

STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO EDGEFIELD COUNTY
Court of Common Pleas

The Honorable Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2014-000591

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S.C. Supreme Court

Fredy Deleon, ... Respondent,

v.

State of South Carolina, ... Petitioner.

APPENDIX

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ROGER LOWE - CROSS-EXAMINATION BY MR. SUSSMAN

- 1 A YES, SIR.
- 2 Q FEDERAL AGENT IN CHARGE.
- 3 A SHE'S FEDERAL.
- 4 Q SO IT WAS STILL A FEDERAL INVESTIGATION AT THAT POINT.
- 5 A AT THAT POINT.
- 6 Q OKAY. AND WHEN -- WERE THESE GENTLEMEN ARRESTED PRIOR TO THE
- 7 CHIMNEYS BEING -- PRIOR TO THESE CHIMNEYS BEING TAKEN BACK TO
- 8 EDGEFIELD TO THE SHERIFF'S DEPARTMENT AND OPENED?
- 9 A YES, SIR.
- 10 Q SO THEY WERE ARRESTED AGAIN AS PART OF THE FEDERAL
- 11 INVESTIGATION.
- 12 A THERE AGAIN, I WASN'T INVOLVED IN THE ARREST.
- 13 Q BUT IT WAS YOUR UNDERSTANDING THAT AT LEAST WHAT YOU WERE
- 14 DOING WAS BEING DONE AT THE DIRECTION OF---
- 15 A WHAT I WAS DOING---
- 16 Q --FEDERAL AGENT DOWLING.
- 17 A ---WAS -- YES, SIR.
- 18 Q NOW YOU TESTIFIED I THINK THAT YOU HAD THE KEY TO THE VAULT
- 19 WHERE THIS MARIJUANA WAS PLACED.
- 20 A YES, SIR.
- 21 Q SHERIFF DOBEY ALSO HAD A KEY TO THAT VAULT, DID HE NOT?
- 22 A NO, SIR.
- 23 Q WHAT WOULD'VE HAPPENED IF YOU'D LOST THAT KEY?
- 24 A WE WOULD'VE HAD TO TAKE SOME MEASURES TO OBTAIN ENTRY
- 25 SOMEHOW.

ROGER LOWE - CROSS-EXAMINATION BY MR. SUSSMAN

1 Q THERE'S NO SPARE KEY?

2 A NO, SIR.

3 Q HOW MANY TIMES DID YOU GO INTO THAT VAULT BETWEEN THE TIME IT
4 WAS TAKEN AND THE TIME THAT YOU LEFT THE SHERIFF'S DEPARTMENT?

5 A I WOULD HAVE NO IDEA.

6 Q NUMEROUS TIMES?

7 A PROBABLY I WOULD SAY NUMEROUS, YES.

8 Q WERE OTHER THINGS KEPT IN THAT VAULT BESIDES THE---

9 A NOT IN THE VAULT. THAT WAS A PRETTY SIZABLE AMOUNT. IT PRETTY
10 MUCH FILLS UP THE VAULT.

11 Q SO YOU WENT INTO THAT VAULT WHERE THE MARIJUANA WAS KEPT
12 NUMEROUS TIMES?

13 A YES, SIR.

14 Q DID YOU GO IN WITH OTHER PEOPLE?

15 A ONLY ONE TIME WHEN WE HAD THE OFFICER FROM AIKEN COME OVER TO
16 TEST THE---

17 Q OTHER TIMES YOU WOULD GO IN BY YOURSELF?

18 A OCCASIONALLY, YES. WHEN WE FIRST GOT IT I ATTEMPTED TO WEIGH IT
19 AND NUMBER IT MYSELF, AND IT GOT TO BE AN OVERWHELMING TASK. SO THAT'S
20 WHEN WE ASKED FOR ASSISTANCE FROM AIKEN.

21 Q AND YOU WEREN'T INVOLVED AT ALL WITH ANY OF THE SCENE THAT
22 TOOK PLACE ON PADGETT ROAD.

23 A I WAS -- I CAME THROUGH THERE, YES.

24 Q WAS THAT BEFORE OR AFTER THE SEMI WAS STUCK?

25 A IT WAS AFTER THE SEMI WAS STUCK.

ROGER LOWE - CROSS-EXAMINATION BY MR. SUSSMAN

1 Q WAS THAT BEFORE OR AFTER THE 3 INDIVIDUALS IN THE RYDER TRUCK
2 WERE ARRESTED?

3 A I THINK IT WAS PROBABLY RIGHT AROUND THE TIME THEY WERE
4 ARRESTED.

5 Q OKAY. WHAT WAS YOUR ROLE? WHAT DID YOU DO?

6 A AGAIN, I WAS TO PROVIDE LOCAL SUPPORT TO THE FEDERAL AGENCIES.

7 Q OKAY. PATRICK MIZE WAS ON THE SCENE?

8 A YES, SIR.

9 Q DID YOU HAVE VISUAL -- COULD YOU ACTUALLY SEE WHERE THEY WERE
10 IN THE FIELD?

11 A THEY? I'M SORRY.

12 Q I'M SORRY. THIS SEMI AND THE RYDER TRUCK.

13 A IN THE ROAD, YES.

14 Q WHEN YOU SAY IN THE ROAD ARE YOU TALKIN' ABOUT PADGETT ROAD?

15 A YES, SIR.

16 Q WERE YOU ALSO INVOLVED WITH SURVEILLING THE GREEN
17 THUNDERBIRD?

18 A NO, SIR.

19 Q WHO WAS RESPONSIBLE FOR SURVEILLING THE GREEN THUNDERBIRD?

20 A THAT WOULD'VE BEEN SOME OF THE FEDERAL AGENTS AND THERE WERE
21 A FEW LOCAL AGENTS AS WELL AS THE -- I BELIEVE WE HAD SOME ASSISTANCE
22 FROM THE AIKEN COUNTY SHERIFF'S OFFICE AND SLED.

23 Q OKAY. AND WERE YOU AT FREDY'S STORE WHEN THE MANTLE WAS
24 UNLOADED? WERE YOU UNDER SURVEILLANCE THEN?

25 A I WAS PROBABLY A QUARTER MILE AWAY.

ROGER LOWE - CROSS-EXAMINATION BY MR. SUSSMAN

1 Q OKAY. SO Y'ALL WERE IN RADIO CONTACT?

2 A FROM TIME TO TIME WE WERE.

3 Q OKAY. NOW YOU'RE THE CHIEF DEPUTY AND SECOND IN CHARGE IN
4 EDGEFIELD. RIGHT?

5 A AT THE TIME, YES, SIR.

6 Q AT THE TIME. WAS IT NOT -- IS IT NOT TRUE THAT EVERYONE KNEW THAT
7 THERE WAS A GREEN THUNDERBIRD AT FREDY'S STORE?

8 A I HEARD RADIO TRAFFIC CONCERNING IT, YES, SIR.

9 Q AND YOU HEARD RADIO TRAFFIC WHEN THE GREEN THUNDERBIRD LEFT?

10 A I BELIEVE SO.

11 Q AND THEN WHO WAS FOLLOWING THE GREEN THUNDERBIRD WHEN IT
12 LEFT?

13 A THAT I CAN'T ANSWER.

14 Q AND WHO WAS FOLLOWING THE GREEN THUNDERBIRD WHEN IT ARRIVED
15 AT BILLY'S SUPER STORE?

16 A THAT I CAN'T ANSWER. LIKE I SAID, THERE WAS SEVERAL UNITS
17 PARTICIPATING.

18 Q AND -- BUT YOU WERE ONE OF THE UNITS PARTICIPATING WHEN THEY
19 WENT INTO PADGETT'S FIELD?

20 A NO. I WASN'T THERE WHEN THEY WENT INTO PADGETT ROAD.

21 Q OKAY. YOU WERE THERE WHEN THEY WENT IN.

22 A NO, I WAS NOT.

23 Q BUT YOU CAME THROUGH THERE WHILE THEY WERE OUT THERE.

24 A WHILE THE TRUCKS WERE STILL STUCK, YES.

25 Q AND YOU DON'T RECALL ANY RADIO TRAFFIC ABOUT WHO WAS

ROGER LOWE - CROSS-EXAMINATION BY MR. SUSSMAN

1 FOLLOWING OR WHAT HAPPENED TO THE GREEN THUNDERBIRD?

2 A NO, SIR, I DON'T RECALL SPECIFICALLY.

3 Q OKAY. AND HAVE NO KNOWLEDGE OF WHETHER -- WHAT -- WHERE THE
4 GREEN THUNDERBIRD WENT BETWEEN BILLY'S - I MEAN BETWEEN FREDY'S
5 STORE AND BILLY'S STORE.

6 A NO, I DON'T HAVE ANY KNOWLEDGE AT ALL.

7 MR. SUSSMAN: YOUR HONOR, IF I COULD HAVE JUST ONE SECOND.

8 THE COURT: YES, SIR.

9 MR. SUSSMAN: THAT'S ALL I HAVE. THANK YOU.

10 THE COURT: MR. MILLER?

11 MR. MILLER: THANK YOU, YOUR HONOR.

12 CROSS-EXAMINATION

13 BY MR. MILLER

14 Q AFTERNOON, CAPTAIN LOWE.

15 A HELLO.

16 Q CAPTAIN LOWE, I WANT TO SHOW YOU WHAT'S BEEN PREVIOUSLY
17 MARKED AS STATE'S EXHIBIT 23.

18 A UH-HUH.

19 Q THAT HAS ALREADY BEEN IDENTIFIED AS THE RECEIPT FOR THE RYDER
20 TRUCK THAT INDICATES THAT MY CLIENT HONORIO GUERRERO RENTED THE
21 TRUCK IN ROCK HILL I BELIEVE. IS THAT CORRECT?

22 A THAT'S WHAT IT SAYS.

23 Q OKAY. DOES IT SHOW AN ADDRESS FOR HONORIO GUERRERO?

24 A YES, IT IS.

25 Q DOES IT SHOW A DRIVER'S LICENSE NUMBER?

ROGER LOWE - CROSS-EXAMINATION BY MR. MILLER

- 1 A YES, IT DOES.
- 2 Q WHAT STATE IS HIS DRIVER'S LICENSE ISSUED FROM?
- 3 A NORTH CAROLINA.
- 4 Q DID YOU OR ANYONE IN YOUR OFFICE VERIFY THAT THAT WAS A VALID
- 5 DRIVER'S LICENSE FROM THE STATE OF NORTH CAROLINA?
- 6 A I DIDN'T, NO, SIR.
- 7 Q OKAY. AND YOU FOUND THAT INSIDE THE RYDER TRUCK. IS THAT
- 8 CORRECT?
- 9 A YES, SIR.
- 10 Q AND IT WAS STILL STUCK IN THE MUD WHENEVER Y'ALL INVENTORIED
- 11 THE TRUCK?
- 12 A I CAN'T HONESTLY SAY IF I OBTAINED THIS ON PADGETT ROAD OR AFTER
- 13 IT WAS TOWED TO THE SHERIFF'S OFFICE.
- 14 Q SO THE RYDER TRUCK WAS TOWED TO THE SHERIFF'S OFFICE.
- 15 A YES, SIR.
- 16 Q WOULD IT UNDERGO A CRIME SCENE TYPE PROCESSING AT THE SHERIFF'S
- 17 OFFICE?
- 18 A IT WAS CHECKED FOR CONTRABAND.
- 19 Q WHAT KIND OF CONTRABAND DID YOU FIND IN THE TRUCK?
- 20 A NONE.
- 21 Q NO GUNS; NO WEAPONS?
- 22 A NO GUNS; NO WEAPONS.
- 23 Q AND AT THE TIME THAT WAS DONE, MY CLIENT WAS IN CUSTODY. IS THAT
- 24 CORRECT?
- 25 A YES, SIR.

ROGER LOWE - CROSS-EXAMINATION BY MR. MILLER

- 1 Q OKAY. THANK YOU, SIR. I'M GONNA SHOW YOU WHAT'S BEEN
2 PREVIOUSLY MARKED AS STATE'S EXHIBIT #24. AND THAT'S THE RECEIPT FROM
3 THE CROSSROADS?
- 4 A CROSSROADS, YES, SIR.
- 5 Q CROSSROADS MOTEL. WAS THAT ALSO FOUND INSIDE THE TRUCK?
- 6 A YES, SIR, IT WAS.
- 7 Q OKAY. DID ANYBODY EVER GO TO THE CROSSROADS MOTEL AND ASK TO
8 LOOK AT THE ROOM?
- 9 A I BELIEVE SOMEONE DID.
- 10 Q WHAT DID THEY FIND INSIDE THE ROOM?
- 11 A I DON'T HAVE THAT INFORMATION WITH ME.
- 12 Q DID THEY EVER ASK FOR THE PHONE RECORDS FROM ANY PHONE CALLS
13 THAT MIGHT'VE BEEN MADE FROM THAT ROOM OR RECEIVED TO PEOPLE IN THAT
14 ROOM?
- 15 A THAT I CAN'T ANSWER THAT.
- 16 Q DID THEY TAKE ANY PICTURES OF THE ROOM?
- 17 A I CAN'T ANSWER THAT. I WASN'T THERE.
- 18 Q OKAY. JUMPING BACK ON THOSE QUICKLY, DID ANYBODY TAKE A
19 PICTURE, A PHOTOGRAPH OF THE ACTUAL RYDER TRUCK ITSELF?
- 20 A A PICTURE OF JUST THE TRUCK?
- 21 Q A PICTURE OF THE TRUCK.
- 22 A I'M SURE THERE WERE PICTURES TAKEN.
- 23 Q DO YOU HAVE ANY OF THOSE?
- 24 A I DON'T HAVE ANY.
- 25 Q OKAY.

ROGER LOWE - CROSS-EXAMINATION BY MR. MILLER

1 A I'M NOT INVOLVED WITH THE SHERIFF'S OFFICE AT THIS TIME.

2 Q OKAY. WHAT WAS IN THE CARGO AREA OF THE RYDER TRUCK? WAS
3 THERE ANYTHING IN IT?

4 A NO, I BELIEVE IT WAS EMPTY.

5 Q OKAY. YOU SAID YOU HANDLED MOSTLY ADMINISTRATIVE DUTIES FOR
6 THE SHERIFF'S OFFICE AS CHIEF DEPUTY. IS THAT CORRECT?

7 A THAT'S CORRECT.

8 Q WHAT HAPPENS IF YOU KNOW, TO THE ITEMS OF PERSONAL PROPERTY
9 THAT AN ARRESTEE HAS ON THEM WHENEVER THEY ARE TAKEN TO THE
10 EDGEFIELD COUNTY JAIL?

11 A THEY'RE PLACED IN THE INTAKE AREA OF THE JAIL IN A BAG WITH THE
12 ARRESTEE'S NAME AND NUMBER.

13 Q OKAY. SO DID YOU EVER TAKE INTO EVIDENCE ANY OTHER ITEMS
14 REGARDING MY CLIENT MR. GUERRERO OTHER THAN THIS RECEIPT AND THIS
15 RECEIPT PREVIOUSLY MARKED STATE'S 23 AND 24?

16 A NO, SIR. I PERSONALLY DIDN'T TAKE ANY.

17 Q OKAY. WELL, YOU AS THE EVIDENCE CUSTODIAN, WAS THERE ANY OTHER
18 EVIDENCE IN THE EVIDENCE ROOM RELATED TO HONORIO GUERRERO BESIDES
19 THOSE 2 RECEIPTS?

20 A JUST THE DRUGS.

21 Q JUST ALL THIS STUFF HERE.

22 A RIGHT.

23 Q ONE BIG GROUP.

24 A YES, SIR.

25 Q OKAY. PREVIOUSLY AGENT MIZE TESTIFIED THAT HONORIO TRIED TO GIVE

ROGER LOWE - CROSS-EXAMINATION BY MR. MILLER

1 HIM A CELL PHONE. HONORIO TRIED -- DID IN FACT GIVE HIM HIS CELL PHONE.
2 NOW THAT CELL PHONE WASN'T FOUND IN THE RYDER TRUCK, WAS IT?

3 A NO, SIR.

4 Q THAT CELL PHONE WAS NEVER ENTERED INTO EVIDENCE IN YOUR
5 EVIDENCE LOCKER, WAS IT?

6 A NOT AS EVIDENCE, NO.

7 Q SO DOES THAT MEAN THAT THAT CELL PHONE WAS SITTING WITH HIS
8 PERSONAL PROPERTY AT THE EDGEFIELD COUNTY JAIL FOR THE ENTIRE TIME
9 THAT HE WAS DETAINED?

10 A IF IT WAS ON HIS PERSON WHEN HE WAS PROCESSED INTO JAIL, THAT'S
11 WHERE IT WOULD BE.

12 Q DID ANYBODY EVER BOTHER TO PICK UP THAT CELL PHONE AND LOOK AT
13 IT AND SEE WHAT NUMBERS WERE CALLED IN AND WHAT NUMBERS HE HAD
14 CALLED ON THAT CELL PHONE?

15 A I CAN'T EVEN CONFIRM THE EXISTENCE OF THE CELL PHONE.

16 Q OKAY. YOU SAID WHENEVER YOU WENT TO PADGETT ROAD -- THAT
17 EVENTUALLY YOU WENT OUT TO PADGETT ROAD. WERE YOU ONE OF THE
18 OFFICERS THAT ATTEMPTED TO BRING A CELL PHONE TO---

19 A NO, SIR.

20 Q ---AGENT MIZE?

21 A NO, SIR.

22 Q OKAY. BUT YOU WERE PROVIDING BACKUP FOR AGENT MIZE AT THAT
23 TIME, WERE YOU NOT?

24 A I DIDN'T KNOW HIS NAME OR -- I KNEW THERE WAS AN AGENT OUT THERE.

25 Q YOU KNEW HE WAS AN AGENT IN AN 18-WHEELER LOADED WITH

ROGER LOWE - CROSS-EXAMINATION BY MR. MILLER

1 MARIJUANA, DIDN'T YOU?

2 A THAT HE WAS IN AN 18-WHEELER. AT THAT TIME WE DIDN'T KNOW WHAT
3 WAS IN THE TRUCK FOR SURE. OR I DIDN'T.

4 Q WHO WERE YOU RIDING WITH?

5 A AT TIMES I WAS WITH AGENT PERRY FROM SLED. AT OTHER TIMES I WAS
6 IN MY OWN VEHICLE.

7 Q WHO WAS THE OTHER PERSON? AGENT PERRY AND WHO?

8 A I WAS IN MY OWN VEHICLE.

9 Q WHAT KIND OF VEHICLE WAS IT?

10 A I'M SORRY. WHICH ONE?

11 Q WHAT KIND OF VEHICLE WAS AGENT PERRY DRIVING?

12 A IT WAS A PICKUP TRUCK.

13 Q OKAY. WHAT KIND OF VEHICLE WERE YOU DRIVING?

14 A BLACK CROWN VICTORIA.

15 Q OKAY. AND YOU INDICATED TO MR. SUSSMAN IN YOUR CROSS
16 EXAMINATION THAT YOU WERE PROVIDING LOCAL ASSISTANCE.

17 A YES, SIR.

18 Q WOULD PART OF THE LOCAL ASSISTANCE THAT YOU WERE ATTEMPTING
19 TO PROVIDE HAVE BEEN PROVIDING KNOWLEDGE OF THE AREA WHERE THIS WAS
20 GOING ON SINCE THOSE PEOPLE FROM LAREDO, TEXAS DIDN'T KNOW WHERE IN
21 THE WORLD THEY WERE?

22 A THAT WOULD'VE BEEN LOCAL SUPPORT, BUT I DIDN'T PERSONALLY
23 PROVIDE IT.

24 Q HOW'D THEY GET THE TRACTOR-TRAILER -- EXCUSE ME -- THE TRAILER
25 OUT OF THE MUD ON PADGETT ROAD? HOW DID THEY GET IT FROM PADGETT

ROGER LOWE - CROSS-EXAMINATION BY MR. MILLER

1 ROAD DOWN TO THE EDGEFIELD COUNTY SHERIFF'S OFFICE?

2 A I BELIEVE A LARGE RECOVERY TYPE VEHICLE -- AS A MATTER OF FACT, I
3 THINK IT MIGHT HAVE BEEN A BULLDOZER IN THIS CASE WAS USED TO PULL IT
4 OUT OF THE MUD.

5 Q LIKE A TOW TRUCK TYPE VEHICLE?

6 A I WASN'T THERE, BUT IF MY MEMORY SERVES ME IT WAS A--

7 Q AND DO YOU KNOW HOW

8 A -- BULLDOZER.

9 Q I'M SORRY. GO AHEAD.

10 A IT WAS A BULLDOZER THAT PULLED IT OUTTA THE ROAD.

11 Q OKAY. AND YOU SAID -- Y'ALL KNOW HOW THE RYDER TRUCK GOT OUT
12 OF THE MUD ON PADGETT ROAD AND GOT BACK TO THE SHERIFF'S OFFICE?

13 A JUST HEARSAY.

14 MR. MILLER: ONE SECOND, PLEASE.

15 THE COURT: YES, SIR.

16 MR. MILLER: THANK YOU, YOUR HONOR. THAT'S ALL I HAVE FOR THIS
17 WITNESS.

18 THE COURT: REDIRECT?

19 MR. MAYE: NOTHIN' ELSE.

20 THE COURT: MR. HAWKE?

21 MR. HAWKE: NO, YOUR HONOR. I'M SORRY.

22 THE COURT: MR. SUSSMAN?

23 MR. SUSSMAN: NO, YOUR HONOR.

24 THE COURT: THANK YOU, MR. LOWE. YOU MAY STEP DOWN. DON'T
25 DISCUSS YOUR TESTIMONY WITH ANY OTHER WITNESSES. CALL YOUR NEXT

SHERIFF DOBEY - DIRECT EXAMINATION BY MR. MAYE

1 WITNESS.

2 A THANK YOU, YOUR HONOR.

3 MR. MAYE: STATE CALLS SHERIFF ADELL DOBEY TO THE STAND.

4 SHERIFF DOBEY, BEING DULY SWORN,

5 TESTIFIES AS FOLLOWS:

6 DIRECT EXAMINATION

7 BY MR. MAYE

8 Q MR. DOBEY, WHERE ARE YOU EMPLOYED?

9 A EDGEFIELD. I'M THE SHERIFF OF EDGEFIELD COUNTY.

10 Q OKAY. LET ME ASK YOU THIS: DID YOU TAKE CUSTODY DURING THE
11 COURSE OF THIS CASE OF ALL OF THE DRUG EVIDENCE THAT'S BEEN MARKED
12 INTO CUSTODY HERE FOR I.D. PURPOSES -- THAT'S STATE'S 22 -- ALL OF THESE 400
13 BAGS OF DRUG EVIDENCE? DID YOU TAKE CUSTODY AND CONTROL OF THOSE
14 FROM ROGER LOWE?

15 A I DID.

16 Q WHEN DID YOU DO THAT?

17 A JULY 2ND OF '02.

18 Q OKAY. 2002.

19 A THAT'S RIGHT.

20 Q DID YOU DO THAT WHEN HE LEFT THE SHERIFF'S OFFICE?

21 A THAT'S CORRECT.

22 Q OKAY. THE VAULT WHERE THE STORAGE IS, DID YOU GET THE KEY FROM
23 HIM ON THAT DAY?

24 A THAT'S CORRECT.

25 Q OKAY. DID YOU MAINTAIN EXCLUSIVE CUSTODY AND CONTROL OF ALL OF

SHERIFF DOBEY - DIRECT EXAMINATION BY MR. MAYE

1 THIS DRUG EVIDENCE IN THIS CASE, ALL THESE 400 PACKAGES OF DRUGS UNTIL A
2 LATER TIME?

3 A I DID.

4 Q WHEN WAS THAT? WHEN DID YOU RETAIN THAT UNTIL?

5 A UNTIL FEBRUARY 22ND OF THIS YEAR.

6 Q OKAY. WHO DID YOU TURN OVER CUSTODY AND CONTROL OF THIS DRUG
7 EVIDENCE, THIS 400 BAGS OF MARIJUANA IN THIS CASE? WHO DID YOU TURN
8 CUSTODY AND CONTROL OF THAT OVER TO?

9 A LT. CHRIS WASH WITH THE SHERIFF OFFICE.

10 Q OKAY. DID YOU TURN THE KEY OVER TO HIM AT THAT TIME?

11 A THAT'S CORRECT.

12 Q OKAY. DURING THE TIME THAT IT WAS IN YOUR CUSTODY AND CONTROL,
13 WAS IT ALTERED OR CHANGED IN ANY WAY OR WAS ANYONE ELSE ALLOWED TO
14 HAVE ACCESS TO IT?

15 A NO.

16 Q ANSWER ANY QUESTIONS THAT THE DEFENSE HAS FOR YOU.

17 A YES, SIR.

18 MR. HAWKE: WE HAVE NO QUESTIONS ON BEHALF OF DEFENDANT
19 DELEON.

20 CROSS-EXAMINATION

21 BY MR. SUSSMAN

22 Q SHERIFF, DURING THIS ABOUT A YEAR AND A HALF OR SO THAT YOU HAD
23 ACCESS TO THE -- YOU HAD EXCLUSIVE CONTROL OF THE MARIJUANA -- DID
24 ANYBODY ELSE GO INTO THE VAULT TO TAKE A LOOK AT THE MARIJUANA FOR
25 ANY REASON?

SHERIFF DOBEY - CROSS-EXAMINATION BY MR. SUSSMAN

1 A DID ANYONE ELSE GO INTO---

2 Q YEAH.

3 A I THINK PROBABLY SOME ONE TIME TO TEST IT.

4 Q OKAY. WERE YOU PRESENT WHEN THAT TOOK PLACE?

5 A WAS I PRESENT?

6 Q UH-HUH.

7 A RIGHT. I LET 'EM IN WITH THE KEY.

8 Q OKAY. AND THEN DID YOU STAY IN THERE OR DID YOU GO ON ABOUT
9 SOME OTHER DUTIES WHILE THEY WERE DOIN' WHATEVER THEY WERE DOIN'?

10 A RIGHT. I WENT ON ABOUT---

11 Q YOUR OTHER DUTIES?

12 A THAT'S RIGHT.

13 Q OKAY. DO YOU KNOW WHEN SOMEONE CAME INTO THE VAULT?

14 A NO, I'M NOT---

15 Q I'M SORRY?

16 A NO, I DON'T KNOW WHAT - WHAT DAY THAT WAS.

17 Q OKAY.

18 A JUST SOMETIME.

19 Q DO Y' ALL KEEP RECORDS OF WHO GOES IN AND OUT OF THE VAULT?

20 A THE VAULT, NO.

21 Q YOU DON'T KEEP RECORDS?

22 A JUST THE OVERALL EVIDENCE ROOM, BUT NOT THE VAULT.

23 Q OKAY. AND THE VAULT IS WHERE ALL THE MARIJUANA WAS STORED?

24 A THAT'S RIGHT.

25 Q OKAY. ALRIGHT. DO YOU KNOW IF THE MARIJUANA EVER LEFT THE

SHERIFF DOBEY - CROSS-EXAMINATION BY MR. SUSSMAN

1 VAULT FOR ANY REASON WHILE -- YOU KNOW, WHILE YOU HAD THE KEY?

2 A NOT WHILE I HAD THE KEY, NO.

3 Q AND YOU'RE THE ONLY ONE THAT WOULD'VE HAD THE KEY?

4 A THAT'S CORRECT.

5 Q OKAY. IS THERE A SPARE KEY SOMEWHERE?

6 A NO. I ONLY HAVE ONE KEY FOR THE VAULT.

7 Q WHEN MR. LOWE HAD -- HAD THE KEY TO THE VAULT, DID YOU MAINTAIN
8 SPARE KEY?

9 A NO.

10 Q SO HE HAD THE ONLY KEY.

11 A UNTIL HE GAVE THE KEY TO ME ON--

12 Q AND HE GAVE IT TO YOU.

13 A THAT'S CORRECT.

14 Q OKAY.

15 MR. SUSSMAN: JUDGE, IF I COULD HAVE JUST ONE SECOND.

16 THE COURT: YES, SIR.

17 Q THE VAULT, WHERE'S THIS VAULT AT?

18 A THE VAULT IS INSIDE THE EVIDENCE ROOM.

19 Q WHICH IS LOCATED WHERE? THE EVIDENCE ROOM.

20 A AT THE SHERIFF OFFICE.

21 Q OKAY. OVER HERE BEHIND US?

22 A THAT'S RIGHT.

23 Q OKAY. AND SO IS IT -- WHAT'S THE SIZE OF THE VAULT?

24 A MAYBE ABOUT HALF OF THE SIZE OF THE AREA WHERE THE JURY IS
25 SITTING.

SHERIFF DOBEY - CROSS-EXAMINATION BY MR. SUSSMAN

1 Q AND HOW HIGH IS IT?

2 A NORMAL HEIGHT OF A ROOM. NOT A ROOM THIS SIZE, BUT---

3 Q SO ONCE ALL THIS MARIJUANA WAS PILED UP IN THERE, THERE WASN'T A
4 LOTTA ROOM LEFT, WAS THERE?

5 A IT WAS ON SOME SHELVES INSIDE THE ROOM.

6 Q IS ANY OTHER -- ANY OTHER EVIDENCE KEPT IN THE VAULT WHILE THIS
7 MARIJUANA HAS BEEN IN THERE?

8 A NO.

9 Q DID THE MARIJUANA KINDA FILL IT UP?

10 A IT WAS ROOM TO WALK AROUND.

11 Q BUT YOU DIDN'T HAVE ANYTHING ELSE IN THERE EXCEPT FOR THE
12 MARIJUANA?

13 A THAT'S CORRECT.

14 Q NOW WHAT ABOUT THESE CHIMNEYS, THESE MANTLE PIECES, DO YOU
15 KNOW WHERE THEY WERE KEPT?

16 A THEY ARE STORED IN A WAREHOUSE HERE IN TOWN. I CAN'T THINK OF
17 THE STREET.

18 Q WHO HAD ACCESS TO THE MANTLE PIECES?

19 A NO ONE.

20 Q NO ONE?

21 A RIGHT.

22 Q OKAY. IS THERE A KEY TO THAT STORE HOUSE?

23 A THAT'S CORRECT.

24 Q WHO HAD THE KEY?

25 A I HAD THE KEY.

SHERIFF DOBEY - REDIRECT EXAMINATION BY MR. MAYE

1 Q THAT BEGAN AS JUST ONE KEY?

2 A THAT'S CORRECT.

3 Q OKAY. THANK YOU, SHERIFF. THAT'S ALL I HAVE.

4 THE COURT: MR. MILLER?

5 MR. MILLER: I DON'T HAVE ANY QUESTIONS, YOUR HONOR.

6 THE COURT: REDIRECT?

7 MR. MAYE: JUST ONE.

8 REDIRECT EXAMINATION

9 BY MR. MAYE

10 Q SHERIFF, I WANT TO SHOW YOU 2 DOCUMENTS HERE. TAKE A LOOK AT
11 THAT ONE RIGHT THERE.

12 A LET ME GET MY SPECS. OKAY.

13 Q HAVE YOU REVIEWED THAT DOCUMENT?

14 A YES.

15 Q HOW ABOUT THIS ONE?

16 A YES.

17 Q IN YOUR PREVIOUS TESTIMONY YOU SAID THAT A LADY HAD COME FROM
18 ANOTHER COUNTY. DID THAT OCCUR WHILE ROGER LOWE HAD CUSTODY AND
19 CONTROL OF THE EVIDENCE OR WHILE YOU HAD CUSTODY AND CONTROL OF THE
20 EVIDENCE?

21 THE COURT: HOLD ON.

22 MR. SUSSMAN: YOUR HONOR, I WOULD OBJECT. I DON'T RECALL ANY
23 TESTIMONY THAT HE GAVE ABOUT SOME LADY COMIN' UP. WE WOULD OBJECT.
24 IT'S IMPROPER REDIRECT.

25 MR. MAYE: I ASKED HIM ON DIRECT, YOUR HONOR, IF HE OR ANYONE ELSE

SHERIFF DOBEY - REDIRECT EXAMINATION BY MR. MAYE

1 HAD COME INTO THE EVIDENCE ROOM.

2 THE COURT: IT WAS ASKED. I DON'T RECALL HIM SAYING IT WAS A LADY.
3 I RECALL HIM SAYIN' SOMEONE TESTED THE DRUGS. IT'S PROPER REDIRECT, BUT
4 THE QUESTION IS---

5 MR. MAYE: I'LL REPHRASE IT, YOUR HONOR.

6 THE COURT: I DON'T GET INTO THE FACTS OF THE QUESTIONS OF A CASE,
7 BUT I DON'T RECALL A GENDER BEING MENTIONED.

8 Q SHERIFF, DID ANYONE ENTER THE EVIDENCE ROOM WHILE IT WAS UNDER
9 YOUR CUSTODY AND CONTROL?

10 A NO.

11 MR. PUETZ: COULD WE SEE THOSE DOCUMENTS.

12 MR. MAYE: YOU HAVE THEM.

13 THE COURT: RECROSS?

14 MR. HAWKE: NONE, YOUR HONOR.

15 THE COURT: MR. SUSSMAN?

16 MR. SUSSMAN: NO QUESTIONS. THANK YOU, YOUR HONOR.

17 THE COURT: MR. MILLER?

18 MR. MILLER: NO, YOUR HONOR. THANK YOU.

19 THE COURT: THANK YOU, SHERIFF. YOU MAY STEP DOWN. DON'T DISCUSS
20 YOUR TESTIMONY WITH ANY OTHER WITNESSES.

21 A YES, SIR.

22 THE COURT: CALL YOUR NEXT WITNESS.

23 MR. MAYE: STATE CALLS CHRIS WASH. INVESTIGATOR.

24 CHRIS WASH, BEING DULY SWORN, TESTIFIES

25 AS FOLLOWS:

CHRIS WASH - DIRECT EXAMINATION BY MR. MAYE

1 DIRECT EXAMINATION

2 BY MR. MAYE

3 Q PLEASE, STATE YOUR NAME FOR THE RECORD AND TELL THEM WHERE
4 YOU'RE EMPLOYED.

5 A CHRIS WASH. EDGEFIELD COUNTY SHERIFF'S OFFICE.

6 Q INVESTIGATOR WASH, LET ME ASK YOU THIS: THERE'S BEEN MARKED AS
7 STATE'S EXHIBIT #22 SOME 400 BAGS, COMPRESSED BAGS OF MARIJUANA,
8 PACKAGED IN THIS FORM. DID YOU RECEIVE CUSTODY AND CONTROL OF ALL OF
9 THESE ITEMS?

10 A YES, SIR.

11 Q WHEN?

12 A FEBRUARY THE 22ND OF THIS YEAR.

13 Q OKAY. HAVE YOU MAINTAINED EXCLUSIVE CUSTODY AND CONTROL OF
14 THESE ITEMS OF DRUG EVIDENCE SINCE THEY WERE TURNED OVER TO YOU?

15 A YES, SIR.

16 Q OKAY. UP UNTIL WHEN?

17 A UP UNTIL NOW.

18 Q UP UNTIL NOW.

19 A YES, SIR.

20 Q OKAY. HAS ANYONE ELSE BEEN ALLOWED TO HAVE ACCESS AND
21 CUSTODY AND CONTROL OF THEM OUTSIDE THE COURTROOM---

22 A NO, SIR.

23 Q ---THAT ENTIRE PERIOD?

24 A NO, SIR.

25 Q HAVE THEY BEEN ALTERED OR CHANGED IN ANY WAY BY ANYONE OTHER

CHRIS WASH - DIRECT EXAMINATION BY MR. MAYE

1 THAN YOURSELF?

2 A NO, SIR.

3 Q OKAY. LET ME ASK YOU THIS: ARE YOU CERTIFIED TO TEST MARIJUANA BY
4 THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION?

5 A YES, SIR, I AM.

6 Q WHAT SPECIALIZED TRAINING HAVE YOU RECEIVED IN THE AREA OF DRUG
7 ANALYSIS OF MARIJUANA EVIDENCE?

8 A I RECEIVED TRAININ' FROM SLED FROM THEIR MARIJUANA ANALYST.

9 Q HOW LONG DID THAT LAST?

10 A I BELIEVE IT WAS 3 DAYS.

11 Q OKAY. DID YOU SUBSEQUENTLY RECEIVE A CERTIFICATION OR
12 CERTIFICATE FROM SLED STATING THAT YOU WERE CERTIFIED TO ANALYZE
13 MARIJUANA?

14 A YES, I DID.

15 Q ARE YOU CURRENTLY STILL - IS THAT CERTIFICATE STILL VALID?

16 A YES, SIR.

17 Q WHEN DID YOU RECEIVE THAT CERTIFICATE?

18 A IN JANUARY OF 2003.

19 Q IN JANUARY OF 2003.

20 A CORRECT.

21 Q OKAY. HAVE YOU CARRIED OUT AND CONDUCTED TESTS OF MARIJUANA
22 SINCE THAT TIME?

23 A YES, I HAVE.

24 Q OKAY.

25 MR. MAYE: YOUR HONOR, AT THIS TIME I'M GONNA MOVE THE---

CHRIS WASH - DIRECT EXAMINATION BY MR. MAYE

1 Q WHO DID YOU RECEIVE CUSTODY AND CONTROL OF THIS DRUG EVIDENCE
2 FROM? ON THE DAY THAT YOU PREVIOUSLY TESTIFIED. WHO DID IT COME FROM?

3 A SHERIFF DOBEY.

4 Q OKAY.

5 MR. MAYE: YOUR HONOR, I'M GONNA OFFER HIM AS AN EXPERT IN THE
6 AREA OF DRUG IDENTIFICATION. IF THEY'D LIKE TO VOIR DIRE HIM AS TO HIS
7 CREDENTIALS AS TO WHETHER OR NOT HE HAS EXPERTISE TO ANALYZE
8 MARIJUANA. BUT WE'VE LAID A PERFECT FOUNDATION SINCE HE'S GOT
9 SPECIALIZED TRAINING FROM SLED, THAT HE HAS A CERTIFICATE, AND IT IS
10 VALID, YOUR HONOR, AND HE RECEIVED THAT TRAINING AND WAS CERTIFIED IN
11 JANUARY.

12 THE COURT: ALRIGHT.

13 MR. HAWKE: NO QUESTIONS ON BEHALF OF DELEON, YOUR HONOR.

14 THE COURT: MR. SUSSMAN?

15 MR. SUSSMAN: THANK YOU.

16 CROSS-EXAMINATION

17 BY MR. SUSSMAN

18 Q SO YOUR TESTIMONY IS THAT YOU RECEIVED TRAINING FROM SLED.
19 RIGHT?

20 A YES, SIR.

21 Q AND THAT TRAINING LASTED 3 DAYS.

22 A I BELIEVE. I THINK IT WAS 2 OR 3 DAYS.

23 Q 2 OR 3 DAYS.

24 A CORRECT.

25 Q AND YOU WERE CERTIFIED BY SLED TO ANALYZE MARIJUANA.

CHRIS WASH - CROSS-EXAMINATION BY MR. SUSSMAN

- 1 A CORRECT.
- 2 Q OKAY. NOW TELL ME, IS THE TESTING PROCEDURES YOU LEARNED
- 3 SUBJECT TO PEER REVIEW?
- 4 A I DON'T KNOW.
- 5 Q IS IT SUBJECT TO PEER REVIEW?
- 6 A I DON'T KNOW.
- 7 Q DO YOU KNOW WHAT PEER REVIEW IS?
- 8 A NO, SIR.
- 9 Q OKAY. DO YOU HAVE PERSONAL KNOWLEDGE THAT THE TECHNIQUE YOU
- 10 LEARNED, WHATEVER IT WAS, IS GENERALLY ACCEPTED BY THE SCIENTIFIC
- 11 COMMUNITY?
- 12 A IT'S GENERALLY ACCEPTED BY THE SOUTH CAROLINA LAW ENFORCEMENT
- 13 DIVISION AND THE COURT SYSTEM.
- 14 Q OKAY. WHAT IS THE RATE OF ERROR OF THE PARTICULAR TECHNIQUE YOU
- 15 USE TO ANALYZE THIS MARIJUANA?
- 16 A I KNOW OF NO PERCENTAGE OF ERROR.
- 17 Q PARDON ME?
- 18 A I KNOW OF NO PERCENTAGE OF ERROR.
- 19 Q ALRIGHT. NOW HAVE YOU EVER PUBLISHED ANY ARTICLES ON
- 20 ANALYZING MARIJUANA?
- 21 A NO, SIR.
- 22 Q OKAY. HAVE YOU COMPARED THE TECHNIQUE THAT YOU'VE BEEN
- 23 TRAINED ON WITH OTHER SIMILAR TYPES OF ANALYZING TECHNIQUES IN OTHER
- 24 AREAS?
- 25 A NO, SIR.

CHRIS WASH - CROSS-EXAMINATION BY MR. SUSSMAN

1 Q OTHER JURISDICTIONS?

2 A NO, SIR.

3 Q YOU SAID YOU WERE CERTIFIED IN JANUARY OF 2003.

4 A THAT'S CORRECT.

5 Q WHO TAUGHT YOU?

6 A I DON'T REMEMBER THE INSTRUCTOR'S NAME.

7 Q WHERE ARE YOUR MANUALS ON THE INSTRUCTION?

8 A AT MY OFFICE.

9 Q SINCE JANUARY 2003 HOW MANY TIMES HAVE YOU TESTIFIED IN COURT
10 CONCERNING ANALYZING MARIJUANA?

11 A I HAVEN'T TESTIFIED ANY.

12 Q SO YOU'VE NEVER BEEN QUALIFIED AS AN EXPERT IN THE TESTING AND
13 ANALYSIS OF MARIJUANA BY ANY CIRCUIT COURT IN THIS STATE?

14 A NO, SIR.

15 MR. SUSSMAN: JUDGE, IF I COULD HAVE JUST A SECOND. WE DON'T HAVE
16 ANY FURTHER VOIR DIRE, BUT WE WOULD OBJECT TO LT. WASH AS BEING
17 QUALIFIED AS AN EXPERT. HE DOESN'T MEET THE CRITERIA OF THE SOUTH
18 CAROLINA RULE 702 OF THE FEDERAL BOOK - OF THE SOUTH CAROLINA RULES
19 FOR 703. HE ALSO DOESN'T QUALIFY UNDER COUNCIL V. STATE OR THE CRITERIA
20 AS SET FORTH THERE IN QUALIFICATION OF EXPERT WITNESSES WHICH IS FOUND
21 IN 335 SOUTH CAROLINA ONE 515 SOUTHEASTERN 2ND 508 (1999). HE ALSO DOESN'T
22 QUALIFY IN OUR OPINION - I THINK I SAID THIS ALREADY. RULE 702 OF THE
23 SOUTH CAROLINA RULES OF EVIDENCE IN REGARDS TO THE FOUNDATION
24 REQUIREMENT FOR THE ESTABLISHING OF AN EXPERT, AND ALSO FOR THE
25 CRITERIA ESTABLISHED IN JONES V. STATE WHICH IS FOUND AT 343 SOUTH

1 CAROLINA 562, 343 SOUTH CAROLINA 562 (2001). SIMPLY TO MAKE A CONCLUSORY
2 STATEMENT THAT HE'S BEEN CERTIFIED WITHOUT GIVING ANY FURTHER DETAILS,
3 ANY FURTHER FOUNDATION OR SATISFY ANY OF THESE CRITERIA, WE WOULD
4 OBJECT TO THIS TESTIMONY AS AN EXPERT IN THIS FIELD OF TESTING AND
5 ANALYZING MARIJUANA.

6 THE COURT: MR. MILLER?

7 MR. MILLER: WE WOULD JOIN IN THAT MOTION, YOUR HONOR.

8 MR. HAWKE: AS WELL AS US, YOUR HONOR. I DIDN'T VOIR DIRE BUT WE
9 JOIN THE MOTION.

10 THE COURT: LADIES AND GENTLEMEN, PLEASE, STEP IN THE JURY ROOM.
11 DON'T DISCUSS THE CASE. LEAVE YOUR NOTES IN THE COURTROOM. (THE
12 FOLLOWING OCCURRED OUTSIDE THE PRESENCE OF THE JURY.)

13 MR. SUSSMAN: JUDGE, WITH ALL DUE RESPECT, IF WE'RE GOING TO HAVE
14 A DISCUSSION REGARDING THIS WITNESS, I WOULD ASK THAT HE STEP OUT.

15 THE COURT: OKAY. MR. WASH, PLEASE, STEP IN THERE. DON'T DISCUSS
16 YOUR TESTIMONY WITH ANYONE, PLEASE.

17 A NO, SIR. (THE WITNESS EXITED THE COURTROOM.)

18 THE COURT: IF YOU ALL WOULD GIVE ME JUST A MINUTE. I NEED TO GO
19 PAY MY CAR TAXES SO I DON'T HAVE A PROBLEM. I'LL BE RIGHT BACK AND
20 WE'LL DEAL WITH THIS. WE'RE AT EASE. (THERE WAS A BRIEF RECESS.) WHAT IS
21 THIS CERTIFICATE BY SLED BUSINESS?

22 MR. MAYE: HE'S CERTIFIED BY SLED THEY GIVE HIM A CERTIFICATE I
23 THINK TO CERTIFY THAT HE'S AUTHORIZED TO TEST MARIJUANA, THAT HE'S
24 COMPLETED THE COURSE AND ALL TO TEST MARIJUANA.

25 THE COURT: UNDER WHAT AUTHORITY?

1 MR. MAYE: YOUR HONOR, I DO NOT KNOW OTHER THAN SLED GIVES THEM
2 A CERTIFICATE STATIN' THAT THEY'VE COMPLETED THAT IS MY UNDERSTANDIN'.
3 THAT WAS MY UNDERSTANDING. JUST LIKE THEY OPERATE THE BREATHALYZER.
4 THEY GIVE THEM—

5 THE COURT: THAT'S UNDER A STATUTE. THE STATUTE SAYS THAT -- THAT
6 GIVES SLED THE AUTHORITY TO MAKE REGULATION TO CERTIFY DATA MASTER
7 AND BREATHALYZER OPERATION. WHAT AUTHORITY DOES SLED HAVE TO
8 CERTIFY SOMEBODY AS A CHEMIST?

9 MR. MAYE: YOUR HONOR, I DON'T KNOW. HE JUST COMPLETED THE
10 COURSE.

11 THE COURT: WELL, HOW IN THE WORLD AM I GONNA LET THAT IN?

12 MR. MIZZELL: WELL, YOUR HONOR, I'LL HAVE TO DO A LITTLE CALLING,
13 BUT I KNOW THAT DEPUTY SHERIFF JOE COLLIER WAS CERTIFIED BY SLED TO TEST
14 MARIJUANA AS WELL AS MARTY FULMER, SALUDA COUNTY SHERIFF'S OFFICE IT
15 HAS BEEN DONE. SLED ROUTINELY DOES NOT TEST MARIJUANA ANYMORE.

16 THE COURT: WELL, I DIDN'T THINK Y'ALL MADE IT UP. I MEAN I ASSUME
17 HE WENT OVER THERE. I ASSUME THERE'S SOME SORT OF PROVISION. I'VE JUST
18 NEVER RUN ACROSS IT. I MEAN I'VE HAD PEOPLE FIELD TEST DRUGS BEFORE
19 WITHOUT ANY GREAT DEAL OF SPECIALIZED TRAINING, BUT EVERY OTHER DRUG
20 CASE I'VE EVER HAD OR SEEN OR HEARD ABOUT, THEY HAD A CHEMIST FROM
21 SLED OR A CHEMIST FROM SOME DEPARTMENT COME IN AND TESTIFY WHAT I'M
22 CONCERNED ABOUT. TO GIVE YOU -- I MEAN SO YOU ALL KNOW. I MEAN I DON'T
23 EVEN KNOW IF CHRIS WASH TOOK HIGH SCHOOL CHEMISTRY. I DON'T KNOW IF
24 HE'S -- I DON'T KNOW ANYTHING ABOUT THIS TRAINING. I DON'T KNOW
25 ANYTHING -- I'M NOT CASTING ASPERSIONS ON MR. WASH IN PARTICULAR, BUT

1 ON THIS RECORD I HAVE NO WAY OF KNOWIN' IF HE KNOWS ABOUT
2 CONTAMINATION OF THINGS OR WHAT COULD AFFECT THE TEST OR WHAT KINDA
3 TEST HE USED. YOU KNOW, A LITTLE KNOWLEDGE IS A DANGEROUS THING, AND I
4 DON'T KNOW WHAT THEY'RE TRAININ' THEM ON. THEY TAKE THEM OVER THERE
5 FOR 2 DAYS AND TRAIN THEM HOW TO TEST MARIJUANA? WELL, IF THAT'S THE
6 CASE, THEN SOMEBODY CAN EXPLAIN IT TO ME IN SOME SORT OF RATIONAL
7 FASHION AND EXPLAIN TO ME WHY IT IS THAT THAT'S APPROPRIATE AND UNDER
8 WHAT AUTHORITY THEY'RE DOIN' IT, THEN THAT'S FINE.

9 MR. MAYE: YOUR HONOR, IT'S MY UNDERSTANDIN' WE'RE GONNA DO
10 THAT. IT IS MY UNDERSTANDING THEY ARE NOT TESTING MARIJUANA AT ALL AT
11 SLED ANYMORE.

12 THE COURT: I DON'T CARE. I GOT 905 POUNDS OF THINGS OVER THERE
13 THAT SOMEBODY HAS GOT TO PROVE IS MARIJUANA. AND WHAT YOU'RE ASKIN'
14 ME TO DO IS HAVE SOMEBODY COME IN HERE AND TESTIFY I WENT TO A 2-DAY
15 COURSE AT SLED AND GOT A CERTIFICATE. DON'T KNOW ANYTHING ABOUT
16 ANYTHING. BASICALLY WHAT HE SAID. AND I ASSUME HE'S GONNA SAY I TESTED
17 IT AND IT'S MARIJUANA.

18 MR. MAYE: YES, SIR, YOUR HONOR, HE'S GOING TO---

19 THE COURT: AND I DON'T DOUBT THAT IT IS MARIJUANA. BUT---

20 MR. MAYE: AND, YOUR HONOR, IN THIS CASE I ALSO HAVE A VERY RECENT
21 CASE FROM THE SUPREME COURT THE OFFICER CAN TESTIFY HIMSELF WITHOUT
22 BEING CERTIFIED AS AN EXPERT, HE CAN TESTIFY BASED ON HIS EXPERIENCE AND
23 TRAINING THAT HE'S SEEN IT, THAT IT IS MARIJUANA, IT SMELLS LIKE MARIJUANA,
24 IT APPEARS THAT HE'S SEEN MARIJUANA IN THE PAST THAT HAS TESTED POSITIVE
25 BASED ON HIS EXPERIENCE AS A LAW ENFORCEMENT OFFICER. AND I HAVE THE

1 CASE. IT WAS A CASE WHERE THEY CUT DOWN A BUNCHA MARIJUANA -- JUST
2 RECENTLY -- AND THEY SAID IT'S MARIJUANA. WE DON'T HAVE TO HAVE A
3 CERTIFIED CHEMIST FROM SLED IN HERE TO TESTIFY THAT IT IS MARIJUANA. THAT
4 IT JUST WENT UP TO THE SUPREME COURT AND IT CAME BACK DOWN -- I'M
5 PRETTY SURE IT'S A SUPREME COURT CASE, YOUR HONOR. THE COURT OF
6 APPEALS OR THE SUPREME COURT. THIS OFFICER CAN TESTIFY THAT IT'S
7 MARIJUANA IN THAT HE LOOKED AT IT, HE SMELLED IT, AND HE ANALYZED IT AND
8 THAT'S SUFFICIENT TO GET US TO THE JURY IN THIS CASE, YOUR HONOR. I WILL
9 OBTAIN THAT CASE. I PULLED IT JUST FOR THAT REASON. BUT---

10 THE COURT: YOU'RE TALKIN' ABOUT PLANTS?

11 MR. MAYE: MARIJUANA PERIOD. MARIJUANA PLANTS AND THERE WAS
12 ALSO SOME MARIJUANA IN THE CASE, YOUR HONOR. AND THEY TESTIFIED -- THE
13 OFFICER TESTIFIED THAT IT WAS MARIJUANA, THAT THAT WAS SUFFICIENT. IT DID
14 NOT HAVE TO BE A TEST BY A CHEMIST IN THE AREA OF MARIJUANA. BUT IT'S MY
15 UNDERSTANDING THERE IS NO LONGER---

16 THE COURT: I KNOW THAT---

17 MR. MAYE: --AND WE'LL DO A BETTER JOB OF LAYIN' A FOUNDATION. I'D
18 ASK TO BE ABLE TO MORE EXTENSIVELY VOIR DIRE HIM AND AS TO WHAT TEST HE
19 CARRIED OUT AND HOW THEY WERE CONDUCTED AND WHETHER OR NOT
20 THEY'RE GENERALLY ACCEPTED BY THE SCIENTIFIC COMMUNITY. BUT IT IS MY
21 UNDERSTANDING, YOUR HONOR, THAT THAT IS DONE ROUTINELY. I'LL FIND OUT
22 WHAT AUTHORITY SLED HAS IN THAT REGARD. BUT LIKE I SAID, I'D LIKE TO
23 FURTHER VOIR DIRE HIM, BUT IN THE EVENT WE CANNOT DO THAT, I STILL WOULD
24 LIKE FOR HIM TO TESTIFY UNDER THAT AUTHORITY---

25 THE COURT: WELL, THERE'S NOTHING TO STOP YOU FROM KEEPING

1 TRYING TO QUALIFY HIM AND---

2 MR. MAYE: YES, SIR.

3 THE COURT: I MEAN I'M NOT SAYING THAT YOU CAN'T DO THAT, AND I
4 KNOW THERE'S CASES YOU DON'T -- HE SAID HE TESTED ALL THOSE BUNDLES.
5 YOU DON'T HAVE TO DO THAT. THERE'S A RECENT CASE ON POINT ON THAT. YOU
6 DON'T HAVE TO TEST EVERY BUNDLE. I KNOW IF MARIJUANA IS GROWING THAT
7 SOMEBODY HAS EXPERIENCE WITH IT AND THEY CAN TESTIFY ABOUT THAT. I
8 KNOW THAT FIELD TESTS ARE ADMISSIBLE. BUT THIS IS A NEW ONE ON ME AND I
9 TO BE HONEST WITH YOU, THIS IS A CURVE.

10 MR. MAYE: YES, SIR.

11 THE COURT: I DIDN'T THINK---

12 MR. MAYE: YES, SIR. AND I'LL GET MORE INFORMATION ON THAT.

13 THE COURT: WELL, I GUESS WE'RE AT EASE. (THERE WAS A BRIEF RECESS.)

14 MR. MAYE: MAY IT PLEASE THE COURT, YOUR HONOR? I WAS SPEAKING
15 WITH SOME OF THE CHEMISTS IN THE DEPARTMENT AT SLED IN THEIR DRUG
16 ANALYSIS AND I.D. YOUR HONOR, THEY DO BELIEVE THAT THEY ARE AUTHORIZED
17 TO -- I'M GONNA HAND UP TO THE COURT -- THEY'RE ISSUING CERTIFICATES. THIS
18 CERTIFICATE SAYS IT'S MARIJUANA ANALYSIS SCHOOL. IT CERTIFIES THAT CHRIS
19 WASH HAS COMPLETED THE COURSE AND THIS APPLICANT IS HEREBY DEEMED TO
20 BE QUALIFIED BY THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION IN
21 ANALYSIS AND EXAMINATION. IT'S SIGNED BY CHIEF STEWART AND ONE OF THE
22 CHEMISTS, ONE OF THE HEADS, I BELIEVE, AT SLED. THEY ALSO GIVE A POCKET
23 CAR, YOUR HONOR. SLED SAID UNDER RULE 6 WHICH IS THE RULE ABOUT -- IT'S A
24 LITTLE BIT DIFFERENT IN THIS CASE, BUT THEY SAY UNDER RULE 6, IT SAYS RULE
25 6(A)(2)(A), IT SAID THAT -- AND IF YOU'RE GONNA UTILIZE RULE 6, IT SAYS THE

1 REPORT IS ACCOMPANIED BY AN AFFIDAVIT OF THE CHEMIST OR ANALYST WHO
2 PERFORMED THE TEST AND HE OR SHE IS CERTIFIED BY SLED AS QUALIFIED
3 UNDER STANDARDS APPROVED BY SLED TO ANALYZE THEIR SUBSTANCES.

4 SLED SAYS THAT THEY HAVE THESE INTERNAL STANDARDS AND THAT
5 THEY ARE NOW CERTIFYING PEOPLE.

6 THEY'RE FAXING ME A COPY OF THE STANDARDS THAT WERE IN PLACE
7 WHEN CHRIS WASH HAD THIS TRAINING.

8 THEY SAID THAT THEY ARE CERTIFYING HIM AS BEING QUALIFIED TO
9 ANALYZE MARIJUANA IN THIS CASE, YOUR HONOR.

10 I'M PROBABLY GONNA NEED TO RECALL AGENT WASH TO THE STAND,
11 YOUR HONOR, AND GO THROUGH WITH HIM PART OF THE COURSE MATERIALS,
12 YOUR HONOR, WHICH COVER MANY OF THE CONCERNS THAT THE COURT HAS
13 ABOUT WHETHER OR NOT HE KNOWS ABOUT QUALIFICATIONS.

14 THEY'RE USING THIS DUCANOID LEVINE (PHONETIC) TEST WHICH IS THE
15 SAME THING THEY ARE AND HAVE BEEN USING IN THE FIELD TEST IN THE PAST.
16 BUT APPARENTLY SLED'S POSITION NOW IS THEY'RE NOT TESTING MARIJUANA
17 UNLESS IT IS - THEY'RE SPECIFICALLY REQUESTED TO DO SO, THAT THEY ARE
18 CERTIFYING THE OFFICERS TO TEST IT AND THAT THEY ARE NOW TESTIFYING
19 STATEWIDE IN THIS REGARD, YOUR HONOR. I - WITH THE COURT'S PERMISSION I
20 WILL RECALL DEPUTY WASH TO THE STAND AND TALK WITH HIM ABOUT HIS
21 TRAINING AND QUALIFICATION WHETHER OR NOT THIS IS SUBJECT TO SCIENTIFIC
22 REVIEW. UNDER THE DAUBERT (PHONETIC) CASE IT SAID THAT THE FBI
23 (UNINTELLIGIBLE). I'LL ASK HIM IN THIS CASE, YOUR HONOR, WHETHER OR NOT
24 SLED LABORATORIES HAVE VALIDATED HIS TECHNIQUES AND TRAINED HIM IN
25 THIS CASE, YOUR HONOR. I DON'T THINK THERE WOULD BE ANY DIFFERENCE IN

1 THE FACT THAT WE'RE IN STATE COURT. AND ASK HIM ABOUT THE TRAINING
2 THAT HE WENT THROUGH AND SUCCESSFULLY COMPLETING THIS COURT.

3 AND I'D PUT UP HIS CERTIFICATE AT THIS TIME, YOUR HONOR, AND GO
4 THROUGH AND ATTEMPT TO FURTHER QUALIFY HIM AS AN EXPERT.

5 WE DID NOT -- I BASICALLY THOUGHT THIS WAS A SETTLED ISSUE. I HAD
6 BEEN INFORMED THAT IT WAS. I UNDERSTAND THAT THROUGH THE
7 BREATHALYZER THAT SLED'S GOT A STATUTE. THEY TELL ME THEY BELIEVE IN
8 LOOKING AT RULE 6 THAT THEY HAVE THE AUTHORITY, SLED DOES HAVE THE
9 AUTHORITY TO QUALIFY PEOPLE FOR THE PURPOSE OF CHEMICAL ANALYSIS AS
10 AN EXPERT AND THAT THEY HAVE AN INTERNAL POLICY THAT ONCE A PERSON
11 GOES THROUGH THEIR TRAINING AND CERTIFICATION THAT THEY ARE THEREBY
12 QUALIFIED TO TESTIFY AS AN EXPERT. AND THE MANUAL GOES IN AND TALKS TO
13 THEM ABOUT TESTIFYING, YOUR HONOR, THE ONE THAT I HAVE HERE ON
14 MARIJUANA ANALYSIS SCHOOL, AND THEY ARE EXPECTING HIM CERTAINLY AS A
15 RESULT OF COMPLETING THIS COURSE TO BE ABLE TO TESTIFY IN THE COURTS OF
16 THIS STATE AS EXPERTS IN THE AREA OF CHEMICAL ANALYSIS ONLY OF
17 MARIJUANA.

18 THE COURT: THERE IS NO REPORT OF A CHEMICAL ANALYSIS IN THIS
19 CASE. IS THERE?

20 MR. MAYE: YES. HE HAD TO RENDER A REPORT, YOUR HONOR, WHICH I'VE
21 HANDED OVER TO THEM. HE RENDERED A REPORT HE TESTED EACH OF THE 400
22 SAMPLES IN THIS CASE, YOUR HONOR, AND HE DID RENDER A WRITTEN REPORT IN
23 THIS CASE AND I FORWARDED THAT TO ALL THE ATTORNEYS IN THIS CASE. THERE
24 IS A WRITTEN REPORT OF ANALYSIS BY HIM HAVING TESTED EVERY BAG, ALL 400.
25 HE CONDUCTED THE CHEMICAL -- I'LL HAVE HIM TESTIFY TO THAT, BUT I EXPECT

1 HIM TO TESTIFY THAT HE CONDUCTED THE DUCANOID LEVINE TEST AND THE
2 MICROSCOPIC TEST ON EVERY SAMPLE, AND MOST OF OUR MARIJUANA NOW IN
3 THE LAST FEW YEARS HAS BEEN TESTED BY OFFICERS IN THIS AREA. I KNOW JOE
4 COLLIER IS CERTIFIED. MIKE GOODMAN WAS. JOE COLLIER WAS. SOONIE REEL
5 (PHONETIC) IS HERE IN THE SHERIFF'S DEPARTMENT AND CHRIS WASH IS
6 ADDITIONALLY. I KNOW THAT THEY TESTIFIED -- I'M PRETTY SURE THEY'VE
7 TESTIFIED IN LOWER COURTS HERE BUT -- AS A RESULT OF THEM BEING
8 CERTIFIED.

9 MR. PUETZ: MAY I SEE THAT CERTIFICATE.

10 THE COURT: MR. DUNN, HAND THAT TO MR. SUSSMAN.

11 MR. MAYE: I'LL MAKE A COPY OF THIS FOR THE DEFENSE, BUT THIS IS AN
12 ORDER FROM CHIEF STEWART SAYIN' THAT PURSUANT TO RULE 6 THEY HAVE THE
13 AUTHORITY TO CERTIFY PEOPLE AS CHEMISTS UNDER THEIR PROCEDURE, AND
14 THAT'S WHAT CHRIS WASH WAS CERTIFIED UNDERNEATH THAT.

15 THE COURT: BUT YOU ALL HAVE ME CONFUSED. WAS THERE A WRITTEN
16 REPORT. RULE 6 IS DESIGNED TO AVOID HAVING TO BRING CHEMISTS -- I USE THE
17 TERM IN THE SENSE WE NORMALLY HAVE THEM IN COURT -- I MEAN I NEVER HAD
18 A TRIAL WHERE A CHEMIST DID NOT TESTIFY IN A DRUG CASE.

19 MR. MAYE: I'VE NOT---

20 THE COURT: SO I APOLOGIZE TO YOU ALL FOR MY IGNORANCE. I ASSUME
21 THERE IS A DIFFERENT PROCEDURE. I JUST HAVE NOT RUN ACROSS IT. I HAVE PUT
22 OUT ON THE LIST SERVED TO ALL -- TO EVERY CIRCUIT JUDGE IN THIS STATE WHO
23 HAS HIS OR HER COMPUTER ON RIGHT NOW ASKING THEM IF THEY HAD RUN
24 ACROSS IT. I'M SURE BASED ON THE FACT THAT THEY'VE GOT THESE NICE
25 CERTIFICATES PRINTED UP AND THEY'RE GOING TO THESE TRAINING SESSIONS

1 THAT SOMEBODY'S DOIN' SOMETHIN'. THEY JUST HADN'T LET ME IN ON IT.

2 MR. MAYE: BEG THE COURT'S INDULGENCE. I DID NOT REALIZE--

3 THE COURT: AND I SURE DIDN'T EXPECT IT IN A CASE WITH 905 POUNDS OF
4 MARIJUANA. WAIT A MINUTE.

5 MR. MAYE: OKAY.

6 THE COURT: RULE 6 IS A RULE RELATED TO THE ISSUANCE OF A REPORT BY
7 A CHEMIST OR AN ANALYST. AND IT PROVIDES A MECHANISM BY WHICH THE
8 WRITTEN REPORT CAN BE DONE AND SUBMITTED AND GIVEN TO THE OTHER SIDE
9 SO THAT WE DON'T HAVE TO DRAG IN THE PAST SLED CHEMISTS ALL OVER THE
10 STATE TO TESTIFY ABOUT SOMETHING THAT REALLY ISN'T IN DISPUTE. AND,
11 OBVIOUSLY, THE DEFENSE'S THEORY OF THE CASE IS THEY DIDN'T KNOW
12 ANYTHING ABOUT ANY DOPE. SO -- BUT I DON'T GET TO PICK AND CHOOSE WHAT
13 ISSUES THEY RAISE. I HAVE TO RULE ON WHATEVER IT IS. SO I CAN EASILY
14 UNDERSTAND HOW THE STATE WOULD FEEL LIKE THIS WOULD NOT BE AN ISSUE
15 BECAUSE THEIR THEORY OF THE CASE IS THEY DIDN'T KNOW ANYTHING ABOUT
16 ANY DOPE. NOT WHETHER IT'S DOPE OR NOT. BUT YOU GOTTA PROVE IT IF THEY
17 PUT YOU TO IT.

18 MR. MAYE: YES, SIR.

19 THE COURT: NOW I DID NOT KNOW SINCE THE LAST TRIAL, APPARENTLY,
20 YOU ALL HAVE HAD MR. WASH DO THIS BECAUSE MY UNDERSTANDING IS THAT
21 SOME CHEMIST FROM AIKEN HAD COME BEFORE AND TESTED SAMPLES BUT NOT
22 ALL PACKAGES OF THE MARIJUANA.

23 MR. MAYE: THAT'S CORRECT.

24 THE COURT: AND I DON'T THINK THAT ISSUE WAS EVER RAISED AT THE
25 LAST TRIAL. I DON'T THINK WE GOT THAT FAR INTO IT. BUT MY UNDERSTANDING

1 OF THE LAW IS THE CHEMIST DOESN'T HAVE TO TEST EVERY SINGLE BUNDLE OF
2 SOMETHING WHEN YOU HAVE A LARGE QUANTITY OF DRUGS. THEY CAN GO IN
3 AND TESTIFY -- AND TEST REPRESENTATIVE SAMPLES AND TESTIFY AS TO WHAT
4 THEY FOUND.

5 BUT WHAT I'VE GOT NOW, AND I'LL CERTAINLY ALLOW Y'ALL TO PUT HIM
6 BACK UP, HIS TESTIMONY DOESN'T GIVE ME ANYTHING TO RULE ON. HE DIDN'T
7 SAY ONE THING ABOUT HIS EDUCATION. HE SAID HE WENT TO A COURSE. HE SAID
8 3 DAYS ONE TIME; 2 DAYS ANOTHER. HE DIDN'T KNOW WHO TAUGHT IT. HE
9 DIDN'T SAY A THING ABOUT WHAT HE WAS TAUGHT EXCEPT HE GOT A
10 CERTIFICATE. HE DIDN'T SAY WHETHER HE WAS TRAINED IN ANY SORT OF
11 CONTROL PROCEDURES. AND WHEN YOU'RE TALKIN' ABOUT THE DATA MASTER
12 MACHINE, I MAY WELL BE WRONG ABOUT THIS, BUT SLED HAS REGULATIONS.
13 REGULATIONS GO THROUGH THE LEGISLATURE. IF THE LEGISLATURE DOESN'T
14 ACT UPON THE REG -- THEY HAVE THE FORCE AND EFFECT OF LAW. CHIEF
15 STEWART FOR WHOM I HAVE THE UTMOST RESPECT CAN'T MAKE REGS BY A
16 LETTER.

17 MR. MAYE: I AGREE WITH THAT, YOUR HONOR. I JUST THOUGHT THIS WAS
18 A SETTLED ISSUE. BUT I HAVE THE ORIGINAL CHEMIST ON MY WITNESS LIST. I'LL
19 CALL HER LATER IN MY CASE IF THAT BECOMES A NECESSITY.

20 THE COURT: WHAT DID YOU ALL WANT TO SAY?

21 MR. PUETZ: I WAS JUST GONNA SAY THAT WE HAD FILED THE OBJECTION
22 TO THE INTRODUCTION OF JUST THE REPORTS. WE WANTED THE PEOPLE LIVE.

23 THE COURT: ALRIGHT.

24 MR. MAYE: UNDER RULE 6 THERE WAS A DEMAND THAT THE CHEMIST BE
25 BROUGHT HERE?

1 MR. PUETZ: YES, SIR.

2 THE COURT: THAT'S WHAT HE SAID.

3 MR. MAYE: I JUST HAVEN'T SEEN IT. WAS THAT---

4 MR. PUETZ: AS SOON AS I GOT INVOLVED IN THE CASE WAY BACK WHEN.

5 MR. MAYE: I JUST HAD NOT SEEN IT. I WAS GOING TO CHECK TO SEE IF IT
6 WAS FILED IN THE CLERK'S OFFICE BECAUSE I HAVE NOT SEEN IT.

7 THE COURT: WHAT DO I DO WITH THIS JURY?

8 MR. MAYE: DO WHAT?

9 THE COURT: WHAT DO I DO WITH THE JURY?

10 MR. MAYE: WE CAN GO ON AND TAKE TESTIMONY FROM OTHER
11 WITNESSES IN THE INTERIM, YOUR HONOR. I WOULD LIKE TO SEE IF I CAN
12 QUALIFY DEPUTY WASH AT THIS POINT IN TIME AS AN EXPERT, YOUR HONOR, IN
13 THIS AREA. I'LL LET HIM REFRESH HIS RECOLLECTION ON THIS COURSE AND SEE
14 IF I CAN QUALIFY HIM.

15 THE COURT: YOU CAN BRING HIM BACK OUT OUTSIDE THE PRESENCE OF
16 THE JURY, BUT NOW IF IT'S GONNA TAKE 45 MINUTES TO GO THROUGH THIS, I'M
17 GONNA LET THE JURY GO HOME.

18 MR. MAYE: YES, SIR. I'M TRYIN' TO SEE WHAT TIME IT IS. 4:13. THAT MAY
19 BE JUST THE THING TO DO IN THIS REGARD, YOUR HONOR.

20 THE COURT: ALRIGHT. WHAT KINDA BARBECUE DO Y'ALL LIKE? Y'ALL
21 LIKE MUSTARD BASED OR KETCHUP BASE? LOOKS LIKE WE MIGHT BE SPENDIN'
22 THE 4TH TOGETHER. BRING THE JURY BACK IN HERE. (THE FOLLOWING OCCURRED
23 IN THE PRESENCE OF THE JURY.) LADIES AND GENTLEMEN, DESPITE EVERYBODY'S
24 BEST PLANNING, IN CASES WE OFTEN HAVE SITUATIONS ARISE THAT WE DIDN'T
25 KNOW ABOUT, DIDN'T PLAN FOR, AND WE'VE RUN INTO ONE OF THOSE. WE'VE

1 BEEN WORKING EVER SINCE YOU WENT BACK THERE, BUT WE'RE NOT CLOSE TO
2 BEING THROUGH WITH THIS ISSUE, AND I DON'T WANT TO MAKE YOU SIT BACK
3 THERE WHILE WE DO THIS. SO WHAT I'M GOING TO DO IS LET YOU GO HOME AND
4 ASK YOU TO BE HERE AT 9 IN THE MORNING. START A LITTLE BIT EARLIER, AND
5 WE'LL CONTINUE THEN. WE'RE GONNA STAY HERE AND WORK, BUT IT'S NOT
6 NECESSARY FOR YOU TO BE SITTING IN THAT ROOM, AND BY THE TIME I GET
7 THROUGH WITH THIS, WHATEVER TESTIMONY YOU WOULD HEAR WOULD BE SO
8 SHORT IT WOULDN'T BE WORTH KEEPING YOU HERE FOR. SO IF YOU'LL JUST
9 LEAVE YOUR NOTES WITH THE BAILIFF LIKE YOU DID YESTERDAY, I NEED YOU IN
10 THE JURY ROOM AT 9 O'CLOCK IN THE MORNING. THANK YOU. (THE FOLLOWING
11 OCCURRED IN THE ABSENCE OF THE JURY.)

12 MR. PUETZ: JUDGE, JUST FOR THE---

13 THE COURT: YES?

14 MR. PUETZ: ---COURT'S INFORMATION I FILED MY -- OR SENT IT TO THE
15 CLERK'S OFFICE BY U.S. MAIL AND TO THE SOLICITOR'S OFFICE ON SEPTEMBER
16 THE 27TH OF 2002.

17 MR. MIZZELL: I DO HAVE A COPY OF IT, YOUR HONOR.

18 THE COURT: WELL, WHICH CHEMIST WAS THAT? I MEAN WHICH ANALYST
19 WAS THAT?

20 MR. MIZZELL: IT WAS -- THIS WAS -- IT APPEARS TO BE A GENERIC
21 MOTION, YOUR HONOR, SAYING COMES NOW THE DEFENDANT MR. DELEON BY
22 AND THROUGH HIS ATTORNEY MARTIN PUETZ (UNINTELLIGIBLE)---

23 THE COURT: SLOW DOWN. SLOW DOWN. SHE'S---

24 MR. MIZZELL: I'M SORRY, SMOKEY. SHALL PURSUANT TO RULE 6(A) OF THE
25 SOUTH CAROLINA RULES OF CRIMINAL PROCEDURE DEMANDS THAT ANY

1 WITNESS TO BE CALLED BY THE STATE TO TESTIFY IN PERSON. AND IT'S JUST
2 GENERIC MOTION.

3 THE COURT: OBVIOUSLY, I'M GONNA MAKE THIS DECISION MYSELF AND
4 I'M GONNA MAKE IT BASED ON THIS PARTICULAR CASE. I HAVE GOTTEN BACK
5 TWO RESPONSES ON THIS LIST SERVE TO THE JUDGES. BOTH OF THEM SAY IT
6 DOESN'T COME IN, ONE OF WHOM SAYS YOU MIGHT AS WELL BRING THE DRUG
7 DOG IN HERE AND LET HIM BARK. SO IT -- AND THESE ARE TWO VERY
8 EXPERIENCED TRIAL JUDGES. SO IF IT'S GOIN' ON ALL ACROSS THE STATE, I GET
9 THE IMPRESSION THEY HAVEN'T SEEN IT EITHER. SO I DON'T FEEL QUITE AS BAD.
10 BUT I DON'T KNOW THAT MR. WASH EVEN HAD PERFORMED HIS REPORT -- OR
11 DONE HIS REPORT AT THAT TIME. AND I DON'T KNOW IF THE OTHER CHEMIST HAD
12 DONE A REPORT OR NOT.

13 MR. MIZZELL: YOUR HONOR, I DON'T BELIEVE EITHER HAD.

14 MR. PUETZ: SHE DID ONE ON -- SHE DID HER TEST -- AND I DON'T THINK
15 SHE WAS THE CHEMIST. I THINK SHE'S THE SAME THING. IF YOU LOOK AT THE
16 REPORT THAT WE GOT FROM HER, IT'S BASICALLY THE SAME THING AS CHRIS
17 WASH AS SAYING I'M CERTIFIED BY SLED TO DO THIS.

18 MR. MIZZELL: I'M TOLD SHE IS ACTUALLY A CHEMIST.

19 MR. PUETZ: OKAY.

20 MR. MIZZELL: BUT WE'LL FIND ALL THAT OUT. IT SOUNDS TO ME AS IF
21 WHAT WE NEED TO DO IS GET SLED TO TEST IT OVERNIGHT. AND THAT'S WHAT I
22 PROPOSE TO DO.

23 THE COURT: NOW I'LL BE HAPPY TO LISTEN TO ANYTHING THAT MR. WASH
24 WANTS TO ADD TO WHAT HE TESTIFIED EARLIER.

25 MR. MIZZELL: I UNDERSTAND.

1 THE COURT: Y'ALL HAVE TO GIVE ME A BASIS UPON WHICH TO MAKE THE
2 RULING. I TOLD -- MR. MAYE, WHILE YOU WERE OUT, I TOLD 'EM THAT I HAD SENT
3 AROUND THIS LIST SERVE. WE HAVE THE ABILITY TO INSTANTANEOUSLY
4 BROADCAST ANY PROBLEMS WE HAVE TO EVERY OTHER CIRCUIT JUDGE IN THE
5 STATE AND ASK FOR THEIR INPUT. AND, OF COURSE, I MAKE THESE DECISIONS
6 MYSELF AND I MAKE 'EM, YOU KNOW, SOMETIMES I TAKE THEIR ADVICE;
7 SOMETIMES I DON'T TAKE THEIR ADVICE. VICE VERSA.

8 MR. MAYE: OKAY.

9 MR. MIZZELL: WE'LL---

10 THE COURT: WAIT A MINUTE. DON'T LEAVE THE ROOM YET.

11 MR. MAYE: NO, SIR, I DIDN'T KNOW---

12 THE COURT: YOU LIKE ME TO BRING YOUR TOOTHBRUSH OR I'LL GET YOU
13 ONE.

14 MR. MAYE: YES, SIR, I DIDN'T---

15 THE COURT: I'M TALKIN' TO YOU.

16 MR. MAYE: YES, SIR.

17 THE COURT: AND BOTH THESE JUDGES SAY THEY DON'T THINK IT'S -- THAT
18 I CAN QUALIFY HIM AS AN EXPERT BASED ON WHAT I'VE HEARD SO FAR. I KNOW I
19 CAN'T QUALIFY HIM AS AN EXPERT BASED ON WHAT I'VE HEARD SO FAR.

20 MR. MAYE: I UNDERSTAND.

21 THE COURT: BUT YOU CAN SUPPLEMENT IT. NOW I'LL GIVE Y'ALL A FEW
22 MINUTES TO TALK AND DIGEST AND DECIDE STRATEGY AND DO WHAT YOU WANT
23 TO DO.

24 MR. MAYE: YES, SIR.

25 THE COURT: AND OF COURSE I'M NOT CASTIN' ANY ASPERSIONS AGAINST

1 MR. WASH.

2 MR. MAYE: I UNDERSTAND.

3 THE COURT: IT'S -- IT'S MORE THE PROCEDURE. I MEAN IF THEY'RE
4 GONNA DEVELOP SOME SORT OF PROCEDURE LIKE THIS WHERE THEY'RE GONNA
5 MAKE, YOU KNOW, 150 DEPUTIES IN THE STATE OF SOUTH CAROLINA BE CHEMISTS,
6 THEY NEED TO LET US IN ON IT, AND IF I MISS IT, IT'S MY FAULT, BUT I APPARENTLY
7 WASN'T THE ONLY ONE WHO MISSED IT.

8 MR. MAYE: YOUR HONOR, I WILL ONLY SAY FROM MY PERSPECTIVE I
9 THOUGHT SLED HAD TAKEN CARE OF THIS BECAUSE THIS IS SOMETHING THAT
10 WAS INSTITUTED EARLIER THIS YEAR OR IN THE LAST 2 YEARS, AND THEY'VE
11 DONE THIS STATEWIDE, AND I CERTAINLY THOUGHT THEY HAD THE AUTHORITY
12 TO DO SO. AND I'VE NOT QUESTIONED IT. AND CERTAINLY I HATE TO FIND OUT
13 THAT 905 POUND DOPE CASE -- WE ALSO HAD ANOTHER CHEMIST TEST THESE
14 DRUGS IN THIS CASE BUT---

15 THE COURT: IT'S---

16 MR. MAYE: --I THOUGHT THIS WAS SOMETHING THAT SLED HAD BEEN
17 SETTLED THIS YEAR.

18 THE COURT: IT ISN'T A JOINT.

19 MR. MAYE: I UNDERSTAND THAT, YOUR HONOR. AND I WOULD NOT HAVE
20 DONE SO IF I HAD NOT THOUGHT SLED HAD TAKEN CARE OF THAT, BUT IT'S BEEN
21 TESTED BY ANOTHER CHEMIST AND WE'LL HAVE HER HERE TO TESTIFY. SHE'S ON
22 MY WITNESS LIST. AND WE'LL---

23 THE COURT: WELL, THEY'RE DISPUTIN' WHETHER SHE'S A CHEMIST OR
24 NOT. SO Y'ALL TALK AND LET ME KNOW. I TOLD THE JURY TO COME BACK AT 9
25 O'CLOCK IN THE MORNIN'. I NEED TO KNOW WHETHER Y'ALL NEED TO BE HERE

1 AT 6 O'CLOCK IN THE MORNIN' OR WHAT WE NEED TO DO.

2 MR. MAYE: YES, SIR.

3 THE COURT: THANK YOU. WE'RE AT EASE. NOW DON'T LEAVE.

4 MR. MAYE: THANK YOU. I WILL NOT, YOUR HONOR. (THERE WAS A BRIEF
5 RECESS.)

6 THE COURT: LET ME TELL YOU NOW I'VE GOTTEN 3 MORE RESPONSES
7 FROM 3 MORE EXPERIENCED TRIAL JUDGES.

8 ONE STATES, BASICALLY, THAT THEY BELIEVE THAT AN OFFICER CAN
9 TESTIFY IF THE SUFFICIENT FOUNDATION IS LAID.

10 I THINK THIS PERSON AGREES WITH ME THAT AT THIS POINT I DON'T HAVE
11 A SUFFICIENT FOUNDATION WHICH IS WHAT I BELIEVE IS WHAT I SAID BEFORE.
12 I'M NOT SAYIN' HE CANNOT TESTIFY. I'M JUST SAYIN' BASED ON WHAT'S BEFORE
13 ME HE CANNOT TESTIFY. AND IT DOESN'T NECESSARILY HAVE TO RELATE TO HIS
14 TRAINING, EDUCATION, EXPERIENCE AT SLED. IT CAN RELATE TO HIS EXPERIENCE
15 WITH MARIJUANA AS YOU WERE ARGUIN' FROM WHICH YOU SAID WAS A
16 PREVIOUS CASE BEFORE, MR. MAYE.

17 THE OTHER, OR ANOTHER, BELIEVES THAT IT IS POSSIBLE FOR AN OFFICER
18 TO RENDER AN OPINION AS AN EXPERT UNDER RULE 701 BECAUSE OF THE NATURE
19 OF THE DRUG. THEY BOTH SAY THAT MARIJUANA IS DIFFERENT THAN COCAINE
20 OR CRACK COCAINE OR THINGS OF THAT NATURE. THE OTHER ONE SAYS HE
21 DOESN'T WANT TO ANSWER THE QUESTION BUT THAT HE DOES KNOW THAT THERE
22 ARE SMALLER LABS THAT CERTAIN COUNTIES DO THEIR OWN. THEY DO IT WITH --
23 THE ONES HE'S FAMILIAR WITH THEY HAVE AN EXPERT CHEMIST. HE BELIEVES
24 THAT WITH A CERTIFICATE FROM SLED THE OFFICER PROBABLY CAN TESTIFY ON
25 MARIJUANA BECAUSE MARIJUANA IS A COMMON -- SUCH A COMMON SUBSTANCE.

1 SO IT'S NOW MORE EVENLY MATCHED THAN IT WAS BEFORE. BUT IT STILL
2 WOULD REQUIRE MORE OF A FOUNDATION THAN WHAT I HAVE. ALRIGHT. MR.
3 SUSSMAN, YOU WANTED TO MAKE A MOTION.

4 MR. SUSSMAN: YES, YOUR HONOR. BASED ON WHAT'S TRANSPIRED WITH
5 LT. WASH AND THE FAILURE OF THE STATE TO QUALIFY HIM AS AN EXPERT FOR
6 PURPOSES OF TESTIFYING AS TO THE ANALYSIS AND IDENTIFICATION OF
7 MARIJUANA ISSUE, I WOULD MOVE FOR A MISTRIAL.

8 THESE DEFENDANTS HAVE BEEN CHARGED WITH THIS CRIME SINCE MAY
9 OF 2002. IT IS NOW OVER 2 YEARS SINCE THE ARREST.

10 WE'VE ALREADY BEEN THROUGH ONE PROSECUTION THAT RESULTED IN A
11 MISTRIAL, AND I WOULD SUBMIT THAT THIS VIOLATES THEIR CONSTITUTIONAL
12 RIGHT TO A SPEEDY TRIAL, TO CONTINUE TO DELAY THE TRIAL FOR THE STATE TO
13 ATTEMPT TO MAKE THEIR CASE TO WHERE THEY CAN FIND AN EXPERT TO TEST
14 AND ANALYZE THIS MARIJUANA.

15 I THINK IT WOULD BE A VIOLATION OF MY CLIENT'S DUE PROCESS RIGHTS
16 UNDER THE 5TH, 6TH 8TH AND 14TH AMENDMENTS OF THE U.S. CONSTITUTION AND THE
17 SOUTH CAROLINA CONSTITUTIONAL SUB PARTS AS WELL AS APPLICABLE CASE
18 LAW. I WOULD ALSO SUBMIT THAT IN THE EVENT THE COURT DECLINES TO GRANT
19 THE MISTRIAL THAT WE BE GRANTED A CONTINUANCE BECAUSE IT SOUNDS TO ME
20 FROM OUR CONVERSATIONS WITH THE STATE, THEY INTEND TO HAVE A NEW
21 CHEMIST COME AND TESTIFY -- I MEAN TEST THE MATERIALS AND POSSIBLY ISSUE
22 A REPORT. IF THAT'S THE CASE, THEN I THINK WE HAVE TO HAVE AN
23 OPPORTUNITY TO REVIEW THE REPORT, DO A BACKGROUND CHECK AND DO AN
24 INVESTIGATION OF THE QUALIFICATIONS OF THAT CHEMIST IN ORDER TO
25 PRESERVE OUR CLIENTS' RIGHTS TO A FAIR -- TO A FAIR TRIAL. SO I WOULD ASK

1 THE COURT TO GRANT OUR MISTRIAL AT THIS TIME AS WELL AS THE MOTION FOR
2 A CONTINUANCE IN THE ALTERNATIVE.

3 THE COURT: ANYONE ELSE?

4 MR. HAWKE: I'M SORRY.

5 THE COURT: YES, SIR?

6 MR. HAWKE: ON BEHALF OF DEFENDANT DELEON WE WOULD JOIN IN THE
7 OBJECTION EXCEPT WE DO NOT MOVE FOR CONTINUANCE -- WE JOIN IN THE
8 MOTION AND OBJECTION AS STATED; HOWEVER, WE DO NOT MOVE FOR A
9 CONTINUANCE.

10 MR. MILLER: YOUR HONOR, I WOULD JOIN IN THE MOTION FOR A MISTRIAL
11 AS WELL AS THE MOTION FOR A CONTINUANCE IN THE ALTERNATIVE.

12 THE COURT: MOTION FOR MISTRIAL IS DENIED. AGAIN, I HAVE NOT RULED
13 THAT DEPUTY WASH CANNOT TESTIFY AS AN EXPERT. I WANT TO MAKE THAT
14 CRYSTAL CLEAR, AND I'M SORRY TO BE SO REPETITIVE. I'M JUST TELLIN' Y'ALL I
15 DON'T HAVE ENOUGH RIGHT NOW TO LET HIM TESTIFY. I CAN'T ANTICIPATE
16 WHAT MIGHT HAPPEN TOMORROW. AND I'LL DEAL WITH THE CONTINUANCE
17 MOTIONS TOMORROW.

18 MR. SUSSMAN: I JUST WANTED TO MAKE SURE THE RECORD WAS CLEAR. I
19 DID, IN FACT, FILE AN OBJECTION -- ON BEHALF OF MR. AROJONA AND MR.
20 HERNANDEZ MY FILE COPY REFLECTS RULE 6 DISCLOSURE OBJECTIONS FILED IN
21 JULY OF 2003. JUST SO THAT'S CLEAR ON THE RECORD.

22 THE COURT: ALRIGHT.

23 MR. MAYE: MAY IT PLEASE THE COURT, YOUR HONOR---

24 THE COURT: YES, SIR.

25 MR. MAYE: I THINK SINCE WE DO HAVE TIME I WILL PUT OFFICER WASH ON

1 THE STAND IN AN ATTEMPT TO REHABILITATE HIM AND FURTHER EXAMINE HIM AS
2 TO HIS QUALIFICATIONS AS AN EXPERT.

3 I KNOW THAT HE DID RECEIVE SPECIALIZED TRAINING IN THIS AREA AND
4 WENT THROUGH IT ALL.

5 HE HAD TO TEST 100 SAMPLES OUT OF 100 SAMPLES AND BE EXACTLY
6 RIGHT IN IDENTIFYING MARIJUANA WHICH HE'S DONE. HE HAD TO RECEIVE MORE
7 THAN 80 PERCENTILE ON A TEST IN REGARD TO THE TESTING OF MARIJUANA. HE
8 HAS PASSED SLED'S TESTS IN REGARD TO WHAT THEIR STANDARDS ARE FOR
9 THEIR CHEMISTS. EITHER THEIR CHEMISTS WITH BACHELOR'S DEGREES OR
10 ANYTHING ELSE. I THINK THESE ARE THE STANDARDS IN WHICH THEY GO BY FOR
11 ALL THEIR CHEMISTS THAT TEST MARIJUANA. MARIJUANA IS A COMMON
12 SUBSTANCE, YOUR HONOR. I KNOW THAT IN SEVERAL CASES, VERY RECENT
13 CASES, ONE OF THE ONES WAS STATE VERSUS PERRY. LOOKS LIKE -- I'M TRYIN'
14 TO SAY -- 595 SOUTHEASTERN 2ND 383. AND LOOKS LIKE THAT'S A COURT OF
15 APPEALS CASE, YOUR HONOR. IN REGARD TO GROWING MARIJUANA, YOUR
16 HONOR, CERTAINLY THEY DON'T HAVE TO DO ANY SCIENTIFIC TEST AT ALL. THEY
17 JUST COME IN AND TESTIFY IT'S MARIJUANA.

18 THE COURT: YEAH, I UNDERSTAND---

19 MR. MAYE: I UNDERSTAND IT'S A DIFFERENT ISSUE THAN GROWIN', BUT
20 LIKE I SAID, I'D LIKE TO ATTEMPT TO QUALIFY DEPUTY WASH IN THIS CASE AS AN
21 EXPERT. I WOULD DO SO AT THIS TIME.

22 THE COURT: ALRIGHT. WOULD SOMEBODY GET HIM FOR ME, PLEASE.
23 YOU'RE STILL UNDER OATH, MR. WASH. THEY'RE GONNA ASK YOU SOME MORE
24 QUESTIONS.

25 A YES, SIR.

CHRIS WASH - DIRECT EXAMINATION BY MR. MAYE

1 Q DEPUTY WASH, LET ME ASK YOU THIS: HOW LONG HAVE YOU BEEN A
2 SHERIFF'S DEPUTY?

3 A 9 YEARS.

4 Q YOU'VE BEEN A SHERIFF'S DEPUTY 9 YEARS?

5 A RIGHT.

6 Q APPROXIMATELY HOW MANY TIMES HAVE YOU MADE ARRESTS OR BEEN
7 AROUND MARIJUANA---

8 A I--

9 MR. SUSSMAN: I OBJECT TO THAT, YOUR HONOR. THAT'S ASKING 2
10 QUESTIONS. COMPOUND QUESTION. HOW LONG HAS HE BEEN AROUND IT VERSUS
11 HOW MANY TIMES HAS HE MADE ARRESTS.

12 THE COURT: ALRIGHT.

13 Q HOW MANY TIMES HAVE YOU BEEN AROUND MARIJUANA?

14 A COUPLE HUNDRED MAYBE.

15 Q OKAY. HOW MANY CASES IN WHICH YOU MADE ARRESTS APPROXIMATE
16 IN MARIJUANA?

17 A 40. 50.

18 Q ARE YOU FAMILIAR WITH MARIJUANA'S COLOR, ODOR, SMELL?

19 A YES, SIR.

20 Q ALL?

21 A YES, SIR.

22 Q OKAY. LET ME ASK YOU THIS: HAVE YOU RECEIVED SPECIALIZED
23 TRAINING IN THE AREA OF ANALYZING MARIJUANA?

24 A YES, I HAVE.

25 Q OKAY. DO YOU HAVE A HIGH SCHOOL EQUIVALENCY DEGREE?

CHRIS WASH - DIRECT EXAMINATION BY MR. MAYE

1 A YES, I DO.

2 Q OKAY. AND YOU'VE BEEN A DEPUTY FOR 9 YEARS.

3 A CORRECT.

4 Q OKAY. AND IF YOU NEED TO REFRESH YOUR RECOLLECTION AS TO ANY OF
5 THE COURSE MATERIALS OR ANYTHING THAT YOU DID -- DID YOU, IN FACT, TAKE
6 A COURSE FROM THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION
7 REGARDING THE TESTING OF MARIJUANA, THE MARIJUANA ANALYSIS SCHOOL?

8 A YES, I DID.

9 Q DID YOU GRADUATE FROM THAT COURSE?

10 A YES, I DID.

11 Q DO YOU HAVE A CERTIFICATE?

12 A YES, I DO.

13 Q DO YOU HAVE IT WITH YOU?

14 A I BELIEVE IT'S OUT THERE. IT'S RIGHT HERE.

15 MR. MAYE: YOUR HONOR, I DON'T WANT TO USE HIS ORIGINAL BUT---

16 THE COURT: THAT'S FINE. WE'LL MAKE A COPY OF IT.

17 MR. MAYE: OKAY. I'D LIKE TO MAKE A COPY OF IT.

18 THE COURT: MARK IT FOR I.D. THEN. DON'T MARK IT AS AN EXHIBIT.

19 THE COURT REPORTER: JUDGE, DO YOU WANT ME TO WAIT AND MARK THE
20 COPY?

21 THE COURT: I MEAN PUT THE STICKER ON THE COPY, YEAH. FOR I.D.
22 PURPOSES ONLY. NOT AS AN EXHIBIT. (STATE'S EXHIBIT #25 MARKED FOR
23 IDENTIFICATION.)

24 Q DEPUTY WASH, LET ME ASK YOU THIS: HOW LONG DID THAT COURSE TAKE
25 PLACE OVER?

CHRIS WASH - DIRECT EXAMINATION BY MR. MAYE

1 A I THINK IT WAS 2 DAYS.

2 Q YOU THINK IT WAS A 2-DAY COURSE FROM SLED?

3 A YES, SIR.

4 Q DEPUTY WASH, DURING THE COURSE OF CARRYING OUT THAT COURSE, DID
5 SLED GO OVER WITH YOU THE DEFINITIONS OF MARIJUANA AND THE TYPES OF
6 MARIJUANA?

7 A YES, SIR.

8 Q DID THEY GO OVER WITH YOU THE DIFFERENCE BETWEEN THE PLANT, THE
9 OILS AND THE EXTRACT OR THE RESIN IN THAT CLASS?

10 A YES, SIR.

11 Q OKAY. DID THEY TALK WITH YOU ABOUT THE POTENTIAL FOR ABUSE
12 EXCEPT THE MEDICAL USES IN THE UNITED STATES AND ITS LACK OF ACCEPTED
13 SAFETY UNDER MEDICAL SUPERVISION?

14 MR. HAWKE: YOUR HONOR, I'M GONNA OBJECT TO LEADING.

15 THE COURT: SUSTAINED.

16 Q IF YOU NEED TO REFER TO YOUR NOTES, PLEASE, DO SO. TO REFRESH
17 YOUR RECOLLECTION. WHAT DID THEY TEACH YOU AT THE SLED SCHOOL IN
18 REGARDS TO WEIGHING A SAMPLE OF MARIJUANA? IF YOU NEED TO REFRESH
19 YOUR RECOLLECTION BY REFERRING TO YOUR NOTES, PLEASE, DO SO.

20 A I DON'T HAVE MY NOTES HERE WITH ME, BUT I -- BUT THEY---

21 Q THE COURSE MATERIALS. DO YOU HAVE THE COURSE MATERIALS FROM
22 THE SCHOOL?

23 A NO, SIR.

24 Q OKAY.

25 MR. MAYE: BEG THE COURT'S INDULGENCE.

CHRIS WASH - DIRECT EXAMINATION BY MR. MAYE

1 MR. PUETZ: JUDGE?

2 THE COURT: SIR?

3 MR. PUETZ: I WOULD OBJECT. IF THE COURT IS GONNA HAVE TO MAKE
4 THAT DETERMINATION---

5 THE COURT: I CAN'T HEAR YOU.

6 MR. PUETZ: I SAID I WOULD OBJECT IF THE COURT'S GONNA HAVE TO
7 DETERMINE WHETHER OR NOT HE'S AN EXPERT AND HAVING HIM BEING ABLE TO
8 SIT THERE AND READ THE VERY MATERIALS THAT DEAL WITH THE SUBJECT
9 MATTER ON WHICH YOU'VE GOT TO DETERMINE HIS -- IF HE'S AN EXPERT. IT'S
10 IMPROPER.

11 THE COURT: OVERRULED.

12 MR. MAYE: BEG THE COURT'S INDULGENCE, YOUR HONOR.

13 A THERE WERE SEVERAL THINGS I LEARNED ABOUT THE WEIGHING OF IT. I
14 MEAN YOU WEIGH THE PLANT MATERIAL ITSELF, NOT THE PACKAGING.

15 Q WHAT ELSE DID YOU LEARN IN REGARD TO WEIGHING THE SAMPLE AT THE
16 SCHOOL?

17 MR. SUSSMAN: YOUR HONOR, I'M GOING TO OBJECT. I WANT THE RECORD
18 TO BE CLEAR THAT HE'S BEEN HANDED SOME DOCUMENTS. WE'RE NOT SURE
19 WHAT THEY ARE, BUT I THINK IN ORDER FOR HIM TO EVEN HAVE THE POSSIBILITY
20 OF HAVING THIS WITNESS REFRESH HIS RECOLLECTION, HE NEEDS TO ASK EACH
21 QUESTION AND SEE IF THE WITNESS CAN ANSWER IT. IF THE WITNESS CAN
22 ANSWER IT, THEN FURNISH HIM WHATEVER DOCUMENT HE CHOOSES TO TRY TO
23 REFRESH HIS RECOLLECTION. THIS IS NOTHING MORE THAN QUESTIONING HIM
24 AND THEN ALLOWING THE WITNESS TO READ HIS ANSWER FROM THIS COURSE
25 MATERIALS WITH NO DEMONSTRATION THAT HE HAS ANY RECOLLECTION

CHRIS WASH - DIRECT EXAMINATION BY MR. MAYE

1 WHATSOEVER INDEPENDENTLY.

2 THE COURT: WHAT IS HE READING FROM?

3 MR. MAYE: YOUR HONOR, HE HAS -- MY UNDERSTANDING THERE IS A
4 MANUAL, MARIJUANA ANALYSIS, THAT WAS PUT OUT BY SLED THAT IS PART OF
5 THE COURSE MATERIALS AND WHICH HE WAS INSTRUCTED ON.

6 THE COURT: THE RECORD NEEDS TO REFLECT WHAT IT IS HE'S USING IF
7 HE'S USING IT TO REFRESH HIS MEMORY, AND IF THAT IS, IN FACT, WHAT HE'S
8 DOING. OR WHETHER HE'S JUST READING SOMETHING FROM SOME DOCUMENT
9 HE'S BEEN HANDED.

10 Q DEPUTY WASH, YOU HAVE COURSE MATERIALS WITH YOU PROVIDED AS A
11 RESULT OF THE COURSE YOU TOOK?

12 A YES, I DO.

13 Q OKAY. WOULD YOU TAKE A MOMENT AND REFRESH YOUR RECOLLECTION
14 AS TO THOSE MATERIALS. THEN I'VE GOT SOME QUESTIONS FOR YOU.

15 MR. SUSSMAN: JUDGE, I WOULD OBJECT. I THINK IN ORDER TO REFRESH
16 RECOLLECTION, THERE HAS TO FIRST BE A QUESTION POSED TO DEMONSTRATE
17 WHETHER OR NOT THE WITNESS HAS HIS OWN INDEPENDENT RECOLLECTION, AND
18 SECOND, IF HE NEEDS TO REFRESH IT HE CAN BE HANDED THE MATERIALS, BUT IN
19 THIS CASE THE SOLICITOR IS PUTTING THE CART BEFORE THE HORSE: READ YOUR
20 MATERIALS AND THEN LET'S TESTIFY FROM THEM. I THINK HE NEEDS TO ASK THE
21 WITNESS IF HE'S AN EXPERT, HE SHOULD KNOW SOMETHING ABOUT WHAT HE'S
22 TESTIFYING TO WITHOUT HAVING TO READ IT FROM HIS SCHOOL COURSE. SO I
23 WOULD OBJECT TO THIS PROCEDURE. I THINK HE NEEDS TO ASK HIM THE
24 QUESTION WITHOUT HIS MATERIALS; SEE IF HE REMEMBERS IT; IF HE DOESN'T,
25 THEN REFRESH HIS RECOLLECTION; AND THEN THE COURT CAN DETERMINE THE

CHRIS WASH - DIRECT EXAMINATION BY MR. MAYE

1 CREDIBILITY, RELIABILITY AND ADMISSIBILITY OF THIS PERSON AS AN EXPERT.

2 THE COURT: I AGREE, SOLICITOR.

3 Q WHAT TESTS DID YOU PERFORM ON THE MARIJUANA IN THIS CASE, DEPUTY
4 WASH.

5 A I PERFORMED A MICROSCOPIC TEST AND -- AND A CHEMICAL TEST.

6 Q WHAT IS THE MICROSCOPIC TEST?

7 A THAT'S PUTTING THE SAMPLE UNDER A MICROSCOPE AND YOU HAVE TO
8 FIND 3 ELEMENTS PRESENT FOR IT TO BE POSITIVE FOR MARIJUANA UNDER THE
9 MICROSCOPIC TEST.

10 Q WHAT ARE THOSE?

11 A THOSE ARE UNICELLULAR HAIRS, SYS---

12 Q WHAT ARE UNICELLULAR HAIRS?

13 A THEY'RE THIN JUST LIKE -- KINDA LIKE FUZZ ON A PEACH. ON THE -- ON
14 THE LEAF ITSELF.

15 Q WERE YOU TAUGHT THAT IN THE SCHOOL?

16 A THAT'S CORRECT.

17 Q WHAT ELSE ARE THEY LOOKIN' FOR WITH THE MICROSCOPIC TEST?

18 A THEY'RE CALLED BEAR CLAWS. THE NAME FOR 'EM IS -- AND I HAVE IT
19 ON MY -- SYSTOLITHIC HAIRS WHICH ARE -- THEY LOOK LIKE A BEAR CLAW. IT'S
20 A SHORTER HAIR WITH RESIN -- LOOKS LIKE RESIN AT THE BASE OF IT AND THE
21 HAIR IS MOVIN' AWAY FROM THE RESIN.

22 Q WHAT ELSE ARE YOU LOOKING FOR? IS THERE ANYTHING ELSE THAT
23 YOU'RE LOOKING FOR AS TO THE MICROSCOPIC TEST WHEN YOU'RE CARRYING
24 OUT AND CONDUCTING A TEST OR ANALYSIS OF MARIJUANA?

25 A THE GLANDULAR HAIRS WHICH LOOKS LIKE BROWN SUGAR ON THE

CHRIS WASH - DIRECT EXAMINATION BY MR. MAYE

1 SAMPLE.

2 Q OKAY. DO ALL THOSE HAVE TO BE PRESENT IN ORDER FOR IT TO PASS THE
3 MICROSCOPIC TEST?

4 A YES, THEY DO.

5 Q THEY ALL HAVE TO BE PRESENT.

6 A ALL OF 'EM.

7 Q OKAY. I WILL GO AHEAD AND ASK YOU IN THIS CASE DID YOU PERFORM A
8 MICROSCOPIC TEST ON ALL OF THE ITEMS THAT YOU TESTED IN THIS CASE?

9 A YES, I DID.

10 Q OKAY. DID ALL OF 'EM, IN FACT, TEST POSITIVE GIVEN THOSE 3
11 PARAMETERS THAT YOU USED?

12 A YES, THEY DID.

13 Q OKAY. WHAT IS THE OTHER TEST THAT YOU UTILIZED TO CARRY OUT IN
14 ORDER TO TEST MARIJUANA?

15 A CHEMICAL TEST. DUCANOID LEVINE TEST.

16 Q WHAT IS THAT TEST? HOW DOES THAT WORK?

17 A THE FIRST PART OF THE TEST IS THE DUCANOID REAGENT THAT CONSISTS
18 OF REAGENT ALCOHOL AND VANILLIN. THE SAMPLE IS PLACED IN A TEST TUBE,
19 DAMPENED WITH THE REAGENT; THEN CONCENTRATED HYDROCHLORIC ACID IS
20 ADDED, 2 OR 3 DROPS TO THE SAMPLE. IF MARIJUANA IS PRESENT IT TURNS A
21 PURPLISH COLOR. THEN CHLOROFORM IS ADDED IS THE LEVINE PORTION OF THE
22 TEST. CHLOROFORM IS ADDED TO THE SAMPLE, AND IT CREATES AN EYE EFFECT
23 IN THE SAMPLE.

24 MR. HAWKE: CREATES A WHAT?

25 THE COURT: WHAT DOES IT CREATE? WHAT EFFECT?

CHRIS WASH - DIRECT EXAMINATION BY MR. MAYE

1 A AN EYE EFFECT.

2 THE COURT: EYE? E-Y-E?

3 A YES, SIR.

4 Q WOULD YOU DESCRIBE---

5 A A SPACE BETWEEN THE SAMPLE AND THE BOTTOM OF THE TEST TUBE. IF
6 IT'S DONE IN A TEST TUBE THE WAY THAT I DID IT.

7 Q WHAT'S IN THE FIRST SOLUTION? WHAT ALL IS MADE UP IN THE FIRST
8 PART OF THE SOLUTION?

9 A REAGENT ALCOHOL AND VANILLIN.

10 Q WHAT ELSE?

11 A THAT'S IT.

12 Q ARE YOU SURE? DO YOU NEED TO REFRESH YOUR RECOLLECTION?

13 A YES. THE -- ACID ALDEHYDE.

14 Q OKAY.

15 MR. HAWKE: I'M SORRY. I HAD TROUBLE HEARIN' YOU.

16 A ACID ALDEHYDE.

17 Q ONCE YOU GET THAT HOW DO YOU CARRY OUT THE TEST?

18 A PLACE THE SAMPLE IN A TEST -- THE WAY I DO IT -- IT CAN BE DONE
19 DIFFERENT WAYS, BUT WE'RE TAUGHT 2 DIFFERENT WAYS AT SLED. IT CAN BE
20 DONE IN A TEST TUBE OR BASIN, TEST BASIN WITH DIFFERENT -- PUT THE SAMPLE
21 IN THE TEST TUBE, DAMPEN IT WITH THE DUCANOID REAGENT AND THEN 2 OR 3
22 DROPS OF THE CONCENTRATED HYDROCHLORIC ACID IS ADDED WHICH IT TURNS
23 COLOR WHENEVER MARIJUANA IS PRESENT.

24 Q HOW LONG DOES THAT TAKE FOR IT TO TURN COLOR?

25 A SECONDS.

CHRIS WASH - DIRECT EXAMINATION BY MR. MAYE

1 Q JUST SECONDS?

2 A JUST SECONDS.

3 Q OKAY. ALRIGHT. WHAT HAPPENS THEN? WHAT ARE YOU LOOKIN' FOR
4 ONCE YOU DO THAT?

5 A YOU'RE LOOKIN' FOR A PURPLISH BLUE DEEP COLOR. THEN THE
6 CHLOROFORM IS ADDED TO THE SAMPLE, AND THAT'S WHAT CREATES THE EYE
7 EFFECT IS THE WAY THAT THEY TAUGHT US, BUT IT'S A SPACE BETWEEN THE
8 BOTTOM OF THE TEST TUBE AND THE SAMPLE WHICH IS CALLED AN EYE.

9 Q IS THERE ANYTHING THAT'LL GIVE YOU A FALSE POSITIVE?

10 A THE ONLY THING THAT'LL GIVE YOU AS FAR AS THE FIRST PART OF THE
11 TEST, COFFEE, NON FREEZE DRIED COFFEE WILL GIVE YOU A COLOR CHANGE ON
12 THE FIRST TWO PARTS OF THE TEST.

13 Q OKAY. DID YOU CARRY OUT THE DUCANOID LEVINE OR THE CHEMICAL
14 TEST ON EACH OF THE SAMPLES THAT YOU DREW FROM THESE ITEMS IN THIS
15 CASE?

16 A YES, I DID.

17 Q OKAY. AS TO THE CHEMICAL TEST -- THE MICROSCOPIC TEST AND THE
18 CHEMICAL TEST, DID YOU GET POSITIVES ON SAMPLES THAT YOU DREW FROM ALL
19 400?

20 A YES, I DID.

21 Q OKAY. WHAT PRECAUTIONS DO YOU NEED TO TAKE WHEN PERFORMING
22 THESE TESTS TO MAKE SURE THAT THERE'S NO CONTAMINATION OR ANYTHING
23 HAPPENS TO GIVE YOU A FALSE POSITIVE ON THE TEST? WHAT PROCEDURES DO
24 YOU INSTITUTE IN ORDER TO INSURE THAT DOESN'T HAPPEN?

25 A JUST THAT YOU HAVE A CLEAN WORK AREA. A NEW TEST TUBE EVERY

CHRIS WASH - DIRECT EXAMINATION BY MR. MAYE

1 TIME THAT YOU DO A TEST.

2 Q HOW OFTEN DO YOU HAVE TO CHECK THE REAGENT?

3 A ONCE A MONTH.

4 Q ONCE A MONTH. OKAY.

5 A BUT THERE WAS A NEW REAGENT MIXED FOR THIS TEST.

6 Q YOU MIXED A NEW REAGENT FOR THIS TEST AND YOU MUST CHECK IT
7 ONCE A MONTH OTHERWISE?

8 A YES, SIR.

9 Q DID YOU WEIGH ALL OF THE SAMPLES FROM THIS CASE?

10 A YES, I DID.

11 Q WHAT ARE THE STANDARDS FOR HOW FREQUENTLY YOUR SCALES
12 SHOULD BE CALIBRATED?

13 A I BELIEVE IT'S ONCE A MONTH, BUT WE CHECK THEM EVERY TIME WE USE
14 'EM.

15 Q DID YOU CHECK IT, IN FACT, BEFORE YOU USED IT THIS TIME?

16 A YES, I DID.

17 Q DID YOU HAVE THE PROPER CALIBRATION ON YOUR SCALES?

18 A YES, I DID.

19 Q DO YOU KEEP A BALANCED SCALE CALIBRATION LOG FOR ITS BALANCE?

20 A NO, SIR.

21 Q OKAY. IS THAT THE TYPE OF SCALE YOU'RE USING OR ARE YOU USIN' AN
22 ELECTRONIC SCALE?

23 A ELECTRONIC SCALE.

24 Q IS THAT APPROVED BY SLED? IS THAT WHAT YOU LEARNED IN THE
25 COURSE?

CHRIS WASH - DIRECT EXAMINATION BY MR. MAYE

1 A YES, SIR.

2 Q ELECTRONIC BALANCE SCALE?

3 A YES, SIR.

4 Q WHAT ARE THE SAFETY CONCERNS THAT YOU HAVE IN CARRYING OUT
5 THIS TEST AND USING THESE CHEMICALS? WHAT DID YOU LEARN IN THAT
6 REGARD -- WHAT DO YOU KNOW IN THAT REGARD AS AN EXPERT IN THIS FIELD?

7 A I KNOW THAT IT HAS TO BE DONE IN A VENTILATED AREA.

8 Q WHY IS THAT?

9 A BECAUSE OF THE CHEMICALS USED.

10 Q WHAT ARE THE DANGERS FROM THE CHEMICALS?

11 A IT COULD BE ANYWHERE FROM SKIN BURNS TO BREATHING PROBLEMS.
12 WHICH ONE OF THE ITEMS IS HYDROCHLORIC ACID SO--

13 Q CAN YOU TELL ME WHAT KIND OF MAGNIFICATION YOU'RE LOOKIN' AT
14 THE MARIJUANA IN? WHAT KIND OF X MAGNIFICATION? HOW MANY TIMES ON
15 THE MAGNIFICATION?

16 A NO, SIR.

17 Q DO YOU HAVE A VARIABLE MAGNIFYING GLASS THAT YOU USE OR A
18 VARIABLE POWER MICROSCOPE?

19 A YES, SIR.

20 Q IS THAT IMPORTANT IN CARRYING OUT TESTING?

21 A YES, SIR.

22 Q WHY SO?

23 A BECAUSE YOU HAVE TO BE ABLE TO SEE THE WHOLE SAMPLE AND
24 DETERMINE WHEN THE 3 ELEMENTS ARE THERE ON THE SAMPLE. YOU HAVE TO
25 ADJUST IT TO EACH INDIVIDUAL'S EYES TOO BECAUSE---

CHRIS WASH -- DIRECT EXAMINATION BY MR. MAYE

1 Q OKAY. DID YOU, IN FACT, DO SO WHEN YOU TESTED THESE 400 SAMPLES
2 THAT WERE PROVIDED TO YOU?

3 A YES, SIR.

4 Q OKAY. LET ME ASK YOU THIS, INVESTIGATOR WASH: IN CARRYING OUT OR
5 CONDUCTING THE SCHOOL WHERE YOU WERE CERTIFIED BY SLED, HOW MANY
6 SAMPLES WERE YOU REQUIRED TO TEST AND GET POSITIVE RESULTS ON IN
7 CARRYING OUT A TEST LIKE THIS? HOW MANY SAMPLES DID YOU HAVE TO TEST?
8 WHAT WERE THE CIRCUMSTANCES?

9 A I HAD TO TEST 100 SAMPLES. NOT ALL THE SAMPLES WERE MARIJUANA OR
10 WOULD TEST POSITIVE. IT JUST HAD TO BE IN CORRECT -- 100 PERCENT OF THE
11 SAMPLES YOU HAD TO GET 'EM CORRECT.

12 Q WERE YOU ABLE TO DO SO?

13 A YES, I WAS.

14 Q OUT OF 100 SAMPLES YOU WERE 100 PERCENT CORRECT.

15 A YES, SIR.

16 Q DID YOU HAVE TO DO THAT IN ABLE -- IN ORDER TO BE ABLE TO BE
17 QUALIFIED AS BEING PROFICIENT BY THE SOUTH CAROLINA LAW ENFORCEMENT
18 DIVISION?

19 A YES, SIR.

20 Q OKAY. WHAT ELSE WAS A PART OR A COMPONENT OF THAT TEST? DID
21 THEY GIVE YOU WRITTEN TEST MATERIALS?

22 A YES, SIR, THEY DID.

23 Q WERE YOU ADMINISTERED A WRITTEN TEST IN REGARD TO YOUR
24 EXPERTISE IN THE AREA OF MARIJUANA ANALYSIS?

25 A YES, SIR.

CHRIS WASH - DIRECT EXAMINATION BY MR. MAYE

1 Q WHAT WAS THE MINIMUM ACCEPTED SCORE THAT YOU HAD TO GENERATE
2 IN ORDER TO DO THAT?

3 A 80 PERCENT.

4 Q 80 PERCENT? DO YOU HAVE THOSE COURSE MATERIALS WITH YOU NOW
5 OR CAN I HAND YOU UP THESE COURSE MATERIALS. ARE THOSE YOUR COURSE
6 MATERIALS?

7 A YES, SIR.

8 MR. MAYE: YOUR HONOR, I'D ASK THAT THESE BE ADMITTED, BASICALLY,
9 AS A COURT EXHIBIT IN THIS CASE IN THIS CASE.

10 THE COURT: YES, SIR. (COURT'S EXHIBIT #1 RECEIVED IN EVIDENCE.)

11 Q IN REGARD TO YOUR EXPERTISE IN CROSS -- IN EXAMINING YOU IN
12 REGARD TO YOUR EXPERTISE IN ANALYZING MARIJUANA, LET ME ASK YOU THIS:
13 ARE THE TECHNIQUES HERE, THESE MICROSCOPIC TESTS AND THESE CHEMICAL
14 TESTS, ARE THESE GENERALLY ACCEPTED BY THE SCIENTIFIC COMMUNITY?

15 MR. SUSSMAN: OBJECTION TO THAT, YOUR HONOR, UNLESS THEY CAN LAY
16 A FOUNDATION AS TO HOW HE WOULD KNOW THAT.

17 THE COURT: LAY A FOUNDATION.

18 Q AGENT WASH, DO YOU KNOW WHETHER OR NOT THESE ARE THE -- THESE
19 ARE THE PROCEDURES IN USE -- HAVE YOU BEEN AROUND OTHER CHEMISTS;
20 HAVE YOU BEEN AROUND 'EM AND LISTENED TO OTHER CHEMISTS TESTIFY AND
21 HAD INSTRUCTION BY OTHER CHEMISTS?

22 A I'VE HAD INSTRUCTION BY OTHER CHEMISTS.

23 THE COURT: I'M SORRY. I DIDN'T HEAR HIS ANSWER.

24 A I HAD INSTRUCTION BY OTHER CHEMISTS.

25 Q LET ME ASK YOU THIS: ARE THE SAME TEST PROCEDURES THAT YOU'RE

CHRIS WASH - DIRECT EXAMINATION BY MR. MAYE

1 LOOKING FOR , THE MICROSCOPIC TEST AND THE CHEMICAL TEST, ARE THOSE
2 COMMONLY IN USE BY OTHER CHEMISTS IN TESTING MARIJUANA?

3 MR. HAWKE: OBJECTION. LEADING.

4 MR. SUSSMAN: AND, AGAIN, JUDGE, I WOULD SUBMIT ARE THESE
5 PROCEDURES COMMONLY USED BY OTHER CHEMISTS, THAT WOULD SEEM TO
6 INDICATE SOME GENERAL KNOWLEDGE OF SCIENTIFIC ANALYSIS PROCEDURE
7 UTILIZED BY OTHER SCIENTISTS AND I DON'T THINK WE'VE GOT ANY FOUNDATION
8 FOR MR. WASH'S KNOWLEDGE OF THAT UNLESS THEY CAN SHOW WHAT
9 UNIVERSITIES HE'S BEEN TO OR LABORATORIES HE'S BEEN IN WHERE HE'S
10 OBSERVED THE SAME PROCEDURES THAT MATCH WHAT HE DOES SO HE CAN SAY
11 THEY'RE COMMONLY USED BY THEIR -- IN THE SCIENTIFIC COMMUNITY. I WOULD
12 OBJECT. THAT WOULD BE OUTSIDE THE SCOPE OF HIS KNOWLEDGE AT THIS POINT.

13 THE COURT: I SUSTAIN THE OBJECTION, BUT NOT NECESSARILY ON THE
14 GROUNDS -- I DON'T NECESSARILY ACCEPT ALL THE ARGUMENT MADE. I DO
15 SUSTAIN THE OBJECTION. YOU HAVE TO GIVE ME A FOUNDATION AS TO HOW HE
16 CAN TESTIFY ABOUT WHAT IS COMMONLY USED IN THE SCIENTIFIC COMMUNITY
17 TO TEST MARIJUANA.

18 Q DEPUTY WASH, DO YOU KNOW THROUGH YOUR STUDIES WHETHER OR NOT
19 THE TESTS YOU USED OR UTILIZED HAVE BEEN SUBJECT TO REVIEW AND
20 SCRUTINY IN THE SCIENTIFIC COMMUNITY?

21 MR. HAWKE: SAME OBJECTION, YOUR HONOR. I DON'T THINK THERE'S
22 ANY FOUNDATION FOR THIS.

23 THE COURT: WELL, THAT QUESTION ASKS HIM FOR AN OPPORTUNITY -- TO
24 GIVE HIM AN OPPORTUNITY TO LAY A FOUNDATION. SO THE QUESTION IS
25 APPROPRIATE. YOU MAY ANSWER IT.

CHRIS WASH - DIRECT EXAMINATION BY MR. MAYE

1 A YES, SIR. IT'S USED BY ALL AGENCIES THAT I'M FAMILIAR WITH THAT TEST
2 MARIJUANA. THE TEST ITSELF, THE DUCANOID LEVINE TEST IS TWO SCIENTISTS
3 THAT CREATED THE TEST. DUCANOID AND LEVINE LATER ADDED THE
4 CHLOROFORM TEST AT THE END TO PUT ANOTHER TEST WHERE IT HAD TO BE
5 MARIJUANA IN ORDER -- IT HAD TO BE MARIJUANA. AFTER HIS TEST WAS
6 COMPLETED, IT COULDN'T BE ANYTHING OTHER THAN MARIJUANA.

7 Q DO YOU KNOW WAS THERE SOME DEBATE UP UNTIL THAT POINT IN TIME?
8 UP UNTIL THAT WAS RENDERED?

9 A I DON'T KNOW THAT BUT---

10 Q THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION IN THEIR
11 LABORATORY DO THEY VALIDATE THESE PROCESSES THAT YOU'RE USING IN
12 ORDER TO TEST AND IDENTIFY MARIJUANA?

13 A YES, THEY DO.

14 Q OKAY. DO YOU KNOW WHETHER OR NOT THAT THE PROCESS OR METHOD
15 THAT YOU'RE USING TO TEST FOR MARIJUANA DO YOU KNOW IF THOSE HAVE
16 BEEN PUBLISHED IN OTHER PLACES? THEY WERE PUBLISHED IN WRITTEN
17 MATERIALS?

18 A YES, SIR.

19 Q OKAY. ARE THEY PUBLISHED IN POLICE JOURNALS AND SCIENTIFIC
20 JOURNALS---

21 MR. PUETZ: YOUR HONOR--

22 Q -- THAT COME TO THE SHERIFF'S OFFICE.

23 THE COURT: HOLD ON.

24 MR. PUETZ: LEADING.

25 THE COURT: STATE YOUR QUESTION IN A NON-LEADING FASHION.

1 Q HAVE YOU SEEN MATERIALS IN WHICH THEY HAVE DISCUSSED USING
2 THESE TESTING METHODS?

3 A YES, I HAVE.

4 Q WHAT TYPE OF MATERIALS?

5 A TRAINING MATERIALS, UPDATES FROM DIFFERENT LAW ENFORCEMENT
6 SOURCES.

7 Q DO YOU GET UPDATES -- COULD YOU GIVE ME AN EXAMPLE OF SOME OF
8 THE TYPES OF MATERIAL, WHAT TYPES OF PUBLICATIONS IN WHICH YOU'VE SEEN
9 THIS.

10 A FROM -- I DON'T REMEMBER THE TITLE OF IT, BUT WE GET THE NATIONAL
11 INTELLIGENCE CENTER SENDS US INFORMATION ON DIFFERENT THINGS, AND I
12 THINK THAT'S WHERE I'VE SEEN IT BEFORE.

13 Q DO YOU KNOW WHICH AGENCY THAT'S PUBLISHED BY OR DO YOU KNOW
14 WHERE THAT'S COMIN' FROM? ORIGINATES?

15 A I BELIEVE IT'S FEDERAL ENTITY. I DON'T KNOW.

16 Q FROM THE FEDERAL GOVERNMENT?

17 A YES, SIR.

18 Q OKAY. DO YOU KNOW HOW LONG THAT THIS TESTING METHOD HAS BEEN
19 UTILIZED?

20 A I DON'T REMEMBER THE DATES. I CAN LOOK THROUGH MY NOTES AND
21 FIND THE DATES, BUT IT'S BEEN A LONG TIME.

22 Q DO YOU KNOW WHETHER OR NOT THESE TEST HAVE BEEN ACCEPTED IN
23 THE COURTS OF THIS COUNTRY ACROSS THE LAND? DO YOU KNOW IF THESE
24 TESTS HAVE BEEN ACCEPTED FOR A LONG PERIOD OF TIME?

25 A YES, SIR.

1 MR. SUSSMAN: OBJECTION.

2 THE COURT: HOLD ON.

3 MR. HAWKE: HE WOULD HAVE NO BASIS FOR THAT KNOWLEDGE, JUDGE,
4 UNLESS -- UNLESS SOME FOUNDATION IS LAID TO SHOW THAT HE HAS SOME BASIS
5 FOR THAT KNOWLEDGE. NO FOUNDATION.

6 MR. SUSSMAN: WE JOIN IN THAT.

7 THE COURT: WELL, HE CAN ANSWER THE QUESTION. THEN HE CAN SAY
8 THE BASIS OF HIS KNOWLEDGE.

9 Q WHAT IS THE BASIS OF YOUR KNOWLEDGE OF THAT?

10 A THAT THAT'S THE ONLY WAY THAT I KNOW THAT MARIJUANA HAS BEEN
11 TESTED IN THE STATE OF SOUTH CAROLINA AND BROUGHT TO COURT. I DON'T
12 KNOW OF ANOTHER WAY.

13 Q HAVE YOU BEEN PRESENT IN OTHER TRIALS WHEN THESE TEST METHODS
14 WERE DISCUSSED IN THE COURTS OF THE STATE OF SOUTH CAROLINA?

15 A NO, SIR.

16 Q WHAT'S THE ACTIVE INGREDIENT IN MARIJUANA?

17 A TETRAHYDRACANNABINAUGH (PHONETIC).

18 Q LET ME ASK YOU THIS: HOW MANY TESTS AFTER YOU TESTED THE 100
19 SAMPLES AND GOT POSITIVE, HOW MANY OTHER TIMES HAVE YOU TESTED
20 MARIJUANA? USING THESE MICROSCOPIC AND DUCANOID LEVINE TESTS?

21 MR. SUSMAN: OBJECTION, YOUR HONOR. THAT'S A COMPOUND QUESTION.
22 THOSE ARE TWO DIFFERENT TESTS. SO HE'S ASKING HOW MANY TIMES HAS HE
23 USED THESE TWO TESTS. I THINK HE NEEDS TO ASK HOW MANY TIMES HE'S USED
24 ONE AND HOW MANY TIMES HE'S USED THE OTHER.

25 A I---

CHRIS WASH - DIRECT EXAMINATION BY MR. MAYE

1 THE COURT: WAIT A MINUTE. WHAT WAS YOUR QUESTION?

2 Q HAVE YOU ALWAYS UTILIZED BOTH THE MICROSCOPIC AND THE
3 DUCANOID LEVINE TEST IN CARRYING OUT YOUR TEST OF MARIJUANA?

4 A YES, SIR.

5 Q IS THAT IN ACCORDANCE WITH YOUR TRAINING FROM SLED?

6 A YES, SIR.

7 Q OKAY. HOW MANY TIMES HAVE YOU TESTED USING THOSE APPROVED --
8 TESTED MARIJUANA USING THOSE APPROVED TESTING METHODS THAT YOU
9 LEARNED AT THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION?

10 A OTHER THAN THE 100 THAT I WAS CERTIFIED ON, PROBABLY 30 OR 40
11 SAMPLES.

12 Q YOU RUN THOSE IN ADDITION?

13 A YES, SIR.

14 Q WERE YOU REQUIRED TO DO MULTIPLE TESTS WITH SOME OF THOSE IN
15 CASES? OR IS THAT 30 OR 40 SAMPLES TOTAL?

16 A 30 OR 40 SAMPLES TOTAL IN ALL THE DIFFERENT CASES.

17 Q BASED ON YOUR EXPERIENCE AND TRAINING AS A LAW ENFORCEMENT
18 OFFICER YOU TESTIFIED YOU HAVE BEEN AROUND AND EXPOSED TO MARIJUANA?

19 A YES, SIR.

20 Q IN THE 400 SAMPLES THAT YOU TESTED IN THIS CASE ACCORDING TO THE
21 APPROVED TESTING METHODS THAT YOU LEARNED AT SLED, WAS EACH OF THE
22 PACKETS, SAMPLES THAT YOU PULLED, DID EACH OF 'EM CONTAIN MARIJUANA?
23 DID YOU GET 100 PERCENT?

24 A YES, I DID.

25 Q DID YOU WEIGH EACH ONE OF THE PACKAGES IN THIS CASE?

CHRIS WASH - DIRECT EXAMINATION BY MR. MAYE

1 A YES, I DID.

2 Q OKAY. DID YOU GENERATE A WRITTEN REPORT OF THE WEIGHT OF THESE
3 PACKAGES?

4 A YES, I DID.

5 Q OKAY. DID YOU BRING THAT WITH YOU HERE TODAY?

6 A YES, SIR.

7 Q WHAT WAS THE LIGHTEST OF ANY OF THE PACKAGES THAT YOU WEIGHED?

8 A ONE POUND 11 OUNCES.

9 Q IF YOU TOOK 20 OF THOSE PACKAGES THAT WEIGHED ONE POUND 11
10 OUNCES, I KNOW THAT THAT WAS THE LIGHTEST, THAT WOULD BE THE MOST
11 CONSERVATIVE METHOD, ANY OF THE 20, WHAT IS A MINIMUM WEIGHT ASSUMING
12 THAT EACH OF THE 20 WAS AT THAT LIGHTEST WEIGHT.

13 A I DON'T KNOW. I WOULD HAVE TO FIGURE THAT UP.

14 Q HAVE YOU COMPUTED THAT OTHERWISE?

15 A I'VE COMPUTED IT AS THE LIGHTEST 20 OUT OF THE 400.

16 Q THE LIGHTEST 20 OUT OF 400?

17 A THE LIGHTEST 20 OUT OF THE 400.

18 Q DO YOU HAVE THAT FIGURE WITH YOU?

19 A YES, I DO.

20 Q WHAT IS THAT?

21 A 36 POUNDS 8 OUNCES.

22 Q 36 POUNDS 8 OUNCES.

23 A YES, SIR.

24 Q WHAT WAS THE TOTAL WEIGHT OF MARIJUANA OF ALL THE COMBINED
25 WEIGHT OF ALL OF 'EM THAT YOU TESTED?

CHRIS WASH - DIRECT EXAMINATION BY MR. MAYE

1 A 900 AND 5 POUNDS.

2 Q 900 AND 5 POUNDS. HOW DID YOU OBTAIN A WEIGHT ON EACH OF THESE
3 SAMPLES?

4 A I HAD TO WEIGH THE SAMPLES. I WEIGHED ALL THE SAMPLES THE WAY
5 THEY WERE PACKAGED NOT INCLUDING THE OUTER -- I'M TRYIN' TO THINK OF
6 WHAT IT'S CALLED. THE OUTER FREEZE DRIED BAG THAT IT WAS IN. THEY -- JUST
7 THE BUNDLE ITSELF WAS TAKEN OUT OF THE BAG.

8 Q YES.

9 A THAT WAS WRAPPED INTO THE BUNDLE. IT WAS WEIGHED -- ALL THE
10 SAMPLES WERE WEIGHED. THE PACKAGE WAS REMOVED FROM ONE OF THE
11 SAMPLES. THE OUTER WRAPPINGS, THE TAPE AND THE CELLOPHANE AND THE
12 WHATEVER KINDA GREASE THAT WAS IN BETWEEN THE TWO---

13 Q UH-HUH.

14 A ---WAS TAKEN OFF AND WEIGHED SEPARATELY. AND THEN SUBTRACTED --
15 WELL, IT WAS MULTIPLIED BY 400 TO GET A WEIGHT, AND THEN SUBTRACTED
16 FROM THE TOTAL WEIGHT OF ALL THE MARIJUANA WITH THE PACKAGES.

17 Q WHAT WAS THE TOTAL WEIGHT THAT YOU CAME UP WITH OF THE 400
18 PACKAGES OF THE MARIJUANA? TOTAL WEIGHT OF THE MARIJUANA.

19 A IT WAS 905 POUNDS.

20 Q 905 POUNDS. IS THAT EXACTLY OR SOME PERCENTAGE? DID IT COME OUT
21 TO 905 EVEN?

22 A 905.89.

23 Q WOULD YOU DOUBLE CHECK YOUR REPORT THERE.

24 A I DON'T HAVE A TOTAL WEIGHT GENERATED ON THIS REPORT.

25 Q BUT YOU KNOW THAT THE TOTAL WEIGHT IS 905 POUNDS.

CHRIS WASH - DIRECT EXAMINATION BY MR. MAYE

1 A CORRECT.

2 Q BUT YOU HAVE -- DID YOU NUMBER EACH ONE OF THE BAGS AS YOU TOOK
3 THEM OUT AND ASSIGN AN INDIVIDUAL NUMBER?

4 A YES, I DID.

5 Q DID YOU PULL A SAMPLE OUT OF EACH ONE OF THOSE AT THAT TIME?

6 A YES, I DID.

7 Q AND PERFORMED BOTH A MICROSCOPIC AND CHEMICAL TEST ON EACH
8 ONE OF 'EM?

9 A YES, I DID.

10 Q AND YOU GOT A POSITIVE RESULT ON EACH SAMPLE FROM EACH ONE.

11 A YES, I DID.

12 Q BASED ON YOUR EXPERIENCE AND TRAINING AS A LAW ENFORCEMENT
13 OFFICER HAVE YOU BEEN AROUND MARIJUANA?

14 A YES, SIR.

15 Q WERE YOU ABLE TO LOOK AND VIEW THE SAMPLES THAT YOU PULLED
16 OUT, THE MATERIAL THAT YOU PULLED OUT OF EACH OF THE BAGS?

17 A YES, I WAS.

18 Q BASED ON YOUR EXPERIENCE AND TRAINING AS A LAW ENFORCEMENT
19 OFFICER WITHOUT USING A MICROSCOPIC OR CHEMICAL TEST, WHAT WAS THE
20 SUBSTANCE IN WHICH YOU TESTED?

21 A IT LOOKED AND SMELT TO BE MARIJUANA.

22 Q DID YOU BELIEVE IT TO BE, IN FACT, MARIJUANA BASED ON YOUR
23 EXPERIENCE AND TRAINING?

24 A YES, SIR.

25 Q NOTWITHSTANDING THE CHEMICAL---

CHRIS WASH - DIRECT EXAMINATION BY MR. MAYE

1 A RIGHT.

2 Q ---TEST.

3 A CORRECT.

4 MR. MAYE: YOUR HONOR, I'D OFFER HIM UP TO BE CROSS EXAMINED AS A
5 -- TO HIS QUALIFICATIONS AS AN EXPERT IN THE AREA OF MARIJUANA ANALYSIS.
6 WE HAVE MARKED HIS CERTIFICATE IN THIS CASE, YOUR HONOR, AS A COURT'S --
7 IS THAT CORRECT?

8 THE COURT: WE'RE GONNA MARK IT AFTER WE MAKE A COPY, BUT--

9 MR. MAYE: YES, SIR.

10 THE COURT: --IT'S COURT'S--

11 MR. MAYE: AND HIS TESTING MATERIALS -- I MEAN HIS COURSE
12 MATERIALS ARE IN EVIDENCE IN THIS CASE, YOUR HONOR.

13 THE COURT: --COURT'S EXHIBIT.

14 MR. MAYE: YES, SIR. COURT'S EXHIBIT, YES, SIR, YOUR HONOR.

15 THE COURT: ALRIGHT.

16 MR. MAYE: I OFFER HIM TO THE DEFENSE TO CROSS EXAMINE HIM AS TO
17 HIS QUALIFICATIONS AS AN EXPERT IN THE AREA OF MARIJUANA ANALYSIS.

18 THE COURT: VOIR DIRE.

19 A COULD I GET SOME WATER REAL QUICK?

20 CROSS-EXAMINATION

21 BY MR. HAWKE

22 MR. HAWKE: COULD WE SEE THE COURSE MATERIAL?

23 THE COURT: YOU NEED A FEW MINUTES TO LOOK AT IT?

24 MR. PUETZ: YES, SIR.

25 THE COURT: ALRIGHT. MR. WASH, DURING THE BREAK YOU CAN'T

CHRIS WASH - CROSS-EXAMINATION BY MR. HAWKE

1 DISCUSS YOUR TESTIMONY WITH ANYBODY.

2 A YES, SIR.

3 THE COURT: WE'RE AT EASE. (THERE WAS A BRIEF RECESS.)

4 Q OFFICER, FIRST OF ALL WHEN YOU WENT TO -- FIRST, HOW FAR IN SCHOOL
5 DID YOU GO?

6 A 11TH GRADE.

7 Q OKAY. WERE YOU ABLE TO -- DID YOU EVER IN YOUR HIGH SCHOOL
8 TRAINING EVER TAKE ANY CHEMISTRY AT ALL?

9 A YES, I DID.

10 Q OKAY. AND IS IT A REGULAR HIGH SCHOOL CHEMISTRY COURSE. IS THAT
11 RIGHT?

12 A YES.

13 Q I MEAN A CHEMISTRY COURSE. NOT SOMETHING YOU LEARNED IN
14 PHYSICAL SCIENCE.

15 A RIGHT.

16 Q BUT A REGULAR LIKE A CHEMISTRY TEST -- COURSE. OKAY.

17 A RIGHT.

18 Q NOW HAVE YOU HAD ANY OTHER TRAINING IN CHEMISTRY?

19 A NO.

20 Q ALRIGHT. HAVE YOU EVER RECEIVED ANY TRAINING AS TO -- IN
21 LABORATORY PROCEDURES?

22 A NOT OTHER THAN THIS MARIJUANA ANALYSIS.

23 Q OKAY. HAVE YOU EVER HAD ANY OTHER TRAINING AT ALL IN ANY KIND
24 OF CHEMICAL TESTING, LABORATORY PROCEDURES OTHER THAN THIS 2-DAY
25 COURSE YOU TOOK WITH SLED??

CHRIS WASH - CROSS-EXAMINATION BY MR. HAWKE

1 A NO, SIR.

2 Q OKAY. AND NOW THE COURSE THAT YOU TOOK I THINK YOU SAID WAS A 2-
3 DAY COURSE. EXACTLY HOW LONG DID YOU GO EACH DAY?

4 A I DON'T REMEMBER THE TIMES. I MEAN IT WAS ALL DAY ONE DAY AND UP
5 INTO PART OF THE AFTERNOON.

6 Q OKAY.

7 A TILL WE COMPLETED THE TEST AND WERE 100 PERCENT ON THAT.

8 Q WOULD IT BE LIKE A -- AND WHEN YOU SAY ALL DAY ONE DAY ARE YOU
9 TALKIN' ABOUT 9 TO 5?

10 A YES.

11 Q OKAY. DID Y'ALL HAVE A BREAK FOR LUNCH?

12 A YES.

13 Q OKAY. DID YOU HAVE OTHER BREAKS DURIN' THE DAY?

14 A I ASSUME WE DONE THAT. I DON'T REMEMBER.

15 Q AND THE NEXT DAY DO YOU REMEMBER WHAT HOURS YOU WENT, FROM
16 WHEN TO WHEN?

17 A NO, I DON'T.

18 Q OKAY. ALRIGHT. NOW ONCE YOU TOOK YOU TOOK THE COURSE THEN
19 THEY GAVE YOU YOUR CERTIFICATE. AM I CORRECT? DID YOU HAVE A TEST AT
20 THE END?

21 A YES.

22 Q AND WHAT SORT OF TESTING WAS IT?

23 A A WRITTEN TEST.

24 Q A WRITTEN TEST?

25 A IN ADDITION TO THE SAMPLE TEST.

CHRIS WASH - CROSS-EXAMINATION BY MR. HAWKE

- 1 Q OKAY. AND THE SAMPLE TEST WOULD'VE BEEN YOU DOIN' WHAT?
- 2 A TESTING 100 SAMPLES.
- 3 Q OKAY. AND---
- 4 A BOTH MICROSCOPICALLY AND CHEMICALLY.
- 5 Q OKAY. AND WERE ALL THE SAMPLES MARIJUANA?
- 6 A NO.
- 7 Q OKAY. WHAT WERE THEY?
- 8 A I DON'T KNOW. WASN'T MARIJUANA.
- 9 Q OKAY. SOME OF 'EM MARIJUANA AND SOME OF 'EM NOT?
- 10 A CORRECT.
- 11 Q OKAY. AND THEN YOU HAD TO FIGURE OUT WHICH ONES WERE AND
- 12 WHICH ONES WEREN'T?
- 13 A CORRECT.
- 14 Q OKAY. NOW DO YOU HAVE -- HAS SLED TO YOUR KNOWLEDGE EVER
- 15 AUTHORIZED THE ESTABLISHMENT OF A LAB IN EDGEFIELD COUNTY SHERIFF'S
- 16 DEPARTMENT?
- 17 A NO, SIR.
- 18 Q OKAY. DO Y'ALL HAVE A LAB IN THE EDGEFIELD COUNTY SHERIFF'S
- 19 DEPARTMENT?
- 20 A NOT IN THE SHERIFF'S DEPARTMENT.
- 21 Q OKAY. IS THERE ANY LAB THAT YOU KNOW OF IN THE CONTROL OF THE
- 22 EDGEFIELD COUNTY SHERIFF'S DEPARTMENT?
- 23 A YES, SIR.
- 24 Q ALRIGHT. WHERE IS IT AT?
- 25 A AT SALUDA AIRPORT.

