

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Aiken County

Tanya A. Gee, The Honorable Tanya A. Gee

RECEIVED

MAY -2 2016

SC SUPREME COURT

TREVIS E. JOHNSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001537

APPENDIX

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STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN) COURT OF GENERAL SESSIONS
2008-GS-02-522,523

STATE OF SC,)
PLAINTIFF)
VS.) TRANSCRIPT OF RECORD
TREVIS JOHNSON,)
DEFENDANT)

MARCH 17-19, 2009
AIKEN, SOUTH CAROLINA

B E F O R E:

THE HONORABLE JACK EARLY, JUDGE; AND A JURY.

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

BETH ANN YOUNG, ASSISTANT SOLICITOR
BILL WEEKS, ASSISTANT SOLICITOR
ATTORNEY FOR THE PLAINTIFF

JOHNNY WATSON, ESQUIRE
ATTORNEY FOR THE DEFENDANT

TAKEN BY LISA H DAVENPORT
TRANSCRIBED BY
KATHLEEN RICHARDSON, RPR, CRR
OFFICIAL COURT REPORTERS

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1 MRS. YOUNG: THIS IS THE STATE OF SOUTH CAROLINA
2 VERSUS TREVIS E. JOHNSON, CASE NUMBER 08-GS-02-522,
3 TRAFFICKING IN COCAINE IN EXCESS OF 200 GRAMS BUT LESS
4 THAN 400 GRAMS. 2008-GS-02-523, POSSESSION WITH INTENT TO
5 DISTRIBUTE COCAINE WITHIN PROXIMITY OF A SCHOOL.

6 THE COURT: ALL RIGHT. LET THE RECORD REFLECT THAT
7 MR. TREVIS EUGENE JOHNSON IS PRESENT THIS MORNING WITH HIS
8 ATTORNEY MR. JOHNNY E WATSON. GOOD MORNING, GENTLEMEN.

9 MR. WATSON: GOOD MORNING.

10 THE COURT: AS YOU'VE HEARD, WE'RE ABOUT TO PROCEED
11 IN THE CASE OF THE STATE OF SOUTH CAROLINA VERSUS TREVIS
12 EUGENE JOHNSON. I REMIND YOU -- I AM GOING TO ASK YOU A
13 FEW QUESTIONS ABOUT THIS PARTICULAR CASE. PLEASE REMEMBER
14 THAT YOUR ANSWERS -- YOU'RE STILL UNDER OATH, SO YOUR
15 ANSWERS HAVE TO BE UNDER OATH.

16 LADIES AND GENTLEMEN, AS YOU'VE HEARD, THE STATE HAS
17 CALLED THE CASE. A DEFENDANT IN THIS CASE HAS BEEN
18 INDICTED. AN INDICTMENT IS SIMPLY A LEGAL DOCUMENT BY WAY
19 -- BY WHICH THE CASE COMES INTO THIS COURT.

20 I MEAN, IT IS NOT EVIDENCE IN THE COURT. AND THE
21 FACT THAT THE DEFENDANT HAS BEEN CHARGED AND INDICTED IS
22 NOT TO BE CONSIDERED AT ALL BY YOU.

23 HE HAS PLEAD NOT GUILTY TO THESE TWO INDICTMENTS.
24 AND HIS PLEA OF NOT GUILTY PUTS THE BURDEN ON THE STATE OF
25 SOUTH CAROLINA TO PROVE EACH AND EVERY ELEMENT OF BOTH

1 INDICTMENTS TO A JURY OF 12 PEOPLE BEYOND A REASONABLE
2 DOUBT.

3 SO THAT WILL BE YOUR FUNCTION. YOU'LL BE THE FINDERS
4 OF THE FACTS IN THE CASE. I'LL EXPLAIN IT TO YOU IN MORE
5 DETAIL WHEN THE JURY IS DRAWN. BUT YOU WILL DETERMINE
6 WHETHER OR NOT THE STATE HAS MET THAT BURDEN WHEN THE
7 TRIAL IS -- AS THE TRIAL GOES ON AT THE CONCLUSION OF THE
8 TRIAL.

9 LET ME ASK YOU A FEW QUESTIONS ABOUT THIS PARTICULAR
10 CASE. IF ANY OF THE QUESTIONS APPLY TO YOU, PLEASE STAND
11 AND RESPOND TO ME AFTER GIVING ME YOUR NAME AND YOUR
12 NUMBER.

13 MR. JOHNSON, WOULD YOU PLEASE ONE MORE TIME STAND AN
14 FACE THE JURY PANEL.

15 (WHEREUPON THE DEFENDANT COMPLIED.)

16 THE COURT: THANK YOU. YOU MAY BE SEATED.

17 LADIES AND GENTLEMEN, ANY OF YOU NOW OR IN THE PAST
18 BEEN RELATED BY BLOOD OR MARRIAGE TO MR. JOHNSON OR HAS
19 ANYONE EVER HAD A CLOSE PERSONAL OR SOCIAL RELATIONSHIP
20 WITH THE DEFENDANT, MR. TREVIS EUGENE JOHNSON. IF SO,
21 PLEASE STAND.

22 LADIES AND GENTLEMEN, I AM GOING TO ASK YOU THE SAME
23 QUESTION AFTER I READ -- ALL RIGHT, SIR. PLEASE STAND.
24 YOUR NAME?

25 THE JUROR: SAMMY PRESTON.

1 THE COURT: I'M SORRY. KEVIN? MR. PRESTON?

2 THE JUROR: YES.

3 THE COURT: AND YOU KNOW THE DEFENDANT?

4 THE JUROR: YES.

5 THE COURT: ARE YOU RELATED BY BLOOD OR MARRIAGE OR
6 KNOW HIM SOCIALLY?

7 THE JUROR: SOCIALLY.

8 THE COURT: AND HOW DO YOU KNOW HIM?

9 THE JUROR: JUST FRIENDS...

10 THE COURT: SORRY?

11 THE JUROR: BY FRIEND.

12 THE COURT: OKAY. WELL, YOU KNOW, WE ALL LIVE IN A
13 RELATIVELY SMALL COMMUNITIES AND CERTAINLY WE ALL HAVE
14 FRIENDS.

15 THE JUROR: YES.

16 THE COURT: THE FACT THAT YOU'RE A FRIEND WITH HIM
17 WOULD NOT DISQUALIFY YOU, BUT I MUST ASK YOU THIS. THE
18 FACT THAT YOU KNOW THE DEFENDANT AND ARE FRIENDS WITH HIM,
19 WOULD THAT KEEP OR PRECLUDE YOU FROM BEING A FAIR AND
20 IMPARTIAL JUROR IN THE TRIAL OF THIS CASE BEING ABLE TO
21 MAKE YOUR DECISION BASED SOLELY ON THE EVIDENCE PRESENTED
22 TO YOU AND THE LAW THAT I GIVE IT TO YOU OR WOULD YOUR
23 FRIENDSHIP INTERFERE WITH THAT DUTY?

24 THE JUROR: PROBABLY – I KNOW HIM...

25 THE COURT: SIR?

1 THE JUROR: WELL, BECAUSE I KNOW HIM, YEA.

2 THE COURT: BECAUSE YOU KNOW HIM, THAT WOULD
3 INTERFERE WITH IT?

4 THE JUROR: YEA.

5 THE COURT: I APPRECIATE YOUR HONESTY. WE'LL SET YOU
6 ASIDE FOR THIS PARTICULAR CASE. 112. IS THAT CORRECT?

7 THE CLERK: YES, SIR.

8 THE COURT: JUROR 112. THANK YOU. LADIES AND
9 GENTLEMEN, I AM GOING TO READ OUT A LIST OF POTENTIAL
10 WITNESSES. THAT'S NOT TO SAY THAT ALL OF THEM WILL BE
11 CALLED.

12 BUT THE POTENTIAL WITNESSES IN THE CASE ARE DETECTIVE
13 PHILLIP TURNER, NORTH AUGUSTA DEPARTMENT OF PUBLIC
14 SERVICE -- FACE THE JURY PANEL, PLEASE. THANK YOU.
15 OFFICER GEORGE SHAW, NORTH AUGUSTA DEPARTMENT OF PUBLIC
16 SAFETY.

17 PUBLIC SAFETY OFFICER JOHN RUTLAND, ALSO WITH NORTH
18 AUGUSTA. THANK YOU. PUBLIC SAFETY OFFICER JOHN FITTERY,
19 NORTH AUGUSTA. THANK YOU. MICHELLE APPLETON -- IS WHO?
20 MA'AM?

21 MRS. YOUNG: SHE'S NOT HERE.

22 THE COURT: WHO IS SHE?

23 MRS. YOUNG: EYE WITNESS.

24 THE COURT: A WITNESS. AMBER WAY, AIKEN COUNTY
25 SHERIFF'S OFFICE. JOHNATHAN PYLANT, P-Y-L-A-N-T. DOG

1 MAN?

2 MRS. YOUNG: THAT'S ANOTHER EYE WITNESS.

3 THE COURT: JERRY BRADSHAW. MR. BRADSHAW IS FROM OUT
4 OF STATE. HE DEALS WITH DOGS, K-9S. LIEUTENANT CLAY
5 ADAMS, AIKEN COUNTY SHERIFF'S OFFICE. MR. WATSON, DO YOU
6 HAVE ANY WITNESSES, ADDITIONAL WITNESSES?

7 MR. WATSON: I HAVE NONE, YOUR HONOR.

8 THE COURT: THANK YOU.

9 MRS. YOUNG: FOR THE RECORD, THE LIST IS TYPED
10 INCORRECTLY. THE NUMBER FOUR SHOULD SAY PSO AARON FITTERY
11 INSTEAD OF JOHN.

12 THE COURT: HOW DO YOU SPELL AARON?

13 MRS. YOUNG: AARON.

14 THE COURT: AARON FITTERY INSTEAD OF JOHN. HE
15 ANSWERED TO JOHN. THAT'S PRETTY GOOD. NOW, LADIES AND
16 GENTLEMEN, HAS ANY ONE OF YOU EVER BEEN RELATED BY BLOOD
17 OR MARRIAGE TO ANY OF THE POTENTIAL WITNESSES OR HAS
18 ANYONE EVER HAD A CLOSE PERSONAL OR SOCIAL RELATIONSHIP
19 WITH ANY OF THE WITNESSES? IF SO, PLEASE STAND. ANYBODY
20 ELSE?

21 ALL RIGHT, STARTING WITH MY LADY WITH THE PRETTY ST.
22 PATRICK'S DAY GREEN BLOUSE. YOUR NAME.

23 THE JUROR: LINDA CLARK, JUROR 31. I TAUGHT AMBER
24 WAY IN SUNDAY SCHOOL WHEN SHE WAS FIVE OR SIX YEARS OLD.

25 THE COURT: I ASSUME THAT WASN'T LAST YEAR.

1 THE JUROR: NO, SIR.

2 THE COURT: ALL RIGHT. THE FACT THAT YOU WERE ONE OF
3 THE WITNESSES, MRS. WAY'S SUNDAY SCHOOL TEACHER SOME YEARS
4 AGO, MA'AM, WOULD THAT IN ANY WAY PRECLUDE OR KEEP YOU
5 FROM BEING A FAIR AND IMPARTIAL JUROR?

6 THE JUROR: NO, SIR. THANK YOU, YOU MAY BE SEATED.

7 MR. WATSON: WHAT WAS THE NUMBER?

8 THE COURT: I'M SORRY?

9 THE JUROR: THIRTY-ONE.

10 THE COURT: THIRTY-ONE. THAT NAME AGAIN? I'M SORRY.

11 THE JUROR: LINDA CLARK.

12 THE COURT: MRS. CLARK. YOU GOT IT. THIRTY-ONE.

13 MR. WATSON, READY?

14 MR. WATSON: YES, SIR. I HAVE IT, YOUR HONOR.

15 THE COURT: MA'AM IN THE PINK?

16 THE JUROR: BRENDA BUSBEE. JUROR 18. CLAY ADAMS IS
17 MY SON-IN-LAW.

18 THE COURT: ALL RIGHT. I AM GOING TO EXCUSE YOU FROM
19 THE TRIAL OF THIS CASE. NUMBER 18. THAT'S TOO CLOSE.
20 SON-IN-LAW? STILL TOO CLOSE. YES, SIR. IN THE GREEN AND
21 WHITE STRIPE?

22 THE JUROR: JUROR 149. I KNOW OFFICER AARON FITTERY.

23 THE COURT: ALL RIGHT. AND JUST AS A FRIEND?

24 THE JUROR: PRETTY MUCH. OUR FAMILIES GO OUT TO
25 DINNER A LOT.

1 THE COURT: SIR?

2 THE JUROR: OUR FAMILIES GO OUT TO DINNER.

3 THE COURT: HOW OFTEN?

4 THE JUROR: ONCE OR TWICE A MONTH MAYBE.

5 THE COURT: ALL RIGHT. I AM GOING TO DISQUALIFY YOU
6 FROM THE TRIAL OF THIS CASE. THANK YOU.

7 LADIES AND GENTLEMEN, LISTEN TO THE NEXT QUESTIONS.

8 IT'S GOT SOME OF THE SAME PARTS. IN THIS CASE THE STATE
9 OF SOUTH CAROLINA WILL BE REPRESENTED BY MEMBERS OF THE
10 SOLICITOR'S OFFICE, MRS. BETH ANN YOUNG AND MR. BILL
11 WEEKS. MR. WEEKS.

12 THE DEFENDANT IS REPRESENTED BY MR. JOHNNY E WATSON
13 OF THE RICHLAND COUNTY, COLUMBIA, SOUTH CAROLINA BAR. HE
14 IS A SOLE PRACTITIONER. RIGHT, MR. WATSON?

15 MR. WATSON: THAT'S CORRECT, YOUR HONOR.

16 THE COURT: NOW, FIRST QUESTION, IS ANYBODY NOW OR IN
17 THE PAST BEEN REPRESENTED BY ANY OF THE THREE LAWYERS? IF
18 SO, PLEASE STAND.

19 DOES ANYBODY HAVE A CLOSE PERSONAL OR SOCIAL
20 RELATIONSHIP OR ARE YOU NOW OR IN THE PAST BEEN RELATED BY
21 BLOOD OR MARRIAGE TO ANY OF THE THREE LAWYERS? IF SO,
22 PLEASE STAND.

23 THE JUROR: I AM JUROR NUMBER 151. I DON'T KNOW --
24 GAIL DIGGS. I DON'T KNOW WHETHER YOU'D CALL IT A CLOSE
25 SOCIAL RELATIONSHIP. BILL WEEKS, I'VE KNOWN HIM FOR

1 YEARS. MY EX-HUSBAND WAS AN ATTORNEY HERE, AND I USED TO
2 WORK FOR HIS WIFE AMY.

3 THE COURT: AMY. ALL RIGHT. PLEASE STAND UP FOR ME.
4 STAND BACK UP FOR ME. GIVE US YOUR NAME AND NUMBER AGAIN.

5 THE JUROR: I AM JUROR NUMBER 151, GAIL DIGGS.

6 THE COURT: AND MRS. DIGGS, HOW LONG AGO DID YOU WORK
7 WITH AMY WEEKS?

8 THE JUROR: BACK IN 1994.

9 THE COURT: SO, 15 YEARS AGO? CLOSE TO IT.

10 THE JUROR: UH-HUH.

11 THE COURT: AND YOUR HUSBAND WAS MR. LESTER DIGGS?

12 THE JUROR: YES, SIR.

13 THE COURT: AND HE WAS A LAWYER HERE IN AIKEN FOR A
14 WHILE.

15 THE JUROR: YES, SIR.

16 THE COURT: AND SO YOU KNOW MR. WEEKS?

17 THE JUROR: YES.

18 THE COURT: WOULD THAT RELATIONSHIP WITH MR. WEEKS IN
19 ANY WAY KEEP YOU OR PRECLUDE YOU FROM BEING A FAIR AND
20 IMPARTIAL JUROR IN THE TRIAL OF THIS CASE?

21 THE JUROR: NO, SIR.

22 THE COURT: THANK YOU, MA'AM. YOU MAY BE SEATED.

23 LADIES AND GENTLEMEN, AS I TOLD YOU EARLIER, THE
24 INDICTMENT IS NOT EVIDENCE IN THE CASE. THE DEFENDANT HAS
25 PLED NOT GUILTY TO IT, AND THAT PLEA PUTS THE BURDEN ON

1 THE STATE TO PROVE HIS GUILT BEYOND A REASONABLE DOUBT --
2 PROVE TO YOU EACH AND EVERY ELEMENT OF THE OFFENSE BEYOND
3 A REASONABLE DOUBT.

4 BUT LET ME TELL YOU WHAT IS ALLEGED, WHICH IS NOT
5 EVIDENCE, BUT IT IS SIMPLY WHAT THE ALLEGATIONS ARE TO SEE
6 IF ANYBODY KNOWS ANYTHING ABOUT THE CASE. IT'S ALLEGED
7 THAT HERE IN AIKEN COUNTY ON OR ABOUT DECEMBER 18 OF 2007
8 THAT THIS DEFENDANT HAD IN HIS POSSESSION ALLEGEDLY MORE
9 THAN 200 GRAMS OF COCAINE AND THAT AT THAT TIME IT WAS
10 WITHIN A ONE HALF MILE RADIUS OF THE NORTH AUGUSTA MIDDLE
11 SCHOOL.

12 MY QUESTION TO YOU IS, DOES ANYBODY OR ANYBODY HEARD
13 ANYTHING ABOUT THE CASE, READ ANYTHING ABOUT IT, SEEN
14 ANYTHING ABOUT IT ON TV? HAS ANYBODY DISCUSSED IT WITH
15 YOU? HAS ANYBODY FORMED AN OPINION, EXPRESSED AN OPINION
16 OR KNOW ANYTHING AT ALL ABOUT THE CASE? IF SO, PLEASE
17 STAND.

18 DO I HAVE ANY MEMBER OF THE JURY PANEL WHO YOU OR
19 YOUR CLOSE FAMILY, THAT MEANS HUSBAND, CHILDREN OR MAYBE
20 WIFE OR PARENTS WHO ARE INVOLVED IN LAW ENFORCEMENT? IF
21 SO, PLEASE STAND. GOT ANYBODY FAMILY IN LAW ENFORCEMENT.
22 YES, MA'AM IN THE BLACK. YOUR NAME?

23 THE JUROR: MY NAME IS DORA SCHOFIELD, JUROR 126. MY
24 HUSBAND COUSIN HERBERT SCHOFIELD. HE IS INVOLVED IN LAW
25 ENFORCEMENT.

1 THE COURT: AND WHERE IS HERBERT EMPLOYED, MA'AM?

2 THE JUROR: PUBLIC SAFETY.

3 THE COURT: WITH WHOM? AIKEN?

4 THE JUROR: YES.

5 THE COURT: THIS IS NOT AN AIKEN PUBLIC SAFETY CASE,
6 IS IT?

7 MRS. YOUNG: NO, SIR YOUR HONOR.

8 THE COURT: ALL RIGHT. THE FACT THAT YOU HAVE A
9 RELATIVE INVOLVED IN LAW ENFORCEMENT, MA'AM, WOULD THAT
10 PRECLUDE YOU FROM BEING FAIR AND IMPARTIAL?

11 THE JUROR: NO.

12 THE COURT: YES, MA'AM. AGAIN, IN THE PINK. REPEAT
13 YOUR NAME AGAIN FOR US.

14 THE JUROR: BRENDA BUSBEE, JUROR 18. MY DAUGHTER
15 WORKS FOR THE SOLICITOR'S OFFICE.

16 THE COURT: I HAVE ALREADY EXCUSED YOU.

17 THE JUROR: OH, OKAY.

18 THE COURT: BECAUSE OF YOUR SON-IN-LAW.

19 THE JUROR: RUSELL JACOBS, JUROR NUMBER 70. MY
20 NEPHEW IS IN LAW ENFORCEMENT.

21 THE COURT: AND WHERE IS THAT, SIR?

22 THE JUROR: MICHIGAN.

23 THE COURT: THE FACT THAT YOU HAVE A NEPHEW IN LAW
24 ENFORCEMENT IN MICHIGAN, WOULD THAT PRECLUDE OR KEEP YOU
25 FROM BEING A FAIR AND IMPARTIAL TRIAL IN THE TRIAL OF THIS

1 CASE?

2 THE JUROR: NO, YOUR HONOR.

3 THE COURT: THANK YOU. YOU MAY BE SEATED. ALL
4 RIGHT. NOW, PLEASE LISTEN TO THIS. DOES ANYBODY KNOW OF
5 ANY REASON WHATSOEVER WHY YOU SHOULD NOT SERVE AS A JUROR
6 IN THIS CASE, WITH PARTICULAR EMPHASIS BEING PLACED ON
7 YOUR ABILITY TO BE FAIR BOTH TO THE STATE OF SOUTH
8 CAROLINA AND THE DEFENDANT, AND THAT WOULD INCLUDE ANY
9 RELIGIOUS BELIEFS, ANY PERSONAL BELIEFS, ANY AVERSIONS TO
10 ALCOHOL OR DRUGS OR ANY REASON WHATSOEVER, I NEED TO KNOW
11 ABOUT IT.

12 DOES ANYBODY KNOW OF ANY REASON WHY YOU CAN'T SIT ON
13 THIS JURY WITH 11 OTHER JURORS, LISTEN TO THE EVIDENCE,
14 YOU DETERMINE WHAT EVIDENCE YOU BELIEVE TO BE TRUE, YOU
15 TAKE THAT EVIDENCE THAT YOU FIND TO BE TRUE AND YOU APPLY
16 IT TO THE LAW AS I GIVE IT TO YOU AND RENDER A JUST AND
17 FAIR DECISION BOTH TO THE DEFENDANT AND TO THE STATE.

18 DOES ANYBODY HAVE ANY REASON WHATSOEVER THEY CAN'T DO
19 THAT? IF SO, PLEASE STAND.

20 ANY BIAS, ANY PREJUDICE TOWARDS THE STATE OR THE
21 DEFENDANT? PLEASE TELL ME NOW.

22 ANY MEMBER OF THE JURY PANEL A MEMBER OF THE AIKEN
23 COUNTY GRAND JURY THAT ISSUED A TRUE BILL ON APRIL 17,
24 2008? IF SO, PLEASE STAND.

25 ANY ADDITIONAL QUESTIONS BY THE STATE?

1 MRS. YOUNG: NONE BY THE STATE.

2 THE COURT: BY THE DEFENDANT?

3 MR. WATSON: NOTHING FROM THE DEFENDANT, YOUR HONOR.

4 THE COURT: ALL RIGHT. NOW, WE'RE GOING TO CALL YOUR

5 NAME. AS YOUR NAME IS CALLED, PLEASE COME FORWARD. IF

6 YOU'RE ON THAT SIDE, SLIP OUT THAT WAY. IF YOU'RE OUT

7 THIS SIDE, JUST SLIP OUT THIS WAY.

8 JUST COME STRAIGHT DOWN HERE AND HAVE A SEAT -- NOT A

9 SEAT. STAND RIGHT HERE IN THE MIDDLE. AND WE'LL GO

10 THROUGH THAT PROCESS. PLEASE COME FORWARD AS YOUR NAME IS

11 CALLED. MA'AM?

12 THE CLERK: JUROR NUMBER 96, RYAN MOLINICH.

13 THE COURT: BACK UP A LITTLE BIT.

14 THE CLERK: WHAT SAYS THE STATE?

15 MRS. YOUNG: PLEASE PRESENT MR. MOLINICH.

16 THE CLERK: WHAT SAYS THE DEFENSE?

17 MR. WATSON: PLEASE PRESENT MR. MOLINICH.

18 THE CLERK: YOU MAY HAVE A SEAT IN THE JURY BOX TO

19 YOUR LEFT. JUROR NUMBER 126, DORA SCHOFIELD. WHAT SAYS

20 THE STATE?

21 MRS. YOUNG: IS THIS 126?

22 THE COURT: YES, MA'AM.

23 MRS. YOUNG: PLEASE PRESENT MRS. SCHOFIELD.

24 THE CLERK: WHAT SAYS THE DEFENSE?

25 MR. WATSON: PLEASE SEAT THE JUROR.

1 THE CLERK: YOU MAY HAVE A SEAT IN THE JURY BOX TO
2 THE LEFT. JUROR NUMBER 72 DWAYNE JEFFCOAT. WHAT SAYS
3 THE STATE?

4 MRS. YOUNG: PLEASE PRESENT MR. JEFFCOAT.

5 THE CLERK: WHAT SAYS THE DEFENSE?

6 MR. WATSON: PLEASE SEAT THE JUROR.

7 THE CLERK: YOU MAY HAVE A SEAT IN THE JURY BOX TO
8 THE LEFT. JUROR NUMBER 151, GAIL DIGGS. WHAT SAYS THE
9 STATE?

10 MRS. YOUNG: PLEASE PRESENT MRS. DIGGS.

11 THE CLERK: WHAT SAYS THE DEFENSE?

12 MR. WATSON: PLEASE PASS ON THIS JUROR.

13 THE COURT: YOU MAY HAVE A SEAT. JUROR NUMBER 48,
14 PAIGE EDMONDS. WHAT SAYS THE STATE?

15 MRS. YOUNG: PLEASE PRESENT MRS. EDMONDS.

16 THE CLERK: WHAT SAYS THE DEFENSE?

17 MR. WATSON: PLEASE STRIKE THIS JUROR.

18 THE CLERK: YOU MAY RETURN TO YOUR SEAT. JUROR
19 NUMBER 128, JANE SHERMAN. WHAT SAYS THE STATE?

20 MRS. YOUNG: PLEASE PRESENT MRS. SHERMAN.

21 THE CLERK: WHAT SAYS THE DEFENSE?

22 MR. WATSON: PLEASE PRESENT HER.

23 THE CLERK: YOU MAY HAVE A SEAT IN THE JURY BOX TO
24 THE LEFT. JUROR NUMBER 26, ELAINE CHAVOUS. WHAT SAYS THE
25 STATE?

1 MRS. YOUNG: PLEASE PRESENT MRS. CHAVOUS.

2 THE CLERK: WHAT SAYS THE DEFENSE?

3 MR. WATSON: PLEASE PRESENT MRS. CHAVOUS.

4 THE CLERK: YOU MAY HAVE A SEAT IN THE JURY BOX TO

5 THE LEFT. JUROR NUMBER 97, BARBARA MONTGOMERY. WHAT SAYS

6 THE STATE?

7 MRS. YOUNG: PLEASE PRESENT MRS. MONTGOMERY.

8 THE CLERK: WHAT SAYS THE DEFENSE?

9 MR. WATSON: PLEASE PRESENT THIS JUROR.

10 THE CLERK: YOU MAY HAVE A SEAT IN THE JURY BOX TO

11 THE LEFT. JUROR NUMBER 121, DAVID ROBERTS. WHAT SAYS THE

12 STATE?

13 MRS. YOUNG: PLEASE EXCUSE MR. ROBERTS FROM THIS

14 TRIAL.

15 THE CLERK: YOU MAY RETURN TO YOUR SEAT. JUROR

16 NUMBER 34, JUDY COLLINS. WHAT SAYS THE STATE?

17 MRS. YOUNG: PLEASE PRESENT MRS. COLLINS.

18 THE CLERK: WHAT SAYS THE DEFENSE?

19 MR. WATSON: PLEASE STRIKE MRS. COLLINS.

20 THE CLERK: YOU MAY RETURN TO YOUR SEAT. THE STATE

21 HAS EXHAUSTED ONE STRIKE. THE DEFENSE THREE. JUROR

22 NUMBER 36, LISA CREECH. WHAT SAYS THE STATE?

23 MRS. YOUNG: PLEASE PRESENT MRS. CREECH.

24 THE CLERK: WHAT SAYS THE DEFENSE?

25 MR. WATSON: PLEASE PRESENT MRS. CREECH.

1 THE CLERK: YOU MAY HAVE A SEAT IN THE JURY BOX TO
2 THE LEFT. JUROR NUMBER 99, JESSICA MOUSER. WHAT SAYS THE
3 STATE?

4 MRS. YOUNG: PLEASE PRESENT MRS. MOUSER.

5 THE CLERK: WHAT SAYS THE DEFENSE?

6 MR. WATSON: PLEASE PRESENT HER.

7 THE CLERK: YOU MAY HAVE A SEAT IN THE JURY BOX TO
8 THE LEFT. JUROR NUMBER 106 BEN PERRY. WHAT SAYS THE
9 STATE?

10 MRS. YOUNG: PLEASE EXCUSE MR. PERRY FROM THE TRIAL
11 OF THIS CASE.

12 THE CLERK: YOU MAY RETURN TO YOUR SEAT. JUROR
13 NUMBER 29, DANIEL CLARK. WHAT SAYS THE STATE?

14 MRS. YOUNG: PLEASE EXCUSE MR. CLARK FROM THIS TRIAL.

15 THE CLERK: YOU MAY RETURN TO YOUR SEAT. JUROR
16 NUMBER 116 ALANDO RAWLS. WHAT SAYS THE STATE?

17 MRS. YOUNG: PLEASE EXCUSE MR. RAWLS FROM THIS TRIAL.

18 THE CLERK: YOU MAY RETURN TO YOUR SEAT. THE STATE
19 HAS EXHAUSTED FOUR STRIKES, THE DEFENSE THREE. JUROR
20 NUMBER 104 THERESA OAKMAN. WHAT SAYS THE STATE?

21 MRS. YOUNG: PLEASE PRESENT MRS. OAKMAN.

22 THE CLERK: WHAT SAYS THE DEFENSE?

23 MR. WATSON: PLEASE PRESENT HER.

24 THE CLERK: YOU MAY HAVE A SEAT IN THE JURY BOX TO
25 THE LEFT. JUROR NUMBER 70, RUSSELL JACOBS. WHAT SAYS THE

1 STATE?

2 MRS. YOUNG: PLEASE PRESENT MR. JACOBS.

3 THE CLERK: WHAT SAYS THE DEFENSE?

4 MR. WATSON: PLEASE STRIKE MR. JACOBS.

5 THE CLERK: YOU MAY RETURN TO YOUR SEAT. JUROR

6 NUMBER 86, DANIEL LOTT. WHAT SAYS THE STATE?

7 MRS. YOUNG: PLEASE EXCUSE MR. LOTT.

8 THE CLERK: YOU MAY RETURN TO YOUR SEAT. THE STATE

9 HAS EXHAUSTED FIVE STRIKES, THE DEFENSE FOUR. JUROR

10 NUMBER 137, KATHRYN TAYLOR. WHAT SAYS THE STATE?

11 MRS. YOUNG: PLEASE PRESENT MRS. TAYLOR.

12 THE CLERK: WHAT SAYS THE DEFENSE?

13 MR. WATSON: PLEASE SEAT THE JUROR.

14 THE CLERK: YOU MAY HAVE A SEAT IN THE JURY BOX TO

15 THE LEFT. JUROR 144, ANTHONY TYLER. WHAT SAYS THE STATE?

16 MRS. YOUNG: PLEASE PRESENT MR. TYLER.

17 THE CLERK: WHAT SAYS THE DEFENSE?

18 MR. WATSON: PLEASE PRESENT HIM.

19 THE CLERK: YOU MAY HAVE A SEAT IN THE JURY BOX TO

20 THE LEFT. JUROR NUMBER 66 ROBERT L HOLMES. WHAT SAYS THE

21 STATE?

22 MRS. YOUNG: PLEASE PRESENT MR. HOLMES.

23 THE CLERK: WHAT SAYS THE DEFENSE?

24 MR. WATSON: PLEASE PRESENT MR. HOLMES.

25 THE CLERK: YOU MAY HAVE A SEAT IN THE JURY BOX TO

1 THE LEFT.

2 THE COURT: GIVE ME TWO ALTERNATES.

3 THE CLERK: ALTERNATE NUMBER ONE. JUROR NUMBER
4 THREE, DONNA BACON. WHAT SAYS THE STATE?

5 MRS. YOUNG: PLEASE PRESENT MRS. BACON.

6 THE CLERK: WHAT SAYS THE DEFENSE?

7 MR. WATSON: PLEASE PRESENT MRS. BACON.

8 THE CLERK: YOU MAY HAVE A SEAT IN THE JURY BOX TO
9 YOUR LEFT. ALTERNATE NUMBER TWO, JUROR NUMBER 17, BRENDA
10 BUFF. WHAT SAYS THE STATE?

11 MRS. YOUNG: PLEASE PRESENT MRS. BUFF.

12 THE CLERK: WHAT SAYS THE DEFENSE?

13 MR. WATSON: PLEASE STRIKE MRS. BUFF.

14 THE CLERK: YOU MAY RETURN TO YOUR SEAT. JUROR 119,
15 LISA REEVES. WHAT SAYS THE STATE?

16 MRS. YOUNG: PLEASE PRESENT MRS. REEVES.

17 THE CLERK: WHAT SAYS THE DEFENSE?

18 MR. WATSON: PLEASE PRESENT HER.

19 THE CLERK: YOU MAY HAVE A SEAT IN THE JURY BOX TO
20 THE LEFT.

21 THE COURT: ANY MOTIONS FROM THE STATE IN CONNECTION
22 WITH THE SELECTION OF THE JURY?

23 MRS. YOUNG: NONE.

24 THE COURT: BY THE DEFENDANT?

25 MR. WATSON: NONE, YOUR HONOR.

1 THE COURT: THANK YOU.

2 (WHEREUPON, THE REMAINING JURY WAS EXCUSED TO CALL
3 BACK AFTER 6 PM.)

4 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN,
5 2 O'CLOCK SUIT Y'ALL? WHEN WE GET BACK AT TWO WE'RE GOING
6 TO DO A COUPLE OF THINGS. MY SWEET MS. BARBARA WILL SHOW
7 YOU WHERE TO COME BACK. SHE'S THE SWEETEST BAILIFF. OF
8 ALL OF MY BAILIFFS, SHE'S THE SWEETEST. WELL, NO, SHE
9 AND -- THEN I GOT ALL OF THE MEN.

10 BUT SHE'LL SHOW Y'ALL WHERE TO RETURN RIGHT BACK HERE
11 IN THE JURY ROOM. SHE'LL SHOW YOU HOW TO GET UP, THROUGH,
12 AND DOWN. WE'LL START AT TWO. I SUSPECT, UNLESS ANYBODY
13 HAS GOT ANY PROBLEMS WITH ANYTHING, WE'LL GO UNTIL ABOUT
14 FIVE, MAYBE JUST A TAD BEFORE FIVE OR JUST A TAD FIVE
15 UNLESS ANYBODY HAS GOT ANY PROBLEMS WITH THAT.

16 WHEN WE GET BACK, WE'LL SWEAR YOU IN FOR THIS
17 PARTICULAR CASE. I'LL SELECT ONE PERSON AS THE
18 FOREPERSON, AND THEN WE'LL START THE TRIAL OF THE CASE.

19 THE FIRST THING WE'LL DO IS I WILL GIVE JUST ABOUT A
20 FIVE MINUTES LITTLE SPEEL ABOUT WHAT YOUR DUTIES ARE AND
21 WHAT MY DUTIES ARE AND JUST GENERAL COMMENTS. AND THEN
22 THE SOLICITOR WILL MAKE AN OPENING STATEMENT FOLLOWED BY
23 THE DEFENSE LAWYER.

24 AND THEN WE'LL GET INTO THE TRIAL OF THE CASE. AND I
25 AM NOT SURE HOW FAR WE'LL GO -- HOW MUCH OF THE TESTIMONY

1 WE'LL GET THIS AFTERNOON. THEY HAVE TOLD ME IT'S ABOUT A
2 DAY TRIAL. SO WE'LL GET GOING THIS AFTERNOON.

3 WE'LL START BACK IN THE MORNING AND I'LL HAVE YOU
4 SOME BREAKFAST SNACKS. IF WE'RE STILL GOING AT LUNCH
5 TOMORROW, I'LL BUY YOU LUNCH AND WE'LL GO FROM THERE.

6 SO GO HAVE A VERY PLEASANT LUNCH. WE'LL START AT
7 2 O'CLOCK. PLEASE BE PROMPT. I TRY TO BE PROMPT. AND BE
8 BACK UP HERE ABOUT 10 MINUTES UNTIL TWO SO WE CAN GET
9 STARTED RIGHT AT TWO.

10 I AM GOING TO ASK YOU, DON'T DISCUSS THE CASE WITH
11 ANYBODY EVEN THOUGH YOU DON'T KNOW A WHOLE LOT ABOUT IT AS
12 OF YET. DON'T LET ANYBODY DISCUSS IT WITH YOU. DON'T
13 DISCUSS IT AMONG YOURSELVES.

14 IF ANYBODY TRIES TO DISCUSS IT WITH YOU, PLEASE TELL
15 THEM THAT YOU'RE ON THE JURY, YOU CAN'T TALK ABOUT IT. IF
16 THEY INSIST, GET THEIR NAME AND I'LL DEAL WITH THEM
17 ACCORDINGLY.

18 SO HAVING SAID THAT, I AM GOING TO LET YOU GO WITH
19 MS. BARBARA. SHE'LL SHOW YOU WHERE TO COME BACK. AND
20 WE'LL GET STARTED RIGHT AT 2 O'CLOCK. THANK YOU.

21 (WHEREUPON, THE JURY EXITED THE COURTROOM AT 11:34
22 AM.)

23 THE COURT: IS THE STATE PREPARED TO TAKE UP THE
24 MOTIONS NOW?

25 MRS. YOUNG: YES, SIR.

1 THE COURT: DEFENSE?

2 MR. WATSON: YES, YOUR HONOR.

3 THE COURT: I THINK IT'S YOUR MOTION. HANG ON A
4 SECOND. I'VE GOT A JUROR ALREADY WANTING TO TALK TO ME.
5 IF Y'ALL GIVE ME PERMISSION TO TALK WITH HER, THEN I'LL
6 TELL YOU WHAT SHE SAYS? BOTH SAID YES.

7 (WHEREUPON, A BREAK WAS TAKEN.)

8 THE COURT: LET THE RECORD REFLECT PLEASE THAT JUROR
9 NUMBER 26, MRS. CHAVIS, SHE SAID SHE HAD HER FINGERS
10 CROSSED THAT SHE WOULDN'T GET CALLED. SHE HAS ALREADY
11 PAID FOR A TEST OR SOMETHING IN THE MORNING FOR A VERY
12 SIGNIFICANT JOB IN COLUMBIA.

13 AND WITH THE ECONOMY SUCH AS IT IS AND JOBS SUCH AS
14 IT IS, WE'VE GOT TWO ALTERNATES. UNLESS I HAVE ANY
15 EXTREME OPPOSITION, I AM GOING TO EXCUSE HER. BY THE
16 STATE?

17 MRS. YOUNG: NO OPPOSITION BY THE STATE.

18 THE COURT: DEFENSE?

19 MR. WATSON: NO OPPOSITION, YOUR HONOR.

20 THE COURT: ALL RIGHT. I'LL EXCUSE YOU FOR THE
21 BALANCE OF THE WEEK. GOOD LUCK WITH YOUR JOB APPLICATION.
22 DO GOOD.

23 (WHEREUPON THE JUROR LEFT THE COURTROOM.)

24 THE COURT: ALL RIGHT. WE HAVE TWO ALTERNATES, JUROR
25 NUMBER THREE AND JUROR NUMBER 119. PLEASE RANDOMLY SELECT

1 ONE OF THOSE FOR ME TO ELEVATE THEM TO THE JURY, PLEASE.

2 THE CLERK: 119.

3 THE COURT: ALL RIGHT. 119, MRS. LISA REEVES WILL BE
4 ELEVATED. WHEN WE GET BACK IN, I'LL TELL HER THAT. ALL
5 RIGHT. YOU MAY DISMISS THEM.

6 THE BAILIFF: ALL RIGHT.

7 (WHEREUPON, STATE'S EXHIBITS NOS 1-13 WERE MARKED FOR
8 IDENTIFICATION ONLY.)

9 MR. WATSON: YOUR HONOR, WE'D LIKE TO MAKE A MOTION
10 TO SUPPRESS THE EVIDENCE BASED ON THE FACT THAT THERE WAS
11 NO PROBABLE CAUSE FOR THE ARREST IN THIS CASE. THE
12 OFFICER -- OFFICER FITTERY INDICATED THAT HE STOPPED THE
13 DEFENDANT FOR SPEEDING.

14 HOWEVER, HE HAD FAILED TO ISSUE THE DEFENDANT ANY
15 CITATION FOR SPEEDING. THAT WAS THE THRESHOLD REASON FOR
16 EVERYTHING ELSE THAT FOLLOWED. THEREFORE, WITHOUT
17 PROBABLE CAUSE FOR THE ARREST AND NO TRAFFIC TICKET WAS
18 ISSUED, WE WOULD MOVE TO DISMISS -- TO SUPPRESS THE
19 EVIDENCE.

20 THE COURT: DO YOU HAVE ANY CASE LAW SUPPORTING THAT?

21 MR. WATSON: I HAVE NONE.

22 THE COURT: THANK YOU. WHAT IS THE STATE'S POSITION?

23 MRS. YOUNG: YOUR HONOR, OFFICER FITTERY ISSUED
24 TICKET NUMBER 24006EK FOR RECKLESS DRIVING WHICH WE FEEL
25 WOULD ENCOMPASS THE SPEEDING AND RUNNING OF THE STOP SIGNS

1 AND SUCH THAT WE ALLEGE THIS DEFENDANT DID.

2 THE COURT: WHAT WAS THE DISPOSITION OF THE RECKLESS
3 DRIVING?

4 MRS. YOUNG: I BELIEVE HE PLEAD GUILTY TO IT, YOUR
5 HONOR, BUT LET ME MAKE SURE. HE PLEAD GUILTY IN CITY
6 COURT ON JANUARY 4TH, 2008.

7 THE COURT: OKAY. IF YOU WOULD PLEASE MARK THAT FOR
8 THE SUPPRESSION HEARING AS EXHIBIT -- STATE'S EXHIBIT 1.
9 I AM GOING TO REMARK THAT AS COURT'S EXHIBIT 1 TO THE
10 SUPPRESSION HEARING. MR. WATSON, I'LL BE GLAD TO HEAR
11 FROM YOU.

12 (WHEREUPON, COURT'S EXHIBIT NO. 1 WAS MARKED FOR
13 IDENTIFICATION AND RECEIVED INTO EVIDENCE.)

14 MR. WATSON: FURTHER, YOUR HONOR, THERE WAS NO
15 DEMONSTRATION THAT IS -- THAT MY CLIENT ACTUALLY POSSESSED
16 ANY DRUGS AT ANY POINT. THEY'RE GOING TO TELL US SOME
17 HOCUS POCUS ABOUT A DOG BEING ABLE TO DO AN OPEN AIR
18 SEARCH, BUT THERE IS NO POINT WHATSOEVER DO THEY PUT THESE
19 DRUGS IN MY CLIENT'S POSSESSION OR CONSTRUCTIVE
20 POSSESSION. THEREFORE, THE DRUGS SHOULD FURTHER BE
21 SUPPRESSED.

22 THE COURT: WELL, ISN'T THAT A -- SHOULDN'T THAT
23 GO -- LET ME ASK -- AS TO WHETHER OR NOT IT'S ADMITTED,
24 NUMBER ONE, AND NUMBER TWO, IF IT'S ADMITTED, AS TO THE
25 WEIGHT AS OPPOSED TO SUPPRESSING IT OUTRIGHT, MRS. BETH

1 ANN YOUNG -- OR MR. WEEKS?

2 MRS. YOUNG: I THINK YOU ARE CORRECT, YOUR HONOR.

3 BUT JUST FOR THE RECORD WHAT THE STATE'S PROOF WILL BE IS

4 THAT DURING THE TRAFFIC STOP MR. JOHNSON FLED HIS VEHICLE.

5 OFFICER FITTERRY'S IN-CAR CAMERA WAS CAPTURING THIS, AND HE

6 OBSERVED A BLACK BAG IN MR. JOHNSON'S HAND.

7 SHORTLY THEREAFTER OFFICER RUTLAND APPREHENDED

8 MR. JOHNSON. HE DID NOT HAVE THE BAG IN HIS POSSESSION.

9 THE K-9 WENT BACK AND ALERTED ON THE VEHICLE, AND THEY DID

10 THIS OPEN AIR SEARCH AND FOUND A BLACK BAG THAT WAS

11 IDENTIFIED BY OFFICER FITTERRY AS THE BAG THAT THE

12 DEFENDANT WAS CARRYING ON A ROUTE BETWEEN WHERE HE RAN AND

13 WHERE HE WAS ARRESTED.

14 THE COURT: ALL RIGHT. MR. WATSON, I AM GOING TO

15 RESPECTFULLY DENY BOTH MOTIONS AT THIS TIME. OBVIOUSLY AS

16 TO YOUR SECOND MOTION, AS THE TRIAL AND EVIDENCE -- STRIKE

17 THAT.

18 AS THE EVIDENCE DEVELOPS, IF THE STATE IS ABLE TO

19 COME TO THE -- UNDER THE EVIDENTIARY RULES AND THE RULES

20 OF CRIMINAL PROCEDURE INTRODUCE INTO EVIDENCE THOSE

21 MATTERS WHICH WE'RE TALKING ABOUT, THAT'S ONE THING. IF

22 THEY CAN'T OBVIOUSLY, THAT'S ANOTHER THING.

23 AND YOU CAN RENEW THAT MOTION AT THE APPROPRIATE

24 STAGE, IE DIRECTED VERDICT, OR IF THE EVIDENCE DOESN'T

25 COME IN, LIKEWISE DIRECTED VERDICT.

1 I HAVE TO LISTEN TO THE EVIDENCE TO SEE WHETHER OR
2 NOT THEY WILL BE ABLE TO SATISFY THE RULES OF EVIDENCE AND
3 OR CRIMINAL PROCEDURE TO MAKE THAT CASE WITH THOSE
4 PARTICULAR DRUGS.

5 MR. WATSON: MY NEXT MOTION, YOUR HONOR, IS TO
6 SUPPRESS THE EVIDENCE OF THE EXPERT WITNESS REGARDING THE
7 INABILITY TO -- THE FINGERPRINT EXPERT. THE PROSECUTION
8 PROPOSES TO HAVE AN EXPERT WITNESS TESTIFY THAT AS THERE
9 WERE NO FINGERPRINTS ON THE DRUGS OR THE CASE OR ANYTHING
10 RELATED IN THE CASE, THAT THERE IS A REASON WHY THEY WERE
11 NOT ABLE TO OBTAIN FINGERPRINTS.

12 I DON'T SEE HOW THAT'S GOING TO BE ABLE TO AID THE
13 JURY. ANY JUROR HAS COMMON SENSE TO KNOW THAT EITHER THAT
14 FINGERPRINTS WERE OBTAINED OR THEY WEREN'T OBTAINED. I
15 DON'T SEE WHERE THAT'S THE SUBJECT OF EXPERT OPINION.

16 THE COURT: WELL, OBVIOUSLY AN EXPERT CANNOT GIVE AN
17 OPINION THAT'S IN THE COMMON, ORDINARY KNOWLEDGE OF A
18 JUROR. MRS. BETH ANN YOUNG, WHEN WE GET TO THAT POINT IN
19 THE TRIAL, LET'S DO A PROFFER OUTSIDE OF THE PRESENCE OF
20 THE JURY TO MAKE THAT DETERMINATION.

21 AND DEPENDING ON HOW I RULE ON THAT, WE'LL SEE
22 WHETHER IT COMES IN OR NOT.

23 MRS. YOUNG: YES, YOUR HONOR.

24 THE COURT: THAT WAY IT WON'T PREJUDICE THE
25 DEFENDANT. AND I'D ASK YOU NOT TO ARGUE THAT IN OPENING

1 STATEMENT --

2 MRS. YOUNG: YES, SIR.

3 THE COURT: -- UNTIL WE CROSS THAT BRIDGE LIKE A
4 MOTION IN LIMINE. ANYTHING ELSE?

5 MR. WATSON: I HAVE NOTHING FURTHER, YOUR HONOR.

6 THE COURT: ALL RIGHT. HAVE YOU RECEIVED ANY OF THE
7 INFORMATION FROM THE K-9 EXPERT?

8 MRS. YOUNG: I HAVE SEVERAL ARTICLES THAT WE WERE
9 ABLE TO OBTAIN. I HAVE GIVEN ALL OF THOSE TO MR. WATSON.
10 OBVIOUSLY HE JUST GOT THEM. HE HASN'T REALLY HAD A CHANCE
11 TO LOOK AT THEM. I CAN ALSO HAVE COPIES FOR YOUR HONOR.

12 THE COURT: YOUR HONOR DOESN'T NEED THEM. I WOULD
13 AS -- I THINK WE MENTIONED IN CHAMBERS YESTERDAY THAT THAT
14 PARTICULAR GENTLEMAN WILL NOT BE HERE UNTIL 2 O'CLOCK. IS
15 THAT CORRECT?

16 MRS. YOUNG: WELL, HIS FLIGHT LANDS AT TWO IN
17 COLUMBIA. THEY HAVE TO PICK HIM UP. SO PROBABLY 3:30.

18 THE COURT: WELL, IN ALL FAIRNESS TO THE DEFENSE AND
19 DEFENSE COUNSEL, I AM GOING TO JUST ASK THAT WE NOT CALL
20 HIM. IS HE GOING TO BE AROUND TOMORROW?

21 MRS. YOUNG: I WAS PLANNING TO CALL HIM TOMORROW, NOT
22 TODAY.

23 THE COURT: I WILL ASK NOT TO CALL HIM TODAY, GIVE
24 MR. WATSON AMPLE OPPORTUNITY OVER THE EVENING AND THE
25 BREAK TO REVIEW THE ARTICLES. AND IF HE BRINGS ANY

1 ADDITIONAL ARTICLES WITH HIM, PLEASE MAKE SURE THAT
2 THEY'RE AVAILABLE TO MR. WATSON.

3 MRS. YOUNG: ALSO, YOUR HONOR, WE'LL MAKE THE WITNESS
4 AVAILABLE TO MR. WATSON SO THAT HE CAN SPEAK WITH HIM
5 PERSONALLY AND ASK HIM ANY QUESTIONS OR TRY TO FIND OUT
6 ANY INFORMATION HE MAY WANT TO KNOW.

7 THE COURT: ALL RIGHT. MR. WATSON, I WILL AFFORD YOU
8 THAT OPPORTUNITY ONCE WE STOP FOR THE AFTERNOON AROUND
9 FIVE AND I WON'T HOLD YOU UP TOO LONG GETTING BACK TO
10 COLUMBIA -- AND MAKE HIM AVAILABLE SO YOU CAN TALK WITH
11 HIM.

12 I WILL ALSO -- WE WILL START IN THE MORNING AT 9:30
13 OR 10, I WILL ASK HIM TO BE HERE 30 MINUTES AHEAD OF TIME.
14 SO IF MR. WATSON HAS AN OPPORTUNITY TO READ THE ARTICLES
15 TONIGHT, HE CAN ASK HIM ADDITIONAL QUESTIONS BEFORE HE IS
16 PUT ON THE WITNESS STAND IN THE MORNING. FAIR ENOUGH,
17 MR. WATSON?

18 MR. WATSON: THAT'S FAIR, YOUR HONOR.

19 THE COURT: ANYTHING ELSE?

20 MRS. YOUNG: NOTHING FURTHER FROM THE STATE.

21 MR. WATSON: NOTHING FURTHER FROM THE DEFENSE.

22 THE COURT: HAVE YOU GOT YOUR FINGERPRINT PERSON
23 HERE?

24 MRS. YOUNG: HE IS NOT HERE. HE'S AT THE SHERIFF'S
25 OFFICE IN TRAINING AT THE MOMENT.

1 THE COURT: OKAY. ALL RIGHT. ANYTHING ELSE I CAN DO
2 FOR ANYONE? THAT WENT A LITTLE QUICKER THAN I THOUGHT. I
3 APOLOGIZE FOR NOT STARTING UNTIL TWO. I HAD A 2 O'CLOCK
4 HOUR-LONG CIVIL THING SET AT 2 AND WE MOVED IT BACK TO
5 12:30.

6 SO I'LL BE THROUGH WITH THAT BY 2 O'CLOCK AND WE'LL
7 START RIGHT ON TIME AT 2. ANYTHING FOR THE RECORD FROM
8 THE STATE BEFORE WE BREAK?

9 MRS. YOUNG: NO, YOUR HONOR.

10 MR. WATSON: NOTHING FURTHER, YOUR HONOR.

11 THE COURT: ALL RIGHT. HOLD ON ONE SECOND, PLEASE.
12 AS TO JUROR NUMBER 125, THAT WAS ANTHONY RUSSELL.
13 MR. WATSON, HE HAD A CRIMINAL RECORD THAT CARRIED MORE
14 THAN ONE YEAR. HE PLED GUILTY TO LARCENY IN NEW YORK IN
15 1997.

16 AS TO JUROR NUMBER 107, THAT IS MICHAEL PETERS. HE
17 HAD A RECORD IN 1992, FOUND GUILTY OF UNLAWFUL SEXUAL
18 INTERCOURSE THIRD DEGREE, VICTIM LESS THAN 16 YEARS OF
19 AGE. FROM SUSSIX COUNTY -- I AM NOT SURE WHERE THAT IS.

20 BUT ANYWAY, AS TO JUROR NUMBER -- I CAN'T READ
21 MR. WEEKS' WRITING. FIFTY-FOUR. THAT'S BRITTANY GIBBS --
22 OR IS THAT 34?

23 MR. WEEKS: IT IS 54.

24 THE COURT: I'M SORRY. SHE HAD A CRIMINAL RECORD
25 WITH AN ALIAS OF SHERRY ANITA HALL. THE SOCIAL SECURITY

1 NUMBERS MATCHED. MR. WEEKS, HELP ME.

2 MR. WEEKS: THEFT BY TAKING, YOUR HONOR.

3 THE COURT: THEFT BY TAKING. AND I WILL MAKE ALL OF
4 THE NCIC REPORTS, COURTS EXHIBIT NO. 2 FOR THE RECORD.

5 MR. WATSON, YOU NEED TO LOOK AT THOSE NOW, YOU'RE
6 CERTAINLY WELCOME TO.

7 MR. WATSON: THAT'S FINE, YOUR HONOR. I DON'T NEED
8 TO LOOK AT IT.

9 MR. WEEKS: YOUR HONOR, FOR THE RECORD, WE HAD GIVEN
10 MR. WATSON A COPY OF OUR BREAKDOWNS ON THE PRIOR RECORDS
11 ON THE JURORS THAT MAY OR MAY NOT HAVE BEEN QUALIFIED. WE
12 GAVE HIM THAT PRIOR TO JURY SELECTION, SO HE WAS AWARE OF
13 THOSE.

14 THE COURT: THANK YOU. ALL RIGHT. ANYTHING ELSE BY
15 THE STATE BEFORE I BREAK UNTIL 2 O'CLOCK?

16 MRS. YOUNG: NO, SIR.

17 THE COURT: MR. WATSON, ANYTHING?

18 MR. WATSON: NOTHING FURTHER, YOUR HONOR.

19 THE COURT: ALL RIGHT. DO YOU HAVE -- HAS HE GOT A
20 ROOM TO TALK TO HIS CLIENT BACK THERE?

21 THE POLICE OFFICER: (WITNESS NODS HEAD.

22 THE COURT: ALL RIGHT. WE'LL STAND AT EASE UNTIL
23 2 O'CLOCK EXCEPT -- ON THIS TRIAL.

24 (WHEREUPON, A BREAK WAS TAKEN.)

25 THE COURT: IS THE STATE READY TO GO?

1 MR. WATSON: YOUR HONOR, THERE IS AN OFFER ON THE
2 TABLE. MY CLIENT'S FAMILY IS HERE EXCEPT FOR HIS WIFE.
3 HE WANTS FIVE MINUTES TO CALL HIS WIFE - - DECIDE WHETHER
4 OR NOT TO TAKE THE OFFER.

5 THE COURT: THAT'S FAIR. LET HIM STEP BACK THERE SO
6 HE DOESN'T HAVE TO DO IT OUT HERE WITH EVERYBODY IN THE
7 COURTROOM. HOW ABOUT TELL MY JURY I AM COGNIZANT THEY'RE
8 WAITING ON ME; THAT I AM AWARE THEY'RE NOT SITTING IN
9 THERE. JUST TELL THEM I'LL BE WITH THEM IN JUST A FEW
10 MINUTES.

11 (WHEREUPON, A BREAK WAS TAKEN.)

12 THE COURT: WHAT IS YOUR PLEASURE MR. WATSON?

13 MR. WATSON: WE'RE PREPARED FOR TRIAL, YOUR HONOR.

14 THE COURT: READY FOR TRIAL?

15 MR. WATSON: YES, YOUR HONOR.

16 THE COURT: CALL THE JURY IN.

17 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
18 APPROXIMATELY 2:20 PM.).

19 THE COURT: MRS. REEVES, HOW ARE YOU? GUESS WHAT.
20 YOU'RE NOW ON THE REAL JURY. YOU'RE NOT AN ALTERNATE ANY
21 MORE.

22 THE JUROR: MY LUCKY DAY.

23 THE COURT: YOU WON THE ELECTION. THE FIRST THING WE
24 HAVE TO DO IS HAVE YOU SWORN IN FOR THIS PARTICULAR TRIAL.

25 (WHEREUPON, THE JURY WAS SWORN AT 2:20 PM.)

1 THE COURT: LADIES AND GENTLEMEN OF THE JURY, LET ME
2 JUST GIVE YOU A QUICK SORT OF AN OUTLINE AS TO WHERE WE'RE
3 GOING. AS I TOLD YOU WHEN WE -- ALL RIGHT. LET ME HAVE
4 YOUR ATTENTION, SIR, PLEASE.

5 AS I TOLD YOU WHEN WE STARTED, THE DEFENDANT IN THIS
6 CASE HAS BEEN INDICTED ON TWO OFFENSES. ONE IS WHAT WE
7 CALL TRAFFICKING IN COCAINE. AND UNDER OUR LAW THERE ARE
8 VARIOUS STEPS IN THAT TRAFFICKING. IT IS ACCORDING TO THE
9 AMOUNT OF THE ALLEGED WEIGHT THAT'S INVOLVED.

10 THIS PARTICULAR INDICTMENT SAYS OR IS ALLEGED THAT HE
11 WAS IN POSSESSION OF BETWEEN 200 -- MORE THAN 200 LESS
12 THAN 400 GRAMS OF COCAINE.

13 THE OTHER ONE IS POSSESSION WITH INTENT TO DISTRIBUTE
14 COCAINE WITHIN PROXIMITY OF A SCHOOL. THERE IS A LAW THAT
15 SAYS IF YOU HAVE DRUGS ON YOUR POSSESSION, A CERTAIN
16 AMOUNT -- CERTAIN EMPHASIS CAN BE MADE, AND YOU CAN'T DO
17 THAT WITHIN A HALF A MILE OF A SCHOOL. THAT'S A WHOLE
18 SEPARATE CRIME.

19 HE'S PLED NOT GUILTY. AND OF COURSE, THE INDICTMENT
20 IS NOT EVIDENCE IN THE CASE. SO DON'T CONSIDER THE
21 EVIDENCE -- DON'T CONSIDER THAT AS EVIDENCE. IT IS SIMPLY
22 THE WAY IT COMES INTO THE COURTROOM.

23 HE'S PLED NOT GUILTY AND HE HAS THE CONSTITUTIONAL
24 RIGHT THAT ATTACHES TO THAT PLEA OF BEING INNOCENT UNTIL
25 PROVEN GUILTY BY THE STATE BEYOND A REASONABLE DOUBT,

1 WHICH SATISFIES 12 OF YOU UNANIMOUSLY OF THAT DEGREE OF
2 PROOF.

3 NOW, DURING THIS TRIAL OF THE CASE YOU AND I HAVE
4 SEPARATE DUTIES TO PERFORM. AS THE JUDGE I AM -- NOT ME,
5 BUT MY POSITION -- I AM THE JUDGE OF THE LAW. I TELL
6 Y'ALL WHAT THE LAW IS IN REGARDS TO THIS CASE.

7 AT THE END OF THE CASE I'LL CHARGE OR INSTRUCT YOU ON
8 THE LAW. THE OATH THAT YOU JUST TOOK SAYS THAT I WILL
9 ACCEPT THE LAW AS THE JUDGE GIVES IT TO ME.

10 IF YOU COME INTO COURT WITH SOME PRECONCEIVED IDEA
11 ABOUT WHAT THE LAW SHOULD BE OR IS, AND IT DOESN'T AGREE
12 WITH WHAT I TELL YOU, YOU HAVE TO SET THAT ASIDE AND TAKE
13 THE LAW AS I GIVE IT TO YOU AND I'LL BE CITING IT OUT OF
14 THE CASE BOOKS AND THE STATUTES AND SO FORTH.

15 I WILL TELL YOU WHAT THE LAW IN SOUTH CAROLINA IS
16 REGARDING THESE TWO OFFENSES AND GENERAL LAW IN DEALING
17 WITH CRIMINAL CASES IN GENERAL.

18 I HAVE ONE OTHER TASK TO PERFORM. I HAVE TO RULE ON
19 THE ADMISSIBILITY OF EVIDENCE. YOU CAN ONLY CONSIDER AS
20 EVIDENCE IN THE CASE THE TESTIMONY THAT COMES FROM THE
21 SWORN WITNESSES WHO TAKE THE WITNESS STAND AND ANY
22 RELEVANT EXHIBITS THAT MAY BE INTRODUCED DURING THE TRIAL
23 OF THE CASE.

24 THE LAWYERS, BOTH THE STATE AND THE DEFENDANT, THEY
25 OPERATE UNDER OUR RULES OF EVIDENCE AND OUR RULES OF

1 CRIMINAL PROCEDURE. THEY HAVE TO FOLLOW THOSE RULES. WE
2 HAVE GOOD LAWYERS, SO THEY WILL BE FOLLOWING THE RULES.

3 SO WHAT HAPPENS IS I RULE ON THE ADMISSIBILITY. AND
4 WHAT THAT MEANS IS EVERY NOW AND THEN A LAWYER WILL ASK AN
5 IMPROPER QUESTION OR A RULE NOT IS NOT ALLOWED BY THE
6 RULES OF EVIDENCE AND I WILL HAVE TO RULE THAT NOT
7 EVIDENCE IN THE CASE.

8 EVERYTHING ELSE COMES INTO THE TRIAL OF THE CASE. IT
9 IS ADMITTED EVIDENCE. SO MY JOB IS TO TELL YOU WHAT THE
10 LAW IS AND TO MAKE SURE ONLY RELEVANT EVIDENCE IS
11 INTRODUCED AND EVIDENCE THAT'S ALLOWED UNDER THE RULES.

12 ONCE IT IS INTRODUCED IN THE TRIAL OF THE CASE, THEN
13 YOUR FUNCTION BEGINS. THE 12 OF YOU ACTING COLLECTIVELY
14 AS ONE, YOU ARE THE FINDERS OF THE FACTS IN THE CASE.

15 NOW, AS JUDGE I TRY CASES ALL OVER THE STATE AND I
16 CAN PROMISE YOU ONE THING. YOU WILL HEAR FACTS THAT HAVE
17 DIFFERENT SPINS OR PERHAPS EVEN DIFFERENT FACTS CONCERNING
18 ONE SITUATION.

19 LIKE IN LIFE, YOU WILL HEAR VARIOUS VERSIONS OF THE
20 STORY. IT IS UP TO THE 12 OF YOU TO DECIDE WHO YOU
21 BELIEVE, WHAT YOU BELIEVE, AND WHAT THE TRUE FACTS ARE IN
22 THE CASE.

23 AS YOU CANNOT TELL ME WHAT THE LAW IS, I TELL IT TO
24 YOU, I CAN'T TELL YOU WHAT THE FACTS ARE. YOU TELL THOSE
25 FACTS TO ME. AND THE WAY THAT WORKS IS AFTER ALL OF THE

1 EVIDENCE IS IN AND ALL THE FACTS ARE IN, YOU DETERMINE
2 WHAT THE TRUTH IS.

3 YOU TAKE THOSE FACTS AS YOU DEEM THEM TO BE TRUE.
4 YOU APPLY IT TO THE LAW AS I GIVE IT TO YOU AT THE END OF
5 THE CASE. AND THEN YOU'LL BE IN A POSITION TO RENDER WHAT
6 WE CALL A TRUE AND JUST VERDICT AT THE TRIAL OF THE CASE.

7 SO YOU'RE THE FINDERS OF THE FACT. I AM THE JUDGE OF
8 THE LAW. SO THAT'S HOW IT WORKS. IN JUST A FEW MINUTES
9 WE'LL BEGIN THE TRIAL OF THE CASE.

10 SINCE THE STATE HAS THE BURDEN OF PROOF, THEY GO
11 FIRST FOLLOWED BY THE DEFENDANT. BEFORE WE START TAKING
12 TESTIMONY, THE STATE THROUGH THEIR REPRESENTATIVE AND THE
13 DEFENDANT THROUGH HIS REPRESENTATIVE WILL MAKE OPENING
14 STATEMENTS.

15 NOW, OPENING STATEMENTS ARE NOT EVIDENCE IN THE CASE.
16 SO DO NOT CONSIDER THAT AS EVIDENCE. IT IS SIMPLY EACH
17 SIDE TELL YOU WHAT THEY CONTEND THE ISSUES ARE, WHAT THE
18 QUESTIONS WILL BE, SORT OF A ROADMAP THAT THEY INTEND TO
19 FOLLOW IN PRESENTING THEIR CASE, BUT IT IS NOT EVIDENCE.

20 AS I SAID, THE ONLY EVIDENCE YOU CAN CONSIDER COMES
21 FROM THE WITNESS STAND.

22 ONCE THE LAWYERS MAKE THEIR OPENING STATEMENTS --
23 BECAUSE THE STATE HAS THE BURDEN OF PROOF, THEY WILL CALL
24 THEIR CASE FIRST. THEY WILL PRESENT THEIR WITNESSES.

25 AT THE CONCLUSION OF THEIR CASE, THEN IF THE

1 DEFENDANT WISHES TO, HE HAS THE OPPORTUNITY OF PRESENTING
2 A DEFENSE. ONCE THAT TESTIMONY IS IN SOMETIMES THE STATE
3 CAN PUT UP REPLY TESTIMONY. MOST TIMES THEY DON'T.

4 SO YOU HAVE THE STATE'S TESTIMONY, CASE. IF THE
5 DEFENDANT CHOOSES TO PUT UP TESTIMONY, HIS CASE. THEN
6 WHEN WE FINISH THAT, IT WILL BE FOLLOWED BY FINAL
7 ARGUMENTS BY THE LAWYERS.

8 AND THEN ONCE THAT IS DONE, I WILL CHARGE OR INSTRUCT
9 YOU ON THE LAW AND YOU'LL TAKE THAT LAW AND APPLY IT TO
10 THE FACTS AS YOU FIND THEM TO BE AND THEN YOU'LL BE IN A
11 POSITION TO RENDER A VERDICT.

12 SO THAT'S HOW IT WORKS. THIS IS NOT T.V. THIS IS
13 NOT CSI. THIS IS THE REAL THING. SO I ASK THAT YOU PAY
14 VERY CLOSE ATTENTION. IT IS A VERY IMPORTANT CASE. IT IS
15 A BIG CASE.

16 A COUPLE OF THINGS IN GENERAL. I AM NOT TRYING TO
17 RUN AN ENDURANCE RECORD OUT HERE. IF ANY OF YOU GET
18 UNCOMFORTABLE, IF YOU NEED TO GO TO THE BATHROOM, NEED TO
19 TAKE ANY KIND OF BREAK, STRETCH, JUST GET TIRED OF
20 LISTENING TO ME, RAISE YOUR HAND AND WE'LL TAKE A BREAK.

