

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from York County

Edgar W. Dickson, Circuit Court Judge

RECEIVED

AUG 26 2014

S.C. Supreme Court

CHRISTOPHER ROBINSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000152

APPENDIX

LANELLE CANTEY DURANT
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT (dated October 3, 2007)	1
APPLICATION FOR POST-CONVICTION RELIEF	230
RETURN	236
POST-CONVICTION RELIEF HEARING TRANSCRIPT (October 12, 2012)	242
EXHIBIT #1 (INCIDENT REPORT)	291
ORDER OF DISMISSAL	293
MOTION TO ALTER/AMEND JUDGMENT PURSUANT TO RULE 59(e)	306
RETURN TO MOTION FOR REHEARING AND/OR TO LATER OR AMEND THE ORDER OF DISMISSAL	312
ORDER DENYING APPLICANT'S MOTION TO ALTER OR AMEND	315
COURT OF APPEALS OPINION NO. 2010-UP-324	317
INDICTMENTS, SENTENCE SHEETS AND ARREST WARRANT	319

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE COURT OF GENERAL SESSIONS
YORK COUNTY, SOUTH CAROLINA

SOUTH CAROLINA

VERSUS

CHRISTOPHER ANTANGELO ROBINSON, DEFENDANT

CASE NUMBER: 2007-GS-46-2616-2618

HEARD ON TUESDAY, OCTOBER 3, 2007.
BEFORE THE HONORABLE JOHN C. HAYES, III, AND A JURY.

APPEARANCES:

E. ASHLEY ANDERSON
E. B. SPRINGS, IV
16TH CIRCUIT SOLICITOR'S OFFICE
1675 YORK HIGHWAY
YORK, SC 29745
REPRESENTING THE STATE

MELISSA INZERILLO
POST OFFICE BOX 10191
ROCK HILL, SC 29732
REPRESENTING MR. ROBINSON

REPORTED BY: JANET M. RICH
CIRCUIT COURT REPORTER
1992 DOWNEY STREET
ROCK HILL, SC 29732

1	I N D E X	
2	MOTIONS	
3	ANTHONY BREEDEN IN CAMERA	
4	DIRECT EXAMINATION	20
5	CROSS EXAMINATION	22
6	MOTIONS	28
7	JURY VOIR DIRE	31
8	JURY SWORN	40
9	OPENING STATEMENTS:	
10	MS. ANDERSON	44
11	MS. INZERILLO	47
12	ANTHONY BREEDEN	
13	DIRECT EXAMINATION	49
14	CROSS EXAMINATION	63
15	REDIRECT EXAMINATION	75
16	MICHAEL CHAVIS	
17	DIRECT EXAMINATION	77
18	CROSS EXAMINATION	86
19	REDIRECT EXAMINATION	93
20	RECROSS EXAMINATION	94
21	JOHN GREGORY IN CAMERA	
22	DIRECT EXAMINATION	95
23	CROSS EXAMINATION	98
24		
25		

1	I N D E X	
2	RAY BARNWELL	
3	DIRECT EXAMINATION	102
4	CROSS EXAMINATION	106
5	MATT HALL	
6	DIRECT EXAMINATION	110
7	CROSS EXAMINATION	113
8	CYNTHIA MITCHUM	
9	DIRECT EXAMINATION	115
10	MATT HALL	
11	REDIRECT EXAMINATION	123
12	RE CROSS EXAMINATION	124
13	MARK SCHURIG	
14	DIRECT EXAMINATION	125
15	IN CAMERA DIRECT	126
16	DIRECT EXAMINATION	130
17	CROSS EXAMINATION	133
18	MOTIONS	135
19	CLOSING STATEMENTS:	
20	MS. ANDERSON	159
21	MS. INZERILLO	186
22	JURY CHARGE	204
23	JURY VERDICT	220
24	SENTENCE	227
25		

E X H I B I T S

			ID	EV
1				
2				
3	S-1	DRUGS		113
4	S-2	PICTURE		61
5	S-3	DRUGS		125
6	S-4	REPORT		113
7	S-5	REPORT		125
8	C-1	SEIZURE		154
9	C-2	JC REQUEST		

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 (COURT RESUMES AT 09:58 AM.)

2 MS. ANDERSON: YOUR HONOR, THE STATE
3 CALLS THE CASE OF CHRISTOPHER ROBINSON ON TRUE BILLED
4 INDICTMENTS 2007-GS-46-02616. THAT IS AN INDICTMENT
5 FOR POSSESSION OF COCAINE BASE OR CRACK WITH INTENT
6 TO DISTRIBUTE. 2007-GS-46-2617 INDICTMENT FOR
7 POSSESSION OF COCAINE BASE OR CRACK WITH INTENT TO
8 DISTRIBUTE WITHIN PROXIMITY A SCHOOL. AND INDICTMENT
9 2007-GS-46-2618 AN INDICTMENT FOR POSSESSION OF
10 MARIJUANA. ALL THOSE INDICTMENTS HAVE BEEN TRUE
11 BILLED.

12 THE STATE WOULD ASK MS. INZERILLO HOW
13 MR. ROBINSON PLEADS TO THESE CHARGES.

14 MS. INZERILLO: HE PLEADS NOT GUILTY, YOUR
15 HONOR.

16 MS. ANDERSON: SO THE STATE IS READY TO GO
17 FORWARD.

18 THE COURT: ALL RIGHT. I GOT MOTIONS IN
19 LIMINE FROM MS. INZERILLO ON BEHALF OF MR. ROBINSON.
20 LET'S GO THROUGH THEM, COUNSEL. MOTION TO DETERMINE
21 IF THE STATE HAS COMPLIED WITH THE RULES OF
22 DISCOVERY.

23 MS. INZERILLO:: YOUR HONOR, IN ADDITION
24 TO THAT BEFORE MR. SPRINGS ADDRESSES THAT ISSUE, YOUR
25 HONOR, AT THE TIME, AT THIS TIME IT'S A GENERAL

1 MOTION AS WE DON'T HAVE ANYTHING SPECIFIC TO PUT
2 BEFORE THE COURT, BUT I WILL TELL THE COURT THAT
3 MR. O'KELLY AND I TWICE IN THE LAST FIVE DAYS HAVE
4 REQUESTED MR. SPRINGS THAT WE BE ALLOWED TO INSPECT
5 HIS FILE AND THE OPEN FILE POLICY. BOTH MR. O'KELLY
6 AND I WERE BOTH TOLD BY MR. SPRINGS THAT HE DOES NOT
7 FOLLOW THAT POLICY AND WE WERE NOT ALLOWED TO REVIEW
8 THE DOCUMENTS THAT WERE CONTAINED IN THAT FILE. I AM
9 NOT SURE, TO BE COMPLETELY HONEST WITH THE COURT, IF
10 WE ARE MISSING ANYTHING, IF ANYTHING WOULD BE
11 PRESENTED DURING THE STATE'S CASE OR THAT IF THERE IS
12 ANYTHING QUITE FRANKLY THAT WE WOULD HAVE BEEN
13 ENTITLED TO UNDER RULE FIVE AND BRADY. I WOULD LIKE
14 TO STATE FOR THE RECORD WHAT WE DO HAVE IN CASE THIS
15 IS AN ISSUE DURING THE TRIAL.

16 AT MY REVIEW OF THE LAW THEY TEND TO
17 FOCUS ON ONE PARTICULAR DOCUMENT AND THAT DOCUMENT IS
18 THE SUBJECT OF THE CASE AND AT THIS TIME WE DON'T
19 HAVE ANY PARTICULAR DOCUMENT THAT WE KNOW OF THAT
20 WE'RE MISSING, BUT WE DO HAVE SOME CONCERNS THAT WE
21 ARE MISSING SOME THINGS. WHEN I SPOKE TO MR. SPRINGS
22 LAST NIGHT HE INDICATED TO ME THAT WE HAD EVERYTHING
23 WE WERE ENTITLED TO. LOGICALLY THAT TELLS ME THERE
24 MAY BE SOME THINGS THAT WE WERE NOT GIVEN THAT HE
25 DOES NOT FEEL THAT WE ARE ENTITLED TO AND WE FEEL AT

1 THIS TIME THAT MAY BECOME EVIDENT DURING THE COURSE
2 OF THE CASE. AT THIS TIME I WOULD STATE --

3 THE COURT: IF I CAN INTERRUPT YOU THERE,
4 BUT I CAN TELL YOU NOW IN MR. SPRINGS' PRESENCE THAT
5 IF SOMETHING POPS UP DURING THE MIDDLE OF THE CASE
6 THAT INDICATES THE STATE HAS NOT GIVEN YOU SOMETHING
7 THAT THEY SHOULD HAVE, I WILL NOT BE A HAPPY JUDGE
8 AND WHOEVER HAS CAUSED THAT TO HAPPEN WILL NOT BE A
9 HAPPY PERSON. MR. SPRINGS IS AN OFFICER OF THE COURT
10 AND I DON'T THINK THAT WILL HAPPEN, BUT HE KNOWS THAT
11 THAT WOULD BE A TRAGIC EVENT.

12 MS. INZERILLO: YES, SIR. YOUR HONOR, IN
13 LIGHT OF THAT I WOULD JUST PUT ON THE RECORD WHAT WE
14 HAVE AND HAVE MR. SPRINGS CERTIFY AT THIS TIME THAT
15 IS ALL THE EVIDENCE THAT HE HAS TURNED OVER TO US AND
16 THAT HE INTENDS TO USE IN THE CASE.

17 THE COURT: ALL RIGHT.

18 MS. INZERILLO: I HAVE THE INCIDENT
19 REPORTS FROM ROCK HILL POLICE DEPARTMENT INVOLVING
20 THIS DEFENDANT, BOOKING REPORT, GENERAL SESSIONS CASE
21 SUMMARY, EVIDENCE LOG FROM ROCK HILL POLICE
22 DEPARTMENT DATED JUNE FIRST OF '07. DRUG REPORT FROM
23 CYNTHIA MITCHUM, TWO MARIJUANA ANALYSIS FORMS THAT
24 WERE CONDUCTED BY ROCK HILL PD. A RAP SHEET OF
25 MR. ROBINSON, AS WELL AS A COPY OF WARRANTS AND COPY

1 OF THE TRUE BILL INDICTMENTS.

2 THE COURT: ALL RIGHT. MR. SPRINGS,
3 MOTION IS, BACK TO WHERE WE STARTED, HAS THE STATE
4 COMPLIED WITH BRADY, RULE FIVE, AND ALL OF THE
5 ACCOUTERMENTS ATTACHED THERETO.

6 MR. SPRINGS: WE HAVE FULLY COMPLIED WITH
7 BRADY. THERE IS NOTHING IN MY FILE OR ANYWHERE IN
8 THE WORLD THAT I KNOW THAT SHOWS THAT MR. ROBINSON IS
9 LESS CULPABLE. WE JUST YESTERDAY GOT HIS JUVENILE
10 RECORD WHICH IS LENGTHY AND THEY DON'T HAVE THAT AND
11 WE'LL HAVE TO GET THEM COPIES OF THAT RIGHT NOW. MY
12 APOLOGIES TO YOU. WE GOT THAT YESTERDAY AFTERNOON
13 AND I GOT SO INVOLVED WITH IT I FORGET YOU BUT MY
14 APOLOGIES TO YOU.

15 THE COURT: THAT'S FINE. ALTHOUGH I DON'T
16 THINK ANYBODY IN THE WORLD SHOULD KNOW MORE ABOUT HIS
17 JUVENILE RECORD IS THAN HE HIMSELF BUT IF YOU'LL
18 SUPPLY IT.

19 MR. SPRINGS: WE ARE GOING TO RECTIFY THAT
20 ASAP. NOW OTHER THAN THAT, I HAVE A POLICY ON THE
21 SIMPLEST CASES TO THE MOST COMPLEX NOT TO ALLOW THE
22 DEFENSE ATTORNEY TO RUSTLE THROUGH MY FILE OR THE
23 POLICE FILE. I GO THROUGH IT THOROUGHLY. IF THERE
24 IS ANYTHING CLOSE TO BEING EXCULPATORY I REVEAL IT
25 AND I FOLLOW THE RULE FIVE LIST METICULOUSLY BECAUSE

1 I MAKE NOTES IN THERE, MY CANDID OPINIONS OF THE
2 QUALITY OF SOMEBODY'S SOMETIMES CHARACTER. I JUST
3 DON'T WANT MY NOTES AND THOSE THINGS SHOWN SO I JUST
4 DON'T DO IT BUT.

5 THE COURT: THAT'S ALL RIGHT. YOU DON'T
6 NEED TO EXPLAIN. YOU ARE NOT REQUIRED TO. THAT'S
7 YOUR CALL.

8 MR. SPRINGS: ALL RIGHT.

9 MS. INZERILLO: YOUR HONOR, NOT TO BEAT
10 THIS TO DEATH BUT JUST AS A POINT OF CLARIFICATION,
11 HE INDICATED THAT WE RECEIVED EVERYTHING THAT WAS
12 EXCULPATORY IN NATURE. I BELIEVE UNDER RULE FIVE I
13 BELIEVE WE ARE ALSO ENTITLED TO WHATEVER WILL BE
14 PRESENTED IN THE CASE IN CHIEF OR ANYTHING THAT WOULD
15 BE USED IN IMPEACHMENT. I JUST WANT TO VERIFY THAT
16 HE'S INDICATING THAT HE DOESN'T HAVE ANY OF THAT TYPE
17 OF MATERIAL THAT HE HAS NOT TURNED OVER.

18 MR. SPRINGS: THAT'S CORRECT. I DO NOT.
19 I DO NOT.

20 THE COURT: ALL RIGHT. THE SECOND MOTION
21 IS PRIOR RECORD IN CASE OF TESTIMONY BY MR. ROBINSON,
22 IMPEACHMENT.

23 MS. INZERILLO: YOUR HONOR, THE FIRST
24 THING I WOULD SAY TO THAT IS PURSUANT TO SECTION
25 20-7-7805 ANY JUVENILE ADJUDICATIONS ARE NOT

1 CONVICTIONS AND WE WOULD FIRST ASK THAT ANYTHING ON
2 THE JUVENILE RECORD WHICH MR. SPRINGS HAS SAID WE
3 HAVE NOT SEEN IN FULL YET, BUT ALSO THE TRAFFICKING
4 FOR WHICH WAS A JUVENILE CONVICTION WHICH IS ON HIS
5 ADULT RAP SHEET, THAT THAT NOT BE ALLOWED IN.

6 THE COURT: WHAT'S THAT SECTION NUMBER
7 AGAIN?

8 MS. INZERILLO:: 20-7-7805.

9 THE COURT: LET'S FIRST SEE WHAT THE
10 STATE'S POSITION IS. WE MAY NOT HAVE TO.

11 MR. SPRINGS: AS FAR AS, WOULD YOU GET OUT
12 THE LIST OF IMPEACHMENT OFFENSES.

13 THE COURT: I'M SORRY. I CAN'T HEAR YOU.

14 MR. SPRINGS: I'M SORRY, YOUR HONOR. I
15 WAS ASKING MS. ANDERSON TO GET OUT A LIST OF HIS
16 IMPEACHABLE OFFENSES THAT WE INTEND TO INTRODUCE
17 SHOULD HE TESTIFY. OUR POSITION IS THAT A JUVENILE
18 CRIME FOR WHICH HE COULD HAVE BEEN IMPEACHED IF HE
19 HAD BEEN AN ADULT CRIME IS FAIR GAME. I BELIEVE OUR
20 RULES OF EVIDENCE ADDRESS THAT.

21 NOW AS FAR AS THE TRAFFICKING
22 CONVICTION HE HAS A JUVENILE, WE WOULDN'T CALL IT
23 TRAFFICKING, WE WOULD CALL IT A CLASS B FELONY.
24 ISN'T IT TRUE THAT YOU WERE CONVICTED OF A CLASS B
25 FELONY.

1 LET ME MOVE OVER HERE. LET ME MOVE
2 OVER TO MS. INZERILLO AND SHARE THAT LIST OF
3 IMPEACHABLE OFFENSES. DO WE HAVE AN EXTRA, MS.
4 ANDERSON? WE ARE HAVING SOME SENT. HERE IS WHAT WE
5 WOULD USE AS HIS IMPEACHABLE OFFENSES. THIS IS
6 JUVENILE. JUVENILE, JUVENILE. MY APOLOGIES, YOUR
7 HONOR. I'M GOING TO TURN THIS OVER TO MS. ANDERSON.
8 SHE'S PREPARED THIS AND SHE'S MORE FAMILIAR WITH WHAT
9 SHE'S PREPARED. IF YOU WOULD, MS. ANDERSON. I
10 THOUGHT WE WERE GOING TO MAKE A LIST OF THE
11 IMPEACHABLE OFFENSES.

12 THE COURT: WHILE SHE IS DOING THAT LET'S
13 MOVE ON IF WE CAN. MS. INZERILLO, I'M LOOKING AT THE
14 LATEST POCKET PART, THE LATEST ONE I'VE GOT 2005, AND
15 IT SAYS THAT 20-7-780 REPEALED IN 1996.

16 MS. INZERILLO: 7805?

17 THE COURT: SAY AGAIN? 20.

18 MS. INZERILLO: -7-7805.

19 THE COURT: OKAY. 78, I JUST WROTE IT
20 DOWN WRONG.

21 MS. INZERILLO: THAT MAY BE MY FAULT.

22 THE COURT: NO, I WROTE IT DOWN.

23 MS. INZERILLO: AND THE SPECIFIC SECTION
24 FOR THE EASE OF THE COURT IS SECTION C UNDER THAT.

25 THE COURT: I DON'T DO FAMILY LAW AND I

1 DON'T DO JUVENILE LAW. IT JUST SAYS, NO ADJUDICATION
2 OF THE STATUS OF A CHILD. NOW WHAT DOES THAT PHRASE
3 MEAN?

4 MS. INZERILLO: YOUR HONOR, I WOULD ARGUE
5 THAT THAT --

6 THE COURT: WELL, I DON'T WANT YOU TO
7 ARGUE. I WANT YOU TO TELL ME. SURELY THE
8 LEGISLATURE MEANT SOMETHING BY THAT. LET'S SEE FIRST
9 IF THE LEGISLATURE HAD A DEFINITION. THIS IS UNDER A
10 CHAPTER DEALING WITH.

11 MS. INZERILLO: UNDER DISPOSITIONAL POWERS
12 OF THE COURT, YOUR HONOR, THE A SECTION WHICH DEFINES
13 ADJUDICATIONS OUTLINES ESSENTIALLY THAT THE FAMILY
14 COURT VERSION OF CONVICTION WHICH IS IF IT FINDS BY
15 FINDING OF FACT THAT A CHILD FALLS UNDER THE FAMILY
16 COURT WHAT THEY ARE ALLOWED TO DO AND THE SUBSECTIONS
17 OF A THAT APPLY ARE THAT THE COURT CAN JUST AS AN
18 ADULT COURT PLACE A CHILD ON PROBATION AND COMMIT A
19 CHILD TO AN INSTITUTION OR AGENCY. ANYTHING LIKE
20 THAT THAT WOULD RESULT IN PUNISHMENT FOR THE CHILD
21 ADJUDICATION GENERALLY IS JUST THE FAMILY COURT TERM
22 FOR CONVICTION AS WE WOULD USE HERE IN ADULT COURT.

23 THE COURT: BUT THE STATUS OF A CHILD
24 DOESN'T MEAN, I MEAN IN MY MIND IMPOSES SOMETHING
25 DIFFERENT. IT JUST CONJURES UP.

1 MS. INZERILLO: YOUR HONOR, GENERALLY IN
2 FAMILY COURT A CHILD IS ADJUDICATED DELINQUENT. HE'S
3 NOT FOUND GUILTY OR ANYTHING. HE'S JUST ADJUDICATED
4 DELINQUENT AND THAT AFFECTS THE STATUS OF THE CHILD.

5 THE COURT: ALL RIGHT, MR. SPRINGS.

6 MR. SPRINGS: WHAT WE ARE GOING ON, YOUR
7 HONOR, IS I AM ON PAGE 393 IN OUR RULES OF EVIDENCE,
8 RULE 609. I'M LOOKING IN THE ANNOTATIONS, UP AT THE
9 TOP.

10 THE COURT: WHAT WAS THAT PAGE NUMBER?

11 MR. SPRINGS: 393 IN THE 2007 BOOK AND UP
12 AT THE TOP RIGHT HAND PARAGRAPH JUVENILE
13 ADJUDICATIONS ARE ADMISSIBLE, I'M FIVE LINES DOWN, IN
14 THIS STATE TO IMPEACH ANY WITNESS INCLUDING THE
15 ACCUSED IF THE CONDUCT WOULD BE CRIMINAL IF IT WAS
16 COMMITTED BY AN ADULT, AND THAT'S WHAT WE'RE HANGING
17 OUR HAT ON.

18 THE COURT: THAT'S A 1978 CASE AND I'M
19 LOOKING AT A 1996 STATUTE. WE'LL PULL THAT CASE, BUT
20 THE STATUTE POSTDATES THAT. LET'S LOOK AT THIS CASE,
21 STATE VERSUS ELLIS 547490, IT'S A 2001 CASE. THAT
22 LOOKS LIKE IT MIGHT BE ON POINT.

23 MR. SPRINGS, THIS CASE ISN'T DIRECTLY
24 ON POINT, BUT THE SUPREME COURT, THE LAST LINE DEALS
25 WITH WHETHER OR NOT SOME PRIOR OFFENSES, JUVENILE

1 OFFENSES, COULD BE USED FOR THE LIFE WITHOUT PAROLE.
2 IT SAYS QUOTE: THE CHILDREN'S CODE SPECIFICALLY
3 PROVIDES NO ADJUDICATION BY THE FAMILY COURT OF A
4 STATUS OF A CHILD IS A CONVICTION PERIOD. AND SO I'M
5 GOING, LET'S BETWEEN NOW AND THE TIME THAT
6 MR. ROBINSON TESTIFIES, IF HE SO DOES, I'M GOING TO
7 RULE THAT THE, WHILE THEY MAY BE IMPEACHABLE UNDER
8 THE RULES, THAT THEY ARE NOT ALLOWED TO BE USED
9 AGAINST HIM BASED ON THE STATUTE AND THE CASE OF THE
10 STATE VERSUS ELLIS 547 SOUTHEAST SECOND 49.

11 MR. SPRINGS: VERY GOOD, YOUR HONOR. SO
12 FOR THE COURT'S EDIFICATION AND FOR THE DEFENSE
13 ATTORNEY, WE WOULD USE TWO ADULT OFFENSES FOR
14 IMPEACHMENT SHOULD HE TAKE THE STAND, A RECEIVING
15 STOLEN GOODS FROM 2001 AND GIVING FALSE INFORMATION
16 TO POLICE IN 2003, THOSE TWO, BOTH ADULT.

17 MS. INZERILLO: YES, SIR, WE BELIEVE THOSE
18 FALL UNDER THE RULES.

19 THE COURT: ALL RIGHT. NOW THE THIRD
20 MOTION IS CRIMINAL HISTORY OF NON-LAW ENFORCEMENT
21 WITNESSES.

22 MR. SPRINGS: IT'S A QUESTION OF WHETHER
23 OUR CHEMIST IS CONSIDERED LAW ENFORCEMENT. I WOULD
24 CONSIDER HER LAW ENFORCEMENT. A CHEMIST, I'LL BE GET
25 OUR CHEMIST'S RAP SHEET IF MS. INZERILLO WANTS IT.

1 DO YOU WANT --

2 THE COURT: WHO IS HER EMPLOYER?

3 MR. SPRINGS: THE SHERIFF'S DEPARTMENT.

4 THE COURT: THEN I THINK SHE FALLS UNDER
5 THAT CATAGORY.

6 MR. SPRINGS: VERY GOOD. WE'RE NOT GOING
7 TO HAVE ANY CIVILIANS.

8 MS. INZERILLO: YOUR HONOR, AS A COROLLARY
9 TO THAT, I REVIEWED THE STATE'S WITNESS LIST FOR THIS
10 MORNING AND ONE OF THE PROPOSED WITNESSES IS THE
11 CHIEF OF POLICE FOR ROCK HILL AND I CERTAINLY DON'T
12 MEAN THIS CONCERNING IN ANY TO DIRECT THE STATE HOW
13 TO PROVE THEIR CASE, BUT MY UNDERSTANDING IS HIS
14 TESTIMONY WOULD BE NOT SPECIFIC TO THIS CASE, BUT TO
15 DESCRIBE TO THE JURY THE WEED AND SEED PROGRAM AND I
16 WOULD JUST MAKE AN OBJECTION TO THIS AT THIS TIME.

17 THE COURT: BEFORE HE TESTIFIES WE'LL HAVE
18 A PROFFER. NEXT IS MOTION TO RECIPROCAL
19 SEQUESTRATION. I'LL REQUIRE THAT OTHER THAN THE LEAD
20 INVESTIGATOR AND OF COURSE THERE ARE NO VICTIMS SO
21 JUST THE LEAD INVESTIGATOR. ANY LYLE TESTIMONY?

22 MR. SPRINGS: NO, SIR.

23 THE COURT: ALL RIGHT. THERE IS A MOTION
24 TO SUPPRESS ANY MONEYS TAKEN BASED ON THE LACK OF
25 CHAIN OF CUSTODY. I THINK I HAVE TO HAVE A PROFFER

1 ON THAT, AT LEAST HAVE THE TESTIMONY AS THAT GOES
2 THROUGH AND THEY WANT A REDACTED INDICTMENT ON
3 POSSESSION OF MARIJUANA TO DELETE THE FACT THAT THIS
4 IS NOT HIS FIRST OFFENSE.

5 MR. SPRINGS: OF COURSE. YOUR HONOR, I
6 CAN'T RECALL IF YOU SEND INDICTMENTS BACK OR DO YOU
7 USE VERDICT SHEETS.

8 THE COURT: I USUALLY SEND THE INDICTMENTS
9 BACK AND I CAN DO, AS TO THAT ONE, I CAN DO A VERDICT
10 FORM AND JUST TELL THEM THAT WITHOUT GOING INTO THE
11 DETAIL.

12 MR. SPRINGS: WHATEVER THE COURT'S
13 PLEASURE AT THE APPROPRIATE TIME.

14 THE COURT: WELL, IT JUST SEEMS LIKE YOU
15 COULD REDACT ON A COPY AFTER THE COMMA AFTER AMENDED
16 ON THE FOURTH LINE ALL THE WAY DOWN TO THE NEXT
17 COMMA. WELL, NO, THE SECOND NEXT COMMA AND IT WOULD
18 BE JUST A BLANK THERE.

19 MR. SPRINGS: WE'LL DO THAT.

20 THE COURT: OKAY.

21 MR. SPRINGS: NOW BEFORE WE DO OUR PROFFER
22 ON THE MONEY, THE STATE HAS A FEW PRETRIAL MOTIONS.

23 THE COURT: ALL RIGHT.

24 MR. SPRINGS: ONE OF THEM IS TO PRECLUDE ANY
25 MENTION OF THE POTENTIAL SENTENCE MR. ROBINSON MAY

1 RECEIVE, IT'S IRRELEVANT, IT'S PREJUDICIAL TO THE
2 STATE, AND OUR COMMON LAW SAYS THAT THAT'S NOT
3 SOMETHING THE JURY SHOULD HEAR.

4 MS. INZERILLO: WE HAVE NO INTENTION OF
5 DOING THAT, YOUR HONOR.

6 THE COURT: ALL RIGHT.

7 MR. SPRINGS: THE SECOND MOTION IS TO
8 PRECLUDE ANY HEARSAY, ANY WORDS FROM MR. ROBINSON
9 ELICITED FROM OUR WITNESSES WE CONTEND ARE
10 SELF-SERVING HEARSAY AND THERE IS NO RULE OF EVIDENCE
11 WHICH WOULD ALLOW HIS SELF-SERVING HEARSAY TO BE
12 ELICITED THROUGH OUR WITNESSES.

13 THE COURT: I'M NOT SURE, I GUESS I'M
14 GOING TO HAVE TO HEAR THE TESTIMONY AND I GUESS I'LL
15 ASK YOU TO OBJECT AT THE TIME IT COMES UP BECAUSE I
16 DON'T KNOW THAT I CAN GIVE A BLANKET RULING ON
17 SOMETHING LIKE THAT.

18 MR. SPRINGS: VERY GOOD. I WOULD ASK THE
19 DEFENSE IF THEY HAVE COMPLIED WITH OUR RECIPROCAL
20 DISCOVERY ORDER.

21 MS. INZERILLO: WE HAVE, YOUR HONOR. WE
22 HAVE NOTHING TO GIVE.

23 MR. SPRINGS: AND FINALLY MS. ANDERSON IS
24 GOING TO LAYOUT THE FEW WORDS THAT MR. ROBINSON SPOKE
25 TO SEE IF THE DEFENSE HAS ANY OBJECTION TO THEIR

1 ADMISSION IN OUR CASE. MS. ANDERSON.

2 MS. ANDERSON: YOUR HONOR, THE ONLY
3 STATEMENTS THE STATE WOULD SEEK TO ADMIT AS AT THE
4 TIME THAT MR. ROBINSON WAS IN THE PROCESS OF BEING
5 ARRESTED BY SERGEANT BREEDEN MR. ROBINSON STATED THAT
6 THE MARIJUANA IN HIS POCKET WAS IN FACT HIS BUT THE
7 CRACK IS SOMEONE ELSE. HE WAS ASKED HOW HE GOT, HE
8 WAS THEN ASKED HOW HE GOT TO THE APARTMENT AND HE
9 STATED HE RODE IN THE CADILLAC.

10 YOUR HONOR, AS I'VE SPOKEN TO SERGEANT
11 BREEDEN, HE HAD NOT GIVEN MR. ROBINSON MIRANDA RIGHTS
12 AT THE TIME BUT THE STATEMENT THE MARIJUANA IN HIS
13 POCKET WAS HIS BUT THE CRACK WAS SOMEONE ELSE WAS AT
14 AT THE TIME THAT SERGEANT BREEDEN WAS SEARCHING HIM
15 INCIDENT TO ARREST. WHEN PULLING THE MARIJUANA OUT
16 OF HIS POCKET, MR. ROBINSON SPONTANEOUSLY STATED THAT
17 TO THE OFFICER. IT WAS NOT THE RESULT OF ANY
18 INTERROGATION OR ANY QUESTIONING ON THE PART OF THE
19 OFFICER.

20 AS TO THE STATEMENT THAT HE RODE IN
21 THE CADILLAC TO RIDE TO THE APARTMENTS, THE STATE
22 WOULD ARGUE THAT THAT IS NOT AN INTERROGATION UNDER
23 THE PURPOSES OF MIRANDA. OFFICERS STATED IT WAS MORE
24 OF A PURPOSE OF SEEING WHETHER MR. ROBINSON HAD ANY
25 CONNECTION WITH THE APARTMENT BUILDINGS RATHER THAN

ANTHONY BREEDEN IN CAMERA DIRECT

19

1 TRYING TO ELICIT ANY INCRIMINATORY, INCRIMINATING
2 INFORMATION. HE DID NOT ASK HIM ANY QUESTIONS
3 REGARDING THE DRUGS. SIMPLY MORE OF A QUESTION MORE
4 AKIN TO WHERE HE LIVED, HIS ADDRESS, OF HOW HE
5 ARRIVED THERE AND WHY HE WAS THERE.

6 THE COURT: IT WAS NOT IN RESPONSE TO ANY,
7 WAS IT IN RESPONSE TO A QUESTION?

8 MS. ANDERSON: THE QUESTION WAS HOW DID HE
9 GET THERE AT THE APARTMENT COMPLEX WHERE HE WAS AT,
10 BUT NOT ANY QUESTION ABOUT THE DRUGS.

11 THE COURT: MS. INZERILLO.

12 MS. INZERILLO: YOUR HONOR, WE HAVE NO
13 OBJECTION TO THE STATE ENTERING THOSE STATEMENTS BY
14 THE DEFENDANT.

15 THE COURT: ALL RIGHT. NOW.

16 MR. SPRINGS: THAT'S ALL WE HAVE. AT THIS
17 TIME WE WILL CALL, TENDER SERGEANT BREEDEN TO THE
18 STAND TO TALK ABOUT THE MONEY.

19 THE COURT: WE'LL DO A HEARING ON THE
20 ADMISSIBILITY OR THE MOTION TO SUPPRESS THE MONEY
21 BASED ON CHAIN OF EVIDENCE. PLEASE COME UP AND BE
22 SWORN.

23 MR. SPRINGS: COME UP, SERGEANT.

24 ANTHONY BREEDEN, BEING FIRST DULY
25 SWORN, TESTIFIED AS FOLLOWS:

1 IN CAMERA DIRECT EXAMINATION BY MR. SPRINGS:

2 Q SERGEANT, THIS IS WHAT WE CALL A PRELIMINARY
3 MATTER SO WE'RE GOING TO MOVE PRETTY QUICKLY. TELL
4 US ALL YOUR NAME?

5 A MY NAME IS ANTHONY WADE BREEDEN.

6 Q WHO DO YOU WORK FOR?

7 A ROCK HILL POLICE DEPARTMENT.

8 Q AND WERE YOU ON DUTY AND WORKING THE NIGHT OF
9 JUNE FIRST THIS YEAR 2007?

10 A YES, SIR. I'M ASSIGNED AS A SUPERVISOR OF OUR
11 STREET CRIMES UNIT IN THE POLICE DEPARTMENT.

12 Q AND ABOUT 9:30 AT NIGHT DID YOU AND YOUR FELLOW
13 OFFICERS HAVE OCCASION TO ARREST CHRISTOPHER
14 ANTANGELO ROBINSON?

15 A YES, SIR, WE DID.

16 Q WHAT DID YOU ARREST HIM FOR, WHAT KIND OF
17 CHARGES?

18 A THE DRUG CHARGES, PWID CRACK, PWID IN PROXIMITY,
19 AND THE MARIJUANA CHARGE.

20 Q ALL RIGHT. AND DID YOU TAKE HIM TO JAIL?

21 A YES, SIR, WE DID.

22 Q AND DID YOU SEARCH HIM PURSUANT TO THE ARREST ON
23 THE DRUG CHARGES?

24 A YES, SIR, WE DID.

25 Q DID HE HAVE ANY MONEY ON HIM?

ANTHONY BREEDEN

CROSS

21

1 A YES, SIR.

2 Q HOW MUCH MONEY DID HE HAVE?

3 A \$531.

4 Q DID YOU POLICE OFFICERS SEIZE THAT MONEY?

5 A THE ACTUAL ROCK HILL POLICE DEPARTMENT, WE DON'T
6 HAVE THE ABILITY TO SEIZE IT. WE NORMALLY CONTACT A.

7 Q LET ME REPHRASE YOUR QUESTION. DID YOU HANDLE
8 THAT MONEY YOURSELF?

9 A YES, SIR. WE INITIALLY TOOK THE MONEY, PLACED
10 IT IN HIS PROPERTY, COUNTED IT, PLACED IT IN HIS
11 PROPERTY, NOTIFIED A DEU AGENT, THE DRUG ENFORCEMENT
12 UNIT AGENT, AND INFORMED THEM OF THE DRUGS WE HAD,
13 THE AMOUNT OF DRUGS WE HAD, AND THE MONEY, AND THEN
14 AN AGENT WITH THAT DRUG UNIT CAME AND ACTUALLY SEIZED
15 THE MONEY.

16 Q VERY GOOD. AND YOU COUNTED THE MONEY?

17 A YES, SIR.

18 Q OKAY.

19 MR. SPRINGS: THAT'S ALL WE HAVE.

20 THE COURT: CROSS.

21 CROSS EXAMINATION BY MS. INZERILLO:

22 Q SERGEANT BREEDEN, YOU HAD DIRECT CONTACT WITH
23 MR. ROBINSON ON THE SCENE?

24 A YES, MA'AM, AND AT THE LAW CENTER.

25 Q OKAY. AND YOU WERE THE OFFICER THAT DID THE PAT

1 DOWN SEARCH OF MR. ROBINSON?

2 A YES. SEARCH INCIDENT TO ARREST, YES, MA'AM.

3 Q RIGHT. AND YOU FOUND THE MARIJUANA IN HIS
4 POCKET?

5 A YES, MA'AM.

6 Q OKAY. AND AT THAT TIME YOU FOUND THE MONEY IN
7 HIS POCKET AS WELL?

8 A I MADE A NOTE THAT HE HAD MONEY. THE ONLY THING
9 I WOULD HAVE TAKEN FROM HIM AT THE ACTUAL SCENE WOULD
10 HAVE BEEN THE DRUGS. THE REST OF HIS PROPERTY, ONCE
11 HE'S SEARCHED, ANY WEAPONS OR DRUGS REMOVED AT THE
12 SCENE, ANY JEWELRY, MONEY, THINGS LIKE THAT, STAY ON
13 HIS PERSON. WHEN WE COME IN THE BACK ROOM OF THE
14 JAIL WE'VE GOT A TABLE, LIKE A COUNTER TOP IN THE
15 BACK HALLWAY OF THE JAIL WITH PROPERTY BAGS, EVIDENCE
16 THINGS, THAT'S WHERE WE REMOVE THE REST OF THE
17 PERSON'S PROPERTY; ANY MONEY, ANY ITEMS LIKE THAT,
18 ARE PLACED IN A BROWN PAPER BAG AND ONCE THEY ARE
19 SEARCHED AND ALL THOSE ITEMS REMOVED THEN WE PROCEED
20 ACTUALLY INTO THE HOLDING AREA, AND THAT'S WHERE WE
21 INITIALLY COUNT THE MONEY.

22 Q SO THE MONEY, IF I'M UNDERSTANDING YOU
23 CORRECTLY, IS TREATED AS PROPERTY AND NOT TREATED AS
24 EVIDENCE?

25 A NOT INITIALLY. IT'S TREATED, IT'S STILL HIS

ANTHONY BREEDEN

CROSS

23

1 PROPERTY AT THAT POINT.

2 Q OKAY. SO YOU TOOK THE MONEY AND YOU PUT IT WITH
3 HIS PROPERTY?

4 A YES.

5 Q OKAY. SO YOU DON'T LOG IT INTO EVIDENCE?

6 A NOT AT THAT TIME, NO.

7 Q ALL RIGHT. NOW YOU NEVER LOGGED IT INTO
8 EVIDENCE?

9 A IF IT'S ACTUALLY SEIZED BY THE DEU WE'LL PUT IT
10 ON THE PROPERTY RECEIPT THAT THEY ARE ACTUALLY TAKING
11 IT, BUT I CAN'T MAKE THE DETERMINATION TO WHETHER
12 THEY ARE GOING TO SEIZE THE MONEY OR THAT IT WOULD BE
13 ACTUALLY TAKEN BECAUSE WE DON'T HAVE THE ABILITY TO
14 DO THAT.

15 Q SO YOU DON'T MAKE THE DETERMINATION WHETHER IT
16 WAS MONEY USED IN CONNECTION WITH THE DRUG DEAL?

17 A NO, I CAN MAKE THAT DETERMINATION, BUT I CAN'T
18 MAKE THE DETERMINATION TO TAKE THE MONEY.

19 Q OKAY. AND IF I'M READING YOUR EVIDENCE PROPERTY
20 SHEET CORRECTLY THAT YOU AND OFFICER CHAVIS
21 SUBMITTED, THE ONLY THINGS YOU PUT ON THE REPORT WERE
22 THE CRACK COCAINE AND MARIJUANA BAGGY?

23 A YES, MA'AM.

24 Q OKAY. AND NO INDICATION AT ALL THAT ANY MONEY
25 AT ALL WAS TAKEN?

1 A NO, MA'AM.

2 Q AND YOU DIDN'T -- I'M SORRY. YOU DIDN'T TAKE
3 ANY PICTURES OF THE MONEY?

4 A NO, MA'AM. AFTER TALKING TO LIEUTENANT DALTON
5 THERE WAS AN AMENDMENT TO HOW WE WERE DOING IT AND
6 ENTERING IT SPEAKING TO LIEUTENANT DALTON AND THAT IS
7 NOT A POLICY THAT WE WERE DOING UNTIL AFTER SPEAKING
8 TO HIM.

9 Q OKAY.

10 A AND WE WERE ALWAYS NOTE TAKING IT ON THE GENERAL
11 SESSIONS SUMMARY AND INCIDENT REPORT THAT WAS TAKEN,
12 BUT NOT IN THE EVIDENCE THEN THAT NOW HAS CHANGED TO
13 WHERE IT IS IN THE EVIDENCE.

14 Q OKAY. AND ON THE THE GENERAL SESSIONS REPORT
15 THAT YOU DRAFTED, YOU DO NOT MENTION AT ALL THAT ANY
16 MONEY WAS TAKEN?

17 A MAYBE I DIDN'T.

18 Q OKAY. AND ON THE INCIDENT REPORT THAT YOU GAVE
19 THAT WAS DRAFTED THERE WAS ONLY A HANDWRITTEN LINE
20 PUT IN THERE THAT THE DEU SEIZED \$531?

21 A RIGHT.

22 Q I'LL GIVE YOU A CHANCE TO REVIEW THAT?

23 A RIGHT. ALL RIGHT.

24 Q OKAY. AND THERE IS NO MENTION OF MONEY?

25 A NO, MA'AM.

ANTHONY BREEDEN

CROSS

25

1 Q OKAY. AND THE PROPERTY RECEIPT THAT YOU ARE
2 SPEAKING OF IS THE BOTTOM HALF OF THE BOOKING REPORT,
3 THAT IS DONE, IS THAT CORRECT?

4 A YOU TALKING ABOUT THE ACTUAL BOOKING REPORT
5 WHERE THE PROPERTY IS DONE, THAT'S DONE BY A JAILER I
6 BELIEVE.

7 Q OKAY. WELL, LET ME SHOW YOU WHAT, I'M LOOKING
8 AT THE BOTTOM OF HIS BOOKING REPORT WHERE IT SAYS
9 DEFENDANT'S PERSONAL PROPERTY RECEIPT?

10 A RIGHT.

11 Q AND IT LISTS A CAP AND I BELIEVE ANOTHER ITEM?

12 A RIGHT.

13 Q OKAY. AND THEN NEXT TO THAT IT LISTS MONEY
14 TAKEN ZERO?

15 A RIGHT. THAT'S ACTUALLY, THAT'S AT THE TIME OF
16 THE ARREST. THERE COULD BE A DIFFERENCE IN TIME FROM
17 THE TIME A PERSON IS INITIALLY BROUGHT INTO THE JAIL
18 UNTIL THEY ARE ACTUALLY BOOKED IN AND PROCESSED BY A
19 JAILER AND NORMALLY THAT WON'T TAKE PLACE UNTIL AFTER
20 THE WARRANTS ARE TYPED, SERVED, THEY KNOW EXACTLY
21 WHAT THE CHARGES ARE, AND BY THE TIME THAT JAILER HAS
22 ACTUALLY COMPLETED THAT BOOKING SLIP, ANY MONEY OR
23 ANY PROPERTY THAT HAD BEEN TAKEN OR SEIZED BY THE DEU
24 WOULD HAVE BEEN TAKEN AT THAT POINT. HAD THE MONEY
25 NOT BEEN TAKEN IT WOULD HAVE BEEN IN HIS BAG AND BEEN

1 THERE AND THE JAILER WOULD HAVE MADE NOTE THAT HE HAD
2 THAT MONEY AT THAT TIME.

3 Q OKAY. ALL RIGHT. SO I JUST WANT TO MAKE SURE
4 I'M UNDERSTANDING THIS. YOU FIND THE MONEY BUT YOU
5 CAN'T PLACE IT INTO EVIDENCE SO YOU HOLD IT AS
6 PROPERTY, SO YOU DRAFT A PROPERTY RECEIPTS--NO?

7 A NO. HE HAS, THE MONEY HE HAS ON HIM AT THE TIME
8 OF THE ARREST IS IN HIS PROPERTY BAG WITH HIS OTHER
9 ITEMS.

10 Q OKAY.

11 A AT THAT POINT I NOTIFIED THE DRUG ENFORCEMENT
12 UNIT WE HAVE A DRUG CHARGE THAT MEETS THEIR CRITERIA
13 FOR SEIZING MONEY AND THAT THEY HAVE A QUANTITY OF
14 MONEY. AT THAT POINT WHATEVER SUPERVISOR OR WHOEVER
15 IS WORKING DECIDES IF THEY WANT TO EITHER ASK THE
16 SUBJECT TO SIGN IT OVER OR SEIZE THE MONEY. ALL
17 RIGHT. THAT'S NOT OUR DECISION. WE INFORM THEM AND
18 THEN WHAT NORMALLY TAKES PLACE IS A LITTLE WHILE
19 LATER THEY COME BACK AND SAY WE DID IN FACT TAKE THE
20 MONEY. I NEED A COPY OF THE SUMMARY, THE INCIDENT
21 REPORT, AND THAT'S WHEN WE FORWARD THOSE ITEMS TO
22 THEM.

23 Q OKAY.

24 A AS FAR AS IT BEING A HANDWRITTEN NOTE IN THE
25 INCIDENT REPORT, WE'VE ACTUALLY GONE TO, IT'S A, I

ANTHONY BREEDEN

CROSS

27

1 DON'T KNOW WHY IT'S CALLED PAPERLESS BUT IT'S CALLED
2 A PAPERLESS REPORT WHERE THE COMPUTERS ARE DONE AND
3 ACTUALLY SUBMITTED WIRELESSLY TO RECORDS AND THAT
4 REPORT HAD ALREADY BEEN SUBMITTED WIRELESSLY TO
5 RECORDS SO IT WAS A HANDWRITTEN NOTE AFTER THE FACT
6 THAT I WROTE ON THE REPORT THAT THE MONEY WAS SEIZED.

7 Q OKAY. AND I JUST WANT TO GET BACK TO YOUR END
8 OF IT. WHEN IT'S PLACED IN THE PROPERTY, DO YOU
9 DRAFT THE PROPERTY RECEIPT AT THAT TIME?

10 A NO.

11 Q NO. IT'S JUST WRITTEN ON THE PROPERTY BAG?

12 A IT'S ON HIS BAG, HOW MUCH MONEY, THE ONLY THING
13 WE WRITE ON THE BAG IS CASH THAT HE HAS, NOT THAT HE
14 HAS A CAP, A KNIFE, CIGARETTES, LIGHTER, NONE OF THAT
15 IS WRITTEN ON THE BAG, THE ONLY THING ON THE BAG IS
16 CASH AND HIS NAME AND IT'S SENT INTO THE JAIL, PUT
17 BEHIND THE DESK WHERE THE JAILER SITS, AND THEY ARE
18 INFORMED HERE'S HIS PROPERTY BAG; HE'S SEARCHED AGAIN
19 MORE THOROUGHLY, PLACED IN A HOLDING CELL, AND
20 NORMALLY WAITS THERE UNTIL WE COME BACK AND TELL THE
21 JAILER WHAT THE EXACT CHARGES ARE.

22 Q OKAY. AND DID YOU MAKE A COPY OF THAT PROPERTY
23 BAG THAT YOU HAD NOTED THAT MONEY WAS RECOVERED?

24 A NO, MA'AM.

25 MS. INZERILLO: NO FURTHER QUESTIONS.

1 THE COURT: REDIRECT?

2 MR. SPRINGS: NOTHING.

3 THE COURT: YOU CAN STEP DOWN. THANK YOU.

4 THE WITNESS: THANK YOU, YOUR HONOR.

5 THE COURT: CALL YOUR NEXT WITNESS.

6 MR. SPRINGS: THAT'S ALL WE HAVE.

7 MS. INZERILLO: YOUR HONOR, THEN I WOULD
8 MOVE TO SUPPRESS THE MONEY ON THE BASIS OF AN
9 INCOMPLETE CHAIN OF CUSTODY. OBVIOUSLY SERGEANT
10 BREEDEN INDICATED THAT HE HANDED THE MONEY TO OR THAT
11 HE PUT IT IN THE PROPERTY AND FROM PROPERTY OF DRUG
12 ENFORCEMENT, HIS UNDERSTANDING THAT TYPICAL POLICY
13 THAT A DRUG ENFORCEMENT UNIT OFFICER WOULD THEN
14 RECEIVE THE MONEY AND DO ANY FURTHER SEIZURE
15 ACTIVITIES THAT HE NEEDED TO DO WITH THAT IN LIGHT OF
16 THE FACT THAT THE DRUG ENFORCEMENT OFFICER IS NOT
17 HERE TO TESTIFY TO THE NEXT LINK IN THE CHAIN WE
18 WOULD MOVE TO SUPPRESS THAT MONEY.

19 MR. SPRINGS: YOUR HONOR, WE'RE NOT
20 ENTERING THE MONEY INTO EVIDENCE. WE'RE GOING TO
21 TALK ABOUT THE MONEY.

22 THE COURT: I THINK HE CAN TESTIFY ABOUT
23 IT, BUT IT'S A DIFFERENT ISSUE THEY WON'T ACTUALLY
24 PUT THE CURRENCY IN THEN YOU ARE RIGHT. IF THEY WANT
25 TO TALK ABOUT IT, THEN THEY HAVE ESTABLISHED ENOUGH

1 TO DO THAT. THERE IS REALLY NO CHAIN OF CUSTODY
2 ISSUE.

3 MS. INZERILLO: THEN, YOUR HONOR, MY, WHAT
4 I WOULD BE CONCERNED ABOUT IS ANY ALLEGATION BY THE
5 STATE THAT MR. ROBINSON FORFEITED THAT MONEY AND
6 THAT'S WHAT'S BEEN TOLD TO US BY THE STATE IN
7 ADDITION TO DISCUSSING MONEY, THEY WOULD ALSO DISCUSS
8 IN THE CASE IN CHIEF THAT MR. ROBINSON FORFEITED THE
9 MONEY.

10 THE COURT: THAT'S NOT RELEVANT TO THE
11 CASE.

12 MR. SPRINGS: WE'RE NOT GOING TO DO THAT.
13 WE'RE GOING TO ASK DID YOU TAKE ANY MONEY OFF OF HIM
14 AND THEY WILL SAY \$531.

15 THE COURT: ALL RIGHT. ANYTHING FURTHER?

16 MS. INZERILLO: NO, YOUR HONOR.

17 THE COURT: ALL RIGHT. ANYTHING FROM THE
18 STATE?

19 MR. SPRINGS: NO, SIR.

20 THE COURT: I'VE GONE OVER EACH PARTIES
21 VOIR DIRE AND THEY ALL LOOK OKAY TO ME UNLESS EITHER
22 OF YOU HAVE ANY SPECIFIC OBJECTION. I DON'T ASK THEM
23 JUST LIKE YOU'VE GOT THEM COUCHED BUT I DO ASK THOSE
24 PARTICULAR THINGS.

25 MS. INZERILLO: YOUR HONOR, I HAVE NO

1 OBJECTION TO THAT BUT YOUR HONOR DID NOTE THAT YOU
2 WOULD WANT TO MAKE A PROFFER OF THE CHIEF'S TESTIMONY.
3 AND I DIDN'T KNOW IF YOU WANTED TO DO THAT NOW.

4 THE COURT: I DIDN'T KNOW THAT HE'S HERE.

5 MR. SPRINGS: HE'S NOT COMING UNTIL CLOSE
6 TO TWO.

7 THE COURT: I DON'T KNOW WHY I WOULD THINK
8 HE WASN'T HERE. I JUST FIGURED THAT THAT WOULD BE
9 SOMETHING LATER.

10 MR. SPRINGS: WE WON'T MENTION THE CHIEF
11 IN OPENING AND THEN PROBABLY RIGHT AFTER THE LUNCH
12 BREAK WE'LL TAKE UP CHIEF GREGORY.

13 THE COURT: ALL RIGHT. READY FOR THE
14 JURY, MR. SPRINGS?

15 MR. SPRINGS: WE ARE, SIR.

16 THE COURT: MS. INZERILLO?

17 MS. INZERILLO: YES, YOUR HONOR.

18 THE COURT: WE'LL TAKE A SHORT BREAK, ONLY
19 BE A BREAK TO BRING THE JURY UP, AND LET US GET
20 REFRESHED SO IF YOU'LL BRING US A PANEL. STRIKES ARE
21 FIVE AND FIVE.

22 MR. SPRINGS: YES, SIR.

23 THE COURT: MS. INZERILLO, YOU AGREE?

24 MS. INZERILLO: YES, YOUR HONOR.

25 (COURT'S IN RECESS AT 10:37 AM.)

1 (COURT RESUMES 10:45 AM AND THE JURY
2 PANEL IS PRESENT IN THE COURTROOM.)
3 THE COURT: THOSE OF YOU WHO HAVEN'T MET
4 ME I'M JOHN HAYES. I ALONG WITH JUDGE MILLER FROM
5 GREENVILLE ARE HOLDING COURT HERE THIS WEEK AND WE'RE
6 GETTING READY TO START OUR SECOND TRIAL IN THIS
7 COURTROOM AND THAT IS THE CASE OF THE STATE VERSUS
8 CHRISTOPHER ROBINSON. MR. ROBINSON, WILL YOU PLEASE
9 STAND AND LET THE JURY IDENTIFY YOU. THIS IS
10 MR. ROBINSON. YOU MAY BE SEATED. HE'S REPRESENTED
11 BY MELISSA INZERILLO. THE STATE WILL BE REPRESENTED
12 BY MR. E. B. SPRINGS AND MS. ASHLEY ANDERSON. YOU
13 MAY BE SEATED.

14 MR. ROBINSON IS CHARGED WITH
15 POSSESSION OF COCAINE BASE, THAT'S WHAT THEY ARE
16 CALLING CRACK COCAINE NOW, POSSESSION OF CRACK
17 COCAINE WITH INTENT TO DISTRIBUTE, POSSESSION OF
18 MARIJUANA, AND POSSESSION OF CRACK COCAINE WITH
19 INTENT TO DISTRIBUTE WITHIN A PROXIMITY OF A SCHOOL
20 THAT BEING COMMUNITY IN SCHOOLS HERE IN YORK. IT'S
21 ALLEGED THIS OCCURRED HERE IN YORK ON JUNE FIRST,
22 2007: I'M SORRY. THE COMMUNITY IN SCHOOLS IS
23 LOCATED IT SAYS YORK COUNTY. I THINK IT'S IN
24 ACTUALLY IN ROCK HILL. I APOLOGIZE.

25 IT'S ALLEGED THIS OCCURRED ON JUNE

1 FIRST, 2007, HERE IN YORK COUNTY IN THE ROCK HILL
2 AREA.

3 FIRST ARE ANY OF YOU RELATED BY BLOOD
4 OR MARRIAGE OR ARE YOU A CLOSE PERSONAL FRIEND OR
5 ACQUAINTANCE OF CHRISTOPHER ANTANGELO ROBINSON. IF
6 SO PLEASE STAND. NO ONE STANDS.

7 HAVE ANY OF YOU ON THE JURY PANEL BEEN
8 REPRESENTED BY MS. INZERILLO, MR. SPRINGS,
9 MS. ANDERSON, OR DO ANY OF YOU HAVE ANY CONNECTION
10 WHATSOEVER WITH THE SIXTEENTH CIRCUIT SOLICITOR'S
11 OFFICE OR BEEN A WITNESS IN A CASE FOR THE
12 PROSECUTION. YES, MA'AM, YOUR NAME AND NUMBER.

13 THE JUROR: JUROR 62. MARIE DELLA-POSTA.
14 I AM A PERSONAL FRIEND OF MELISSA'S.

15 THE COURT: ALL RIGHT. WOULD THAT AFFECT
16 YOUR ABILITY TO BE FAIR AND IMPARTIAL IN THE TRIAL OF
17 THIS CASE?

18 THE JUROR: I DON'T THINK SO.

19 THE COURT: WOULD YOU BE ABLE TO BASE YOUR
20 VERDICT SOLELY ON THE LAW AND THE EVIDENCE IN THE
21 TRIAL?

22 THE JUROR: YES, SIR.

23 THE COURT: ALL RIGHT. YOU CAN HAVE A
24 SEAT. THANK YOU. NO ONE ELSE STANDS. WERE ANY OF
25 YOU MEMBERS OF THE GRAND JURY WHICH PASSED ON THIS

1 INDICTMENT AT AN EARLIER TIME IF SO PLEASE STAND. NO
2 ONE STANDS.

3 DO ANY OF YOU KNOW ANYTHING ABOUT THIS
4 CASE, HEARD ABOUT IT FROM ANY SOURCE WHATSOEVER, OR
5 HAVE ANY OF YOU FORMED OR EXPRESSED ANY OPINION ON
6 ANY MATTER THAT WOULD BE INVOLVED IN THIS CASE. IF
7 SO PLEASE STAND. NO ONE STANDS.

8 ARE ANY OF YOU AWARE OF ANY BIAS OR
9 PREJUDICE THAT YOU WOULD HAVE TOWARD MR. ROBINSON,
10 THE SOLICITOR'S OFFICE, OR THE STATE OR THE SUBJECT
11 MATTER OF THIS CASE; THAT IS, A CASE INVOLVING THE
12 POSSESSION OF CONTROLLED SUBSTANCES. IF SO PLEASE
13 STAND. NO ONE STANDS.

14 DO ANY OF YOU HAVE ANY PSYCHOLOGICAL,
15 THEOLOGICAL, RELIGIOUS POSITION SUCH THAT YOU WOULD
16 BE UNABLE TO BE FAIR AND IMPARTIAL IN THE TRIAL OF
17 THIS TYPE, IF SO PLEASE STAND. NO ONE STANDS.

18 I'M NOT GOING TO ASK YOU TO GO INTO
19 PARTICULARS AS TO THIS NEXT QUESTION BUT IF ANY OF
20 YOU OR A MEMBER OF YOUR IMMEDIATE FAMILY BEEN
21 AFFECTED BY THE USE OF ILLEGAL DRUGS, AGAIN I'M NOT
22 GOING TO ASK YOU TO STAND UP AND TELL US THINGS WE
23 DON'T NEED TO KNOW, JUST IF YOUR FAMILY HAS BEEN
24 AFFECTED EITHER BY HAVING SOMEONE INVOLVED WITH THE
25 USE OF CONTROLLED SUBSTANCE OR HAVING SOMEONE CHARGED

1 WITH THAT OFFENSE OR BEING THE SUBJECT OF SOME
2 OFFENSE THAT YOU THINK WAS PRECIPITATED BY THE USE OF
3 CONTROLLED SUBSTANCE, ILLEGAL DRUGS, PLEASE STAND.
4 NO ONE STANDS.

5 ARE ANY OF YOU MEMBERS OF OR
6 CONTRIBUTORS TO ORGANIZATIONS SUCH AS MOTHERS AGAINST
7 DRUNK DRIVERS, STUDENTS AGAINST DRUNK DRIVERS,
8 CITIZENS AGAINST VIOLENCE, TROOPERS ASSOCIATION,
9 SHERIFF'S ASSOCIATION, FRATERNAL ORDER OF POLICE.
10 ANY OF YOU MEMBERS OF OR CONTRIBUTORS TO THOSE
11 ORGANIZATIONS. ALL RIGHT, NAME AND NUMBER AND THE
12 ORGANIZATION.

13 THE JUROR: 167. I AM TIM NEWMAN.
14 SHERIFFS ASSOCIATION AND THE TROOPERS ASSOCIATION.

15 THE COURT: ALL RIGHT. REMAIN STANDING.
16 YES, MA'AM.

17 THE JUROR: 147 TERESA MCDANIEL AND MADD
18 AND I THINK TROOPERS ASSOCIATION IN THE PAST.

19 THE COURT: ALL RIGHT. THE LADY THAT
20 STOOD EARLIER AND I KNOW YOU STOOD BUT WE HAVE TO
21 MAKE A RECORD OF THIS.

22 THE JUROR: JUROR 62 MARIE DELLA-POSTA.
23 CONTRIBUTOR TO TROOPERS ASSOCIATION.

24 THE COURT: REMAIN STANDING PLEASE.

25 THE JUROR: JUROR 210 GAIL SMITH

1 CONTRIBUTOR TO THE FRATERNAL ORDER OF POLICE.

2 THE COURT: THOSE OF YOU, THE FOUR OF YOU
3 WHO ARE STANDING, IF THAT, IF HAVING DONE THAT WOULD
4 AFFECT YOUR ABILITY TO BE FAIR AND IMPARTIAL IN THE
5 TRIAL OF THIS CASE OR PREVENT YOU FROM BASING YOUR
6 VERDICT ON THE LAW AND THE EVIDENCE PLEASE RAISE YOUR
7 RIGHT HAND. NO ONE DOES. THANK YOU. YOU MAY BE
8 SEATED.

9 ARE ANY OF YOU OR A MEMBER OF YOUR
10 IMMEDIATE FAMILY INVOLVED IN LAW ENFORCEMENT AT ANY
11 LEVEL, A POLICEMAN, A SHERIFF'S DEPUTY, A US
12 MARSHALL, MP, OR YOU OR A MEMBER OF YOUR IMMEDIATE
13 FAMILY INVOLVED IN THE PROSECUTION OF CRIMINAL CASES,
14 DISTRICT ATTORNEY, MEMBERS OF JUDGE ADVOCATE GENERAL,
15 SOLICITOR, ANYTHING LIKE THAT. IF SO PLEASE STAND.
16 YES, SIR, YOUR NAME AND NUMBER.

17 THE JUROR: YES, SIR. MY NAME IS FRANCIS
18 GUIDRY, JUROR NUMBER 92. MY DAD IS THE LIEUTENANT
19 HERE MOSS JUSTICE CENTER AND SO IS MY BROTHER WHO
20 WORKS HERE AS WELL.

21 THE COURT: WOULD THAT FACT AFFECT YOUR
22 ABILITY TO BE FAIR AND IMPARTIAL IN THE TRIAL OF THIS
23 CASE?

24 THE JUROR: NO, SIR.

25 THE COURT: ALL RIGHT. WOULD YOU BE ABLE

1 TO BASE YOUR VERDICT ON THE LAW AND THE EVIDENCE
2 DEVELOPED IN THE TRIAL?

3 THE JUROR: YES, SIR.

4 THE COURT: ALL RIGHT. YOU CAN BE SEATED.
5 THANK YOU. THE FOLLOWING ARE POSSIBLE WITNESSES IN
6 THIS CASE, I DO NOT KNOW THAT ALL WILL TESTIFY, BUT
7 IF YOU ARE RELATED BY BLOOD OR MARRIAGE OR A CLOSE
8 PERSONAL FRIEND OR ACQUAINTANCE OF ANY OF THESE
9 INDIVIDUALS PLEASE STAND AND JUST REMAIN STANDING.
10 SERGEANT A.W. BREEDEN OF THE ROCK HILL POLICE
11 DEPARTMENT, AND UNTIL I SAY THEY ARE NOT MEMBERS OF
12 THE ROCK HILL DEPARTMENT THEY ARE. OFFICER MICHAEL
13 CHAVIS, CHIEF JOHN GREGORY, OFFICER CARLOS CULBREATH,
14 OFFICER CHRISTOPHER CROWDER, OFFICER MATT HALL.

15 NOW FROM THE YORK COUNTY SHERIFF'S
16 OFFICE, OFFICERS MARK SCHURIG, CYNTHIA MITCHUM, SHE'S
17 NOT AN OFFICER SHE IS WITH THE SHERIFF'S OFFICE,
18 BARBIE TRAYLOR, RAY BARNWELL, AUDRA EDDIE, AND THEN
19 AGAIN FROM THE ROCK HILL POLICE DEPARTMENT LINDA
20 ERBY. ANY OF YOU RELATED BY BLOOD OR MARRIAGE OR A
21 CLOSE PERSONAL FRIEND OR ACQUAINTANCE TO ANY OF THOSE
22 INDIVIDUALS? IF SO PLEASE STAND. NO ONE STANDS.
23 ANYTHING ELSE FROM THE STATE?

24 MR. SPRINGS: NO, SIR.

25 THE COURT: THE DEFENSE?

1 MS. INZERILLO: NO, YOUR HONOR.

2 THE COURT: DO ANY OF YOU KNOW OF ANY
3 REASON WHATSOEVER WHY YOU COULD NOT OR SHOULD NOT BE
4 A FAIR AND IMPARTIAL JUROR IN THE TRIAL OF THIS
5 PARTICULAR CASE IF SO PLEASE STAND. NO ONE STANDS.
6 BOTH SIDES CONSENT TO THE CLERK DRAWING THE JURY?

