HAVE THE MONEY ALL THE TIME, AND THEN
10 SOMETIMES YOU ARE OUT 2:00 OR 3:00 IN THE MORNING, MAYBE
11 EVEN LATER, TRYING TO FIND SOME.

12 Q. SO, JUST SO THAT I'M SURE, YOUR TESTIMONY IS THAT
13 YOU WERE GONNA BREAK UP THAT LARGE AMOUNT OF CRACK INTO
14 PIECES SMALL ENOUGH TO FIT INTO YOUR CRACK PIPE AND
15 SMOKE EVERY SINGLE ONE OF THOSE ROCKS YOURSELF?

16 A. YES, MA'AM.

17 Q. EVEN THOUGH MR. JOHNSON WAS JUST DRIVING YOU
18 AROUND, DIDN'T EXPECT ANYTHING IN RETURN, EVEN THOUGH
19 YOU WERE GONNA MEET THIS LADY LATER ON TONIGHT, DIDN'T
20 KNOW WHERE THAT DATE WAS GONNA GO, YOU WERE JUST GONNA
21 HOLD ON TO THIS ALL YOURSELF UNTIL YOU GOT A MINUTE TO
22 BE ALONE AND JUST HIT EVERY SINGLE ONE OF THOSE ROCKS
23 YOURSELF?

24 A. MAYBE NOT HIT EVERY SINGLE ONE OF THEM LIKE
25 YOU'RE TALKING ABOUT, BUT SMOKE THEM ALL, YES, MA'AM.

1 Q. OKAY. ALL RIGHT. WELL, NOW, THAT'S THE STORY
2 THAT YOU WOULD LIKE THE JURY TO BELIEVE, DESPITE THE
3 FACT THAT YOU HAVE BEEN CONVICTED OF ---

4 MR. CHAMBERS: WELL, YOUR HONOR, I'M GOING
5 TO OBJECT TO THE WAY SHE'S ASKING THAT QUESTION.

6 THE COURT: VERY GOOD. SUSTAINED.

7 LET'S SAVE OUR ARGUMENT OR EDITORIALIZING
8 FOR ARGUMENT. JUST ASK THE QUESTION.

9 MS. SALISBURY: THANK YOU, JUDGE.

10 BY MS. SALISBURY:

11 Q. MR. TODD, YOU WERE CONVICTED IN 2000 OF ARSON IN
12 THE THIRD DEGREE; IS THAT CORRECT?

13 A. YES, MA'AM.

14 Q. YOU WERE ALSO CONVICTED IN 2000 OF BURGLARY IN
15 THE SECOND DEGREE, CORRECT?

16 A. YES, MA'AM.

17 MS. SALISBURY: THANK YOU, JUDGE.

18 THE COURT: VERY GOOD.

19 MR. CHAMBERS: NO REDIRECT, YOUR HONOR.

20 THE COURT: ALL RIGHT. YOU MAY STEP DOWN.

21 THANK YOU.

22 (WITNESS LEAVES STAND.)

23 MR. CHAMBERS: YOUR HONOR, THE DEFENSE
24 RESTS.

25 THE COURT: ALL RIGHT. ANY REPLY?

1 MS. SALISBURY: NO, JUDGE.

2 THE COURT: ALL RIGHT. MADAM FORELADY,
3 LADIES AND GENTLEMEN OF THE JURY, I'M GOING TO ASK YOU
4 TO RETIRE TO THE JURY ROOM FOR A MOMENT BECAUSE I DO
5 NEED TO TAKE UP SOME MATTERS WITH THE ATTORNEYS.

6 AGAIN, DO NOT UNDERTAKE THE DISCUSSION OF
7 THE CASE AMONG YOURSELVES IN ANY WAY. WE STILL HAVE
8 ARGUMENT BY COUNSEL AND ALSO THE CHARGE ON THE LAW. IF
9 YOU WOULD THEN PLEASE RETIRE TO THE JURY ROOM AND I'LL
10 CALL YOU BACK.

11 (WHEREUPON, THE JURY LEFT THE COURTROOM AT
12 11:07 A.M.)

13 THE COURT: ALL RIGHT. ANYTHING FROM THE
14 STATE?

15 MS. SALISBURY: NO, YOUR HONOR.

16 THE COURT: ANYTHING FROM THE DEFENSE?

17 MR. CHAMBERS: NO, YOUR HONOR.

18 CHARGE CONFERENCE:

19 THE COURT: ALL RIGHT. LET'S SEE. LET'S
20 LOOK AND SEE WHAT WE HAVE FOR CHARGES. A CHARGE ON
21 EXPERT WITNESSES, A CHARGE ON THE STATEMENT OF THE
22 DEFENDANT, BURDEN OF PROOF, ESTABLISHING IT WAS FREELY
23 AND VOLUNTARILY GIVEN -- WELL, FIRST OF ALL, THE
24 STATEMENT WAS MADE FREELY AND VOLUNTARILY.

25 AND PRIOR RECORD, SOLELY FOR THE PURPOSE OF

1 IMPEACHMENT; PRESUMPTION OF INNOCENCE; AND I USE THE
2 STATE V. MANNING BEYOND A REASONABLE DOUBT. I WILL SAY
3 THIS, THOUGH. IF I GET A REQUEST FOR A FURTHER CHARGE,
4 I MIGHT USE VICTOR V. NEBRASKA. BUT I JUST AM MORE
5 COMFORTABLE WITH THE MANNING CHARGE. IN FACT, I MIGHT
6 EVEN DO ADAMS, WHICH IS REFUSES TO FIND REASONABLE DOUBT
7 AT ALL. BUT ANYWAY, NOT, WHAT I WILL DO IS I'LL CHARGE
8 MANNING AND THEN IF THEY REQUEST A FURTHER, I WILL
9 CHARGE VICTOR V. NEBRASKA.

10 DIRECT AND CIRCUMSTANTIAL EVIDENCE, CRIMINAL
11 INTENT, INDICTMENTS NOT EVIDENCE, AND THEN THE
12 POSSESSION WITH INTENT TO DISTRIBUTE DEFINITION.

13 NOW, THE STATE HAS REQUESTED FROM STATE
14 VERSUS ANDREWS PERMISSIVE DIFFERENCE, AND THAT'S
15 INCLUDED IN MY CHARGE.

16 BY THE WAY, IF I SAY IT'S COVERED, IT MIGHT
17 NOT BE EXACTLY, BUT IT'S, THE PRINCIPLE IS COVERED.

18 AND THEN SIMPLE POSSESSION, AND THE
19 LESSER-INCLUDED BEING SIMPLE POSSESSION BEING THE
20 LESSER-INCLUDED. AND, OF COURSE, REASONABLE DOUBT BEING
21 IF YOU FAIL TO ESTABLISH ALL THE ELEMENTS OF THE CHARGE,
22 OFFENSE, AND WITH THE FAILURE TO DO SO, THEN THE VERDICT
23 WOULD BE NOT GUILTY.

24 THE NEXT THING IS I HAVE -- OH, THE VERDICT
25 FORM IS ON THE FRONT. LOOK AT THE PROPOSED VERDICT

1 FORM, IF YOU WOULD, PLEASE --

2 AND WE ARE OFF THE RECORD.

3 (OFF-THE-RECORD DISCUSSION.)

4 THE COURT: ALL RIGHT. ANY OBJECTION TO THE
5 VERDICT FORM?

6 MS. SALISBURY: NO, YOUR HONOR.

7 MR. CHAMBERS: NO, YOUR HONOR.

8 THE COURT: ALL RIGHT. IT WILL BE GUILTY OF
9 POSSESSION WITH INTENT TO DISTRIBUTE CRACK COCAINE OR
10 GUILTY OF SIMPLE POSSESSION OF CRACK COCAINE OR NOT
11 GUILTY.

12 ALL RIGHT. LET'S TAKE A SHORT BREAK AND
13 THEN -- IS THAT ALL RIGHT TO TAKE A SHORT BREAK AND THEN
14 GO TO THE JURY?

15 MS. SALISBURY: CERTAINLY, JUDGE.

16 MR. CHAMBERS: YES, YOUR HONOR.

17 THE COURT: ALL RIGHT. STATE OPENS, DEFENSE
18 ARGUES, THE STATE CLOSES.

19 (A BREAK WAS TAKEN.)

20 THE COURT: IS THERE ANYTHING FROM THE STATE
21 BEFORE WE BRING THE JURY BACK?

22 MS. SALISBURY: JUDGE, I JUST WANTED TO LET
23 YOU KNOW THE STATE WAIVES OPENING.

24 MR. CHAMBERS: THAT'S FINE, YOUR HONOR.

25 THE COURT: ALL RIGHT. VERY GOOD. DEFENSE

1 WILL ARGUE, THE STATE WILL CLOSE. ALL RIGHT. ANYTHING
2 ELSE FROM THE STATE?

3 MS. SALISBURY: NO, YOUR HONOR.

4 THE COURT: FROM THE DEFENSE?

5 MR. CHAMBERS: NO, YOUR HONOR.

6 THE COURT: ALL RIGHT. VERY GOOD. ASK THE
7 JURY TO JOIN US, PLEASE.

8 (WHEREUPON, THE JURY ENTERED THE COURTROOM AT
9 11:25 A.M.)

10 THE COURT: MADAM FORELADY, LADIES AND
11 GENTLEMEN OF THE JURY, WE NOW ARE GOING TO HAVE THE
12 FINAL STAGES OF THE TRIAL WHICH WILL BE THE ARGUMENT BY
13 COUNSEL, IN THIS CASE IT'S BEEN AGREED THAT THE
14 DEFENDANT WILL ARGUE FIRST AND THEN THE STATE WILL
15 CLOSE, AND THEN I'LL GIVE YOU THE CHARGE ON THE LAW
16 APPLICABLE TO THE CASE AND THEN THE CASE WILL BE GIVEN
17 TO YOU FOR YOUR DELIBERATION AND DECISION.

18 I RECOGNIZE THE DEFENDANT NOW, MR. CHAMBERS.

19 MR. CHAMBERS: MAY IT PLEASE THE COURT, YOUR
20 HONOR.

21 CLOSING ARGUMENT ON BEHALF OF DEFENDANT:

22 MR. CHAMBERS: LADIES AND GENTLEMEN, WE'VE
23 JUST ABOUT COME TO THE END HERE, WE'VE COME TO THE POINT
24 WHERE YOU FOLKS ARE GONNA GO BACK AND DELIBERATE AND DO
25 THE JOB THAT YOU WERE BROUGHT IN HERE TO DO. YOU ARE

1 THE FINDERS OF THE FACT. NOBODY ELSE IN THIS CASE
2 DECIDES WHAT THE FACTS ARE. HIS HONOR IS GONNA CHARGE
3 YOU ON OH THE LAW IN A MINUTE, AND THAT'S THE LAW THAT
4 YOU HAVE TO APPLY TO THIS CASE. BUT YOU DETERMINE WHAT
5 THE FACTS ARE.

6 NOW, YOU DON'T DETERMINE THE FACTS THROUGH
7 SPECULATION, CONJECTURE, WHAT YOU THINK THINGS OUGHT TO
8 BE, WHATEVER THE SOLICITOR MAY TRY TO CONVINCE YOU
9 THINGS ARE. YOU DETERMINE THOSE FACTS BASED ON THE
10 EVIDENCE THAT IS PRESENTED TO YOU, ALONG WITH THE
11 TESTIMONY THAT YOU HEARD FROM THE WITNESS STAND. THAT'S
12 WHERE THE EVIDENCE COMES FROM.

13 EACH OF YOU, ALL OF YOU SAT HERE AND YOU
14 LISTENED TO THE TESTIMONY AND YOU VIEWED THE EVIDENCE.
15 AND YOU WILL HAVE A FURTHER OPPORTUNITY TO VIEW THAT
16 EVIDENCE. AND EACH OF YOU, INDEPENDENT OF THE OTHER,
17 HAS TO MAKE UP YOUR MIND ABOUT WHETHER OR NOT THE STATE
18 HAS PROVEN BEYOND A REASONABLE DOUBT THAT CALVIN TODD
19 POSSESSED CRACK COCAINE WITH THE INTENT TO DISTRIBUTE
20 IT. YOU HAVE TO COME TO THAT DETERMINATION ON YOUR OWN.
21 AND THEN YOU WILL DELIBERATE WITH ONE ANOTHER, AND AS A
22 BODY YOU WILL COME TO A DECISION, AND YOU ARE REQUIRED
23 TO MAKE A UNANIMOUS DECISION.

24 AS YOU GO THROUGH THAT PROCESS, THERE IS A
25 GIVE OR TAKE THAT NATURALLY TAKES PLACE. THE REASON

1 THAT THE JURY SYSTEM WORKS AS WELL AS IT DOES IS BECAUSE
2 ALL OF YOU COME IN HERE DIFFERENT AGES, DIFFERENT WALKS
3 OF LIFE, DIFFERENT LIFE EXPERIENCES, AND YOU'LL COME
4 TOGETHER AS A BODY. ALSO BEAR IN MIND THAT YOUR OPINION
5 COUNTS AS MUCH AS EVERYBODY ELSE'S. SO IF YOU HAVE A
6 FIRMLY HELD BELIEF ABOUT THINGS, YOU DON'T LET OTHER
7 PEOPLE SWAY YOU FROM THAT JUST FOR CONVENIENCE'S SAKE.

8 NOW I SPEND A LOT OF TIME WHEN I GET THE
9 OPPORTUNITY TO ADDRESS A JURY TALKING ABOUT THIS CONCEPT
10 OF PROOF BEYOND A REASONABLE DOUBT, AND THE REASON FOR
11 THAT IS THIS IS WHAT MAKES THIS SYSTEM WORK. IT IS ONE
12 THAT IS SO DEEPLY EMBEDDED IN THE CONSCIOUSNESS OF ALL
13 OF US THAT I HEAR PEOPLE SAY ALMOST EVERY DAY. YOU
14 KNOW, YOU WILL HEAR ABOUT SOMEBODY THAT HAD SOME SORT OF
15 PROBLEM, AND YOU WILL HEAR SOMEBODY INEVITABLY SAY,
16 WELL, YOU KNOW, HE'S GUILTY -- HE'S INNOCENT UNTIL HE'S
17 PROVEN GUILTY. AND I THINK IT'S SAID SO MUCH IT'S
18 ALMOST BECOME A CLICHE.

19 BUT THIS IS WHERE WE PUT THAT TO THE TEST.
20 MY CLIENT STANDS ACCUSED OF POSSESSING THIS CRACK
21 COCAINE WITH THE INTENT TO DISTRIBUTE. THESE FOLKS, ALL
22 THESE FOLKS THAT YOU HAVE SEEN IN HERE FOR THE LAST TWO
23 DAYS, THEIR JOB IS TO PROVE TO YOU BEYOND A REASONABLE
24 DOUBT THAT HE IS GUILTY AND THEY HAVE TO PROVE EVERY
25 ELEMENT. AND IT IS PRETTY OBVIOUS THAT THEY HAVE DONE

1 EVERYTHING WITHIN THEIR POWER TO DO THAT, ALL RIGHT?
2 DON'T EVER THINK THAT POLICE OFFICERS AND PROSECUTORS
3 DON'T HAVE A STAKE IN WHAT HAPPENS. A LOT OF PEOPLE
4 LIKE TO SAY, WELL, THEY DON'T HAVE AN AX TO GRIND.

5 BUT LADIES AND GENTLEMEN, THEY HAVE MADE A
6 DECISION PRIOR TO COMING TO COURT THAT MY CLIENT
7 INTENDED TO DISTRIBUTE CRACK COCAINE, AND SO THEY PUT
8 THEIR EFFORTS IN COURT INTO PROVING ALL THAT. AND
9 THERE'S NOTHING WRONG WITH THAT. I MEAN, THAT'S WHAT
10 THEY ARE SUPPOSED TO TRY AND DO. BUT YOU HAVE TO LOOK
11 AT THAT WITH A SKEPTICAL EYE. THAT'S YOUR JOB AS
12 FINDERS OF FACT. YOU ARE NOT A RUBBER STAMP. YOU LOOK
13 AT IT WITH A SKEPTICAL EYE.

14 NOW, HIS HONOR IS GONNA CHARGE IN A LITTLE
15 BIT THAT IN ORDER TO FIND MY CLIENT GUILTY, YOU HAVE TO
16 FIRST FIND THAT THIS SUBSTANCE WAS CRACK COCAINE. WELL,
17 IT WAS. THEY BROUGHT IN THE FOLKS, THE CHAIN OF
18 CUSTODY, AND THE PERSON THAT TESTED IT, AND THERE IS NO
19 QUESTION, IT WAS CRACK COCAINE. MY CLIENT BELIEVED IT
20 TO BE CRACK COCAINE THAT HE HAD IN HIS POCKET, IT TESTED
21 TO BE CRACK COCAINE, AND THERE IS JUST NO QUESTION IT
22 WAS CRACK COCAINE.

23 THE JUDGE WILL THEN TELL YOU THAT HE HAD TO
24 HAVE POSSESSED IT, WHICH MEANS EXERCISING DOMINION AND
25 CONTROL. HE HAD IT IN HIS POCKET. HE TOLD YOU HE

1 BOUGHT IT AND HE TOLD YOU HE PUT IT IN HIS POCKET. IT
2 WAS HIS. SO THERE IS NO QUESTION THAT HE POSSESSED IT.

3 ONE OF THE THINGS THAT YOU WILL BE ABLE TO
4 DO WHEN YOU SEE THE JURY FORM IS YOU'LL BE ABLE TO LOOK
5 AT THAT AND YOU'LL BE ABLE TO CHECK THAT HE IS GUILTY OF
6 POSSESSION OF CRACK COCAINE, AND HE IS, IN FACT, GUILTY
7 OF THAT.

8 NOW, THE SOLICITOR IS GONNA TRY TO GET YOU
9 TO GO ONE STEP FURTHER AND SAY THAT HE HAD IT WITH THE
10 INTENT TO DISTRIBUTE IT, AND THE JUDGE WILL TELL YOU
11 THAT BECAUSE IT WAS MORE THAN ONE GRAM, THAT YOU CAN
12 DRAW A PERMISSIVE INFERENCE FROM THAT, THAT HE DID
13 INTEND TO DISTRIBUTE IT.

14 BUT THAT INFERENCE CAN BE REBUTTED. AND
15 LADIES AND GENTLEMEN, IF IT IS SUFFICIENTLY REBUTTED,
16 THAT IS ENOUGH TO CREATE REASONABLE DOUBT. THE FACT
17 THAT THEY GET THIS PERMISSIBLE INFERENCE DOES NOT
18 RELIEVE THE SOLICITOR AT ANY POINT FROM PROVING TO YOU
19 BEYOND A REASONABLE DOUBT THAT MY CLIENT INTENDED TO
20 DISTRIBUTE THE CRACK COCAINE THAT HE HAD IN HIS
21 POSSESSION. THEY STILL HAVE TO PROVE THAT BEYOND A
22 REASONABLE DOUBT. AND YOU HAVE TO HOLD THEM TO THAT
23 BURDEN.

24 AND WHEN YOU ARE CONSIDERING REASONABLE
25 DOUBT THERE ARE LOTS OF DIFFERENT DEFINITIONS. BUT THE

1 BOTTOM LINE IS, IS IT SOMETHING YOU FEEL COMFORTABLE
2 WITH? IF IT WAS SOMETHING THAT YOU HAD A PERSONAL STAKE
3 IN, WOULD YOU FEEL COMFORTABLE MAKING THAT DECISION?

4 IT'S ONE OF THOSE THINGS THAT IT'S KIND OF
5 HARD TO FIND, BUT YOU KNOW IT WHEN YOU SEE IT.
6 REASONABLE DOUBT. BEYOND A REASONABLE DOUBT.

7 SO LET'S CONSIDER WHAT YOU HAVE HEARD AS
8 THIS TRIAL HAS GONE ON. WE FIRST HEARD FROM THE
9 OFFICERS. AND WHAT YOU'VE HEARD FROM THE OFFICERS IS
10 THAT MY CLIENT AND THIS MR. JOHNSON AT 12:30 AT NIGHT,
11 AND THEY KEPT REFERRING TO AS THE WEE HOURS OF THE
12 MORNING AS THOUGH THERE WAS SOMETHING NEFARIOUS ABOUT
13 DRIVING AROUND AT 12:30 AT NIGHT. I THINK THAT'S
14 ACTUALLY COMMON. AND THEY WERE GOING THROUGH THE
15 NEIGHBORHOOD AND LISTENING TO MUSIC AND YOU COULD HEAR
16 THE BASS IN THE CAR.

17 NOW LET'S GET PAST THE POINT THAT IF THESE
18 WERE TWO WHITE GUYS LISTENING TO KENNY CHESNEY RUMBLING
19 THROUGH THE NEIGHBORHOOD, THEY PROBABLY WOULDN'T HAVE
20 GOT STOPPED. BUT THEY DID. BOTH OF THEM COOPERATED
21 FULLY. MY CLIENT HANDED THE BEER THAT HE WAS DRINKING
22 OUT OF THE CAR, HE GOT OUT, PUT HIS HANDS UP ON THE CAR.
23 THEY ASKED IF THEY COULD SEARCH AND HE SAID YEAH. AND
24 HE TOLD THEM HE HAD A CRACK PIPE, WHICH THEY TOOK OUT,
25 THEY TOOK OUT A CRACK PIPE AND THEY ALSO TOOK OUT A

1 LITTLE PIECE OF METAL THAT EVERYBODY AGREED WAS USED TO
2 CLEAN A CRACK PIPE.

3 AND HE WAS HANDCUFFED AT THE TIME. NOW, YOU
4 KNOW, I DON'T EVEN KNOW THAT THIS POINT IS PERTINENT, IT
5 JUST SOMEHOW DOESN'T FIT. BUT I STILL CAN'T GET PAST
6 THE FACT THAT -- AND YOU SAW THOSE HANDCUFFS AND YOU CAN
7 IMAGINE BEHIND YOUR BACK, PALMS IN. HOW IN THE WORLD --
8 THEY SAY HE REACHED AROUND AND GOT SOMETHING OUT OF HIS
9 FRONT POCKET. IT JUST DOESN'T MAKE SENSE TO ME, OKAY?
10 AND I DON'T KNOW IF IT'S JUST SOMETHING THAT WAS A
11 MISTAKE OR IT'S JUST SOMETHING THEY THROW OUT THERE TO
12 TRY AND SOMEHOW MAKE IT LOOK MORE NEFARIOUS ON MY
13 CLIENT'S PART. I DON'T KNOW. BUT IT JUST SEEMS
14 CERTAINLY IMPROBABLE IF NOT IMPOSSIBLE FOR SOMEBODY TO
15 ACTUALLY REACH AROUND, HANDCUFFED, AND PULL SOMETHING
16 OUT OF THEIR FRONT POCKET.

17 MORE THAN LIKELY WHAT HAPPENED IS EXACTLY
18 WHAT MY CLIENT TOLD YOU HAPPENED. THEY PULLED THINGS
19 OUT OF HIS FRONT POCKET AND THE CRACK FELL ON THE
20 GROUND. AT THAT POINT HE WAS THROWN DOWN ON THE GROUND
21 AND THEN THEY WENT INTO, YOU KNOW, POLICE MODE WHERE
22 THEY THEN SECURED THAT AND DID ALL THE THINGS THEY TOLD
23 YOU THEY DID. THE BOTTOM LINE IS THAT, LADIES AND
24 GENTLEMEN, IS THAT HE HAD THAT IN HIS FRONT POCKET.

25 WHEN THEY GOT DOWN TO THE POLICE STATION HE

1 CONTINUED TO COOPERATE WITH THEM. HE GAVE THEM A
2 STATEMENT. YOU'RE GONNA GET AN OPPORTUNITY TO LOOK AT
3 HIS STATEMENT. AND HE CLEARLY WROTE OUT (READING): I,
4 CALVIN TODD, HAD POSSESSION OF CRACK COCAINE IN LEFT
5 POCKET. SINCERELY -- HE EVEN ADDED SINCERELY -- CALVIN
6 TODD. I'M NOT SURE HE HAD TO DO THAT, BUT IT'S A NICE
7 LITTLE TOUCH. AND HE TOLD THEM, HEY, I POSSESSED IT,
8 ALL RIGHT?

9 SO, SO FAR THERE IS NOTHING TO INDICATE THAT
10 HE WAS TRYING TO DISTRIBUTE TO ANYBODY, OR IN ANY WAY
11 SHARE IT WITH ANYBODY OR TRADE IT FOR ANYTHING. LET'S
12 LOOK AT THE FACTS. WHY DID THEY GET STOPPED? DID THEY
13 GET STOPPED BECAUSE THERE WAS A REPORT OF DRUG ACTIVITY
14 IN THAT AREA ON THAT EVENING? NO. DID HE GET STOPPED
15 BECAUSE SOMEBODY SAID THIS CALVIN TODD IS SELLING CRACK
16 AND YOU NEED TO BE ON THE LOOKOUT FOR HIM? NO. HE GOT
17 STOPPED BECAUSE THEY HAD THIS LOUD BASS THUMPING IN THE
18 CAR. THAT'S IT.

