

THE STATE OF SOUTH CAROLINA
In The Supreme Court

ORIGINAL

APPEAL FROM BEAUFORT COUNTY
Court of General Sessions

The Honorable J. Ernest Kinard, Jr., Circuit Court Judge

Opinion No. 4956 (S.C. Ct. App. Filed March 21, 2012)

THE STATE,

PETITIONER,

V.

DIAMON D. FRIPP,

RESPONDENT.

APPENDIX

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1 DELIBERATIONS AND SO FORTH. HAVE A GOOD NIGHT. WHAT DID I
2 SAY? 9:20? BE BACK ABOUT 9:25. ELECT THE FOREPERSON, AND
3 WE'LL START RIGHT AT 9:30. I NEED EVERYBODY HERE THOUGH. I
4 NEED EVERYBODY HERE. THE BAILIFFS WILL SHOW YOU WHERE TO
5 REPORT AND HOW TO GET IN HERE. OKAY?

6 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT FOR THE
7 DAY AT 3:09 P.M.)

8 THE COURT: YOU HAVE A JACKSON/DENNO YOU WANTED TO DO?

9 MR. BANNON: YES, JUDGE.

10 THE COURT: ALL RIGHT. LET'S DO IT.

11 MR. BANNON: YOUR HONOR---

12 THE COURT: DO Y'ALL NEED A BREAK OR ARE YOU READY TO
13 GO? I'M NOT A SLAVE DRIVER. I MEAN, I'VE GOT THINGS TO DO.

14 MS. JORDAN: I THINK WE'RE FINE, YOUR HONOR. THANK YOU.

15 THE COURT: YOU KNOW, EVERY HOUR OR SO I'VE GOT TO CHECK
16 AND MAKE SURE THE CLERK HASN'T MADE ANY MORE MISTAKES. NO,
17 I'M KIDDING.

18 THE CLERK: THANKS, JUDGE.

19 THE COURT: OR THINGS LIKE THAT. OKAY.

20 MR. BANNON: THE STATE CALLS SERGEANT RODRIGUEZ.

21 THE COURT: ALL RIGHT. SERGEANT, COME AROUND.

22 SCOTT RODRIGUEZ, AFTER BEING DULY SWORN, TESTIFIED
23 AS FOLLOWS IN CAMERA:
24
25

DIRECT EXAMINATION

BY MR. BANNON:

Q. GOOD AFTERNOON, SERGEANT.

A. GOOD AFTERNOON.

Q. COULD YOU PLEASE STATE YOUR NAME JUST FOR THE RECORD?

A. SCOTT RODRIGUEZ.

Q. AND WHERE DO YOU WORK?

A. THE BEAUFORT COUNTY SHERIFF'S OFFICE.

Q. WERE YOU INVOLVED WITH AN INVESTIGATION INVOLVING DIAMON
FRIPP ON JANUARY 1ST OF 2009?

A. YES, I WAS.

Q. AND COULD YOU PLEASE TELL US HOW YOU CAME TO BE INVOLVED
IN THAT?

A. I WAS WORKING THE ROAD. I AM NORTHERN ROAD -- ONE OF
THE NORTHERN ROAD SUPERVISORS, AND WE RECEIVED A CALL AT THE
STUDIO SEVEN NIGHTCLUB IN REFERENCE TO A DISTURBANCE IN THE
PARKING LOT.

Q. AND WHAT TIME OF NIGHT WAS THIS?

A. AFTER DARK. ABOUT 2:00 IN THE MORNING OR SO.

Q. OKAY. AND SO JUST INTO THE NEW YEAR.

A. YES.

Q. OKAY. AND WHAT KIND OF COMPLAINT DID YOU RECEIVE?

A. IT WAS A DISTURBANCE IN THE PARKING LOT, A MAN WEARING
BLUE CAUSING SOME FORM OF DISTURBANCE.

Q. AND DID YOU GO TO THE PARKING LOT?

1 A. YES. I RESPONDED IN MY PATROL VEHICLE, PARKED IN THE
2 PARKING LOT.

3 Q. AND IS THAT AT 44 DONALDSON CAMP ROAD?

4 A. YES, IT IS.

5 Q. AND DID YOU SEE -- WHAT DID YOU SEE WHEN YOU ARRIVED?

6 A. WHEN I PULLED INTO THE PARKING LOT, I STOPPED ABOUT 40
7 YARDS FROM THE FRONT ENTRANCE. I COULD SEE THE SECURITY
8 GUARD HANDLING A ROW OF FEMALE CUSTOMERS LINED UP WAITING TO
9 GET INTO THE NIGHTCLUB AND ONE MALE WITH HIS BACK TO MY
10 PATROL VEHICLE.

11 Q. OKAY. AND COULD YOU DESCRIBE WHAT THE MALE WITH HIS
12 BACK TO YOU WAS WEARING?

13 A. HE WAS WEARING A BLUE SHIRT-TYPE JACKET.

14 Q. OKAY.

15 A. BAGGY.

16 Q. AND WHAT HAPPENED NEXT?

17 A. THAT MALE LOOKED OVER HIS RIGHT SHOULDER AT MY PATROL
18 VEHICLE AND THEN STARTED WALKING TOWARDS THE LEFT PARKING
19 LOT.

20 Q. OKAY. AND WHAT AFTER THAT?

21 A. I EXITED MY VEHICLE, WALKED UP TO THE SECURITY GUARD,
22 LOOKED AT HIM. HE CONTINUED DEALING WITH THE FEMALE
23 CUSTOMERS INSIDE THE VESTIBULE WHERE THE SECURITY GUARD WAS.
24 THERE WAS A VESTIBULE TO HIS RIGHT. THE OWNER OF THE CLUB
25 WAS STANDING IN THERE BEHIND ONE OF THE WINDOWS, AND HE WAS

1 POINTING AT THAT MALE WHO WALKED AWAY.

2 Q. OKAY. SO WHAT DID YOU DO AFTER THAT?

3 A. I PROCEEDED AFTER THE MALE WHO WALKED AWAY.

4 Q. AND DID YOU CALL OUT TO HIM?

5 A. YES, I SAID -- I CALLED OUT. I SAY, "HEY, COME HERE.
6 CAN I TALK TO YOU?" I WHISTLED.

7 Q. AND DID HE STOP?

8 A. HE STOPPED. HE TURNED AROUND AND LOOKED STRAIGHT AT ME,
9 TURNED BACK AROUND AND CONTINUED WALKING AT A FASTER PACE
10 BETWEEN PARKED CARS.

11 Q. OKAY. AND DID YOU FOLLOW HIM?

12 A. I ACTUALLY HEADED IN THE SAME DIRECTION, BUT I DIDN'T
13 FOLLOW HIS PATH. I FOLLOWED IN THE AREA OF THE PARKING LOT
14 WHERE VEHICLES WOULD NORMALLY TRAVEL. I DIDN'T FOLLOW
15 BETWEEN THE CARS.

16 Q. HOW FAR DID YOU FOLLOW HIM?

17 A. APPROXIMATELY 400 YARDS FROM THE FRONT ENTRANCE.

18 Q. OKAY. AND---

19 A. I'M SORRY. 400 FEET.

20 Q. 400 FEET? OKAY. AND ARE YOU -- DID YOU JUST CALL HIM
21 THE ONE TIME?

22 A. FROM THAT INITIAL POINT? YES. THEN I SAID, "SHERIFF'S
23 OFFICE, STOP," OR "STOP. SHERIFF'S OFFICE." I DO NOT
24 REMEMBER WHICH ONE IT WAS.

25 Q. OKAY. DID THE DEFENDANT STOP OR DID HE JUST CONTINUE ON

1 HIS WAY?

2 A. NO, HE CONTINUED ON HIS WAY.

3 Q. AND AT ANY POINT DID YOU EVER GET A GOOD LOOK AT THE
4 PERSON WHO WAS WEARING BLUE?

5 A. I SAW HIS FACE WHEN HE TURNED AROUND, AND I SAW HIS BACK
6 THE WHOLE TIME I WAS BEHIND HIM.

7 Q. AND DO YOU SEE THAT PERSON IN THE COURTROOM TODAY?

8 A. YES, I DO.

9 Q. WOULD YOU POINT HIM OUT, PLEASE?

10 A. HE'S SITTING RIGHT OVER HERE WITH A BLACK-AND-WHITE
11 CHECKERBOARD SHIRT ON. (THE WITNESS POINTS TO THE
12 DEFENDANT.)

13 Q. AND WHAT HAPPENED THEN?

14 A. HE GOT FARTHER DOWN IN THE PARKING LOT. THEN HE CUT
15 ACROSS ONE OF THE ROWS OF PARKED CARS, CUT ACROSS THE PATHWAY
16 THAT I WAS TAKING WHERE VEHICLE TRAFFIC WOULD NORMALLY TRAVEL
17 AND RAN BEHIND A BLACK PICKUP TRUCK.

18 Q. OKAY. AND WHAT DID YOU DO NEXT?

19 A. I LOST SIGHT OF HIM, AND I TOLD MY DISPATCHERS, "I GUESS
20 HE DOESN'T WANT TO TALK TO ME," AND HE REAPPEARED.

21 Q. OKAY. WHAT HAPPENED NEXT?

22 A. HE STARTED COMING BACK TOWARDS ME, AND HE LOOKED LIKE HE
23 WANTED TO WALK PAST ME.

24 Q. OKAY. DID HE SAY ANYTHING?

25 A. AT THAT POINT, NO.

1 Q. OKAY.

2 A. I COULDN'T SEE HIS HANDS.

3 Q. SO WHAT HAPPENED THEN?

4 A. I DREW MY SERVICE WEAPON, AND I ORDERED HIM TO LET ME
5 SEE HIS HANDS.

6 Q. AND WHY DID YOU DO THAT?

7 A. IT'S A SAFETY ISSUE AT THAT POINT. I DON'T KNOW IF HE
8 HAS A GUN IN HIS HANDS. I DON'T KNOW WHAT. IF HE DOESN'T
9 HAVE ANYTHING IN HIS HANDS, HE PRETTY MUCH CAN'T HURT ME.

10 Q. OKAY.

11 A. SO I ORDERED TO SEE HIS HANDS.

12 Q. AND WHAT HAPPENED THEN?

13 A. HE SAID, "YOU GOT NOTHING ON ME. I DON'T GOT ANY
14 DRUGS," AND I CONTINUED ORDERING HIM TO LET ME SEE HIS HANDS,
15 LET ME SEE HIS HANDS.

16 Q. OKAY. AND DID HE EVER SHOW YOU HIS HANDS?

17 A. YES, EVENTUALLY HE DID.

18 Q. AND WHAT HAPPENED NEXT?

19 A. I TOLD HIM TO GET ON THE GROUND. HE SAID, "NO, IT'S
20 COLD OUTSIDE." HE SQUATTED. HE PUT HIS LEFT HAND DOWN
21 NUMEROUS TIMES TO THE FLOOR, BUT HE NEVER GOT ON THE GROUND.

22 Q. OKAY. WERE YOU EVER ABLE TO TAKE THE DEFENDANT INTO
23 CUSTODY?

24 A. YES, EVENTUALLY I WAS ABLE TO.

25 Q. OKAY. DID YOU PUT HANDCUFFS ON HIM?

1 A. I WAS ABLE TO GET THE LEFT HANDCUFF ON HIM FIRST, AND I
2 WAS ABLE TO HOLSTER MY DUTY WEAPON, AND I WAS ABLE TO GET THE
3 RIGHT HANDCUFF ON HIM AND FULLY HANDCUFF HIM.

4 Q. WAS HE SAYING ANYTHING DURING THIS?

5 A. HE WAS SAYING ALL TYPES OF THINGS: "YOU'RE DIRTY. YOU
6 GOT NOTHING ON ME. THIS AIN'T RIGHT." ALL TYPES OF STUFF.

7 Q. OKAY. AND ONCE YOU HAD HIM IN CUSTODY, DID YOU -- WERE
8 YOU EVER ABLE TO SEARCH HIM?

9 A. YES.

10 Q. AND DID YOU FIND ANYTHING?

11 A. IN HIS PANTS POCKET WE FOUND CLOSE TO \$600 OF CRUMPLED-
12 UP BILLS. THEY WEREN'T ALL CRUMPLED IN ONE BUNDLE. IT WAS
13 LIKE TISSUE PAPER WITH IDEAS. YOU CRUMPLE THEM UP AND THROW
14 THEM OUT. CLOSE TO \$600. I BELIEVE IT WAS 594 OR 5 DOLLARS.

15 Q. WAS THERE ANYTHING ELSE?

16 A. HE ALSO HAD SOME STONES IN HIS POCKET.

17 Q. AND WHAT DID YOU DO WITH THE STONES?

18 A. THE BILLS AND THE STONES WERE PLACED ON THE TRUNK OF THE
19 PATROL CAR THAT HE WAS UP AGAINST. HE WAS CHEST UP AGAINST
20 THE PATROL CAR, AND HIS CONTENTS OF HIS POCKETS WERE EMPTIED
21 ON TO THE TRUNK OF THE VEHICLE.

22 Q. AND WHAT HAPPENED NEXT?

23 A. HE TRIED TO BEND OVER AND SCOOP UP THOSE STONES WITH HIS
24 MOUTH.

25 Q. OKAY. DID YOU EVER DO ANY PRELIMINARY TESTS ON THE

1 STONES TO DETERMINE IF THEY WERE NARCOTICS OR NOT?

2 A. PRIOR TO THAT POINT? NO.

3 Q. DID YOU AFTERWARDS?

4 A. YES.

5 Q. DID THEY REACT IN ANY WAY?

6 A. THEY DIDN'T REACT TO MY NIK KIT, MY COCAINE ANALYSIS
7 KIT, NO.

8 Q. WHAT DID YOU DO NEXT?

9 A. AT THAT POINT I HAD CALLED FOR ANOTHER UNIT, AND ANOTHER
10 UNIT SHOWED UP. I TOLD THEM TO COME AROUND THE PARKING LOT
11 BECAUSE THERE'S ONLY ONE WAY IN. HE HAD TO DRIVE AROUND
12 BEHIND ME TO GET HIS VEHICLE TO MY POINT, AND MR. FRIPP WAS
13 PLACED IN THAT CAR.

14 Q. AND WAS A SEARCH OF THE AREA PERFORMED?

15 A. YES, THAT WAS ALSO DONE.

16 Q. AND WAS ANYTHING FOUND?

17 A. YES, A BAG OF WHITE POWDERY SUBSTANCE WAS LOCATED.

18 Q. AND DO YOU KNOW WHO FOUND THAT?

19 A. YES, OFFICER MOONEY FOUND IT.

20 Q. AND DID HE EVER GIVE IT TO YOU?

21 A. YES, HE DID.

22 Q. WHAT DID YOU DO WITH THE BAGGY OF POWDER ONCE YOU FOUND
23 IT?

24 A. THAT WAS FIELD-TESTED RIGHT THERE ON THE TRUNK OF THAT
25 PATROL VEHICLE WITH A DEPARTMENT-ISSUED NIK KIT WHICH IS A

1 COCAINE TEST KIT, AND IT REACTED POSITIVE FOR THE PRESENCE OF
2 COCAINE.

3 Q. WHERE IS THE DEFENDANT WHEN YOU'RE DOING THIS?

4 A. HE'S IN THE BACK SEAT OF THAT PATROL VEHICLE.

5 Q. OKAY. IS HE ABLE TO SEE OR ARE YOU IN VIEW OF HIM?

6 A. YES. HE WAS TURNED AROUND IN THE SEAT, YELLING
7 OBSCENITIES AND SCREAMING AND YELLING THE WHOLE TIME.

8 Q. OKAY. AND WAS HE ALONE IN THE CAR?

9 A. YES, HE WAS.

10 Q. OKAY. WHAT HAPPENED THEN?

11 A. AT THAT POINT THE COCAINE -- THE BAG THAT WAS FOUND WAS
12 PLACED INTO AN EVIDENCE BAG TO BE TURNED IN TO THE LAB FOR
13 TESTING.

14 Q. OKAY. DID YOU EVER INFORM MR. FRIPP WHAT HE WAS GOING
15 TO BE CHARGED FOR?

16 A. INITIALLY WHEN HE SAID, "WHAT ARE YOU ARRESTING ME FOR?"
17 AND I TOLD HIM, "FOR FLEEING TO EVADE ARREST."

18 Q. OKAY.

19 A. AND I ALSO TOLD HIM THIS IS BEING -- "YOU'RE BEING
20 CHARGED WITH THIS."

21 Q. OKAY. AND WHAT DID -- DID HE REPLY WHEN YOU TOLD HIM---

22 A. HE SAID, "I DON'T KNOW ANYTHING ABOUT THAT COCAINE."

23 Q. OKAY. HAD YOU TOLD HIM ANYTHING ABOUT COCAINE PRIOR TO
24 THAT?

25 A. NO.

1 Q. OKAY. AND NOW STUDIO SEVEN, IS THAT A NIGHTCLUB?

2 A. YES, IT IS.

3 Q. AND WOULD YOU CALL IT A HIGH-CRIME AREA?

4 A. YES.

5 Q. IS THERE A LOT OF DRUG ACTIVITY AT THAT LOCATION?

6 A. I WOULDN'T KNOW ABOUT DRUG ACTIVITY.

7 Q. OKAY. WAS THE DEFENDANT EVER MIRANDIZED?

8 A. HE WAS, NOT BY ME.

9 Q. OKAY. DO YOU KNOW WHO MIRANDIZED HIM?

10 A. I BELIEVE IT WAS FERGUSON AT THE JAIL.

11 Q. OKAY. SO YOU NEVER MIRANDIZED HIM.

12 A. NO. AFTER HE WAS PLACED IN THE VEHICLE, I HADN'T HAD A
13 CONVERSATION WITH HIM.

14 Q. OKAY. DID YOU EVER ASK HIM ANY DIRECT QUESTIONS?

15 A. I ASKED HIM WHAT HIS NAME WAS, AND HE WOULDN'T TELL ME.

16 MR. BANNON: OKAY. NO FURTHER QUESTIONS.

17 CROSS-EXAMINATION

18 BY MS. JORDAN:

19 Q. SO THE ONLY TIME YOU SPOKE TO DIAMON -- IN FACT, YOU DID
20 KNOW IT WAS DIAMON FRIPP; CORRECT?

21 A. I DIDN'T KNOW WHO HE WAS AT THAT TIME.

22 Q. YOU NEVER CALLED DISPATCH WITH THAT NAME?

23 A. NOT UNTIL AFTER I FOUND OUT WHAT HIS NAME WAS.

24 Q. AND SO BASICALLY YOU HAD TWO CONVERSATIONS WITH HIM, ONE
25 WHEN YOU TOLD HIM TO GET TO THE GROUND - IS THAT CORRECT -

1 WHEN HE SAID THE FIRST STATEMENT, "I HAVE NOTHING ON ME"? IS
2 THAT CORRECT?

3 A. WHEN I SAID, "LET ME SEE YOUR HANDS"?

4 Q. RIGHT. WHEN HE CAME---

5 A. I SPOKE TO HIM PRIOR TO THAT TELLING HIM, "LET ME TALK
6 TO YOU." HE WOULDN'T -- HE WOULDN'T TALK TO ME.

7 Q. RIGHT. I UNDERSTAND. YOU SAID THAT WAS THE FIRST TWO-
8 WAY CONVERSATION, I GUESS---

9 A. YES.

10 Q. ---AT THAT POINT?

11 A. YES.

12 Q. AND THE ONLY OTHER TIME YOU TALKED TO HIM WAS WHEN HE
13 WAS BACK IN THE PATROL CAR AND YOU PUT THE DRUGS -- SHOWED
14 HIM THE DRUGS AND TOLD HIM, "YOU'RE CHARGED WITH THAT." IS
15 THAT CORRECT?

16 A. I SAID, "YOU'RE BEING CHARGED WITH THIS."

17 Q. RIGHT.

18 A. IT WASN'T A TWO-WAY CONVERSATION. HE WAS IN A CLOSED
19 VEHICLE.

20 Q. OKAY. SO THE WINDOW WAS UP AND HE WAS INSIDE.

21 A. THE WINDOW WAS UP. IT WAS DECEMBER. IT WAS COLD.

22 Q. BUT YOU COULD HEAR HIM.

23 A. OH, YEAH. HE WAS YELLING.

24 Q. COULD HE HEAR YOU?

25 A. I DON'T KNOW. MAYBE.

1 Q. OKAY. SO BACK UP TO THE FIRST CONVERSATION YOU HAD WITH
2 HIM BY THE TRUCK, YOU HAD YOUR GUN. YOU ORDERED HIM TO THE
3 GROUND, AND IS IT TRUE THAT DIAMON SAID HE DIDN'T HAVE ANY
4 DRUGS ON HIM?

5 A. I ORDERED HIM TO LET ME SEE HIS HANDS, AND HE SAID, "YOU
6 GOT NOTHING ON ME. I HAVE NO DRUGS."

7 Q. OKAY. AND WHEN HE WAS IN THE CAR, YOU SHOWED HIM THE
8 BAG AND SAID THAT YOU'RE CHARGING HIM WITH THIS, AND IT WAS A
9 CONVERSATION -- HIS RESPONSE WAS, "THAT'S NOT MINE" OR -- I'M
10 SORRY.

11 A. HE SAID, "I DON'T KNOW ANYTHING ABOUT THAT COCAINE,"
12 MA'AM.

13 MS. JORDAN: NOTHING FURTHER.

14 MR. BANNON: NO REDIRECT, YOUR HONOR. IT WOULD JUST BE
15 THE STATE'S CONTENTION THAT THOSE STATEMENTS WEREN'T MADE
16 UNDER INTERROGATION AND THEY WERE VOLUNTARILY GIVEN.

17 THE COURT: OKAY.

18 MS. JORDAN: SORRY, YOUR HONOR. YOUR HONOR, FOR THIS
19 HEARING WE AGREE THE FIRST -- THE FIRST STATEMENT CAN BE --
20 WE FEEL THAT YOU PROBABLY COULD FIND THAT THERE WAS A
21 SPONTANEOUS UTTERANCE AT THAT POINT. THE SECOND TIME HE WAS
22 IN THE CAR, NO MIRANDA RIGHTS HAD BEEN GIVEN TO HIM. HE WAS
23 SHOWN A BAG, WHICH IT DOESN'T NECESSARILY HAVE TO BE ACTUAL
24 WORDS, VERBAL WORDS, BUT BECAUSE HE WAS ELICITING SOME KIND
25 OF RESPONSE BY SHOWING HIM HE WAS CHARGED WITH THAT, I

1 BELIEVE THAT WOULD BE SOMETHING THAT YOUR HONOR MAY CONSIDER
2 BEING NOT VOLUNTARY.

3 THE COURT: ALL RIGHT. IT CAN COME IN. AS I UNDERSTAND
4 IT, ALL HE SAID IS, "I DON'T KNOW NOTHING ABOUT NO COCAINE."
5 HE DIDN'T SAY, "I DON'T KNOW ANYTHING ABOUT 28.23 GRAINS OF
6 COCAINE." ALL RIGHT. YOU CAN STEP DOWN.

7 THE WITNESS: THANK YOU, YOUR HONOR.

8 MR. BANNON: JUST ONE SECOND, YOUR HONOR. YOUR HONOR,
9 NEXT THE STATE WOULD CALL OFFICER VORTISCH, AND I BELIEVE
10 HE'S IN THE BACK, AS HE WAS---

11 THE COURT: OKAY. YOU CAN---

12 MR. BANNON: ---COMING FROM THE DETENTION CENTER.

13 THE COURT: ---GET HIM.

14 MR. BANNON: SO THANK YOU, JUDGE.

15 THE COURT: SERGEANT SCOTT RODRIGUEZ, YOU CAN STEP DOWN.

16 THE WITNESS: THANK YOU, YOUR HONOR.

17 JEFF VORTISCH, AFTER BEING DULY SWORN, TESTIFIED AS
18 FOLLOWS IN CAMERA:

19 DIRECT EXAMINATION

20 BY MR. BANNON:

21 Q. GOOD AFTERNOON, OFFICER.

22 A. GOOD AFTERNOON, SIR.

23 Q. PLEASE STATE YOUR NAME FOR THE RECORD.

24 A. JEFF VORTISCH.

25 Q. AND WHERE DO YOU WORK?

1 MR. BANNON: THAT WOULD CONCLUDES THE STATE'S JACKSON
2 VERSUS DENNO HEARING. THANK YOU, OFFICER. NO FURTHER
3 QUESTIONS.

4 COURT REPORTER: SO THAT EXHIBIT IS NOT GOING TO BE PART
5 OF THIS TRIAL?

6 MR. BANNON: I DON'T THINK SO.

7 THE COURT: NO, UNLESS THEY WANT IT. I MEAN, Y'ALL
8 DON'T WANT IT, DO YOU?

9 MS. JORDAN: NO, YOUR HONOR. THANK YOU. THANK YOU,
10 YOUR HONOR.

11 THE COURT: ALL RIGHT. WHAT MOTIONS DO YOU HAVE?

12 MS. JORDAN: YOUR HONOR, THE DEFENSE MAKES A MOTION AT
13 THIS TIME TO EXCLUDE ANY TESTIMONY OR REFERENCE TO THE
14 DEFENDANT IN ANYTHING FLEEING, EVADING, OR SUSPICIOUS
15 BEHAVIOR RELATED TO THE CHARGE OF FLEEING TO EVADE ARREST AND
16 DETENTION. YOUR HONOR, IN MARCH THIS CASE WAS BROUGHT BEFORE
17 A MAGISTRATE COURT. THE MAGISTRATE COURT JUDGE AT THAT TIME
18 -- IT WENT TO THE TRIAL. IT WENT TO THE JURY. THE JURY CAME
19 BACK. THE MAGISTRATE REVISITED... THE JURY WAS HUNG, CAME
20 BACK TO THE MAGISTRATE. THE MAGISTRATE REVISITED HIS -- I
21 ASKED HIM TO -- I RENEWED MY MOTIONS AT THAT TIME. HE
22 GRANTED A DIRECTED VERDICT OF NOT GUILTY AT THAT TIME ON THAT
23 CHARGE. AT THIS TIME, YOUR HONOR, I BELIEVE THAT WOULD BE
24 FOLLOWING THE RULES OF COLLATERAL ESTOPPEL TO BRING ANYTHING
25 RELATED TO HIS NOT-GUILTY VERDICT UNDER THAT TRIAL AT THAT

1 TIME.

2 THE COURT: I DON'T KNOW ANYTHING ABOUT IT. HE CAN'T --
3 HE CAN'T BRING THAT UP, BUT I CAN'T KEEP OFFICER RODRIGUEZ
4 FROM TESTIFYING ABOUT WHAT HAPPENED OUT THERE THAT DAY.

5 MS. JORDAN: YOU KNOW, WE'RE WORRIED THAT ANYTHING
6 RELATED TO THE -- ANYTHING ABOUT HIM NOT STOPPING, FLEEING
7 FROM THE OFFICER, WILL AGAIN PUT THAT IN THE JURY'S MIND THAT
8 THERE IS SOMETHING -- HE'S DOING SOMETHING WRONG WHEN HE'S
9 ALREADY BEEN FOUND NOT GUILTY FOR THAT TRIAL.

10 THE COURT: WELL, GOOD LUCK, BUT THE PROBLEM IS: THE
11 OFFICER IS ENTITLED TO TESTIFY AS TO WHY HE DETAINED HIM AND
12 SO FORTH, AND THAT'S GOING TO COME IN, IF THAT'S WHAT YOU'RE
13 TRYING TO GET EXCLUDED. THE TRIAL ITSELF IS NOT GOING TO
14 COME IN UNLESS YOU BRING IT IN.

15 MS. JORDAN: YEAH, BUT HE'S ALREADY BEEN TRIED AND FOUND
16 NOT GUILTY OF THOSE CHARGES.

17 THE COURT: WHO -- I MEAN, YOU CAN BRING THAT OUT IF YOU
18 WANT TO, BUT THEY CAN'T BRING IT OUT, BUT I CAN'T STOP
19 OFFICER RODRIGUEZ, IF THAT'S WHAT YOU'RE ASKING ME TO DO,
20 FROM SAYING WHY HE STOPPED HIM. IS THAT WHAT YOU'RE TRYING
21 TO DO?

22 MS. JORDAN: BASICALLY, YOUR HONOR, I GUESS BECAUSE THAT
23 WAS THE UNDERLYING -- THAT WAS WHY HE ARRESTED HIM. HE
24 ARRESTED HIM ONLY BECAUSE HE SAID FLEEING TO EVADE ARREST.
25 WELL, IF HIS ONLY REASON TO ARREST HIM WAS FLEEING TO EVADE

1 AND HE WAS FOUND NOT GUILTY ON THAT CHARGE, THEN THAT -- THAT
2 WAS THE REASON HE WAS ARRESTED.

3 THE COURT: WELL, YOU KNOW, IN YOUR HEART OF HEARTS, AS
4 YOU THINK BACK, AS JUSTICE SCALIA SAID IN I THINK IT WAS THE
5 CASE OF FIERA VERSUS CALIFORNIA (PHONETIC), QUOTING SOME
6 BIBLICAL SCRIPTURE: A GUILTY MAN FLEETH WHEN NONE PURSUETH.
7 THAT'S WHY HE WENT AFTER HIM. HE CAN TESTIFY TO THAT. I
8 CAN'T KEEP HIM FROM SAYING THAT.

9 MS. JORDAN: OKAY. WELL, THEN I HAVE THE STATE V.
10 SNOWDEN, COLLATERAL ESTOPPEL, WHERE THE COURT HAS CITED THAT,
11 "COLLATERAL ESTOPPEL PREVENTS A PARTY FROM RELITIGATING IN A
12 SUBSEQUENT SUIT AN ISSUE ACTUALLY NECESSARILY LITIGATED IN A
13 PRIOR ACTION." THIS HAS ALREADY BEEN DETERMINED TO... OUR
14 ARGUMENT I GUESS, YOUR HONOR, IS THAT TO PUT HIM ON TRIAL FOR
15 THE SAME OFFENSE WOULD FALL UNDER STATE V. SNOWDEN THAT IT
16 WOULD BE---

17 THE COURT: HE CANNOT BE TRIED FOR RESISTING -- FOR
18 FLEEING THE SCENE OR RESISTING ARREST. THAT'S NOT ONE OF THE
19 COUNTS OF THE INDICTMENT THAT I'M LOOKING AT.

20 MS. JORDAN: CORRECT, YOUR HONOR, BUT THAT WAS THE
21 CHARGE THAT HE WAS ARRESTED ON. THERE WAS NO DRUGS FOUND ON
22 HIM, AND HE WASN'T THERE INVESTIGATING A DRUG REPORT.

23 THE COURT: SO THEN IF YOU CAPTION YOUR MOTION INTO
24 THROW IT OUT BECAUSE THEY HAD NO PROBABLE CAUSE FOR MAKING AN
25 ARREST...

1 MS. JORDAN: THAT'S WHAT I'M SAYING; THERE'S NO PROBABLE
2 CAUSE.

3 THE COURT: WHICH WOULD BE -- WHICH WOULD BE A PROPER
4 MOTION, NOT THIS STUFF ABOUT COLLATERAL ESTOPPEL ON THAT,
5 THEN I CAN CONSIDER THAT, BUT I'M NOT GOING TO THROW IT OUT
6 AT THIS POINT.

7 MS. JORDAN: MY UNDERSTANDING, I THOUGHT I WAS SAYING IT
8 THE RIGHT WAY - EXCUSE ME - THAT THE JUDGE FOUND -- RULED ON
9 A DIRECTED VERDICT THAT THERE WAS NO PROBABLE CAUSE FOR THE
10 ARREST ITSELF, AND THAT'S WHY WE PUT THE MOTION IN AND THAT
11 IT SHOULD BE...

12 THE COURT: BUT HE -- HE DETAINED HIM, AND THEN THE
13 DRUGS WERE FOUND, AS I UNDERSTOOD IT, JUST FROM HIS
14 TESTIMONY.

15 MS. JORDAN: WELL, I UNDERSTAND. THAT'S FINE IF HE WAS
16 DETAINED, BUT I JUST DON'T WANT ANYTHING THAT WOULD RELATE TO
17 THE CHARGE THAT THE JUDGE FOUND NO PROBABLE CAUSE FOR.

18 MR. BANNON: I'M NOT PLANNING ON MAKING THIS A TRIAL
19 ABOUT HIM---

20 THE COURT: RIGHT.

21 MR. BANNON: ---WANTING -- WE'RE GOING TO TALK ABOUT THE
22 FACT THAT HE WALKED AWAY, BUT I'M NOT GOING TO TALK ABOUT THE
23 FACT THAT HE HAD A PRIOR CHARGE.

24 THE COURT: RIGHT. YOU CAN'T DO THAT. HE'S BEEN
25 ACQUITTED OF THAT. THERE YOU GO.

1 MS. JORDAN: SO I GUESS I'M -- IF HE WAS ARRESTED, HE'S
2 GOING TO SAY HE PUT HIS GUN TO HIM AND ARRESTED HIM.

3 THE COURT: WELL, HE'S GOING TO TESTIFY AS TO WHAT HE
4 DID. HE'S NOT GOING TO GO ANY FURTHER THAN THAT. THAT'S --
5 THAT'S ALL. I MEAN, I DON'T KNOW ANYTHING ABOUT THE CASE
6 UNTIL I WALK IN HERE. ALL RIGHT?

7 MS. JORDAN: I UNDERSTAND.

8 THE COURT: YOU KNOW, CIVIL CASES LAWYERS DO SOME
9 HOMEWORK AND THEY FILE BRIEFS WITH THE JUDGE SO EVERYTHING IS
10 NOT OFF THE TOP OF YOUR HEAD AND YOU GET ERRONEOUS RULINGS
11 WHICH IS WHY YOU LOSE A CRIMINAL CASE. NOBODY DOES THEIR
12 HOMEWORK AND NOBODY EDUCATES THE JUDGE, SO THERE YOU GO. SO
13 BASED ON WHAT THE OFFICER SAID, ALL THAT COMES IN INCLUDING,
14 "I DON'T KNOW NOTHING ABOUT NO DRUGS ON THE BACK OF THE CAR,
15 NO COCAINE." BUT HE CAN'T GO INTO HE WAS ARRESTED FOR THAT.

16 MR. BANNON: WE'RE JUST GOING TO GO INTO THE FACT THAT
17 HE WAS THEN ARRESTED.

18 THE COURT: BUT HE CAN SAY THAT HE ARRESTED HIM. YOU
19 JUST CAN'T GO INTO DISPOSITION OF THAT.

20 MR. BANNON: YES. YES, YOUR HONOR.

21 THE COURT: ALL RIGHT. WHICH DOESN'T HELP THEM A LOT,
22 BUT I CAN'T HELP THEM. ANYTHING ELSE?

23 MS. JORDAN: WE MAKE A MOTION ALSO, YOUR HONOR, TO
24 SUPPRESS OFFICER MENENDEZ FROM MAKING A STATEMENT AS TO THE
25 DRUG MONEY AND ASK THAT THAT BE SUPPRESSED. AT THE TIME OF

1 THE ARREST THEY TALKED ABOUT THE ROCKS. THE ROCKS ARE NOT
2 DRUGS. IT WAS TESTED, AND THEY'RE NOT DRUGS. THEREFORE, IT
3 WOULD BE A PREJUDICE TO THE JURY TO INSINUATE THAT HE WAS
4 TAKING THEM FOR DRUG MONEY.

5 THE COURT: THAT HE HAD \$600 ON HIM IS EVIDENCE IN THE
6 CASE, ISN'T IT? I'M NOT GOING TO SUPPRESS THAT.

7 MS. JORDAN: WELL, MY ONLY -- ANY REFERENCES TO DRUG
8 MONEY...

9 THE COURT: HE HAD \$600 ON HIM. THAT'S EVIDENCE IN THE
10 CASE; THAT'S ALL.

11 MS. JORDAN: BASED BACK TO IT WAS AN ILLEGAL SEARCH,
12 YOUR HONOR, THAT THERE WAS NO PROBABLE CAUSE FOR THE ARREST.
13 IT WAS AN ILLEGAL SEARCH. THEREFORE, THE MONEY SHOULDN'T BE
14 PUT IN.

15 THE COURT: MAYBE IT SHOULD BE, BUT I'M NOT GOING TO
16 RULE THAT WAY.

17 MS. JORDAN: I'M SORRY. DID YOU SAY -- SO YOU'RE NOT
18 GOING TO RULE ON IT, YOUR HONOR? I'M SORRY.

19 THE COURT: I'M NOT RULING FOR YOU. I GUESS THAT MEANS
20 I'M RULING AGAINST YOU.

21 MS. JORDAN: OKAY.

22 THE COURT: WERE I TO TAKE A WILD GUESS, THAT'S WHAT I
23 WOULD SAY.

24 MS. JORDAN: WE ALSO MAKE A MOTION TO EXCLUDE---

25 THE COURT: Y'ALL DIDN'T MAKE ALL THESE MOTIONS IN THE

1 LAST TRIAL?

2 MS. JORDAN: WELL, I TRIED, YOUR HONOR. TO BE HONEST, I
3 DON'T KNOW. I COULD TELL YOU I WAS...

4 THE COURT: I MEAN, THIS IS THE SECOND TIME AROUND. YOU
5 DON'T THROW THINGS OUT ON A SECOND TRIAL THAT YOU DIDN'T MORE
6 OR LESS WAIVE BEFORE, I GUESS.

7 MS. JORDAN: WELL, YOUR HONOR, I GOT REAL SICK DURING
8 THE FIRST TRIAL AND SOME THINGS WERE MISSING. THE LAST THING
9 I HAVE IS THE SUPPRESSION OF THE ROCKS.

10 THE COURT: THE WHAT?

11 MS. JORDAN: THE ROCKS THEMSELVES IN THAT THEY ARE
12 IRRELEVANT.

13 THE COURT: HE'S ENTITLED TO TESTIFY AS TO WHAT
14 HAPPENED. THEY WERE NOT---

15 MS. JORDAN: CORRECT.

16 THE COURT: ---DRUGS. THEY FIELD-TESTED THE OTHER WAY.
17 THAT'S HARMLESS, FROM MY VIEWPOINT.

18 MS. JORDAN: UNDER CUTNER VERSUS STATE, IT HAS THE
19 ARGUMENT - DO YOU NEED THE CASE, YOUR HONOR - IN WHICH THE
20 SUPREME COURT RULED THAT ON A SIMILAR CASE THAT IT WAS A
21 P.W.I.D. MARIJUANA CASE, AND IN THAT CASE THEY ALSO FOUND
22 CRACK ROCKS, AND BECAUSE HE WASN'T BEING ON TRIAL FOR THE
23 CRACK ROCKS, THE SUPREME COURT SAID THAT THAT SHOULD NOT BE
24 BROUGHT IN. IT'S NOT ANYTHING TO DO WITH THE CASE AT HAND.
25 I HAVE THE CASE HERE IF YOU WOULD LIKE TO LOOK AT IT, YOUR

1 HONOR. AND SO WE---

2 THE COURT: HE'S NOT BEING CHARGED WITH THAT, SO I DON'T
3 UNDERSTAND WHY YOU...

4 MS. JORDAN: I THINK IT'S PREJUDICIAL TO THE JURY, YOUR
5 HONOR, TO ASSUME THAT THESE ROCKS WERE SOMETHING. THEY'RE --
6 THAT DRUG-RELATED...

7 THE COURT: THEY WEREN'T. HE SAID HE FIELD-TESTED THEM
8 AND THEY WERE NOT. I MEAN, IF HE SAID HE EMPTIED HIS POCKETS
9 AND IN HIS POCKETS HE HAD \$600, CAR KEYS, A POCKETKNIFE, FIVE
10 STONES, THAT'S JUST EVIDENCE IN THE CASE. I DON'T HAVE ANY
11 INFERENCE ONE WAY OR THE OTHER FROM ANY OF THAT.

12 MS. JORDAN: WELL, I UNDERSTAND THAT, YOUR HONOR. I
13 JUST FELT IT WAS ALL CONNECTED TO THE -- THAT THERE WAS NO
14 PROBABLE CAUSE FOR THE ARREST IN THE FIRST PLACE, AND ALL
15 THIS IS THE FRUIT OF THE PROBABLE CAUSE -- OF NO PROBABLE
16 CAUSE FOR THE ARREST AND IT ALL SHOULD BE MOVED TO BE
17 SUPPRESSED.