7 MR. SPRINGS: YES, YOUR HONOR.

8 MS. INZERILLO: YES, YOUR HONOR.

9 (THE JURY DRAWN AND SEATED.)

10 JUROR NUMBER 167 TIMOTHY NEWMAN MALE WHITE.

11 (BENCH CONFERENCE.)

12 THE COURT: SO YOU'LL KNOW, I DID NOT
13 QUALIFY BUT I UNDERSTAND YOU HAD A MEETING?

14 THE JUROR: TOMORROW.

15 THE COURT: TOMORROW. DID JUDGE MILLER
16 ALLOW YOU TO BE EXCUSED FOR THAT?

17 THE JUROR: IT WAS GOING TO BE DEPENDENT
18 UPON WHEN I'D BE IN THIS POSITION SO.

19 THE COURT: BUT YOU ARE NOT EXCUSED, IS
20 THAT MY UNDERSTANDING?

21 THE JUROR: NO, SIR.

22 THE COURT: Y'ALL MAY BE SEATED. I DIDN'T
23 MEAN TO SINGLE YOU OUT BUT I WAS NOT AT QUALIFICATION
24 AND THIS SOMETIMES HAPPENS WHEN I'M DRAWING JURORS
25 AND I'M NOT PRESENT. ALL RIGHT.

1 JUROR NUMBER 167 TIMOTHY NEWMAN MALE WHITE IS EXCUSED
2 BY THE DEFENSE.
3 JUROR NUMBER 166 JOHN NETTLES MALE WHITE ACCEPTED.
4 JUROR NUMBER 95 STEPHEN HAMILTON MALE WHITE STRUCK BY
5 THE STATE.
6 JUROR NUMBER 59 HOWARD DAVIS MALE WHITE ACCEPTED.
7 JUROR NUMBER 11 CANDACE BARNES FEMALE WHITE ACCEPTED.
8 JUROR NUMBER 140 PATRICIA MCCALL FEMALE WHITE
9 ACCEPTED.
10 JUROR NUMBER 159 JAYSEN MONGELLI MALE WHITE ACCEPTED.
11 JUROR NUMBER 251 TEENY CHILDERS FEMALE WHITE
12 ACCEPTED.
13 JUROR NUMBER 141 WILLIE MCCLOUD FEMALE BLACK
14 ACCEPTED.
15 JUROR NUMBER 147 TERESA MCDANIEL FEMALE WHITE
16 ACCEPTED.
17 JUROR NUMBER 190 WES REVELS MALE WHITE STRUCK BY THE
18 DEFENSE.
19
20
21
22
23
24
25

1 JUROR NUMBER 76 RANDY FINCHER MALE WHITE ACCEPTED.
2 JUROR NUMBER 198 WILLIAM ROBISON MALE WHITE STRUCK BY
3 THE DEFENSE.
4 JUROR NUMBER 92 FRANCISCO GUIDRY MALE WHITE STRUCK BY
5 THE DEFENSE.
6 JUROR NUMBER 149 BARBARA MCKEITHAN FEMALE WHITE
7 ACCEPTED.
8 JUROR NUMBER 173 GRADY PAGE MALE BLACK STRUCK BY THE
9 STATE.
10 JUROR NUMBER 248 DENISE WRAY FEMALE WHITE ACCEPTED.
11 JUROR NUMBER 189 LAURA REINHARDT FEMALE WHITE
12 ACCEPTED.
13 THE COURT: DRAW ONE ALTERNATE, STRIKES
14 WILL BE ONE AND TWO.
15 JUROR NUMBER 2 VIC ADKINS MALE WHITE STRUCK BY THE
16 DEFENSE.
17 JUROR NUMBER 9 FRANCIS ASENCIO MALE WHITE STRUCK BY
18 THE STATE.
19 JUROR NUMBER 200 LORIS RUSHING FEMALE WHITE ACCEPTED.
20 THE COURT: ANYTHING FROM THE STATE
21 INVOLVING STRIKING OF THE PANEL?
22 MR. SPRINGS: NO, SIR.
23 THE COURT: ANYTHING FROM THE DEFENSE.
24 MS. INZERILLO: NO, YOUR HONOR.
25 THE COURT: ALL RIGHT. INSTRUCTIONS.

1 THE CLERK: CALL AT SEVEN.

2 THE COURT: THOSE WHO WERE NOT CHOSEN,
3 PLEASE CALL TONIGHT AT SEVEN TO FIND OUT ABOUT YOUR
4 NEXT INSTRUCTIONS. WE APPRECIATE YOUR HELP IN
5 DRAWING THIS PANEL. PLEASE LEAVE QUIETLY SO I CAN
6 START TALKING WITH THIS PANEL.

7 (THE JURY EXITS THE COURTROOM.)

8 THE COURT: THOSE WHO WERE CHOSEN IF
9 YOU'LL STAND AND RAISE YOUR RIGHT HAND THE CLERK WILL
10 ADMINISTER THE OATH. AND WHEN YOU GO TO SIT DOWN,
11 MR. DAVIS, I'M GOING TO ASK YOU TO BE THE FOREMAN.
12 IF YOU'LL GO TO THE END AND ALL THE REST OF YOU SLIDE
13 DOWN ONE. THE FOREMAN AND THE ALTERNATE ARE THE ONLY
14 ONES THAT HAVE ASSIGNED SEATING. EVERYONE JUST SIT
15 WHERE YOU HAPPEN TO BE WHEN YOU COME IN. BUT RIGHT
16 NOW IF EVERYBODY WOULD RAISE THEIR RIGHT HAND.

17 (THE JURY IS SWORN.)

18 THE COURT: MEMBERS OF THE JURY PANEL, IN
19 JUST A MOMENT THE ATTORNEYS HAVE THE RIGHT BUT NO
20 OBLIGATION TO COME BEFORE YOU AND MAKE WHAT ARE
21 CALLED OPENING STATEMENTS. THEY ARE NOT ARGUING
22 THEIR CASE, THEY WILL AT A LATER TIME HAVE AN
23 OPPORTUNITY TO DO THAT, AND THEY ARE NOT TESTIFYING
24 BECAUSE THEY ARE NOT WITNESSES. WHAT THEY ARE DOING
25 IS GIVING YOU AN OVERVIEW OR OUTLINE OF THE TRIAL.

1 SOMEONE HAS CALLED IT A PREVIEW OF COMING EVENTS. TO
2 THE CHARGES THAT I HAVE STATED, MR. ROBINSON HAS
3 ENTERED PLEAS OF NOT GUILTY. THESE PLEAS OF NOT
4 GUILTY PLACE ON HIM THE PRESUMPTION OF INNOCENCE. HE
5 IS PRESUMED INNOCENT BY LAW OF ALL CHARGES AGAINST
6 HIM. ANY ONE CHARGED WITH ANY OFFENSE IN OUR SYSTEM
7 IS PRESUMED INNOCENT AND NEED NOT PROVE THEIR
8 INNOCENCE. THE STATE IS HOWEVER REQUIRED TO PROVE
9 ONE'S GUILT BEYOND A REASONABLE DOUBT BEFORE THAT
10 INDIVIDUAL COULD BE CONVICTED. SO MR. ROBINSON IS
11 PRESUMED INNOCENT, HAS NO OBLIGATION TO PROVE HIS
12 INNOCENCE, AND THE STATE MUST PROVE HIS GUILT BEYOND
13 A REASONABLE DOUBT BEFORE YOU COULD CONVICT HIM OF
14 ONE OR MORE OF THESE OFFENSES WITH WHICH HE IS
15 CHARGED.

16 I AM THE SOLE JUDGE OF THE LAW IN THIS
17 CASE AND YOU MUST TAKE, ACCEPT, AND APPLY THE LAW AS
18 I CHARGE IT. THIS IS TRUE EVEN IF YOU THINK I CHARGE
19 THE LAW IN ERROR OR EVEN IF YOU THINK THE LAW SHOULD
20 BE DIFFERENT. YOUR OATH REQUIRES YOU TO TAKE,
21 ACCEPT, AND APPLY THE LAW AS I CHARGE IT.

22 YOU ARE NOT TO INFER FROM ANYTHING I
23 SAY OR DO AT ANY TIME AS BEING AN INDICATION OF AN
24 OPINION OF MINE ON THE FACTS. A TRIAL JUDGE IN OUR
25 STATE IS NOT ALLOWED TO FORMULATE OR EXPRESS TO A

1 JURY ANY OPINION ON THE FACTS. THAT IS SOLELY UP TO
2 YOU AS TRIERS OF FACTS IN THIS CASE. IT IS SOLELY UP
3 TO YOU THE JURY TO DETERMINE THE TRUE FACTS, TO
4 EXAMINE THE EVIDENCE, AND TO GIVE TO IT THE EFFECT,
5 THE VALUE, THE WEIGHT, AND THE TRUTH YOU BELIEVE IT
6 SHOULD HAVE. IN DOING THIS YOU MAY BELIEVE ONE
7 WITNESS AS OPPOSED TO SEVERAL, SEVERAL WITNESSES AS
8 OPPOSED TO ONE. YOU MAY BELIEVE ALL, PART, OR NONE
9 OF A WITNESS' TESTIMONY.

10 IN ANALYZING THE EVIDENCE, USE YOUR
11 COMMON SENSE, YOUR SENSE OF LOGIC, YOUR SENSE OF
12 REASON, USE YOUR EXPERIENCES IN LIFE. AS JUDGES OF
13 THE FACTS, YOU MUST JUDGE THE BELIEVABILITY,
14 CREDIBILITY OF THE WITNESSES WHO TESTIFY. IN
15 ASSESSING BELIEVABILITY, USE THOSE THINGS I JUST
16 MENTIONED, USE THOSE THINGS THAT IN YOUR DAY-TO-DAY
17 LIFE YOU FIND TO INDICATE TRUTHFULNESS, AND YOU CAN
18 USE CERTAIN EVALUATORS: A WITNESS'S DEemeanor, HOW
19 THEY ACT ON THE STAND. WHETHER A WITNESS HAS ANY
20 BIAS OR PREJUDICE, THAT IS, WHETHER THEY WOULD WISH
21 TO HELP OR HURT ONE SIDE OR THE OTHER. YOU CAN LOOK
22 AT THE CONSISTENCIES OR INCONSISTENCY OF A WITNESS'S
23 TESTIMONY. LOOK TO SEE WHETHER A WITNESS ANSWERS
24 STRAIGHT FORWARD OR HESITATES, AND YOU CAN CONSIDER
25 THE OPPORTUNITY A WITNESS HAD TO KNOW THOSE THINGS

1 ABOUT WHICH THE WITNESS TESTIFIED. ALL OF THESE
2 THINGS YOU CONSIDER, DETERMINE THE TRUE FACTS, APPLY
3 THE LAW, AND THEN YOU'LL BE IN A POSITION TO RETURN A
4 VERDICT THAT SPEAKS THE TRUTH.

5 DO NOT DISCUSS THE CASE AMONG
6 YOURSELVES OR TRY TO MAKE UP YOUR OWN MIND UNTIL I
7 INSTRUCT YOU TO JOINTLY DELIBERATE AND RETURN A
8 UNANIMOUS VERDICT. PRIOR TO THAT TIME YOU ARE NOT
9 EQUIPPED WITH ALL THE TOOLS YOU NEED TO MAKE A FAIR
10 AND REASONABLE DECISION. WHEN YOU ARE OUTSIDE THE
11 COURTROOM AT LUNCH OR IF THIS CASE GOES INTO
12 TOMORROW, DON'T LET ANYONE DISCUSS THE CASE WITH YOU.
13 IF ANYONE TRIES TO DISCUSS THIS CASE WITH YOU, TELL
14 THEM YOU CANNOT AS YOU ARE A JUROR ON THE CASE,
15 REPORT BACK TO ME IF ANYONE TRIES TO DISCUSS THE CASE
16 WITH YOU, HOPEFULLY GIVING ME THAT PERSON'S IDENTITY
17 BECAUSE THEY WOULD BE IN TROUBLE WITH THE COURT FOR
18 ATTEMPTING TO TALK TO A SEATED JUROR. DON'T LET
19 YOURSELF BE EXPOSED TO NEWS COVERAGE IF THERE IS ANY.
20 I DON'T KNOW WHETHER THERE WILL OR WILL NOT BE ANY.
21 DO NOT READ ABOUT THIS CASE, WATCH ANYTHING ABOUT IT,
22 OR LISTEN TO ANYTHING ABOUT IT. IF ANYTHING CATCHES
23 YOUR EYE OR EAR THAT COULD REMOTELY DEAL WITH THIS
24 TRIAL DO NOT LET YOURSELF BE EXPOSED TO IT.

25 WE TAKE BREAKS ABOUT EVERY HOUR AND A

1 HALF. I FIND THAT IS A GOOD BREAKING TIME. IF
2 ANYBODY NEEDS A BREAK AT ANY TIME JUST RAISE YOUR
3 RIGHT HAND AND WITH NO QUESTIONS ASKED WE'LL TAKE A
4 BREAK. I NEED YOU TO PAY ATTENTION AND IT'S ONLY
5 FAIR TO THE PARTIES TO PAY ATTENTION AND IF YOU ARE
6 IN A POSITION WHERE YOU NEED A BREAK, YOU WON'T BE
7 PAYING ATTENTION, SO IF YOU NEED TO TAKE A BREAK
8 RAISE YOUR RIGHT HAND AND WE'LL TAKE A BREAK, NO
9 QUESTIONS ASKED, AND I EXTEND THAT TO COUNSEL AND
10 MR. ROBINSON. WE WANT TO MOVE THE CASE ALONG BUT
11 WE'RE NOT THAT BIG A HURRY THAT WE WON'T TAKE A BREAK
12 IF WE NEED TO.

13 YOU DON'T NEED TO TAKE NOTES. PLEASE
14 LISTEN ATTENTATIVELY AND I'LL NOW TURN IT OVER TO THE
15 ATTORNEYS.

16 MS. ANDERSON: MAY IT PLEASE THE COURT.

17 THE COURT: CERTAINLY.

18 OPENING STATEMENT BY MS. ANDERSON:
19 WHAT DO YOU PEOPLE DO ON A SUMMER EVENING? ON A JUNE
20 EVENING? PERHAPS OUT ENJOYING THE WEATHER. IT'S NOT
21 ALWAYS SO UNBEARABLY HOT HERE IN SOUTH CAROLINA AT
22 THAT TIME. MAYBE THEY ARE OUT WITH FRIENDS. MAYBE
23 DOING A MYRIAD OF THINGS, MANY THINGS THEY COULD BE
24 DOING. ON JUNE 1, 2007, OFFICERS OF THE STREET
25 CRIMES UNIT OF THE ROCK HILL POLICE DEPARTMENT WERE

1 OUT. THEY WERE DOING THEIR JOB THAT NIGHT. THEY
2 WERE OUT ON PATROL AND THEY WENT TO MARKET PLACE
3 APARTMENTS AND THOSE ARE ON HECKLE BOULEVARD IN THE
4 CITY OF ROCK HILL IN YORK COUNTY AND THAT'S A PLACE
5 WHERE RESIDENTS AND MANAGEMENT HAD COMPLAINED BEFORE
6 ABOUT DRUG ACTIVITY IN THE PARKING LOT. AND ON THAT
7 NIGHT WHEN OFFICERS DROVE THROUGH THE PARKING LOT
8 WHAT THEY SAW WAS A GOLD CADILLAC AND A NUMBER OF
9 PEOPLE THERE. WHAT YOU'LL HEAR FROM THE OFFICERS IS
10 THAT THEY SAW AN INDIVIDUAL WALK AWAY FROM THAT CAR
11 AND OFFICER MICHAEL CHAVIS WILL TELL YOU THAT HE SAW
12 THAT INDIVIDUAL WITH SOMETHING IN HIS HAND THAT HE
13 DROPPED TO THE SIDEWALK AND OFFICER CHAVIS WILL TELL
14 YOU THAT HE WENT OVER TO THE SIDEWALK AND WHAT HE SAW
15 WAS A BAG OF WHAT HE BELIEVED TO BE CRACK COCAINE, AN
16 ILLEGAL DRUG, AND WHAT WAS LATER PROVED TO BE CRACK
17 COCAINE, OVER SIX GRAMS OF CRACK COCAINE AND THAT
18 INDIVIDUAL THAT HE SAW WALK AWAY FROM THE CAR AND HE
19 SAW DROP THAT CRACK TO THE SIDEWALK WAS THE DEFENDANT
20 CHRISTOPHER ROBINSON.

21 AND YOU'LL HEAR FROM SERGEANT TONY
22 BREEDEN WHO HE SAW, WHAT HE SAW, AND WHAT HE FOUND
23 WAS MARIJUANA IN MR. ROBINSON'S POCKET AND ALL OF
24 THIS TOOK PLACE WITHIN A HALF A MILE OF THE COMMUNITY
25 IN SCHOOLS AND THAT'S A PUBLIC SCHOOL HERE IN YORK

1 COUNTY.

2 THOSE ARE THE BASIC FACTS THAT BRING
3 US HERE TODAY ON THREE CHARGES: POSSESSION OF
4 MARIJUANA WHICH CHARGES THAT MR. ROBINSON KNOWINGLY
5 POSSESSED MARIJUANA IN YORK COUNTY. POSSESSION
6 COCAINE BASE AND WHAT'S COMMONLY KNOWN AS CRACK
7 COCAINE WITH INTENT TO DISTRIBUTE. YOU'LL HEAR THAT
8 INVOLVES MR. ROBINSON, EXACTLY WHAT IT SAYS,
9 POSSESSING COCAINE BASE OR CRACK COCAINE WITH THE
10 INTENT TO DISTRIBUTE IT IN YORK COUNTY. AND ALSO
11 POSSESSION WITH INTENT TO DISTRIBUTE CRACK COCAINE
12 WITHIN THE PROXIMITY OF A SCHOOL, AND THAT'S BECAUSE
13 AS I SAID YOU'LL HEAR ABOUT COMMUNITIES IN SCHOOL
14 BEING WITHIN ONE HALF MILE OF WHERE ALL THIS TOOK
15 PLACE.

16 OF COURSE, THAT'S A VERY SIMPLE
17 STATEMENT OF THE LAW AND AS THE JUDGE TOLD YOU
18 ULTIMATELY HE IS THE ONE THAT YOU LISTEN TO FOR THE
19 LAW AND YOU'LL HEAR MORE ABOUT THE LAW AS THIS CASE
20 PROGRESSES, BUT I GIVE THAT TO YOU AS SORT OF A LENS
21 AS WHEN YOU HEAR ALL THE TESTIMONY OF WHAT TO BE
22 THINKING ABOUT AS YOU HEAR BECAUSE THE BEST PEOPLE
23 FOR YOU TO HEAR FROM ARE THE PEOPLE WHO WERE THERE,
24 THE OFFICERS WHO WERE INVOLVED, TO HEAR WHAT THEY
25 SENSED, THEIR EYES, THEIR EARS, THEIR HANDS, WHAT

1 THEY SAW, HEARD, TOUCHED, AND IT'S FOR YOU TO USE
2 YOUR SENSES HERE TODAY AS YOU LISTEN AND SEE
3 EVERYTHING THAT GOES ON IN THIS COURTROOM. TO USE
4 YOUR EYES, TO USE YOUR EARS, TO USE YOUR HANDS AND TO
5 USE ANOTHER SENSE THAT'S NOT TYPICALLY THOUGHT AS ONE
6 OF THE STANDARD FIVE BUT THAT IS JUST AS IMPORTANT
7 AND THAT'S TO USE YOUR COMMON SENSE AS YOU,
8 EVERYTHING YOU SEE AND YOU HEAR AND YOU TOUCH.

9 AT THE END OF ALL THE TESTIMONY, THE
10 STATE WILL STAND BACK IN FRONT YOU AND AT THAT TIME
11 WILL ASK YOU TO RETURN THREE VERDICTS, EACH OF THOSE
12 VERDICTS FINDING CHRISTOPHER ROBINSON, THE DEFENDANT,
13 GUILTY. THANK YOU, LADIES AND GENTLEMEN.

14 THE COURT: MS. INZERILLO.

15 MS. INZERILLO: THANK YOU, YOUR HONOR.
16 MAY IT PLEASE THE COURT.

17 OPENING STATEMENT BY MS. INZERILLO:
18 GOOD MORNING, LADIES AND GENTLEMEN. THIS IS A CASE
19 ABOUT ASSUMPTIONS AND THE STATE DURING THE COURSE OF
20 THE DAY, MAY BE THROUGH TOMORROW, IN PROVING THEIR
21 CASE IS GOING TO STRING TOGETHER A COLLECTIVE OF
22 ASSUMPTIONS. AND THE THING ABOUT ASSUMPTIONS IS ON
23 THE SURFACE THEY SOUND GREAT, THEY SOUND LIKE THEY
24 HOLD WATER, BUT WHEN YOU LOOK DEEPER, PEEK BEHIND THE
25 CURTAIN SO TO SPEAK, YOU FIND THAT THEY ARE WITHOUT

1 BASIS. AND THE PROBLEM WITH STRINGING TOGETHER
2 ASSUMPTIONS THAT HAVE NO BASIS IS THAT INEVITABLY YOU
3 ARE GOING TO HAVE REASONABLE DOUBT.

4 REASONABLE DOUBT IS A DOUBT THAT'S NOT
5 JUST ONE LITTLE DOUBT, IT'S A DOUBT THAT WOULD CAUSE
6 A REASONABLE PERSON TO HESITATE, TO SORT OF MAKE YOU
7 CATCH YOUR BREATH BEFORE PASSING JUDGMENT, AND
8 REASONABLE DOUBT IS IMPORTANT IN THIS COURTROOM
9 BECAUSE IT'S UP TO THE STATE TO PROVE THEIR CASE
10 BEYOND A REASONABLE DOUBT. THAT IS THEIR BURDEN.
11 THEY PUT THIS EVIDENCE BEFORE YOU THROUGHOUT TODAY,
12 MAYBE INTO TOMORROW, THEY ARE PUTTING UP EVIDENCE IN
13 ORDER TO PROVE A CASE BEYOND A REASONABLE DOUBT.

14 THEY WILL PROVE THEIR CASE, AS I
15 INDICATED, THROUGH TESTIMONY. LISTEN TO THAT
16 TESTIMONY VERY CAREFULLY. LISTEN TO THE ASSUMPTIONS
17 THAT ARE GIVEN TO YOU THROUGH THE TESTIMONY, THROUGH
18 THE OFFICERS THAT WILL TESTIFY, AND ANY OTHER
19 WITNESSES THAT THE STATE MAY CALL. JUST OFF THE TOP
20 OF MY HEAD I WOULD SAY ONE OF THE ASSUMPTIONS IS THAT
21 CHRISTOPHER ROBINSON POSSESSED ANY CRACK WITH AN
22 INTENT TO DISTRIBUTE. LISTEN CAREFULLY TO TESTIMONY
23 ON THAT AND MAKE UP YOUR MIND WHETHER THIS IS JUST
24 STRUNG TOGETHER ASSUMPTIONS. IS THERE ENOUGH
25 EVIDENCE THE STATE IS GOING TO PUT FORWARD TO SUPPORT

ANTHONY BREEDEN

DIRECT

49

1 THAT? IS THE TESTIMONY IN THIS CASE ENOUGH TO GIVE
2 THAT ASSUMPTION WEIGHT.

3 I ASK YOU DURING THE COURSE OF THIS
4 TRIAL TO PAY ATTENTION TO THE LACK OF FOUNDATION IN
5 THE STATE'S ASSUMPTIONS AND AFTER YOU LISTEN TO THAT
6 YOU WILL FIND THAT CHRISTOPHER ROBINSON, THAT THERE
7 IS NOT ENOUGH EVIDENCE AND CHRISTOPHER ROBINSON IS
8 NOT GUILTY.

9 THE COURT: CALL YOUR FIRST WITNESS.

10 MS. ANDERSON: THE STATE CALLS SERGEANT
11 TONY BREEDEN.

12 ANTHONY BREEDEN, BEING FIRST DULY
13 SWORN, TESTIFIED AS FOLLOWS:

14 DIRECT EXAMINATION BY MS. ANDERSON:

15 Q IF YOU WOULD STATE YOUR NAME FOR THE RECORD?

16 A ANTHONY WADE BREEDEN.

17 Q WHO ARE YOU EMPLOYED WITH?

18 A CITY OF ROCK HILL POLICE DEPARTMENT.

19 Q HOW LONG HAVE YOU BEEN INVOLVED IN LAW
20 ENFORCEMENT?

21 A IN LAW ENFORCEMENT, 15 YEARS, 13 AT ROCK HILL.

22 Q WHAT ARE YOUR CURRENT DUTIES WITH ROCK HILL
23 POLICE DEPARTMENT?

24 A I'M ASSIGNED AS A SUPERVISOR OF OUR STREET
25 CRIMES UNIT WHICH IS ACTUALLY UNIFORM SECTION OF OUR

1 DETECTIVE DIVISION TO ASSIST THE DETECTIVE DIVISION.

2 Q WERE YOU EMPLOYED WITH THE STREET CRIMES UNIT ON
3 JUNE THE FIRST 2007?

4 A YES, MA'AM, I WAS.

5 Q WERE YOU WORKING THAT EVENING?

6 A YES, MA'AM.

7 Q WHAT WERE YOU DOING THAT EVENING?

8 A THAT EVENING WE WERE ACTUALLY UTILIZING, WE HAVE
9 AN UNMARKED VEHICLE AT OUR DISPOSAL, WE STILL HAVE
10 UNIFORMS ON, BUT OCCASIONALLY WE'LL UTILIZE A MARKED
11 PATROL CAR OR AN UNMARKED CAR, AND WE'LL USE THAT TO
12 GO INTO AREAS THAT WE'RE SENT OR DISPATCHED OR THAT
13 WE KNOW ARE TARGET AREAS WHERE WE RECEIVED COMPLAINTS
14 AND THAT EVENING WE WERE IN AN UNMARKED DODGE
15 STRATUS. THE OFFICERS IN THE CAR WERE WEARING
16 UNIFORMS AND WE WERE RESPONDING TO A GROUP OF
17 SUBJECTS STANDING AROUND IN THE AREA OF MARKET PLACE
18 APARTMENTS FORMERLY KNOWN AS HECKLE COURT APARTMENTS
19 WHICH IS ON HECKLE BOULEVARD JUST BELOW CRAWFORD ROAD
20 NEAR CLINTON JUNIOR COLLEGE IN ROCK HILL.

21 Q NOW YOU SAID MARKET PLACE APARTMENTS IS IN THE
22 CITY OF ROCK HILL?

23 A YES, MA'AM, IT IS.

24 Q AND THAT'S ALSO WITHIN YORK COUNTY?

25 A YES, MA'AM.

ANTHONY BREEDEN

DIRECT

51

1 Q YOU MENTION I BELIEVE THERE WERE SEVERAL
2 OFFICERS IN THE VEHICLE, WHO WAS WITH YOU?

3 A I KNOW THAT IT WAS MYSELF, OFFICER CHAVIS. I
4 BELIEVE OFFICER CROWDER AND CULBREATH WERE THERE AS
5 WELL AND NORMALLY IT'S OUR CUSTOM TO ALSO HAVE
6 OFFICERS, ONE OF OUR OFFICERS IN OUR UNITS, IN A
7 MARKED CAR THAT WILL AS SOON AS WE PULL INTO AN AREA
8 SHORTLY THEREAFTER PULL IN WITH A MARKED CAR SO THAT
9 WE AT LEAST HAVE THAT MARKED VEHICLE AND ALSO FOR
10 TRANSPORT PURPOSES IF WE NEED IT.

11 Q DO YOU RECALL WHAT TIME YOU ARRIVED AT MARKET
12 PLACE APARTMENT?

13 A I THINK IT WAS SOMEWHERE AROUND 9-9:30,
14 SOMEWHERE IN THAT TIMEFRAME I BELIEVE.

15 Q NOW WHAT, HOW DID YOU ENTER MARKET PLACE
16 APARTMENTS?

17 A IN THIS PARTICULAR INSTANCE SINCE WE WERE
18 UTILIZING AN UNMARKED CAR WHAT WE NORMALLY DO IS
19 WE'LL DRIVE, IF WE HAVE A CERTAIN LOCATION THAT IS ON
20 OUR LIST OF ITEMS THAT WE NEED TO CHECK AND IN THE
21 STREET CRIMES WE HAVE CERTAIN THINGS THAT ARE ON OUR
22 LIST OF AREAS TO CHECK, AND IN THIS PARTICULAR CASE
23 IN AN UNMARKED CAR WE'LL NORMALLY DRIVE PAST THE
24 APARTMENTS OR WHATEVER THE LOCATION IS, SEE IF THERE
25 IS ANY ACTIVITY, SEE IF THERE IS PEOPLE OUT, AND THEN

1 WE WILL COME BACK AND ENTER IN THE VEHICLE. IF IT'S
2 IN A MARKED VEHICLE YOU DON'T REALLY HAVE THAT
3 OPPORTUNITY TO GO BY AND COME BACK SO WE PULL
4 STRAIGHT IN BUT IN THIS CASE WE NORMALLY RIDE BY, SEE
5 IF THERE IS PEOPLE, AND THEN PULL STRAIGHT IN. THERE
6 IS THREE ENTRANCES TO MARKET PLACE APARTMENTS AND WE
7 NOTICED A GROUP OF PEOPLE STANDING AROUND A VEHICLE
8 IN THE MIDDLE ENTRANCE OF THE APARTMENTS, SO WE
9 PULLED IN IN THE UNMARKED VEHICLE UP TO THE LOCATION
10 WHERE THOSE INDIVIDUALS WERE STANDING.

11 MS. ANDERSON: BEG THE COURT'S INDULGENCE.
12 WITH THE COURT'S PERMISSION HAVE THE WITNESS STAND
13 DOWN.

14 THE COURT: CERTAINLY.

15 Q I'LL HAVE YOU USE THIS. IF YOU RECOGNIZE THAT?

16 THE COURT: I'M GOING TO ASK YOU TO
17 POSITION YOURSELF SO THAT IT IS NOT INTERFERING WITH
18 THE JURY. CAN ALL OF YOU SEE OKAY? THAT'S FINE.

19 A THIS IS HECKLE BOULEVARD. THESE ARE MARKET
20 PLACE APARTMENTS. UP IN THIS AREA, UP HERE, WOULD BE
21 CRAWFORD ROAD. THIS IS WHAT WE COMMONLY REFER TO AS
22 FIRST ENTRANCE, MIDDLE ENTRANCE, THIRD ENTRANCE.
23 THIS IS THE OFFICE AREA. WE TURNED INTO THIS
24 ENTRANCE AND APPROXIMATELY HERE IS WHERE WE NOTICED A
25 GOLD COLORED CADILLAC WITH SUBJECTS STANDING AROUND

ANTHONY BREEDEN

DIRECT

53

1 THE VEHICLE. WE ENTERED IN AND PULLED UP AND PARKED
2 APPROXIMATELY BEHIND THE CADILLAC.

3 Q THANK YOU. SIT BACK ON THE STAND. IF YOU WOULD
4 JUST TELL US WHAT YOU SAW, WHAT HAPPENED NEXT AFTER
5 YOU PULLED NEXT TO THE GOLD CADILLAC?

6 A WE PULLED IN. AS SOON AS WE PULLED INTO THE
7 PARKING LOT WE WERE ABLE, BECAUSE WE WERE IN THE
8 UNMARKED CAR, WE WERE ABLE TO GET FAIRLY CLOSE TO THE
9 VEHICLE. I DID NOT GET OUT OF OUR VEHICLE. WE
10 PULLED IN BEHIND IT. AS SOON AS WE PULLED IN AND
11 EXITED OUR VEHICLE IN UNIFORMS WE NOTICED THAT ONE
12 SUBJECT BEGAN TO IMMEDIATELY WALK AWAY FROM THE
13 CADILLAC DOWN A SIDEWALK WHICH IS PARALLEL TO THE
14 BUILDING WITH THE RED X WALKING TOWARDS THE WOODS
15 ALONG THE SIDEWALK AWAY FROM THE VEHICLE AND WHERE WE
16 HAD PULLED IN.

17 Q NOW YOU HAD STATED IT WAS SOMEWHERE AROUND
18 9-9:30 HOW DARK WAS IT OUTSIDE?

19 A IT WAS ACTUALLY DARK BUT THERE ARE TWO LIGHTS
20 DOWN THERE THAT LIGHT UP THE PARKING LOT. THE LIGHTS
21 ARE ACTUALLY ON THE OTHER SIDE OF THE PARKING LOT.
22 BUT IT IS WELL LIT ENOUGH TO WHERE YOU CAN SEE
23 PEOPLE, YOU CAN SEE THINGS ON THE SIDEWALK, YOU CAN
24 SEE THINGS LIKE THAT, BUT IT WAS DARK AT NIGHT BUT
25 THERE ARE STREETLIGHTS IN THAT PARKING LOT.

1 Q DID YOU HAVE ANY TROUBLE SEEING ANYBODY IN THE
2 PARKING LOT?

3 A NO, MA'AM, WE DID NOT.

4 Q NOW YOU STATED AN INDIVIDUAL WALKED AWAY FROM
5 THE GROUP. WHAT HAPPENED NEXT OR DID YOU GO TALK TO
6 THAT INDIVIDUAL?

7 A YES. I WAS IN THE DRIVER'S SEAT OF THE VEHICLE.
8 OFFICER CHAVIS WAS ON THE PASSENGER SIDE, THE RIGHT
9 SIDE OF THE VEHICLE, BEST WAY TO DESCRIBE IT I PULLED
10 UP, THE CADILLAC WAS ESSENTIALLY PARKED, I PULLED UP
11 IN THIS MANNER AND WOULD HAVE GOT OUT OF THE DRIVER'S
12 SEAT AND GONE AROUND, THERE WAS OTHER CARS PARKED.
13 OFFICER CHAVIS IMMEDIATELY GOT OUT AND WENT DOWN A
14 SIDEWALK DIRECTLY BEHIND US, THE SUBJECT THAT WAS
15 WALKING AWAY, GAVE INSTRUCTION FOR THE SUBJECT TO
16 STOP, AT THAT POINT HE DID STOP, TURNED, COME BACK.
17 OFFICER CHAVIS WALKED PAST HIM STATING THAT SOMETHING
18 WAS DROPPED. I WENT AHEAD AND THE INDIVIDUAL WALKING
19 BACK TO ME, I DETAINED THAT INDIVIDUAL. OFFICER
20 CHAVIS INDICATED TO ME THAT HE FOUND DRUGS ON THE
21 SIDEWALK. AT THAT POINT I PLACED, DETAINED THE
22 SUBJECT, AND PLACED HIM UNDER ARREST AND WE BEGAN A
23 SEARCH INCIDENT TO ARREST AT THAT POINT.

24 Q OKAY. DID YOU KNOW WHO THAT INDIVIDUAL WAS AT
25 THE TIME?

ANTHONY BREEDEN

DIRECT

55

1 A NOT AT THE TIME I DIDN'T KNOW WHO HE WAS.

2 Q DO YOU SEE HIM IN THE COURTROOM TODAY?

3 A YES, MA'AM, I DO.

4 Q WOULD YOU POINT HIM OUT TO THE JURY PLEASE?

5 A IT'S DEFENDANT AT THE TABLE IN THE GRAY SUIT.

6 Q LET THE RECORD REFLECT THE WITNESS HAS
7 IDENTIFIED THE DEFENDANT. NOW YOU STATED YOU
8 SEARCHED HIM, DID YOU FIND ANYTHING WHEN YOU SEARCHED
9 HIM?

10 A YES, I NOTED THAT HE, I STARTED TO SEARCH HIM
11 AND I NOTED THAT HE HAD A BAG OF MARIJUANA IN HIS
12 POCKET AND THEN AT THAT POINT RECOVERED THE MARIJUANA
13 AND AT THAT POINT HE STATED TO ME, THE MARIJUANA IS
14 MINE BUT THE CRACK ISN'T SO.

15 Q DO YOU RECALL WHICH POCKET OF HIS CLOTHING YOU
16 FOUND THE MARIJUANA IN?

17 A I KNOW I MADE A NOTE OF IT. I'M NOT REALLY
18 SURE. IT'S IN MY NOTES THOUGH. I'D HAVE TO REVIEW
19 IT.

20 MS. ANDERSON: BEG THE COURT'S INDULGENCE.

21 Q SERGEANT BREEDEN, I WANT TO GO BACK A LITTLE
22 BIT, WHAT BROUGHT YOU SPECIFICALLY TO MARKET PLACE
23 APARTMENTS?

24 A THE, AS I SAID EARLIER, WE'RE ACTUALLY PART OF
25 THE STREET CRIMES UNIT AND WE'RE NOT, WE'RE IN

1 UNIFORM BUT WE'RE NOT A TYPICAL PATROL SHIFT IN WHICH
2 WE'RE NOT DRIVEN BY CALLS FOR SERVICE AND BY DISPATCH
3 AND THINGS THAT YOU WOULD THINK A TYPICAL PATROL
4 SHIFT IS DRIVEN BY, WE'RE ACTUALLY UTILIZING IN THE
5 DEPARTMENT NOW SOMETHING CALLED COMSTAT WHERE WE ARE
6 USING COMPUTER ANALYSIS AND CRIME ANALYSIS AND WE'RE
7 USING THOSE TO IDENTIFY AREAS WITHIN THE CITY THAT
8 ARE HIGH CRIME, HIGH DRUG AREAS, WHERE WE'VE HAD
9 INCREASE NUMBER OF EITHER ASSAULTS, ROBBERIES, CAR
10 BREAK-IN, THINGS LIKE THAT, AND WE HAVE A LIST OF
11 THINGS THAT WE LIKE TO CALL EITHER PRIORITY OR
12 SUBPRIORITIES WHICH OUR UNIT CONCENTRATES ON.
13 CERTAIN OF THOSE AREAS OF PRIORITIES ARE EITHER HIGH
14 ASSAULT, HIGH DRUG AREAS, WHERE WE GET LOTS OF
15 CITIZEN COMPLAINTS, COMPLAINTS FROM THE ACTUAL
16 APARTMENT MANAGER, THE APARTMENT STAFF, A LOT OF
17 TIMES THAT'S DRIVEN BY PEOPLE THAT LIVE IN THE
18 APARTMENT WHEN THEY GO PAY BILLS SAY, LOOK, THERE IS
19 A LOT OF TRAFFIC OUTSIDE THIS APARTMENT AT NIGHT, AND
20 THROUGH ALL THOSE THINGS WE FORMULATE A PLAN ON A
21 WEEKLY AND DAILY BASIS WHERE WE NEED TO CONCENTRATE
22 OUR EFFORTS AND THAT'S WHAT'S UNIQUE ABOUT OUR UNIT,
23 WE'RE ABLE TO SEND FIVE OR SIX GUYS TO A CERTAIN AREA
24 AND SATURATE IT AND DO MORE A HEAVY ENFORCEMENT THAN
25 A PATROL UNIT THAT'S ONE OFFICER PER ZONE OR TWO

ANTHONY BREEDEN

DIRECT

57

1 OFFICERS PER ZONE. WE ACTUALLY HAVE THAT ABILITY TO
2 SEND THAT UNIT, SIX PERSON UNIT, INTO THAT AREA AND
3 CONDUCT ENFORCEMENT.

4 Q ARE YOU FAMILIAR WITH SOMETHING CALLED WEED AND
5 SEED?

6 A YES, MA'AM.

7 Q ARE YOU INVOLVED WITH THAT PROGRAM?

8 A YES, MA'AM.

9 Q WOULD YOU TELL US A LITTLE BIT ABOUT WHAT THAT
10 PROGRAM IS?

11 A THE WEED AND SEED IS ACTUALLY A NATIONAL
12 INITIATIVE. IF I HAD TO SAY I'D SAY I THINK THERE IS
13 13 OR SO MUNICIPALITIES IN THE COUNTRY THAT ARE
14 INVOLVED IN THE ACTUAL WEED AND SEED PROJECT, AND
15 WHAT THAT BASICALLY IS IS THROUGH A COLLABORATION OF
16 THE POLICE DEPARTMENT AND ALL OTHER CITY
17 ORGANIZATIONS, UTILITIES, INSPECTIONS, AND THINGS
18 LIKE THAT; THE TERM ACTUALLY COMES FROM THE, WHAT YOU
19 WOULD PHRASE IS WEED THE PROBLEMS OUT AND THEN RESEED
20 IT. YOU THINK ABOUT AREAS YOU HAVE A LOT OF CRIME,
21 YOU HAVE A LOT OF ABANDONED PROPERTY, DERELICT
22 VEHICLES, DERELICT HOUSES, OUR PART OF THE
23 ENFORCEMENT IS THE WEEDING PART. WE WEED OUT THE
24 HIGH CRIMINAL ELEMENT, WEED OUT CERTAIN PROBLEMS THAT
25 WE KNOW ARE THE LAW ENFORCEMENT END, WHICH THAT

1 ALLOWS THE CITY TO DO THE SEEDING PART THROUGH
2 PRIVATE ORGANIZATIONS, THROUGH THE CITIES THROUGH
3 THEIR INSPECTIONS, ZONING, REBUILDING THINGS, AND
4 THAT'S HOW THE BASIC WEED AND SEED WORKS. WE FOCUS
5 PRIMARILY ON THE WEEDING PART BUT WE ALSO AS A CITY
6 DO SOME OF THE SEEDING WITH SOME OF THE THINGS THAT
7 WE'VE DONE, TRASH PICK UP, ORGANIZING COMMUNITY
8 MEETINGS AND THINGS LIKE THAT, AND A LARGE PART, A
9 HUGE PART OF WHAT THE STREET CRIMES ACTUALLY FOCUSES
10 ON IS OUR WEED AND SEED AREA AND THAT'S IN THE SOUTH
11 CENTRAL HAGIN STREET, HECKLE COURT AREA, THE GREEN
12 STREET, ALL THAT AREA DOWN THERE HAS BEEN DEEMED OUR
13 FIRST WEED AND SEED AREA AND THAT'S WHERE THE GREAT
14 MAJORITY OF OUR FOCUS IS IN THE WEED AND SEED AREA
15 AND HECKLE COURT OR MARKET PLACE, I'M SORRY, IS
16 WITHIN THE WEED AND SEED.

17 Q I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS
18 STATE'S EXHIBIT ONE AND ASK IF YOU'D SEEN THAT
19 BEFORE?

20 A YES, MA'AM.

21 Q WHAT IS THAT?

22 A THIS IS A, THE LARGER BAG IS AN EVIDENCE BAG
23 THAT WE WILL PUT AND THE CLEAR ONE IS WHAT WE WILL
24 PLACE DRUGS IN AND IT'S ACTUALLY ONE THAT I FILLED
25 OUT. IT JUST SAYS OUR AGENCY, THE CASE NUMBER, WHAT

ANTHONY BREEDEN

DIRECT

59

1 THE OFFENSE IS, THE SUSPECT, THE DATE AND TIME OF
2 RECOVERY, WHO RECOVERED IT, AND THE DESCRIPTION
3 AND/OR LOCATION OF WHAT WAS TAKEN, AND THIS IS IN
4 PARTICULAR A SMALL PLASTIC BAG OF MARIJUANA WHICH I
5 NOTED THAT WAS TAKEN OUT OF THE FRONT LEFT POCKET,
6 PANTS POCKET OF MR. ROBINSON.

7 Q SO THIS WAS THE MARIJUANA THAT YOU RECOVERED?

8 A YES.

9 Q WHAT DID YOU DO AFTER YOU, WITH THE MARIJUANA?

10 A IT'S ACTUALLY, YOU'LL SEE IT'S IN A SMALLER
11 PLASTIC BAG AND WHAT WE DO IS INITIALLY PLACE IT IN A
12 SMALLER ZIPLOCK BAG JUST TO INITIALLY PROTECT IT, AND
13 THEN IT'S ACTUALLY TRANSFERRED AND PLACED IN THE
14 EVIDENCE. I NOTE THAT I RECOVERED THAT PARTICULAR
15 ITEM, I NOTED THAT I, IT WENT FROM ME TO THE DROP
16 LOCKER, AND I SIGNED AND DATED IT OF WHEN I DROPPED
17 IT INTO THE EVIDENCE DROP LOCKER. WE'VE HAD, IN THE
18 LAW CENTER WE HAVE, THE BEST THING TO DO IS THEY
19 ACTUALLY PUT A NIGHT DEPOSIT BOX IN THE HALLWAY OF
20 THE EVIDENCE ROOM TO WHICH WE OPEN IT, DROP IT, AND
21 THEN WE CAN'T GET BACK TO IT, IT'S DROPPED IN THERE
22 AND THAT'S WHAT WE ACTUALLY DROP OUR DRUGS IN.

23 Q SO DID YOU ACTUALLY SEAL THIS BAG UP?

24 A YES, I DID.

25 Q AND WAS IT IN YOUR CUSTODY AND CONTROL?

1 A YES.

2 Q WITH THE COURT'S PERMISSION I'M GOING TO HAVE
3 YOU STAND DOWN AGAIN. I'M GOING TO HAVE YOU LOOK AT
4 WHAT'S MARKED AS STATE'S EXHIBIT TWO, YOU KNOW WHAT
5 THIS IS?

6 A ALL RIGHT. THIS IS A LARGER OVERLAY OF HECKLE
7 BOULEVARD. UP HERE WOULD BE THE CRAWFORD ROAD, BACK
8 THIS WAY WOULD BE GOING TOWARD SALUDA STREETS. A
9 LARGER OVERLAY OF THE APARTMENTS, FIRST ENTRANCE,
10 MIDDLE ENTRANCE, THIRD ENTRANCE. HERE IS THE OFFICE
11 AREA. THIS IS THE MIDDLE ENTRANCE. APPROXIMATELY
12 RIGHT HERE IS WHERE THIS INCIDENT WOULD HAVE TAKEN
13 PLACE.

14 Q I'M GOING TO HAVE YOU ACTUALLY TAKE THIS MARKER
15 IF YOU WOULD CIRCLE?

16 A WHERE WE WERE?

17 Q YES. AND DO YOU ALSO SEE COMMUNITY IN SCHOOLS
18 ON THIS AERIAL PHOTOGRAPH?

19 A YES, MA'AM, I DO.

20 Q WOULD YOU CIRCLE THAT?

21 A THAT'S THE CITY IN SCHOOLS, COMMUNITY IN
22 SCHOOLS.

23 Q DID YOU MEASURE THE DISTANCE BETWEEN MARKET
24 PLACE APARTMENTS AND THE CITIES IN SCHOOLS?

25 A YES, MA'AM, WE ACTUALLY DID IT TWO WAYS. WE DID

ANTHONY BREEDEN

DIRECT

61

1 WITH AN ACTUAL MAP MEASURE WITH THE SCALE MEASURING A
2 HALF MILE AND WE ALSO DROVE IT AND DRIVING IT WAS
3 POINT, ABOUT .45 MILES FROM THE ENTRANCE OF, FROM THE
4 AREA OF HECKLE COURT TO THE SCHOOL.

5 Q OKAY. AND DOES THIS AERIAL PHOTOGRAPH FAIRLY
6 AND ACCURATELY REPRESENT AN OVERHEAD VIEW OF THAT
7 AREA?

8 A YES, MA'AM, IT DOES.

9 MS. ANDERSON: YOUR HONOR, THE STATE WOULD
10 MOVE TO ADMIT STATE'S EXHIBIT TWO INTO EVIDENCE.

11 MS. INZERILLO: NO OBJECTION, YOUR HONOR.

12 THE COURT: BE RECEIVED WITHOUT OBJECTION.

13 (STATE'S EXHIBIT 2 PHOTO RECEIVED INTO
14 EVIDENCE.)

15 Q JUST A FEW MORE QUESTIONS. DID YOU RECOVER, DID
16 YOU FIND ANY MONEY WITH MR. ROBINSON?

17 A YES, MA'AM, WE DID.

18 Q HOW MUCH MONEY DID YOU FIND?

19 A \$531.

20 Q WAS THAT IN CASH?

21 A YES, MA'AM.

22 Q DID MR. ROBINSON INDICATE TO YOU AT ANY POINT
23 WHETHER OR NOT HE WAS EMPLOYED?

24 A I DON'T REMEMBER ANY --

25 MS. INZERILLO: OBJECTION, YOUR HONOR.

1 THE COURT: I SUSTAIN THE OBJECTION.

2 Q DO YOU RECALL WHERE YOU RECOVERED THE MONEY?

3 A IT WAS IN HIS, IT WAS IN HIS PANTS POCKET. I'M
4 NOT REALLY SURE ACTUALLY WHICH PANTS POCKET, BUT HE
5 HAD IT IN HIS PANTS, IN HIS ACTUAL PANTS HE WAS
6 WEARING.

7 Q WHAT DID YOU DO WITH THE MONEY AFTER YOU FOUND
8 IT?

9 A AFTER I FOUND IT, WHEN WE SEARCH A SUBJECT OR AN
10 INDIVIDUAL, THE ONLY ITEMS THAT ARE INITIALLY REMOVED
11 ARE THEIR, ANY DRUGS OR WEAPONS, THE REST, ANYTHING
12 THEY WOULD HAVE, WATCH, MONEY, JEWELRY, ANYTHING LIKE
13 THAT, STAYS ON THEIR PERSON, TRANSPORTED TO THE LAW
14 CENTER. WHEN WE COME IN THE BACK DOOR AND IN THE
15 SECURE AREA OF THE LAW CENTER, WE DO AN INITIAL
16 FURTHER SEARCH AND REMOVE THEIR PROPERTY, PLACE THAT
17 IN A BROWN PAPER BAG, AND THEN THEY AND THEIR
18 PROPERTY ARE ESCORTED INTO THE HOLDING AREA. AT THAT
19 POINT WE WILL TURN THEM OVER TO THE JAIL STAFF AND
20 ACKNOWLEDGE TO THE STAFF, WE'LL WRITE ON THE BAG THE
21 AMOUNT OF MONEY THEY HAD, JUST CASH MONEY, AND GIVE
22 THAT BAG TO THE JAILER AND THEN THEY ARE PLACED IN A
23 HOLDING CELL UNTIL WE ACTUALLY BRING BACK WHAT THEIR
24 FORMAL CHARGES ARE.

25 MS. ANDERSON: BEG THE COURT'S INDULGENCE.

ANTHONY BREEDEN

CROSS

63

1 Q NOTHING FURTHER, SERGEANT BREEDEN. IF YOU'D
2 ANSWER ANY QUESTIONS DEFENSE COUNSEL MAY HAVE.

3 MS. INZERILLO: MAY IT PLEASE THE COURT,
4 YOUR HONOR.

5 THE COURT: YES, MA'AM.

6 CROSS EXAMINATION BY MS. INZERILLO:

7 Q GOOD MORNING, OFFICER BREEDEN.

8 A HOW ARE YOU?

9 Q GOOD. YOU ARE ON PATROL THE NIGHT OF JUNE
10 FIRST, 2007?

11 A YES, MA'AM.

12 Q AND THAT NIGHT WAS A FRIDAY NIGHT?

13 A I BELIEVE IT WAS.

14 Q OKAY. AND AS YOU TESTIFIED UNDER QUESTIONING
15 FROM THE STATE, YOU ARE PART OF THIS WEED AND SEED
16 PROGRAM?

17 A YES, MA'AM.

18 Q AND YOU WENT INTO GREAT DETAIL---

19 A YES, MA'AM.

20 Q AS TO WHAT THAT IS. AND IN A NUTSHELL THE WEED
21 AND SEED PROGRAM IS A DRUG INITIATIVE PROGRAM
22 TARGETING DRUG AREAS, IS THAT A FAIR STATEMENT?

23 A YES. IT'S-- THAT'S NOT THE PRIMARY TARGET. THE
24 MAIN INITIATIVE OF IT IS TO CHANGE THE DYNAMICS AND
25 ATMOSPHERE OF AN AREA THROUGH A COLLABORATION OF THE

1 WHOLE CITY. NOW SOMETIMES THAT DOES ENCOMPASS
2 ENFORCING DRUGS, BUT THAT, THE WHOLE PURPOSE OF IT IS
3 NOT JUST TO TARGET DRUGS OR DRUG DEALERS OR SOMETHING
4 LIKE THAT, IT'S TO CHANGE THE DYNAMICS OF A
5 NEIGHBORHOOD.

6 Q OKAY. PERSONALLY THOUGH YOU HANDLE A GREAT DEAL
7 OF DRUG CASES?

8 A YES, MA'AM.

9 Q OKAY. IS IT FAIR TO SAY YOU HANDLE ABOUT 30
10 DAYS CASES A MONTH?

11 A YEAH, I'D SAY ON AVERAGE.

12 Q OKAY. AND YOU ARE TRAINED, THROUGH YOUR
13 TRAINING AS A POLICE OFFICER OR THROUGH OTHER CLASSES
14 YOU HAVE TAKEN, HOW TO INVESTIGATE DRUG CASES?

15 A YES, MA'AM.

16 Q AND THIS INVESTIGATION NOT ONLY INCLUDES
17 RECOVERING DRUG EVIDENCE BUT ALSO INCLUDES SEEING
18 WHAT OTHER EVIDENCE MAY BE USED TO ARREST SOMEONE?

19 A YES, MA'AM.

20 Q OKAY. FOR EXAMPLE, IN YOUR EXPERIENCE YOU KNOW
21 THAT IF YOU FIND SCALES ON A PERSON WHERE THERE IS
22 DRUGS THAT COULD BE AN IMPORTANT PIECE OF EVIDENCE,
23 IS THAT CORRECT?

24 A YES, MA'AM.

25 Q BECAUSE THAT COULD SHOW THAT THEY ARE A DRUG

ANTHONY BREEDEN

CROSS

65

1 DEALER?

2 A OR, YES, MA'AM, IT COULD OR THAT THEY LIKE TO
3 WEIGH THEIR DRUGS.

4 Q ALSO ANOTHER PIECE OF EVIDENCE THAT YOU ARE
5 TRAINED BY WOULD SEE THAT MAYBE OTHER PEOPLE MAY NOT
6 WOULD BE PERHAPS THE PRESENCE OF EXTRA BAGGIES?

7 A YES, MA'AM.

8 Q OKAY. AND THE OTHER THING YOU LOOK FOR IN THE
9 PACKAGING OF THE, ANY DRUGS THAT YOU FIND IS IF THEY
10 ARE BAGGY, I'M SORRY, PACKAGED INDIVIDUALLY, IS THAT
11 CORRECT?

12 A IN SOME CASES, YES, MA'AM. IT'S, IT'S MORE RARE
13 THAT YOU FIND ACTUAL INDIVIDUAL PACKED ROCKS THAN YOU
14 DO A BAG CONTAINING MULTIPLE ROCKS.

15 Q BUT YOU KNOW BEING TRAINED THAT IF YOU FIND
16 INDIVIDUAL BAGGIES THAT COULD ALSO BE EVIDENCE THAT
17 SOMEONE WAS GOING TO DISTRIBUTE THEM?

18 A YES, MA'AM, BUT IN MY EXPERIENCE IT'S MORE
19 COMMON THAT WE FIND INDIVIDUAL BAGGIES OF MARIJUANA
20 BECAUSE IT'S SOLD IN DIFFERENT INCREMENTS THAN WOULD
21 BE WHAT YOU WOULD SAY THE AVERAGE CRACK ROCK IS.

22 Q SURE, OKAY. YOU INDICATED THAT, THIS INCIDENT
23 HAPPENED ABOUT 9:30 AT NIGHT?

24 A YES, MA'AM.

25 Q OKAY. AND SO AT THAT TIME IT WAS NIGHTTIME?

1 A YES, MA'AM.

2 Q AND YOU WERE IN A BLACK UNMARKED DODGE STRATUS?

3 A YES, MA'AM.

4 Q OKAY. BUT YOU WERE IN UNIFORM?

5 A YES, SIR.

6 Q OKAY. THIS UNMARKED CAR, IS IT EQUIPPED WITH
7 VIDEO?

8 A NO, MA'AM.

9 Q IS IT, WERE YOU MIKED THAT NIGHT FOR AUDIO
10 RECORDING?

11 A NO, MA'AM.

12 Q OKAY. AND WHEN YOU GOT OUT OF THE CAR AND
13 APPROACHED WITH OFFICER CHAVIS THERE ARE ABOUT 15 TO
14 20 PEOPLE STANDING AROUND?

15 A NO, I WOULDN'T SAY IT WAS 15 OR 20. THERE WERE
16 THREE SEATED IN THE VEHICLE AND I WOULD SAY TWO TO
17 THREE OR FOUR SOMEWHERE AROUND THE VEHICLE.

18 Q OKAY. SO IF I'M ADDING UP ABOUT 7 OR 8?

19 A GIVE OR TAKE, YES, MA'AM.

20 Q SURE, OKAY.

21 A THERE IS NORMALLY A GOOD AMOUNT PEOPLE UP AND
22 DOWN THE SIDEWALK AND IN THE APARTMENTS, BUT THE
23 GROUP THAT WE WERE FOCUSED ON CONCENTRATED ON ABOUT
24 THAT NUMBER.

25 Q BECAUSE JUST TO BE CLEAR THIS IS AN APARTMENT

ANTHONY BREEDEN

CROSS

67

1 COMPLEX?

2 A YES, MA'AM.

3 Q AN APARTMENT COMPLEX?

4 A YES, MA'AM.

5 Q OKAY. AND I BELIEVE YOU'VE KIND OF SHOWED THIS
6 WITH THE LASER POINTER, BUT THE AREA WHERE THEY WERE
7 STANDING, THEY WERE STANDING SORT OF IN THE PARKING
8 SPACES?

9 A YES, MA'AM, RIGHT AROUND A VEHICLE THAT WAS
10 PARKED, LEGALLY PARKED.

11 Q OKAY. AND THERE WERE A COUPLE OTHER CARS PARKED
12 IN THAT AREA AS WELL?

13 A YES, MA'AM.

14 Q AND WHEN YOU GOT OUT YOU SAW OFFICER CHAVIS WALK
15 TOWARDS THE SIDEWALK?

16 A NO.

17 Q THE MIDDLE AREA?

18 A WHEN WE PARKED THE ONLY FOCUS WE CHANGED TOWARD
19 THE SIDEWALK IS WHEN WE SAW MR. ROBINSON SEPARATE
20 HIMSELF FROM THE GROUP AND IMMEDIATELY START TO WALK
21 AWAY FROM US DOWN THE SIDEWALK.

22 Q BUT THEN AFTER THAT YOU WATCHED CHAVIS GET OUT
23 OF THE CAR AND WALK TOWARDS THAT AREA?

24 A WELL, WE GOT OUT SIMULTANEOUSLY, EVERYBODY GOT
25 OUT WHEN WE SAW HIM WALKING AWAY. I ACTUALLY WOULD

1 HAVE TAKEN A ROUTE ACROSS THE PARKING LOT, HE
2 IMMEDIATELY GOT ON THE SIDEWALK, AND FOLLOWED HIM
3 DOWN THE SIDEWALK AND JUST IN CASE THERE WOULD HAVE
4 BEEN EITHER A FOOT PURSUIT OR SOMETHING LIKE THAT, I
5 WOULD HAVE ACTUALLY BEEN KIND OF, THE BEST WAY TO
6 DESCRIBE IT WOULD HAVE BEEN, TRIANGULATE AND TRYING
7 TO CUT HIM OFF IS BASICALLY THE BEST WAY TO DESCRIBE
8 IT.

9 Q BUT THERE WASN'T A FOOT PURSUIT?

10 A NO, MA'AM. NO, MA'AM.

11 Q OKAY. AND I BELIEVE YOU TESTIFIED WHEN HE,
12 CHRISTOPHER, WAS ORDERED TO COME BACK, HE TURNED
13 AROUND AND WALKED BACK?

14 A WELL, YEAH, IT WAS MORE LIKE A HOLD UP, COME
15 HERE A MINUTE.

16 Q AND THEN HE COMPLIED?

17 A HE STOPPED, AND THEN CAME BACK TOWARDS ME.

18 Q OKAY. AND AT THIS TIME YOU SAID HE WALKED BACK
19 TOWARDS YOU?

20 A RIGHT.

21 Q AND DID YOU OBSERVE OFFICER CHAVIS AT THAT TIME
22 OR DID YOU HAVE YOUR EYES ON CHRISTOPHER?

23 A THEY WERE ACTUALLY, AS HE TURNED, OFFICER CHAVIS
24 JUST CONTINUED TO WALK RIGHT PAST WHERE HE HAD TURNED
25 AROUND AT.

ANTHONY BREEDEN

CROSS

69

1 Q OKAY.

2 A WALKED RIGHT PAST HIM, INDICATED HE DROPPED
3 SOMETHING, AND THEN HE STARTED COMING BACK TO ME AND
4 THAT'S WHEN OFFICER CHAVIS INFORMED ME THAT HE HAD
5 DROPPED SOME DRUGS.

6 Q AND AT THAT POINT IS WHEN YOU SAW OFFICER CHAVIS
7 LOOK TO THE GROUND WITH A FLASHLIGHT?

8 A I DON'T REALLY REMEMBER IF HE HAD, WE ALL HAD
9 FLASHLIGHTS, BUT AT THAT POINT ONCE HE TOLD ME HE
10 DROPPED SOMETHING AND HE WAS PICKING IT UP, THEN MY
11 FOCUS WAS ON MR. ROBINSON.

12 Q SURE. AND YOU SAID Y'ALL HAD FLASHLIGHTS, IS
13 THAT ON YOUR BELT THAT YOU HAVE?

14 A SOME GUYS HAVE THEM ON THEIR BELT. I PUT MINE
15 IN MY BACK POCKET OR IN MOST CASES I CARRY IT AND
16 THEN WHEN I'M ACTUALLY IN THE PROCESS OF EITHER
17 HANDCUFFING OR DOING SOMETHING ELSE I PUT IT IN MY
18 POCKET. I MEAN I DON'T REMEMBER EXACTLY WHERE
19 EVERYBODY HAD THEIR FLASHLIGHTS BUT.

20 Q SURE. AND ONCE YOU LEARNED THAT CRACK WAS
21 FOUND?

22 A YES.

23 Q THAT IS WHEN YOU BEGAN THE ARREST PROCESS ON
24 CHRISTOPHER?

25 A YES.

1 Q OKAY. AND ESSENTIALLY YOUR ARREST PROCESS
2 FOLLOWS A PRETTY SIMPLE PROTOCOL? YOU, IT'S CALLED
3 SEARCH AND COMMENCEMENT TO THAT ARREST?

4 A YES.

5 Q AND THAT MEANS THAT ESSENTIALLY YOU PAT THEM
6 DOWN?

7 A NO, THAT, THAT'S A DIFFERENT SEARCH THAN A PAT
8 DOWN. ONCE THEY ARE UNDER ARREST I SEARCH THEM. I
9 CHECK THEM FOR WEAPONS. I CHECK THEIR PANTS. I
10 CHECK THEIR CROUCH AREA, THEIR BELT AREA; I CHECK
11 INSIDE THEIR SOCK AREA. THAT'S DIFFERENT THAN A PAT
12 DOWN BECAUSE THEY ARE GETTING READY TO GET IN OUR
13 VEHICLE AND THEN IT BECOMES A SAFETY ISSUE.

14 Q OKAY.

15 A SO A SEARCH INCIDENT TO ARREST IS NOTHING LIKE A
16 PAT DOWN.

17 Q OKAY. BUT BOTH SEARCHES THE POINT OF THEM ARE
18 INITIALLY OFFICER SAFETY AND THEN SECONDARY TO THE
19 SEARCH THAT YOU DID TO SEARCH THE POCKETS TO MAKE
20 SURE THERE IS NO DRUGS OR WEAPONS OR ANYTHING LIKE
21 THAT?