19 WE KNOW THAT MR. JOHNSON CERTAINLY WASN'T
20 INVOLVED IN SMOKING CRACK WITH MY CLIENT OR SELLING
21 CRACK WITH MY CLIENT BECAUSE IF THAT WERE THE CASE THEN
22 THESE ZEALOUS POLICE OFFICERS WOULD HAVE ARRESTED HIM,
23 AND THEY DIDN'T. THEY LET HIM DRIVE HOME OR WHEREVER IT
24 WAS HE WENT AFTER THEY LET HIM GO, WITH A TICKET FOR
25 PLAYING HIS MUSIC TOO LOUD. SO THEY CERTAINLY DIDN'T

1 BELIEVE THAT HE WAS UNDER THE INFLUENCE, THEY DIDN'T
2 BELIEVE HE HAD BEEN SHARING CRACK WITH MY CLIENT, THEY
3 DIDN'T BELIEVE HE'D BEEN SELLING CRACK WITH MY CLIENT.
4 THEY DIDN'T BELIEVE HE HAD ANY INVOLVEMENT WITH IT AT
5 ALL. WHICH GUESS WHAT? IS ABSOLUTELY CONSISTENT WITH
6 WHAT MY CLIENT TOLD YOU.

7 NOW, THIS GUY WAS AT THE STORE, I KNOW HIM,
8 AND WE WERE GONNA RIDE AROUND. WE'VE DONE THAT BEFORE.

9 SO AGAIN AT THAT POINT ALL THAT THEY HAVE
10 ESTABLISHED IS HE HAD THIS CRACK IN HIS POCKET. BUT
11 BEYOND THAT, THEY ESTABLISHED THROUGH WHAT THEY SEIZED
12 FROM HIM THAT HE WAS A CRACK USER. WHAT DID THEY FIND
13 WHEN THEY SEARCHED HIM? THEY FOUND A CRACK PIPE AND
14 THEY FOUND AN IMPLEMENT USED FOR CLEANING A CRACK PIPE.
15 AND HE TOLD YOU THAT HE USED CRACK. AT THAT POINT IN
16 HIS LIFE HE USED CRACK A LOT. AND SO HE WAS CARRYING
17 THAT PIPE AROUND WITH HIM. WHY? SO THAT HE COULD GET
18 HIGH.

19 MR. JOHNSON DIDN'T HAVE A CRACK PIPE AND WE
20 DON'T KNOW IF ANYBODY ELSE THAT WAS HANGING OUT WITH MY
21 CLIENT HAD A CRACK PIPE. HE HAD ONE.

22 AND ALMOST AS TELLING AS WHAT THEY FOUND IS
23 WHAT THEY DIDN'T FIND. THEY DIDN'T FIND ANY MONEY. YOU
24 KNOW, THEY BROUGHT AN EXPERT IN HERE THAT DOESN'T EVEN
25 WORK FOR THE FOUNTAIN INN POLICE DEPARTMENT THAT WAS

1 BROUGHT IN SPECIFICALLY TO TRY AND HELP CONVINCING YOU
2 THAT THE MERE POSSESSION OF OVER A GRAM OF CRACK
3 COCAINE, THAT'S ALL YOU NEED. THAT WAS HIS SOLE PURPOSE
4 FOR COMING IN HERE.

5 AND IF YOU REMEMBER AS I QUESTIONED HIM, HE
6 WAS SINGLE-MINDED IN HIS DETERMINATION TO CONVINCING YOU
7 OF THAT. BECAUSE WHEN I ASKED HIM, I SAID, WELL, YOU
8 KNOW, THEY SELL IT FOR \$20.00 A PIECE. WOULDN'T
9 SOMEBODY HAVE -- WOULDN'T YOU EXPECT TO FIND MONEY?

10 OH, NO, NOT ALWAYS. IT COULD HAVE BEEN VERY
11 EARLY IN THE EVENING, HE COULD HAVE JUST GONE OUT TO
12 START TO SELL IT.

13 BUT WOULDN'T SOMEBODY, WOULDN'T THEY HAVE TO
14 KNOW WHERE TO FIND HIM? WOULDN'T HE HAVE TO BE IN A
15 CERTAIN AREA? OH, NO, NOT REALLY. BECAUSE IF HE WAS IN
16 A CERTAIN AREA, WE'D JUST GO ARREST HIM. BUT THEY HAD
17 TO KNOW HOW TO FIND HIM, OKAY, HOW TO FIND HIM. WELL,
18 REMEMBER, LADIES AND GENTLEMEN, WHAT I WAS TALKING
19 ABOUT, WHAT THEY DIDN'T FIND IS ALMOST AS IMPORTANT AS
20 WHAT THEY FOUND.

21 FIRST OF ALL THEY DIDN'T FIND ANY MONEY. A
22 DRUG DEALER WITH NO MONEY, ALL RIGHT, NO 20'S. HE TOLD
23 YOU THAT THEY'VE BEEN CHARGING \$20.00 A PIECE FOR ROCKS
24 OF CRACK SINCE THE EIGHTIES, THE SAME PRICE ALL THE
25 TIME. NO 20'S, NO MONEY OF ANY KIND.

1 IT WASN'T IN ANY WAY INDIVIDUALLY PACKAGED.
2 AND REMEMBER, HE TOLD YOU: WELL, THEY DON'T SELL IT
3 LIKE THAT. THEY JUST SELL IT A ROCK AT A TIME AND THEY
4 CUT IT DOWN SO THAT IT IS, THEY USUALLY GET ABOUT TEN
5 ROCKS TO A GRAM.

6 WELL, LADIES AND GENTLEMEN, WHEN YOU GET THE
7 OPPORTUNITY TO GO BACK AND LOOK AT THIS CRACK COCAINE, I
8 WANT YOU TO LOOK AT IT REALLY CLOSELY. THOSE ARE ALL
9 DIFFERENT SIZES AND SHAPES, IRREGULAR SIZES AND SHAPES.
10 SOME OF THEM ARE VERY BIG. THE CHEMIST TOLD YOU SOME OF
11 THESE ARE EVEN AS BIG AS A GRAM IN AND OF THEMSELVES.
12 WELL, THAT'S NOT HOW A CRACK DEALER SELLS HIS CRACK.
13 OUR EXPERT TOLD US THAT. THAT'S NOT HOW HE SELLS HIS
14 CRACK. SO EITHER HE REALLY SUCKS AT HIS JOB OF BEING A
15 CRACK DEALER, OR HE'S NOT ONE.

16 NOW, THE OTHER THING THAT I WANT YOU TO
17 THINK ABOUT THAT THEY DIDN'T FIND, BECAUSE OUR EXPERT
18 TOLD US, OUR EXPERT SAID THEY KNOW HOW TO GET IN TOUCH
19 WITH HIM. WELL, AND CERTAINLY MY MAN OVER HERE WOULD
20 HAVE A BEEPER OR HE WOULD HAVE A CELL PHONE BECAUSE
21 THAT'S HOW YOU GET IN TOUCH WITH PEOPLE THESE DAYS,
22 ESPECIALLY SOMEBODY THAT'S ON THE MOVE. GUESS WHAT? NO
23 BEEPER, NO CELL PHONE. NO BEEPER AND NO CELL PHONE.

24 SO LADIES AND GENTLEMEN, WE'VE GOT WHAT THEY
25 INITIALLY TOLD THEM WAS 9.5 GRAMS OF CRACK, BECAUSE

1 APPARENTLY THIS LITTLE BAG THAT IT WAS IN WEIGHED OVER A
2 GRAM, WHAT TURNED OUT TO BE 8.4 GRAMS OF CRACK, AND THEY
3 DON'T HAVE ANY MONEY, THEY DON'T HAVE ANY INDIVIDUAL
4 PACKAGING, THEY DON'T HAVE ANY UNIFORMITY IN THE SIZE OF
5 THE CRACK ROCKS THAT WOULD INDICATE THAT AT SOME POINT
6 IT WAS GONNA BE DISTRIBUTED OR SOLD.

7 THEY DON'T HAVE A BEEPER OR A CELL PHONE OR
8 ANY OTHER WAY FOR ANYBODY TO GET IN TOUCH WITH HIM.
9 THEY DON'T HAVE ANY REPORTS OF ANY DRUG ACTIVITY GOING
10 ON IN THAT AREA OR RELATED TO MR. TODD. THEY DON'T HAVE
11 ANYTHING. THEY DON'T HAVE THAT HE IN ANY WAY
12 DISTRIBUTED OR USED WITH HIS FRIEND JOHNSON, BECAUSE
13 THEY LET JOHNSON GO, AND WE KNOW HE WASN'T INVOLVED OR
14 THEY WOULDN'T LET HIM GO.

15 SO AGAIN, WHEN WE LOOK AT THIS CASE, ALL
16 WE'VE GOT IS THAT HE HAD MORE THAN A GRAM. HE HAD MORE
17 THAN A GRAM. BUT EVEN IF WE APPLY WHAT THEIR EXPERT
18 TOLD US, IT DOESN'T FIT WITH SOMEBODY WHO INTENDED TO IN
19 ANY WAY DISTRIBUTE IT.

20 THEN MR. TODD TAKES THE WITNESS STAND. HE
21 DIDN'T HAVE TO. ALL HE HAS TO DO IS SIT OVER THERE AND
22 KEEP HIS MOUTH SHUT. HE IS NOT REQUIRED TO GET UP IN
23 FRONT OF YOU AND GIVE ANY TESTIMONY. BUT HE DID. HE
24 WANTED TO BE HEARD, HE WANTED HIS DAY IN COURT. AND HE
25 TOLD YOU THAT AT THAT POINT IN HIS LIFE HE WAS USING

1 CRACK AND HE WAS USING A LOT OF IT. AND HE TOLD YOU
2 THAT HE WOULD GO SOMETIMES EIGHT, NINE, TEN TIMES A DAY,
3 IN AND OUT OF A NEIGHBORHOOD TO BUY IT AS HE COULD
4 AFFORD IT.

5 WHICH, IF YOU WILL REMEMBER FROM TALKING,
6 FROM OUR EXPERT, THAT IS PRETTY COMMON. THAT IS PRETTY
7 COMMON. SO WE KNOW THAT HIS USE OF IT WAS GREAT. WE
8 KNOW THAT OVER THE COURSE OF A DAY, NOT ONLY FROM HIS
9 TESTIMONY BUT FROM OUR EXPERT'S TESTIMONY, THAT IT WOULD
10 BE PRETTY COMMON FOR SOMEBODY TO GO THAT MANY TIMES
11 DURING THE DAY TO GET IT.

12 SO IMAGINE IF SOMEBODY COMES ALONG AND GIVES
13 YOU AN OPPORTUNITY TO BUY A LARGER QUANTITY THAT YOU CAN
14 THEN USE AND NOT HAVE TO DO THAT. AND HE EVEN SAID:
15 THAT WAY I WOULDN'T HAVE TO GO IN AND OUT SO MUCH. AND
16 I ASKED HIM, I SAID: WHAT HE MEANT BY IN AND OUT? AND
17 HE EXPLAINED IT. AND HE SAID THAT HE HAD BEEN WORKING
18 HIS PLUMBING JOB, THAT THEY MADE A PRETTY GOOD AMOUNT OF
19 MONEY ON IT, AND THAT A FRIEND HAD TOLD HIM THAT THIS
20 OTHER GUY COULD HOOK HIM UP, AND THAT'S WHAT HE DID.
21 AND WHO WOULDN'T DO THAT IF THEY HAD THE OPPORTUNITY, IF
22 THAT'S WHAT YOU ARE INTO, YOU KNOW?

23 I GUESS MY OWN VICE IS I LIKE A GOOD COLD
24 BEER EVERY NOW AND THEN. I DON'T DRINK A LOT BUT I DO
25 LIKE THEM. I DON'T GO BUY THEM ONE AT A TIME FROM A

1 SUPERMARKET. MOST OF THE TIME I BUY 12. BUT IF IT'S A
2 WEEKEND AND I'M GONNA BE HANGING OUT IN THE YARD AND
3 GRILLING SOMETHING UP, I MIGHT BUY A CASE BECAUSE IT'S
4 MORE CONVENIENT AND I DON'T HAVE TO RUN BACK AND FORTH
5 TO THE STORE. AND THAT MAY SEEM SILLY TO GIVE AN
6 ANALOGY LIKE THAT, BUT LADIES AND GENTLEMEN, HE HAD THE
7 OPPORTUNITY TO BUY HIS DRUG OF CHOICE IN A LARGER
8 QUANTITY ACCORDING TO THE PRICE, SO WHY WOULDN'T HE DO
9 THAT?

10 AND HIS STORY WAS PERFECTLY CONSISTENT.

11 NOW, THE SOLICITOR CAN STAND UP HERE AND
12 HAVE AS SARCASTIC A TONE AS SHE WANTS TO AND SAY THAT
13 SHE'S CONFUSED AS MANY TIMES AS SHE WANTS TO, BUT THERE
14 WAS NOTHING CONFUSING ABOUT HIS TESTIMONY. IT WAS
15 PERFECTLY CONSISTENT.

16 AND EVERY TIME THAT SHE SARCASTICALLY TRIED
17 TO GET HIM OFF TRACK AND SAY HOW CONFUSED SHE WAS, HE
18 SIMPLY SAID, YOU KNOW, TOLD WHAT HAPPENED. HE WORKED
19 THIS PLUMBING JOB UNTIL ABOUT 10:00, AND WHETHER SHE
20 THINKS THAT'S JUST CRAZY OR NOT, PEOPLE SOMETIMES WORK
21 PLUMBING JOBS TILL LATE AT NIGHT. THE FOLKS NEXT TO ME
22 ARE BUILDING A HOUSE, AND I SWEAR, I THINK THEY'RE OVER
23 THERE 24 HOURS A DAY. THAT'S HOW PEOPLE WORK THESE
24 JOBS, BECAUSE YOU FINISH ONE JOB AND YOU MOVE ON TO
25 ANOTHER, AND IT'S JUST THE NATURE OF HOW THEY DO IT.

1 SO HE WORKED UP TILL ABOUT 10:00, THE GUY
2 DRIVES HIM OVER TO MAULDIN WHERE HE BUYS THE CRACK, AND
3 THEN HE GOES OVER TO THIS STORE. AND THAT'S WHERE
4 MR. JOHNSON WAS. AND AGAIN THE SOLICITOR APPARENTLY
5 THINKS IT'S THE MOST LUDICROUS THING IN THE WORLD THAT
6 SOMEBODY MIGHT HAVE A FRIEND THAT'S 20 YEARS YOUNGER
7 THAN THEY ARE.

8 I MUST BE LUDICROUS BECAUSE I HAVE FRIENDS
9 OF ALL AGES, AND I SOMETIMES GO RIDING AROUND IN CARS
10 WITH PEOPLE THAT AREN'T MY AGE. I SOMETIMES GO RIDING
11 AROUND IN CARS AT 12:30 AT NIGHT WITH PEOPLE THAT AREN'T
12 IN MY AGE GROUP. SO THERE MUST BE SOMETHING JUST CRAZY
13 ABOUT THAT.

14 YOU KNOW, IT'S ALL AN EFFORT TO GET YOU NOT
15 TO BELIEVE HIM. EVEN WHEN IT COMES TO HIS PRIOR
16 CONVICTIONS. YEAH, HE'S NOT PERFECT. HE USES OR DID
17 USE CRACK AND HE'S BEEN CONVICTED OF ARSON. THE
18 SOLICITOR TRIED TO SAY, DO YOU EXPECT THIS JURY TO
19 BELIEVE YOU? BUT OF COURSE THAT WASN'T ALLOWED AND SHE
20 DIDN'T GET TO ASK IT THAT WAY. BUT THAT'S WHAT SHE
21 WANTS. SHE WANTS YOU TO SAY BECAUSE HE'S BEEN CONVICTED
22 OF SOMETHING BEFORE, HE'S JUST A COMPLETE LIAR..

23 BUT LADIES AND GENTLEMEN, THE WAY YOU TEST
24 WHETHER SOMEBODY IS LYING OR NOT IS THE CONSISTENCY OF
25 THEIR STORY. AND IS IT CORROBORATED BY THE OTHER

1 EVIDENCE IN THE CASE? HIS STORY, AS I TOLD YOU,
2 PERFECTLY CONSISTENT, SARCASM ASIDE: I WORKED THIS JOB,
3 I WENT OVER TO MAULDIN, I BOUGHT THE CRACK, I HAD IT IN
4 MY POCKET, JOHNSON DIDN'T KNOW ANYTHING ABOUT IT.

5 WE KNOW THAT'S TRUE BECAUSE THEY LET JOHNSON
6 GO. JOHNSON WASN'T INVOLVED. JOHNSON WASN'T GETTING
7 HIGH. IF THE POLICE BELIEVED THAT, THEY WOULDN'T GET
8 JOHNSON GO.

9 I WAS GONNA USE IT MYSELF. I WASN'T GONNA
10 SHARE IT WITH ANYBODY.

11 AND THERE WAS ABSOLUTELY NO EVIDENCE HE WAS
12 GONNA SHARE IT WITH ANYBODY ELSE. SOMEHOW I GUESS IF HE
13 DATES A GIRL, HE'S GOT TO BE GETTING HIGH WITH HER. THE
14 SOLICITOR KIND OF HARPED ON THAT A LITTLE BIT. BUT,
15 YEAH, MAYBE HE'S JUST SELFISH AND HE WANTS IT ALL FOR
16 HIMSELF.

17 BUT EVERY PIECE OF EVIDENCE, OR LACK
18 THEREOF, POINTS TO HIS STORY BEING TRUE. AND I'LL GO
19 THROUGH IT AGAIN. I DON'T WANT TO BEAT A DEAD HORSE,
20 BUT I WANT TO MAKE SURE WE UNDERSTAND. NO MONEY. THESE
21 THINGS ARE EVERY KIND OF SIZE IN THE WORLD (HOLDING UP
22 DRUGS). AND YOU GET ALL THE OPPORTUNITY YOU WANT TO TO
23 LOOK AT THEM. NO CELL PHONE, NO BEEPER. I MEAN, NONE
24 OF THE -- NO SCALES, NOTHING TO MEASURE IT WITH. NONE
25 OF THAT. LADIES AND GENTLEMEN, YOU'VE GOT A CASE OF

1 POSSESSION.

2 NOW, THE SOLICITOR, BECAUSE SHE DOES HAVE
3 THE BURDEN OF PROOF, SHE'S GOT TO TALK TO YOU FIRST, SHE
4 GETS TO TALK TO YOU LAST, AND SHE WILL STAND UP HERE IN
5 A MINUTE AND JUST TELL YOU THAT EVERYTHING THAT I SAID
6 IS RIDICULOUS. AND IT'S THE HARDEST THING FOR A LAWYER
7 TO SIT OVER THERE AND NOT BE ABLE TO SPRING UP AND
8 ANSWER EVERYTHING THAT SHE SAYS.

9 BUT SHE CAN TALK ALL SHE WANTS TO, BUT THE
10 ONLY THING SHE'S GOING TO BE ABLE TO SHOW YOU IN THIS
11 CASE IS THAT MY CLIENT POSSESSED MORE THAN A GRAM OF
12 CRACK, AND THAT THE DEPUTY FROM THE GREENVILLE COUNTY
13 SHERIFF'S OFFICE CAME IN AND TOLD YOU THAT THAT'S ENOUGH
14 BECAUSE, GOD KNOWS, YOU CAN NEVER HAVE MORE THAN A GRAM
15 OF CRACK UNLESS YOU ARE GONNA DEAL IT TO SOMEBODY.

16 REMEMBER, I ASKED HIM ABOUT THE MARIJUANA
17 LAWS -- AND MARIJUANA IS NOT INVOLVED IN THIS CASE, BUT
18 IT'S INTERESTING TO ME THAT IF YOU HAVE MORE THAN AN
19 OUNCE OF MARIJUANA, IT'S TREATED THE SAME AS MORE THAN A
20 GRAM OF CRACK. AND I SAID: COULD YOU IMAGINE SOMEBODY
21 HAVING MORE THAN AN OUNCE OF MARIJUANA FOR THEIR OWN
22 USE?

23 WELL, YEAH, BUT THAT'S JUST A COMPLETELY
24 DIFFERENT THING.

25 WELL, NOT ACCORDING TO THE LEGISLATURE. NOT

1 ACCORDING TO THE LEGISLATURE.

2 AND THAT'S WHAT THEY'VE GOT. HE HAD MORE
3 THAN A GRAM, AND THEY GOT A DEPUTY WHO SAID, WELL, IF HE
4 HAD THAT MUCH, THEN IT'S CLEARLY WITH INTENT TO
5 DISTRIBUTE. BUT THEN AGAIN, ALL THE OTHER EVIDENCE
6 POINTS IN THE OTHER DIRECTION. AND MY CLIENT'S
7 TESTIMONY HAS AS MUCH WEIGHT AS ANYBODY ELSE'S. BUT YOU
8 GET TO BE THE JUDGE OF IT.

9 YOU KNOW, ONE OF THE THINGS THAT MAKES THE
10 SYSTEM WORK IS THAT ALL OF YOU AS THE TRIERS OF FACT
11 HAVE BEEN HERE AND YOU GET TO USE YOUR COMMON SENSE.
12 AND ONE OF THE THINGS THAT ALL OF US DO EVERY DAY IS WE
13 JUDGE IF WHAT PEOPLE ARE TELLING US IS TRUE. WHEN WE
14 MEET PEOPLE, WE ARE AUTOMATICALLY MAKING DECISIONS ABOUT
15 WHETHER OR NOT WE LIKE THESE PEOPLE, WE BELIEVE THIS
16 PERSON AND TRUST THEM. WHEN WE WATCH T.V. WE DO THAT,
17 AND THAT'S WHAT YOU ARE DOING HERE.

18 AND ONE OF THE WAYS THAT PEOPLE DO THAT IS
19 BY GETTING THE FACTS OUT OF THEM. DO THE CIRCUMSTANCES
20 IN THIS CASE LEND CREDIBILITY TO WHAT THIS PERSON IS
21 TELLING ME? WELL, LADIES AND GENTLEMEN, THE
22 CIRCUMSTANCES IN THIS CASE COMPLETELY LEND CREDIBILITY
23 TO WHAT MY CLIENT IS TELLING YOU.

24 YEAH. HE IS NOT TRYING TO ESCAPE
25 RESPONSIBILITY. HOLD HIM RESPONSIBLE FOR WHAT HE DID.

1 HE POSSESSED CRACK COCAINE, AND THAT IS AGAINST THE LAW
2 AND HE WILL BE PUNISHED FOR IT. BUT LET'S NOT MAKE HIM
3 A DRUG DEALER OR A DISTRIBUTOR OF DRUGS WHEN THE FACTS
4 ALL POINT IN THE OTHER DIRECTION.

5 SO AS YOU LISTEN TO THE SOLICITOR, ASK
6 YOURSELF AS YOU LISTEN TO HER, WHERE IS THE EVIDENCE
7 THAT HE DISTRIBUTED? NOT CONJECTURE, NOT SPECULATION.
8 WHERE IS THE MONEY? WHERE IS THE PACKAGING OR THE
9 PREPARATION TO DISTRIBUTE TO OTHER PEOPLE? WHERE IS THE
10 BEEPER OR CELL PHONE OR THE MEANS TO CONTACT SOMEBODY?
11 WHERE IS THE CONCRETE EVIDENCE THAT GOES BEYOND
12 CONJECTURE AND SPECULATION THAT HE INTENDED TO IN SOME
13 WAY DISTRIBUTE THAT? IT'S JUST NOT THERE. IT'S JUST
14 NOT THERE.

15 NOW, LADIES AND GENTLEMEN, I UNDERSTAND THAT
16 MOST OF US IN OUR DAILY LIVES DON'T COME IN CONTACT WITH
17 DRUG USERS. WE DON'T KNOW PEOPLE LIKE CALVIN TODD.
18 CALVIN IS NOT USING NOW, BUT HE WAS AT THIS POINT. AND
19 THAT'S NOT SOMETHING YOU'RE PROUD OF. AND I WOULD ASK
20 YOU IN THE SENSE OF CONSIDERING THIS OFFENSE NOT TO HOLD
21 THAT AGAINST HIM. CONSIDER THIS OFFENSE FOR WHAT IT IS.
22 AND YOU HAVE TO LOOK AT THE WEIGHT OF THE EVIDENCE IN
23 THIS CASE, AND THE WEIGHT OF THE EVIDENCE SIMPLY DOESN'T
24 ADD UP TO BEYOND A REASONABLE DOUBT.

25 NOW I'M GONNA DO WHAT IS ABOUT THE HARDEST

1 THING THAT I HAVE TO DO IN THE WHOLE TRIAL AND THAT IS
2 TO GO OVER THERE AND SIT DOWN AND NOT GET TO SAY ANOTHER
3 WORD TO YOU. BECAUSE IT IS AN AWESOME RESPONSIBILITY TO
4 WALK INTO COURT AND REPRESENT A CLIENT WHO IS CHARGED
5 WITH A CRIMINAL OFFENSE. HIS LIBERTY IS AT STAKE, AND I
6 FEEL LIKE IT'S IN MY HANDS AND HE PUTS HIS TRUST IN ME.