21 I AM NOT TRYING TO MAKE IT UNCOMFORTABLE FOR YOU.
22 WE'LL RUN UNTIL ABOUT 5 O'CLOCK THIS AFTERNOON. WE WILL
23 STOP AT 3:30 OR A QUARTER 'TIL FOUR AND TAKE AN AFTERNOON
24 BREAK. IF ANYBODY GETS UNCOMFORTABLE BEFORE THEN, JUST
25 RAISE YOUR HAND AND I'LL MAKE SURE YOUR NEEDS ARE

1 ACCOMMODATED.

2 WHEN WE TAKE THE FIRST BREAK, I AM GOING TO ASK THE
3 12 OF YOU WHO ARE ON MY NOW JURY -- NOT MY ALTERNATE --
4 BUT YOU'LL GO BACK THERE WITH THEM. I AM GOING TO ASK
5 THAT Y'ALL BETWEEN THE 12 OF YOU SELECT A FOREPERSON.

6 THE FOREPERSON IS SIMPLY THE PERSON WHO DELIVERS TO
7 ME ANY CONCERNS THAT THE 12 OF YOU MAY HAVE. THE
8 FOREPERSON IS THE ONE WHO SORT OF HEADS UP THE
9 DELIBERATIONS WHEN Y'ALL START DECIDING THE CASE. AND THE
10 FOREPERSON IS THE ONE WHO SIGNS THE VERDICT FORM WHEN A
11 DECISION IS MADE.

12 SO IF YOU CAN, PLEASE ELECT A FOREPERSON OUT OF THE
13 12 OF YOU. IF YOU CAN'T THEN I'LL JUST RANDOMLY CHOOSE
14 SOMEBODY BECAUSE I DON'T KNOW ANY OF YOU.

15 I WILL TELL YOU EVERY TIME THAT WE TAKE A BREAK
16 PLEASE DO NOT START ANY KIND OF DISCUSSION ON THE CASE.
17 DON'T START ANY KIND OF DELIBERATION.

18 ONE OF THE RULES OR ONE OF THE THINGS THAT YOU'VE
19 JUST SWORN TO IS THAT YOU WON'T DISCUSS THE CASE EVEN WITH
20 YOURSELVES UNTIL ALL OF THE EVIDENCE IS IN, ARGUMENTS ARE
21 MADE, AND I CHARGE YOU ON THE LAW.

22 SO WHOEVER IS THE FOREPERSON, THAT'S ONE OF YOUR
23 DUTIES IS TO MAKE SURE NOTHING ABOUT THE CASE IS TALKED
24 ABOUT IN THE JURY ROOM UNTIL WE'RE FINISHED. YOU CAN TALK
25 ABOUT ANYTHING ELSE YOU WANT TO, BUT DON'T TALK ABOUT THE

1 CASE PARTICULARLY BECAUSE WE WANT IT ALL TO BE IN BEFORE
2 YOU START YOUR FINAL DELIBERATION.

3 I WILL ASK YOU WHEN WE BREAK THIS AFTERNOON OR THE
4 EVENING, PLEASE DO NOT DISCUSS THE CASE WITH ANY FAMILY,
5 FRIENDS, OR ANYONE ELSE AND DON'T LET ANYBODY DISCUSS IT
6 WITH YOU.

7 WE HAVE A NEWSPAPER REPORTER HERE. HE IS HERE AT A
8 LOT OF MY TRIALS. HE DOES AN EXCELLENT JOB. I AM GOING
9 TO ASK YOU NOT TO READ ANYTHING IN THE NEWSPAPER ABOUT IT
10 BECAUSE IF I TRIED TO TELL Y'ALL WHAT HAPPENED TODAY, I
11 MAY NOT TELL YOU EXACTLY LIKE YOU HEARD IT.

12 SO JUST MAKE YOUR OWN DECISION FROM THE EVIDENCE.
13 AND THEN WHEN IT'S ALL OVER, IF YOU WANT TO READ THE
14 NEWSPAPER ACCOUNTS, YOU CAN READ HIS -- HOW HE PERCEIVED
15 IT.

16 IT IS UP TO YOU. I WANT Y'ALL TO DO IT BASED SOLELY
17 ON WHAT YOU HEAR IN HERE AND NOT BY WHAT YOU READ IN THE
18 NEWSPAPER AND SOMEBODY ELSE'S OPINIONS.

19 SO HAVING SAID ALL OF THAT, WE'RE GOING TO START IN
20 JUST A FEW MINUTES. AND LIKE I SAID, IF YOU GET
21 UNCOMFORTABLE, RAISE YOUR HAND AND WE'LL TAKE A BREAK.
22 ANY OBJECTIONS TO MY OPENING REMARKS BY THE STATE?

23 MRS. YOUNG: NO, SIR, YOUR HONOR.

24 THE COURT: BY THE DEFENSE?

25 MR. WATSON: NONE, YOUR HONOR.

1 THE COURT: ALL RIGHT. AT THIS TIME MRS. BETH ANN
2 YOUNG WILL DO AN OPENING STATEMENT ON BEHALF OF THE STATE
3 FOLLOWED BY THE DEFENSE COUNSEL AND THEN WE'LL GET INTO
4 THE TESTIMONY. SO PLEASE GIVE HER YOUR UNDIVIDED
5 ATTENTION AS WELL AS DEFENSE COUNSEL.

6 MRS. YOUNG: MR. WATSON, MAY IT PLEASE THE COURT.

7 THE COURT: YES, MA'AM.

8 OPENING STATEMENT

9 MRS. YOUNG: GOOD AFTERNOON, LADIES AND GENTLEMEN.
10 THIS CASE IS ABOUT A BLACK BAG. WHEN IT COMES DOWN TO IT,
11 THAT'S WHAT IT'S ABOUT. IT'S ABOUT A BLACK BAG.

12 NOW, IT'S A BIG CASE, BUT ALL COMES DOWN TO A BLACK
13 BAG THAT'S ABOUT THIS BIG. ON DECEMBER 18TH, 2007 OFFICER
14 FITTERY WAS ON ROUTINE PATROL IN NORTH AUGUSTA AND HE HAD
15 AN OCCASION TO MAKE A TRAFFIC STOP, AND THE PERSON HE
16 STOPPED WAS THE DEFENDANT, MR. JOHNSON.

17 AND DURING THE COURSE OF THAT STOP THE BLACK BAG
18 COMES INTO PLAY. YOU WILL SEE A VIDEO FROM OFFICER
19 FITTERY'S IN-CAR CAMERA THAT SHOWS MR. JOHNSON WITH THE
20 BLACK BAG IN HIS HAND AS HE RUNS FROM OFFICER FITTERY.

21 A SHORT TIME LATER ANOTHER OFFICER, OFFICER RUTLAND,
22 FINDS MR. JOHNSON WALKING DOWN THE STREET WITHOUT THAT
23 BLACK BAG. THE BLACK BAG WAS LATER FOUND USING A K-9 DOG
24 AND IT WAS ON THE PATH IN BETWEEN WHERE MR. JOHNSON RAN
25 AND WHERE HE WAS FOUND BY OFFICER RUTLAND.

1 SO IT ALL COMES DOWN TO IT, EVEN THOUGH IT IS A BIG
2 CASE LIKE JUDGE EARLY SAID, TO THIS ONE BLACK BAG AND WHAT
3 WAS INSIDE IT. WHAT WAS INSIDE IT WAS OVER 200 GRAMS OF
4 COCAINE.

5 YOUR HONOR IS GOING TO TELL YOU THE LAW, AND IT'S NOT
6 MY PLACE TO DO THAT, BUT I DID WANT TO SORT OF PUT
7 SOMETHING IN YOUR HEAD TO THINK ABOUT DURING THE TRIAL
8 ABOUT TRAFFICKING.

9 TRAFFICKING A LOT OF TIMES YOU THINK ABOUT CARTELS
10 AND LOTS OF PEOPLE IN AIRPLANES. AND I THINK THE JUDGE IS
11 GOING TO TELL YOU THAT THE LAW IN THIS STATE ALLOWS
12 SOMEBODY TO BE CHARGED WITH TRAFFICKING IF THEY POSSESS A
13 CERTAIN WEIGHT OF A DRUG, AND THAT'S ALL IT TAKES IS
14 POSSESSING THAT WEIGHT.

15 WE WILL ALSO SHOW YOU THAT THE TRAFFIC STOP WAS MADE
16 AND MR. JOHNSON HAD THAT COCAINE AND IT WAS WITHIN ONE
17 HALF MILE OF NORTH AUGUSTA MIDDLE SCHOOL, WHICH IS AGAINST
18 THE LAW HERE IN THE STATE OF SOUTH CAROLINA. YOU CANNOT
19 POSSESS DRUGS WITH THE INTENT TO DISTRIBUTE THEM WITHIN
20 PROXIMITY OF A SCHOOL.

21 SO IT ALL COMES DOWN TO THAT BLACK BAG. YOU'RE GOING
22 TO HEAR A LOT ABOUT THAT BLACK BAG BEFORE IT IS OVER WITH.

23 WE PICK JURIES THAT WE FEEL LIKE CAN BE FAIR TO BOTH
24 THE STATE AND THE DEFENDANT. BUT ONE THING THAT Y'ALL
25 HAVE IN COMMON IS YOUR COMMON SENSE. YOU DON'T CHECK YOUR

1 COMMON SENSE AT THE DOOR. YOU BRING IT WITH YOU.

2 SO I AM GOING TO ASK YOU TO LISTEN CAREFULLY TO THE
3 EVIDENCE, THE TESTIMONY OF THE WITNESSES, TO REVIEW ANY
4 EVIDENCE THAT'S PUT INTO – THAT'S ALLOWED INTO EVIDENCE
5 BY THE JUDGE.

6 YOU WILL HAVE A CHANCE TO TAKE IT BACK AND LOOK AT IT
7 AT YOUR LEISURE. AND I WOULD ASK THAT YOU THINK ABOUT IT
8 CAREFULLY AND THINK ABOUT IT USING YOUR COMMON SENSE ABOUT
9 THAT BLACK BAG.

10 AT THE END OF THIS CASE I AM GOING TO HAVE A CHANCE
11 TO COME BACK BEFORE YOU AGAIN AND DO A LITTLE MORE
12 EXTENSIVE ARGUING, BUT I'LL ASK THAT YOU FIND THE
13 DEFENDANT GUILTY OF HAVING THAT BLACK BAG AND THE CONTENTS
14 AND FIND HIM GUILTY OF TRAFFICKING COCAINE. THANK YOU.

15 THE COURT: MR. WATSON?

16 OPENING STATEMENT

17 MR. WATSON: MAY IT PLEASE THE COURT, MRS. BETH ANN.
18 LADIES AND GENTLEMEN OF THE JURY, I AM JOHNNY WATSON. I
19 AM A SOLE PRACTITIONER. JUST ME.

20 I AM THE ONLY THING STANDING BETWEEN MR. TREVIS
21 JOHNSON AND THE OVERWHELMING POWER OF THE STATE OF SOUTH
22 CAROLINA. THEY HAVE ALL OF THESE RESOURCES. THEY HAVE
23 POLICE OFFICERS, THEY HAVE LABS AND DETECTIVES. ALL
24 MR. JOHNSON HAS IS ME.

25 YOU'RE GOING TO FIND THAT THERE ISN'T A WHOLE LOT OF

1 DISAGREEMENT ABOUT THE FACTS IN THIS CASE EXCEPT FOR ONE
2 POINT, WHETHER OR NOT MR. JOHNSON POSSESSED THE DRUGS THAT
3 HE'S ACCUSED OF POSSESSING.

4 THE JUDGE HAS TOLD YOU WHAT THE INDICTMENT STATES IN
5 THIS CASE. THE INDICTMENT STATES THAT TREVIS JOHNSON DID
6 IN AIKEN COUNTY ON OR ABOUT DECEMBER 18, WHICH IS ONE WEEK
7 BEFORE CHRISTMAS, 2007, KNOWINGLY SELL, MANUFACTURE,
8 CULTIVATE, DELIVER, PURCHASE, OR BRING INTO THIS STATE OR
9 DID PROVIDE FINANCIAL ASSISTANCE OR DID OTHERWISE ABET,
10 ATTEMPT OR CONSPIRE TO SELL, MANUFACTURE, CULTIVATE,
11 DELIVER, OR PURCHASE OR BRING INTO THE STATE OR DID
12 KNOWINGLY ACTUALLY OR CONSTRUCTIVELY POSSESS.

13 NOW, MRS. BETH TOLD YOU THAT THE CASE IS ABOUT A
14 BLACK BAG. MORE SPECIFICALLY THE CASE IS ABOUT WHETHER OR
15 NOT MY CLIENT POSSESSED THE BLACK BAG WHERE THE DRUGS WAS
16 FOUND. NOT JUST ANY BLACK BAG, THE SPECIFIC BLACK BAG
17 WHERE THE DRUGS WERE FOUND.

18 YOU'RE GOING TO SEE THAT ON DECEMBER 18TH OFFICER
19 FITTERY WILL TESTIFY THAT HE WAS RUNNING A STATIONARY
20 RADAR AND MY CLIENT, MR. JOHNSON, CAME THROUGH DRIVING IN
21 EXCESS OF 35 MILES PER HOUR.

22 YOU'LL SEE A VIDEO WHERE OFFICER FITTERY -- OFFICER
23 FITTERY GETS IN BEHIND MR. JOHNSON AND PURSUES HIM THROUGH
24 THE NEIGHBORHOOD. MR. JOHNSON GETS OUT OF THE CAR AND
25 RUNS. WHEN HE IS RUNNING, HE HAS A BLACK BAG.

1 THE QUESTION ISN'T WHETHER OR NOT HE HAS A BLACK BAG,
2 BUT WHETHER IT'S THE SAME BLACK BAG WHERE THE DRUGS WERE
3 FOUND. AND I SUBMIT TO YOU THAT YOU'LL BE ABLE TO SEE
4 FROM THE EVIDENCE PRESENTED THAT THAT WAS NOT THE SAME
5 BLACK BAG.

6 THERE ARE TWO TYPES OF POSSESSION. THERE ARE TWO
7 WAYS TO PROVE THAT MR. JOHNSON POSSESSED THE BLACK BAG.
8 ONE IS ACTUAL POSSESSION, HERE, I HAVE IN MY HAND THIS
9 PAPER. I ACTUALLY POSSESS THIS PAPER.

10 YOU'LL FIND THAT AT NO POINT WAS MR. JOHNSON FOUND TO
11 HAVE THAT BLACK BAG IN HIS HAND IN THE PRESENCE OF ANY
12 OFFICER. OKAY? THEY SAW HIM WITH A BLACK BAG, NOT WE
13 CONTEND THE BLACK BAG WHERE THE DRUGS WERE FOUND.

14 NOW, I HAVE THIS IN MY HAND. OF COURSE, THIS -- I
15 ACTUALLY POSSESS THIS. THERE IS ANOTHER WAY TO PROVE
16 POSSESSION. AS THE INDICTMENT SAYS, ACTIVELY OR
17 CONSTRUCTIVELY POSSESS.

18 CONSTRUCTIVE POSSESSION IS WHAT THE STATE IS ARGUING.
19 THEY CLEARLY WILL CONCEDE THAT AT NO POINT DID ANY OFFICER
20 SEE MR. JOHNSON HOLDING THE BAG WITH THE DRUGS IN QUESTION
21 IN THIS CASE.

22 SO THEY'RE GOING TO ARGUE THAT THEY FOUND A BLACK BAG
23 IN THE NEIGHBORHOOD AFTER MR. JOHNSON RAN FROM HIM -- FROM
24 THEM, AND THEREFORE THAT BLACK BAG BELONGS TO MR. JOHNSON.

25 HOCUS POCUS. A LEAP OF FAITH. THEY WANT YOU TO TAKE

1 THAT LEAP AND SAY THAT THE BLACK BAG BELONGS TO
2 MR. JOHNSON.

3 NOW, IN AN EFFORT TO PROVE -- A LITTLE MORE ABOUT
4 CONSTRUCTIVE POSSESSION. IF I AM STOPPED BY AN OFFICER
5 AND I HAVE IN MY CAR A QUANTITY OF DRUGS AND I GET OUT OF
6 THAT CAR AND I RUN, THE DRUGS ARE STILL IN THE CAR.

7 THE OFFICER KNOW THAT I HAD THAT CAR, I HAD
8 POSSESSION, CONTROL, DOMINION OF THAT CAR, THEREFORE THE
9 DRUGS ARE CONSTRUCTIVELY MINE.

10 THAT'S NOT THE CASE IN THIS CASE. MR. JOHNSON IS
11 ALLEGED TO HAVE RUN WITH THE BLACK BAG, BUT THERE WERE NO
12 DRUGS FOUND IN MR. JOHNSON'S CAR.

13 YOU'LL FIND THAT THE EVIDENCE WILL SHOW THAT
14 MR. JOHNSON WAS FOUND SOMETIME AFTER HE RAN FROM THE
15 OFFICER WALKING DOWN THE STREET. AT THAT TIME THE
16 EVIDENCE WILL SHOW THAT HE DID NOT HAVE ANY BLACK BAG IN
17 HIS POSSESSION.

18 THE OFFICER -- THE EVIDENCE WILL SHOW THAT WHEN
19 MR. JOHNSON WAS DETAINED BY OFFICER FITTERY, OFFICER
20 FITTERY, HE PUT HIM DOWN ON THE GROUND. HE SAID TO
21 MR. JOHNSON, WHERE IS THE BLACK BAG?

22 MR. JOHNSON SAID, I DON'T HAVE A BLACK BAG. THE
23 OFFICER WILL TELL HIM -- TELL TO MR. JOHNSON AT THAT
24 POINT, TELL US WHERE THE BLACK BAG IS, IF YOU DON'T TELL
25 US, ANY DRUGS THAT WE FIND IN THIS AREA WE'RE GOING TO PUT

1 IT ON YOU.

2 AND THAT'S WHAT THEY'RE ATTEMPTING TO DO HERE TODAY.
3 THEY ALLEGEDLY FOUND SOME DRUGS IN THE AREA, AND THEY'RE
4 ATTEMPTING TO SAY BECAUSE THE DRUGS WERE FOUND IN A BLACK
5 BAG, THAT MR. JOHNSON HAD TO HAVE POSSESSED IT.

6 THE EVIDENCE WILL SHOW THAT THEY HAVE THE BLACK BAG;
7 THAT THERE IS NO D.N.A. EVIDENCE FROM MR. JOHNSON ON THE
8 BAG, THERE IS NO FINGERPRINT, THERE IS NO SPIT, THERE IS
9 NO SWEAT, THERE IS NOTHING THAT THEY CAN GET TO RELATE
10 MR. JOHNSON TO THIS BLACK BAG.

11 SO, THEY ARE GOING TO TRY A NOVEL APPROACH. HOCUS
12 POCUS. WE ARE GOING TO BRING IN AN EXPERT TO SAY THAT
13 DOGS CAN DO OPEN-END SEARCHES. THIS DOG IS GOING TO GO
14 AND SEARCH THE AREA, A KNOWN DRUG AREA ACCORDING TO
15 OFFICER FITTERY.

16 DON'T FORGET. HE SAID, ANY DRUGS WE FIND IN THIS
17 AREA, IF YOU DON'T TELL US WHERE YOURS ARE -- YOU'RE GOING
18 TO HEAR THE TAPE. YOU'RE GOING TO HEAR THE WORDS COME OUT
19 OF HIS VERY MOUTH.

20 ANY DRUGS THAT WE FIND IN THIS AREA WE'RE GOING TO
21 PUT ON YOU. AND THAT'S WHAT THEY'RE ATTEMPTING TO DO
22 HERE.

23 NOW, THE POLICE OFFICER -- IF FINDING DRUGS WERE THAT
24 SIMPLE, I DON'T UNDERSTAND WHY WE STILL HAVE A DRUG
25 PROBLEM IN THIS COUNTRY. WHY DON'T THE OFFICERS SIMPLY GO

1 INTO ANY AREA WITH THESE DOGS AND LET THEM GO TO WHERE ALL
2 OF THE DRUGS ARE.

3 THEY'RE GOING TO HAVE YOU BELIEVE THAT IT'S THAT
4 SIMPLE, THAT THEY BROUGHT THE DOG INTO THE AREA, THE DOG
5 WENT TO THE DRUGS, AND THEY FIND THE DRUGS IN A BLACK BAG,
6 SO THEREFORE IT MUST BE MR. JOHNSON'S. HOCUS POCUS.

7 PROVE THAT IT'S HIS. SHOW ME SOMETHING THAT CONNECTS
8 HIM. SHOW ME -- THE BAG HAD COLOGNE IN IT. IS IT THE
9 SAME COLOGNE? YOU WATCH CSI. WE HAVE ALL KIND OF
10 CHEMICAL TESTS WE CAN RUN.

11 NO FINGERPRINTS. NO D.N.A. NO SWEAT. NO NOTHING
12 CONNECTS MR. JOHNSON TO THIS BLACK BAG OTHER THAN SOME
13 EXPERT THAT THEY'RE GOING TO BRING TO SAY THAT MR. JOHNSON
14 MUST HAVE POSSESSED THE BLACK BAG BECAUSE THE DOG FOUND
15 IT.

16 BEYOND THAT, THE EVIDENCE WOULD SHOW -- THE EVIDENCE
17 WOULD SHOW THAT OFFICER FITTERY FURTHER STATED TO
18 MR. JOHNSON AFTER HE HAD HIM ON THE GROUND AND SEARCHED
19 HIS POCKETS HE FOUND \$863.

20 OFFICER FITTERY SAID -- AND YOU'LL HEAR IT ON THE
21 TAPE -- THAT WE FOUND SOME MONEY. ALL WE HAVE TO DO NOW
22 IS FIND THE DRUGS AND WE CAN PUT IT ON HIM. WE FOUND THE
23 MONEY.

24 HE PUTS THE MONEY ON THE GROUND. BRINGS THE DOG OUT
25 OF HIS CAR. HE SAID, IF THIS DOG ALERTS ON THIS MONEY,

1 THIS MONEY BELONGS TO THE CITY OF NORTH AUGUSTA.

2 HE BROUGHT THE DOG. YOU'LL SEE THE DOG WALKS RIGHT
3 ON PAST THE MONEY LIKE NOTHING. YOU'RE GOING TO SEE THIS
4 ON THE TAPE. THE DOG WALKS RIGHT PAST THE MONEY, WALKS
5 RIGHT PAST MR. JOHNSON, DOES NOT ALERT.

6 LATER ON YOU'RE GOING TO SEE THAT AN OFFICER ASKED
7 OFFICER FITTERY DID THE DOG ALERT ON THE MONEY. HE SAID,
8 YES, THE DOG DID. YOU'RE GOING TO WATCH FOR YOURSELF.
9 THE DOG DIDN'T ALERT.

10 IN FACT, AFTER THE DOG WALKED AROUND THE MONEY
11 SEVERAL TIMES, YOU'LL SEE OFFICER FITTERY LITERALLY PUSHES
12 THE DOG BUTT TO THE GROUND WHERE THE MONEY IS AND SAYS NOW
13 THE DOG ALERTS. HOCUS POCUS.

14 I JUST WANT YOU TO PAY ATTENTION TO THE EVIDENCE AND
15 YOU'LL BE ABLE TO DETERMINE THAT MR. JOHNSON DID NOT HAVE
16 ACTUAL OR CONSTRUCTIVE POSSESSION OF THE DRUGS IN THIS
17 CASE.

18 THE COURT: YOU MAY CALL YOUR FIRST WITNESS.

19 MRS. YOUNG: THE STATE CALLS OFFICER AARON FITTERY.

20 AARON FITTERY, AFTER BEING DULY SWORN,
21 TESTIFIED AS FOLLOWS:

22 THE CLERK: HAVE A SEAT IN THE WITNESS BOX STATING
23 YOUR FULL NAME AND SPELLING YOUR LAST FOR THE COURT,
24 PLEASE.

25 THE WITNESS: MY NAME IS OFFICER RICHARD AARON

1 FITTERY, F-I-T-T-E-R-Y.

2 DIRECT EXAMINATION

3 BY MRS. YOUNG:

4 Q OFFICER FITTERY, HOW LONG HAVE YOU BEEN EMPLOYED WITH
5 THE CITY OF NORTH AUGUSTA.

6 A APPROXIMATELY THREE YEARS.

7 Q AND IN WHAT CAPACITY ARE YOU EMPLOYED THERE?

8 A I AM A K-9 HANDLER ASSIGNED TO THE TRAFFIC UNIT FOR
9 THE CITY OF NORTH AUGUSTA.

10 Q HOW LONG HAVE YOU BEEN A K9 HANDLER?

11 A APPROXIMATELY A YEAR AND A HALF.

12 Q WERE YOU EMPLOYED WITH THE CITY ON DECEMBER 18, 2007?

13 A YES, I WAS.

14 Q AND WHAT WAS YOUR EMPLOYMENT STATUS AT THAT TIME.

15 A I WAS ASSIGNED TO THE TRAFFIC SAFETY UNIT AND MY
16 DUTIES WERE TO ENFORCE THE TRAFFIC LAWS OF THE CITY OF
17 NORTH AUGUSTA AND THE STATE OF SOUTH CAROLINA TO MAKE THE
18 ROADWAYS SAFE FOR THE PUBLIC.

19 Q AND YOU WERE WORKING THAT NIGHT?

20 A I WAS.

21 Q DID YOU HAVE AN OCCASION TO COME INTO CONTACT WITH
22 TREVIS JOHNSON?

23 A I DID.

24 Q CAN YOU DESCRIBE HOW THAT OCCURRED?

25 A YES, MA'AM. I WAS RUNNING STATIONARY RADAR ON

1 WOMRATH ROAD WHICH IS AN AREA OF HIGH SPEED ACTIVITY. ON
2 THAT DAY I WAS SITTING OFF TO THE RIGHT SIDE OF THE
3 ROADWAY OPERATING STATIONARY RADAR WHEN I OBSERVED A RED
4 IN COLOR HONDA ACCORD TRAVELING IN THE SAME DIRECTION THAT
5 I WAS FACING.

6 UPON SEEING THE VEHICLE, I NOTICED THAT IT WAS
7 TRAVELING AT A HIGH RATE OF SPEED. I ACTIVATED MY REAR
8 ANTENNA RADAR WHICH IS THE ANTENNA IN THE REAR OF MY
9 VEHICLE. IT THEN GAVE ME A SPEED READING OF 51 MILES PER
10 HOUR IN A 35 MILE AN HOUR ZONE.

11 AT THAT TIME THE VEHICLE WAS CLOSING DISTANCE THE
12 ENTIRE TIME. UPON THE VEHICLE GETTING CLOSER TO ME, HE
13 IMMEDIATELY MADE A RIGHT HAND TURN AND WHAT WAS AN
14 OPPORTUNITY TO TRY TO ELUDE ME WITHOUT COMING PAST ME. I
15 IMMEDIATELY NOTICED THAT AND--

16 Q LET ME ASK YOU THIS REAL QUICK.

17 A YES, MA'AM.

18 Q SO YOU'RE SAYING THAT YOU HAVE RADAR ON THE FRONT AND
19 THE BACK OF YOUR VEHICLE?

20 A YES, MA'AM. WE HAVE A RADAR ON THE FRONT AND IN THE
21 BACK.

22 Q SO YOU'RE IN TROUBLE IN MATTER WHERE YOU ARE IF YOU
23 ARE SPEEDING. YOU CAN DETECT IT FRONT AND BACK?

24 A THAT'S CORRECT.

25 Q ARE YOU TRAINED AS PART OF YOUR DUTIES TO OPERATE

1 THAT RADAR?

2 A YES, MA'AM, WE ARE. YOU WILL HAVE A RADAR
3 CERTIFICATION THAT WE MUST PASS.

4 Q OKAY. AND DO YOU HAVE ANY TESTING THAT YOU DO TO
5 INSURE THAT YOUR RADAR IS WORKING PROPERLY.

6 A YES, MA'AM. WE DO A CALIBRATION EVERY MORNING AND
7 ALSO THE RADAR THAT WAS IN MY VEHICLE THAT DAY AND IS
8 STILL INSIDE IS A NEWER MODEL OF RADAR AND IT DOES A
9 SELF-CALIBRATION EVERY 15 MINUTES TO MAKE SURE THAT THE
10 INTERNAL SYSTEMS ARE WORKING PROPERLY.

11 Q DID YOU DO THE CALIBRATION THAT MORNING?

12 A I DID DO THE CALIBRATION ON IT.

13 Q WAS IT WORKING PROPERLY?

14 A IT WAS.

15 Q AND WERE YOU IN FACT CERTIFIED THE RUN THE RADAR AS
16 YOU STATED?

17 A YES, MA'AM, I AM OR WAS AT THE TIME. YES, MA'AM.

18 Q DESCRIBE IF YOU WOULD -- DID MR. JOHNSON'S CAR EVER
19 GET TO WHERE YOU WERE SITTING ON THE SIDE OF THE ROAD?

20 A NO, MA'AM. IT APPEARED AS SOON AS HE SEEN ME, HE
21 IMMEDIATELY MADE A RIGHT HAND TURN ON TO A SIDE STREET
22 THAT WAS BEHIND WHERE I WAS SITTING.

23 Q AND WHAT DID YOU DO IN RESPONSE?

24 A IN RESPONSE TO THAT, I IMMEDIATELY MADE A RIGHT HAND
25 TURN ON THE ROAD THAT WAS IN FRONT OF ME BECAUSE THE ROAD

1 THAT HE HAD TURNED ON, WHICH WAS WOMRATH COURT, IS A
2 DEAD-END ROAD, AND THERE IS NO OPTION.

3 HE WOULD HAVE EITHER HAD TO TURN AROUND AND COME BACK
4 PAST ME OR HE WOULD HAVE HAD TO MAKE A LEFT ON TO ANOTHER
5 ROAD WHICH INTERSECTS WITH THE ROAD THAT I WAS SITTING AT.

6 SO AT THAT TIME I IMMEDIATELY MADE A RIGHT TURN ONTO
7 NORMAN STREET WHICH INTERSECTS WITH THURMOND WAY WHICH IS
8 THE ROAD THAT HE WOULD HAVE HAD TO TURN ON TO TO AVOID
9 GOING TO THE DEAD-END OR TURNING AROUND GOING TO BACK PAST
10 ME.

11 Q OKAY. JUST A SECOND. OFFICER FITTERY, I AM GOING TO
12 SHOW YOU WHAT'S BEEN MARKED FOR IDENTIFICATION PURPOSES AS
13 STATE'S EXHIBIT NO. 17 AND ASK IF YOU RECOGNIZE THIS.

14 A YES, MA'AM. IT IS AN OVERHEAD OF THE AREA I WAS
15 PATROLLING THAT DAY.

16 Q DO YOU KNOW THIS IS TO BE A TRUE AND ACCURATE
17 REPRESENTATION OF THAT AREA?

18 A YES, MA'AM.

19 Q WHERE DID THIS MAP COME FROM?

20 A IT COME FROM OUR GIS PERSON THAT WORKS FOR THE CITY.
21 HE IS OVER MARKING OR KEEPING UP WITH THE CITY BOUNDARIES
22 AND THINGS LIKE THAT. HE HAS A WHOLE SYSTEM THAT SHOWS
23 THE OVERHEAD VIEW OF THE CITY.

24 MRS. YOUNG: YOUR HONOR, AT THIS TIME THE STATE WOULD
25 LIKE TO MOVE EXHIBIT NO. 17 INTO EVIDENCE.

1 MR. WATSON: WITHOUT OBJECTION.

2 THE COURT: SO MOVED.

3 (WHEREUPON, STATE'S EXHIBIT 17 WAS ADMITTED INTO
4 EVIDENCE.)

5 MRS. YOUNG: MAY I HAVE THE WITNESS STEP DOWN AND
6 TESTIFY ABOUT IT?

7 THE COURT: YOU MAY.

8 BY MRS. YOUNG:

9 Q ALL RIGHT. OFFICER FITTERY, IF YOU COULD, YOU
10 TESTIFIED ABOUT A LOT OF TURNS AND THINGS OF THAT NATURE.
11 IF YOU WOULD PLEASE SHOW THE JURY WHERE YOU WERE AND JUST
12 KIND OF HOW THINGS PROGRESSED SO THEY CAN GET A LITTLE BIT
13 BETTER UNDERSTANDING.

14 THE COURT: HOLD ON ONE SECOND. LET HIM COME AROUND.
15 ALL RIGHT. CAN YOU SEE BACK THERE?

16 MR. WATSON: I CAN, YOUR HONOR.

17 BY MRS. YOUNG:

18 Q SO DESCRIBE AGAIN FOR THE JURY SO YOU CAN SHOW
19 THEM...

20 A OKAY. THIS IS -- THE GREEN STAR WHICH IS LOCATED
21 RIGHT HERE WOULD BE MY PATROL CAR AND WHERE I WAS SITTING.
22 THIS IS WOMRATH ROAD. THIS IS THE ROAD THAT I WAS
23 MONITORING TRAFFIC ON AND THE ROAD THAT THE DEFENDANT WAS
24 TRAVELING DOWN.

25 I WAS SITTING HERE. AND MY VEHICLE WOULD HAVE BEEN

1 FACING GOING THIS WAY, AND I WAS OPERATING REAR ANTENNA
2 LIKE I STATED EARLIER.

3 AS THE DEFENDANT COME DOWN THE HILL, I OBTAINED A
4 SPEED READING PROBABLY AROUND HERE ON THE VEHICLE. UPON
5 HIM CLOSING THE GAP BETWEEN MYSELF AND HIM, HE IMMEDIATELY
6 MADE A RIGHT HAND TURN ONTO WOMRATH COURT, WHICH IS HERE.

7 UPON HIM DOING THAT, I NOTICED HE WAS TRYING TO ELUDE
8 ME. SO AT THAT TIME I IMMEDIATELY MADE A RIGHT HAND TURN
9 RIGHT HERE TO CONTINUE UP TO NORMAN.

10 AND AS YOU CAN SEE, IF YOU WERE TO FOLLOW WOMRATH
11 COURT DOWN TO HERE, IT IS A CUL-DE-SAC DEAD-END, SO HE
12 WOULD HAVE EITHER HAD TO TURN AROUND AND HEAD BACK OUT
13 THIS DIRECTION, WHICH WOULD HAVE CAUSED HIM TO PASS ME IF
14 I WOULD HAVE STAYED IN PLACE.

15 SO HIS VEHICLE FOLLOWED WOMRATH COURT TO HERE, WHICH
16 IS THURMOND WAY, AND HE MADE A LEFT HAND TURN ON TO
17 THURMOND WAY. AS I WAS COMING UP THE HILL APPROXIMATELY
18 IN THIS AREA, I SEEN HIS VEHICLE GO PAST.

19 AT THAT TIME I NOTICED THAT IT WAS TRAVELING AT A
20 HIGH RATE OF SPEED THAN IT PREVIOUSLY WAS. AT THAT TIME I
21 BEGAN TO ACCELERATE MY VEHICLE TO TRY TO CATCH UP WITH
22 HIM.

23 WHEN I ARRIVED AT THIS INTERSECTION, I WAS BEHIND HIS
24 VEHICLE. I IMMEDIATELY MADE A LEFT HAND TURN ON THE
25 VEHICLE TRYING TO CATCH UP. THERE WAS A STOP SIGN AT THE

1 CORNER OF THIS ROADWAY, WHICH IS THURMOND WAY -- AND THIS
2 IS THURMOND STREET.

3 HE -- THERE WAS A STOP SIGN HERE. HE RUN THE STOP
4 SIGN, CONTINUED ACCELERATING MAKING A RIGHT HAND TURN
5 COMING DOWN. AT THIS TIME I WAS CLOSING THE GAP CLOSER TO
6 HIS VEHICLE. HE CONTINUED -- I'M SORRY. HE CONTINUED
7 DOWN THIS ROADWAY.

8 AT THAT TIME I WAS -- THE CLOSER I GOT, THE CLOSER
9 THE TWO CARS COME TOGETHER. I FOLLOWED HIM DOWN TO HERE.
10 AT THIS INTERSECTION OF THURMOND STREET AND SEYMORE, I
11 ACTIVATED MY LIGHTS ON TOP OF MY VEHICLE TO LET THE
12 DEFENDANT KNOW THAT HE WAS BEING PULLED OVER AS I ALWAYS
13 DO.

14 UPON INITIATING MY LIGHTS, HE CONTINUED TO TRAVEL
15 FORWARD. AND AT THAT TIME I NOTICED THAT HE WAS NOT GOING
16 TO STOP FOR MY BLUE LIGHTS EITHER. SO UPON ARRIVING AT
17 THIS INTERSECTION, I BEGAN TO BUMP MY SIREN ALERTING HIM
18 THAT I WAS BACK THERE IN CASE HE DIDN'T SEE IT, AND HE
19 CONTINUED TO MAKE A RIGHT HAND TURN ON TO CRESLYN DRIVE.

20 UPON HIM MAKING THE RIGHT HAND TURN ON TO CRESLYN.
21 HE CONTINUED FORWARD. I BEGAN CALLING THE TRAFFIC STOP
22 INTO MY DISPATCH LETTING THEM KNOW THAT I WAS TRYING TO
23 STOP A VEHICLE AND HE WAS NOT STOPPING.

24 UPON HIM PULLING IN HERE, THIS IS ANOTHER KIND OF A
25 HALF CIRCLE CUL-DE-SAC TYPE. HE PULLS IN, OPENS THE DOOR,

1 EXITS HIS VEHICLE. UPON HIM EXITING THE VEHICLE, HIS
2 VEHICLE WENT INTO REVERSE.

3 AND WHEN HE LEFT HIS VEHICLE, HIS VEHICLE ROLLS BACK
4 AND HITS MY VEHICLE -- MY PATROL CAR WHILE I WAS STILL
5 SITTING INSIDE OF IT. AT THAT TIME THE DEFENDANT BEGAN
6 RUNNING ON FOOT.

7 I ADVISED MY DISPATCHER WHAT WAS GOING ON AND
8 IMMEDIATELY TRIED TO INITIATE A FOOT PURSUIT WITH THE
9 DEFENDANT.

10 Q SO THIS MAP SHOWS THE ROUTE THAT YOU TOOK AND THAT HE
11 TOOK AND THIS IS WHERE Y'ALL FINALLY ENDED UP?

12 A YES, MA'AM.

13 Q OKAY. YOU CAN TAKE THE STAND AGAIN.

14 A (COMPLIED.)

15 Q NOW, YOU STATED PREVIOUSLY THAT YOU WERE OPERATING
16 YOUR IN-CAR CAMERA ON THAT DATE.?

17 A YES, MA'AM. IT WAS OPERATING THAT DAY.

18 Q AND HAVE YOU REVIEWED THE TAPE THAT YOU TOOK THAT
19 EVENING?

20 A YES, MA'AM. I HAVE REVIEWED IT SEVERAL TIMES.

21 Q HAVE YOU REVIEWED IT RECENTLY?

22 A YES, MA'AM.

23 Q IS THE TAPE THAT YOU REVIEWED A FAIR AND ACCURATE
24 DEPICTION OF THE IN-CAR VIDEO THAT YOUR CAR RECORDED THAT
25 EVENING?

1 A YES, MA'AM.

2 Q AT THIS TIME I SHOW YOU FOR IDENTIFICATION PURPOSES
3 STATE'S EXHIBIT 13 AND ASK IF YOU RECOGNIZE IT.

4 A THAT'S A COPY OF MY IN-CAR VIDEO.

5 MRS. YOUNG: YOUR HONOR, THE STATE MOVES EXHIBIT 13
6 INTO EVIDENCE AT THIS TIME.

7 MR. WATSON: WITHOUT OBJECTION.

8 THE COURT: NO OBJECTION. THAT'S THE VIDEO?

9 MRS. YOUNG: YES. AND WE'D ASK TO PUBLISH IT TO THE
10 JURY AT THIS TIME.

11 (WHEREUPON, STATE'S EXHIBIT 13 WAS ADMITTED INTO
12 EVIDENCE.)

13 THE COURT: YOU MAY.

14 MRS. YOUNG: YOUR HONOR, MAY THE WITNESS COME DOWN
15 OFF THE STAND?

16 THE COURT: HE MAY.

17 BY MRS. YOUNG:

18 Q OFFICER FITTERY, IF YOU COULD SHOW THE DEFENDANT -- I
19 MEAN, DESCRIBE WHAT YOU OBSERVE TO THE JURY.

20 A AT THIS TIME, AS YOU CAN SEE, THE REVERSE LIGHTS ARE
21 ON ON THE VEHICLE. I SEEN THE SUBJECT IMMEDIATELY OPEN
22 THE DOOR. I ALSO NOTICED THE REVERSE LIGHTS ON IN THE
23 VEHICLE.

24 I SEEN HIM OPEN THE DOOR AND EXIT THE VEHICLE. I DID
25 NOTICE HIS APPEARANCE WAS VERY WELL-DRESSED. HE WAS

1 WEARING A SPORT-TYPE -- WHAT I WOULD CONSIDER TO BE A
2 BLAZER OR A SPORT-TYPE OF COAT. HE WAS WEARING THAT.
3 APPEARED TO BE LIKE A SWEATER UNDERNEATH.

4 HE WAS WEARING BLUE JEANS. AND I CAN REMEMBER HIM --
5 HE HAD LIKE A LOAFER STYLE OF SHOE ON. ALSO WHAT REALLY
6 CAUGHT MY ATTENTION ABOUT HIM EXITING THE VEHICLE WAS HE
7 HAD A BLACK BAG IN HIS RIGHT HAND WHICH KIND OF LOOKED TO
8 BE LIKE A WOMAN'S PURSE TO ME.

9 THE BAG -- YOU CAN SEE IN THE VIDEO -- IS CLEARLY IN
10 HIS RIGHT HAND. AS HE BEGINS RUNNING, YOU CAN SEE HIM
11 KIND OF TUCK IT AWAY LIKE HE'S -- WHAT I WOULD CALL LIKE
12 RUNNING WITH A FOOTBALL. HE BRINGS THE BAG UP WHEN HE
13 GETS OUT OF THE CAR AND KIND OF TUCKS IT AWAY.

14 Q CAN YOU SHOW US WITH THAT FANCY PEN -- CAN YOU SHOW
15 US THE BLACK BAG THAT YOU SAY HE WAS CARRYING?

16 A YES, MA'AM. THE BAG IS LOCATED -- EXCUSE ME. RIGHT
17 HERE IN HIS RIGHT HAND. AND WHEN THE VIDEO IS IN MOTION,
18 YOU CAN ACTUALLY SEE HIM BRING IT BACK DOWN TO HIS BODY
19 AND TUCK IT AWAY.

20 Q ALL RIGHT. YOU CAN TAKE THE STAND AGAIN. GO AHEAD
21 AND PLAY THE REST OF THE VIDEO.

22 A (COMPLIED.)

23 Q CAN YOU DESCRIBE TO THE JURY WHAT YOU WERE DOING
24 AFTER YOU SAW HIM RUN?

25 A YES. WHEN I SEEN -- WHEN I INITIALLY SEEN HIM EXIT

1 HIS VEHICLE, I OPENED MY DOOR AND STUCK ONE LEG OUT. I
2 STILL HAD THE RADIO THAT WAS CONNECTED TO MY CAR. I STILL
3 HAD THE MICROPHONE IN MY HAND BECAUSE I WAS IN THE PROCESS
4 OF CALLING IN A TRAFFIC STOP WHEN HE TOOK OFF RUNNING.

5 SO AS SOON AS I FINISHED MY RADIO TRANSMISSION, BY
6 THAT TIME THE -- HIS VEHICLE HAD STRUCK MINE. WHEN -- AS
7 SOON AS I FINISHED MY RADIO TRANSMISSION WITH DISPATCH, I
8 THREW THE MICROPHONE DOWN IN THE FLOORBOARD OF MY CAR.

9 AT THAT TIME I EXITED THE VEHICLE AND BEGAN FOOT
10 PURSUIT OF THE SUBJECT WHERE I SEEN HIM RUNNING THROUGH--

11 Q ABOUT HOW FAR AWAY WOULD YOU SAY HE WAS FROM YOU AT
12 THIS TIME WHEN YOU FIRST STARTED PURSUING HIM?

13 A PROBABLY APPROXIMATELY 15 TO 20 FEET.

14 Q CAN YOU TELL US ABOUT WHAT YOU DID NEXT?

15 A LIKE I SAID, I STEPPED OUT OF THE VEHICLE. I BEGAN
16 RUNNING ON FOOT, WENT BEHIND -- IN BETWEEN TWO HOUSES IN
17 THE PATH THAT HE WAS TRAVELING, RUN DOWN A HILL. AT THE
18 TIME I WAS ON TOP OF A HILL BEHIND A RESIDENCE.

19 I SEEN THE DEFENDANT. HE JUMPED -- THERE WAS
20 APPROXIMATELY ABOUT A 4-FOOT RETAINING WALL THAT SEPARATED
21 A YARD AND THE ROADWAY. HE JUMPED DOWN OFF OF THE
22 RETAINING WALL, AND RIGHT WHEN I WAS TOPPING THE HILL, I
23 SEEN HIM HIT THE GROUND. HE FELL TO THE GROUND.

24 WHEN HE FELL TO THE GROUND, I CONTINUED TO PURSUE HIM
25 ON FOOT. HE IMMEDIATELY GOT TO HIS FEET AND RAN UP THE

1 HILL IN A YARD OF A RESIDENCE THAT WAS ACROSS THE STREET.

2 BEFORE I COULD GET TO THE RETAINING WALL WHERE I SEEN
3 HIM, HE HAD ALREADY GONE UP THE HILL AND HE HAD RUN BEHIND
4 THAT RESIDENCE OF THE YARD THAT HE HAD WENT INTO. AND AT
5 THAT TIME, THE SAFETY DISTANCE BETWEEN ME AND HIM WAS TOO
6 GREAT FOR ME TO CONTINUE A FOOT PURSUIT. I WOULD HAVE RUN
7 INTO AN AMBUSH-TYPE OF SITUATION AT THAT TIME.

8 I DIDN'T KNOW WHAT THE CONTENTS OF THE BLACK BAG WAS.
9 I WASN'T SURE IF HE HAD A GUN INSIDE OF IT. AND I WAS
10 SCARED THAT WHEN I COME INTO THE RESIDENCE -- OR BACK OF
11 THE RESIDENCE, HE COULD HAVE AMBUSHED ME AND SHOT ME IN
12 THE BACK OF THE HEAD.

13 Q DID YOU CONTINUE TO SEARCH FOR HIM EVEN AFTER YOU
14 LOST SIGHT OF HIM?

15 A YES. AT THAT TIME I THOUGHT THE SAFEST THING TO DO
16 WOULD BE TO GO BACK TO MY VEHICLE AND LOCK BOTH OF THE
17 VEHICLES BECAUSE I WAS SCARED THAT HE COULD LOOP BACK
18 AROUND AND GET BACK INSIDE ONE OF OUR VEHICLES AND FLEE
19 THE SCENE IN A VEHICLE.

20 Q OFFICER FITTERY, I'LL SHOW YOU WHAT'S BEEN MARKED FOR
21 IDENTIFICATION PURPOSES AS STATE'S EXHIBIT NO. 16 AND IF
22 YOU IF YOU RECOGNIZE IT.

23 A YES, MA'AM. THAT'S THE PATH I TOOK THAT NIGHT.

24 Q AND DOES THIS MAP APPEAR TO BE A FAIR AND ACCURATE
25 REPRESENTATION AND DEPICTION OF THE PATH THAT YOU TOOK AND

1 THE DEFENDANT TOOK?

2 A YES, IT IS.

3 MRS. YOUNG: YOUR HONOR, AT THIS TIME WE WOULD ASK TO
4 MOVE STATE'S EXHIBIT 16, ANOTHER MAP, INTO EVIDENCE.

5 MR. WATSON: WITHOUT OBJECTION.

6 THE COURT: NO OBJECTION.

7 MRS. YOUNG: MAY THE OFFICER COME DOWN BRIEFLY?

8 THE COURT: HE MAY.

9 BY MRS. YOUNG:

10 Q I DON'T HAVE A LOT OF LUCK WITH THAT STAND, SO I AM
11 JUST GOING TO HOLD IT. CAN YOU DESCRIBE WHAT YOU DID FOR
12 THE JURY.

13 A YES. THIS IS LABELED HERE AS TRAFFIC STOP. THIS IS
14 WHERE THE STOP ACTUALLY OCCURRED WHERE WE COME TO A FINAL
15 REST AT AND HIS VEHICLE HIT MINE. THIS IS ALSO THE SPOT
16 WHERE HE JUMPED OUT OF THE CAR AND BEGAN RAN -- RUNNING ON
17 FOOT.

18 THE GREEN ARROWS OR DOTTED SLASH LINES HERE DEPICT
19 THE AREA THAT WE BOTH TRAVELED IN THE FOOT PURSUIT. WHEN
20 HE EXCITED HIS VEHICLE, HE BEGAN RUNNING ON FOOT DOWN THIS
21 RESIDENCE RIGHT HERE.

22 HE RUN IN BETWEEN THIS RESIDENCE. AND THERE'S
23 ANOTHER RESIDENCE YOU CAN'T SEE FROM THE TREES LOCATED
24 RIGHT HERE. HE RUN IN BETWEEN THESE TREES, RUN THROUGH
25 TWO BACKYARDS, AS DID I, AND COME TO HERE.

1 THIS AREA RIGHT HERE IS THE RETAINING WALL THAT I WAS
2 SPEAKING OF EARLIER. HE JUMPS DOWN OFF OF THE RETAINING
3 WALL. AND AS I'M COMING THROUGH HERE APPROXIMATELY IN
4 THIS LOCATION, THAT'S WHEN I SEE HIM GETTING UP OFF OF THE
5 GROUND AT THAT TIME AND HE STILL HAD THE BLACK BAG IN HIS
6 HANDS ALSO AT THAT TIME.

7 HE GETS UP OFF THE GROUND, BEGINS RUNNING THIS WAY.
8 WHEN I GET TO THIS POINT IN MY FOOT PURSUIT, THE SUBJECT
9 HAS ALREADY INCREASED THE DISTANCE TO HERE WHICH IN MY
10 TACTICS, THAT'S TOO FAR OF A DISTANCE FOR ME TO CONTINUE A
11 FOOT PURSUIT BECAUSE HE COULD HAVE EASILY HOOKED BEHIND
12 THIS RESIDENCE AND AMBUSHED ME AS I RUN PAST.

13 Q BUT YOU'RE SAYING THIS GREEN LINE IS THE ONE THAT
14 Y'ALL WENT THROUGH AND IT WENT THROUGH THESE WOODS AN
15 BETWEEN THESE HOUSES?

16 A THAT'S CORRECT.

17 Q THANK YOU. YOU MAY RE-TAKE THE STAND.

18 A (COMPLIED.)

19 Q DID YOU ATTEMPT ANY FURTHER SEARCH OF HIM ON SUIT --
20 ON FOOT PRIOR TO GETTING IN YOUR VEHICLE?

21 A NO, MA'AM. ONCE I SEEN THE DISTANCE WAS TOO GREAT
22 AND SEEN THE LAST KNOWN SPOT, THEN THAT'S WHEN I
23 IMMEDIATELY RETURNED TO OUR VEHICLES TO SECURE BOTH OF
24 THEM.

25 Q AFTER YOU SECURED THE VEHICLES, WHAT DID YOU DO NEXT?

1 A I THEN GOT INTO MY PATROL CAR AND LEFT THE SCENE OR I
2 GOT BACK TO HIS CAR -- EXCUSE ME. WHEN I GOT BACK TO HIS
3 VEHICLE, THE DEFENDANT'S VEHICLE, I SECURED IT SO NO ONE
4 COULD GET INSIDE OF IT.

5 AT THAT TIME THAT I SECURED IT, I LOCKED THE DOORS
6 AND I TOOK THE KEYS WITH ME, AND I THEN GOT INTO MY PATROL
7 CAR, LEFT THE SCENE OF WHERE THE INCIDENT TOOK PLACE AND
8 IMMEDIATELY LEFT TRYING TO LOCATE THE DEFENDANT BY USING
9 MY VEHICLE.

10 Q AND DID YOU SEE THAT PERSON THAT RAN FROM YOU AGAIN?

11 A I DID.

12 Q WHERE DID YOU NEXT SEE THAT PERSON?

13 A OFFICER RUTLAND HAD LOCATED HIM A COUPLE OF MINUTES
14 LATER.

15 Q HOW MANY MINUTES DO YOU THINK IT WAS?

16 A APPROXIMATELY THREE TO FOUR.

17 Q SO FROM THE TIME HE RAN FROM YOUR VEHICLE TO THE TIME
18 THAT YOU SAW HIM WITH OFFICER RUTLAND, YOU THINK IT WAS
19 ABOUT THREE TO FOUR MINUTES?

20 A YES.

21 Q AND WHAT DID YOU DO NEXT WHEN YOU OBSERVED
22 MR. JOHNSON AND OFFICER RUTLAND?

23 A I IMMEDIATELY GOT OUT OF MY CAR, AND THE FIRST WORDS
24 OUT OF MY MOUTH WERE, WHERE'S THE BLACK BAG?

25 Q AND WHAT DID YOU DO AFTER THAT?

1 A AFTER THAT, I WENT TO THE DEFENDANT FOR AN
2 IDENTIFICATION OF HIM TO MAKE SURE THAT OFFICER RUTLAND
3 HAD STOPPED THE SAME PERSON OR THE DEFENDANT THAT HAD RUN
4 WITH ME WITH THE BLACK BAG EARLIER.

5 Q AND HAD HE?

6 A YES, HE HAD STOPPED THE DEFENDANT.

7 Q OKAY. AND WHAT WAS THE NEXT THING THAT YOU DID,
8 OFFICER FITTERY?

9 A AFTER ASKING WHERE HIS BLACK BAG WAS, I ASSISTED
10 OFFICER RUTLAND WITH RUNNING THINGS LIKE HIS DRIVER'S
11 LICENSE TO CHECK FOR DRIVER'S STATUS AND IF HE WAS
12 SUSPENDED OR ANYTHING LIKE THAT.

13 Q OKAY. WERE YOU WITH HIM WHEN HE USED HIS K-9?

14 A I WAS.

15 Q WERE YOU OBSERVING HIM THE WHOLE TIME?

16 A I WAS.

17 Q AND AT SOME POINT DID YOU LEAVE THAT IMMEDIATE AREA?

18 A NO, MA'AM. I STAYED IN THE AREA WHERE THE DEFENDANT
19 WAS APPREHENDED AT. AND OFFICER RUTLAND STATED THAT HE
20 WAS GOING TO RETURN TO THE VEHICLE AND OBTAIN HIS K-9 FOR
21 AN OPEN AIR SEARCH.

22 Q OKAY. AND CAN YOU DESCRIBE WHAT YOU OBSERVED ONCE HE
23 GOT THE K-9 OUT OF THE CAR?

24 A YES, MA'AM. HE -- OFFICER RUTLAND HAD LOCATED A
25 LARGE SUM OF CURRENCY, US CURRENCY IN THE DEFENDANT'S

1 POCKET. AT THAT TIME IT WAS PLACED ON THE GROUND.
2 OFFICER RUTLAND, AFTER RETRIEVING FILA, WHICH IS HIS K-9'S
3 NAME, COME BACK TO THE SCENE, DEPLOYED HIS K-9 ON AN OPEN
4 AIR SEARCH OF THE MONEY.

5 AT THAT TIME SHE DID SIT FOR AN ALERT WHICH IS HER --
6 WHICH IS HER ALERT. AT THAT TIME THE MONEY WAS TAKEN INTO
7 CUSTODY BY OFFICER RUTLAND. AND UPON DOING SO, HE
8 IMMEDIATELY BEGAN A FREE AIR SEARCH OF THE IMMEDIATE AREA
9 WHERE THE DEFENDANT WAS STOPPED TO SEE IF WE COULD LOCATE
10 ANY CONTRABAND AT THAT TIME.

11 Q AND WHAT AREA WERE YOU SEARCHING?

12 A IT WAS ACTUALLY NORMAN STREET, THE AREA WHERE I HAD
13 TURNED TO THE RIGHT AND HE ENDED UP RUNNING BACK IN THAT
14 DIRECTION AND ENDED UP BACK ON NORMAN STREET.

15 Q AND HOW DID YOU CONDUCT YOUR SEARCH ON NORMAN STREET?

16 A OFFICER RUTLAND USED HIS K-9 TO CONDUCT AN OPEN AIR
17 SEARCH OF THE AREA BY GIVING HER HER SEARCH COMMAND, AND
18 SHE WAS UNABLE TO LOCATE ANYTHING IN THAT AREA.

19 Q WHAT WAS THE NEXT THING THAT HAPPENED?

20 A THE DEFENDANT WAS TAKEN AND PLACED INSIDE OF ANOTHER
21 OFFICER'S PATROL CAR AND TRANSPORTED TO -- EXCUSE ME -- TO
22 HEADQUARTERS. AND AT THAT TIME MYSELF AND OFFICER RUTLAND
23 RETURNED TO THE SCENE TO -- OF THE VEHICLE TO MEET WITH
24 HIGHWAY PATROL.

25 Q YOU RETURNED TO THE ORIGINAL SCENE?

1 A YES, THE ORIGINAL SCENE WHERE HE FLED ON FOOT.

2 Q AND THAT WOULD BE WHERE HIS CAR WAS LOCATED?

3 A YES, MA'AM.

4 Q AND I DON'T THINK I ASKED YOU THIS. WHERE IS ALL OF
5 THIS TAKING PLACE GEOGRAPHICALLY?

6 A MAYBE - IT'S REALLY NOT THAT - IT SOUNDS LIKE A
7 GREAT DISTANCE, BUT GEOGRAPHICALLY IT'S NOT THAT FAR OF A
8 DISTANCE, MAYBE 250 YARDS, MAYBE--

9 Q NOT DISTANCE, BUT WHERE SPECIFICALLY WERE YOU?

10 A WE WERE IN THE FRONT YARD ON A HOUSE.

11 Q WHAT CITY WERE YOU IN?

12 A OH--

13 THE COURT: WHAT ADDRESS WERE YOU AT?

14 THE WITNESS: I AM NOT SURE. IT WAS ON NORMAN STREET
15 IN THE CITY OF NORTH AUGUSTA, AIKEN COUNTY, SOUTH
16 CAROLINA.

17 THE COURT: THERE YOU GO.

18 BY MRS. YOUNG:

19 Q AND ONCE YOU WENT BACK TO THE DEFENDANT'S VEHICLE,
20 WHAT WAS THE NEXT THING THAT YOU DID?

21 A AFTER RETURNING TO THE VEHICLE, WE WERE MET BY
22 HIGHWAY PATROL. HE BEGAN - I GIVE MY LICENSE INFORMATION
23 TO. HE BEGAN WORKING ON A ACCIDENT REPORT DUE TO THE
24 COLLISION.

25 AND THAT TIME WE STATED THAT WE WERE GOING TO BEGIN

1 A SEARCH FOR THE CONTRABAND, AND OFFICER RUTLAND DEPLOYED
2 HIS K-9 AGAIN ON AN EXTERIOR SEARCH OF THE DEFENDANT'S
3 VEHICLE.

4 Q OKAY. AND WHAT HAPPENED AFTER THAT?

5 A HE DID RECEIVE A POSITIVE ALERT ON THE VEHICLE -- THE
6 DEFENDANT'S VEHICLE. AT THAT TIME I UNLOCKED THE VEHICLE
7 FOR OFFICER RUTLAND. HE PLACED HIS K-9 INSIDE. EXCUSE
8 ME.

9 AND AT THAT TIME SHE ALSO AGAIN ALERTED TO THE CENTER
10 CONSOLE OF THE VEHICLE. AFTER THAT PERIOD IN TIME THE
11 TOW-TRUCK WAS CALLED TO THE SCENE AND A VEHICLE INVENTORY
12 WAS COMPLETED ON THIS CAR.

13 Q DID YOU FIND ANY DRUGS IN THE VEHICLE?

14 A NO, MA'AM. THERE WAS NO CONTRABAND LOCATED INSIDE OF
15 THE VEHICLE.

16 Q ALL RIGHT. WELL, AFTER YOU DID THIS WITH OFFICER
17 RUTLAND, DID YOU DO ANYTHING ELSE?

18 A YES, MA'AM. AT THE TIME I WAS GETTING READY TO
19 BECOME A K-9 HANDLER, SO I KNEW THE ABILITIES OF FILA, AND
20 I ASKED OFFICER RUTLAND IF WE COULD DO AN OPEN AIR SEARCH
21 OF THE TRACK THAT THE DEFENDANT HAD RUN. HE STATED, YEAH,
22 SO WE BEGAN THAT.

23 Q AND IT STARTED FROM WHERE?

24 A IT STARTED FROM CRESLYN DRIVE TO -- IT STARTED FROM
25 CRESLYN DRIVE FROM WHERE THE INCIDENT TOOK PLACE.

1 Q WHERE HIS CAR WAS?

2 A YES, MA'AM.

3 Q OKAY. AND DESCRIBE WHAT YOU OBSERVED.

4 A CAN YOU -- YOU MEAN FROM THE DOG?

5 Q JUST WHERE WERE YOU GOING?

6 A OH. I SHOWED OFFICER RUTLAND WHERE THE LAST -- WHERE
7 WE HAD RAN TOGETHER, MYSELF AND THE DEFENDANT. I SHOWED
8 HIM, THIS IS WHERE WE STARTED, THIS IS THE DIRECTION HE
9 RUN IN, HE WAS RUNNING THIS WAY.

10 AS SOON AS I SHOWED OFFICER RUTLAND THE SPOT FROM
11 WHERE WE STARTED THE WHOLE -- WHERE MR. -- THE DEFENDANT,
12 WHERE HE BEGAN THE FOOT -- OR THAT HE BEGAN RUNNING ON
13 FOOT, OFFICER RUTLAND STARTED HIS K-9 ON HIS SEARCH.

14 AT THAT TIME MYSELF AND OFFICER RUTLAND WAS BEHIND
15 K-9 FILA, AND SHE HAD HER NOSE TO THE GROUND AND SHE TOOK
16 OFF AND WAS RUNNING THE EXACT PATH THAT I HAD WITNESSED
17 THE DEFENDANT RUN AND MYSELF RUN.

18 Q ALL RIGHT. DID YOU OBSERVE THE K-9 STOP AT ANY
19 PARTICULAR LOCATION?

20 A SHE DID. IF YOU CONTINUE DOWN -- MAY I USE THE MAP
21 AGAIN?

22 Q SURE.

23 MRS. YOUNG: MAY HE STEP DOWN, YOUR HONOR?

24 THE COURT: YES, MA'AM. REFER TO THE EXHIBIT NUMBER.

25 MRS. YOUNG: WE WILL BE USING EXHIBIT NO. 16.

1 THE COURT: FIFTEEN IS NOT IN EVIDENCE. YOU SAID 15
2 OR 16?

3 MRS. YOUNG: SIXTEEN.

4 THE COURT: SIXTEEN. I'M SORRY.

5 THE WITNESS: WE STARTED WITH THE K-9 HERE. WE
6 CONTINUED. LIKE I SAID, SHE FOLLOWED THE DIRECT PATH THAT
7 WE WERE -- THAT WE WERE RUNNING. SHE CAME DOWN TO HERE
8 AND CONTINUED OVER.

9 WHEN SHE GOT TO HERE WHERE IT IS MARKED AS A LOCKED
10 STORAGE BUILDING, SHE IMMEDIATELY STOPPED AND BEGAN
11 SNIFFING REALLY HARD. THE DEMONSTRATION WOULD BE SMELLING
12 REALLY, REALLY HARD TRYING TO LOCATE SOMETHING.

13 UPON HER DOING THAT, WE TRIED TO GAIN -- SEE IF WE
14 WERE ABLE TO GAIN ENTRY INTO THE BUILDING, AND IT WAS
15 SECURE. THERE WAS NO WAY FOR US TO GAIN ENTRY.

16 Q HOW WAS IT SECURED?

17 A IT HAD A PADLOCK AND A HASP LOCK ON THE DOORS.

18 Q OKAY. AND WHAT DID YOU DO NEXT?

19 A WE CONTINUED THIS RED PATH WITH THE FILA -- WITH FILA
20 IN FRONT OF US. SHE CONTINUED TO TRACK FORWARD, FOLLOWING
21 IT DOWN, CROSSING BACK OVER. THIS STREET HERE IS THURMOND
22 STREET.

23 SHE CROSSED OVER THURMOND, ENTERED A RESIDENCE THAT
24 WAS VACANT. IT WAS -- THE OUTSIDE APPEARED KIND OF -- THE
25 OUTSIDE WASN'T GROWN UP, BUT YOU COULD SEE IN THE BACKYARD

1 THE GRASS WAS REAL TALL AND IT APPEARED TO BE VACANT AND
2 OVERGROWN.

3 AT THAT TIME SHE GOT TO A POINT WHERE THERE WAS AN
4 OPEN WOODEN PRIVACY FENCE. SHE ENTERED THE OPEN GATE HERE
5 AND CONTINUED TO TRACK FORWARD --

6 Q OKAY.

7 A -- TO A OPEN -- WHAT I WOULD CALL LIKE A WORKSHOP
8 TYPE OF SHOP.

9 Q OKAY. OFFICER FITTERY, I AM GOING TO SHOW YOU WHAT'S
10 BEEN MARKED FOR IDENTIFICATION PURPOSES AS STATE'S
11 EXHIBIT 1 AND ASK YOU IF RECOGNIZE IT.

12 A YES, MA'AM, I DO RECOGNIZE.

13 Q AND WHAT IS THAT.

14 A THAT'S THE HOUSE ON THURMOND STREET THAT THE BUILDING
15 WAS LOCATED BEHIND.

16 MRS. YOUNG: JOHNNY, YOU WANT TO COME LOOK AT THESE
17 REAL QUICK?

18 BY MRS. YOUNG:

19 Q AND DO YOU RECOGNIZE EXHIBIT NO. 2?

20 A YES. THAT'S A CLOSER PICTURE OF THE SAME HOUSE ON
21 THURMOND STREET.

22 Q CAN YOU IDENTIFY WHAT'S SHOWN ON PICTURE NUMBER
23 THREE?

24 A YES, MA'AM. THAT'S THE GATE THAT WE WENT INTO AT THE
25 HOUSE ON THURMOND STREET.

1 Q CAN YOU IDENTIFY WHAT'S DEPICTED IN PICTURE NUMBER
2 FOUR?

3 A YES, MA'AM. THAT'S THE OPEN BUILDING WHERE THE BLACK
4 BAG WAS LOCATED.

5 Q CAN YOU IDENTIFY WHAT'S IN EXHIBIT NO. 5.

6 A THAT'S ANOTHER PICTURE, A CLOSER PICTURE OF THE SAME
7 BUILDING WHERE THE DEFENDANT'S BAG WAS LOCATED.

8 Q ALL RIGHT. DO THOSE PICTURES THAT I'VE SHOWN YOU,
9 WHICH IS STATE'S ONE THROUGH FIVE, ARE THEY A TRUE AND
10 ACCURATE DEPICTION OF THE SCENE AS YOU OBSERVED IT ON THE
11 EVENING IN QUESTION?

12 A YES, MA'AM.

13 MRS. YOUNG: YOUR HONOR, AT THIS TIME WE'D ASK THAT
14 WE BE ALLOWED TO ENTER STATE'S ONE THROUGH FIVE INTO
15 EVIDENCE.

16 THE COURT: WITHOUT OBJECTION?

17 MR. WATSON: WITHOUT OBJECTION.

18 THE COURT: ONE, TWO, THREE, FOUR, AND FIVE.

19 (WHEREUPON, STATE'S EXHIBITS NOS. 1-5 WERE MARKED FOR
20 IDENTIFICATION AND RECEIVED INTO EVIDENCE.)