22 A THE INITIAL PAT DOWN WOULD BE FOR OFFICER
23 SAFETY. ONCE THERE IS AN EXTENSIVE SEARCH THEN IT IS
24 TO EITHER EVIDENTIARY VALUE OR TO MAKE SURE THEY
25 DON'T HAVE ANYTHING, KNIFE OR ANYTHING LIKE THAT,

ANTHONY BREEDEN

CROSS

71

1 THAT CAN BE USED TO HURT THEMSELVES OR US AT THAT
2 POINT.

3 Q OKAY. AND PER PROTOCOL ON THIS, DID YOU ASK
4 CHRISTOPHER IF HE HAD ANY DRUGS OR WEAPONS ON HIM?

5 A I WOULD NORMALLY SAY DO YOU HAVE ANY DRUGS OR
6 WEAPONS ON YOU.

7 Q OKAY. AND AT THAT POINT CHRISTOPHER SAID YES, I
8 HAVE MARIJUANA IN MY POCKET?

9 A YEAH. WELL, I GRABBED IT, A POCKET, PULLED THE
10 MARIJUANA OUT AND THEN HE SAID TO ME THE MARIJUANA IS
11 MINE BUT THE CRACK ISN'T.

12 Q OKAY. SO YOU REACHED IN, HE DIDN'T REACH INTO
13 HIS POCKETS, YOU REACHED INTO HIS POCKET?

14 A YES. WHEN HE CAME BACK TO ME I IMMEDIATELY
15 PLACED HIM IN HANDCUFFS AND THEN STARTED CHECKING HIM
16 AND HIS POCKETS.

17 Q OKAY. AND HE DID INDICATE TO YOU HE SAID THE
18 MARIJUANA WAS HIS BUT THE OTHER DRUGS WERE NOT?

19 A YES.

20 Q IS THAT RIGHT? OKAY. AND IN CONNECTION WITH
21 THIS CASE YOU DID A REPORT?

22 A YES, MA'AM.

23 Q IS THAT CORRECT? AND IN YOUR REPORT YOU NOTED
24 THAT CHRISTOPHER HAD BEEN SMOKING MARIJUANA?

25 A YES.

- 1 Q OKAY. WHEN YOU DID THIS INTENSIVE SEARCH OF HIM
2 TOP TO BOTTOM, YOU DIDN'T FIND ANY SCALES ON HIM?
3 A NO.
4 Q NO ADDITIONAL BAGGIES?
5 A NO.
6 Q THE ONLY THING, OTHER THING I THINK YOU
7 MENTIONED WAS THE MONEY YOU FOUND IN HIS POCKET?
8 A YES.
9 Q BUT PER PROTOCOL AS YOU DESCRIBED THAT WAS
10 RETURNED TO HIM AS PROPERTY?
11 A YES, MA'AM.
12 Q OKAY. AND THIS IS ALL EVIDENCE TO THE FACT THAT
13 THE ONLY THING YOU LOGGED INTO YOUR EVIDENCE LOG WAS
14 THE MARIJUANA THAT YOU HAD RECOVERED?
15 A AS FAR AS ME?
16 Q RIGHT.
17 A I -- ACTUALLY IT WAS, ALL THE DRUGS WERE LOGGED
18 IN.
19 Q BUT YOU LOG, YOU JUST LOGGED IN THE MARIJUANA?
20 A I ACTUALLY JUST HELD THE MARIJUANA.
21 Q OKAY. NO SCALES?
22 A NO.
23 Q NO BAGGIES?
24 A NO.
25 Q AND THE MONEY INTO THE EVIDENCE LOG?

ANTHONY BREEDEN

CROSS

73

1 A RIGHT, BUT THAT'S NOT FOUND IN EVERY SINGLE CASE
2 WE MAKE.

3 Q SURE, BUT IN THIS PARTICULAR CASE YOU WERE
4 CAREFUL TO DOCUMENT WHAT YOU HAD FOUND?

5 A OH, YES, MA'AM.

6 Q SURE. OKAY. NOW YOU INDICATED, I'LL HAVE TO
7 LOOK AT YOUR LITTLE MAP HERE, HAD YOU INDICATED THAT
8 THE COMMUNITY IN SCHOOLS AREA WAS HERE?

9 A YES, MA'AM.

10 Q SORRY. WHAT IS THE ADDRESS OF THIS?

11 A IT'S A RUSSELL STREET ADDRESS.

12 Q UH-HUH.

13 A I DON'T KNOW THE EXACT ADDRESS. I BELIEVE IT'S
14 1447 OR SOMETHING RUSSELL STREET. THAT'S JUST A
15 GUESS.

16 Q OKAY.

17 A WE KNOW IT'S ON RUSSELL STREET IS THE ACTUAL
18 ADDRESS. YOU CAN GET TO IT ON EITHER AMERICA STREET,
19 THERE IS TWO DIFFERENT ACCESS POINTS TO IT BUT THE
20 ACTUAL ADDRESS WOULD BE THE RUSSELL STREET ADDRESS.

21 Q OKAY. IS THAT, LET ME SEE HERE. WOULD YOU, IF
22 IT WERE A SCHOOL, JUST TO FIND THE EXACT ADDRESS FOR
23 MEASUREMENT, IT WOULD BE ON THE ROCK HILL SCHOOL
24 DISTRICT WEBSITE?

25 A YES, MA'AM.

1 Q OKAY.

2 A IT MAY BE UNDER HEAD START AS WELL IF IT'S NOT
3 UNDER THE ACTUAL SCHOOL DISTRICT, IT'S HEAD START OR
4 I'M NOT REALLY SURE HOW THEY HAVE IT LISTED IN THE
5 PHONE BOOK OR IN THEIR DIRECTORY.

6 Q I'M SHOWING YOU, BECAUSE I'M TECHNOLOGICALLY NOT
7 ADVANCED, IF WE WERE TO PULL IT UP ON THE WEBSITE THE
8 SCHOOL LISTING FOR ROCK HILL SCHOOL DISTRICT THREE?

9 A RIGHT.

10 Q OKAY. COMMUNITIES IN SCHOOLS IS NO WHERE ON
11 THERE, IS THAT CORRECT?

12 A NOT ON HERE.

13 Q OKAY. AND THAT LIST, THE LIST OF ELEMENTARY,
14 MIDDLE, OR JUNIOR HIGH SCHOOLS, AND SECONDARY SCHOOLS
15 OR HIGH SCHOOLS, IS THAT CORRECT?

16 A I'M ASSUMING. I GUESS IT'S GOT ALL OF THEM ON
17 HERE.

18 THE COURT: YOU READY FOR A QUESTION?

19 Q OH, I'M SORRY. WERE YOU REVIEWING IT?

20 A I'M DONE.

21 Q OH, I'M SORRY. THANK YOU, YOUR HONOR. ALL
22 RIGHT. AND JUST TO MAKE SURE WE'RE THE MOST SPECIFIC
23 I'M SHOWING YOU, AGAIN BEING TECHNOLOGICALLY
24 DEFICIENT, IF YOU LOOK UP COMMUNITY IN SCHOOLS CAN
25 YOU READ THE ADDRESS OF THE ROCK HILL ONE OFF THERE?

ANTHONY BREEDEN

REDIRECT

75

1 A I DON'T THINK IT'S ON HERE. I DON'T EXACTLY
2 KNOW WHEN IT WAS CHANGED TO COMMUNITIES IN SCHOOLS.
3 IT USED TO BE CITIES IN SCHOOLS. I DON'T KNOW
4 EXACTLY WHEN IT WAS CHANGED TO COMMUNITIES, IF IT WAS
5 BEFORE OR AFTER THIS.

6 Q OKAY. AND DID YOU CONTACT ROCK HILL SCHOOL
7 DISTRICT TO FIND OUT THAT ROCK HILL HAS A COMMUNITY
8 IN SCHOOLS FOR FIVE YEARS?

9 A NO.

10 Q NO. I'LL JUST TAKE THAT BACK. AND ONE LAST
11 QUESTION, THIS MARIJUANA THAT YOU FOUND, THE
12 MARIJUANA WAS ACTUALLY INSIDE THE BAGGY, IS THAT
13 CORRECT?

14 A YES.

15 Q OKAY.

16 MS. INZERILLO: I HAVE NO FURTHER
17 QUESTIONS, YOUR HONOR.

18 THE COURT: REDIRECT.

19 REDIRECT EXAMINATION BY MS. ANDERSON:

20 Q SERGEANT BREEDEN, IS THE FOCUS OF THE STREET
21 CRIMES UNIT, IS THE FOCUS ON STREET LEVEL DRUG
22 DEALING OR HIGH LEVEL DRUG DEALING?

23 A STREET LEVEL.

24 Q AND I'M GOING TO ASK ARE YOU FAMILIAR WITH THE
25 CHILDREN'S ATTENTION HOME?

1 A I MEAN I'VE HEARD OF IT.

2 MS. ANDERSON: NOTHING FURTHER.

3 THE COURT: ALL RIGHT. ANY RECROSS?

4 MS. INZERILLO: NO, YOUR HONOR.

5 THE COURT: YOU CAN STEP DOWN. WE
6 APPRECIATE YOUR TIME.

7 A THANK YOU, YOUR HONOR.

8 THE COURT: WE'LL TAKE A BREAK FOR THE
9 JURY. MR. BAILIFF, IF YOU'LL TAKE THE JURY OUT,
10 WE'LL TAKE ABOUT A TEN MINUTE BREAK.

11 (THE JURY EXITS THE COURTROOM AT
12 12:05.)

13 THE COURT: ALL RIGHT. JUST FOR
14 SCHEDULING PURPOSES, IT'S 12:07, ABOUT FIVE AFTER
15 LET'S CALL IT, HAVE WE GOT A WITNESS THAT WILL TAKE
16 US TO AROUND ONE AND THEN START BACK AT TWO OR?

17 MR. SPRINGS: I WOULD --

18 THE COURT: OR 2:15?

19 MR. SPRINGS: I WOULD PROPOSE OUR NEXT
20 WITNESS WILL BE OUR LONGEST WITNESS, I'D LIKE TO GO
21 AND THAT'S OFFICER CHAVIS, I'D LIKE TO DO HIM AND
22 THEN BREAK FOR LUNCH.

23 THE COURT: ALL RIGHT. WE'LL DO THAT.

24 MS. INZERILLO: THAT'S FINE.

25 THE COURT: LET'S TAKE ABOUT A TEN MINUTE

MICHAEL CHAVIS

DIRECT

77

1 BREAK.

2 (COURT'S IN RECESS AT 12:06 PM.)

3 (COURT RESUMES AT 12:20 PM.)

4 THE COURT: IS THE STATE READY?

5 MS. ANDERSON: YES, YOUR HONOR.

6 THE COURT: THE DEFENSE READY?

7 MS. INZERILLO: YES, YOUR HONOR.

8 THE COURT: BRING IN THE JURY.

9 (THE JURY RETURNS TO THE COURTROOM AT
10 12:20 PM.)

11 THE COURT: CALL YOUR NEXT WITNESS.

12 MS. ANDERSON: THE STATE CALLS OFFICER
13 MICHAEL CHAVIS.

14 MICHAEL CHAVIS, BEING FIRST DULY
15 SWORN, TESTIFIED AS FOLLOWS:

16 DIRECT EXAMINATION BY MS. ANDERSON:

17 Q IF YOU WOULD, STATE YOUR NAME FOR THE RECORD?

18 A IT'S MICHAEL CHAVIS.

19 Q WHO ARE YOU EMPLOYED WITH?

20 A THE CITY OF ROCK HILL POLICE DEPARTMENT.

21 Q WHAT PART OF ROCK HILL POLICE DEPARTMENT DO YOU
22 WORK IN?

23 A I WORK IN THE DETECTIVE DIVISION IN THE STREET
24 CRIMES UNIT.

25 Q ARE YOU INVOLVED WITH THE WEED AND SEED PROGRAM?

1 A YES, MA'AM, I AM.

2 Q HOW LONG HAVE YOU BEEN INVOLVED IN THAT?

3 A SINCE WE STARTED THE STREET CRIME UNIT BACK IN
4 DECEMBER OF LAST YEAR.

5 Q WHAT DO YOU DO AS PART OF YOUR DUTIES WITH THE
6 STREET CRIME UNIT?

7 A WE'RE BASICALLY A PROACTIVE RESPONSE TO
8 COMPLAINTS ARISING FROM WITHIN THE CITY. WE GET
9 INTELS FROM DIFFERENT MEANS WHETHER IT BE INCIDENT
10 REPORTS THAT ARE COMING IN IDENTIFYING CRIMINAL
11 ACTIVITY, CITIZEN COMPLAINTS, OR ANY OTHER PHONE
12 CALLS OR E-MAILS THAT WE MAY RECEIVE TO OUR OFFICE.

13 Q WERE YOU WORKING WITH THE STREET CRIMES UNIT ON
14 THE NIGHT OF JUNE FIRST 2007?

15 A YES, MA'AM, I WAS.

16 Q WHAT WERE YOU DOING THAT EVENING?

17 A THAT EVENING MYSELF AND SERGEANT BREEDEN,
18 OFFICERS CROWDER AND CULBREATH WERE PART OF THE UNIT
19 WHO WERE ALL UTILIZING THE UNMARKED DODGE STRATUS
20 UNDERCOVER CAR TO DO PROACTIVE ENFORCEMENT OUT IN THE
21 WEED AND SEED AREA WHICH IS BASICALLY OUR SOUTHEND OF
22 THE CITY.

23 Q WERE YOU IN UNIFORM THAT EVENING?

24 A YES, MA'AM.

25 Q DID YOU RESPOND TO OR GO TO MARKET PLACE

MICHAEL CHAVIS

DIRECT

79

1 APARTMENTS?

2 A YES, MA'AM, WE DID.

3 Q WHAT DO YOU DO AT MARKET OR TELL ME HOW YOU GOT
4 TO APARTMENT PLACE APARTMENTS?

5 A WE WERE ON OUR NORMAL DUTY AND AS WE RODE BY
6 MARKET PLACE APARTMENTS WE NOTICED THERE WERE A GROUP
7 OF SUBJECTS NEAR A CADILLAC IN THE SECOND ENTRANCE.
8 WE WENT DOWN TOWARD SALUDA, MADE A U-TURN NEAR
9 RUSSELL STREET, CAME BACK UP, AND IMMEDIATELY PULLED
10 INTO THE MIDDLE ENTRANCE WHERE THE CADILLAC WAS. WE
11 PULLED DOWN INTO THE PARKING LOT AND PARKED CATTY
12 CORNER TO THE PASSENGER SIDE REAR OF THE VEHICLE TO
13 APPROACH THE SUBJECTS TO MAKE CONTACT WITH THEM AND
14 SEE WHAT WAS GOING ON.

15 AS WE GOT OUT OF THE VEHICLE ALL OF
16 THE SUBJECTS WERE EITHER IN THE CAR, STANDING NEAR
17 THE CAR, ONE OF THEM BEGAN TO WALK AWAY. HE WALKED
18 UP TO THE SIDEWALK FROM THE PARKING LOT AND STARTED
19 WALKING DOWN THE SIDEWALK TOWARD THE BACK FENCE NEAR
20 THE WOODED AREA ON THE MAP. I IMMEDIATELY JUMPED OUT
21 OF THE PASSENGER SEAT WHERE I WAS GETTING OUT AND
22 WENT TO THE SIDEWALK AND FOLLOWED BEHIND HIM. AS
23 GETTING BEHIND HIM, I HAVE A FLASHLIGHT AND OF COURSE
24 I ILLUMINATED HIM AND SAID, HOLD ON A MINUTE, SIR, I
25 NEED TO TALK TO YOU. AT THAT POINT I SAW THE SUBJECT

1 PUT HIS RIGHT HAND, MAKE A TOSSING MOTION BACK BEHIND
2 HIM AND I SAW WHAT APPEARED TO BE A WHITE BAG FALL TO
3 THE SIDEWALK. I IMMEDIATELY YELLED TO MY SUPERVISOR
4 WHO WAS SERGEANT BREEDEN THAT HE JUST DROPPED
5 SOMETHING ON THE SIDEWALK. SERGEANT BREEDEN INFORMED
6 THE SUBJECT HEY, COME HERE. I WENT BY THE SUBJECT
7 WITH MY EYES FOCUSED ON THE ITEMS ON THE SIDEWALK AND
8 I WENT AND PICKED IT UP. WHEN I PICKED IT UP IT WAS
9 A CLEAR PLASTIC BAGGY CONTAINING WHITE SUBSTANCE THAT
10 I BELIEVED TO BE CRACK COCAINE. I THEN SHOUTED TO MY
11 SUPERVISOR SERGEANT BREEDEN I'VE GOT CRACK COCAINE
12 HERE THAT HE DROPPED. AT THAT POINT SERGEANT BREEDEN
13 PLACED HIM IN HANDCUFFS AND MAKES THE ARREST.

14 Q BREAK DOWN A LITTLE OF THAT. THE PERSON WHO
15 WALKED AWAY WAS ANYBODY ELSE NEARBY HIM WHEN HE
16 WALKED AWAY?

17 A NO, MA'AM, NOT ONCE HE GOT TO THE SIDEWALK.

18 Q HOW FAR AWAY FROM HIM WERE YOU?

19 A WHEN WE INITIALLY PULLED IN, MAYBE TEN FEET. HE
20 GOT AWAY ON TO THE SIDEWALK, I WAS PROBABLY STILL
21 ABOUT 10 FEET, AND I STARTED HUSTLING DOWN THE
22 SIDEWALK SO I PROBABLY STAYED WITHIN 10 TO 12 FEET OF
23 HIM.

24 Q COULD YOU SEE HIM CLEARLY?

25 A YES, MA'AM.

MICHAEL CHAVIS

DIRECT

81

1 Q HOW DARK WAS IT IN THE PARKING LOT?

2 A IT WAS NIGHTTIME BUT THERE WERE AMBIENT LIGHTS
3 FROM THE STREET LIGHTS AND EVERY APARTMENT THERE HAS
4 A LIGHT ON THE PORCH. MOST OF THEM STAY ON ALL NIGHT
5 AND I ALSO HAVE MY FLASHLIGHT THAT I USED TO
6 ILLUMINATE THE AREA.

7 Q SO COULD YOU SEE THE INDIVIDUAL CLEARLY?

8 A YES, MA'AM.

9 Q DO YOU SEE THE INDIVIDUAL IN THE COURTROOM
10 TODAY?

11 A YES, MA'AM.

12 Q WOULD YOU POINT HIM OUT FOR THE JURY?

13 A HE'S RIGHT THERE IN THE GRAY OVERSHIRT AND THE
14 BLACK T-SHIRT.

15 Q LET THE RECORD REFLECT THE WITNESS HAS
16 IDENTIFIED THE DEFENDANT. NOW WHEN YOU SAW, YOU
17 STATE YOU SAW THE DEFENDANT DROP SOMETHING?

18 A YES, MA'AM.

19 Q DID YOU EVER LOSE SIGHT OF THAT OBJECT?

20 A NO, MA'AM.

21 Q HOW MUCH TIME PASSED BETWEEN THE BAG, WHAT YOU
22 SAW BEING DROPPED, AND YOU GETTING TO THAT ITEM
23 PASSED?

24 A NOT MORE THAN TEN SECONDS.

25 Q I'M GOING TO HAVE, WITH THE COURT'S PERMISSION,

1 THE WITNESS TO STAND DOWN.

2 THE COURT: SURE.

3 Q TO LOOK AT THIS AND LET YOU USE THIS. STAND
4 HERE SO YOU DON'T BLOCK THE JURY AND WHAT YOU JUST
5 TOLD US TO POINT OUT FOR THE JURY WHERE THAT TOOK
6 PLACE?

7 A APPROXIMATELY THIS PARKING SPOT WAS IS WHERE THE
8 CADILLAC WAS PARKED. IT WAS PARKED PROBABLY FACING
9 THESE APARTMENTS. WE PULLED IN THIS ENTRANCE AND
10 PARKED CATTY CORNER AT AN ANGLE FACING THE REAR
11 BUMPER. THE PLACES NEAR THE CADILLAC ON THE RIGHT
12 SIDE WERE EMPTY. THERE WERE NO CARS HERE; HOWEVER,
13 ON THE OTHER SIDE, THERE WERE TWO EMPTY CARS. WHEN
14 WE PULLED IN THE SUBJECT WALKED UP THE SIDEWALK AND
15 STARTED GOING THIS WAY. I RAN OUT MY DOOR, IT WAS
16 OPEN, GOT UP ON THE SIDEWALK AND SHOUTED UP TOWARDS
17 HIM. PROBABLY RIGHT IN HERE IS WHERE HE TOSSED THE
18 CONTRABAND OR THE DRUG, CRACK COCAINE, AND I WENT BY
19 HIM AND WENT AND PICKED IT. SERGEANT BREEDEN GOT OUT
20 OF HIS DOOR AND WENT UP TO THE SIDEWALK AND HE SAW
21 HIM TAKE AWAY AND ONCE HE DROPPED THE ITEM HE TURNED
22 AROUND AND CAME BACK AND THAT'S WHEN SERGEANT BREEDEN
23 STARTED TALKING TO HIM AND I INFORMED SERGEANT
24 BREEDEN THAT I RECOVERED CRACK COCAINE. THAT'S WHEN
25 WE PLACED HIM INTO CUSTODY.

MICHAEL CHAVIS

DIRECT

83

1 Q OKAY. SIT BACK DOWN. WHO ELSE WAS AT THE SCENE
2 THERE THAT NIGHT AT THE CADILLAC?

3 A AT THE CADILLAC THERE WAS A DELVINCHE WILLIAMS,
4 DAVID WILLIAMS, VASTADAQUAR THOMPSON, AND A DAVID
5 MOORE.

6 Q OKAY. LET'S START WITH DELVINCHE WILLIAMS, DID
7 HE GET ARRESTED FOR ANYTHING?

8 MS. INZERILLO: OBJECTION, YOUR HONOR.

9 THE COURT: I SUSTAIN THE OBJECTION.

10 MS. ANDERSON: BEG THE COURT'S INDULGENCE.

11 Q DID YOU SUSPECT DELVINCHE WILLIAMS OF BEING
12 INVOLVED WITH THE CRACK COCAINE?

13 A NO, MA'AM.

14 Q DID YOU SUSPECT DAVID WILLIAMS OF BEING INVOLVED
15 WITH THE CRACK COCAINE?

16 A NO, MA'AM.

17 Q DID YOU SUSPECT VASTADAQUAR THOMPSON OF BEING
18 INVOLVED WITH THE CRACK COCAINE?

19 A NO, MA'AM.

20 Q WAS THERE ANYONE ELSE?

21 A YES, MA'AM, THERE WAS DAVID MOORE.

22 Q DID YOU SUSPECT DAVID MOORE OF BEING INVOLVED IN
23 THE CRACK COCAINE?

24 A NO, MA'AM.

25 Q I'M GOING TO HAVE YOU STEP DOWN WITH THE COURT'S

1 PERMISSION.

2 THE COURT: CERTAINLY.

3 Q AND LOOK AT STATE'S EXHIBIT TWO.

4 THE COURT: LET ME STOP YOU. HAVE THEY
5 BEEN IN EVIDENCE? ARE THEY INTO EVIDENCE?

6 MR. SPRINGS: YES, IT IS.

7 THE COURT: OKAY.

8 MS. INZERILLO: YES, SIR, THE MAP IS.

9 THE COURT: YOU KEEP REFERING TO THAT ONE.
10 HOW ABOUT THAT ONE?

11 MS. ANDERSON: YOUR HONOR, I'M JUST USING
12 THAT FOR DEMONSTRATIVE PURPOSES. I'M NOT OFFERING
13 THAT INTO EVIDENCE.

14 THE COURT: THAT'S FINE.

15 Q IF YOU CAN LOOK AT STATE'S EXHIBIT TWO AND POINT
16 OUT THE RUSSELL STREET SCHOOL?

17 A THAT WOULD BE HERE.

18 Q WOULD YOU PLEASE TELL US ABOUT THE RUSSELL
19 STREET SCHOOL?

20 A IT'S LOCATED AT 1446 RUSSELL STREET IS THE
21 PHYSICAL ADDRESS. THE NAME OF IT IS THE CHILDREN'S
22 ATTENTION HOME CHARTER SCHOOL. IT'S KINDERGARTEN
23 THROUGH 8TH GRADERS. AFTER THAT THEY HAVE TO LEAVE
24 AND GO TO HIGH SCHOOL.

25 Q OKAY. YOU CAN HAVE A SEAT. OFFICER CHAVIS, I'M

MICHAEL CHAVIS

CROSS

85

1 GOING TO SHOW YOU WHAT'S BEEN MARKED AS STATE'S
2 EXHIBIT THREE AND ASK YOU IF YOU KNOW WHAT THAT IS?

3 A YES, MA'AM.

4 Q WHAT IS THAT?

5 A THIS WILL BE THE CRACK COCAINE AND THE BAG THAT
6 IT WAS CONTAINED IN ONCE I REMOVED IT FROM THE
7 SIDEWALK AND TOOK IT IN MY POSSESSION AND PLACED IT
8 IN EVIDENCE.

9 Q DID YOU SEAL THE BAG?

10 A YES, MA'AM, I DID.

11 Q AND WHAT DID YOU DO WITH THE BAG?

12 A I PLACED IT INTO OUR DROP LOCKER IN OUR EVIDENCE
13 HOLDING AREA.

14 Q WAS THE BAG IN YOUR CUSTODY AND CONTROL THE
15 ENTIRE TIME?

16 A YES, MA'AM, FROM THE TIME I SAW IT ON THE
17 SIDEWALK AND UNTIL THE TIME I PUT IT IN THE DROP
18 LOCKER.

19 Q NOTHING FURTHER, OFFICER. IF YOU'D ANSWER ANY
20 QUESTIONS THE DEFENSE MAY HAVE.

21 CROSS EXAMINATION BY MS. INZERILLO:

22 Q GOOD MORNING, OFFICER CHAVIS.

23 A GOOD MORNING.

24 Q GOOD AFTERNOON.

25 A GOOD AFTERNOON.

1 Q YOU WERE ON PATROL WITH OFFICER BREEDEN ON JUNE
2 FIRST OF THIS YEAR, IS THAT CORRECT?

3 A YES, SIR.

4 Q OKAY. AND JUNE FIRST IS A FRIDAY?

5 A I SUPPOSE.

6 Q AND YOU WERE ON PATROL AS PART OF THE WEED AND
7 SEED PROGRAM?

8 A AS PART OF THE STREET CRIME UNIT. THE WEED AND
9 SEED IS JUST THE PROGRAM THAT WE FALL UNDER WHEN WE
10 DO CERTAIN ACTIVITIES IN ENFORCEMENT.

11 Q OKAY. BUT AS A PART OF BOTH STREET CRIMES AND
12 THEN UMBRELLA WEED AND SEED, YOU ARE TRAINED TO
13 HANDLE DRUG CASES?

14 A YES, MA'AM. AS A POLICE OFFICER I'M TRAINED TO
15 HANDLE DRUG CASES.

16 Q SURE. AND YOU KNOW HOW TO INVESTIGATE A DRUG
17 CASE?

18 A YES, MA'AM.

19 Q OKAY. YOU LEARN, FOR EXAMPLE, HOW TO IDENTIFY
20 DIFFERENT DRUGS?

21 A YES, MA'AM.

22 Q ALL RIGHT. AND LEARN HOW TO DETERMINE WHAT
23 CONSTITUTES CERTAIN OFFENSES?

24 A CORRECT.

25 Q ALL RIGHT. ALSO ONE OF THE THINGS THAT YOU ARE

MICHAEL CHAVIS

CROSS

87

1 ESPECIALLY TRAINED TO DO IS TO NOTICE WHEN NON-DRUG
2 EVIDENCE MAY BECOME EVIDENCE?

3 A CORRECT.

4 Q OKAY. FOR EXAMPLE, IF YOU FIND SCALES THAT
5 COULD BE INDICATIVE OF DRUG DEALING?

6 A YES, MA'AM, IT COULD.

7 Q OKAY. AND ONE OF THE ITEMS THAT YOU AS A
8 TRAINED OFFICER WOULD KNOW TO LOOK FOR WOULD BE, FOR
9 EXAMPLE, FOR ZIPLOCK BAGGIES, EXTRA BAGGIES IN THE
10 AREA?

11 A CORRECT.

12 Q OKAY. AND YOU ALSO LEARN AGAIN THROUGH THE
13 SPECIALTY TRAINING HOW DRUGS ARE PACKAGED?

14 A CORRECT.

15 Q OKAY. AND, FOR EXAMPLE, IF YOU CAME ACROSS
16 DRUGS THAT WERE PACKAGED INDIVIDUALLY THAT COULD BE A
17 SIGN TO YOU THAT THERE WAS AN INTENT TO DISTRIBUTE
18 THOSE?

19 A THERE COULD BE, YES.

20 Q OKAY. ALL RIGHT. ON THIS PARTICULAR NIGHT, ON
21 JUNE FIRST, YOU INDICATED THAT YOU AND THE OTHER
22 OFFICERS WERE RIDING IN AN UNMARKED DODGE STRATUS, IS
23 THAT RIGHT?

24 A CORRECT.

25 Q AND IT'S A BLACK CAR?

1 A YES, MA'AM.

2 Q AND YOU GUYS WERE IN UNIFORM?

3 A YES, MA'AM.

4 Q SUCH AS YOU ARE RIGHT NOW?

5 A YES, MA'AM, THIS IS THE UNIFORM WE WEAR.

6 Q OKAY. AND THIS DODGE STRATUS IT DOESN'T HAVE
7 VIDEO EQUIPMENT IN IT?

8 A NO, MA'AM. IT'S NOT OUTFITTED WITH VIDEO
9 EQUIPMENT.

10 Q AND YOU WEREN'T OUTFITTED WITH THE LITTLE
11 MICROPHONE THAT RECORDS EVERYTHING ON YOU?

12 A NO, MA'AM, WE DON'T HAVE THAT.

13 Q ALL RIGHT. NOW IT BEING A FRIDAY NIGHT THERE
14 WERE PEOPLE MILLING AROUND HERE AT THE MARKET PLACE
15 APARTMENTS?

16 A NOT WHERE WE WERE BUT POSSIBLY IN OTHER AREAS OF
17 THE APARTMENTS.

18 Q OKAY. BECAUSE MARKET PLACE APARTMENTS IS SORT
19 OF A TYPICAL APARTMENT COMPLEX?

20 A YES, MA'AM, IT IS AN APARTMENT COMPLEX. IT'S
21 TYPICAL.

22 Q AND IF I WAS FOLLOWING YOUR LITTLE RED DOT AS
23 CLOSE AS I COULD, ESSENTIALLY YOU INDICATED THAT FROM
24 YOUR VIEW A LOT OF PEOPLE WERE STANDING AROUND IN
25 SORT OF THE PARKING SPACE AREA OF THE PARKING LOT?

MICHAEL CHAVIS

CROSS

89

1 A FROM WHAT I OBSERVED I OBSERVED TWO INDIVIDUALS
2 NEAR THE CADILLAC, THAT PARKING SPACE THAT WE'RE
3 REFERRING TO, YES, MA'AM.

4 Q OKAY. AND IN THIS PICTURE IT WOULD BE SLIGHTLY
5 DIFFERENT IN THAT THAT NIGHT THERE WERE OTHER CARS
6 PARKED THERE?

7 A THERE WAS, LIKE I SAID, TWO CARS ABOUT WHERE
8 THAT DARK SPOT IS, TWO CARS TO THE LEFT OF IT, AND
9 THE TWO SPOTS TO THE RIGHT WERE EMPTY.

10 Q OKAY. AND IF I'M, AGAIN FOLLOWED IT CORRECTLY,
11 I BELIEVE YOU INDICATED THERE WERE ABOUT 7 TO 10
12 PEOPLE THERE, I DID HEAR THAT RIGHT?

13 A NO, MA'AM. I MEAN ABOUT FIVE THAT I KNEW WERE
14 THERE.

15 Q FIVE?

16 A THAT I OBSERVED.

17 Q BUT THERE MAY HAVE BEEN OTHER PEOPLE AROUND?

18 A I DIDN'T OBSERVE ANYBODY ELSE AROUND THAT
19 CADILLAC OR THE AREA WE INITIALLY WENT TO GET OUT
20 WITH THE SUBJECTS WITH.

21 Q OKAY. AND YOU WERE RIDING IN A PASSENGER SEAT
22 OF THE CAR?

23 A YES, MA'AM.

24 Q AND YOU GOT OUT OF THE CAR AND WALKED DOWN THIS
25 SIDEWALK HERE, IS THAT CORRECT?

- 1 A YES, MA'AM.
- 2 Q ALL RIGHT. AND YOU WERE WALKING THAT WAY?
- 3 A YES, MA'AM, STRAIGHT TOWARD THE WOODS.
- 4 Q OKAY. AND YOU INDICATED IT WAS NIGHTTIME SO YOU
- 5 HAD YOUR FLASHLIGHT OUT?
- 6 A YES, MA'AM.
- 7 Q ALL RIGHT. AND WOULD YOU AGREE WITH ME THAT THE
- 8 ADDRESS, THE SORT OF AREA THE COMPLEX HAS, IS ABOUT
- 9 ?
- 10 A YES, MA'AM.
- 11 Q HECKLE COURT. OKAY. AND YOU RECOVERED THE
- 12 BAGGY THAT WAS ON THE GROUND?
- 13 A YES, MA'AM.
- 14 Q THANK YOU.
- 15 A YOU ARE WELCOME.
- 16 Q AND YOU RECOVERED IT, THE WAY IN WHICH YOU
- 17 RECOVERED IT, IT WAS CRACK INSIDE A DARK BLACK BAGGY?
- 18 A NO, MA'AM.
- 19 Q OKAY.
- 20 A THAT WAS A CLEAR PLASTIC BAG.
- 21 Q OKAY. DID YOU RECOVER THIS?
- 22 A I RECOVERED THAT BAG BUT IT WAS NOT THAT COLOR
- 23 AT THE TIME.
- 24 Q OKAY. NOW YOU ALSO INDICATED THAT THIS WAS
- 25 LOCATED WITHIN WOULD YOU SAY HALF A MILE OF

MICHAEL CHAVIS

CROSS

91

1 CHILDREN'S ATTENTION HOME?

2 A YES, MA'AM.

3 Q THAT'S THE CHARTER SCHOOL HERE IN ROCK HILL?

4 A YES, MA'AM.

5 Q AND WOULD YOU AGREE WITH ME THAT IF IT WERE A

6 SCHOOL IN ROCK HILL IT WOULD BE ON THE ROCK HILL

7 SCHOOL DISTRICT WEBSITE?

8 A NO, MA'AM, I WON'T.

9 Q OKAY. WHY WOULD YOU DISAGREE WITH IT?

10 A BECAUSE IT DOESN'T FALL UNDER THE ROCK HILL

11 DISTRICT THREE SCHOOLS.

12 Q OKAY. YOU WOULD AGREE WITH ME THAT ALL THE

13 SCHOOLS IN ROCK HILL SCHOOL DISTRICT THREE ARE

14 PUBLIC, ELEMENTARY SCHOOLS, MIDDLE SCHOOLS, OR

15 SECONDARY SCHOOLS?

16 A ALL THE SCHOOLS IN THE ROCK HILL DISTRICT?

17 Q ALL THE SCHOOLS ON ROCK HILL SCHOOL DISTRICT'S

18 WEBSITE?

19 A YES, MA'AM.

20 Q THAT THEY LIST THE SCHOOLS THAT ARE THE PUBLIC

21 OR PRIVATE ELEMENTARY, MIDDLE OR SECONDARY?

22 A THE SCHOOLS ON THAT LIST, YES, ARE PUBLIC OR

23 PRIVATE ELEMENTARY, MIDDLE AND HIGH SCHOOLS.

24 Q OKAY. SO YOU ARE SAYING THAT ANY SCHOOLS NOT ON

25 THIS LIST ARE NOT RECOGNIZED BY ROCK HILL SCHOOL

1 DISTRICT?

2 A THAT'S NOT WHAT I'M SAYING. I'M SAYING THEY
3 DON'T FALL UNDER ROCK HILL SCHOOL DISTRICT THREE AS A
4 SCHOOL, NOT THAT THEY DO NOT HAVE THE MEANS OF BEING
5 A SCHOOL.

6 Q DID YOU HAVE A CHANCE TO LOCK UP CHILDREN'S
7 ATTENTION HOME CHARTER SCHOOL?

8 A NO, MA'AM.

9 Q DID YOU VERIFY, OKAY, SO YOU DIDN'T VERIFY AT
10 ALL THAT IT RECEIVES STATE FUNDS AS A SCHOOL?

11 A I TALKED TO THE PRINCIPAL.

12 Q YOU JUST SAID YOU DIDN'T INVESTIGATE IT?

13 A YOU ASKED ME IF I LOOKED UP A SCHOOL. I DIDN'T
14 LOOK IT UP. I JUST HAD A CONVERSATION WITH THE
15 PRINCIPAL. I TOOK IT THAT YOU MEANT SOMETHING ELSE.

16 Q ALL RIGHT.

17 A LIKE A QUESTION.

18 MS. INZERILLO: I HAVE NO FURTHER
19 QUESTIONS, YOUR HONOR.

20 THE COURT: ALL RIGHT.

21 MS. ANDERSON: JUST BRIEFLY.

22 REDIRECT EXAMINATION BY MS. ANDERSON:

23 Q OFFICER CHAVIS, DO YOU KNOW, DEFENSE COUNSEL
24 REFERENCED TO THE BAG BEING DARK --

25 A YES, MA'AM.

1 Q ---ON STATE'S EXHIBIT THREE. DO YOU KNOW WHY
2 THE BAG TURNED DARK?

3 A YES, MA'AM. IT HAD BEEN FINGERPRINTED BY
4 FORENICS UNIT WITHIN YORK COUNTY.

5 MS. ANDERSON: THAT'S ALL I HAVE, YOUR
6 HONOR.

7 THE COURT: REDIRECT -- RECROSS. I'M
8 SORRY.

9 RECROSS EXAMINATION BY MS. INZERILLO:

10 Q IN YOUR INVESTIGATION, OFFICER CHAVIS, DID YOU
11 BECOME AWARE THAT THE RESULTS OF THAT TEST WAS
12 NEGATIVE FOR CHRISTOPHER ROBINSON'S FINGERPRINTS?

13 A NO, MA'AM, I HAVEN'T BEEN INFORMED OF THE
14 FINGERPRINT TEST ON THAT BAG.

15 MS. INZERILLO: NO FURTHER QUESTIONS, YOUR
16 HONOR.

17 THE COURT: YOU MAY STEP DOWN. MEMBERS OF
18 THE JURY PANEL, WE ARE GOING TO BREAK FOR LUNCH UNTIL
19 ABOUT 2:15, IT'S ABOUT QUARTER TO ONE NOW. I USUALLY
20 TRY TO TAKE AN HOUR AND A HALF BECAUSE YOU HAVE TO
21 DRIVE TO EAT. THERE IS NO PLACE TO WALK TO OUT HERE.
22 PLEASE BE BACK AT 2:15 AND WE'LL START AS PROMPTLY
23 THEREAFTER AS WE CAN. HAVE A PLEASANT LUNCH.

24 (THE JURY EXITS THE COURTROOM AT 12:40
25 PM.)

1 THE COURT: LET'S RECONVENE ABOUT TWO SO
2 WE CAN HEAR FROM CHIEF GREGORY AND HAVE A PROFFER ON
3 THAT. ANYTHING ELSE. I'M GOING TO REQUIRE THE
4 DEFENDANT TO STAY IN CUSTODY THROUGHOUT FOR THE
5 DURATION OF THE TRIAL.

6 MS. INZERILLO: YOU ARE?

7 THE COURT: YES, MA'AM.

8 MS. INZERILLO: OKAY.

9 (COURT'S IN RECESS AT 12:41 PM.)

10 (COURT RESUMES AT 02:09 PM.)

11 THE COURT: MR. SPRINGS, I BELIEVE WE'RE
12 GOING TO HAVE A PROFFER WITH THE CHIEF WHO IS PRESENT
13 CONCERNING THE WEED AND SEED PROGRAM.

14 MR. SPRINGS: YES, YOUR HONOR.

15 MS. ANDERSON IS GOING TO HANDLE THAT.

16 MS. ANDERSON: CALL CHIEF JOHN GREGORY.

17 THE COURT: ALL RIGHT.

18 JOHN GREGORY, BEING FIRST DULY SWORN
19 WAS EXAMINED AND TESTIFIED AS FOLLOWS:

20 DIRECT EXAMINATION BY MS. ANDERSON:

21 Q PLEASE TELL US YOUR NAME AND JOB TITLE?

22 A JOHN H. GREGORY THE THIRD. CHIEF OF POLICE FOR
23 ROCK HILL, SOUTH CAROLINA.

24 Q HOW LONG HAVE YOU BEEN IN LAW ENFORCEMENT?

25 A I'VE BEEN IN LAW ENFORCEMENT OVER 34 YEARS.

JOHN GREGORY

IN CAMERA DIRECT

95

1 Q AS PART OF YOUR DUTIES AS CHIEF OF POLICE DO YOU
2 SOMETIMES ATTEND CONFERENCES AND MEETINGS WITH OTHER
3 POLICE CHIEFS FROM OTHER PARTS OF THE SOUTH AND EVEN
4 THE UNITED STATES AS A WHOLE?

5 A YES, I DO.

6 Q AS CHIEF OF ROCK HILL CITY POLICE DEPARTMENT DO
7 YOU ESTABLISH PROCEDURES AND IMPLEMENT PROGRAMS THAT
8 YOU FIND PROVEN SUCCESSFUL IN OTHER POLICE
9 DEPARTMENTS NATIONWIDE?

10 A YES, I DO.

11 Q DOES YOUR DEPARTMENT HAVE A STREET CRIMES UNIT?

12 A YES.

13 Q IS THE STREET CRIMES UNIT SOMETHING THAT'S BEEN
14 DONE IN OTHER POLICE DEPARTMENTS IN OTHER PARTS OF
15 THE UNITED STATES OR IS THIS UNIQUE TO THE ROCK HILL
16 POLICE DEPARTMENT?

17 A IT'S SOMETHING THAT'S DONE THROUGHOUT THE UNITED
18 STATES.

19 Q IF YOU WOULD GIVE A VERY BRIEF DESCRIPTION OR
20 GIVE A BRIEF DESCRIPTION OF THE MISSION OF THE STREET
21 CRIMES MISSION IS AND WHAT IT IS YOU ARE WANTING THEM
22 TO ACCOMPLISH?

23 A MOST OF THE TIME, JUDGE, WE HAVE ONGOING
24 PROBLEMS THAT ARE HABITUAL AND THEY HAVE A FREQUENCY
25 OF RE-OCCURRING AND THROUGHOUT WE EVERY DAY STAFFING

1 AND EVERY LAW ENFORCEMENT AGENCY YOU CAN'T GET ON TOP
2 OF THE HOT ISSUES. YOU TAKE ISSUES THAT HAPPEN IN
3 OUR WEED AND SEED AREA, DRUGS, ROBBERIES, ASSAULTS,
4 THOSE TYPES OF CRIMES, YOU PUT YOUR STREET CRIMES
5 UNIT IN THOSE AREAS AND DIRECT THEM TO TAKE
6 ENFORCEMENT ACTIONS TO KIND OF CURTAIL THOSE ACTIONS
7 FROM OCCURRING.

8 Q DOES THE ROCK HILL CITY POLICE DEPARTMENT
9 PARTICIPATE IN THE WEED AND SEED PROGRAM?

10 A YES, WE DO.

11 Q IS THE WEED AND SEED PROGRAM DONE IN MANY CITIES
12 OR IS THIS SOMETHING ONLY ROCK HILL DOES?

13 A THE CITIES THAT DESIGNATED BY THE US DEPARTMENT
14 OF JUSTICE WHEN YOU ARE DESIGNATED. WE'RE ONE OF
15 THOSE FEW CITIES IN THE UNITED STATES WITH THAT
16 DESIGNATION, YES.

17 Q WOULD YOU BRIEFLY TELL US WHAT THE WEED AND SEED
18 PROGRAM SEEKS TO ACCOMPLISH?

19 A WE SEEK THE PROGRAM, WHAT IT DOES, WE FIND AN
20 AREA OF A COMMUNITY, OF THE CITY, THAT IS HIGHLY MORE
21 LIKELY AFFECTED BY POVERTY, CRIME, AND ENVIRONMENTAL
22 ISSUES AND THOSE ISSUES, THOSE AREAS, NEED SOME
23 INTENSIVE CONCENTRATION BY LAW ENFORCEMENT, CITY
24 GOVERNMENT, AND THE COMMUNITY. THE LAW ENFORCEMENT
25 INITIATIVES ARE TWO: ONE BEING LAW ENFORCEMENT AND

JOHN GREGORY

CROSS

97

1 THE OTHER BEING COMMUNITY POLICING.

2 Q DOES THE ROCK HILL CITY POLICE DEPARTMENT USE OR
3 PARTICIPATE IN ANY SORT OF CRIME STOPPERS PROGRAM
4 WHERE CONCERNED CITIZENS CAN CALL AND REPORT CRIMINAL
5 ACTIVITY SUCH AS DRUG ACTIVITY?

6 A YES, WE DO. WE ARE PART OF THE YORK COUNTY
7 CRIME STOPPERS.

8 Q THAT'S ALL THE QUESTIONS I HAVE, CHIEF GREGORY.
9 PLEASE ANSWER ANY QUESTIONS MS. INZERILLO MAY HAVE.
10 CROSS EXAMINATION BY MS. INZERILLO:

11 Q GOOD AFTERNOON, CHIEF GREGORY.

12 A HI.

13 Q WERE YOU INVOLVED AS PART OF THE CALL INVOLVING
14 CHRISTOPHER ROBINSON?

15 A NO, I WAS NOT.

16 Q OKAY. YOU DID NOT GO ON SCENE INTO THE CALL
17 INVOLVING CHRISTOPHER ROBINSON?

18 A NO, I DID NOT.

19 Q AND YOU WERE NOT INVOLVED AT ALL IN THE ARREST
20 OF CHRISTOPHER ROBINSON?

21 A NO, I WAS NOT.

22 Q YOU SIMILARLY WERE NOT INVOLVED IN ANY OF THE
23 TAKING OF THE EVIDENCE?

24 A NO, I WAS NOT.

25 Q OKAY. AND YOU WERE NOT INVOLVED IN ANY TIPS

1 FROM CRIME STOPPERS THAT WERE INVOLVED IN THIS CASE?

2 A NO, I WAS NOT PERSONALLY INVOLVED.

3 Q OKAY.

4 MS. INZERILLO: THOSE ARE ALL THE
5 QUESTIONS I HAVE, YOUR HONOR.

6 MS. ANDERSON: THAT WOULD BE THE STATE'S
7 PROFFER, YOUR HONOR.

8 THE COURT: YOU CAN STEP DOWN AND HAVE A
9 SEAT BACK THERE. GLAD TO HAVE YOU WITH US. WHAT
10 ISSUE DOES, I'M VERY FAMILIAR WITH THE WEED AND SEED
11 PROGRAM. I KNOW SOME PEOPLE WHO PARTICIPATE IN IT.
12 MY FAMILY HAS BEEN ACTIVE IN THE BOYS AND GIRLS
13 CLUBS, SO I'M VERY AWARE OF ALL THOSE SORTS OF
14 THINGS. WHAT ISSUE DOES IT RELATE TO IN THIS CASE?

15 MS. ANDERSON: YOUR HONOR, THE OFFICERS
16 RESPONDED TO MARKET PLACE APARTMENTS AS PART OF THE
17 WEED AND SEED PROGRAM RATHER THAN AN INDIVIDUAL
18 DISPATCH CALL OR SOMETHING OF THAT NATURE. CHIEF
19 GREGORY'S TESTIMONY WOULD COLLABORATE WHAT THE WEED
20 AND SEED PROGRAM DOES, WHY THEY WOULD BE IN THAT
21 AREA, WHY THEY WOULD BE PATROLLING THAT AREA AS PART
22 OF THE WEED AND SEED PROGRAM NOT WITH REFERENCE TO A
23 SPECIFIC CALL

24 THE COURT: BUT WHAT DOES THAT HAVE TO DO
25 WITH HIS GUILT?

1 MS. ANDERSON: BEG THE COURT'S INDULGENCE.
2 YOUR HONOR, IT WOULD COLLABORATE THE OFFICER'S
3 TESTIMONY --

4 THE COURT: THAT'S NOT WHAT I ASKED,
5 MS. ANDERSON. I KNOW THAT IS WHAT MR. SPRINGS TOLD
6 YOU TO SAY, BUT I KNOW THAT YOU HAVE ALREADY SAID
7 THAT, BUT COLLABORATING THAT THEY WERE THERE, YOU
8 KNOW, YOU ALMOST GETTING TO GUILT BY ASSOCIATION;
9 HE'S IN A BAD AREA SO HE MUST HAVE BEEN DEALING
10 DRUGS. TELL ME WHAT ISSUE IN THIS CASE WHETHER OR
11 NOT THIS MAN, AND HE DIDN'T TESTIFY ABOUT PROXIMITY
12 TO THE SCHOOL, HE DIDN'T TESTIFY ABOUT WHETHER THIS
13 MAN HAD ANY, THREW DOWN ANY DRUGS OR HAD ANY DRUGS ON
14 HIM, I JUST DON'T -- THERE IS SOME CASES THAT ALLOW
15 THE WITNESS TO TESTIFY AS TO WHY THEY ARE IN A
16 CERTAIN AREA, I'M FAMILIAR WITH THOSE CASES, BUT
17 THAT'S NOT AN ISSUE HERE. YOU WANT TO CHECK WITH
18 MR. SPRINGS AGAIN.

19 MR. SPRINGS: IF YOU DON'T MIND TAKING IT
20 STRAIGHT FROM THE HORSE'S MOUTH.

21 THE COURT: WELL, SHE MADE THE
22 PRESENTATION AND I'LL BE GLAD TO HEAR THROUGH ONE
23 ATTORNEY.

24 MR. SPRINGS: ALL RIGHT.

25 THE COURT: MS. INZERILLO, DO YOU OBJECT TO

1 BEING BEING DOUBLE TEAMED?

2 MS. INZERILLO: NO, YOUR HONOR.

3 THE COURT: ALL RIGHT. MR. SPRINGS.

4 MR. SPRINGS: YOUR HONOR, THE JURY HAS
5 HEARD THESE OFFICERS SAY THEY ARE PART OF THE STREET
6 CRIMES UNIT. I THINK CHIEF GREGORY CORROBORATES THAT
7 THIS IS A BONE FIDE UNIT, IT'S NOT SOME SET OF
8 COWBOYS THAT THEY MADE UP AND THEY DECIDED, THESE
9 OFFICERS, WE'RE GOING TO BE THE STREET CRIMES UNIT
10 AND THAT'S WHAT WE'RE GOING TO CALL OURSELVES, LIKE
11 OUR OWN LITTLE GANG, IT CORROBORATES THE PART OF A
12 LEGITIMATE POLICE INITIATIVE IN A, A VERY WELL TESTED
13 POLICE INITIATIVE THAT'S BEEN TRIED AND TESTED IN
14 OTHER PARTS OF THE COUNTRY AND IT ALSO TIES INTO THE
15 WEED AND SEED PROGRAM AND IT EXPLAINS WHY THEY WENT
16 OUT THERE IN AN UNMARKED CAR IN UNIFORM THE WAY THEY
17 DID LOOKING TO SEE IF THERE WERE ANY PROBLEMS IN THIS
18 AREA THAT IS PART OF THE WEED AND SEED AREA. IT
19 CORROBORATES THAT TESTIMONY AND IT EXPLAINS WHY THEY
20 WERE THERE.

21 THE COURT: WELL, WHAT DIFFERENCE DOES IT
22 MAKE WHY THEY WERE THERE AND THEY CAUGHT THIS MAN
23 WITH MARIJUANA IN HIS POCKET?

24 MR. SPRINGS: I THINK IT'S FAIR FOR THE
25 JURY TO HEAR WHY, TO CORROBORATE WHY THEY WERE THERE,

RAY BARNWELL

DIRECT

101

1 WHY THEY WERE DOING WHAT THEY DID. IF I HAD A
2 DISPATCHER COME IN HERE AND RELAY WHAT THE DISPATCH
3 CALL HAD BEEN, THE DISPATCHER COULDN'T SAY, NO, NO,
4 YEAH, I WAS OUT THERE AND HE HAD THIS AND HE DIDN'T
5 DO THAT. THAT WOULD TEND TO CORROBORATE WHY PEOPLE
6 WENT WHERE THEY WENT AND DID WHAT THEY DID AND I
7 THINK CORROBORATION IS FAIR GAME IN THE STATE'S CASE.

8 THE COURT: WELL, I'M GLAD TO HAVE CHIEF
9 GREGORY OVER HERE, BUT YOU MADE YOUR PROFFER BUT I
10 FIND THAT THAT EVIDENCE IS NOT RELEVANT TO THE ISSUES
11 INVOLVED IN MR. ROBINSON. YOU CAN STAY OR GO.
12 THAT'S YOUR CHOICE.

13 CHIEF GREGORY: I'LL COME BACK ANOTHER
14 TIME, JUDGE.

15 THE COURT: ALL RIGHT. BRING IN THE JURY.

16 (THE JURY RETURNS TO THE COURTROOM AT
17 02:17 PM.)

18 THE COURT: CALL YOUR NEXT WITNESS.

19 MR. SPRINGS: THANK YOU, JUDGE HAYES. LET
20 ME STEP OUT IN THE HALL. I DON'T HAVE A BAILIFF.

21 RAY BARNWELL, BEING FIRST
22 DULY SWORN, TESTIFIED AS FOLLOWS:

23 DIRECT EXAMINATION BY MR. SPRINGS:

24 Q TELL THIS JURY YOUR NAME, SIR?

25 A RAY BARNWELL.

1 Q WHAT DO YOU DO FOR A LIVING?

2 A I'M A FORENSIC SERVICES INVESTIGATOR FOR YORK
3 COUNTY MULTIJURISDICTIONAL FORENSIC SERVICES UNIT.

4 Q ALL RIGHT. HOW LONG HAVE YOU BEEN IN LAW
5 ENFORCEMENT?

6 A OVER 16 YEARS.

7 Q YOU'VE HAD SOME TRAINING, EDUCATION, AND
8 EXPERIENCE IN LIFTING, IDENTIFYING, ANALYZING, AND
9 WORKING WITH FINGERPRINTS?

10 A WELL OVER TEN YEARS.

11 Q ALL RIGHT. HAVE YOU EVER TESTIFIED AS AN EXPERT
12 IN A COURT OF RECORD SUCH AS THIS AS AN EXPERT IN
13 IDENTIFYING, ANALYZING, AND WORKING WITH FINGERPRINT?

14 A YES.

15 Q DID YOU DO SOME FINGERPRINT TESTING IN THIS
16 CASE?

17 A YES, SIR, I DID.

18 Q DID YOU FIND ANY IDENTIFIABLE PRINTS?

19 A NO, SIR, NO IDENTIFIABLE PRINTS.

20 Q OFFICER BARNWELL, TELL THIS JURY WHY YOU MIGHT
21 NOT FIND IDENTIFIABLE PRINTS ON SOMETHING SOMEBODY
22 HAS TOUCHED?

23 A LATENT PRINTS, FINGERPRINTS, ARE TRANSFERS OR
24 IMPRESSIONS OF THE PERSON'S FINGERS LIKE A PHOTOCOPY
25 OF IT TRANSFER. THE TRANSFER PART IS THE PROBLEM.

RAY BARNWELL

DIRECT

103

1 IT'S GOT TO DO WITH ANYTHING FROM ENVIRONMENT TO THE
2 SURFACES TOUCHED TO THE CONDITION OF THE PERSON'S
3 HAND TO THE CONDITION OF THE ITEM TOUCHED. IT CAN BE
4 TRANSFERRED TO SOME ITEMS BECAUSE OF SWEAT. A
5 FINGERPRINT IS A TRANSFER OF SWEAT, MOISTURE,
6 EPITHELIALS WHICH ARE SKIN CELLS, IT'S THAT
7 TRANSFERRED TO THE ITEM. IF YOU EXCUSE ME ONE SECOND
8 I'LL GET THE BAG THAT WAS RECEIVED. WHEN YOU TOUCH A
9 ITEM SUCH AS THIS, YOU CAN HOLD IT, ALL YOUR FINGER
10 DOES NOT TOUCH IT. WELL, NORMALLY WHEN A DRUG BAG IS
11 RECEIVED, WHEN I GET IT, IT'S TO PROCESS IT IT'S IN
12 SUCH FORM AS WADDED.

13 Q WE ARE MAKING A WRITTEN RECORD, DESCRIBE WHAT
14 YOU ARE HOLDING AND WHAT IT LOOKS LOOK?

15 A IT IS, I'M HOLDING A TISSUE FROM THE KLEENEX BOX
16 AND IT'S KIND OF WADDED UP. WHAT THAT SHOWS IS THAT
17 YOUR FINGER WOULD NOT TOUCH IN ONE PARTICULAR AREA,
18 IN A FLAT AREA, AS LIKE A FLAT PIECE OF PAPER OR A
19 FLAT CELLOPHANE BAG, A ZIPLOCK BAG, LIKE IT BE FLAT,
20 SO THE WHOLE FINGER COULD MAKE A COMPLETE IMPRESSION.
21 THAT IS ONE REASON YOU DO NOT GET THE FINGERPRINT ON
22 IT IS BECAUSE IT IS IN SUCH A MANNER WHERE NO, WHERE
23 YOUR FINGER DOES NOT TOUCH. WHEN YOU OPEN THE BAG UP
24 TO PROCESS IT, EXCUSE ME, THOSE AREAS ARE SEPARATED
25 AND YOU GET LITTLE SPECS WITH MAYBE ONE OR TWO

1 RIDGES. WELL, THERE IS PROBABLY SEVERAL HUNDRED
2 DIFFERENT RIDGES THROUGHOUT YOUR FINGER TIPS, ALL OF
3 THEM TOGETHER, AND YOU HAVE TO, SOME RIDGES FLOW
4 CONTINUOUSLY AND SOME DO NOT. THE ONES THAT DO NOT
5 FLOW CONTINUOUSLY YOU HAVE BIFURCATIONS AND/OR A Y
6 AND IT WOULD GO STRAIGHT UP AS A Y-SHAPE AND WHEN IT
7 FORKS THAT'S CALL A BIFURCATION. OR IT JUST STOP AND
8 THAT'S CALLED AN ENDING RIDGE. YOU MARK THOSE
9 POINTS. WHEN YOU FIND YOUR SUSPECT PRINT YOU LOOK AT
10 THOSE AND YOU MATCH THOSE POINTS, THE BIFURCATIONS,
11 THE ENDING RIDGES, THE DELTAS WHERE THE RIDGES START
12 IN ONE PART OF THE FINGER. IF THOSE ARE NOT ON
13 THERE, YOU CANNOT MATCH THAT FINGERPRINT.

14 Q LET ME ASK YOU A QUESTION. IS THERE A CERTAIN
15 THRESHOLD, A QUALITY CONTROL THRESHOLD, IN AMOUNT OF
16 FINGERPRINT YOU GOT TO HAVE TO BE ABLE TO PUT YOUR
17 REPUTATION ON THE LINE?

18 A YOU MEAN POINTS THAT MATCH?

19 Q YES.

20 A ME PERSONALLY THERE IS NOT A SET NUMBER, OKAY.
21 TO ENTER IN THE COMPUTER YOU HAVE TO HAVE 8 POINTS.

22 Q HOW MANY DOES THE FBI?

23 A THE FBI WANTS SIX POINTS ON WHAT WE CALL IFIS
24 WHICH IS INTERNATIONAL FINGERPRINT IDENTIFICATION
25 SYSTEM. WE USE 8 WITH SLED WHICH THE SOUTH CAROLINA

RAY BARNWELL

CROSS

105

1 SYSTEM. IT WILL STILL RUN ON THE FBI. I PERSONALLY
2 HAVE CALLED ON FIVE BECAUSE OF THE POINTS ARE SUCH IN
3 A TIGHT AREA AND HAD SOMEBODY ELSE VERIFY THAT THIS
4 IS A GOOD PRINT, BUT WE ALWAYS BACK IT UP WITH
5 ANOTHER PRINT WHERE WE HAD FIVE OR SIX SO WE COULD
6 SAY THESE TWO PRINTS. BUT WE ALWAYS USE AT LEAST 6
7 TO 8 MARKS, MOST OF THE TIME WE END UP COMING UP WITH
8 12 OR 14, EVEN MORE.

9 Q MR. BARNWELL, WHAT'S A SMUDGE?

10 A A SMUDGE IS WHEN YOU TOUCH A ITEM AND SMEAR IT,
11 YOUR FINGER DRAGS DOWN. IF SOMEONE WERE TO GRAB A
12 PLASTIC BAG AND PULL THEIR FINGER ACROSS IT, IT WOULD
13 SMEAR IT OR A SMUDGE IS THE SAME THING AS A SMEAR.

14 Q SO MOVEMENT CAN CAUSE A SMUDGE?

15 A MOVEMENT. IF YOU WAS TO THROW AN ITEM AND
16 WITHOUT MOVING YOUR HAND AWAY QUICKLY AS IN DROPPING,
17 IF YOU SLUNG IT OUT OF YOUR HAND, IT WOULD PULL A
18 SMUDGE TO IT. MORE LIKE, KIND OF SLINGING A FRISBEE,
19 IT SLINGS OFF YOUR HAND AND THROWING A BASE BALL
20 WOULD THROW MORE BECAUSE IT'S MORE OF A THROW THAN A
21 SLING.

22 Q THANK YOU VERY MUCH. THAT'S ALL WE HAVE,
23 OFFICER.

24 THE COURT: MS. INZERILLO.

25 CROSS EXAMINATION BY MS. INZERILLO:

1 Q GOOD AFTERNOON.

2 A HELLO, MA'AM.

3 Q AS YOU JUST TESTIFIED PART OF THE WAY THAT YOU
4 FIND FINGERPRINTS ON AN OBJECT HAS AS MUCH TO DO WITH
5 THE ENVIRONMENT AS IT DOES WITH ACTUAL FINGERPRINT,
6 IS THAT CORRECT?

7 A THAT'S CORRECT.

8 Q OKAY. SO, FOR EXAMPLE, LIKE YOU SAY THERE WAS
9 SWEAT INVOLVED THAT COULD IMPAIR THE QUALITY OF PRINT
10 OR WHETHER YOU CAN EVEN LIFT A PRINT?

11 A MOST OF THE TIME IF THERE IS MORE SWEAT YOU GET
12 BETTER PRINTS, LESS SWEAT IS LESS OF A PRINT, IF YOU
13 UNDERSTAND.

14 Q OKAY.

15 A THE SWEAT SEEMS TO HOLD, SWEAT, ALL SWEAT IS IS
16 MOISTURE AND OILS FROM YOUR SKIN AND THAT --

17 Q CREATES A BETTER PRINT?

18 A ---TENDS TO MAKE A BETTER PRINT.

19 Q AND THIS IS ASSUMING THAT CONDITIONS ARE RIPE
20 FOR THE PERSON'S FINGERPRINT AND THE RIGHT AMOUNT OF
21 SWEAT ON THAT, ON THAT OBJECT TO LEAVE A FINGERPRINT,
22 IS THAT CORRECT? THAT'S ONE OF THE UNDERLYING
23 ASSUMPTIONS?

24 A YES. I MEAN TO GET THE BEST PRINT IN THE WORLD
25 YOU NEED THE BEST CONDITIONS.

RAY BARNWELL

CROSS

107

1 Q RIGHT. YOU BECAME INVOLVED IN THIS CASE IN THE
2 TESTING SCIENTIFIC PORTION OF IT?

3 A CORRECT.

4 Q OKAY. AND YOU GOT INVOLVED IN ORDER TO TEST THE
5 BAGGY?

6 A TO TEST THE BAG FOR FINGERPRINTS. I HAD
7 RECEIVED A REQUEST TO DO SO AND THAT'S WHAT I DID.

8 Q AND YOU WERE NOT ON SCENE?

9 A NO.

10 Q THIS NIGHT. OKAY. SO YOU DON'T KNOW HOW THIS
11 BAGGY WAS HELD?

12 A NO, I DO NOT.

13 Q OKAY. YOU DON'T KNOW THE MANNER IN WHICH WAS
14 RELEASED FROM SOMEONE'S HAND?

15 A NO, I DO NOT.

16 Q OKAY. AND IF SOMEONE ELSE WERE TO HAVE PICKED
17 UP THE BAG RIGHT AFTER IT WAS DROPPED THAT TOO COULD
18 IMPAIR YOUR ABILITY TO LIFT A LATENT PRINT?