7 IN THIS PARTICULAR CASE HE DIDN'T GET A
8 CHOICE OF WHO HIS LAWYER WAS AND BECAUSE HE COULDN'T
9 AFFORD TO HIRE A LAWYER HE GOT STUCK WITH ME. SO I TAKE
10 IT VERY SERIOUSLY. BUT I DO THIS WITH EVERY CONFIDENCE
11 THAT YOU FOLKS HAVE LISTENED, THAT YOU WILL WEIGH THE
12 EVIDENCE AND THAT YOU WILL COME BACK WITH A FAIR VERDICT
13 IN THIS CASE.

14 NOW, LADIES AND GENTLEMEN, A FAIR VERDICT IN
15 THIS CASE IS TO FIND MY CLIENT GUILTY OF POSSESSION BUT
16 NOT GUILTY OF POSSESSION WITH INTENT TO DISTRIBUTE.
17 THANK YOU VERY MUCH.

18 **THE COURT:** MADAM SOLICITOR?

19 **MS. SALISBURY:** MAY IT PLEASE THE COURT,
20 YOUR HONOR.

21 CLOSING ARGUMENT ON BEHALF OF THE STATE:

22 **MS. SALISBURY:** LADIES AND GENTLEMEN, AS I
23 TOLD YOU AT THE VERY BEGINNING OF THIS TRIAL, WHETHER
24 THE DEFENDANT PLANNED TO SELL, TRADE, OR SHARE THAT
25 CRACK COCAINE, WHAT IS CLEAR NOW IS THAT HE INTENDED TO

1 DISTRIBUTE IT.

2 YOU HEARD THE TESTIMONY FROM THE TWO
3 OFFICERS THAT INITIATED THIS TRAFFIC STOP SHORTLY AFTER
4 MIDNIGHT ON JULY 28TH, 2007. THEY TOLD YOU WHY THEY
5 PULLED THE CAR OVER, THEY TOLD YOU WHY THEY ASKED
6 MR. TODD TO STEP OUT OF THE CAR. THEY TOLD YOU THAT
7 THEY SEARCHED HIM AND THEY FOUND THE CRACK COCAINE.

8 REGARDLESS OF HOW IT GOT TO THE GROUND,
9 WHETHER HE WAS ABLE TO MANEUVER HIS HANDS INTO HIS
10 POCKET, AS THEY TESTIFIED, OR WHETHER IT SIMPLY TUMBLED
11 OUT OF HIS POCKET AS MR. TODD WOULD LIKE YOU TO BELIEVE,
12 IT WAS IN HIS POCKET. THAT'S THE END OF IT. THE
13 OFFICERS TESTIFIED HOW THEY ARRESTED HIM FOR THAT CRIME
14 AND HOW THEY TOOK HIM IN AND HOW THEY ADVISED HIM OF HIS
15 RIGHTS AND THEN HE GAVE A STATEMENT. THAT'S THE
16 EVIDENCE THAT YOU HEARD ABOUT WHAT HAPPENED ON JULY 28,
17 2007.

18 NOW, YOUR JOB FROM HERE IS TO DRAW
19 CONCLUSIONS FROM WHAT ELSE WE KNOW ABOUT THE, ABOUT THE
20 FACTS OF THIS CASE. AND AS THE JUDGE IS GONNA INSTRUCT
21 YOU IN JUST A FEW MINUTES, THAT'S PRECISELY WHAT YOU CAN
22 DO WITH THE EVIDENCE THAT YOU HAVE HEARD.

23 CIRCUMSTANTIAL EVIDENCE IS THE KIND OF
24 EVIDENCE THAT GIVES YOU THE OPPORTUNITY TO DRAW
25 INFERENCES, TO DRAW A RATIONAL CONCLUSION FROM THE KIND

1 OF THINGS THAT YOU HAVE HEARD, AND THAT'S PRECISELY WHY
2 WE BROUGHT IN THE KINDS OF WITNESSES THAT WE HAVE, TO
3 HELP YOU DRAW THOSE CONCLUSIONS BASED ON THEIR
4 PROFESSIONAL EXPERIENCE, BASED ON WHAT THEY DO DAY TO
5 DAY.

6 NOW, AS ALL OF YOU KNOW, THE DEFENDANT IS
7 CHARGED WITH POSSESSION WITH INTENT TO DISTRIBUTE CRACK
8 COCAINE, AND THE STATE HAS TO PROVE THAT THE DEFENDANT
9 IS GUILTY OF THAT BEYOND A REASONABLE DOUBT. AND
10 GENERALLY SPEAKING, PROOF BEYOND A REASONABLE DOUBT CAN
11 BE DESCRIBED AS THE KIND OF PROOF THAT LEAVES YOU FIRMLY
12 CONVINCED THAT THE DEFENDANT IS GUILTY OF THIS CRIME.

13 NOW, PROOF BEYOND A REASONABLE DOUBT IS THE
14 VERY HIGHEST BURDEN IN OUR LEGAL SYSTEM, AND IN THIS
15 CASE LADIES AND GENTLEMEN, THE STATE WELCOMES THAT HIGH
16 BURDEN, BECAUSE AFTER LISTENING TO THE EVIDENCE AND
17 AFTER USING THE TOOLS THAT EACH OF YOU COME HERE
18 EQUIPPED TO USE, YOUR COMMON SENSE AND YOUR LIFE
19 EXPERIENCE, IT IS CLEAR THAT THE DEFENDANT PLANNED TO
20 DISTRIBUTE THESE DRUGS.

21 NOW, TO PROVE SPECIFICALLY THAT THE
22 DEFENDANT IS GUILTY OF THIS CRIME, THE STATE HAS TO
23 PROVE FIRST THAT THE DEFENDANT WAS IN POSSESSION OF THE
24 CRACK COCAINE. YOU HEARD TESTIMONY FROM THE CHEMIST,
25 JAMES ARMSTRONG, WHO SAID HE TESTED IT, HE TESTS THESE

1 THINGS REGULARLY, AND THAT IT IS CRACK COCAINE.

2 YOU HEARD TESTIMONY FROM DETECTIVE TROY
3 MCBRIDE WHO TOOK THE DEFENDANT'S STATEMENT WHERE THE
4 DEFENDANT ADMITTED THAT HE HAD POSSESSION OF THIS CRACK
5 COCAINE.

6 AND THE DEFENDANT HIMSELF TOLD YOU THAT IT
7 WAS IN HIS POCKET.

8 THE NEXT PIECE IS THAT WE HAVE TO PROVE TO
9 YOU THAT HE PLANNED TO DISTRIBUTE THAT CRACK COCAINE.
10 AND WHEN CONSIDERING THAT, I WOULD LIKE YOU TO KEEP IN
11 MIND SOME VERY IMPORTANT PIECES OF EVIDENCE.

12 THE FIRST OF THOSE PIECES OF EVIDENCE IS
13 SOMETHING THAT YOU HAVE HEARD ABOUT A COUPLE TIMES
14 ALREADY. THIS INFERENCE THAT YOU ARE ALLOWED TO DRAW,
15 THIS STATUTORY INFERENCE. THE LAW SAYS, AND AS THE
16 JUDGE WILL INSTRUCT YOU LATER IN MORE DETAIL, THE LAW
17 SAYS THAT WHEN SOMEONE POSSESSES MORE THAN ONE GRAM OF
18 CRACK COCAINE, YOU CAN INFER THAT THEY PLAN TO
19 DISTRIBUTE IT. YOU CAN REJECT THAT INFERENCE, BUT YOU
20 ARE FREE TO INFER THAT MORE THAN ONE GRAM MEANS THAT THE
21 DEFENDANT PLANNED TO DISTRIBUTE IT.

22 NOW, THE DEFENDANT IN THIS CASE DIDN'T HAVE
23 A GRAM. HE DIDN'T HAVE TWO. HE DIDN'T HAVE THREE. HE
24 HAD OVER EIGHT GRAMS, EIGHT TIMES WHAT THE LAW SAYS IS
25 THE THRESHOLD AMOUNT FROM WHICH YOU CAN INFER THAT HE

1 PLANNED TO DISTRIBUTE IT.

2 MORE THAN THAT, IS THE PIECE OF EVIDENCE
3 THAT I WOULD LIKE YOU TO KEEP IN MIND FROM OUR EXPERT
4 THAT WORKS IN THE VICE AND NARCOTICS UNIT WITH
5 GREENVILLE COUNTY. HE TESTIFIED THAT BASED ON HIS
6 PROFESSIONAL EXPERIENCE, BASED ON HIS DEALINGS DAY TO
7 DAY WITH INVESTIGATIONS OF DRUGS, WITH SERVING SEARCH
8 WARRANTS, WITH ARRESTING PEOPLE, WITH INTERVIEWING
9 PEOPLE, ENGAGING IN UNDERCOVER DRUG BUYS, IN HIS OPINION
10 A TYPICAL HIT, A TYPICAL ROCK IS ABOUT A TENTH OF A
11 GRAM. THAT'S ITS AVERAGE WEIGHT. THAT MEANS THAT WE
12 GET TEN ROCKS OUT OF EVERY GRAM.

13 SO I THINK HE DID THE MATH FOR US. THAT
14 MEANS THAT THE DEFENDANT HAD MORE THAN 80 ROCKS. THE
15 DEFENDANT TOLD YOU THAT EARLIER, EARLIER IN THE DAY, AND
16 HE SAID, IN FACT, EVERY FEW DAYS, HE SPENT \$30.00,
17 BOUGHT TWO, MAYBE THREE ROCKS. SO ALL OF A SUDDEN HE
18 DECIDES TWO IS NOT GOOD ENOUGH. THREE IS NOT GONNA LAST
19 HIM THE COUPLE OF DAYS THAT HE SAID THAT THE PREVIOUS
20 PURCHASE LASTED HIM. HE NEEDED 80 THIS TIME. HE HAD TO
21 PURCHASE 80 ROCKS ALL FOR HIMSELF.

22 IF THREE ROCKS WOULD LAST HIM A FEW DAYS,
23 AND THAT'S THE KIND OF PAYCHECK SCALE THAT HE LIVES ON,
24 CAN HE INVEST THIS KIND OF MONEY? ASK YOURSELVES. IS
25 IT REASONABLE THAT HE COULD INVEST THIS KIND OF MONEY

1 ALL OF A SUDDEN ON 80 ROCKS ALL TO SMOKE HIMSELF?

2 ANOTHER THING I WOULD LIKE YOU TO KEEP IN
3 MIND IS WHAT OFFICER BROWN, INVESTIGATOR BROWN TESTIFIED
4 TO AS TO THE VALUE OF THIS CRACK COCAINE. NOW, THE
5 DEFENDANT TOLD YOU THAT HE PAID \$200.00 FOR CRACK
6 COCAINE. BUT I'D LIKE YOU TO CONTRAST THAT WITH WHAT
7 YOU HEARD FROM THE INVESTIGATOR.

8 HE SAYS THAT THIS VOLUME OF CRACK COCAINE,
9 IF SOMEONE IS THE LEVEL OF A DEALER, AND THAT MEANS THAT
10 THEY WOULD BUY DIRECTLY FROM SOME SUPPLIER, IF THEY ARE
11 SUFFICIENTLY HIGH UP THE CHAIN, SO TO SPEAK, TO BE A
12 DEALER, THEN IT WOULD COST THEM ABOUT \$500.00 TO BUY
13 EIGHT GRAMS OF CRACK COCAINE.

14 MAYBE THE DEFENDANT GOT A BARGAIN, HE GOT
15 \$200.00.

16 BUT HE SAYS MORE THAN THAT. A USER OF CRACK
17 COCAINE, A MERE USER, WOULD PAY COST FOR EVERY HIT, FOR
18 EVERY ROCK. AND SO FOR SOMEONE THAT IS A MERE USER
19 RATHER THAN A DEALER, SOMEONE THAT IN TURN SELLS WHAT
20 THEY PURCHASE, THIS WOULD COST \$1,600.00. SO IF
21 MR. TODD IS JUST A USER, HOW DID HE GET SUCH A GREAT
22 DEAL? IF THE AVERAGE CRACK USER SPENDS \$20.00 FOR EVERY
23 TENTH OF A GRAM, HOW DID HE GET 80 ROCKS FOR \$200.00?

24 NOW, ONE OF THE THINGS, ONE OF THE THINGS
25 THAT THE DEFENDANT MENTIONED IS THAT HE, IS THAT HE WAS

1 FINISHING UP THIS PLUMBING JOB LATE IN THE EVENING AND
2 THAT THROUGH SOME FRIENDS AND SOME FAVORS HE WAS
3 TRANSPORTED FROM GRAY COURT TO MAULDIN TO SIMPSONVILLE
4 SOMEWHERE OVER THIS COURSE OF AN HOUR.

5 HE TOLD YOU THAT HE WAS PAID \$400.00 FOR HIS
6 JOB, FOR HIS WORK. THAT'S WHAT HE GOT PAID AT THE END
7 OF THE DAY. AND HE TOLD YOU HE SPENT \$200.00 ON THIS
8 BAG OF CRACK COCAINE, WHICH OUR EXPERT SAYS COST MORE
9 LIKE 500 IF YOU ARE A DEALER, 1600 IF YOU ARE JUST A
10 USER. BUT WE KNOW THAT HE HAD NO CASH ON HIM WHEN HE
11 WAS ARRESTED. WHERE IS THE OTHER \$200.00? WHERE DID IT
12 GO? IF HE REALLY ONLY SPENT \$200.00, THEN WHERE'S THE
13 REST OF IT?

14 NOW, THE LAST THING THAT I WANT YOU TO
15 CONSIDER IS SORT OF THE SCENE, SORT OF HOW, HOW THIS
16 WHOLE THING PLAYED OUT. WE KNOW THAT IT WAS AFTER
17 MIDNIGHT. WE KNOW THAT MR. TODD WAS IN A CAR WITH
18 MR. JOHNSON, WHO HE SAYS HE GREW UP WITH, BUT THE
19 20-YEAR AGE DIFFERENCE IS A LITTLE BIT STRANGE TO THINK
20 THAT THEY GREW UP TOGETHER, BUT HE HAPPENED TO BE AT A
21 CONVENIENCE STORE, THAT THE TWO DECIDED TO GO RIDE
22 AROUND AND GO MEET THIS WOMAN FOR A DATE. AND HE SAYS
23 HE'S NEVER MET THIS WOMAN BEFORE BUT THAT'S HOW HE
24 PLANNED TO SPEND THE EVENING. ALL THE WHILE LOCKED AND
25 LOADED WITH THIS EIGHT GRAMS OF CRACK THAT AS AN ADDICT

1 HE WOULD BE I THINK PRETTY ANXIOUS TO USE.

2 BUT HE WANTED TO PUT THAT OFF. HE WANTED TO
3 PUT THAT OFF AND TAKE HIS CHANCES WITH THIS PERSON THAT
4 HE'D NEVER MET. BUT HE WANTS YOU TO BELIEVE THAT NONE
5 OF THAT, NONE OF THAT WAS GONNA INVOLVE THIS CRACK THAT
6 WAS, PROBABLY BURNED A HOLE IN HIS POCKET. A REAL USER
7 WOULD HAVE NEEDED TO TAKE A HIT.

8 AND IF HE WANTED IT BAD ENOUGH, THERE
9 WOULDN'T HAVE BEEN ANYBODY TO STAND IN THE WAY, NOT A
10 DATE, OR EVEN A DATE NOT EVEN A HOT DATE. BUT CERTAINLY
11 NOT RIDING AROUND WITH A FRIEND, CERTAINLY NOT JUST
12 KILLING TIME DRINKING A SIX-PACK. SO JUST KEEP IN MIND
13 WHEN YOU ARE CONSIDERING ALL THIS, WHEN YOU ARE
14 CONSIDERING ALL THE EVIDENCE FROM WHICH YOU CAN INFER
15 THAT THIS DISTRIBUTION WAS PLANNED OR TO BE EXECUTED IN
16 THE FUTURE, JUST KEEP IN MIND SORT OF THE SCENE, SORT OF
17 THE WAY, THE WAY THINGS WENT DOWN.

18 NOW, ONE OF THE THINGS THAT YOU HEARD A
19 COUPLE TIMES THAT I THINK, I THINK IS WORTH MENTIONING
20 IS THAT WHEN SOMEONE GOES TO BUY BEER, THEY DON'T BUY
21 ONE BEER. THEY BUY A SIX-PACK, MAYBE A 12-PACK, MAYBE A
22 24-PACK.

23 LADIES AND GENTLEMEN, THIS DEFENDANT DIDN'T
24 BUY A 12-PACK OR A 24-PACK. HE BOUGHT THE COMPARABLE
25 EQUIVALENT OF A BEER TRUCK, MORE THAN 80 ROCKS OF CRACK

1 COCAINE FOR PERSONAL USE THAT HE WOULD HAVE HAD TO HAVE
2 SMOKED SUCCESSIVELY IN ORDER TO POWER THROUGH THEM, THE
3 WAY HE SAYS HE WAS THROUGH THESE OTHER ROCKS.

4 SO AFTER CONSIDERING ALL OF THAT, THE FACT
5 THAT YOU CAN'T INFER THAT THIS IS EIGHT TIMES WHAT THE
6 LAW SAYS IS THE THRESHOLD FOR WHEN SOMEONE PLANS TO
7 DISTRIBUTE, WHEN YOU CONSIDER THAT IT WAS 80 ROCKS, 80
8 HITS, 80 INDIVIDUAL HITS IN THIS CRACK PIPE, THAT IT WAS
9 WORTH \$16,000.00 TO A USER, \$500.00 TO A DEALER, AND THE
10 WAY IN WHICH ALL THIS WENT DOWN, IT SHOULD BE EVIDENT
11 THAT REGARDLESS OF WHETHER HE PLANNED TO SELL IT TO
12 MR. JOHNSON, TO HIS DATE, OR THAT WHEREVER THEY WERE
13 HEADED, WHETHER HE PLANNED TO TRADE IT TO MR. JOHNSON
14 FOR THE FAVOR OF DRIVING HIM AROUND, OR WHETHER HE
15 PLANNED TO SHARE IT WITH ANY OF THOSE PEOPLE, HE
16 CERTAINLY PLANNED TO DISTRIBUTE IT.

17 AND I ASK YOU TO KEEP ALL THAT IN MIND WHEN
18 YOU RETURN A VERDICT THAT THE DEFENDANT IS GUILTY OF
19 POSSESSION WITH INTENT TO DISTRIBUTE CRACK COCAINE.
20 THANK YOU.

21 THE COURT'S CHARGE TO THE JURY:

22 THE COURT: MADAM FORELADY, LADIES AND
23 GENTLEMEN OF THE JURY, AS JURORS IN THIS CASE YOU HAVE
24 CERTAIN FUNCTIONS AND RESPONSIBILITIES TO PERFORM WHICH
25 ARE ENTIRELY SEPARATE AND DISTINCT FROM THOSE OF MINE AS

1 THE TRIAL JUDGE. I AM PROHIBITED BY THE CONSTITUTION OF
2 OUR STATE FROM CHARGING YOU ON THE FACTS OF THIS CASE.
3 I'M ALSO PROHIBITED FROM DISCUSSING THE FACTS OF THE
4 CASE WITH YOU OR IN ANY WAY INTIMATING WHAT MY FEELINGS,
5 IF ANY, ARE ABOUT THE FACTS OF THIS CASE. IT IS YOUR
6 RESPONSIBILITY AND YOURS ALONE TO PASS UPON ALL ISSUES
7 OF FACT PRESENTED IN THIS CASE. I WOULD, THEREFORE,
8 CHARGE THAT IF DURING THE COURSE OF THE TRIAL OR DURING
9 MY CHARGE YOU HAVE BEEN GIVEN OR LEFT WITH THE
10 IMPRESSION THAT I DO HAVE A PERSONAL FEELING ABOUT THE
11 FACTS OF THE CASE, I WOULD SPECIFICALLY INSTRUCT YOU TO
12 DISREGARD THAT FEELING OR IMPRESSION. MOREOVER, YOU ARE
13 THE SOLE JUDGES OF WHAT THE TESTIMONY WAS AND NOT THE
14 ARGUMENT OF COUNSEL.

15 IT IS ALSO YOUR DUTY AND YOURS ALONE TO
16 WEIGH THE TESTIMONY AND EVIDENCE IN THE CASE AND TO PASS
17 UPON THE CREDIBILITY OR BELIEVABILITY OF THE WITNESSES.
18 IN THIS CONNECTION YOU HAVE THE RIGHT TO BELIEVE ALL
19 THAT A WITNESS TELLS YOU OR DISBELIEVE ALL THAT A
20 WITNESS TELLS YOU. YOU HAVE THE RIGHT TO BELIEVE A PART
21 OF WHAT A WITNESS TELLS YOU AND TO DISBELIEVE A PART OF
22 WHAT A WITNESS TELLS YOU. YOU HAVE THE RIGHT TO TAKE
23 INTO CONSIDERATION ANY BIAS OR PREJUDICE OR INTEREST YOU
24 FEEL A WITNESS MIGHT HAVE IN THE CASE. I SAY THIS
25 MERELY TO EMPHASIZE THAT THE WEIGHT YOU SEE FIT TO GIVE

1 TO THE TESTIMONY, TO THE CREDIBILITY OF THE WITNESSES,
2 AS WELL AS ALL ISSUES OF FACT, ARE FOR YOUR SOLE
3 DETERMINATION.

4 AS JUDGES OF THE FACTS YOU ARE THE SOLE
5 JUDGES OF THE CREDIBILITY, THAT IS THE BELIEVABILITY OF
6 WITNESSES WHO HAVE TESTIFIED IN THIS CASE. IN PASSING
7 UPON THEIR CREDIBILITY YOU MAY TAKE INTO CONSIDERATION
8 MANY THINGS, SUCH AS THE APPEARANCE AND MANNER OF THE
9 WITNESS ON THE STAND, SOMETIMES REFERRED TO AS THE
10 Demeanor OF THE WITNESS.

11 WAS THE WITNESS FORTHRIGHT OR HESITANT? WAS
12 THE WITNESS'S TESTIMONY CONSISTENT OR DID IT CONTAIN
13 DISCREPANCIES? WHAT WAS THE ABILITY OF THE WITNESS TO
14 KNOW THE FACTS ABOUT WHICH HE OR SHE TESTIFIED? DID THE
15 WITNESS HAVE A CAUSE OR A REASON TO BE BIASED AND
16 PREJUDICED IN FAVOR OF THE TESTIMONY HE OR SHE GAVE?
17 WAS THE TESTIMONY OF THE WITNESS CORROBORATED OR MADE
18 STRONGER BY OTHER TESTIMONY AND EVIDENCE OR WAS IT MADE
19 WEAKER OR IMPEACHED BY SUCH OTHER TESTIMONY AND
20 EVIDENCE?

21 AS JURORS YOU HAVE A RIGHT TO BELIEVE A
22 SMALL PORTION OF A WITNESS'S TESTIMONY AND DISCARD THE
23 LARGER, OR VICE VERSA. YOU MAY BELIEVE ALL OF A
24 WITNESS'S TESTIMONY OR NONE. YOU MAY BELIEVE THE
25 TESTIMONY OF A SINGLE WITNESS AGAINST THAT OF MANY

1 WITNESSES OR THE OTHER WAY AROUND. MOST CERTAINLY YOU
2 DO NOT DETERMINE THE MATTER OF CREDIBILITY OR
3 BELIEVABILITY BY COUNTING UP THE NUMBER OF WITNESSES WHO
4 MAY HAVE TESTIFIED ON BEHALF OF THE PARTIES.

5 NOW, THE RULES OF EVIDENCE ORDINARILY DO NOT
6 PERMIT WITNESSES TO TESTIFY TO OPINIONS OR CONCLUSIONS.
7 AN EXCEPTION TO THIS RULE EXISTS FOR THE WITNESSES WE
8 CALL EXPERT WITNESSES. A WITNESS WHO BY EDUCATION AND
9 EXPERIENCE HAS BECOME AN EXPERT IN SOME ART, SCIENCE,
10 PROFESSION OR OTHER CALLING MAY STATE AN OPINION AS TO
11 THE RELEVANT AND MATERIAL MATTER IN WHICH THE WITNESS
12 CLAIMS TO BE AN EXPERT AND MAY ALSO STATE THE REASON FOR
13 THE OPINION.

14 YOU SHOULD CONSIDER ANY EXPERT TESTIMONY
15 RECEIVED IN EVIDENCE IN THIS CASE, AND LIKE ANY OTHER
16 EVIDENCE, GIVE IT THE WEIGHT YOU THINK IT DESERVES. IF
17 YOU DECIDE THAT THE OPINION OF AN EXPERT IS NOT BASED ON
18 SUFFICIENT EDUCATION AND EXPERIENCE, OR IF YOU CONCLUDE
19 THAT THE REASONS GIVEN IN SUPPORT OF THE OPINION ARE NOT
20 SOUND, OR THAT THE OPINION IS OUTWEIGHED BY OTHER
21 EVIDENCE, YOU MAY DISREGARD THE OPINION ENTIRELY. AN
22 EXPERT WITNESS'S TESTIMONY IS TO BE GIVEN NO GREATER
23 WEIGHT THAN THAT OF OTHER WITNESSES SIMPLY BECAUSE THE
24 WITNESS IS AN EXPERT. FURTHER, YOU ARE NOT REQUIRED TO
25 ACCEPT AN EXPERT'S OPINION EVEN THOUGH IT IS NOT

1 CONTRADICTED.

2 NOW, A STATEMENT ALLEGED TO HAVE BEEN MADE
3 BY THE DEFENDANT HAS BEEN ADMITTED INTO EVIDENCE IN THIS
4 CASE. WHILE THE COURT HAS DETERMINED THAT THE STATEMENT
5 IS ADMISSIBLE, I INSTRUCT YOU THAT YOU MAKE THE ULTIMATE
6 DECISION OF WHETHER OR NOT THE DEFENDANT MADE THE
7 STATEMENT AT ALL.