CHRIS WASH - CROSS-EXAMINATION BY MR. HAWKE

- 1 Q OKAY. ALRIGHT. IS THAT WHERE YOU DID YOUR TESTING?
- 2 A NO, SIR.
- 3 Q OKAY. DID -- THE SUPPLIES THAT YOU USED FOR YOUR TESTING---
- 4 A YES.
- 5 Q ---WHERE DID YOU GET THOSE?
- 6 A FROM THE SALUDA AIRPORT.
- 7 Q OKAY. AND WHEN YOU WENT TO TEST THIS PARTICULAR -- THESE
- 8 PARTICULAR SAMPLES, WHAT SUPPLIES DID YOU GO GET?
- 9 A I WENT AND GOT A MICROSCOPE, A TEST TUBE.
- 10 Q HOW MANY TEST TUBES?
- 11 A I THINK IT WAS TWO FIFTY IN EACH BOX.
- 12 Q THAT'S---
- 13 A 500 AND SOMETHIN'---
- 14 Q RIGHT.
- 15 A ---I DON'T KNOW HOW MANY IT WAS.
- 16 Q OKAY.
- 17 A THE -- ALL THE CHEMICALS, THE REAGENT ALCOHOL, THE VANILLIN, THE
- 18 ACETALDEHYDE, THE CHLOROFORM, THE CONCENTRATED HYDROCHLORIC ACID.
- 19 Q OKAY. ANYTHING ELSE?
- 20 A SCALE. THE RUBBER GLOVES, THE TEST TUBE HOLDER, THE WEIGHTS, THE
- 21 CALIBRATION WEIGHTS. THE -- I DON'T REMEMBER---
- 22 Q OKAY.
- 23 A ---WHAT ELSE I HAD.
- 24 Q ONCE YOU GET ALL THAT STUFF, WHAT'D YOU DO WITH IT? YOU THROW IT
- 25 IN YOUR CAR AND HEAD TO WHEREVER THE MARIJUANA IS? IS THAT RIGHT?

CHRIS WASH - CROSS-EXAMINATION BY MR. HAWKE

1 A UH-HUH.

2 Q AND WHEN YOU WENT TO DO THE TESTING ITSELF, WHERE DID YOU GO TO
3 DO THE TESTING?

4 A IN THE EVIDENCE ROOM AT THE SHERIFF'S OFFICE.

5 Q OKAY. AND IN THAT EVIDENCE ROOM IS THAT WHERE ALL EVIDENCE IS
6 STORED? ALL FUNGIBLE EVIDENCE? OR IS THIS NON-FUNGIBLE EVIDENCE IN
7 THAT ROOM?

8 A IT'S ALL EVIDENCE OTHER THAN THE MARIJUANA THAT WAS IN THE
9 VAULT, YES, SIR.

10 Q OKAY. ALRIGHT. SO YOU'RE BASICALLY JUST OUTSIDE THE VAULT IN THE
11 EVIDENCE ROOM. RIGHT?

12 A CORRECT.

13 Q AND WHAT ARE YOU WORKIN' OFF OF? WHAT DO YOU DO TO TEST THAT?
14 WHERE DO YOU SET UP AT?

15 A DESK.

16 Q ON THE DESK?

17 A YES.

18 Q OKAY. AND IS THIS THE ONLY DESK IN THE EVIDENCE ROOM?

19 A YES.

20 Q WHAT'S THE DESK USED FOR OTHER THAN WHAT YOU WERE USIN' IT FOR
21 THAT DAY? WHAT'S IT NORMALLY USED FOR?

22 A WRITING.

23 Q OKAY. SO YOU USE IT FOR LOGGIN' IN EVIDENCE?

24 A YES.

25 Q EVIDENCE THAT'S BEEN RECEIVED ON DIFFERENT CASES AND THINGS?

CHRIS WASH - CROSS-EXAMINATION BY MR. HAWKE

1 A YES.

2 Q WOULD IT INCLUDE EVIDENCE THAT'S BEEN RECEIVED ON DRUG CASES AS
3 WELL AS OTHER TYPES OF CASES?

4 A NO, BECAUSE OTHER DRUG EVIDENCE IS TAKEN BY INVESTIGATOR YOUNG
5 AND HOUSED SOMEWHERE ELSE.

6 Q WHY WAS THIS MARIJUANA HOUSED IN THE VAULT VERSUS WHERE
7 INVESTIGATOR YOUNG HOUSES ALL THE OTHER DRUG EVIDENCE?

8 A 'CAUSE IT WOULDN'T FIT IN THE VAULT WHERE HE HOUSES ALL THE
9 OTHER.

10 Q OKAY.

11 THE COURT: SAY THAT AGAIN.

12 A SIR?

13 THE COURT: SAY THAT AGAIN.

14 A IT WON'T FIT IN THE VAULT THAT HE HAS TO STORE THE OTHER EVIDENCE.

15 Q TO YOUR KNOWLEDGE HAS THERE BEEN ANY OTHER EVIDENCE EVER
16 BROUGHT INTO THAT EVIDENCE ROOM? EXCUSE ME. HAS THERE BEEN ANY
17 OTHER MARIJUANA BROUGHT INTO THAT EVIDENCE ROOM?

18 A PROBABLY, YES.

19 Q OKAY. AND BASICALLY THAT'S WHERE SOMEBODY SITS THERE AND THEY
20 SAY WHAT HAVE I GOT HERE AND THEY WRITE OUT THE LOGS ABOUT WHAT YOU
21 HAVE IN EVIDENCE. IS THAT RIGHT?

22 A RIGHT.

23 Q IS IT USED FOR ANYTHING ELSE?

24 A NO.

25 Q OKAY. HOW BIG IS THE DESK?

CHRIS WASH - CROSS-EXAMINATION BY MR. HAWKE

1 A ABOUT AS WIDE AS THAT TABLE RIGHT THERE.

2 Q OKAY. AND FOR PURPOSES OF THE RECORD ABOUT WHAT'S THE WIDTH
3 AND LENGTH OF THAT TABLE?

4 A 30 FEET BY 2 AND A HALF FEET.

5 Q OKAY.

6 A IT'S PROBABLY A LITTLE BIT BIGGER THAN THAT TABLE.

7 Q ALRIGHT. WHAT -- WHAT, IF ANYTHING, PROTECTS THAT DESK FROM
8 CONTAMINATION, FROM THINGS AROUND IT? WHAT IS DONE TO MAINTAIN THE
9 STERILITY OF THE DESK THAT YOU'RE WORKIN' ON?

10 A NOTHIN' ON THE DESK ITSELF.

11 Q IS THE DESK IN ANY WAY SEPARATED AND PROTECTED FROM ANY OTHER
12 EVIDENCE IN THE ROOM OR THINGS AROUND IT?

13 A I DON'T UNDERSTAND WHAT YOU'RE ASKIN'.

14 Q OKAY. IS THERE ANY KINDA LABORATORY PROTOCOL THAT YOU DO IN
15 REFERENCE TO THE DESK IN ORDER TO MAKE SURE THAT NOTHING ELSE CAN GET
16 ON THIS DESK OR INTERFERE WITH YOUR TESTING?

17 A NO, SIR.

18 Q OKAY. NOW HAVE YOU OR DO YOU SUBSCRIBE TO ANY SCIENTIFIC
19 PUBLICATIONS AT ALL?

20 A NO, SIR.

21 Q DO YOU READ SCIENTIFIC PUBLICATIONS AT ALL?

22 A NO, SIR.

23 Q HAVE YOU READ ANY SCIENTIFIC PUBLICATIONS THAT HAVE DEALT WITH
24 THE TESTING? I'M TALKIN' ABOUT SOMETHING RECOGNIZED IN THE SCIENTIFIC
25 COMMUNITY?

CHRIS WASH - CROSS-EXAMINATION BY MR. HAWKE

1 A YEAH. WELL, I DON'T KNOW IF THE SCIENTIFIC COMMUNITY GETS THE
2 SAME BULLETINS THAT I'M REFERRIN' TO EARLIER.

3 Q ALL THE BULLETINS THAT YOU'VE SEEN IN REGARDS TO THESE TESTS
4 WERE LAW ENFORCEMENT TYPE BULLETINS. AM I CORRECT?

5 A YES, SIR.

6 Q THEY'RE NOT MADE FOR THE SCIENTIFIC COMMUNITY; THEY'RE MADE FOR
7 LAW ENFORCEMENT OFFICERS. IS THAT RIGHT?

8 A YES, SIR.

9 Q AND YOU HAVE NOT SEEN ANY SCIENTIFIC PUBLICATIONS OR
10 PUBLICATIONS WRITTEN FOR THE SCIENTIFIC COMMUNITY WHICH HAVE
11 DISCUSSED THIS PARTICULAR TEST OR ITS RELIABILITY.

12 A NO.

13 Q OKAY. AND I DON'T GUESS YOU HAVE A LOT OF CONTACT WITH CHEMISTS
14 AND PEOPLE IN THE SCIENTIFIC COMMUNITY, DO YOU?

15 A NO, SIR.

16 Q AND YOU HAVE NOT LEARNED ANYTHING FROM THEM ABOUT THIS
17 PARTICULAR TEST AND ITS RELIABILITY.

18 A NO, SIR.

19 Q OKAY. I THINK YOU SAID ONE OF THE THINGS YOU DO WHEN YOU TOOK
20 THIS PARTICULAR MARIJUANA AND WEIGHED IT WAS YOU TOOK IT OUT OF THE --
21 TOOK ONE OF 'EM OUT OF THE PACKAGING.

22 A YES.

23 Q YOU WEIGHED THE PACKAGING SEPARATELY.

24 A YES.

25 Q AND YOU TOOK A SAMPLE FROM IT?

CHRIS WASH - CROSS-EXAMINATION BY MR. HAWKE

1 A YES.

2 Q ALRIGHT. AND THEN OTHER THAN THAT YOU WEIGHED THE PACKAGE AS
3 BEST YOU COULD TELL AS THE NET WEIGHT OF MARIJUANA WITHOUT THE OUTER
4 WRAPPING. IS THAT RIGHT?

5 A CORRECT.

6 Q OKAY. WHEN YOU DID THE SUBSEQUENT SAMPLES ALL YOU DID WAS
7 TAKE -- IS WEIGH THE WHOLE PACKAGE AND THEN SUBTRACT WHAT THE
8 WRAPPING OF THE ONE SAMPLE THAT YOU SEPARATED THE WRAPPING FROM AND
9 TESTED IT. IS THAT RIGHT?

10 A THAT'S RIGHT.

11 Q OKAY. DID YOU EVER REMOVE ANY STALKS FROM THE MARIJUANA?

12 A NO.

13 Q DID YOU EVER REMOVE ANY STEMS FROM THE MARIJUANA?

14 A NO, SIR.

15 Q DID YOU EVER REMOVE ANY ROOTS FROM THE MARIJUANA?

16 A NO.

17 Q AREN'T YOU TAUGHT IN YOUR MANUAL THAT STALKS. STEMS AND ROOTS
18 DO NOT CONTAIN THC AND THEREFORE SHOULD BE REMOVED BEFORE WEIGHING
19 ANY MARIJUANA?

20 A YES.

21 Q OKAY. AND NONE OF THAT WAS DONE BEFORE WEIGHING ANY OF THESE
22 PACKAGES. AM I CORRECT?

23 A NO, SIR.

24 Q OKAY. NOW WHAT, IF ANYTHING, DO YOU DO AS FAR AS PROTOCOL IN
25 ORDER TO PREVENT CONTAMINATION OF A -- OF YOUR REAGENTS? EXCUSE ME.

CHRIS WASH - CROSS-EXAMINATION BY MR. HAWKE

1 LET ME GO BACK AND RESTATE THAT. WHAT DO YOU DO IN REFERENCE TO KEEP
2 THE AREA IN WHICH YOU'RE WORKING IN FROM RECEIVING CROSS
3 CONTAMINATION IN -- IN THIS REGARD? IN OTHER WORDS, YOU'VE HANDLED THE
4 MARIJUANA SAMPLE; YOU'VE REMOVED THAT ONE; HOW DO YOU KEEP THAT
5 LAST SAMPLE THAT YOU TESTED FROM HAVING AN EFFECT ON YOUR NEXT
6 SAMPLE THAT YOU TEST?

7 A IT'S -- IT'S NOT TOUCHIN' THE TABLE ITSELF. I MEAN THE WRAPPIN' IS
8 TOUCHIN' THE TABLE.

9 Q OKAY. ALRIGHT. AND NOW DO YOU NOT HAVE TO HANDLE THE
10 MARIJUANA WITH YOUR HANDS?

11 A UH-HUH.

12 Q ALRIGHT. AND THEN ONCE -- ONCE YOU TAKE A SAMPLE OF MARIJUANA
13 AND YOU TEST IT, YOU HANDLE IT WITH YOUR RUBBER GLOVES -- YOU PUT ON
14 RUBBER GLOVES. IS THAT RIGHT?

15 A UH-HUH.

16 Q ALRIGHT. THEN ONCE YOU'VE DONE THAT, HOW DO YOU MAKE SURE THAT
17 THE MARIJUANA THAT IS ON YOUR HANDS DOES NOT AFFECT THE NEXT SAMPLE?

18 A I WIPED IT OFF.

19 Q JUST WIPED IT OFF THE BEST YOU COULD?

20 A UH-HUH.

21 Q AND WHAT DID YOU WIPE IT OFF WITH?

22 A A CLOTH RAG.

23 Q OKAY. AND DID YOU -- DID YOU USE THE SAME CLOTH RAG?

24 A YES.

25 Q ALRIGHT. THE WHOLE TIME?

CHRIS WASH - CROSS-EXAMINATION BY MR. HAWKE

1 A I ASSUME SO, YES.

2 Q DO YOU KNOW WHAT YOU HAVE TO DO IN ORDER TO EXCLUDE SAGE AND
3 THYME AS BEING ONE OF THE ELEMENTS THAT YOU HAVE FOUND? WHAT
4 SPECIFIC TEST DO YOU DO FOR SAGE AND WHAT SPECIFIC TEST DO YOU DO FOR
5 THYME?

6 A NO, SIR.

7 Q OKAY.

8 A THE MICROSCOPIC TEST.

9 Q OKAY. ALRIGHT. IN THE MICROSCOPIC TEST YOU ARE LOOKING FOR 2
10 DIFFERENT TYPES OF HAIR. AM I CORRECT?

11 A IT'S ACTUALLY 3.

12 Q OKAY. AND ONE OF 'EM IS UNICELLULAR HAIRS?

13 A YES.

14 Q AND THE OTHER ONE IS MULTICELLULAR HAIRS.

15 A YES.

16 Q NOW UNICELLULAR MEANS ONE HAIR. RIGHT?

17 A UH-HUH.

18 Q AND MULTICELLULAR MEANS MULTI CELLS.

19 A RIGHT.

20 Q HOW DO YOU DETERMINE THAT THESE UNICELLULAR HAIRS OR THE
21 UNICELLULAR HAIR THAT YOU'RE LOOKIN' FOR OR THESE MULTICELLULAR HAIRS
22 ARE THE HAIRS THAT YOU'RE LOOKIN' FOR?

23 A BECAUSE OF THE DESCRIPTION IN OUR TRAININ'. WE SAW WHAT
24 MARIJUANA LOOKED LIKE; WE SAW WHAT EACH CELL LOOKED LIKE; WHICH ONE
25 WAS SUPPOSED TO LOOK THIS WAY AND WHICH ONE WAS SUPPOSED TO LOOK

CHRIS WASH - CROSS-EXAMINATION BY MR. HAWKE

1 ANOTHER WAY.

2 Q OKAY. IF ONE MEANS UNICELLULAR WITH ONE CELL AND THE OTHER ONE
3 MEANS MULTICELLULAR, WHAT DO YOU DO ON THE CELLULAR LEVEL TO
4 DETERMINE THAT YOU HAVE MARIJUANA?

5 A I DON'T KNOW.

6 Q OKAY. WHAT DO YOU -- WHAT EXACTLY DO YOU PUT TOGETHER TO MAKE
7 OUT THE -- I'M GONNA LET YOU SAY THIS. I'M SORRY -- I JUST DON'T WANT TO
8 MISPRONOUNCE THE NAME SO WE'RE NOT CONFUSED. THERE IT IS. WHAT DO YOU
9 HAVE TO PUT TOGETHER TO CREATE THE DUCANOID REAGENT? WHAT THINGS DO
10 YOU HAVE TO MIX TOGETHER?

11 A REAGENT ALCOHOL.

12 Q OKAY.

13 A ACETALDEHYDE.

14 Q YOU SAID REAGENT ALCOHOL?

15 A YES, SIR.

16 Q ALRIGHT. WHAT ELSE?

17 A ACETALDEHYDE. AND VANILLIN.

18 Q AND VANILLIN?

19 A YES.

20 Q OKAY. WHAT IS REAGENT ALCOHOL?

21 A IT'S A TYPE OF ALCOHOL THAT'S USED IN LABORATORIES FOR THESE
22 PURPOSES.

23 Q DO YOU KNOW WHICH TYPE OF ALCOHOL WE'RE TALKIN' ABOUT?

24 A NO, I DON'T RECALL.

25 Q OKAY. ETHEL ALCOHOL SOUND FAMILIAR?

CHRIS WASH - CROSS-EXAMINATION BY MR. HAWKE

1 A UH-HUH.

2 Q OKAY. IS THAT -- IS THAT OTHERWISE KNOWN AS SOMETHING ELSE? IS IT
3 A COMMON TERM? HAVE YOU EVER HEARD IT REFERRED TO AS GRAIN ALCOHOL?

4 A YES, SIR.

5 Q DO YOU KNOW---

6 A YOU CAN'T USE GRAIN ALCOHOL.

7 Q WHAT?

8 A YOU CAN'T USE GRAIN ALCOHOL.

9 Q WHY CAN'T YOU?

10 A BECAUSE THAT'S THE WAY I WAS TAUGHT. YOU NOT SUPPOSED TO USE
11 GRAIN ALCOHOL.

12 Q YOU KNOW IN YOUR MANUAL IT REFERS TO 60 -- IT REFERS TO ETHEL
13 ALCOHOL AS "(GRAIN ALCOHOL)"?

14 A UH-HUH.

15 Q OKAY. BUT YOU'RE NOT SUPPOSED TO USE GRAIN ALCOHOL?

16 A THAT'S WHAT I WAS TOLD, YES, SIR.

17 Q OKAY. HOW MANY GRAMS OF VANILLIN DO YOU MIX IN?

18 A I HAVE NO IDEA.

19 Q HOW MANY MILLILITERS OF ETHEL ALCOHOL DO YOU MIX IN?

20 A I DON'T KNOW.

21 Q HOW MANY DROPS OF ACETALDEHYDE DO YOU USE?

22 A I DON'T KNOW. I REFER TO THAT BEFORE I MIX IT.

23 Q OKAY. AND HOW DO YOU MIX IT? WHAT DO YOU MIX FIRST AND WHAT DO
24 YOU MIX NEXT?

25 A YOU MIX THE REAGENT ALCOHOL AND THEN THE ACETALDEHYDE.

CHRIS WASH - CROSS-EXAMINATION BY MR. HAWKE

1 Q AND HOW ARE YOU SUPPOSED TO ADD THE ACETALDEHYDE AS YOU MIX IT
2 UP?

3 A I DON'T KNOW.

4 MR. SUSSMAN: YOUR HONOR?

5 THE COURT: YES, SIR?

6 MR. SUSSMAN: WE ARE HAVING TROUBLE HEARING THE WITNESS.

7 THE COURT: YOU NEED TO SPEAK UP.

8 A YES, SIR.

9 Q WHEN THIS PARTICULAR REAGENT IS USED, WHAT CAUSES THE PURPLE
10 COLOR?

11 A THC.

12 Q ALRIGHT. AND WHAT DOES IT REACT WITH THAT CAUSES IT TO LOOK
13 PURPLE?

14 A IT REACTS WITH THE REAGENT.

15 Q OKAY. AND YOU KNOW WHAT - WHAT -- YOU KNOW ANYTHING ABOUT
16 THAT CHEMICAL REACTION THAT CAUSES THAT PURPLE COLOR?

17 A NO, SIR.

18 Q OKAY. THEN EVENTUALLY I THINK YOU USED SOME CONCENTRATED
19 HYDROCHLORIC ACID? IS THAT RIGHT?

20 A THAT'S RIGHT.

21 Q YOU KNOW WHAT PERCENTAGE HYDROCHLORIC ACID THAT IS?

22 A NO.

23 Q DO YOU KNOW WHETHER 10 PERCENT WOULD BE SUFFICIENT OR 80
24 PERCENT OR ANY IDEA CONCENTRATION?

25 A YOU MEAN FOR EACH SAMPLE OR FOR EACH---

CHRIS WASH - CROSS-EXAMINATION BY MR. HAWKE

1 Q IN OTHER WORDS, YOU HAVE TO ADD EVENTUALLY INTO YOUR TESTING
2 CONCENTRATED HYDROCHLORIC ACID. AM I RIGHT?

3 A RIGHT.

4 Q AND WHAT I'M ASKING YOU IS WHAT -- YOU KNOW -- I MEAN ACID --
5 HYDROCHLORIC ACID COMES IN PERCENTAGES OF CONCENTRATION. AM I
6 CORRECT?

7 A UH-HUH.

8 Q ALRIGHT. SOMETIMES IT COULD BE 10 PERCENT HYDROCHLORIC ACID. IT
9 COULD BE 80 PERCENT HYDROCHLORIC ACID. THE HYDROCHLORIC ACID THAT
10 YOU USED WHAT PERCENT?

11 A I'M NOT FAMILIAR.

12 Q OKAY.

13 A DO YOU HAVE ANY IDEA WHAT PERCENTAGE YOU SHOULD BE USING?

14 A NO, SIR.

15 Q NOW AS YOU DO YOUR TESTING CAN YOU TELL ME EXACTLY HOW YOU
16 WENT ABOUT TESTING EACH SAMPLE AS FAR AS JUST TAKING ONE TEST, ONE TEST
17 SAMPLE THAT YOU WOULD DO THAT YOU WOULD JUST REPEAT OVER AND OVER.
18 WHAT WOULD YOU DO?

19 A I WOULD WEIGH THE SAMPLE, NUMBER THE SAMPLE, BOTH THE OUTER
20 BAG AND THE SAMPLE ITSELF THE BRICK ITSELF. I WOULD BORE INTO THE
21 SAMPLE, INTO THE MIDDLE OF THE SAMPLE. I WOULD REMOVE THE GREEN LEAFY
22 MATERIAL FROM THE SAMPLE, PLACE IT IN TIN WHERE I CAN SEE THE SAMPLE
23 UNDER THE MICROSCOPE.

24 Q OKAY. ALRIGHT. WHEN YOU SAY A TIN, WHAT DO YOU MEAN BY THAT?

25 A ANYTHING THAT COULD HOLD---

CHRIS WASH - CROSS-EXAMINATION BY MR. HAWKE

1 Q OKAY.

2 A ---THE MARIJUANA.

3 Q ALRIGHT. AND THEN YOU SET THAT UNDERNEATH THE MICROSCOPE AND
4 LOOK AT IT?

5 A YES.

6 Q AND THEN WHAT DO YOU DO?

7 A AND THEN I LOOK AT THE SAMPLE. IF ALL THE HAIRS ARE PRESENT AS A
8 POSITIVE SAMPLE THROUGH THE MICROSCOPIC TEST, I PLACE THE SAMPLE IN A
9 TEST TUBE. THEN WITH THE DUCANOIS REAGENT, I WOULD DAMPEN THE SAMPLE.
10 THEN I WOULD ADD 3 OR 4 DROPS OF THE CONCENTRATED HYDROCHLORIC ACID.
11 THEN IF THERE WAS A PURPLISH COLOR, I WOULD ADD CHLOROFORM TO THAT.

12 Q OKAY. AND WHAT WOULD YOU BE LOOKIN' FOR AT EACH STAGE?

13 A I WOULDN'T BE LOOKIN' FOR ANYTHING UNTIL I GOT TO THE
14 HYDROCHLORIC ACID.

15 Q ALRIGHT. WHEN YOU GOT TO THE HYDROCHLORIC ACID WHAT WOULD
16 YOU---

17 A PURPLISH COLOR.

18 Q PURPLISH COLOR.

19 A UH-HUH.

20 Q OKAY. AND THEN YOU WOULD ADD THE CHLOROFORM AND WHAT
21 WOULD YOU BE LOOKING FOR THEN?

22 A BE LOOKIN' FOR AN EYE OR A SEPARATION BETWEEN THE BOTTOM OF THE
23 TEST TUBE AND THE SAMPLE ITSELF.

24 Q OKAY. AND WHAT COLOR WOULD YOU BE LOOKING FOR IN REFERENCE TO
25 THE CHLOROFORM?

CHRIS WASH - CROSS-EXAMINATION BY MR. HAWKE

1 A IT'S NOT A SPECIFIC COLOR YOU'RE LOOKIN' FOR.

2 Q NOT ANY SPECIFIC COLOR AT ALL?

3 A IT'S CALLED A RED EYE BUT IT'S NOT REALLY RED.

4 Q OKAY. YOU REMEMBER YOUR TESTING MATERIAL INDICATES YOU
5 SHOULD LOOK FOR A PINK OR LIGHT PURPLE COLOR?

6 A NO.

7 Q OKAY. AND YOU WEREN'T LOOKIN' FOR A PINK OR LIGHT PURPLE COLOR
8 WHEN YOU TESTED THIS?

9 A NO.

10 Q NOW YOU PUT IT IN THE TEST TUBE. WHAT -- HOW DID YOU GO ABOUT
11 DOIN' THE NEXT SAMPLE? DID YOU USE THE SAME TEST TUBE; DID YOU USE A
12 DIFFERENT TEST TUBE OR WHAT?

13 A I USED A DIFFERENT TEST TUBE.

14 Q OKAY. NOW THE REAGENT YOU USED THAT DAY, WHERE DID IT COME
15 FROM?

16 A I MADE IT.

17 Q YOU MADE IT? AND WHEN DID YOU MAKE IT?

18 A BEFORE I BEGAN TESTING.

19 Q ALRIGHT. AND DO YOU REMEMBER IN YOUR TESTING MATERIAL THAT
20 EVEN WITH CAREFUL USE, YOUR REAGENT CAN GET CONTAMINATED?

21 A YES.

22 Q AND HOW WOULD YOU KNOW IF YOUR REAGENT IS CONTAMINATED?

23 A IT WOULD -- I BELIEVE IT WOULD TURN A COLOR. A YELLOWISH COLOR.

24 Q YOU BELIEVE WHAT WOULD HAPPEN?

25 A THE REAGENT WOULD TURN A YELLOWISH COLOR.

CHRIS WASH - CROSS-EXAMINATION BY MR. HAWKE

1 Q OKAY. AND ALRIGHT, SO THE REAGENT ITSELF WOULD TURN A
2 YELLOWISH COLOR.

3 A UH-HUH.

4 Q DO YOU KNOW ANYWHERE IN YOUR MANUAL WHERE IT SAYS THAT?

5 A I DON'T KNOW.

6 Q HOW DO YOU TEST---

7 THE COURT: YOU NEED TO SPEAK UP.

8 Q --FOR CONTAMINATION OF YOUR REAGENT?

9 A SIR?

10 Q HOW DO YOU TEST FOR CONTAMINATION OF YOUR REAGENT?

11 A THE COFFEE TEST.

12 Q OKAY. AND TELL ME WHAT HAPPENS? HOW DO YOU DO THE COFFEE TEST?

13 A THE SAME WAY YOU DO THE SAMPLE TEST BUT WITH COFFEE.

14 Q AND THAT DOES WHAT FOR YOU?

15 A IT TELLS YOU WHETHER YOUR REAGENT IS WORKIN' PROPERLY OR NOT.

16 Q OKAY. HAVE YOU EVER BEEN TAUGHT OF ANY OTHER WAY TO TEST TO
17 SEE IF YOUR REAGENT HAS BECOME CONTAMINATED?

18 A I DON'T RECALL, NO.

19 Q YOU REMEMBER YOUR MATERIAL INDICATING THAT YOU SHOULD TAKE
20 SEVERAL DROPS OF YOUR REAGENT AND PUT IT IN A SPOT CAVITY BOWL BY
21 ITSELF AND THEN ADD SEVERAL DROPS OF HYDROCHLORIC ACID, AND THEN IF IT
22 TURNS PURPLE, THEN YOU'VE GOT CONTAMINATED REAGENT?

23 A I DON'T KNOW. I DIDN'T RECALL THAT.

24 Q OKAY. DID YOU EVER DO ANY TESTING OF YOUR REAGENT WHILE YOU
25 WERE TESTING THIS MATERIAL TO SEE IF IT HAD BEEN CONTAMINATED IN THIS

CHRIS WASH - CROSS-EXAMINATION BY MR. HAWKE

1 METHOD THAT I JUST DESCRIBED?

2 A NO, SIR.

3 Q OKAY. AND IN YOUR MATERIAL, WOULD YOU READ RIGHT DOWN HERE,
4 THE VERY BOTTOM HERE, TO TEST.

5 A TO TEST FOR CONTAMINATION PLACE SEVERAL DROPS OF DUCANOIS IN A
6 SPOT CAVITY AND ADD SEVERAL DROPS OF HYDROCHLORIC ACID TO THE SPOT
7 CAVITY.

8 Q ALRIGHT. AND THEN IT SAYS WHAT? NO COLOR?

9 A NO COLOR CHANGE SHOULD OCCUR. IF PURPLE COLOR OCCURRED,
10 PURPLE COLOR OF MARIJUANA APPEARS, THE REAGENTS HAVE BEEN
11 CONTAMINATED AND SHOULD BE REPLACED.

12 Q AND ONCE THE REAGENT GETS CONTAMINATED, AT THAT POINT IN TIME
13 ANY TESTING THAT YOU DO AFTER THAT PARTICULAR POINT WILL ALWAYS COME
14 BACK POSITIVE, WON'T THEY?

15 A YES, SIR.

16 Q OKAY. AND YOU DIDN'T DO ANY OF THIS PARTICULAR TYPE OF TESTING
17 TO SEE IF DURING THE COURSE OF THIS TESTING OF 400 SAMPLES THERE WAS A
18 POSSIBLE CONTAMINATION OF YOUR REAGENT.

19 A NO, SIR.

20 Q OKAY. AND THEY ALSO INDICATED THAT YOU SHOULD KEEP A REAGENT
21 QUALITY LOG BOOK. IS THAT CORRECT?

22 A THAT'S CORRECT.

23 Q DO YOU HAVE ONE?

24 A NO, SIR.

25 Q HAVE YOU EVER PREPARED ONE?

CHRIS WASH -- CROSS-EXAMINATION BY MR. HAWKE

1 A NO, SIR.

2 Q AND THEY RECOMMEND THIS IN ORDER TO MAKE SURE THAT THE
3 REAGENT IS NOT TOO OLD FOR ONE---

4 A RIGHT.

5 Q ---RIGHT? AND ALSO TO CHECK, TO KEEP RECORDS OF WHETHER OR NOT
6 YOU HAVE DETECTED ANY CONTAMINATION. AM I CORRECT?

7 A CORRECT.

8 Q OKAY. AND THEY RECOMMEND, OF COURSE, CHECKING YOUR REAGENTS
9 AT LEAST ONCE PER MONTH IF YOU DID NOT HAVE CONTAMINATED REAGENTS.
10 CORRECT?

11 A YES, SIR.

12 Q AND WHEN YOU WEIGHED THIS PARTICULAR MARIJUANA, I THINK YOU'VE
13 ALREADY TOLD US YOU DID NOT REMOVE THE STEMS, THE ROOTS AND THE -- AND
14 THE STALKS. IS THAT CORRECT?

15 A THAT'S CORRECT.

16 Q AND THERE WAS NO INDICATION WHEN YOU RECEIVED THIS MARIJUANA
17 IN ORDER TO WEIGH IT, THERE WAS NO INDICATION AS TO WHICH 20 OF THE
18 BRICKS THAT YOU WEIGHED CAME FROM THE CHIMNEY THAT WAS TAKEN FROM
19 FREDY DELEON'S STORE, WAS THERE?

20 A NO.

21 Q AND WE DON'T KNOW -- I THINK THAT'S ALL I HAVE. LET ME CHECK ONE
22 SECOND. I DON'T HAVE ANYMORE QUESTIONS.

23 THE COURT: MR. SUSSMAN?

24 MR. SUSSMAN: MAY IT PLEASE THE COURT?

25 THE COURT: YES, SIR.

CHRIS WASH - CROSS-EXAMINATION BY MR. SUSSMAN

1 CROSS-EXAMINATION

2 BY MR. SUSSMAN

3 Q AS I UNDERSTAND IT, YOUR EDUCATIONAL BACKGROUND IS THAT YOU
4 GOT A HIGH SCHOOL EQUIVALENCY?

5 A YES, SIR.

6 Q AND YOU TOOK A CHEMISTRY DEGREE -- OR YOU TOOK A CHEMISTRY
7 COURSE. IS THAT WHAT YOU SAID?

8 A IN HIGH SCHOOL, YEAH.

9 Q WHAT GRADE WAS THAT?

10 A I DON'T REMEMBER WHAT GRADE IT WAS.

11 Q WHAT WAS YOUR GRADE IN THAT COURSE?

12 A I DON'T REMEMBER.

13 Q WHAT HIGH SCHOOL DID YOU GO TO?

14 A WARDLAW ACADEMY.

15 Q DID YOU DO ANY LABORATORY WORK IN THAT CHEMISTRY COURSE?

16 A VERY LITTLE.

17 Q AND AS I UNDERSTAND IT, THE ONLY OTHER TRAINING YOU'VE HAD IN THE
18 USE OF LABORATORY TECHNIQUES OR CHEMICAL ANALYSIS WAS IN THIS 2-DAY
19 COURSE AT SLED?

20 A YES, SIR.

21 Q NOW AS WE DISCUSSED EARLIER AND AS I HEARD YOU EARLIER, YOU
22 DON'T SUBSCRIBE TO ANY SCIENTIFIC JOURNALS.

23 A NO, SIR.

24 Q YOU DON'T READ -- SUBSCRIBE TO SCIENTIFIC AMERICA.

25 A NO, SIR.

CHRIS WASH - CROSS-EXAMINATION BY MR. SUSSMAN

1 Q AND YOU DON'T READ PEER REVIEWS OF THE TECHNIQUE YOU JUST
2 TESTIFIED TO REGARDING HOW YOU TEST MARIJUANA.

3 A NO, SIR.

4 Q OKAY. DO YOU KNOW WHAT PRIOR APPLICATIONS OF THIS TESTING
5 TECHNIQUE THAT YOU UTILIZED HAS BEEN USED BEFORE? WANT ME TO
6 REPHRASE THAT?

7 A YEAH.

8 Q OKAY. YOU TESTIFIED THAT THE TECHNIQUE YOU USE FOR ANALYZING IS
9 THE MICROSCOPIC ANALYSIS---

10 A UH-HUH.

11 Q ---OF MARIJUANA.

12 A CORRECT.

13 Q AND THEN THIS DUCANE LEVINE.

14 A DUQUENOIS LEVINE.

15 Q DUQUENOIS LEVINE.

16 A YES, SIR.

17 Q THAT'S D-U-Q-U-E-N-O-I-S LEVINE. ARE YOU AWARE OF WHERE THAT HAS
18 BEEN USED PREVIOUSLY IN TESTING MARIJUANA? BESIDES YOUR USE OF IT?

19 A SLED'S USE OF IT.

20 Q OKAY. AND HAVE YOU BEEN PRESENT WHEN THIS TESTING PROCEDURE
21 HAS BEEN UTILIZED BY SLED? OTHER THAN YOUR TRAINING.

22 A OTHER THAN MY TRAININ', NO.

23 Q OKAY. DO YOU KNOW WHAT QUALIFY CONTROL PROCEDURES ARE USED
24 TO ENSURE THE RELIABILITY OF THIS DUQUENOIS LEVINE TESTING PROCEDURE?

25 A THE QUALITY CONTROL ON THE REAGENT AND THE SCALES AND THE --

CHRIS WASH - CROSS-EXAMINATION BY MR. SUSSMAN

1 JUST THAT.

2 Q THAT'S IT? THAT'S ALL YOU KNOW?

3 A YES, SIR.

4 Q CAN YOU TELL ME THE MARGIN OF ERROR THAT IS IN THIS TESTING
5 TECHNIQUE OF THIS DUQUENOIS LEVINE TESTING PROCEDURE?

6 A NO, SIR.

7 Q CAN YOU TELL ME HOW CONSISTENT THIS METHODOLOGY IS THAT YOU'RE
8 UTILIZING WITH THE RECOGNIZED SCIENTIFIC LAWS AND PROCEDURES THAT ARE
9 GENERALLY ACCEPTED FOR SCIENTIFIC -- SCIENTIFIC METHOD?

10 A IT MUST BE PRETTY RELIABLE.

11 Q OKAY. CAN YOU GIVE ME ANY KIND OF---

12 A I CAN'T GIVE YOU ANY NUMBERS, NO.

13 Q YOU DON'T HAVE ANY STATISTICAL ANALYSIS REGARDING CONSISTENCY?

14 A NO, SIR.

15 Q HAVE YOU EVER BEEN IN ANY OTHER STATE WHERE THIS TESTING
16 PROCEDURE HAS BEEN UTILIZED?

17 A I IMAGINE SOME OTHER STATES USE IT BUT I DON'T KNOW FOR A FACT.
18 ALL I KNOW IS ABOUT SOUTH CAROLINA.

19 Q AS I ASKED YOU, HAVE YOU EVER BEEN IN ANY OTHER STATE WHERE THIS
20 DUQUENOIS LEVINE TEST HAS BEEN UTILIZED?

21 A NO.

22 Q OKAY. DO YOU KNOW WHETHER OR NOT THERE IS A POTENTIAL RATE OF
23 ERROR THAT EXISTS IN THE UTILIZATION OF THIS DUQUENOIS LEVINE TESTING
24 PROCEDURE?

25 A NO, SIR.

CHRIS WASH - CROSS-EXAMINATION BY MR. SUSSMAN

1 Q DO YOU KNOW WHO PROMULGATED OR CREATED THE STANDARDS USED
2 IN THE CONTROL AND TECHNIQUE AND OPERATION OF THIS DUQUENOIS LEVINE
3 TESTING PROCEDURE?

4 A NO, SIR.

5 Q CAN YOU GIVE ME THE NAMES OF ANY SCIENTISTS WHO HAVE PUBLISHED
6 AN OPINION REGARDING THE ACCEPTANCE OF THIS DUQUENOIS LEVINE TESTING
7 PROCEDURE IN THE COMMUNITY?

8 A NO, SIR.

9 Q NOW WERE YOU INVOLVED IN THE ARREST AND IN THE INVESTIGATION
10 AND APPREHENSION OF THE INDIVIDUALS CHARGED IN COURT TODAY?

11 A I WASN'T INVOLVED IN THE INVESTIGATION, NO.

12 Q WERE YOU INVOLVED IN THE ARREST?

13 A I WAS INVOLVED IN THE ARREST OF TWO OF 'EM, YEAH.

14 Q WHO WERE YOU INVOLVED IN THE ARREST OF?

15 A I DON'T EVEN REMEMBER WHICH TWO IT WAS. I CAN POINT OUT ONE OF
16 'EM, BUT I DON'T KNOW WHICH TWO IT WAS.

17 Q IN FACT, WERE YOU OUT IN THE FIELD WHEN THE SEMI WAS STUCK?

18 A YES.

19 Q AND IS THAT WHERE YOU WERE WHEN YOU WERE INVOLVED IN THE
20 ARREST OF TWO OF THESE INDIVIDUALS?

21 A I WAS ON THE ROAD, YES.

22 Q DO YOU REMEMBER WHAT TEAM YOU WERE INVOLVED IN?

23 A NO.

24 Q YOU WERE WORKING FOR THE EDGEFIELD SHERIFF'S---

25 A YES.

CHRIS WASH - CROSS-EXAMINATION BY MR. SUSSMAN

- 1 Q ---DEPARTMENT---
- 2 A YES.
- 3 Q ---AT THE TIME?
- 4 A YES.
- 5 Q OKAY. AND DID YOU TAKE THESE TWO INDIVIDUALS INTO THE JAIL?
- 6 A YES.
- 7 Q OKAY. AND YOU WERE PRESENT WHEN THEY OFFLOADED THIS
- 8 MARIJUANA?
- 9 A YES.
- 10 Q OKAY. AND PRESENT WHEN THEY OPENED THESE MANTLE PIECES?
- 11 A YES.
- 12 Q AND TOOK THE MARIJUANA OUT?
- 13 A YES.
- 14 Q OKAY. AND YOU'RE AWARE THAT THIS MARIJUANA HAS BEEN TESTED
- 15 BEFORE?
- 16 A SOME OF IT, YES.
- 17 Q AND YOU'RE AWARE OF THE RESULTS OF THAT TEST?
- 18 A I SAW IT THE OTHER DAY WHENEVER -- THE OTHER PROCEEDINGS THE
- 19 FIRST TIME I'D SEEN THE REPORT.
- 20 Q NOW ARE YOU FAMILIAR WITH WHAT WE CALL BIAS OF THE TESTER?
- 21 A YES.
- 22 Q AND ARE YOU FAMILIAR WITH YOUR COURT -- I MEAN WITH YOUR COURSE
- 23 MATERIALS THAT SAY IF YOU WERE INVOLVED AT ALL IN THE ARREST OF THE
- 24 INDIVIDUALS FROM WHOM THE MARIJUANA WAS TAKEN THAT YOU SHOULD NOT
- 25 BE UTILIZED AS THE TESTER?

CHRIS WASH - CROSS-EXAMINATION BY MR. SUSSMAN

1 A YES.

2 Q AND YET YOU WENT AHEAD AND TESTED THIS MARIJUANA ANYWAY.
3 NOW---

4 A I WASN'T PART OF THE INVESTIGATION. I JUST HAPPENED TO BE ONE WHO
5 PUT HANDCUFFS ONTO 'EM.

6 Q WELL, HOWEVER YOU CHARACTERIZE IT, YOU WERE THERE WHEN TWO OF
7 THESE INDIVIDUALS WERE ARRESTED. RIGHT?

8 A RIGHT.

9 Q AND YOU TRANSPORTED THEM TO THE JAIL.

10 A RIGHT.

11 Q I DIDN'T HEAR YOU.

12 A RIGHT.

13 Q AND YOU WERE PRESENT WHEN THE MARIJUANA WAS TAKEN OUT OF THE
14 SEMI.

15 A YES, SIR.

16 Q AND YOU WERE PRESENT WHEN -- WHEN I SAY THE --- I SHOULD SAY
17 WHEN THE MANTLES WERE TAKEN OUT OF THE SEMI, AND YOU WERE PRESENT
18 WHEN THEY WERE OPENED AND THE MARIJUANA WAS REMOVED.

19 A YES, SIR. NOT AT THE -- I WAS AT THE SHERIFF'S OFFICE, YES.

20 Q AND YOU ARE FAMILIAR WITH THE REMINDERS AND ADDITIONAL
21 INFORMATION IN YOUR COURSE MATERIALS.

22 A I DON'T KNOW WHICH ONES YOU'RE REFERRIN' TO.

23 Q WELL, YOU'RE FAMILIAR WITH #4 -- YOU'RE FAMILIAR WITH THE
24 REMINDER THAT -- IN YOUR COURSE MATERIALS WHERE IT STATES YOU SHOULD
25 NOT ANALYZE EVIDENTIARY SUBMISSIONS FROM WHICH YOU HAVE PRIOR

CHRIS WASH -- CROSS-EXAMINATION BY MR. SUSSMAN

1 KNOWLEDGE. YOU'RE FAMILIAR WITH THAT IN YOUR COURSE MATERIALS.

2 A YES.

3 Q BY THE WAY, DID YOU TAKE A TEST IN THIS COURSE?

4 A YES.

5 Q WHAT WAS YOUR GRADE IN THIS?

6 A I DON'T KNOW. THEY DIDN'T TELL ME.

7 Q OKAY. AND I THINK MR. HAWKE ASKED YOU IF YOU WERE FAMILIAR WITH
8 THE PART OF YOUR COURSE MATERIALS WHICH INDICATE YOU SHOULD KEEP A
9 LOG OF YOUR REAGENT.

10 A RIGHT.

11 Q WHICH YOU DON'T DO.

12 A RIGHT.

13 Q CAN YOU TELL ME WHAT ACETALDEHYDE IS -- ACETALDEHYDE IS.
14 WHAT'S ITS CHEMICAL COMPOSITION?

15 A I DON'T KNOW.

16 Q I DIDN'T HEAR YOU.

17 A I DON'T KNOW. SORRY.

18 Q THAT'S ALRIGHT. NOW YOU INDICATED, I THINK, TO MR. MAYE THAT YOU
19 UTILIZED THE ELECTRONIC BALANCING IN YOUR WEIGHING?

20 A YES, SIR.

21 Q CAN YOU TELL ME WHAT THE TARE FEATURE IS IN THE ELECTRONIC
22 BALANCING?

23 A IT'S THE FEATURE WHERE YOU CAN BRING IT BACK TO A ZERO SETTING
24 AFTER PLACING A -- ANYTHING ON THE SCALE IN ORDER TO -- SOMETHING TO
25 HOLD SOMETHING, A CUP OR WHATEVER YOU HAVE TO USE TO HOLD THE SAMPLE.

1 Q WHAT IS THE PURPOSE OF THAT?

2 A SO YOU DON'T WEIGH THE SAMPLE AND THE WHATEVER YOU'RE UTILIZIN'
3 TO HOLD THE SAMPLE.

4 Q AND WHAT CERTIFIED WEIGHTS DO YOU USE TO CALIBRATE YOUR SCALE?

5 A I DON'T REMEMBER THE NAME OF 'EM. IT'S -- IT'S CERTIFIED WEIGHTS.

6 Q DO YOU USE THE METRIC -- WHICH -- WHICH FORM OF MEASUREMENT DO
7 YOU USE? THE METRIC OR THE ENGLISH?

8 A THE ENGLISH.

9 Q HUH?

10 A ENGLISH.

11 Q I CAN'T HEAR YOU.

12 A GRAMS.

13 Q WELL, WHAT I'M ASKIN' YOU THOUGH IS WHAT FORM OF MEASUREMENT
14 DO YOU UTILIZE, THE METRIC OR THE ENGLISH?

15 A THE ENGLISH.

16 Q OKAY. THAT'S THE ONLY ONE YOU UTILIZE?

17 A UH-HUH.

18 Q I'M SORRY?

19 A YES, SIR.

20 Q OKAY. WERE YOU FAMILIAR WITH -- ARE YOU FAMILIAR WITH THE SOUTH
21 CAROLINA CONTROLLED SUBSTANCES ACT?

22 A YES, SIR.

23 Q DO YOU REALIZE THAT REQUIRES THE USE OF BOTH METRIC AND ENGLISH
24 MEASUREMENTS IN WEIGHING CONTRABAND?

25 A YES, SIR.

CHRIS WASH - CROSS-EXAMINATION BY MR. SUSSMAN

1 Q YET YOU ONLY USE THE ENGLISH IN VIOLATION OF THE ACT. IS THAT
2 CORRECT?

3 A I USE OUNCES AND GRAMS, YES, SIR.

4 Q HOW MANY NUMBER OF LEAVES DOES A MARIJUANA PLANT HAVE?

5 A A ODD NUMBER.

6 Q OKAY. CAN YOU TELL ME HOW MANY?

7 A NO, SIR.

8 Q CAN YOU DESCRIBE THE LEAFLETS FOR ME.

9 A YES, SIR, THEY'RE LONG, SERRATED LEAFLETS.

10 Q IS THAT IT? THOSE ARE THE ONLY CHARACTERISTICS YOU CAN TELL ME?

11 A LONG, SERRATED, GREEN USUALLY IF IT'S STILL ALIVE. YES, SIR.

12 Q WHERE ARE THE VEINS OF THE LEAVES BEST SEEN?

13 A ON THE UNDERSIDE.

14 Q DID YOU SAY THAT YOU HAVE DONE 30 TO 40 OTHER TESTS -- TESTING OF
15 OTHER SAMPLES BESIDES THE ONES YOU DID FOR YOUR CERTIFICATION?

16 A YES, SIR.

17 Q WHERE WERE THOSE DONE?

18 A IN SALUDA AND IN EDGEFIELD.

19 Q OKAY. AND DID YOU HAVE A LAB SET UP IN SALUDA?

20 A YES, SIR.

21 Q AND WAS THIS A LAB THAT WAS ALREADY THERE OR YOU BROUGHT
22 THERE WITH YOU?

23 A IT WAS ALREADY THERE.

24 Q AND YOU SAID YOU TESTED THIS -- THIS MARIJUANA WHEREVER --
25 WHEREVER IT WAS, YOU TESTED THIS IN THE EDGEFIELD COUNTY SHERIFF'S

CHRIS WASH - CROSS-EXAMINATION BY MR. SUSSMAN

1 DEPARTMENT.

2 A YES, SIR.

3 Q IN THE EVIDENCE ROOM?

4 A YES, SIR.

5 Q WAS IT -- WAS IT IN THE VAULT OR WAS IT IN THE EVIDENCE ROOM?

6 A WAS THE MARIJUANA IN---

7 Q THE MARIJUANA.

8 A THE MARIJUANA WAS IN THE VAULT.

9 Q OKAY. AND THEN DID YOU TEST IT IN THE VAULT?

10 A NO.

11 Q YOU BROUGHT IT OUT AND TESTED IT.

12 A CORRECT.

13 Q WAS ANYONE ELSE PRESENT?

14 A NOT IN THE EVIDENCE ROOM WITH ME, NO.

15 Q I'M SORRY?

16 A NOT IN THERE WITH ME, NO.

17 Q SO NO ONE WAS PRESENT WHILE YOU TESTED.

18 A NO.

19 Q OKAY. NOW YOU GENERATED A REPORT.

20 A YES.

21 Q AND IN THAT REPORT DO YOU DESIGNATE WHICH CHEMICAL TESTS WERE
22 POSITIVE AND WHICH MICROSCOPIC TESTS WERE POSITIVE?

23 A I DON'T SEPARATE THE TWO.

24 Q SO YOUR REPORT DOES NOT INDICATE A SEPARATE CHEMICAL TEST AND A
25 SEPARATE MICROSCOPIC TEST FOR EACH BUNDLE?

CHRIS WASH - CROSS-EXAMINATION BY MR. MILLER

1 A NO, SIR. IT'S JUST A POSITIVE TEST.

2 Q OKAY.

3 MR. SUSSMAN: YOUR HONOR, I THINK I'M THROUGH IF YOU'LL GIVE ME
4 JUST ONE SECOND.

5 THE COURT: SURE.

6 MR. SUSSMAN: THAT'S ALL I HAVE, JUDGE.

7 THE COURT: MR. MILLER?

8 MR. MILLER: THANK YOU, YOUR HONOR.

9 CROSS-EXAMINATION

10 BY MR. MILLER

11 Q LT. WASH, WOULD YOU READ FOR ME THE PARAGRAPH THAT'S HERE AT
12 THE TOP OF THE REPORT THAT YOU HAVE SUBMITTED.

13 A THIS IS AN OFFICIAL REPORT OF THE EDGEFIELD COUNTY SHERIFF'S
14 OFFICE MARIJUANA ANALYSIS LABORATORY AND BEEN USED IN CONNECTION
15 WITH AN OFFICIAL INVESTIGATION. THESE EXAMINATIONS WERE CONDUCTED
16 UNDER YOUR ASSURANCE THAT NO PREVIOUS EXAMINATION OR EVIDENCE
17 SUBMITTED IN THIS CASE HAS BEEN OR WILL BE CONDUCTED BY ANOTHER
18 LABORATORY OR AGENCY.

19 Q OKAY. IT SAYS YOUR ASSURANCE -- IT'S BEING DIRECTED UNDER YOUR
20 ASSURANCE THAT THIS STUFF HADN'T BEEN TESTED BEFORE AND IT'S NOT GONNA
21 BE TESTED BY ANOTHER LAB. WHEN IT SAYS YOUR ASSURANCE, WHO ARE THEY
22 TALKING ABOUT? WHO'S ASSURIN' YOU?

23 A ME.

24 Q SO YOU'RE ASSURING -- WELL, FIRST OF ALL, WHOSE SIGNATURE APPEARS
25 BENEATH OR WHOSE NAME APPEARS BENEATH THAT CERTIFICATION?

CHRIS WASH - CROSS-EXAMINATION BY MR. MILLER

1 A ADELL DOBEY. A. DOBEY.

2 Q OKAY. SO SHERIFF DOBEY IS ASSERTING THAT. IS HE SAYING THAT YOU
3 HAVE ASSURED HIM THAT IT'S NOT GONNA BE TESTED BY ANYBODY ELSE AND IT
4 HADN'T BEEN TESTED BY ANYBODY ELSE?

5 A YES.

6 Q OKAY. WHAT'S THE DATE ON THE TOP OF THE REPORT THERE?

7 A 6-15-2004.

8 Q 6-15-2004. AND THE NEXT PARAGRAPH BELOW THE ONE THAT SHERIFF
9 DOBEY'S NAME APPEARS UNDER, COULD YOU READ THAT, PLEASE.

10 A YES. ON 6-6-2004 I RECEIVED PERSONALLY THE BELOW STATED ITEMS OF
11 EVIDENCE. I TESTED ALL THE BELOW ITEMS SUBMITTED TO ME USING ACCEPTED
12 FORENSIC PROCEDURES BY SLED AND THE BELOW RESULTS REFLECT MY
13 CONCLUSION BASED ON MY EXAMINATION.

14 Q SO HOW LONG DID IT TAKE YOU TO TEST 400 SAMPLES?

15 A IT TOOK ME 4 DAYS.

16 Q TOOK YOU 4 DAYS. SO ON THE LAST PAGE OF THE REPORT IS YOUR
17 SIGNATURE HERE IS IT NOT?

18 A YES, SIR.

19 Q AND THAT'S YOUR CERTIFICATION TO THIS COURT OR TO WHOEVER
20 YOU'RE MAKING THE REPORT FOR THAT THAT'S AN ACCURATE -- THAT YOUR
21 REPORT IS ACCURATE.

22 A YES, SIR.

23 Q OKAY. WHEN WAS YOUR SIGNATURE NOTARIZED?

24 A ON THE 15TH.

25 Q CAN YOU EXPLAIN WHY THERE'S A WEEK PERIOD THAT PASSES FROM THE

CHRIS WASH - CROSS-EXAMINATION BY MR. MILLER

1 TIME OR 3 DAYS PASSED BETWEEN THE TIME YOU FINISHED DOING YOUR TESTING
2 AND YOU SIGNED OFF ON THE RESULTS?

3 A YES, SIR. IT HAD TO BE PUT INTO THIS FORM, AND THAT'S WHEN THE FORM
4 WAS GENERATED. THAT'S WHEN THIS FORM WAS GENERATED.

5 Q WHO GENERATED THAT FORM?

6 A I DID.

7 Q SO YOU SAT DOWN AND TYPED IT INTO THE KEYBOARD?

8 A YES.

9 Q OKAY

10 MR. MILLER: YOUR HONOR, THIS IS A FACSIMILE COPY OF THE REPORT.
11 GOES FROM PAGE 2 TO PAGE 16 WITH NO SIGNATURE, AND THEN STARTS OVER
12 WITH PAGE ONE AND GOES TO PAGE 5. I THINK THAT WAS JUST A FAXING ERROR.
13 I WOULD REPRESENT TO THE COURT THIS APPEARS TO BE A COMPLETE COPY OF
14 THE REPORT THAT WAS SUBMITTED BY LT. WASH TO THE SOLICITOR'S OFFICE
15 WHO THEN FORWARDED IT ON TO ME. I'D LIKE TO MAKE THAT INTO A COURT'S
16 EXHIBIT IF THERE'S NO OBJECTION. (COURT'S EXHIBIT #2 RECEIVED IN EVIDENCE.)

17 Q LT. WASH, DID ANYBODY -- WITH THE EXCEPTION -- I WANT TO MAKE THIS
18 QUESTION VERY CLEAR FOR YOU. WITH THE EXCEPTION OF WHEN YOU WERE
19 SITTING IN THAT CHAIR, HAS ANYONE TODAY DISCUSSED YOUR EDUCATIONAL
20 BACKGROUND OR YOUR QUALIFICATIONS WITH YOU?

21 A FOR TESTIN' MARIJUANA?

22 Q FOR TESTING MARIJUANA, WHEN YOU GRADUATED FROM HIGH SCHOOL,
23 HOW YOU GRADUATED, ANY -- ANYTHING ABOUT YOUR EDUCATIONAL
24 BACKGROUND?

25 A NO.

CHRIS WASH - CROSS-EXAMINATION BY MR. MILLER

1 Q SO YOU'VE NEVER -

2 A COULD YOU ASK ME AGAIN.

3 Q OTHER THAN WHEN YOU WERE SITTING IN THIS CHAIR TODAY---

4 A RIGHT.

5 Q ---HAS ANYBODY EVER ASKED YOU ABOUT YOUR EDUCATIONAL
6 BACKGROUND OR YOUR TRAINING WITH SLED OR ANYTHING ELSE AS IT REGARDS
7 MARIJUANA ANALYSIS?

8 A NO.

9 Q OKAY. SO YOU'VE NEVER BEEN QUALIFIED AS AN EXPERT WITNESS
10 BEFORE IN MARIJUANA ANALYSIS.

11 A NO, SIR.

12 Q OKAY. THANK YOU SO MUCH.

13 MR. MILLER: NO FURTHER QUESTIONS, YOUR HONOR.

14 Q I'M SORRY. YOU SAID THAT THE LAB WAS LOCATED -- THE EDGEFIELD
15 COUNTY LAB WAS LOCATED IN THE SHERIFF'S OFFICE?

16 A NO.

17 Q IS THAT CORRECT?

18 A NO.

19 Q I'M SORRY?

20 A NO, SIR.

21 Q WHERE -- WHERE---

22 A IN SALUDA.

23 Q THE EDGEFIELD COUNTY LAB IS IN SALUDA AT THE AIRPORT?

24 A YES, SIR.

25 Q OKAY.

1 A YES, SIR.

2 MR. MILLER: THANK YOU, YOUR HONOR.

3 THE COURT: REDIRECT?

4 MR. MAYE: NO, YOUR HONOR.

5 THE COURT: ANYTHING ELSE OF THE WITNESS? THANK YOU, MR. WASH.
6 WOULD YOU, PLEASE, STEP BACK THERE AND NOT DISCUSS YOUR TESTIMONY
7 WITH ANYBODY.

8 A YES, SIR.

9 THE COURT: ALRIGHT. THE MOTIONS ARE?

10 MR. SUSSMAN: JUDGE, I THINK AGAIN WE WOULD MOVE TO HAVE -- WE
11 WOULD OBJECT TO THE QUALIFICATION OF LT. WASH AS AN EXPERT FOR
12 PURPOSES OF ANALYZING AND TESTING THIS MARIJUANA.

13 AGAIN, I GO BACK TO THE STATE -VS- JONES PREVIOUSLY CITED. THE
14 CRITERIA FOR DETERMINING WHETHER OR NOT THIS IS RELIABLE UNDER 702 OF
15 THE SOUTH CAROLINA RULES OF EVIDENCE, THE CRITERIA WOULD BE FOR
16 DETERMINING LIABILITY WOULD BE SUCH AS PUBLICATION AND PEER REVIEW OF
17 THE TECHNIQUE. THIS -- THIS WITNESS CANNOT TESTIFY AS TO PUBLICATION AND
18 PEER REVIEW OF THE TECHNIQUE. IN FACT, HE SAID HE DIDN'T KNOW WHAT PEER
19 REVIEW MEANS. HE COULD NOT GIVE US ANY TESTIMONY REGARDING PRIOR
20 APPLICATION OF THE METHOD THAT'S UTILIZED TO TEST THE MARIJUANA TO THE
21 TYPE OF METHODS INVOLVED IN THIS CASE WHICH IS MARIJUANA. HE COULD NOT
22 GIVE US ANY PRIOR EXAMPLES OF APPLYING THIS METHOD TO THE SAME TYPE OF
23 EVIDENCE IN OTHER CASES. HE COULD NOT GIVE US ANY DETAILS ON THE
24 QUALITY CONTROL PROCEDURES USED TO INSURE RELIABILITY. IN FACT, I THINK
25 HE TESTIFIED THAT, BASICALLY, HE CONTAMINATED EACH SAMPLE UNDER MR

1 HAWKE'S CROSS-EXAMINATION BY WIPING HIS HANDS WITH THE SAME CLOTH 400
2 TIMES.

3 HE ALSO TESTIFIED THAT THERE WAS NO VENTILATED HOOD. WHAT HE
4 DID THIS UNDER IT WAS JUST A DESK IN THE EVIDENCE ROOM WHICH IS
5 INTERESTING BECAUSE HE CERTIFIED IN HIS REPORT THAT THE TESTING WAS
6 DONE AT THE LAB, AND HE SAID THE LAB WAS IN SALUDA, AND HE'S TESTING IN
7 EDGEFIELD. SO HE'S NOT EVEN DOING THE TESTING AT THE LAB THAT'S SET UP TO
8 DO IT.

9 AND THAT FALLS IN THE FOURTH AREA OF RELIABILITY AND THAT IS HE
10 COULD NOT TALK ABOUT THE CONSISTENCY OF THE METHOD WITH THE
11 RECOGNIZED SCIENTIFIC LAWS AND PROCEDURES. HE WOULD GIVE US NO
12 TESTIMONY ON THAT. ALL HE WOULD SAY IS ALL I CAN SAY IS IT'S CERTIFIED, THE
13 METHOD IS CERTIFIED BY SLED. HE COULDN'T GIVE US THE NAME OF ANY
14 SCIENTIST HE'S CONSULTED WITH, ANY CHEMIST HE'S CONSULTED WITH.

15 HE'S NEVER BEEN QUALIFIED AS AN EXPERT IN ANY STATE -- ANY COURT
16 IN THIS STATE, AND WE WOULD SUBMIT THAT HIS QUALIFICATIONS ARE
17 INHERENTLY UNRELIABLE AND DO NOT RISE TO THE LEVEL OF JONES V. STATE
18 AND COUNCIL V. STATE AND THE SOUTH CAROLINA OF EVIDENCE 702 TO OFFER
19 THE TRIER OF FACTS A RELIABLE RESULT.

20 ONE OF THE THINGS, HE VIOLATES HIS OWN COURSE OUTLINE DIRECTIVES
21 ON 4 OR 5 DIFFERENT PLACES. FOR ONE, THEY TELL HIM NOT TO TEST EVIDENCE IN
22 WHICH HE'S INVOLVED IN THE INVESTIGATION OR ARREST OF THE SUBJECT DUE
23 TO TESTING BIAS. IN THIS CASE HE ARRESTED TWO OF THE DEFENDANTS AND HE
24 TOOK 'EM TO THE JAIL AND HE WAS PRESENT WHEN THE MARIJUANA OPENED OUT
25 AT THE TRAILER. WE WOULD SUBMIT THAT THAT'S CERTAINLY A BIAS. HE

1 ALREADY, I'M SURE, FORMED THE OPINION THAT IT WAS MARIJUANA. PLUS, HE'S
2 THE CUSTODIAN OF THE EVIDENCE. CERTAINLY THAT DOES NOT LEND ITSELF TO
3 OBJECTIVE CRITERIA.

4 HE ALSO TESTIFIED THAT HE VIOLATED HIS OWN -- THE PROCEDURE
5 REQUIRED BY KEEPING A LOG OF THE REAGENTS UTILIZED. HE DIDN'T DO THAT.
6 HE ALSO SAID THAT HE ONLY USED THE ENGLISH METHOD OF MEASUREMENT,
7 AND THE SOUTH CAROLINA CONTROLLED SUBSTANCES ACT THE UTILIZATION OF
8 THE ENGLISH AND THE METRIC FORM OF MEASUREMENT FOR WEIGHING
9 SUBSTANCES. SO HE VIOLATED THAT.

10 AND THE COURSE OUTLINE, THE COURSE MATERIALS THAT FORM THE
11 BASIS FOR HIS EXPERTISE SHOWS WE WOULD SUBMIT THAT HE'S CERTAINLY NOT
12 RELIABLE ENOUGH TO UTILIZE -- HE VIOLATES HIS OWN TRAINING, SUCH THAT IT
13 IS.

14 SO FOR THOSE REASONS WE WOULD SUBMIT THAT HE SHOULD NOT BE
15 QUALIFIED AND SHOULD NOT BE ALLOWED TO TESTIFY AS AN EXPERT IN THIS
16 CASE. AND I MAKE THOSE UNDER THE 4TH, 5TH, 6TH, 8TH AND 14TH AMENDMENTS OF
17 THE U.S. CONSTITUTION AND THE COMPARATIVE SOUTH CAROLINA
18 CONSTITUTIONAL PROVISIONS APPLICABLE TO SOUTH CAROLINA CASE LAW. AND
19 TO ALLOW THIS GENTLEMAN TO TESTIFY WILL DEPRIVE MY CLI -- OUR CLIENTS OF
20 A FAIR TRIAL AND DUE PROCESS OF LAW.

21 MR. HAWKE: YOUR HONOR, I WOULD JOIN IN THAT ON BEHALF OF
22 DEFENDANT DELEON AND I WOULD ALSO POINT OUT TO THE COURT THAT HE'S
23 INDICATED HE WOULD BE LOOKING FOR UNICELLULAR HAIRS AND
24 MULTICELLULAR HAIRS AND DID NOT KNOW HOW HE WOULD DISTINGUISH
25 BETWEEN THE TWO. HE ALSO SAID THAT WHEN HE WEIGHED -- WHEN HE

1 WEIGHED THE MARIJUANA THAT HE WAS SUPPOSED TO REMOVE THE STALKS AND
2 STEMS AND ROOTS AND ALL OF IT BEFORE HE WEIGHED IT 'CAUSE THOSE PARTS
3 OF THE PLANT WOULD NOT HAVE THC, AND HE DID NOT DO THAT AS FAR AS ITS
4 WEIGHT.

5 HE ALSO DID NOT KNOW HOW TO MIX THE REAGENT. HE SAID HE RELIED
6 ON THE MANUAL. AND THEN WHEN HE INDICATED ABOUT HOW TO MIX THE
7 REAGENT AND HE DIDN'T KNOW EXACTLY HOW TO MIX IT UP IN ACCORDANCE
8 WITH THE MANUAL THAT HAS PUT INTO EVIDENCE AS A COURT EXHIBIT.

9 ALSO, JUDGE, THIS MANUAL INDICATES THAT EVEN UPON CAREFUL USE
10 IT'S EASY TO CONTAMINATE THE REAGENT, AND THE REAGENT SHOULD BE
11 TESTED FROM TIME TO TIME TO MAKE SURE THAT NO CONTAMINATION HAS
12 OCCURRED, AND WHEN I ASKED HIM ABOUT HOW TO TEST FOR CONTAMINATION,
13 HE DID NOT KNOW, AND THEN WHEN I REMINDED HIM THROUGH THE MANUAL HE
14 REMEMBERED THAT, BUT SAID HE HAD NOT DONE IT AT ANY TIME DURING THE
15 TESTING OF THE 400 SAMPLES, AND THAT HE DID NOT KEEP A LOG ABOUT THE
16 TESTING, AND GENERALLY, JUDGE, ALTHOUGH THE STATUTE SAYS THAT THE SLED
17 AGENCY IS AUTHORIZED TO SET UP A LAB FOR THE TESTING OF DRUGS AND
18 THINGS LIKE THIS, IT DOES NOT IN ANY WAY INDICATE BY THE STATUTE THAT
19 THEY CAN RUBBER STAMP FOLKS AS CERTIFIED TO TEST FOR DRUGS AND SEND
20 THEM THROUGHOUT THE STATE WITHOUT THEM BEING IN A LAB SETTING.

21 THE PROTOCOL THAT WAS SET UP IN HIS TRAINING HAS BEEN VIOLATED;
22 THE AUTHORITY UNDER WHICH HE IS OPERATING IS THE AUTHORITY THAT IS
23 GRANTED SLED TO SET UP A LAB. NOT TO JUST TRAIN PEOPLE, BUT GIVE THEM A
24 LITTLE LAB KIT AND LET THEM GO TO A DESK SOMEWHERE IN AN EVIDENCE
25 ROOM AND BEGIN TESTING.

1 THE COURT: MR. MILLER?

2 MR. MILLER: YOUR HONOR, WE WOULD JUST JOIN IN THE MOTIONS
3 PREVIOUSLY STATED BY COUNSEL.

4 THE COURT: ALRIGHT. STATE'S POSITION?

5 MR. MAYE: YOUR HONOR, THE AGENT IN THIS CASE HAS BEEN CERTIFIED
6 BY SLED AND TESTED.

7 SLED DOES HAVE AUTHORITY TO SET UP A LAB BY STATUTORY AUTHORITY.
8 THEY HAVE -- HE DID PASS THE TEST SUCCESSFULLY IDENTIFYING 100 OUT OF 100
9 SAMPLES ACCORDING TO HIS TESTIMONY.

10 HE DID TESTIFY THAT HE USED BOTH OUNCES AND GRAMS IN THIS CASE,
11 YOUR HONOR, IN THE CARRYING OUT OF HIS REPORT, YOUR HONOR, WHICH
12 WOULD BE IN ACCORDANCE WITH THE CONTROL SUBSTANCE ACT.

13 HE INDICATED HE RECEIVED A PASSING SCORE IN THE WRITTEN TESTING
14 MATERIALS, YOUR HONOR. HE SHOWED A VERY GOOD WORKING KNOWLEDGE OF
15 THE TESTING PROCEDURES, YOUR HONOR. I DON'T KNOW THAT THE TESTING
16 THAT HE HAS DONE WOULD BE ANY DIFFERENT THAN ANY THAT WAS DONE BY
17 SLED OVER AT THEIR LABORATORY, YOUR HONOR. THIS IS A GENERALLY
18 ACCEPTED SCIENTIFIC TEST. THIS IS NOT SOME NOVEL ISSUE OF SCIENCE HERE,
19 YOUR HONOR.

20 THIS IS WELL ESTABLISHED IN THE COURTS OF THIS STATE. IT IS NOT A
21 NOVEL ISSUE; WE'RE NOT TALKING ABOUT FOOTWEAR IMPRESSION KINDA DEALS
22 THAT ARE CUTTING EDGE. THIS IS LONGSTANDING GENERALLY ACCEPTED
23 SCIENCE, YOUR HONOR. IT IS BASICALLY SOMETHING THAT CAN BE TAUGHT TO
24 THE OFFICER. THIS OFFICER INDICATED THAT HE HAS PROFICIENCY IN THIS CASE
25 AND EXPERTISE BASED ON HIS TRAINING AND EXPERIENCE, YOUR HONOR. AND

1 WE SUBMIT HE'S QUALIFIED AS AN EXPERT IN THIS CASE. YOUR HONOR. THE
2 TESTING OF MARIJUANA IS COMPLETELY DIFFERENT THAN THE TESTING OF
3 COCAINE OR CRACK WHERE YOU'RE TALKIN' ABOUT A MASS SPECTRUM GAS
4 CHROMATOGRAPH. IT'S BASICALLY A SIMPLE CHEMICAL TEST AND A VISUAL
5 TEST USING A MICROSCOPE. IT'S SOMETHIN' THAT A 7TH GRADE SCIENCE STUDENT
6 COULD DO WITH VERY LITTLE INSTRUCTION, YOUR HONOR. THIS OFFICER
7 RECEIVED TRAINING AND CERTIFICATION FROM SLED. WE SUBMIT THAT HE
8 SHOULD BE QUALIFIED AS AB EXPERT WITNESS IN THIS CASE, YOUR HONOR, AND
9 BE ALLOWED TO TESTIFY AS TO HIS RESULTS.

10 THE COURT: ANYTHING ELSE, GENTLEMEN?

11 MR. SUSSMAN: NO, YOUR HONOR.

12 MR. HAWKE: NO, YOUR HONOR.

13 MR. MILLER: NO, YOUR HONOR.

14 THE COURT: ALRIGHT. SINCE THIS ISSUE ORIGINALLY AROSE, I'VE HAD
15 THE OPPORTUNITY TO READ PROBABLY 15 OR 20 CASES. I'VE HAD AN
16 OPPORTUNITY TO REVIEW A SUMMARY OF CASES SET FORTH BY JUDGE RALPH
17 KING ANDERSON, JR., IN HIS BOOK. I'VE HAD AN OPPORTUNITY TO DO WORD
18 SEARCHES ON THE COMPUTER AND TO REVIEW THE SOUTH CAROLINA RULES OF
19 CIVIL PROCEDURE AND SOUTH CAROLINA RULES OF EVIDENCE SINCE BOTH HAVE
20 BEEN CITED IN COURT. BASICALLY, I THINK YOU ALL ARE ARGUING ISSUES AND
21 THE ARGUMENTS ARE NOT SEGREGATED. I'M HEARING ARGUMENTS THAT MAY BE
22 PERFECTLY VALID ARGUMENTS AS TO ONE POINT, BUT IT'S NOT THE MATTER
23 BEFORE ME. THE ISSUE BEFORE ME IS WHETHER THIS WITNESS CAN TESTIFY AS AN
24 EXPERT IN THE FIELD OF IDENTIFICATION OF MARIJUANA. I THINK THE EXACT
25 WORDS THE SOLICITOR USED IN TENDERING HIM WAS TENDER HIM AS AN EXPERT

1 IN THE FIELD OF MARIJUANA ANALYSIS.

2 NOW THERE IS A PRETTY CONSTANT THEME IN ALL OF THESE CASES. THAT
3 THEME IS THAT THE QUALIFICATION OF EXPERTS IS WITHIN THE SOUND
4 DISCRETION OF THE COURT AND WILL NOT BE DISTURBED ABSENT AN ABUSE OF
5 DISCRETION.

6 SO, BASICALLY, IT PLACES IT ON ME. AND CERTAINLY I HAVE
7 PARAMETERS WITHIN WHICH I HAVE TO OPERATE, BUT THE CASES REALLY ARE
8 USUALLY REVERSALS OF WHERE JUDGES DO NOT ALLOW SOMEBODY TO TESTIFY
9 AS AN EXPERT.

10 TWO BASIC DEFINITIONS OF THE STANDARDS WE ARE TO USE IS, FIRST
11 WOULD BE TO BE COMPETENT AS AN EXPERT, A WITNESS BY REASON OF STUDY OR
12 EXPERIENCE OR BOTH, MUST POSSESS SUCH A KNOWLEDGE OR SKILL IN A
13 BUSINESS, PROFESSION OR SCIENCE THAT HE IS BETTER QUALIFIED THAN THE
14 JURY TO FORM AN OPINION ON THE PARTICULAR SUBJECT OF HIS TESTIMONY. THE
15 OTHER EXPRESSION OF WHAT THAT ANALYSIS INVOLVES IS THAT TO QUALIFY AS
16 AN EXPERT A PERSON MUST'VE ACQUIRED BY STUDY OR PRACTICAL EXPERIENCE
17 SUCH SPECIAL KNOWLEDGE ON THE SUBJECT MATTER OF HIS OR HER TESTIMONY
18 AS WOULD ENABLE THE PERSON TO GIVE GUIDANCE OR ASSISTANCE TO THE JURY
19 IN SOLVING A PROBLEM ABOUT WHICH THE JURY'S GOOD JUDGMENT AND
20 AVERAGE KNOWLEDGE IS INADEQUATE. THE STATE -VS- JONES CASE CITED IS
21 THAT FOOTWEAR IMPRESSION CASE. IT CAME I THINK FROM SALUDA COUNTY.
22 WAS IT SALUDA COUNTY?

23 MR. MAYE: YES, SIR, YOUR HONOR. IT WAS---

24 THE COURT: I REMEMBER---

25 MR. MAYE: ---SALUDA COUNTY.

1 THE COURT: I REMEMBER THE CASE 'CAUSE I HAD IT AFTER IT CAME BACK
2 AFTER BEING REVERSED. AND THAT WAS A DIFFERENT ISSUE. THE ISSUE THERE
3 WAS ABOUT THE SCIENCE ITSELF.

4 MR. MAYE: YES, SIR.

5 THE COURT: AND WHETHER THE SCIENCE WAS RECOGNIZED AND
6 SUFFICIENT.

7 IT WAS SORT OF LIKE A POLYGRAPH ISSUE AS TO WHETHER YOU ALLOW
8 THE INTRODUCTION OF THE RESULTS OF THIS TEST IN BECAUSE THERE'S A DISPUTE
9 ABOUT WHETHER OR NOT THE SCIENCE HAS BEEN RECOGNIZED OR IS
10 SUFFICIENTLY RELIABLE TO COME BEFORE THE JURY.

11 THAT'S A COMPLETELY DIFFERENT MATTER THAN WHETHER A WITNESS
12 CAN TESTIFY AS AN EXPERT. AND THE STANDARDS, I THINK, ARE PRETTY LOW.
13 BASICALLY, ALL OF THESE CASES RECITE OVER AND OVER AGAIN IT AMOUNTS TO
14 A SITUATION WHERE THE WITNESS IS BETTER QUALIFIED THAN THE JURY TO FORM
15 AN OPINION ON THE MATTER IN ISSUE, AND IT DOESN'T HAVE TO BE CLASSROOM
16 TYPE OF EXPERIENCE OR SEMINARS OR THINGS OF THAT NATURE.

17 IT CAN BE PRACTICAL EXPERIENCE. AND THIS OFFICER TESTIFIED HE HAD
18 9 YEARS IN LAW ENFORCEMENT EXPERIENCE AND THAT HE HAS BEEN AROUND
19 MARIJUANA A COUPLE HUNDRED TIMES. HE KNOWS ITS ODOR, ITS SMELL AND
20 COLOR. I'M TRYING TO MAKE THIS RULING AS SHORT AS I CAN BELIEVE IT OR
21 NOT, BUT I DO FEEL LIKE I DO NEED TO STATE A COUPLE OF THINGS. I DO NOT
22 MAKE A RULING HERE AS TO THE WEIGHT OF THE EVIDENCE OR THE CREDIBILITY
23 OF THE WITNESS. QUITE FRANKLY, THERE IS NO WAY I CAN FIND THAT THIS
24 WITNESS COMPLIED WITH THE SLED GUIDELINES THAT YOU ALL READ THROUGH.
25 I MEAN THERE ARE SERIOUS ISSUES ABOUT CONTAMINATION. THERE ARE

1 SERIOUS ISSUES ABOUT METHODOLOGY AND THINGS OF THAT NATURE, BUT THOSE
2 ARE THINGS THAT ARE SUBJECT TO CROSS EXAMINATION AND ATTACK AND THE
3 RULES PROVIDE THAT IF THERE IS AN ISSUE ABOUT WHETHER THAT'S REALLY
4 MARIJUANA OR NOT, THE DEFENSE CAN GET ITS OWN EXPERT AND ANALYZE IT,
5 AND THAT'S NOT SHIFTING THE BURDEN OF PROOF.

6 I'M NOT SAYING THAT THE STATE IS ABSOLVED OF ITS BURDEN OF PROOF,
7 BUT IT IS CERTAINLY AN OPPORTUNITY THE DEFENSE CAN HAVE.

8 AGAIN, MY ANALYSIS IS AS TO WHETHER THIS WITNESS HAS SUFFICIENT
9 TRAINING, EXPERTISE, EXPERIENCE AND KNOWLEDGE TO BE BETTER QUALIFIED
10 THAN THE JURY TO RECOGNIZE AND IDENTIFY MARIJUANA.

11 AND THOUGH I THINK THAT THIS IS A CASE WHERE I POSSIBLY COULD
12 RULE THE OTHER WAY, AND CERTAINLY BEFORE HE TESTIFIED THIS LAST TIME I
13 WOULD DEFINITELY HAVE RULED THE OTHER WAY BECAUSE IN THE ORIGINAL
14 VOIR DIRE I DIDN'T GET MUCH OF ANYTHING.

15 HE DIDN'T KNOW HOW LONG THE TRAINING LASTED; HE DIDN'T KNOW
16 WHO TAUGHT IT. HE KNEW HE WENT TO SLED AND HE KNEW HE HAD A
17 CERTIFICATE THAT WAS DOWN IN HIS OFFICE, AND THAT WAS PRETTY MUCH ALL
18 HE TOLD ME. IN THE NEW OR MORE RECENT HEARING HE TESTIFIED THAT HE
19 LEARNED ABOUT DIFFERENT TYPES OF ELEMENTS THAT HAVE TO BE PRESENT. HE
20 WENT THROUGH THE MICROSCOPIC ANALYSIS PROCESS. THEN HE TALKED ABOUT
21 THE CHEMICAL ANALYSIS, AND THEN HE TALKED ABOUT A BACKUP TO THE
22 CHEMICAL ANALYSIS SO THAT YOU GO THROUGH THIS PROCESS OF TESTING AND
23 DOUBLE CHECKING AND TRIPLE CHECKING IF YOU WILL. HE KNEW ABOUT THE
24 ADDITION OF THE CHLOROFORM REQUIREMENT AND WHY THAT WAS ADDED. HE
25 KNEW ABOUT ASPECTS OF THE POSSIBILITY OF FALSE POSITIVES. HE KNEW ABOUT

1 CONTAMINATION. HE DID TESTIFY ABOUT A CLEAN WORK AREA AND USING A
2 NEW TEST TUBE EVERY TIME YOU DO A TEST.

3 NOW IF THERE ARE INCONSISTENCIES IN HIS TESTIMONY I DON'T REALLY
4 GET INTO EVALUATING THAT I DON'T THINK.

5 HE DID TESTIFY ABOUT THOSE TWO THINGS: A CLEAN WORK AREA AND A
6 NEW TEST TUBE WHICH I THINK HE MEANT A CLEAN TEST TUBE.

7 MY UNDERSTANDING OF HIS TESTIMONY ABOUT THE USE OF THE REAGENT
8 OR THE CREATION OF THE REAGENT WAS THAT HE HAD MADE THAT UP AND WHEN
9 HE WAS ASKED ABOUT EXACT PERCENTAGES THAT GO IN TO MAKING THAT UP, HE
10 TESTIFIED THAT HE USES AND I THINK HE POINTED AT THE DOCUMENT. SO I THINK
11 WHAT HE DOES IS JUST LIKE A RECIPE.

12 SOME FOLKS CAN MAKE BISCUITS OFF THE TOP OF THEIR HEAD AND
13 COULDN'T BEGIN TO TELL YOU A RECIPE FOR 'EM. OTHER PEOPLE COULDN'T
14 MAKE A BISCUIT WITHOUT A RECIPE. SOME PEOPLE CAN'T MAKE A BISCUIT WITH
15 A RECIPE, AND THAT INCLUDES ME. BUT ALL OF THOSE THINGS, AGAIN, I THINK
16 THOSE GO TO THE WEIGHT OF THE EVIDENCE AND NOT WHETHER HE'S QUALIFIED
17 TO GIVE HIS OPINION OR WHETHER HE'S QUALIFIED AS AN EXPERT. HE CAN BE
18 CROSS EXAMINED ALL DAY LONG ABOUT WHAT HE DID WRONG OR WHAT HE
19 DOESN'T KNOW OR HOW THOSE THINGS AFFECT HIS OPINION. I DON'T KNOW
20 THAT I WOULD TAKE THE RISK THAT THIS BE THE ONLY PERSON WHO GIVES THAT
21 OPINION. BUT THAT'S NOT MY CALL TO MAKE. HE IS QUALIFIED AS AN EXPERT IN
22 THE FIELD FOR WHICH HE IS TENDERED, AND THAT IS IDENTIFICATION OF
23 MARIJUANA. IF YOU ALL ANTICIPATE ANY ISSUES, I NEED YOU HERE AT 8:30. IF
24 YOU DO NOT, I NEED YOU HERE AT 9.

25 MR. MAYE: WE'LL BE HERE AT 8:30.

1 MR. HAWKE: WHAT?

2 THE COURT: I SAID IF YOU ANTICIPATE ANY ISSUES I NEED YOU HERE AT
3 8:30. IF YOU DO NOT ANTICIPATE ANY ISSUES I NEED YOU HERE AT 9.

4 MR. SUSSMAN: I DON'T ANTICIPATE ANY ISSUES.

5 THE COURT: WELL, IF ANY OF YOU DO I NEED ALL OF YOU HERE.

6 MR. MAYE: I DO, YOUR HONOR.

7 THE COURT: 8:30.

8 MR. MAYE: THANK YOU.

9 MR. SUSSMAN: CAN I KNOW WHAT THE ISSUE IS THAT'S ANTICIPATED?

10 THE COURT: IT DOESN'T MATTER. WE DIDN'T KNOW ABOUT THIS ISSUE
11 UNTIL TODAY.

12 MR. SUSSMAN: WELL---

13 THE COURT: 8:30 IN THE MORNING. TELL THEM THAT. I'M SORRY, MR.
14 SUSSMAN. SHE LIVES ON THE OTHER SIDE OF RICHLAND COUNTY AND SHE HAS TO
15 DRIVE AN HOUR AND HALF TO GET HERE.

16 MR. SUSSMAN: I WAS JUST GONNA ASK ONE OF US SO WE COULD BE
17 PREPARED SO THAT WE COULD MAKE (INAUDIBLE) THAT'S ALL.

18 THE COURT: Y'ALL CAN TALK. DO THEY UNDERSTAND THEY HAVE TO BE
19 HERE AT 8:30 IN THE MORNING? MR. HUNT, DO THEY? THEY ALL UNDERSTAND? I
20 NEED AN ANSWER ON THAT RECORD. DO THEY UNDERSTAND THAT THEY HAVE TO
21 BE HERE AT 8:30 A.M. TOMORROW MORNING?

22 MR. HUNT: YES, YES, YES, YES, SIR.

23 THE COURT: ALRIGHT. ALL 4 ACKNOWLEDGE THAT. THANK YOU VERY
24 MUCH. COURT'S IN RECESS TILL 8:30.

25 (THE FOLLOWING OCCURRED THE NEXT DAY.)

1 THE COURT: ARE THERE ANY OTHER ISSUES I NEED TO ADDRESS BEFORE
2 THE JURY GETS HERE?

3 MR. MAYE: THE ONLY THING I CAN THINK OF RIGHT NOW OR ONE OF THE
4 THINGS I CAN THINK OF IS IF WE NEED TO LISTEN TO ANY ADDITIONAL
5 TESTIMONY. IF I NEED TO RECALL INVESTIGATOR LOWE. THE COURT INDICATED
6 THAT IN BETWEEN THE SUPPRESSION AND THE TESTIMONY IN CHIEF THAT WE MAY
7 HAVE A PROBLEM, THAT THERE MAY BE A GAP IN THE CHAIN AS FAR AS
8 INVESTIGATOR LOWE. I BELIEVE FROM MY RECOLLECTION INVESTIGATOR
9 TESTIFIED THAT HE TOOK EXCLUSIVE CUSTODY AND CONTROL OF THE DRUGS
10 AND OPENED THE CHIMNEYS AT THE DIRECTION OF CUSTOMS AT THE -- AT THE
11 STORE AND LATER AT THE SHERIFF'S OFFICE. SO I KNOW THERE'S A GAP IN THE
12 CHAIN IN REGARD TO INVESTIGATOR LOWE BEFORE I MAKE A DECISION WHETHER
13 OR NOT TO RELEASE HIM.

14 THE COURT: ALRIGHT. Y'ALL KNOW OF ANYTHING ELSE I NEED TO
15 ADDRESS?

16 MR. HAWKE: JUDGE, THE ONLY THING THAT I WOULD ASK THAT WE'D BE
17 ALLOWED IS THEY HAVE THE VIDEO THAT CAME FROM FREDY DELEON, AND I
18 WOULD LIKE AN OPPORTUNITY TO SIT DOWN AND LOOK AT THAT VIDEO WITH MY
19 CLIENT.

20 THE COURT: HOW LONG IS IT?

21 MR. HAWKE: IT'S -- I CAN DO IT ON A -- I MEAN I CAN DO IT ON LUNCH OR
22 SOMETHIN' LIKE THAT. I DON'T NEED TO DO IT THIS MORNIN'. AT ONE OF OUR
23 BREAKS WHERE WE COULD SIT DOWN, IF THEY COULD JUST OBTAIN IT FOR ME.
24 THAT'S ALL I'M ASKING.

25 THE COURT: DO YOU ALL KNOW WHERE THE TAPE IS?

1 MR. MIZZELL: YES, SIR, I THINK I CAN PUT MY HANDS ON IT.

2 THE COURT: I REALIZE YOU CAN'T ALWAYS ANTICIPATE WHAT'S GONNA
3 HAPPEN IN A TRIAL AND WHAT ISSUES ARE GOIN' TO ARISE. AS YOU ALL KNOW,
4 WE'RE ON A PRETTY TIGHT TIMEFRAME TRYIN' TO GET THIS CASE DONE SO THAT
5 WE DON'T INTERFERE WITH THE JURORS' HOLIDAYS OR REQUIRE THEM TO HAVE
6 TO COME BACK NEXT WEEK. IF THAT'S WHAT WE HAVE TO DO, THAT'S WHAT WE
7 HAVE TO DO. I'M PERFECTLY PREPARED TO DO IT. BUT I -- I AM GETTING A LITTLE
8 CONCERNED ABOUT THE NUMBER OF MATTERS THAT COME UP SORT OF OUT OF
9 THE BLUE.

10 WE HAD MONDAY AFTERNOON TO DEAL WITH ISSUES, AND I DON'T KNOW
11 WHAT TIME WE LEFT HERE. PROBABLY 7:30 OR SO. BUT I THINK A LOT OF THAT
12 TIME WAS GOING INTO, AS I SAID THAT DAY, A WHOLE LOTTA MATTERS THAT
13 REALLY DIDN'T HAVE MUCH TO DO WITH THE ISSUE THAT WAS BEFORE ME.
14 SEEMINGLY DIDN'T.

15 IT LOOKED LIKE IT WAS A DISCOVERY EXERCISE TO SOME EXTENT AND I
16 REALIZE HOW IT IS TO BE ON BOTH SIDES. I'VE SAT WHERE EACH OF YOU HAVE
17 SAT AS LAWYERS. BUT ANYWAY, THAT TOOK AN INORDINATE AMOUNT OF TIME I
18 THOUGHT AND THEN YOU COME IN AND NOBODY'S EVER MENTIONED A NEED FOR
19 A NEAL -VS- BIGGERS HEARING ON IDENTIFICATION, AND THEN AFTER THE
20 IDENTIFICATION IS MADE, THERE'S AN OBJECTION MADE. WELL, I'M REQUIRED TO
21 HAVE THOSE HEARINGS. BUT IF I DON'T KNOW THAT THERE'S AN ISSUE, I'M NOT
22 GONNA -- I'M NOT GONNA ADD IT. THAT'S WHY I ASKED IF WE HAD ANY
23 PRETRIAL ISSUES. I DIDN'T ANTICIPATE ANY. YOU KNOW, A LOT OF TIMES I
24 SPECIFICALLY MENTION IF THERE'S A NEAL -VS- BIGGERS OR A JACKSON -VS-
25 DENNO OR WHATEVER NEEDS TO BE DONE. BUT MY UNDERSTANDING WAS THAT

1 PROBABLY WAS SOMEWHAT OF A NON ISSUE BECAUSE MY BELIEF WAS THAT THE
2 3 INDIVIDUALS THAT WERE IDENTIFIED AT THAT POINT WERE ARRESTED AT THE
3 SCENE AND STAYED IN JAIL FOR AN EXTENDED PERIOD OF TIME AND ONE OF 'EM
4 IS BACK IN JAIL. ALL I'M SAYING IS IF YOU ALL KNOW THAT I'M GOING TO HAVE
5 TO DEAL WITH SOMETHING, LET ME KNOW ABOUT IT SO I CAN PLAN A LITTLE
6 BETTER. AND, MR. MAYE, I HAVE ASKED THE COURT REPORTER YESTERDAY, I
7 TOLD HER WHAT MY CONCERN IS, AND I'M GONNA GO IN THERE AND LISTEN TO
8 WHAT SHE QUED UP. I CAN'T PUT IT OFF ON HER. THERE ARE OCCASIONALLY
9 DISTRACTIONS UP HERE. I TRY TO LISTEN VERY CLOSELY AND I DO THE BEST I
10 CAN BUT OCCASIONALLY THERE ARE THINGS I HAVE TO DEAL WITH THAT MAY
11 DISTRACT ME FOR A MOMENT OR TWO, AND I MIGHT'VE MISSED SOMETHING, BUT I
12 DON'T KNOW THAT I CAN TELL YOU WHERE THE BREAK IN THE CHAIN IS.

13 MR. MAYE: I UNDERSTAND, YOUR HONOR. WE'LL RECALL INVESTIGATOR
14 LOWE AND I HAVE ONE OTHER WITNESS THAT WE CAN DO SO BEFORE THE JURY.

15 THE COURT: I GUESS SHE'S GOING TO BE PLAYING THIS OUT HERE SO
16 EVERYBODY CAN HEAR IT. SO YOU'LL HAVE EQUAL OPPORTUNITY TO HEAR WHAT
17 SHE THOUGHT MIGHT ADDRESS WHAT MY CONCERN WAS.

18 MR. PUETZ: I WOULD JUST ASK THAT THE REST OF US LEAVE THE ROOM
19 AND LET THE COURT DO---

20 THE COURT: THAT'S FINE TOO. THERE'S NOWHERE ELSE WE CAN PLAY
21 THAT, IS THERE, SMOKEY?

22 THE COURT REPORTER: NO, SIR. I MEAN---

23 THE COURT: ALRIGHT.

24 MR. MAYE: WE DON'T INTEND TO LEAVE WHEN THE TESTIMONY IS GONNA
25 BE PLAYED. I DON'T KNOW THAT WE'RE PRECLUDED FROM HEARING THE

1 TESTIMONY. WE DON'T INTEND TO LEAVE.

2 THE COURT: WELL, I DON'T THINK YOU'RE ENTITLED TO HEAR WHAT I
3 WANTED TO HEAR PLAYED BACK.

4 MR. MAYE: OH, YES, SIR, YOUR HONOR, IF---

5 THE COURT: IF THE JURY WANTS TO HEAR SOMETHING PLAYED BACK,
6 THAT'S A DIFFERENT ISSUE.

7 MR. MAYE: YES, SIR. THAT'S FINE. (THE FOLLOWING OCCURRED
8 SOMETIME LATER.)

9 THE COURT: ALRIGHT. GENTLEMEN, I LISTENED BASICALLY TO THE
10 ENTIRE DIRECT TESTIMONY, PORTIONS OF IT, AND THEN PRETTY MUCH ALL OF IT,
11 AND MY CONCERN WAS ADDRESSED. I DON'T KNOW HOW MUCH DETAIL I NEED
12 TO GO INTO BUT, BASICALLY, I HAD A CONCERN THAT THERE WAS A BREAK IN THE
13 CHAIN AS TO PART OF THE EVIDENCE, BUT AFTER LISTENING TO IT AGAIN, THE
14 WITNESS TESTIFIED DIFFERENTLY THAN WHAT I HAD RECALLED. SO MY CONCERN
15 WAS REMOVED.

16 MR. SUSSMAN: YOUR CONCERNED IS REMOVED? IS THAT WHAT YOU SAID?

17 THE COURT: I'LL TELL YOU -- I'LL TELL YOU WHAT MY CONCERN WAS IF
18 ALL OF Y'ALL WILL AGREE THAT I CAN TELL YOU.

19 MR. HAWKE: IF IT'S BEEN REMOVED, I DON'T MIND.

20 MR. MAYE: YES, SIR.

21 MR. SUSSMAN: YES, SIR.

22 THE COURT: OKAY. EVERYBODY'S IN AGREEMENT. MR. MILLER NODDED
23 HIS HEAD AFFIRMATIVELY. THE OTHERS GAVE AN ORAL RESPONSE. I DID NOT
24 RECALL OFFICER LOWE, CAPTAIN LOWE, TESTIFYING THAT HE HAD TAKEN
25 CUSTODY OF THE ITEMS FROM -- THE MARIJUANA FROM THE TRUCK. I RECALLED

1 HIM TESTIFYING THAT HE HAD TAKEN CUSTODY OF THE ITEMS FROM THE STORE.
2 BUT HE TESTIFIED THAT HE TOOK EXCLUSIVE POSSESSION AND CONTROL, WHICH
3 IS THE NOTE I HAD, OF THE ITEMS FROM THE TRUCK AND FROM THE STORE ON
4 THAT DAY AND THAT HE WAS TALKING ABOUT THE ITEMS SEIZED FROM BOTH
5 LOCATIONS.

6 I GUESS WHAT I WAS TRYING TO HEAR WAS HE WAS THE ONE WHO
7 ACTUALLY REMOVED THE THINGS FROM THE CHIMNEYS, AND I DON'T THINK I
8 CAN GET THAT NIT-PICKY. I THINK THERE'S SUFFICIENT EVIDENCE, BASICALLY, AT
9 THIS POINT. I'M NOT MAKING THE FINAL RULING, BUT I'LL TELL YOU -- SO I'M NOT
10 KEEPING YOU IN THE DARK, I'LL TELL YOU WHAT MY CONCERN WAS. MY
11 CONCERN WAS THAT THERE WAS, BASICALLY, NO MENTION OF TAKING
12 EXCLUSIVE POSSESSION AND CONTROL OF THE ITEMS FROM THE CHIMNEYS IN
13 THE TRAILER AT THE SHERIFF'S DEPARTMENT. AND I DON'T -- IT WASN'T
14 PROMPTED BY THE QUESTIONING BY THE DEFENSE RELATED TO THE FEDERAL
15 CHAIN OF CUSTODY DOCUMENT WHICH SAID THE ITEMS WERE GIVEN OVER TO
16 ROOSEVELT YOUNG. THAT'S NOT WHAT PROMPTED IT, BUT CERTAINLY THAT WAS
17 SOMEWHAT DISQUIETING TO MY EVALUATION. YOU READY FOR THE JURY,
18 SOLICITOR?

19 MR. MAYE: YES, SIR, YOUR HONOR. I WANT TO CHECK AND MAKE SURE
20 CHRIS WASH OUR WITNESS IS READY TO RETAKE THE STAND.

21 THE COURT: YOU ALL READY FOR THE JURY?

22 MR. SUSSMAN: YES, YOUR HONOR.

23 MR. MILLER: YES, YOUR HONOR.

24 THE COURT: YOU'RE STILL UNDER OATH, MR. WASH.

25 MR. WASH: YES, SIR, YOUR HONOR.

1 THE COURT: BRING THE JURY, PLEASE. YOU ALL KNOW THAT THAT
2 RULING I MADE HAS NOT BEEN MADE IN FRONT OF THE JURY AND IF YOU ALL
3 TENDER HIM AS AN EXPERT, ALL THAT STUFF YOU DID LAST NIGHT, THEY HAVEN'T
4 HEARD IT.

5 MR. MAYE: YES, SIR, YOUR HONOR.

6 THE COURT: ALL THE STUFF WE WENT OVER LAST NIGHT THE JURY HASN'T
7 HEARD. (THE FOLLOWING OCCURRED IN THE PRESENCE OF THE JURY.) ALRIGHT.
8 LADIES AND GENTLEMEN, WE STARTED AT 8:30 BUT IT JUST TOOK A LOT LONGER --
9 WELL, WE STAYED HERE LAST NIGHT UNTIL 7:30 AND THEN WE STARTED THIS
10 MORNING AT 8:30, BUT IT JUST TOOK LONGER THIS MORNING THAN I THOUGHT. I
11 APOLOGIZE. IT'S MY FAULT. I MISJUDGED THE TIME. OKAY. WE WERE IN A VOIR
12 DIRE STAGE, AN OBJECTION WAS RAISED, AND AT THAT POINT I INDICATED TO
13 YOU ALL THAT WHAT HAD COME BEFORE THE JURY WAS NOT SUFFICIENT. SO IT'S
14 BACK TO YOU, SOLICITOR. WE CAN GO FORWARD FROM THAT POINT.

15 (DIRECT EXAMINATION OF CHRIS WASH BY MR. MAYE RESUMES.)

16 Q LET ME ASK YOU THIS: WHEN DID YOU GAIN EXCLUSIVE CUSTODY AND
17 CONTROL OF ALL THE DRUG EVIDENCE IN THIS CASE THAT'S PREVIOUSLY
18 MARKED FOR I.D.?

19 A FEBRUARY THE 22ND OF THIS YEAR 2004.

20 Q HAVE YOU MAINTAINED EXCLUSIVE CUSTODY AND CONTROL OF IT UP
21 UNTIL WHEN?

22 A I STILL HAVE CUSTODY OF IT NOW.

23 Q RIGHT NOW.

24 A YES.

25 MR. MAYE: YOUR HONOR, AT THIS TIME I'M GOING TO RESERVE THE RIGHT,

1 SPECIFICALLY RESERVE THE RIGHT TO RECALL THIS WITNESS. THAT'S ALL THE
2 QUESTIONS I HAVE FOR HIM AT THIS TIME.

3 THE COURT: CROSS?

4 CROSS-EXAMINATION

5 BY MR. HAWKE

6 Q DEPUTY -- IS IT DEPUTY? HOW DO I ADDRESS YOU SO I ADDRESS YOU
7 PROPERLY?

8 A LT. WASH.

9 Q LT. WASH. I'M SORRY. AND, LT. WASH, DID YOU TAKE OVER THE
10 NARCOTICS DIVISION WHEN ROOSEVELT YOUNG LEFT?

11 A NO, SIR.

12 Q OKAY. WHO TOOK OVER NARCOTICS INVESTIGATIONS AT THAT TIME?

13 A I BELIEVE IT WAS MARK HOWARD.

14 Q ALRIGHT. AND WHEN MARK HOWARD TOOK IT OVER, ARE YOU AWARE OF
15 ANY FOLLOW UP INVESTIGATION THAT WAS DONE BY HIM?

16 A NO, SIR.

17 Q OKAY. HAVE YOU YOURSELF DONE ANY FOLLOW UP INVESTIGATION IN
18 THIS CASE?

19 A NO, SIR.

20 Q OKAY. THAT'S ALL I HAVE.

21 THE COURT: ALRIGHT. MR. SUSSMAN?

22 MR. SUSSMAN: NO QUESTIONS.

23 THE COURT: MR. MILLER?

24 MR. MILLER: NO QUESTIONS, YOUR HONOR.

25 THE COURT: MR. MAYE, REDIRECT?

1 MR. MAYE: NOTHIN' ELSE, YOUR HONOR. JUST RESERVE THE RIGHT TO
2 RECALL HIM.

3 THE COURT: ALRIGHT. THANK YOU VERY MUCH, LIEUTENANT. YOU MAY
4 STEP DOWN. YOU CANNOT DISCUSS YOUR TESTIMONY WITH ANYONE ELSE. THEY
5 SAID THEY MAY RECALL YOU.

6 A YES, SIR, YOUR HONOR.

7 THE COURT: CALL YOUR NEXT WITNESS.

8 MR. MAYE: STATE CALLS INVESTIGATOR ROOSEVELT YOUNG TO THE
9 STAND.

10 ROOSEVELT YOUNG, BEING DULY SWORN, TESTIFIES

11 AS FOLLOWS:

12 DIRECT EXAMINATION

13 BY MR. MAYE

14 Q INVESTIGATOR YOUNG, IF YOU WOULD, INTRODUCE YOURSELF TO THE
15 LADIES AND GENTLEMEN OF THE JURY.

16 A ROOSEVELT YOUNG FROM EDGEFIELD COUNTY SHERIFF'S OFFICE.

17 Q INVESTIGATOR YOUNG, HOW LONG HAVE YOU BEEN IN THE SHERIFF'S
18 OFFICE?

19 A 9 YEARS.

20 Q 9 YEARS. WHERE ARE YOU ORIGINALLY FROM?

21 A JOHNSTON.

22 Q YOU'RE FROM JOHNSTON.

23 A YES, SIR.

24 Q OKAY. IN WHAT CAPACITY WERE YOU EMPLOYED WITH THE SHERIFF'S
25 OFFICE BACK IN 2002?

- 1 A NARCOTICS INVESTIGATOR.
- 2 Q NARCOTICS INVESTIGATOR?
- 3 A RIGHT.
- 4 Q IS THAT STILL THE POSITION YOU CURRENTLY HAVE?
- 5 A YES, SIR.
- 6 Q HAS THERE BEEN A GAP IN YOUR SERVICE?
- 7 A YES, SIR.
- 8 Q WHEN?
- 9 A FEBRUARY 2003 UNTIL MARCH OF 2004.
- 10 Q WHY?
- 11 A I WAS CALLED UP TO ACTIVE DUTY WITH OPERATION ENDURING
- 12 (PHONETIC) FREEDOM IN IRAQ.
- 13 Q WHEN DID YOU RETURN BACK TO THE UNITED STATES?
- 14 A MARCH THE 10TH.
- 15 Q INVESTIGATOR YOUNG, LET ME ASK YOU THIS: WHAT WAS YOUR FIRST
- 16 INVOLVEMENT IN THIS CASE?
- 17 A MAY THE 13TH 2002 WHEN I RECEIVED A CALL FROM CUSTOMS ABOUT
- 18 APPROXIMATELY 800 TO 1000 POUNDS OF MARIJUANA COMIN' TO EDGEFIELD
- 19 COUNTY.
- 20 Q WHAT DID YOU DO TO PREPARE FOR THAT?
- 21 A WHAT I DID WAS ENLISTED HELP FROM SLED, AGENT COBY PERRY AND
- 22 AIKEN COUNTY SHERIFF'S OFFICE SENT OVER A COUPLE OF INVESTIGATORS TO
- 23 ASSIST ME THAT DAY.
- 24 Q OKAY. WHERE DID Y'ALL MEET?
- 25 A AT THE AIRPORT IN SALUDA COUNTY.

1 Q OKAY. WHAT WAS THE CIRCUMSTANCE, WHAT HAPPENED WHEN YOU
2 ARRIVED THERE?

3 A WE MET WITH CUSTOMS AND AGENTS FROM DEA AND WE DISCUSSED THIS
4 CONTROLLED DELIVERY TO THE MEXICAN STORE IN TRENTON.

5 Q OKAY. WHAT WAS YOUR ROLE? WHAT DID YOU DO?

6 A I BASICALLY WAS ASSISTIN' THE FEDS AND BROKE DOWN INTO TEAMS
7 AND WENT TO THE STORE AND TRIED TO MONITOR WHAT WAS GOIN' ON FOR THE
8 CONTROLLED DELIVERY.

9 Q WHERE WERE YOU?

10 A I WAS STATIONED AT THE COUNTRY STORE ABOUT 200 YARDS FROM THE
11 MEXICAN STORE IN TRENTON.

12 Q OKAY. WHAT LATER HAPPENED THEN FROM YOUR PERSPECTIVE?

13 A WHAT LATER HAPPENED WAS THEY OFFLOADED SEVERAL PIECES OF
14 FURNITURE AT THE STORE AND WE WENT TO BILLY'S AND FROM BILLY'S WE
15 WENT ON TO PADGETT ROAD WHERE THE TRUCK GOT STUCK.

16 Q DID THEY INFORM YOU AHEAD OF TIME WHERE THEY WERE ATTEMPTING
17 TO MAKE THIS CONTROLLED DELIVERY TO AND WHO IT WAS COMIN' TO?

18 A YES, SIR.

19 MR. SUSSMAN: OBJECTION TO THE FORM AS TO WHO THEY IS, JUDGE.

20 THE COURT: REPHRASE IT, PLEASE.

21 Q DID CUSTOMS WHEN THEY MADE THEIR INITIAL CONTACT NOTIFY YOU AS
22 TO WHERE THEY WERE ATTEMPTING TO MAKE A CONTROLLED DELIVERY?

23 A YES, SIR.

24 Q WHERE DID THEY SAY THEY WERE ATTEMPTING TO MAKE A CONTROLLED
25 DELIVERY?

- 1 A TO THE MEXICAN STORE IN TRENTON.
- 2 Q TO THE MEXICAN STORE IN TRENTON.
- 3 A YES, SIR.
- 4 Q OKAY. TO WHAT INDIVIDUAL?
- 5 A TO MR. FREDY DELEON. DELEON. I DON'T KNOW IF I'M PRONOUNCING IT
- 6 RIGHT.
- 7 Q OKAY. INVESTIGATOR YOUNG, DID YOU GO OUT TO THE SCENE WHERE THE
- 8 TRAILER WAS STUCK? WAS IT ALREADY STUCK AT THE TIME THAT YOU WENT OUT
- 9 THERE?
- 10 A YES, SIR.
- 11 Q OKAY. WHAT DID YOU DO ONCE YOU WENT OUT THERE AND THE TRUCK
- 12 WAS STUCK?
- 13 A I JUST BASICALLY KEPT CONTROL OF THE TRUCK TO MAKE SURE NOBODY
- 14 TAMPERED WITH IT AND WAITED UNTIL WE COULD GET A BULLDOZER OUT THERE
- 15 TO GET THE TRUCK UNSTUCK AND ESCORT IT BACK TO THE SHERIFF'S OFFICE.
- 16 Q OKAY. DID YOU OPEN AND LOOK INSIDE THE TRUCK OUT THERE WHILE IT
- 17 WAS STUCK?
- 18 A YES, SIR, I DID.
- 19 Q WHO WAS PRESENT WHEN YOU WENT OUT THERE?
- 20 A AGENT MICHELLE DOWLING WITH CUSTOMS.
- 21 Q OKAY. AT WHOSE DIRECTION DID YOU TAKE THE LOAD BACK TO THE
- 22 SHERIFF'S OFFICE?
- 23 A AGENT MICHELLE DOWLING.
- 24 Q OKAY. ONCE YOU GOT BACK TO THE -- HOW DID YOU GET THE TRUCK OUT
- 25 AND GET IT BACK TO THE SHERIFF'S OFFICE?

1 A I THINK WE CALLED RUSHTON WRECKER SERVICE FROM JOHNSTON AND
2 THEY IN TURN BROUGHT A -- I THINK IT WAS A BULLDOZER OUT AND WE HAD TO
3 PULL IT OUT WITH A DOZER.

4 Q OKAY. DID ANYBODY CHANGE OR HAVE ACCESS TO THE DRUGS WHILE
5 YOU WERE WATCHIN' OVER THE TRAILER?

6 A NO, SIR.

7 Q OR BACK AT THE SHERIFF'S OFFICE?

8 A NO, SIR.

9 Q WHO WAS BACK THERE AT THE SHERIFF'S OFFICE TO OPEN UP THE ITEMS?

10 A AT THE TIME IT WAS CAPTAIN ROGER LOWE.

11 Q AT WHOSE DIRECTION DID HE OPEN UP THOSE ITEMS?

12 A AGENT MICHELLE DOWLING.

13 Q INVESTIGATOR YOUNG, DID YOU OBTAIN WARRANTS FOR INDIVIDUALS IN
14 THIS CASE BASED ON THE EVENTS OF MAY 18TH 2002?

15 A YES, SIR.

16 Q DID YOU OBTAIN WARRANTS FOR TRAFFICKING FOR MR. DELEON?

17 A YES, SIR.

18 Q FOR MR. HONORIO GUERRERO?

19 A YES, SIR.

20 Q FOR MR. AVILA-AROJONA?

21 A YES, SIR.

22 Q AND MR. HERNANDEZ? DID YOU OBTAIN WARRANTS FOR HIM AS WELL
23 FOR TRAFFICKING?

24 A YES, SIR, I DID.

25 Q OKAY. WHEN DID YOU OBTAIN THOSE WARRANTS?

- 1 A WE ARRESTED 'EM THAT SATURDAY MORNING; I OBTAINED WARRANTS ON
2 THEM THAT FOLLOWING MONDAY.
- 3 Q OKAY. DID YOU GO TO A LOCAL MAGISTRATE TO GET THE WARRANTS?
- 4 A YES, SIR, I DID.
- 5 Q DID YOU SERVE THOSE WARRANTS ON THEM?
- 6 A YES, SIR, I DID.
- 7 Q MR. DELEON, MR. HERNANDEZ, MR. GUERRERO AND MR. AVILA-AROJONA?
- 8 A YES, SIR, I DID.
- 9 Q INVESTIGATOR YOUNG, WERE YOU ABLE TO LEARN ANYTHING IN THE
10 INVESTIGATION ABOUT THE INDIVIDUALS THAT WERE IN THE THUNDERBIRD
11 AUTOMOBILE?
- 12 A YES, SIR.
- 13 Q OKAY. WHERE WAS THE THUNDERBIRD AUTOMOBILE RECOVERED?
- 14 A AT BI-LO'S PARKING LOT UP HERE AT APPLE SQUARE PLAZA.
- 15 Q DID YOU ACTUALLY RECOVER THE THUNDERBIRD?
- 16 A YES, SIR.
- 17 Q OKAY. ALRIGHT: WAS -- WAS IT TAKE -- WHO FOUND IT INITIALLY? YOU
18 KNOW WHO FOUND IT INITIALLY?
- 19 A SLED AGENT COBY PERRY.
- 20 Q HE FOUND IT INITIALLY--
- 21 A HE FOUND IT INITIALLY, YES, SIR.
- 22 Q WHERE DID YOU TAKE IT BACK TO?
- 23 A SHERIFF'S OFFICE.
- 24 Q OKAY. WERE YOU ABLE TO DETERMINE WHO ONE OF THE OCCUPANTS OF
25 THE THUNDERBIRD WAS THAT HAD GOTTEN AWAY?

1 A YES, SIR.

2 Q I'M GONNA HAND YOU WHAT'S BEEN MARKED AS NOTHING -- OTHERS
3 HAVE BEEN MARKED PREVIOUSLY --

4 MR. MAYE: ASK THAT IT BE MARKED FOR I.D. JUST LET ME SHOW IT TO HIM.
5 YOU HAVE ANY OBJECTION TO THAT?

6 MR. HAWKE: NO.

7 MR. MAYE: YOUR HONOR, I'M GONNA MOVE THAT THIS PHOTOGRAPH BE
8 ADMITTED AS A STATE'S EXHIBIT, AND I DON'T THINK THERE'S ANY OBJECTION.

9 MR. HAWKE: THERE IS NO OBJECTION ON BEHALF OF FREDY DELEON. IT IS
10 NOT A PHOTOGRAPH THOUGH; IT'S A SKETCH. WE DON'T DISPUTE IT.

11 THE COURT: ANY OTHER OBJECTION?

12 MR. SUSSMAN: NO OBJECTION.

13 MR. MILLER: NO OBJECTION, YOUR HONOR.

14 THE COURT: MARK IT IN EVIDENCE, PLEASE. (STATE'S EXHIBIT #26
15 RECEIVED IN EVIDENCE.)

16 Q WHO WERE YOU ABLE TO DETERMINE THAT ONE OF THE OCCUPANTS OF
17 THE THUNDERBIRD WAS?

18 A MR. NUFO (PHONETIC) RAMOS VALASQUEZ.

19 Q WHERE DID HE LIVE?

20 A 20 GREENHOUSE ROAD.

21 Q 20 GREENHOUSE ROAD? WHERE IS THAT? WHAT'S THAT NEAR? WHAT
22 BUSINESS IS THAT NEAR?

23 A THAT'S GONNA BE NEAR THE MEXICAN STORE IN TRENTON.

24 Q OKAY. WERE YOU ABLE TO DETERMINE WHERE HE WAS WORKIN'?

25 MR. HAWKE: OBJECTION, YOUR HONOR. HEARSAY.

1 THE COURT: YOU WANT TO BE HEARD?

2 MR. MAYE: NO, SIR, YOUR HONOR.

3 THE COURT: ALRIGHT. SUSTAINED.

4 Q AGENT -- INVESTIGATOR YOUNG, DID YOU GET A SEARCH WARRANT FOR
5 THAT GREEN THUNDERBIRD? WERE YOU ABLE TO OBTAIN THAT?

6 A YES, SIR, I DID.

7 Q OKAY. DID YOU REMOVE VARIOUS ITEMS FROM INSIDE THE
8 THUNDERBIRD?

9 A YES, SIR, I DID.

10 Q OKAY. WERE YOU ABLE TO RETAIN -- TO OBTAIN RECORDS, PAYROLL
11 RECORDS OUT OF THAT THUNDERBIRD?

12 A YES, SIR.

13 Q OKAY. WHERE DID THEY INDICATE THAT MR. VALASQUEZ WORKED?

14 MR. HAWKE: OBJECTION, YOUR HONOR. IT'S STILL HEARSAY. JUST
15 WRITTEN NOW.

16 THE COURT: YOU WANT TO BE HEARD?

17 MR. MAYE: NO, SIR, YOUR HONOR.

18 THE COURT: SUSTAINED.

19 Q INVESTIGATOR YOUNG, DID YOU OBTAIN WARRANTS FOR MR. -- MR.
20 RAMOS I GUESS WE'LL CALL HIM?

21 A YES, SIR.

22 Q OKAY. DID YOU HAVE A SLED SKETCH ARTIST COME DOWN AND MAKE A
23 COMPOSITE OF HIM?

24 A YES, SIR, I DID.

25 Q OKAY. WHO DID YOU UTILIZE IN ORDER TO GIVE YOU INFORMATION IN

1 REGARD TO GETTIN' THAT COMPOSITE PICTURE?

2 A MISS BOBBY SNODGRASS.

3 Q MR. BOBBY SNODGRASS.

4 A MISS BOBBY SNODGRASS.

5 Q BOBBY SNODGRASS. WHO IS SHE AND WHAT DOES SHE DO?

6 A SHE STAYS IN THE TRAILER PARK, IN THE SAME TRAILER PARK WHERE MR.
7 VALASCO (PHONETIC) STAYS AT.

8 Q ALRIGHT. COULD YOU COME DOWN AND SHOW THE JURY THIS SKETCH OF
9 HIM.

10 THE COURT: HE CAN'T GO IN THE JURY BOX.

11 MR. MAYE: EXCUSE ME.

12 Q DON'T GO IN THE BOX. JUST SHOW IT TO 'EM FROM OUTSIDE.

13 MR. MAYE: I LOOKED AWAY, YOUR HONOR. I'M SORRY.

14 Q DID YOU OBTAIN A WARRANT FOR MR. RAMOS?

15 A YES, SIR, I DID.

16 Q FOR WHAT?

17 A TRAFFICKING MARIJUANA, CONSPIRACY TO TRAFFICK MARIJUANA.

18 Q WHAT STEPS DID YOU TAKE IN ORDER TO INSURE THAT OTHER LAW
19 ENFORCEMENT AGENCIES ACROSS THE COUNTRY WOULD KNOW THAT HE WAS
20 WANTED?

21 A I ENTERED HIM IN THE NATIONAL CRIME INFORMATION CENTER
22 COMPUTER WHICH IS THE NCIC.

23 Q OKAY. DO ALL LAW ENFORCEMENT OFFICERS---

24 A RIGHT.

25 Q ---HAVE ACCESS TO THAT?

1 A YES, SIR, THEY DO.

2 Q HAVE YOU EVER GOTTEN BACK ANY FEEDBACK FROM ANY LAW
3 ENFORCEMENT AGENCY?

4 A AS OF THIS DAY AND TIME, NO, SIR.

5 Q HAVE YOU HAD ANY SUCCESS AT ALL IN LOCATING MR. RAMOS OR
6 GETTING ANY LEADS AS TO WHERE HIS WHEREABOUTS ARE?

7 A NO, SIR.

8 Q LET ME ASK YOU THIS: INVESTIGATOR YOUNG, WERE YOU ABLE TO
9 ASCERTAIN WHO THE OTHER PERSON IN THE THUNDERBIRD WAS THAT GOT
10 AWAY?

11 A NO, SIR, I HAVEN'T.

12 Q OKAY. DID YOU LOOK AT A VIDEO TAPE THAT WAS TAKEN FROM MR.
13 DELEON ON THAT DAY?

14 A YES, SIR, BRIEFLY AT THE STORE I DID.

15 Q YOU DID?

16 A YES, SIR.

17 Q WERE YOU EVER ABLE TO GAIN ANY INTELLIGENCE OR ANYTHING THAT
18 ASSISTED YOU OR FURTHERED YOUR INVESTIGATION IN ANY WAY FROM THAT
19 VIDEO TAPE?

20 A NO, SIR.

21 Q OKAY.

22 MR. MAYE: YOUR HONOR, I HAVE ONE - I'D LIKE TO APPROACH IF I
23 COULD. I'VE GOT ONE DEFENSE LAWYER I NEED TO APPROACH WITH. IF THEY
24 ALL NEED TO COME--(THERE WAS A BENCH CONFERENCE OUT OF THE HEARING
25 OF THE JURY AND OFF THE RECORD.)

- 1 Q INVESTIGATOR YOUNG, YOU DID LOOK AT THE VIDEO TAPE UP THERE.
- 2 A YES, SIR, I DID.
- 3 Q WHO WAS PRESENT LOOKIN' AT THAT TIME?
- 4 A I THINK SLED AGENT PERRY WAS PRESENT WHEN I WAS LOOKIN' AT IT
- 5 ALSO AND MAYBE ONE OF THE AIKEN COUNTY SHERIFF'S OFFICE WAS THERE.
- 6 Q WERE FEDERAL OFFICERS ALSO THERE?
- 7 A YES, SIR, THEY WERE ALSO THERE. AGENT DOWLING WAS THERE ALSO.
- 8 Q OKAY. BUT YOU WEREN'T ABLE TO LEARN ANYTHING FROM THE TAPE?
- 9 A NO, SIR, I WASN'T.
- 10 Q OKAY. LET ME ASK YOU THIS: DID YOU EXECUTE ANY SEARCH WARRANTS
- 11 OR ANYTHING ON ANY OTHER PIECES OF PROPERTY THERE?
- 12 A NO, SIR, I DIDN'T.
- 13 Q WHY?
- 14 A I DIDN'T THINK IT WOULD BEAR NO FRUIT TO MY INVESTIGATION.
- 15 Q WHY NOT?
- 16 A I JUST DON'T THINK MR. DELEON WOULD LEAVE ANY SCALES OR ANY
- 17 LARGE SUMS OF MONEY OR ANYTHING LIKE THAT AROUND THE STORE.
- 18 Q WHY NOT?
- 19 A BECAUSE HE'S A DRUG TRAFFICKER. HE'S NOT A STREET LEVEL---
- 20 MR. HAWKE: OBJECTION, YOUR HONOR. THERE IS ABSOLUTELY NO
- 21 EVIDENCE WHATSOEVER. AND I NEED TO BE HEARD OUTSIDE THE PRESENCE OF
- 22 THE JURY.
- 23 THE COURT: LADIES AND GENTLEMEN, PLEASE, STEP INTO THE JURY
- 24 ROOM. DISREGARD THE LAST STATEMENT OF THE WITNESS. DO NOT DISCUSS THE
- 25 CASE. (THE FOLLOWING OCCURRED OUTSIDE THE PRESENCE OF THE JURY.) YES,

1 SIR?

2 MR. HAWKE: YOUR HONOR, CAN WE TAKE UP THIS MATTER OUTSIDE THE
3 PRESENCE OF INVESTOR YOUNG?

4 THE COURT: YES, SIR. MR. YOUNG, PLEASE, STEP IN THE BACK. PLEASE,
5 DON'T DISCUSS YOUR TESTIMONY WITH ANYONE.

6 MR. HAWKE: JUDGE, AT THIS TIME ON BEHALF OF DEFENDANT DELEON,
7 WE WOULD MOVE FOR A MISTRIAL. HE'S BEEN MISCHARACTERIZED AS A DRUG
8 TRAFFICKER, AND THAT STATEMENT HAS BEEN PUT BEFORE THE JURY WITHOUT
9 ANY BASIS WHATSOEVER. THE ONLY THING THAT THEY HAVE IN THIS CASE IS THE
10 MAN HAD FURNITURE DELIVERED THAT WAS SEALED UP. NO PRIOR EVIDENCE
11 THAT HE'D BEEN INVOLVED IN ANYTHING AS FAR AS DRUGS AND ALL. HE'S GOT A
12 CLEAN RECORD, AND NOW HE'S BEEN LABELED BEFORE THE JURY AS A -- LIKE
13 HE'S A KNOWN DRUG TRAFFICKER OR SOMETHING LIKE THAT, AND WE THINK IT'S
14 HIGHLY PREJUDICIAL. WE DON'T THINK IT CAN BE ERASED FROM THE MINDS OF
15 THE JURY. WE WOULD MOVE FOR A MISTRIAL AT THIS TIME.

16 MR. SUSSMAN: JUDGE, I'D LIKE TO JOIN IN THAT MOTION. THESE CASES
17 ARE ALL BEING TRIED TOGETHER. THE FACT THAT THE T-BIRD WAS AT FREDY'S
18 AND IT CAME OVER TO BILLY'S WITH OUR CLIENTS, SO OBVIOUSLY THAT'S THE TIE-
19 IN THAT THE SOLICITOR'S OFFICE IS TRYING TO USE, AND THEREFORE ANY
20 IMPERMISSIBLE TAIN ON FREDY CONSEQUENTLY MUST TAIN OUR CLIENTS. FOR
21 THAT REASON WE WOULD MOVE FOR A MISTRIAL BASED UPON A DENIAL OF OUR
22 CLIENTS' RIGHT TO A FAIR TRIAL AND DUE PROCESS OF LAW.

23 THE COURT: MR. MILLER?

24 MR. MILLER: YOUR HONOR, I WOULD JOIN IN THE MOTION MADE BY MR.
25 SUSSMAN FOR THE REASONS STATED THEREIN.

1 MR. HAWKE: AND, JUDGE, ONE MORE IN THAT REGARD.

2 THE REASON I THINK THIS WAS AN INTENTIONAL KIND OF STATEMENT IN
3 FRONT OF THE JURY TO INFLAME THE JURY IS BECAUSE IN PREVIOUS TESTIMONY
4 IN THIS SAME CASE WHEN THIS INVESTIGATOR WAS UNDER OATH HE HAS STATED
5 THAT IN THE PRELIMINARY HEARING ON PAGE 30 LINE 2 THROUGH 7 THAT HE
6 DIDN'T THINK -- EXCUSE ME -- PAGE 30 LINE 2 THROUGH 4 THAT HE DIDN'T FEEL
7 LIKE HE WAS THE DRUG DEALER IN THIS CASE.

8 HE'S ALSO STATED IN PREVIOUS TESTIMONY AT THE PRELIMINARY
9 HEARING WHEN HE WAS UNDER OATH AT PAGE 30 LINE 2 THROUGH 7 THAT HE
10 DIDN'T THINK HE WAS A DRUG DEALER AND THAT'S WHY HE DIDN'T DO THE
11 SEARCH WARRANT IN DIRECT CONTRADICTION TO THE TESTIMONY HE JUST GAVE
12 IN THIS CASE, AND BOTH OF THESE TWO THINGS CANNOT BE TRUTHFUL. AND HE
13 HAS MADE THESE INTENTIONAL MISREPRESENTATIONS IN FRONT OF THE JURY,
14 AND I THINK THAT IS A BASIS FOR A MISTRIAL OR AT LEAST EVENTUALLY HAVE
15 HIS TESTIMONY STRICKEN. BUT WE THINK IT'S PLENTY OF EVIDENCE THAT IT'S
16 INTENTIONAL MISCONDUCT OF THIS WITNESS PLACING THESE MATTERS BEFORE
17 THE JURY WHEN HIS PREVIOUS TESTIMONY WAS IN DIRECT CONTRADICTION TO
18 WHAT HE JUST STATED.

19 MR. PUETZ: JUDGE, I'D LIKE TO HAND UP---

20 THE COURT: I TAKE YOU AT YOUR WORD. I DON'T HAVE ANY REASON TO
21 DOUBT WHAT YOU'RE TELLIN' ME. IF YOU WANT TO MAKE SOMETHING PART OF
22 THE RECORD, YOU MAY. I DON'T GET INTO EVALUATIN' WHETHER SOMEBODY'S
23 TELLIN' THE TRUTH AT ONE POINT OR TELLIN' THE TRUTH AT ANOTHER. WHAT'S
24 THE STATE'S POSITION?

25 MR. MAYE: YOUR HONOR, OUR POSITION IN THIS CASE IS HE'S CHARGED

1 WITH TRAFFICKING IN THIS CASE.

2 THE INDICTMENT ITSELF IS HE'S CHARGED WITH DRUG TRAFFICKING IN
3 THIS CASE. THE OFFICER IN THIS CASE -- I ASK THE COURT JUST TO ASK THE JURY
4 TO IGNORE THE RESPONSE OF THE WITNESS IN THIS CASE, YOUR HONOR.

5 I WAS ASKIN' HIM ABOUT THE WHY HE HAD EXECUTED THE SEARCH
6 WARRANT IN THIS CASE. CERTAINLY WHAT WE'RE LOOKIN' FOR OR WHAT WE
7 WOULD HAVE ANTICIPATED WAS TESTIMONY IN REGARD TO WHETHER OR NOT
8 THERE WERE SCALES AND WHAT THE SIGNIFICANCE OF THAT IS IN RELATION TO
9 THAT STUFF, BUT THE OFFICER CERTAINLY HAS ALREADY SWORN OUT A
10 WARRANT AND SAID IN THIS CASE HE BELIEVES, IF YOU WILL, THAT HE IS A DRUG
11 TRAFFICKER AND THAT'S WHAT HE'S ULTIMATELY CHARGED WITH IN THIS CASE,
12 YOUR HONOR.

13 I THINK JUST ASKIN' THE JURY TO -- I MEAN IT'S NOT A MYSTERY THAT
14 HE'S CHARGED WITH TRAFFICKING IN THIS CASE, YOUR HONOR. I WOULD ASK
15 THAT -- EVERY WITNESS PRIOR TO THIS HAS BEEN ASKED THE SAME QUESTION
16 ABOUT WHY THEY DID NOT EXECUTE A SEARCH WARRANT OR WHAT WAS DONE
17 IN FURTHERANCE OF THE INVESTIGATION. I ANTICIPATE THIS WITNESS ON CROSS
18 WOULD BE ASKED THE SAME THING. I UNDERSTAND THAT THAT CAME OUT ON
19 DIRECT TESTIMONY, YOUR HONOR. I THINK A CURATIVE INSTRUCTION -- LIKE I
20 SAID, IT'S NO MYSTERY IN THIS CASE HE'S CHARGED WITH TRAFFICKING IN THIS
21 CASE AND THE OFFICER DREW A WARRANT FOR THAT VERY CRIME.

22 MR. HAWKE: YOUR HONOR, MAY I PLACE IN THE RECORD THE EXACT
23 TESTIMONY FROM THE PRELIMINARY HEARING? IT SAYS DID YOU FEEL LIKE HE
24 WAS THE DRUG DEALER IN THIS CASE. HIS ANSWER AT THAT TIME WAS NO SIR I
25 DIDN'T. OKAY AND THAT'S WHY YOU DIDN'T GO DO THE SEARCH WARRANT

1 OBVIOUSLY. ANSWER: YES SIR. THAT'S IN DIRECT CONTRADICTION TO ALMOST
2 EVERYTHING THING HE JUST SAID AND THEN HE LABELED HIM AS A DRUG
3 TRAFFICKER.

4 MR. MAYE: MAY IT PLEASE THE COURT? YOUR HONOR, ALL I WANT TO SAY
5 IS THERE'S A BIG DIFFERENCE BETWEEN BEING A STREET LEVEL DRUG DEALER
6 AND A TRAFFICKER. CERTAINLY THE OFFICERS CAN TESTIFY AS TO THAT, THE
7 DIFFERENCE BETWEEN BEING A DRUG TRAFFICKER AS OPPOSED TO BEING A
8 STREET LEVEL DEALER. THERE ALL KINDS A QUESTIONS IN THIS RECORD AS TO
9 SCALES OR BAGS OR THOSE THINGS THAT WOULD BE INDICATIVE OF BEIN' A
10 DRUG DEALER AS OPPOSED TO BEING A DRUG TRAFFICKER IN THIS CASE, YOUR
11 HONOR, AND THERE IS A BIG DISTINCTION.

12 THE COURT: THE MOTION FOR A MISTRIAL IS DENIED.

13 I DO BELIEVE THAT IT'S NO MYSTERY THAT THE STATE HAS CHARGED THIS
14 INDIVIDUAL AS BEING A DRUG TRAFFICKER AND THEREFORE THE STATEMENT
15 THAT HE IS A DRUG TRAFFICKER IS NOT SUFFICIENT GROUNDS FOR A MISTRIAL.
16 HOWEVER, I'M GONNA TELL YOU ALL THAT I'M LOSIN' MY PATIENCE.

17 I'VE ALREADY HAD TO DECLARE A MISTRIAL BECAUSE OF SOMETHIN' MR.
18 YOUNG SAID, AND IF HE DOES ANYTHING LIKE THIS AGAIN, I'M DISMISSIN' THE
19 CASE AGAINST THESE PEOPLE AND THEY'RE GONNA WALK OUTTA THIS
20 COURTROOM. FREE. NOW THAT MAY ULTIMATELY BE THE DECISION OF THE JURY.
21 THAT'S FINE. BUT I'M GETTIN' TIRED OF THIS FOOLISHNESS. IT CAN BE
22 INTERPRETED AS SOME SORTA WAY THAT HE IS A KNOWN DRUG TRAFFICKER. HE
23 IS -- YOU KNOW, SOMETHING LIKE THAT. IT'S JUST CALLIN' HIM NAMES
24 UNNECESSARILY. NOW IF Y'ALL DON'T HAVE ANY BETTER CONTROL OVER YOUR
25 WITNESS THAN THAT, DON'T PUT HIM ON THE STAND. IT'S COSTIN' THOUSANDS OF

1 DOLLARS, WASTIN' ALL KINDS A COURT TIME. IT'S A HUGE CASE. IT'S BEEN GOIN'
2 ON FOR YEARS. IT'S THE BIGGEST DRUG SEIZURE, MY UNDERSTANDING, IN THE
3 HISTORY OF EDGEFIELD COUNTY, AND I WANT IT TO BE HANDLED THAT WAY.
4 WE'RE AT EASE. (THERE WAS A BRIEF RECESS.) BRING MR. YOUNG BACK IN HERE.
5 MR. YOUNG, DO NOT CALL THOSE PEOPLE NAMES. DO NOT SAY ANYTHING TO
6 INFLAME THAT JURY. I'VE HAD TO DECLARE ONE MISTRIAL BECAUSE OF
7 SOMETHING YOU DID BEFORE. THEY MADE ANOTHER MISTRIAL MOTION THEN
8 BECAUSE OF WHAT YOU JUST DID. IF WHAT YOUR INTENTION IS TO TRY TO
9 DISTINGUISH BETWEEN WHAT A DRUG TRAFFICKER WOULD HAVE AND WHAT A
10 DRUG DEALER WOULD HAVE, YOU CAN DO THAT WITHOUT SAYING THAT SUCH
11 AND SUCH IS A DRUG TRAFFICKER. I HAVE PUT THE STATE ON NOTICE THAT IF I
12 HAVE ONE MORE OF THESE THINGS HAPPEN THEN I HAVE NO OPTION IN MY MIND
13 BUT TO LET THOSE MEN GO FREE AND DISMISS THE CASE FOR PROSECUTORIAL
14 MISCONDUCT. BRING THAT JURY IN. NOW Y'ALL QUIT WASTIN' MY TIME. (THE
15 FOLLOWING OCCURRED IN THE PRESENCE OF THE JURY.) LADIES AND
16 GENTLEMEN OF THE JURY, AS I INSTRUCTED YOU BEFORE YOU LEFT, DISREGARD
17 THE LAST COMMENT OF THAT WITNESS -- THIS WITNESS WHICH CHARACTERIZED
18 THE DEFENDANT. YOU MAY CONTINUE, MR. MAYE

19 Q INVESTIGATOR YOUNG, DID YOU HAVE AN OCCASION TO GO DOWN TO THE
20 JAIL AND LOOK AT A CELLULAR TELEPHONE THAT ONE OF THE DEFENDANTS IN
21 THIS CASE HAD?

22 A YES, SIR, I DID.

23 Q OKAY. DO YOU REMEMBER WHICH ONE OF THE DEFENDANTS IT WAS?

24 A I THINK IT'S THAT SUSPECT STANDIN' OVER THERE WITH THE LIGHT BLUE
25 SHIRT ON. I CAN'T RECALL HIS LAST NAME.

1 Q ON THE END RIGHT HERE?

2 A YES, SIR.

3 Q DID YOU, IN FACT, EXAMINE OR LOOK AT THAT CELL PHONE?

4 A YES, SIR, I DID.

5 Q WERE YOU ABLE TO GAIN ANY INFORMATION THAT FURTHERED YOUR
6 INVESTIGATION IN ANY WAY FROM THE CELL PHONE?

7 A NO, SIR. THE BATTERY WENT DEAD ON IT.

8 Q OKAY. ANSWER ANY QUESTIONS THE DEFENSE HAS FOR YOU
9 THE COURT. CROSS.

10 CROSS-EXAMINATION

11 BY MR. HAWKE

12 Q NOW WHEN DID YOU SAY YOU FIRST BECAME INVOLVED IN THIS CASE?

13 A MAY THE 13TH IS WHEN I GOT THE INITIAL CALL.

14 Q OKAY. AND I THINK YOU WERE BASICALLY ASSIGNED WHEN -- OR YOU
15 GOT INFORMATION THAT WAS COMIN' IN AND YOU WERE ASSIGNED TO ONE OF
16 THE GROUPS. AM I CORRECT?

17 A CORRECT.

18 Q DO YOU REMEMBER TELLIN' ME ABOUT THE WEATHER ON THAT DAY?

19 A YES, I DO.

20 Q CAN YOU TELL THE JURY WHAT THE WEATHER WAS LIKE THAT DAY?

21 A IT WAS RAINING TERRIBLY, LIKE A MONSOON.

22 Q OKAY. AND WHEN YOU WERE AT YOUR SURVEILLANCE POINT DO YOU
23 REMEMBER TELLING ME THAT YOU WERE SITTING THERE AND YOU REALLY
24 COULDN'T SEE MUCH FURTHER THAN, SAY, 7 OR 8 FOOT AWAY FROM YOU?

25 A YES, SIR.

1 Q OKAY. AND YOU REALLY COULDN'T SEE MUCH OF ANYTHING THAT WAS
2 GOING ON THAT DAY; YOU HEARD MOST OF IT OVER THE RADIO.

3 A CORRECT.

4 Q OKAY. NOW YOU HAVE NEVER -- YOU DON'T HAVE ANY EVIDENCE THAT
5 MR. FREDY DELEON WAS EVER -- MADE ANY PHONE CALLS TO SEBASTIAN
6 EXPORTACIONES, DO YOU?

7 A NO, SIR.

8 Q OKAY. YOU DON'T HAVE ANY EVIDENCE THAT HE HAD WRITTEN THEM OR
9 DID YOU EVER FIND ANY CORRESPONDENCE FROM THEM TO HIM OR HIM TO
10 SEBASTIAN EXPORTACIONES?

11 A NO, SIR.

12 Q OKAY. DID YOU FIND ANY PHONE CALL OR ANY RECORDS THAT WOULD
13 INDICATE THAT HE EVER CALLED JAMCO INTERNATIONAL?

14 A NO, SIR, I HAVEN'T.

15 Q OR THAT THEY HAD WRITTEN BACK AND FORTH IN THE MAIL?

16 A NO, SIR.

17 Q OKAY. DID YOU FIND ANY CONNECTIONS WITH -- BETWEEN HIM AS FAR
18 AS A PHONE CALL, LETTERS OF CORRESPONDENCE BACK AND FORTH TO LAREDO,
19 TEXAS?

20 A NO, SIR.

21 Q OKAY. ANY PHONE CALLS OR ANY RECORDS OF CORRESPONDENCE
22 BETWEEN HIM AND BORDER CARRIERS?

23 A NO, SIR.

24 Q ANY PHONE CALLS OR LETTERS OR RECORDS IN REGARDS TO HIM AND
25 JOSE ROBAR CONTRARAS, THE DRIVER THAT BROUGHT THE TRUCK OVER THE

1 BORDER?

2 A NO, SIR.

3 Q OKAY. AND YOU NEVER FOUND ANY INFORMATION TO INDICATE THAT
4 FREDY DELEON HIMSELF PLACED THIS ORDER.

5 A NO, SIR.

6 Q OKAY.

7 A OTHER THAN -- CAN I SAY SOMETHIN' ELSE?

8 Q SURE.

9 A OTHER THAN HIS NAME WAS ON THE BILL OF LADING AND HE ACCEPTED
10 CUSTODY AND CONTROL OF THAT CHIMNEY WHEN IT CAME TO THE STORE.

11 Q I UNDERSTAND. AND THAT BILL OF LADING YOU DON'T KNOW WHO
12 PROVIDED THE INFORMATION THAT'S ON THAT BILL OF LADING TO THE PEOPLE
13 WHO PREPARED THE BILL OF LADING. DO YOU?

14 A NO, SIR, I DON'T.

15 Q OKAY. THERE WAS A BOX TRUCK, A YELLOW BOX TRUCK THAT WAS
16 FOLLOWING THE FORD THUNDERBIRD. DO YOU REMEMBER IT?

17 A YES, SIR, I DO.

18 Q ALRIGHT. DID YOU EVER FIND ANYTHING THAT WOULD INDICATE THAT
19 FREDY DELEON WAS INVOLVED IN EITHER OBTAINING OR RENTING THAT BOX
20 TRUCK?

21 A NO, SIR.

22 Q DID YOU -- THERE ARE 3 OTHER CO-DEFENDANTS IN THIS PARTICULAR
23 CASE. HAVE YOU FOUND ANY EVIDENCE WHICH WOULD INDICATE -- EXCUSE ME -
24 - ANY CORRESPONDENCE, ANY PHONE CALLS OR ANYTHING BETWEEN HIM AND
25 ANY ONE OF THESE DEFENDANTS -- THESE OTHER CO-DEFENDANTS BEFORE THIS

1 PARTICULAR INCIDENT HAPPENED?

2 A NO, SIR.

3 Q OKAY. AND DID -- HAVE YOU DONE ANY SUBSEQUENT INVESTIGATION
4 THAT WOULD INDICATE THAT THERE WAS ANY PHONE CALLS OR
5 CORRESPONDENCE BETWEEN HIM AND THEM?