18 THE COURT: I DON'T KNOW. HE'S GOT THE RIGHT TO DETAIN
19 HIM WHEN HE STARTS WALKING AWAY, I THINK, FOR A BRIEF PERIOD
20 OF TIME. IF HE HADN'T SMARTED BACK OFF AT HIM, HE'D PROBABLY
21 BE OUT OF HERE TODAY. THERE YOU GO.

22 MS. JORDAN: WE'D ALSO LIKE TO ASK YOUR HONOR FOR THE
23 WITNESSES BE SEQUESTERED, ALL TESTIFYING WITNESSES.

24 THE COURT: WE CAN SEQUESTER THEM, BUT I DON'T KNOW WHY
25 IT MATTERS IF YOU'VE ALREADY HAD ONE TRIAL ON IT AND THEY'VE

1 YOU JURORS ARE GOING TO TAKE ALL ADMITTED - ADMITTED
2 DOESN'T MEAN I HAVE AGREED TO IT - JUST EVIDENCE THAT COMES
3 IN. OKAY? ALL THE EVIDENCE THAT IS PRESENTED WHERE AN
4 OBJECTION HAS NOT BEEN SUSTAINED DURING THE TRIAL, YOU WILL
5 CONSIDER IT AND WEIGH IT. YOU WILL PASS UPON THE
6 BELIEVABILITY OF ALL TESTIMONY GIVEN FROM WITNESSES. THERE
7 MAY BE SOME DOCUMENTARY EVIDENCE PRESENTED. YOU DECIDE
8 WHETHER YOU ACCEPT THAT OR NOT, AND AT THE END OF THE TRIAL
9 I'LL INSTRUCT YOU IN A LITTLE MORE DETAIL ON THE LAW. THIS
10 IS JUST A BRIEF -- IT'S AN OVERVIEW. AND THEN ATTORNEYS WILL
11 SUM UP, AND I'LL INSTRUCT YOU ON THE LAW, AND YOU'LL GO BACK
12 AND DECIDE WHETHER THE STATE HAS MET ITS BURDEN OF PROOF
13 BEYOND A REASONABLE DOUBT.

14 SO WITHOUT FURTHER ADO, THE STATE'S GOING TO MAKE A
15 BRIEF OPENING STATEMENT. AFTER THE OPENING STATEMENTS, WE'LL
16 START CALLING WITNESSES.

17 MR. BANNON: THANK YOU, YOUR HONOR. MAY IT PLEASE THE
18 COURT?

19 THE COURT: SURE.

20 MR. BANNON: "YOU GOT NOTHING ON ME. I DON'T HAVE ANY
21 DRUGS ON ME." THAT'S THE FIRST THING THAT YOU JUST HEARD IN
22 THIS CASE. THE REASON WHY IT'S THE FIRST THING THAT YOU
23 HEARD IN THIS CASE IS BECAUSE THAT IS VERY FIRST THING THAT
24 DIAMON FRIPP SAID TO SERGEANT RODRIGUEZ. DIAMON FRIPP SAID
25 THAT TO SERGEANT RODRIGUEZ ON JANUARY 1ST, 2009, EARLY IN THE

1 MORNING. IT WAS NEW YEAR'S EVE AND IT HAD JUST TURNED OVER
2 INTO THE NEW YEAR. ALL OF THIS HAPPENED AT A NIGHTCLUB
3 CALLED STUDIO SEVEN. IT'S AT 44 DONALDSON CAMP ROAD HERE IN
4 BEAUFORT COUNTY. "YOU GOT NOTHING ON ME. I DON'T HAVE ANY
5 DRUGS ON ME." MR. FRIPP SAID IT THAT NIGHT WITH CONVICTION.

6 NOW, THE EVENTS THAT YOU'RE GOING TO HEAR ABOUT TODAY,
7 THE EVENTS OF JANUARY 1ST, 2009, HAPPENED SOMETHING LIKE
8 THIS: OFFICER RODRIGUEZ WAS ON DUTY. HE WAS WORKING THAT
9 NIGHT. HE GOT A CALL TO RESPOND TO STUDIO SEVEN. HE GOT A
10 CALL THAT THERE WAS SOMEONE DRESSED IN BLUE WHO WAS CAUSING A
11 DISTURBANCE. SO OFFICER RODRIGUEZ HEADS OUT TO STUDIO SEVEN.
12 HE SEES A PERSON WEARING BLUE STANDING OUT IN FRONT OF THE
13 NIGHTCLUB.

14 AS SOON AS THE PERSON DRESSED IN BLUE SEES HIM, THE
15 PERSON IN BLUE TAKES OFF WALKING, STARTS WALKING AWAY FROM
16 THE OFFICER. SERGEANT RODRIGUEZ HASN'T DONE ANYTHING AT THIS
17 POINT. HE'S JUST PULLED UP TO THE LOCATION, AND THE PERSON
18 IN BLUE STARTS WALKING AWAY, STARTS WALKING THROUGH THE
19 PARKING LOT.

20 SERGEANT RODRIGUEZ, HE GOES AFTER HIM. HE STARTS
21 WALKING AFTER HIM. HE CALLS OUT TO HIM. HE WHISTLES AT HIM.
22 HE SAYS, "COME HERE. I'D LIKE TO TALK TO YOU." THE
23 DEFENDANT, DIAMON FRIPP, IS THE PERSON WHO WAS DRESSED IN
24 BLUE THAT NIGHT. HE TURNED AROUND AND HE LOOKED AT SERGEANT
25 RODRIGUEZ, AND HE TURNED AROUND AND KEPT WALKING, KEPT

1 WALKING ACROSS THE PARKING LOT UNTIL HE CAME UP UPON A BLACK
2 TRUCK, AND HE WENT BEHIND THE BLACK TRUCK FOR A BRIEF PERIOD
3 OF TIME. THEN HE COMES BACK OUT FROM BEHIND THE BLACK TRUCK,
4 STARTS WALKING BACK TOWARDS SERGEANT RODRIGUEZ, AND HE SAYS,
5 "YOU GOT NOTHING ON ME. I DON'T HAVE ANY DRUGS ON ME." AS
6 SOON AS THE OFFICER PULLS UP, MR. FRIPP STARTS WALKING AWAY,
7 GOES BEHIND THE BLACK CAR, THE BLACK TRUCK, TURNS AROUND,
8 COMES BACK, AND THE FIRST THING HE SAYS IS, "YOU DON'T HAVE
9 ANYTHING ON ME. I'VE GOT NO DRUGS ON ME."

10 WELL, SERGEANT RODRIGUEZ HAS HIS WEAPON DRAWN AT THIS
11 POINT FOR OFFICER SAFETY. HE TAKES MR. FRIPP INTO CUSTODY
12 AND HE SEARCHES HIM, AND IN MR. FRIPP'S POCKETS HE FINDS A
13 COUPLE OF THINGS. HE FINDS \$594 IN CASH. HE ALSO FINDS SOME
14 BLACK ROCKS IN HIS POCKET. AND SERGEANT RODRIGUEZ IS OUT
15 THERE ALL BY HIMSELF AT THIS POINT, CALLS FOR BACKUP. BACKUP
16 ARRIVES.

17 DEPUTY MOONEY IS ONE OF THE PEOPLE WHO ARRIVED AS
18 BACKUP. DIAMON FRIPP WAS PLACED IN THE BACK OF THE PATROL
19 CAR THAT ARRIVES. SERGEANT RODRIGUEZ ASKED DEPUTY MOONEY TO
20 GO AHEAD AND SEARCH THE AREA BEHIND THE BLACK TRUCK THAT THE
21 DEFENDANT WENT BEHIND. DEPUTY MOONEY GOES BACK THERE, AND HE
22 FINDS A BAGGY FULL OF WHITE POWDER RIGHT BEHIND THE BLACK
23 TRUCK. SO DEPUTY MOONEY TAKES THIS BAG OF COCAINE, AND HE
24 BRINGS IT TO SERGEANT RODRIGUEZ. SERGEANT RODRIGUEZ HAS WHAT
25 THEY CALL A NIK KIT, AND BASICALLY IT'S A LITTLE KIT THAT

1 GIVES YOU -- LETS OFFICERS TEST SOMETHING IN THE FIELD TO SEE
2 IF IT MIGHT BE COCAINE. SO HE TESTS IT, AND IT TESTS
3 POSITIVE. SO HE THINKS IT MIGHT BE COCAINE.

4 SO SERGEANT RODRIGUEZ TELLS MR. FRIPP, "I'M GOING TO
5 CHARGE YOU WITH THIS." HE SHOWS HIM THE BAGGY. MR. FRIPP
6 SAYS, "I DON'T KNOW ANYTHING ABOUT THAT COCAINE." NO ONE HAS
7 TOLD MR. FRIPP ANYTHING ABOUT COCAINE YET. SERGEANT
8 RODRIGUEZ WENT TO STUDIO SEVEN TO INVESTIGATE A DISTURBANCE.
9 HE TRIED TO STOP MR. FRIPP TO TALK TO HIM ABOUT THE
10 DISTURBANCE. MR. FRIPP TOOK OFF WALKING. HE WALKED RIGHT
11 BEHIND THE BLACK TRUCK, CAME OUT AND SAID, "YOU GOT NOTHING
12 ON ME. I GOT NO DRUGS ON ME." NOW, THAT'S THE FIRST TIME
13 YOU'RE GOING TO HEAR ABOUT DRUGS IN THIS CASE FROM THE
14 DEFENDANT WHEN HE SAYS, "I DON'T HAVE ANY DRUGS ON ME."

15 THE FIRST TIME YOU'RE GOING TO HEAR ABOUT COCAINE IS
16 WHEN SERGEANT RODRIGUEZ SAYS, "I'M GOING TO CHARGE YOU WITH
17 WHAT'S IN THIS BAG," AND THE DEFENDANT SAYS, "I DON'T KNOW
18 ANYTHING ABOUT THAT COCAINE." NOW, SERGEANT RODRIGUEZ TOOK
19 THAT BAGGY OF COCAINE, TOOK IT TO EVIDENCE. IT WAS LOGGED IN
20 TO EVIDENCE, AND IT WAS SUBMITTED TO BE ANALYZED BY A DRUG
21 ANALYST WHO WORKS AT THE SHERIFF'S OFFICE. SHE RAN IT
22 THROUGH A TEST. SHE DID A COUPLE OF DIFFERENT TESTS ON IT.
23 SHE FOUND THAT IT WAS COCAINE. AFTER HER TESTS, SHE WEIGHED
24 IT, AND SHE FOUND THAT IT WAS - I WANT TO GET THIS RIGHT -
25 34.35 GRAMS OF COCAINE WHICH IS A LITTLE OVER AN OUNCE.

1 FORTY-FOUR DONALDSON CAMP ROAD IS WITHIN A HALF MILE OF A
2 SCHOOL. IT ALWAYS HAS BEEN, ALWAYS WILL BE.

3 LADIES AND GENTLEMEN, THOSE ARE THE FACTS OF THE CASE
4 THAT YOU'RE GOING TO HEAR, AND NOW THE JUDGE JUST TOLD YOU
5 AND I'M SURE YOU'RE GOING TO HEAR AGAIN THAT THE DEFENDANT
6 ENTERED THE COURTROOM TODAY AN INNOCENT MAN. HE REMAINS AN
7 INNOCENT MAN WHERE HE SITS, BUT THAT'S WHAT WE'RE HERE TO
8 TALK ABOUT TODAY. WE'RE HERE TO TALK ABOUT WHETHER OR NOT
9 THE EVIDENCE WILL LET HIM REMAIN A FREE MAN. THE EVIDENCE IN
10 THIS CASE WILL PROVE TO YOU BEYOND A REASONABLE DOUBT THAT
11 MR. FRIPP IS GUILTY. THANK YOU.

12 MS. JORDAN: GOOD MORNING. I'M KIMBERLY JORDAN. I'M
13 FROM THE PUBLIC DEFENDER'S OFFICE, AND MY CO-COUNSEL IS IAN
14 DEYSACH. WE REPRESENT DIAMON FRIPP ON THIS CHARGE. DIAMON
15 FRIPP HAS BEEN CHARGED WITH TRAFFICKING IN COCAINE, AS THE
16 JUDGE TOLD YOU, AND MR. BANNON HAS GIVEN YOU A RUNDOWN ON
17 WHAT THE STATE FEELS OCCURRED THAT NIGHT. BUT WHAT WE'D LIKE
18 TO ASK YOU IS TO PUT THE PIECES TOGETHER YOURSELF AND SEE IF
19 THIS EVIDENCE GIVEN YOU TODAY REALLY FOLLOWS THAT LINE.

20 MEMBERS OF THE JURY, WHAT THIS CASE IS ESSENTIALLY ABOUT
21 IS THAT DIAMON -- IS WHETHER OR NOT DIAMON POSSESSED THE BAG
22 OF COCAINE THAT WAS FOUND UNDER A PINE TREE. NOW, MAYBE IN A
23 REGULAR NEIGHBORHOOD FINDING DRUGS UNDER A PINE TREE IS KIND
24 OF ABSURD, BUT WE'RE NOT TALKING ABOUT A REGULAR NEIGHBORHOOD
25 RIGHT NOW. WE'RE TALKING ABOUT A NEW YEAR'S EVE PARTY AT A

1 POPULAR CLUB, STUDIO SEVEN.

2 APPROXIMATELY 2 A.M. ON A VERY COLD NEW YEAR'S EARLY
3 MORNING, THE BALL HAS ALREADY DROPPED, AND LIKE MANY PLACES
4 AND PLACES AROUND OUR COUNTRY DURING THAT TIME, THE PARTIES
5 ARE STILL GOING ON. THOUSANDS OF PEOPLE CELEBRATE NEW
6 YEAR'S, AND THERE'S LARGE PARTIES. EVEN THOUGH THIS CLUB IS
7 IN A SECLUDED DARK AREA OFF THE MAIN ROAD, THE PLACE WAS
8 ROCKING THAT NIGHT. THE PLACE IS PACKED. IT'S A BIG PARTY
9 NIGHT, ONE OF THE BIGGEST PARTIES OF THE YEAR. IT IS PACKED.
10 THE MUSIC IS STILL PLAYING, PROBABLY TOO LOUD FOR MOST OF US,
11 AND THE PARKING LOT IS JAMMED FULL. THERE'S CARS PARKED
12 EVERYWHERE.

13 NOW, OUTSIDE THE FRONT ENTRANCE OF THIS CLUB, A SECURITY
14 GUARD STANDS AT THE DOOR. A LINE OF PATRONS IS FORMING A
15 LINE TO GET IN THE CLUB, AND THE SECURITY GUARD IS DOING WHAT
16 SECURITY GUARDS DO: CHECKING PEOPLE IN. THE MUSIC IS
17 EXTREMELY LOUD THERE. THE DOORS ARE OPEN. LOUD MUSIC IS
18 EMANATING FROM THE DOOR. IT'S A PARTY; THE PLACE IS ROCKING.

19 ALSO STANDING OUTSIDE THAT DOOR IS DIAMON FRIPP. HE'S
20 STANDING THERE TALKING TO THE SECURITY GUARD. NOW, TO THIS
21 CLUB THERE'S LIKE ONE ENTRANCE INTO THE CLUB. IT'S A LONG
22 DIRT ROAD THAT DRIVES DOWN INTO THIS CLUB. IT'S THE SAME
23 DOWN -- IT COMES TO THE CLUB, TO THE PARKING LOT. IT'S ONE
24 ROAD IN AND ONE ROAD OUT, AND WE CAN ASSUME WITH ANYTHING --
25 ALL THE PARTIES THAT NIGHT THAT PEOPLE ARE COMING AND GOING

1 THROUGHOUT THE NIGHT. IT'S NEW YEAR'S. THAT'S WHAT PEOPLE
2 DO ON NEW YEAR'S.

3 ABOUT 2:08 THAT DARK EARLY MORNING, ANOTHER CAR PULLS
4 DOWN THE DRIVE. HEADLIGHTS APPROACHING, SHINING TOWARDS THE
5 CLUB ENTRANCE, BUT THIS CAR DOESN'T PULL TOWARDS THE PARKING
6 LOT. THIS CAR STOPS ABOUT 40 YARDS FROM THE FRONT DOOR. IT
7 STOPS. ABOUT THE LENGTH OF A FOOTBALL FIELD THE CAR STOPS.
8 LIGHTS SHINING INTO THE PATRONS AT THE DOOR.

9 OFFICER RODRIGUEZ SITS IN THAT CAR. HE HAS BEEN CALLED
10 FOR A RESPONSE. HE'S CALLED IN RESPONSE TO A CALL FOR A
11 DISTURBANCE. I WANT TO STOP RIGHT HERE FOR NOW, BUT KEEP
12 THIS PICTURE IN YOUR MIND AS THE EVIDENCE YOU'RE GIVEN
13 PROGRESSES. KEEP THIS PICTURE AND ADD TO IT WHAT YOU HEAR
14 COME FROM THE STAND. AT THE END OF THIS -- AT THE END OF
15 THIS, I WILL HAVE THE OPPORTUNITY TO TALK TO YOU AGAIN.

16 THE JUDGE RECENTLY ASKED YOU A QUESTION YESTERDAY DURING
17 QUALIFICATIONS: CAN YOU BE A FAIR AND IMPARTIAL JUROR? AND
18 YOUR ANSWER TO THAT QUESTION WAS YES, AND THAT'S WHY YOU'RE
19 HERE TODAY. AND TODAY A MAN SITS HERE, A MAN BELIEVING IN
20 THE OATH THAT YOU TOOK, A MAN BELIEVING IN THAT -- IS IT
21 GUILTY UNTIL PROVEN INNOCENT? NOW, THE JUDGE HAS TOLD YOU
22 OTHERWISE. THE STATE HAS TOLD YOU OTHERWISE. HE SITS THERE
23 AN INNOCENT MAN.

24 NOW, THE LAWS OF OUR LAND PROVIDE THAT ANY PERSON
25 CHARGED WITH A CRIME IS INNOCENT, INNOCENT UNTIL PROVEN

1 GUILTY BEYOND A REASONABLE DOUBT. A REASONABLE DOUBT HAS
2 BEEN THE SUBJECT OF MOVIES, BOOKS. WE'VE ALL HEARD THAT, BUT
3 WHAT IS THAT? WHAT DOES REASONABLE DOUBT MEAN? REASONABLE
4 DOUBT MEANS THAT THERE'S ENOUGH DOUBT THAT YOU HESITATE TO
5 ACT.

6 FOR EXAMPLE, SUPPOSE YOU'VE JUST HEARD THAT THE SCHOOL
7 BUS DRIVER WHO DRIVES YOUR KIDS TO SCHOOL -- SOMEONE HAS SAID
8 THAT THERE'S -- THAT THIS MAN TAKES A COUPLE OF SHOTS OF
9 VODKA IN THE MORNING BEFORE HE GETS BEHIND THE WHEEL. THE
10 SCHOOL BUS IS OUTSIDE HONKING FOR YOUR KIDS TO GET ON THE
11 BUS; YOU'RE THERE WITH YOUR CHILDREN. WOULD YOU HESITATE
12 BEFORE TRUSTING THAT BUS DRIVER TO DRIVE OFF WITH YOUR KIDS?
13 IF YOU WOULD THINK TWICE ABOUT LETTING YOUR CHILD DRIVE OFF
14 WITH THAT GUY BEHIND THE WHEEL, YOU JUST HAD A REASONABLE
15 DOUBT, AND HESITATION MEANS NOT GUILTY.

16 REMEMBER: THIS CASE IS ABOUT WHETHER DIAMON KNOWINGLY
17 POSSESSED THAT BAG OF COCAINE, AND THE STATE MUST PROVE IT TO
18 YOU BEYOND A REASONABLE DOUBT. ANY HESITATION MEANS THAT
19 YOU'VE LOOKED AT WHAT THE STATE HAS SAID, AND YOU SAY, "I
20 CAN'T BECAUSE IT'S NOT ENOUGH. I'M NOT COMFORTABLE WITH THE
21 EVIDENCE YOU HAVE GIVEN ME. I'M NOT COMFORTABLE HE'S GUILTY
22 WHEN ALL YOU'VE GIVEN ME IS THIS." AND I'M CONFIDENT THAT
23 THE EVIDENCE TODAY WILL SHOW YOU THIS MAN, DIAMON FRIPP, IS
24 NOT GUILTY.

25 MR. BANNON: JUDGE, I THINK WE NEED TO SEQUESTER SOME OF

1 THE WITNESSES.

2 THE COURT: IF THERE ARE ANY IN HERE. SEQUESTER JUST
3 MEANS SEND THEM OUT OF THE COURTROOM SO THEY CAN'T HEAR WHAT
4 ANYBODY ELSE SAYS.

5 MR. BANNON: THE STATE WOULD CALL SERGEANT RODRIGUEZ.

6 THE COURT: ALL RIGHT. SERGEANT RODRIGUEZ, COME AROUND.

7 SCOTT RODRIGUEZ, AFTER BEING DULY SWORN, TESTIFIED
8 AS FOLLOWS:

9 DIRECT EXAMINATION

10 BY MR. BANNON:

11 Q. WOULD YOU PLEASE STATE YOUR NAME, PLEASE?

12 A. SCOTT RODRIGUEZ.

13 Q. WHERE DO YOU WORK, SIR?

14 A. THE BEAUFORT COUNTY SHERIFF'S OFFICE.

15 Q. WERE YOU WORKING ON JANUARY 1ST OF 2009?

16 A. YES, I WAS.

17 Q. WHAT WERE YOU DOING THAT EVENING?

18 A. I WAS WORKING ROAD PATROL.

19 Q. OKAY. WHAT DOES THAT MEAN?

20 A. PATROLLING THE STREETS OF BEAUFORT COUNTY, NORTHERN
21 BEAUFORT COUNTY. I'M ALSO THE ROAD SUPERVISOR.

22 Q. AND SO YOU SUPERVISE OTHER DEPUTIES?

23 A. YES, I DO.

24 Q. AND DID YOU HAVE AN OPPORTUNITY TO GO TO 44 DONALDSON
25 CAMP ROAD THAT EVENING?

1 A. YES.

2 Q. AND IS THAT LOCATION IN BEAUFORT COUNTY?

3 A. YES, IT IS.

4 Q. WHY DID YOU GO OUT THERE?

5 A. I RECEIVED A CALL FROM DISPATCH IN REFERENCE TO A
6 DISTURBANCE.

7 Q. OKAY. AND DID THEY DESCRIBE -- DID THEY GIVE YOU ANY
8 DETAIL ABOUT THE DISTURBANCE?

9 A. THE DISTURBANCE WAS A MALE WEARING BLUE IN THE PARKING
10 LOT.

11 Q. NOW, I'D JUST LIKE TO TALK TO YOU REAL QUICK ABOUT SOME
12 OF THE GEAR THAT YOU CARRY WITH YOU. WHAT IS A NIK KIT?

13 A. A NIK KIT IS LIKE A RESTAURANT WET WIPE THAT YOU CLEAN
14 UP YOUR HANDS AFTER YOU EAT, BUT IT HAS A SWAB INSIDE WITH A
15 CHEMICAL REAGENT ON IT. AND WHEN YOU EXPOSE THAT TO COCAINE
16 OR YOU RUB COCAINE ON IT, IT WILL TURN A VIBRANT BLUE.

17 Q. OKAY. WERE YOU CARRYING SOME NIK KITS WITH YOU THAT
18 EVENING?

19 A. YES, WE HAD SOME.

20 Q. AND LET'S TALK ABOUT 44 DONALDSON CAMP ROAD. WHAT IS
21 THAT?

22 A. THAT IS THE STUDIO SEVEN NIGHTCLUB.

23 Q. AND THIS IS IN THE EARLY HOURS OF JANUARY 1ST, 2009?

24 A. YES.

25 Q. SO WAS THE NIGHTCLUB OPEN?

1 A. OH, YEAH.

2 Q. AND IS IT BUSY?

3 A. FROM WHAT I COULD TELL, THE PARKING LOT WAS FULL OF
4 VEHICLES, YES.

5 Q. COULD YOU HEAR MUSIC PLAYING?

6 A. YES.

7 Q. WAS IT LOUD?

8 A. YEAH.

9 Q. WERE YOU -- DID YOU GO OUT THERE BY YOURSELF?

10 A. YES, I DID.

11 Q. AND IF YOU GET A CALL FROM STUDIO SEVEN, DO YOU
12 TYPICALLY GO OUT THERE BY YOURSELF?

13 A. NO. NORMALLY IT'S TWO OR THREE OTHER VEHICLES WITH YOU.

14 Q. AND WHY IS THAT?

15 A. BECAUSE OF THE NATURE OF THE PARKING LOT AND NATURE OF
16 THINGS THAT HAPPEN OUT THERE: FIGHTS, SHOOTINGS, THINGS OF
17 THAT NATURE.

18 Q. OKAY. AND YOU SAID THE NATURE OF THE PARKING LOT.
19 COULD YOU DESCRIBE TO US WHAT THE PARKING LOT IS LIKE?

20 A. IT'S A -- IT'S BASICALLY DOWN IN A VALLEY, IT LOOKS
21 LIKE. THERE'S ONE WAY IN; YOU'VE GOT TO DRIVE IN. AND IT'S
22 APPROXIMATELY THE SIZE OF A FOOTBALL FIELD, BUT IT HAS A LEFT
23 PARKING LOT, A CENTER PARKING LOT, AND A RIGHT PARKING LOT
24 WITH A FENCE RIGHT DOWN THE LEFT SIDE.

25 Q. OKAY. SO WHEN YOU WERE -- WHEN YOU WENT TO STUDIO SEVEN

1 ON JANUARY 1ST, 2009, WHAT DID YOU SEE?

2 A. I PULLED INTO THE -- I CAME OFF THE DRIVE, AND AT THE
3 ENTRANCE TO THE PARKING LOT I STOPPED MY VEHICLE. FROM THERE
4 I HAD A CLEAR VIEW OF THE FRONT DOOR OF THE CLUB. I SAW THE
5 SECURITY GUARD STANDING, DEALING WITH A ROW OF FEMALES, AND
6 ONE OTHER MALE WITH HIS BACK TOWARDS ME.

7 Q. OKAY. WAS THE -- WHERE WAS THE MALE? WAS HE IN LINE
8 WITH THE FEMALES THAT YOU SAID?

9 A. NO, HE WASN'T. HE HAD HIS BACK TOWARDS ME. HE WAS
10 STANDING IN THE GRAVEL. HE WAS NOT ON THE CONCRETE PAD WHICH
11 WOULD BE WHERE PEOPLE LINE UP TO GET INTO THE CLUB.

12 Q. OKAY. AND HOW WAS THE MAN DRESSED?

13 A. HE HAD ON A BLuish JACKET/SHIRT ON. VERY BAGGY.

14 Q. AND SO WHAT HAPPENED NEXT?

15 A. I TOLD MY COMMUNICATION CENTER THAT I WAS THERE, AND I
16 STEPPED OUT OF MY VEHICLE.

17 Q. AND WHAT HAPPENED THEN?

18 A. WELL, BEFORE I STEPPED OUT OF MY VEHICLE, THE MALE
19 LOOKED OVER HIS RIGHT SHOULDER AT ME AND HE LOOKED AT MY
20 PATROL CAR, AND HE STARTED WALKING OFF TO THE LEFT.

21 Q. OKAY. AND WHERE DID HE GO?

22 A. TO THE LEFT PARKING LOT.

23 Q. OKAY. WHAT HAPPENED THEN?

24 A. I WALKED UP TO THE SECURITY GUARD AT THE FRONT DOOR.

25 Q. OKAY.

1 A. HE CONTINUED DEALING WITH THE FEMALE CUSTOMERS THAT WERE
2 ALL IN LINE, AND I LOOKED TO THE RIGHT OF HIM AND IN --
3 THERE'S DOUBLE-DOOR FOYER, AND THERE IS 12-BY-12 WINDOWS,
4 SMALL GLASS WINDOWS, AND THE OWNER OF THE NIGHTCLUB WAS
5 STANDING BEHIND THOSE WINDOWS, AND HE WAS POINTING AT THE
6 MALE IN BLUE THAT WAS WALKING AWAY.

7 MS. JORDAN: OBJECTION, YOUR HONOR. HEARSAY.

8 THE COURT: ALL RIGHT. GO AHEAD.

9 BY MR. BANNON:

10 Q. AND WHAT DID YOU DO NEXT?

11 A. I FOLLOWED THE MALE IN BLUE.

12 Q. AND WHAT WAS HE DOING WHEN YOU STARTED TO FOLLOW HIM?

13 A. HE WAS WALKING AWAY TOWARDS -- THE PARKING LOT ON THE
14 LEFT SIDE OF THE CLUB IS A U-SHAPE ALMOST. IT'S ALMOST A
15 CIRCLE, AND CARS ARE PARKED UP AGAINST LOGS THAT ARE LAID IN
16 THE CENTER, NOSE TO NOSE, ALMOST LIKE PARKING SPOTS. HE WAS
17 WALKING UP THAT CENTER AISLE OF THOSE PARKING -- OF THOSE
18 PARKED CARS.

19 Q. AND HOW FAR FROM HIM WERE YOU AT THIS POINT?

20 A. TWENTY CAR LENGTHS. TWENTY FEET.

21 Q. OKAY. DID YOU CALL TO HIM?

22 A. I CALLED. I WHISTLED. I YELLED. I SAID, "HEY, COME
23 HERE. CAN I TALK TO YOU?"

24 Q. NOW, YOU SAID THAT THERE WAS MUSIC PLAYING.

25 A. YES..

1 Q. WAS HE ABLE TO -- COULD HE HEAR YOU?

2 A. OH, HE HEARD ME. HE---

3 Q. HOW DO YOU KNOW THAT HE HEARD YOU?

4 A. HE TURNED AROUND AND LOOKED RIGHT AT ME.

5 Q. AND WHAT DID HE DO WHEN HE TURNED AROUND AND HE LOOKED
6 AT YOU?

7 A. HE TURNED BACK AROUND AND KEPT ON BETWEEN THE PARKED
8 CARS, A LITTLE BIT FASTER THOUGH.

9 Q. OKAY. WERE YOU ABLE TO SEE -- THE PERSON WHO WAS
10 DRESSED IN BLUE, WERE YOU ABLE TO SEE HIS FACE?

11 A. YES, WHEN HE TURNED AROUND AND LOOKED AT ME. CORRECT.

12 Q. AND DO YOU SEE THAT PERSON IN THE COURTROOM TODAY?

13 A. YES, I DO.

14 Q. AND COULD YOU PLEASE POINT HIM OUT?

15 A. HE'S SITTING RIGHT OVER HERE WITH THE BLACK-AND-WHITE
16 CHECKERBOARD SHIRT ON.

17 Q. WHAT DID YOU DO NEXT?

18 A. I PROCEEDED TO THE SAME GENERAL DIRECTION HE WAS HEADED,
19 BUT I WASN'T WALKING BETWEEN THE CARS. I WAS WALKING INTO --
20 ON THE PORTION OF THE DRIVEWAY WHERE CARS WOULD DRIVE IN
21 PARKING LOT. IT IS A DIRT ROAD PARKING LOT. THERE'S NO
22 MARKED SPOTS OR ANYTHING.

23 Q. OKAY. AFTER HE TURNS AROUND AND LOOKS AT YOU, DO YOU
24 CONTINUE TO CALL OUT TO HIM OR DO YOU JUST FOLLOW HIM?

25 A. HE KEPT ON GOING, AND I SAID, "SHERIFF'S OFFICE, STOP,"

1 OR, "STOP. SHERIFF'S OFFICE." I DON'T REMEMBER WHAT ORDER I
2 SAID IT IN.

3 Q. OKAY. AND DID HE STOP THEN?

4 A. NO.

5 Q. SO WHAT HAPPENED NEXT?

6 A. HE CUT ACROSS ONE OF THE PARKED CARS, CROSSED THE
7 SECTION WHERE CARS WOULD NORMALLY TRAVEL IN THE PARKING LOT,
8 AND WENT BEHIND A BLACK PICKUP TRUCK THAT WAS TO THE RIGHT OF
9 THE PARKING LOT.

10 Q. OKAY. AND ABOUT HOW FAR IS THAT BLACK PICKUP TRUCK FROM
11 WHERE YOU FIRST SAW THE DEFENDANT?

12 A. APPROXIMATELY 400 FEET.

13 MR. BANNON: AND NOW, YOUR HONOR, I'D LIKE PERMISSION
14 FOR SERGEANT RODRIGUEZ TO STEP DOWN FOR JUST A MOMENT.

15 THE COURT: HE CAN STEP DOWN.

16 BY MR. BANNON:

17 Q. NOW, SERGEANT, I WAS HOPING YOU WOULD DRAW FOR US WHAT
18 -- JUST TRY TO GIVE US AN IDEA WHAT THE PARKING LOT IS LIKE
19 WITH SOME OF THESE LANDMARKS THAT YOU'VE BEEN TALKING ABOUT.
20 LIKE WHERE IS THE TRUCK AND WHERE IS THIS ROW OF CARS AND
21 WHERE IS THE NIGHTCLUB?

22 A. OKAY. I DON'T DRAW WELL, SO... THIS WILL BE DONALDSON
23 CAMP ROAD COMING INTO THE NIGHTCLUB. THIS WOULD BE THE
24 NIGHTCLUB. THIS IS THE DOUBLE DOORS. THIS IS THE SECURITY
25 GUARD. THERE'S WOMEN STANDING IN LINE DOWN THIS WAY.

1 THERE'S AN OVERHANG RIGHT HERE SO PEOPLE DON'T GET WET.

2 I PARKED MY CAR APPROXIMATELY RIGHT HERE. THERE'S A
3 PUMP HOUSE RIGHT HERE, AND THERE'S A FENCE ALONG THIS SIDE OF
4 THE PUMP HOUSE THAT CURVES, AND THERE'S A COUPLE OF LOGS AND
5 STUFF HERE. THIS IS WHERE I PARKED MY CAR. THIS IS WHERE
6 MR. FRIPP WAS STANDING.

7 WHEN I STOPPED MY CAR, MR. FRIPP WALKED UNDER THIS
8 UNDER-HANG AND WENT TO THIS LEFT PARKING LOT IN THIS AREA.
9 THESE ARE THE LOGS THAT THE CARS WOULD BE PARKED... AND THE
10 CARS PARKED ALL ALONG THESE... THERE'S ALSO THE DRIVING PATH
11 WHERE THE CARS WOULD COME THROUGH AND LEAD BACK OUT. THIS IS
12 A PARKING SECTION RIGHT HERE. HERE IS A PATHWAY FOR CARS TO
13 COME AROUND TO CIRCLE RIGHT HERE, AND THERE'S CARS PARKED ALL
14 ALONG THESE SECTIONS AS WELL, INCLUDING UP HERE, OVER ON THE
15 SIDES HERE, THE BACK SECTION OVER HERE AS WELL. THIS IS
16 WHERE THE BLACK PICKUP TRUCK WAS ON THIS SIDE OF THE PARKING
17 LOT, AND THIS IS A MARSH AND WOODED AREA BACK HERE, AND
18 THERE'S ALSO CARS PARKED ALL ALONG THESE BACK SECTIONS AS
19 WELL, PRETTY MUCH EVERY CONCEIVABLE SPOT.

20 WHEN HE, MR. FRIPP, WENT THIS WAY, I WALKED TO THE
21 SECURITY GUARD, AND THEN I FOLLOWED HIM TO THIS PARKING LOT.
22 HE WENT BETWEEN THE CARS WHERE THESE LOGS ARE 'TIL HE GOT
23 HERE, AND THERE'S ACTUALLY A TREE RIGHT HERE. HE RAN BACK
24 BEHIND THIS PICKUP TRUCK RIGHT HERE, AND THAT'S WHERE I LOST
25 SIGHT OF HIM.

1 Q. OKAY. NOW, HOW IS THIS PICKUP TRUCK ORIENTED? IS THIS
2 THE FRONT OF IT OR...

3 A. I BELIEVE, YES, THAT'S THE FRONT OF IT FACING TOWARDS
4 THE DRIVING SECTION.

5 Q. OKAY. AND IS THERE -- ARE THERE CARS ON EITHER SIDE OF
6 IT?

7 A. THERE'S CARS ALL ALONG IT ALSO.

8 Q. OKAY. AND SO WHEN HE WENT BEHIND IT, IS THIS -- IS THIS
9 THE SIDE OF THE CAR? LIKE IT'S NOT TO THE REAR OF THE CAR.
10 IT'S JUST BEHIND THE CAR?

11 A. IT'S RIGHT BEHIND THE CAR. I'D BE ABLE TO SEE THROUGH
12 WINDOWS---

13 Q. OKAY.

14 A. ---LOOKING AT THE PICKUP TRUCK, AND WHEN I FOLLOWED HIM,
15 I WAS APPROXIMATELY HERE WHEN HE MADE IT BEHIND THE PICKUP
16 TRUCK.

17 Q. OKAY.

18 A. SO THIS IS HERE...

19 Q. ALL RIGHT. AND YOU SAID HE RAN BEHIND THE PICKUP TRUCK.

20 A. YES.

21 Q. DID YOU LOSE SIGHT OF HIM?

22 A. YES.

23 Q. ABOUT HOW LONG DID YOU LOSE SIGHT OF HIM FOR?

24 A. ABOUT TEN SECONDS.

25 Q. DID YOU HAVE A STOPWATCH WITH YOU?

1 A. I HAD MY WATCH, BUT I WASN'T LOOKING AT MY WATCH.

2 Q. AND SO ONCE HE GOES BEHIND THE TRUCK, WHAT HAPPENS NEXT?

3 A. HE COMES BACK OUT FROM BEHIND THE TRUCK.

4 Q. OKAY.

5 A. STARTS WALKING TOWARDS ME LIKE: I'M GOING THIS WAY NOW.

6 Q. AND NOW IS HE -- COULD YOU DRAW IN HERE WHICH WAY HE'S
7 WALKING TOWARDS YOU?

8 A. HE CAME BACK ON THE SAME SIDE HE WENT, AND HE CAME RIGHT
9 BACK TOWARDS ME, BUT HE LOOKED LIKE HE WANTED TO PASS ME ON
10 MY LEFT.

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

12 A. I DREW MY WEAPON.

13 Q. AND WHY DID YOU DO THAT?

14 A. I COULDN'T SEE HIS HANDS. IT BECOMES AN OFFICER SAFETY
15 ISSUE AT THAT POINT BECAUSE IF I CAN'T SEE HIS HANDS -- IF
16 THERE'S NOTHING IN HIS HANDS, HE CAN'T HURT ME WITH ANYTHING.

17 Q. AND SO YOU DREW YOUR GUN AND WHAT HAPPENED NEXT?

18 A. I ORDERED HIM TO THE GROUND.

19 Q. AND WHAT HAPPENED THEN?

20 A. HE DIDN'T COMPLY. HE SAID, "NO, IT'S COLD. NO, YOU GOT
21 NOTHING ON ME," ALL THAT.

22 Q. DID HE MENTION ANYTHING ABOUT DRUGS?

23 A. OH, YEAH. HE SAID---

24 MS. JORDAN: OBJECTION.

25 THE WITNESS: ---"I HAVE NO DRUGS."

1 MS. JORDAN: LEADING.

2 MR. BANNON: THAT'S NOT A LEADING QUESTION.

3 THE COURT: JUST KEEP GOING. IT IS LEADING, BUT HE'S
4 ALREADY ANSWERED.

5 BY MR. BANNON:

6 Q. HAD YOU MENTIONED ANYTHING ABOUT DRUGS THEN?

7 A. NO, I HADN'T.

8 Q. AND SO WHAT HAPPENED THEN?

9 A. THE OWNER OF THE CLUB CAME OUT, AND AS MR. FRIPP HEADED
10 BACK TO ME LIKE HE WAS SQUATTING -- HE WOULDN'T GO DOWN ON
11 THE GROUND. HE -- CAN I SHOW EVERYBODY? HE WAS SQUATTING
12 LIKE THIS. HE WOULDN'T GET ON THE GROUND. I'M TELLING HIM,
13 "LET ME SEE YOUR HANDS. LET ME SEE YOUR HANDS." HIS HANDS
14 ARE IN FRONT OF HIM STILL. THE OWNER OF THE CLUB STARTS
15 YELLING AT HIM, "YOU BETTER DO WHAT THE DEPUTY SAYS. YOU
16 BETTER DO WHAT THE DEPUTY SAYS."