8 IF THE DEFENDANT DID MAKE THE STATEMENT, YOU
9 MUST DETERMINE WHETHER THE STATEMENT WAS MADE BY THE
10 DEFENDANT VOLUNTARILY AND OF HIS OWN FREE WILL. THIS
11 MEANS THAT THE STATEMENT WAS NOT CAUSED BY PRESSURE,
12 FORCE, FEAR, THREATS, COERCION, OR INTIMIDATION, OR BY
13 HOPE OR A PROMISE OF LENIENCY OR REWARD OF ANY KIND.

14 IN DETERMINING WHETHER THE STATEMENT WAS
15 VOLUNTARY YOU SHOULD CONSIDER BOTH THE CHARACTERISTICS
16 OF THE DEFENDANT AND THE DETAILS OF THE QUESTIONING.
17 SOME OF THE FACTORS THAT YOU MUST CONSIDER ARE THE AGE
18 OF THE DEFENDANT, THE DEFENDANT'S EDUCATION OR LACK OF
19 EDUCATION, THE DEFENDANT'S MENTAL ABILITY OR CAPACITY,
20 THE DEFENDANT'S I.Q. OR INTELLIGENCE, THE DEFENDANT'S
21 BACKGROUND AND ENVIRONMENT, THE PLACE AND LENGTH OF
22 DETENTION, THE NATURE OF THE QUESTIONING, AND ADVICE OR
23 LACK THEREOF TO THE DEFENDANT OF HIS CONSTITUTIONAL
24 RIGHTS, INCLUDING BUT NOT LIMITED TO THE RIGHT TO REMAIN
25 SILENT; THAT ANY STATEMENT COULD BE USED AGAINST HIM IN

1 A COURT OF LAW; THE RIGHT TO HAVE A LAWYER PRESENT; THAT
2 IF HE COULD NOT AFFORD A LAWYER, A LAWYER WOULD BE
3 APPOINTED TO REPRESENT HIM WITHOUT COST; AND THAT HE
4 COULD STOP MAKING A STATEMENT AT ANY TIME.

5 YOU MUST CAREFULLY CONSIDER ALL OF THE
6 SURROUNDING CIRCUMSTANCES BEFORE YOU CAN GIVE ANY WEIGHT
7 TO ANY ALLEGED STATEMENT. THE STATE HAS THE BURDEN OF
8 PROVING BEYOND A REASONABLE DOUBT THAT THE ALLEGED
9 STATEMENT WAS VOLUNTARY. IF YOU DETERMINE IT WAS, YOU
10 MAY GIVE THE STATEMENT ANY FURTHER CONSIDERATION THAT
11 YOU DEEM PROPER. YOU MUST DECIDE WHAT WEIGHT, IF ANY,
12 SHOULD BE GIVEN TO THE ALLEGED STATEMENT. IF YOU
13 DETERMINE THE ALLEGED STATEMENT WAS NOT THE FREE AND
14 VOLUNTARILY STATEMENT OF THE DEFENDANT, YOU SHOULD NOT
15 CONSIDER THE STATEMENT AT ALL.

16 NOW, YOU HAVE HEARD EVIDENCE THAT THE
17 DEFENDANT WAS CONVICTED OF A CRIME OTHER THAN THE ONE
18 WHICH THE DEFENDANT IS NOW ON TRIAL. THIS EVIDENCE MAY
19 BE CONSIDERED BY YOU IF YOU CONCLUDE IT IS TRUE ONLY IN
20 DECIDING WHETHER THE DEFENDANT'S TESTIMONY IS BELIEVABLE
21 AND FOR NO OTHER PURPOSE. YOU MUST NOT CONSIDER THE
22 DEFENDANT'S PRIOR RECORD AS ANY EVIDENCE OF THE
23 DEFENDANT'S GUILT ON THE CHARGE WE ARE TRYING TODAY.

24 THROUGHOUT THIS ENTIRE PROCESS YOU HAVE ONE
25 SINGLE OBJECTIVE AND THAT IS TO SEEK THE TRUTH,

1 REGARDLESS OF WHAT WITNESS OR TESTIMONY MAY HAVE COME.

2 NOW, BY THE SAME CONSTITUTION AND LAW WHICH
3 MAKES YOU THE FINDERS OF THE FACTS AND EVIDENCE AS I
4 HAVE DISCUSSED WITH YOU, I AM AS THE JUDGE MADE THE SOLE
5 AND ONLY INSTRUCTOR IN THE LAW. YOU MUST ACCEPT AS
6 CORRECT THE LAW WHICH I CHARGE AND APPLY TO IT THE
7 EVIDENCE AS YOU FIND IT AND REACH YOUR VERDICT. IF I
8 SHOULD MAKE AN ERROR IN THE LAW AS I INSTRUCT IT TO YOU,
9 THERE IS ANOTHER TIME AND PLACE THAT ERROR CAN BE
10 CONSIDERED AND, IF NECESSARY, CORRECTED, BUT FOR THE
11 PURPOSES OF THIS CASE TODAY YOU MUST ACCEPT THE LAW AS I
12 CHARGE IT TO BE THE CORRECT LAW.

13 NOW, THE DEFENDANT HAS PLED NOT GUILTY TO
14 THIS INDICTMENT AND THAT PLEA PUTS THE BURDEN ON THE
15 STATE TO PROVE THE DEFENDANT GUILTY. A PERSON CHARGED
16 WITH COMMITTING A CRIMINAL OFFENSE IN SOUTH CAROLINA IS
17 NEVER REQUIRED TO PROVE HIMSELF INNOCENT. I CHARGE YOU
18 THAT IT IS AN IMPORTANT RULE OF THE LAW THAT THE
19 DEFENDANT IN A CRIMINAL CASE, NO MATTER HOW SERIOUS THE
20 CHARGE MAY BE, WILL ALWAYS BE PRESUMED TO BE INNOCENT OF
21 THE CRIME FOR WHICH THE INDICTMENT WAS ISSUED UNLESS THE
22 GUILT HAS BEEN PROVEN BY THE EVIDENCE SATISFYING YOU OF
23 THAT GUILT BEYOND A REASONABLE DOUBT.

24 THE PRESUMPTION OF INNOCENCE DOES NOT END
25 WHEN YOU BEGIN YOUR DELIBERATIONS, BUT IT ACCOMPANIES

1 THE DEFENDANT THROUGHOUT THE TRIAL UNTIL YOU REACH A
2 VERDICT OF GUILT BASED UPON EVIDENCE SATISFYING YOU OF
3 THAT GUILT BEYOND A REASONABLE DOUBT.

4 THE PRESUMPTION OF INNOCENCE IS LIKE A ROBE
5 OF RIGHTEOUSNESS PLACED ABOUT THE SHOULDERS OF THE
6 DEFENDANT WHICH REMAINS WITH THE DEFENDANT UNTIL IT HAS
7 BEEN STRIPPED FROM THE DEFENDANT BY EVIDENCE SATISFYING
8 YOU OF THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.

9 PRESUMPTION OF INNOCENCE IS NOT A MERE LEGAL
10 THEORY, IT IS NOT JUST A LEGAL PHRASE. IT IS A
11 SUBSTANTIAL RIGHT TO WHICH EVERY DEFENDANT IS ENTITLED
12 UNLESS YOU, THE JURY, ARE SATISFIED FROM THE EVIDENCE OF
13 THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.

14 WHAT IS A REASONABLE DOUBT IN THE LAW? A
15 REASONABLE DOUBT IS THE KIND OF DOUBT THAT WOULD CAUSE A
16 REASONABLE PERSON TO HESITATE TO ACT.

17 NOW, THERE ARE TWO TYPES OF EVIDENCE
18 GENERALLY PRESENTED DURING A TRIAL: DIRECT EVIDENCE AND
19 CIRCUMSTANTIAL EVIDENCE. DIRECT EVIDENCE IS THE
20 TESTIMONY OF A PERSON WHO CLAIMS TO HAVE ACTUAL
21 KNOWLEDGE OF A FACT, SUCH AS AN EYEWITNESS. IT IS
22 EVIDENCE WHICH IMMEDIATELY ESTABLISHES THE MAIN FACT TO
23 BE PROVED.

24 CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN
25 OF FACTS AND CIRCUMSTANCES INDICATING THE EXISTENCE OF A

1 FACT. IT IS EVIDENCE WHICH IMMEDIATELY ESTABLISHES THE
2 COLLATERAL FACTS FROM WHICH THE MAIN FACT MAY BE
3 INFERRED. CIRCUMSTANTIAL EVIDENCE IS BASED ON INFERENCE
4 AND NOT ON PERSONAL KNOWLEDGE OR OBSERVATION. IT IS
5 PROOF THAT DOES NOT ACTUALLY ESTABLISH THE FACT IN
6 QUESTION, BUT THAT ASSERTS OR DESCRIBES SOMETHING ELSE
7 FROM WHICH YOU MAY EITHER REASONABLY INFER THE TRUTH OF
8 THE FACT OR AT LEAST REASONABLY INFER AN INCREASE IN THE
9 PROBABILITY THAT THE FACT IS TRUE.

10 FOR CIRCUMSTANTIAL EVIDENCE TO BE SUFFICIENT
11 TO WARRANT THE FINDING OF A FACT, THE CIRCUMSTANCES MUST
12 LEAD TO THE FACT WITH REASONABLE CERTAINTY. THE FACTS
13 AND CIRCUMSTANCES SHOULD BE CONSIDERED IN LIGHT OF
14 ORDINARY EXPERIENCE AND COMMON SENSE. THE EXISTENCE OF
15 A FACT CANNOT BE BASED ON SPECULATION, SURMISE, OR
16 CONJECTURE. THE LAW MAKES ABSOLUTELY NO DISTINCTION
17 BETWEEN THE WEIGHT OR VALUE TO BE GIVEN TO EITHER DIRECT
18 OR CIRCUMSTANTIAL EVIDENCE, NOR IS A GREATER DEGREE OF
19 CERTAINTY REQUIRED FOR CIRCUMSTANTIAL EVIDENCE THAN OF
20 DIRECT EVIDENCE.

21 CRIMINAL INTENT, FOR EXAMPLE, IS A STATE OF
22 MIND THAT OPERATES JOINTLY WITH AN ACT OR OMISSION IN
23 THE COMMISSION OF A CRIME. CRIMINAL INTENT IS A MENTAL
24 STATE. CRIMINAL LIABILITY IS NORMALLY BASED UPON THE
25 CONCURRENCE OF TWO FACTORS: AN EVIL MEANING MIND AND AN

1 EVIL DOING HAND. PROOF OF INTENT NECESSARILY RESTS ON
2 INFERENCE FROM CONDUCT.

3 IN INDICTMENT NUMBER 2007-GS-23-8646 THE
4 DEFENDANT, CALVIN EARL TODD, IS CHARGED WITH POSSESSION
5 OF CRACK COCAINE WITH INTENT TO DISTRIBUTE IN VIOLATION
6 OF SOUTH CAROLINA CODE OF LAWS SECTION 44-53-375. I
7 REMIND YOU THAT THE FACT THAT THE DEFENDANT WAS
8 ARRESTED, CHARGED, AND INDICTED IN THIS CASE IS NOT
9 EVIDENCE IN THIS CASE AND CANNOT BE CONSIDERED BY YOU AS
10 EVIDENCE OF GUILT IN THIS CASE; NOR DOES IT CREATE ANY
11 PRESUMPTION OR INFERENCE OF GUILT. THE INDICTMENT IS
12 SIMPLY THE FORMAL WRITTEN INSTRUMENT WHICH CONTAINS THE
13 CHARGE MADE AGAINST THE DEFENDANT. IT IS THE FORMAL
14 DOCUMENT BY WHICH THE CASE IS BROUGHT INTO THIS COURT.

15 THE DEFENDANT IS CHARGED WITH POSSESSION
16 WITH INTENT TO DISTRIBUTE CRACK COCAINE. THE STATE MUST
17 PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT
18 POSSESSED CRACK COCAINE WITH THE INTENT TO DISTRIBUTE
19 IT. TO PROVE POSSESSION THE STATE MUST PROVE BEYOND A
20 REASONABLE DOUBT THAT THE DEFENDANT HAD BOTH THE POWER
21 AND THE INTENT TO CONTROL THE DISPOSITION OR USE OF THE
22 CRACK COCAINE.

23 POSSESSION MAY EITHER BE ACTUAL OR
24 CONSTRUCTIVE. ACTUAL POSSESSION MEANS THE CRACK COCAINE
25 WAS IN THE ACTUAL POSSESSION OR PHYSICAL CUSTODY OF THE

1 DEFENDANT. CONSTRUCTIVE POSSESSION MEANS THAT THE
2 DEFENDANT HAD DOMINION AND CONTROL OR THE RIGHT TO
3 EXERCISE DOMINION AND CONTROL OVER EITHER THE CRACK
4 COCAINE ITSELF OR THE PROPERTY IN WHICH THE CRACK
5 COCAINE WAS FOUND. MERE PRESENCE AT THE SCENE WHERE THE
6 DRUGS WERE FOUND IS NOT ENOUGH TO PROVE POSSESSION.
7 ACTUAL KNOWLEDGE OF THE PRESENCE OF THE CRACK COCAINE IS
8 STRONG EVIDENCE OF THE DEFENDANT'S INTENT TO CONTROL ITS
9 DISPOSITION OR USE.

10 THE DEFENDANT'S KNOWLEDGE AND POSSESSION MAY
11 BE INFERRED FROM A SUBSTANCE WHEN A SUBSTANCE IS FOUND
12 ON THE PROPERTY UNDER THE DEFENDANT'S CONTROL. HOWEVER,
13 THIS IS SIMPLY AN EVIDENTIARY FACT TO BE TAKEN IN
14 CONSIDERATION BY YOU ALONG WITH OTHER EVIDENCE IN THE
15 CASE AND BE GIVEN THE WEIGHT YOU DECIDE IT SHOULD HAVE.

16 THE STATE MUST ALSO PROVE BEYOND A
17 REASONABLE DOUBT THAT THE DEFENDANT INTENDED TO
18 DISTRIBUTE THE CRACK COCAINE. DISTRIBUTE MEANS TO
19 DELIVER, OTHER THAN BY ADMINISTERING OR DISPENSING A
20 DRUG. INTENT MAY BE SHOWN BY ACTS AND CONDUCT OF THE
21 DEFENDANT AND OTHER CIRCUMSTANCES FROM WHICH YOU MAY
22 NATURALLY AND REASONABLY INFER INTENT.

23 IN DETERMINING WHETHER THE DEFENDANT HAD THE
24 INTENT TO DISTRIBUTE THE CRACK COCAINE, YOU MAY CONSIDER
25 THE CIRCUMSTANCES SURROUNDING THE DEFENDANT'S ALLEGED

1 POSSESSION. YOU MAY CONSIDER THE AMOUNT OF THE
2 SUBSTANCE ALLEGED TO HAVE BEEN POSSESSED, THE MANNER IN
3 WHICH IT WAS ALLEGEDLY POSSESSED, THE PLACE WHERE IT WAS
4 ALLEGEDLY POSSESSED, AND OTHER FACTORS WHICH YOU
5 CONSIDER TO BE IMPORTANT.

6 TO FIND POSSESSION WITH INTENT TO DISTRIBUTE
7 YOU MUST FIND THAT THE DEFENDANT DID NOT INTEND TO HAVE
8 THE CRACK COCAINE SOLELY FOR HIS OWN USE. POSSESSION OF
9 MORE THAN ONE OR MORE GRAM OF CRACK COCAINE CREATES AN
10 INFERENCE THAT THE DEFENDANT POSSESSED THE CRACK COCAINE
11 WITH THE INTENT TO DISTRIBUTE IT. THE INFERENCE DOES
12 NOT RELIEVE THE STATE FROM PROVING BEYOND A REASONABLE
13 DOUBT THAT THE DEFENDANT HAD THE INTENT TO DISTRIBUTE.
14 IT IS SIMPLY AN EVIDENTIARY FACT TO BE TAKEN INTO
15 CONSIDERATION BY YOU ALONG WITH THE OTHER EVIDENCE IN
16 THE CASE AND TO BE GIVEN THE WEIGHT YOU DECIDE IT SHOULD
17 HAVE.

18 IF YOU FIND THE STATE HAS FAILED TO PROVE
19 BEYOND A REASONABLE DOUBT THAT THE DEFENDANT IS GUILTY
20 OF POSSESSION WITH INTENT TO DISTRIBUTE CRACK COCAINE,
21 YOU MAY CONSIDER WHETHER THE STATE HAS PROVED BEYOND A
22 REASONABLE DOUBT THAT THE DEFENDANT IS GUILTY OF SIMPLE
23 POSSESSION OF CRACK COCAINE. UNDER SOUTH CAROLINA LAW
24 WE HAVE A PRINCIPLE KNOWN AS THE LESSER-INCLUDED
25 OFFENSES. SIMPLE POSSESSION IS WHAT IS KNOWN AS A

1 LESSER-INCLUDED OFFENSE OF POSSESSION WITH INTENT TO
2 DISTRIBUTE. AN INDICTMENT WILL SUSTAIN A CONVICTION FOR
3 A LESSER OFFENSE IF THE LESSER OFFENSE IS INCLUDED
4 WITHIN THE GREATER-CHARGED OFFENSE.

5 SIMPLE POSSESSION DOES NOT REQUIRE AN INTENT
6 TO DISTRIBUTE THE CRACK COCAINE. IF YOU FIND THAT THE
7 DEFENDANT POSSESSED CRACK COCAINE BUT DID NOT INTEND TO
8 DISTRIBUTE IT, THEN THE DEFENDANT WOULD BE FOUND GUILTY
9 OF SIMPLE POSSESSION OF CRACK COCAINE.

10 THE STATE HAS THE BURDEN OF PROOF OF
11 ESTABLISHING EACH ELEMENT OF THE CHARGED OFFENSE BEYOND
12 A REASONABLE DOUBT. YOU SHOULD ENTER YOUR VERDICT BASED
13 ON WHETHER OR NOT YOU ARE SATISFIED THAT THE STATE HAS
14 ESTABLISHED BEYOND A REASONABLE DOUBT ALL OF THE
15 ELEMENTS OF THE OFFENSE.

16 IF YOU HAVE A REASONABLE DOUBT AS TO WHETHER
17 THE STATE HAS SHOWN ALL ELEMENTS OF THE LESSER-INCLUDED
18 OFFENSE OF SIMPLE POSSESSION OF CRACK COCAINE, YOU WOULD
19 FIND THE DEFENDANT NOT GUILTY.

20 IN SUMMARY: IF YOU HAVE A REASONABLE DOUBT
21 OF THE DEFENDANT'S GUILT ON ANY CHARGE AFTER CONSIDERING
22 ALL THE EVIDENCE, THEN YOU MUST FIND THE DEFENDANT NOT
23 GUILTY ON THAT CHARGE. ON THE OTHER HAND, IF YOU HAVE
24 NO REASONABLE DOUBT OF THE DEFENDANT'S GUILT AS TO A
25 PARTICULAR CHARGE AFTER CONSIDERING ALL THE EVIDENCE,

1 THEN YOU MUST FIND THE DEFENDANT GUILTY OF THAT CHARGE.

2 MADAM FORELADY, LADIES AND GENTLEMEN OF THE
3 JURY, YOU HAVE BEEN SELECTED AS FAIR AND IMPARTIAL
4 JURORS SWORN TO IMPARTIALLY TRY AND DETERMINE THE FACTS
5 OF THE CASE, AND WHEN YOU COMPLY WITH YOUR OATH TO DO
6 SO, THEN NO ONE WILL HAVE THE RIGHT TO CRITICIZE YOUR
7 VERDICT AND YOU WILL HAVE FULLY DISCHARGED YOUR DUTY AS
8 JURORS. YOU SHOULD NOT BE INFLUENCED BY OPINIONS OR
9 EXPRESSIONS OF OPINIONS, IF ANY, WHICH YOU MAY HAVE
10 HEARD ON THE OUTSIDE, BUT YOU ARE TO DECIDE THIS CASE
11 ACCORDING TO THE TESTIMONY THAT YOU HAVE HEARD FROM THE
12 LIPS OF THE SWORN WITNESSES ALONG WITH OTHER EVIDENCE
13 THAT MAY HAVE BEEN INTRODUCED.

14 YOU MUST NEVER SPECULATE TO BE TRUE ANY
15 INSINUATION SUGGESTED BY A QUESTION ASKED A WITNESS.
16 THE QUESTION IS NOT EVIDENCE AND MAY BE CONSIDERED ONLY
17 AS IT SUPPLIES MEANING TO THE ANSWER.

18 AS I SAID EARLIER, YOU ARE THE JUDGES OF THE
19 FACTS IN THIS CASE AND YOU ARE TO DETERMINE ONLY IF THIS
20 DEFENDANT IS GUILTY OR NOT GUILTY BASED UPON THE
21 TESTIMONY AND EVIDENCE PRESENTED IN THE TRIAL AND AFTER
22 APPLYING THE LAW AS I'VE GIVEN IT TO YOU. IF FROM THE
23 EVIDENCE YOU HAVE A REASONABLE DOUBT AS TO WHETHER OR
24 NOT THE DEFENDANT IS GUILTY, IT IS YOUR DUTY TO ACQUIT
25 HIM AND WRITE THE TWO WORDS "NOT GUILTY."

1 UNDER THE OATH YOU TOOK YOU SWORE TO TRY
2 THIS CASE BASED ONLY AND SOLELY ON THE TESTIMONY AND
3 EVIDENCE AND LAW PRESENTED AND HEARD IN THIS COURTROOM.
4 IT IS YOUR DUTY TO LAY ASIDE ALL BIAS, PREJUDICE, OR
5 SYMPATHY YOU MAY HAVE IN REACHING YOUR VERDICT. YOU
6 HAVE NO FRIENDS TO REWARD OR ENEMIES TO PUNISH IN THIS
7 CASE.

8 I MIGHT NOTE THAT THE TERM VERDICT COMES
9 FROM THE LATIN TERM, *VEREDICTO*, WHICH MEANS TO SPEAK THE
10 TRUTH. ABIDE BY YOUR OATH AND RETURN A VERDICT WHICH
11 SPEAKS THE TRUTH.

12 MADAM FORELADY, I HAVE PREPARED A VERDICT
13 FORM FOR YOU TO USE TO REPORT YOUR VERDICT TO THE COURT.
14 AS YOU WILL NOTICE, *THE STATE OF SOUTH CAROLINA VERSUS*
15 *CALVIN E. TODD*, DEFENDANT, INDICTMENT NUMBER
16 2007-GS-23-8646, POSSESSION OF CRACK COCAINE WITH INTENT
17 TO DISTRIBUTE. AND DO REMEMBER WHATEVER VERDICT YOU
18 REACH, IT MUST BE UNANIMOUS, ALL 12 MEMBERS OF THE JURY
19 MUST AGREE.

20 AND SO IT STATES: WE, THE JURY, UNANIMOUSLY
21 FIND THAT THE DEFENDANT, CALVIN E. TODD, IS -- AND YOU
22 HAVE THREE POSSIBLE VERDICTS: GUILTY OF POSSESSION WITH
23 INTENT TO DISTRIBUTE CRACK COCAINE, OR THE
24 LESSER-INCLUDED, GUILTY OF SIMPLE POSSESSION OF CRACK
25 COCAINE, OR NOT GUILTY. WHICHEVER IS THE UNANIMOUS

1 VERDICT OF THE JURY, MADAM FORELADY, IF YOU WOULD, IF
2 YOU WOULD CHECK THAT VERDICT WHERE IT'S PROVIDED. AND
3 ONCE THE PROPER VERDICT HAS BEEN CHECKED, THEN YOU WOULD
4 SIGN ABOVE YOUR NAME AT THE BOTTOM. AND AT THAT TIME
5 KNOCK ON THE DOOR AND WE WILL RECEIVE YOUR VERDICT.

6 I'M GOING TO ASK YOU TO RETURN THE VERDICT
7 FORM TO THE BAILIFF AND I'M GOING TO ASK YOU TO RETIRE
8 TO THE JURY ROOM ONE MORE TIME WITHOUT DELIBERATING, BUT
9 IT WILL ONLY BE FOR A FEW MINUTES, AND THEN I'LL SEND IN
10 THE VERDICT FORM ALONG WITH THE EXHIBITS, AND THEN AT
11 THAT POINT THEN YOU WILL BEGIN YOUR DELIBERATIONS.