6 A NO, SIR.

7 Q NOW I KNOW THAT THERE WERE 2 GUYS THAT WERE NOT ARRESTED. AM I
8 CORRECT?

9 A CORRECT.

10 Q OKAY. AND THOSE 2 PARTICULAR GUYS -- I THINK YOU SHOWED US A
11 PICTURE OF ONE: MR. RAMOS.

12 A RIGHT.

13 Q OTHER THAN PUTTING HIM IN THE NCIC, HAVE YOU DONE ANY FOLLOW UP
14 INVESTIGATION TO TRY AND LOCATE HIM?

15 A NO, SIR. MR. RAMOS IS PROBABLY AN ILLEGAL ALIEN. I'M NOT GONNA BE
16 ABLE TO FIND HIM NOWHERE.

17 Q OKAY. DID YOU DO ANYTHING TO FIND OUT -- ANYONE GIVE YOU ANY
18 RECORDS WHERE HE HAD BEEN WORKING OR ANYTHING LIKE THAT?

19 A NO, SIR. I DIDN'T.

20 Q DID YOU DO ANYTHING TO OBTAIN ANY BANK RECORDS WHERE HE
21 MIGHT'VE GIVEN INFORMATION ABOUT HIS FAMILY OR OTHER CONTACTS OR
22 ANYTHING LIKE THAT?

23 A WELL, CORRECTION. I THINK THERE WAS A PAYROLL STATEMENT OR
24 SOMETHING LIKE THAT IN THAT CAR WHERE HE USED TO WORK AT IN TRENTON.

25 Q NOW DID YOU ALSO GO TO HIS HOME AND LOOK AROUND FOR

1 CORRESPONDENCE AND THINGS LIKE THAT?

2 A NO, SIR, I DIDN'T.

3 Q OKAY. DID YOU GO AND SEE IF HE HAD ANY CON -- IF HE HAD ANY
4 LETTERS FROM ANY PEOPLE THAT HE MIGHT KNOW, HIS FAMILY OR ANYTHING
5 LIKE THAT?

6 A NO, SIR.

7 Q DID YOU TRY AND LOCATE HIS FAMILY?

8 A NO, SIR.

9 Q DID YOU LOOK AT HIS PHONE RECORDS TO SEE WHO HE MIGHT CALL?

10 A NO, SIR.

11 Q DID YOU LOOK FOR ANY -- DID YOU BASICALLY SEARCH OR OBTAIN ANY
12 INFORMATION FROM HIS HOUSE OR HIS CAR THAT LED TO INFORMATION WHERE
13 YOU COULD LOCATE HIM?

14 A NO, SIR.

15 Q NOW THE OTHER GENTLEMAN THAT WAS INVOLVED, DID MR. DELEON
16 PROVIDE YOU WITH A VIDEO TAPE OR A PICTURE OF THAT GENTLEMAN?

17 A HE PROVIDED A VIDEO TAPE. I LOOKED AT THE VIDEO TAPE, AND I DID NOT
18 SEE ANYBODY ON AT THE TIMEFRAME I WAS LOOKIN' AT IT.

19 Q OKAY. WHICH TIMEFRAME DID YOU LOOK AT IT?

20 A SHORTLY AFTER WE WENT INSIDE THE STORE.

21 Q OKAY. ALRIGHT. SO YOU WERE LOOKIN' AT THE VIDEO TAPE AFTER ALL
22 THE NARCOTICS OFFICERS WENT INSIDE THE STORE.

23 A CORRECT.

24 Q OKAY. DID YOU EVER LOOK AT THE VIDEO TAPE AT ANY TIME PRIOR TO
25 THAT TO SEE IF THERE WAS A PERSON ON THERE IDENTIFIED BY MR. DELEON AS A

1 PERSON THAT TOLD HIM TO ORDER THIS FURNITURE?

2 A NO, SIR.

3 Q OKAY. HAS ANYBODY EVER DONE ANYTHING TO PULL AN IMAGE OF ANY
4 PEOPLE OFF THIS VIDEO TAPE WHEN USING IT TO ATTEMPT TO IDENTIFY THAT
5 INDIVIDUAL?

6 A TO MY KNOWLEDGE, NO, SIR.

7 Q OKAY. NOW WHEN THIS PARTICULAR TRUCK ARRIVED WERE YOU AWARE
8 THAT IT WAS -- THAT IT HAD A SEAL THAT WAS PLACED ON THERE BY CUSTOMS?

9 A I WASN'T AWARE OF IT, NO, SIR.

10 Q OKAY. YOU DON'T KNOW ANYTHING ABOUT THE SEALS?

11 A I DON'T KNOW ANYTHING ABOUT THAT.

12 Q OKAY. AND THIS -- THIS RAMOS GUY APPARENTLY -- DID YOU DETERMINE
13 WHETHER HE OWNED THIS CAR?

14 A IT WAS REGISTERED TO HIM, YES, SIR.

15 Q OKAY. IT WAS REGISTERED TO HIM. SO HE JUST -- HE LEFT THIS CAR AND
16 COMPLETELY ABANDONED THIS CAR.

17 A CORRECT.

18 Q DID YOU EVER DETERMINE WHETHER THERE WERE ANY LIENS OR MONEY
19 OWED ON THAT CAR?

20 A YES, SIR, IT IS.

21 Q OKAY. WHAT DID YOU FIND OUT?

22 A SOME FINANCIAL COMPANY I THINK IN NORTH AUGUSTA. PROBABLY
23 \$2500, I THINK, WAS LEFT ON IT.

24 Q OKAY. SO WHEN HE LEFT HE JUST COMPLETELY ABANDONED THAT CAR
25 AND LEFT IT.

ROOSEVELT YOUNG - CROSS-EXAMINATION BY MR. HAWKE

1 A YES, SIR.

2 Q HE COMPLETELY ABANDONED HIS RESIDENCE?

3 A YES, SIR.

4 Q AS FAR AS YOU KNOW, HE ABANDONED HIS JOB?

5 A AS FAR AS I KNOW.

6 Q AND NOBODY HAS SEEN HIDE NOR HAIR OF HIM SINCE.

7 A NO, SIR.

8 Q OKAY. AND THIS OTHER GENTLEMAN AS WELL HE IS GONE AND NOBODY
9 HAS SEEN HIM SINCE.

10 A CORRECT.

11 Q OKAY. NOW THERE WAS A TIME PERIOD, WAS THERE NOT, WHEN THESE
12 GENTLEMEN LEFT THE DELEON STORE AND THEY WERE GONE FOR ABOUT 20
13 MINUTES WHILE THE TRUCK WAITED ON THEM AT BILLY'S. AM I CORRECT?

14 A CORRECT.

15 Q OKAY. DOES ANYBODY KNOW WHAT HAPPENED TO THEM OR WHAT THEY
16 WERE DOING DURING THE TIME THAT THEY DISAPPEARED?

17 A ME PERSONALLY I DON'T.

18 Q HUH?

19 A ME PERSONALLY I DON'T.

20 Q OKAY. ALRIGHT. BUT AT THIS POINT IN TIME RIGHT BEFORE THEY
21 DISAPPEARED THEY HAD HAD AN OPPORTUNITY TO LOOK AT THIS TRAILER AND
22 OBSERVE IT AND ALSO HELP UNLOAD SOME FURNITURE.

23 A YES, SIR.

24 Q OKAY. AND IT WAS SHORTLY AFTER THAT THAT THEY TOOK Y'ALL ON
25 THIS DIRT ROAD WHILE THEY LED THE WAY.

1 A CORRECT.

2 Q DO YOU KNOW WHO WAS RESPONSIBLE FOR BEIN' ON THE OTHER END OF
3 THE DIRT ROAD WHERE IT COMES BACK OUT TO THE OTHER PAVED HIGHWAY?

4 A I WAS ASSUMIN' ONE OF THE OTHER TEAM MEMBERS, BUT I DON'T --
5 EVIDENTLY THEY DIDN'T COVER THE SPOT.

6 Q DID YOU EVER SEE ANYBODY -- ARE YOU AWARE OF ANY PARTICULAR
7 AGENT THAT WAS ASSIGNED TO THAT END OF THE ROAD TO DO THAT WORK? TO
8 MAKE SURE THAT THEY SEAL OFF THE OTHER END OF THE ROAD?

9 A NO, SIR, I'M NOT.

10 Q ONCE -- ONCE -- IT'S FAIR TO SAY THAT ONCE Y'ALL -- ONCE Y'ALL WERE
11 AT THE SCENE AND Y'ALL LEFT TO GO AWAY FROM BILLY'S. RIGHT? THERE WAS -
12 - THERE WAS NO INDICATION THAT FREDY WAS TELLING THE -- THE DRIVER OF
13 THE CAR WHERE TO GO TO BILLY'S OR TO WAIT 30 MINUTES.

14 A I WASN'T AT THAT SCENE. I COULDN'T HEAR ON THE RADIO. I DON'T
15 KNOW, SIR.

16 Q OKAY. SO YOU DON'T KNOW WHAT WAS SAID OR DONE OUT THERE WITH
17 THESE 3 INDIVIDUALS JUST BEFORE THEY LEFT--

18 A THAT'S CORRECT.

19 Q OKAY. BUT YOU ARE AWARE -- YOU WERE AWARE THAT WHEN THEY GOT
20 TO BILLY'S THE GREEN FORD THUNDERBIRD SHOWED UP 20 OR 30 MINUTES LATER.

21 A YES, SIR.

22 Q OKAY. AT THAT TIME THE BOX TRUCK SHOWED UP?

23 A CORRECT.

24 Q AND THEN THE GREEN FORD THUNDERBIRD BEGAN DIRECTING
25 EVERYBODY WHERE TO GO.

ROOSEVELT YOUNG - CROSS-EXAMINATION BY MR. HAWKE

1 A CORRECT.

2 Q MR. DELEON WAS NOWHERE AROUND.

3 A TO MY KNOWLEDGE.

4 Q AND MR. DELEON WAS NOT IN THE THUNDERBIRD, NOT IN THE BOX TRUCK
5 AND HE WASN'T GIVIN' ANYBODY DIRECTIONS.

6 A CORRECT.

7 Q DO YOU KNOW WHERE HE WAS?

8 A I WOULD ASSUME HE WAS STILL AT THE STORE, BUT I WASN'T ON THAT
9 TEAM THAT WAS AT THE STORE.

10 Q OKAY. I DON'T WANT YOU TO ASSUME IF YOU DON'T KNOW.

11 A I DON'T KNOW.

12 Q OKAY. AND IT WAS WHEN Y'ALL WENT DOWN THE DIRT ROAD AND
13 FOLLOWED IN THE DIRECTION OF THE GREEN FORD THUNDERBIRD THAT THE
14 GREEN FORD THUNDERBIRD LOST EVERYBODY.

15 A CORRECT.

16 Q OKAY. AND IF YOU'RE FAMILIAR WITH PADGETT ROAD -- ARE YOU
17 FAMILIAR WITH THAT ROAD?

18 A YES, SIR, I AM.

19 Q THAT'S A ROAD IF THAT IF THAT GREEN FORD THUNDERBIRD WANTED TO
20 DRIVE OFF AND LEAVE EVERYBODY, IT WOULD BE ABLE TO EASILY DO THAT
21 BEING THAT THE OTHER ONES THAT WERE ATTEMPTING TO FOLLOW IT WAS A BOX
22 TRUCK AND A TRACTOR TRAILER. ISN'T THAT CORRECT?

23 A CORRECT.

24 Q IT'S A CURVY DIRT ROAD; IT'S NOT MUCH WIDER THAN A SINGLE ROAD
25 AM I CORRECT?

ROOSEVELT YOUNG - CROSS-EXAMINATION BY MR. HAWKE

1 A CORRECT.

2 Q OKAY. IT'D BE A GOOD PLACE TO LOSE EVERYBODY. AM I CORRECT?

3 A I---

4 Q I DON'T WANT YOU TO SPECULATE ABOUT THAT. THEY COULD EASILY
5 LOSE PEOPLE BY BEING IN A CAR AND HAVING EVERYBODY FOLLOW THEM DOWN
6 THAT DIRT ROAD.

7 A RIGHT.

8 Q IF THEY SO CHOSE.

9 A IF THEY CHOSE TO.

10 Q OKAY. NOW YOU REMEMBER TELLING ME THAT THERE WERE TWO PEOPLE
11 THAT HELPED UNLOAD THAT HAD SLIPPED AWAY AS WELL?

12 A YES, SIR.

13 Q OKAY. DO YOU REMEMBER TELLIN' ME THAT THE TWO GUYS THAT HELPED
14 UNLOAD THAT HAD SLIPPED AWAY WERE NOT -- WERE TWO GUYS OTHER THAN
15 THE ONES IN THE T-BIRD?

16 A YES, SIR.

17 Q OKAY. THE PASSENGER OF THE T-BIRD WAS THE ONE THAT WAS
18 DIRECTING EVERYBODY, WASN'T IT?

19 A I DON'T KNOW. I WASN'T AT THE STORE. I COULDN'T DETERMINE THAT

20 Q OKAY. SO YOU DON'T KNOW WHETHER IT WAS A PASSENGER OR THE
21 OTHER ONE.

22 A I DON'T KNOW.

23 Q OKAY. I'M SORRY. SOME OF THIS I'VE COVERED. I DON'T WANT TO
24 RECOVER IT WITH YOU. OKAY?

25 A THAT'S FINE.

- 1 Q NOW WHEN THIS PARTICULAR FURNITURE WAS UNLOADED, WAS IT YOUR
2 UNDERSTANDING THAT THE FURNITURE WAS DIRECTED TO BE UNLOADED BY ONE
3 OF THE TWO GUYS THAT ARE NOW MISSING?
- 4 A NO, SIR. BY A CUSTOMS AGENT.
- 5 Q HUH?
- 6 A IT WAS UNLOADED BY A CUSTOMS AGENT AT THE SHERIFF'S OFFICE
7 UNDER THEIR DIRECTION.
- 8 Q OKAY. I'M SORRY. I MUST'VE MISSTATED MY QUESTION. WHEN THE
9 TRACTOR TRAILER FIRST ARRIVED AT DELEON'S STORE---
- 10 A CORRECT.
- 11 Q --IS IT YOUR UNDERSTANDING THAT THE PEOPLE THAT WERE SELECTING
12 THE ITEMS OF FURNITURE, IF ANY WOULD BE UNLOADED, WERE ONE OF THE TWO
13 GUYS THAT ARE NO LONGER HERE?
- 14 A I DON'T KNOW. I WASN'T AT THE STORE. I COULDN'T SEE. I DON'T KNOW.
- 15 Q OKAY. OUT OF THE 13 PIECES THAT WERE UNLOADED, ONLY ONE HAD
16 MARIJUANA IN IT.
- 17 A CORRECT.
- 18 Q OKAY. AND WHEN YOU GOT THERE - YOU ACTUALLY WENT TO THE
19 STORE, DID YOU NOT?
- 20 A YES, SIR.
- 21 Q OKAY. THERE WAS NOT ENOUGH ROOM IN THE STOREROOM TO PUT
22 HARDLY ANY FURNITURE, WAS THERE?
- 23 A CORRECT.
- 24 Q OKAY. AND WHEN THESE 13 PIECES WERE IN THERE IT WAS PRETTY MUCH
25 SLAM FULL, WASN'T IT?

1 A CORRECT.

2 Q DID YOU FIND IT UNUSUAL THAT MR. DELEON IF HE WAS EXPECTING 905
3 POUNDS OF MARIJUANA TO BE STORED IN ALL THIS FURNITURE WOULD NOT HAVE
4 ROOM FOR THEM? DID THAT STRIKE YOU AS UNUSUAL?

5 A WELL, HE HAD ROOM FOR THAT ONE CHIMNEY.

6 Q OKAY. THERE WAS NO REASON TO THINK THAT FREDY DELEON KNEW
7 THERE WAS MARIJUANA IN THESE CHIMNEYS, WAS THERE?

8 A I -- I DON'T KNOW.

9 Q OKAY. YOU REMEMBER TELLIN' ME IN YOUR -- EARLIER WHEN YOU
10 TESTIFIED IN THE PRELIMINARY HEARING WHERE YOU DIDN'T THINK HE HAD ANY
11 REASON TO KNOW THERE WAS MARIJUANA IN THE CHIMNEY?

12 A YES, SIR. I ALSO TOLD YOU IT WAS AN ONGOING INVESTIGATION.

13 Q ALRIGHT. AND DO YOU ALSO -- DO YOU ALSO AGREE THERE WAS NO
14 INDICATION THAT HE THOUGHT THAT ANYTHING WAS COMING THAT -- OTHER
15 THAN FURNITURE?

16 A I DON'T RECALL THAT.

17 Q YOU REMEMBER TELLING ME THAT AT THE PRELIMINARY HEARING?

18 A I REMEMBER TELLING YOU IT WAS AN ONGOING INVESTIGATION.

19 Q IF YOU GO TO PAGE 9 LINE 18---

20 MR. MAYE: YOUR HONOR, I'M GONNA OBJECT AT THIS POINT IN TIME. HE
21 DOESN'T DISPUTE SAYIN' THAT IN THIS CASE, YOUR HONOR. NO NEED TO GO
22 BACK THROUGH THE PRELIMINARY TESTIMONY -- I MEAN PRELIMINARY HEARING
23 TESTIMONY IF THE WITNESS CONCEDES THAT.

24 MR. HAWKE: I THINK HE---

25 MR. MAYE: SO TO GO BACK THROUGH THERE'S NO -- NO WAY TO IMPEACH

1 HIM IF HE AGREES TO IT TO GO BACK AND REITERATE WHAT WAS SAID AT THE
2 PRELIMINARY HEARING IF HE AGREES TO IT. TO IMPEACH HIM IT'S GOT TO BE
3 SOMETHIN' HE DISAGREES WITH.

4 MR. HAWKE: ALRIGHT. LET ME ASK HIM AGAIN. MAYBE I
5 MISUNDERSTOOD HIM. I THOUGHT HE SAID IT WAS STILL UNDER INVESTIGATION.
6 LET ME ASK HIM AGAIN.

7 Q DO YOU AGREE THAT THERE WAS NO INDICATION THAT HE THOUGHT
8 ANYTHING WAS COMING OTHER THAN FURNITURE?

9 A IT WAS AN ONGOING INVESTIGATION. THAT'S WHAT I TOLD YOU.

10 Q ALRIGHT. AND AT THE TIME OF THE PRELIMINARY HEARING YOU TOLD ME
11 THAT THERE WAS NO INDICATION THAT HE THOUGHT ANYTHING WAS COMING
12 OTHER THAN FURNITURE.

13 A THAT'S WHAT I TOLD YOU AT THE PRELIM. AND I ALSO TOLD YOU IT WAS
14 AN ONGOING INVESTIGATION.

15 Q OKAY. NOW THE MARIJUANA ITSELF WAS COMPLETELY HIDDEN, WASN'T
16 IT?

17 A YES, SIR.

18 Q OKAY. YOU HAD TO HAVE AN X-RAY MACHINE OR EITHER PRY IT OPEN TO
19 SEE WHAT WAS IN IT.

20 A CUSTOMS DID.

21 Q OKAY. AND IT WAS VACUUM SEALED SO THERE WAS NO ODOR.

22 A IT WAS VACUUM SEALED.

23 Q OKAY. THERE WAS NO ODOR, SO YOU COULDN'T SMELL IT.

24 A I COULDN'T SMELL IT, BUT I THINK THE CANINES DETECTED IT.

25 Q YOU REMEMBER AT THE PRELIMINARY HEARING TELLING ME THAT YOU

1 COULDN'T SMELL IT.

2 A I JUST SAID I COULDN'T SMELL IT BUT I THINK THE CANINES DETECTED IT
3 WITH CUSTOMS.

4 Q GOTCHU. OKAY.

5 A YES, SIR.

6 Q THAT MAKES MORE SENSE. OKAY? IF YOU LOOKED AT ALL THIS AND YOU
7 DIDN'T KNOW FROM EITHER A CANINE OR AN X-RAY MACHINE, YOU WOULD
8 THINK THIS WAS A LOAD OF FURNITURE.

9 A YES, SIR, POSSIBLY.

10 Q AND WHEN Y'ALL HAD ARRIVED THERE, NOBODY HAD ATTEMPTED TO DO
11 ANYTHING WITH THIS CHIMNEY AT ALL AS FAR AS OPENING OR LOOK IN IT OR---

12 A CORRECT.

13 Q OKAY. DO YOU REMEMBER ME THAT TEAM ONE ADVI -- DO YOU
14 REMEMBER TELLING ME THAT TEAM ONE ADVISED FREDY WHAT WAS IN HIS
15 STORE?

16 A YES, SIR.

17 Q YOU REMEMBER THAT THEY HAD TO TELL HIM WHAT HE HAD?

18 A YES, SIR.

19 Q AND DO YOU REMEMBER TELLIN' ME THAT YOU DON'T KNOW IF FREDY
20 EVEN KNEW THAT THERE WAS ACTUAL MARIJUANA IN THE CHIMNEY?

21 A YES, SIR.

22 Q NOW TO YOUR KNOWLEDGE NOBODY VIDEOED ANYTHING OR AUDIO
23 RECORDED ANYTHING. RIGHT?

24 A TO MY KNOWLEDGE, NO, SIR.

25 Q ALRIGHT. AND THEY HAD NEITHER THE DRIVER NOR THE AGENT RIDING IN

1 THE TRUCK SPOKE SPANISH. AM I CORRECT?

2 A CORRECT.

3 Q OKAY. AND THEN EVEN THOUGH THERE WERE SEVERAL CONVERSATIONS
4 WITH THE HISPANIC MALES INVOLVED IN THIS CASE, THERE WAS NO RECORDING,
5 NO NOTES, NOBODY KNOWS WHAT WAS SAID BECAUSE THERE WAS NOTHING
6 TAKEN DOWN. RIGHT?

7 A TO MY KNOWLEDGE. BUT HOLD UP ON ONE THING. AGENT PATRICK MIZE
8 THE OFFICER FROM CUSTOMS THAT WAS RIDING IN THE TRUCK I DON'T KNOW
9 WHETHER HE SPEAKS SPANISH OR NOT.

10 Q OKAY.

11 A I CAN'T SAY THAT.

12 Q I UNDERSTAND. WE TALKED TO HIM.

13 A YES, SIR.

14 Q OKAY. NOW MR. DELEON MADE A STATEMENT ABOUT WHAT WAS GOING
15 ON IN THIS CASE, DIDN'T HE?

16 A NOT TO ME HE DIDN'T.

17 Q DID ANYBODY TAKE A STATEMENT FROM MR. DELEON?

18 A TO MY KNOWLEDGE, NO, SIR.

19 Q DID ANYBODY LET HIM WRITE OUT HIS STATEMENT?

20 A TO MY KNOWLEDGE, NO, SIR.

21 Q NOBODY WROTE A STATEMENT FOR HIM AND LET HIM SIGN IT.

22 A TO MY KNOWLEDGE, NO, SIR.

23 Q IF HE'D A MADE AN INCRIMINATING STATEMENT, Y'ALL WOULD'VE
24 RECORDED IT, WOULDN'T YOU? AS A MATTER OF PRACTICE.

25 A AS A MATTER OF PRACTICE, YES, SIR.

1 Q NOW WHEN YOU -- YOU BEING THE LEAD NARCOTICS INVESTIGATOR, YOU
2 EXECUTE AFFIDAVITS FOR SEARCH WARRANTS ALMOST DAILY, DON'T YOU?

3 A I WOULDN'T SAY DAILY.

4 Q HOW OFTEN?

5 A ONCE EVERY TWO MONTHS. SOMETHING LIKE THAT.

6 Q ALRIGHT. AND THE REASON YOU DO THAT IS BECAUSE YOU HAVE
7 PROBABLE CAUSE AT THE TIME TO BELIEVE THAT DRUGS ARE GONNA BE AT A
8 CERTAIN PLACE OR ITEMS RELATED TO DRUGS ARE GONNA BE AT A CERTAIN
9 PLACE.

10 A CORRECT.

11 Q ALRIGHT. AND WHAT YOU DO IS YOU GO TO A -- YOU EXECUTE AND
12 AFFIDAVIT; YOU SHOW THE MAGISTRATE WHAT PROBABLE CAUSE YOU HAVE AND
13 THEN HE GIVES YOU A SEARCH WARRANT. AM I CORRECT?

14 A CORRECT.

15 Q OKAY. AND YOU TELL HIM THE INFORMATION THAT YOU HAVE THAT
16 MIGHT LEAD TO THE DISCOVERY OF CONTRABAND OR DRUGS OR WHATEVER.

17 A CORRECT.

18 Q AND ONCE -- ONCE YOU DO THAT, THEN YOU'RE ABLE TO -- YOU'RE ABLE
19 TO SEARCH HIS HOUSE OR HIS CAR OR WHATEVER THE MAGISTRATE AUTHORIZES
20 YOU TO SEARCH.

21 A CORRECT.

22 Q NOW IN THIS PARTICULAR CASE YOU -- IN FREDY DELEON'S CASE YOU
23 HAD 40 POUNDS OF -- APPROXIMATELY 40 POUNDS OR SO OF MARIJUANA IN HIS
24 CHIMNEY. IS THAT RIGHT?

25 A CORRECT.

1 Q DID YOU USE THAT PROBABLE CAUSE TO EXECUTE AN AFFIDAVIT FOR A
2 SEARCH WARRANT?

3 A NO, SIR. I DIDN'T.

4 Q OKAY. AND IT'S NOT UNUSUAL FOR YOU TO PUT IN YOUR AFFIDAVITS FOR
5 SEARCH WARRANTS THAT YOU WANT TO SEARCH THE PLACE BECAUSE YOU
6 EXPECT TO FIND DRUGS.

7 A CORRECT.

8 Q DRUG PARAPHERNALIA.

9 A MOST OF THE TIME 90 PERCENT OF MY SEARCH WARRANTS ARE BASED ON
10 WHERE I DONE BOUGHT DRUGS FROM SUSPECTS.

11 Q I'M SORRY?

12 A 90 PERCENT OF MY SEARCH WARRANTS THAT I EXECUTE FROM A STREET
13 LEVEL DEALER WHERE I DONE BOUGHT DRUGS FROM.

14 Q OH, I UNDERSTAND. I KNOW WHAT---

15 A I JUST WANT TO CLARIFY THAT UP WHERE YOU'RE GOIN' WITH IT.

16 Q OKAY. AND YOU ALSO TELL THEM THAT YOU EXPECT TO FIND POSSIBLY
17 GUNS?

18 A SOMETIME, YES, SIR.

19 Q MONEY.

20 A YES, SIR.

21 Q LARGE SUMS OF CASH. DRUG PARAPHERNALIA OR DRUGS.

22 A YES, SIR.

23 Q SCALES TO REWEIGH THE DRUGS.

24 A YES, SIR.

25 Q PACKAGING MATERIAL.

ROOSEVELT YOUNG - CROSS-EXAMINATION BY MR. HAWKE

- 1 A YES, SIR.
- 2 Q DRUG LISTS OF WHO THEY'RE GOING TO DISTRIBUTE TO, PARTICULARLY IF
- 3 THEY GET LARGE AMOUNTS. RIGHT?
- 4 A NO, NOT NECESSARILY.
- 5 Q YOU NEVER -- YOU NEVER PUT THAT IN THE SEARCH WARRANT?
- 6 A I NEVER HAVE INDICATED THAT IN A SEARCH WARRANT.
- 7 Q OKAY. NOW IN THIS PARTICULAR CASE, FREDY DELEON DID NOT KNOW
- 8 Y'ALL WERE COMIN' TO THE STORE. HE DIDN'T KNOW Y'ALL WERE COMIN', DID
- 9 HE?
- 10 A I ASSUME NOT, NO, SIR.
- 11 Q OKAY. NOBODY FOUND ANY DRUGS. RIGHT?
- 12 A FOUND--
- 13 Q I'M SORRY. NOBODY FOUND ANY DRUGS OTHER THAN WHAT WAS IN THE
- 14 CHIMNEY.
- 15 A CORRECT.
- 16 Q OKAY. NOBODY FOUND ANY DRUG PARAPHERNALIA.
- 17 A NO, SIR.
- 18 Q NOBODY FOUND ANY LARGE SUMS OF CASH.
- 19 A NO, SIR.
- 20 Q NO REPACKAGING MATERIAL.
- 21 A NO, SIR.
- 22 Q NO SCALE. DID YOU GO TO HIS HOUSE AT ALL?
- 23 A NO, SIR.
- 24 Q OKAY. DID YOU USE THE INFORMATION THAT YOU HAD OBTAINED IN
- 25 ORDER TO EXECUTE AN AFFIDAVIT FOR A SEARCH WARRANT FOR HIS HOME?

- 1 A NO, SIR, I DIDN'T.
- 2 Q FOR HIS CARS?
- 3 A NO, SIR.
- 4 Q ANY PROPERTY OF HIS WHATSOEVER?
- 5 A NO, SIR.
- 6 Q OKAY. BUT YOU DID IN REFERENCE TO MR. RAMOS' CAR, DIDN'T YOU?
- 7 A CORRECT.
- 8 Q OKAY. AND YOU WENT OUT AND YOU SEARCHED HIS CAR FROM TOP TO
- 9 BOTTOM, DIDN'T YOU?
- 10 A YES, SIR.
- 11 Q OKAY. DO YOU KNOW OF ANY OTHER LAW ENFORCEMENT OFFICER OUT
- 12 THERE THAT WENT AND GOT A SEARCH WARRANT?
- 13 A NO, SIR.
- 14 Q OR USE THAT TO SEARCH HIS HOME OR HIS CARS OR ANYTHING LIKE
- 15 THAT?
- 16 A SAY THAT AGAIN.
- 17 Q ARE -- DO YOU KNOW ANY OTHER OFFICER THAT USED THAT
- 18 INFORMATION IN ORDER TO OBTAIN A SEARCH WARRANT TO SEARCH HIS HOME
- 19 OR HIS CARS OR ANY OF HIS PROPERTY?
- 20 A TO MY KNOWLEDGE, NO, SIR.
- 21 Q AND THEY ALSO WOULD HAVE THE AUTHORITY TO GO OUT AND EXECUTE
- 22 AN AFFIDAVIT FOR A SEARCH WARRANT AND OBTAIN A SEARCH WARRANT.
- 23 A CORRECT.
- 24 Q OKAY. DO YOU -- DO YOU REMEMBER TELLIN' ME YOU DIDN'T FEEL LIKE
- 25 HE WAS THE DRUG DEALER?

1 MR. MAYE: WAIT A SECOND. I'M GOIN' TO OBJECT TO THAT. I'M GONNA
2 OBJECT TO ANY OPINION TESTIMONY IN THIS CASE, YOUR HONOR. THIS WITNESS
3 HAS ALREADY BEEN ADMONISHED NOT TO GIVE OPINION TESTIMONY. I OBJECT IF
4 HE'S ASKED TO RENDER AN OPINION IN THIS CASE.

5 MR. HAWKE: MAY I REPHRASE, YOUR HONOR?

6 THE COURT: YES, SIR.

7 Q AT THE TIME OF THE PRELIMINARY HEARING YOU HAD OBTAINED ALL THE
8 DRUGS AND EVERYTHING, HADN'T YOU?

9 A YES, SIR.

10 Q HOW LONG WAS IT AFTER THE ARREST?

11 A HOW LONG WAS IT AFTER THE ARREST?

12 Q YEAH.

13 A FOR WHAT?

14 Q THE PRELIMINARY HEARING. WE'VE GOT IT. WE'VE GOT IT.

15 A ABOUT 2 MONTHS I THINK. THE PRELIM WAS JULY 31ST. CORRECT?

16 Q THAT'S CORRECT.

17 A RIGHT.

18 Q SO THIS IS A COUPLE MONTHS LATER.

19 A CORRECT.

20 Q AND YOU HAD AT LEAST ALL THE EVIDENCE AND MATERIAL, ALL THE
21 EVIDENCE AGAINST FREDY DELEON THAT HAD BEEN GATHERED UP AT THAT
22 POINT IN TIME.

23 A WELL, YOU'RE STILL FOLLOWIN' UP LEADS.

24 Q I UNDERSTAND. DO YOU REMEMBER AT LEAST AT THAT POINT IN TIME
25 BASED UPON ALL THE EVIDENCE THAT YOU HAD IN THIS CASE TELLIN' ME THAT IT

1 WAS YOUR OPINION---

2 MR. MAYE: YOUR HONOR, I OBJECT TO HIM BEING ASKED TO RENDER AN
3 OPINION IN THIS CASE OR ANY TESTIMONY REGARDING AN OPINION IN THIS CASE.

4 THE COURT: OBJECTION IS OVERRULED. NOW THAT MAY OPEN THE DOOR,
5 SOLICITOR.

6 MR. MAYE: OKAY.

7 THE COURT: THIS IS A LITTLE DIFFERENT THAN WHAT I WAS FOCUSING ON
8 EARLIER BECAUSE OBVIOUSLY THE STATE HAS CHARGED MR. DELEON WITH
9 BEING A DRUG TRAFFICKER. THEY'RE ALLEGING THAT HE IS. SO I THINK THAT HE
10 CAN ASK THIS QUESTION. YOU MAY BE ABLE TO FOLLOW UP. THIS MAY OPEN THE
11 DOOR.

12 MR. MAYE: OKAY.

13 THE COURT: THANK YOU.

14 MR. MAYE: THANK YOU, YOUR HONOR.

15 THE COURT: THANK YOU.

16 Q DO YOU REMEMBER TELLIN' ME AT THAT TIME YOU DIDN'T FEEL LIKE HE
17 WAS THE DRUG DEALER IN THIS CASE?

18 A AT THAT POINT IN TIME, YES, SIR, I DID -- I DO REMEMBER SAYING THAT,
19 BUT IT'S AN ONGOING INVESTIGATION.

20 Q OKAY. AND YOU SAID THAT WAS THE REASON YOU HAD NOT EXECUTED A
21 SEARCH WARRANT?

22 A YES, SIR.

23 Q AND UP UNTIL THIS POINT IN TIME, BEING THE LEAD NARCOTICS
24 INVESTIGATION OFFICER IN EDGEFIELD COUNTY, YOU HAD NO REASON TO
25 BELIEVE THAT IN THE PAST PRIOR TO THIS INCIDENT THAT FREDY DELEON HAD

1 EVER BEEN INVOLVED IN THE USE, SALE OR POSSESSION OF DRUGS.

2 A NO, SIR. ON THAT NOTE, I HAVE NO HISPANIC INFORMANTS. THEREFORE I
3 DON'T HAVE TOO MUCH NARCOTICS GOING ON IN THE HISPANIC COMMUNITY.

4 Q OKAY. BUT HIS NAME HAD NEVER CAME UP IN YOUR INVESTIGATIONS
5 PRIOR TO THIS INCIDENT.

6 A NO, SIR, IT HADN'T.

7 Q BUT YOU THOUGHT THE DRIVER AND THE PASSENGER OF THE T-BIRD
8 DEFINITELY WERE.

9 A YES, SIR.

10 Q AND THE 2 PEOPLE WHO WERE UNLOADED - UNLOADING WHO YOU SAID
11 ALSO DISAPPEARED DEFINITELY WERE.

12 A YES, SIR.

13 Q DO YOU REMEMBER INDICATING THAT YOU TOOK CONTROL OF THE DRUGS
14 WHEN THEY WERE UNLOADED?

15 A AT THE SHERIFF'S OFFICE?

16 Q NO. OUT AT THE SCENE, OUT ON THE ROAD.

17 A YES, SIR. I TOOK CONTROL OF 'EM FROM CUSTOMS OUT ON PADGETT
18 ROAD.

19 Q OKAY. AND DID YOU ALSO TAKE CONTROL OF THEM WHEN THEY WERE
20 UNLOADED AT THE SHERIFF'S OFFICE?

21 A NO, SIR. CAPTAIN ROGER LOWE TOOK CONTROL OF 'EM.

22 Q OKAY. DID YOU TAKE CONTROL OF THE DRUGS AT THE STORE?

23 A THE DRUGS AT THE STORE.

24 Q DID YOU TAKE 'EM?

25 A I'M TRYIN' TO THINK. I KNOW IT'S CAPTAIN LOWE AT THE STORE. SLED

1 AGENT PERRY. I DON'T RECALL IF I DID OR NOT.

2 Q OKAY. DO YOU REMEMBER PREVIOUSLY TESTIFYING THAT YOU DID?

3 A IF I DID SAY IT IN THE PRELIM, I DID.

4 Q OKAY. EVEN IN THE LAST HEARING ON THIS MATTER BACK ON MARCH
5 23RD.

6 A YES, SIR.

7 Q AND YOU DID NO -- CAN YOU TELL THIS JURY ALL THE FOLLOW UP
8 INVESTIGATION YOU HAVE DONE SINCE THE ARREST OF THESE INDIVIDUALS.

9 A SINCE THE ARREST OF 'EM?

10 Q YES, SIR.

11 A BASICALLY IT WAS MINIMAL. GENERALLY THE HISPANIC COMMUNITY
12 THERE'S NO COOPERATION. DIDN'T HAVE TOO MUCH GOIN'. THERE WAS NO
13 PHONE TOLLS. THEY PROBABLY USED PREPAID PHONE CARDS AND YOU CAN'T
14 TRACE THOSE.

15 Q I DON'T WANT YOU TO TELL ME WHAT YOU THINK THEY MIGHT HAVE
16 DONE; I WANT TO KNOW WHAT INVESTIGATION YOU DID.

17 A IT WAS VERY MINIMAL.

18 Q OKAY. VERY MINIMUM BEING EXACTLY WHAT?

19 A IT'S BASICALLY LOOKED AT THE VIDEO TAPE BRIEFLY AT THE STORE AND
20 THAT WAS ABOUT IT.

21 MR. MAYE: YOUR HONOR, I KNOW THIS WITNESS HAS BEEN ADMONISHED
22 NOT TO SAY THAT, BUT AT THIS POINT IN TIME THIS WITNESS CAN EXPLAIN HIS
23 ANSWER. HE WAS INSTRUCTED NOT TO ANSWER BY DEFENSE COUNSEL WHICH
24 I'M GONNA OBJECT TO. HE CAN EXPLAIN HIS ANSWER IF HE'S ASKED AS TO
25 WHETHER OR NOT HE DID ANYTHING AS TO WHY HE DID NOT, YOUR HONOR. AND I

1 WOULD OBJECT TO HIM BEING INSTRUCTED BY DEFENSE COUNSEL AS TO WHICH
2 QUESTIONS AS TO HOW HE CAN ANSWER, AND I OBJECT TO THAT. I WOULD ASK
3 THAT HE BE ALLOWED TO ANSWER A QUESTION. DEFENSE COUNSEL HAS NO
4 RIGHT TO INSTRUCT HIM AS TO WHAT HE CAN ANSWER IN THIS CASE, YOUR
5 HONOR. I WOULD OBJECT TO THAT AND ASK THAT HE BE ALLOWED TO FULLY
6 EXPLAIN HIS ANSWER.

7 MR. HAWKE: YOUR HONOR, I PROBABLY SHOULD'VE ADDRESSED AN
8 OBJECTION TO THE COURT AND SAY THAT WAS OUTSIDE THE PARAMETERS OF MY
9 QUESTION AND I DIDN'T WANT HIM - AND THAT I WOULD OBJECT TO HIM
10 SPECULATING. I CONTROLLED THE WITNESS IN THAT WAY AND IF I DID IT
11 WITHOUT THE COURT'S PERMISSION, I APOLOGIZE, BUT IT'S NOT WHAT I ASKED.

12 THE COURT: I DON'T THINK TECHNICALLY THERE'S SOMETHING FOR ME TO
13 RULE ON AT THIS POINT BUT I WILL CAUTION YOU ALL THAT IF YOU ASK
14 WITNESSES WHO ARE OFFICERS WHY THEY DID NOT INVESTIGATE CERTAIN
15 THINGS FURTHER, YOU - YOU MAY BE OPENING THE DOOR FOR THEM TO SAY
16 THINGS THAT DO NOT OTHERWISE GET TO COME INTO EVIDENCE. I'M NOT SAYING
17 THERE'S ANYTHING OUT THERE THAT'S HIDDEN. I'M NOT TRYING TO IMPLY THAT
18 BY ANY STRETCH OF THE IMAGINATION. I DON'T KNOW ANY OF THIS.

19 MR. HAWKE: YES, YOUR HONOR.

20 THE COURT: BUT IF YOU ASK, FOR EXAMPLE, JUST IN THE ABSTRACT, WHY
21 DIDN'T OFFICER A PURSUE SUCH AND SUCH IT MAY BE BECAUSE OF SOME
22 HEARSAY THAT OFFICER A CAME INTO POSSESSION OF WHICH WOULD NOT
23 OTHERWISE BE ADMISSIBLE, BUT ONCE YOU -- ONCE YOU GO DOWN THAT ROAD,
24 HE'S GOT A RIGHT TO EXPLAIN WHY HE--

25 MR. HAWKE: FOR THE RECORD, JUDGE, I DIDN'T ASK HIM WHY. I ASKED

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1 HIM WHAT HE DID.

2 Q WHAT DID YOU DO IN YOUR INVESTIGATION? TELL US EXACTLY WHAT
3 YOU DID.

4 MR. HAWKE: THAT'S WHY---

5 THE COURT: YOU CAN ASK HIM.

6 MR. HAWKE: OKAY. I THINK HE'S ANSWERED IT CLEARLY.

7 Q NOW THIS -- THIS WAS A FEDERAL INVESTIGATION, WAS IT NOT?

8 A WELL, IT STARTED OUT TO BE.

9 Q OKAY. AND IT GOT DROPPED IN YOUR LAP.

10 A YES, SIR.

11 MR. HAWKE: I DON'T HAVE ANYMORE, YOUR HONOR.

12 THE COURT: THANK YOU. MR. SUSSMAN.

13 CROSS-EXAMINATION

14 BY MR. SUSSMAN

15 Q DID YOU SAY YOU FIRST GOT INVOLVED IN THIS CASE ON THE 13TH?

16 A MAY THE 13TH IS WHEN I RECEIVED THE INITIAL CALL FROM CUSTOMS.

17 Q IS THAT WHEN SPECIAL AGENT DEAN TUCKER WITH THE DEA CALLED
18 YOU?

19 A YES, SIR.

20 Q NOTIFIED YOU THAT APPROXIMATELY 800 POUNDS OF MARIJUANA WOULD
21 BE HEADING YOUR WAY?

22 A 800 TO 1000, YES, SIR.

23 Q SAID THAT THE MARIJUANA WOULD BE IN AN 18-WHEELER?

24 A YES, SIR.

25 Q ALSO TOLD YOU ABOUT THE WOODEN CHIMNEYS?

1 A YES, SIR.

2 Q AND THEN WHEN THE TRUCK ARRIVED OR THE SEMI TRACTOR TRAILER
3 CARRYING THE MARIJUANA ARRIVED, IT MADE A CONTROLLED DELIVERY IN
4 SALUDA COUNTY?

5 A YES, SIR.

6 Q WHERE WAS THAT CONTROLLED DELIVERY MADE?

7 A WHERE WAS IT MADE?

8 Q WHERE IN SALUDA?

9 A TO THE AIRPORT IN SALUDA.

10 Q WELL, BUT THERE WERE A NUMBER OF CONTROLLED DELIVERIES MADE IN
11 SALUDA COUNTY.

12 A WHATCHU MEAN A NUMBER OF 'EM? THERE WAS ONE MADE TO THE
13 AIRPORT AND ONE MADE TO THE STORE IN TRENTON.

14 Q WELL, WHAT WAS THE CONTROLLED DELIVERY MADE TO THE AIRPORT?

15 A THAT WAS THE CONTROLLED DELIVERY OF THE MARIJUANA THAT HAD
16 THE CHIMNEYS ON IT.

17 Q WHO WAS IT DELIVERED TO?

18 A IT WAS DELIVERED THERE AND THEY STAYED THERE OVERNIGHT WITH IT.

19 Q DO YOU RECALL YOUR TESTIMONY AT THE PRELIMINARY HEARING ON
20 AUGUST 20 OF 2002 WHEN MR. STURKEY WAS REPRESENTING THE DEFENDANTS IN
21 THIS CASE?

22 A YES, SIR.

23 Q YOU REMEMBER BEING ASKED OR ACTUALLY YOU WEREN'T ASKED
24 'CAUSE I THINK THERE WAS NO ONE THERE TO ASK ANY QUESTIONS. YOU WERE
25 JUST SORT OF TELLIN' THE JUDGE WHAT HAPPENED.

- 1 A CORRECT.
- 2 Q ISN'T THAT RIGHT? THERE WAS NO SOLICITOR THERE.
- 3 A CORRECT.
- 4 Q AT THAT TIME YOU SAID THAT ON SATURDAY MAY 18TH OF THIS YEAR THE
- 5 DEA MADE A CONTROLLED DELIVERY OF THE TRACTOR TRAILER CARRYIN' THE
- 6 MARIJUANA INSIDE OF IT TO SALUDA COUNTY.
- 7 A CORRECT.
- 8 Q AND THEN LATER ON YOU SAID -- LET ME FIND IT SO I DON'T MISQUOTE
- 9 YOU. ON -- YOU WANTED TO -- YOU SAID I NEED TO GO BACK AND AMEND
- 10 SOMETHING.
- 11 A I THINK THEY CAME DOWN ON -- THEY MADE THE DELIVERY ON FRIDAY
- 12 INTO SALUDA AND THEN ON SATURDAY TO TRENTON.
- 13 Q RIGHT. ON FRIDAY MAY THE 17TH THEY BROUGHT THE TRACTOR TRAILER
- 14 TO SALUDA COUNTY AND MADE CONTROLLED DELIVERIES TO SALUDA COUNTY.
- 15 A A CONTROLLED DELIVERY TO EDGEFIELD COUNTY.
- 16 Q OKAY. SO YOU DIDN'T -- YOU DON'T RECALL SAYING DELIVERIES?
- 17 A I MAY HAVE SAID IT, BUT IT SHOULD'VE BEEN A CONTROLLED DELIVERY.
- 18 Q OKAY. AND SO WHEN YOU -- WHEN YOU MENTIONED A CONTROLLED
- 19 DELIVERY, ARE YOU TALKING ABOUT DELIVERING THE MARIJUANA TO -- TO
- 20 SOMEONE?
- 21 A I'M TALKIN' ABOUT DELIVERIN' THE TRACTOR TRAILER LOAD OF
- 22 MARIJUANA TO THE STORE IN TRENTON.
- 23 Q WELL, YOU ALSO SAID THEY MADE CONTROLLED DELIVERY OR
- 24 DELIVERIES IN SALUDA. NOW WHERE WAS THAT AT?
- 25 A THEY MADE THE CONTROLLED DELIVERY TO SALUDA AIRPORT. THAT'S

1 WHERE THEY STAYED WITH THE TRUCK ALL NIGHT. AND THEY MADE ANOTHER
2 CONTROLLED DELIVERY TO THE STORE IN TRENTON THE FOLLOWING DAY.

3 Q WHO WAS AT THE SALUDA AIRPORT THAT RECEIVED THIS CONTROLLED
4 DELIVERY?

5 A CUSTOMS BROUGHT THE TRUCK DOWN.

6 Q WAS IT TUCKER?

7 A THAT WAS MY UNDERSTANDING IT WAS HIM.

8 Q WAS ANYONE ELSE THERE?

9 A YEAH, THE DRIVER WITH IT.

10 Q WERE ANY OTHER DEA AGENTS?

11 A TO MY KNOWLEDGE I DON'T KNOW.

12 Q OKAY.

13 A I WASN'T THERE WHEN THE TRUCK ARRIVED.

14 Q WERE YOU -- DID YOU GO UP THERE FOR A MEETING THE NEXT MORNING?

15 A SURE DID.

16 Q WAS ANYBODY FROM THE SOLICITOR'S OFFICE THERE?

17 A NO, SIR.

18 Q WAS ANYBODY FROM -- ANYBODY ELSE BESIDE YOU FROM EDGEFIELD
19 COUNTY?

20 A YES, SIR. CAPTAIN ROGER LOWE, SHERIFF ADELL DOBEY FROM THE
21 SHERIFF'S OFFICE NOW.

22 Q HOW ABOUT FROM SLED?

23 A AGENT COBY PERRY.

24 Q NOW IT'S MY UNDERSTANDING THAT -- I REPRESENT TWO OF THE
25 INDIVIDUALS IN THIS CASE: MR. AVILA AND MR. HERNANDEZ. OKAY? YOU -- TO

1 YOUR KNOWLEDGE THEY WERE NEVER PRESENT AT ANY TIME IN SALUDA
2 COUNTY.

3 A TO MY KNOWLEDGE, NO.

4 Q OKAY. AND THEY NEVER HELPED OFFLOAD ANY CHIMNEYS OR CHAIRS,
5 DID THEY?

6 A TO MY KNOWLEDGE, NO, SIR.

7 Q AND AT ANY TIME YOU NEVER SAW THEM GET INSIDE THE BACK OF THE
8 TRAILER.

9 A NO, SIR.

10 Q AND WHEN I SAY THEM, I MEAN MR. AVILA AND MR. HERNANDEZ.

11 A CORRECT.

12 Q AND IT IS MY UNDERSTANDING THAT YOU HAD SURVEILLANCE AT BILLY'S
13 SUPER STORE?

14 A YES, SIR.

15 Q AND THAT YOU SURVEILLED THE RYDER TRUCK, THE T-BIRD AND THE SEMI
16 AS IT WENT INTO PADGETT ROAD?

17 A CORRECT.

18 Q THE VISIBILITY WASN'T THAT HOT, WAS IT?

19 A CORRECT.

20 Q BUT YOU HAD A RADIO IN YOUR CAR?

21 A WE HAD HAND-HELD RADIOS.

22 Q OKAY. WELL, THEY'RE MORE THAN THE RADIO SHACK HAND-HELD
23 RADIOS. THESE ARE NICER RADIOS THAN THAT, AREN'T THEY?

24 A THEY WERE, BUT YOU HAVE TO LOOK AT THE WEATHER CONDITION. THEY
25 WASN'T GETTIN' OUT WORTH A NOTHIN'.

1 Q OKAY. AND WHEN MR. AVILA AND MR. HERNANDEZ WERE ARRESTED,
2 THEY DIDN'T HAVE ANY MARIJUANA ON THEM, DID THEY?

3 A NO, SIR, THEY DIDN'T.

4 Q I DIDN'T HEAR YOU.

5 A NO, SIR, THEY DIDN'T.

6 Q OKAY. YOU NEVER RECEIVED ANY INFORMATION THAT THEY WERE EVER
7 AT BILLY -- AT FREDY'S STORE EITHER, DID YOU? THEY MEANING MR. AVILA AND
8 MR. HERNANDEZ.

9 A NO, SIR.

10 Q IS IT MY UNDERSTANDING THAT THERE WERE TWO ADDITIONAL MEXICAN
11 INDIVIDUALS THAT WERE AT FREDY'S HELPING UNLOAD?

12 A YES, SIR.

13 Q OKAY. WHERE ARE THESE GUYS?

14 A I DON'T KNOW, SIR.

15 Q WELL, DID YOU HAVE THE STORE UNDER SURVEILLANCE?

16 A YES, SIR.

17 Q WELL, THESE TWO ADDITIONAL GUYS THAT WERE HELPIN' UNLOAD, WERE
18 THEY SUSPECTS?

19 A YES, SIR.

20 Q AND HOW MANY AGENTS? JUST GIVE US A ROUGH IDEA OF HOW MANY
21 STATE AND FEDERAL AGENTS WE HAD TOTAL IN THIS SURVEILLANCE?

22 A GIVE OR TAKE 15 OR 20.

23 Q OKAY. AND Y'ALL WERE ON RADIO CONTACT WITH EACH OTHER.

24 A CORRECT.

25 Q YOU WERE IN VARIOUS DISTANCES FROM THE STORE.

ROOSEVELT YOUNG - CROSS-EXAMINATION BY MR. SUSSMAN

- 1 A CORRECT.
- 2 Q FROM FREDY'S.
- 3 A CORRECT.
- 4 Q AND Y'ALL WERE MAKIN' SURE THAT THAT SEMI WASN'T GETTIN' OUT OF
5 YOUR SIGHT.
- 6 A THAT WAS THE MAIN OBJECTIVE.
- 7 Q ALRIGHT. 'CAUSE THAT HAD ALL THE MARIJUANA IN IT.
- 8 A CORRECT.
- 9 Q AND ANYBODY HELPING TO UNLOAD THAT MARIJUANA WOULD
10 AUTOMATICALLY BE SUSPECTS.
- 11 A CORRECT.
- 12 Q 'CAUSE THAT'S LOGICAL. RIGHT?
- 13 A CORRECT.
- 14 Q SO ANY SUSPECTS THAT ARE SEEN HELPING TO UNLOAD THE MARIJUANA
15 WOULD OBVIOUSLY WANNA BE FOLLOWED.
- 16 A CORRECT.
- 17 Q SO THESE TWO GUYS THAT WERE HELPING UNLOAD THE MARIJUANA, WHO
18 FOLLOWED THEM?
- 19 A I WAS ASSUMIN' ONE OF THE OTHER TEAM MEMBERS.
- 20 Q DID YOU SAY ASSUME?
- 21 A I ASSUME, YES, SIR.
- 22 Q YOU DID SAY ASSUME.
- 23 A I DID.
- 24 Q AND SO YOU ASSUMED THAT ONE OF THE OTHER TEAM MEMBERS
25 FOLLOWED THOSE TWO GUYS.

1 A CORRECT.

2 Q AND YOU ASSUMED THAT THOSE TWO GUYS WERE EVENTUALLY
3 ARRESTED BY ONE OF THE OTHER TEAM MEMBERS.

4 A CORRECT.

5 Q AND I GUESS AT THE TIME YOU ASSUMED THAT IF THIS EVER WENT TO
6 TRIAL THEY'D BE HERE TODAY.

7 A IF THEY WERE ARRESTED, YES, SIR.

8 Q DID YOU SEE THESE TWO FELLOWS LEAVE AFTER THEY HELPED UNLOAD
9 AT THE STORE?

10 A ME PERSONALLY I DIDN'T. I WASN'T IN A POSITION WHERE I COULD SEE
11 THE STORE. THE RADIO YOU COULDN'T THE COMS (PHONETIC) WERE BAD. YOU
12 COULD HEAR BITS AND PIECES OF PEOPLE'S CONVERSATION AND YOU COULDN'T
13 MAKE HEADS OR TAILS OUT OF IT.

14 Q OKAY. HOW FAR AWAY WERE YOU FROM THE STORE?

15 A I PROBABLY WAS GIVE OR TAKE 150 YARDS. 200 YARDS.

16 Q YOU WERE 150 TO 200 YARDS AWAY FROM THE STORE?

17 A YES, SIR.

18 Q BUT YOU COULDN'T SEE THE STORE.

19 A COULDN'T SEE IT.

20 Q BUT YOU HEARD -- BUT YOU KNOW THAT THESE TWO FELLOWS WERE
21 HELPING UNLOAD THE SEMI.

22 A I HEARD BITS AND PIECES OF THE CONVERSATION ON THE AGENT THAT
23 WAS WITH THE TRUCK DRIVER AT THE STORE.

24 Q BUT I THINK YOUR TESTIMONY EITHER ON CROSS OR DIRECT WAS THAT
25 THERE WERE TWO ADDITIONAL GUYS HELPING UNLOAD THE STORE -- HELPING

- 1 UNLOAD THE SEMI AT THE STORE.
- 2 A YES, SIR.
- 3 Q 2 ADDITIONAL GUYS BESIDES THE TWO GUYS IN THE T-BIRD. IS THAT
- 4 RIGHT?
- 5 A THAT'S RIGHT.
- 6 Q AND WERE THESE TWO ADDITIONAL GUYS EVER IDENTIFIED OR
- 7 DESCRIBED IN ANY FASHION WHATSOEVER THAN YOUR RADIO TALK?
- 8 A TO MY KNOWLEDGE, NO, SIR.
- 9 Q DID Y'ALL HAVE A DEBRIEFING AFTER THIS CASE WAS OVER, AFTER THE --
- 10 AFTER THE TAKEDOWN, AFTER EVERYONE WAS ARRESTED, DID YOU HAVE A
- 11 DEBRIEFING?
- 12 A I WOULDN'T CALL IT A DEBRIEFING.
- 13 Q WELL, HOW LONG HAVE YOU BEEN AN INVESTIGATOR?
- 14 A 3 YEARS.
- 15 Q WHAT'D YOU DO BEFORE THAT?
- 16 A ROAD PATROL.
- 17 Q OKAY. AND ROAD PATROL OFTEN TIMES YOU'RE INVOLVED IN
- 18 INVESTIGATIONS AS WELL.
- 19 A CORRECT.
- 20 Q YOU PULL SOMEONE OVER THAT MAY HAVE SOME DOPE AND THEN YOU
- 21 CALL IN AN INVESTIGATOR.
- 22 A CORRECT.
- 23 Q BUT YOU SOMETIMES WILL STAY IN THE CASE TO ASSIST IF NEEDED.
- 24 A CORRECT.
- 25 Q ALSO, YOU MIGHT ALSO BE IN THE CHAIN OF CUSTODY SOMEWHERE DOWN

1 THE ROAD IF YOU MAKE THE INITIAL STOP.

2 A I MIGHT.

3 Q OKAY. SO YOU WERE SOMEWHAT FAMILIAR WITH NARCOTICS, BUT
4 CERTAINLY YOU'RE FAMILIAR WITH NARCOTICS INVESTIGATIONS NOW.

5 A CORRECT.

6 Q AND ISN'T IT A FACT THAT WHEN YOU HAVE A LARGE SCALE OPERATION
7 SUCH AS THIS WITH A NUMBER OF AGENTS YOU HAVE SORT OF AN
8 ORGANIZATIONAL MEETING BEFOREHAND AS TO HOW YOU'RE GONNA HANDLE IT.
9 RIGHT?

10 A YES, SIR. THEY HAD A BRIEF MEETING TO START OPERATIONS.

11 Q YOU HAVE AN INITIAL ORGANIZATIONAL MEETING AND YOU DETERMINE
12 SOMEONE'S GOT TO BE THE LEADER OF THIS.

13 A CORRECT.

14 Q IN THIS CASE IT WAS DEAN TUCKER?

15 A YES, SIR, HE WAS ONE OF THE AGENTS OUT THERE.

16 Q OKAY.

17 A I WOULDN'T GO AS FAR AS CALLIN' HIM IN CHARGE. I MEAN IT WAS
18 SEVERAL AGENTS OUT THERE.

19 Q OKAY. WELL, ALRIGHT, SO THERE WERE SEVERAL AGENTS OUT THERE.
20 THE FEDS YOU TALKIN' ABOUT AGENTS NOW YOU MEAN FEDERAL AGENTS.

21 A FEDERAL AGENTS, YES, SIR.

22 Q SO IT WAS A FEDERAL INVESTIGATION.

23 A IT STARTED OFF BEIN' ONE AND THE STATE ADOPTED IT.

24 Q I UNDERSTAND. RIGHT NOW WE'RE AT THE STAGE WHERE IT'S AN
25 ORGANIZATIONAL MEETING BEFORE WE GO TO THE STORE.

1 A CORRECT.

2 Q SO IT'S A FEDERAL INVESTIGATION AT THAT POINT.

3 A YES, SIR.

4 Q AND YOU'RE HAVING A MEETING AS TO WHO'S GONNA BE WHERE AND
5 WHAT EACH PERSON'S DUTIES ARE GONNA BE.

6 A CORRECT.

7 Q AND THEN AFTER THE OPERATION IS OVER, EVERYBODY'S ARRESTED,
8 PEOPLE ARE DONE DOIN' THEIR INDIVIDUAL WHATEVER THEY'RE DOIN', YOU GET
9 BACK TOGETHER AND YOU COMPARE NOTES AS TO WHAT EACH PERSON DID SO
10 THAT YOU CAN COMPLETE THE INVESTIGATION. IS THAT NORMALLY HOW YOU
11 WOULD HANDLE IT?

12 A THAT'S NORMALLY HOW YOU WOULD DO IT.

13 Q WAS IT DONE IN THIS CASE?

14 A NO, SIR, IT WASN'T.

15 Q SO YOU DON'T HAVE ANY IDEA WHAT HAPPENED TO THESE TWO
16 UNKNOWN PEOPLE WHO ASSISTED AND UNLOADED 20 BUNDLES OF MARIJUANA IN
17 A STORE IN YOUR COUNTY.

18 A NO, SIR, I DON'T.

19 Q NOW LET'S TALK ABOUT AFFIDAVITS TO SUPPORT SEARCH WARRANTS
20 FOR JUST -- JUST A MINUTE. I THINK YOU SAID A LOTTA TIMES YOU WOULD GET
21 AN AFFIDAVIT FOR A SEARCH WARRANT. 90 PERCENT OF THE TIME WHEN YOU
22 MAKE A CONTROLLED BUY OR SOMEBODY ELSE MAKES A CONTROLLED BUY.

23 A CORRECT.

24 Q AND YOU TARGET EITHER A -- A RESIDENCE, A BUSINESS WHERE DEALING
25 IS TAKING PLACE?

ROOSEVELT YOUNG - CROSS-EXAMINATION BY MR. SUSSMAN

- 1 A WHOMEVER I BOUGHT THE DRUGS FROM.
- 2 Q RIGHT.
- 3 A RIGHT.
- 4 Q AND IF THAT WHOMEVER HAPPENS TO BE IN A PARTICULAR LOCATION
5 LIKE HIS RESIDENCE OR PLACE OF BUSINESS, YOU WOULD MAKE PURCHASES IN
6 THERE. ISN'T THAT RIGHT?
- 7 A YES, SIR.
- 8 Q IS THAT RIGHT?
- 9 A CORRECT.
- 10 Q YOU MIGHT SEND SOMEONE IN WITH SOME MARKED CASH--
- 11 A YES, SIR.
- 12 Q --TO MAKE PURCHASES.
- 13 A CORRECT.
- 14 Q AND THEN LATER ON WHEN YOU GO IN AND TAKE DOWN THAT PERSON,
15 YOU HOPE TO SEE WHERE THAT MARKED CASH IS IN THE PERSON'S POCKET OR IN
16 HIS IMMEDIATE PRESENCE.
- 17 A CORRECT.
- 18 Q OKAY. NOW IN YOUR -- IN YOUR PRACTICE OF DOING THIS OF TARGETING
19 OF DEALERS OR WHATNOT, PEOPLE THAT YOU MAKE CONTROLLED BUYS FROM,
20 YOU -- YOU OPERATE SURVEILLANCE ON THE HOUSE WHEN IT INVOLVES A HOUSE.
- 21 A CORRECT.
- 22 Q AND YOU WOULD ACTUALLY DO IT, A SURVEILLANCE OF THE HOUSE 24 OR
23 48 HOURS BEFORE YOU APPLIED FOR THE WARRANT SO YOU COULD HAVE SOME
24 BASIS OF PROBABLE CAUSE SHOWING TRAFFICK IN AND OUT OF THE HOUSE.
- 25 A CORRECT.

- 1 Q IS THAT RIGHT?
- 2 A CORRECT.
- 3 Q OKAY. NOW IN THIS CASE WHEN YOU WERE CALLED YOU WERE CALLED
- 4 ON MAY 13TH ABOUT THIS COMING INTO EDGEFIELD, SOUTH CAROLINA, THIS SEMI.
- 5 A CORRECT.
- 6 Q AND YOU KNEW THAT THE INTENDED LOCATION WAS MR. DELEON'S
- 7 STORE.
- 8 A CORRECT.
- 9 Q BUT DID YOU HAVE ANY SURVEILLANCE ON MR. DELEON'S STORE PRIOR
- 10 TO THE DELIVERY THAT WAS MADE TO HIS STORE?
- 11 A NO, SIR.
- 12 Q I DIDN'T HEAR YOU.
- 13 A NO, SIR. FRIDAY, LATE FRIDAY WHEN MR. TUCKER CAME DOWN, I TOOK
- 14 HIM TO THE STORE AND HIM AND ANOTHER TRANSPORT POLICE OFFICER AND
- 15 THEY SAID THEY WERE GONNA STAY DOWN THERE AND TRY TO GET THE LAYOUT
- 16 OF IT AND EVERYTHING. AND THAT WAS THE LAST I HEARD OF IT.
- 17 Q SO YOU DON'T KNOW WHAT THEY DID?
- 18 A I DON'T KNOW WHAT THEY'VE DONE.
- 19 Q YOU DON'T KNOW WHAT -- IF THEY MADE ANY SURVEILLANCE---
- 20 A I DON'T KNOW.
- 21 Q ---LOGS?
- 22 A TO MY KNOWLEDGE, NO, SIR.
- 23 Q BECAUSE THEY DIDN'T ASK YOU TO HELP 'EM.
- 24 A THEY DIDN'T ASK ME, NO, SIR.
- 25 Q THEY JUST WANTED YOU TO SHOW WHERE IT WAS.

ROOSEVELT YOUNG - CROSS-EXAMINATION BY MR. SUSSMAN

1 A SHOW 'EM WHERE THE STORE WAS.

2 Q THEY WERE GONNA HANDLE IT.

3 A THEY WAS GONNA HANDLE IT.

4 Q THEY HANDLED IT. NOW LET ME ASK YOU THIS: YOU TALKED ABOUT
5 GETTING THIS PHONE FROM THE GENTLEMAN OVER THERE IN THE LIGHT BLUE
6 SHIRT.

7 A YES, SIR.

8 Q WOULD YOU HAVE ANY DISAGREEMENT WITH ME IF I TOLD YOU THAT WAS
9 HONORIO GUERRERO?

10 A NO, SIR.

11 Q OKAY. AND YOU SAID THE BATTERY ON THE PHONE WAS DEAD.

12 A YES, SIR.

13 Q WHAT KINDA PHONE WAS IT?

14 A I WANNA SAY IT WAS MAYBE A VERIZON, BUT DON'T QUOTE ME ON THAT.
15 I'M NOT 100 PERCENT SURE. THAT'S BEEN A LONG TIME AGO THAT I LOOKED AT
16 THAT PHONE.

17 Q ALRIGHT. BUT IT WAS A CELLULAR PHONE.

18 A IT WAS A CELLULAR PHONE.

19 Q IT WAS A CELLULAR PHONE THAT YOU'D SEEN BEFORE?

20 A SOME TYPE, YES, SIR.

21 Q OKAY. DID YOU TAKE IT TO ANY OF THE LOCAL CELLULAR PHONE
22 COMPANIES TO SEE IF THEY COULD PLUG IT INTO AN AC WALL ADAPTER TO GET IT
23 TO WORK?

24 A NO, SIR.

25 Q DID ANYBODY ELSE TO YOUR KNOWLEDGE?

ROOSEVELT YOUNG - CROSS-EXAMINATION BY MR. SUSSMAN

1 A TO MY KNOWLEDGE, NO, SIR.

2 Q WHERE IS THE PHONE NOW?

3 A I ASSUME IT'S STILL IN HIS PROPERTY. I DON'T HAVE IT. IN HIS PROPERTY
4 AT THE JAIL.

5 MR. SUSSMAN: JUDGE, IF I COULD HAVE JUST ONE MINUTE, I THINK I'M
6 THROUGH.

7 Q OKAY. SO LET ME GO BACK JUST FOR A MINUTE ABOUT THE DEPARTURE
8 FROM BILLY'S STORE TO PADGETT ROAD. YOU WERE INVOLVED IN THAT
9 SURVEILLANCE.

10 A YES, SIR.

11 Q RIGHT?

12 A RIGHT.

13 Q AND AS I UNDERSTAND IT, PADGETT ROAD IS A GRAVEL OR A DIRT ROAD.

14 A PART OF IT IS GRAVEL AND THE MAJORITY OF IT IS DIRT.

15 Q OKAY. ONCE YOU TURN ONTO IT, IT'S GRAVEL FOR ABOUT 200 YARDS AND
16 EVENTUALLY JUST TURNS INTO DIRT?

17 A YES, SIR.

18 Q IS THAT THAT RED CLAY?

19 A THAT'S IT.

20 Q AND IT WAS RAINING REALLY HARD. RIGHT?

21 A CORRECT.

22 Q AND Y'ALL WENT ABOUT 100 TO 150 YARDS, AND THEN THE TRUCK JUST
23 WENT OFF TO THE SIDE ONCE YOU GOT ON THE DIRT.

24 A YES, SIR.

25 Q AND IT RAN INTO A DITCH.

ROOSEVELT YOUNG - CROSS-EXAMINATION BY MR. SUSSMAN

- 1 A YES, SIR.
- 2 Q JUST KINDA SLID OFF IN THE RAIN.
- 3 A YES, SIR.
- 4 Q OKAY. AND ONCE THE -- ONCE THE TRUCK SLID OFF, THE GREEN CAR JUST
- 5 TOOK OFF. BOOGIED ON I THINK IS HOW YOU PUT IT.
- 6 A THAT'S THE WAY I ASSUME IT, YES, SIR. COULDN'T SEE IT.
- 7 Q THAT'S WHAT YOU ASSUMED?
- 8 A YES, SIR. I COULDN'T SEE IT.
- 9 Q BUT YOU WERE THERE AND YOU NEVER SAW THE GREEN CAR.
- 10 A NEVER SAW THE GREEN CAR, NO, SIR.
- 11 Q SO AS I UNDERSTAND IT, WHEN THE T-BIRD GOES DOWN THE DIRT ROAD.
- 12 RIGHT?
- 13 A RIGHT.
- 14 Q THEN THE TRACTOR TRAILER.
- 15 A RIGHT.
- 16 Q THEN THE BOX TRUCK, THE YELLOW RYDER TRUCK. AND THEN YOU WERE
- 17 APPROXIMATELY 30 TO 40 YARDS BEHIND THE RYDER TRUCK.
- 18 A YES, SIR.
- 19 Q IS THAT CORRECT?
- 20 A CORRECT.
- 21 Q LET'S MAKE SURE WE'VE GOT THAT RIGHT NOW. IT'S THE T-BIRD LEADING
- 22 THE WAY.
- 23 A UH-HUH.
- 24 Q RIGHT?
- 25 A UH-HUH.

- 1 Q THEN THE SEMI TRACTOR TRAILER.
- 2 A YES, SIR.
- 3 Q THEN THE YELLOW RYDER TRUCK FOLLOWIN' BEHIND IT.
- 4 A YES, SIR.
- 5 Q WITH MY TWO CLIENTS IN THERE AND MR. MILLER'S CLIENT. RIGHT?
- 6 A TO THE BEST OF MY KNOWLEDGE, YES, SIR.
- 7 Q WELL, I MEAN YOU WERE 30 OR 40 YARDS BEHIND THE YELLOW RYDER
- 8 TRUCK.
- 9 A YES, SIR.
- 10 Q NOW 30 OR 40 YARDS THAT WOULD BE -- TELL ME -- STOP ME. IS IT BEFORE
- 11 THE END OF THE BUILDING HERE?
- 12 A SAY AGAIN.
- 13 Q IS IT BEFORE THE END OF THIS BUILDING?
- 14 A YES, SIR.
- 15 Q STOP ME WHEN I'M 30 OR 40 YARDS WHERE YOU THOUGHT YOU WERE
- 16 BEHIND THE TRUCK.
- 17 A KEEP GOIN'. YOU GONNA HAVE TO GO OUTSIDE.
- 18 Q FURTHER MORE THAN THIS?
- 19 A FURTHER MORE THAN THAT.
- 20 Q SO THIS IS LESS THAN 30 OR 40 YARDS?
- 21 A IT'S MORE.
- 22 Q BUT YOU SAID YOU WERE ABOUT 30 OR 40 YARDS BEHIND THE YELLOW
- 23 TRUCK.
- 24 A RIGHT.
- 25 Q SO AM I FURTHER AWAY THAN YOU WERE?

ROOSEVELT YOUNG - CROSS-EXAMINATION BY MR. SUSSMAN

- 1 A NO, SIR, YOU'RE NOT.
- 2 Q OKAY. SO IT'S OUTSIDE THE DOOR.
- 3 A IT'S OUTSIDE.
- 4 Q HOW FAR OUTSIDE THE DOOR?
- 5 A I DON'T KNOW. PROBABLY ANOTHER 10 OR 15 YARDS.
- 6 Q COULD YOU SEE THE YELLOW TRUCK FROM WHERE YOU WERE?
- 7 A TO THE BEST OF MY KNOWLEDGE I THINK WHEN WE FIRST TOOK OFF FROM
- 8 BILLY'S I SAW IT THEN, AND WITH ALL THE RAIN AND STUFF, I DON'T THINK WE
- 9 SAW IT AGAIN.
- 10 Q BUT WHEN YOU GOT INTO THE DIRT ROAD, INTO PADGETT ROAD---
- 11 A RIGHT.
- 12 Q --YOU WERE STILL BEHIND IT ONLY 30 OR 40 YARDS BACK.
- 13 A YES, SIR, BUT WE LET THEM EASE ON UP.
- 14 Q I UNDERSTAND THAT, BUT THEY GOT STUCK.
- 15 A RIGHT.
- 16 Q SO YOU HAD TO STOP OR THEY'D SEE YOU.
- 17 A NO, WE STOPPED SHORT AND LET THEM CONTINUE ON IN THERE, AND IT
- 18 WAS BITS AND PIECES ON THE RADIO FROM AGENT MIZE WHO WAS IN THE TRUCK
- 19 AND HE WAS SAYIN' THAT THEY WAS GETTIN' STUCK; DIDN'T THINK THEY WOULD
- 20 MAKE IT OUTTA THERE.
- 21 Q SO YOU SAID YOU HEARD FROM AGENT MIZE.
- 22 A YES, SIR.
- 23 Q SO IT WAS STILL A CRIMINAL INVESTIGATION AT THAT POINT.
- 24 A I WOULD ASSUME SO, YES, SIR.
- 25 Q DID YOU SAY ASSUME?

1 A YES, SIR.

2 Q AND SO YOU HEARD THEM SAY -- YOU HEARD AGENT -- I GUESS AGENT
3 MIZE SAY THAT ONCE THE TRUCK GOT STOPPED, NOBODY SAW THE GREEN CAR
4 AFTER THAT POINT.

5 A THAT'S CORRECT.

6 Q BUT THEY SAID TO WAIT, DON'T TAKE -- DON'T ARREST THESE GUYS RIGHT
7 AWAY. WAIT A FEW MINUTES. AND THEN YOU SAID WELL THE AGENT SHOULD'VE
8 TAKEN THEM OUT AT THE END OF THE ROAD. REMEMBER THAT?

9 A YES, SIR.

10 Q NOW THAT WAS AN AGENT AT THE END OF PADGETT ROAD THAT
11 WOULD'VE TAKEN OUT THE GREEN CAR. IS THAT WHAT YOU WERE ASSUMING?

12 A I WAS ASSUMIN' THERE WAS AN AGENT GONNA BE ON THE OTHER END OF
13 PADGETT ROAD TO INTERCEPT THAT VEHICLE.

14 Q SO AGENT MIZE OR SOME OTHER FEDERAL AGENT SAID LET'S PLAY A
15 LITTLE WAITING GAME AND YOU SAID OKAY WELL AND SO YOU WAITED 30
16 MINUTES OR AN HOUR TO SEE IF ANYBODY WOULD COME BACK, IF THE T-BIRD
17 WOULD COME BACK.

18 A CORRECT.

19 Q AND IT NEVER DID.

20 A CORRECT.

21 Q AND NO ONE EVER FIGURED OUT HOW THE GREEN CAR GOT OUT.

22 A NO, SIR.

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

24 THE COURT: MR. MILLER.

25 MR. MILLER: THANK YOU, YOUR HONOR.

CROSS-EXAMINATIONBY MR. MILLER

Q MORNIN', INVESTIGATOR YOUNG.

A MORNIN'.

Q INVESTIGATOR YOUNG, AM I CORRECT THAT YOU WERE IN THE GROUP THAT WAS LOOKING AT THE 18-WHEELER AT BILLY'S SUPER STORE?

A YES, SIR.

Q OKAY. WOULD YOU COME DOWN JUST A MINUTE, PLEASE. UTILIZING THIS SKETCH HERE, WE GOT TO JUST ORIENT YOU UP AT THE TOP HERE. HERE'S TIENDA DELEON. AND HERE'S BILLY'S SUPER STORE. AND HERE'S 121 INTERSECTS WITH U.S. 25.

THE COURT: MR. MILLER, Y'ALL GOT SOME OF THE JURORS BLOCKED.

MR. MILLER: THANK YOU, YOUR HONOR.

Q SO HERE'S BILLY'S.

A RIGHT.

Q AND WE'VE PREVIOUSLY HEARD TESTIMONY THAT THE 18-WHEELER WAS PARKED UP HERE IN THIS DIRECTION SO THAT THERE WAS A FIELD BEHIND IT AND IT WAS FACING U.S. 25. IS THAT YOUR RECOLLECTION?

A THAT'S RIGHT.

Q OKAY. NOW WHERE WERE YOU AT THIS TIME WHEN YOU WERE OBSERVING THE 18-WHEELER PARKED HERE AT BILLY'S SUPER STORE?

A BILLY'S SUPER STORE HAS A BIG OLD PARKING LOT. WE WERE OVER HERE PARKED BESIDE ONE OF THE -- IT'S SEVERAL RIGS THAT STAYS OVERNIGHT AND WE WERE PARKED BESIDE ONE OF THEM.

Q OKAY. NOW DID YOU HAVE A DIRECT LINE OF SIGHT TO THE 18-WHEELER?

ROOSEVELT YOUNG - CROSS-EXAMINATION BY MR. MILLER

- 1 A YES, SIR.
- 2 Q OKAY. SO YOU WERE LOOKING AT THE PASSENGER'S SIDE OF THE 18-
- 3 WHEELER.
- 4 A CORRECTION. WE WAS AT -- WE STARTED OFF AT BILLY'S; THEN WE WENT
- 5 TO MOTEL, CROSSROADS MOTEL AND PARKED AT ONE OF THE PARKING LOTS
- 6 THERE.
- 7 Q OKAY. DID YOU STILL MAINTAIN A DIRECT LINE OF SIGHT?
- 8 A WE COULD STILL SEE IT.
- 9 Q OKAY. WHICH SIDE OF THE 18-WHEELER WERE YOU LOOKING AT?
- 10 A THE DRIVER'S SIDE I THINK IT WAS.
- 11 Q OKAY. SO YOU WERE LOOKING AT THE DRIVER'S SIDE OF THE 18-
- 12 WHEELER.
- 13 A CORRECT.
- 14 Q DID -- AND SO YOU WERE IN THIS AREA. I'M NOT GOING TO THE SPECIFIC
- 15 SPOT, BUT IN THIS AREA WHERE CROSSROADS MOTEL IS INDICATED.
- 16 A RIGHT.
- 17 Q DID YOU AT SOME POINT SEE THE GREEN THUNDERBIRD FOLLOWED BY
- 18 THE YELLOW BOX TRUCK PASS YOUR LOCATION AND GO OVER HERE TO WHERE
- 19 THE 18-WHEELER WAS?
- 20 A RIGHT. THEY MADE A LOOP THROUGH THE MOTEL WHERE WE WAS AND
- 21 COME BACK UP HERE TO THE TRUCK.
- 22 Q OKAY. AND YOU COULD SEE THE INTERACTION BETWEEN ALL THE PEOPLE
- 23 IN THE VEHICLES AND THE PEOPLE IN THE TRUCK AT THAT TIME FROM YOUR
- 24 VANTAGE POINT.
- 25 A YES, SIR.

ROOSEVELT YOUNG -- CROSS-EXAMINATION BY MR. MILLER

- 1 Q OKAY. DID YOU -- STRIKE THAT. WOULD YOU CONSIDER YOUR FUNCTION
2 AT THAT TIME WHEN YOU WERE OBSERVING THE TRUCK TO BE SURVEILLANCE?
- 3 A YES, SIR.
- 4 Q WOULD YOU CONSIDER YOUR FUNCTION AT THAT TIME WHILE YOU WERE
5 OBSERVING THE TRUCK TO BE BACKUP FOR AGENT MIZE AND THE TRUCK DRIVER?
- 6 A YES, SIR.
- 7 Q OKAY. AND YOU COULD SEE WHAT WAS GOIN' ON OVER THERE.
- 8 A YES, SIR.
- 9 Q DID YOU SEE THE DRIVER -- OR EXCUSE ME -- THE PASSENGER OF THE
10 GREEN THUNDERBIRD GET OUT OF THE CAR AND APPROACH THE 18-WHEELER?
- 11 A YES, SIR.
- 12 Q DID YOU HAVE ANY INDICATION FROM WHAT YOU COULD SEE THAT
13 ANYBODY WAS IN DANGER OR THE TRUCK DRIVER WAS IN DANGER?
- 14 A AT THAT TIME, NO, SIR.
- 15 Q OKAY. IF YOU HAD THOUGHT THAT AGENT MIZE OR THE TRUCK DRIVER
16 WAS IN DANGER, WOULD YOU HAVE APPROACHED THE VEHICLE?
- 17 A OR IF I WOULD HAVE HEARD HIM MENTION IT ON THE RADIO.
- 18 Q SO AS SOON AS YOU HAD ANY INDICATION THERE WAS ANY KINDA TYPE
19 OF DANGER YOU WOULD'VE GONE TO THE TRUCK TO HELP AGENT MIZE---
- 20 A THAT'S CORRECT.
- 21 Q --AND THE TRUCK DRIVER. OKAY. DID YOU SEE ANYBODY AT THAT TIME
22 WHILE THIS WAS GOIN' ON WITH THE 18-WHEELER, DID YOU SEE ANYBODY
23 TALKIN' TO ANY OF THE INDIVIDUALS INSIDE THE BOX TRUCK?
- 24 A I DON'T RECALL THAT.
- 25 Q OKAY. I THINK MR. SUSSMAN HAS ALREADY GONE OVER ENOUGH DETAIL

ROOSEVELT YOUNG - CROSS-EXAMINATION BY MR. MILLER

1 OF THE TRIP FROM BILLY'S TO THE -- TO PADGETT ROAD. LET ME ASK YOU THIS:
2 YOU'RE A NARCOTIC -- OR AT LEAST WERE A NARCOTICS INVESTIGATOR WHEN
3 YOU'RE NOT SERVING ACTIVE DUTY IN THE MILITARY. IS THAT CORRECT?

4 A CORRECT.

5 Q IS IT YOUR CUSTOM OR PRACTICE WHENEVER IT IS POSSIBLY FEASIBLE TO
6 RECORD DRUG TRANSACTIONS VIA AUDIO OR HOPEFULLY VIDEOTAPE?

7 A CORRECT.

8 Q DO YOU HAVE EQUIPMENT HERE AT THE EDGEFIELD COUNTY SHERIFF'S
9 OFFICE THAT YOU COULD WIRE SOMEBODY UP SO THAT THEIR CONVERSATIONS
10 COULD BE RECORDED?

11 A YES, SIR, I DO.

12 Q DID ANYBODY ASK, CUSTOMS, SLED, ANYBODY ELSE SAY INVESTIGATOR
13 YOUNG CAN WE USE YOUR EQUIPMENT SO WE CAN PUT A WIRE ON THIS GUY OR
14 PUT A WIRE IN HIS VEHICLE?

15 A NO, SIR.

16 Q IF THEY HAD ASKED YOU, WOULD YOU HAVE LET 'EM?

17 A YES, SIR.

18 Q BUT THERE WERE NO AUDIO RECORDINGS OF ANY OF THE
19 CONVERSATIONS OR ANY OF THE TRANSACTIONS INVOLVED IN THIS CASE. IS
20 THAT CORRECT?

21 A THAT'S CORRECT.

22 Q NOW YOU CHARACTERIZED YOUR INVESTIGATION AFTER EVERYBODY --
23 WELL, AT LEAST AFTER MY CLIENT HONORIO GUERRERO WAS IN CUSTODY, YOU
24 CHARACTERIZED YOUR INVESTIGATION AS MINIMAL.

25 A CORRECT.

1 Q DID HONORIO GUERRERO TELL YOU THAT HE HAD SPENT MAY THE 17TH THE
2 NIGHT BEFORE THIS HAPPENED AT THE CROSSROADS MOTEL?

3 A I KNOW WE GOT A STATEMENT OUT THE RENTAL VAN SAYIN' THAT THEY
4 HAD PURCHASED A ROOM THE NIGHT BEFORE. WE TALKED. I DON'T RECALL.

5 Q OKAY.

6 A I DON'T RECALL.

7 Q WELL, AT SOME POINT YOU ASKED HIM IF YOU COULD TAKE A LOOK AT HIS
8 CELL PHONE, DID YOU NOT?

9 A YES, SIR.

10 Q AND HE JUST SAID OKAY?

11 A YES, SIR.

12 Q DID YOU HAVE HIM EXECUTE ANY KIND OF PAPERWORK OR CONSENT TO
13 SEARCH OR ANY TYPE THING LIKE THAT THAT YOU THOUGHT MIGHT'VE BEEN
14 NECESSARY? DID HE EXECUTE ANY PAPERWORK OR DID HE JUST TELL YOU I
15 DON'T HAVE ANY PROBLEM WITH YOU LOOKIN' AT THE CELL PHONE?

16 A HE JUST GAVE IT TO ME. HE DIDN'T HAVE ANY PROBLEM WITH ME LOOKIN'
17 AT IT.

18 Q AND DID YOU CHECK THE RYDER TRUCK RECORDS AND THE RECEIPT
19 FROM THE HOTEL AND SEE IF HE HAD PROVIDED ANY FALSE INFORMATION ON
20 THOSE DOCUMENTS?

21 A NO, SIR, I DIDN'T.

22 Q BUT HIS DRIVER'S LICENSE WOULD'VE BEEN IN HIS PERSONAL EFFECTS AT
23 THE JAIL. IS THAT CORRECT?

24 A CORRECT.

25 Q YOU KEEP THOSE IN THE JAIL.

ROOSEVELT YOUNG - CROSS-EXAMINATION BY MR. MILLER

1 A CORRECT.

2 Q SO YOUR INVESTIGATION CONSISTED OF THE EVIDENCE, GATHERING THE
3 EVIDENCE THAT WAS EITHER IN THE RYDER TRUCK -- DID YOU DO THE ACTUAL
4 SWEEP OF THE RYDER TRUCK OR THE---

5 A I THINK CAPTAIN LOWE DID.

6 Q OKAY. CAPTAIN LOWE DID THE PROCESSING OF THE RYDER TRUCK. SO
7 YOU LOOKED AT THAT INFORMATION; YOU ASKED MY CLIENT IF YOU COULD
8 LOOK AT HIS CELL PHONE AND HE TOLD YOU THAT HE COULD -- THAT YOU
9 COULD. WAS THERE ANY OTHER INVESTIGATION OF MR. HONORIO GUERRERO
10 OTHER THAN THAT?

11 A OTHER THAN THAT, NO, SIR.

12 Q OKAY. HOW LONG AFTER MAY THE 18TH WAS IT BEFORE YOU WENT TO MR.
13 GUERRERO AND ASKED HIM IF YOU COULD LOOK AT HIS CELL PHONE?

14 A MAYBE A DAY OR TWO.

15 Q A DAY OR TWO LATER.

16 A YES, SIR.

17 Q OKAY. ARE YOU SURE ABOUT THAT TIMEFRAME? COULD IT HAVE BEEN A
18 LONGER TIMEFRAME?

19 A I DON'T THINK IT WAS A LONG TIMEFRAME.

20 Q OKAY.

21 A NO MORE THAN 4 DAYS.

22 MR. MILLER: ONE SECOND, PLEASE, YOUR HONOR.

23 THE COURT: YES, SIR.

24 MR. MILLER: YOUR HONOR, I DON'T HAVE ANY FURTHER QUESTIONS.

25 THANK YOU.

1 THE COURT: THANK YOU. REDIRECT?

2 MR. MAYE: YOUR HONOR, MAY WE APPROACH THE BENCH? I WANT TO
3 MAKE SURE OF A PRIOR RULING. (THERE WAS A BENCH CONFERENCE OUT OF THE
4 HEARING OF THE JURY AND OFF THE RECORD.)

5 THE COURT: LADIES AND GENTLEMEN, THERE'S A MATTER OF LAW I HAVE
6 TO ADDRESS SO I'M GOING TO ASK YOU TO GO TO THE JURY ROOM. DON'T
7 DISCUSS THE CASE. LEAVE YOUR NOTES IN THE COURTROOM. (THE FOLLOWING
8 OCCURRED OUTSIDE THE PRESENCE OF THE JURY.) ALRIGHT. SOLICITOR?

9 MR. MAYE: PLEASE THE COURT, YOUR HONOR? BEFORE I BEGIN WITH THIS
10 LINE OF QUESTIONING, THE COURT HAS ADMONISHED INVESTIGATOR YOUNG NOT
11 TO REFER TO THE DEFENDANT AS A DRUG TRAFFICKER IN THIS WAY, NOT TO SAY
12 HE IS A DRUG TRAFFICKER, BUT HE WAS ASKED DIRECTLY BY THE DEFENSE IN
13 THIS CASE DIDN'T YOU PREVIOUSLY TESTIFY THAT YOU DID NOT BELIEVE HE WAS
14 A DRUG DEALER IN THIS CASE. AT THIS POINT IN TIME, YOUR HONOR, IT IS THE
15 STATE'S CONTENTION THAT WE HAD ASKED INVESTIGATOR YOUNG TO DESCRIBE
16 THE DIFFERENCE BETWEEN A DRUG DEALER AND A DRUG TRAFFICKER AND
17 ASKED HIM WHETHER OR NOT HE BELIEVES MR. DELEON IS A DRUG TRAFFICKER
18 AND THE SIGNIFICANCE OF THAT AS TO SEEKING A SEARCH WARRANT AND BEING
19 EXPECTED TO FIND WRAPPERS AND SCALES AND THIS SORTA THING WITH A
20 DEALER VERSUS A TRAFFICKER.

21 THE COURT: ALRIGHT.

22 MR. MAYE: HE'S BEEN ASKED DIRECTLY IN THIS CASE, YOUR HONOR. IT'S
23 OUR POSITION THEY HAVE OPENED THE DOOR FOR THAT TO ASK HIM WHAT HIS
24 OPINION WAS FROM THIS PRELIMINARY HEARING. IT WAS OVER MY OBJECTION. I
25 OBJECTED HE BE ASKED ABOUT HIS OPINION IN THIS CASE. ONCE HE'S BEEN

1 ASKED ABOUT WHETHER OR NOT HIS OPINION THAT HE IS A DRUG DEALER OR
2 TRAFFICKER, HE CAN NOW EXPLAIN HIS ANSWER IS THE STATE'S POSITION IN THIS
3 CASE, BUT WITH A DIRECT ADMONISHMENT BY THE COURT FOR HIM NOT TO SAY
4 THE WORDS THAT HE IS A DRUG TRAFFICKER, YOUR HONOR---

5 THE COURT: WELL---

6 MR. MAYE: --THAT HE BELIEVES HE IS A DRUG TRAFFICKER, I WAS NOT
7 ABOUT TO ASK THIS WITNESS THIS QUESTION UNTIL HE WAS RELEASED BY THE
8 COURT, BASICALLY, FROM THAT ADMONISHMENT, YOUR HONOR, THAT HE COULD,
9 IN FACT, EXPLAIN HIS ANSWER IN THIS CASE. THE---

10 THE COURT: MY QUES -- MY CONCERN BEFORE WAS NOT SO MUCH WITH
11 THIS INCIDENT. IN OTHER WORDS, IF THE QUESTION AND THE ANSWER ARE
12 TAILORED SO THAT YOU'RE ASKING INVESTIGATOR YOUNG ABOUT THIS INCIDENT,
13 THAT DOESN'T CONCERN ME. THE CONCERN I HAD WAS THAT BY JUST USING THE
14 LABEL I BELIEVE HE IS A TRAFFICKER, THAT THAT IMPLIES OR COULD BE
15 INTERPRETIVE TO IMPLY THAT HE HAS SOME HISTORY THAT THEY KNOW ABOUT
16 OF BEING INVOLVED IN DRUG TRAFFICKING ASIDE FROM THIS ONE INCIDENT.
17 THAT WAS THE PRIMARY CONCERN I HAD BEFORE. NOW LET ME HEAR FROM THE
18 DEFENSE AND I'LL TELL Y'ALL WHAT MY RULING IS.

19 MR. HAWKE: YOUR HONOR, IN THIS PARTICULAR CASE, INVESTIGATOR
20 YOUNG HAS TESTIFIED PREVIOUSLY THAT HE HAD NEVER -- DIDN'T EVEN -- HAD
21 NEVER EVEN HAD HIS NAME COME UP IN A PRIOR INVESTIGATION. HAD NO
22 REASON TO BELIEVE HE HAD BEEN INVOLVED IN DRUGS, HAD NOT EVER HAD ANY
23 REASON TO BELIEVE HE WAS ON DRUGS. MY CLIENT IN OTHER TESTIMONY HAS
24 AN ABSOLUTELY CLEAN RECORD. HE HAS STATED UNDER OATH PREVIOUSLY AT
25 THE PRELIMINARY HEARING THAT HE DIDN'T EVEN THINK HE WAS A DRUG

1 DEALER. THAT THAT'S THE REASON HE DIDN'T EVEN EXECUTE A SEARCH
2 WARRANT FOR HIS HOME BECAUSE HE DIDN'T BELIEVE HE WAS A DRUG DEALER,
3 AND TO NOW SAY THAT WELL THERE'S A LITTLE DISTINCTION HERE; HE'S NOT A
4 DRUG DEALER; HE'S A QUOTE DRUG TRAFFICKER. AND THEN--

5 THE COURT: SEE, I DON'T KNOW WHAT THE WITNESS' RESPONSE WOULD
6 BE TO THAT.

7 MR. HAWKE: YES.

8 THE COURT: BUT THERE'S ALREADY BEEN TESTIMONY IN THIS RECORD IF I
9 RECALL CORRECTLY ABOUT THE DIFFERENCES IN BEING -- I THINK, MR. YOUNG, I
10 NEED TO ASK YOU TO STEP OUTSIDE SINCE WE'RE SEQUESTERING THE WITNESSES.
11 IF I START SAYING WHAT WAS SAID BY OTHER WITNESSES IT MIGHT CREATE A
12 PROBLEM. DON'T DISCUSS YOUR TESTIMONY WITH ANYONE.

13 THERE'S ALREADY BEEN TESTIMONY BY ONE WITNESS. I THINK IT WAS
14 AGENT MIZE. I'M NOT SURE. IT COULD'VE BEEN ONE OF THE OTHER FEDERAL
15 AGENTS ABOUT YOU WOULDN'T EXPECT A TRAFFICKER TO HAVE -- YOU
16 WOULDN'T EXPECT A TRAFFICKER TO HAVE THIS THAT AND THE OTHER. NOW THE
17 JURY MAY BELIEVE THAT INVESTIGATOR YOUNG WAS USING THE TERM
18 SYNONYMOUSLY WHENEVER HE SAID HE DIDN'T BELIEVE HE WAS A TRAFFIC -- A
19 DEALER. BUT, YOU KNOW, I CAUTIONED YOU ALL BEFORE YOU WENT INTO THAT
20 LINE OF QUESTIONING WHEN THEY RAISED THE OBJECTION THAT YOU MAY OPEN
21 THE DOOR THAT THEY WOULD ALLOW HIM TO COME BACK AND EXPLAIN HIS
22 ANSWER IF IT -- IF HE HAS AN EXPLANATION.

23 MR. HAWKE: THE MAIN REASON, JUDGE IS THIS: AND WE TALKED ABOUT
24 EVERYTHING PREVIOUS. OKAY? EVERYTHING PREVIOUS AND UP TO THE POINT IN
25 TIME OF THIS INCIDENT WHERE HE SAID HE HAD NO REASON TO BELIEVE THAT

1 FREDY DELEON HAD BEEN INVOLVED AND HIS NAME HAD NEVER EVEN CAME UP
2 IN A PREVIOUS INVESTIGATION. OF COURSE, SINCE THEN HE HASN'T BEEN
3 ARRESTED OR ANYTHING AND HIS BOND REVOKED. AND THEN I ALSO AT THE
4 PRELIMINARY DID YOU FEEL LIKE HE WAS THE DRUG DEALER IN THIS CASE. IN
5 THIS CASE. HIS ANSWER WAS NO SIR I DIDN'T. AND THAT'S WHY YOU DIDN'T GO
6 DO A SEARCH WARRANT OBVIOUSLY. YES SIR. OKAY? SO YOU HAVE ALL OF
7 THAT UP TO THIS POINT IN TIME WHERE HE'S NEVER HAD ANY INDICATION HE'S
8 INVOLVED IN DRUGS. HE SAYS HE DIDN'T THINK HE WAS THE DRUG DEALER IN
9 THIS CASE. HE'S NEVER BEEN ARRESTED SINCE, BUT NOW WE'RE GONNA SAY
10 HE'S A DRUG TRAFFICKER.

11 THE COURT: WELL, HE'S CHARGED WITH TRAFFICKING. THERE IS A
12 DIFFERENCE BETWEEN WHAT A TRAFFICKER DOES---

13 MR. HAWKE: OKAY.

14 THE COURT: --AND WHAT DEALER DOES IN SOME PARLANCE. NOW
15 WHETHER MR. YOUNG WAS USING THAT, I DON'T KNOW. I DON'T KNOW WHAT HIS
16 ANSWER WILL BE.

17 MR. HAWKE: YES, SIR.

18 THE COURT: BUT IF YOU'VE ASKED THE QUESTION -- NOW IF Y'ALL
19 WANNA BRING HIM OUT AND ASK HIM IN CAMERA AND THEN I CAN DO A
20 DETERMINATION AND IF HE'S--

21 MR. MAYE: YES, SIR, YOUR HONOR. WE--

22 THE COURT: WE CAN DO THAT.

23 MR. HAWKE: ANY WAY YOU WANNA HANDLE IT, JUDGE. THAT'S -- THAT'S
24 FINE WITH ME. WHICHEVER WAY YOU THINK IS THE SAFEST AND BEST WAY IS
25 FINE WITH ME.

1 THE COURT: BUT THE WAY THE OTHER AGENT -- THE OTHER WITNESS
2 TESTIFIED WAS, YOU KNOW, THAT THE DEALERS ARE THE ONES WHO ARE
3 BREAKING DOWN THE BRICKS INTO SMALLER QUANTITIES. SO -- A TRAFFICKER
4 WILL RECEIVE A LARGE QUANTITY AND JUST BE PASSING ALONG LARGE
5 QUANTITIES. SO I MEAN IN SOME PARLANCE THAT MAY BE WHAT THEY MEANT. I
6 DON'T KNOW THAT.

7 MR. HAWKE: YES, SIR.

8 THE COURT: AND THEN YOU CAN ARGUE TO THE JURY ALL DAY LONG
9 THAT HE'S CHANGIN' HIS STORY AND---

10 MR. HAWKE: YES, SIR.

11 THE COURT: --HE'S DOIN' THIS FOR PURPOSES OF CONVENIENCE AND HE
12 SAID THEN THAT HE DIDN'T THINK THAT.

13 MR. HAWKE: YES, SIR.

14 THE COURT: BUT Y'ALL, IN MY VIEW, OPENED THE DOOR TO THAT.

15 THE COURT: WE'LL DO IT IN CAMERA FIRST. LET'S TAKE A BRIEF RECESS.

16 (THERE WAS A BRIEF RECESS.)

17 REDIRECT EXAMINATION OF INVESTIGATOR YOUNG BY MR. MAYE

18 Q INVESTIGATOR YOUNG, AT THE TIME OF THE PRELIMINARY HEARING,
19 WHAT DID YOU CHARGE MR. DELEON WITH IN THIS CASE?

20 A TRAFFICKING MARIJUANA, CONSPIRACY TO TRAFFIC MARIJUANA.

21 Q OKAY. AT THE -- INVESTIGATOR YOUNG, WHAT IS THE DIFFERENCE
22 BETWEEN A DRUG TRAFFICKER AND A DEALER?

23 A A DRUG DEALER IS SOME STREET LEVEL GUY THAT I CATCH OUT HERE
24 DEALING 20-DOLLAR ROCKS OUT HERE ON THE STREET. A DRUG TRAFFICKER IS
25 SOMEBODY THAT GETS IT IN AND DISTRIBUTES IT OUT TO VARIOUS PEOPLE IN

INVESTIGATOR YOUNG -- REDIRECT EXAMINATION BY MR. MAYE

1 BULKS.

2 Q WOULD YOU EXPECT TO FIND SCALES AND WRAPPING PAPERS AND
3 THINGS ASSOCIATED WITH STREET LEVEL SALES WITH A TRAFFICKER?

4 A NO, SIR.

5 Q WHERE WOULD YOU EXPECT TO FIND THOSE THINGS? WHAT TYPE OF
6 DEALER. WOULD YOU -- OR WHAT TYPE OF A NARCOTICS PERSON WOULD YOU
7 EXPECT TO---

8 A A STREET LEVEL DEALER.

9 Q ---FIND THOSE THINGS?

10 A A STREET LEVEL DEALER.

11 Q OKAY. WHEN YOU WERE ASKED AT THE PRELIMINARY HEARING ABOUT
12 WHETHER OR NOT YOU THOUGHT HE WAS THE DEALER IN THIS CASE, WHAT WAS
13 YOUR RESPONSE TO THAT QUESTION AND IN WHAT CONTEXT WERE YOU
14 ANSWERING THAT?

15 A I DIDN'T THINK HE WAS THE DEALER BECAUSE I NEVER HAVE PURCHASED
16 DRUGS FROM HIM.

17 Q YOU NEVER HAVE PURCHASED DRUGS FROM HIM?

18 A TO CLASSIFY HIM AS A DRUG DEALER. NO, SIR.

19 Q OKAY. AT THAT POINT HAD YOU ALREADY GOTTEN WARRANTS FOR HIM?

20 A YES. TRAFFICKING MARIJUANA.

21 Q BASED ON WHAT ACTIONS?

22 A BASED ON THAT HE ACCEPTED THE CHIMNEY WITH 20 BRICKS IN IT OF
23 MARIJUANA.

24 Q OKAY. DID HE HAVE THOSE IN HIS POSSESSION?

25 A HE HAD 'EM IN HIS POSSESSION AND CUSTODY AND CONTROL IN THAT

INVESTIGATOR YOUNG - REDIRECT EXAMINATION BY MR. MAYE

1 STORE ROOM.

2 Q IN EDGEFIELD COUNTY?

3 A IN EDGEFIELD COUNTY.

4 Q OKAY. IN EXECUTING OR CARRYING OUT A SEARCH WARRANT AGAINST A
5 TRAFFICKER WOULD YOU THINK THAT WOULD'VE BEEN SUCCESSFUL AND
6 SECURING WRAPPERS OR MONEY OR RECORDS OR ANYTHING LIKE THAT OR
7 WRAPPER OR MONEY OR SCALES OR THE THINGS THAT WOULD BE ASSOCIATED
8 WITH A STREET LEVEL DEAL---

9 A YES, SIR.

10 Q ---WOULD YOU EXPECT TO FIND THAT WITH A TRAFFICKER?

11 A NO, SIR.

12 Q FOR THAT REASON DID YOU NOT EXECUTE A SEARCH WARRANT IN THIS
13 CASE?

14 A THAT'S THE REASON. I DIDN'T THINK HE WAS GONNA LEAVE NO JOINTS
15 LAYIN' AROUND OR NOTHIN' LIKE THAT. OR NO SCALES WHEN WE WENT IN
16 THERE.

17 Q OKAY. DID YOU AT THE TIME OF THE PRELIMINARY HEARING BELIEVE
18 THAT HE WAS A DRUG TRAFFICKER?

19 A YES, SIR.

20 Q DO YOU CONTINUE TO BELIEVE THAT.

21 A I CONTINUE TO BELIEVE THAT TO THIS POINT IN TIME.

22 Q OKAY. IN RESPONSE TO THE QUESTION WHO IS THE DRUG TRAFFICKER IN
23 THIS CASE, WHO WOULD YOU SAY THAT IT IS? WHICH INDIVIDUAL?

24 A I DON'T WANT NO TROUBLE.

25 Q IT'S OKAY NOW. THAT'S WHY I DID THIS.

INVESTIGATOR YOUNG - REDIRECT EXAMINATION BY MR. MAYE

1 THE COURT: I APPRECIATE IT VERY MUCH. I DO.

2 Q FREDY DELEON?

3 A FREDY DELEON, YES, SIR.

4 MR. MAYE: YOUR HONOR, THAT'S, BASICALLY, WHAT MY QUESTIONING IS.

5 THE COURT: ALRIGHT. WHAT'S YOUR POSITION?

6 MR. HAWKE: THE SAME AS I PREVIOUSLY STATED, JUDGE. THERE'S NO
7 NEED TO WASTE TIME TO RESTATE IT.

8 THE COURT: WHAT ABOUT THE OTHERS? Y'ALL HAVE ANY POSITION ON
9 THIS?

10 MR. SUSSMAN: YOUR HONOR, IT SEEMS LIKE ALL THIS HAS BEEN DIRECTED
11 TOWARDS MR. DELEON. ALTHOUGH WE OBVIOUSLY WOULD NOT LIKE ANY OF
12 THE DEFENDANTS CHARACTERIZED AS DRUG TRAFFICKERS AS THAT WOULD
13 TAINT ALL THE DEFENDANTS. FOR THAT REASON WE WOULD STILL MAINTAIN
14 OUR POSITION AND OBJECTION.

15 MR. HAWKE: YOUR HONOR, ALSO IN REFERENCE TO THE OPINION HE'S
16 RENDERED IN REFERENCE TO HIS BELIEF AND PARTICULARLY IN LIGHT OF THE
17 FACTS AS HE HAS PREVIOUSLY TESTIFIED TO, WE DON'T FEEL LIKE HIS OPINION IS
18 SUPPORTED BY ANY ADEQUATE FACTS. HIS IS JUST GENERALLY STATING I THINK
19 HE'S A DRUG TRAFFICKER. AND UNDER RULE 403 WE FEEL LIKE THIS IS MORE
20 PREJUDICIAL THAN PROBATIVE, AND THIS OPINION SHOULD NOT BE ADMISSIBLE.

21 THE COURT: MR. MILLER, YOU HAVE A POSITION?

22 MR. MILLER: YOUR HONOR, WE WOULD JOIN IN THE MOTION
23 PARTICULARLY THE REASONS ON BEHALF OF DEFENDANT GUERRERO THAT MR.
24 SUSSMAN STATED. FURTHERMORE, BECAUSE HIS TESTIMONY IS DIRECTED AT MR.
25 DELEON, IF MR. YOUNG IS -- IF INVESTIGATOR YOUNG IS ALLOWED TO TESTIFY,

1 THE ONLY PRUDENT THING TO DO IN REFERENCE TO MY CLIENT WOULD BE TO
2 MOVE FOR A SEVERANCE OF THE CASES BECAUSE MR. YOUNG HAS JUST TESTIFIED
3 IN THIS CASE THAT HE FEELS THE TRAFFICKER IS FREDY DELEON. AND THE CLEAR
4 IMPLICATION FROM THAT IS THAT THE TRAFFICKERS ARE NOT -- IS NOT HONORIO
5 GUERRERO. AND ALLOWING THAT TO COME IN AND SAY THAT I THINK FREDY
6 DELEON IS A TRAFFICKER, QUITE FRANKLY, I BELIEVE IS BENEFICIAL TO THE
7 POINT HE DOESN'T THINK IT'S MR. GUERRERO, BUT AT THE SAME TIME THE
8 STATE'S WHOLE CASE HAS BEEN THAT THESE GUYS WERE INVOLVED IN THE SAME
9 DEAL, THAT IT WOULD CERTAINLY BE UNFAIRLY PREJUDICIAL FOR MY CLIENT TO
10 BE -- TO BE LUMPED INTO THE GROUP AND TRY TO TAKE HIM DOWN WITH
11 EVERYBODY ELSE. SO IN THE ABSENCE OF THE PROHIBITION FROM THE
12 TESTIMONY THAT'S BEEN OFFERED IN CAMERA COMING IN, I WOULD MOVE FOR A
13 SEVERANCE OF THE CASES FOR THE DEFENDANTS.

14 MR. SUSSMAN: I TOO WOULD ALSO MOVE FOR A SEVERANCE OF HIS
15 CLIENT ON BEHALF OF MR. HERNANDEZ AND MR. AVILA-ARONJONA.

16 THE COURT: MOTIONS FOR SEVERANCE ARE DENIED. AS LONG AS THE
17 QUESTIONS ARE DIRECTED AS THEY WERE TO THIS ALLEGED INCIDENT, I DON'T
18 HAVE A PROBLEM BECAUSE I FEEL THAT THE DEFENSE HAS OPENED THAT DOOR,
19 THE DEFENDANT DELEON HAS OPENED THAT DOOR BY ASKING THOSE QUESTIONS
20 EARLIER. HOWEVER, I AM NOT SAYING THAT SOME OF THOSE QUESTIONS WERE
21 NOT LEADING. THAT'S A DOUBLE NEGATIVE. I MEAN THERE WEREN'T
22 OBJECTIONS RAISED TO INDIVIDUAL QUESTIONS. SOME OF THE QUESTIONS
23 APPEARED TO BE LEADING. SOME OF THE QUESTIONS MAY HAVE BEEN
24 OBJECTIONABLE FOR SOME OTHER REASON. BUT AS FAR AS THE FUNDAMENTAL
25 CONCEPT CAN YOU ASK HIM TO EXPLAIN WHAT HE MEANT IN HIS PRELIMINARY

INVESTIGATOR YOUNG - REDIRECT EXAMINATION BY MR. MAYE

1 HEARING TESTIMONY, YOU CAN ASK HIM THAT. THIS IS REPETITIVE AND I
2 APOLOGIZE. BUT A LEADING QUESTION IS ONE THAT SUGGESTS THE ANSWER.
3 SOME OF THOSE QUESTIONS DEFINITELY SUGGESTED THE ANSWER. SO YOU CAN
4 ASK HIM IF HE CHARGED THE MAN WITH DRUG TRAFFICKING, AND I MEAN THAT'S
5 THE SAME THING IN MY OPINION AS ASKING HIM DO YOU BELIEVE THAT HE'S A
6 DRUG TRAFFICKER -- HE WAS TRAFFICKING IN DRUGS IN THIS INSTANCE. IT JUST
7 MAY BE CLEANER ONE WAY THAN THE OTHER. BUT THEY'RE BOTH LEADING
8 QUESTIONS AS I STATED THEM. I'M NOT TRYIN' TO BE TECHNICAL RIGHT NOW. I'M
9 TRYIN' TO BE OF ASSISTANCE TO AVOID A PROBLEM AFTER THE JURY COMES IN.
10 ANYTHING ELSE?

11 MR. HAWKE: NO, YOUR HONOR.

12 MR. MILLER: NOTHIN' FROM GUERRERO, YOUR HONOR.

13 MR. SUSSMAN: NO, YOUR HONOR.

14 THE COURT: BRING THE JURY. (THE FOLLOWING OCCURRED IN THE
15 PRESENCE OF THE JURY.) ALRIGHT, LADIES AND GENTLEMEN. THANK YOU.
16 REDIRECT.

17 Q INVESTIGATOR YOUNG, AT THE TIME THAT YOU GAVE TESTIMONY AT THE
18 PRELIMINARY HEARING, WHAT HAD YOU CHARGED MR. DELEON WITH IN THIS
19 CASE?

20 A TRAFFICKING MARIJUANA AND CONSPIRACY TO TRAFFIC MARIJUANA.

21 Q TRAFFICKING MARIJUANA AND CONSPIRACY TO TRAFFIC. INVESTIGATOR
22 YOUNG, WHAT'S THE DIFFERENCE BETWEEN A DRUG DEALER AND A DRUG
23 TRAFFICKER?

24 A A DRUG DEALER IS BASICALLY SOMEBODY THAT'S STANDIN' ON THE
25 STREET CORNER DEALIN' \$20 ROCKS, \$20 BAGS OF MARIJUANA. A DRUG

INVESTIGATOR YOUNG - REDIRECT EXAMINATION BY MR. MAYE

1 TRAFFICKER IS SOMEBODY THAT BASICALLY RECEIVES BULKS AND BULKS OF
2 MARIJUANA, POUNDS OF COCAINE, OR SOMETHING OF THAT NATURE.

3 Q WHAT WOULD YOU EXPECT TO FIND AT A DEALER'S IF YOU WENT AND
4 CARRIED OUT A SEARCH WARRANT THERE?

5 A MAYBE JOINTS, A COUPLE SCALES.

6 Q OKAY. HOW ABOUT WITH A TRAFFICKER? WOULD YOU EXPECT TO FIND
7 THOSE SAME SORTS OF THINGS IF YOU CARRIED OUT A SEARCH WARRANT AT A
8 TRAFFICKER'S LOCATION?

9 A NO, SIR.

10 Q WHY NOT?

11 A BECAUSE THEY'RE A LITTLE TOO SMART FOR THAT. THEY'RE NOT GONNA
12 LEAVE ALL THAT INCRIMINATING EVIDENCE AROUND.

13 Q WOULD THEY HAVE -- THE TRAFFICKER OPERATE THE SAME WAY A DALER
14 WOULD? WOULD THEY BE DISTRIBUTED IN THE SAME FASHION?

15 A NO, SIR.

16 Q WHY? WHAT WOULD BE THE DIFFERENCE?

17 A WELL, ONCE AGAIN, THE DEALER WOULD JUST DISTRIBUTE IT OUT TO
18 ANYBODY BASICALLY THAT COMES TO THEM ON THE STREET. THE TRAFFICKER
19 IT'LL BE PROBABLY A CLOSE KNIT GROUP AND A LITTLE BIT MORE TIME SPENT IN
20 IT WHERE THEY GONNA SHIP THE MARIJUANA OR THE CRACK OUT TO.

21 MR. SUSSMAN: OBJECTION, YOUR HONOR. IF I'M NOT MISTAKEN, I
22 THOUGHT HE SAID SOMETHIN' ABOUT CRACK, AND THIS IS A MARIJUANA CASE AS
23 FAR AS I KNOW. SO ANY REFERENCE TO ANY OTHER TYPE OF NARCOTIC WOULD
24 BE INAPPROPRIATE AND INADMISSIBLE.

25 THE COURT: HE DIDN'T MAKE ANY SUGGESTION THAT THIS -- THAT ANY

1 OF THESE DEFENDANTS WERE INVOLVED WITH COCAINE OR CRACK COCAINE. HE
2 WAS TALKIN' ABOUT TRAFFICKERS IN GENERAL. AND HE WAS ALLUDING TO
3 DIFFERENT TYPES OF DRUGS. LADIES AND GENTLEMEN, THERE IS NO
4 ACCUSATION, NO ASSERTION, NO NOTHING RELATED TO THIS CASE CONCERNING
5 ANY DRUG OTHER THAN THE ALLEGATION THAT MARIJUANA WAS INVOLVED.
6 THERE IS NO ALLEGATION OF ANY OTHER DRUG BEING INVOLVED.

7 Q AT THE TIME OF THE PRELIMINARY HEARING DID YOU BELIEVE HIM TO BE
8 A STREET LEVEL DRUG DEALER?

9 A NO, SIR.

10 Q OKAY. DID YOU BELIEVE HIM TO BE A TRAFFICKER AT THE TIME YOU
11 DREW THE WARRANT?

12 A YES, SIR, I DID.

13 Q BASED ON WHAT?

14 A BASED ON THE WAY THAT THE MARIJUANA CAME INSIDE THE CHIMNEY
15 THERE. THAT WASN'T NO STREET LEVEL DEALER DEALIN' WITH THAT.

16 Q WHO HAD IT IN THEIR POSSESSION AND CUSTODY AND CONTROL OUT
17 THERE AT THE STORE?

18 A FREDY DELEON.

19 Q OKAY. INVESTIGATOR YOUNG, LET ME ASK YOU THIS: YOU'VE
20 PREVIOUSLY BEEN ASKED ABOUT WHEN THEY OFFLOADED AT THE STORE. WERE
21 YOU AROUND IN THAT GENERAL VICINITY?

22 A NO, SIR.

23 Q SO YOU DIDN'T SEE ACTUALLY WHAT HAPPENED.

24 A I DIDN'T SEE IT.

25 Q OKAY. YOU'VE BEEN ASKED ABOUT WHAT THE NUMBER OF PEOPLE, WHO

INVESTIGATOR YOUNG - REDIRECT EXAMINATION BY MR. MAYE

1 DO YOU UNDERSTAND WAS THERE OFFLOADING IT? YOU'VE BEEN ASKED ABOUT
2 WHAT THE NUMBER OF PEOPLE WERE. WHO DO YOU UNDERSTAND WAS OUT
3 THERE OFFLOADING IT?

4 A AGENT MIZE, THE TRUCK DRIVER AND TWO MORE.

5 Q OKAY. DO YOU KNOW WHETHER OR NOT THOSE WERE THE INDIVIDUALS
6 IN THE THUNDERBIRD OR TWO OTHER INDIVIDUALS? DO YOU KNOW?

7 A I DON'T, NO, SIR.

8 Q OKAY. SO YOU WEREN'T THERE.

9 A I WASN'T THERE.

10 Q OKAY. COULD IT HAVE BEEN THE GUYS IN THE THUNDERBIRD WHO WERE
11 HELPING OFFLOAD ALONG WITH AGENT MIZE---

12 MR. HAWKE: OBJECTION. SPECULATION. HE'S JUST LOCKED HIM DOWN
13 THAT HE WASN'T EVEN THERE.

14 THE COURT: SUSTAINED.

15 MR. MAYE: WITHDRAWN.

16 THE COURT: DISREGARD THAT, LADIES AND GENTLEMEN.

17 Q INVESTIGATOR YOUNG, IN REGARD TO THE ORDER OF THE VEHICLES, THE
18 WAY THAT THEY WERE GOIN' OUT, COULD YOU BE MISTAKEN IN REGARD TO
19 WHAT ORDER THE VEHICLES WERE---

20 THE COURT: HOLD ON---

21 MR. HAWKE: OBJECTION TO LEADING.

22 THE COURT: SUSTAINED.

23 Q ARE YOU SURE ABOUT YOUR TESTIMONY WITH THE ORDER OF THE
24 VEHICLES IN THIS CASE?

25 A AS FAR AS THE VEHICLES, I -- I'M -- COULD'VE BEEN OFF ONE OR TWO

INVESTIGATOR YOUNG - RECROSS EXAMINATION BY MR. HAWKE

1 VEHICLES IN THE ORDER WE LEFT OUT OF THERE. THAT'S BEEN 2 YEARS AGO.

2 Q OKAY. DID YOU GO DOWN THERE AFTERWARDS TO THE SCENE?

3 A YES, SIR.

4 Q DO YOU REMEMBER WHICH ONE WAS IN FRONT OF THE OTHER THEN? DO
5 YOU REMEMBER WHICH ONE WAS IN FRONT OF THE OTHER ONE?

6 A TO BE HONEST WITH YOU, NO, SIR, I DON'T.

7 Q WERE YOU IN THE BEST VANTAGE POINT TO VIEW THAT OF ALL THE
8 PEOPLE THERE?

9 A NO, SIR.

10 Q NOTHIN' ELSE.

11 THE COURT: RECROSS.

12 RECROSS EXAMINATION

13 BY MR. HAWKE

14 Q NOW YOU'VE ACKNOWLEDGED THAT YOU HAVE NO REASON PRIOR TO
15 THIS INCIDENT, YOU HAD NO REASON TO BELIEVE THAT FREDY DELEON HAD EVER
16 BEEN INVOLVED IN THE USE, SALE, OR POSSESSION OF DRUGS. AM I CORRECT?

17 A CORRECT.

18 Q AND DID YOU ACKNOWLEDGE THAT YOU HAD NO REASON TO THINK THAT
19 FREDY DELEON EVEN KNEW THERE WAS MARIJUANA IN THIS FURNITURE.

20 A THAT'S CORRECT.

21 Q AND YOU'VE ALSO ACKNOWLEDGED THAT YOU DIDN'T HAVE ANY
22 INDICATION THAT HE THOUGHT ANYTHING WAS COMING TO HIM OTHER THAN
23 FURNITURE. AM I CORRECT?

24 A CORRECT.

25 Q AND -- AND WHEN I ASKED AT THE PRELIMINARY HEARING, DID YOU

INVESTIGATOR YOUNG - RECROSS EXAMINATION BY MR. HAWKE

1 THINK HE WAS THE DRUG DEALER IN THIS CASE, DID YOU THINK I WAS REFERRING
2 TO SOMEBODY OTHER THAN THE PEOPLE BRINGING THE DRUGS HERE?

3 A AT THE PRELIMINARY HEARIN' I TOLD YOU THAT WAS AN ONGOING
4 INVESTIGATION.

5 Q RIGHT. BUT DID YOU THINK WHEN I ASKED YOU DO YOU THINK HE WAS
6 THE DRUG DEALER IN THIS CASE, IN THIS VERY CASE, DID YOU THINK I WAS
7 TALKIN' ABOUT SOME OTHER DRUG DEALER, STREET LEVEL DRUG DEALER?

8 A I CANNOT CLASS -- AT THE TIME OF THE PRELIMINARY HEARING I
9 COULDN'T CLASSIFY YOUR CLIENT AS A DRUG DEALER. I HAVE NEVER
10 PURCHASED DRUGS FROM HIM.

11 Q OKAY. WHAT OTHER DID YOU THINK -- WHAT DRUG DEALER DID YOU
12 THINK I WAS REFERRING TO WHEN I SAID DO YOU THINK HE IS A DRUG DEALER IN
13 THIS CASE? WHICH DRUG DEALER DID YOU THINK I WAS TALKIN' ABOUT?

14 A I ASSUME YOU WAS TALKIN' ABOUT YOUR CLIENT.

15 Q OKAY.

16 A BUT I CAN'T CLASSIFY HIM AS A DRUG DEALER.

17 Q BUT -- BUT WHEN I ASKED YOU THAT, I SAID -- I SAID LISTEN DO YOU
18 THINK HE IS THE DRUG DEALER IN THIS CASE, DID YOU THINK I MIGHT BE TALKING
19 ABOUT THE PERSON THAT'S BRINGING IN 905 POUNDS OF MARIJUANA?

20 A I'M THINKIN' YOU'RE TALKIN' ABOUT YOUR CLIENT.

21 Q NO. DID YOU THINK I WAS TALKIN' ABOUT THE PERSON BRINGIN' IN 905
22 POUNDS OF MARIJUANA? YOU DIDN'T THINK I WAS TALKIN' ABOUT SOME STREET
23 DEALER HANGIN' OUT ON THE CORNER, DID YOU?

24 A NO, SIR, I DIDN'T.

25 Q WELL, WHEN I ASKED YOU THAT QUESTION AND I ASKED YOU WHETHER

INVESTIGATOR YOUNG - RECROSS EXAMINATION BY MR. HAWKE

1 OR NOT YOU THOUGHT MR. DELEON WAS A DRUG DEALER, YOU TOLD ME YOU
2 DIDN'T FEEL LIKE HE WAS THE DRUG DEALER IN THIS CASE, DID YOU?

3 A I DID. AND I JUST GOT THROUGH TELLIN' YOU I HAVE NEVER PURCHASED
4 NARCOTICS FROM HIM, SO I CAN'T CLASSIFY YOUR CLIENT AS A DRUG DEALER.

5 Q OKAY. BUT YOU UNDERSTOOD VERY CLEARLY WHEN I ASKED YOU ABOUT
6 WHO WAS THE DRUG DEALER IN THIS CASE WAS THAT I WAS REFERRING TO THE
7 DRUG DEALER THAT WAS BRINGIN' IN 905 POUNDS OF MARIJUANA. DIDN'T YOU?

8 A THAT'S WHAT YOU SAY AND I TOLD YOU IT WAS AN ONGOING
9 INVESTIGATION.

10 Q AND THEN YOU ALSO TOLD ME THAT YOU DIDN'T THINK HE WAS THE DRUG
11 DEALER AND THAT'S WHY YOU DIDN'T DO A SEARCH WARRANT, DIDN'T YOU?

12 A I TOLD YOU I DIDN'T THINK THAT IT WOULD BEAR ANY FRUIT ON MY CASE.
13 THAT'S---

14 Q ALRIGHT. YOU---

15 A ---WHAT I TESTIFIED TO.

16 Q ---DIDN'T SAY THAT.

17 A I DIDN'T TESTIFY TO THAT IN THE PRELIM. THAT'S WHAT I'M TELLIN' YOU
18 NOW.

19 Q OKAY. THAT'S WHAT YOU'RE SAYIN' NOW.

20 A CORRECT.

21 Q BUT AT THE TIME OF THE PRELIMINARY HEARING THOUGH YOU TOLD ME
22 YOU DIDN'T THINK HE WAS THE DRUG DEALER AND THAT'S WHY YOU DIDN'T DO
23 A SEARCH WARRANT. DIDN'T YOU?

24 A AND I ALSO TOLD YOU IT WAS AN ONGOING INVESTIGATION. I HAVE---

25 Q ALRIGHT. LET'S SEE IF YOU SAID THAT. I WANT YOU TO TELL ME WHERE

INVESTIGATOR YOUNG - RECROSS EXAMINATION BY MR. HAWKE

1 YOU SAID THAT.

2 A WHERE I SAID WHAT?

3 Q THAT THERE WAS AN ONGOING INVESTIGATION

4 A IT'S IN THERE SOMEWHERE. I'LL LET YOU LOOK AT IT.

5 Q QUESTION, PAGE 30, LINE 2 THROUGH 7 IS WHAT I'M GONNA REFER TO. DID
6 YOU -- DID YOU FEEL LIKE HE WAS THE DRUG DEALER IN THIS CASE. YOUR
7 ANSWER WAS WHAT?

8 A NO SIR DIDN'T.

9 Q AND I SAID AND THAT'S WHY YOU DIDN'T GO DO THE SEARCH WARRANT
10 OBVIOUSLY. YOUR ANSWER WAS WHAT?

11 A YES SIR.

12 Q YOU DIDN'T MENTION ANYTHING ABOUT AN ONGOING INVESTIGATION,
13 DID YOU?

14 A IT'S NOT ON THIS PAGE, BUT IT'S IN THE PRELIMINARY SOMEWHERE
15 BECAUSE I DID TELL YOU IT WAS AN ONGOING INVESTIGATION.

16 Q OKAY. YOU'RE TALKIN' ABOUT SOME OTHER TIME.

17 A I'M TALKIN' ABOUT BEFORE WE CLOSE OUT THIS PRELIMINARY HEARIN' I
18 TOLD YOU IT WAS AN ONGOING INVESTIGATION.

19 Q OKAY. ALRIGHT.

20 A AND WE STILL DEVELOPIN' LEADS.

21 Q BUT WHEN I WAS ASKIN' YOU THOSE QUESTIONS, YOU DIDN'T MENTION
22 THAT, DID YOU?

23 A THAT PARTICULAR QUESTION, NO, SIR, I DID NOT ANSWER IT WAS AN
24 ONGOIN' INVESTIGATION.

25 Q OKAY. NOW WE'VE -- SO UP TO THIS POINT IN TIME YOU ACKNOWLEDGE

INVESTIGATOR YOUNG - RECROSS EXAMINATION BY MR. HAWKE

1 THAT YOU'D NEVER HEARD OF HIM BEFORE AND HE'S NEVER BEEN MENTIONED IN
2 ANY INVESTIGATION. YOU HAVE ACKNOWLEDGED THAT YOU KNEW OR YOU
3 DIDN'T HAVE ANY REASON TO THINK THAT HE KNEW THE MARIJUANA WAS IN
4 THIS FURNITURE. YOU ACKNOWLEDGED THAT HE DIDN'T HAVE ANY REASON TO
5 BELIEVE THERE WAS ANYTHING OTHER THAN FURNITURE COMING TO HIM. HE'S
6 NEVER BEEN ARRESTED SINCE AS FAR AS WITH ANY DRUG OFFENSES, HAS HE?

7 A NO, SIR.

8 Q THAT'S THE BASIS THAT YOU'RE NOW TELLIN' THIS JURY THAT HE'S A
9 DRUG TRAFFICKER, ISN'T IT?

10 A YES, SIR, I AM.

11 Q AND AT THE TIME YOU ARRESTED HIM AND CHARGED HIM AS THE DRUG
12 TRAFFICKER IN THIS PARTICULAR CASE, THERE WAS NOBODY ELSE TO ARREST,
13 WERE THERE? EXCEPT FOR THESE 3 PEOPLE HERE.

14 A THAT'S IT, YES, SIR.

15 Q THE PEOPLE OUT THERE TELLIN' 'EM WHERE TO GO WITH 800 AND
16 SOMETHIN' POUNDS OF MARIJUANA WEREN'T AVAILABLE, WERE THEY?

17 A NO, SIR, THEY GOT OFF THE DIRT ROAD PROMPTLY OR THEY WOULD A
18 BEEN ARRESTED TOO.

19 Q THE PASSENGER IN THAT CAR ALSO GOT AWAY, DIDN'T HE?

20 A YES, SIR.

21 Q THE 2 PEOPLE THAT YOU SAID WERE UNLOADING THAT ARE NO LONGER
22 AROUND, THEY'RE NOT ANYWHERE HERE TO ARREST, WERE THEY?

23 A NO, SIR, HE WASN'T.

24 Q SO YOU HAD ALL THIS MARIJUANA; YOU HAD TO ARREST SOMEBODY,
25 DIDN'T YOU?

INVESTIGATOR YOUNG - RECROSS EXAMINATION BY MR. SUSSMAN

1 A THAT'S IT. I WASN'T GONNA LET 905 POUND OF MARIJUANA WALK OUTTA
2 EDGEFIELD COUNTY.

3 Q THAT'S ALL I HAVE.

4 THE COURT: MR. SUSSMAN?

5 RECROSS EXAMINATION

6 BY MR. SUSSMAN

7 Q INVESTIGATOR YOUNG, I JUST HAVE A COUPLE OF QUESTIONS. YOU
8 RECALL THE PRELIMINARY HEARING THAT YOU GAVE TESTIMONY AT ON JULY 31ST
9 2002 HERE AT THE EDGEFIELD COUNTY MAGISTRATE'S COURT?

10 A YES, SIR.

11 Q I THINK MR. STURKEY -- I KNOW MR. HAWKE WAS ASKIN' YOU SOME
12 QUESTIONS BACK THEN. THAT WAS JULY 31ST 2002. SO MAY, JUNE, JULY, THAT'S
13 JUST LIKE ABOUT 2 MONTHS AFTER THE INCIDENT.

14 A CORRECT.

15 Q WOULD YOU AGREE WITH ME THAT YOUR MEMORY OF WHAT HAPPENED IN
16 MAY OF 2002 WAS BETTER IN JULY OF 2002 THAN IT IS NOW?

17 A YES, SIR.

18 Q OKAY. DOES AS TIME GOES ON WE TEND TO LOSE A LITTLE BIT AS WE GO?

19 A CORRECT.

20 Q AND AT THE TIME YOU WERE ASKED WHEN THEY TURNED ONTO PADGETT
21 ROAD THE CONVOY, SO TO SPEAK, THAT WENT INTO PADGETT ROAD, THE GREEN
22 CAR ITSELF DID NOT HANG AROUND ONCE THAT TRUCK GOT STUCK. AND YOUR
23 ANSWER WAS ONCE THE TRUCK SLID OFF I THINK WE ALREADY SAID THE GREEN
24 CAR TOOK OFF.

25 A CORRECT.

INVESTIGATOR YOUNG - RECROSS EXAMINATION BY MR. SUSSMAN

1 Q ALRIGHT. AND THEN YOU WERE ASKED WHAT DID THE BOX TRUCK DO,
2 AND YOUR RESPONSE WAS, THE BOX TRUCK WAS BEHIND THE TRACTOR TRAILER.

3 A CORRECT.

4 Q AND WE WAS BEHIND IT PROBABLY 30 OR 40 YARDS.

5 A CORRECT.

6 Q ALRIGHT? SO AT THE TIME IN JULY OF 31, 2002 WHEN YOUR MEMORY WAS
7 A LOT CLEARER OF WHAT HAPPENED, YOU TESTIFIED UNDER OATH---

8 A UH-HUH.

9 Q ---THAT THE SEMI -- THAT IT WAS THE SEMI IN FRONT, THEN THE BOX
10 RYDER TRUCK, AND THEN YOU GUYS.

11 A UH-HUH.

12 Q IS THAT A YES?

13 A YES, SIR.

14 Q SHE'S GOTTA---

15 A YES, SIR.

16 Q OKAY. AND I THINK THAT'S WHEN WE WENT THROUGH THAT
17 CONVERSATION ABOUT 30 OR 40 YARDS AWAY.

18 A YES, SIR.

19 Q AND YOU KIND OF STOPPED ONCE YOU HEARD ON THAT RADIO THAT THEY
20 GOT STUCK.

21 A CORRECT.

22 Q ALRIGHT. AND THAT WAS AGENT MIZE THAT RADIOED YOU.

23 A YES, SIR.

24 Q AND YOU COULD HEAR HIM PLAIN.

25 A I COULD HEAR HIM AT THAT TIME, YES, SIR.

1 Q ALRIGHT. AND THE T-BIRD WAS NEVER RECOVERED.

2 A LATER AT---

3 Q OH, YEAH. IT WAS. IT WAS ABANDONED.

4 A YES, SIR.

5 Q DOWN AT THE---

6 A BUT IT WASN'T RECOVERED THAT DAY.

7 Q OKAY. THAT'S ALL. THANK YOU, SIR.

8 THE COURT: MR. MILLER.

9 MR. MILLER: NO FURTHER QUESTIONS, YOUR HONOR.

10 THE COURT: ANYTHING ELSE OF THIS WITNESS, SOLICITOR?

11 MR. MAYE: NO, SIR. I WANT TO RESERVE THE RIGHT TO RECALL HIM, BUT
12 NOTHING ELSE.

13 THE COURT: THANK YOU, SIR. YOU MAY STEP DOWN. SINCE THEY'VE
14 RESERVED THE RIGHT TO RECALL YOU, YOU STILL CAN'T TALK ABOUT YOUR
15 TESTIMONY WITH ANYONE.

16 A YES, SIR.

17 THE COURT: ALRIGHT. SOLICITOR, YOU HAVE ANOTHER WITNESS?

18 MR. MAYE: IT'S GONNA BE A FAIRLY LIMITED -- IF WE COULD HAVE A
19 MOMENT FOR A BREAK. I HATE TO KEEP TAKING BREAKS BUT I NEED ONE
20 PERSONALLY.

21 THE COURT: ALRIGHT. LADIES AND GENTLEMEN, STEP BACK IN THE JURY
22 ROOM. LET ME FIND OUT WHAT THEY'VE GOT AND I'LL DECIDE WHAT WE'RE
23 GOING TO DO WHETHER WE'RE GOING TO BREAK FOR LUNCH NOW OR I'LL LET
24 YOU HEAR SOME MORE TESTIMONY. OKAY? WE'RE AT EASE. (THERE WAS A BRIEF
25 RECESS.) BRING THE JURY IN, PLEASE. (THE FOLLOWING OCCURRED IN THE

ERIC OWENBY - DIRECT EXAMINATION BY MR. MAYE

1 PRESENCE OF THE JURY.) ALRIGHT. CALL YOUR NEXT WITNESS, PLEASE,
2 SOLICITOR.

3 MR. MAYE: STATE CALLS INVESTIGATOR ERIC OWENBY, AIKEN COUNTY
4 SHERIFF'S OFFICE.

5 THE COURT: COME AROUND, PLEASE, AND LET THE CLERK SWEAR YOU.

6 INVESTIGATOR ERIC OWENBY, BEING DULY SWORN,
7 TESTIFIES AS FOLLOWS:

8 DIRECT EXAMINATION

9 BY MR. MAYE

10 Q INVESTIGATOR OWENBY, WHERE ARE YOU EMPLOYED NOW?

11 A THE AIKEN COUNTY SHERIFF'S OFFICE.

12 Q IN WHAT CAPACITY ARE YOU EMPLOYED THERE NOW?

13 A I'M A CRIMINAL INVESTIGATOR.

14 Q BACK IN 2002 WHEN THE EVENTS OF THIS CASE TOOK PLACE, WHAT WERE
15 YOU DOING? WERE YOU STILL WITH THE SHERIFF'S DEPARTMENT IN AIKEN?

16 A I WAS.

17 Q IN WHAT CAPACITY WERE YOU WORKING FOR THE AIKEN COUNTY
18 SHERIFF'S OFFICE BACK THEN?

19 A I WAS ASSIGNED AS A NARCOTICS INVESTIGATOR.

20 Q DID YOU COME UP HERE AND GIVE THEM ASSISTANCE IN MAKING THIS
21 CONTROLLED DELIVERY ON THE 18TH OF 2002?

22 A YES, SIR, I DID.

23 Q PLEASE, DESCRIBE FOR THE LADIES AND GENTLEMEN OF THE JURY WHAT
24 YOUR ROLE WAS AND WHAT YOU DID IN CARRYIN' OUT THAT ASSISTANCE.

25 A WE RECEIVED A CALL THE EVENIN' BEFORE TO ASSIST EDGEFIELD COUNTY

ERIC OWENBY - DIRECT EXAMINATION BY MR. MAYE

1 AND CUSTOMS IN A CONTROLLED DELIVERY OF MARIJUANA TO A LOCATION IN
2 EDGEFIELD COUNTY. WE RECEIVED INFORMATION TO MEET AT THE SALUDA
3 COUNTY AIRPORT WHERE WE WOULD BE BRIEFED THE FOLLOWIN' MORNIN'. AND
4 THAT'S WHAT WE DID. WE MET THERE AND WERE BRIEFED ABOUT A
5 CONTROLLED DELIVERY GOIN' TO A STORE IN TRENTON. WE WERE DIVIDED AND
6 SEPARATED IN TEAMS. I WAS ASSIGNED WITH THE CUSTOMS AGENT OUT OF I
7 BELIEVE IT WAS LAREDO, TEXAS. I THINK HIS NAME WAS AGENT PEREZ. WE WERE
8 ASSIGNED TO A LOCATION OFF OF 121, I BELIEVE IT'S WISE STREET WHERE WE
9 WERE GONNA DO THE -- MAINTAIN SURVEILLANCE AND SECURITY ON THE STORE.
10 THAT WAS OUR DUTY.

11 Q WHAT DID YOU DO AFTER YOU ARRIVED AT THAT LOCATION?

12 A WE WERE THERE -- I'M NOT SURE HOW LONG WE WERE THERE. WE
13 MAINTAINED RADIO CONTACT. WE HAD RADIO IN THE CAR THAT WE COULD
14 MONITOR OTHER CUSTOMS AGENTS, WHAT WAS BEIN' SAID, WHAT WAS
15 OCCURRING AT THE STORE, OTHER PEOPLE THAT COULD SEE THE STORE AND TELL
16 US WHAT WAS OCCURRING. WE DIDN'T HAVE ANY, YOU KNOW, SORT OF VIDEO
17 OR AUDIO. WE RELIED ON THE RADIO CONTACT FROM THE OTHER AGENTS. WE
18 WERE NOTIFIED THAT A PACKAGE BELIEVED TO CONTAIN MARIJUANA WAS
19 UNLOADED AT THE STORE. AND THEN THE DECISION WAS MADE THAT WE WERE
20 GONNA GO TO THE STORE FOR FEAR OF THE CUSTOMERS COMING AND LEAVING.

21 Q OKAY. ALRIGHT. WHAT DID YOU FIND WHEN YOU ARRIVED AT THE
22 STORE?

23 A WHEN WE ARRIVED AT THE STORE, THERE WAS A FEMALE WHO I LATER
24 FOUND OUT TO BE MR. DELEON'S WIFE MS. GONZALES WORKIN' BEHIND THE
25 COUNTER. THE STORE WAS OPEN FOR BUSINESS.

ERIC OWENBY - DIRECT EXAMINATION BY MR. MAYE

1 Q HOW DID Y'ALL GO IN? DID Y'ALL GO IN IN MARKED CARS WITH THE
2 LIGHTS AND SIRENS BLINKIN' OR HOW'D Y'ALL GO IN?

3 A NO, SIR, WE WERE IN UNMARKED VEHICLES. WE PARKED ON THE SIDE OF
4 THE STORE AND WALKED IN. DIDN'T RUN IN. JUST WALKED IN.

5 Q WHAT WAS THE NEXT THING THAT Y'ALL DID? WHAT HAPPENED NEXT?

6 A ONCE WE WENT IN THE AGENTS THAT SPOKE SPANISH MADE CONTACT
7 WITH MS. GONZALES AND THEY WERE DIRECTED TO THE STORAGE ROOM WHERE
8 THE CHIMNEY WAS KEPT.

9 Q WAS THE CHIMNEY LATER OPENED IN YOUR PRESENCE?

10 A IT WAS LATER OPENED IN MY PRESENCE BY, I BELIEVE IT WAS CAPTAIN
11 LOWE AT THE TIME WITH EDGEFIELD COUNTY SHERIFF'S OFFICE.

12 Q WHO DIRECTED YOU TO OPEN THE CHIMNEY?

13 A CUSTOMS.

14 Q CUSTOMS.

15 A I BELIEVE IT WAS MICHELLE. AN AGENT WITH CUSTOMS.

16 Q OKAY. LET ME ASK YOU THIS: DID MR. DELEON THE DEFENDANT IN THIS
17 CASE, DID HE LATER SHOW UP AT THE -- AT THE STORE?