21 BY MRS. YOUNG:

22 Q ONCE YOU WENT INTO THIS BACKYARD, WHAT DID YOU DO
23 NEXT?

24 A THERE WAS A YARD THAT WAS DIRECTLY ADJACENT OR BEHIND
25 THE RESIDENCE ON THURMOND STREET. THERE WAS A DOG THAT

1 WAS IN THE BACKYARD THAT WAS BARKING. IT WAS A LARGE --
2 LIKE A GREAT DANE TYPE OF BREED OR SOMETHING.

3 Q LET ME STOP YOU BECAUSE WHEN YOU SAY ADJACENT, THAT
4 CAN BE A LOT OF DIFFERENT WAYS. DESCRIBE WHERE THIS YARD
5 WAS IN RELATION TO THE YARD THAT YOU WERE IN.

6 A IF THE -- IF THE RESIDENCE, THE FRONT OF THE
7 RESIDENCE WAS FACING ME, THE BACKYARD WOULD GO TOWARDS
8 YOU. THE TWO BACKYARDS WOULD MEET TOGETHER, AND HIS HOUSE
9 OR THE HOUSE WHERE THE DOG WAS WAS FACING NORMAN STREET,
10 SO THEY WERE KIND OF -- THEY WERE BACK TO BACK, BUT THE
11 2 YARDS MET TOGETHER.

12 Q OKAY. WHAT DID YOU DO NEXT?

13 A I IMMEDIATELY WENT INTO THE BACKYARD OF THE HOUSE
14 WHERE THE DOG WAS BARKING TO TRY TO SEE IF I COULD CONTACT
15 THE HOME OWNER TO HAVE THEM SECURE THE DOG BECAUSE I
16 DIDN'T WANT THEIR DOG TO GET INTO A CONFRONTATION OR TO
17 DISTRACT THE POLICE K-9.

18 Q OKAY. AND WHAT WAS THE NEXT THING THAT YOU DID?

19 A I WAS IMMEDIATELY MET BY A MALE SUBJECT STEPPING OUT
20 OF THE BACK OF THE HOUSE.

21 Q AND WITHOUT STATING WHAT HE SAID, DID YOU HAVE A
22 CONVERSATION WITH HIM?

23 A I DID. UPON SPEAKING WITH HIM, I FOUND THAT HE HAD
24 MADE CONTACT WITH THE SUBJECT, WITH THE DEFENDANT OR
25 SOMEONE DRESSED PERFECTLY TO THE T AS THE DEFENDANT. SO

1 THAT MADE ME MORE INTERESTED IN WHAT HE HAD TO SAY.

2 SO AFTER HE SECURED HIS K-9, I IMMEDIATELY WENT OVER
3 AND STARTED ASKING HIM ABOUT THE CONFRONTATION THAT HE HAD
4 HAD WITH THE DEFENDANT.

5 Q WAS IT A CONFRONTATION OR A CONVERSATION?

6 A CONVERSATION. I'M SORRY.

7 Q OKAY. AND WHAT WAS THE NEXT THING THAT YOU DID,
8 OFFICER FITTERY?

9 A AFTER TALKING WITH THE SUBJECT THAT LIVED IN THE
10 HOUSE, I WAS IMMEDIATELY NOTIFIED BY OFFICER RUTLAND THAT
11 HIS K-9 HAD ALERTED AND HE THOUGHT HE MIGHT HAVE LOCATED
12 SOMETHING.

13 Q WHAT WAS YOUR RESPONSE?

14 A I IMMEDIATELY LEFT AND HEADED BACK OVER TO WHERE
15 OFFICER RUTLAND WAS.

16 Q WHERE WAS HE?

17 A HE WAS IN A -- HE WAS STANDING OUTSIDE OF AN
18 ABANDONED WORK SHOP OR SHED-TYPE OF BUILDING THAT WAS
19 LOCATED BEHIND THE ADDRESS ON THURMOND STREET.

20 Q AND DID YOU HAVE TO -- WERE YOU PAST THAT BUILDING
21 TALKING TO THIS MAN?

22 A YEAH, I HAD ACTUALLY -- K-9 FILA HAD STARTED IN THAT
23 AREA. AND WHEN THE DOG STARTED BARKING, IT IMMEDIATELY
24 GOT MY ATTENTION. I IMMEDIATELY STARTED WALKING IN THAT
25 AREA, SO I WALKED OFF FROM K-9 FILA.

1 Q WHAT DID YOU OBSERVE WHEN OFFICER RUTLAND CALLED YOU
2 BACK?

3 A OFFICER RUTLAND WAS STANDING OUTSIDE OF THE BUILDING,
4 AND HE STATED TO ME THAT -- EXCUSE ME -- THAT FILA HAD
5 ALERTED TO THE BUILDING AND THAT THERE WAS A BLACK BAG
6 INSIDE OF THERE. SO AT THAT TIME I ENTERED THE BUILDING.

7 Q WHAT DID YOU OBSERVE?

8 A I OBSERVED THE BLACK BAG THAT THE DEFENDANT HAD
9 SITTING ON THE GROUND UNDERNEATH A WORK BENCH.

10 MR. WATSON: OBJECTION.

11 THE COURT: WHAT IS THE OBJECTION?

12 MR. WATSON: HE STATED THAT HE OBSERVED THE BAG THAT
13 THE DEFENDANT HAD. IT'S NOT BEEN ESTABLISHED THAT THE
14 DEFENDANT HAD THAT BAG. HE CAN SAY THAT HE OBSERVED A
15 BLACK BAG WHERE HE ALLEGES THAT IT WAS FOUND.

16 THE COURT: DID IT APPEAR TO BE THE SAME AS WHAT THE
17 DEFENDANT HAD?

18 THE WITNESS: YES, SIR, YOUR HONOR, IT WAS THE SAME.

19 THE COURT: MOVE ALONG.

20 BY MRS. YOUNG:

21 Q AND WHAT DID YOU DO AT THAT POINT IN TIME?

22 A AT THAT POINT I ASKED OFFICER RUTLAND IF HE HAD A
23 CAMERA IN HIS VEHICLE AND IF HE WOULD, COULD HE PLEASE GO
24 GET IT SO WE COULD PHOTOGRAPH THE SCREEN.

25 Q DID YOU DO SO?

1 A HE DID.

2 Q OKAY. AND WHAT DID YOU DO DURING THAT TIME?

3 A I JUST STOOD BY AT THE DOOR AND MADE SURE THAT THE
4 EVIDENCE WASN'T MESSED WITH.

5 Q OFFICER FITTERY, I AM GOING TO SHOW YOU WHAT'S BEEN
6 MARKED FOR IDENTIFICATION PURPOSES AS STATE'S EXHIBIT 6
7 AND ASK IF YOU RECOGNIZE IT.

8 A YES. THAT'S THE DEFENDANT'S BLACK BAG.

9 MR. WATSON: OBJECTION.

10 THE COURT: ALL RIGHT. SIR, LET'S DO THIS. LET'S
11 JUST REFER TO IT AS WHAT IT APPEARED. THAT'S FOR THE JURY
12 TO DECIDE WHOSE BAG IT IS. OKAY?

13 THE WITNESS: YES, YOUR HONOR. THAT'S WHAT APPEARED
14 TO BE THE DEFENDANT'S BLACK BAG.

15 BY MRS. YOUNG:

16 Q IS THAT WHERE YOU SAW IT WHEN YOU WENT TO THE SHED?

17 A YES, MA'AM.

18 Q AND CAN YOU IDENTIFY STATE'S EXHIBIT NO. 7?

19 A THAT'S ANOTHER PICTURE OF WHAT APPEARED TO BE THE
20 DEFENDANT'S BLACK BAG.

21 Q AND CAN YOU IDENTIFY NUMBER EIGHT?

22 A THAT'S A CLOSE-UP PICTURE OF WHAT APPEARED TO BE THE
23 DEFENDANT'S BLACK BAG.

24 Q DO THESE PICTURES ACCURATELY DEPICT WHAT YOU SAW ON
25 THAT EVENING?

1 A YES, MA'AM.

2 MRS. YOUNG: YOUR HONOR, AT THIS TIME WE'D ASK TO
3 ENTER STATE'S EXHIBITS SIX, SEVEN AND EIGHT INTO EVIDENCE.

4 MR. WATSON: WITHOUT OBJECTION.

5 THE COURT: SO ORDERED.

6 (WHEREUPON, STATE'S EXHIBITS 6, 7, 8 WERE ADMITTED
7 INTO EVIDENCE.)

8 BY MRS. YOUNG:

9 Q ONCE YOU TOOK THE PHOTOGRAPHS, WHAT DID YOU DO NEXT,
10 OFFICER FITTERY?

11 A I SECURED THE BAG FOR EVIDENCE AND ALSO TO HAVE IT
12 TESTED.

13 Q OKAY. AND WHAT DOES THAT MEAN, YOU SECURED THE BAG?

14 A I TOOK IT INTO MY POSSESSION. THAT WAY I WOULD KNOW
15 WHERE IT WAS AT THE WHOLE TIME.

16 Q SO YOU TOOK IT IN YOUR POSSESSION AND DIDN'T LET IT
17 OUT OF YOUR POSSESSION?

18 A I DID NOT LET IT OUT OF MY POSSESSION.

19 Q YOU EVENTUALLY--

20 A NOT UNTIL THE TIME THAT IT WAS DROPPED INTO EVIDENCE.

21 Q OKAY. AND HOW DOES THAT WORK?

22 A OUR EVIDENCE PROCEDURE WORKS -- YOU WOULD TAKE THE
23 EVIDENCE. THEY HAVE ENVELOPES THAT YOU HAVE ALONG WITH
24 PAPERWORK THAT YOU WOULD FILL OUT CALLED A CHAIN OF
25 CUSTODY.

1 YOU WOULD FILL THE CHAIN OF CUSTODY OUT STATING WHERE
2 YOU OBTAINED THE EVIDENCE, WHERE THE EVIDENCE IS GOING TO
3 BE TAKEN, THE DESCRIPTION OF THE EVIDENCE. YOU WOULD FILL
4 THOSE OUT AND PLACE THEM IN THERE WITH THE EVIDENCE IN A
5 SEALED BAG AND DROP IT INTO THE EVIDENCE LOCKER FOR THE
6 EVIDENCE CUSTODIANS TO COME RETRIEVE.

7 Q IS THAT WHAT YOU DID ON THE EVENING IN QUESTION?

8 A I DID.

9 Q AND WHO ELSE -- WHO HAS ACCESS TO THAT EVIDENCE
10 LOCKER?

11 A I BELIEVE IT'S ONLY TWO -- THERE IS ONLY TWO PEOPLE
12 WITHIN THE POLICE DEPARTMENT THAT ACTUALLY HAVE ACCESS TO
13 GET INSIDE OF THE ROOM WHERE THE EVIDENCE IS LOCKED UP AT.

14 Q AND WHO IS THAT? WHO ARE THEY RATHER?

15 A INVESTIGATOR GEORGE SHAW AND LIEUTENANT JOE COUNT.

16 Q OFFICER FITTERY, AT THIS TIME I AM SHOWING YOU
17 STATE'S EXHIBIT 15 AND ASKING IF YOU CAN IDENTIFY IT.

18 A THAT IS THE BLACK BAG THAT APPEARS TO BE THE ONE LIKE
19 THE DEFENDANT HAD.

20 MR. WATSON: OBJECTION.

21 THE COURT: WHAT IS THE OBJECTION?

22 MR. WATSON: HE SAID ONE LIKE THE DEFENDANT HAD.

23 THE COURT: HE SAID APPEARS TO BE LIKE THE ONE. IS
24 THAT THE BAG YOU FOUND ON THE GROUND?

25 THE WITNESS: YES, SIR, YOUR HONOR.

1 THE COURT: ALL RIGHT. FIFTEEN, BLACK BAG.

2 MRS. YOUNG: YOUR HONOR, AT THIS TIME WE'D MOVE TO
3 ENTER STATE'S EXHIBIT 15 INTO EVIDENCE.

4 THE COURT: AS THE BLACK BAG HE FOUND ON THE GROUND.

5 MRS. YOUNG: YES, SIR.

6 MR. WATSON: NO OBJECTION.

7 (WHEREUPON, STATE'S EXHIBIT NO. 15 WAS MARKED FOR
8 IDENTIFICATION AND RECEIVED INTO EVIDENCE.)

9 BY MRS. YOUNG:

10 Q AND I DON'T THINK I'VE ASKED YOU AN IMPORTANT
11 QUESTION. DID YOU EVER OPEN THE BLACK BAG?

12 A I DID.

13 Q WHAT DID YOU FIND INSIDE OF THE BAG?

14 A A LARGE QUANTITY OF COCAINE, POWDER COCAINE.

15 Q AND WAS IT FIELD TESTED?

16 A IT WAS BY MYSELF, AND IT DID FIELD TEST POSITIVE FOR
17 COCAINE.

18 Q ONCE YOU OPENED THE BAG AND FOUND THAT, WHAT DID DO
19 YOU DO WITH WHAT YOU FIND?

20 A I PLACE IT IN -- WELL, I FIELD TEST IT LIKE WE STATED
21 EARLIER. IF IT DOES FIELD TEST POSITIVE, THEN I PLACE IT
22 INTO EVIDENCE. AND ALSO WHEN IT'S GETTING PLACED INTO
23 EVIDENCE, IT'S ALSO PLACED INTO EVIDENCE TO BE ANALYZED BY
24 A CHEMIST.

25 Q DO YOU BASICALLY FOLLOW THE SAME PROCEDURE THAT YOU

1 DID WITH ANY OTHER PIECE OF EVIDENCE IN TERMS OF WHERE IT
2 GOES?

3 A NO. IT'S A LITTLE BIT DIFFERENT FOR DRUGS THAN SAY
4 FOR SOMETHING THAT WAS SHOPLIFTED OR SOMETHING -- OR
5 PROPERTY TYPE OF THING.

6 Q HOW IS IT DIFFERENT?

7 A THE FORMS ARE DIFFERENT. THERE IS A -- ACTUALLY IT'S
8 WHAT WE CALL A BEST KIT. AND WHAT THE BEST KIT IS, IT'S
9 ANOTHER SHEET OF PAPER ALONG WITH A DIFFERENT TYPE OF BAG
10 THAT YOU PLACE THE EVIDENCE INTO BECAUSE IT ACTUALLY GOES
11 TO THE SHERIFF'S OFFICE TO HAVE THEIR CHEMIST TEST IT.

12 Q AND IS THAT WHAT YOU DID ON THIS EVENING?

13 A THAT'S CORRECT. I PLACED IT IN THERE.

14 Q I'LL SHOW WAS WHAT'S BEEN MARKED FOR IDENTIFICATION
15 PURPOSES AS STATE'S EXHIBIT 14 AND ASK IF YOU CAN
16 RECOGNIZE IT.

17 A YES. THAT'S THE COCAINE I LOCATED THAT WAS INSIDE OF
18 THE BAG THAT LOOKED LIKE THE DEFENDANT'S.

19 Q AND THE LAST THING YOU DID WITH IT WAS...

20 A DROPPED IT INTO THE EVIDENCE LOCKER.

21 Q TO BE TESTED?

22 A YES.

23 Q OFFICER FITTERY, I AM GOING TO SHOW YOU TWO ITEMS,
24 STATE'S EXHIBIT 9 AND STATE'S EXHIBIT 10 AND ASK IF YOU
25 RECOGNIZE THEM.

1 A YES, THOSE ARE CAPTURES FROM MY IN-CAR VIDEO.

2 Q WHAT IS A CAPTURE?

3 A I GUESS IT WOULD BE CALLED A STILL FRAME WHERE THEY
4 STOP THE VIDEO AT A CERTAIN POINT AND TAKE A PICTURE OUT.

5 Q OKAY. AND--

6 A TAKING THE PICTURE OUT OF IT THAT SHOWS...

7 Q SO IS THIS A TRUE AND ACCURATE STILL DEPICTION OF
8 WHAT WAS FILMED INSIDE OF YOUR IN-CAR CAMERA?

9 A YES, MA'AM.

10 Q AND THAT'S HOW IT LOOKED ON THE EVENING?

11 A YES, MA'AM. THAT'S EXACTLY HOW IT LOOKED.

12 MRS. YOUNG: YOUR HONOR, AT THIS TIME WE'D MOVE TO
13 ENTER STATE'S EXHIBIT 9 AND 10 INTO EVIDENCE.

14 MR. WATSON: WITHOUT OBJECTION.

15 THE COURT: NINE AND 10 IS WHAT? MA'AM, WHAT IS
16 NINE?

17 MRS. YOUNG: IT'S A PHOTOGRAPH -- BOTH OF THEM, YOUR
18 HONOR, ARE STILL PHOTOGRAPHS TAKEN FROM THE VIDEO CAMERA.
19 ONE OF THEM IS AT MINUTE 172440 -- WELL, THEY'RE BOTH AT
20 THAT MINUTE. I AM TRYING TO DIFFERENTIATE.

21 THE COURT: THAT'S THE PHOTOS OF HIM DEPARTING THE
22 CAR?

23 MRS. YOUNG: RIGHT.

24 (WHEREUPON, STATE'S EXHIBITS NOS. 9, 10 WERE MARKED
25 FOR IDENTIFICATION AND RECEIVED INTO EVIDENCE.)

1 BY MRS. YOUNG:

2 Q OFFICER FITTERY, DO YOU SEE THE PERSON THAT YOU'VE
3 BEEN SPEAKING ABOUT IN THE COURTROOM TODAY?

4 A YES, MA'AM.

5 Q AND CAN YOU IDENTIFY HIM FOR US?

6 A HE'S A YOUNG MAN THAT'S SITTING WEARING BLUE JEANS, A
7 BLACK JACKET, A PURPLE TIE, AND A BLACK AND WHITE SHIRT.

8 MRS. YOUNG: YOUR HONOR, AT THIS TIME WE'D ASK THAT
9 THE RECORD REFLECT THAT THIS WITNESS HAS IDENTIFIED THE
10 DEFENDANT, MR. JOHNSON.

11 THE COURT: THANK YOU. IT DOES.

12 BY MRS. YOUNG:

13 Q DOES HE LOOK THE SAME AS HE DID --

14 A NO, MA'AM --

15 Q -- AT THE TIME?

16 A -- HE'S CUT -- HE'S CUT HIS HAIR SINCE THAT TIME.

17 Q AT THIS TIME I AM SHOWING YOU WHAT'S BEEN MARKED FOR
18 IDENTIFICATION PURPOSES AS STATE'S EXHIBIT 11 AND ASK IF
19 YOU RECOGNIZE IT.

20 A THAT'S THE DEFENDANT WITH DREAD LOCKS.

21 Q IS THAT THE WAY HE APPEARED ON THE EVENING IN
22 QUESTION?

23 A YES. YES.

24 MRS. YOUNG: YOUR HONOR, AT THIS TIME WE ASK TO ENTER
25 STATE'S EXHIBIT 11 INTO EVIDENCE.

1 MR. WATSON: WITHOUT OBJECTION.

2 THE COURT: WITHOUT OBJECTION.

3 (WHEREUPON, STATE'S EXHIBIT NO. 11 WAS MARKED FOR
4 IDENTIFICATION AND RECEIVED INTO EVIDENCE.)

5 BY MRS. YOUNG:

6 Q THIS LOCATION WHERE YOU STOPPED MR. JOHNSON, WHAT IS
7 IT LOCATED NEAR?

8 A IT IS LOCATED NEAR NORTH AUGUSTA MIDDLE SCHOOL.

9 Q AND DO YOU KNOW HOW FAR IT IS BETWEEN NORTH AUGUSTA
10 MIDDLE SCHOOL AND THE STOP?

11 A MAYBE A TENTH OF A MILE.

12 Q SO IT'S WITHIN A HALF OF A MILE?

13 A OH, DEFINITELY WITHIN A HALF OF A MILE.

14 Q HOW FAST DID YOU SAY THAT THE DEFENDANT WAS GOING
15 WHEN YOU INITIALLY SAW HIM ON YOUR RADAR?

16 A FIFTY-ONE IN A 35. 16 MILES OVER THE SPEED LIMIT.

17 Q AND WE HAVEN'T REALLY TALKED ABOUT IT YET, BUT WHAT
18 TIME OF THE DAY OR NIGHT WAS IT WHEN THIS ALL OCCURRED?

19 A IT WAS STILL DAYLIGHT HOURS. IT WAS APPROACHING I
20 GUESS WHAT YOU WOULD CONSIDER DUSK OR ANYONE WOULD
21 CONSIDER DUSK HOURS.

22 Q AND DURING THE COURSE OF YOUR INTERACTIONS WITH
23 MR. JOHNSON, WERE YOU IN CLOSE PROXIMITY TO HIM?

24 A YES.

25 Q DID YOU HAVE A CHANCE TO OBSERVE HIM CLOSELY?

1 A YES.

2 Q PLEASE ANSWER ANY QUESTIONS THAT MR. WATSON MAY HAVE
3 OF YOU.

4 THE COURT: CROSS?

5 MR. WATSON: MAY IT PLEASE THE COURT.

6 THE COURT: GOOD TIME TO BREAK. HOLD ON A SECOND.

7 DON'T FORGET TO GET ME A FOREPERSON. DON'T DISCUSS THE
8 CASE. DON'T START DELIBERATING AND ENJOY YOUR AFTERNOON
9 BREAK. WE'LL BE BACK IN JUST A FEW MINUTES. EVERYBODY
10 ELSE REMAIN SEATED.

11 (WHEREUPON, THE JURY EXITED THE COURTROOM AT 3:35.)

12 THE COURT: ALL RIGHT. OFFICER, YOU'RE RIGHT IN THE
13 MIDDLE OF YOUR TESTIMONY. OBVIOUSLY, I AM GOING TO LET
14 YOU STEP DOWN AND GO TO THE BATHROOM AND STRETCH YOUR
15 FEET.

16 PLEASE DO NOT DISCUSS YOUR TESTIMONY EITHER WITH THE
17 STATE, DEFENDANT, OR ANYONE ELSE. THAT'S THE RULES FOR IN
18 THE MIDDLE OF YOUR TESTIMONY. YOU MAY STEP DOWN.
19 ANYTHING FROM THE STATE BEFORE WE BREAK?

20 MRS. YOUNG: NO, SIR, YOUR HONOR.

21 THE COURT: MR. WATSON?

22 MR. WATSON: NOTHING, YOUR HONOR.

23 THE COURT: WE'LL TAKE ABOUT A 10 MINUTE SHORT BREAK.

24 (WHEREUPON, A BREAK WAS TAKEN.)

25 THE COURT: MRS. YOUNG, WE NEED TO DO ANYTHING FOR

1 THE RECORD BEFORE WE START BACK?

2 MRS. YOUNG: NO, SIR, YOUR HONOR.

3 THE COURT: MR. WATSON?

4 MR. WATSON: NO, SIR, YOUR HONOR.

5 THE COURT: BRING THE JURY IN. OFFICER, YOU WANT TO
6 COME BACK AND HAVE A SEAT.

7 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
8 APPROXIMATELY 3:52 PM.)

9 THE COURT: WHICH ONE IS MR. MALINICHE?

10 THE JUROR: ME, YOUR HONOR.

11 THE COURT: CONGRATULATIONS.

12 THE JUROR: THANK YOU.

13 THE COURT: YOU'RE NOW IN POLITICS. MAYBE YOU OUGHT
14 TO RUN FOR EVERYTHING. BLESS YOUR HEART. YOU CAN'T
15 COUNT. I KNOW YOU'RE GETTING OLD.

16 BAILIFF: I THROW MYSELF ON THE MERCY OF THE COURT.

17 THE COURT: BLESS MERT'S HEART. HE TRIES. I GOT A
18 GREAT GROUP OF BAILIFFS. THEY ARE SO GOOD INCLUDING MERT.
19 THEY DO. THEY WORK VERY HARD AND THEY KEEP US ROLLING AND
20 MOVING.

21 WE'RE GOING TO GO UNTIL ABOUT FIVE. IS THAT OKAY
22 WITH EVERYBODY? I'VE GOT A LAWYER FROM COLUMBIA AND I'M
23 FROM BAMBERG, SO HE'S GOT AN HOUR. I'VE GOT AN HOUR. WE
24 HAVE GOT A 9:30 CONFERENCE CALL IN THE MORNING, SO WE'RE
25 GOING TO START AT 10 IN THE MORNING IF THAT'S OKAY WITH

1 EVERYBODY. DOES THAT SUIT?

2 I WILL HAVE -- LET'S GO AHEAD AND GET THIS OUT OF THE
3 WAY -- CHOICES OF EITHER SAUSAGE BISCUITS, HAM BISCUITS,
4 COFFEE, OR DOUGHNUTS. YOU CAN'T HAVE ANY -- DONUTS,
5 MUFFINS, THOSE SORTS OF THINGS. WHAT IS YOUR CHOICE?

6 THE JUROR: BISCUITS.

7 THE COURT: THE LADY FROM PUBLIX. BISCUITS OKAY?

8 THE JUROR: YES.

9 THE COURT: YES, BACK THERE. ALL RIGHT.

10 MRS. BARBARA, YOU CAN TELL MR. BILL.

11 THE BAILIFF: I'LL TELL HIM.

12 THE COURT: AND WE'LL HAVE PLENTY OF HOT COFFEE AND
13 IF YOU'RE STILL HERE AT LUNCH TIME TOMORROW, I'LL BUY YOUR
14 LUNCH. I'LL TELL YOU A STORY ABOUT PUBLIX WHEN WE GET
15 FINISHED. OKAY?

16 THE JUROR: OKAY. MR. WATSON.

17 CROSS-EXAMINATION

18 BY MR. WATSON:

19 Q OFFICER FITTERY, YOU INDICATED THAT MR. JOHNSON WAS
20 SPEEDING IS THE REASON YOU INITIALLY STARTED PURSUING HIM?

21 A THAT'S CORRECT.

22 Q AND HOW WERE YOU ABLE TO DETERMINE HIS SPEED?

23 A BY VISUALLY SEEING HIS SPEED AND ALSO BY THE DISPLAY
24 ON MY RADAR.

25 Q OKAY. I BELIEVE THIS EXHIBIT 17 SHOWS WHERE YOU

1 INDICATED YOU WERE STATIONED ON THAT PARTICULAR DAY; IS
2 THAT CORRECT?

3 A THAT'S CORRECT.

4 Q AND YOU INDICATED THAT YOU WERE HERE?

5 A YES, SIR.

6 Q WHAT DISTANCE IS THERE FROM THIS POINT TO THE POINT
7 OVER HERE WHERE THIS STREET STARTS?

8 A MAYBE ABOUT 150, 200 YARDS.

9 Q ABOUT 200 YARDS. THAT'S LIKE TWICE THE LENGTH OF A
10 FOOTBALL FIELD?

11 A 200 YARDS IS TWICE THE LENGTH OF A FOOTBALL FIELD.

12 Q OKAY. SO YOU'RE INDICATING THAT YOU WERE ABOUT
13 200 YARDS AWAY AND YOU COULD OBSERVE THAT HE WAS SPEEDING;
14 IS THAT CORRECT?

15 A ABOUT A FOOTBALL FIELD AND A HALF, YEAH.

16 Q OKAY. THERE APPEARS TO BE A NUMBER OF TREES AND
17 OTHER THINGS BETWEEN YOU AND WHERE YOU SAY YOU SAW THE
18 DEFENDANT. HOW WERE YOU ABLE TO SEE HIM IN THAT CASE?

19 A THERE IS NO TREES IN THE ROADWAY.

20 Q THERE ARE NO TREES IN THE ROADWAY? AND YOU WERE
21 PARKED IN THE ROADWAY?

22 A I WAS PARK OFF TO THE SIDE OF THE ROADWAY.

23 Q ON THE SIDE OF THE ROAD AND -- AND YOU HAD A CLEAR
24 VIEW OF THE VEHICLE COMING 200 YARDS DOWN THERE?

25 A THAT'S CORRECT, BY MY REAR VIEW MIRROR AND ALSO BY MY

1 SIDE VIEW MIRROR.

2 Q WHICH MIRROR WERE YOU FACING--

3 THE COURT: MR. WATSON, CAN I INTERRUPT YOU FOR ONE
4 SECOND? YOU'RE SORT OF BLOCKING MY LAST JUROR OVER THERE.
5 OFFICER, DO YOU NEED TO STEP DOWN SO WE CAN ALL SEE AND
6 MR. WATSON IN HIS CROSS-EXAMINATION? ALL RIGHT. CAN YOU
7 SEE IT NOW?

8 THE WITNESS: I CAN STILL SEE IT.

9 THE COURT: EVERYBODY SEE IT NOW? THANK YOU,
10 MR. WATSON.

11 BY MR. WATSON:

12 Q SO YOU'RE SAYING THAT YOU'RE ABOUT 200 YARDS AWAY OFF
13 OF THE ROADWAY AND HE IS COMING STRAIGHT DOWN THE ROADWAY
14 AND YOU ARE ABLE TO DETERMINE THAT HE WAS GOING WHAT SPEED
15 AT THAT POINT DO YOU ESTIMATED HIS SPEED TO BE?

16 A APPROXIMATELY 49 TO 50 MILES AN HOUR.

17 Q IN YOUR STATEMENT YOU INDICATED THAT AFTER YOU
18 STARTED PURSUING HIM, HE ACCELERATED TO SPEEDS UP TO
19 51 MILES PER HOUR; IS THAT CORRECT?

20 A NO, SIR. I SAID HE ACCELERATED SPEEDS. I DIDN'T SAY
21 AN EXACT SPEED.

22 Q EXCUSE ME FOR ONE SECOND. DO YOU RECALL WRITING AN
23 INCIDENT REPORT AFTER THIS EVENT HAPPENED; IS THAT
24 CORRECT?

25 A I DO, SIR.

1 Q LET ME SHOW YOU A COPY OF THIS INCIDENT REPORT AND
2 ASK YOU IF YOU RECOGNIZE IT.

3 A YES, IT'S MY INCIDENT REPORT.

4 Q THIS IS YOUR INCIDENT REPORT?

5 A YES, SIR.

6 Q AND YOUR INCIDENT REPORT STATES THAT ON THE ABOVE
7 DATE AND TIME -- WE'RE TALKING ABOUT DECEMBER 18; IS THAT
8 CORRECT?

9 A YES, SIR.

10 Q 2007?

11 A YES, SIR.

12 Q AND THAT'S ONE WEEK PRECISELY BEFORE CHRISTMAS; IS
13 THAT CORRECT?

14 A YES, SIR.

15 Q CHRISTMAS IS STILL ON DECEMBER 25 -- IS THAT -- I
16 BELIEVE.

17 A YES, SIR.

18 Q OKAY. ON THE ABOVE DATE AND TIME, THE REPORTING
19 OFFICER -- THAT'S YOU?

20 A YES, SIR, THAT IS.

21 Q WAS RUNNING STATIONARY RADAR AT THE INTERSECTION OF
22 WOMRATH ROAD AND NORMAL STREET. THE REPORTING OFFICER
23 THEN OBSERVED THE RED IN COLOR HONDA DRIVEN BY A BLACK
24 MALE. YOU COULD SEE THAT IT WAS DRIVEN BY A BLACK MALE
25 100 YARDS AWAY?

1 A YES, SIR.

2 Q TRAVELING AT ABOVE THE POSTED SPEED LIMIT OF 35?

3 A UH-HUH.

4 Q THE REPORTING OFFICER THEN ACTIVATED HIS REAR ANTENNA
5 RADAR AND OBTAINED A SPEED OF 51 MILES PER HOUR.

6 A YES, SIR.

7 Q THE VEHICLE THEN IMMEDIATELY MADE A RIGHT TURN UPON
8 SEEING THE REPORTING OFFICER. THE SUBJECT TURNED RIGHT ON
9 TO WOMRATH. THE REPORTING OFFICER ACTIVATED HIS BLUE
10 LIGHTS AND BEGAN TO TRY AND CATCH THE SUSPECT.

11 THE REPORTING OFFICER THEN OBTAINED SIGHT ON THE
12 VEHICLE--

13 MRS. YOUNG: YOUR HONOR, I AM GOING TO OBJECT AT THIS
14 TIME. I DON'T THINK HE IS ASKING HIM A QUESTION. HE IS
15 JUST READING THE OFFICER'S REPORT INTO THE EVIDENCE RECORD
16 WHICH IS HEARSAY.

17 MR. WATSON: IT IS HEARSAY, BUT THIS--

18 THE COURT: HOLD ON. YOU CAN USE IT TO REFRESH HIS
19 MEMORY. MR. WATSON, ASK HIM DOES HE RECALL SAYING SO AND
20 SO, AND IF HE DOESN'T, SHOW IT TO HIM AND LET HIM REFRESH
21 HIS MEMORY. BUT TO PUBLISH THE WHOLE THING--

22 MRS. YOUNG: NO, I'M NOT ASKING THAT. I AM OBJECTING
23 TO HIM READING FROM IT AND NOT ASKING A QUESTION.

24 THE COURT: I UNDERSTAND THAT. ASK HIM A QUESTION.
25 IF HE DOESN'T REMEMBER, LET HIM REFRESH HIS MEMORY. AND

1 THEN YOU CAN ASK HIM DID HE DO AN INCIDENT REPORT AND IS
2 THAT THIS HIS INCIDENT REPORT.

3 IF YOU WANT TO PUT IT IN EVIDENCE, YOU CAN, AND THEN
4 YOU CAN ASK HIM QUESTIONS ABOUT IT.

5 BY MR. WATSON:

6 Q OKAY. BUT IN ANY EVENT, YOUR TESTIMONY IS THAT HE
7 WAS RUNNING -- YOU ESTIMATED THAT HE WAS RUNNING 49 MILES
8 PER HOUR AND THEN YOU -- UPON ENTERING THE CHASE,
9 SO-TO-SPEAK, HE REACHED SPEEDS OF UP TO 51 MILES AN HOUR.
10 IS THAT YOUR TESTIMONY?

11 A NO, SIR. I OBTAINED THE SPEED READING OF 51 MILES AN
12 HOUR BEFORE I ACTUALLY BEGAN TO PURSUE HIM.

13 Q OKAY. I AM A LITTLE CONFUSED ABOUT THIS NOW. YOU'RE
14 OVER HERE AND HE IS OVER HERE.

15 A UH-HUH.

16 Q SO WHEN YOU STARTED PURSUING HIM, YOU SAW THE SPEED.
17 YOU'RE TAKING THIS COURSE; IS THAT CORRECT?

18 A UH-HUH.

19 Q AND HE'S TAKING THIS COURSE; IS THAT CORRECT?

20 A THAT'S CORRECT.

21 Q SO THAT Y'ALL ARE ON COMPLETELY SEPARATE ROADS AT
22 THIS POINT.

23 A THAT'S CORRECT.

24 Q OKAY. AND THEN YOU WERE ABLE TO PURSUE HIM ALL OF
25 THE WAY DOWN THROUGH -- WHERE DID YOU GET IN BEHIND HIM,

1 ABOUT UP IN THIS AREA?

2 A I TURNED -- I TURNED BEHIND HIM AT NORMAN AND
3 THURMOND WAY.

4 Q WOMRATH?

5 A NO. I TURNED IN BEHIND HIM AT NORMAN AND THURMOND
6 WAY WHICH IS WHERE YOU JUST HAD YOUR PEN AT.

7 Q YOU TURNED IN BEHIND HIM AT NORMAN AND THURMOND WAY.
8 SO THAT -- THURMOND WAY MUST STOP RIGHT HERE.

9 A THAT'S CORRECT.

10 Q SO THAT'S WHY I WAS ASKING YOU. AND THEN HE CAME
11 PAST YOU HERE AND YOU TURNED THEN AND THEN THE PURSUIT
12 CONTINUED ON UP TO WHERE YOU FINALLY STOPPED HIM AT THIS
13 LOCATION?

14 A THAT'S CORRECT.

15 Q OKAY. WHEN YOU TURNED THE RADAR ON IN YOUR CAR,
16 WHERE -- WHAT LOCATION WERE YOU?

17 A WHERE THE GREEN STAR IS WHERE IT SAYS, STATIONARY
18 RADAR.

19 Q OKAY. THAT'S WHERE YOU TURNED THE RADAR ON?

20 A YES.

21 Q OKAY. NOW, WHAT POINT NOW DID YOU TURN ON YOUR VIDEO
22 CAMERA -- VIDEO CAMERA?

23 A WHERE -- FOLLOW IT DOWN. IT SAYS AT THE BOTTOM,
24 INITIATED THE LIGHTS OR EMERGENCY EQUIPMENT I BELIEVE.

25 Q OKAY. SO YOU'RE PURSUING HIM ALL THIS TIME WITH

1 NO...

2 A I WAS TRYING TO CATCH UP WITH HIM.

3 Q OKAY. AND TO YOUR KNOWLEDGE HE WAS UNAWARE THAT YOU
4 WERE PURSUING HIM AT THAT TIME; IS THAT CORRECT?

5 A TO MY KNOWLEDGE -- NO PROPER EMERGENCY EQUIPMENT WAS
6 NOT ACTIVATED AT THAT TIME. NO, IT WASN'T.

7 Q OKAY. AND DURING -- DID YOU EVER ISSUE HIM A
8 CITATION FOR SPEEDING?

9 A NO, SIR. I ISSUED HIM A CITATION FOR RECKLESS
10 DRIVING DUE TO THE STOP SIGNS THAT HE RUN IN THE PROCESS.

11 Q WELL, LOOKING AT THE VIDEO, I NEVER SAW WHERE HE RAN
12 A STOP SIGN. YOU'RE INDICATING THAT HE RAN A STOP SIGN
13 BEFORE YOU TURNED ON THE CAMERA?

14 A THAT'S CORRECT.

15 Q AND WHERE WOULD THAT STOP SIGN BE AGAIN?

16 A AT THE CORNER OF THURMOND WAY AND THURMOND STREET.

17 Q THURMOND... WHICH IS IT, THIS IS--

18 A RIGHT THERE. YOU GO BACK UP. I'LL STEP--

19 Q THIS IS THURMOND STREET OR THURMOND WAY?

20 A I'LL STEP DOWN.

21 Q THIS IS THURMOND -- COME ON.

22 A HE RAN THE STOP SIGN LOCATED HERE AT THIS
23 INTERSECTION.

24 Q OKAY. YOUR CAMERA IS ON AT THIS POINT?

25 A NO, IT'S NOT.

1 Q OKAY.

2 A AND HE CONTINUED TO TRAVEL DOWN, AROUND. AND UPON
3 MAKING A LEFT TURN AT THURMOND STREET AND SEYMORE DRIVE,
4 THEN HE ALSO RAN THIS STOP SIGN. AND THEN AT THAT TIME
5 THAT'S WHEN MY EMERGENCY EQUIPMENT -- THAT'S WHEN IT WAS
6 INITIATED.

7 Q OKAY. BUT NONE OF THOSE RUNNING OF THE STOP SIGNS
8 WERE CAPTURED ON ANY OF YOUR VIDEO EQUIPMENT; IS THAT
9 CORRECT?

10 A THAT'S CORRECT.

11 Q NOW, YOU INDICATED THAT WHEN HE STOPPED AND JUMPED
12 OUT OF THE CAR AND STARTED TO RUN YOU WERE ABLE TO GET A
13 CLEAR DESCRIPTION OF HIM?

14 A OH, YES, SIR.

15 Q AND HOW FAR WERE YOU -- HOW CLOSE TO YOU WERE HIM --
16 WERE FROM HIM AT THE TIME YOU FIRST WERE ABLE TO IDENTIFY
17 HIM?

18 A APPROXIMATELY 10 TO 15 FEET.

19 Q THAT'S -- HE WAS GETTING OUT OF THE CAR AND YOU WERE
20 STILL IN YOUR CAR IS THAT POINT; IS THAT CORRECT?

21 A YES, SIR. YES, SIR.

22 Q NOW, YOU INDICATED THAT YOU DID SOME PURSUIT ON FOOT
23 FOR A WHILE AND THEN YOU EVENTUALLY CAME BACK TO YOUR CAR.

24 A UH-HUH.

25 Q HOW LONG DID ALL OF THAT TAKE?

1 A I WOULD SAY A MINUTE.

2 Q A MINUTE. THIS IS PLAINTIFF'S EXHIBIT NO. 17. NOW,
3 YOU'RE TELLING ME THAT YOU PURSUED HIM FROM THIS STOP HERE
4 ALL THE WAY ALONG THIS PATH HERE, ALL OF THE WAY TO THE
5 STREET WHERE THIS RETAINING WALL IS AND ALL OF THAT ONLY
6 TOOK ONE MINUTE?

7 A YES, SIR.

8 Q OKAY. AND AT THAT POINT THEN, YOU RETURNED TO THE
9 VEHICLE?

10 A UH-HUH.

11 Q OKAY. AT ANY POINT DID MR. JOHNSON -- DID YOU ASK
12 MR. JOHNSON WHY HE WAS RUNNING FROM YOU?

13 A NO, SIR, I DIDN'T.

14 Q DID ANY OF THE OFFICERS ASK HIM TO YOUR KNOWLEDGE?

15 A YES. I BELIEVE OFFICER RUTLAND ASKED HIM.

16 Q DO YOU KNOW WHAT HE SAID, STATED?

17 MRS. YOUNG: I WOULD OBJECT TO ANYTHING THIS WITNESS
18 DID NOT OBSERVE PERSONALLY. IT WOULD BE HEARSAY IF HE WAS
19 NOT PRESENT WHEN THE DEFENDANT SAID IT.

20 THE COURT: JUST TESTIFY ABOUT WHAT YOU SAW, HEARD,
21 SMELLED, WHATEVER, TASTED.

22 BY MR. WATSON:

23 Q DID HE INDICATE TO -- DID MR. JOHNSON INDICATE TO YOU
24 WHY HE WAS RUNNING FROM THE POLICE?

25 A I DIDN'T HEAR HIM SAY--

1 Q DID HE INDICATE TO YOU?

2 A NO, HE DID NOT INDICATE TO ME.

3 Q OKAY. BUT HE DID GIVE AN EXPLANATION TO ONE OF THE
4 OFFICERS; IS THAT CORRECT?

5 A HE DID.

6 Q AND THE OFFICER HE GAVE THAT EXPLANATION TO WAS
7 OFFICER RUTLAND.

8 A THAT'S CORRECT.

9 Q OKAY. NOW, YOU INDICATED THAT WHILE YOU WERE
10 PURSUING HIM FOR THIS ONE MINUTE, DID HE EVER LEAVE YOUR
11 SIGHT?

12 A YES.

13 Q YOU LOST SIGHT OF HIM DURING THAT ONE MINUTE FROM THE
14 TIME YOU WERE RUNNING FROM -- BEHIND HIM UNTIL HE GOT TO
15 THAT WALL; IS THAT CORRECT?

16 A THAT'S CORRECT.

17 Q YOU LOST SIGHT OF HIM. IS THERE ANY -- YOU DID NOT
18 SEE A WEAPON IN HIS HAND; DID YOU?

19 A NO, SIR. ALL I SEEN WAS THE BLACK BAG IN HIS HAND.

20 Q OKAY. YOU SAW A BLACK BAG. YOU NEVER SAW ANY TYPE
21 OF WEAPON?

22 A NO, SIR.

23 Q YOU MADE SOME STATEMENTS THAT YOU WERE AFRAID THAT
24 YOU MIGHT BE AMBUSHED AND SO FORTH.

25 A YES, SIR.

1 Q YOU CAN SEE PRETTY CLEARLY WHAT HE HAD ON AND
2 EVERYTHING. I BELIEVE YOU INDICATED THAT YOU THOUGHT HE
3 HAD ON A SWEATER AND YOU WERE ABLE TO DESCRIBE HIS
4 CLOTHING IN GREAT PARTICULAR.

5 A UH-HUH.

6 Q BUT YOU -- AND YOU SAW NO WEAPON; IS THAT CORRECT?

7 A NO, HE DIDN'T GET OUT THE CAR WITH A WEAPON IN HIS
8 HAND.

9 Q OKAY. SO, WHEN YOU SAY, AMBUSHING YOU, I MEAN, YOU
10 DIDN'T THINK THAT -- HE WAS TRYING TO GET AWAY. HE WASN'T
11 TRYING TO ATTACK YOU OR ANYTHING OF THAT NATURE; IS THAT
12 CORRECT?

13 A I DON'T KNOW WHAT HE WAS PLANNING TO DO.

14 Q BUT IT LOOKED TO YOU LIKE HE WAS TRYING TO GET AWAY;
15 DIDN'T IT?

16 A HE WAS TRYING TO GET AWAY, YES.

17 Q OKAY. NOT TURN ON YOU OR DO ANYTHING TO YOU; IS THAT
18 CORRECT?

19 A AT THAT TIME, NO, BUT WHAT HE DID--

20 Q AT ANY POINT DID HE INDICATE THAT HE WANTED TO TURN
21 ON YOU OR DO ANYTHING TO YOU?

22 A I DIDN'T KNOW WHAT HE WAS GOING TO DO WHEN HE GOT OF
23 MY SIGHT.

24 Q AT ANY POINT DID HE INDICATE OR YOU FELT THAT HE WAS
25 ABOUT TO TURN ON YOU -- TURN ON YOU OR HARM YOU IN ANY

1 WAY?

2 A WHEN HE EXITED THE VEHICLE, I FIRST THOUGHT THAT HE
3 WAS GOING TO RUN BACK TOWARDS MY PATROL CAR AND TRY TO
4 AMBUSH ME INSIDE OF MY PATROL CAR, BUT HE IMMEDIATELY
5 BARED OFF TO THE RIGHT AND RAN INTO THE YARDS THAT WERE
6 LOCATED BESIDE US, BUT THAT WAS THE ONLY TIME.

7 Q NOW, SO AS THE PURSUIT -- AT SOME POINT YOU CAME BACK
8 TO THE VEHICLE AND SECURED YOUR VEHICLE AND MR. JOHNSON'S
9 VEHICLE; IS THAT CORRECT?

10 A THAT'S CORRECT.

11 Q AND AT THAT TIME DID YOU DO A SEARCH OF THE VEHICLE?

12 A NO, SIR.

13 Q YOU DIDN'T DO A SEARCH OF THE VEHICLE?

14 A NO, SIR.

15 Q THE CAMERA SHOWED YOU LOOKING INSIDE OF THE VEHICLE.
16 WHAT WERE YOU DOING THERE?

17 A I WAS LOCATING THE KEYS TO THE VEHICLE SO I COULD
18 REMOVE THEM.

19 Q OKAY. WELL, DURING YOUR PERUSAL OF THE VEHICLE, DID
20 YOU LOCATE ANY DRUGS?

21 A I WASN'T LOOKING FOR DRUGS. I WAS LOOKING FOR KEYS.

22 Q TO YOUR KNOWLEDGE WERE ANY DRUGS EVER FOUND IN THE
23 VEHICLE?

24 A NOT TO MY KNOWLEDGE.

25 Q WERE ANY DRUGS FOUND ON MR. JOHNSON?

1 A NOT TO MY KNOWLEDGE.

2 Q OKAY. SO TO YOUR KNOWLEDGE HE HAD NO WEAPON. HE HAD
3 NO DRUGS ON HIM. NO DRUGS WERE FOUND IN THE CAR; IS THAT
4 CORRECT.

5 A THAT'S CORRECT.

6 Q NOW, YOU'VE TESTIFIED THAT HE HAD A BLACK BAG IN HIS
7 HAND; IS THAT CORRECT?

8 A THAT'S CORRECT.

9 Q DID YOU HAVE TIME TO EXAMINE THAT BAG WHILE YOU WERE
10 IN PURSUIT OF HIM?

11 A NO, SIR.

12 Q OKAY. YOU ADMIT THAT THERE ARE SEVERAL BAGS THAT
13 LOOK SIMILAR; IS THAT CORRECT?

14 A THERE ARE OTHER BLACK BAGS, YES, SIR.

15 Q SO IT'S POSSIBLE THAT THE BAG THAT HE WAS RUNNING
16 WITH IS STILL OUT THERE SOMEWHERE. IT IS POSSIBLE THAT
17 THERE IS ANOTHER BLACK BAG OUT THERE SOMEWHERE; IS THAT
18 CORRECT?

19 A NO, SIR, THAT'S THE BAG.

20 Q YOU'RE SURE THERE IS NOT ANOTHER BLACK BAG IN THAT
21 AREA. IN THIS ENTIRE AREA THERE IS NOT ANOTHER BLACK BAG
22 ANYWHERE.

23 A THAT'S POSSIBLE, BUT THAT'S HIS BLACK BAG.

24 Q YOU FOUND HIS FINGERPRINTS ON THE BAGS?

25 A NO, SIR. I DON'T ANALYZE FINGERPRINTS.

1 Q TO YOUR KNOWLEDGE WAS ANY DNA FOUND ON THE BAG?

2 A TO MY KNOWLEDGE, NO, SIR.

3 Q FROM THE TIME YOU LEFT THE VEHICLE TO THE TIME HE WAS
4 APPREHENDED IT WAS A TOTAL OF WHAT, ABOUT THREE MINUTES?
5 I BELIEVE YOU TOLD ME ABOUT -- YOU TESTIFIED ABOUT THREE
6 MINUTES EARLIER; IS THAT CORRECT?

7 A IT WAS -- I BELIEVE IT WAS SEVEN TO EIGHT MINUTES
8 WHEN HE WAS APPREHENDED.

9 Q OKAY. SO IT TOOK ABOUT SEVEN TO EIGHT MINUTES FROM
10 THE TIME YOU MADE THE STOP AND HE TOOK OFF RUNNING TO THE
11 TIME OFFICER RUTLAND FOUND HIM WALKING DOWN THE STREET; IS
12 THAT CORRECT?

13 A THAT'S CORRECT.

14 Q AND IN THAT SEVEN MINUTES YOU'RE SAYING THEN THAT HE
15 HAD TIME TO STASH THE BLACK BAG, CLEAN THE BACK OF THE BAG
16 OFF, REMOVE FINGERPRINTS, REMOVE SWEAT, REMOVE HAIRS SUCH
17 THAT NOTHING WAS LEFT ON THE BLACK BAG?

18 A HE HAD TIME TO THROW THE BAG IN THE AREA THAT WE
19 LOCATED IT.

20 Q OKAY. HE HAD TIME TO THROW THE BAG. BUT DID HE HAVE
21 TIME, IF IT WERE IN FACT HIS BAG, TO REMOVE ALL OF HIS DNA
22 FROM THE BAG?

23 A I BELIEVE I COULD WIPE SWEAT OFF A BAG OR HIS
24 FINGERPRINTS OFF.

25 Q WIPING THE SWEAT OFF THE BAG, IT WOULD STILL LEAVE

1 SWEAT ON THE BAG; WOULDN'T IT?

2 A I'M NOT SURE.

3 Q YOU WERE THERE WHEN OFFICER RUTLAND TOOK THE DOG FILA
4 OUT OF THE CAR AND ATTEMPTED TO HAVE THE DOG SEARCH FOR
5 DRUGS ON THE MONEY; IS THAT CORRECT?

6 A THE ODOR OF NARCOTICS ON THE MONEY? YES, SIR, I WAS
7 THERE.

8 Q OKAY. AND DID THE DOG ALERT ON THE MONEY?

9 A YES, SIR, SHE DID.

10 Q WHAT DO YOU MEAN -- WHEN YOU SAY SHE ALERTED ON THE
11 MONEY, EXPLAIN WHAT ALERTING IS.

12 A WELL, HER -- FILA'S ALERT IS A SIT. SHE'S CALLED A
13 PASSIVE DOG WHICH MEANS SHE SITS FOR AN ALERT. SO SHE SAT
14 DOWN WHEN SHE--

15 Q SO YOU'RE SAYING WHEN OFFICER RUTLAND PUT THE MONEY
16 ON THE GROUND AND WALKED FILA PAST THE MONEY, FILA SAT
17 DOWN ON ITS OWN.

18 A WHEN HE PRESENTED THE MONEY TO HER, SHE SAT DOWN ON
19 HER OWN, YES, SIR.

20 Q SAT DOWN ON HER OWN. THANK YOU. NOW, THE ONLY PART
21 OF THE SEARCH WITH FILA IS THE PART RIGHT AFTER
22 MR. JOHNSON WAS APPREHENDED, FILA WAS BROUGHT TO THE
23 LOCATION WHERE MR. JOHNSON WAS OR WAS ALREADY IN
24 MR. RUTLAND'S CAR; IS THAT CORRECT?

25 A THAT'S CORRECT.

1 Q OKAY. AND DID FILA ALERT ON MR. JOHNSON IN ANY WAY?

2 A WE'RE NOT ALLOWED TO SEARCH PERSONS WITH OUR K-9S.

3 Q YOU'RE NOT? SO WHAT IS -- EXACTLY IS FILA'S

4 EXPERTISE? WHAT IS FILA TRAINED TO DO?

5 A SHE IS TRAINED TO SEARCH FOR NARCOTICS.

6 Q SHE'S TRAINED TO SEARCH FOR NARCOTICS. SHE'S NOT

7 TRAINED TO TRACK AN INDIVIDUAL SCENT?

8 A YEAH, SHE'S TRAINED TO TRACK THE SCENT OF A

9 NARCOTIC.

10 Q NO, NOT THE SCENT OF A NARCOTICS. IS SHE TRAINED TO

11 TRACK THE SCENT OF A PERSON?

12 A NO, SHE'S NOT TRAINED ON HUMAN ODOR.

13 Q OKAY. SO IF FILA IS DOING THIS OPEN AIR SEARCH, FILA

14 IS NOT CONCERNED ABOUT WHAT PATH THE DEFENDANT RAN OR

15 MR. JOHNSON RAN, FILA'S ONLY CONCERNED ABOUT WHETHER HE

16 CAN SMELL DRUGS SOMEWHERE IN THE AREA?

17 A THAT'S CORRECT.

18 Q IS THAT CORRECT? SO, IT DOESN'T MATTER THEN WHERE

19 YOU START YOUR SEARCH. IT DOES NOT THEREFORE MATTER

20 WHETHER YOU START AT SEARCH AT THE CAR WHERE THE DEFENDANT

21 WAS BECAUSE FILA IS NOT CONCERNED ABOUT THE DEFENDANT'S

22 SCENT; IS THAT CORRECT?

23 A THAT'S INCORRECT.

24 Q CORRECT ME.

25 A THE REASON WHY THE SEARCH SHOULD BE STARTED AT THE

1 VEHICLE IS BECAUSE YOU'RE LOOKING FOR THE ODOR OF A
2 NARCOTIC. FILA IS NOT A HUMAN DETECTION -- SHE'S NOT A
3 HUMAN ODOR DETECTION DOG.

4 ALL WE WERE TRACKING FOR THAT DAY WOULD HAVE BEEN FOR
5 THE SCENT OF A NARCOTIC, WHICH IF THE DEFENDANT HAD A
6 SCENT OF A NARCOTIC IN HIS POSSESSION, IT WOULD HAVE -- IT
7 WOULD HAVE BEEN -- THE FOLLICLES WOULD HAVE BEEN FALLING
8 TO THE GROUND, AND THAT'S WHAT SHE WOULD HAVE BEEN
9 TRACKING, SO THAT WOULD HAVE BEEN THE BEST STARTING POINT
10 FOR FILA TO START FROM WOULD HAVE BEEN FROM THERE.

11 Q OKAY. SO THE LOCATION WHERE YOU APPREHENDED
12 MR. JOHNSON YOU, INDICATED THAT FILA ALERTED ON HIM AS
13 WELL?

14 A CAN YOU REPEAT THE QUESTION?

15 Q DID FILA ALERT ON MR. JOHNSON AS WELL?

16 A NO, SIR. WE'RE NOT ALLOWED TO SEARCH PERSONS. WE--

17 Q BUT IF HE HAD -- MR. JOHNSON HAD THE SMELL OF
18 NARCOTICS ON HIM, CERTAINLY IF HE ALERTS TO NARCOTICS, HE
19 SHOULD HAVE ALERTED ON MR. JOHNSON; IS THAT CORRECT?

20 A THAT'S INCORRECT. WE DON'T SEARCH PERSONS WITH DOGS.

21 Q SO THE DOG KNOW THAT IF THE NARCOTICS IS ON A PERSON,
22 DON'T GO SMELLING THAT PERSON BECAUSE THAT'S A PERSON --
23 DON'T SMELL AROUND THE PERSON?

24 A HE WAS ALSO -- THE DEFENDANT WAS ALSO REMOVED FROM
25 THE SEARCH AREA BY THE TIME -- IF MY MEMORY SERVES ME

1 CORRECTLY -- HE WAS REMOVED FROM THE SEARCH AREA AND THEN
2 OFFICER RUTLAND -- THAT'S WHEN OFFICER RUTLAND BROUGHT
3 FILA OUT.

4 Q BUT MR. JOHNSON WAS APPREHENDED. HE WAS RIGHT THERE
5 IN THE PRESENCE OF THE MONEY. FILA WAS BROUGHT TO WHERE
6 HE WAS. IF THERE WERE ANY DRUG SMELL ON THE MONEY OR HIM,
7 FILA SHOULD HAVE ALERTED AT THAT TIME; IS THAT CORRECT?

8 A SHE DID ALERT TO THE MONEY.

9 Q WELL, THAT'S YOUR OPINION, BUT WE'LL LOOK AT THAT.
10 THAT'S CLEARLY ON THE VIDEO; ISN'T THAT CORRECT?

11 A UH-HUH.

12 Q WHETHER OR NOT FILA ALERTED ON THE DRUGS OR
13 MR. JOHNSON IS CLEARLY WITHIN THE PURVIEW OF THIS JURY TO
14 LOOK AT THE VIDEO THEMSELVES AND DETERMINE; IS THAT
15 CORRECT?

16 THE COURT: NOT ON THE DRUGS, ON THE MONEY; ISN'T
17 THAT CORRECT?

18 THE WITNESS: THAT'S CORRECT, YOUR HONOR, ON THE
19 MONEY.

20 BY MR. WATSON:

21 Q ON THE MONEY OR THE SMELL OF ANY DRUGS ON THE MONEY?

22 A SHE DID ALERT TO THE ODOR OF NARCOTICS ON THE MONEY,
23 YES, SIR.

24 Q AGAIN, SO IF SHE ALERTED TO THE SMELL OF DRUGS ON THE
25 MONEY, THAT WOULD CLEARLY BE ON THE VIDEO SINCE HER

1 CONTACT WITH THE MONEY WAS DONE ALL ON THE VIDEO; IS THAT
2 CORRECT?

3 A YES, YOU DO SEE HER SITTING ON THE VIDEO.

4 Q OKAY. WITH THE HELP OF OFFICER RUTLAND.

5 A YOU HAVE TO PRESENT THE ITEM THAT YOU WANT YOUR K-9
6 TO SEARCH.

7 Q IS IT NORMAL FOR THE CONTROLLING OFFICER TO PUSH THE
8 DOG'S BUTT ON THE GROUND AND MAKE THEM SIT?

9 A NO, THAT'S NOT NORMAL, BUT I DIDN'T SEE THAT ON THE
10 VIDEO.

11 THE COURT: WELL, SIR, THEY'LL SEE THE VIDEO. LET
12 THE JURY MAKE THE DECISION OFF THE VIDEO. OKAY.

13 BY MR. WATSON:

14 Q NOW, DURING THE COURSE OF SEARCHING WITH THE DOG,
15 THERE ARE A NUMBER OF FACTORS THAT DETERMINE THE ACCURACY
16 OF THE SEARCH; IS THAT CORRECT? IN OTHER WORDS, THE
17 CONDITIONS, THE WEATHER CONDITIONS MAKE A DIFFERENCE?

18 THE COURT: THE QUESTION IS DO WEATHER CONDITIONS
19 MAKE A DIFFERENCE.

20 THE WITNESS: YES, THEY CAN.

21 BY MR. WATSON:

22 Q WEATHER CONDITIONS CAN MAKE A DIFFERENCE. THE
23 PRESENCE OF CHILDREN CAN MAKE A DIFFERENCE?

24 A NOT TO A NARCOTICS DETECTION DOG IT SHOULDN'T.

25 Q REALLY? ON THESE TRAINING RECORD FORMS FOR FILA, THE

1 FORM CONTAINS A SPOT THAT'S CALLED CONGESTION. WHAT DOES
2 THAT MEAN?

3 A IF THERE IS PEOPLE AROUND.

4 Q EXCUSE ME?

5 A I BELIEVE IF THERE IS PEOPLE AROUND THE AREA, THAT
6 WOULD BE CONGESTION.

7 Q PEOPLE? SO THE DOG IS AFFECTED BY THE PRESENCE OF
8 PEOPLE.

9 A NO, SIR. YOUR DOG SHOULD NOT BE AFFECTED BY THE
10 PRESENCE OF PEOPLE.

11 Q THE DOG IS NOT AFFECTED BY THE PRESENCE OF PEOPLE.
12 BUT YOU INDICATE ON YOUR REPORT WHETHER PEOPLE WERE
13 AROUND--

14 MRS. YOUNG: YOUR HONOR, I AM GOING TO OBJECT AT THIS
15 TIME.

16 THE COURT: HOLD ON. HOLD ON. WHAT IS THE
17 OBJECTION?

18 MRS. YOUNG: FIRST OF ALL, OFFICER FITTERY WAS NOT
19 THE CERTIFIED K-9 HANDLER THAT NIGHT. THE CERTIFIED K-9
20 HANDLER IS OFFICER JOHN RUTLAND. HE IS ASKING HIM
21 QUESTIONS FROM OFFICER RUTLAND'S RECORDS WHICH HE COULD --
22 WOULD NOT HAVE KNOWLEDGE OF.

23 THE COURT: WELL, HE'S NOT BEEN OFFERED AS AN EXPERT,
24 NOT BEEN OFFERED AS -- FOR OPINION, SO I'LL SUSTAIN THAT.
25 BY MR. WATSON:

1 Q YOU'VE TESTIFIED -- YOU TOLD ME -- YOU TESTIFIED
2 EARLIER THAT YOU WERE TRAINED AS A K-9 HANDLER, CORRECT?
3 YOU WERE TO BE NEXT K-9 HANDLER IN LINE?

4 A I WAS.

5 Q SO YOU WERE QUALIFIED AND TRAINED AND YOU KNOW WHAT
6 DISTRACTS A DOG?

7 A NO, SIR. I WAS NOT QUALIFIED. I WAS IN THE PROCESS
8 OF TRAINING--

9 THE COURT: ARE YOU QUALIFIED NOW?

10 THE WITNESS: I AM QUALIFIED NOW.

11 BY MR. WATSON:

12 Q SO ON THESE K-9 REPORTS HERE THAT SHOW THE
13 DISTRACTIONS LIKE THE DEGREE, 45 DEGREES AND WINDY, MINOR
14 TRAFFIC OR CHILDREN PRESENT--

15 MRS. YOUNG: OBJECTION, YOUR HONOR.

16 THE COURT: HOLD ON. WHAT IS YOUR OBJECTION?

17 MRS. YOUNG: THE OBJECTION IS IT'S HEARSAY. HE IS
18 READING FROM THE REPORTS AND NOT ASKING A QUESTION.

19 THE COURT: THAT'S CORRECT. SUSTAINED.

20 BY MR. WATSON:

21 Q WOULD YOU ADMIT THEN THAT THERE ARE THINGS IN THE
22 AREA CALLED -- THAT AFFECT THE PERFORMANCE OF THE DOG AND
23 YOU REFER TO THOSE THING AS CONGESTIONS; RIGHT?

24 THE COURT: THOSE ARE NOT HIS REPORTS. YOU CAN ASK
25 HIM GENERALLY DOES CONGESTION AFFECT THE DOG'S ABILITY TO

1 PERFORM.

2 MR. WATSON: AGAIN, HE INDICATED THAT HE IS--

3 THE COURT: I UNDERSTAND THAT, BUT I'VE RULED,

4 MR. WATSON. YOU CAN ANSWER THAT QUESTION. DOES

5 CONGESTION OF PEOPLE AFFECT THE ABILITY OF A DOG TO ALERT.

6 THE WITNESS: IT SHOULD NOT AFFECT THE ABILITY FOR

7 THE DOG TO ALERT. THAT'S WHY IT IS PLACED IN THE REPORT.

8 THAT OPERATING UNDER CONGESTION THE DOG HAS NO PROBLEMS.

9 THE COURT: IS IT YOUR REPORT?

10 THE WITNESS: NO, SIR. IT'S NOT MY REPORT.

11 THE COURT: THEN HOW DO YOU KNOW WHY. I AM GOING TO

12 MOVE. STRIKE THAT. STRIKE THAT LAST ANSWER THAT HE GAVE,

13 IT'S NOT HIS REPORT.

14 BY MR. WATSON:

15 Q BUT YOU ARE TRAINED AT THIS POINT AND YOU KNOW WHAT

16 AFFECTS THE PERFORMANCE OF A DOG?

17 A YES.

18 Q NOW, YOU INDICATED THAT THERE WAS A DOG BARKING NEXT

19 DOOR.

20 A UH-HUH.

21 Q WOULD A DOG BARKING NEXT DOOR AFFECT THE PERFORMANCE

22 OF A DOG?

23 A IT SHOULDN'T.

24 Q NOW, FROM THE TIME THESE DRUGS WERE ALLEGEDLY FOUND

25 IN THE SHED BEHIND THE HOUSE -- FROM THE TIME THE DOGS --

1 THAT THE DRUGS WERE FOUND, YOU COULD ESTABLISH A CHAIN OF
2 CUSTODY TO THAT DRUG ARRIVING RIGHT HERE IN COURT TODAY;
3 IS THAT CORRECT?

4 A YES, SIR.

5 Q SO CHAIN OF CUSTODY IS VERY IMPORTANT; ISN'T IT? IN
6 ORDER TO BE SURE THAT YOU HAVE THE EXACT DRUGS THAT HE IS
7 CHARGED WITH, ONCE YOU GOT A HOLD OF THESE DRUGS, YOU HAVE
8 TO MAKE A RECORD OF EVERYONE WHO TOUCHES THIS DRUG UNTIL
9 IT GETS TO THIS COURTHOUSE; IS THAT CORRECT?

10 A I'M NOT SURE. I KNOW THAT I HAVE TO MAKE A RECORD OF
11 THE CHAIN OF CUSTODY ON MY BEHALF, AND I BELIEVE THAT IT
12 STAYS THE SAME WAY THROUGHOUT THE ENTIRE PROCESS UNTIL THE
13 NARCOTICS ARE DESTROYED.

14 Q EXACTLY. SO CAN YOU ESTABLISH THE CHAIN OF CUSTODY
15 FROM MR. JOHNSON'S VEHICLE TO THE SHED? YOU CAN'T; CAN
16 YOU?

17 A (WITNESS SHAKES HEAD.)

18 Q THANK YOU. ALL YOU CAN TESTIFY IS THAT FILA
19 SUPPOSEDLY FOUND SOME DRUGS IN THE SHED. YOU CANNOT TRACK
20 MR. JOHNSON – CHAIN OF CUSTODY FROM MR. JOHNSON'S VEHICLE
21 TO THAT SHED?

22 A I CAN STATE THAT THE BAG IS THE SAME AS THE ONE THAT
23 THE DEFENDANT HAD WHICH CONTAINED THE NARCOTICS WHICH WERE
24 LOCATED BY K-9 FILA.

25 Q YOU CAN STATE THAT YOU BELIEVE THE BAG TO BE THE

1 SAME; IS THAT CORRECT?

2 A THAT'S THE SAME BAG.

3 Q YOU BELIEVE IT TO BE THE SAME BAG.

4 A YES.

5 Q CAN YOU SCIENTIFICALLY PROVE THAT THAT IS THE SAME
6 BAG?

7 A I CANNOT, NO.

8 Q CAN YOU POINT TO HIS DNA ON THAT BAG?

9 A NO, SIR.

10 Q CAN YOU POINT TO HIS FINGERPRINTS ON THAT BAG?

11 A NO, SIR.

12 Q AND YOU CAN'T POINT TO ANY CUSTODY FROM MR. JOHNSON'S
13 VEHICLE TO THE BAG. YOU'VE ALREADY STATED THAT. SO TO
14 SUMMARIZE YOUR TESTIMONY IS BASICALLY THAT YOU SAW THE
15 VEHICLE SPEEDING DRIVEN BY MY CLIENT, MR. JOHNSON. YOU
16 PURSUED HIM. HE JUMPED OUT OF THE CAR. HE RAN WITH A
17 BAG.