12 SO NOW, IF YOU WOULD PLEASE RETIRE TO THE
13 JURY ROOM AND WAIT UNTIL I SEND IN THE VERDICT FORM AND
14 THE EXHIBITS.

15 MR. ALTERNATE, IF YOU WOULD STAY WITH US,
16 THOUGH, PLEASE. THANK YOU, SIR.

17 (WHEREUPON, THE JURY, EXCEPT FOR THE
18 ALTERNATE, LEFT THE COURTROOM AT 12:21 P.M.)

19 **THE COURT:** ANY EXCEPTIONS OR REQUESTS, FROM
20 THE STATE?

21 **MS. SALISBURY:** NONE, YOUR HONOR.

22 **THE COURT:** FROM THE DEFENSE?

23 **MR. CHAMBERS:** NO, YOUR HONOR.

24 **THE COURT:** VERY GOOD. LOOK OVER THE
25 EXHIBITS AND BE SURE THAT THE ONES THAT ARE SUPPOSED TO

1 GO BACK GO BACK AND NONE THAT ARE NOT SUPPOSED TO GO
2 BACK DO.

3 (OFF-THE-RECORD DISCUSSION.)

4 (COURT CONFERRED WITH JURY ALTERNATE OFF THE
5 RECORD, AFTER WHICH THE ALTERNATE WAS EXCUSED
6 AND ADVISED TO CALL AFTER 6:00 FOR FURTHER
7 INSTRUCTIONS.)

8 THE COURT: ANYTHING FROM THE STATE?

9 MS. SALISBURY: NO, YOUR HONOR.

10 THE COURT: FROM THE DEFENSE?

11 MR. CHAMBERS: NO, YOUR HONOR.

12 THE COURT: ALL RIGHT. WE'LL AWAIT A
13 VERDICT. BY THE WAY, I WANT TO THANK ALL PARTIES FOR
14 YOUR PARTICIPATION. YOU TRIED THIS CASE IN A VERY
15 PROFESSIONAL WAY AND I THANK YOU FOR IT.

16 MR. CHAMBERS: THANK YOU, YOUR HONOR.

17 THE COURT: ALL RIGHT. IT'S IN THE JURY'S
18 HANDS NOW.

19 (THE JURY STARTED DELIBERATIONS AT 12:24
20 P.M.)

21 (A VERDICT WAS REACHED AT 2:35 P.M.)

22 THE COURT: ALL RIGHT. IT IS MY
23 UNDERSTANDING THAT THE JURY HAS REACHED A VERDICT. IS
24 THERE ANYTHING FROM THE STATE BEFORE WE BRING THE JURY
25 BACK?

1 MS. SALISBURY: NO, YOUR HONOR.

2 THE COURT: FROM THE DEFENSE?

3 MR. CHAMBERS: NO, YOUR HONOR.

4 THE COURT: VERY GOOD. ASK THE JURY TO JOIN
5 US, PLEASE.

6 (WHEREUPON, THE JURY ENTERED THE COURTROOM AT
7 2:47 P.M.)

8 THE COURT: MADAM FORELADY, I UNDERSTAND THE
9 JURY HAS REACHED A VERDICT?

10 THE FORELADY: YES, SIR, WE HAVE.

11 THE COURT: IF YOU WOULD PLEASE, MA'AM, PASS
12 IT UP TO THE BAILIFF.

13 THE FORELADY: (COMPLIES.)

14 THE COURT: IF YOU WOULD --

15 THE CLERK: YES, SIR.

16 THE COURT: -- MADAM CLERK, PUBLISH THE
17 VERDICT. IF THE DEFENDANT WOULD PLEASE STAND.

18 VERDICT OF THE JURY:

19 THE CLERK: YOUR HONOR, THIS IS CASE
20 2007-GS-23-8646, THE STATE VERSUS CALVIN E. TODD. WE,
21 THE JURY, UNANIMOUSLY FIND THE DEFENDANT, CALVIN E.
22 TODD, IS GUILTY OF POSSESSION WITH INTENT TO DISTRIBUTE
23 CRACK COCAINE.

24 THIS IS SIGNED BY CYDELLE GUTH, OUR
25 FORELADY.

1 LADIES AND GENTLEMEN OF THE JURY, IF YOU
2 AGREE THIS IS THE VERDICT YOU REACHED IN YOUR
3 DELIBERATION ROOM, WOULD YOU PLEASE RAISE YOUR RIGHT
4 HAND.

5 (ALL JURORS RAISED THEIR RIGHT HAND.)

6 THE CLERK: THANK YOU.

7 THE COURT: LET THE RECORD REFLECT ALL
8 RESPONDED IN THE AFFIRMATIVE.

9 IS THERE ANYTHING FURTHER FOR THE JURY, FROM
10 THE STATE?

11 MS. SALISBURY: NO, YOUR HONOR.

12 THE COURT: FROM THE DEFENSE?

13 MR. CHAMBERS: NO, YOUR HONOR.

14 THE COURT: MADAM FORELADY, LADIES AND
15 GENTLEMEN OF THE JURY, THE COURT IS NEVER INTERESTED IN
16 A VERDICT, ONLY HOW THAT VERDICT IS REACHED. AND I CAN
17 ASSURE YOU, AND AS I EXPLAINED TO THE ALTERNATE, THAT
18 ALTHOUGH IT LOOKS LIKE I'M DOING EVERYTHING UP HERE
19 EXCEPT PAYING ATTENTION, I DO TRY TO KEEP TRACK OF
20 WHAT'S GOING ON, AND I NOTICED THROUGHOUT THIS TRIAL
21 THAT ALL OF YOU PAID VERY CAREFUL AND PARTICULAR
22 ATTENTION TO NOT ONLY THE TESTIMONY, BUT THE EXHIBITS
23 AND OTHER EVIDENCE AS IT WAS PRESENTED IN THE COURTROOM.

24 NONE OF YOU ASKED TO BE HERE, AND I KNOW YOU
25 WOULD RATHER HAVE BEEN SOMEWHERE ELSE OTHER THAN WHERE

1 YOU HAVE BEEN THE LAST TWO DAYS. HOWEVER, IT'S
2 IMPORTANT THAT WE DO HAVE JURORS WHO CAN BRING TO OUR
3 JUDICIAL SYSTEM, OUR SYSTEM OF JUSTICE, THOSE
4 EXPERIENCES THAT MAKE IT THE MOST ADMIRABLE IN HISTORY,
5 REALLY. SO I THANK YOU FOR THAT.

6 I WISH I COULD DO SOMETHING FOR YOU, BUT I'M
7 AFRAID THAT I'M GOING TO HAVE TO ASK YOU TO CALL BACK
8 AFTER 6:00. DO YOU HAVE THE NUMBERS? EVERYBODY HAVE
9 THE NUMBER? ANYBODY THAT DOES NOT HAVE THE NUMBER,
10 RAISE YOUR HAND AND WE'LL GET YOU A NUMBER.

11 ALL RIGHT. IF YOU WOULD, PLEASE, CALL BACK
12 AFTER 6:00, AND IT IS AN ANSWERING MACHINE SO IT WILL BE
13 ON ALL NIGHT, SO IF YOU DON'T GET THROUGH AT FIRST, KEEP
14 CALLING UNTIL YOU FINALLY DO GET THROUGH.

15 WITH THAT YOU ARE EXCUSED, AND I DO WANT TO
16 THANK YOU FOR YOUR SERVICE. I'M SATISFIED THAT YOU GAVE
17 BOTH THE STATE AND THE DEFENSE FAIR ATTENTION AND
18 CONSIDERATION THAT YOU WERE REQUIRED TO UNDER YOUR DUTY
19 AND I THANK YOU FOR THAT.

20 I MIGHT NOTE THAT ALSO THIS CASE WAS VERY
21 PROFESSIONALLY TRIED BY ALL COUNSEL, AND I THINK THAT
22 ALSO ADDS TO OUR SYSTEM OF JUSTICE, AND I WANT TO, I
23 APPRECIATE AGAIN YOUR SERVICE ON THIS PARTICULAR CASE
24 AND LOOK FORWARD TO WORKING WITH YOU LATER. WITH THAT
25 YOU ARE EXCUSED, AND THANK YOU VERY MUCH.

1 (WHEREUPON, THE JURY LEFT THE COURTROOM AT
2 2:50 P.M.)

3 THE COURT: OH, MADAM FORELADY, I DO NEED TO
4 SEE YOU. YES, MA'AM.

5 (THE COURT CONFERRED WITH THE FORELADY OFF
6 RECORD, AFTER WHICH FORELADY WAS EXCUSED.)
7 SENTENCING OF THE COURT:

8 THE COURT: ALL RIGHT. IS THE STATE READY
9 FOR SENTENCING?

10 MS. SALISBURY: YES, YOUR HONOR.

11 THE COURT: IS THE DEFENDANT READY?

12 MR. CHAMBERS: YES, YOUR HONOR.

13 THE COURT: VERY GOOD. COME AROUND.

14 DO YOU HAVE A SENTENCING SHEET?

15 MS. SALISBURY: YES, YOUR HONOR.

16 THE COURT: MADAM SOLICITOR?

17 MS. SALISBURY: YES, YOUR HONOR.

18 THE COURT: WHAT DO YOU HAVE TO OFFER?

19 FIRST OF ALL, WHAT'S THE MAXIMUM SENTENCE ON POSSESSION
20 WITH INTENT TO DISTRIBUTE CRACK COCAINE, SECOND OFFENSE?

21 MS. SALISBURY: YOUR HONOR, THIS IS A SECOND
22 OFFENSE. THE SENTENCING RANGE IS FIVE YEARS TO 30
23 YEARS, NONE OF WHICH CAN BE SUSPENDED.

24 THE COURT: SO IT'S A STRAIGHT SENTENCE?

25 MS. SALISBURY: YES, YOUR HONOR.

1 **THE COURT:** ALL RIGHT. WHAT'S THE PRIOR
2 RECORD?

3 **MS. SALISBURY:** JUDGE, IN 1993 A CONVICTION
4 FOR CRIMINAL DOMESTIC VIOLENCE, 1995, POSSESSION OF
5 COCAINE; 1997, CRIMINAL DOMESTIC VIOLENCE; 1999, THREE
6 COUNTS OF CRIMINAL DOMESTIC VIOLENCE; 2000, ARSON IN THE
7 THIRD DEGREE, BURGLARY IN THE SECOND DEGREE; IN 2006,
8 VIOLATION OF A PROTECTIVE ORDER.

9 **THE COURT:** ALL RIGHT. ANY RECOMMENDATION?

10 **MS. SALISBURY:** NONE YOUR HONOR.

11 **THE COURT:** ALL RIGHT. MR. CHAMBERS, WHAT
12 DO YOU HAVE TO SAY ON BEHALF OF MR. TODD?

13 **MR. CHAMBERS:** YOUR HONOR, AS YOU HEARD FROM
14 MY CLIENT DURING THE TRIAL, HE IS 44 YEARS OLD, HE'S A
15 LIFELONG RESIDENT OF THIS AREA, HE,---

16 **THE COURT:** WAIT A MINUTE, LET ME BE SURE.
17 I'VE GOT DATE OF BIRTH

18 **THE DEFENDANT:** '4.

19 **MR. CHAMBERS:** IT SHOULD BE '64.

20 **THE COURT:** WHAT DO YOUR RECORDS REFLECT?

21 **MS. SALISBURY:** THAT'S THE INFORMATION THAT
22 WE HAVE IN OUR RECORDS, JUDGE, 1961. IT MAY JUST BE A
23 CLERICAL ERROR.

24 **THE COURT:** WELL, DO YOU HAVE A SHEET ON
25 HIM?

1 **MS. SALISBURY:** JUDGE, I DON'T HAVE ONE. I
2 SENT MY ASSISTANT ---

3 **THE COURT:** WE OUGHT TO HAVE IT CLARIFIED.
4 BUT ANYWAY, SO YOUR BIRTHDAY IS

5
6 **THE DEFENDANT:** (NODDED HEAD.)

7 **THE COURT:** OKAY. I'LL NOTE THAT.

8 BUT LET'S DO SEE IF WE CAN HAVE THE RIGHT
9 DATE PUT ON THE -- AS YOU WELL KNOW, THAT SOMETIMES
10 PEOPLE GET IN THE SYSTEM AND IF THEY CAN'T IDENTIFY THEM
11 BY THE SOCIAL SECURITY AND DATE OF BIRTH, CONFUSION CAN
12 RESULT.

13 ALL RIGHT. MR. CHAMBERS, I'M SORRY TO
14 INTERRUPT YOU.

15 **MR. CHAMBERS:** THAT'S OKAY, YOUR HONOR.

16 AS I SAID, HE'S 44 YEARS OLD, HE IS A
17 LIFELONG RESIDENT OF THIS AREA. HE HAS MAINTAINED
18 GAINFUL EMPLOYMENT FOR MOST OF HIS ADULT LIFE. AS YOU
19 HEARD, HE IS A PLUMBER'S HELPER.

20 HE DOES HAVE SOME PRIOR RECORD.
21 SIGNIFICANTLY, YOUR HONOR, THERE'S NOTHING IN HIS RECORD
22 THAT WOULD INDICATE THAT HE HAS DISTRIBUTED DRUGS IN THE
23 PAST. HIS ONE AND ONLY DRUG OFFENSE WAS BACK IN 1995
24 AND THAT WAS POSSESSION OF COCAINE.

25 HE HAS BEEN IN JAIL ON THIS OFFENSE SINCE HE

1 WAS ARRESTED ON JULY 28TH, 2007. HE HAS NOT BEEN ABLE
2 TO MAKE BOND AND GET OUT. HE'S MADE GOOD USE OF THE
3 TIME THAT HE'S BEEN IN JAIL; OBVIOUSLY IT'S GIVEN HIM AN
4 OPPORTUNITY TO DRY OUT. HE ALSO WENT THROUGH A PROGRAM
5 THROUGH THE JAIL CALLED CELEBRATE RECOVERY WHICH HE SAYS
6 HAD A BIG IMPACT ON HIS LIFE AND HE HAS GOTTEN PAST HIS
7 DRUG HABIT.

8 THE DEFENDANT: I GRADUATED IT, ACTUALLY.

9 MR. CHAMBERS: OBVIOUSLY, WE ARE NOT GONNA
10 CHALLENGE THE JURY'S VERDICT AT THIS POINT, BUT I
11 BELIEVE IT WOULD BE SAFE TO SAY THAT WHILE THERE MAY
12 HAVE BEEN AN INFERENCE THAT THE JURY COULD DRAW THAT HE
13 WAS, IN FACT, GOING TO SHARE THIS WITH SOMEONE ELSE,
14 THERE REALLY, AS YOU HEARD, WASN'T A LOT OF EVIDENCE
15 THAT HE WAS SELLING DRUGS. WE DON'T BELIEVE HIM TO BE A
16 DRUG DEALER, AND I KNOW THAT'S HIS TESTIMONY AND THAT'S
17 WHAT HE'S TOLD ME ALL ALONG.

18 HE HAS BEEN READY SINCE THE FIRST DAY THAT I
19 TALKED TO HIM TO COME INTO COURT AND PLEAD GUILTY TO
20 POSSESSION OF CRACK COCAINE. AND THEN THE STATE'S
21 PREROGATIVE, OBVIOUSLY THEY WANTED TO GO FORWARD ON THE
22 GREATER CHARGE, AND THEY WERE PROVEN RIGHT HERE TODAY AT
23 LEAST BY THE JURY'S VERDICT.

24 BUT, YOUR HONOR, I DON'T BELIEVE THERE IS
25 ANYTHING AGGRAVATED ABOUT THIS CASE SUCH THAT THIS MAN

1 SHOULD RECEIVE A MAXIMUM SENTENCE. IN FACT, I WOULD ASK
2 THE COURT TO CONSIDER GIVING HIM THE MINIMUM SENTENCE OF
3 FIVE YEARS IN THIS CASE. IF IT WEREN'T FOR THAT
4 POSSESSION WAY BACK IN '95, OBVIOUSLY HE COULD GET EVEN
5 LESS. BUT I BELIEVE THAT ALL THE FACTS AND
6 CIRCUMSTANCES CONSIDERED, THAT FIVE YEARS WOULD BE AN
7 APPROPRIATE SENTENCE IN THIS CASE. THANK YOU, YOUR
8 HONOR.

9 MS. SALISBURY: JUDGE, IF I MAY INTERJECT
10 ONE THING, IF IT'S OF CONSEQUENCE TO THE COURT. THE
11 DEFENDANT DID POST BOND ON THIS CHARGE. HE WAS
12 INCARCERATED ON THE ARREST FOR 38 DAYS, POSTED BOND, AND
13 WAS PICKED UP ON BENCH WARRANT IN DECEMBER AND HAS BEEN
14 IN JAIL SINCE THEN.

15 THE COURT: BUT ON THIS INDICTMENT.

16 MS. SALISBURY: YES, SIR.

17 MR. CHAMBERS: I APOLOGIZE, YOUR HONOR, I
18 THOUGHT HE HAD BEEN IN SINCE JULY. I WASN'T TRYING TO
19 MISLEAD ANYTHING.

20 THE COURT: NO, THAT'S ALL RIGHT. IN FACT,
21 I'M GOING TO JUST CHECK THE BOX THAT HE GET CREDIT FOR
22 TIME SERVED TO BE DETERMINED BY THE DEPARTMENT OF
23 CORRECTIONS.

24 ALL RIGHT. DO YOU HAVE A DATE?

25 MS. SALISBURY: I DO. IT IS 1964. WE HAVE

1 CONFIRMED THAT ON THE DEFENDANT'S N.C.I.C. REPORT AS
2 WELL AS THE INFORMATION OBTAINED BY THE OFFICERS AT THE
3 TIME OF THE DEFENDANT'S ARREST.

4 THE COURT: ALL RIGHT. I'M GOING TO CORRECT
5 THE SENTENCING SHEET TO REFLECT

6 ANYTHING ELSE FROM THE STATE?

7 MS. SALISBURY: NO, YOUR HONOR.

8 THE COURT: MR. TODD, ANYTHING YOU WOULD
9 LIKE TO SAY?

10 THE DEFENDANT: NO, SIR.

11 THE COURT: IN YOUR TESTIMONY YOU MENTIONED
12 THE FACT THAT YOU DON'T PAY RENT.

13 THE DEFENDANT: I LIVE WITH MY FATHER.

14 THE COURT: YOU STAY WITH YOUR FATHER?

15 THE DEFENDANT: BACK THERE.

16 THE COURT: SO YOU ARE STILL THERE. DO YOU
17 HAVE ANY CHILDREN?

18 THE DEFENDANT: NO, SIR.

19 THE COURT: HAVE YOU EVER BEEN MARRIED?

20 THE DEFENDANT: NO, SIR.

21 THE COURT: AND YOU HAVE WORKED AS A
22 PLUMBER'S ASSISTANT FOR THREE OR FOUR YEARS?

23 THE DEFENDANT: YES, SIR.

24 THE COURT: THE SAME ---

25 THE DEFENDANT: THE SAME EMPLOYMENT, YES,

1 SIR.

2 THE COURT: WHAT DID YOU DO BEFORE THAT?

3 THE DEFENDANT: BEFORE THAT I WORKED AS
4 BRICK MASON.

5 THE COURT: HOW FAR DID YOU GO IN SCHOOL?

6 THE DEFENDANT: I GOT A G.E.D., SIR.

7 THE COURT: YOU DO?

8 THE DEFENDANT: I JUST GOT OFF ON THE WRONG
9 TRACK, YOUR HONOR, ON THEM DRUGS.

10 THE COURT: ANY FINE?

11 THE DEFENDANT: SIR?

12 THE COURT: I WAS ASKING, ANY FINE FOR
13 DISTRIBUTING?

14 MS. SALISBURY: IN YOUR DISCRETION, JUDGE.
15 I BELIEVE UP TO \$50,000.00.

16 THE COURT: \$50,000.00. I JUST WANTED TO BE
17 SURE THE RECORD REFLECTED ALL CONSIDERATIONS.

18 ALL RIGHT. ANYTHING ELSE, MR. TODD?

19 THE DEFENDANT: YOUR HONOR, OTHER THAN
20 GETTING MIXED UP WITH THOSE DRUGS, I NEVER HAD ANY
21 INTENTION OF DISTRIBUTING ANY DRUGS.

22 THE COURT: I UNDERSTAND. INDICTMENT NUMBER
23 2007-GS-23-8646, IT'S THE SENTENCE OF THE COURT THAT THE
24 DEFENDANT, CALVIN E. TODD, BE COMMITTED TO THE STATE
25 DEPARTMENT OF CORRECTIONS FOR A TERM OF 20 YEARS, PLUS

1 PAY THE COSTS AND ASSESSMENTS AS APPLICABLE.

2 SPECIAL CONDITION OF THE SENTENCE IS TO BE
3 GIVEN CREDIT FOR TIME SERVED, UNDERGO DRUG AND ALCOHOL
4 TESTING AND TREATMENT AND SUBSTANCE ABUSE COUNSELING TO
5 INCLUDE A.T.U. WHILE INCARCERATED.

6 GOOD LUCK TO YOU, SIR.

7 THE DEFENDANT: 20 YEARS?

8 THE COURT: 20 YEARS.

9 THE SHERIFF'S DEPUTY: STEP THIS WAY,
10 PLEASE.

11 MS. SALISBURY: THANK YOU, JUDGE.

12 THE COURT: ALL RIGHT. ANYTHING ELSE? (NO
13 RESPONSE.)

14 (OFF-THE-RECORD DISCUSSION.)

15 (COURT ADJOURNED AT 3:06 P.M.)

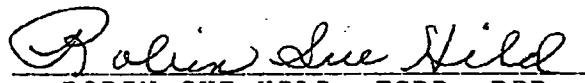
16 ***** END OF REQUESTED TRANSCRIPT *****
17
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25

CERTIFICATE OF COURT REPORTER

I, THE UNDERSIGNED, ROBIN SUE HILD, FCRR, RPR,
OFFICIAL COURT REPORTER FOR THE THIRTEENTH JUDICIAL
CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY
CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND
COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND
THE EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED
CASE, VOLUME II, MAY 20, 2008, PAGES 148 THROUGH 268,
RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR
GREENVILLE COUNTY, SOUTH CAROLINA, ON THE 19TH DAY AND
20TH DAY OF MAY, 2008.

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

AUGUST 12, 2008


ROBIN SUE HILD, FCRR, RPR
CIRCUIT COURT REPORTER

FORM 5

STATE OF SOUTH CAROLINA)

County of Greenville)

IN THE COURT OF COMMON PLEAS

Calvin E. Sockel 266990)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

2011-CP-23- 05311

APPLICATION FOR
POST-CONVICTION RELIEF2011-06-09 AM 9:31
FILED
CLERK OF COURT
GREENVILLE CO S.C.
P.A.M. HICKS**INSTRUCTIONS B READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention: Perry Correctional Institution
2. Name and location of Court which imposed sentence: Greenville County Court of General Sessions
3. Name(s) of co-defendant(s) (if any): None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Possession With Intent To Distribute Crack Cocaine
(2007-65-23-8696)

55 11-33

- (b) _____
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) May 19, 2008
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) ☒ after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
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. Appeals Court
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered Ano@ to (7), state your reasons for not so appealing:
- (a) N/A

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of Counsel
- (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 brief, memorandum of law in support
- (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:

i. N/A

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

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?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. N/A

ii. _____

iii. _____

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) This is my first opportunity
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? yes
 (b) your trial, if any? yes
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? no

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. Randy Chambers
 ii. M. Celia Robinson
 iii. _____

(b) the proceedings at which each such attorney represented you:

i. 17 author C
 ii. Direct Appeal
 iii. _____

19. State clearly the relief you seek in filing this application:

a new trial

20. Are you now under sentence from any other court that you have not challenged?

no

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Greenville)

VERIFICATION

I, CALVIN E TODD, 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.

Calvin E Todd
Calvin E Todd

SWORN to and subscribed before me this 21
day of July, 2011.

Dwight M. Munn (L.S.)
Notary Public

My Commission Expires: JAN 28, 2018

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, CALVIN E TODD, 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.

Calvin E Todd
Calvin E Todd Applicant

SWORN or affirmed to and subscribed before me this

21 day of July, 2011.

Doreen Murre
Notary Public

My Commission Expires: Jan 28, 2018

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) 13th Judicial Circuit

Calvin E. Todd, #266990,

Applicant,

v.

State of South Carolina,

Respondent.

C/A No:

2011-CP-23-

05311

MEMORANDUM OF LAW
IN SUPPORT OF
PCR APPLICATION

FILED-CLERK OF COURT
GREENVILLE CO S.C.
WICKES

2011 AUG -9 AM 9:31

APPLICANT CONTENDS HE WAS DENIED EFFECTIVE ASSISTANCE OF
TRIAL COUNSEL IN VIOLATION OF HIS SOUTH CAROLINA AND UNITED
STATES CONSTITUTIONAL RIGHTS.

The Applicant was indicted for possession of crack cocaine with intent to distribute. Applicant voluntarily admitted that he possessed the crack cocaine, but denied his intent to distribute it. Applicant's trial lawyer also admitted this element at trial and also contended Applicant had no intent on distributing the drugs because Applicant was a "user" only, with a serious addiction to smoking crack cocaine.