18 A YES, SIR.

19 Q OKAY. WAS -- WERE THE LIGHTS ON OR WERE THERE MARKED CARS;
20 WERE THERE UNIFORMED DEPUTIES OUTSIDE; WAS THERE ANYTHING TO INDICATE
21 Y'ALL WERE PRESENT THERE?

22 A NO, SIR. THERE WAS NOTHIN'. NO MARKED UNITS OUTSIDE.

23 Q DO YOU REMEMBER WHETHER THE CHIMNEY WAS ALREADY OPENED OR
24 NOT WHEN HE GOT THERE?

25 A WHEN MR. DELEON GOT THERE?

ERIC OWENBY - DIRECT EXAMINATION BY MR. MAYE

1 Q WHEN HE GOT THERE.

2 A I DON'T RECALL.

3 Q OKAY. HE DID COME BY.

4 A HE DID COME BACK TO THE STORE.

5 Q WAS HE TAKEN INTO CUSTODY THERE IN YOUR PRESENCE?

6 A I DON'T RECALL.

7 Q YOU DON'T RECALL.

8 MR. MAYE: BEG THE COURT'S INDULGENCE.

9 THE COURT: YES, SIR.

10 MR. MAYE: ANSWER ANY QUESTIONS THE DEFENSE HAS FOR YOU.

11 THE COURT: ALRIGHT. MR. HAWKE.

12 CROSS-EXAMINATION

13 BY MR. HAWKE

14 Q MR. OWENBY, YOU DID SURVEILLANCE FROM WISE STREET. AM I
15 CORRECT?

16 A I BELIEVE THAT'S CORRECT, YES, SIR.

17 Q AND -- AND FROM WISE STREET YOU COULDN'T PHYSICALLY SEE
18 ANYTHING THAT WAS GOING ON AT THE STORE, YOU COULDN'T PHYSICALLY SEE
19 IT.

20 A YOU COULDN'T SEE THE STORE MY STREET, NO, SIR.

21 Q AND EVERYTHING THAT YOU OBTAINED AS FAR AS INFORMATION AS FAR
22 AS WHAT WAS GOING ON SPECIFICALLY THERE BEFORE YOU WENT THERE
23 WOULD'VE BEEN INFORMATION YOU RECEIVED OVER THE RADIO.

24 A YES, SIR.

25 Q OKAY. YOU DON'T KNOW HOW THIS SHIPPING COMPANY GOT TO THIS

- 1 SHIPPING POINT, DO YOU?
- 2 A NO, SIR.
- 3 Q OKAY. AND YOU DON'T KNOW WHAT, IF ANYTHING, CAUSED THE
- 4 DELIVERY TO BE MADE AT MR. DELEON'S STORE.
- 5 A NO, SIR.
- 6 Q OKAY. AND WHEN YOU ASKED THE FEMALE WORKER BEHIND THE
- 7 COUNTER WHERE THE CHIMNEY WAS---
- 8 A I DIDN'T ASK HER.
- 9 Q OKAY, WHO DID -- WERE YOU THERE WHEN SHE WAS ASKED?
- 10 A THEY WERE SPEAKIN' SPANISH. I DON'T SPEAK SPANISH.
- 11 Q OKAY. WHEN SHE WAS ASKED A QUESTION BY THE AGENTS, DID SHE
- 12 IMMEDIATELY POINT TO THE AREA WHERE THE CHIMNEY WAS?
- 13 A THE BEST I RECALL, YES, SIR.
- 14 Q OKAY. AND THE CHIMNEY WAS COMPLETELY SEALED. WAS IT NOT?
- 15 A IT WAS.
- 16 Q AND THERE WAS NO INFORMATION TO SHOW THAT MR. DELEON KNEW
- 17 THAT MARIJUANA WAS IN THIS PARTICULAR CHIMNEY.
- 18 A I HAVE NO INFORMATION AS TO THAT.
- 19 Q OKAY. AND NOBODY HAD ATTEMPTED TO BREAK OPEN THE CHIMNEY OR
- 20 OPEN IT TO SEE WHAT WAS IN IT ANYWAY, HAD THEY?
- 21 A NO, SIR, NOT AT THAT TIME.
- 22 Q OKAY. YEAH, I UNDERSTAND WHEN Y'ALL GOT THERE Y'ALL OPENED IT
- 23 UP, BUT BEFORE Y'ALL GOT THERE, THE THING WAS COMPLETELY SEALED.
- 24 A YES, SIR.
- 25 Q OKAY. AND WHILE YOU WERE THERE, REGULAR CUSTOMERS WERE

ERIC OWENBY - CROSS-EXAMINATION BY MR. HAWKE

1 COMING IN AND OUT TO MAKE PURCHASES AT THE STORE?

2 A YES, SIR.

3 Q AND THEY WERE BASICALLY PURCHASING THE MEXICAN FOOD AND ITEMS
4 AND THINGS THAT THEY HAD IN THE STORE?

5 A IF I RECALL, A LOT OF 'EM WERE PURCHASING PHONE CARDS.

6 Q PHONE CARDS. OKAY. AND SOME PHONE CARDS. ALRIGHT. AND YOU
7 DIDN'T RECOGNIZE ANY KNOWN CRIMINALS OR DRUG DEALERS COME IN AND
8 OUT, DID YOU?

9 A NO, SIR. I AM NOT FAMILIAR WITH THE HISPANIC COMMUNITY. WE DON'T
10 DO A WHOLE LOTTA WORK. WE DON'T HAVE A LOTTA HISPANIC INFORMANTS.
11 NO, SIR.

12 Q OKAY. NOW YOU YOURSELF DID NOT MAKE ANY NOTES IN THIS CASE OF
13 WHAT YOU'D DONE, DID YOU?

14 A NO, SIR.

15 Q AND YOU DIDN'T AL -- YOU ALSO DIDN'T MAKE ANY AUDIO RECORDINGS
16 TO REMIND YOU OF WHAT YOU DID IN THIS CASE.

17 A NO, SIR. WE WERE SIMPLY ASSISTING CUSTOMS AND EDGEFIELD COUNTY.

18 Q OKAY. YOU -- AND FROM WHERE YOU WERE AT ON WISE STREET YOU
19 NEVER SAW ANY GREEN FORD THUNDERBIRDS OR BOX TRUCKS GO BY YOU.

20 A NOT THAT I RECALL.

21 Q OKAY. NOW THIS STOCK ROOM THAT THE CHIMNEY WAS IN, WHEN THE
22 FURNITURE WAS IN THERE IT WAS EXTREMELY TIGHT, WASN'T IT?

23 A YES, SIR.

24 Q IT HAD PRETTY MUCH EVERYTHING IT COULD HOLD, DIDN'T IT?

25 A THE BEST I CAN RECALL IT WAS VERY TIGHT.

ERIC OWENBY - CROSS-EXAMINATION BY MR. HAWKE

1 Q AND YOU DON'T KNOW WHY THE FURNITURE WAS TAKEN INTO THE STORE.

2 A NO, SIR. IT'S JUST MY UNDERSTANDING THAT THEY WERE INSTRUCTED TO
3 OFFLOAD SOME THERE.

4 Q OKAY.

5 A ALL THAT COME BY RADIO.

6 Q OKAY. AND WHEN YOU CAME INTO THE STORE, OF COURSE, YOU HAD
7 SOMETHING ON TO INDICATE YOU WERE LAW ENFORCEMENT, DIDN'T YOU?

8 A YES, SIR. I HAD A PROTECTIVE BULLET PROOF VEST. IT'S OUR TACTICAL
9 VEST THAT HAD SHERIFF WROTE ACROSS IT.

10 Q OKAY. ALRIGHT. THAT'S ALL I HAVE. THANK YOU, SIR.

11 THE COURT: ALRIGHT, MR. SUSSMAN.

12 CROSS-EXAMINATION

13 BY MR. SUSSMAN

14 Q INVESTIGATOR OWENBY, MY UNDERSTANDING IS YOUR MAIN
15 INVOLVEMENT IN THIS CASE TOOK PLACE AT FREDY'S STORE. IS THAT RIGHT?

16 A SURE, I DIDN'T LEAVE THERE ONCE I ENTERED THE STORE. I DIDN'T GO
17 ANYWHERE ELSE.

18 Q YOU DIDN'T GO OUT TO THE FIELD WHERE THE SEMI WAS STUCK?

19 A NO, SIR.

20 Q YOU WEREN'T INVOLVED IN THE ARREST OF ANY OF THOSE INDIVIDUALS
21 OUT IN THE FIELD?

22 A NO, SIR.

23 Q AS A MATTER OF FACT, YOU COULDN'T IDENTIFY THEM TODAY, COULD
24 YOU?

25 A NO, SIR.

ERIC OWENBY -- CROSS-EXAMINATION BY MR. SUSSMAN

- 1 Q YOU DON'T KNOW WHO'S WHO OVER HERE IN THIS CORNER WHERE THESE
2 DEFENDANTS ARE.
- 3 A I SIMPLY KNOW MR. DELEON.
- 4 Q BUT YOU DON'T KNOW THE OTHER 3.
- 5 A NO, SIR.
- 6 Q NOW YOU SAID YOU WERE -- YOU WERE IN AN UNMARKED CAR?
- 7 A YES, SIR.
- 8 Q WHO WAS IN THE CAR WITH YOU?
- 9 A I BELIEVE IT WAS AGENT PEREZ. I'M NOT REAL CERTAIN OF THE NAME.
10 IT'S A CUSTOMS AGENT.
- 11 Q FEDERAL GUY. THEY WERE RUNNIN' THE SHOW BASICALLY AT THAT
12 POINT?
- 13 A YES, SIR.
- 14 Q OKAY. AND WHERE WAS INVESTIGATOR YOUNG? WAS HE OVER THERE
15 WITH YOU?
- 16 A I DON'T RECALL HIM. I BELIEVE HE CAME BACK TO THE STORE, BUT NOT
17 AT THAT TIME. I DON'T RECALL HIM BEIN' THERE, NO, SIR.
- 18 Q OKAY. ALRIGHT. OKAY. AND DID YOU SAY YOU DID OR DID NOT HAVE
19 THE STORE IN YOUR VIEW?
- 20 A COULD NOT SEE THE STORE FROM WISE STREET, NO, SIR.
- 21 Q OKAY. JUST HEARD RADIO TRAFFIC.
- 22 A YES, SIR.
- 23 Q OKAY. THANK YOU, INVESTIGATOR. THAT'S ALL I HAVE.
- 24 A THANK YOU, SIR.
- 25 THE COURT: MR. MILLER.

MIKE JONES - DIRECT EXAMINATION BY MR. MAYE

1 MR. MILLER: I DON'T HAVE ANY QUESTIONS OF THIS WITNESS, YOUR
2 HONOR.

3 THE COURT: REDIRECT?

4 MR. MAYE: NOTHING ELSE.

5 THE COURT: ANYTHING ELSE?

6 MR. HAWKE: NONE, YOUR HONOR.

7 THE COURT: THANK YOU, SIR, YOU MAY STEP DOWN. CALL YOUR NEXT
8 WITNESS.

9 MR. MAYE: WE CALL MIKE JONES FROM THE AIKEN COUNTY SHERIFF'S
10 OFFICE.

11 MICHAEL JONES, BEING DULY SWORN, TESTIFIES AS
12 FOLLOWS:

13 DIRECT EXAMINATION

14 BY MR. MAYE

15 Q LT. JONES, TELL THE LADIES AND GENTLEMEN OF THE JURY WHERE
16 YOU'RE EMPLOYED NOW.

17 A WITH THE AIKEN COUNTY SHERIFF'S OFFICE.

18 Q IN WHAT CAPACITY?

19 A I'M THE LIEUTENANT IN CHARGE OF THE NARCOTICS DIVISION.

20 Q OKAY. WERE YOU WORKING IN NARCOTICS IN AIKEN BACK IN 2002 THE
21 DAY THIS TOOK PLACE?

22 A YES, SIR. I WAS.

23 Q OKAY. PLEASE, TELL THE LADIES AND GENTLEMEN OF THE JURY WHAT
24 YOUR ROLE IN THIS CASE WAS, HOW YOU GOT INVOLVED AND WHAT YOU DID.

25 A I WAS CONTACTED BY ROOSEVELT YOUNG THE NIGHT BEFORE AND ASKED

MIKE JONES - DIRECT EXAMINATION BY MR. MAYE

1 TO MEET AT THE SALUDA AIRPORT THE NEXT MORNING.

2 Q WHAT DID YOU DO WHEN YOU GOT THERE?

3 A I MET WITH AGENTS FROM CUSTOMS, DEA AND EDGEFIELD COUNTY AND
4 ALSO SLED. I WAS ASSIGNED AS A ROVING SURVEILLANCE UNIT JUST---

5 Q WHAT KINDA VEHICLE WERE YOU DRIVIN'?

6 A I WAS DRIVIN' A BLACK FORD TAURUS. 2002 TAURUS AT THE TIME.

7 Q ALRIGHT. WHAT DID YOU DO? DID YOU JUST HELP IN THE CONTROLLED
8 DELIVERY OR HELP THEM THE NEXT DAY?

9 A NO, I WAS NOT INVOLVED IN THE DELIVERY ITSELF. I WAS JUST ON THE
10 ROAD WATCHIN'---

11 Q YOU WERE BACKUP AT THAT POINT IN TIME?

12 A YES.

13 Q OKAY. WHAT DID YOU DO THE NEXT DAY?

14 A THE NEXT DAY I SPOTTED MR. DELEON DRIVING A WHITE BOX TRUCK
15 LEAVE THE STORE.

16 Q WHEN WAS THAT?

17 A THAT WAS SHORTLY AFTER THE TRUCK ARRIVED AT THE STORE.

18 Q OKAY. THEY HAD ALREADY OFFLOADED THE FURNITURE AND THAT SORT
19 OF THING BY THE TIME -- DID YOU SEE THAT?

20 A I COULDN'T SEE THAT.

21 Q OKAY. WERE YOU MONITORING RADIO TRAFFIC AND ALL AT THAT TIME?

22 A A LITTLE BIT, BUT THE RADIO WAS IN AND OUT, SO IT WASN'T REALLY TOO
23 MUCH TO MONITOR. THE RADIO WAS IN AND OUT.

24 Q ALRIGHT. WHAT DID YOU DO WHEN YOU SAW HIM LEAVING?

25 A I FOLLOWED HIM. I GOT IN BEHIND AND TAILED HIM. I SURVEILLED HIM.

MIKE JONES - DIRECT EXAMINATION BY MR. MAYE

- 1 Q OKAY. WHERE DID HE GO WHEN HE LEFT THE STORE?
- 2 A HE LEFT THE STORE AND WENT TO LAYMAN'S NURSERY OFF OF I THINK
- 3 IT'S GREENHOUSE ROAD.
- 4 Q OKAY. THEN WHERE DID HE GO?
- 5 A HE LEFT THE NURSERY AND WENT TO AIKEN COUNTY. TOOK 19 TO AIKEN
- 6 COUNTY.
- 7 Q WAS HE IN THE BOX TRUCK?
- 8 A YES.
- 9 Q OKAY. WHAT HAPPENED THEN?
- 10 A AT THAT TIME WE GOT TO THE BYPASS AT RUTLAND AND UNIVERSITY IN
- 11 AIKEN. AT THAT TIME HE TURNED AROUND AND WENT BACK TOWARD
- 12 EDGEFIELD.
- 13 Q DID YOU NOTICE ANYTHING AT THE TIME HE TURNED AROUND?
- 14 A YES, SIR. AT THE TIME HE TURNED AROUND, HE WAS ON HIS CELL PHONE.
- 15 Q HE WAS ON HIS CELL PHONE?
- 16 A YES.
- 17 Q OKAY. WHERE DID YOU FOLLOW HIM BACK TO?
- 18 A I FOLLOWED HIM BACK TO THE STORE, THE DELEON STORE.
- 19 Q OKAY. HAD THE TRACTOR TRAILER TRUCK ALREADY LEFT AT THAT POINT
- 20 IN TIME THAT HE LEFT THE STORE?
- 21 A AT THAT POINT IN TIME I THINK THE TRUCK HAD ALREADY LEFT THE
- 22 STORE.
- 23 Q DID YOU TAIL HIM ALL THE WAY BACK TO THE STORE?
- 24 A YES, SIR.
- 25 Q OKAY. WERE THE OTHER OFFICERS ALREADY ON THE SCENE AT THE TIME

MIKE JONES - CROSS-EXAMINATION BY MR. HAWKE

1 Y'ALL ARRIVED BACK THERE?

2 A YES.

3 Q ANSWER ANY QUESTIONS THE DEFENSE HAS FOR YOU.

4 THE COURT: ALRIGHT. MR. HAWKE.

5 CROSS-EXAMINATION

6 BY MR. HAWKE

7 Q WHEN YOU FOLLOWED HIM HE WENT TO LYNN'S (PHONETIC) NURSERY?

8 A I CAN'T HEAR YOU.

9 Q I'M SORRY. WHEN YOU FOLLOWED HIM HE WENT TO LYNN'S NURSERY?

10 A I THINK IT WAS LAYMAN'S NURSERY, BUT I'M NOT SURE.

11 Q LAYMAN'S NURSERY.

12 A YES, SIR.

13 Q OKAY. LAYMAN'S?

14 A YES.

15 Q I'M SORRY. AND HOW LONG DID HE STAY THERE?

16 A HE WAS THERE 10 TO 15 MINUTES.

17 Q OKAY. WHAT WAS -- WAS HE MEETING WITH MIGRANT WORKERS THERE?

18 A I COULDN'T TELL WHO HE WAS MEETIN' WITH.

19 Q OKAY. YOU STAYED OFF AT A FAR ENOUGH DISTANCE YOU COULDN'T
20 REALLY SEE WHAT HE WAS DOIN.

21 A CORRECT.

22 Q OKAY. IS IT TRUE THAT LYN -- ARE YOU FAMILIAR WITH LAYMAN'S
23 NURSERY?

24 A NOT AT ALL.

25 Q OKAY. DO YOU KNOW WHAT KINDA WORKERS OR FOLKS THEY EMPLOY

MIKE JONES - CROSS-EXAMINATION BY MR. HAWKE

1 THERE?

2 A I KNOW THEY HAVE MIGRANT WORKERS.

3 Q OKAY. ALRIGHT. OKAY. AND THEN HE TURNED AROUND AND HE HEADED
4 TOWARDS AIKEN COUNTY ON THAT ROAD?

5 A YES, ON HIGHWAY 19.

6 Q WHAT WAS THE WEATHER LIKE THAT DAY?

7 A IT WAS RAINING.

8 Q OKAY. HOW HARD WAS IT RAINING WHEN HE WAS AT THE NURSERY?

9 A IT WAS RAININ' BUT NOT TO THE POINT WHERE IT WAS POURIN' RAIN BUT
10 IT WAS RAININ'.

11 Q OKAY. AND AS YOU HEADED TOWARDS AIKEN, HOW WAS THE WEATHER?

12 A IT HAD PICKED UP A LITTLE BIT. IT STARTED RAININ' HARDER.

13 Q STARTED GETTIN' WORSE.

14 A YES, SIR.

15 Q AND THAT'S WHEN HE RETURNED TO THE STORE?

16 A YES.

17 Q OKAY. THAT'S ALL I HAVE.

18 THE COURT: MR. SUSSMAN.

19 MR. SUSSMAN: THANK YOU.

20 CROSS-EXAMINATION

21 BY MR. SUSSMAN

22 Q LT. JONES, MY NAME IS WILLIAM SUSSMAN. I REPRESENT TWO
23 INDIVIDUALS IN THIS CASE. YOU WERE NEVER OUT IN THE FIELD WHERE THE SEMI
24 WAS STUCK IN THE MUD?

25 A NO, SIR, NEVER MADE IT THERE.

MIKE JONES - CROSS-EXAMINATION BY MR. SUSSMAN

1 Q AND THE BOX TRUCK YOU TALKED ABOUT FOLLOWING, WHAT COLOR WAS
2 IT?

3 A BLACK.

4 Q AND YOU FOLLOWED IT AND EVENTUALLY ENDED UP BACK AT FREDY'S
5 STORE?

6 A YES.

7 Q AND IT STAYED THERE?

8 A YES, SIR.

9 Q THAT'S ALL I HAVE.

10 THE COURT: MR. MILLER.

11 MR. MILLER: NO QUESTIONS FOR THIS WITNESS, YOUR HONOR.

12 THE COURT: REDIRECT.

13 MR. MAYE: NOTHIN' ELSE AND THE STATE ASKS THAT HE BE RELEASED.

14 MR. HAWKE: NO, YOUR HONOR.

15 THE COURT: THANK YOU. THANK YOU, SIR. YOU'RE FREE TO GO.

16 ALRIGHT. NEXT WITNESS WOULD BE WHO?

17 MR. MAYE: INVESTIGATOR COBY PERRY. I THINK WE'RE AT A GOOD
18 STOPPING POINT, YOUR HONOR. THAT'S MY ASSESSMENT.

19 THE COURT: LADIES AND GENTLEMEN, THIS LOOKS LIKE A GOOD POINT TO
20 BREAK FOR LUNCH, AND IS IT 12:30?

21 MR. MAYE: 12:40 IS WHAT I HAVE.

22 MR. PUETZ: IT'S 12:37.

23 THE COURT: WELL, I GOT 12:32 ON ONE COMPUTER AND 12:33 ON ANOTHER
24 AND 12:37 ON THE CELL PHONE. LET'S JUST HAVE YOU BACK AT 2 O'CLOCK.
25 OKAY? I NEED YOU BACK IN THE JURY ROOM AT 2 O'CLOCK, PLEASE. DON'T

COBY PERRY - DIRECT EXAMINATION BY MR. MAYE

1 DISCUSS THE CASE. I HOPE YOU HAVE A PLEASANT LUNCH. THANK YOU. (THE
2 FOLLOWING OCCURRED IN THE ABSENCE OF THE JURY.) DO ANY OF YOU WANT
3 YOUR CLIENTS HERE SOONER THAN 2 O'CLOCK?

4 MR. MILLER: NO, YOUR HONOR.

5 THE COURT: MR. HUNT, BE SURE THEY KNOW TO BE BACK NO LATER THAN
6 2 O'CLOCK. AND THAT THE TRIAL WILL PROCEED WITHOUT THEM IF THEY'RE NOT
7 HERE. DO THEY ALL UNDERSTAND? FOR THE 3 THAT ARE NOT IN CUSTODY.

8 MR. HUNT: YES.

9 THE COURT: THANK YOU. COURT'S IN RECESS TILL 2 O'CLOCK. (THERE
10 WAS A LUNCH RECESS.) BRING THE JURY. (THE FOLLOWING OCCURRED IN THE
11 PRESENCE OF THE JURY.) CALL YOUR NEXT WITNESS.

12 MR. MAYE: THE STATE CALLS INVESTIGATOR COBY PERRY FROM THE
13 SOUTH CAROLINA LAW ENFORCEMENT DIVISION.

14 COBY PERRY, BEING DULY SWORN,

15 TESTIFIES AS FOLLOWS:

16 DIRECT EXAMINATION

17 BY MR. MAYE

18 Q INVESTIGATOR PERRY, INTRODUCE YOURSELF TO THE LADIES AND
19 GENTLEMEN OF THE JURY. TELL 'EM ABOUT WHERE YOU WORK.

20 A MY NAME IS COBY PERRY. I'M A RESIDENT HERE IN EDGEFIELD COUNTY. I
21 WORK FOR THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION KNOWN AS SLED.
22 I WORK AS A NARCOTICS INVESTIGATOR IN THE STATE OF SOUTH CAROLINA.

23 Q HOW LONG HAVE YOU BEEN A POLICEMAN?

24 A I'VE BEEN A POLICE OFFICER COME AUGUST WILL BE 25 YEARS.

25 Q HOW LONG OF THAT HAVE YOU BEEN WORKING IN NARCOTICS?

COBY PERRY - DIRECT EXAMINATION BY MR. MAYE

1 A 15 YEARS I'VE BEEN WORKING IN NARCOTICS.

2 Q HAVE YOU BEEN DOING THAT STATEWIDE?

3 A STATEWIDE, OUT OF STATE, IN OTHER COUNTRIES TOO.

4 Q INVESTIGATOR PERRY, HOW DID YOU GET INVOLVED IN THIS CASE? WHAT
5 PRECIPITATED YOUR AND SLED'S INVOLVEMENT IN THIS MATTER?

6 A WELL, SLED IS -- TO GIVE YOU A LITTLE HISTORY. WE'RE AN ASSISTING
7 AGENCY TO THE COUNTIES AND THE CITIES HERE IN SOUTH CAROLINA, AND ON
8 THIS CASE, INVESTIGATOR ROOSEVELT YOUNG CALLED ME ON I THINK IT WAS THE
9 EVENING OF MAY 17TH AND ASKED ME IF I WOULD BE IN TOWN AND COULD HELP
10 THEM IN A CONTROLLED DELIVERY ALONG WITH CUSTOMS TO TAKE PLACE IN
11 TRENTON, SOUTH CAROLINA AT THE TIENDA DELEON TO FREDY DELEON.

12 Q OKAY. WHAT WAS YOUR ROLE AND WHAT DID YOU DO?

13 A MY ROLE, LIKE I SAY, TECHNICALLY IS TO PROVIDE ASSISTANCE TO
14 EDGEFIELD COUNTY AND ANY OTHER AREAS OF THE STATE I CAN ALONG WITH -- I
15 WAS DOWN THAT DAY TO ASSIST CUSTOMS AS WELL. THERE WAS CUSTOMS
16 AGENTS; THERE WAS DEA AGENTS; THERE WAS EDGEFIELD COUNTY; THERE WAS
17 AIKEN COUNTY, AND ALSO THERE WAS DPS GUYS. THAT'S THE TRANSPORT
18 POLICE THAT WAS INVOLVED THERE THAT DAY. I WASN'T GIVEN ANY SPECIFIC
19 ROLE THAT DAY OTHER THAN TO BE THERE FOR ASSISTANCE, AND BASED ON MY
20 PAST OF WORKING NARCOTICS AND DRUGS, I TOOK A BIG INTEREST IN MAKING
21 SURE I WAS CLOSE TO THE UNDERCOVER. WHEN YOU'RE TALKIN' ABOUT A
22 LARGE AMOUNT OF DRUGS AND A LARGE AMOUNT OF MONEY, THERE'S A WHOLE
23 LOT THAT CAN GO WRONG. SO THAT MORNING AFTER THE MEETING, WE HAD MET
24 IN SALUDA, SOUTH CAROLINA AT THE AIRPORT -- I GUESS I GOT THERE AROUND
25 6:30 OR 7 WHEN WE HAD THE DEBRIEFING OF WHAT WE WERE GONNA DO. I

1 PARTED, CAME AND -- YOU'RE ALL FAMILIAR WITH THE LITTLE TOWN OF
2 TRENTON -- WE GOT AHEAD OF EVERYBODY BEFORE THE TRACTOR TRAILER
3 TRUCK. WE GOT THERE AND GOT SET UP BECAUSE A LOTTA PEOPLE LIKE THIS RUN
4 COUNTER SURVEILLANCE. THEY WANNA SEE WHAT WE'RE UP TO. JUST LIKE WE
5 WANNA SEE WHAT THEY'RE UP TO.

6 I'D GOTTEN THERE EARLIER AND POSITIONED MYSELF. I DON'T KNOW
7 WHAT THE NAME OF THE PLACE IS NOW, BUT IT'S THE OLD SHAW INDUSTRY
8 BUILDING ACROSS THE STREET FROM BILLY'S.

9 I WAS DRIVIN' A 2001 BLACK F-150 CREW CAB OR SCENIC CAB TRUCK
10 WHICH IS AN UNDERCOVER TRUCK THAT SLED PROVIDES ME.

11 I HAD PULLED INTO THE PARKIN' LOT FACING THE BUILDING SO I
12 WOULDN'T LOOK SO OBVIOUS. I HAD POSITIONED MYSELF WHERE I COULD LOOK
13 BACK UP 121 TOWARDS THE TIENDA DELEON, THE STORE BUILDING THERE, AND
14 FOR THOSE OF YOU NOT FAMILIAR WITH IT, IT IS A LITTLE STRIP MALL RIGHT
15 THERE AND IT HAS LIKE A -- USED TO BE A RESTAURANT. STILL MAY BE A
16 RESTAURANT. A LITTLE WASHATERIA THERE. AND THEN THE STORE ON THE END.
17 IT'S BEEN SEVERAL THINGS. IT WAS THE OLD -- ROBERT ROGERS HAD A
18 FURNITURE THING THERE YEARS AGO. THE BUILDING ON THE END IS THE TIENDA
19 DELEON. I POSITIONED MYSELF WHERE I COULD SEE BACK UP 121 TOWARDS THAT
20 TOWARDS JOHNSTON AND TRENTON. IT WAS RAININ' THAT DAY VERY HARD. BUT
21 I HAD A GOOD VISUAL ON THAT LOCATION AND THAT WAS A MAIN CONCERN OF
22 MINE BECAUSE OF THE OPPORTUNITY OF RIP-OFFS AND ROBBERIES AND THINGS
23 AND HIGH-JACKINGS THAT COULD HAPPEN.

24 Q OKAY. SO WHAT HAPPENED NEXT? WHAT DID YOU DO?

25 A I SAT THERE. IT WASN'T LONG AFTER I GOT POSITIONED, THE TRACTOR.

COBY PERRY - DIRECT EXAMINATION BY MR. MAYE

1 TRAILER TRUCK CAME IN, CAME DOWN 121 TOWARDS TRENTON.

2 IT PULLED INTO THE TIENDA DELEON. TAKIN' NOTE BEFORE THEY GOT
3 THERE, THERE WAS A GREEN THUNDERBIRD, JUST LIKE A TEAL GREEN COLOR
4 THUNDERBIRD THAT WAS PARKED OUT IN FRONT OF THE TIENDA DELEON.

5 AND THERE WAS ALSO A LIGHT BOX TRUCK THAT WAS PARKED RIGHT IN
6 THAT AREA TOO.

7 DID NOT SEE ANY MOVEMENT AROUND THE OUTSIDE. ONCE THE TRACTOR
8 PULLED IN, AND THAT WAS INVESTIGATOR PAT MIZE WITH THE CUSTOMS SERVICE
9 WAS RIDING ALONG WITH A GUY BY THE NAME OF PAUL WHO WAS PROVIDED TO
10 US BY THE PEOPLE THAT OWNED THE TRUCKIN' COMPANY TO JUST DRIVE THE
11 TRUCK.

12 ONCE THEY PULLED IN, IT WASN'T LONG AFTER I OBSERVED PEOPLE
13 COMIN' OUT, COMIN' TO THE BACK OF THE TRUCK WHERE YOU COULD SEE THEY
14 OPENED THE DOORS AND STARTED TO OFFLOAD WHAT APPEARED TO ME TO BE
15 FURNITURE AND THAT'S WHAT I WAS TOLD WAS IN THAT CONTAINING ILLEGAL
16 SUBSTANCE: MARIJUANA.

17 SAW 'EM STARTING TO UNLOAD. COULDN'T TELL YOU HOW MANY PIECES,
18 WHICH PIECES FROM WHERE I WAS AT BUT I COULD SEE THAT THEY WERE
19 OFFLOADING STUFF. ONCE THAT WAS DONE, THE DOORS WERE CLOSED BACK. A
20 SHORT TIME AFTER THE DRIVER GOT BACK IN HIS SIDE I GUESS. I COULDN'T SEE
21 HIM ON HIS SIDE BUT I COULD SEE WHERE THE DEA - THE CUSTOMS AGENT CAME
22 IN AND GOT IN ON HIS SIDE. HE GOT BACK IN. THEY SAT THERE FOR A FEW
23 MINUTES. IT WASN'T - I'D SAY 10 MINUTES OR SO PASSED BY. THE GREEN
24 THUNDERBIRD LEFT WITH THE TRACTOR STILL PARKED THERE. LEFT AND CAME
25 PAST US. AND HAD TWO OCCUPANTS IN THE VEHICLE. THEY CAME BACK DOWN

COBY PERRY - DIRECT EXAMINATION BY MR. MAYE

1 121 WHERE THEY MET -- WHERE THEY CAME TO A STOP LIGHT. THEY TURNED LEFT
2 ONTO HIGHWAY 19 LIKE GOIN' BACK TOWARDS AIKEN. THEY WENT AROUND. I
3 LOST SIGHT OF 'EM. COULDN'T MOVE AT THAT TIME. IN A SMALL AREA. TOO
4 EASY FOR ME TO GET BURNED. I DIDN'T LEAVE. I WAS UNDER THE
5 UNDERSTANDING THAT SOMEBODY ELSE WOULD PROBABLY PICK 'EM UP ON THE
6 OUTER PERIMETER. SO I COULDN'T TELL YOU WHERE THEY WENT, BUT IT WAS A
7 SHORT TIME AFTER, HE CAME BACK. RIGHT BACK IN FRONT OF ME ON 121. HE
8 PULLS BACK INTO THE TIENDA DELEON PARKING LOT. GETS OUT. THEY ALL GET
9 OUT AND THERE APPEARS TO BE A LITTLE CONVERSATION AND THEN THEY GO
10 OUTSIDE WHERE I CAN'T REALLY SEE ON THE SIDE OF THE TRACTOR.

11 MR. HAWKE: YOUR HONOR, FOR PURPOSES OF THE RECORD WHO IS HE
12 TALKIN' ABOUT CAME BACK?

13 A THE GREEN THUNDERBIRD.

14 MR. HAWKE: OKAY. I'M SORRY.

15 A I'M SORRY. THE GREEN THUNDERBIRD CAME BACK AND THEY PULLED
16 BACK INTO THE TIENDA DELEON AND GOT OUT. A SHORT TIME AFTER THE
17 TRACTOR LEAVES. GOES TOWARD JOHNSTON ON 121 AND TURNS AROUND. I
18 DIDN'T SEE WHERE THEY TURNED AROUND AT SO I CAN'T TELL YOU. THEY
19 TURNED AROUND; CAME BACK AND PULLED INTO BILLY'S SUPERSTORE. TAKIN'
20 NOTE I WAS GETTIN' BITS AND PIECES BY PHONE OF WHAT WAS GOING ON WITH
21 THE PEOPLE TALKIN' TO THE INVESTIGATOR IN THE TRUCK. THEY PULLED IN AND
22 PARKED AT BILLY'S SUPERSTORE RIGHT UP CLOSE TO THE ROAD AREA IN THE
23 FRONT ON THE DRIVE AS YOU WOULD BE COMIN' IN FROM 121 FROM TRENTON.

24 Q AGENT PERRY, I'VE GOT SOME STATE'S EXHIBITS HERE.

25 A YES, SIR.

COBY PERRY - DIRECT EXAMINATION BY MR. MAYE

1 Q SHOW THE JURY AND ORIENT THEM WHERE BILLY'S SUPERSTORE IS. COME
2 OFF THE STAND.

3 A OKAY.

4 Q WHEN YOU SHOW THEM A PHOTOGRAPH, REFER TO THE NUMBER, PLEASE.

5 A ALRIGHT, SIR. I'M GONNA TRY TO GET THE BEST PHOTOGRAPH. THOSE OF
6 YOU THAT KNOW THE AREA. THIS WILL BE EXHIBIT 13. THIS IS -- WOULD BE
7 BILLY'S PARKIN' LOT. THIS WOULD BE HIGHWAY 121 HERE. AND THEN THIS AREA
8 RIGHT IN HERE WOULD BE -- OH, I'M SORRY -- WOULD BE THE AREA WHERE THEY
9 WERE PARKED IN WITH THE TRACTOR. IT WOULD BE RIGHT UP HERE NEXT TO THE
10 HIGHWAY I THINK. THIS EXHIBIT #14. THAT RIG WAS PARKED CLOSE IN THERE
11 (INAUDIBLE)

12 THE COURT: YOU GOTTA KEEP YOUR VOICE UP 'CAUSE THEY HAVE TO
13 HEAR--

14 A I'M SORRY.

15 THE COURT: --YOU ALL THE WAY ON THE OTHER SIDE OF THE ROOM.

16 A ON #14, EXHIBIT 14 I WAS TELLIN' THE JURY THAT THE RED TRUCK WOULD
17 BE PARKED IN THE PARKIN' LOT CLOSE TO WHERE THE TRUCK WOULD'VE BEEN
18 PARKED. SHAW INDUSTRY IS RIGHT ACROSS THE STREET.

19 Q TELL THE LADIES AND GENTLEMEN OF THE JURY WHAT HAPPENED NEXT.

20 A AFTER THAT, THE -- I THINK I WAS AT WHERE THE VEHICLE -- THE TRUCK
21 LEFT AND WENT BACK DOWN AND PULLED IN AND PARKED AT BILLY'S. THE 18
22 WHEELER. THE GREEN THUNDERBIRD AND THE BOX TRUCK WERE STILL THERE AT
23 TIENDA DELEON. SHORTLY AFTER IT GOT PARKED--

24 Q ARE YOU TALKIN' ABOUT FREDY'S BOX TRUCK OR THE RYDER TRUCK?

25 A FREDY'S BOX TRUCK. THE WHITE BOX TRUCK WAS PARKED AT THE

1 TIENDA DELEON.

2 Q OKAY.

3 A ALONG WITH THE GREEN THUNDERBIRD.

4 Q OKAY.

5 A THE GREEN THUNDERBIRD THEN LEFT AGAIN. CAME DOWN. WENT PAST
6 US. WENT HIGHWAY 19. THE TRACTOR WAS ALREADY AT BILLY'S SUPERSTORE
7 WHEN THIS TOOK PLACE. OKAY? THEY LEFT, WENT OUTTA MY SIGHT. I DON'T
8 KNOW WHERE THEY WENT. SHORT TIME AFTER, THEY ARRIVED BACK, CAME
9 RIGHT BACK IN FRONT OF US. WENT RIGHT BACK DOWN 121 AND RIGHT PAST
10 BILLY'S YOU CUT IN OFF OF 121 TO GO INTO THE CROSSROAD MOTEL. I DON'T
11 KNOW IF Y'ALL ARE FAMILIAR WITH THE CROSSROAD MOTEL. IT'S LOCATED
12 BEHIND BILLY'S SUPERSTORE.

13 Q COME DOWN HERE AND SHOW 'EM ON THIS MAP.

14 A THIS WOULD BE THE INTERSECTION HERE OF 25, RIGHT HERE 121 AND 19.
15 CAME BACK IN, CUT AND WENT BACK THIS WAY. AND THEY CUT IN AND WENT
16 AROUND BEING WHEN IT GOT OVER HERE, I LOST SIGHT OF WHAT WAS GOIN' ON
17 THERE. AND RIGHT IN HERE I COULDN'T TELL YOU. I LOST SIGHT RIGHT IN HERE. I
18 COULDN'T SEE BECAUSE OF BILLY'S SUPERSTORE.

19 Q WHAT WAS THE NEXT THING YOU SAW?

20 A THE NEXT THING I SAW WAS RIGHT HERE AT THE CORNER OF BILLY'S
21 SUPERSTORE, THE GREEN THUNDERBIRD COME BACK IN REAL QUICK LIKE. TRIED
22 TO PARK RIGHT HERE AT THIS CORNER. THE GREEN THUNDERBIRD COMES BACK
23 IN AND IT COMES PAST HERE AND CUT RIGHT BACK IN FRONT OF THE TRUCK.
24 ABOUT THE SAME TIME THE RYDER TRUCK - IT COULDA BEEN ALREADY PARKED
25 THERE, I DON'T KNOW. I DIDN'T SEE IT EARLIER. ZIPS RIGHT BACK (INAUDIBLE)

COBY PERRY - DIRECT EXAMINATION BY MR. MAYE

1 THE COURT: CAN YOU HEAR HIM?

2 THE COURT REPORTER: NO, SIR.

3 A I'M SORRY.

4 Q GO BACK AND RETAKE THE STAND. PLEASE REPEAT THAT LAST BIT OF
5 TESTIMONY. I DON'T THINK THEY COULD HEAR ON THE OTHER SIDE.

6 A THE RYDER TRUCK PULLS UP ALONG IN FRONT OF THE 18 WHEELER ALSO
7 AND IMMEDIATELY -- I CAN'T TELL YOU WHICH ONE JUMPED OUTTA WHICH SIDE,
8 BUT IT LOOKED LIKE ONE WENT TO THE TRUCK DRIVER'S DOOR AND THE OTHER
9 WENT TO THE RYDER TRUCK.

10 BASED ON MY EXPERIENCE I BECAME VERY CONCERNED OF A HIGHJACK
11 OR A ROBBERY WITH THIS AMOUNT OF DRUGS BEIN' THERE.

12 ONCE I WAS ABLE TO SEE THAT IT WAS UNDER CONTROL, I RESTED A
13 LITTLE EASIER, BUT I WAS ON THE POINT OF READY TO MOVE IF WE HAD TO.

14 FROM THERE IT WASN'T LONG AFTER -- AFTER WATCHING THAT, IT TOOK
15 A FEW MINUTES. THEY GOT BACK IN THE VEHICLE. THE GREEN THUNDERBIRD
16 YOU COULD SEE THERE WAS LIGHT CONVERSATION GOIN' ON. I CAN'T TELL YOU
17 WHAT WAS BEIN' SAID BECAUSE I WASN'T LISTENIN'. THE GREEN THUNDERBIRD
18 LEAVES OUT OF BILLY'S SUPERSTORE, THE RYDER TRUCK BEHIND IT; THE 18
19 WHEELER COMES OUT BEHIND THE RYDER TRUCK. THEY TURN -- WOULD BE TO
20 THE RIGHT ON 121 AND COME TO THE INTERSECTION THERE AND GO STRAIGHT ON
21 OUT LIKE THEY'RE GOIN' HIGHWAY 25 TOWARDS AUGUSTA. THEY TRAVEL ON
22 OUTTA MY SIGHT. I RECEIVE A PHONE CALL THAT THEY'RE GOIN' DOWN 25. I
23 KEEP ON THE PHONE WANTING TO KNOW IN WHICH DIRECTION BECAUSE I
24 NEEDED TO KNOW TO TRY TO FIGURE OUT WHERE THEY'RE GONNA BE TURNIN' OR
25 WHATEVER TO SEE IF THERE'S ANY NEED OF ME MOVIN' AT THE TIME TO ASSIST

COBY PERRY - DIRECT EXAMINATION BY MR. MAYE

1 FURTHER. THEY TELL ME BY PHONE THAT THEY ARE TURNIN' ONTO PADGETT
2 ROAD.

3 THOSE OF YOU THAT'S NOT FAMILIAR WITH PADGETT ROAD, AS YOU'RE
4 GOIN' DOWN 25 OUTTA TRENTON, YOU DROP DOWN A BIG HILL PAST INDUSTRY
5 PARK; YOU COME BACK UP. THERE'S A JACKIE'S PIZZA STAND ON THE LEFT.
6 PADGETT ROAD TURNS OFF TO THE RIGHT. YOU FOLLOW PADGETT ROAD, WHAT
7 THEY WERE TELLIN' ME THEY WERE GOIN' DOWN PADGETT ROAD AT THAT TIME.
8 AND I TOLD 'EM I SAID WELL BASED ON THE RAIN -- I TOLD 'EM BASED ON THE
9 RAIN I CAN TELL YOU NOW THAT THE 18 WHEELER AND THE BOX TRUCK IF THEY
10 GO TO THE RIGHT OR THE LEFT, THEY'RE NOT GOIN' FAR. CAR, MAYBE SO.

11 SO THEY INFORMED ME THAT THEY HAD TURNED TO THE RIGHT. SO ONCE
12 THEY HAD TOLD ME THEY HAD TURNED TO THE RIGHT, I IMMEDIATELY THEN,
13 KNOWING THAT AREA, TRIED TO GET SOMEBODY DIRECTED AROUND BECAUSE
14 THAT ROAD COMES BACK OUT ON WHAT THEY CALL VAN ROAD, AND IT IS OUT IN
15 THE MIDDLE OF NOWHERE.

16 IT COMES BACK OUT ON VAN ROAD, AND BY ME TRYIN' TO DIRECT
17 SOMEONE TO GET THERE, HOPEFULLY BEFORE THEY GET OUT OR WHATEVER.
18 COULDN'T GET ANYBODY THERE, SO I LEFT. I WENT IMMEDIATELY AROUND TO
19 VAN ROAD. I COULD SEE WHERE ONE VEHICLE HAD COME OUT. DIDN'T KNOW
20 WHERE THE VEHICLE MAY HAVE BEEN. I KNEW IT WAS A CAR; IT WASN'T A
21 TRUCK. AT THAT TIME I LEFT 'CAUSE I FIGURED IT WAS OUT. TRIED TO GET
22 SOMEBODY ELSE AROUND THERE. WENT BACK AROUND TO PADGETT ROAD.
23 CAME IN. AND I WENT DOWN AND MET WITH THE AGENTS THAT WERE RUNNIN'
24 SURVEILLANCE. THEY HAD DETERMINED THAT THE TRUCK EVIDENTLY WAS
25 STUCK. WELL, I WANTED TO KNOW WHAT WAS GOIN' ON, SO I MYSELF AND

COBY PERRY - DIRECT EXAMINATION BY MR. MAYE

1 ROGER LOWE WENT -- KNOWING THE AREA, WENT THROUGH THE WOODS AND
2 TRAVELED UP WHERE WE COULD GET AN EYE TO SEE WHAT WAS GOIN' ON. AT
3 THAT TIME I NOTICED THAT THE TRACTOR WAS STUCK AND THE RYDER TRUCK
4 WAS STUCK. DID NOT SEE THE GREEN THUNDERBIRD ANYWHERE. WENT BACK
5 OUT. WE HAD CALLED SHERIFF DOBEY AND INVESTIGATOR WASH, I THINK, WERE
6 CALLED TO BRING IN A 4-WHEEL DRIVE VEHICLE TO COME IN FROM THE END OF
7 VAN ROAD TO GET TO IT. IT'S SAND CLAY, BUT THERE'S ONE PLACE IN THERE
8 THAT'S RED MUD. AND, YOU KNOW, IT'D TAKE SOMETHIN' TO GET THROUGH IT.
9 SO BY THE TIME WE GOT -- GOT BACK AROUND TO THE AGENTS THAT WERE
10 SITTING THERE RUNNIN' SURVEILLANCE ON THE TRUCK; TOLD THEM WHAT WE
11 SAW; WE WENT TO GO BACK. AT THAT TIME BY THE TIME I GOT BACK AGENT
12 DOBEY -- I MEAN SHERIFF DOBEY AND HIS OFFICERS CAME IN ON THE VAN ROAD
13 SIDE AND HAD PICKED UP THE SUBJECTS THAT WERE IN THE RYDER TRUCK AND
14 ARRESTED 'EM.

15 Q WHAT ELSE HAPPENED? WHAT ELSE DID YOU DO?

16 A WHAT ELSE DID I DO THEN? I STAYED THERE FOR A FEW MINUTES
17 SHORTLY TO SEE IF I COULD ASSIST IN ANYTHING THERE, AND I FIGURED THE BEST
18 THING I COULD DO IS START TRYIN' TO GET OUT AND GATHER SOME
19 INTELLIGENCE OR ANYTHING TO TRY TO FIND THAT GREEN THUNDERBIRD. THE
20 MAIN INTEREST.

21 Q DID YOU FIND THAT THUNDERBIRD?

22 A FOUND THE THUNDERBIRD THE NEXT MORNIN'.

23 Q WHERE WAS THE THUNDERBIRD?

24 A THE THUNDERBIRD WAS PARKED IN THE BI-LO PARKIN' LOT.

25 Q LET ME SHOW YOU WHAT'S STATE'S 17. IS THAT THE THUNDERBIRD?

COBY PERRY - DIRECT EXAMINATION BY MR. MAYE

1 A YES, SIR.

2 Q IS THAT WHERE IT WAS IN THE BI-LO PARKING LOT?

3 A IT'S VERY CLEAR, YES, SIR.

4 Q SHOW THAT TO THE JURY. COME DOWN AND SHOW THEM THAT
5 PHOTOGRAPH.

6 A THIS IS EXHIBIT 17. 17. TAKING IN MIND IT WAS A VERY BIG RAIN THAT
7 AFTERNOON. THERE WAS SOME RED MUD AND ALL STILL UP UNDER THE FENDER
8 WHEELS OF THE CAR PARKED IN THE BI-LO PARKING LOT. THIS WAS THE
9 FOLLOWING MORNING THAT I FOUND IT.

10 Q OKAY.

11 A AND ALSO I DID GO BACK TO THE MOTEL THAT DAY.

12 Q WERE YOU ABLE TO GAIN ANY INTELLIGENCE FROM GOIN' TO THE MOTEL?

13 A I WENT BACK AND TALKED TO THE OWNER AND WAS ABLE TO GAIN A
14 LITTLE INTELLIGENCE, VERY LITTLE THAT WAS HELPFUL, ABOUT THE GUYS THAT
15 HAD STAYED IN THE MOTEL ROOM, THAT THERE WERE SOME PHONE CALLS MADE-

16 --

17 MR. SUSSMAN: OBJECTION, YOUR HONOR. THIS IS STARTING HEARSAY.

18 Q DON'T GO INTO HEARSAY.

19 A ALRIGHT, SIR.

20 Q STATE'S 24 IS THAT A RECEIPT FROM THE CROSSROADS MOTEL?

21 A YES, SIR, IT IS.

22 Q IS THAT WHERE YOU WENT CHECKIN' BEHIND 'EM?

23 A YES, SIR, IT WAS.

24 Q OKAY. LET ME SHOW YOU STATE'S EXHIBIT 26 THAT'S IN EVIDENCE. SEE
25 THAT?

1 A YES, SIR.

2 Q WHAT'S THE ADDRESS ON THERE? WHAT'S THE NAME ON THAT EXHIBIT?

3 A IT IS AREAR -- I CAN'T PRONOUNCE ALL THESE -- HONORIO RAMOS
4 VELASCO.

5 THE COURT: SPELL IT.

6 A V-E-L-A-Z-Z-O. I FOUND HIM TO BE KNOWN AS RAMOS.

7 Q OKAY. WHAT DID THE ADDRESS SAY?

8 A 20 GREENHOUSE ROAD, TRENTON, SOUTH CAROLINA.

9 Q WHAT IS 20 GREENHOUSE ROAD? WHAT IS THAT LOCATION?

10 A THOSE OF YOU THAT ARE FAMILIAR WITH THAT AREA, GREENHOUSE ROAD
11 RUNS FROM TRENTON BARBEQUE, CUTS BACK AND GOES BACK INTO 19. FROM
12 THE CORNER THERE AS YOU TURN OFF OF 25 BACK, ON THE RIGHT HAND SIDE
13 STARTS LAYMAN'S NURSERY. THERE'S A FENCE ALL THE WAY AROUND IT AND IT
14 RUNS BACK DOWN UNTIL SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
15 AREA. THIS TRAILER THAT HE LIVED IN IS LOCATED WITH INSIDE THE FENCE ON
16 LAYMAN'S NURSERY. THERE'S 2 TRAILERS IN THERE AND IT'S THE BACK TRAILER.

17 Q OKAY.

18 A RIGHT BESIDE THE HIGHWAY THERE.

19 Q ALRIGHT. AND THAT'S RAMOS' PLACE.

20 A YES, SIR. AND I KNOW THAT TO BE WHERE HE LIVED BECAUSE I WENT
21 THERE THAT DAY.

22 Q LET ME ASK YOU THIS -- LET ME SHOW YOU STATE'S EXHIBIT #11. CAN YOU
23 IDENTIFY THAT?

24 A THAT IS THE TIENDA DELEON STORE LOCATED IN THE STRIP MALL THERE
25 IN TRENTON.

1 Q WHAT'S THE PHONE NUMBER ON THE WINDOW THERE IN THAT
2 PHOTOGRAPH?

3 A APPEARS TO BE 803-275-1 I THINK THAT'S 2017. SOMETHIN' LIKE THAT.

4 Q LET ME SHOW YOU STATE'S 3, THE BILL OF LADING. WHAT'S THE PHONE
5 NUMBER ON THAT?

6 A 803-275-2017.

7 Q SAME THING AS THE STORE TIENDA DELEON, FREDY'S STORE---

8 MR. PUETZ: OBJECTION. HE'S LEADING.

9 THE COURT: SUSTAINED.

10 MR. MAYE: WITHDRAWN.

11 Q HOW ABOUT THE ADDRESS ON THE BILL OF LADING?

12 A IT SAYS 216 BREEZY OAKS, TRENTON, SOUTH CAROLINA.

13 Q WHO WAS LIVIN' THERE AT THAT TIME?

14 A FREDY DELEON. THAT IS -- ALSO YOU CAN CALL THAT, IF ANY OF YOU ARE
15 NOT FAMILIAR, IS WHERE THE FURNITURE BARN IS NOW. THE TRAILER PARK
16 BESIDE IT IS KNOWN AS MR. JACKSON'S TRAILER PARK.

17 Q THAT'S NOT THE BUSINESS ADDRESS OF TIENDA DELEON, 216 BREEZY
18 OAKS, IS IT?

19 A NO, SIR.

20 MR. MAYE: BEG THE COURT'S INDULGENCE.

21 THE COURT: YES, SIR.

22 Q IS FREDY DELEON HERE IN THE COURTROOM TODAY?

23 A YES, SIR, HE IS.

24 Q WOULD YOU POINT HIM OUT.

25 A IT'S THE GENTLEMAN SITTIN' RIGHT HERE ON THE FRONT WITH THE SORTA

COBY PERRY - DIRECT EXAMINATION BY MR. MAYE

1 YELLOWISH COLOR SHIRT AND APPEARS TO BE BLUE JEANS.

2 Q LET ME ASK YOU THIS: TAKE A LOOK AT THIS.

3 A ALRIGHT, SIR. YES, SIR.

4 Q ALTHOUGH NOT WITH ANY REPRESENTATION TO SCALE AND NOT
5 SHOWING THE FULL ROAD NETWORK, DOES THAT FAIRLY AND ACCURATELY
6 SHOW THE GENERAL RELATIONSHIP BETWEEN THE PLACES THAT YOU'RE TALKIN'
7 ABOUT HERE?

8 A YES, SIR, IT DOES.

9 MR. MAYE: I'M GOING TO MOVE THIS INTO EVIDENCE IF THERE'S NO
10 OBJECTION.

11 THE COURT: IS THERE ANY OBJECTION?

12 MR. HAWKE: YOUR HONOR, WE WOULD - WE WOULD OBJECT AND
13 REQUEST THAT IF THEY'RE GOING TO USE THIS FOR A MAP THAT THEY USE A MAP.

14 MR. MAYE: IF THEY DON'T WANT IT IN, THAT'S OKAY. I'LL WITHDRAW IT.
15 THEY DON'T WANT IT IN.

16 THE COURT: ALRIGHT.

17 MR. MAYE: I WITHDRAW IT.

18 Q ARE ALL OF THE AREAS IN WHICH YOU OBSERVED THE THUNDERBIRD, THE
19 EVENTS AT THE TIENDA DELEON AND WHERE YOU FOUND THE THUNDERBIRD, IS
20 ALL THAT IN EDGEFIELD COUNTY?

21 A YES, SIR, IN EDGEFIELD COUNTY, SOUTH CAROLINA.

22 Q ANSWER ANY QUESTIONS THE DEFENSE HAS FOR YOU.

23 THE COURT: ALRIGHT. CROSS.

24 MR. HAWKE: YES.

25

COBY PERRY - CROSS-EXAMINATION BY MR. HAWKE

CROSS-EXAMINATIONBY MR. HAWKE

Q INVESTIGATOR COBY? IS THAT THE CORRECT WAY TO ADDRESS YOU? I
MEAN ARE YOU A LIEUTENANT OR SERGEANT OR ANYTHING LIKE THAT?

A I'M JUST AGENT OR AGENT COBY. IT DOESN'T MATTER.

Q THAT'S FINE. I JUST WANTED TO ADDRESS YOU PROPERLY. THE WEATHER
THAT DAY WAS UP AND DOWN, WASN'T IT?

A YES, SIR, IT WAS.

Q AND AT TIMES IT WOULD BE RAINING AND IT WOULDN'T BE RAINING THAT
HARD AND AT OTHER TIMES IT WOULD BE RAINING VERY HARD.

A THAT'S RIGHT, SIR.

Q OKAY. AND WHO WAS IN CHARGE OF DOING THE FOLLOW UP
INVESTIGATION ON THIS CASE?

A I DON'T KNOW THAT YOU COULD SAY THERE WAS ANYBODY
PARTICULARLY SO MUCH INVOLVED AS -- YOU KNOW, INVESTIGATOR YOUNG IS
THE NARCOTICS INVESTIGATOR HERE IN EDGEFIELD COUNTY. HE DOES A FINE
JOB, AND I ASSISTED HIM IN EVERY WAY POSSIBLE I COULD TO FOLLOW UP LEADS.

Q OKAY. AND WHAT LEADS DID YOU FOLLOW?

A WHAT LEADS DID I FOLLOW?

Q YES, SIR, AFTER THE ARREST OF THESE INDIVIDUALS. WHAT LEADS DID
YOU FOLLOW UP WITH?

A WHAT LEADS DID I FOLLOW. I WAS AT THE TRENTON STORE WHERE THERE
WAS A VIDEO THAT WAS IN THERE, AND I LOOKED AT IT.

Q OKAY. DID YOU LOOK AT THE ENTIRE VIDEO?

A I LOOKED AT THE -- I THINK IT WAS THE DAY IN QUESTION.

1 Q OKAY.

2 A WE LOOKED AT IT, AND I FOUND NOTHING OF ANY EVIDENCE THAT WOULD
3 HELP ANY IN THIS CASE.

4 Q OKAY.

5 A ALSO---

6 Q BEFORE WE LEAVE THAT, WHAT PART OF THE VIDEO DID YOU WATCH?
7 FROM WHAT POINT TO WHAT POINT.

8 A SIR, I CAN'T TELL YOU THE EXACT DATE I CUT IT OFF AT.

9 Q OKAY. DO YOU REMEMBER WHEN YOU STARTED IT -- DID YOU START IT
10 AFTER THE INVESTIGATORS WERE IN FREDY DELEON'S PLACE WITH
11 INVESTIGATOR YOUNG?

12 A YOU MEAN WAS IT STARTED AFTER EVERYBODY HAD BEEN IN THE STORE--

13 -

14 Q RIGHT.

15 A YES, SIR, IT STARTED THEN.

16 Q OKAY. IS THAT THE PART YOU LOOKED AT? THAT'S WHAT I'M ASKIN'.

17 A I LOOKED AT THE PART THAT STARTED THAT WAS ON THE VIDEO THAT
18 DAY AND LOOKED A FEW DAYS BACK, AND FOUND NOTHIN' THAT WOULD HELP.

19 Q WENT A FEW DAYS BACK?

20 A I GUESS IT WAS PROBABLY A FEW DAYS. I COULDN'T SIT HERE AND TELL
21 YOU EXACTLY WHAT DAY I CUT IT OFF ON.

22 Q OKAY. DID YOU LOOK AT IT WITH MR. DELEON PRESENT IN ORDER FOR
23 HIM TO POINT OUT THE GENTLEMAN THAT HE HAD INDICATED HAD REQUESTED TO
24 USE HIS ADDRESS TO DELIVER THE FURNITURE?

25 A NOBODY NEVER SHOWED ME A GENTLEMAN THAT DID ASK TO USE NO

COBY PERRY - CROSS-EXAMINATION BY MR. HAWKE

1 ADDRESS.

2 Q YOU NEVER SAT DOWN AND LOOKED AT IT WITH MR. DELEON?

3 A NEVER HAVE.

4 Q OKAY. YOU KNOW ANY INVESTIGATOR THAT HAS?

5 A CAN'T TELL YOU OF ANY THAT I KNOW OF, NO, SIR.

6 Q WERE YOU EVER ABLE TO LOCATE ANY CORRESPONDENCE OR ANY MAIL
7 OR ANYTHING IN POSSESSION OF FREDY DELEON OR ANYTHING OR ANY PHONE
8 CALLS FROM FREDY DELEON TO SEBASTIAN EXPORTACIONES?

9 A SIR, I'VE WORKED NUMEROUS CASES WITH SLED IN AND OUT OF THE
10 COUNTRY. IT'S NO NEED TRYIN' TO FIND IT. FOREIGN COUNTRIES DON'T
11 COOPERATE WITH US.

12 Q WHAT I'M TALKIN' ABOUT IS IN REFERENCE TO HIS PHONE RECORDS OR
13 ANYTHING IN HIS POSSESSION.

14 A DID I FIND ANYTHING THERE?

15 Q RIGHT. ANYWHERE.

16 A NO, SIR, I CAN'T SAY THAT I HAVE. I DIDN'T LOOK AT ANYTHING BECAUSE
17 I KNOW DEALIN' WITH SOMEWHERE OUT OF THE COUNTRY, AND I HATE TO SAY IT,
18 BUT THEY DON'T COOPERATE WITH US. I CAN SEND A SUBPOENA; THEY DON'T
19 HAVE TO ANSWER IT. I CAN CALL THE BUSINESSES THERE. I'VE DONE IT IN OTHER
20 COUNTRIES. THEY'RE NOT GONNA GIVE YOU INFORMATION.

21 Q DID YOU EVER FIND ANY EVIDENCE OF CORRESPONDENCE OR PHONE
22 CALLS FROM FREDY DELEON TO SEBASTIAN EXPORTACIONES?

23 A NO, SIR, I HAVE NOT.

24 Q DID YOU EVER FIND ANY OF THAT TYPE OF INFORMATION OR RECORDS
25 FROM HIM TO JAMCO INTERNATIONAL?

COBY PERRY - CROSS-EXAMINATION BY MR. HAWKE

- 1 A NO, SIR. ALL THAT'S ACROSS IN MEXICO.
- 2 Q ANYTHING IN REFERENCE TO HIM AND LAREDO, TEXAS?
- 3 A NOTHING THAT I FOUND.
- 4 Q ANYTHING LIKE THAT IN REFERENCE TO HIM AND BORDER CARRIERS?
- 5 A NO, SIR. AND I WOULD LIKE TO EXPLAIN MYSELF.
- 6 Q SURE.
- 7 A MOST OF THIS I FEEL LIKE, BECAUSE OF MY INVESTIGATIONS OF THESE
- 8 TYPE THINGS BEFORE, ALL THIS WAS GONNA BE DONE IN MEXICO. ALL THESE
- 9 TRANSACTIONS WOULD'VE TOOK PLACE ACROSS THE LINE. THEY WOULD'VE BEEN
- 10 MADE IN MEXICO. SO THERE'S NO NEED TO TRY TO FOLLOW UP.
- 11 Q DID YOU EVER CHECK TO SEE IF HE'D MADE ANY RECENT TRIPS TO
- 12 MEXICO OR ANY OF THESE AREAS?
- 13 A NO, SIR. I DIDN'T SEE ANY NEED IN THAT.
- 14 Q OKAY. TO YOUR KNOWLEDGE WAS THERE ANY EVIDENCE THAT HE EVER
- 15 DID MAKE ANY RECENT TRIPS TO MEXICO WHERE THIS COULD'VE BEEN
- 16 ARRANGED IN MEXICO?
- 17 A NO, SIR, I CAN'T SAY THAT I HAVE DONE THAT.
- 18 Q DID YOU FIND ANY INFORMATION THAT HE WAS INVOLVED -- EXCUSE ME -
- 19 - DID YOU FIND ANY RECORDS OR SEE ANYTHING TO INDICATE HE WAS INVOLVED
- 20 IN THE RENTAL OF A BOX TRUCK?
- 21 A NO, SIR, I CAN'T SAY THAT I DID.
- 22 Q DID YOU FIND ANY EVIDENCE OF -- DID YOU FIND ANY PHONE CALLS,
- 23 CORRESPONDENCE, ANYTHING LIKE THAT TO CONNECT HIM WITH THE OTHER 3
- 24 DEFENDANTS THAT ARE SITTING UP THERE NEXT TO HIM? DID THEY HAVE SOME
- 25 PRIOR COMMUNICATION OR CONTACT?

1 A NO, SIR. LIKE I SAID, YOU KNOW, THE -- I'VE FOUND IN MOST OF THESE
2 CASES AND I DID FIND IN SOME OF THIS CASE THAT THEM PHONE CARDS, THROW
3 AWAY PHONE CARDS, ARE USED. YOU CAN'T DO ANYTHING WITH 'EM. YOU
4 CAN'T TRACE 'EM BACK.

5 Q ALRIGHT. DID YOU MAKE ANY ATTEMPT TO?

6 A I -- IN THE PAST I'VE BEEN TOLD BY THE PHONE COMPANY THAT I -- YOU
7 KNOW, THERE'S NOTHIN' I CAN DO WITH 'EM.

8 Q OKAY.

9 A SO THERE'S NO NEED IN ME GOIN' ANYWHERE WITH 'EM IF I COULDN'T DO
10 ANYTHING.

11 Q ARE YOU SAYING YOU COULD NOT CHECK HIS PHONE RECORDS TO SEE IF
12 HE HAD MADE ANY PHONE CALLS TO ANY OF THEIR REFERENCES IN NORTH
13 CAROLINA?

14 A SIR, I COULDN'T -- IF HE WOULD'VE CALLED SOMEWHERE IN NORTH
15 CAROLINA AND TALKED TO SOMEONE, TO BE HONEST WITH YOU, I HAVE NO WAY
16 OF I.D.'ING HISPANIC IN NORTH CAROLINA. THERE'S NO WAY.

17 Q I'M SORRY?

18 A I SAID I HAVE NO WAY OF GETTING INTO THE HISPANIC COMMUNITY BY
19 DOING THIS IN THE PAST. I WOULD'VE BEEN AT A DEAD END TRYIN' TO I.D.
20 SOMEONE IN NORTH CAROLINA.

21 Q OKAY. WHAT WERE THE -- WHAT WOULD THE -- HOW MUCH TROUBLE
22 WOULD IT HAVE BEEN TO ISSUE A SUBPOENA FOR HIS PHONE RECORDS TO SEE IF
23 HE MADE LONG DISTANCE PHONE CALLS TO NORTH CAROLINA? HOW HARD
24 WOULD THAT HAVE BEEN?

25 A IT WOULDN'T BE ANY TROUBLE.

1 Q HUH?

2 A IT WOULDN'T HAVE BEEN ANY TROUBLE. IT'S JUST SOMETHIN' THAT WE
3 DIDN'T SEE WAS NECESSARY.

4 Q HOW HARD WOULD IT HAVE BEEN TO SUBPOENA THEIR RECORDS IN
5 NORTH CAROLINA TO SEE IF THEY HAD MADE ANY PHONE CALL TO FREDY
6 DELEON BEFORE THIS INCIDENT?

7 A IT WOULDN'T HAVE BEEN ANY IF WE WOULD'VE KNOWN WHAT THEIR
8 PHONE NUMBER WAS IN NORTH CAROLINA, BUT THERE AGAIN, I DIDN'T KNOW IT,
9 SIR.

10 Q YOU DIDN'T GET THEIR BASIC INFORMATION AS TO WHERE THEY LIVED IN
11 NORTH CAROLINA WHEN YOU ARRESTED THEM?

12 A SIR--

13 THE COURT: HOLD ON.

14 A --THERE WASN'T ANY--

15 THE COURT: HOLD ON A SECOND. LADIES AND GENTLEMEN, GO BACK IN
16 THE JURY ROOM, PLEASE. DON'T DISCUSS THE CASE. (THE FOLLOWING
17 OCCURRED IN THE ABSENCE OF THE JURY.) I DON'T KNOW THE CASE. I DON'T
18 KNOW IF THIS IS A PROBLEM. I'M JUST BEING CAUTIOUS. AS I UNDERSTAND IT, HE
19 IS NOW ASKING THIS WITNESS QUESTIONS ABOUT WHAT YOUR CLIENTS TOLD THE
20 POLICE.

21 MR. SUSSMAN: HE WAS ABOUT TO -- MAYBE I WAS RIGHT BEHIND YOU. HE
22 WAS ABOUT TO GET THERE AND I WAS GOING TO -- I AGREE, JUDGE. IF HE IS, THEN
23 WE HAVE A JACKSON V. DENNO SITUATION.

24 THE COURT: WELL, HE MAY BE GETTING INTO A COMMENT ON THE
25 EXERCISE OF THE RIGHT OF SILENCE, AND I DON'T KNOW -- I DON'T KNOW. Y'ALL

COBY PERRY - CROSS-EXAMINATION BY MR. HAWKE

1 MIGHT NEED TO TALK AND SEE WHERE HE'S GOING, BUT HE'S ASKING OF THE
2 POLICE OFFICER OR SLED AGENT ABOUT WHAT YOUR CLIENTS TOLD THE POLICE.
3 DIDN'T THEY GIVE YOU THE PHONE NUMBERS OR DIDN'T THEY DO THIS OR THAT.
4 AND I DON'T KNOW IF THERE'S AN ISSUE BEFORE I HEAR A MISTRIAL ON THE 4TH
5 DAY OF THIS THING. SO Y'ALL TALK.

6 MR. HAWKE: YES, SIR. (THERE WAS A BRIEF RECESS.)

7 THE COURT: ALRIGHT. YOU READY?

8 MR. HAWKE: YES, YOUR HONOR. WE'RE ALL ON THE SAME PAGE.

9 THE COURT: OKAY. I MEAN YOU CAN ASK IT DIFFERENT WAYS, AND I'M
10 CERTAINLY NOT GOING TO TELL YOU HOW TO ASK IT. BUT WHEN YOU PHRASE THE
11 QUESTION IN ANY WAY IT CAN BE CONSTRUED AS WHAT THEIR CLIENTS TOLD--

12 MR. HAWKE: I UNDERSTAND.

13 THE COURT: ---AGENT PERRY, YOU'RE WALKIN' ON A DANGEROUS SLOPE
14 THERE.

15 MR. HAWKE: I UNDERSTAND, YOUR HONOR, AND WE APPRECIATE THE
16 GUIDANCE.

17 THE COURT: ALRIGHT. BRING THE JURY. (THE FOLLOWING OCCURRED IN
18 THE PRESENCE OF THE JURY.) ALRIGHT. THANK YOU, LADIES AND GENTLEMEN.
19 YOU MAY CONTINUE, MR. HAWKE.

20 Q AGENT, THAT TRUCK THAT YOU HAD OUT THERE THAT DAY, WAS THAT
21 PROVIDED BY SLED?

22 A THE TRUCK I WAS RIDING IN?

23 Q YES, SIR.

24 A YES, SIR, THAT IS A STATE TRUCK.

25 Q AND THEY HAVE VARIOUS OTHER EQUIPMENT THAT YOU CAN TAKE WITH

COBY PERRY - CROSS-EXAMINATION BY MR. HAWKE

1 YOU ON SURVEILLANCE, DON'T THEY?

2 A YES, SIR, WE HAVE A NUMBER OF DIFFERENT THINGS THAT WE CAN USE. I
3 DON'T KNOW -- YOU KNOW, NOT FOR SURVEILLANCE. YOU KNOW,
4 SURVEILLANCE IS RIGHT HERE, MY TWO EYES. WHAT I SEE HAPPEN.

5 Q YOU EVER USE A VIDEO CAMERA?

6 A HAVE SOMETIMES. WEATHER PERMITTING.

7 Q HAVE YOU EVER USED CAMERAS?

8 A I'VE USED SOME WHEN THE WEATHER IS PERMITTING.

9 Q ALRIGHT. ANY OF THIS -- ANY OF THESE THINGS THAT YOU'VE TESTIFIED
10 TO, DID YOU VIDEO OR PHOTOGRAPH IT?

11 A NO, SIR, I DID NOT. I DID NOT HAVE ANY OF THAT EQUIPMENT WITH ME.

12 Q DID YOU RECORD ANY OF YOUR NOTES ABOUT WHAT WAS GOING ON AS IT
13 OCCURRED?

14 A NO, SIR, I DID NOT.

15 Q OKAY. DID YOU MAKE WRITTEN NOTES ABOUT WHAT OCCURRED--

16 A NO, SIR, I DID NOT.

17 Q OKAY. AND THE FIRST REPORT YOU PREPARED IN THIS CASE, WHAT DATE
18 DID YOU PREPARE IT ON?

19 A SIR, IT WASN'T LONG AFTER. I COULDN'T TELL YOU THE DATE WITHOUT
20 LOOKING AT MY REPORT AND I HADN'T EVEN LOOKED AT WHAT REPORT I HAVE.
21 BUT I CAN REMEMBER IT LIKE IT WAS YESTERDAY PRETTY WELL.

22 MR. HAWKE: MAY I APPROACH, YOUR HONOR?

23 THE COURT: CERTAINLY.

24 Q WOULD YOU LOOK AT THAT AND TELL ME IF YOU RECOGNIZE WHAT THAT
25 IS.

1 A THAT'S MY REPORT.

2 Q OKAY. IS THAT THE ONLY REPORT YOU'VE EVER PREPARED IN THIS CASE?

3 A YES, SIR.

4 Q OKAY.

5 A TELLIN' WHAT I DID. I ASSISTED EDGEFIELD COUNTY, DEA AND CUSTOMS.

6 Q WELL, DO YOU WANT TO -- JUST GO AHEAD AND READ THE REPORT ABOUT
7 WHAT YOU DID THAT DAY.

8 A ALRIGHT, SIR. IT SAYS ON MAY 18TH 2002 SPECIAL AGENT PERRY ASSISTED
9 U.S. CUSTOMS AGENTS, DEA---

10 THE COURT: SLOW DOWN. SHE HAS TO--

11 A ---THE EDGEFIELD COUNTY SHERIFF'S OFFICE IN A CONTROLLED DELIVERY
12 OF A POSSIBLE 1000 POUNDS OF MARIJUANA IN EDGEFIELD, IN THE COUNTY OF
13 EDGEFIELD, SOUTH CAROLINA. U.S. CUSTOMS AGENTS DELIVERED THE PACKAGES
14 TO A MEXICAN STORE FROM TRENTON, SOUTH CAROLINA, EDGEFIELD COUNTY,
15 AND ONE PACKAGE WAS DROPPED OFF AT THE STORE, AND THE OTHERS WERE TO
16 BE OFFLOADED ON PADGETT ROAD, A DIRT ROAD OFF OF HIGHWAY 25 IN
17 EDGEFIELD COUNTY. AGENTS MOVED IN AND TOOK SUBJECTS INTO CUSTODY. U.S.
18 CUSTOMS WENT INTO THE MEXICAN STORE AND REMOVED MARIJUANA.
19 INVESTIGATOR ROOSEVELT YOUNG OF THE EDGEFIELD SHERIFF'S OFFICE TOOK
20 CONTROL OF ALL EVIDENCE AND 4 SUBJECTS WERE ARRESTED FOR TRAFFICKING
21 MARIJUANA. INVESTIGATOR YOUNG OF THE EDGEFIELD SHERIFF'S OFFICE
22 SECURED ALL THAT. SPECIAL AGENT PERRY ASSISTED EDGEFIELD COUNTY
23 SHERIFF'S OFFICE IN TRYIN' TO LOCATE OTHER SUBJECTS AND FOLLOW UP LEADS
24 ON THIS CASE AND IS STILL ACTIVE IN TRYIN' TO LOCATE OTHER SUBJECTS.

25 Q OKAY. NOW YOU DIDN'T INCLUDE IN YOUR REPORT ANY OF THE

1 INFORMATION YOU JUST TALKED TO US ABOUT OBSERVIN' ALL THESE PEOPLE
2 GOIN' IN ALL THESE DIFFERENT DIRECTIONS. RIGHT?

3 A NO, SIR, I WAS NOT THINKIN' SURVEILLANCE WHEN I SAID THAT.

4 Q AND THIS REPORT WAS PREPARED BY 2 MONTHS AFTER THE INCIDENT?

5 A SIR?

6 Q THIS REPORT WAS PREPARED ABOUT 2 MONTHS AFTER THE INCIDENT
7 OCCURRED?

8 A ALMOST CLOSE TO THE SAME DAY, WASN'T IT?

9 MR. MAYE: HE CAN PUT IT IN EVIDENCE. I'LL SUBMIT TO PUT IT IN
10 EVIDENCE IF HE WANTS TO.

11 A I THINK IT'S MAY 18TH 2002. I THINK I WROTE MY REPORT THAT SAME DAY.

12 Q IS THERE ANY OTHER REPORT THAT YOU PREPARED?

13 A NO, SIR. THAT IS IT.

14 Q OKAY. YOU HADN'T MADE ANY OTHER NOTES OR ANYTHING THAT YOU
15 USED TO REFRESH YOUR MEMORY ABOUT WHAT HAPPENED THAT DAY BEFORE
16 COMING HERE TO TESTIFY?

17 A I TOLD YOU THE AMOUNT AND I'M PRETTY WELL SET ON WHAT I SAW AND
18 I KNOW WHAT I SAW.

19 Q OKAY. BUT, AGENT, NOW DURIN' THIS TRIAL YOU'VE HAD THE LUXURY OF
20 SITTN' HERE AND LISTENIN' TO EVERYBODY WHILE THEY GIVE THEIR TESTIMONY,
21 HAVEN'T YOU?

22 A I HAVE.

23 Q OKAY. I DON'T HAVE ANYMORE.

24 THE COURT: MR. SUSSMAN.
25

COBY PERRY - CROSS-EXAMINATION BY MR. SUSSMAN

CROSS-EXAMINATIONBY MR. SUSSMAN

Q AGENT PERRY?

A YES, SIR.

Q HOW LONG WERE YOU INVOLVED IN THIS OPERATION FROM BEGINNING TO
END? JUST ROUGHLY?

A I'D SAY THAT DAY. IS THAT WHAT YOU'RE ASKIN' ME?

Q JUST---

A TOTAL NUMBER OF HOURS?

Q YEAH, ROUGHLY.

A PROBABLY 40 OR 50 OR MORE HOURS IN THIS CASE PROBABLY. TRYIN' TO
FOLLOW UP LEADS AND THINGS.

Q AND SO YOUR TESTIMONY IS THAT THIS 4-PARAGRAPH REPORT, THE ONLY
REPORT YOU GENERATED IS BASED ON 40 OR 50 HOURS OF YOUR HARD WORK.

A THAT IS WHAT I DID THAT DAY AND THAT IS ALL I HAVE BEEN ABLE TO
TURN UP.

Q AND AS I UNDERSTAND IT, THE REPORT INDICATES THAT ROOSEVELT
YOUNG TOOK CONTROL OF ALL EVIDENCE.

A AND I THINK I GO IN THERE AND SAY THE EDGEFIELD SHERIFF'S
DEPARTMENT SECURED IT OR WHATEVER. I WASN'T SURE OF EXACTLY WHICH
ONE THAT DAY TOOK THE CONTROL OF IT WHETHER THAT BEING THE OFFICER
HERE IN EDGEFIELD COUNTY THAT I WORK WITH IS WHO I LISTED, AND I THINK I
ALSO LISTED 'EM SECURED BY EDGEFIELD COUNTY SHERIFF'S OFFICE.

Q YOU CAN LOOK AT IT IF YOU'D LIKE TO REFRESH YOUR MEMORY. I'LL
REPEAT THE QUESTION. YOUR REPORT SAYS THAT ROOSEVELT YOUNG TOOK

1 CONTROL OF ALL EVIDENCE. THAT'S PART OF WHAT YOUR REPORT SAYS.

2 A YES, SIR. THAT'S WHAT I'VE GOT HERE IT SAYS.

3 Q AND THEN THE EDGEFIELD COUNTY SHERIFF'S DEPARTMENT SECURED IT.

4 A THAT'S WHERE IT WAS SECURED.

5 Q RIGHT?

6 A RIGHT.

7 Q HE TOOK CONTROL OF IT FIRST. OR AT LEAST IT READS THAT HE TOOK
8 CONTROL OF IT FIRST BEFORE YOU STATE THE EDGEFIELD COUNTY SHERIFF'S
9 DEPARTMENT SECURED IT. IS THAT CORRECT?

10 A THAT'S WHAT I HAVE WROTE HERE IN MINE. AND THAT IS NOT TO SAY
11 WHAT THEY DID INTERNALLY.

12 Q WELL, YOUR RECOLLECTION OF WHO TOOK CONTROL OF THE EVIDENCE,
13 THAT IS TO SAY, ALL THE EVIDENCE WAS PROBABLY FRESHER ON THE DAY THAT
14 IT TOOK PLACE THAN IT IS TODAY. WOULDN'T YOU AGREE WITH THAT?

15 A YES, SIR, I MEAN---

16 Q NOW LET ME ASK YOU THIS: WHAT IS YOUR UNDERSTANDING OF A
17 CONTROLLED DELIVERY?

18 A WHAT IS MY UNDERSTANDING OF A CONTROLLED DELIVERY.

19 Q WHEN YOU SAY IN THERE THAT A CONTROLLED DELIVERY TOOK PLACE,
20 WHAT DOES THAT MEAN?

21 A IT MEANS THAT WHAT WE DO IS WE HAVE A PACKAGE OF ILLEGAL
22 SUBSTANCE. IN THIS CASE IT WAS MARIJUANA. AND WHAT WE DO WE DELIVER IT
23 TO THE PERSON WHO IT IS TO GO TO, WHOSE ADDRESS IS PROVIDED TO WHERE IT
24 IS TO BE DROPPED. WE DRIVE IT OR TAKE IT HOWEVER. IT HAS BEEN DONE BY UPS
25 BEFORE; IT'S BEEN DONE BY FED-EX; IT'S BEEN DONE BY LARGER COMPANIES; IT'S

COBY PERRY - CROSS-EXAMINATION BY MR. SUSSMAN

1 BEEN DONE BY US IN JUST REGULAR VEHICLES. WE DELIVER IT TO THAT PERSON
2 AND LET THEM SIGN FOR IT. LET THEM ACCEPT THE PACKAGE. IS BASICALLY
3 WHAT A CONTROLLED DELIVERY IS.

4 Q AND THEN YOU -- THANK YOU. AND THEN YOU SAID THAT PART OF THE
5 PACKAGE -- PART OF THE MERCHANDISE WAS OFFLOADED AT THE STORE.

6 A YES, SIR.

7 Q RIGHT?

8 A YES, SIR.

9 Q AND THEN YOU SAID THAT THE REST WAS GOING TO BE OFFLOADED AT
10 PADGETT ROAD. NOW HOW DO YOU KNOW THAT IT WAS GOING TO BE
11 OFFLOADED AT PADGETT ROAD? DO YOU KNOW THAT AS A FACT?

12 A I ASSUMED THAT.

13 Q I'M SORRY. DID YOU SAY ASSUMED?

14 A I ASSUME BECAUSE I COULDN'T TELL YOU.

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

16 MR. MAYE: YOUR HONOR, HE CAN FINISH ANSWERING HIS QUESTION. HE
17 WAS CUT OFF THERE. HE DIDN'T FINISH HIS ANSWER. I ASK THAT HE BE ALLOWED
18 TO FINISH.

19 THE COURT: HAD YOU FINISHED ANSWERING THE QUESTION, MR. PERRY?

20 A I ASSUME BECAUSE OF THE LOCATION IN WHICH THEY WERE IN AND WITH
21 THEM BEING STUCK. I HAD NO WAY OF KNOWING ANY OTHER PLACE THEY
22 WOULD BE GOING. IT WAS A GOOD AREA.

23 THE COURT: MR. MILLER.

24 MR. MILLER: THANK YOU, YOUR HONOR.

25

CROSS-EXAMINATIONBY MR. MILLER

Q AGENT PERRY, YOU SAID THAT AS SOON AS YOU HEARD ON A TELEPHONE CALL THAT THEY WERE TURNING ONTO PADGETT ROAD THAT IF THEY WENT RIGHT OR LEFT AT THE END OF THE ROAD YOU KNEW THAT BOX TRUCK AND 18 WHEELER WEREN'T GOIN' TO MAKE IT. IS THAT CORRECT?

A YES, SIR, TO THE BEST OF MY KNOWLEDGE I SAID THAT. THAT'S EXACTLY RIGHT.

Q OKAY. WHO WERE YOU TALKIN' TO ON THE PHONE?

A TO TELL YOU THE TRUTH I BELIEVE IT MAY HAVE BEEN -- IT WAS EITHER DEAN TUCKER OR EITHER THE DPS GUY WHO WAS WITH HIM. NOW I DID HAVE CONVERSATION WITH OTHER AGENTS THAT DAY TOO. SOME OF THEM WERE CALLIN' ME BECAUSE OF ME BEING LOCAL WANTING TO KNOW THE AREAS. I DIDN'T KNOW ALL OF THESE GUYS. I KNOW SOME OF 'EM WHEN I SEE 'EM; SOME OF 'EM I DON'T.

Q YOU SAID YOU KNEW THAT AND YOU KNEW ENOUGH ABOUT PADGETT ROAD TO KNOW THEY WEREN'T GONNA BE ABLE TO MAKE IT OUT THE OTHER END, BUT YOU WEREN'T SURE HOW YOU COULD DIRECT ANYBODY TO -- LET ME MAKE SURE I'VE GOT THE NAME RIGHT HERE. VAN ROAD. IS THAT CORRECT?

A I DON'T -- REPHRASE YOUR QUESTION AGAIN, SIR.

Q YOU SAID YOU KNEW THE AREA WELL ENOUGH TO KNOW THAT PADGETT ROAD IS GONNA BE -- NO WAY -- WOULD NOT BE PASSABLE FOR THOSE VEHICLES, BUT YOU COULDN'T DIRECT ANYONE TO VAN ROAD TO TELL THEM HOW TO CUT OFF THE CAR THAT WAS AT THE FRONT OF THE LINE.

A I THINK I SAID THAT I WAS NOT ABLE TO GET ANYBODY AROUND THERE,

1 YES, SIR, BASICALLY, IN OTHER WORDS.

2 Q OKAY.

3 A IF YOU'RE NOT FROM THIS AREA, TRYIN' TO GET SOMEBODY IN AND
4 AROUND ALL THESE PLACES IS VERY HARD. THESE ARE LITTLE COUNTRY ROADS.

5 Q LITTLE COUNTRY ROADS. WOULD IT BE FAIR TO SAY THAT IF I TOLD YOU
6 TO GO DOWN HIGHWAY 25 TOWARD NORTH AUGUSTA AND TAKE THE FIRST RIGHT
7 PAVED ROAD PAST EDGEFIELD INDUSTRIAL PARK THAT YOU'D BE ON VAN ROAD?

8 A JUST---

9 Q GO DOWN HIGHWAY 25 TOWARD NORTH AUGUSTA.

10 A YES, SIR.

11 Q SOMEWHERE (UNINTELLIGIBLE).

12 A FINE, SIR.

13 Q FIRST RIGHT PAVED ROAD PAST THE EDGEFIELD INDUSTRIAL PARK IS VAN
14 ROAD.

15 A YOU'RE CORRECT.

16 Q ARE THOSE TOO DIFFICULT DIRECTIONS TO GIVE SOMEBODY OR HAVE
17 SOMEBODY FOLLOW?

18 A WELL, WHEN THEY'RE DEALIN' WITH SOMEONE THAT'S NOT FROM THE
19 AREA, GETTING THEM TO VAN ROAD MAY NOT BE AS HARD. ONCE YOU'RE ON
20 VAN ROAD, THERE'S A LOTTA LITTLE CUTOFF ROADS THAT CUT BACK OFF TO THE
21 LEFT IN THERE.

22 Q THERE'S NOT A SIGN FOR PADGETT ROAD.

23 A TO THE BEST OF MY KNOWLEDGE IT'S NOT, NOT, SIR, AND LIKE I SAID, IT'S
24 SEVERAL, SEVERAL ROADS THAT YOU CAN CUT OFF TO THE LEFT IN THERE.

25 Q YOU SAID YOU WENT TO CROSSROADS MOTEL. WHY DID YOU GO THERE?

1 A TO SEE IF I COULD GAIN ANY INTELLIGENCE OF WHAT WAS GOIN' ON AND
2 I DID.

3 Q AND HOW DID YOU KNOW TO GO TO THE CROSSROADS MOTEL?

4 A HOW DID I KNOW TO GO?

5 Q YES, SIR.

6 A WELL, THE RECEIPT WAS FOUND IN THE -- IN THE U-HAUL VAN THAT SAID
7 CROSSROAD MOTEL.

8 Q OKAY. SO YOU WENT BACK TO THE CROSSROADS AND YOU SAID THE
9 LADY THERE TOLD YOU OR THE OWNER THERE TOLD YOU THAT THERE WERE
10 SOME PHONE CALLS MADE FROM THE ROOM?

11 A AM I ALLOWED TO ANSWER?

12 Q YES, SIR, I ASKED YOU THE QUESTION.

13 A YES, SIR. I DID. AND THEY TOLD ME THEY WERE MADE WITH PHONE
14 CARDS, AND THEY LEFT WITHOUT PAYIN' FOR THEIR CALLS.

15 Q DID YOU ASK FOR ANY KIND OF RECORD OF THAT?

16 A THE LADY SHOWED ME THE RECORD. I CAN'T SAY THAT EDGEFIELD
17 COUNTY DIDN'T RETRIEVE IT. I DON'T KNOW IF ANYONE DID OR NOT.

18 Q SO YOU SAW A PIECE OF PAPER THAT HAD THESE ALLEGED PHONE CARD
19 CALLS ON IT BUT YOU DIDN'T BOTHER TO TAKE IT?

20 A I WASN'T IN CHARGE OF THE EVIDENCE AT THAT TIME AND I DIDN'T TAKE
21 IT. I DON'T KNOW IF SOMEONE FROM EDGEFIELD COUNTY DID TAKE IT. NO, SIR, I
22 DID NOT TAKE IT. I SAW IT WAS 1-800 PHONE CARDS, AND THERE AGAIN, IF
23 ANYBODY'S FAMILIAR WITH THESE PHONE CARDS, YOU CAN -- THERE'S NO
24 TRACEABLE WAY, AND IT'S JUST---

25 Q SO YOU DIDN'T TELL SOMEBODY FROM THE EDGEFIELD COUNTY SHERIFF'S

1 DEPARTMENT WHO WAS IN CHARGE OF THE INVESTIGATION. HEY THERE'S
2 PERTINENT EVIDENCE THAT CAN SHOW THIS?

3 A I THINK THERE WAS SOME OF THEM THERE PRESENT AT THE TIME.

4 Q AND NOBODY BOTHERED TO TAKE 'EM.

5 A SIR, I CAN'T TELL YOU WHAT THEY HAVE IN THEIR CASE FILE. I HAVEN'T
6 REVIEWED IT.

7 Q SO YOU WALK AWAY FROM A PIECE OF PAPER THAT HAD THE EVIDENCE
8 ON IT AND WE HAVE TO RELY ON YOUR TESTIMONY HERE TODAY TO SAY THAT
9 IT'S TRUE.

10 A YOU CAN TAKE MY WORD THAT THAT'S WHAT I SAW AND THAT'S WHAT
11 THE LADY TOLD ME. IT WAS 1-800 NUMBERS AND IT WAS PHONE CARDS, AND SHE
12 TOLD ME THEY LEFT WITHOUT PAYIN'. EVIDENTLY THERE IS A CHARGE FOR USIN'
13 THEIR PHONE.

14 Q BUT YOU DON'T HAVE ANY DOCUMENTATION OF THAT.

15 A NO, SIR, I DO NOT.

16 Q DO YOU KNOW WHAT THE PERSON'S NAME IS THAT YOU TALKED TO
17 THERE?

18 A IT WAS A INDIAN LADY AND MAN THAT WAS RUNNIN' THE MOTEL AT THAT
19 TIME.

20 Q THERE'S NO RECORD OR RECORDING OF THIS INTERVIEW WITH THEM, IS
21 THERE?

22 A NO, SIR, IT DIDN'T LEAD ME ANYWHERE.

23 Q WAS THERE ANY REASON THAT THE WEATHER OUTSIDE STOPPED YOU
24 FROM RECORDING YOUR INTERVIEW WITH THEM?

25 A SIR, THAT'S NOT NORMAL PROCEDURE THAT I WOULD RECORD A

1 INTERVIEW WITH SOMEONE LIKE THAT. I HAVEN'T DONE THAT. I DON'T ALWAYS
2 DO A -- WRITE DOWN AN INTERVIEW WITH SOMEONE I TALK TO IN ANYTHING LIKE
3 THAT.

4 Q WOULD THE WEATHER OUTSIDE STOP YOUR PEN FROM WORKING?

5 A IF I WAS INSIDE, NO, SIR.

6 Q SO IS IT NOT NORMAL SLED PROCEDURE TO TAKE NOTES OF INTERVIEWS
7 YOU DO WITH PEOPLE THAT AREN'T SUSPECTS?

8 A SIR, IF I WAS INTO A IN-DEPTH INTERVIEW OF SOMEBODY -- THESE PEOPLE
9 WERE NOT SUSPECTS THAT I WAS TALKIN' TO AT THE MOTEL. THESE WERE THE
10 OWNERS.

11 Q AND THERE'S NO INDICATION OF IT ANYWHERE IN YOUR REPORT.

12 A NO, SIR. I'M TELLIN' THE JURY WHAT I DID.

13 MR. MILLER: I DON'T HAVE ANY OTHER QUESTIONS, YOUR HONOR.

14 THE COURT: REDIRECT.

15 MR. MAYE: NOTHIN' ELSE, YOUR HONOR, FOR AGENT PERRY.

16 THE COURT: ANYTHING ELSE OF THIS WITNESS?

17 MR. HAWKE: NO, YOUR HONOR.

18 MR. SUSSMAN: NO, YOUR HONOR.

19 THE COURT: YOU MAY STEP DOWN. YOU HAVE ANOTHER WITNESS TODAY,
20 SOLICITOR?

21 MR. MAYE: BEG THE COURT'S INDULGENCE. YOUR HONOR, I THINK THAT'S
22 ALL THE -- BEG THE COURT'S INDULGENCE. YOUR HONOR, THAT'S ALL -- THAT'S
23 ALL I HAVE AT THIS TIME. I WOULD LIKE TO RESERVE THE RIGHT WITH AGENT
24 PERRY TO RECALL HIM IN THE MORNING. THAT'S ALL I HAVE -- TESTIMONY FOR
25 TODAY. I HAVE A BRIEF MATTER WITH AGENT PERRY IN THE MORNING. BUT

1 THAT'S ALL THAT I HAVE AT THIS TIME. YOUR HONOR. I HAVE AN INITIAL WITNESS
2 FOR IN THE MORNING.

3 THE COURT: ALRIGHT. LADIES AND GENTLEMEN, I'M GOING TO HAVE TO
4 SEND YOU HOME FOR THE DAY, AND I -- I DON'T HAVE ANY WAY OF KNOWING
5 WHETHER WE'LL GET THE CASE TO YOU TOMORROW OR NOT.

6 I'LL BE ABLE TO TELL YOU TOMORROW OBVIOUSLY, BUT I CAN'T TELL YOU
7 TODAY.

8 IF I DO NOT GET THE CASE TO YOU TOMORROW, YOU'LL HAVE TO COME
9 BACK TUESDAY. SO IF THAT PRESENTS A MAJOR PROBLEM FOR YOU, IF YOU WILL
10 LET ME KNOW THAT TOMORROW, YOU NEED TO WRITE IT ON A PIECE OF PAPER
11 AND GIVE IT TO THE BAILIFF WHEN YOU COME IN TOMORROW. SO IT'S GOTTA BE
12 EXTREMELY MAJOR FOR ME TO DO ANYTHING ABOUT IT. SO BUT LIKE I TOLD YOU
13 BEFORE, I WANT Y'ALL TO LET ME KNOW WHAT'S GOIN' ON, AND MAYBE I CAN
14 WORK AROUND SOME THINGS. BUT I TOLD YOU WHEN I QUALIFIED YOU, I WASN'T
15 GONNA MAKE YOU MISS YOUR 4TH OF JULY AND I WASN'T GONNA MAKE YOU MISS
16 THE HOLIDAY ON MONDAY FOR THOSE OF YOU THAT MIGHT HAVE A HOLIDAY ON
17 MONDAY. EXCUSE ME. TOMORROW HOPEFULLY BY LUNCH TIME I'LL BE IN A LOT
18 BETTER POSITION TO TELL YOU WHAT IT LOOKS LIKE. I HOPE YOU HAVE A
19 PLEASANT EVENING. LEAVE YOUR NOTES WITH THE BAILIFF, AND I NEED YOU IN
20 THE MORNING AT -- LET'S START AT 9 AGAIN. WE'LL TRY TO GET IT TO YOU IF
21 POSSIBLE. OKAY?

22 (THE FOLLOWING OCCURRED OUTSIDE THE PRESENCE OF THE JURY.) MR.
23 HUNT, MAKE SURE THAT THEY KNOW THEY HAVE TO BE HERE AT 9 O'CLOCK IN
24 THE MORNIN' OR SUCH SOONER TIME THAT THE LAWYERS WANT 'EM. THE TRIAL
25 WILL GO ON WITHOUT THEM IF THEY'RE NOT HERE. DO THEY ALL UNDERSTAND?

1 MR. HUNT: YES, THEY DO.

2 MR. SUSSMAN: JUDGE, BEFORE WE BREAK, I DON'T KNOW EXACTLY HOW
3 TO DESCRIBE THE PROCEDURE, BUT I HAVE A REQUEST TO MAKE OF THE COURT IN
4 REGARDS TO CLOSING ARGUMENT WITH MULTIPLE DEFENDANTS WHEN 2 OF THE 3
5 DEFENDANTS' PUT UP EVIDENCE AND A THIRD DOES NOT. IT IS MY
6 UNDERSTANDING OF THE RULES OF SOUTH CAROLINA, AS THEY ARE IN GEORGIA,
7 IF YOU DON'T PUT UP ANY EVIDENCE YOU HAVE -- THE DEFENDANT HAS THE
8 RIGHT TO CLOSE. AND WITH MULTIPLE DEFENDANTS, THE RULE IN GEORGIA IS IF
9 ONE PUTS IT UP, THAT WAIVES IT FOR ALL. SOUTH CAROLINA I CHECKED LAST
10 NIGHT AND DID NOT FIND A CASE. I'D ASK THE COURT TO GIVE ME SOME
11 DIRECTION AS TO WHETHER THAT SAME RULE APPLIES IN SOUTH CAROLINA OR
12 NOT. OBVIOUSLY I WANT THE RIGHT TO CLOSE IF I DON'T PUT UP ANY EVIDENCE.

13 THE COURT: I CAN'T CITE YOU TO THE RULE OFF THE TOP OF MY HEAD; I
14 CAN'T CITE YOU TO A CASE, BUT MY UNDERSTANDING IS THAT IF ONE PUTS UP
15 EVIDENCE, ALL ARE IN THAT SAME BOAT WHICH MEANS THAT THE STATE MAKES
16 THE LAST CLOSING ARGUMENT.

17 MR. MAYE: YOUR HONOR, I'M NOT POSITIVE BUT I THINK THAT WAS ALSO
18 IN THAT PIPE BOMB CASE DOWN IN MCCORMICK WHERE THEY HAD MULTIPLE
19 DEFENDANTS DOWN THERE. THAT'S WHERE I'M AWARE OF THAT COMIN' UP. I
20 PARTICIPATED IN THAT CASE BACK IN '94. I'VE HAD THAT ABOUT 5 TIMES IN THE
21 PAST.

22 THE COURT: THAT GUY'S NAME WAS SIMILAR TO MINE. LAST NAME. WAS
23 IT KEEDLER?

24 MR. MAYE: IT WAS CANE, KELSEY AND LEE.

25 THE COURT: KELSEY.

1 MR. MAYE: AND I JUST KNOW THAT CAME UP IN THAT CASE, YOUR HONOR.
2 I'VE HAD IT ABOUT 5 TIMES IN THE PAST. I KNOW THAT IF ANY ONE DEFENDANT
3 PUTS IN EVEN ONE EXHIBIT THAT'S A DEFENSE EXHIBIT, THEY DON'T EVEN HAVE
4 TO PUT UP ANY TESTIMONY. IF THEY PUT UP A SINGLE DEFENSE EXHIBIT, ONE
5 DOCUMENT, ALL OF 'EM LOSE THE LAST ARGUMENT, YOUR HONOR.

6 THE COURT: LET ME SEE -- WE CAN GO OFF THE RECORD ON THAT AND I
7 CAN TELL YOU. WELL, THAT'S MY UNDERSTANDING. I DON'T THINK IT'LL
8 CHANGE, BUT I'LL TELL YOU FIRST THING IN THE MORNING. I SEE MR. MILLER'S
9 TRYIN' TO LOOK IT UP ON HIS COMPUTER AND I'LL TRY TO LOOK IT UP ON MINE.

10 MR. SUSSMAN: KELSEY?

11 THE COURT: KELSEY WAS ONE OF THE DEFENDANTS IN THAT CASE THAT
12 MR. MAYE SAID. IT'S A MCCORMICK CASE. IT INVOLVED -- THERE'S NO NEED TO
13 PUT ALL THIS ON THE RECORD. I NEED THEM HERE NO LATER THAN 9 O'CLOCK.
14 WE'RE AT EASE. (THE FOLLOWING OCCURRED THE NEXT DAY.) STATE READY FOR
15 THE JURY?

16 MR. MAYE: YES, SIR, YOUR HONOR. THAT'S THE LAST OF THEM.

17 THE COURT: DEFENSE READY?

18 MR. MILLER: YES, YOUR HONOR.

19 MR. SUSSMAN: YES, YOUR HONOR.

20 THE COURT: BRING 'EM IN. (THE FOLLOWING OCCURRED IN THE PRESENCE
21 OF THE JURY.) CALL YOUR NEXT WITNESS TO THE STAND, PLEASE.

22 MR. MAYE: STATE CALLS CHRIS WASH TO THE STAND, YOUR HONOR.

23 THE COURT: YOU'RE STILL UNDER OATH INVESTIGATOR -- LT. WASH.

24 Q INVESTIGATOR WASH, EARLIER THIS WEEK YOU TESTIFIED AS TO STATE'S
25 22, ALL THESE ITEMS I BELIEVE MARIJUANA HERE. AND YOU ANSWERED EARLIER

1 IN THE WEEK THAT THEY HAD BEEN IN YOUR CUSTODY AND CONTROL.

2 A YES, SIR.

3 Q OKAY. SINCE THE TIME YOU HAVE TESTIFIED HAVE THESE ITEMS
4 CONTINUED TO REMAIN IN YOUR EXCLUSIVE CUSTODY AND CONTROL?

5 A YES, SIR, THEY HAVE.

6 Q HAVE YOU TAKEN STEPS TO INSURE THAT?

7 A YES, SIR, I HAVE.

8 Q OKAY. IN THE INTERIM HAVE YOU HAD AN INDIVIDUAL FROM THE STATE
9 LAW ENFORCEMENT DIVISION PERFORM CERTAIN TESTS UPON THESE ITEMS?

10 A YES, I HAVE.

11 Q WHO WAS THAT?

12 A WILLIE SMITH.

13 Q WAS THAT DONE SO WHILE THE ITEMS WERE IN YOUR EXCLUSIVE
14 CUSTODY AND CONTROL?

15 A YES, THEY WERE.

16 Q WERE YOU ALWAYS PRESENT?

17 A YES, I WAS.

18 Q OKAY. OTHER THAN THE TESTING THAT'S BEEN DONE ON THESE, HAS
19 ANYBODY CHANGED OR ALTERED THESE IN ANY WAY?

20 A NO, SIR.

21 Q OKAY. IN THE ORIGINAL STATE THEY WERE IN, THE PACKAGING
22 MATERIAL, HAD THEY BEEN REMOVED FROM THAT PACKAGING MATERIAL?

23 A YES, THEY HAD.

24 Q OKAY. IS THE PACKAGING MATERIAL IN THESE BAGS?

25 A YES, THEY ARE.

CHRIS WASH - REDIRECT EXAMINATION BY MR. MAYE

1 Q OKAY. AS TO EACH INDIVIDUAL BRICK, DID THE PACKAGING MATERIAL
2 OFF EACH BRICK GO IN ONE OF THESE?

3 A YES, THEY DID.

4 Q THE ORIGINAL PACKAGING MATERIAL WENT IN THIS BAG.

5 A THAT'S CORRECT.

6 Q ALONG WITH THE ORIGINAL SUBSTANCE.

7 A THAT'S CORRECT.

8 MR. MAYE: I RESERVE THE RIGHT TO RECALL HIM AGAIN, BUT THAT'S ALL
9 I HAVE FOR HIM AT THIS TIME.

10 THE COURT: CROSS.

11 MR. HAWKE: NO CROSS.

12 MR. SUSSMAN: NO CROSS.

13 MR. MILLER: NOTHIN' FOR THIS WITNESS, YOUR HONOR.

14 THE COURT: THANK YOU, LIEUTENANT. YOU MAY STEP DOWN.

15 A YES, SIR.

16 THE COURT: CALL YOUR NEXT WITNESS.

17 MR. MAYE: THE STATE CALLS WILLIE C. SMITH, III, SOUTH CAROLINA LAW
18 ENFORCEMENT DIVISION.

19 WILLIE C. SMITH, III, BEING DULY SWORN, TESTIFIES

20 AS FOLLOWS:

21 DIRECT EXAMINATION

22 BY MR. MAYE

23 Q MR. SMITH, WHERE ARE YOU CURRENTLY EMPLOYED?

24 A I'M EMPLOYED WITH THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION,
25 FORMERLY KNOWN AS SLED.

1 Q IN WHAT DIVISION OF SLED DO YOU CURRENTLY WORK?

2 A I'M A SPECIAL AGENT LAW ENFORCEMENT OFFICER CHEMICAL ANALYST
3 IN THE DRUG ANALYSIS DEPARTMENT.

4 Q MR. SMITH -- OR AGENT SMITH, WHAT EDUCATIONAL BACKGROUND DO
5 YOU HAVE?

6 A I HAVE A BACHELOR OF SCIENCE DEGREE IN BIOLOGY AND CHEMISTRY
7 FROM THE UNIVERSITY OF SOUTH CAROLINA, AND THAT'S MY EDUCATIONAL
8 BACKGROUND.

9 Q HAVE YOU RECEIVED SPECIALIZED TRAINING IN THE AREA OF DRUG
10 IDENTIFICATION?

11 A YES, I HAVE TAKEN SEVERAL COURSES. I ALSO HAVE TAKEN TRAINING
12 FROM THE DRUG ENFORCEMENT ADMINISTRATION FOR DRUG ANALYSIS. I WENT
13 THROUGH A YEAR OF TRAINING AT SLED TO ANALYZE DRUGS AND I'VE TAKEN A
14 GRADUATE COURSE FOR INSTRUMENT INTERPRETATION OF DATA.

15 Q OKAY. ARE YOU APPROVED BY SLED TO ROUTINELY TEST NARCOTICS FOR
16 THEM?

17 A YES, I AM APPROVED BY SLED TO TEST NARCOTICS.

18 Q OKAY. HAVE YOU ANALYZED MARIJUANA ON OTHER OCCASIONS?

19 A YES, I HAVE.

20 Q JUST GIVE ME SOME BALLPARK OF HOW MANY TIMES YOU THINK YOU'VE
21 ANALYZED MARIJUANA.

22 A AT LEAST 200 TIMES.

23 Q AT LEAST 200 TIMES?

24 A RIGHT.

25 Q HOW MANY TIMES HAVE YOU PREVIOUSLY BEEN QUALIFIED AS AN EXPERT

WILLIE SMITH - DIRECT EXAMINATION BY MR. MAYE

1 WITNESS IN COURTS OF THIS STATE OR OTHERS IN THE AREA OF DRUG
2 IDENTIFICATION?

3 A I'VE BEEN QUALIFIED AS AN EXPERT 27 TIMES IN THE STATE OF SOUTH
4 CAROLINA.

5 MR. MAYE: YOUR HONOR, I'M GONNA OFFER AGENT SMITH AS AN EXPERT
6 IN THE AREA OF DRUG IDENTIFICATION. IF THEY CARE TO VOIR DIRE HIM AS TO
7 HIS QUALIFICATIONS I'D CERTAINLY MAKE THE WITNESS AVAILABLE FOR THEM
8 TO DO SO.

9 THE COURT: ANY QUESTIONS OF THE WITNESS?

10 MR. HAWKE: NOT ON BEHALF OF THE DEFENDANT DELEON.

11 MR. SUSSMAN: NOT ON BEHALF OF MY TWO CLIENTS.

12 MR. MILLER: NONE ON BEHALF OF GUERRERO.

13 THE COURT: HE IS RECOGNIZED AS AN EXPERT IN THE FIELD OF DRUG
14 IDENTIFICATION. YOU MAY CONTINUE.

15 Q AGENT SMITH, LET ME ASK YOU, WE HAVE HERE ITEMS THAT HAVE
16 PREVIOUSLY BEEN MARKED INTO EVIDENCE AS STATE'S EXHIBIT 22 IN THIS CASE.
17 MULTIPLE PACKAGES OF A GREEN, PLANT-LIKE SUBSTANCE. DID YOU PERFORM A
18 CHEMICAL ANALYSIS AND A SCIENTIFIC ANALYSIS ON THESE IN ORDER TO
19 ASCERTAIN WHAT THIS SUBSTANCE IS?

20 A YES. I PERFORMED A CHEMICAL ANALYSIS AND A MICROSCOPIC
21 ANALYSIS ON ALL 400 ITEMS THAT ARE IN THOSE BOXES.

22 Q AGENT SMITH, IF YOU WOULD, BASICALLY, TELL THE LADIES AND
23 GENTLEMEN OF THE JURY HOW DO YOU DETERMINE THAT THE SUBSTANCE IS
24 MARIJUANA AND NOT SOMETHIN' ELSE. HOW DO YOU DO THAT? TELL THEM HOW
25 YOU TEST IT.

1 A THE BASIC MARIJUANA TESTING IS SIMPLE. THE FIRST PART IS A
2 CHEMICAL TEST IN WHICH WE USE, DUQUENOIS TO TEST IT. DUQUENOIS -- IT'S
3 CALLED THE DUQUENOIS LEVINE TEST. WHEN YOU TAKE A SAMPLE OUT OF THE
4 MARIJUANA, JUST SAY LIKE ONE OF THESE BUNDLES RIGHT HERE, I WOULD TAKE
5 A LITTLE SAMPLE OF THE LEAF MATERIAL, PLACE IT INTO A PLAIN SPOT PLATE,
6 PLACE THE MARIJUANA SAMPLE IN THERE AND I WOULD DROP A DROP OF
7 DUQUENOIS ON IT. THAT'S THE FIRST PART OF THE TEST, THE DUQUENOIS TEST.
8 AFTER YOU DROP THE DUQUENOIS REAGENT ON IT, YOU DROP HYDROCHLORIC
9 ACID ON IT. ONCE YOU DROP HYDROCHLORIC ACID ON IT, YOU GET A COLOR
10 CHANGE WHICH CHANGES TO PURPLE. AND A MODIFICATION WHICH WAS MADE
11 TO THIS TEST WHICH IS THE LEVINE PART OF IT IS THE ADDITION OF CHLOROFORM,
12 AND YOU DROP CHLOROFORM ON IT AND IT FORMS A PINK EYE INSIDE OF THE
13 WELL OF THE SPOT PLATE. AND THIS IS A HIGHLY SPECIFIC TEST THAT'S ONLY FOR
14 MARIJUANA.

15 Q OKAY.

16 A AND THE -- BEFORE I DETERMINE -- DO MY SAMPLE FOR THE CHEMICAL
17 TEST, I LOOK UP UNDER THE MICROSCOPE AND MAKE SURE THE
18 CHARACTERISTICS ON THE PLANT ARE UNIQUELY FOR MARIJUANA, AND THE
19 MARIJUANA PLANT HAS 3 DISTINCTIVE CHARACTERISTICS. THEY HAVE
20 UNICELLULAR HAIR, MULTICELLULAR HAIR AND SYSTOLITHIC HAIR. AND THIS IS
21 UNIQUELY FOR THE MARIJUANA PLANT. AND I SEE ALL 3 CHARACTERISTICS ON
22 EACH AND EVERY SAMPLE BEFORE I DO MY CHEMICAL TEST.

23 Q OKAY. PRIOR TO DOIN' THAT, DO YOU WEIGH IT?

24 A I ONLY WEIGH MY SAMPLE OR MY EVIDENCE THAT I RECEIVE AFTER I TAKE
25 MY SAMPLE.

1 Q OKAY.

2 A AND THE FINAL WEIGHT THAT'S INSIDE AFTER I SEAL IT UP IS THE END
3 PART OF WEIGHT AFTER MY WEIGHT THAT I TAKE FOR MY SAMPLE IN MY
4 CHEMICAL TEST.

5 Q IN ONE OF THESE BAGS HERE, THERE'S A BRICK OF THAT SUBSTANCE.
6 WHAT DID YOU DO WITH THE ORIGINAL PACKAGING MATERIAL?

7 A THE ORIGINAL PACKAGING MATERIALS, EVERY TIME I TOUCH A PIECE OF
8 EVIDENCE I PUT MY INITIALS ON IT WHICH IS W.C.S. ALL THE ORIGINAL
9 PACKAGING MATERIAL THAT THIS BRICK OF MARIJUANA WAS IN IS PACKED
10 INSIDE HERE AND I RESEALED IT MYSELF, EVERY LAST BRICK OF MARIJUANA.

11 Q OKAY. DID YOU WEIGH EACH ONE OF THESE ITEMS THAT ARE HERE AS
12 STATE'S EXHIBIT 22?

13 A YES. EVERY ITEM WAS WEIGHED INDIVIDUALLY. ALL 400 BRICKS OF
14 MARIJUANA.

15 Q LET ME ASK YOU THIS: BASED ON THE CHEMICAL AND THE VISUAL TEST
16 OR THE MICROSCOPIC TEST THAT YOU DID IN THIS, WERE YOU ABLE TO REACH A
17 CONCLUSION AS TO EACH OF THESE BRICKS OF THIS PLANT MATERIAL THAT YOU
18 TESTED AS TO WHAT THIS SUBSTANCE IS?

19 A YES, I WAS ABLE TO REACH A CONCLUSION.

20 Q WHAT IS THIS SUBSTANCE?

21 A THIS SUBSTANCE IS -- IT WAS FOUND TO BE MARIJUANA FOUND IN ALL THE
22 CASES, ALL 400 BRICKS OF MARIJUANA. AND IT HAD A COMBINED WEIGHT OF
23 406,385 GRAMS, 14221 OUNCES, 892 POUNDS, AND IT'S A C-1.

24 Q OKAY. SO YOU WEIGHED ALL THIS AND IT WEIGHED 894 POUNDS. 894
25 POUNDS OF MARIJUANA LAYIN' RIGHT HERE.

WILLIE SMITH - DIRECT EXAMINATION BY MR. MAYE

1 A RIGHT. IN ALL THESE BOXES RIGHT HERE IF YOU WAS TO REWEIGH IT
2 WOULD BE 894 POUNDS FOR ALL THIS.

3 Q OKAY. AND THAT'S JUST THE MARIJUANA. THAT'S NOT COUNTIN' THE
4 WRAPPIN' MATERIAL OR THE BAGS OR ANY OF THAT STUFF.

5 A RIGHT. I NEVER WEIGHED THE PACKAGING. I ONLY WEIGHED THE ACTUAL
6 CONTROLLED SUBSTANCE.

7 MR. MAYE: YOUR HONOR, AT THIS TIME I'M GONNA MOVE TO ADMIT
8 STATE'S 22 WHICH HAS BEEN PREVIOUSLY MARKED FOR IDENTIFICATION INTO
9 EVIDENCE.

10 THE COURT: HOLD ON JUST A SECOND. WHAT'S THAT LADY NEED BACK
11 THERE? WHY DON'T Y'ALL TELL HER WHATEVER IT IS SHE NEEDS. Y'ALL CAN GO
12 AHEAD AND TELL HER WHATEVER YOU NEED TO TELL HER.

13 THE BAILIFF: SHE'S LOOKIN' FOR PROBATE.

14 THE COURT: THAT'S FINE. IS THERE ANY OBJECTION TO THE
15 INTRODUCTION OF THE EVIDENCE FROM ANY DEFENDANTS?

16 MR. HAWKE: YOUR HONOR, WE NEED TO BE HEARD BRIEFLY.

17 THE COURT: ALRIGHT. LADIES AND GENTLEMEN, I NEED TO ASK YOU TO
18 STEP IN THE JURY ROOM. DON'T DISCUSS THE CASE. (THE FOLLOWING OCCURRED
19 OUTSIDE THE PRESENCE OF THE JURY.) YES, SIR?

20 MR. HAWKE: JUDGE, IN REFERENCE TO THE MARIJUANA, WE WOULD
21 OBJECT TO ITS ADMISSION BASED UPON A LACK OF COMPLETION OF THE CHAIN OF
22 CUSTODY IN THIS REGARD. JUDGE, WE WOULD OBJECT TO THE ADMISSION OF THE
23 MARIJUANA BASED UPON A LACK OF FULFILLMENT OF THE CHAIN OF CUSTODY IN
24 REGARDS TO THIS MARIJUANA. ACCORDING TO THE FEDERAL DOCUMENT OF
25 CHAIN OF CUSTODY, WE HAVE NOT HEARD ANYTHING FROM A CRAIG MAGAHEE

1 WHO TOOK POSSESSION FROM MICHELLE WILLIAMS ON MAY 16TH 2002. WE'VE
2 ALSO NOT HEARD ANYTHING FROM A JOHN TUCKER WHO TOOK POSSESSION
3 FROM MICHELLE WILLIAMS ON MAY 18TH 2002 AS INDICATED IN THE FEDERAL
4 CHAIN OF CUSTODY. JUDGE, ALSO, THE MARIJUANA AT SOME POINT IN TIME WAS
5 TOWED FROM THE SCENE. IT WAS IN THE POSSESSION AND CUSTODY OF
6 WHOEVER WAS TOWING THE MARIJUANA IN. FOR THOSE REASONS, JUDGE, WE DO
7 NOT BELIEVE THAT THE CHAIN OF CUSTODY HAS BEEN COMPLETED AND THAT THE
8 MARIJUANA SHOULD NOT BE ALLOWED TO BE ADMITTED AT THIS TIME.

9 MR. SUSSMAN: YOUR HONOR, I'D LIKE TO JOIN IN THAT OBJECTION AND
10 MOTION AND ARGUMENT AND ALSO POINT OUT THAT THERE'S A FAIRLY CRITICAL
11 AND BASIC CONFLICT IN THE EVIDENCE EDUCED AT TRIAL FROM THE STATE
12 WHEREIN WE HEARD FROM ROGER LOWE WHO SAID THAT HE TOOK CUSTODY
13 AND CONTROL OF THE MARIJUANA.

14 AND THEN WE HEARD FROM ROOSEVELT YOUNG WHERE IT WAS STATED
15 THAT HE TOOK CUSTODY AND CONTROL OF ALL THE EVIDENCE. THAT WAS, I
16 BELIEVE, A VERBATIM TESTIMONY FROM A PREVIOUS PRELIMINARY HEARING
17 WHICH HE AGREED WITH. SO IF ROOSEVELT -- SO WE DON'T KNOW EXACTLY
18 WHO TOOK CUSTODY AND CONTROL OF THE EVIDENCE FROM EITHER OF THESE
19 TWO SCENES AND AT WHAT POINT THEY TOOK CUSTODY AND CONTROL BECAUSE
20 OF THE CONFUSION BETWEEN WHETHER IT WAS A FEDERAL INVESTIGATION OR
21 WHETHER IT WAS A STATE INVESTIGATION OR AT WHAT POINT THE AUTHORITY
22 TRANSFERRED, AT WHAT POINT WHICH AGENCY TOOK CUSTODY AND CONTROL.
23 AND FOR THAT REASON WE WOULD SUBMIT THAT THE STATE'S FAILED TO
24 ESTABLISH A PROPER CHAIN THAT WILL BRING THIS EVIDENCE, THIS MARIJUANA
25 INTO THE COURTROOM AND WE WOULD OBJECT TO ITS ADMISSION AT THIS TIME,

1 YOUR HONOR.

2 MR. MILLER: YOUR HONOR, ON BEHALF OF DEFENDANT GUERRERO I
3 WOULD JOIN IN THE MOTIONS PREVIOUSLY MADE AND ALSO BRING TO THE
4 COURT'S ATTENTION THAT AT NO TIME -- WE HAD TALKED ABOUT THIS AT THE
5 PRIOR HEARING BACK ON MARCH THAT IT WAS OBVIOUS THE STATE WAS NOT
6 GOING TO BE REQUIRED TO SHOW THE CHAIN ALL THE WAY BACK TO LAREDO,
7 TEXAS.

8 AT THAT TIME THE PROSECUTION OPINED THAT THEY ONLY HAD TO SHOW
9 A CHAIN FROM EDGEFIELD COUNTY INTO THE COURTROOM WHILE THE
10 UNDISPUTED EVIDENCE IN THIS CASE IS THAT THE EVIDENCE WAS IN THE
11 CONTROL AND CUSTODY OF AGENT DEAN TUCKER OF THE UNITED STATES
12 CUSTOMS SERVICE, AT LEAST THE EVIDENCE THAT WAS INSIDE THAT TRACTOR
13 TRAILER AND NEVER LEFT HIS CONTROL AND CUSTODY; ONLY THE CONTROL AND
14 CUSTODY OF AGENT MIZE, AND UNTIL SUCH TIME AS IT WAS SEIZED BY EDGEFIELD
15 COUNTY, WE'VE HEARD NO TESTIMONY FROM AGENT DEAN TUCKER TO SHOW
16 THAT HE TRANSFERRED OVER EVIDENCE TO EDGEFIELD COUNTY, AND QUITE
17 FRANKLY, AGENT TUCKER WOULD BE THE WITNESS THAT WOULD BE NEEDED TO
18 SAY WHETHER HE TRANSFERRED THE EVIDENCE TO ROOSEVELT YOUNG,
19 WHETHER HE TRANSFERRED THE EVIDENCE OVER TO CAPTAIN LOWE, WHO IT
20 WAS FROM EDGEFIELD COUNTY THAT HE TURNED THE EVIDENCE OVER TO.

21 AS IT STANDS RIGHT NOW, THERE'S A SUBSTANTIAL BREAK IN THE CHAIN
22 BECAUSE THERE'S NOT A FIRST LINK IN THE CHAIN, AND THAT FIRST LINK HAS
23 NOT BEEN ESTABLISHED. WE DO KNOW THAT THE EVIDENCE CAME FROM
24 PADGETT ROAD; NOT IN THE CUSTODY OF ANY OF THE DEFENDANTS; IT WAS IN
25 THE CUSTODY OF THE STATE AND CAME TO THE EDGEFIELD COUNTY SHERIFF'S

OFFICE.

WE DON'T KNOW HOW THAT HAPPENED.

CAPTAIN LOWE TESTIFIED THAT'S WHERE HE TOOK CUSTODY OF IT. HE TOOK CUSTODY OF IT OUT THERE AT THE ROAD.

WE DON'T KNOW WHERE AGENT TUCKER WAS INVOLVED IN THIS PROCESS.

WE DO KNOW THAT ALL OF THIS MARIJUANA WAS IN THE CUSTODY AND CONTROL OF AGENT DEAN TUCKER OF THE UNITED STATES CUSTOMS SERVICE WHEN IT HIT TRENTON, SOUTH CAROLINA AND WHEN IT ENDED UP ON PADGETT ROAD.

THAT HASN'T BEEN -- THAT HASN'T BEEN CONVOLUTE -- OR CONTROVERTED BY THE WITNESS STATEMENTS. AND IT'S ACTUALLY SUPPORTED BY THE DOCUMENT THAT'S IN EVIDENCE WHICH IS THE UNITED STATES -- THE CUSTODY AND RECEIPT FOR -- THE RETAINED RECEIPTS PROPERTY WHICH CLEARLY SHOWS THAT THE MARIJUANA ON MAY 18, 2002, WAS TRANSFERRED TO THE CUSTODY OF AGENT TUCKER WITH UNITED STATES CUSTOMS SERVICE, AND FROM THERE APPARENTLY ROOSEVELT YOUNG SAYS THAT HE GOT CUSTODY OF IT, BUT CAPTAIN LOWE SAYS SOMETHING COMPLETELY DIFFERENT.

HE SAYS HE'S THE ONE THAT TOOK CUSTODY OF IT WHENEVER IT CAME HERE TO THE SHERIFF'S OFFICE. WE DON'T KNOW HOW -- WHO HAD CUSTODY OF IT WHILE IT WAS BEING TRANSFERRED FROM PADGETT ROAD TO THE SHERIFF'S OFFICE. AND CERTAINLY INVESTIGATOR YOUNG IS NOT IN A POSITION TO BE IN TWO PLACES AT ONCE. HE ALSO TESTIFIED THAT HE WAS HELPING CAPTAIN LOWE UNLOAD THE MARIJUANA FROM TIENDA DELEON INTO CAPTAIN LOWE'S CAR AT THE SAME TIME. BASED ON A LACK OF ANY TESTIMONY FROM AGENT TUCKER, I

1 DON'T THINK THE CHAIN IS COMPLETE AND THEREFORE THE EVIDENCE SHOULD
2 NOT BE ADMITTED.

3 THE COURT: MOTIONS ARE DENIED.

4 THERE IS SUFFICIENT EVIDENCE IN THIS RECORD TO ESTABLISH A CHAIN
5 OF CUSTODY.

6 THERE'S EVIDENCE ABOUT CONTAINERS BEING SEALED. IT'S A
7 CONTROLLED TRANSFER.

8 SO AT SOME POINT IN TIME IT WOULD HAVE TO BE OUT OF THE POSSESSION
9 OF THE LAW ENFORCEMENT OFFICER OR AT LEAST THERE'D BE SHARED
10 POSSESSION OR ELSE YOU WOULDN'T HAVE A TRANSFER. IT WOULD BY
11 DEFINITION NEVER OCCUR. THE TESTIMONY WAS THAT IT WAS BROUGHT FROM
12 THE PADGETT ROAD SITE STILL IN THE CHIMNEY TO THE EDGEFIELD COUNTY JAIL
13 AREA. THAT'S WHERE SERGEANT -- CAPTAIN LOWE -- EXCUSE ME -- OPENED AND
14 TOOK POSSESSION OF THAT AMOUNT OF MARIJUANA, AND THAT AT THE STORE
15 THAT IT WAS OPEN -- THE ONE CHIMNEY WAS OPENED THERE AT THE STORE. ALL
16 THE CHIMNEYS WERE OPENED AT THE DIRECTION OF THE FEDERAL AGENTS
17 UNDER THE EXTENDED BORDER DOCTRINE. THE MOTION'S RESPECTFULLY
18 DENIED. THE ITEMS WILL BE MARKED INTO EVIDENCE. NOW I THINK YOU ALL
19 HAD AGREED THAT YOU WOULD USE THE NUMBERING SYSTEM THAT HAD BEEN
20 USED BY THE ANALYST. NOW THAT WE'VE GOT A DIFFERENT ANALYST, HAS THE
21 NUMBERING SYSTEM CHANGED?

22 MR. MAYE: DO YOU HAVE A DIFFERENT NUMBERING SYSTEM IN ORDER TO
23 KEEP TRACK OF ALL THESE ITEMS NOW IN THESE INDIVIDUAL BAGS?

24 A YES, I DO.

25 THE COURT: DO YOU KNOW WHAT NUMBER---

1 MR. MAYE: YOUR HONOR, I'LL PUT TESTIMONY IN THE RECORD AS TO
2 WHAT HIS NUMBERING SYSTEM IS.

3 THE COURT: OKAY. WELL, CAN YOU JUST TELL US RIGHT NOW SO THAT
4 BEFORE WE BRING THE JURY IN---

5 A I NUMBERED THEM ONE THROUGH 400 EVEN THOUGH THEY WERE
6 NUMBERED DIFFERENTLY ON SOME OF THE INDIVIDUAL PACKAGES.

7 MR. MAYE: SO THE NUMBERS 1 THROUGH 400 ARE THE NUMBERS YOU PUT
8 IN THERE.

9 A THAT IS CORRECT.

10 THE COURT: HOW CAN WE TELL WHICH NUMBERS ARE YOURS?

11 A EVERY NUMBER THAT I PUT ON THERE, I PUT MY INITIALS WITH THE
12 NUMBER. RIGHT BELOW THE NUMBER.

13 THE COURT: THEY'RE IN EVIDENCE BAGS NOW?

14 A THAT IS CORRECT.

15 MR. MAYE: ON THE OUTSIDE OF THIS EVIDENCE BAG WHERE IT SAYS 96---

16 THE COURT: OKAY. I SEE WHAT YOU'RE TALKIN' ABOUT.

17 MR. MAYE: YOUR HONOR---

18 THE COURT: JUST FLIP IT AROUND. DO YOU SEE? DID YOU SEE WHAT HE
19 WAS TALKIN' ABOUT?

20 MR. SUSSMAN: WELL, THAT'S WHY I CAME OVER TO TAKE A LOOK. IT
21 LOOKS LIKE HE PUT THE OLD EVIDENCE BAGS INTO NEW EVIDENCE BAGS.

22 A THAT'S CORRECT.

23 MR. MAYE: MAY IT PLEASE THE COURT, YOUR HONOR? JUDGE BAGGETT
24 TOLD ME HE SAID BOY WHEN THEY RULE FOR YOU, KEEP YOUR MOUTH SHUT. BUT
25 ONE THING I DID WANNA DO IF I COULD, YOUR HONOR. WE HAD SUCH EXTENSIVE

1 -- DURING THE PREVIOUS TIME THAT WE HEARD THIS CASE -- WE HAD SUCH
2 EXTENSIVE DISCUSSION ABOUT THE BORDER SEARCH ISSUE. I DID JUST WANT TO
3 BRIEFLY PUT THIS ON THE RECORD TO MAKE A RECORD ON THIS ISSUE AND CITE A
4 COUPLE ISSUES IF IT DOESN'T OFFEND THE COURT.

5 THE COURT: NO. THAT'S FINE.

6 MR. MAYE: IF YOU WANT ME TO DO THAT OUTSIDE THE PRESENCE OF THE
7 JURY, I'LL DO SO NOW BECAUSE I JUST WANTED TO PUT IT IN THE RECORD
8 BASICALLY AS TO RULING ON THE EXTENDED BORDER SEARCH ISSUE.

9 THE COURT: I WOULD SAY DO IT NOW BECAUSE I DON'T THINK IT IS
10 REALLY---

11 MR. MAYE: OKAY.

12 THE COURT: --A CONCERN FOR THE JURY.

13 MR. MAYE: ALRIGHT. YOUR HONOR, CERTAINLY IN RESPONSE, I
14 APPRECIATE THE COURT HAS ALREADY RULED ON THE EXTENDED BORDER
15 SEARCH DOCTRINE. THESE CASES ALL GO BACK TO ALEXANDER -VS- UNITED
16 STATES FOUND AT 385 U.S. 977--

17 THE COURT: SLOW DOWN NOW. SHE'S GOT TO TAKE IT ALL DOWN, AND
18 SHE'S GOTTA HEAR YOU OVER THEM. SO---

19 MR. MAYE: ALEXANDER -VS- U.S. FOUND AT 385 U.S. 977. IT'S BEEN
20 RECOGNIZED BY THE SECOND, THIRD, FOURTH, FIFTH AND THE NINTH CIRCUITS,
21 THE EXTENDED BORDER DOCTRINE. THERE ARE REPORTED CASES IN ALL OF
22 THOSE CIRCUITS. IN THE 4TH CIRCUIT U.S. -VS- BILIR. THAT'S 592 F 2^D 735, AND U.S. -
23 VS- DIAZ SEGOVIA (PHONETIC) AT 520 F SUP 313. THE DOCTRINE HAS BEEN
24 EXTENDED EVEN TO PRIVATE RESIDENCES AND PRIVATE LIVING QUARTERS
25 ACCORDING TO U.S. -VS- JACOBSON AT 102 SUPREME COURT 398 AND U.S. -VS-

1 ALPHONSO AT 759 F 2^D 728.

2 YOUR HONOR, IT HAS BEEN FOUND THAT THE INABILITY TO REMOVE
3 CONTRABAND DURING LAPSES IN SURVEILLANCE CAN ESTABLISH AN
4 UNCHANGED CONDITION, AND THAT'S FOUND AT U.S. -VS- GARCIA. THAT'S 672 F
5 2^D 1349 AND US -VS- HARDING (PHONETIC) AT 743 F 2^D 256, AND THEY SAY IN THIS
6 CASE SURVEILLANCE CAN ESTABLISH UNCHANGED CONDITION.

7 IN THIS CASE I THINK THE RECORD IS CLEAR THAT UNDER THE EXTENDED
8 BORDER SEARCH DOCTRINE THE AGENTS CAN FOLLOW WHEREVER IT IS IN THE
9 UNITED STATES. THEY CAN CONDUCT A FOLLOW UP SEARCH EVEN IF THEY'VE
10 CONDUCTED INITIAL SEARCH AND THAT'S ACCORDING TO U.S. -VS- ESPERICUETA
11 REYES AND THAT'S FOUND AT 631 F 2^D 616.

12 THE TESTIMONY IN THIS RECORD IS CLEAR THAT BOTH AT THE STORE AND
13 AT THE SHERIFF'S DEPARTMENT THAT AGENT LOWE OPENED THESE ITEMS THAT
14 WERE IN AN UNCHANGED CONDITION AND THE RECORD IS COMPLETE WITH
15 REFERENCES THAT IT WAS IN AN UNCHANGED CONDITION SEALED UP INSIDE
16 THESE NAILED UP CHIMNEYS. THE CHIMNEYS HAD TO BE DESTROYED TO REMOVE
17 THE CONTRABAND, YOUR HONOR. AND THEN WE'VE MET -- CERTAINLY MET THE
18 CHAIN OF CUSTODY FROM THE POINT IN TIME INVESTIGATOR LOWE INDICATED
19 THAT HE TOOK CUSTODY AND CONTROL OF IT, YOUR HONOR. AND THAT'S,
20 BASICALLY, WHAT THE STATE WOULD RELY ON. I UNDERSTAND THE COURT'S
21 ALREADY RULED. THANK YOU FOR THAT TIME TO PUT THAT ON THE RECORD.

22 THE COURT: IS THERE ANYTHING ELSE WE NEED AT THIS POINT? ALRIGHT.
23 MADAM COURT REPORTER,?

24 THE COURT REPORTER: YES, SIR.

25 THE COURT: THEY HAD AGREED, AGENT SMITH, THAT ONE PARTICULAR

1 BAG WOULD BE MARKED, AND I THINK IT WAS 162 OR SOMETHING LIKE THAT.

2 THE COURT REPORTER: YES. 162 AND 364. IT HAD 2 NUMBERS ON IT.

3 THE COURT: ARE THOSE BAGS IN ANY ORDER LIKE, SAY, ONE BOX
4 CONTAINS 1 THROUGH 25 OR ARE THEY ALL JUST JUMBLED TOGETHER?

5 MR. MAYE: I JUST SNATCHED ONE OUT HERE, YOUR HONOR. THIS IS #345
6 FOR THIS BOX.

7 THE COURT: DO YOU KNOW HOW THEY WERE PUT IN THE BOXES?

8 A NO, YOUR HONOR, I DON'T.

9 MR. MAYE: THIS ONE IS #352. THEY'RE PROBABLY -- I'D SAY IT'S AN
10 AVERAGE OF ABOUT 16 IN EACH BOX. SOME OF THESE BOXES ARE LARGER. THIS
11 ONE HAS 13 IN IT. THERE ARE APPROXIMATELY 16 OF THESE APPROXIMATELY
12 KILOGRAM WEIGHT IN THESE BOXES. AND, YOUR HONOR, I PROPOSE AT SOME
13 POINT IN TIME IF IT'S NECESSARY TO TAKE A RECORD IN THIS CASE, I'LL LAY ALL
14 THESE OUT AND WE'LL VIDEO TAPE 'EM; WE'LL TAKE PHOTOGRAPHS OF 'EM AND
15 DOCUMENT ALL THE EVIDENCE, HOW MANY BOXES IN CAMERA.

16 THE COURT: WELL, THE ONLY THING I'M WORRIED ABOUT RIGHT NOW IS
17 HOW SHE'S GONNA MARK IT. AND THE AGREEMENT WAS THAT WE WERE GONNA
18 MARK -- PUT ONE STICKER ON ONE BAG AND THAT THE UNDERSTANDING WAS
19 THAT THE BAGS HAD BEEN NUMBERED BY THE ANALYST 1 THROUGH 400. IT'S 400
20 BAGS?

21 A THAT'S CORRECT, YOUR HONOR.

22 THE COURT: SO NOW WE GOT DIFFERENT NUMBERS WHICH IS NO
23 PROBLEM. IT'S JUST WE DON'T KNOW WHERE THE ORIGINAL STICKER IS IN THAT
24 PILE OF DOPE.

25 MR. MAYE: I WOULD ASK, YOUR HONOR, THAT WE RECOGNIZE THERE IS

1 FOR PURPOSES OF THIS RECORD. RECOGNIZE THAT THERE IS A DUPLICATE OF ITEM
2 22. ONE INSIDE OF THE SEALED UP BAG AND ONE ON THE OUTSIDE OF THE BAG
3 THAT WE'LL CALL THE NUMBER OUT ON. WE'LL RECOGNIZE THAT AND LET THE
4 RECORD REFLECT THAT. THAT'S PRETTY CLEAR. BECAUSE THAT OTHER
5 PACKAGING MATERIAL IS FOLDED UP INSIDE THE BAG.

6 THE COURT: WHY DON'T I ASK THE ONE THAT IT REALLY MATTERS TO.
7 WHAT DO YOU WANT TO DO?

8 THE COURT REPORTER: OH, I WOULD JUST PREFER TO TAKE A RANDOM
9 ONE AND MARK IT AGAIN WITH THE SAME NUMBER.

10 THE COURT: ALRIGHT. JUST HAND HER--

11 MR. MAYE: LET THE RECORD REFLECT THAT I RETURNED THIS EVIDENCE;
12 IT DIDN'T STAY WITH ME. WHAT'S THAT NUMBER?

13 A 345.

14 THE COURT: THAT'S EASY TO REMEMBER. (STATE'S EXHIBIT #22 RECEIVED
15 IN EVIDENCE.) OKAY. BRING THE JURY. (THE FOLLOWING OCCURRED IN THE
16 PRESENCE OF THE JURY.) ALRIGHT. THE ITEMS ARE MARKED INTO EVIDENCE AS
17 WHAT? STATE'S EXHIBIT WHAT?

18 THE COURT REPORTER: 22.

19 THE COURT: 22. ALRIGHT. SOLICITOR, YOU MAY CONTINUE.

20 MR. MAYE: YOUR HONOR, THE RECORD DOES REFLECT THESE ITEMS ARE
21 IN EVIDENCE.

22 THE COURT: YES, SIR. WE JUST MARKED ONE BAG, BUT THE WHOLE
23 AMOUNT IS IN EVIDENCE.

24 MR. MAYE: THANK YOU, YOUR HONOR.

25 THE COURT: AS EXHIBIT #22. AND THE UNDERSTANDING IS THAT THAT

AGENT SMITH - DIRECT EXAMINATION BY MR. MAYE

1 EXHIBIT STICKER, 22, IS DEEMED TO APPLY TO EVERY INDIVIDUAL BAG WHICH ARE
2 INDIVIDUALLY NUMBERED, AND WE'RE GONNA USE FOR THE RECORD, I GUESS,
3 SUB NUMBERS WOULD BE THE ONES THAT THIS AGENT APPLIED WHICH HAVE HIS
4 INITIALS BY THEM.

5 Q AGENT SMITH, LET ME ASK YOU, DID YOU GENERATE A WRITTEN REPORT
6 OF YOUR TEST RESULTS IN THIS CASE?

7 A YES, I DID GENERATE A REPORT FOR THE RESULTS OF THIS CASE.

8 Q YOU HAVE IT WITH YOU HERE?

9 A YES, I DO.

10 Q CAN I SEE THAT. WOULD YOU TAKE A LOOK AT THOSE ITEMS STRAIGHT
11 THERE. ARE THOSE ITEMS YOUR WRITTEN REPORT THAT YOU PREPARED IN THIS
12 CASE?

13 A YES, IT IS. THIS IS MY ORIGINAL REPORT.

14 MR. MAYE: YOUR HONOR, I'D ASK TO PUT THIS IN EVIDENCE.

15 THE COURT: SHOW IT TO OPPOSING COUNSEL.

16 MR. MAYE: I THINK THEY'VE ALL BEEN PREVIOUSLY PROVIDED A COPY OF
17 IT.

18 MR. HAWKE: YOUR HONOR, WE WOULD OBJECT ON THE BASIS OF THIS IS
19 NOTHING BUT REDUCING THE TESTIMONY THAT HE HAS JUST GIVEN TO WRITING
20 AND THEN DUPLICATING IT AND SUBMITTING IT INTO EVIDENCE, AND IT IS ALSO
21 HEARSAY.

22 MR. SUSSMAN: NO OBJECTION ON BEHALF OF MR. HERNANDEZ AND MR.
23 AVILA-AROJONA.

24 MR. MILLER: NO OBJECTION ON BEHALF OF DEFENDANT GUERRERO, YOUR
25 HONOR.

AGENT SMITH - CROSS-EXAMINATION BY MR. HAWKE

1 THE COURT: I'M SORRY. I JUST WANTED TO READ RULE 6 AGAIN. THE
2 OBJECTION BY DEFENDANT DELEON IS SUSTAINED. MARK IT FOR IDENTIFICATION.