17 HE FINALLY PUT HIS HANDS BEHIND HIS BACK, AND I WAS ABLE
18 TO GET ONE HANDCUFF ON HIM. I HOLSTERED MY WEAPON, AND I WAS
19 ABLE TO GET THE OTHER HANDCUFF ON HIM. AT THAT POINT ANOTHER
20 UNIT IS COMING ON THE WAY. YOU COULD SEE HIM COMING DOWN THE
21 ONLY ENTRANCE TO DONALDSON CAMP ROAD.

22 Q. OKAY. YOU CAN GO AHEAD AND RETAKE THE STAND. YOUR
23 HONOR, I WOULD LIKE TO HAVE THIS MARKED AS STATE'S EXHIBIT
24 NUMBER 5, AND I WOULD MOVE FOR IT TO BE ADMITTED INTO
25 EVIDENCE.

1 THE COURT: OKAY. THEY DON'T OBJECT.

2 (STATE'S EXHIBIT 5 WAS RECEIVED IN EVIDENCE.)

3 BY MR. BANNON:

4 Q. SO ONCE YOU GOT MR. FRIPP INTO HANDCUFFS, WHAT HAPPENED
5 THEN?

6 A. MR. FRIPP WAS IN HANDCUFFS. THE OWNER OF THE CLUB
7 TURNED AROUND AND HEADED BACK TO THE CLUB. ANOTHER UNIT
8 STARTED COMING DOWN THE DRIVEWAY AND PULLED UP BEHIND MY
9 PATROL CAR AT THE ENTRANCE OF THE DRIVEWAY.

10 Q. OKAY. WHO WAS IN THE PATROL CAR?

11 A. THAT WAS I BELIEVE OFFICER FERGUSON.

12 Q. OKAY. AND WHAT DID YOU DO WITH MR. FRIPP NEXT?

13 A. I TOLD FERGUSON TO BRING HIS CAR AROUND. HE HAD TO
14 DRIVE THROUGH THE WHOLE PARKING LOT, AND I PLACED MR. FRIPP
15 IN THE BACK OF OFFICER FERGUSON'S CAR.

16 Q. OKAY. AND COULD YOU DESCRIBE MR. FRIPP'S DEMEANOR AT
17 THIS POINT?

18 A. HE WAS SCREAMING, YELLING, CARRYING ON, CURSING, "YOU'RE
19 DIRTY, RODRIGUEZ. YOU GOT NOTHING," ALL TYPES OF STUFF LIKE
20 THAT.

21 Q. OKAY. DID YOU ASK HIM ANY QUESTIONS?

22 A. NO.

23 Q. SO WHAT HAPPENED THEN?

24 A. MORE UNITS RESPONDED. MOONEY RESPONDED AND DRAISON
25 (PHONETIC) RESPONDED ALSO.

1 Q. OKAY. AND WHO IS MOONEY?

2 A. HE'S A TRAFFIC TEAM MEMBER. HE'S ALSO A CANINE OFFICER.

3 Q. OKAY. DID YOU EVER SEARCH MR. FRIPP?

4 A. WHEN HE WAS AT -- BEFORE WE PLACED HIM IN THE CAR, BY
5 PROCEDURE WE SEARCH SOMEBODY.

6 Q. OKAY.

7 A. HE WAS UNDER ARREST AT THAT POINT IN MY EYES, SO WE
8 EMPTIED HIS POCKETS.

9 Q. AND WHAT DID YOU FIND?

10 A. IN HIS POCKET HE HAD JUST UNDER \$600 IN CASH, BUT HE HAD
11 THE BILLS CRUMPLED UP. IT WASN'T NEATLY FOLDED IN A BUNDLE.
12 IT WAS ALMOST LIKE YOU WERE GOING TO THROW THEM IN A GARBAGE
13 BAG. SOME OF THEM WERE MULTIPLES, BUT MOST OF THEM WERE
14 SINGLES.

15 Q. WERE THEY ALL -- WERE THEY ALL CRUMPLED INTO ONE BIG
16 WAD?

17 A. BASICALLY. THERE WERE ALSO SOME ROCKS IN HIS PANTS
18 POCKET.

19 Q. SO WHAT DID YOU DO WITH THESE ITEMS THAT YOU FOUND?

20 A. WELL, WE PLACED THEM ON THE TRUNK OF THE VEHICLE THAT HE
21 WAS IN.

22 Q. IS HE INSIDE THE VEHICLE?

23 A. WHEN WE'RE TAKING THE STUFF OUT OF HIS POCKETS? NO.

24 Q. OKAY. AND SO IF -- IF THIS IS THE VEHICLE, WHAT PART OF
25 THE VEHICLE DID YOU HAVE HIM UP AGAINST?

1 A. WELL, IF YOU OPEN THE BACK DOOR ON THE PASSENGER SIDE,
2 HE'S LEANING AGAINST THAT POST THAT WOULD HOLD UP THE ROOF.
3 SO HE'S LEANING AGAINST THAT PORTION, AND THE STUFF IS BEING
4 PLACED RIGHT TO THE TRUNK TO THE LEFT.

5 Q. OKAY. AND SO IF THIS IS -- IF THIS IS THE TRUNK, IT'S
6 JUST BEING PLACED RIGHT OVER HERE.

7 A. YES.

8 Q. OKAY. YOU SAID HE WAS -- YOU SAID IT WAS NEARLY \$600.
9 DO YOU REMEMBER THE EXACT AMOUNT?

10 A. 594, I BELIEVE.

11 Q. OKAY. AND DO YOU REMEMBER THE DENOMINATIONS?

12 A. NO, I DON'T.

13 Q. DO YOU REMEMBER -- WAS IT MORE THAN TEN BILLS?

14 A. DEFINITELY MORE THAN TEN BILLS.

15 Q. AND SO WHEN YOU PUT THESE ITEMS ON THE HOOD OF THE
16 PATROL VEHICLE, WHAT HAPPENS THEN?

17 A. WE PLACED THEM ON THE TRUNK OF THE CAR, AND MR. FRIPP
18 LEANS OVER AND TRIES TO GATHER THE STONES UP THAT WE TOOK OUT
19 OF HIS POCKET THAT WERE ON THE TRUNK OF THE CAR.

20 Q. WASN'T HE IN HANDCUFFS?

21 A. YES, HE WAS.

22 Q. WELL, HOW DID HE TRY TO GATHER UP THE STONES?

23 A. HE LEANED HIS ENTIRE BODY OVER TRYING TO GATHER THOSE UP
24 WITH HIS MOUTH.

25 Q. AND DID HE GATHER THE STONES INTO HIS MOUTH?

1 A. NO, WE RESTRAINED HIM.

2 Q. AND SO AFTER YOU SEARCHED MR. FRIPP, WHAT DID YOU DO?

3 A. HE WAS PLACED IN THE BACK OF FERGUSON'S VEHICLE, AND I
4 ADVISED MOONEY THAT HE HAD RAN BETWEEN THE CARS AND BEHIND
5 THE BLACK TRUCK AND CAN YOU GUYS SEARCH THE AREA.

6 Q. OKAY. AND TO YOUR KNOWLEDGE, DID OFFICER MOONEY SEARCH
7 THE AREA?

8 A. YES, HE DID.

9 Q. AND TO YOUR KNOWLEDGE, DID HE FIND ANYTHING?

10 A. YES, HE FOUND A BAGGY. HE ACTUALLY CALLED OUT TO ME,
11 "SARGE, I FOUND SOMETHING," AND HE HANDED ME A BAGGY OF A
12 WHITE POWDERY SUBSTANCE.

13 Q. I'D LIKE TO SHOW YOU WHAT HAS BEEN MARKED AS STATE'S
14 EXHIBIT NUMBER 1. CAN YOU TAKE A LOOK AT THAT FOR ME?

15 A. (THE WITNESS COMPLIES.)

16 Q. DO YOU RECOGNIZE IT?

17 A. YES, I DO.

18 Q. AND WHAT'S IN STATE'S EXHIBIT NUMBER 1?

19 A. STATE'S EXHIBIT -- THIS BAG IS THE ROCKS AND THE WHITE
20 BAGGY THAT WAS HANDED TO ME.

21 Q. AND ARE THOSE TWO ITEMS -- WELL, LET'S TALK ABOUT THE
22 ROCKS FIRST. ARE THE ROCKS IN THE SAME OR SUBSTANTIALLY THE
23 SAME CONDITION AS WHEN YOU FOUND THEM ON MR. FRIPP?

24 A. YES.

25 Q. AND THE BAGGY OF THE WHITE POWDER, IS THAT IN THE SAME

1 OR SUBSTANTIALLY THE SAME CONDITION AS WHEN DEPUTY MOONEY
2 HANDED IT TO YOU?

3 A. YES.

4 Q. AND WHEN DEPUTY MOONEY HANDED YOU THE BAGGY OF THE WHITE
5 POWDER, WHAT DID YOU DO WITH IT?

6 A. I TOOK IT, AND I SAID, "I'M CHARGING YOU WITH THIS."

7 Q. AND DID YOU NIK TEST IT?

8 A. OH, YES.

9 Q. AND WAS THAT BEFORE YOU DECIDED TO INFORM MR. FRIPP THAT
10 YOU WERE GOING TO CHARGE HIM OR WAS THAT AFTER?

11 A. I BELIEVE IT WAS BEFORE.

12 Q. OKAY. AND SO WHEN YOU NIK TESTED IT, WHAT WERE THE
13 RESULTS?

14 A. THE SAMPLE THAT WAS PLACED ON THE NIK TEST SWAB TURNED A
15 VIBRANT BLUE.

16 Q. AND WHAT DOES THAT MEAN?

17 A. I OPENED THE INITIAL BAGGY THAT WAS FOUND IN THE WOODS.
18 I TOOK A SAMPLE OUT WITH THE POINT OF MY KNIFE, AND I APPLIED
19 IT TO THE NIK KIT. AND THE NIK KIT IS A WHITE SWAB, LIKE A
20 COTTON-LOOKING SWAB. I DO NOT KNOW WHAT THE FIBER IS
21 EXACTLY. BUT ONCE COCAINE TOUCHES THAT SWAB, IT TURNS BLUE.

22 Q. OKAY. AND THE SUBSTANCE THAT YOU PUT ON TO THIS NIK
23 KIT, IT TURNED BLUE?

24 A. YES.

25 Q. AND SO AT THAT POINT IS THAT WHEN YOU TOLD MR. FRIPP

1 THAT YOU WERE GOING TO CHARGE HIM WITH THE CONTENTS OF THE
2 BAG?

3 A. I SAID, "YOU'RE GETTING CHARGED WITH THIS."

4 Q. OKAY. AND WHERE WAS HE AT THIS TIME?

5 A. IN THE BACK SEAT OF THE PATROL VEHICLE STILL.

6 Q. AND WHAT DID HE SAY?

7 A. HE SAID, "I DON'T KNOW ANYTHING ABOUT THAT COCAINE."

8 Q. AT THAT POINT HAD YOU -- HAD YOU MENTIONED COCAINE TO
9 HIM AT ALL?

10 A. NO.

11 Q. AND SO MR. FRIPP TELLS YOU, "I DON'T KNOW ANYTHING ABOUT
12 THAT COCAINE." SO WHAT DID YOU DO?

13 A. I BELIEVE I TOLD HIM, "WHO SAID ANYTHING ABOUT COCAINE?"

14 Q. AND AT THAT POINT WHAT HAPPENED?

15 A. HE SAID, "I DON'T KNOW ANYTHING ABOUT THAT WHITE
16 POWDER."

17 Q. AND AT THIS POINT COULD YOU DESCRIBE THE DEFENDANT'S
18 Demeanor?

19 A. SCREAMING, YELLING, HOLLERING. HE WAS ONLY TAKING A
20 BREAK TO PRETTY MUCH CATCH HIS BREATH TO CONTINUE YELLING AND
21 SCREAMING.

22 Q. AND NOW THE ROCKS AND THE BAGGY OF THE WHITE POWDER,
23 WHAT DID YOU DO WITH THESE ITEMS?

24 A. WELL, I FIELD-TESTED THE ROCKS ON THE SCENE AS WELL, AND
25 THEY DIDN'T COME UP POSITIVE FOR ANYTHING. THE BAGGY WITH

1 THE WHITE POWDER ALONG WITH THE ROCKS, BECAUSE I DIDN'T KNOW
2 WHAT THEY WERE, WERE TURNED IN FOR ANALYSIS.

3 Q. AND WHAT DO YOU DO WHEN YOU TURN ITEMS IN TO BE TESTED?

4 A. FOR DRUGS, THEY GO INTO A BEST BAG WHICH WOULD BE THIS
5 COLORED BAG BACK HERE. IT HAS THE ACTUAL SERIAL NUMBER AND A
6 GLUE-TYPE SEAL THAT SEALS THE BAG TOTALLY SHUT.

7 Q. OKAY. AND SO DID YOU USE A BEST BAG IN THIS CASE?

8 A. YES.

9 Q. AND WHAT DID YOU DO WITH THE DRUGS?

10 A. THEY WERE TAKEN TO THE DRUG DROP BOX.

11 Q. OKAY. AND WERE THEY INSIDE THE BEST BAG?

12 A. YES.

13 Q. AND ARE BEST BAGS INDIVIDUALLY NUMBERED?

14 A. YES.

15 Q. AND DO YOU KNOW WHAT NUMBER BEST BAG YOU USED IN THIS
16 CASES?

17 A. YES, I DO. CHARLIE 001319.

18 Q. AND DOES THAT BEST BAG HAVE YOUR HANDWRITING ON IT?

19 A. YES, IT DOES.

20 Q. AND NOW THE DRUG DROP BOX, WHAT IS THAT?

21 A. THAT IS A SECURE BOX INSIDE THE EVIDENCE LOCATION.

22 Q. OKAY. AND DID YOU PUT IT INTO THE BOX PERSONALLY?

23 A. YES.

24 Q. OKAY. AND HAD -- TO YOUR KNOWLEDGE, ONCE THE -- ONCE

25 THE BAGGY AND THE ROCKS CAME INTO YOUR POSSESSION, DID ANYONE

1 TAMPER WITH THEM IN ANY WAY?

2 A. NOBODY HAS ACCESS TO IT. NOBODY CAN TAMPER WITH IT
3 OTHER THAN IT GOES TO THE LAB. THAT'S THE ONLY TIME IT GETS
4 HANDLED.

5 Q. OKAY. I'D LIKE YOU TO TAKE A LOOK AT WHAT HAS BEEN
6 MARKED AS STATE'S EXHIBIT NUMBER 3. DO YOU RECOGNIZE IT?

7 A. YES.

8 Q. AND WHAT IS IT?

9 A. THAT IS AN AERIAL PHOTO OF BEAUFORT COUNTY.

10 Q. AND DO YOU KNOW WHAT PART OF BEAUFORT COUNTY?

11 A. I BELIEVE THAT'S BURTON. ACTUALLY 44 DONALDSON CAMP
12 ROAD IS IN THE CENTER OF IT.

13 Q. AND IS IT A FAIR AND ACCURATE DEPICTION OF THAT AREA?

14 A. YES.

15 Q. AND IS THERE A SHADED AREA?

16 A. YES, THERE IS.

17 Q. AND DO YOU KNOW ABOUT HOW FAR A HALF MILE IS FROM 44
18 DONALDSON CAMP ROAD?

19 A. AS PER THE SHADED AREA? YES.

20 Q. IS THAT A FAIR AND ACCURATE DEPICTION OF A HALF MILE
21 FROM DONALDSON CAMP ROAD?

22 A. YES.

23 MR. BANNON: YOUR HONOR, THE STATE WOULD MOVE TO ADMIT
24 STATE'S EXHIBIT NUMBER 3.

25 THE COURT: ALL RIGHT.

1 MS. JORDAN: NO OBJECTION.

2 THE COURT: OKAY.

3 MR. BANNON: PERMISSION TO PUBLISH TO THE JURY?

4 THE COURT: YOU CAN DO IT.

5 (STATE'S EXHIBIT 3 WAS RECEIVED IN EVIDENCE.)

6 BY MR. BANNON:

7 Q. NOW, SERGEANT RODRIGUEZ, IS THERE A -- IS THERE A BLUE
8 DOT?

9 A. YES, THERE IS.

10 Q. AND WHAT LOCATION IS DEPICTED BY THE BLUE DOT?

11 A. THAT IS STUDIO SEVEN NIGHTCLUB.

12 Q. AND IS THERE A GREEN DOT?

13 A. YES, THERE IS.

14 Q. AND TO YOUR KNOWLEDGE, WHAT DOES THE GREEN DOT
15 REPRESENT?

16 A. THAT IS THE ELEMENTARY SCHOOL, BROAD RIVER ELEMENTARY I
17 BELIEVE IT IS.

18 MR. BANNON: OKAY. NO FURTHER QUESTIONS, YOUR HONOR.

19 CROSS-EXAMINATION

20 BY MS. JORDAN:

21 Q. SORRY. GIVE ME A SECOND. GOOD MORNING.

22 A. GOOD MORNING.

23 Q. OFFICER RODRIGUEZ, YOU SAID YOU RESPONDED TO A DISPATCH
24 TO STUDIO SEVEN AT ABOUT 2:08 JANUARY 1ST. CORRECT?

25 A. I DON'T REMEMBER THE TIME ENTIRELY, BUT, YEAH, ABOUT

1 2:00 IN THE MORNING.

2 Q. BUT YOUR REPORT WOULD GIVE THE ACCURATE TIME; IS THAT
3 CORRECT?

4 A. CORRECT.

5 Q. RIGHT. AND DO YOU NEED YOUR REPORT TO SEE THE TIME ON
6 THE INCIDENT REPORT?

7 A. NO, I'LL TAKE YOUR WORD FOR IT, MA'AM.

8 Q. 2:08.

9 A. OKAY.

10 Q. AND YOU TESTIFIED HERE THAT YOU GOT A REPORT OF A BLACK
11 MALE WEARING BLUE. IS THAT CORRECT?

12 A. CORRECT.

13 Q. ISN'T IT TRUE THAT DISPATCH TOLD YOU THAT THE SUBJECT
14 WAS A BLACK MALE WEARING BLUE SWEATS?

15 A. I DON'T RECALL WHAT DISPATCH TOLD ME, MA'AM.

16 Q. YOU'RE AWARE THAT DISPATCH DOES KEEP A RECORDED LOG.

17 A. YES.

18 Q. IF YOU'D SEEN A RECORDED LOG, WOULD THAT REFRESH YOUR
19 MEMORY?

20 A. NO, I HAVEN'T SEEN IT, BUT I'D LIKE TO SEE IT.

21 MS. JORDAN: PERMISSION TO APPROACH, YOUR HONOR?

22 MR. BANNON: CAN I TAKE A LOOK AT IT?

23 MS. JORDAN: OH, SORRY.

24 THE WITNESS: WHICH ONE ARE YOU TALKING ABOUT?

25 BY MS. JORDAN:

1 Q. THE CALL ON THE TOP OR THE TWO -- THE CALL THAT WAS SENT
2 FROM DISPATCH TO YOU TO YOUR... CAN YOU READ WHAT THE CALL
3 SAYS?

4 A. "REFERENCE TO A BLACK MALE WEARING BLUE SWEATS THAT IS
5 AT THE FRONT DOOR ACTING VERY BELLIGERENT AND REFUSING TO
6 LEAVE. UNKNOWN 32'S."

7 Q. SO THAT WAS THE DISPATCH CALL THEN TO YOU; CORRECT?

8 A. OKAY.

9 Q. NOW, YOU DON'T HAVE ANY ARTICLES OF CLOTHING IN EVIDENCE
10 IN THIS CASE, DO YOU?

11 A. NO.

12 Q. YOU NEVER SECURED THE CLOTHING MR. FRIPP WAS WEARING ON
13 THAT JANUARY 1ST NIGHT.

14 A. NO.

15 Q. YOU TESTIFIED YOU RECEIVED A REPORT OF A DISTURBANCE IN
16 THE PARKING LOT ON STUDIO SEVEN. IS THAT CORRECT?

17 A. THAT'S THE REPORT THAT YOU HANDED TO ME, YES.

18 Q. AND ISN'T IT TRUE THAT DISPATCH TOLD YOU THAT IT WAS A
19 BLACK MALE WEARING BLUE SWEATS ACTING BELLIGERENT AT THE
20 FRONT DOOR REFUSING TO LEAVE?

21 A. FROM WHAT THAT PRINTOUT SAYS, THAT'S WHAT THEY
22 DISPATCHED, YES.

23 Q. WHEN YOU PARKED, YOU SAID YOU PARKED ABOUT 40 YARDS AWAY
24 FROM THE FRONT DOOR?

25 A. CORRECT.

1 Q. IS THAT RIGHT? AND YOU DIDN'T SEE ANY DISTURBANCE GOING
2 ON AT THAT TIME, DID YOU?

3 A. NO.

4 Q. IS THAT CORRECT? AND YOU DON'T SEE ANY FIGHTING; RIGHT?

5 A. NO.

6 Q. YOU DON'T HEAR ANY YELLING; RIGHT?

7 A. NO.

8 Q. AND FROM THAT DISTANCE YOU TESTIFIED THAT YOU -- THAT

9 MR. FRIPP LOOKED AT YOU AND WALKED AWAY. IS THAT CORRECT?

10 A. YES, HE LOOKED OVER HIS RIGHT SHOULDER AT MY PATROL

11 VEHICLE AND WALKED AWAY TO THE LEFT.

12 Q. NOW, AT THAT TIME YOU NEVER TOLD HIM, "STOP. POLICE."

13 CORRECT?

14 A. CORRECT.

15 Q. AND YOU NEVER AT THAT TIME -- YOU NEVER TALKED WITH THE

16 SECURITY GUARD AT THAT TIME. CORRECT?

17 A. AT THAT TIME I WAS STILL IN MY VEHICLE, MA'AM. NO.

18 Q. OKAY. WHEN YOU GOT OUT OF YOUR VEHICLE, YOU WENT TO THE

19 FRONT ENTRANCE. CORRECT?

20 A. CORRECT.

21 Q. AND YOU NEVER TALKED TO A SECURITY GUARD THERE AT THE

22 DOOR; CORRECT?

23 A. NO.

24 Q. AND THAT TIME YOU NEVER TALKED TO THE OWNER OF THE CLUB;

25 CORRECT?

1 A. CORRECT.

2 Q. NEVER SPOKE TO HIM. AND YOU NEVER TALKED TO ANY OF THE
3 PATRONS. YOU SAID THERE WAS A LINE OF FEMALES STANDING IN
4 LINE. YOU NEVER TALKED TO ANY OF THOSE PEOPLE IN LINE;
5 CORRECT?

6 A. NO, MA'AM.

7 Q. ISN'T IT TRUE THAT THE OWNER WAS STANDING INSIDE THE
8 CLUB FOYER BEHIND THE WINDOW?

9 A. YES.

10 Q. OFFICER RODRIGUEZ, DIDN'T YOU SAY YOU LOOKED INSIDE THE
11 ENTRYWAY AND THE OWNER POINTED OUT? CORRECT?

12 A. YES.

13 Q. NOW, IN FACT, THE OWNER WAS INSIDE THE BUILDING. RIGHT?

14 A. HE WAS INSIDE THAT FOYER.

15 Q. THAT'S INSIDE THE BUILDING. THE FOYER IS INSIDE THE
16 BUILDING; CORRECT?

17 A. YES.

18 Q. AND, IN FACT, THE OWNER WAS BEHIND A WINDOW IN THE
19 FOYER? CORRECT?

20 A. YES.

21 Q. SO HE WAS NOT OUTSIDE THE BUILDING; CORRECT?

22 A. NO.

23 Q. HE WAS INSIDE; CORRECT?

24 A. CORRECT.

25 Q. I'D LIKE YOU TO TAKE A LOOK AT WHAT I HAVE MARKED AS A

1 DEFENSE EXHIBIT FOR IDENTIFICATION PURPOSES ONLY. MAY I
2 APPROACH, YOUR HONOR?

3 THE COURT: SURE.

4 MR. BANNON: CAN I SEE IT?

5 MS. JORDAN: I'M SORRY.

6 BY MS. JORDAN:

7 Q. OFFICER, DO YOU RECOGNIZE THAT PHOTO?

8 A. YES.

9 Q. AND IS THIS -- YOU TOOK THAT PHOTO; CORRECT?

10 A. CORRECT.

11 Q. AND THIS IS THE WINDOW YOU WERE TALKING ABOUT? IS THAT
12 CORRECT?

13 A. THAT IS THE WINDOW I'M TALKING ABOUT RIGHT HERE.

14 Q. OKAY. AND THIS PHOTO WAS TAKEN DURING THE DAY THOUGH.
15 CORRECT?

16 A. YES.

17 Q. AND THIS INCIDENT THAT WE'RE TALKING ABOUT TODAY
18 HAPPENED IN THE DARK NIGHT. IS THAT CORRECT?

19 A. CORRECT.

20 Q. AND THE CLUB ENTRANCE, YOU'VE TESTIFIED BEFORE THAT THE
21 LIGHT -- IT'S NOT VERY BRIGHT THERE. IT'S NOT---

22 A. IN THE PARKING LOT, NO, THERE ISN'T.

23 Q. IN FACT, YOU'VE TESTIFIED THAT THE -- THERE WAS ONLY ONE
24 LIGHT IN THE FAR LEFT CORNER OF THE PARKING LOT. ISN'T THAT
25 CORRECT?

1 A. TO MY KNOWLEDGE ON THAT NIGHT, YES, MA'AM, IN THE
2 PARKING LOT.

3 Q. ALL RIGHT. AND THE MUSIC AT THE CLUB THAT NIGHT WAS
4 EXTREMELY LOUD; CORRECT?

5 A. THERE WAS MUSIC PLAYING, YES.

6 Q. WELL, IT WAS SO LOUD THAT IT WAS HARD TO HEAR OUTSIDE
7 THE BUILDING; CORRECT?

8 A. I WOULDN'T SAY IT WAS HARD TO HEAR OUTSIDE THE BUILDING,
9 BUT IT WAS LOUD.

10 Q. WELL, YOU FELT YOU HAD TO YELL TO GET MR. FRIPP'S
11 ATTENTION. ISN'T THAT CORRECT?

12 A. OH, YEAH.

13 Q. AND HE DID STOP WHEN YOU YELLED AT HIM; CORRECT?

14 A. CORRECT.

15 Q. AND HE LOOKED AT YOU; CORRECT?

16 A. CORRECT.

17 Q. AND HE TURNED AWAY FROM YOU; CORRECT?

18 A. CORRECT.

19 Q. YOU NEVER TOLD HIM TO STOP AT THAT POINT; CORRECT?

20 A. NOT AT THAT POINT, NO, MA'AM.

21 Q. OKAY. YOU SAID, "I WANT TO TALK TO YOU." CORRECT?

22 A. I SAID, "HEY. COME HERE. CAN I TALK TO YOU?" I EVEN
23 WHISTLED.

24 Q. YOU JUST WANTED TO TALK TO HIM; CORRECT?

25 A. YEAH.

1 Q. SO YOU NEVER SAID, "STOP. POLICE. STOP." ISN'T THAT
2 RIGHT?

3 A. NOT AT THAT POINT, MA'AM.

4 Q. ALL RIGHT. NOW, WHEN MR. FRIPP WALKED AWAY, THEN YOU
5 SAID, "SHERIFF'S OFFICE. STOP." CORRECT?

6 A. CORRECT.

7 Q. SO THIS TIME HE WAS ALREADY FURTHER AWAY FROM YOU?
8 ISN'T THAT RIGHT?

9 A. YES.

10 Q. AND I THINK YOU SAID IT WAS 20 CAR LENGTHS? ISN'T THAT
11 CORRECT?

12 A. YES.

13 Q. SO THAT WOULD BE ABOUT 150, 200 FEET, MORE THAN HALF A
14 FOOTBALL FIELD MAYBE?

15 A. CLOSE TO IT.

16 Q. AND WE TALKED ABOUT THIS. ACCORDING TO YOU, THERE WAS
17 ONLY ONE LIGHT IN THE PARKING LOT. CORRECT?

18 A. YES.

19 Q. IN FACT, THAT'S ALL THE WAY IN THE BACK FAR LEFT CORNER
20 IN THE LEFT PARKING LOT.

21 A. FROM WHAT I BELIEVE, YES, MA'AM.

22 Q. THAT WOULD BE THAT WAY; RIGHT?

23 A. LEFT.

24 Q. AND AT THIS TIME THERE WERE ALREADY CARS BLOCKING YOU
25 FROM HIM ALL THE WAY ACROSS THE PARKING LOT. CORRECT?

1 A. THERE WERE CARS ALL OVER THAT PARKING LOT; YES, MA'AM.

2 Q. AND MR. FRIPP COMES TOWARDS YOU AT ABOUT -- IN ABOUT 10
3 SECONDS AFTER LOSING HIM. CORRECT?

4 A. EXCUSE ME?

5 Q. MR. FRIPP COMES TOWARD YOU -- COMES TO YOU IN ABOUT 10
6 SECONDS? ISN'T THAT CORRECT? ISN'T THAT WHAT YOU TESTIFIED?
7 TEN SECONDS HE TURNED---

8 A. AFTER HE WENT BEHIND THE TRUCK?

9 Q. ABOUT 10 SECONDS?

10 A. APPROXIMATELY 10 SECONDS, MA'AM.

11 Q. IT WAS EXTREMELY COLD THAT NIGHT. FOR THE LOW COUNTRY
12 IT WAS COLD; CORRECT?

13 A. UH-HUH.

14 Q. AND YOU PROBABLY AGREE MAYBE IT WAS IN THE THIRTIES;
15 CORRECT?

16 A. I'D SAY IT WAS IN THE THIRTIES, 32, 33.

17 Q. MR. FRIPP HAD ON A JACKET OR A SHIRT?

18 A. A BAGGY BLUE SHIRT OR JACKET.

19 Q. AND YOUR TESTIMONY WAS HE HAD HIS HANDS IN HIS POCKETS
20 AND HE HAD---

21 A. I COULDN'T SEE HIS HANDS. THEY WERE EITHER IN HIS PANTS
22 POCKETS OR HIS JACKET POCKET; I COULDN'T TELL.

23 Q. OKAY. AND THEN YOU'RE TELLING US HE WALKED TOWARDS YOU
24 AT THAT POINT. CORRECT?

25 A. AFTER HE EXITED THE BACK OF THE TRUCK, YES, MA'AM.

1 Q. HE WALKED TOWARDS YOU.

2 A. YES.

3 Q. A COP. A POLICE OFFICER.

4 A. YES.

5 Q. HE WALKED TOWARDS YOU WITH HIS HANDS HIDDEN; CORRECT?

6 A. YES.

7 Q. AND ARE YOU SURE HE EVEN HEARD YOU TALKING?

8 A. OH, I'M POSITIVE HE HEARD ME TALKING.

9 Q. AND ISN'T IT CORRECT YOU THOUGHT HE WAS GOING TO WALK
10 RIGHT PAST YOU?

11 A. YES.

12 Q. WAS HE IN THE LIGHT, THAT LIGHT YOU TOLD US ABOUT
13 BEFORE?

14 A. IT WAS SHINING FROM THE LEFT SIDE OF THE PARKING LOT,
15 YES.

16 Q. AND ARE YOU SURE YOU SAW HIS HANDS IN HIS POCKETS AT
17 THAT POINT?

18 A. I COULDN'T SEE HIS HANDS AT THAT POINT.

19 Q. OKAY.

20 A. I COULDN'T TELL YOU WHAT POCKET THEY WERE IN.

21 Q. OKAY. OKAY. YOU DIDN'T HAVE A FLASHLIGHT ON; CORRECT?

22 A. ACTUALLY, I DIDN'T HAVE TIME TO GRAB MY FLASHLIGHT FROM
23 THE CAR.

24 Q. HE WAS WALKING BACK TOWARDS YOU FROM THE -- BACK TOWARDS
25 THE CLUB FROM THE DARK. IS THAT CORRECT?

1 A. HE WAS WALKING BACK TOWARDS ME FROM THE BACK OF THE
2 TRUCK.

3 Q. BACK TOWARDS THE CLUB? THAT DIRECTION?

4 A. BACK TOWARDS THE PATH. THE CLUB IS IN THAT DIRECTION;
5 YES, MA'AM.

6 Q. AND AFTER HE GOT CLOSER TO YOU, HE DID SHOW YOU HIS
7 HANDS; CORRECT?

8 A. AFTER I DREW MY SERVICE WEAPON, YES, MA'AM.

9 Q. AND HE SAID, "YOU GOT NOTHING ON ME. I DON'T HAVE ANY
10 DRUGS ON ME." CORRECT?

11 A. CORRECT.

12 Q. BASICALLY TOLD YOU TO LEAVE HIM ALONE; RIGHT?

13 A. HE BASICALLY TOLD ME I HAD -- "YOU GOT NOTHING ON ME.
14 YOU HAVE NO DRUGS ON ME."

15 Q. WELL, BASICALLY LEAVE ME ALONE? YOU GOT NOTHING ON ME;
16 CORRECT?

17 MR. BANNON: OBJECTION. CALLS FOR SPECULATION.

18 THE COURT: WELL, SHE'S JUST -- SHE CAN DO THAT ON
19 CROSS-EXAM ONCE.

20 BY MS. JORDAN:

21 Q. SO AT THAT POINT YOU START ORDERING HIM TO THE GROUND.

22 A. "LET ME SEE YOUR HANDS. GET TO THE GROUND." YES.

23 Q. SO GET DOWN. CORRECT?

24 A. CORRECT.

25 Q. AND YOU'RE POINTING YOUR GUN AT HIM AT THIS POINT.

1 A. YES, I AM.

2 Q. AND YOU TAKE HIM DOWN.

3 A. NO---

4 Q. CORRECT?

5 A. ---I DIDN'T TAKE HIM DOWN TO THE GROUND.

6 Q. WELL, NOT PHYSICALLY, BUT YOU ORDER HIM DOWN. SORRY.

7 A. I ORDER HIM DOWN TO THE GROUND, YES.

8 Q. AND AT ABOUT 2:11 MR. FRIPP IS ARRESTED; CORRECT?

9 A. CORRECT.

10 Q. YOU PUT HANDCUFFS ON HIM; CORRECT?

11 A. YES.

12 Q. AND YOU ARREST HIM FOR FLEEING TO EVADE ARREST OR

13 DETENTION; CORRECT?

14 A. YES, MA'AM.

15 Q. AND YOU WERE THE OFFICER THAT TESTIFIED AT A TRIAL

16 CONCERNING THAT; CORRECT?

17 A. CORRECT.

18 MR. BANNON: OBJECTION.

19 THE COURT: YOU DON'T GET INTO THAT. WE SAID YOU DON'T

20 GO INTO IT.

21 MS. JORDAN: OKAY.

22 THE COURT: GO ON TO SOMETHING ELSE. THEY HAD SOME

23 MAGISTRATE COURT HEARING. I TOLD THEM THEY COULDN'T GO INTO

24 IT; SHE'S GOING INTO IT. SO FORGET IT. YOU DIDN'T EVEN HEAR

25 THAT. GO AHEAD.

1 BY MS. JORDAN:

2 Q. MR. FRIPP IS NOT WEARING GLOVES, IS HE?

3 A. AT THIS POINT I DON'T KNOW, MA'AM.

4 Q. WHEN YOU ARREST HIM, DID HE HAVE GLOVES ON? IS THAT
5 CORRECT?

6 A. NO, HE DIDN'T.

7 Q. YOU FOUND NO GLOVES ON HIM; CORRECT?

8 A. NO.

9 Q. IN FACT, NO ONE FOUND ANY GLOVES ANYWHERE IN THE
10 SEARCHES IN THIS CASE. THERE WAS NO GLOVES FOUND.

11 A. NOT TO MY KNOWLEDGE, MA'AM, NO.

12 Q. BUT YOU SEARCH HIM THOROUGHLY; RIGHT?

13 A. YES.

14 Q. AND YOU FIND NO GUNS ON HIM; CORRECT?

15 A. NO GUNS EITHER.

16 Q. YOU FIND NO KNIVES ON HIM; CORRECT?

17 A. NO KNIVES EITHER.

18 Q. AND IS IT TRUE YOU FIND NO ILLEGAL DRUGS ON HIM?
19 CORRECT?

20 A. CORRECT.

21 Q. YOU FIND NOTHING THAT'S ILLEGAL ON HIM; CORRECT?

22 A. CORRECT.

23 Q. THE ROCKS THAT YOU MENTIONED, YOU SENT THEM FOR DRUG
24 ANALYSIS; CORRECT?

25 A. YES.

1 Q. AND HOW MANY WERE THERE? I'M SORRY?

2 A. I DON'T REMEMBER THE EXACT AMOUNT. I'LL TELL YOU RIGHT
3 NOW. ONE, TWO, THREE, FOUR, FIVE, SIX, SEVEN, EIGHT. EIGHT
4 OR NINE, MA'AM, FROM WHAT I COULD SEE.

5 Q. AND YOU TOOK SOME MONEY FROM MR. FRIPP. IS THAT
6 CORRECT?

7 A. YES.

8 Q. AND YOU GAVE THAT MONEY TO OFFICER MENENDEZ?

9 A. CORRECT.

10 Q. YOU NEVER SAW MR. FRIPP WITH ANY DRUGS IN HIS HANDS, DID
11 YOU?

12 A. NO, I DIDN'T.

13 Q. AND YOU NEVER SAW MR. FRIPP WITH ANY PLASTIC BAGGIES IN
14 HIS HANDS, DID YOU?

15 A. NO, I DIDN'T.

16 Q. YOU'RE NOT A QUALIFIED -- YOU'RE NOT QUALIFIED AS A
17 FINGERPRINT EXPERT, ARE YOU?

18 A. I AM NOT A FINGERPRINT EXPERT, MA'AM.

19 Q. YOU'VE NEVER BEEN TO FINGERPRINT EXPERT SCHOOL; CORRECT?

20 A. I'VE NOT BEEN QUALIFIED AS A FINGERPRINT EXPERT. I'VE
21 BEEN TO FINGERPRINTING SCHOOL; YES, MA'AM. AND I'M ALSO AN
22 EVIDENCE TECHNICIAN.

23 Q. BUT YOU KNOW -- BASICALLY YOU KNOW HOW TO LIFT A PRINT;
24 RIGHT?

25 A. I KNOW HOW TO LIFT A PRINT, YES.

1 Q. THEY TEACH YOU THAT AT THE ACADEMY; RIGHT?

2 A. YES, MA'AM.

3 Q. SO IF YOU THINK THAT YOU NEED PRINTS FROM A CRIME SCENE,
4 YOU CAN SECURE THEM. YOU CAN SECURE THE EVIDENCE WHERE YOU
5 BELIEVE FINGERPRINTS MIGHT BE LOCATED. RIGHT?

6 A. IF IT'S FEASIBLE, YES, MA'AM.

7 Q. YOU HAD THE PLASTIC BAG SECURED IN EVIDENCE; CORRECT?

8 A. CORRECT.

9 Q. AND YOU HANDLED IT CAREFULLY; CORRECT?

10 A. CORRECT.

11 Q. BUT DID YOU -- YOU DID NOT SUBMIT THIS PLASTIC BAG FOR
12 FINGERPRINT ANALYSIS. IS THAT CORRECT?

13 A. NO, MA'AM, I DID NOT FINGERPRINT THE PLASTIC BAG.

14 Q. COURT'S INDULGENCE. OFFICER RODRIGUEZ, THE BAG OF DRUGS
15 THAT WAS FOUND, WAS IT -- WAS FOUND IN THE WOODS, NOT RIGHT
16 BEHIND THE BACK OF THE TRUCK. CORRECT?