Trial counsel failed to seek out readily available witnesses who would have testified Applicant was a drug addict with an out of control addiction to smoking crack cocaine and was not a drug dealer. See, Applicant's several affidavits herewith to substantiate such available witnesses.

The defense never challenged the possession element. But they did challenge the intent to distribute element. Amongst other factors, the jury is allowed to evaluate this element besides the amount found to be possessed; under the circumstances surrounding the defendant's alleged possession manner manner in which it was possessed.

Applicant asserts that without trial counsel presenting any testimony other than Applicant's or evidence to refute the intent to distribute element, Applicant was denied effective assistance of counsel. If trial counsel would have sought out the readily available witnesses to refute the intent to distribute element, there is a reasonable probability the outcome would have been different.

CONCLUSION

For the foregoing reasons, Applicant should be granted a new trial.

Date: 7-11-11
Greenville County

Calvin E. Todd
Calvin E. Todd, #266990
Perry C.I. / Q4A-102
430 Oaklawn Road
Pelzer, SC 29669

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

THE COURT OF COMMON PLEAS

13th Judicial Circuit

Calvin E. Todd, #266990,

Applicant,

v.

State of South Carolina,

Respondent.

C/A 2011-CP-23-05311

PROOF OF SERVICE

2011 AUG -9 AM 9:31
 FILED-CLERK OF COURT
 GREENVILLE CO SC
 PAUL B. WICKENSIMER

I HEREBY CERTIFY, first being duly sworn, that on this day, I did file/serve the foregoing document(s): PCR Application and Supporting Memorandum of Law, by placing an original and one (1) copy into the U.S. Mail, postage pre-paid, deliverable to individual(s) listed below at their last known address:

Greenville County Courthouse
 Hon. Paul B. Wickensimer
 305 E. North Street
 Greenville, SC 29601

SC Office of Attorney General
 Karen C. Ratigan, A.A.G.
 Post Office Box 11549
 Columbia, SC 29211

Date: 7-11-11
 Greenville County,

Calvin Todd
 Calvin E. Todd, #266990
 Perry, C.I. / Q4A-102
 430 Oaklawn Road
 Pelzer, SC 29669

SWORN AND SUBSCRIBED TO before me, this

11th day of July, 2011

Steven F. McEachery

Notary Public for South Carolina

My Commission Expires: January 7, 2016

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

COURT OF COMMON PLEAS

13th Judicial Circuit

Calvin E. Todd, #266990

Applicant,

v.

State of South Carolina,

Respondent.

C/A NO:

2011-CP-23

05311

AFFIDAVIT IN SUPPORT
OF PCR APPLICATIONFILED CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER

2011 AUG -9 AM 9:31

I, Calvin E. Todd (Applicant), being first duly sworn, depose and say that, I am the Applicant in the above Post-Conviction Relief application; and that I am hereby submitting five (5) "Sworn Affidavits" in support of said PCR application and as mentioned in Applicant's Memorandum of Law in Support of PCR Application on page one (1); upon the Greenville County Clerk of Court's office by depositing one (1) original and one (1) copy of the same in the U.S. Mail (by and through the Perry Correctional Institution's legal mail system). The above has been served at the below addresses:

Greenville County Clerk of Court
Hon. Paul B. Wickensimer
305 E. North Street
Greenville, SC 29601

SC Office of Attorney General
Alan Wilson, A.G.
Post Office Box 11549
Columbia, SC 29211

Date: 18 July 2011
Greenville County

SWORN AND SUBSCRIBED TO before me, this

18 day of July, 2011

[Signature]

Notary Public for South Carolina

My Commission Expires: Jan 28, 2018

Calvin Todd

Calvin E. Todd, #266990

Perry C.I. / Q4A-102

430 Oaklawn Road

Plazer, SC 29669

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

THE COURT OF COMMON PLEAS
13th Judicial Circuit

Calvin E. Todd,
Applicant,
v.
State of South Carolina,
Respondent.

C/A 2011-CP-23- 05311

SWORN AFFIDAVIT

2011 AUG -9 AM 9:31
FILED-CLERK OF COURT
GREENVILLE CO SC
PAUL H. WICKERSON

PERSONALLY APPEARED before me, Ian Rice, who first being duly sworn, deposes and says that I am willing to testify for the Applicant ("Calvin E. Todd") at his post-conviction relief hearing to the following:

I have known Calvin Todd (Applicant) for at least fifteen years. We have been in the same places 'hanging out' from time to time. I have personally witnessed Calvin smoke crack cocaine. He was a known smoker. Calvin was not a drug dealer. If Calvin had ever sold drugs in the areas of Gray Court, Laurens, or Fountain Inn, I would have known about it because talk like that gets around in small areas. I know for a fact that Todd wasn't a drug dealer; he liked to smoke too much to sell it.

I am willing to testify to this court, under oath. I so state these facts as true to the best of my knowledge and belief under penalty of perjury.

Date: 7-5-11
Greenville County,

SWORN AND SUBSCRIBED TO before me, this

5 day of July, 2011.

Paul H. Wickerson

Notary Public for South Carolina

My Commission Expires: JAN 28, 2018

1st Ian Rice 274002
Ian Rice, #
Perry C.I. / Q1B
430 Oaklawn Road
Pelzer, SC 29669
Ian Rice 274002

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

THE COURT OF COMMON PLEAS
13th Judicial Circuit

Calvin E. Todd,
Applicant,
v.
State of South Carolina,
Respondent.

C/A No:

2011-CP-23-05311

SWORN AFFIDAVIT

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. HICKS, JR.
2011 AUG -9 AM 9:31

PERSONALLY APPEARED before me, Johnny Sanders, who first being duly sworn, deposes and says that I am willing to testify for the Applicant ("Calvin E. Todd") at his post-conviction relief hearing to the following:

I have known Calvin Todd (Applicant) for at least thirty years. We use to 'hang out' together from time to time. I was an alcohol drinker, Todd was was a crack smoker. From Clinton to Laurens, Fountain Inn to Greer Court, Todd was known as a smoker (i.e., crack cocaine user) not a drug dealer.

I know for a fact that Todd has never sold drugs, he loved crack cocaine too much to sell it. He would only smoke it.

I am willing to testify to this in court, under oath. I so state these facts as true to the best of my knowledge and belief under the penalty of perjury.

Date: 5 July 2011
Greenville County,

SWORN AND SUBSCRIBED TO before me, this

5 day of July, 2011

[Signature]
Notary Public for South Carolina

My Commission Expires: Jan 28, 2018

[Signature]
Johnny Sanders,
Pecky C.I. / Q1B
430 Oaklawn Road
Pelzer, SC 29669

[Signature] 220062

2011-CP-23- 05311

P.S. Mr. Wickensimer,
I will submit the other 3
affidavits as I receive them
from the streets. Sorry for
the inconvenience. appreciate
your patience.

Thanks

Perry Carver
 430 Oaklawn Rd
 Selma, S.C. 29669

2011-CP-23-05311

RECEIVED
 AUG 04 2011
 P.C.T. MAILROOM

Paul B White
 Greenville S.C.
 305 East N
 Main St

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2011-CP-23-5311
COUNTY OF GREENVILLE	)	
	)	
Calvin Earl Todd,	)	
S.C.D.C. No. 266990,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed August 9, 2011, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the October 2007 term of General Sessions for possession with intent to distribute (PWID) crack cocaine (2007-GS-23-8646). Randall L. Chambers, Esquire represented the Applicant.

After the State brought the case to trial, the Applicant was found guilty. On May 20, 2008, the Honorable Alexander S. Macaulay sentenced the Applicant to twenty (20) years imprisonment for PWID crack cocaine, second offense.

A notice of appeal was filed at the South Carolina Court of Appeals. M. Celia Robinson, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The Court of Appeals affirmed the Applicant's conviction and sentence. State v. Todd, Op. No. 2011-UP-133 (S.C. Ct. App. filed March 29, 2011).

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject conviction, 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 trial counsel:
 - a. Failed to seek defense witnesses to testify the Applicant was a drug addict.
 - b. Failed to challenge the Applicant's possession of the drugs.
 - c. Failed to present evidence to refute the "intent to distribute" element of the crime.

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.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held

and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

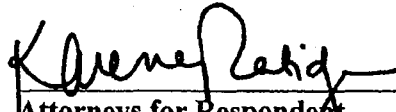
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

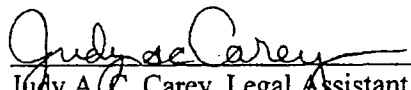
Jan. 30, 2012

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
	)	2011-CP-23-5311
	)	
CALVIN EARL TODD, 266990	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Calvin Earl Todd, 266990
Perry Correctional Institution
430 Oaklawn Road
Pelzer SC 29669**

DATED this 30th day of January, 2012.


Judy A.C. Carey, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Calvin E. Todd,

Applicant

v.

State of South Carolina

Respondent.

) IN THE COURT OF COMMON PLEAS

) THIRTEENTH JUDICIAL CIRCUIT

) C.A. No.: 2011-CP-23-5311

) AMENDED PETITION FOR
) POST CONVICTION RELIEF

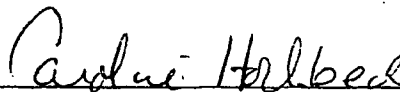
2013 APR 17 A 9:13

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER

The Defendant, by and through his counsel, Caroline M. Horlbeck, respectfully amends his Petition for Post Conviction Relief to add the following allegations:

1. Counsel was ineffective by failing to object to the admission of Applicant's prior record into evidence;
2. Counsel was ineffective by failing to move that the Court perform a 609 balancing analysis prior to admission of evidence of Applicant's prior record.

Respectfully submitted,



Caroline Horlbeck
Attorney for the Defendant
101 Whitsett Street
Greenville, S.C. 29601

Greenville, South Carolina.

10th day of April, 2013

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

CALVIN E. TODD,

PLAINTIFF,

-VS-

STATE OF SOUTH CAROLINA,

DEFENDANT.

2011-CP-23-5311

APRIL 18, 2013

TRANSCRIPT OF RECORD

BEFORE:

THE HONORABLE G. EDWARD WELMAKER, JUDGE

APPEARANCES:

CAROLINE HORLBECK, ESQUIRE
ATTORNEY FOR THE PLAINTIFF

KAREN RATIGAN, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DANETTE P. HANKS
CIRCUIT COURT REPORTER

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EXHIBITS

(NONE)

1 April 18, 2013

2 (WHEREUPON, court convened with all parties present
3 and the following proceedings were had.)

4 THE COURT: All right. Ms. Ratigan.

5 MS. RATIGAN: Thank you, Your Honor. May it
6 please the Court. This is the case of Calvin Todd versus
7 the State. Docket number is 2011-CP-23-5311. Mr. Todd was
8 indicted for possession with intent to distribute crack
9 cocaine. He was represented on that charge by Mr.
10 Chambers. He was brought to trial before Judge Macaulay
11 back in May of 2008. Mr. Todd was found guilty of PWID
12 crack cocaine and Judge Macaulay sentenced him to twenty
13 years for a second offense of that charge. Mr. Todd did
14 file a notice of appeal. It was perfected at the Court of
15 Appeals. The Court confirmed his conviction and sentence
16 in March 2011. This application was timely filed. The
17 State's ready to proceed.

18 THE COURT: Ms. Horlbeck.

19 MS. HORLBECK: Your Honor, we would call Calvin
20 Todd to the stand.

21 THE CLERK: Mr. Todd, please place your left hand
22 on the bible and raise your right hand, best you can.

23 You do solemnly swear or affirm that the testimony
24 you're about to give in this case will be the truth, the
25 whole truth and nothing but the truth, so help you God?

1 THE WITNESS: I do.

2 THE CLERK: Thank you. You may be seated. State
3 your full name for the record; please.

4 THE WITNESS: Calvin Earl Todd.

5 CALVIN TODD,

6 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

7 DIRECT EXAMINATION

8 BY MS. HORLBECK:

9 Q. Mr. Todd, who represented you on the trial of this
10 case?

11 A. Mr. Chambers.

12 Q. All right. And as a result of your trial, did you
13 file the petition for post-conviction relief in this
14 matter?

15 A. Yes, ma'am.

16 Q. All right. Now, during your trial did Mr. Chambers
17 make a motion for a directed verdict?

18 A. At the start of the trial.

19 Q. Okay. Well, in the middle of the trial, did he make
20 his motion?

21 A. He's supposed to made it again at the end of the
22 State's evidence.

23 Q. Okay. But you recall that he made it in the middle,
24 right?

25 A. Right.

Calvin E. Todd -vs- State of South Carolina (2011-CP-23-5311)
PCR Hearing

5

1 Q. Okay. And then your allegation is that he did not
2 renew his objection ---he did not renew that motion at the
3 end of the trial?

4 A. Yeah.

5 Q. And did you appeal the conviction in this case?

6 A. Yes.

7 Q. All right. And was the conviction affirmed or was
8 your appeal dismissed basically and the conviction and
9 affirmed?

10 A. Conviction affirmed.

11 Q. Okay. And to your understanding, was one of the
12 reasons for the affirmation of your conviction the fact
13 that the directed verdict motion was not renewed at the
14 very end of the case?

15 A. That was one issue.

16 Q. Okay And is that one of the issues that you've raised
17 today in your post conviction relief petition, that Mr.
18 Chambers should have renewed that motion at the very end of
19 the trial?

20 A. Yes, ma'am.

21 Q. All right. And you believe that if he had renewed
22 that motion, that the outcome of the case would have been
23 different?

24 A. Could have.

25 Q. Okay. All right. At your trial, your defense was

1 that you did not have the intent to distribute; is that
2 correct?

3 A. That's correct.

4 Q. Okay. And did you and Mr. Chambers discuss that
5 defense?

6 A. We talked once.

7 Q. Okay. When did you talk about your defense and the
8 case and the trial?

9 A. We never prepared a defense.

10 Q. Okay. That's what I'm asking, when did you talk to
11 him about that? The day of the trial, two weeks before the
12 trial, what?

13 A. He came to see me on a Friday and we went to trial on
14 Monday.

15 Q. All right. And when he came to see you on the Friday,
16 what was the substance of your discussion with him?

17 A. I asked him what did he think about seven years?

18 Q. That was the offer?

19 A. That's what he said the offer was. I never saw
20 anything, I don't think.

21 Q. Okay. All right. And before that, had you ever
22 discussed your case with him?

23 A. No.

24 Q. Did you and Mr. Chambers have the opportunity to
25 review the police reports and the drug analyst report and

Calvin E. Todd -vs- State of South Carolina (2011-CP-23-5311)
PCR Hearing

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1 any statements that there were -- that the State said that
2 they had against you?

3 A. No. We never did any of that.

4 Q. Okay. Did you do any of the -- did you review any of
5 that discovery or evidence the Friday before the trial
6 started?

7 A. No, ma'am.

8 Q. Okay. Did he ask you if you had any witnesses to
9 subpoena in the case?

10 A. No, ma'am.

11 Q. All right. Did you have the opportunity to give him
12 the names of any witnesses that you had?

13 A. No, ma'am.

14 Q. Okay. If you'd been alerted -- when did you find out
15 that you were on the trial docket?

16 A. Like I say, he came to see me on a Friday and we went
17 to trial the following Monday.

18 Q. Okay. If you'd had more time to assess the fact that
19 you were on the trial docket, would you have given him any
20 names of witnesses to subpoena?

21 A. We would have talked about it, yeah.

22 Q. Okay. Do you have any specific names of witnesses
23 that you wanted him to subpoena to refute the allegation

24 that you were a drug dealer?

25 A. Mr. Osborne and Mr. Carter.

1 Q. Okay. Those are names that you -- your assertion
2 today is that you didn't have the opportunity or the time
3 to give him those names so that he could develop those two
4 people as witnesses?

5 A. That's right.

6 Q. Okay. And as a result of that, did you have any
7 witnesses that were presented at trial, besides yourself?

8 A. No, ma'am.

9 Q. All right. Mr. Chambers never asked you if you had
10 any witnesses that you wanted to subpoena?

11 A. No, ma'am.

12 Q. All right. Do you believe the outcome of the trial
13 would have been different if those two witnesses had
14 testified?

15 A. Yes, ma'am.

16 Q. Okay. All right. You also allege in your petition
17 that you have a chain of custody issue and that Mr.
18 Chambers should have challenged the chain of custody?

19 A. Yes, ma'am.

20 Q. Okay. Explain that to the Court. Tell the Court what
21 specifically you believe Mr. Chambers should have
22 challenged about the chain of custody?

23 A. Well, chain of custody, when a drug travels through
24 several different hands, drug or blood samples, it has a
25 tendency to get mixed up.

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1 Q. Uh-huh (affirmative).

2 A. If he'd have challenged that, the outcome might have
3 been different.

4 Q. Okay. Do you know -- but do you have any testimony
5 that you want to present today about where you believe that
6 the drugs got mixed up in that chain of custody?

7 A. I'm sure more than three people handled it. And some
8 missing names were from the chain of custody.

9 Q. Do you know what names are missing?

10 A. No, ma'am.

11 Q. All right. But you believe that Mr. -- is it your
12 argument today that Mr. Chambers should have investigated
13 that further and should have seen if there were ---

14 A. Yes, ma'am.

15 Q. --- missing names and should have challenged that?

16 A. Yes, ma'am.

17 Q. Okay. And if he had challenged that, do you think the
18 outcome of your trial would have been different?

19 A. Maybe even dismissed.

20 Q. Okay. All right. Did you also allege that Mr.
21 Chambers should have objected to the indictment?

22 A. Yes, ma'am. Yes, ma'am.

23 Q. Okay. All right. Explain that to the Court?

24 A. Well, the indictment stated that it was a quantity of
25 drugs. Okay. So a quantity of drugs don't have to be no

1 great big amount, right? And when he went to trial, all of
2 a sudden, it was eight point four grams. So that changed
3 the whole outlook on the case.

4 Q. Okay. And is it your position that the evidence of
5 the specific amount, that that changed the nature of your
6 indictment?

7 A. Yes, ma'am.

8 Q. And did Mr. Chambers object to that?

9 A. No, he didn't.

10 Q. All right. And do you believe that his failure to
11 object affected the outcome of your case?

12 A. Yes, ma'am.

13 Q. Okay. And then you also had an issue about the drug
14 analysis report. Was that provided to you by Mr. Chambers?

15 A. No, ma'am.

16 Q. All right. And you and he -- did you ever get to look
17 at it or go over it with him?

18 A. No, ma'am.

19 Q. Okay. All right. And did you and Mr. Chambers talk
20 specifically about -- did he provide you any advice about
21 whether or not you should go to trial or plead guilty?

22 A. He told me if it was him he would go to trial.

23 Q. Okay. And did you rely on that advice?

24 A. Yes, ma'am.

25 Q. Were you thinking about pleading guilty?

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1 A. At one time.

2 Q. Okay. What changed your mind?

3 A. Mr. Chambers.

4 Q. Okay. And that was what you relied on in making your
5 decision to go to trial?

6 A. Yes, ma'am.

7 Q. Okay. You also had a Brandon Brown testify as an
8 expert in the field of identification and sale of crack
9 cocaine. Do you recall whether or not Mr. Chambers
10 objected to that testimony and to the qualification of that
11 witness as an expert?

12 A. He did not.

13 Q. Okay. And do you believe that his failure to object
14 to that affected the outcome of the trial?

15 A. Yes, ma'am.

16 Q. Okay. Did the State question you when you took the
17 stand about what you may have done earlier in the day?

18 A. Yes, ma'am.

19 Q. All right. And what effect do you think that question
20 had on the outcome of the trial and the jury?

21 A. Well, the jury panel was already persuaded from the
22 start of the opening statement ---

23 Q. Uh-huh (affirmative).

24 A. --- if you look at the transcript on page seventy-
25 eight, somewhere between line twenty-one and line twenty-

1 five, Mr. Chambers said I was not innocent.

2 Q. What page is that on?

3 A. Seventy-eight.

4 Q. And when he said you were not innocent, was he saying
5 that you were not innocent of possession? Is that what he
6 was saying?

7 A. No.

8 Q. Okay. What is it -- what do you believe that he was
9 saying when he said that?

10 A. He told the jury I wasn't innocent, so that's enough
11 for the jury to go on right there to convict me.

12 Q. Okay. Do you believe that that prejudiced your case?

13 A. Yes, ma'am.

14 Q. Okay. Did Mr. Chambers object when the State
15 questioned you about what you were doing earlier that day?

16 A. No.

17 Q. Okay. And do you believe that prejudiced the outcome
18 of your case?

19 A. Yes, ma'am.

20 Q. Okay. You also had an issue that you raised, that the
21 Grand Jury didn't convene at the appropriate time, at a
22 time when General Sessions was in session. Do you recall
23 making that allegation in your petition?

24 A. According to the court calendar and the indictment,
25 the dates don't match. The indictment date is the 24th and

Calvin E. Todd -vs- State of South Carolina (2011-CP-23-5311)
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1 the calendar said General Sessions wasn't in session until
2 the 26th.

3 Q. All right. And is it your argument today that the
4 Grand Jury can only meet at a time when General Sessions is
5 actually in session?

6 A. According to the rule.

7 Q. Okay. All right. And did you also raise an
8 allegation that Mr. Chambers did not object to the use of
9 your prior record to impeach you?

10 A. Yes, ma'am.

11 Q. All right. When you testified, there were two
12 convictions that were used to impeach you; is that correct?

13 A. Yes, ma'am.

14 Q. And your trial was in 2008?

15 A. Yes, ma'am.

16 Q. All right. And your convictions were in 2000?

17 A. Yes, ma'am.

18 Q. All right. And it's your contention today that that
19 should have been objected to and that did not fall within
20 Rule 609?

21 A. Yes, ma'am.

22 Q. Okay. And Mr. Chambers, did he make any motion to
23 keep that out as unduly prejudicial or anything like that?

24 A. No. He agreed. It's on the transcript, page one
25 eighty-seven.

1 Q. Okay. And obviously the jury heard your prior
2 convictions. And do you believe that if an objection had
3 been made the outcome of your trial would have been
4 different?

5 A. Yes, ma'am.

6 Q. Okay. Do you have any other allegations that we have
7 missed or not talked about today?

8 A. Well, as a 609 issue, when a defendant takes the stand
9 the crime that should be used for impeachment purposes, a
10 crime of dishonesty, some kind of falsification of
11 documents or something alleging some element of
12 untruthfulness. That's why he should have objected to it.

13 Q. Okay.

14 A. They used that to discredit my testimony. And my
15 testimony was key. I mean, my testimony was the sole
16 testimony for my credibility. So that's why the arson and
17 the burglary shouldn't have been used?

18 Q. Okay. Any other allegations you want to raise today?

19 A. Yes, ma'am. A 609 balancing test. The Judge should
20 have been required to do a 609 balancing test.

21 Q. Okay. All right. Anything else?

22 A. That's all.

23 Q. All right. Do you understand that the Judge could
24 only grant or deny your petition today?

25 A. Yes, ma'am.

1 Q. Do you understand that if the Judge grants your
2 petition that you're subject to re-prosecution and you
3 could actually get more of a -- a greater sentence if you
4 are re-prosecuted and you were convicted a second time. Do
5 you understand that?

6 A. Yes, ma'am.

7 Q. Okay. And do you understand that if the Judge denies
8 your petition then you just have to serve the remainder of
9 your sentence; correct?

10 A. Yes, ma'am.

11 Q. Okay. Knowing all that, you still want to go forward?

12 A. Yes, ma'am.

13 Q. All right. And is it your request today that the
14 Judge grant your petition?

15 A. Yes, ma'am.

16 Q. Okay. That's all I have. Please answer any questions
17 that Ms. Ratigan may have for you.

18 MS. RATIGAN: I don't have any questions, Your
19 Honor.

20 THE COURT: All right. Thank you, sir. You may
21 step down.

22 MS. HORLBECK: Judge, we would call Mr. Carter to
23 the stand.

24 THE CLERK: Mr. Carter, please place your left
25 hand on the bible and raise your right hand.

1 You do solemnly swear or affirm that the testimony
2 you're about to give in this case will be the truth, the
3 whole truth and nothing but the truth, so help you God?

4 THE WITNESS: I do.

5 THE CLERK: Thank you. You may be seated.
6 Please state your full name for the record.

7 THE WITNESS: John Robert Carter.

8 JOHN ROBERT CARTER,

9 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

10 DIRECT EXAMINATION

11 BY MS. HORLBECK:

12 Q. Mr. Carter, are you familiar with Calvin Earl Todd?

13 A. Yes, ma'am, I am.

14 Q. How do you know him?

15 A. I've known him since he was very, very young. I've
16 known his family for -- I don't want to say how many years,
17 but I've know him for quite a while.

18 Q. Okay. And do you know him just socially or has he
19 ever done any work for you?

20 A. Yes, ma'am. He's done work for me at my home. And at
21 one time when I had a summer program in town, I let him
22 work along with some of the kids for beautification.