3 MR. MAYE: YOUR HONOR, I WILL WITHDRAW EVEN TRYING TO PUT IT IN. IF
4 THERE'S ANY DISPUTE ABOUT IT GOING IN---

5 THE COURT: NO. MARK IT FOR I.D.

6 MR. MAYE: YES, SIR.

7 THE COURT: OR EITHER MARK IT AS A COURT'S I.D. I DON'T CARE WHICH.
8 YOU CAN GIVE HIM BACK THE ORIGINAL AND USE A COPY.

9 MR. MAYE: NO PROBLEM WITH THAT---

10 THE COURT: BUT SINCE WE REFERRED TO IT, I WANT IT IN THE RECORD.
11 THE JURY WON'T SEE IT, BUT---

12 MR. MAYE: THAT'S FINE. (STATE'S EXHIBIT #27 MARKED FOR
13 IDENTIFICATION.)

14 THE COURT: OKAY.

15 Q JUST ONE MORE QUESTION. AGENT SMITH, ANY DOUBT IN YOUR MIND WE
16 GOT 894 POUNDS OF MARIJUANA SITTING RIGHT HERE?

17 A THERE IS NO DOUBT IN MY MIND THIS IS 100 PERCENT ALL MARIJUANA
18 THAT'S IN EACH AND EVERY ONE OF THESE PACKETS.

19 Q ANSWER ANY QUESTIONS THE DEFENSE HAS FOR YOU.

20 THE COURT: CROSS.

21 CROSS-EXAMINATION

22 BY MR. HAWKE

23 Q JUST ONE. WHEN YOU ARE TRAINED, ARE YOU TRAINED TO REMOVE THE
24 STEMS, STALKS AND ROOTS FROM EACH OF THE MARIJUANA CONTAINERS IN
25 ORDER TO MAKE SURE THAT ITEMS OR PARTS OF THE MARIJUANA THAT DO NOT

AGENT SMITH - CROSS-EXAMINATION BY MR. HAWKE

1 CONTAIN THC ARE NOT WEIGHED?

2 A IT DEPENDS ON THE TYPE OF EXHIBIT OR THE TYPE OF EVIDENCE THAT IS
3 SUBMITTED TO THE LAB.

4 Q OKAY.

5 A AS FAR AS IN THIS CASE, IT'S IMPOSSIBLE TO DO DUE TO THE FACT THAT
6 THEY COMPRESSED IT AND THEY MADE BRICKS OF MARIJUANA.

7 Q OKAY. BUT THE ONLY THING YOU WOULD HAVE TO DO TO REMOVE THE
8 STEMS AND STALKS AND ROOTS WOULD BE TO CUT THE ITEM OPEN, REMOVE
9 THOSE ITEMS FROM IT AND THEN REWEIGH IT. AM I CORRECT?

10 A NOT IF IT'S COMPRESSED IN A BRICK FORM. IF IT'S A PLANT IT'S EASY TO
11 DO THAT IN A PLANT FORM.

12 Q OKAY. BUT ALL YOU WOULD HAVE TO DO IS CUT IT OPEN AND THEN THE
13 VACUUM PART -- IT WOULD BE RELIEVED FROM ITS VACUUM SEAL AND THEN IT
14 WOULD BREAK APART. WOULDN'T IT? THAT'S HOW THEY USE IT, ISN'T IT?

15 A YEAH, BUT IN THIS CASE THESE BRICKS THEY ARE ACTUALLY COMPRESSED
16 INTO BRICKS OF MARIJUANA, COMBINING ALL ITEMS TOGETHER, THE PLANT
17 MATERIAL, THE STEMS, THE STALKS AND THE SEEDS COMPRESSED ALL TOGETHER
18 INTO A BRICK.

19 Q NOW YOU WERE TOLD AND TAUGHT AS PART OF YOUR TRAINING THAT THE
20 PROPER WAY TO WEIGH MARIJUANA WAS TO REMOVE THE STEMS?

21 A YES.

22 Q TO REMOVE THE STALKS?

23 A YES.

24 Q TO REMOVE THE ROOTS?

25 A YES, IF APPLICABLE.

AGENT SMITH - CROSS-EXAMINATION BY MR. HAWKE

1 Q ALRIGHT. IT'S OKAY. I UNDERSTAND YOUR EXPLANATION AS TO WHY
2 YOU DID IT. BUT THIS PARTICULAR -- THAT HAS NOT BEEN DONE IN THIS CASE.

3 A THAT IS CORRECT.

4 Q DID YOU GET TO SEE THE PREVIOUS REPORT, LAB REPORT THAT HAD BEEN
5 DONE ON THIS PARTICULAR MARIJUANA?

6 A NO. I HAVE NO PRIOR KNOWLEDGE OF THIS CASE.

7 Q LET ME SHOW YOU WHAT'S---

8 MR. MAYE: WELL, IT'S HEARSAY, BUT HE CAN PUT IT IN IF HE WANTS TO.
9 HE CAN PUT IN ALL THE TEST REPORTS THAT ANYBODY HAS DONE. I'LL BE HAPPY
10 FOR 'EM TO COME IN.

11 MR. HAWKE: OKAY. THEN, YOUR HONOR, WE'D MARK IT.

12 THE COURT: Y'ALL WISH TO BE HEARD?

13 MR. SUSSMAN: WHAT DO YOU -- CAN I SEE WHAT YOU GOT. OKAY.

14 THE COURT: IF THERE'S NO OBJECTION, MARK IT IN EVIDENCE.
15 (DEFENDANT'S EXHIBIT #5 RECEIVED IN EVIDENCE FOR DELEON.)

16 Q LET ME SHOW YOU WHAT'S BEEN MARKED DEFENDANT DELEON'S EXHIBIT
17 #5. CAN YOU LOOK AT THAT AND TELL ME WHAT THE DRUG WEIGHT WAS
18 DETERMINED BY THAT CHEMIST WITH THE FORENSIC SECTION OF THE AIKEN
19 COUNTY SHERIFF'S OFFICE.

20 A THE RESULTS, THE GROSS WEIGHT WAS LISTED AS 905.89 POUNDS.

21 Q WHAT WAS YOUR GROSS WEIGHT?

22 A MINE WAS WEIGHED WHICH DID NOT CONTAIN ANY PACKAGING, JUST THE
23 PLANT MATERIAL, WAS 406,305 GRAMS, 14,221 OUNCES, 894 POUNDS.

24 Q ALRIGHT. AND ANY FORENSIC CHEMIST WOULD KNOW NOT TO WEIGH THE
25 PACKAGING. ISN'T THAT RIGHT? THEY DON'T -- YOU DON'T -- WHEN YOU SAY

AGENT SMITH - CROSS-EXAMINATION BY MR. HAWKE

1 THE WEIGHT OF THE SAMPLE IS -- EXCUSE ME -- THE TOTAL WEIGHT OF THE
2 SAMPLE IS THAT WOULD NOT INCLUDE PACKAGING. ISN'T THAT CORRECT?

3 A I DO NOT KNOW ANYTHING ABOUT AIKEN'S POLICE DEPARTMENT POLICIES
4 OR THE SHERIFF'S OFFICE POLICY AND PROCEDURE AS HOW THEY HANDLE THEIR
5 EVIDENCE.

6 Q DO YOU KNOW OF ANY CHEMIST, ANY TRAINED CHEMIST ANALYZING
7 DRUGS IN THE STATE THAT IS AUTHORIZED TO DO THIS KIND OF WORK THAT IS
8 NOT TAUGHT, THAT YOU DO NOT CONSIDER -- THAT YOU DO NOT IN THE TOTAL
9 WEIGHT INCLUDE THE PACKAGING?

10 A COULD YOU REPEAT THE QUESTION?

11 Q SURE. DO YOU KNOW OF ANY CHEMIST OR YOU KNOW OF ANYBODY
12 TEACHING CHEMISTS WITHIN THIS STATE THAT ARE TEACHING THAT THE TOTAL
13 WEIGHT OF AN ITEM IS ONLY DETERMINED AFTER REMOVAL OR AFTER
14 SUBTRACTION OF THE WRAPPING, PACKAGING?

15 A THE WAY THAT I WAS TRAINED I DO NOT KNOW---

16 Q I THINK I SAID THAT WRONG.

17 A ALRIGHT.

18 Q MAYBE IT'S MY PROBLEM IN PHRASING THE QUESTION. WHEN YOU GO TO
19 TRAINING OR WHEN A CHEMIST GOES TO TRAINING, ONE OF THE THINGS YOU'RE
20 TAUGHT IS TO SEPARATE THE PACKAGING TO DETERMINE THE WEIGHT OF THE
21 GENERAL PACKAGING OF ITEMS. AM I CORRECT?

22 A RIGHT.

23 Q OKAY. AND THEN WHEN YOU WOULD DETERMINE A TOTAL WEIGHT, YOU
24 SUBTRACTED, YOU WEIGHED BOTH THE ITEM AND THE PACKAGING YOU
25 SUBTRACT THE PACKAGING WHEN YOU PUT DOWN A FIGURE FOR THE TOTAL

AGENT SMITH - CROSS-EXAMINATION BY MR. HAWKE

1 WEIGHT. AM I CORRECT?

2 A WELL, AS FAR AS SLED GOES, WE ONLY WEIGH THE ACTUAL SAMPLE.

3 Q OKAY. ALRIGHT. DO YOU KNOW OF ANY CHEMIST WHO IS TAUGHT TO
4 INCLUDE THE ACTUAL PACKAGING OR THE WRAPPING IN THE TOTAL WEIGHT OF
5 THE SAMPLE?

6 A I DO NOT HAVE PERSONAL KNOWLEDGE OF THAT.

7 Q SO GENERALLY EVERY CHEMIST IF THEY'RE GIVEN A TOTAL WEIGHT, THEY
8 HAVE SUBTRACTED OUT THE WEIGHT OF THE WRAPPING OR PACKAGING.

9 A THAT'S THE WAY THAT MY POLICY AND OUR PROCEDURES THAT WE DO AT
10 SLED. WE JUST WEIGH THE ACTUAL SAMPLE WITHOUT THE PACKAGING.

11 Q AND THAT'S STANDARD FOR A CHEMIST.

12 A I CANNOT SAY THAT'S STANDARD FOR CHEMISTS.

13 Q BUT YOU DON'T KNOW ANY CHEMISTS THAT DON'T DO IT THAT WAY.

14 THE COURT: ARE Y'ALL GONNA OBJECT OR AM I GONNA SIT HERE AND
15 LISTEN TO THE SAME QUESTION ASKED 25 TIMES? THE WEIGHT OF THE
16 PACKAGING HAS -- IT'S NOT AGAINST THE LAW IN SOUTH CAROLINA TO POSSESS
17 CELLOPHANE OR PLASTIC.

18 MR. MAYE: YOUR HONOR, I'M GONNA---

19 THE COURT: LET'S MOVE ON, PLEASE.

20 MR. MAYE: I'M NOT GONNA OBJECT TO HIM LEADIN'. HE CAN DO
21 WHATEVER HE WANTS TO IN THAT REGARD.

22 MR. HAWKE: YOUR HONOR, I'M DONE.

23 CROSS-EXAMINATION

24 BY MR. SUSSMAN

25 Q MR. SMITH, MY NAME IS WILLIAM SUSSMAN. WE MET JUST A LITTLE WHILE

AGENT SMITH - CROSS-EXAMINATION BY MR. SUSSMAN

1 AGO, DIDN'T WE?

2 A THAT'S CORRECT.

3 Q I REPRESENT MR. HERNANDEZ AND MR. AVILA. WHEN DID YOU PERFORM
4 THE TEST OF WHICH YOU JUST TESTIFIED?

5 A I PERFORMED THE TEST -- TODAY'S FRIDAY. ON WEDNESDAY AND
6 THURSDAY. ON ALL THESE SAMPLES.

7 Q OF THIS WEEK.

8 A OF THIS WEEK.

9 Q WHERE WAS THE TEST PERFORMED?

10 A IT WAS PERFORMED AT THE LOCAL POLICE DEPARTMENT LABORATORY
11 FACILITIES.

12 Q DESCRIBE THE LABORATORY FACILITIES FOR THE JURY, PLEASE.

13 A IT'S IN AN OFFICE WITH A HOOD FOR VENTILATION WITH A DESK. IT'S A
14 SMALL OFFICE WITH A VENTILATED HOOD THAT IS APPROVED BY OSHEA TO DO
15 TESTING FOR MARIJUANA.

16 Q APPROVED BY WHOM?

17 A OSHEA.

18 Q WHO IS THAT?

19 A I KNOW IT. I JUST CAN'T THINK OF IT. IT'S A SAFETY, YOU KNOW,
20 APPROVAL WHICH THEY HAVE TO GO THROUGH. IT'S STATE FOR SAFETY.

21 Q WHO WAS PRESENT DURING THE TESTING?

22 A WHO WAS PRESENT? I WAS THE ANALYST HANDLING THE CASE. I HAD 3 --
23 WELL, 3 OTHER AGENTS ASSISTING ME AND THE OFFICER THAT HAD CUSTODY
24 OVER ALL THE MARIJUANA STAYED THERE THE WHOLE TIME.

25 Q AND WHO WAS THAT?

AGENT SMITH - CROSS-EXAMINATION BY MR. SUSSMAN

1 A I JUST KNOW HIM AS CHRIS.

2 Q OKAY. HE WAS THERE THE WHOLE TIME?

3 A HE WAS THERE THE WHOLE TIME.

4 Q OKAY. WERE THERE ANY OTHER CHEMISTS PRESENT?

5 A THERE WERE 3 OTHER CHEMISTS PRESENT AT VARIOUS TIMES.

6 Q BUT YOU WERE THE ONE THAT WAS ACTUALLY DOING THE TESTING.

7 A RIGHT. THE EVIDENCE NEVER LEFT MY EYESIGHT FROM THE OTHER
8 CHEMISTS. THE ONLY THING THE CHEMISTS DID WAS JUST CUT OPEN THE
9 PACKAGES -- PACKAGING FOR ME. THAT'S WHAT ALL THE OTHER CHEMISTS DID.

10 Q AND YOU DID -- YOU'RE THE ONE PERSONALLY, YOU YOURSELF, TESTED
11 EACH AND EVERY BAG.

12 A I DID ALL THE CHEMICAL TESTING AND I DID ALL THE MICROSCOPIC
13 TESTING ON ALL 400 ITEMS MYSELF.

14 Q AND SO THAT MEANT YOU TOOK A SAMPLE FROM EACH BAG.

15 A I TOOK A SAMPLE FROM EACH AND EVERY BRICK OF MARIJUANA.

16 Q AND THAT WOULD BE ONE SAMPLE PER BAG.

17 A THAT IS CORRECT.

18 Q AND THE SAMPLE WAS -- JUST TO GIVE US AN IDEA ABOUT HOW BIG WAS
19 THE SAMPLE?

20 A ALL I NEEDED WAS ONE LEAF OUT OF THE BRICK. THAT'S ALL IT TOOK. OR
21 ONE SMALL LEAF. TINY PORTION THAT I CAN LOOK UP UNDER THE MICROSCOPE.

22 Q IS THIS OUR REPRESENTATIVE BAG?

23 A YES, THAT'S IT.

24 Q SO AND EACH BAG WEIGHS ABOUT HOW MUCH?

25 A THEY VARY FROM BAG TO BAG.

AGENT SMITH - CROSS-EXAMINATION BY MR. SUSSMAN

1 Q WHAT'S THE RANGE?

2 A AROUND 100 -- WELL, 1000 GRAMS.

3 Q CAN YOU GIVE US THAT IN, YOU KNOW, REGULAR WEIGHT, POUNDAGE,
4 OUNCES. WHAT DOES THAT COME TO?

5 A 1000 GRAMS. I MEAN POUNDS AND OUNCES.

6 Q 1000 GRAMS IS THE SAME AS 1000 OUNCES?

7 A NO. ONE KILOGRAM -- WELL, ONE KILOGRAM EQUALS 1000 GRAMS. I
8 KILOGRAM EQUALS 2.2 POUNDS.

9 Q SO THIS WEIGHS ABOUT HOW MANY POUNDS? OR OUNCES?

10 A 2.2 POUNDS.

11 Q OKAY. APPROXIMATELY THAT'S WHAT EACH BUNDLE WEIGHED?

12 A RIGHT. IT'LL VARY THOUGH. SOME WEIGHED MORE, SOME WEIGHED LESS.
13 AROUND 900 TO 1000.

14 Q OKAY. SO AT ANY RATE YOU TAKE -- YOU ONLY NEED TO TAKE ONE LEAF
15 OR SO OUT OF EACH BAG.

16 A RIGHT. THE WEIGHT I TOOK WAS JUST VERY MINIMUM.

17 Q AND HOW MANY LEAVES DO YOU IMAGINE WAS IN THERE? IN ONE OF
18 THESE BAGS.

19 A I DO NOT KNOW.

20 Q DO YOU HAVE ANY IDEA AT ALL?

21 A I HAVE NO IDEA.

22 Q WOULD YOU SAY IT'S MORE THAN 100?

23 A I HAVE NO IDEA.

24 Q BUT BASICALLY YOU ONLY TESTED ONE LEAF PER BAG.

25 A ONE SAMPLE PER BAG.

1 Q AND THAT'S -- SO NOW THIS REPORT THAT JUST CAME IN, HOW LONG
2 HAVE YOU BEEN WITH SLED?

3 A I'VE BEEN WITH SLED FOR 4 YEARS.

4 Q AND YOUR ACTUAL POSITION WITH SLED IS?

5 A SPECIAL AGENT; CHEMICAL ANALYST; CRIMINAL.

6 Q DO YOU EVER GET INVOLVED IN THE CERTIFICATION OR TRAINING OF
7 LOCAL LAW ENFORCEMENT TO BE MARIJUANA EXAMINERS?

8 A YES, I DO.

9 Q OKAY. ARE YOU FAMILIAR WITH THE FORMS THAT THEY'RE REQUIRED TO
10 FILL OUT IN REGARDS TO THEIR TESTING AND THEIR QUALIFICATIONS?

11 A YES, I AM.

12 Q WOULD YOU TAKE A LOOK AT THE FIRST THREE PAGES OF THIS EXHIBIT
13 AND TELL ME IF YOU'RE FAMILIAR WITH THESE FORMS. YEAH, I'M SORRY. I'M
14 REFERRING ALL THIS TIME TO DEFENDANT'S 5.

15 A ON WHICH FORM?

16 Q OKAY. THE FIRST 3.

17 A YOU MEAN THAT ONE? AIKEN COUNTY SHERIFF'S OFFICE. THAT REPORT?

18 Q YEAH, ARE YOU FAMILIAR WITH THAT FORMAT? THE FIRST PAGE.

19 A I AM NOT FAMILIAR WITH THIS FORMAT OR AIKEN COUNTY SHERIFF'S
20 OFFICE FORENSIC SECTION. I DO NOT KNOW WHAT THEY DO IN THEIRS.

21 Q WHAT ABOUT THE SECOND PAGE?

22 A I AM NOT FAMILIAR WITH THIS TYPE OF FORM.

23 Q SO HAVE YOU EVER SEEN A CERTIFICATION FORM BY LOCAL LAW
24 ENFORCEMENT AGENCY WHERE THEY STATE IN THEIR CERTIFICATION THEY'RE
25 CERTIFIED BY SLED? YOU'VE NEVER SEEN ANY LOCAL LAW ENFORCEMENT--

1 HAVE YOU SEEN ANY LOCAL LAW ENFORCEMENT CERTIFICATION?

2 A I HAVEN'T SEEN ANY LOCAL LAW ENFORCEMENT CERTIFICATION HOW
3 THEY PRINT UP THEIR LABORATORY REPORTS.

4 Q WELL, WHAT ABOUT HOW THEY PRINT UP THEIR AFFIDAVITS REGARDING
5 THEIR CERTIFICATION AND QUALIFICATIONS TO TEST MARIJUANA?

6 A I HAVEN'T SEEN ANY FORMS HOW THEY PRINT THAT UP EITHER.

7 Q SO YOU TRAIN THESE FOLKS TO ANALYZE MARIJUANA.

8 A THAT'S CORRECT.

9 Q AND---

10 THE COURT: WAIT A MINUTE. YOU MEAN HIM? OR DID YOU MEAN SLED?

11 MR. SUSSMAN: YEAH, HE TESTIFIED EARLIER THAT HE'S TAKEN PART IN
12 THE SUPERVISION AND TRAINING OF LOCAL LAW ENFORCEMENT TO TEST
13 MARIJUANA.

14 Q IS THAT NOT CORRECT?

15 A I HAVE BEEN INVOLVED WITH SOME OF THE TRAINING FOR MARIJUANA
16 SCHOOL.

17 Q ARE YOU FAMILIAR WITH THE COURSE OUTLINE OF MATERIALS THAT
18 THESE FOLKS, LOCAL LAW ENFORCEMENT, HAVE TO STUDY TO BE CERTIFIED?

19 MR. MAYE: YOUR HONOR, AT THIS POINT IN TIME I AM GOING TO OBJECT
20 TO RELEVANCE.

21 THE COURT: WHERE IN THE WORLD---

22 Q WHAT---

23 THE COURT: ---ARE Y'ALL GOIN' WITH -- HOLD ON A SECOND. WHERE ARE
24 Y'ALL GOIN' WITH THIS?

25 MR. SUSSMAN: WELL, JUDGE, THIS---

1 MR. MAYE: YOUR HONOR, I THINK WE NEED TO TAKE THIS UP OUTSIDE
2 THE---

3 THE COURT: LADIES AND GENTLEMEN, STEP BACK IN THE JURY ROOM.
4 DON'T DISCUSS THE CASE. (THE FOLLOWING OCCURRED OUTSIDE THE PRESENCE
5 OF THE JURY.) YES, SIR?

6 MR. SUSSMAN: OKAY. AM I RESPONDING TO HIS OBJECTION OR YOUR
7 COMMENTS WHERE I'M GOING WITH THIS? CAUSE THAT -- WHAT DO YOU WANT
8 ME TO RESPOND TO?

9 THE COURT: YES, SIR, WITH A LITTLE BETTER TONE.

10 MR. SUSSMAN: YES, SIR. OKAY. I APOLOGIZE. I DON'T MEAN TO---

11 THE COURT: WELL, LET ME TELL YOU, LAST NIGHT WHEN I LEFT HERE I
12 FOUND MY WIFE IN THE FLOOR. I HAD TO CALL AN AMBULANCE AND HAVE HER
13 TAKEN TO THE HOSPITAL. IF I'M A LITTLE TESTY THIS MORNING, I APOLOGIZE TO
14 Y'ALL, BUT THE THEORY OF THE DEFENSE ALL ALONG HAS BEEN THAT THEY
15 DIDN'T KNOW THAT THERE WERE DRUGS IN THE CONTAINERS. I AM JUST
16 STRUGGLING AS TO WHY WE ARE DEALING WITH AN AIKEN COUNTY
17 INVESTIGATION. SO, PLEASE, EXPLAIN IT TO ME, AND I'D BE HAPPY TO LET Y'ALL
18 PRESENT IT.

19 MR. SUSSMAN: YES, SIR. AND I'M SORRY ABOUT YOUR WIFE, JUDGE.

20 THE COURT: BY THE WAY, MR. HAWKE, I SAW YOUR SON AT THE HOSPITAL
21 LAST NIGHT TOO. HE HAD AN ANT BITE.

22 MR. HAWKE: HE WAS THERE LAST NIGHT?

23 THE COURT: HE HAD AN ANT BITE.

24 MR. SUSSMAN: I'M DOING THIS OFF THE CUFF BECAUSE I WAS NOT AWARE
25 THIS REPORT WAS GOING TO BE INTRODUCED UNTIL JUST A FEW MINUTES AGO.

1 THE ONLY POINT I'M TRYING TO MAKE, AND I'D LIKE TO MAKE THIS OUTSIDE THE
2 PRESENCE OF THE WITNESS IF IT WOULD BE PERMISSIBLE?

3 THE COURT: YES, SIR, GO AHEAD.

4 MR. SUSSMAN: MAY I ASK THAT MR. SMITH BE EXCUSED FOR JUST A
5 MINUTE.. THANK YOU.

6 THE COURT: DON'T DISCUSS YOUR TESTIMONY, PLEASE, AGENT SMITH,
7 WITH ANYBODY. YES, SIR?

8 MR. SUSSMAN: I THINK MR. HAWKE WANTED THIS REPORT IN TO SHOW
9 THE DIFFERENCE IN POUNDAGE BETWEEN WHAT WAS WEIGHED JUST A FEW
10 MONTHS AGO BY AIKEN AND WHAT WAS WEIGHED BY THIS EXPERT.

11 THE COURT: WHICH I COULD UNDERSTAND IF YOU WERE CLOSE TO 100
12 POUNDS.

13 MR. SUSSMAN: WELL---

14 THE COURT: GO AHEAD.

15 MR. SUSSMAN: YOU KNOW, FOR WHATEVER RELEVANCE WEIGHT OR
16 PURPOSE THAT I GUESS WE ALL HAVE IN THIS 10-POUND DIFFERENCE, ALL I'M
17 TRYING TO ELICIT FROM THIS WITNESS IS THAT THE PERSON THAT TESTED IT 2 OR 3
18 MONTHS AGO, AT LEAST APPARENTLY FROM THE EXHIBIT IT APPEARS TO BE
19 CERTIFIED BY THE SAME PEOPLE THAT CERTIFIED HIM AND THAT HE, IN FACT,
20 TRAINS THESE LOCAL FOLKS TO COME IN AND LEARN HOW TO WEIGH THIS STUFF.
21 I'M TRYIN' TO SEE IF WHAT SHE -- THE WAY IN WHICH SHE QUALIFIED HERSELF
22 AND CERTIFIED HERSELF AS AN EXPERT FOR WEIGHIN' THIS STUFF IS SIMILAR TO
23 THE PROCEDURES THAT USED TO TRAIN THESE FOLKS. JUST TO SHOW THAT IT
24 APPEARS THAT THE WEIGHING PROCESS WAS SIMILAR TO -- BACK THEN WAS
25 SIMILAR TO THE WEIGHING PROCESS UTILIZED BY THIS WITNESS. THAT'S ALL I'M

1 TRYING TO SHOW IS GIVE THE JURY SOME FOUNDATION FOR WHATEVER WEIGHT
2 IT MAY HAVE THAT IT WAS A SLED PERSON THAT WEIGHED IT LAST TIME; IT'S A
3 SLED PERSON NOW; NOW WITHIN A SPACE OF 2 MONTHS THERE'S A 10-POUND
4 DIFFERENCE. I DON'T REALLY THINK IT'S THAT BIG OF A DEAL, BUT I DIDN'T PUT
5 THE EXHIBIT IN, AND I'M TRYIN' THE BEST WAY I CAN WHICH MAY NOT BE THE
6 VERY BEST WAY TO SHOW -- WELL, MAYBE IT DOES HAVE SOME RELEVANCE AND
7 HERE'S WHY. THAT'S ALL I WAS TRYIN' TO DO AND FRANKLY I -- NOW I THINK
8 BASED ON WHAT I SEE TO BE MAYBE SOME DISPLEASURE FROM THE COURT AS TO
9 THE WAY I WAS HANDLING THE CROSS, THAT THE JURY'S PROBABLY GONNA
10 THINK THAT I'M A FOOL TO CONTINUE AT THIS POINT AND---

11 THE COURT: I APOLOGIZE TO YOU.

12 MR. SUSSMAN: I'M STUCK NOW.

13 THE COURT: I APOLOGIZE IF YOU GOT THAT IMPRESSION. I JUST -- AGAIN,
14 WE'RE GOIN' BACK TO SOMETHIN' I SAID A COUPLE OF DAYS AGO. I UNDERSTAND
15 THAT IF THE DRUGS ARE THROWN OUT, I MADE THE STATEMENT, IF THE DRUGS
16 ARE THROWN OUT, THE CASES ARE THROWN OUT. AND I UNDERSTAND THE
17 DEFENSE'S POSITION IS TO DILIGENTLY REPRESENT THEIR CLIENTS. THAT'S YOUR
18 -- THAT'S YOUR OATH. I THINK THAT MAYBE ALL OF US WERE KINDA CAUGHT BY
19 SURPRISE BECAUSE ALL I HAD HEARD UP UNTIL THIS POINT WAS THAT NONE OF
20 THE DEFENDANTS KNEW ABOUT ANY DOPE. I'M STRUGGLIN' TO SEE HOW YOU
21 ALL ARE GOIN' TO PREVAIL -- AND IT'S NOT YOUR BURDEN, BUT I'M STRUGGLIN'
22 TO SEE HOW YOU ALL ARE GONNA PREVAIL ON A THEORY THAT MAYBE THE
23 WEIGHTS ARE A LITTLE OFF OR THAT THE JURY'S GONNA CARE ONE IOTA THAT
24 IT'S 10 POUNDS DIFFERENCE. LIKE I SAID, IF IT WAS CLOSE TO 100 POUNDS, CLOSE
25 TO A CRITICAL WEIGHT, THAT'D BE SOMETHIN', BUT YOU'VE GOT 900 POUNDS OF

1 DOPE SITTING OVER THERE ACCORDING TO THE STATE. AND YOU CAN TAKE OUT
2 STEMS, PACKAGING AND ALL THAT STUFF AND YOU STILL GONNA HAVE MORE'N
3 100 POUNDS OF DOPE I WOULD THINK.

4 ANYWAY, SO IF I'M, YOU KNOW, IF I'M A LITTLE BIT SHORT WITH YOU ALL I
5 APOLOGIZE.

6 I WAS PRETTY TOUGH ON THE SOLICITOR YESTERDAY, AND I APOLOGIZE
7 FOR THAT.

8 BUT QUITE HONESTLY, I DON'T THINK I'M DOING ANYTHING WRONG
9 BECAUSE I THINK THIS TRIAL IS TAKING AN INORDINATE AMOUNT OF TIME. I THINK
10 IT IS BEING DRAGGED OUT, AND I THINK IF THERE'S ANY PROBLEM WITH OFFENDING A
11 JURY, IT IS THAT YOU ALL KEEP GOING INTO ALL THIS STUFF THAT PROBABLY JUST
12 DOESN'T HAVE A THING TO DO WITH THEIR ULTIMATE DECISION WHICH IS
13 KNOWLEDGE.

14 NOW I APOLOGIZE TO YOU, AND I'M GONNA SHUT MY MOUTH AND I'M
15 GONNA SIT UP HERE AND I'M GONNA BE THE MOST NEUTRAL AND DETACHED
16 JUDGE THAT COULD POSSIBLY EXIST. BUT IF THAT JURY HAS TO COME BACK NEXT
17 WEEK, THAT'S FINE. I JUST DON'T KNOW WHY WE'RE GOING DOWN SOME OF
18 THESE ROADS. AND IF I DIDN'T -- IF I DIDN'T DO MY COMMUNICATION OF THAT IN
19 THE PROPER FASHION, I AM TRULY SORRY, BUT I THINK I DID OKAY. I'LL LET YOU
20 EXPLORE THIS -- THE TESTING PROCEDURES, YOU KNOW, IF YOU'RE GONNA -- IF
21 YOU'RE JUST TRYING TO MAKE AN ARGUMENT TO THE JURY IT WAS A BOTCHED
22 THING FROM THE BEGINNING, THAT LAW ENFORCEMENT BOTCHED IT, I
23 UNDERSTAND YOU CAN MAKE THAT ARGUMENT, AND I UNDERSTAND YOU GOT
24 SOMETHING IN THE RECORD YOU CAN MAKE THAT ARGUMENT FROM. BRING HIM
25 BACK OUT.

1 MR. MAYE: MAY IT PLEASE THE COURT, YOUR HONOR? I DID JUST WANT
2 TO PUT THIS ON THE RECORD. I APOLOGIZE YESTERDAY. I HAVE MANY QUIRKS
3 AND I HAVE A LITTLE A.D.D. AND WHEN I GET FOCUSED OFF I JUST -- I DID NOT SEE
4 THE COURT -- I NEITHER HEARD NOR SAW THE JUDGE COME OUT UNTIL I REALIZED
5 THAT YOU---

6 THE COURT: MR. MAYE---

7 MR. MAYE: I'M VERY SORRY FOR THAT. I DID NOT APOLOGIZE FOR THAT
8 YESTERDAY, YOUR HONOR. AND OFTEN TIMES I DO NOT GET UP WHEN THE JURY
9 COMES AND LEAVES JUST BECAUSE I DO HAVE A TOUCH OF THAT AND I CAN'T
10 REMEMBER TO DO IT EVERY TIME. SO I FIGURE I NEED TO BE CONSISTENT ONE
11 WAY OR THE OTHER. IT IS CERTAINLY NOT -- I ALSO FEEL SOMETIMES LIKE WHEN
12 FOLKS JUMP UP EVERY TIME THE JURY COMES IN NOW SOMETIMES IT GETS TO BE A
13 LITTLE BIT CONTRIVED GIVEN THE SETTING THAT WE'RE IN BUT I MAKE A
14 CONSCIOUS DECISION NOT TO RISE WHEN THE JURY COMES AND LEAVES.

15 THE COURT: WELL, THAT'S---

16 MR. MAYE: BUT IT'S CERTAINLY NOT A LACK OF RESPECT FOR THE COURT
17 AND I WENT TO SLEEP AT THE WHEEL YESTERDAY. SO I DO WISH TO APOLOGIZE
18 FOR THAT. I DID NOT DO SO YESTERDAY.

19 THE COURT: MR. MAYE, WE'RE ALL HUMAN, AND I AM THE MOST GUILTY
20 OF THAT. AND I WISH I COULD SIT UP HERE LIKE MT. RUSHMORE AND NEVER
21 SHOW ANY EXPRESSION. I TRY NEVER TO LAUGH AT ANYTHING. I TRY TO NEVER
22 SHOW ANY FACIAL EXPRESSIONS. I TRY TO HAVE THE BIGGEST POKER FACE IN
23 THE WORLD. BUT I'M HUMAN TOO, AND I APOLOGIZE TO YOU ALL.

24 MR. MAYE: YOUR HONOR, THAT WAS ALL OUTSIDE THE PRESENCE OF THE
25 JURY.

1 THE COURT: IN CASE THERE'S ANY -- YEAH, ALL THIS WAS DONE OUTSIDE
2 THE PRESENCE OF THE JURY. BUT IN CASE THERE'S ANY QUESTION, I THINK ALL
3 OF YOU HAVE DONE AN OUTSTANDING JOB REPRESENTING YOUR RESPECTIVE
4 INTERESTS. I DO HAVE THE UTMOST RESPECT FOR ALL OF YOU; NOT ONLY ON A
5 PROFESSIONAL LEVEL, BUT ON A PERSONAL LEVEL. I'M JUST TRYIN' TO GET THIS
6 CASE TO THE JURY. THAT'S ALL I'M TRYIN' TO DO. I'M SORRY. WHY DON'T WE
7 TAKE A COUPLE OF MINUTES AND THEN WE CAN GET STARTED.

8 MR. MAYE: THANK YOU, YOUR HONOR. (THERE WAS A BRIEF RECESS.)

9 MR. HAWKE: I APOLOGIZE FOR THIS, JUDGE. AGAINST MY BETTER
10 JUDGMENT AND USUALLY THE WAY I TRY CASES I STILL OPENED THIS DOOR. I'M
11 THE ONE WHO CREATED THIS MESS.

12 THE COURT: MR. HAWKE, YOU MIGHT BE 100 PERCENT RIGHT AND I 100
13 PERCENT WRONG. SO DON'T BE APOLOGIZING TO ME. IN THE FIRST PLACE, ANY
14 TIME I EVER THINK I KNOW WHAT A JURY'S THINKIN', I OUGHTA JUST SLAP
15 MYSELF UPSIDE THE HEAD BECAUSE I DON'T KNOW WHAT A JURY'S THINKIN'.
16 AND SO, AGAIN, YOU MAY BE 100 PERCENT RIGHT. SECONDLY, I -- I JUST --
17 HOPEFULLY IT'S FEW AND FAR BETWEEN, THE TIMES THAT I FORGET THAT I WAS
18 SITTING WHERE YOU ALL ARE SITTING.

19 MR. HAWKE: I THINK WE CAN ALL TELL YOU HAVE NOT FORGOTTEN, AND
20 THAT'S PLEASANT FROM THE COURT.

21 THE COURT: BRING THE JURY IN. (THE FOLLOWING OCCURRED IN THE
22 PRESENCE OF THE JURY.) LADIES AND GENTLEMEN, I WANT TO SAY SOMETHING TO
23 YOU FOLKS, AND NO ONE HAS ASKED ME TO SAY THIS. I'M SAYIN' THIS MYSELF. I
24 JUST WANNA MAKE SURE THAT I DON'T CONVEY TO YOU ANY KIND OF FALSE
25 IMPRESSION. WHEN I GIVE YOU THE CHARGE ON THE LAW, I'M GOING TO TELL

1 YOU THE SENTENCE THAT WILL STATE THAT IF YOU BELIEVE THAT I HAVE ANY
2 PERSONAL OPINIONS ABOUT THE CASE YOU'RE TO REMOVE THOSE TOTALLY FROM
3 YOUR MIND. IT'S IN EVERY CHARGE I GIVE.

4 PLEASE, UNDERSTAND THAT I WAS 100 PERCENT SINCERE WHEN I TOLD
5 YOU AT THE OUTSET OF THE CASE THAT MY FOCUS IS ON THE RULES AND ON THE
6 OPERATION OF COURT. I'M NOT EVEN THINKING ABOUT THE FACTS OF THE CASE.
7 THAT'S YOUR JOB TO DO.

8 I HAD NOT PLANNED ON SAYING THIS, BUT I THINK I SHOULD IN FAIRNESS
9 TO EVERYBODY INVOLVED. I HAD SOMEWHAT OF A FAMILY EMERGENCY LAST
10 NIGHT. MY WIFE WAS PUT IN THE HOSPITAL. SHE'S OKAY. BUT IF -- IF I'VE BEEN
11 SHORT WITH ANYBODY TODAY, IT'S AN UNUSUAL DAY.

12 I JUST WANT YOU TO UNDERSTAND THAT -- THAT YOU ALL DECIDE THE
13 FACTS OF THE CASE, AND I'M A REAL HARD PERSON TO READ ON THE BEST OF
14 DAYS. SO DON'T -- DON'T TRY TO READ ANYTHING INTO THE WAY I'M SAYING
15 ANYTHING OR HOW I'M ACTING OR WHAT'S GOIN' ON OR WHAT I'M REALLY
16 THINKIN' BECAUSE IF I'VE BEEN TESTY TODAY, IT'S PROBABLY BECAUSE OF
17 WHAT'S GOIN' ON IN MY PERSONAL LIFE AND DOESN'T HAVE A THING TO DO WITH
18 THIS CASE.

19 SO WITHOUT GOIN' ANY FURTHER I JUST WANNA TELL YOU THAT THAT
20 SITUATION'S GOIN' ON, AND TO APOLOGIZE TO EVERYBODY IF I'VE BEEN SHORT
21 WITH 'EM IN ANY WAY, AND TO MAKE SURE YOU UNDERSTAND THAT HOW I'M
22 ACTIN' DOESN'T HAVE A THING TO DO WITH YOUR JOB. OKAY? AND IT DOESN'T
23 HAVE ANYTHING TO DO WITH MY ASSESSMENT OF ANY ASPECT OF THE CASE. IT
24 JUST HONESTLY DOESN'T. ALRIGHT. SO, MR. SUSSMAN, I APOLOGIZE TO YOU ALL
25 IF I WAS SHORT WITH YOU OR WITH THE SOLICITOR OR ANYONE ELSE, AND YOU

1 MAY CONTINUE WITH YOUR LINE OF QUESTIONING.

2 MR. SUSSMAN: THANK YOU, YOUR HONOR.

3 THE COURT: THE OBJECTION IS OVERRULED.

4 Q LET ME ASK YOU THIS, AGENT SMITH: JUST BEFORE WE TOOK A BREAK
5 YOU HAD A CHANCE TO REVIEW THE FIRST 3 PAGES OF THIS REPORT THAT MR.
6 HAWKE HAD ADMITTED AS D-5?

7 A YES, I REVIEWED ALL 3 OF THESE PAGES.

8 Q OKAY. AND IN YOUR INVOLVEMENT WITH THE TRAINING AND
9 SUPERVISION OF THE LOCAL LAW ENFORCEMENT PEOPLE TO COME TO SLED FOR
10 TRAINING IN ANALYZING MARIJUANA, ARE THEY INSTRUCTED TO FILL OUT SOME
11 SORT OF CERTIFICATION WHEN THEY DO A REPORT?

12 A THE MAIN PART THAT I'M INVOLVED WITH AS FAR AS THE TRAINING GOES,
13 I'M INVOLVED WITH THE PRACTICAL PART, THE ON-HAND EXPERIENCE, ON
14 TEACHING THEM HOW TO IDENTIFY MARIJUANA UNDER THE MICROSCOPE.

15 Q OKAY.

16 A THAT'S THE MAIN PART THAT I'M INVOLVED WITH.

17 Q AND WHEN YOU'RE IN TRAINING YOU'RE TRAINED TO DO SOME SORT OF
18 CERTIFICATION WHEN YOU DO A REPORT SAYING THAT YOU'RE CERTIFIED UNDER
19 SLED TO DO THIS ANALYSIS?

20 A YES.

21 Q AND YOU FILL OUT REPORTS LIKE THAT ON A COMMON BASIS?

22 A AS A CHEMICAL ANALYST, RIGHT, I FILL OUT REPORTS. I GENERATE AN
23 OFFICIAL SLED LABORATORY REPORT.

24 Q AND YOU IN YOUR CERTIFICATION ON YOUR REPORT YOU INDICATE THAT
25 YOU'RE CERTIFIED BY SLED? IS THAT TRUE? THAT IN YOUR REPORT YOU WOULD

AGENT SMITH - CROSS-EXAMINATION BY MR. SUSSMAN

1 FILL OUT SOMETHING SAYING YOU'RE CERTIFIED BY SLED TO DO THE
2 EXAMINATION?

3 A RIGHT.

4 Q DO YOU ACTUALLY SIGN AN AFFIDAVIT?

5 A I AS FAR AS MY REPORTS GO, I DO NOT SIGN AN AFFIDAVIT.

6 Q IN YOUR REPORTS DO YOU -- WHEN YOU SIGN -- YOU DO SIGN A REPORT
7 WHEN YOU GENERATE A REPORT.

8 A YES, I DO.

9 Q AND WHEN YOU SIGN THAT REPORT DO YOU INDICATE WHAT TYPE OF
10 EXAMINATION THAT YOU DO WHETHER IT BE MICROSCOPIC OR CHEMICAL?

11 A YES, I DO.

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

13 THE COURT: OKAY.

14 MR. MILLER: NO QUESTIONS FOR THIS WITNESS, YOUR HONOR.

15 THE COURT: BACK TO YOU, SOLICITOR.

16 MR. MAYE: NOTHIN' ELSE, YOUR HONOR.

17 THE COURT: MR. HAWKE?

18 MR. HAWKE: NO, YOUR HONOR.

19 THE COURT: THANK YOU VERY MUCH. YOU MAY STEP DOWN. IS HE FREE
20 TO GO?

21 MR. MAYE: I'D ASK THAT HE BE RELEASED.

22 MR. SUSSMAN: NO OBJECTION.

23 MR. HAWKE: NO OBJECTION ON BEHALF OF DEFENDANT DELEON, YOUR
24 HONOR.

25 THE COURT: AGENT SMITH, YOU WANT TO STAY AROUND EDGEFIELD A

AGENT PERRY - DIRECT EXAMINATION BY MR. MAYE

1 LITTLE BIT LONGER OR ARE YOU READY TO GO ON BACK?

2 A READY TO GO, YOUR HONOR.

3 THE COURT: THAT GENTLEMAN WITH YOU OUT THERE?

4 A YES, YOUR HONOR.

5 THE COURT: YOU GENTLEMEN ARE FREE TO GO IF YOU LIKE. THANK YOU.
6 ANYTHING FURTHER FROM THE STATE?

7 MR. MAYE: THE STATE RECALLS AGENT COBY PERRY FOR A BRIEF
8 MATTER.

9 THE COURT: YOU'RE STILL UNDER OATH, AGENT PERRY.

10 DIRECT EXAMINATION OF AGENT PERRY BY MR. MAYE

11 Q INVESTIGATOR PERRY, I BELIEVE YOU PREVIOUSLY TESTIFIED YOU'VE
12 BEEN WORKIN' IN DOPE FOR HOW LONG?

13 A 15 YEARS.

14 Q OKAY. HAVE YOU BOUGHT AND SOLD MARIJUANA AS A RESULT OF
15 WORKIN' IN UNDERCOVER INVESTIGATIONS?

16 A YES, SIR.

17 Q PERSONALLY SOLD IT OUT ON THE STREETS?

18 A YES, SIR.

19 Q PERSONALLY BOUGHT IT OUT ON THE STREETS?

20 A YES, SIR.

21 Q OKAY. HERE IN EDGEFIELD COUNTY?

22 A YES, SIR.

23 Q ACROSS SOUTH CAROLINA?

24 A YES, SIR.

25 Q OKAY. WHAT'S THE STREET VALUE OF MARIJUANA?

AGENT PERRY - DIRECT EXAMINATION BY MR. MAYE

1 A BREAK IT DOWN INTO POUNDS, THE STREET VALUE BY THE TIME IT'S
2 BUSTED UP, PUT OUT, ESTIMATE AROUND \$2400 A POUND RETURN IS WHAT THEY
3 WOULD GET. A LOTTA PEOPLE SELL IT BY THE POUND AMOUNTS. AROUND THIS
4 AREA I'D SAY YOU'D PAY \$1200 A POUND.

5 Q WHAT'S THE TOTAL VALUE OF THIS RIGHT HERE? STREET VALUE.

6 A I'D HAVE TO SAY STREET VALUE WOULD BE AROUND \$2,000,000.

7 Q OKAY. SO ABOUT IF YOU HAD 20 OF THESE, WHAT'S THE STREET VALUE OF
8 ABOUT 20 OF THOSE?

9 A CLOSE TO \$100,000.

10 Q IF YOU JUST CULLED OUT 20?

11 A YES, SIR.

12 Q NOTHIN' ELSE.

13 THE COURT: CROSS.

14 MR. HAWKE: I DON'T HAVE ANY CROSS, YOUR HONOR.

15 MR. SUSSMAN: NO CROSS.

16 THE COURT: MR. MILLER?

17 MR. MILLER: NOTHING, YOUR HONOR.

18 THE COURT: THANK YOU, MR. PERRY. YOU MAY STEP DOWN. ANYTHING
19 ELSE?

20 MR. MAYE: YOUR HONOR, I'D LIKE TO TAKE A BRIEF MINUTE TO REVIEW
21 MY NOTES AND THEN I'M GONNA REST, YOUR HONOR. IF I COULD HAVE JUST A
22 BRIEF MOMENT.

23 THE COURT: SURE.

24 MR. MAYE: MAY I SEE THE INDICTMENT, YOUR HONOR.

25 THE COURT: YES, SIR.

1 MR. MAYE: THANK YOU. THE STATE OF SOUTH CAROLINA RESTS ITS CASE.

2 THE COURT: LADIES AND GENTLEMEN, I TOLD YOU ON TUESDAY THAT
3 WHENEVER WE REACHED THIS POINT, WHENEVER IT WAS, THAT I HAD TO GO
4 OVER LEGAL ISSUES WITH THE ATTORNEYS. I KNOW YOU'VE BEEN IN AND OUT A
5 LOT THIS MORNING. BUT THIS IS AN ESSENTIAL STAGE FOR YOU TO GO OUT. SO
6 TYPICALLY THIS TAKES AT LEAST 15 MINUTES. IT'S OFTEN 20 TO 30 MINUTES, BUT
7 IT WILL BE AT LEAST 15 MINUTES THAT YOU'LL BE OUT. IF IT LOOKS LIKE IT'S
8 GONNA BE A LONGER TIME THAN THAT, I'LL SEND WORD TO YOU. IF IT'S GONNA
9 BE AN EXTENDED PERIOD OF TIME, I'LL LET YOU LEAVE THE ROOM AND WALK
10 OUT AND DO THINGS LIKE THAT. BUT IT SHOULDN'T BE MORE THAN 15 OR 20
11 MINUTES UNLESS WE RUN INTO SOME SNAGS. DON'T DISCUSS THE CASE. MADAM
12 BAILIFF, TAKE THE JURY BACK.

13 (THE FOLLOWING OCCURRED IN THE ABSENCE OF THE JURY.) Y'ALL BEAR
14 WITH ME JUST A SECOND. I APOLOGIZE. THERE WAS A MATTER I NEEDED TO
15 COMMUNICATE WITH ANOTHER JUDGE ABOUT TOTALLY UNRELATED TO THIS
16 CASE. I GOT AN E-MAIL. ALRIGHT. MOTIONS?

17 MR. HAWKE: YOUR HONOR, ON BEHALF OF THE DEFENDANT DELEON AT
18 THIS TIME WE WOULD MOVE FOR A DIRECTED VERDICT OF ACQUITTAL. THE
19 REASON FOR THAT IS THERE HAS BEEN NO PROOF OF THE ESSENTIAL ELEMENT OF
20 KNOWLEDGE. AS A MATTER OF FACT, THE STATE'S CASE THUS FAR HAS PROVEN
21 THAT THERE WAS NO KNOWLEDGE AND ALL THE CIRCUMSTANCES ALSO SUPPORT
22 THE FACT THAT THERE WAS NO KNOWLEDGE. I'D POINT MOST CLEARLY TO THE
23 EVIDENCE ELICITED FROM ROOSEVELT YOUNG WHICH SAID THAT HE HAD NO
24 REASON TO BELIEVE THAT FREDY DELEON KNEW THAT HE WAS RECEIVING
25 ANYTHING OTHER THAN FURNITURE. THAT HE HAD NO REASON TO BELIEVE THAT

1 FREDY DELEON HAD ANY KNOWLEDGE THAT THERE WAS MARIJUANA IN THE
2 CHIMNEY, AND THAT THE CHIMNEY ITSELF WAS SEALED AND WITHOUT THE
3 ASSISTANCE OF THE HELP OF A DRUG DOG OR A X-RAY IT WAS IMPOSSIBLE TO
4 LOOK AT THE FURNITURE AND TELL THAT ANYTHING ELSE WAS IN THERE.

5 ALSO, IN COMBINATION WITH THAT, JUDGE, IS THE TESTIMONY OF THE
6 STATE'S OFFICERS WHICH INDICATE THAT THE MANIFEST WITH MR. DELEON'S
7 NAME IS A MANIFEST THAT WAS GENERATED AS A RESULT OF SOME UNKNOWN
8 PERSON SEBASTIAN EXPORTACIONES AND PROVIDING THAT INFORMATION, AND
9 NO ONE WAS ABLE TO VERIFY IN ANY WAY THAT FREDY DELEON WAS INVOLVED
10 IN THAT. THERE'S NO PROOF AT ALL THAT HE PROVIDED HIS NAME AND ADDRESS
11 OR ANYTHING TO THOSE PARTICULAR FOLKS.

12 THE OTHER THINGS THAT SUPPORT THE PROPOSITION THAT HE HAD NO
13 KNOWLEDGE IN THIS CASE IS THE OPINION OF ROOSEVELT YOUNG THAT HE WAS
14 NOT THE DRUG DEALER IN THIS CASE; THE FACT THAT FREDY DELEON HAD HAD A
15 CLEAN RECORD AND HE HAD NEVER HAD HIS NAME HEARD OR MENTIONED IN
16 ANY PRIOR DRUG DEALING AND THEY HAVE NEVER HEARD OF HIS NAME SINCE.

17 THE OTHER THINGS THAT INDICATE THAT HE HAD NO KNOWLEDGE WAS
18 THAT DESPITE HAVING A TRUCKLOAD OF FURNITURE COME TO HIS PLACE, HE HAD
19 MADE ABSOLUTELY NO PLANS TO BE ABLE TO STORE IT OR TAKE IT IN. THE
20 STORAGE ROOM, ACCORDING TO EVERYBODY, COULD NOT POSSIBLY HOLD WHAT
21 WAS SENT IN.

22 THE OTHER THINGS THAT INDICATE THAT HE HAD NO KNOWLEDGE AND
23 CONTROL OF WHAT WAS GOING ON IN REFERENCE TO THE MARIJUANA, ONE OF
24 THE OTHER TWO INDIVIDUALS THAT DIRECTED EVERYBODY THAT THEY EVEN
25 SELECTED ALL THE FURNITURE TO BE OFFLOADED. THEY SAID FREDY DELEON DID

1 NOT SELECT ANY FURNITURE TO BE OFFLOADED. AND WE THINK THAT SUPPORTS
2 A FINDING OR CIRCUMSTANCES THAT SHOW THAT HE HAD NO KNOWLEDGE. IF HE
3 KNEW THAT THIS WAS HIS MARIJUANA AND HE BROUGHT IT HERE AND HE KNEW
4 MARIJUANA WAS HERE, HE WOULD DEFINITELY PARTICIPATE IN THE SELECTION
5 PROCESS OF WHAT COMES OFF THE TRUCK AND DOESN'T COME OFF THE TRUCK.
6 AND IT'S CLEARLY TESTIFIED TO BY THE STATE THAT THERE WERE OTHER
7 INDIVIDUALS THAT DID -- THAT MADE ALL THE SELECTION AND THAT SORTA
8 THING. YOU'LL SEE THAT FREDY DELEON ALSO INDICATES THAT HE HAD NO
9 KNOWLEDGE BY GOING ABOUT HIS BUSINESS AND GOIN' TO SELL SANDWICHES
10 OR WHATEVER WHILE THE OTHER INDIVIDUALS THAT HAVE ESCAPED IN THIS
11 CASE DIRECTED THEY MOVE ELSEWHERE WITH SUPPOSEDLY HIS 850 POUNDS OR
12 SO OF MARIJUANA.

13 THEY ALSO VERIFIED THAT -- EVERY OFFICER INDICATED THAT THERE IS
14 NO EVIDENCE THAT HE HAD EVER CONTACTED JAMCO INTERNATIONAL,
15 SEBASTIAN EXPORTANCIONES, THE TRUCKING COMPANY, THE DRIVER OR
16 ANYBODY OUT THERE OR ANYBODY IN LAREDO.

17 THERE WAS ALSO -- THEY ALSO ACKNOWLEDGE THAT IN ORDER FOR
18 THEM TO KNOW THAT THERE WAS MARIJUANA IN THESE PARTICULAR ITEMS OF
19 FURNITURE THAT THEY NEEDED AN X-RAY MACHINE AND DOGS. AND YET BUT
20 WHEN IT COMES TO HIM, THEY EXPECT HIM TO KNOW WITHOUT THE BENEFIT OF
21 THAT.

22 JUDGE, THE OTHER THING THAT WE ARE TELLING YOU IN REFERENCE TO
23 HIS NON-PARTICIPATION AND HIS NON-KNOWLEDGE IS THAT WHEN HIS PLACE IS
24 SEARCHED THEY DON'T FIND ANY DRUGS, PARAPHERNALIA, SCALES, PACKAGING
25 MATERIALS OR ANYTHING LIKE THAT ANY PLACE DESPITE THE FACT THAT WHEN

1 THE OFFICERS ARRIVE THEY HAVE NO PRIOR WARNING AT ALL -- HE HAS NO
2 PRIOR WARNING AT ALL THAT THEY ARE COMING.

3 THIS STUFF LOOKS LIKE FURNITURE; IT SMELLS LIKE FURNITURE; IT FEELS
4 LIKE FURNITURE. THERE IS NEVER SHOWN ANY ATTEMPT WHATSOEVER BY FREDY
5 DELEON OR ANYONE ON HIS BEHALF TO OPEN THE FURNITURE AND LOOK IN IT OR
6 INSPECT IT IN ANY WAY. AND MR. ROOSEVELT YOUNG EVEN STATED THAT TEAM
7 ONE HAD TO TELL FREDY DELEON WHAT HE HAD IN THE FURNITURE. THEY DID
8 NOT -- AND IN FURTHER SUPPORT OF THE FACT THAT THE OFFICERS THEMSELVES
9 DID NOT THINK HE HAD ANY KNOWLEDGE, THEY DIDN'T DO ANY SEARCH
10 WARRANT FOR HIS HOME, HIS CARS, HIS TRUCK OR ANYTHING LIKE THAT. IT
11 SEEMS ALMOST PREPOSTEROUS TO THINK THAT SOMEBODY WOULD GO TO ALL
12 THE TROUBLE TO HIDE THE DRUGS LIKE WAS HIDDEN IN THIS CASE TO AVOID
13 DETECTION IN EVERY WAY POSSIBLE TO DECEIVE EVERYBODY IN THE WHOLE
14 CHAIN LINK OF GETTING HERE AND THEN PUT THE BILL OF LADING IN HIS NAME
15 WHICH HIS HOME ADDRESS WHERE HIS WIFE AND SMALL CHILD ARE.

16 THERE'S NOTHING ILLEGAL ABOUT HAVING FURNITURE, AND THERE'S
17 NOTHING ILLEGAL ABOUT BEING AROUND SOMEBODY ELSE THAT'S POSSIBLY A
18 CRIMINAL. AND UNDER THESE PARTICULAR CIRCUMSTANCES, WE THINK THAT
19 FREDY DELEON SHOULD BE ENTITLED TO A DIRECTED VERDICT FOR LACK OF
20 PROOF ON THE ESSENTIAL ELEMENT OF KNOWLEDGE.

21 THE COURT: I ALSO ASSUME YOU'RE WISHING TO PRESERVE ALL YOUR --
22 ALL THE ISSUES YOU RAISED ON PROCEDURAL QUESTIONS AND SEARCH AND
23 SEIZURE AND ALL THOSE ISSUES.

24 MR. HAWKE: YES, YOUR HONOR, AND I FORGOT TO STATE THAT. WE
25 RESERVE ALL PREVIOUS OBJECTIONS AND MOTIONS MADE TO THIS DATE, AND WE

1 WOULD RENEW THOSE SAME MOTIONS AGAIN AND ASK THE COURT TO
2 RECONSIDER EACH AND EVERY ONE OF 'EM. WE MAINTAIN THE SAME POSITIONS
3 AS WE HAVE PREVIOUSLY STATED IN THE RECORD IN REGARDS TO EACH ONE OF
4 THOSE ISSUES, THE OBJECTIONS AND MOTIONS, AND AT THIS POINT IN TIME WE
5 WOULD RENEW THOSE AND ASK THE COURT TO CHANGE ANY ADVERSE RULINGS
6 AGAINST US TO RULE EACH IN OUR FAVOR.

7 THE COURT: THANK YOU. ALRIGHT. MS. SUSSMAN, YOU HAVE MOTIONS?

8 MR. SUSSMAN: YES, YOUR HONOR. I'D LIKE TO BRING A MOTION
9 PURSUANT TO THE SOUTH CAROLINA RULES OF CRIMINAL PROCEDURE, RULE 19(A)
10 BY ASSERTING THAT THE STATE HAS FAILED TO PRODUCE ANY COMPETENT
11 EVIDENCE THAT WOULD TEND TO PROVE THE CHARGE IN THE INDICTMENT
12 AGAINST MY TWO CLIENTS RAPHAEL HERNANDEZ AND ALFREDO AVILA-
13 AROJONA. THE ONLY EVIDENCE AT ALL REGARDING THE CHARGE IN THE
14 INDICTMENT WHICH THEY ARE BOTH CHARGED WITH HAVING KNOWINGLY,
15 INTENTIONALLY, WILFULLY AND UNLAWFULLY SELLING, MANUFACTURING,
16 CULTIVATING, DELIVERING, PURCHASING OR BRINGING INTO THIS STATE FOR OR
17 BY FINANCIAL ASSISTANCE OR OTHERWISE AID, ABET, ATTEMPT OR ASSIST,
18 CONSPIRE, PARTICIPATE WITH OTHERS TO ETC., ETC., OR BRING INTO THIS STATE
19 OR WITH KNOWING OR ACTUAL CONSTRUCTIVE POSSESSION OF OR KNOWINGLY
20 ATTEMPT TO BECOME IN ACTUAL CONSTRUCTIVE POSSESSION OF THIS
21 MARIJUANA.

22 THE ONLY REAL COMPETENT EVIDENCE THAT HAS BEEN ADDUCED THUS
23 FAR WITH REGARD TO THESE TWO INDIVIDUALS IS THAT THEY WERE MERELY
24 PRESENT AT THE SCENE WHICH IS AN ACCEPTED JURY CHARGE AND THE LAW IN
25 THIS STATE THAT MERE ASSOCIATION WITH A PERSON WHO COMMITS A CRIME

1 DOES NOT MAKE AN ACCUSED AN ACCOMPLICE OR AN AIDER OR ABETTER OF THE
2 PERSON COMMITTING THE CRIME. IN THIS PARTICULAR INSTANCE I WOULD
3 IMAGINE IF THE STATE WERE TO ARGUE THAT THERE IS COMPETENT EVIDENCE
4 THAT THEY HAD KNOWLEDGE OR AIDED OR ABETTED BECAUSE THEY BLOCKED
5 THE SEMI IN AND FOLLOWED THE SEMI INTO A FIELD. THAT'S ABOUT THE ONLY
6 EVIDENCE THEY'VE GOT. AND I WOULD SUGGEST THAT IT'S NOT COMPETENT
7 EVIDENCE BECAUSE MY TWO INDIVIDUALS WERE NOT DRIVING THIS ALLEGED
8 BLOCKING RYDER TRUCK. THEY WERE MERELY PASSENGERS. ONE OF WHOM
9 WASN'T EVEN SEEN -- IDENTIFIED IN THE TRUCK UNTIL LATER.

10 SECONDLY, THE EVIDENCE THAT THEY WERE BLOCKED IN WHICH CAME
11 FROM AGENT MIZE WHO SAID IN HIS REPORT WHICH WAS PREPARED SHORTLY
12 AFTER THIS INCIDENT, THERE WAS NEVER ANY MENTION THAT THIS TRUCK
13 BLOCKED THE SEMI IN. THAT ONLY CAME OUT IN TESTIMONY 2 YEARS LATER. SO
14 THERE'S A DIRECT CONFLICT BETWEEN MIZE'S TESTIMONY AND HIS WRITTEN
15 REPORT. SO THAT'S NOT COMPETENT EVIDENCE.

16 AND, SECONDLY, THAT THEY FOLLOWED THE SEMI. WELL, THEY, MY
17 CLIENTS WERE PASSENGERS AGAIN, JUDGE. THEY WERE NOT DRIVING. AND,
18 SECONDLY, THERE'S A CONFLICT IN THIS EVIDENCE REGARDING WHO WAS
19 FOLLOWING WHOM. AGENT MIZE SAID THEY WERE IN FRONT OF HIM. ROOSEVELT
20 YOUNG SAID THEY WERE BEHIND AGENT MIZE.

21 SO IF THAT'S THE ONLY EVIDENCE REALLY THE STATE CAN ARGUE TO
22 PROVE THAT MY CLIENTS AIDED AND ABETTED OR HAD KNOWLEDGE, WE WOULD
23 SUBMIT THAT THAT'S NOT SUFFICIENT, COMPETENT EVIDENCE ENOUGH TO
24 SURVIVE A MOTION FOR DIRECTED VERDICT. AND OR THAT REASON WE WOULD
25 ASK THE COURT TO RULE FOR A DIRECTED VERDICT OF ACQUITTAL IN REGARDS

1 TO RAPHAEL HERNANDEZ AND ALFREDO AVILA-AROJONA. THAT -- THAT -- AND
2 THE MOTION'S BASED UPON RULE 19 AS STATED AS WELL AS THE FAILURE OF THE
3 STATE TO PROPERLY PROVE CHAIN OF CUSTODY OF THE EVIDENCE OF
4 MARIJUANA. AND FOR ALL THE OTHER PROCEDURAL OBJECTIONS AND MOTIONS
5 PREVIOUSLY MADE IN THIS CASE IN REGARDS TO THE ADMISSION OF ANY OF THE
6 EVIDENCE. WE WOULD ASK THE COURT TO RULE DIRECTED VERDICT OF
7 ACQUITTAL FOR MR. HERNANDEZ AND MR. AROJONA. THANK YOU.

8 THE COURT: MR. MILLER, YOU HAVE ANY MOTIONS?

9 MR. MILLER: YOUR HONOR, AT THIS TIME ON BEHALF OF DEFENDANT
10 GUERRERO WE WOULD LIKEWISE MOVE FOR A DIRECTED VERDICT OF ACQUITTAL
11 PURSUANT TO RULE 19 IN SOUTH CAROLINA RULES OF CRIMINAL PROCEDURE.
12 THE -- MR. SUSSMAN HAS LAID OUT THE BASIS FOR THE LACK OF THE STATE'S
13 EVIDENCE ON ANY ELEMENT OF THE CRIME AFFECTING MY CLIENT AS WELL, AND
14 CERTAINLY I WOULD ADOPT THOSE ARGUMENTS

15 AGAIN, THERE HAS BEEN NO EVIDENCE PRESENTED FROM WHICH THE
16 JURY COULD -- COULD DETERMINE THAT -- THAT AN ESSENTIAL ELEMENT OF THIS
17 CRIME OF TRAFFICKING -- THE INDICTMENT OF TRAFFICKING HAS BEEN PROVEN --
18 AND THAT IS THE KNOWLEDGE ELEMENT. THERE'S JUST NOT EVIDENCE IN THE
19 RECORD FROM WHICH THE JURY COULD -- COULD REACH THAT CONCLUSION
20 THAT THAT HAS BEEN PROVEN BEYOND A REASONABLE DOUBT.

21 BASED ON THAT, YOUR HONOR, WE WOULD MOVE FOR A DIRECTED
22 VERDICT OF ACQUITTAL IN THE CASE, AND FURTHERMORE, WOULD LIKEWISE
23 REQUEST THAT ALL OBJECTIONS PREVIOUSLY MADE BE PRESERVED AND
24 RULINGS OF THE COURT BE CONSIDERED AS THE COURT SEES FIT. THANK YOU.

25 THE COURT: THANK YOU. ALRIGHT. GENTLEMEN, THE PREVIOUS RULINGS

1 ARE ALL AFFIRMED AND THE COURT FINDS THERE IS EVIDENCE SUFFICIENT TO
2 SUBMIT THESE MATTERS TO THE JURY. WITH REGARD TO THE KNOWLEDGE ISSUE
3 SPECIFICALLY, A MENTAL STATE IS VIRTUALLY ALWAYS A MATTER OF
4 CIRCUMSTANTIAL EVIDENCE. AND IT'S A JURY ISSUE. ALRIGHT. I NEED TO TALK
5 TO MR. DELEON, MR. HERNANDEZ, MR. GUERRERO AND MR. AVILA-AROJONA. MR.
6 HUNT, WILL YOU EXPLAIN TO THEM THAT EACH OF THEM HAS A RIGHT TO TESTIFY
7 IF THEY WISH TO TESTIFY. DO THEY UNDERSTAND ALL -- WELL, ONE OF 'EM'S
8 ASLEEP. I WISH I COULD BE THAT RELAXED.

9 MR. MILLER: THAT'S A VOTE OF CONFIDENCE FOR MR. SUSSMAN.

10 MR. SUSSMAN: FACING 25 YEARS AND HE'S ASLEEP.

11 THE COURT: I HAVE HAD A PLAINTIFF GO TO SLEEP IN A CIVIL CASE
12 BEFORE. HE ACTUALLY WOUND UP WINNING MORE MONEY THAN HE PROVED. I
13 HAD TO CUT THE VERDICT. I MEAN LIKE 3 TIMES THE AMOUNT OF MONEY THAN
14 THEY HAD PROVEN.

15 MR. HAWKE: ONE TIME, JUDGE, I REPRESENTED A PLAINTIFF. THE MOM
16 CAME IN DRUNK. BEEN OUT ALL NIGHT. SHE WAS WALKING AROUND THE TABLE.
17 DIDN'T HELP.

18 THE COURT: THEY'RE TALKIN' AN AWFUL LOT OVER THERE. I NEED TO -- I
19 GUESS I NEED TO INTERVENE HERE.

20 MR. HUNT: ALL 3 UNDERSTAND WITH THE EXCEPTION OF MR. AVILA
21 (INAUDIBLE)

22 THE COURT: THEY HAVE A RIGHT TO TAKE THE WITNESS STAND AND
23 TESTIFY IF THEY WISH. I'M NOT ASKING THEM IF THEY WANT TO DO IT OR NOT.
24 I'M ASKIN' IF THEY UNDERSTAND THEIR RIGHT.

25 MR. HUNT: I DON'T WANT TO SPEAK. I DON'T WANT TO SPEAK.

1 THE COURT: BRING 'EM AROUND ONE INDIVIDUALLY AND THE LAWYERS
2 CAN STAND BESIDE HIM IF YOU LIKE. WE'LL START WITH YOU, MR. DELEON. NOW
3 I WANT YOU TO SAY THIS IN SPANISH LOUDLY ENOUGH SO THEY CAN HEAR. THEY
4 BEING THE OTHER THREE DEFENDANTS. MR. DELEON, THE STATE HAS FINISHED
5 PUTTING UP ITS CASE. THE NEXT STAGE OF THE TRIAL IS THAT THE DEFENDANTS
6 ARE GIVEN A CHANCE IF THEY WANT TO TO PUT UP EVIDENCE. YOU DON'T HAVE
7 TO PUT UP ANY EVIDENCE. YOU UNDERSTAND WHERE WE ARE IN THE TRIAL?

8 MR. HUNT: YES, SIR.

9 THE COURT: NOW YOU CAN CALL WITNESSES TO TESTIFY IN YOUR BEHALF.
10 YOU UNDERSTAND THAT?

11 MR. HUNT: YES, SIR.

12 THE COURT: AND IF YOU WANT TO TESTIFY YOURSELF, YOU CAN TESTIFY
13 OR YOU CAN BE THE ONLY WITNESS IN YOUR CASE. YOU UNDERSTAND?

14 MR. HUNT: YES, SIR.

15 THE COURT: BUT NO ONE CAN FORCE YOU TO TESTIFY. YOU UNDERSTAND
16 THAT?

17 MR. HUNT: YES, SIR.

18 THE COURT: YOU HAVE AN ABSOLUTE RIGHT TO STAY SILENT, AND IF YOU
19 CHOOSE NOT TO TESTIFY, I'M GOING TO TELL THAT JURY THAT THEY CANNOT
20 HOLD YOUR SILENCE AGAINST YOU. THEY CAN'T -- THEY CAN'T TALK ABOUT IT
21 WHEN THEY DECIDE THE CASE, AND THAT IT'S NOT TO ENTER THEIR MINDS IN
22 DECIDING THE CASE. DO YOU UNDERSTAND ALL THAT?

23 MR. HUNT: YES, SIR.

24 THE COURT: THE DECISION ABOUT WHETHER YOU TESTIFY OR NOT IS YOUR
25 DECISION AND YOUR DECISION ALONE TO MAKE. DO YOU UNDERSTAND THAT?

1 MR. HUNT: YES, SIR.

2 THE COURT: YOU MAY TALK WITH YOUR ATTORNEYS AND SEEK THEIR
3 ADVICE IF YOU CHOOSE, BUT IT IS YOUR DECISION TO MAKE, NOT THE DECISION
4 OF YOUR ATTORNEYS. YOU UNDERSTAND?

5 MR. HUNT: YES, SIR.

6 THE COURT: THANK YOU. ALRIGHT. MR. HERNANDEZ. MR. HERNANDEZ,
7 DO YOU UNDERSTAND THAT THE STATE HAS FINISHED PUTTING UP ITS CASE
8 AGAINST YOU?

9 MR. HUNT: YES, SIR.

10 THE COURT: THE NEXT STAGE OF THE TRIAL IS THAT IF YOU WANT TO PUT
11 UP EVIDENCE, YOU WILL BE GIVEN AN OPPORTUNITY TO PUT UP EVIDENCE FOR
12 THE JURY. YOU UNDERSTAND THAT?

13 MR. HUNT: YES, SIR.

14 THE COURT: YOU DO NOT HAVE TO PUT UP ANY EVIDENCE. YOU
15 UNDERSTAND?

16 MR. HUNT: YES, SIR.

17 THE COURT: IF YOU DO WANT TO CALL WITNESSES THOUGH, YOU MAY
18 CALL WITNESSES. YOU UNDERSTAND THAT?

19 MR. HUNT: YES, SIR.

20 THE COURT: AND IF YOU WANT TO TESTIFY, YOU CAN TESTIFY.
21 UNDERSTAND?

22 MR. HUNT: YES, SIR.

23 THE COURT: YOU DO NOT HAVE TO TESTIFY. YOU UNDERSTAND?

24 MR. HUNT: YES, SIR.

25 THE COURT: AND IF YOU CHOOSE NOT TO TESTIFY, I WILL TELL THE JURY

1 THAT THEY CANNOT HOLD YOUR SILENCE AGAINST YOU IN ANY WAY. THAT THEY
2 CANNOT DISCUSS YOUR SILENCE IN THE JURY ROOM, AND THAT IT IS NOT TO
3 ENTER THEIR MINDS IN DECIDING YOUR CASE. YOU UNDERSTAND ALL THAT?

4 MR. HUNT: YES, SIR.

5 THE COURT: DO YOU UNDERSTAND THAT THE DECISION ABOUT WHETHER
6 YOU TESTIFY OR NOT IS YOUR DECISION TO MAKE AND YOURS ALONE?

7 MR. HUNT: YES, SIR.

8 THE COURT: YOU MAY ASK YOUR LAWYER FOR HIS ADVICE, BUT IT IS NOT
9 HIS DECISION; IT IS YOUR DECISION TO MAKE. DO YOU UNDERSTAND?

10 MR. HUNT: YES, SIR.

11 THE COURT: I'M ASSUMING NOBODY HAS A CRIMINAL RECORD.

12 MR. MAYE: NOT THAT I'M AWARE OF, YOUR HONOR.

13 THE COURT: GRACIOUS. ALRIGHT. MR. GUERRERO -- I'M SORRY. WE CAN
14 GO WITH MR. AROJONA SINCE YOU'RE THERE. I APOLOGIZE. OKAY. MR.
15 AROJONA, DO YOU UNDERSTAND THAT THE STATE HAS FINISHED PUTTING UP ITS
16 CASE AGAINST YOU? YOU UNDERSTAND?

17 MR. HUNT: I UNDERSTAND.

18 THE COURT: DO YOU UNDERSTAND THAT THE NEXT STEP OF THE TRIAL IS
19 TO GIVE YOU AN OPPORTUNITY IF YOU WANT TO PRESENT EVIDENCE FOR THE
20 JURY TO CONSIDER? YOU UNDERSTAND THAT?

21 MR. HUNT: EVIDENCE? WHAT DO YOU MEAN BY EVIDENCE?

22 THE COURT: TESTIMONY FROM WITNESSES, EXHIBITS WHICH COULD BE
23 RECORDS, PHOTOGRAPHS, ALL THAT OVER THERE IS EVIDENCE THE STATE HAS
24 OFFERED.

25 MR. HUNT: I DON'T KNOW Y'ALL. MY ATTORNEY--

1 THE COURT: TELL HIM FIRST I'M NOT ASKING HIM HIS DECISION. I JUST
2 WANT TO MAKE SURE HE UNDERSTANDS HIS RIGHTS. SO DOES HE UNDERSTAND
3 THE QUESTION, THE PURPOSE OF THE QUESTION?

4 MR. HUNT: THAT WE HAVE A RIGHT, YES.

5 THE COURT: OKAY.

6 MR. HUNT: I UNDERSTAND.

7 THE COURT: ALRIGHT. DOES HE UNDERSTAND THAT HE CAN PUT UP
8 EVIDENCE IF HE WISHES?

9 MR. HUNT: IF THEY WANT, YES. ME PRESENTING THEM?

10 THE COURT: HE CAN -- HE CAN CALL OTHER PEOPLE TO TESTIFY IF HE HAS
11 OTHER WITNESSES OR HE CAN TESTIFY HIMSELF. OR BOTH.

12 MR. HUNT: I CAN DO IT WHATEVER YOU WANNA ASK ME I CAN ANSWER IN
13 SPANISH.

14 THE COURT: WELL, TELL HIM I DON'T SPEAK SPANISH. OH, YOU MEAN ON
15 THE WITNESS STAND?

16 MR. HUNT: YEAH. I THINK HE UNDERSTOOD THAT HE WAS AGREEING TO
17 TESTIFY IF YOU ASKED HIM.

18 THE COURT: I DON'T HAVE ANYTHING TO DO WITH DECIDING WHETHER HE
19 TESTIFIES OR NOT. HE DECIDES WHETHER HE WANTS TO TESTIFY. DOES HE
20 UNDERSTAND?

21 MR. HUNT: YES.

22 THE COURT: TELL HIM IF HE DOES TESTIFY YOU WILL INTERPRET IT TO
23 ENGLISH FOR THE JURY.

24 MR. HUNT: I REALLY DON'T KNOW WHAT TO SAY ABOUT WHETHER TO
25 TESTIFY OR NOT.

1 THE COURT: WELL, I DON'T NEED TO KNOW WHAT HIS DECISION IS; I JUST
2 NEED TO KNOW IF HE UNDERSTANDS THAT HE CAN TESTIFY IF HE WANTS TO.

3 MR. HUNT: YES.

4 THE COURT: AND THAT HE UNDERSTANDS THAT HE DOES NOT HAVE TO
5 TESTIFY IF HE DOES NOT WANT TO.

6 MR. HUNT: THAT'S OKAY.

7 THE COURT: DOES HE UNDERSTAND?

8 MR. HUNT: YES.

9 THE COURT: OKAY. DOES HE UNDERSTAND THAT HIS DECISION ABOUT
10 WHETHER HE TESTIFIES IS HIS DECISION TO MAKE?

11 MR. HUNT: YES.

12 THE COURT: HE MAY ASK HIS LAWYER FOR ADVICE, BUT IT'S NOT HIS
13 LAWYER'S DECISION. IT'S MR. AROJONA'S DECISION. HE UNDERSTAND?

14 MR. HUNT: YES.

15 THE COURT: TELL HIM IF HE DOES NOT TESTIFY, I WILL TELL THE JURY
16 THAT THEY CANNOT HOLD HIS SILENCE AGAINST HIM. THAT THEY CANNOT
17 DISCUSS IN THE JURY ROOM THAT HE DID NOT TESTIFY, AND THAT THEY CANNOT
18 LET THE FACT THAT HE DID NOT TESTIFY ENTER THEIR MINDS IN DECIDING THE
19 CASE. DOES HE UNDERSTAND?

20 MR. HUNT: YES.

21 THE COURT: ALRIGHT. GRACIOUS. ALRIGHT. MR. GUERRERO. ASK MR.
22 GUERRERO IF HE UNDERSTANDS THAT WE ARE AT THE STAGE OF THE TRIAL
23 WHERE THE STATE HAS PUT ITS CASE UP AGAINST HIM?

24 MR. HUNT: YES.

25 THE COURT: THE NEXT STAGE OF THE TRIAL IS TO GIVE THE DEFENDANTS

1 AN OPPORTUNITY TO PRESENT EVIDENCE IF ANY DEFENDANT WANTS TO PRESENT
2 EVIDENCE.

3 MR. HUNT: YES.

4 THE COURT: TELL HIM THAT IF HE WANTS TO PRESENT EVIDENCE HE MAY
5 DO SO. DOES HE UNDERSTAND?

6 MR. HUNT: YES, I UNDERSTAND.

7 THE COURT: IF HE WANTS TO CALL WITNESSES, HE MAY CALL WITNESSES
8 ON HIS BEHALF. DOES HE UNDERSTAND?

9 MR. HUNT: YES.

10 THE COURT: IF HE WANTS TO TESTIFY HIMSELF, HE MAY TESTIFY.
11 UNDERSTAND?

12 MR. HUNT: YES.

13 THE COURT: IF HE CHOOSES NOT TO TESTIFY, NO ONE CAN FORCE HIM TO
14 TESTIFY. DOES HE UNDERSTAND?

15 MR. HUNT: YES. YES, SIR.

16 THE COURT: TELL HIM THAT IF HE CHOOSES NOT TO TESTIFY THAT I WILL
17 TELL THE JURY THAT THEY CANNOT HOLD HIS SILENCE AGAINST HIM IN ANY WAY
18 AT ALL. DOES HE UNDERSTAND?

19 MR. HUNT: YES, SIR.

20 THE COURT: TELL HIM THAT I WILL TELL THE JURY THAT THEY CANNOT
21 DISCUSS IN THE JURY ROOM THE FACT THAT HE DECIDES NOT TO TESTIFY. AND
22 THAT THEY CANNOT LET THAT ENTER THEIR MINDS, THE JURY, IN DECIDING HIS
23 CASE. DOES HE UNDERSTAND?

24 MR. HUNT: YES, SIR.

25 THE COURT: OKAY. THE DECISION ABOUT WHETHER HE TESTIFIES OR NOT

1 IS HIS DECISION AND HIS ALONE TO MAKE. HE UNDERSTAND?

2 MR. HUNT: YES, SIR.

3 THE COURT: HE MAY DISCUSS HIS DECISION ABOUT WHETHER TO TESTIFY
4 OR NOT WITH HIS ATTORNEY; HE MAY SEEK HIS ATTORNEY'S ADVICE, BUT IT IS
5 NOT HIS ATTORNEY'S DECISION TO MAKE. IT IS ONLY MR. GUERRERO'S DECISION.
6 DOES HE UNDERSTAND?

7 MR. HUNT: YES, SIR. I UNDERSTAND.

8 THE COURT: GRACIOUS. YOU ALL NEED AN OPPORTUNITY TO TALK TO
9 YOUR CLIENTS?

10 MR. HAWKE: YES, SIR.

11 THE COURT: WE'RE AT EASE. THANK YOU. (THERE WAS A BRIEF RECESS.)
12 ALRIGHT. I UNDERSTAND THAT DEFENDANT DELEON HAS A WITNESS TO CALL. IS
13 THAT CORRECT?

14 MR. PUETZ: YES, SIR.

15 THE COURT: YOU HAVE YOUR WITNESS AVAILABLE NOW?

16 MR. HAWKE: YES, SIR, GERRY NAULT.

17 MR. MAYE: MAY IT PLEASE THE COURT, YOUR HONOR? I'VE BEEN HANDED
18 SOMETHING IN REGARD TO -- ABOUT CHARACTER WITNESS, AND I JUST WANT TO
19 MAKE SURE THAT IF ANY CHARACTER WITNESS TESTIFIES IN THIS CASE THAT
20 THEY UNDERSTAND THEY ARE LIMITED TO IF THEY KNOW HIS REPUTATION FOR
21 TRUTH AND VORACITY IN THE COMMUNITY; IS IT GOOD OR BAD; WHETHER OR NOT
22 THEY KNOW HIM; WHETHER OR NOT THEY HAVE THE FOUNDATION TO FORM AN
23 OPINION AS TO HIS REPUTATION IN THE COMMUNITY; WHETHER OR NOT IT'S GOOD
24 OR BAD; WHETHER OR NOT THEY KNOW HIS REPUTATION FOR TRUTH AND
25 VORACITY AND WOULD BELIEVE HIM UNDER OATH. IF THIS IS GOING TO BE A

1 CHARACTER WITNESS I ASK THAT IT BE LIMITED TO THE EXTENT OF THE
2 PARAMETERS OF THE RULE, YOUR HONOR.

3 MR. HAWKE: IT'S A FACT AND CHARACTER WITNESS, BUT WITHIN THE
4 PARAMETERS OF THE RULE OF CHARACTER EVIDENCE, I WILL KEEP IT WITHIN THE
5 PARAMETERS---

6 MR. MAYE: I JUST WANT TO MAKE SURE.

7 MR. HAWKE: OKAY.

8 THE COURT: MY UNDERSTANDING IS AT THIS POINT INITIALLY THAT NONE
9 OF THE DEFENDANTS HAVE ELECTED TO TESTIFY.

10 MR. HAWKE: NOT AT THIS POINT.

11 MR. SUSSMAN: THAT'S CORRECT ON BEHALF OF MR. AVILA-AROJONA AND
12 HERNANDEZ.

13 MR. MILLER: AND THAT IS CORRECT WITH MR. GUERRERO.

14 THE COURT: SO I DON'T KNOW IF Y'ALL NEED TO GET INTO TRUTH AND
15 VORACITY.

16 MR. HAWKE: I'M NOT GOIN' THERE. I'M NOT GONNA DO THAT.

17 THE COURT: SIR, I KNOW THEY TOLD YOU TO COME ON UP HERE, BUT I
18 THINK THEY WANT YOU TO SIT ON THE FIRST ROW TILL I GET THE JURY IN. BRING
19 THE JURY. (THE FOLLOWING OCCURRED IN THE PRESENCE OF THE JURY.)
20 ALRIGHT. LADIES AND GENTLEMEN, AS YOU HEARD BEFORE THE BREAK, THE
21 STATE HAS RESTED. THE NEXT STAGE OF THE TRIAL IS THAT WE AFFORD TO THE
22 DEFENSE THE OPPORTUNITY TO PRESENT EVIDENCE FOR YOU TO CONSIDER. THIS
23 DOES NOT CHANGE THE BURDEN OF PROOF. EACH OF THESE FOUR DEFENDANTS IS
24 PRESUMED TO BE INNOCENT. NO DEFENDANT HAS ANY OBLIGATION TO PROVE
25 ANYTHING AT ALL. THE BURDEN'S ENTIRELY ON THE STATE OF SOUTH CAROLINA.

GERARD NAULT - DIRECT EXAMINATION BY MR. HAWKE

1 BUT THE DEFENDANTS ARE GIVEN AN OPPORTUNITY, IF ANY OF THEM WISH, FOR
2 YOU TO CONSIDER EVIDENCE ON THEIR PARTICULAR CASE IN EVALUATING
3 WHETHER THE STATE HAS MET ITS BURDEN OF PROOF OR HAS FAILED TO MEET ITS
4 BURDEN OF PROOF AND, OBVIOUSLY, EVIDENCE PRESENTED CAN BE CONSIDERED
5 BY YOU IN MAKING YOUR DETERMINATION ON THESE CASES AS TO WHETHER THE
6 STATE HAS PROVEN THE DEFENDANT GUILTY OR FAILED TO MEET THAT BURDEN.
7 SO WHAT WE WILL DO IS FIRST I WILL GIVE MR. DELEON AN OPPORTUNITY TO
8 PRESENT ANY EVIDENCE THAT HE MAY WISH TO OFFER, AND THEN MR.
9 HERNANDEZ AND MR. AVILA-AROJONA REPRESENTED BY THE SAME ATTORNEY,
10 AND THEN MR. GUERRERO. OKAY? ALRIGHT. ANY EVIDENCE ON BEHALF OF
11 DELEON?

12 MR. HAWKE: YES, YOUR HONOR. AT THIS TIME WE CALL GERRY NAULT.

13 THE COURT: IF YOU WOULD COME UP HERE, PLEASE, TO THE CLERK, SIR.

14 GERARD NAULT, BEING DULY SWORN,

15 TESTIFIES AS FOLLOWS:

16 DIRECT EXAMINATION

17 BY MR. HAWKE

18 Q MR. NAULT, CAN YOU TELL US, DO YOU KNOW FREDY DELEON?

19 A YES, I DO.

20 Q CAN YOU TELL US HOW YOU CAME TO KNOW HIM.

21 A FREDY OWNED A STORE IN TRENTON NEXT TO MY STORE. I HAD A
22 FURNITURE STORE AND A RENT-TO-OWN STORE LOCATED RIGHT NEXT TO FREDY'S
23 FOR ABOUT A YEAR AND A HALF, AND THEN I MOVED MY BUSINESS TO A NEW
24 LOCATION, ALSO IN TRENTON, AND FREDY'S MOBILE HOME THAT HE LIVED IN
25 WAS RIGHT BEHIND MY STORE. SO I'VE KNOWN HIM FOR ABOUT 3 AND A HALF

1 YEARS.

2 Q OKAY. AND DURING THAT 3 AND A HALF YEARS DID YOU COME TO KNOW
3 HIS FAMILY AS WELL?

4 A YES, I DO.

5 Q CAN YOU TELL US WHAT TYPE OF FAMILY HE HAS.

6 A THEY WERE VERY FAMILY ORIENTED. THEY WERE ALWAYS AT THE STORE,
7 HIS WIFE TERESA, THE BABY, OTHER FAMILY MEMBERS, FRIENDS AT HIS HOUSE.
8 SOMETIMES ON A SUNDAY AFTERNOON HE WOULD HAVE A PICNIC AND THERE'D
9 BE A LOT OF FAMILY OVER THERE AND FRIENDS.

10 Q YOU CAME TO KNOW HIM SOMEWHAT THROUGH YOUR BUSINESS. IS THAT
11 RIGHT?

12 A YES, I DID.

13 Q COULD YOU TELL THE JURY WHAT TYPE OF BUSINESS YOU OWN.

14 A THAT I RUN?

15 Q YES, SIR.

16 A AT THAT TIME I HAD -- I FIRST STARTED WITH A FURNITURE RENT-TO-OWN
17 BUSINESS WHERE WE RENT FURNITURE OUT TO PEOPLE IN THE COMMUNITY.

18 Q OKAY. DO YOU REMEMBER WHEN THIS ARREST HAPPENED?

19 A I DON'T KNOW THE EXACT DATES, BUT I'M FAMILIAR WITH GENERALLY
20 WHAT TIME.

21 Q WHAT BUSINESS WERE YOU IN?

22 A AT THAT POINT I HAD A FURNITURE STORE LOCATED JUST AROUND THE
23 CORNER FROM FREDY'S, AND IT'S A RETAIL STORE FURNITURE. WE GOT OUT OF
24 THE RENT-TO-OWN BUSINESS.

25 Q AND WHAT OTHER BUSINESSES HAVE YOU PARTICIPATED IN OR WHAT

GERARD NAULT - DIRECT EXAMINATION BY MR. HAWKE

1 OTHER CAREERS HAVE YOU HAD BEFORE ENTERING THE FURNITURE BUSINESS?

2 A I'VE HAD ABOUT 22 YEARS IN LAW ENFORCEMENT. I WAS A POLICE
3 OFFICER IN SOUTH FLORIDA BOTH FOR THE CITY POLICE DEPARTMENT AND PALM
4 BEACH COUNTY SHERIFF'S OFFICE. I WAS A HOMICIDE DETECTIVE. I WORKED
5 UNDERCOVER NARCOTICS FOR A YEAR AND A HALF AND THE LAST 12 YEARS OF
6 MY CAREER I WAS A FORENSIC CRIME SCENE INVESTIGATOR.

7 Q OKAY. AND SO YOU HAVE SOME LAW ENFORCEMENT BACKGROUND AND
8 THINGS IN THAT REGARD. RIGHT?

9 A YES, I DO.

10 Q NOW DURING THE ENTIRE TIME THAT YOU HAVE KNOWN FREDY HAVE YOU
11 SEEN ANYTHING BASED UPON YOUR BACKGROUND AND EXPERIENCE AS AN
12 INVESTIGATOR WHICH YOU WERE SUSPICIOUS OF AS SOME SORT OF CRIMINAL
13 ACTIVITY?

14 A NOT AT ALL. FREDY WORKS 7 DAYS A WEEK. I WAS AT MY STORE. WE
15 WERE OPEN 6 DAYS. A LOTTA TIMES I'D BE THERE ON SUNDAY TRYIN' TO DO SOME
16 THINGS, PAPERWORK--

17 MR. MAYE: YOUR HONOR, I'M GONNA OBJECT TO THIS AS A FOUNDATION
18 AS TO WHETHER OR NOT HE KNOWS IF HE'S INVOLVED IN ANY CRIMINAL
19 ACTIVITY. THERE'S NO FOUNDATION FOR HIM KNOWING WHETHER OR NOT HE'S
20 INVOLVED IN ANY CRIMINAL ACTIVITY OR NOT, YOUR HONOR. I OBJECT.

21 THE COURT: OVERRULED. I'M NOT SAYING -- I'M NOT COUCHING THAT I'M
22 RULING BASED ON THE LANGUAGE OF THE OBJECTION, BUT I THINK HE CAN BE
23 ASKED THAT QUESTION. I THINK HE CAN STATE WHAT HE OBSERVED.

24 Q AND BASED UPON YOUR EXPERIENCE, DID YOU EVER SEE ANYTHING --
25 YOU SAID YOU HAD PRIOR EXPERIENCE AS A NARCOTICS INVESTIGATOR?

GERARD NAULT - DIRECT EXAMINATION BY MR. HAWKE

1 A THAT'S CORRECT. I WAS UNDERCOVER FOR A YEAR AND A HALF.

2 Q OKAY. DID YOU SEE ANY ACTIVITIES IN AND AROUND THE STORE OR THE
3 HOME OF FREDY DELEON WHICH MADE YOU SUSPICIOUS THAT THERE MAY BE
4 SOME SORT OF NARCOTICS OR DRUG ACTIVITY GOING ON AROUND HIS HOME?

5 A NOT AT ALL.

6 Q NOW HAVE YOU BEEN IN HIS HOME?

7 A YES, I HAVE.

8 Q HAS HE BEEN IN YOUR BUSINESSES; HAS HE BEEN IN YOUR HOME?

9 A YES, HE HAS.

10 Q OKAY. AND LET ME SHOW YOU -- ARE YOU GENERALLY FAMILIAR WITH
11 HIS HOME, HIS PROPERTY THAT HE OWNS?

12 A I'M FAMILIAR WITH HIS MOBILE HOME THAT WAS BEHIND OUR STORE.
13 AND---

14 Q ARE YOU FAMILIAR WITH HIS CARS AND TRUCKS AND THINGS?

15 A YES, I AM.

16 MR. HAWKE: JUDGE, AT THIS TIME WE HAD PREVIOUSLY IDENTIFIED AND
17 MARKED FOR EVIDENCE SOME EXHIBITS THAT, I BELIEVE, THE STATE DOES NOT
18 HAVE ANY OBJECTION TO, AND I'M GONNA TENDER THEM AS SOON AS I GET THEM
19 IN ORDER AND GET THE NUMBERS STRAIGHT.

20 MR. MAYE: NO OBJECTION TO THESE EXHIBITS COMIN' IN.

21 MR. HAWKE: I'LL GET THE NUMBERS AND WE'LL---

22 Q NOW HOW CLOSE A CONTACT DO YOU HAVE WITH HIM ON A DAY-TO-DAY
23 BASIS?

24 A WHEN I HAD THE STORE NEXT TO HIM, I WAS THERE 6 DAYS A WEEK, AND
25 I'D GO IN -- HE HAD COLD DRINKS. I'D GO IN AND GET COLD DRINKS. FREDY

GERARD NAULT -- DIRECT EXAMINATION BY MR. HAWKE

1 BOUGHT A LOT OF STUFF FROM ME OVER THE YEARS. TELEVISIONS, FREEZERS,
2 STUFF FOR HIS BUSINESS BOTH IN HIS TRUCK AND FOR HIS STORE AND HIS HOME.
3 LIKE I SAY, BACK AND FORTH. IF I HAD SOME SPANISH-SPEAKIN' PEOPLE THAT
4 COME IN AND WANTED FURNITURE THAT I DIDN'T UNDERSTAND EXACTLY WHAT
5 THEY WOULD -- EITHER MOST OF THE TIME HIS WIFE TERESA WOULD COME IN
6 AND INTERPRET FOR US, YOU KNOW, SO WE'D UNDERSTAND WHAT THEY DO AND
7 WE'D EXPLAIN THE CONTRACT OR WHATEVER FOR US.

8 Q SHE'D TRY AND HELP YOU BREAK IT DOWN SO Y'ALL COULD BASICALLY--

9 A WE'D BE ABLE TO ENTER INTO A CONTRACT, YES.

10 Q NOW AS PART OF YOUR BUSINESS WERE THERE TIMES THAT YOU NEEDED
11 EXTRA STORAGE?

12 A YES, THERE WAS. I HAD ONE STORE; FREDY HAD THE STORE ON ONE SIDE
13 OF ME, AND HE ALSO HAD A SMALL STORE ON THE OTHER SIDE OF MY BUSINESS,
14 AND I NEEDED MORE FLOOR SPACE. WE WERE GROWIN' REAL GOOD, AND I
15 NEEDED MORE FLOOR SPACE. SO I ASKED FREDY IF I COULD TAKE OVER THAT
16 STORE LOCATION. IT WAS ABOUT 4 OR 5 HUNDRED SQUARE FEET, AND I TALKED
17 HIM INTO BRINGIN' THAT STUFF HE HAD STORED IN THERE WHICH WAS
18 VEGETABLES AND CANNED GOODS AND SO FORTH AND PUTTIN' IT IN HIS STORE
19 ON ONE SIDE. SO I TOOK OVER THAT SPACE AND EXPANDED MY FURNITURE
20 STORE AT THAT POINT.

21 Q OKAY. WERE THERE TIMES WHEN YOU HAD ASKED HIM TO ALLOW YOU TO
22 STORE FURNITURE AT HIS PLACE? OR ITEMS OF YOURS AT HIS PLACE?

23 A NO, NOT REALLY. I HAD PLENTY OF STUFF -- ROOM. YOU KNOW, YOU
24 ALWAYS NEED MORE ROOM, BUT FREDY WOULD HELP ME UNLOAD TRUCKS. IF HE
25 HAD A TRUCK COME IN WITH STUFF, SOMETIMES I WOULD HELP HIM UNLOAD

GERARD NAULT - DIRECT EXAMINATION BY MR. HAWKE

1 TRUCKS. WE ALWAYS, YOU KNOW, WE WERE ONLY ONE PERSON IN THE STORE AT
2 THE TIME AND WE WOULD HELP EACH OTHER OUT ON TAKING CARE OF BUSINESS
3 ON A DAILY BASIS.

4 Q AND WERE THERE EVER ANY TIMES WHEN HE NEEDED TO STORE STUFF
5 WITH YOU?

6 A NOT THAT I REMEMBER, NO.

7 Q OKAY. NOW DO YOU OWN WAREHOUSES?

8 A CURRENTLY IN MY NEW LOCATION, YES, I'VE GOT SELF STORAGE
9 WAREHOUSES.

10 Q OKAY. DID YOU HAVE ANY EXTRA STORAGE SPACE BACK DURING THE
11 TIME OF HIS ARREST?

12 A YES, I DID. WE HAD JUST FINISHED 2 BUILDINGS ON OUR PROPERTY AND
13 WE HAD PLENTY OF STORAGE SPACE AVAILABLE.

14 Q OKAY. AND DID YOU MAKE IT KNOWN TO HIM THAT -- ANYTHING IN
15 REFERENCE TO THOSE STORAGE BUILDINGS AS FAR AS HE COULD USE THEM IF HE
16 NEEDED TO?

17 A I DIDN'T REALLY LET HIM KNOW, BUT IF HE WOULD'VE COME TO ME AND
18 ASKED ME IF HE COULD STORE SOMETHIN' IN THERE, ESPECIALLY IF IT'S JUST FOR
19 A SHORT PERIOD JUST GO AHEAD AND PUT IT IN BECAUSE WE JUST WORKED SO
20 CLOSE TOGETHER BACK AND FORTH HELPIN' EACH OTHER OUT TRYIN' TO GET
21 OUR BUSINESSES GOIN'.

22 Q OKAY. I'M GONNA SHOW YOU---

23 MR. HAWKE: FIRST LET ME TENDER AT THIS TIME, JUDGE, DEFENDANT'S
24 EXHIBITS #6 THROUGH 33 INCLUSIVE. THESE ARE THE PHOTOGRAPHS THAT WE
25 REFERRED TO EARLIER, AND THEN I BELIEVE THE SOLICITOR DOES NOT HAVE AN

1 OBJECTION TO THEM.

2 THE COURT: ALRIGHT. MARK THEM IN EVIDENCE, PLEASE. (DEFENDANT
3 DELEON'S EXHIBITS 6 THROUGH 33 RECEIVED IN EVIDENCE.)

4 Q IF YOU COULD LOOK AT DEFENDANT'S EXHIBITS #33 AND 32. IF YOU
5 WOULD, COULD YOU TELL ME WHAT THAT IS.

6 A IT'S A PICTURE OF A BLuish GREEN CAR. I'M NOT SURE OF THE MAKE.
7 AND THIS IS THE CAR THAT FREDY WAS DRIVIN'. HIM AND HIS WIFE DROVE THAT.

8 Q OKAY.

9 A A WHILE AGO.

10 Q DID YOU EVER SEE THEM HAVE ANY OTHER NICER OR NEWER CARS THAN
11 THAT CAR?

12 A NO.

13 Q OKAY. LET ME SHOW YOU DEFENDANT'S EXHIBIT #31 AND ASK YOU IF YOU
14 CAN IDENTIFY THAT FOR ME, PLEASE.

15 A YEAH, THIS IS LOCATED AT 33 PINEHOUSE DRIVE. THIS IS FREDY'S STORE
16 WHERE MY STORE IS LOCATED DIRECTLY SOUTH OF THAT.

17 Q OKAY. AND LET ME SHOW YOU DEFENDANT'S EXHIBIT #28. IS THAT ALSO
18 A PICTURE INSIDE THAT STORE? OR CAN YOU TELL FROM LOOKIN' AT THAT?

19 A I CAN'T REALLY TELL FOR SURE ON THIS ONE IF -- ON THAT LOCATION.

20 Q OKAY.

21 A I'M TRYIN' TO PICTURE EXACTLY WHERE IT'S FROM, YOU KNOW, WHAT
22 DIRECTION.

23 Q OKAY. ARE YOU FAMILIAR WITH THE STORAGE ROOM AT FREDY'S PLACE?

24 A YES, I AM.

25 Q OKAY. LET ME SHOW YOU THESE PICTURES HERE. THESE ARE

GERARD NAULT - DIRECT EXAMINATION BY MR. HAWKE

1 DEFENDANT'S EXHIBITS #33, #25, #26 AND #29. DO THOSE FAIRLY AND
2 ACCURATELY DEPICT THE STORAGE ROOM AREA OF HIS BUSINESS?

3 A YES, THEY DO.

4 Q OKAY. LET ME SHOW YOU WHAT WE'VE MARKED AS DEFENDANT'S
5 EXHIBIT #29. AND CAN YOU TELL ME FIRST OF ALL WHAT'S DEPICTED IN THERE?

6 A THIS IS OF A WHITE CARGO TRUCK, I'D SAY APPROXIMATELY 12 OR 14 FEET
7 IN LENGTH WITH THE ROLL DOWN DOOR IN THE BACK.

8 Q OKAY. AND DEFENDANT'S EXHIBIT #27.

9 A YEAH, THAT'S THE FRONT OF THAT -- IT'S ANOTHER -- IT'S A WHITE
10 CHEVY, AGAIN, CARGO TRUCK LOOKIN' AT IT FROM THE FRONT. THE FIRST ONE
11 WAS A PICTURE TAKEN FROM THE BACK OF THE VEHICLE.

12 Q ARE YOU FAMILIAR WITH THAT TRUCK?

13 A YES. FREDY HAD -- ACTUALLY HAD 2 TRUCKS FOR A WHILE THAT HE
14 WOULD TAKE ITEMS FROM THE STORE AND TAKE OUT INTO THE FIELD INTO THE
15 CAMPS. HE HAD LEMONS AND PEPPERS AND CANNED GOODS AND ALL KINDS OF
16 STUFF THAT HE WOULD TAKE OUT TO THE CAMPS.

17 Q HAVE YOU EVER ACTUALLY HELPED HIM LOAD HIS TRUCK IN ORDER TO
18 GO MAKE DELIVERIES?

19 A YES, I HAVE.

20 Q CAN YOU TELL THE JURY SOME SORT OF -- SOMETHIN' ABOUT THE SORTS
21 OF ITEMS THAT YOU LOAD UP TO HELP HIM GO DELIVER -- YOU WOULD JUST HELP
22 HIM---

23 A I WOULD JUST HELP HIM LOAD UP IF I WAS THERE AND WAS SLOW. HE
24 WOULD LOAD UP A TRUCK IN THE MORNING AND THE AFTERNOON, AND IT'D BE
25 CASES OF LEMONS, PEPPERS, VEGETABLES, CANNED GOODS, CANNED MILK,

1 SEASONINGS, TORTILLA CHIPS, THAT KIND OF STUFF THAT HE WOULD LOAD UP.
2 HE HAD RACKS UP IN THE SHELF AND HE WOULD LOAD UP. BOTTLE -- CASES OF
3 SODA. AND AT ONE POINT I EVEN SOLD HIM A SNOW CONE MACHINE THAT WAS
4 BATTERY OPERATED THAT HE HOOKED UP INSIDE THE TRUCK.

5 Q OKAY. AND DEFENDANT'S EXHIBIT #28 IS THAT A PICTURE FROM INSIDE
6 HIS STORE AS WELL?

7 A YES, IT IS.

8 Q OKAY. LET ME SHOW YOU WHAT WE'VE MARKED AS DEFENDANT'S
9 EXHIBITS #23, 22, 21, 20, 19, 18, 17, 16, 15, 14, 13, 12, 11, 10, 9, 8, 7 AND 6. AND ASK IF YOU
10 COULD LOOK THROUGH THOSE AND TELL ME -- ONCE YOU LOOK THROUGH THOSE
11 TELL ME GENERALLY WHAT IS PICTURED IN THOSE PICTURES.

12 A WHAT'S PICTURED HERE IS THE INSIDE OF A MOBILE HOME THAT FREDY
13 WAS LIVING IN. WHETHER HE OWNED IT OR NOT I REALLY DON'T KNOW. IT WAS
14 PARKED -- IT WAS OVER IN CLYDE JACKSON'S TRAILER PARK WHICH IS DIRECTLY
15 BEHIND MY STORE AND WAREHOUSES.

16 Q OKAY. IT'S A PICTURE OF BOTH THE INSIDE AND THE OUTSIDE OF THE
17 MOBILE HOME WHICH I'VE BEEN INSIDE ON SEVERAL OCCASIONS. LOOKIN' AT
18 THEIR BEDROOM FURNITURE I WAS TRYIN' TO GET A DRESSER AND MIRROR TO
19 MATCH WITH WHAT THEY HAD. THEY HAD A CHEST-OF-DRAWERS AND A BED.
20 WAS TRYIN' TO GET A CHES -- A MIRROR -- YOU KNOW, A DRESSER AND MIRROR
21 TO MATCH THAT ONE. THE TELEVISION AND ENTERTAINMENT CENTER IS ONE
22 THAT FREDY BOUGHT FROM ME, AND WE HELPED HIM BRING IT IN THERE AND
23 HOOKED UP HIS TV AND STEREO. I'VE PROBABLY BEEN IN THIS HOUSE, OH, I'D SAY
24 AT LEAST A HALF A DOZEN TIMES ON THE INSIDE AND SEVERAL TIMES ON THE
25 OUTSIDE WHEN HE'S HAD COOKOUTS AND SO FORTH.

1 Q ALRIGHT. NOW HAVE YOU EVER SEEN THIS HOUSE MORE ELABORATELY
2 FURNISHED THAN WHAT IS PICTURED IN THE PICTURES THERE?

3 A NO, I HAVEN'T.

4 Q AND AS A NARCOTICS IN -- FORMER NARCOTICS INVESTIGATOR, HAVE
5 YOU EVER SEEN ANYTHING WITHIN HIS HOUSE THAT INDICATED -- EXCUSE ME --
6 THAT MIGHT BE EVIDENCE OF THE USE OR SALE OF DRUGS?

7 A NO, I HAVEN'T.

8 Q OKAY. HAVE YOU CAME OVER UNANNOUNCED ON OCCASIONS?

9 A ABSOLUTELY. I'D JUST STOP IN TO SEE WHAT HE WAS UP TO OR -- I'M SORT
10 OF A WHEELER-DEALER. I'VE ALWAYS GOT SOMETHIN' FOR SALE, LOOKIN' TO
11 BUY STUFF, AND I HAD A COUPLE OF PIGS AT MY HOUSE I WAS RAISIN'. I WANTED
12 TO SEE SOMETIMES IF FREDY WANTED TO BUY SOME OF THE PIGS OR USE SOME OF
13 THE PIGS. I MEAN I'D JUST STOP IN. HE'D STOP IN MY BUSINESS OR HIS HOUSE AT
14 ANY TIME.

15 Q OKAY. ARE YOU GENERALLY FAMILIAR WITH FREDY'S REPUTATION IN
16 THE COMMUNITY?

17 MR. MAYE: YOUR HONOR, IF HE'S GOING TO PUT HIS CHARACTER INTO
18 ISSUE IN THIS CASE THROUGH -- I'M GONNA OBJECT TO THAT.

19 THE COURT: OVERRULED. THE OBJECTION IS OVERRULED. YOU MAY ASK
20 THE QUESTION.

21 MR. HAWKE: OKAY.

22 Q ARE YOU AWARE GENERALLY OF HIS REPUTATION IN THE COMMUNITY?

23 A JUST IN THE BUSINESS COMMUNITY THAT I WAS DEALIN' -- I DIDN'T
24 REALLY SOCIALIZE WITH FREDY OUTSIDE HIS TRAILER. I DIDN'T, YOU KNOW, I
25 MEAN BUT THERE AGAIN, I'VE SEEN HIM AT THE STORE 6 AND 7 DAYS A WEEK,

GERARD NAULT -- DIRECT EXAMINATION BY MR. HAWKE

1 AND PEOPLE THAT WOULD COME IN SELLING DIFFERENT THINGS---

2 Q OKAY. YOU CAN'T GO INTO SPECIFIC FACTS OR ANYTHING. HIS GENERAL
3 REPUTATION IS IT GOOD OR BAD?

4 A THE DEALINGS I'VE HAD WITH HIM AND THE PEOPLE I KNOW THAT HAVE
5 HAD DEALINGS WITH BOTH OF US IT'S BEEN GOOD.

6 Q ARE YOU AWARE OF HIS REPUTATION FOR -- OH, I CAN'T DO THAT ONE.
7 ARE YOU ---

8 MR. HAWKE: YOUR HONOR, AT THIS TIME THE ONLY THING I WOULD NEED
9 TO DO FURTHER IN REFERENCE TO THE MATTER BEFORE THE COURT RIGHT NOW
10 WOULD BE I REQUEST THE COURT'S PERMISSION TO BE ALLOWED TO PUBLISH THE
11 PICTURES TO THE JURY.

12 THE COURT: CERTAINLY.

13 MR. HAWKE: YOUR HONOR, THAT'S ALL I HAVE OF THIS WITNESS. PLEASE,
14 ANSWER ANY QUESTIONS THE SOLICITOR MIGHT HAVE.

15 THE COURT: ALRIGHT.

16 MR. HAWKE: OR THE DEFENDANTS.

17 THE COURT: ANY OF THE DEFENDANTS HAVE ANY QUESTIONS?

18 MR. SUSSMAN: NO, YOUR HONOR.

19 MR. MILLER: NO QUESTIONS, YOUR HONOR.

20 THE COURT: STATE?

21 MR. MAYE: YES, SIR, BUT I'M GOING TO WAIT TILL THEY LOOK AT THE
22 PICTURES.

23 THE COURT: OKAY.

24 MR. HAWKE: JUDGE, I THOUGHT OF ONE OTHER MATTER. MAY I GO AHEAD
25 AND GO INTO IT? IF THE COURT WILL ALLOW ME?

GERARD NAULT - DIRECT EXAMINATION BY MR. HAWKE

1 Q WHEN YOU WERE A NARCOTICS INVESTIGATOR, DID YOU DEAL WITH BOTH
2 STREET LEVEL DRUG DEALERS AND TRAFFICKERS AS WELL?

3 A YEAH, ALL -- WELL, I WAS ON A MULTI-AGENCY NARCOTICS TASK FORCE,
4 AND I'VE DONE STUFF FROM OUNCE BUYS OF MARIJUANA TO UNLOADIN' 57 AND A
5 HALF TONS OF POT OFF A FREIGHTER.

6 Q 57 AND A HALF TONS?

7 A YES.

8 Q OKAY. AND HAVE YOU HAD OCCASION TO EXECUTE SEARCH WARRANTS?

9 A ABSOLUTELY. I DO -- I WAS -- MYSELF AND TWO PARTNERS WE PROBABLY
10 EXECUTED ABOUT 2 SEARCH WARRANTS A WEEK.

11 Q OKAY. AND WHEN YOU WERE GONNA EXECUTE THE SEARCH WARRANT,
12 CAN YOU TELL THE JUDGE -- THE JUDGE -- THE JURY SOME OF THE TYPES OF ITEMS
13 THAT YOU WOULD FIND WHEN YOU EXECUTED THE SEARCH WARRANTS
14 GENERALLY FOUND IN THE DIFFERENT DRUG DEALERS' OR DRUG TRAFFICKERS'
15 HOMES.

16 A THERE'D USUALLY BE SOME TYPE OF RECORDS, THERE'D BE SCALES TO
17 WEIGH THE STUFF OUT, THERE WOULD BE A LOT OF PLASTIC BAGS, PACKAGING
18 MATERIAL WHERE THEY CAN CUT IT UP INTO SMALLER CONTAINERS AND SEND IT
19 OUT. THERE WOULD BE THINGS LIKE -- I NOTICE A LOT OF SEARCH WARRANTS
20 THAT I WENT ON WHERE THERE WOULD BE FEMALES IN THE HOUSE THERE WOULD
21 BE A LOT OF PORNOGRAPHY, SEX TOYS. THERE WOULD BE A LOT OF JEWELRY
22 AROUND, GOLD JEWELRY. AND YOU'D SEE SOME EXPENSIVE -- SOMETIMES YES,
23 SOMETIMES NO, SOME EXPENSIVE ITEMS: FURNITURE, ELECTRONICS, THAT KINDA
24 STUFF.

25 Q OKAY. DID YOU FIND LARGE SUMS OF CASH ON OCCASION?

GERARD NAULT -- DIRECT EXAMINATION BY MR. HAWKE

1 A YES. I'VE -- UP TO LIKE 35,000. OTHER TIMES 8000, 6000.

2 Q OKAY. WAS THAT UNUSUAL AT ALL?

3 A NOT AT ALL.

4 Q OKAY. DRUG PARAPHERNALIA?

5 A DRUG PARAPHERNALIA TO SMOKE MARIJUANA, ROACH CLIPS, PAPERS,
6 ALL THAT KINDA STUFF. I MEAN THAT WAS JUST ALWAYS THERE.

7 Q WOULD THERE BE ANY DISTINGUISH -- LET ME PUT IT THIS WAY: WOULD
8 THERE BE ANY SIGNIFICANT DIFFERENCE BETWEEN WHAT YOU WOULD EXPECT TO
9 FIND IN THAT, SAY, A STREET LEVEL DEALER'S HOUSE VERSUS A DRUG
10 TRAFFICKER'S HOUSE?

11 A YES. THERE'D BE A LOT LESS CLUTTER I WOULD SAY IN A TRAFFICKER'S
12 HOUSE, BUT THERE WOULD TEND TO BE MORE EXTRAVAGANT FURNITURE, ITEMS,
13 MORE EXPENSIVE STUFF IN THE TRAFFICKER'S HOUSE, A LOT LESS
14 PARAPHERNALIA AND THAT KINDA STUFF.

15 Q OKAY. WOULD YOU EXPECT -- MANY TIMES WHEN YOU DID TRAFFICKER'S
16 HOUSE DID YOU FIND MORE LARGER SUMS OF CASH?

17 A YES. THAT'S WHERE WE'VE HAD LARGER SUMS OF CASH OR HAD TRACES
18 BACK TO HUNDREDS OF THOUSANDS OF DOLLARS OF CASH AVAILABLE.

19 Q OKAY. AND WOULD YOU ALSO EXPECT TO FIND -- WHAT SORT OF
20 QUANTITIES OF DRUGS WOULD YOU EXPECT TO FIND WITH A TRAFFICKER?

21 A WELL, LIKE I SAY, WITH TRAFFICKERS I -- YOU KNOW, FROM 100 POUNDS
22 OF MARIJUANA TO 30 KILOS OF COCAINE. I WAS IN SOUTH FLORIDA AND THERE
23 WAS A LOTTA -- LOT OF NARCOTICS COMING IN AND OUT OF THERE, PLANE LOADS
24 OF STUFF, NOTHIN' TO HAVE -- PULL A CAR OVER ON A TRAFFICKER THAT WE
25 WERE WATCHING AND HAVE 55, 60 THOUSAND DOLLARS IN CASH. 8, 10 THOUSAND

GERARD NAULT - CROSS-EXAMINATION BY MR. MAYE

1 DOLLARS IF HE WAS -- YOU KNOW, SOME SMALL DEAL THAT HE WAS GONNA
2 DELIVER A SMALL AMOUNT OR WHATEVER.

3 Q OKAY. DID YOU FIND PACKAGING MATERIAL IN TRAFFICKERS' HOUSES AS
4 WELL?

5 A SOMETIMES, YES, BUT NOWHERE AS NEAR AS MUCH AS STREET LEVELS.

6 Q OKAY. AND WHAT ELSE WOULD YOU EXPECT TO FIND IN A TRAFFICKER'S
7 HOUSE?

8 A AGAIN, STUFF THAT THEY USUALLY BOUGHT WITH THEIR MONIES THAT
9 THEY'VE EARNED FROM TRAFFICKING. MORE EXPENSIVE JEWELRY, MORE
10 EXPENSIVE ELECTRONICS STUFF, MORE JEWELRY, FINER FURNITURE, NICER HOME.

11 Q OKAY. THAT'S ALL I HAVE. PLEASE, ANSWER ANY QUESTIONS THE
12 SOLICITOR MIGHT HAVE FOR YOU.

13 CROSS-EXAMINATION

14 BY MR. MAYE

15 Q I DIDN'T CATCH YOUR NAME. WHAT IS YOUR NAME AGAIN, SIR?

16 A IT'S GERARD G-E-R-A-R-D NAULT N-A-U-L-T.

17 Q N---

18 A A-U-L-T.

19 Q MR. NAULT, WHAT DEPARTMENTS HAVE YOU WORKED FOR? WHAT WAS
20 THE NAME OF THOSE DEPARTMENTS?

21 A PALM BEACH COUNTY SHERIFF'S OFFICE.

22 Q WOULD YOU SPELL THAT COUNTY NAME FOR ME.

23 A P-A-L-M B-E-A-C-H.

24 Q WHAT OTHER PLACE?

25 A CITY OF BOYNTON BEACH POLICE DEPARTMENT.

- 1 Q CITY OF BOYNTON BEACH?
- 2 A YEAH, B-O-Y-N-T-O-N. ABOUT 60 MILES NORTH OF MIAMI.
- 3 Q DID YOU RETIRE FROM LAW ENFORCEMENT DOWN THERE?
- 4 A YES, I DID.
- 5 Q DO YOU DRAW A PENSION?
- 6 A I HAVE IT LOCKED IN. I START DRAWING IT OUT AT AGE 62.
- 7 Q OKAY. IS IT PRETTY COMMONLY KNOWN THAT YOU'RE RETIRED LAW
- 8 ENFORCEMENT IN THIS AREA?
- 9 A PARDON?
- 10 Q IS IT PRETTY COMMONLY KNOWN THAT YOU ARE FORMER LAW
- 11 ENFORCEMENT IN THIS AREA?
- 12 A THERE'S QUITE A FEW PEOPLE KNOW THAT, YES.
- 13 Q DID MR. DELEON KNOW THAT YOU WERE FORMERLY A POLICE OFFICER?
- 14 A YES, HE DID.
- 15 Q OKAY. DO YOU THINK MR. DELEON WOULD'VE LEFT ANYTHING, ANY
- 16 ROLLIN' PAPERS OR ANY DOPE OR ANYTHING INDICATIVE OF NARCOTICS
- 17 TRAFFICKING OUT FOR YOU TO SEE?
- 18 A NOT IF HE KNEW I WAS COMING OVER, NO.
- 19 Q OKAY. HIS TRAILER'S RIGHT THERE BEHIND YOU, ISN'T IT?
- 20 A THAT'S CORRECT.
- 21 Q IF YOU'D SEEN ANYTHING, YOU'D HAVE TURNED HIM IN. WOULDN'T YOU?
- 22 A ABSOLUTELY.
- 23 Q OKAY. SO HE'S NOT GONNA LEAVE ANYTHING WHERE YOU CAN SEE IT, IS
- 24 HE?
- 25 A I WOULDN'T THINK SO, NO.

GERARD NAULT - CROSS-EXAMINATION BY MR. MAYE

- 1 Q IT WOULDN'T BE VERY SMART, WOULD IT?
- 2 A NO, IT WOULDN'T.
- 3 Q OKAY. DURING THE TIME THAT YOU WORKED NARCOTICS YOU CAUGHT A
- 4 LOTTA PEOPLE FOR THE FIRST TIME, DIDN'T YOU?
- 5 A YES, I DID.
- 6 Q OKAY. BET YOU WENT INTO SUBDIVISIONS AND HAULED PEOPLE OUT AND
- 7 THE NEIGHBORS ALL STOOD AROUND WITH THEIR EYES WIDE OPEN AND THEIR
- 8 MOUTHS HANGIN' OPEN, DIDN'T THEY? WHEN YOU TOOK 'EM OUT IN HANDCUFFS.
- 9 A ON A FEW OCCASIONS, YES.
- 10 Q HAPPENS DOESN'T IT?
- 11 A IT SURE DOES?
- 12 Q UH-HUH. SOMETIMES YOUR OWN FAMILY MEMBERS DON'T KNOW. ISN'T
- 13 THAT RIGHT?
- 14 A SOMETIMES, YES.
- 15 Q PEOPLE THAT LIVE WITH 'EM IN THE SAME HOUSEHOLD. HAPPENS
- 16 DOESN'T IT?
- 17 A IT COULD -- IT HAPPENS, YOU KNOW, A LITTLE DEAL IS -- WELL, IT COULD
- 18 HAPPEN THE OTHER WAY AROUND TOO. SOMETIMES FAMILY MEMBERS DO NOT
- 19 KNOW WHAT THE OTHER FAMILY MEMBERS ARE DOING, YES.
- 20 Q FAIR TO SAY IN LAW ENFORCEMENT YOU SEE SOMETHIN' NEW ALL THE
- 21 TIME, DON'T YOU?
- 22 A THAT'S ABSOLUTELY.
- 23 Q NEVER ARE SURPRISED BY ANYTHING, ARE YOU?
- 24 A NO, THAT'S FOR SURE.
- 25 Q AND YOU NEVER REALLY KNOW ANYBODY EITHER, DO YOU?

GERARD NAULT - CROSS-EXAMINATION BY MR. MAYE

- 1 A NO, YOU NEVER REALLY KNOW WHAT A PERSON IS THINKIN' AND WHAT'S
2 GOIN' ON IN THEIR MIND, WHAT THEY'RE THINKIN'.
- 3 Q YOU DON'T KNOW WHAT THEY'RE DOIN' WHEN YOU'RE NOT LOOKIN'
4 EITHER, DO YOU?
- 5 A THAT'S CORRECT.
- 6 Q YOU DID DO A GOOD BIT OF BUSINESS WITH MR. DELEON, DIDN'T YOU?
- 7 A YES, I DID.
- 8 Q YOU WEREN'T INVOLVED IN ANY OF THIS BUSINESS THOUGH, WERE YOU?
- 9 A ABSOLUTELY NOT.
- 10 Q OKAY. EVEN THOUGH YOU'RE IN THE FURNITURE BUSINESS.
- 11 A EVEN THOUGH I WAS IN THE FURNITURE BUSINESS. ANY INDICATION I'D
12 GIVE THE SHERIFF A CALL AND SAY HEY SOMETHIN' AIN'T -- SOMETHIN'S RIGHT
13 OVER HERE AND I'VE HAD SEVERAL CONVERSATIONS WITH HIM ABOUT
14 SUSPICIOUS ACTIVITY THAT I HAD HEARD INFORMATION ABOUT.
- 15 Q SURE. MR. DELEON ALSO HAD A STORE IN ESTILL TOO, DIDN'T HE?
- 16 A I'M FAMILIAR WITH IT -- I KNEW HE HAD ONE BUT I'D NEVER BEEN OUT
17 THERE.
- 18 Q OKAY. DO YOU KNOW WHEN HE CAME TO THE UNITED STATES?
- 19 A NO, I DID NOT.
- 20 Q DO YOU KNOW WHAT HE DID PRIOR TO GOIN' IN THE STORE BUSINESS?
- 21 A NO, I DON'T.
- 22 Q OKAY. HE HASN'T BEEN HERE LONG THOUGH, HAS HE?
- 23 A PARDON?
- 24 Q HE HADN'T BEEN HERE LONG THOUGH, HAS HE?
- 25 A HE WAS HERE WHEN I GOT -- WHEN I OPENED UP MY BUSINESS. HIS.

GERARD NAULT -- CROSS-EXAMINATION BY MR. MAYE

1 BUSINESS WAS ALREADY OPEN AND RUNNING.

2 Q UH-HUH.

3 A THAT WAS ABOUT 3 AND A HALF YEARS AGO. BEFORE THAT, I DON'T
4 KNOW HOW LONG HE'S BEEN HERE.

5 Q UH-HUH. BUT HE HAD 2 STORES GOIN' AT THAT TIME, DIDN'T HE?

6 A HE ORIGINALLY HAD ONE WHEN HE FIRST OPENED UP, AND OPENED UP
7 THE SECOND ONE I'D SAY MAYBE ABOUT -- ABOUT A YEAR AFTER I OPENED MINE
8 UP. ABOUT THE TIME I OPENED UP MY NEW STORE, HE OPENED UP ANOTHER ONE.

9 Q HIS WIFE WAS DRIVIN' A NEW JETTA ABOUT THAT TIME TOO, WASN'T SHE?
10 VOLKSWAGEN?

11 A SOMEWHERE IN THAT TIME PERIOD, YES.

12 Q AND HE HAD A TRAILER AND AN ACRE OF LAND, DIDN'T HE?

13 A I KNOW HE HAD A TRAILER. I'M NOT SURE WHO OWNED THE LAND. THIS
14 WAS AT THE -- THE TRAILER THAT I KNEW HE HAD WAS IN A TRAILER PARK
15 BEHIND THE STORE AND I DON'T THINK HE OWNED THE LAND THERE, BUT I'M NOT
16 POSITIVE.

17 Q BUSINESS APPEARED TO BE GOIN' PRETTY GOOD, DIDN'T IT?

18 A THERE'S QUITE A FEW PEOPLE IN AND OUT OF THE STORE BUYIN' -- HE HAD
19 A LITTLE -- HE'D DO LUNCH FOR A WHILE, WAS SELLIN' LUNCH TO PEOPLE THAT
20 WOULD COME IN FROM THE FARMS WORKIN'. PAYDAY PEOPLE WOULD COME IN A
21 LOTTA TIMES AND I'D BE IN THERE SOMETIMES DURIN' THAT TIME AND THEY'D
22 WIRE MONEY DOWN TO MEXICO AND HE'D TAKE THAT MONEY IN TO GET IT IN THE
23 BANK AND SO FORTH AND WIRE IT. AND BUY GROCERIES FOR THE WEEKEND OR
24 STUFF THAT NIGHT FOR SUPPER. WHATEVER. THERE'S QUITE A BIT OF BUSINESS
25 IN THERE, YES.

1 Q LOTTA MONEY GOIN' IN AND OUTTA THAT PLACE TOO, WASN'T THERE?
2 WIRE TRANSFERS BACK TO MEXICO AND THAT KINDA THING?

3 A I DON'T KNOW EXACTLY HOW MUCH, BUT THERE WAS QUITE A BIT OF
4 MONEY, YES.

5 Q AND A BUNCH OF IT HEADED BACK TO MEXICO, WASN'T IT?

6 A WELL, YEAH, THAT IS WHERE THEIR FAMILIES LIVED AND FROM WHAT I
7 UNDERSTOOD THAT'S A COMMON PRACTICE WITH SPANISH PEOPLE AND A LOTTA
8 FOREIGNERS WHO SEND MONEY BACK TO MEXICO, GUATEMALA. I'VE SEEN IT
9 DOWN IN FLORIDA WITH THE MIGRANTS DOWN THERE. THEY DON'T TRUST
10 BANKS. THEY KEEP IT ON 'EM. I'VE ARRESTED OR BEEN IN CONTACT WITH
11 SPANISH OR GUATEMALANS AND THEY MAY HAVE 7, 8 HUNDRED, A THOUSAND, 2
12 THOUSAND DOLLARS ON 'EM BECAUSE THEY DON'T TRUST BANKS AND DIDN'T
13 HAVE A CHANCE TO GET IT WIRED BACK TO THEIR COUNTRY TO THEIR FAMILIES.

14 Q FOR THAT REASON, WHEN YOU TRY TO GO LOOKIN' FOR RECORDS ON
15 HISPANICS, YOU DON'T HAVE MUCH LUCK, DO YOU?

16 A NO, NOT A WHOLE LOT A LUCK, NO. THEY DEAL A LOT IN CASH AND THEY -
17 - THEY HAVE A TENDENCY NOT TO TRUST BANKS.

18 Q THAT'S PRETTY COMMON WITH HISPANICS, ISN'T IT?

19 A YES, IT IS.

20 Q SO THAT'D MAKE FOR A DISTINCT ABSENCE OF FINANCIAL RECORDS, A
21 GUY DEALIN' IN CASH?

22 A IT COULD, YES.

23 Q IN FACT, A GUY WITH A WIRE TRANSFER BUSINESS COULD LAUNDER A
24 LOTTA MONEY, COULDN'T HE?

25 A I'M NOT FAMILIAR WITH EXACTLY HOW IT WORKS. I KNOW MONEY COMES

1 IN AND IT GOES INTO A BANK AND IT'S TRANSFERRED OR SOMETHIN', BUT I DON'T
2 KNOW THAT TRANS -- YOU KNOW, WHAT RECORDS YOU HAVE TO KEEP, YOU
3 KNOW.

4 Q BUT BASED ON YOUR EXPERIENCE AND TRAINING, A LOTTA PEOPLE MADE
5 MONEY OFF THE DRUG BUSINESS IN FLORIDA AND THEN WIRE TRANSFERRED
6 MONEY BACK OVERSEAS. ISN'T THAT RIGHT? DIDN'T STAY AROUND THE UNITED
7 STATES A LOTTA TIME, DID IT?

8 A PEOPLE MAKE MONEY IN NARCOTICS ALL OVER THE PLACE AND THERE'S
9 ALL -- THE COME UP WITH ALL KINDS OF WAYS OF GETTIN' IT INTO THE SYSTEM
10 TO WHERE IT'S USABLE MONEY RATHER THAN, YOU KNOW, LAUNDRY STUFF OUT.
11 YES.

12 Q UH-HUH. IN FACT, A LOTTA TIMES THEY'LL HIDE DOPE INSIDE STUFF AND
13 BLINDLY SHIP IT OVER TO THE UNITED STATES, SOMEBODY FROM MEXICO WILL
14 BLINDLY SHIP IT OVER TO THE UNITED STATES TO SOMEONE, TO A DESIGNEE HERE
15 LIKE USING UPS OR USING SHIPPING COMPANIES THAT MAIL A LOTTA PACKAGES,
16 DON'T THEY?

17 A ABSOLUTELY. I'VE SEEN STUFF COME THROUGH THE MAIL. UPS.
18 PACKAGES COME IN WITH STUFF INSIDE. AND ALL THE TIME THEY'RE COMIN' UP
19 WITH SOMETHIN' NEW TO TRY TO GET STUFF IN AND OUT OF THE COUNTRY, YES.

20 Q I BET Y'ALL SET UP ON PLACES LIKE FED EX AND UPS WITH DRUG DOGS
21 JUST SWEEPIN' ALL THE PACKAGES DOWN THERE, DIDN'T YOU?

22 A YEAH, THEY HAD U.P. -- FED EX AND UPS HAD A LOT OF THEIR OWN STUFF.
23 WE WORKED A LOT. AS A MATTER OF FACT, WE HAD UPS AND FED EX SHIRTS A
24 LOT OF TIMES WHERE WE'VE HAD A PACKAGE WHERE DOGS HAD SNIFFED OUT
25 THE NARCOTICS AND WE WOULD ACTUALLY DELIVER IT TO THAT PERSON, ONE OF

GERARD NAULT - CROSS-EXAMINATION BY MR. MAYE

1 OUR OFFICERS WOULD DELIVER IT TO THAT PERSON, AND ONCE THEY TOOK
2 POSSESSION OF IT, WE WOULD EITHER EXECUTE A SEARCH WARRANT OR GO IN
3 AND BUST PEOPLE BECAUSE NOW WE KNOW THEY HAD IT IN THEIR POSSESSION.

4 Q AND YOU'D GO POP 'EM RIGHT THEN, WOULDN'T YOU?

5 A YES.

6 Q BET YOU DID THAT ALL THE TIME IN FLORIDA, DIDN'T YOU?

7 A TOO OFTEN UNFORTUNATELY.

8 Q DID YOU EVER ARREST A FED EX OR UPS DRIVER, DID YOU EVER ENLIST
9 ANY OF THEM TO HELP YOU WITH THIS? DID YOU EVER GET THE REGULAR DRIVER
10 TO COME IN AND DO IT?

11 A NO, USUALLY WE FOR SECURITY REASONS WE'D GET OUR OWN WHEN WE
12 WERE DOIN' ANY OF THAT.

13 Q SOMETIMES THEY'RE SOPHISTICATED ENOUGH TO KNOW WHO THE
14 REGULAR UPS OR FED EX GUY IS, AREN'T THEY?

15 A SOMETIMES. MOST OF THE TIME WHEN WE DID THAT, IT WAS JUST A
16 SMALL AMOUNT, A SMALL PACKAGE, AND ON LARGER CASES, YOU KNOW,
17 WHERE THEY MIGHT USE SOMEBODY LIKE, YOU KNOW, THE REGULAR DRIVER,
18 BUT AGAIN, IT'S A LITTLE BIT DIFFERENT IN SOUTH FLORIDA THAN IT IS HERE. OUR
19 UPS DRIVER I KNOW HIM BY NAME. YOU'D SEE HIM ON THE STREET AND HE'S GOT
20 A PACKAGE TO DELIVER TO MY HOUSE, HE'LL GIVE IT TO THE OTHER DRIVER AND
21 COME TO THE STORE. DOWN IN SOUTH FLORIDA THERE'S SUCH A BIG TURNOVER;
22 THERE'S SO MUCH PEOPLE, NOBODY KNOWS WHO'S COMIN' OR GOIN'. AND
23 THAT'S ONE OF THE REASONS WHY I'M OUTTA THERE. IT'S JUST MORE OF A CLOSE
24 KNIT COMMUNITY WHERE EVERYBODY KNOWS ONE ANOTHER AND THEY'RE
25 MORE FRIENDLY. DOWN THERE YOU'RE NOT GONNA SEE THE SAME FACES---

1 Q UH-HUH.

2 A ---AT ANY TIME.

3 Q Y'ALL ARE JUST SLAP EAT UP WITH 'EM DOWN THERE, AREN'T YOU?

4 A YES, SIR.

5 Q IT'S HEADED THIS WAY, ISN'T IT?

6 A WELL, THAT'S -- IT'S GOIN' ALL OVER THE COUNTRY UNFORTUNATELY.

7 Q IT'S GETTIN' WORSE THOUGH, ISN'T IT?

8 A YES, IT IS.

9 Q AND SPREADIN' FROM THE BORDER AREAS BACK UP TO---

10 MR. HAWKE: OBJECTION, YOUR HONOR. THIS IS NOT RELEVANT TO THIS

11 CASE OR ANY OF THE DECISIONS THAT THIS JURY MUST MAKE.

12 THE COURT: LADIES AND GENTLEMEN, DISREGARD THAT LAST QUESTION.

13 Q WERE YOU A DETECTIVE?

14 A PARDON ME?

15 Q DETECTIVE, INVESTIGATOR, YOUR HIGHEST RANK? WHAT DID YOU HAVE?

16 A MY HIGHEST RANK I GUESS WOULD BE DETECTIVE.

17 Q THANK YOU, DETECTIVE.

18 THE COURT: ALRIGHT. ANY OTHER QUESTIONS OF THE WITNESS?

19 MR. HAWKE: NO, YOUR HONOR.

20 MR. SUSSMAN: NO, YOUR HONOR.

21 THE COURT: THANK YOU VERY MUCH, SIR. YOU MAY STEP DOWN.

22 MR. HAWKE: MARK THIS FOR IDENTIFICATION.

23 THE COURT: SEE IF THEY OBJECT TO IT.

24 MR. HAWKE: WE HAVE TALKED ABOUT IT, JUDGE. HE DOESN'T HAVE ANY

25 OBJECTION TO IT.

1 MR. MAYE: IS IT THE BUSINESS LICENSE?

2 MR. HAWKE: IT'S A COPY OF THE BUSINESS LICENSE.

3 MR. MAYE: GO AHEAD AND PUT IT IN. I DON'T HAVE ANY OBJECTION.
4 WHATEVER YOU WANT.

5 THE COURT: MARK IT INTO EVIDENCE.

6 MR. HAWKE: MAY I HAVE ONE MOMENT WITH THE REST OF COUNSEL?

7 THE COURT: SURE. (DEFENDANT DELEON'S EXHIBIT #34 RECEIVED IN
8 EVIDENCE.)

9 MR. HAWKE: YOUR HONOR, AT THIS TIME THE DEFENDANT DELEON
10 WOULD REST. EXCEPT FOR THE---

11 THE COURT: IT'S IN.

12 MR. HAWKE: I DIDN'T KNOW IT WAS IN.

13 THE COURT: YES.

14 MR. HAWKE: OKAY.

15 THE COURT: ALRIGHT. DOES MR. HERNANDEZ WISH TO OFFER ANY
16 EVIDENCE?

17 MR. SUSSMAN: MR. HERNANDEZ RESTS HIS CASE AND SO DOES MR. AVILA-
18 AROJONA.

19 THE COURT: THANK YOU. DOES MR. GUERRERO WISH TO OFFER ANY
20 EVIDENCE?

21 MR. MILLER: NO, YOUR HONOR. MR. GUERRERO RESTS.

22 THE COURT: LADIES AND GENTLEMEN OF THE JURY, PLEASE, GIVE ME
23 YOUR ATTENTION. I INSTRUCT YOU NOW AND EMPHASIZE TO YOU THAT THE FACT
24 THAT A DEFENDANT ELECTED NOT TO TESTIFY IS NOT A FACTOR TO BE
25 CONSIDERED BY YOU IN ANY WAY IN YOUR DELIBERATIONS AND IN YOUR

1 CONSIDERATION ON THE QUESTION OF WHETHER A DEFENDANT IS GUILTY OR NOT
2 GUILTY. THE DECISION NOT TO TESTIFY SHOULD NOT BE CONSIDERED BY YOU IN
3 ANY MANNER WHATSOEVER AGAINST THE DEFENDANT. AN ACCUSED HAS A
4 CONSTITUTIONAL RIGHT TO REMAIN SILENT, AND THE ASSERTION OF THAT RIGHT
5 CANNOT AND MUST NOT BE CONSIDERED IN ANY WAY AGAINST HIM OR IN ANY
6 WAY IN YOUR DELIBERATIONS. UNDER THE OATH YOU HAVE TAKEN, YOU ARE TO
7 REACH NO INFERENCE; YOU ARE TO DRAW NO CONCLUSION WHATSOEVER FROM
8 THE FACT THAT A DEFENDANT ELECTED NOT TO TESTIFY. HIS DECISION NOT TO
9 TESTIFY SHOULD NOT BE DISCUSSED BY YOU IN THE JURY ROOM. IT SHOULD NOT
10 ENTER INTO YOUR MIND IN MAKING YOUR DECISIONS ON THESE CASES. THE
11 BURDEN OF PROOF, AS I'VE TOLD YOU REPEATEDLY, IS ENTIRELY ON THE STATE
12 TO PROVE EVERY ESSENTIAL ELEMENT OF THESE CASES BEYOND A REASONABLE
13 DOUBT, AND THE DEFENDANTS HAVE NO BURDEN TO PROVE ANYTHING AT ALL. IS
14 THERE ANY REPLY?

15 MR. MAYE: NOTHIN' IN REPLY, YOUR HONOR.

16 THE COURT: ALRIGHT. LADIES AND GENTLEMEN, THAT'S ALL THE
17 EVIDENCE YOU'RE GONNA HAVE TO DECIDE THESE CASES, SO IT DOES APPEAR
18 THAT YOU WILL GET THE CASES TODAY. WE STILL HAVE SOME MATTERS TO
19 REVIEW. WE'RE AT ANOTHER ONE OF THOSE POINTS AT THE END OF THE
20 EVIDENCE JUST AS WHEN THE STATE RESTED WHERE I HAVE TO DISCUSS LEGAL
21 ISSUES WITH THE ATTORNEYS, AND MY PRACTICE IS THAT I USUALLY PRINT OUT
22 FOR THE LAWYERS WHAT I INTEND TO TELL YOU ABOUT THE LAW, AND I'M NOT
23 ABLE TO GET THAT FINISHED UNTIL I HAVE HEARD WHAT'S BEEN PRESENTED IN
24 THE CASE MYSELF. SO WHILE I HAVE WORKED ON THIS THROUGHOUT THE TRIAL
25 AND HAVE IT BASICALLY FINISHED, I STILL HAVE A LITTLE BIT MORE TO DO. IT'S A

1 QUESTION WHETHER YOU WAIT NOW OR YOU WAIT LATER. SO WHAT I'M GONNA
2 DO IS I'M GONNA LET YOU FOLKS GO TO LUNCH IN JUST A FEW MINUTES, AND I'M
3 GONNA HAVE YOU BACK HERE AT 2:15. I THINK THAT WE CAN FINISH BY THAT
4 TIME, BUT I CAN'T GUARANTEE IT. I CAN GUARANTEE YOU THAT AS CLOSE TO
5 THAT TIME AS WE POSSIBLY CAN, WE'LL GET YOU OUTTA HERE. YOU'LL HEAR THE
6 CLOSING ARGUMENT, AND THEN I'LL TELL YOU THE LAW THAT APPLIES TO THE
7 CASE, AND SHORTLY AFTER THAT, THESE CASES WILL BE PLACED INTO YOUR
8 HANDS TO DECIDE. OKAY? I HOPE YOU HAVE A PLEASANT LUNCH. LEAVE YOUR
9 NOTES HERE AS YOU'VE DONE DURING THE BREAKS, AND I NEED YOU IN THE JURY
10 ROOM AT -- WHAT'D I SAY? -- 2:15. ALRIGHT. THANK YOU. (THE FOLLOWING
11 OCCURRED IN THE ABSENCE OF THE JURY.) MOTIONS?