18 A WITH THAT BLACK BAG, YES, SIR.

19 Q WITH A BLACK BAG THAT YOU'RE INSISTING THAT, THAT IS
20 THE BLACK BAG BUT THAT YOU HAVE NO PHYSICAL PROOF THAT IT
21 IS; IS THAT CORRECT?

22 A I CAN -- YES, SIR, I CAN PROVE IT.

23 Q YOU HAVE NO -- YOU HAVE PHYSICAL PROOF?

24 A I CAN SHOW YOU THAT THE K-9 TRACKED THE BAG.

25 Q CAN YOU SHOW ME PHYSICAL SCIENTIFIC EVIDENCE THAT

1 THIS IS THE SAME BAG THAT MR. JOHNSON HAD?

2 A I WOULD BELIEVE THAT THAT WOULD BE SCIENTIFIC--

3 Q YOU WOULD BELIEVE. CAN YOU SHOW ME--

4 THE COURT: HOLD ON, GENTLEMEN. LET'S HOLD ON A
5 SECOND. THE RULES ARE WHEN HE'S ANSWERING, YOU LET HIM
6 ANSWER. THE RULES ARE WHEN HE'S ASKING YOU QUESTIONS, YOU
7 LET HIM FINISH THE QUESTION. MOVE ALONG.

8 BY MR. WATSON:

9 Q NOW, ONCE YOU FOUND THAT BAG, DID YOU PRESENT THAT
10 BAG TO MR. JOHNSON?

11 A NO, SIR.

12 Q DID MR. JOHNSON EVER MADE A STATEMENT SAYING IT WAS
13 HIS BAG?

14 A I BELIEVE.

15 THE COURT: WAIT. HOLD ON A SECOND, NOW.
16 MR. WATSON, LET ME SEE Y'ALL UP HERE AT SIDE BAR.

17 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

18 MR. WATSON: I HAVE NO FURTHER QUESTIONS AT THIS
19 TIME.

20 THE COURT: MRS. YOUNG, ANYTHING ON REDIRECT?

21 REDIRECT EXAMINATION

22 BY MRS. YOUNG:

23 Q OFFICER FITTERY, HOW DID THE -- LET'S SEE. YOU TOOK
24 CUSTODY OF THIS BLACK BAG THAT WE'VE BEEN TALKING ABOUT;
25 DIDN'T YOU?

- 1 A YES, MA'AM.
- 2 Q AND HOW DID IT GET TO YOUR PATROL CAR?
- 3 A I CARRIED IT.
- 4 Q IN YOUR HANDS?
- 5 A YES.
- 6 Q DID YOU ASK MR. JOHNSON, THE DEFENDANT, ABOUT A BAG?
- 7 A I DID.
- 8 Q WHAT WAS HIS RESPONSE?
- 9 A I WAS CARRYING A SUNGLASS BAG.
- 10 Q JUST A FEW MORE BRIEF QUESTIONS, OFFICER FITTERY.
- 11 WHAT MAKES YOUR IN-CAR CAMERA TURN ON?
- 12 A WHEN I ACTIVATE THE LIGHTS, THAT'S WHEN IT CUTS ON.
- 13 Q OKAY. AND YOU STATED THAT YOU OBSERVED MR. JOHNSON,
- 14 THE DEFENDANT, RUNNING SEVERAL STOP SIGNS?
- 15 A YES, MA'AM.
- 16 Q BUT THAT WAS NOT INDICATED ON YOUR VIDEO?
- 17 A NO, MA'AM, BECAUSE I HADN'T INITIATED LIGHTS BECAUSE
- 18 I WAS TRYING TO CATCH UP TO HIM.
- 19 Q DID YOU CHARGE MR. JOHNSON WITH SOME TRAFFIC OFFENSE
- 20 IN THIS CASE?
- 21 A I DID. RECKLESS DRIVING.
- 22 Q AND DO YOU HAVE ANY KNOWLEDGE AS TO THE DISPOSITION
- 23 OF THAT?
- 24 A HE PLED GUILTY TO IT.
- 25 Q NOTHING FURTHER.

1 THE COURT: THANK YOU. YOU MAY STEP DOWN. NEXT
2 WITNESS.

3 MRS. YOUNG: THE STATE CALLS AIRMAN JOHNATHAN PYLANT.
4 JOHNATHAN PYLANT, AFTER BEING DULY
5 SWORN, TESTIFIED AS FOLLOWS:

6 THE WITNESS: MY NAME IS SENIOR AIRMAN JOHNATHAN
7 PYLANT, P-Y-L-A-N-T.

8 DIRECT EXAMINATION

9 BY MRS. YOUNG:

10 Q OBVIOUSLY YOU'RE EMPLOYED WITH THE AIR FORCE; IS THAT
11 CORRECT?

12 A YES, MA'AM.

13 Q IN WHAT CAPACITY?

14 A I AM STATIONED WITH THE 31ST AS A LINGUIST.

15 Q YOU SPEAK SORT OF FAST. MAKE SURE YOU ANSWER SLOWLY
16 SO EVERYBODY CAN HEAR YOU. OKAY? WHERE DO YOU LIVE, MR.
17 PYLANT?

18 A NORMAN STREET.

19 Q AND HOW LONG HAVE YOU LIVED THERE?

20 A I MOVED THERE JANUARY OF 2007.

21 Q SO YOU WERE LIVING THERE ON THE EVENING OF
22 DECEMBER 18, 2007?

23 A YES.

24 Q ANYTHING UNUSUAL HAPPEN THAT NIGHT?

25 A MY DOG STARTED BARKING WHILE I WAS GETTING READY TO

1 GO TO WORK THAT NIGHT. I WAS WORKING MID THAT EVENING.
2 AND I WALKED OUTSIDE TO FIGURE OUT WHAT WAS GOING ON,
3 WHICH I SAW THE TWO OFFICERS SITTING BEHIND YOU. THE
4 OFFICER FITTERY I BELIEVE. IS THAT HOW YOU PRONOUNCE IT?

5 THE POLICE OFFICER: FITTERY.

6 THE WITNESS: APPROACH ME. AND WE ENGAGED IN A
7 CONVERSATION PERTAINING TO WHY HE WAS IN MY BACKYARD. AND
8 HE ASKED THAT I DETAIN MY DOG AND PRECEDED TO ASK ME
9 QUESTIONS ABOUT A GENTLEMAN THAT THEY HAD BEEN LOOKING
10 FOR.

11 BY MRS. YOUNG:

12 Q AND DID YOU HAVE ANY INFORMATION TO PROVIDE TO THEM?

13 A IN TALKING WITH THEM, THE VAGUE DESCRIPTION THAT HE
14 GAVE ME, I ASSUMED BECAUSE HE DIDN'T WANT TO PRIVY ME TO
15 TOO MUCH INFORMATION, MADE ME REMEMBER THAT EARLIER THAT
16 DAY MY WIFE HAD WOKEN ME UP, BECAUSE I SLEEP DURING THE
17 DAY TO GO TO WORK DURING THE NIGHT, TO TELL ME THAT THERE
18 WAS A GENTLEMAN AT THE BACK DOOR WHO NEEDED TO USE THE
19 PHONE.

20 AND SO I WENT TO THE BACK DOOR AND TALKED WITH THE
21 GENTLEMAN. SAID THAT HE HAD BOUGHT A HOUSE. HE SAID, YOU
22 KNOW, I BOUGHT A HOUSE BACK THERE. HE DIDN'T GIVE ME A
23 SPECIFIC LOCATION OR ANY OF THE SORT, AND THAT I BELIEVE
24 IT WAS A REALTOR OR SOMEBODY HAD DROPPED HIM OFF AT THE
25 HOUSE OR HIS FRIEND OR SOMETHING AND THE ELECTRICITY

1 WASN'T ON, SO HE WAS GOING TO CALL SOMEONE TO COME PICK
2 HIM UP.

3 AND I MEAN, HE LOOKED LIKE A VERY WELL-DRESSED,
4 HANDSOME GENTLEMAN. I DIDN'T QUESTION HIM ABOUT HIS
5 APPEARANCE AT ALL. I GAVE HIM--

6 Q DO YOU RECALL WHAT HE WAS WEARING?

7 A YES. HE WAS WEARING A BLUE AND YELLOW CARDIGAN
8 SWEATER AS WELL AS A BLAZER. I NOTICED THAT HE HAD SOME
9 REALLY NICE SHOES ON, LOAFERS, AND HE HAD HIS DREADS TIED
10 BACK BEHIND HIS HEAD.

11 Q AFTER YOU WERE SPEAKING TO HIM, WHAT HAPPENED NEXT?

12 A I GAVE HIM MY PHONE TO USE, AND HE CALLED HIS COUSIN.

13 Q HOW DO YOU KNOW IT WAS HIS COUSIN?

14 A BECAUSE HE -- I DON'T KNOW. THIS IS FROM THE
15 ASSUMPTION THAT I HAVE OUTSIDE LOOKING IN, BUT HE WAS
16 SEEMINGLY CONVINCING, THE GENTLEMAN ON THE PHONE, THAT HE
17 WAS HIS COUSIN.

18 Q WHAT WAS HE SAYING?

19 A WHAT I REMEMBERED -- WHAT STUCK OUT TO ME WAS THAT,
20 YOU KNOW, HE WAS -- HE WOULD -- SAID THIS IS SO-AND-SO,
21 YOU KNOW, YOUR COUSIN. THIS IS YOUR COUSIN? YOUR COUSIN
22 KIND OF THING AS IF, YOU KNOW, YOU'RE AT A BAR AND YOU'RE
23 HOOKED UP WITH A GUY AND THE GIRL LOOKS OVER AND SAYS,
24 I'VE GOT THAT APPOINTMENT TO GO TO, THAT APPOINTMENT, YOU
25 KNOW, TO GET OUT OF -- TO GET OUT OF THE SCENARIO.

1 AND HE EVEN TOLD HIM, YOU KNOW, WHERE HE WAS AT. HE
2 ASKED ME TALKING ABOUT THE LOCATION. HE SAID THAT THIS
3 WAS NORMAN STREET, AND HE TOLD HIM THAT HE WOULD MEET HIM
4 THERE. IT WAS A VERY BRIEF PHONECALL. HE HUNG UP. HE
5 PARTED WAYS AND WENT INSIDE.

6 Q WHERE DID HE GO?

7 A I CAN'T REMEMBER IN DETAIL.

8 Q HE DIDN'T STAY IN YOUR BACKYARD?

9 A NO, HE DIDN'T. HE LEFT.

10 Q CAN YOU DESCRIBE THE RESIDENCE THAT WAS DIRECTLY
11 BEHIND YOURS AT THE TIME THAT WAS IN QUESTION BACK IN
12 DECEMBER OF 2007?

13 A IT WAS A DELAPIDATED ABANDONED RESIDENCE. THERE'S
14 BEEN A COUPLE OF THOSE IN MY NEIGHBORHOOD WHERE PEOPLE
15 JUST UP AND LEAVE. BUT, YEAH, THERE WAS NOBODY LIVING
16 THERE. IT HAD NOT BEEN TAKEN CARE OF OR MAINTAINED.

17 Q I WANT TO SHOW YOU WHAT'S BEEN MARKED FOR
18 IDENTIFICATIONS PURPOSES AS STATE'S EXHIBIT 19 AND ASK YOU
19 IF YOU -- YOU CAN HOLD IT. I ASK YOU IF YOU RECOGNIZE
20 THAT DOCUMENT.

21 A YES, IT'S A DOCUMENT FROM MY CELLPHONE BILL.

22 Q IS IT IS A COPY OF YOUR CELLPHONE BILL?

23 A YES.

24 Q IS IT A TRUE AND ACCURATE COPY OF YOUR CELLPHONE
25 BILL?

1 A YES.

2 MRS. YOUNG: YOUR HONOR, AT THIS TIME WE WOULD ASK TO
3 MOVE STATE'S EXHIBIT NO. 19 INTO EVIDENCE.

4 MR. WATSON: NO OBJECTION.

5 THE COURT: WITHOUT OBJECTION.

6 (WHEREUPON, STATE'S EXHIBIT 19 WAS ADMITTED INTO
7 EVIDENCE.)

8 BY MRS. YOUNG:

9 Q WHAT TIME PERIOD DOES THAT DOCUMENT COVER?

10 A THE FIRST LISTING IS DECEMBER 12, 2007, 5:26 PM, AND
11 IT FOLLOWS ON TO DECEMBER 20TH, 2007 AT 11:28 AM.

12 Q AND I DRAW YOUR ATTENTION TO THE DATE OF DECEMBER 18.
13 DO YOU RECOGNIZE THAT NUMBER?

14 A NO, I DO NOT.

15 Q DID YOU MAKE THAT PHONECALL?

16 A NO, I DID NOT.

17 Q IS THIS AROUND ABOUT THE TIME THAT YOU THINK THIS
18 PERSON CAME TO YOUR DOOR?

19 A YES.

20 Q AND WHAT DOES THE PHONE BILL STATE?

21 A THE PHONE BILL SHOWS THAT A PHONECALL WAS MADE TO
22 THIS PHONE NUMBER. AND THEN ONE, TWO, THREE TIMES AFTER
23 THAT APPROXIMATELY WITHIN -- FIRST ONE WITHIN EIGHT AND
24 THEN FOUR AND THEN FIVE MINUTES INTERVALS OF EACH OTHER
25 THE PHONECALL -- THE PHONE NUMBER CALLED MY PHONE.

1 AND THIS IS WHERE HIS, YOU KNOW, WHAT I WOULD HAVE TO
2 ASSUME WAS HIS COUSIN WAS CALLING BACK. HE HAD BEEN
3 TRYING TO FIGURE OUT HOW TO GET TO THE LOCATION THAT THE
4 GENTLEMAN FROM MY BACK DOOR HAD TOLD HIM.

5 HE ASKED FOR MY ADDRESS. I JUST DON'T FEEL
6 COMFORTABLE GIVING MY HOUSE NUMBER BECAUSE I DIDN'T KNOW
7 HIM. SO I JUST TOLD HIM IT WAS ON NORMAN STREET. HE SAID
8 HE WOULD BE DOWN THERE SOMEWHERE.

9 SO HE SAID, ALL RIGHT, I'LL LOOK. I HUNG UP AND I
10 GET ANOTHER PHONECALL. HE SAID, HE JUST CAN'T FIND HIM
11 ANYWHERE. AND I ASKED HIM WHERE HE WAS AT. AND I HELPED
12 HIM OUT BECAUSE I AM FAMILIAR WITH THE STREETS AROUND
13 THERE.

14 AND THEN HE GAVE ME A FINAL PHONECALL. AND I WALKED
15 OUTSIDE AND LIKE I SAID, YOU KNOW, WHERE ARE YOU AT?
16 BECAUSE USUALLY I CAN SEE CARS APPROACHING FROM MY FRONT
17 DECK.

18 AND AMONG THE THINGS THAT I NOTICED WERE A COUPLE OF
19 SQUAD CARS AT THE END OF MY -- AND THEN NORMAN STREET AS
20 IT MERGES ON WITH WOMRATH. AND I KEPT ASKING THE GUY
21 WHERE HE WAS AND TOLD HIM THAT HE SHOULD BE COMING UP. I
22 SHOULD BE SEEING HIM APPROACHING.

23 AND HE SAID, ALL RIGHT. AND WE HUNG UP AGAIN AND I
24 NEVER HEARD FROM HIM THE REST OF THE EVENING OR EVER SINCE
25 THEN.

1 Q SO YOU DON'T KNOW THE PERSON THAT THAT NUMBER BELONGS
2 TO, (803) ?

3 A NO.

4 Q AND YOU DID NOT DIAL THAT NUMBER?

5 A NO.

6 THE COURT: WHAT TIME WAS IT?

7 THE WITNESS: THE INITIATING CALL --

8 THE COURT: YES, SIR.

9 THE WITNESS: -- OUT WAS AT 5:30 PM. DO YOU WANT TO
10 KNOW THE OTHER CALLS AS WELL?

11 THE COURT: NO.

12 BY MRS. YOUNG:

13 Q CAN YOU DESCRIBE -- THERE'S BEEN SOME TESTIMONY ABOUT
14 A SHED IN THIS CASE. ARE YOU FAMILIAR WITH THE SHED IN
15 THE YARD THAT'S ADJACENT TO YOURS?

16 A I AM FAMILIAR WITH THE YARD. VAGUELY FAMILIAR WITH
17 THE SHED.

18 Q IS THERE A SHED THERE?

19 A YES.

20 Q DO YOU HAVE AN ESTIMATE OF HOW FAR IT IS FROM YOUR
21 HOUSE TO THAT SHED?

22 A I WOULD ESTIMATE MAYBE FROM MY BACK DOOR 50 FEET, 50
23 TO 70 FEET.

24 Q DID YOU KNOW THE PERSON THAT CAME TO YOUR DOOR?

25 A NO.

1 Q DID YOU EVER FIND OUT THAT PERSON'S NAME?

2 A NOT THAT I REMEMBER.

3 Q NO FURTHER QUESTIONS.

4 THE COURT: MR. WATSON?

5 MR. WATSON: MAY IT PLEASE THE COURT. I ONLY HAVE A
6 COUPLE OF QUESTIONS.

7 CROSS-EXAMINATION

8 BY MR. WATSON:

9 Q YOU'RE SAYING THAT MR. JOHNSON IS THE PERSON WHO CAME
10 TO YOUR DOOR.

11 A YES.

12 Q AND YOU WERE ABLE TO HEAR HIS CONVERSATION YOU
13 INDICATED?

14 A A ONE-SIDED CONVERSATION, OF COURSE, BUT YES.

15 Q YOU HEARD HIS SIDE OF THE CONVERSATION.

16 A YES.

17 Q OKAY. WAS THERE ANY CONVERSATION ABOUT POSSESSION OF
18 ANY DRUGS?

19 A NO.

20 Q AND YOU HAD A CHANCE TO LOOK IN THE SHED THAT'S
21 BEHIND YOUR HOUSE AT ANY POINT?

22 A NO.

23 Q OKAY. SO YOU DON'T KNOW WHAT'S IN THE SHED? YOU
24 DON'T KNOW WHAT WAS IN IT THEN, YOU DON'T KNOW WHO PUT
25 WHAT IN THERE WHEN; IS THAT CORRECT?

1 A NO, IT'S NOT MY PROPERTY.

2 Q OKAY. AND THE PROPERTY WAS GROWN UP QUITE A BIT AT
3 ONE POINT; ISN'T THAT CORRECT?

4 A UH-HUH.

5 Q IN FACT, IS THIS THE CONDITION OF THE PROPERTY RIGHT
6 NOW, THE HOUSE BEHIND YOU?

7 A ACTUALLY IT'S A LITTLE BETTER. SINCE THEN SOMEBODY
8 HAS MOVED INTO IT AND THEY HAVE BEEN FIXING IT UP.

9 Q OKAY. BUT THIS--

10 THE COURT: MR. WATSON, GIVE US THE NUMBER OF THAT
11 EXHIBIT.

12 MR. WATSON: THIS IS EXHIBIT NO. 2.

13 THE COURT: THANK YOU.

14 BY MR. WATSON:

15 Q THIS EXHIBIT REPRESENTS THE PRESENT STATE OF THE
16 HOUSEHOLD. AND YOU SAID THE STATE IS EVEN A LITTLE BETTER
17 NOW.

18 A YEAH, THERE IS ACTUALLY SOMEONE LIVING THERE.

19 Q A NICE COUPLE I MIGHT ADD. I TALKED WITH THEM. BUT
20 AT THE TIME OF THIS INCIDENT, THIS WAS THE CONDITION OF
21 THE PROPERTY; IS THAT CORRECT?

22 THE COURT: GIVE US THE NUMBERS.

23 BY MR. WATSON:

24 Q ON EXHIBIT NO. 5, THAT'S THE CONDITION OF THE
25 PROPERTY; IS THAT CORRECT?

1 A UH-HUH.

2 THE COURT: PLEASE ANSWER YES OR NO.

3 THE WITNESS: I APOLOGIZE. YES.

4 BY MR. WATSON:

5 Q AND THIS IS ANOTHER PICTURE OF THAT SAME PROPERTY?

6 THE COURT: EXHIBIT 4?

7 BY MR. WATSON:

8 Q EXHIBIT 4 IS ANOTHER PICTURE OF THAT SAME PROPERTY;
9 IS THAT CORRECT?

10 A IT LOOKS TO BE, YES.

11 Q SO THERE'S BEEN A SUBSTANTIAL CHANGE IN THE CONDITION
12 OF THE PROPERTY SINCE MR. JOHNSON APPEARED AT YOUR HOUSE;
13 IS THAT CORRECT?

14 A YES.

15 Q AND THERE SEEMED TO BE LOTS OF PLACES AROUND AND
16 BUSHES HERE TO HIDE STUFF; ISN'T THAT CORRECT?

17 A UH-HUH. YES.

18 THE COURT: REFERRING TO EXHIBIT 4.

19 BY MR. WATSON:

20 Q OH, REFERRING TO EXHIBIT NO. 4, THERE SEEMS TO BE A
21 LOT OF PLACES, BUSHES AROUND THE PROPERTY IN WHICH SOMEONE
22 COULD HIDE THINGS. AND DO YOU KNOW IF THIS IS THE INSIDE
23 OF THAT SHED? HAVE YOU EVER SEEN THE INSIDE OF THAT SHED?

24 A NO, I HAVE NOT, SIR.

25 Q EXHIBIT NO. 6. HAVE YOU EVER SEEN THE INSIDE OF THAT

1 SHED?

2 A NO, I HAVE NOT, SIR.

3 Q OKAY. OKAY. BUT YOUR TESTIMONY IS THAT YOU HEARD
4 ONE SIDE OF THE CONVERSATION, AND MR. JOHNSON NEVER ONCE
5 TALKED TO THE PERSON ON THE OTHER LINE -- OTHER END OF THE
6 PHONE ABOUT ANY DRUGS?

7 A NO, HE DID NOT.

8 Q THAT HE WAS IN TROUBLE OR RUNNING FROM THE POLICE
9 BECAUSE OF DRUGS OR ANYTHING LIKE THAT?

10 A NO.

11 MR. WATSON: I HAVE NOTHING FURTHER.

12 THE COURT: THE LAST RESPONSE WAS NO FOR THE RECORD.
13 REDIRECT, IF ANY?

14 MRS. YOUNG: NO FURTHER QUESTIONS. MAY THIS WITNESS
15 BE EXCUSED?

16 THE COURT: THANK YOU. MR. PYLANT, YOU MAY GO SERVE
17 THE COUNTRY. READY TO STOP?

18 (WITNESS LEFT THE STAND.)

19 MRS. YOUNG: I THINK SO, YOUR HONOR. THE NEXT
20 WITNESSES I IMAGINE WILL BE LENGTHY. SO IT SEEMS LIKE A
21 GOOD TIME TO STOP.

22 THE COURT: MR. FOREMAN, LADIES AND GENTLEMEN, WE'RE
23 GOING TO BREAK FOR THE EVENING. I WILL TELL YOU OR ASK
24 YOU ONCE AGAIN PLEASE DON'T DISCUSS THE CASE. DON'T START
25 ANY DELIBERATIONS. WE'LL START AT 10 O'CLOCK IN THE

1 MORNING.

2 YOUR SAUSAGE BISCUITS AND COFFEE WILL BE HERE ABOUT
3 9:30, 9:15. SO GET HERE IN TIME TO EAT BECAUSE I DON'T
4 LET YOU BRING IT OUT HERE -- IF YOU WANT TO EAT. WE'LL
5 PROBABLY EAT LUNCH TOMORROW AT THE BOWERY. WE'LL SEE HOW
6 WE'RE RUNNING.

7 I CAN DO ONE OF TWO THINGS. I CAN LET Y'ALL ALL GO
8 UP THERE AND EAT OR I CAN BRING IT IN AND WE CAN KEEP
9 MOVING. WE'LL JUST SEE HOW WE'RE RUNNING AT THAT TIME.

10 10 O'CLOCK OKAY WITH EVERYBODY? DOES EVERYBODY HAVE
11 A RIDE HOME. I CAN GET A DEPUTY TO TAKE ANYBODY HOME. OR
12 WE CAN LET PUBLIX -- YOU GOT INS AT PUBLIX YOU CAN GET US
13 A BIG BREAKFAST IN THE MORNING? I ASSUME THAT ANSWER IS
14 NO?

15 THE JUROR: DOUGHNUTS.

16 THE COURT: THANK YOU. Y'ALL HAVE A VERY PLEASANT
17 EVENING. EVERYBODY ELSE REMAIN SEATED.

18 (WHEREUPON THE JURY LEFT THE COURTROOM FOR THE
19 EVENING.)

20 THE COURT: ANYTHING FOR THE RECORD, MRS. YOUNG,
21 BEFORE WE BREAK FOR THE EVENING?

22 MRS. YOUNG: NOTHING FROM THE STATE, YOUR HONOR.

23 MR. WATSON: NOTHING FROM THE DEFENSE, YOUR HONOR.

24 THE COURT: THANK YOU, MR. WATSON. I SUSPECT WE MAY
25 BE FINISHED TOMORROW. I AM NOT SURE. BUT IF ANYBODY HAS

1 ANY SPECIFIC OR PARTICULAR JURY CHARGES THAT YOU WOULD
2 LIKE FOR ME TO CONSIDER, PLEASE HAVE THEM READY FOR ME IN
3 THE MORNING SO I CAN LOOK AT THEM AND THEN WE'LL HAVE A
4 CHARGE CONFERENCE BEFORE OBVIOUSLY THE CASE GOES --
5 OBVIOUSLY BEFORE WE ARGUE AND CHARGE.

6 SO IF THAT'S NOT AN IMPOSITION, PLEASE DO THAT,
7 MR. WATSON, MRS. BETH ANN YOUNG.

8 MRS. YOUNG: YES, SIR, YOUR HONOR.

9 THE COURT: ALL RIGHT. WE'LL STAND AT EASE UNTIL --
10 WE'LL START AT 10 IN THE MORNING. SO PLEASE EVERYBODY BE
11 READY TO GO. THE DEFENDANT IS IN CUSTODY.

12 (WHEREUPON, COURT WAS IN RECESS FOR THE EVENING.)

13 ***** MARCH 18, 2009 *****

14 THE COURT: GOING BACK ON THE RECORD THIS MORNING IN
15 THE STATE VERSUS TREVIS EUGENE JOHNSON. PRESENT IN THE
16 COURTROOM IS THE SOLICITOR'S OFFICE AND THEIR
17 REPRESENTATIVE ALONG WITH THE DEFENSE COUNSEL, MR. WATSON,
18 AS WELL AS THE DEFENDANT.

19 MR. WATSON, AS I INFORMED YOU THIS MORNING ALONG WITH
20 THE SOLICITOR'S OFFICE, AND MR. JOHNSON, I DON'T KNOW IF
21 YOU HAVE HEARD THIS OR NOT.

22 BUT AS I WAS LEAVING YESTERDAY, ONE OF THE BAILIFFS
23 STOPPED ME AND SAID A JUROR NUMBER 66, ROBERT HOLMES,
24 NEEDED TO SPEAK TO ME. AND I DID NOT SPEAK TO HIM BECAUSE
25 I WANTED TO SPEAK TO HIM IN THE PRESENCE OF Y'ALL.

1 BUT I WAS TOLD THAT HE INFORMED ONE OF THE BAILIFFS
2 THAT HE KNEW THE JOHNSON FAMILY. SO I HAVE ASKED
3 MR. HOLMES TO COME IN THIS MORNING AND TELL ME -- GOOD
4 MORNING. HOW ARE YOU?

5 JUROR: I'M OKAY.

6 THE COURT: DID YOU GET YOUR BISCUIT BACK THERE?

7 JUROR: I ATE ALREADY THIS MORNING.

8 THE COURT: DID YOU? TELL ME WHAT'S GOING ON,
9 MR. HOLMES.

10 JUROR: LIKE I TOLD THE BAILIFF, IT'S BEEN SOME YEARS
11 AGO, BUT I MET THEM BEFORE.

12 THE COURT: YOU KNOW THE JOHNSON FAMILY.

13 JUROR: YES, SIR.

14 THE COURT: AND DOES THAT GIVE YOU SOME CONCERN ABOUT
15 SITTING ON THE JURY?

16 JUROR: NO. I JUST WANTED TO MAKE SURE THAT
17 EVERYBODY KNEW THAT I DID KNOW THE FAMILY.

18 THE COURT: WELL, THE PROBLEM THAT PRESENTS IS IF
19 THEY HAD KNOWN THAT WHEN THEY WERE DRAWING THE JURY,
20 THOUGH, THEY MAY HAVE MADE A DIFFERENT STRIKE. HOW WELL
21 DO YOU KNOW THEM?

22 JUROR: NOT THAT WELL.

23 THE COURT: SIR?

24 JUROR: NOT THAT WELL. BASICALLY THROUGH MR. MACKEY.
25 AND HOW I REMEMBER WHEN I SAW MR. MACKEY SITTING BACK

1 THERE. HE IS NOT HERE RIGHT NOW. MR. BO MACKEY. HE WAS
2 SITTING BACK THERE. AND I KEPT LOOKING. I SAID, I KNOW
3 THEM FROM SOMEWHERE.

4 THE COURT: ALL RIGHT, SIR. WHY DON'T YOU STEP RIGHT
5 OUT THERE IN THE HALL. LET ME ASK YOU THIS, MR. HOLMES.
6 THE FACT THAT YOU TOLD ME THAT YOU RECOGNIZE SOME OF THE
7 FAMILY MEMBERS, THAT YOU'VE KNOWN THEM IN THE PAST, WOULD
8 THAT IN ANY WAY KEEP YOU FROM BEING FAIR AND IMPARTIAL IN
9 THE TRIAL OF THE CASE?

10 JUROR: NO.

11 THE COURT: ALL RIGHT, SIR. JUST HAVE A SEAT. JUST
12 STEP OUT IN THE HALL A SECOND.

13 (JUROR LEFT THE COURTROOM.)

14 THE COURT: OKAY. WHAT IS STATE'S POSITION?

15 MRS. YOUNG: YOUR HONOR, THE STATE'S POSITION IS
16 THIS. WHEN YOU ASKED THE QUESTION IF ANYBODY KNEW OR WAS
17 RELATED TO THIS DEFENDANT, NOBODY ANSWERED. IF HE HAD
18 STOOD UP AND INDICATED THAT HE KNEW HIM, WE WOULD HAVE
19 USED A STRIKE FOR HIM.

20 THE COURT: I UNDERSTAND.

21 MRS. YOUNG: WE WOULD ASK THAT HE BE REMOVED AND AN
22 ALTERNATE BE PLACED ON THE JURY.

23 THE COURT: ALL RIGHT. MR. WATSON, WHAT IS YOUR
24 POSITION?

25 MR. WATSON: CERTAINLY, YOUR HONOR, THAT CHANGES THE

1 DYNAMICS OF THE JURY AND WE'D MOVE FOR A MISTRIAL.

2 THE COURT: MOVED FOR A MISTRIAL?

3 MR. WATSON: BASED ON THE FACT THAT THAT
4 SUBSTANTIALLY CHANGES THE DYNAMICS OF THE JURY
5 SUBSTITUTING THE ONLY SUBSTITUTE THAT WE HAVE LEFT.

6 THE COURT: WELL, THAT'S WHY I DREW TWO ALTERNATES.
7 ANYTHING ELSE? ANY OTHER POSITION? MR. WATSON, ANY OTHER
8 POSITION OTHER THAN YOU DON'T LIKE THE DYNAMICS OF THE
9 JURY IF I EXCUSE HIM?

10 MR. WATSON: NOTHING FURTHER, YOUR HONOR.

11 THE COURT: WELL, MRS. BETH ANN YOUNG, THE PROBLEM
12 WITH YOUR POSITION IS THAT BY THE TIME WE GOT TO ROBERT
13 HOLMES, YOU HAD RUN OUT OF STRIKES. AND YOU STRUCK JUROR
14 NUMBER 86 DANIEL LOTT. THAT WAS YOUR FIFTH STRIKE.

15 THEN WE HAD KATHRYN TAYLOR, ANTHONY TYLER AND ROBERT
16 HOLMES. YOU WOULD NOT HAVE BEEN ABLE TO STRIKE HIM.

17 MRS. YOUNG: WELL, YOUR HONOR, WE--

18 THE COURT: BUT YOU COULD HAVE MANAGED YOUR STRIKES
19 DIFFERENTLY I ASSUME.

20 MRS. YOUNG: THAT'S CORRECT, YOUR HONOR. IF WE HAD
21 KNOWN THAT HE KNEW THE DEFENDANT AND HIS FAMILY, WE WOULD
22 HAVE RESERVED A STRIKE SPECIFICALLY FOR HIM. WE WOULD
23 HAVE USED OUR STRIKES DIFFERENTLY. WE DID NOT HAVE THAT
24 KNOWLEDGE AT THE TIME, SO WE WERE NOT ABLE TO DO THAT.

25 AND I BELIEVE THAT MR. WATSON STRUCK EVERYBODY THAT

1 KNEW PEOPLE IN OUR OFFICE OR LAW ENFORCEMENT.

2 THE COURT: WELL, HE DID. HE USED HIS STRIKES
3 APPROPRIATELY BY DOING THAT. ALL RIGHT. I AM GOING TO
4 REMOVE MR. HOLMES AND REPLACE HIM WITH JUROR NUMBER THREE,
5 MRS. BACON. I THINK HER NAME IS BACON. LET ME PUT MY
6 GLASSES ON SO I CAN READ. MRS. DONNA BACON. BRING
7 MR. HOLMES BACK IN, PLEASE.

8 (JUROR ENTERED THE COURTROOM.)

9 THE COURT: MR. HOLMES, I CERTAINLY APPRECIATE YOUR
10 HONESTY AND YOUR BRINGING THAT TO THE ATTENTION OF THE
11 COURT. I AM GOING TO EXCUSE YOU FROM THE JURY. AND YOU
12 ARE FREE FOR THE BALANCE OF THE DAY.

13 IN FACT, I'LL JUST -- SINCE YOU'VE ALREADY SPENT TWO
14 DAYS UP HERE, I AM JUST GOING TO RELEASE YOU FOR THE
15 BALANCE OF THE WEEK.

16 JUROR: THANK YOU.

17 THE COURT: YOU WANT TO SEND HIM A CHECK.

18 THE CLERK: IF HE'LL WAIT FOR ME, I CAN GO AHEAD...

19 THE COURT: IF YOU'LL JUST WAIT OUT THERE IN THE
20 HALL. WE'LL TAKE CARE OF IT. THANK YOU. YOU HAVE A
21 WONDERFUL DAY.

22 THE JUROR: YOU, TOO.

23 (JUROR LEFT THE COURTROOM.)

24 THE COURT: ALL RIGHT. I AM GOING TO START AT
25 10 O'CLOCK LIKE I TOLD THE JURY. I ALSO TOLD MR. WATSON

1 LAST NIGHT I WOULD GIVE HIM A CHANCE TO MEET WITH THE
2 EXPERT, BUT I EXPECTED THAT TO HAVE BEEN DONE BETWEEN NINE
3 AND 10. WHAT TIME DID THE EXPERT GET HERE?

4 MRS. YOUNG: ABOUT 10 'TIL NINE.

5 THE COURT: MR. WATSON, WHAT TIME DID YOU GET HERE?

6 MR. WATSON: ABOUT 15 MINUTES AGO.

7 THE COURT: WHICH WOULD BE ABOUT 20 MINUTES UNTIL 10?

8 MR. WATSON: THAT'S CORRECT.

9 THE COURT: WELL, I KNOW THAT YOU HAD TO COME FROM
10 COLUMBIA. AND LET'S GO ON WITH SOME TESTIMONY. AND
11 BEFORE WE PUT UP THE K-9 EXPERT, I'LL GIVE YOU THE
12 OPPORTUNITY TO TALK WITH HIM. FAIR ENOUGH?

13 MR. WATSON: FAIR ENOUGH.

14 THE COURT: ALL RIGHT. WE'LL STAND AT EASE FOR THREE
15 OR FOUR MORE MINUTES.

16 MRS. YOUNG: YOUR HONOR, MAY I ADD ONE MORE MATTER
17 FOR THE RECORD?

18 THE COURT: YES, MA'AM.

19 MRS. YOUNG: YESTERDAY AFTERNOON MR. WEEKS AND I HAD
20 THE DISCUSSION WITH MR. WATSON WHEREUPON WE DISCLOSED TO
21 HIM THAT ONE OF OUR POTENTIAL WITNESSES, LIEUTENANT CLAY
22 ADAMS, IS MARRIED TO THE INVESTIGATOR FOR OUR OFFICE,
23 JESSIE ADAMS, AND WE JUST WANTED THE RECORD TO REFLECT
24 THAT WE HAD DISCLOSED THAT TO HIM.

25 THE COURT: OKAY. ANYTHING ELSE? MR. WATSON,

1 ANYTHING I CAN -- YOU NEED TO PUT ON THE RECORD THIS
2 MORNING?

3 MR. WATSON: NO, YOUR HONOR.

4 THE COURT: AND DID ANYBODY HAPPEN TO COME UP WITH
5 ANY JURY CHARGES THEY WANTED ME TO LOOK AT? IF NOT, I'LL
6 JUST DO MY STANDARD CHARGE.

7 MR. WATSON: YOUR STANDARD CHARGE INCLUDES
8 INSTRUCTIONS ON CHARGES OF CONSTRUCTIVE POSSESSION?
9 THAT'S FINE, SIR.

10 THE COURT: YES, SIR. AND AT THE BREAK IF YOU'LL
11 REMIND ME, I'LL LET -- IF YOU'LL REMIND ME. FAIR ENOUGH?

12 MR. WATSON: FAIR ENOUGH.

13 THE COURT: ALL RIGHT. I'M GOING TO START RIGHT AT
14 10. SO TWO OR THREE MORE MINUTES, BRING THE JURY BACK IN.
15 (WHEREUPON, A BREAK WAS TAKEN.)

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

18 MRS. YOUNG: NOTHING AT THIS TIME, YOUR HONOR.

19 THE COURT: MR. WATSON, ANYTHING FROM THE DEFENSE?

20 MR. WATSON: I'D JUST RENEW MY MOTION TO DISMISS
21 BASED ON THE CHANGE IN THE DYNAMICS OF THE JURY.

22 THE COURT: DENIED. BRING THE JURY IN, PLEASE.

23 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
24 APPROXIMATELY 10:06 AM.)

25 THE COURT: MRS. BACON, I HAD TO EXCUSE MR. HOLMES,

1 SO YOU'RE NOW ELEVATED TO THE GROUP.

2 THE JUROR: OKAY.

3 THE COURT: GOOD MORNING. YOU'RE FINE RIGHT THERE.

4 GOOD MORNING. EVERYONE HAVE A PLEASANT EVENING? SAUSAGE

5 BISCUITS GOOD? I'M LOOKING AT YOU. ALL RIGHT. PUBLIX IN

6 THE MORNING, OKAY, IF WE COME BACK TOMORROW?

7 THE JUROR: OKAY.

8 THE COURT: WHOLE THING. ROAST BEEF. YOU CAN DO

9 THAT; CAN'T YOU?

10 THE JUROR: I THINK SO.

11 THE COURT: I KNEW YOU COULD. CALL YOUR NEXT

12 WITNESS.

13 MRS. YOUNG: THE STATE CALLS DETECTIVE GEORGE SHAW.

14 GEORGE SHAW, AFTER BEING DULY SWORN,

15 TESTIFIED AS FOLLOWS:

16 THE CLERK: HAVE A SEAT IN THE WITNESS BOX STATING

17 YOUR FULL NAME AND SPELLING YOUR LAST FOR THE COURT,

18 PLEASE.

19 THE WITNESS: GEORGE ARLINGTON SHAW, THE SECOND.

20 S-H-A-W.

21 THE COURT: MRS. BACON, I DID TELL YOU YOU'RE NOW ON

22 THE MAIN JURY; RIGHT?

23 THE JUROR: YES.

24 THE COURT: GO AHEAD.

25 DIRECT EXAMINATION

1 BY MRS. YOUNG:

2 Q DETECTIVE SHAW, WHERE ARE YOU EMPLOYED?

3 A NORTH AUGUSTA DEPARTMENT OF PUBLIC SAFETY.

4 Q IN WHAT CAPACITY?

5 A NARCOTICS DETECTIVE.

6 Q HOW LONG HAVE YOU BEEN WITH THE DEPARTMENT?

7 A NINETEEN YEARS.

8 Q DO YOU HAVE ANY ADDITIONAL DUTIES OTHER THAN BEING A
9 NARCOTICS DETECTIVE?

10 A YES. I AM THE SECOND EVIDENCE CUSTODIAN FOR THE
11 DEPARTMENT.

12 Q AND WHAT DOES THAT MEAN THAT YOU'RE THE SECOND
13 EVIDENCE CUSTODIAN?

14 A WELL, PRIMARILY WHAT IT MEANS IS WHEN THE PRIMARY
15 EVIDENCE CUSTODIAN IS OUT, MY LIEUTENANT, I TAKE OVER HIS
16 RESPONSIBILITIES OF LOGGING IN AND PROCESSING EVIDENCE.

17 ON THE OTHER HAND, IT ALSO MEANS THAT I PROCESS AND
18 HANDLE ALL DRUG EVIDENCE AS IT COMES IN FOR THE
19 DEPARTMENT.

20 Q HOW DOES THAT WORK? CAN YOU EXPLAIN THAT TO THE
21 JURY?

22 A YES. WHAT I DO IS WHEN THERE ARE DRUG CASES ASSIGNED
23 TO THE DRUG UNIT, WE REVIEW THOSE CASES. I GO DOWN TO THE
24 EVIDENCE ROOM. WE HAVE AN EVIDENCE DROP BOX THAT THE
25 OFFICERS OPEN UP AND DEPOSIT ALL OF THEIR EVIDENCE.

1 REGARDLESS OF WHAT KIND OF EVIDENCE IT IS, THEY
2 DEPOSIT IT INTO A CENTRAL LOCATION. THERE IS ONLY THREE
3 PEOPLE IN MY DEPARTMENT THAT HAVE AUTHORIZATION TO ENTER
4 THE EVIDENCE ROOM. MY BOSS, MY LIEUTENANT JOE COUNT,
5 MYSELF, AND INVESTIGATOR TIM FORTON.

6 AND PART OF MY RESPONSIBILITIES IS IF I AM NOT DOING
7 FULL EVIDENCE RESPONSIBILITIES, IF I AM JUST DOING THE
8 DRUG STUFF, I GO DOWNSTAIRS, I PULL OUT ALL OF THE DRUG
9 EVIDENCE, I REVIEW ALL OF THE DRUG EVIDENCE, AND MAKE SURE
10 THAT IT'S WHAT IT SAYS ON THE CHAIN OF CUSTODY.

11 I LOG IT INTO THE COMPUTER, AND THEN I STORE IT.
12 THEN WHEN IT'S TIME TO TRANSPORT IT EITHER TO THE DRUG LAB
13 OR TO BE TESTED WITHIN HOUSE -- WHAT I MEAN BY THAT IS
14 SOME PIECES OF DRUG EVIDENCE HAS TO BE SENT OFF TO A DRUG
15 LAB TO BE TESTED.

16 SOME EVIDENCE -- AND I WILL BE MORE SPECIFIC --
17 MARIJUANA CAN BE TESTED WITHIN HOUSE. WE HAVE PEOPLE THAT
18 ARE CERTIFIED TO DO THAT.

19 EVIDENCE THAT HAS TO GO TO A LAB, I'LL TAKE THAT
20 EVIDENCE OUT, PROCESS IT, LOG IT OUT, TRANSPORT IT TO THE
21 DRUG LAB, AND TURN IT OVER TO EITHER THEIR DROP BOX OR TO
22 THEIR CHEMIST.

23 Q AND YOU SAID THAT THE OFFICER PUT THE DRUGS IN A DROP
24 BOX --

25 A YES.

1 Q -- TO GET IT TO YOU. ONCE THEY DO THAT, CAN THEY
2 REACH INSIDE AND PULL IT BACK OUT IN ANY WAY?

3 A NO, MA'AM.

4 Q AND YOU SAID THAT YOU'RE THE SOLE PERSON THAT DOES IT
5 FOR NARCOTICS FOR THE CITY OF NORTH AUGUSTA?

6 A YES, MA'AM. I AM THE ONLY ONE THAT PROCESSES ALL OF
7 THE DRUG EVIDENCE.

8 Q DID YOU HAVE AN OPPORTUNITY TO HANDLE SOME EVIDENCE
9 IN A CASE INVOLVING TREVIS EUGENE JOHNSON?

10 A YES, MA'AM.

11 Q I AM GOING TO SHOW YOU WHAT'S BEEN MARKED STATE'S
12 EXHIBIT 14 AND ASK IF YOU RECOGNIZE IT.

13 A YES. THIS IS A -- IT'S ACTUALLY IN A SEALED
14 ENVELOPE. BUT WHAT I CAN SEE FROM INSIDE, IT'S GOT A
15 NORTH AUGUSTA EVIDENCE LABEL ON IT. IT HAS OUR CASE
16 NUMBER. IT HAS THE DATE ON IT.

17 AND IT HAS MR. TREVIS EUGENE JOHNSON'S NAME AND THE
18 DESCRIPTION AS THE BEST KIT. THAT IS ON THE EVIDENCE
19 LABEL.

20 AND THEN THAT LABEL IS ACTUALLY ON A -- AN EVIDENCE
21 BAG SUPPLIED BY THE AIKEN COUNTY SHERIFF'S OFFICE TO PUT
22 CONTROLLED SUBSTANCES IN TO BE TESTED. AND IT IS A
23 TAMPER-PROOF BAG THAT DRUGS ARE DROPPED INTO.

24 MY HANDWRITING IS ON THE OUTSIDE OF THAT PLASTIC BAG
25 WITH MY SIGNATURE. AND THEN THE CONTENTS THAT YOU SEE

1 HERE WAS ACTUALLY INSIDE OF THIS BAG RIGHT HERE. THIS BAG
2 HAD TO BE CUT OPEN BY THE CHEMIST TO GET ALL OF THE
3 CONTENTS OUT. AND THEN WHAT SHE DID IS SHE PUT IT BACK
4 INTO THIS--

5 THE COURT: SIR, UNLESS YOU KNOW WHAT THE CHEMIST
6 DID, DON'T TESTIFY TO THAT.

7 THE WITNESS: WELL, THE -- IT'S BEEN PUT BACK INTO
8 ANOTHER BAG AND THEN SEALED UP.

9 BY MRS. YOUNG:

10 Q AND HOW DO YOU KNOW THAT YOU TOUCHED THOSE DRUGS?

11 A BECAUSE IT HAD MY NAME AND MY SIGNATURE ON THE
12 PLASTIC BAG.

13 Q AND WHERE DID YOU TAKE THOSE DRUGS?

14 A I TOOK IT TO THE AIKEN COUNTY DRUG LAB.

15 Q ALL RIGHT. DID YOU DO ANYTHING TO THE DRUGS? DID
16 YOU TAMPER WITH THEM OR ALTER THEM IN ANY WAY?

17 A NO, MA'AM. THAT'S NOT MY RESPONSIBILITY.

18 Q SO THE CONDITION THAT THEY CAME IN TO THE DEPARTMENT
19 IS THE SAME CONDITION AS WHEN YOU DELIVERED THEM TO THE
20 AIKEN COUNTY SHERIFF'S OFFICE TO BE TESTED --

21 A THAT IS CORRECT.

22 Q -- TO YOUR KNOWLEDGE.

23 A TO MY KNOWLEDGE.

24 Q PLEASE ANSWER ANY QUESTIONS--

25 THE COURT: CROSS, IF ANY?

1 MR. WATSON: MAY IT PLEASE THE COURT.

2 THE COURT: YES, SIR.

3 CROSS-EXAMINATION

4 BY MR. WATSON:

5 Q OFFICER SHAW, I BELIEVE?

6 A YES.

7 Q I ONLY HAVE A COUPLE OF QUESTIONS FOR YOU. NOW, WHEN
8 YOU GET EVIDENCE DROPPED INTO THE DROP BOX AT THE
9 SHERIFF'S DEPARTMENT, YOU CAN TRACE CHAIN OF CUSTODY FROM
10 THERE ON UNTIL THAT EVIDENCE IS BROUGHT INTO THE COURTROOM
11 TODAY; IS THAT CORRECT?

12 A WE CAN SHOW CHAIN OF CUSTODY FROM THE TIME IT WAS
13 DROPPED AT NORTH AUGUSTA UNTIL THE TIME IT WAS TAKEN TO
14 THE AIKEN COUNTY SHERIFF'S DEPARTMENT AND THEN FROM THE
15 TIME IT LEFT THE SHERIFF'S DEPARTMENT AND CAME BACK TO
16 NORTH AUGUSTA PUBLIC SAFETY.

17 Q OKAY. NOW, HAD THAT EVIDENCE GOTTEN OUT OF THAT
18 CHAIN OF CUSTODY, YOU CANNOT RELY ON THAT EVIDENCE AS
19 BEING ATTRIBUTED TO THE DEFENDANT IN THE CASE; IS THAT
20 CORRECT?

21 A I AM NOT EXACTLY SURE WHAT YOU MEAN, SIR.

22 Q IF SOMEONE IS NOT ABLE TO ACCOUNT FOR THE PRESENCE OF
23 THAT EVIDENCE FROM THE TIME THE SHERIFF -- IT WAS DROPPED
24 OFF AT THE SHERIFF'S DEPARTMENT UNTIL THE TIME IT ARRIVED
25 IN THIS COURTROOM, YOU WOULD HAVE NO CONFIDENCE IN

1 CONVICTING A DEFENDANT BASED ON THAT; IS THAT CORRECT?

2 THE COURT: SUSTAINED.

3 MRS. YOUNG: YOUR HONOR, I OBJECT.

4 THE COURT: THAT'S AN IMPROPER QUESTION.

5 BY MR. WATSON:

6 Q OKAY. BUT YOU CAN TRACE THE CHAIN OF CUSTODY OF THAT
7 EVIDENCE FROM THE TIME IT REACHED TO THE SHERIFF'S OFFICE
8 UNTIL IT ARRIVED HERE IN COURT TODAY?

9 A YES, SIR.

10 Q OKAY. AND THAT'S IMPORTANT IN THE CASE; CORRECT?

11 A WELL, IT'S IMPORTANT UP UNTIL THE TIME IT'S TESTED.

12 Q I MEAN, IT'S IMPORTANT THROUGHOUT THE PROCESS TO KNOW
13 THAT YOU ARE DEALING WITH THE VERY SAME EVIDENCE THAT THE
14 DEFENDANT IS ACCUSED OF HAVING; IS THAT CORRECT?

15 A CORRECT. IT IS THE EXACT SAME EVIDENCE.

16 Q OKAY. OKAY. BUT YOU HAVE YOUR CHAIN OF CUSTODY
17 STARTS FROM THE TIME IT'S DROPPED OFF. YOU DON'T KNOW
18 WHAT HAPPENED TO IT PRIOR TO IT GETTING TO THE SHERIFF'S
19 OFFICE; IS THAT CORRECT?

20 A OH, NO, I KNOW EXACTLY WHERE IT WAS AT UNTIL IT GOT
21 TO THE SHERIFF'S DEPARTMENT.

22 Q YOU KNOW EXACTLY WHERE THE EVIDENCE WAS AT UNTIL IT
23 GOT -- HOW DO YOU KNOW THAT?

24 A WELL, BECAUSE THE DAY IT WAS SEIZED BY OUR OFFICERS,
25 IT WAS DROPPED INTO OUR EVIDENCE IN OUR CUSTODY WHERE IT

1 SAT IN OUR CUSTODY UNTIL IT WAS HAND-DELIVERED TO THE
2 SHERIFF'S DEPARTMENT WHERE IT STAYED UNDER THEIR CUSTODY
3 UNTIL THEY WERE DONE WITH IT.

4 AND WHEN THEY WERE DONE WITH IT, IT WAS HAND-CARRIED
5 BACK TO MY POLICE DEPARTMENT BY MYSELF AND PLACED BACK
6 INTO EVIDENCE BY MYSELF UNTIL IT WAS NEEDED FOR COURT.

7 Q SO YOU'RE SAYING THEN THAT THE SHERIFF'S DEPARTMENT
8 COULD TRACE CHAIN OF CUSTODY OF THIS DRUGS FROM THE POINT
9 WHERE IT WAS DISCOVERED TO THIS COURTROOM TODAY?

10 MRS. YOUNG: I WOULD OBJECT, YOUR HONOR. HE DOESN'T
11 HAVE ANY WAY TO KNOW WHAT THE AIKEN COUNTY SHERIFF'S
12 OFFICE WOULD KNOW.

13 THE COURT: WELL, IF YOU KNOW. I MEAN, HE IS JUST
14 TRYING TO ASK YOU THAT YOU CAN TRACE IT FROM THE TIME
15 Y'ALL GOT IT IN THE FIELD UNTIL RIGHT NOW; RIGHT?

16 THE WITNESS: YES, YOUR HONOR.

17 BY MR. WATSON:

18 Q THAT'S ALL I AM TRYING TO GET AT. WHY ARE YOU SO
19 RELUCTANT TO SAY THAT?

20 THE COURT: SIR, WE DON'T NEED ANY COMMENTS ON THE
21 ANSWERS.

22 BY MR. WATSON:

23 Q NOW, WHEN YOU RECEIVED THIS EVIDENCE, HOW WAS IT
24 PACKAGED?

25 A I WOULD HAVE TO SEE THE ORIGINAL CHAIN OF CUSTODY

1 BECAUSE MY MEMORY DOESN'T--

2 Q CAN YOU GET THAT AND TELL ME HOW IT WAS PACKAGED?

3 A WHEN I RECEIVED IT, IT WAS THREE CLEAR PLASTIC BAGS
4 CONTAINING A WHITE POWDER SUBSTANCE.

5 Q THREE CLEAR PLASTIC BAGS. THAT'S WHAT YOU HAVE HERE
6 TODAY?

7 A THAT'S WHAT IS INSIDE OF THAT BAG--

8 Q THIS IS ALL -- THESE ARE THE THREE PLASTIC BAGS THAT
9 YOU'RE REFERRING TO?

10 A IT WAS IN THREE PLASTIC BAGS.

11 Q DESCRIBE FOR ME EXACTLY THE PACKAGING OF THE DRUGS
12 WHEN YOU RECEIVED IT. WERE THE DRUGS ITSELF WRAPPED IN
13 CELLOPHANE AND THAT CELLOPHANE PLACED IN ANOTHER PLASTIC
14 CONTAINER, THAT PLASTIC CONTAINER PLACED IN ANOTHER
15 PLASTIC CONTAINER, WHICH WAS PLACED IN THIS CASE. TELL ME
16 HOW THE PACKAGING GOES -- DRUGS PACKAGED.

17 A THREE CLEAR PLASTIC BAGS CONTAINING A WHITE POWDER
18 SUBSTANCE.

19 Q THREE PLASTIC BAGS JUST OUT IN THE AIR? I WANT YOU
20 TO DESCRIBE EXACTLY HOW THE DRUGS WERE PACKAGED.

21 THE COURT: HE JUST DID.

22 MR. WATSON: HE JUST SAID THREE PLASTIC BAGS.

23 THE COURT: WELL, THAT'S HIS ANSWER. ANYTHING
24 ELSE -- ANY MORE DESCRIPTION?

25 THE WITNESS: THAT'S IT, YOUR HONOR.

1 THE COURT: ALL RIGHT. HE'S ANSWERED. YOU'VE ASKED
2 AND ANSWERED.

3 BY MR. WATSON:

4 Q AGAIN -- OKAY. THE THREE PLASTIC BAGS THAT YOU'RE
5 REFERRING TO, ARE THEY HERE IN THE COURTROOM RIGHT NOW?

6 A THEY'RE SEALED UP INSIDE THIS BIG ENVELOPE.

7 Q OKAY. THREE PLASTIC BAGS INSIDE THIS BIG ENVELOPE.

8 A YES.

9 Q THE DRUGS WERE IN THOSE THREE PLASTIC BAGS?

10 A THE THREE ORIGINAL PLASTIC BAGS--

11 Q OKAY. THOSE THREE PLASTIC BAGS, WERE THEY CONTAINED
12 IN ANYTHING ELSE?

13 A THAT I DO NOT KNOW, SIR. I DIDN'T--

14 Q NOW, DIDN'T--

15 THE COURT: SIR, SIR, HOLD ON. I KNOW THAT WE ALL
16 WANT TO GET OUR POINT ACROSS. BUT NOW, LET MR. WATSON
17 FINISH HIS QUESTIONS BEFORE YOU ANSWER. MR. WATSON, YOU
18 LET HIM FINISH HIS ANSWER BEFORE YOU ASK ANOTHER QUESTION,
19 PLEASE. ASK YOUR QUESTION AGAIN.

20 BY MR. WATSON:

21 Q AGAIN. YOU SAID THE DRUGS WERE CONTAINED IN THREE
22 SEPARATE PLASTIC BAGS. THAT BAG CONTAINS THREE SMALL
23 PLASTIC BAGS; IS THAT CORRECT?

24 A YES, SIR.

25 Q OKAY. THE COCAINE ITSELF WERE IN THOSE THREE SMALL

1 PLASTIC BAGS; IS THAT CORRECT?

2 A CORRECT.

3 Q NOW, WERE THOSE THREE PLASTIC BAGS INSIDE ANOTHER
4 BAG?

5 A THAT I DO NOT KNOW BECAUSE I DON'T BREAK IT DOWN ANY
6 FURTHER THAN THAT.

7 Q WHEN YOU RECEIVE THEM, THEY WERE JUST THREE
8 INDIVIDUAL BAGS DROPPED IN THE DROP BOX?

9 A THEY WERE JUST DROPPED IN THE EVIDENCE DROP BOX IN
10 INSIDE OF THE BLUE BAG THAT IS INSIDE --

11 Q OKAY.

12 A -- THE OFFICER PLACES THE BAGS INSIDE OF THIS AND
13 DROPS IT INSIDE EVIDENCE.

14 Q OKAY. AND THOSE BAGS WERE NOT IN THIS CONTAINER?
15 THE COURT: ALL RIGHT. THIS IS WHAT? IS THERE A
16 NUMBER ON THAT?

17 MR. WATSON: THIS IS DEFENDANT'S EXHIBIT NUMBER 15.

18 THE COURT: DEFENDANT OR STATE?

19 MR. WATSON: EXCUSE ME. STATE'S EXHIBIT NO. 15.

20 BY MR. WATSON:

21 Q WERE THOSE THREE PLASTIC BAGS INSIDE THIS CONTAINER
22 WHEN YOU RECEIVED IT?

23 A I DON'T RECALL OR REMEMBER SEEING THAT.

24 Q YOU DON'T RECALL SEEING THIS CONTAINER BEFORE? SO
25 YOU CAN'T SAY HOW THE DRUGS WERE PACKAGED WHEN THEY'RE OUT

1 IN THE FIELD; IS THAT CORRECT?

2 A OUT IN THE ACTUAL FIELD, NO, SIR, ONLY WHEN THEY WERE
3 DROPPED INTO EVIDENCE.

4 Q SO IT'S POSSIBLE THEN THAT THOSE DRUGS WERE IN THREE
5 SEPARATE PLASTIC BAGS, WHICH WAS IN ANOTHER PLASTIC BAG
6 WHICH WERE INSIDE EXHIBIT -- STATE'S EXHIBIT NO. 15; IS
7 THAT CORRECT?

8 MRS. YOUNG: YOUR HONOR, I OBJECT. I THINK THIS
9 QUESTION HAS BEEN ASKED AND ANSWERED SEVERAL TIMES.

10 THE COURT: WELL, NOT ONLY THAT. HE IS ASKING
11 POSSIBILITIES, AND THAT'S SPECULATION, AND THAT'S NOT A
12 PROPER QUESTION. IF YOU KNOW, TELL US. IF YOU DON'T,
13 TELL US.

14 THE WITNESS: I DON'T KNOW.

15 THE COURT: THANK YOU. MOVE ALONG.

16 BY MR. WATSON:

17 Q YOU HAVE NO WAY OF ATTRIBUTING THESE PLASTIC BAGS TO
18 MR. JOHNSON; DO YOU?

19 A NO, SIR, I DON'T.

20 Q THANK YOU.

21 MRS. YOUNG: NO FURTHER QUESTIONS FROM THE STATE,
22 YOUR HONOR.

23 THE COURT: YOU MAY STEP DOWN, SIR.

24 (WITNESS LEFT THE STAND.)

25 THE COURT: CALL YOUR NEXT WITNESS.

1 MRS. YOUNG: THE STATE CALLS AMBER WAY.

2 AMBER WAY, AFTER BEING DULY SWORN,

3 TESTIFIED AS FOLLOWS:

4 THE CLERK: HAVE A SEAT IN THE WITNESS BOX STATING
5 YOUR FULL NAME AND SPELLING YOUR LAST FOR THE COURT,
6 PLEASE.

7 THE WITNESS: AMBER MARY WAY. W-A-Y.

8 THE COURT: A-M-B-E-R?

9 THE WITNESS: YES, SIR.

10 DIRECT EXAMINATION

11 BY MRS. YOUNG:

12 Q GOOD MORNING, AMBER. YOU'RE PRETTY SOFT SPOKEN, SO
13 MAKE SURE YOU SPEAK LOUDLY SO EVERYBODY ON THE JURY CAN
14 HEAR YOU; OKAY?

15 A YES, MA'AM.

16 Q CAN YOU TELL US WHERE YOU'RE EMPLOYED?

17 A AIKEN COUNTY SHERIFF'S OFFICE.

18 Q AND IN WHAT CAPACITY?

19 A FORENSIC CHEMIST.

20 Q HOW LONG HAVE YOU BEEN EMPLOYED IN THAT CAPACITY?

21 A THREE YEARS.

22 Q AND PRIOR TO THAT, CAN YOU DESCRIBE YOUR EDUCATION
23 AND PREVIOUS EMPLOYMENT?

24 A YES, MA'AM. I HAVE A BACHELORS DEGREE IN CHEMISTRY
25 AND I WAS TRAINED FOR FOUR MONTHS BY THE SOUTH CAROLINA

1 LAW ENFORCEMENT DIVISION OR SLED UP IN COLUMBIA IN DRUG
2 ANALYSIS.

3 Q AND DID YOU WORK AT ANY OTHER PLACES PRIOR TO THE
4 SHERIFF'S OFFICE?

5 A YES, MA'AM. I MADE A SYNTHESIS CHEMIST AND MADE
6 AMINO ACIDS, CHAINED THEM TOGETHER.

7 Q WHAT ARE YOUR DUTIES WITH THE SHERIFF'S OFFICE?

8 A I LOG IN DRUG EVIDENCE. I TEST DRUG EVIDENCE. I DO
9 THE REPORTS AND TESTIFY IN COURT ON THE REPORTS AND MY
10 FINDINGS.

11 Q AND WHAT TYPE OF TRAINING HAVE YOU HAD TO DO THOSE
12 THINGS?

13 A I WAS TRAINED BY SLED, SOUTH CAROLINA LAW ENFORCEMENT
14 DIVISION, IN FORENSIC DRUG ANALYSIS.

15 Q DO YOU HAVE ANY SORT OF CERTIFICATIONS?

16 A I HAVE THE CERTIFICATION FROM SLED AND I'VE ALSO BEEN
17 TRAINED WITH THE CLANDESTINE LABORATORIES.

18 Q IS THE CERTIFICATION FROM SLED REQUIRED TO ANALYZE
19 DRUGS FOR LAW ENFORCEMENT?

20 A YES, MA'AM.

21 Q AND DURING YOUR EMPLOYMENT, HAVE YOU HAD AN OCCASION
22 TO CHEMICALLY ANALYZE SUBSTANCES AND DETERMINE WHETHER IT
23 IS OR IS NOT A NARCOTIC DRUG?

24 A YES, MA'AM.

25 Q HOW MANY TIMES?

1 A OVER A THOUSAND.

2 Q IS THAT PART OF YOUR REGULAR JOB DUTIES?

3 A YES, MA'AM.

4 Q AND HAVE YOU BEEN QUALIFIED AS AN EXPERT WITNESS IN
5 COURTS OF THIS STATE BEFORE?

6 A YES, MA'AM.

7 MRS. YOUNG: YOUR HONOR, AT THIS TIME WE'D OFFER
8 AMBER WAY AS AN EXPERT IN THE FIELD OF NARCOTICS ANALYSIS.

9 MR. WATSON: WITHOUT OBJECTION.

10 THE COURT: ALL RIGHT. WITHOUT OBJECTION. MR.
11 FOREMAN, LADIES AND GENTLEMEN OF THE JURY, NORMALLY A
12 WITNESS CANNOT TESTIFY ABOUT OPINIONS. THEY CAN ONLY
13 TESTIFY ABOUT THINGS THEY SEE, OBSERVE.

14 BUT THERE IS AN EXCEPTION UNDER OUR RULES WHICH
15 ALLOWS SOMEONE WHO HAS BEEN QUALIFIED IN A PARTICULAR
16 FIELD TO RENDER AN OPINION. SHE'S BEEN QUALIFIED --
17 MRS. WAY HAS BEEN QUALIFIED AS AN EXPERT IN CHEMICAL
18 ANALYSIS, PARTICULARLY DRUGS, SO SHE WILL BE ABLE TO GIVE
19 OPINION TESTIMONY.

20 AT THE CONCLUSION OF THE TRIAL I'LL TELL YOU HOW YOU
21 WEIGH OPINION TESTIMONY BY EXPERTS. I'LL JUST GIVE YOU
22 SOME GENERAL LAW ON THAT. BUT SHE WILL BE ALLOWED TO GIVE
23 OPINIONS WHEREAS THE OTHER LAY EXPERTS CANNOT GIVE
24 OPINIONS.

25 BY MRS. YOUNG:

1 Q IF YOU COULD, MRS. WAY, DESCRIBE FOR THE JURY THE
2 BASIC STEPS YOU FOLLOW WHEN YOU RECEIVE DRUGS AND HOW YOU
3 ANALYZE THEM.

4 A OKAY. I RECEIVE DRUGS OUT OF A DRUG DROP BOX WHICH
5 IS LIKE AN OLD US MAILBOX WHERE YOU CAN DROP IT ON THE
6 TOP, AND I HAVE THE ONLY KEY TO UNLOCK IT TO RECEIVE THE
7 EVIDENCE FROM THE BOTTOM.

8 ONCE I RETRIEVE IT, I BRING IT IN, GIVE IT A LAB
9 NUMBER WHICH IS SPECIFIC FOR THAT CASE. I TEST WITH A
10 PRELIMINARY COLOR TEST. AND ONCE THAT COLOR TEST IS
11 FINISHED, I CAN DO A CONFIRMATORY TEST -- SORRY -- BY AN
12 INSTRUMENT USING INSTRUMENTATION FROM THERE.

13 Q WHAT IS A COLOR TEST?

14 A A COLOR TEST -- WELL, WITH COCAINE, A COLOR TEST
15 WOULD BE COBALT THIOCYANATE AND STANNOUS CHLORIDE.
16 BASICALLY IT IS A PINK SOLUTION. IF YOU DROP THE POWDERED
17 SUBSTANCE IN IT AND IT TURNS BLUE, IT INDICATES THAT YOU
18 MAY BE DEALING WITH COCAINE.