19 A THAT'S CORRECT.

20 Q IS THAT CORRECT? OKAY. AND YOU DID A REPORT IN
21 THIS CASE?

22 A YES, I DID.

23 Q AND IN THAT REPORT YOU ESSENTIALLY SAID WHAT YOU
24 JUST SAID HERE THAT YOU COULDN'T PULL A LATENT PRINT?

25 A THE DATE OF THE REPORT IS THE EXACT DAY, I THINK

1 IT SAYS ON FRIDAY, FRIDAY A WEEK AGO, WAS THE DAY I
2 PROCESSED IT.

3 Q YOU PROCESSED IT AND THAT WAS 9/28/07?

4 A I THINK THAT WAS THE 28.

5 MS. INZERILLO: MAY I APPROACH, YOUR
6 HONOR.

7 Q I DON'T WANT TO BE UNFAIR. I WANT YOU TO BE
8 SURE.

9 A IT SAYS 9/28 AND THAT WOULD HAVE BEEN THE DAY.
10 THE DAY I DID THE REPORT IS THE DAY THAT I PROCESSED
11 IT. I THINK IT WAS THIS PAST FRIDAY.

12 Q OKAY. AND THAT'S YOUR NAME THERE?

13 A YES.

14 Q THAT YOU TYPED IN.

15 A THAT'S MY UNIT'S SUPERVISOR SIGNATURE.

16 Q OKAY. AND THE METHOD THAT YOU USE TO TEST THE
17 BAG IS YOU PUT BLACK POWDER ON IT?

18 A DIFFERENT THINGS YOU USE DIFFERENT ITEMS, BUT ON
19 THIS ITEM, YES, I PUT, I USED REGULAR BLACK POWDER
20 AND MAGNETIC. MAGNETIC SEEMS TO WORK BETTER ON SOME
21 ITEMS BUT IT'S NOT AS DARK SO IF WE USE MAGNETIC
22 POWDER FIRST AND THEN USE REGULAR POWDER SECOND IF WE
23 DON'T GET IT, IF WE DO NOT RECEIVE ANYTHING ON, WITH
24 THE MAGNETIC.

25 MS. INZERILLO: NO FURTHER QUESTIONS, YOUR

MATT HALL

DIRECT

109

1 HONOR.

2 MR. SPRINGS: NOTHING FURTHER.

3 THE COURT: YOU CAN STEP DOWN AND BE
4 EXCUSED. WE APPRECIATE YOUR TIME.

5 A THANK YOU, SIR.

6 THE COURT: THANK YOU. CALL YOUR NEXT
7 WITNESS.

8 MS. ANDERSON: THE STATE CALLS MATT HALL.

9 MATT HALL, BEING FIRST DULY

10 SWORN, TESTIFIED AS FOLLOWS:

11 DIRECT EXAMINATION BY MS. ANDERSON:

12 Q IF YOU WOULD PLEASE STATE YOUR NAME FOR THE
13 RECORD AGAIN?

14 A MATTHEW HALL.

15 Q WHERE ARE YOU EMPLOYED?

16 A ROCK HILL POLICE DEPARTMENT.

17 Q WHAT ARE YOUR DUTIES AT ROCK HILL POLICE
18 DEPARTMENT?

19 A I'M CURRENTLY OVER THE PROPERTY AND EVIDENCE
20 DIVISION AT THE POLICE DEPARTMENT.

21 Q WHAT DUTIES DO YOU PERFORM AT ROCK HILL POLICE
22 DEPARTMENT?

23 A I'M PRIMARILY RESPONSIBLE FOR TAKING EVIDENCE
24 THAT'S LOGGED IN ON A DAILY BASIS FROM THE OFFICERS
25 LOGGING THAT INTO THE EVIDENCE ROOM INTO OUR COMPUTER

1 SYSTEM AND MAINTAINING IT IN OUR FACILITY UNTIL IT'S
2 NEEDED FOR COURT OR DESTRUCTION.

3 MS. ANDERSON: IF I MAY APPROACH THE
4 WITNESS.

5 THE COURT: CERTAINLY.

6 Q I'M SHOWING YOU WHAT'S BEEN MARKED AS STATE'S
7 EXHIBIT THREE, HAVE YOU EVER SEEN THAT BEFORE?

8 A YES, I HAVE.

9 Q WHERE DID YOU GET THAT?

10 A THIS WAS, I RECOVERED THIS FROM OUR EVIDENCE
11 ROOM.

12 Q HAD IT BEEN TAMPERED WITH?

13 A NO. WHEN IT CAME TO MY CUSTODY IT WAS STILL
14 SEALED FROM THE ORIGINAL SEALING OFFICER.

15 Q WAS IT CONTINUOUSLY IN YOUR CUSTODY AND CONTROL
16 WHEN YOU HAD IT?

17 A YES, IT WAS.

18 Q DID YOU CARRY THIS ANYWHERE?

19 A YES, I DID. I TRANSPORTED IT TO THE LAB HERE AT
20 THE MOSS JUSTICE CENTER.

21 Q AND THEN DID YOU BRING THAT BACK?

22 A YES, I DID.

23 Q ALL RIGHT. NOW AS PART OF YOUR DUTIES AT THE
24 ROCK HILL POLICE DEPARTMENT, DO YOU EVER ANALYZE
25 SUBSTANCES SUCH AS NARCOTICS OR CONTROLLED SUBSTANCE?

MATT HALL

DIRECT

111

1 A YES, WE DO TEST MARIJUANA AT THE POLICE
2 DEPARTMENT.

3 Q WHAT TYPE OF EDUCATION AND TRAINING OR
4 CERTIFICATION DO YOU HAVE IN ORDER TO TEST MARIJUANA?

5 A I ATTENDED TRAINING CERTIFICATION CLASS AT SLED
6 WHICH IS THE STATE LAW ENFORCEMENT DIVISION IN
7 COLUMBIA WHERE THEY DO CERTIFY US TO CONDUCT ANALYSIS
8 TO CERTIFY THAT IN FACT IT IS MARIJUANA.

9 Q HAVE YOU EVER BEEN QUALIFIED IN COURT AS AN
10 EXPERT IN THE FIELD OF TESTING MARIJUANA?

11 A YES, I HAVE.

12 Q DO YOU RECALL APPROXIMATELY HOW MANY TIMES?

13 A NUMEROUS TIMES. I COULDN'T GIVE YOU A NUMBER
14 THOUGH.

15 MS. ANDERSON: BEG THE COURT'S INDULGENCE.
16 YOUR HONOR, THE STATE WOULD OFFER MATT HALL AS AN
17 EXPERT IN THE FIELD OF TESTING MARIJUANA.

18 MS. INZERILLO: NO OBJECTION, YOUR HONOR.

19 THE COURT: I FIND HE'S QUALIFIED.

20 Q I'M SHOWING YOU NOW WHAT'S BEEN MARKED STATE'S
21 EXHIBIT ONE, DO YOU RECOGNIZE THAT?

22 A YES, I DO.

23 Q WHERE DID YOU GET THAT?

24 A FROM THE EVIDENCE ROOM AT THE POLICE DEPARTMENT
25 WHERE IT'S IN STORAGE.

1 Q HAD IT BEEN TAMPERED WITH?

2 A TAMPERED, IT HAD JUST BEEN EXAMINED BY ONE OF
3 OUR MARIJUANA ANALYSIS, THAT WAS THE ONLY THING, BUT
4 IT HAD BEEN RESEALED.

5 Q DID YOU TEST THIS YOURSELF?

6 A YES, I DID.

7 Q WHAT WAS THE RESULT DID YOU DETERMINE? DID YOU
8 PRODUCE A REPORT AS PART OF YOUR TESTING?

9 A YES, I DID.

10 Q I'M SHOWING YOU WHAT'S BEEN MARKED STATE'S
11 EXHIBIT FOUR, WHAT IS IS THAT?

12 A THIS IS THE ANALYSIS REPORT THAT I COMPLETED AS
13 A RESULT OF TESTING THE MARIJUANA.

14 Q WHAT DOES YOUR REPORT INDICATE?

15 A IT DID TEST POSITIVE AS MARIJUANA WITH A WEIGHT
16 THE .06 OUNCES.

17 MS. ANDERSON: YOUR HONOR, THE STATE WOULD
18 OFFER BOTH STATE'S EXHIBIT THREE THE MARIJUANA AND
19 STATE'S EXHIBIT FOUR THE REPORT INTO EVIDENCE.

20 MS. INZERILLO: NO OBJECTION, YOUR HONOR.

21 THE COURT: BE RECEIVED WITHOUT OBJECTION.

22 MS. ANDERSON: I HAVE NOTHING FURTHER.

23 PLEASE ANSWER ANY QUESTIONS MS. INZERILLO MAY HAVE.

24 A YES, MA'AM.

25 (STATE'S EXHIBITS 3 DRUGS & 4 REPORT

MATT HALL

CROSS

113

1 RECEIVED INTO EVIDENCE.)

2 CROSS EXAMINATION BY MS. INZERILLO:

3 Q AFTERNOON, DETECTIVE HALL.

4 A AFTERNOON.

5 Q I BELIEVE YOU JUST TESTIFIED YOU'RE EVIDENCE
6 CUSTODY FOR ROCK HILL POLICE DEPARTMENT?

7 A THAT'S CORRECT.

8 Q AND ESSENTIALLY THAT MEANS THAT YOU KEEP UP WITH
9 ALL THE EVIDENCE?

10 A YES, MA'AM.

11 Q OKAY. AND ONE OF THE WAYS THAT YOU MONITOR THE
12 EVIDENCE TO MAKE SURE YOU HAVE EVERYTHING IS YOU TAKE
13 THE EVIDENCE LOG THAT WAS PRODUCED IN THE CASE AND
14 YOU COMPARE IT WITH WHAT YOU HAVE IN THE EVIDENCE
15 LOCKER, IS THAT CORRECT?

16 A WELL, THERE IS A SHEET HERE THAT IT'S ALSO
17 TRACKED BY A COMPUTER ELECTRONICALLY BY THE BAR CODE.

18 Q OKAY.

19 A AND THAT'S HOW YOU TRACK EVERYTHING BY THAT
20 ELECTRONIC BAR CODE.

21 Q OKAY. BUT ARE THERE TIMES WHEN YOU REFER BACK
22 TO THE EVIDENCE LOG THAT WAS TURNED IN?

23 A OH, THERE MIGHT BE AN OCCASION YOU HAVE TO REFER
24 BACK TO IT.

25 Q AND, FOR EXAMPLE, IN THIS PARTICULAR CASE ON THE

1 EVIDENCE LOG, YOU WERE CAREFUL TO SIGN-IN AND OUT
2 THAT, YOU HAD SIGNED AT THE BOTTOM THAT YOU HAD
3 SIGNED IN AND OUT THE MARIJUANA, FOR EXAMPLE?

4 A CORRECT.

5 Q OKAY. AND ON THIS PROPERTY INVENTORY IT WAS
6 NOTED THAT OFFICER CHAVIS RECOVERED SOME DRUGS AND
7 OFFICER BREEDEN RECOVERED THE MARIJUANA, IS THAT
8 CORRECT?

9 A I'D HAVE TO REFER BACK TO THAT. I DON'T KNOW
10 OFF THE TOP OF MY HEAD.

11 Q LET ME SHOW YOU A COPY OF THIS.

12 A IT WOULD APPEAR, COULD YOU REPEAT YOUR QUESTION
13 AGAIN.

14 Q ACCORDING TO THAT EVIDENCE LOG, OFFICER BREEDEN
15 HAD RECOVERED THE MARIJUANA WHICH YOU JUST TESTIFIED
16 TO AND THEN OFFICER CHAVIS HAD RECOVERED THE DRUGS?

17 A THAT IS CORRECT.

18 Q OKAY. AND IF THEY HAD RECOVERED ANYTHING ELSE,
19 FOR EXAMPLE, BAGGIES OR SCALES OR ANYTHING THAT TOO
20 WOULD BE PUT ON THAT SHEET, IS THAT CORRECT?

21 A IF IT WAS RECOVERED AT THE SAME TIME OF THIS
22 INCIDENT, YES.

23 Q OKAY. AND YOU'VE REVIEWED ALL THE EVIDENCE TO
24 BRING TO COURT RELATED TO THIS CASE?

25 A THAT IS CORRECT.

CYNTHIA MITCHUM

DIRECT

115

1 Q AND NONE OF THE EVIDENCE INCLUDED ANY ADDITIONAL
2 BAGGIES?

3 A NO, IT WAS JUST THESE THREE ITEMS HERE.

4 Q OKAY. NO SCALES?

5 A NO.

6 Q THOSE ARE ALL THE QUESTIONS I HAVE. THANK YOU.

7 A UH-HUH.

8 THE COURT: MS. ANDERSON.

9 MS. ANDERSON: NOTHING FURTHER, YOUR
10 HONOR.

11 THE COURT: YOU MAY STEP DOWN AND BE
12 EXCUSED. WE APPRECIATE YOUR TIME. THANK YOU. CALL
13 YOUR NEXT WITNESS.

14 MS. ANDERSON: THE STATE CALLS CYNTHIA
15 MITCHUM.

16 CYNTHIA MITCHUM, BEING FIRST DULY
17 SWORN, TESTIFIED AS FOLLOWS:

18 DIRECT EXAMINATION BY MS. ANDERSON:

19 Q IF YOU WOULD PLEASE STATE YOUR NAME AGAIN FOR
20 THE RECORD?

21 A IT'S CYNTHIA MITCHUM.

22 Q WHERE ARE YOU EMPLOYED?

23 A I'M EMPLOYED WITH THE YORK COUNTY SHERIFF'S
24 OFFICE IN THE DRUG ANALYSIS LABORATORY.

25 Q WHAT ARE YOUR DUTIES OF YOUR INVOLVEMENT WITH

1 THE SHERIFF'S OFFICE?

2 A I RECEIVE EVIDENCE AND TEST THE EVIDENCE FOR
3 CONTROLLED AND NON-CONTROLLED SUBSTANCES.

4 Q WHAT EDUCATION AND TRAINING EXPERIENCE DO YOU
5 HAVE THAT WOULD QUALIFY YOU TO ANALYZE CONTROLLED
6 SUBSTANCES?

7 A I HAVE A BACHELOR OF SCIENCE DEGREE IN CHEMISTRY
8 WHICH I RECEIVED FROM WINTHROP UNIVERSITY IN 1990.
9 PRIOR TO BEING AT THE SHERIFF'S OFFICE I WORKED WITH
10 SOUTH CAROLINA LAW ENFORCEMENT DIVISION COMMONLY
11 KNOWN AS SLED IN COLUMBIA, SOUTH CAROLINA, FOR SEVEN
12 AND A HALF YEARS AND I'VE BEEN HERE FOR SEVEN AND A
13 HALF YEARS.

14 Q HAVE YOU EVER BEEN QUALIFIED IN COURT AS AN
15 EXPERT IN THE FIELD OF CHEMICAL DRUG ANALYSIS AND
16 IDENTIFICATION?

17 A YES, I HAVE.

18 Q DO YOU RECALL APPROXIMATELY HOW MANY TIMES?

19 A EXCEEDED 200 TIMES.

20 Q DO YOU ANALYZE SUBSTANCES SUCH AS NARCOTICS AND
21 ILLEGAL DRUGS AS PART OF YOUR DUTIES?

22 A YES, I DO.

23 MS. ANDERSON: YOUR HONOR, THE STATE WOULD
24 OFFER CYNTHIA MITCHUM AN EXPERT IN CHEMICAL ANALYSIS
25 AND IDENTIFICATION OF SUBSTANCES.

CYNTHIA MITCHUM

DIRECT

117

1 THE COURT: ANY VOIR DIRE?

2 MS. INZERILLO: NO OBJECTION.

3 THE COURT: I FIND SHE IS QUALIFIED.

4 Q I'M SHOWING YOU WHAT'S BEEN MARKED AS STATE'S
5 EXHIBIT THREE, DO YOU RECOGNIZE THAT?

6 A YES, I DO.

7 Q HOW DO YOU RECOGNIZE IT?

8 A I CAN RECOGNIZE IT WITH MY NAME AND THE CHAIN OF
9 CUSTODY AND ALSO WITH MY SIGNATURE AND INITIALS ON
10 DIFFERENT PARTS OF THE SEAL.

11 Q OKAY. WHERE DID YOU GET IT?

12 A I RECEIVED THIS FROM THE MOSS JUSTICE DROP BOX.

13 Q IS THAT A SECURE FACILITY AS PART OF THE
14 EVIDENCE ROOM?

15 A IT'S NOT PART OF THE EVIDENCE ROOM, IT'S RIGHT
16 BESIDE THE EVIDENCE ROOM, AND WHAT THEY BASICALLY ARE
17 IS THEY LOOK LIKE THE MAIL BOXES YOU WOULD SEE AT THE
18 POST OFFICE, ONLY THEY HAVE LOCKS ON THE FRONT OF
19 THEM, AND THEY ARE SECURED IN THE BOTTOM. THIS
20 PARTICULAR BOX I HAVE THE ONLY KEYS TO GET TO THE
21 DRUGS TO.

22 Q WHEN YOU RECEIVED THAT DID YOU OPEN IT AND TEST
23 IT?

24 A YES, I DID.

25 Q EXPLAIN HOW YOU TESTED THE SUBSTANCE IN THE BAG?

1 A BASICALLY WHAT I DID IS A CHEMICAL ANALYSIS AND
2 AN INSTRUMENTAL ANALYSIS ON THIS.

3 Q WHAT DID YOU DO AFTER YOU PUT THE CONTENTS BACK
4 IN THE BAG?

5 A I SEALED THE BAG AND THEN KEPT IT UNTIL IT WAS
6 TURNED BACK OVER TO ROCK HILL PD.

7 MS. ANDERSON: BEG THE COURT'S INDULGENCE.

8 Q DID YOU PRODUCE A WRITTEN REPORT AS PART OF
9 THIS?

10 A YES.

11 Q DO YOU HAVE THAT WITH YOU?

12 A YES, I DO.

13 Q OKAY.

14 (STATE'S EXHIBIT FIVE REPORT MARKED
15 FOR IDENTIFICATION.)

16 Q I HAD THAT MARKED AS STATE'S NUMBER FIVE. I
17 HAND THAT BACK TO YOU. WHAT DOES YOUR REPORT
18 INDICATE?

19 A STATE'S EXHIBIT NUMBER THREE WHICH IS ITEM
20 NUMBER ONE IN THIS CASE WAS FOUND TO BE COCAINE BASE
21 ALSO KNOWN AS CRACK IN THE AMOUNT OF 6.21 GRAMS OR
22 95.82 GRAINS CONTROLLED TWO SUBSTANCE.

23 MS. ANDERSON: YOUR HONOR, THE STATE WOULD
24 OFFER STATE'S EXHIBIT THREE AND STATE'S EXHIBIT FIVE,
25 STATE'S EXHIBIT THREE AND FIVE.

1 THE COURT: ANY OBJECTION?

2 MS. INZERILLO: YES, YOUR HONOR. MAY WE
3 APPROACH.

4 (BENCH CONFERENCE.)

5 THE COURT: YOU OBJECT?

6 MS. INZERILLO: YES, YOUR HONOR, I OBJECT.

7 THE COURT: WELL, I SUSTAIN THE OBJECTION.

8 Q WHAT DID YOU DO AFTER YOU TESTED THE SUBSTANCE?

9 A WHAT I DO IS REMOVE THE DRUGS FIRST FROM THIS
10 INNER BAG AND THEN ONCE I DO MY ANALYSIS I PUT THE
11 INNER BAG AND THE SUBSTANCES I TESTED BACK IN THIS
12 OUTER BAG AND THEN SEAL THAT SHUT AND IT REMAINS IN
13 MY CUSTODY UNTIL I RETURN THIS THIS PARTICULAR
14 EVIDENCE BACK TO ROCK HILL PD.

15 Q NOW DID THE ROCK HILL POLICE DEPARTMENT ACTUALLY
16 COME AND PICK THAT BAG UP?

17 A YES, MATT HALL DID.

18 MS. ANDERSON: THE STATE WOULD OFFER
19 STATE'S EXHIBIT NUMBER THREE INTO EVIDENCE.

20 MS. INZERILLO: YOUR HONOR, I WOULD STILL
21 OBJECT.

22 THE COURT: I SUSTAIN THE OBJECTION.

23 MR. SPRINGS: MAY WE TAKE THIS UP OUTSIDE
24 THE JURY'S PRESENCE.

25 THE COURT: TAKE THE JURY TO THE JURY

1 ROOM.

2 (THE JURY EXITS THE COURTROOM AT 02:47
3 PM.)

4 THE COURT: I MAY HAVE MISSED IT BUT I
5 DON'T RECALL HIM TESTIFYING THAT HE TOOK ANYTHING TO
6 THE DROP BOX BUT I'LL BE GLAD TO HEAR FROM YOU,
7 MR. SPRINGS.

8 MR. SPRINGS: OFFICER HALL SAID HE BROUGHT
9 IT OUT HERE TO THE MOSS JUSTICE CENTER TO THE
10 EVIDENCE FACILITY. THE DROP BOX IS CONSIDERED PART
11 OF THE EVIDENCE FACILITY, IT SITS RIGHT OUTSIDE THEIR
12 WINDOW; I THINK THE GENERAL UNDERSTANDING THAT THE
13 EVIDENCE DROP BOX IS PART OF THE EVIDENCE FACILITY.

14 THE COURT: WELL, YOU MAY HAVE A GENERAL
15 UNDERSTANDING BUT WE GOT A JURY HERE. YOU GOT TO
16 PROVE YOUR CASE. YOU CAN'T GO ON GENERAL
17 UNDERSTANDING. THIS MAN IS ENTITLED TO PROVING YOUR
18 CASE, SOMETIMES IT'S QUITE A HURDLE, BUT THAT DOESN'T
19 PLACE THE HURDLE THERE, THE HURDLE IS THERE FOR A
20 REASON. WE'LL TAKE A BREAK AND YOU CAN LOOK AT THE
21 TESTIMONY, I DON'T RECALL HIM TESTIFYING ABOUT THAT
22 LINK IN THE CHAIN. HE MAY HAVE AND I MIGHT HAVE JUST
23 MISSED IT. I'LL LET YOU TRY TO FIND THAT. WE'LL
24 TAKE A BREAK.

25 MR. SPRINGS: OKAY.

1 (COURT'S IN RECESS AT 02:49 PM.)

2 (COURT RESUMES AT 03:10 PM.)

3 THE COURT: WHERE ARE WE, MR. SPRINGS AND
4 MS. ANDERSON?

5 MS. ANDERSON: AND, YOUR HONOR, I DON'T
6 THINK THE STATE HAS ANY FURTHER QUESTIONS FOR
7 MRS. MITCHUM. WHAT WE WOULD DO IS TO BEG THE COURT'S
8 INDULGENCE TO RECALL MATT HALL IN ORDER TO CLEAN UP
9 ANYTHING.

10 THE COURT: ALL RIGHT. SO I GUESS READING
11 BETWEEN THE LINES IS THAT LINK IS MISSING?

12 MR. SPRINGS: WELL, WE WANT TO BE
13 ABSOLUTELY SURE AND NOT JUST GET CLOSE BUT GET ON THE
14 MONEY SO WE JUST WANT TO MAKE IT MORE PRECISE.

15 THE COURT: ALL RIGHT. WE'VE BEEN LOOKING
16 FOR THE MISSING LINK FOR YEARS I GUESS WE'LL HAVE TO
17 CONTINUE. SO THE EVIDENCE IS NOT IN AND NOW IS CROSS
18 EXAMINATION?

19 MS. ANDERSON: THAT'S CORRECT, YOUR HONOR.

20 THE COURT: ALL RIGHT. AND YOUR POSITION
21 AS FAR AS RECALLING WE'LL GET TO IN A MINUTE. GO
22 AHEAD.

23 MS. INZERILLO: OKAY. YOU SAID WE WILL
24 GET TO IT IN A MINUTE OR HANDLE IT NOW?

25 THE COURT: LET'S GO AHEAD AND DO THE

1 CROSS OF HER AND THEN RECALL OR DO YOU WANT.

2 MR. SPRINGS: WE NEED THE JURY.

3 THE COURT: I KNOW BUT WE GOT TO, DO YOU
4 WANT RECALL HIM NOW OR.

5 MR. SPRINGS: WE'RE THROUGH WITH MRS.
6 MITCHUM AND SO AT THIS POINT.

7 THE COURT: BRING IN THE JURY AND YOU ARE
8 READY FOR CROSS?

9 MS. INZERILLO: YES, YOUR HONOR.

10 MR. SPRINGS: THEN WE RECALL MATT HALL.

11 THE COURT: ALL RIGHT. BRING IN THE JURY.

12 (THE JURY RETURNS TO THE COURTROOM AT
13 03:13 PM.)

14 THE COURT: ALL RIGHT. YOU MAY PROCEED
15 WITH CROSS EXAMINATION.

16 MS. INZERILLO: THANK YOU, YOUR HONOR. WE
17 HAVE NO QUESTIONS FOR MRS. MITCHUM.

18 THE COURT: ALL RIGHT. YOU MAY STEP DOWN.
19 THANK YOU. WE APPRECIATE YOUR TIME. ALL RIGHT.
20 CALL YOUR NEXT WITNESS.

21 MS. ANDERSON: I ASK TO RECALL MATT HALL.

22 THE COURT: ALL RIGHT.

23 MS. INZERILLO: WE WOULD OBJECT TO
24 RECALLING THIS WITNESS.

25 THE COURT: I OVERRULE THE OBJECTION. YOU

MATT HALL

REDIRECT

123

1 ARE STILL UNDER OATH.

2 MR. HALL: YES, SIR.

3 REDIRECT EXAMINATION BY MS. ANDERSON:

4 Q I WANT TO ASK YOU ABOUT STATE'S EXHIBIT THREE
5 WHICH IS THE CRACK COCAINE, DID YOU TAKE STATE'S
6 EXHIBIT THREE ANYWHERE?

7 A I TRANSPORTED IT HERE TO THE LAB TO THE DROP
8 LOCKER THAT THEY HAVE FOR THE LAB FOR SUBMITTING
9 EVIDENCE.

10 Q SO WHEN YOU BROUGHT IT OUT, YOU PUT IT, WHERE
11 WAS IT EXACTLY YOU PUT IT?

12 A IN THE LAB DROP LOCKER.

13 Q NOW YOU SAID EARLIER THAT YOU PICKED IT UP AND
14 BROUGHT IT BACK TO ROCK HILL, IS THAT CORRECT?

15 A THAT IS CORRECT.

16 Q DID FORENSICS COME AND CHECK IT AFTER YOU
17 BROUGHT IT BACK TO ROCK HILL?

18 A THAT IS CORRECT, THEY DID.

19 MS. ANDERSON: BEG THE COURT'S INDULGENCE.

20 Q JUST TO BE COMPLETELY CLEAR, WHEN YOU PICKED IT
21 UP TO TAKE IT BACK TO ROCK HILL WHERE DID YOU PICK IT
22 FROM?

23 A I PICKED IT FROM THE LAB. I ACTUALLY HAD TO
24 SIGN IT OUT FROM THE CHEMIST.

25 MS. ANDERSON: THAT'S ALL I HAVE, YOUR

1 HONOR.

2 THE COURT: DO YOU HAVE ANY QUESTIONS ON
3 THAT?

4 MS. INZERILLO: YES, YOUR HONOR.

5 CROSS EXAMINATION BY MS. INZERILLO:

6 Q MR. HALL, WHEN YOU INDICATED THAT FORENSICS
7 CHECKED IT OUT WHAT IS THE BASIS OF YOUR KNOWLEDGE OF
8 THAT?

9 A ONE OF THE FORENSICS OFFICERS HAD TOLD ME THEY
10 HAD TO TEST THE BAGGY FOR FINGERPRINTS.

11 Q OKAY. SO YOU ARE NOT PRESENT WHEN THAT WAS
12 DONE?

13 A NO, I WAS NOT.

14 MS. INZERILLO: NO FURTHER QUESTIONS, YOUR
15 HONOR.

16 MS. ANDERSON: YOUR HONOR, THE STATE WOULD
17 MOVE TO ADMIT STATE'S EXHIBITS THREE AND FIVE INTO
18 EVIDENCE.

19 MS. INZERILLO: YOUR HONOR, WE STILL WOULD
20 HAVE AN OBJECTION TO STATE'S EXHIBIT THREE.

21 THE COURT: ALL RIGHT. I OVERRULE THE
22 OBJECTION. I'LL ALLOW IT IN.

23 MS. INZERILLO: ACTUALLY, MAY WE JUST
24 APPROACH?

25 THE COURT: YES.

MARK SCHURIG

DIRECT

125

1 (BENCH CONFERENCE.)

2 THE COURT: I'LL OVERRULE THE
3 OBJECTION. I'LL LET YOU PUT ANYTHING ON THE RECORD
4 YOU'D LIKE.

5 MS. INZERILLO: THANK YOU, YOUR HONOR.

6 (STATE'S EXHIBITS 3 DRUGS & 5 REPORT
7 RECEIVED INTO EVIDENCE.)

8 THE COURT: ANYTHING ELSE OF THIS WITNESS?

9 MS. ANDERSON: NOTHING FURTHER FROM THIS
10 WITNESS, YOUR HONOR.

11 THE COURT: MS. INZERILLO.

12 MS. INZERILLO: NO, YOUR HONOR.

13 THE COURT: YOU CAN STEP DOWN AGAIN. CALL
14 YOUR NEXT WITNESS.

15 MS. ANDERSON: THE STATE CALLS OFFICER
16 SCHURIG.

17 MARK SCHURIG, BEING FIRST
18 DULY SWORN, TESTIFIED AS FOLLOWS:

19 DIRECT EXAMINATION BY MS. ANDERSON:

20 Q IF YOU WOULD PLEASE STATE YOUR NAME FOR THE
21 RECORD?

22 A MARK SCHURIG.

23 Q ARE YOU A POLICE OFFICER?

24 A YES, MA'AM, I AM.

25 Q HOW LONG HAVE YOU BEEN A POLICE OFFICER?

1 A GOING ON 12 YEARS.

2 Q ARE YOU ASSIGNED TO THE NARCOTICS TASK FORCE?

3 A YES, I AM.

4 Q HOW LONG HAVE YOU BEEN ASSIGNED TO NARCOTICS
5 WORK?

6 A THREE YEARS.

7 Q HAVE YOU YOURSELF BEEN INVOLVED IN CRACK COCAINE
8 AND DRUG DEALING INVESTIGATIONS?

9 A YES, I HAVE.

10 MS. INZERILLO: OBJECTION, YOUR HONOR. I
11 WOULD OBJECT TO THIS WITNESS.

12 THE COURT: LET ME LET THE JURY GO TO THE
13 JURY ROOM. LET YOU GO TO THE JURY ROOM.

14 (THE JURY EXITS THE COURTROOM AT 03:18
15 PM.)

16 THE COURT: ALL I HEARD SO FAR IS HIS NAME
17 BUT BASICALLY --

18 MS. INZERILLO: YOUR HONOR, OUR
19 UNDERSTANDING IS THAT OFFICER SCHURIG HAD NO
20 RELATIONSHIP TO THIS CASE.

21 THE COURT: LET'S DO A PROFFER. LET'S SEE
22 WHAT YOU WANT HIM TO SAY.

23 MS. ANDERSON: YES, YOUR HONOR.

24 THE COURT: OR WHAT YOU EXPECT HIM TO SAY.
25 IN CAMERA TESTIMONY BY MS. ANDERSON:

MARK SCHURIG

IN CAMERA

127

1 Q OFFICER, AS PART OF YOUR EXPERIENCE IN CRACK
2 COCAINE INVESTIGATIONS, HAVE YOU COME TO KNOW WHAT A
3 TYPICAL STREET CORNER DOSAGE OF CRACK COCAINE WOULD
4 BE?

5 A YES.

6 Q WHAT IS THAT?

7 A ANYWHERE BETWEEN .1 AND .2 GRAMS.

8 Q AND WHAT WOULD BE THE VERY SLANG TERMS FOR THIS,
9 WOULD THAT BE THE INTOXICATING DOSE, CONSIDERED AN
10 INTOXICATING DOSE?

11 A ANY DOSE IS AN INTOXICATING DOSE.

12 Q WHAT ARE THE VERY SLANG TERMS FOR AN
13 INTOXICATING DOSE OF THAT?

14 A JUST THAT PARTICULAR WEIGHT WOULD BE JUST A \$20
15 PIECE, EITHER A 20 OR A DUB OR SOMETHING TO THAT
16 EFFECT.

17 Q AND WHAT WOULD BE THE TYPICAL WEIGHT OF THIS
18 \$20?

19 A .1 TO .2 GRAMS.

20 Q AND WHAT WOULD THAT COST?

21 A 20 BUCKS.

22 Q DID THE ROCK HILL STREET CRIMES UNIT CALL YOU IN
23 ON THIS CASE?

24 A YES, THEY DID.

25 Q DID YOU MEET THEM AT THE ROCK HILL CITY POLICE

1 DEPARTMENT?

2 A YES, I DID.

3 Q DID YOU ACTUALLY SEE THE DEFENDANT CHRISTOPHER
4 ROBINSON?

5 A I DID.

6 Q DID YOU TAKE ANY MONEY OFF OF HIM?

7 A YES, I DID.

8 Q ARE YOU FAMILIAR WITH THE SCHOOL LOCATED AT
9 RUSSELL STREET?

10 A I AM.

11 Q DO YOU KNOW WHAT THE NAME OF THAT SCHOOL IS?

12 A THE SPECIFIC NAME, NO, I DO NOT. I'VE ALWAYS
13 CALLED IT CITIES IN SCHOOLS.

14 Q DO YOU KNOW WHAT THE SIGN OUT FRONT SAYS?

15 A CITIES IN SCHOOLS.

16 MS. ANDERSON: BEG THE COURT'S INDULGENCE.

17 Q DO YOU RECALL HOW MUCH MONEY YOU TOOK OFF THE
18 DEFENDANT?

19 A I BELIEVE \$531, I BELIEVE.

20 Q WHERE WAS THAT MONEY PUT?

21 A WHERE WAS THE MONEY PUT AFTER I TOOK IT?

22 Q YES.

23 A INTO A GOVERNMENT BANK ACCOUNT.

24 MS. ANDERSON: NOTHING FURTHER, YOUR
25 HONOR.

MARK SCHURIG

IN CAMERA

129

1 MS. INZERILLO: YOUR HONOR, WE HAVE NO
2 QUESTIONS FOR HIM.

3 THE COURT: ALL RIGHT. WHAT'S THE PURPOSE
4 OF HIS TESTIMONY?

5 MS. ANDERSON: YOUR HONOR, THIS OFFICER
6 WAS INVOLVED IN THE CASE IN TERMS OF TAKING THE MONEY
7 OFF OF THE DEFENDANT SO HE DOES HAVE THE PERSONAL
8 KNOWLEDGE ABOUT TAKING THE MONEY OFF OF HIM. HE ALSO
9 HAS FAMILIARITY WITH THE RUSSELL STREET SCHOOL THAT
10 IS INVOLVED IN THE CASE, AND HE WOULD ALSO BE
11 TESTIFYING AS TO STREET VALUE OF THE CRACK COCAINE
12 AND HOW IT WAS SOLD.

13 THE COURT: ALL RIGHT.

14 MS. INZERILLO: YOUR HONOR, FIRST
15 REGARDING THE MONEY, WHEN WE ADDRESSED THIS IN
16 MOTIONS IN LIMINE AND THE STATE PROFFERED THEIR CASE
17 AT THAT TIME AND THE ONLY OFFICER THEY PUT UP WAS
18 OFFICER BREEDEN. UPON MY FURTHER QUESTIONING ABOUT
19 ANYTHING HAPPENING AFTER THAT REGARDING THE MONEY OR
20 ANY SORT OF FORFEITURE OR ANYTHING LIKE THAT, THE
21 STATE INDICATED TO THE COURT THEY WERE NOT GOING TO
22 INTRODUCE ANY EVIDENCE REGARDING THAT AND SO --

23 THE COURT: NO, I THINK WHAT THEY SAID
24 THEY WEREN'T GOING TO INTRODUCE THE CURRENCY. THEY
25 SAID THEY WERE GOING, THEY MADE A -- MR. SPRINGS I

1 BELIEVE IT WAS MADE A RATHER GENERAL REMARK THAT THEY
2 WERE GOING TO TALK ABOUT THE MONEY, THEY SAID THEY, I
3 TOOK THAT TO MEAN THEIR WITNESSES, BUT THEY WEREN'T
4 GOING TO INTRODUCE THE CURRENCY, SO I DID NOT HEAR
5 THEM SAY THAT THEY WERE GOING TO HAVE ONE OFFICER
6 THAT'S GOING TO TESTIFY ABOUT THE MONEY AND THAT'S
7 GOING TO BE IT.

8 MS. INZERILLO: YES, SIR. MY
9 UNDERSTANDING OF THAT WAS WHEN WE FURTHER INQUIRED
10 AFTER THAT REMARK REGARDING ANY FORFEITURE OR
11 ANYTHING PAST OFFICER BREEDEN TAKEN THE MONEY AS
12 PROPERTY, THEY INDICATED THAT THEY WERE JUST GOING TO
13 MENTION OFFICER BREEDEN TOOK THE MONEY AND THAT WAS
14 IT.

15 THE COURT: WELL, THAT WASN'T WHAT I
16 UNDERSTOOD SO.

17 MR. SPRINGS: THAT'S NOT WHAT I SAID. I
18 SAID WE'RE GOING TO TALK ABOUT IT BUT WE'RE NOT GOING
19 TO INTRODUCE IT, WE'RE NOT GOING TO GO INTO
20 FORFEITURE PROCEEDINGS, AND WE HAVEN'T.

21 THE COURT: THAT'S MY RECOLLECTION. ANY
22 OTHER OBJECTION?

23 MS. INZERILLO: NO FURTHER OBJECTION, YOUR
24 HONOR.

25 THE COURT: ALL RIGHT. BRING THE JURY

MARK SCHURIG

DIRECT

131

1 BACK IN.

2 (THE JURY RETURNS TO THE COURTROOM AT
3 03:23 PM.)

4 THE COURT: ALL RIGHT.

5 DIRECT EXAMINATION CONTINUED BY MS. ANDERSON:

6 Q THANK YOU. OFFICER SCHURIG, HAVE YOU YOURSELF
7 BEEN INVOLVED IN THE CRACK COCAINE DRUG DEALING
8 INVESTIGATIONS?

9 A MANY INVESTIGATIONS.

10 Q AS PART OF YOUR EXPERIENCE IN CRACK COCAINE
11 INVESTIGATIONS, HAVE YOU COME TO LEARN WHAT THE
12 TYPICAL STREET CORNER DOSE, THE AMOUNT OF CRACK
13 COCAINE THE ADDICT IS LOOKING FOR FOR INTOXICATING
14 HIGH?

15 A YES, THE APPROXIMATE WEIGHT IS .1 TO .2 GRAMS.

16 Q WHAT WOULD BE THE VERY SLANG TERMS FOR THIS
17 INTOXICATING DOSE?

18 A JUST A ROCK, A 20 PIECE, A DUB, THINGS SUCH AS
19 THAT.

20 Q THEN JUST, WHAT IS THE TYPICAL WEIGHT OF THIS
21 ROCK?

22 A ANYWHERE BETWEEN .1 AND .2 GRAMS.

23 Q AND WHAT DOES, WHAT DOES A ROCK COST? WHAT IS
24 THE PRICE ON THE STREET FOR IT?

25 A JUST A SINGLE ROCK IS 20 BUCKS.

1 Q DID THE ROCK HILL STREET CRIMES UNIT CALL YOU IN
2 ON THIS CASE?

3 A YES.

4 Q DID YOU MEET THEM AT THE ROCK HILL CITY POLICE
5 DEPARTMENT?

6 A I DID.

7 Q DID YOU ACTUALLY SEE THE DEFENDANT CHRISTOPHER
8 ROBINSON?

9 A I DID.

10 Q DID YOU TAKE ANY MONEY OFF OF HIM?

11 A YES.

12 Q DO YOU RECALL HOW MUCH MONEY?

13 A \$531.

14 Q DO YOU RECALL WHAT YOU DID WITH THE MONEY?

15 A WE TAKE IT AND PUT IT INTO A BANK ACCOUNT, A
16 GOVERNMENT BANK ACCOUNT, AND ONCE IT'S PUT IN THAT
17 BANK ACCOUNT WE NO LONGER HAVE ANY ACCESS OR DEALING
18 WITH IT.

19 Q OFFICER, ARE YOU FAMILIAR WITH THE SCHOOL
20 LOCATED ON RUSSELL STREET?

21 A I AM.

22 Q DO YOU KNOW WHAT THE NAME OF THE SCHOOL IS?

23 A THE CURRENT NAME, NO, I DO NOT. I'VE ALWAYS
24 CALLED IT CITIES IN SCHOOLS.

25 Q ARE YOU AWARE OF WHAT THE SIGN ON THE FRONT OF

MARK SCHURIG

CROSS

133

1 THE SCHOOL SAYS?

2 A CITIES IN SCHOOLS.

3 MS. ANDERSON: BEG THE COURT'S INDULGENCE.

4 THAT'S ALL I HAVE OF THIS OFFICER. PLEASE ANSWER ANY

5 QUESTIONS MS. INZERILLO MAY HAVE.

6 CROSS EXAMINATION BY MS. INZERILLO:

7 Q GOOD MORNING, OFFICER.

8 A HOW ARE YOU?

9 Q YOU WERE NOT INVOLVED IN THIS CASE AT MARKET
10 PLACE APARTMENTS?

11 A NO.

12 Q RIGHT. OKAY. YOUR INVOLVEMENT CAME AT THE ROCK
13 HILL LAW CENTER?

14 A YES.

15 Q OKAY. AND YOU TESTIFIED THAT YOU TOOK MONEY
16 FROM CHRISTOPHER ROBINSON?

17 A YES.

18 Q OKAY. DID YOU TAKE THAT MONEY AS EVIDENCE?

19 A NO.

20 Q DID YOU FILL OUT ANY RECEIPTS OR ANY PAPERWORK?

21 A YES.

22 Q TO MONITOR THE MONEY. DID YOU BRING THAT
23 PAPERWORK WITH YOU TODAY?

24 A NO.

25 Q DID YOU GIVE IT TO THE STATE?

1 A DID I GIVE IT TO THE STATE?

2 Q UH-HUH.

3 A THEY PROBABLY HAVE A COPY OF IT SOMEWHERE. I
4 FILLED OUT A SEIZURE PACKET FOR THE MONEY.

5 Q OKAY. DID YOU ATTEMPT TO TAKE PICTURES OF THE
6 MONEY?

7 A NO.

8 MS. INZERILLO: NO FURTHER QUESTIONS AT
9 THIS TIME BUT I WOULD LIKE TO APPROACH BEFORE THE
10 WITNESS IS EXCUSED.

11 THE COURT: ALL RIGHT. COME ON UP.

12 (BENCH CONFERENCE.)

13 THE COURT: YOU CAN STEP DOWN AND BE
14 EXCUSED. WE APPRECIATE YOUR TIME.

15 MR. SCHURIG: THANK YOU, YOUR HONOR.

16 THE COURT: CALL YOUR NEXT WITNESS.

17 MS. ANDERSON: THE STATE RESTS, YOUR
18 HONOR.

19 THE COURT: MEMBERS OF THE JURY PANEL, THE
20 STATE IS RESTING, THAT IS, THEY ARE TELLING US THAT
21 THEY HAVE PRESENTED THEIR CASE. THEY HAVE A RIGHT
22 UNDER CERTAIN CIRCUMSTANCES TO PRESENT EVIDENCE AT A
23 LATER TIME BUT BASICALLY YOU'VE HEARD THEIR CASE.
24 IT'S THE POINT WHERE I HAVE TO TAKE UP SOME MATTERS
25 OUTSIDE YOUR PRESENCE, SO I'M GOING TO LET YOU GO TO

1 THE JURY ROOM.

2 (THE JURY EXITS THE COURTROOM AT 03:29
3 PM.)

4 THE COURT: ANYTHING FROM THE STATE?

5 MR. SPRINGS: NOT ON THE TRIAL IN GENERAL,
6 NO.

7 THE COURT: WE'RE IN THE POINT OF THE
8 TRIAL WHERE THE DEFENSE HAS A RIGHT TO GO FORWARD IF
9 THEY WISH, YOU KNOW WHERE WE ARE SO YOU ARE SAYING
10 YOU DON'T HAVE ANYTHING.

11 MR. SPRINGS: WE HAVE NOTHING FROM THE
12 STATE.

13 THE COURT: ANYTHING FROM THE DEFENSE?

14 MS. INZERILLO: YES, YOUR HONOR, JUST A
15 COUPLE MATTERS. THE FIRST MATTER WOULD BE WE WOULD
16 MOVE FOR A DIRECTED VERDICT ON THE PROXIMITY CHARGE.
17 THE EVIDENCE THAT'S BEEN PRESENTED IS CONFUSING AT
18 BEST. THERE WAS ALLEGATION MADE BY THE INITIAL
19 OFFICER THAT THE SCHOOL IN QUESTION WAS COMMUNITIES
20 IN SCHOOLS AND THEN UPON FURTHER QUESTIONING ADMITTED
21 THAT WAS NO LONGER PRESENT. TWO OTHER OFFICERS HAVE
22 CALLED IT A FACILITY BY TWO OTHER NAMES, WITH NO
23 AGREEMENT AS TO THE ADDRESS OF THAT SCHOOL, OR THAT
24 PROPERTY IN ORDER TO HAVE THE STATE MEET ITS BURDEN
25 AS TO THE HALF MILE REQUIREMENT FOR PROXIMITY.

1 THE COURT: LET ME FIRST THE PROXIMITY,
2 THE TESTIMONY OF OFFICER BREEDEN WAS IT .4 BUT IT
3 WASN'T CLEAR TO ME, MY RECOLLECTION WAS THE TESTIMONY
4 WAS NOT FROM THE APARTMENTS TO THE SCHOOL AND NOT
5 FROM THE PLACE THE INCIDENT OCCURRED TO THE SCHOOL,
6 WE NEED TO LOOK BACK AT THAT, BUT THEN ON CROSS
7 EXAMINATION, AS I RECALL, YOU ASKED THE OTHER WITNESS
8 MR. CHAVIS, OFFICER CHAVIS, SOMETHING ABOUT IT BEING
9 WITHIN A HALF MILE AND HE SAID IT WAS, SO THERE IS
10 SOME TESTIMONY IT WAS WITHIN A HALF MILE ALTHOUGH I
11 HAD THAT CONCERN BASED ON BREEDEN'S TESTIMONY
12 BECAUSE, THAT'S MY RECOLLECTION BUT BASED ON THE
13 TESTIMONY OF OFFICER CHAVIS WHICH QUITE FRANKLY WAS
14 IN RESPONSE TO A QUESTION BY THE DEFENSE, I BELIEVE
15 THAT THERE IS SUFFICIENT EVIDENCE ON THAT ISSUE.

16 NOW WHAT ABOUT THE PUBLIC OR PRIVATE
17 SCHOOL ISSUE. YOU'VE ALLEGED IN YOUR INDICTMENT IT'S
18 WITHIN ONE HALF MILE OF THE GROUNDS OF COMMUNITIES IN
19 SCHOOLS A PUBLIC SCHOOL. THERE IS NO EVIDENCE THAT
20 THIS SCHOOL IS CALLED, THIS PLACE IS CALLED
21 COMMUNITIES IN SCHOOLS AND THERE IS NO EVIDENCE IT'S
22 A PUBLIC SCHOOL.

23 MR. SPRINGS: I DON'T THINK WE INTRODUCED
24 ANY EVIDENCE THAT IT WAS A PUBLIC SCHOOL, YOUR HONOR,
25 BUT BECAUSE IT COULD BE PUBLIC OR PRIVATE, I THINK

1 THE WORD PUBLIC IN THERE IS SUPERFLUOUS AND I DON'T
2 THINK WE ARE WEDDED TO IT.

3 THE COURT: I DON'T THINK IT IS AND
4 PARTICULARLY THERE IS A CASE WHERE THEY HELD A DAY
5 CARE CENTER WOULDN'T CONSTITUTE A PUBLIC OR PRIVATE
6 SCHOOL BECAUSE IT'S NOT ENUMERATED, SO SURELY THEY
7 USE THOSE WORDS FOR SOME PURPOSE. WHAT THEY USED
8 THOSE WORDS FOR TO MAKE SURE WESTMINSTER AND TRINITY
9 AND ALL THESE OTHER PLACES THAT ARE PRIVATE COULD BE
10 INCLUDED. IT'S CERTAINLY NOT SUPERFLUOUS.

11 MR. SPRINGS: WELL, WE HAVE TESTIMONY THAT
12 IT'S K THROUGH 8 GRADES OR K THROUGH 8 GRADE SCHOOL I
13 THINK.

14 THE COURT: I KNOW BUT YOU'VE ALLEGED IT'S
15 PUBLIC. THAT'S THE DIFFERENCE. I MEAN WESTMINSTER
16 HAS K THROUGH HIGH SCHOOL BUT IT DOESN'T MAKE IT
17 PUBLIC.

18 MR. SPRINGS: YES, BUT I'M, AGAIN WITH ALL
19 DUE RESPECT TO THE COURT, I DON'T THINK WE ARE WEDDED
20 TO THAT. IT SAYS PUBLIC OR PRIVATE SCHOOLS WOULD
21 APPLY. I DON'T THINK THE FACT THAT WE DIDN'T PROVE IT
22 WAS PUBLIC IS A FATAL FLAW. I JUST THINK WE NEEDED
23 TO PROVE IT WAS A SCHOOL. I THINK -- I DON'T HAVE
24 THE STATUTE IN FRONT OF ME BUT IT SAYS PUBLIC OR A
25 PRIVATE SCHOOL.

1 THE COURT: IT DOES. I LOOKED AT IT.

2 MR. SPRINGS: I THINK THE LEGISLATURE --

3 THE COURT: DON'T TELL ME WHAT YOU THINK
4 THEY ARE SAYING. LET'S SEE WHAT THEY DO SAY BECAUSE
5 WE CAN'T THINK FOR THEM.

6 MR. SPRINGS: NO, RIGHT.

7 THE COURT: AND WHAT THEY SAY IS: WITHIN
8 ONE HALF MILE OF THE GROUNDS OF A PUBLIC OR PRIVATE
9 ELEMENTARY, MIDDLE, OR SECONDARY SCHOOL.

10 MR. SPRINGS: YES. IN OTHER WORDS, ALL
11 SCHOOLS BECAUSE A SCHOOL IS EITHER PUBLIC OR IT'S
12 PRIVATE SO I DON'T THINK WE NEED TO INTRODUCE
13 TESTIMONY THAT IT WAS PUBLIC OR PRIVATE MAKING PUBLIC
14 SUPERFLUOUS TO THE INDICTMENT. THERE ISN'T ANY OTHER
15 KIND OF SCHOOL OTHER THAN PUBLIC OR PRIVATE.

16 THE COURT: WHAT ABOUT THE FACT THAT --
17 WELL, I'M GOING TO OVERRULE THE MOTION. I THINK THE
18 STATE NEEDS TO BE A LITTLE MORE CIRCUMSPECT IN THE
19 WAY THEY DRAW THESE INDICTMENTS BECAUSE YOU GOT
20 SOMETHING IN HERE THAT YOU HAVEN'T PROVED. IT WAS
21 WITHIN ONE HALF MILE OF A SCHOOL KNOWN AS COMMUNITY
22 IN SCHOOLS AND IT WAS A PUBLIC SCHOOL, BUT I THINK
23 THE STATUTE IS BROAD ENOUGH AND THEN WE GET BACK TO
24 THE JURISDICTIONAL QUESTION AND AN INDICTMENT, OF
25 COURSE, THE SUPREME COURT HAS RULED THAT INDICTMENTS

1 ARE NOTICE DOCUMENT AND I THINK THERE IS NO QUESTION
2 THAT THE WAY THE INDICTMENT IS SET FORTH THAT IT'S
3 CERTAINLY PUTS THE DEFENDANT ON NOTICE THAT IT WAS
4 WITHIN ONE HALF MILE OF A SCHOOL. THE ONLY QUESTION
5 THAT I MIGHT HAVE SOME CONCERN ABOUT IS THAT IT TELLS
6 IT WAS A SCHOOL CALLED COMMUNITY IN SCHOOLS WHICH
7 APPARENTLY THERE IS NO TESTIMONY THAT EVEN EXISTED AT
8 THIS TIME THAT THIS OCCURRED SO.

9 MR. SPRINGS: I AGREE WITH YOU.

10 THE COURT: I DON'T KNOW IF THAT'S A FATAL
11 FLAW OR NOT. I'M KIND OF WRESTLING WITH IT TO BE
12 HONEST WITH YOU.

13 MR. SPRINGS: WELL, I THINK THAT THE --
14 FIRST OF ALL, LET ME AGREE WITH THE COURT, THIS ISN'T
15 MY BEST EFFORT. I COULD HAVE MADE THIS INDICTMENT
16 MUCH BETTER AND MORE PRECISE. IN MY DEFENSE, IT HAS
17 CHANGED THE NAME TO CHILDREN'S ATTENTION HOME.

18 THE COURT: WELL, IN YOUR DEFENSE I'M NOT
19 TRYING TO ARGUE YOUR DEFENSE, BUT THIS HAPPENED IN
20 JUNE OF '07, THE TESTIMONY WAS THAT IT HADN'T BEEN
21 CALLED THIS IN FIVE YEARS ACCORDING TO SOMEBODY. I
22 DON'T KNOW WHO IT WAS.

23 MR. SPRINGS: WELL, THE QUESTION WAS ASKED
24 DID YOU KNOW THAT THE NAME CHANGED FIVE YEARS AGO.
25 THE PROBLEM IS, IT'S LIKE A COMFORTABLE OLD SHOE,

1 THEY STILL CALL IT COMMUNITIES IN SCHOOLS WHICH MAKES
2 IT WIGGLY. I'VE ACTUALLY TALKED TO THE PEOPLE OUT
3 THERE. YEAH, WE CALL IT THAT AND WE CALL IT RUSSELL
4 STREET SCHOOL AND WE CALL IT CHILDREN'S ATTENTION
5 HOME SO, AND THIS IS AFTER I PREPARED THE INDICTMENT.
6 AGAIN IT WASN'T MY BEST EFFORT AND I SHOULD HAVE MADE
7 IT BETTER, BUT I THINK SINCE MS. INZERILLO DID ASK
8 THE QUESTION, OFFICER, WERE AWARE THE NAME CHANGED
9 FIVE YEARS AGO, SHE WAS AWARE AND NOT PREJUDICED BY,
10 SHE KNEW THIS WAS THE SCHOOL, SHE KNEW THIS WAS THE
11 SCHOOL WE WERE TALKING ABOUT, BECAUSE SHE HAD THE
12 CONNECTION BETWEEN THE OLD AND THE NEW NAME.

13 MS. INZERILLO: I ACTUALLY ASKED HIM,
14 YOUR HONOR, IF HE WAS AWARE THAT COMMUNITY IN SCHOOLS
15 HAS NOT EXISTED FOR THE LAST FIVE YEARS.

16 THE COURT: WELL.

17 MS. INZERILLO: YOUR HONOR, IF I MAY JUST
18 ADDRESS ONE MORE POINT. THE ONLY FURTHER NOTE I
19 WOULD PUT TO THIS IS THE STATUTE IS EXTREMELY
20 SPECIFIC WHEN IT LISTS PUBLIC OR PRIVATE SCHOOLS,
21 VOCATIONAL, TRADE SCHOOL, TECHNICAL EDUCATIONAL
22 CENTER, PUBLIC OR PRIVATE COLLEGE OR UNIVERSITY.
23 OBVIOUSLY THE STATE HAD A SPECIFIC ENTITIES IN WHICH
24 IT WANTED TO BE CONSIDERED IN THIS. I TAKE ISSUE
25 WITH MR. SPRINGS SAYING THAT COMES AS ALL SCHOOLS

1 BECAUSE CERTAINLY I COULD GO OUT AND START A SCHOOL,
2 CALL IT A SCHOOL, NOT GET ANY FUNDING FOR IT, AND I
3 DON'T THINK THAT WOULD MAKE IT A SCHOOL UNDER THIS
4 STATUTE. ONE OF THE ELEMENTS THAT THE STATE HAS THE
5 BURDEN OF PROOF IN THIS PER THE STATUTE IS THAT THIS
6 WAS A PUBLIC OR PRIVATE SCHOOL AND THERE HAS BEEN NO
7 EVIDENCE, ONE, THAT COMMUNITY SCHOOLS AS LISTED IN
8 THE INDICTMENT EVEN EXISTS; AND, TWO, IF IT DOES
9 EXIST IN SOME SHAPE OR FORM THAT IT IS SOME SORT OF
10 PUBLIC SCHOOL. THEY HAVE MADE NO SHOWING THAT IT
11 RECEIVES ANY PUBLIC MONEY, ADHERES TO STATE
12 GUIDELINES, ANYTHING LIKE THAT. AS THE COURT IS WELL
13 AWARE THE STATE LAW FROM THE CASE STATE LAW REQUIRES
14 THAT IF THERE IS AMBIGUITY THAT SHOULD BE RESOLVED IN
15 FAVOR OF THE DEFENDANT AND WE WOULD ARGUE IN THIS
16 CASE THAT BECAUSE THERE IS, THIS IS PUTTING IT
17 NICELY, TO AMBIGUITY IN THIS CASE THAT SHOULD BE
18 RESOLVED IN FAVOR OF THE DEFENDANT AND THIS CHARGE
19 SHOULD BE DISMISSED.

20 THE COURT: ANYTHING ELSE? WHAT ABOUT
21 HOME SCHOOL? WHAT KIND OF SCHOOL WOULD THAT BE?

22 MR. SPRINGS: THAT'S A PRIVATE SCHOOL,
23 YOUR HONOR.

24 THE COURT: WOULD THAT FALL UNDER HERE?
25 WELL, WE WON'T GO THERE. THAT'S NOT AN ISSUE. WE

1 HAVE GOT ENOUGH TO WRESTLE WITH.

2 MR. SPRINGS: I DON'T KNOW, YOUR HONOR,
3 BUT TO PROTECT THIS CASE AND TO PROTECT THE EFFORTS
4 WE PUT INTO IT AND TO TRY TO ACHIEVE JUSTICE THAT
5 WILL STICK IN THIS CASE, WE DON'T WANT TO TAKE A
6 CHANCE WITH THE PROXIMITY CHARGE, AND WITH THE
7 COURT'S PERMISSION WE ARE GOING TO DISMISS THAT
8 CHARGE.

9 THE COURT: THEY MOVE TO DISMISS IT, SO
10 WE'LL DISMISS IT.

11 MR. SPRINGS: FOR THE RECORD, MAY I
12 DISMISS IT. IT'S NOT THE COURT.

13 THE COURT: WELL, WE'RE A STICKY THING
14 NOW. YOU GOT DOUBLE JEOPARDY.

15 MR. SPRINGS: IT'S GONE FOREVER.

16 THE COURT: IT'S GONE FOREVER BECAUSE YOU
17 ARE IN A DOUBLE JEOPARDY SITUATION NOW.

18 MR. SPRINGS: IT'S GONE.

19 THE COURT: SO I GRANT YOUR MOTION TO
20 DISMISS IT, SO THAT MEANS IT'S GONE, ALL RIGHT.
21 WHAT'S NEXT?

22 MS. INZERILLO: THANK YOU, YOUR HONOR. I
23 WOULD LIKE AT THIS POINT, I FAILED TO THE LAST TIME
24 THE JURY WAS OUT OF THE ROOM TO STATE FOR THE RECORD
25 MY OBJECTION TO STATE'S EXHIBIT THREE, AT THIS TIME I

1 WOULD LIKE TO DO THAT. BASED ON THE EVIDENCE THAT'S
2 BEEN PRESENTED AS WELL AS THE HANDWRITTEN NOTES IN
3 STATE'S EXHIBIT THREE, CYNTHIA MITCHUM TESTED IT IN
4 AUGUST, RETURNED IT, MATT HALL DID, INDICATED HE
5 RETURNED IT, AND THEN LAST WEEK IT WAS CHECKED BACK
6 OUT AGAIN BY THE FORENSICS EXAMINER. AS IS IT
7 EVIDENT ON THE EVIDENCE, THE FORENSIC EXAMINER OPENED
8 THE PACKAGE, PULLED OUT A BAGGY, RESEALED IT IN HIS
9 OWN BAGGY SIGNED IT, I BELIEVE TESTED IT, PUT IT IN A
10 DIFFERENT SMALLER BAGGY INSIDE OF THAT PIECE OF
11 EVIDENCE, SEALED IT, SIGNED IT, AND THEN RESEALED THE
12 ENTIRE PACKAGE IN WHICH HE SIGNED. MR. SPRINGS DID A
13 VERY THOROUGH DIRECT EXAMINATION OF THAT OFFICER BUT
14 AT NO TIME ASKED HIM TO CONVEY TO THE COURT THAT THAT
15 IS EXACTLY WHAT HE DID. OUR POSITION, YOUR HONOR, IS
16 THE CHAIN, THEY MAY HAVE PROVEN THE CHAIN THROUGH
17 CYNTHIA MITCHUM AND MR. HALL RETURNING THAT BACK TO
18 ROCK HILL PD, BUT SUBSEQUENT TO THAT WITH MR.
19 BARNWELL THEN AGAIN TAKING THE EVIDENCE, CHANGING IT,
20 ALTERING IT, ALBEIT SIGNING IT, AND THEN RETURNING IT
21 THAT IS A SEPARATE PIECE OF THE CHAIN THAT WAS NOT
22 TESTIFIED TO DURING THE TRIAL AND FOR THAT REASON WE
23 WANTED TO NOTE OUR OBJECTION TO THE ADMISSIBILITY OF
24 THAT.

25 THE COURT: I OVERRULE YOUR OBJECTION. I

1 THINK MRS. MITCHUM TESTIFIED THAT THAT WAS IN FACT
2 WHAT SHE TESTED AND THE IMPORTANCE OF THE CHAIN OF
3 CUSTODY IS TO MAKE SURE WHAT IS TESTED IS IN FACT
4 THAT WHICH WAS TAKEN FROM THE DEFENDANT. OBVIOUSLY,
5 THE CHAIN SHOULD COME ALL THE WAY TO COURT, BUT EVEN
6 THOUGH IT'S SOMETHING THAT'S FUNGIBLE, WHETHER IT HAD
7 BEEN TAMPERED WITH OR NOT AFTER THE TEST IS OF NO
8 IMPORT THAT I'M AWARE OF, THERE HAVE BEEN NO REQUESTS
9 TO HAVE IT RETESTED, SO YOU ARE ON RECORD AND THE
10 STATE'S ON NOTICE THAT IN THE FUTURE THEY MIGHT WANT
11 TO LOOK AT THE CHAIN, MAKE A LITTLE LONGER CHAIN, BUT
12 ANYTHING ELSE FROM.

13 MS. INZERILLO: YOUR HONOR, FOR THE RECORD
14 WE WOULD RENEW ALL PREVIOUS OBJECTIONS. I WOULD ALSO
15 NOTE THAT I DID OBJECT TO THE, WHAT I PERCEIVED AS A
16 RULE FIVE BRADY VIOLATION. I DON'T KNOW IF THE COURT
17 WANTED TO ADDRESS THAT NOW OR WAIT UNTIL THE
18 CONCLUSION OF THE TRIAL.