12 MR. HAWKE: YOUR HONOR, THE SAME MOTION FOR DIRECTED VERDICT
13 PREVIOUSLY MADE. WE ALSO RENEW AND ASK THE COURT TO ONCE AGAIN
14 SUSTAIN THE PREVIOUS MOTIONS AND OBJECTIONS THAT WE HAVE MADE
15 THROUGHOUT THIS TRIAL FOR THE SAME REASONS AND BASES THAT WE HAVE
16 ADVANCED DURING THE TRIAL AND DURING THE HEARINGS ON THIS MATTER,
17 AND WE ONCE AGAIN REASSERT THOSE MOTIONS AND OBJECTIONS, AND ASK THE
18 COURT TO RULE IN OUR FAVOR AS WELL AS GRANT THE MOTION FOR DIRECTED
19 VERDICT OF ACQUITTAL.

20 THE COURT: THANK YOU.

21 MR. HAWKE: AND EXCUSE ME, JUDGE. THE DIRECTED VERDICT OF
22 ACQUITTAL WOULD BE ON THE EXACT SAME BASIS AS PREVIOUSLY STATED AND
23 THE DIRECTED VERDICT OF ACQUITTAL THAT WAS STATED IN THE RECORD AFTER
24 THE COMPLETION OF THE STATE'S CASE.

25 THE COURT: MR. SUSSMAN?

1 MR. SUSSMAN: I WOULD RENEW MY MOTIONS PREVIOUSLY MADE FOR
2 ANY RULINGS MADE BY THE COURT DURING THE TRIAL AND YOUR
3 RECONSIDERATION ADVERSE TO ANY OF THOSE RULINGS FOR RAPHAEL
4 HERNANDEZ AND ALFREDO AVILA-AROJONA AND AGAIN RENEW THE MOTIONS
5 OR A DIRECTED VERDICT OF ACQUITTAL WITH EVEN RENEWED VIGOR FOR THE
6 SAME REASONS AS BEFORE AS TO THE ABSOLUTE PAUCITY OF THE EVIDENCE, OF
7 ANY COMPETENT EVIDENCE ADDUCED AT TRIAL IN REGARDS TO MR. HERNANDEZ
8 AND MR. AVILA-AROJONA.

9 THE COURT: THANK YOU. MR. MILLER?

10 MR. MILLER: YOUR HONOR, ON BEHALF OF THE DEFENDANT HONORIO
11 GUERRERO WE WOULD RENEW OUR MOTION PREVIOUSLY STATED FOR DIRECTED
12 VERDICT AND ALSO AS STATED BEFORE THAT ALL OBJECTIONS BE PRESERVED
13 AND THAT THE COURT'S RULINGS ON THOSE MOTIONS BE RECONSIDERED THAT
14 WERE ADVERSE TO THE DEFENDANT. THANK YOU, YOUR HONOR.

15 THE COURT: THANK YOU. MOTIONS ARE RESPECTFULLY DENIED.
16 ALRIGHT. WE'RE GONNA BE AT EASE. I'M GONNA PRINT THIS CHARGE OUT AS
17 SOON AS I FINISH, AND THEN YOU'LL HAVE IT. YOU CAN MEET ME BACK HERE
18 SOMETIME PRIOR TO WHEN THE JURY'S COMING BACK. WE'LL TALK ABOUT THE
19 PROPOSED CHARGE AT THAT TIME.

20 MR. PUETZ: IS 2 O'CLOCK FINE?

21 THE COURT: THAT'S WHAT I'M GONNA AIM FOR IS 2 O'CLOCK. BUT I WANT
22 Y'ALL TO GET THE DRAFT BEFORE YOU LEAVE.

23 MR. HAWKE: OH, SURE.

24 THE COURT: NOW I JUST NEED THE LAWYERS TO STAY. THE REST OF YOU
25 CAN GO ON TO LUNCH IF YOU'D LIKE.

1 MR. MILLER: THANK YOU. YOUR HONOR.

2 THE COURT: WE NEED -- MR. HUNT, MAKE SURE THEY KNOW TO BE BACK
3 HERE AT 2 O'CLOCK THIS AFTERNOON, AND IF THEY'RE NOT HERE, THE CASE WILL
4 GO ON WITHOUT THEM. DO ALL FOUR UNDERSTAND?

5 MR. HUNT: WE'LL BE HERE TOO.

6 THE COURT: THANK YOU. WE'RE AT EASE. (THERE WAS A LUNCH RECESS.)
7 WE'VE HAD DISCUSSIONS ABOUT THE PROPOSED CHARGE. I GAVE A DRAFT TO
8 THE ATTORNEYS BEFORE LUNCH AND THEY'VE HAD AN OPPORTUNITY TO REVIEW
9 IT, AND WE'VE HAD A CONFERENCE OFF THE RECORD ABOUT IT. THEY DO HAVE
10 SOME ISSUES THEY WANT TO RAISE. I HAVE ALREADY CONSIDERED WHAT THEY
11 WANT TO RAISE, BUT WHAT I'LL DO IS AFTER THE CHARGE GIVE THEM AN
12 OPPORTUNITY TO PLACE ANY SPECIFIC OBJECTIONS THEY WANT ON THE RECORD
13 AND FILE ANY OF THESE WRITTEN REQUESTS TO CHARGE THEY WANT AND
14 PRESERVE THOSE. I HAVE MADE SOME CHANGES IN RESPONSE TO THEIR
15 COMMENTS. ALRIGHT.

16 MR. SUSSMAN: ONE OTHER MATTER: THERE WAS ORIGINALLY OR
17 INITIALLY IN THE CASE, SOLICITOR MOVED FOR IN LIMINE DIRECTION THAT WE
18 WERE NOT TO MAKE REFERENCES TO THE FACT THAT IT STARTED OUT AS A
19 FEDERAL INVESTIGATION AND THAT IT WAS SOME BAD REFLECTION THAT IT WAS
20 HANDLED BY THE STATE EVENTUALLY AND -- BUT THAT WAS BEFORE, I THINK,
21 THERE WAS REALLY MUCH EVIDENCE IN THE CASE. AND THE PURPOSE OF
22 ARGUMENT, JUDGE, I THINK HAS BEEN -- THERE'S EVIDENCE ALL THROUGH THIS
23 CASE IT STARTED OUT AS A FEDERAL INVESTIGATION, AND AT THE LAST MINUTE
24 THE FEDS WALKED AWAY AND THE WORDS OF ROOSEVELT YOUNG DUMPED IT IN
25 THE STATE'S LAP. EITHER ROOSEVELT OR COBY PERRY ONE OR THE OTHER SAID

1 THAT. AND THEN THERE WAS ANOTHER COMMENT ABOUT -- DOWLING SAID
2 THAT. THERE HAVE BEEN SEVERAL WITNESSES THAT MADE SOME COMMENT OR
3 SOME REFERENCE ABOUT THE FEDS WALKING AWAY AND THE STATE HAVING TO
4 PICK UP WHERE THEY LEFT OFF. THE STATE DIDN'T -- NOBODY USED THE STATE'S
5 EQUIPMENT. THE FED -- IT WAS A FEDERAL DEAL. ALL THAT'S ABSOLUTELY
6 CRITICAL TO DEFENSE ARGUMENT REGARDING THE WAY THE CASE WAS
7 HANDLED AND CERTAINLY -- CERTAINLY IN TERMS OF HOW THE FEDS WHEN
8 THEY HANDLED THE DRIVER OF THE TRUCK AT THE BORDER, THEY JUST LET HIM
9 WALK WITH PROBABLY MORE EVIDENCE THAN WHAT THEY HAVE AGAINST MY
10 TWO FELLOWS ANYWAY. AND I JUST THINK THAT'S JUST CRITICAL TO BE ABLE TO
11 ARGUE THAT TO THE JURY.

12 THE COURT: THE ONLY THING I HAVE RULED IS THAT YOU CANNOT ASSERT
13 THAT BECAUSE THE FEDERAL GOVERNMENT DID NOT DEEM IT APPROPRIATE TO
14 PROSECUTE THESE CASES THAT THAT IS A DETERMINATION THAT THE CASES
15 AREN'T WORTHY OF PROSECUTION. YOU CAN ARGUE THAT THE FEDS WERE
16 INVOLVED AND THE FEDS TURNED IT OVER TO THE STATE AND IT WAS JUST --
17 THAT MAY HAVE CREATED CONFUSION; THAT MAY HAVE PREVENTED 'EM FROM
18 LOOKING DOWN LEADS THEY SHOULD'VE PURSUED, ALL THOSE THINGS I THINK
19 ARE FAIR GAME. WHAT I DON'T THINK IS FAIR GAME IS TO SAY THAT THIS CASE
20 OBVIOUSLY HAS NO MERITS BECAUSE THE FEDS DIDN'T PURSUE IT.

21 MR. SUSSMAN: I THINK WITH ALL DUE RESPECT, I THINK THAT THE JURY
22 DRAWS ON THE STRENGTH OR WEAKNESS OF THE STATE'S CASE IN PART ON THE
23 OPINIONS AND THE ATTITUDES AND THE METHODOLOGY THAT THE LAW
24 ENFORCEMENT UTILIZES IN PREPARING THE CASE IN ITS INVESTIGATION. AND IN
25 THIS PARTICULAR CASE THE FEDERAL GOVERNMENT HAD IN THEIR HANDS THE

1 DRIVER OF THE SEMI LOADED WITH DOPE, AND BASED ON THEIR CURSORY
2 INVESTIGATION---

3 THE COURT: I'M NOT TALKIN' ABOUT THE SEMI DRIVER. YOU -- YOU CAN
4 ARGUE THAT.

5 MR. SUSSMAN: WELL, SEE, THAT TIES IN WITH THE ARGUMENT THAT THEY
6 DIDN'T THINK MUCH -- THEY DIDN'T THINK ANYTHING ABOUT MAKING A CASE
7 AGAINST THAT MAN---

8 THE COURT: NO. THAT'S NOT---

9 MR. SUSSMAN: ---AND THEY DIDN'T THINK ANY -- THEY DIDN'T THINK
10 MUCH ABOUT MAKING A CASE AGAINST MY TWO -- OUR GUYS. AND THAT---

11 THE COURT: SEE---

12 MR. SUSSMAN: --AWAY---

13 THE COURT: GO AHEAD. GO AHEAD.

14 MR. SUSSMAN: SO LOGICALLY, A LOGICAL INFERENCE FROM THE
15 EVIDENCE IS THEY WALKED AWAY FROM THE DRIVER OF THE SEMI FOR THE SAME
16 REASON THEY WALKED AWAY FROM THE -- FROM MY TWO GUYS THAT THEY
17 DIDN'T -- THAT THERE WASN'T SUFFICIENT EVIDENCE TO CHARGE THAT GUY --
18 THEY DIDN'T THINK THERE WAS SUFFICIENT EVIDENCE TO CHARGE THEM.

19 THE COURT: THERE'S NO EVIDENCE -- I MEAN I CAN'T -- THAT -- THAT'S
20 JUST NOT PROPER ARGUMENT.

21 MR. SUSSMAN: I'D JUST ASK THE COURT TO NOTE MY OBJECTION.

22 THE COURT: I DO.

23 MR. SUSSMAN: I THINK IT'S A CRITICAL PART OF THE CASE IN REGARDS TO
24 THE ARGUMENT OF EXCULPATORY EVIDENCE AND AN INFERENCE THEREFROM.
25 UNDER BRADY -VS- MARYLAND AND THE 4TH, 5TH, 6TH, 8TH AND 14TH AMENDMENTS

1 TO THE UNITED STATES CONSTITUTION AND APPLICABLE SOUTH CAROLINA
2 CONSTITUTIONAL LAW AND CASE LAW.

3 THE COURT: BUT IT'S NOT EVIDENCE. BUT GO AHEAD.

4 MR. SUSSMAN: WELL, YOUR HONOR, THAT ARGUMENT, AS I UNDERSTAND
5 THE LAW, IS YOU CAN ARGUE FROM THE EVIDENCE OR REASONABLE INFERENCES
6 THEREFROM. AND I GUESS THAT'S WHERE WE DIFFER. YOU DON'T THINK THAT'S
7 A REASONABLE INFERENCE AND I SUBMIT IT IS. I MEAN THAT'S THE ONLY WAY I
8 CAN LOOK AT IT.

9 THE COURT: I UNDERSTAND WHAT YOU'RE SAYING.

10 MR. SUSSMAN: AND SO IT JUST DOVETAILS INTO MY -- IN THE THEORY OF
11 MY CASE. HOW ELSE CAN I TIE IN THE FACT THAT THEY DIDN'T CHARGE THAT GUY
12 WHO IS IN EXACTLY THE SAME SITUATION AS MR. HERNANDEZ AND MR. AVILA-
13 AROJONA? IN FACT, THAT GUY, IF ANYTHING, HAD MORE EVIDENCE ON HIM. HE
14 WAS ACTUALLY IN THE SEMI WHERE THE DOPE WAS. MY GUYS WEREN'T EVEN IN
15 THE SEMI. YET THEY LET HIM WALK AWAY.

16 THE COURT: I DIDN'T SAY YOU COULDN'T ARGUE THAT.

17 MR. SUSSMAN: AND WELL BUT I CAN'T MAKE THE SECOND HALF OF THAT
18 SENTENCE AND THEY WALK AWAY FROM MY GUYS AT THE SAME TIME
19 THEREFORE THEY SHOULDN'T BE FOUND GUILTY.

20 THE COURT: BECAUSE THE FEDS DIDN'T PROSECUTE, YOU SHOULD FIND
21 THIS GUY NOT GUILTY?

22 MR. SUSSMAN: OR THERE SHOULD BE SOME REASONABLE DOUBT AS TO
23 THEIR IN -- AS TO THEIR GUILT. I MEAN OTHERWISE HOW CAN I -- HOW CAN I
24 MAKE THE PARALLEL? IT WOULDN'T MAKE LOGICAL SENSE TO ARGUE ABOUT
25 THAT GUY'S -- THAT THEY LET HIM GO BUT THEN I CAN'T SAY AND SO OBVIOUSLY

1 THEY DIDN'T THINK ANYTHING ABOUT MY TWO GUYS EITHER.

2 THE COURT: I'M NOT SAYING THAT YOU CAN'T POINT OUT TO THE JURY
3 THAT THE FEDERAL PROSECUTORS DID NOT CHARGE YOUR CLIENT. WHAT I'M
4 SAYING IS YOU CAN'T THEN SAY THAT SHOWS THEY'RE NOT GUILTY.

5 MR. SUSSMAN: I THINK UNDER BRADY IT'S EXCULPATORY.

6 THE COURT: IT'S NOT. IN MY VIEW, NO. IT'S NOT. I MEAN IT'S -- FEDERAL
7 AUTHORITIES DECIDE ON A MULTITUDE OF REASONS WHY TO PROSECUTE A CASE
8 OR NOT TO PROSECUTE A CASE, WHETHER TO BRING IT IN STATE COURT OR
9 FEDERAL COURT, WHETHER TO YIELD TO THIS ONE OR THAT ON, AND---

10 MR. SUSSMAN: THE ONLY REASON I THINK IT MIGHT HAVE MORE
11 RELEVANCE IS BECAUSE THE STATE'S OWN WITNESS SAID THE FEDS HAD THE
12 CASE; THEY INVESTIGATED THE CASE AND THEN THEY "DUMPED IT IN THEIR LAP."
13 NOW, YOU KNOW, I THINK THAT'S A REASONABLE INFERENCE THAT THEY DUMPED
14 IT IN THEIR LAPS 'CAUSE THEY DIDN'T WANT IT. AND FOR WHATEVER REASON I
15 THINK WE CAN ARGUE THAT BECAUSE THEY DIDN'T THINK THERE WAS ENOUGH
16 EVIDENCE JUST LIKE THEY DIDN'T THINK THERE WAS ENOUGH EVIDENCE TO HOLD
17 THE DRIVER AT LAREDO. IF THAT ISN'T EXCULPATORY TO SOME EXTENT -- SOME
18 EXCULPATORY ARGUMENT OR REASONABLE INFERENCE THEREFROM FROM THAT
19 EVIDENCE, THEN, YOU KNOW, WE JUST KNOW IT IS. I'M NOT HERE TO ARGUE WITH
20 YOU, JUDGE. I JUST WANNA PRESERVE IT FOR THE RECORD.

21 THE COURT: ALRIGHT.

22 MR. SUSSMAN: UNLESS YOU'RE RECONSIDERING.

23 THE COURT: NO, I'M NOT RECONSIDERING. I DON'T KNOW THAT I'M
24 COMMUNICATING WITH YOU WHAT I THINK YOU CAN ARGUE WELL ENOUGH, AND
25 I -- WHAT IS IN EVIDENCE YOU CAN MAKE ARGUMENTS FROM AND YOU CAN

1 MAKE REASONABLE -- YOU CAN ARGUE REASONABLE INFERENCES FROM IT. I
2 THINK IT IS INAPPROPRIATE TO ARGUE TO A JURY THAT BECAUSE ONE
3 JURISDICTION DID NOT PROSECUTE A CASE THAT THAT MUST MEAN THAT THE
4 PEOPLE ARE NOT GUILTY.

5 MR. SUSSMAN: WELL, HOW ABOUT IF I JUST ARGUE THAT THAT IS SOME
6 INDICATION AS TO THE WEIGHT OF EVIDENCE?

7 THE COURT: ALL I'M GONNA SAY AT THIS POINT IS THAT I'M NOT GONNA
8 PLAY THE WHAT-IF GAME. YOU MAKE YOUR ARGUMENT, I'LL LISTEN TO IT, IF
9 THEY OBJECT, I'LL MAKE A RULING. I CAN'T ANTICIPATE EXACTLY HOW THE
10 WORDS ARE GOING TO BE USED OR WHAT'S GOING TO BE SAID AND I DON'T KNOW
11 HOW I WILL RULE.

12 MR. SUSSMAN: YES, SIR.

13 THE COURT: THAT'S ALL I CAN DO.

14 MR. HAWKE: YOUR HONOR, ON BEHALF OF DEFENDANT DELEON WE
15 WOULD ALSO MOVE TO BE ALLOWED TO MAKE THE SAME ARGUMENT FOR THE
16 SAME REASONS AS STATED BY MR. SUSSMAN. AND WE UNDERSTAND THE COURT
17 HAS RULED.

18 THE COURT: YES, SIR.

19 MR. MAYE: MAY IT PLEASE THE COURT, YOUR HONOR? I---

20 THE COURT: IF YOU DID THAT IN REVERSE BACK IN THE '60'S, YOU WOULD
21 ARGUE IN FEDERAL COURT THAT PEOPLE WHO KILLED BLACK FOLKS IN
22 MISSISSIPPI AND WERE NOT PROSECUTED BY THE STATE OF MISSISSIPPI COULDN'T
23 BE PROSECUTED IN FEDERAL COURT. THEY MUST BE NOT GUILTY BECAUSE THE
24 STATE OF MISSISSIPPI DIDN'T PROSECUTE THEM. I MEAN THERE CAN BE ALL
25 KINDS OF REASONS WHY A PERSON DOESN'T -- A FEDERAL PROSECUTOR DOESN'T

1 GO FORWARD. I JUST -- AND IF THERE'S -- IF THERE'S EVIDENCE ABOUT IT, THAT'S
2 FINE. I JUST -- I DON'T KNOW. I CAN'T ANTICIPATE EXACTLY HOW YOUR
3 ARGUMENT'S GONNA COME DOWN, AND ALL I CAN TELL YOU RIGHT NOW IS I'LL
4 RULE ON IT WHEN IT ARISES.

5 MR. MAYE: MAY IT PLEASE THE COURT, YOUR HONOR?

6 THE ONLY THING I WANTED TO ADD TO THAT IS AS I STATED INITIALLY.
7 THERE WERE CONVERSATIONS IN THIS CASE BETWEEN AGENT PERRY AND
8 MYSELF AT THE SAME TIME THIS FEDERAL OFFICER WAS TALKING TO FEDERAL
9 AUTHORITIES ABOUT WHETHER OR NOT TO CHARGE 'EM.

10 I TOLD 'EM IT WAS A GOOD CASE, TO GO SEEK INDICTMENTS -- I MEAN TO
11 GO SEEK WARRANTS FOR IT, I WOULD PROSECUTE THE CASE.

12 I TOLD THEM THAT CONTEMPORANEOUS WITH CONVERSATIONS BEIN'
13 MADE AS TO WHETHER OR NOT A U.S. ATTORNEY WAS GOIN' TO AUTHORIZE THEM
14 TO ISSUE -- OR TAKE IT AS A -- AS A FEDERAL CASE.

15 AND, YOUR HONOR, WE COULD BOTH HAVE CHARGED. THAT'S ALL BASED
16 ON HEARSAY WHETHER OR NOT ANYBODY ELSE CHOSE TO SEEK AN INDICTMENT,
17 WHETHER OR NOT TO CHARGE, THEY CAN'T GET INTO ANY OF THAT ANY MORE
18 THAN I COULD GET UP AND ARGUE YOU KNOW THIS IS A GREAT CASE. GRAND
19 JURY INDICTMENT, AND I SAID IT WAS A GOOD CASE; I TOLD 'EM TO GO GET
20 WARRANTS IN THIS CASE. YOU KNOW, THE FEDERAL GOVERNMENT WOULD HAVE
21 LIKED TO HAVE HAD THIS CASE IT WAS SO GOOD BUT I TOOK IT AWAY FROM 'EM.
22 YOU KNOW, WE CHARGED 'EM ON THE STATE'S SIDE. YOU KNOW, YOU START
23 DOWN THAT ROAD AND THAT'S NOT -- ULTIMATELY THESE GUYS FACE CHARGES.
24 STATE CHARGES, VALID CHARGES, BEEN TRUE BILLED BY THE GRAND JURY OF
25 EDGEFIELD COUNTY HERE IN EDGEFIELD. WHETHER OR NOT THEY ARE -- COULD

1 HAVE BEEN CHARGED OR WERE CHARGED IN FEDERAL COURT IS INADMISSIBLE IN
2 THIS CASE WHETHER THEY WERE OR NOT. AND TO SAY BECAUSE THEY WERE NOT
3 CHARGED IT HAS A BEARING ON WHETHER OR NOT THEY'RE GUILTY OR INNOCENT
4 IN THIS CASE, YOUR HONOR, WE ASSERT THAT HAS ABSOLUTELY NO PLACE ANY
5 MORE SO THAN IT WOULD BE AGENT PERRY GETTIN' UP AND TESTIFYIN' AND
6 PUTTIN' BEFORE THIS JURY OR ANY ARGUMENT I SAID IT WAS A GOOD CASE AND
7 WE INDICTED IT SO THAT MUST MEAN THEY'RE GUILTY. BECAUSE THE GRAND
8 JURY INDICTED AND BECAUSE WE HAVE A STATE CASE THAT MEANS THEY'RE
9 GUILTY IN THIS CASE. I CAN'T GET UP AND ARGUE THAT. AND I WOULD SAY THEY
10 COULD CERTAINLY COMMENT THE DRIVER WAS NOT CHARGED, AND UNDER A
11 SIMILAR FACTUAL SCENARIO ON THESE STATE CHARGES, MY GUYS ARE NOT
12 GUILTY. BUT TO SAY THAT THEY WEREN'T -- THE STATE -- THEY WEREN'T
13 CHARGED -- THAT THE FEDERAL AUTHORITIES DIDN'T CHARGE THEM IN ANOTHER
14 JURISDICTION AND THESE GUYS DIDN'T GET CHARGED HERE SO THAT MEANS THE
15 CASE IS NO GOOD, I THINK THAT'S THE DISTINCTION THE COURT WAS TALKIN'
16 ABOUT.

17 THE COURT: I JUST THINK THAT'S AN INAPPROPRIATE ARGUMENT.

18 MR. MAYE: I AGREE AND I INTEND TO OBJECT IF IT GETS RAISED OR IT
19 COMES UP.

20 THE COURT: IF WE DON'T DO SOMETHIN' SOON, Y'ALL WILL BE OBJECTIN'
21 ON TUESDAY BECAUSE WE'RE NOT GONNA GET THIS CASE TO THE JURY TODAY.
22 BRING THE JURY IN. THE BEAUTY FOR YOU, SOLICITOR, IS THAT YOU GET TO GO
23 LAST.

24 MR. MAYE: YES, SIR. (THE FOLLOWING OCCURRED IN THE PRESENCE OF
25 THE JURY.)

1 THE COURT: LADIES AND GENTLEMEN OF THE JURY, THERE ARE TWO
2 STAGES THAT REMAIN: THE CLOSING ARGUMENTS AND THEN THE CHARGE.

3 THE WAY THIS WILL WORK IS THAT THE DEFENSE COUNSEL WILL GO FIRST
4 AND EACH DEFENDANT'S CASE IS SEPARATE AND THE STATE AS YOU WELL KNOW.
5 WE'LL GO IN THE SAME ORDER THAT WE'VE GONE IN BEFORE THROUGHOUT THE
6 TRIAL.

7 WHEN ALL THE DEFENDANTS HAVE FINISHED PRESENTING THEIR CLOSING
8 ARGUMENT, THE STATE GETS TO MAKE THE LAST CLOSING ARGUMENT BECAUSE
9 THE STATE HAS THE BURDEN OF PROOF. WE WILL TAKE BREAKS PERIODICALLY
10 THROUGHOUT THIS PROCESS, AND AT THIS TIME I WILL TELL YOU THAT WE'RE
11 SUBSTANTIALLY LATER STARTING THIS THAN I HAD ENVISIONED. I NEVER KNOW
12 EXACTLY HOW LONG LAWYERS ARE GONNA TALK. I HAVE ASKED FOR AN
13 APPROXIMATION. I HAVE THAT. BUT MY BEST GUESS IS THAT YOU'RE NOT GONNA
14 GET THIS CASE TILL ABOUT 6. SO IF YOU NEED TO MAKE PHONE CALLS DURING
15 THE BREAK OR IF THAT PRESENTS SOME MAJOR PROBLEM FOR YOU, YOU LET ME
16 KNOW DURING THE BREAK. SEND ME A NOTE. OKAY? BUT IF YOU NEED TO MAKE
17 PHONE CALLS TO LET PEOPLE KNOW WHAT'S GOIN' ON, SOMEBODY NEEDS TO
18 PICK UP CHILDREN OR WHAT-HAVE-YOU, LET THE BAILIFF KNOW DURING A
19 BREAK AND SHE'LL GET YOU TO A TELEPHONE. OKAY? ALRIGHT. MR. HAWKE,
20 YOU'RE RECOGNIZED.

21 MR. HAWKE: CAN Y'ALL SEE THAT OKAY? LADIES AND GENTLEMEN, YOU
22 CANNOT CONVICT MY CLIENT BASED UPON MERE SPECULATION, SOME POSSIBLE
23 BELIEFS, SOME THINGS THAT YOU MIGHT FEEL. MY CLIENT IN THIS PARTICULAR
24 CASE IS CHARGED WITH A CRIMINAL OFFENSE, AND UNDER OUR SYSTEM AND
25 OUR RULES, WE HAVE A VERY SPECIFIC BURDEN OF PROOF. IT'S A VERY SIMPLE

1 BURDEN OF PROOF, AND THE JUDGE IS GONNA GIVE YOU THE SPECIFIC LAW IN
2 THAT REGARD. IT'S CALLED PROOF BEYOND A REASONABLE DOUBT.

3 SEE, THERE HAVE BEEN OTHER GOVERNMENTS THAT HAVE BEEN BASED
4 UPON PROOF OF LESS THAN BEYOND A REASONABLE DOUBT.

5 YOU MIGHT REMEMBER THEM FROM WORLD WAR II AND WITH THE
6 DOCTRINES BASED UPON FASCISM AND HITLER. WHAT HAPPENED IN THOSE
7 JURISDICTIONS IS PEOPLE WERE PRESUMED GUILTY AND THEN THEY HAD TO
8 PROVE THEIR INNOCENCE.

9 WE DON'T HAVE ANYTHING LIKE THAT IN THIS PARTICULAR SITUATION.
10 OUR LAW SAYS MR. PROSECUTOR IF YOU'RE GOING TO CONVICT SOMEBODY OF A
11 CRIME THEN YOU NEED TO BRING FORTH CREDIBLE, BELIEVABLE EVIDENCE THAT
12 PROVES GUILT BEYOND A REASONABLE DOUBT.

13 BY ALL MEANS, IF YOU GET TO THE END OF THIS CASE AND AFTER
14 CONSIDERING ALL THE FACTS, IF YOU'RE MORALLY CERTAIN, I'LL BE THE FIRST
15 ONE TO TELL YOU YOU NEED TO CONVICT MY CLIENT.

16 BUT IF YOUR MIND IS WAVERING, IF YOU HAVE SOME QUESTION AND
17 YOU'RE NOT SURE, IF YOU'RE HAVING TO INFER THINGS OR ASSUME THINGS,
18 THOSE ARE THINGS WHICH CAUSE YOUR MIND TO WAVER AND BE UNCERTAIN.
19 YOU SEE, WE'RE NOT HERE ABOUT SOME CIVIL CASE OR SOME REAL ESTATE CASE,
20 PERSONAL INJURY CASE WHERE EVERYBODY IS HERE ABOUT MONEY AND SOME
21 SORT OF COMPENSATION.

22 WE'RE HERE ABOUT A HUMAN LIFE AND WHICH DIRECTION IT IS GOING TO
23 TAKE. AND WHEN THOSE KIND OF DECISIONS HAVE TO BE MADE, THAT'S WHEN
24 THIS KIND OF PROOF IS DEMANDED. SO IF YOU GET IT -- AND YOU MUST
25 UNDERSTAND THIS IS ONE OF THE GREAT THINGS ABOUT A JURY AND THAT IS

1 THIS: I SIT HERE: I'M ONE PERSON.

2 I COME FROM A CERTAIN BACKGROUND. I COME FROM A CERTAIN GROUP
3 OF FOLKS. I HAVE A CERTAIN NUMBER OF LIFE EXPERIENCES, AND THAT'S ALL I
4 BRING. AND I LOOK AT THE CASE AS BEST I CAN WITH WHAT I'VE LEARNED IN LIFE
5 AND HOW I'VE BEEN RAISED AND WHAT I KNOW.

6 BUT WHEN WE BRING FOLKS LIKE YOU HERE, WE HAVE MALE AND
7 FEMALE; WE HAVE ALL RACES REPRESENTED; WE HAVE -- WE HAVE PEOPLE
8 FROM ALL WALKS OF LIFE; PEOPLE WHO ARE IN DIFFERENT TYPES OF
9 EMPLOYMENT, AND PEOPLE WITH DIFFERENT BACKGROUNDS, AND EVERYTHING --
10 EVERYONE OF YOU BRINGS SOMETHING TO THIS CASE. YOU BRING SOMETHING
11 VERY SPECIAL TO THIS CASE THAT MAKES THE GROUP OF YOU AS A 12 MUCH
12 MORE INTELLIGENT THAN ANY GROUP OF A LESSER NUMBER.

13 AND THAT'S WHY JURIES ARE SO AWESOME IN CASES LIKE THIS BECAUSE
14 THEY KNOW HOW THINGS WORK AND THEY BRING LIFE EXPERIENCES TO COURT.
15 AND SO WHEN YOU'RE CONSIDERIN' THIS CASE AND YOU'RE THINKIN' ABOUT
16 THIS CASE, WHAT IS GOING ON WITH THIS CASE AND HOW'D THIS REALLY
17 HAPPEN, LOOK AT IT, AND IF YOU HAVE A DOUBT, SOMETHIN' THAT'S CAUSIN'
18 YOUR MIND TO WAVER AND BE UNCERTAIN, MAKE A NOTE OF IT. DISCUSS IT WITH
19 YOUR OTHER JURORS. AND IF AT THE END OF THE CASE IF YOU ALL AGREE THAT
20 YOU AT LEAST HAVE ONE REASONABLE DOUBT ABOUT THE GUILT OR INNOCENCE
21 OF MY CLIENT -- OR THE GUILT OF MY CLIENT, BY ALL MEANS, YOU HAVE A DUTY
22 AND THAT IS TO ACQUIT HIM. THAT'S WHAT REASONABLE DOUBT IS ALL ABOUT.

23 NOW IT'S MY TURN NOW TO TELL YOU WHAT I HAVE SEEN FROM MY
24 LIMITED EXPERIENCE IN LIFE AND FROM MY EXPERIENCES AND WHAT I'VE
25 LEARNED AND WHAT I SEE IN THIS CASE. BY ALL MEANS, IT'S NOT EXTENSIVE

1 AND IT'S NOT COMPLETE, AND I'M SURE YOU'LL SEE THINGS AND TALK ABOUT
2 THINGS THAT I NEVER EVEN SAW. BUT ALL I ASK YOU TO DO IS CONSIDER EACH
3 ONE OF THEM AND SEE IF THEY'RE REASONABLE AND SEE IF THEY CAUSE SOME
4 QUESTION IN YOUR MIND ABOUT WHETHER MY CLIENT IS GUILTY IN THIS CASE.
5 YOU MAY NOT AGREE WITH ANY OF IT, ANY ONE OF 'EM; YOU MAY AGREE WITH
6 SOME OF 'EM, BUT AS A WHOLE IF YOU LOOK AT 'EM, I HOPE YOU SEE WHAT I SEE.
7 I SEE A REASONABLE DOUBT.

8 MR. MAYE: YOUR HONOR, I'M GONNA OBJECT TO HIM GIVING HIS
9 PERSONAL OPINION AS TO INNOCENCE OR GUILT. HE CAN'T ASSERT HIS
10 PERSONAL OPINION. I'M GONNA OBJECT TO THAT ASPECT.

11 THE COURT: SUSTAINED.

12 MR. HAWKE: YOU REMEMBER THAT? CAN Y'ALL SEE THAT? FIRST OF ALL,
13 CAN EVERYBODY SEE THAT?

14 YOU REMEMBER ROOSEVELT YOUNG IN THIS CASE, AND REMEMBER WHEN
15 HE TESTIFIED, AND I WENT BACK THROUGH HIS PRELIMINARY HEARING IN THIS
16 CASE AND HE WAS THE AGENT IN CHARGE FOR EDGEFIELD COUNTY, BUT NOT THE
17 LEAD NARCOTICS AGENT. AND HE SAID HE LOOKED THROUGH THE EVIDENCE --
18 YOU KNOW, BY THIS TIME THEY'VE BEEN ARRESTED; EVERYTHING'S BEEN
19 GATHERED; WE'RE AT A PRELIMINARY HEARING. AND HE HAS SWORN JUST LIKE
20 HE WAS BEFORE YOU TO TELL THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT
21 THE TRUTH SO HELP YOU GOD. AND I ASKED HIM I SAID DID YOU REALLY THINK
22 HE WAS THE DRUG DEALER IN THIS CASE. HE SAID NO. NOW HE DIDN'T SAY THAT
23 INITIALLY. I HAD TO GO PULL IT OUT OF HIM AND MAKE HIM READ IT. NOW WHY
24 WOULD I HAVE TO DO THAT? IF THE CASE IS SO GOOD AND HE'S SUCH A
25 CRIMINAL, WHY WOULD THEY HAVE TO FUDGE ON THINGS LIKE THIS? WHY

1 WOULD I HAVE TO GET THESE TRANSCRIPTS AND MAKE 'EM READ WHAT THEY
2 TOLD US BEFORE? UNDER OATH. RIGHT HERE. JUST LIKE THEY SWORE TO YOU
3 THEY WERE GONNA TELL THE TRUTH TODAY. THEY SAID SOMETHING EXACTLY
4 OPPOSITE FROM WHAT THEY HAD SWORN TO BEFORE. THAT'S YOUR LEAD
5 INVESTIGATOR SAYIN' HE WAS NOT THE DRUG DEALER IN THIS CASE.

6 PEOPLE -- AND YOU'RE GONNA HEAR ABOUT THIS. PEOPLE SHOULDN'T BE
7 JUDGED BY A SNAPSHOT. WE ARE GENERALLY PEOPLE WHO ACT A CERTAIN WAY
8 OVER TIME. IF THEY'RE GENERALLY A CRIMINAL, THEY'RE GONNA BE DOIN'
9 SOME CRIMINAL STUFF. IF THEY'RE GENERALLY GOOD PEOPLE YOU'RE NOT
10 GONNA SEE 'EM AROUND THE COURTROOM. YOU KNOW, PEOPLE THAT I KNOW
11 THAT ARE CRIMINALS, SEE 'EM ALL THE TIME. THEY'RE IN COURT EVERY WEEK.
12 THEY'RE HERE AGAIN. FELLOW IS THIS YOU AGAIN. WHAT'D YOU DO THIS TIME.
13 DID YOU LEARN ANYTHING YET. YOU KNOW, YOU SEE 'EM OVER AND OVER AND
14 OVER AND OVER AND OVER AND OVER. THAT'S THE CHARACTER OF THAT
15 PERSON. THAT'S THE TYPE OF PERSON THAT PERSON IS.

16 NOW HIS RECORD OVER HIS LIFETIME IS THAT THE AUTHORITIES HAVE
17 NEVER EVEN HEARD OF HIM. HE'S NEVER BEEN SO MUCH AS ARRESTED. THEY
18 DIDN'T EVEN KNOW WHO HE WAS. THEY NEVER EVEN HAD HIS NAME COME UP IN
19 AN INVESTIGATION, AND THEY WANT YOU TO THINK WELL HE'S A MAJOR DRUG
20 TRAFFICKER BRINGIN' IN 1000 POUNDS JUST OUTTA THE BLUE. I ASK THAT YOU
21 JUDGE HIM OVER THE COURSE OF HIS LIFE. NOT ONE INCIDENT HE GOT MIXED UP
22 IN ONE DAY WITH A BUNCHA BONEHEADS.

23 NOW YOU REMEMBER I ASKED ROOSEVELT YOUNG, AND I HAD TO GET THE
24 TRANSCRIPT OUT AGAIN. COULDN'T SEEM TO REMEMBER THIS. I SAID MR. -- DO
25 YOU HAVE ANY REASON TO BELIEVE THAT HE KNEW HE HAD MARIJUANA. ANY

1 REASON BASED UPON THE ENTIRE INVESTIGATION TO THIS POINT. NO SIR. THAT'S
2 UNDER OATH.

3 AND THE JUDGE IS GONNA CHARGE YOU ON THE ACT -- ON ACTUAL
4 KNOWLEDGE. IN ORDER FOR HIM TO BE GUILTY OF THIS CRIME THE STATE HAS TO
5 PROVE HE HAS ACTUAL KNOWLEDGE. IT IS ESSENTIAL FOR HIM TO BE FOUND
6 GUILTY OF ANY OF THIS. ACTUAL KNOWLEDGE HAS TO BE PROVEN.

7 AND REMEMBER HOW I WENT THROUGH THAT WITH MR. YOUNG. I WENT
8 THROUGH AND I SAID LISTEN DIDN'T YOU TELL ME YOU HAD NO REASON TO
9 BELIEVE THAT HE KNEW IT WAS MARIJUANA? DID YOU FIND ANY REASON TO
10 BELIEVE THAT HE DIDN'T THINK IT WAS FURNITURE. HAD YOU EVER SEEN HIM
11 BEFORE IN YOUR ENTIRE LIFE, EVER HEARD OF HIM BEING INVOLVED IN DRUGS.
12 NO SIR. I SAID HAVE YOU SEEN HIM SINCE. NO BUT HE'S A WHAT NOW? HE'S NOT
13 THE DRUG DEALER IN THIS CASE. HE'S SOME TRAFFICKER. HE ALSO SAID HE HAD
14 NO REASON TO BELIEVE HE THOUGHT HE HAD ANYTHING OTHER THAN
15 FURNITURE. THAT'S KNOWLEDGE THAT HE HAD MARIJUANA. IT'S AN ESSENTIAL
16 ELEMENT THAT HAS TO BE PROVEN.

17 AND THEN I SAID -- I SAID ISN'T THAT WHY SEARCH HIM. OH NO SOME
18 OTHER REASON. WE DIDN'T THINK THE TRAFFICKERS WOULD HAVE THESE DRUGS
19 AND MONEY. WHEN YOU'RE DEALIN' WITH THOUSANDS OF POUNDS OF
20 MARIJUANA, WHAT DO YOU THINK THEY TRADE IT FOR? CANDY CIGARETTES? DO
21 YOU REALLY BELIEVE THAT A DRUG TRAFFICKER BRINGIN' 1000 POUNDS OF
22 MARIJUANA IN HERE WOULDN'T HAVE A LITTLE CASH HANGIN' OUT AT THE
23 HOUSE? YOU THINK HE'S WRITIN' A CHECK FOR IT? OH WE DIDN'T THINK HE'D
24 HAVE ANY. HE WAS JUST A DRUG DEALER. AND THEN I SAID WELL ISN'T THE
25 REAL REASON -- I HAD TO GET THE TRANSCRIPT OUT. ISN'T IT THE REAL REASON

1 YOU DID NOT SEARCH HIS HOUSE IS YOU DIDN'T THINK HE WAS THE DRUG DEALER
2 IN THIS CASE. YES SIR. READ IT THERE. I HAD TO MAKE HIM READ IT 'CAUSE I
3 COULDN'T GET HIM TO SAY IT WITHOUT MAKIN' HIM READ IT. HIS OWN SWORN
4 TESTIMONY FROM THE LAST TIME WE TALKED TO HIM ABOUT THIS CASE. AND
5 YOU THINK ABOUT IT. HE WASN'T THE ONLY AGENT IN THIS CASE. WE GOT
6 CUSTOMS AGENTS; WE GOT DEA; WE GOT SLED; WE GOT EDGEFIELD COUNTY. ANY
7 ONE OF THOSE OFFICERS IF THEY THOUGHT HE WAS THE DEALER IN THIS
8 PARTICULAR CASE THEY'D GO IN THERE AND SWEAR OUT AN AFFIDAVIT AND GET
9 'EM A SEARCH WARRANT AND GO THROUGH HIS STUFF FROM TOP TO BOTTOM.
10 HOW MANY DID IT? THAT TELLS YOU HOW THEY REALLY FEEL AND WHAT THEY
11 REALLY THINK. I'M GONNA TELL YOU WHAT -- WE'RE GONNA GET TO WHAT
12 HAPPENED AND WHY HE'S HERE.

13 THEY ARRIVED WITH ABSOLUTELY NO PRIOR NOTICE TO HIS BUSINESS AND
14 FIND ABSOLUTELY NOTHING. REMEMBER THE OTHER OFFICER THE ONE WE
15 BROUGHT IN TO TESTIFY. I SAID YOU GO THROUGH THEIR HOUSE UNANNOUNCED.
16 YES. YOU'RE A FORMER NARCOTICS OFFICER. YES. YOU SEE ANYTHING? NO SIR.
17 YOU EVER SEE ANYTHING? NO SIR. THEY COME IN; THEY DON'T FIND ANY DRUGS,
18 NO LARGE SUMS OF CASH, NO SCALES, NO DRUGS, NO PARAPHERNALIA, NO
19 PACKAGING MATERIAL, NOTHING. ABSOLUTELY NOTHING. I GUESS HE'S GONNA
20 PAY FOR THIS WITH CANDY CIGARETTES OR SOMETHIN'. I DON'T KNOW.

21 LET ME TALK TO YOU A LITTLE BIT ABOUT PARTICIPATION. TO BE GUILTY
22 OF A CRIME YOU MUST PARTICIPATE. WE ALL PARTICIPATE IN THINGS IN OUR
23 LIVES. IT'S WHERE YOU GO OUT, LIKE IF I'M GONNA GO OUT AND BE ON A
24 SOFTBALL TEAM OR WHATEVER, I JOIN IN. I ASSOCIATE WITH THE PEOPLE. WE --
25 YOU KNOWINGLY AND VOLUNTARILY JOIN IN AN ACTIVITY. AND THAT'S HOW

1 YOU PARTICIPATE. OKAY? AND IF YOU PARTICIPATE -- AND YOU'LL SEE IN THE
2 CHARGE OF THE COURT, IT SAYS HE MUST INTENTIONALLY PARTICIPATE IN THESE
3 CRIMES TO BE GUILTY OF ANYTHING. HE HAS TO INTENTIONALLY PARTICIPATE.

4 NOW IF I'M SITTING HERE AND, SAY, WE GO TO, SAY, THE PROSECUTOR,
5 THIS PROSECUTOR HAS ITS TABLE. OKAY? AND SAY THEY SHIFT THIS TABLE TO
6 HIM. OKAY? AND THEY SHIFT THIS TABLE TO HIM AND THEY TELL HIM THEY'RE
7 GIVIN' HIM THE TABLE. ALRIGHT? AND HE SITS AT THAT TABLE AND HE USES IT
8 DAY IN AND DAY OUT TO TRY HIS CASE. THAT'S HIS TABLE. HE'S IN POSSESSION
9 OF IT. RIGHT?

10 SAY THE GOOD CLERK HERE AND OUR COURT REPORTER, SAY THEY USE
11 THIS THING, SAY THEY ORDER THIS THING. THIS THING COMES IN THE MAIL. AND
12 THEY GET IT AND THEY USE IT OR WHATEVER AND EVERYTHING ELSE. BUT
13 UNKNOWN TO THEM SOME DRUG TRAFFICKER HAS HIDDEN SOMETHING. LIKE IF
14 THEY WERE TO HIDE SOMETHIN' UNDERNEATH THIS DESK. WE HAVE SOME WEED
15 OR SOMETHIN' LIKE THAT.

16 AND YOU WOULD SIT THERE AND YOU WOULD CHARGE THIS PROSECUTOR
17 AND WHAT WOULD HE SAY? HE'D SAY I DIDN'T KNOW ANYTHING ABOUT THAT.
18 HE'D SAY I DIDN'T VOLUNTARILY PARTICIPATE IN THAT. NO IT'S NOT MINE. I
19 DIDN'T EVEN KNOW IT WAS IN THERE. HOW DID IT GET THERE. I DIDN'T KNOW IT
20 WAS IN THERE. HOW IN THE WORLD CAN I BE GUILTY OF ANYTHING. IF I GO TO
21 THIS LADY HERE AND GO TO HER THING, SHE HAD NO REASON TO KNOW
22 ANYTHING. BUT IF THERE'S SOMETHIN' HID IN HERE, SOMEBODY STUCK IT IN
23 HERE, THEY DIDN'T TELL HER. SHE DIDN'T KNOW. SHE HADN'T PARTICIPATED IN
24 ANYTHING. SHE'S NOT ANYMORE GUILTY THAN YOU OR I OR ANYBODY ELSE. IF I
25 COME TO YOUR HOUSE AND I SAY LISTEN I GOT SOME PARSLEY AND I SET IT RIGHT

1 THERE AND THEN I TAKE OFF AND I RUN OUT THE DOOR AND SAY OH BY THE WAY
2 THAT'S NOT PARSLEY; THAT'S MARIJUANA, AND I HEAD OUT. WELL, YOU HAVE IT.
3 YOU'RE IN POSSESSION OF IT. YOU KNOW IT'S A DRUG. ARE YOU GUILTY? NO.
4 YOU HAVE NOT PARTICIPATED. YOU DIDN'T PARTICIPATE IN THAT CRIME. AND
5 NEITHER HAS HE. NEITHER HAS HE IN ANY WAY, SHAPE OR FORM. HE HASN'T
6 PARTICIPATED IN ANYTHING. AND THEY DON'T HAVE ANY PROOF THAT HE DID.

7 NOW THIS DRUG TRAFFICKER WHO IS SUPPOSEDLY FREDY WHO HIDES,
8 DECEIVES AND LIES TO EVERYBODY ALL THE WAY DOWN THE LINE, ALL THE WAY
9 DOWN THE LINE, AND THEN RIGHT AT THE END OF THE LINE HE'S STILL HIDIN'
10 THIS MARIJUANA; HE'S LYIN' TO EVERYBODY TELLIN' 'EM THEY GOT FURNITURE
11 AND EVERYTHING ELSE, AND WHAT DOES HE DO RIGHT AT THE END?

12 HE PUTS HIS NAME ALL OVER IT AND SENDS IT TO HIS HOME WITH A SMALL
13 CHILD AND WIFE. BOY, THAT'S SMART, ISN'T IT? YOU THINK ANY DRUG DEALER
14 WOULD DO THAT? SENDING 894 OR 895 POUNDS, DEPENDING ON WHICH EXPERT
15 LAB YOU BELIEVE, AND THEN HE DOESN'T MAKE ROOM FOR IT? YOU GOT 1000
16 POUNDS COMIN' OR 900 POUNDS COMIN' TO YOU AND YOU DON'T EVEN MAKE
17 ROOM TO PUT IT INSIDE? AND YOU KNOW IT'S COMIN'. AND YOU TAKE IT AND,
18 YOU KNOW, YOU ACTUALLY SET IT OUT IN FRONT OF YOUR PLACE FOR A WHILE.
19 INITIALLY SETS IT OUT IN THE PUBLIC? YOU DON'T THINK IF YOU KNOW IT'S
20 MARIJUANA YOU MIGHT BE HAVIN' SOMEBODY HOLD THE DOOR AND THAT THING
21 WOULD BE GOIN' STRAIGHT ON IN. STRAIGHT ON IN. STRAIGHT ON IN. I
22 WOULDN'T BE SITTIN' OUT THERE ON THE STREET. HE PUTS IT OUT FRONT FOR A
23 WHILE. WHAT ARE Y'ALL GONNA DO WITH IT? HE OFFLOADS ONE CHIMNEY?
24 WHAT? LET'S 850 POUNDS RIDE OFF. BUT HE KNOWS WHAT HE'S DOIN'. JUST
25 RIDES OFF. TWO OTHER PEOPLE. HE GOES TO SELLIN' FOOD.

1 ABSOLUTELY NO CONNECTION WITH JAMCO, SEBASTIAN EXPORTACIONES,
2 JOSE CONTRARAS, ANY PLACE IN MEXICO, RUIZ FLORES, JOSE CONTRARAS' BOSS,
3 BOX TRUCK OR ANY OTHER THING. YOU THINK HE JUST CALLED UP SOMEBODY
4 AND SAID HEY LISTEN IT'S -- I KNOW YOU DON'T KNOW ME, I'M FREDY DELEON;
5 SEND ME 1000 POUNDS OF POT? OR DO YOU THINK IN ORDER TO GET THIS KINDA
6 MONEY YOU MIGHT HAVE TO HAVE SOME PRIOR CONNECTION WITH THESE
7 PEOPLE? SOME SORTA CONTACT, EITHER THROUGH THE MAIL OR THROUGH
8 PHONES OR THROUGH SOMETHIN'.

9 WE GOT AN INVESTIGATION THAT INVOLVES ABSOLUTELY NOTHIN'.
10 WHENEVER THEY GOT THAT THING, THAT'S WHAT THEY GOT.

11 AND ANY TIME I ASKED 'EM WHAT FOLLOW -- WHO WAS SUPPOSED TO DO
12 THE FOLLOW UP. THE CASE AGENT. WHO WAS THAT CASE AGENT. THAT'S
13 SOMEBODY ELSE. NEXT ONE GETS UP THERE. WHO'S THAT CASE AGENT. THAT'S
14 SOMEBODY ELSE. WHO'S THAT CASE AGENT. THAT'S SOMEBODY ELSE. WELL
15 WHAT'D YOU DO. WHAT'D YOU DO. WHAT'D YOU DO. I DIDN'T DO ANYTHING. I
16 DIDN'T DO ANYTHING. I DIDN'T DO ANYTHING. I WENT AND -- THEY SAID OH WE
17 DID SOMETHIN'. WE DID SOMETHIN'. WE DID A LITTLE BIT A THIS AND A LITTLE
18 BITA THAT. AND I SAID OKAY. TELL ME EXACTLY WHAT YOU DID. I LOOKED AT
19 PART OF A VIDEO WHEN WE CAME IN. SOMETHIN' LIKE THAT. THEY DIDN'T GET
20 ANY OF THE PHONE RECORDS.

21 I SAID WELL HOW HARD -- THEY SAID WE COULDN'T GET ANY
22 COOPERATION FROM THE HISPANIC COMMUNITY. I SAID WELL HOW HARD IS IT TO
23 GET A SUBPOENA. WELL I GUESS WE DIDN'T DO THAT. NO CORRESPONDENCE.
24 THEY DIDN'T FOLLOW IT UP AT ALL. NOTHIN' WAS VIDEOED. NOTHIN' WAS
25 RECORDED. THEY DIDN'T HAVE A TRANSLATOR. NO ONE SPEAKS SPANISH. THEY

1 DIDN'T EVEN MAKE NOTES OUT THERE.

2 AND ONE OF THE INVESTIGATORS' REPORT WAS PREPARED 6 MONTHS
3 LATER. THEY WANT YOU TO JUST SAY WELL I THINK THAT'S WHAT HAPPENED 6
4 MONTHS AGO. HERE YOU GO. GIT 'IM. AND THEY THROW IT ON YOU.

5 NO ATTEMPT AT ALL TO FIND ANYBODY ANYTHING. OH WE RUN IT IN THE
6 C.I.C.C. WHATEVER. YEAH WE ENTERED THE INFORMATION THERE. WHAT ELSE
7 DID YOU DO. NOTHIN'. NOT A THING. GOT THESE POLICE OFFICERS ALL OVER THE
8 PLACE. WHAT'D THEY DO? WHAT DOES HE DO? HE COMES BACK. HE'S GOIN' TO
9 HIS SHOP. HE COMES WALKIN' IN. AND THEY'RE -- I MEAN THEY'RE
10 EVERYWHERE. HE COMES WALKIN' RIGHT BACK IN. HE DOESN'T RUN; HE
11 DOESN'T TRY TO GET AWAY. HE DOESN'T DO ANYTHING. THEY QUESTION HIM.
12 YOU KNOW THEY GOT HIM ALL THERE; EVERYBODY'S GOT HIM THERE. YOU KNOW
13 WHAT -- AND -- AND THAT'S GONNA LEAD SOMETHIN' -- DID YOU HEAR
14 ANYTHING ABOUT ANYTHING THAT SAID -- WHERE IS ANY SPANISH OFFICER THAT
15 TALKED TO HIM? I GUARANTEE YOU IF THEY'D SAID ANYTHING INCRIMINATING,
16 YOU'D A HAD A RECORDED STATEMENT; MIGHT EVEN HAD A VIDEO TAPED
17 STATEMENT; YOU'D A PROBABLY HAD IT WRITTEN; YOU'D A PROBABLY HAD IT
18 ORALLY IN THE COURT; YOU'D A HAD ALL KINDA STUFF. BUT BEIN'---

19 MR. MAYE: YOUR HONOR, AGAIN I'M GONNA OBJECT. HIS PERSONAL
20 OPINIONS ARE INSERTED. HIS PERSONAL GUARANTEES. IT'S INAPPROPRIATE. I'VE
21 ALREADY OBJECTED ONE TIME TO HIM ASSERTING HIS PERSONAL OPINION AND
22 HIS PERSONAL GUARANTEE. I OBJECT TO IT AND ASK THAT HE BE CAUTIONED NOT
23 TO DO IT AGAIN.

24 MR. HAWKE: YOUR HONOR, I'M ARGUIN' WHAT I THINK IS NORMALLY
25 DONE UNDER A NORMAL INVESTIGATION.

1 THE COURT: THAT OBJECTION IS OVERRULED. AN ATTORNEY IS NOT
2 PERMITTED TO ARGUE HIS PERSONAL OPINIONS OR PERSONAL BELIEFS, BUT I -- I
3 THINK HE SHOULD BE GIVEN SOME LEEWAY ON THAT LAST -- THE
4 INTERPRETATION OF THE LAST PART. THE OBJECTION IS OVERRULED. YOU MAY
5 CONTINUE.

6 MR. HAWKE: THANK YOU. HE'S JUST GOT 40 POUNDS OF MARIJUANA IN HIS
7 STORE ROOM THAT SUPPOSEDLY HE KNOWS ABOUT. THE GUYS THAT HAVE
8 DELIVERED IT ARE DRIVING OFF. YOU THINK YOU MIGHT WANT TO GO CHECK TO
9 SEE WHAT HE'S GOT? SEE IF THEY GAVE HIM WHAT HE ORDERED IF THAT'S WHAT
10 HE ORDERED OR WHATEVER? YOU THINK HE OUGHT TO GO CHECK? DID HE DO
11 THAT? NEVER EVEN WENT AND LOOKED AT IT, OPENED IT OR ANYTHING.

12 WE JUST TALKED ABOUT IT. ABSOLUTELY NO STATEMENTS WHATSOEVER
13 FROM ANY DEFENDANT. THAT'S HOW YOU GET INVESTIGATION -- THAT'S HOW
14 YOU CAN GET AN INVESTIGATION LINED UP. DON'T YOU THINK EVERYTHING'S
15 INCRIMINATING. IF YOU JUST PICK UP THE INCRIMINATING STUFF. IF IT HELPS THE
16 DEFENSE -- JUST WRITE IT DOWN -- JUST RECORD IT. THEY DIDN'T DO ANY OF
17 THAT. AND IT WON'T EVER MAKE IT TO COURT 'CAUSE NOBODY PRESERVES IT.

18 THE FORD THUNDERBIRD, THE TWO GUYS IN THE FORD THUNDERBIRD ARE
19 DIRECTING EVERYTHING. THEY'RE THE ONES THAT SAY WELL IT'S OFFLOADED
20 AND UNLOADED. THEY'RE THE ONES THAT SAY WHERE EVERYTHING GOES. AND
21 THEY JUST LET THEM GO.

22 WHO SELECTS AND CONTROLS THE MARIJUANA? YOU THINK HE GOES TO
23 ALL THIS TROUBLE TO GET IT HERE AND THEN HE DOESN'T EVEN SO MUCH AS PICK
24 ONE ITEM TO TAKE OFF AND KEEP IT? IT'S ALL SELECTED BY THE TWO MEN IN THE
25 THUNDERBIRD. IT'S ALL CONTROLLED BY THE TWO MEN IN THE THUNDERBIRD.

1 AND THEY TAKE IT STRAIGHT ON DOWN THE HIGHWAY.

2 NOW WHO KNEW THE LOAD WAS COMIN'? REMEMBER WE TALKED ABOUT
3 THE SEAL? THEY PUT SEALS ON THERE FOR A VERY SPECIFIC REASON. IT'S TO LET
4 YOU KNOW IF THE LOAD HAS BEEN TAMPERED WITH. THEY TAKE THE SEALS THAT
5 THE DRUG DEALERS HAVE PUT ON, SNATCH THOSE OFF AND PUT ANOTHER SEAL
6 ON.

7 TWO GUYS IN THE THUNDERBIRD SHOW UP. THEY HANG OUT A LITTLE
8 WHILE, UNLOAD A LITTLE FURNITURE. HEY, SOMETHIN'S SUSPICIOUS. THEY HEAD
9 OUT FOR 20, 30 MINUTES. THEY GOTTA GO TALK ABOUT IT. WHAT WE GONNA DO
10 NOW? REMEMBER THEY'RE JUST GONE? NOBODY KNOWS WHERE THEY'RE AT.
11 THEY COULD BE DOIN' WHATEVER. TELL YOU WHAT, I THINK THIS IS A DONE
12 DEAL. HOW COULD WE LOSE 'EM? I GOT A PERFECT PLAN. WE'LL TAKE 'EM
13 DOWN THIS HIGHWAY 25, DOWN THIS DIRT ROAD, DOWN THIS LITTLE CURVY DIRT
14 ROAD AND WE'LL LEAD THE WAY, AND THEN WE'LL TAKE OFF. THERE'S NO WAY
15 THEY CAN KEEP UP WITH US WITH THAT TRACTOR TRAILER AND THAT BOX TRUCK.
16 AND THAT'S EXACTLY WHAT THEY DID. THEY VERIFIED THAT LOAD HAD BEEN
17 COMPROMISED AND WENT AND MADE A PLAN AND THEY LEFT. AND IF THEY
18 WERE ALL IN THIS TOGETHER, DON'T YOU THINK THEY MIGHT TRY AND CONTACT
19 SOME OF THESE FOLKS AND HELP 'EM? HELP THEM GET AWAY? THEY LEFT THEM
20 HANGING, JUST AS HANGING AS YOU CAN LEAVE ANYBODY

21 FORMER NARCOTICS OFFICER GERRY NAULT KNOWS MY CLIENT OVER 7
22 YEARS AND SEES ABSOLUTELY NOTHING TO INDICATE HE'S INVOLVED IN ANY
23 KINDA DRUG BUSINESS IN ANY WAY, SHAPE OR FORM. AND IF YOU DON'T THINK
24 HE AIN'T LAW ENFORCEMENT NOW, HE SAID I TURN 'EM IN REGULARLY. IF I SEE
25 SOMETHIN', I TURN IT IN. HE AIN'T CHANGED A BIT. IF HE SEES ILLEGAL ACTIVITY,

1 HE TURNS 'EM IN.

2 AND I TELL YOU, WE BROUGHT HIM FOR ONE REASON: SO YOU COULD SEE
3 WHAT A BELIEVABLE AND CREDIBLE WITNESS LOOKS LIKE. ONE, IF THEY MAKE A
4 POINT HE SAYS YES THAT'S RIGHT. IT HAPPENS THAT WAY SOMETIMES. AND HE
5 DIDN'T SIT THERE AND ARGUE WITH THEM. THEY DIDN'T HAVE TO PULL THAT
6 TRANSCRIPT AND BEAT HIM OVER THE HEAD WITH IT JUST TO MAKE HIM TELL THE
7 SAME STORY TWICE UNDER OATH. HE CAME IN AND TOLD THE TRUTH. THEY
8 MADE GOOD POINTS WITH HIM. HE SAID YES THAT'S RIGHT. SOMETIMES IN
9 NARCOTICS INVESTIGATIONS IT GOES THAT WAY.

10 AND HE ALSO TOLD YOU THE TRUTH ABOUT MR. DELEON. IS THE HOME IN
11 THESE PHOTOS THE HOME OF A DRUG TRAFFICKER? YOU SEE THIS AWESOME
12 HOME HE'S BUILT FOR HIMSELF? HUH? I MEAN IT'S A GOOD HOME. I'M NOT
13 KNOCKIN' HIS HOME. BUT IT'S COMFORTABLE. THE MAN IS DOIN' GOOD. I MEAN
14 YOU WALK IN HERE AND YOU DON'T HAVE ANYTHING AND YOU GET A HOME AND
15 YOU GOT A LITTLE PIECE A LAND, YOU ARE DOIN' WELL. IT'S HARD TO DO THAT IN
16 THIS DAY AND AGE. I'M NOT KNOCKIN' HIM LIKE THAT. BUT I'M TELLIN' YOU IF
17 YOU'RE A DRUG TRAFFICKER AND YOU MAKIN' HOW MUCH MONEY YOU SAY IT'S
18 WORTH? JUST 20 PACKS WAS \$100,000? YOU THINK HE'D BE LIVIN' HERE? DO YOU
19 THINK HE'D BE DRIVIN' THAT LITTLE PONTIAC? YOU THINK HIS HOUSE MIGHT
20 LOOK A LITTLE BIT DIFFERENT? HOW MANY MILLION? 2 MILLION DOLLARS
21 WORTH WE HAVE RIGHT HERE? YOU THINK HE'S GONNA BE LIVIN' IN A SINGLE
22 WIDE? HIS CHILDREN GONNA HAVE A BED WITH, YOU KNOW, WITH JUST A
23 MATTRESS AND BOX SPRING?

24 REPUTATION AND GOOD CHARACTER. AND THAT'S WHAT GERRY TALKED
25 ABOUT, ABOUT HIS GOOD CHARACTER IN THE COMMUNITY AND HOW HE'S

1 GENERALLY -- THAT'S HOW HE'S ACTED HIS WHOLE LIFE. HE'S NEVER CHANGED.
2 AND I ASK THAT YOU JUDGE HIM BASED ON THAT CHARACTER. JUST THINK OF
3 ANY OF YOU IF YOU HAD TO GO STAND BEFORE GOD. AND INSTEAD OF BEIN'
4 JUDGED ON YOUR OWN MORAL LIFE AND YOUR OVERALL CHARACTER AND HOW
5 YOU LIVED YOUR LIFE AND IF WE LET ANYBODY PICK RANDOMLY PICK ONE DAY,
6 ANY DAY---

7 MR. MAYE: YOUR HONOR, I'M GONNA OBJECT TO THIS. THEY'RE TO
8 DECIDE THIS CASE BASED ON THE FACTS OF THIS CASE AND THIS CRIMINAL
9 CHARGE. HE'S TRYIN' TO TALK THIS JURY -- SAYIN' THAT'S NOT THE STANDARD
10 IN THIS CASE, YOUR HONOR, HE'S SOMEHOW TO BE JUDGED OVER THE COURSE OF
11 HIS WHOLE LIFETIME AND NOT THIS EVENT. I OBJECT TO THAT, YOUR HONOR. THE
12 JURY IS TO DECIDE THIS CASE BASED ON THE EVIDENCE OF THIS CASE.

13 THE COURT: THE JURY IS TO DECIDE THE CASE BASED ON THE EVIDENCE
14 PRESENTED IN THE CASE, BUT THE JURY IS ALLOWED TO CONSIDER EVIDENCE, IF
15 THERE IS ANY, OF GOOD CHARACTER OF AN ACCUSED TO DETERMINE WHETHER
16 THERE'S A REASONABLE DOUBT AS TO THIS GUILT BASED ON THE CONDUCT
17 ALLEGED BEING INCONSISTENT WITH THAT GENERAL GOOD CHARACTER. SO IT'S
18 PROPER ARGUMENT. YOU CAN MAKE THE ARGUMENT.

19 MR. HAWKE: THANK YOU. WHAT I'M SAYIN' IS SUPPOSE YOU HAD TO
20 STAND BEFORE GOD OR WHATEVER JUDGMENT AND THEY TOOK ONE DAY,
21 SOMEBODY RANDOMLY PICKED ONE DAY AND THEN THEY GET -- THEY NOT ONLY
22 JUST PICK THAT DAY, THEY DID NOT LET YOU EXPLAIN THE CIRCUMSTANCES OF
23 WHICH OCCURRED THAT DAY WHICH MADE YOU ACT, HOW YOU ACTED THAT ONE
24 DAY. IT WOULD BE TRAGIC IF YOU DIDN'T THINK ABOUT HOW THEY ARE EVERY
25 DAY. WHAT KINDA PERSON IS THIS PERSON DAY IN AND DAY OUT? AND

1 CONSIDER THAT IN LIGHT OF THE ONE DAY THEY'RE TALKIN' ABOUT. AND THAT'S
2 WHAT I ASK YOU TO DO WITH FREDY.

3 REMEMBER I HAD TO GET THE TRANSCRIPT OUT FOR ROOSEVELT AGAIN. I
4 SAID DID TEAM HAVE TO TELL FREDY WHAT -- WHAT HE HAD. THEY HAD TO TELL
5 HIM WHAT HE HAD. HE DIDN'T KNOW. THAT'S WHY HE'S HERE. THERE WASN'T
6 ANYBODY ELSE TO ARREST.

7 IMAGINE THAT -- CAN YOU IMAGINE THE END OF THIS INVESTIGATION?
8 THEY ALL ACT LIKE -- YOU KNOW, THEY ALL COME UP HERE AND SAY WELL NO
9 BIG DEAL, WE JUST GOT STUCK IN THE MUD, THE THUNDERBIRD LEFT, NO BIG
10 DEAL, WE GOT THESE 4 GUYS.

11 CAN YOU IMAGINE WHAT MIGHT'VE BEEN SAID OUT THERE OR WHAT WAS
12 GOIN' ON? CAN YOU IMAGINE THE CHAOS THAT WENT ON WHEN THEY SAID
13 WHAT, THE GUYS IN THE THUNDERBIRD ARE WHAT, THEY'RE WHAT, THEY'RE
14 GONE. WHAT ARE WE GONNA TELL OUR BOSS. HOW ARE WE GONNA EXPLAIN
15 THIS. WHO WE GONNA ARREST. YOU DON'T THINK THAT SOME INVESTIGATOR
16 MIGHT THINK THAT THEIR TAIL MIGHT BE IN A SLING ON THIS? FOR LETTIN' THE
17 TWO MAIN GUYS THAT'S LEADIN' THE WHOLE LOAD JUST RIDE OFF INTO THE
18 SUNSET? NO, THEY SAID, WE GONNA GET SOMEBODY. SO THEN THEY GO GRAB
19 THESE 4 AND THEY SAY HEY GUESS WHAT, WE GOT 'EM ALL. YEAH WE GOT 2 OR 3
20 IN THIS TRUCK, WE GOT THE OTHER GUY, HE WAS ON THE MANIFEST, WE GOT THE
21 GUY ON THE MANIFEST. YEAH WE ALL GOOD TO GO. THAT'S HOW THEY GOT 'EM.

22 I WANT TO TALK TO YOU A LITTLE BIT ABOUT SUSPICION. IT'S LIKE A
23 CLOUD THAT AFFECTS OUR THOUGHTS. IT'S LIKE YOU CAN TAKE SOMEBODY AND
24 YOU SAY WELL I THINK THIS GUY'S INSANE; YOU TAKE HIM BEFORE A DOCTOR,
25 AND YOU SAY I WANT YOU TO EVALUATE HIM OR WHATEVER. HE GETS ANGRY

1 REAL EASILY.

2 INSTEAD OF YOU THINKIN' ABOUT THE CIRCUMSTANCES OR WHATEVER
3 YOU MIGHT THINK HEY MAYBE THERE IS SOMETHIN' WRONG WITH HIM. YOU
4 START LOOKIN' AT THINGS AND TRYIN' TO FIND THINGS THAT MATCH YOUR
5 SUSPICION. SORT OF CLOUDS EVERYTHING.

6 AND I WANT YOU TO TRY YOUR BEST TO AVOID THAT AND THINK
7 ABSOLUTELY OF WHAT ACTUALLY HAPPENED WITHOUT ANY SUSPICION.

8 JUST SAY IF THIS JUST HAPPENED IS IT POSSIBLE THAT MR. DELEON IS
9 TELLING THE TRUTH.

10 YOU HAVE TO MAKE A LOT OF INFERENCES FROM THE EVIDENCE THAT
11 THEY HAVE GIVEN YOU AND WHAT THEY HAVE DONE IN THIS PARTICULAR CASE.
12 AND, PLEASE, BE CAREFUL WITH INFERENCES. THE ONLY WAY I CAN EXPLAIN
13 THAT TO YOU IS TO GIVE YOU A LITTLE STORY.

14 THERE WAS A SHIPMATE AND A CAPTAIN. AND THE FIRST NIGHT THE
15 SHIPMATE COMES ON DUTY, HE WAS DRUNK AND HE COULDN'T STAND HIS
16 WATCH. SO THE CAPTAIN WROTE IN THE LOG, SHIPMATE TOO DRUNK TO STAND
17 HIS WATCH. NOW THEY GO ON THE VOYAGE OUT TO SEA FOR 180 DAYS, AND ON
18 THE WAY BACK IN THE SHIPMATE APPROACHES THE CAPTAIN. HE SAYS LISTEN
19 MY CONDUCT HAS BEEN EXEMPLARY OVER THIS VOYAGE. I HAD THE ONE
20 PROBLEM THE FIRST NIGHT. IT'S GONNA AFFECT MY WHOLE CAREER. WILL YOU
21 REMOVE THAT FROM THE LOG BOOK. HE SAYS NO SIR I WON'T, THAT'S HAPPENED.
22 AND SO THE SHIPMATE HAD TO STAND THE LAST WATCH AND HE HAD TO MAKE
23 THE LAST ENTRY IN THE LOG. SO WHAT HE WROTE IN THERE WAS CAPTAIN WAS
24 SOBER TONIGHT. THE INFERENCE FROM THAT BEING THE CAPTAIN HAD BEEN
25 DRUNK THE WHOLE REST OF THE TRIP. AND INFERENCES LIKE THAT COME FROM

1 CIRCUMSTANTIAL EVIDENCE. OKAY? IT MEANS YOU HAVE CIRCUMSTANCES AND
2 BECAUSE YOUR MIND IS A LITTLE BIT SUSPICIOUS YOU GO OH LORD THIS MUST
3 MEAN THIS. PLEASE, BE CAREFUL IF YOU MAKE ANY INFERENCES IN THIS CASE.
4 THAT CAN LEAD TO INJUSTICE AND I REALLY DON'T WANT ANYTHING LIKE THAT
5 TO HAPPEN IN THIS CASE.

6 YOU MUST UNDERSTAND THAT IN REFERENCE TO FREDY DELEON HE --
7 AND THE ONLY REASON I EVEN SAY THIS, I DON'T THINK HE'S GUILTY OF
8 ANYTHING BECAUSE I DON'T THINK HE'S PARTICIPATED; I DON'T THINK HE'S HAD
9 ANY KNOWING PARTICIPATION; I DON'T THINK HE VOLUNTEERED. I DON'T THINK
10 HE HAD ANY ROLE IN THIS, BUT I HAVE TO TALK TO YOU ABOUT THIS PART OF IT.
11 TRAFFICKING IS 100 POUNDS OR MORE OF MARIJUANA.

12 THERE IS ABSOLUTELY NO PROOF IN THIS CASE THAT MORE THAN 40
13 POUNDS HAS EVER BEEN IN HIS POSSESSION AT ANY TIME. IN HIS POSSESSION. BY
14 HIS POSSESSION I'M TALKIN' ABOUT IN THIS SEALED CHIMNEY THAT YOU CAN'T
15 TELL THAT IT HAS MARIJUANA IN IT IN HIS STORE ROOM. AND UNDER OUR LAW,
16 AND THE JUDGE IS GONNA TELL YOU ABOUT OUR PARTICULAR LAW, IF THERE IS A
17 REASONABLE DOUBT AS TO WHICH CRIME HE MAY OR MAY NOT BE GUILTY OF, IT
18 IS YOUR DUTY IF YOU FIND THERE IS A REASONABLE DOUBT ABOUT WHICH CRIME
19 HE'S GUILTY OF, TO FIND HIM GUILTY OF THE LESSER OFFENSE. AND BY SAYING
20 THIS, I DON'T WANT YOU TO FORGET OR THINK THAT IN ANY WAY I'M CONCEDING
21 ANYTHING OF WHAT I'VE JUST TOLD YOU. BUT I HAVE TO TALK ABOUT THAT
22 BECAUSE IT'S VERY IMPORTANT IN REGARDS TO HIS SITUATION IF FOR SOME
23 REASON Y' ALL ABSOLUTELY DISAGREE WITH ME ON EVERYTHING.

24 NOW YOU AS JURORS ARE GONNA BE BACK THERE AND I ASK THAT YOU
25 DO ONE THING: I ASK THAT YOU DISCUSS ANY AND ALL REASONABLE DOUBTS OR

1 ANY QUESTIONS THAT YOU HAVE IN YOUR MIND ABOUT THIS CASE BEFORE YOU
2 DECIDE, AND THE REASON FOR THAT IS THIS: ONCE YOU LEAVE THIS
3 COURTHOUSE AND YOU'RE RIDING DOWN THE ROAD AND YOU SAY GAAA I'M NOT
4 SURE ABOUT THAT; I'M NOT SURE ABOUT THIS OR I'M NOT SURE ABOUT THAT; I
5 WISH I HAD TALKED TO THE JURY ABOUT THAT. IT'S TOO LATE. YOU'RE GONNA
6 RENDER A DECISION IN THIS CASE AND IT IS GONNA BE FINAL AND WHATEVER
7 YOU WRITE, HE'S GONNA LIVE WITH UNTIL THE DAY HE DIES. DISCUSS
8 EVERYTHING NOW BECAUSE IF YOU DON'T, YOU'RE GONNA HAVE TO DEAL WITH
9 YOUR CONSCIENCE. YOU'RE GONNA BE THINKING, YOU KNOW. OH GOSH YOU
10 KNOW I SHOULD'VE DISCUSSED IT. AND THERE IS NO ACCUSER SO POWERFUL; NO
11 WITNESS SO STRONG AS THE CONSCIENCE WHICH DWELLS WITHIN US. SO.
12 PLEASE, PLEASE, ON BEHALF OF MR. DELEON, PLEASE, DISCUSS EVERYTHING.

13 THE OTHER THING I WANT TO LEAVE YOU WITH -- AND I PROMISE I'M
14 ALMOST DONE -- AND THAT IS THIS: THERE'S A QUOTE BY LORD ELMER. HE WAS
15 AN OLD LAWYER FROM ENGLAND, WHATEVER -- AND HE THOUGHT ABOUT THESE
16 THINGS AND THE ROLE OF THE JURY, AND HE SAID I ALWAYS THOUGHT IT BETTER
17 TO ALLOW MYSELF TO DOUBT NOW RATHER THAN PUTTING MYSELF THROUGH
18 THE MISERY OF DOUBTING LATER WHETHER I HAD DECIDED RIGHT AND JUSTLY.
19 AND I ASK THAT EACH ONE OF YOU CONSIDER THAT AND CONSIDER EVERYTHING
20 ABOUT THIS CASE.

21 AND FREDY DELEON CAME TO ME, AND HE TOLD ME ABOUT HIS CAUSE
22 AND HIS CASE, AND I'VE HAD HIM WITH ME FROM THAT POINT FORWARD. I
23 BROUGHT HIM TO THIS COURTROOM. AND I CARRIED HIM THROUGH THE OPENING
24 STATEMENTS, THROUGH ALL THE DIRECT AND CROSS. BUT MR. DELEON CANNOT
25 BE CARRIED BY ME ANOTHER STEP. DO YOU -- I ASK THAT YOU FAIRLY CONSIDER

1 THIS CASE. AND IF YOU HAVE A REASONABLE DOUBT, THEN YOU ACQUIT HIM. IF
2 YOU ARE MORALLY CERTAIN THAT HE IS GUILTY, THEN YOU CONVICT HIM.

3 THE COURT: MR. SUSSMAN, ARE YOU READY?

4 MR. SUSSMAN: YES, YOUR HONOR. MAY IT PLEASE THE COURT?

5 THE COURT: YES, SIR.

6 MR. SUSSMAN: SOLICITOR, COURT REPORTER, CLERK, JURY, EVERYBODY.
7 LADIES AND GENTLEMEN, THANK YOU FOR YOUR ATTENTION. IT'S BEEN A LONG
8 WEEK. THIS IS GOING TO BE A SHORT STATEMENT BY ME DICTATED BY THE
9 BREVITY OF THE EVIDENCE AGAINST MY TWO CLIENTS NEITHER OF WHOM HAVE
10 BEEN ACTUALLY IDENTIFIED TO YOU BY ANYBODY IN THE STATE AS THEY DON'T
11 KNOW WHO'S WHO. THE REASON BEING IS BECAUSE THERE'S VERY LITTLE
12 EVIDENCE, IF ANY, AGAINST THEM.

13 MR. HERNANDEZ AND MR. ARONJONA I WILL SUBMIT TO YOU ARE GUILTY
14 OF RIDING IN A TRUCK. THAT IS THE EVIDENCE. ANYTHING ELSE THAT YOU DO
15 BACK THERE IN REGARDS TO THAT THAT LEADS YOU TO THEIR GUILT WOULD BE
16 ASSUMPTION. AS YOU RECALL, MUCH OF THE TESTIMONY FROM THE STATE FROM
17 PATRICK MIZE TO COBY PERRY, ROOSEVELT YOUNG. I ASSUME. A CASE OF
18 ASSUMPTION. I ASSUMED SOMEONE ELSE WAS ON THE OTHER END OF VAN ROAD.
19 I ASSUMED THAT THEY HAD THESE PEOPLE UNDER SURVEILLANCE. I ASSUMED IT
20 WAS A FEDERAL INVESTIGATION. WELL, YOUR JOB IS NOT TO MAKE
21 ASSUMPTIONS. YOUR JOB IS TO REQUIRE THE STATE TO PROVE THEIR CASE WITH
22 FACTS BEYOND A REASONABLE DOUBT. AND IF THEY HAVEN'T, YOU GO BACK
23 THERE AND YOU HESITATE TO FIND RAPHAEL AND ALFREDO GUILTY. THERE'S A
24 REASON FOR YOUR HESITATION. AND THE REASON FOR THAT HESITATION IS THEY
25 HAVEN'T BROUGHT YOU ENOUGH EVIDENCE TO PROVE THEIR GUILT. AND THAT'S

1 WHAT A REASONABLE DOUBT IS.

2 NOW THERE HAS BEEN AN ATTEMPT TO CHARACTERIZE WHAT HAPPENED
3 OUT THERE AS REFLECTIVE OF SOME TYPE OF GUILT. AND WE ALL -- SOME OF US
4 TOOK NOTES. AND I THINK I SAID AT THE BEGINNING OF THE CASE, I ASKED ANY
5 OF YOU WHO TOOK NOTES TO REVIEW YOUR NOTES AT THE END TO SEE WHAT
6 YOU'VE WRITTEN DOWN ABOUT MY TWO CLIENTS WHICH TO THIS DAY THE STATE
7 HASN'T TOLD YOU WHO'S WHO.

8 I'LL BET THE NOTES THAT YOU HAVE, IF ANY, MENTAL OR WRITTEN, WILL
9 SAY THEY WERE IN A RYDER RENTAL TRUCK AS PASSENGERS.

10 THIS RENTAL TRUCK -- AND, OF COURSE, WE DON'T GET THE LUXURY OF
11 HEARING THE ELOQUENCE OF OUR PROSECUTOR AND THEN COME BACK TO
12 REBUT. SO I'M ANTICIPATING IF HE TWITCHES A LITTLE THEN I'M GETTING CLOSE.
13 BUT I'M ANTICIPATING WHAT HE'S GOING TO SAY, IF ANYTHING, BUT I'M SURE
14 HE'S COMPELLED TO SAY SOMETHING ABOUT MY CLIENTS ALTHOUGH I WISH HE'D
15 JUST STAND UP AND SAY SUSSMAN IS RIGHT. WE DON'T HAVE ANYTHING ON
16 THEM; LET'S GET RID OF 'EM. BUT OF COURSE ROOSEVELT WOULD BE MAD
17 BECAUSE HE SAID IF YOU'RE GONNA BRING IN 900 POUNDS OF DOPE IN THIS
18 COUNTY, WE GOTTA GET SOMEBODY.

19 SO WHO DO WE HAVE? WELL, WE GOT WINKIN' AND BLINKIN' OVER HERE.
20 WELL, LET'S SEE WHAT WE GOT. MEAN LOOKIN' ISN'T HE? LOOK AT HIM. LET ME
21 TELL YOU, THERE ARE TWO GUYS IN THE TRUCK. WHAT'S THAT MOVING
22 COMPANY? TWO GUYS AND A TRUCK? WELL, THERE WAS AN ATTEMPT TO SAY
23 THAT THEY WERE IN A TRUCK THAT BLOCKED PAT MIZE IN. BLOCKED HIM IN.
24 WELL, THERE IS NO EVIDENCE THAT THE SEMI WAS GOIN' ANYWHERE ANYWAY.
25 AND INTERESTINGLY ENOUGH, YEAH I HAD A REPORT. AND I THINK YOU MAY

1 RECALL I ASKED HIM ON HIS REPORT WHERE DID IT SAY IN YOUR REPORT THAT
2 THEY WERE BLOCKING YOU IN? OH I LEFT THAT OUT. OKAY. SO -- SO YOU GOT TO
3 DETERMINE WHAT'S CREDIBLE HERE. RIGHT? NOW THE CREDIBILITY JUST LIKE
4 YOU GOT KIDS, YOU GOT 2 KIDS AND ONE GIVES YOU ONE STORE ABOUT HE DID IT
5 AND THE OTHER ONE GIVES YOU A STORY ABOUT SHE DID IT. WHO DO YOU
6 BELIEVE? YOU GOT TO HAVE SOME COMPETENT EVIDENCE BEFORE YOU DECIDE.
7 WAS THE TRUCK BLOCKING THE SEMI OR WASN'T IT? WELL, WHICHEVER WAY
8 YOU GO, REMEMBER NEITHER ONE OF THEM ARE DRIVING ANYWAY.

9 SO WHAT ELSE DID MR. MAYE SAY ABOUT THIS -- THIS OVERWHELMING
10 GUILT OF MY TWO FELLOWS?

11 WELL, EVERYBODY'S TALKED ABOUT THE GREEN THUNDERBIRD WHICH IS
12 A SHAME, DISPARAGING A THUNDERBIRD BECAUSE A THUNDERBIRD IS A GOOD
13 CAR, BUT AT ANY RATE, SAYING THAT THIS GREEN THUNDERBIRD THAT THEY'RE
14 LEADERS AND THEY'RE TELLIN' EVERYBODY WHAT TO DO AND THEY'RE
15 OFFLOADIN' HERE AND THEY'RE LEADIN' THE SEMI THERE.

16 WELL, THE FACT IS WHAT EVIDENCE DO YOU HAVE THAT MY 2 GUYS HAVE
17 A CLUE WHO WAS DRIVING THE GREEN THUNDERBIRD? IS THERE ANY -- LOOK IN
18 YOUR NOTES. WHAT HAVE YOU GOT THAT THEY DROVE UP AT THE SAME TIME AT
19 BILLY'S? OKAY. ALRIGHT. WELL, MR. MAYE WILL ARGUE THAT THAT'S EVIDENCE
20 OF GUILT. ISN'T HE ALSO ASKING YOU TO MAKE AN ASSUMPTION THAT THEY HAD
21 SOME CONVERSATION SOMEWHERE ELSE, THEY HAD SOME CONTACT
22 SOMEWHERE ELSE? THAT THE GREEN THUNDERBIRD GUYS TOLD THEM THAT
23 THERE WAS DOPE IN THERE AND THEY WERE GONNA HELP UNLOAD? WELL,
24 THAT'S ASSUMPTION. THERE'S NO PROOF OF ANY OF THAT.

25 NOW THERE WAS -- AND, AGAIN, PARTICIPATING. PATRICK MIZE TESTIFIED

1 THAT WHILE HE WAS ATTEMPTING TO KEEP ONE OF THE GREEN THUNDERBIRD
2 GUYS FROM GETTIN' IN HIS CAB, ONE OF THE OTHER -- THE OTHER OCCUPANT GOT
3 OUT AND WENT AROUND TO THE DRIVER'S SIDE DOOR OF THE RYDER TRUCK.
4 REMEMBER THAT? HE SAID THAT. AND THAT I WOULD SUBMIT WOULD BE AN
5 ARGUMENT MADE BY THE STATE THAT THAT'S SOME KNOWLEDGE THAT MY GUYS
6 KNEW THAT THIS WAS A SEMI LOADED WITH DOPE. HOWEVER, I ASKED MR. MIZE -
7 - AGENT MIZE RATHER -- I ASKED AGENT MIZE WHERE DOES IT SAY THAT IN YOUR
8 REPORT ABOUT THESE GUYS -- THIS GUY IN THE THUNDERBIRD GETTIN' OUT. NOT
9 IN THERE. THAT'S SOMETHIN' HE LEFT OUT. WELL, THAT'S SOMETHIN' FOR YOU
10 TO DETERMINE. IF THAT'S EVEN EVIDENCE, EVEN IF YOU BELIEVE IT. BUT IS IT
11 COMPETENT EVIDENCE WHEN THE SAME WITNESS SAYS I LEFT IT OUTTA MY
12 REPORT 6 MONTHS AFTER THE INCIDENT, BUT I REMEMBER IT 2 YEARS LATER IN
13 TESTIMONY?

14 ALRIGHT. WHAT EVIDENCE, IF ANY, HAS BEEN SUBMITTED TO YOU THAT
15 THESE TWO HAD IN ANY WAY, SHAPE OR FASHION ACCORDING TO THE
16 INDICTMENT KNOWINGLY, WILFULLY DELIVERED MARIJUANA INTO THIS STATE
17 OR PARTICIPATED WITH OTHERS TO DELIVER MARIJUANA INTO THIS STATE OR
18 BROUGHT INTO THIS STATE OR KNOWINGLY WERE IN CONSTRUCTIVE POSSESSION
19 OF THIS MARIJUANA OR DID KNOWINGLY ATTEMPT TO BECOME IN CONSTRUCTIVE
20 POSSESSION? INTERESTINGLY ENOUGH THE INDICTMENT AND THE JUDGE'S
21 CHARGE WHICH YOU'LL HAVE BACK WITH YOU, IT CONTINUALLY TALKS ABOUT
22 WHAT THEY KNOWINGLY DID. AND I WOULD SUBMIT THE ONLY FACTS THAT
23 YOU'VE HEARD IS THAT THEY KNOWINGLY OCCUPIED A RYDER RENTAL TRUCK.
24 YOU KNOW. YOU CAN MAKE INFERENCES AS TO WHAT ELSE MAY HAVE
25 OCCURRED. THEY DIDN'T FLEE. THEY DIDN'T GET OUT OF THE TRUCK WHEN THEY

1 GOT STOPPED. SO IF THEY KNOWINGLY HAD AN IDEA THERE WAS POT IN THAT
2 TRUCK AND THEY GOT STUCK, WOULDN'T THE NATURAL THING FOR THEM TO BE
3 RUNNING AWAY, GET AWAY FROM THERE? THEY SAT IN THE TRUCK STUCK.
4 THAT'S DEFINITELY WHAT THEY'RE GUILTY OF. TWO GUYS STUCK IN A TRUCK. I
5 DON'T THINK THAT'S QUITE A VIOLATION OF THE LAW YET IN THE STATE OF
6 SOUTH CAROLINA.

7 AN INTERESTING PARALLEL -- AND MAYBE I'M GOING ON TOO LONG, BUT
8 DON'T HOLD THAT AGAINST MY CLIENT; HOLD IT AGAINST ME. SO IF YOU NEED A
9 LAWYER, YOU WON'T CALL ME 'CAUSE I TALK TOO MUCH. BUT I WILL TELL YOU
10 THIS: I DO WANT TO REMIND YOU BUT YOU ALREADY KNOW THIS ANYWAY, SO --
11 ISN'T IT INTERESTING THAT THE DRIVER OF THE SEMI WHO CAME ACROSS THE
12 BORDER IN ACTIVE POSSESSION AND CONTROL OF THIS DOPE WHO WAS IN
13 FEDERAL CUSTODY FOR SEVERAL HOURS IS INTERVIEWED AND LET GO? BYE, BYE.
14 THEY DON'T KNOW WHO HE IS; THEY DON'T KNOW WHERE HE CAME FROM. HE'S
15 JUST SOME DREDGE DRIVER THAT JUST HAPPENED TO BE HOOKED UP TO 900
16 POUNDS OF DOPE. THEY JUST LET HIM GO.

17 NOW ARE THESE TWO GUYS ANY MORE GUILTY THAN THAT GUY?
18 SOMEBODY'S GOTTA PAY. RIGHT? ISN'T THAT THE DEAL? CAN'T JUST LET
19 EVERYBODY WALK EVEN WHETHER THEY'RE GUILTY OR NOT. YOU'D THINK
20 SOMEBODY WAS RESPONSIBLE FOR THIS INVESTIGATION BUT ARE YOU SURE YET
21 WHO IT WAS? WAS IT AGENT DOWLING? WHAT WAS HER MANTRA? NOT MY
22 RESPONSIBILITY. NOT MY RESPONSIBILITY. NOT MY RESPONSIBILITY. WELL,
23 WHAT WAS EVERYBODY ELSE'S MANTRA? AGENT DOWLING'S RESPONSIBILITY.
24 AGENT DOWLING'S RESPONSIBILITY. SHE DIRECTED ME TO TAKE THE DOPE OUT.
25 SHE WAS DIRECTING ME TO DO THIS. SOUNDS LIKE THE SHELL GAME, DOESN'T IT?

1 WHO'S RESPONSIBLE? NOT HERE; NOT HERE; NOT HERE.

2 YOU HAVE TO JUDGE THE STRENGTH OF THE STATE'S CASE BY THE
3 CREDIBILITY AND RELIABILITY OF THE STATE'S WITNESSES. THAT GOES WITHOUT
4 SAYING.

5 THEY BROUGHT THIS FURNITURE OUT OSTENSIBLY TO SHOW YOU WHAT
6 WAS LOADED IN THE BACK OF THE SEMI. AND I DON'T KNOW IF YOU'RE GOING TO
7 DRAG THIS BACK HERE TO THE JURY ROOM, BUT EVERYBODY AGREES IF YOU
8 LOOK AT THIS THING, DOES IT LOOK LIKE A CARRIER OF DOPE? NOT TO
9 ANYBODY'S NAKED EYE. YOU CAN'T SMELL IT; YOU CAN'T SEE IT.

10 WELL, MAYBE THESE GUYS HAD AN X-RAY MACHINE IN THEIR TRUCK AND
11 THAT'S HOW THEY KNEW IT WAS DOPE. AND SOMEWHERE BETWEEN BILLY'S AND
12 PADGETT ROAD, THEY DUMPED THE X-RAY MACHINE. WELL, THAT WOULD BE
13 SOMETHING TO ARGUE IF THEY PRESENT ANY EVIDENCE THAT THEY LOOKED
14 INSIDE THE TRUCK TO SEE IF THERE WAS SOMETHING THAT THEY COULDN'T TELL
15 WAS DOPE. THEY NEVER LOOKED INSIDE THE TRUCK; THEY NEVER TOUCHED THE
16 TRUCK; THERE'S NOT A FINGERPRINT; THERE'S NO DNA; THERE'S NO
17 PHOTOGRAPHS; THERE'S NO AUDIO RECORDING; THERE'S NO VIDEO RECORDING;
18 THERE IS NO EVIDENCE IN THIS CASE WHATSOEVER THAT SAYS MY GUYS ARE
19 GUILTY OF ANYTHING BUT BEING 2 GUYS STUCK IN A TRUCK.

20 ALRIGHT. SOMETHIN' ELSE THAT DID COME OUT THAT MAYBE THE STATE
21 COULD ARGUE WAS SOME INDICATION OR KNOWLEDGE THAT THESE TWO GUYS
22 WERE IN ON THE DEAL. ALRIGHT? WELL, IF YOU LOOK AT THE CHIMNEYS OR THE
23 MANTLE PIECES, THEY LOOK LIKE THEY COULD FIT IN THE TRUCK THEY WERE IN. I
24 THINK ONE OF THEM SAID THAT. REMEMBER THAT? OKAY. WELL, FOOLISH ME I
25 STOOD UP AND ASKED A COUPLE QUESTIONS ON CROSS EXAMINATION. DID YOU

1 MEASURE THE MANTLE PIECES. WELL NO. DID YOU MEASURE THE INSIDE OF THE
2 BOX TRUCK. WELL NO. DID YOU FIND ANYTHING INSIDE THE BOX TRUCK. NO.
3 DID YOU FIND ANY MARIJUANA OR DOPE ON MY 2 GUYS. WELL NO. SEE, AGAIN,
4 THAT'S AN ASSUMPTION FOR YOU TO MAKE. WELL, THEY BROUGHT THE BOX
5 TRUCK TO LOAD THE MANTLES. YET THERE'S NO OBJECTIVE EVIDENCE GIVEN TO
6 YOU EVEN THAT THEY MEASURED THE MANTLES OR THE BOX TRUCK TO SEE IF
7 THEY WOULD FIT. DID THEY? HOW DO WE KNOW THAT THEY WEREN'T THERE TO
8 PICK UP THE FURNITURE? THE OTHER 90 SOME ODD PIECES OF FURNITURE. WE
9 DON'T KNOW WHAT THEY WERE TOLD. AND THE JUDGE WILL TELL YOU WITH
10 CIRCUMSTANTIAL EVIDENCE, IF THERE IS A REASONABLE HYPOTHESIS THAT
11 EXPLAINS, AT LEAST, TOWARD NOT GUILTY, THEN THAT'S WHAT YOU HAVE TO
12 ACCEPT.

13 ONE LAST INDICIA, ONE LAST INDICATION OF THEIR GUILT. ONE THING I
14 ALMOST LEFT OUT. GOT IT ON THE BOTTOM OF MY PAGE THAT I'M SURE MR. MAYE
15 WILL ARGUE. THAT WHEN AGENT MIZE -- REMEMBER OUR SCRUFFY AGENT?
16 LOOKS A LOT SCRUFFIER THAN NOW. HE SAID THAT HE PORTRAYED HIMSELF AS
17 A SCRUFFY TRUCK DRIVER. NOW -- NOW BELIEVE ME, IF ANY OF Y'ALL ARE
18 TRUCK DRIVERS OR RELATED TO TRUCK DRIVERS, I'M THE LAST ONE TO SAY THEY
19 LOOK SCRUFFY. THAT CAME FROM THE STATE. WELL, HE PORTRAYED HIMSELF
20 AS SOMEONE HE WASN'T. WHERE I'M FROM, THAT'S DECEIT.

21 NOW I KNOW HE'S UNDERCOVER AND YOU GOTTA GO UNDERCOVER WITH
22 THESE KINDA THINGS, BUT IF YOU LOOK AT IT, HE ISN'T WHAT HE SAID HE WAS.
23 SO THESE 2 GUYS BY NOW -- AND LET'S JUST IMAGINE MAYBE THEY REALLY ARE
24 INNOCENT; MAYBE THEY DIDN'T HAVE A CLUE WHAT WAS GOING ON. SO THEY'RE
25 LOCKED UP BY THE POLICE WHO THEY THOUGHT WERE MAYBE COMIN' TO HELP

1 THEM WHILE THEY'RE STUCK. AND ANYWAY THEY GET LOCKED UP BY THE
2 POLICE; THEY'RE SITTING IN JAIL, IN THE COUNTY JAIL WHICH APPARENTLY HAD
3 NEVER BEEN BEFORE OR WE'D HAVE HEARD ABOUT IT. AND AGENT MIZE WHO
4 PROBABLY LOOKED ABOUT AS LEAST LIKELY TO BE A POLICEMAN AS ANYONE --
5 ANYBODY IN TOWN, SHOWS UP WITH A BADGE AROUND HIS NECK. SAYS HI
6 FELLOWS. WELL, GEE WHIZ, THEIR EYES BUGGED OUT. DOES THAT MEAN THEY'RE
7 GUILTY? OR DOES THAT MEAN THIS DISGUISE WAS AS GOOD AS HE WANTED IT TO
8 BE?

9 THE JUDGE WILL CHARGE YOU -- AND WE DON'T KNOW THE LAW; THE
10 JUDGE KNOWS THE LAW -- THE JUDGE IS GONNA TELL YOU WHAT THE LAW IS.
11 THERE IS ONE THING THAT HE WILL TELL YOU AND I THINK YOU'LL HAVE IT OUT
12 TO READ YOURSELF IF YOU'RE NOT ALREADY SICK OF HEARING ABOUT IT. AND
13 THAT IS THE FACT THAT YOU'RE PRESENT, WHAT THEY CALL MERE PRESENCE, IS
14 NOT INDICATIVE OF GUILT. MERE PRESENCE AT THE SCENE OF A CRIME, EVEN IF
15 YOU'RE IN THE COMPANY OF WRONGDOERS, DOES NOT MAKE YOU AN AIDER OR
16 ABETTOR. DOES NOT MAKE YOU GUILTY. AND I SUBMIT TO YOU THAT IF
17 ANYTHING, IF WE HAVE ANYTHING AT ALL ON THESE TWO GUYS, IS THAT THEY
18 WERE PRESENT. WE KNOW THAT THAT'S WHAT THE FACTS ESTABLISH. ANYTHING
19 ELSE WILL SIMPLY BE ARGUMENT WHICH IS NOT EVIDENCE OR ASSUMPTION
20 WHICH IS NOT BASED ON FACT. AND SO I WOULD ASK YOU TO LET MY TWO GUYS
21 GO BECAUSE I DON'T BELIEVE THE EVIDENCE HAS INDICATED ANYWHERE NEAR
22 GUILT BEYOND A REASONABLE DOUBT.

23 THANK YOU, JUDGE.

24 THE COURT: THANK YOU VERY MUCH, MR. SUSSMAN. LADIES AND
25 GENTLEMEN, WE'LL TAKE A SHORT BREAK NOW. I'LL GET YOU BACK OUT HERE

1 WITHIN TEN MINUTES AND WE'LL CONTINUE. CAN YOU ALL MOVE THOSE THINGS
2 FOR ME. DON'T DISCUSS THE CASE YET. (THERE WAS A BRIEF RECESS.) ALRIGHT.
3 MR. MILLER?

4 MR. MILLER: THANK YOU, YOUR HONOR. LADIES AND GENTLEMEN, AT THE
5 BEGINNING OF THIS CASE I TOLD YOU I WAS GOING TO TRY TO BE BRIEF AND THAT
6 USUALLY I'D BE THE LAST ONE YOU HAD TO HEAR FROM. WELL, I WON'T BE THE
7 LAST ONE THAT YOU HEAR FROM TODAY. SOLICITOR MAYE IS GONNA MAKE HIS
8 FINAL ARGUMENT, BUT I'M STILL GONNA TRY AND KEEP THE BEIN' BRIEF PART
9 TRUE.

10 LADIES AND GENTLEMEN, YOU'VE ALREADY HEARD A LOT OF - WELL,
11 YOU'VE HEARD ALL OF THE EVIDENCE AND YOU'VE HEARD A LOT OF THE
12 ARGUMENT IN THIS CASE AS IT RELATES TO MR. DELEON AND MR. SUSSMAN'S
13 TWO CLIENTS AND AS TO REASONABLE DOUBT AND THOSE TYPES OF THINGS THAT
14 THEY'VE ALREADY TALKED TO YOU ABOUT. I'M NOT GONNA REHASH ALL THAT
15 'CAUSE THAT'S ALL OPINION, AND IT IS WHAT IT IS, AND THEY'VE ALREADY
16 DISCUSSED THAT WITH YOU.

17 BUT WHAT I WANTED TO TALK TO YOU ABOUT IS CIRCUMSTANTIAL
18 EVIDENCE. AND A LOTTA TIMES IN LIFE, A LOTTA TIMES IN THE LAW, YOU HAVE
19 TO RELY ON WHAT IS CALLED CIRCUMSTANTIAL EVIDENCE TO DETERMINE IF
20 SOMETHING IS TRUE OR NOT. IF SOMEBODY WALKS IN THROUGH THAT DOOR AND
21 YOU DIDN'T HAVE THE WINDOWS THERE AND THEY'RE SOAKIN' WET, THEY'RE
22 SHAKIN' OFF AN UMBRELLA AND YOU HEAR THUNDER OUTSIDE, YOU DIDN'T
23 HAVE TO SEE THAT IT WAS RAINING OUTSIDE TO COME TO THE LOGICAL
24 CONCLUSION THAT THERE'S RAIN FALLIN'. YOU CAN INFER THAT. YOU CAN
25 FIGURE THAT OUT. IT DOESN'T REQUIRE YOU TO ACTUALLY GO OUT AND LOOK

1 OUT THE DOOR. BUT THINGS AREN'T ALWAYS AS THEY SEEM. AND WHENEVER
2 THE STATE HAS THE BURDEN OF PROVING A CASE BEYOND A REASONABLE DOUBT
3 AND THEY ATTEMPT TO DO THAT THROUGH CIRCUMSTANTIAL EVIDENCE, YOU
4 HAVE TO EVALUATE THAT EVIDENCE IN THIS WAY: THESE ARE THE FACTS; THESE
5 FACTS LEAD TO THE CONCLUSION THAT THE STATE WANTS YOU TO REACH. BUT IF
6 THOSE EXACT SAME FACTS CAN LEAD YOU TO A DIFFERENT CONCLUSION, THAT IS
7 WHERE THE REASONABLE DOUBT IS. SEE, I'VE NEVER USED ONE OF THESE BEFORE
8 IN A TRIAL, AND THIS'LL BE THE LAST TIME. CIRCUMSTANTIAL EVIDENCE, TO
9 PROVE A CASE BY CIRCUMSTANTIAL EVIDENCE IT MUST EXCLUDE ALL OTHER
10 REASONABLE POSSIBILITIES TO MEET THE STATE'S BURDEN OF PROOF. OKAY?

11 NOW THAT DOESN'T MEAN THAT I COULD COME IN HERE AND TELL YOU
12 THAT MY CLIENT HONORIO GUERRERO WAS TRANSPORTED, YOU KNOW, BY JAMES
13 KIRK ON THE STAR SHIP ENTERPRISE OUT THERE ONTO PADGETT ROAD. THAT'S
14 NOT A REASONABLE CONCLUSION THAT YOU CAN REACH FROM THE EVIDENCE.
15 BUT IF THE CONCLUSION THAT YOU REACH FROM THE EVIDENCE IS REASONABLE
16 AND NOT WHAT THE STATE SAYS, THEN THAT'S WHERE REASONABLE DOUBT
17 COMES FROM. YOU DON'T NEED TO WEIGH THE POSSIBILITIES OF WHAT I SAY
18 VERSUS WHAT THE SOLICITOR SAYS. AS LONG AS MINE IS REASONABLE, THAT'S
19 ALL THE LAW REQUIRES. YOU DON'T HAVE TO SAY I THINK IT'S MORE LIKELY
20 THAN WHAT THE SOLICITOR SAID IS TRUE THAN WHAT DAVID MILLER SAID IS
21 TRUE. THAT'S NOT THE QUESTION. THE ONLY QUESTION FOR YOU IS WHETHER
22 THE OUTCOME IS REASONABLE BASED ON THE EVIDENCE THAT YOU HAVE IN THE
23 CASE.

24 SO LET'S LOOK AT HOW IT WOULD APPLY TO OUR SITUATION AND OUR
25 FACTS. AND I'LL TRY TO EXPLAIN SOME DIFFERENCES AS WE GO ALONG. HERE'S

1 A FACT: HONORIO GUERRERO ALONG WITH MR. SUSSMAN'S TWO CLIENTS WAS IN
2 EDGEFIELD COUNTY ON MAY THE 18TH OF 2002. THAT'S A FACT. THE SOLICITOR
3 SAYS HE WAS HERE TO MOVE MARIJUANA. THERE'S NO PROOF OF THAT. YOU
4 HAVE TO FIGURE IT OUT FROM THE CIRCUMSTANCES. I'LL OFFER THE
5 ALTERNATIVE: HE WAS HERE TO MOVE FURNITURE. ON THE 17TH THAT NIGHT
6 PRIOR TO THE 18TH, HONORIO STAYED AT THE CROSSROADS MOTEL. THAT IS A
7 FACT. WE HAVE A RECEIPT THAT SHOWS IT.

8 NEXT, HONORIO WAS CONTACTED BY RAMOS. THAT'S THE GUY IN THE
9 GREEN THUNDERBIRD. AT LEAST THAT'S WHAT THE POLICE BELIEVE. THAT'S
10 WHAT THE SKETCH THAT THEY HAD -- THEY'VE IDENTIFIED THAT.

11 HONORIO WAS CONTACTED BY RAMOS AND TOLD TO FOLLOW HIM TO THE
12 PLACE WHERE THE FURNITURE IS LOCATED.

13 I DON'T KNOW IF RAMOS CONTACTED HONORIO. I DON'T KNOW IF SOME
14 THIRD PARTY CONTACTED HONORIO AND SAID HEY THERE'LL BE A GREEN
15 THUNDERBIRD AT BILLY'S; FOLLOW THE GREEN THUNDERBIRD. I DON'T KNOW
16 HOW IT CAME OUT. BUT THAT CERTAINLY DOESN'T SHOW ANY EVIDENCE -- THE
17 FACT THAT HE'S FOLLOWIN' THE GREEN THUNDERBIRD IS NO EVIDENCE THAT HE
18 KNOWS THERE'S AN 18-WHEELER ACROSS THE PARKING LOT LOADED WITH
19 MARIJUANA. HONORIO FOLLOWS RAMOS. THAT IS A FACT. WE'VE HAD PLENTY
20 OF PEOPLE TESTIFY ABOUT IT. HONORIO IN THE RYDER TRUCK WITH HIS TWO
21 FRIENDS, MR. SUSSMAN'S CLIENTS, IS FOLLOWING RAMOS. AT SOME POINT IN
22 TIME THE 18-WHEELER JOINS IN THE LINE. OKAY? HONORIO GETS STUCK ON
23 PADGETT ROAD. THAT'S A FACT. EVERYBODY ADMITS THAT. THAT IS A FACT.
24 AND THEN HONORIO IS ARRESTED. WE KNOW THAT HAPPENED AS WELL. SLED
25 GOES OUT, AGENT PERRY SAYS HE WENT OUT AND THERE WERE PHONE CALLS

MADE FROM THE CROSSROADS MOTEL ON PHONE CARDS. I DON'T KNOW THAT THAT'S A FACT. AND QUITE FRANKLY THERE WAS NO DOCUMENTATION PRESENTED TO YOU TO SHOW THAT WHEN AGENT PERRY ADMITTED ON THE STAND THAT THE DOCUMENTATION WAS READILY AVAILABLE. HE COULD'VE BROUGHT IT IN. HE COULD'VE MADE IT AN EXHIBIT THE SAY WAY THEY BROUGHT THIS IN AND MADE IT AN EXHIBIT. BUT IT DIDN'T HAPPEN. BUT HERE'S WHERE THE PROBLEMS START WITH THE STATE'S CASE. HOW DO YOU KNOW, WHAT EVIDENCE DO YOU HAVE THAT HONORIO GUERRERO WAS GOING TO PUT THOSE 23 CHIMNEYS OR 22 OR HOWEVER MANY THERE WERE INTO THE BACK OF THAT RYDER TRUCK?

NOW THERE IS NO QUESTION THAT THIS RYDER TRUCK LEFT FROM LAREDO, TEXAS WITH 133 PIECES OF FURNITURE ON IT.

THERE'S NO QUESTION THAT AT FREDY DELEON'S STORE THEY DROPPED OFF 13 PIECES OF FURNITURE. THAT MEANS BY MY COUNT THERE WERE 98 OTHER ITEMS ON THAT TRUCK BESIDES THOSE CHIMNEYS.

NOW CLEARLY IT MAKES SENSE LOGICALLY THAT IF THE GUYS IN THE GREEN THUNDERBIRD ARE DRUG TRAFFICKERS, I THINK EVERYTHING POINTS TO THAT, THEY'VE ORDERED ALL THIS FURNITURE, THEY CAN'T TAKE THE CHIMNEYS OFF AND TELL THE TRUCK DRIVER HAVE A NICE DAY. THEY GOTTA DO SOMETHIN' WITH THOSE 98 PIECES OF FURNITURE. IT MAKES PERFECTLY LOGICAL SENSE TO HAVE SOMEONE WITH A BOX TRUCK THAT CAN TAKE AWAY THE REST OF THE FURNITURE SO THE TRUCK DRIVER CAN LEAVE AFTER IT'S DONE. BUT THE PLAN, WHATEVER THE PLAN WAS, THERE'S NO EVIDENCE THAT THE PLAN WAS THAT HONORIO WAS TO BRING HIS TWO FRIENDS DOWN AND ENGAGE IN TRAFFICKING IN MARIJUANA. NOT INTENTIONALLY. BUT THE PLAN WENT AWRY.

1 AND THE PLAN WENT AWRY FOR ONE REASON AND ONE REASON ONLY. I WILL
2 SUBMIT TO YOU THAT RAMOS KNEW LAW ENFORCEMENT WAS AWARE THAT
3 THERE WAS MARIJUANA ON THAT TRUCK.

4 NOW WE GO BACK TO CIRCUMSTANTIAL EVIDENCE AGAIN. WHEN THAT
5 TRUCK ARRIVED AT THE WORLD TRADE BRIDGE, THERE WERE 3 SEALS ON IT. THE
6 DRIVER, THE DREDGE DRIVER THAT DROVE IT OVER KNEW THAT THERE WERE 3
7 SEALS ON IT. HIS BOSS THAT TOLD HIM TO HOOK UP TO THE TRUCK COULD'VE
8 VERY WELL KNOWN THAT THERE WERE 3 SEALS ON IT. THEY'RE THERE FOR THE
9 WORLD TO SEE. ALL YOU GOTTA DO IS WALK UP TO THE BACK OF THE TRUCK.
10 COUNT THE SEALS. 1, 2, 3. AND THAT TRUCK WAS PARKED IN FRONT OF FREDY
11 DELEON'S STORE. WHO DID AGENT MIZE SAY WENT AROUND TO THE BACK OF THE
12 TRUCK? THE GUYS IN THE THUNDERBIRD. WALKED AROUND TO THE BACK OF THE
13 TRUCK AND LOOKED. THERE WERE 3 SEALS. CUSTOMS ONLY PUT ONE BACK ON.
14 IF IM SHIPPING ALMOST 1000 POUNDS OF MARIJUANA, THAT'S GONNA CONCERN
15 ME BECAUSE I'M GONNA THINK SOMEBODY WAS IN THE BACK OF THAT TRUCK.

16 BUT WE CAN GO BACK AND GO FURTHER THAN THAT. CUSTOMS AT THE
17 BORDER TOOK THE DRIVER OFF AND ASKED THE DRIVER WHERE DID YOU PICK UP
18 THIS LOAD. WHERE WERE YOU TAKIN' THIS. WHAT WERE YOU DOIN' WITH THIS.
19 WHAT WAS -- DID YOU EVER SEE WHAT WAS INSIDE OF IT.

20 NOW YOU DON'T HAVE TO BE A ROCKET SCIENTIST TO FIGURE OUT THAT
21 AFTER THAT GUY'S BEEN DETAINED FOR A COUPLE OF HOURS -- IT'S A BRIEF
22 AMOUNT OF TIME, BUT IT'S STILL A COUPLE OF HOURS -- AND HE GOES BACK
23 ACROSS THE BORDER TO HIS BOSS AT THE OFFICE. HE PROBABLY DIDN'T SAY HEY
24 BOSS WHERE'S MY NEXT LOAD. HE PROBABLY TOLD PEOPLE THAT HE WORKED
25 WITH HEY THEY WERE ASIN' ME ABOUT A LOAD OF MARIJUANA ON THAT TRUCK.

1 ANYBODY THAT WAS THERE, ANYBODY THAT TALKED TO HIM, HE HIMSELF. IF HE
2 DID REALLY KNOW THAT THERE WAS MARIJUANA ON THE TRUCK.

3 HE KNEW WHERE THE MANIFEST WAS GOIN' TO. ALL HE HAD TO DO WAS
4 PICK UP THE PHONE. CALL THIS GUY IN MEXICO. CALL HIS GUY OR WHEREVER.
5 HEY THE FEDS CAUGHT IT. THEY MADE ME GO THROUGH THE X-RAY MACHINE.
6 SORRY ABOUT THAT. NOTHIN' I CAN DO.

7 THESE GUYS VERY WELL IN THE GREEN THUNDERBIRD VERY WELL COULD
8 HAVE KNOWN DAYS IN ADVANCE THAT THE FEDS WERE ON TO THAT TRUCK.

9 SO THINKING LOGICALLY WHY'D THEY GO IN THE FIRST PLACE? WELL, DO
10 YOU REALLY THINK THEY SAW A POSSIBILITY BASED ON ONE PERSON'S WORD.
11 EVEN THAT THEY'RE GONNA WALK AWAY FROM 1000 POUNDS OF MARIJUANA?
12 NO, LET'S GO CHECK IT OUT. LET'S GO MAKE SURE.

13 SO THEY GO TO FREDY'S AND THEY UNLOAD SOME FURNITURE AND THEY
14 DROP OFF THIS CHIMNEY, AND THEY CLOSE THE TRUCK BACK UP, AND THEN
15 WHAT DID THEY DO? THEY DISAPPEARED. ALRIGHT. LET'S COMPARE NOTES AT
16 THIS POINT. WHAT DO WE KNOW AND WHAT DO WE THINK? WELL, WE THINK
17 THAT THE LOAD MIGHT'VE BEEN COMPROMISED. WE KNOW THAT IT LEFT MEXICO
18 WITH 3 SEALS ON IT, NOW IT'S ONLY GOT ONE. AND WE KNOW -- AND I DON'T
19 KNOW HOW FAMILIAR ANY OF YOU ARE WITH TRUCK DRIVERS, BUT WE KNOW
20 THERE ARE TWO DRIVERS ON THIS TRUCK. I DON'T KNOW IF THAT'S NORMAL OR
21 NOT. I DON'T KNOW IF THEY KNEW IT WAS NORMAL OR NOT. BUT NO MATTER
22 HOW GOOD THE DISGUISE IS TO THE GUYS IN THE THUNDERBIRD, THEY'RE
23 LOOKING FOR SOMETHING UNUSUAL. THEY'RE LOOKING FOR SOMETHING OUT OF
24 PLACE. AND THERE WAS PLENTY OF STUFF OUT OF PLACE. AND THERE WAS
25 PLENTY OF STUFF OUT OF PLACE TO GO ALONG THE WHOLE TIME 'CAUSE THE

1 GUYS IN THE THUNDERBIRD KNEW IT WAS DOPE AND THE GUYS IN THE
2 THUNDERBIRD SUSPECTED THAT THERE WAS DOPE -- THAT THE FEDS KNEW THAT
3 THERE WAS DOPE TOO.

4 SO WHAT DO THEY DO? LET'S RUN. LET'S JUST GET OUTTA HERE. THAT
5 WOULD'VE BEEN A REASONABLE THING TO DO. WHY DIDN'T THEY DO IT? I DON'T
6 KNOW. MAYBE THEY THOUGHT THEY WERE PROBABLY -- I WOULD'VE THOUGHT,
7 MAYBE THEY THOUGHT THAT THEY WERE STILL BEING SURVEILLED. MAYBE THEY
8 THOUGHT SOMEBODY WAS LOOKIN'. I'M SURE THAT IF THEY HAD KNOWN THAT
9 CUSTOMS AND SLED AND EDGEFIELD COUNTY AND AIKEN COUNTY HAD NO CLUE
10 WHERE THEY WERE, THEY PROBABLY WOULDN'T HAVE COME BACK. BUT THEY
11 DIDN'T KNOW THAT. SO WHAT DID THEY NEED TO DO? THEY NEED TO CREATE A
12 DIVERSION. THERE'S HONORIO GUERRERO IN THE YELLOW BOX TRUCK.

13 YOU CAN BET -- I -- YOU CAN BET THAT IF THOSE GUYS HAD NEVER COME
14 BACK IN THAT GREEN THUNDERBIRD AND THAT TRUCK'S OUT THERE FOR 3 HOURS
15 WITH ALL THAT DOPE ON IT AT BILLY'S SUPER STORE, EVERY ONE OF THOSE GUYS
16 THAT WAS OUT THERE MESSIN' WITH THAT TRUCK ON THAT ROAD WOULD'VE
17 BEEN OUT THERE LOOKIN' FOR THAT THUNDERBIRD. GOTTA ARREST EVERYBODY
18 WE CAN GET OUR HANDS ON. THESE GUYS HAVE A PLAN. THEY'RE NOT DUMB. I
19 MEAN THEY'RE ALL -- ALL THE EVIDENCE HAS SHOWN THEY'RE THE ONLY ONES
20 DIRECTIN' AND MESSIN' WITH THIS 1000 POUNDS OF MARIJUANA. BUT THEY'RE
21 NOT HERE. SO THEY CAN'T BE TOO STUPID. SO HERE'S THE PLAN. WE TAKE THE
22 TRUCK SOMEWHERE WE KNOW IT CAN'T GO. AGENT PERRY TESTIFIED HE KNEW
23 THAT WAS WHAT WAS GOIN' ON AS SOON AS THEY TURNED ONTO PADGETT ROAD.
24 AIN'T NO WAY THAT TRUCK'S MAKIN' IT OUTTA THAT ROAD. WE'LL TAKE THE
25 TRUCK SOMEWHERE IT CAN'T GO. WE'LL THROW SOME PEOPLE IN BETWEEN US

1 AND THE TRUCK THAT DON'T KNOW ANYTHING. WE DON'T WANT THEM TO BE
2 ABLE TO TELL ON US. AND WHILE THEY'RE HASSLING WITH THAT WE'LL MAKE
3 OUR GETAWAY. AND THE PLAN WORKED TO A T. IT WORKED PERFECTLY. THEY
4 THREW MY CLIENT AND THE TWO OTHER PEOPLE IN THAT RYDER TRUCK IN
5 BETWEEN THEM AND THE 18-WHEELER. IF NOTHIN' ELSE, PUTTIN' DISTANCE
6 BETWEEN THEM AND ANY VEHICLES THAT MIGHT'VE BEEN FOLLOWIN'. AND AS
7 SOON AS THEY GOT TO THE POINT ON PADGETT ROAD WHERE THEY KNEW THAT
8 TRUCK COULDN'T GO, THEY PICKED UP AND RAN.

9 WANT MORE EVIDENCE THAT THEY KNEW THAT STUFF WAS
10 COMPROMISED?

11 850 POUNDS OR MORE OF MARIJUANA SITTIN' ON A DIRT ROAD IN
12 EDGEFIELD COUNTY DURING A RAINSTORM AND THEY NEVER CAME BACK.
13 AGENT PERRY TESTIFIED TODAY: \$2,000,000 WORTH OF DOPE SITTIN' OUT THERE.

14 I TURN AROUND AND GO BACK IF I DROP A \$20 BILL. I'M NOT LEAVIN'
15 \$2,000,000 OF MY MARIJUANA SITTIN' OUT THERE IN A FIELD UNLESS I KNOW WHEN
16 I GO BACK I'M GETTIN' ARRESTED. AGENT PERRY TESTIFIED, SHERIFF DOBEY,
17 SNUCK THROUGH THE WOODS AND SURVEILLED IT, LOOKIN' AT THE TRUCK.
18 WHAT'D YOU SEE? WELL, I SAW THERE WAS STUFF. DIDN'T SEE ANYBODY ELSE.
19 CAME BACK AROUND. THEY TAKE 'EM ON OUT. ARREST EVERYBODY WE CAN.
20 ROUND 'EM ALL UP. INVESTIGATOR YOUNG SAYS I'M NOT LETTIN' 905 POUNDS OF
21 MARIJUANA WALK OUTTA EDGEFIELD COUNTY. I DON'T DISAGREE WITH
22 CONTAINING THE LOAD, BUT ONCE THE LOAD WAS CONTAINED, THEY NEEDED TO
23 MAKE SOME ARRESTS. YOU GOT AGENTS FROM LAREDO, TEXAS SPENDIN' 2 DAYS
24 BRINGIN' 1000 POUNDS OF MARIJUANA ALL THE WAY TO SOUTH CAROLINA. HOW
25 IS IT GONNA LOOK TO THEIR SUPERVISOR WHEN THEY CALL BACK AND SAY HEY

1 BOSS WE GOT 905 POUNDS OF MARIJUANA. YOU HAD 905 POUNDS OF MARIJUANA
2 WHEN YOU LEFT. WHAT'D YOU JUST SPEND THE LAST 2 DAYS DOIN'. WELL WE
3 GOT THE GUYS RESPONSIBLE IN THE THUNDERBIRD GOT AWAY. YOU CAN BET
4 THAT CALL DIDN'T TAKE PLACE.

5 THIS CASE CALLS FOR ASSUMPTIONS AND SUPPOSITION. AND THE
6 SOLICITOR, THE STATE IS REQUIRED TO MAKE THIS CASE COMPLETE TO HAVE YOU
7 CONNECT THE DOTS. THAT'S A CIRCUMSTANTIAL CASE. THERE'S NOTHING
8 WRONG WITH THAT. THAT'S THE NATURE OF A CIRCUMSTANTIAL CASE. IT'S
9 BECAUSE YOU HAVE TO CONNECT THE DOTS AND YOU HAVE TO PUT THE DOTS ON
10 THE STATE. THOSE ARE THE FACTS. AND ONCE THE JURY CONNECTS ALL THE
11 DOTS THEY HAVE TO MAKE A PICTURE, BUT IF YOU CAN CONNECT THOSE DOTS IN
12 SOME WAY THAT DOESN'T MAKE THE PICTURE THAT THE SOLICITOR IS TRYING TO
13 PUT TOGETHER, YOU MUST FIND THESE MEN NOT GUILTY. YOU MUST FIND
14 HONORIO GUERRERO NOT GUILTY. THERE IS A PERFECTLY LOGICAL REASONABLE
15 EXPLANATION WITHIN THE FACTS THAT ARE IN EVIDENCE FOR EVERY SINGLE
16 OCCURRENCE THAT'S HAPPENED IN THIS CASE.

17 HERE'S A DRUG TRAFFICKER WHO'S GOT THE 3 STOOGES OUT THERE IN A
18 RYDER BOX TRUCK. DOES IT MAKE ANY SENSE TO TELL THEM THAT THEY'RE
19 TRANSPORTING MARIJUANA? REALLY. DOES IT MAKE ANY SENSE TO LET THEM
20 KNOW WHAT THEY'RE DOING? DOES IT MAKE ANY SENSE TO LET THEM KNOW
21 WHO THEY REALLY ARE? WHY NOT GIVE 'EM UP TO THE POLICE? IF THEY GET
22 ARRESTED THEY CAN'T TELL THE POLICE WHO I AM. THEY CAN'T TELL THE
23 POLICE WHERE I AM. BY THE TIME THEY FIGURE OUT WHERE I AM, I'LL BE LONG
24 GONE. THAT'S WHAT THEY DID. THEY TOOK OFF.

25 LADIES AND GENTLEMEN, JUSTICE IS DEFINED -- ONE OF THE MANY

1 DEFINITIONS -- BUT ONE OF THE DEFINITIONS OF JUSTICE IS WHAT IS RIGHT,
2 IMPARTIAL AND FAIR. JUSTICE AND THE LAW -- AND THE JUDGE WILL TELL YOU
3 WHAT THE LAW IS, BUT JUSTICE AND THE LAW REQUIRE THAT BEFORE YOU CAN
4 BE CONVICTED OF A CRIME YOU HAVE TO KNOW THAT YOU ARE COMMITTING A
5 CRIME.

6 IN THIS CASE, LADIES AND GENTLEMEN, JUSTICE DEMANDS A NOT GUILTY
7 VERDICT FOR THESE CLIENTS. THEY HAD NO KNOWLEDGE OF WHAT THEY WERE
8 DOING. SPECIFICALLY HONORIO GUERRERO DIDN'T. HAD NO KNOWLEDGE. I'M
9 HERE TO DRIVE THE BOX TRUCK. I'M HERE TO MOVE SOME FURNITURE.

10 THE JUDGE IS GOING TO INSTRUCT YOU ON THE LAW AFTER THE SOLICITOR
11 IS DONE WITH HIS CLOSING ARGUMENT, BUT ONE OF THE THINGS I SUBMIT TO YOU
12 THAT HE IS GOING TO DISCUSS IS KNOWLEDGE OF THE PRESENCE OF DRUGS.

13 AND WHETHER YOU'RE TALKIN' ABOUT POSSESSIN' DRUGS, EVEN THE
14 STATE DOESN'T SAY THAT HONORIO GUERRERO EVER POSSESSED DRUGS. HE
15 NEVER EVEN SAW THE CHIMNEYS. THEY WERE LOCKED INSIDE THE TRUCK THAT
16 AGENT MIZE TESTIFIED THEY NEVER EVEN OPENED THE DOORS ON OUT ON
17 PADGETT ROAD. THEY NEVER OPENED THE DOORS ON THE TRUCK AFTER IT LEFT
18 TIENDA DELEON UNTIL IT GOT TO THE SHERIFF'S OFFICE WHEN THEY TOOK ALL OF
19 THE STUFF OFF. BUT WHETHER THE POSSESSION IS ACTUAL OR CONSTRUCTIVE, A
20 PERSON CANNOT BE DEEMED TO HAVE POSSESSED A DRUG UNLESS THE STATE
21 HAS PROVEN BEYOND A REASONABLE DOUBT THAT A PARTICULAR DEFENDANT IN
22 QUESTION KNEW ABOUT THE PRESENCE OF MARIJUANA. ACTUAL KNOWLEDGE OF
23 THE PRESENCE OF MARIJUANA BY THE PARTICULAR DEFENDANT IS ESSENTIAL.

24 LADIES AND GENTLEMEN, IF HE DIDN'T KNOW, HE CAN'T BE GUILTY AS A
25 MATTER OF FACT AND AS A MATTER OF LAW. SO YOU HAVE TO DECIDE BASED

1 UPON THESE FACT THAT HE STAYED IN EDGEFIELD COUNTY AT THE CROSSROADS
2 MOTEL ON THE 17TH OF MAY. WELL, CERTAINLY PEOPLE THAT AREN'T DRUG
3 DEALERS COULD'VE DONE THAT. BASED UPON THE FACT THAT HE RENTED A
4 RYDER TRUCK. I'VE RENTED A RYDER TRUCK MANY TIMES MYSELF. I DON'T
5 THINK IT'S AN INFERENCE THAT I'M A DRUG DEALER. BASED UPON THE FACT
6 THAT HE WAS FOLLOWING THAT GREEN T-BIRD AND BASED UPON THE FACT THAT
7 HE GOT STUCK ON THE ROAD.

8 AGAIN, THE SOLICITOR GETS THE LAST ARGUMENT SO I HAVE TO ASSUME
9 THAT HE IS GOING TO CONCENTRATE ON THE FACT THAT THEY FOLLOWED THAT
10 GREEN T-BIRD. IS THERE ANY REASON AT ALL BESIDES THE FACT THAT YOU WERE
11 TRAFFICKING DRUGS THAT IS REASONABLE THAT YOU WOULD FOLLOW ANOTHER
12 CAR TO A -- TO A LOCATION? THAT'S THE QUESTION THAT I HAVE TO ASK YOU.
13 AND IF THERE IS A REASON THAT YOU WOULD FOLLOW THE CAR TO ANOTHER
14 LOCATION, THAT YOU'RE NOT A TRAFFICKER, THEN THAT'S REASONABLE DOUBT.

15 FINALLY, LADIES AND GENTLEMEN, I APOLOGIZE: I KNOW I'VE ALREADY
16 RUN OVER WHAT I INTENDED TO. IF YOU GET THROUGH CONNECTING THE DOTS
17 ON THE PICTURE AND THERE ARE STILL GAPS, THINK ABOUT WHY. AGENT
18 DOWLING TESTIFIED. YOU REMEMBER AGENT DOWLING. SHE WAS THE ONE THAT
19 IT'S NOT MY RESPONSIBILITY, IT'S NOT MY RESPONSIBILITY. IT'S NOT MY
20 RESPONSIBILITY. AGENT DOWLING TESTIFIED IT WAS DEAN TUCKER'S
21 RESPONSIBILITY. HE IS THE RESIDENT IN CHARGE OF THE GREENVILLE U.S.
22 CUSTOMS OFFICE. I GOT TO SOUTH CAROLINA. I TRANSFERRED THE CASE TO
23 DEAN TUCKER. YOU DON'T REMEMBER DEAN TUCKER BECAUSE YOU NEVER
24 HEARD FROM HIM. HE NEVER TOOK THE STAND. IF THERE ARE GAPS IN THE CASE,
25 IT'S NOT YOUR RESPONSIBILITY TO FILL IN THE GAPS WITH WHAT YOU THINK

1 WOULD HAVE COME UP. TAKE THE FACTS; ANALYZE THE FACTS; COME TO THE
2 RIGHT CONCLUSION AND FIND HONORIO GURERRO NOT GUILTY OF TRAFFICKING
3 IN MARIJUANA. THANK YOU.

4 THE COURT: THANK YOU, MR. MILLER. SOLICITOR, YOU'RE RECOGNIZED
5 FOR YOUR CLOSING ARGUMENT.

6 MR. MILLER: PLEASE THE COURT, YOUR HONOR? I'M GONNA BE A
7 MOMENT. I'M GONNA GET THIS STUFF OUTTA MY WAY.

8 THE COURT: LADIES AND GENTLEMEN, PLEASE, STEP IN THE JURY ROOM.
9 DON'T DISCUSS THE CASE. (THERE WAS A BRIEF RECESS.) (THE FOLLOWING
10 OCCURRED OUTSIDE THE PRESENCE OF THE JURY.) EVERYBODY READY?

11 MR. MAYE: STATE'S READY.

12 MR. MILLER: YOUR HONOR, WE'RE WAITING ON MR. SUSSMAN.

13 THE COURT: SORRY.

14 MR. MAYE: HAVE YOU GOT THE INDICTMENT, YOUR HONOR? THANK YOU.

15 THE COURT: ALRIGHT. BRING THE JURY. (THE FOLLOWING OCCURRED IN
16 THE PRESENCE OF THE JURY.) ALRIGHT, SOLICITOR.

17 MR. MAYE: MAY IT PLEASE THE COURT, YOUR HONOR? THANK YOU.
18 LADIES AND GENTLEMEN OF THE JURY, IT SEEMS LIKE A LONG TIME SINCE WE GOT
19 HERE MONDAY AND I BEGAN TALKING WITH YOU. I KNOW IT SEEMS LIKE A LONG
20 TIME PROBABLY BECAUSE EACH OF THE 12 OF YOU WERE TAKEN AWAY THIS
21 WEEK FROM WHAT YOU WERE GOING TO BE DOING. WINSTON CHURCHILL ONCE
22 SAID THAT THE HIGHEST DUTY THAT A CITIZEN HAS IN PEACETIME IS SERVICE ON
23 A JURY. Y'ALL HAVE PROVED THAT HERE THIS WEEK. YOU'VE BEEN DRUG AWAY
24 FROM YOUR LIFE, PUT---

25 THE COURT: KEEP YOUR VOICE UP.

1 MR. MAYE: PUT HERE, LISTENED TO THE EVIDENCE IN THIS CASE AND
2 SERVED AS THE JUDGES OF THE FACTS IN THIS CASE.

3 NOW THERE ARE A LOTTA OTHER PEOPLE INVOLVED IN THIS CASE GOIN'
4 BACK TO OTHER PLACES WHEN ALL THIS IS OVER. THE 12 OF YOU ARE GONNA GO
5 BACK IN THAT JURY ROOM AND DELIBERATE IN THIS CASE. YOU LIVE HERE IN
6 EDGEFIELD COUNTY AND YOU'VE GOT A STAKE IN THIS TO BEGIN WITH.

7 LET'S SHIFT GEARS. LET'S TALK ABOUT REALITY. THIS IS DEADLY SERIOUS
8 BUSINESS THAT WE'RE TALKIN' ABOUT HERE. WE'RE TALKIN' ABOUT
9 INTERNATIONAL DRUG TRAFFICKING. AND YOU'RE NOT GONNA HEAR FROM THE
10 STATE ANY MINSTREL SHOW OR SMILIN' OR CARRYIN' ON UP HERE 'CAUSE THIS IS
11 SERIOUS BUSINESS.

12 UNITED STATES CUSTOMS SERVICE IS CHARGED WITH BORDER -- WITH
13 KEEPIN' PEOPLE AND THINGS OUT OF THE UNITED STATES THAT ARE NOT
14 SUPPOSED TO BE HERE.

15 THE STATE LAW ENFORCEMENT DIVISION IN THIS CASE IS CHARGED WITH
16 HELPING ENFORCE THE LAWS OF THE STATE OF SOUTH CAROLINA AND ASSISTING
17 LOCAL LAW ENFORCEMENT.

18 INVESTIGATOR ROOSEVELT YOUNG IS A NARCOTICS OFFICER,
19 INVESTIGATOR FOR THE SHERIFF'S OFFICE.

20 SHERIFF DOBEY OVER HERE IS THE SHERIFF FOR EDGEFIELD COUNTY. I
21 TOLD YOU AT THE BEGINNING OF THIS CASE, THIS THING STARTED DOWN IN
22 LAREDO, TEXAS. WE'RE TALKIN' ABOUT INTERNATIONAL DRUG TRAFFICKERS IN
23 THE INTERIOR OF MEXICO SHIPPIN' \$2,000,000 WORTH A DRUGS RIGHT HERE IN
24 YOUR BACKYARD IN EDGEFIELD COUNTY. AND THE MINUTE THAT TRACTOR
25 TRAILER TRUCK CROSSED OVER INTO EDGEFIELD COUNTY, IT GOT IMPORTANT

1 FOR EVERYONE HERE. IT WAS ALREADY IMPORTANT FOR EVERYONE ELSE IN THE
2 UNITED STATES, BUT IT STRIKES PARTICULARLY CLOSE TO HOME HERE 'CAUSE
3 WE'RE TALKING ABOUT INTERNATIONAL DRUG TRAFFICKING OCCURRIN' IN
4 TRENTON, SOUTH CAROLINA BECAUSE THE BOTTOM LINE, THE LONG AND SHORT
5 OF THIS CASE IS IN THE INTERIOR OF MEXICO THEY GREW, THERE'S TRAFFICKERS
6 IN THIS CASE; THEY SHIPPED \$2,000,000 WORTH OF DRUGS IN THIS CASE TO MR.
7 FREDY DELEON HERE, THE DEFENDANT IN THIS CASE WHO SIGNED FOR IT.

8 IT WASN'T A MYSTERY; NOBODY DREW HIS NAME OUT OF A HAT OR GOT
9 THEM A JOHNSTON, TRENTON, EDGEFIELD PHONEBOOK OUT AND JUST PICKED HIS
10 NAME OUT AT RANDOM 'CAUSE IT WASN'T COMIN' TO ANYBODY AT RANDOM. IT
11 WAS COMIN' TO MR. FREDY DELEON WHEN IT WENT ACROSS THE BORDER
12 INITIALLY AT THE TIENDA DELEON. THAT'S WHERE IT'S GOIN'.

13 NEVER MIND THEY TOLD YOU AT THE BEGINNIN' OF THIS CASE THAT THE
14 ONLY REASON IT WAS COMIN' TO HIM IS BECAUSE IT HAD TO BE SHIPPED TO A
15 BUSINESS ADDRESS. THIS ISN'T ANY BUSINESS ADDRESS. THIS IS HIS HOME
16 ADDRESS. THAT'S A BUNCHA JUNK. JUST LIKE A LOTTA OTHER STUFF YOU'VE
17 HEARD IN THIS CASE. THAT'S RIDICULOUS. BUT WHEN YOU GET STARTED
18 RAMBLIN' TRYIN' TO GET OUT FROM UNDER SOMETHIN', THERE'S GONNA BE A
19 LOTTA THAT KINDA THING. SO YOU THINK ABOUT THAT, YOU 12 THAT GO BACK
20 AND DELIBERATE. THE BOTTOM LINE IS THEY WERE SHIPPIN' IT HERE TO FREDY
21 DELEON'S. AND IT WAS COMIN' FROM THERE TO HERE.

22 I DON'T KNOW HOW MANY TIMES WE'VE HEARD TALK ABOUT JAMCO AND
23 WHATEVER IT IS THE OTHER THING IS SOMETHIN' ANOTHER NATIONALE --
24 SEBASTIAN EXPORTANTES. IT'S A BUNCHA JUNK. THOSE ARE COMPANIES JUST
25 LIKE FEDERAL EXPRESS AND U.P.S. THEY'RE NOT GONNA LOCK UP THE U.P.S.

1 DRIVER. THEY'RE NOT GONNA LOCK UP THE FED-EX DRIVER ANY MORE SO THAN
2 THEY'D LOCK UP THE U.S. POSTAL SERVICE FOR SOMEBODY DROPPIN' A LETTER IN
3 THE MAIL AND THE LETTER CARRIER PUTTIN' IT IN SOMEBODY'S MAILBOX.
4 THEY'RE NOT AT FAULT.

5 THE BOTTOM LINE IS PEOPLE WENT TO A LOTTA TROUBLE IN THIS CASE
6 BECAUSE WHEN THIS CASE BEGAN -- LOOK HERE AT THIS MANTLE PIECE. ALL
7 THIS LOAD A FURNITURE WAS CONSTRUCTED AND PUT TOGETHER FOR ONE
8 PURPOSE CAUSE IT'S IS A BUNCHA JUNK THAT'S NAILED TOGETHER. IT WAS PUT
9 TOGETHER FOR ONE PURPOSE: A COORDINATED, WELL-OILED ATTEMPT TO
10 TRAFFIC AND GET DRUGS HERE TO TRENTON, SOUTH CAROLINA, AND TO AVOID
11 DETECTION.