19 Q AND THAT'S SOMETHING THAT YOU LEARNED AS PART OF YOUR
20 TRAINING?

21 A YES, MA'AM.

22 Q AND YOU STATED THAT YOU DID SOME SORT OF CONFIRMING
23 ANALYSIS AFTER THE COLOR TEST?

24 A YES, MA'AM.

25 Q WHAT IS THAT?

1 A ONCE THE COLOR TEST FINISHED, I PUT A SAMPLE OF THE
2 SUBSTANCE I AM DEALING WITH ONTO AN FTIR WHICH IS A
3 FOURIER TRANSFORM INFRARED SPECTROMETER, AND FROM THERE
4 I'LL GET A SPECTRUM WHICH IS COMPARED TO A KNOWN SUBSTANCE
5 AND GIVEN A PERCENT MATCH BETWEEN THE TWO.

6 Q THAT SOUNDS KIND OF CONFUSING. CAN YOU EXPLAIN THAT
7 MORE IN A LITTLE BIT OF LAYMAN'S TERMS WHAT EXACTLY YOU'RE
8 DOING THERE?

9 A I TOOK THE SUBSTANCE. AN INFRARED BEAM SHOOTS
10 THROUGH IT. THE COMPUTER TAKES THE ABSORBENCE, AND I HAVE
11 A SPECTRUM OR I GUESS A PICTURE OF WHAT THAT WAVELENGTH IS
12 AND IT'S COMPARED TO A KNOWN WAVELENGTH, AND IF THE TWO
13 MATCH UP, THEN THAT'S A MATCH TO COCAINE OR
14 METHAMPHETAMINE OR WHATEVER SUBSTANCE I MAY BE DEALING
15 WITH.

16 Q SO YOU'RE USING A SET OF KNOWN WAVELENGTHS THAT YOU
17 HAVE IN YOUR MACHINE?

18 A RIGHT.

19 Q AND THEN YOU PUT THESE SUBSTANCES IN AND IT TESTS
20 THEM AND IT COMPARES TO SEE IF IT'S THE SAME WAVELENGTH?

21 A RIGHT.

22 Q IS THAT THE EXTENT OF THE TYPE OF TESTING YOU DO FOR
23 THIS SORT OF CASE?

24 A YES, MA'AM.

25 Q OKAY. MRS. WAY, I AM SHOWING YOU STATE'S EXHIBIT 14

1 AND ASKING IF YOU CAN IDENTIFY THAT.

2 A YES, MA'AM.

3 Q CAN YOU DESCRIBE WHAT IT IS?

4 A THIS IS MY BEST PACKET WHICH IS GIVEN TO THE OFFICER.

5 IT IS A TAMPER-EVIDENT POUCH, SO IF ANYTHING HAS BEEN DONE

6 TO THE POUCH YOU'LL BE ABLE TO TELL. YOU HAVE TO USE

7 SCISSORS TO CUT IT OPEN.

8 AND THEN HERE YOU'LL SEE THESE ARE EMPTY BAGGIES AND

9 THEN YOU'LL SEE ZIP-LOCKED BAGGIES. AND EVERYTHING HAS MY

10 INITIALS AND MY LAB NUMBER AND ITEM NUMBER TO MATCH.

11 THESE ARE THE BAGGIES THAT THE ORIGINAL SUBSTANCES CAME

12 FROM AND I REPACKAGED THEM INTO THESE BAGGIES.

13 Q SO IF YOU HAD A BAG OF ONE THING, YOU WOULD TAKE IT

14 OUT AND TEST IT, AND THEN PUT IT IN ANOTHER BAG? WHAT I

15 AM ASKING IS IF YOU HAVE NUMEROUS ITEMS GIVEN TO YOU, DO

16 YOU KEEP THEM SEPARATE?

17 A RIGHT. DEPENDING -- WELL, BY LAW DEPENDING. IF

18 THEY'RE SIMILAR, I CAN DO A COMBINED WEIGHT. IF I DO

19 PRELIMINARY TESTS TO SHOW THAT THEY'RE THE SAME THING, BUT

20 USUALLY I KEEP THEM SEPARATE UNLESS THERE IS SOME KIND OF

21 DISTINGUISHING THING THAT I NEED TO -- THAT I JUST NEED TO

22 KEEP THEM SEPARATE.

23 Q AND YOU CAN IDENTIFY STATE'S 14 AS THE SUBSTANCE THAT

24 YOU ANALYZED IN THIS PARTICULAR CASE?

25 A YES, MA'AM.

1 Q HOW CAN YOU DO THAT?

2 A BECAUSE I'VE GOT MY INITIALS. I DON'T KNOW IF YOU
3 GUYS CAN SEE. ON EVERY PACKAGE I'VE GOT MY INITIALS, MY
4 LAB NUMBER WHICH CORRESPONDS TO THE CASE, AND THE ITEM
5 NUMBER.

6 MRS. YOUNG: YOUR HONOR, AT THIS TIME THE STATE WOULD
7 ASK TO MOVE EXHIBIT NO. 14 INTO EVIDENCE.

8 MR. WATSON: WITHOUT OBJECTION.

9 THE COURT: WITHOUT OBJECTION.

10 (WHEREUPON, STATE'S EXHIBIT NO. 14 WAS MARKED FOR
11 IDENTIFICATION AND RECEIVED INTO EVIDENCE.)

12 BY MRS. YOUNG:

13 Q DO YOU WEIGH THE SUBSTANCE BEFORE YOU DO ALL OF THESE
14 COLOR TEST THINGS AND THINGS LIKE THAT?

15 A YES, MA'AM.

16 Q AND FOR THIS PARTICULAR CASE, CAN YOU EXPLAIN TO THE
17 JURY HOW THAT ITEM CAME INTO YOUR POSSESSION?

18 A THIS ITEM WAS PUT INTO -- WELL, I RECEIVED IT IN MY
19 DROP BOX, BROUGHT IT IN, PUT IT INTO THE CHAIN OR PUT IT
20 INTO MY -- I GUESS YOU WOULD CALL IT MY LAB BOOK, AND GAVE
21 IT A LAB NUMBER, SO IT CAME OUT OF MY DROP BOX.

22 Q HOW DO YOU KNOW WHO IT CAME FROM?

23 A THE CHAIN OF CUSTODY.

24 Q IS THAT SOME PAPERWORK THAT YOU RECEIVED?

25 A YES, MA'AM, PAPERWORK.

1 Q AND DID YOU DO -- YOU DID IN FACT DO SOME TESTING ON
2 THOSE ITEMS?

3 A YES, MA'AM.

4 Q AND BASED ON YOUR PAST EXPERIENCE AND TRAINING, DO
5 YOU HAVE AN OPINION OR A CONCLUSION AS TO WHAT THE
6 SUBSTANCE WAS THAT YOU TESTED?

7 A YES, MA'AM.

8 Q AND WHAT WAS THAT?

9 A MAY I HAVE MY REPORT?

10 Q YES, YOU MAY. FOR THE RECORD, THIS HAS BEEN MARKED
11 FOR IDENTIFICATION AS STATE'S EXHIBIT 20. AND YOU
12 RECOGNIZE THAT AS YOUR REPORT?

13 A YES, MA'AM. I FOUND COCAINE 84.11 GRAMS.

14 THE COURT: HOW MANY? 84 WHAT?

15 THE WITNESS: 84.11 GRAMS. AND I ALSO FOUND COCAINE
16 IN A COMBINED WEIGHT OF 168.19 GRAMS.

17 THE COURT: THAT'S TWO SEPARATE WEIGHTS?

18 THE WITNESS: YES, SIR.

19 BY MRS. YOUNG:

20 Q AND DO YOU HAVE SOME SORT OF WAY OF TRACKING THAT YOU
21 RECEIVED THAT AND TESTED IT AND YOU KNOW THAT'S WHAT IT
22 IS?

23 A YES, MA'AM.

24 Q OTHER THAN PUTTING YOUR INITIALS ON THE BAG? HOW DO
25 YOU DO THAT?

1 A IT'S IN A LOG BOOK THAT I RECEIVED ACCORDING TO THEIR
2 CHAIN AND IT'S WRITTEN IN A LOG BOOK.

3 Q YOU TESTIFIED THAT THE ITEMS COME AND THEY'RE IN --
4 THEY'RE SENT TO YOU OR YOU RECEIVED THEM SOMETIMES VIA A
5 DROP BOX.

6 A RIGHT.

7 Q IS THERE MORE THAN ONE DROP BOX AT THE AIKEN COUNTY
8 SHERIFF'S OFFICE?

9 A NO, MA'AM. THERE IS ONE DROP BOX RIGHT OUTSIDE OF MY
10 LABORATORY. AND I HAVE GOT ACTUALLY A CAMERA POINTED ON
11 THE LOCK BOX.

12 Q AND WHAT IS THE PURPOSE OF THAT?

13 A OF THE CAMERA?

14 Q UH-HUH.

15 A JUST TO MAKE SURE THAT NOBODY IS TRYING TO TAMPER
16 WITH ANYTHING OR, YOU KNOW, BASICALLY NOBODY IS TRYING TO
17 MESS WITH ANYTHING.

18 Q AND WHO HAS THE KEY TO THE LOCK BOX?

19 A I DO.

20 MRS. YOUNG: YOUR HONOR, AT THIS TIME THE STATE WOULD
21 MOVE TO ENTER STATE'S EXHIBIT 20 INTO EVIDENCE.

22 MR. WATSON: WITHOUT OBJECTION.

23 THE COURT: WITHOUT OBJECTION.

24 (WHEREUPON, STATE'S EXHIBIT NO. 20 WAS MARKED FOR
25 IDENTIFICATION AND RECEIVED INTO EVIDENCE.)

1 BY MRS. YOUNG:

2 Q YOU SAID SOMETIMES YOU DO DIFFERENT THINGS ON THE
3 WEIGHTS. DO YOU HAVE A REASON FOR THIS PARTICULAR CASE
4 WHY THERE ARE TWO WEIGHTS INSTEAD OF THREE?

5 A RIGHT. IS IT ALL RIGHT IF I GRAB MY REPORT AGAIN?

6 Q SURE.

7 A IN THIS CASE, IN ITEM NUMBER ONE THERE IS A ZIP-LOCK
8 BAG CONTAINING AN EMPTY ZIP-LOCK BAG AND A PLASTIC BAG
9 CONTAINING POWDER SUBSTANCE. WELL, IN THE OTHER CASE
10 THERE ARE TWO ZIP-LOCK BAGS CONTAINING -- PLASTIC BAG
11 CONTAINING POWDER SUBSTANCE.

12 THE FIRST ITEM HAD AN EXTRA EMPTY ZIP-LOCK BAG, SO I
13 DIDN'T PUT THAT WITH THE OTHER TWO WHO HAD THE EXACT SAME
14 CONTENTS. THAT'S HOW I SEPARATED THEM. THE FIRST ONE WAS
15 WEIGHED SEPARATELY BECAUSE OF THE EMPTY ZIP-LOCK BAG THAT
16 WAS CONTAINED, AND THEN THE OTHER TWO WERE DONE TOGETHER
17 BECAUSE THEY WERE JUST SIMILAR.

18 Q AND THEY APPEARED TO BE THE SAME -- THEY WERE
19 PACKAGED THE SAME WAY?

20 A YES, MA'AM.

21 Q AND THEY LOOKED THE SAME?

22 A YES, MA'AM, AND TESTED -- THE PRELIMINARY TESTING WAS
23 THE SAME.

24 Q AND SO BY YOUR PROTOCOL, YOU'RE ALLOWED TO WEIGH
25 THOSE ITEMS TOGETHER?

1 A YES, MA'AM.

2 Q PLEASE ANSWER ANY QUESTIONS THAT MR. WATSON HAS.

3 CROSS-EXAMINATION

4 BY MR. WATSON:

5 Q I ONLY HAVE A COUPLE OF QUESTIONS FOR YOU.

6 A OKAY.

7 Q QUESTION NUMBER ONE IS YOU TESTED THE -- THE
8 SUBSTANCE YOU TESTED CAME UP TO APPROXIMATELY 252 GRAMS OF
9 COCAINE; IS THAT CORRECT?

10 A YES, SIR, I BELIEVE. I'VE GOT THEM LISTED
11 SEPARATELY, SO...

12 Q OKAY. AND ALL YOU KNOW IS THAT THE SUBSTANCE THAT
13 WAS DELIVERED TO YOU TESTED POSITIVE FOR COCAINE. YOU
14 DON'T KNOW HOW THE SHERIFF'S DEPARTMENT GOT A HOLD OF IT;
15 IS THAT CORRECT?

16 A I KNOW THAT I GOT IT OUT OF THE DROP BOX AND THE
17 CHAIN CAME FROM NORTH AUGUSTA.

18 Q THAT'S ALL YOU KNOW.

19 A YES, SIR.

20 Q YOU DON'T KNOW HOW NORTH AUGUSTA GOT IT?

21 A RIGHT.

22 Q IS THAT CORRECT?

23 A OTHER THAN--

24 Q SO YOU DON'T KNOW WHETHER OR NOT MR. JOHNSON EVER
25 HANDLED THE SUBSTANCE; IS THAT CORRECT?

1 A I DON'T KNOW IF I CAN ANSWER THAT. ALL I KNOW IS
2 THAT I GOT IT FROM MY DROP BOX WITH THEIR CHAIN.

3 Q RIGHT. SO--

4 A UH-HUH.

5 Q SO YOU DON'T KNOW WHETHER OR NOT MR. JOHNSON EVER
6 HANDLED THE SUBSTANCE.

7 A I DON'T KNOW.

8 Q THANK YOU.

9 A YOU'RE WELCOME.

10 Q NOTHING FURTHER.

11 THE COURT: ANYTHING?

12 MRS. YOUNG: NO FURTHER QUESTIONS. MAY SHE BE
13 EXCUSED?

14 THE COURT: MRS. WAY, YOU MAY STEP DOWN AND BE
15 EXCUSED.

16 (WITNESS LEFT THE STAND.)

17 THE WITNESS: ALL RIGHT.

18 THE COURT: NEXT WITNESS.

19 MRS. YOUNG: THE STATE CALLS OFFICER JOHN RUTLAND TO
20 THE STAND.

21 JOHN RUTLAND, AFTER BEING DULY SWORN,
22 TESTIFIED AS FOLLOWS:

23 THE CLERK: HAVE A SEAT IN THE WITNESS BOX STATING
24 YOUR FULL NAME AND SPELLING YOUR LAST FOR THE COURT.

25 THE WITNESS: MY NAME IS OFFICER JOHN RUTLAND.

1 R-U-T-L-A-N-D. I AM EMPLOYED BY THE CITY OF NORTH AUGUSTA
2 AND HAVE BEEN FOR NINE YEARS.

3 DIRECT EXAMINATION

4 BY MRS. YOUNG:

5 Q AND IN WHAT CAPACITY ARE YOU EMPLOYED WITH THE CITY?

6 A I'M A TRAFFIC OFFICER AND K-9 HANDLER.

7 Q AND HOW LONG HAVE YOU BEEN A K-9 HANDLER?

8 A THREE YEARS.

9 Q CAN YOU DESCRIBE ANY TRAINING OR, IF ANY, THAT YOU
10 HAVE TO RECEIVE TO BECOME A K-9 HANDLER?

11 A YES, MA'AM. WE DO ROUTINE TRAINING WITH OUR K-9S.
12 WE HAVE TRAINING AIDS THAT ARE ASSIGNED TO US BY THE DEA
13 THAT WE UTILIZE TO TRAIN OUR K-9S. WE ALSO HAVE--

14 Q LET ME INTERRUPT YOU JUST A SECOND.

15 A SURE.

16 Q YOU'RE SOFT-SPOKEN AS WELL. SO IF YOU COULD SPEAK UP
17 A LITTLE BIT SO THAT EVERYBODY CAN HEAR YOU.

18 A WE ALSO DO USPCA CERTIFICATIONS EVERY YEAR. THAT'S A
19 NATIONAL CERTIFICATION FOR OUR K-9S. EXCUSE ME. THE
20 USPCA, UNITED STATES POLICE K-9 ASSOCIATION, SETS A
21 NATIONAL STANDARD THAT OUR DOGS HAVE TO ADHERE TO TO BE
22 CERTIFIED.

23 Q AND TAKE US BACK A LITTLE BIT TO THE BEGINNING. WAS
24 THERE ANY INITIAL TRAINING WHEN YOU FIRST RECEIVED YOUR
25 K-9?

1 A YES, MA'AM. WHEN I WAS ISSUED MY K-9, I WAS SENT TO
2 SANFORD, NORTH CAROLINA, TO TARHEEL K-9 WHERE I WAS
3 INTRODUCED TO MY K-9 FILA. SHE WAS A YEAR AND A HALF OLD
4 GERMAN SHEPPARD TRAINED BY JERRY BRADSHAW AND HIS
5 DELEGATES.

6 DURING THE COURSE OF THAT TRAINING, THE THREE WEEK
7 TRAINING COURSE, WE WERE -- I WAS TAUGHT HOW TO OPERATE MY
8 K-9, HOW TO WATCH WHAT SHE DOES, HOW TO READ WHAT SHE IS
9 TRAINED TO DO.

10 SHE'S TRAINED TO FIND THE ODOR OF NARCOTICS. AND THE
11 TRAINING THAT I RECEIVED FROM MR. BRADSHAW ALLOWED ME TO
12 OBSERVE MY DOG AND DECIPHER WHAT SHE WAS LOOKING FOR,
13 WHETHER SHE WAS IN THE ODOR OF NARCOTIC OR THAT TYPE OF
14 STUFF.

15 Q IT ALLOWED YOU TO UNDERSTAND YOUR DOG'S BEHAVIORS?

16 A YES, MA'AM.

17 Q YOU STATED THAT WAS THREE WEEKS OR FOUR WEEKS?

18 A THAT WAS A THREE WEEK COURSE.

19 Q OKAY. AND THAT WAS PRIOR TO YOU GETTING OUT ON THE
20 ROAD WITH YOUR K-9?

21 A THAT'S CORRECT.

22 Q AND WHAT IS THE NAME OF YOUR K-9?

23 A FILA.

24 Q FILA?

25 THE COURT: HOW DO YOU SPELL THAT?

1 THE WITNESS: F-I-L-A.

2 BY MRS. YOUNG:

3 Q IS SHE -- YOU SAID THAT YOU'RE CERTIFIED BY THE
4 USPCA?

5 A UNITED STATES POLICE K-9 ASSOCIATION.

6 Q AND HOW OFTEN DO YOU HAVE TO RECEIVE THAT
7 CERTIFICATION?

8 A WE RECERTIFIED EVERY YEAR.

9 Q AND DO YOU AND -- DO IT TOGETHER OR IS IT JUST FOR
10 THE DOG?

11 A WE'RE ACTUALLY -- UNITED STATES POLICE K-9
12 ASSOCIATION ACTUALLY CERTIFIES THE HANDLER AND THE K-9.
13 YOU CERTIFY AS A TEAM.

14 Q AND HAVE YOU AND FILA BEEN CERTIFIED EACH YEAR?

15 A YES, MA'AM. WE JUST UNDERWENT THIS PAST WEEKEND
16 CURRENT CERTIFICATION. MYSELF AND MY K-9 USUALLY
17 RECERTIFY THE FIRST WEEK OF MARCH, AS WELL AS THE OTHER
18 CITY'S K-9.

19 WE'VE CONSISTENTLY FINISHED WITHIN THE TOP 5 PERCENT
20 IN OUR REGION, OUR REGION BEING EASTERN GEORGIA, SOUTH
21 CAROLINA AND NORTH CAROLINA.

22 Q AND WERE YOU AND FILA BOTH CERTIFIED AND EMPLOYED
23 WITH THE DEPARTMENT OF PUBLIC SAFETY ON DECEMBER 18, 2007?

24 A YES, MA'AM. WE WERE.

25 Q AND WERE YOU WORKING THAT NIGHT?

1 A YES, MA'AM.

2 Q WHAT WERE YOUR DUTIES?

3 A IT WAS A TRAINING DAY, SO WE WERE ASSISTING THE SHIFT
4 WHILE THEY WERE IN TRAINING. WE WERE ALSO DOING TRAFFIC
5 ENFORCEMENT.

6 Q IS THAT PART OF YOUR DUTIES AS A K-9 OFFICER?

7 A YES, MA'AM. MY DUTIES AS AN OFFICER WITH THE CITY
8 ARE -- AS WELL AS BEING A K-9 HANDLER, I AM ALSO ASSIGNED
9 TO THE TRAFFIC DIVISION. WE DO TRAFFIC ENFORCEMENT,
10 ACCIDENT INVESTIGATION, ACCIDENT RECONSTRUCTION.

11 Q AND WHERE ALL DO YOU HAVE THE AUTHORITY TO PATROL OR
12 INVESTIGATE THINGS?

13 A THE ENTIRE CITY LIMITS OF NORTH AUGUSTA.

14 Q JUST INSIDE THE CITY LIMITS?

15 A YES, MA'AM.

16 Q AND THAT'S IN AIKEN COUNTY?

17 A THAT'S CORRECT.

18 Q WE WERE TALKING A LITTLE BIT ABOUT FILA'S TRAINING.
19 AND YOU STATED THAT SHE'S TRAINED TO DETECT THE ODOR OF
20 NARCOTICS?

21 A THAT'S CORRECT.

22 Q IS THAT HER SOLE DUTY WITH THE DEPARTMENT OF PUBLIC
23 SAFETY?

24 A YES, MA'AM.

25 Q DID YOU HAVE AN OCCASION THAT EVENING TO COME INTO

1 CONTACT WITH THE DEFENDANT IN THIS CASE?

2 A YES, I DID.

3 Q CAN YOU DESCRIBE HOW THAT OCCURRED?

4 A I'M SORRY?

5 Q CAN YOU DESCRIBE HOW THAT OCCURRED AND HOW YOU FIRST
6 CAME INTO CONTACT OR HOW YOU GOT INITIALLY INVOLVED?

7 A I WAS ON ROUTINE PATROL ON THE WEST END OF THE CITY
8 WHEN I OBSERVED OFFICER FITTERY OR HEARD OFFICER FITTERY
9 ON THE RADIO ANNOUNCE THAT HE WAS ATTEMPTING TO STOP A
10 MOTOR VEHICLE FOR A TRAFFIC VIOLATION.

11 MY UNDERSTANDING THROUGH HIS RADIO TRANSMISSION WAS
12 THAT THE VEHICLE WAS FAILING TO STOP FOR HIM. SO I THEN
13 BEGAN TO PROCEED TO THE AREA OF THE CITY THAT OFFICER
14 FITTERY WAS ATTEMPTING TO EFFECT A TRAFFIC STOP.

15 DURING THE COURSE OF THAT ATTEMPT OFFICER FITTERY
16 CAME ACROSS THE RADIO AND ADVISED THAT HIS VEHICLE HAD
17 BEEN HIT AND THAT HE WAS ENGAGING IN A FOOT PURSUIT.

18 WHEN I ARRIVED IN THE AREA THAT OFFICER FITTERY WAS
19 WORKING AND ACTUALLY ENGAGED IN THIS FOOT PURSUIT, I WAS
20 SET UP ON PERIMETER WITH SEVERAL OTHER OFFICERS IN AN
21 ATTEMPT TO LOCATE THE DEFENDANT.

22 Q AND HAD THE DEFENDANT BEEN DESCRIBED OVER POLICE
23 TRANSMISSIONS?

24 A YES, MA'AM. IN OFFICER FITTERY'S RADIO TRANSMISSION,
25 HE DESCRIBED THE PERSON THAT HE WAS ENGAGED IN A FOOT

1 PURSUIT WITH AS A BLACK MALE WITH LONG DREAD LOCKS WEARING
2 BLUE JEANS AND A TAN IN COLOR SPORTS TYPE JACKET OR A
3 COAT, AND I BELIEVE HE ALSO STATED THAT HE THOUGHT HE HAD
4 ON SOME TYPE OF SWEATER OR PLAID SHIRT.

5 Q OKAY. AND WHAT WAS THE NEXT THING YOU DID ONCE YOU
6 STARTED WORKING THAT PERIMETER?

7 A WELL, I STOPPED IN THE AREA WHERE OFFICER FITTERY'S
8 CAR HAD BEEN STRUCK. HE WAS NOT IN THE AREA. I DIDN'T
9 HAVE THE OPPORTUNITY TO CHECK ON HIM TO MAKE SURE THAT HE
10 WAS ALL RIGHT.

11 I DID EXIT MY VEHICLE. I RAN THE VIN NUMBER OF THE
12 VEHICLE HE HAD BEEN ENGAGED IN A PURSUIT WITH TO ENSURE
13 THAT THE VEHICLE WASN'T STOLEN. AFTER I DID THAT--

14 Q HANG ON JUST A SECOND BECAUSE I AM GETTING LOST.

15 A SURE.

16 Q YOU WENT TO THE VEHICLE THAT HAD BEEN WRECKED INTO
17 OFFICER FITTERY?

18 A THE VEHICLE THE DEFENDANT WAS DRIVING. YES, MA'AM.

19 Q AND THAT'S THE ONE YOU'RE REFERRING TO WHEN YOU'RE
20 TALKING ABOUT CHECKING VIN NUMBERS?

21 A YES.

22 Q CONTINUE. I JUST WANTED...

23 A AFTER I CHECKED THE VIN NUMBER ON THE VEHICLE THAT
24 WAS DRIVEN BY THE DEFENDANT, I THEN PROCEEDED TO START A
25 SEARCH OF THE AREA WITH OTHER OFFICERS. WHILE CHECKING

1 THE AREA, A GENERAL DIRECTION WAS GIVEN TO US IN WHICH HE
2 HAD RAN.

3 I BELIEVE THE LAST INFORMATION I RECEIVED WAS THAT HE
4 HAD RAN DOWN CRESLYN AND WAS LAST SEEN CROSSING OVER
5 SEYMORE DRIVE. MY EXPERIENCE IN THE CITY OF NORTH AUGUSTA
6 AND HAVING A WORKING KNOWLEDGE OF THE ROADWAYS, I BEGAN
7 SEARCHING AREAS WHERE I THOUGHT HE WOULD BE PRESENTING
8 HIMSELF.

9 I TURNED DOWN SEYMORE DRIVE. I MADE A LEFT TURN ON
10 MAY STREET. MAY STREET CONNECTS BACK WITH NORMAN STREET.
11 AS I APPROACHED THE INTERSECTION OF NORMAN AND MAY, I
12 LOOKED TO MY LEFT AND I DIDN'T SEE ANYTHING.

13 AND AS I MADE A RIGHT TURN ON NORMAN, OUT OF MY
14 PERIPHERAL VISION I CAUGHT SOMEBODY THAT APPEARED TO BE
15 WALKING DOWN THE SIDE OF THE ROAD THAT INITIALLY SEEMED TO
16 BE STANDING.

17 I BEGAN A THREE-POINT TURN ON MY VEHICLE. ONE OF THE
18 CAPTAINS ENGAGED IN A CONVERSATION ON THE RADIO. AS I
19 MADE MY THREE-POINT TURN AND WAS FACING BACK UP NORMAN
20 STREET, I GOT ON THE RADIO BECAUSE I HAD OBSERVED A BLACK
21 MALE WEARING THE EXACT SAME CLOTHING THAT WAS DESCRIBED BY
22 OFFICER FITTERY.

23 I NOTIFIED OFFICER FITTERY THAT I BELIEVE I HAD A
24 SUSPECT COMING TOWARDS ME. I EXITED MY VEHICLE. AND
25 BASED ON THE CIRCUMSTANCES WITH THE COLLISION, WITH THE

1 PURSUIT, ENGAGED IN A FELONY ARREST.

2 Q DESCRIBE FOR THE JURY, PLEASE, WHAT A FELONY ARREST
3 IS.

4 A YES, MA'AM. BASED ON CIRCUMSTANCES THAT ARE GIVEN TO
5 YOU, A TYPICAL ARREST WOULD BE BASICALLY I WALK UP TO YOU,
6 SPEAK WITH YOU, A CASUAL CONVERSATION, PER SE, AND TAKE
7 YOU INTO CUSTODY.

8 BASED ON THE CIRCUMSTANCES INVOLVED WITH THIS, NOT
9 KNOWING WHETHER OFFICER FITTERY WAS HURT, WHAT TYPE OF
10 DAMAGE WAS DONE TO HIS VEHICLE OR WHAT THE SUSPECT'S
11 INTENT WAS IN LETTING HIS VEHICLE STRIKE OFFICER FITTERY'S
12 AND ALSO GIVEN THE FACT THAT HE HAD RAN, I EXITED MY
13 VEHICLE, I DREW MY SIDE ARM, AND ORDERED THE DEFENDANT ON
14 TO THE GROUND.

15 AS I ORDERED HIM ON TO THE GROUND, HE FAILED TO
16 COMPLY. I AGAIN ORDERED HIM ON TO THE GROUND AT GUNPOINT
17 AT WHICH TIME HE STOPPED WALKING TOWARDS ME. AND I THEN
18 TOLD HIM TO GET ON THE GROUND OR I WOULD DEPLOY MY DOG.
19 HE COMPLIED AND HE WAS TAKEN INTO CUSTODY AT THAT POINT.

20 BUT THE FELONY ARREST WOULD BE USING THE SIDE ARM.
21 AND OBVIOUSLY I WAS BY MYSELF IN EFFECTING THAT ARREST. I
22 DEEMED IT NECESSARY FOR MY SAFETY AND THE SAFETY OF THE
23 GENERAL PUBLIC TO EFFECT THAT ARREST THAT WAY.

24 Q SO YOU'RE DESCRIBING -- THE CIRCUMSTANCES THAT YOU
25 HAVE DESCRIBED ARE THE REASON THAT YOU DREW YOUR SIDE ARM

1 DURING THE COURSE OF TRYING TO ARREST THE DEFENDANT?

2 A YES, MA'AM.

3 Q AND YOU STATED THAT YOU THREATENED TO DEPLOY YOUR DOG
4 ON HIM?

5 A YES, MA'AM, I DID.

6 Q IS THAT PART OF YOUR PRACTICE OR SOMETHING THAT YOU
7 WOULD DO?

8 A NO, MA'AM. MY K-9 IS NOT A TRAINED BITE DOG. THE
9 GENERAL PUBLIC DOES NOT KNOW THAT. BUT IF I AM BY MYSELF,
10 IT TENDS TO MAKE FOR A GOOD TACTIC TO GET SOMEBODY TO
11 COMPLY.

12 THE AVERAGE PERSON IS -- BASED ON WHAT THEY'VE SEEN
13 ON TV, THEY'RE AFRAID OF POLICE DOGS BECAUSE I GUESS YOU
14 WOULD SAY THE NORM IS THAT THEY BITE. I HAVE USED THAT AS
15 I GUESS A PLOY OR TACTIC TO GET COMPLIANCE.

16 Q BUT YOU'RE SAYING THAT FOR A DOG TO BE ABLE TO QUOTE
17 UNQUOTE BITE SUSPECTS, THAT'S A SEPARATE SORT OF TRAINING?

18 A THAT IS A SEPARATE TRAINING. IT IS CONTROLLED
19 AGGRESSION TRAINING.

20 Q AND YOUR DOG DOES NOT HAVE THAT?

21 A NO, MA'AM.

22 Q SO IF YOU WERE TO USE YOUR DOG IN THAT WAY, IT WOULD
23 BE IMPROPER.

24 A SHE WOULD PROBABLY LICK HIM TO DEATH.

25 Q OKAY. ONCE YOU GOT HIM ON THE GROUND, WHAT HAPPENED

1 NEXT?

2 A ONCE I HAD HIM ON THE GROUND, I ORDERED HIM TO PLACE
3 HIS HANDS BEHIND HIS BACK. AS I SAID, I WAS BY MYSELF AT
4 THAT TIME. I DIDN'T HAVE A COVER OFFICER WITH ME.

5 AS A MATTER OF FACT, A CITIZEN OF NORTH AUGUSTA
6 HAPPENED TO BE PASSING BY, STOPPED, AND ASKED ME IF I
7 NEEDED ANY ASSISTANCE. AND I ASKED HIM TO JUST STAND BY
8 FOR JUST A MINUTE IN CASE THERE WAS ANY ALTERCATION WITH
9 THE DEFENDANT.

10 AS I ORDERED MR. JOHNSON TO PLACE HIS HANDS BEHIND
11 HIS BACK, HE FAILED TO COMPLY. HE KIND OF MOVED THEM OUT
12 TO THE SIDE, BUT DID NOT PUT THEM BEHIND HIS BACK. I
13 AGAIN TOLD HIM TO PUT HIS HANDS BEHIND HIS BACK AND NOT TO
14 MOVE OR AGAIN I WOULD DEPLOY MY K-9.

15 AT THAT TIME HE COMPLIED AND PUT HIS HANDS BEHIND HIS
16 BACK AND I WAS ABLE TO EFFECT THE ARREST.

17 Q OKAY. AND HOW DID YOU EFFECT THE ARREST AS YOU
18 STATE?

19 A I APPROACHED HIM BASICALLY FROM AN 11:00 POSITION.
20 AS I APPROACHED HIM, I STEPPED AROUND BEHIND HIM AND CAME
21 UP I GUESS FROM THE FEET TOWARDS HIS BACK AND WAS ABLE TO
22 PLACE THE HANDCUFFS ON HIM.

23 Q AND DID YOU ASK HIM ANYTHING AT THAT POINT IN TIME?

24 A YES, MA'AM. I DID. MY FIRST QUESTION TO HIM AS I
25 RECALL WAS, WHY DID YOU RUN FROM MY OFFICER? AND HIS

1 STATEMENT TO ME WAS THAT HE DIDN'T HAVE A LICENSE. I THEN
2 GOT I GUESS YOU WOULD SAY A LITTLE LOUD WITH HIM. I ASKED
3 HIM, I SAID, YOU RAN BECAUSE YOU DIDN'T HAVE A LICENSE?
4 AND HE SAID, YES, SIR.

5 Q OKAY. WAS THERE ANY OTHER INFORMATION BETWEEN THE
6 TWO OF YOU?

7 A THERE WAS. I ASKED HIM IF HE HAD ANY DRUGS ON HIM.
8 HE STATED HE DID NOT. AT THAT TIME OFFICER -- I BELIEVE
9 OFFICER FITTERY HAD ARRIVED ON THE SCENE, AND THE COMMENT
10 WAS MADE BY OFFICER FITTERY, WHERE IS HIS BAG.

11 AND I THEN TOLD OFFICER FITTERY THAT I HADN'T
12 SEARCHED HIM YET. I DIDN'T SEE ANY BAG AT THAT TIME, BUT
13 I HADN'T SEARCHED HIM.

14 Q AND I DON'T KNOW IF I ASKED YOU THIS OR NOT. BUT THE
15 PERSON THAT YOU WERE TAKING INTO CUSTODY, CAN YOU DESCRIBE
16 WHAT HE WAS WEARING?

17 A THAT DAY?

18 Q YES.

19 A YES, MA'AM. HE WAS WEARING BLUE JEANS. HE WAS
20 WEARING A SPORT COAT. I BELIEVE IT WAS SOME TYPE OF
21 SWEATER. IT ACTUALLY WASN'T A PLAID SHIRT. IT WAS SOME
22 TYPE OF SWEATER, A CARDIGAN-TYPE OF SWEATER, LOAFERS.

23 HE HAD LONG DREAD LOCKS, MATCHED THE DESCRIPTION
24 GIVEN BY OFFICER FITTERY TO A T.

25 Q AFTER YOU ADVISED OFFICER FITTERY THAT YOU HAD NOT

1 YET SEARCHED THE DEFENDANT, WHAT WAS THE NEXT THING THAT
2 YOU DID?

3 A I BELIEVE WE ROLLED HIM ON TO HIS SIDE AND BEGAN
4 CHECKING HIS POCKETS, HIS WAISTBAND FOR ANY CONTRABAND,
5 ANY WEAPONS, ANYTHING THAT WOULD POSE A DIRECT THREAT TO
6 US. AND WE LOCATED I BELIEVE IT WAS A DRIVER'S LICENSE OR
7 AN ID CARD IF I RECALL CORRECTLY.

8 Q OKAY. AND DID YOU LOCATE ANYTHING ELSE?

9 A WE LOCATED US CURRENCY IN HIS PANTS POCKETS.

10 Q DO YOU KNOW HOW MUCH IT WAS?

11 A NOT OFF-HAND I DON'T. AS I RECALL IT'S ABOUT -- OVER
12 \$800.

13 Q AND DID YOU HAVE ANY CONVERSATION WITH THE DEFENDANT
14 REGARDING THAT MONEY THAT YOU HAD FOUND?

15 A YES, MA'AM, I DID. I TOLD HIM THAT WE WERE GOING TO
16 PUT THE MONEY OUT. I WAS GOING TO RUN MY K-9 ACROSS THAT
17 MONEY, AND IF THERE WERE ANY ODOR OF NARCOTICS DETECTED ON
18 THAT MONEY, IT WOULD BE SEIZED BY THE CITY OF NORTH
19 AUGUSTA.

20 Q OKAY. WHAT WAS THE NEXT THING THAT YOU DID?

21 A I BELIEVE THE NEXT THING WE DID, WE PULLED HIM UP OFF
22 OF THE GROUND. I WENT BACK TO MY PATROL VEHICLE AND
23 DEPLOYED MY K-9 TO CONDUCT AN AIR SNIFF OF THE CURRENCY.

24 Q OKAY. WHEN YOU -- HOW DO YOU GIVE INSTRUCTIONS TO
25 FILA?

1 A HER COMMAND TO SEARCH IS -- CHECKOSLOVAKIAN COMMANDS
2 ARE GIVEN TO HER FOR SEARCHES, SITS, STAYS, THAT TYPE OF
3 STUFF.

4 Q AND WHY DO YOU USE CHECKOSLOVAKIAN DEMANDS? COMMANDS
5 I SHOULD SAY.

6 A ONE, IT'S -- IT KEEPS THE GENERAL PUBLIC FROM BEING
7 ABLE TO GIVE HER COMMANDS. THE LOGIC BEHIND THAT WOULD BE
8 FOR AGGRESSIVE DOGS, BITE DOGS, YOU WOULDN'T WANT TO SEND
9 A BITE DOG ON SOMEBODY THAT WAS ABLE TO RECALL THAT DOG,
10 AND THAT'S -- I BELIEVE THAT'S WHERE IT STARTED, AND IT'S
11 STUCK WITH THOSE DOGS.

12 Q IS FILA FROM CHECKOSLOVAKIA?

13 A YES, MA'AM. SHE IS.

14 Q OKAY. SO ONCE YOU GOT HER OUT OF THE CAR, WHAT DID
15 SHE DO?

16 A SHE WAS GIVEN THE COMMAND TO SEARCH, WHICH IS ZUCH.

17 Q WHAT IS THAT AGAIN?

18 A ZUCH, Z-U-C-H. THAT'S HER COMMAND TO SEARCH.

19 Q ZUCH?

20 A YES.

21 Q AND WHAT DID SHE DO?

22 A SHE -- WE PROCEEDED UP BEHIND MR. JOHNSON AND BACK --
23 STARTED WORKING BACK DOWN THE HILL. SHE WAS GIVEN A
24 COMMAND TO SEARCH. AS WE APPROACHED THE MONEY, I
25 PRESENTED THE LEADING EDGE OF THE MONEY, BASICALLY WHERE

1 THE GRAPH IN THE CURRENCY STARTED, AS IT'S LAYING ON IT.

2 SHE PUT HER NOSE ON TO THAT CURRENCY. AS SHE PUT HER
3 NOSE ON TO THE CURRENCY, SHE WENT INTO A SIT. I THEN
4 PRESENTED THE MIDDLE OF THAT CURRENCY. AS I PRESENTED THE
5 MIDDLE OF THAT CURRENCY, SHE LAID DOWN ON TOP OF IT.

6 Q AND YOU STATED SITTING IS HER TRAINED RESPONSE?

7 A SITTING IS HER FINAL RESPONSE. AS WE CONDUCT
8 SEARCHES WITH THESE K-9S, HER ULTIMATE RESPONSE IS TO GO
9 INTO A SIT WHEN SHE LOCATES THE ODOR OF NARCOTICS, NOT
10 NECESSARILY NARCOTICS THEMSELVES, BUT JUST THE ODOR OF.

11 WE'RE TRAINED TO WATCH FOR ANY BEHAVIOR CHANGES SUCH
12 AS A CHANGE IN THE MANNER IN WHICH SHE IS SNIFFING, BODY
13 BEHAVIOR, WHETHER SHE TENSES UP, TAIL WAG, ANYTHING THAT'S
14 OUT OF THE NORM OF WHAT SHE WAS DOING PRIOR TO GETTING AN
15 ODOR OF A NARCOTIC.

16 Q CAN YOU DESCRIBE TO THE JURY WHAT YOU MEAN BY
17 PRESENTING?

18 A AS A K-9 HANDLER, WE'RE TAUGHT TO PRESENT PRODUCTIVE
19 AREAS TO OUR K-9S. I GUESS A GOOD EXAMPLE WOULD BE TO
20 SEARCH THIS ROOM. TO CUT DOWN ON TIME AND SEARCHES, YOU
21 WOULDN'T WANT HER TO JUST WALK AROUND EVERYTHING.

22 YOU WOULD WANT TO PRESENT PRODUCTIVE AREAS, CRACKS,
23 SEAMS, FLOORS, THAT TYPE OF STUFF. ON A VEHICLE, ANY DOOR
24 SEAMS, DOOR HANDLES, ANYTHING THAT MAY HAVE BEEN TOUCHED,
25 ANY AREAS WHERE AIR COULD ESCAPE TO PRODUCE THAT ODOR.

1 Q BUT IN THIS CASE YOU WERE PRESENTING HER WITH THE
2 MONEY?

3 A YES, MA'AM. IT'S GIVING HER A PRODUCTIVE AREA WHERE
4 YOU WANTED HER TO SEARCH. IF I WANTED HER TO SEARCH THE
5 GRASS BEFORE, I'D PRESENT THE LEADING EDGE. IF I WANTED
6 HER TO SEARCH THE MONEY ITSELF, I WOULD PRESENT THE CENTER
7 OF THE MONEY TO DIRECT HER FOCUS TO THAT AREA.

8 Q AND IS THAT CONSISTENT WITH THE TRAINING YOU RECEIVED
9 IN HANDLING HER?

10 A YES, MA'AM, IT IS.

11 Q AFTER SHE ALERTED ON THE MONEY, DID YOU HAVE ANY
12 FURTHER CONVERSATION OR COMMENTS FOR THE DEFENDANT?

13 A I DON'T RECALL. I BELIEVE I DID TELL HIM THAT MY K-9
14 HAD ALERTED TO THAT CURRENCY, BUT I DON'T RECALL.

15 Q AT SOME POINT IN TIME DID YOU MAKE A GENERAL COMMENT
16 TO HIM ABOUT THE AREA AND THINGS BEING FOUND?

17 A I DID. I ASKED HIM IF HE HAD ANY NARCOTICS IN HIS
18 POSSESSION. HE STATED NO. I ASKED HIM WHERE HE THREW HIS
19 DRUGS DOWN AT. HE STATED HE DIDN'T THROW ANYTHING DOWN.

20 I TOLD HIM THAT I WAS GOING TO CONDUCT AN OPEN AIR
21 SEARCH WITH MY K-9 IN THE AREA THAT HE HAD BEEN SEEN
22 WALKING IN AND THAT ANY DRUGS THAT WERE FOUND THERE WOULD
23 BE HIS.

24 Q WHY WOULD YOU SAY SOMETHING LIKE THAT?

25 A IT'S USUALLY NOT A GOOD WAY TO PUT ANYTHING. THERE

1 IS NO EXCUSE, NO DEFENSE FOR THAT, BUT BASICALLY JUST A
2 DEPLOY TO SEE IF HE WOULD ADMIT TO THROWING ANY DRUGS
3 DOWN.

4 Q HAVE YOU EVER PLANTED ANY EVIDENCE ON A SUSPECT --

5 A NO, MA'AM.

6 Q -- OR DEFENDANT?

7 A NO, MA'AM.

8 Q DO YOU CARRY AROUND DRUGS IN YOUR CAR --

9 A NO, MA'AM.

10 Q -- AS A COMMON PRACTICE?

11 A NO, MA'AM. THE TRAINING AIDS THAT WE USE FOR OUR
12 K-9S ARE SIGNED OUT TO US FOR TRAINING PURPOSES AND SIGNED
13 RIGHT BACK IN.

14 Q OFFICER RUTLAND, DID YOU HAVE OPERATIONAL VIDEO IN
15 YOUR PATROL CAR?

16 A YES, MA'AM, I DID.

17 Q WAS IT WORKING ON THE EVENING IN QUESTION?

18 A YES, MA'AM.

19 Q LET ME SHOW YOU WHAT'S BEEN MARKED FOR IDENTIFICATION
20 PURPOSES AS STATE'S EXHIBIT 12 AND ASK IF YOU RECOGNIZE
21 IT.

22 A YES, MA'AM.

23 Q WHAT IS IT?

24 A IT'S A DUPLICATE OF MY IN-CAR CAMERA.

25 Q AND HAVE YOU HAD AN OPPORTUNITY TO OBSERVE WHAT WAS

1 ON YOUR IN-CAR CAMERA SINCE THE INCIDENT?

2 A YES, MA'AM, I HAVE.

3 Q HAVE YOU OBSERVED IT RECENTLY?

4 A YES, I DID.

5 Q AND DOES IT APPEAR TO BE THE SAME AS IT WAS RECORDED
6 ON THE NIGHT IN QUESTION?

7 A YES, MA'AM.

8 MRS. YOUNG: YOUR HONOR, AT THIS TIME WE WOULD ASK TO
9 ENTER STATE'S EXHIBIT 12, THE IN-CAR VIDEO FROM OFFICER
10 RUTLAND INTO EVIDENCE.

11 MR. WATSON: WITHOUT OBJECTION.

12 THE COURT: WITHOUT OBJECTION.

13 (WHEREUPON, STATE'S EXHIBIT 12 WAS ADMITTED INTO
14 EVIDENCE.)

15 MRS. YOUNG: AND MAY WE PUBLISH IT TO THE JURY AT
16 THIS TIME?

17 THE COURT: YOU MAY.

18 MRS. YOUNG: IS IT OKAY IF THE WITNESS STEPS DOWN OFF
19 THE STAND SO HE CAN VIEW IT ALSO?

20 THE COURT: YES, MA'AM.

21 BY MRS. YOUNG:

22 Q WHILE THAT'S GETTING SET UP, I JUST HAVE A COUPLE OF
23 OTHER QUESTIONS FOR YOU. YOU ARE A K-9 HANDLER?

24 A YES, MA'AM.

25 Q AND PART OF YOUR DUTY IS TO FIND DRUGS?

1 A YES, MA'AM.

2 Q DOES FINDING DRUGS EXCITE YOU?

3 A YES, MA'AM.

4 Q OKAY. BECAUSE THAT'S BASICALLY YOUR FUNCTION?

5 A YES, MA'AM. I HAVE A 17 YEAR OLD SON. AND ANY DRUGS
6 I GET OFF THE STREET IS LESS THAT CAN BE SOLD OR DEALT TO
7 HIM.

8 MR. WATSON: YOUR HONOR, I OBJECT TO THIS LINE OF
9 TESTIMONY.

10 THE COURT: SUSTAINED. JUST STRIKE THAT LAST
11 COMMENT, LADIES AND GENTLEMEN. THAT'S NOT RELEVANT TO
12 THIS TRIAL. I JUST TOLD HIM THAT HE COULD STEP CLOSER.

13 BY MRS. YOUNG:

14 Q REGARDING THE COMMENTS THAT YOU HAD ABOUT WHAT YOU
15 SAID TO THE DEFENDANT, DESCRIBE HOW YOU SAID IT TO HIM.

16 A WELL, THE COMMENTS INITIALLY WHEN I CAME IN CONTACT
17 WITH HIM, I ASKED HIM TWICE TO GET ON THE GROUND. HE DID
18 NOT GET ON THE GROUND. AND I APOLOGIZE FOR MY LANGUAGE UP
19 FRONT.

20 AS HE FAILED TO COMPLY, I TOLD HIM IF HE DIDN'T GET
21 ON THE GROUND, I WAS GOING TO SEND MY DOG TO BITE HIS ASS.

22 Q AND DID YOU SAY THAT IN A CALM VOICE LIKE YOU JUST
23 SAID IT TO ME?

24 A NO, MA'AM, I DID NOT. I SAID IT IN A LOUD MANNER, A
25 LOUD, DIRECT MANNER.

1 Q AND WERE YOUR ADDITIONAL COMMENTS SAID IN THE SAME
2 WAY?

3 A THE ADDITIONAL COMMENT AFTER THAT IS I WAS TELLING
4 HIM TO PUT HIS HANDS BEHIND HIS BACK. YES, MA'AM. THEY
5 WERE SAID IN A LOUD, BOISTEROUS MANNER AS WELL. AN
6 ASSERTIVE MANNER.

7 Q WHOSE VOICE IS THAT THAT WE'RE HEARING?

8 A THAT'S OFFICER FITTERRY'S VOICE IN THE BACKGROUND.

9 Q OFFICER RUTLAND, DID YOU NOTICE AT ABOUT WHAT TIME
10 YOUR VIDEO CAMERA STARTED?

11 A I BELIEVE IT STARTED ABOUT 5:22. 5:22 AND A HALF
12 MINUTES.

13 Q WHAT DID IT SAY?

14 A 17:22. THAT WILL BE 5:22 IN THE EVENING, MILITARY
15 TIME.

16 Q WHAT DOES IT MEAN TO 1090, A VIN.

17 A PREPARE A COPY. ASKING THAT DISPATCHER TO WRITE DOWN
18 THAT VIN SO SHE CAN RUN IT.

19 Q OFFICER RUTLAND, WHAT TIME DOES YOUR CAR CAMERA SHOW
20 AT THIS POINT?

21 A 1729.

22 Q WHO WERE YOU TALKING TO RIGHT THEN?

23 A THERE WAS A CITIZEN THAT STOPPED. THAT IS MY CAPTAIN
24 THAT JUST PULLED UP.

25 Q OFFICER RUTLAND, WOULD YOU COME DOWN HERE AND BACK

1 THAT UP A LITTLE BIT. IT'S KIND OF GRAINY. AND YOU CAN
2 EXPLAIN TO THE JURY WHAT YOU'RE DOING. MAKE SURE THAT
3 YOU'RE NOT BLOCKING --

4 THE COURT: HOLD ON. CAN EVERYBODY SEE? MA'AM, BACK
5 THERE?

6 THE JUROR: (NODS HEAD.)

7 THE WITNESS: WHAT I HAVE DONE IS I HAVE TAKEN HER
8 UP. BEGIN A QUICK OPEN AIR SEARCH.

9 BY MRS. YOUNG:

10 Q FOR THE JURY.

11 A SURE. AS WE GET UP HERE, I PRESENT AND TRY TO GET
12 HER NOSE CLOSE TO THE GROUND. I BRING HER DOWN RIGHT
13 HERE. AS WE WALK PAST, SHE STOPPED AND SMELLS THE MONEY
14 AND GOES INTO A SIT.

15 I LEAN DOWN AND RE-PRESENT AGAIN. AS I RE-PRESENT TO
16 THE CENTER OF THE MONEY, SHE ACTUALLY LAYS DOWN ON TOP OF
17 IT AND COMES BACK INTO A SIT AGAIN. AND AT THIS POINT WE
18 STARTED WORKING OUR WAY UP THE HILL.

19 Q OKAY. AND WHERE ARE YOU NOW?

20 A I AM UP THE HILL. WE ACTUALLY WALKED UP TOWARDS I
21 BELIEVE IT'S THE PYLANT RESIDENCE. AND WE'RE GOING UP AND
22 IN BETWEEN -- COMBING OUR WAY BACK DOWN CHECKING THE OPEN
23 AREA, THE AREA THAT I HAD ACTUALLY OBSERVED HIM WALKING
24 IN.

25 (VIDEO PLAYED.)

1 Q WHEN YOU WERE MAKING THAT COMMENT ABOUT THE KNOWN
2 DRUG AREA, WHERE WERE YOU REFERRING TO?

3 A THE AREAS JUST TO -- JUST TO THE EAST OF THIS AND
4 THEN BACK TO THE -- CORRECTION -- TO THE SOUTH OF THIS AND
5 TO THE NORTH OF IT ARE AREAS WHERE WE'VE HAD PROBLEMS
6 BEFORE.

7 Q WERE YOU REFERRING TO THAT PARTICULAR STREET?

8 A NO, MA'AM. THAT PARTICULAR STREET HADN'T HAD MANY
9 PROBLEMS AT ALL. IT IS THE SURROUNDING AREAS.

10 Q WHAT WAS THE NEXT THING THAT YOU DID AFTER LEAVING
11 THE INITIAL SCENE?

12 A AFTER I LEFT OFFICER FITTERY'S LOCATION THERE, WE
13 WENT BACK TO THE SCENE OF THE ACCIDENT WHERE THE DEFENDANT
14 ACTUALLY JUMPED OUT OF THE VEHICLE AND BEGAN RUNNING.
15 WHEN WE WENT BACK TO THE VEHICLE, I DEPLOYED MY K-9 TO
16 CONDUCT AN EXTERIOR AIR SNIFF OF THE VEHICLE ITSELF.

17 IN DOING SO, I WORKED MY K-9 AROUND THAT VEHICLE
18 PRESENTING, AS WE TALKED ABOUT EARLIER, THE PRODUCTIVE
19 AREAS BEING THE DOOR SEAMS, THE GRILL, THE TRUNK SEAMS,
20 UNDERNEATH THE VEHICLE.

21 UPON DOING SO, MY K-9 ALERTED TO THE DOOR SEAM OF THE
22 RIGHT FRONT DOOR.

23 Q WHAT DID YOU DO ONCE SHE ALERTED TO--

24 A ONCE SHE ALERT TO THE VEHICLE -- OFFICER FITTERY HAD
25 SECURED THE VEHICLE EARLIER -- HE UNLOCKED THE VEHICLE AND

1 I PUT K-9 INTO THE VEHICLE. I CAST HER INSIDE OF IT SO
2 SHE COULD CONDUCT AN INTERIOR SNIFF OF THAT VEHICLE.

3 Q DID YOU GET INSIDE WITH HER?

4 A NO, MA'AM, I DO NOT.

5 Q DO YOU LET HER OFF THE LEASH?

6 A AT THAT TIME I DON'T BELIEVE I DID. NORMALLY I KEEP
7 HER ON THE LEASH.

8 Q DID YOU PUT HER IN THE VEHICLE?

9 A YES, MA'AM.

10 Q DESCRIBE WHAT SHE DID, IF ANYTHING.

11 A UPON PUTTING HER IN THE VEHICLE, SHE GOES INTO A
12 VEHICLE AND BEGINS CONDUCTING AN AIR SNIFF OF THE
13 INTERIOR, BEING THE BACK SEATS, FRONT SEATS, DASH. UPON
14 COMING TO THE CENTER CONSOLE AREA, SHE AGAIN INDICATED TO
15 THE ODOR OF NARCOTICS BY I BELIEVE HAVING A BEHAVIOR
16 CHANGE AND HEAVY SNIFFING AND ACTUALLY KIND OF PAWING AND
17 THEN GOING INTO A FINAL RESPONSE BY SITTING.

18 Q SO YOU'RE SAYING THAT YOUR DOG SAT IN THE CAR?

19 A SHE SAT IN THE CAR INDICATING THE ODOR OF NARCOTICS.

20 Q ALL RIGHT. WHAT WAS THE NEXT THING THAT YOU DECIDED
21 TO DO?

22 A AFTER WE FINISHED UP THE VEHICLE, I DECIDED TO
23 ATTEMPT TO CAST HER OUT IN AN OPEN AIR SEARCH -- AN OPEN
24 AIR SEARCH BEING I'D TAKE HER OFF OF HER LEASH AND CAST
25 HER OUT IN THE GENERAL DIRECTION THAT WE KNEW THAT THE

1 DEFENDANT HAD RUN IN.

2 THE HOPES BEHIND THAT IS THAT THE DOG WILL CATCH THE
3 ODOR OF THE NARCOTICS THAT MAY BE EMITTING FROM THE BAG OR
4 FROM THE DEFENDANT AS HE'S RUNNING. SHE DID GET ON AN
5 ODOR OF NARCOTICS.

6 Q HOW DO YOU KNOW THAT?

7 A I NOTICED AN OBVIOUS BEHAVIOR CHANGE.

8 Q WHAT WAS IT?

9 A HER OBVIOUS BEHAVIOR CHANGE WAS SHE PUT HER NOSE
10 STRAIGHT TO THE GROUND, BEGAN BRACKETING. SHE WASN'T
11 BRACKETING VERY HARD. IT WAS A COOL NIGHT. THAT
12 AFFECTS--

13 Q HANG ON JUST A SECOND. SOME OF US MIGHT NOT KNOW ALL
14 OF THESE DOG TERMS. SO TELL US WHAT BRACKETING MEANS.

15 A BRACKETING WOULD BE AS YOU'RE HOLDING AN ITEM THAT'S
16 EMITTING AN ODOR, SUCH AS NARCOTICS, THE ODOR IS GOING TO
17 COME DIRECTLY FROM THAT SOURCE. AND AS IT DOES, IT IS
18 GOING TO COME OUT INTO BASICALLY A CONE SHAPE AS IT'S
19 DROPPING TO THE GROUND FROM THE BAG THAT THE DRUGS ARE IN
20 OR FROM WHATEVER SOURCE IT'S BEING EMITTED FROM.

21 IN THE CONE, THE DOGS ARE TAUGHT TO ACTUALLY WORK THE
22 TWO ENDS OF THAT CONE. THEY'RE TAUGHT TO BASICALLY WORK
23 UNTIL THEY CAN'T SMELL IT.

24 AS THEY GO OUT OF THE ODOR, THEY'RE TAUGHT TO COME
25 BACK INTO THAT ODOR AGAIN, CROSS OVER UNTIL THEY GO OUT

1 AND BASICALLY WORK IT BACK AND FORTH UNTIL THEY CAN NARROW
2 IT DOWN TO THE SOURCE, BEING THE PINPOINT OF THE CONE.

3 Q SO YOU'RE CALLING THAT BRACKETING?

4 A YES.

5 Q SORT OF LIKE WALKING IN AN S SHAPE?

6 A EXCUSE ME?

7 Q SHE'S SORT OF WALKING IN AN S SHAPE?

8 A YES, MA'AM.

9 Q OKAY. WAS OFFICER FITTERY WITH YOU AT THIS TIME?

10 A YES, MA'AM. OFFICER FITTERY WAS UTILIZING MY COVER
11 OFFICER WHILE WE WERE DOING THIS.

12 MRS. YOUNG: YOUR HONOR, MAY THE WITNESS STEP DOWN
13 OFF THE STAND WHILE WE REFER TO STATE'S EXHIBIT NO. 16,
14 WHICH IS A MAP OF THE AREA?

15 THE COURT: YES, MA'AM.

16 BY MRS. YOUNG:

17 Q JUST BASICALLY TELL US WHAT YOU DID ONCE YOU NOTICED
18 THE OBVIOUS BEHAVIOR CHANGE AND WHERE YOU WERE.

19 A YES, MA'AM. AS WE CONCLUDED OUR SEARCH RIGHT HERE, I
20 CAST MY K-9 OUT. THE INFORMATION I RECEIVED FROM OFFICER
21 FITTERY WAS THAT TO -- MR. JOHNSON HAD RUN THROUGH THIS
22 FRONT YARD. THAT GAVE ME A SOLID STARTING POINT.

23 BY PUTTING THE K-9 INTO THE VEHICLE, BECAUSE OF THE
24 DIFFERENT ODORS THAT SHE'S TRAINED TO RECOGNIZE, WE PUT
25 HER IN THE VEHICLE. AFTER SHE'S ALERTED TO THE OUTSIDE,

1 SHE GOES INTO THE INSIDE AND SHE CAN OBVIOUSLY DETECT
2 NARCOTICS IN THERE.

3 IT'S A TWO-FOLD PURPOSE. ONE, IT GIVES ME A STARTING
4 POINT. I KNOW HE RAN FROM THERE. IF HE HAD DRUGS ON HIM,
5 THAT'S WHERE SHE'S GOING TO START FROM AND RUN IN THE
6 GENERAL DIRECTION.

7 BY PUTTING HER IN THAT VEHICLE, SHE'S ALSO ABLE TO
8 DECIPHER WHICH DRUGS SHE'S LOOKING FOR BECAUSE SHE'S
9 TRAINED ON SEVERAL DIFFERENT ONES. IT KIND OF GETS HER
10 MIND SET INTO I'M LOOKING FOR THIS BECAUSE I DON'T SMELL
11 THOSE.

12 Q WHAT IS HE TRAINED ON?

13 A SHE'S TRAINED ON METHAMPHETAMINE. SHE'S TRAINED ON
14 HEROIN, MARIJUANA AND COCAINE AND DERIVATIVES OF THOSE
15 DRUGS SUCH AS CRACK AND ECSTASY.

16 Q OKAY. SO YOU SAID YOU STARTED THE SEARCH. DESCRIBE
17 WHAT YOU WERE DOING IN RELATION TO WHAT THE DOG WAS DOING.

18 A YES, MA'AM. ACTUALLY, WHEN I WORK IN AN OPEN AREA
19 WITH HER, SO THAT I DON'T LIMIT WHAT SHE'S DOING, THERE IS
20 NO HINDERANCE OF MY LEASH, I ACTUALLY TAKE THE LEASH OFF
21 OF HER AND JUST GIVE HER FREE REIGN TO DO WHAT HER JOB IS.
22 SHE KNOWS IT VERY WELL.

23 AT THAT TIME WE COME THROUGH THIS FRONT YARD AND
24 PROBABLY 10 FEET INTO OR I SHOULD SAY AWAY FROM THE
25 VEHICLE SHE STUCK HER NOSE TO THE GROUND AND BEGAN WORKING

1 BASICALLY A TIGHT S.

2 IT DIDN'T VARY BY MAYBE THREE OR 4 FEET, WHICH IN MY
3 EXPERIENCE I FOUND TO BE A VERY GOOD INDICATOR THAT SHE'S
4 ONTO A TRAIL, ONTO THE SCENT OF THE NARCOTICS. SHE'S NOT
5 TRAINED TO TRAIL PEOPLE, SO I KNOW THAT'S NOT THE CASE
6 WITH THIS. SHE WAS ACTUALLY ON THE ODOR OF NARCOTICS.

7 BASED ON DIFFERENT TEMPERATURES AND DIFFERENT WIND
8 CONDITIONS, THEY EFFECT HOW THAT ODOR AND THE PARTICULATES
9 ACTUALLY REACH THE GROUND. IT WAS A COOL NIGHT. THERE
10 WAS NO WIND. THERE WAS PROBABLY SOMEWHERE--

11 Q WHAT ARE PARTICULATES?

12 A PARTICULATES ARE MICROSCOPIC BITS OF THE DRUGS THAT
13 MAY HAVE BEEN ON THE BAG. ACTUALLY THE ODOR OF THE DRUGS
14 THEMSELVES, THEY HAVE -- OBVIOUSLY COCAINE TO ME I
15 WOULDN'T KNOW AN ODOR OF COCAINE, BUT THE DOGS KNOW THE
16 CHEMICAL COMPOUND THAT MAKES UP THE ODOR OF COCAINE.
17 THAT'S WHAT SHE'S TRAINED IN.

18 I GUESS I WOULD SAY WE RECOGNIZE THE ODOR OF POPCORN
19 WITHOUT KNOWING POPCORN WAS COOKED. SHE KNOWS THE ODOR OF
20 COCAINE WITHOUT KNOWING COCAINE. IS THAT...

21 Q OKAY. SO Y'ALL ARE ON THIS TRAIL. WHAT HAPPENS
22 NEXT?

23 A AS WE'RE WORKING THROUGH THIS YARD, SHE COMES THROUGH
24 THE YARD AND DOWN IN BEHIND THE HOUSE HERE, AND SHE'S
25 STILL GOT HER OBVIOUS BEHAVIOR CHANGE. HER NOSE IS STILL

1 TO THE GROUND. SHE'S BREATHING HEAVILY. AND I CALL IT
2 BEING IN THE MOMENT. SHE KNOWS WHAT SHE'S DOING AND I
3 KNOW HOW TO READ HER. SHE'S NOT PLAYING.

4 I CAN TELL THAT'S SHE'S VERY SERIOUS IN WHAT SHE'S
5 DOING. SHE'S VERY MATTER-OF-FACT IN HER DEMEANOR JUST BY
6 HER EXCESSIVE BREATHING, HER EXCESSIVE SNIFFING, AND THE
7 FACT THAT SHE'S GOT HER NOSE TO THE GROUND TELLS ME THAT
8 SHE'S WORKING.

9 AS WE COME ACROSS RIGHT HERE, THERE IS A WALL RIGHT
10 HERE. AS I WAS COMING OFF OF THE WALL, OFFICER FITTERTY
11 ADVISED ME THAT THIS IS WHERE MR. JOHNSON HAD FALLEN.

12 AS WE COME ACROSS HERE, SHE ACTUALLY SLOWS, BEGINS
13 SNIFFING THE GROUND, AND ESSENTIALLY TAKES OFF RUNNING UP
14 THIS DRIVEWAY AT A QUICK PACE. SHE'S OFF LEASH, SO ME AND
15 OFFICER FITTERTY WERE TRYING TO KEEP UP WITH HER.

16 Q DID YOU HAVE TO RUN TO KEEP UP WITH HER?

17 A WE DID. NOT A FULL RUN, BUT MORE OF A TROT BECAUSE I
18 DON'T WANT TO CALL HER OFF AND DISTRACT HER FROM WHAT
19 SHE'S DOING. IT IS MY JOB TO KEEP UP WITH HER WHILE SHE'S
20 WORKING.

21 AS WE COME ACROSS, WE COME UP THIS DRIVEWAY. SHE'S
22 PRETTY WELL STILL IN THAT FOUR TO 5-FOOT WINDOW OF WHAT I
23 BELIEVE TO BE THE ODOR THAT SHE IS IN. THIS IS A CONCRETE
24 DRIVEWAY.

25 AND BACK TOWARD THE BACK OF THE HOUSE, PROBABLY RIGHT

1 IN HERE IT TURNS TO DIRT. THIS IS A GARAGE. AS WE COME
2 PAST THAT GARAGE, I NOTICED THAT HER PATTERN STARTS
3 GETTING WIDER WHICH LEADS ME TO BELIEVE THAT THE SCENT IS
4 ACTUALLY A LOT FRESHER. IT'S NOT -- IT'S A DROP TO THE
5 GROUND, IT IS STILL SCATTERED.

6 WE CONTINUED TO WORK THROUGH THE YARD BACK HERE
7 COMING OUT RIGHT IN HERE. AS WE COME ACROSS THIS AREA--

8 Q BEFORE YOU GET THERE, I WANT TO ASK YOU ABOUT THIS.
9 THIS SAYS THAT SHE HAD SOME KIND OF BEHAVIOR CHANGE AT
10 THIS STORAGE BUILDING.

11 A YES. THIS WAS A STORAGE BUILDING WITH -- I BELIEVE
12 THERE WAS A DOOR HERE AND THERE'S ANOTHER GARAGE DOOR. AS
13 WE COME UP IN THIS AREA, SHE PATTERNED THIS YARD. AND AS
14 WE COME UP HERE, SHE CUT BACK TOWARD THAT STORAGE BUILDING
15 AND APPEARED TO BE WORKING BACK AND FORTH FROM END TO END
16 OF IT.

17 I BELIEVE SHE WAS WORKING THE ODOR OF NARCOTICS CLOSE
18 TO THAT BUILDING AT THAT BUILDING. MYSELF AND OFFICER
19 FITTERY ACTUALLY STOPPED TO CHECK THAT BUILDING TO MAKE
20 SURE THAT NOTHING HAD BEEN THROWN ON THE ROOF OR INSIDE OF
21 IT.