19 THE COURT: WELL, LET'S GET TO THAT.
20 MR. ROBINSON, CAN YOU HEAR ME?

21 MR. ROBINSON: YES, SIR.

22 THE COURT: YOU HAVE A RIGHT TO PRESENT
23 TESTIMONY AND WITNESSES IF YOU WISH BUT YOU DO NOT
24 HAVE TO. WE HAVE REACHED THAT POINT IN THE TRIAL
25 WHERE YOU HAVE A RIGHT TO PRESENT A CASE, BUT YOU

1 DON'T HAVE TO. IT'S NOT BEEN CALLED TO MY ATTENTION
2 THAT YOU HAVE ANY WITNESSES YOU WISH TO TESTIFY BUT
3 YOU HAVE A RIGHT TO HAVE WITNESSES TESTIFY. YOU HAVE
4 A RIGHT TO TESTIFY YOURSELF AND YOU ALSO HAVE A RIGHT
5 TO REMAIN SILENT. IF YOU TESTIFY, THE STATE WILL BE
6 ABLE TO ASK YOU CERTAIN QUESTIONS, YOU'LL BE UNDER
7 OATH, ABOUT THIS NIGHT AND I BELIEVE THERE ARE TWO
8 PRIOR OFFENSES THEY CAN ASK YOU ABOUT THAT WERE GONE
9 OVER EARLIER. IF YOU TESTIFY I WILL TELL THE JURY
10 THAT THEY CONSIDER THOSE PRIOR OFFENSES SOLELY
11 REGARDING YOUR BELIEVABILITY, NOT WHETHER OR NOT YOU
12 COMMITTED THIS OFFENSE. THAT IS, THEY CANNOT USE
13 THIS EVIDENCE AS EVIDENCE THAT YOU COMMITTED THIS
14 OFFENSE BUT THEY CAN USE IT AS A BAROMETER SORT OF TO
15 DECIDE WHETHER OR NOT TO BELIEVE YOU OR NOT.

16 NOW IF YOU EXERCISE YOUR
17 CONSTITUTIONAL RIGHT TO REMAIN SILENT, I WILL TELL
18 THE JURY YOU HAVE DONE THAT. I WILL TELL THE JURY
19 THAT THEY CANNOT HOLD THAT AGAINST YOU, THEY CANNOT
20 DISCUSS THAT IN THE JURY ROOM, AND THEY CANNOT FACTOR
21 INTO THEIR OWN DELIBERATION CONCERNING THE ISSUES IN
22 THIS CASE. I WILL TELL THEM THAT YOU ARE, REMIND
23 THEM BECAUSE BY THAT TIME I WILL HAVE ALREADY TOLD
24 THEM THAT YOU ARE PRESUMED INNOCENT OF THAT CHARGE
25 AND THE STATE MUST PROVE YOUR GUILT BEYOND A

1 REASONABLE DOUBT. YOU UNDERSTAND ALL THAT?

2 MR. ROBINSON: YES, SIR.

3 THE COURT: DO YOU HAVE ANY QUESTIONS
4 ABOUT THAT?

5 MR. ROBINSON: NO, SIR.

6 THE COURT: ALL RIGHT. DO YOU WISH TO
7 TESTIFY OR EXERCISE YOUR RIGHT TO REMAIN SILENT.

8 MR. ROBINSON: I FEEL MY LAWYER, THEY WAS
9 GOING TO PUT IT TO TRIAL.

10 THE COURT: YOU ARE NOT GOING TO TESTIFY?

11 MR. ROBINSON: NO.

12 THE COURT: YOU MAY BE SEATED.

13 MS. INZERILLO, DO YOU HAVE ANY WITNESSES YOU WANT TO
14 PRESENT?

15 MS. INZERILLO: NO, YOUR HONOR.

16 THE COURT: ALL RIGHT. LET'S DO THIS, WE
17 WERE HERE, I KEPT THE STAFF HERE LATE LAST NIGHT AND
18 I'M NOT GOING TO DO THAT TWO NIGHTS IN A ROW, IT'S
19 PROBABLY A LITTLE EARLY TO QUIT BECAUSE IT'S NOT
20 QUITE FOUR BUT BY THE TIME WE GET IT TO THEM IT WOULD
21 BE FIVE AND SO I'M GOING TO ALLOW THEM TO LEAVE UNTIL
22 9:30 IN THE MORNING AND WE'LL, ONCE I DO THAT WE'LL
23 FINISH UP, MS. INZERILLO, ANYTHING ELSE YOU WANT TO
24 PUT ON THE RECORD AND MR. ROBINSON WILL HAVE TO
25 REMAIN INCARCERATED TONIGHT AND THAT'S JUST THE WAY.

1 IT'S WORKING OUT, BUT I DON'T WANT TO KEEP THE JURY
2 HERE LATE TONIGHT OR MORE PARTICULARLY THE STAFF.
3 THIS JURY WAS A DIFFERENT ONE SO THEY DIDN'T GET TO
4 ENJOY PIZZA WITH US, BUT I THINK THE STAFF MIGHT
5 REBEL.

6 MRS. SPRINGS: COULD WE TAKE UP THE RULE
7 FIVE TODAY?

8 THE COURT: YES. I'M GOING TO LET THE
9 JURY GO. WE CAN WORK. I'M NOT QUITTING. ALL RIGHT
10 BRING IN THE JURY.

11 MR. SPRINGS: ALL RIGHT.

12 (THE JURY RETURNS TO THE COURTROOM AT
13 03:45 PM.)

14 THE COURT: MEMBERS OF THE JURY PANEL, THE
15 DEFENSE HAS ALSO RESTED WHICH MEANS THE NEXT PART OF
16 THE TRIAL WILL BE THE ARGUMENTS AND THEN MY CHARGE
17 AND YOUR DELIBERATION. WE'RE NOT GOING TO START THIS
18 AFTERNOON BECAUSE IT'S ALMOST FOUR O'CLOCK AND THAT
19 WILL TAKE US WELL INTO THE EVENING AND QUITE FRANKLY
20 SOME OF US WERE HERE LATE INTO THE EVENING LAST NIGHT
21 DOING THE SAME THING, SO RATHER THAN KEEPING YOU HERE
22 UNTIL WHAT MAY BE LATER IN THE EVENING, WE'RE GOING
23 TO STOP AND START BACK AT 9:30. YOU STILL HADN'T
24 HEARD THE ARGUMENTS OF THE ATTORNEYS, YOU STILL
25 HADN'T HEARD MY CHARGE, SO YOU ARE STILL NOT IN A

1 POSITION TO TRY TO MAKE UP YOUR MIND, YOU ARE STILL
2 NOT IN A POSITION TO DISCUSS THE CASE, AND YOU ARE
3 STILL NOT IN THE POSITION TO LET ANYONE DISCUSS THIS
4 CASE WITH YOU OR RECEIVE ANY NEWS COVERAGE. WE'VE
5 GOT SOME OTHER WORK TO DO, SO WE ARE NOT QUITTING AND
6 WE WILL LET YOU STOP FOR THE DAY AND BE BACK AT 9:30
7 IN MORNING. HAVE A PLEASANT EVENING.

8 (THE JURY EXITS THE COURTROOM AT 03:47
9 PM.)

10 THE COURT: ALL RIGHT. LET'S TAKE UP THE
11 RULE FIVE MATTER. NOW THERE WAS TESTIMONY AS I
12 UNDERSTAND WHERE WE ARE FROM MR. SCHURIG, OFFICER
13 SCHURIG, THAT HE HAD SOME DOCUMENTATION AND THAT WAS
14 NOT, MS. INZERILLO SAYS SHE'S NOT AWARE OF HAVING
15 RECEIVED ANY OF THAT, SO LET'S TAKE A LOOK AT THAT.
16 MR. SPRINGS.

17 MR. SPRINGS: YOUR HONOR, THERE WAS MONEY,
18 AS THE COURT HAS HEARD, SEIZED FROM MR. ROBINSON \$531
19 PURSUANT TO THE FORFEITURE STATUTES 44-53-530 AND
20 THAT'S A CIVIL PROCEEDING. IT'S ACTUALLY CAPTIONED
21 THE NOTICE OF SEIZURE AND THE DOCUMENTS SIGNED BY
22 HONORABLE LEE ALFORD THE SEIZURE WARRANTS AND SO
23 FORTH ARE CAPTIONED IN THE COURT OF COMMON PLEAS. I
24 ALSO, THEY WERE GOOD ENOUGH TO GIVE ME A COPY OF THE
25 BANK DEPOSIT SLIP WHERE THEY PUT THAT MONEY IN THE

1 BANK. I DON'T THINK THIS FALLS UNDER RULE FIVE
2 DISCOVERY SECTION. IF IT DOES I WISH THE DEFENSE
3 WOULD POINT IT OUT TO ME.

4 THE COURT: ALL RIGHT.

5 MS. INZERILLO: YOUR HONOR, THE CONCERNS
6 IN THIS CASE ARE WITH THIS PARTICULAR SITUATION IS
7 MR. SPRINGS INFORMED US TWO WEEKS AGO THAT \$531 WAS
8 TAKEN FROM THE DEFENDANT AND THAT THE DEFENDANT
9 CONSENTED FORFEITURE AND THAT WAS SOMETHING THAT HE
10 INTENDED TO PUT FORTH IN HIS CASE IN CHIEF. HE AGAIN
11 SENT ME AN E-MAIL I BELIEVE LAST WEEK RE-ITERATING
12 THAT TO MAKE SURE I WAS AWARE OF THOSE TWO FACTS.
13 AGAIN AS I INDICATED THIS MORNING, MR. O'KELLY AND I
14 LOOKED THROUGH THE FILE, WE HAD NO EVIDENCE OF ANY
15 FORFEITURE, NO EVIDENCE OF THE MONEY BEING TAKEN
16 EXCEPT FOR A HANDWRITTEN LINE ON THE INCIDENT REPORT.
17 MR. O'KELLY, AS I INDICATED THIS MORNING, ASKED TO
18 INSPECT THE FILE AS I DID LAST NIGHT. THIS MORNING
19 WE HAD A MOTION ON THE BRADY ISSUE IN WHICH I READ
20 SPECIFICALLY WHAT I HAD AND THAT WAS AFTER THE STATE
21 HAD ALREADY PROVIDED US AND THE COURT WITH THEIR
22 WITNESS LIST. OFFICER SCHURIG WAS ON THE WITNESS
23 LIST, SO OBVIOUSLY AT THAT TIME THE STATE KNEW HE WAS
24 A POSSIBLE WITNESS WHO COULD COME FORWARD. HIS
25 TESTIMONY WOULD ENCOMPASS THE ACTUAL ISSUE THAT WE

1 ADDRESSED THIS MORNING WHICH IS WHERE THE MONEY WENT.
2 I MADE CLEAR MY CONCERNS THAT I FELT LIKE I WAS
3 MISSING SOME DOCUMENTS. OBVIOUSLY IF THERE WAS A
4 QUESTION AS TO THE STATUS OF THE MONEY, HOW IT WAS
5 TAKEN, WHEN IT WAS TAKEN, ANYTHING LIKE THAT, THAT
6 COULD BE MATERIAL TO OUR CASE, YOUR HONOR, AS YOU
7 KNOW AND AS YOU ARE GETTING READY TO CHARGE THE JURY,
8 THIS IS A PWID CASE IN WHICH THE JURY IS ALLOWED TO
9 CONSIDER CERTAIN FACTORS OUTSIDE OF THE POSSESSION OF
10 DRUGS. ONE OF THOSE FACTORS BEING THE POSSESSION OF
11 MONEY. YOUR HONOR, AS MY UNDERSTANDING READING CASE
12 LAW OVER LAST NIGHT THAT IF THIS WOULD BE MATERIAL TO
13 OUR CASE IF WE CAN SOMEHOW NEGATE ONE OF THOSE
14 FACTORS THAT COULD EFFECT THE JURY'S DECISION ON
15 WHETHER OR NOT TO CONVICT ON PWID OR FOR EXAMPLE ON A
16 SIMPLE POSSESSION OR A THIRD OPTION A NOT GUILTY.

17 I TRIED TO BE VERY CLEAR THIS MORNING
18 AS TO MY CONCERNS ABOUT OUR FEAR THAT WE WERE MISSING
19 EVIDENCE. WHEN I READ OUT WHAT I HAD, HE INDICATED
20 TO THE COURT THAT THAT WAS ALL THAT THEY WERE GOING
21 TO GO FORWARD WITH AND THAT THE ISSUE WAS SETTLED.
22 IN THIS CASE, YOUR HONOR, MONEY HAS CONTINUOUSLY BEEN
23 ADDRESSED IN THIS CASE. THE STATE KNEW THEY WERE
24 CALLING OFFICER SCHURIG. OBVIOUSLY KNEW WHAT
25 TESTIMONY THEY WERE GOING TO ELICIT FROM HIM.

1 OBVIOUSLY KNEW THEY HAD THIS PAPERWORK THAT THEY NOT
2 DISCLOSED TO US DESPITE MR. O'KELLY'S REQUEST, MY
3 REQUEST, AND A GENERAL REQUEST THAT WE FILE IN EVERY
4 ONE OF OUR CASES. FOR THIS REASON, YOUR HONOR, WE
5 WOULD ASK FOR AN INSTRUCTION TO THE JURY THAT THEY
6 NOT CONSIDER ANY OF THE, ANY CONSIDERATION OF MONEY
7 SINCE US NOT HAVING THOSE PAPERWORK COULD HAVE IN
8 SOMEWAY FURTHERED OUR INVESTIGATION IN THIS CASE,
9 COULD HAVE MADE A DIFFERENCE IN THE WAY WE PRESENTED
10 THE CASE, AND ULTIMATELY COULD HAVE, COULD EFFECT
11 WHETHER THE JURY ACCEPTED THAT AS A REASONABLE
12 INFERENCE OR REJECTED THAT AS A REASONABLE INFERENCE.

13 THE COURT: WELL, I KNOW YOU CAN'T GUESS
14 THE UNKNOWN, BUT TELL ME AGAIN QUICKLY THE PAPERWORK,
15 THE FORFEITURE PAPERS IS ALL YOU'RE TAKING ABOUT?

16 MR. SPRINGS: IT'S THE STANDARD NOTICE OF
17 SEIZURE AND SEIZURE WARRANT CAPTIONED IN THE COURT OF
18 COMMON PLEAS. AND I WOULD POINT OUT FOR MS.
19 INZERILLO'S BEGINNING POINT, \$531 THAT WAS SEIZED
20 FROM HIM, FROM THE FIRST TIME SHE GOT DISCOVERY IT
21 WAS RIGHT THERE IN THE INCIDENT REPORT. IN FACT,
22 IT'S HIGHLIGHTED BECAUSE IT'S HANDWRITTEN IN THERE
23 INTO THE INCIDENT REPORT.

24 THE COURT: SHE DOESN'T DISPUTE THAT. SHE
25 KNOWS SHE KNEW THE AMOUNT. THE DISPUTE IS THAT YOU

1 FAILED TO GIVE HER SOME PAPERS THAT SHE CLAIMS
2 SOMEHOW, LET ME FINISH, SOMEHOW SHE'S ENTITLED TO
3 UNDER THE RULE FIVE AND/OR BRADY AND IT'S NOT
4 EXCULPATORY. I DON'T KNOW THAT IT MIGHT --

5 MS. INZERILLO: YOUR HONOR, I WOULD POINT
6 TO THE LANGUAGE IN RULE FIVE A ONE C. NO, I'M SORRY.
7 THE REQUIREMENT THAT IF THE STATE INTENDS TO USE IT
8 IN ITS CASE IN CHIEF THEN THAT IS SUBJECT TO
9 DISCLOSURE.

10 THE COURT: BUT THEY DIDN'T USE IT.

11 MS. INZERILLO: THEY DISCUSSED THE MONEY
12 AND THE TESTIMONY CAME OUT.

13 THE COURT: ALL RIGHT. BUT THEY DIDN'T
14 USE THE DOCUMENTS. THAT STARTS OUT DOCUMENTS AND
15 TANGIBLE OBJECTS. THAT'S WHAT, THAT'S THE HEADING ON
16 NUMBER C. THAT'S WHAT THEY ARE REQUIRED TO PRODUCE
17 IF THEY INTEND TO USE IT AS EVIDENCE IN CHIEF AT THE
18 TRIAL.

19 MS. INZERILLO: YOUR HONOR, OUR CONCERN IS
20 HAD WE HAD THAT DOCUMENTATION OUR PRESENTATION OF THE
21 DEFENSE MAY HAVE BEEN DIFFERENT. BASED ON SOME OF
22 THE DISCUSSIONS WE HAD WITH OUR CLIENT, NOT TO GO IN
23 ANY PRIVILEGED AREAS, BUT IT MAY HAVE BEEN DIFFERENT
24 IN THE WAY WE PRESENTED THE CASE. THE TESTIMONY IN
25 MY MIND IS OUT THERE, THE JURY HAS HEARD THAT THERE

1 WAS MONEY TAKEN, HAD WE HAD THIS, THESE DOCUMENTS
2 THAT WE'VE BEEN REQUESTING, MULTIPLE TIMES THAT MAY
3 HAVE ADJUSTED THE WAY WE PRESENTED OUR CASE REGARDING
4 THE MONEY. WE UNDERSTAND THAT THE STATE DID NOT
5 PRESENT A FORFEITURE ORDER AND DID NOT PRESENT THE
6 MONEY, THE RECEIPTS THAT WERE TAKEN, BUT WE STILL
7 FEEL THEY SHOULD HAVE BEEN TURNED OVER TO US AS FOR
8 OUR USE IN OUR INVESTIGATION IN THE CASE, IF THEY
9 KNEW THAT THIS TOPIC WAS GOING COME UP IN THEIR CASE
10 IN CHIEF.

11 THE COURT: THAT TOPIC HADN'T COME UP.
12 THAT'S WHERE I'M LOSING THE ARGUMENT AND YOU ARE
13 ALWAYS AN ABLE ARGUER BUT LOSING THE ARGUMENT IS,
14 THESE DOCUMENTS AND TANGIBLE OBJECTS WEREN'T
15 PRESENTED. THE EVIDENCE THAT WAS SET FORTH THEREON
16 IS REALLY AN EXTENSION OF THE EVIDENCE FROM WHAT
17 HAPPENED ON THE NIGHT WHEN THE OFFICER BREEDEN TOOK
18 IT FROM THE GENTLEMAN. IF IT WAS WRITTEN DOWN IN 400
19 PLACES I DON'T THINK THEY WOULD HAVE TO GIVE YOU ALL
20 400. I DON'T THINK THAT WOULD ADD ANYTHING TO THE
21 MIX, SO I THAT FIND, I FOLLOW YOUR ARGUMENT. WHAT IS
22 THE RELIEF YOU REQUEST?

23 MS. INZERILLO: YOUR HONOR, IN LIGHT OF
24 THIS WE WOULD REQUEST AN INSTRUCTION TO THE JURY THAT
25 THEY NOT CONSIDER ANY TESTIMONY AS TO THE MONEY THAT

1 HAS BEEN PRESENTED IN THIS CASE.

2 THE COURT: I DENY THAT MOTION.

3 MR. SPRINGS: YOUR HONOR, MAY I MAKE A
4 COPY OF THE NOTICE OF SEIZURE AND SEIZURE WARRANTS
5 THAT WE TALKED ABOUT SO MUCH AND THE DEPOSIT SLIP
6 PART OF THE RECORD?

7 THE COURT: SURE.

8 MR. SPRINGS: WOULD THAT BE BETTER MARKED
9 AS A STATE OR A COURT'S EXHIBIT?

10 THE COURT: MAKE IT A COURT'S. WE'LL BE
11 AT EASE IN THIS CASE AND DOES THE STATE HAVE ANYTHING
12 ELSE WE CAN DO. WELL MS. INZERILLO IS ON HER FEET
13 AGAIN, SO LET'S, THAT'S FINE. LET'S DO AS MUCH AS WE
14 CAN THIS AFTERNOON.

15 (COURT'S EXHIBIT 1 SEIZURE DOCUMENTS
16 RECEIVED INTO EVIDENCE.)

17 MS. INZERILLO: SURE. MR. ROBINSON HAS
18 ASKED ME TO ASK THE COURT FOR PERMISSION TO ALLOW HIM
19 TO STAY OUT OF JAIL THIS EVENING. HIS MOTHER
20 ACCOMPANIED HIM THIS MORNING. SHE CAME BY OUR OFFICE
21 ABOUT LUNCH TIME AND GOT VERY ILL BEING DIABETIC I
22 BELIEVE, SO HE WAS INTENSIVELY WORRIED ABOUT HER. I
23 CAN TELL THE COURT SHE IS AN OLDER WOMAN. MR.
24 ROBINSON, I REPRESENTED MR. ROBINSON SINCE THE
25 INCEPTION OF THIS CASE, HE HAS COME WHEN THE STATE

1 HAS ORDERED HIM TO COME. IN FACT THIS WEEK MR.
2 SPRINGS ORDERED HIM TO BE HERE AT 8:30 EVERY SINGLE
3 DAY UP UNTIL TODAY AND REMAIN UNTIL FIVE O'CLOCK AND
4 HE HAS DONE THAT DILIGENTLY AND HAS NEVER LEFT AND I
5 BELIEVE MR. SPRINGS CAN ATTEST TO THAT AS WELL. IN
6 LIGHT OF THIS, YOUR HONOR, IN LIGHT OF THE UNUSUAL
7 CIRCUMSTANCES WITH HIS MOTHER GETTING UNEXPECTEDLY
8 SICK TODAY, HE'S ASKING THE COURT FOR PERMISSION TO
9 BE RELEASED FOR THE EVENING.

10 THE COURT: NOT ON THE NATURE OF THESE
11 CHARGES, I'M GOING TO REQUIRE HIM TO STAY IN. ALL
12 RIGHT. LET'S BE AT EASE ON THIS CASE.

13 (COURT'S IN RECESS AT 03:58 PM.)

14 (COURT RESUMES AT 09:52 AM ON OCTOBER 04,
15 2007.)

16 THE COURT: THE STATE READY?

17 MR. SPRINGS: YES, SIR.

18 THE COURT: THE DEFENSE READY?

19 MS. INZERILLO: YES, YOUR HONOR.

20 THE COURT: I REVIEWED, LET ME ASK IT THIS
21 WAY. HAS THE STATE REVIEWED THE DEFENDANT'S REQUEST
22 OF CHARGE?

23 MR. SPRINGS: YES, SIR.

24 THE COURT: ANY COMMENTS? I THINK ALL OF
25 THEM ARE BASICALLY COVERED.

1 MR. SPRINGS: THEY ARE. THE ONE THAT
2 CITES COPELAND.

3 THE COURT: I'M LOOKING AT THAT.

4 MR. SPRINGS: I THINK THEIR CONCERNS ARE
5 ADDRESSED IN YOUR NORMAL CHARGE AND WE WOULD ASK YOU
6 TO JUST USE YOUR NORMAL CHARGE.

7 THE COURT: I THINK I'M GOING TO USE MY
8 NORMAL CHARGE AND I'LL MAKE THESE COURT EXHIBITS BUT
9 I BELIEVE I COVERED EVERYTHING.

10 MS. INZERILLO: OKAY, YOUR HONOR. AND I
11 BELIEVE I INDICATED TO YOUR HONOR AS WELL THAT WE
12 WOULD MAKE AN ADDITIONAL REQUEST FOR A POSSESSION OF
13 CRACK COCAINE CHARGE. I BELIEVE YOUR HONOR HAS A
14 STANDARD.

15 THE COURT: YES, WE'LL DO THAT AS A LESSER
16 INCLUDED AND ON THAT ONE WE'LL DO A VERDICT FORM
17 INSTEAD OF THAT INDICTMENT AND I'M ALSO GOING TO
18 EXPLAIN TO THE JURY BRIEFLY THAT THE PROXIMITY CHARGE
19 IS GONE AND THAT'S NOT THEIR CONCERN.

20 MR. SPRINGS: I KNOW YOU ARE GOING TO
21 CHARGE THE INFERENCE BUT JUST TO BE SURE I WANT TO
22 ASK YOU, ARE YOU GOING TO CHARGE THE INFERENCE LEVEL?

23 THE COURT: WELL, QUITE FRANKLY MY CLERK
24 HAS GOT THE CHARGE TOGETHER AND I HAVE NOT EVEN GONE
25 OVER IT, BUT IF IT IS NOT IN THERE IT WILL BE BY THE

1 TIME I CHARGE IT.

2 MR. SPRINGS: VERY GOOD.

3 MS. INZERILLO: AND, YOUR HONOR, ONE
4 ADDITIONAL THING, I'M NOT QUITE SURE HOW YOUR HONOR'S
5 CHARGES AN INSTRUCTION REGARDING POSSESSION, THE
6 POSSESSION CHARGE, BUT SINCE THERE HAS BEEN NO
7 ALLEGATION OF CONSTRUCTIVE POSSESSION WE WOULD WOULD
8 ASK THAT CONSTRUCTIVE POSSESSION NOT BE CHARGED.

9 THE COURT: WELL, I THINK ON THE CRACK
10 COCAINE I THINK IT WOULD BE A CONSTRUCTIVE
11 POSSESSION. IT MIGHT HAVE BEEN, I MEAN IT WASN'T
12 LIKE IT WAS IN HIS HOUSE OR IN HIS CAR OR THE USUAL
13 KIND, BUT IF IT WAS ON THE GROUND, I THINK I'M GOING
14 TO CHARGE CONSTRUCTION UNLESS THE STATE AGREES --

15 MR. SPRINGS: WE'D LIKE TO HAVE ACTUAL AND
16 CONSTRUCTIVE.

17 THE COURT: I'M GOING TO CHARGE THAT.

18 MS. INZERILLO: YES, YOUR HONOR.

19 THE COURT: ANYTHING FURTHER?

20 MR. SPRINGS: NOTHING FROM THE STATE.

21 MS. INZERILLO: YOUR HONOR, JUST BRIEFLY
22 BEFORE WE BRING OUT THE JURY, IN LIGHT OF THE FACT
23 THAT THE DEFENSE HAS NOW RESTED AND DOES NOT INTEND
24 TO PRESENT A CASE, WE WOULD AT THIS TIME REVIEW ALL
25 PREVIOUS MOTIONS THAT WE'VE MADE. YOUR HONOR IS

1 QUITE AWARE OF OUR POSITION ON THE SITUATION OF THE
2 MONEY AND I'LL CERTAINLY NOT GO BACK IN DETAIL OVER
3 THAT, BUT I DID WANT TO CLARIFY FOR THE RECORD THAT I
4 WAS ARGUING THAT MOTION UNDER BOTH BRADY AND RULE
5 FIVE. I BELIEVE IN MY ARGUMENTS YESTERDAY I DID
6 MENTION THE MATERIALITY STANDARD WHICH IS A BRADY
7 STANDARD BUT I WANTED TO BE CLEAR AT THIS TIME IN MY
8 RENEWAL OF THE MOTION THAT I WAS ARGUING THAT BOTH
9 UNDER BRADY AND RULE FIVE.

10 YOUR HONOR, IN LIGHT AS WELL IN SORT
11 OF THINKING ABOUT THIS CASE LAST NIGHT, YESTERDAY I
12 HAD ASKED FOR THE, THAT TO BE STRICKEN, ANY MENTION
13 OF THE MONEY TO BE STRICKEN, AT THIS TIME IN THE
14 RENEWAL OF THE MOTION, I WOULD IN ADDITION TO THAT
15 JUST MOVE FOR A MISTRIAL AS WELL.

16 THE COURT: I DENY THAT MOTION. I'M NOT
17 GOING TO STRIKE THE TESTIMONY REGARDING THE MONEY
18 WHICH IS WHAT I UNDERSTAND YOU ARE ASKING TO DO, I AM
19 NOT GOING TO GRANT A MISTRIAL, AND THE MOTION FOR
20 DIRECTED VERDICT AS TO THE TWO REMAINING CHARGES
21 POSSESSION OF CRACK COCAINE WITH INTENT TO DISTRIBUTE
22 AND POSSESSION OF MARIJUANA I'M GOING TO DENY.

23 MS. INZERILLO: THANK YOU.

24 THE COURT: ALL RIGHT. BRING IN THE JURY.

25 (THE JURY RETURNS TO THE COURTROOM AT

1 09:56 AM.)

2 THE COURT: GOOD MORNING.

3 THE JURY: GOOD MORNING.

4 THE COURT: MEMBERS OF THE JURY PANEL,
5 WHEN THIS CASE STARTED YOU RECALL THERE WERE THREE
6 CHARGES; ONE DEALT WITH HAVING POSSESSED WITH INTENT
7 TO DISTRIBUTE CRACK COCAINE WITHIN PROXIMITY OF A
8 PLACE CALLED COMMUNITY IN SCHOOLS, THAT INDICTMENT IS
9 NOT BEFORE YOU ANY LONGER AND YOU NEED NOT TRY TO
10 DETERMINE WHY, YOU ARE NOT TO FACTOR THAT INTO ANY OF
11 YOUR DELIBERATIONS, IT'S SIMPLY IS NOW DOWN TO THE
12 TWO INDICTMENTS POSSESSION OF MARIJUANA AND
13 POSSESSION OF CRACK COCAINE WITH INTENT TO
14 DISTRIBUTE. THE THIRD INDICTMENT THAT WAS MENTIONED
15 EARLIER AND MENTIONED TO YOU IN OPENING STATEMENTS IS
16 NOT ACTIVE ANYMORE. ALL RIGHT. MS. ANDERSON.
17 CLOSING STATEMENT BY MS. ANDERSON:

18 MAY IT PLEASE THE COURT. LADIES AND
19 GENTLEMEN, WE'RE HERE TODAY BECAUSE ON A SUMMER
20 EVENING IN ROCK HILL IN YORK COUNTY PEOPLE WEREN'T
21 OUT IN MARKET PLACE APARTMENTS GRILLING OUT, PLAYING
22 A GAME. WHEN OFFICERS OF THE STREET CRIMES UNIT
23 DROVE BY MARKET PLACE APARTMENTS, THEY DIDN'T SEE
24 PEOPLE OUT PLAYING GAMES, HAVING A PARTY. THEY SAW A
25 GROUP OF INDIVIDUALS AROUND A GOLD CADILLAC AND THEY

1 FOUND THE DEFENDANT WITH MARIJUANA AND WITH CRACK
2 COCAINE. THAT IS THE REASON WE'RE HERE TODAY ON TWO
3 CHARGES. POSSESSION OF MARIJUANA AND POSSESSION WITH
4 INTENT TO DISTRIBUTE CRACK COCAINE. YESTERDAY YOU'VE
5 HEARD FROM ALL THE WITNESSES, YOU HEARD ALL THEIR
6 TESTIMONY, YOU SAW THE PICTURES, YOU HEARD FROM THEM,
7 YOU HEARD FROM THE ATTORNEYS, YOU ARE HEARING FROM
8 THE STATE NOW, YOU'LL GET TO HEAR FROM THE DEFENSE
9 ATTORNEY AND THEN YOU'LL HEAR FROM THE JUDGE THEN IT
10 WILL BE YOUR TIME TO GO BACK IN THE JURY ROOM AND AT
11 THAT POINT YOU WON'T HAVE TO LISTEN TO OTHER PEOPLE
12 TALKING TO YOU ABOUT THIS, IT'S YOUR TURN TO TALK AND
13 YOUR TURN TO DECIDE AND MAKE A DECISION ON THE
14 CHARGES IN THIS CASE.

15 THIS IS THE STATE'S OPPORTUNITY TO
16 TALK TO YOU. ONCE THE STATE SITS DOWN IT WON'T HAVE
17 AN OPPORTUNITY TO TALK TO YOU AGAIN. I CAN'T KNOW
18 WHAT DEFENSE COUNSEL IS GOING TO SAY, I CAN GUESS. I
19 CAN GUESS ONE THING THAT DEFENSE COUNSEL IS GOING TO
20 TALK TO YOU ABOUT IS THE BURDEN OF PROOF IN THIS
21 CASE. THE JUDGE IS CERTAINLY GOING TO TALK TO YOU
22 ABOUT IT, HE'LL INSTRUCT YOU ON THE LAW, AND HE'S THE
23 ONE YOU SHOULD LISTEN TO. THE DEFENSE COUNSEL WILL
24 PROBABLY TELL YOU, THE JUDGE WILL TELL YOU, THE
25 BURDEN OF PROOF IS ON THE STATE IN THIS CASE. THE

1 STATE HAS TO PROVE BOTH OF THESE CHARGES BEYOND A
2 REASONABLE DOUBT BEFORE YOU SHOULD CONVICT
3 CHRISTOPHER ROBINSON. SO LET'S TALK ABOUT WHAT THE
4 PROOF IS IN THIS CASE.

5 LET'S TALK ABOUT THE ELEMENTS OF THE
6 CRIME OF POSSESSION OF MARIJUANA. YOU CAN THINK OF
7 IT ALMOST LIKE A MATH EQUATION, ONE PLUS ONE PLUS ONE
8 PLUS ONE EQUALS GUILTY. IN THIS CASE IT'S NOT EQUALS
9 FOUR, FOUR ELEMENTS EQUALS GUILTY. THE DEFENDANT HAS
10 TO KNOWINGLY OR INTENTIONALLY POSSESS MARIJUANA IN
11 YORK COUNTY. LET'S TALK ABOUT IT ONE BY ONE.

12 KNOWINGLY OR INTENTIONALLY. NOW
13 NATURALLY IT'S IMPOSSIBLE TO LOOK INSIDE A PERSON'S
14 MIND, WE'RE TALKING ABOUT KNOWING, WE'RE TALKING
15 ABOUT INTENDING, AND YOU MAY BE THINKING THERE IS NO
16 WAY WE CAN REALLY KNOW WHAT A PERSON IS THINKING.
17 THAT'S WHERE YOUR COMMON SENSE COMES IN PLAY. TALK
18 TO YOU ABOUT YOUR COMMON SENSE BEING JUST AS
19 IMPORTANT AS YOUR EYES AND YOUR EARS AND YOUR HANDS,
20 WHAT YOU SEE, WHAT YOU HEAR, WHAT YOU TOUCH, THAT
21 COMMON SENSE, COMMON SENSE. YOU HAVE THE EXPERIENCES
22 IN YOUR LIFE WHICH YOU BRING WITH YOU IN THE
23 COURTROOM IS JUST AS IMPORTANT AS THOSE SORT OF
24 BIOLOGICAL SENSES.

25 YOU HEARD THE TESTIMONY OF THE

1 OFFICERS: SERGEANT BREEDEN, HE SEARCHED THE
2 DEFENDANT AND FOUND THE MARIJUANA IN HIS POCKET. USE
3 YOUR COMMON SENSE, LADIES AND GENTLEMEN. IF
4 SOMETHING IS IN HIS POCKET OF HIS CLOTHING ON HIM
5 PHYSICALLY, DOES HE KNOW IT'S THERE? IS IT COMMON
6 SENSE TO THINK HE KNOWS IT'S THERE.

7 YOU HEARD SERGEANT BREEDEN TESTIFY
8 THAT THE DEFENDANT HIMSELF SAID THE MARIJUANA IS
9 MINE. AGAIN, LADIES AND GENTLEMEN, COMMON SENSE, IS
10 THERE ANY OTHER REASONABLE CONCLUSION THAN THAT HE
11 KNEW THAT MARIJUANA WAS THERE. FIRST ELEMENT
12 KNOWINGLY OR INTENTIONALLY.

13 LET'S TALK ABOUT POSSESS. LET'S TALK
14 ABOUT ACTUAL POSSESSION. THE JUDGE WILL CHARGE YOU
15 ON THE LAW, THINK ABOUT IT AS SOMETHING THAT'S WITHIN
16 THE DEFENDANT'S ACTUAL PHYSICAL CONTROL. LADIES AND
17 GENTLEMEN, LIKE WE JUST TALKED ABOUT, WHERE WAS THE
18 MARIJUANA? IN HIS POCKET. IT'S ACTUALLY ON HIM. NO
19 QUESTION POSSESSION IN HIS POCKET. EASY ELEMENT TO
20 DEAL WITH.

21 ANOTHER EASY ONE: DRUG REPORT. THIS
22 IS IN EVIDENCE. YOU CAN LOOK AT IT YOURSELF IN THE
23 JURY ROOM AND SEE RIGHT THERE THIS SUBSTANCE TESTED
24 POSITIVE FOR MARIJUANA.

25 THE LAST ELEMENT TO DEAL WITH YORK

1 COUNTY. RIGHT THERE YOU SEE BOULEVARD,
2 OFF OF HECKLE BOULEVARD OFFICERS TESTIFIED HAPPENED
3 APPROXIMATELY IN FRONT OF BUILDING , THAT'S WITHIN
4 THE CITY OF ROCK HILL, THAT'S WITHIN YORK COUNTY; WE
5 ADDED UP OUR EQUATION, WE ADDED EACH OF THE ELEMENTS,
6 GUILTY OF POSSESSION OF MARIJUANA.

7 LET'S DEAL WITH OUR NEXT ONE. STILL
8 SORT OF A SIMPLE LOOKING EQUATION, BUT THERE IS A
9 LITTLE MORE HERE. THE ELEMENTS OF POSSESSION WITH
10 INTENT TO DISTRIBUTE CRACK COCAINE. AGAIN YOU HAVE
11 TO POSSESS, THIS TIME IT HAS TO BE CRACK COCAINE; WE
12 HAVE TO HAVE AN INTENT TO DISTRIBUTE. IT HAS TO BE
13 IN YORK COUNTY. ONCE AGAIN DEALING WITH THEM ONE BY
14 ONE.

15 POSSESS, THE JUDGE IS GOING TO TALK TO
16 YOU ABOUT THE LAW. WHEN WE TALK ABOUT POSSESSION
17 THINK ABOUT WORDS LIKE CONTROL, DOMINION, PHYSICAL
18 CUSTODY, THE SORT OF COMMON SENSE THINGS OF
19 POSSESSING. POSSESSING DOESN'T ALWAYS MEAN YOU HAVE
20 TO CARRY EVERYTHING AROUND. YOU DON'T CARRY ALL YOUR
21 POSSESSIONS IN YOUR POCKET OR IN YOUR ARMS ALL THE
22 TIME, BUT THERE HAS TO BE SOME KIND OF CONTROL
23 CUSTODY. THINK ABOUT SOME COMMON SENSE TERMS, THINK
24 ABOUT COMMON SENSE IDEAS WHEN THE JUDGE CHARGES YOU
25 ON THE LAW. THE JUDGE WILL TALK TO YOU ABOUT TYPES

1 OF POSSESSION. WE'RE TALKING ABOUT ACTUAL
2 POSSESSION. THE DRUGS WOULD BE IN THE ACTUAL
3 PHYSICAL CUSTODY. THINK ABOUT THE MARIJUANA IN HIS
4 POCKET. THAT RIGHT THERE IS AN EXAMPLE AS CLEAR AS
5 AS YOU CAN BE OF ACTUAL POSSESSION.

6 WE ALSO TALK ABOUT CONSTRUCTIVE
7 POSSESSION. HERE WE GOT THOSE WORDS LIKE DOMINION
8 AND CONTROL. HE HAS DOMINION AND CONTROL OVER IT.
9 HE CAN EXERCISE DOMINION AND CONTROL OVER IT. THAT'S
10 STILL A FORM OF POSSESSION.

11 LET'S TALK ABOUT WHAT OFFICER CHAVIS
12 TESTIFIED. OFFICER CHAVIS TESTIFIED HE SAW THE
13 DEFENDANT MAKE A THROWING MOTION WITH HIS HAND,
14 SOMETHING COMES FROM HIS HAND AND GOES TO THE
15 SIDEWALK. AND YOU REMEMBER OFFICER CHAVIS WAS
16 TELLING YOU THIS IS HAPPENING WITHIN I BELIEVE TEN
17 SECONDS. IT'S WITHIN A MATTER OF SECONDS HE SEES
18 WHAT HAPPENS. WHEN HE GOES TO SEE WHAT THAT
19 SOMETHING WAS, THE SOMETHING WAS CRACK COCAINE.

20 LET'S TALK ABOUT THE POSSESSION. IF
21 OFFICER CHAVIS SEES THIS THROWING MOTION, FOLLOWS
22 WITH HIS EYES, I BELIEVE HE TESTIFIES HE SEES HIS EYE
23 GO DOWN TO THE GROUND, IMMEDIATELY GOES TO IT AND
24 SEES IT'S CRACK COCAINE. IS IT LOGICAL, LADIES AND
25 GENTLEMEN, THAT IT CAME FROM THE DEFENDANT'S HAND AND

1 IF HE SAW THE THROWING MOTION, THE DEFENDANT THREW IT
2 DOWN, THEN THE CRACK COCAINE HAD TO HAVE BEEN IN THE
3 DEFENDANT'S HAND. RIGHT THERE YOU ARE DEALING WITH
4 POSSESSION. IT'S IN HIS CONTROL, IT'S IN HIS HAND,
5 AND EVEN IF HE THROWS IT DOWN HE'S EXERCISING
6 CONTROL. IF I THROW THIS DOWN RIGHT NOW YOU CAN SEE
7 IT THROW DOWN, I'VE HAD IT IN MY HAND, I'M EXERCISING
8 CONTROL OVER IT. I'M POSSESSING THIS. THAT'S THE
9 SAME THING WE'RE DEALING WITH WITH WHAT THE DEFENDANT
10 DID WITH THAT CRACK COCAINE ON JUNE FIRST.

11 ASSUMPTIONS. LIKE I SAID I CAN'T
12 PREDICT WHAT DEFENSE COUNSEL IS GOING TO TALK ABOUT
13 TO YOU IN CLOSING, BUT IN OPENING IF YOU REMEMBER ONE
14 OF THE WORDS DEFENSE COUNSEL USED SEVERAL TIMES WAS
15 ASSUMPTIONS AND BASED ON WHAT DEFENSE COUNSEL SAID
16 YOU MIGHT THINK THAT ALL ASSUMPTIONS WERE BAD. THAT
17 ASSUMPTIONS INVOLVE MAKING CRAZY SORT OF LEAPS OF
18 REASONING, UNREASONABLE, ILLOGICAL, LADIES AND
19 GENTLEMEN, THAT'S NOT ALWAYS WHAT ASSUMPTIONS MEAN.
20 IF I JUMP OFF A 30 STORY BUILDING I CAN ASSUME THAT
21 EITHER I MIGHT DIE OR IF NOT THAT I'M GOING TO BE
22 PRETTY SERIOUSLY INJURED. I'M MAKING AN ASSUMPTION
23 THAT IF I JUMP OFF THAT BUILDING THAT'S WHAT GOING TO
24 HAPPEN TO ME. IS THAT IN ANY WAY NOT A LOGICAL
25 ASSUMPTION? IS THAT IN ANYWAY A CRAZY LEAP OF

1 REASONING ON MY PART? BUT THAT'S AN ASSUMPTION
2 NONETHELESS. SO WHEN WE'RE TALKING ABOUT ASSUMPTIONS
3 WE HAVE TO DISTINGUISH BETWEEN ASSUMPTIONS THAT
4 AREN'T LOGICAL AND ASSUMPTIONS THAT ARE BECAUSE YOU
5 ARE ENTITLED TO MAKE ASSUMPTIONS. THE LAW ENTITLES
6 YOU TO MAKE ASSUMPTIONS. YOU CAN MAKE REASONABLE
7 ASSUMPTIONS BECAUSE YOU CAN'T KNOW EVERYTHING FOR
8 CERTAIN. YOU HAVE TO SOMETIMES MAKE ASSUMPTIONS. SO
9 WHEN DEFENSE COUNSEL TALKS ABOUT ASSUMPTIONS NOT ALL
10 ASSUMPTIONS ARE BAD, SOMETIMES ASSUMPTIONS ARE
11 REASONABLE, AND THOSE REASONABLE ASSUMPTIONS CAN LEAD
12 YOU TO THE RIGHT VERDICT.

13 LET'S TALK A LITTLE MORE ABOUT THIS
14 POSSESSION AND THE BAG OF CRACK COCAINE. WE TALKED
15 ABOUT HE HAD IT IN HIS HAND AND HE EXERCISED CONTROL
16 OVER IT WHEN HE THREW IT IN THE GROUND AND IT ALL
17 HAPPENED IN A MATTER OF SECONDS. MY RECOLLECTION IS
18 THAT OFFICER CHAVIS SAID WITHIN ABOUT TEN SECONDS BUT
19 IF YOU REMEMBER IT DIFFERENTLY, BUT EITHER WAY IT WAS
20 A MATTER OF SECONDS. THIS WASN'T MINUTES. IT WASN'T
21 AN HOUR. IT WASN'T A LONG TIME. IT HAPPENED
22 QUICKLY.

23 NOW IF YOU'LL RECALL BOTH SERGEANT
24 BREEDEN I BELIEVE SAW AND OFFICER CHAVIS CERTAINLY
25 SAW THAT WHEN THIS HAPPENED THE DEFENDANT HAD WALKED

1 AWAY FROM THE CAR, SO NO ONE IS NEARBY THE DEFENDANT.
2 THE GROUP'S AT THE CAR, WHEN OFFICER CHAVIS GETS OUT
3 OF THE CAR HE SEES THE DEFENDANT WALK AWAY TOWARD THE
4 SIDEWALK. SO AT THIS POINT THE DEFENDANT SEPARATED
5 FROM THOSE OTHER PEOPLE AT THE CAR. IN FACT THE ONLY
6 ONE WHO REALLY NEARBY THE DEFENDANT AT THAT POINT IS
7 OFFICER CHAVIS WHO HAD TESTIFIED THAT WHEN HE SAW THE
8 THROWING MOTION HE WAS SOMEWHERE AROUND TEN FEET
9 AWAY, SO THIS COULDN'T, THIS ISN'T A CASE WHERE
10 LOGICALLY, USING COMMON SENSE, THAT OFFICER CHAVIS IS
11 GETTING CONFUSED. THIS ISN'T A CASE WHERE THE
12 DEFENDANT IS IN A BIG GROUP BY THE CAR, THE OFFICER
13 IS GETTING OUT, AND IT'S DARK AND HE SEES SOMETHING
14 FALL BUT THERE IS THREE TO FOUR PEOPLE THAT IT COULD
15 HAVE COME FROM. THE DEFENDANT HAS SEPARATED HIMSELF.
16 THE BAG IS NOT THROWN AND THEN HE WALKS AWAY. HE
17 WALKS AWAY AND THEN HE THREW THE BAG.

18 NOW WE MENTION IN TERMS OF MARIJUANA
19 THAT SERGEANT BREEDEN TESTIFIED THAT WHEN HE SEARCHED
20 HIM HE PULLED OUT A BAG OF MARIJUANA. THE DEFENDANT
21 SAID THE MARIJUANA IS MINE BUT THE CRACK ISN'T. NOW
22 AT FIRST YOU MIGHT SAY, WELL, HE SAID THE CRACK
23 WASN'T HIS, WHY IS THE STATE TALKING ABOUT THIS, BUT
24 LOOK AT WHAT HE SAID. THE CRACK ISN'T MINE. NOW I
25 DON'T RECALL SERGEANT BREEDEN TESTIFYING THAT ANYONE

1 HAD REALLY SAID I FOUND CRACK COCAINE. IF I MISS
2 REMEMBERED IT WRONG, OF COURSE YOU RELY ON YOUR
3 MEMORY, BUT SOMEONE MIGHT HAVE SAID WE FOUND DRUGS OR
4 WE FOUND SOMETHING, IT CERTAINLY WASN'T TESTED,
5 NOBODY KNEW FOR CERTAIN IT WAS CRACK COCAINE.
6 SERGEANT BREEDEN DIDN'T ASK THE DEFENDANT IS THAT
7 CRACK COCAINE YOURS? WE FOUND CRACK COCAINE, DO YOU
8 KNOW ANYTHING ABOUT IT? THE DEFENDANT VOLUNTARILY ON
9 HIS OWN SAID THE MARIJUANA IS MINE BUT THE CRACK
10 ISN'T. HE IDENTIFIED IT AS CRACK. LOGICALLY WHAT
11 CAN YOU ASSUME FROM THAT? HE KNEW THERE WAS A BAG,
12 HE KNEW WHAT WAS IN THE BAG. WELL, IF IT WASN'T HIS
13 AND HE DIDN'T KNOW WHAT THE BAG WAS, HOW WOULD HE
14 KNOW THAT IT WAS CRACK IN THE BAG? NOBODY HAS TOLD
15 HIM, NOBODY SAID I FOUND CRACK. NOBODY HAS ASKED HIM
16 WHAT DO YOU KNOW ABOUT THIS CRACK. ON HIS OWN HE
17 IDENTIFIES IT AS CRACK. DOES THAT INDICATE HE KNEW
18 WHAT IT WAS? HE HAD IT IN HIS HAND, HOW OTHERWISE
19 WOULD HE KNOW? IT'S JUST OUT IN THIS SUPPOSEDLY DARK
20 PARKING LOT, HE DOESN'T KNOW ABOUT IT, HOW WOULD HE
21 KNOW TO CALL IT THAT? COMMON SENSE LADIES AND
22 GENTLEMEN, LOGIC, REASONABLE ASSUMPTIONS WHEN YOU ARE
23 ADDING ALL THESE THINGS TOGETHER. THOSE ARE THE
24 THINGS YOU RELY ON. YOUR LOGIC, YOUR COMMON SENSE,
25 AND YOUR REASON.

1 LET'S LOOK AT THIS JUST A LITTLE MORE.
2 AGAIN IF IT'S NOT IN THE DEFENDANT'S HAND WHERE DID
3 IT COME FROM? THE SKY? WEATHER REPORTS DON'T SAY
4 IT'S RAINING CRACK COCAINE. LOOK AT THE LOGICAL, IS
5 THIS A REASONABLE EXPLANATION FOR WHAT ACTUALLY
6 HAPPENED.

7 SOMEONE ELSE, WE TALKED ABOUT HIM
8 SEPARATING HIMSELF. IS THERE ANY REASONABLY
9 ASSUMING, IS IT REASONABLE TO BELIEVE SOMEONE ELSE
10 THREW IT, SOMEONE ELSE PUT IT THERE, WHERE IN A
11 MATTER OF SECONDS THE OFFICER SEES IT AND NO ONE
12 EXCEPT FOR THE OFFICER IS NEARBY. OR IT WAS ALREADY
13 THERE.

14 OFFICER CHAVIS TESTIFIED HE SAW
15 SOMETHING FALL TO THE GROUND, HE WENT TO IT, HE
16 DIDN'T TESTIFY THAT THERE WAS ANYTHING ELSE AROUND.
17 HE SORT OF SAW IT THE ENTIRE TIME, SAW WHERE IT WENT.
18 UNLESS HE'S GOT SOME SORT OF EYE TROUBLE AND HE JUST
19 IMAGINED THIS ALL, WHAT'S ALREADY THERE. SAW IT
20 HAPPEN IN A MATTERS OF SECONDS. HE SAW IT FALL TO
21 THE GROUND. ALL OF THAT, LADIES AND GENTLEMEN, ADDS
22 UP TO POSSESSION.

23 LET'S TALK ABOUT CRACK COCAINE JUST AS
24 WE TALKED ABOUT WITH THE MARIJUANA. YOU HAVE THE
25 DRUG REPORT WITH YOU IN EVIDENCE. YOU CAN LOOK AT IT

1 REAL CLOSELY. LOOK AT THAT PORTION RIGHT THERE. IT
2 SAYS THE RESULTS ARE COCAINE BASE CALLED CRACK
3 COCAINE IN THE AMOUNT 6.21 GRAMS.

4 NOW LET'S TALK ABOUT A BIGGER ONE,
5 INTENT TO DISTRIBUTE. WHEN WE TALK ABOUT DISTRIBUTE
6 WHAT ARE WE CONTEMPLATING WHEN WE TALK ABOUT
7 DISTRIBUTE? WELL, THERE CAN BE SEVERAL OPTIONS. IT
8 CAN MEAN TO DISTRIBUTE OR TO DISPENSE OR TO DELIVER.
9 MAYBE THE TYPICAL THING YOU THINK ABOUT IS SELLING
10 DRUGS, AN INTENT TO DISTRIBUTE COULD MEAN AN INTENT
11 TO SELL DRUGS FOR MONEY, BUT IT DOESN'T HAVE TO BE.
12 IT COULD BE GIVING THEM. IT COULD BE HAVING A PARTY
13 AND HANDING THEM OUT. IT CAN BE NOT GETTING ANYTHING
14 IN RETURN. IT COULD BE LIKE SOMEONE IS DEALING OUT A
15 DECK OF CARDS THAT YOU ARE GOING TO HAND OUT THESE
16 DRUGS THAT WAY. THAT WOULD BE DELIVER, THAT WOULD BE
17 DISPENSING, SO ALL OF THOSE CAN FALL IN WHAT WE CALL
18 DISTRIBUTE. IT DOESN'T NECESSARILY WITH INTENT TO
19 SELL FOR PROFIT CRACK COCAINE. IT'S DISTRIBUTE, SOME
20 TYPE OF DISTRIBUTING, WHETHER IT'S FOR MONEY, WHETHER
21 IT'S FOR FRIENDS, WHETHER IT'S FOR SOME OTHER REASON.
22 WE TALKED ABOUT WITH INTENT THAT YOU JUST, WE CAN'T
23 LOOK INSIDE ANYONE'S HEAD, WE CAN'T LOOK INSIDE THE
24 DEFENDANT'S HEAD, BUT WE CAN USE OTHER THINGS. THE
25 THREE C'S: WE CAN USE OUR COMMON SENSE. I TALKED SO

1 MUCH ABOUT COMMON SENSE AND THAT'S BECAUSE IT'S SO
2 IMPORTANT. WE TALKED ABOUT THAT BEING JUST AS
3 IMPORTANT AS ANY OF YOUR OTHER SENSES. THAT'S A TOOL
4 FOR YOU TO USE WHEN YOU ARE MAKING A DECISION IN THIS
5 CASE. TALKED WITH CONTEXT CLUES. I CAN REMEMBER
6 FROM SCHOOL WHEN YOU ARE TAKING TESTS OR STANDARDIZED
7 TESTS OR SOMETHING LIKE THAT, THAT YOU WOULD GET A
8 SENTENCE AND YOU ARE SUPPOSED TO FILL A WORD IN OR
9 YOU ARE SUPPOSED TO DO SOMETHING WITH IT AND YOU GO
10 UP TO YOUR TEACHER AND YOU SAY I DON'T WHAT THIS WORD
11 IS BUT IT'S A TEST SO THE TEACHER WON'T LET YOU USE A
12 DICTIONARY AND THE TEACHER IS NOT GOING TO TELL YOU
13 WHAT THE WORD MEANS, THE TEACHER WOULD ALWAYS TELL ME
14 YOU NEED TO LOOK AT EVERYTHING ELSE IN THE SENTENCE.
15 YOU NEED TO LOOK AT THE WORDS AROUND IT AND READ IT
16 AS A WHOLE AND SEE IF YOU CAN FIGURE OUT WHAT THE
17 WORD IS. I LOOK AT IT LIKE THIS, WE CAN'T KNOW FOR
18 CERTAIN SOMEONE'S INTENT. CAN'T LOOK INSIDE THEIR
19 HEAD, CAN'T SEE WHAT THEY WERE THINKING, BUT WE CAN
20 LOOK AT THE FACTS AND CIRCUMSTANCES SURROUNDING IT.
21 WE CAN LOOK AT WHAT WAS HAPPENING, WE CAN USE OUR
22 COMMON SENSE TO MAKE ASSUMPTIONS ABOUT THE FACTS, AND
23 FROM THAT THEN WE CAN MAYBE FIGURE OUT WHAT THE
24 INTENT WAS AT THE TIME. SO I THINK THAT'S THE WAY I
25 LOOK AT IT.

1 CIRCUMSTANTIAL EVIDENCE AND THE JUDGE
2 IS GOING TO TALK TO YOU ABOUT THE TYPES OF EVIDENCE
3 AND CIRCUMSTANTIAL EVIDENCE IS SORT OF SIMILIAR TO
4 THAT CONTEXT CLUES IDEAS. IT'S NOT DIRECT. IT'S NOT
5 SOMEONE SAYING I DID IT. IT'S NOT SEEING IT ON A
6 VIDEO TAPE. IT'S LOOKING AT THE FACTS FROM THE
7 CIRCUMSTANCES, LOOKING AT WHAT HAPPENED AND WHAT CAN
8 YOU REASONABLY ADD UP TOGETHER, WHAT CAN YOU ADD ALL
9 TOGETHER TO REACH A VERDICT.

10 THE JUDGE WILL TALK TO YOU ABOUT WHAT
11 CIRCUMSTANTIAL EVIDENCE AND DIRECT EVIDENCE DOESN'T
12 MEAN THAT JUST BECAUSE IT'S A CIRCUMSTANTIAL EVIDENCE
13 CASE THAT THE STATE CANNOT PROVE THEIR CASE BEYOND A
14 REASONABLE DOUBT. IT'S JUST A DIFFERENT TYPE OF
15 EVIDENCE AND THE JUDGE WILL INSTRUCT YOU ON THAT.

16 I WANT TO TALK TO YOU ABOUT WHAT'S
17 CALLED A PERMISSIVE STATUTORY INFERENCE. AGAIN THE
18 JUDGE WILL INSTRUCT YOU. THE LEGISLATURE FOR CRACK
19 COCAINE SAID A PERMISSIVE STATUTORY INFERENCE ONE
20 GRAM. WHAT THAT MEANS IS THAT IF YOU ARE DEALING
21 WITH DRUGS AND THE DRUGS IN EVIDENCE, IT WEIGHS MORE
22 THAN ONE GRAM, THEN YOU CAN INFER THAT SOMEONE HAD
23 INTENT TO DISTRIBUTE THOSE DRUGS. THAT DOESN'T MEAN
24 THE STATE DOESN'T HAVE TO PROVE ITS CASE BEYOND A
25 REASONABLE DOUBT, BUT THAT'S ONE OF THE TOOLS, ONE OF

1 THOSE CONTEXT CLUES YOU CAN USE TO DETERMINE WHETHER
2 THE DEFENDANT HAD INTENT TO DISTRIBUTE THAT ONE GRAM.
3 LOOK AT THIS CASE. WE'RE DEALING WITH 6.21 GRAMS OF
4 CRACK COCAINE. THAT'S WHAT'S IN THIS BAG 6.21 GRAMS.
5 SO THAT'S OVER SIX TIMES THAT STATUTORY INFERENCE
6 LEVEL. THAT STATUTORY INFERENCE LEVEL THAT YOU CAN
7 USE TO DETERMINE WHETHER OR NOT THEY HAD INTENT TO
8 DISTRIBUTE. ONE GRAM, SIX GRAMS, 6.21 GRAMS IS
9 GREATER THAN ONE GRAM, LADIES AND GENTLEMEN.

10 LET'S LOOK AT IT THIS WAY. THIS IS
11 ANOTHER WAY OF LOOKING AT IT. WHAT'S THE INFERENCE
12 AMOUNT? ONE GRAM. THERE YOU SEE NEXT TO IT IN
13 COMPARISON THAT'S HOW MUCH CRACK COCAINE WAS THROWN
14 FROM THE DEFENDANT'S HAND THAT NIGHT.

15 LET'S TALK A LITTLE BIT ABOUT THE
16 SIGNIFICANCE OF 6.21 GRAMS BECAUSE ONE GRAM SOUNDS
17 LIKE A SMALL AMOUNT AND MAYBE WHEN YOU LOOK AT THIS
18 BACK IN THE JURY ROOM, MAYBE THIS LOOKS LIKE A SMALL
19 AMOUNT. MAYBE THIS LOOKS MORE LIKE PIECES OF CANDY
20 OR SOMETHING. IT'S NOT A HUGE AMOUNT OF DRUGS. IT'S
21 NOT A BIG SUITCASE OF DRUGS. IT LOOKS SMALL. LET'S
22 TALK ABOUT WHAT THE SIGNIFICANCE OF THAT IS. IF YOU
23 RECALL OFFICER SCHURIG'S TESTIMONY, HE TALKED ABOUT
24 THAT AN INTOXICATING DOSE OF CRACK COCAINE CAN BE
25 FROM .1 GRAM TO .2 GRAMS. LET'S DO LITTLE A BIT OF

1 MATH IN ORDER TO KIND OF EXPLAIN IT. LET'S DEAL
2 FIRST WITH TAKING .1 GRAM AS AN INTOXICATING DOSE.
3 LET'S COMPARE THIS TO BEER. WHAT WOULD BE AN
4 INTOXICATING DOSE TO THE AVERAGE PERSON OF BEER?
5 WELL, FOR MOST PEOPLE IT PROBABLY WOULDN'T BE ONE
6 BEER, PROBABLY NOT EVEN TWO. LET'S SAY JUST FOR AN
7 AVERAGE PERSON THAT SIX BEERS WOULD BE AN
8 INTOXICATING DOSE, SO WE'RE GOING TO SAY SIX BEERS IS
9 INTOXICATING DOSE FOR THE PURPOSES OF THIS
10 ILLUSTRATION, SO WE'RE GOING TO MAKE THE EQUATION
11 THAT SIX BEERS EQUALS .1 GRAMS OF CRACK. SO IF WE
12 TAKE THAT AND WHEN WE SAY A PERSON CONSUMES AN ENTIRE
13 CASE OF 24 BEERS, THAT WOULD END UP TO BE THE
14 EQUIVALENT OF .4 GRAMS CRACK, SO .4 GRAMS OF CRACK
15 WOULD EQUAL 24 BEERS. ALL RIGHT AND SAY EVEN 24
16 BEERS WASN'T TOO MUCH FOR A PERSON, THAT THEY COULD
17 TAKE THAT, THEY COULD CONSUME THAT MANY BEERS, LET'S
18 SAY 48 BEERS. WHAT WOULD THE EQUIVALENT OF THAT BE
19 WHEN WE'RE DEALING WITH SIX BEERS EQUALS .1 GRAMS OF
20 CRACK. .8 GRAMS OF CRACK. IF WE'RE USING THIS, 6.21
21 GRAMS OF CRACK THAT ARE IN THIS BAG THAT WOULD ADD UP
22 TO THE EQUIVALENT OF 372 BEERS. IS A PERSON LIKELY
23 TO CARRY AROUND IN THEIR ARMS OR A LITTLE WAGON
24 BEHIND THEM OR HOWEVER IT IS 372 BEERS FOR HIMSELF?
25 NO MATTER HOW SMALL THIS LOOKS, THIS IS THE

1 EQUIVALENT OF 372 BEERS, IS IT LIKELY THAT THIS IS
2 FOR ONE PERSON OR DOES THIS SOUND MORE LIKE EITHER A
3 PARTY THAT SOMEONE IS THROWING TO GIVE TO OTHER
4 PEOPLE OR A CONCESSION STAND TO SELL TO OTHER PEOPLE.
5 USE YOUR COMMON SENSE, USE YOUR REASONING, WHAT'S
6 MORE LIKELY.

7 I GO THROUGH THIS A LITTLE FASTER BUT
8 LET'S LOOK AT THE SAME THING. IF WE TAKE OFFICER
9 SCHURIG'S TESTIMONY THAT HE SAID SOMETIMES .2 GRAMS
10 EQUALS AN INTOXICATING DOSE. IF WE DO SIX BEERS AS
11 ONE INTOXICATING DOSE, WE DO SIX BEERS EQUALS TWO
12 GRAMS OF CRACK, ALL RIGHT, OUR NUMBERS ARE GOING TO
13 BE A LITTLE LOWER HERE, 24 BEERS IS .8. IF SOMEONE
14 WOULD TAKE 48 BEERS FOR THEMSELVES .16. SO ONCE
15 AGAIN IN THIS CASE .2 GRAMS IS AN INTOXICATING DOSE,
16 WE'RE STILL TALKING ABOUT 186 BEERS. AGAIN LADIES
17 AND GENTLEMEN, YOU ARE MAKING A REASONABLE ASSUMPTION
18 ABOUT WHETHER SOMEONE HAD INTENT TO DISTRIBUTE.
19 AGAIN WE'RE STILL LOOKING AT THE EQUIVALENT OF 186
20 BEERS. NO MATTER HOW SMALL THIS LOOKS, IT'S 6.21
21 GRAMS IS THE EQUIVALENT OF BETWEEN 186 AND 372 BEERS.