17 A. EXCUSE ME?

18 Q. THE BAG OF DRUGS THAT WAS FOUND WAS NOT FOUND RIGHT
19 BEHIND THE TRUCK. IT WAS FOUND IN THE WOODS; CORRECT?

20 A. I BELIEVE IT WAS FOUND RIGHT BEHIND THE TRUCK, MA'AM.

21 Q. YOU TESTIFIED THE WOODS EARLIER.

22 A. THERE'S WOODS RIGHT BEHIND THE TRUCK, MA'AM.

23 MS. JORDAN: OKAY. THANK YOU. THAT'S ALL. THANK YOU.

24

25

REDIRECT EXAMINATION

1

2 BY MR. BANNON:

3 Q. SERGEANT, WHETHER YOU GOT TO STUDIO SEVEN, DID YOU SEE
4 ANYONE ELSE -- ANY OTHER MALES WEARING BLUE OUTSIDE THE CLUB?

5 A. NO.

6 Q. AND NOW YOU JUST SAID THAT YOU DIDN'T FINGERPRINT THE
7 BAGGY THAT WAS FOUND.

8 A. CORRECT.

9 Q. WHY DIDN'T YOU FINGERPRINT THE BAGGY?

10 A. IT'S MY KNOWLEDGE THAT THE ACTIVE INGREDIENTS IN THE
11 COCAINE---

12 MS. JORDAN: OBJECTION. HE'S ALREADY TESTIFIED TO THIS.

13 THE COURT: WELL, HE'S ON REDIRECT. HE CAN ASK HIM
14 ABOUT IT SINCE YOU BROUGHT IT UP.

15 MS. JORDAN: OKAY.

16 THE WITNESS: IT'S MY UNDERSTANDING THAT THE ACTIVE
17 INGREDIENTS IN THE COCAINE EAT THE AMINO ACIDS IN ANY
18 FINGERPRINT THAT IS LEFT BEHIND ON A PLASTIC BAG. SO IT
19 WOULD HAVE BEEN AN EFFORT IN FUTILITY TO FINGERPRINT THE BAG.
20 BY MR. BANNON:

21 Q. AND THE EIGHT OR NINE ROCKS THAT YOU FOUND ON MR. FRIPP,
22 ARE THOSE -- ARE THEY FOOD?

23 A. NO.

24 Q. DO THEY LOOK LIKE FOOD?

25 A. NO, THEY DON'T.

1 THE COURT: ALL RIGHT. THE ROCKS, FORGET IT.

2 MR. BANNON: THANK YOU, JUDGE. NO FURTHER QUESTIONS.

3 THE COURT: WELL, JUST ONE OR TWO THINGS. NOTHING TO
4 REALLY DO WITH THE CASE, BUT WE SEE THE DEFENDANT THERE.
5 BASED ON THE TESTIMONY, HE'S STILL SITTING IN THE CAR AT THE
6 CLUB. THEY TRANSPORTED HIM, I GUESS. JUST ASK HIM WHAT
7 HAPPENED TO HIM.

8 MR. BANNON: ALL RIGHT. ALL RIGHT, JUDGE. ONCE YOU
9 TOOK---

10 THE COURT: WE'VE JUST GOT TO COMPLETE THE CASE. RIGHT
11 NOW HE'S JUST SITTING IN THE CAR.

12 MR. BANNON: ALL RIGHT. THANK YOU, JUDGE.

13 THE COURT: OKAY.

14 BY MR. BANNON:

15 Q. ONCE YOU COLLECTED ALL OF THE EVIDENCE, WHAT DID YOU DO
16 NEXT?

17 A. I ADVISED MR. FERGUSON, DEPUTY FERGUSON, TO DRIVE MR.
18 FRIPP TO THE DETENTION CENTER TO PROCESS HIM IN.

19 MR. BANNON: OKAY.

20 THE COURT: ALL RIGHT. THAT'S ENOUGH.

21 MR. BANNON: THANK YOU, JUDGE. NO FURTHER QUESTIONS.

22 THE COURT: ALL RIGHT. YOU CAN STEP DOWN.

23 THE WITNESS: THANK YOU, YOUR HONOR.

24 MR. BANNON: THE STATE CALLS DEPUTY MOONEY.

25 THE COURT: ALL RIGHT.

1 DANIEL MOONEY, AFTER BEING DULY SWORN, TESTIFIED AS
2 FOLLOWS:

3 DIRECT EXAMINATION

4 BY MR. BANNON:

5 Q. GOOD MORNING.

6 A. GOOD MORNING.

7 Q. PLEASE STATE YOUR NAME.

8 A. DANIEL MOONEY.

9 Q. WHERE DO YOU WORK, SIR?

10 A. BEAUFORT COUNTY SHERIFF'S OFFICE.

11 Q. HOW LONG HAVE YOU WORKED THERE?

12 A. APPROXIMATELY FOUR AND A HALF YEARS.

13 Q. AND WHAT DO YOU DO FOR THE SHERIFF'S OFFICE?

14 A. I'VE GOT A COUPLE OF JOBS: NARCOTICS HANDLER AND I ALSO
15 WORK FOR THE JOINT ENFORCEMENT TRAFFIC TEAM.

16 Q. OKAY. DO YOU USE A CANINE OFFICER?

17 A. YES, I DO.

18 Q. AND HAVE YOU BEEN TRAINED TO USE A CANINE OFFICER?

19 A. TRAINED TO USE A NARCOTICS DOG, YES, SIR, I DO.

20 Q. YES, SIR. WERE YOU WORKING ON JANUARY 1ST, 2009?

21 A. YES, SIR, I WAS.

22 Q. AND DID YOU HAVE AN OPPORTUNITY TO GO TO 44 DONALDSON
23 CAMP ROAD?

24 A. YES, SIR, I DID.

25 Q. AND WHAT'S OUT THERE?

1 A. THAT'S A NIGHTCLUB.

2 Q. AND WHY DID YOU GO OUT THERE?

3 A. OFFICER RODRIGUEZ WAS RESPONDING TO A DISTURBANCE.

4 SHORTLY AFTERWARDS HE CLEARED THE CHANNEL FOR RADIO TRAFFIC,

5 SO I KNEW THAT SOMETHING WAS WRONG. SO I RESPONDED AS HIS

6 BACKUP.

7 Q. OKAY. AND SO YOU RESPONDED TO THE SCENE. AND WHAT DID

8 YOU DO NEXT?

9 A. I CHECKED ON SERGEANT RODRIGUEZ TO MAKE SURE HE WAS OKAY

10 AND AT WHICH POINT HE HAD MR. FRIPP DETAINED. I ASKED MR.

11 RODRIGUEZ IF HE WAS OKAY. HE SAID HE HAD EVERYTHING UNDER

12 CONTROL. HE SAID THAT MR. FRIPP HAD WENT BEHIND THE TRUCK.

13 MR. DEYSACH: OBJECTION TO THE HEARSAY.

14 THE COURT: HE CAN GO AHEAD. HE'S DESCRIBING WHY HE

15 WENT BEHIND THE TRUCK. IT WAS ALREADY TESTIFIED TO.

16 MR. BANNON: THANK YOU, JUDGE.

17 BY MR. BANNON:

18 Q. AND SO DID YOU GO AND SEARCH BEHIND THE TRUCK?

19 A. AFTER SERGEANT RODRIGUEZ SAID THAT HE WENT BEHIND THE

20 TRUCK, YES, I DID.

21 Q. OKAY. AND DID YOU -- DID YOU TAKE THE DOG WITH YOU OR

22 WAS IT JUST YOU?

23 A. I TOOK THE DOG WITH ME.

24 Q. OKAY. AND IS -- YOU SAID IT WAS A NARCOTIC DOG. IS

25 THIS A DOG THAT WAS TRAINED TO SEARCH OUT FOR ILLEGAL DRUGS?

1 A. YES, SIR, IT IS.

2 Q. AND WHEN YOU TOOK THE DOG BACK BEHIND THE CAR, DID IT --
3 WELL, IF A DOG -- WHEN A DOG THINKS IT'S FOUND ILLEGAL DRUGS,
4 WHAT DOES IT DO?

5 A. IT GIVES AN ALERT, AND THEN SHORTLY AFTERWARDS IT GIVES
6 AN INDICATION WHEN IT FINDS THE SOURCE OF NARCOTICS.

7 Q. AND SO WHEN YOU TOOK THE DOG BEHIND THE TRUCK, DID IT
8 ALERT?

9 A. SHORTLY BEHIND -- A LITTLE FURTHER AWAY FROM THE TRUCK,
10 YES, SIR, IT DID.

11 Q. OKAY.

12 A. BY A TREE.

13 Q. OKAY. ALL RIGHT. AND NEAR WHERE THE DOG ALERTED, DID
14 YOU FIND ANYTHING?

15 A. YES, SIR, I DID.

16 Q. WHAT DID YOU FIND?

17 A. IN SOME PINE STRAW I LOCATED A CLEAR PLASTIC BAG WITH A
18 WHITE POWDERY SUBSTANCE INSIDE OF IT.

19 Q. OKAY. AND WHERE WAS THIS BAGGY OF POWDER?

20 A. IT WAS -- THERE'S PINE STRAW. NEXT TO IT IS A TREE, AND
21 I COULD TELL THAT IT WAS FRESHLY DISTURBED, AND RIGHT IN THE
22 FRESHLY-DISTURBED PINE STRAW IS WHERE THE COCAINE WAS LOCATED
23 AT.

24 Q. OKAY. WAS THE COCAINE MIXED IN WITH THE PINE STRAW?

25 A. YES, SIR, IT WAS.

1 Q. OKAY.

2 A. IT LOOKED LIKE SOMEBODY TRIED TO BURY IT.

3 Q. I'D LIKE TO SHOW YOU WHAT HAS PREVIOUSLY BEEN MARKED AS
4 STATE'S EXHIBIT NUMBER 1. COULD YOU TAKE A LOOK AT THAT?
5 AND NOW INSIDE THERE IS THERE A BAGGY OF WHITE POWDER?

6 A. YES, SIR, THERE IS.

7 Q. AND DOES THAT APPEAR TO BE THE SAME OR SUBSTANTIALLY THE
8 SAME BAGGY OF WHITE POWDER THAT YOU FOUND THAT EVENING IN THE
9 PINE STRAW?

10 A. YES, SIR, IT IS.

11 Q. AND NOW WAS IT COLD OUT THAT EVENING?

12 A. YES, SIR, IT WAS.

13 Q. WAS IT FREEZING COLD?

14 A. ABOUT 10 DEGREES OR A LITTLE BIT ABOVE FREEZING.

15 Q. OKAY. AND SO COULD YOU -- COULD YOU DESCRIBE FOR US THE
16 CONDITION OF THE BAG WHEN YOU FOUND IT?

17 A. IT WAS DRY. IT DIDN'T HAVE ANY DIRT ON IT. IT WAS -- I
18 WOULD SAY THAT IT LOOKED LIKE IT WAS JUST -- JUST PUT THERE.

19 MR. DEYSACH: I WOULD -- I WOULD OBJECT TO THAT OPINION
20 TESTIMONY. I DON'T THINK HE'S QUALIFIED TO---

21 THE COURT: YOU CAN QUESTION HIM ABOUT IT. OBVIOUSLY
22 THAT'S JUST HIS OPINION. GO AHEAD. HE'S JUST OBSERVING, AS
23 I UNDERSTAND IT, WHAT HE OBSERVED.

24 BY MR. BANNON:

25 Q. AND NOW YOU SAID THAT IT WAS DRY AND DIDN'T HAVE ANY

1 DIRT ON IT. WHY IS THAT SIGNIFICANT TO YOU?

2 A. IN MY PAST EXPERIENCE, BECAUSE I ALSO DO TRACKING FOR
3 HUMANS, IF SOMETHING IS FRESHLY PUT THERE, ESPECIALLY ON A
4 FRESHLY-DISTURBED PINE STRAW AREA AND BEING THE TEMPERATURE
5 THAT IT WAS OUTSIDE, CONDENSATION WOULD HAVE PROBABLY BUILT
6 UP ON THE BAG IF IT HAD BEEN THERE FOR A GOOD -- GOOD AMOUNT
7 OF TIME.

8 Q. OKAY. SO YOU SAID -- YOU SAID YOU'VE BEEN TRAINED TO
9 TRACK A HUMAN BEING.

10 A. YES, SIR, I HAVE.

11 Q. AND AS PART OF THAT TRAINING, ARE YOU TRAINED TO LOOK
12 FOR INDICATORS ABOUT, YOU KNOW, HOW FRESH OR HOW LONG
13 SOMETHING HAS BEEN THERE?

14 A. YES, SIR, WE HAVE.

15 Q. OKAY. AND BASED ON THAT TRAINING, WHAT IS YOUR OPINION
16 ABOUT THIS BAGGY OF COCAINE?

17 MR. DEYSACH: I MEAN, THAT'S ASKING FOR AN EXPERT---

18 THE COURT: YEAH, THAT -- HE CAN JUST SAY WHAT HE'S---

19 MR. DEYSACH: ---OPINION.

20 THE COURT: ---WHAT HE'S... HE'S DONE THAT, SO MOVE ON.
21 BY MR. BANNON:

22 Q. OKAY. AND NOW WAS THE BAGGY RIGHT NEXT TO THE TRUCK?

23 A. THERE WAS A DISTANCE BETWEEN WHERE THE TRUCK WAS LOCATED
24 AT AND WHERE I FOUND IT AT.

25 Q. OKAY. WHAT I'D LIKE TO DO IS IMAGINE THAT THIS BENCH IS

1 THE END OF THE TRUCK. NOW, I'M JUST GOING TO START BACKING
2 UP AND YOU TELL ME WHEN I GET TO THE POINT THAT WAS THE
3 DISTANCE BETWEEN THE TRUCK AND WHERE YOU FOUND THE BAGGY.

4 A. OKAY, SIR.

5 Q. (MR. BANNON WALKS BACKWARDS.)

6 A. RIGHT ABOUT THERE.

7 Q. RIGHT ABOUT HERE. ALL RIGHT. SO RIGHT ABOUT THERE?

8 A. YES, SIR. THAT WOULD BE CORRECT.

9 Q. OKAY. AND NOW WHAT DID YOU DO WITH THE BAGGY OF POWDER
10 ONCE YOU FOUND IT?

11 A. I PICKED IT UP AND BROUGHT IT OVER TO SERGEANT
12 RODRIGUEZ.

13 Q. NOW, FROM THE TIME THAT YOU FOUND IT, DID YOU OR ANYONE
14 ELSE TAMPER WITH IT IN ANY WAY?

15 A. NO, SIR.

16 Q. OKAY. AND SO WHEN YOU HANDED IT TO OFFICER RODRIGUEZ,
17 WAS IT IN THE SAME CONDITION AS WHEN YOU FOUND IT?

18 A. YES, SIR, IT WAS.

19 Q. AND DOES IT APPEAR TO BE IN THE SAME CONDITION NOW AS IT
20 WAS WHEN YOU FOUND IT?

21 A. OTHER THAN IT BEING IN AN EVIDENCE BAG, YES, SIR.

22 MR. BANNON: OKAY. NO FURTHER QUESTIONS.

23 THE COURT: OKAY.

24 MR. DEYSACH: MAY IT PLEASE THE COURT, YOUR HONOR?

25 THE COURT: SURE.

CROSS-EXAMINATION

BY MR. DEYSACH:

Q. GOOD MORNING, LANCE CORPORAL MOONEY?

A. YES, SIR.

Q. WE'RE HERE TO TALK ABOUT WHAT HAPPENED AT STUDIO SEVEN
ON THE EARLY MORNING HOURS OF NEW YEAR'S THIS YEAR; CORRECT?

A. YES, SIR.

Q. ALL RIGHT. WHEN YOU ARRIVED AT THE STUDIO SEVEN, THE
PARTY WAS GOING ON, WASN'T IT?

A. YES, SIR, THERE WAS A PARTY GOING ON.

Q. IT WAS A BIG PARTY GOING ON; CORRECT?

A. THERE WAS A QUITE A FEW PEOPLE INSIDE THE CLUB FROM WHAT
I HEARD, YES.

Q. THE PARKING LOT WAS FULL OF CARS; CORRECT?

A. YES, IT WAS.

Q. AND THERE WAS A LOT OF NOISE COMING OUT OF THE -- OUT OF
THE STUDIO SEVEN -- OUT OF THE BUILDING; CORRECT?

A. CORRECT.

Q. OKAY. THERE WERE PEOPLE LINED UP TO GET INSIDE THE
BUILDING; CORRECT?

A. THAT I CAN'T SAY THAT THERE WAS BECAUSE WHERE I WAS
LOCATED, I WAS IN THE VERY BACK OF THE PARKING LOT.

Q. SO YOU DIDN'T -- YOU DIDN'T TAKE NOTE OF WHETHER OR NOT
THERE WAS STILL PEOPLE LINED UP TO GET INTO THE PARTY.

A. NO, SIR. AT THAT POINT I WAS ACTUALLY LOOKING FOR

1 SERGEANT RODRIGUEZ WHEN I WAS PULLING IN THE PARKING LOT.

2 Q. FAIR ENOUGH. ALL RIGHT. NOW, YOU TESTIFIED THAT YOU
3 WEREN'T RESPONDING TO THE ORIGINAL CALL; CORRECT?

4 A. CORRECT.

5 Q. THAT WHEN THE RADIO CHANNEL WAS CLEARED, YOU TOOK THAT
6 AS A SIGNAL THAT YOU MIGHT BE OF SOME HELP TO SHOW UP AT
7 STUDIO SEVEN; CORRECT?

8 A. CORRECT.

9 Q. OKAY. SO HOW LONG DID IT TAKE YOU BETWEEN THE CHANNEL
10 BEING CLEARED AND YOU ARRIVING AT STUDIO SEVEN?

11 A. I COULDN'T TELL YOU. I KNOW I WAS IN A HURRY.

12 Q. DID IT TAKE YOU A HALF AN HOUR?

13 A. NO, SIR, IT DIDN'T.

14 Q. IT TOOK YOU A COUPLE OF MINUTES?

15 A. I'M ASSUMING.

16 Q. OKAY. SO AT THE TIME WHEN THE CHANNEL WAS CLEARED,
17 YOU'RE SITTING IN YOUR CAR SOMEWHERE IN BEAUFORT COUNTY;
18 CORRECT?

19 A. I WAS LOCATED AT THE BROAD RIVER BRIDGE WHICH IS NOT
20 VERY FAR.

21 Q. SO YOU'RE IN THE AREA; CORRECT?

22 A. YES, SIR, I WAS.

23 Q. WITH LEIA; CORRECT?

24 A. YES, SIR.

25 Q. AND LEIA IS -- LEIA IS THE CANINE OFFICER; CORRECT?

1 YOU'RE NOT THE CANINE. LEIA IS THE OFFICER; CORRECT?

2 A. LEIA IS THE CANINE DOG.

3 Q. OKAY.

4 A. AND I'M THE CANINE OFFICER BECAUSE I HANDLE LEIA.

5 Q. I GOT YOU. SO LEIA IS NOT AN OFFICER. ALL RIGHT. I'M
6 SORRY.

7 A. WELL, I BELIEVE SHE IS.

8 Q. OKAY.

9 A. I DON'T KNOW IF THEY COULD SWEAR LEIA IN, SO I COULDN'T
10 TELL YOU, SIR.

11 Q. OKAY. VERY GOOD. SO WITHIN MINUTES OF THE CHANNEL
12 BEING CLEARED, YOU'RE AT STUDIO SEVEN WITH THE NARCOTICS DOG;
13 CORRECT?

14 A. YES, SIR.

15 Q. AND YOU OFFER -- WAS IT LIEUTENANT RODRIGUEZ?

16 A. SERGEANT.

17 Q. SERGEANT RODRIGUEZ ASSISTANCE WHEN YOU ARRIVE. CORRECT?

18 A. CORRECT.

19 Q. AND YOU OFFER HIM LEIA'S ASSISTANCE; CORRECT?

20 A. YES, SIR.

21 Q. AND YOU OFFER TO LET LEIA SNIFF THE PARKING LOT;
22 CORRECT?

23 A. THE AREA WHERE HE HAD POINTED TO WHICH IS BEHIND THE
24 TRUCK.

25 Q. SO -- SO YOU WERE LOOKING FOR A HINT OR AT LEAST

1 DIRECTION AS TO WHERE SERGEANT RODRIGUEZ HAD LAST SEEN THE
2 DEFENDANT, THE SUBJECT; CORRECT?

3 A. I WOULDN'T NECESSARILY SAY A HINT, BUT HE TOLD ME WHERE
4 HE WAS AT.

5 Q. HE TELLS YOU WHERE HE WAS, AND THEN THAT'S WHERE YOU
6 SHOULD DIRECT LEIA TO SNIFF; CORRECT?

7 A. CORRECT.

8 Q. ALL RIGHT. AND SO HE DIRECTS YOU TO BEHIND THE BLACK
9 TRUCK; CORRECT?

10 A. YES, SIR.

11 Q. ALL RIGHT. AND LEIA SNIFFS BEHIND THE BLACK TRUCK;
12 CORRECT?

13 A. YES, SIR.

14 Q. BUT SHE FINDS NO DRUGS BEHIND THE BLACK TRUCK, DOES SHE?

15 A. WELL, THERE WAS AN AREA BEHIND THE BLACK TRUCK, SO I
16 WOULD CONSIDER THAT BEHIND THE BLACK TRUCK.

17 Q. SO I GUESS ANYWHERE -- I GUESS IN -- OKAY. SO IT'S NOT
18 RIGHT BEHIND THE BLACK TRUCK; LET'S SAY THAT.

19 A. YES, SIR.

20 Q. SO YOU'RE AGREEING WITH ME THAT IT'S NOT RIGHT BEHIND
21 THE BLACK TRUCK.

22 A. NOT RIGHT BEHIND THE BLACK TRUCK.

23 Q. YOU SAID IT'S SOME DISTANCE BEHIND THE BLACK TRUCK.

24 A. YES, SIR. CORRECT.

25 Q. ALL RIGHT. NOW, YOU SAID THAT YOU'D BEEN AN OFFICER FOR

1 ABOUT FOUR AND A HALF YEARS; CORRECT?

2 A. YES, SIR.

3 Q. AND THAT WHEN YOU'RE AN OFFICER, ONE OF THE THINGS THAT
4 THEY TRAIN YOU TO DO IS TO WRITE REPORTS.

5 A. YES, SIR.

6 Q. OKAY. AND THERE'S REASONS FOR THAT. THE REASON THAT
7 YOU WRITE REPORTS -- OR I'LL SAY THIS: THAT YOU WRITE THE
8 REPORT SHORTLY AFTER THE EVENT THAT YOU'RE REPORTING TAKES
9 PLACE. CORRECT?

10 A. YES, SIR.

11 Q. AND THE REASON FOR THAT IS SO THAT YOU DON'T FORGET WHAT
12 IT IS THAT HAPPENED DURING THE EVENT THAT YOU'RE REPORTING;
13 CORRECT?

14 A. CORRECT.

15 Q. THAT AS TIME PASSES, MEMORIES COULD FADE; CORRECT?

16 A. CORRECT.

17 Q. AND YOU GO ON MANY CALLS; CORRECT?

18 A. CORRECT.

19 Q. AND YOU WOULDN'T WANT TO CONFUSE DIFFERENT EVENTS THAT
20 YOU HAD REPORTED; CORRECT?

21 A. YES.

22 Q. AND SO THAT'S WHY SHORTLY AFTER YOU RESPOND YOU WRITE A
23 REPORT; CORRECT?

24 A. YES, SIR.

25 Q. AND YOU DID THAT IN THIS CASE; RIGHT?

1 A. YES, SIR.

2 Q. ALL RIGHT. AND YOU KNOW THAT WHEN YOU'RE WRITING THOSE
3 REPORTS THAT YOU NEED TO BE ACCURATE; RIGHT?

4 A. YES, SIR.

5 Q. BECAUSE YOU KNOW THAT LOTS OF PEOPLE RELY ON THIS
6 REPORT; CORRECT?

7 A. CORRECT.

8 Q. SO YOU WOULDN'T WANT TO PUT SOMETHING IN THERE THAT
9 WASN'T ACCURATE; CORRECT?

10 A. YES, SIR.

11 Q. AND YOU WOULDN'T WANT TO LEAVE SOMETHING OUT THAT YOU
12 THOUGHT MIGHT BE IMPORTANT; CORRECT?

13 A. YES, SIR.

14 Q. SO THAT'S THE REASON -- AND YOU -- THAT'S THE REASON YOU
15 WRITE THE REPORTS. OKAY. ALL RIGHT. NOW, YOU WROTE A
16 REPORT ABOUT THE SNIFF THAT YOU AND LEIA CONDUCTED; CORRECT?

17 A. YES, SIR.

18 Q. I THINK I MIGHT HAVE SEEN IT IN YOUR HAND WHEN YOU
19 WALKED UP HERE. DO YOU HAVE A COPY OF IT?

20 A. NO, SIR.

21 Q. OKAY. ALL RIGHT. I'M GOING TO LET YOU HAVE A COPY OF
22 YOUR REPORT.

23 A. OKAY.

24 Q. YOU WROTE IN YOUR REPORT THAT LEIA CIRCLED AROUND THE
25 BACK OF TWO VEHICLES; CORRECT?

1 A. YES, SIR.

2 Q. AND AT THAT TIME SHE STARTED HEADING TOWARDS THE TREE;
3 CORRECT?

4 A. YES, SIR.

5 Q. YOU WROTE THAT YOU NOTICED AN EMPTY BEER BOTTLE LYING ON
6 THE GROUND.

7 A. YES, SIR.

8 Q. DID YOU TAKE THAT BEER BOTTLE INTO EVIDENCE?

9 A. NO, SIR.

10 Q. DID YOU PROCESS THAT BEER BOTTLE FOR FINGERPRINTS?

11 A. NO, SIR.

12 Q. DID YOU SWAB IT FOR ANY D.N.A. THAT MIGHT BE ON THE PART
13 WHERE YOU DRINK OUT OF?

14 A. NO, SIR.

15 Q. AND THAT BOTTLE WAS NEAR THE BASE OF A TREE.

16 A. YES, SIR.

17 Q. AND THAT TREE AND THAT BOTTLE WERE TEN YARDS FROM THE
18 BACK OF THE TRUCK; CORRECT?

19 A. I SAID APPROXIMATELY TEN YARDS.

20 Q. YOU SAID -- SO IT COULD HAVE BEEN MORE THAN TEN YARDS;
21 CORRECT?

22 A. I DON'T THINK IT WAS MORE THAN TEN YARDS.

23 Q. OKAY. SO YOU PUT TEN YARDS AND -- OKAY. NOW, YOU WROTE
24 APPROXIMATELY TEN YARDS; CORRECT?

25 A. YES, SIR.

1 Q. YOU DIDN'T PUT AT A MAXIMUM OF TEN YARDS, DID YOU?

2 A. NO, SIR.

3 Q. OKAY. AND HOW MANY FEET IS TEN YARDS?

4 A. I'M NOT GREAT AT MATH BUT WHAT? THIRTY FEET MAYBE?

5 Q. THIRTY FEET BECAUSE THERE'S THREE FEET IN A YARD;
6 CORRECT?

7 A. OKAY.

8 Q. YOU MULTIPLY IT BY TEN?

9 A. YES.

10 Q. AND THAT'S 30 FEET; CORRECT.

11 A. YES, SIR.

12 THE COURT: IT WAS THIS MORNING; I GUESS IT STILL IS.

13 BY MR. DEYSACH:

14 Q. NOW, LEIA ALERTED TO AN AREA OF PINE STRAW; CORRECT?

15 A. CORRECT.

16 Q. AND IN ORDER TO FIND THE BAGGY IN THE PINE STRAW, YOU
17 HAD TO SIFT THROUGH THE PINE STRAW; CORRECT?

18 A. CORRECT.

19 Q. AND THIS AREA WAS APPROXIMATELY TEN YARDS FROM THE BACK
20 OF THE TRUCK.

21 A. YES, SIR.

22 Q. IN A WOOD LINE; CORRECT?

23 A. WELL, I CALL IT A WOOD LINE BECAUSE THERE WAS A TREE
24 THERE.

25 Q. AND IT WAS -- OKAY. I MEAN, YOU CALLED IT A WOOD LINE

1 BECAUSE THERE WAS JUST ONE TREE THERE?

2 A. WELL, BEHIND THAT THERE'S SOME OTHER TREES NEAR THE
3 MARSH.

4 MR. DEYSACH: BEGGING THE COURT'S INDULGENCE. I DON'T
5 HAVE ANYTHING FURTHER.

6 THE COURT: ALL RIGHT.

7 REDIRECT EXAMINATION

8 BY MR. BANNON:

9 Q. DEPUTY, WHEN YOU SEARCHED THE AREA BEHIND THE TRUCK, WAS
10 THE LOCATION SECURE?

11 A. YES, SIR, IT WAS.

12 Q. SO I THINK YOU TESTIFIED PREVIOUSLY THAT THE CLUB WAS
13 CROWDED.

14 A. YES, SIR, IT WAS.

15 Q. BUT WERE THERE PEOPLE FROM THE CLUB JUST GOING BACK
16 BEHIND THE -- BEHIND THE TRUCK AS YOU'RE TRYING TO SEARCH IT?

17 A. NO, SIR, THERE WASN'T. IT WAS ALL SECURED WHEN I GOT
18 THERE.

19 Q. AND NOW WE HEARD YOU TESTIFY THAT YOU WROTE IN YOUR
20 REPORT THAT IT WAS APPROXIMATELY TEN YARDS FROM THE TRUCK TO
21 WHERE YOU FOUND THE BAGGY.

22 A. YES, SIR.

23 Q. CORRECT? WOULD YOU SAY THAT THIS IS APPROXIMATELY TEN
24 YARDS?

25 A. TO GUESSTIMATE, YEAH, A VISUAL ESTIMATE.

1 MR. BANNON: NO FURTHER QUESTIONS.

2 MR. DEYSACH: NOTHING FURTHER, YOUR HONOR.

3 THE COURT: YOU CAN STEP DOWN. ALL RIGHT. JURORS,
4 DON'T PANIC; WE'RE GOING TO TAKE A BREAK. OKAY? DON'T TALK
5 ABOUT THE CASE. BE ABOUT 12 MINUTES.

6 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT AT
7 11:08 A.M.)

8 THE COURT: ALL RIGHT. HOW MUCH MORE DO YOU HAVE?

9 MR. BANNON: JUDGE, I HAVE TWO MORE WITNESSES. THE NEXT
10 ONE IS OFFICER MENENDEZ AND THEN OUR EXPERT, MS. BERRY.

11 THE COURT: OKAY. WE'RE AT EASE.

12 MR. BANNON: JUDGE, I WAS PLANNING ON USING SOME
13 DEMONSTRATIVE AIDS WITH OFFICER MENENDEZ, AND SO I JUST WANT
14 TO ALERT THE COURT TO IT SO IF THERE'S ANY MOTIONS WE'LL LIKE
15 TO TAKE UP NOW, WE'LL JUST HEAR THEM RIGHT NOW BEFORE WE...

16 MS. JORDAN: WE DO OBJECT, YOUR HONOR. UNDER THE RULE
17 -- UNDER -- WE DON'T FEEL WHAT HE'S PLANNING TO PRESENT IS
18 RELEVANT TO THIS CASE.

19 THE COURT: WHAT ARE YOU GOING TO DO? SEE, I DON'T KNOW
20 WHAT YOU'RE TALKING ABOUT.

21 MR. BANNON: YES, JUDGE. WELL, WHAT WE HAVE HERE IS WE
22 HAVE THREE ITEMS THAT HAVE BEEN MARKED AS STATE'S EXHIBIT 9.
23 THESE ARE ITEMS WHICH OFFICER MENENDEZ USES AS PART OF HIS
24 EMPLOYMENT AT THE DRUG TASK FORCE AS EDUCATIONAL TOOLS FOR
25 PEOPLE. ONE IS A BUNDLE OF WHITE POWDER WHICH HAS BEEN

1 MARKED AS 28 GRAMS. IT'S BEEN PREVIOUSLY WEIGHED AND FOUND
2 TO BE 28 GRAMS. ONE IS ONE GRAM AND ONE IS A PACKET OF
3 EQUAL. AND SO, JUDGE, I'M GOING TO USE THIS AS DEMONSTRATIVE
4 EVIDENCE TO TRY TO SHOW THE JURY HOW MUCH AN OUNCE OF
5 COCAINE---

6 THE COURT: YOU CAN DO THAT.

7 MR. BANNON: THANK YOU, JUDGE.

8 THE COURT: ALL RIGHT.

9 MS. JORDAN: YOUR HONOR, WE JUST FEEL THAT UNDER 403
10 THAT EVEN THOUGH IT MAY HAVE SOME KIND OF VALUE TO IT THAT IT
11 COULD CAUSE -- IT CAN CONFUSE THE ISSUE BEFORE THE JURY---

12 THE COURT: HOW?

13 MS. JORDAN: ---IN THAT IT WASN'T FOUND IN PACKAGING
14 AMOUNTS. IT WAS FOUND IN---

15 THE COURT: IT JUST DEMONSTRATES HOW MUCH 28 OUNCES
16 WEIGHS.

17 MR. BANNON: AND THAT'S ALL---

18 THE COURT: IT LOOKS LIKE -- LOOKS LIKE EQUAL. THAT'S
19 WHY HE HAS TO TEST IT. HE CAN DO IT.

20 MR. BANNON: THANK YOU, JUDGE.

21 THE COURT: HE'S NOT GOING TO BE UP THERE TEN MINUTES
22 ANYWAY. HE CAN'T TESTIFY LONG. ALL RIGHT. ALL RIGHT.
23 Y'ALL CAN TAKE A BREAK, TOO.

24 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

25 THE COURT: ALL RIGHT. OKAY. MR. BANNON, ARE YOU

1 READY?

2 MR. BANNON: YES, SIR, YOUR HONOR. THE STATE IS READY.

3 THE COURT: YOU CAN GO AHEAD AND BE BRINGING YOUR
4 WITNESS IN---

5 MR. BANNON: OH, OKAY.

6 THE COURT: ---WHILE WE BRING THE JURY IN.

7 MR. BANNON: OFFICER MENENDEZ.

8 THE COURT: BRING THE JURY IN.

9 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT
10 11:28 A.M.)

11 THE COURT: OKAY.

12 MR. BANNON: HAS THE WITNESS BEEN SWORN, YOUR HONOR?

13 THE COURT: NO. WE JUST TOLD YOU TO BRING HIM IN TO
14 SPEED THINGS UP. WE'LL SWEAR HIM.

15 RICHARD MENENDEZ, AFTER BEING DULY SWORN, TESTIFIED
16 AS FOLLOWS:

17 DIRECT EXAMINATION

18 BY MR. BANNON:

19 Q. GOOD MORNING.

20 A. GOOD MORNING.

21 Q. COULD YOU STATE YOUR NAME, PLEASE?

22 A. RICHARD MENENDEZ.

23 Q. WHERE DO YOU WORK?

24 A. BEAUFORT COUNTY SHERIFF'S OFFICE.

25 Q. HOW LONG HAVE YOU WORKED THERE?

1 A. SINCE 2006, SEPTEMBER.

2 Q. WHAT DO YOU DO FOR THE SHERIFF'S OFFICE?

3 A. I WORK FOR THE DRUG TASK FORCE.

4 Q. AND WHAT ARE YOUR RESPONSIBILITIES AT THE DRUG TASK
5 FORCE?

6 A. INVESTIGATE NARCOTICS, SALE AND DISTRIBUTION AND USAGE
7 IN THE COUNTY.

8 Q. AND IN YOUR -- IN YOUR JOB DO YOU DEAL WITH COCAINE?

9 A. YES.

10 Q. HAVE YOU BEEN TRAINED ON HOW TO DEAL WITH COCAINE?

11 A. YES.

12 Q. COULD YOU TELL US A LITTLE BIT ABOUT THAT TRAINING?

13 A. I'VE OVER A PERIOD OF TIME, EVEN PRIOR TO BEING EMPLOYED
14 BY BEAUFORT COUNTY SHERIFF'S OFFICE, I'VE BEEN TO NUMEROUS
15 SCHOOLS REGARDING NARCOTICS AND NARCOTICS INVESTIGATIONS WHEN
16 I WAS ASSIGNED TO N.C.I.S. AS A SPECIAL AGENT. SINCE I'VE
17 BEEN WITH BEAUFORT COUNTY, I'VE BEEN TO A NUMBER OF SCHOOLS
18 INVOLVING TRAINING REGARDING THE INVESTIGATION OF NARCOTICS
19 OVER A PERIOD OF APPROXIMATELY 15 YEARS TO INCLUDE THE TIME
20 PERIOD THAT I'VE BEEN EMPLOYED BY THE SHERIFF'S OFFICE. I'VE
21 CONDUCTED NUMEROUS INVESTIGATIONS REGARDING NARCOTICS.

22 Q. AND WHEN YOU DEAL WITH COCAINE, WHAT ARE THE AMOUNTS OF
23 COCAINE THAT YOU TYPICALLY SEE?

24 A. AS IN USUAL AMOUNTS OR...

25 Q. YEAH. LET ME BE MORE SPECIFIC. FOR EXAMPLE, IF THERE

1 WAS A SINGLE DOSAGE AMOUNT, IN YOUR EXPERIENCE IN THE AREA
2 HOW MUCH WOULD THAT AMOUNT BE?

3 A. TYPICALLY WE FIND BETWEEN HALF A GRAM TO A GRAM ON A
4 PERSON.

5 Q. OKAY. AND ABOUT HOW -- HOW BIG IS ABOUT A GRAM? HOW
6 MUCH IS A GRAM?

7 A. A GRAM IS APPROXIMATELY THE CONTENTS OF SWEET'N LOW
8 PACK. THAT WOULD BE APPROXIMATELY A GRAM.

9 Q. SO ABOUT -- NOW, IS THAT THE ENTIRE BAG OR JUST WHAT'S
10 INSIDE THE BAG?

11 A. THAT'S WHAT'S INSIDE THE BAG.

12 Q. OKAY. AND HOW MUCH WOULD A HALF GRAM TO A GRAM OF
13 COCAINE -- OR HOW MUCH WOULD THAT BE WORTH?

14 A. THE VALUE -- THE VALUE IS DEPENDENT UPON THE PURITY,
15 DEPENDENT UPON THE DEALER WHO KNOWS WHO THE BUYER IS, AND
16 IT'S A NEGOTIABLE PRICE BETWEEN THE DEALER. TYPICALLY,
17 THOUGH, A HALF GRAM WE'VE BEEN ABLE TO BUY IT FROM ANYWHERE
18 BETWEEN 40 TO \$60 FOR HALF AN OUNCE.

19 Q. OKAY. SO ABOUT A HALF A GRAM OF COCAINE IS WORTH -- IS
20 WORTH GENERALLY AROUND 40 TO \$60.

21 A. (WITNESS NODDED HEAD UP AND DOWN.)

22 Q. AND NOW YOU SAID THAT'S -- THAT'S I GUESS A SINGLE
23 SERVING IS THE BEST WAY TO PUT IT OF COCAINE. NOW, LET'S
24 TALK ABOUT LARGER AMOUNTS OF COCAINE. WHEN YOU INVESTIGATE
25 CASES OR INVESTIGATIONS OF COCAINE WHERE THERE'S, SAY, 28 OR

1 MORE GRAMS, WHAT DO YOU TYPICALLY SEE WHEN YOU INVESTIGATE
2 THESE KINDS OF CASES? WHAT DO YOU FIND?

3 A. TWENTY-EIGHT OR MORE GRAMS -- AN OUNCE OR MORE OF
4 COCAINE IS TYPICALLY A DEALER. THOSE WEIGHTS BY STATUTE ARE
5 TRAFFICKING WEIGHTS. SOME OF THE OTHER THINGS THAT WE RUN
6 INTO WHEN WE'RE DEALING WITH THAT IS PACKAGING MATERIAL,
7 SCALES TO BREAK IT DOWN, LARGE AMOUNTS OF CURRENCY.