22 AND WE DID NOTE THAT THE DOORS ON THE ENTIRE BUILDING
23 WERE PADLOCKED FROM THE OUTSIDE WITH A PADLOCK. WHILE WE
24 WERE DOING THAT, I NOTICED FILA WAS STILL WORKING DOWN
25 PAST US. WE CAUGHT BACK UP WITH HER.

1 AS WE COME OUT ACROSS -- THIS IS THURMOND STREET
2 HERE, I BELIEVE. AS WE COME ACROSS, SHE CUTS STRAIGHT
3 ACROSS THE STREET INTO THIS YARD. MYSELF AND OFFICER
4 FITTERY CONTINUED DOWN THE SIDEWALK AND JUST OBSERVED HER
5 WORKING.

6 AS SHE BEGAN TO CUT DOWN THE SIDE OF THIS HOUSE, WE
7 NOTED THERE WAS LIKE A LATTICE-TYPE PRIVACY FENCE TYPE OF
8 GATE. THAT GATE WAS OPENED PROBABLY SOMEWHERE IN THE
9 NEIGHBORHOOD OF A FOOT AND A HALF TO 2-FOOT, BASICALLY
10 HALF OPEN.

11 I OBSERVED FILA CUT INTO THE BACKYARD OF THAT
12 RESIDENCE. MYSELF AND OFFICER FITTERY THEN WENT DOWN INTO
13 THAT RESIDENCE AS WELL. K-9 FILA HAD PROCEEDED ABOUT HALF
14 WAY DOWN THE BACK YARD.

15 THERE WAS -- MYSELF AND OFFICER FITTERY BOTH OBSERVED
16 OR HEARD A DOG BARKING. THAT DOG WAS IN THE YARD DIRECTLY
17 BEHIND WHERE K-9 FILA WAS AT.

18 OFFICER FITTERY PROCEEDED TOWARDS WHAT ENDED UP BEING
19 THE PYLANTS' BACKYARD. THEY HAD I BELIEVE WAS A GREAT
20 DANE OR GREYHOUND OR SOMETHING LIKE THAT OUTSIDE.
21 MR. PYLANT CAME TO THE DOOR AND OFFICER FITTERY ASKED HIM
22 TO SECURE HIS K-9.

23 THERE IS A SHED THAT SITS BACK IN THE BACK OF THIS
24 YARD. AS I WAS STANDING BACK THERE WATCHING MY K-9 DO A
25 WIDE PATTERN OF THIS YARD, SHE BASICALLY WENT FROM

1 PERIMETER TO PERIMETER OF THAT YARD, ESSENTIALLY GOING TO
2 THE DOOR OF THE BUILDING.

3 WHILE I WAS WATCHING HER WORK, THERE WAS A LARGE --
4 SOME TYPE OF OVERGROWN BUSH OR TREE THAT PROTRUDED OUT
5 INTO THE YARD. SO I LOST SIGHT OF HER FOR A SECOND AS SHE
6 WENT UNDER THAT TREE AND ACTUALLY INTO THE PARTIALLY
7 OPENED DOOR OF THAT BUILDING.

8 AS SHE ENTERED INTO THE BUILDING, I CAME UP BEHIND
9 HER AND WAS PROBABLY EIGHT TO 10-FOOT AWAY FROM HER. SHE
10 STUCK HER HEAD INTO THE OPEN DOOR.

11 AND AS SHE PUT HER HEAD IN, SHE WENT DOWN TOWARD THE
12 GROUND AND CAME BACK OUT AND CAME OUT IN A FINAL RESPONSE,
13 WHICH IS IN HER INDICATION TO ME THAT SHE HAS LOCATED THE
14 SOURCE OF THE ODOR THAT WE HAD BEEN LOOKING FOR.

15 Q AND HER FINAL RESPONSE AGAIN IS...

16 A IS A SIT. AS I APPROACHED THE AREA THAT SHE WAS AT,
17 I LOOKED INTO THE BUILDING. AS I LOOKED INTO THE
18 BUILDING, SHE WAS KIND OF LOOKING BACK DOWN. I LOOKED
19 DOWN AND OBSERVED A BLACK BAG.

20 AT THAT TIME I BACKED OUT OF THE BUILDING AND I
21 NOTIFIED OFFICER FITTERTY THAT I THOUGHT WE HAD WHAT HE WAS
22 LOOKING FOR.

23 Q THIS IS AN AREAL MAP OF THE AREA?

24 A YES, MA'AM.

25 Q IT LOOKS LIKE IT IS A LONG WAY. CAN YOU DESCRIBE THE

1 DISTANCES?

2 A THIS IS A BLOWN-UP OVERHEAD VIEW. THE TOTAL DISTANCE
3 ACTUALLY FROM THE START POINT TO THE LOCATION WHERE THE
4 CONTRABAND WAS FOUND IN MY ESTIMATION PROBABLY WOULDN'T BE
5 ANY MORE THAN ABOUT MAYBE 300 YARDS, SOMEWHERE IN THERE.
6 IT'S NOT VERY FAR AT ALL.

7 Q OKAY. CAN YOU TAKE THE STAND? I AM GOING TO SHOW
8 YOU WHAT'S ALREADY BEEN ENTERED INTO EVIDENCE AS STATE'S
9 ONE. DO YOU RECOGNIZE THAT?

10 A YES, MA'AM. THIS IS A PICTURE THAT I TOOK.

11 Q AND WHAT IS IT?

12 A THIS IS A PICTURE OF THE RESIDENCE ON THURMOND
13 STREET. THIS IS THE HOUSE THAT -- THE RESIDENCE WHERE THE
14 NARCOTICS WERE FOUND.

15 Q OKAY. HOW ABOUT STATE'S TWO?

16 A THIS IS A CLOSE-UP PICTURE THAT I TOOK OF THE
17 BUILDING. I ACTUALLY TOOK THIS PICTURE JUST TO DISPLAY
18 THE ADDRESS FOR FUTURE REFERENCE.

19 Q STATE'S THREE?

20 A THIS IS THE RIGHT SIDE OF THAT RESIDENCE. THIS
21 PICTURE DEPICTS THE PRIVACY FENCE AS WELL AS THE LATTICE
22 GATE THAT WAS PARTIALLY OPENED.

23 Q OKAY. STATE'S FOUR?

24 A THIS IS A VIEW STANDING AT THE BACK OF THE HOUSE
25 LOOKING BACK TOWARD THE SHED. THIS IS THE PARTIALLY

1 OPENED DOOR TO THE SHED, THE OVERGROWN BUSH, AND IN THE
2 BACKGROUND IS ACTUALLY THE PYLANTS' PORCH LIGHT.

3 Q THE BACKGROUND IS THE PYLANTS' PORCH LIGHT?

4 A YES, MA'AM. THIS IS THEIR PORCH LIGHT DIRECTLY
5 BEHIND THIS HOUSE.

6 Q HOW ABOUT STATE'S FIVE?

7 A YES, MA'AM. THIS IS A PICTURE THAT I TOOK ACTUALLY
8 LOOKING AT THE -- AT THE DOOR OF THE STORAGE BUILDING.

9 Q HOW WAS THE DOOR WHEN YOU APPROACHED?

10 A THE DOOR WAS PARTIALLY OPENED.

11 Q LIKE IT IS IN THAT PICTURE?

12 A YES, MA'AM.

13 Q AND IT LOOKS LIKE THERE IS SOME LATTICE THERE?

14 A YES, MA'AM.

15 Q CAN YOU DESCRIBE THAT?

16 A YES, MA'AM. THERE IS SOME LATTICE WORK ACROSS THE
17 WINDOWS HERE. THE ROOF WAS A FIBERGLASS -- I'M SORRY --
18 LIKE A METAL ROOFING MATERIAL GRADED -- CORRUGATED METAL.

19 Q WAS THAT LATTICE PART OPEN?

20 A TO THE BEST OF MY KNOWLEDGE, YES, MA'AM, IT WAS.
21 THERE WAS NO GLASS IN THE WINDOW.

22 Q LET ME SHOW YOU STATE'S EXHIBIT 6.

23 A THIS IS A PICTURE OF THE EVIDENCE AS I FOUND IT. AS
24 I SAID, WHEN MY K-9 CAME IN, SHE PUT HER HEAD IN THE DOOR,
25 PUT IT DOWN THROUGH. THIS WAS ACTUALLY A WORK BENCH.

1 THIS BEING A WOODEN LEG TO THAT WORK BENCH.

2 THIS BLACK BAG IS UNDERNEATH OF THE WORK BENCH. MY
3 K-9 CAME IN HERE AND PUT HER HEAD BETWEEN THE WALL AND
4 THIS LEG AND ACTUALLY LEANED DOWN IN THIS AREA. AND WHEN
5 SHE COME BACK OUT INTO A SIT, SHE WAS SITTING IN THE
6 DOORWAY.

7 Q IS THAT BAG AS IT'S SHOWN IN THIS PICTURE HOW IT WAS
8 WHEN YOU FIRST OBSERVED IT?

9 A YES, MA'AM.

10 Q HAS IT BEEN MOVED OR ANYTHING?

11 A NO, MA'AM.

12 Q WHAT IS STATE'S SEVEN?

13 A THIS IS A PICTURE OF THE BAG AS IT WAS SITTING IN
14 THERE FROM A DIFFERENT ANGLE. THIS IS A PICTURE OF THE
15 BAG--

16 THE COURT: WHAT NUMBER IS THAT?

17 MRS. YOUNG: THAT'S EIGHT.

18 THE WITNESS: THIS IS A PICTURE OF THE BAG THAT THE
19 DEFENDANT HAD IN HIS POSSESSION.

20 BY MRS. YOUNG:

21 Q WELL, YOU'RE THE ONE WHO TOOK THOSE PICTURES?

22 A YES, MA'AM.

23 Q OKAY. HOW ABOUT THE SHED? CAN YOU DESCRIBE THE
24 INTERIOR OF THE SHED TO THE JURY?

25 A THE INTERIOR OF THE SHED, IT APPEARED TO HAVE BEEN

1 UNOCCUPIED FOR SOME TIME. THERE WERE NO TYPICAL ITEMS
2 THAT YOU WOULD THINK TO FIND IN THERE SUCH AS HAND TOOLS,
3 POWER TOOLS, NOTHING THAT SHOWED THAT THAT SHED HAD BEEN
4 USED IN ANY LENGTH OF TIME.

5 Q IT WAS BASICALLY EMPTY?

6 A YES, MA'AM. IT WAS BASICALLY EMPTY. IT WAS DUSTY.
7 IT WAS FULL OF COB WEBS ON THE CORNERS OF IT AND SUCH.

8 Q AND AFTER YOU PHOTOGRAPHED ALL OF THIS, WHAT DID YOU
9 DO NEXT?

10 A AFTER ALL OF THIS EVIDENCE WAS PHOTOGRAPHED, OFFICER
11 FITTERY WAS THERE. I TOLD HIM I WOULD MAKE COPIES OF THE
12 PICTURES FOR HIM, AND HE SECURED THE EVIDENCE.

13 Q AND BY SECURE IT, WHAT DOES THAT MEAN?

14 A HE TOOK POSSESSION OF THE EVIDENCE FOR CHAIN OF
15 CUSTODY PURPOSES AND MAINTAINED THAT EVIDENCE IN HIS
16 CUSTODY UNTIL IT WAS PLACED IN THE EVIDENCE DROP BOX.

17 Q HE PICKED IT UP OFF THE GROUND?

18 A YES, MA'AM.

19 Q I AM GOING TO SHOW YOU WHAT'S ALREADY BEEN ENTERED AS
20 STATE'S EXHIBIT 11 AND ASK IF YOU RECOGNIZE OR CAN
21 IDENTIFY IT.

22 A YES, MA'AM. THAT'S TREVIS EUGENE JOHNSON. THAT'S
23 THE MAN I TOOK INTO CUSTODY AT THE CORNER OF NORMAN AND
24 MAY STREET THAT DAY.

25 Q IS THAT HOW HE APPEARED ON THE DAY IN QUESTION?

1 A YES, MA'AM.

2 Q DO YOU SEE HIM IN THE COURTROOM TODAY?

3 A YES, MA'AM, I DO.

4 Q CAN YOU DESCRIBE THE PERSON THAT YOU'RE REFERRING TO?

5 A YES, MA'AM. HE IS A BLACK MALE SITTING OVER BESIDE
6 MR. WATSON WEARING A DARK COLOR -- BLACK COLORED SHIRT
7 JACKET WITH A RED VEST, WHITE SHIRT, AND IT LOOKS LIKE A
8 DARK COLORED TIE WITH STRIPES ON IT.

9 MRS. YOUNG: YOUR HONOR, WE WOULD ASK THE RECORD TO
10 REFLECT THAT THIS WITNESS IDENTIFIED THE DEFENDANT.

11 THE COURT: VERY WELL.

12 BY MRS. YOUNG:

13 Q JUST A FEW MORE FOLLOW-UP QUESTIONS ABOUT FILA. YOU
14 SAID SHE'S CERTIFIED BY THE USPCA?

15 A YES, MA'AM.

16 Q WHAT SORT OF -- DO YOU DO ANY TRAINING WITH HER
17 OTHERWISE THAN JUST GOING OUT AND WORKING HER ON THE
18 STREET?

19 A YES, MA'AM, WE DO. WE TRY TO DO FORMAL TRAINING WITH
20 HER SEVERAL TIMES A MONTH. OUR SCHEDULE IS NOT ALWAYS
21 CONDUCIVE TO DOING A WEEKLY OR BI-WEEKLY TRAINING. BUT AS
22 WE HAVE TIME AND CAN SET ASIDE TIME FROM OUR OTHER DUTIES,
23 WE DO DO FORMAL TRAINING WITH TRAINING AIDS THAT ARE
24 PROVIDED TO US BY THE DEA.

25 Q OKAY. BY TRAINING AIDS THAT ARE PROVIDED BY THE DEA,

1 YOU'RE REFERRING TO...

2 A THE DEA ACTUALLY SENDS US A QUANTITY OF MARIJUANA,
3 HEROIN, COCAINE, AND METHAMPHETAMINE. IT'S ISSUED TO US
4 BY WEIGHT. IT'S CHECKED OUT BY WEIGHT AND TURNED IN BY
5 WEIGHT. AND THAT'S WHAT WE USE TO TRAIN OUR DOGS.

6 Q OKAY. WHEN YOU SAY YOU DO THIS FORMAL TRAINING, CAN
7 YOU GO INTO A LITTLE BIT FURTHER DESCRIPTION ABOUT THAT?

8 A YES, MA'AM. WHAT WE DO IS WE HAVE DIFFERENT AREAS IN
9 THE CITY THAT WE WILL GO TO. WE TRY TO DO OPEN AREA
10 TRAINING. WE MAY WORK IN A FIELD ONE DAY. WE TRY TO GO
11 TO SEVERAL DIFFERENT AUTO YARDS SUCH AS DON'S COLLISION,
12 THE HILLTOP AUTO AUCTION.

13 WE UTILIZE OUR SUBSTATION, DIFFERENT AREAS OF THE
14 CITY THAT WE'LL GO TO. WE TAKE THE TRAINING AIDS THAT WE
15 HAVE. THOSE TRAINING AIDS ARE PLACED ON SPECIFIC VEHICLES
16 OR SPECIFIC AREAS, A CONTROLLED AREAS.

17 AT THAT TIME WE WILL -- WE WILL LET THE NARCOTICS SET
18 FOR A PERIOD OF TIME AND THEN WE'LL TAKE OUR DOGS AND
19 PRESENT THOSE AREAS AND LET THEM TRAIN AND ATTEMPT TO
20 LOCATE.

21 Q SO BASICALLY YOU'RE DESCRIBING YOU HIDE NARCOTICS IN
22 THESE VARIOUS AREAS?

23 A YES, MA'AM.

24 Q AND THEN YOU LET YOUR DOG ATTEMPT TO FIND THEM?

25 A YES, MA'AM.

1 Q DO YOU DO THIS BY YOURSELF OR WITH OTHER PEOPLE?

2 A GENERALLY MYSELF AND OFFICER FITTERY TRAIN THEM AMONG
3 OURSELVES WITH OTHER AGENTS WHO WE INVITE, AND THEY INVITE
4 US AS WELL, AIKEN COUNTY, AIKEN CITY'S K-9S, OCCASIONALLY
5 RICHMOND COUNTY AND EDGEFIELD COUNTY K-9S.

6 Q DO YOU KEEP RECORDS OF THE TRAINING THAT YOU DO?

7 A WE KEEP RECORDS OF THE FORMAL TRAINING, YES, SIR.

8 Q HAVE YOU DONE ANY TRAINING THAT WOULD BE SIMILAR TO
9 WHAT HAPPENED ON THIS NIGHT WHERE SHE JUST WENT AND FOUND
10 SOMETHING?

11 A YES, MA'AM. WE HAVE. ON AUGUST THE 25, 2008 MYSELF
12 AND OFFICER FITTERY ACTUALLY WENT AND DID A -- BASICALLY A
13 TEST TO THIS TYPE OF SITUATION. WE WENT TO THE HIPPO
14 DROME ON US1. IT IS A LARGE, WIDE OPEN AREA WITH SEVERAL
15 DIFFERENT ENVIRONMENTS.

16 ONE OF THE THINGS THAT WE DID -- IN THIS SPECIFIC
17 CASE WE WERE TRAINING WITH 11.3 GRAMS OF MARIJUANA. THAT
18 MARIJUANA IS ONE OF THE TRAINING AIDS THAT'S PROVIDED TO
19 US BY THE DEA.

20 THE MANNER IN WHICH THIS TRAINING WAS PERFORMED, I
21 PERFORMED THE TEST FOR AARON'S K-9 AND AARON PERFORMED
22 THIS TEST FOR MYSELF. THAT BEING OFFICER FITTERY. ON
23 THIS OCCASION OFFICER FITTERY TOOK THAT 11.3-GRAM BAG OF
24 MARIJUANA. ESSENTIALLY WHAT WE DID WAS WIPE OUR SLEEVES
25 WITH IT AND WIPED OUR PANTS JUST TO GET THAT ODOR ON TO

1 OUR CLOTHING.

2 AT THAT TIME HE WENT ACROSS THE OPEN FIELD PROBABLY
3 SOMEWHERE IN THE NEIGHBORHOOD OF ABOUT 200 YARDS. AT THE
4 END OF THAT FIELD THERE IS A WOOD LINE. THAT WOOD LINE IS
5 PROBABLY 100-FOOT ACROSS.

6 OFFICER FITTERY WENT -- FROM MY PATROL VEHICLE WENT
7 BACK IN A NORTHWESTERLY DIRECTION ACROSS THE FIELD THROUGH
8 THE WOOD LINE. AND AS I LEARNED LATER, HE ACTUALLY CAME
9 BACK DOWN A POWER LINE AND WENT TO HIS RIGHT BACK INTO
10 ANOTHER WOODED SECTION.

11 ONCE HE ENTERED THAT WOODED SECTION, HE HID THE BAG
12 OF MARIJUANA THAT HE HAD IN HIS POSSESSION AND HE
13 PROCEEDED TO GO PROBABLY IN THE NEIGHBORHOOD OF ABOUT 30
14 TO 40 FEET AWAY FROM WHERE HE HAD PLACED THAT BAG OF
15 MARIJUANA.

16 Q AND WHAT DID YOU DO?

17 A AFTER ABOUT -- AFTER ABOUT A 10 TO 15 MINUTE WAIT
18 PERIOD, NOT KNOWING WHERE OFFICER FITTERY HAD GONE, JUST
19 HAVING A GENERAL DIRECTION AS TO WHERE HE WENT, AFTER
20 ABOUT 10 TO 15 MINUTES WAIT PERIOD TO LET THAT ODOR BEGIN
21 TO SETTLE TOWARDS THE GROUND, I CAST K-9 FILA OUT OFF THE
22 LEASH IN AN ATTEMPT TO DO AN OPEN AIR SEARCH TO LOCATE THE
23 NARCOTICS THAT I KNEW OFFICER FITTERY HAD LEFT WITH.

24 Q AND WHAT HAPPENED?

25 A SHE BEGAN TO GO IN THE SAME -- BASICALLY THE SAME

1 AREA THAT OFFICER FITTERY HAD GONE TO. SHE WAS STAYING A
2 LITTLE BIT OFF OF THE TRAIL THAT HE HAD TOOK -- I PRESUME
3 BASED ON WIND CONDITIONS AND ENVIRONMENTAL CONDITIONS.

4 SHE WENT NORTHWESTLY BACK ACROSS THE FIELD INTO THE
5 WOOD LINE. AS WE ENTERED THE WOOD LINE, SHE WORKED HER
6 WAY THROUGH THAT WOOD LINE, WHICH LIKE I SAID IS ABOUT
7 100-FOOT.

8 AS WE COME OUT OF THE WOOD LINE, SHE CUT BACK TO THE
9 LEFT AND BEGAN GOING DOWN BACK -- ESSENTIALLY BACK BEHIND
10 WHERE WE WOULD HAVE BEEN TO THE RIGHT, CROSSED DOWN
11 THROUGH A SLIGHT RAVINE, BACK UP THE HILL.

12 AS SHE WENT BACK UP THE HILL, SHE WENT INTO THE WOOD
13 LINE AGAIN AND WENT TO THE SOURCE OF MARIJUANA THAT WAS
14 LOCATED NEAR A TREE.

15 Q AND DID SHE DO ANYTHING WITH REGARD TO OFFICER
16 FITTERY?

17 A NO, MA'AM. AS SHE ENTERED INTO THE WOOD LINE -- I'M
18 SORRY. SHE DID. SHE WENT PAST OFFICER FITTERY TO GET TO
19 THOSE NARCOTICS.

20 Q DO YOU KNOW WHAT THE MOST WEIGHT OF COCAINE YOU HAVE
21 USED TO TRAIN FILA WITH?

22 A I BELIEVE THE AMOUNT THAT THE DEA HAS SENT ME IS
23 19 GRAMS OF COCAINE.

24 Q THAT'S WHAT YOU HAVE PERSONALLY TRAINED HER WITH?

25 A YES, MA'AM. THEY'VE SENT ME 19 GRAMS OF COCAINE.

1 Q AND SHE SUCCESSFULLY FOUND THE NARCOTICS ON THIS
2 SEARCH, WHICH WAS MARIJUANA, FOR TESTING PURPOSES?

3 A YES, MA'AM. AND THAT WEIGHT WAS, AS I SAID -- THE
4 WEIGHT ON THAT WAS 11.3 GRAMS.

5 Q LET ME REFER YOU BACK TO THE EVENING THAT WE'RE HERE
6 FOR WHICH IS DECEMBER 18. WERE YOU PRESENT WHEN FILA
7 ALERTED TO THE BAG IN THE SHED; CORRECT?

8 A YES, MA'AM.

9 Q HOW FAR WAS THAT FROM WHERE YOU SAW MR. JOHNSON IN
10 YOUR ESTIMATION?

11 A FROM WHERE THE NARCOTICS WERE LOCATED TO WHERE I
12 ACTUALLY ENCOUNTERED HIM?

13 Q YES, SIR.

14 A I ESTIMATE LESS THAN 200 FEET. PROBABLY IN THE
15 NEIGHBORHOOD OF 150 -- 150 FEET AT BEST.

16 Q ANSWER ANY QUESTIONS THAT MR. WATSON HAS.

17 A YES, MA'AM.

18 THE COURT: HOLD ON A SECOND. LET'S TAKE A BREAK
19 THIS MORNING. WE'VE BEEN GOING FOR A WHILE. I AM GOING
20 TO GIVE YOU MENUS TO THE -- DOES THE BOWERY SUIT Y'ALL?
21 THAT'S A LITTLE SANDWICH SHOP UP THE STREET.

22 WOULD YOU RATHER ME ORDER IT AND BRING IT HERE AND
23 EAT HERE AND WHEN YOU GET THROUGH GO OUT AND STRETCH YOUR
24 LEGS OR WOULD YOU RATHER GO UP THERE?

25 THE JUROR: HERE WILL BE FINE.

1 THE COURT: WOMEN VOTE HERE. SO THEY WIN. OKAY.
2 MRS. JIMMY WILL GIVE Y'ALL A MENU. SO GO AHEAD AND MAKE
3 YOUR ORDER AND STRETCH YOUR LEGS, BATHROOM BREAK. WE'LL
4 TAKE ABOUT A 10 OR 15 MINUTE BREAK. EVERYBODY ELSE REMAIN
5 SEATED, PLEASE. DON'T DISCUSS THE CASE. DON'T START
6 DELIBERATIONS.

7 (WHEREUPON, THE JURY EXITED THE COURTROOM AT 11:43
8 AM.)

9 THE COURT: ANYTHING FROM THE STATE BEFORE WE TAKE A
10 LITTLE SHORT BREAK?

11 MRS. YOUNG: THAT'S FINE, YOUR HONOR.

12 THE COURT: ANYTHING FROM THE STATE?

13 MRS. YOUNG: I'M SORRY. NOTHING FROM THE STATE AT
14 THIS TIME.

15 MR. WATSON: NOTHING FROM THE DEFENSE, YOUR HONOR.

16 THE COURT: THANK YOU, MR. WATSON. ALL RIGHT.
17 OFFICER, YOU'RE STILL IN THE MIDDLE OF YOUR TESTIMONY. I
18 WOULD ASK THAT YOU NOT TO DISCUSS IT WITH ANYONE. YOU CAN
19 STEP DOWN DURING THE BREAK.

20 DO NOT DISCUSS YOUR TESTIMONY WITH THE STATE OR THE
21 DEFENDANT OR THE EXPERT WITNESS OR ANYONE ELSE.

22 THE WITNESS: YES, SIR.

23 THE COURT: WE'LL STAND AT EASE FOR A FEW MINUTES.

24 (WHEREUPON, A BREAK WAS TAKEN.)

25 THE COURT: ANYTHING FROM THE STATE BEFORE I BRING

1 THE JURY?

2 MRS. YOUNG: NO, SIR, YOUR HONOR.

3 THE COURT: MR. WATSON?

4 MR. WATSON: NOTHING, YOUR HONOR.

5 THE COURT: MR. BILL?

6 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
7 APPROXIMATELY 12:00 PM.)

8 THE COURT: MR. WATSON.

9 MR. WATSON: MAY IT PLEASE THE COURT.

10 CROSS-EXAMINATION

11 BY MR. WATSON:

12 Q YOU'RE OFFICER RUTLAND; IS THAT CORRECT?

13 A YES, SIR.

14 Q AND YOU HAVE A CAMERA IN YOUR CAR THAT YOU ACTIVATED
15 DURING THE PURSUIT IN THIS CASE; IS THAT CORRECT?

16 A I ACTIVATED IT IN MY RESPONSE TO OFFICER FITTERTY'S
17 PURSUIT.

18 Q OKAY. WHAT IS THE POLICY OF YOUR DEPARTMENT AS TO
19 WHEN AN OFFICER ACTIVATES HIS CAMERA?

20 A OUR POLICY IS IF WE'RE INITIATING – WHAT IS THE WORD
21 I'M LOOKING FOR. IF WE'RE INITIATING AN ENFORCEMENT
22 ACTION, WE ACTIVATE OUR CAMERAS. MY CAMERA ACTUALLY
23 ACTIVATES WITH THE ACTIVATION OF MY RED LIGHTS.

24 Q OKAY. BUT ALL THE CARS DON'T DO THAT?

25 A EXCUSE ME?

1 Q ALL OF THE CARS -- THE CAMERAS DON'T ACTIVATE WITH
2 THE RED LIGHT? JUST YOUR CAR?

3 A NO, SIR. WHEN WE ACTIVATE OUR EMERGENCY LIGHTS, THE
4 CAMERAS DO CUT ON. SOME CARS, DEPENDING ON THE CAMERA,
5 THERE IS A DELAY IN THE CAMERA ACTIVATION.

6 Q OKAY. BECAUSE I NOTICED DURING THE PURSUIT THAT YOUR
7 CAMERA WAS ON IT SEEMED LIKE FROM THE BEGINNING YET I
8 HEARD OFFICER FITTERY TESTIFY THAT HE FOLLOWED MY CLIENT
9 THROUGH SEVERAL STOP SIGNS AND THERE WAS NO VIDEO OF ANY
10 OF THAT.

11 SO IT JUST DEPENDS ON WHEN THE INDIVIDUAL OFFICER
12 DECIDES TO ACTIVATE HIS CAMERA IN SOME CASES?

13 A NO, SIR. WHEN YOU TURN ON YOUR LIGHTS -- I CAN CUT
14 ON MY CAMERA WITHOUT TURNING THE LIGHTS ON. I CAN TURN
15 THE CAMERA ON MANUALLY. BUT WHEN WE ACTIVATE OUR LIGHTS,
16 IT DOES -- DEPENDING ON THE CAMERA STYLE, IT WILL ACTIVATE
17 THE CAMERA IMMEDIATELY.

18 ON SOME OF THEM THERE IS A DELAY. I AM NOT FAMILIAR
19 WITH THE EQUIPMENT THAT AARON HAS IN HIS CAR. I AM
20 FAMILIAR WITH MY OWN, SIR.

21 Q OKAY. AND YOU DRIVE THE SAME CAR EVERY DAY?

22 A YES, SIR, I DO.

23 Q NOW, DURING THE COURSE OF THIS -- YOUR ATTEMPTS TO
24 ARREST MR. JOHNSON, HOW MANY CARS WERE INVOLVED?

25 A MYSELF AND OFFICER FITTERY WERE DIRECTLY INVOLVED. I

1 CAN'T SPEAK FOR HOW MANY OTHER VEHICLES WERE OUT THERE. I
2 KNOW THERE WAS SOME OTHER VEHICLES ON THE PERIMETER THAT
3 NEVER MADE IT TO OUR LOCATION.

4 Q OKAY. SO, BUT THERE WERE MORE THAN JUST YOU AND
5 OFFICER FITTERY?

6 A MY CAPTAIN WAS OUT THERE, AND HIS VEHICLE IS NOT
7 EQUIPPED WITH A CAMERA SYSTEM, SIR.

8 Q OKAY. WERE THERE ANY OTHER CARS OUT THERE THAT WERE
9 EQUIPPED WITH A CAMERA SYSTEM?

10 A DURING THE INCIDENT, NOT THAT I'M AWARE OF, SIR.

11 Q OKAY. SO THESE TWO VIDEOS THAT WE HAVE IN COURT
12 TODAY ARE THE ONLY VIDEOS IN THIS CASE. THERE ARE NO
13 OTHER VIDEOS FROM ANY OTHER POLICE CARS?

14 A THEY'RE THE ONLY TWO I'M AWARE OF, SIR.

15 Q DOES THAT MEAN THERE AREN'T ANY MORE?

16 A THAT'S THE ONLY TWO I'M AWARE OF. I CAN'T SPEAK FOR
17 ANYBODY ELSE, SIR.

18 Q AND IT JUST SO HAPPENED THAT THE TWO CARS THAT
19 ENCOUNTERED MR. JOHNSON JUST HAPPENED TO BE THE ONE
20 EQUIPPED WITH CAMERAS AND THE CAMERAS WERE ROLLING; IS
21 THAT CORRECT?

22 A COULD YOU REPEAT THAT ONE MORE TIME?

23 Q IT JUST SO HAPPENED THAT THE TWO CARS, YOUR CAR AND
24 OFFICER FITTERY'S CAR, THE ONLY TWO CARS THAT ENCOUNTERED
25 MR. JOHNSON IS THE ONLY TWO CARS HAD VIDEO FOR. WE

1 COULDN'T SEE WHAT THE CARS DID BECAUSE THERE IS NO
2 VIDEO...

3 A GENERALLY, SIR, WHEN WE'RE ON PERIMETER, UNLESS WE'VE
4 ACTIVATED OUR EMERGENCY EQUIPMENT IN RESPONSE, OUR CAMERAS
5 WOULD NOT BE ON. IF THERE WAS ANOTHER VEHICLE ON THE
6 PERIMETER, THEY PROBABLY DID NOT HAVE ANY CAMERAS ON.

7 AS I SAID, WE WERE THE ONLY TWO OTHER THAN MY CAPTAIN
8 THAT WERE AT THE SCENE. THE CAPTAIN'S VEHICLE IS NOT
9 EQUIPMENT WITH A CAMERA.

10 Q NOW, YOU MADE A STATEMENT NEAR THE END OF YOUR
11 TESTIMONY ABOUT THE BAG THAT YOU SAID THAT YOU FOUND --

12 A YES, SIR.

13 Q -- DURING THE SEARCH. YOU SAID THAT THE DEFENDANT'S
14 BAG -- YOU NEVER EVER SAW MR. JOHNSON HOLD THAT BAG; IS
15 THAT CORRECT?

16 A NOT PHYSICALLY, SIR. I DID OBSERVE HIM HOLDING THAT
17 BAG WHEN I REVIEWED -- AT THE END OF MY TAPE YOU SEE ME
18 LEAN INTO OFFICER FITTERY'S CAR. WHILE I AM LEANING IN
19 HIS CAR YOU CAN HEAR THROUGH MY MICROPHONE.

20 THIS IS THE MICROPHONE THAT I WEAR. IT'S ON IN
21 CONJUNCTION WITH MY CAMERA. IF YOU LOOK AT MY CAMERA
22 IMAGE, IT'LL SAY M1 AND M2. THAT M1 AND M2 ARE
23 MICROPHONES. THERE IS A MICROPHONE INSIDE OF MY CAR AS
24 WELL AS MY EXTERNAL MICROPHONE.

25 AND YOU CAN HEAR THROUGH MY MICROPHONE OFFICER

1 FITTERY'S VIDEO BEING PLAYED. I OBSERVED THE VIDEO WHERE
2 HE SHOWED ME THE STOP AND I DID OBSERVE ON HIS VIDEOTAPE
3 THE DEFENDANT JUMPING OUT OF HIS VEHICLE WITH A BAG IN HIS
4 HAND, SIR.

5 Q EXCUSE ME. DID YOU EVER OBSERVE MR. JOHNSON HOLD
6 THIS SPECIFIC BAG RIGHT HERE?

7 A ON THE VIDEOTAPE ONLY, SIR.

8 Q SO YOU ARE ASSUMING THAT THIS IS THE BAG THAT WAS IN
9 THE VIDEOTAPE?

10 A THAT'S THE BAG THAT MY K-9 TRAILED FROM YOUR
11 DEFENDANT'S VEHICLE TO THE LOCATION WHERE THAT BAG WAS
12 FOUND, SIR.

13 Q AND AGAIN, YOU HAVE NOT PHYSICALLY SEEN MR. JOHNSON
14 HOLD THIS PARTICULAR BAG IN YOUR PRESENCE; IS THAT
15 CORRECT?

16 A THAT'S CORRECT.

17 Q THANK YOU. NOW, WHEN YOU ARRESTED MR. JOHNSON, YOU
18 ASKED HIM WHY DID HE RUN; IS THAT CORRECT?

19 A I DID, SIR.

20 Q AND TELL ME WHAT HE SAID.

21 A HE TOLD ME THAT HE RAN BECAUSE HE DIDN'T HAVE A
22 DRIVER'S LICENSE.

23 Q AND IS NOT HAVING A DRIVING LICENSE AN ARRESTABLE
24 OFFENSE?

25 A YES IT IS, SIR.

1 Q SO HAD HE STAYED WITH THE VEHICLE, HE WOULD HAVE GONE
2 TO JAIL.

3 A THAT'S CORRECT. WELL, LET ME REPHRASE THAT.
4 DEPENDING ON THE CIRCUMSTANCES BEHIND THAT. SIMPLY FOR
5 NOT HAVING A DRIVER'S LICENSE, A GENERAL POLICY IN THE
6 CITY OF NORTH AUGUSTA WOULD BE I COULD ISSUE YOU A UNIFORM
7 TRAFFIC CITATION FOR NOT HAVING A DRIVER'S LICENSE.

8 AT THAT TIME WE HAD THE DISCRETION AS OFFICERS TO
9 ISSUE YOU THAT TICKET AND SUMMONS A LICENSED DRIVER TO
10 COME DOWN AND TAKE POSSESSION OF YOUR VEHICLE AND DRIVE
11 YOU HOME AND ISSUE A COURT DATE ON THAT UNIFORMED TRAFFIC
12 CITATION.

13 IF THE DRIVER'S LICENSE IS SUSPENDED THEN, YES, SIR,
14 WE TAKE YOU TO JAIL.

15 Q OKAY. IN THIS CASE MR. JOHNSON'S LICENSE WAS
16 SUSPENDED?

17 A I BELIEVE IT WAS, SIR.

18 Q IF FACT, YOU CHARGED -- HE WAS DRIVING -- CHARGED
19 WITH DRIVING UNDER SUSPENSION WHAT OFFENSE?

20 A I DIDN'T MAKE THE CHARGES, SIR. I DON'T KNOW.

21 Q WHEN THE VIDEO WAS BEING PLAYED I THINK I HEARD
22 SOMETHING ABOUT MULTIPLE DRIVING OFFENSES. DO YOU RECALL
23 HEARING THAT?

24 A I DON'T, SIR.

25 Q BUT, IF MR. JOHNSON HAD MULTIPLE DRIVING OFFENSES FOR

1 DRIVING UNDER SUSPENSION AND YOU VERIFIED THAT, AT THAT
2 POINT YOU WOULD HAVE TAKEN HIM TO JAIL WITHOUT REGARD TO
3 ANYTHING ELSE.

4 A FOR DRIVING UNDER SUSPENSION, YES, SIR.

5 Q THAT'S CORRECT.

6 A HE WOULD HAVE GONE TO JAIL REGARDLESS OF ANY OTHER
7 OFFENSES.

8 Q AND MR. JOHNSON INDICATED TO YOU THAT HE WAS RUNNING
9 BECAUSE HE HAD NO LICENSE.

10 A THAT'S CORRECT.

11 Q ERGO HE DID NOT WANT TO GO TO JAIL; CORRECT?

12 MRS. YOUNG: I OBJECT, YOUR HONOR. THAT CALLS FOR
13 SPECULATION.

14 THE COURT: ABSOLUTELY. SUSTAINED. HE DOESN'T KNOW
15 WHY.

16 BY MR. WATSON:

17 Q AND THE DATE OF THIS INCIDENT WAS DECEMBER 18; IS
18 THAT CORRECT?

19 A YES, SIR.

20 Q 2007. DECEMBER 18 IS HOW MANY DAYS PRIOR TO
21 CHRISTMAS?

22 A ONE WEEK.

23 Q ONE WEEK. AND IS IT UNREASONABLE FOR SOMEONE TO NOT
24 WANT TO GO TO JAIL ONE WEEK BEFORE CHRISTMAS?

25 MRS. YOUNG: OBJECTION, YOUR HONOR, AGAIN.

1 THE COURT: MR. WATSON, HE CAN'T ANSWER WHY OR WHAT
2 YOUR CLIENT HAD IN HIS MIND.

3 BY MR. WATSON:

4 Q BUT THIS WAS ONE WEEK BEFORE CHRISTMAS?

5 A YES, SIR.

6 Q DID HE PROVIDE -- DID HE TELL YOU THAT THE MONEY THAT
7 HE HAD IN HIS POCKET WAS FOR SHOPPING?

8 A NO, SIR.

9 Q HE DID NOT. YOU DID NOT ASK HIM ANYTHING ABOUT THAT.

10 A I ASKED HIM -- I ASKED HIM WHAT WAS IN HIS POCKET.

11 HE EXPLAINED TO ME WHAT WAS IN HIS POCKET, AND THE
12 CURRENCY WAS FOUND. I DON'T RECALL HIM EVER TELLING ME A
13 PURPOSE BEHIND THE CURRENCY, SIR.

14 Q OKAY. I WANT YOU TO SHOW ME THE PART WHERE YOUR DOG
15 ALERTED ON THE MONEY ON THIS VIDEO.

16 THE COURT: ALL RIGHT. YES, MA'AM. MY TECHNICAL
17 DIRECTOR. MR. WATSON, DO YOU NEED HIM TO STEP DOWN?
18 WOULD THAT HELP YOU?

19 MR. WATSON: I'M OKAY, YOUR HONOR, UNLESS HE NEEDS
20 TO.

21 THE WITNESS: YOUR HONOR, I'D PREFER TO STEP DOWN.

22 THE COURT: YOU MAY. SURE. CAN YOU FAST FORWARD IT,
23 MA'AM, PLEASE?

24 (VIDEO WAS PLAYED.)

25 THE WITNESS: CAN YOU SEE?

1 THE COURT: TELL HER TO STOP IT WHEN YOU GET TO WHERE
2 YOU NEED TO BE.

3 MR. WATSON: STOP PLEASE RIGHT HERE.

4 BY MR. WATSON:

5 Q AT THIS POINT WHERE IS THE MONEY?

6 A IT IS ON THE GROUND I BELIEVE BEHIND WHERE TREVIS
7 JOHNSON IS STANDING.

8 Q AND THE DOG JUST WALKED CASUALLY PAST?

9 A THE REASON THE DOG WALKED CASUALLY PAST HER, WE'RE
10 NOT ALLOWED TO LET HER OUR DOGS SEARCH INDIVIDUALS. AS
11 SHE GOES UP THE HILL, I PULL TENSION ON THE LEASH AND YOU
12 CAN PHYSICALLY SEE ME GO AROUND THE FRONT OF THE CAR. I
13 CAN'T LET HIM GET NEAR HIM. THAT'S NOT ACCEPTABLE AS A
14 K-9 HANDLER PRACTICES.

15 Q SO AT THIS POINT THE DOG DID NOT ALERT ON THE MONEY?

16 A SHE WAS NOT ALLOWED CLOSE TO THE MONEY BASED ON THE
17 POSITION OF YOUR DEFENDANT.

18 Q AT THIS POINT THE DOG DID NOT ALERT ON THE MONEY?

19 A NO, SIR. SHE COULDN'T GET TO IT.

20 Q OKAY. THE DOG DID NOT ALERT ON MR. JOHNSON.

21 A MY WAS PULLED AWAY COMPLETELY BY TENSION ON THE LEASH
22 BECAUSE SHE'S NOT ALLOWED TO SEARCH INDIVIDUALS.

23 Q THERE IS NOTHING AT THIS POINT THAT SHOWS THAT THE
24 DOG ALERTED ON EITHER MR. JOHNSON OR ON THE MONEY?

25 A SHE WAS NOT GIVEN THE OPPORTUNITY. THAT'S WHY WE

1 WALKED QUICKLY PAST HIM, SIR.

2 Q CONTINUE.

3 THE COURT: HOLD ON A SECOND. STOP IT RIGHT THERE.

4 MR. WATSON, WHEN YOU WANT IT STOPPED, YOU TELL THE

5 OPERATOR. FAIR ENOUGH?

6 MR. WATSON: THANK YOU, YOUR HONOR.

7 THE COURT: GO AHEAD.

8 (VIDEO PLAYED.)

9 THE WITNESS: AND RIGHT THERE SHE GOES INTO A SIT AND

10 COMES BACK UP AND GOES INTO LAY ON TOP OF THE MONEY.

11 BY MR. WATSON:

12 Q NOW, YOU TESTIFIED THAT YOU DIRECTED THE DOG TO THE

13 MONEY. ISN'T THAT WHAT YOU DID IN THAT VIDEO JUST NOW?

14 A SIR, I COULDN'T SEE THE MONEY FROM MY POSITION. IF

15 YOU NOTICE ON THE VIDEO, AS I'M APPROACHING I AM ACTUALLY

16 WALKING BACKWARDS. I CAN'T SEE WHERE IT'S GOING. ALL I

17 AM DOING IS WALKING IN THE GENERAL AREA.

18 AS I GET TOWARDS IT, I PRESENT. ONCE SHE GOES DOWN

19 INTO A SIT, I REACH THE CENTER -- I AM NOT WALKING

20 PHYSICALLY TOWARDS IT. THE VIDEO OBVIOUSLY SHOWS ME

21 WALKING BACKWARDS WITH HER.

22 Q BUT YOU WERE WALKING BACKWARDS BECAUSE YOU KNOW WHERE

23 THE MONEY IS.

24 A I KNOW IT'S IN THE GENERAL VICINITY.

25 Q OKAY. YOU TESTIFIED DURING YOUR TESTIMONY THAT YOU

1 OPERATE YOUR DOG. I FIND THAT A PECULIAR CHOICE OF WORDS,
2 BUT THAT'S EXACTLY WHAT YOU DO. YOU OPERATE THE DOG;
3 DON'T YOU?

4 A NO.

5 Q YOU AND THE DOG ARE AN INTEGRAL TEAM.

6 A WE ARE AN INTEGRAL TEAM, YES.

7 Q CAN I GET FILA AND WALK FILA, AND THE DOG WOULD REACT
8 THE SAME WAY FOR ME AS IT WOULD FOR YOU?

9 A NO, SIR.

10 Q EXACTLY. SO YOU AND FILA ARE LIKE BONDED?

11 A YES, SIR, WE ARE.

12 Q NOW AGAIN, YOU SAID THE DOG'S REACTION WHEN THE
13 SIGN -- THE DOG'S SIGN OF ALERT IS TO SIT WHEN IT
14 ENCOUNTERS SOMETHING--

15 A YES. SHE SITS. AND THEN AFTER SHE GOES INTO HER
16 SIT, SHE ACTUALLY GOES INTO AND LAYS ON TOP OF THE
17 CURRENCY. IT IS A DIRECT COURSE THAT SHE CAN GET TO.

18 Q OKAY. WOULD YOU REWIND AND SHOW THAT PART AGAIN WHEN
19 THE DOG COMES UP TO IT.

20 (VIDEO PLAYED.)

21 Q STOP. EVEN WHEN THE DOG CAME TO THE MONEY, I DIDN'T
22 SEE THE DOG SIT UNTIL YOU DID SOMETHING TO THE GROUND.
23 WHAT WERE YOU DOING THERE?

24 A PRESENTING A PRODUCTIVE AREA FOR HER TO SEARCH.

25 Q BUT THIS IS RIGHT AT THE MONEY. I MEAN, YOU WALK THE

1 DOG TO THE MONEY AND YOU DO SOMETHING TO MAKE THE DOG GO
2 DOWN AND YOU MAKE THEM SIT AT THAT POINT. IS THAT NOT
3 WHAT THE VIDEO SHOWS?

4 A THE VIDEO CLEARLY SHOWS ME PRESENTING BEFORE THE
5 MONEY AND--

6 Q YOU ARE PRESENTING -- YOU PRESENTING THE MONEY TO THE
7 DOG?

8 A I AM PRESENTING PRODUCTIVE AREAS FOR HER TO SEARCH.

9 Q YOU'RE PRESENTING PRODUCTIVE AREA RIGHT THERE AT THE
10 MONEY.

11 A BEFORE THE MONEY AND AT THE MONEY. YES, SIR.

12 Q CONTINUE PLEASE.

13 THE COURT: CONTINUE WHAT, THE VIDEO?

14 MR. WATSON: CONTINUE THE VIDEO.

15 THE COURT: YOU TELL US WHEN TO STOP.

16 (VIDEO PLAYED.)

17 BY MR. WATSON:

18 Q NOW, STOP, PLEASE. NOW, WHEN YOU SAY THE DOG ALERTED
19 ON THE MONEY, DID YOU REWARD THE DOG AT THAT POINT?

20 A DID I REWARD THE DOG?

21 Q DID YOU GIVE THE DOG ANY TYPE OF REWARD?

22 A I JUST GAVE HER PRAISE, SIR.

23 Q EXCUSE ME?

24 A PRAISE.

25 Q SO YOU PRAISED HER WHEN YOU FELT SHE GOT TO THE

1 MONEY. YOU PRAISED HER AT THAT POINT. SO--

2 A I PRAISED HER WHEN SHE GAVE A POSITIVE INDICATION, A
3 FINAL RESPONSE.

4 Q OKAY. SO THE DOG SENSED THEN YOU LIKED WHAT IT DID
5 AT THIS POINT AND NOW YOU'RE WALKING THE DOG AGAIN; IS
6 THAT CORRECT?

7 A I AM WALKING THE DOG UP THE STREET -- IN THE AREA
8 WHERE YOUR CLIENT WAS WALKING.

9 Q CONTINUE PLEASE.

10 (VIDEO PLAYED.)

11 Q STOP. NOW, IS THE DOG FREE REIGNING NOW OR DO YOU
12 HAVE THE DOG ON THE LEASH?

13 A I HAVE HER ON THE LEASH AT THIS POINT, SIR.

14 Q OKAY. SO THE DOG IS NOT FREE TO GO WHERE IT WANTS?

15 A NO, SIR. SHE WILL BE IN JUST A MINUTE, THOUGH.

16 Q OKAY. SO IF THE DOG WERE FREE, THE DOG COULD WELL
17 TURN AROUND AND COME BACK TO THE MONEY, BUT THE DOG WON'T
18 COME TO THE MONEY UNLESS YOU BRING HER IN THAT DIRECTION?

19 A ACTUALLY SIR--

20 THE COURT: GENTLEMEN. GENTLEMEN. LET HIM FINISH
21 THE QUESTION.

22 THE WITNESS: YES, SIR.

23 BY MR. WATSON:

24 Q SO THE DOG ONLY COMES TO THE MONEY WHEN YOU BRING HER
25 IN THAT DIRECTION; IS THAT CORRECT?

1 A AT THAT POINT, YES.

2 Q CONTINUE.

3 (VIDEO PLAYED.)

4 Q STOP. YOU WENT TO THE MONEY BEFORE THE DOG DID; IS
5 THAT CORRECT?

6 A AT THIS POINT I AM GOING TO PICK UP THE MONEY. AND
7 AS YOU CAN SEE FROM THE VIDEO, SHE CLEARLY HAS HER NOSE
8 BACK ON IT AGAIN.

9 Q BUT THAT'S ONLY AFTER YOU REACHED DOWN FOR THE MONEY.
10 IS THAT WHAT THE VIDEO SHOWS?

11 A I DIDN'T MAKE HER PUT HER NOSE ON IT, SIR.

12 Q BUT YOU BROUGHT HER TO THE MONEY AGAIN, THE MONEY YOU
13 JUST HAD PRESENTED TO HER; IS THAT CORRECT?

14 A I HAD TO PICK IT UP. I CAN'T JUST CUT HER LOOSE AND
15 GO OVER AND PICK IT UP AND LET HER WANDER FREE.

16 Q CONTINUE.

17 (VIDEO PLAYED.)

18 BY MR. WATSON:

19 Q THAT'S ENOUGH AT THIS POINT. PLEASE STOP THE VIDEO.

20 A THANK YOU, SIR.

21 THE COURT: YOU CAN TURN IT OFF.

22 BY MR. WATSON:

23 Q NOW, Y'ALL HAD STILL CAMERAS -- CAMERAS THAT TAKE
24 STILL PHOTOS AS WELL AS THE CAMERAS IN THE CAR; IS THAT
25 CORRECT?

1 A THAT'S CORRECT, SIR.

2 Q IN FACT, THAT'S WHERE THOSE PHOTOS CAME FROM IS THE
3 STILL CAMERAS; IS THAT CORRECT?

4 A YES, SIR.

5 Q THE PHOTOS THAT WE HAVE IN AS AN EXHIBIT ALREADY THAT
6 YOU'VE LOOKED AT UP TO THIS POINT.

7 A YES, SIR.

8 Q WHO TOOK THOSE PICTURES?

9 A I DID, SIR.

10 Q YOU TOOK THOSE PICTURES? NOW, DO YOU HAVE ANY
11 PICTURES OF FILA ALERTING IN THE CAR WHEN YOU TOOK HER
12 BACK TO THE CAR?

13 A NO, SIR, I DO NOT.

14 Q DO WE HAVE ANY PICTURES OF FILA IN THE CAR?

15 A NO, SIR, WE DO NOT. IT'S NOT PRUDENT FOR ME TO TAKE
16 PICTURES WHILE I'M WORKING MY DOG.

17 Q OKAY. ARE YOU THE ONLY ONE IN THE DEPARTMENT WHO
18 KNOWS HOW TO OPERATE A CAMERA?

19 A NO, SIR, I'M NOT.

20 Q SO WHY DIDN'T SOMEBODY ELSE? YOU WOULD AGREE THAT
21 HAVING THOSE PICTURES WOULD CERTAINLY BE CRUCIAL AT THIS
22 POINT IN CONVINCING THIS JURY; WOULDN'T IT?

23 A POSSIBLY.

24 Q AND YOU PRESENT NOTHING TO SHOW THAT THE DOG ALERTED
25 ANYWHERE -- ANYWHERE WHEN YOU WENT BACK TO THE CAR; IS

1 THAT CORRECT?

2 A SIR, IT'S NEVER BEEN A PRACTICE OF US TO TAKE
3 PICTURES OF OUR DOGS ALERTING TO VEHICLES. WE SEARCH
4 NUMEROUS CARS AND IT WOULDN'T BE PRUDENT.

5 Q I HAVE SEEN PICTURES OF DOGS SITTING BY DRUGS MANY,
6 MANY TIMES--

7 MRS. YOUNG: I OBJECT, YOUR HONOR.

8 THE COURT: LET HIM FINISH HIS QUESTIONS.

9 BY MR. WATSON:

10 Q YOU CAN TAKE PICTURES OF THE DOG AT ANY POINT; COULD
11 YOU NOT?

12 A SOMEBODY COULD, YES, SIR.

13 Q RIGHT. AND NOBODY DID THIS IN THIS CASE. NOT A
14 SINGLE PICTURE OF THIS DOG ALERTING IN THAT CAR. YOU
15 CLAIM THE DOG ALERTED ON THE DOOR; IS THAT CORRECT?

16 A THE DOOR SEAM, SIR.

17 Q ON THE DOOR SEAM. AND THERE IS NO EVIDENCE OF THAT
18 OTHER THAN YOUR WORD; IS THAT RIGHT?

19 A YES, SIR.

20 Q WHERE ELSE DID -- DO YOU SAY THE DOG ALERTED?

21 A ON THE CENTER CONSOLE AREA OF THE INTERIOR OF THE
22 VEHICLE.

23 Q DO YOU HAVE ANY PICTURES OF THAT?

24 A I DO NOT, NO, SIR.

25 Q THE ONLY THING WE HAVE ON THAT IS YOUR WORD?

1 A YES, SIR.

2 Q NOW, YOU SAY THAT AFTER YOU LEFT THE CAR, FILA
3 STARTED ON ITS TRACKING SEARCH; IS THAT CORRECT?

4 A A FREE AIR SEARCH, YES, SIR.

5 Q OKAY. NOW, IS THERE ANY PICTURE OF ANY PART OF THIS
6 ALLEGED SEARCH?

7 A NOT THAT I'M AWARE OF, SIR.

8 Q HAD YOU HAD CAMERAS OUT THERE ON THE SCENE TO TAKE
9 PICTURES -- THOSE PICTURES; RIGHT?

10 A YES, SIR.

11 Q YOU HAVE VIDEOS IN YOUR CAR; IS THAT CORRECT?

12 A IT WOULDN'T HAVE BEEN PRUDENT TO USE A VIDEO IN THE
13 CAR--

14 Q EXACTLY, BUT--

15 THE COURT: GENTLEMEN, I AM NOT GOING TO WARN YOU
16 AGAIN. DON'T CUT EACH OTHER OFF. PLEASE. LET'S BE
17 CIVIL.

18 BY MR. WATSON:

19 Q AGAIN, WE'VE ALREADY SEEN VIDEOS OF OFFICER FITTERTY'S
20 CAR AT MR. JOHNSON'S CAR RUNNING, SO YOU CLEARLY COULD
21 HAVE HAD THAT CAMERAS TAKING PICTURES OF WHEN YOU WENT
22 BACK TO THE CAR AND ENTER THE CAR; COULD YOU NOT?

23 A WE COULD HAVE.

24 Q BUT YOU DIDN'T.

25 A NO, SIR.

1 Q YOU DIDN'T CHOOSE TO BRING ANY OTHER EVIDENCE TO
2 COURT OTHER THAN YOUR WORD?

3 A YES, SIR.

4 Q NOW, WHEN YOU ARRESTED MR. JOHNSON, YOU THREATENED
5 AMONG OTHER THINGS TO HAVE -- TO LET THE DOG GET UP AND
6 EAT HIM UP; IS THAT CORRECT?

7 A I TOLD HIM THAT I WOULD HAVE HER BITE HIM IF HE
8 DIDN'T COMPLY WITH MY ORDERS, YES, SIR.

9 Q MR. JOHNSON IS CHARGED WITH RESISTING ARREST AS A
10 RESULT OF THIS ARREST; WAS HE NOT?

11 A I DON'T KNOW WHAT HIS CHARGES WERE, SIR.

12 Q WAS THERE ANY POINT WHERE MR. JOHNSON RESISTED YOU?

13 A THAT HE RESISTED ME PHYSICALLY?

14 Q DURING THE ARREST.

15 A NO, SIR, JUST NONCOMPLIANT WITH VERBAL INSTRUCTIONS.

16 Q AND ALL OF YOUR ENCOUNTERS WITH MR. JOHNSON OUT IN
17 THE FIELD THAT DAY ARE CAPTURED ON YOUR VIDEO UP UNTIL THE
18 TIME YOU TAKE HIM TO JAIL; IS THAT CORRECT?

19 A THAT'S CORRECT, SIR.

20 Q SO THERE IS NOTHING INDICATING THAT MR. JOHNSON
21 RESISTED YOU AND YOU'RE NOT SAYING THAT MR. JOHNSON
22 RESISTED YOU IN ANY WAY.

23 A HE DIDN'T RESIST ME, BUT I CAN'T SPEAK FOR OFFICER
24 FITTERY'S FOOT PURSUIT, SIR.

25 Q YOU TESTIFIED THAT THIS WAS A KNOWN DRUG AREA; IS

1 THAT CORRECT?

2 A I TESTIFIED THAT THE AREAS AROUND IT ARE KNOWN DRUG
3 AREAS.

4 Q CAN YOU RUN THE VIDEO, PLEASE, WHERE HE'S DESCRIBING
5 THE KNOWN DRUG AREA? CAN YOU BACK UP A LITTLE?

6 A MR. WATSON, I BELIEVE THAT WE'RE PAST THE POINT THAT
7 YOU'RE LOOKING FOR, I BELIEVE THAT WE NEED TO LOOK AT.

8 Q IT IS SUBSEQUENT TO THIS?

9 A IT SHOULD BE JUST BEYOND THIS. YES, MA'AM.

10 (VIDEO PLAYED.)

11 Q AGAIN. THIS IS A KNOWN DRUG AREA. WHAT AREA DO THAT
12 ENCOMPASS?

13 A THE AREA TO THE EAST OF THAT IS A KNOWN DRUG AREA.
14 THE AREA TO THE NORTH OF THAT IS A WELL A KNOWN DRUG AREA.

15 Q SO YOU'RE JUST SAYING THAT THIS IS A PRISTINE AREA.

16 THERE ARE DRUGS ALL AROUND, BUT THIS AREA HERE IS
17 PRISTINE, THERE ARE NO DRUGS IN THIS AREA?

18 A I DON'T BELIEVE THERE IS ANYTHING SUCH AS A PRISTINE
19 AREA, SIR.

20 Q OKAY. DRUGS ALL AROUND BUT NOT IN THIS SPECIFIC
21 AREA. WHY DID YOU TELL HIM THERE WAS A KNOWN DRUG AREA IF
22 YOU DIDN'T THINK THERE WAS ANY DRUGS IN THIS AREA?

23 A SIR, I USED THAT AS A TACTIC TO SEE IF HE WOULD ADMIT
24 TO WHERE HE -- WHERE HE HID HIS BLACK BAG CONTAINING THE
25 COCAINE.

1 Q MRS. YOUNG ASKED YOU IF YOU EVER FRAMED ANYBODY.

2 A YES, SIR, SHE DID.

3 Q HAVE YOU?

4 A NO, SIR, I HAVE NOT.

5 Q YOU TOLD MR. JOHNSON IN THIS CASE THAT ANY DRUGS
6 FOUND WERE GOING TO BE HIS, WHETHER IT IS HIS OR NOT, IF
7 HE DIDN'T TELL YOU WHERE HIS WERE; IS THAT CORRECT?

8 A I DID TELL HIM THAT, SIR.

9 Q SO HAVE YOU DONE THAT IN THE PAST WITH OTHER
10 DEFENDANTS?

11 A SIR, I HAVE USED THAT AS A TACTIC TO GET PEOPLE TO
12 ADMIT TO WHERE THEY HID THEIR DOPE, BUT I HAVE NEVER
13 FRAMED ANYBODY. THE ONLY THING THAT I HAVE IN THIS LINE
14 OF WORK THAT'S MINE IS MY CREDIBILITY AND I WON'T GIVE
15 THAT TO ANYBODY.

16 Q NOW, IT'S NOT A BIG STEP FROM FINDING DRUGS IN AN
17 AREA THAT YOU KNOW DOES NOT BELONG TO A DEFENDANT AND
18 PUTTING IT ON THAT -- SAYING IT'S THE DEFENDANT'S -- TO
19 ACTUALLY PUTTING DRUGS IN THE AREA AND SAYING IT BELONGS
20 TO THE DEFENDANT; IS THERE?

21 A COULD YOU REPEAT THAT?

22 Q IT'S NOT A BIG LEAP--

23 MRS. YOUNG: YOUR HONOR, THIS IS SPECULATION.

24 THE COURT: THAT'S IMPROPER. SUSTAINED.

25 BY MR. WATSON:

1 Q NOW, TELL ME ABOUT THE FENCE THAT MR. JOHNSON IS
2 ALLEGED TO HAVE -- IN FACT, OFFICER FITTERY TESTIFIED THAT
3 WHEN HE WAS CHASING MR. JOHNSON, THAT HE PURSUED HIM UP TO
4 A FENCE AND HE JUMPED ACROSS THE FENCE. YOU RECALL --

5 A NO, SIR.

6 Q -- COMING TO THAT FENCE ON YOUR WAY ALONG THE DRUG
7 TRAIL?

8 A NO, SIR, HE MADE NO TESTIMONY ABOUT A FENCE. HE MADE
9 TESTIMONY TO A RETAINING WALL.

10 Q OKAY. A RETAINING WALL. HOW WAS FILA ABLE TO
11 NEGOTIATE THE RETAINING WALL?

12 A THE RETAINING WALL WAS APPROXIMATELY 2-FOOT OFF THE
13 GROUND. IT IS ACTUALLY -- THE WALL IS A RETENTION TYPE OF
14 WALL. THAT WALL -- AS YOU LOOK AT THE STREET, THERE IS A
15 SIDEWALK AND THEN THERE IS A WALL.

16 THAT WALL IS TYPICAL STONE TYPE OF WALL THAT YOU
17 WOULD PICK UP AT ANY HOME IMPROVEMENT STORE. THAT WALL
18 COMES UP APPROXIMATELY TWO, TWO AND A HALF FEET, AND THEN
19 THE YARD ACTUALLY BEGINS AT THIS POINT AND ACTUALLY
20 PROGRESSES IN AN UPHILL MANNER TOWARDS THE HOUSE.

21 Q SO YOU'RE SAYING THAT WHEN YOU TRACKED HER -- FILA
22 TRACKED TO THIS WALL SUPPOSEDLY, HE JUST WENT RIGHT ACROSS
23 IT.

24 A SHE DIDN'T HAVE TO GO ACROSS IT, SIR. THE YARD
25 ACTUALLY COMES DOWN AND FLATTENS INTO THE WALL. AND ALL

1 SHE HAS TO DO IS JUMP DOWN FROM THE WALL ON TO THE
2 SIDEWALK APPROXIMATELY TWO AND A HALF FEET.

3 Q SHE JUMPED ACROSS THE WALL. HOW DID SHE GET ACROSS
4 THE WALL?

5 A SHE DIDN'T HAVE TO CROSS THE WALL, SIR. YOU'RE NOT
6 UNDERSTANDING WHAT I AM SAYING.

7 Q NO, I AM NOT UNDERSTANDING.

8 A THE YARD COMES DOWN AT THE BASE OF THE WALL. THE
9 YARD COMES IN. LEVEL DIRT. THIS IS THE WALL. IT COMES
10 IN EVEN AND THEN IT DROPS DOWN ABOUT TWO AND A HALF FEET
11 TO THE SIDEWALK. THAT WALL IS ACTUALLY USED TO HOLD THE
12 DIRT BACK FROM THAT YARD.

13 Q OKAY. ALL RIGHT. MY MISTAKE. WHEN OFFICER FITTERY
14 TESTIFIED, HE MADE IT SEEM AS IF MY CLIENT JUMPED ACROSS
15 THE WALL. THANK YOU FOR CLEARING THAT UP FOR ME.

16 A YES, SIR. IN THE VIDEO, SIR, WHEN YOU SEE ME COME
17 DOWN FROM WHERE THE INCIDENT LOCATION WAS AND MAKE MY
18 RIGHT TURN ON TO SEYMORE, ON THE RIGHT SIDE OF THE CAMERA
19 YOU CAN ACTUALLY SEE THAT YARD AND THAT WALL, SIR, IF YOU
20 NEED A CLEAR PICTURE OF IT.

21 Q OKAY. NOW, LET'S TAKE A LOOK AT SOME OF THESE
22 PICTURES FROM THE YARD. THIS PLAINTIFF'S -- STATE'S
23 EXHIBIT NO. 5 IS A PICTURE OF THE SHRUBBERY AND SO FORTH.
24 THIS IS A PICTURE OF THE FRONT OF THE SHED WHERE YOU SAY
25 THE DRUGS WERE FOUND; IS THAT CORRECT?

1 A THAT'S A PICTURE OF THE LEFT FRONT OF THAT SHED, YES,
2 SIR.

3 Q OKAY. AND IT'S PRETTY GROWN UP; IS THAT CORRECT?

4 A YES, SIR. THAT'S A LARGE BUSH RIGHT THERE.

5 Q OKAY. AND STATE'S EXHIBIT NO. 4 IS ANOTHER PICTURE
6 OF THE SAME THING?

7 A YES, SIR, FROM A DIFFERENT ANGLE.

8 Q OKAY. AND YOU WOULD HAVE US BELIEVE THEN THAT WITH
9 ALL OF THOSE PLACES TO HIDE DRUGS, IF SOMEONE WANTED TO
10 HIDE IT, THEY JUST STUCK IT OUT IN THE PLAIN VIEW AS SHOWN
11 IN STATE'S EXHIBIT NO. 7; IS THAT CORRECT?

12 A I CAN'T SPEAK FOR WHAT ANYBODY WOULD HAVE DONE, SIR.
13 I CAN TELL YOU THAT'S NOT ACTUALLY PLAIN VIEW FROM
14 ANYWHERE UNLESS YOU WERE ACTUALLY UTILIZING A K-9 TO
15 ATTEMPT TO LOCATE IT. IT WAS ACTUALLY CONCEALED PRETTY
16 FAIRLY.

17 Q LOOK AT THAT'S EXHIBIT NO. 7 AGAIN. I SEE A BOX IN
18 THAT PICTURE. DO YOU SEE THAT CARDBOARD BOX?

19 A YES, SIR.

20 Q OKAY. THERE IS A CARDBOARD BOX IN THE PICTURE. THE
21 DRUGS WEREN'T HIDDEN UNDER THE BOX OR ANYTHING. THE DRUGS
22 ARE JUST OUT THERE IN PLAIN VIEW; IS THAT CORRECT?