22 NOW THE JUDGE IS GOING TO CHARGE YOU
23 ON LESSER INCLUDED OFFENSE OF POSSESSION OF CRACK
24 COCAINE AND LADIES AND GENTLEMEN, IF YOU GO BACK IN
25 THE JURY ROOM AND OUT OF ALL THE TESTIMONY AND

1 EVERYTHING YOU CONSIDER AND YOU THINK THAT THIS WAS
2 FOR THE DEFENDANT'S OWN USE AND THIS IS FOR HIM, THEN
3 YOU SHOULD COME BACK AND FIND HIM GUILTY OF
4 POSSESSION OF CRACK COCAINE. BUT, LADIES AND
5 GENTLEMEN, THE STATE SUBMITS TO YOU THAT IF THIS IS
6 THE EQUIVALENT OF EITHER 186 BEERS OR 372 BEERS, THAT
7 THIS IS OVER 60 DOSES OF CRACK COCAINE THEN THE
8 REASONABLE ASSUMPTION IS NOT THAT IT WAS JUST FOR THE
9 DEFENDANT'S OWN USE BUT THAT IT WAS TO BE
10 DISTRIBUTED.

11 LET'S LOOK AT IT ONE MORE WAY BASED ON
12 WHAT OFFICER SCHURIG TESTIFIED. HOW MUCH IS THAT
13 CRACK COCAINE WORTH? BECAUSE ONCE AGAIN, LADIES AND
14 GENTLEMEN, THIS MIGHT LOOK SMALL, IT MIGHT LOOK LIKE
15 A SMALL AMOUNT, BUT LET'S SEE WHAT THAT'S ACTUALLY
16 WORTH. OFFICER SCHURIG TESTIFIED THAT .1 GRAMS
17 EQUALS ONE ROCK. THAT ROCK WAS A TERM THAT'S USED ON
18 THE STREET. HE TESTIFIED THAT ONE ROCK EQUALS \$20.
19 LET'S DO OUR MATH. 6.21 GRAMS, WE'LL SAY THAT'S 62
20 ROCKS, WE MULTIPLY THAT 20, \$1240, THAT BAG OF WHAT
21 MIGHT LOOK LIKE A SMALL AMOUNT OF CRACK BAG, THAT AT
22 FIRST GLANCE MIGHT LOOK LIKE THAT WAS SOMEONE HAD IT
23 FOR THEMSELVES, THE VALUE OF THAT IS \$1240. IS IT
24 LIKELY, IS IT LOGICAL, IS IT COMMON SENSE, THAT THE
25 DEFENDANT SPENT \$1240 TO BUY THAT AMOUNT, IN CASH

1 LADIES AND GENTLEMEN, BECAUSE THIS IS, WE'RE TALKING
2 ABOUT STREET LEVEL DRUG DEALER, ABOUT ILLEGAL DRUGS,
3 WE'RE NOT PAYING WITH FINANCING PAYMENTS OR CREDIT
4 CARDS OR PERSONAL CHECKS. THIS IS CASH. \$1240 IN
5 CASH. IF YOU BELIEVE THAT REASONABLY HE BOUGHT THAT
6 FOR HIMSELF FIND HIM GUILTY OF POSSESSION. BUT IS IT
7 REASONABLE THAT THE DEFENDANT WOULD HAVE SPENT AND
8 EVEN SPENT \$1240, NOT EVEN SAYING \$1,000 OR EVEN
9 \$1,200, BUT SPECIFICALLY \$1240 IN CASH TO PURCHASE
10 THAT CRACK COCAINE ONLY FOR HIMSELF. IF YOU THINK
11 THAT'S REASONABLE FIND HIM GUILTY OF POSSESSION. THE
12 STATE SUBMITS TO YOU THAT'S INTENT TO DISTRIBUTE.
13 THAT'S EVIDENCE OF INTENT TO DISTRIBUTE.

14 WE TALKED ABOUT WHAT WAS THERE, THE
15 FACTS AND CIRCUMSTANCES THAT WERE THERE, LET'S TALK
16 ABOUT WHAT WASN'T THERE. ONCE AGAIN THIS IS
17 SOMETHING, IN OTHER WORDS SCALES AND BAGGIES. THE
18 DEFENSE ATTORNEY TALKED SEVERAL TIMES ABOUT SCALES
19 AND BAGGIES AND IT CAME UP FIRST IN CROSS EXAMINATION
20 OF SERGEANT BREEDEN, IT WAS BROUGHT UP IN CROSS
21 EXAMINATION IN OFFICER CHAVIS, I BELIEVE IT WAS EVEN
22 TALKED TO ABOUT WITH MATT HALL, THE EVIDENCE
23 CUSTODIAN, THE SCALES AND BAGGIES. THE DEFENSE
24 COUNSEL KEPT ASKING IF SCALES AND BAGGIES WERE THERE,
25 SCALES AND BAGGIES AREN'T THERE. LADIES AND

1 GENTLEMEN, THERE WERE NO SCALES AND BAGGIES THERE
2 THAT NIGHT. WOULD SCALES AND BAGGIES, INDIVIDUAL
3 BAGGIES BE EVIDENCE OF INTENT TO DISTRIBUTE.
4 ABSOLUTELY. DOES THE ABSENCE OF SCALES AND BAGGIES
5 MEAN THAT THE STATE CAN'T PROVE INTENT TO DISTRIBUTE
6 BEYOND A REASONABLE DOUBT? ABSOLUTELY NOT. WE THINK
7 ABOUT SCALES AND BAGGIES THINK BACK TO WHAT SERGEANT
8 BREEDEN TESTIFIED TO ON CROSS WHEN HE ASKED ABOUT
9 SCALES AND BAGGIES. NOW IF YOU RECALL HE WAS ASKED
10 HOW MANY DRUG CASES HE MADE. I THINK HE ANSWERED HE
11 DOES AROUND 30 A MONTH. HE'S GOT SOME EXPERIENCE.
12 THE STATE ASKED IF HE DEALT WITH HIGH LEVEL DRUG
13 DEALING OR STREET LEVEL DRUG DEALING. HIS ANSWER WAS
14 HE DEALT WITH STREET LEVEL DRUG DEALING SO HE'S GOT
15 FAMILIARITY WITH STREET LEVEL DRUG DEALING AND WE'RE
16 TALKING ABOUT STREET LEVEL DRUG DEALING. AND HE
17 TESTIFIED THAT IT WAS NOT UNCOMMON TO SEE CRACK
18 COCAINE NOT INDIVIDUALLY BAGGED. HE DISTINGUISHED IT
19 BETWEEN MARIJUANA JUST BECAUSE OF THE NATURE OF IT.
20 TALKED ABOUT MARIJUANA BEING INDIVIDUALLY BAGGED AND
21 IF YOU LOOK AT IT, YOU'LL HAVE THIS BACK IN THE JURY
22 ROOM, IT'S KIND OF CRUMBLY, IT'S DRY, THIS COULD
23 EASILY FALL. IF SOMEBODY JUST STUCK THIS IN THE
24 POCKET IT WOULD GET CAUGHT IN THE POCKET LINING WITH
25 THE LINT AND WHATEVER OR IF IT'S WINDY IT MIGHT BLOW

1 AWAY. IF YOU LOOK AT THIS WOULD IT BE REASONABLE FOR
2 IT TO BE BAGGED UP AND THAT'S WHAT OFFICER BREEDEN'S
3 EXPERIENCE IS. HE TALKED ABOUT IT IT WASN'T UNUSUAL
4 TO SEE CRACK NOT BAGGED UP. WELL, IF YOU LOOK AT
5 CRACK COCAINE, AND YOU'LL HAVE THIS BACK IN THE JURY
6 ROOM, AND YOU SORT OF FEEL THIS THROUGH THE BAG, IT'S
7 HARD. IT'S NOT CRUMBLY, IT'S NOT FIBERS, IT'S NOT
8 PLANT, THIS IS HARD, AND IT CAN SORT OF BE IN LITTLE
9 PIECES. IF YOU LOOK AT THIS FOR THE MOST PART THESE
10 ARE IN PRETTY UNIFORM SIZE PIECES. I'LL TALK MORE
11 ABOUT THEY LOOK LIKE LITTLE PIECES OF CANDY. IN FACT
12 YOU'RE MEASURING OUT A TIC TAC YOU COULD JUST PULL
13 ONE OF THESE OUT. SO JUST BECAUSE THERE AREN'T
14 INDIVIDUAL BAGGIES HERE, WOULD THAT MEAN SOMEONE
15 COULDN'T EASILY DISTRIBUTE THESE? IF YOU LOOK AT
16 THEM, COMPARE THE TWO, THINK ABOUT WHAT SERGEANT
17 BREEDEN SAYS HIS EXPERIENCE IS, HIS EXPERIENCE WITH
18 DRUG DEALERS, HIS EXPERIENCE WITH THE INVESTIGATIONS.

19 LET'S ALSO MENTION A LITTLE BIT ABOUT
20 FINGERPRINTS. DEFENSE COUNSEL MAY BRING THIS UP.
21 THERE WEREN'T FINGERPRINTS ON THAT BAG. WELL, RAY
22 BARNWELL TESTIFIED TO YOU, THERE WEREN'T FINGERPRINTS
23 ON THE BAG BUT I DON'T RECALL ANYBODY TESTIFIED THAT
24 THERE WERE ANY FINGERPRINTS ON THE BAG, SO NOT ONLY
25 WERE THE DEFENDANT'S FINGERPRINTS NOT ON IT, THERE

1 WEREN'T ANY OTHER FINGERPRINTS, THERE WEREN'T THE
2 OFFICERS FINGERPRINTS ON IT. WE KNOW OFFICER CHAVIS
3 TOUCHED IT. SO IN REGARD DEFENSE COUNSEL TALKS TO
4 YOU ABOUT WHAT TO KEEP FINGERPRINTS FROM BEING ON
5 THERE, TALKED ABOUT HOW WHEN THE BAGS CRUMPLED UP,
6 THE FINGERPRINTS WILL GET SPLIT; HE TALKS ABOUT IF
7 SOMETHING IS THROWN AND WE KNOW SOMETHING WAS THROWN
8 TO THE GROUND, WE KNOW THAT BAG WAS THROWN, THAT CAN
9 MESS UP FINGERPRINTS. SO REASONABLY IF THE OFFICER
10 SEES HIM THROW IT OUT OF HIS HAND, JUST BECAUSE THERE
11 IS NOT ANY FINGERPRINTS ON IT, DOES THAT MEAN HE
12 DIDN'T HAVE THAT? IS THAT SOMEHOW THAT LIGHT SCALES
13 AND BAGGIES THAT BECAUSE THIS ISN'T THERE THE CASE
14 CAN'T BE PROVEN BEYOND A REASONABLE DOUBT? WE NEED
15 TO LOOK AT WHAT WAS THERE. \$531 IN CASH. WE ALREADY
16 TALKED ABOUT HOW THIS WAS WORTH \$1240. LET'S MAKE A
17 REASONABLE ASSUMPTION. IF THE DEFENDANT PURCHASED
18 THAT FOR HIMSELF THAT NIGHT, SO HE SPENT \$1240 ON
19 THAT, HE HAD AN ADDITIONAL \$531 ON HIM, SO THAT WOULD
20 BE \$1741 TOTAL IN CASH HE HAD WITH HIM THAT NIGHT.
21 USE YOUR LOGIC, YOUR USE YOUR COMMON SENSE, USE YOUR
22 EXPERIENCE.

23 THE COMPLAINTS ABOUT DRUG ACTIVITY.
24 SERGEANT BREEDEN TESTIFIED TO YOU ONE OF THE REASONS
25 THEY DROVE BY THERE WAS THAT THE MANAGEMENT, THE

1 RESIDENTS OF MARKET PLACE APARTMENTS HAVE BEEN
2 COMPLAINING ABOUT DRUG ACTIVITY IN THE PARKING LOT.
3 HE HAD TESTIFIED TO YOU THE REASON THEY WENT IN THE
4 MIDDLE ENTRANCE WITH THAT BACK ENTRANCE WITH THAT
5 PARKING LOT WAS A SPECIFIC AREA THEY WERE COMPLAINING
6 ABOUT. LADIES AND GENTLEMEN, PEOPLE ON MARKET PLACE
7 APARTMENTS THEY DIDN'T WANT THIS IN THEIR PARKING
8 LOT. THIS ISN'T CANDY TO THEM. THIS IS ILLEGAL
9 DRUGS. THIS IS ILLEGAL DRUGS BEING DISTRIBUTED IN
10 THE PARKING LOT OR BEING TAKEN TO THE PARKING LOT TO
11 BE DISTRIBUTED AND THEY DON'T WANT THAT THERE.

12 OFFICERS TALKED TO YOU ABOUT IN LIGHT
13 OF THE COMPLAINTS ABOUT DRUG ACTIVITY WITH THEIR
14 EXPERIENCE THEY GO BY, THEY SEE THE CAR, THEY SEE THE
15 PEOPLE THERE, THAT'S SOMETHING THAT SPARKS IN THEIR
16 MIND THAT THIS MIGHT BE DRUG ACTIVITY GOING ON,
17 THAT'S SOMETHING CONSISTENT WITH ALL THE OTHER
18 FACTORS TAKEN INTO EFFECT, THAT'S SOMETHING THAT'S
19 CONSISTENT WITH THE DISTRIBUTION OF DRUGS, THAT
20 SOMEONE WHO INTENDS TO DISTRIBUTE DRUGS.

21 DON'T FORGET ABOUT THE PERMISSIVE
22 INFERENCE LEVEL. THAT'S SOMETHING ELSE IF WE LOOK AT
23 WHAT'S THERE AND THE LARGE AMOUNT OF CRACK COCAINE.
24 YOU HEARD ABOUT THE STREET VALUE OF IT, ABOUT THE
25 EQUIVALENT IF IT WAS BEERS, EQUIVALENT OF 60 DOSES OF

1 CRACK COCAINE. IT MAY LOOK SMALL, BUT THIS IS A
2 POTENT ILLEGAL DRUG AND EVEN IF IT LOOKS SMALL TO
3 YOUR EYES THIS IS A LOT OF CRACK COCAINE.

4 THE DEFENSE TALKED ABOUT A STRING OF
5 ASSUMPTIONS IN OPENING. ASSUMPTIONS AREN'T BAD.
6 ASSUMPTIONS CAN BE LOGICAL. ASSUMPTIONS DON'T HAVE
7 TO BE HUGE JUMPS. THE ASSUMPTIONS THE STATE IS
8 MAKING, THE ASSUMPTIONS THE STATE IS ASKING TO YOU
9 MAKE AREN'T BIG LEAPS. CERTAINLY AREN'T THE DISTANCE
10 FROM A 30 STORY BUILDING TO THE GROUND. THE LEAP
11 WE'RE ASKING YOU TO MAKE, THE JUMP WE'RE ASKING YOU
12 TO ASSUME, WELL, THAT'S MUCH MORE SIMILIAR BETWEEN
13 THE DISTANCE BETWEEN SOMEONE'S HAND AND THE SIDEWALK.
14 THAT'S THE LEAP WE'RE ASKING YOU TO DO. NOT ALL
15 ASSUMPTIONS ARE WILD AND CRAZY. YOU CAN USE YOUR
16 COMMON SENSE, YOU CAN USE YOUR REASON, YOU CAN USE
17 THE CONTEXT CLUES, YOU CAN USE ALL THE FACTS AND
18 CIRCUMSTANCES, ADD IT ALL TOGETHER, AND YOU CAN MAKE
19 THOSE ASSUMPTIONS.

20 WE TALKED ABOUT IT, GO BACK AGAIN, YOU
21 CAN'T KNOW FOR CERTAIN WHAT SOMEONE INTENDS BUT WE
22 MAKE THOSE ASSUMPTIONS, WE USE OUR COMMON SENSE, YOU
23 USE THE CONTEXT CLUES, YOU USE THE CIRCUMSTANTIAL
24 EVIDENCE, YOU THINK ABOUT IT ALL, YOU THINK ABOUT IT
25 ALL TOGETHER AND WHAT DOES IT ALL ADD UP TO? IF YOU

1 THINK ABOUT IT IT'S SORT OF LIKE ONE OF THOSE PAINT
2 BY NUMBER SETS THAT KIDS MAY USE AND THE SHAPES ARE
3 ALL OUT THERE, MAYBE THEY DON'T ALL LOOK AND MAYBE
4 THE WEIGHT, THE CRACK AND THIS AND THE COMPLAINTS AND
5 WHAT IT LOOKED LIKE, MAKE IT ALL SEPARATE
6 INDIVIDUALLY EACH THING, IT MIGHT LOOK LIKE INTENT TO
7 DISTRIBUTE, BUT WHEN YOU PUT IT ALL TOGETHER, WHEN
8 YOU PAINT ALL THOSE SHAPES, THE PICTURE EMERGES, LOOK
9 AT ALL OF THIS, THINK ABOUT ALL OF THIS, AND SEE IF
10 WHEN YOU ADD ALL OF IT TOGETHER, WHEN YOU PUT ALL OF
11 THESE INDIVIDUALS PARTS TOGETHER THE PICTURE THAT
12 EMERGES IS AN INTENT TO DISTRIBUTE CRACK COCAINE.
13 THE DEFENDANT'S INTENT TO DISTRIBUTE CRACK COCAINE.

14 OUR FINAL ELEMENT IS A SIMPLE ONE
15 AGAIN. WE ALREADY COVERED IT WITH THE MARIJUANA.
16 YORK COUNTY, IT'S BEEN MADE CLEAR. MARKET PLACE
17 APARTMENTS ON HECKLE BOULEVARD AND IT'S IN YORK
18 COUNTY. THAT ELEMENT IS MET. WHEN YOU MEET THAT
19 ELEMENT, WE ADD UP THE EQUATION, AND THE DEFENDANT IS
20 GUILTY OF POSSESSION WITH INTENT TO DISTRIBUTE CRACK
21 COCAINE.

22 LET'S TALK A LITTLE BIT ABOUT
23 REASONABLE DOUBT. THE JUDGE WILL INSTRUCT YOU ABOUT
24 REASONABLE DOUBT. I'M SURE THE DEFENSE ATTORNEY IS
25 GOING TO TALK TO YOU ABOUT REASONABLE DOUBT. LISTEN

1 TO THE JUDGE'S INSTRUCTIONS. DO YOU THINK A
2 REASONABLE DOUBT IS A DOUBT THAT WOULD CAUSE A
3 REASONABLE PERSON TO HESITATE TO ACT. IT DOESN'T
4 JUST SAY TO HESITATE, HESITATE TO ACT. IT'S GOT
5 TAKING THAT, NO, I'M NOT GOING TO TAKE THAT STEP, NOT
6 JUST I'M THINKING ABOUT WHETHER OR NOT I'M GOING TO
7 TAKE THAT STEP. REASONABLE DOUBT IS NOT
8 DELIBERATION, IT'S NOT DEBATE, IT'S NOT DISCUSSION.
9 THOSE ARE ALL THINGS YOU SHOULD DO IN THE JURY ROOM
10 WHEN YOU GO BACK TO DELIBERATE. WE TELL YOU TO
11 DELIBERATE, WE WANT YOU TO DISCUSS ALL THE FACTS,
12 THAT'S YOUR JOB. BUT JUST BECAUSE THERE IS A DEBATE
13 OR YOU CONSIDER THINGS FROM DIFFERENT SIDES OR YOU
14 TALK ABOUT THE ISSUES OR YOU TALK ABOUT THE FACTS
15 THAT DOESN'T EQUATE TO REASONABLE DOUBT. A MORE
16 EXPERIENCE ATTORNEY THAN I ONCE DESCRIBED IT AS IT'S
17 THE REASON THERE ARE CHAIRS IN THE JURY ROOM. THE
18 STATE DOESN'T EXPECT TO YOU MAKE A SNAP DECISION.
19 THE LAW DOESN'T EXPECT TO YOU MAKE A SNAP DECISION.
20 YOU ARE SUPPOSED TO DEBATE, YOU ARE SUPPOSED TO
21 DISCUSS, YOU ARE SUPPOSED TO DELIBERATE, BUT JUST
22 BECAUSE YOU DO THAT DOESN'T MEAN THAT YOU HAVE A
23 REASONABLE DOUBT.

24 WE'RE HERE TODAY ON BECAUSE ON JUNE 1,
25 2007, THE DEFENDANT CHRISTOPHER ROBINSON POSSESSED

1 MARIJUANA AND POSSESSED CRACK COCAINE WITH INTENT TO
2 DISTRIBUTE. WHEN WE TALK ABOUT THE ELEMENT, I'VE
3 TALKED ABOUT IT LIKE MATH, BUT IT ISN'T JUST MATH AND
4 CERTAINLY ISN'T MATH TO PEOPLE AT MARKET PLACE
5 APARTMENTS. IT'S NOT JUST MATH. IT'S NOT JUST THE
6 WORDS ON THE SCREEN.

7 AFTER I SIT DOWN THE STATE DOESN'T
8 HAVE THE OPPORTUNITY TO SPEAK TO YOU ANYMORE. THE
9 DEFENSE COUNSEL WILL AN OPPORTUNITY TO SPEAK TO YOU,
10 THE JUDGE WILL INSTRUCT YOU ON THE LAW, AND THEN
11 YOU'LL GO BACK IN THE JURY ROOM. THE LAST WORDS THE
12 STATE WANTS YOU TO HEAR ARE TO URGE YOU TO USE YOUR
13 EYES, USE YOUR EARS, USE YOUR HANDS, USE YOUR COMMON
14 SENSE, USE YOUR SENSES, THINK ABOUT EVERYTHING IN
15 THIS CASE. THE PEOPLE AT MARKET PLACE APARTMENTS ON
16 JUNE 1, 2007, THIS WASN'T ABOUT THE OFFICERS GOING
17 THERE TO FIND PEOPLE PLAYING, SOCIALIZING; THIS WAS
18 THEM GOING THERE TO FIND THE DEFENDANT WITH MARIJUANA
19 AND WITH CRACK COCAINE. THE PEOPLE AT MARKET PLACE
20 APARTMENTS DON'T WANT THIS IN THE PARKING LOT. THEY
21 DON'T WANT THIS IN THE PLACE THAT THEY GO HOME TO IN
22 SUMMER EVENINGS. THE LAST WORDS THE STATE ASKS YOU
23 ARE TO ASK YOU TO USE YOUR EYES, TO USE YOUR EARS, TO
24 USE YOUR COMMON SENSE, TO RETURN TWO VERDICTS THAT
25 SPEAK THE TRUTH, TWO VERDICTS TO FIND THE DEFENDANT

1 GUILTY. THANK YOU, LADIES AND GENTLEMEN.

2 THE COURT: MS. INZERILLO.

3 MS. INZERILLO: THANK YOU, YOUR HONOR.

4 MAY IT PLEASE THE COURT.

5 CLOSING STATEMENT BY MS. INZERILLO:

6 GOOD MORNING, LADIES AND GENTLEMEN. WHEN I SPOKE TO
7 YOU YESTERDAY I TOLD YOU THAT THIS CASE WAS ABOUT
8 ASSUMPTIONS AND THIS WAS A CASE IN WHICH THE STATE IN
9 ORDER TO SHOW PROVE THEIR CASE WAS GOING TO STRING
10 TOGETHER A BUNCH OF ASSUMPTIONS WITH NO BASIS. AND
11 THE MORE I LISTENED TO THE TESTIMONY BEING GIVEN AND
12 THE EVIDENCE BEING GIVEN AND EVEN DURING THE STATE'S
13 CLOSING I WAS REMINDED OF THAT MOVIE THE WIZARD OF
14 OZ. I THINK WE'VE ALL SEEN THE WIZARD OF OZ WHERE
15 DOROTHY AND TOTO AND THE TIN MAN AND THE COWARDLY
16 LION AND THE SCARECROW, THEY ALL WALKED DOWN THE
17 YELLOW BRICK ROAD. EVERYBODY TELLS THEM WALK DOWN
18 THE YELLOW BRICK ROAD THAT WILL GET YOU TO OZ, SO
19 THEY FOLLOW THE YELLOW BRICK ROAD AND THEY GET TO OZ
20 AND WHAT DO THEY FIND? THEY FIND THIS PHENOMENAL
21 PLACE. THIS THING OF BEAUTY AND THEY GO TO THE OZ
22 AND THEY SEE THE GREAT OZ AND IT IS A BEAUTIFUL THING
23 TO BEHOLD, EXCEEDING ALL THEIR EXPECTATIONS. THEN
24 YOU REMEMBER TOTO I THINK IT WAS, KIND OF SCAMPERS
25 AROUND AND HE PULLS BACK THE CURTAIN ON THE GREAT OZ

1 AND WHAT DOES HE FIND? HE DOESN'T FIND A GREAT OZ.
2 HE FINDS A LITTLE MAN WITH A SMOKE MACHINE AND A
3 MICROPHONE AND A COUPLE OTHER LITTLE MACHINES I NEVER
4 COULD QUITE FIGURE OUT WHAT THEY DO. THAT'S WHAT
5 THIS CASE IS, LADIES AND GENTLEMEN. THE STATE
6 THROUGH THE DURATION OF THIS TRIAL HAS PUT FORTH
7 SEVERAL ASSUMPTIONS. NOW IS THE TIME TO PULL BACK
8 THE CURTAIN ON THOSE ASSUMPTIONS AND SEE WHAT IF ANY
9 EVIDENCE THEY HAVE PUT FORWARD IN PROVING
10 ASSUMPTIONS.

11 WHAT'S THE FIRST ASSUMPTION? THAT
12 CHRISTOPHER ROBINSON POSSESSED CRACK COCAINE. ALL
13 RIGHT. EVIDENCE OF THAT CAME IN THE FORM OF
14 TESTIMONY FROM TWO OFFICERS, OFFICER CHAVIS AND
15 SERGEANT BREEDEN. SERGEANT BREEDEN TESTIFIED FIRST
16 AND HE SAID THEY WERE STANDING IN ONE OF THESE
17 PARKING SPACES AND THEN HE SAW CHRIS ROBINSON WALK
18 DOWN THE ALLEYWAY TOWARDS THE WOODED AREA, OVER HERE,
19 AND HE WAS VERY SPECIFIC ABOUT THAT, THAT HE SAW
20 CHRISTOPHER ROBINSON WALK THIS WAY. OFFICER CHAVIS
21 TOOK THE STAND -- I'M SORRY. SERGEANT BREEDEN THEN
22 TESTIFIED THAT WHEN HE SAW CHRISTOPHER ROBINSON WALK
23 THAT WAY HE SAID, HEY, COME BACK HERE AND CHRISTOPHER
24 ROBINSON TURNED AROUND AND WALKED BACK TOWARDS HERE,
25 THE CAR BEING PARKED HERE.

1 OFFICER CHAVIS THEN TOOK THE STAND AND
2 HE SAID CHRISTOPHER ROBINSON WALKED DOWN THIS
3 SIDEWALK AND I KNOW HE WALKED DOWN THAT SIDEWALK
4 BECAUSE THIS IS BOULEVARD APARTMENTS OR
5 HECKLE BOULEVARD. HE GAVE A BUILDING ADDRESS, LADIES
6 AND GENTLEMEN, THAT'S HOW SURE HE WAS WHERE
7 CHRISTOPHER ROBINSON WAS WALKING. HE ALSO SAID
8 CHRISTOPHER ROBINSON WAS NEVER OUT OF MY SIGHT. I
9 FOLLOWED CHRISTOPHER ROBINSON NO MORE THAN TEN FEET
10 BEHIND ME THE ENTIRE TIME. NOW, LADIES AND
11 GENTLEMEN, THIS IS A PROBLEM, THE STATE HAS GIVEN YOU
12 TWO WITNESSES ALREADY THAT ARE THE EYE WITNESSES TO
13 THE ACCOUNT AND THEY CAN'T EVEN AGREE ON WHAT THE
14 STORY IS BECAUSE IF YOU BELIEVE OFFICER BREEDEN THAT
15 CHRISTOPHER ROBINSON WALKED HERE AND THEN WALKED
16 BACK, OFFICER CHAVIS COULDN'T HAVE BEEN TEN FEET
17 BEHIND HIM THE WHOLE TIME. IF YOU BELIEVE OFFICER
18 CHAVIS, THAT CHRISTOPHER ROBINSON WALKED HERE, THEN
19 YOU CAN'T BELIEVE SERGEANT BREEDEN WHEN SERGEANT
20 BREEDEN SAID I CALLED HIM BACK TO ME. NOW THERE
21 SEEMS TO BE NO CONFUSION AT ANY POINT THAT AT SOME
22 POINT CHRISTOPHER ROBINSON WAS STANDING NEXT TO
23 SERGEANT BREEDEN BECAUSE AT THE POINT THAT OFFICER
24 CHAVIS STOOD UP AND SAID I FOUND SOME CRACK, SERGEANT
25 BREEDEN IMMEDIATELY TURNED AROUND AND PLACED

1 CHRISTOPHER ROBINSON UNDER ARREST. THERE WAS NO
2 DELAY. THERE WAS NO HAVING TO WALK TO CHRISTOPHER
3 ROBINSON TO GET TO HIM TO HOLD HIM UNDER ARREST. HE
4 WAS THERE. THERE WAS NO QUESTION ABOUT THAT.

5 NOW LET'S FOCUS AGAIN ON THE
6 ASSUMPTION THAT OFFICER CHAVIS SAW CHRISTOPHER
7 ROBINSON DROP THIS BAGGY. NOW AS TESTIMONY THEN IT
8 WAS A FRIDAY NIGHT, IT WAS NIGHTTIME, AND THE
9 OFFICERS SAID, WELL, IT WAS NIGHTTIME BUT THERE WAS
10 LIGHTS. OKAY, THERE WERE LIGHTS ACROSS THE PARKING
11 LOT. THERE IS ONE ALL THE WAY ACROSS THE PARKING
12 LOT. WHETHER THE EVENT TOOK PLACE HERE OR HERE OR
13 SOMEWHERE, DEPENDING ON HOW WHO YOU BELIEVE, AND HE
14 SAID THERE WERE LIGHTS COMING FROM THE HOUSES. THESE
15 COVERED PORCHES HERE PROVIDED LIGHT. BUT YET OFFICER
16 CHAVIS TESTIFIED THAT IT WAS DARK ENOUGH THAT IN
17 ORDER TO FOLLOW CHRISTOPHER ROBINSON HE HAD TO PULL
18 OUT HIS FLASHLIGHT. HE HAD TO PULL OUT HIS
19 FLASHLIGHT AND USE IT TO LOOK ON THE GROUND TO FIND
20 WHATEVER HE WAS LOOKING FOR. THAT'S HOW DARK IT WAS.
21 OFFICER BREEDEN SAID HE DOESN'T REMEMBER IF OFFICER
22 CHAVIS PULLED OUT HIS FLASHLIGHT OR NOT. REASONABLE
23 DOUBT AS TO WHETHER THEY SAW WHAT THEY SAID THEY DID.
24 NOW THEY PRESENT IT AND THEY PUT THE OFFICERS ON THE
25 STAND AND THE OFFICERS WERE VERY, VERY SURE ABOUT

1 WHAT THEY SAW AND IT ALL SOUNDS GOOD, BUT WHEN YOU
2 LOOK UNDERNEATH IT, IT DOESN'T SOUND SO GOOD. WHEN
3 YOU PULL BACK THE CURTAIN HOW CAN YOU BE SO SURE?

4 NOW THE STATE INTRODUCED EVIDENCE OF
5 FINGERPRINTING AND THE FINGERPRINT ANALYST GOT ON THE
6 STAND AND HE SAID, YES, I TESTED THE BAGGY THAT HAD
7 CRACK IN IT AND I DIDN'T FIND ANY PRINTS. I WAS
8 UNABLE TO PULL ANY PRINTS OFF OF THIS BAGGY. AND HE
9 TESTIFIED THAT HE RAN THIS TEST SEPTEMBER 28, 2007.
10 THAT'S THE DAY ON HIS REPORT. NOW, LADIES AND
11 GENTLEMEN, FOR THOSE OF YOU WHO DON'T HAVE A CALENDAR
12 IN FRONT OF YOU, THAT WAS LAST FRIDAY. NOW I WOULD
13 NOTE NO FINGERPRINT ANALYSIS WAS DONE ON THE
14 MARIJUANA, NONE. THEY WERE BOTH TAKEN AT THE SCENE,
15 BUT THE STATE OF SOUTH CAROLINA PRETTY SURE WHERE THE
16 MARIJUANA CAME FROM. AS OF LAST FRIDAY THEY STILL
17 WEREN'T SURE WHERE THE CRACK CAME FROM BECAUSE THE
18 FINGERPRINT ANALYSIS INVESTIGATOR WAS STILL TRYING TO
19 FIGURE THAT OUT AND, LADIES AND GENTLEMEN, HE STILL
20 DOESN'T HAVE AN ANSWER BECAUSE HIS CONCLUSION THAT HE
21 COULDN'T FIND ANYTHING THAT'S A NEUTRAL CONCLUSION.
22 AS MS. ANDERSON JUST TOLD YOU, THAT COULD MEAN THEY
23 DIDN'T FIND CHRISTOPHER ROBINSON'S FINGERPRINTS, THEY
24 DIDN'T FIND OFFICER CHAVIS'S FINGERPRINTS. IT'S A
25 NEUTRAL CONCLUSION. WHAT'S CHANGED BETWEEN FRIDAY

1 WHEN THAT TESTING WAS DONE AND TODAY? NOTHING. WAS
2 OFFICER CHAVIS'S WORD NOT ENOUGH TO CONVINCE THEM
3 THAT I SAW HIM DROP THAT THEY HAD TO GO BACK AND DO
4 SPECIFIC OBJECTIVE TESTS? WAS HIS WORD NOT ENOUGH?
5 OBVIOUSLY THEY DIDN'T QUESTION WHERE THIS CAME FROM.
6 SERGEANT BREEDEN SAID IT WAS IN HIS POCKET. NO TEST
7 DONE ON THIS. WE'LL TAKE HIS WORD FOR THAT.

8 NOW THE STATE MADE AN ISSUE OF HOW IF
9 CHRISTOPHER ROBINSON DIDN'T DROP THAT BAG OF CRACK
10 HOW DID HE KNOW THERE WAS CRACK IN IT? IF YOU
11 LISTENED TO THE TESTIMONY OFFICER CHAVIS SAID I
12 PICKED UP THE BAG AND I OPENED IT UP AND I YELLED OUT
13 TO SERGEANT BREEDEN, HEY, I'VE GOT SOME CRACK HERE.
14 IMMEDIATELY THEREAFTER SERGEANT BREEDEN PUTS
15 CHRISTOPHER ROBINSON UNDER ARREST, DOES THE DETAILED
16 SEARCH, AND RIGHT AFTER CHRISTOPHER ROBINSON, HE
17 FINDS THE MARIJUANA IN HIS POCKET, AND THEN RIGHT
18 AFTER THAT CHRISTOPHER ROBINSON SAYS, HEY, THE
19 MARIJUANA IS MINE BUT THAT CRACK IS NOT. NOW IT'S
20 LOGICAL TO BELIEVE THAT IF BREEDEN WHO IS STANDING
21 NEXT TO CHRISTOPHER COULD HEAR OFFICER CHAVIS SAY
22 HEY, I'VE GOT CRACK, THEN CHRISTOPHER HEARD THAT TOO.
23 AND IT'S ALSO LOGICAL FOR CHRISTOPHER TO BELIEVE THAT
24 IF AN OFFICER SAYS HEY, I'VE GOT CRACK HERE, AND THEN
25 HE'S IMMEDIATELY ARRESTED, THAT DOESN'T TAKE A

1 LOGICAL LEAP TO FIGURE OUT, HEY, I'M GETTING ARRESTED
2 FOR THAT CRACK. SO WHAT DOES HE SAY ON THE SCENE?
3 THE MARIJUANA IS MINE BUT THE CRACK ISN'T. HE DIDN'T
4 HAVE A, KNOW WHAT WAS IN THAT BAGGY. OFFICER CHAVIS
5 TOLD HIM WHAT WAS IN THE BAGGY AT THE SAME TIME THAT
6 HE INFORMED SERGEANT BREEDEN OFFICER CHAVIS TOLD HIM
7 WHAT WAS IN THAT BAG. THERE IS NO MYSTERY ABOUT
8 THAT. THERE IS NO QUESTION. THERE IS NO THING TO
9 GLEAN FROM THAT. IT'S IN THE EVIDENCE. IT IS IN THE
10 EVIDENCE THAT WAS PRESENTED BY BOTH OFFICERS WHO WERE
11 ON THE SCENE.

12 NOW WHAT'S THE SECOND ASSUMPTION
13 THAT'S BEEN PRESENTED IN THIS CASE? THAT IF
14 CHRISTOPHER ROBINSON POSSESSED THIS BAGGY HE DID SO
15 WITH INTENT TO DISTRIBUTE. NOW I DON'T KNOW WHERE
16 THE BEER THING CAME FROM BECAUSE I DON'T REMEMBER ANY
17 TESTIMONY ABOUT BEERS AND I DON'T KNOW IF THAT'S AN
18 APPLES AND ORANGES KIND OF THING, BUT I DO REMEMBER
19 WHAT WAS SAID FROM THE STAND, AND IF YOU REMEMBER
20 WHAT WAS SAID DURING TESTIMONY IN THIS CASE, THE
21 STATE NEVER ASKED OFFICER CHAVIS OR SERGEANT BREEDEN,
22 BOTH WORKING LAW ENFORCEMENT OFFICERS, WORKING ON
23 DRUG CASES, SERGEANT BREEDEN GOING SO FAR TO SAY I DO
24 30 OF THESE A MONTH, THE STATE NEVER ASKED HIM,
25 WHAT'S THE VALUE OF A STREET DRUG? WHAT WAS THE

1 VALUE OF THIS? YOU WERE THERE, YOU SAW IT, YOUR
2 TESTIMONY IS YOU FOUND IT. THIS IS WHAT THEY DO
3 EVERYDAY. THEY BOTH TESTIFIED BOTH THE STATE'S
4 DIRECT EXAMINATION AND MY CROSS EXAMINATION THAT THEY
5 HAVE SPECIALIZED EXPERIENCE. THEY KNOW WHAT TO LOOK
6 FOR WHEN THEY ARE LOOKING AT A DRUG CASE. ISN'T IT
7 REASONABLE TO THINK NOT ONLY ARE THEY EYE WITNESSES
8 BUT THEY ARE SPECIALIZED WITNESSES. THEY DO THIS FOR
9 A LIVING. OFFICER CHAVIS SAID I'VE BEEN ON THE
10 STREET CRIMES UNIT SINCE ITS INCEPTION. I'VE BEEN
11 DOING THIS EVER SINCE ROCK HILL STARTED DOING IT.
12 NO. WHO DID THEY ASK THOSE QUESTIONS TO? THE
13 OFFICER WHO TOOK THE MONEY. THE OFFICER WHOSE JOB IT
14 WAS TO PUT THE MONEY IN A GOVERNMENT BANK ACCOUNT.
15 THAT OFFICER NEVER TESTIFIED HE MADE DRUG ARRESTS,
16 THAT OFFICER NEVER TESTIFIED HE COMES IN CONTACT WITH
17 THIS, HE SAID I'M WITH THE DRUG ENFORCEMENT UNIT AND
18 MY CONNECTION IN THIS CASE IS I PUT SOME MONEY OUT OF
19 PROPERTY AND I PUT IT IN THE GOVERNMENT BANK ACCOUNT.
20 IS THAT ALL HE DOES FOR THE DEU? WE CERTAINLY DON'T
21 KNOW. WE CERTAINLY DON'T KNOW WHAT WOULD GIVE HIM
22 THE BASIS TO SAY THE VALUE OF THIS, THE WEIGHT OF
23 THIS, THE POINT ONE, THE POINT TWO, THE \$20. THE
24 STATE CERTAINLY HAD AT THEIR DISPOSAL TWO OFFICERS
25 WHO ARE WELL ACQUAINTED WITH THAT. WELL ACQUAINTED

1 WITH THAT.

2 FURTHERMORE, DID YOU NOTICE OFFICER
3 SCHURIG TOOK THE STAND AND HE SAID TYPICALLY,
4 TYPICALLY, IT'S POINT ONE, POINT TWO, TYPICALLY IT'S
5 WORTH \$20. LADIES AND GENTLEMEN, THIS IS NOT THE
6 STATE OF SOUTH CAROLINA VERSUS TYPICALLY. THIS IS
7 THE STATE OF SOUTH CAROLINA VERSUS CHRISTOPHER
8 ROBINSON AND THE STATE CERTAINLY HAD AT THEIR
9 DISPOSAL THE OFFICERS ON THE SCENE DIRECTLY CAME IN
10 CONTACT WITH CHRISTOPHER ROBINSON WHO COULD SAY THE
11 VALUE OF THIS, WHO COULD SAY WHETHER THIS TOLD THEM
12 THIS WAS INTENT TO DISTRIBUTE, AND THEY DIDN'T.

13 THE STATE MADE A BIG DEAL IN THEIR
14 CLOSING ABOUT RELYING ON YOUR COMMON SENSE AND
15 LOOKING AT YOUR FIVE SENSES. WHAT DO YOU THINK THESE
16 OFFICERS DO EVERY DAY. I QUESTIONED THEM IN GREAT
17 DETAIL ABOUT WHEN YOU GO INTO A DRUG SCENARIO YOU
18 DON'T JUST LOOK AT THE DRUGS, YOU LOOK AT NON-DRUG
19 ITEMS THAT COULD BE USED AS EVIDENCE, THAT'S HOW
20 SPECIALLY TRAINED THEY ARE. WHO WOULD THINK BESIDES
21 A SPECIALLY TRAINED OFFICER THAT A BAG OF ZIPLOCK
22 BAGS WOULD BE IMPORTANT TO A CASE? AN EVERYDAY
23 HOUSEHOLD ITEM THAT'S WHAT SUPPOSED TO BE AN EVERYDAY
24 HOUSEHOLD ITEM, BUT TO HIM IT MAY BE A PIECE OF
25 EVIDENCE AND YET THE STATE OF SOUTH CAROLINA NEVER

1 ASKED THEM TO GIVE YOU THE STREET VALUE OF THIS, TO
2 GIVE YOU WHAT YOU THEY CONSIDERED WHEN THEY WERE ON
3 THE SCENE. NO. THEY WOULD PREFER A MATH EQUATION
4 ABOUT BEER TO GET THAT POINT ACROSS. THAT'S AN
5 ASSUMPTION, LADIES AND GENTLEMEN. THAT'S AN
6 ASSUMPTION THAT IS NOT BASED IN FACT BECAUSE THEY HAD
7 THE WITNESSES RIGHT HERE, THEY COULD HAVE ANSWERED
8 THAT QUESTION. WHY MAKE THEM LEAP? WHY MAKE OZ
9 BIGGER THAN HE HAS TO BE? RIGHT HERE IS THE PERSON
10 AND THE PEOPLE WHO COULD ANSWER ALL YOUR QUESTIONS
11 AND THEY DID NOT ASK.

12 NOW ANOTHER REASON IS THAT OZ LOOKS
13 LIKE A LOT BIGGER WHEN YOU HAVE YET A THIRD DRUG
14 OFFICER COME IN AND JUST TALK ABOUT IN HIS EXPERIENCE
15 WHICH WE'RE NOT QUITE SURE WHAT THAT EXPERIENCE IS,
16 HIS EXPERIENCE ABOUT TYPICALLY WHAT THIS IS. OZ
17 SEEMS A LOT BIGGER. WOW, ANOTHER NARCOTIC OFFICER
18 TOLD US THAT. IT'S GOT TO BE TRUE. IT'S GOT TO BE
19 TRUE. LADIES AND GENTLEMEN, PULL BACK THAT CURTAIN,
20 THE PERSON WHO COULD HAVE TOLD YOU EVERYTHING, THE
21 PEOPLE WHO COULD HAVE TOLD YOU EVERYTHING SAT HERE
22 AND THEY WERE INTENSIVELY QUESTIONED NOT ONLY BY THE
23 STATE AND BUT BY MYSELF AS WELL.

24 NOW I QUESTIONED BOTH OFFICERS ABOUT
25 THE PRESENCE OF THE SCALES, THE PRESENCE OF BAGGIES,

1 BUT BOTH OFFICERS INDICATED, ONE, I HAD SPECIALIZED
2 LAW ENFORCEMENT EXPERIENCE DEALING WITH DRUGS. TWO,
3 I KNOW WHAT TO LOOK FOR WHEN I MAKE A DRUG CASE.
4 THREE, TWO OF THE THINGS I LOOK FOR WHEN I MAKE A
5 DRUG CASE ARE SCALES BECAUSE THAT COULD BE USED TO
6 INDICATE TO DISTRIBUTION IF THEY ARE GOING TO WEIGH
7 THEM AND BAGGIES THAT ALSO CAN BE USED TO INDICATE
8 THAT I'M GOING TO GIVE, TAKE A BAGGY AND GIVE THE
9 DRUG OUT. BOTH OFFICERS WITH SPECIALIZED EXPERIENCE,
10 BOTH OF THEM SAID NONE OF THAT WAS PRESENT. NOW WHY
11 IS THAT IMPORTANT IN THIS CASE? THE COURT IS GOING
12 TO CHARGE YOU ABOUT THE PERMISSIVE INFERENCE THAT IS
13 ALLOWED IN THIS CASE AND THAT INFERENCE SAYS IF THERE
14 IS MORE THAN A GRAM OF CRACK THEN YOU ARE ALLOWED TO
15 INFER THAT HE INTENDED TO DISTRIBUTE THAT CRACK. THE
16 JUDGE WILL ALSO TELL YOU THAT YOU ARE FREE TO REJECT
17 THAT INFERENCE. IF YOU LOOK AT THE ENTIRE SITUATION
18 AND YOU LOOK AT, AS MS. ANDERSON SAYS CONTEXT CLUES,
19 AND YOU DETERMINE THAT THAT INFERENCE DOESN'T HOLD
20 ANY WATER, FEEL FREE TO REJECT IT. IT DOESN'T BIND
21 YOU.

22 NOW LET'S LOOK AT THE CONTEXT CLUES.
23 THEY FIND A BAGGY ON THE GROUND, NO SCALES, NO OTHER
24 BAGGIES, AND SERGEANT BREEDEN SAID WHEN I PUT
25 CHRISTOPHER ROBINSON UNDER ARREST I DID A SEARCH

1 INCIDENT TO ARREST, YOU REMEMBER HE CORRECTED ME, I
2 DID A SEARCH INCIDENT TO ARREST. THAT IS MORE
3 SPECIFIC THAN A PAT DOWN BECAUSE I SEARCH HIM FROM
4 HEAD TO TOE. I DON'T JUST PAT DOWN THE POCKETS. I
5 GO IN THE POCKETS. DON'T YOU THINK IF HE HAD DONE
6 THAT TYPE OF SEARCH AND THERE ARE SCALES OR BAGGIES
7 OR PARAPHERNALIA ON CHRISTOPHER ROBINSON HE WOULD
8 HAVE FOUND IT. HE FOUND THE MARIJUANA. IF THERE WAS
9 ANYTHING ELSE ON HIM, WOULD THEY HAVE FOUND IT? NO,
10 THERE IS NO EVIDENCE THAT ANY OF THAT WAS FOUND.
11 THOSE ALSO ARE CONTEXT CLUES FOR YOU TO CONSIDER IN
12 DETERMINING WHETHER TO REJECT THAT INFERENCE THAT
13 ALLOWS YOU TO CONSIDER IF CHRISTOPHER ROBINSON
14 INTENDED TO DISTRIBUTE.

15 NOW THE STATE ALSO HAD WITNESSES
16 TESTIFY AS TO THIS \$531 THAT WAS FOUND. INTRIGUING
17 THIS \$531 AND IT'S INTRIGUING BECAUSE WHERE IS IT?
18 WHERE IS THE \$531? THE STATE WENT THROUGH GREAT,
19 GREAT DETAIL IN BRINGING THE CRACK, IN BRINGING THE
20 REPORTS, AND DOING THIS NICE FANCY MAP HERE, MARKING
21 IT IN EVIDENCE SO YOU CAN TAKE IT BACK WITH YOU, LOTS
22 OF DETAILS, LOTS OF A DETAIL. WHERE'S THE MONEY? NO
23 ONE BROUGHT THE MONEY. NO ONE BROUGHT A RECEIPT
24 SAYING WHERE THE MONEY IS. NO ONE BROUGHT COPIES OF
25 THE MONEY. THESE OFFICERS, OFFICER SCHURIG JUST TOOK

1 THE STAND AND JUST ASSUMED THAT IF HE SAID WE TOOK
2 MONEY OFF OF HIM THAT YOU GUYS WOULD BUY IT. THAT'S
3 A DANGEROUS ASSUMPTION, LADIES AND GENTLEMEN, AND
4 IT'S DANGEROUS BECAUSE TWO OTHER OFFICERS ALSO SAID
5 WE FOUND MARIJUANA AND CRACK AT THE SCENE AND THEY
6 JUST DIDN'T EXPECT YOU TO TAKE THEIR WORD FOR IT.
7 THEY BROUGHT THE CRACK AND THEY BROUGHT THE
8 MARIJUANA. WHY IS THE MONEY DIFFERENT? ALSO BOTH
9 OFFICERS, SERGEANT BREEDEN AND OFFICER SCHURIG, WERE
10 BOTH CAREFUL TO SAY WE PUT THAT MONEY INTO PROPERTY.
11 IF YOU LISTEN CLOSELY TO SERGEANT BREEDEN HE SAID
12 WELL, ON THE SCENE I FOUND THE MONEY IN HIS POCKET, I
13 PULLED IT OUT, DETERMINED IT WAS PROPERTY, GAVE IT
14 BACK TO HIM SO THAT ONCE HE GOT TO THE LAW CENTER AND
15 WAS GOING TO BE BOOKED IN, WE TOOK THE MONEY BACK OUT
16 ALONG WITH OTHER ITEMS IN HIS POCKET AND PUT IT IN A
17 BROWN PROPERTY BAG. LADIES AND GENTLEMEN, WHAT THAT
18 MEANS IS IF THEY FOUND A CHAPSTICK OR PACK OF
19 NIOLATORS ON CHRISTOPHER ROBINSON THE MONEY HAD THE
20 SAME EXACT VALUE TO THAT OFFICER. AS THAT CHAPSTICK
21 OR NIOLATORS. BUT NOW THE STATE WANTS TO SAY, WELL,
22 HE HAD THIS IN HIS POCKET AND ADD ON THIS MYTHICAL
23 AMOUNT OF \$1400 WHICH SOME DEU AGENT WITH HARDLY ANY
24 CONNECTION WITH THE CASE COMES UP WITH, AND THAT THEY
25 WANT YOU TO TAKE THIS FROM THE MONEY. THE MONEY THE

1 OFFICERS ON THE SCENE LOGGED IT IN AS PROPERTY.
2 ACTUALLY I STAND CORRECTED, DIDN'T LOG IT IN
3 ANYWHERE. THEY TOOK IT AS PROPERTY. THEY PUT IT IN
4 A BROWN PROPERTY BAG AND THEY LOGGED IT. NO EVIDENCE
5 LOG SHOWED ANY MONEY. THE EVIDENCE CUSTODIAN SAID
6 ONLY THING I HAVE ON MY EVIDENCE REPORT IS CRACK AND
7 MARIJUANA. THE OFFICERS BOTH SAID I LOGGED THE
8 REPORT ON THE EVIDENCE REPORT CRACK AND MARIJUANA.
9 WHERE IS THE MONEY? THEY WANT YOU TO TAKE THAT INTO
10 CONSIDERATION IN REACHING YOUR VERDICT AND YET THEY
11 DIDN'T EVEN HAVE THE COMMON COURTESY TO BRING IT, TO
12 SHOW IT TO YOU, TO GIVE YOU A RECEIPT. IT'S MONEY
13 FOR CRYING OUT LOUD. IT'S PRETTY IMPORTANT.

14 NOW WHAT DO WE KNOW ABOUT CHRISTOPHER
15 ROBINSON? WE KNOW THAT AT THE SCENE CHRISTOPHER
16 ROBINSON SAID THE MARIJUANA IS MINE BUT THE CRACK IS
17 NOT. LET'S SEE WHAT EVIDENCE WE HAVE IN THE RECORD
18 THAT PROVES CHRISTOPHER'S STATEMENT. ON A FRIDAY
19 NIGHT, JUNE FIRST, CHRISTOPHER WAS STANDING AROUND
20 WITH SOME FRIENDS IN A PUBLIC PARKING LOT IN AT
21 APARTMENT COMPLEX. BOTH OFFICERS WERE CAREFUL TO
22 POINT OUT THAT THE GOLD CADILLAC THAT THEY WERE
23 STANDING AROUND WAS LEGALLY PARKED, IT WAS LEGALLY
24 PARKED. THE ONLY REASON WHY THE OFFICERS WHO
25 TESTIFIED THEY WERE ON ROUTINE PATROL PULLED IN WAS

1 BECAUSE THEY SAW A GROUP OF PEOPLE STANDING AROUND.
2 IT BEING A FRIDAY NIGHT, MAY NOT BE UNUSUAL, BUT THEN
3 THEY TRIED TO JUSTIFY IT BY SAYING, WELL, WE'VE HAD A
4 LOT OF COMPLAINTS ABOUT DRUG ACTIVITY IN THIS AREA.
5 BUT IF YOU NOTICE NOT ONE OFFICER TOOK THE STAND AND
6 SAID, WE HAVE COMPLAINTS ABOUT CHRISTOPHER ROBINSON
7 DEALING DRUGS. WE HAVE COMPLAINTS ABOUT CHRISTOPHER
8 ROBINSON BUYING DRUGS. NO ONE ISSUED A MR. ROBINSON
9 A NO TRESPASSING NOTICE TO TELL HIM HE WASN'T
10 SUPPOSED TO BE THERE. SO AS FAR AS WE KNOW AT THAT
11 POINT WITH THE OFFICER TESTIMONY IT'S A FRIDAY NIGHT,
12 CHRISTOPHER ROBINSON IS STANDING BY HIS FRIEND'S CAR
13 WHICH IS BY THE WAY LEGALLY PARKED. THEN THE
14 OFFICERS PULL IN. NOW IF YOU REMEMBER THE OFFICER
15 SAID THE GOLD CADILLAC WAS PARKED WHERE THIS DARK
16 SPOT IS AND THEY PULLED IN SORT OF CATTY CORNER,
17 THERE WERE EMPTY SPOTS AROUND THE GOLD CADILLAC, AND
18 THEY TESTIFIED TO THE ASSUMPTION THAT CHRISTOPHER
19 ROBINSON WALKED AWAY WHEN HE SAW THE POLICE. NOW I
20 CALL THAT AN ASSUMPTION FOR THIS REASON, WHAT'S THE
21 EVIDENCE? SERGEANT BREEDEN SAT ON THE STAND, IF YOU
22 REMEMBER, AND WHEN HE TESTIFIED ABOUT CALLING
23 CHRISTOPHER BACK AFTER HE SAID CHRISTOPHER HAD WALKED
24 AWAY FROM THE CROWD, NOT RUNNING, NOT SPRINTING, NOT
25 LOOKING BACK OVER HIS SHOULDER, BUT WALKING AWAY FROM

1 THE CROWD, HE SAID I CALLED HIM BACK, I SAID COME
2 BACK HERE, AND I ASKED HIM, WAS CHRISTOPHER COMPLIANT
3 WITH THAT REQUEST? BREEDEN SORT OF STOPPED AND HE
4 SAID, WELL, HE TURNED AROUND, KIND OF LOOKED AT ME,
5 AND THEN WALKED BACK, DIDN'T RUN, DIDN'T LOOK AROUND,
6 HE WALKED BACK. NOW ISN'T IT JUST AS REASONABLE TO
7 THINK THAT CHRISTOPHER ROBINSON JUST HAPPENED TO WALK
8 AWAY FROM HIS FRIENDS AT THAT POINT, THAT WHAT
9 CHRISTOPHER ROBINSON SAW WAS A DARK COLORED UNMARKED
10 DODGE STRATUS PARKED A LITTLE BIT ODD IN THE PARKING
11 LOT WHEN IT COULD HAVE JUST PULLED INTO A PARKING
12 SPACE. WE DON'T KNOW WHAT IMMEDIATELY HAPPENED
13 BEFORE CHRISTOPHER WALKED AWAY. WE DON'T KNOW IF HE
14 SAID, OH, I DON'T LIKE THAT CAR AND I GOT TO GO. OR
15 IF HE SAID, ALL RIGHT, GUYS, I'LL SEE YOU LATER. I'M
16 GOING TO WALK BACK OVER HERE. WE DON'T KNOW ANYTHING
17 ABOUT THAT. THE OFFICERS ASSUME BECAUSE THEY KNEW
18 THEY WERE IN UNIFORM THAT CHRISTOPHER KNEW THEY WERE
19 UNIFORM, BUT WHAT DO WE KNOW FROM THE TESTIMONY? HE
20 WALKED AWAY. WHEN SERGEANT BREEDEN, WHO WAS IN
21 UNIFORM SAID HEY, COME BACK HERE, CHRISTOPHER LOOKED
22 AROUND, GAVE A FACE, LIKE, OH, THEY WERE COPS IN THAT
23 CAR AND WALKED BACK TOWARDS THEM. NOW THERE HAS BEEN
24 NO TESTIMONY AND AS FAR AS WE KNOW IT'S NOT ILLEGAL
25 TO STAND IN THAT PARKING LOT ON A FRIDAY NIGHT. THEY

1 DIDN'T TICKET HIM FOR ANYTHING ON THAT. IT'S LEGAL.
2 IT'S ALSO NOT ILLEGAL TO WALK AWAY FROM AN OFFICER
3 AND THAT'S WHAT HE DID. THERE IS NO EVIDENCE HE WAS
4 LOOKING SUSPICIOUS, THERE IS NO EVIDENCE HE WAS
5 LOOKING DOWN OR RUNNING, HE JUST WALKED AWAY. AND
6 WHEN HE WAS TOLD TO COME BACK BY THE OFFICER HE DID.
7 HE COMPLIED AND HE STOOD NEXT TO THE OFFICER.
8 ALTHOUGH REALLY THEY DIDN'T HAVE A REASON TO HOLD
9 HIM, BUT HE STOOD THERE. AND THEN WHEN OFFICER
10 CHAVIS SAID HEY, I FOUND THIS CRACK, BREEDEN
11 IMMEDIATELY PUT HIM UNDER ARREST. AGAIN NO EVIDENCE
12 CHRISTOPHER ROBINSON FOUGHT, RAN, JERKED, CUSSED HIM
13 OUT, NOTHING. THEN HE PUTS HIM IN HANDCUFFS AND
14 SERGEANT BREEDEN BEGINS THE SEARCH AND HE FINDS THE
15 MARIJUANA. NOW WHILE HE'S SEARCHING THERE IS NO
16 EVIDENCE CHRISTOPHER WAS LIKE THIS, DON'T LOOK IN
17 THAT POCKET, PENDING OVER, HEY, OFFICER BREEDEN,
18 DON'T LOOK IN THAT POCKET, NO EVIDENCE OF THAT. HE
19 PULLED IT OUT. AT THAT POINT EVEN THEN CHRISTOPHER
20 DID NOT FIGHT, HE DIDN'T ARGUE, THERE IS NO TESTIMONY
21 ABOUT IT, THESE ARE THE ACTIONS OF A MAN WHO HAS
22 NOTHING TO HIDE. WHAT DOES HE SAY IMMEDIATELY AFTER
23 THAT? THE MARIJUANA IS MINE. THE MARIJUANA WHICH IS
24 A CONTROLLED SUBSTANCE AND THE CRACK IS A CONTROLLED
25 SUBSTANCE. IT'S MINE. CHRISTOPHER ROBINSON WAS SO

1 TRUTHFUL WITH THE OFFICERS THAT IT HURT BECAUSE AS
2 THE STATE INDICATED THAT IS THE BASIS FOR THE
3 MARIJUANA CHARGE ONE OF THE FACTORS YOU CAN TAKE
4 INTO. HE ADMITTED TO HAVING THE MARIJUANA. HE SAID
5 BUT THE CRACK IS MINE, IS NOT.

6 NOW ONE MORE BIT OF LOGIC WITH WHICH
7 TO LOOK AT THIS CASE, DON'T YOU THINK IF CHRISTOPHER
8 ROBINSON WAS WALKING AWAY FROM THE OFFICERS OR
9 WALKING SOMEWHERE DEPENDING ON WHICH VERSION OF THE
10 STATE CASE YOU BELIEVE AND HE KNEW HE HAD MARIJUANA
11 IN ONE POCKET AND CRACK IN ANOTHER, DON'T YOU THINK
12 HE WOULD HAVE DROPPED BOTH? THEY ARE BOTH ILLEGAL.
13 THEY ARE BOTH CONTROLLED SUBSTANCE. WHAT'S THE LOGIC
14 IN ONLY DROPPING ONE? HIS WHOLE ATTITUDE THAT NIGHT
15 WAS COMPLIANCE. HE HAD NOTHING TO HIDE. THE ONLY
16 TIME HE SPOKE OUT WAS WHEN HE REALIZED HE WAS BEING
17 CHARGED WITH CRACK. LADIES AND GENTLEMEN, THOSE ARE
18 THE FACTS THAT SUPPORT HIS STATEMENT THAT THE
19 MARIJUANA IS MINE BUT THE CRACK IS NOT. LADIES AND
20 GENTLEMEN, FIND CHRISTOPHER ROBINSON GUILTY OF THE
21 MARIJUANA, IT WAS FOUND IN HIS POCKET, HE ADMITTED TO
22 IT, BUT CHRISTOPHER ROBINSON IS NOT GUILTY OF
23 POSSESSION WITH THE INTENT TO DISTRIBUTE CRACK
24 COCAINE. THANK YOU.

25 THE COURT: MEMBERS OF THE JURY PANEL,

1 WE'LL TAKE A SHORT BREAK BEFORE I CHARGE THE LAW AND
2 DON'T START DISCUSSING THE CASE OR START MAKING UP
3 YOUR OWN MIND BECAUSE YOU HADN'T HEARD THE LAW.
4 WE'LL HAVE A SHORT REFRESHER BREAK.

5 (THE JURY EXITS THE COURTROOM AT 11:08
6 AND COURT'S IN RECESS AT 11:08 AM.)

7 (COURT RESUMES AT 11:18.)

8 THE COURT: BRING IN THE JURY.

9 (THE JURY RETURNS TO THE COURTROOM AT
10 11:19 AM.)

11 CHARGE BY THE COURT:

12 MEMBERS OF THE JURY PANEL, FIRST LET ME
13 THANK YOU FOR THE ATTENTION YOU'VE GIVEN TO US TO
14 THIS POINT. I WILL NOW ASK YOU TO GIVE ME YOUR
15 ATTENTION AS I CHARGE YOU THE LAW WHICH ARE YOU ARE
16 TO APPLY TO THE FACTS AS YOU DETERMINE THEM TO BE IN
17 THIS CASE. AS YOU KNOW MR. ROBINSON IS CHARGED WITH
18 POSSESSION OF CRACK COCAINE, CRACK AS THEY CALL IT
19 COCAINE BASE ALSO WITH INTENT TO DISTRIBUTE, AND
20 POSSESSION OF MARIJUANA. THESE ARE SETFORTH ON TWO
21 SEPARATE INDICTMENTS. YOU'LL HAVE THOSE INDICTMENTS
22 WITH YOU IN THE JURY ROOM. THEY ARE NOT EVIDENCE.
23 THEY CONTAIN THE CHARGES AGAINST MR. ROBINSON. THEY
24 ARE THE PAPERWORK BY WAY OF WHICH THIS CASE HAS BEEN
25 PROCESSED THROUGH OUR COURT SYSTEM AND THEY WILL BE

1 ULTIMATELY WHERE THE VERDICT, THE UNANIMOUS VERDICT,
2 OF THE JURY WILL BE ENROLLED. THEY ARE NOT EVIDENCE
3 AND NOT TO BE CONSIDERED AS SUCH.