8 Q. BY CURRENCY YOU MEAN MONEY?

9 A. YES.

10 Q. OKAY. AND ASSOCIATED WITH THOSE TYPES OF CASES YOU ALSO
11 SEE LARGE AMOUNTS OF DRUGS?

12 A. YES. WELL, AN OUNCE IS A SIGNIFICANT AMOUNT OF COCAINE.

13 Q. OKAY. I'D LIKE YOU TO TAKE A LOOK AT WHAT HAS BEEN
14 MARKED AS -- FOR IDENTIFICATION PURPOSES ONLY STATE'S EXHIBIT
15 NUMBER 9, AND HOW MANY ITEMS ARE IN STATE'S EXHIBIT NUMBER 9?

16 A. THERE ARE THREE ITEMS.

17 Q. AND WHAT ARE THEY?

18 A. ONE IS AN EQUAL/SWEET'N LOW PACK. THE OTHER IS A
19 TRAINING AID, A SIMULATED ONE GRAM OF COCAINE, AND THE OTHER
20 IS ANOTHER TRAINING AID WHICH SIMULATES ONE OUNCE OR 28 GRAMS
21 OF COCAINE.

22 Q. AND SO THESE HAVE BEEN WEIGHED PREVIOUSLY, AND ONE
23 WEIGHS 28 GRAMS AND ONE WEIGHS ONE GRAM?

24 A. AS THEY'RE MARKED, YES, SIR.

25 Q. OKAY. AND THOSE ITEMS AREN'T ACTUALLY COCAINE.

1 A. NO, THEY'RE NOT. THEY'RE TRAINING AIDS.

2 Q. NOW, THIS IS A -- THIS IS A PACKET OF EQUAL, BUT IS THIS
3 -- IS THIS AMOUNT STILL ABOUT APPROXIMATELY ONE GRAM?

4 A. APPROXIMATELY A GRAM.

5 Q. OKAY. SO IF THIS WERE COCAINE, IT WOULD BE ABOUT ONE
6 GRAM OF COCAINE?

7 A. APPROXIMATELY, YES.

8 Q. AND YOU SAID THAT THIS SMALLER BINDLE IS ONE GRAM OF
9 COCAINE.

10 A. THAT IS SIMULATED ONE GRAM OF COCAINE.

11 Q. SO THIS IS WHAT ONE GRAM OF COCAINE LOOKS LIKE?

12 A. YES.

13 Q. YOU SAID THAT ONE GRAM OF COCAINE IS LARGE OR SMALL IN
14 SIZE?

15 A. I WOULD SAY IT'S SMALL. TYPICALLY THAT WOULD BE TWO
16 DOSES.

17 Q. NOW, YOU SAID THIS IS -- THIS IS 28 GRAMS?

18 A. TWENTY-EIGHT GRAMS, ONE OUNCE.

19 Q. AND HOW MANY GRAMS ARE IN AN OUNCE?

20 A. TWENTY-EIGHT GRAMS IN AN OUNCE.

21 Q. SO THIS WOULD BE ABOUT HOW BIG 28 GRAMS OR ONE OUNCE OF
22 COCAINE WOULD LOOK LIKE. SO NOW YOU SAID YOU CAN BUY ONE
23 GRAM OF COCAINE FOR ANYWHERE FROM 40 TO \$60. HOW MUCH IN
24 YOUR EXPERIENCE IS ONE OUNCE OR 28 GRAMS OF COCAINE WORTH?

25 A. HALF A GRAM WOULD BE BETWEEN 40 TO \$60.

1 Q. OH, EXCUSE ME. HALF A GRAM.

2 A. ONE-EIGHTH -- I KNOW WE HAVE -- WE HAVE BOUGHT ONE-
3 EIGHTH OF AN OUNCE OF COCAINE ANYWHERE FROM 120 TO \$150 WHICH
4 IS ONE -- ONE-EIGHTH OF AN OUNCE, SEVEN GRAMS.

5 Q. OKAY. BUT SO I GUESS AS A STREET VALUE IT WOULD BE \$40
6 TIMES HOW EVER MANY HALF OUNCES OR HALF GRAMS THERE ARE.

7 A. AGAIN, THOSE VALUES ARE NEGOTIABLE. IF YOU BROKE IT
8 EACH UP INTO A HALF A GRAM AND YOU SOLD THEM FOR HALF GRAMS
9 AT 40, IT WOULD BE 40 HALF GRAMS TO WHATEVER YOU BROKE IT UP.
10 SOME OF THE DEALERS ALSO -- IF YOU BUY MORE, THEY -- THE
11 PRICES IS HAGGLEABLE (PHONETIC). THEY REDUCE THE PRICE---

12 Q. YOU CAN BUY IN BULK.

13 A. YOU CAN BUY---

14 Q. IT'S LIKE SAM'S CLUB.

15 A. EXACTLY.

16 Q. AND SO THIS 28 GRAMS OF COCAINE, IS THIS -- IS THIS
17 VALUABLE?

18 A. IF YOU PUT A MONEY VALUE TO IT, YES, SIR, IT POTENTIALLY
19 COULD BE VALUABLE.

20 Q. ON THE STREET?

21 A. YES, SIR.

22 Q. WOULD YOU SAY IT'S WORTH HUNDREDS OF DOLLARS?

23 A. PROBABLY CLOSE TO A THOUSAND, IF NOT MORE.

24 Q. SO ABOUT A THOUSAND DOLLARS WORTH? AND THAT'S IF YOU
25 BOUGHT IT. IS THAT IF YOU BROKE IT DOWN AND SOLD IT OR IS

1 THAT JUST AS A UNIT, A ONE-OUNCE UNIT?

2 A. THE RIGHT PERSON COULD PROBABLY GET THAT UNIT FOR A
3 THOUSAND. BROKE DOWN, YOU COULD PROBABLY MAKE MORE.

4 Q. I GUESS IS -- IS THIS KIND OF PACKAGING TYPICAL OF HOW
5 YOU SEE COCAINE PACKAGED IN THIS AREA?

6 A. TYPICALLY YOU'LL SEE IT BROKEN DOWN GOING FROM AN OUNCE
7 DOWN TO AN EIGHTH OUNCE, HALF OUNCE TO GRAMS.

8 Q. OKAY. I GUESS I MEAN THE -- I GUESS WHAT IS THE -- WHAT
9 IS THE POWDER SUBSTANCE WRAPPED IN HERE?

10 A. A CORNER BAGGY, A PLASTIC BAG, WHICH THEY'LL TIE DOWN --
11 I'VE SEEN WITH TWIST TIES OR KNOTTED IN SUCH A MANNER.

12 Q. OKAY. AND IS THIS A TYPICAL WAY TO PACKAGE COCAINE?

13 A. YES.

14 Q. OKAY. SO IS 28 -- SO 28 GRAMS OF COCAINE IS WORTH ABOUT
15 A THOUSAND DOLLARS. THAT'S SOMETHING YOU WOULD WANT TO KEEP
16 YOUR HANDS ON, ISN'T IT?

17 A. A THOUSAND DOLLARS I WOULD WANT TO KEEP MY HANDS ON.

18 Q. THAT ISN'T SOMETHING YOU JUST FLING UNDERNEATH A BUSH,
19 IS IT?

20 MS. JORDAN: OBJECTION, YOUR HONOR.

21 THE COURT: ALL RIGHT. YOU PUT HIM UP FOR DEMONSTRATIVE
22 PURPOSES.

23 MR. BANNON: THANK YOU, YOUR HONOR.

24 THE COURT: THAT'S AS FAR AS YOU CAN GO WITH HIM.

25 MR. BANNON: NO FURTHER QUESTIONS.

1 MS. JORDAN: WE HAVE NOTHING FOR THIS WITNESS.

2 THE COURT: YOU CAN STEP DOWN. HE CAN GO BACK TO WORK,
3 I GUESS.

4 MR. BANNON: YES, SIR.

5 THE COURT: ALL RIGHT.

6 THE WITNESS: THANK YOU.

7 MR. BANNON: THE STATE WOULD CALL RENITA BERRY.

8 THE COURT: OKAY.

9 RENITA L. BERRY, AFTER BEING DULY SWORN, TESTIFIED
10 AS FOLLOWS:

11 DIRECT EXAMINATION

12 BY MR. BANNON:

13 Q. GOOD MORNING.

14 A. GOOD MORNING.

15 Q. COULD YOU PLEASE STATE YOUR NAME?

16 A. RENITA L. BERRY.

17 Q. WHERE DO YOU WORK, MA'AM?

18 A. BEAUFORT COUNTY SHERIFF'S OFFICE.

19 Q. HOW LONG HAVE YOU WORKED THERE?

20 A. I'VE BEEN WITH THE SHERIFF'S OFFICE ALMOST EIGHT YEARS.

21 Q. WHAT DO YOU DO THERE AT THE SHERIFF'S OFFICE?

22 A. I AM THE FORENSIC DRUG CHEMIST.

23 Q. AND NOW WHAT DOES A FORENSIC DRUG CHEMIST DO?

24 A. WELL, MY PRIMARY RESPONSIBILITY IS TO ANALYZE ANY
25 SUBSTANCE, ANY SUSPECTED DRUG EVIDENCE, THAT IS SUBMITTED TO

1 THE LAB. I ANALYZE IT, DETERMINE WHETHER OR NOT IT IS A
2 CONTROLLED OR NON-CONTROLLED SUBSTANCE, AND THEN PROVIDE
3 THOSE RESULTS TO THE NECESSARY PARTIES.

4 Q. OKAY. AND HOW DO YOU GET THE SUSPECTED NARCOTICS TO
5 ANALYZE?

6 A. USUALLY THEY'RE PLACED IN WHAT WE CONSIDER TO BE A DRUG
7 DROP BOX, AND A DRUG DROP BOX IS NO MORE THAN A MAILBOX THAT
8 YOU MIGHT FIND AT YOUR LOCAL POST OFFICE. FOR INSTANCE, WHEN
9 YOU'RE DROPPING OFF YOUR MAIL AT NIGHT AND YOU PUT IT IN THAT
10 BOX, WELL, OUR BOX IS VERY SIMILAR TO THAT, WHEREAS YOU CAN
11 PUT THINGS IN BUT NO ONE CAN GET ANYTHING OUT, AND SO WE HAVE
12 A BOX LIKE THAT.

13 Q. OKAY. AND IS IT LOCKED?

14 A. IT IS.

15 Q. AND SO ONCE YOU GET -- ONCE YOU PICK UP AN ITEM TO BE
16 ANALYZED, WHAT DO YOU DO WITH IT?

17 A. ONCE I RECEIVE THAT ITEM, I SECURE IT INTO OUR LAB UNTIL
18 I'M READY TO ANALYZE IT. ONCE I'M READY TO ANALYZE IT, THEN
19 I TAKE IT OUT AND I PERFORM A SERIES OF PRESUMPTIVE AND
20 CONFIRMATORY TESTS TO DETERMINE WHAT IT IS.

21 Q. OKAY. YOU SAID YOU DO PRESUMPTIVE TESTS AND
22 CONFIRMATORY TESTS?

23 A. YES.

24 Q. LET'S TALK ABOUT THE PRESUMPTIVE TESTS FIRST. WHAT KIND
25 OF TEST DO YOU DO TO GET A PRESUMPTIVE -- WHAT TESTS MAKE UP

1 PRESUMPTIVE TESTS?

2 A. YOUR PRESUMPTIVE TESTS MAY BE NO MORE THAN YOUR CHEMICAL
3 TESTS WHEREAS YOU'RE USING -- YOU HAVE SEVERAL DIFFERENT
4 REAGENTS, AND THOSE REAGENTS REACT TO CERTAIN THINGS OR
5 SUBSTANCES WITHIN A FAMILY OF SUBSTANCES. AND SO YOU ADD
6 CERTAIN CHEMICALS TO A CERTAIN SUBSTANCE, AND YOU WAIT FOR A
7 REACTION, AND BASED ON THAT REACTION, YOU HAVE AN IDEA OF
8 WHAT YOU HAVE. YOU CAN ALSO DO WHAT WE CALL MELTING-POINT
9 TESTS, AND YOU CAN ALSO -- JUST LOOKING AT THE ITEMS
10 SOMETIMES GIVES YOU AN IDEA WHAT YOU MAY HAVE, BUT THOSE, OF
11 COURSE, ARE JUST PRESUMPTIVE TESTS?

12 Q. OKAY. AND WHAT WOULD YOU SEE IF YOU WERE DOING
13 PRESUMPTIVE TESTS ON A SUBSTANCE -- ON COCAINE?

14 A. WELL, IF I'M USING THE STANDARD REAGENTS THAT WE USE TO
15 TEST FOR COCAINE FOR PRESUMPTIVE TESTS, THEN WHEN I ADD MY
16 FIRST REAGENT WHICH IS A STANNOUS CHLORIDE, I'M GOING TO SEE
17 AN IMMEDIATE BLUE IF IT'S COCAINE HYDROCHLORIDE OR COCAINE,
18 WHAT MOST PEOPLE CONSIDER TO BE COCAINE POWDER, AND THEN WHEN
19 I ADD THE SECOND AGENT OF COBALT THIOCYANATE, THEN I'M GOING
20 TO SEE A CONTINUED BLUE. IT DOESN'T FADE OR ANYTHING; IT
21 JUST INTENSIFIES SOMEWHAT.

22 Q. OKAY. SO BLUE MEANS COCAINE.

23 A. BLUE MEANS THAT IT'S A PRESUMPTIVE TEST AND IT'S
24 POSITIVE BASED ON THAT PRESUMPTIVE TEST FOR COCAINE OR THAT
25 IT'S IN THAT PARTICULAR FAMILY OF DRUGS.

1 Q. OKAY. AND THEN LET'S TALK ABOUT THE CONFIRMATORY TESTS.
2 WHAT DO YOU DO THERE?

3 A. WITH THE CONFIRMATORY TESTS, WE USE INSTRUMENTATION.
4 AGAIN, WE TAKE A SMALL AMOUNT OF THAT SUBSTANCE, ADD
5 DIFFERENT SOLVENTS TO IT SO THAT WE CAN DO WHAT WE CALL AN
6 EXTRACTION. ONCE WE DO THAT, WE INTRODUCE IT TO THE
7 INSTRUMENT, AND WHAT WE USE AS INSTRUMENTATION IS A GAS
8 CHROMATOGRAPH MASS SPECTROMETER COMMONLY REFERRED TO THE G.C.
9 MASS SPEC. AND WITH THAT G.C. MASS SPEC, WE'RE ABLE TO
10 INTRODUCE THE SUBSTANCE INTO THE INSTRUMENT, AND THE
11 INSTRUMENT ACTUALLY DOES ANALYSIS ON IT, BREAKS IT DOWN AND
12 GIVES US AN IDEA WHAT IT IS. AND SO IT PRINTS OUT FROM A
13 PARTICULAR LIBRARY THAT WE'VE CREATED WHAT THE SUBSTANCE IS,
14 AND THEN ONCE WE RECEIVE THAT DATA, THEN WE THEN CONFIRM WHAT
15 IT IS AGAIN. WE DO ADDITIONAL CONFIRMATION TO MAKE SURE THAT
16 THE INSTRUMENT IS ACTUALLY REPORTING THE SUBSTANCE CORRECTLY.

17 Q. OKAY. AND WHAT SORT OF SAFEGUARDS DO YOU TAKE TO MAKE
18 SURE THAT THE INSTRUMENTS ARE WORKING PROPERLY?

19 A. THERE ARE SEVERAL THINGS THAT WE DO. WE HAVE DIFFERENT
20 QUALITY AND CONTROL MEASURES IN PLACE. WE USE WHAT WE CALL
21 POSITIVE STANDARDS OR POSITIVE TESTS, AND WE RUN A SERIES OF
22 STANDARDS ALWAYS TO MAKE SURE THAT THE INSTRUMENT IS WORKING
23 CORRECTLY, PLUS THERE ARE DIFFERENT MAINTENANCE THINGS THAT
24 YOU HAVE TO DO WITH THE INSTRUMENT. WE MAKE SURE THAT IT'S
25 MAINTAINED PROPERLY AT ALL TIMES, AND WE CONDUCT WHAT WE CALL

1 A CALIBRATION OR WHAT SOME PEOPLE CALL AN AUTO-TUNE TO MAKE
2 SURE THAT EVERYTHING IS WORKING PROPERLY BEFORE WE EVEN START
3 THE TESTING.

4 Q. OKAY. AND NOW HOW DID YOU LEARN HOW TO DO ALL THIS?

5 A. WELL, I -- THE MAJORITY OF MY TRAINING COMES FROM
6 WORKING WITH THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION. I
7 DO HAVE A DEGREE IN CHEMISTRY FROM THE UNIVERSITY OF SOUTH
8 CAROLINA, AND I'VE WORKED IN A LAB PRETTY MUCH RIGHT AFTER
9 COLLEGE AND EVEN SOME DURING COLLEGE. BUT IT WAS WHEN I
10 STARTED WORKING FOR THE SOUTH CAROLINA LAW ENFORCEMENT
11 DIVISION, AGAIN COMMONLY KNOWN AS S.L.E.D., IS WHEN I
12 RECEIVED THE MAJORITY OF MY TRAINING AS A FORENSIC CHEMIST.

13 AND WHILE I WAS THERE, I WAS TRAINED BY THE FORENSIC
14 CHEMISTS THERE, AND THEY HAD A VERY INTENSIVE PROGRAM.
15 COMPLETED THAT TRAINING, BECAME CERTIFIED THERE. I ALSO
16 BECAME CERTIFIED BY THE D.E.A., AND THEN THROUGHOUT THE YEARS
17 YOU COMPLETE A VARIETY OF PROFICIENCY TESTS. YOU ATTEND
18 DIFFERENT SEMINARS AND DIFFERENT CONFERENCES TO MAKE SURE
19 THAT YOUR TRAINING IS STILL UPDATED.

20 MR. BANNON: YOUR HONOR, I WOULD ASK THAT MS. BERRY BE
21 QUALIFIED AS AN EXPERT IN FORENSIC CHEMISTRY.

22 MR. DEYSACH: NO OBJECTION, YOUR HONOR.

23 THE COURT: JURORS, ANY TIME SOMEBODY IS QUALIFIED AS AN
24 EXPERT, I DON'T VOUCH FOR THEM. THEY JUST DEMONSTRATE THAT
25 THROUGH EDUCATION, TRAINING, WORK EXPERIENCE OR A COMBINATION

1 OF THOSE FACTORS AN INDIVIDUAL HAS ACQUIRED MORE KNOWLEDGE IN
2 A PARTICULAR FIELD THAN YOU OR I HAVE. ONCE THAT'S DONE,
3 THEN THEY'RE ENTITLED TO GIVE OPINIONS WITHIN THEIR FIELD OF
4 EXPERTISE. YOU'RE NOT BOUND TO ACCEPT IT, BUT I'M NOT SAYING
5 YOU SHOULD REJECT IT.

6 MR. BANNON: THANK YOU, YOUR HONOR.

7 BY MR. BANNON:

8 Q. NOW, MS. BERRY, DID YOU HAVE AN OPPORTUNITY TO ANALYZE
9 DRUGS THAT WERE SUBMITTED IN RELATION TO MR. FRIPP?

10 A. YES.

11 Q. OKAY. I'D LIKE TO HAND YOU WHAT HAS BEEN MARKED AS
12 STATE'S EXHIBIT NUMBER 1. I'D LIKE FOR YOU TO TAKE A LOOK AT
13 IT, OPEN IT UP IF YOU WANT TO. DO YOU NEED A PAIR OF GLOVES,
14 MA'AM?

15 A. YES.

16 Q. (MR. BANNON GIVES THE WITNESS GLOVES.)

17 A. THANK YOU. OKAY.

18 Q. AND DO YOU RECOGNIZE WHAT'S INSIDE THE BAG?

19 A. YES, I DO.

20 Q. AND COULD YOU TELL US WHAT'S IN THE BAG?

21 A. OKAY. THE FIRST THING THAT YOU SEE IN HERE IS WHAT WE
22 CALL A CONTROL BAG, AND THIS IS A BLUE-AND-WHITE BAG, AND
23 THIS IS THE BAG THAT THE EVIDENCE WAS INITIALLY SUBMITTED IN.
24 THE BAG WAS SEALED ALONG THIS LINE, AND I OPENED IT MYSELF TO
25 PULL OUT THE EVIDENCE. THIS IS WHAT WE CALL A TAMPER-

1 EVIDENCE BAG, WHEREAS IF SOMEONE WERE TO TRY TO OPEN IT, YOU
2 COULD SEE THAT THE LINES WERE DISTORTED AND THIS RED GLUE UP
3 HERE GETS OVER EVERYTHING IF ANYONE EVER TRIES TO OPEN IT.
4 SO IF YOU NOTICE, YOU'LL SEE MY INITIALS ON THE BAG, AND THIS
5 BAG ALSO HAS WHAT WE CALL A CONTROLLED NUMBER. SO THAT
6 CONTROL NUMBER ALSO CORRESPONDS TO MY PAPERWORK.

7 Q. OKAY.

8 A. ALSO IN THE BAG WAS TWO DIFFERENT PIECES OF EVIDENCE,
9 AND FOR ITEM ONE -- WHAT I CONSIDERED TO BE ITEM ONE WAS A
10 PLASTIC BAG WITH POWDER SUBSTANCE IN IT. I ADDED THE OUTER
11 BAG. AND WITH THIS WAS AN EVIDENCE BAG WITH A HARD SUBSTANCE
12 INSIDE OF IT, AND ON EACH BAG YOU'LL NOTE THAT I HAVE ON
13 THERE A LAB NUMBER AND MY INITIALS.

14 Q. OKAY. SO THE WHITE POWDER SUBSTANCE AND THE SMALL ROCK-
15 LIKE SUBSTANCE, WHERE WERE THEY WHEN YOU FIRST CAME INTO
16 POSSESSION OF THESE ITEMS?

17 A. I RETRIEVED THE EVIDENCE FROM THE DRUG DROP BOX THAT I
18 MENTIONED EARLIER.

19 Q. OKAY. AND WHEN YOU RECOVERED THEM, WERE THEY SEALED?

20 A. YES, THEY WERE.

21 Q. AND DID THEY APPEAR TO HAVE BEEN TAMPERED WITH IN ANY
22 WAY?

23 A. NO, THEY HAD NOT BEEN TAMPERED WITH.

24 Q. OKAY. HOW WERE THE ITEMS PACKAGED WHEN YOU GOT THEM?

25 A. THE PLASTIC BAG ON THE INSIDE WITH THE WHITE POWDER

1 SUBSTANCE WAS INSIDE OF HERE ALONG WITH THIS BAG HERE WITH
2 THE HARD SUBSTANCE -- WAS OVER INSIDE OF THIS PLASTIC BAG.

3 Q. OKAY. AND SO ONCE YOU PICKED IT UP, WHAT DID YOU DO
4 WITH IT?

5 A. SECURED THE EVIDENCE AND THEN WHEN IT WAS TIME, I
6 CONDUCTED THE VARIOUS ANALYSES: THE CONFIRMATORY AND THE
7 PRESUMPTIVE TESTING THAT I MENTIONED EARLIER.

8 Q. OKAY. AND LET'S TALK ABOUT THE BAGGY OF WHITE POWDER
9 FIRST. WHAT DID YOUR PRESUMPTIVE TEST SHOW?

10 A. IT INDICATED THAT IT WAS POSITIVE FOR COCAINE.

11 Q. OKAY. AND DID YOU RUN ANY CONFIRMATORY TESTS ON IT?

12 A. YES.

13 Q. AND WHAT DID THE CONFIRMATORY TESTS TELL YOU?

14 A. THE CONFIRMATORY TEST, OF COURSE, CONFIRMED THAT IT WAS
15 COCAINE.

16 Q. OKAY. AND NOW DID YOU EVER WEIGH THE WHITE SUBSTANCE
17 THAT WAS IN THE BAGGY?

18 A. YES, I DID.

19 Q. AND DID YOU WEIGH IT INSIDE THE BAGGY OR OUTSIDE OF THE
20 BAGGY?

21 A. NO, I ONLY WEIGHED THE SUBSTANCE ITSELF.

22 Q. OKAY. AND DID YOU WEIGH IT BEFORE YOU TESTED IT OR
23 AFTER YOU TESTED IT?

24 A. AFTER I TESTED IT.

25 Q. AND WHEN YOU WEIGHED IT, HOW MUCH DID IT WEIGH?

1 A. THE WEIGHT WAS 34.35 GRAMS.

2 Q. SO -- SO, IN YOUR OPINION, WHAT -- AND HOW MUCH OF THE
3 WHITE POWDER SUBSTANCE IS IN THAT BAG?

4 A. 34.35 GRAMS.

5 Q. AND WHAT IS IT?

6 A. COCAINE.

7 MR. BANNON: YOUR HONOR, I'D LIKE TO HAVE THE WHITE
8 POWDER -- THE BAGGY OF WHITE POWDER MARKED AS STATE'S EXHIBIT
9 1-B, AND THEN I WOULD MOVE FOR IT TO BE ADMITTED INTO
10 EVIDENCE.

11 MR. DEYSACH: MAY I LOOK AT IT REAL QUICK?

12 THE COURT: YOU CAN.

13 MR. DEYSACH: NO OBJECTION, YOUR HONOR.

14 THE COURT: OKAY.

15 (STATE'S EXHIBIT 1-B WAS RECEIVED IN EVIDENCE.)

16 BY MR. BANNON:

17 Q. AND NEXT I'D LIKE TO TALK ABOUT THE ROCK-LIKE SUBSTANCE
18 WHICH WAS INSIDE THE BAG. DID YOU PERFORM ANY PRESUMPTIVE
19 TESTS ON THE ROCKS?

20 A. YES, I DID.

21 Q. AND WHAT DID THAT TELL YOU?

22 A. THAT IT WAS NEGATIVE.

23 Q. SO -- SO, IN YOUR OPINION, ARE THOSE ROCKS NARCOTICS OR
24 DRUGS OF ANY KIND?

25 A. WELL, BASED ON THE CONFIRMATORY TEST -- BECAUSE EVEN IF

1 MY PRESUMPTIVE TEST COMES OUT NEGATIVE, I STILL ALWAYS
2 ANALYZE IT USING A CONFIRMATORY TEST. SO BASED ON THE
3 CONFIRMATORY TEST, I AM ABLE TO SAY THAT IT'S NEGATIVE FOR
4 ANY CONTROLLED SUBSTANCE.

5 MR. BANNON: YOUR HONOR, AT THIS TIME THE STATE WOULD
6 MOVE TO HAVE THE BAGGY OF ROCKS MARKED AS STATE'S EXHIBIT 1-A
7 AND MOVED INTO EVIDENCE, AND THEN THE STATE WOULD MOVE THAT
8 THE BEST BAG BE MARKED AS EXHIBIT 1-C AND MOVED INTO
9 EVIDENCE.

10 MR. DEYSACH: NO OBJECTION, YOUR HONOR.

11 THE COURT: ALL RIGHT.

12 (STATE'S EXHIBITS 1-A AND 1-C WERE RECEIVED IN
13 EVIDENCE.)

14 MR. BANNON: NO FURTHER QUESTIONS.

15 MR. DEYSACH: JUST BRIEFLY, YOUR HONOR.

16 CROSS-EXAMINATION

17 BY MR. DEYSACH:

18 Q. MS. BERRY?

19 A. YES.

20 Q. YOU'RE A CHEMIST.

21 A. YES, I AM.

22 Q. A FORENSIC DRUG CHEMIST; CORRECT?

23 A. YES, I AM.

24 Q. IN ALL OF YOUR TRAINING, YOU HAVE NEVER LEARNED THAT
25 COCAINE EATS THE AMINO ACIDS OF FINGERPRINTS, HAVE YOU?

1 MR. BANNON: OBJECTION.

2 THE COURT: WELL, HE CAN ASK HER THAT. SHE CAN SAY I
3 DON'T KNOW OR I KNOW OR WHATEVER.

4 BY MR. DEYSACH:

5 Q. ALL RIGHT. I'LL REPEAT IT. IN ALL OF YOUR TRAINING YOU
6 HAVE NEVER LEARNED THAT COCAINE EATS UP THE AMINO ACIDS THAT
7 LEAVE FINGERPRINTS, HAVE YOU?

8 A. NO. THAT HAS NOT BEEN A PART OF MY TRAINING.

9 MR. DEYSACH: THANK YOU, YOUR HONOR.

10 REDIRECT EXAMINATION

11 BY MR. BANNON:

12 Q. HAVE YOU RECEIVED ANY TRAINING WITH REGARDS TO
13 FINGERPRINTS?

14 A. NO, I HAVEN'T.

15 Q. DO YOU KNOW HOW TO COLLECT FINGERPRINTS?

16 A. NO, I DON'T.

17 Q. DO YOU KNOW WHAT, IF ANY, EFFECT COCAINE HAS ON
18 FINGERPRINTS?

19 A. NO, I'VE NEVER STUDIED THAT.

20 MR. BANNON: NO FURTHER QUESTIONS.

21 THE COURT: YOU CAN STEP DOWN.

22 THE WITNESS: THANK YOU, YOUR HONOR.

23 MR. BANNON: YOUR HONOR, THE STATE RESTS.

24 THE COURT: OKAY. WELL, THE STATE RESTS. THAT MEANS
25 THEY'RE NOT GOING TO PUT ANY OTHER EVIDENCE IN. JURORS,

1 CONSIDER THAT ON THE ISSUE OF WHETHER YOU COMMITTED THE CRIME
2 BUT ON THE ISSUE OF YOUR BELIEVABILITY, BUT THAT'S IT.
3 ASSUMING HE DOES NOT TESTIFY, THE FORMS OF VERDICT ARE JUST
4 GUILTY OR NOT GUILTY?

5 MR. BANNON: YES, JUDGE. THE STATE DOESN'T WANT ANY
6 OTHER CHARGES.

7 THE COURT: AND THE CHARGES YOU -- YOU KNOW,
8 CONSTRUCTIVE POSSESSION, MERE PRESENCE.

9 MR. BANNON: I THINK THAT PROBABLY BOTH CONSTRUCTIVE
10 POSSESSION AND MERE PRESENCE WOULD BE AN APPROPRIATE CHARGE.

11 THE COURT: MERE PRESENCE? I DON'T KNOW OF ANYTHING
12 ELSE OUT OF THE ORDINARY.

13 MR. DEYSACH: I WOULD -- YOU KNOW, WE'RE TALKING
14 ABOUT -- I DON'T KNOW IF IT'S A CONSTRUCTIVE POSSESSION
15 THEORY. WHERE THEY HAVE THE DRUGS IS 30 FEET AWAY FROM WHERE
16 THEY HAVE THE MAN, AND I DON'T KNOW THAT THAT'S ANY EVIDENCE
17 OF DOMINION AND CONTROL.

18 THE COURT: WELL, IT'S A JURY ARGUMENT THAT HE HAD IT,
19 RAN IN AND DROPPED IT AND RAN BACK, AND HE KNEW IT WAS
20 COCAINE. HE WOULDN'T HAVE KNOWN IT, UNLESS IT WAS HIS, THAT
21 HE HAD DOMINION AND CONTROL OVER IT. THAT'S JURY ARGUMENT.

22 MR. DEYSACH: I'LL JUST SAY THIS: THAT IF THE THEORY IS
23 THAT HE HAS IT IN HIS POCKET AND THEN DROPS IT THAT WHAT
24 THEY'RE SAYING IS IT'S AN ACTUAL POSSESSION WHEN IT'S IN HIS
25 POCKET.

1 THE COURT: RIGHT. IT HID IT IN THE TREES IS HIS CASE
2 ON IT WHICH IS -- HE DIDN'T HAVE IT IN ACTUAL POSSESSION WHEN
3 OFFICER RODRIGUEZ STOPPED HIM. SO IT HAS TO BE CONSTRUCTIVE,
4 I THINK. SO ACTUAL AND CONSTRUCTIVE IS ALL I CHARGE THEM.
5 IT'S UP TO Y'ALL TO SORT IT OUT.

6 MR. DEYSACH: OKAY. WELL, I THINK I'M JUST PLACING ON
7 THE RECORD AN OBJECTION TO A CONSTRUCTIVE POSSESSION CHARGE
8 BASED ON WHAT I JUST SAID AND I THINK---

9 THE COURT: RIGHT.

10 MR. DEYSACH: ---I CAN LEAVE IT AT THAT, YOUR HONOR.

11 THE COURT: SURE. BUT I CHARGE ACTUAL AND CONSTRUCTIVE.

12 MR. BANNON: THANK YOU, JUDGE.

13 MR. DEYSACH: AND MERE PRESENCE. RIGHT?

14 THE COURT: AND MERE PRESENCE.

15 MR. BANNON: YEAH, THERE'S NO OBJECTION TO MERE
16 PRESENCE.

17 THE COURT: OF COURSE, A MERE PRESENCE CHARGE GOES
18 FURTHER IN DRUG CASES. IT SAYS, "MERE PRESENCE IS NOT IN AND
19 OF ITSELF SUFFICIENT EVIDENCE TO GET A CONVICTION." THAT'S
20 JUST---

21 MR. BANNON: YES, JUDGE.

22 THE COURT: I'M JUST TELLING YOU WHAT IT SAYS. ALL
23 RIGHT. THEN WE ARE AT EASE.

24 (WHEREUPON, A LUNCH BREAK WAS TAKEN.)

25 THE COURT: OKAY. AT EASE.

1 **THE COURT:** OKAY. JURORS, WE'RE COMING INTO THE FINAL
2 PHASE OF THE TRIAL. MR. FRIPP HAS ELECTED NOT TO TESTIFY.
3 REMEMBER, HE'S PRESUMED INNOCENT. HE IS NOT REQUIRED TO
4 PROVE HE'S NOT GUILTY AT ALL. THE STATE HAS THE BURDEN OF
5 PROOF THROUGHOUT. THERE ARE GOOD REASONS TO TESTIFY AND GOOD
6 REASONS NOT TO TESTIFY. ONE OF THE REASONS IS IF YOU DON'T
7 TESTIFY, YOU GET TO ARGUE LAST. SO DON'T SPECULATE ON WHY HE
8 DIDN'T TESTIFY. DON'T EVEN DISCUSS THAT ON THE ISSUE OF
9 WHETHER THE STATE'S MET ITS BURDEN OF PROOF. IT'S
10 IRRELEVANT. THE STATE HAS THE BURDEN THROUGHOUT. RIGHT NOW
11 THE STATE'S GOING TO MAKE THEIR ONLY ARGUMENT. NORMALLY THEY
12 GET TO MAKE TWO.

13 **MR. BANNON:** THANK YOU, YOUR HONOR. "I DON'T HAVE ANY
14 DRUGS ON ME. YOU'VE GOT NOTHING ON ME." THAT'S ESSENTIALLY
15 WHAT THIS CASE IS ABOUT. ON JANUARY 1ST, 2009, MR. FRIPP
16 SUMMED IT UP. "YOU'VE GOT NOTHING ON ME. I DON'T HAVE ANY
17 DRUGS ON ME." WELL, WHEN THE OFFICER SEARCHED HIM, HE DIDN'T
18 HAVE ANY DRUGS ON HIM. THAT'S WHAT THEY TESTIFIED TO. AND
19 WHEN THEY SEARCHED HIM, HE HAD \$594 IN CRUMPLED-UP BILLS AND
20 SOME ROCKS.

21 THEY DID FIND DRUGS THOUGH BEHIND THE CAR THAT MR. FRIPP
22 MADE A BEELINE TOWARDS, THAT HE DUCKED BEHIND FOR TEN
23 SECONDS, AND AS SOON AS HE CAME BACK OUT FROM BEHIND THE CAR:
24 "YOU GOT NOTHING ON ME. I DON'T HAVE ANY DRUGS ON ME." AND
25 SURE ENOUGH, MR. FRIPP WAS RIGHT. THERE WEREN'T ANY DRUGS ON

1 HIM; I'LL READILY CONCEDE THAT. BUT THAT'S NOT THE ENTIRE
2 CASE, LADIES AND GENTLEMEN.

3 WHEN SERGEANT RODRIGUEZ SHOWS UP AT STUDIO SEVEN, MR.
4 FRIPP IS STANDING OUTSIDE. AS SOON AS SERGEANT RODRIGUEZ
5 SHOWS UP, MR. FRIPP SEES A MARKED PATROL CAR AND HE TAKES OFF
6 WALKING. SERGEANT RODRIGUEZ GOES AFTER HIM. MR. FRIPP KEEPS
7 ON GOING. SERGEANT RODRIGUEZ CALLS OUT TO HIM, WHISTLES TO
8 HIM. MR. FRIPP MUST HAVE HEARD HIM. HE TURNED AROUND. HE
9 LOOKED RIGHT AT HIM. SAW A POLICE OFFICER WEARING POLICE
10 CLOTHES, JUST GOT OUT OF A POLICE CAR, COMING TOWARDS HIM.

11 MR. FRIPP CHOOSES NOT TO STOP. MR. FRIPP KEEPS GOING.
12 I'D LIKE YOU TO THINK ABOUT WHY HE KEPT GOING. MR. FRIPP
13 CONTINUES ON. AT THAT POINT SERGEANT RODRIGUEZ CALLS OUT:
14 "SHERIFF'S OFFICE. STOP." MR. FRIPP KEEPS GOING.

15 I WONDER WHY THAT IS. WHY DOES MR. FRIPP, AS SOON AS
16 THE POLICE SHOW UP, TAKE OFF WALKING? WHY DOES HE KEEP
17 WALKING WHEN ALL OFFICER -- WHEN ALL SERGEANT RODRIGUEZ WANTS
18 TO DO IS TALK TO HIM? WHY DOES HE KEEP WALKING? WHY, WHEN
19 HE COMMANDS HIM TO STOP, DOES HE KEEP WALKING? WHY DOES HE
20 MAKE FOR THE BLACK TRUCK, DUCK BEHIND IT FOR TEN SECONDS, AND
21 THEN AS SOON AS HE COMES BACK OUT FROM BEHIND THAT TRUCK
22 THINGS HAVE CHANGED? HE STARTS WALKING RIGHT TOWARDS
23 SERGEANT RODRIGUEZ, AND HE SAYS, "YOU DON'T HAVE ANYTHING ON
24 ME. I'VE GOT NO DRUGS ON ME." WHAT CHANGED?

25 WHY DOES MR. FRIPP FEEL SO CONFIDENT TO TURN RIGHT BACK

1 AROUND AND ALL OF A SUDDEN HEAD TOWARDS THAT OFFICER? WHY
2 DOES HE FEEL SO CONFIDENT TO SAY, "YOU GOT NOTHING ON ME.
3 I'VE GOT NO DRUGS ON ME," WHEN BEFORE HE WOULDN'T STOP AT
4 ALL? WHY IS THAT? THEN THEY ARREST HIM AND THEY SEARCH HIM,
5 AND THEY FIND \$600 IN CRUMPLED-UP BILLS IN HIS POCKET, \$600
6 IN CASH. YOU HEARD OFFICER MENENDEZ TESTIFY THAT A LOT OF
7 TIMES WHEN PEOPLE ARE TRAFFICKING IN COCAINE THEY HAVE LARGE
8 AMOUNTS OF CASH ON THEM. HE HAD \$694 (SIC) IN CRUMPLED-UP
9 BILLS IN HIS POCKET.

10 THEN DEPUTY MOONEY, HE FINDS -- HE FINDS WHAT ULTIMATELY
11 WE KNOW AS THE COCAINE AND TURNS IT OVER TO DEPUTY RODRIGUEZ.
12 RODRIGUEZ SAYS, "I'M GOING TO CHARGE YOU WITH THIS." MR.
13 FRIPP SAYS, "I DON'T KNOW ANYTHING ABOUT THAT COCAINE."
14 NOBODY SAID ANYTHING ABOUT COCAINE TO MR. FRIPP AT THAT POINT
15 IN TIME. HOW DID HE KNOW IT WAS COCAINE?

16 THEN WHEN THE SERGEANT POINTS IT OUT TO HIM, WHY DOES HE
17 CHANGE HIS STORY? "I DON'T KNOW ANYTHING ABOUT THAT WHITE
18 POWDER." THOSE ARE THE FACTS OF THE CASE. THAT'S WHAT YOU
19 SAT ALL HERE ALL MORNING -- THAT'S WHAT YOU HEARD.