12 YOU CAN LOOK AT THIS. IT'S IN EVIDENCE. NOW THIS IS SOPHISTICATED.
13 THEY ALREADY KNOW TO LOOK OUT FOR X-RAY MACHINES. THEY'VE GOT THAT
14 CARBON PAPER IN THERE TRYIN' TO BLOCK THE X-RAY. THEY GOT HIDDEN
15 COMPARTMENTS IN THERE. THIS STUFF IS VACUUM SEALED. I'M NOT GONNA
16 BEAT ON THIS FINE COURTROOM. JUST FROM THE VERY WAY IT'S PACKAGED, I
17 WANT Y'ALL TO GO BACK THERE AND LOOK AT IT. YOU COULD DRIVE NAILS WITH
18 THIS. THIS IS A SOPHISTICATED OPERATION 'CAUSE SOME KINDA MACHINE
19 COMPACTED THIS THING. LORD KNOWS WHAT IT LOOKS LIKE AND WHAT IT WAS.
20 I'M A COUNTRY BOY. IT MUST HAVE MORE PRESSURE THAN A CIDER (PHONETIC)
21 PRESS. THEY JAM THIS STUFF DOWN. YOU COULD DRIVE A NAIL WITH IT. AND
22 WHAT'S THE PURPOSE OF THAT? IT'S TO COMPACT IT DOWN JUST AS SMALL AS
23 YOU CAN GET IT SO YOU CAN GET THE MOST OF IT IN THE SMALLEST AREA AS YOU
24 POSSIBLY CAN. THAT'S WHAT THIS IS ALL ABOUT. THIS IS SOPHISTICATED
25 INTERNATIONAL DRUG TRAFFICKING.

1 AND I SUBMIT TO YOU, LADIES AND GENTLEMEN. THE STATE IN THIS CASE
2 HAS PROVEN THAT 4 DRUG TRAFFICKERS ARE SITTING RIGHT HERE IN THIS
3 COURTROOM WITH YOU. AND THERE'S NOTHING FUNNY ABOUT THIS, AND THERE'S
4 NOTHING LIGHTEARTED ABOUT THIS. THIS IS SERIOUS BUSINESS.

5 THEY COMPRESS AND PACK THIS STUFF AND JAM IT DOWN IN HERE. THEY
6 GOT CARBON PAPER IN THERE TO BEAT THE X-RAY. SOMEBODY IN THE INTERIOR
7 OF MEXICO PAYS TO HAVE THIS STUFF SHIPPED UP HERE. JUST LIKE ANYBODY IN
8 HERE WOULD GO DOWN TO ROADWAY EXPRESS AND SAY I WANNA SHIP
9 SOMETHING FROM HERE TO CALIFORNIA, AND IT APPEARED FROM THE OUTWARD
10 SIDE TO BE FURNITURE, AND THAT'S THE WHOLE POINT OF IT. THEY WERE
11 CONCEALING AND HIDING THIS DRUG. SHRINK WRAPPING IT DOWN.

12 Y'ALL WHEN YOU FIRST GOT IN HERE AND THIS STUFF WAS FIRST MARKED
13 FOR IDENTIFICATION, IT WAS HARD TO SMELL. NOW THIS THING'S BEEN STIRRED
14 UP AND THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION HAS SPENT 2 DAYS
15 DURING THE COURSE OF THIS TRIAL GOING BACK THROUGH ALL 400 BAGS AGAIN.
16 ABOUT KNOCK YOU OVER IN HERE, THE ODOR FROM THIS STUFF. SOPHISTICATED
17 BUSINESS. THEY CONSTRUCTED ALL OF THIS STUFF IN AN ATTEMPT TO GET THIS
18 STUFF ACROSS AND FOOL THE UNITED STATES CUSTOMS SERVICE.

19 MILLIONS OF DOLLARS WORTH OF EQUIPMENT. HOW MUCH YOU THINK
20 THAT VACUS X-RAY MACHINE COST? THE ONE BIG ENOUGH FOR A TRACTOR
21 TRAILER TRUCK. WHAT'S THE ONE AT THE DENTIST'S OFFICE COST? GOOD LORD,
22 WHAT DOES THIS COST? ALL OF THIS WAS AN ATTEMPT TO HIDE IT AND TO SNEAK
23 IT UP HERE TO TRENTON, SOUTH CAROLINA UNDETECTED. AND THEY THOUGHT
24 THEY HAD. THAT'S THE BOTTOM LINE. DON'T LET ANYBODY TELL YOU ANY
25 DIFFERENT IN THIS CASE, LADIES AND GENTLEMEN. WHEN THAT TRUCK SHOWED

1 UP THERE AT TRENTON, SOUTH CAROLINA.

2 THESE BOYS SITTING UP HERE THOUGHT THAT THEY HAD IT BECAUSE IT
3 HAD MADE IT ACROSS THE BORDER.

4 WHAT HAPPENS WHEN YOU GO DOWN TO THE AIRPORT AT THAT MACHINE,
5 THE X-RAY MACHINE AND YOU GOT A DOG GONE PAIR OF SCISSORS IN YOUR
6 POCKET NOW? LORD KNOWS, THEY'RE CULLIN' YOU OUT AND JACKIN' YOU UP
7 AND PUTTIN' YOU UP TO HERE.

8 ONCE THIS STUFF HAD MADE IT THROUGH CUSTOMS, AND THE PEOPLE
9 THAT PACKED IT KNEW FULL WELL ALL THE HOOPS THAT WOULD HAVE TO BE
10 JUMPED THROUGH TO GET IT HERE. THEY WERE HOME FREE WHEN IT SHOWED UP
11 AT TRENTON. THERE WASN'T ANYBODY EXPECTING ANYTHING. DON'T LET
12 ANYBODY TELL YOU ANYTHING ABOUT 3 SEALS AND ONE SEAL. SOMEBODY IN
13 THE INTERIOR WENT DOWN AND PAID A LEGITIMATE COMPANY TO BRING THIS
14 STUFF ACROSS BECAUSE UNITED STATE CUSTOMS SERVICE REPRESENTATIVES
15 TOLD YOU JAMCO AND SEBASTIAN EXPORTANTE AND THESE KINDA COMPANIES --
16 THESE ARE LEGITIMATE COMPANIES THAT THEY DEAL WITH ALL THE TIME. THEY
17 MAKE THEIR MONEY THROUGH LEGITIMATE MEANS JUST LIKE FEDERAL EXPRESS
18 AND ROADWAY AND U.P.S. THESE ARE LEGITIMATE COMPANIES WITH A STAKE IN
19 BEIN' ABLE TO GO BACK AND FORTH ACROSS THE BORDER. THIS JAMCO THAT'S
20 WHAT THEY SPECIALIZE IN: GETTIN' THINGS BACK AND FORTH, THE LITTLE SHORT
21 HAUL.

22 YOU HEARD ALL THAT TALK ABOUT DREDGE DRIVERS. I KNOW Y'ALL
23 HAVE BEEN UP HERE FOR A LONG TIME AND HEARD FROM A LOTTA WITNESSES,
24 BUT THIS IS IMPORTANT STUFF. THEY WENT THROUGH A LOTTA DETAIL, AND THE
25 STATE DIDN'T KEEP Y'ALL'S ATTENTION UP HERE FOR 4 OR 5 DAYS JUST DRAG

1 THIS THING OUT. THESE ARE IMPORTANT DETAILS. THESE ARE LEGITIMATE
2 COMPANIES. AND THAT'S WHY NOBODY GOT CHARGED.

3 AGENT DOWLING TOLD YOU FROM WHAT SHE COULD INVESTIGATE THE
4 DRIVER THAT CAME ACROSS, HE HAD THE STUFF FOR LESS THAN 45 MINUTES.
5 THESE PEOPLE IN THE INTERIOR OF MEXICO DIDN'T HAVE ANYTHING TO DO WITH
6 WHETHER OR NOT IT HAD 3 SEALS ON IT OR ONE. THAT'S A RED HERRING.
7 NOTHING TO DO WITH THIS CASE. NO MORE THAN WHAT U.P.S. DOES WHEN THEY
8 SEAL THINGS UP TO GET SHIPPED OUT AT THE AIRPORT. DOESN'T MAKE A
9 NICKEL'S WORTH OF DIFFERENCE. THEY DIDN'T HAVE ANYTHING TO DO WITH
10 THAT BECAUSE THEY HAD COMPACTED AND PRESSED AND HIDDEN THIS
11 MARIJUANA IN THIS FURNITURE AND REPRESENTED THAT IT WAS FURNITURE TO
12 LEGITIMATE COMPANIES TO HAVE IT BROUGHT ACROSS THE UNITED STATES. IT'S
13 JUST HOW THEY GET IT IN.

14 THEIR OWN WITNESS SAID JUST LIKE SOMEBODY GOES AND SHIPS THINGS
15 THROUGH FED-EX. THEY JUST BOMBARD IT. THEY SHIP ALL THEY CAN ACROSS
16 AND HOPE THAT IT'LL GET THROUGH. AND THERE'S NO EXPECTATION ONCE IT'S
17 MADE IT ACROSS THE BORDER BECAUSE ALL OF THIS IS TAILORED TO GET IT
18 ACROSS THE BORDER AND INTO THE UNITED STATES. I GUARANTEE YOU NOT A
19 ONE OF THESE 4 WOULD BE SITTING HERE IF THEY HAD ANY IDEA THAT THE UNITED
20 STATES CUSTOMS SERVICE HAD INTERCEPTED IT AND THEY WERE GONNA COME
21 ALL OF THESE THOUSANDS OF MILES UP HERE TO EDGEFIELD SOUTH CAROLINA TO
22 EDGEFIELD COUNTY TREKIN' TO DELIVER THIS STUFF. IF ANYBODY -- ANYTHING
23 ABOUT ANYBODY KNOWING ABOUT THIS HAD BEEN COMPROMISED. SHOOT, IT'D A
24 BEEN A GHOST TOWN WHEN THEY GOT THERE. YOU THINK THOSE GUYS IN THE
25 GREEN THUNDERBIRD WOULD'VE BEEN ANYWHERE AROUND? THEY'D BEEN

1 BACK SOUTH OF THE BORDER IF THEY THOUGHT ANYBODY HAD ANY IDEA THAT
2 THE CUSTOMS SERVICE HAD DISCOVERED THIS STUFF.

3 THEY'D A NEVER OFFLOADED THE FIRST STICK OF FURNITURE.

4 THEY'D A NEVER GONE DOWN ON PADGETT ROAD.

5 THEY'D A NEVER BEEN -- THEY COULDN'T HAVE GOTTEN FAR ENOUGH
6 AWAY FROM EDGEFIELD COUNTY IF THEY HAD HAD ANY IDEA THAT IT HAD BEEN
7 DISCOVERED AND DETECTED 'CAUSE THESE ARE PRETTY EXTREME MEASURES.

8 A LOTTA AGENTS WERE TAKEN AWAY FROM THEIR FAMILIES AND TAKEN
9 AWAY FROM WHATEVER THEY WERE DOIN' TO COME ALL THE WAY TO TRENTON,
10 SOUTH CAROLINA TO MAKE THIS DELIVERY. RIGHT THERE IN YOUR BACKYARD.
11 WHAT AN EXTRAORDINARY EFFORT.

12 AND THEY WEREN'T ALONE BECAUSE ALONG THE WAY THEY CALLED UP
13 HERE AND THEY GOT ROOSEVELT YOUNG FROM THE EDGEFIELD COUNTY
14 SHERIFF'S DEPARTMENT, AND THEY CALLED HIM AND THEY SAID WE'RE COMIN'
15 TO YOUR BACKYARD AND WE NEED YOUR HELP. AND ROOSEVELT YOUNG GOT
16 COBY PERRY HERE FROM THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION
17 AND SAID WE NEED YOUR HELP AND YOUR KNOWLEDGE HERE 'CAUSE WE'RE
18 COMIN' HERE WHERE WE DON'T KNOW -- THESE AGENTS UP HERE DON'T HAVE
19 AN AXE TO GRIND IN EDGEFIELD COUNTY I SUBMIT TO YOU. THEY COULDN'T
20 HAVE PICKED IT OUT ON THE MAP BEFORE THIS HAPPENED. BUT THEY GET WITH
21 LOCAL LAW ENFORCEMENT BECAUSE THEY WANNA SWEEP AND THEY WANNA
22 FIND OUT WHO IT'S GOIN' TO. AND THEY WANNA ROUND UP ALL THE CO-
23 CONSPIRATORS HERE IN THIS CASE. AND THEY DID. TWO OF 'EM GOT AWAY. BUT
24 THAT DOESN'T MAKE THESE 4 ANY LESS GUILTY. SURE IT'D A BEEN GREAT TO
25 HAVE 'EM ALL. ABSOLUTELY.

RAMOS? WHERE IS HE? SOUTH OF THE BORDER. NOWHERE TO BE FOUND.
HE AIN'T NEVER GONNA BE FOUND. ANYTHING TO TRY TO FIND HIM IS A
COMPLETE WASTE OF TIME.

ONCE THEY GOT IT ACROSS THE BORDER THEY THOUGHT THEY WERE
HOME FREE.

NOW WHAT HAPPENED IN THIS CASE? THEY GOT ACROSS THE BORDER;
SET UP THE CONTROLLED DELIVERY; AGENT MIZE GOT UP THERE IN THE TRUCK
AND THEY TOOK IT OUT THERE TO FREDY DELEON'S STORE.

I WANT Y'ALL TO THINK ABOUT IT AND I WANT Y'ALL TO LOOK HERE. THIS
THING'S LOADED UP.

INVESTIGATOR LOWE TOLD YOU WHEN HE GOT THE STUFF OFF DOWN
HERE AT THE SHERIFF'S OFFICE THAT YOU COULDN'T HAVE GOTTEN THE REST OF
THE FURNITURE OUT OF THE BACK BACK HERE WITHOUT TAKIN' THIS STUFF OFF
FIRST.

BUT I WANT Y'ALL TO THINK ABOUT THE PLANNING THAT WENT INTO THIS
AHEAD OF TIME. THEY OBVIOUSLY HAD THIS TRUCK LOADED SO THAT THERE
WERE GONNA BE SOME ITEMS BACK THERE AT THE BACK END THAT THEY COULD
GET OFF BECAUSE THEY UNLOADED THE STUFF PRETTY QUICKLY OUT THERE AT
FREDY DELEON'S. RAMOS WAS THERE AND THE GUY WITH THE BAD POCK MARKS
ON HIS FACE. BUT THEY WERE ALL COOPERATIN' AND COORDINATIN'. THIS
DIDN'T HAPPEN BY ACCIDENT. THEY ALL KNEW IT WAS COMIN'. WE'RE TALKIN'
ABOUT A WELL-OILED MACHINE HERE 'CAUSE THEY WERE READY FOR IT. OLE
RAMOS AND THE GUY WITH THE BAD COMPLEXION, THEY'RE ALREADY THERE
WITH FREDY AT DELEON'S STORE, AT THE TIENDA DELEON. BUT THERE'S NO
QUESTION ABOUT WHERE IT'S COMIN'. THAT'S WHERE IT WAS COMIN' WHEN IT

1 WENT ACROSS.

2 NOW GRANTED HE TOOK A CHANCE BY HAVIN' IT SHIPPED TO HIM, BUT
3 THAT'S JUST PART OF THE RISK AND REWARD.

4 TALKIN' ABOUT \$5000 IN EVERY ONE OF THESE. TALKIN' ABOUT JUST THE
5 20 BRICKS THOSE GUYS OFFLOADED AT HIS STORE, \$100,000.

6 AND THERE IS RISK AND REWARD IN THIS BUSINESS 'CAUSE WE'RE
7 TALKIN' ABOUT DRUG TRAFFICKIN'. WE'RE NOT TALKIN' ABOUT A BUNCH A KIDS
8 STANDIN' AT THE STREET CORNER SELLIN' NICKEL DIME BAGS OF MARIJUANA.
9 THIS IS A WHOLE DIFFERENT ANIMAL WITH A WHOLE DIFFERENT CAST A
10 CHARACTERS. THESE PEOPLE ARE NOT IDIOTS. THERE'S NOT A FOOL SITTIN' OVER
11 THERE. THERE ARE NO INNOCENT PARTIES IN THIS 'CAUSE WE'RE TALKIN' -- YOU
12 TAKE A BOX OR TWO OF THESE, IT'S WORTH MORE'N ANY HOUSE IN EDGEFIELD
13 COUNTY. YOU COULD STACK THIS UP. VERY FEW PIECES OF PROPERTY IN
14 EDGEFIELD COUNTY WOULD BE WORTH THIS AMOUNT OF MONEY. IT MIGHT BE.
15 MR. HOLMES AND SOME OF THEM MIGHT HAVE SOMETHIN' WORTH THAT. BUT
16 GOOD LORD, WE'RE TALKIN' ABOUT A PILE A MONEY.

17 AND, LADIES AND GENTLEMEN, USE YOUR COMMON SENSE IN THIS CASE.
18 LAWYER OVER THERE TOLD YOU HE'D GO BACK FOR A \$20. DO YOU THINK
19 THEY'RE GONNA LET ANYBODY HAVE ANY PART IN THIS DEAL THAT THEY CAN'T
20 TRUST AND IS NOT IN THAT INNER CIRCLE? NO WAY. ANY SUGGESTION THAT
21 THESE 3 GUYS OVER HERE IN THE TRUCK WERE JUST SOME LABORERS,
22 RIDICULOUS. NOBODY'S GONNA TRUST THIS MUCH DOPE. EVEN BY THE TIME THEY
23 TOOK 100 GRAND OFF AT FREDY'S AND LEFT HIM WITH THE CHIMNEY OUT THERE,
24 THINK ABOUT HOW MUCH IS LEFT ON THAT TRUCK. NOBODY IS GONNA BE
25 INVOLVED IN THIS THAT'S NOT IN THAT TIGHT INTERNET CIRCLE OF

INTERNATIONAL DRUG TRAFFICKING. NO WAY GONNA LET 3 GUYS THAT DON'T
KNOW ANYTHING ABOUT IT.

AND THEY'RE THE ONLY ONES IN THIS THING THAT HAVE GOT ANY ABILITY
TO HAUL THIS STUFF. THEY GOT OUT ON PADGETT ROAD BECAUSE DOPE DEALERS
DON'T LIKE THE LIGHT OF DAY.

THEY GO DOWN TO ONE OF THE MOST REMOTE DESOLATE SPOTS IN
EDGEFIELD COUNTY. I NEED TO GET THOSE 13 PIECES OF FURNITURE OFF AT
FREDY'S. THAT'S NOT GONNA BE OBVIOUS FROM THERE. BUT THEY'RE GONNA GO
SOMEWHERE IN EDGEFIELD COUNTY FROM THERE, AND I WANT Y'ALL TO
REMEMBER RAMOS LIVES UP THERE AT LAYMAN'S NURSERY; FREDY LIVES RIGHT
AROUND THERE IN TRENTON IN THAT TRAILER; THE OTHER GUYS ARE WAITIN'
THERE AT THE CROSSROADS MOTEL RIGHT THERE IN TRENTON.

ALL THESE GUYS ARE RIGHT THERE CONCENTRATED IN ONE AREA. THEY
KNOW THIS AREA. AND THEY KNOW THAT'S A GOOD REMOTE SPOT BECAUSE IT
GETS BACK TO THE FUNDAMENTAL PART OF WHY IS IT COMIN' HERE TO
EDGEFIELD COUNTY. THEY WILL SHIP THIS STUFF TO SOMEWHERE REMOTE
ENOUGH THAT THEY THINK THEY CAN HIDE AND THERE'S NO LIGHT OF DAY.

I SUBMIT TO YOU, LADIES AND GENTLEMEN, A LOT OF THIS STUFF WAS
GOIN' UP TO MECKLINBURG COUNTY WITH THEM. IT WAS GOIN' TO OTHER
PLACES. IT'S TOO MUCH TO SHIP TO EDGEFIELD COUNTY ALONE. LORD, HOW
MUCH TIME WOULD IT TAKE TO PEDDLE THIS MUCH DOPE IN EDGEFIELD COUNTY?
IT WAS GOIN' TO OTHER PLACES. YOU CAN BET. ALL PART OF THE
INTERNATIONAL DRUG TRAFFICKING AND DISTRIBUTION.

THEY SENT IT HERE TO EDGEFIELD COUNTY BECAUSE THEY THINK THIS IS
SOME BACKWATER PLACE WHERE NOBODY'S GONNA BE PAYIN' ANY ATTENTION.

1 NOT LIKE UP THERE IN CHARLOTTE WHERE IT'D BE HARD TO FIND SOME REMOTE
2 SPOT. BUT THESE GUYS HERE IN TRENTON ARE UNIQUELY SITUATED. THEY KNOW
3 THE AREA AROUND THERE. AND THEY WENT BACK DOWN THERE ON PADGETT
4 ROAD TOO AND THEY WERE GONNA GET THE REST OF THIS STUFF OFF. WHY?
5 BECAUSE IT'S UNLIKELY THEY'D SEE ANYBODY

6 THEY WENT ON PADGETT ROAD. LOOK AT THE MAP OUT HERE. PADGETT
7 ROAD ALL IT DOES IS GO THROUGH TO VAN ROAD. YOU HAD TO GO BY VAN ROAD
8 TO EVEN GET THERE. THEY WEREN'T GOIN' ANYWHERE; THEY WEREN'T GOIN' TO
9 ANY OTHER DESTINATION. THEY WEREN'T GOIN' ANYWHERE BUT RIGHT THERE
10 ONTO PADGETT ROAD.

11 AND IT WASN'T ANY MASTER PLAN TO THROW OFF THE POLICE AND TRY
12 TO GET 'EM STUCK UP IN THE MUD AND ALL THAT. IF THEY'D A HAD ANY IDEA
13 THESE OTHER TWO THAT OH EVERYBODY SAYS, YOU KNOW, OH NOBODY ELSE IS
14 INVOLVED IN THIS, BUT THESE OLD BAD BOYS IN THE THUNDERBIRD, THEY KNEW
15 IT ALL; THEY WERE PULLIN' ALL THE STRINGS, JUST FOOLIN' AND DECEIVIN'
16 THESE BOYS OVER HERE. 'CAUSE THEY DIDN'T KNOW A THING ABOUT WHAT'S
17 GOIN' ON. JUST IN THE DARK. GROPIN' AROUND. THEY DIDN'T KNOW WHAT WAS
18 HAPPENIN'. THAT'S WHAT THEY'D HAVE YOU BELIEVE IN THIS CASE.

19 THEY WERE GOIN' OUT THERE TO PADGETT ROAD FOR THE EXPRESS
20 PURPOSE OF BEIN' ABLE TO OFFLOAD THIS STUFF OUTSIDE OF THE LIGHT OF DAY
21 AND NOBODY SEEIN' BECAUSE DOPE DEALERS AND TRAFFICKERS ESPECIALLY
22 CAN'T STAND THE LIGHT OF DAY. THEY NEED TO GET OFF SOMEWHERE WHERE
23 THEY CAN HIDE TO CARRY OUT THEIR ACTIVITIES. THAT'S EXACTLY WHAT THEY
24 WERE DOIN' ON PADGETT ROAD. THEY WERE GONNA GET THE REST OF THOSE
25 CHIMNEYS OUT BECAUSE NEVER MIND THE REST OF THIS STUFF ON HERE. WITH

1 THE VALUE OF THIS STUFF RIGHT HERE THAT STUFF IS WORTHLESS.

2 I SUBMIT TO YOU THE FURNITURE IN THIS CASE HAS SERVED ITS PURPOSE
3 ONCE IT GOT ACROSS THE BORDER. BECAUSE ALL THAT WAS WAS A SHELL TRYIN'
4 TO HIDE IT. JUST A RUSE TO GET THROUGH AND FOIL CUSTOMS. AND THEY
5 THOUGHT ONCE IT HAD GOTTEN UP HERE, THEY WERE HOME FREE.

6 OR I GUARANTEE YOU THERE'D A BEEN NOBODY THERE TO MEET IT. IF
7 THEY'D A HAD ANY IDEA IT'D BEEN COMPROMISED THEN WHEN AGENT MIZE AND
8 THEM WHEN THEY PICKED UP THE PHONE AND THEY CALLED DOWN TO 275-2017, IF
9 ANYBODY'D HAD ANY IDEA THAT THIS HAD BEEN COMPROMISED THERE'D BEEN
10 NOBODY THERE. NOT A SOUL TO DELIVER IT TO. NOBODY WOULD'A SHOWED UP.
11 THEY'D ALL HIGHTAIL IT AND THEY'D BE SOMEWHERE ELSE NOW. THEY THOUGHT
12 THEY'D GOTTEN IT. THEY THOUGHT ALL THESE STEPS THAT HAD BEEN TAKEN
13 DOWN THERE IN MEXICO TO HIDE AND FOIL IT AND TO GET IT BY CUSTOMS HAD
14 WORKED BECAUSE IT WAS GONNA BE DELIVERED UP HERE.

15 I GUARANTEE YOU THAT THEY NEVER DREAMED THAT A UNITED STATES
16 CUSTOMS AGENT WAS GONNA BE SITTING UP HERE IN THE CAB WITH OLD MR.
17 MARTIN. AND I GUARANTEE YOU THEY WERE SURPRISED WHEN THEY SAW AGENT
18 MIZE DOWN AT THE JAIL BECAUSE THEY KNEW THEY WERE CAUGHT. THAT'S WHY
19 THEY WERE SURPRISED. SURE THEY WERE SHOCKED. NOBODY KNEW AHEAD OF
20 THAT TIME.

21 NOW THOSE BOYS IN THE THUNDERBIRD WERE GONE BECAUSE THOSE
22 TRUCKS GOT STUCK DOWN THERE. WASN'T ANYTHING ELSE THEY COULD DO.
23 THEY KNEW IT WASN'T COMIN' OUT. AND THE BOYS IN THE THUNDERBIRD
24 WEREN'T GONNA HAUL 22 CHIMNEYS. AIN'T 3 GUYS SITTING IN THIS COURTROOM
25 THAT HAVE THE ABILITY TO HAUL THE REST OF THOSE CHIMNEYS HERE. AND YOU

1 GET THE RECEIPT HERE AND LOOK. WHAT IS THIS? 15-FOOT PARCEL VAN. Y'ALL
2 KNOW WHAT THOSE LOOK LIKE. RYDER TRUCK THAT YOU RENT WITH A VAN IN
3 FRONT OF IT. 22 CHIMNEYS WILL FIT IN THERE 'CAUSE AGENT PERRY SAT UP HERE
4 UNDER OATH AND TOLD YOU THEY WOULD.

5 ONCE THE TRUCKS GOT STUCK, THEY WEREN'T GETTIN' OUT. THE BOYS IN
6 THE THUNDERBIRD LEFT. SURE THEY KNEW WHAT WAS THERE. SO DID
7 EVERYBODY ELSE IN THIS DEAL. THEY OFFLOADED THIS STUFF AT MR. DELEON'S
8 STORE, AND HE GOT ONE OF THE CHIMNEYS.

9 NOW HE STUCK HIS NECK OUT. LADIES AND GENTLEMEN, I SUBMIT TO YOU
10 THE EVIDENCE IN THIS CASE JUST SHOWS HE'S GETTIN' ONE CHIMNEY OUT OF HIS
11 CUT. 100 GRAND RIGHT THERE. MR. DELEON. HE WAS GONNA DISTRIBUTE THAT
12 OUT FROM THERE. HE DOESN'T HAVE TO GET PAID IN CASH. GETTIN' PAID IN
13 DRUGS. THESE AGENTS MANY OF 'EM TOLD YOU UP HERE FROM THE STAND,
14 THAT'S TYPICAL OF HOW SOMEBODY GETS PAID. IT'S NOT EXCHANGED IN CASH.
15 HE GOT IT IN DRUGS. 'CAUSE THEY HAD THAT PART OF THE FURNITURE LOADED
16 BACK THERE IN THE BACK WHERE THEY COULD VERY EASILY GET IT OFF AT
17 FREDY'S.

18 NOW I WANT YOU TO THINK ABOUT ALL THE WRANGLING THAT YOU'VE
19 HEARD UP HERE, BUT MOST OF THIS IS JUST TRYIN' TO PUT ALL THESE LAW
20 ENFORCEMENT OFFICERS ON TRIAL FOR THEIR ACTIONS. JUMP ALL OVER THEM.
21 NOT TELLIN' THE TRUTH. NOT DOIN' WHAT THEY'RE SUPPOSED TO DO. WHIPPIN'
22 ON ROOSEVELT YOUNG OVER HERE. INSINUATIN' THAT HE WOULDN'T BE
23 TRUTHFUL IN THIS CASE. DON'T SUGAR COAT IT IN ANY WAY 'CAUSE THAT'S
24 EXACTLY WHAT THEY'RE TELLIN' YOU IN THIS CASE, HE IS NOT TRUTHFUL. IF YOU
25 DON'T BELIEVE INVESTIGATOR ROOSEVELT YOUNG, YOU LET THOSE 4 GO. IF

1 Y'ALL THINK HE'D LIE UNDER OATH, LET 'EM GO.

2 THE BOTTOM LINE IS THEY HAD THIS THING LOADED. YOU CAN LOOK
3 BACK HERE AND TELL. ALL OF IT'S BACK HERE IN THE BACK. THEY OFFLOADED
4 SOME FURNITURE, TEND TO MAKE THIS LOOK LEGITIMATE, AND THEY GAVE HIM
5 ONE CHIMNEY. AND EVERY CHIMNEY IN THIS CASE HAD DRUGS IN IT.

6 YOU THINK FOR ONE MINUTE THAT FREDY DELEON DIDN'T KNOW WHAT
7 WAS GOIN' ON WITH THIS THING AND WAS AN INNOCENT PARTY THAT THEY
8 WOULD HAVE LEFT ONE OF THOSE CHIMNEYS WITH HIM WITH \$100,000 WORTH A
9 MARIJUANA IN IT?

10 YOU THINK THEY JUST KINDA FORGOT THAT THE CHIMNEYS HAD THE
11 MARIJUANA IN IT? ABSOLUTELY NOT.

12 THINK THEY WERE GIVIN' HIM A TIP FOR LETTIN' 'EM USE HIS PLACE AND
13 SETTIN' THIS DEAL UP? THERE'S NO WAY THEY'D A LEFT \$100,000 WORTH A
14 MARIJUANA IN HIS STORE OTHER THAN THAT WAS WHAT HE WOULD GET AND
15 THAT WAS HIS CUT.

16 NOW, LADIES AND GENTLEMEN, THE STATE'S NOT GONNA STAND UP HERE
17 AND TRY TO CONVINCE YOU ALL OF IT WAS HIS. HE WAS CERTAINLY INVOLVED
18 IN THE CONSPIRACY TO GET IT ALL OUT. BUT A LOT OF IT WAS GOIN' TO
19 CHARLOTTE AND OTHER PLACES. I'M SURE THERE WERE A LOTTA OTHER PEOPLE
20 INVOLVED IN THIS THING OTHER THAN THESE 4 AND THE 2 IN THE THUNDERBIRD
21 THAT GOT AWAY. 'CAUSE IT TAKES MORE THAN THAT. IT'S GOIN' A LOTTA
22 PLACES. BUT FREDY DELEON GOT 20 BRICKS OUTTA THERE AT HIS STORE. AND HE
23 KNEW IT WAS COMIN'. BECAUSE HE WAS THERE, HE WAS READY, AND HE TOOK
24 HIS CHANCES BY BEIN' THE ONE THAT HAD HIS NAME ON THIS STUFF. RISK AND
25 REWARD. \$100,000 WORTH OF MARIJUANA. AND THERE'S NO WAY THEY'D A LEFT

1 IT WITH HIM BECAUSE THEY KNEW IT WAS THERE.

2 EVERYBODY IN THIS CASE IS TELLIN' YOU THOSE BAD BOYS IN THE
3 THUNDERBIRD KNEW EVERYTHING THAT WAS GOIN' ON. THEY'D A NEVER LEFT
4 HIM \$100,000 WORTH OF MARIJUANA IF THEY KNEW THAT. NO WAY. HE WAS IN ON
5 IT. HE HAD KNOWLEDGE. BECAUSE THEY LEFT IT WITH HIM. ABSOLUTELY. THEY
6 OFFLOADED IT. MR. DELEON SIGNS FOR IT.

7 WHAT DID THEY TELL YOU, WHAT DID THEY START WITH? OH, HE TRIED TO
8 GIVE IT BACK TO 'EM. DIDN'T WANNA TAKE IT. BUT THESE OLD BAD AGENTS
9 MADE HIM TAKE IT. OLD MARTIN AND OLD MIZE OVER HERE THEY TRIED TO
10 FORCE HIM TO KEEP THAT STUFF. OH HE WANTED TO GIVE IT BACK TO 'EM.

11 WHAT KINDA SENSE DOES THAT MAKE? IF HE DIDN'T KNOW IT WAS
12 ANYTHING OTHER THAN FURNITURE, WHAT IN THE WORLD, WHY WAS HE TRYIN'
13 TO GIVE IT BACK?

14 I'LL TELL YOU WHY THEY'RE EVEN INSINUATIN' THAT IN THIS CASE, THEY
15 WANNA GET ABOUT AS FAR AWAY FROM THAT MARIJUANA OVER THERE, 894
16 POUNDS OF IT, AS THEY CAN POSSIBLY GET. BECAUSE ULTIMATELY IN THIS CASE
17 WHAT THEY'RE TELLIN' YOU IS, ALL OF 'EM, THEY DIDN'T KNOW ANYTHING
18 ABOUT ANY MARIJUANA. NOTHIN'. I WAS DOWN HERE JUST PEDDLIN' A LITTLE
19 FURNITURE. I WAS JUST GONNA HAVE A LITTLE FURNITURE TO DEAL WITH. GET
20 SOME STUFF OUT THERE AT MY MEXICAN GROCERY STORE. I DON'T KNOW
21 NOTHIN' ABOUT NO MARIJUANA NOW. GIT AS FAR AWAY FROM THAT AS THEY
22 CAN POSSIBLY GIT.

23 SQUABBLIN' AND QUIBBLIN' OVER EVERY WITNESS THAT GOT UP HERE.
24 NOBODY DID ANYTHING RIGHT. NOBODY COULD TELL THE TRUTH. POUNDIN' ON
25 EVERY ONE OF 'EM. EVEN TALKIN' ABOUT THE WEIGHT. WELL, LET ME LOOK AT

1 THIS THING. REPORT. DOGGONE CHEMIST TESTED 176 BAGS RANDOM. Y'ALL CAN
2 LOOK AT THIS.

3 SLED HAS TO GO DOWN THERE AND TEST 400. EVERY ONE OF EM'S BEEN
4 TESTED NOW, AND YOU HEARD THE CHEMIST TESTIFY. EVERYTHING IN EVERY
5 ONE OF THESE BAGS NIGHT, AND DAY THEY WENT THROUGH IT. EVERY ONE OF
6 'EM'S MARIJUANA. AND THE WEIGHT HERE 905.89 POUNDS, AND THE SLED REPORT
7 SAYS 894 POUNDS. BAGS AND ALL WEIGH SOMETHIN'. WHEN THEY SELL IT THEY
8 SURE WEREN'T GONNA TAKE IT OUT AND GIVE IT TO SOMEBODY LOOSE. IT WAS
9 GONNA BE IN THE BAGS. THAT'S DEDUCTED. AND IF IT'S NOT, HERE, 2, 4, 6, 8, 10,
10 HERE ARE 2 MORE. 14. YOU SET THOSE ASIDE BECAUSE WE'RE TALKIN' ABOUT
11 TRAFFICKIN' AND THE WEIGHT IN THIS CASE IN THE INDICTMENT.

12 THEY QUIBBLE ABOUT THE WEIGHT. BETWEEN 100 AND 2000 POUNDS. JUST
13 CULL THOSE OUT. MUCH ADO ABOUT NOTHING. BECAUSE IF IT ISN'T YOUR DOPE,
14 WHY DO YOU CARE HOW MUCH IT WEIGHS? WHY DO YOU CARE ABOUT ALL THIS
15 STUFF?

16 THE MOST INCREDIBLE THING I'VE HEARD AT ALL, OLE GAONA THERE
17 WITH HIS X-RAY MACHINE, THEY WERE JUMPIN' HIM ABOUT HIS CERTIFICATION
18 CARD ON THE VACUS II MACHINE STILL CURRENT. THAT'S SOME EARTH
19 SHATTERIN' STUFF HERE. DOES IT LOOK LIKE THIS THING WAS WORKIN'? DOES IT
20 LOOK LIKE HE KNOWS WHAT HE WAS DOIN'? WHETHER OR NOT HIS
21 CERTIFICATION CARD. IF IT AIN'T YOUR DOPE, WHY DO YOU CARE? WHY DO YOU
22 CARE ABOUT ALL THIS STUFF IF IT'S NOT YOUR DOPE?

23 DON'T HAMMER AND POUND ON EVERY WITNESS UP HERE ABOUT EVERY
24 LITTLE MINUTIA IN THIS CASE. WE'VE BEEN UP HERE 5 DAYS WITH THIS. AND THE
25 STORY HASN'T CHANGED SINCE THE BEGINNING. THE BOTTOM LINE IS THEY

1 SHIPPED IT ACROSS; MR. DELEON SIGNED FOR IT; THEY LEFT HIM 20 BRICKS OF IT,
2 AND THEY LEAVE OUT THERE -- AND I WANT YOU TO THINK ABOUT IT.

3 AND THEY POUND ON THE POLICE. WHAT A MESSED UP DEAL Y'ALL DID.
4 YOU DON'T KNOW ANYTHING. DON'T Y'ALL HAVE ANY SURVEILLANCE
5 EQUIPMENT. ANY OF THEM BIONIC EARS AND ALL THESE VIDEO CAMERAS AND
6 ALL THIS. DIDN'T Y'ALL USE ANY OF THAT STUFF. BOY THEY CAN'T DO ANYTHING
7 RIGHT. DID YOU FOLLOW UP ON ANYTHING. JUST POUNDIN' AND HAMMERIN'
8 AWAY. MUCH ADO ABOUT NOTHIN'. SHIFTIN' THE FOCUS AWAY FROM WHAT
9 REALLY HAPPENED IN THIS CASE WHICH IS THEY TRAFFICKED DRUGS UP HERE IN
10 SOUTH CAROLINA.

11 THEY LEFT OUTTA THERE, AND I WANT Y'ALL TO THINK ABOUT A WELL-
12 OILED MACHINE BECAUSE OBVIOUSLY WHAT THEY'RE TELLIN' YOU THE POLICE
13 DON'T KNOW WHAT THEY'RE DOIN' SO LET'S TALK ABOUT SOMEBODY THAT
14 DOES.

15 LET'S TALK ABOUT A WELL-OILED MACHINE. LET'S TALK ABOUT THE
16 KINDA INTERNATIONAL DRUG TRAFFICKING RING THAT CAN PUT TOGETHER A
17 SHIPMENT LIKE THIS AND CONSTRUCT THIS FURNITURE, KNOWS ENOUGH TO HIDE
18 AND CONCEAL THIS STUFF AND GET IT ACROSS THE BORDER IN THE UNITED
19 STATES. LET'S TALK ABOUT THE PLANNING AND COORDINATION AND THE EFFORT
20 THAT IT TAKES FOR EVERYBODY TO BE READY FOR THIS STUFF TO GET HERE.

21 NOW THIS STUFF IS LOADED ON THE TRAILER IN SUCH A FASHION THAT
22 THEY COULD TAKE OFF WHAT THEY COULD GET AT FREDY'S FIRST, AND THE REST
23 OF IT IS LOADED BACK THERE AT THE BACK SO THEY COULD EASILY GET IT OFF.
24 PLANNING AND COORDINATION AND CONSPIRING, CONSPIRACY, AGREEMENT
25 BETWEEN THESE PEOPLE. BECAUSE THAT'S WHAT THE INDICTMENT IN THIS CASE

1 CHARGES. THIS ISN'T LIKE A POSSESSION CASE OR POSSESSION WITH INTENT TO
2 DISTRIBUTE. THIS IS TRAFFICKING. THIS IS SUCH SERIOUS BUSINESS.

3 UNLAWFUL SALE, MANUFACTURE, CULTIVATE, DELIVER, PURCHASE OR
4 BRING INTO THIS STATE OR PROVIDE FINANCIAL ASSISTANCE OR OTHERWISE AID,
5 ABET, CONSPIRE TO DELIVER, MANUFACTURE, CULTIVATE, ANYTHING, HAVE
6 ANYTHING TO DO WITH HELPIN', ASSISTIN', ANY OF IT. 'CAUSE THIS IS SUCH
7 SERIOUS BUSINESS.

8 IT DOESN'T TAKE JUST YOU HAVIN' IT IN YOUR HANDS. IT DOESN'T EVEN
9 TAKE YOU ACTUALLY GETTIN' YOUR HANDS ON IT. JUST ATTEMPTIN' TO BECOME
10 IN POSSESSION OF THIS. WE'RE TALKIN' ABOUT SO MUCH WEIGHT HERE.
11 TRAFFICKIN' IS A WHOLE DIFFERENT ANIMAL THAN THIS STREET LEVEL STUFF. IT
12 IS THE ABSOLUTE TOP TIER.

13 WHEN WE'RE TALKIN' ABOUT A STREET LEVEL DEALER THEY GOTTA
14 PROVE HE HAD IT. WITH TRAFFICKIN' ALL YOU HAVE TO DO IS PROVE THE
15 AGREEMENT, CONSPIRACY, PEOPLE COMBININ' TOGETHER IN ORDER TO CARRY
16 OUT THIS WITH YOUR DIRECTIN' IT, WITH YOUR AIDIN' OR ASSISTIN' OR HELPIN' IN
17 ANY WAY. IF YOU'RE INVOLVED IN IT.

18 AND THEY WANNA TELL YOU ALL THIS STUFF ABOUT KNOWINGLY. THERE
19 WAS NOBODY HERE THAT DIDN'T KNOW WHAT WAS GOIN' ON. BECAUSE THEY'RE
20 NOT GONNA TAKE A CHANCE. THEY'RE GONNA LET 3 GUYS THAT DON'T KNOW
21 WHAT'S GOIN' ON IN THIS CASE? 'CAUSE THEY INDICATE OH THESE GUYS ARE
22 NOT INTERCONNECTED. WHAT IF THESE 3 OLD BOYS HERE JUST DECIDED THEY
23 WERE GONNA DRIVE OFF WITH THAT FURNITURE? YOU THINK THEY GONNA HAND
24 THAT TO ANYBODY THEY CAN'T TRUST AND CONTROL ALL THAT MONEY'S WORTH
25 OF DOPE? ABSOLUTELY NOT. NO WAY. JUST SHORT A \$2,000,000 WORTH AT THAT

1 POINT IN TIME. YOU DON'T HAVE GUYS -- WHAT IF THEY RIPPED 'EM OFF? WHAT
2 ARE YOU GONNA DO? YOU GONNA GO DOWN TO THE POLICE DEPARTMENT, THEY
3 GONNA PULL UP HERE TO THE POLICE DEPARTMENT DOWN HERE AND SAY OH MY
4 LORD THESE GUYS HAVE RIPPED ME OFF. BECAUSE THAT'S THE DANGER OF
5 TRAFFICKING IN CONTROLLED SUBSTANCES. YOU DON'T HAVE PROTECTIONS OF
6 THE LAW THAT WE ALL ENJOY. BECAUSE IF SOMEBODY RIPS YOU OFF, IT'S JUST
7 TOO BAD 'CAUSE YOU CAN'T GO TO THE POLICE. OLE RAMOS AND THEM, RANDY
8 OR ANY OF THE REST OF 'EM IF THOSE OLD BOYS JUST DROVE OFF WITH IT, SEE
9 YOU LATER. THAT'S ALL THEY COULD DO. SO DO YOU THINK FOR A MINUTE
10 ANYBODY THAT'S INVOLVED IN THIS PROCESS IS NOT SOMEBODY THAT'S IN THEIR
11 INNER CIRCLE AND THEY CAN TRUST? A WELL-OILED MACHINE.

12 THEY KNEW WHEN IT WAS COMIN'. THESE TWO GUYS UP HERE FROM
13 CHARLOTTE, MR. GUERRERO AND HIS COMPANY COME DOWN AND GET A MOTEL
14 ROOM. THEY'VE ALREADY RENTED A TRUCK THEY'RE GONNA HAUL THE
15 CHIMNEYS WITH WHATEVER PORTION--

16 MR. SUSSMAN: YOUR HONOR, I'M GOING TO OBJECT.

17 THE COURT: HOLD ON. YES?

18 MR. SUSSMAN: YOU KNOW, HE KEEPS SAYING THEY THIS AND THEY THAT,
19 BUT THERE'S NO EVIDENCE WHATSOEVER CONCERNING MY CLIENTS RENTING A
20 MOTEL ROOM OR MY CLIENTS RENTING A TRUCK. THE EVIDENCE I'VE HEARD IS
21 IT'S MR. GUERRERO. I THINK THAT'S BEYOND A REASONABLE INFERENCE OF THE
22 EVIDENCE IN THIS CASE.

23 MR. HAWKE: I MAKE THE SAME OBJECTION ON BEHALF OF MR. DELEON.

24 THE COURT: IT'S ARGUMENT, LADIES AND GENTLEMEN. WHAT THE
25 LAWYERS SAY IS NOT EVIDENCE. IT'S ARGUMENT.

1 MR. MAYE. MR. GUERRERO GOES AND RENTS A RYDER TRUCK. WHO'S HE
2 COME DOWN HERE WITH? WHO'S THE LABOR IN THIS CASE? WHO'S THE AIDIN',
3 ABETTIN' AND CONSPIRIN'? WHO WAS GONNA MOVE AND UNLOAD THIS STUFF?
4 THESE GUYS OVER HERE. AND THEY WEREN'T GONNA LET ONE PERSON BE
5 INVOLVED IN THIS CASE THAT THEY COULDN'T TRUST IN THE INNER SANCTUM.
6 THIS LAWYER OVER HERE'S GONNA GO BACK FOR \$20. HOW ABOUT \$2,000,000?
7 THAT YOU CAN'T DO A THING ABOUT IT IF ANYBODY RIPS YOU FOR IT. YOU
8 GONNA LET ANYBODY BE INVOLVED IN THIS PROCESS THAT DOESN'T KNOW?
9 ABSOLUTELY NOT.

10 LADIES AND GENTLEMEN, THIS ULTIMATELY COMES DOWN TO YOU USIN'
11 YOUR COMMON SENSE IN THIS CASE. THEY'RE ALL INVOLVED. RENTED THE
12 TRUCK AHEAD A TIME. CAME DOWN HERE AND STAYED AT THE CROSSROADS
13 MOTEL. ALL 3 OF 'EM STAYED AT THE MOTEL. THEY DIDN'T LEVITATE DOWN
14 THERE. CAME DOWN IN THIS TRUCK. AND THEY'RE ALL WAITIN' ON THIS
15 SHIPMENT FROM MEXICO WHICH THEY THINK HAS SUCCESSFULLY EVADED THE
16 DETECTION OF THE UNITED STATES CUSTOMS SERVICE AND IT'S GONNA BE
17 DELIVERED THERE. 'CAUSE FROM THE OUTSIDE IT LOOKS LIKE FURNITURE.
18 THEY'RE READY. BECAUSE WHEN CUSTOMS COME HERE TO DO THE OFFLOAD
19 WITH OLD MARTIN AND MR. MIZE IN THE TRUCK OUT THERE, THE GUYS IN THE
20 THUNDERBIRD ARE ALREADY THERE AND THEY'RE WAITIN' FOR 'EM. AND THEY
21 OFFLOAD THOSE 13 PIECES. THEY GIVE FREDY HIS (INAUDIBLE). HE LOADS IT UP
22 IN HIS STORE. THEN HE LEAVES.

23 AGENT PERRY WAS IN AN OBSERVATION POSITION. HE TOLD YOU WHAT
24 HE COULD SEE THERE. THE GUYS IN THE THUNDERBIRD LEAVE AND THEY GO
25 AWAY.

1 NOW FREDY IT'S UNQUESTIONED IN THIS CASE -- NOW THEY'RE ALL
2 TALKIN' ABOUT IT BECAUSE, LADIES AND GENTLEMEN, THEY'RE ALL IN ON THIS
3 TOGETHER. THEY'RE WORKIN' ON IT TOGETHER 'CAUSE ONCE FREDY HAD GIVEN
4 'EM A LOCATION TO SHIP IT TO HERE IN EDGEFIELD COUNTY WHERE THEY THINK
5 NOBODY'S LOOKIN'. NO QUESTION. AND THEY'VE GIVEN HIM HIS DOPE.

6 BUT THEY'VE ALL AGREED ON IT. 'CAUSE HE KNOWS ENOUGH ABOUT
7 WHAT'S GONNA GO ON IN THE OPERATION THAT HE'S DIRECTIN' 'EM DOWN TO
8 BILLY'S SUPER STORE.

9 THE AGENT EVEN TELLS YOU HE GETS HIS WIFE ON THE PHONE TO HELP
10 THIS GUY. THIS IS A COORDINATED EFFORT FROM A LOTTA PEOPLE, AND DIRECTS
11 'EM TO GO DOWN TO BILLY'S SUPER STORE WHERE THE AGENT WAITS WITH THE
12 TRUCK WITH THE REMAINDER OF THE MARIJUANA.

13 AGENT PERRY TOLD YOU FROM HIS VANTAGE POINT THE THUNDERBIRD
14 GOES BACK TO MR. DELEON'S STORE AGAIN. THEY'RE STILL WORKIN'
15 ALTOGETHER IN ORDER TO INSURE THAT THIS GOES ACCORDING TO PLAN AND
16 THEY CARRY OUT WHAT THEY'VE CONSPIRED TO AND AGREED TO IN THIS CASE.
17 GOES BACK DOWN THERE TO FREDY'S, AND THERE'S MORE INTERACTION. AND
18 THEN THE THUNDERBIRD CIRCLES AROUND AND GOES TO THE MOTEL WHERE
19 THESE GUYS ARE WAITING WITH A TRUCK THAT THEY'VE RENTED, THAT THEY'VE
20 PAID CASH FOR. MR. HONORIO HE'S SIGNED HIS NAME; HE'S GOT THESE GUYS
21 WITH HIM. THEY'RE WAITIN'. IT'S COORDINATED. BECAUSE NO MORE THAN 20
22 MINUTES PASS AND THEY'RE CIRCLING BACK AROUND AND THEY'RE GONNA GO
23 GET CONTROL OF THIS TRUCK.

24 AND AGENT PERRY TOLD YOU HE COULD SEE. AND AGENT MIZE I
25 GUARANTEE YOU HE COULD SEE BECAUSE HE WAS SITTING THERE IN THE MIDST OF

1 IT. THE THUNDERBIRD ROLLS UP IN A COORDINATED EFFORT WITH THE TRUCK
2 AND THEY BLOCK 'EM IN, AND THE GUY WITH THE BAD COMPLEXION GETS OUT
3 AND TRIES TO GET IN THE TRUCK. WHY? 'CAUSE THEY WANTED TO DIRECT
4 WHERE IT WAS GONNA GO. THEY WANTED TO TAKE OVER AT THAT POINT IN TIME.
5 BECAUSE THEY WANT THIS THING DOWN THERE ON PADGETT ROAD. BECAUSE
6 THEY CAN'T STAND THE LIGHT OF DAY. BECAUSE THERE WAS NOT A BETTER
7 PLACE AROUND. TO OFFLOAD THIS STUFF AND TO HAVE TRUCKS BACKED UP TO
8 EACH OTHER THAN THE PARKIN' LOT AT BILLY'S SUPER STORE OUT THERE AT 25.
9 THEY HAD ALL THE ROOM IN THE WORLD. IF THIS WAS ANYTHING LEGITIMATE,
10 THEY'D A DONE IT RIGHT THERE. BUT DRUG DEALERS CAN'T STAND THE LIGHT OF
11 DAY. THEY WANNA TRADE OUT BILLY'S SUPER STORE WHERE ANYBODY IN THE
12 WORLD CAN RIDE BY AND MAYBE HAVE AN INTEREST IN WHAT'S GOIN' ON FOR
13 PADGETT ROAD DOWN THERE.

14 PLANNIN' AND COORDINATION. COORDINATED EFFORT. THEY PULL UP
15 AND THEY BLOCK THEM IN. THEY'RE ACTING IN CONCERT. THEY'RE ALL
16 TOGETHER. THERE'S TESTIMONY IN THIS CASE THAT THEY WERE ALL GETTIN' OUT
17 AND TALKIN' AND PLANNIN'. THESE 3 GUYS OVER HERE IN THE TRUCK THEY'RE
18 NOT IN THE DARK ABOUT A THING. THEY KNOW WHAT'S GOIN' ON 'CAUSE
19 THEY'VE SELECTED THIS AREA AHEAD OF TIME. GET DOWN THERE AND OFFLOAD
20 THE REST OF THAT STUFF. AND THEY GO DOWN TO PADGETT ROAD. BUT THERE'S
21 ONE THING THEY DIDN'T PLAN FOR IN THIS CASE. THE BEST LAID PLANS
22 SOMETIMES, THE SIMPLEST THINGS CAN FOIL IT. AND I SUBMIT TO YOU IN THIS
23 CASE AT LEAST FOR THESE THREE GUYS, OLD FREDY HE'S DONE AT THAT POINT IN
24 TIME 'CAUSE THEY GOT HIM. THE BEST LAID PLANS. THEY DIDN'T PLAN ON THAT
25 EDGEFIELD COUNTY RED CLAY. THEY DON'T HAVE ANY OF THAT DOWN IN

1 MEXICO, AND IT'D BEEN RAININ'. THEY GOT DOWN THERE AND THEY GOT STUCK.
2 GAME OVER AT THAT POINT 'CAUSE THE TRUCK'S NOT GOIN' ANYWHERE. THESE 3
3 GUYS ARE NOT GOIN' ANYWHERE. AT THAT POINT IN TIME THEY DON'T KNOW
4 THEY GOT THE POLICE ON TO 'EM ANYWAY. BUT THE GUYS IN THE THUNDERBIRD
5 THEY GONE. THEY GET OUT AT THAT POINT IN TIME. AND THEN AGENTS DESCEND
6 ON 'EM AND ARREST 'EM.

7 THERE ARE NO INNOCENT PARTIES HERE CHARGED WITH THIS IN THIS
8 COURTROOM 'CAUSE IT'S JUST NOT REASONABLE AND BELIEVABLE WHEN WE'RE
9 TALKIN' ABOUT A TRAFFICKIN' MARIJUANA CASE WITH \$2,000,000 INVOLVED WITH
10 THESE GUYS. JUST NO WAY.

11 I WANT TO TALK TO YOU -- AND THE JUDGE IS GONNA CHARGE YOU MERE
12 PRESENCE TELLIN' YOU YOU CAN'T CONVICT THESE GUYS (INAUDIBLE) THEY HAD
13 ANYTHING TO DO WITH IT. COMMON SENSE, LADIES AND GENTLEMEN. THEY
14 KNEW. CAME DOWN HERE FROM CHARLOTTE, NORTH CAROLINA AND THEY WERE
15 GONNA HAUL THAT STUFF BACK TO CHARLOTTE, NORTH CAROLINA. AT LEAST
16 SOME OF IT. AND OLD FREDY HE'S RIGHT IN THE MIDDLE OF IT. 'CAUSE WHERE
17 DOES HE GO AFTER THEY OFFLOAD OUT THERE AT THE STORE? HE GETS STRAIGHT
18 IN HIS VAN AND GOES STRAIGHT TO WHERE RAMOS LIVES. OUT THERE--

19 MR. HAWKE: JUDGE---

20 THE COURT: HOLD ON. YES?

21 MR. HAWKE: THERE IS NO EVIDENCE AT ALL THAT HE WENT STRAIGHT TO
22 WHERE RAMOS WAS. RAMOS WAS THE ONE IN THE THUNDERBIRD THAT TOOK OFF
23 AT THE END OF THE ROAD. NOBODY KNOWS ANYWHERE HE WENT. AND NOW
24 HE'S GOT THEM MEETIN'.

25 MR. MAYE: LADIES AND GENTLEMEN, WHERE DOES---

1 THE COURT: HOLD ON A MOMENT---

2 MR. MAYE: EXCUSE ME, YOUR HONOR. WHERE DOES MR. RAMOS LIVE?

3 THE COURT: HOLD ON.

4 MR. MAYE: EXCUSE ME.

5 THE COURT: I CAN'T GET INTO THE FACTS OF THE CASE. THERE WAS
6 EVIDENCE ABOUT MR. DELEON GOIN' TO LAYMAN'S NURSERY. THERE WAS
7 EVIDENCE THAT THERE WERE TRAILERS INSIDE THE FENCE OF LAYMAN'S
8 NURSERY.

9 MR. MAYE: AGENT PERRY DID TESTIFY HE LIVED IN A TRAILER ON THE
10 GROUND, YOUR HONOR. YOUR HONOR, I THINK I CAN CLEAR THIS UP.

11 MR. HAWKE: YOUR HONOR, THERE'S NO EVIDENCE THAT RAMOS WAS
12 ANYWHERE NEAR THERE. RAMOS LEFT AND WENT OUT THE DIRT ROAD, AND
13 WHEN FREDY DELEON WENT THAT WAY, THE TRUCK WAS GOIN' DOWN---

14 THE COURT: WHAT DID YOU SAY?

15 MR. HAWKE: HE SAID THEY WENT AND MET.

16 MR. MAYE: I CAN---

17 THE COURT: THERE IS NO EVIDENCE OF ANY MEETING.

18 MR. MAYE: I CAN TAKE CARE OF THAT. LADIES AND GENTLEMEN, YOU
19 TAKE THE FACTS AS YOU REMEMBER THEM. THE 12 OF YOU YOUR COLLECTIVE
20 MEMORY IS BETTER THAN ANY ONE PERSON IN THIS COURTROOM. YOU TAKE THE
21 FACTS AS YOU REMEMBER THEM. FREDY GOES STRAIGHT UP THERE TO LAYMAN'S
22 NURSERY. YOU'VE HEARD THE TESTIMONY IN THIS CASE WHERE AGENT PERRY
23 TOLD YOU THIS IS, WHERE RAMOS LIVES. AND THAT'S RIGHT ALONG THE PATH
24 WHERE THE TRACTOR TRAILER TRUCK WAS GOING. BACK DOWN IN THIS AREA.
25 THAT'S WHERE FREDY LEAVES AND GOES BECAUSE THE AGENT FROM AIKEN

1 COUNTY IS TAILIN' HIM. AND HE GOES BACK AND HE'S HEADED TOWARD AIKEN
2 COUNTY. YOU MAKE UP YOUR MIND WHAT HE'S DOIN'. WHERE'S THIS STUFF
3 GOIN'? IS ALL OF IT GOIN' THERE? IS ALL OF IT GOIN' ON TO CHARLOTTE TO SET
4 UP ANOTHER DEAL? IS IT GOIN' SOMEWHERE ELSE? WHERE ELSE IS THIS TRUCK
5 GOIN' TO GET DIRECTED TO? IT'S UP TO YOU TO DECIDE. IT DOESN'T MUCH MAKE
6 ANY DIFFERENCE AT THAT POINT IN TIME 'CAUSE YOU GOT THESE 4 HERE IN
7 EDGEFIELD COUNTY.

8 EVEN THEIR OWN WITNESS IN THIS CASE WANTED TO TELL YOU THAT
9 FREDY DIDN'T HAVE ANYTHING TO DO WITH THIS 'CAUSE OF WHAT KINDA
10 TRAILER HE LIVES IN. HIS OWN WITNESS CAME UP HERE AND TOLD YOU ABOUT
11 HIM SHIPPIN' MONEY BACK TO MEXICO AND ABOUT THE WIRE TRANSFERS. IS
12 THAT WHAT FREDY'S ROLE IS IN THIS? IS HE HELPIN' 'EM GET THE MONEY BACK
13 TO MEXICO? BECAUSE THEY NEED SOME WAY TO GET IT BACK THERE.

14 THESE PHONE CARDS THAT THESE GUYS WERE USIN' AT THE MOTEL, ALL A
15 THAT STUFF, FREDY SELLS 'EM AT HIS STORE. THAT'S WHAT THE AGENT
16 TESTIFIED. THAT'S WHAT PEOPLE WERE IN THERE BUYIN'. THEY KNOW WHAT'S
17 GOIN' ON. THEIR OWN WITNESS UP HERE TOLD YOU ABOUT HOW THE HISPANIC
18 COMMUNITY OPERATES IN THIS KINDA THING. THEY'RE NO RECORDS 'CAUSE
19 THEY OPERATE IN CASH. CASH FOR THE TRUCK. TRANSFERRIN' MONEY BACK TO
20 MEXICO. THAT'S WHERE IT'S ALL GOIN'. HE DOESN'T HAVE TO LIVE IN A
21 MANSION OR PALACE. IT'S HEADED BACK SOUTH OF THE BORDER. THAT DOESN'T
22 HAVE ANYTHING TO DO WITH THIS CASE. HIS OWN WITNESS TOLD YOU THAT
23 FREDY OVER HERE IS (INAUDIBLE) THAT HE IS A POLICE OFFICER AND HE TOLD
24 YOU. HE'D A RATTED HIM OUT. HE'S NOT GONNA HAVE ANYTHING AROUND
25 THERE. THAT EXPLAINS IT. THEIR OWN WITNESS PUTS A LOT OF THE PIECES OF

1 THE PUZZLE HERE TOGETHER. AND HE TELLS YOU ABOUT HOW THIS GOES ON.
2 WHAT'D HE SAY, 22 YEARS DOWN THERE? SAYS THEIR OWN WITNESS, THAT'S
3 WHAT THEY DO, THEY CARRY OUT THESE CONTROLLED DELIVERIES. WHAT'D HE
4 SAY? WHEN THEY ACCEPT A CONTROLLED DELIVERY IT'S JUST LIKE FREDY
5 DELEON. THEY POP 'EM. EXACTLY. 'CAUSE THAT'S WHERE IT WAS GOIN'. AND
6 FREDY HAD IT UP THERE AT HIS HOUSE. 20 BAGS OF IT. 100 GRAMS. AND THEY
7 THOUGHT AS AN ASIDE TO THIS CASE OH IF YOU DON'T BUY ANYTHING ELSE IN
8 THIS CASE WELL OLE FREDY YOU CAN'T TIE HIM UP TO BUT, WHAT, 20 BAGS? SO
9 COME BACK WITH THAT LESSER INCLUDED.

10 THE JUDGE IS GONNA CHARGE YOU IN THIS CASE OF THE WHOLE WEIGHT
11 OF TRAFFICKING. AND THE JUDGE IS GONNA TELL YOU WHAT THE LAW IS HERE.
12 HE'S GONNA TELL YOU ALL ABOUT WHAT TRAFFICKING ENCOMPASSES. HE'S
13 GONNA TALK ABOUT THIS WEIGHT PARAMETER. IT'S 100 POUNDS TO 2000 POUNDS.
14 THERE'S A LOWER TIER THAT WOULD COVER THAT 40 POUNDS. SO IT'S A
15 FALLBACK POSITION. IF YOU DON'T BELIEVE ANYTHING ELSE THAT'S BEEN GOIN'
16 ON UP HERE FOR 5 DAYS, YOU DON'T BELIEVE ANYTHING AT ALL, WELL, ALL HE
17 REALLY KNEW ABOUT WAS THAT 20 UP THERE AT THE STORE. HE DIDN'T KNOW
18 THERE WAS ANYMORE IN ALL THOSE OTHER CHIMNEYS THAT WERE UP THERE. HE
19 JUST KNEW ABOUT THE 20. SO FIND HIM GUILTY OF THAT LESSER CRIME.

20 EVERYBODY IN THIS CRIME KNEW HOW MUCH MARIJUANA WAS THERE.
21 THEY KNEW THAT THERE WERE CHIMNEY LOADS AND CHIMNEY LOADS. THAT'S
22 WHAT THEY HAD THE TRUCK FOR. THAT'S WHY THEY CAME DOWN HERE FROM
23 CHARLOTTE TO HAUL IT. WHERE IT WAS GOIN', LORD KNOWS. BUT EDGEFIELD
24 COUNTY SHERIFF'S DEPARTMENT, SOUTH CAROLINA LAW ENFORCEMENT
25 DIVISION AND UNITED STATES CUSTOMS SERVICE DID SOMETHIN' RIGHT. THEY

1 STOPPED 894 POUNDS OF THIS FROM GOIN' ANYWHERE ELSE. AND THEY
2 ARRESTED MR. FREDY DELEON FOR TRAFFICKIN'. AND THEY ARRESTED THESE
3 OTHER 3 OVER HERE FOR TRAFFICKIN'. AND THEY BROUGHT 'EM TO YOU. TWO
4 GOT AWAY, AND THEY'RE GONE. AND THESE OFFICERS HAVE BEEN WHIPPED,
5 PRODDED AND POKED AND CARRIED ON ABOUT WHY DIDN'T THEY EXECUTE A
6 SEARCH WARRANT, WHY DIDN'T THEY PULL PHONE RECORDS. AND THEY TOLD
7 YOU: IT'S A DEAD END. ADELL DOBEY AND ROOSEVELT YOUNG ARE NOT GONNA
8 SADDLE UP AND RIDE DOWN SOUTH OF THE BORDER LOOKIN' FOR OLD MR.
9 RAMOS. HE'S GONE. BUT YOU GOT 4 DRUG TRAFFICKERS SITTIN' HERE IN THIS
10 COURTROOM THAT WAS COMBIN' AND CONSPIRIN' AND GOIN' IN TOGETHER TO
11 TRAFFIC DRUGS HERE IN EDGEFIELD COUNTY. THERE'S NOT ONE SITTIN' OVER
12 THERE THAT DIDN'T KNOW WHAT WAS GOIN' ON.

13 LADIES AND GENTLEMEN, IT'S BEEN A LONG, LONG TIME. ALL I ASK OF
14 THE 12 OF YOU WHEN YOU DELIBERATE IS TO APPLY YOUR COMMON SENSE TO
15 THIS CASE. AND WE ASKED YOU AT THE OUTSET.

16 AS TO MR. FREDY DELEON, INDICTMENT FOR TRAFFICKING IN MARIJUANA,
17 COME BACK WITH A GUILTY VERDICT.

18 AS TO MR. HONORIO HERNANDEZ GUERRERO ON INDICTMENT 2004-GS-19-
19 139, COME BACK WITH A GUILTY VERDICT AS TO TRAFFICKING IN MARIJUANA.

20 AS TO MR. ALFREDO AVILA-AROJONA COME BACK WITH A GUILTY
21 VERDICT FOR TRAFFICKING IN MARIJUANA.

22 AS TO MR. RAPHAEL HERNANDEZ COME BACK WITH A GUILTY VERDICT
23 FOR TRAFFICKING IN MARIJUANA.

24 THEY ALL TOLD YOU THEY HAD THE PRESUMPTION OF INNOCENCE WHEN
25 THEY CAME IN HERE. BUT ONE WITNESS AT A TIME, EVERYTHING THAT CAME INTO

1 EVIDENCE, THAT'S BEEN STRIPPED AWAY FROM THEM. AND THE TRUTH HAS BEEN
2 EXPOSED IN THIS CASE. THESE AGENTS HAVE—

3 THE COURT: SPEAK UP.

4 MR. MAYE: ---TOLD YOU WHAT HAPPENED. IT'S UP TO THE 12 OF YOU. ALL
5 I'D ASK IS THAT YOU DO THE RIGHT THING FOR EVERYBODY HERE IN EDGEFIELD
6 COUNTY. IF YOU HAVE DONE THAT, YOU WILL HAVE DONE ALL THAT ANYBODY
7 CAN ASK OF YOU.

8 THE COURT: ALRIGHT. THANK YOU. LADIES AND GENTLEMEN, STEP BACK
9 IN THE JURY ROOM. AS SOON AS WE'RE SET UP, I'LL BRING YOU OUT HERE AND
10 I'LL GIVE YOU THE LAW. IT'LL TAKE ME 32 MINUTES TO TELL YOU THE LAW.
11 DON'T DISCUSS THE CASE. (THERE WAS A BRIEF RECESS.)

12 MEMBERS OF THE JURY, YOU'VE HEARD THE ARGUMENTS OF COUNSEL.
13 NOW IT'S TIME FOR ME TO INSTRUCT YOU ON THE LAW. PLEASE, CONTINUE TO
14 PAY CLOSE ATTENTION DURING THIS NEXT STAGE OF THE PROCEEDING.

15 NOW FIRST YOU NEED TO UNDERSTAND SOME BASIC GROUND RULES. YOU
16 THE JURY MEMBERS ARE THE SOLE JUDGES OF THE FACTS. YOU DECIDE ALL THE
17 ISSUES OF FACT. YOU ALONE DETERMINE THE TRUTH OF THE EVIDENCE, ITS
18 EFFECT, ITS VALUE AND ITS WEIGHT. YOU ALONE JUDGE THE CREDIBILITY OF
19 WITNESSES. IN OTHER WORDS, WHETHER OR NOT A WITNESS' TESTIMONY IS
20 BELIEVABLE. IN THAT REGARD IN EVALUATING THE TESTIMONY OF WITNESSES
21 INCLUDING EXPERT WITNESSES, YOU MAY BELIEVE ALL THAT A WITNESS SAID OR
22 NONE OF IT. YOU MAY BELIEVE PART OF WHAT A WITNESS SAID AND NOT BELIEVE
23 THE BALANCE. YOU MAY BELIEVE ONE WITNESS AGAINST MANY OR MANY
24 AGAINST ONE. YOU MAY CONSIDER ANY INTEREST, BIAS OR PREJUDICE THAT YOU
25 FEEL THAT A WITNESS HAS IN THE CASE. YOU MAY CONSIDER THE Demeanor

1 AND THE APPEARANCE OF THE WITNESS AND THE OPPORTUNITY FOR KNOWLEDGE
2 THAT THE WITNESS HAD. YOU MAY CONSIDER WHETHER A WITNESS IS BEING
3 CONSISTENT OR INCONSISTENT. YOU MAY CONSIDER THE LACK OF EVIDENCE
4 PRESENTED BY THE STATE. BUT YOU'RE NOT TO EXERCISE THESE
5 CONSIDERATIONS ARBITRARILY. WHAT I WANT YOU TO DO IS TO USE YOUR
6 COMMON SENSE. USE YOUR SENSE OF LOGIC AND REASON AND YOUR GOOD
7 JUDGMENT.

8 NOW THE RULES OF EVIDENCE THAT WE OPERATE UNDER ALLOW FOR
9 OPINION TESTIMONY TO BE GIVEN UNDER CERTAIN CIRCUMSTANCES. ONE AREA
10 WHERE A WITNESS IS ALLOWED TO GIVE OPINION TESTIMONY IS WHERE THAT
11 PERSON BY VIRTUE OF EDUCATION, TRAINING AND EXPERIENCE IS PERMITTED TO
12 TESTIFY AS AN EXPERT WITNESS. THE MERE FACT THAT A WITNESS IS ALLOWED
13 TO GIVE OPINION TESTIMONY UNDER OUR RULES DOES NOT MEAN THAT YOU
14 HAVE TO ACCEPT THE OPINIONS GIVEN. YOU MAY ACCEPT OR REJECT THE
15 OPINIONS OF AN EXPERT WITNESS JUST AS YOU MAY ANY OTHER WITNESS IN
16 WHOLE OR IN PART.

17 I NEED TO EXPLAIN TO YOU THAT IT'S NOT PROPER FOR ME TO GIVE YOU A
18 CHARGE ON THE FACTS OF THE CASE. I CAN'T DISCUSS THE FACTS WITH YOU. I'M
19 NOT EVEN PERMITTED TO CONVEY TO YOU AN IMPRESSION AS TO WHAT, IF ANY,
20 PERSONAL OPINIONS I MAY DEVELOP ABOUT THE FACTS OF THE CASE AS IT GOES
21 ALONG. SO IF DURING ANY STAGE OF THIS TRIAL YOU HAVE DEVELOPED AN
22 IMPRESSION THAT I'VE GOT A PERSONAL OPINION ABOUT THE FACTS, YOU MUST
23 REMOVE THAT TOTALLY FROM YOUR MIND. YOU'RE THE SOLE JUDGES OF THE
24 FACTS.

25 NOW I AM THE JUDGE OF THE LAW THAT APPLIES IN THE CASE, AND UNDER

1 YOUR OATH YOU HAVE TO ACCEPT AND APPLY THE LAW AS I GIVE IT TO YOU. AND
2 THAT MEANS IF YOU HAVE CONFLICTING IDEAS ABOUT WHAT THE LAW IS OR
3 WHAT IT SHOULD BE, YOU MUST ABANDON THOSE THINGS. I GIVE YOU THE LAW;
4 YOU APPLY IT TO THE FACTS AS YOU DETERMINE THEM TO BE, AND IN THAT WAY
5 YOU REACH YOUR VERDICT. IT'S ALSO MY JOB TO DECIDE WHAT EVIDENCE IS
6 ADMISSIBLE. IF I'VE RULED SOMETHING INADMISSIBLE OR TOLD YOU TO
7 DISREGARD SOMETHING, YOU ARE NOT TO CONSIDER THOSE THINGS IN ARRIVING
8 AT YOUR VERDICT. BASE YOUR VERDICT UPON THE COMPETENT EVIDENCE
9 BEFORE YOU. CONSIDER THE TESTIMONY OF THE WITNESSES AND THE EXHIBITS
10 ADMITTED IN THE TRIAL.

11 NOW, FOLKS, THERE ARE TWO TYPES OF EVIDENCE THAT ARE GENERALLY
12 PRESENTED DURING A TRIAL: DIRECT EVIDENCE AND CIRCUMSTANTIAL
13 EVIDENCE.

14 NOW DIRECT EVIDENCE IS EVIDENCE OF DIRECT PERCEPTION INCLUDING
15 THE TESTIMONY OF A PERSON WHO ASSERTS OR CLAIMS TO HAVE ACTUAL
16 KNOWLEDGE OF A FACT SUCH AS AN EYEWITNESS.

17 CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN. IT'S PROOF OF A
18 CHAIN OF FACTS AND CIRCUMSTANCES THAT INDICATE THE EXISTENCE OF A
19 FACT.

20 THE LAW MAKES ABSOLUTELY NO DISTINCTION BETWEEN THE WEIGHT OR
21 THE VALUE TO BE GIVEN TO EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE; NOR
22 IS A GREATER DEGREE OF CERTAINTY REQUIRED OF CIRCUMSTANTIAL EVIDENCE
23 THAN OF DIRECT EVIDENCE. YOU NEED TO WEIGH ALL THE EVIDENCE IN THE
24 CASES, AND AFTER WEIGHING ALL THE EVIDENCE IF YOU'RE NOT CONVINCED OF
25 THE GUILT OF A DEFENDANT BEYOND A REASONABLE DOUBT, THEN YOU MUST

1 FIND THAT DEFENDANT NOT GUILTY.

2 THE DEFENDANTS IN THESE CASES ARE PRESUMED TO BE INNOCENT. THIS
3 IS NO MERE LEGAL THEORY. IT IS A FUNDAMENTAL AND SUBSTANTIAL RIGHT TO
4 WHICH EVERYONE IS ENTITLED. IT'S BEEN DESCRIBED AS BEING LIKE A ROBE OR
5 RIGHTEOUSNESS THAT'S PLACED AROUND AN ACCUSED AND REMAINS WITH HIM
6 THROUGH EVERY STAGE OF THE TRIAL. IT REMAINS WITH HIM AFTER YOU RETIRE
7 TO YOUR JURY ROOM TO DELIBERATE AND CONTINUES TO EXIST SO THAT THE
8 DEFENDANT IS PRESUMED TO BE INNOCENT UNLESS AND UNTIL YOU THE JURY
9 DETERMINE THAT THE STATE HAS PROVEN THE GUILT OF THAT DEFENDANT
10 BEYOND A REASONABLE DOUBT.

11 I INSTRUCT YOU AGAIN AND REMIND YOU OF THE EARLIER EMPHASIS THAT
12 I MADE UPON THIS FACT THAT A DEFENDANT IN A CASE IS -- IS NOT REQUIRED TO
13 TESTIFY, AND HIS DECISION NOT TO TESTIFY IS NOT A FACTOR TO BE CONSIDERED
14 BY YOU IN ANY WAY IN YOUR DELIBERATIONS AND IN YOUR CONSIDERATION ON
15 THE QUESTION OF WHETHER THAT DEFENDANT IS GUILTY OR NOT GUILTY.

16 HIS DECISION NOT TO TESTIFY MUST NOT BE CONSIDERED BY YOU IN ANY
17 MANNER WHATSOEVER AGAINST THE DEFENDANT. AN ACCUSED HAS A
18 CONSTITUTIONAL RIGHT TO REMAIN SILENT AND THE ASSERTION OF THAT
19 CONSTITUTIONAL RIGHT CANNOT AND MUST NOT BE CONSIDERED BY YOU IN
20 YOUR DELIBERATIONS. UNDER YOUR OATH YOU ARE TO REACH NO INFERENCE,
21 AND YOU ARE TO DRAW NO CONCLUSION WHATSOEVER FROM THE FACT THAT A
22 DEFENDANT IN A CASE ELECTED NOT TO TESTIFY. THE DECISION OF A DEFENDANT
23 NOT TO TESTIFY SHOULD NOT BE DISCUSSED BY YOU IN YOUR DELIBERATION. IT
24 SHOULD NOT ENTER YOUR MIND IN MAKING YOUR DECISION IN THESE CASES. THE
25 BURDEN OF PROOF, AS I'VE TOLD YOU REPEATEDLY, IS ENTIRELY ON THE STATE

1 TO PROVE THE GUILT OF THE DEFENDANTS BEYOND A REASONABLE DOUBT, AND
2 THESE DEFENDANTS HAVE NO OBLIGATION TO PROVE ANYTHING AT ALL.

3 NOW, AS I JUST STATED, LADIES AND GENTLEMEN, THE DEFENDANT IS NOT
4 REQUIRED TO PROVE HIS INNOCENCE. HE'S NOT REQUIRED TO PROVE ANYTHING.
5 THE BURDEN IS ON THE STATE TO PROVE THE DEFENDANT GUILTY BEYOND A
6 REASONABLE DOUBT. THE STATE HAS TO PROVE EVERY ESSENTIAL ELEMENT OF
7 AN OFFENSE CHARGED AGAINST A DEFENDANT BEYOND A REASONABLE DOUBT.

8 NOW THAT DOESN'T MEAN THAT THE STATE HAS TO PROVE THE GUILT OF A
9 DEFENDANT BEYOND ALL DOUBT OR BEYOND EVERY DOUBT. THE APPROPRIATE
10 STANDARD IS PROOF BEYOND A REASONABLE DOUBT. SO WHAT DO I MEAN WHEN
11 I SAY THAT?

12 SOME OF YOU MAY HAVE SERVED AS JURORS IN CIVIL COURT, AND IF YOU
13 HAVE, YOU KNOW THAT THE BURDEN OF PROOF IN CIVIL COURT REQUIRES THAT
14 THE PARTY WITH THE BURDEN HAS TO ESTABLISH THAT SOMETHING IS MORE
15 LIKELY THAN NOT, THAT IT'S PROBABLE. AND WE CALL THAT THE GREATER
16 WEIGHT OR THE PREPONDERANCE OF THE EVIDENCE. BUT IN A CRIMINAL COURT
17 SETTING SUCH AS WE'RE IN NOW, THE STANDARD IS MUCH HIGHER AND THE
18 PROOF MUST BE MUCH STRONGER THAN WHAT WE REQUIRE IN CIVIL COURT. THE
19 BURDEN OF PROOF IN CRIMINAL CASES SUCH AS THESE IS PROOF BEYOND A
20 REASONABLE DOUBT.

21 NOW PROOF BEYOND A REASONABLE DOUBT IS PROOF THAT LEAVES YOU
22 FIRMLY CONVINCED OF THE DEFENDANT'S GUILT. THERE ARE FEW THINGS IN THE
23 WORLD THAT WE KNOW WITH ABSOLUTE CERTAINTY, AND IN CRIMINAL CASES,
24 THE LAW DOES NOT REQUIRE PROOF THAT OVERCOMES EVERY POSSIBLE DOUBT.
25 IF, BASED ON YOUR CONSIDERATION OF THE EVIDENCE, YOU ARE FIRMLY

1 CONVINCED, THAT A DEFENDANT IS GUILTY OF THE CRIME CHARGED AGAINST
2 HIM, THEN YOU ARE TO FIND HIM GUILTY OF THAT CRIME. IF, ON THE OTHER
3 HAND, YOU THINK THERE IS A REAL POSSIBILITY THAT HE IS NOT GUILTY, YOU
4 MUST GIVE HIM THE BENEFIT OF THE DOUBT AND FIND HIM NOT GUILTY. THERE IS
5 NO OBLIGATION ON THE PART OF ANY DEFENDANT TO RAISE ANY DOUBT OR ANY
6 OTHER POSSIBILITY. HE'S PRESUMED INNOCENT. THEY'RE PRESUMED INNOCENT.
7 AND THE STATE HAS THE ENTIRE BURDEN OF PROOF AND HAS TO PROVE TO YOU
8 THAT A PARTICULAR DEFENDANT IN QUESTION IS GUILTY TO THE EXCLUSION OF
9 ANY OTHER REAL POSSIBILITY.

10 A JURY MAY CONSIDER EVIDENCE OF A DEFENDANT'S GENERAL GOOD
11 CHARACTER. SOMEONE WHO IS ACCUSED OF A CRIME MAY PRODUCE EVIDENCE
12 OF A CHARACTER THAT IS INCONSISTENT WITH A CRIME CHARGED AGAINST HIM
13 FOR THE PURPOSE OF ASSERTING THE IMPROBABILITY THAT THAT DEFENDANT
14 COMMITTED THE CRIME CHARGED.

15 NOW I REMIND YOU THAT THE DEFENDANT HAS NO BURDEN OF PROOF. HE
16 DOES NOT HAVE TO PROVE OR DISPROVE ANYTHING AT ALL. EVIDENCE OF GOOD
17 CHARACTER OF THE ACCUSED IS ENTITLED TO SUCH EFFECT AND WEIGHT, IF ANY,
18 THAT YOU DETERMINE TO BE APPROPRIATE. IT MAY CREATE A REASONABLE
19 DOUBT AS TO EVIDENCE WHICH OTHERWISE APPEARS CONCLUSIVE. IT IS THE
20 PRIVILEGE OF THE ACCUSED TO PLACE INTO EVIDENCE ITS GOOD CHARACTER
21 WITHOUT REGARD TO THE OTHER EVIDENCE IN THE CASE, AND IT'S FOR YOU THE
22 JURY TO DECIDE AND CONSIDER THAT EVIDENCE IN CONNECTION WITH ALL THE
23 OTHER EVIDENCE IN THE CASE AND DETERMINE WHAT FORCE, VALUE, EFFECT
24 AND WEIGHT IT SHOULD HAVE, IF ANY.

25 NOW LET'S TURN TO THE SPECIFIC INDICTMENTS IN THESE CASES. AS YOU

1 KNOW, FOLKS, THERE ARE 4 SEPARATE AND DISTINCT INDICTMENTS EACH
2 ALLEGED AGAINST A DIFFERENT INDIVIDUAL. THERE ARE 4 PEOPLE INVOLVED; 4
3 CASES. EACH CHARGE MUST BE EVALUATED ON ITS OWN MERIT OR ITS OWN
4 LACK OF MERIT. EACH DEFENDANT IS CHARGED WITH TRAFFICKING IN
5 MARIJUANA IN EDGEFIELD COUNTY ON OR BETWEEN APRIL 5, 2002 AND MAY 18,
6 2002. I READ THE INDICTMENTS TO YOU AT THE BEGINNING OF THE TRIAL. I
7 CAUTION YOU AGAIN THE INDICTMENTS HAVE NO EVIDENTIARY VALUE, AND YOU
8 MAY NOT ACCORD THEM ANY EVIDENTIARY VALUE. THEY ARE NOT EVIDENCE.
9 THEY ARE CHARGING PAPERS.

10 SO LET ME TELL YOU WHAT WE MEAN BY TRAFFIC. THE LEGISLATURE HAS
11 ESTABLISHED THAT CERTAIN ACTIVITIES ARE UNLAWFUL AND THAT THESE
12 UNLAWFUL ACTIVITIES ARE CALLED TRAFFICKING IN MARIJUANA. VIOLATION OF
13 ANY ONE OF THESE PROHIBITED ACTS CONSTITUTES TRAFFICKING. TRAFFICKING
14 REQUIRES THAT CERTAIN MINIMUM WEIGHTS OF THE ILLEGAL DRUG BE
15 CONNECTED TO THE UNLAWFUL CONDUCT. AND IN THESE CASES THE
16 DEFENDANTS ARE ALLEGED TO HAVE ENGAGED IN TRAFFICKING MARIJUANA
17 WEIGHING AT LEAST 100 POUNDS BUT LESS THAN 2000 POUNDS.

18 SO WHAT CONSTITUTES TRAFFICKING?

19 FIRST, IF A PERSON KNOWINGLY SELLS, DELIVERS, PURCHASES OR BRINGS
20 INTO THIS STATE 100 POUNDS OR MORE OF MARIJUANA, HE IS GUILTY OF
21 TRAFFICKING.

22 SECOND, IF A PERSON PROVIDES FINANCIAL ASSISTANCE FOR ANY OF
23 THOSE ACTIVITIES, THAT IS, SELLING, DELIVERING, PURCHASING OR BRINGING
24 INTO THIS STATE 100 POUNDS OR MORE OF MARIJUANA, HE IS GUILTY OF
25 TRAFFICKING.

1 THIRD, IF A PERSON OTHERWISE AIDS, ABETS, ATTEMPTS OR CONSPIRES TO
2 CONDUCT THESE ACTIVITIES RELATED TO 100 POUNDS OR MORE OF MARIJUANA,
3 HE IS GUILTY OF TRAFFICKING.

4 FOURTH, IF A PERSON KNOWINGLY ACTUALLY OR CONSTRUCTIVELY
5 POSSESSES OR KNOWINGLY ATTEMPTS TO ACTUALLY OR CONSTRUCTIVELY
6 POSSESS 100 POUNDS OR MORE OF MARIJUANA, HE IS GUILTY OF TRAFFICKING.

7 SO IF THE STATE PROVES THAT A DEFENDANT KNOWINGLY DID ONE OR
8 MORE OF THESE SPECIFIC THINGS RELATED TO 100 POUNDS OR MORE OF
9 MARIJUANA AS ALLEGED IN THE INDICTMENT AND THAT THAT OCCURRED IN
10 EDGEFIELD COUNTY, THEN THAT DEFENDANT IS GUILTY OF THE CHARGE MADE
11 AGAINST HIM. THE STATE HAS TO PROVE TO YOU BEYOND A REASONABLE DOUBT
12 THAT THE SUBSTANCE IN QUESTION WAS MARIJUANA, AND THE STATE HAS TO
13 PROVE BEYOND A REASONABLE DOUBT THAT THE WEIGHT IN MARIJUANA EQUALS
14 OR EXCEEDS 100 POUNDS.

15 NOW LET ME BREAK DOWN SOME OF THOSE THINGS THAT I JUST WENT
16 OVER WITH YOU.

17 FIRST I'M GONNA TALK ABOUT CONSPIRACY. ONE OF THE WAYS A PERSON
18 CAN BE GUILTY OF TRAFFICKING IS TO SELL, DELIVER, POSSESS, PURCHASE, BRING
19 INTO THE STATE MORE THAN 100 POUNDS OF MARIJUANA OR CONSPIRE TO
20 PROVIDE FINANCIAL ASSISTANCE TO DO ONE OF THOSE THINGS. THAT SENTENCE
21 IS NOT TECHNICALLY CORRECT. IF A PERSON CONSPIRES TO SELL, DELIVER,
22 POSSESS, PURCHASE OR BRING INTO THIS STATE MORE THAN 100 POUNDS OF
23 MARIJUANA OR CONSPIRES TO PROVIDE FINANCIAL ASSISTANCE TO DO ONE OF
24 THOSE THINGS, THAT'S ONE OF THE WAYS -- ONE OF THE THINGS THAT
25 CONSTITUTES TRAFFICKING. SO I NEED TO TALK TO YOU ABOUT CONSPIRACY.

1 A CONSPIRACY IS AGREEMENT BETWEEN 2 OR MORE PERSONS TO DO AN
2 UNLAWFUL ACT OR TO DO A LAWFUL ACT BY UNLAWFUL MEANS. IF THE STATE
3 RELIES UPON CONSPIRACY, THE STATE HAS TO PROVE THAT THE PARTICULAR
4 DEFENDANT IN QUESTION INTENTIONALLY PARTICIPATED IN THE CONSPIRACY
5 WITH A VIEW AND A PURPOSE TO FURTHER THE COMMON DESIGN OF THE
6 CONSPIRACY. THE DEFENDANT AND THE OTHER ALLEGED CO-CONSPIRATORS
7 MUST HAVE INTENDED TO ACT TOGETHER FOR THEIR SHARED MUTUAL BENEFIT
8 WITHIN THE SCOPE OF THE CONSPIRACY. IN ORDER TO BE A MEMBER OF A
9 CONSPIRACY, ONE DOES NOT HAVE TO HAVE FULL KNOWLEDGE OF ALL THE
10 DETAILS OF THE PROPOSED WRONG DOING. SO THAT'S WHAT I MEAN BY
11 CONSPIRACY.

12 ANOTHER WAY A PERSON CAN BE GUILTY OF TRAFFICKING IS BY AIDING
13 OR ABETTING IN SELLING, DELIVERING, POSSESSING, PURCHASING, BRINGING
14 INTO THIS STATE MORE THAN 100 POUNDS OF MARIJUANA OR PROVIDING
15 FINANCIAL ASSISTANCE TO DO ONE OF THOSE THINGS.

16 NOW I NEED TO TALK TO YOU ABOUT AIDING AND ABETTING. IF A PERSON
17 IS PRESENT -- REQUIRES THE PERSON TO BE PRESENT -- AND AIDS, ABETS AND
18 ASSISTS IN THE COMMISSION OF ONE OR MORE OF THOSE PROHIBITED ACTS THAT I
19 READ TO YOU OVER AND AGAIN, HE'S GUILTY OF TRAFFICKING.

20 NOW I'M TALKING ABOUT SELLING, DELIVERING, POSSESSING,
21 PURCHASING, BRINGING INTO THE STATE MORE THAN 100 POUNDS OF MARIJUANA.
22 SO IF SOMEONE IS PRESENT AND AIDS, ABETS AND ASSISTS IN THAT, THEN THAT
23 PERSON IS GUILTY OF TRAFFICKING.

24 WHERE SOMEONE DOES AN ACT IN THE PRESENCE OF AND WITH THE
25 ASSISTANCE OF ANOTHER PERSON, THE ACT IS DONE BY BOTH, AND WHERE 2 OR

1 MORE PEOPLE ACTING WITH A COMMON DESIGN OR INTENT TO PERFORM A
2 CRIMINAL ACT ARE PRESENT AT THE COMMISSION OF THE CRIME, IT DOES NOT
3 MATTER WHO WAS THE ONE PERFORMING A SPECIFIC, PARTICULAR ACT, ALL ARE
4 GUILTY. THEY'RE AIDING AND ABETTING ONE ANOTHER.

5 INTENT IS A NECESSARY ELEMENT, HOWEVER, BECAUSE THERE HAS TO BE
6 A COMMON DESIGN OR INTENT TO COMMIT THE CRIME IN QUESTION AND THE
7 CRIME MUST HAVE BEEN COMMITTED PURSUANT TO THAT COMMON DESIGN OR
8 INTENT. IN OTHER WORDS, THERE HAS TO BE AIDING AND ABETTING ONE
9 ANOTHER, WITH A COMMON DESIGN AND INTENT TO COMMIT THAT PARTICULAR
10 CRIME.

11 NOW SOMETIMES THIS IS REFERRED TO AS THE HAND OF ONE BEING THE
12 HAND OF ALL. BUT IT'S AIDING AND ABETTING AND ASSISTING OTHERS IN THE
13 COMMISSION OF A CRIME.

14 IN EVALUATING WHETHER A PERSON IS AIDING AND ABETTING IN THE
15 COMMISSION OF A CRIME, YOU MUST UNDERSTAND THAT AIDER AND ABETTOR
16 HAS TO DO SO BY SOME OVERT ACT. THERE HAS TO BE AN ACTION TAKEN, AN ACT
17 DONE TO AID AND ABET. THE PERSON AIDING AND ABETTING MUST ALSO BE
18 PRESENT WHEN THE CRIME IS COMMITTED WHICH MEANS THAT THE PERSON HAS
19 TO BE SUFFICIENTLY NEAR TO AID, ABET AND ASSIST IN THE COMMISSION OF THE
20 CRIME. SO I'VE DISCUSSED WITH YOU AIDING AND ABETTING.

21 I DO NEED TO EXPLAIN TO YOU, LADIES AND GENTLEMEN, THAT MERE
22 PRESENCE AT THE SCENE OF A CRIME IS NOT SUFFICIENT TO PROVE SOMEONE
23 GUILTY OF THE CRIME, AND MERELY BEING PRESENT WHEN SOMEONE ELSE
24 COMMITS A CRIME IS NOT SUFFICIENT TO MAKE A PERSON AN AIDER, ABETTOR,
25 ACCOMPLICE OR CO-CONSPIRATOR OF THE PERSON WHO COMMITS A CRIME. SO

1 MERE PRESENCE IS NOT ENOUGH.

2 IF YOU FIND AFTER REVIEWING ALL THE EVIDENCE THAT THE STATE HAS
3 PROVEN ONLY THAT A DEFENDANT WAS PRESENT AT THE TIME A CRIME WAS
4 COMMITTED, YOU MUST FIND HIM NOT GUILTY BECAUSE IN ORDER FOR YOU TO
5 CONVICT SOMEONE OF A CRIME, THE STATE HAS TO PROVE TO YOU THAT THAT
6 PARTICULAR DEFENDANT IN QUESTION COMMITTED EVERY ESSENTIAL ELEMENT
7 OF THE OFFENSE CHARGED.

8 NOW ANOTHER WAY THAT A PERSON CAN BE GUILTY OF TRAFFICKING IS IF
9 HE ATTEMPTS TO SELL, DELIVER, POSSESS, PURCHASE OR BRING INTO THIS STATE
10 MORE THAN 100 POUNDS OF MARIJUANA OR IF HE ATTEMPTS TO PROVIDE
11 FINANCIAL ASSISTANCE TO DO ONE OF THOSE THINGS. AN ATTEMPT IS AN ACT
12 DONE IN PARTIAL EXECUTION OF A DESIGN TO COMMIT THE CRIME. THERE MUST
13 BE AN INTENT THAT THE ACT SHALL BE COMMITTED, AND AN ACT MUST BE DONE
14 THAT FALLS SHORT OF THE FULL COMMISSION OF THE CRIME BUT DOES AMOUNT
15 TO AN ACT DONE IN PURSUIT OF COMMITTING THE CRIME. AN INTENT IS -- I'M
16 SORRY. AN ATTEMPT -- AN ATTEMPT IS DIFFERENT FROM PREPARATION. THE LAW
17 DOES NOT PUNISH SOMEONE FOR MERELY ENTERTAINING A CRIMINAL INTENT.
18 IT'S NECESSARY THAT SOME ACT BE DONE IN PURSUIT OF THE CRIMINAL INTENT
19 IMMEDIATELY AND DIRECTLY TENDING TO THE COMMISSION OF THE CRIME. THE
20 ACT THAT IS DONE MUST BE SUCH AS WOULD CONSTITUTE PART AND PARCEL OF
21 THE CRIME ITSELF IF THE CRIME HAD BEEN FULLY PERPETRATED.

22 ATTEMPT REFERS TO ACTIONS DONE IN PURSUIT OF A CRIME THAT FALLS
23 SHORT OF THE ORIGINAL INTENT BECAUSE THE FULL COMMISSION OF THE
24 CRIMINAL WRONGDOING IS PREVENTED OR IS ABANDONED. OKAY?

25 FINALLY, ANOTHER WAY THAT A PERSON CAN BE GUILTY OF TRAFFICKING

1 IS BY KNOWINGLY POSSESSING OR BY KNOWINGLY ATTEMPTING TO POSSESS 100
2 POUNDS OR MORE OF MARIJUANA.

3 NOW POSSESSION CAN BE ACTUAL OR CONSTRUCTIVE.

4 ACTUAL POSSESSION OF A CONTROLLED SUBSTANCE EXISTS WHEN THE
5 PERSON HAS ACTUAL PHYSICAL CUSTODY OF THAT SUBSTANCE. CONSTRUCTIVE
6 POSSESSION OF A CONTROLLED SUBSTANCE EXISTS WHEN THE PERSON DOESN'T
7 HAVE ACTUAL PHYSICAL POSSESSION OF THE CONTROLLED SUBSTANCE, BUT
8 EXERCISES DOMINION AND CONTROL. DOMINION AND CONTROL OVER THE
9 CONTROLLED SUBSTANCE.

10 SO SOMEONE WHO HAS BOTH THE POWER AND THE INTENT TO CONTROL
11 THE DISPOSITION OR USE OF A CONTROLLED SUBSTANCE HAS POSSESSION OF IT
12 WITHIN THE MEANING OF THE LAW.

13 NOW WHEN I REFER TO EXERCISE OF DOMINION AND CONTROL, WHAT I
14 BASICALLY MEAN IS THAT A PERSON MAY BE DEEMED TO POSSESS A DRUG IF HE
15 HAS THE POWER OR AUTHORITY TO GUIDE, DIRECT, OVERSEE OR MANAGE THE
16 DRUG. BUT MERE PRESENCE OF A PERSON IN AN AREA WHERE A CONTROLLED
17 SUBSTANCE IS FOUND IS NOT ENOUGH, STANDING ALONE, TO ESTABLISH THAT A
18 PARTICULAR DEFENDANT HAD DOMINION AND CONTROL OVER THE DRUG. IF
19 POSSESSION IS BASED ON CONSTRUCTIVE POSSESSION, THE STATE HAS TO PROVE
20 BEYOND A REASONABLE DOUBT THAT THE PARTICULAR DEFENDANT IN QUESTION
21 EXERCISED DOMINION AND CONTROL OVER THE DRUG.

22 NOW WHETHER THE POSSESSION IS ACTUAL POSSESSION OR
23 CONSTRUCTIVE POSSESSION THROUGH DOMINION AND CONTROL. A PERSON
24 CANNOT BE DEEMED TO POSSESS A DRUG UNLESS THE STATE PROVES TO YOU
25 BEYOND A REASONABLE DOUBT THAT THAT PARTICULAR DEFENDANT KNEW

1 ABOUT THE PRESENCE OF THE DRUG. ACTUAL KNOWLEDGE, ACTUAL
2 KNOWLEDGE OF THE PRESENCE OF THE MARIJUANA BY THE PARTICULAR
3 DEFENDANT IN QUESTION IS ESSENTIAL TO CONVICT THAT DEFENDANT. THE
4 STATE HAS TO PROVE TO YOU THAT THE PARTICULAR DEFENDANT IN QUESTION
5 ACTUALLY KNEW ABOUT THE PRESENCE OF THE MARIJUANA.

6 I NEED TO TALK TO YOU ABOUT CRIMINAL INTENT IN A LITTLE MORE
7 DETAIL NOW AND EXPLAIN TO YOU THAT IN ORDER FOR A CRIME TO BE PROVEN,
8 THE STATE HAS TO PROVE TO YOU THAT THE DEFENDANT IN QUESTION HAD THE
9 NECESSARY CRIMINAL INTENT.

10 A DEFENDANT CANNOT BE CONVICTED OF A CRIMINAL INTENT UNLESS
11 THE STATE PROVES TO YOU BEYOND A REASONABLE DOUBT THAT THAT
12 DEFENDANT ACTED WITH A CRIMINAL INTENT, THE MENTAL STATE REQUIRED FOR
13 THE PARTICULAR OFFENSE.

14 WITH TRAFFICKING THE STATE HAS TO PROVE THAT THE DEFENDANT
15 KNOWINGLY -- THAT'S THE CRIMINAL INTENT -- KNOWINGLY ENGAGED IN THE
16 PARTIC -- PROHIBITED CONDUCT, THAT HE KNOWINGLY SOLD, DELIVERED,
17 PURCHASED OR BROUGHT INTO THIS STATE 100 POUNDS OR MORE OF MARIJUANA
18 OR THAT HE KNOWINGLY PROVIDED FINANCIAL ASSISTANCE TO SELL, DELIVER,
19 PURCHASE OR BRING 100 POUNDS OR MORE OF MARIJUANA INTO THIS STATE OR
20 THAT HE KNOWINGLY AIDED, ABETTED, ATTEMPTED OR CONSPIRED TO SELL,
21 DELIVER, PURCHASE OR BRING 100 POUNDS OR MORE OF MARIJUANA INTO THIS
22 STATE OR THAT HE KNOWINGLY ACTUALLY OR CONSTRUCTIVELY POSSESSED OR
23 THAT HE KNOWINGLY ATTEMPTED TO ACTUALLY OR CONSTRUCTIVELY POSSESS
24 100 POUNDS OR MORE OF MARIJUANA. TO DO AN ACT KNOWINGLY MEANS THAT
25 IT'S DONE WITH KNOWLEDGE THAT THE CONDUCT IS ILLEGAL. IT REQUIRES THAT

1 THE DEFENDANT BE AWARE OF THE ILLEGAL NATURE OF HIS CONDUCT, IT
2 REQUIRES THAT THE DEFENDANT BE AWARE THAT THE ILLEGAL NATURE OF HIS
3 CONDUCT IS PRACTICALLY CERTAIN TO FOLLOW FROM HIS CONDUCT WHATEVER
4 HIS DESIRE MAY BE AS TO THAT RESULT. AN ACT DONE KNOWINGLY IS NOT DONE
5 ACCIDENTALLY OR INADVERTENTLY. KNOWINGLY MEANS IT'S DONE WITH
6 KNOWLEDGE THAT THE CONDUCT IS ILLEGAL.

7 ALRIGHT. WE GOT ABOUT 6 MINUTES LEFT.

8 THE LAW RECOGNIZES THAT CERTAIN CRIMES CONTAIN WITHIN THEM
9 LESSER CRIMES. THESE WE CALL LESSER INCLUDED OFFENSES.

10 WITH TRAFFICKING THE OFFENSES ARE TIED TO THE WEIGHT OF THE
11 DRUGS INVOLVED AS I TOLD YOU EARLIER.

12 HERE THE DEFENDANTS ARE CHARGED WITH TRAFFICKING 100 POUNDS OR
13 MORE OF MARIJUANA. THERE IS A LESSER INCLUDED OFFENSE OF TRAFFICKING
14 WHERE THE WEIGHT OF THE MARIJUANA INVOLVED IS 10 POUNDS OR MORE BUT
15 LESS THAN 100 POUNDS.

16 CONCERNING THE CASE ALLEGED AGAINST THE DEFENDANT DELEON, IF
17 YOU FIND THAT MR. DELEON ENGAGED IN CONDUCT THAT CONSTITUTES
18 TRAFFICKING IN MARIJUANA, IF THE STATE HAS PROVEN THAT PART OF ITS CASE,
19 BUT YOU HAVE A REASONABLE DOUBT AS TO WHETHER HE KNOWINGLY WAS
20 INVOLVED IN 100 POUNDS OR MORE OF MARIJUANA, YOU MAY THEN CONSIDER
21 THE LESSER INCLUDED OFFENSE AND YOU MAY CONSIDER WHETHER THE STATE
22 HAS PROVEN HIM GUILTY OF THE LESSER INCLUDED OFFENSE OF 10 POUNDS OR
23 MORE BUT LESS THAN 100 POUNDS. IF THE STATE PROVES THAT MR. DELEON
24 KNOWINGLY ENGAGED IN TRAFFICKING MARIJUANA IN AN AMOUNT OF 10
25 POUNDS OR MORE BUT LESS THAN 100 POUNDS, YOU MAY FIND HIM GUILTY OF THE

1 LESSER. INCLUDED OFFENSE EVEN THOUGH IT'S NOT WRITTEN ON THE FACE OF
2 THE INDICTMENT BECAUSE THE GREATER INCLUDES THE LESSER. BUT YOU
3 CANNOT CONVICT A DEFENDANT OF ANY OFFENSE, GREATER OR LESSER, UNLESS
4 YOU'RE CONVINCED BEYOND A REASONABLE DOUBT THAT THE PARTICULAR
5 DEFENDANT IS GUILTY OF EVERY ESSENTIAL ELEMENT OF THAT OFFENSE AND THE
6 STATE HAS PROVEN HIM GUILTY.

7 ONE OF THE ISSUES IN THIS CASE IS THE IDENTIFICATION OF THE
8 PARTICULAR DEFENDANTS AS PERPETRATORS OF THE ALLEGED CRIMES.

9 THE STATE HAS THE BURDEN OF PROVING IDENTITY BEYOND A
10 REASONABLE DOUBT. YOU MUST BE SATISFIED BEYOND A REASONABLE DOUBT
11 OF THE ACCURACY OF THE IDENTIFICATION OF THE DEFENDANT BEFORE YOU MAY
12 CONVICT HIM.

13 IDENTIFICATION TESTIMONY IS AN EXPRESSION OF BELIEF OR IMPRESSION
14 BY A WITNESS. ITS VALUE DEPENDS UPON THE OPPORTUNITY THAT THE WITNESS
15 HAD TO OBSERVE THE OFFENDER AT THE TIME OF THE ALLEGED OFFENSE AND TO
16 MAKE A RELIABLE IDENTIFICATION LATER. IF THE STATE HAS FAILED TO PROVE
17 THAT A PARTICULAR DEFENDANT WAS PRESENT AT THE SCENE AND WAS THE
18 PERPETRATOR OF THE CRIME CHARGED, YOU MUST FIND THAT DEFENDANT NOT
19 GUILTY. IF THE CIRCUMSTANCES UNDER WHICH THE DEFENDANT IS PRESENTED
20 TO THE WITNESS FOR IDENTIFICATION ARE SUGGESTED, YOU SHOULD EVALUATE
21 THE EVIDENCE REGARDING IDENTIFICATION WITH GREAT SCRUTINY. SO IF A
22 PARTICULAR PERSON IS PRESENTED TO A WITNESS IS UNDER CERTAIN
23 CIRCUMSTANCES THAT IT SUGGESTS THAT THAT'S THE PERSON, YOU EVALUATE
24 THAT IDENTIFICATION TESTIMONY WITH GREAT SCRUTINY.

25 THE FINAL THING I HAVE TO TELL YOU, A DEFENDANT IS ENTITLED TO

1 EVERY REASONABLE DOUBT ARISING IN AN ENTIRE CASE AND IN ANY DEFENSES
2 THAT MIGHT BE ASSERTED. IF UPON ANY ISSUE OF FACT ESSENTIAL TO A
3 CONVICTION YOU HAVE A REASONABLE DOUBT AS TO HOW THAT ISSUE SHOULD
4 BE RESOLVED, YOU HAVE TO RESOLVE A DOUBT IN FAVOR OF THE DEFENDANT. IF
5 YOU HAVE A REASONABLE DOUBT AS TO WHETHER A DEFENDANT HAS BEEN
6 PROVEN GUILTY OF A GREATER CRIME CHARGED OR A LESSER INCLUDED
7 OFFENSE, YOU MUST RESOLVE THAT DOUBT IN FAVOR OF THE DEFENDANT, AND
8 FIND HIM GUILTY ONLY OF THE LESSER OFFENSE, BUT YOU CANNOT FIND HIM
9 GUILTY OF ANY OFFENSE, GREATER OR LESSER, UNLESS YOU'RE SATISFIED THAT
10 THE STATE HAS PROVEN THE DEFENDANT GUILTY OF THAT OFFENSE, ALL THE
11 ESSENTIAL ELEMENTS OF IT BEYOND A REASONABLE DOUBT.

12 IF UPON REVIEWING THE ENTIRE CASE YOU HAVE A REASONABLE DOUBT
13 AS TO WHETHER THE DEFENDANT HAS BEEN PROVEN GUILTY, HE IS ENTITLED TO
14 THAT DOUBT AND A VERDICT OF NOT GUILTY. ON THE OTHER HAND, IF UPON
15 REVIEWING AN ENTIRE CASE, YOU HAVE DETERMINED THAT THE STATE HAS
16 PROVEN EVERY ESSENTIAL ELEMENT OF ITS CASE AGAINST THAT DEFENDANT
17 BEYOND A REASONABLE DOUBT, IT'S EQUALLY YOUR DUTY TO FIND THAT
18 DEFENDANT GUILTY.

19 THAT'S THE LAW.

20 WHEN YOU GO BACK TO YOUR JURY ROOM TO DECIDE THESE CASES,
21 YOU'RE GOING TO HAVE WITH YOU THESE VERDICT FORMS, AND YOU'RE GOING
22 TO HAVE THE EXHIBITS.

23 NOW, FOLKS, I'M NOT GOING TO MAKE NOW -- UNLESS YOU WANT -- IF
24 YOU WANT TO SEE THESE THINGS AND HAVE THEM IN YOUR JURY ROOM, I'LL
25 SEND THEM BACK THERE WITH YOU. I'M NOT GONNA HAVE 'EM BRING THAT

1 FURNITURE BACK THERE UNLESS YOU ALL ASK THAT IT BE BROUGHT BACK THERE.
2 OKAY? IF YOU WANT IT, THAT'S FINE.

3 SECONDLY, WITH REGARD TO CASES WHERE THERE ARE ALLEGATIONS
4 THAT CONTROLLED SUBSTANCES ARE INVOLVED, WE'RE UNDER DIRECTIONS IN
5 ALL THOSE CASES THAT YOU ARE NOT TO OPEN THE SEALED CONTAINERS. OKAY?
6 I'M NOT GONNA SEND BACK ALL THOSE CONTAINERS. THERE'LL ONLY BE THE
7 ONE THAT'S BEEN MARKED WITH A STICKER. IF YOU WANNA SEE ALL OF 'EM, YOU
8 LET ME KNOW. I'LL PUT YOU IN A BIGGER ROOM AND YOU CAN SEE ALL OF 'EM.
9 BUT YOU'LL HAVE ALL THE OTHER EXHIBITS.

10 NOW THESE VERDICT FORMS. ON THESE FORMS YOU ARE GOING TO TELL
11 US YOUR DECISION ON EACH CASE. PLEASE, DO NOT THINK I AM TRYING TO
12 SUGGEST ANYTHING TO YOU BY THE ORDER IN WHICH I STATE THESE POSSIBLE
13 FORMS OF VERDICT. I HAVE TO SAY ONE THING FIRST AND ONE THING SECOND
14 AND SO ON. THE TRUTH IS THAT I DID THESE FORMS AT A COMPUTER SCHOOL IN
15 NEVADA IN 1993, AND I JUST CHANGE NAMES AND CASE NUMBERS NOW.

16 I'M GOING TO TAKE THESE JUST IN THE ORDER THAT THE INDICTMENTS
17 WERE NUMBERED. IF YOU'LL LOOK AT THE TOP OF EACH VERDICT FORM WHAT
18 YOU WILL SEE IS A CAPTION, AND EACH ONE WILL HAVE THE NAME OF THE
19 DEFENDANT LISTED.

20 THIS ONE IS IN INDICTMENT 137 AND IT'S THE STATE OF SOUTH CAROLINA -
21 VS- ALFREDO AVILA-AROJONA. IT READS AS TO THE CHARGE OF TRAFFICKING IN
22 MARIJUANA 100 POUNDS OR MORE BUT LESS THAN 2000 POUNDS. YOU HAVE TWO
23 POSSIBLE FORMS OF VERDICT AS TO MR. AVILA-AROJONA. YOU MAY FIND HIM
24 NOT GUILTY, YOU MAY FIND HIM GUILTY OF TRAFFICKING IN MARIJUANA 100
25 POUNDS OR MORE BUT LESS THAN 2000 POUNDS.

1 INDICTMENT 138 RAPHAEL PEREZ HERNANDEZ YOU HAVE TWO POSSIBLE
2 FORMS OF VERDICT. YOU MAY FIND HIM NOT GUILTY; YOU MAY FIND HIM GUILTY
3 OF TRAFFICKING MARIJUANA 100 POUNDS OR MORE BUT LESS THAN 2000 POUNDS.

4 INDICTMENT 139 HONORIO HERNANDEZ GUERRERO. TWO POSSIBLE FORMS
5 OF VERDICT. YOU MAY FIND HIM NOT GUILTY; YOU MAY FIND HIM GUILTY OF
6 TRAFFICKING IN MARIJUANA 100 POUNDS OR MORE BUT LESS THAN 2000 POUNDS.

7 INDICTMENT 140 STATE-VS- FREDY DELEON TAMAYO. AND, FOLKS, I'VE --
8 WE'VE REFERRED TO HIM CONSISTENTLY AS DELEON. IF I NEED TO CHANGE THAT
9 I'LL DO IT.

10 MR. HAWKE: I THINK THAT'S FINE, JUDGE. I THINK I TALKED TO 'EM
11 ABOUT WHY HE HAD THAT OTHER NAME.

12 THE COURT: I DO THINK THAT IT WAS EXPLAINED TO YOU AT THE
13 BEGINNING IN THE OPENING STATEMENTS ABOUT THE TYPICAL USAGE BY
14 HISPANIC FOLKS AND HOW THEY DO THE NAMES AND HYPHENATE NAMES AND
15 SUCH AS THAT. IN ANY EVENT, ON THIS ONE YOU HAVE 3 POSSIBLE FORMS OF
16 VERDICT. YOU MAY FIND MR. DELEON NOT GUILTY; YOU MAY FIND MR. DELEON
17 GUILTY OF THE LESSER INCLUDED OFFENSE OF TRAFFICKING IN MARIJUANA 10
18 POUNDS OR MORE BUT LESS THAN 100 POUNDS. OR YOU MAY FIND MR. DELEON
19 GUILTY AS CHARGED TRAFFICKING IN MARIJUANA 100 POUNDS OR MORE BUT
20 LESS THAN 2000 POUNDS.

21 MR. FOREMAN, PART OF YOUR JOB IS GOING TO BE TO RECORD THE
22 DECISION OF THE JURY FOR ME. I THINK YOU'LL FIND THESE SELF EXPLANATORY.
23 YOU JUST CHECK THE RESPONSES CHOSEN BY THE JURY ON EACH VERDICT FORM.
24 SIGN YOUR NAME ON THE SIGNATURE LINE, PLEASE, ON EACH ONE.

25 FOLKS, I'VE TOLD YOU PROBABLY NOW DOZENS OF TIMES NOT TO DISCUSS

1 THE CASE UNTIL I TELL YOU TO.

2 WELL, BELIEVE IT OR NOT, IT'S STILL NOT TIME. THE LAW SAYS THAT I
3 HAVE TO LET THE ATTORNEYS TALK WITH ME ABOUT WHAT I JUST TOLD YOU
4 BEFORE YOU START DECIDING THE CASES. AND THAT'S JUST COMMON SENSE. WE
5 DON'T WANT YOU DECIDING THE CASES WITH THE WRONG LAW.

6 SO IF I TOLD YOU SOMETHING WRONG, THEY HAVE TO BE GIVEN A CHANCE
7 TO POINT IT OUT TO ME BEFORE YOU START DELIBERATING THE CASE. THE TRUTH
8 OF THE MATTER IS THAT I PRACTICE PRINTING THESE THINGS OUT. THEY HAD IT
9 OVER LUNCH BREAK. WE TALKED ABOUT IT BEFORE YOU CAME BACK. WE CAME
10 BACK BEFORE YOU DID. WE'VE ALREADY BEEN OVER THIS. IT'LL PROBABLY
11 TAKE 10 MINUTES OR SO TO GO THROUGH EVERYTHING. BUT HERE'S WHAT YOU
12 NEED TO LOOK FOR: IF I BELIEVE I NEED TO BRING SOMETHING OUT AND EXPLAIN
13 IT OR CORRECT IT, I'LL DO THAT, BUT IF I'M SATISFIED WITH WHAT I TOLD YOU, I
14 WILL HAVE THE BAILIFF BRING THE EXHIBITS AND THE VERDICT FORMS INTO THE
15 JURY ROOM. SHE'LL GIVE THOSE TO THE FOREMAN. SHE'LL BRING THE
16 ALTERNATE OUT. WHEN THE ALTERNATE IS OUT AND THE BAILIFF IS OUT AND
17 THESE EXHIBITS ARE IN THERE WITH YOU, THAT'S THE SIGNAL. YOU DON'T HAVE
18 TO WAIT ANYMORE. YOU CAN START TALKING ABOUT THE CASE. BUT DON'T
19 TALK ABOUT THE CASE UNTIL THOSE THINGS EXIST. OKAY?

20 NOW, FOLKS, I'LL SEND BACK AND CHECK ON YOU FROM TIME TO TIME. I
21 REALLY DO APPRECIATE YOUR ATTENTION. I WON'T BELABOR THAT ANYMORE
22 OTHER THAN TO SAY THANK YOU SO MUCH. YOU MAY RETIRE TO YOUR JURY
23 ROOM. YOU MAY TAKE YOUR NOTES WITH YOU NOW. REMEMBER YOU DON'T
24 PHYSICALLY SHOW 'EM TO ANOTHER JUROR. (THE JURY RETIRED TO THE JURY
25 ROOM AT 6:15 P.M.) (THE FOLLOWING OCCURRED OUTSIDE THE PRESENCE OF THE

1 JURY.) ALRIGHT. WE NEED TO STATE FOR THE RECORD EXCEPTIONS, ADDITIONS,
2 OBJECTIONS TO THE CHARGE FROM THE STATE.

3 MR. MAYE: NONE FROM THE STATE, YOUR HONOR.

4 THE COURT: I DIDN'T SAY GRAMS AT ANY TIME I SHOULD'VE SAID
5 POUNDS, DID I? MOST OF THE TIME ON DRUG CASES I'M TALKING IN GRAMS. I
6 WAS AFRAID -- I THOUGHT ONE TIME MAYBE I HAD MESSED UP. ALRIGHT. MR.
7 MILLER?

8 MR. MILLER: YOUR HONOR, ON BEHALF OF THE DEFENDANT HONORIO
9 GUERRERO WE WOULD REQUEST THE ALTERNATIVE CIRCUMSTANTIAL EVIDENCE
10 CHARGE PROVIDED IN STATE V. EDWARDS FOUND AT 298 SOUTH CAROLINA 272,
11 YOUR HONOR. A 1989 CASE. IT IS OUR POSITION THAT THAT CASE OR THE CHARGE
12 CONTAINED THEREIN OR DERIVED THEREFROM IS MUCH MORE APPLICABLE TO
13 THE FACTS OF THE CASE -- THE FACTS THAT WERE ENTERED IN EVIDENCE ON THIS
14 CASE, AND WE WOULD RESPECTFULLY REQUEST THAT THE COURT GIVE THAT
15 ALTERNATIVE CIRCUMSTANTIAL EVIDENCE CHARGE TO THE MORE RECENT
16 CHARGE THAT HAS BEEN ADOPTED BY THE SUPREME COURT.

17 THE COURT: ALRIGHT.

18 MR. MILLER: I BELIEVE THE COURT DOES HAVE A COPY OF THE PROPOSED
19 CHARGE.

20 THE COURT: ALRIGHT. I DO, AND WE'LL MARK IT AS A COURT'S EXHIBIT.

21 MR. MILLER: THANK YOU, YOUR HONOR.

22 MR. SUSSMAN: ON BEHALF OF MR. HERNANDEZ AND AVILA-AROJONA, WE
23 WOULD ALSO JOIN THAT REQUEST AND ASK THAT THAT WRITTEN CHARGE BE
24 MARKED AS A COURT EXHIBIT IN OUR CASE AS WELL.

25 MR. HAWKE: ON BEHALF OF DEFENDANT DELEON, YOUR HONOR, WE

1 WOULD JOIN IN THE OBJECTION STATED BY THE OTHER TO CO-DEFENDANTS'
2 COUNSEL.

3 THE COURT: YOU HAD SOME OTHER WRITTEN REQUESTS TO CHARGE AS
4 WELL. YOU WANT TO PRESERVE THOSE?

5 MR. PUETZ: YES, YOUR HONOR.

6 THE COURT: MR. MILLER, I SAID I HAD IT.

7 MR. MILLER: I GOT ANOTHER COPY, YOUR HONOR.

8 THE COURT: GET HER TO MARK IT. HERE, SMOKEY, THIS IS EVERYTHING
9 THEY GAVE ME. WHY DON'T YOU JUST MARK IT ALL. SOME OF IT IS DUPLICATE
10 BUT---JUST MARK IT ALL AND THEN IF IT GOES UP ON APPEAL.

11 MR. MILLER: THANK YOU, YOUR HONOR.

12 THE COURT: THE MOTIONS ARE RESPECTFULLY DENIED.

13 MR. HAWKE: THANK YOU, YOUR HONOR.

14 THE COURT: WAIT JUST A SECOND. (COURT'S EXHIBIT #3 RECEIVED IN
15 EVIDENCE.) NOW I WANT TO MAKE SURE ON THIS VERDICT FORM WITH MR.
16 DELEON THAT IT'S AGREEABLE WITH DEFENSE COUNSEL.

17 MR. HAWKE: OKAY.

18 THE COURT: THE OTHER ONES AS WELL. I MEAN I'M NOT LEAVING YOU
19 OUT, MR. MILLER, AND, MR. SUSSMAN. BUT YOURS JUST HAD THE TWO OPTIONS.
20 THE WAY I'VE ALWAYS DONE MY VERDICT FORMS IS WHEN THERE'S A LESSER
21 INCLUDED OFFENSE, I START WITH NOT GUILTY AND I WORK THROUGH THE
22 LESSERS TO THE GREATER. SO THE FIRST OPTION THE JURY SEES ON THE PIECE OF
23 PAPER IS NOT GUILTY; THE SECOND IS THE LESSER INCLUDED UP TO THE CRIME
24 CHARGED. I THINK THERE IS SOME U.S. SUPREME COURT PRECEDENT THAT
25 INDICATES THAT I HAVE -- IF I'M REQUIRED TO, I HAVE TO PUT AN OPTION OF NOT

1 GUILTY FOR EACH OF THE OFFENSES. THE LESSER AND THE GREATER.

2 NOW IN 14 YEARS NEARLY NO ONE HAS EVER WANTED ME TO DO THAT,
3 BUT THERE'S A FIRST TIME FOR EVERYTHING. I THINK THIS IS CLEARER TO A JURY
4 THAN THE OTHER WAY. YOU ALL PRACTICE IN GEORGIA SO YOU MAY BE
5 FAMILIAR WITH A DIFFERENT SYSTEM. BUT LOOK AT IT. IF YOU HAVE A PROBLEM
6 WITH IT, I'M AMENABLE TO WORKING WITH YOU ON IT. BUT ALL IT DOES IS JUST
7 GIVES THEM THE OPTIONS OF NOT GUILTY, GUILTY OF THE LESSER INCLUDED,
8 GUILTY OF THE CRIME CHARGED. Y'ALL NEED TO LOOK AT THIS.

9 MR. HAWKE: ON BEHALF OF FREDY DELEON WE DON'T HAVE ANY
10 PROBLEMS OR OBJECTIONS TO THE FORM.

11 THE COURT: ALRIGHT. NO DEFENDANTS OBJECT TO ANY OF THE VERDICT
12 FORMS. STATE?

13 MR. MAYE: NO OBJECTION.

14 THE COURT: NO, NO, THIS IS GOING TO THE JURY.

15 MR. HAWKE: OH, THAT'S THE ONE THAT'S GOIN' TO THE JURY.

16 THE COURT: YEAH. THOSE FOUR WILL GO TO THE JURY. THAT'S THE ONLY
17 COPY I HAVE. Y'ALL CHECK THE EXHIBITS. ALRIGHT. TAKE THOSE BACK, PLEASE.
18 BRING THE ALTERNATE OUT. ALRIGHT. THE STATE'S REVIEWED THE EXHIBITS
19 AND THEY'RE SATISFACTORY?

20 MR. MAYE: I'M HAPPY.

21 THE COURT: DEFENSE?

22 MR. MILLER: YES, SIR.

23 MR. SUSSMAN: YES, YOUR HONOR.

24 MR. HAWKE: YES, YOUR HONOR.

25 THE COURT: LET THE RECORD REFLECT THAT THE ALTERNATE IS

1 DISCHARGED. ALRIGHT. WE'RE GONNA BE AT EASE PENDING A VERDICT. ALL
2 THE DEFENDANTS ARE IN CUSTODY. SO IF Y'ALL NEED TO FEED 'EM, YOU NEED TO
3 FEED 'EM. ALRIGHT. THANK YOU.

4 (THE FOLLOWING OCCURRED SOMETIME LATER.)

5 SINCE WE BROKE THE JURY HAS SENT TWO NOTES.

6 THE FIRST NOTE, BASICALLY, ASKED IF THE REPORT OF AGENT MIZE WAS
7 ENTERED INTO EVIDENCE AND IF SO, IF THE JURY COULD HAVE A COPY OF IT. THE
8 LAWYERS ALL AGREED TO JUST WRITE A RESPONSE THAT THE REPORT WAS NOT
9 ENTERED INTO EVIDENCE, SO THE JURY MAY NOT HAVE A COPY OF IT. THAT WAS
10 MARKED AS A COURT'S EXHIBIT AND SENT BACK.

11 WE NOW HAVE A NOTE FROM THE JURY THAT READS MAY WE SEE A COPY
12 OF THE LAW THAT YOU READ TO US. I HAVE ALWAYS INDICATED WHEN JURIES
13 ASK FOR THIS THAT I AM PERFECTLY WILLING TO LET THE JURY HAVE A COPY OF
14 THE CHARGE IF ALL THE LAWYERS AGREE. I DO NOT READ THE CHARGE
15 VERBATIM, AND I DO KNOW THERE'S ONE MISTAKE IN THERE WHEN I CORRECTED
16 WHEN I WENT THROUGH IT. SO I'D PROBABLY HAVE TO GO AND CORRECT THAT
17 ONE MISTAKE ANYWAY. BUT UNLESS EVERY LAWYER AGREES, I DO NOT SEND
18 THE INSTRUCTIONS, WRITTEN INSTRUCTIONS BACK. WHAT I DO IS I BRING THE
19 JURY IN AND I TELL THE JURY THAT THEY MAY NOT HAVE A WRITTEN COPY OF THE
20 LAW. IF THEY REQUEST TO BE INSTRUCTED ON THE ENTIRE CHARGE AGAIN OR
21 ANY PORTION OF IT, THAT THEY HAVE A RIGHT TO REQUEST THAT.

22 NOW WHAT DO YOU ALL WANT TO TELL ME?

23 MR. MAYE: YOUR HONOR, I'D SAY BRING 'EM OUT, IF THEY WANT TO HEAR
24 THE CHARGE OR ANY PORTION THEREOF, GIVE IT TO 'EM AGAIN. BUT I WOULD
25 OBJECT TO SENDING THE CHARGE BACK IN.

1 THE COURT: WELL, I DON'T ASK 'EM IN THE COURTROOM IF THEY WANNA
2 HEAR ANYTHING ELSE. I TELL THEM IF THEY WANT TO HEAR ANYTHING, THEY
3 HAVE TO SEND ME ANOTHER NOTE. ALRIGHT.

4 MR. SUSSMAN: WHY DON'T WE DO THAT. YOU WANNA JUST WRITE THAT
5 OUT ON A RESPONSE TO THE NOTE. YOU WANNA BRING 'EM OUT, SEND 'EM BACK
6 AND SEE IF THEY WANNA COME BACK OUT?

7 THE COURT: I WANNA BRING 'EM IN HERE.

8 MR. HAWKE: WE DON'T HAVE ANY PROBLEM IF YOU GIVE 'EM THE
9 WRITTEN, COPY OF THE WRITTEN CHARGE.

10 MR. SUSSMAN: NEITHER DO WE, YOUR HONOR.

11 MR. MILLER: WE DON'T EITHER, YOUR HONOR, BUT I UNDERSTAND THE
12 RULES ON THAT.

13 THE COURT: WELL, I THINK MR. MAYE HAD INDICATED BEFORE WE WENT
14 ON THE RECORD THAT HE OBJECTED AND I ASSUME THAT'S CORRECT. ALRIGHT.
15 BRING THE JURY, PLEASE. (THE FOLLOWING OCCURRED IN THE PRESENCE OF THE
16 JURY.) (THE JURY RETURNED TO THE OPEN COURTROOM AT 8 P.M.) MR. FOREMAN,
17 I RECEIVED A NOTE THAT READS MAY WE SEE A COPY OF THE LAW THAT YOU
18 READ TO US. IS THAT THE JURY'S QUESTION?

19 THE FOREMAN: YES, SIR.

20 THE COURT: LADIES AND GENTLEMEN, I CANNOT GIVE YOU A WRITTEN
21 COPY OF THE CHARGE. IF YOU WANT ME TO READ THE ENTIRE CHARGE TO YOU
22 AGAIN OR ANY PORTION OF IT YOU CAN SEND ME -- OR PORTIONS OF IT, YOU CAN
23 SEND ME A NOTE AND I'LL TRY TO IDENTIFY THE PORTIONS, IF IT'S A PORTION
24 THAT YOU'RE ASKING FOR, OR I'LL GO THROUGH THE WHOLE THING AGAIN. BUT I
25 CAN'T GIVE YOU THE WRITTEN INSTRUCTIONS. I'M SORRY. YOUR FOOD IS HERE.

1 THEY'LL GIVE YOU YOUR FOOD WHEN YOU GET BACK. AND IF YOU WANT TO BE
2 RE-INSTRUCTED ON ANYTHING, JUST SEND ME A NOTE, AND I'LL BE HAPPY TO TRY
3 TO OBLIGE YOU. THANK YOU. YOU ALL NEED TO GO BACK THERE. (THE JURY
4 RETIRED TO THE JURY ROOM AT 8:01 P.M.) STATE FOR THE RECORD ANY
5 EXCEPTIONS, ADDITIONS, OBJECTIONS TO THE INSTRUCTIONS FROM THE STATE?

6 MR. MAYE: NONE FROM THE STATE, YOUR HONOR.

7 THE COURT: FROM DELEON?

8 MR. HAWKE: NO, YOUR HONOR.

9 THE COURT: MR. SUSSMAN?

10 MR. SUSSMAN: NO, YOUR HONOR.

11 THE COURT: MR. MILLER?

12 MR. MILLER: NO, YOUR HONOR.

13 THE COURT: WE'RE AT EASE PENDING A VERDICT. (THE FOLLOWING
14 OCCURRED SOMETIME LATER.) THE JURY HAS SENT OUT 2 QUESTIONS, AND I'M
15 VERY GLAD THEY DID BECAUSE I JUST FLAT MESSED SOMETHING UP. THE SECOND
16 QUESTION ASKS WHAT HAPPENS IF THERE'S NOT AGREEMENT, DOES MAJORITY
17 RULE. I DIDN'T TELL THEM ABOUT A UNANIMOUS VERDICT I DON'T THINK.

18 MR. MILLER: YOUR HONOR, I THOUGHT THAT THE LAST THING YOU SAID
19 WAS YOUR VERDICT MUST BE UNANIMOUS BUT---

20 THE COURT: WELL, IT'S THE LAST THING I WROTE. WHETHER I SAID IT TO
21 THEM OR NOT, I DON'T KNOW. BUT I DON'T -- I DON'T THINK I DID.

22 MR. PUETZ: I DON'T THINK SO EITHER.

23 THE COURT: I THINK I JUMPED OVER THE PART I USUALLY DO AND WENT
24 INTO THE SPILL ABOUT -- ANYWAY, THANKFULLY, THEY ASKED THE QUESTION. SO
25 I CAN CURE THAT. THE FIRST THING COULD YOU PLEASE RE-READ THE LAW FOR

1 US. SO I ASSUME THEY WANT THE WHOLE 9 YARDS. BRING THE JURY OUT. (THE
2 JURY RETURNED TO THE OPEN COURTROOM AT 8:30 P.M.) MR. FOREMAN, I
3 RECEIVED A QUESTION IN TWO PARTS FROM THE JURY. I'M GONNA COVER THE
4 SECOND PART FIRST. WHAT HAPPENS IF THERE IS NOT AGREEMENT; DOES
5 MAJORITY RULE. I'M REALLY GLAD YOU ASKED THAT QUESTION BECAUSE I FLAT
6 MESSED UP. I'M SUPPOSED TO TELL YOU THAT, AND IT'S THE VERY LAST THING
7 THAT'S WRITTEN ON THE CHARGE AND I JUST DIDN'T READ IT TO YOU. YOUR
8 VERDICTS MUST BE UNANIMOUS. ALL 12 OF YOU MUST AGREE. YOU CANNOT DO
9 ANYTHING TO CHANGE THE REQUIREMENT OF THE UNANIMOUS VERDICT. SO I'M
10 REALLY THANKFUL THAT YOU ASKED THAT QUESTION.

11 THE OTHER QUESTION IS COULD YOU, PLEASE, REREAD THE LAW FOR US. I
12 ASSUME BY THAT YOU MEAN THE ENTIRE CHARGE. SO THAT'S WHAT I'M GONNA
13 DO.

14 MEMBERS OF THE JURY, ALL THE EVIDENCE HAS BEEN PRESENTED;
15 YOU'VE HEARD THE ARGUMENTS OF COUNSEL. IT'S NOW TIME FOR ME TO
16 INSTRUCT YOU ON THE LAW. PLEASE, CONTINUE TO PAY CLOSE ATTENTION
17 DURING THIS NEXT STAGE OF THE PROCEEDING.

18 FIRST, YOU MUST UNDERSTAND THESE BASIC GROUND RULES. YOU THE
19 JURY MEMBERS ARE THE SOLE JUDGES OF THE FACTS. YOU DECIDE ALL THE
20 ISSUES OF FACT. YOU ALONE DETERMINE THE TRUTH OF THE EVIDENCE, ITS
21 EFFECT, ITS VALUE AND ITS WEIGHT. YOU ALONE JUDGE THE CREDIBILITY OF
22 WITNESSES. IN OTHER WORDS, WHETHER OR NOT A WITNESS'S TESTIMONY IS
23 BELIEVABLE. IN EVALUATING THE TESTIMONY OF THE WITNESSES INCLUDING
24 ANY EXPERT WITNESSES, YOU MAY BELIEVE ALL THAT A WITNESS SAID OR NONE
25 OF IT. YOU MAY BELIEVE PART OF WHAT A WITNESS SAID AND NOT BELIEVE THE

1 BALANCE. YOU MAY BELIEVE ONE WITNESS AGAINST MANY OR MANY AGAINST
2 ONE. YOU MAY CONSIDER ANY INTEREST, BIAS OR PREJUDICE THAT YOU FEEL
3 THAT A WITNESS HAS IN THE CASE. YOU MAY CONSIDER THE Demeanor AND THE
4 APPEARANCE OF THE WITNESS AND THE OPPORTUNITY FOR KNOWLEDGE THAT
5 THE WITNESS HAD. YOU MAY CONSIDER WHETHER A WITNESS IS BEING
6 CONSISTENT OR INCONSISTENT. YOU MAY CONSIDER THE LACK OF EVIDENCE
7 PRESENTED BY THE STATE. YOU'RE NOT TO EXERCISE THESE CONSIDERATIONS
8 ARBITRARILY HOWEVER. WHAT I WANT YOU TO DO IS TO USE YOUR COMMON
9 SENSE. USE YOUR SENSE OF LOGIC AND REASON AND YOUR GOOD JUDGMENT.

10 THE RULES OF EVIDENCE ALLOW OPINION TESTIMONY TO BE GIVEN UNDER
11 CERTAIN CIRCUMSTANCES. ONE WAY WHERE THAT'S ALLOWED IS WHERE A
12 WITNESS BY VIRTUE OF EDUCATION, TRAINING AND EXPERIENCE IS PERMITTED TO
13 TESTIFY AS AN EXPERT WITNESS.

14 NOW THE MERE FACT THAT SOMEONE IS ALLOWED TO GIVE OPINIONS
15 UNDER OUR RULES AS AN EXPERT WITNESS DOES NOT REQUIRE YOU TO ACCEPT
16 THOSE OPINIONS IF YOU CHOOSE NOT TO. YOU MAY ACCEPT OR REJECT THE
17 OPINIONS OF AN EXPERT WITNESS, THE TESTIMONY OF AN EXPERT WITNESS, JUST
18 AS YOU MAY ANY OTHER WITNESS IN WHOLE OR IN PART.

19 IT'S NOT PROPER FOR ME TO GIVE YOU A CHARGE ON THE FACTS OF THE
20 CASE. I CAN'T DISCUSS THE FACTS WITH YOU. I CAN'T CONVEY TO YOU AN
21 IMPRESSION AS TO WHAT, IF ANY, PERSONAL OPINIONS I MAY DEVELOP ABOUT
22 THE FACTS OF A CASE AS IT GOES ALONG. IF DURING ANY STAGE OF THE TRIAL
23 YOU DEVELOP AN IMPRESSION THAT I'VE GOT A PERSONAL OPINION ABOUT THE
24 FACTS, YOU MUST REMOVE THAT TOTALLY FROM YOUR MIND. YOU'RE THE SOLE
25 JUDGES OF THE FACTS.

1 I AM THE JUDGE OF THE LAW THAT APPLIES TO THE CASE. UNDER YOUR
2 OATH YOU MUST ACCEPT THE LAW AS I GIVE IT TO YOU, AND THAT MEANS YOU
3 HAVE TO ABANDON ANY CONFLICTING IDEAS YOU MAY HAVE AS TO WHAT THE
4 LAW IS OR WHAT IT SHOULD BE. I GIVE YOU THE LAW; YOU APPLY IT TO THE
5 FACTS YOU DETERMINE THEM TO BE. IN THAT WAY YOU REACH YOUR VERDICTS.

6 IT'S ALSO MY JOB TO DECIDE WHAT EVIDENCE IS ADMISSIBLE. IF I'VE
7 RULED SOMETHING INADMISSIBLE OR TOLD YOU TO DISREGARD SOMETHING,
8 DON'T CONSIDER THOSE THINGS IN ARRIVING AT YOUR VERDICTS. BASE YOUR
9 VERDICTS ON THE COMPETENT EVIDENCE BEFORE YOU. CONSIDER THE
10 TESTIMONY OF THE WITNESSES AND THE EXHIBITS SUBMITTED IN THE TRIAL.

11 I EXPLAINED TO YOU EARLIER THAT THERE ARE 2 TYPES OF EVIDENCE
12 GENERALLY PRESENTED DURING A TRIAL: DIRECT EVIDENCE AND
13 CIRCUMSTANTIAL EVIDENCE.

14 DIRECT EVIDENCE IS EVIDENCE OF DIRECT PERCEPTION INCLUDING THE
15 TESTIMONY OF A PERSON WHO ASSERTS OR CLAIMS TO HAVE ACTUAL
16 KNOWLEDGE OF A FACT SUCH AS AN EYEWITNESS.

17 CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN. IT'S PROOF OF A
18 CHAIN OF FACTS AND CIRCUMSTANCES THAT INDICATE THE EXISTENCE OF A
19 FACT

20 THE LAW MAKES ABSOLUTELY NO DISTINCTION BETWEEN THE WEIGHT OR
21 THE VALUE TO BE GIVEN TO EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE, NOR
22 IS A GREATER DEGREE OF CERTAINTY REQUIRED OF CIRCUMSTANTIAL EVIDENCE
23 THAN OF DIRECT EVIDENCE. YOU NEED TO WEIGH ALL THE EVIDENCE IN THE
24 CASE. AFTER WEIGHING ALL THE EVIDENCE, IF YOU'RE NOT CONVINCED OF THE
25 GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT, YOU MUST FIND THAT

1 DEFENDANT NOT GUILTY.

2 EACH DEFENDANT IN THESE CASES IS PRESUMED TO BE INNOCENT. THIS IS
3 NO MERE LEGAL THEORY. IT IS A FUNDAMENTAL AND SUBSTANTIAL RIGHT TO
4 WHICH EVERYONE IS ENTITLED. IT'S BEEN DESCRIBED AS BEING LIKE A ROBE OF
5 RIGHTEOUSNESS THAT'S PLACED AROUND AN ACCUSED. IT REMAINS WITH HIM
6 THROUGH EVERY STAGE OF THE TRIAL. IT CONTINUES TO EXIST AFTER YOU GO
7 BACK TO YOUR JURY ROOM TO DELIBERATE. SO THAT HE IS PRESUMED TO BE
8 INNOCENT UNLESS AND UNTIL YOU THE JURY DETERMINE THAT THE STATE HAS
9 PROVEN HIM GUILTY BEYOND A REASONABLE DOUBT.

10 I REMIND YOU, LADIES AND GENTLEMEN, THAT THE FACT THAT A
11 DEFENDANT CHOOSES NOT TO TESTIFY IN A TRIAL IS NOT A FACTOR TO BE
12 CONSIDERED BY YOU IN ANY WAY IN YOUR DELIBERATIONS, IN YOUR
13 CONSIDERATION ON THE QUESTION OF WHETHER A DEFENDANT IS GUILTY OR NOT
14 GUILTY.

15 IT MUST NOT BE CONSIDERED BY YOU IN ANY MANNER WHATSOEVER
16 AGAINST THE DEFENDANT. AN ACCUSED HAS A CONSTITUTIONAL RIGHT TO
17 REMAIN SILENT, AND THE ASSERTION OF THAT RIGHT CANNOT AND MUST NOT BE
18 CONSIDERED BY YOU IN YOUR DELIBERATIONS. UNDER THE OATH YOU HAVE
19 TAKEN YOU ARE TO REACH NO INFERENCE. YOU ARE TO DRAW NO CONCLUSION
20 WHATSOEVER FROM THE FACT THAT A DEFENDANT CHOOSES NOT TO TESTIFY.
21 HIS DECISION NOT TO TESTIFY SHOULD NOT BE DISCUSSED BY YOU IN THE JURY
22 ROOM. IT SHOULD NOT ENTER YOUR MIND IN MAKING YOUR DECISIONS. THE
23 BURDEN OF PROOF IS ENTIRELY UPON THE STATE TO PROVE THE GUILT OF THE
24 DEFENDANT BEYOND A REASONABLE DOUBT. AND THE STATE HAS TO PROVE
25 EVERY ESSENTIAL ELEMENT OF AN OFFENSE CHARGED BEYOND A REASONABLE

1 DOUBT.

2 SO A DEFENDANT IS NOT REQUIRED TO PROVE HIS INNOCENCE. HE'S NOT
3 REQUIRED TO PROVE ANYTHING AT ALL. THE BURDEN'S ON THE STATE. THE
4 BURDEN IS TO PROVE THE GUILT OF THE DEFENDANT BEYOND A REASONABLE
5 DOUBT, AND IT'S REQUIRED THAT EVERY ESSENTIAL ELEMENT OF A CHARGED TO
6 BE PROVEN BY THE STATE BEYOND A REASONABLE DOUBT.