23 A UNDERNEATH THAT TABLE, SIR.

24 Q UNDERNEATH THE TABLE. BUT YOU WALK IN THE ROOM, YOU
25 CAN SEE IT?

1 A IF YOU CAN GET DOWN INTO THAT ROOM FOR ANY PURPOSE.

2 Q IF YOU CAN GET DOWN INTO THE ROOM. IS IT DIFFICULT
3 TO GETTING INTO A ROOM?

4 A NO, SIR. THE AVERAGE PRUDENT PERSON WOULDN'T GO DOWN
5 THERE BASED ON THE OVERGROWTH OF THE YARD.

6 Q BUT YOU COULD.

7 A OH, CERTAINLY.

8 Q YOU WERE SOUNDING AS IF THERE WAS DIFFICULTY ENTERING
9 THIS BUILDING. IS THERE SOME PHYSICAL OBSTRUCTION TO KEEP
10 YOU FROM ENTERING THIS BUILDING?

11 A NO, SIR, JUST THE OVERGROWN GRASS.

12 Q YOU KNOW WHAT IMPRESSED ME ABOUT THIS BUILDING? WHAT
13 IMPRESSED ME IS THAT DESPITE ALL OF THIS GROWTH
14 EVERYWHERE, IF I WERE TO GO TO THIS YARD, THIS HOUSE
15 TODAY--

16 MRS. YOUNG: YOUR HONOR, I OBJECT.

17 THE COURT: MR. WATSON, PLEASE ASK THE QUESTION, NOT
18 YOUR PERSONAL OPINION.

19 MR. WATSON: I WILL. I AM SETTING THE FOUNDATION,
20 YOUR HONOR.

21 THE COURT: WELL, I KNOW THAT. BUT YOU'RE NOT A
22 WITNESS. YOU ASK QUESTIONS. PLEASE.

23 BY MR. WATSON:

24 Q OKAY. IF I WERE TO GO TO THIS HOUSE AND LOOK IN THIS
25 SHED THAT'S PICTURED IN STATE'S EXHIBIT NO. 7, THAT SHED

1 WOULD LOOK PRETTY MUCH THE SAME AS IT IS RIGHT NOW WITH NO
2 GRASS GROWN UP OR ANYTHING; IS THAT CORRECT?

3 A I DON'T KNOW, SIR. I DON'T OWN THAT PROPERTY.

4 Q IN SPITE OF THE FACT THAT THERE WAS GRASS AND
5 EVERYTHING GROWING UP ALL OVER THE PLACE AROUND IT; IS
6 THAT CORRECT?

7 A I CAN'T SPEAK FOR WHAT THAT PROPERTY WOULD LOOK LIKE
8 NOW, SIR.

9 MR. WATSON: I AM GOING TO ASK THE COURT TO ALLOW THE
10 JURY TO GO OUT THERE AND TAKE A LOOK AT THE SHED AT SOME
11 POINT, YOUR HONOR.

12 THE COURT: YOU HAVE TO MAKE THE PROPER MOTION.

13 MR. WATSON: I WILL.

14 BY MR. WATSON:

15 Q NOW, YOU AND -- THERE HAVE BEEN ARTICLES WRITTEN IN
16 THE NEWSPAPER ABOUT YOU AND FILA ON SEVERAL OCCASION; HAVE
17 THERE NOT?

18 A YES, SIR, THERE HAVE.

19 Q IN FACT, AS I UNDERSTAND IT, THIS ARREST -- THE
20 AMOUNT OF DRUGS SEIZED IN THIS CASE IS THE LARGEST THAT
21 YOU AND FILA HAVE EVER SEIZED; IS THAT CORRECT?

22 A YES, SIR.

23 Q SO THIS IS A BIG THING FOR YOU AND FILA; IS THAT
24 CORRECT?

25 A IT IS.

1 Q AND YOU'RE ABOUT TO HAND YOUR JOB OVER TO OFFICER
2 FITTERY. IS HE NOW THE K-9 OFFICER OR ARE YOU STILL THE
3 K-9?

4 A NO, SIR. I AM THE K-9 HANDLER FOR K-9 FILA. OFFICER
5 FITTERY RECEIVED A K-9, K-9 ALISHA. HE GOT HER
6 APPROXIMATELY 14 OR 15 MONTHS AGO.

7 Q SO HE WAS TRAINED ALREADY THEN FOURTEEN OR 15 OR 15
8 MONTHS AGO AT THE TIME THIS SEARCH WAS BEING DONE.

9 A NO, SIR.

10 Q HE ALREADY HAD HIS DOG?

11 A NO, SIR. HE DIDN'T RECEIVE HIS TRAINING UNTIL HE
12 WENT TO TARHEEL K-9, WHICH I BELIEVE WAS -- I WOULD BE
13 SPECULATING TO SAY TWO OR THREE MONTHS AFTER THIS
14 INCIDENT.

15 Q OKAY. THE REASON I AM CONFUSED, YOU SAID 14 OR 15
16 MONTHS. THIS OCCURRED ON DECEMBER OF 2007. AND BY MY
17 CALCULATION THAT'S 14 OR 15 MONTHS. WE'RE IN MARCH OF
18 2009.

19 A YES, SIR. I BELIEVE HE WENT TO GET HIS K-9 JANUARY,
20 FEBRUARY -- LATE FEBRUARY I GUESS IT WAS OF 2008.

21 Q NOW, THE TIMES SHOWN ON THESE -- IN THESE VIDEOS ON
22 THE VARIOUS CARS ARE NOT SYNCHRONIZED; ARE THEY?

23 A NO, SIR, THEY'RE NOT.

24 Q OKAY. SO THE ONLY THING WE CAN GATHER FROM YOUR
25 CAR'S CAMERA IS THE ELAPSED TIME WHILE IN YOUR CAR. IF

1 OFFICER FITTERY'S CAR HAD ANOTHER TIME, THERE WOULD BE NO
2 SYNCHRONIZATION BETWEEN THE TWO CARS; IS THAT CORRECT?

3 A THERE IS NO SYNCHRONIZATION BETWEEN ANY OF THE CARS.

4 Q OKAY. THE REASON I ASK THIS IS IT CLEARLY SHOWS IN
5 THE VIDEO THAT WHEN YOU ENCOUNTERED MR. JOHNSON, IT WAS
6 ABOUT 11 -- EXCUSE ME -- SEVENTEEN 29. CAN YOU BACK THIS
7 UP TO THE FIRST ENCOUNTER FOR ME?

8 THE COURT: MR. WATSON, MAY I SEE YOU OVER HERE AT
9 THE SIDE FOR A SECOND?

10 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

11 THE COURT: MR. FOREMAN, LADIES AND GENTLEMEN, YOUR
12 LUNCH IS HERE. HERE IS WHAT I AM GOING TO DO. I AM GOING
13 TO STOP AND BREAK FOR LUNCH. WE'LL START BACK AT
14 2 O'CLOCK.

15 SO, ENJOY YOUR LUNCH. I THINK IT'S REAL PRETTY
16 OUTSIDE. SO WHEN YOU GET THROUGH EATING, YOU'RE CERTAINLY
17 WELCOME TO GO OUTSIDE AND STRETCH AND GET SOME FRESH AIR,
18 SMOKE A CIGARETTE IF YOU WANT TO. I ONLY GOT ONE SMOKER?

19 THE JUROR: TWO.

20 THE COURT: TWO. I KNEW YOU WERE. ANYWAY, WE'LL
21 START BACK AT TWO. AND DON'T DISCUSS THE CASE. DON'T
22 START ANY DELIBERATIONS. DON'T LET ANYBODY DISCUSS IT
23 WITH YOU. DOES THAT SUIT EVERYBODY? THANK YOU.

24 EVERYBODY ELSE REMAIN SEATED. Y'ALL GO ENJOY YOUR
25 LUNCH. IF YOU WANT TO GO OUTSIDE AND EAT IT, HOWEVER YOU

1 WANT TO DO IT, THAT'S UP TO YOU.

2 (WHEREUPON, THE JURY EXITED THE COURTROOM AT 12:42
3 PM.)

4 THE COURT: ALL RIGHT. OFFICER RUTLAND, YOU'RE IN
5 THE MIDDLE OF YOUR TESTIMONY. I WILL ALLOW YOU TO
6 OBVIOUSLY TAKE A LUNCH BREAK. I INSTRUCT AND ORDER YOU
7 NOT TO DISCUSS YOUR TESTIMONY WITH ANYONE. ANYONE.
8 INCLUDING THE SOLICITOR, THE DEFENSE, THE EXPERT WITNESS
9 OR ANYONE ELSE.

10 THE WITNESS: YES, SIR.

11 THE COURT: HAVE A VERY PLEASANT LUNCH, EVEN YOUR
12 CO-FELLOW WORKERS. THAT'S THE RULES. ENJOY YOUR LUNCH.

13 THE WITNESS: THANK YOU, SIR.

14 THE COURT: ALL RIGHT. ANYTHING FOR THE RECORD ON
15 BEHALF OF THE STATE?

16 MR. WEEKS: YOUR HONOR, I JUST WANTED TO PUT ON THE
17 RECORD WHILE THE JURY IS OUT THAT THE VIDEOTAPE IS IN
18 EVIDENCE. MR -- WE'VE BEEN VERY NICE IN ALLOWING HIM TO
19 USE OUR VIDEOTAPE EQUIPMENT.

20 BUT IF HE WANTS TO CROSS-EXAMINE A WITNESS WITH A
21 SPECIFIC PORTION OF A VIDEOTAPE, IT'S UP TO HIM TO HAVE
22 THAT PREPARED, KEYED UP AND READY TO GO. AND HE'S ALSO
23 ASKING THE QUESTIONS IMPROPERLY BECAUSE HE'S JUST TURNING
24 TO OUR EMPLOYEES, SAYING, TURN IT BACK TO THAT POINT.

25 WELL, THAT'S NOT SPECIFIC ENOUGH TO CROSS-EXAMINE THE

1 WITNESS UNDER THE RULES. RULES REQUIRE HIM TO ASK HIM
2 FIRST WHETHER OR NOT HE REMEMBERS SAYING THAT. HE IS
3 SEEKING TO IMPEACH HIM I'M ASSUMING BY GETTING HIM TO GO
4 BACK AND REPLAY A PORTION OF THE VIDEOTAPE WHICH SPEAKS
5 FOR ITSELF ON THE RECORD.

6 SO I DIDN'T WANT TO BRING ALL OF THIS UP IN THE
7 PRESENCE OF THE JURY, BUT THIS PIECE OF EQUIPMENT IS HARD
8 FOR US TO OPERATE ON OUR OWN. AND TO DO IT AT HIS VERY
9 VAGUE INSTRUCTIONS IS EQUALLY HARDER. SO THAT'S MY POINT.

10 IF HE HAS SOME SPECIFIC PIECES OF EVIDENCE THAT HE
11 WANTS TO IMPEACH A WITNESS WITH, WE WILL ASSIST HIM IN
12 TRYING TO FIND THAT ON THE VIDEOTAPE.

13 BUT JUST TO DIRECT HER BACK AND FORTH AND SHE'S GOT
14 TO KEEP RE-PUBLISHING PORTIONS OF THE VIDEO, IMPROPER
15 QUESTIONING. THAT'S MY OBJECTION.

16 THE COURT: ALL RIGHT. WELL, MR. WATSON, OVER THE
17 BREAK AT LUNCH, PLEASE TRY TO PINPOINT WHERE YOU'RE
18 REFERRING TO IN THE VIDEO. THERE IS NO SENSE IN KEEP
19 PLAYING IT BACK AND BACK. MR. WEEKS IS RIGHT.

20 I HADN'T SAID ANYTHING, BUT I MEAN, IT JUST KEEPS
21 RE-PUBLISHING, RE-PUBLISHING. IF YOU'VE GOT A SPECIFIC
22 PLACE YOU WANT TO GO DIRECTLY TO IT, TRY TO GET THAT
23 WORKED OVER LUNCH. ANYTHING BY THE DEFENDANT BEFORE WE
24 BREAK FOR LUNCH?

25 MR. WATSON: WE HAVE NOTHING, YOUR HONOR.

1 THE COURT: ALL RIGHT. MAKE SURE THAT THE DEFENDANT
2 IS AVAILABLE TO DEFENSE COUNSEL DURING LUNCH. MAKE SURE
3 THAT THE DEFENDANT GETS SOME LUNCH. AND WE'LL START BACK
4 AT 2 O'CLOCK.

5 MR. WATSON, I TOLD YOU I WOULD SHOW YOU MY CHARGE ON
6 CONSTRUCTIVE POSSESSION. IF YOU'LL -- I WILL TRUST YOU
7 WITH...

8 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

9 (WHEREUPON, COURT WAS IN RECESS FOR LUNCH.)

10 THE COURT: ANYTHING FROM THE STATE BEFORE WE START
11 BACK?

12 MRS. YOUNG: NO, SIR.

13 THE COURT: MR. WATSON?

14 MR. WATSON: NOTHING, YOUR HONOR.

15 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
16 APPROXIMATELY 2:01 PM.)

17 THE COURT: I HOPE YOU ENJOYED YOUR LUNCH. WE'LL GET
18 STARTED RIGHT -- IS 5 O'CLOCK OKAY WITH EVERYBODY? WE'LL
19 SEE HOW WE'RE GOING. OKAY? YOU MAY CONTINUE, SIR.

20 MR. WATSON: THANK YOU, YOUR HONOR.

21 THE COURT: YOU'RE WELCOME.

22 BY MR. WATSON:

23 Q OFFICER RUTLAND.

24 A YES, SIR.

25 Q DURING YOUR TESTIMONY YOU INDICATED THAT AFTER YOU

1 TOOK THE DOG BACK TO THE VEHICLE, TO MR. JOHNSON'S
2 VEHICLE, AND STARTED YOUR OPEN AIR SEARCH, AT ONE POINT
3 THE DOG GAVE AN ALERT NEAR A BUILDING; IS THAT CORRECT?

4 A NO, SIR. SHE DID NOT GIVE AN ALERT NEAR A BUILDING.

5 Q YOU INDICATED SOMETHING ABOUT A PADLOCKED BUILDING.
6 WOULD YOU REVEAL THAT FOR ME?

7 A YES, SIR.

8 Q ALL RIGHT.

9 A DURING THE COURSE OF HER AIR SCENTING, WE TRAVELED
10 THROUGH A BACK YARD. IT'S ON THE MAP THERE. AS WE
11 REACHED THE END OF THE DRIVEWAY AS YOU COME OFF OF THE --
12 OFF THE RETAINING WALL AND CROSSED OVER SEYMORE DRIVE, WE
13 WENT UP A DRIVEWAY.

14 THE BACK SIDE OF THAT PROPERTY -- I GUESS THE
15 BOUNDARY OF THAT PROPERTY AND THE PROPERTY THAT WOULD HAVE
16 BEEN ON THURMOND STREET, THERE WAS A STORAGE BUILDING BACK
17 THERE. I NOTICED THAT AS MY DOG WAS PATTERNING, SHE DID
18 EXPRESS INTEREST TOWARDS THAT BUILDING.

19 SHE BEGAN WORKING BACK AND FORTH ON THAT BUILDING AND
20 PULLED OFF OF IT TO CONTINUE A TRACK. MYSELF AND OFFICER
21 FITTERY, AS I TESTIFIED EARLIER, LOOKED AT THAT BUILDING
22 AND AROUND THAT BUILDING.

23 SHE NEVER GAVE AN ALERT. NEVER GAVE A FINAL RESPONSE
24 IN THAT AREA. SHE CONTINUED TO SEARCH. BUT IN THE MANNER
25 THAT SHE WAS PATTERNING LED ME TO BELIEVE THAT BASED ON MY

1 EXPERIENCE IN HANDLING MY DOG THAT THE PERSON THAT WAS
2 RUNNING WITH THE COCAINE IN THEIR HANDS HAD GOTTEN CLOSE
3 TO THAT BUILDING.

4 THAT'S WHAT LED US ULTIMATELY TO CHECK THAT AREA TO
5 MAKE SURE THERE WAS NOTHING THROWN, NOTHING DITCHED,
6 NOTHING ACTUALLY ATTEMPTED TO BE HIDDEN INSIDE OF THAT
7 BUILDING.

8 Q THERE COULD ACTUALLY HAVE BEEN COCAINE IN THAT
9 BUILDING. AND YOU DON'T KNOW BECAUSE YOU NEVER WENT IN
10 IT; IS THAT CORRECT?

11 A NO, SIR. MY DOG NEVER GAVE A FINAL RESPONSE ON THAT
12 BUILDING, SO I HAD NO REASON TO INVESTIGATE THAT FURTHER.
13 I TRUST MY K-9.

14 Q BUT YOU KNOW FOR SOME REASON THE DOG SHOWED A LOT OF
15 INTEREST IN THAT AREA AROUND THE BUILDING.

16 A YES, SIR. SHE ONLY EXPRESSED INTEREST ACROSS THE
17 FRONT OF THAT BUILDING IN A PATH THAT WAS BEING TRAVELED,
18 NEVER TO THE SIDES OR BEHIND THAT BUILDING.

19 Q OKAY. NOW, I UNDERSTAND THAT DURING THIS SO-CALLED
20 OPEN AIR SEARCH, THE DOG IS NOT ACTUALLY SEARCHING THE
21 AIR. THE DOG IS ACTUALLY SEARCHING THE GROUND; IS THAT
22 CORRECT?

23 A THE DOG IS ATTEMPTING TO SEARCH ANYWHERE WHERE THE
24 ODOR COULD BE. BASED ON THE ENVIRONMENTAL CONDITIONS,
25 LIKE I SAID, IT WAS A COOL NIGHT THAT NIGHT. THERE WAS NO

1 WIND.

2 TYPICALLY WHAT WE FIND IN WORKING OUR K-9S AND
3 TRAINING OUR K-9S, ON A COLD NIGHT WITH NO WIND MOVING
4 ANYTHING ABOUT, ANY ODOR WOULD TEND TO SETTLE IMMEDIATELY.
5 THERE IS NOTHING ACTUALLY TO CAST THAT ODOR EXPRESSLY TO
6 THE LEFT OR TO THE RIGHT.

7 IT WOULD ESSENTIALLY, AS THE ODOR IS COMING OFF,
8 WOULD FALL LOWER TO THE GROUND BASED ON THE TEMPERATURE.
9 AND WITH NO WIND TO MOVE IT, IT WOULD ESSENTIALLY STAY IN
10 THAT AREA. THAT'S HOW SHE'S ABLE TO MAINTAIN A SOLID WIND
11 SCENT ON THAT.

12 Q OKAY. BUT THE DOG'S SEARCH IS REALLY FOR THE
13 PARTICULARS THAT FELL TO THE GROUND, NOT FOR WHAT'S STILL
14 IN THE AIR; IS THAT CORRECT?

15 A IT CAN BE WHEREVER THAT SUBSTANCE HAPPENS TO BE. IF
16 THAT SUBSTANCE IS STILL LINGERING IN THE AIR, THEN THAT'S
17 WHAT SHE IS GOING TO GO TO. WHEN SHE WORKS LOOKING FOR
18 THE ODOR OF NARCOTICS, IF SHE'S CATCHING THAT ODOR AT THE
19 GROUND, THAT'S WHERE HER NOSE IS GOING TO BE.

20 IF THE ODOR IS STILL LINGERING IN THE AIR, SHE'S
21 GOING TO HAVE HER HEAD UP. SHE'S GOING TO BE LOOKING
22 TRYING TO BRACKET IN BETWEEN THAT SCENT.

23 Q I NOTICED THAT WHEN YOU STATED THAT IN YOUR TEST RUNS
24 YOU WOULD PUT DRUGS OUT AND LET THE DRUGS STAY THERE FOR A
25 CERTAIN AMOUNT OF TIME BEFORE YOU WOULD ACTUALLY SEND YOUR

1 DOG ON THE SEARCH. WHAT IS THE SIGNIFICANCE OF THAT?

2 A ANY TIME WE DO ANY TRAINING, ANY TEST SEARCH, IF
3 NARCOTICS ARE PRESENT, THAT ODOR IS GOING TO EMIT FROM THE
4 PACKAGING OR FROM THE AREA WHERE THAT SUBSTANCE IS
5 LOCATED.

6 IN THIS CASE THE SEARCH WAS STARTED SOME SIGNIFICANT
7 TIME AFTER MR. JOHNSON EXITED HIS VEHICLE. SO WHEN WE DO
8 OUR TRAINING, IN AN ATTEMPT TO RECREATE A TEST SIMILAR TO
9 THIS, WE WOULD LET THE NARCOTICS SET FOR ROUGHLY THE SAME
10 AMOUNT OF TIME.

11 IF WE DETERMINED THAT 30 MINUTES AFTER HE EXITED HIS
12 VEHICLE WE LOCATED THE SUBSTANCE, THEN THAT'S WHEN WE
13 REALLY WANT TO TRY AND FOCUS ON. IT GIVES THE ODOR A
14 CHANCE.

15 OBVIOUSLY WHEN WE CONDUCTED OUR TEST, THE WEATHER
16 CONDITIONS WERE NOT THE SAME. SO WE TRY TO GIVE A LITTLE
17 BIT LONGER FOR THAT ODOR TO DROP IN FAIRNESS TO THE DOG.
18 I WOULDN'T TRAIN MY DOG AND SET HER UP FOR FAILURE BECAUSE
19 THAT'S DEFEATING HER PURPOSE.

20 I WOULDN'T TAKE A CONTROLLED TRAINING EVENT AND SET A
21 NARCOTIC HIDEOUT HERE AND EXPECT HER TO RUN STRAIGHT UP TO
22 IT TWO MINUTES LATER. THAT'S NOT REASONABLE FOR HER, NOT
23 IN A CONTROLLED TRAINING ENVIRONMENT.

24 Q AND SO IN THIS PARTICULAR INCIDENT FROM THE TIME AT
25 THE BEGINNING ON YOUR VIDEO UNTIL YOU ENCOUNTERED

1 MR. JOHNSON, THAT WAS THE ELAPSED TIME OF ABOUT TWO OR
2 THREE MINUTES?

3 A EXPLAIN THAT ONE MORE TIME.

4 Q THE TIME WHEN YOU FIRST STARTED RESPONDING TO GO TO
5 THE SCENE AND THE TIME WHEN YOU APPREHENDED MR. JOHNSON,
6 THAT SPAN OF TIME WAS ABOUT THREE, FIVE MINUTES? HOW LONG
7 WAS THAT?

8 A I WOULD SAY SOMEWHERE IN THE NEIGHBORHOOD OF --
9 BETWEEN THE TIME I ACTUALLY BEGAN RESPONDING UNTIL THE
10 TIME I ACTUALLY TOOK HIM INTO CUSTODY, FOUR TO SEVEN
11 MINUTES. SOMEWHERE THEREABOUTS, GIVE OR TAKE.

12 Q OKAY. SO THIS -- THERE WAS NOT A LONG PERIOD OF
13 SET-UP IN THIS CASE. IT WAS FAIRLY QUICKLY.

14 A SIR, WE DIDN'T ACTUALLY START THE K-9 OPEN AIR SEARCH
15 UNTIL SOME TIME LATER. WE DIDN'T IMMEDIATELY GO BACK AND
16 PUT HER ON THE GROUND. AFTER WE TOOK YOUR DEFENDANT INTO
17 CUSTODY, BECAUSE THERE WAS A MOTOR VEHICLE COLLISION
18 INVOLVED, WE LEFT THE SCENE OF WHERE WE WERE AT AND WENT
19 BACK TO THE INCIDENT LOCATION AND HAD TO MEET WITH THE
20 HIGHWAY PATROL.

21 ANY TIME WE HAVE AN ACCIDENT AS A RESULT OF A
22 PURSUIT, IF IT'S A CITY VEHICLE OR A COUNTY VEHICLE, THE
23 SOUTH CAROLINA HIGHWAY PATROL HAS TO INVESTIGATE THAT
24 COLLISION. THAT WAY THERE IS AN UNBIASED OPINION AS TO
25 THE FACTS THAT HAVE OCCURRED.

1 IF THEY HAVE A MOTOR VEHICLE COLLISION, THEY CONTACT
2 THE NEAREST COUNTY AGENCY THAT'S QUALIFIED TO CONDUCT THE
3 INVESTIGATION.

4 AFTER WE MET WITH THEM WITH REGARDS TO THE MOTOR
5 VEHICLE COLLISION, THEN WE PUT K-9 FILA OUT TO BEGIN AN
6 OPEN AIR SEARCH.

7 Q SO IN THIS CASE THAT WAS HOW LONG?

8 A GIVE OR TAKE SOMEWHERE BETWEEN 45 MINUTES TO AN HOUR.
9 I DON'T HAVE THE EXACT TIME.

10 Q SO 45 MINUTES TO AN HOUR. SO YOU STARTED THE SEARCH
11 AFTER IT WAS DARK BECAUSE FROM THE VIDEO I SAW, IT WAS
12 GETTING DUSK-DARK WHEN MR. JOHNSON WAS APPREHENDED. YOU
13 SAID THIS ALL OCCURRED DURING DARK?

14 A IT WAS LATE, DUSK GOING INTO DARK. IT WAS ACTUALLY
15 DARK WHEN WE LOCATED THE SUBSTANCE.

16 Q OKAY. NOW, I'M LOOKING AT THE -- A COPY OF THE NORTH
17 AUGUSTA DEPARTMENT OF PUBLIC SAFETY NARCOTICS K-9 TRAINING
18 ASSIGNMENT AND TRAINING FORM.

19 A YES, SIR.

20 Q ARE YOU FAMILIAR WITH THIS FORM?

21 A YES, SIR. I HAVE THAT FORM IN FRONT OF ME.

22 Q OKAY. AND EVERY TIME YOU TAKE FILA OUT FOR TRAINING,
23 YOU DOCUMENT IT?

24 A YES, SIR. IF IT'S A CONTROLLED TRAINING, YES, SIR.

25 Q WHAT DO YOU MEAN IF IT'S A CONTROLLED TRAINING?

1 A IF I AM USING THE NARCOTICS THAT HAVE BEEN ISSUED TO
2 ME BY THE DEA, I DOCUMENT THOSE TRAININGS.

3 Q SO THERE ARE OTHER TIMES WHEN YOU USE YOUR OWN
4 NARCOTICS THAT YOU DON'T DOCUMENT THE TRAINING?

5 A NO, SIR. BUT WE DO TAKE OUR DOGS OUT TO SIMPLY RUN
6 BLANKS. AND BY A BLANK I MEAN WE'LL TAKE HER OUT TO A NEW
7 CAR LOT, LET HER WORK, YOU KNOW, FOUR OR FIVE CARS AT THAT
8 POINT JUST TO SHOW THAT OUR DOGS DON'T ALWAYS FIND
9 SOMETHING.

10 Q OKAY. NOW, I'LL CALL YOUR ATTENTION TO THAT SAME
11 FORM AGAIN.

12 A YES, SIR.

13 Q DO YOU HAVE A BLANK COPY OF THAT FORM PER CHANCE?

14 A WHICH ONE?

15 Q THE SAME FORM, BLANK COPY.

16 A NOT WITH ME. I DO NOT.

17 Q OKAY. ON THAT FORM YOU HAVE A NUMBER OF THINGS. YOU
18 HAVE THE K-9'S NAME, THE HANDLER, AND THE DATE; IS THAT
19 CORRECT?

20 A YES, SIR.

21 Q AND YOU HAVE THE TYPE OF SEARCH, WHETHER IT IS ACTUAL
22 TRAINING OR NEGATIVE. WHAT DOES NEGATIVE MEAN?

23 A NEGATIVE IS BASICALLY A BLANK TYPE OF TRAINING WHERE
24 WE WOULD RUN. WHEN I LIST A BLANK TRAINING, A BLANK
25 TRAINING WOULD COINCIDE WITH A POSITIVE TRAINING MEANING

1 THAT I ACTUALLY GO OUT AND DO -- IF I PUT DRUGS ON FOUR
2 VEHICLES FOR MY DOG TO SEARCH, A BLANK TRAINING WOULD BE
3 RUNNING HER ON ROUGHLY 10 TO 20 OTHERS JUST FOR THE
4 PURPOSES OF KEEPING HER REFRESHED AND KEEPING HER
5 EXERCISED.

6 Q OKAY. NOW, ONE THING -- ANOTHER THING ON THIS FORM
7 IS THE LOCATION I GUESS WHERE YOU'RE RUNNING THE TESTS.
8 YOU HAVE BUILDING, FREIGHT, VEHICLE, BAGGAGE AND SO FORTH.
9 AND IT'S IMPORTANT TO KNOW EXACTLY WHAT TYPE OF SEARCH
10 YOU'RE DOING, RIGHT, TO BE ABLE TO TRACK THE BEHAVIOR OF
11 THE DOG?

12 A YES, SIR.

13 Q ANOTHER IMPORTANT THING I SEE YOU HAVE ON THE FORM IS
14 THE ENVIRONMENTAL CONDITIONS. THAT IS IMPORTANT TO THE
15 PERFORMANCE OF THE DOG?

16 A IT IS IMPORTANT FOR ME TO BE ABLE TO REFLECT WHAT
17 TYPE OF ENVIRONMENT SHE WAS TRAINING IN, SIR.

18 Q BUT YOU AGREE THAT THE ENVIRONMENTAL CONDITIONS
19 AFFECT THE PERFORMANCE OF THE DOG.

20 A I DON'T BELIEVE THEY AFFECT HER PERFORMANCE. THEY
21 WOULD AFFECT THE TIME IN WHICH SHE CONDUCTS THE SEARCH AND
22 THE MANNER IN WHICH SHE CONDUCTS IT.

23 Q YOU HAVE ANOTHER PLACE ON THAT FORM CALLED
24 CONGESTION. WHAT DOES THAT MEAN?

25 A CONGESTION IS WHAT I USE FOR -- IF I AM SEARCHING IN

1 A SCHOOL, PARK, OR PLAYGROUND, SOMETHING LIKE THAT, I
2 WOULD DOCUMENT. I ACTUALLY HAVE SOME TRAINING RECORDS IN
3 HERE WHERE SHE'S BEEN TAKEN TO A PARK.

4 I WOULD DOCUMENT WHETHER THERE WERE CHILDREN PRESENT,
5 WHETHER THERE WERE ADULTS PRESENT WALKING OTHER DOGS,
6 WHETHER THERE IS FOOT TRAFFIC THROUGH AN AREA. IF WE'RE
7 USING A JUNKYARD, PER SAY, WHETHER THERE WAS HEAVY
8 EQUIPMENT BEING OPERATED.

9 AND THE REASONING BEHIND THAT IS IN TRAINING
10 PURPOSES, IF I HAVE A LOT OF FOOT TRAFFIC AND MY DOG DOES
11 AN EXCELLENT JOB, SHE STILL GETS THE SOURCE, IT JUST SHOWS
12 ME THAT SHE'S NOT BEING DISTRACTED BY OUTSIDE
13 INTERFERENCES.

14 Q DOES THAT MEAN THERE IS THE POTENTIAL FOR DISTRACTION
15 BY OUTSIDE INTERFERENCE SUCH AS CHILDREN?

16 A THERE'S A POTENTIAL TO THAT ANYBODY COULD BE
17 DISTRACTED. THAT'S WHY I DOCUMENT CONGESTION TO SHOW THAT
18 SHE WAS NOT DISTRACTED. SHE ACTUALLY GOT SOLID ALERTS ON
19 EVERYTHING SHE DID EVEN WITH WHAT WAS PRESENT. SHE STILL
20 DID HER JOB AND WAS NOT PULLED OFF OF THAT, SIR.

21 Q OKAY. BUT THERE ARE THINGS THAT DISTRACT THE DOGS
22 JUST LIKE CHILDREN AND THE PRESENCE OF OTHER ANIMALS?

23 A THERE ARE FACTORS THAT COULD AFFECT A DOG'S BEHAVIOR,
24 BUT THIS IS WHY WE DOCUMENT THIS TO SHOW THAT IT DOES NOT
25 AND WE CAN WORK THROUGH THESE SCENARIOS.

1 Q IN THIS CASE YOU INDICATED THAT THE DRUGS WERE FOUND
2 NEAR THE PRESENCE OF ANOTHER DOG; IS THAT CORRECT?

3 A YES, SIR. SHE STILL GOT TO THE SOURCE ON THAT
4 WITHOUT BEING DISTRACTED BY THAT DOG.

5 Q DO YOU HAVE A WAY OF KNOWING THAT FILA WAS NOT JUST
6 GOING TO INTERACT WITH THE OTHER DOG AS OPPOSED TO DOING A
7 SEARCH FOR THE DRUGS?

8 A CERTAINLY, SIR. THAT DOG WAS LOCATED -- AS YOU
9 LOOKED AT THAT BACKYARD, FROM THE RESIDENCE WHERE THE
10 NARCOTICS WERE LOCATED, AS YOU LOOK AT THE PYLANTS' BACK
11 YARD, THAT DOG WAS LOCATED IN THE RIGHT CORNER OF THAT
12 BACK YARD.

13 THE NARCOTICS WERE LOCATED IN A SHED ON THE LEFT SIDE
14 OF THE ADDRESS ON THURMOND STREET, SIR. SO SHE OBVIOUSLY
15 WAS NOT PULLED OFF OF HER SEARCH AND DISTRACTED. SHE
16 STILL GOT TO THE SOURCE AND LOCATED THE COCAINE.

17 Q OKAY. LOOKING AT STATE'S EXHIBIT NO. 16.

18 A CAN I STEP DOWN?

19 THE COURT: IF YOU NEED TO.

20 BY MR. WATSON:

21 Q SHOW ME WHERE ON HERE WAS THE OTHER DOG LOCATED.

22 A THIS PICTURE DOES NOT SHOW A CLEAR VANTAGE POINT OF
23 THAT BACK YARD.

24 Q OKAY.

25 A FOR ME TO BE ABLE TO SHOW THIS WITH ACCURACY, I

1 NEED -- WOULD NEED SOMETHING SHOWING THAT BACK YARD, NOT
2 WITH THE OVERHEAD PROJECTION, SIR.

3 Q OKAY. BUT ON THIS PICTURE YOU HAVE PLYANTS'
4 RESIDENCE. WAS IT NOT IN THE PLYANTS' RESIDENCE?

5 A IT WAS IN THE BACK YARD OF THAT RESIDENCE.

6 Q BACK RESIDENCE. THAT'S WHAT I'M TRYING TO GET AT.

7 A YES, SIR.

8 Q SO THIS PATH HERE THAT YOU SAY FILA TRAVELED, THAT
9 INDICATED THAT THAT DOG TRAVELED STRAIGHT TO WHERE THE
10 OTHER DOG WAS.

11 A NO, SIR.

12 Q IT DOES NOT INDICATE THAT TO YOU?

13 A SHE TRAVELED TO -- THE ARROWS ON THERE INDICATE THE
14 PATH OF TRAVEL OF YOUR SUSPECT -- SORRY, YOUR DEFENDANT.
15 FILA STOPPED AT THE STORAGE SHED WHERE SHE ULTIMATELY GAVE
16 A FINAL RESPONSE OF THE COCAINE.

17 Q OKAY. BUT AS I SEE THIS DEMONSTRATION THAT THE STATE
18 ENTERED, I SEE A PATH GOING FROM THE TRAFFIC STOP ALL THE
19 WAY TO WHERE THE PLYANTS' HOUSE IS WHERE YOU TOLD ME THE
20 OTHER DOG WAS.

21 A EXCUSE ME? ONE MORE TIME, PLEASE.

22 Q IF THIS IS AN ACCURATE DESCRIPTION OF THE SEARCH
23 PATH.

24 A ALL OF THE WAY UP TO THE K-9 ALERT, SIR. AT THE K-9
25 ALERT, MY K-9 WAS IN A FINAL RESPONSE. AFTER SHE WENT

1 INTO FINAL RESPONSE, THE NARCOTICS WERE SEIZED AND SHE WAS
2 TAKEN BACK TO MY VEHICLE.

3 Q OKAY. BUT WOULD YOU NOT ADMIT, LOOKING AT THIS
4 PICTURE, THIS PATH LEADS TO WHERE THE OTHER DOG WAS.

5 A THE PATH DOES LEAD THERE, BUT THAT'S NOT WHERE MY K-9
6 WENT.

7 Q BUT IS THIS NOT A DEPICTION OF THE PATH THAT YOUR DOG
8 TOOK?

9 A NO, SIR. THAT'S A DEPICTION OF THE PATH THAT YOUR
10 DEFENDANT TOOK.

11 Q BUT YOU SAID THAT THE DOG FOLLOWED MY DEFENDANT'S
12 PATH. SO IS THAT NOT THE PATH THAT THE DOG TOOK?

13 A NO, SIR. MY DOG TOOK THE TRACK UP TO THE POINT WHERE
14 THE NARCOTICS ARE FOUND. SHE IS NOT A HUMAN TRACKER, SO
15 SHE WOULD NOT HAVE TRACKED TO THE LOCATION WHERE
16 MR. JOHNSON WAS ULTIMATELY ARRESTED, SIR.

17 Q FILA IS NOT PERFECT; IS IT? SHE DOESN'T FIND HER
18 TARGET ON EVERY SEARCH; IS THAT CORRECT?

19 A SHE HAS A 99 PERCENT ACCURACY RATE.

20 Q NINETY-NINE PERCENT ACCURATE. DID YOU DO THIS REPORT
21 RIGHT HERE?

22 A YES, SIR, I DID.

23 Q TELL ME THE RESULTS OF THAT SEARCH. READ YOUR NOTES
24 FOR ME.

25 A IT SAYS THAT SHE MISSED ON THE FIRST PASS, BUT

1 LOCATED ON THE SECOND PASS. GREAT JOB ON ALL OTHER HIDES.

2 Q NOW, WAS THIS A FREE SEARCH OR IS IT ONE WHERE YOU
3 WERE LEADING HER AROUND?

4 A I DON'T RECALL WHETHER SHE WOULD HAVE BEEN ON LEASH
5 OR OFF, SIR. BUT I WILL SAY THAT IN MY TRAINING AND IN
6 THE TRAINING OF THE K-9 -- AND SOMEBODY WILL BE ABLE TO
7 ATTEST TO THIS LATER -- THAT WHEN WE SEARCH A VEHICLE, WE
8 PICK AN ANCHOR POINT.

9 BY ANCHOR POINT, I MEAN A CORNER OF A BUMPER, EITHER
10 RIGHT FRONT, LEFT FRONT, RIGHT REAR, LEFT REAR. OUR
11 SEARCH IS STARTED THERE. AND TYPICALLY WE WOULD WORK
12 AROUND THE VEHICLE.

13 WHEN WE GET BACK TO THE ANCHOR POINT THAT WE STARTED
14 FROM, WE WILL REVERSE AND GO BACK. BECAUSE IF WE START
15 BASED ON WIND CONDITIONS, BASED ON ENVIRONMENTAL
16 CONDITIONS, SHE MAY NOT -- THE WIND MAY NOT BE PUSHING IT
17 A CERTAIN WAY.

18 IT MAY NOT BE COMING OUT OF THE DOOR SEAM. A
19 PARTICULAR WAY THAT WE'RE TAUGHT TO DO TWO PASSES, ONCE
20 ONE WAY AND REVERSE THE PATTERN AND COME BACK, ALWAYS
21 STARTING AND FINISHING AT THE SAME--

22 MR. WATSON: I'D LIKE TO HAVE THIS MARKED AS
23 DEFENDANT'S EXHIBIT NO. 1. I'D LIKE TO HAVE THIS MOVED
24 INTO EVIDENCE, YOUR HONOR.

25 MRS. YOUNG: NO OBJECTION.

1 (WHEREUPON, DEFENDANT'S EXHIBIT NO. 1 WAS MARKED FOR
2 IDENTIFICATION AND RECEIVED INTO EVIDENCE.)

3 THE COURT: WITHOUT OBJECTION.

4 BY MR. WATSON:

5 Q ON THIS PARTICULAR TRAINING EXERCISE INDICATED THAT
6 HE MISSED ON THE FIRST PASS BUT LOCATED ON THE SECOND
7 PASS. YOU KNEW WHERE THE DRUGS WAS -- WERE THAT THE DOG
8 WAS SUPPOSED TO BE SEARCHING FOR; IS THAT CORRECT?

9 A YES, SIR.

10 Q SO IS IT FAIR TO SAY THAT YOU KEEP THE DOG IN THE
11 AREA AND LET THEM ROAM UNTIL THE DOG FINDS THE DRUG THAT
12 YOU KNOW IS THERE?

13 A NO, SIR.

14 THE COURT: MR. WATSON, THAT WAS DEFENDANT'S ONE; IS
15 THAT CORRECT?

16 MR. WATSON: THAT'S CORRECT, YOUR HONOR.

17 THE COURT: WHAT WAS IT? WHAT IS IT TITLED? GIVE ME
18 A DESCRIPTION OF IT.

19 MR. WATSON: THIS IS THE NORTH AUGUSTA DEPARTMENT OF
20 PUBLIC SAFETY NARCOTICS K-9 ASSIGNMENT AND TRAINING FORM.

21 MR. WEEKS: THAT WOULD BE DEFENDANT'S EXHIBIT ONE,
22 YOUR HONOR?

23 THE COURT: IT IS.

24 BY MRS. YOUNG:

25 Q DO YOU RECOGNIZE THIS DOCUMENT? IT IS ANOTHER COPY

1 OF THE SAME FORM FOR ANOTHER TRAINING.

2 A YES, SIR.

3 Q DID YOU FILL OUT THAT FORM?

4 A I DID, SIR.

5 Q WOULD YOU READ WHAT YOUR COMMENTS WERE?

6 THE COURT: WELL, IT'S NOT IN EVIDENCE, SIR.

7 MR. WATSON: OH, EXCUSE ME. I'D LIKE TO HAVE THIS

8 MARKED AS DEFENDANT'S NO. TWO.

9 THE COURT: THAT'S ANOTHER TRAINING FORM?

10 MR. WATSON: ANOTHER TRAINING FORM.

11 (WHEREUPON, DEFENDANT'S EXHIBIT NO. 2 WAS MARKED FOR
12 IDENTIFICATION ONLY.)

13 THE COURT: SHOW IT TO THE SOLICITOR.

14 MRS. YOUNG: WITHOUT OBJECTION.

15 MR. WATSON: I'D LIKE TO HAVE THIS MOVED INTO
16 EVIDENCE, YOUR HONOR.

17 THE COURT: WITHOUT OBJECTION.

18 (WHEREUPON, DEFENDANT'S EXHIBIT 2 WAS ADMITTED INTO
19 EVIDENCE.)

20 BY MR. WATSON:

21 Q READ WHAT IT SAYS THERE, PLEASE.

22 A CERTAINLY. IT SAYS, HIDE NUMBER TWO AND FIVE. ALERT
23 ON SECOND PASS. EXCELLENT JOB ON THE OPEN AIR.

24 APPROXIMATELY ONE QUARTER MILE THROUGH FIELD AND WOODS,
25 WALKED AROUND AREA AND LEFT, FINISHED THE SEARCH. THAT

1 WAS THE TEST THAT WE CONDUCTED, SIR.

2 Q OKAY. THERE IS ANOTHER ONE THAT THE DOG JUST DIDN'T
3 FIND IT. THE DOG HAD TO MAKE MULTIPLE PASSES; IS THAT
4 CORRECT?

5 A SIR, AS I SAID, WE'RE TAUGHT TO DO TWO PASSES. WE
6 START AT ONE POINT AND WORK AROUND AND THEN REVERSE
7 PATTERN. THAT'S WHAT THE SECOND PASS IS, WHEN YOU REVERSE
8 PATTERN AND GO BACK AROUND, THEY LOCATE THE ITEM.

9 AND IF SHE FOUND OUT ON THE -- IF SHE HAD FOUND THAT
10 ON THE FIRST PASS, I WOULD HAVE ARTICULATED SHE FOUND IT
11 ON THE FIRST PASS. BUT SHE'S DOING HER JOB I AM
12 PRESENTING. SHE FOUND IT ON THE SECOND PASS, AND THAT'S
13 ACCEPTABLE.

14 Q NOW, IN REVIEWING THESE FORMS, I SEE THERE IS PLACES
15 FOR TWO SIGNATURE BLOCKS ON THE FORM. SOME OF THEM ARE
16 SIGNED. SOME ARE NOT. WHAT IS YOUR PROCEDURE ON THAT?

17 A ONE OF US -- ONE PERSON HAS TO SIGN THAT SHOWING THAT
18 THE TRAINING AIDS WERE RETRIEVED. AND IT SAYS AT THE
19 BOTTOM OF IT, SIGNATURE OF INDIVIDUAL VERIFYING THE
20 RETRIEVAL OF ALL TRAINING AIDS.

21 IF I PICK UP THE TRAINING AIDS MYSELF, I SIGN OFF ON
22 IT. IF I PICK UP ONE OR TWO AND OFFICER FITTERY RETRIEVES
23 ONE OR TWO, THEN TYPICALLY WE WOULD BOTH WE SIGN. IT IS
24 ACCEPTABLE TO HAVE ONE SIGNATURE.

25 I AM RESPONSIBLE THROUGH OUR DEPARTMENT. MYSELF AND

1 MY LIEUTENANT ARE THE ONLY TWO PEOPLE WHO -- THAT ARE
2 CERTIFIED THROUGH THE DEA TO BE ABLE TO SIGN ON THESE
3 TRAINING AIDS.

4 AND THERE ARE TWO PEOPLE THAT ARE ABLE TO
5 COUNTERSIGN, THOSE TWO PEOPLE BEING GEORGE SHAW AND
6 LIEUTENANT -- WHO ARE EVIDENCE CUSTODIANS. ONLY TWO
7 PEOPLE THAT HAVE ACCESS TO THAT ROOM.

8 SO I AM RESPONSIBLE -- BECAUSE MY LIEUTENANT DOES NOT
9 WORK THESE K-9S, I AM RESPONSIBLE TO ENSURE THAT THESE
10 TRAINING AIDS ARE PICKED UP AND SIGNED BACK INTO OUR
11 EVIDENCE CUSTODIAN MYSELF BECAUSE MY NAME IS ON THE
12 QUALIFYING PAPERWORK THROUGH THE DEA.

13 Q OFFICER FITTERY IS NOW QUALIFIED TO DO THIS AS WELL;
14 IS THAT CORRECT?

15 A EXCUSE ME?

16 Q OFFICER FITTERY--

17 A HE IS QUALIFIED TO TRAIN WITH NARCOTICS, BUT HE IS
18 NOT -- NOT ALLOWED TO SIGN THE NARCOTICS OUT OR SIGN THEM
19 IN.

20 Q HE DOESN'T SIGN THESE FORMS?

21 A HE SIGNS THOSE FORMS. THAT'S NOT THE FORM THAT WE
22 SIGN OUR NARCOTICS IN AND OUT ON --

23 Q OKAY.

24 A -- THROUGH OUR AGENCY. WE HAVE A SPECIFIC FORM THAT
25 WE TAKE CARE OF THAT WITH.

1 Q OKAY. I HAVE ANOTHER ONE OF THE SAME FORMS. DO YOU
2 RECOGNIZE THIS FORM?

3 THE COURT: YOU NEED TO IDENTIFY IT. MARK IT,
4 WHATEVER.

5 BY MR. WATSON:

6 Q DO YOU RECOGNIZE IT?

7 A YES, SIR, I RECOGNIZE THIS.

8 Q THIS IS ANOTHER COPY OF THE SAME TYPE -- SAME FORM
9 THAT YOU USED?

10 A YES, SIR.

11 MR. WATSON: I'D LIKE TO HAVE THIS MARKED AS
12 DEFENDANT'S EXHIBIT NUMBER THREE.

13 THE COURT: TRAINING FORM?

14 MR. WATSON: TRAINING FORM.

15 THE COURT: SHOW IT TO THE SOLICITOR.

16 MR. WEEKS: NO OBJECTION, YOUR HONOR. DEFENDANT'S
17 THREE?

18 THE COURT: THAT'S CORRECT.

19 (WHEREUPON, DEFENDANT'S EXHIBIT NO. 3 WAS MARKED FOR
20 IDENTIFICATION AND RECEIVED INTO EVIDENCE.)

21 BY MR. WATSON:

22 Q TELL ME WHAT'S ON THAT FORM. JUST GO THROUGH THE
23 ENTIRE FORM SLOWLY.

24 A SURE. THIS IS TRAININGS, BUILDINGS, OPEN AREAS,
25 THREE OPEN AREAS SEARCHED, ENVIRONMENTAL CONDITIONS TO

1 85-DEGREES, A LIGHT WEST WIND, CONGESTION WITH CHILDREN
2 PRESENT--

3 Q STOP. YOU SAID CONGESTION WAS WHAT?

4 A CHILDREN PRESENT.

5 Q IS THAT SIGNIFICANT TO YOU FOR YOU TO PUT DOWN ON THE
6 FORM BECAUSE THAT WOULD EFFECT THE DOG IN SOME MANNER?

7 A NO, SIR. IT IS SIGNIFICANT TO ME TO PUT DOWN ON THE
8 FORM BECAUSE SHE HAD POSITIVE ALERTS TO ALL OF THE
9 TRAINING AIDS, AND SHE WAS NOT DISTRACTED BY THOSE
10 CHILDREN.

11 Q BUT IT IS SIGNIFICANT THEN THAT THAT WAS A FACTOR TO
12 BE CONSIDERED?

13 A NO, SIR. IT IS PUT DOWN THERE SO I CAN SHOW THAT SHE
14 TRAINED POSITIVELY AND GOT TO HER HIDES AND WAS NOT
15 DISTRACTED BY ANY OUTSIDE INFLUENCES.

16 Q OKAY. WHAT WERE YOUR FINAL COMMENTS?

17 A MY FINAL COMMENTS WERE THAT SHE DIDN'T LIKE THE
18 DIFFERENT SURFACES, BUT WORKED WELL THROUGH THE PROBLEMS.

19 Q SHE DIDN'T LIKE THE DIFFERENT SURFACES. WHAT THAT
20 MEAN?

21 A WELL SIR, I WOULD HAVE TO EXPLAIN TO YOU HOW THIS
22 TRAINING WAS SET UP. AND I CAN EXPLAIN EXACTLY HOW MY
23 HIDES WERE PLACED AND YOU'LL HAVE A BETTER UNDERSTANDING.
24 I HAD 11 POINT--

25 Q WELL, LET ME ASK YOU THIS. WHAT IS THE SIGNIFICANCE

1 OF THE DIFFERENT SURFACES THAT EFFECTS THE PERFORMANCE OF
2 THE DOG?

3 A IT DOESN'T, BUT I CAN SHOW THAT SHE WORKED THROUGH
4 THOSE DIFFERENT SURFACES. THOSE HIDES WERE PLACED AT THE
5 TOPS OF SLIDES--

6 THE COURT: DO YOU NEED TO KNOW, SIR?

7 BY MR. WATSON:

8 Q NO. I JUST WANTED TO KNOW THAT YOU DID MAKE A NOTE
9 THAT THE DOG -- READ THAT AGAIN.

10 A YES, SIR. IT SAID THAT SHE DIDN'T LIKE THE DIFFERENT
11 SURFACES, BUT SHE WORKED WELL THROUGH THE PROBLEMS.

12 Q THANK YOU. SHE DIDN'T LIKE--

13 A AND HAD POSITIVE INDICATIONS TO ALL OF HER HIDES.

14 Q OKAY. THIS IS A FORM WITH FITTERY'S SIGNATURE ON IT.
15 YOU DID INDICATE THAT HE HAS ACCESS TO THESE FORMS, HE
16 SIGNS THESE FORMS AS WELL; IS THAT CORRECT?

17 A WE USE THOSE FORMS INDIVIDUALLY FOR TRAINING, YES,
18 SIR.

19 Q DO YOU RECOGNIZE THIS FORM?

20 A YES, SIR.

21 Q ANOTHER ONE OF THE SAME TYPE OF FORMS?

22 A YES, SIR.

23 THE COURT: LET'S MARK IT, PLEASE.

24 MR. WATSON: LET'S MARK IT AS DEFENDANT'S EXHIBIT NO.

25 4.

1 THE COURT: THAT'S ANOTHER TRAINING--

2 MR. WATSON: ANOTHER TRAINING FORM.

3 (WHEREUPON, DEFENDANT'S EXHIBIT NO. 4 WAS MARKED FOR
4 IDENTIFICATION ONLY.)

5 MR. WATSON: I'D LIKE TO MOVE IT INTO EVIDENCE, YOUR
6 HONOR.

7 THE COURT: ANY OBJECTION?

8 MRS. YOUNG: NO, SIR.

9 THE COURT: ALL RIGHT. THAT'S DEFENDANT'S FOUR.

10 MR. WATSON: YES, THAT'S CORRECT.

11 (WHEREUPON, DEFENDANT'S EXHIBIT 4 WAS ADMITTED INTO
12 EVIDENCE.)

13 BY MR. WATSON:

14 Q ALL RIGHT. READ YOUR COMMENTS THERE.

15 A YES, SIR. IT SAYS, GOOD ODOR RECOGNITION, A LOW LOSS
16 SOURCE ON NUMBER FOUR, BUT HANDLER REPRESENTED HIGH WITH
17 EXCELLENT RESULTS. WORK ON STAMINA. LONG -- HIGH HEAT
18 SEEMED TO TIRE THE K-9 QUICKLY.

19 Q NOW, I NOTICE THAT ON ALL OF THESE THINGS YOU CLOSE
20 OUT BY SAYING, GOOD RESULTS. THE RESULTS ARE ALWAYS GOOD
21 IN YOUR OPINION? THE RESULTS, WHETHER THE DOG FIND OR
22 DOES NOT FIND THE ITEM OR TAKES TWO OR THREE PASSES, IT IS
23 ALWAYS A GOOD RESULT IN YOUR OPINION?

24 A ANY TIME MY K-9 CAN HAVE A POSITIVE RESULT AND
25 INDICATE ON A KNOWN CONTRABAND IS A GOOD DAY, SIR, YES,

1 SIR.

2 Q AND YOU AND YOUR DOG ARE INTEGRALLY RELATED. I MEAN,
3 YOUR DOG WILL NOT PERFORM THE WAY IT PERFORMS FOR YOU FOR
4 ANYBODY ELSE. YOU ARE A TEAM AS YOU INDICATED EARLIER; IS
5 THAT CORRECT?

6 A WE'RE A TEAM, YES, SIR.

7 Q SO WHEN YOU'RE EVALUATING THE DOG, YOU'RE IN ESSENCE
8 EVALUATING YOURSELF; IS THAT NOT CORRECT?

9 A I EVALUATE MY K-9. I HAVE OTHERS OFFICERS PRESENT.
10 AS I STATED EARLIER, WE TRAIN WITH AIKEN COUNTY SHERIFF'S
11 OFFICE, WE TRAIN WITH AIKEN CITY, EDGEFIELD, RICHMOND
12 COUNTY, AND SRS.

13 OCCASIONALLY THEY WILL BE OUT THERE AND THEY AS WELL
14 WILL PERFORM THESE SAME TESTS. BUT MYSELF AND OFFICER
15 FITTERY, AFTER WE CONDUCT TRAINING, WE'LL HAVE A -- PER SE
16 A POW WOW ABOUT HOW THINGS WENT AND HOW WE THOUGHT THE
17 TRAINING WENT.

18 Q OKAY. THIS IS A SLIGHTLY DIFFERENT FORM. THIS ONE
19 IS ENTITLED, AIKEN COUNTY SHERIFF'S OFFICE K-9 DETECTION
20 TEAM TRAINING RECORD. ARE YOU FAMILIAR WITH THIS FORM?

21 A YES, SIR. YOUR HONOR -- SIR, THIS IS A TRAINING FORM
22 USED BY AIKEN COUNTY SHERIFF'S OFFICE. THE EVALUATOR ON
23 THIS OCCASION WAS RONNIE JOHNSON WHO IS A USPCA JUDGE.

24 Q OKAY. SO, THIS IS NOT ONE WHERE YOU DID THE
25 EVALUATING. THIS IS ONE WHERE AN OUTSIDE PERSON DID THE

1 EVALUATING?

2 A THAT'S CORRECT, SIR. AND THIS WAS CONDUCTED ROUGHLY
3 FIVE -- FOUR OR FIVE MONTHS AFTER I RECEIVED MY K-9, SIR.

4 MR. WATSON: OKAY. I'D LIKE TO MARKED AS DEFENDANT'S
5 EXHIBIT NUMBER 5. I'D LIKE TO MOVE IT INTO EVIDENCE.

6 MRS. YOUNG: NO OBJECTION.

7 THE COURT: DEFENDANT'S FIVE.

8 (WHEREUPON, DEFENDANT'S EXHIBIT NO. 5 WAS MARKED FOR
9 IDENTIFICATION AND RECEIVED INTO EVIDENCE.)

10 BY MR. WATSON:

11 Q OKAY. NOW, YOU INDICATED THAT THIS IS A FORM WHERE
12 THERE IS AN INDEPENDENT EVALUATOR BESIDES YOURSELF; IS
13 THAT CORRECT?

14 A EXCUSE ME?

15 Q YOU INDICATED THAT THIS FORM -- THIS IS A FORM WHERE
16 THERE WAS AN INDEPENDENT EVALUATOR BESIDES YOURSELF?

17 A YES, SIR.

18 Q AND WHAT WAS THE RESULT THERE?

19 A SHE HAD POSITIVE INDICATIONS TO FIVE HIDES THAT WERE
20 PLACED OUT. THOSE HIDES BEING -- TWO OF THEM WERE
21 MARIJUANA. I CAN'T TELL WHAT THE FIRST WEIGHT IS.

22 THE SECOND WEIGHT ON THE MARIJUANA WAS 10 GRAMS.
23 HEROIN WAS 35.6 GRAMS. COCAINE WAS 14 GRAMS. AND THE
24 METH WAS 36.4 GRAMS. AND SHE'S GOT POSITIVE INDICATIONS
25 AS THE RESULTS WERE POSITIVE FINDS, SIR.

1 Q OKAY. AND WHAT WAS THE EVALUATOR'S COMMENTS?

2 A THE EVALUATOR'S COMMENTS WERE THAT THERE WAS AN
3 INCONSISTENT SEARCH PATTERN AND LEASH CONTROL. AND HE
4 ALSO NOTED THAT THERE WERE SOME PROBLEMS WITH HIS TRAINING
5 AIDS.

6 Q THANK YOU. SO THAT INDICATES TO ME THAT THIS DOG HAS
7 A PROBLEM WITH THE SEARCH PATTERN ON OCCASION. AND YOU
8 INDICATED IN THIS CASE THAT THE DOG WAS RUNNING FREE; IS
9 THAT CORRECT? YOU WEREN'T RESTRAINING THE DOG?

10 THE COURT: WELL, THAT'S TWO QUESTIONS.

11 BY MR. WATSON:

12 Q YOU WERE NOT RESTRAINING THE DOG IN THIS CASE; WERE
13 YOU?

14 A IN THE SEARCH WITH THIS COCAINE, NO, I WAS NOT, SIR.

15 Q OKAY. AND SO THE DOG WAS FREE TO GO WHEREVER IT WANT
16 -- WANTED.

17 A THAT'S CORRECT, SIR.

18 Q THE DOG WAS EVEN FREE TO GO TO THE PRESENCE OF
19 ANOTHER DOG IF HE WANTED TO?

20 A THIS K-9 WAS FREE TO GO TO ANYWHERE SHE WANTED TO,
21 SIR, BUT SHE MAINTAINED THE TRACK THAT YOUR DEFENDANT RAN.

22 Q THAT YOU THINK MY DEFENDANT RAN.

23 A THAT I THINK YOUR DEFENDANT RAN, YES, SIR.

24 Q NOW, IF MR. JOHNSON HAD SOME COCAINE ON HIM THAT,
25 LET'S SAY, THAT HE WAS RUNNING HIS TRACK TRYING TO ELUDE

1 YOU, HE HAD SOME COCAINE ON HIM AND THEN STASHED IT
2 SOMEWHERE AND THERE WAS OTHER COCAINE IN THE AREA, WOULD
3 THE DOG BE ABLE TO DISTINGUISH LET'S TRACK MR. JOHNSON'S
4 COCAINE AND NOT OPEN SOME OTHER COCAINE?

5 MRS. YOUNG: OBJECTION, YOUR HONOR. IT CALLS FOR
6 SPECULATION.

7 THE COURT: OVERRULED. CAN THE DOG DISTINGUISH
8 BETWEEN COCAINE FROM ONE SOURCE TO ANOTHER SOURCE? IS
9 THAT WHAT YOU'RE ASKING?

10 THE WITNESS: CAN YOU REPEAT THAT ONE MORE TIME FOR
11 ME?

12 BY MR. WATSON:

13 Q YEAH. AGAIN, IF THERE WERE TWO SETS OF COCAINE OUT
14 ON WHATEVER AREA YOU WERE SEARCHING, YOUR DOG IS TRAINED
15 TO GO TO ANY COCAINE, NOT ONE ON A PARTICULAR TRACK; IS
16 THAT CORRECT?

17 A MY K-9 WOULD HAVE FOLLOWED THE STRONGEST SCENT. THE
18 STRONGEST SCENT THAT DAY BEING FROM THE VEHICLE TO THE
19 POINT THAT SHE LOCATED IT BECAUSE THAT WAS THE FRESHEST
20 SCENT.

21 Q OKAY. TO YOUR MIND, THAT WAS THE STRONGEST POINT TO
22 START AT THE VEHICLE. HAD THIS DOG ALONG THIS PATH PICKED
23 UP A STRONGER SCENT, YOU DON'T HAVE ANY CONTROL OVER THAT;
24 DO YOU?

25 A NO, SIR, I DO NOT.

1 Q YOU DON'T KNOW IF HE VARIED AND WENT ON WHERE THIS
2 STRONGER SCENT WAS TO LIKE A SHED WHERE THAT COCAINE WAS
3 FOUND; DO YOU?

4 A I AM NOT UNDERSTANDING WHAT YOU JUST SAID, SIR.

5 Q YOU DON'T KNOW WHETHER THE DOG STAYED ON
6 MR. JOHNSON'S TRACK OR WENT TO THE STRONGEST SCENT THAT IT
7 SMELLED.

8 A SHE STAYED ON THE STRONGEST SCENT. SHE ACTUALLY WENT
9 TO THE LOCATION WHERE THIS COCAINE WAS FOUND AND IT WAS
10 SUBSTANTIATED THROUGH SPEAKING WITH THE PLYANTS THAT HE
11 HAD ACTUALLY CROSSED THEIR BACK FENCE TO TALK TO THEM AT
12 THE BACK DOOR WHICH PUT HIM IN THE AREA, SIR.

13 Q AGAIN, IF MR. JOHNSON HAD COCAINE AND THIS OTHER
14 COCAINE WERE IN THE SHED AND IF THERE WERE TWO DIFFERENT
15 SET OF COCAINE, THE ONE WITH THE BIG BAG YOU THINK WOULD
16 EMINATE THE STRONGEST; IS THAT CORRECT?

17 A I WOULD THINK SO, YES, SIR.

18 Q OKAY. SO YOU DON'T KNOW IF MR. JOHNSON COULD HAVE A
19 BAG OUT THERE SOMEWHERE WITH HIS COCAINE, IF HE HAD
20 COCAINE IN IT, YOU CANNOT SAY THAT THERE IS NOT ANOTHER
21 BAG OUT THERE WITH COCAINE IN IT?

22 A NO, I COULDN'T SAY THERE IS NOT ANOTHER BAG OUT
23 THERE. I AM JUST SAYING SHE STARTED A TRACK AND SHE
24 SUCCESSFULLY FINISHED THAT TRACK IN THE SAME DIRECTION
25 THAT YOUR DEFENDANT RAN, SIR.

1 Q AND THAT'S THE DIRECTION WHERE THE OTHER DOG WAS?

2 A IT IS THE DIRECTION TO THE RESIDENCE BEHIND THE
3 PYLANTS' BACK YARD, SIR -- OR PYLANTS' BACKYARD. EXCUSE
4 ME.

5 Q COULD ANYONE ELSE USED THAT SHED PRIOR TO THIS NIGHT?

6 A I HAVE NO IDEA, SIR.

7 Q EXACTLY. YOU HAVE NO IDEA.

8 MR. WEEKS: OBJECT.

9 THE COURT: MR. WATSON, WHEN ASKING THE QUESTION,
10 PLEASE DON'T EDITORIALIZE OR COMMENT ON HIS ANSWER. ASK
11 THE QUESTION.

12 BY MR. WATSON:

13 Q WHEN YOU WERE TALKING ABOUT TRAINING FILA ON OPEN AIR
14 SEARCHES, YOU MENTIONED ONE IN WHICH OFFICER FITTERY
15 SPREAD MARIJUANA ALL OVER HIMSELF AS AN EXAMPLE OF FILA
16 BEING ABLE TO DO AN OPEN AIR SEARCH; IS THAT CORRECT?

17 YOUR EARLIER TESTIMONY, YOU -- WHEN MRS. YOUNG WAS
18 ASKING YOU ABOUT ANY OPEN AIR TESTS THAT YOU'VE DONE IN
19 THE PAST --

20 A YES, SIR.

21 Q -- YOU DESCRIBED THIS TEST THAT YOU DID WHERE OFFICER
22 FITTERY I BELIEVE IT WAS SMEARED MARIJUANA ON HIMSELF AND
23 THE DOG WAS ABLE TO TRACK TO THAT POINT; IS THAT CORRECT?

24 A I THINK YOU MISUNDERSTOOD. HE DIDN'T SMEAR MARIJUANA
25 ON HIMSELF. MY MARIJUANA IS PACKAGED. IT IS IN PACKAGES

1 THAT ARE SENT TO US BY THE DEA. THOSE BAGGIES ARE
2 ZIP-LOCK BAGGIES WHICH ARE INSIDE OF A SECOND ZIP-LOCK
3 BAGGIE.

4 WHAT WE DID THAT DAY IS TOOK THE BAGGIE ITSELF NEVER
5 TOUCHING THE CONTENTS, TOOK THAT BAGGIE ITSELF AND RUBBED
6 THE BAGGIE ON OUR CLOTHING AS WELL AS ON OUR SHOES, AND
7 THEN HE PLACED THAT BAGGIE IN HIS POCKET OR WHEREVER --
8 WHAT HE DID WITH IT.

9 I WOULDN'T SPECULATE AS TO WHERE HE PUT IT, BUT HE
10 ACTUALLY RAN WITH THAT BAGGIE OF MARIJUANA WHICH IS -- I
11 HAVE THE NUMBERS IN THERE. I DON'T RECALL THE AMOUNT
12 WITHOUT LOOKING.

13 BUT THEN HE RAN WITH THAT BAGGIE OF MARIJUANA. WHEN
14 HE GOT TO A STOPPING POINT, HE HID THAT BAG OF MARIJUANA
15 AND THEN MOVED TO A SEPARATE LOCATION, SIR. AND SHE WENT
16 PAST HIM AND FOUND THE BAG OF MARIJUANA.

17 Q YOU WOULD AGREE THAT THE ODOR OF MARIJUANA IS
18 STRONGER THAN THE ODOR OF COCAINE?

19 A DEPENDING ON THE AMOUNT, YES, SIR.

20 Q EQUAL AMOUNTS?

21 A AN EQUAL AMOUNT OF MARIJUANA--

22 Q AS OPPOSED--

23 THE COURT: WAIT A MINUTE, NOW. I HAVE ALREADY TOLD
24 Y'ALL ABOUT 10 TIMES. I AM NOT GOING TO DO ANY IT ANY
25 MORE. NEXT TIME I AM GOING TO FINE ONE OF YOU. ASK THE

1 QUESTION, SIR.

2 BY MR. WATSON:

3 Q 1 GRAM OF MARIJUANA AND 1 GRAM OF COCAINE. WHICH ONE
4 TO YOUR KNOWLEDGE GIVES OFF THE STRONGEST ODOR?

5 A MARIJUANA.

6 Q SO IT WOULD BE MUCH EASIER. IS THIS THE ONLY OTHER
7 OPEN AIR TEST YOU'VE DONE?

8 A YES, SIR.

9 Q I HAVE NO FURTHER QUESTIONS.

10 THE COURT: REDIRECT IF ANY? SIT TIGHT.

11 REDIRECT EXAMINATION

12 BY MRS. YOUNG:

13 Q MR. WATSON JUST ASKED YOU ABOUT IF THAT WAS THE ONLY
14 OTHER OPEN AIR TEST THAT YOU HAVE DONE.

15 A YES, MA'AM.

16 Q CAN YOU EXPLAIN THAT A LITTLE BIT FURTHER?

17 A THAT IS THE ONLY OPEN AIR TEST WE HAD DONE BECAUSE I
18 HAD THIS OCCASION TO UTILIZE MY DOG IN THIS CAPACITY -- MY
19 K-9 IN THIS CAPACITY. AARON FITTERY HAD NOT. HE HAD JUST
20 RECEIVED HIS DOG.