20 NOW, THE JUDGE IS GOING TO GIVE YOU INSTRUCTIONS ON THE
21 LAW, AND I'M SURE MS. JORDAN IS GOING TO TALK TO YOU ABOUT
22 THE LAW, TOO. SO I'M GOING TO TALK TO YOU A LITTLE BIT ABOUT
23 IT. THE JUDGE IS GOING TO CHARGE YOU TO GO BACK IN THE JURY
24 (SIC) AND FIND MR. FRIPP -- THAT YOU HAVE TO FIND HIM GUILTY
25 BEYOND A REASONABLE DOUBT. THOSE ARE VERY FAMOUS WORDS IN

1 OUR LINE OF WORK. WHAT DO THEY MEAN - BEYOND A REASONABLE
2 DOUBT? WELL, THE JUDGE IS GOING TO GIVE YOU SOME
3 INSTRUCTIONS ON WHAT THAT MEANS, AND I'D LIKE TO TALK TO YOU
4 ABOUT IT NOW. WHAT HE'S GOING TO TELL YOU IS THAT IT IS
5 EVIDENCE THAT LEAVES YOU FIRMLY CONVINCED AND ALSO THAT IT IS
6 THE KIND OF EVIDENCE THAT WOULD MAKE YOU NOT HESITATE TO ACT.

7 NOW, AT THE START OF THE TRIAL MS. JORDAN BROUGHT IT UP
8 A LITTLE BIT. SHE SAID -- SHE PROPOSED TO YOU A SITUATION
9 WHERE YOU'RE WAITING WITH YOUR CHILD AT THE SCHOOL BUS, AND
10 YOU HAD BEEN HEARING RUMORS THAT THE DRIVER HAD BEEN
11 DRINKING. WOULD YOU PUT YOUR CHILD ON THE BUS? NO, I DON'T
12 THINK ANY -- I THINK ALL OF US WOULD HESITATE TO ACT. I
13 THINK ANY REASONABLE PERSON WOULD.

14 LET'S TALK ABOUT ANOTHER SITUATION. YOU COME HOME AFTER
15 WORK, AND YOUR KIDS ARE AT HOME. THEY'VE GOTTEN HOME FROM
16 SCHOOL, AND YOU TELL THEM, "YOU'RE NOT ALLOWED TO HAVE ANY OF
17 THE COOKIES FROM THE COOKIE JAR. YOU CAN'T DO IT. YOU'VE
18 GOT TO WAIT UNTIL DINNER, AND MAYBE AFTER DINNER YOU CAN."
19 WELL, AS SOON AS YOU SHOW UP AT THE HOUSE YOU FIND ONE OF
20 YOUR CHILDREN STANDING RIGHT THERE WHEN YOU WALK IN THE DOOR.
21 AS SOON AS YOU WALK IN, THAT KID TAKES OFF FOR THE OTHER
22 ROOM. NO, "HI. HOW ARE YOU DOING? HOW'S IT GOING?" TAKES
23 OFF TO THE OTHER ROOM.

24 YOU THINK THAT'S ODD, SO YOU GO AFTER HIM. YOU SAY,
25 "COME HERE. WHAT'S GOING ON?" THEY KEEP ON GOING. YOU SAY,

1 "NO, NO, NO, NO. COME OVER HERE. WHAT'S UP? WHAT'S GOING
2 ON? YOU NEED TO COME OVER HERE RIGHT NOW." THE KID KEEPS
3 GOING. THE KID RUNS INTO A ROOM WHICH HE SHARES WITH HIS
4 BROTHERS AND SISTERS. YOU LOSE SIGHT OF HIM FOR ABOUT TEN
5 SECONDS.

6 HE COMES BACK OUT AND THE FIRST THING HE SAYS TO YOU IS,
7 "I DIDN'T TAKE THE COOKIE FROM THE COOKIE JAR. YOU GOT
8 NOTHING ON ME." AND THEN YOU GO INTO THAT ROOM WHICH IS
9 SHARED WITH THE OTHER CHILDREN, AND YOU FIND A BIG STACK OF
10 COOKIES. WOULD YOU HESITATE? YOU KNOW THAT CHILD WAS
11 RESPONSIBLE.

12 COMMON SENSE, WHICH YOU'RE FREE TO USE HERE, LADIES AND
13 GENTLEMEN, TELLS YOU THAT'S WHAT THE CHILD DID. WHY ELSE
14 WOULD THEY TAKE OFF AS SOON AS YOU GOT HOME? WHY ELSE WHEN
15 YOU SAID, "HEY. WHAT'S GOING ON?" -- WHY ELSE WOULD THEY
16 KEEP GOING? WHY ELSE WHEN YOU SAID, "NO. YOU COME HERE A
17 MINUTE. LET'S TALK," AND THEN THEY DISAPPEAR? THE CHILD
18 DISAPPEARED SO THAT THEY COULD GET RID OF THE COOKIES AND NOT
19 HAVE ANY ON THEM. THAT'S WHY MR. FRIPP DISAPPEARED IN THIS
20 CASE, TO MAKE SURE THAT HE GOT RID OF HIS BAGGY OF COCAINE
21 BEFORE HE TALKED TO SERGEANT RODRIGUEZ. WHY ELSE?

22 NOW, LADIES AND GENTLEMEN, THERE'S ANOTHER CHARGE IN
23 THIS CASE, AND THAT'S POSSESSION WITH INTENT TO DISTRIBUTE
24 WITHIN A HALF MILE OF A SCHOOL OR PARK. WELL, THE FIRST PART
25 IS VERY EASY. JUST TAKE A LOOK AT THIS MAP. THIS IS 44

1 DONALDSON CAMP ROAD, AND THAT'S THE SCHOOL. THE STATUTE
2 DOESN'T READ THAT YOU HAVE TO BE AT THE SCHOOL, IN THE
3 SCHOOL. YOU NEED TO BE ONE-HALF OF A MILE WITH COCAINE WITH
4 THE INTENT TO DISTRIBUTE IT. WELL, 44 DONALDSON CAMP ROAD IS
5 WITHIN A HALF MILE OF A SCHOOL OR PARK.

6 YOU MIGHT ASK YOURSELVES: WELL, HOW DO WE KNOW IT WAS
7 FOR DISTRIBUTION? WELL, LET'S THINK ABOUT THE TESTIMONY THAT
8 WE'VE HEARD HERE TODAY. SERGEANT MENENDEZ TOLD US THAT ABOUT
9 A SINGLE SERVING OF COCAINE IS ABOUT A HALF A GRAM. WHAT WAS
10 FOUND IN THE BAGGY IS 34.35 GRAMS OF COCAINE WHICH MEANS THAT
11 THERE'S ABOUT 68 SERVINGS OF COCAINE IN THAT BAG. THAT'S NOT
12 FOR ONE PERSON. THAT'S FOR A BUNCH OF PEOPLE. MIGHT BE ALL
13 IN ONE PLACE, BUT IT'S GOING TO A BUNCH OF PEOPLE. THAT'S
14 THE COCAINE THAT WAS -- THAT'S READY TO BE DISTRIBUTED BY A
15 MAN WHO HAS A POCKET FULL OF BALLED-UP MONEY.

16 NOW, LADIES AND GENTLEMEN, A COUPLE OF THINGS THAT HAVE
17 BEEN BROUGHT UP HERE IN CROSS-EXAMINATION IS HOW FAR THINGS
18 ARE AND HOW LONG THINGS TOOK, AND DEPUTY MOONEY WROTE IN HIS
19 REPORT THAT HE THOUGHT IT WAS APPROXIMATELY TEN YARDS FROM
20 THE BLACK TRUCK TO WHERE HE FOUND THE BAGGY OF COCAINE. NOW,
21 HERE TODAY I ASKED HIM, WELL, JUST TELL ME -- JUST TELL ME
22 HOW FAR IT WAS. I DON'T CARE ABOUT YARDS OR FEET. JUST TELL
23 ME HOW FAR IT WAS.

24 I SAID: IF THIS WAS THE TRUCK, WHERE DID YOU FIND THE
25 COCAINE? IT WAS RIGHT HERE. TEN SECONDS. THAT DOESN'T SEEM

1 LIKE A TON OF TIME, BUT, LADIES AND GENTLEMEN, IT IS MORE
2 THAN ENOUGH TIME TO GET FROM BEHIND THE TRUCK OVER THERE.
3 YOU'D HAVE TO BE MOVING PRETTY SLOW TO NOT BE ABLE TO DO IT
4 IN TEN SECONDS. JUST WATCH. I GUARANTEE YOU THAT WAS LESS
5 THAN TEN SECONDS. LET'S SEE. IT'S ABOUT TO TURN AND NOW...
6 HOW FAR CAN I GET IN TEN SECONDS? I'M MOVING PRETTY FAST.
7 TEN SECONDS. I WASN'T MOVING FAST. I DIDN'T EVEN BREAK A
8 SWEAT.

9 I'M KIND OF A BIG GUY. I DON'T MOVE AS FAST AS I USED
10 TO, BUT YOU CAN GET THERE. YOU CAN GET YOUR BAGGY OF COCAINE
11 WHICH YOU'VE BEEN CARRYING WITH YOU THE WHOLE TIME AND THEN
12 RUN BACK OUT TO MEET SERGEANT RODRIGUEZ, KNOWING THAT YOU
13 DON'T HAVE ANYTHING ON YOU BECAUSE YOU JUST DITCHED IT
14 UNDERNEATH A PILE OF PINE STRAW, PINE STRAW THAT DEPUTY
15 MOONEY SAID WAS RECENTLY DISTURBED. I'M SURE WE'VE ALL SEEN
16 PINE STRAW. YOU CAN TELL WHEN IT'S RECENTLY DISTURBED AND
17 WHEN IT'S JUST BEEN LAYING THERE. AND THERE IN A BIG PILE OF
18 PINE STRAW IS A BAGGY OF COCAINE.

19 NOW, LADIES AND GENTLEMEN, I WANT TO LEAVE YOU WITH A
20 COUPLE OF DIFFERENT THINGS FOR YOU TO THINK ABOUT WHEN YOU'RE
21 IN THE JURY ROOM WHEN YOU ARE DECIDING THIS CASE. I WANT YOU
22 TO THINK ABOUT THIS. I WANT YOU TO IMAGINE THIS LINE. NOW,
23 IMAGINE ALL THE POINTS ON THIS LINE ARE THE POSSIBLE REASONS
24 WHY MR. FRIPP TOOK OFF AS SOON AS SERGEANT RODRIGUEZ PULLED
25 IN AT STUDIO SEVEN, ALL THE DIFFERENT REASONS WHY. MAYBE IT

1 WAS TIME TO GO. MAYBE HE'D HAD ENOUGH; IT WAS LATE. OR
2 MAYBE IT WAS BECAUSE HE HAD OVER 30 GRAMS OF COCAINE IN HIS
3 POCKET.

4 AND NOW IMAGINE THIS LINE, ALL THE REASONS WHY MR. FRIPP
5 KEPT WALKING WHEN SERGEANT RODRIGUEZ SAID, "HEY. COME HERE.
6 I WANT TO TALK TO YOU." MAYBE HE JUST DIDN'T WANT TO...
7 MAYBE IT WAS TIME TO GO. MAYBE IT WAS BECAUSE HE HAD 34
8 GRAMS OF COCAINE IN HIS POCKET.

9 NOW, IMAGINE THIS LINE: ALL THE REASONS WHY WHEN
10 SERGEANT RODRIGUEZ COMMANDED HIM TO STOP HE KEPT GOING.
11 MAYBE IT WAS TIME TO GO. MAYBE HE DIDN'T FEEL WELL. MAYBE
12 HE WAS HUNGRY. MAYBE IT WAS BECAUSE HE HAD 34 GRAMS OF
13 COCAINE IN HIS POCKET. THIS IS ALL THE REASONS WHY MR. FRIPP
14 WALKED ALL THE WAY ACROSS THE PARKING LOT. IT'S NOT THE WAY
15 OUT. MAYBE IT WAS BECAUSE HE HAD 34 GRAMS OF COCAINE IN HIS
16 POCKET.

17 THIS IS WHY MR. FRIPP GOES BEHIND THE TRUCK, ALL OF THE
18 DIFFERENT REASONS. IT'S BECAUSE HE HAS 34 GRAMS OF COCAINE
19 IN HIS POCKET THAT HE NEEDS TO GET RID OF. ALL THE REASONS
20 WHY MR. FRIPP SUDDENLY DECIDES TO TURN AROUND AND COME AND
21 TALK TO SERGEANT RODRIGUEZ. MAYBE HE SUDDENLY DECIDED ONCE
22 HE WENT BEHIND THAT BLACK TRUCK THAT HE HAD FOUND THE MEANING
23 OF LIFE OR MAYBE IT WAS BECAUSE HE CAME AROUND -- HE WENT TO
24 TALK TO SERGEANT RODRIGUEZ BECAUSE HE HAD JUST GOTTEN RID OF
25 THE 34 GRAMS OF COCAINE THAT WAS IN HIS POCKET. THAT'S WHERE

1 THIS WHOLE CASE CHANGES. HE DOESN'T WANT TO TALK TO HIM,
2 DOESN'T WANT TO TALK TO HIM, DOESN'T WANT TO SEE HIM. HE'S
3 MAKING HIS WAY ACROSS THE PARKING LOT. ALL OF A SUDDEN, WHEN
4 HE GOES BEHIND THAT PICKUP TRUCK, THINGS CHANGE.

5 WHEN HE COMES BACK OUT FROM BEHIND THE PICKUP TRUCK, HE
6 SAYS, "I DON'T HAVE ANY DRUGS ON ME," AND MAYBE THAT'S
7 BECAUSE HE JUST DITCHED THE 34 GRAMS OF COCAINE BEHIND THE
8 PICKUP TRUCK. LADIES AND GENTLEMEN, 34 GRAMS OF COCAINE WERE
9 FOUND BEHIND THE PICKUP TRUCK, ALL THE REASONS WHY IT COULD
10 HAVE GOTTEN THERE.

11 WHAT THE DEFENSE IS GOING TO ARGUE IS THAT IT'S SOMEBODY
12 ELSE'S. SO, I MEAN, THAT'S A POSSIBLE LINE, BUT WHAT MAKES
13 THE MOST SENSE? WHAT MAKES THE MOST SENSE IS THAT THE
14 COCAINE THAT WAS FOUND BEHIND THE PICKUP TRUCK -- IT'S
15 BECAUSE MR. FRIPP DROPPED IT THERE. THAT'S WHERE HE HID IT.
16 HE SAID HE TALKED TO THE POLICE WITH CONFIDENCE BECAUSE HE
17 DIDN'T HAVE ANYTHING ON HIM SO HE COULD GET BY, MAYBE GO BACK
18 AND GET IT LATER. MR. FRIPP SAYS, "I DON'T KNOW ANYTHING
19 ABOUT THAT COCAINE." HOW DOES HE KNOW IT'S COCAINE? MAYBE
20 IT'S BECAUSE HE KNOWS IT'S COCAINE BECAUSE HE'S HAD IT THE
21 WHOLE NIGHT AND HE JUST DROPPED IT BEHIND THAT PICKUP TRUCK.

22 LADIES AND GENTLEMEN, THERE'S ONLY ONE THING IN THIS
23 CASE THAT MAKES SENSE, ONLY ONE THING IN THIS CASE THAT PULLS
24 IT ALL TOGETHER: THAT MR. FRIPP KNEW -- HE KNEW HE WAS
25 GUILTY BECAUSE HE HAD COCAINE IN HIS -- ON HIM. HE HAD TO

1 TAKE OFF; HE HAD NO OTHER CHOICE. THAT WAS ALL HE COULD DO,
2 SO HE TOOK OFF. HE DIDN'T STOP, NOT FOR A REQUEST. HE
3 DIDN'T STOP FOR A COMMAND. DUCKS BEHIND THIS PICKUP TRUCK.
4 THERE'S NO REASON TO GO BEHIND THE PICKUP TRUCK.

5 THE TESTIMONY WASN'T THAT HE GOT INTO THE TRUCK OR THAT
6 HE WENT INTO A CAR. HE WENT BEHIND THE TRUCK FOR TEN SECONDS
7 AND THEN HE COMES BACK OUT, THE TRUCK THAT BORDERS A MARSH
8 AND SOME TREES. THERE'S NO REASON TO GO BEHIND THAT TRUCK,
9 BUT IT'S A SECLUDED SPOT AND YOU CAN DITCH YOUR COCAINE
10 THAT'S WORTH AT LEAST A THOUSAND DOLLARS, KEEP YOU OUT OF
11 TROUBLE, AND MAYBE YOU CAN COME BACK FOR IT LATER. THAT'S A
12 PRETTY GOOD REASON TO GO BACK BEHIND THAT TRUCK.

13 LADIES AND GENTLEMEN, WHEN WE STARTED THIS CASE I TOLD
14 YOU THAT THE DEFENDANT SAT THERE AN INNOCENT MAN. WELL, NOW
15 WE'VE GOTTEN THROUGH TO THE END. NOW IT'S TIME FOR YOU TO
16 DECIDE IF HE SHOULD STAY THAT WAY BECAUSE THE SIMPLE FACT OF
17 THE MATTER IS IS THAT HE HAD THE COCAINE IN HIS POCKET WHEN
18 SERGEANT RODRIGUEZ PULLED UP. HE HAD THE COCAINE IN HIS
19 POCKET WHEN HE WALKED AWAY FROM SERGEANT RODRIGUEZ, AND HE
20 HAD THE COCAINE IN HIS POCKET WHEN SERGEANT RODRIGUEZ CALLED
21 OUT TO HIM. HE HAD THE COCAINE IN HIS POCKET WHEN SERGEANT
22 RODRIGUEZ COMMANDED HIM TO STOP. HE HAD THE COCAINE IN HIS
23 POCKET WHEN HE WENT BEHIND THE PICKUP TRUCK. HE HAD THE
24 COCAINE ON HIM WHEN HE HID IT BEFORE HE CAME BACK OUT FROM
25 BEHIND THE CAR. THAT'S WHAT THIS CASE IS REALLY ABOUT, AND

1 THAT IS WHAT THIS TELLS YOU, AND THIS DEMANDS THAT YOU GO
2 BACK INTO THE JURY ROOM AND YOU FIND DIAMON FRIPP GUILTY OF
3 BOTH OF THESE CHARGES. THANK YOU.

4 MS. JORDAN: MAY IT PLEASE THE COURT, YOUR HONOR?

5 THE COURT: SURE.

6 MS. JORDAN: REMEMBER THE PICTURE I LEFT YOU THE LAST
7 TIME I SPOKE TO YOU. WE WERE AT THE POINT WHERE OFFICER
8 RODRIGUEZ HAD JUST DROVE INTO THE PARKING LOT. HIS LIGHTS
9 WERE SHINING IN FROM THE DARK 40 YARDS AWAY TO THE FRONT
10 ENTRANCE WHERE HE SEES PEOPLE STANDING THERE. IT'S NOT QUITE
11 2:09 P.M. (SIC). IT WAS EARLY NEW YEAR'S MORNING, AND
12 OFFICER RODRIGUEZ TESTIFIED THAT HE WAS CALLED TO A
13 DISTURBANCE, BUT THERE WAS NO DISTURBANCE.

14 HE SEES SECURITY IS STILL THERE CHECKING PATRONS IN.
15 PATRONS THAT ARE ARRIVING TO THE CLUB, THEY'RE IN LINE,
16 GETTING READY TO COME INTO THE CLUB. AND HE SEES A BLACK
17 MALE THERE AND HE'S STANDING NEAR THE SECURITY GUARD, AND
18 THEN WHEN -- WHEN THAT BLACK MALE DECIDES TO LEAVE, OFFICER
19 RODRIGUEZ SAID HE GOT OUT OF HIS CAR AND STARTED WALKING
20 TOWARDS THE FRONT. HE WALKS TOWARDS THE CLUB NOW TO
21 INVESTIGATE THIS CALL. HE GETS TO THE DOOR, AND WHAT DOES HE
22 SAY HE DOES? HE APPROACHES THE FRONT ENTRANCE. AGAIN, THERE
23 WAS NO DISTURBANCE GOING ON.

24 THE DISPATCHED CALL THAT HE RESPONDED TO SAID A BLACK
25 MALE WEARING BLUE SWEATS WAS ACTING BELLIGERENT AT THE FRONT

1 DOOR AND REFUSING TO LEAVE. WELL, THE SECURITY GUARD WAS
2 RIGHT THERE AT THE FRONT ENTRANCE. THE SECURITY GUARD SURELY
3 KNOWS SOMETHING WAS GOING ON AT THE FRONT ENTRANCE, BUT HE
4 DOESN'T ASK HIM. HE DOESN'T EVEN TALK TO HIM. PATRONS THAT
5 ARE TRYING TO GET IN THE CLUB, THEY'RE GETTING READY.
6 THEY'RE LINED UP CHECKING TO GET IN. COULD THEY HAVE HEARD
7 SOMETHING? POSSIBLY. BUT HE DOESN'T ASK THEM. HE DOESN'T
8 TALK TO THEM, ANY OF THEM.

9 HE SAID HE LOOKED UP AND THERE'S A SMALL GLASS WINDOW
10 INTO THE FOYER, THE ENTRANCE, OF THE CLUB AND HE SPOTTED THE
11 OWNER. SURELY THE OWNER WOULD KNOW WHAT WAS GOING ON IN THIS
12 CLUB, BUT OFFICER RODRIGUEZ CHOOSES NOT TO TALK TO HIM
13 EITHER. THE ONLY PERSON THAT IS NO LONGER THERE AT THE FRONT
14 ENTRANCE IS DIAMON WHO IS LEAVING, ALREADY WALKING IN THE
15 PARKING LOT NOW. HE'S THE ONE OFFICER RODRIGUEZ WANTS TO
16 TALK TO.

17 NOW, AS WE SAID EARLIER, THE MUSIC IS STILL BLARING ON.
18 REMEMBER, THIS IS A ROCKING NEW YEAR'S AND IT'S A CLUB AND
19 IT'S PACKED. AND OFFICER RODRIGUEZ CALLS OUT TO DIAMON AND
20 SAYS, "HEY. I WANT TO TALK TO YOU." AND HE TESTIFIED HE
21 REALIZED THAT THE MUSIC WAS LOUD, AND HE HAD TO KIND OF YELL
22 A LITTLE BIT TO TRY TO BE HEARD ABOVE THE MUSIC AND HE
23 ATTEMPTS TO YELL ABOVE IT. AT THIS POINT HE SAYS DIAMON IS
24 ABOUT 20 CAR LENGTHS AWAY. TWENTY CAR LENGTHS: THAT WOULD
25 BE ABOUT A FOOTBALL FIELD IS WHAT WE CAME TO. AND HE'S

1 WALKING -- DIAMON IS WALKING, WALKING THROUGH THE CARS.

2 REMEMBER, IT WAS OFFICER RODRIGUEZ'S TESTIMONY THAT
3 THERE WAS A CAR PARKED AT EVERY CONCEIVABLE PLACE. IT WAS
4 PACKED. WELL, DIAMON AT ONE POINT STOPS AND TURNS. NOW,
5 REMEMBER, TOO, THERE WAS ONLY ONE LIGHT THAT'S IN THE PARKING
6 LOT, AND IT'S IN THE FAR BACK CORNER, AND THIS PARKING LOT
7 WAS THE SIZE OF A FOOTBALL FIELD. CAN HE SEE ANYTHING? CAN
8 HE HEAR?

9 OFFICER RODRIGUEZ FINISHED FOLLOWING. HE SAYS AT THIS
10 POINT, "SHERIFF'S OFFICE. STOP," OR, "STOP. OFFICER," AND
11 DIAMON CONTINUES WALKING. OFFICER RODRIGUEZ IS FOLLOWING
12 ALONGSIDE. HE SAID DIAMON CONTINUES TO WALK BY THE CARS. AT
13 THIS POINT I BELIEVE OFFICER RODRIGUEZ SAYS HE LOSES SIGHT OF
14 DIAMON FOR ABOUT TEN SECONDS, AND AFTER THAT MERE TEN SECONDS
15 OFFICER RODRIGUEZ SEES DIAMON WALKING AGAIN COMING TOWARDS
16 HIM. HE THINKS DIAMON'S HANDS ARE CONCEALED. IT'S DARK. HE
17 DOESN'T HAVE A FLASHLIGHT.

18 DIAMON -- HE SAYS DIAMON ATTEMPTS TO WALK PAST OFFICER
19 RODRIGUEZ. AT THAT POINT OFFICER RODRIGUEZ PULLS HIS GUN,
20 NOT SURE WHERE HIS HANDS ARE, AND ORDERS DIAMON TO THE
21 GROUND. DIAMON WAS CONFUSED, STARTLED, AND HE SHOUTED, "I
22 DON'T HAVE ANYTHING ON ME." HE HAS HIS GUN DRAWN. OFFICER
23 RODRIGUEZ HAD HIS GUN DRAWN, AND HE ORDERED HIM TO THE
24 GROUND.

25 AT THAT POINT HE HANDCUFFS HIM. THE TIME NOW IS 2:11,

1 2:11, LESS THAN THREE MINUTES WHEN OFFICER RODRIGUEZ ARRIVED
2 AND DIAMON WAS ARRESTED. DIAMON SITS CUFFED IN THE PATROL
3 CAR. HE'S TOLD HIM THE TRUTH: THERE WAS NOTHING ON HIM, NO
4 GUNS, NO KNIVES, NO DRUG-PACKAGING MATERIAL, NO SCALES.
5 NOTHING ILLEGAL WAS IN HIS POCKETS, NOTHING IN HIS POCKETS
6 THAT WAS ILLEGAL. HE SITS THERE, ARRESTED IN THE BACK OF THE
7 CAR.

8 I THINK AT THIS POINT THE OTHER CAR -- THE OTHER OFFICER
9 ARRIVES. OFFICER MOONEY ARRIVES WITH THE DRUG DOG, LEIA, AND
10 HE IS GIVEN DIRECTIONS AND HE GOES IN THE PARKING LOT AT
11 OFFICER RODRIGUEZ'S DIRECTION TO TRACE THE PATH WHERE DIAMON
12 WALKED, BUT THERE'S NO DRUGS FOUND ON THE PATH DIAMON TOOK.
13 REMEMBER, HE'S WALKING BETWEEN THESE CARS. THERE'S NO DRUGS
14 FOUND THERE.

15 HOWEVER, OFF THE PATH OFFICER ROD -- OFFICER MOONEY,
16 EXCUSE ME, PROCEEDS AND GETS A BEER BOTTLE. THEN HE NOTICES
17 SOME DISTURBED PINE STRAW. HE GOES THERE WITH THE DOG. THE
18 DOG SNIFFS THROUGH THE PINE STRAW, UNDERNEATH THAT BOTTLE
19 FINDS A PLASTIC BAG OF COCAINE, AND HE MADE THE COMMENT -- HE
20 SAID IT LOOKED LIKE SOMEBODY HAD BURIED IT THERE. SO HE
21 SNIFFED THROUGH AND DUG UP THE PINE STRAW. SO OFF THE PATH,
22 30 FEET PAST THE TRUCK BEHIND A TREE UNDER A BEER BOTTLE AND
23 BURIED IN SOME PINE STRAW...

24 THE BEER BOTTLE, WE DIDN'T SEE THAT. IT WAS LEFT
25 BEHIND, NOT TAKEN INTO EVIDENCE, THE SAME BOTTLE THAT CAUGHT

1 THE OFFICER'S ATTENTION, YET IT WAS LEFT BEHIND. NO EVIDENCE
2 SENT FOR ANALYSIS, NO FINGERPRINTS. THE BAGGY CONTAINING
3 COCAINE, THAT WAS TAKEN INTO EVIDENCE, YET THERE'S NO ATTEMPT
4 BY OFFICER MOONEY TO GET FINGERPRINTS OFF THAT. THERE WAS NO
5 ATTEMPT FOR OFFICER RODRIGUEZ TO GET FINGERPRINTS OFF THAT.
6 IT WAS NOT SENT TO THE LAB TO SEE IF THEY COULD GET
7 FINGERPRINTS OFF IT. NOTHING.

8 WELL, AT THIS POINT HE MOVES TOWARDS THE CAR. DIAMON IS
9 PLACED IN THE BACK OF THE CAR, AND HE'S SITTING THERE
10 ARRESTED. WELL, BACK UP. HE SAYS HE WAS BY THE CAR FIRST,
11 AND AT THAT TIME THAT'S WHEN OFFICER RODRIGUEZ SEARCHED HIS
12 POCKET. HE SAID HE FOUND SOME ROCKS. HE PUT SOME ROCKS ON
13 THE HOOD OF THE CAR; I BELIEVE IT WAS THE HOOD OF THE CAR.
14 THERE'S BEEN TESTIMONY HE WAS TRYING TO EAT THESE ROCKS.

15 WELL, OFFICER RODRIGUEZ OBVIOUSLY THOUGHT THEY WERE SOME
16 KIND OF DRUGS BECAUSE HE TESTED THEM FOR DRUGS, TOOK THEM
17 INTO EVIDENCE, AND MAYBE DIAMON THOUGHT THEY WERE DRUGS, TOO.
18 MAYBE THAT'S WHY HE WAS TRYING TO GET THESE ROCKS, BUT DOES
19 IT MAKE SENSE THAT HE WOULD KEEP THESE ROCKS IN HIS POCKET IF
20 HE GOT RID OF THE COCAINE? WHY WOULDN'T HE GET RID OF ALL OF
21 THEM IF HE THOUGHT THEY WERE DRUGS?

22 WELL, OFFICER RODRIGUEZ THEN TESTS THIS BAGGY, THE
23 CONTENTS OF BAGGY, RIGHT NEARBY ON THE HOOD OF THE CAR OR THE
24 TRUNK OF THE CAR. I'M SORRY. I CAN'T REMEMBER WHICH ONE,
25 BUT YOUR RECOLLECTION IS MORE CLEAR. AND DIAMON'S IN THE

1 BACK SEAT. THEN THROUGH THE WINDOW OFFICER RODRIGUEZ HOLDS
2 THE BAG, DANGLING IT IN FRONT OF DIAMON, TELLING HIM HE'S
3 GOING TO CHARGE HIM. HE'S GOING TO CHARGE HIM WITH THIS
4 WHITE POWDERY SUBSTANCE. DIAMON HEARS HIM SAY HE'S GOING TO
5 CHARGE HIM WITH IT, AND HE SAID, "THAT'S NOT MINE. I DON'T
6 KNOW ANYTHING ABOUT THAT COCAINE."

7 WELL, WHAT ELSE WOULD HE CHARGE HIM WITH? IT'S A WHITE
8 POWDERY SUBSTANCE. BUT RIGHT AWAY HE DENIED IT: THAT'S NOT
9 MINE; I DON'T KNOW WHAT IT IS. I DON'T KNOW WHERE IT CAME
10 FROM. HE KNOWS NOTHING ABOUT IT.

11 WHEN WE THINK ABOUT IT, HAS ANYONE TESTIFIED THAT THEY
12 SAW THE COCAINE IN DIAMON'S HANDS? NO. HAS ANYONE TESTIFIED
13 THAT THEY SAW HIM THROW IT? NO. HAS ANYONE TESTIFIED THAT
14 THEY SAW HIM DROP IT? NO. HAS ANYONE TESTIFIED THEY SAW HIM
15 GO BEHIND A TREE? NO. HAS ANYONE TESTIFIED THEY ACTUALLY
16 SAW HIM BURY IT? NO. NO DRUGS WERE NEVER AT ANY TIME SEEN
17 IN THE POSSESSION OF DIAMON.

18 MR. BANNON DEMONSTRATED WITH WALKING THIS TEN SECONDS TO
19 SEE HOW FAR HE COULD GO, BUT THINK MORE EXACTLY WHAT HAPPENED
20 IN THAT TEN SECONDS. THE DRUGS WERE FOUND MORE THAN 30 FEET
21 ACTUALLY WHEN YOU THINK ABOUT IT BECAUSE IN THAT TEN SECONDS
22 NOT ONLY DID HE WALK PAST THE TRUCK, BUT OFFICER MOONEY
23 TESTIFIED THEY WERE 30 FEET BEYOND THE BACK OF THE TRUCK.
24 THAT'S WHERE HE LOST SIGHT OF HIM. SO OFF THE DRIVEWAY,
25 BEHIND A PICKUP TRUCK, THEN 30 FEET, DIG UP PINE STRAW, PUT

1 THE DRUGS DOWN, COVER THEM UP WITH PINE STRAW, LOOK FOR A
2 BEER BOTTLE, PUT THE BEER BOTTLE THERE, AND WALK BACK OUT 30
3 FEET PAST THE TRUCK WHERE OFFICER RODRIGUEZ IS STANDING. TEN
4 SECONDS?

5 UNDER THIS BEER BOTTLE, WHICH NO ONE EVER SEEN IN HIS
6 HAND -- SO WHERE DID IT COME FROM? UNDER SOME DISTURBED PINE
7 STRAW BEHIND A TREE WHERE NO ONE IS GOING TO GO. THE DRUGS
8 WERE FOUND AT THE STUDIO SEVEN PARKING LOT ON NEW YEAR'S EVE.
9 IT'S AN EXTREMELY CROWDED PARKING LOT, ROCKING, HAPPENING.
10 IT'S THE PLACE TO BE ON NEW YEAR'S, A NEW YEAR'S CELEBRATION
11 AT A POPULAR CLUB, AND THAT'S WHAT BRINGS US HERE TODAY.

12 AND NOW THE EVIDENCE MUST BE CONSIDERED TO DETERMINE IF
13 THE STATE HAS MET ITS BURDEN. REMEMBER: NO MAN MUST PROVE
14 HIS INNOCENCE. IT'S THE STATE WHO MUST PROVE TO EACH ONE OF
15 YOU, EACH ONE OF YOU INDIVIDUALLY, THAT THIS MAN IS GUILTY
16 BEYOND A REASONABLE DOUBT.

17 THE JUDGE WILL FURTHER INSTRUCT YOU ON THE LAW. I'D
18 LIKE TO GO INTO SOME OF THE THINGS YOU MUST CONSIDER. THE
19 TERM MERE PRESENCE, WHAT THAT MEANS IS THAT THE STATE NEEDS
20 EVIDENCE MORE THAN JUST DIAMON'S MERE PRESENCE IN AN AREA
21 WHERE DRUGS WERE FOUND. MERE PRESENCE IS NOT ENOUGH TO PROVE
22 SOMEONE GUILTY OF A CRIME. REMEMBER, IT'S THE BURDEN OF THE
23 STATE TO PROVE EVERY ELEMENT OF THE CRIME. IF YOU FIND THE
24 STATE HAS ONLY SHOWN THAT DIAMON WAS ONLY PRESENT AT A SCENE
25 WHERE DRUGS WERE FOUND, YOU MUST FIND HIM NOT GUILTY.

1 POSSESSION -- POSSESSION IS A KEY ELEMENT TO WHAT THIS
2 TRIAL ABOUT. DID DIAMON POSSESS THE BAG OF COCAINE FOUND IN
3 THE PINE STRAW UNDER THE TREE? AND THERE SHOULD BE NO
4 GUESSWORK INVOLVED, NOTHING TO GUESS ABOUT. IT IS -- IT'S
5 NOT -- IT'S NOT HE MAY HAVE HAD IT, AND IT'S NOT HE COULD
6 POSSIBLY HAVE IT. THE EVIDENCE MUST PROVE TO YOU THAT
7 THERE'S NO REASONABLE DOUBT THAT DIAMON POSSESSED THAT DRUG.
8 IT MUST BE BEYOND A REASONABLE DOUBT.

9 NOW, THE JUDGE IS GOING TO TELL YOU ABOUT TWO DIFFERENT
10 TYPES OF POSSESSION, SO JUST BRIEFLY THERE'S POSSESSION
11 CALLED ACTUAL POSSESSION: DRUGS FOUND OR SEEN IN THE ACTUAL
12 PHYSICAL CUSTODY OF THE PERSON CHARGED. WHAT DOES THE
13 EVIDENCE SHOW IN THIS REGARD? NO TESTIMONY THAT THEY SAW
14 DIAMON IN A DRUG TRANSACTION. NO TESTIMONY THAT ANYONE HAS
15 EVER SEEN DIAMON PUT SOMETHING IN... NO TESTIMONY AS TO
16 WHETHER DIAMON THREW ANYTHING. NO TESTIMONY AS TO SEEING
17 DIAMON BURY ANYTHING. NO ONE SAW HIM BY THE TREE, NO
18 FINGERPRINTS ON THE BOTTLE, NO FINGERPRINTS ON THE BAGGY, NO
19 D.N.A.

20 THEN THERE'S CONSTRUCTIVE POSSESSION. IN THAT -- THE
21 JUDGE GAVE YOU A BRIEF DESCRIPTION IN THE BEGINNING, AND
22 HE'LL TELL YOU SOME MORE ABOUT THAT LATER. BUT BASICALLY
23 DIAMON WOULD HAVE TO HAVE THE RIGHT TO CONTROL THE PREMISES,
24 HAVE CONTROL OVER THAT AREA, THE AREA WE'RE TALKING ABOUT
25 WHERE THE DRUGS WERE FOUND. NOW, REMEMBER, IT'S A PACKED

1 PARKING LOT, A PUBLIC PARKING LOT AT A CLUB DURING ONE OF THE
2 BIGGEST PARTIES OF THE YEAR. CARS PARKED EVERYWHERE, EVERY
3 CONCEIVABLE PLACE.

4 DIAMON DOESN'T OWN THE PARKING LOT. IT'S NOT HIS
5 RESIDENCE. HE ONLY HAS THE RIGHT TO ACCESS THE PARKING LOT,
6 NOT ACTUAL DOMINION AND CONTROL OVER IT. IN OTHER WORDS, THE
7 PARKING LOT DOESN'T BELONG TO HIM. HE HAS ABSOLUTELY NO
8 CONTROL OVER WHO CAME AND WENT FROM THE PARKING LOT.

9 WELL, THE STATE WOULD LIKE YOU TO DEMISE FROM THE
10 CIRCUMSTANCES THAT DIAMON HAD SOME KIND OF CONSTRUCTIVE
11 POSSESSION OF THE COCAINE, BUT THIS COULD ONLY BE POSSIBLE IF
12 YOU CAN FIND NO OTHER POSSIBLE EXPLANATION OF HOW THE DRUGS
13 GOT THERE OTHER THAN THE ONE THE STATE HAD GIVEN YOU. IF
14 THERE'S POSSIBLY EVEN TWO EXPLANATIONS AS TO HOW THE DRUGS
15 GOT THERE, THE STATE CANNOT ASK YOU TO CONVICT.

16 FOR EXAMPLE, IF YOU WAKE UP IN THE MORNING AND THERE'S
17 SNOW OUTSIDE, YOU COME TO THE CONCLUSION THAT IT HAD TO SNOW
18 OVERNIGHT. BUT IF YOU WAKE UP AND YOU GO OUTSIDE AND THE
19 GROUND IS WET, CAN THERE BE MORE THAN ONE EXPLANATION OF WHY
20 THE GROUND IS WET? YOU MAY FIRST THINK THAT, WELL, IT COULD
21 HAVE RAINED, BUT THAT'S NOT NECESSARILY WHY THE GROUND IS
22 WET. A PIPE COULD HAVE BURST. SPRINKLERS COULD HAVE GONE
23 OFF. SO THERE'S MORE THAN ONE REASONABLE EXPLANATION WHY THE
24 GROUND WAS WET.

25 DRUGS WERE FOUND IN A CROWDED PUBLIC PARKING LOT AT

1 STUDIO SEVEN DURING NEW YEAR'S EVE. IS THERE ANY OTHER
2 REASONABLE EXPLANATION OF HOW THE DRUGS GOT THERE? CAN THERE
3 BE ANOTHER EXPLANATION OTHER THAN WHAT THE STATE HAS GIVEN
4 YOU? IF YOU HAVE A HESITATION, REMEMBER A REASONABLE DOUBT
5 IS A HESITATION TO ACT. THAT MEANS -- ANY HESITATION MEANS
6 YOU HAVE LOOKED AT WHAT THE STATE HAS GIVEN YOU AND YOU SAY,
7 "I CAN'T. IT'S NOT ENOUGH. I'M NOT COMFORTABLE WITH SAYING
8 GUILTY WHEN ALL YOU GAVE ME WAS THIS," AND THAT HESITATION
9 MEANS NOT GUILTY.