4 THE FACT THAT MR. ROBINSON HAS BEEN
5 ARRESTED, CHARGED AND INDICTED AND IS ON TRIAL IS NOT
6 EVIDENCE AGAINST HIM EITHER. THAT'S JUST THE WAY OUR
7 SYSTEM WORKS. HE IS PRESUMED INNOCENT AND I'LL TELL
8 YOU MORE ABOUT THAT IN A MOMENT. THE FACT THAT HE
9 HAS THESE CHARGES IS NOT EVIDENCE THAT HE COMMITTED
10 THESE OFFENSES. THE FACT THAT THERE ARE TWO CHARGES
11 IS OF NO IMPORTANCE OTHER THAN THAT YOU MUST LOOK AT
12 EACH CHARGE SEPARATELY AND RETURN A VERDICT AS TO
13 EACH. THAT IS, THE STATE AND MR. ROBINSON ARE
14 ENTITLED TO EACH CHARGE BEING INDIVIDUALLY ASSESSED
15 AND A DETERMINATION MADE AS TO EACH AS TO WHETHER OR
16 NOT THE STATE HAS PROVEN HIS GUILT BEYOND A
17 REASONABLE DOUBT OR NOT.

18 MR. ROBINSON, AS I TOLD YOU, IS
19 PRESUMED INNOCENT OF THIS CHARGE. ANYONE CHARGED IN
20 OUR SYSTEM WITH ANY OFFENSE IS PRESUMED INNOCENT OF
21 THE CHARGE. THIS IS A SUBSTANTIAL RIGHT. IT IS NOT
22 A MERE LEGAL THEORY. IT'S NOT JUST A MERE LEGAL
23 PHRASE. IT IS A SUBSTANTIAL RIGHT WHICH INURES TO
24 THE BENEFIT OF ANYONE CHARGED WITH ANY OFFENSE IN OUR
25 SYSTEM. THE PRESUMPTION OF INNOCENCE ATTACHES AT THE

1 TIME ONE IS ARRESTED, REMAINS WITH THEM AS THEIR CASE
2 IS PROCESSED THROUGH OUR COURT SYSTEM, AND REMAINS
3 THEM THROUGHOUT THE TRIAL. THE PRESUMPTION OF
4 INNOCENCE IN FACT REMAINS WITH THE DEFENDANT
5 MR. ROBINSON AS YOU DELIBERATE. THE PRESUMPTION OF
6 INNOCENCE IN HIS FAVOR IS REMOVED IF AND WHEN AND
7 ONLY IF AND WHEN YOU DETERMINE THAT THE STATE HAS
8 PROVEN HIS GUILT BEYOND A REASONABLE DOUBT.

9 NOW THE STATE IS NOT REQUIRED TO PROVE
10 HIS GUILT BEYOND ALL OR BEYOND EVERY DOUBT BUT BEYOND
11 A REASONABLE DOUBT. A REASONABLE DOUBT HAS BEEN
12 DESCRIBED BY OUR COURTS AS THE KIND OF DOUBT THAT
13 WOULD CAUSE A REASONABLE PERSON TO HESITATE TO ACT.
14 PROOF BEYOND A REASONABLE DOUBT IS PROOF THAT LEAVES
15 YOU FIRMLY CONVINCED OF SOMEONE'S GUILT. THERE ARE
16 VERY FEW THINGS IN OUR WORLD THAT WE CAN KNOW WITH
17 ABSOLUTE CERTAINTY AND THE LAW DOES NOT REQUIRE THAT
18 IN CASES SUCH AS THIS. IF BASED ON YOUR
19 CONSIDERATION OF THE EVIDENCE YOU ARE FIRMLY
20 CONVINCED THAT MR. ROBINSON IS GUILTY OF ONE OR BOTH
21 OF THE CHARGES AGAINST HIM, YOU WOULD FIND HIM
22 GUILTY. ON THE OTHER HAND, IF YOU THINK THERE IS A
23 REAL POSSIBILITY HE IS NOT GUILTY OF ONE OR BOTH, YOU
24 WOULD BE ENTITLED TO THAT REASONABLE DOUBT AND
25 ENTITLED TO A VERDICT OF NOT GUILTY. HE IS ENTITLED

1 TO THE BENEFIT OF ANY REASONABLE DOUBT THAT YOU HAVE
2 AS TO ANY ISSUE IN THIS CASE. IF YOU HAVE A
3 REASONABLE DOUBT ON ANY ISSUE IT MUST BE RESOLVED IN
4 HIS FAVOR.

5 I TOLD YOU EARLIER I'M THE SOLE JUDGE
6 OF THE LAW. YOU MUST TAKE, ACCEPT, AND APPLY THE LAW
7 AS I CHARGE IT. THIS IS TRUE EVEN IF YOU THINK I
8 CHARGE THE LAW IN ERROR OR EVEN IF YOU THINK THE LAW
9 SHOULD BE DIFFERENT. YOUR OATH REQUIRES YOU TO TAKE,
10 ACCEPT, AND APPLY THE LAW AS I CHARGE IT. YOU ARE
11 NOT TO INFER FROM ANYTHING I HAVE SAID OR DONE OR
12 ANYTHING I SAY NOW SAY OR DO AS BEING AN INDICATION
13 OF AN OPINION OF MINE ON THE FACTS. THE LAW DOES NOT
14 ALLOW ME TO FORMULATE OR EXPRESS TO YOU AN OPINION ON
15 THE FACTS. THAT IS SOLELY UP TO YOU. IT IS SOLELY
16 UP TO YOU TO EXAMINE THE EVIDENCE AND TO GIVE TO THE
17 EVIDENCE THE TRUTH, THE WEIGHT AND THE EFFECT AND
18 VALUE YOU BELIEVE IT SHOULD HAVE. IN DOING THIS YOU
19 MAY BELIEVE ONE WITNESS AS OPPOSED TO SEVERAL,
20 SEVERAL WITNESSES AS OPPOSED TO ONE. YOU MAY BELIEVE
21 ALL, PART, OR NONE OF A WITNESS' TESTIMONY. USE YOUR
22 COMMON SENSE, YOUR SENSE OF LOGIC, YOUR SENSE OF
23 REASON, USE YOUR EXPERIENCES IN LIFE AS YOU ANALYZE
24 THE EVIDENCE. AS JUDGES OF THE FACTS YOU OF
25 NECESSITY MUST JUDGE THE CREDIBILITY, THAT IS THE

1 BELIEVABILITY, OF THE WITNESSES WHO HAVE TESTIFIED.
2 IN ASSESSING CREDIBILITY USE THE THINGS I JUST
3 MENTIONED, USE THOSE THINGS THAT YOU IN YOUR
4 DAY-TO-DAY LIFE FIND AS INDICATIVE OF TRUTHFULNESS,
5 AND YOU CAN USE CERTAIN EVALUATORS AS I CALL THEM,
6 THE WITNESS' DEemeanOR, HOW THEY ACT ON THE STAND; ARE
7 THEY HESITANT OR STRAIGHT FORWARD. IS THEIR
8 TESTIMONY CONSISTENT OR INCONSISTENT WHEN COMPARED
9 WITH OTHER TESTIMONY OR COMPARED WITH THEIR OWN
10 TESTIMONY OR COMPARED WITH TESTIMONY PERHAPS GIVEN AT
11 AN EARLIER TIME. YOU CAN CONSIDER ANY BIAS OR
12 PREJUDICE A WITNESS MAY HAVE; THAT IS, WHETHER A
13 WITNESS WOULD WISH TO HELP OR HURT ONE SIDE OR THE
14 OTHER; AND YOU CAN CONSIDER THE OPPORTUNITY THE
15 WITNESS HAD TO ACTUALLY KNOW THOSE THINGS TO WHICH
16 THAT WITNESS TESTIFIED. ALL OF THESE THINGS YOU
17 CONSIDER, DETERMINE THE TRUE FACTS, APPLY THE LAW,
18 AND YOU'LL BE ABLE TO RETURN A VERDICT THAT SPEAKS
19 THE TRUTH.

20 NOW IN THIS CASE WE'VE HAD A WITNESS
21 QUALIFIED AS AN EXPERT. GENERALLY ONE CAN ONLY
22 TESTIFY AS TO SOMETHING THEY'VE OBSERVED WITH ONE OF
23 THEIR FIVE SENSES SUCH AS AN EYE WITNESS. HOWEVER,
24 WHERE AN INDIVIDUAL HAS CERTAIN TRAINING, EDUCATION,
25 KNOWLEDGE, SKILL, AND EXPERIENCE IN A CERTAIN AREA

1 THAT PERSON CAN TAKE FACTS AND FROM THOSE FACTS
2 RENDER AN OPINION. THE OPINION OF EXPERTS ARE
3 ALLOWED INTO EVIDENCE TO ASSIST YOU. THEY ARE NOT
4 BINDING ON YOU. YOU CONSIDER AN EXPERT'S TESTIMONY
5 JUST AS YOU CONSIDER THE TESTIMONY OF ANY OTHER
6 WITNESS. IN ADDITION AS TO AN EXPERT YOU CAN
7 CONSIDER THE EXPERT'S QUALIFICATIONS TO GIVE THE
8 OPINION THEY GIVE AND ALSO YOU CAN LOOK AT THE
9 REASONS AND ANALYZE THE REASONS GIVEN FOR THEIR
10 OPINION. YOU ARE NOT BOUND BY AN EXPERT WITNESS'S
11 TESTIMONY. IT IS GIVEN ONLY TO ASSIST YOU. YOU MAY
12 ACCEPT IT OR REJECT IT IN WHOLE OR IN PART.

13 IN CASES SUCH AS THIS THERE ARE
14 GENERALLY TWO TYPES OF EVIDENCE WHICH ARE PRESENTED,
15 DIRECT AND CIRCUMSTANTIAL EVIDENCE. DIRECT EVIDENCE
16 IS THE TESTIMONY OF SOMEONE WHO HAS ACTUAL KNOWLEDGE
17 OF THE FACTS SUCH AS AN EYE WITNESS. IT IS EVIDENCE
18 WHICH IMMEDIATELY ESTABLISHES THE MAIN FACT SOUGHT TO
19 BE PROVEN.

20 CIRCUMSTANTIAL EVIDENCE IS PROOF OF A
21 CHAIN OF EVENTS AND CIRCUMSTANCES OR A CHAIN OF FACTS
22 AND CIRCUMSTANCES INDICATING THE EXISTENCE OF A FACT.
23 CIRCUMSTANTIAL EVIDENCE IS EVIDENCE WHICH IMMEDIATELY
24 ESTABLISHES COLLATERAL FACTS FROM WHICH THE MAIN FACT
25 MAY BE INFERRED. CIRCUMSTANTIAL EVIDENCE IS BASED ON

1 INFERENCE AND NOT ON PERSONAL KNOWLEDGE OR PERSONAL
2 OBSERVATION. OUR LAW MAKES ABSOLUTELY NO DISTINCTION
3 BETWEEN THE WEIGHT OR THE VALUE TO BE GIVEN DIRECT OR
4 CIRCUMSTANTIAL EVIDENCE. IT DOES NOT REQUIRE A GREAT
5 DEGREE OF CERTAINTY FOR CIRCUMSTANTIAL EVIDENCE AS
6 OPPOSED TO DIRECT EVIDENCE. WHAT YOU SHOULD DO IS
7 WEIGH ALL THE EVIDENCE IN THIS CASE. AFTER WEIGHING
8 ALL THE EVIDENCE IF YOU ARE NOT CONVINCED OF THE
9 GUILT OF MR. ROBINSON AS TO ONE OR BOTH OF THE
10 CHARGES, YOU MUST FIND HIM NOT GUILTY.

11 MR. ROBINSON IS CHARGED WITH A
12 STATUTORY OFFENSE, THAT IS, A CRIME ESTABLISHED BY
13 OUR LEGISLATURE. THE FIRST CHARGE I WILL GO OVER IS
14 THAT DEALING WITH THE LAW THAT PROHIBITS ONE TO
15 POSSESS CRACK COCAINE WITH INTENT TO DISTRIBUTE.

16 THE STATE MUST PROVE BEYOND A
17 REASONABLE DOUBT THAT MR. ROBINSON POSSESSED CRACK
18 COCAINE WITH THE INTENT TO DISTRIBUTE. TO PROVE
19 POSSESSION THE STATE MUST PROVE BEYOND A REASONABLE
20 DOUBT THAT MR. ROBINSON HAD BOTH THE POWER AND INTENT
21 TO CONTROL THE DEPOSITION AND USE OF CRACK COCAINE.
22 POSSESSION MAYBE EITHER ACTUAL POSSESSION OR
23 CONSTRUCTIVE POSSESSION. ACTUAL POSSESSION MEANS
24 THAT THE CRACK COCAINE WAS IN THE ACTUAL PHYSICAL
25 CUSTODY OF SOMEONE. CONSTRUCTIVE POSSESSION MEANS

1 THAT ONE HAD DOMINION AND CONTROL OR THE RIGHT TO
2 EXERCISE DOMINION AND CONTROL OVER EITHER THE CRACK
3 COCAINE ITSELF OR THE PROPERTY ON WHICH OR IN WHICH
4 THE CRACK COCAINE WAS FOUND. MERE PRESENCE AT THE
5 SCENE WHERE DRUGS ARE FOUND IS NOT ENOUGH ALONE TO
6 PROVE POSSESSION. ACTUAL KNOWLEDGE OF THE PRESENCE
7 OF CRACK COCAINE IS STRONG EVIDENCE OF A DEFENDANT'S
8 INTENT TO CONTROL ITS DISPOSITION OR USE. A
9 DEFENDANT'S KNOWLEDGE OF POSSESSION MAY BE INFERRED
10 WHERE A SUBSTANCE IS FOUND ON THE PROPERTY UNDER THAT
11 DEFENDANT'S CONTROL. HOWEVER, THIS INFERENCE IS
12 SIMPLY AN EVIDENTIARY FACT TO BE TAKEN INTO
13 CONSIDERATION BY YOU ALONG WITH THE OTHER EVIDENCE IN
14 THE CASE AND TO BE GIVEN SUCH WEIGHT IF ANY AS YOU
15 DEEM IT SHOULD DESERVE. THE STATE MUST PROVE THAT
16 THE SUBSTANCE IN QUESTION WAS IN FACT CRACK COCAINE
17 AND THE STATE MUST PROVE BEYOND A REASONABLE DOUBT
18 THAT MR. ROBINSON INTENDED TO DISTRIBUTE. DISTRIBUTE
19 MEANS TO DELIVER OTHER THAN BY ADMINISTERING OR
20 DISPENSING A DRUG THROUGH A PRESCRIPTION OR THROUGH
21 MEDICAL USE. INTENT MAY BE SHOWN BY ACTS AND
22 CONDUCTS OF THE DEFENDANT AND OTHER CIRCUMSTANCES
23 WHICH YOU MAY NATURALLY AND REASONABLY INFER INTENT.
24 IN DETERMINING WHETHER MR. ROBINSON HAD THE INTENT TO
25 DISTRIBUTE CRACK COCAINE IF YOU FIND THAT HE HAD

1 POSSESSION OF IT, YOU MAY CONSIDER THE CIRCUMSTANCES
2 SURROUNDING HIS ALLEGED POSSESSION. YOU MAY CONSIDER
3 THE AMOUNT OF THE SUBSTANCE ALLEGED TO HAVE BEEN
4 POSSESSED, THE MANNER IN WHICH IT WAS ALLEGEDLY
5 POSSESSED, THE PLACE WHERE IT WAS ALLEGEDLY
6 POSSESSED, AND OTHER FACTORS THAT YOU DEEM IMPORTANT
7 IN DETERMINING THE ISSUE OF INTENT TO DISTRIBUTE.
8 YOU MUST FIND THAT MR. ROBINSON DID NOT INTEND TO USE
9 THE CRACK COCAINE SOLELY FOR HIS OWN USE IN ORDER TO
10 FIND THAT HE POSSESSED IT WITH INTENT TO DISTRIBUTE
11 IT.

12 POSSESSION OF MORE THAN, SORRY.
13 POSSESSION OF ONE OR MORE GRAMS OF CRACK COCAINE
14 CREATES AN INFERENCE THAT THE DEFENDANT POSSESSED THE
15 CRACK COCAINE WITH INTENT TO DISTRIBUTE IT. THIS
16 INFERENCE DOES NOT RELIEVE THE STATE FROM PROVING
17 BEYOND A REASONABLE DOUBT THAT MR. ROBINSON POSSESSED
18 AND HAD THE INTENT TO DISTRIBUTE THE CRACK COCAINE.
19 THIS INFERENCE IS SIMPLY AN EVIDENTIARY FACT TO BE
20 TAKEN INTO CONSIDERATION BY YOU ALONG WITH THE OTHER
21 EVIDENCE IN THE CASE. IT WILL BE GIVEN SUCH WEIGHT
22 IF ANY YOU BELIEVE IT SHOULD HAVE.

23 NOW WHILE IT'S NOT SETFORTH IN THE
24 INDICTMENT OUR LAW PROVIDES THAT CERTAIN OFFENSES
25 THERE ARE WHAT ARE CALLED LESSER INCLUDED OFFENSES.

1 I'VE EXPLAINED TO YOU THAT HE, MR. ROBINSON, MUST BE
2 PROVEN TO BOTH POSSESS THE CRACK COCAINE AND
3 POSSESSED IT WITH INTENT TO DISTRIBUTE IN ORDER FOR
4 YOU TO FIND HIM GUILTY OF POSSESSION WITH INTENT TO
5 DISTRIBUTE. THE LAW ALSO DOES NOT ALLOW ONE SIMPLY
6 TO POSSESS CRACK COCAINE AND THAT IS A LESSER
7 OFFENSE, THAT IS, POSSESSING WITHOUT THE INTENT TO
8 DISTRIBUTE. IF YOU FIND THE STATE HAS FAILED TO
9 PROVE BEYOND A REASONABLE DOUBT THAT MR. ROBINSON
10 POSSESSED CRACK COCAINE AND HE POSSESSED IT WITH
11 INTENT TO DISTRIBUTE IT BEYOND A REASONABLE DOUBT YOU
12 MAY CONSIDER WHETHER HE IS GUILTY OF SIMPLE
13 POSSESSION, THAT IS, SIMPLE POSSESSION OF CRACK
14 COCAINE. THE STATE MUST PROVE BEYOND A REASONABLE
15 DOUBT THAT MR. ROBINSON KNOWINGLY OR INTENTIONALLY
16 POSSESSED THE CRACK COCAINE AND THAT THE SUBSTANCE
17 WAS CRACK COCAINE. KNOWINGLY MEANS WITH KNOWLEDGE
18 CONSCIOUSLY, NOT ACCIDENTALLY. INTENTIONALLY MEANS
19 WILLFULLY, INTENDING THE RESULTS WHICH ACTUALLY
20 OCCURS. AGAIN NOT ACCIDENTALLY OR INVOLUNTARY.
21 INTENT MAY BE SHOWN BY ACTS AND CONDUCT OF THE
22 DEFENDANT AND OTHER CIRCUMSTANCES FROM WHICH YOU MAY
23 NATURALLY AND REASONABLY INFER INTENT.

24 AGAIN THE STATE MUST PROVE EVEN THE
25 LESSER INCLUDED OFFENSE OF SIMPLE POSSESSION OF CRACK

1 COCAINE BEYOND A REASONABLE DOUBT BEFORE YOU COULD
2 CONVICT MR. ROBINSON OF THAT OFFENSE.

3 MR. ROBINSON IS ALSO CHARGED WITH
4 POSSESSION OF MARIJUANA. TO PROVE THIS OFFENSE THE
5 STATE MUST PROVE THAT MR. ROBINSON POSSESSED
6 MARIJUANA AND HE MUST PROVE IT BEYOND A REASONABLE
7 DOUBT. THEY MUST PROVE THAT HE HAD BOTH THE POWER
8 AND INTENT TO CONTROL THE DISPOSITION OR USE OF THE
9 MARIJUANA AND POSSESSION MAY BE EITHER ACTUAL OR
10 CONSTRUCTIVE. I ALREADY DEFINED THE TERMS ACTUAL AND
11 CONSTRUCTIVE POSSESSION TO YOU EARLIER AND I TOLD YOU
12 AT THAT TIME IN YOUR MIND MERE PRESENCE AT THE SCENE
13 WHERE A CONTROLLED SUBSTANCE IS FOUND ALONE IS NOT
14 EVIDENCE OF POSSESSION.

15 NOW YOUR VERDICT IN THIS CASE MUST BE
16 UNANIMOUS. THE STATE MUST PROVE THE CHARGES AND/OR
17 THE LESSER INCLUDED CHARGE BEYOND A REASONABLE DOUBT.
18 ALL 12 OF YOU MUST AGREE; THAT IS, THE VERDICT AS I
19 SAID MUST BE UNANIMOUS. ONCE YOU HAVE ALL 12 AGREED
20 YOU AUTHORIZE YOUR FOREMAN TO WRITE THE VERDICT ON
21 YOUR BEHALF. MR. FOREMAN, YOU'LL PRESIDE OVER THE
22 JURY DELIBERATIONS. IF DURING DELIBERATIONS THE JURY
23 HAS ANY QUESTIONS PLEASE WRITE THEM DOWN AND SEND
24 THEM OUT TO ME, KNOCK ON THE DOOR, GIVE THE NOTE TO
25 THE BAILIFF; I WILL GO OVER THE NOTE WITH THE

1 ATTORNEYS AND I WILL RESPOND. IT MAY BE THAT I CAN
2 WRITE AN ANSWER ON THE NOTE. IT MAY BE THAT I HAVE
3 TO BRING YOU BACK HERE IN THE COURTROOM AND ANSWER
4 IT. PLEASE KEEP ANY NOTES AND RETURN THEM WITH THE
5 EVIDENCE BECAUSE THEY HAVE TO BE PART OF THE RECORD.

6 ONCE YOU HAVE REACHED A VERDICT KNOCK
7 ON THE DOOR AND THE TELL BAILIFF AND THE BAILIFF WILL
8 COME AND GET US AND WE WILL SEND FOR YOU AS PROMPTLY
9 AS WE CAN. WE MAY BE INVOLVED IN SOME OTHER BUSINESS
10 BUT WE'LL BREAK AS PROMPTLY AS WE CAN AND SEND FOR
11 YOU.

12 WE DO NOT IN SOUTH CAROLINA SEND IN A
13 CHARGE ON THE LAW INTO THE JURY ROOM. IF YOU WISH ME
14 TO GO OVER ANY PART OR ALL OF THE LAW, MY CHARGE ON
15 THE LAW, LET ME KNOW AND I WILL BRING YOU BACK IN AND
16 HERE IN OPEN COURT RECHARGE YOU ANY PART OR ALL OF
17 THE LAW.

18 WHEN YOU FIRST GO INTO THE JURY ROOM
19 DO NOT GET TOO COMFORTABLE AND DO NOT START
20 DELIBERATING BECAUSE I HAVE TO GO OVER MY CHARGE WITH
21 THE ATTORNEYS. IF I HAVE MADE AN ERROR I'LL HAVE TO
22 BRING YOU BACK IN AND CORRECT IT. IF NOT, I WILL
23 SEND IN THE VERDICT FORMS I WILL GO OVER IN JUST A
24 MOMENT AND THE BAILIFF WILL TELL YOU TO START
25 DELIBERATING. DO NOT START DELIBERATING UNTIL THAT

1 TIME.

2 MRS. RUSHING, YOU AS THE ALTERNATE IN
3 THIS CASE WILL REMAIN IN HERE WHEN THE JURY IS
4 DISMISSED THIS TIME SINCE YOU WILL NOT BE
5 PARTICIPATING IN THE DELIBERATIONS SINCE WE DID NOT
6 NEED TO USE THE ALTERNATE.

7 YOUR VERDICT MAY NOT BE BASED ON
8 PASSION, PREJUDICE, PUBLIC OPINION OR SYMPATHY OR
9 MATTERS OUTSIDE THE RECORD. AGAIN YOUR VERDICT MUST
10 BE UNANIMOUS. IF I HAVE MADE ANY ERRORS IN MY CHARGE
11 I WILL BRING YOU OUT PROMPTLY. IF NOT I WILL SEND IN
12 THE EXHIBITS AND THE TWO INDICTMENTS AND ONE VERDICT
13 FORM AND THE BAILIFF WILL TELL YOU TO START
14 DELIBERATING.

15 AS TO THE POSSESSION OF MARIJUANA,
16 MR. FOREMAN, ON THE BACK YOU WILL SEE THE WORD
17 VERDICT AND THERE ARE FOUR LINES BENEATH THAT. THE
18 BOTTOM LINE IS FOR YOUR SIGNATURE AND A PLACE FOR THE
19 DATE, TODAY'S DATE IS THE FOURTH, ON ONE OF THE OTHER
20 LINES YOU WILL WRITE THE UNANIMOUS VERDICT OF THE
21 JURY.

22 IF THE STATE HAS FAILED TO PROVE
23 MR. ROBINSON'S GUILT AS TO THE POSSESSION OF
24 MARIJUANA BEYOND A REASONABLE DOUBT, YOUR VERDICT
25 WOULD BE TWO WORDS NOT GUILTY. YOU WOULD SIMPLY

1 WRITE THOSE ON ONE OF THOSE LINES.

2 IF ON THE OTHER HAND THE STATE HAS
3 CONVINCED YOU BEYOND A REASONABLE DOUBT
4 MR. ROBINSON'S GUILT OF POSSESSION OF MARIJUANA, YOU
5 WOULD WRITE THE ONE WORD GUILTY AND OF COURSE SIGN
6 IT.

7 IT'S A LITTLE DIFFERENT ON THE
8 POSSESSION OF CRACK COCAINE WITH INTENT TO DISTRIBUTE
9 BECAUSE I TOLD YOU WE HAVE THAT LESSER INCLUDED
10 OFFENSE. ON THIS ONE I HAVE A SEPARATE VERDICT FORM
11 THAT YOU WOULD USE, IT IS ALREADY DATED, AND A PLACE
12 FOR YOU TO SIGN, THERE ARE THREE OPTIONS. IF YOU
13 FIND THAT THE STATE HAS PROVEN MR. ROBINSON GUILTY OF
14 POSSESSION OF CRACK COCAINE WITH INTENT TO DISTRIBUTE
15 AS HE IS CHARGED WITH YOU WOULD PUT A CHECK IN FRONT
16 OF THE FIRST LINE THAT SIMPLY SAYS THAT.

17 IF YOU FIND THE STATE HAS FAILED TO
18 PROVE HIS GUILT OF THAT OFFENSE BEYOND A REASONABLE
19 DOUBT BUT YOU HAVE FOUND THAT THEY HAVE PROVEN BEYOND
20 A REASONABLE DOUBT THAT HE IS IN SIMPLE POSSESSION OF
21 CRACK COCAINE YOU WOULD USE THE SECOND LINE THAT
22 SIMPLY SAYS THAT ALSO.

23 IF YOU FIND THE STATE HAS FAILED TO
24 PROVE MR. ROBINSON GUILT OF EITHER OF THOSE OFFENSES
25 YOU WOULD USE THE THIRD LINE THAT SIMPLY SAYS WE FIND

1 RECORD.

2 THE COURT: THANK YOU.

3 MS. INZERILLO: THANK YOU, YOUR HONOR.

4 MS. ANDERSON: THANK YOU, YOUR HONOR.

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

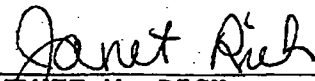
23

24

25

1 I, JANET RICH, OFFICIAL COURT REPORTER FOR
2 THE SIXTEENTH CIRCUIT OF THE STATE OF SOUTH CAROLINA,
3 DO HEREBY CERTIFY THAT THE FORGOING IS A TRUE,
4 ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL
5 THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE
6 TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN
7 THE CIRCUIT COURT FOR YORK COUNTY, SOUTH CAROLINA, ON
8 THE 3 & 4 DAY OF OCTOBER 2007.

9 I DO FURTHER CERTIFY THAT I AM NEITHER KIN,
10 COUNSEL, NOR INTEREST TO ANY PARTY HERETO.
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25


JANET M. RICH

FILED-RECEIVED

STATE OF SOUTH CAROLINA

2011 MAY 10 PM 12:50

Case # 2011CP4601841

County of YorkDAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

In the Court of Common Pleas

Christopher Robinson #265006

Full name and prison number (if any) of Applicant,

vs.

State of South Carolina

Name of Respondent.

South Carolina Attorney GeneralAPPLICATION FOR
POST-CONVICTION RELIEFINSTRUCTIONS — READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken *in forma pauperis*, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention Lee Correction Institution; 990 Wilsack Highway; Bishopville
South Carolina 29010
2. Name and location of Court which imposed sentence York County General Sessions Court
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 07-GS-46-2616 Possession With intent to distribute Crack Cocaine
 - (b) 07-GS-46-2618 Possession of Marijuana
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) October 4th, 2007 20 Years
 - (b) October 4th, 2007 1 Year
 - (c) _____

5. Check whether a finding of guilty was made

- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓ _____
- (c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes _____

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

- i. South Carolina Court of Appeals _____
- ii. _____
- iii. _____

(b) the result in each such Court to which you appealed:

- i. Affirmed _____
- ii. _____
- iii. _____

(c) the date of each such result:

- i. June 23rd, 2010 _____
- ii. _____
- iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. Unpublished _____
- ii. _____
- iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a) _____
- (b) _____
- (c) Not Applicable _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) _____
- (b) See Attached Sheet _____
- (c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

- (a) _____
- (b) See Attached Sheet _____
- (c) _____

1) Whether Appellate Counsel Was Ineffective For Not Addressing Directed Verdict Motion On Appeal?

(A) Appellate Counsel Failed To Argue That State Failed To Prove Element Of Intent

2) Whether Trial Counsel Was Ineffective For Not Challenging Prior Convictions For Drugs To Enhance Sentence?

(A) Trial counsel failed to challenge prior conviction as being unconstitutional in violation of right to counsel and prior drug convictions did not constitute as drug convictions

3) Whether Testimony Presented By State Was Prejudicial Despite Counsel Objections?

(A) Trial counsel failed to make objections to testimony by Chief Of Police And other Officer which had no relevance to case.

4) Whether Trial Counsel Was Ineffective For Not Requesting Jury To Sentence Defendant Under Blakely v. Washington?

(A) Trial counsel failed to ask court to sentence defendant under Blakely v. Washington. which counsel should have known about

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law? No
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? No
- (d) any other petitions, motions or applications in this or any other Court?
No

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. _____
- ii. _____
- iii. Not Applicable
- iv. _____

(b) the name and location of the Court in which each was filed:

- i. _____
- ii. _____
- iii. Not Applicable
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. Not Applicable
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. Not Applicable
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. Not Applicable
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. _____
 ii. _____ *Not Applicable*
 iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
 ii. _____ *Not Applicable*
 iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) _____
 (b) _____ *Not Applicable*
 (c) _____

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____ *No*
 (b) your trial, if any? _____ *Yes*
 (c) your sentencing? _____ *Yes*
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____ *Yes*
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____ *No*

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. *Melissa Inzerillo Assistant Public Defender*
Post Office Box 691; York, South Carolina 29445
 ii. *M. Celia Robinson Division Of Appellate Defense*
1330 Lady Street; Columbia, South Carolina 29211 / Suite 401
 iii. _____

(b) the proceedings at which each such attorney represented you:

- i. *Trial / Sentencing*
 ii. *Appeal*
 iii. _____

18. State clearly the relief you seek in filing this application.

New Trial / Resentencing

19. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA

VERIFICATION

County of Lee

I, Christopher Robinson, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Christopher Robinson

SWORN to and subscribed before me this 6day of May, 2011.

Debra Sims (L.S.)
Notary Public

My Commission Expires: 11-4-2015

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Christopher Robinson, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security therefor.

Christopher Robinson
Applicant

SWORN or affirmed to and subscribed before me this

6 day of May, 2011.
Debra Sims
Notary Public

My Commission Expires 11-4-2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	Case No.: 2011-CP-46-01841
	)	
Christopher Robinson, #265006	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent, making its Return to the application for post conviction relief (PCR) filed May 16, 2011, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted at the August term of the York County Grand Jury for Possession of Cocaine base with intent to distribute (2007-GS-46-02616) (PWID) and Possession of Marijuana (2007-GS-46-02618. Melissa Inzerillo, Esquire represented the Applicant. On October 4, 2007, the Applicant underwent trial and was convicted of PWID, 3rd offense and Possession of Marijuana, 2nd offense. The Honorable John C. Hayes, III, sentenced him to confinement for twenty (20) years for PWID, 3rd offense and one (1) year, concurrent, for Possession of Marijuana, 2nd offense.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Robinson, Op. No. 2010-UP-324 (S.C. Ct. App. filed June 23, 2010). The Remittitur was sent on July 7, 2010

Attached herewith and incorporated herein by reference are the records of the York County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the appellate court records, and the trial transcript.

II.

In his current application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Appellate Counsel
 - a. "Appellate counsel failed to argue that state failed to prove element of intent"
2. Ineffective Assistance of Counsel
 - a. "Trail counsel failed to challenge prior conviction as being unconstitutional in violation of right to counsel and prior drug convictions did not constitute as drug convictions"
 - b. "Trial counsel failed to make objections to testimony by Chief of Police and other officer which had no relevance to case"
 - c. "Trial counsel failed to ask court to sentence Defendant under Blakely v. Washington which counsel should have known about"

III.

A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

The Applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, Id. at 537; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

The Respondent contends that the Applicant's appellate attorney rendered effective assistance of counsel. However, this ground for relief may raise factual issues that are not conclusively refuted by the record. The Respondent requests an evidentiary hearing on this allegation. Sharper, Id.

IV.

In a PCR proceeding, the applicant bears the burden of establishing that he is entitled to relief. Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000). First, a PCR applicant must show that his counsel's performance was deficient such that it falls below an objective standard of reasonableness. Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 693 (1984); Alexander v. State, 303 S.C. 539, 541, 402 S.E.2d 484, 485 (1991). Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry v. State, 300 S.C. 115 at 117, 386 S.E.2d 624 at 625 (1989), *citing* Strickland.

Second, an applicant must show there is a reasonable probability, but for counsel's unprofessional errors, the result of the proceeding would have been different. Strickland, 466 U.S. at 687, 104 S.Ct. at 2064, 80 L.Ed.2d at 693; Alexander, 303 S.C. at 541-42, 402 S.E.2d at 485. The

Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, Id. Applicant must overcome this presumption in order to receive relief. Cherry, Id.

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel and appellate counsel. As to all other allegations, the State moves for summary dismissal pursuant to S.C. Code Ann. §17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VI.

Each and every allegation contained within the application not hereinbefore expressly admitted, qualified or explained is hereby denied.

VII.

WHEREFORE, having made its Return, the State requests that a hearing be held.

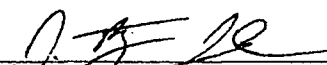
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Staff Attorney

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

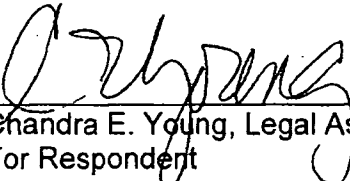
Sept 14, 2011.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	
	)	2011-CP-46-1841
	)	
CHRISTOPHER ROBINSON,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Bradford A. Rawlinson, Esquire
 PO Box 36365
 Rock Hill, SC 29732

DATED this 15th day of September, 2011.


 Chandra E. Young, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA

2 -----x

3 CHRISTOPHER ROBINSON

4 Appellate,

5 Case No.

6 -against-

2011-CP-46-1841

7 STATE,

8 Respondent.

9 -----x

10 October 12, 2012

11 York, S.C.

12

13 B E F O R E:

14 HONORABLE EDGAR W. DICKSON, Judge.

15

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

17 ELEANOR CLEARY, Esquire

18 Attorney for the Appellate

19

20 J. RUTLEDGE JOHNSON, Esquire

21 Attorney for the Respondent

22

23

24 Aileen Butler

25 Official Court Reporter

1		<u>I N D E X</u>			
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	Christopher Robinson				
4	Ms. Cleary	8			
5	Mr. Bean		17		
6	Melissa Inzerillo				
7	Mr. Johnson	19		46	
8	Ms. Cleary		26		
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
23					
24					
25					

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

3	<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVD.</u>
4	Appellant's 1	Case Summary		30

1 MR. JOHNSON: May it please the court.

2 THE COURT: Yes, sir.

3 MR. JOHNSON: This is the case of Christopher
4 Robinson versus State of South Carolina, case number
5 2011-CP-46-1841. Mr. Robinson was true bill indicted
6 the August 2000 term in the York County Grand Jury for
7 PWID crack cocaine, PWID within proximity of a school
8 and possession of marijuana. On October 4th proceeded
9 to a jury trial, pursuant to which he was found guilty
10 of the PWID crack cocaine, 3rd offense and possession
11 of marijuana 2nd offense. The proximity charge was
12 dropped by the State in the middle of trial.

13 He was sentenced by the Honorable John C. Hayes,
14 III to 20 years for PWID, cocaine base and one year
15 concurrent for possession of marijuana.

16 Thereafter there was a Notice of Appeal filed on
17 his behalf and appeal perfected. South Carolina Court
18 of Appeals confirmed his sentence and conviction. A
19 Remittitur was thereafter issued on July 7, 2010.

20 Mr. Robinson filed a timely PCR May 16, 2011. The
21 State made its on September the 5th, 2001 and he is
22 represented here today by Mill Eleanore Cleary.

23 I do have one matter before the Court, Ms. Cleary
24 and I have been e-mailing back and forth yesterday.
25 She sent me some amendments on Wednesday. I know she

1 a family situation last week. However, I did send out
2 a letter with my rooster saying any amendments should
3 be given to me one week prior to the start of a PCR
4 term, meaning last Monday. As you can attest I have
5 been in court all week and have not had a chance to
6 prepare for those allegations and the State's position
7 is any allegations that she tries to amend we would
8 oppose and dismiss and go on what is on the
9 application itself.

10 THE COURT: Okay. Mr. Johnson, this is his only
11 chance at PCR, is that correct.

12 MR. JOHNSON: I understand Your Honor, but I have
13 not had the chance at all to prepare.

14 THE COURT: What are the new allegations Miss
15 Cleary?

16 MS. CLEARY: We had several related to trial
17 counsel ineffectiveness. I just really made them more
18 specific.

19 Do you want me to go through them?

20 THE COURT: Well, my question is, if they are just
21 more specific allegations of ineffective assistance of
22 counsel is there anything new?

23 MR. JOHNSON: Your Honor, just to you clarify,
24 they are ineffectiveness of trial counsel claims, but
25 they are very specific and like I previously stated I

1 have not had time to prepare. I only had notice two
2 days ago.

3 THE COURT: Okay.

4 MS. CLEARY: And for example, one is the trial
5 counsel was ineffective for failing to ask for a
6 suppression hearing. That she was ineffective for
7 improperly advising him about what would happen if he
8 testified in terms of his prior convictions.

9 THE COURT: What you did is you went through and
10 specifically laid out everything, is that correct.

11 Defense Attorney: Yes, sir.

12 THE COURT: Okay. All right. And Mr. Johnson you
13 are going to need more time to investigate those?

14 MR. JOHNSON: I am not sure at this point, it
15 depends if I can get testimony from counsel, but I
16 talked to Melisso Inzerillo who was trial counsel last
17 week. We prepared for the allegations in the
18 application. I talked with her a little bit this
19 morning but I haven't been able to flush those issues
20 completely out.

21 MS. CLEARY: I don't know if you all have another
22 case to go forward with. I don't mind waiting if you
23 want to be able to speak to her at lunch.

24 THE COURT: Well, if he speaks to her at lunch he
25 will be speaking to her about the next time we try it.

1 Okay?

2 MS. CLEARY: Okay.

3 THE COURT: Because it won't be after lunch.

4 MR. JOHNSON: I will take my chances, Your Honor.

5 THE COURT: Okay.

6 MR. JOHNSON: I don't see many issues in this case
7 to be honest with you.

8 THE COURT: All right. Miss Cleary, if you'll
9 call Mr. Robinson or whoever you want to call.

10 MS. CLEARY: Thank you.

11 THE COURT: I'm sorry, I didn't mean to suggest
12 you had to call him.

13 MS. CLEARY: Yes, I would like to call Christopher
14 Robinson.

15 THE COURT: Miss Cleary, I don't have any problems
16 with you pointing out, you know, leading him if you
17 are asking him about parts of the transcript. You
18 don't have to ask him was this mentioned in trial or
19 something like that. You can kind of get to the point
20 if you don't mind.

21 MS. CLEARY: Okay.

22 CHRISTOPHER ROBINSON, called as a witness, having
23 been duly sworn by The Clerk, was examined and
24 testified as follows:

25 THE COURT: Mr. Robinson, please move that

1 microphone over and make sure you speak up.

2 Ms. Cleary.

3 DIRECT EXAMINATION

4 BY MS. CLEARY:

5 Q Mr. Robinson, you were arrested on June 1, 2007 for
6 this crime, is that right?

7 A Yes, ma'am.

8 Q And when did you first met with Ms. Inzerillo?

9 A If I am not mistaken probably like, three, two weeks
10 prior -- afterwards.

11 Q And then you went to trial on October 3, 2007?

12 A Yes, ma'am.

13 Q And how many times did you met with her?

14 A Once prior.

15 Q And you went -- what did you do at that meeting?

16 A She informed me that I could accept a plea of 11 years
17 and therefore if I didn't accept the plea of 11 years our offer
18 was off the table.

19 Q All right. And did she tell you what the minimum
20 sentence that you were facing if you went to trial?

21 A No, ma'am.

22 Q Did you she tell you what the maximum sentence was?

23 A No, ma'am.

24 Q Okay. Did you understand that your two convictions for
25 simple possession could be used to make this sentence much

1 greater?

2 A No, ma'am.

3 Q Okay. She never told you that?

4 A No, ma'am.

5 Q All right. And when you met with her, did you tell her
6 what happened on the day that you were arrested?

7 A Yes, ma'am. I informed her exactly what happened.

8 Q And real briefly, can you just tell us how this
9 encounter with the police happened?

10 A All right, I informed Miss Inzerillo I just arrived at
11 Market Place Apartments and upon arrival I went to the back of
12 the alley and I came up to the top of the alley. I mean I was
13 speaking with an individual for a few minutes and then like
14 officers approach in an unmarked car and upon -- and I mean,
15 upon them exiting the car, I mean, I was in the process of
16 leaving already, so once they jumped --

17 A Let me interrupt. Slow down. The officers came up in
18 an unmarked car?

19 A Yes, ma'am.

20 Q And then they got out of the car?

21 A Yes, ma'am.

22 Q And they were in uniform?

23 A Yes, ma'am.

24 Q And what happened then?

25 A I was leaving the scene already, but he was like I need

1 to stop you for questioning. So once he asked me what is my
2 name I gave my name. He ran my name.

3 Q He ran your name, what does that mean?

4 A To check to see if I have any warrants.

5 Q Did he call somebody?

6 A Yes, ma'am, dispatch.

7 Q Okay.

8 A Once they dispatched back that I didn't have any
9 warrants he was saying I was free to go and upon me leaving
10 that's when I was approach by another officer and escorted back
11 up to -- I mean, I will not say the initial area where we were
12 standing at, but right beside.

13 Q Okay. A second officer came up?

14 A Yes, ma'am.

15 Q Had he been in the same car with the first officer?

16 A Yes, ma'am.

17 Q And he came up and did he say anything to the first
18 officer?

19 A Basically they --

20 MR. JOHNSON: Objection. Hearsay.

21 A Okay. Did -- all right. All right. Did the -- so,
22 the first officer had already said you were free to go because
23 you had no warrants?

24 A Yes, ma'am.

25 Q And then the second officer detained you.. Did he say

1 why?

2 A No, ma'am, not whatsoever.

3 Q What did he do?

4 A He just said this whole area --

5 MR. JOHNSON: Objection to anything to the officer
6 said.

7 MS. CLEARY: Your Honor, we are not submitting
8 this for the truth of the matter asserted, we are
9 submitting it to show that this is what he told Miss
10 Inzerillo as part of his defense, so it doesn't have
11 to be taken as truth at this point.

12 THE COURT: Okay. I will let you question him
13 realizing that it may not be the truth. I am not
14 taking it for the truth.

15 MS. CLEARY: I understand.

16 Q Okay. So, what did the officer - the second officer,
17 do you know what his name was?

18 A Okay, if I am not mistaken --

19 A If you don't know that's okay.

20 A I don't know.

21 Q Okay. All right. So the second officer said to the
22 first officer, what did he say?

23 A Okay. One officer come up and he say, hey, I got crack
24 here. So he just placed -- he just escorted me to the car and
25 place handcuffs on me so once he did that he was like -- he did

1 a pat down. He got marijuana out of my pocket, which I did
2 have. All right.

3 Q So he did pat down for the marijuana?

4 A Yes, ma'am.

5 Q Before or after they found the crack cocaine?

6 A Okay. You see he pat me down first one time, but I
7 mean, he didn't go into my pockets at all and I was still free
8 to leave, but I was detained once again by the following officer
9 and that's when he said that he found crack. I was placed
10 inside the car and once I was inside the car I'm sitting and he
11 come back and ask me what do I know about this? Which was at
12 that time I didn't know because it was concealed inside a little
13 black plastic bag and he says I got crack and I said well, I
14 don't have any crack. I have marijuana. That's what you got.

15 Q All right. To your knowledge did the your attorney
16 ever talk to any other witnesses that were there?

17 A No, ma'am.

18 Q And there were three other men arrested with you on
19 that day?

20 A Yes, ma'am.

21 Q And their names were in the Discovery?

22 A Yes, ma'am.

23 Q And did she go up to the apartments with you and look
24 at the scene?

25 A She came out -- she came out and she said -- she just

1 noted and jot down a few things and just left.

2 Q Was this in the day time?

3 A Yes, ma'am.

4 Q Okay. And did you tell Miss Inzerillo that you were
5 working at that time?

6 A Yes, ma'am. I also provided her with check stubs and
7 documents.

8 Q And where were you working?

9 A Chesterwood Products, ma'am.

10 Q And how much were you making?

11 A Fourteen -- fifteen an hour.

12 Q Okay. And did she ask you about whose car that was,
13 the gold Cadillac that was referenced numerous times?

14 A Yes, ma'am. And I addressed to her that that was the
15 guy's car that was already out there?

16 Q Okay. And you don't know if she talked to the driver
17 of that car?

18 A No, ma'am.

19 Q Okay. And why didn't you testify?

20 A Because she informed me that if I get on the stand to
21 testify a juvenile record would be imposed (sic) before the
22 Court.

23 Q Your juvenile record. What part of your juvenile
24 record?

25 A I had a trafficking charge which I took for an

1 individual and she was saying that will be addresses before the
2 trial Court.

3 Q Okay. So you thought the jury would hear that you had
4 a prior drug offense?

5 A Right.

6 Q Okay. Do you remember the judge talking about what was
7 going to be admissible if you did testify?

8 A I wouldn't -- I didn't really hear because I was
9 listening to what she was also informing me.

10 Q So at what point did she tell you that the other drugs
11 charges would be brought in, was it right before you testified
12 or -- I am sorry, was it right before the end of the State's
13 case and then they ask you if you want to testify?

14 A Okay. She jot down on a note -- I mean she jot down on
15 a piece of paper and said no.

16 Q No?

17 A No.

18 Q And said did she have any other reason why she didn't
19 want you to testify?

20 A No, ma'am.

21 Q Okay. And why were you at the apartments that day?

22 A Basically I just got off work and I was going to play
23 cards in the back of the alley and just enjoy myself.

24 Q Okay, but you saw your child there? Did you see your
25 child there that night.

1 A Yes, I had him with me.

2 Q And how old was the child?

3 A My child -- my son was 18 months at that time.

4 Q Okay. And was your child's mother around?

5 A Yes, she was located in the back of the alley.

6 Q And did Miss Inzerillo ever talk to her?

7 A No, ma'am.

8 Q Did you want to testify?

9 A Yes, ma'am. I wanted to let them know how things
10 played out on June the first at 9:30 at night. That's what I
11 did want to do.

12 Q And what did you want to let them know?

13 A I wanted to let them know how the whole incident
14 occurred. How everything just folded.

15 Q What did you want to let them know about the crack?

16 A That it wasn't mine.

17 Q And did you want to be able to have a chance to tell
18 the jury that you were working?

19 A Yes, ma'am.

20 Q And trying to raise your child?

21 A Yes, ma'am.

22 Q And that you were not -- and that you didn't drive a
23 gold Cadillac and you weren't a drug dealer?

24 A Yes, ma'am.

25 Q And you were just going there to get marijuana like you

1 told the judge at the end of the sentence?

2 A Basically. That's my whole intention of going to the
3 top of the alley.

4 Q All right. Again, how many times total did you met
5 with her?

6 A Once.

7 Q Just once. You met with her at the scene?

8 A No, ma'am.

9 Q She went there on her own?

10 A We talked here at Moss Justice about a plea agreement
11 of 11 years and she was like I need to follow you out to the
12 scene. So her and her -- I mean, her paralegal they follow me
13 out to the scene and once we got out to the scene she took a few
14 notes and she was like okay and she left.

15 Q But at that one meeting you did -- you told her what
16 you told us today?

17 A Yes, ma'am.

18 Q Okay. And you were out on bond?

19 A Yes, ma'am.

20 Q Okay. That's all I have. Thank you. Answer any
21 questions the State has.

22 THE WITNESS: Yes.

23 THE COURT: Mr. Johnson.

24 CROSS EXAMINATION

25 BY MR. JOHNSON:

1 Q Mr. Robinson, your testimony here today is that you
2 wanted to testify; isn't that right?

3 A Yes, sir.

4 Q But didn't the judge ask you whether or not you wanted
5 to testify and you told him no?

6 A He asked me did I want to testify and I true in fact
7 did say no, but I also informed him that I feel as if my lawyer
8 was handling everything.

9 Q But on page 146 the judge asked you whether or not it
10 is your decision to testify and you said, yeah, and you said no,
11 you didn't want to testify; isn't that correct?

12 A Right.

13 Q As a matter of fact you have been convicted of giving
14 false statements to the police before, haven't you?

15 A Yes sir.

16 Q 2003, wasn't it?

17 A 2003, sir.

18 Q And that was adult charge, wasn't it?

19 A Yes.

20 Q You also been convicted of receiving stolen goods,
21 haven't you?

22 A Yes, sir.

23 Q You said you spoke with somebody at the top of the
24 alley but the truth of the matter is that you were buying weed
25 from that person at the top of the alley, right

1 A That is upon speaking with him.

2 Q That is what you said at the end of sentencing or right
3 before sentencing that is what you told the judge?

4 A That's what I mean by speaking with him sir.

5 Q And you gave pay stubs from where you work at
6 Chesterwood Products to Miss Inzerillo; isn't that correct?

7 A Yes, sir.

8 Q And this incident happened in June, right?

9 A Yes, sir.

10 Q You are aware the last pay stub you gave her was either
11 April or May?

12 A No, sir. I didn't give her all my check stubs.
13 Period.

14 MR. JOHNSON: That's all I have of this witness,
15 Your Honor.

16 THE COURT: Anything on redirect?

17 MS. CLEARY: No, Your Honor.

18 THE COURT: Okay. You may step down. Thank you
19 sir.

20 (Witness excused.)

21 THE COURT: Ms. Cleary, you may call your next
22 witness.

23 MS. CLEARY: Beg the Court's indulgence.

24 May I check outside real quick to see if a witness
25 is here?

1 THE COURT: Yes, ma'am.

2 MS. CLEARY: That's all we have. I could make
3 arguments at this point or wait until the end.

4 THE COURT: Mr. Johnson.

5 MR. JOHNSON: Call Melissa Inzerillo, Your Honor.

6 MELISSA INZERILLO, called as a witness, having
7 been duly sworn by The Clerk, was examined and
8 testified as follows:

9 THE COURT: Mr. Johnson.

10 MR. JOHNSON: Thank you, Your Honor. May it please
11 the Court.

12 DIRECT EXAMINATION

13 BY MR. JOHNSON:

14 Q Good morning, Miss Inzerillo.

15 A Good morning, Mr. Johnson.

16 Q Can you please explain to the Court how you became
17 involved in this case?

18 A I was appointed Mr. Robinson's case when he was
19 arrested on the set of charges at issue here. He was arrested
20 it looks like June 2nd and so I was appointed after that and my
21 scheduled initial appearance with him was suppose to be July
22 16th, 2007.

23 Q And how many times did you meet with Mr. Robinson?

24 A I met with him, I can count from my notes at least four
25 times. There may have been more than that.

1 Q One being did you handle his bond or was that on his
2 own?

3 A I think he had bonded out when I represented him. I
4 have that he did not come to his initial appearance on July
5 16th, so my initial meeting with him would have been after that.

6 Q And you in fact went out to the scene with him?

7 A Yes, I did. My investigator, Mr. O'Kelly, and I went
8 out to the scene in preparation of this case. I did meet with
9 him to convey both offers he had on the case. One was a 11-year
10 offer. One was a nine-year, sort of drop-dead offer which is an
11 offer the solicitor gives that has to be accepted that term of
12 Court. Mr. Robinson rejected both.

13 I also met with in my office where I had Mr. Robinson,
14 actually he and I drew out a map of where everybody was that
15 night. Where he was, so he could explain where the crack was in
16 relation to him and then Barton O'Kelly met with him separately
17 on at least one or two meetings involving the case. Outside of
18 that my other contact that I have reflected in the file was a
19 letter date September 6, 2007, informing him of this trial date
20 as well as the fact that none of the witnesses he had provided
21 had made contact with our office.

22 Q So he did give you names of witnesses?

23 A Yes, sir. Actually he was pretty thorough and gave us
24 -- brought in written statements by witnesses. Based on that I
25 asked Mr. O'Kelly to work on the case to find the witnesses. It

1 appears from a letter Mr. Robinson had informed me they would be
2 in contact with me. When they were not in contact with me I
3 asked Mr. O'Kelly to try and find the witnesses. He was unable
4 to find the witnesses and they did not make contact with him.

5 Q Do you see any of those witnesses here in the courtroom
6 today?

7 A I wouldn't recognize them.

8 Q Any of them testify on his behalf?

9 A No, sir.

10 Q Did you go over the Discovery material with Mr.
11 Robinson?

12 A Yes, sir, I did.

13 Q And what all would you have explained to him?

14 A Well, I would have explained the allegations against
15 him. What's in the police reports, the general sessions case
16 file. In his case, well, I would have explained what the charge
17 carries. Why it's a third offense. The charges that he had,
18 the proximity and the PDI crack third strikes, the fact that any
19 time he got it would be no parole which means he would serve at
20 less 85 percent of his sentence.

21 Generally, in that conversation I ask him is this true? Is
22 what the officers saying true, which gives him an opportunity to
23 explain to me if there been any potential defenses like alibi or
24 anything like that.

25 Q Did you appraise him of the minimum and maximum

1 penalties?

2 A I did.

3 Q One of his claims is that you advised him not to
4 testify. Did you have any discussions about whether or not he
5 would testify at trial?

6 A Yes, in my standard discussion with clients regarding
7 trials and again in preparation for trials, my standard advice
8 to clients is that I can not tell them whether to testify or
9 not. Same thing, I can't tell them whether to plead guilty or
10 not. It is in fact only their decision. That I can advise them
11 and tell them things they should take into consideration, but I
12 can not tell them whether or not they should take the stand or
13 will take the stand.

14 In his case, I would have advised him of his prior record
15 and I believe it is clear in the transcript we did address that
16 at pretrial to give Mr. Robinson again, the day of trial the
17 maximum amount of time to consider his decision and to discuss
18 with him especially because you see, the thing with Mr. Robinson
19 he really had a minimal prior record. He didn't have really
20 huge prior record outside of the juvenile stuff and I don't
21 think the juvenile prior record had ever been really addressed
22 before up here. So we would have talked about that. The fact
23 that things like false information may have come in and of
24 course my arguments to the judge as to why certain charges would
25 or would not be in my view used against him if he testified, but

1 again, that would be up to the judge.

2 Q And was the juvenile record going to be used against
3 him?

4 A No, the judge determined that pursuant to statute it
5 should not be used to impeach Mr. Robinson.

6 Q One of the allegations is that you failed to argue that
7 he was working at the time of the incident and that the \$531 was
8 talked about and used to show I guess intent to distribute or
9 that he was a drug dealer can you address that issue?

10 A Sure. Mr. Robinson had told us that he did have a job.
11 The earnings statements that he provided were from March, April
12 and May, periods ending 3/11, 4/8 and 5/6. He was arrested on
13 on 6. He could for the provide a earning statement covering
14 that pay period that would essentially be a logical connection
15 between possession of the money and, you know, any work that he
16 had done. This was all he he could produce. No boss men names
17 that I had ever noted.

18 You could see from the transcript as well there was
19 lots of sort of agitation between the parties regarding the
20 discussion of the money and that was an issue in the case
21 because we did not feel we had been provided all the Discovery
22 pursuant to Rule 5 and Brady. The judge did address that and
23 allowed the testimony in. But we addressed that as well as we
24 could without any other extrinsic evidence that we could put
25 forward in front of the judge.

1 Q As a matter of fact didn't you move for a mistrial at
2 the end of case based on that?

3 A We did.

4 Q Was there of any debate over the ownership of the gold
5 Cadillac?

6 A No. I don't recall any arguments being made that it
7 was his Cadillac. Obviously the drugs were not found in the
8 Cadillac. They were only linking him to the Cadillac. The only
9 way the Cadillac figured in was to orient the jury as to where
10 they were all standing. Essentially it could have been as
11 simple as light post as well as a Cadillac.

12 It didn't appear to me in reviewing the file that that was
13 used as one of the indicia that the State relied on to show an
14 intent to distribute or the fact that they were alleging he was
15 a drug dealer.

16 Q Another allegation Mr. Robinson brings up is that you
17 failed to ask the Court for a suppression. Hearing is there a
18 reason?

19 A I can tell you, I do not have in any of my notes that
20 Mr. Robinson ever gave the version of events that he has given
21 to the Court today. Mr. Robinson was adamant with us that he
22 did not throw down that crack and my notes reflect in two
23 separate meetings with him including the one with the map he
24 indicated that the crack was just laying under a car and then
25 when we went out to the apartment to meet with him he indicated

1 that he couldn't remember where the drugs were found because he
2 never saw them which we interpreted essentially two different
3 stories regarding the crack.

4 I have no indication in any of my notes that he ever told us
5 that there was an issue with the marijuana, that they had patted
6 him down and then told him he could leave or anything like that.

7 Q So in effect Mr. Robinson gave you conflicting
8 statements?

9 A Yes, sir, in regards to the crack.

10 Q Never disputed the marijuana was his?

11 A I don't have any reflection of that in my notes.

12 Q And actually that was one of your trial strategies
13 wasn't it?

14 A Yes, sir. Essentially in reviewing the case and
15 discussing potential strategies with him what we saw as facts
16 that would be presented in the case with that marijuana was
17 found on him, that we honestly didn't feel really that Mr.
18 Robinson had thrown down the crack and wanted to argue there was
19 no possession, and in the alternative because we felt like we
20 could get a simple possession lesser included charge, that if
21 they did find that to also hammer in front of the jury that
22 there was no other indicia of an intent to distribute; the
23 baggies. Obviously we were hoping that the money wouldn't come
24 in -- and no scales, which we repeatedly cross examined the
25 witnesses on. And so the strategy was essentially to concede

1 the marijuana because if he was convicted of the marijuana even
2 as third offense he would only be looking at up to a year and
3 not up to the 15 to 30 years he was looking on at PWID 3rd.

4 Q And Miss Inzerillo, did you also ask the judge to not
5 charge constructive possession because the State hadn't given
6 any evidence of the constructive possession?

7 A Yes, sir.

8 Q But he did in fact charge the jury?

9 A Yes.

10 MR. JOHNSON: Beg the Court's indulgence, Your
11 Honor.

12 THE COURT: Take your time.

13 MR. JOHNSON: That's all I have at this time.

14 THE COURT: Anything on cross?

15 MS. CLEARY: Yes, sir. May it please the court.

16 THE COURT: Yes, ma'am.

17 CROSS EXAMINATION

18 BY MS. CLEARY:

19 Q How long have you work for the public defender's
20 office?

21 A I worked for the York office I believe about five or
22 six years and I have been an attorney this will be my 11th year
23 as an attorney.

24 Q Okay. And do you handle a lot of drugs cases?

25 A Yes, ma'am.

1 Q Now, you know what the minimum term he was facing for
2 third offense?

3 A Yes.

4 Q And what was that?

5 A Fifteen years.

6 Q And what was the maximum?

7 A Thirty.

8 Q And you told him that if he went to trial he could very
9 well get 30 years and he said, no, I don't want to do the nine
10 years -- I don't want to take the nine-year deal?

11 A That's correct. I advised him that was the range.
12 Obviously in order for him nine or eleven there would have to be
13 a reduction of charge so I reviewed that with him as well.

14 Q He said, no, I want to risk 30 years?

15 A He was adamant that he did not throw down that crack.
16 So he was adamant that he did not want to plead to either the
17 nine or the 11 and wanted to go to trial.

18 Q You have had clients who have denied possession or
19 distribution of drugs but who have plead to lesser charges
20 because they don't want to get the thirty years, the very high
21 sentence?

22 A That is true.

23 Q Did you discuss with him the benefit of doing that?

24 A Yes, ma'am.

25 Q And you told him he could plead even without admitting

1 his guilt?

2 A Yes, ma'am.

3 Q And he just said no, I want to go to trial?

4 A That's correct.

5 Q And did you tell him whether you thought that was a
6 good idea or bad idea?

7 A I'm fairly sure I would have told him to at least
8 consider the 9 and the 11 because it is less than the 15. Both
9 were 85%. That is something that he would need to consider.
10 Generally when clients are as adamant as they were about a
11 factual issue like he was if he wants a trial and he kept
12 requesting a trial then we would just set it for trial.

13 Q Okay. So this was a trial where he was facing 30
14 years. So this was comparable to a murder trial?

15 A Yes, ma'am.

16 Q So, you needed to be able to confront -- rebut
17 everything about the State's case, is that correct? I mean, you
18 wanted to be able to do that obviously as counsel?

19 A I felt like there were some weaknesses in the State's
20 case and our strategy was to highlight as many of those as
21 possible to minimize his exposure to 15 to 30.

22 Q Okay. You had said that he gave you the name of some
23 people who were at the scene, do you know what those names were?

24 A Yes, ma'am. Actually he gave a statement.

25 Q From who?

1 A Someone named Deemos, (phonetic) Renicce and Keen.

2 Q Okay. As part of Discovery I am sure you got this case
3 file summary from the officers?

4 A Yes.

5 Q And in that document -- let me show you this.

6 MS. CLEARY: May I approach the witness?

7 THE COURT: You may.

8 Q Do you recognize this?

9 A Yes, that is the general sessions case file summary.

10 MS. CLEARY: Do you have any objection to
11 introducing this, it is from her Discovery?

12 MR. JOHNSON: I haven't seen it.

13 (Document shown to Mr. Johnson.)

14 MS. CLEARY: I would like to admit this into
15 evidence as Applicant's 1.

16 THE COURT: What is it?

17 MS. CLEARY: It is a Rock Hill Police Street Crime
18 Unit general case summary in the case of Christopher
19 Robinson.

20 THE COURT: Have you reviewed that Mr. Johnson?

21 MR. JOHNSON: Just for the record, Your Honor,
22 while she may have it in her case file it has not been
23 authenticated, who made who made the document. There
24 has been no foundation laid.

25 Q Did you receive this from the solicitor's office in

1 response to Discovery request?

2 A I did.

3 Q Okay.

4 MS. CLEARY: And again I am not trying to
5 establish the truth of the matter asserted, but that
6 she had this information.

7 THE COURT: Okay. All right. I will note your
8 objection. I will let admit it as Appellate's Number
9 1. It is the general case file summary that was in the
10 solicitor's file and passed on to defense attorney.

11 (Appellate's Exhibit 1, received in evidence as of
12 this date.)