23 Q. Okay. Just let me make sure I understand. You let
24 him work in a summer program with children?

25 A. Right. He was kind of like a casual laborer. He was

1 not on the town payroll per se, but he was a casual
2 laborer.

3 Q. Okay. And all the dealings that you've had with him
4 and all the work that he's done for you, was there any foot
5 traffic? Did he appear to be selling anything or any drugs
6 to anybody?

7 A. No, ma'am, I never knew him to be a drug dealer.

8 Q. Okay. All right. And you said you've known him since
9 he was a little boy?

10 A. Yes, ma'am.

11 Q. Okay. All right. And did anyone, his attorney or
12 anyone from his attorney's office ever contact you about
13 testifying in Mr. Todd's trial?

14 A. No, ma'am.

15 Q. And this is -- the first time you've ever heard about
16 it was when we contacted you?

17 A. The first time I've ever been contacted to come to a
18 trial.

19 Q. Okay. All right. That's all. Thank you very much.

20 MS. HORLBECK: And may he be -- you may want to
21 answer any questions of Ms. Ratigan may have for you.

22 MS. RATIGAN: I have no questions for Mr. Carter,
23 Your Honor.

24 MS. HORLBECK: May he be released?

25 THE COURT: You may be excused. Thank you, sir.

1 You may step down.

2 MS. HORLBECK: Judge, we would call Wayne Osborne
3 to the stand.

4 THE CLERK: Mr. Osborne, please place your left
5 hand on the bible and raise your right hand.

6 You do solemnly swear or affirm that the testimony
7 you're about to give in this case will be the truth, the
8 whole truth and nothing but the truth, so help you God?

9 THE WITNESS: Yes, ma'am.

10 THE CLERK: Thank you. You may be seated.
11 Please state your full name for the record.

12 THE WITNESS: Melvin Wayne Osborne.

13 WAYNE OSBORNE,

14 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

15 DIRECT EXAMINATION

16 BY MS. HORLBECK:

17 Q. Mr. Osborne, are you familiar with Calvin Earl Todd?

18 A. Yes, ma'am.

19 Q. How do you know him?

20 A. As a friend and just an individual.

21 Q. Okay. How long have you known Mr. Todd?

22 a. Probably for thirty years.

23 Q. Okay. And do you know him just socially or has he
24 done any work for you or both?

25 A. Yes, ma'am. I've used him a lot of times to help me

1 do various odd jobs around my farm and stuff.

2 Q. Okay. How long have you used him to do work on your
3 farm?

4 A. I don't know. It was different times. Never any
5 steady work, but different times.

6 Q. Okay. And while he was working on your farm, did you
7 notice him selling anything or distributing any drugs to
8 anybody?

9 A. No, ma'am.

10 Q. Okay. Did you notice any foot traffic or any visitors
11 coming to see him?

12 A. No, ma'am.

13 Q. Okay. All right. And were you contacted by any -- by
14 his attorney or anyone from his attorney's office to attend
15 and testify at a jury trial?

16 A. No, ma'am.

17 Q. Okay. All right. That's all I have. Please answer
18 any questions that Ms. Ratigan may have for you.

19 MS. RATIGAN: I don't have any questions for Mr.
20 Osborne, Your Honor.

21 THE COURT: Thank you, Mr. Osborne. You may step
22 down. You may be excused.

23 MS. HORLBECK: Thank you, Judge.

24 And, Judge, that's all we have. Well, hang on, Judge.
25 He's got something he wants to tell me. (Confers with

1 client). Judge, we rest.

2 THE COURT: All right. - Anything from the State?

3 MS. RATIGAN: Yes, Your Honor. We would call Mr.
4 Chambers.

5 THE CLERK: Mr. Chambers, you do solemnly swear
6 or affirm that the testimony you're about to give in this
7 case will be the truth, the whole truth and nothing but the
8 truth, so help you God?

9 THE WITNESS: I do.

10 THE CLERK: Thank you. You may be seated. And
11 please state your full name for the record.

12 THE WITNESS: My name is Randall Lee Chambers.

13 **RANDY CHAMBERS,**

14 **BEING FIRST DULY SWORN TESTIFIED AS FOLLOWS:**

15 **DIRECT EXAMINATION**

16 **BY MS. RATIGAN:**

17 Q. Mr. Cambers, do you recall representing Mr. Todd on
18 this charge?

19 A. Yeah, vaguely.

20 Q. Do you remember if you were appointed or were you
21 retained?

22 A. I was appointed.

23 Q. And did you file the usual Brady Rule 5 discovery
24 motions?

25 A. I did.

1 Q. Did you receive those materials from the State?

2 A. I did.

3 Q. Did you review them with Mr. Todd?

4 A. I did.

5 Q. Do you recall how many times you would have met with
6 Mr. Todd prior to trial?

7 A. I don't know specifically how many times I met with
8 him. I looked in my file. I know that I had an initial
9 meeting with him right after I was appointed, which I
10 always do. Our policy, because I work on a part-time basis
11 with the public defender's office, our policy is, if at all
12 possible, to see people within seventy-two hours of being
13 appointed. When I go to meet people at that first meeting,
14 it's, you know, first of all, just to introduce myself.
15 Secondly, to discuss specifically bond and getting
16 somebody's bond reduced so that we can try and get them out
17 of jail. That's really the thrust of it, is the bond
18 issue. But I also go over with them, just in general, what
19 the procedure is, make sure that they know that -- and I'll
20 usually touch on the allegations a little bit. At that
21 point, I don't have anything at all. But I touch on the
22 allegations and I let them know that if there are any
23 witnesses or anything that are going to be helpful to their
24 case, that they need to be thinking about who those are so
25 they can let me know. I make sure that -- at that time, we

1 had assigned to each of us in the office, we had a
2 secretary and we also had an investigator. And I would
3 make sure that they knew that those people were in the
4 public defender's office. That if they called there, they
5 could contact one of those people and, you know, they can
6 share whatever information they have.

7 And I also, you know, just kind of go over the
8 procedure, what's going to happen from that point on.
9 After that, you know, I know that I met with him after we
10 got the discovery material. I provide a copy if they want
11 it. To be quite honest with you, I discourage people from
12 getting a copy of the discovery. I've just found over the
13 years it's a bad idea for people to have it in the jail.
14 But if they want it, I provide it for them and I -- at that
15 time, my investigator was Tracy Burkett and I would have
16 told Tracy to give him a copy. I don't recall whether or
17 not he asked for a copy or got a copy.

18 And then after that, you know, I meet with people
19 either as, you know, things come up and I need to talk with
20 them. Or when I become aware that a case is about to be
21 put on the trial docket, I will go well in advance of the
22 trial date and meet with them. And then meet with as many
23 more times as I need to prior to going to trial. But
24 beyond that, I don't really know how many times I met with
25 Mr. Todd.

1 Q. During one of these meetings, would he have told you
2 kind of his version of what happened that day?

3 A. Yeah. He probably would have done that the first time
4 we met. And then certainly after we -- when we went over
5 the discovery together, he would have been more specific
6 about things.

7 Q. Do you recall whether or not Mr. Todd ever gave you
8 any witnesses to contact?

9 A. I don't recall that. But if he'd given me the names
10 of any witnesses, I would have given those to Tracy and had
11 her run them down. She's always very good about doing
12 that. And I've done it in lots of cases.

13 Q. When you reviewed the discovery, did you perceive
14 there to be any issues with the chain of custody?

15 A. No. And we -- you know, I was provided with the chain
16 of custody log. When I looked at it, I didn't see any
17 problems with it.

18 Q. If there had been any issues, was that something you
19 would have challenged before the trial?

20 A. Yeah. Absolutely.

21 Q. Likewise, did you perceive there to be any issues with
22 the indictment, the way the indictment was worded?

23 A. No.

24 Q. And, again, if you had perceived there to be any kind
25 of potential defect with the indictment, is that something

1 you would have challenged before the trial?

2 A. Yes.

3 Q. Now, Mr. Todd mentions that there was a seven-year
4 offer. Do you recall that?

5 A. I don't, you know, and I looked in the file. And
6 normally, I would have something from the solicitor that
7 would indicate, you know, if they'd offered that. But then
8 oftentimes there are discussions that go on between the
9 solicitor and me that are not written down. It has always
10 been my policy that if -- you know, I view it, if there are
11 plea negotiations between the solicitor and me, that I am
12 compelled to share that with a client. And if he said that
13 there was a seven-year offer, then there probably was.

14 Now, that said, you know, there's a time limit on
15 offers in this circuit. And they're withdrawn after a
16 certain amount of time. So I would not have broached that
17 subject with him for the first time prior to trial because
18 any plea deal at that point would have been withdrawn. And
19 he would have simply been deciding whether to plead
20 straight up, in other words, without a recommendation, or
21 going to trial. So if I discussed a seven-year deal with
22 him, it would have been long before he was put on the trial
23 docket.

24 Q. When you discuss a plea offer with your client, do you
25 ever give your kind of personal, this is what I would do

1 with this offer, type advice?

2 A. You know, what typically happens is I communicate to
3 them what the offer is. And unless it's probation, they're
4 typically not happy with it. And then generally there's a
5 discussion about whether or not -- you know, everybody
6 always wants to know what their odds are if they go to
7 trial. In this particular case, I mean, it was a fairly
8 large amount of crack cocaine. It was eight point four
9 grams. And so, you know, anything that's over a gram, and
10 I would have shared this with Mr. Todd, a jury is allowed
11 to infer from that -- and this is what a judge is going to
12 instruct them. The jury is allowed to infer from that,
13 that the person possessed it with the intent to distribute.

14 Now, my feeling was that, and I certainly agree with
15 the two gentlemen that testified just a few minutes ago,
16 that Mr. Todd is not a drug dealer. And I never believed
17 that he was a drug dealer. Our defense all along -- it was
18 very little question that he possessed the drugs, very
19 little question that he possessed the drugs in the amount
20 that was tested. But I believe that any drugs that he had
21 was for his personal use. Of course, the statute also says
22 that distribution doesn't have to be to sell. You don't
23 have to be an active seller of drugs. You can distribute
24 by simply giving the drugs to somebody else or sharing it
25 with somebody else. And I would have explained all that to

1 Mr. Todd.

2 Q. Since the defense all along was going to be that these
3 drugs were for personal use and not for sale, was it always
4 pretty clear that Mr. Todd was going to testify in his own
5 defense?

6 A. Yes.

7 Q. And you had discussed with Mr. Todd about his prior
8 convictions potentially coming in against him?

9 A. Yes. And not only that -- and I did not get a chance
10 to review the record. I think you provided it to me, the
11 transcript a long time ago. And I think this case was
12 continued once. And when I went to look for it for today's
13 testimony, I was not able to find it. So I haven't -- I
14 honestly can't speak to anything that's in the transcript
15 because I didn't get to review it as I normally would
16 before I come over here. But it has always been my
17 practice to ask -- because, you know, the Judge will go
18 over the -- your rights with a defendant regarding whether
19 or not they're going to testify. And it's always been my
20 practice to ask the solicitor to identify anything that
21 they plan to use. And then after that, you know, the
22 court's going to rule on whether those are admissible or
23 not. And a lot of times, if I know that they fit within
24 the rule, I mean, I'm not going to offer a specious
25 objection. I'm just going to say, you know. I mean, I

1 would object if it's objectionable. But very often I will
2 just say, yeah, I would agree that those come in under the
3 rule.

4 Sometimes if it's something that's unduly prejudicial
5 -- let's say you represent somebody that's on trial for
6 possession with intent to distribute crack, and they had a
7 similar conviction in the past, I will then object on --
8 you know, under 403 that it's unduly prejudicial. And
9 typically what I've found that the court does in those
10 situations is to limit the solicitor simply saying that
11 they had a felony conviction and not allowing them to say
12 what it was.

13 Q. But you would have had his NCIC as part of your
14 discovery?

15 A. Yes. And he would have -- and had he gotten a copy of
16 his discovery, he would have been provided with that, as
17 well. And I would have had a specific discussion with him
18 about what was on there before he testified because,
19 obviously, that's a big issue.

20 MS. RATIGAN: That's all I have, Your Honor.

21 THE COURT: You may cross-examine.

22 **CROSS-EXAMINATION**

23 **BY MS. HORLBECK:**

24 Q. Mr. Chambers, do you recall when Mr. Todd made it
25 clear to you that this would be a trial and not a guilty

1 plea?

2 A. I really don't. I mean, obviously, it was some time
3 well before we went to trial. But, you know, because had
4 he at any point told me, I want to plead guilty, you know,
5 I'm not in the habit of making people go to trial. You
6 know, if we can work out something that -- for them to go
7 to plea to, that they're satisfied with, that's good for
8 me. Because, you know, I get appointed a couple of hundred
9 cases a year and I can't try them all. And when I do go to
10 trial, I try to win the cases. But I'm not in the habit of
11 talking people into going to trial when they want to plead
12 guilty.

13 Q. Okay. And I just wanted to know if you knew when it
14 was clear that this became a trial. Okay. And I know you
15 stated that you met with Mr. Todd. You don't know
16 specifically what days you met with him, though. Okay.
17 Was he incarcerated the whole time or was he out on the
18 street, do you know?

19 A. You know, to be quite honest with you, I don't
20 remember whether he was or not. Obviously, if he was on
21 the street, then he's free to come see me and we can meet
22 any time.

23 Q. Okay.

24 A. But I don't remember.

25 Q. Okay. All right. That's all I have. Thank you.

Calvin E. Todd -vs- State of South Carolina (2011-CP-23-5311)
PCR Hearing

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1 THE COURT: Any redirect?

2 MS. RATIGAN: No, Your Honor. The State would
3 rest and ask that Mr. Chambers be released.

4 THE COURT: Okay. Thank you, Mr. Chambers. You
5 may step down.

6 All right. I'll obviously need to read the transcript
7 on this case. I'll issue an order or send notification to
8 you as soon as we can.

9

10 [END OF REQUESTED TRANSCRIPT OF RECORD]

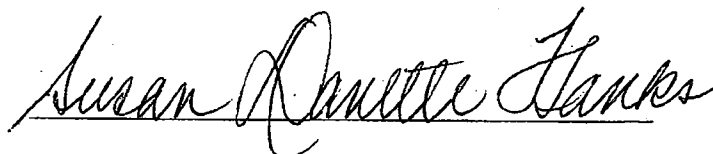
CERTIFICATE OF REPORTER

I, the undersigned Danette P. Hanks, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Greenville County, South Carolina, on the 18th day of April, 2013.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

July 24, 2013

A handwritten signature in cursive script that reads "Susan Danette Hanks". The signature is written in dark ink and is positioned above the printed name of the reporter.

Circuit Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2011-CP-23-5311
COUNTY OF GREENVILLE	)	
	)	
Calvin Earl Todd,	)	
S.C.D.C. No. 266990,	)	
	)	
Applicant,	)	
	)	ORDER OF DISMISSAL
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed August 9, 2011. The Respondent made its return on January 30, 2012. An evidentiary hearing into the matter was convened on April 18, 2013 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Caroline Horlbeck, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying were John Carter, Wayne Osborne, and the Applicant's trial counsel, Randall L. Chambers, Esquire. The Court had before it the trial transcript, the Greenville County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, the 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 Greenville County Clerk of Court. The Greenville County Grand Jury indicted the Applicant at the October 2007 term of General Sessions for possession

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with intent to distribute (PWID) crack cocaine (2007-GS-23-8646). He was represented by Randall L. Chambers, Esquire.

After the State brought the case to trial, the Applicant was found guilty. On May 20, 2008, the Honorable Alexander S. Macaulay sentenced the Applicant to twenty (20) years imprisonment for PWID crack cocaine, second offense.

A notice of appeal was filed at the South Carolina Court of Appeals. M. Celia Robinson, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The Court of Appeals affirmed the Applicant's conviction and sentence. State v. Todd, Op. No. 2011-UP-133 (S.C. Ct. App. filed March 29, 2011).

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel:
 - a. Failed to seek defense witnesses to testify the Applicant was a drug addict.
 - b. Failed to challenge the Applicant's possession of the drugs.
 - c. Failed to present evidence to refute the "intent to distribute" element of the crime.

In an Amended Petition for Post Conviction Relief filed by the Applicant's counsel on April 17, 2013, the Applicant made the following allegations:

1. Ineffective assistance of trial counsel:
 - a. Failed to object to admission of the Applicant's prior record.
 - b. Failed to move the Court to perform a Rule 609 balancing analysis prior to admission of evidence of the Applicant's prior record.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the

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opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

The Applicant stated he did not review the evidence with counsel prior to trial. The Applicant stated they discussed his defense – that he had no intent to distribute – only once before trial. The Applicant stated trial counsel conveyed a seven year plea offer a few days before trial but that counsel convinced him to go to trial. The Applicant stated trial counsel did not ask him about potential witnesses. The Applicant stated trial counsel should have challenged

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the chain of custody because samples can become "mixed up" and he believes more than three people handled the evidence. The Applicant stated trial counsel should have challenged the indictment because: (1) the Grand Jury was not scheduled to be convened the week the indictment was issued and (2) the indictment stated there were "a quantity of drugs" but the evidence at trial was that it was 8.4 grams. The Applicant stated trial counsel should not have told the jury he was guilty of possession. The Applicant stated trial counsel should have objected to the use of his prior convictions at trial. The Applicant stated trial counsel should have renewed the motion for directed verdict at the end of trial

John Carter and Wayne Osborne stated they had known the Applicant for many years, and that he had done work for them in the past. Carter and Osborne stated they had not observed the Applicant selling anything while working for them. Carter and Osborne stated they were not contacted about testifying at the Applicant's trial.

Trial counsel testified he was appointed in this case and filed discovery motions. Trial counsel testified he had several meetings with the Applicant and that they reviewed the discovery materials and the Applicant's version of events. Trial counsel testified the defense in this case was that the Applicant was not a drug dealer but that the drugs in his possession were for his personal use. Trial counsel testified he did not recall a seven year plea offer in this case (and there was no evidence of such in the file). Trial counsel testified he would not have received a plea offer for the first time when the case was on the trial docket. Trial counsel testified that, if there were an offer, he would have discussed it with the Applicant and informed him the jury could make an inference from the weight of the drugs. Trial counsel testified he did not recall whether the Applicant gave him the names of witnesses but that, if he had received this information, he would have had his investigator look into it. Trial counsel testified he did not

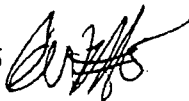


see any deficiencies with either the chain of custody or the indictment and that he would have challenged any defects. Trial counsel testified he would have had a specific conversation with the Applicant about his prior convictions being mentioned at trial if he testified. Trial counsel testified that, if the prior convictions the State intends to use fit within the rules, he does not make an objection.

This Court finds the Applicant's testimony is not credible, while also finding trial counsel's testimony is credible. This Court further finds trial counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

This Court finds the Applicant failed to meet his burden of proving trial counsel did not properly prepare his case or represent him at trial. Trial counsel testified he filed discovery motions, received those materials, and reviewed them with the Applicant. Trial counsel testified they also reviewed the Applicant's version of events and the defense strategy of arguing the Applicant was a drug user and not a drug dealer. This Court finds trial counsel's testimony is credible. This Court finds that trial counsel's admission to the jury that the Applicant was merely guilty of possession¹ was consistent with the defense strategy. This Court also finds the Applicant has failed to set forth what more trial counsel should have done to prepare the case for trial. 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); Davis v. State, 326 S.C. 283, 486 S.E.2d 747 (1997) (denying relief where applicant failed to present witnesses or specific testimony establishing he would have had a defense with additional time to prepare for trial).

¹ Trial transcript, pp.78-79.

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This Court finds the Applicant failed to meet his burden of proving trial counsel misadvised him about a potential plea offer. This Court notes trial counsel was unsure if there was a seven year plea offer in this case. Assuming arguendo there was such an offer, by the Applicant's own admission the offer was conveyed and discussed. Trial counsel would have satisfied his obligations in that regard. See Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009) (holding counsel's failure to convey the State's plea offer to defendant constituted deficient performance). The Applicant has failed to present any credible or compelling evidence that trial counsel pressured him into going to trial instead of accepting this alleged plea offer.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have investigated and subpoenaed witnesses to testify on his behalf. The Applicant argues witnesses such as John Carter and Wayne Osborne could have supported the defense argument that he was not a drug dealer. This Court finds this argument is unpersuasive. Initially, this Court notes the Applicant did not provide these witness names to trial counsel before trial. As such, counsel could not have investigated whether the witnesses would have benefitted the case. Regardless, based on the strength of the State's case, this Court does not find this type of testimony would have changed the outcome of the trial. See Cherry v. State, 300 S.C. at 117-18, 386 S.E.2d at 625.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have challenged the chain of custody. The Applicant, however, has failed to present any evidence that there was a defect in the chain of custody. As such, he cannot prevail on this allegation. See Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have challenged the indictment. The true test of the sufficiency of an indictment is not whether it

could be made more definite and certain, but whether it contains the necessary elements of the offense intended to be charged and sufficiently apprises the defendant of what he must be prepared to meet. State v. Gentry, 363 S.C. 93, 103, 610 S.E.2d 494, 500 (2005). Indictments are not evidentiary or jurisdictional documents – they are merely notice documents. Id. at 102, 610 S.E.2d at 500. This Court finds the indictment in this case was true-billed and clearly sufficient to put the Applicant on notice of the charge he was facing. See State v. Tumbleston, 376 S.C. 90, 95-96, 654 S.E.2d 849, 852 (Ct. App. 2007). This Court further finds the Applicant's argument that trial counsel should have challenged the indictment because the Grand Jury was not scheduled to convene that week is without merit. While terms of court are technically prescribed by statute, this Court notes general sessions matters may be transacted during common pleas terms of court and vice versa. See S.C. Code Ann. §§ 14-5-410, -420 (Supp. 2003).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have requested the trial judge perform a Rule 609, SCRE balancing test for the prior convictions used at trial. The State noted the prior convictions it intended to reference and the trial judge agreed they were proper. (Trial transcript, pp.187-88). Trial counsel testified he would not make a specious objection if the prior convictions were proper under the Rules. This Court finds the Applicant has failed to demonstrate any prejudice from the lack of a Rule 609 balancing test because he has failed to demonstrate any of his prior convictions were improperly admitted. See Butler v. State, 286 S.C. at 442, 334 S.E.2d at 814.

This Court finds the Applicant failed to meet his burden of proving he is entitled to relief because trial counsel did not renew the motion for directed verdict at the end of the defense case. The Applicant cannot demonstrate he was prejudiced by the lack of a motion for directed verdict

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at the close of the defense case because the trial judge can grant a directed verdict on its own motion. Rule 19(a), SCRCrimP.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in 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.

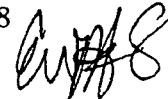
All Other Allegations

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.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His

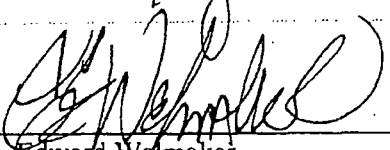
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attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

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 3 day of May, 2013.



G. Edward Welmaker
Presiding Judge
Thirteenth Judicial Circuit


_____, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2011CP2305311

2013 MAY 14 PM 3:09

Calvin E Todd vs. South Carolina State Of

CHECK ONE:

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC: ☐ Rule 41(a).
SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRPC: ☐ Bankruptcy:
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed: ☐ Reversed: ☐ Remanded:
☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court;

Dated at Greenville, South Carolina, this 14th day of May, 2013.

Court Reporter: _____

PRESIDING JUDGE - G Edward Welmaker

This judgment was entered on the 14th day of May, 2013, and a copy mailed first class this 14th day of May, 2013, to attorneys of record or to parties (when appearing pro se) as follows:

Caroline M.W. Horlbeck 101 Whitsett Street
Greenville, SC 29601

✓ Karen Christine Ratigan PO Box 11549 Columbia,
SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

WITNESSES

Troy McBride *Turner*

Fountain Inn Police Department

7/28/2007

ARREST WARRANT NUMBER

1517085

ACTION OF GRAND JURY
TRUE BILL*For*
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

*Guilty**Calvin E. Todd* *5/20/08*
Foreperson of Petit Jury Date:

DOCKET NO. 2007-GS-23-

JLX

The State of South Carolina
August 6 4 6

County of Greenville

COURT OF GENERAL SESSIONS

OCTOBER TERM 2007

*5-20-08***GUILTY** THE STATE
VS.