10 WE ALL HAVE OUR OWN OPINIONS, AND EACH OF YOU NOW HAVE
11 YOUR OWN VOTE. HOLD ON TO IT CAREFULLY, CONSCIENTIOUSLY. WE
12 ALL ARE EQUAL, ALL DESERVING THE SAME JUSTICE AND DESERVING
13 THE SAME FREEDOM, ALL DESERVING OF THE SAME RIGHTS THAT NO
14 MAN CAN BE FOUND GUILTY WITHOUT PROOF BEYOND A REASONABLE
15 DOUBT. THE QUESTION NOW BEFORE YOU: HAS THE STATE REMOVED
16 ALL REASONABLE DOUBT THAT THE BAG OF COCAINE WAS POSSESSED BY
17 DIAMON? I'M CONFIDENT THAT WHEN YOU REVIEW THE EVIDENCE PUT
18 BEFORE YOU TODAY THAT YOU'LL COME TO THE DECISION THE STATE
19 HAS NOT MET ITS BURDEN AND FIND DIAMON FRIPP NOT GUILTY.

20 THE COURT: OKAY. JURORS, FINAL PHASE OF THE TRIAL.
21 I'M GOING TO INSTRUCT Y'ALL ON THE LAW, AND THEN YOU'RE GOING
22 TO GO BACK AND REACH VERDICTS - EITHER NOT GUILTY OR GUILTY,
23 GUILTY OR NOT GUILTY - ON THE TWO CHARGES. OBVIOUSLY THE
24 ORDER THAT I SAID THAT HAS NO BEARING; THERE ARE ONLY TWO
25 WAYS I CAN SAY IT.

1 NOW, I'M NOT A FACT FINDER. SO I'M INSTRUCTING YOU ON
2 THE LAW, BUT THE LAW IS IN THE ABSTRACT. OKAY? I'M GOING TO
3 TELL YOU ABOUT DIRECT EVIDENCE AND CIRCUMSTANTIAL EVIDENCE.
4 I'M NOT GOING TO TELL YOU WHAT WAS WHAT IN THIS PARTICULAR
5 TRIAL OR WHAT YOU SHOULD BELIEVE OR WHAT YOU SHOULDN'T
6 BELIEVE. THAT'S GOING TO BE UP TO YOU JURORS. YOU WILL NOT
7 HAVE WITH YOU THE INDICTMENTS. OKAY? THE INDICTMENTS
8 CHARGE, AND THAT'S ALL THAT THEY DO, CHARGE DIAMON FRIPP WITH
9 COMMITTING TWO CRIMES. ONE IS AN ADD-ON, BUT IT'S A LITTLE
10 MORE -- ANOTHER ELEMENT TO IT OTHER THAN JUST AN ADD-ON THAT
11 THE STATE WOULD HAVE TO PROVE BEYOND A REASONABLE DOUBT, AS I
12 WILL EXPLAIN TO YOU.

13 THE INDICTMENTS RUN THROUGH EVERYTHING THAT COULD
14 POSSIBLY CONSTITUTE TRAFFICKING ON THE CHARGE OF TRAFFICKING,
15 AND I'LL -- I'LL READ MOST OF IT TO YOU. THE INDICTMENT ON
16 DISTRIBUTION, INTENT TO DISTRIBUTE AND SO FORTH WITHIN A HALF
17 MILE OF A SCHOOL, I'LL READ THAT TO YOU. BUT THE VERDICT --
18 THE FORM THAT'S GOING TO COME BACK IS SIMPLY GOING TO SAY:
19 WE, THE JURORS, BY UNANIMOUS CONSENT - AND 12 JURORS HAVE TO
20 AGREE BUT ONLY THE FOREPERSON WILL SIGN - FIND THE DEFENDANT
21 ON THE CHARGE OF POSSESSION WITH INTENT TO DISTRIBUTE COCAINE
22 WITHIN A HALF MILE OF A SCHOOL... IT'S NOT GOING TO SAY
23 EVERYTHING ELSE. EITHER NOT GUILTY OR GUILTY. AND THE
24 SECOND WILL SAY: WE, THE JURY, BY UNANIMOUS CONSENT FIND THE
25 DEFENDANT ON THE CHARGE OF TRAFFICKING IN COCAINE THREE GRAMS

1 OR MORE NOT GUILTY OR GUILTY, GUILTY OR NOT GUILTY. IT'S NOT
2 GOING TO HAVE ALL THE OTHER LANGUAGE IN THERE.

3 MR. FRIPP IS PRESUMED INNOCENT OF ALL CHARGES. I
4 EXPLAINED THAT TO YOU WHEN WE STARTED. THAT PRESUMPTION IS
5 STILL WITH HIM. IT'S ONLY REMOVED IF THE STATE CONVINCES YOU
6 12 JURORS UNANIMOUSLY BEYOND A REASONABLE DOUBT THAT HE
7 COMMITTED A CRIME OR TWO CRIMES. BEYOND A REASONABLE DOUBT
8 IS SIMPLY SUCH A DOUBT IT WOULD CAUSE AN ORDINARY PERSON TO
9 HESITATE TO ACT IN HIS DAILY AFFAIRS. IT'S EVIDENCE THAT
10 WOULD LEAVE YOU JURORS FIRMLY CONVINCED THAT A PERSON'S
11 GUILTY AS CHARGED.

12 MR. FRIPP DID NOT TESTIFY. I EXPLAINED TO YOU HE HAS NO
13 BURDEN TO PROVE THAT HE'S NOT GUILTY. YOU SHOULDN'T EVEN
14 TALK ABOUT WHETHER HE TESTIFIED OR DIDN'T TESTIFY ON THE
15 ISSUE OF WHETHER THE STATE HAS MET ITS BURDEN OF PROOF.

16 ALL RIGHT. THE FIRST INDICTMENT THAT CHARGES
17 TRAFFICKING READS AS FOLLOWS. IF YOU ACTUALLY WANTED TO
18 READ, WE COULD XEROX IT AND SEND IT BACK, BUT IT'S JUST THE
19 ALLEGATIONS. OKAY? THAT IN BEAUFORT COUNTY ON JANUARY THE
20 1ST, 2009, THE DEFENDANT, DIAMON D. FRIPP, UNLAWFULLY AND
21 KNOWINGLY DID SELL, MANUFACTURE, CULTIVATE, DELIVER,
22 PURCHASE, OR BRING INTO THE STATE OR DID PROVIDE FINANCIAL
23 ASSISTANCE OR OTHERWISE AID, ABET, ATTEMPT, OR CONSPIRE TO
24 SELL, MANUFACTURE, CULTIVATE, DELIVER, PURCHASE OR BRING INTO
25 THE STATE... THAT'S WHAT THE STATUTE SAYS. OR DID POSSESS A

1 CONTROLLED SUBSTANCE, TO WIT, COCAINE IN EXCESS OF 28 GRAMS.
2 THAT'S WHAT THE CASE IS...

3 IN ORDER TO OBTAIN A CONVICTION, THE STATE MUST CONVINCE
4 YOU 12 JURORS UNANIMOUSLY BEYOND A REASONABLE DOUBT THAT ON
5 JANUARY THE 1ST OF '09 IN BEAUFORT COUNTY DIAMON FRIPP
6 POSSESSED IN EXCESS OF 28 GRAMS OF COCAINE. TRAFFICKING IS A
7 POSSESSION-BY-WEIGHT STATUTE. SIMPLE POSSESSION WOULD BE --
8 YOU KNOW, IF YOU JUST HAD A GRAIN OR A GRAM OR SOMETHING,
9 THAT WOULD BE SIMPLE POSSESSION, BUT THE PENALTIES INCREASE
10 AS IT GOES UP AND THEY JUST CALL POSSESSION OF MORE THAN 28
11 GRAMS TRAFFICKING. SO OBVIOUSLY THE STATE WOULD HAVE TO
12 PROVE POSSESSION AND THEN THE WEIGHT, THAT HE HAD IT IN
13 BEAUFORT COUNTY AS I WILL COME TO.

14 THE SECOND INDICTMENT COPIES THE STATUTE AGAIN MORE OR
15 LESS AND ALLEGES THAT IN BEAUFORT COUNTY ON JANUARY THE 1ST
16 ON OR ABOUT THIS YEAR THE DEFENDANT, DIAMON FRIPP, UNLAWFULLY
17 DID POSSESS WITH INTENT TO DISTRIBUTE, DISTRIBUTE, DISPENSE,
18 SELL, PURCHASE, OR MANUFACTURE A QUANTITY OF COCAINE WITHIN A
19 ONE-HALF-MILE RADIUS OF BROAD RIVER ELEMENTARY SCHOOL. YOU
20 GET EVERYTHING IN THERE EXCEPT POSSESSION WITH INTENT TO
21 DISTRIBUTE, AND THAT'S WHAT THE STATE HAS TO PROVE. THEY
22 HAVE TO -- IT'S AN ADD-ON PENALTY IF YOU FIND HIM GUILTY OF
23 TRAFFICKING, IF YOU FIND THAT NOT ONLY DID HE HAVE COCAINE IN
24 HIS POSSESSION WITHIN A HALF MILE OF THE SCHOOL BUT THAT HE
25 INTENDED TO DISTRIBUTE IT, SELL IT, TRANSFER IT, GIVE IT

1 AWAY.

2 THERE'S OBVIOUSLY NO EVIDENCE THAT HE SOLD ANY AND SO
3 FORTH WITHIN THERE. SO THE LANGUAGE THAT CHARGES HIM WITH
4 THE CRIME JUST COPIES ALL -- IT'S INCLUDED WITHIN THE PENALTY
5 FOR DOING CERTAIN THINGS WITH DRUGS WITHIN A HALF MILE OF A
6 SCHOOL, BUT ALL WE'RE TALKING ABOUT IN THIS CASE IS
7 POSSESSING DRUGS WITH INTENT TO DISTRIBUTE. THAT'S WHAT THE
8 STATE HAS THE BURDEN OF PROOF ON.

9 NOW, ALTERNATE JUROR, YOU STILL PAY ATTENTION. A CALL
10 MIGHT COME ANY MINUTE SAYING A CHILD HAS HIT ANOTHER CHILD AT
11 SCHOOL OR VICE VERSA, AND YOU'D HAVE TO TAKE THEIR PLACE.
12 MR. FOREMAN, YOUR VOTE COUNTS NO MORE THAN ANYBODY'S, BUT
13 SOMEBODY HAS TO PRESIDE OVER DELIBERATIONS AND ACT AS
14 SPOKESPERSON FOR THE JURY. IF QUESTIONS OCCUR DURING
15 DELIBERATION, MR. FOREMAN, IF YOU WOULD WRITE THEM DOWN. I
16 WILL CONFER WITH THE ATTORNEYS AND SEE IF I CAN ANSWER THE
17 QUESTION.

18 AS I TOLD YOU, I'M THE LONGEST-SERVING JUDGE. TO
19 FORESTALL THE QUESTIONS THAT GENERALLY COME BACK: I CAN'T
20 ADD ANYTHING TO THE CASE. OKAY? DON'T SEND ME BACK A
21 QUESTION: WHERE IS THE VIDEO CAMERA? HEY, WE DIDN'T HAVE
22 ONE. ALL RIGHT? OR Y'ALL -- Y'ALL WATCH A LOT OF T.V.
23 PROBABLY. IF YOU WOULD LIKE TO HAVE ASKED A WITNESS ANOTHER
24 QUESTION, YOU CAN'T DO IT. YOU HAVE TO DECIDE THE CASE BASED
25 UPON THE TESTIMONY AND EVIDENCE THAT WAS PRESENTED. SO I

1 CAN'T DO THAT.

2 IF YOU SAW SOMETHING DURING THE TRIAL THAT WAS NOT
3 INTRODUCED INTO EVIDENCE, IT WILL NOT COME BACK. THERE WAS
4 CERTAIN DEMONSTRATIVE EVIDENCE THAT WAS JUST SHOWN TO YOU.
5 THAT WILL NOT COME BACK. IT WAS NOT INTRODUCED INTO
6 EVIDENCE. OR IF A CHART WAS USED OR A DIAGRAM WAS USED IN
7 SUMMATIONS WHICH ARE NOT EVIDENCE, THEY CAN'T COME BACK. YOU
8 CAN CONSIDER WHAT YOU SAW, BUT WHAT WILL COME BACK IS
9 EVERYTHING THAT WAS INTRODUCED INTO EVIDENCE. I WOULD
10 SUGGEST YOU NOT OPEN THE COCAINE BAG, BUT I MEAN YOU CAN AND
11 IT WILL BE BACK THERE. ALL RIGHT? IT'S INTRODUCED FORMALLY,
12 INTRODUCED INTO EVIDENCE. SO I CANNOT ADD ANY TESTIMONY OR
13 ANY OTHER EVIDENCE TO THE CASE. THE STATE HAS THE BURDEN OF
14 PROOF BEYOND A REASONABLE DOUBT BASED UPON WHAT HAS BEEN
15 PRESENTED DURING THIS TRIAL AND SO FORTH.

16 NOW, YOU JURORS AND YOU ALONE PASS UPON THE CREDIBILITY
17 WHICH IS ANOTHER WAY OF SAYING THE BELIEVABILITY OF THE
18 WITNESSES WHO HAVE TESTIFIED. YOU JUST USE YOUR COMMON SENSE
19 WHEN YOU'RE EVALUATING TESTIMONY. I'M NOT DIRECTING THESE
20 COMMENTS TO ANY PARTICULAR WITNESS. THEY APPLY TO ALL OF
21 THEM. AMONG THE FACTORS THAT YOU WOULD TAKE INTO ACCOUNT
22 CERTAINLY WOULD BE THE Demeanor OR THE APPEARANCE OF A
23 WITNESS. YOU WOULD CONSIDER WHETHER WITNESSES ARE HESITANT
24 OR FORTHRIGHT IN ANSWERING QUESTIONS. CERTAINLY IF A
25 WITNESS'S TESTIMONY IS CONSISTENT OR INCONSISTENT SHOULD BE

1 CONSIDERED BY YOU. YOU CAN CONSIDER ANY INTEREST OR BIAS
2 THAT A WITNESS HAS IN THE OUTCOME OF THE PROCEEDINGS. THE
3 OPPORTUNITY THAT THE WITNESS HAD TO SEE, HEAR, OR OBSERVE
4 WHAT THE WITNESS TESTIFIED TO SHOULD BE CONSIDERED BY YOU.

5 JURORS, WE DON'T COUNT WITNESSES, OF COURSE, IN
6 PROSECUTIONS. WHATEVER SIDE THAT PUTS UP THE MOST WITNESSES
7 DOESN'T NECESSARILY WIN. THE DEFENDANT DOES NOT HAVE TO PUT
8 UP ANY, AS I EXPLAINED TO YOU, AND YOU CAN'T EVEN DISCUSS OR
9 DEBATE THAT WHILE YOU'RE DECIDING WHETHER THE STATE HAS MET
10 ITS BURDEN OF PROOF ON THE TWO INDICTMENTS ON WHICH HE'S
11 CHARGED.

12 NOW, JURORS, YOU'RE NOT BOUND TO ACCEPT IN ITS ENTIRETY
13 THE TESTIMONY OF ANY PARTICULAR WITNESS. YOU HAVE THE
14 ABSOLUTE RIGHT TO PICK AND CHOOSE PORTIONS OF TESTIMONY THAT
15 YOU FEEL ARE BELIEVABLE. AFTER YOU HAVE DECIDED WHICH
16 TESTIMONY IS BELIEVABLE, THE RELATIVE WEIGHT THAT YOU
17 ATTRIBUTE TO BELIEVABLE TESTIMONY IS ENTIRELY UP TO YOU
18 JURORS. SO, AGAIN, MR. FOREMAN, DON'T SEND BACK A QUESTION:
19 HOW MUCH OF SO-AND-SO'S TESTIMONY SHOULD WE BELIEVE? THAT'S
20 UP TO YOU, AFTER YOU DECIDE WHICH TESTIMONY IS BELIEVABLE AND
21 THE WEIGHT THAT YOU ATTRIBUTE TO IT. IT'S UP TO YOU JURORS.

22 DURING THE TRIAL, ONE WITNESS WAS QUALIFIED AS AN
23 EXPERT. YOU USE YOUR STANDARD TEST IN EVALUATING THE
24 TESTIMONY FROM AN EXPERT. IN ADDITION, YOU WOULD CONSIDER
25 THE EDUCATION, BACKGROUND, AND TRAINING THAT AN EXPERT HAD.

1 ONCE A WITNESS IS QUALIFIED AS AN EXPERT, HE OR SHE IS
2 ENTITLED TO GIVE OPINIONS WITHIN THEIR FIELD OF EXPERTISE.
3 IN THIS CASE IT'S JUST: WAS THIS A DRUG, HOW MUCH DOES IT
4 WEIGH AND SO FORTH? YOU'RE NOT BOUND TO ACCEPT WHAT THE
5 WITNESS TESTIFIED TO, BUT THERE WAS SUFFICIENT EVIDENCE TO
6 ALLOW THAT PERSON TO TESTIFY AS AN EXPERT IN THAT... IF THEY
7 HANDED US A BAG OF WHITE POWDER, YOU KNOW, WE MIGHT BE ABLE
8 TO TASTE IT AND SEE WHETHER IT WAS SUGAR OR SWEET'N LOW OR
9 BAKING SODA, BUT I DOUBT WE COULD TELL YOU WHETHER IT WAS A
10 DRUG OR NOT, YOU KNOW. YOU HAVE TO HAVE TRAINING. THAT'S
11 ALL.

12 NOW, JURORS, EVIDENCE IS BROKEN DOWN INTO TWO TYPES:
13 DIRECT EVIDENCE AND INDIRECT OR CIRCUMSTANTIAL EVIDENCE.
14 THOSE EVIDENCES STAND ON THE SAME FOOTING AS FAR AS TRIALS
15 ARE CONCERNED. IN OTHER WORDS, THE STATE CAN RELY ON DIRECT
16 EVIDENCE AND CIRCUMSTANTIAL EVIDENCE IN OBTAINING A
17 CONVICTION. DIRECT EVIDENCE IS WHERE AN INDIVIDUAL TESTIFIES
18 TO SOMETHING HE OR SHE HAS OBSERVED THROUGH THE SENSES. IT
19 MIGHT NOT BE TRUE, BUT THAT'S DIRECT EVIDENCE JUST LIKE
20 SOMEBODY CAME IN AND SAID IT'S RAINING OUTSIDE. I DON'T KNOW
21 WHETHER THAT'S AIR CONDITIONING OR RAIN HITTING THE ROOF.
22 YOU KNOW, THEY SAID IT WAS RAINING OUTSIDE. THAT'S EVIDENCE
23 THAT IT'S RAINING OUTSIDE AND IT MIGHT NOT BE.

24 IF SOMEBODY CAME IN AND TOOK AN UMBRELLA OFF AND SHOOK
25 IT, YOU KNOW, TOOK A COAT OFF AND SHOOK WATER OFF OF IT,

1 DIDN'T SAY A WORD, YOU COULD SAY IT MUST BE RAINING OUTSIDE.
2 MIGHT NOT BE. THEY JUST STEPPED UNDER THE SHOWER OR
3 SOMETHING. ANYWAY, DIRECT EVIDENCE IS WHERE YOU TAKE A
4 PROVEN FACT OR FACTS AND FROM THAT YOU MAKE A REASONABLE
5 CONNECTION TO DRAW AN INFERENCE AS TO THE EXISTENCE OF
6 ANOTHER FACT. INFERENCES, OF COURSE, MUST BE REASONABLE.
7 YOU CAN'T MAKE A WILD FETCH OF SOMETHING OR ANOTHER. SO
8 THAT'S IT. DIRECT EVIDENCE IS THROUGH THE SENSES. INDIRECT
9 EVIDENCE IS WHERE FROM A PROVEN FACT YOU INFER THE EXISTENCE
10 OF ANOTHER FACT, THE SAME FOOTING AS FAR AS THE TRIAL IS
11 CONCERNED.

12 I EXPLAINED TO YOU AT THE START: THE LEGISLATURE
13 CLASSIFIES VARIOUS SUBSTANCES AS CONTROLLED SUBSTANCES.
14 AMONG THE SUBSTANCES THAT ARE CLASSIFIED AS A CONTROLLED
15 SUBSTANCE IS COCAINE. SO IT'S UNLAWFUL FOR AN INDIVIDUAL TO
16 POSSESS A CONTROLLED SUBSTANCE UNLESS YOU ARE OTHERWISE
17 AUTHORIZED BY LAW TO POSSESS IT, SUCH AS YOU HAVE A VALID
18 PRESCRIPTION THAT'S BEEN HANDED OR BEEN HANDED TO YOU BY A
19 PHYSICIAN OR A PHARMACIST OR YOU ARE A PERSON AUTHORIZED TO
20 TRANSPORT A DRUG FROM POINT A. TO POINT B.

21 IF YOU HAVE A DRUG IN YOUR POSSESSION OTHERWISE, YOU ARE
22 GUILTY OF POSSESSION OF A CONTROLLED SUBSTANCE, AND THAT'S
23 EVEN -- YOU KNOW, IF YOUR MOTHER HAS A PRESCRIPTION FOR
24 TYLENOL II AND YOU HAVE A HEADACHE AND GIVES IT TO YOU AND
25 YOU GET STOPPED, I'M SORRY. YOU DIDN'T HAVE IT -- THAT'S A

1 CONTROLLED SUBSTANCE THAT YOU DIDN'T HAVE A PRESCRIPTION FOR,
2 AND YOU WOULD ACTUALLY BE GUILTY OF POSSESSION OF A
3 CONTROLLED SUBSTANCE. THE LEGISLATURE CLASSIFIED MANY
4 SUBSTANCES AS CONTROLLED, AND AMONG THOSE ARE COCAINE.

5 NOW, I EXPLAINED TO YOU THAT THE TRAFFICKING IN THIS
6 CASE - IT COULD BE DIFFERENT IN OTHER CASES -- IS BASED SOLELY
7 ON THE WEIGHT OF THE COCAINE, BUT BEFORE A WEIGHT CAN EVEN BE
8 CONSIDERED, IT'S INCUMBENT ON THE STATE TO PROVE THAT THE
9 DEFENDANT HAD POSSESSION OF THE CONTROLLED SUBSTANCE. FIRST,
10 THE STATE MUST PROVE, IN ORDER TO GET A CONVICTION BEYOND A
11 REASONABLE DOUBT, THAT THE DEFENDANT HAD COCAINE IN HIS
12 POSSESSION, THAT THE SUBSTANCE WAS, IN FACT, COCAINE, AND
13 THAT HE KNEW IT WAS COCAINE. ALL RIGHT.

14 POSSESSION CAN BE PROVED AS ACTUAL POSSESSION OR
15 CONSTRUCTIVE. ACTUAL POSSESSION, JURORS, IS WHERE A PERSON
16 HAS REAL PHYSICAL CUSTODY OF THE OBJECT IN QUESTION. IN
17 OTHER WORDS, IT'S ON HIS PERSON OR WITHIN HIS OR HER GRASP AT
18 THAT POINT. CONSTRUCTIVE POSSESSION MEANS THAT A DEFENDANT
19 HAS THE RIGHT TO EXERCISE DOMINION AND CONTROL OVER THE
20 SUBSTANCE OR HAS THE RIGHT TO EXERCISE DOMINION AND CONTROL
21 OVER THE AREA IN WHICH THE CONTROLLED SUBSTANCES WERE FOUND.

22 PROOF OF POSSESSION, JURORS, REQUIRES MORE THAN PROOF OF
23 MERE PRESENCE AT A PLACE WHERE DRUGS ARE FOUND. THE STATE
24 MUST PROVE BEYOND A REASONABLE DOUBT THAT THE ACCUSED HAD
25 BOTH THE POWER, THAT IS, ACTUAL OR CONSTRUCTIVE CONTROL, AND

1 THE INTENT TO CONTROL THE SUBSTANCE AND ITS DISPOSITION OR
2 USE. AS I STATED, ACTUAL OR CONTROLLED OCCURS WHEN THE
3 CONTROLLED SUBSTANCE IS FOUND IN THE ACTUAL PHYSICAL CUSTODY
4 OF THE PERSON CHARGED. CONSTRUCTIVE CONTROL OCCURS WHEN THE
5 PERSON CHARGED WITH POSSESSION HAS DOMINION AND CONTROL OVER
6 THE CONTROLLED SUBSTANCE OR DOMINION AND CONTROL OVER THE
7 AREA IN WHICH THE DRUGS HAVE BEEN FOUND.

8 MERE PRESENCE, AS I EARLIER STATED, OF A PERSON IN AN
9 AREA WHERE AN OBJECT IS FOUND IS NOT ENOUGH IN AND OF ITSELF
10 TO GIVE RISE TO THE NECESSARY INFERENCES, BUT IN CONSIDERING
11 WHETHER THE STATE HAS MET ITS BURDEN OF PROOF BEYOND A
12 REASONABLE DOUBT, YOU CAN CONSIDER ALL EVIDENCE, DIRECT AND
13 INDIRECT, BEARING ON THAT ISSUE. NOW, DON'T SEND BACK A
14 QUESTION TO ME AND SAY: WHAT DIRECT EVIDENCE IS THERE?
15 THAT'S JUST EVIDENCE IN THE CASE. ALL RIGHT.

16 NOW, IN ADDITION TO PROVING -- IN ORDER TO OBTAIN A
17 CONVICTION OF TRAFFICKING, THE STATE MUST GO FURTHER AND SHOW
18 THAT THE WEIGHT OF THE SUBSTANCE, IN THIS CASE COCAINE, WAS
19 IN EXCESS OF 28 GRAMS. ALL RIGHT? NOW, THAT'S WHAT THE
20 STATE HAS TO PROVE ON THE FIRST CHARGE OF TRAFFICKING IN
21 COCAINE. THE SECOND CHARGE WHICH IS -- IT'S CALLED
22 DISTRIBUTING, SELLING, PURCHASING, MANUFACTURING DRUGS WITHIN
23 A HALF MILE OF A SCHOOL OR A PARK, BUT I JUST WROTE ON HERE
24 WHAT THE STATE ACTUALLY HAS TO PROVE. I'M NOT SUGGESTING
25 THAT THEY HAVE.

1 THEY HAVE TO PROVE THAT THE DEFENDANT HAD IN HIS
2 POSSESSION COCAINE AND THAT HE DIDN'T JUST HAVE IT IN HIS
3 POSSESSION BUT THAT HE INTENDED TO DISTRIBUTE IT WITHIN
4 ONE-HALF MILE OF A SCHOOL. THE SCHOOL IN QUESTION IS BROAD
5 RIVER ELEMENTARY SCHOOL. ALL RIGHT. SO TO OBTAIN A
6 CONVICTION ON THIS CHARGE - AND I'M NOT SUGGESTING THAT THE
7 STATE DOES - YOU WOULD FIRST HAVE TO FIND THE DEFENDANT
8 GUILTY ON THE TRAFFICKING CHARGE WHICH ENCOMPASSES
9 POSSESSION. IF YOU DON'T FIND THAT HE HAD POSSESSION OF THE
10 DRUGS, THEN YOU DON'T EVEN CONSIDER THE NEXT. IF YOU FIND
11 THAT HE HAS POSSESSION OF THE DRUGS, YOU'D HAVE TO MAKE A
12 COUPLE OF DETERMINATIONS IN ORDER TO FIND A CONVICTION, AND
13 THE STATE HAS TO PROVE EACH OF THOSE BEYOND A REASONABLE
14 DOUBT.

15 THEY MUST PROVE, THEY BEING THE STATE, THAT THE
16 DEFENDANT HAD POSSESSION OF COCAINE WITHIN A HALF MILE OF THE
17 BROAD RIVER ELEMENTARY SCHOOL, BUT NOT ONLY DID HE HAVE
18 POSSESSION OF IT IN BEAUFORT COUNTY, SOUTH CAROLINA, BUT THAT
19 HE INTENDED TO DISTRIBUTE IT. GOT TO GO FURTHER. THEY CAN'T
20 JUST PROVE THAT HE HAD IT IN HIS POSSESSION. THEY'VE GOT TO
21 PROVE BEYOND A REASONABLE DOUBT THAT HE INTENDED TO
22 DISTRIBUTE IT.

23 DISTRIBUTE SIMPLY MEANS DELIVER OTHER THAN BY
24 ADMINISTERING A DRUG TO ANOTHER PERSON. IT'S SELLING,
25 TRANSFERRING, GIVING TO ANOTHER PERSON A CONTROLLED

1 SUBSTANCE. IT'S SOMETIMES EASIER TO PROVE THAT A PERSON
2 DISTRIBUTED SOMETHING THAN IT IS TO PROVE THAT THEY INTENDED
3 TO DISTRIBUTE IT. YOU CAN CONSIDER A CIRCUMSTANTIAL ISSUE ON
4 THAT BURDEN OF PROOF THAT THE STATE HAS.

5 IN ORDER TO PROVE THAT THE DEFENDANT INTENDED TO
6 DISTRIBUTE THE CONTROLLED SUBSTANCE, THE STATE MUST FIRST
7 PROVE THAT THE DEFENDANT POSSESSED A CONTROLLED SUBSTANCE.
8 SECOND, THAT THE DEFENDANT'S POSSESSION OF THE CONTROLLED
9 SUBSTANCE WAS KNOWING OR INTENTIONAL AND, THIRD, THAT THE
10 DEFENDANT POSSESSED IT WITH AN INTENT TO DISTRIBUTE THE
11 CONTROLLED SUBSTANCE. IT'S REAL EASY, JURORS. YOU KNOW, IF
12 LAW ENFORCEMENT COMES UP AND SOMEBODY SAYS, "OH, NO, YOU'VE
13 GOT THESE DRUGS. YOU'RE GOING TO TAKE THESE DRUGS FROM ME
14 THAT I WAS GOING TO SELL TO SO-AND-SO DOWN THE STREET," YOU
15 KNOW, THEN WE DON'T HAVE THOSE TRIALS. ALL RIGHT? WE DON'T
16 HAVE THOSE TRIALS. THAT WOULD BE DIRECT EVIDENCE OF THAT.

17 BUT WHEN YOU GET INTO THE AREA OF CIRCUMSTANTIAL
18 EVIDENCE, THE LEGISLATURE SAID THAT WHERE AN INDIVIDUAL
19 POSSESSED MORE THAN 10 GRAINS OF COCAINE, AN INFERENCE COULD
20 ARISE THAT THE PERSON WHO HAD THE COCAINE INTENDED TO
21 DISTRIBUTE IT, BUT THAT'S A PERMISSIBLE INFERENCE. IT'S JUST
22 EVIDENCE IN THE CASE. IT DOES NOT REQUIRE YOU JURORS TO
23 INFER THAT THE INDIVIDUAL, EVEN IF THEY HAD POSSESSION OF
24 THAT MORE THAN 10 GRAINS OF COCAINE, WOULD ACTUALLY BE
25 PLANNING TO SELL IT OR DISTRIBUTE IT.

1 NOW, I KNOW Y'ALL ALL HAVE BEEN TO SCHOOL. A GRAIN, AS
2 YOU RECALL, IS ONE-FIFTEENTH OF A GRAM. THEREFORE, 10 GRAINS
3 OF COCAINE WOULD EQUAL TWO-THIRDS GRAMS OF COCAINE. SO IF A
4 PERSON HAS 10 GRAINS WHICH IS TWO-THIRD GRAMS OF COCAINE, THE
5 INFERENCE COULD ARISE THAT THEY INTENDED TO SELL IT AND
6 DISTRIBUTE IT GIVEN THE WEIGHT, BUT IT'S JUST A PERMISSIBLE
7 INFERENCE. IT'S NOT SOMETHING THAT YOU ARE BOUND TO ACCEPT.

8 SO BOTTOM LINE: IN ORDER TO OBTAIN CONVICTIONS ON THE
9 TRAFFICKING CHARGE, THE STATE MUST CONVINCE YOU BEYOND A
10 REASONABLE DOUBT THAT THE DEFENDANT HAD 28 GRAMS OF COCAINE
11 IN HIS POSSESSION IN BEAUFORT COUNTY, POSSESSION BEING ACTUAL
12 OR CONSTRUCTIVE. REMEMBER THAT MERE PRESENCE AT A SCENE
13 WHERE DRUGS ARE FOUND STANDING ALONE CAN NEVER SUPPORT A
14 CONVICTION.

15 IF YOU FIND THE DEFENDANT GUILTY, AND I'M NOT SUGGESTING
16 THAT YOU DO, THEN YOU CAN CONSIDER THE SECOND CHARGE OF
17 POSSESSION WITH INTENT TO DISTRIBUTE WITHIN A HALF MILE OF
18 THE SCHOOL IN QUESTION. YOU COULD FIND THE DEFENDANT GUILTY
19 OF POSSESSION OF TRAFFICKING AND STILL NOT FIND HIM GUILTY OF
20 POSSESSION WITH INTENT TO DISTRIBUTE WITHIN A HALF MILE OF A
21 SCHOOL IF YOU FIND THE STATE HAS NOT CONVINCED YOU THAT HE
22 INTENDED TO DISTRIBUTE THE DRUGS WITHIN A HALF MILE OF A
23 SCHOOL.

24 OF COURSE, I'M JUST GIVING YOU SOME THINGS ON THAT.
25 JUST BECAUSE YOU FIND HIM GUILTY OF ONE DOES NOT MEAN YOU

1 NEED TO FIND HIM GUILTY OF THE OTHER. HOWEVER, IF YOU FIND
2 HIM NOT GUILTY OF TRAFFICKING, YOU CANNOT FIND HIM GUILTY OF
3 POSSESSION WITH INTENT TO DISTRIBUTE UNDER THE FACTS OF THIS
4 PARTICULAR CASE AS HAVE BEEN PRESENTED.

5 SO BEYOND THAT, JURORS, WHILE YOU DELIBERATE, YOU'LL
6 HAVE WITH YOU THE VERDICT FORMS. THE ORDER IN WHICH THE
7 VERDICT IS TYPED HAS NO BEARING. THERE ARE ONLY TWO WAYS TO
8 SAY IT: NOT GUILTY OR GUILTY, GUILTY OR NOT GUILTY. THAT'S
9 FOR Y'ALL TO DECIDE. IF YOU FIND HIM NOT GUILTY, YOU WOULD
10 CIRCLE OR UNDERLINE THAT, MR. FOREMAN. IF YOU FIND HIM
11 GUILTY, THE SAME, JUST SO WE WOULD UNDERSTAND. YOU DON'T PUT
12 A CHECK RIGHT BETWEEN THEM; WE WOULDN'T KNOW. YOU UNDERLINE
13 OR CIRCLE WHATEVER YOU FIND, AND 12 JURORS HAVE TO AGREE
14 UNANIMOUSLY, BUT I DO NOT NEED 12 SIGNATURES. ONLY THE
15 FOREPERSON SIGNS.

16 WE WILL SEND BACK ANYTHING THAT HAS BEEN OFFICIALLY
17 INTRODUCED INTO EVIDENCE, AND DON'T START DELIBERATING QUITE
18 YET. I HAVE TO CONFER WITH THE ATTORNEYS. I KEPT IT PRETTY
19 SHORT. THEY MIGHT WANT ME TO AMPLIFY SOMETHING OR, I MEAN, I
20 COULD HAVE MISSPOKE. IT MIGHT NOT BE THE FIRST TIME.
21 ALTERNATE JUROR, HANG IN HERE. THE REST OF Y'ALL STEP OUT.

22 (WHEREUPON, THE JURY WAS EXCUSED FROM OPEN COURT AT 2:29
23 P.M., AND THE ALTERNATE WAS EXCUSED FROM THE TRIAL.)

24 THE COURT: ALL RIGHT. DO YOU NEED ANYTHING ELSE?

25 MR. BANNON: NO, YOUR HONOR.

1 MR. DEYSACH: NO, YOUR HONOR. I JUST I GUESS RENEW THE
2 OBJECTION I HAD TO THE CONSTRUCTIVE POSSESSION CHARGE, AND
3 ANY AND ALL MOTIONS AND OBJECTIONS THAT WERE MADE DURING THE
4 TRIAL I WANT TO RENEW THOSE RIGHT NOW.

5 THE COURT: ALL RIGHT. YOU'VE RENEWED THEM, AND EVEN
6 AFTER CAREFUL CONSIDERATION I OVERRULE THEM.

7 MR. DEYSACH: THANK YOU.

8 THE COURT: OR DENY THEM. THE EVIDENCE, HE WANTS TO
9 TAKE IT BACK. TELL THEM START DELIBERATING.

10 BAILIFF: YES, SIR.

11 (WHEREUPON, THE JURY BEGAN DELIBERATING AT 2:32 P.M.)

12 THE COURT: OKAY. BRING THEM IN.

13 (WHEREUPON, THE JURY WAS BROUGHT INTO OPEN COURT AT 3:19
14 P.M.)

15 THE COURT: OKAY. JURORS, I DIDN'T SEND THE INDICTMENTS
16 BACK TO TRY NOT TO CONFUSE YOU BECAUSE OF ALL THE LANGUAGE IN
17 THERE. YOU SAY, "WHAT'S THE DIFFERENCE BETWEEN TRAFFICKING
18 AND THE INTENT TO DISTRIBUTE?" IF YOU'VE GOT 28 OR MORE
19 GRAMS OF CRACK COCAINE IN YOUR POSSESSION, YOU COULD -- YOU
20 COULD INFER, BUT YOU DON'T HAVE TO, THAT THE PERSON THAT HAD
21 THAT MUCH INTENDED TO DISTRIBUTE IT. DISTRIBUTE MEANS TO
22 SELL, GIVE AWAY, OR TRANSFER, BUT THAT'S JUST AN INFERENCE
23 ONE CAN DRAW.

24 INFERENCE STARTS WHEN A PERSON HAS 10 GRAINS OF COCAINE
25 OR MORE, AND 28 GRAMS IS OBVIOUSLY MORE THAN 10 GRAINS, BUT

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

State of South Carolina,

v.

Diamon D. Fripp

Defendant.

) FOURTEENTH JUDICIAL CIRCUIT
) IN THE GENERAL SESSIONS COURT

) J3117263
) Case No. 09-GS-07-019

) POST-TRIAL MOTION
) NEW TRIAL

JERAMIAH B. GRIFFIN
BEAUFORT COUNTY, S.C.
CLERK OF COURT

2009 OCT 29 AM 11:06

This matter comes before the Court on Defendant's Post-Trial Motion for New Trial. The Defendant was originally tried by jury, said trial beginning on October 26, 2009. That trial lasted until October 27, 2009 at which time the jury returned a verdict finding the Defendant guilty of one count of Trafficking Cocaine 44-53-370(c)(2)(b)(1). Subsequent to the jury's verdict and before sentencing, Defense counsel renewed its motion for directed verdict and its objection to the jury charge of constructive possession. After hearing from the parties, the Court sentenced the Defendant to a twelve (12) year sentence for Trafficking Cocaine.

The Defendant files this post-trial motion pursuant to Rule 29 of the S.C. Rules of Criminal Procedure. The Defendant respectfully moves that the Court grant the Defendant a New Trial based on the following grounds:

Motion for New Trial

During trial, following the denial of Defendant's request for a directed verdict the Defendant objected to the offering the charge of constructive possession to the jury. The Defendant argued that the State failed to establish constructive possession and therefore the

charge should not have been given to the jury. The Defendant resubmits this argument for consideration in this post-trial motion for new trial.

The Defendant believes the charge of constructive possession should not have been given to the jury in that 1) the State made the statements before this court that their case was proceeding as a "drop case" which insinuates "actual possession"; and 2) the charge of constructive possession is only appropriate when the State provides evidence that Defendant can "exercise dominion and control" over the area where the illegal substance is found.

Relevant case law shows that "[t]he trial judge should charge only the law applicable to the case." State v. Fair, 209 S.C. 439; 40 S.E.2d 634, 637 (1946). The Court further warned that [p]roviding instructions to the jury which do not fit the facts of the case may tend to confuse the jury. Id.

The Defendant is speaking specifically not only of the failure of the Court to grant Defendant's motion for a directed verdict but on over ruling Defendant's objection to allowing the jury to consider the charge of constructive possession.