7 THAT DOESN'T MEAN THAT THE STATE HAS TO PROVE THE GUILT OF A
8 DEFENDANT BEYOND ALL DOUBT OR BEYOND EVERY DOUBT. THE APPROPRIATE
9 STANDARD IS PROOF BEYOND A REASONABLE DOUBT.

10 I ALLUDED EARLIER TO THE FACT THAT SOME OF YOU MAY HAVE SERVED
11 AS JURORS IN CIVIL COURT, AND IF YOU HAVE, YOU UNDERSTAND THAT THE
12 BURDEN OF PROOF IN CIVIL COURT IS TO ESTABLISH THAT SOMETHING IS
13 PROBABLE, IS MORE LIKELY THAN NOT, AND WE CALL THAT THE GREATER
14 WEIGHT OR THE PREPONDERANCE OF THE EVIDENCE. BUT IN CRIMINAL COURT --
15 THAT'S WHAT THIS IS, CRIMINAL COURT -- THE STANDARD IS MUCH HIGHER, AND
16 THE BURDEN OF PROOF IS MUCH STRONGER THAN WHAT'S REQUIRED IN CIVIL
17 COURT. THE BURDEN OF PROOF IN A CRIMINAL CASE IS PROOF BEYOND A
18 REASONABLE DOUBT.

19 PROOF BEYOND A REASONABLE DOUBT IS PROOF THAT LEAVES YOU
20 FIRMLY CONVINCED OF THE DEFENDANT'S GUILT. THERE ARE FEW THINGS THAT
21 WE KNOW WITH ABSOLUTE CERTAINTY. AND IN CRIMINAL CASES THE LAW DOES
22 NOT REQUIRE PROOF THAT OVERCOMES EVERY POSSIBLE DOUBT. IF BASED ON
23 YOUR CONSIDERATION OF THE EVIDENCE YOU ARE FIRMLY CONVINCED THAT A
24 DEFENDANT IS GUILTY OF THE CRIME CHARGED AGAINST HIM, THEN YOU ARE TO
25 FIND HIM GUILTY OF THAT CRIME.

1 IF ON THE OTHER HAND, YOU THINK THERE IS A REAL POSSIBILITY THAT HE
2 IS NOT GUILTY, YOU MUST GIVE HIM THE BENEFIT OF THE DOUBT AND FIND HIM
3 NOT GUILTY. THERE IS NO OBLIGATION ON THE PART OF THE DEFENDANT TO
4 RAISE ANY DOUBT OR ANY OTHER POSSIBILITY. HE'S PRESUMED INNOCENT. THE
5 DEFENDANTS ARE PRESUMED INNOCENT. AND THE STATE HAS THE ENTIRE
6 BURDEN OF PROOF, AND THE STATE HAS TO PROVE TO YOU THAT A DEFENDANT IS
7 GUILTY TO THE EXCLUSION OF ANY OTHER REAL POSSIBILITY.

8 A JURY MAY CONSIDER EVIDENCE OF A DEFENDANT'S GENERAL GOOD
9 CHARACTER. SOMEONE WHO IS ACCUSED OF A CRIME MAY PRODUCE EVIDENCE
10 OF A CHARACTER INCONSISTENT WITH THE CRIME CHARGED AGAINST HIM FOR
11 THE PURPOSE OF ASSERTING THE IMPROBABILITY THAT THE DEFENDANT
12 COMMITTED THE CRIME THAT'S CHARGED AGAINST HIM.

13 I REMIND YOU AGAIN THAT THE DEFENDANT HAS NO BURDEN OF PROOF.
14 HE DOES NOT HAVE TO PROVE OR DISPROVE ANYTHING. EVIDENCE OF GOOD
15 CHARACTER OF AN ACCUSED IS ENTITLED TO SUCH EFFECT AND SUCH WEIGHT, IF
16 ANY, THAT YOU DETERMINE TO BE APPROPRIATE. IT MAY CREATE A REASONABLE
17 DOUBT AS TO EVIDENCE WHICH OTHERWISE APPEARS CONCLUSIVE. IT'S THE
18 PRIVILEGE OF AN ACCUSED TO PLACE INTO EVIDENCE HIS GOOD CHARACTER
19 WITHOUT REGARD TO OTHER EVIDENCE IN THE CASE, AND IT'S FOR THE JURY TO
20 CONSIDER THAT EVIDENCE IN CONNECTION WITH ALL THE OTHER EVIDENCE IN
21 THE CASE TO DECIDE WHAT FORCE, VALUE, EFFECT AND WEIGHT IT SHOULD HAVE
22 IF ANY.

23 AT THIS POINT, LADIES AND GENTLEMEN, I TURN TO THE SPECIFIC
24 INDICTMENTS IN THESE CASES. AND I REMINDED YOU THAT THERE ARE 4
25 SEPARATE INDICTMENTS, EACH SEPARATE AND DISTINCT, EACH ALLEGED

1 AGAINST A SEPARATE DEFENDANT. AND I TOLD YOU THAT EACH CHARGE HAS TO
2 BE EVALUATED ON ITS OWN MERIT OR LACK OF MERIT. EACH DEFENDANT IS
3 CHARGED WITH TRAFFICKING MARIJUANA IN EDGEFIELD COUNTY ON OR
4 BETWEEN APRIL 5, 2002 AND MAY 18, 2002. I READ THE INDICTMENTS TO YOU AT
5 THE BEGINNING OF THE TRIAL, AND I CAUTION ONCE AGAIN, THE INDICTMENTS
6 ARE NOT EVIDENCE, AND YOU MAY NOT GIVE THEM ANY EVIDENTIARY VALUE.

7 THEN I STARTED EXPLAINING TO YOU WHAT TRAFFICKING IS. AND I TOLD
8 YOU THAT THE LEGISLATURE HAS ESTABLISHED THAT CERTAIN DEFINED
9 ACTIVITIES ARE UNLAWFUL, AND THAT THESE PARTICULAR UNLAWFUL
10 ACTIVITIES ARE CALLED TRAFFICKING IN MARIJUANA. VIOLATION OF ANY ONE
11 OF THESE PROHIBITED ACTS CONSTITUTES TRAFFICKING.

12 NOW TRAFFICKING REQUIRES THAT CERTAIN MINIMUM OF THE ILLEGAL
13 DRUG BE CONNECTED TO UNLAWFUL CONDUCT. IN THIS CASE THE DEFENDANTS
14 ARE ALLEGED TO HAVE ENGAGED IN TRAFFICKING MARIJUANA WEIGHING AT
15 LEAST 100 POUNDS BUT LESS THAN 2000 POUNDS.

16 SO WHAT CONSTITUTES TRAFFICKING? FIRST, IF A PERSON KNOWINGLY
17 SELLS, DELIVERS, PURCHASES OR BRINGS INTO THIS STATE 100 POUNDS OR MORE
18 OF MARIJUANA, HE IS GUILTY OF TRAFFICKING.

19 SECOND, IF A PERSON PROVIDES FINANCIAL ASSISTANCE FOR ANY OF
20 THOSE ACTIVITIES I JUST READ TO YOU RELATED TO 100 POUNDS OR MORE OF
21 MARIJUANA, HE IS GUILTY OF TRAFFICKING.

22 THIRD, IF A PERSON OTHERWISE AIDS, ABETS, ATTEMPTS OR CONSPIRES TO
23 CONDUCT THESE ACTIVITIES RELATED TO 100 POUNDS OR MORE OF MARIJUANA,
24 HE IS GUILTY OF TRAFFICKING.

25 AND, FOURTH, IF A PERSON KNOWINGLY, ACTUALLY OR CONSTRUCTIVELY,

1 POSSESSES OR KNOWINGLY ATTEMPTS TO ACTUALLY OR CONSTRUCTIVELY
2 POSSESS 100 POUNDS OR MORE OF MARIJUANA, HE IS GUILTY OF TRAFFICKING.

3 SO IF THE STATE PROVES TO YOU THAT A DEFENDANT DID ONE OR MORE
4 OF THESE SPECIFIC THINGS THAT I JUST WENT OVER RELATED TO 100 POUNDS OR
5 MORE OF MARIJUANA AS ALLEGED IN THE INDICTMENT AGAINST HIM IN
6 EDGEFIELD COUNTY, THEN THAT DEFENDANT IS GUILTY OF THE CHARGE MADE
7 AGAINST HIM.

8 THE STATE HAS TO PROVE TO YOU BEYOND A REASONABLE DOUBT THAT
9 THE SUBSTANCE WAS, IN FACT, MARIJUANA AND THAT THE WEIGHT IN
10 MARIJUANA EQUALS OR EXCEEDS 100 POUNDS.

11 NOW ONE OF THE WAYS THAT A PERSON CAN BE GUILTY OF TRAFFICKING
12 IS TO CONSPIRE TO SELL, DELIVER, POSSESS, PURCHASE OR BRING INTO THIS
13 STATE MORE THAN 100 POUNDS OF MARIJUANA OR CONSPIRED TO PROVIDE
14 FINANCIAL ASSISTANCE TO DO ONE OR MORE OF THOSE THINGS.

15 SO I EXPLAINED TO YOU, BASICALLY, THE FUNDAMENTAL LAW ABOUT
16 CONSPIRACY. AND THIS IS WHAT I TOLD YOU: A CONSPIRACY IS AN AGREEMENT
17 BETWEEN TWO OR MORE PERSONS TO DO AN UNLAWFUL ACT OR TO DO AN
18 UNLAWFUL -- I'M SORRY. LET ME START OVER. CONSPIRACY IS AN AGREEMENT
19 BETWEEN TWO OR MORE PERSONS TO DO AN UNLAWFUL ACT OR TO DO A LAWFUL
20 ACT THROUGH UNLAWFUL MEANS. IF THE STATE RELIES UPON A CONSPIRACY,
21 THE STATE HAS TO PROVE THAT THE PARTICULAR DEFENDANT IN QUESTION
22 INTENTIONALLY PARTICIPATED IN THE CONSPIRACY WITH A VIEW AND A PURPOSE
23 TO FURTHER THE COMMON DESIGN. THE DEFENDANT AND THE OTHER ALLEGED
24 CO-CONSPIRATORS MUST HAVE INTENDED TO ACT TOGETHER FOR THEIR SHARED
25 MUTUAL BENEFIT WITHIN THE SCOPE OF THE CONSPIRACY. IN ORDER TO BE A

1 MEMBER OF A CONSPIRACY, ONE DOES NOT HAVE TO HAVE FULL KNOWLEDGE OF
2 ALL THE DETAILS OF THE PROPOSED CONSPIRACY.

3 THEN I EXPLAINED TO YOU THAT ANOTHER WAY THAT A PERSON CAN BE
4 GUILTY OF TRAFFICKING IS BY AIDING OR ABETTING IN SELLING, DELIVERING,
5 POSSESSING, PURCHASING OR BRINGING INTO THIS STATE MORE THAN 100 POUNDS
6 OF MARIJUANA OR PROVIDING FINANCIAL ASSISTANCE TO DO ONE OF THOSE
7 THINGS.

8 SO I EXPLAINED TO YOU THIS LAW, IT'S COMMONLY CALLED ACCOMPLICE
9 LIABILITY, THE HAND OF ONE IS THE HAND OF ALL, AIDING AND ABETTING.
10 ALRIGHT?

11 IF A PERSON IS PRESENT AND AIDS, ABETS AND ASSISTS IN THE
12 COMMISSION OF ONE OR MORE OF THE ACTS THAT WOULD CONSTITUTE
13 TRAFFICKING, HE IS GUILTY OF TRAFFICKING.

14 WHERE SOMEONE DOES AN ACT IN THE PRESENCE OF AND WITH THE
15 ASSISTANCE OF ANOTHER PERSON OR PERSONS, THE ACT IS DONE BY BOTH OR
16 ALL. SO WHERE TWO OR MORE PEOPLE ACTING WITH A COMMON DESIGN OR
17 INTENT TO PERFORM A CRIMINAL ACT ARE PRESENT AT THE COMMISSION OF A
18 CRIME, IT DOES NOT MATTER WHO WAS THE ONE PERFORMING THE PARTICULAR
19 ACT. ALL ARE GUILTY. TO GIVE YOU AN EXAMPLE COMPLETELY UNRELATED TO
20 THIS CASE, IF TWO PEOPLE ACTING TOGETHER BOTH PRESENT AT THE
21 COMMISSION OF THE CRIME ROB SOMEONE AT GUNPOINT, AND ONLY ONE HAS
22 THE GUN, THEY'RE BOTH GUILTY OF ARMED ROBBERY. OKAY? BUT THE PERSON
23 HAS TO BE PRESENT AND AID, ABET AND ASSIST IN THE COMMISSION OF THE
24 CRIME. THERE HAS TO BE AN INTENT TO DO IT. IT CAN'T BE THAT ONE GUY'S JUST
25 STANDIN' THERE AND ANOTHER GUY HAS A GUN AND THE FIRST GUY DIDN'T

1 KNOW ANYTHING ABOUT ALL THAT. OKAY?

2 NOW INTENT IS A NECESSARY ELEMENT BECAUSE THERE HAS TO HAVE
3 BEEN A COMMON DESIGN OR INTENT TO COMMIT THE CRIME, AND THE CRIME
4 MUST'VE BEEN COMMITTED PURSUANT TO THE COMMON DESIGN OR INTENT.

5 NOW, FURTHER, WITH REGARD TO AIDING AND ABETTING IN THE
6 COMMISSION OF A CRIME, IT HAS TO BE DONE BY SOME OVERT ACT. THE PERSON
7 THERE AIDING, ABETTING AND ASSISTING HAS TO DO SOMETHING, SOME OVERT
8 ACT IN ASSISTING IN THE COMMISSION OF THE CRIME WHICH MEANS THE PERSON
9 HAS TO BE PRESENT, DO AN OVERT ACT IN FURTHERANCE OF THE CRIME, AND
10 WHEN I SAY BE PRESENT, THAT MEANS A PERSON HAS TO BE SUFFICIENTLY NEAR
11 TO AID, ABET AND ASSIST IN THE COMMISSION OF THE CRIME.

12 NOW I'M GOIN' A LITTLE ASIDE LIKE I DID WITH THAT ARMED ROBBERY
13 ISSUE. BUT, SEE, PEOPLE COULD CONSPIRE TO COMMIT AN ARMED ROBBERY AND -
14 - AND ONE GO OFF AND DO IT AND COME BACK. OKAY? SO YOU COULD HAVE
15 TWO CO-CONSPIRATORS TO ARMED ROBBERY. ONE DOES THE ACTUAL ACT AND
16 COMES BACK, THE TWO CONSPIRED. THE AIDING, ABETTING AND ASSISTING
17 REQUIRES THAT THE PERSON BE PRESENT WITH INTENT TO HAVE A COMMON
18 DESIGN OF COMMITTING THIS CRIME AND ACTUALLY BE SUFFICIENTLY PRESENT
19 TO AID, ABET AND ASSIST IN THE COMMISSION OF IT AND DO SO BY SOME OVERT
20 ACT. OKAY? BUT THEY -- THEY CAN DO DIFFERENT THINGS IN FURTHERANCE OF
21 THE ACT.

22 I EXPLAINED TO YOU THE LAW ABOUT MERE PRESENCE, AND I DID IT MORE
23 THAN ONCE BECAUSE IT APPLIES MORE THAN ONCE. MERE PRESENCE AT THE
24 SCENE OF A CRIME IS NOT SUFFICIENT TO PROVE SOMEBODY GUILTY OF THE
25 CRIME, AND MERELY BEING PRESENT WHEN SOMEBODY ELSE COMMITS A CRIME

1 IS NOT SUFFICIENT TO MAKE A PERSON AN AIDER, ABETTOR, ACCOMPLICE OR A
2 CO-CONSPIRATOR. IF YOU FIND AFTER REVIEWING ALL THE EVIDENCE THAT THE
3 STATE HAS PROVEN ONLY THAT A DEFENDANT WAS PRESENT AT THE TIME A
4 CRIME WAS COMMITTED, YOU MUST FIND HIM NOT GUILTY BECAUSE IN ORDER TO
5 CONVICT SOMEONE OF A CRIME, THE STATE HAS TO PROVE TO YOU THAT THE
6 PARTICULAR DEFENDANT IN QUESTION COMMITTED ALL THE ESSENTIAL
7 ELEMENTS OF THE OFFENSE. OKAY?

8 NOW OBVIOUSLY I JUST EXPLAINED TO YOU THEY CAN BE AN AIDER,
9 ABETTOR OR ASSISTOR. BUT JUST MERELY BEING PRESENT IS NOT ENOUGH.

10 THEN I EXPLAINED TO YOU THAT ANOTHER WAY THAT A PERSON CAN BE
11 GUILTY OF TRAFFICKING IS IF HE ATTEMPTS TO SELL, DELIVER, POSSESS,
12 PURCHASE OR BRING INTO THE STATE 100 POUNDS OR MORE OF MARIJUANA. OR IF
13 HE ATTEMPTS TO PROVIDE FINANCIAL ASSISTANCE TO DO ONE OF THOSE THINGS.

14 NOW ATTEMPT REALLY IS PRETTY MUCH WHAT IT SOUNDS LIKE IN
15 EVERYDAY PARLANCE. AN ATTEMPT IS AN ACT DONE IN PARTIAL EXECUTION OF
16 A DESIGN TO COMMIT A CRIME. THERE HAS TO BE AN INTENT THAT THE ACT
17 SHALL BE COMMITTED AND THAT AN ACT IF ACTUALLY DONE IN FURTHERANCE
18 OF COMMITTING THE CRIME BUT FALLS SHORT OF FULL EXECUTION OF THE CRIME.
19 SO THERE HAS TO BE AN ACT THAT AMOUNTS TO AN ACT DONE IN PURSUIT OF
20 COMMITTING A CRIME, BUT IT FALLS SHORT OF THE FULL EXECUTION.

21 NOW TO MAKE SURE THAT YOU UNDERSTAND, THERE IS A DIFFERENCE
22 BETWEEN AN ATTEMPT AND PREPARATION. OKAY? THE LAW DOES NOT PUNISH
23 SOMEONE FOR MERELY ENTERTAINING A CRIMINAL INTENT. IT'S NECESSARY IF
24 YOU HAVE AN ATTEMPT THAT THERE BE SOME ACT DONE IN PURSUIT OF THE
25 CRIMINAL INTENT IMMEDIATELY AND DIRECTLY TENDING TO THE COMMISSION OF

THE CRIME. THE ACT HAS TO BE OF SUCH A NATURE THAT IT WOULD BE PART AND
PARCEL OF THE CRIME ITSELF. IT WOULD BE A PART OF THE CRIME IF THE CRIME
WAS FULLY COMMITTED. OKAY? ATTEMPT REFERS TO ACTIONS DONE IN PURSUIT
OF A CRIME THAT FALLS SHORT OF THE ORIGINAL INTENT BECAUSE THE FULL
COMMISSION OF THE CRIMINAL WRONGDOING IS EITHER PREVENTED OR
ABANDONED. OKAY? IT'S ATTEMPTED. THERE'S AN ACT DONE IN FURTHERANCE
OF IT. THE ACT THAT'S DONE IN FURTHERANCE OF IT WOULD ACTUALLY AMOUNT
TO A PART OF THE CRIME IF THE FULL CRIME WERE COMMITTED, BUT THE FULL
CRIME IS NOT COMMITTED BECAUSE IT'S EITHER PREVENTED OR ABANDONED.

SO THEN I NEEDED TO EXPLAIN TO YOU THAT A WAY A PERSON CAN BE
GUILTY OF TRAFFICKING IS BY KNOWINGLY POSSESSING OR KNOWINGLY
ATTEMPTING TO POSSESS 100 POUNDS OR MORE OF MARIJUANA.

NOW POSSESSION CAN BE BY ACTUAL POSSESSION OR CONSTRUCTIVE
POSSESSION.

NOW ACTUAL POSSESSION IS WHAT IT SOUNDS LIKE. IT'S THE SITUATION
WHERE A PERSON HAS ACTUAL PHYSICAL CUSTODY OF THE SUBSTANCE.
CONSTRUCTIVE POSSESSION OF A CONTROLLED SUBSTANCE EXISTS WHEN A
PERSON DOES NOT HAVE ACTUAL PHYSICAL POSSESSION OF THE CONTROLLED
SUBSTANCE BUT EXERCISES DOMINION AND CONTROL OVER IT. SO SOMEONE
WHO HAS BOTH THE POWER AND THE INTENT TO CONTROL THE DISPOSITION OR
USE OF A CONTROLLED SUBSTANCE HAS POSSESSION OF THAT CONTROLLED
SUBSTANCE WITHIN THE MEANING OF THE LAW.

NOW WHEN I REFER TO THE EXERCISE OF DOMINION AND CONTROL,
BASICALLY, WHAT I MEAN IS THAT A PERSON MAY BE DEEMED TO POSSESS A
DRUG IF HE HAS THE POWER OR AUTHORITY TO GUIDE, DIRECT, OVERSEE, OR

MANAGE THE DRUG. BUT THIS IS ANOTHER ONE OF THOSE MERE PRESENCE CHARGES. MERE PRESENCE OF A PERSON IN AN AREA WHERE A CONTROLLED SUBSTANCE IS FOUND IS NOT ENOUGH STANDING ALONE TO ESTABLISH THAT A PARTICULAR DEFENDANT HAD DOMINION AND CONTROL OVER THE DRUGS. IF POSSESSION IS BASED ON CONSTRUCTIVE POSSESSION, THIS DOMINION AND CONTROL THEORY, THE STATE HAS TO PROVE TO YOU BEYOND A REASONABLE DOUBT THAT THE PARTICULAR DEFENDANT IN QUESTION EXERCISED DOMINION AND CONTROL OVER THE DRUG.

NOW I NEEDED TO EXPLAIN TO YOU ABOUT KNOWLEDGE BECAUSE WITH REGARD TO POSSESSION AND THEN I'M GONNA COVER IT IN SOMETHING ELSE LATER.

WHETHER POSSESSION IS ACTUAL OR WHETHER IT'S CONSTRUCTIVE, A PERSON CANNOT POSSESS A DRUG UNLESS THE STATE HAS PROVEN TO YOU BEYOND A REASONABLE DOUBT THAT THE PARTICULAR DEFENDANT IN QUESTION KNEW OF THE PRESENCE OF THE MARIJUANA.

ACTUAL KNOWLEDGE OF THE PRESENCE OF THE MARIJUANA BY THE PARTICULAR DEFENDANT IS ESSENTIAL, AND THE STATE HAS TO PROVE TO YOU THAT THE PARTICULAR DEFENDANT IN QUESTION ACTUALLY KNEW ABOUT THE PRESENCE OF THE MARIJUANA. THIS GOES TO -- IT'S SLIGHTLY DIFFERENT BUT IT OVERLAPS. CRIMINAL INTENT. IN ORDER FOR A CRIME TO BE PROVEN, THE STATE HAS TO PROVE TO YOU THAT THE DEFENDANT IN QUESTION HAD THE NECESSARY CRIMINAL INTENT. A DEFENDANT IS NOT GUILTY OF A CRIME UNLESS THE STATE PROVES TO YOU THAT HE ACTED WITH CRIMINAL INTENT, A MENTAL STATE THAT'S REQUIRED FOR THAT PARTICULAR OFFENSE. AND WITH TRAFFICKING, THE MENTAL STATE REQUIRED IS KNOWINGLY. THE STATE HAS TO PROVE TO YOU

1 THAT THE DEFENDANT KNOWINGLY ENGAGED IN THE PROHIBITED CONDUCT.
2 THAT IS, THAT HE KNOWINGLY SOLD, DELIVERED, PURCHASED OR BROUGHT INTO
3 THIS STATE 100 POUNDS OR MORE OF MARIJUANA OR THAT HE KNOWINGLY
4 PROVIDED FINANCIAL ASSISTANCE TO SELL, DELIVER, PURCHASE OR BRING 100
5 POUNDS OR MORE OF MARIJUANA INTO SOUTH CAROLINA OR THAT HE
6 KNOWINGLY AIDED, ABETTED, ATTEMPTED OR CONSPIRED TO SELL, DELIVER,
7 PURCHASE OR BRING 100 POUNDS OR MORE OF MARIJUANA INTO THIS STATE OR
8 THAT HE KNOWINGLY ACTUALLY OR CONSTRUCTIVELY POSSESSED OR
9 KNOWINGLY ATTEMPTED TO ACTUALLY OR CONSTRUCTIVELY POSSESS 100
10 POUNDS OR MORE OF MARIJUANA.

11 TO ACT KNOWINGLY MEANS TO DO SOMETHING WITH KNOWLEDGE THAT
12 THE CONDUCT IS ILLEGAL. IT REQUIRES THAT THE DEFENDANT BE AWARE THAT
13 THE ILLEGAL NATURE OF HIS CONDUCT IS PRACTICALLY CERTAIN TO FOLLOW
14 FROM HIS CONDUCT WHATEVER HIS DESIRE MAY BE AS TO THE RESULT. AN ACT
15 DONE KNOWINGLY IS NOT DONE ACCIDENTALLY OR INADVERTENTLY OR
16 UNINTENTIONALLY. OKAY?

17 NOW I EXPLAINED TO YOU THIS CONCEPT ABOUT LESSER INCLUDED
18 OFFENSES AS RELATES TO THE CHARGE AGAINST MR. DELEON. AND I TOLD YOU
19 THAT THE LAW RECOGNIZES THAT CERTAIN GREATER CRIMES INCLUDE WITHIN
20 THEM LESSER INCLUDED OFFENSES, AND I EXPLAINED TO YOU THAT WITH
21 TRAFFICKING THERE ARE OFFENSES THAT ARE BROKEN DOWN BY WEIGHT. THESE
22 DEFENDANTS ARE ALL CHARGED WITH TRAFFICKING MARIJUANA 100 POUNDS OR
23 GREATER, LESS THAN 2000 POUNDS. CONCERNING THE CASE THAT'S ALLEGED
24 AGAINST MR. DELEON, YOU NEED TO UNDERSTAND THAT THERE IS A LESSER
25 INCLUDED TRAFFICKING OFFENSE WHERE THE WEIGHT OF THE MARIJUANA

1 INVOLVED IS 10 POUNDS OR MORE BUT LESS THAN 100 POUNDS. 10 POUNDS OR
2 MORE; LESS THAN 100 POUNDS. IF YOU FIND THAT MR. DELEON ENGAGED IN
3 CONDUCT THAT CONSTITUTES TRAFFICKING MARIJUANA BUT YOU HAVE A
4 REASONABLE DOUBT AS TO WHETHER HE KNOWINGLY WAS INVOLVED IN 100
5 POUNDS OR MORE OF MARIJUANA, YOU MAY THEN CONSIDER WHETHER THE
6 STATE HAS PROVEN HIM GUILTY OF THE LESSER INCLUDED OFFENSE. IF THE
7 STATE PROVES THAT MR. DELEON KNOWINGLY ENGAGED IN TRAFFICKING IN
8 MARIJUANA IN AN AMOUNT OF 10 POUNDS OR MORE BUT LESS THAN 100 POUNDS,
9 YOU MAY FIND HIM GUILTY OF THE LESSER INCLUDED OFFENSE EVEN THOUGH
10 IT'S NOT WRITTEN ON THE FACE OF THE INDICTMENT. BUT, AGAIN, AND I'LL SAY
11 THIS TWICE, AS I DO IN EVERY CASE, YOU CAN'T CONVICT THE DEFENDANT OF
12 ANY OFFENSE, GREATER OR LESSER, UNLESS YOU'RE SATISFIED THAT THE STATE
13 HAS PROVEN EVERY ESSENTIAL ELEMENT OF THAT OFFENSE BEYOND A
14 REASONABLE DOUBT.

15 I TOLD YOU THAT ONE OF THE ISSUES IN THE CASE IS THE IDENTIFICATION
16 OF THE PARTICULAR DEFENDANTS AS THE PERPETRATORS OF THE CRIME THAT'S
17 CHARGED AGAINST EACH DEFENDANT. THE STATE HAS THE BURDEN OF PROVING
18 IDENTITY BEYOND A REASONABLE DOUBT. YOU HAVE TO BE SATISFIED BEYOND A
19 REASONABLE DOUBT OF THE ACTORS HERE OF THE IDENTIFICATION OF THE
20 PARTICULAR DEFENDANT IN QUESTION BEFORE YOU MAY CONVICT HIM.
21 IDENTIFICATION TESTIMONY IS AN EXPRESSION OF BELIEF OR IMPRESSION BY A
22 WITNESS. ITS VALUE DEPENDS UPON THE OPPORTUNITY THE WITNESS HAD TO
23 OBSERVE THE OFFENDER AT THE TIME OF THE OFFENSE AND TO MAKE A RELIABLE
24 IDENTIFICATION LATER. IF THE STATE HAS FAILED TO PROVE THAT A PARTICULAR
25 DEFENDANT WAS PRESENT AT THE SCENE AND WAS A PERPETRATOR OF THE

1 CRIME CHARGED, YOU MUST FIND THAT DEFENDANT NOT GUILTY. IF THE
2 CIRCUMSTANCES UNDER WHICH THE DEFENDANT IS PRESENTED TO THE WITNESS
3 FOR IDENTIFICATION OR SUGGESTION, YOU SHOULD EVALUATE THE EVIDENCE
4 REGARDING IDENTIFICATION WITH GREAT SCRUT - SCRUTINY. I'VE NEVER HAD
5 TROUBLE SAYIN' THAT WORD UNTIL TODAY. ALRIGHT.

6 AND THEN WE GOT TO THE LAST PART: THAT A DEFENDANT IS ENTITLED
7 TO EVERY REASONABLE DOUBT ARISING IN AN ENTIRE CASE OR ANY DEFENSES.

8 IF UPON ANY ISSUE OF FACT ESSENTIAL TO A CONVICTION YOU HAVE A
9 REASONABLE DOUBT AS TO HOW THAT SHOULD BE RESOLVED, YOU HAVE TO
10 RESOLVE THAT DOUBT IN FAVOR OF THE DEFENDANT.

11 IF YOU HAVE A REASONABLE DOUBT AS TO WHETHER THE DEFENDANT
12 HAS BEEN PROVEN GUILTY OF A GREATER CRIME CHARGED OR A LESSER
13 INCLUDED OFFENSE, YOU HAVE TO RESOLVE THAT DOUBT IN FAVOR OF THE
14 DEFENDANT AND FIND HIM GUILTY ONLY OF THE LESSER INCLUDED OFFENSE.
15 YOU CANNOT FIND HIM GUILTY OF ANY OFFENSE, GREATER OR LESSER, UNLESS
16 YOU'RE SATISFIED THAT THE STATE HAS PROVEN HIM GUILTY OF EVERY
17 ESSENTIAL ELEMENT OF THAT OFFENSE BEYOND A REASONABLE DOUBT. IF UPON
18 REVIEWING THE ENTIRE CASE AGAINST THE DEFENDANT, YOU HAVE A
19 REASONABLE DOUBT AS TO WHETHER THE DEFENDANT HAS BEEN PROVEN
20 GUILTY, HE IS ENTITLED TO THAT DOUBT AND A VERDICT OF NOT GUILTY. ON THE
21 OTHER HAND, IF UPON REVIEWING AN ENTIRE CASE AGAINST A DEFENDANT, YOU
22 FIND THAT THE STATE HAS PROVEN EVERY ESSENTIAL ELEMENT OF THE CASE
23 AGAINST THAT DEFENDANT BEYOND A REASONABLE DOUBT, IT'S EQUALLY YOUR
24 DUTY TO FIND THE DEFENDANT GUILTY.

25 YOUR VERDICT MUST BE UNANIMOUS. I LEFT THIS OUT EARLIER. ALL 12 OF

1 YOU MUST AGREE IN ORDER FOR THE FORMAN TO RECORD ANY VERDICT.

2 NOW, LADIES AND GENTLEMEN, THAT'S THE ENTIRE CHARGE. A LITTLE BIT
3 DIFFERENT BECAUSE THEY'RE NEVER EXACTLY THE SAME UNLESS I PLAY THE
4 TAPE BACK. IF YOU NEED ANY FURTHER INSTRUCTIONS, LET ME KNOW. DON'T
5 START YOUR DELIBERATIONS AGAIN UNTIL I SEND WORD TO YOU BY THE BAILIFF
6 THAT YOU MAY BECAUSE IF I SAID SOMETHING WRONG THEY NEED TO BE GIVEN A
7 CHANCE TO SAY IT TO ME AGAIN. ALRIGHT? THANK YOU. (THE JURY RETIRED TO
8 THE JURY ROOM AT 9 P.M.) ALRIGHT. SUBJECT TO THE PREVIOUS OBJECTIONS
9 THAT WERE RAISED WITHOUT WAIVING ANY OBJECTIONS THAT WERE RAISED
10 AFTER THE FIRST CHARGE, ARE THERE ANY ADDITIONAL EXCEPTIONS, ADDITIONS
11 OR OBJECTIONS TO THE CHARGE THAT WAS GIVEN? FROM THE STATE?

12 MR. MAYE: NOTHING FROM THE STATE.

13 MR. HAWKE: NO, YOUR HONOR, NOT ON BEHALF OF THE DEFENDANT -- I'M
14 GONNA ADOPT WHATEVER THEY HAVE TO SAY, JUDGE.

15 MR. SUSSMAN: JUDGE, ON BEHALF OF MR. HERNANDEZ AND MR. AROJONA
16 AFTER HEARING THE CHARGE AGAIN, WITHOUT READING IT, BUT JUST HEARING IT,
17 I WOULD HAVE TO OBJECT TO THE CHARACTERIZATION OF -- IN THE PORTION
18 ABOUT REASONABLE DOUBT, THE FACT THAT THEY MUST BE FIRMLY CONVINCED
19 OF THE DEFENDANT'S GUILT UNLESS THEY HAVE A REAL DOUBT OR I THINK THERE
20 IS PROOF TO THE EXCLUSION OF ANY REAL POSSIBILITY. I THINK THAT THAT IS
21 AMBIGUOUS AND KIND OF A VAGUE HISTORICAL DEFINITION OF REASONABLE
22 DOUBT IS SIMPLY IF YOUR MINDS ARE WAVERING OR UNSETTLED, YOUR DUTY IS
23 TO ACQUIT. I'M NOT SURE THAT BEING FIRMLY CONVINCED IS SUFFICIENT TO --
24 BEYOND A REASONABLE DOUBT -- THOSE PORTIONS OF THE CHARGE WE WOULD
25 OBJECT TO BASED ON THE 4TH, 5TH, 6TH, 8TH AND 14TH AMENDMENTS TO THE U.S.

1 CONSTITUTION AND APPLICABLE SOUTH CAROLINA LAW.

2 ALSO, JUDGE, AND AGAIN LISTENING TO THE CHARGE WITHOUT READING
3 IT, I'M CONCERNED ABOUT THE MULTIPLE DEFENDANTS AS TO WHETHER OR NOT
4 IT'S CLEAR THAT EACH DEFENDANT CAN BE FOUND GUILTY OR NOT GUILTY
5 INDIVIDUALLY AND SEPARATELY FROM THE OTHER DEFENDANTS. THAT THE JURY
6 WOULD NOT HAVE TO NECESSARILY BE UNANIMOUS IN FINDING ALL THE
7 DEFENDANTS GUILTY OR NOT GUILTY, AND THAT WOULD BE MY ONLY OTHER
8 PROFFER IN REGARDS TO THE CHARGE.

9 THE COURT: I TOLD THAT JURY AT LEAST A DOZEN TIMES THAT EVERY
10 DEFENDANT IN EVERY CASE IS SEPARATE AND DISTINCT AND HAS TO BE
11 EVALUATED ON ITS OWN MERIT OR LACK OF MERIT. I TOLD YOU ALL I DID NOT
12 DEFINE REASONABLE DOUBT UNTIL THE SOUTH CAROLINA SUPREME COURT CAME
13 ALONG AND SAID THEY BASICALLY ADOPTED THE LANGUAGE FROM THE U.S.
14 SUPREME COURT OPINION, AND THAT'S WHERE THAT LANGUAGE CAME FROM.
15 AND I CHANGED IT TO ADD THE PART AT THE END WHICH STATES THAT THE
16 DEFENDANT DOESN'T HAVE TO CREATE ANY DOUBT OR ANY OTHER POSSIBILITY.
17 IT'S JUST THE BURDEN OF THE STATE.

18 NOW I'M NOT GOOD AT CITING CASES, SO I CAN'T TELL YOU THE NAME OF
19 THE CASE. I KNOW HOW TO FIND IT. BUT, BASICALLY, I CHANGED MY CHARGE --
20 MY PRACTICE OF NOT CHARGING REASONABLE DOUBT AT ALL BASED SOLELY ON
21 THE FACT THAT OUR SOUTH CAROLINA SUPREME COURT CAME ALONG AND GAVE
22 THAT DEFINITIVE INSTRUCTION, WHAT I INTERPRET AS AN INSTRUCTION. AND I
23 TOLD YOU NOW -- MAYBE THAT'S A LITTLE HYPOCRITICAL BECAUSE WHEN THEY
24 HAD THEIR EARLIER INSTRUCTION THAT IT WAS THE KIND OF DOUBT TO CAUSE A
25 REASONABLE PERSON TO HESITATE TO ACT, I JUST THOUGHT THAT'S EXTREMELY

1 CONFUSING. I DON'T UNDERSTAND THAT CHARGE MYSELF, AND I THOUGHT IF
2 ANYBODY EVER ASKED ME TO EXPLAIN IT, I COULDN'T EXPLAIN IT. AND I KNOW
3 THEY'RE A WHOLE LOT SMARTER 'N I AM. I KNOW THAT FOR A FACT BECAUSE I'VE
4 BEEN AROUND 'EM ENOUGH TO KNOW AND THEY UNDERSTAND IT. BUT I DON'T.
5 IF I DON'T UNDERSTAND IT, I'M NOT GONNA TELL THE JURY ABOUT IT. YOUR
6 EXCEPTIONS ARE NOTED. MR. MILLER?

7 MR. MILLER: WE JOIN IN THE EXCEPTION PREVIOUSLY STATED.

8 MR. HAWKE: AND ON BEHALF OF DELEON, YOUR HONOR, I WOULD JOIN IN
9 THE STATEMENTS MADE BY MR. SUSSMAN.

10 THE COURT: ALRIGHT.

11 MR. PUETZ: THANK YOU, JUDGE.

12 THE COURT: THANK YOU. TELL THEM TO BEGIN THEIR DELIBERATIONS.
13 (THE FOLLOWING OCCURRED SOMETIME LATER.) ALRIGHT. I HAVE A NOTE FROM
14 THE JURY ASKING ME TO REDEFINE CIRCUMSTANTIAL EVIDENCE. I'M GOING TO
15 DEFINE IT AS I DEFINED IT AND THEN I'M GONNA GIVE MR. MILLER'S PROPOSED
16 CHARGE.

17 MR. MILLER: THANK YOU, YOUR HONOR.

18 MR. PUETZ: THANK YOU, JUDGE.

19 THE COURT: Y'ALL CAN RAISE YOUR OBJECTIONS. WELL, THE ONE MR.
20 PUETZ SUBMITTED IS DIFFERENT FROM THE ONE MR. MILLER SUBMITTED. YOURS
21 IS A LOT BROADER.

22 MR. PUETZ: YEAH. (THE JURY RETURNED TO THE OPEN COURTROOM AT 9:30
23 P.M.) ALRIGHT. MR. FOREMAN, I RECEIVED A NOTE FROM THE JURY THAT READS
24 PLEASE REDEFINE CIRCUMSTANTIAL EVIDENCE. IS THAT THE JURORS' REQUEST?

25 THE FOREMAN: YES, SIR.

THE COURT: WHAT I'M GONNA DO, FOLKS, IS I -- I'M GONNA START OUT BY GIVIN' YOU AN EXPLANATION THAT WE HAVE USED FOR YEARS THAT'S AN EXAMPLE, AND THEN I'M GOING TO READ TO YOU THE DEFINITION OR THE INSTRUCTIONS I GAVE YOU ABOUT CIRCUMSTANTIAL EVIDENCE BEFORE, AND THEN I'M GONNA EXPAND THAT A LITTLE BIT AND GIVE YOU A LITTLE BIT MORE OF AN INSTRUCTION ON CIRCUMSTANTIAL EVIDENCE. I'M NOT TRYING TO CREATE ANY UNDUE EMPHASIS ON THIS OR THE OPPOSITE. SEE, BUT I WANT TO TRY TO ADDRESS YOUR QUESTIONS.

DIRECT EVIDENCE TYPICALLY IS -- WHEN I SAID IT WAS EVIDENCE OF DIRECT PERCEPTION, IT'S TYPICALLY BEEN CONSIDERED TO BE WHAT ONE PERCEIVES THROUGH THE USE OF THE 5 SENSES: SEE, HEAR, TOUCH, SMELL, TASTE. OKAY? SO IF I SEE SOMETHING HAPPEN, I GO INTO COURT; I TESTIFY AS TO WHAT I SAW, THAT'S DIRECT EVIDENCE. THAT'S EYEWITNESS TESTIMONY. IF I HEAR SOMETHING SAID IT'S NOT HEARSAY, IF IT IS NOT HEARSAY, I CAN COME IN AND SAY WHAT I HEARD. SO DIRECT EVIDENCE IS GENERALLY CONSIDERED TO BE THAT TYPE OF DIRECT PERCEPTION EVIDENCE, SOMETHING YOU SEE, HEAR, TOUCH, SMELL, TASTE. THEN COME INTO COURT AND PROVIDE EVIDENCE ABOUT IT. IT DOESN'T HAVE TO BE TESTIMONY ALONE. IT CAN BE OTHER WAYS OF PRESENTING IT TO YOU, BUT IT'S DIRECT PERCEPTION TYPE THINGS. OKAY?

AND THEN I TOLD YOU THAT CIRCUMSTANTIAL EVIDENCE IS A CHAIN, IT'S PROOF OF A CHAIN OF FACTS AND CIRCUMSTANCES THAT INDICATE THE EXISTENCE OF SOME FACT THAT'S IN ISSUE. WELL, THE EXAMPLE THAT I'VE HEARD IN COURT HUNDREDS OF TIMES IS THIS -- OF CIRCUMSTANTIAL EVIDENCE: IF I GO TO A MOVIE THEATRE AND WHEN I -- AND OF COURSE, YOU KNOW LIVING HERE, WE GO TO AUGUSTA OR AIKEN TO GO TO THE MOVIE THEATRE. SO WE

1 DRIVE ALL THE WAY OVER THERE, AND ALL THE WAY OVER THERE THE ROADS
2 ARE DRY AND THERE'S NO RAIN FALLING; EVERYTHING'S FINE; WE GO IN THE
3 MOVIE THEATRE, AND WE STAY IN THERE 2 HOURS, AND WHEN WE COME OUT,
4 EVERYTHING'S WET. THE PARKING LOT'S WET; THE CARS ARE WET; WE GET IN
5 OUR CARS AND DRIVE DOWN THE ROAD -- IT'S NOT RAINING, BUT ALL THE ROADS
6 WET FOR MILES AND MILES.

7 NOW WE DIDN'T SEE IT RAIN; WE DIDN'T HEAR IT RAIN 'CAUSE WE WERE
8 IN THE THEATRE; WE DIDN'T FEEL ANY RAIN FALL ON OUR SKIN, BUT FROM WHAT
9 WE NOW PERCEIVE THE FACTS AND CIRCUMSTANCES THAT WE'VE LINKED
10 TOGETHER IN THIS CHAIN THAT IT'S WET HERE; IT'S WET DOWN THE ROAD;
11 EVERYTHING'S WET, WE KNOW THAT IT RAINED WHILE WE WERE IN THAT MOVIE
12 THEATRE. OKAY? SO THAT'S -- THAT'S THE BEST EXAMPLE -- I MEAN THAT'S A
13 TYPICAL EXAMPLE OF WHAT YOU'RE TALKIN' ABOUT WITH DIRECT AND
14 CIRCUMSTANTIAL EVIDENCE.

15 NOW WHAT I TOLD YOU, WHAT OUR SUPREME COURT HAS INDICATED
16 THAT WE ARE TO INSTRUCT YOU IS THIS: THERE ARE TWO TYPES OF EVIDENCE
17 GENERALLY PRESENTED DURING A TRIAL. THERE'S DIRECT EVIDENCE AND
18 THERE'S CIRCUMSTANTIAL EVIDENCE.

19 DIRECT EVIDENCE IS EVIDENCE OF DIRECT PERCEPTION INCLUDING THE
20 TESTIMONY OF A PERSON WHO ASSERTS OR CLAIMS TO HAVE ACTUAL
21 KNOWLEDGE OF A FACT SUCH AS AN EYEWITNESS.

22 CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN, PROOF OF A CHAIN OF
23 FACTS AND CIRCUMSTANCES THAT INDICATE THE EXISTENCE OF A FACT THAT'S
24 IN ISSUE.

25 THE LAW MAKES ABSOLUTELY NO DISTINCTION BETWEEN THE WEIGHT OR

1 THE VALUE TO BE GIVEN TO EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE, NOR
2 IS A GREATER DEGREE OF CERTAINTY REQUIRED OF CIRCUMSTANTIAL EVIDENCE
3 THAN OF DIRECT EVIDENCE. YOU SHOULD WEIGH ALL THE EVIDENCE IN THE
4 CASE, AND AFTER WEIGHING ALL THE EVIDENCE, IF YOU'RE NOT CONVINCED OF
5 THE GUILT OF A DEFENDANT BEYOND A REASONABLE DOUBT, YOU ARE TO FIND
6 HIM NOT GUILTY.

7 NOW I'M GOING TO READ TO YOU SOME ADDITIONAL LANGUAGE THAT
8 ALSO HAS EVOLVED THROUGH OUR CASES. WHEN THE STATE RELIES ON
9 CIRCUMSTANTIAL EVIDENCE YOU MAY NOT CONVICT A DEFENDANT UNLESS
10 EVERY CIRCUMSTANCE RELIED ON BY THE STATE IS PROVEN BEYOND A
11 REASONABLE DOUBT, AND ALL THE CIRCUMSTANCES SO PROVEN ARE
12 CONSISTENT WITH EACH OTHER. JUST LIKE IN THE RAIN SCENARIO. OKAY? THE
13 ROADS ARE WET, THE CARS ARE WET, YOU KNOW, THEY'RE ALL CONSISTENTLY
14 POINTING TO RAIN.

15 SO THE CIRCUMSTANCES HAVE TO BE CONSISTENT WITH EACH OTHER,
16 AND TAKEN TOGETHER THEY HAVE TO POINT CONCLUSIVELY TO THE GUILT OF
17 THE ACCUSED TO THE EXCLUSION OF ANY OTHER REASONABLE HYPOTHESIS.
18 SOMEONE COULD SAY THAT THE FIREMAN HAD BEEN OUT THERE WITH FIRE
19 HOSES AND HAD HOSED DOWN THE PARKING LOT, BUT YOU DON'T THINK THEY'RE
20 GONNA GO 5 MILES DOWN THE ROAD WITH THAT FIRE HOSE. OKAY?

21 SO THEY HAVE TO POINT CONCLUSIVELY TO THE GUILT OF THE ACCUSED
22 TO THE EXCLUSION OF EVERY OTHER REASONABLE HYPOTHESIS. IT'S NOT
23 SUFFICIENT IN A CRIMINAL CASE WHEN YOU RELY UPON CIRCUMSTANTIAL
24 EVIDENCE THAT THE CIRCUMSTANCES CREATE A PROBABILITY EVEN IF IT'S A
25 STRONG ONE.

1 NOW YOU CAN -- YOU CAN COMBINE DIRECT EVIDENCE AND
2 CIRCUMSTANTIAL EVIDENCE, BUT TO THE EXTENT YOU'RE RELYING ON
3 CIRCUMSTANTIAL EVIDENCE, IT'S NOT SUFFICIENT THAT THE CIRCUMSTANCES
4 CREATE A PROBABILITY EVEN IF IT'S A STRONG ONE. IF ASSUMING THAT THE
5 CIRCUMSTANCES ARE TRUE, THERE IS A REASONABLE HYPOTHESIS WHICH DOES
6 NOT INCLUDE THE GUILT OF THE ACCUSED, THEN THE STATE HAS FAILED IN
7 ESTABLISHING THAT PROOF.

8 I HOPE I HAVEN'T CONFUSED YOU MORE, BUT I WANTED TO EXPAND THAT
9 DEFINITION WHILE YOU WERE OUT HERE. Y'ALL NEED ME TO GO THROUGH IT
10 AGAIN? I'M GETTIN' SOME YESES. SO I'M GONNA GO THROUGH IT AGAIN. IT
11 WON'T BE EXACTLY THE SAME. Y'ALL DON'T NEED ME TO GO THROUGH THE
12 THEATRE EXAMPLE AGAIN I DON'T -- EVERYBODY REMEMBERS THAT. THAT'S
13 EASY TO REMEMBER. OKAY.

14 WHAT I CHARGED YOU WHEN I ORIGINALLY CHARGED YOU WAS THAT
15 THERE ARE TWO TYPES OF EVIDENCE GENERALLY PRESENTED DURING A TRIAL:
16 DIRECT EVIDENCE AND CIRCUMSTANTIAL EVIDENCE.

17 DIRECT EVIDENCE IS EVIDENCE OF DIRECT PERCEPTION. IT INCLUDES THE
18 TESTIMONY OF A PERSON WHO ASSERTS OR CLAIMS TO HAVE ACTUAL
19 KNOWLEDGE OF A FACT SUCH AS AN EYEWITNESS.

20 CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN. IT'S PROOF OF A
21 CHAIN OF FACTS AND CIRCUMSTANCES THAT INDICATE THE EXISTENCE OF SOME
22 FACT IN ISSUE.

23 NOW IF YOU NEED TWO FACTS, FOR EXAMPLE, IF YOU'VE GOT
24 CIRCUMSTANTIAL EVIDENCE THAT ESTABLISHES ONE AND DIRECT EVIDENCE
25 THAT ESTABLISHES OF ANOTHER, YOU SEE YOU'VE GOT A COMBINATION OF

1 THINGS. YOU CAN COMBINE WITHIN ONE FACT DIRECT AND CIRCUMSTANTIAL.
2 OKAY? BUT CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN OF FACTS AND
3 CIRCUMSTANCES THAT INDICATE THE EXISTENCE OF A FACT THAT IS IN ISSUE IN
4 YOUR DECISION. THE LAW MAKES NO DISTINCTION, ABSOLUTELY NO DISTINCTION
5 BETWEEN THE WEIGHT OR THE VALUE TO BE GIVEN TO EITHER DIRECT OR
6 CIRCUMSTANTIAL EVIDENCE; NOR IS A GREATER DEGREE OF CERTAINTY
7 REQUIRED OF CIRCUMSTANTIAL EVIDENCE THAN OF DIRECT EVIDENCE. YOU
8 NEED TO WEIGH ALL THE EVIDENCE IN THE CASE. IF YOU'RE NOT CONVINCED OF
9 THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT, YOU FIND HIM NOT
10 GUILTY.

11 THEN I EXPLAINED TO YOU THIS ADDITIONAL LANGUAGE. WHEN THE
12 STATE RELIES ON CIRCUMSTANTIAL EVIDENCE, YOU MAY NOT CONVICT A
13 DEFENDANT UNLESS EVERY CIRCUMSTANCE RELIED ON BY THE STATE ON THAT
14 ISSUE IS PROVEN BEYOND A REASONABLE DOUBT, AND ALL THE CIRCUMSTANCES
15 SO PROVEN ARE CONSISTENT WITH EACH OTHER, AND TAKEN TOGETHER, POINT
16 CONCLUSIVELY TO THE GUILT OF THE ACCUSED TO THE EXCLUSION OF EVERY
17 OTHER REASONABLE HYPOTHESIS.

18 IT'S NOT SUFFICIENT THAT THE CIRCUMSTANCES CREATE A PROBABILITY.
19 I TOLD YOU THAT'S A CIVIL STANDARD. PROBABILITY IS A CIVIL STANDARD. IT IS
20 PROBABLE THAT SOMETHIN' HAPPENED. IN CRIMINAL COURT IT'S BEYOND A
21 REASONABLE DOUBT. SO IT'S NOT SUFFICIENT THAT CIRCUMSTANCES CREATE A
22 PROBABILITY EVEN IF IT'S A STRONG ONE. IF ASSUMING THE CIRCUMSTANCES
23 ARE TRUE THERE IS A REASONABLE HYPOTHESIS WHICH DOES NOT INCLUDE THE
24 GUILT OF AN ACCUSED, THEN THE PROOF HAS FAILED. I CAN'T REALLY - I'M
25 REALLY GIVIN' YOU NOW THE TWO PREEMINENT CASES ON THIS AND THAT'S

1 BASICALLY LANGUAGE DIRECTLY FROM OUR SUPREME COURT. I CAN'T MAKE IT
2 ANY CLEARER THAN THAT. I'M SORRY IF IT'S CONFUSING. YOU MAY RETIRE TO
3 YOUR JURY ROOM. (THE JURY RETIRED TO THE JURY ROOM AT 9:46 P.M.) STATE
4 EXCEPTIONS, ADDITIONS, OBJECTIONS TO THE ADDITIONAL INSTRUCTIONS FROM
5 THE STATE.

6 MR. MAYE: NOTHIN', YOUR HONOR.

7 THE COURT: DEFENSE?

8 MR. HAWKE: NO, YOUR HONOR.

9 MR. MILLER: NONE, YOUR HONOR.

10 THE COURT: SUBJECT TO ALL PREVIOUS OBJECTIONS REALIZING YOU'RE
11 NOT WAIVING ANY PREVIOUS OBJECTIONS.

12 MR. HAWKE: THANK YOU, YOUR HONOR.

13 MR. MILLER: THANK YOU, YOUR HONOR.

14 MR. SUSSMAN: THANK YOU, YOUR HONOR.

15 THE COURT: ALRIGHT. THE OBJEC -- THE CHARGE WILL STAND AS I GAVE
16 IT. WE'RE AT EASE. (THE FOLLOWING OCCURRED SOMETIME LATER.) I RECEIVED
17 A NOTE FROM THE JURY THAT READS JURY HAS REACHED AN IMPASSE ON ALL 4
18 CASES. IT IS NOT LIKELY TO BE RESOLVED TONIGHT FROM ALL APPEARANCES.
19 I'M GONNA BRING 'EM IN AND BRING 'EM BACK TUESDAY. BRING THE JURY. (THE
20 JURY RETURNED TO THE OPEN COURTROOM AT 11:07 P.M.) MR. FOREMAN, I
21 RECEIVED A NOTE FROM THE JURY THAT READS THAT YOU'VE REACHED AN
22 IMPASSE ON ALL 4 CASES, IT IS NOT LIKELY TO BE RESOLVED TONIGHT FROM ALL
23 APPEARANCES. IS THAT THE JURY'S NOTE?

24 THE FOREMAN: YES, SIR.

25 THE COURT: LADIES AND GENTLEMEN, I WAS FIXING TO COME SEND FOR

1 YOU ANYWAY. I WAS GONNA WAIT TILL 11 O'CLOCK AND I THINK WE'RE RIGHT
2 AT THAT, MAYBE A LITTLE PAST. I'VE TALKED TO THE COURT PERSONNEL, AND I
3 JUST HAVE TO MAKE A JUDGMENT CALL. MY JUDGMENT CALL IS TO BRING YOU
4 BACK AT 10 ON TUESDAY. IS THERE ANYBODY WHO ABSOLUTELY, POSITIVELY
5 CANNOT BE HERE AT 10 ON TUESDAY. WHAT'S YOUR NAME?

6 THE JUROR: CHRISTINE CURRY.

7 THE COURT: WHY CAN'T YOU BE HERE, MS. CURRY?

8 THE JUROR: I GOT TO GO TO WORK AND MAKE SOME MONEY.

9 THE COURT: I'M SORRY. YOU HAVE TO BE HERE. ANYBODY ELSE? FOLKS, I
10 WANNA TELL YOU, AND I KNOW THIS IS A SMALL CONSOLATION AND I'LL MAKE IT
11 SHORT. I JUST WANT TO TELL YOU HOW MUCH I THANK YOU FOR YOUR SERVICE. I
12 TRULY DO. REGARDLESS OF WHAT HAPPENS FROM THIS POINT FORWARD, YOU
13 HAVE -- YOU HAVE BEEN A FANTASTIC JURY AND I DO APPRECIATE IT SO MUCH.

14 NOW WHEN YOU COME BACK TUESDAY, COME DIRECTLY TO THE JURY
15 ROOM. DO NOT DISCUSS THIS CASE WITH ANYBODY; DON'T LET ANYBODY
16 DISCUSS IT WITH YOU, AND WHEN YOU ALL 12 ARE IN THE JURY ROOM YOU CAN
17 START YOUR DELIBERATIONS AGAIN. OKAY? IF YOU HAVE ANY FURTHER NOTES
18 TO SEND ME, YOU CAN SEND THOSE THEN. BUT DON'T START DELIBERATING
19 UNTIL ALL 12 ARE IN THE JURY ROOM. THANK YOU VERY MUCH. 10 O'CLOCK. 10
20 O'CLOCK TUESDAY. ALRIGHT. WHERE ARE MOST OF YOU LADIES PARKED?
21 DOWN THE HILL? IS ANY OBJECTION IF I GET THE LAW ENFORCEMENT FOLKS TO
22 KINDA WALK AROUND---

23 MR. PUETZ: NO, SIR.

24 MR. MAYE: ABSOLUTELY NOT.

25 THE COURT: WELL, IF YOU ALL WILL JUST HAVE -- DOES ANYBODY NEED

1 TO GO BACK IN THE JURY ROOM? OKAY. WELL, Y'ALL GO GET YOUR BELONGINGS
2 AND I'LL JUST HAVE SOME FOLKS TO MAKE SURE THAT Y'ALL GET SAFELY TO
3 YOUR CARS. OKAY? I'M SORRY? WHATEVER YOU -- YOUR NOTEPADS THAT YOU
4 TOOK, GIVE THOSE TO THE BAILIFF AND WE'LL LOCK 'EM UP TILL YOU COME
5 BACK. THE EXHIBITS ARE STILL BACK THERE WITH THE EXCEPTION OF THE
6 MARIJUANA WHICH WAS PUT BACK IN THE EVIDENCE ROOM. WE'LL TAKE
7 CONTROL OF THE EXHIBITS AND THEY'LL PUT THOSE BACK ON THE TABLE FOR
8 YOU FOR TUESDAY MORNING. OKAY? ALRIGHT.

9 MR. SUSSMAN: JUDGE, CAN WE APPROACH FOR JUST A SECOND? (THERE
10 WAS A BENCH CONFERENCE OUT OF THE HEARING OF THE JURY AND OFF THE
11 RECORD.)

12 THE COURT: ALRIGHT. LADIES AND GENTLEMEN, LET ME MAKE SURE I
13 REITERATE WHAT I TOLD YOU BEFORE: DON'T DISCUSS IT WITH ANY FAMILY
14 MEMBERS, FRIENDS, ANYBODY AT ALL; DON'T LET ANYBODY DISCUSS IT WITH
15 YOU; DON'T TELL 'EM WHAT THE CASE IS ABOUT; DON'T TELL 'EM WHO'S
16 INVOLVED IN IT, IF THERE'S ANY MEDIA COVERAGE, GET AWAY FROM IT; DON'T
17 LET YOURSELF BE EXPOSED TO IT, AND REPORT TO ME IF ANYBODY DOES ATTEMPT
18 TO CONTACT YOU AND DISCUSS THE CASE OR IF YOU'RE EXPOSED TO ANY MEDIA
19 COVERAGE. THANK YOU SO MUCH. ALRIGHT, IF YOU ALL WILL MAKE SURE AS
20 SOON AS EVERYBODY'S READY TO GO THAT EVERYBODY GETS OUT SAFELY.
21 OKAY. COURT'S IN RECESS TILL 10 A.M. ON MONDAY -- ON TUESDAY.

22 MR. HAWKE: ON BEHALF OF THE DEFENDANT DELEON, AT THIS TIME WE'D
23 MOVE FOR A MISTRIAL. THIS JURY HAS DELIBERATED VERY DILIGENTLY UNTIL I
24 THINK ABOUT A QUARTER TILL 7. IT'S NOW 11:15 AT NIGHT. THEY'VE INDICATED
25 AT THIS POINT THAT THEY ARE HOPELESSLY DEADLOCKED AND DON'T

1 ANTICIPATE ANY---

2 THE COURT: THEY DIDN'T SAY THAT.

3 MR. HAWKE: OKAY. WELL, THEY'RE DEADLOCKED AT THIS POINT IN TIME,
4 AND FOR THOSE REASONS WE WOULD MOVE FOR A MISTRIAL.

5 MR. SUSSMAN: YOUR HONOR, I'D LIKE TO JOIN IN THAT MOTION, AND I'D
6 ALSO LIKE TO SUBMIT ON BEHALF OF MR. HERNANDEZ AND AVILA-AROJONA
7 WE'RE VERY CONCERNED ABOUT THE GAP IN TIME.

8 THE COURT: ALRIGHT.

9 MR. SUSSMAN: WE'RE REAL CONCERNED ABOUT THE GAP IN TIME
10 BETWEEN NOW AND TUESDAY BECAUSE NO MATTER HOW STRONG YOUR
11 ADMONITION IS, JURORS ARE HUMAN BEINGS AND VERY LIKELY AND VERY
12 POSSIBLY MAY DISCUSS THIS CASE WITH THEIR SPOUSES OR THEIR FRIENDS. I
13 THINK THEY WERE FOCUSED AND CONCENTRATED ON DELIBERATIN' THIS CASE
14 REFLECTED BY THE NUMBER OF QUESTIONS THEY SENT WHICH INDICATED AN
15 INTELLIGENT AND REASONING AND WE WOULD SUBMIT THAT, YOU KNOW,
16 DECLARING A MISTRIAL OR BRINGING THEM BACK IN THE MORNING OR AT LEAST
17 GIVING THEM THE OPTION OF COMING BACK IN THE MORNING WOULD'VE BEEN
18 MORE APPROPRIATE IN TERMS OF TRYING TO REACH A FAIR AND IMPARTIAL
19 VERDICT THAT WOULD BENEFIT OUR CLIENTS UNDER DUE PROCESS OF LAW. FOR
20 THOSE REASONS WE MOVE FOR A MISTRIAL.

21 THE COURT: YES, SIR?

22 MR. MILLER: YOUR HONOR, I'D JUST JOIN IN THE MOTIONS ALREADY
23 STATED.

24 MR. HAWKE: AND, YOUR HONOR, ON BEHALF OF THE DEFENDANT DELEON
25 WE WOULD JOIN IN THE ADDITIONAL REASONS THAT MR. SUSSMAN HAS NOW

1 ENUNCIATED.

2 THE COURT: ALRIGHT. THE MOTIONS ARE DENIED.

3 MR. HAWKE: THANKK YOU.

4 THE COURT: LET'S SEE---

5 MR. HAWKE: WE COULD ALWAYS START---

6 THE COURT: MR. DELEON -- LET'S SEE, IS MR. AROJONA THE ONE THAT'S
7 LOCKED UP? THAT'S RIGHT.

8 MR. SUSSMAN: YES.

9 THE COURT: MR. DELEON, MR. GUERRERO---

10 MR. HAWKE: STAND UP. STAND UP.

11 THE COURT: ---MR. HERNANDEZ, I'M RESTORING YOU TO YOUR BOND. BE
12 BACK HERE TUESDAY NO LATER THAN 10 A.M. THE TRIAL WILL GO ON WHETHER
13 YOU'RE HERE OR NOT. DO EACH OF THEM UNDERSTAND, MR. HUNT?

14 MR. HUNT: YES, YOUR HONOR, THEY DO.

15 THE COURT: THANK YOU.

16 MR. SUSSMAN: THANK YOU, JUDGE.

17 THE COURT: COURT'S IN RECESS UNTIL 10 A.M. TUESDAY. (THE
18 FOLLOWING OCCURRED THE TUESDAY JULY 6, 2004.) I'VE BEEN INFORMED THAT
19 THE JURY HAS A VERDICT. I HAVE NO WAY OF KNOWING WHAT THE JURY
20 DECIDED. PLEASE, STAY STILL AND STAY QUIET WHEN AND AFTER THE VERDICT
21 IS PUBLISHED. DON'T SHOW ANY SIGNS OF APPROVAL OR DISAPPROVAL. DON'T
22 MAKE ANY SOUNDS. DON'T SHAKE YOUR HEAD IN AGREEMENT OR
23 DISAGREEMENT. STAY STILL AND STAY QUIET. BRING THE JURY IN. (THE JURY
24 RETURNED TO THE OPEN COURTROOM TO RENDER ITS VERDICT AT 10:35 A.M.) MR.
25 CLERK?

1 THE CLERK: THANK YOU, YOUR HONOR. MR. FOREMAN, HAVE YOU
2 REACHED A VERDICT?

3 THE FOREMAN: WE HAVE.

4 THE CLERK: IF YOU WOULD GIVE IT TO THE BAILIFF, PLEASE, SIR.

5 THE COURT: PUBLISH THE VERDICTS, PLEASE.

6 THE CLERK: YOUR HONOR, THIS IS CASE #2004-GS-19-137 THE STATE OF
7 SOUTH CAROLINA -VS- ALFREDO-AVILA AROJONA, THE CHARGE TRAFFICKING
8 MARIJUANA 100 POUNDS OR MORE. AND THE VERDICT GUILTY OF TRAFFICKIN'
9 MARIJUANA 100 POUNDS OR MORE BUT LESS THAN 2000 POUNDS.

10 CASE #2004-GS-19-138 THE STATE -VS- RAPHAEL PEREZ HERNANDEZ
11 CHARGED TRAFFICKIN' MARIJUANA 100 POUNDS OR MORE BUT LESS THAN 2000
12 POUNDS. AND THE VERDICT GUILTY OF TRAFFICKIN' MARIJUANA 100 POUNDS OR
13 MORE BUT LESS THAN 2000 POUNDS.

14 CASE #GS-2004-19-139 THE STATE OF SOUTH CAROLINA -VS- HONORIO
15 HERNANDEZ GUERRERO CHARGED TRAFFICKING MARIJUANA 100 POUNDS OR
16 MORE BUT LESS THAN 2000 POUNDS. THE VERDICT GUILTY TRAFFICKING
17 MARIJUANA.

18 CASE 2004-GS-19-140 THE STATE OF SOUTH CAROLINA -VS- FREDY DELEON
19 TAMAYO, AND THE VERDICT GUILTY OF TRAFFICKING MARIJUANA 100 POUNDS OR
20 MORE BUT LESS THAN 2000 POUNDS.

21 LADIES AND GENTLEMEN, THE VERDICTS THAT I JUST READ ARE THE
22 VERDICTS THAT YOU REACHED IN YOUR JURY ROOM. I ASK YOU NOW WAS THIS
23 YOUR VERDICT IN THE JURY ROOM AND IS THIS STILL YOUR VERDICT? IF SO, RAISE
24 YOUR HAND.

25 THE COURT: ALRIGHT. ALL HANDS ARE RAISED. ARE ANY MATTERS TO

1 TAKE UP PRIOR TO THE JURY BEING DISCHARGED FROM THE STATE?

2 MR. MAYE: NOT FROM THE STATE, YOUR HONOR.

3 THE COURT: FROM THE DEFENSE?

4 MR. HAWKE: NO, YOUR HONOR.

5 MR. SUSSMAN: NO, YOUR HONOR.

6 MR. MILLER: NO, YOUR HONOR. (THE JURY WAS DISMISSED BY THE
7 COURT.) ARE THERE ANY MOTIONS?

8 MR. HAWKE: YOUR HONOR, ON BEHALF OF FREDY DELEON, WE WOULD
9 RENEW ALL PREVIOUS MOTIONS FOR DIRECTED VERDICT -- ON BEHALF OF FREDY
10 DELEON, YOUR HONOR, WE WOULD RENEW ALL OF OUR MOTIONS FOR DIRECTED
11 VERDICT AS PREVIOUSLY STATED. WE ALSO AT THIS TIME MOVE FOR A NEW
12 TRIAL AND WOULD LIKE TO BE ABLE TO MORE SPECIFICALLY DELINEATE THE
13 GROUNDS FOR THE MOTION FOR MISTRIAL AT A LATER TIME. AND, JUDGE, WE
14 WOULD ASK AT LEAST BE ALLOWED 10 DAYS TO DELINEATE FOR THE MOTION FOR
15 MISTRIAL.

16 THE COURT: YES, SIR?

17 MR. SUSSMAN: I'D LIKE TO JOIN IN THAT MOTION AND ASK THE COURT TO
18 RETAIN JURISDICTION AND ALLOW US 10 DAYS TO PRODUCE A MOTION FOR
19 MISTRIAL IN WRITING. I'D ALSO MOVE THE COURT AT THIS TIME AS THE 13TH
20 JUROR UNDER THE 13TH JUROR DOCTRINE TO FIND MR. GUERRERO AND MR.
21 ALFREDO AROJONA NOT GUILTY BASED ON THE PAUCITY OF EVIDENCE, LACK OF
22 EVIDENCE AND THE FACT THAT THE ONLY EVIDENCE IS THEY WERE MERELY
23 PRESENT.

24 MR. MILLER: YOUR HONOR, I'D JOIN ON BEHALF OF HONORIO GUERRERO
25 THE MOTIONS PREVIOUSLY STATED AND THE REQUEST THAT THE DEFENSE BE

1 ALLOWED A REASONABLE AMOUNT OF TIME IN WHICH TO PREPARE WRITTEN
2 MOTIONS FOR A NEW TRIAL IN THIS CASE. THANK YOU, YOUR HONOR.

3 THE COURT: ANY MOTIONS THAT YOU ALL NEED TO MAKE, YOU NEED TO
4 MAKE THEM NOW. I'LL BE HAPPY TO LET Y'ALL GET YOUR WITS TOGETHER AND
5 THINK A MINUTE. THIS ISN'T LIKE A CIVIL CASE WHERE I CAN JUST ISSUE AN
6 ORDER. I'VE GOTTA GET EVERYBODY BACK TOGETHER AGAIN AND HAVE
7 SENTENCING PROCEDURE. THAT'S JUST GONNA BE AWFULLY HARD FOR ME TO
8 DO. I DON'T EVER RECALL GIVING 10 DAYS TO SUBMIT ADDITIONAL MATERIALS
9 ON A POST-TRIAL MOTIONS IN A CRIMINAL CASE. NOW OBVIOUSLY THERE ARE
10 RULES THAT ALLOW MOTIONS TO BE FILED, BUT I'M GOING TO DENY YOUR
11 MOTION FOR 10 ADDITIONAL DAYS. I'LL GIVE YOU TIME TO THINK ABOUT
12 EXACTLY WHAT YOU NEED TO PRESENT, AND I'LL LET YOU MAKE YOUR MOTIONS.
13 THEY'RE IN CUSTODY. WE'LL BE AT EASE FOR A FEW MINUTES. I'M NOT GONNA
14 TALK TO THE JURY THOUGH UNTIL I HEAR YOUR MOTIONS.

15 MR. MILLER: THANK YOU, YOUR HONOR. (THERE WAS A BRIEF RECESS.)

16 THE COURT: ALRIGHT. ANYTHING ADDITIONAL BY WAY OF POST-TRIAL
17 MOTIONS?

18 MR. HAWKE: YES, YOUR HONOR. ON BEHALF OF THE DEFENDANT DELEON,
19 WE WOULD FIRST OF ALL LIKE TO JOIN IN MR. SUSSMAN'S STATED MOTION IN
20 REFERENCE TO THE 13TH JUROR AND REQUEST THE COURT GRANT A VERDICT OF
21 ACQUITTAL FOR HIM BASED UPON A COUPLE OF THINGS, AND ALSO BASED UPON A
22 MOTION FOR A NEW TRIAL, THERE HAS BEEN ABSOLUTELY NO PROOF IN THIS
23 RECORD WHATSOEVER THAT FREDY DELEON HAD KNOWLEDGE OF THE CONTENT
24 OF THE CONTAINER WHICH CONTAINED THE MARIJUANA. ALL OF THE
25 INVESTIGATORS AND ALL THE STATE'S PROVED -- EVERYBODY'S

1 ACKNOWLEDGED THAT NOBODY KNOWS HOW HIS NAME WOUND UP ON THE
2 MANIFEST THAT LED TO THE MARIJUANA BEING DELIVERED.

3 EVERYONE ACKNOWLEDGED THAT THEY HAD NO PROOF THAT HE HAD
4 ANY KNOWLEDGE THAT THE CONTAINER CONTAINED MARIJUANA. EVERYBODY
5 ACKNOWLEDGED THAT THEY HAD NO PROOF THAT HE KNEW THAT THERE WAS
6 ANYTHING BEING DELIVERED TO HIM OTHER THAN FURNITURE.

7 ALSO, JUDGE, FREDY DELEON'S PAST AND PAST CONDUCT AND ALL HAS
8 GIVEN THEM NO CAUSE TO BELIEVE THAT HE HAD EVER BEEN INVOLVED IN
9 DRUGS OR THE SELLING OF DRUGS OR USE OF DRUGS IN ANY WAY, SHAPE OR
10 FORM, AND THERE'S BEEN NONE SINCE. JUDGE, ALL OF THE PROOF IN THIS CASE
11 ALSO INDICATES THERE WAS NEVER ANY ATTEMPT BY FREDY DELEON EITHER TO
12 OFFLOAD ANY OF THESE ITEMS OR TO CONTROL THE -- THE ITEMS AS FAR AS
13 DIRECTING A TRACTOR-TRAILER AS TO WHERE TO GO AND WHAT TO DO.

14 EVERY SINGLE ONE OF THE WITNESSES HAVE ACKNOWLEDGED THAT
15 FREDY DELEON WAS NOT INVOLVED IN ANY WAY IN SELECTING ANY OF THE
16 ITEMS THAT CAME OFF THE TRUCK, THAT HE MADE NO ATTEMPT TO OPEN OR TO
17 SEE WHAT IS IN THE ITEMS, THAT IT WAS IMPOSSIBLE TO KNOW WHAT WAS IN
18 THESE ITEMS WITHOUT USING A CROWBAR, AN X-RAY MACHINE OR A DOG, NONE
19 OF WHICH MR. DELEON HAD, NOR DID HE HAVE THE ABILITY TO EVEN -- HE
20 DIDN'T EVEN HAVE THE TOOLS THERE TO OPEN IT UP. THEN THE ITEMS WERE
21 TAKEN AWAY FROM MR. DELEON'S BUSINESS AND HE'S NOT INVOLVED AT ALL IN
22 DIRECTING THAT IN ANY WAY, AND HE NEVER WENT IN ANY WAY TO TRY AND
23 CONTROL THOSE ITEMS OR DO ANYTHING WITH THE ITEMS.

24 THERE IS ALSO, JUDGE, NO EVIDENCE THAT MR. DELEON EVER
25 CONTROLLED OR POSSESSED ANY OF THESE DRUGS OTHER THAN THE 40 POUNDS

1 AT HIS PLACE -- IN OTHER WORDS, EVEN HAD THE ABILITY TO CONTROL
2 ANYTHING OTHER THAN THE 40 POUNDS THAT WAS OFFLOADED IN HIS PLACE,
3 AND AT LEAST IN THAT REGARD, JUDGE, IF HE'S -- IF THE COURT FOR SOME
4 REASON CONSIDERS MY PREVIOUS ARGUMENT INVALID, THE MOST HE SHOULD BE
5 CONVICTED OF IS THE 40 POUNDS THAT WAS FOUND IN HIS PLACE. THERE IS
6 ABSOLUTELY NO EVIDENCE OF HIM PARTICIPATING IN ANY CRIME IN ANY
7 REGARD AS FAR AS HIM HAVING ANY KNOWLEDGE OR ANY VOLUNTARY
8 PARTICIPATION IN WHAT WAS GOING ON OTHER THAN HIM RECEIVING A LOAD OF
9 FURNITURE.

10 WE FEEL LIKE THE WEIGHT OF THE EVIDENCE IS GREATLY AGAINST THE
11 STATE IN REGARDS TO PROVING THESE CRUCIAL AND VITAL ELEMENTS OF THE
12 OFFENSE CHARGED, AND WE FEEL LIKE THE SUFFICIENCY OF THE EVIDENCE IS --
13 IS VERY SPARSE AT BEST, AND WE DO NOT FEEL LIKE ANYTHING HAS BEEN
14 BROUGHT BEFORE THE JURY WHICH WOULD CARRY THE STATE'S BURDEN OF
15 PROOF OF BEYOND A REASONABLE DOUBT.

16 ALSO, JUDGE, I'D LIKE TO POINT OUT THAT EVER SINCE NOT ONLY BEFORE,
17 NOT ONLY DURING, BUT EVER SINCE THERE'S BEEN NO INDICATION THAT FREDY
18 DELEON HAS BEEN INVOLVED IN ANY DRUGS, DRUG USE OR ANYTHING LIKE THAT.
19 THE ONLY THING THE STATE HAD UP TO THIS POINT IN TIME, PROOF AT THIS TRIAL
20 WAS THAT FREDY DELEON HAD NEVER BEEN INVOLVED IN DRUGS, THAT THEY
21 HAD NO KNOWLEDGE OR PROOF OF KNOWLEDGE THAT HE KNEW WHAT WAS IN
22 THE CONTENTS OF THESE ITEMS. THEY HAD NO PROOF THAT HE ORDERED THESE --
23 ORDERED -- PUT HIS NAME ON THE MANIFEST AND CAUSED IT TO BE DELIVERED
24 TO HIS PLACE. THEY HAD NO PROOF THAT HE HAD ANY ABILITY TO DETERMINE
25 THAT THIS WAS ANYTHING OTHER THAN FURNITURE. HAD NO ABILITY TO SEE

1 INSIDE THE ITEMS.

2 AND FOR ALL THESE REASONS, JUDGE, IT GOES TO SHOW THAT ONE OF THE
3 CRUCIAL AND VITAL ELEMENTS OF THIS OFFENSE HAS NOT BEEN PROVEN BY THE
4 STATE AND THAT BEING KNOWLEDGE AND PARTICIPATION IN THIS PARTICULAR
5 CRIME.

6 ALSO, JUDGE, AT THIS POINT IN TIME WE WOULD ALSO RAISE THE GROUND
7 FOR MOTION FOR NEW TRIAL. ALL OF THE PREVIOUSLY STATED OBJECTIONS AND
8 MOTIONS THAT WE HAVE MADE IN THIS CASE AND WOULD RENEW THE SAME
9 MOTIONS AND OBJECTIONS ON THE PREVIOUS GROUNDS STATED IN THE RECORD.
10 WE FEEL LIKE THE DENIAL OF THOSE MOTIONS AND OBJECTIONS INDIVIDUALLY
11 AND AS A GROUP SERVE TO VIOLATE THE DEFENDANT'S RIGHTS UNDER THE 4TH,
12 5TH, 6TH, 8TH AND 14TH AMENDMENTS OF THE UNITED STATES CONSTITUTION AND THE
13 COMPARABLE PROVISIONS OF THE SOUTH CAROLINA CONSTITUTION AND THAT
14 EACH OF THOSE RIGHTS BEING VIOLATED TO LEAVE THIS COURT TO GRANT A
15 MOTION FOR NEW TRIAL SO THAT THESE MATTERS CAN BE RECTIFIED AND A NEW
16 TRIAL BE GRANTED.

17 ALSO, JUDGE, WE HAVE SOME CONCERNS THAT THE JURY WAS OUT TILL
18 FRIDAY NIGHT I THINK IT WAS A LITTLE AFTER 11 OR RIGHT AT 11 P.M. AND
19 DESPITE THERE BEING AN INABILITY TO REACH A VERDICT AT THAT POINT IN TIME
20 THEY WERE ALLOWED TO GO HOME FOR 4 DAYS WITHOUT ANY COURT
21 SUPERVISION OR WHATEVER AND EXPOSED TO POSSIBLE OUTSIDE INFLUENCES
22 INCLUDING THEIR FAMILY AND ALL AND THEN BE ABLE TO COME BACK AND
23 WITHIN 20 MINUTES HAVE A VERDICT. WE FEEL LIKE BEFORE ANY VERDICT IS
24 ALLOWED TO STAND IN THAT REGARD THAT THERE NEEDS TO BE AN INQUIRY AS
25 TO WHAT, IF ANYTHING, THEY WERE POSSIBLY EXPOSED TO DURING THE 4-DAY

1 BREAK.

2 OTHER THAN THAT, JUDGE, ON BEHALF OF FREDY DELEON, I WOULD
3 REQUEST THAT THE COURT CONSIDER A REASONABLE BOND PENDING APPEAL OF
4 THIS CASE. MAY I HAVE ONE MORE MOMENT?

5 THE COURT: YES, SIR.

6 MR. HAWKE: THAT'S ALL I HAVE ON BEHALF OF DEFENDANT DELEON.

7 THE COURT: THANK YOU. MR. SUSSMAN?

8 MR. SUSSMAN: JUDGE, I'D JOIN IN THOSE REQUESTS AND MOTIONS AND
9 ARGUMENTS JUST MADE BY MR. HAWKE SO AS NOT TO REPEAT IT VERBATIM, AND
10 ADD TO IT REQUEST FOR CONSIDER -- BRINGING A MOTION FOR NEW TRIAL ON
11 BEHALF OF MR. RAPHAEL HERNANDEZ AND ALFREDO ARJONA. BASED ON THE
12 ARGUMENT, THE VERDICT IS INCONSISTENT WITH THE EVIDENCE AND IS NOT
13 SUPPORTED BY THE EVIDENCE THAT WAS ADDUCED AT TRIAL. THE ONLY
14 EVIDENCE IS THAT MY CLIENTS WERE PRESENT AND ANY INDICIA OR INDICATION
15 OR EVIDENCE OF KNOWLEDGE WHICH IS AN ESSENTIAL ELEMENT MUST BE
16 PROVED BEYOND A REASONABLE DOUBT.

17 WE WOULD ASK THE COURT TO EITHER GRANT A MOTION FOR A NEW
18 TRIAL OR TO SET ASIDE THE VERDICT AND FIND MY CLIENTS NOT GUILTY AS THE
19 13TH JUROR IN THIS CASE. THANK YOU.

20 THE COURT: THANK YOU. MR. MILLER?

21 MR. MILLER: YOUR HONOR, ON BEHALF OF HONORIO GUERRERO, I'D JOIN
22 IN THE MOTIONS PREVIOUSLY STATED. AGAIN, IN AN EFFORT NOT TO REPEAT
23 THEM VERBATIM.

24 ADDITIONALLY, YOUR HONOR, I WOULD DIRECT THE COURT'S ATTENTION
25 TO STATE V. EDWARDS 298 SC 272 A 1989 CASE WHICH IS STILL GOOD LAW IN THE

1 MATTER OF LAW THAT THERE IS A REASONABLE EXPLANATION FOR WHAT WAS
2 GOING ON OUT THERE, AND IT DID NOT INCLUDE THE FACT THAT HONORIO
3 GUERRERO UNDERSTOOD THAT THERE WAS MARIJUANA ON THAT TRUCK, AND
4 BECAUSE OF THAT, AS A MATTER OF LAW, THE PROOF HAS JUST FAILED. WHAT'S
5 HAPPENING NOW IS THAT THE JURY HAS REACHED ITS CONCLUSION THAT HE
6 MUST'VE KNOWN BUT THERE'S JUST NOT ANY EVIDENCE TO SUPPORT IT OTHER
7 THAN THE EVIDENCE THAT WE'VE HEARD HERE DURING THE TRIAL WHICH THERE
8 IS A REASONABLE -- THERE'S NO DIRECT EVIDENCE; THERE IS A REASONABLE
9 HYPOTHESIS WHICH DOES NOT INCLUDE HIS GUILT THAT THE STATE WAS NOT
10 ABLE TO REFUTE.

11 BASED ON THAT AND ARGUMENTS PREVIOUSLY STATED BY COUNSEL FOR
12 AVILA-ARJONA, RAPHAEL HERNANDEZ AND FREDY DELEON, I WOULD ASK THE
13 COURT FOR A NEW TRIAL IN THIS CASE. THANK YOU, YOUR HONOR.

14 THE COURT: THANK YOU.

15 MR. HAWKE: YOUR HONOR, MAY I BE -- I WANNA ADD ONE THING IN
16 REFERENCE TO THE DEFENDANT DELEON. WE WOULD JOIN IN HIS ARGUMENT
17 REGARDING CIRCUMSTANTIAL EVIDENCE. CIRCUMSTANTIAL EVIDENCE--

18 THE COURT: WAIT A MINUTE NOW.

19 MR. HAWKE: OKAY.

20 THE COURT: NO, NO. OKAY. I -- I'M -- GOT YOUR PRONOUNS CONFUSED.
21 YOU SAID IN RESPONSE TO THE ARGUMENT---

22 MR. HAWKE: NO, JUDGE, WE JOIN IN THE ARGUMENT MADE---

23 THE COURT: MR. MILLER JUST MADE?

24 MR. HAWKE: ---MR. MILLER JUST MADE---

25 THE COURT: ALRIGHT.

1 STATE OF SOUTH CAROLINA PARTICULARLY AS IT REGARDS THE DEFINITION OF
2 CIRCUMSTANTIAL EVIDENCE, AND IN THAT CASE IT IS SET OUT THAT FOR THE
3 STATE TO BE ABLE TO HAVE A POSSIBILITY OF PROVING A CASE RELYING ON
4 CIRCUMSTANTIAL EVIDENCE, THERE MUST NOT BE A REASONABLE HYPOTHESIS
5 WHICH WOULD NOT INCLUDE THE GUILT OF THE ACCUSED.

6 AND CLEARLY WHAT HAS HAPPENED IN THIS CASE IS THAT THERE ARE A
7 SET OF FACTS AND CIRCUMSTANCES ALONG WITH 905 POUNDS -- 894 POUNDS --
8 DEPENDING ON WHO WEIGHS IT -- MARIJUANA WHICH HAD CAUSED THE JURY TO
9 SPECULATE AND TO -- AND TO BASICALLY CONCLUDE THAT THEY WERE GONNA
10 CONNECT THE DOTS WHERE THE STATE COULDN'T. CERTAINLY THAT'S NOT
11 ANYTHING AGAINST THE STATE'S CASE, BUT AT THIS POINT IN TIME THERE JUST
12 REALLY WASN'T ANY EVIDENCE THAT THESE GUYS HAD ANY KNOWLEDGE OF
13 WHAT WAS GOING ON, PARTICULARLY HONORIO GUERRERO.

14 FURTHERMORE, YOUR HONOR, THERE IS ABSOLUTELY A REASONABLE
15 EXPLANATION FOR EXACTLY WHAT WAS GOING ON OUT THERE. THEY BROUGHT
16 HONORIO GUERRERO HERE FROM CHARLOTTE AND THEY LED HIM OUT TO
17 PADGETT ROAD THAT DAY. IT DOES NOT INCLUDE HIS GUILT OR HIS KNOWLEDGE
18 OF THE FACT THAT THAT TRUCK WAS LOADED WITH MARIJUANA. CERTAINLY THE
19 JURY HAS TAKEN THAT LEAP, AND THE COURT IS WELL AWARE OF THE CHARGE IN
20 STATE V. EDWARDS ON CIRCUMSTANTIAL EVIDENCE THAT REQUIRES THAT IF THE
21 CIRCUMSTANCES ARE PROVED WHICH WE NEVER DOUBTED THE
22 CIRCUMSTANCES, WE NEVER CONTESTED THE CIRCUMSTANCES BEING TRUE.
23 THERE'S STILL A REASONABLE HYPOTHESIS THAT DOES NOT INCLUDE THE GUILT
24 OF THE ACCUSED, AND UNDER STATE V. EDWARDS THE PROOF HAS FAILED. AND I
25 WOULD ARGUE TO THE COURT THAT THAT IS A CORRECT STATEMENT AS A

1 MR. HAWKE: --ON BEHALF OF DEFENDANT FREDY DELEON. WE JOIN IN
2 HIS ARGUMENT REGARDING CIRCUMSTANTIAL EVIDENCE AND THAT THE
3 CIRCUMSTANTIAL EVIDENCE IN THIS CASE DOES NOT EXCLUDE THE REASONABLE
4 EXPLANATION THAT FREDY DELEON HAD NO KNOWLEDGE AND DID NOT
5 PARTICIPATE IN THE CRIME. AND FOR THOSE REASONS WE WOULD ASSERT THAT
6 AS ONE ADDITIONAL REASON WHY THE MOTION FOR NEW TRIAL SHOULD BE
7 GRANTED.

8 THE COURT: ALRIGHT. THANK YOU. MOTIONS ARE RESPECTFULLY
9 DENIED. CUFF THEM; BRING THEM AROUND. MR. HUNT, I NEED TO MAKE SURE
10 THAT EACH DEFENDANT KNOWS THAT ANY APPEAL TO A HIGHER COURT MUST BE
11 FILED IN WRITING IN A VERY SHORT TIME. SO IF THEY WANT TO APPEAL
12 ANYTHING, THEY MUST TELL THEIR ATTORNEY IMMEDIATELY. ALRIGHT. DOES
13 MR. ARJONA UNDERSTAND THAT?

14 MR. HUNT: YES.

15 THE COURT: MR. HERNANDEZ?

16 MR. HUNT: YES.

17 THE COURT: MR. GUERRERO?

18 MR. HUNT: YES.

19 THE COURT: MR. DELEON?

20 MR. HUNT: YES.

21 THE COURT: REGARDLESS -- INTERPRET ALL THIS FOR ME, PLEASE.
22 REGARDLESS OF ANY PERSONAL FEELINGS THAT I MAY HAVE ABOUT
23 MANDATORY SENTENCING, I HAVE TAKEN AN OATH TO UPHOLD THE LAW. AS I
24 UNDERSTAND THE LAW, A CONVICTION FOR THESE OFFENSES CARRIES A
25 MANDATORY MINIMUM OR A MANDATORY SENTENCE OF 25 YEARS. THE

1 SENTENCE OF THE COURT AS TO EACH DEFENDANT IS THAT THEY BE COMMITTED
2 TO THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS FOR A PERIOD OF 25
3 YEARS. PLUS COST AND ASSESSMENTS. EACH IS GIVEN GREAT -- I'M SORRY --
4 EACH IS GIVEN JAIL -- EACH IS GIVEN CREDIT FOR JAIL TIME THAT HE MAY HAVE
5 SERVED PENDING TRIAL PURSUANT TO SOUTH CAROLINA LAW SECTION 24-13-40.
6 THAT TIME WILL BE CALCULATED AND APPLIED BY THE DEPARTMENT OF
7 CORRECTIONS. ALL COSTS MUST BE PAID WITHIN ONE YEAR OF BEGINNING
8 COMMUNITY SUPERVISION. THANK YOU VERY MUCH. GOOD LUCK TO YOU.
9 THANK YOU. COURT'S ADJOURNED SINE DIE.

10 THE APPEAL BOND, MR. HAWKE, I'M DENYING YOUR CLIENT'S APPEAL
11 BOND.

12 MR. HAWKE: I UNDERSTAND, YOUR HONOR. THANK YOU.

13 THE COURT: TELL HIM THAT, MR. HUNT. (THE FOLLOWING OCCURRED
14 APRIL 14, 2005.)

15 MR. PUETZ: GOOD MORNING, JUDGE.

16 THE COURT: GOOD MORNING, FOLKS. ALRIGHT, IF YOU WILL JUST START
17 INTERPRETING FOR ME. THIS IS A CONTINUATION OF OUR HEARING. THE
18 DEFENDANTS ARE ALL PRESENT. ALL THE ATTORNEYS ARE PRESENT. MR.
19 MIZZELL IS HERE FOR THE STATE. MR. MAYE IS NOT HERE TODAY. HE WAS
20 EXCUSED BY THE COURT.

21 THE REASON FOR THIS HEARING TODAY IS THAT ONE OF THE JURORS WAS
22 UNABLE TO ATTEND THE LAST HEARING. IT'S JUROR #65 CHARTISE MCKIE. MS.
23 MCKIE IS BACK IN THE JURY ROOM, AND IF THERE IS NO FURTHER I'LL SEND FOR
24 HER. ANYTHING ELSE BEFORE WE GET STARTED?

25 MR. MIZZELL: NOTHING FROM THE STATE, YOUR HONOR.

1 MR. HAWKE: NO, YOUR HONOR.

2 MR. SUSSMAN: (NODDED NO.)

3 MR. MILLER: NO, SIR. (THE JUROR ENTERED THE COURTROOM.)

4 THE COURT: WATCH YOUR STEP RIGHT THERE. OKAY? COME AROUND
5 OVER HERE FOR ME. I'M GONNA NEED TO ASK YOU A FEW QUESTIONS. FIRST OF
6 ALL, I NEED YOU UNDER OATH. WOULD YOU RAISE YOUR RIGHT HAND. (THE
7 JUROR WAS SWORN TO TELL THE TRUTH.) MS. MCKIE, I KNOW THE TENDENCY IS
8 WHEN SOMEBODY'S TALKIN' TO YOU TO LOOK AT 'EM, BUT SINCE I'M BEHIND YOU
9 AND THE MICROPHONE IS IN FRONT OF YOU.

10 A UH-HUH.

11 THE COURT: I'M JUST GONNA ASK YOU TO SPEAK INTO THE MICROPHONES
12 AND I KNOW THAT'S A LITTLE ODD, BUT IF THAT'S WHAT YOU WOULD DO, I
13 WOULD APPRECIATE IT. ARE CHARTISE MCKIE?

14 A I AM.

15 THE COURT: DO YOU RECALL BEING ON THE JURY IN THE CASE INVOLVED
16 THOSE 4 GENTLEMEN OVER THERE?

17 A I DO.

18 THE COURT: OKAY. I KNOW IT'S BEEN SOMETIME AGO, BUT I NEED TO ASK
19 YOU SOME QUESTIONS. DO YOU RECALL ANY STATEMENT BY ANY JUROR DURING
20 THE JURY DELIBERATIONS RELATED TO THE PENALTY THAT THESE PEOPLE COULD
21 RECEIVE?

22 A YOU MEAN AS IN TERMS OF HOW LONG THEY COULD HAVE TO SERVE?

23 THE COURT: RIGHT.

24 A YES.

25 THE COURT: OKAY. DO YOU REMEMBER WHICH JURORS MAY HAVE SAID

1 THAT OR WHAT WAS SAID?

2 A NOT PARTICULARLY. I DON'T REMEMBER NO SPECIFIC JUROR.

3 THE COURT: YOU DON'T REMEMBER A SPECIFIC JUROR. YOU REMEMBER
4 WHAT WAS SAID?

5 A WELL, SOMEONE NEED TO PAY---

6 THE COURT: WELL, DON'T -- YOU'RE NOT GONNA BE IN ANY TROUBLE. SO
7 DON'T WORRY ABOUT THAT.

8 A WELL, I WAS JUST TRYIN' TO REMEMBER, RECALL THE CONVERSATION
9 HOW IT WENT.

10 THE COURT: IT'S BEEN A LONG TIME AGO I KNOW. DO YOU REMEMBER
11 WHAT WAS -- CAN YOU RECALL WHAT WAS SAID BY ANY OF THE JURORS ABOUT
12 THE PENALTY OF WHAT THESE DEFENDANTS MIGHT RECEIVE?

13 A ANYWHERE BETWEEN 25 TO LIFE.

14 THE COURT: OKAY. AND DID THAT INFORMATION IN ANY AFFECT YOUR
15 DECISION IN THE CASE?

16 A NO.

17 THE COURT: DID YOU OBSERVE IT, IN YOUR ESTIMATION, AFFECTING
18 ANYONE ELSE'S DECISION IN THE CASE?

19 A NO.

20 THE COURT: OKAY. AND YOU DON'T RECALL WHO MAY HAVE SAID
21 SOMETHING ABOUT THE POSSIBLE PUNISHMENT?

22 A NO. IT WAS MORE THAN ONE AND I CAN'T REALLY REMEMBER.

23 THE COURT: MORE THAN ONE? CAN YOU DESCRIBE ANY OF 'EM?

24 A IT WAS TWO OF THE OLDER WOMEN AND THE MEN WERE DISCUSSIN' IT.

25 THE COURT: TWO OF THE OLDER WOMEN?

1 A I DON'T KNOW THEIR NAMES.

2 THE COURT: AND WHAT DID YOU SAY, DID YOU SAY SOMETHING ABOUT
3 MEN?

4 A WELL, IT WAS TWO MEN ALSO. THEY WERE, YOU KNOW, GOIN' BACK AND
5 FORTH ABOUT HOW MANY YEARS THEY COULD GET FOR THAT.

6 THE COURT: OKAY. DID ANYBODY SAY ANYTHING ABOUT THE INTERNET?

7 A I DON'T RECALL.

8 THE COURT: OKAY. DO YOU RECALL ANYBODY SAYING ANYTHING ABOUT
9 LOOKING ANYTHING UP ON THE INTERNET?

10 A YES, I RECALL ONE PERSON SAYING THAT THEY HAD RESEARCHED SOME
11 THINGS, WELL, YOU KNOW, CHARGES YOU GET FOR DRUG CHARGES.

12 THE COURT: OKAY. THE CHARGES YOU CAN GET FOR THE DRUG CHARGES.

13 A UH-HUH.

14 THE COURT: AND IS THAT THE SAME INFORMATION WE WERE TALKIN'
15 ABOUT BEFORE OR IS IT SOMETHIN' DIFFERENT?

16 A IT'S THE SAME.

17 THE COURT: SAME?

18 A UH-HUH.

19 THE COURT: YOU REMEMBER WHICH JUROR MAY HAVE SAID SOMETHING
20 ABOUT THE INTERNET?

21 A I KNOW SHE WAS A NURSE. THAT'S ALL I---

22 THE COURT: A NURSE?

23 A UH-HUH.

24 THE COURT: OKAY. DID ANY OF THAT INFORMATION AFFECT YOUR
25 DECISION IN ANY WAY?

1 A NO.

2 THE COURT: OKAY. MS. MCKIE, I'M GONNA NEED YOU TO STEP BACK IN
3 THE JURY ROOM. I DON'T THINK IT'LL TAKE LONG, BUT I NEED TO TALK TO THE
4 LAWYERS A MINUTE. OKAY? THANK YOU. WATCH YOUR STEP. (THE JUROR
5 EXITED THE COURTROOM.) ALRIGHT. Y'ALL WANT ANYTHING ON THE RECORD?

6 MR. MIZZELL: STATE DOES NOT.

7 MR. HAWKE: YOUR HONOR, I WOULD ASK IF THE COURT WOULD CONSIDER
8 INQUIRING OF THE JUROR A LITTLE BIT MORE ABOUT IN WHAT -- WHAT PROMPTED
9 THE DISCUSSION OF THE PENALTY, HOW IT WAS DISCUSSED, YOU KNOW, AS MUCH
10 INFORMATION AS TO THE ACTUAL CONTENT IN WHICH IT BECAME SOMETHING
11 THAT WAS DISCUSSED AMONG THE JURORS. IN OTHER WORDS, WHAT PROMPTED
12 Y'ALL TO BEGIN DISCUSSING THE PENALTIES AND WHAT DISCUSSION DID YOU
13 HAVE ABOUT THE PENALTIES; WHAT -- WHAT WERE ANY CONCERNS THAT WERE
14 VOICED BY ANY JUROR ABOUT THE PENALTIES, THAT SORT OF INFORMATION, IF
15 THE COURT WOULD INQUIRE A LITTLE BIT FURTHER.

16 AND, ALSO, JUDGE, TO MAKE IT CLEAR ON THE RECORD AS TO WHETHER
17 ALL THIS WAS DISCUSSED BEFORE OR AFTER THEY HAD MADE THEIR DECISION
18 AND VOTED TO CONVICT AND IF THERE WAS ALSO -- JUDGE, IF THERE HAD BEEN
19 ANY VOTES BEFORE THEY HAD THE DISCUSSION, AND IF THAT DISCUSSION
20 CHANGED THE -- THE VOTE. YOU SEE WHAT I'M -- I'M TRYIN' TO MAKE MYSELF
21 CLEAR. BUT I WANT TO SEE, JUDGE, IF -IF THIS JUROR WOULD INDICATE OR IF
22 THEY HAD ANY VOTES BEFORE THE DISCUSSION ABOUT THE PENALTY AND IF
23 AFTER THE DISCUSSION ABOUT THE PENALTY THERE WAS A CHANGE IN THE
24 VOTES FOR CONVICTION OR ACQUITTAL.

25 AND, ALSO, JUDGE, I REMEMBER ONE TIME US HAVING SOME CONCERN AS

1 TO WHETHER OR NOT ANYTHING WAS ACTUALLY PRINTED OFF THE INTERNET AND
2 TO SEE IF ANYTHING PRINTED WAS BROUGHT INTO THE JURY ROOM FROM THE
3 INTERNET.

4 MR. SUSSMAN: JUDGE?

5 THE COURT: YES.

6 MR. SUSSMAN: I COULDN'T HEAR EVERYTHING THAT WAS SAID, BUT I WAS
7 WONDERIN' IF YOU WOULD INQUIRE AS TO WHETHER OR NOT SHE HAD ANY
8 CONTACT WITH ANY OF THE JURORS SINCE THE VERDICT? IF YOU DID ASK THAT, I
9 THINK THAT WOULD BE APPROPRIATE TO SEE IF SHE'S TALKED TO ANYBODY
10 SINCE WE STARTED THIS JUROR INQUIRY.

11 THE COURT: ALRIGHT.

12 MR. SUSSMAN: IF YOU ASKED THAT, I APOLOGIZE.

13 THE COURT: I DIDN'T.

14 MR. MILLER: YOUR HONOR, ON BEHALF OF HONORIO GUERRERO, I JOIN IN
15 BOTH REQUESTS.

16 THE COURT: BRING HER BACK IN. (THE JUROR ENTERED THE OPEN
17 COURTROOM.) OKAY. I'VE GOT JUST A FEW FOLLOW UP QUESTIONS I NEED TO
18 ASK YOU. SINCE THE TRIAL HAVE YOU HAD ANY CONTACT OR DISCUSSION ABOUT
19 THIS CASE WITH ANY OTHER JURORS?

20 A NO.

21 THE COURT: ANYONE ELSE?

22 A NO.

23 THE COURT: DO YOU RECALL ANYTHING PRINTED OFF THE INTERNET
24 BEING IN THE JURY ROOM DURING THE DELIBERATIONS?

25 A NO. THERE WAS NO PAPER.

1 THE COURT: I'M SORRY?

2 A NO.

3 THE COURT: WHAT ELSE DID YOU SAY?

4 A THERE WAS NO PAPER.

5 THE COURT: OKAY. DO YOU RECALL ANY MORE SPECIFICS ABOUT WHAT
6 WAS SAID, HOW IT WAS SAID OR WHEN IT WAS SAID ABOUT THE PENALTY?

7 A ONLY THE AMOUNT OF YEARS THAT THE SENTENCE COULD CARRY.

8 THE COURT: ONLY WHAT NOW?

9 A ONLY THE AMOUNT OF YEARS THAT IT COULD CARRY.

10 THE COURT: OKAY. OKAY, MS. MCKIE, I NEED YOU TO STEP -- THIS TIME, IF
11 YOU'D JUST STEP THROUGH THAT DOOR. YOU'LL SEE A LITTLE ROOM BACK
12 THERE. GO IN THAT FIRST ROOM ON YOUR LEFT AND SHUT THE DOOR FOR ME.
13 OKAY? I'M NOT GONNA ASK ABOUT ANY VOTE CHANGES. ANYTHING ELSE?

14 MR. HAWKE: WE WOULD JUST, YOUR HONOR, EXCEPT AND OBJECT TO THE
15 COURT'S FAILURE TO ASK ABOUT ANY VOTE CHANGES FOR PERFECTION OF THE
16 RECORD.

17 THE COURT: ALRIGHT.

18 MR. SUSSMAN: WE WOULD JOIN IN THAT AS WELL, YOUR HONOR.

19 MR. MILLER: AS WELL, YOUR HONOR.

20 THE COURT: ALRIGHT. WELL, I PREVIOUSLY ASKED IF IT AFFECTED
21 ANYONE ELSE'S DECISION IN HER OBSERVATION; SHE SAID NO. I THINK A VOTE
22 CHANGE WOULD CERTAINLY BE INCLUDED WITHIN THAT. AND I KNOW SOME OF
23 THE JURORS HAD EXPRESSED SOME THINGS ABOUT THE VOTES BUT I THINK
24 THAT'S GETTING INTO A REALM THAT I SHOULD NOT GET INTO. ALRIGHT. (THE
25 JUROR RETURNED TO THE OPEN COURTROOM.) OKAY, MS. MCKIE, JUST HAVE A

1 SEAT. I WANT TO THANK YOU VERY MUCH FOR COMING IN TODAY. I'M GONNA
2 LET YOU GO IN JUST A MINUTE.

3 A OKAY.

4 THE COURT: AND I'VE GOT AN ISSUE BEFORE ME THAT I'M GONNA HAVE
5 TO RULE UPON. WHAT I WILL DO IS AFTER I MAKE MY RULING, I WILL NOTIFY YOU
6 AND ALL THE OTHER JURORS ABOUT WHAT YOU CAN DO FROM THAT POINT
7 FORWARD, BUT UNTIL YOU GET A NOTICE FROM ME, DO NOT DISCUSS ANYTHING
8 ABOUT THIS CASE WITH ANYBODY. DON'T TALK ABOUT IT WITH FAMILY
9 MEMBERS OR FRIENDS OR ANYBODY ELSE. IF ANYBODY SHOULD ATTEMPT TO
10 CONTACT YOU AND DISCUSS THE CASE WITH YOU BEFORE YOU GET THE NOTICE
11 FROM ME, LET ME KNOW ABOUT IT SO THAT I CAN DEAL WITH IT, PLEASE. YOU
12 UNDERSTAND?

13 A YES, SIR.

14 THE COURT: OKAY. SO DON'T HAVE ANY CONTACT WITH THE OTHER
15 JURORS, DON'T TALK ABOUT THE DELIBERATIONS, DON'T TALK ABOUT THE CASE
16 IN ANY WAY WITH ANYBODY. NOW ONCE YOU GET THIS NOTICE FROM ME, IT'LL
17 EXPLAIN THEN ABOUT YOUR ABILITY TO TALK IF YOU WANT TO. ALRIGHT?

18 A OKAY.

19 THE COURT: THANK YOU VERY MUCH, MA'AM. YOU'RE FREE TO GO.

20 A THANK YOU.

21 THE COURT: YOU WANT TO MAKE WRITTEN SUBMISSIONS OR DO YOU
22 WANT TO ARGUE NOW? WHAT DO YOU WANT TO DO?

23 MR. HAWKE: YOUR HONOR, JUST WE WOULD ARGUE IT NOW, JUDGE.

24 THE COURT: ALRIGHT.

25 MR. HAWKE: JUDGE, WE FEEL LIKE THAT ANY CONSIDERATION OF

1 PUNISHMENT DURING THE DELIBERATION STAGE OF GUILT OR INNOCENCE IS
2 IMPROPER.

3 WE FEEL LIKE THAT THE JUROR MISCONDUCT IN GOING ONTO THE
4 INTERNET AND FINDING OUT THE INFORMATION INDICATES: NUMBER ONE, THAT
5 AT LEAST THE JUROR THAT WENT ON THE INTERNET WAS INTERESTED IN THAT
6 AND WAS CONCERNED WITH THAT ENOUGH TO ACTUALLY GO ON AN INTERNET,
7 DO THE RESEARCH, GET THE INFORMATION AND THEN TAKE IT BACK INTO THE
8 JURY ROOM AND DISBURSE IT TO THE OTHER JURORS, AND THAT WOULD INDICATE
9 THAT AT LEAST TO THAT JUROR IT WAS IMPORTANT FOR HER TO KNOW THAT
10 INFORMATION IN ARRIVING AT HER DECISION, AND THEN WHEN SHE CAME BACK,
11 WHEN SHE ALSO DISBURSED THAT INFORMATION TO THE OTHER JURORS ALL
12 WHICH IS HIGHLY IMPROPER, THE FACT THAT THE PENALTY PROVISIONS WERE
13 BROUGHT TO THE JURY ROOM BY A JUROR WHO HAD CONCERNS ABOUT THE
14 PENALTY ENOUGH TO GO AND RESEARCH IT INDICATES TO ME THAT THE
15 INFORMATION WAS SOMETHING THAT WAS CONSIDERED. IT SHOULD NOT HAVE
16 BEEN CONSIDERED. AND FOR THOSE REASONS WE WOULD REQUEST A NEW TRIAL.

17 THE COURT: ANYTHING ELSE?

18 MR. SUSSMAN: WE WOULD JOIN IN THAT, YOUR HONOR, AND, ALSO, YOU
19 KNOW, IT'S DIFFICULT TO BRING THESE JURORS BACK IN AND ASK THEM
20 WHETHER OR NOT THIS AFFECTED THEIR VOTE BECAUSE I THINK THEY'RE AWARE
21 THAT IF THEY SAY IT DID, IT MIGHT AFFECT THE VERDICT AND CAUSE A NEW
22 TRIAL. I THINK IT'S IMPOSSIBLE TO REALLY DETERMINE OR DISCERN EXACTLY
23 WHAT IMPACT THIS MAY HAVE HAD ON THE JUROR THROUGH THESE QUESTIONS
24 BECAUSE OF THE SITUATION INVOLVED NEVER HAVING BEEN A JUROR BEFORE.
25 THE FACT IS THAT PENALTY CONSIDERATIONS ARE NEVER THE PROVINCE OF THE

1 JURY. IN FACT, DEFENSE LAWYERS GET IN TROUBLE WHEN THEY ARGUE THAT TO
2 THE JURY MANY TIMES. FOR THAT PARTICULAR REASON THEY'RE NOT BEING --
3 THE JURY IS NOT TO BE CONCERNED WITH PENALTY. AND BECAUSE OF THE
4 SEVERITY OF THE PENALTY IN THIS CASE, 25 YEARS TO SERVE WITH NO PAROLE,
5 THE FACT THAT THE JURORS KNEW ABOUT THAT WHETHER OR NOT THEY SAY IT
6 AFFECTED THEM, I THINK THAT UNDER FUNDAMENTAL RIGHT OF DUE PROCESS
7 AND TO SAFEGUARD OUR CLIENTS' CONSTITUTIONAL RIGHTS THAT THEY SHOULD
8 BE GRANTED A NEW TRIAL.

9 THE COURT: MR. MILLER?

10 MR. MILLER: YOUR HONOR, I'D JOIN IN BOTH OF WHAT CO-COUNSEL HAVE
11 ARGUED. AND JUST TO -- I'M SORRY. I'M GETTIN' A LITTLE FEEDBACK FROM THE
12 INTERPRETER HERE. I'LL MOVE OVER IF YOU DON'T MIND. YOUR HONOR, FIRST
13 THINGS FIRST. WE KNOW THAT THIS IS CLEARLY A CASE OF JUROR MISCONDUCT
14 HERE. I DON'T THINK ANYBODY HAS ARGUED OR ANYBODY HERE BELIEVES THAT
15 THE JUROR INTENTIONALLY INTENDED TO COMMIT THIS CONDUCT, BUT THE
16 JUROR DID DO AN INTENTIONAL ACT THAT THE LAW CONSIDERS TO BE
17 MISCONDUCT. SO AS A THRESHOLD ISSUE, THERE WAS MISCONDUCT HERE.

18 NEXT, OBVIOUSLY, WE ARE FACED, AS THE MOVING PARTY, WITH THE
19 BURDEN OF SHOWING SOME SORT OF PREJUDICE IN THIS CASE, AND HERE'S
20 WHERE THE ANALYSIS -- THE LAW GETS A LITTLE MORE COMPLICATED BECAUSE
21 AS THE COURT IS AWARE AND HAS SHOWN THROUGHOUT THE CONDUCT OF THIS
22 HEARING, WE'RE NOT ALLOWED TO CROSS EXAMINE; WE'RE NOT ALLOWED TO
23 ASK QUESTIONS. THOSE QUESTIONS MUST COME FROM THE COURT AND MUST BE
24 TAILORED TO THIS COURT'S SOUND DISCRETION IN THE SCOPE AND QUANTITY OF
25 THOSE QUESTIONS. AND THE COURT SAID THIS MORNING CORRECTLY I BELIEVE,

1 FOR WHAT IT'S WORTH, THAT THOSE ISSUES START GETTING -- AND QUESTIONS
2 THAT WE WOULD REQUEST MIGHT START GETTING INTO ISSUES WE CAN'T ASK
3 ABOUT.

4 CLEARLY THIS IS A CASE OF EXTERNAL JURY MISCONDUCT BECAUSE THIS
5 OCCURRED OUTSIDE THE JURY ROOM. IT OCCURRED WHEN A JUROR WENT HOME
6 AND PROCURED INFORMATION ON HER OWN VOLITION AND BROUGHT IT BACK
7 INTO THE JURY ROOM.

8 I THINK IT IS FUNDAMENTALLY UNFAIR FOR US TO BE REQUIRED TO SHOW
9 SOME TYPE OF PREJUDICE THAT OCCURRED INSIDE THE JURY ROOM WHEN WE
10 CAN'T EXAMINE WHAT HAPPENED INSIDE THE JURY ROOM. WE CAN'T EXAMINE
11 WHAT HAPPENED WITH THEIR DELIBERATIONS. WE CAN'T ASK QUESTIONS ABOUT
12 WHAT WENT ON THERE. THIS CASE IS VERY CLEARLY DISTINGUISHABLE FROM
13 THOSE CASES THAT HAVE PREVIOUSLY BEEN CITED IN SOUTH CAROLINA WHERE
14 VERDICTS HAVE BEEN UPHeld. FOR EXAMPLE, THE STATE V. HARRIS WHICH IS AT
15 340 SC 59 FOR 2000 WHICH I KNOW THE COURT IS AWARE OF BECAUSE IN THIS
16 CASE, UNLIKE HARRIS, IT'S NOT A QUESTION OF WHETHER THE JURY GOT THE
17 RIGHT INFORMATION OR GOT THE WRONG INFORMATION. RIGHT OR WRONG, THE
18 JURY HAD ABSOLUTELY NO RIGHT, AND, IN FACT, AN OBLIGATION NOT TO
19 CONSIDER THIS TYPE OF EVIDENCE AT ALL.

20 AS THE COURT IS AWARE, THERE IS A CHARGE THAT IF FOR SOME REASON
21 DURING THE COURSE OF A TRIAL, THE POTENTIAL PENALTY IS TO COME OUT,
22 THERE'S ACTUALLY A CHARGE TO TELL THE JURY SPECIFICALLY YOU CANNOT
23 CONSIDER THAT IN YOUR DELIBERATIONS WITHOUT REGARD TO THE
24 EFFECTIVENESS OF WHAT THAT CHARGE COULD BE ON A JURY. HERE THERE WAS
25 NOT EVEN -- THERE WAS NO CHARGE BECAUSE NOBODY HAD ANY IDEA THAT

1 WAS SOMETHING THAT WAS ENTERING INTO THE JURY'S MIND.

2 AS TO THE ISSUE TO THE EXTENT THAT WE CAN IDENTIFY WHETHER IT
3 AFFECTED A JUROR, OBVIOUSLY IT DID BECAUSE THERE WAS NO VERDICT
4 WHENEVER THE JURY WAS DISMISSED AT CLOSE TO MIDNIGHT ON, I BELIEVE IT
5 WAS THE 2ND OF JULY, THE FRIDAY, AND WE COME BACK ON TUESDAY FOLLOWING
6 THE JULY 4TH HOLIDAY, AND WITHIN 20 MINUTES WE HAVE A VERDICT.

7 AT LEAST ONE JUROR CHANGED THEIR MIND. AND THE ONLY THING THAT
8 WAS ENTERED INTO THAT WE CAN BE SURE OF THE DELIBERATIONS THAT
9 MORNING WAS THIS EVIDENCE ABOUT THE PENALTY THAT THEY WOULD BE
10 FACING.

11 TO THE EXTENT THAT WE HAVE TO SPECULATE TO DETERMINE WHAT
12 WENT ON IN THAT ROOM, I THINK IT IS A SAFE, LOGICAL ASSUMPTION IN SAYING
13 THAT OUR OWN WITNESS HAD TO BE INFLUENCED -- OR EXCUSE ME -- OUR OWN
14 JUROR, HOLD-OUT JUROR, HAD TO BE NECESSARILY INFLUENCED BY WHAT WAS
15 ON THAT PIECE OF PAPER. SHE HAD TO BE. IF IT WAS GONNA HAVE NO INFLUENCE
16 ON HER AND IT DIDN'T MATTER TO HER AND IT WASN'T GONNA BE CONSIDERED
17 IN HER DELIBERATIONS, SHE WOULDN'T HAVE GONE TO THE TROUBLE TO LOOK IT
18 UP ON THE INTERNET, PRINT IT BACK OUT AND BRING IT IN TO THE JURY ROOM
19 AND ARGUE ABOUT IT TO THE OTHER JURORS.

20 WE WILL NEVER KNOW AND THERE IS NO WAY TO KNOW WHETHER SHE
21 THOUGHT THAT THESE GUYS WOULD BE FACIN' LIFE IN PRISON WITHOUT PAROLE
22 AND WHEN SHE SAW IT WAS ONLY 25 YEARS, SHE FIGURED IT WOULD BE OKAY TO
23 COMPROMISE HER VOTE. WE DO KNOW FROM THE TESTIMONY THAT HAS COME
24 OUT FROM THE JURORS INDIVIDUALLY THAT IT APPEARS THAT IT WAS AN 11 TO 1
25 VOTE, THAT SHE WAS THE ONE HOLD OUT AND SHE WAS THE ONE WHO

1 ESSENTIALLY SAID IF YOU GUYS KNOW THAT THIS IS GONNA CARRY 25 YEARS I'LL
2 CHANGE MY VOTE IF Y'ALL STILL THINK THAT THEY'RE GUILTY.

3 WE CAN'T DELVE INTO THAT; WE CAN'T EXAMINE THAT; WE CAN'T
4 DEVELOP THAT ANY FURTHER, AND TO SAY THAT WITHOUT US BEING ALLOWED
5 TO GO AFTER THAT EVIDENCE BECAUSE IT INVOLVED, ADMITTEDLY, INTERNAL
6 JURY DISCUSSIONS, BUT THE LACK OF ABILITY TO DO THAT MAKES IT IMPOSSIBLE
7 TO SHOW ANY PREJUDICE FOR THE ADMITTED MISCONDUCT OF THE JUROR
8 FUNDAMENTALLY AFFECTS THE DUE PROCESS RIGHTS OF ALL 4 OF THESE
9 DEFENDANTS.

10 THERE'S ABSOLUTELY NO MEANS BY WHICH WE CAN GO GATHER THE
11 INFORMATION TO PROVE THAT WHICH WE NEED TO PROVE WHICH IS PREJUDICE
12 ABSENT, OF COURSE, AN ADMISSION FROM THE JUROR WHICH GETS INTO THE
13 ARGUMENT THAT MR. SUSSMAN WAS MAKING, AND I THINK THAT IS A LEGITIMATE
14 AND VERY POWERFUL ARGUMENT THAT THESE JURORS IN ALL LIKELIHOOD DON'T
15 KNOW MUCH ABOUT BEING JURORS, BUT THEY HAVE TO ASSUME THAT THIS IS AN
16 UNUSUAL CIRCUMSTANCE WHERE YOU ISSUE YOUR VERDICT AND THEN YOU GET
17 CALLED BACK IN TO ANSWER QUESTIONS ABOUT YOUR VERDICT IN FRONT OF THE
18 WHOLE -- THE WHOLE TRIAL HERE, ALL OF THE MEMBERS THAT WERE PRESENT
19 FOR THAT.

20 AND NOBODY WANTS TO ADMIT MAKING A MISTAKE; NOBODY WANTS TO
21 ADMIT THAT THEY DID ANYTHING WRONG. THERE WAS SOME HESITANCY ON THE
22 PART OF THE JURORS, SOME OF WHICH I ATTRIBUTE TO THE AMOUNT OF TIME
23 THAT HAD PASSED, BUT SOME OF IT WHICH IS -- WHICH IS NATURAL HESITATION
24 TO IDENTIFY THE JURORS WHO DID CERTAIN THINGS, WHO SAID CERTAIN THINGS.
25 THEY DON'T WANNA GET IN TROUBLE; THEY DON'T WANT ANYBODY ELSE TO.

1 AND ALTHOUGH THE COURT HAS BEEN VERY STRONG IN ITS POSITION THAT NONE
2 OF THE JURORS ARE IN TROUBLE, YOU KNOW, YOU'RE NOT GONNA HOLD 'EM IN
3 CONTEMPT, ALL OF US SITTING AT THESE TABLES HERE KNOW THAT THAT IS
4 ABSOLUTELY TRUE, BUT THOSE JURORS ARE NECESSARILY AND RIGHTFULLY
5 APPREHENSIVE ABOUT BEING CALLED INTO HERE -- INTO THIS PLACE TO TESTIFY.

6 THAT COUPLED WITH THE FACT THAT ANY TIME SOMETHING IS PRESENTED
7 TO A JUROR, IT CAN HAVE AN EFFECT ON THEIR DELIBERATION OR THEIR
8 THOUGHT PROCESS.

9 IT'S NOT JURORS; IT'S ANYBODY; IT'S ATTORNEYS AS WELL AS
10 DEFENDANTS. IT CAN HAVE AN IMPACT ON THEIR THOUGHT PROCESS. IT DOES
11 NOT HAVE TO BE A CONSCIOUS IMPACT ON THEIR THOUGHT PROCESS.

12 THE FACT THAT THE JURORS, PARTICULARLY OUR HOLDOUT WHO
13 CHANGED HER VOTE, RECEIVED THIS INFORMATION BEFORE SHE CHANGED HER
14 VOTE SPEAKS TO THE FACT THAT THERE HAD TO HAVE BEEN SOME IMPACT ON
15 HER.

16 WE HAVE TO ASSUME OR AT LEAST WE HAVE TO ARGUE FROM OUR
17 POSITION SHE DIDN'T GO OUT AND DO ALL THIS FOR NOTHING. SHE WENT OUT
18 AND SHE DID THIS BECAUSE SHE WANTED TO KNOW THE ANSWER. IF SHE
19 WANTED TO KNOW THE ANSWER, SHE WANTED TO KNOW THE ANSWER FOR A
20 REASON. AND IN THIS CASE, AS I STATED BEFORE, UNLIKE THE HARRIS CASE, THIS
21 IS NOT SOMETHING THAT WAS -- THE COURT HAD PREVIOUSLY CHARGED, YOU
22 KNOW, GETTING A CLARIFICATION. THIS IS AN ISSUE WHERE THE JURY HAS
23 INJECTED INTO ITS DELIBERATIONS SOMETHING THAT THE JURY IS PATENTLY NOT
24 ALLOWED TO CONSIDER. TO THE EXTENT THAT WE CAN'T OFFER ANY TESTIMONY,
25 THAT WE CAN ONLY MAKE ARGUMENT AND HYPOTHESIZE ABOUT WHAT WENT ON

1 IN THE JURY ROOM, I WOULD SAY THAT THE LAW REQUIRES THAT THE DOUBT, ANY
2 DOUBT, ABOUT WHAT WENT ON IN THAT JURY ROOM HAS TO BE RESOLVED IN
3 FAVOR OF THE DEFENDANTS.

4 THIS HAS BEEN A DIFFICULT CASE; IT'S BEEN A LONG CASE; IT'S THE
5 SECOND TIME THAT WE'VE TRIED THIS, AND FROM JULY UNTIL NOW, APRIL OF
6 2005, JULY OF 2004 TO APRIL 2005 WE'VE BEEN WORKING THROUGH THIS SECOND
7 TRIAL. AND I THINK THAT SPEAKS VOLUMES TO THE COURT'S DETERMINATION TO
8 MAKE SURE THAT THIS IS DONE RIGHT.

9 THESE FOUR DEFENDANTS ARE SERVING COLLECTIVELY 100 YEARS RIGHT
10 NOW, AND IT'S AFFECTED, OBVIOUSLY, THEM AS WELL AS THEIR FAMILIES.

11 I'M NOT EAGER TO GO BACK AND TRY THIS CASE AGAIN, BUT I THINK
12 THAT'S WHAT NEEDS TO BE DONE. AND I'M WILLING TO GO BACK AND TRY THIS
13 CASE AGAIN.

14 AND ANY KIND OF QUESTION ABOUT WHETHER OR NOT THIS ADMITTEDLY
15 IMPROPER, ADMITTEDLY MATERIAL THAT WAS OBTAINED THROUGH MISCONDUCT
16 AFFECTED THE JURY, WHERE THERE IS A QUESTION, IT MUST BE RESOLVED IN
17 FAVOR OF THE DEFENDANT. THE LAW REQUIRES IT. THE CONSTITUTION REQUIRES
18 IT. JUSTICE REQUIRES THAT THEY HAVE A FAIR AND IMPARTIAL TRIAL BY A FAIR
19 AND IMPARTIAL JURY. IF IT WASN'T A PROBLEM THAT THE JURY CONSIDERED
20 SENTENCING, THEN WE'D BE ABLE TO TALK ABOUT IT. IF I STOOD UP HERE IN MY
21 CLOSING AND I TOLD THESE JURORS THEY'RE GONNA SEND THESE PEOPLE TO JAIL
22 FOR 25 YEARS AND THE JUDGE UP THERE HAS ABSOLUTELY NO CONTROL OVER IT
23 BECAUSE THIS IS A MANDATORY MINIMUM REQUIRED SENTENCE OF 25 YEARS, MR.
24 MIZZELL WOULD PROBABLY KNOCK HIS CHAIR OVER OBJECTING TO IT. I
25 WOULD'VE BEEN ADMONISHED BY THE COURT, I'M SURE, WHICH IS IMPROPERLY

1 SO. AND THE REASON FOR THAT IS BECAUSE IT IS ELEMENTARY.

2 THE JURY'S JOB IS TO DETERMINE THE GUILT OR INNOCENCE. IT IS NOT TO
3 DETERMINE ANYTHING ABOUT THE SENTENCING. IT IS NOT TO CONSIDER
4 ANYTHING ABOUT THE SENTENCING. THAT IS AN IMPROPER ARGUMENT. AND IF IT
5 IS AN IMPROPER ARGUMENT FOR ME TO MAKE IN THIS COURTROOM WHEN WE
6 HAD THE CHANCE FOR THE COURT TO CORRECT IT WITH A CURATIVE
7 INSTRUCTION, IT HAS TO BE IMPROPER FOR THEM TO CONSIDER BACK IN THE JURY
8 ROOM WHEN NOBODY KNOWS WHAT'S GOING ON EXCEPT FOR THOSE JURORS
9 THEMSELVES. THE THINGS THAT WE KNOW ARE THAT THE JUROR HAD THE
10 SENTENCING INFORMATION; THE JUROR TOOK THE SENTENCING INFORMATION TO
11 THE OTHER JURORS, AND SOMEHOW AFTER THAT, BASED UPON THE TIMEFRAMES
12 WHENEVER THE COURT CALLED THE JURORS IN ON TUESDAY BACK IN JULY AND
13 TOLD THEM THEY COULD RESUME THEIR DELIBERATIONS AND THEN THEY HAD A
14 GUILTY VERDICT, I WOULD SAY VERY SHORTLY AFTER THAT, THE VERDICT -- THE
15 VOTE CHANGED.

16 NOW WE DON'T KNOW FOR CERTAIN WHETHER THAT WAS ONE VOTE THAT
17 CHANGED OR WHETHER IT WAS MULTIPLE VOTES THAT CHANGED. WE DO KNOW
18 THAT ONE OF THE VOTES THAT WAS THE HOLDOUT WAS THE LADY WHO
19 COMMITTED THE MISCONDUCT. SO I THINK THAT'S PRIMA FACIE EVIDENCE RIGHT
20 THERE THAT THIS INFORMATION AFFECTED HER VOTE. I THINK THERE'S A VERY
21 GOOD ARGUMENT TO BE MADE ALTHOUGH, AGAIN, WE CAN'T GET INTO IT, THE
22 ACTUAL DELIBERATION AND THE INTERNAL CONDUCT OF THE JURY. I THINK
23 THERE'S A VERY GOOD ARGUMENT TO BE MADE THAT SHE COMPROMISED HER
24 VOTE IN VIOLATION OF THEIR RIGHTS ONCE ALL THE OTHER JURORS WERE
25 UNSWAYED BY THE FACT THAT THESE PEOPLE WERE GONNA SPEND A QUARTER

1 OF A CENTURY IN PRISON.

2 IN THAT REGARD, ON HER TESTIMONY ALONE, THESE DEFENDANTS
3 SHOULD BE ENTITLED TO A NEW TRIAL.

4 THIS IS NOT SOMETHING THAT IS EASY. IT'S NOT A DIFFICULT -- IT'S NOT A
5 PROBLEM THAT IS EASY TO ANALYZE; IT'S NOT A PROBLEM THAT'S EASY TO WORK
6 THROUGH, BUT TO REQUIRE THESE DEFENDANTS AND US TO SHOW SOME TYPE OF
7 PREJUDICE WHENEVER WE ARE NOT ALLOWED TO FULLY EXAMINE AND FULLY
8 INVESTIGATE AND FULLY PUT IN FRONT OF THE COURT BECAUSE EVEN THOUGH
9 WE MIGHT BE ABLE TO GO OUT AND FIND OUT FROM JURORS NOW, YOU KNOW,
10 SUBSEQUENT TO THESE HEARINGS, WHAT ACTUALLY WENT ON, IT STILL
11 WOULDN'T BE ADMISSIBLE IN THE COURT. AND TO PUT THE BURDEN OF PROVING
12 PREJUDICE ON MY CLIENT AT THIS POINT IS FUNDAMENTALLY UNFAIR.

13 IT'S FUNDAMENTALLY UNFAIR, AND IT VIOLATES HIS DUE PROCESS RIGHTS
14 BECAUSE NONE OF THESE FOUR INDIVIDUALS WERE CONVICTED BY A JURY BASED
15 SOLELY ON THE EVIDENCE PRESENTED AT TRIAL. WE CANNOT ASSUME THAT
16 THEY BASED THEIR VERDICTS SOLELY ON THE EVIDENCE PRESENTED AT TRIAL
17 WHENEVER WE KNOW THAT THIS 400-POUND GORILLA WAS SITTING IN THE ROOM
18 WITH THEM. WE'VE HEARD THEM TALK ABOUT IT; WE'VE HEARD ALL OF THE --
19 ALL OF THE DISCUSSIONS THAT THE COURT HAS ELICITED ABOUT WHAT WENT ON
20 THERE, BUT WE DO KNOW ONE THING: WE KNOW AT LEAST ONE VOTE CHANGED.
21 WE KNOW THE HOLDOUT'S VOTE CHANGED. THANK YOU, YOUR HONOR.

22 THE COURT: THANK YOU, MR. MILLER. MR. MIZZELL?

23 MR. MIZZELL: I'LL BE BRIEF AND I APPRECIATE IT. YOUR HONOR, FIRSTLY,
24 IT HAS ALWAYS BEEN MY OPINION THAT JURORS SHOULD BE GIVEN TRUTHFUL
25 INFORMATION CONCERNING WHAT SENTENCES CAN BE IMPOSED IN EVERY CASE,

1 BE IT DEATH PENALTY OR A REGULAR CASE SUCH AS THIS. BUT, OF COURSE, MY
2 OPINION DOESN'T CARRY WEIGHT IN LAW.

3 SECONDLY, YOUR HONOR, EVERY JUROR QUESTIONED BY THIS COURT
4 AFFIRMED THAT THE INFORMATION THAT WAS PRESENTED -- AND ALL OF 'EM
5 DIDN'T HEAR IT, BUT THE ONES WHO DID SAY THAT THEY HEARD IT -- AFFIRMED
6 THAT THAT INFORMATION HAD NO EFFECT ON THEIR VERDICT.

7 I WOULD ASK THE COURT TO SUSTAIN THE CONVICTIONS AND ALSO
8 SUSTAIN THE PENALTIES IMPOSED ON THESE FOUR DEFENDANTS.

9 FURTHER, YOUR HONOR, IF IT PLEASE? AT THIS POINT IN TIME, ALL THE
10 JURORS HAVE BEEN DIRECTED NOT TO DISCUSS THE CASE OR CASES IN ANY
11 MANNER WITH ANYONE. WHEN THE COURT ISSUES ITS FINAL RULING, I WISH THE
12 COURT WOULD CONSIDER DIRECTING WHAT IS APPROPRIATE FOR CONTACT WITH
13 JURORS. I FURTHER DON'T FEEL THAT ANY CONTACT WITH JURORS IS
14 APPROPRIATE. NEVERTHELESS, I WOULD ASK THE COURT TO INSURE THAT THE
15 JURORS DO NOT HAVE THE FEELING THAT THEY ARE OBLIGATED IN ANY WAY TO
16 DISCUSS THE TRIAL OR WHAT HAPPENED IN THE JURY ROOM WITH ANYONE.
17 THANK YOU VERY MUCH.

18 THE COURT: ALRIGHT. ANYTHING ELSE?

19 MR. MIZZELL: NOTHING FROM THE STATE.

20 MR. MILLER: YOUR HONOR, AS A PROCEDURAL MATTER, JUST TO MAKE
21 SURE THAT THIS CLEAR ON THE RECORD SINCE WE HAD TO SPLIT THIS UP AND
22 MAKE SURE IT'S CLEAR IN MY OWN MIND, IT'S MY UNDERSTANDING WE MOVED
23 FOR A MISTRIAL AT THE CONCLUSION OF -- AT THE CONCLUSION OF THE STATE'S
24 CASE -- OR EXCUSE ME, YOUR HONOR. WE MOVED FOR A MISTRIAL UPON FINDING
25 OUT ABOUT THIS JUROR ISSUE AND THIS HAS BEEN COUCHED -- THESE TWO

1 HEARINGS HAVE BEEN COUCHED AS A MOTION FOR RECONSIDERATION OF
2 DENIAL OF THE MISTRIAL. IS THAT CORRECT?

3 THE COURT: I HONESTLY DON'T KNOW THAT.

4 MR. MILLER: I BELIEVE THAT AFTER--

5 THE COURT: I THOUGHT YOU WERE ASKING FOR A NEW TRIAL.

6 MR. MILLER: WELL, ACTUALLY WHAT -- AND THAT'S WHAT WE WANT TO
7 CLEAR UP. WE ARE ASKING FOR A NEW TRIAL BE IT BY MISTRIAL OR JUST BY
8 GRANTING A NEW TRIAL, BUT I WANNA MAKE SURE FOR THE RECORD THAT IT'S
9 CLEAR WHAT IT IS WE'RE DOING. WE KNOW WHAT WE'RE DOING AS FAR AS THE
10 INDIVIDUAL JURORS. WE HAD TAKEN THE POSITION BEFORE THAT WE HAD
11 MOVED FOR A MISTRIAL; THEN THE COURT DENIED THAT MOTION, AND THEN
12 THERE WAS AFTER DISCOVERED EVIDENCE, I.E., THE EVIDENCE THAT THE JUROR
13 HAD ACTUALLY BROUGHT IN, YOU KNOW, COMMITTED MISCONDUCT. AND WE -- I
14 THINK WE FRAMED THAT AS AN EFFORT TO GET THE COURT TO RECONSIDER THE
15 PREVIOUS DENIAL OF THE MISTRIAL OR OF THE NEW TRIAL MOTION THAT WE
16 FILED AT THE END OF -- OR ORALLY PUT ON THE RECORD AT THE END OF THE
17 CASE.

18 THE COURT: RIGHT. I DON'T HAVE THE COURT FILE WITH ME. THE
19 CLERK'S FILE. I'VE GOT SOME OF -- I'VE GOT PART OF MY FILE WITH ME RELATED
20 TO THE JUROR ISSUE. MY RECOLLECTION -- IT'S BEEN A LONG TIME AGO -- IS
21 THAT I ON MY OWN MOTION -- I ASSUME THE PAPERS WILL SAY EXACTLY WHAT I
22 INTENDED TO SAY, BUT THAT I DID SOMETHING ON MY OWN MOTION RELATED TO
23 THIS BECAUSE THE JUROR CONTACTED ME.

24 MR. MIZZELL: PLEASE, YOUR HONOR, BY---

25 THE COURT: AND I THINK YOU ALL FOLLOWED UP BY FILLING MOTIONS AS

1 WELL.

2 MR. MILLER: I BELIEVE THAT IS CORRECT, YOUR HONOR.

3 MR. MIZZELL: YOUR HONOR, BY ORDER DATED -- OF THIS COURT DATED
4 JULY 15TH 2004, LAST PARAGRAPH WHICH, BASICALLY, FORMALIZED YOUR SUA
5 SPONTE DECISION. IT SAYS IN LIGHT OF THIS DEVELOPMENT THE COURT
6 FORMALIZ -- IT SAID SUA SPONTE DECISION MADE WITHIN 10 DAYS OF THE
7 IMPOSITION OF SENTENCES TO RECONSIDER THE CONVICTIONS AND SENTENCES
8 IMPOSED.

9 THE COURT: I GUESS I DID RECONSIDER IT, YOUR MISTRIAL MOTION AS
10 WELL AS CONSIDERING A MOTION FOR A NEW TRIAL.

11 MR. MILLER: THANK YOU, YOUR HONOR.

12 MR. SUSSMAN: YOUR HONOR, I WANT TO MAKE SURE THE RECORD IS
13 CLEAR THAT I AM ASSERTING A MOTION FOR THE COURT TO DECLARE A MISTRIAL
14 BASED ON THE MISCONDUCT ON BEHALF OF MY TWO CLIENTS RAPHAEL
15 HERNANDEZ AND ALFREDO AVILA.

16 MR. HAWKE: AND, JUDGE, ON BEHALF OF FREDY DELEON, WE'RE JOINING
17 IN THE SAME MOTIONS AND ARGUMENTS THAT'S BEEN PRESENTED BY ALL CO-
18 COUNSEL.

19 THE COURT: THANK YOU. I'LL NOTIFY YOU OF MY DECISION IN WRITING.
20 DO NOT HAVE ANY CONTACT WITH ANY JURORS. THE WRITTEN ORDER WILL
21 ADDRESS THE ISSUE RELATED TO SUBSEQUENT JUROR CONTACT. ALRIGHT?

22 MR. HAWKE: THANK YOU VERY MUCH, JUDGE.

23 MR. SUSSMAN: THANKS, JUDGE.

24 MR. MILLER: THANK YOU.

25 *****ENDOFTRANSCRIPT*****

CERTIFICATE

I, THE UNDERSIGNED, SMOKEY PERRY, OFFICIAL AND CERTIFIED COURT REPORTER FOR THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING TRANSCRIPT IS ACCURATE AND COMPLETE TO THE BEST OF MY ABILITY AND SKILL.

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

Smoky Perry

7-7-05

STATE OF SOUTH CAROLINA)

) COURT OF GENERAL SESSIONS

COUNTY OF EDGEFIELD)

State of South Carolina,)

PLAINTIFF,)

-VS-)

Alfredo Avila-Arjona,)

DEFENDANT.)

TRANSCRIPT OF HEARING
RE JUROR QUESTIONING
FROM TRIAL
2004-GS-19-137

State of South Carolina,)

PLAINTIFF,)

-VS-)

Raphael Perez Hernandez,)

DEFENDANT.)

2004-GS-19-138

State of South Carolina,)

PLAINTIFF,)

-VS-)

Honorio Hernandez Guerrero,)

DEFENDANT.)

2004-GS-19-139

State of South Carolina,)

PLAINTIFF,)

-VS-)

Freddy Deleon Tamayo,)

DEFENDANT.)

2004-GS-19-140

BEFORE THE HONORABLE WILLIAM P. KEESLEY

NOVEMBER 22, 2004

EDGEFIELD, SOUTH CAROLINA

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I N D E X

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EXHIBITS

PAGE NO.

(There were no exhibits entered.)

1 THE COURT: This is the matter of the
2 State of South Carolina versus Avila-Arjona,
3 Hernandez Guerrero, and Deleon. Case numbers are
4 2004-GS-19-137, 138, 139, and 140. These defendants
5 were each convicted of trafficking marijuana. And
6 after the Court had been adjourned and the jury had
7 been discharged, we had a situation where a juror
8 approached me, and I'll get into more detail about
9 that in a few moments.

10 The first thing I need to do is to
11 make sure that we have a qualified interpreter
12 present and interpreting for the defendants and that
13 the interpreter is placed under oath.

14 All right, would you state your name,
15 please?

16 MR. HUNT: Brett Hunt.

17 THE COURT: Okay, Mr. Hunt. You are a
18 certified interpreter with the South Carolina Court
19 Administration, is that correct?

20 MR. HUNT: Yes, sir.

21 THE COURT: You have a degree from Clemson
22 University in Spanish?

23 MR. HUNT: Yes, sir.

24 THE COURT: You've interpreted for courts
25 over which I've presided multiple occasions,