CALVIN E. TODD

Indictment for

3014

POSSESSION OF CRACK COCAINE WITH
INTENT TO DISTRIBUTE

VIOLATION § 44-53-0375

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
POSSESSION OF CRACK COCAINE WITH INTENT TO
DISTRIBUTE

At a Court of General Sessions, convened on October 24, 2007 the Grand Jurors of Greenville
County present upon their oath:

That CALVIN E. TODD did in Greenville County, on or about the 28th day of July 2007, possess with intent to
distribute or aid, abet, or conspire to possess with the intent to distribute a quantity of Crack Cocaine, a controlled
substance, such possession not having been authorized by law. This is in violation of §44-53-375 of the South
Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Jayce Montz
SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.Calvin Todd

AKA: _____

Race: B Sex: M Age: 46DOB: SS#: 000-00-0000

Address: _____

GRAY COURT, SC 29654

DL#: _____

SID#: _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007GS238646A/W#: 1517085Date of Offense: 7/28/2007S.C. Code § : 44-53-0375(b)(2)CDR Code #: 3015

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: POSSESSION WITH INTENT TO DISTRIBUTE CRACK COCAINE 2ND OFFENSEin violation of § 44-53-0375(b)(2) of the S.C. Code of Laws, bearing CDR Code # 3015☒ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor:

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$

§ 14-1-206 (Assessments 107.5 %) _____ \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 _____ \$ 100

§ 14-1-211(A)(2) (DUI Surcharge) \$100 _____ \$

§ 56-5-2995 (DUI Assessment) \$12 _____ \$

§ 35.13 (Public Def/Prob) \$500 _____ \$

§ 73.3, 1B TP (Law Enforce. Funding) \$25 _____ \$ 25§ 33.7, 1B TP (Drug Court Surcharge) \$100 _____ \$ 100

§ 50-21-114(BUI Breath Test Fee) \$50 _____ \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea _____ \$

3% to County (if paid in installments) _____ \$

TOTAL _____ \$

Paul B. Wickham
Clerk of Court/ Deputy ClerkCourt Reporter: Robin Hill

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☒Random Drug/Alcohol testing ☒Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.PRESIDING JUDGE [Signature]Judge Code: 0101013Sentence Date: May 20, 2008

SCCA/217 (10/2007)

ARREST WARRANT

1-517085

6685

STATE OF SOUTH CAROLINA

☒ County/

☐ Municipality of 8-8-07

Greenville

THE STATE

2007-5226

Calvin E Todd

Address:

Gray Court, SC 29654-

Phone:

Sec: M Race: B

SSN:

DL State: SC DL #: 5 7 Weight: 168

DOB:

Agency ORI #: SC0230100

Prosecuting Agency:

Fountain Inn Police Department

Prosecuting Officer:

Troy McBride - 0089

Offense: Drugs/PWID-CRACK

Offense Code:

3014

Code/Ordinance Sec:

44-53-0375(B)(1)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/

☐ Municipality of

is to be arrested and brought before me to be

The accused

dealt with according to the law.

(I.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Calvin E. Todd on 7/28/2007

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

City Of Fountain Inn
300 North Main Street
Fountain Inn, SC 29644

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/

☐ Municipality of

Greenville

Personally appeared before me the affiant Troy McBride

being duly sworn deposes and says that defendant Calvin E Todd

did within this county and state on or about 07/28/2007

State of South Carolina (or ordinance of

☒ County/

☐ Municipality of

Greenville

violate the criminal laws of the

in the following particulars:

DESCRIPTION OF OFFENSE: Drugs/PWID-CRACK

I further state that there is probable cause to believe that the defendant, named above did commit the crime set forth and that probable cause is based on the following facts:

THE DEFENDANT CALVIN E. TODD WAS FOUND TO BE IN POSSESSION OF AN OFF WHITE ROCK LIKE SUBSTANCE WHICH FIELD TESTED POSITIVE FOR CRACK. THE DEFENDANT NOT BEING AUTHORIZED TO POSSESS SAID SUBSTANCE. THE QUANTITY IS INDICATIVE OF THE DEFENDANT'S INTENT TO DISTRIBUTE TO ANOTHER. THIS OFFENSE OCCURRED IN THE CITY LIMITS OF FOUNTAIN INN AND THE COUNTY OF GREENVILLE

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/

☐ Municipality of

Greenville

Affiant's Address

300 NORTH MAIN STREET
FOUNTAIN INN, SC 29644-

Affiant's Telephone

(864)862-4461 x 0000

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 7/28/2007

defendant Calvin E Todd

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/

☐ Municipality of

Greenville

) as set forth below:

DESCRIPTION OF OFFENSE: Drugs/PWID-CRACK

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 07/28/2007

Signature of Affiant

(I.S.)

Judge's Address

Signature of Hearing Judge

(I.S.)

Judge's Telephone

Judge Code: 5701

Issuing Court: ☒ Magistrate

☐ Municipal

☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

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ORIGINAL

Notary Public for
S.C. Attorney General
SCCA 116

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Alexander S. Macaulay, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CALVIN E. TODD,

APPELLANT

INITIAL BRIEF OF APPELLANT

M. CELIA ROBINSON
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

1. Did the trial judge err in denying the defense motion to suppress the evidence seized as the result of a stop and search where there was no probable cause for the initial stop and where there was no consent or any other valid justification for the search of appellant?
2. Did the trial judge err in denying the defense motion for a directed verdict where the State's evidence raised only a mere suspicion that appellant had the necessary intent to distribute?

STATEMENT OF THE CASE

Calvin Todd, appellant, was indicted by the Greenville County Grand Jury for Possession with Intent to Distribute Crack Cocaine. On May 19, 2008, appellant proceeded to trial before the Honorable Alexander S. Macaulay and a jury. The jury found appellant guilty as charged and Judge Macaulay sentenced appellant to twenty years incarceration.

ARGUMENT

- I. The trial judge erred in denying the defense motion to suppress the evidence seized as the result of a stop and search where there was no probable cause for the initial stop and where there was no consent or any other valid justification for the search of appellant?

Counsel for appellant moved to suppress the evidence seized when officers stopped the car in which he was riding. Counsel argued that the stop was unsupported by probable cause or reasonable suspicion and that the search was unauthorized by consent or any valid basis. (Tr. p. 21, lines 19-24; p. 55, line 17-p. 56, line 10; p. 58, line 5-p. 59, line 25).

a. Initial stop:

At 12:33 a.m. on July 27, 2007, patrolling Fountain Inn police officers, McBride and Graham, stopped the car appellant was riding in for the asserted reason that the car radio was playing loud music with the windows down. (Tr. p. 36). Officer Troy McBride testified that Fountain Inn has a noise ordinance which forbids playing loud music in a community. (Tr. p. 39). The officer testified that upon the officers hearing music emanating from the car, blue lights were initiated and the car was stopped. (Tr. p. 36). The car was driven by Nicholas Johnson; Mr. Johnson was charged only with a violation of the noise ordinance and released. (Tr. pp. 38-39; p. 110; 119).

Officer McBride testified that the stop was accomplished in an area that was not well lit with street lamps and that appellant was wearing baggy clothes. (Tr. p. 37). Officer McBride testified that the gist of the noise ordinance is that it forbids the playing of "loud music in the community area that disturbs the public." (Tr. p. 39). However, the officer immediately admitted that, at the time he stopped the car in which appellant was riding he had not gotten any calls from the community complaining about loud music. (Tr. p. 39). The officer further agreed that he had had no calls of complaints of anyone being

woken up by loud music in the community. (Tr. p. 40). Officer McBride agreed that the officers' vehicle was in close proximity to the car when the music was heard. However, he testified that he was unable to tell whether anyone else in the area could hear the music from this car. (Tr. p. 41). Officer McBride testified that he does not stop every car playing loud music but that "it depends on what the time of day is and what I've got going on." (Tr. p. 41).

There was no indication that the Johnson car was violating any traffic laws but only that the officers were able to detect the vibration of bass music coming from the car as it passed closely by the officers. Under these circumstances, the officers lacked probable cause to believe that a crime was being committed. "The Fourth Amendment provides that 'the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.' This inestimable right of personal security belongs as much to the citizen on the streets of our cities as to the homeowner closeted in his study to dispose of his secret affairs. For, as this Court has always recognized,

'No right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law.' Union Pac. R. Co. v. Botsford, 141 U.S. 250, 251, 11 S.Ct. 1000, 1001, 35 L.Ed. 734 (1891)."

Terry v. Ohio, 392 U.S. 1, 8-9, 88 S.Ct. 1868, 1873 (1968). A police officer may stop and briefly detain and question a person for investigative purposes, without treading upon his Fourth Amendment rights, when the officer has a reasonable suspicion supported by articulable facts, short of probable cause for arrest, that the person is involved in criminal

activity. State v. Brannon, 379 S.C. 487, 498, 666 S.E.2d 272, 277 (Ct.App. 2008). However, here, the officers alleged only a subjective belief that the music in the nearby Johnson car was "loud;" without more, the initial stop of the car was unsupported by probable cause or a particularized, articulable, reasonable suspicion of criminal activity, and the stop constituted an unwarranted intrusion in the occupants' right to privacy and right to be free from unreasonable searches and seizures as guaranteed by the federal and state constitutions.

b. No consent to search:

Appellant testified that when the officer saw that he had a beer he asked him to hand it to him and to step out of the car. (Tr. p. 191). Appellant testified that the officer asked him to step out of the car and to place his hands on the top of the car. Appellant testified that he complied with the officer's directions. Appellant testified that the officer then "asked me did I have anything in my possession that I needed to tell him about. That's when I told him about the crack pipe." (Tr.p. 191).

Officer McBride testified that he approached the passenger side where appellant was sitting. The officer testified that he observed an open container of beer in the car and that he asked appellant to hand it to him. (Tr. p. 85, lines 9-13). The officer testified that appellant handed him the beer and that he then asked appellant to step out of the vehicle. The officer testified, "And at that time, he turned around and placed his hands on the hood of the vehicle." (Tr. p. 85, lines 15-17).

Officer McBride testified in camera, "I asked him if had anything on him - - excuse me - - I asked him if I could search him, and after that he stated that he had a pipe in his back pocket." (Tr. p. 37, lines 11-13). The officer testified that upon learning that

appellant had a pipe in his back pocket he immediately placed appellant under arrest and retrieved the pipe. (Tr. p. 37, lines 14-15). However, during his in camera testimony, the officer failed to testify that appellant *answered* the request for consent to search other than to volunteer that he had a pipe in his pocket. Apparently, although the officer may have *asked* for consent to search appellant, appellant did not answer directly and he did not give consent. Instead, upon the officer's hearing that appellant was in possession of a pipe appellant was immediately placed under arrest and searched. When asked about his testimony indicating that appellant answered his request for consent to search only by volunteering that he had a pipe in his pocket rather than giving consent as contrasted with his report wherein the officer indicated that when asked for consent to search, appellant answered, "Yes," the officer testified, "Yes, I did. But I was going. . . ." (Tr. p. 43, lines 19-23). After the discrepancy was pointed out in camera, the officer testified before the jury that appellant did explicitly answer, "Yes," when asked for consent to search. (Tr. p. 85, lines 15-20).

The officer testified improbably that appellant explicitly gave consent to search and *then* volunteered that he had a pipe in his pocket. It is much more likely that in response to a request for consent to search appellant answered only by volunteering the existence and location of his pipe. This volunteering of the pipe was reasonably only appellant's doomed attempt to avoid being searched. The State offered no explanation for why appellant would have consented to be searched and *then* gratuitously volunteered that he had a pipe in his pocket. The testimony more reasonably supports appellant's account indicating that he never gave consent to be searched. In fact, appellant had every reason to attempt to satisfy the officer's interest without submitting to a search given that

he had the recently purchased crack cocaine in a baggy in his front pocket. Appellant testified, "He finished searching me, and I guess when he got my stuff out of my front pocket, my keys and my knife, I guess he left that bag, saw it hanging, and he didn't get it out. As he told me to turn and go over there and sit down, the bag fell on the ground." (Tr. p. p. 193, lines 2-7). Appellant testified, "That's when Officer Graham forced me to the ground." (Tr. p. 193). Officer Graham had another version; he testified that after appellant's hands were cuffed behind his back, appellant reached around, pulled a baggy out of his front pocket and threw it on the ground. (Tr. p. 120). The baggy contained 8.40 grams of crack cocaine. (Tr. p. 178, lines 20-22). Regardless of how the baggy came to light, appellant had good reason to make every attempt to satisfy the officer without submitting to a search. The crack cocaine hidden in his front pocket provides the reasonable explanation for appellant's volunteering that he had a pipe in his back pocket - appellant obviously sought to avoid a search. Whether the officer asked appellant for consent to search or not, the consent sought was not given.

Thus, the search was not authorized by consent and it was not authorized as a search incident to arrest. Neither officer testified that they had any reason to suspect that appellant posed a danger. In fact, Officer Travis Graham testified that he was not in any particular fear that appellant or Mr. Johnson posed a danger to officer safety. (Tr. p. 54). Ordinarily police officers may not, without a search warrant, make an exploratory search of a person arrested for a minor traffic offense. State v. Harris, 265 Minn. 260, 268, 121 N.W.2d 327, 333, certiorari denied, 375 U.S. 867, 84 S.Ct. 141, 11 L.Ed.2d 94. Of course, even in the case of an arrest for a minor traffic offense, if police officers have a reasonable and good-faith belief that the arrestee is armed and dangerous, then under the rule enunciated by the

United States Supreme Court in the 'stop-and-frisk' trilogy, the police may frisk the arrestee for weapons. Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889; Sibron v. New York, 392 U.S. 40, 88 S.Ct. 1889, 20 L.Ed.2d 917. However, the police officer is not entitled to seize and search every person whom he sees on the street or of whom he makes inquiries. Before he places a hand on the person of a citizen in search of anything, he must have constitutionally adequate, reasonable grounds for doing so. In the case of the self-protective search for weapons, he must be able to point to particular facts from which he reasonably inferred that the individual was armed and dangerous." State v. Gannaway, 291 Minn. 391, 392-393, 191 N.W.2d 555, 556 (Minn. 1971); Sibron v. New York 392 U.S. 40, 64, 88 S.Ct. 1889, 1903 (1968); State v. Fowler, 322 S.C. 263, 267, 471 S.E.2d 706, 708 (Ct.App.1996).

A search must reasonably relate to the offense for which the person was, with probable cause, arrested." The reasons for the rule in the more usual simple traffic offense are that the arrestee does not have in his possession physical evidence of such traffic offense and will not ordinarily be armed. A search will not in such circumstances serve either of the usual and legitimate objectives of a warrantless search incident to an arrest, specifically, seizure of evidence of the offense for which the arrest is made or protection of the police officer's safety.

Here, a search of appellant obviously would not reveal evidence of the offense of playing loud music and the officer had already been handed the proof of open container. The officers did not justify the search of appellant by pointing to particular facts from which they reasonably inferred that appellant was armed or dangerous. Instead, the officer testified that he had no fear of appellant and the officers failed even to assert that the search of

appellant was performed in the interest of officer safety. To the contrary, upon appellant's indicating that he possessed a crack pipe, the officer immediately placed him in handcuffs and searched appellant with the intent to discover and seize further evidence of the commission of a crime. Absent probable cause for the initial stop and absent consent or any other valid basis for the officer's placing his hands on appellant, the trial judge erred in refusing to exclude the evidence found as the result of an unreasonable, unjustified, and unwarranted search.

The stop of the car and the search of appellant were carried out in violation of the prohibitions against unreasonable searches and seizures found in the South Carolina and United States constitutions and the trial judge erred in denying the defense motion to suppress.

- II. The trial judge erred in denying the defense motion for a directed verdict where the State's evidence raised only a mere suspicion that appellant had the necessary intent to distribute.

The trial judge erred in denying counsel for appellant's motion for a directed verdict of acquittal as to possession with intent to distribute. (Tr. p. 182, lines 1-18; pp. 183-184). The criterion for denying a directed verdict motion in South Carolina is well established. A case should be submitted to the jury if there is any direct evidence or any substantial circumstantial evidence that reasonably tends to prove the guilt of the accused or from which guilt may be fairly and logically deduced. State v. Weston, 367 S.C. 279, 292-93, 625 S.E.2d 641, 648 (2006); State v. Walker, 349 S.C. 49, 53, 562 S.E.2d 313, 315 (2002); State v. Zeigler, 364 S.C. 94, 102, 610 S.E.2d 859, 863 (Ct.App.2005); State v. Al-Amin, 353 S.C. 405, 411, 578 S.E.2d 32, 35 (Ct.App.2003). However, the defendant is entitled to a directed verdict if the state fails to produce evidence of the offense

charged. State v. Moore, 374 S.C. 468, 474, 649 S.E.2d 84, 86 (Ct.App.2007). A directed verdict motion should be granted when the evidence merely raises a suspicion of the accused's guilt. State v. Dantonio, 376 S.C. 594, 598, 658 S.E.2d 337, 339 (Ct.App. 2008); State v. Arnold, 361 S.C. 386, 390, 605 S.E.2d 529, 531 (2004).

Appellant admitted that he was a crack addict with a bad habit. Appellant is a forty-four (44) year old man who lived with his father, apparently did not own a car, and who had no significant bills to pay. (Tr. p. 204). Appellant testified that he spent the majority of his earnings on crack cocaine. (Tr. p. 205, lines 1-2). Appellant worked as a plumber's helper. (Tr. p. 189).

Appellant testified that July 27, 2007, was the day he and a co-worker finished a plumbing project after working late on the job. Appellant testified that they worked until approximately 10:00 p.m on the Simpsonville plumbing job and that they were paid \$400 for the work. (Tr. p. 199). Appellant testified that his coworker told him that his nephew would give him a better price on crack cocaine if he bought quantity. (Tr. p. 196, lines 1-3). Appellant testified that the purchase of such a quantity would "keep me from going in and out all night." (Tr. p. 196). Appellant testified that this amount of crack cocaine would have taken him approximately two days to consume. (Tr. pp. 197-198). He testified that if he bought only a small quantity of crack cocaine, the price was higher and he had to make more frequent purchases. Thus, earlier in the day on July 27, 2007, appellant had bought two rocks of crack cocaine for \$30 and smoked them during work. (Tr. p. 209). At the end of the day, appellant was out of drugs again; therefore, after he was paid, appellant decided to take advantage of the offer made by his co-worker. This was an opportunity for a crack user to be able to purchase crack at the dealer price. (Tr. p. 136, lines 1-8). Appellant

testified that his coworker drove him to Mauldin where he purchased the quantity of crack cocaine and put it in his pocket. (Tr. p. 199-200). Appellant testified that after his purchase, he and his coworker went to the store in Gray Court. While he was in the store appellant met Nicholas Johnson, an old friend who lived in appellant's neighborhood. Appellant testified that he and Johnson agreed to buy a six-pack of beer and to drive around.

Thus, the evidence established that appellant personally consumed extraordinary amounts of crack cocaine and that the amount of crack cocaine found in his possession was no more than a two-day-supply. Appellant testified credibly that, that night, he had earned enough money to allow him to purchase quantity so that he would get a bargain and so that he would not have to go out and make such frequent purchases. The State was unable to contradict appellant's account or to establish beyond a reasonable doubt that appellant intended to distribute the drugs where appellant was found with no money in his possession and no cell phone or pager.

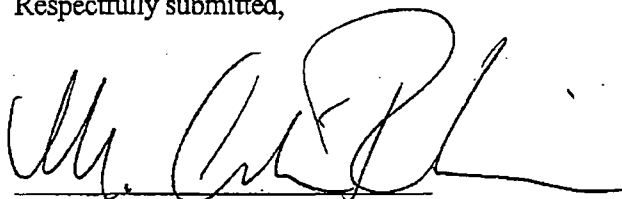
Appellant was found in possession of the pipe which he used to smoke the crack and also in possession of the metal tool he used to clean the pipe so that he could *smoke* the crack. (Tr. p. 124). In contrast, appellant possessed none of the tools necessary for him to *sell* the crack. As defense counsel argued, if appellant was a drug dealer, he was unprepared. Appellant's crack cocaine was not packaged or broken up for sale; he had no way to weigh the drugs or to set a price for the rocks which were of varying sizes; he had no means of communicating with prospective clients, and he had no profits from prior sales. (Tr. p. 124-125; p. 180, lines 12-15). In fact, appellant was found with no money at all in his possession; as usual, he had spent every dime on crack cocaine. (Tr. p. 164, lines 7-9).

Defense counsel informed the jury on opening, "his honor is going to tell you later on that establishing that he possessed more than a gram of crack cocaine establishes what's called a *prima facie* case that he possessed with intent to distribute." (Tr. p. 79). However, counsel correctly argued that such an inference could and would be rebutted. The defense evidence, when coupled with the State's failure to offer evidence of intent to distribute, rebutted any inference or *prima facie* presumption that appellant had intent to distribute based solely on the weight of the crack possessed. Under the circumstances, where the State's evidence raised no more than a bare suspicion that appellant had the intent to distribute, the trial judge should have granted the defense motion for a directed verdict.

CONCLUSION

For all the forgoing reasons, appellant's conviction and sentence should be reversed and a new trial ordered.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'M. Celia Robinson', written over a horizontal line.

M. Celia Robinson
Appellate Defender

ATTORNEY FOR APPELLANT

This 13th day of February, 2009.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

Alexander S. Macaulay, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CALVIN E. TODD,

APPELLANT

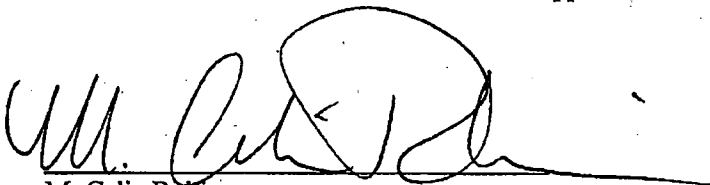
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s);
- (2) Trial transcript;
- (3) Incident reports.

I certify that this designation contains no matter which is irrelevant to this appeal.

February 13th, 2009



M. Celia Robinson
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

Attorney for Appellant

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Alexander S. Macaulay, Circuit Court Judge

THE STATE,

RESPONDENT,

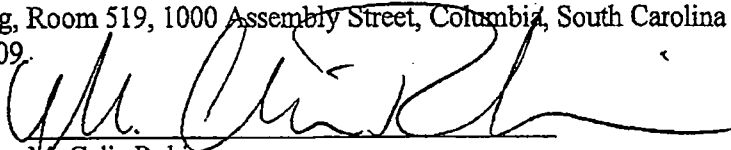
V.

CALVIN E. TODD,

APPELLANT

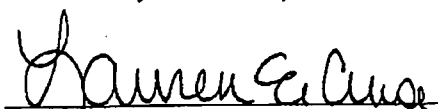
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at P.O. Box 50666, Columbia, SC; and on Calvin E. Todd, #266990 at Perry Correctional Institution, Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, South Carolina 29201 this 13th day of February, 2009.


M. Celia Robinson
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 13th day of February, 2009.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: August 23, 2014.



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332

Joseph L. Savitz, III, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

February 13, 2009

Salley W. Elliott, Esquire
Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

Re: The State v. Calvin E. Todd

Dear Salley:

Enclosed are two copies of the Initial Brief of Appellant and Designation of Matter in the above entitled case, which I have filed today with the South Carolina Court of Appeals.

Please call me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Celia", is placed below the word "Sincerely,".

M. Celia Robinson
Appellate Defender

MCR:lec

Enclosure



SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332

Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Joseph L. Savitz, III, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

February 13, 2009

Mr. Calvin E. Todd #266990
Perry Correctional Institution
430 Oaklawn Road
Pelzer, SC 29669

Re: Your appeal

Dear Mr. Todd:

Enclosed is a copy of the Initial Brief of Appellant in your case, which I have filed with the South Carolina Court of Appeals.

Please contact me if you have any questions.

Sincerely,

M. Celia Robinson
Appellate Defender

MCR:lec

Enclosure

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.

Calvin E. Todd, Appellant.

Appeal From Greenville County
Alexander S. Macaulay, Circuit Court Judge

Unpublished Opinion No. 2011-UP-133
Submitted March 1, 2011 – Filed March 29, 2011

AFFIRMED

Appellate Defender M. Celia Robinson, of
Columbia, for Appellant.

Attorney General Alan Wilson, Chief Deputy
Attorney General John W. McIntosh, Assistant
Deputy Attorney General Salley W. Elliott, and
Assistant Attorney General Deborah R.J. Shupe,
all of Columbia; and Solicitor Walt Wilkins, of
Greenville, for Respondent.

PER CURIAM: Calvin E. Todd appeals his conviction for possession of crack cocaine with intent to distribute and sentence of twenty years' imprisonment, arguing the circuit court erred in denying (1) his motions to suppress and (2) his motion for a directed verdict. We affirm^[1] pursuant to Rule 220(b)(1), SCACR, and the following authorities:

1. As to whether the circuit court erred in denying Todd's motions to suppress evidence of his possession of crack cocaine resulting from a traffic stop and search: State v. Tindall, 388 S.C. 518, 521, 698 S.E.2d 203, 205 (2010) ("On appeals from a motion to suppress based on Fourth Amendment grounds, [an appellate court] applies a deferential standard of review and will reverse if there is clear error."); id. ("[W]here probable cause exists to believe that a traffic violation has occurred, such a seizure is reasonable per se."); State v. Freiburger, 366 S.C.

125, 132, 620 S.E.2d 737, 740 (2005) ("[T]here are situations in which a warrantless search which immediately precedes an arrest is held lawful, in cases where the police officer is held to have had probable cause from the outset.").

2. As to whether the circuit court erred in denying Todd's motion for a directed verdict: State v. Adams, 332 S.C. 139, 144-45, 504 S.E.2d 124, 126-27 (Ct. App. 1998) (holding if a defendant presents evidence after the denial of his motion for a directed verdict at the close of the State's case, in order to preserve the issue for appeal, he must make another motion for a directed verdict at the close of all evidence).

AFFIRMED.

FEW, C.J., and THOMAS and KONDUROS, JJ., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.