The State alleges that the Defendant violated South Carolina Code section 44-53-370(c)(2)(b)(1), . . . a "person. . . who knowingly in actual or constructive possession. . . of 28 grams or more of cocaine. . . is known as 'trafficking in cocaine'".

The record reflects that grams of cocaine were found in the parking lot of Studio 7 nightclub. The State contends that the Defendant was in actual possession of the cocaine and at one point in time "tossed it". Therefore the charge put to the jury should be that of "actual possession" and not that of "constructive possession".

The State did not prove "actual possession" of cocaine by the defendant for the purposes of conviction for Trafficking Cocaine, where the evidence established that drugs were found in a bag on the ground near where Defendant was arrested but none of the officers saw Defendant take anything from his pocket and drop it, nor did any officer see anything fall from his pocket.

Similarly, in State v. Ballenger, 317 S.C. 364; 454 S.E.2d 355, 367, the Court held these similar facts "failed to prove actual possession and therefore the state was required to prove constructive possession."

The Ballenger court addressed the issue of constructive possession holding that "constructive possession requires a showing that the accused had *dominion and control over either the drugs of the premises upon which the drugs were found, as well as knowledge of the presence of the drugs*. Mere presence in the area where drugs are found does not constitute constructive possession" 317 S.C. at 367.

Applying these standards the record does not contain evidence of constructive possession the State failed to prove constructive possession. Therefore the charge was not applicable to the case.

The Defendant would note that the closest case on point to the current situation is State v. Heath, 370 S.C. 326; 635 S.E.2d 18 (2006). In Heath, the appellant and his mother lived in a house owned by his mother. When the police arrived to execute a search warrant the appellant was outside the house appearing to have just finished washing his car. A police dog discovered a car-washing mitt in a recycling bin near the back door of the house containing 43.48 grams of crack cocaine.

The Court held that the trial court erred in failing to direct verdict in favor of Appellant because the State failed to establish an essential element of the crime. To "establish constructive possession by either circumstantial or direct evidence . . . knowledge and possession may be inferred *if the substance was found on premises under his control*." (emphasis added) Heath, 370 S.C. at 329. In Heath, the State presented no direct or circumstantial evidence linking Appellant to the 43.48 grams of crack in that it failed to "demonstrate Appellant could exercise dominion and control over the area where the crack was found." Id.

In Heath, the Appellant *lived in the home* owned by his mother, the crack was found in a car-wash mitt and he was observed having just finished washing his car. Despite those facts, the Court held that the Appellant “merely had a right to access the area where the crack was found and not actual dominion and control of the property.” (emphasis added) 370 S.C. at 330.

In the present case, the Defendant, did not live where the cocaine was found, it was in a public parking lot and the State failed to prove that the Defendant could exercise dominion and control over the area where the cocaine was found. Defendant, even more so than in Heath, merely had a right to access the area where the cocaine was found and not actual dominion and control of the property.

The Defendant believes that the denial of the directed verdict followed by allowing the jury to consider the charge of “constructive possession” have affected the fundamental fairness of the Defendant’s trial in that the “law to be charged to the jury is determined by the evidence at trial.” State v. Knoten, 347 S.C. 296, 302; 555 S.E.2d 391, 394 (2001).

By providing instructions to the jury which do not fit the facts and evidence presented can only tend to confuse the jury. In reviewing a jury charge for alleged error, “[a]n appellate court must consider the charge as a whole in light of the evidence and issues presented at trial.” Wells v. Halvard, 341 S.C. 234; 533 S.E.2d 341 (Ct. App. 2000) “Ordinarily, a trial [court] has a duty to give a requested instruction that correctly states the law applicable to the issues and evidence.” Id., Femanders v. Marks Constr. Of S.C., Inc., 330 S.C. 470 (Ct. App. 1998). In Burns v. South Carolina Commission for the Blind, 323 S.C. 77 (Ct. App. 1994), the Court of Appeals for South Carolina held:

If the requested charge states a sound principle of law that is applicable to the case, and not otherwise covered by the charge, refusal to charge it is error and requires a new trial. Moreover, when general instructions to the jury are insufficient to enable the jury to understand fully the law of the case and issues involved, a refusal to give a requested charge is reversible error.

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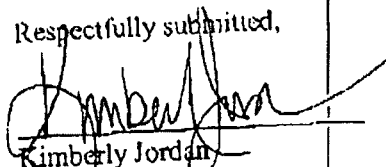
The Defendant would argue that the converse principle would also be correct in that if jury instructions given are "insufficient to enable the jury to understand fully the law of the case and issues involved" then they should not be provided for the jury to consider.

To warrant reversal, the party seeking the requested jury charge must demonstrate error and prejudice. Cole v. Ruat, 378 S.C. 398 (2008). The Defendant believes the charging of "constructive possession" was in error as it was not applicable to the case to enable the jury to understand fully the law of the case but that it also demonstrates prejudice in that clearly the Defendant could not have been found guilty as having "possession" of the of cocaine.

As such, the Defendant believes it was reversible error for the Court to charge the jury with "constructive possession" over the Defendant's objection and the Defendant requests a new trial.

Based on the arguments above, the Defendant respectfully requests the Court order a new trial in this case.

Respectfully submitted,



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Attorney for Defendant
Beaufort Co. Public Defenders
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Beaufort, SC 29901
Phone: 843-470-4525
FAX: 843-470-4533

October 29, 2009

WITNESSES
Certified - A True Copy
Rodriguez/BCSO
Beaufort County, SC

ARREST WARRANT NUMBER

J347263

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date:

10/22/05

VERDICT

143
Foreperson of Petit Jury
Date:
INDICT

DOCKET NO. 2009GS0700196

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

October Term 2009

THE STATE

VS.

Diamon D Fripp

Indictment for

Drugs / Trafficking in Cocaine - 28 g or more,

SC Code: 44-53-0370(e)(2)(b)(1)

CDR Code:2359

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)

INDICTMENT
 2009GS0700196

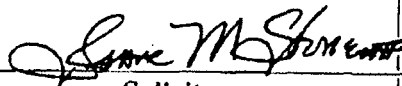
At a Court of General Sessions, convened on October 22, 2009, the Grand Jurors of Beaufort County present upon their oath:

Drugs / Trafficking in Cocaine - 28 g or more.

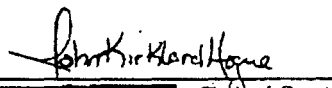
That in Beaufort County, South Carolina, on or about January 1, 2009, the Defendant, Diamon D Fripp, unlawfully and knowingly did sell, manufacture, cultivate, deliver, purchase, or bring into this State; or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State; or did possess or attempt to possess a controlled substance or a controlled substance analogue, to wit: Cocaine, in excess of 28 grams; in violation of 44-53-370 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.

the Bill


 Solicitor

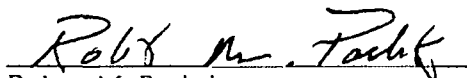
Certified - A True Copy


 - Clerk of Court
 Beaufort County, SC

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

January 21st, 2011



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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County

J. Ernest Kinard, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DIAMON D. FRIPP,

APPELLANT

FINAL BRIEF OF APPELLANT

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ATTORNEY FOR APPELLANT.

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<u>Wong Sun v. United States</u> , 371 U.S. 471, 83 S.Ct. 407 (1963)	9

STATEMENT OF ISSUES ON APPEAL

- I. Whether appellant's statement made after he was arrested and was shown a bag of white powdery substance by Officer Rodriguez and before Miranda rights had been given, should have been suppressed because showing appellant the powder was likely to elicit a response and was the functional equivalent of interrogation?
- II. Whether the trial court erred in refusing to suppress \$600 and rocks seized after appellant was arrested for fleeing to evade arrest because appellant was acquitted of that charge in magistrate's court?
- III. Whether the trial court erred in charging the jury on actual and constructive possession when the case was an actual possession case?

STATEMENT OF THE CASE

Appellant was convicted of trafficking in cocaine after a jury trial held before the Honorable J. Ernest Kinard on October 26-27, 2009, in Beaufort County. A sentence of twelve (12) years and a fine of \$50,000 was imposed.

This appeal follows.

FACTS RELATING TO SUPPRESSION MOTION ISSUES

At the suppression hearing, Sgt. Rodriguez with the Beaufort County Sheriff's Office testified that on January 1, 2009, he received a call around 2:00 AM while on patrol about a disturbance in the parking lot of the Studio Seven nightclub. There was a man wearing blue causing some form of disturbance. (ROA p. 2, lines 3-24) When he arrived at the nightclub parking lot, he saw a male with a blue shirt with his back to the patrol vehicle. The male looked over his shoulder at the patrol vehicle and started walking away. (ROA p. 3, lines 5-19) Sgt. Rodriguez proceeded after him, whistled, and told the man, "Hey, come here. Can I talk to you?" The man turned around and looked at the officer. He turned back around and started walking away at a faster pace between parked cars. Sgt. Rodriguez followed in the same general direction and called out, "Sheriff's office, Stop," or "Stop, Sheriff's office." (ROA 4, lines 3-24) The man did not stop and continued on his way. Sgt. Rodriguez indentified the man as appellant. He said he observed appellant cut across a row of parked cars, cut across a pathway and run behind a black pickup truck. (ROA p. 5, lines 2-17)

Appellant then started coming back towards Rodriguez. The officer could not see appellant's hands so he drew his service revolver and ordered appellant to show his hands. Appellant said, "You got nothing on me. I don't got any drugs." Eventually he showed his hands. Rodriguez took him into custody and put him in handcuffs. (ROA p. 5, line 22 – p. 7, line 3) Appellant was searched and he had around \$600 in his pocket and some stones. The stones were placed on the trunk of the patrol car and appellant tried to scoop them in his mouth. Rodriguez tested the stones and they did not react to his cocaine analysis kit. Appellant was placed in another patrol car. A search of the area was performed and Officer

Moody found a bag of white powdery substance that field tested positive for cocaine. (ROA p. 7, line 7 – p. 9, line 2) When appellant was initially arrested he asked, “What are you arresting me for?” The sergeant told him, “For fleeing to evade arrest.” He then showed him the bag of cocaine and appellant said, “I don’t know anything about that cocaine.” (ROA p. 9, lines 14-25) Rodriguez called the area a high crime area but agreed that he did not Mirandize appellant. (ROA p. 10, lines 1-12)

ARGUMENT I

Appellant's statement made after he was arrested and was shown a bag of white powdery substance by Officer Rodriguez and before Miranda rights had been given, should have been suppressed because showing the appellant the powder was likely to elicit a response and was the functional equivalent of interrogation.

When appellant was arrested he asked for what and Sgt. Rodriguez told him, "for fleeing to evade arrest." The Sgt. Rodriguez showed him the bag of white powder and told him, "You're being charged with this." Appellant then replied, "I don't know anything about that cocaine." (ROA p. 9, lines 14-22) The solicitor brought up this statement later twice in his opening argument, three times on direct examination of Sgt. Rodriguez and twice in closing argument.(ROA p. 25,lines 6-17; ROA p. 46, lines 7-16; ROA p. 105, lines 13-18)

Defense counsel moved to suppress this statement by appellant. Appellant was already arrested and placed in a patrol car. He was not Mirandized. Sgt. Rodriguez showed him a white bag of powder and told appellant he was being charged with it. (ROA p. 12, line 21 – p. 13, line 2) The trial court ruled that the statement could come in. Apparently if appellant had mentioned a specific amount of cocaine it would not have been admissible in the trial court's understanding! (ROA p. 13, lines 3-6) That ruling was in error.

To interrogate someone in custody without warning them of their constitutional rights is a violation of the Fifth and Fourteenth Amendments. Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602 (1966) In Rhode Island v. Innis, 446 U.S. 291, 100 S.Ct. 1682 (1980) the Court held that the "term 'interrogation' under Miranda refers not to express questioning, but also to any words or actions on the a part of the police that the police should know are

reasonably likely to elicit an incriminating response from the suspect.¹ The later portion of this definition focuses primarily upon the perceptions of the suspect, rather than the intent of the police. 446 U.S. at 301, 100 S.Ct. at 1689 – 1690. When Sgt. Rodriguez showed the bag of white powder to appellant and at the same time told him he was going to be charged with it he expected a reaction. Appellant's statement was a normal response. The fact that appellant's statement may be viewed as exculpatory does not protect the State because the prosecution loves to turn such statements around to impeach a defendant's testimony or to show untruths in the statement. Rhode Island v. Innis, 446 U.S. at 302, 100 S.Ct. at 1682 (footnote 5) Appellant's statement should not have been admitted.

¹ The Court noted on this point that "By "incriminating response" we refer to any response whether inculpatory or exculpatory – that the prosecution may seek to introduce at trial. 446 U.S. at 302, 100 S.Ct. at 1690.

ARGUMENT II

The trial court erred in refusing to suppress \$600 and rocks seized after appellant was arrested for fleeing to evade arrest because appellant was acquitted of that charge in magistrate's court.

Defense counsel sought to suppress the cash and rocks seized after appellant was arrested for fleeing to evade arrest because the magistrate court directed a verdict of not guilty on that charge. Because there was no probable cause for the arrest, the search was illegal. (ROA p. 14, line 12 – p. 21, line 17) The trial court said, "Maybe it should be (suppressed), but I'm not going to rule that way." (ROA p. 19, lines 15-16) The solicitor brought up the cash and rocks in his opening argument, on his direct examination of Sgt. Rodriguez, and in his closing argument. (ROA p. 24 lines 13-14; ROA p. 42, lines 10-18; ROA p. 103, lines 19-20; ROA p. 105, lines 4-9) The trial court's decision to let the cash and rocks into evidence was error.

The exclusion of evidence obtained by an illegal arrest, search, or seizure in violation of the Fourth Amendment is a proper remedy and such evidence may not be used to prove guilt. Wong Sun v. United States, 371 U.S. 471, 83 S.Ct. 407 (1963).

ARGUMENT III

The trial court erred in charging the jury on both actual and constructive possession because the case was an actual possession case.

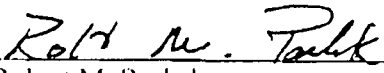
The State's theory of this case was that appellant had drugs on his person and then dropped the drugs near a pickup truck. No one actually saw appellant with drugs or drop the drugs. In State v. Ballenger, 322 S.C. 196, 470 S.E.2d 851 (1996) the Court ruled that this type of case would be one of actual possession, provable by circumstantial evidence. The Court went on to state that constructive possession was not applicable. The trial court announced in this case that it was going to charge on both actual and constructive possession. Defense counsel objected to constructive possession being charged prior to the charge. (ROA p. 101, line 7 – p. 102, line 8), after the charge (ROA p. 137, lines 1-4) and in a post-trial motion for a new trial.

In State v. Rivers, 186 S.C. 221, 196 S.E. 6,7 (1938) the Court said: "In charging a jury, the circuit judge should be cautious to charge only the law which is applicable to the case as made by the facts, for under some circumstances a mass of inapplicable law burdened upon the juror's mind may lead to great confusion." The facts in appellant's case did not support a charge on constructive possession and the jury could therefore have assessed guilt on an improper basis.

CONCLUSION

Appellant's conviction should be reversed, and a new trial ordered.

Respectfully submitted,


Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT.

This 10th day of February, 2011.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

February 10th, 2011


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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County

J. Ernest Kinard, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DIAMON D. FRIPP,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Harold M. Coombs, Jr., Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 10th day of February, 2011.

Robert M. Pachak

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 10th day of February, 2011.

Patricia K. Berry (L.S.)
Notary Public for South Carolina
My Commission Expires: June 21, 2020

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Beaufort County
Honorable J. Ernest Kinard, Circuit Court Judge

THE STATE,

Respondent,

vs.

DIAMON D. FRIPP,

Appellant.

FINAL BRIEF OF RESPONDENT

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<u>State v. Wipestock</u> , 271 S.C. 473, 248 S.E.2d 307 (1978)	8

Other Authorities:

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STATEMENT OF ISSUES ON APPEAL

1. The defendant says that police arresting him and showing him a bag of white substance was likely to elicit a response and was the functional equivalent of interrogation. The defendant concludes that his statement before Miranda warnings should have been suppressed. (Defendant's Statement of Issues on Appeal I).
2. The defendant says he was acquitted of fleeing to evade arrest and asks whether the court erred by declining to suppress six hundred dollars and rocks that were seized after his arrest for that offense. (Defendant's Statement of Issues on Appeal II).
3. The defendant says his case was one of actual possession and asks whether the court erred in charging actual and constructive possession. (Defendant's Statement of Issues on Appeal III).

STATEMENT OF THE CASE

The Grand Jury of Beaufort County charged the defendant with trafficking cocaine (2009-GS-07-0196). The defendant and his counsel came to trial October 26-27, 2009 before the Honorable J. Ernest Kinard, Jr., Judge, and a jury. The jury found the defendant guilty, and the court imposed a sentence of twelve years imprisonment and a fine of fifty thousand dollars. The defendant served opposing counsel a timely notice of appeal.

STATEMENT OF FACTS

Officer Rodriguez responded to Studio Seven nightclub in the early hours of January 1, 2009 and its reported disturbance involving a very belligerent black male, dressed in blue, who was refusing to leave. On arriving at the scene, the owner of the club pointed at the defendant, and the officer attempted to approach and to investigate. The officer called out. The defendant turned and looked at him and attempted to get away. The officer identified himself, but the defendant continued to flee some four hundred feet and ran behind a black pickup truck. The defendant came from the back of the truck toward the officer and "looked like" he wanted to pass by the officer. The officer could not see the defendant's hands and, as an officer safety issue, drew his weapon. Although nothing had been said about drugs, the defendant declared, "I have no drugs." The owner of the club came out and tried to encourage the defendant to cooperate. The defendant did not cooperate. Finally the officer handcuffed the defendant. Officers searched and found about \$594 crumpled cash and eight or nine rocks and placed the items on the trunk of the car. The handcuffed defendant attempted to recover possession of the rocks by gathering them with his mouth. The defendant was put into the back of an officer's car. The defendant continued acting out including unnecessary verbal statements. At Rodriguez's direction, Officer Mooney and a drug dog found a bag of white powdery substance among freshly disturbed pine straw - like somebody had tried to bury it - right behind the truck where Officer Rodriguez had seen the defendant. A field test showed it was positive for cocaine, but nothing was said to the defendant. Officer Rodriguez showed the bag of white substance to the defendant and stated, "I'm charging you with this." The defendant said, "I don't know anything about that cocaine." A field test of the rocks was consistent with their being rocks. (ROA. pp. 31-51;

57-58; 62-63; 67-69 The white substance was a valuable quantity (34.35 grams) of cocaine.
(ROA. pp. 88-89; 97-98).

ARGUMENT

I.

The defendant does not show any contemporaneous trial objection to the statement that he raises on appeal.

In limine the defendant thought the court might consider the defendant's mention of cocaine not voluntary since it was elicited by showing him the substance. The court did not agree and found the statement admissible. (ROA. p. 12, line 14-p. 13, line 14).

On appeal the defendant says that his statement about cocaine was improperly admitted into evidence since it was the product of the functional equivalent of interrogation, and there had been no Miranda warnings. The defendant does not show where he raised a contemporaneous objection to the testimony at trial, and the matter should not be considered further. A brief must reference the Record on Appeal to support the facts alleged and "where relevant objections and rulings occurred in the transcript." Rule 207(b)(4), SCACR. In limine motion hearings are for the purpose of preventing prejudicial matter coming before the jury, but they are not final rulings on the admissibility of evidence. State v. Floyd, 295 S.C. 518, 369 S.E.2d 842 (1988)(Chandler, J., observing peril of treating an in limine ruling as final); State v. Forrester, 343 S.C. 637, 541 S.E.2d 837 (2001)(motion in limine to exclude evidence at the beginning of trial does not preserve an issue for review because a motion in limine is not a final determination).

Assume for argument the appellate court may consider the substance of the assignment of error. The in limine hearing demonstrated that showing the defendant the substance was responsive to the defendant's asking to be apprised of the charges. (ROA. pp. 8-9; 11-12). The officer's response was not of such nature that the officer should have

known that it would elicit a response that a prosecutor would want to use at trial. The trial court's ruling is supported by the record, and there was no error. State v. Franklin, 299 S.C. 133, 382 S.E.2d 911 (1989); Rhode Island v. Innis, 446 U.S. 291, 100 S.Ct. 1682, 64 L.Ed.2d 297 (1980).

II.

The defendant identifies no contemporaneous trial objection to the introduction of the rocks and money.

The defendant says the court should not have admitted a quantity of cash and rocks found during a search when there was supposedly no probable cause for the arrest after a summary court had directed a verdict of not guilty for the offense of fleeing to evade arrest. (IBOA p. 9).

Officer Rodriguez testified at trial to making a search incident to arrest and finding cash and rocks on the defendant's person. (ROA. pp. 42-44). Again, the defendant does not identify on appeal where at trial he raised a contemporaneous trial objection, and the matter should not be considered further by the appellate court.

Assume for argument that the appellate court may consider the substance of the assignment of error.

In limine the defendant moved to exclude any reference to his fleeing or suspicious behavior that related to the offense of fleeing to evade arrest and detention since a summary court judge [after the case had gone to the jury and the jury had not agreed on a verdict] had supposedly granted a directed verdict, and collateral estoppel barred testimony which could support the summary court charge. The defendant thought there was no probable cause. The defendant alleged that in ruling on a motion for directed verdict the summary court judge had found no probable cause for arrest and did not want "anything that would relate to the charge that the judge found no probable cause for." The judge declined to exclude testimony about the facts and circumstances that the officer observed. (ROA. p. 14, line 12-p. 18, line 22). Also, the defendant moved to prevent Officer Menendez from making a statement about drug

money - apparently on the basis that the rocks were not drugs, and it would be prejudicial "to insinuate that he was taking them for drug money." The court denied the motion. (ROA. p. 18, line 23-p. 19).

First, defense counsel's verbal account of the summary court proceeding, apparently without presenting the trial judge with any summary court order or summary court record, leaves the appellate court with nothing to review. State v. Winestock, 271 S.C. 473, 248 S.E.2d 307 (1978)(appellant has the burden of presenting a sufficient record for appellate review). Further, reviewing counsel's account, the summary court supposedly found a want of probable cause for arrest and supposedly granted a directed verdict after apparently finding direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused and submitting the case to the finder of fact. The account may raise questions about the summary court's view of the arrest, testimony which might have been reconsidered as ground for possible suppression of other evidence, the possible effect of the summary court jury's inability to agree on a verdict, the summary court's view of the charged offense in light of the evidence adduced at trial, and whether the purported directed verdict after the jury's consideration of the evidence was a weighing of the evidence. The account is difficult to understand.

Assume that the defendant was acquitted of a summary court offense - supposedly fleeing to evade arrest - based upon the police responding to the nightclub owner's request for assistance with a disturbance involving a very belligerent man who refused to leave the premises. The owner identified the problematic man at the scene, and the police investigated. During their brief investigation the defendant went where he wanted to go, freely articulated his view of the law, thoughts about the status of the police investigation, and odd

concern for drugs, and the police articulated reasonable suspicion to concern themselves with the safety of the suspect and their own safety and continued to address the club owner's concern with a belligerent man who had refused to leave. Meanwhile, the police and their dog found a quantity of apparent contraband near where the defendant had been.

The state did not re-litigate or rely upon the purported summary court fleeing to evade arrest issue in the court of general trial jurisdiction. Facts and circumstances supported both reasonable suspicion to temporarily seize and to investigate, and facts and circumstances supported probable cause to arrest for other offenses.

III.

The court soundly instructed the jury.

The defendant objected to a charge on constructive possession since the drugs were found 30 feet away from him, and there was no evidence of dominion and control. The court declined to adopt his reasoning. (ROA. pp. 101-102; 137, lines 1-7). The court instructed the jury on constructive (and actual) possession. (ROA. p. 130, line 21- p. 132, line 15).

Possession of contraband may be actual or constructive. Actual possession of contraband is the actual physical custody of the substance; constructive possession of contraband is the exercising of dominion and control over either the substance or the premises where the substance is kept. State v. Ballenger, 322 S.C. 196, 470 S.E.2d 851 and n. 3 (1996)(where according to evidence and state's theory of its case, the evidence reasonably tended to show actual possession in that the police saw the defendant apparently engaged in a drug transaction, pursued him on foot, and found twenty-nine units of crack laying on the ground, out in the open, near where defendant fell).

In the present case, the evidence could reasonably be understood to establish that before and while he attempted to hide them, the defendant had the drugs in his actual possession; the jury charge on actual possession is not contested. The evidence also tended to establish constructive possession: The defendant exercised dominion and control of the contraband by hiding his valuable quantity of cocaine, convincing the officers through his theatrics that the benign rocks on the trunk of the patrol car were the contraband, and hoping to recover his hidden treasure at an opportune time.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

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ATTORNEYS FOR RESPONDENT

January 26, 2011

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Beaufort County
Honorable J. Ernest Kinard, Circuit Court Judge

THE STATE,

Respondent,

vs.

DIAMON D. FRIPP,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

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ATTORNEYS FOR RESPONDENT

January 26, 2011

177

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Beaufort County
Honorable J. Ernest Kinard, Circuit Court Judge

THE STATE,

Respondent,

vs.

DIAMON D. FRIPP,

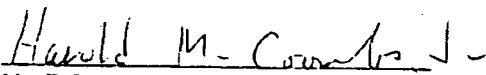
Appellant.

PROOF OF SERVICE

I, Harold M. Coombs, Jr., certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record, Robert M. Pachak, Esquire, South Carolina Commission of Indigent Defense, Division of Appellate Defense, P.O. Box 11589, Columbia, SC 29211.

I further certify that all parties required by Rule to be served have been served.

This 26th day of January, 2011.


HAROLD M. COOMBS, JR.

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ATTORNEY FOR RESPONDENT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

Diamon D. Fripp,

Appellant.

Appeal From Beaufort County
J. Ernest Kinard, Jr., Circuit Court Judge

Opinion No. 4956
Heard February 15, 2012 – Filed March 21, 2012

REVERSED AND REMANDED

Robert M. Pachak, of Columbia and Jared Sullivan
Newman, of Port Royal, for Appellant.

Attorney General Alan Wilson, Chief Deputy
Attorney General John W. McIntosh, Assistant
Deputy Attorney General Salley W. Elliott, and
Senior Assistant Attorney General Harold M.
Coombs, Jr., all of Columbia; and Solicitor I.
McDuffie Stone, III, of Beaufort, for Respondent.

KONDUROS, J.: Diamon Fripp appeals his conviction for trafficking in cocaine. He maintains the trial court erred in admitting a statement he made to police and evidence of money and stones discovered during the search incident to his arrest for evading arrest. He also argues the trial court erred in charging the jury on both actual possession of drugs and constructive possession. We reverse and remand.

FACTS

Beaufort County Sheriff's officer Sergeant Scott Rodriguez received a call to investigate a disturbance involving a male in a blue shirt in the parking lot of the Studio Seven Nightclub around 2 a.m. on January 1, 2009. Sergeant Rodriguez testified he observed a male in a blue shirt near the entrance to the club and saw the club's owner gesture toward the man in the blue shirt. Sergeant Rodriguez called to the man, Fripp, asking if he could talk to him. Fripp walked in the opposite direction of Sergeant Rodriguez, weaving through vehicles in the parking lot. Sergeant Rodriguez then called to Fripp: "Stop. Sheriff's Office" or "Sheriff's Office. Stop." According to Sergeant Rodriguez, Fripp continued moving away from him and disappeared behind a black pick-up truck and was out of sight for approximately ten seconds. Fripp reappeared and then began walking in Sergeant Rodriguez's direction "as though he was going to pass by" him. Sergeant Rodriguez could not see Fripp's hands and drew his weapon and ordered Fripp to the ground. Fripp refused and stated "No, it's cold. No, you got nothing on me. I have no drugs." Sergeant Rodriguez was able to handcuff Fripp, and he searched him finding approximately \$600 of crumpled bills in different denominations and some stones in his pockets. When the stones were placed on the trunk of the patrol vehicle, Fripp attempted to gather the stones into his mouth. Fripp was placed in the back of a second patrol vehicle that had arrived on the scene. Another officer searched the area behind the black pick-up truck and found a baggie containing a white powdery substance that subsequently tested positive for cocaine. Sergeant Rodriguez showed the baggy to Fripp and said, "You're getting charged with this." Fripp then stated, "I don't know anything about that cocaine."

At trial, Fripp sought to suppress evidence of the statement he made regarding cocaine arguing the statements were made without him having

received Miranda¹ warnings. He also sought to suppress the money and stones discovered during the search, contending that because the resisting arrest charge had been dismissed in magistrate's court, any evidence found incident to his arrest on the charge was the result an unlawful search. The trial court denied the motions. Also, over Fripp's objection the trial court charged the jury on both actual and constructive possession of cocaine. Fripp argued the evidence the State presented only supported a theory of actual possession. Fripp was convicted and sentenced to twelve years' imprisonment. This appeal followed.

LAW/ANALYSIS

Fripp contends the trial court erred in charging constructive possession to the jury when the facts presented by the State could not have supported such an instruction. We agree.

"An appellate court will not reverse the trial court's decision regarding jury instructions unless the trial court committed an abuse of discretion." Cole v. Raut, 378 S.C. 398, 404, 663 S.E.2d 30, 33 (2008). "An abuse of discretion occurs when the trial court's ruling is based on an error of law or is not supported by the evidence." Id. "The law to be charged to the jury must be determined by the evidence presented at trial." State v. Harris, 382 S.C. 107, 113, 674 S.E.2d 532, 535 (Ct. App. 2009); see also Clark v. Cantrell, 339 S.C. 369, 390, 529 S.E.2d 528, 539 (2000) ("When instructing the jury, the trial court is required to charge only principles of law that apply to the issues raised in the pleadings and developed by the evidence in support of those issues.").

"Actual possession occurs when the drugs are found to be in the actual physical custody of the person charged with possession, while constructive possession occurs when the person charged with possession has dominion and control over either the drugs or the premises upon which the drugs are found." State v. Ballenger, 322 S.C. 196, 199, 470 S.E.2d 851, 854 (1996) (citation omitted).

¹ Miranda v. Arizona, 384 U.S. 436 (1966).

The facts of this case present no basis for a jury charge of constructive possession. Ballenger is the most instructive case regarding the distinction between actual and constructive possession. In Ballenger, police received complaints that a male fitting Ballenger's description was selling drugs on a particular street corner in a high crime area. Id. at 197, 470 S.E.2d at 852. When police arrived, they saw Ballenger, who fit the description provided, and observed him in what appeared to be a drug transaction. Id. at 197, 470 S.E.2d at 853. When the authorities approached, they observed him put something in his pocket and run away. Id. He eventually fell after scaling a fence and was apprehended when he became entangled in barbed wire. Id. at 198, 470 S.E.2d at 853. Crack rocks were found wrapped in newspaper about five feet from where he had fallen. Id. It appears the jury was charged as to both actual and constructive possession. Id. at 199-200, 470 S.E.2d at 854. On appeal, Ballenger argued no evidence supported either theory and the court of appeals agreed.² The South Carolina Supreme Court reversed the court of appeals finding the record contained sufficient evidence of actual possession to submit the case to the jury and upheld Ballenger's conviction. Ballenger, 322 S.C. at 200, 470 S.E.2d at 854. The court noted the State's case "hinged on proving actual possession" and specifically commented on the constructive possession theory in a footnote. Id. at 199-200, 470 S.E.2d at 854. "Apparently Ballenger focused his argument to the [c]ourt of [a]ppeals on lack of constructive possession, although that court addressed both types of possession in its opinion. However, the constructive possession theory is not applicable here, a fact which the solicitor admitted at trial." Id. at 200 n.3, 470 S.E.2d at 854 n.3.

The facts in this case are similar to those in Ballenger in that the contraband was discovered in a public area over which Fripp had no dominion or control. The State's theory, as in Ballenger, was that Fripp had actual possession of the drugs and tossed them when he disappeared behind the black pick-up truck. Such a scenario means the constructive possession theory is not applicable and the giving of the constructive possession charge was erroneous.

² See State v. Ballenger, 317 S.C. 364, 454 S.E.2d 355 (Ct. App. 1995) (discussing the lack of proof as to Ballenger's actual or constructive possession of drugs) rev'd, 322 S.C. 196, 470 S.E.2d 851 (1996)).

However, in order to warrant reversal of Fripp's conviction, the giving of the instruction must have also been prejudicial.³ "Prejudice to the appellant's case is a prerequisite to reversal of a verdict due to an erroneous jury charge." State v. Lee-Grigg, 374 S.C. 388, 415, 649 S.E.2d 41, 55 (Ct. App. 2007). "An erroneous jury instruction will not result in reversal unless it causes prejudice to the appealing party." Berberich v. Jack, 392 S.C. 278, 285, 709 S.E.2d 607, 611 (2011). "A jury charge consisting of irrelevant and inapplicable principles may confuse the jury and constitutes reversible error where the jury's confusion affects the outcome of the trial." Cole, 378 S.C. at 404, 663 S.E.2d at 33. "No definite rule of law governs finding an error harmless; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case." Lee-Grigg, 374 S.C. at 414, 649 S.E.2d at 55.

In this case, the evidence upon which the State could rely in proving actual possession is entirely circumstantial. Sergeant Rodriguez did not testify he observed Fripp in a drug transaction, saw him put anything in his pocket, or witnessed him drop anything while he was in the parking lot. The dearth of direct evidence as to actual possession leaves us unable to discern on what basis the jury may have reached its verdict. The jury charge as to constructive possession was irrelevant and inapplicable, had the potential to confuse the jury, and may well have affected the outcome of the trial. Therefore, we conclude Fripp's conviction should be reversed and his case remanded for a new trial.

Because the determination of this issue is dispositive, we decline to address Fripp's arguments as to the admission of his statement to Sergeant Rodriguez while in the rear of the patrol car and the admission of the cash and rocks found during the search incident to his arrest for evading arrest. See Whiteside v. Cherokee Cnty. Sch. Dist. No. One, 311 S.C. 335, 340, 428 S.E.2d 886, 889 (1993) (the appellate court need not address remaining issues when previous issue is dispositive of appeal).

³ Any prejudice in the giving of the constructive possession charge does not appear to have been raised as an issue in Ballenger.

Based on all of the foregoing, Fripp's conviction is

REVERSED AND REMANDED.

PIEPER and GEATHERS, JJ., concur.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Beaufort County
Honorable J. Ernest Kinard, Jr., Circuit Court Judge

THE STATE,

Respondent,

vs.

DIAMON D. FRIPP,

Appellant.

PETITION FOR REHEARING

Pursuant to Rule 221, SCACR, Petitioner submits with particularity points the Court may have overlooked or misapprehended in State v. Fripp, Opinion No. 4956 (S.C. Ct. App. filed March 21, 2012) and asks this Court to rehear the case:

1. Police responded to a nightclub's request for service involving a disturbance and a person refusing to leave the premises. At the club owner's instance, the police attempted to approach and to investigate the defendant, but the defendant fled with marked persistence and, at one point, went behind a truck. (FBOR pp. 3-4).

2. Officers apprehended the defendant, and he assured them with screams and curses that they had no evidence. Searching the defendant, police found just under \$600 in crumpled cash and some eight or nine "rocks" or "stones" in his pocket. (FBOR pp. 3-4; ROA pp. 39-43; p. 62, lines 1-5).

3. While handcuffed, the defendant theatrically attempted to retrieve - with his mouth - the stones or rocks. (FBOR pp. 3-4).

4. Continuing the investigation at the scene, a drug dog found a bag of white powdery substance (34.35 grams of cocaine). The cocaine was within freshly disturbed pine straw - like somebody had tried to bury it - right behind the truck where the defendant had gone. (FBOR pp. 3-4).

5. The rocks or stones from the defendant's pocket [which he apparently had attempted to eat], were field tested and tested by a forensic chemist. They were not a controlled substance. (FBOR pp. 3-4; ROA p. 46, line 24 - p. 47, line 2; 98, line 17 - p. 99, line 4).

6. The defendant did not assign error to the court's jury instruction on actual possession. The defendant claimed that the facts did not support a charge on constructive possession. (FBOA p.10; Appellant's Statement of Issues on Appeal III).

7. The trial judge determines the jury instructions based upon the evidence adduced at trial. The appellate court should not reverse the trial judge's determination without a showing of both error and prejudice. State v. Burkhardt, 350 S.C. 252, 565 S.E.2d 298 (2002).

8. State v. Ballenger, 322 S.C. 196, 470 S.E.2d 851 and n. 3 (1996) supported a jury charge on actual possession in that the police saw the defendant apparently engaged in a drug transaction, pursued him on foot, and found twenty-nine units of crack laying on the ground, out in the open, near where defendant fell. Ballenger did not support a jury charge on constructive possession since the only reasonable inference was that the defendant had either discarded and abandoned the crack or

simply lost the crack. Ballenger wanted evidence supporting an inference that the defendant secreted the crack and, later, intended to retrieve it.

9. In the present case, circumstantial evidence supports a reasonable inference that the defendant had the cocaine in his actual possession: During the defendant's fleeing from the police, he went behind the truck. The drug dog subsequently found the bag of white powdery substance within freshly disturbed pine straw behind that truck. (FBOR p. 10).

10. In the present case, circumstantial evidence also supports a reasonable inference that the defendant had the cocaine in his constructive possession: During the defendant's fleeing from the police, he went behind the truck. When apprehended, the defendant emphatically assured the police that they lacked evidence. Upon the police finding the crumpled cash in his pocket and the evidence [the eight or nine rocks], the defendant theatrically attempted to consume that benign evidence. The police, having supposedly found the evidence, would have no reason to retrace the route he took while attempting to flee and no reason to suspect that he had secreted any contraband while fleeing. The defendant, or a confederate, could then recover the hidden treasure [34.35 grams of cocaine] at an opportune time. Fleeing, secreting the cocaine within the freshly disturbed pine straw behind the truck, and attempting to mislead the police into believing that they had found incriminating evidence, demonstrate that the defendant exercised dominion and control over the cocaine and support the trial court's jury instruction on constructive possession of drugs. (FBOR p. 10).

Wherefore, Petitioner asks that the Court may rehear the case.

Respectfully submitted,

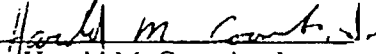
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ATTORNEYS FOR RESPONDENT

March 22, 2012

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Beaufort County
Honorable J. Ernest Kinard, Jr., Circuit Court Judge

THE STATE,

Respondent,

vs.

DIAMON D. FRIPP,

Appellant.

PROOF OF SERVICE

I, Harold M. Coombs, Jr., certify that I have served the within Petition for Rehearing on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record, Jared S. Newman, Esquire, P.O. Box 515, Port Royal, SC 28835.

I further certify that all parties required by Rule to be served have been served.

This 22nd day of March, 2012.

Harold M. Coombs, Jr.
HAROLD M. COOMBS, JR.

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ATTORNEY FOR PETITIONER

The South Carolina Court of Appeals

The State,

Respondent,

v.

Diamon D. Fripp,

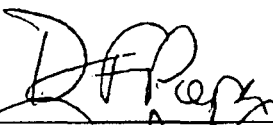
Appellant.

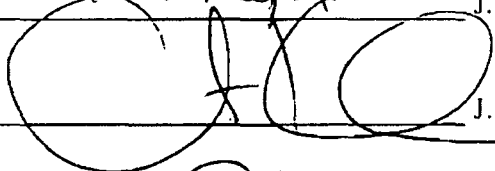
The Honorable J. Ernest Kinard, Jr.
Beaufort County
Trial Court Case No. 2009-GS-07-00196

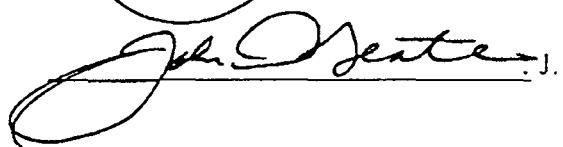
ORDER DENYING PETITION FOR REHEARING

PER CURIAM: After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing.

It is, therefore, ordered that the Petition for Rehearing be denied.







cc: Jared Sullivan Newman, Esquire
Attorney General Alan Wilson
Chief Deputy Attorney General John W. McIntosh
Assistant Deputy Attorney General Salley W. Elliott
Senior Assistant Attorney General Harold M. Coombs
I. McDuffie Stone, III, Esquire

FILED

3 May 2012