13 Q Okay. And on this form it lists co-defendants that
14 were arrested with him?

15 A Yes, it lists Delvinche Keyon Willims, and Davis
16 Denoris Williams. (Phonetics)

17 Q And I think there was one more. Does that have one
18 more in there?

19 A No, outside of Christopher Robinson.

20 Q Okay. And did you talk to Delvinche?

21 A I don't believe we did. My investigator made a note on
22 the file that Keyon -- I guess he goes by Keyon -- was
23 represented by Kenneth Snow.

24 Q Okay, so Keyon was Delvinche?

25 A That is the note we have. I don't know if he goes by

1 Delvinche or Keyon.

2 Q And did you talk to the other man?

3 A I don't have a note that we did. No, ma'am.

4 Q Okay. Did Mr. Robinson tell you that his girlfriend,
5 his baby's mother was out there on the scene that day? Nothing
6 about that?

7 A No, ma'am. Essentially, for the witness prep -- and I
8 will be honest with you Miss Cleary, because some of these
9 witnesses are Keen and Ranissi and Deemos, I don't know if these
10 are street names to some of these people, but -- so I will say
11 -- and he didn't tell me that, but we were working off of these
12 statements that he had given us as possibly witnesses he wanted
13 us to call.

14 Q Okay. So, the entire State's case is based on the
15 officer's testimony that they saw him thrown down crack cocaine?

16 A Yes, ma'am.

17 Q So, if you could have witnesses who would say that the
18 crack was found after he had already been detained or any
19 different version of facts that would help you with your case?

20 A That would help and again Mr. Robinson isolated these
21 three witnesses that he wished to be called in his defense which
22 were the three witnesses that we attempted to contact.

23 Q But again, would you go through the Discovery and try
24 to find witnesses that might be helpful on your own?

25 A Certainly, if other names were there. I don't --

1 again, I don't have any notes. The only notes we have is that
2 Keyon was by Kenneth Snow.

3 Q Okay. And those other people were arrested for
4 marijuana?

5 A Yes, ma'am.

6 Q Okay. And you had said you didn't find that the gold
7 Cadillac was anything important to case, but you would agree
8 that the extent of the State's case was the officer saying that
9 he saw him throw down this much -- this much crack at night time
10 and saw it every step of the way?

11 A Right.

12 Q The money, \$581?

13 A That's correct.

14 Q His -- well, I guess his statement was actually
15 helpful. Okay. And that you established that there were no
16 scales and that sort of thing?

17 A Yes, ma'am.

18 Q So the officer's testimony that he saw him throw down
19 that was the most important thing?

20 A Yes.

21 Q So would you agree that -- I will just refresh your
22 memory because I know -- have you read the transcript?

23 A I have.

24 Q On seven different occasions the State mentioned
25 Cadillac or gold Cadillac. Do you think that gave the

1 impression to the jury that he was a drug dealer? Doesn't that
2 sound like a car a drug dealer would drive?

3 A I did not get that impression to be honest with you.
4 My impression was because there were other cars in the parking
5 lot that they were distinguishing that there was a group of
6 people around a gold Cadillac. To mean it would have been the
7 if they had said a red Camry or something like that.

8 Q And you asked -- you asked the officers after you
9 padded him down, after you did the search incident to arrest did
10 you find any scales?

11 A Right.

12 Q And what kind of scales were you thinking of?

13 A There are scales that are about the size of like an
14 eyeglass case -- sometimes can be smaller -- that are typically
15 found in drugs cases. Generally as the officer did respond,
16 they are use to weigh drugs. When officers find scales they
17 automatically use that as a way to charge PWID on charges. But
18 in my experience in defending drug cases I am also aware that
19 several clients who use also carry scales because they need to
20 weigh the drugs they are receiving. So it is pretty common
21 knowledge among drug officers and in drug cases and those who
22 work the cases that scales do and can figure prominently into a
23 PWID or distribution type case or trafficking.

24 Q Don't you think it would have been helpful for the jury
25 to know there were no scales found in that gold Cadillac?

1 A No my concern was what they found on Mr. Robinson. The
2 officers did not make in my view a big deal about the gold
3 Cadillac. They didn't connect Mr. Robinson to anything with the
4 gold Cadillac.

5 Q Okay, but other than the connection to the gold
6 Cadillac wouldn't it be important for the jury to know that not
7 only did he not have scales on him but the car that he arrived
8 in there were no scales there in order to rebut the image of
9 this being a fancy drug dealer?

10 A My recollection was that when the police came to the
11 scene that Mr. Robinson was actually standing outside the car.
12 That he was not seen inside the car and so, we did not question
13 on the contents of the car, mainly because the focus of the case
14 seemed to be -- or the State's allegation was, that as soon as
15 they pulled up Mr. Robinson was standing outside the car with a
16 group of men and he was the only one who walked away and the
17 path that he took they found crack and that he walked back and
18 so we wanted the jury to remain focused on that to show the
19 weaknesses of that version.

20 Q But you do know that they searched the gold Cadillac?
21 Do you remember that from the Discovery?

22 A I don't, but if you say I will relay on that.

23 Q Okay. As far as the money, again, he was facing thirty
24 years in prison. Did you contact Chesterwood Products to try
25 and get verification of his employment?

1 A I don't have notes that I did. My investigator is
2 generally pretty thorough and obviously if we could explain away
3 the money we would have liked too.

4 Q Because the State made a big deal about money, didn't
5 they?

6 A They made a huge deal about the money, yes, ma'am.

7 Q And you tried very hard to keep it out?

8 A Yes, ma'am.

9 Q Okay. So that was important because we really didn't
10 have much -- the jury didn't have much to go on in terms of
11 finding he was a drug dealer? Would you agree with that? This
12 was not the strongest case?

13 A In my view this case came probably down to the weight.
14 That the weight was six times over the inference level and that
15 in and of itself was fairly strong evidence of PWID.

16 Q Okay. So wouldn't it have been important to have him
17 either testify and explain where he got the money or for you to
18 somehow bring that out in the State's case?

19 A The only information we had as to his -- the fact that
20 he was working was an earning statement that ended in May.

21 Q Okay. And so are you saying you asked him for
22 something, for a statement to show that he got paid around the
23 time of the incident and he said no, I can't get that?

24 A This is all he provided to us. We asked for --

25 Q No, I am sorry. What I am asking is, did you ask him

1 do you have a statement showing you got paid around the time of
2 this incident and he said, no, I don't have it?

3 A He said -- I asked him can you explain the money
4 because he said he was working. I said okay. Can you give us
5 statements, pay checks, because he kept saying he had pay stubs,
6 that that is where the money came from. So I said get us the
7 the pay stubs and the only pay stubs he could produce were
8 March, April and May.

9 Q Okay. I will try one more time. He gave those pay
10 stubs?

11 A Yes, ma'am.

12 Q Did you look at them and say this doesn't explain where
13 you got the money. Can you get me a pay stub showing where you
14 got the money that day?

15 A Yes, ma'am.

16 Q And he said no, I can't?

17 A He could not provide anything.

18 Q And you didn't think it would be a good idea to call
19 Chesterwood and see if they could get it?

20 A I don't know -- I don't know if my investigator did
21 that to be perfectly honest with you, or I don't know if he told
22 me. My notes said that he worked for Chesterwood for eight to
23 nine months. Not that he was currently work at Chesterwood.

24 Q I believe you told the judge at sentencing that he was
25 currently working -- that he had been working at Chesterwood

1 when he got arrested?

2 A Okay.

3 Q Wouldn't that be important for the jury to know?

4 A Yes. If it could have explained the money, yes.

5 Q All right. Now, you said that you did not tell him
6 whether or not to testify. Did you give him any advice in that
7 regard?

8 A I advised him that if he took the stand that portions
9 of his prior record would come in. That there were some
10 portions of his prior record that would be up to the judge to
11 decide whether that come in or not and that would be handled
12 pretrial. That if he did not testify the jury was not allowed
13 to take that into consideration. That the judge would tell them
14 that. And so essentially they would not know if he had any
15 prior record, prior drug possession charges, or the false
16 information to police or anything like that. But other than
17 that my standard advice to all my client's is, you know, you do
18 what you want to do. If you want to take the stand then we will
19 prepare for that. If you don't want to then ...

20 Q Okay. Did you tell him that the jury was going to hear
21 about any prior drug convictions?

22 A I told him -- we went through his record and I told him
23 with the drug convictions some times judges if they find that it
24 is prejudicial because for example, he was charged with
25 possession of marijuana. He had possession of marijuana on his

1 record. Obviously my argument would be that would be
2 prejudicial. If the jury they could just assume he possessed it
3 or any other drugs. So that would be my argument, but that it
4 would be up to the judge whether it came in or not.

5 Q Okay.

6 A And then the juvenile record.

7 Q So you told him that could possibly come in?

8 A Either that could or they could ask if he had been
9 convicted of a felony or a crime before, depending on how the
10 judge handled it. And then the juvenile thing, we had arguments
11 on the juvenile record because the worse of his charges really
12 were on the juvenile record. It was trafficking.

13 Q Okay.

14 A And that is what needed to be addressed with the judge.

15 Q And do you remember in the transcript before the trial
16 where the discussion of what would be admissible?

17 A Yes, ma'am.

18 Q And the state did not ask for the trafficking to be
19 admitted. They actually just asked for the juvenile charge
20 relating to dishonesty?

21 A Yes, but --

22 Q And the judge ultimately ruled that --

23 A That the juvenile record could not come in.

24 Q But the only charges that were going to come in were
25 the ones relating to dishonesty?

1 A Right.

2 Q Not the drugs?

3 A And that may have been his position, but as his counsel
4 I wanted to make sure if there was an issue with any part of the
5 juvenile record that that was addressed.

6 Q But in terms of his adult record he had two simple
7 possessions?

8 A Yes, ma'am.

9 Q And nobody ever suggested that those were admissible.
10 Did you explain -- did you explain to Christopher that the
11 juvenile trafficking and the possession of marijuana and
12 possession of controlled substance were not going to be used
13 against him unless he would somehow open the door?

14 A Yes we generally because he is present for that
15 conversation so we generally go back and explain that to make
16 sure he understands.

17 Q Right, because a lot of times when a judge is making a
18 ruling on something like that the client has no idea what is
19 going on?

20 A Sure. Sure.

21 Q You are talking about --

22 A Legalese.

23 Q -- rule 608. Okay. So when he states that he felt
24 that the jury was going to hear about his drug record he is just
25 mistaken?

1 A I can't speak to that. I don't know what he was
2 thinking.

3 Q But you never told him hey, if you testify the drug --
4 the prior drug charge...

5 A Well, especially after the judge rules and we've agreed
6 what would be impeachable, than yes, we would convey that to
7 him.

8 Q And the ones that the judge was going to let in were
9 pretty minor charges?

10 A Yes, ma'am.

11 Q Okay. So this wouldn't be a case where you would start
12 out saying, listen you are not going to be testifying. This is
13 not one of those cases?

14 A No, and I never tell clients. I am not one of those
15 attorneys that tells client's to testify or not. I know some
16 attorneys do, but I am not one of them. I just lay it out for
17 them because it is their trial. Some clients feel very strongly
18 about wanting to take the stand and wanting to testify and it
19 doesn't matter what they have on their record. They are going
20 to take the stand and so I am very respectful of that.

21 Q But his record was not -- the impeachable record, was
22 not so bad that it would counter anything he might have
23 testified to?

24 A No.

25 Q And if if he had testified you agree that he could have

1 at least offered an alternative to why he was there? I mean he
2 said he was going to get marijuana?

3 A I don't know what he would have testified to because in
4 my prior discussions with him as I indicated before he gave us
5 to different accounts as to where the crack was and so, I mean
6 prior in our private conversations there was inconsistencies.

7 Q Okay. Did he ever tell you that he knew whose crack it
8 was?

9 A He at some point said that he knew but he did not want
10 to say.

11 Q Okay. So did he ever tell you that story about taking
12 that guy up to the police department and trying to get him to
13 confess?

14 A No, ma'am.

15 Q Okay. So you didn't know anything about that?

16 A No.

17 Q All right. If he had testified he could have explained
18 the source of his money, correct?

19 A He could have, yes, ma'am.

20 MS. CLEARY: Beg the Court's indulgence.

21 THE COURT: Okay.

22 Q Okay. And there was originally a nine-year offer?

23 A There was originally a eleven-year offer.

24 Q Okay, and why did the eleven year get knocked down to
25 nine?

1 A Mr. Springs periodically when he is interested in
2 moving a case fairly quickly, will do what he calls a drop-dead
3 offer which is an offer where if the client comes in and takes
4 it that week he will reduce it some amount.

5 Q And that nine-year would have been to a charge which
6 did not carry 85 percent?

7 A It would have been to the 85 percent.

8 Q It would have been 85 percent?

9 A Yes, ma'am.

10 Q Did you tell Mr. Robinson that that was a pretty good
11 deal?

12 A I told Mr. Robinson what the deal was and that was far
13 less than what he was looking at as charged.

14 Q And he insisted on going to trial?

15 A Yes, ma'am.

16 Q Let me ask you one more thing. You said that you
17 didn't ask for a suppression hearing because you didn't -- just
18 tell me why you didn't ask for a suppression hearing?

19 A I do not have any notes that he ever explained the
20 marijuana the way he explained it today. I took notes on the
21 way we approached the crack -- his stories about the crack, but
22 -- and I would have taken notes had he told me they patted me
23 down and then they told me I could leave. I would have taken
24 notes on that to discuss a suppression hearing with him, but I
25 don't have that anywhere that he ever conveyed that to me.

1 Q All right, so, what you are saying you didn't have any
2 doubt that the search was legal. The search where they found
3 the marijuana was legal?

4 A For the marijuana I did not have a good faith basis to
5 move to suppress it because the information that we had was that
6 he was -- the officer asked him to return. Which he did and
7 that while he was returning to the officer a second officer held
8 up and said we found crack. Essentially linking him to the
9 crack. That he was at that point placed under arrest and
10 pursuant to arrest he was searched.

11 I believe I mentioned with Mr. Johnson as well,
12 strategically because we also had his statement which of course
13 would not get suppressed that he had the marijuana but didn't
14 have the crack. We were trying to find a way to not have the
15 jury convict him on the PWID third charge because that is what
16 carried the time and strategically we felt like, you know, what
17 he was explaining and what the facts were actually made a lot
18 more sense. That he came to the police when he was asked too.
19 He has something in his pocket. He tells the officer, yes, this
20 is what I have in my pocket but not the crack and in light of
21 the facts of the case which were, you know, a little suspect as
22 to what the officers were saying about the lighting and how they
23 saw him throw it down we felt like the way that he explained how
24 the facts had transpired on the day actually made a lot of sense
25 and that strategically we wanted to take that route because that

1 being our first strategy if he only got convicted of simple
2 possession he was looking at parolable time at a year even
3 though it was a third. You know, we felt like a backup strategy
4 was if we could again hit on the indicia of distribution, that
5 they were not present, then perhaps he would be found of simple
6 possession of crack third which only carries up to ten years and
7 again is parolable. So again, he would get out he would get out
8 from the no parole time, he would get out from the mandatory
9 minimum and so strategically we felt like factually that would
10 make a lot of sense to the jury, instead of sort or arguing
11 *legal. And so everything that we could pull in conjunction
12 with his statement actually made a whole lot of sense.

13 Q Okay. So I understand that it was your strategy to not
14 really challenge the marijuana, but you still could have moved
15 for a suppression hearing on the marijuana?

16 A If I had a basis for it I would have done it.

17 Q But you don't feel you had any basis?

18 A Not from what is reflected on the file.

19 Q But in most drug cases though you have suppression
20 hearings?

21 A If there is a basis, yes ma'am, we will have whatever
22 hearing we can find.

23 Q And suppression hearings even if you don't get it
24 suppressed they can sometimes be useful in pinning down officers
25 on testimony?

1 A That is true and it also of course as you know can go
2 up on appeal as well which would help him afterwards.

3 Q A then lot of times when you want to do a suppression
4 hearing and you have multiple officers on the scene you can have
5 move to have them sequestered?

6 A I do a standard sequestration motion anyway, so...

7 Q But these officers weren't sequestered here, were they?

8 A They were.

9 Q They were. I just couldn't find that. All right, and
10 then you mentioned going out to the scene, but you never saw how
11 lit the scene was, if what the officer said was accurate. He
12 said everybody in the whole neighborhood keeps their porch light
13 on. Did you go and see if that was the case?

14 A I will be honest with you, I did not.

15 Q And that's right here on Heckle Boulevard?

16 A It is. I did not go out there at night. We did note
17 where the street lights were and he could sort of walk us
18 through because he knows that area a lot better then we do.

19 Q And what about your investigator, is that a man or
20 woman?

21 A It's a man.

22 Q And he didn't go out there at night?

23 A No, I don't think he did. No, ma'am.

24 MS. CLEARY: Beg the Court's indulgence.

25 THE COURT: Yes, ma'am.

1 MS. CLEARY: That's all we have. Thank you.

2 THE COURT: Thank you ma'am. Anything on
3 redirect?

4 MR. JOHNSON: Yes, just briefly.

5 REDIRECT EXAMINATION

6 BY MR. JOHNSON:

7 Q Miss Inzerillo, you have been asked about whether or
8 not you had a good faith basis for a suppression hearing. You
9 based that decision on your experience?

10 A Yes, sir.

11 Q And your research of the facts?

12 A Yes, sir.

13 Q There has also also been a lot of testimony about
14 whether or not Mr. Robinson wanting to testify. Didn't he give
15 you prior conflicting statements?

16 A He did.

17 Q To his own attorney?

18 A Yes, sir.

19 Q And isn't he also convicted of giving false statements
20 to the police?

21 A He had been, yes, sir.

22 Q Whose decision is it to testify?

23 A It's his.

24 Q And didn't the judge apprise him of that right?

25 A He did.

1 Q And he declined to testify?

2 A That's correct.

3 Q There is also testimony about these pay stubs?

4 A Yes.

5 Q Did they present that into evidence today that he had
6 pay stubs for June?

7 A No, sir, not that I have seen.

8 Q Have you ever seen a pay stub from June?

9 A No, sir.

10 Q Do you base your decisions on what your clients tell
11 you?

12 A To some extend I do. Obviously if he knows the case
13 intimately because he was there and especially something like
14 that because I would have no way of knowing pay stubs or
15 anything like that unless he comments or brings it to my
16 attention.

17 Q There is also testimony about the gold Cadillac and the
18 lack of scales and baggies, but didn't you argue that as a basis
19 or as evidence of the lack of intent to distribute?

20 A I argued that there was no scales, no baggies and I
21 argued a third thing, I believe. Because those are common
22 indicia in which the officers did testify to that in their
23 experience they see those as indicia as well. As well as the
24 fact that Mr. Robinson fingerprints with not found on the baggy.

25 Q They also asked you about these witnesses. Once again

1 I ask you do you see them in the courtroom today?

2 A I wouldn't know them if they were here.

3 Q Have you heard them testify today?

4 A No, sir.

5 MR. JOHNSON: That is all I have, Your Honor.

6 THE COURT: Thank you. Anything on recross?

7 MS. CLEARY: No, Your Honor.

8 THE COURT: You may step down.

9 MR. JOHNSON: The State has no further witnesses,
10 Your Honor.

11 THE COURT: All right. What I will do is I will
12 read the testimony, look over the file and I will get
13 back to you all with my decision.

14 MS. CLEARY: Thank you.

15 MR. JOHNSON: Thank you.

16 (END OF TRANSCRIPT)

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

I, the undersigned Aileen Butler, Official Court Reporter
for the Seventh Judicial Circuit of the State of South Carolina,
do hereby certify that the foregoing is a true, accurate, and
complete transcript of record of all the proceedings in the
captioned case, in the Circuit Court for York County, South
Carolina, on the 12th day of October, 2012.

I do further certify that I am neither of kin, counsel, nor
interest to any party hereto.

March 16, 2014

A. Butler

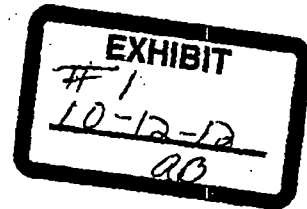
**ROCK HILL POLICE STREET CRIMES
UNIT
GENERAL SESSION CASE FILE SUMMARY**

Incident Report #: 0706010045

Case Agent: Chavis

Defendant(s): Christopher Antangelo Robinson
Delvinche Keon Williams
David Denorris Williams

Charge(s): Christopher Robinson:
PWID Crack 3rd
PWID Crack in Proximity of a School
Possession of Marijuana 3rd
Delvinche Keon Williams:
Possession of Marijuana 3rd
David Denorris Williams:
Possession of Marijuana 2nd



Witness List: Breeden, Chavis, Culbreath, and Crowder

Summary: Breeden

On June 1st, 2007 at approximately 9:30 pm Officers of the Rock Hill Police Street Crimes Unit were patrolling in the area of Market Place Apartments on Heckle Blvd. This apartment complex is within the city limits of Rock Hill and is in the Weed and Seed area. The Weed and Seed areas are an initiative between various city departments intended to reduce crime in high crime areas of the city. There have been complaints from management of the apartments and residents of drug sales and suspicious activity within the complex. On this particular date, officers were in typical uniform but were driving an undercover vehicle, a dark colored Dodge Stratus. There are three entrances to this apartment complex, it has been noticed the primary concentration of activity is in the middle entrance. As officers entered the middle entrance, several subjects were observed standing around a gold Cadillac. Upon seeing that it was the Police exiting the vehicle, one of the subjects attempted to walk away, Christopher A. Robinson walked about ten feet up the sidewalk. Officer Chavis approached Christopher Robinson and instructed him to stop. At that time, Officer Chavis observed Christopher Robinson drop something on the sidewalk then walk back towards the Cadillac. Officer Chavis immediately went to the location he saw Christopher Robinson drop something, and Sgt. Breeden approached Robinson.

Officer Chavis discovered a plastic bag on the sidewalk containing approximately 5 grams of Crack. Officer Chavis told Sgt. Breeden he found drugs and Christopher Robinson was arrested. Sgt. Breeden handcuffed Robinson and searched him incident to arrest. A small plastic bag containing Marijuana was located in his left front pants pocket. Christopher Robinson stated that the Marijuana in his pocket was in fact his but the Crack was someone else's. Christopher Robinson was asked how he got to the apartments, and he stated he rode in the Cadillac.

While Sgt. Breeden was arresting Christopher Robinson, David Williams, who was seated in the right rear seat of the Cadillac, opened the door and attempted to walk away. Officer Culbreath detained David Williams and it was discovered there were two other people still seated in the Cadillac. A very strong odor of burnt Marijuana was detected from the inside of the Cadillac. The front seat passenger, Delvinche Williams was instructed to step out as well as the driver, Vastadaquan Thompson. Beside the seat where Delvinche Williams was sitting a yellow plastic grocery bag was noticed balled up and tucked partially under the seat. Inside the bag was tobacco that had been removed from a cigar. It is common for individuals smoking Marijuana to remove the tobacco from a cigar and replace it with Marijuana. Due to the strong odor of Marijuana and the tobacco in the bag, Delvinche Williams was searched and a small plastic bag containing Marijuana was found in his pants pocket. Delvinche Williams was arrested and a search of the vehicle was conducted. In between the front two seats, there were numerous pieces of small Marijuana leaves observed. It appeared that while attempting to roll a Marijuana cigar, small pieces fell between the seats. David Williams and Vastadaquan Thompson were arrested for the Marijuana as well. Along with the interior of the vehicle, all occupants of the vehicle smelled of fresh burnt Marijuana as well.

Christopher Robinson has two previous convictions for drug offenses, the first being 06-13-2003 and the second being 02-12-2004. David Williams also discovered to be wanted by the York Police Department. This was David Williams second offense, the first being 03-22-2004. Delvinche Williams has two previous offenses, first 06-11-1999, second 08-06-2003. Vastadaquan Thompson had no previous drug charges and was charged in municipal court. All drugs were placed into evidence by Officer Chavis.

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Christopher Robinson, #265066,

2011-CP-46-1841

Applicant,

ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent.

This matter comes before the Court by way of an Application for Post-Conviction Relief filed May 16, 2011. The Respondent made its Return on September 15, 2011. An evidentiary hearing into the matter was convened on October 12, 2012, at the Moss Justice Center in York, SC. Eleanor Cleary, Esquire represented the Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Melissa Inzerillo, Esquire also testified. This Court had before it a copy of the records of the York County Clerk of Court, records from the South Carolina Department of Corrections, and the trial transcript.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. The Applicant was indicted at the August 2007 term of the York County Court of General Sessions for Possession of Cocaine Base with intent to distribute (PWID)(2007-GS-46-2616) and Possession of Marijuana (2007-GS-46-2618). He was represented by Melissa Inzerillo, Esq. On October 4, 2007, the Applicant underwent

trial by jury, pursuant to which he was convicted of PWID crack cocaine, 3rd offense and Possession of Marijuana, 2nd offense. The Honorable John C. Hayes, III sentenced Applicant to confinement for twenty (20) years for PWID crack cocaine, 3rd offense and one (1) year, concurrent, for the Possession of Marijuana, 2nd offense.

A Notice of Appeal was filed on the Applicant's behalf and an appeal perfected. The South Carolina Court of Appeals affirmed his conviction and sentence. State v. Robinson, 2010-UP-324 (S.C. Ct. App. filed June 23, 2010). The Remittitur was issued on July 7, 2010.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Appellate Counsel
 - a. "Appellate Counsel failed to argue that state failed to prove element of intent"
2. Ineffective Assistance of Counsel
 - a. "Trial counsel failed to challenge prior conviction as being unconstitutional in violation of right to counsel and prior drug convictions did not constitute as drug convictions."
 - b. "Trial counsel failed to make objections to testimony by Chief of Police and other officer which had no relevance to case."
 - c. "Trial counsel failed to ask court to sentence Defendant under Blakely v. Washington which counsel should have known about."

At the hearing, the Applicant proceeded on his claims of ineffective assistance of trial counsel.

SUMMARY OF TESTIMONY

The Applicant testified he was arrested on June 7, 2007 and met with Counsel (Inzerillo) approximately two weeks after his arrest. He stated his trial was held on October 4, 2007 and only met with Counsel once prior to trial. The Applicant testified when he met with Counsel, he was relayed an offer of eleven years, was not advised of the minimum and maximum penalties he faced,

and did not understand his prior drug convictions could be used to enhance his current charges. He also stated he told Counsel his version of the facts: he was talking with 'someone' at the top of an alley and buying marijuana from that person; police approached in an unmarked car; he was stopped by police, approached by another officer and then detained; police did not explain to him why he was being detained, but was told by one of the officers that they found crack cocaine. The Applicant claimed Counsel never interviewed witnesses even though some of their names were listed in the discovery. The Applicant stated he and Counsel visited the scene of the crime during the daytime, but did not stay very long. He testified he told Counsel he was employed at the time of his arrest and gave his pay stubs to her. He also said Counsel asked him about the gold Cadillac which was near the scene of the crime, but Counsel never interviewed the driver of that car. The Applicant then testified he did not testify at trial because of his prior convictions. He stated he told Counsel of these convictions, and she simply 'jotted down' on a note not testify. The Applicant asserted that he wanted to testify.

On cross-examination, the Applicant admitted he had a prior conviction for giving false information to police officers. He also admitted it was his decision not to testify. The Applicant stated he was buying marijuana in the alley before police approached him. The Applicant admitted the pay stubs he gave to Counsel to show he was employed only covered the months of April and May, but not June, the month he was arrested.

Counsel testified she was appointed to the Applicant's case and met with the Applicant on four occasions. She stated the Applicant did not show up for their initial meeting. Counsel testified she visited the scene with an investigator. She stated she met with the Applicant to convey plea offers of eleven years and nine years, but the Applicant rejected both offers. Counsel testified she

met with the Applicant to get his version of the facts and for him to draw a map of the scene. Counsel also testified she obtained statements from witnesses in the discovery and tried to locate the witnesses, but was unable to do so.

Additionally, Counsel testified she discussed the discovery in the case with the Applicant including the allegations, the charges and the penalties they carried. She explained to the Applicant these would be third offenses based on his prior record and would be no-parole offenses. Counsel also stated she did not advise the Applicant whether or not he should testified at trial and left this decision to the Applicant. She stated she explained to the Applicant that his prior record was minimal and because the prior drug convictions were juvenile convictions, they could not be used to impeach him. Moreover, Counsel testified the Applicant did provide pay stubs from April and May of 2007 but failed to provide pay stubs from the pay period of his arrest. She also stated the issue concerning the money found on the Applicant was raised during the trial and the trial judge allowed testimony of the money as evidence of intent to distribute. Counsel further stated she moved for a mistrial based on the money as evidence; however, the trial judge denied her motion for a mistrial. Counsel testified she did not file a suppression motion of the crack cocaine because of the Applicant's conflicting statements. She stated she did not have the Applicant's version of his story given at the hearing in her notes. Counsel stated the Applicant said the crack was found under the car, but when at the scene, the Applicant claimed he did not know where the crack was located.

Moreover, Counsel testified her trial strategy was for the Applicant to admit he possessed the marijuana, but not the crack cocaine. Also, the strategy was to show the State could not prove there was intent to distribute. Counsel lastly testified she asked for a jury charge that would not include constructive possession; thus, making the State prove actual possession.

On cross-examination, Counsel testified she has been a public defender for almost six years and had handled numerous drug cases. She stated she advised the Applicant he was facing at least fifteen to thirty years in prison for the PWID crack cocaine, 3rd offense charge, but it was the Applicant who decided to reject both of the plea offers. She testified the Applicant wanted a jury trial. Counsel also testified she found weaknesses in the State's case and tried to expose them. The State's case was based mainly on the police officers' testimony. She stated there were witnesses' names in the discovery packet, but both she and her investigator were unable to locate them. Counsel testified on a few different occasions the State mentioned a gold Cadillac that was near the scene, but she never got the impression the State was trying to show gold Cadillacs are driven by drug dealers. She also explained there were no scales or plastic baggies found on or around the Applicant as further evidence of intent to distribute. Counsel also testified the Applicant was not seen inside of the car, but was the only person who walked away from the area when police approached.

Counsel further stated she did not contact Chester Wood Products concerning the Applicant's pay stub, but her investigator might have. She testified she asked the Applicant to explain the pay stubs and the money found on him, but the only pay stubs he produced were from March, April, and May. The Applicant could not produce the June pay stubs. Counsel also testified, as to the Applicant not testifying at trial, that portions of the Applicant's prior record would have been admissible. She testified she discussed testifying at trial with the Applicant and does not tell her clients whether or not to testify. In addition, Counsel testified she relayed the two offers to the Applicant and the nine-year offer was a 'dead-drop' offer, meaning it was the final offer from the State. She also asserted the Applicant decided to reject these offer and insisted on a jury trial.

Moreover, Counsel testified she did not move for a suppression motion because she was never told the version of the Applicant's story which he portrayed at the hearing. She also explained she did not have a good-faith basis for moving for a suppression hearing. She lastly testified her investigator went to the scene of the crime, but not at night.

On redirect examination, Counsel testified her strategy at trial was based on the facts the Applicant relayed to her. She also stated she used the lack of scales and baggies to attack the State's case, specifically concerning the intent to distribute. Additionally, Counsel testified the Applicant failed to produce the pay stubs he claims shows he was employed at the time of his arrest. Counsel testified it was the Applicant's decision not to testify, but that she discussed with him the fact of the Applicant's prior conflicting statements to her and his prior conviction for giving false statements to police in 2003. She lastly testified she did not ask for a suppression hearing based on her experience as a public defender and the facts of this case.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court had the opportunity to observe the witnesses on the witness stand and heard their testimony. The Court also has read the trial transcript, all of which assists the Court in judging their credibility. The Court finds the testimony of the Applicant concerning ineffective assistance of counsel not credible while finding the testimony of Melissa Inzerillo, Applicant's trial counsel, very credible.

Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, *Id.* The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing* Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Failure to Interview/Call witnesses on the Applicant's behalf

The Applicant alleges Counsel was ineffective for failing to interview witnesses on his behalf.

At the PCR hearing, the Applicant testified Counsel failed to interview witnesses from the scene the night of his arrest. He stated the names of the witnesses were listed in the discovery as some of them gave statements to law enforcement.

Counsel testified she reviewed the witnesses' statements given to law enforcement with the Applicant. She also stated she and her investigator attempted to locate and interview witnesses, but were unable to contact or find them.

Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post-conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). The Applicant's mere speculation as to what a witnesses' testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). An Applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998).

This Court finds Counsel was not ineffective for failing to interview witnesses on the Applicant's behalf. She made a reasonable effort to locate the witnesses listed in the discovery. This Court also finds the Applicant failed to produce any testimony or evidence at the PCR hearing to show what these witnesses would have testified to at trial or how their testimony would have altered the outcome of his trial. Additionally, the Applicant has failed to prove any resulting prejudice from Counsel's alleged shortcoming. Accordingly, this allegation is denied.

Failure to advise the Applicant about testifying at trial

The Applicant also alleges Counsel was ineffective for not advising him about testifying at trial.

The Applicant testified Counsel did not advise him about testifying at trial and that he wanted to testify. The Applicant also stated he did not testify because his prior convictions could be used against him during cross-examination. Counsel testified she discussed with the Applicant the right to testify at trial. She also stated she does not tell clients whether or not to testify at trial. Counsel further stated it was the Applicant's decision not to testify.

This Court finds the Applicant's claim wholly without merit. First, this Court finds Counsel's testimony credible that she discussed the right to testify with the Applicant and did not advise him whether to testify or not. She also stated it was the Applicant's decision. More importantly, the record directly refutes the Applicant's claim that he was not advised of his right to testify. On pages 144-146 of the trial transcript, the trial court clearly and thoroughly explained to the Applicant his right to testify or remain silent. The Applicant testified under oath that he understood his rights and had no question about them. Tr. p. 166 line 2-5. The Applicant then unequivocally stated he did not wish to testify. Tr. p. 166 line 11. This Court finds the record refutes the Applicant's claim, Counsel effectively advised the Applicant about his rights and the Applicant decided not to testify on his own accord. Accordingly, this allegation is denied.

Pay Stubs

Additionally, the Applicant alleges Counsel was ineffective for not using his pay stubs effectively in his defense.

The Applicant testified Counsel failed to utilize the Applicant's pay stubs from Chester Wood Products to show the money found on his person during his arrest came from his employment. He also testified he gave Counsel these pay stubs at one of their meetings. Counsel testified, although the Applicant did give her some pay stubs from Chester Wood Products, the Applicant only gave her stubs from the months of March, April, and May. The Applicant failed to give her a pay stub from June, the pay period in which the Applicant was arrested.

At trial, the State introduced evidence that the Applicant was found with \$531 on his person when he was arrested. Counsel, in a preliminary hearing, moved to suppress evidence of the money being entered into evidence. The trial court ruled the State could have a witness testify money was found on the Applicant upon arrest, but not introduce the money. Counsel also objected to the witness's (Mark Schurig) testimony concerning the money, but the trial court allowed a proffer and then allowed the testimony into evidence. Counsel also objected to the testimony concerning the money pursuant to a Rule 5 violation based upon the State's not turning over documents about seizure and forfeiture of the money. After an *in camera* hearing, the trial court overruled Counsel's objection. Counsel further requested a jury instruction for the jury to disregard any testimony about the money found on the Applicant, but the trial court denied her request.

This Court finds Counsel was not ineffective with regards to the pay stubs or the money issue at trial. Presumably, the State introduced testimony about the money as circumstantial evidence of the Applicant's intent to distribute. This Court finds Counsel made a preliminary suppression motion concerning the money, objected to testimony concerning the money, moved for a Rule 5 violation and asked for a jury instruction to not allow the jury to consider the money. Cleary,

Counsel not only rendered adequate assistance with reference to the money issue, but she also went above and beyond the standard required in trying to keep any testimony about the money from the jury's consideration. Additionally, the Applicant failed to provide evidence of the pay stubs at the hearing and thus, can prove no resulting prejudice from Counsel's alleged failure to utilize these in his defense. This Court finds Counsel did not render ineffective assistance of counsel on this issue. Further, this Court finds no resulting prejudice from Counsel's representation. Accordingly, this allegation is denied.

Failure to request a suppression motion

The Applicant further alleges Counsel was ineffective for not requesting a suppression motion concerning the crack cocaine.

Counsel testified she did not seek a suppression hearing for the crack cocaine as she did not have a good faith basis for doing so. Counsel also stated the version of the facts the Applicant presented at the PCR hearing was different than the version she told him during their meetings. Counsel additionally testified the Applicant had conflicting statements about the crack: in one statement, the Applicant said the crack was under the car and in another, he did not know where the crack was located.

"The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions. Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant. In particular, what investigation decisions are reasonable depends critically on such information."

Strickland at 691, 104 S.Ct. at 2066.

This Court finds Counsel's failure to request a suppression hearing was not ineffective assistance of counsel. Counsel testified she did not have a good faith basis for a suppression motion due to the Applicant's inconsistent statements during the course of this case. For Counsel to advance an argument with no factual or legal basis could be construed as attempting to commit a fraud upon the court. Further, the Applicant provided no evidence that had Counsel moved for a suppression hearing, the crack cocaine would have been excluded. This Court finds the Applicant has failed to meet his burden of proving Counsel was ineffective and also failed to prove any resulting prejudice. Accordingly, this allegation is denied.

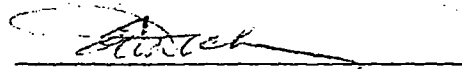
CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED!

Edgar W. Dickson
Presiding Circuit Court Judge
Sixteenth Judicial Circuit

2/14, 2013
Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF YORK
Christopher Robinson #265066

Applicant,

vs.

State of South Carolina

Defendant

) IN THE COURT OF COMMON PLEAS
) SIXTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2001-CP-46-1841
)

) Motion to Alter/Amend Judgment
) Pursuant to Rule 59 (e), SCRPC
)
)
)
)
)
)

PLEASE TAKE NOTICE that the Applicant, by and through his undersigned attorney, hereby moves for the Court for an Order granting the Applicant's Motion to Alter or Amend pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure of this Court's Order of Dismissal, which was signed February 14, 2013, filed March 5, 2013, and received by Applicant's counsel on March 8, 2013,

In its Order of Dismissal, this Court held that Applicant failed to meet his burden of proving trial counsel was ineffective and dismissed his application for post-conviction relief.

However, the record shows that Applicant did meet his burden of proving trial counsel was ineffective for failing to move to suppress the evidence of the crack cocaine before trial and that Applicant was prejudiced by that ineffectiveness.

To establish a claim of ineffective assistance of counsel, Applicant must show counsel's representation fell below an objective standard of reasonableness and that defendant was prejudiced by such deficient performance. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *Gallman v. State*, 307 S.C. 273,

414 S.E.2d 780 (1992). When the defendant claims that counsel's failure to articulate a Fourth Amendment claim was ineffective assistance, defendant must show that such claim is meritorious and that the verdict would have been different absent the evidence that should have been excluded. *Sikes v. State*, 448 S.E.2d 560, 323 S.C. 28 (1994).

Applicant testified at the PCR hearing that he told his counsel that he was approached by officers when he was talking with someone. They "ran his name" and said he was free to go because there were no outstanding warrants. As Applicant started to walk away, another officer came up to the scene and said "I've got crack here" and asked Applicant whose it was. Applicant stated that he did not know. Counsel stated at the PCR hearing that he did not tell her that version of the facts but did adamantly state that he did not throw the crack down, as police alleged. Counsel testified that she did not file a suppression motion because Applicant had told her the crack was found under the car and then later claimed he did not know where the crack was located. She also stated she did not have a good faith basis to request a suppression hearing.

According to the case file summary provided in discovery to trial counsel, Applicant was standing near a Cadillac. When the officers pulled up, Applicant walked ten feet up the sidewalk. Officer Chavis ordered him to stop. He then saw him drop something at a distance. He discovered a bag of crack on the sidewalk. This occurred at 9:30 p.m. in a "high crime area."

Trial counsel was ineffective in failing to request a suppression hearing, especially where Applicant was facing thirty years in prison and where the credibility of the officer's version of the facts provided the entire basis for the case.

When a suppression hearing would have likely been successful, failure to request one does not reflect "reasonable professional judgment." *Goins v. State*, 726 S.E.2d 1, 397 S.C. 568 (2012).

A defendant need not articulate specific grounds as to why a suppression hearing is necessary; he need only make a broad, general motion. *State v. Patton*, 472 S.E.2d 245, 322 S.C. 408 (1996). A hearing is not required "when the defendant can point to no one argument which, as a matter of law, would entitle him to the suppression of evidence and when the trial court, cognizant of this fact, would not be enlightened by a hearing on the matter." *Id.*

Clearly, based on the case summary alone, counsel had a good faith basis for requesting a hearing because Applicant was unlawfully detained by the officers. Any supposed conflict in Applicant's story would be irrelevant since he would not have to testify.

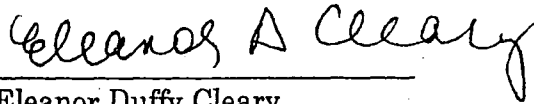
An individual is "seized" when an officer restrains his freedom, even if the detention is brief and falls short of arrest. *Sikes, supra*. A person cannot be detained unless the officer has a reasonable suspicion that the person is involved in criminal activity, which can be articulated with particularity. *Id.* No such reasonable suspicion was alleged in this case.

Despite widespread practice, presence in an area of criminal activity, standing alone, is not enough to support a reasonable, particularized suspicion that the person is committing a crime. *Illinois v. Wardlow*, 528 U.S. 119, 124, 120 S.Ct. 673, 145 L.Ed.2d 570 (2000). Walking away from an officer is not sufficient cause to detain him. *Id.* When an officer approaches an individual without reasonable suspicion or probable cause, the individual can lawfully ignore the officer. *Id.* Therefore, it is likely that Applicant's motion to suppress would have been granted, eliminating all of the evidence against him as fruit of the poisonous tree. *Wong Sun v. United States*, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963);

Additionally, there were improbabilities in the officer's statement that should have been addressed at a suppression hearing. In the case summary, the officers do not claim to have seen the crack being thrown but instead they saw him throw something and then went to that spot, in a "high-crime area parking lot" and claimed to find a small baggie containing 6 grams of crack cocaine. At the trial, in contrast, one officer improbably testified he never lost visual contact with the item being thrown despite the darkness of the hour and the size of the bag. It is likely a third story would have come up at a suppression hearing and their testimony, upon whom the case relied, could be aggressively discredited at trial, even if the suppression motion were not granted. Therefore, Applicant was prejudiced by counsel's failure to discredit the officers because if she had, the jury would have had a reasonable doubt respecting guilt." *Edwards v. State*, 392 S.C. 449, 459, 710 S.E.2d 60, 66 (2011).

Therefore, defendants respectfully ask this Court to reconsider its decision and grant Applicant's petition for post-conviction relief.

Respectfully submitted,



Eleanor Duffy Cleary
1720 Main St., Suite 303
Columbia, SC 29201
(803) 376-0075

Attorneys for Applicant

Columbia, SC
March 18, 2013

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

CHRISTOPHER ROBINSON #265006

Plaintiff,

vs.

THE STATE OF SOUTH CAROLINA

Defendant.

CERTIFICATE OF SERVICE

2011-CP-46-1841

I, Karen Dumas Elliott, Paralegal to Eleanor Duffy Cleary, hereby certify that I have served the Rule 59(e) Motion to Alter or Amend on The South Carolina Office of the Attorney General and The Honorable Edgar W. Dickson, by depositing it in the United States mail on this 18th day of March, 2013, in a stamped envelope addressed to:

J. Rutledge Johnson
SC Office of the Attorney General
PCR Division
PO Box 11549
Columbia, SC 29211

The Honorable Edgar W. Dickson
Presiding Circuit Court Judge
Sixteenth Judicial Circuit
PO Box 1949
Orangeburg, SC 29116

Karen D. Elliott
Karen Dumas Elliott
Paralegal to Eleanor Duffy Cleary

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Christopher Robinson, #265066,

2011-CP-46-1841

Applicant,

v.

RETURN TO MOTION FOR REHEARING
AND/OR TO ALTER OR AMEND THE
ORDER OF DISMISSAL

State of South Carolina,

Respondent.

This matter comes before the Court by way of the Applicant's Motion pursuant to Rule 59(e), SCRCP, in which the Applicant, through counsel, asks the Court to direct the entry of a new judgment and/or to alter or amend its Order dismissing his Application for post-conviction relief (PCR). The Respondent (the State) would submit the following:

I.

This PCR matter came before the Court for an evidentiary hearing on October 12, 2012. Thereafter, this Court issued an Order of Dismissal with Prejudice dated February 14, 2013 and filed with the clerk on February 14, 2013. The Applicant was represented in this matter by Eleanor Cleary, Esquire.

The Applicant submitted a Motion for Rehearing Pursuant to Rule 59(e), SCRCP, dated March 18, 2013 ("Motion").

II.

The State submits this Motion should be denied.

FILED-RECEIVED
2013 APR -7 PM 1:16
DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

The Applicant is requesting this Court alter or amend the findings of fact and conclusions of law. The State submits this Court has properly addressed the issues about which the Applicant complains:

1. In the Order of Dismissal, the Court found Counsel was not ineffective for not requesting a suppression hearing concerning the crack cocaine in this case. *See* Order of Dismissal pages 11-12. Counsel testified the first time she learned about the Applicant's version of the facts, as presented at the hearing, was at the hearing, itself. She, rightly, relied upon what information the Applicant provided to her in deciding how to best defend the Applicant. Additionally, Counsel testified she had no good-faith basis for requesting a suppression hearing. The Court properly held that had she made a motion without a good-faith basis, it could be construed as attempting to commit a fraud upon the court. Clearly, the Court aptly addressed this issue in its Order of Dismissal.

III.

The Applicant is merely asking the Court to reverse its decision and grant post-conviction relief. Such a request is more properly addressed through the appellate process. *See Wilder Corp. v. Wilke*, 330 S.C. 71, 77, 497 S.E.2d 731, 734 (1998) (noting the proper use of a Rule 59(e) motion is to preserve issues raised to but not ruled upon by the trial court).

IV.

The State therefore requests that the relief requested by the Applicant be denied and asserts a hearing on this matter would be unnecessary.

Respectfully submitted,

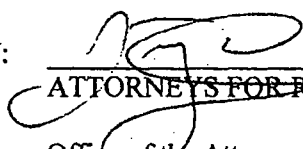
ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

BY:


~~ATTORNEYS FOR RESPONDENT~~

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-3737

March 27, 2013
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF YORK

Christopher Robinson, #265006,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

2011-CP-46-1841

ORDER DENYING APPLICANT'S
MOTION TO ALTER OR AMEND

FILED-RECEIVED
2014 JAN 13 AM 9:12
DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

This post-conviction relief matter came before the Court for an evidentiary hearing at the Moss Justice Center on October 12, 2012. The Applicant was present and represented by Eleanor Cleary, Esquire. The State was represented by J. Rutledge Johnson, Assistant Attorney General. After taking the matter under advisement, this Court issued a Final Order of Dismissal dated February 14, 2013. The Applicant was served with the Final Order on March 8, 2013, and he submitted, through counsel, a timely Motion for Rehearing and/or Motion to Alter or Amend the Judgment on March 18, 2013.

The Applicant raises the following issues in his Rule 59 Motion:

1. The Applicant met his burden of proving trial counsel was ineffective for failing to move to suppress the evidence of the crack cocaine before trial and that Applicant was prejudiced by that ineffectiveness.

Having carefully reviewed the entire record in this matter, this Court finds that no basis for altering or amending is prior ruling.¹ Therefore, this Court hereby denies the Applicant's Rule 59 Motion in its entirety, and affirms the previous Order of Dismissal.

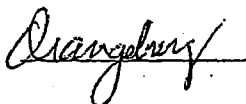
¹ The Court, in its discretion, has considered this matter based upon the motions submitted by the parties and the post

This Court advises that if the Applicant desires to secure appellate review of this Order and the Order of Dismissal, a notice of appeal must be filed and served **within thirty (30) days** of the service of this Rule 59 Order. Applicant and counsel are directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of appeal has been timely filed.

AND IT IS SO ORDERED this 30th day of Dec., 2013.



Edgar W. Dickson
Presiding Judge
Sixteenth Judicial Circuit

 South Carolina

conviction relief file, since oral argument will not aid the Court in reaching its decision. See Rule 59(f), SCRCP.

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Christopher Antangelo Robinson, Appellant.

Appeal From York County
John C. Hayes, III, Circuit Court Judge

Unpublished Opinion No. 2010-UP-324
Submitted June 1, 2010 – June 23, 2010

AFFIRMED

Appellate Defender M. Celia Robinson, of
Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh,
Assistant Deputy Attorney General Salley W.
Elliott, and Assistant Attorney General Julie M.
Thames, all of Columbia; and Solicitor Kevin
Scott Brackett, of York, for Respondent.

PER CURIAM: Christopher Antangelo Robinson was convicted of possession of crack cocaine with intent to distribute and possession of marijuana. He appeals, arguing the circuit court erred in refusing to charge the jury on the law of inconsistent prior statements. Due to the State's violation of Brady v. Maryland, 373 U.S. 83 (1963), and Rule 5(a)(1)(C), SCRCrimP, Robinson contends the circuit court erred in denying his motions (1) to exclude testimony concerning money found on Robinson at the time of his arrest; (2) to instruct the jury to disregard the testimony concerning the money in deliberations; and (3) for mistrial. We affirm^[1] pursuant to Rule 220(b)(1), SCACR, and the following authorities:

1. As to whether the circuit court erred in failing to instruct the jury on the law of prior inconsistent statements: State v. Gaines, 380 S.C. 23, 31, 667 S.E.2d 728, 732 (2008) ("To

warrant reversal, a trial court's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant."); State v. Cole, 338 S.C. 97, 101, 525 S.E.2d 511, 512 (2000) ("The law to be charged must be determined from the evidence presented at trial."); State v. Commander, 384 S.C. 66, 75, 681 S.E.2d 31, 36 (Ct. App. 2009) (stating "an instruction should not be given unless justified by the evidence").

2. As to whether the State violated Brady such that the circuit court erred in denying Robinson's motions (1) to exclude testimony concerning money found on Robinson at the time of his arrest; (2) to instruct the jury to disregard the testimony in deliberations; and (3) for mistrial: S.C. Farm Bureau Mut. Ins. Co. v. S.E.C.U.R.E. Underwriters Risk Retention Group, 347 S.C. 333, 343, 554 S.E.2d 870, 875 (Ct. App. 2001) ("An issue must be raised and ruled upon by the trial court for an appellate court to review the issue.").

3. As to whether the State violated Rule 5(a)(1)(C), SCRCrimP, such that the circuit court erred in denying Robinson's motions (1) to exclude testimony concerning money found on Robinson at the time of his arrest; (2) to instruct the jury to disregard the testimony in deliberations; and (3) for mistrial: Rule 5(a)(1)(A), (B), (C), SCRCrimP (providing criminal defendants are entitled to their statements, criminal records, and any documents or tangible objects material to the preparation of their defense or intended for use by the prosecution); State v. Kennerly, 331 S.C. 442, 453, 503 S.E.2d 214, 220 (Ct. App. 1998) ("The definition of 'material' for purposes of Rule 5 is the same as the definition used in the Brady context."); id. (stating that under Brady "evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different").

AFFIRMED.

KONDUROS, GEATHERS, and LOCKEMY, JJ., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

WITNESSES

RHPDChavis

DOCKET NO. 2007-GS-46- *Delly*

The State of South Carolina

County of York

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

August 16, Term 2007

COURT OF GENERAL SESSIONS

jm

ARREST WARRANT NUMBER

K-254044

THE STATE

vs.

CHRISTOPHER ANTANGELO ROBINSON

ACTION OF GRAND JURY

TRUE BILL

William Smith
Foreperson of Grand Jury

9-13-02

VERDICT

GUILTY

Indictment for

POSSESSION OF COCAINE BASE (CRACK)
WITH INTENT TO DISTRIBUTE

Foreperson of Petit Jury
Date: 10/14/02

SC Code: 44-53-375
CDR Code: 3039

CERTIFIED TRUE COPY
2011 JUN 14 AM 8:12
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

Defendant

Witness:

C.C.C. PLS. AND G.S.

Heavenly Court

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

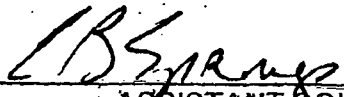
INDICTMENT

At a Court of General Sessions, convened on August 16, 2007, the Grand Jurors of York County present upon their oath:

POSSESSION OF COCAINE BASE (CRACK) WITH INTENT TO DISTRIBUTE

That on or about June 1, 2007, in York County, South Carolina, the Defendant, Christopher Antangelo Robinson, did possess with intent to distribute, dispense, or deliver a quantity of cocaine base, otherwise known as crack cocaine, a controlled substance under provisions of Section 44-53-110, et seq., Code of Laws of South Carolina (1976), as amended, all in violation of Section 44-53-375, Code of Laws of South Carolina, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ASSISTANT SOLICITOR

SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

Y OF York

VS.

Christopher Antangelo Robinson

INDICTMENT/CASE#: 2007GS4602616

AKA:

CERTIFIED TRUE COPY

A/W#: K254044

Date of Offense: 06-01-2007

Race: B

Sex: M

Age: 2011 04/14/08

S.C. Code §: 44-53-0375

DOB:

SS#:

CDR Code #: 3039

Address:

DAVID HAMILTON

CLERK OF COURT

SENTENCE SHEET #1

DL#:

SID#:

SC0136767 YORK COUNTY, SC

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: POSSESSION WITH INTENT TO DISTRIBUTE COCAINE BASE (CRACK COCAINE) 3rd offense

in violation of § 44-53-0375 of the S.C. Code of Laws, bearing CDR Code # 3039

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45

w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor:

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$50,000.00; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §7-25-135

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine:

\$ 50,000

§ 14-1-206 (Assessments 107.5 %)

\$ 53,750

§ 14-1-211(A)(1) (Conv Surcharge)

\$100

\$ 100

§ 14-1-211(A)(2) (DUI Surcharge)

\$100

\$

§ 56-5-2995 (DUI Assessment)

\$12

\$

§ 35.13 (Public Def/Prob)

\$500

\$

§ 73.3, 1B TP (Law Enforce. Funding)

\$25

\$ 25

§ 33.7, 1B TP (Drug Court Surcharge)

\$100

\$ 100

§ 50-21-114(BUI Breath Test Fee)

\$50

\$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea

\$

3% to County (if paid in installments)

\$

TOTAL

\$ 103975.00

PTUP _____

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel §35.13 TP

Requires \$500 be paid to Clerk during probation.

David Hamilton

Clerk of Court/ Deputy Clerk

PRESIDING JUDGE

Judge Code: 21 C 14 19

Sentence Date: 10-4-07

Court Reporter:

Janet Rich

SCCA/17 (9/2006)

ARREST WARRANT

K-254044

STATE OF SOUTH CAROLINA

County/ ☒ Municipality of

Rock Hill

THE STATE
against

Christopher A. Robinson

Address:

PO BOX 29714

Phone:

SSN:

Sex: M Race: E Height: 6'10" Weight: 169IL State: SC DL#:OB: Agency ORI# 30464300Prosecuting Agency: Rock Hill Police DepartmentProsecuting Officer: CURBETTA/CHAVISOffense: VOL 3RD PRID CRACK COCAINEOffense Code: 44-53-375

Code/Ordinance Sec:

This Warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

to be arrested and brought before me to be

served with according to law.

Signature of Judge

(L.S.)

Date:

RETURN

copy of this arrest warrant was delivered to

Defendant Christopher A. RobinsonDate: 6-2-07

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Municipal Judge,

East Black Street

Rock Hill, SC 29731-1706

7200

STATE OF SOUTH CAROLINA

County/ ☒ Municipality of

Rock Hill

AFFIDAVIT

Personally appeared before me the affiant Christopher A. Robinsonbeing duly sworn deposes and says that defendant Christopher A. Robinsondid within this county and state on June 1, 2007 violate the criminal laws of theState of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Rock Hill)

In the following particulars:

DESCRIPTION OF OFFENSE: VOL 3RD PRID CRACK COCAINE

303A

44-53-375

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

THE DEFENDANT DID WILLFULLY AND DELIBERATELY VIOLATE SC CODE OF LAWS 44-53-375 BY HAVING IN HIS POSSESSION 5.3 GRAMS OF CRACK COCAINE WHICH THE DEFENDANT THERETO THE GROUND WHEN OFFICERS APPROACHED. THE INCIDENT OCCURRED AT

BLVD IN ROCK HILL SC. THE DEFENDANT HAS 2 PRIOR CONVICTIONS ON HIS CRIMINAL HISTORY.

POLICE INVESTIGATION
EVIDENCE SEIZED

Signature of Affiant

STATE OF SOUTH CAROLINA

County/ ☒ Municipality of

Rock Hill

Affiant's Address

Affiant's Telephone

120 E. Black Street

Rock Hill, SC 29731-1706

803-329-5695

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above

affidavit that there are reasonable grounds to believe that

on June 1, 2007did violate the criminal laws of the State of South Carolina (or ordinance of Rock Hill)County/ ☐ Municipality of

Rock Hill

as set forth below:

DESCRIPTION OF OFFENSE:

VOL 3RD PRID CRACK COCAINE

44-53-375

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above

affidavit that there are reasonable grounds to believe that

on June 1, 2007did violate the criminal laws of the State of South Carolina (or ordinance of Rock Hill)

as set forth below:

DESCRIPTION OF OFFENSE:

VOL 3RD PRID CRACK COCAINE

44-53-375

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of his execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 06/01/2007

Signature of Issuing Judge

Judge Code: 0607D

Judge's Address

Judge's Telephone

120 East Black Street

Rock Hill, SC 29731-1706

803-329-7700

Issuing Court: ☐ Magistrate

Municipal

Circuit

ORIGINAL

K-254044

Xref #: 0706010045

Form Approved by
S.C. Attorney General
April 2, 2005
SCA 618

2011 JUN 14 AM 8:12
CERTIFIED TRUE COPY
DAVID HAMILTON
CLERK OF COURT
ROCK HILL, SC

WITNESSES

RHPDChavis

DOCKET NO. 2007-GS-46- 02618

The State of South Carolina

County of York

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

COURT OF GENERAL SESSIONS

I hereby appear in my own proper person and plead guilty to the within indictment or to

August 16, Term 2007

Jim

ARREST WARRANT NUMBER

K-254046

THE STATE

Defendant

vs.

Witness:

ACTION OF GRAND JURY

CHRISTOPHER ANTANGELO ROBINSON

C.C.C. PLS. AND G.S.

Due Bill

Foreperson of Grand Jury

9-12-07

VERDICT

Indictment for

POSSESSION OF MARIJUANA

Foreperson of Petit Jury

Date:

10/15/2007 House of Delegates

SC Code: § 44-53-370

CDR Code: 182

CERTIFIED TRUE COPY
2011 JUN 14 AM 8:12
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on August 16, 2007, the Grand Jurors of York County present upon their oath:

POSSESSION OF MARIJUANA

That on or about June 1, 2007, in York County, South Carolina, the Defendant, Christopher Antangelo Robinson, did knowingly or intentionally possess a quantity of marijuana, a controlled substance under provisions of Section 44-53-110, et seq., Code of Laws of South Carolina (1976), as amended, such possession not being the Defendant's first offense, and such possession not having been authorized by law, all in violation of Section 44-53-370, Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

E B Spruill

ASSISTANT SOLICITOR

IN THE COURT OF GENERAL SESSIONS

SOUTH CAROLINA
COUNTY OF York
STATE VS.
Christopher Antangelo Robinson

INDICTMENT/CASE#: 2007GS4602618
A/W#: K254046
Date of Offense: 06-01-2007
S.C. Code § : 44-53-0370
Amended #: 0182

AKA: _____
Race: B Sex: M Age: 24
DOB: _____ SS#: _____
Address: _____

CERTIFIED TRUE COPY
14 AM 12

DL#: _____ SID#: SC01367671

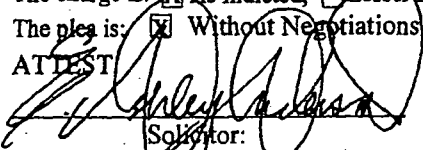
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

SENTENCE SHEET #2

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: POSSESSION OF MARIJUANA, 2ND OR MORE OFFENSE

in violation of § 44-53-0370 of the S.C. Code of Laws, bearing CDR Code # 182
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

Solicitor: _____ Defendant _____ Attorney for Defendant _____

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 1 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 10/4/07
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §7-25-135

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
☐ set by SCDPPPS _____

PTUP _____
_____ days/hours Public Service Employment
Obtain GED _____
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol testing _____
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv Surcharge)	\$100	\$ 100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 35.13 (Public Def/Prob)	\$500	\$
§ 73.3, 1B TP (Law Enforce. Funding)	\$25	\$ 25
§ 33.7, 1B TP (Drug Court Surcharge)	\$100	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$
TOTAL		\$ 125

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

David Hamilton
Clerk of Court/ Deputy Clerk
Court Reporter: Janet Rich

PRESIDING JUDGE John Hagan
Judge Code: 2101419
Sentence Date: 10-4-07
SCCA/217 (9/2006)

ARREST WARRANT

K-254046

STATE OF SOUTH CAROLINA

County/ ☒ Municipality of
Rock Hill

THE STATE
against

RECEIVED

Christopher A. Robinson

Address: ROCK LAWN, SC 29714

Phone: SSN: DL State: SC DL #:

Sex: M Race: B Height: 6'10" Weight: 189

DL State: SC DL #:

DOB: Agency OR#: SC04460300

Prosecuting Agency: Rock Hill Police Department

Prosecuting Officer: CUREATH/CHAVIS

Offense: VDL POSSESSION OF MARIJUANA 2ND AND SUBSEQUENT

Code/Ordinance Sec: 44-53-370 Offense Code: 44-53-375

This Warrant is CERTIFIED FOR SERVICE in the
County/ ☐ Municipality of The accused

is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge (L.S.)

RETURN

copy of this arrest warrant was delivered to
standards *Chalanda Williams*

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Municipal Judge,
East Black Street
Rock Hill, SC 29731-1706
39-7200

STATE OF SOUTH CAROLINA)
County/ ☒ Municipality of)
Rock Hill)

AFFIDAVIT

Form Approved by
SCA Attorney General
April 2, 2003
SCCA 618

Personally appeared before me the affiant Cuthbert Davis who
being duly sworn deposes and says that defendant Christopher A. Robinson
did within this county and state on June 1, 2002 violate the criminal laws of the
State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Rock Hill)
in the following particulars:
DESCRIPTION OF OFFENSE: VDL POSSESSION OF MARIJUANA 2ND AND SUBSEQUENT 44-53-370 *c/87*

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

THE DEFENDANT DID WILLFULLY AND UNLAWFULLY VIOLATE SC CODE OF LAWS 44-53-370 BY HAVING IN HIS POSSESSION
3 GRAMS OF MARIJUANA WHICH WAS LOCATED IN THE DEFENDANT'S PANTS POCKET DURING A SEARCH INCIDENT TO
ARREST. THE INCIDENT OCCURRED AT
BLVD IN ROCK HILL SC. THE DEFENDANT HAS 2 PRIOR
CONVICTIONS ON HIS CRIMINAL HISTORY.

POLICE INVESTIGATION
EVIDENCE SEIZED

Signature of Affiant

STATE OF SOUTH CAROLINA)
County/ ☒ Municipality of)
Rock Hill)

Affiant's Address: 120 E. Black Street
Rock Hill, SC 29731-1706
Affiant's Telephone: 803-329-5693

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on June 1, 2002 defendant Christopher A. Robinson

did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Rock Hill) as set forth below:

DESCRIPTION OF OFFENSE: VDL POSSESSION OF MARIJUANA 2ND AND SUBSEQUENT 44-53-370

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
the defendant at the time of his execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me on 06/01/2002
Judge's Address: 120 East Black Street
Signature of Issuing Judge: James S. Hene (L.S.)
Judge's Telephone: 803-329-7200
Judge Code: 0610 Issuing Court: ☐ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

K-254046 Xref 1: 0706010045

2011 JUN 14 AM 8:18
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC
CERTIFIED TRUE COPY