21 WE WERE DOING A TEST JUST TO BASICALLY RECREATE A
22 SITUATION LIKE THAT, ONE TO TEST MY DOG, AND TWO, BEGIN
23 TRAINING HIS DOG IN THAT TYPE OF SEARCH.

24 Q HAS YOUR DOG EVER RECOVERED NARCOTICS AS A RESULT OF
25 ANOTHER OPEN AIR SEARCH?

1 A YES, MA'AM, SHE HAS.

2 Q NO FURTHER QUESTIONS.

3 THE COURT: YOU MAY STEP DOWN.

4 THE WITNESS: THANK YOU, SIR.

5 (WITNESS LEFT THE STAND.)

6 THE COURT: NEXT WITNESS.

7 MR. WEEKS: YOUR HONOR, THE STATE WOULD CALL

8 INVESTIGATOR CLAY ADAMS.

9 CLAY ADAMS, AFTER BEING DULY SWORN,

10 TESTIFIED AS FOLLOWS:

11 THE CLERK: HAVE A SEAT IN THE WITNESS BOX STATING

12 YOUR FULL NAME AND SPELLING YOUR LAST FOR THE COURT,

13 PLEASE.

14 THE WITNESS: CLAY ADAMS, A-D-A-M-S.

15 DIRECT EXAMINATION

16 BY MR. WEEKS:

17 Q WHERE ARE YOU EMPLOYED?

18 A EMPLOYED IN THE AIKEN COUNTY SHERIFF'S OFFICE.

19 Q IN WHAT CAPACITY ARE YOU EMPLOYED THERE?

20 A I AM THE LIEUTENANT OF FORENSIC INVESTIGATIONS FOR

21 THE SHERIFF.

22 Q AND HOW LONG HAVE YOU BEEN IN THAT CAPACITY IN

23 FORENSIC INVESTIGATIONS?

24 A ROUGHLY SIX YEARS.

25 Q AND I KNOW THAT YOU RECENTLY MADE LIEUTENANT; IS THAT

1 CORRECT?

2 A YES, SIR.

3 Q ALL RIGHT. PRIOR TO THAT, TELL ME WHAT YOUR
4 EDUCATIONAL BACKGROUND IS.

5 A I HAVE A BACHELORS DEGREE IN SCIENCE FROM EASTERN
6 KENTUCKY UNIVERSITY AS WELL AS AN ASSOCIATES OF SCIENCE
7 IN -- FIRE SCIENCE FROM GASTON COLLEGE IN NORTH CAROLINA.

8 I AM A GRADUATE OF BASIC LAW ENFORCEMENT FROM THE
9 SOUTH CAROLINA CRIMINAL JUSTICE ACADEMY AS WELL AS OTHER
10 NUMEROUS ADVANCED TRAININGS THROUGH THE STATE LAW
11 ENFORCEMENT DIVISION AS WELL AS CRIMINAL JUSTICE ACADEMY.

12 Q WHAT IS THE FORENSIC DEPARTMENT COMPOSED OF AT THE
13 AIKEN COUNTY SHERIFF'S DEPARTMENT? WHAT DO Y'ALL DO
14 THERE?

15 A WE ARE RESPONSIBLE FOR CONDUCTING ANY KIND OF
16 INVESTIGATION THAT REQUIRES FORENSIC SCIENCE, BE IT LATENT
17 FINGERPRINT, DRUG ANALYSIS, TRACE EVIDENCE RECOVERY,
18 ANYTHING THAT WOULD REQUIRE FURTHER EXAMINATION BY THE
19 STATE LAW ENFORCEMENT DIVISION.

20 Q AND IN YOUR CAPACITY THERE, DO YOU ROUTINELY EXAMINE
21 LATENT FINGERPRINTS FOR PURPOSES OF COMPARISON?

22 A I DO.

23 Q DO YOU HAVE AN ESTIMATE AS TO HOW MANY TIMES YOU HAVE
24 DONE THAT THROUGH YOUR CAREER?

25 A TENS OF THOUSANDS.

1 Q AND IS IT A COMMON PART OF YOUR DAY TO DAY ACTIVITIES
2 TO COMPARE, TRY TO LIFT, EXAMINE LATENT PRINTS?

3 A IT IS.

4 Q AND HAVE YOU BEEN DOING THAT THE ENTIRE TIME YOU'VE
5 BEEN IN LAW ENFORCEMENT?

6 A I STARTED AS A ROAD DEPUTY AND THEN MOVED TO THE
7 FORENSIC SECTION.

8 Q EVEN AS A ROAD DEPUTY AT THE CRIMINAL JUSTICE
9 ACADEMY, DO THEY TEACH Y'ALL TO LIFT PRINTS?

10 A THEY DO.

11 Q ALL RIGHT. NOW, I KNOW THAT EVERYBODY THINKS THEY
12 KNOW WHAT A FINGERPRINT IS, BUT COULD YOU TELL ME WHAT A
13 FINGERPRINT IS?

14 A A FINGERPRINT IS MERELY WATER, 90 PERCENT WATER. THE
15 REST ARE AMINO ACIDS AND OTHER ACIDS OF THE BODY.

16 Q OKAY. AND WHAT IS PHYSICALLY THE PROCESS BY WHICH
17 YOU LIFT A PRINT? I KNOW THERE ARE A VARIETY OF
18 PROCESSES. IF I CAN STEER YOU IN A LITTLE DIRECTION HERE.
19 HOW DO YOU LIFT PRINTS OFF AN OBJECT LIKE WE HAVE HERE?

20 A OF COURSE, THERE ARE NUMEROUS WAYS OF LIFTING A
21 FINGERPRINT. HOWEVER, FIRST THE FINGERPRINT HAS TO BE
22 DEVELOPED. AND BY THAT I MEAN -- A FINGERPRINT IS THERE
23 OR AN INDICATION THAT A LATENT FINGERPRINT HAS EXISTED ON
24 THAT MATERIAL AT ONE POINT IN TIME OR ANOTHER.

25 AND WHEN WE DEVELOP A FINGERPRINT, IT IS MUCH LIKE A

1 PHOTOGRAPH. WE'RE BRINGING IT VISIBLE TO THE NAKED EYE.
2 WE'RE NOT CREATING IT. ALL WE'RE DOING IS MAKING IT SO
3 THAT I CAN SEE IT AND YOU CAN SEE IT.

4 DEPENDING ON THE PROCESS THAT WE USE, WHICH WE HAVE
5 MULTIPLE PROCESSING BECAUSE IT DOES VARY FROM SURFACES TO
6 SURFACES, ONCE ONE IS DEVELOPED BY A POWDER SOURCE, THEN
7 WE CAN LIFT IT WITH CLEAR TAPE AND PUT IT ON A CONTRASTING
8 BACKING, LIKE A WHITE CARD, SO THAT WE CAN SEE IT.

9 Q OKAY. AND YOU HAVE DONE THIS THOUSANDS OF TIMES IN
10 YOUR CAREER?

11 A YES, SIR.

12 MR. WEEKS: YOUR HONOR, I AM GOING TO MOVE TO QUALIFY
13 INVESTIGATOR ADAMS AS AN EXPERT IN FINGERPRINTS.

14 MR. WATSON: NO OBJECTION.

15 THE COURT: WITHOUT OBJECTION. HE'LL BE QUALIFIED TO
16 GIVE OPINIONS REGARDING FINGERPRINTS AND ANY--
17 BY MR. WEEKS:

18 Q CLAY, WERE YOU SUBMITTED AN ITEM IN THIS CASE OR
19 SEVERAL ITEMS TO ATTEMPT TO OBTAIN FINGERPRINTS FROM IT?

20 A I WAS, SIR.

21 Q I HAND YOU WHAT'S BEEN MARKED STATE'S EXHIBIT 15.
22 CAN YOU IDENTIFY ANYTHING PERTAINING TO THAT ITEM?

23 A YES, SIR. THESE ARE ITEMS THAT WERE BROUGHT TO ME BY
24 DETECTIVE TURNER.

25 Q OF NORTH AUGUSTA?

1 A PHILLIP TURNER OF NORTH AUGUSTA.

2 Q DID YOU ATTEMPT TO LIFT THE FINGERPRINTS FROM THE
3 SATCHEL OR THE BLACK BAG THERE?

4 A WE HAVE ATTEMPTED TO DEVELOP LATENT FINGERPRINTS ON
5 IT.

6 Q OKAY. AND DID YOU ATTEMPT TO DEVELOP LATENT
7 FINGERPRINTS FROM OTHER ITEMS IN THAT BAG?

8 A YES, SIR.

9 Q WERE YOU ABLE TO DO SO?

10 A NO, SIR.

11 Q AND DOES THAT MEAN THAT YOU DIDN'T GET ANY INDICATION
12 THAT THERE WAS EVER A FINGERPRINT THERE?

13 A NO, SIR.

14 Q OKAY. TELL ME THE DIFFERENCE BETWEEN PARTIALS,
15 SMUDGES, THAT SORT OF STUFF.

16 A WITHIN A FINGERPRINT THERE ARE WHAT WE CALL MINUTIA.
17 AND THAT MINUTIA BASICALLY MEANS THAT THERE ARE SMALL
18 MINUTE LITTLE CHARACTERISTICS OF THAT FINGERPRINT THAT
19 MAKE IT SPECIFIC TO YOU.

20 WHEN WE DEVELOP OR ATTEMPT TO DEVELOP THESE PRINTS --
21 AND IN THIS CIRCUMSTANCES -- IN THIS CIRCUMSTANCE MORE
22 PARTICULARLY WE USED WHAT'S CALLED CYANO ACCOLADE FUME.
23 AND THAT IS COMMONLY KNOWN AS SUPER GLUE.

24 TV SHOWS PEOPLE PUTTING IT INTO THE -- LOOKS LIKE A
25 LITTLE AQUARIUM, A LITTLE GLASS CONTAINER, AND THEY PUT

1 THE SUPER GLUE IN THERE AND THE FUMES START RISING UP.
2 THAT'S BASICALLY EXACTLY WHAT WE DO.

3 CYANO ACCOLATE IS THE ACTIVE INGREDIENT THAT'S IN
4 SUPER GLUE. AND WHEN WE HEAT IT UP, IT FORMS A VAPOR, AND
5 THAT VAPOR ADHERES TO THE MOISTURE OF YOUR FINGERPRINT,
6 THE WATER. AND BY DOING THAT, IT SETS THE FINGERPRINT.

7 THE REASON WHY WE DO THAT IS BECAUSE A FINGERPRINT IS
8 ONE OF THE MOST FRAGILE PIECES OF EVIDENCE AT ANY CRIME
9 SCENE. IT IS MORE FRAGILE THAN DNA. IT IS MORE FRAGILE
10 THAN HAIR AND FIBERS. IT CAN BE DESTROYED VERY, VERY
11 EASILY. IT CAN EVEN BE DESTROYED BY OUR PROCESSING.

12 SO WE WOULD FUME THE ITEM, TO USE THAT SUPER GLUE
13 FUME, TO HARDEN THAT PRINT, TO MAKE IT WHERE WE CAN WORK
14 WITH IT AND NOT DESTROY THOSE SMALL BITS OF MINUTIA THAT
15 WE'RE LOOKING FOR.

16 IN CERTAIN CIRCUMSTANCES THE SURFACE OF WHAT WE'RE
17 TRYING TO DEVELOP ON COULD BE CONTAMINATED. IT COULD BE
18 CONTAMINATED WITH OILS. IT CAN BE CONTAMINATED WITH DIRT
19 AND DEBRIS, ANYTHING THAT'S POSSIBLE TO DESTROY THAT
20 LATENT FINGERPRINT.

21 NOW, ONCE WE HAVE STARTED TO PROCESS IT BY THE
22 FUMING, I CAN TELL THAT IT HAS BEEN TOUCHED AND I CAN TELL
23 THAT IT'S BEEN HANDLED. BUT IT DOES NOT DISPLAY ENOUGH OF
24 THOSE MINUTIA CHARACTERISTICS FOR ME TO MAKE AN
25 IDENTIFICATION.

1 Q BEFORE YOU WILL SAY THAT IT IS SOMEBODY'S
2 FINGERPRINT, YOU HAVE TO HAVE A SUBSTANTIAL FINGERPRINT,
3 DON'T YOU, AND ONE TO COMPARE IT TO TO MATCH IT -- TO CALL
4 A MATCH?

5 A YES. WHEN WE DEVELOP FINGERPRINTS, THERE'S REALLY NO
6 SET NUMBER OF MINUTIA THAT WE ARE REQUIRED TO HAVE TO MAKE
7 AN IDENTIFICATION. IT IS TYPICALLY WHAT THE EXAMINER IS
8 COMFORTABLE SAYING IS A MATCH.

9 IN OUR CASE -- EXCUSE ME -- IN MOST EXAMINER'S CASES
10 WE TYPICALLY REQUIRE A CERTAIN ASPECT OF THAT FINGERPRINT
11 BEFORE WE WILL SAY WHETHER OR NOT THE IMPRESSION THAT WAS
12 DEVELOPED FROM AN UNKNOWN ITEM TO THE INK IMPRESSION OF A
13 PERSON THAT WE'RE TRYING TO COMPARE IT TO HAS TO HAVE A
14 CERTAIN AMOUNT OF A PATTERN.

15 IF THAT PATTERN CAN'T BE OBSERVED, IF IT'S JUST
16 RIDGES WHERE YOU CAN TELL WHERE SOMEONE HAD TOUCHED BUT
17 YET YOU CAN'T TELL IF IT IS A WHIRL OR A LOOP OR AN ARCH,
18 A CERTAIN PATTERN TYPE, TYPICALLY WE WILL NOT CALL THAT A
19 FINGERPRINT.

20 Q AND YOU DIDN'T FIND ANY LATENT PRINTS ON THE ITEMS
21 THAT YOU EXAMINED THAT ARE CONTAINED IN STATE'S 15 AND
22 STATE'S 15, THE OUTWARD SHELL, THAT YOU CAN COMPARE TO OR
23 MATCH TO ANYBODY; DID YOU?

24 A NO, SIR, I DID NOT.

25 Q OKAY. AND THE ITEMS THAT ARE CONTAINED IN THIS BAG,

1 DID YOU TAKE THEM OUT TO EXAMINE THEM AND PUT THEM IN THE
2 SUPER GLUE CONTAINER FOR LACK OF A BETTER WORD?

3 A YES. WE REMOVED THE ITEMS FROM THE BLACK BAG. THE
4 CHAMBER THAT WE USED IS A SEALED AIR CHAMBER WHERE WE WILL
5 REMOVE THOSE ITEMS, PLACE THEM IN THE CHAMBER, AND THEN IT
6 IS SEALED.

7 AND THEN THE AIR INSIDE OF THE CHAMBER IS BROUGHT UP
8 TO A 70 PERCENT HUMIDITY. AND BY DOING THAT, IT
9 REJUVENATES THE FINGERPRINT. BECAUSE FINGERPRINT IS
10 WATER, WHAT WE'RE DOING IS WE'RE BRINGING UP THAT HUMIDITY
11 TO REALLY BOLSTER THE WATER IN THE LATENT FINGERPRINT.

12 ONCE THAT HAS BEEN BROUGHT UP TO A 70 PERCENT RATIO,
13 THEN THE SYSTEM AUTOMATICALLY TURNS ON AND HEATS THE SUPER
14 GLUE TO THE APPROPRIATE TEMPERATURE TO GET IT TO VAPORIZE.

15 IN THIS INSTANCE, ALL THESE ITEMS ARE SEPARATE BUT IN
16 THE CONTAINER THEMSELVES, IN THE CONTAINER ALONG WITH EACH
17 OTHER, AND THEY ARE FUMED AT THE SAME TIME.

18 Q CLAY, I MEAN, JUST FOR PURPOSES OF EXAMPLE, I HAVE
19 BEEN FONDLING THIS PODIUM UP HERE TO KEEP FROM TRIPPING.
20 AND YOU HAVE SEEN ME DO IT. IS IT NECESSARILY CERTAIN
21 THAT YOU COULD COME BACK AND GET MY FINGERPRINT OFF OF
22 THIS PODIUM?

23 IT DEPENDS ON HOW MUCH -- HOW FAT I AM, HOW MUCH I
24 SWEAT, AND A LOT OF DIFFERENT THINGS; DOESN'T IT?

25 A YES.

1 Q OKAY. NOW, THE FACT THAT YOU DON'T FIND FINGERPRINTS
2 ON ITEMS DOESN'T MEAN SOMEBODY HADN'T TOUCHED THEM; DOES
3 IT?

4 A NO.

5 Q OKAY. ANSWER ANY QUESTIONS...

6 THE COURT: MR. WATSON. CROSS.

7 CROSS-EXAMINATION

8 BY MR. WATSON:

9 Q YOU WERE HERE TO TESTIFY THAT YOU DIDN'T FIND ANY
10 EVIDENCE OF MR. JOHNSON ON THIS BAG; IS THAT CORRECT?

11 A THAT IS CORRECT.

12 Q YOU'RE HERE TO TESTIFY THAT YOU DIDN'T FIND
13 MR. JOHNSON'S FINGERPRINT ON THIS BAG. HOW LONG DO
14 FINGERPRINTS LAST?

15 A WE DON'T KNOW. WE CAN'T DATE THEM. ORIGINALLY --
16 AND I SAY ORIGINALLY AS IN YEARS AGO IT WAS PRACTICE FOR
17 LATENT EXAMINERS TO SAY WHETHER A FINGERPRINT, IF IT
18 DEVELOPED REALLY QUICKLY, THAT THAT WAS A FRESH
19 FINGERPRINT. BUT FURTHER SCIENCE HAS SHOWN THAT WE CANNOT
20 PUT AN AGE ON A FINGERPRINT.

21 Q WELL, SOMETIMES THERE ARE ITEMS THAT COULD BE IN
22 PLACE FOR YEARS AND YOU CAN GO BACK AND GET A FINGERPRINT
23 ON THEM; IS THAT CORRECT?

24 A IN CERTAIN CIRCUMSTANCES, YES.

25 Q NOW, YOU'RE SAYING THE SWEATING AND THE WATER AND

1 MOISTURE, ALL OF THAT PLAYS A PART IN YOUR ABILITY TO GET
2 THE PRINT?

3 A YES, SIR.

4 Q IF A PERSON IS SWEATING, THAT WOULD MAKE IT MORE
5 CONDUCIVE TO YOU GETTING A PRINT?

6 A NOT ALWAYS. A LOT OF TIMES EXCESS SECRETION OF THE
7 SWEAT GLANDS MAKES IT TO WHERE WE CAN'T DETERMINE THE
8 INDIVIDUAL RIDGES. IT ALL RUNS TOGETHER. IT IS KIND OF
9 LIKE TAKING YOUR HANDS AND DUNKING THEM IN WATER AND THEN
10 PUTTING THEM ON A PIECE OF GLASS. IT IS ALL KIND OF
11 SMEARED.

12 SO YES, SIR, THERE IS CHANCES THAT TOO MUCH SWEATING
13 WILL DO THE EXACT SAME THING AS NOT SWEATING ENOUGH.

14 Q OKAY. SO YOUR AREA IS ONLY FINGERPRINTING. DO
15 YOU -- ARE YOU INVOLVED IN ANY OTHER TYPE OF DNA OR
16 ANYTHING LIKE THAT?

17 A NO, SIR.

18 Q OKAY. SO YOU'RE SAYING THAT MR. JOHNSON'S
19 FINGERPRINT IS ON NOTHING THAT YOU HAD. SO YOU'RE NOT
20 SAYING THAT YOU FOUND ANY OF HIS HAIR ON THE BAG? ANY
21 HAIR FROM MR. JOHNSON?

22 A NO, SIR.

23 Q NO SPIT FROM MR. JOHNSON?

24 A IT WAS NOT EXAMINED FOR THAT.

25 Q SKIN SHEDDINGS?

1 A ONCE AGAIN, IT WAS NOT EXAMINED FOR THAT PURPOSE.
2 WHEN WE DEVELOP -- WHEN WE ARE PROCESSING ITEMS, BE IT FOR
3 HAIR AND FIBER OR DNA OR LATENT FINGERPRINTS, WE HAVE --
4 WE HAVE TO DO WHAT'S CALLED BEST EVIDENCE.

5 ON A LOT OF THESE INDIVIDUAL PIECES, IF I WERE TO
6 PROCESS IT FOR DNA, IT DESTROYS ANY FINGERPRINTS. IF WE
7 PROCESS IT FOR FINGERPRINTS, IT IS GOING TO DESTROY ANY
8 CHANCES OF RECOVERING DNA.

9 SO WE TRY TO GO WITH THE BEST WAY THAT WE CAN GET A
10 TYPE OF FORENSIC EVIDENCE.

11 Q I MEAN, THE STATE HAS ENOUGH RESOURCES TO ORDER A DNA
12 TEST; DON'T THEY?

13 THE WITNESS: YES.

14 MRS. YOUNG: I OBJECT TO THAT, YOUR HONOR.

15 THE COURT: HE HAS TO OBJECT.

16 MR. WEEKS: I OBJECT.

17 THE COURT: WHAT IS THE OBJECTION?

18 MR. WEEKS: HE DOESN'T REPRESENT THE STATE. HE WORKS
19 FOR AIKEN COUNTY. I CAN TELL YOU, THOUGH, THAT WE CAN
20 REQUEST DNA TESTS IF HE WANTS TO HEAR THAT. BUT THIS
21 WITNESS IS NOT QUALIFIED TO ANSWER THAT.

22 BY MR. WATSON:

23 Q OKAY. YOU HAVE NO EVIDENCE THAT MR. JOHNSON TOUCHED
24 THIS BAG. IS THAT YOUR TESTIMONY? IS THAT CORRECT?

25 A YES.

1 Q NOW, HERE IS A PHOTO.

2 THE COURT: LET'S MARK IT, PLEASE.

3 MR. WATSON: I WANT HIM TO CHECK IT FIRST. CAN HE
4 CHECK IT FIRST AND THEN MARK IT?

5 THE COURT: WELL, CAN YOU IDENTIFY IT?

6 BY MR. WATSON:

7 Q CAN YOU IDENTIFY THIS PHOTO?

8 A YES, SIR, I CAN IDENTIFY IT.

9 THE COURT: ALL RIGHT. FOR THE RECORD THEN LET'S
10 MARK IT.

11 MR. WATSON: MARK THIS FOR IDENTIFICATION THEN AS
12 DEFENDANT'S EXHIBIT NO. 6.

13 THE COURT: THAT'S CORRECT. THAT'S A PHOTO OF WHAT?

14 MR. WATSON: A PHOTO OF A BAG AND APPEARS TO BE THE
15 CONTENTS THAT CAME OUT OF THE BAG.

16 THE COURT: ALL RIGHT, SIR.

17 (WHEREUPON, DEFENDANT'S EXHIBIT NO. 6 WAS MARKED FOR
18 IDENTIFICATION ONLY.)

19 MR. WEEKS: NO OBJECTION, YOUR HONOR. DEFENDANT'S
20 SIX?

21 THE COURT: THAT IS DEFENDANT'S SIX.

22 MR. WATSON: I WOULD MOVE IT INTO EVIDENCE, YOUR
23 HONOR.

24 (WHEREUPON, DEFENDANT'S EXHIBIT 6 WAS ADMITTED INTO
25 EVIDENCE.)

1 BY MR. WATSON:

2 Q OKAY. PICTURED HERE ARE A NUMBER OF ITEMS BESIDES
3 THIS BAG; IS THAT CORRECT?

4 A YES, SIR.

5 Q AND WHAT ARE THE OTHER ITEMS PICTURED THERE?

6 A IT LOOKS LIKE WE HAVE ONE, TWO, THREE, FOUR DIFFERENT
7 SHAPED CANISTERS. I CAN READ ARMANI CODE ON ONE OF THEM
8 AS WELL AS A ZIP-LOCK BAG WITH A WHITE ITEM IN IT.

9 Q AND THESE ARE THE ACTUAL ITEMS THAT WERE PHOTOGRAPHED
10 RIGHT THERE, IS THAT CORRECT, ON DEFENDANT'S EXHIBIT
11 NUMBER 15?

12 THE COURT: STATE'S 15.

13 BY MR. WATSON:

14 Q EXCUSE ME. STATE'S 15?

15 A THEY ARE VERY SIMILAR. YES, SIR.

16 Q OKAY. NOW, THIS BAG IS ALLEGED TO BELONG TO
17 MR. JOHNSON; IS THAT CORRECT?

18 A I DON'T KNOW.

19 Q THE BAG IN QUESTION. I MEAN, THAT'S WHY WE'RE HERE.
20 THEY'RE ALLEGING THAT'S MR. JOHNSON'S BAG WHERE THE DRUGS
21 WERE FOUND; IS THAT CORRECT?

22 A I AM ASSUMING SO. I WAS NOT A PART OF THE ARREST.

23 Q THEREFORE, ALL OF THESE ITEMS IN THE BAG WOULD ALSO
24 BE MR. JOHNSON'S; WOULD IT NOT?

25 A IF IT'S HIS BAG.

1 Q THAT MEANS HE WOULD HAVE POSSESSION, DOMINION,
2 CONTROL OF THESE ITEMS IF HE HAD THE BAG AND THESE ITEMS
3 WERE IN IT; IS THAT CORRECT?

4 A ONCE AGAIN, IF IT IS HIS BAG, YES, SIR.

5 Q YOU FOUND ANY FINGERPRINTS OF MR. JOHNSON ON ANY OF
6 THESE ITEMS?

7 A NO, SIR, I DID NOT.

8 MR. WATSON: NOTHING FURTHER.

9 THE COURT: REDIRECT?

10 MR. WEEKS: NOTHING, YOUR HONOR.

11 THE COURT: YOU MAY STEP DOWN. EVERYBODY OKAY ON THE
12 JURY?

13 MR. WEEKS: YOUR HONOR, IF WE COULD. WE PULLED
14 MR. ADAMS OUT OF SOME STUFF OVER THERE THAT HE NEEDS TO
15 GET BACK TO. UNLESS MR. WATSON WANTS TO RECALL HIM, CAN
16 WE EXCUSE HIM?

17 THE COURT: MAY HE BE EXCUSED?

18 MR. WATSON: YES.

19 THE COURT: THANK YOU. GOOD AFTERNOON.

20 MR. WEEKS: MAY WE APPROACH JUST FOR SCHEDULING
21 PURPOSES?

22 THE COURT: YOU MAY.

23 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

24 THE COURT: MR. FOREMAN, LADIES AND GENTLEMEN, I AM
25 GOING TO TAKE A BREAK A LITTLE QUICKER THAN NORMALLY. LET

1 ME TELL YOU WHERE WE ARE. THE STATE HAS TWO MORE
2 WITNESSES AND WE ARE GOING TO TRY TO FINISH THOSE TODAY.
3 WE'LL SEE HOW WE GO.

4 AND THEN I'LL KNOW MORE ABOUT HOW WE'RE RUNNING AS WE
5 GET CLOSER TO 5 O'CLOCK AS TO -- I KNOW WE'LL FINISH
6 TOMORROW, BUT IT'S JUST -- WE'LL -- I'LL KNOW MORE ABOUT
7 IT AT FIVE. HOW ABOUT THAT? CLOSE TO FIVE.

8 SO LET'S TAKE A SHORT BREAK NOW. DON'T DISCUSS THE
9 CASE. DON'T START DELIBERATING. DO YOU SMOKE? YOU JUST
10 HAD ONE. I AM JUST KIDDING YOU. WHO IS THE OTHER SMOKER?

11 (WHEREUPON, THE JURY EXITED THE COURTROOM AT 2:59
12 PM.)

13 THE COURT: ALL RIGHT. LET'S TAKE ABOUT A 10 MINUTE
14 BREAK, OKAY, SO WE CAN KEEP MOVING.

15 (WHEREUPON, A BREAK WAS TAKEN.)

16 THE COURT: ANYTHING FROM THE STATE BEFORE WE START
17 BACK?

18 MRS. YOUNG: NO, SIR.

19 MR. WATSON: NOTHING, YOUR HONOR.

20 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
21 APPROXIMATELY 3:11 PM.)

22 THE COURT: YOU MAY CALL YOUR NEXT WITNESS.

23 MRS. YOUNG: THE STATE CALLS JERRY BRADSHAW.

24 JERRY BRADSHAW, AFTER BEING DULY

25 SWORN, TESTIFIED AS FOLLOWS:

1 THE CLERK: HAVE A SEAT IN THE WITNESS BOX STATING
2 YOUR FULL NAME AND SPELLING YOUR LAST FOR THE COURT,
3 PLEASE.

4 THE WITNESS: JERRY GERARD BRADSHAW, B-R-A-D-S-H-A-W.

5 DIRECT EXAMINATION

6 BY MRS. YOUNG:

7 Q GOOD AFTERNOON, MR. BRADSHAW.

8 A HOW ARE YOU?

9 Q I AM WELL. HOW ARE YOU?

10 A GOOD.

11 Q MR. BRADSHAW, WHAT DO YOU DO FOR A LIVING?

12 A I AM THE TRAINING DIRECTOR AT THE TARHEEL K-9
13 TRAINING INCORPORATED IN SANFORD, NORTH CAROLINA.

14 Q AND HOW LONG HAVE YOU HELD THAT POSITION?

15 A SINCE MY COMPANY WAS INCORPORATED IN 1994.

16 Q FIFTEEN YEARS IF MY LAWYER MATH WORKS. CAN YOU
17 DESCRIBE A LITTLE BIT ABOUT YOUR BACKGROUND AND EDUCATION?

18 A MY FORMAL EDUCATION IS IN THE FIELD OF ECONOMICS. I
19 HAVE A BACHELORS DEGREE IN ECONOMICS. I HAVE A MASTERS
20 DEGREE IN APPLIED ECONOMICS. I AM AN ABD. ALL BUT MY
21 DISSERTATION FINISHED AT THE UNIVERSITY OF NORTH CAROLINA
22 AT CHAPEL HILL AT WHICH TIME I LEFT MY PH.D PROGRAM TO
23 START MY BUSINESS AS A DOG TRAINER.

24 Q OKAY. SO YOU WERE ON AN ECONOMIC PATH AND THEN
25 SWITCHED TO...

1 A HAD AN ABRUPT TURN, YES.

2 Q SPECIFICALLY WITH REGARD TO K-9S, WHAT KIND OF
3 EDUCATION AND TRAINING OR BACKGROUND DO YOU HAVE IN THAT
4 FIELD?

5 A I STARTED WITH K-9S WHEN I GOT MY FIRST HOME
6 PROTECTION DOG WHICH WAS WHEN I WAS ACTUALLY IN GRADUATE
7 SCHOOL AT THE UNIVERSITY OF NORTH CAROLINA. SOMEBODY
8 ATTEMPTED TO BREAK INTO MY HOME, SO MY WIFE AND I AT THE
9 TIME DECIDED TO OBTAIN A PROTECTION DOG.

10 TOOK THAT DOG TO TRAINING, DISCOVERED THAT SHE WAS A
11 LITTLE BIT TOO FRIENDLY TO BE A PROTECTION DOG. WE FOUND
12 A BREEDER WHO BRED BELGIUM MALINOIS WHICH IS A BREED OF
13 DOG THAT'S COMMONLY USED FOR POLICE WORK AND PROTECTION
14 WORK.

15 THAT DOG WAS STARTED IN TRAINING FOR PROTECTION AND
16 ACTUALLY COMPETITION. WE DID SCHUTZHUND COMPETITION. I
17 STARTED DOING SCHUTZHUND COMPETITION WITH THAT DOG IN THE
18 EARLY 90'S.

19 Q WHAT IS THE -- AND IF COULD YOU SPELL IT FOR THE...

20 A S-C-H-U-T-Z-H-U-N-D. SCHUTZHUND IT IS A GERMAN
21 ORIGINATED DOG SPORT WHICH IS FOUND ALL OVER THE WORLD
22 ACTUALLY. THEY'RE A WORLD CHAMPIONSHIP COMPETITION.

23 BUT HERE IN THE UNITED STATES, THERE ARE CLUBS ALL
24 OVER IN PRETTY MUCH EVERY STATE WHERE CIVILIANS GET
25 TOGETHER AND TRAIN IN THE AREAS OF TRACKING, OBEDIENCE AND

1 CONTROL, PROTECTION ROUTINES TO GET SCORED AND GO FOR
2 TITLES, TROPHIES, COMPETITIONS, NATIONAL COMPETITIONS, AND
3 WORLD COMPETITIONS.

4 Q AT SOME POINT DID YOU CHANGE YOUR FOCUS FROM
5 COMPETITION TO ACTUAL TRAINING?

6 A YES. WHEN -- I WAS DOING SCHUTZHUND COMPETITION WHEN
7 I WAS STILL IN GRADUATE SCHOOL WHEN I LEFT TO START MY
8 BUSINESS. AND IN ORDER TO SUPPORT MYSELF, I WENT INTO
9 TRAINING FOR OBEDIENCE AND ALSO TRAINING FOR, YOU KNOW,
10 FOR POLICE WORK.

11 Q AND WHAT -- I MEAN, CAN YOU DESCRIBE THAT IN A LITTLE
12 BIT MORE DETAIL?

13 A SURE. I STARTED APPRENTICING MYSELF WITH PEOPLE --
14 THERE IS A LOT OF CROSSOVER BETWEEN PEOPLE WHO TRAIN IN
15 SCHUTZHUND, TRACKING, OBEDIENCE, CONTROL, PROTECTION, AND
16 PEOPLE WHO TRAIN FOR POLICE WORK. THERE ARE A LOT OF
17 POLICE OFFICERS WHO COMMONLY SHOW THEIR DOGS IN
18 SCHUTZHUND.

19 AND SO THROUGH MY ASSOCIATIONS I MET A LOT OF PEOPLE
20 WHO DID BOTH, AND I STARTED APPRENTICING MYSELF TO PEOPLE
21 WHO DID POLICE TRAINING SO I COULD START LEARNING ABOUT
22 NARCOTICS DETECTION, EXPLOSIVE DETECTION, HUMAN REMAINS
23 DETECTION AND CONTROL AND SO FORTH AND SO ON.

24 Q AND WHAT EXACTLY DOES IT MEAN TO APPRENTICE YOURSELF
25 TO SOMEBODY?

1 A BASICALLY WHAT I DID IN THE BEGINNING WAS I STARTED
2 GOING TO A POLICE TRAINER LOCALLY IN MY AREA. AND ABOUT
3 TWO TO THREE DAYS A WEEK FOR A GOOD COUPLE OF YEARS I
4 WOULD GO DOWN AND ASSIST HER IN THE TRAINING OF POLICE
5 DOGS THAT SHE HAD UNDER CONTRACT WITH HER COMPANY.

6 SO I WAS ABLE TO LEARN BASICALLY HOW TO -- HOW TO
7 TRAIN POLICE DOGS.

8 Q BY BEING IN THE FIELD WITH--

9 A BY BEING IN THE FIELD WITH THEM. I WAS FORTUNATE
10 ENOUGH AT THAT TIME TO BE YOUNG ENOUGH TO PUT ON THE BITE
11 SUIT AND, YOU KNOW, BE THE BAD GUY SO THE POLICE DOGS
12 COULD LEARN PROPER APPREHENSION TECHNIQUES AND SO FORTH.

13 AND SO I STARTED OUT BY TRADING OFF SOME OF MY SKILLS
14 IN THAT AREA THAT I DEVELOPED ALSO IN MY CIVILIAN ROLE AS
15 A SCHUTZHUND TRAINER AND THEN STARTED TO LEARN MORE AND
16 MORE ABOUT ALL OF THE OTHER AREAS AS WELL.

17 Q AND HAVE YOU ATTENDED EDUCATION SPECIFICALLY DIRECTED
18 AT K-9 TRAINING, POLICE K-9 TRAINING?

19 A YES. I HAVE GONE TO NUMEROUS SEMINARS, GONE TO --
20 GONE THROUGH A COURSE IN MIAMI WITH ANOTHER TRAINER WHO I
21 APPRENTICED MYSELF WITH EARLY IN MY CAREER, COMPLETED A
22 200 HOUR SCHOOL WITH HIM AT US K-9 IN MIAMI, FLORIDA.

23 AND SINCE THEN I'VE TAKEN MANY OPPORTUNITIES TO
24 EDUCATE MYSELF BY GOING TO SEMINARS WITH OTHER MASTER
25 TRAINERS FROM, YOU KNOW, VARIOUS, VARIOUS DIFFERENT

1 PLACES.

2 Q AND WHEN DID YOU START GOING TO THAT -- TO THOSE
3 TYPES OF EDUCATION CLASSES IN TERMS OF WHEN YOU OPENED
4 YOUR BUSINESS?

5 A I ACTUALLY STARTED THE -- STARTED THE LEARNING
6 PROCESS BEFORE I FORMALLY OPENED MY BUSINESS, WHICH WAS IN
7 1994. SO SOMEWHERE AROUND 1992 I STARTED DOING SOME OF
8 THE APPRENTICE WORK.

9 AND THEN AFTER 1994 -- I BELIEVE IT WAS '96, '97 I
10 WENT THROUGH THE SCHOOL OF MIAMI. AND THEN SINCE THEN I
11 HAVE BEEN GOING REGULARLY. MY LAST -- THE LAST CLASS I
12 ATTENDED WAS A WEEK AGO.

13 Q AND BY REGULARLY, HOW REGULARLY?

14 A USUALLY EVERY TWO TO THREE MONTHS, YOU KNOW. AT
15 LEAST EARLIER IN MY CAREER I TRIED TO GET AS MUCH
16 EDUCATION AS I POSSIBLY COULD.

17 AND YOU KNOW, BEING AN ACADEMIC MYSELF AND HAVING
18 TAUGHT COLLEGE MYSELF FOR A NUMBER OF YEARS, I DID A LOT
19 OF SELF-STUDY AS WELL AND, YOU KNOW, AVAILED MYSELF OF
20 BOOKS, READING MATERIALS, YOU KNOW, ASSOCIATIONS WITH
21 PEOPLE WHO WERE IN THE KNOW IN ORDER TO HAVE QUESTIONS
22 ANSWERED AND ACTUALLY DID A LOT OF THE TRAINING MYSELF TO
23 GET STARTED AND EXPERIMENTED EARLY ON IN MY CAREER WITH
24 THE -- WITH THE TRAINING.

25 Q DO YOU HAVE ANY CERTIFICATIONS REGARDING K-9

1 TRAINING?

2 A YES. I HAVE BEEN -- I WAS CERTIFIED INITIALLY
3 THROUGH THAT SCHOOL IN MIAMI. I HAVE CERTIFICATIONS FOR
4 ATTENDING, YOU KNOW, VARIOUS CONFERENCES. I HAVE BEEN
5 CERTIFIED BY THE INTERNATIONAL FORENSIC RESEARCH INSTITUTE
6 OUT OF FLORIDA AS A K-9 TRAINER AND EVALUATOR.

7 MY TRAINING PROTOCOLS HAVE BEEN SUBSTANTIATED BY THE
8 DEA AND THE ATF IN ORDER FOR ME TO HAVE THOSE CONTROLLED
9 SUBSTANCES IN MY POSSESSION AT MY COMPANY FOR THE PURPOSES
10 OF K-9 TRAINING AS WELL.

11 WE HAVE TO SUBMIT A TRAINING PROTOCOL TO THEM TO
12 EXPLAIN TO THEM WHAT WE'RE DOING, HOW WE'RE DOING IT, WHAT
13 OUR PAST EDUCATION AND SO FORTH IS, REFERENCES FROM POLICE
14 DEPARTMENTS WE'VE TRAINED DOGS FOR TO SHOW THAT WE'RE
15 OBVIOUSLY SERIOUS ABOUT WHAT WE DO.

16 Q THAT WAY THEY ALLOW YOU TO HAVE THESE SUBSTANCES --

17 A YES.

18 Q -- TO USE IN YOUR TRAINING.

19 A YES.

20 Q AND ARE YOU A TRAINER YOURSELF AT THIS POINT?

21 A YES. I HAVE OVER THE YEARS TRAINED NUMEROUS DOGS FOR
22 COMPETITION, NUMEROUS DOGS FOR POLICE WORK AS A PART OF MY
23 COMPANY.

24 OVER THE LAST TWO YEARS I'VE BEEN CONCENTRATING A
25 LITTLE BIT MORE ON TRAVELING AROUND THE COUNTRY AND

1 TEACHING SEMINARS TO VARIOUS LAW ENFORCEMENT AGENCIES IN
2 PROPER TRAINING TECHNIQUES, METHODOLOGIES, PROBLEM SOLVING
3 AND SO FORTH.

4 SO I HAVE STEPPED OUT OF THE DAY TO DAY TRAINING
5 OPERATIONS AT MY BUSINESS IN ORDER TO WRITE, SPEAK, AND DO
6 TRAINING SEMINARS AROUND THE COUNTRY AND ACTUALLY AROUND
7 THE GLOBE.

8 Q WHEN YOU WERE STILL DOING A LOT OF ACTIVE TRAINING IN
9 PERSON WITH YOUR COMPANY, DID YOU HAVE AN OPPORTUNITY TO
10 TRAIN WITH DIFFERENT LEVELS OF GOVERNMENT?

11 A YES. I HAVE TRAINED WITH -- I HAVE TRAINED WITH
12 FEDERAL, STATE, LOCAL AGENCIES OVER THE COURSE OF MY
13 CAREER. I HAVE TRAINED WITH -- WE'VE PLACED DOGS AT
14 FEDERAL AGENCIES SUCH AS THE UNITED STATES FOREST SERVICE
15 WHICH BUYS DOGS FOR NARCOTICS DETECTION AND PATROL,
16 TRACKING.

17 WE HAVE PLACED DOGS AT THE FEDERAL RESERVE BANK
18 SYSTEM IN THE FIFTH AND SIXTH DISTRICTS OF THE UNITED
19 STATES, BANKS LOCATED IN HIGH VALUE TARGETS OBVIOUSLY FOR
20 TERRORISM LOCATED IN MIAMI, JACKSONVILLE, FLORIDA,
21 ATLANTA, NEW ORLEANS, RICHMOND, CHARLOTTE, NORTH CAROLINA,
22 NASHVILLE, TENNESSEE.

23 I HAVE BEEN A CONSULTANT TO THE DEPARTMENT OF ENERGY.
24 I DID IN THE LAST -- IN 2007 INTO THE EARLY PART OF 2008 I
25 DID CONSULTING FOR THE DEPARTMENT OF ENERGY'S STRATEGIC

1 PETROLEUM RESERVES, ANOTHER HIGH VALUE TARGET FOR
2 TERRORISM. I'VE EVALUATED THEIR K-9 IN TERMS OF EXPLOSIVE
3 DETECTION AND CONTROL PROGRAM.

4 Q AND DO YOU HAVE SOME SORT OF SPECIFIC CERTIFICATION
5 REGARDING PARTICULARLY K-9 NARCOTICS DETECTION?

6 A THE INITIAL CERTIFICATION THAT I RECEIVED IN MIAMI
7 WAS ONE. THE INTERNATIONAL -- THE -- EXCUSE ME -- THE
8 INTERNATIONAL FORENSIC RESEARCH INSTITUTE WHICH CERTIFIED
9 ME.

10 I HAD TO SUBMIT A RESUME, PAST HISTORY AND SO FORTH
11 TO THEM TO BE CERTIFIED WITH THEM AS A TRAINER AND
12 EVALUATOR, SO, YES.

13 Q AND HAVE YOU BEEN INVOLVED YOURSELF WITH ANY FOUNDING
14 -- YOU KNOW, STARTING ANY ASSOCIATIONS WITH REGARDS TO
15 THIS AREA?

16 A YES. I'M A CO-DIRECTOR OF THE NATIONAL TACTICAL
17 POLICE DOG ASSOCIATION ALSO FOR WHICH I AM ONE OF THE
18 EVALUATORS WHICH DOES EVALUATIONS IN THE AREA OF NARCOTICS
19 DETECTION, EXPLOSIVES DETECTION, HUMAN REMAINS DETECTION,
20 PATROL, TRACKING.

21 Q AND WHAT IS THE DIFFERENCE BETWEEN WHAT YOU JUST
22 TESTIFIED ABOUT AND THE USPCA WHICH HAS BEEN TESTIFIED TO?

23 A THE UNITED STATES POLICE K-9 ASSOCIATION IS AN
24 INDEPENDENT THIRD PARTY CERTIFYING ORGANIZATION. IT IS
25 MADE UP OF CURRENT SWORN LAW ENFORCEMENT OFFICERS WHO

1 PROVIDE EDUCATION AND CERTIFICATION FOR POLICE DOGS IN THE
2 UNITED STATES TO MEMBERS OF THEIR ORGANIZATION.

3 Q YOU ARE CERTIFIED IN K-9 NARCOTIC TRAINING?

4 A YES.

5 Q AND HOW LONG HAVE YOU BEEN DOING THAT?

6 A I TRAINED MY FIRST NARCOTICS DETECTION DOG FOR
7 WASHINGTON, GEORGIA IN 1996.

8 Q AND DO YOU HAVE AN ESTIMATE AS TO HOW MANY DOGS
9 YOU'VE TRAINED SINCE 1996?

10 A OVER THE LAST FEW YEARS ON AVERAGE WE PUT OUT ABOUT
11 ANYWHERE FROM 30 TO 60 TRAINED DOGS A YEAR, THE VAST
12 MAJORITY OF THEM BEING NARCOTICS DETECTION DOGS.

13 MRS. YOUNG: YOUR HONOR, AT THIS TIME WE'D LIKE TO
14 OFFER JERRY BRADSHAW AS AN EXPERT IN THE FIELD OF K-9
15 TRAINING AND NARCOTICS DETECTION K-9 TRAINING.

16 MR. WATSON: WITHOUT OBJECTION.

17 THE COURT: WITHOUT OBJECTION HE'LL BE ALLOWED TO
18 GIVE OPINIONS IN THAT AREA.

19 BY MRS. YOUNG:

20 Q MR. BRADSHAW, HOW DID YOU -- WHAT DO YOU HAVE TO DO
21 WITH THIS CASE?

22 A WELL, I HAVE HAD THE PLEASURE OF RUNNING THE HANDLER
23 COURSE AND DOING A VAST MAJORITY OF THE TRAINING FOR K-9
24 FILA WHEN NORTH AUGUSTA CAME TO PURCHASE HER FROM MY
25 COMPANY.

1 I'M NOT EXACTLY SURE OF THE DATE. I'M SORRY. IT WAS
2 ABOUT TWO YEARS -- TWO AND A HALF YEARS AGO, THREE YEARS
3 AGO WHEN JOHN CAME TO DO HIS HANDLER COURSE WITH ME.

4 Q SO FILA WAS TRAINED AT TARHEEL K-9, WHICH IS YOUR
5 COMPANY?

6 A YES. THE PROCESS BY WHICH WE BRING THE DOGS AND THE
7 HANDLERS TOGETHER IS WE AS A COMPANY COMPLETE ALL OF THE
8 TRAINING ON THE DOG PRIOR TO THE HANDLER ARRIVING.

9 THEN WE DO A COURSE WITH THE DOG AND THE HANDLER
10 TOGETHER TO SHOW THE HANDLER HOW TO PROPERLY WORK WITH THE
11 DOG, HOW TO PROPERLY MAINTAIN THE TRAINING, HOW TO READ
12 THE DOG'S BEHAVIORAL RESPONSES WHEN THE DOG IS SEARCHING,
13 WHEN THE DOG IS IN ODOR OR WHEN IT'S NOT IN ODOR, SO THE
14 HANDLER HAS AN IDEA OF WHAT THE DOG IS ACTUALLY DOING.

15 Q SO WHEN YOU INITIALLY START OUT TRAINING THESE DOGS
16 SPECIFICALLY FOR NARCOTICS, ARE THERE EVER SOME DOGS THAT
17 DON'T MAKE IT THROUGH?

18 A YES. TYPICALLY WE IMPORT MOST OF OUR DOGS FROM
19 EUROPE. IT WAS MENTIONED EARLIER THAT FILA CAME FROM
20 CHECKOSLOVAKIA. MOST OF THEM ARE IMPORTED FROM EASTERN
21 EUROPE, BELGIUM, HOLLAND. THE VAST MAJORITY OF THEM COME
22 FROM EASTERN EUROPE.

23 THESE DOGS ARE BROUGHT OVER BY PLANE. THEY'RE TESTED
24 IN EUROPE. THEN THEY'RE TESTED AGAIN WHEN THEY ARRIVE
25 IN -- AT MY FACILITY IN NORTH CAROLINA.

1 THE COURT: WHERE IS THAT IN NORTH CAROLINA?

2 THE WITNESS: THAT'S SANFORD, NORTH CAROLINA.

3 THE COURT: WHERE IS THAT?

4 THE WITNESS: IT IS 30 MINUTES NORTH OF FORT BRAGG AN
5 FAYETTVILLE.

6 THE COURT: UP 95?

7 THE WITNESS: ACTUALLY UP US187. THAT WAY.

8 BY MRS. YOUNG:

9 Q SO YOU DO TRAINING OF OR TESTING OF THE DOGS?

10 A YEAH. I'M SORRY. WE TEST THE DOGS WHEN THEY ARRIVE
11 AT OUR FACILITY AGAIN. SOMETIMES THE STRESS OF THE TRIP
12 KIND OF KNOCKS THEM OFF KILTER, SO WE DO A FULL BATTERY OF
13 TESTING WHEN THEY ARRIVE AT OUR FACILITY.

14 AND OUT OF THE DOGS THAT WE SELECT, WE HAVE A -- WE
15 HAVE A FAIRLY GOOD SELECTION TEST, FAIRLY DIFFICULT
16 SELECTION TEST.

17 POLICE DOGS HAVE TO WORK IN A VARIETY OF
18 ENVIRONMENTS. AND DOGS ARE WHAT'S USUALLY TERMED
19 NEOPHOBES WHICH MEANS THEY'RE AFRAID OF NEW THINGS. IT IS
20 A SURVIVAL MECHANISM THAT ALL DOGS HAVE.

21 SO WHAT WE HAVE TO DO IS WE HAVE TO SELECT OUT OF THE
22 DOGS THAT WE GET DOGS THAT ARE NOT AFRAID OF ANYTHING.
23 BECAUSE THEY HAVE TO GO ON ALL -- IN ALL TYPES OF
24 ENVIRONMENTS AT ALL TIMES OF THE DAY, BE AROUND PEOPLE OF
25 ALL KINDS, GO INTO SCHOOLS, WORK ON SLICK SURFACES, CLIMB

1 STAIRS, LADDERS, THINGS OF THAT NATURE IN THE COURSE OF
2 THEIR WORK, AND SO THESE DOGS HAVE TO BE VERY RIGOROUSLY
3 SELECTED IN ORDER FOR THEM TO PASS OUR EVALUATION.

4 BECAUSE ONCE THEY DO GET OUT ON THE STREET, WE CAN'T
5 HAVE DOGS THAT CAN'T FUNCTION IN THE POLICE ENVIRONMENT.

6 Q AND SPECIFICALLY REGARDING FILA, CAN YOU RELATE TO
7 THE JURORS WHAT KIND OF TRAINING SHE WOULD HAVE RECEIVED
8 ONCE SHE ARRIVED AT YOUR FACILITY?

9 A YES. FILA WAS SELECTED SPECIFICALLY FOR NARCOTICS
10 DETECTION. SHE DID NOT HAVE THE ABILITY TO DO LET'S SAY
11 HUMAN APPREHENSION WORK WHERE SHE WOULD HAVE TO BITE
12 SOMEBODY. SHE WAS A VERY FRIENDLY DOG.

13 BUT SHE'S GOT A LOT OF WHAT WE TERM IN THE FIELD
14 DRIVE, WHICH MEANS SHE LIKES TO PLAY. SHE LIKES TO
15 RETRIEVE AND FETCH AND SHE LIKES TO PLAY TUG OF WAR WITH
16 THE HANDLER. IT'S ALL A GAME TO HER. IT IS BASED OFF OF
17 THE DOGS'S PREY DRIVE, WHICH IS TO CHASE AND CATCH THINGS.

18 SO THE PURPOSE OF THE TRAINING IS TO MAKE AN
19 ASSOCIATION BETWEEN THE ODOR WE WANT THEM TO FIND AND PLAY
20 TIME.

21 SO THE TRAINING BEGINS WITH TAKING A PIECE OF PVC
22 PIPE THAT'S ABOUT 12 INCHES LONG AND ABOUT AN INCH ROUND,
23 AND WE PUT NARCOTICS, ACTUAL NARCOTICS, INTO THAT PIPE AND
24 PLAY A GAME WITH THE DOG.

25 WE START TEACHING HER HOW THE FETCH IT. WE MAKE HER

1 FETCH IT IN TALL GRASS WHERE SHE HAS TO HUNKER DOWN AND
2 LOCATE IT. WHEN SHE GETS IT, WE MAKE A BIG DEAL OF
3 PLAYING WITH IT. WE HIDE IT.

4 THEN WE GRADUATE TO HIDING IT. AND IT'S A BIG GAME
5 OF HIDE AND SEEK. SHE HAS TO GO -- WOULD HAVE TO GO AND
6 SEARCH DIFFERENT AREAS LIKE AROUND VEHICLES, AROUND -- IN
7 BUILDINGS AND SO FORTH AND SO ON. AND THEN SHE WOULD
8 LOCATE IT, PUT HER MOUTH ON IT, AND THEN WE WOULD PLAY A
9 BIG GAME.

10 AND THEN AFTER THAT, WE TEACH THE DOG TO GIVE US
11 WHAT'S BEEN REFERRED TO BEFORE HERE AS A FINAL RESPONSE
12 BECAUSE OBVIOUSLY WE DON'T WANT THE DOG, WHETHER IT'S A
13 NARCOTICS DOG OR A BOMB DOG, GOING IN AND PUTTING THEIR
14 MOUTH ON THE SOURCE OF THE ODOR AND WANTING TO PLAY WITH
15 IT, ESPECIALLY IF IT'S A BOMB DOG, IT'S NOT GOING TO BE A
16 GOOD DAY FOR THE HANDLER.

17 SO WE WANT TO HAVE THE DOG COME TO THE SOURCE OF THE
18 ODOR AND GIVE US AN INDICATION THAT IT'S AT THE SOURCE OF
19 THE ODOR BECAUSE THE DOG WILL BE SHOWING BEHAVIORAL
20 CHANGES THROUGHOUT THE PROCESS OF HUNTING FOR ITS TOY THAT
21 CONTAINS ALL OF THIS ODOR.

22 ONCE IT GETS TO THE SOURCE, IT'S GOT TO TELL THE
23 HANDLER, HEY, I'M HERE, I'VE STOPPED WHERE THE SOURCE OF
24 THE ODOR IS. AT THIS POINT WE WOULD BE HIDING THE
25 SCENT-IMPREGNATED TOY IN PLACES WHERE THE DOG CAN'T

1 PHYSICALLY GET TO IT.

2 SO THAT MEANS THAT IF SHE CAN'T GET IT AND PUT HER
3 MOUTH ON IT, SHE HAS TO DO SOMETHING TO SIGNAL TO US IT'S
4 TIME TO PLAY, AND THEN WE GIVE HER A REWARD AFTER THE
5 FACT.

6 Q SO, SHE WOULD BE TRAINED TO LOCATE THE SOURCE. YOU
7 WEEN HER OFF OF ACTUALLY GRABBING THE SOURCE TO--

8 A RIGHT. AND THEN WE COMPLETELY WEEN HER OFF OF THE
9 TOY BEING AT THE SOURCE OF THE ODOR. SO IT IS A
10 PROCESS -- IT'S A TRAINING PROCESS THAT WE CALL
11 EXTINCTION.

12 IN ORDER FOR US TO MAKE HER WANT TO GO TO THE SOURCE
13 OF THE NARCOTIC ODOR, WE HAVE TO ASSOCIATE THE SOURCE OF
14 THAT NARCOTIC ODOR WITH SOMETHING THAT SHE WOULD LIKE.
15 AND BECAUSE SHE'S ALREADY BEEN SELECTED FOR LIKING TO
16 PLAY, FETCH AND HUNT FOR HER TOY, WE PUT THE TOY AT THE
17 SOURCE OF THE ODOR.

18 OVER TIME, THE DOGS LEARNS THAT THE SOURCE OF THE
19 ODOR IS WHERE SHE GETS HER REWARD. AND ONCE SHE GIVES US
20 THAT INDICATION, THE TOY THEN MAGICALLY APPEARS. THE
21 HANDLER WOULD, YOU KNOW, PRETTY MUCH OVER THE TOP OF THE
22 DOG'S HEAD, YOU KNOW, THROW THE REWARD, MAKE IT BOUNCE OFF
23 THE SOURCE OF THE ODOR.

24 AND SO IF THE DOG THINKS THAT WHEN SHE SITS ON THE
25 SOURCE OF THE ODOR, ALL OF A SUDDEN HER TOY MAGICALLY

1 APPEARS AND SHE CAN PLAY WITH IT.

2 Q BY THE TIME THAT THEY ACTUALLY GRADUATE TO BECOMING
3 DOGS IN THE FIELD, DO THEY STILL GET REWARDED WITH A TOY
4 OF SOME SORT?

5 A ON WHAT WE CALL A VARIABLE REWARD BASIS. BECAUSE
6 WHEN THE DOG IS DEPLOYED IN A SITUATION ON THE STREET,
7 WHEN THE DOG GIVES A RESPONSE, LET'S SAY ON A VEHICLE
8 STOP, WE AS TRAINERS WANT TO BE ABSOLUTELY CERTAIN THAT
9 THERE IS NARCOTICS THAT THE DOG IS ACTUALLY ALERTING ON
10 BEFORE WE GIVE A REWARD.

11 SO ONE OF THE THINGS THAT WE DO IN TRAINING IS WE SET
12 UP OUR TRAINING SO THAT THE DOG FOR THE MOST PART GETS
13 REWARDED IN TRAINING IN THAT ENVIRONMENT WHERE WE KNOW
14 THERE IS CERTAINLY SOMETHING THERE THAT THE DOG IS GOING
15 TO ALERT TO, THE DOG GETS A REWARD.

16 THEN ON THE STREET WE WOULD CONFIRM BEFORE WE
17 ACTUALLY PROVIDE A REWARD TO THE DOG. SO LET'S SAY THE
18 DOG ON THE ROAD WILL SIT ON THE VEHICLE.

19 THE HANDLER WILL TYPICALLY PRAISE THE DOG AT THAT
20 POINT, TAKE THE DOG OUT OF THE SITUATION, LOOK INSIDE TO
21 SEE IF THERE IS ANYTHING VISIBLE THAT THE DOG IS ALERTED
22 ON BECAUSE DOGS CAN ALSO ALERT ON ODORS THAT'S LINGERING
23 IN THERE IF THERE IS NO ACTUAL WEIGHT OF NARCOTICS IN THE
24 CAR.

25 BUT THE DOG, ONCE IT ALERTS, WE WANT TO CONFIRM THAT

1 THERE IS SOMETHING THERE BECAUSE WE DON'T WANT -- WE DON'T
2 WANT THE DOG TO HAVE THE OPPORTUNITY EVEN TO TRY AND DRAW
3 ITS REWARD BY SITTING FOR, YOU KNOW, FOR THE TOY.

4 SO WE GET THE DOG. WE REWARD THE DOG AFTER WE
5 CONFIRM THERE IS SOMETHING IN THERE AND THE PLAY CAN
6 CONTINUE. THE VARIABLE REWARD COMES IN WHERE THE DOG
7 DOESN'T ALWAYS GET REWARDED FOR FINDING SOMETHING AT
8 SOURCE BECAUSE IN DEPLOYMENTS WE CAN'T ALWAYS DO THAT. IT
9 MIGHT NOT EVEN BE SAFE TO DO THAT.

10 BUT -- SO THE DOG DOESN'T ALWAYS GET REWARDED, BUT
11 THE VAST AMOUNT OF THE TIME THE DOG GETS REWARDED FOR
12 FINDING HER TOY. THAT'S WHAT KEEPS HER WANTING TO SEARCH
13 AGAIN AND AGAIN.

14 Q SO THIS IS A TRAINED AND RESPONSE STIMULATION AND
15 RESPONSE --

16 A RIGHT.

17 Q -- SIMILAR AS YOU WOULD TRAIN A HUNTING DOG OR ANY
18 DOG THAT HAS A FUNCTION TO DO.

19 A ABSOLUTELY.

20 Q AND HOW EXACTLY IS IT THAT K-9S ARE SO WELL SUITED TO
21 SEARCH FOR THESE THINGS?

22 A WELL, DOGS HAVE A TREMENDOUS OLFACTORY SENSE. THEY
23 HAVE A TREMENDOUS SENSE OF SMELL. IT'S BEEN
24 SCIENTIFICALLY SHOWN THAT DOGS HAVE ABOUT 200 MILLION
25 SCENT RECEPTORS IN THEIR NOSE AS OPPOSED TO HUMANS WHO

1 HAVE ABOUT 10 MILLIONS SCENT RECEPTORS.

2 SO THEY'RE EXTREMELY CAPABLE OF FINDING VERY SMALL
3 AMOUNTS OF ODOR IN ORDER FOR THEM TO RESPOND TO. THEY
4 HAVE A VERY SHARP SENSE OF SMELL.

5 Q YOU STATED EARLIER THAT THE DOG IS NOT TRAINED TO
6 FIND NARCOTICS PER SE.

7 A RIGHT.

8 Q WHAT IS THE DOG TRAINED TO FIND?

9 A THE DOG IS TRAINED TO FIND THE ODOR OF NARCOTICS.

10 Q AND HOW DOES AN ODOR OF NARCOTICS GET TO A CERTAIN
11 PLACE?

12 A THE ODOR OF NARCOTICS WILL GET TO A CERTAIN PLACE
13 BASED ON THE ENVIRONMENT. SO LET'S SAY, FOR EXAMPLE, IF
14 WE'RE TALKING ABOUT COCAINE. THE ACTUAL DRUG IS CALLED
15 COCAINE HYDROCHLORIDE.

16 THE ODOR OF COCAINE IS A COMPOUND CALLED METHYL
17 BENZOATE. THAT'S BEEN SCIENTIFICALLY PROVEN TO BE FACT IN
18 THE FORENSIC RESEARCH LITERATURE.

19 SO WHAT THAT MEANS IS THAT COCAINE ITSELF IS NOT WHAT
20 THE DOG IS SMELLING. THE DOG IS SMELLING THE ODOR OF
21 COCAINE WHICH IS THE METHYL BENZOATE.

22 SO THAT METHYL BENZOATE IT IS GOING TO EMANATE FROM
23 THE SOURCE OF THE ODOR AND IT IS GOING TO GO WHERE THE AIR
24 TAKES IT. IF IT'S HIDDEN IN A VEHICLE, IT'S GOING TO COME
25 OUT THE SEAMS OF THE VEHICLE.

1 AND SO WE WANT TO MAKE SURE THAT WHEN THE DOG IS
2 SEARCHING FOR IT, THAT THE DOG PUTS ITS NOSE ON PRODUCTIVE
3 AREAS SO THAT IT CAN GET TO THE ODOR.

4 IF THE DOG CANNOT GET ITS NOSE TO THE ODOR OR IF THE
5 ODOR DOES NOT PRESENT ITSELF TO THE DOG'S NOSE, THE DOG
6 CANNOT INDICATE ON THAT ODOR. DOES THAT MAKE SENSE?

7 Q I THINK SO. MAYBE YOU COULD EXPLAIN IT A LITTLE MORE
8 SIMPLY. I HAVE HEARD SOMEBODY SAY SOMETHING ABOUT A SCENT
9 CONE. CAN YOU EXPLAIN TO THE JURY WHAT THAT IS?

10 A SURE. THE EASIEST ANALOGY IS IF I AM COOKING
11 HAMBURGERS ON MY GRILL IN MY BACK YARD IN THE SUMMERTIME
12 AND THERE IS A NICE BREEZE BLOWING FROM THE BACK OF MY
13 HOUSE TO WHERE MY DRIVEWAY IS, AND YOU DRIVE UP, YOU'RE
14 VERY LIKELY TO ENCOUNTER THE ODOR OF MY HAMBURGERS COOKING
15 AND KNOW THAT SOMETHING LIKE THAT IS GOING ON IN MY BACK
16 YARD.

17 THE SAME THING HAPPENS WITH CHEMICAL ODORS LIKE THE
18 ODOR OF COCAINE. WHEN THE AIR PUSHES IT AROUND, IT
19 CREATES A CONE OF ODOR THAT EMANATES FROM THE SOURCE AND
20 GOES OUT.

21 LET'S SAY IF WE HAD A SOURCE OF ODOR HERE AND THE
22 WIND WAS BLOWING IN THAT DIRECTION, THE FURTHER AWAY FROM
23 THAT SOURCE OF ODOR, THE LARGER THE SCENT CONE. OKAY.

24 THE CLOSER TO THE ODOR, THE HEAVIER THE ODOR ITSELF,
25 BUT IT IS GOING TO BE A LITTLE BIT MORE CONCENTRATED AT

1 THE SOURCE.

2 WHAT THE DOG IS GOING TO DO IS THEY'RE GOING TO RUN
3 IN AND OUT OF THAT SCENT CONE. THEY RUN OUT AND THEY TURN
4 BACK INTO IT. THEY RUN OUT AND THEY TURN BACK INTO IT
5 WORKING THEIR WAY TOWARDS THE SOURCE. BECAUSE WHY?
6 BECAUSE WE'VE ASSOCIATED A TOY WITH THE SOURCE OF THAT
7 ODOR.

8 SO THE DOGS WON'T ALWAYS -- THERE IS A COMMON
9 MISCONCEPTION THAT DOGS WILL JUST RUN RIGHT TO THE SOURCE
10 OF THE HIDE. THAT'S NOT TRUE. THEY HAVE TO WORK THEIR
11 WAY IN AND OUT OF THE SCENT CONE IN ORDER FOR THEM TO
12 ESTABLISH THE BOUNDARIES IN THAT SCENT CONE AND TO WORK
13 THEIR WAY INTO THE SOURCE.

14 IF YOU HAVE EVER PLAYED WITH A TENNIS BALL IN HIGH
15 GRASS WITH YOUR OWN DOG AND IT'S GOT ALL KINDS OF DOG
16 SLOBBER ON IT, AND YOU THROW IT AND IT LANDS IN SOME TALL
17 GRASS, YOU'LL SEE YOUR DOG QUARTERING BACK AND FORTH UNTIL
18 IT COMES TO THE SOURCE OF THE ODOR AND THEN IT PICKS THE
19 TOY UP.

20 AND THEY WON'T EVEN HAVE TO SEE IT OBVIOUSLY BECAUSE
21 THEY'RE USING THEIR SENSE OF SMELL IN THE CASE OF MOST PET
22 DOGS, TO FIND THE ODOR OF THEIR OWN SALIVA AND GO TO THE
23 TENNIS BALL, AND THAT HELPS THEM GET TO THE SOURCE.

24 Q WHERE IS THE SCENT CONE THAT YOU'VE DESCRIBED?

25 A THE SCENT CONE IS GOING TO BE ANYWHERE EMANATING OUT

1 FROM THE SOURCE OF THE ODOR WHICH COULD BE A BIG, YOU
2 KNOW, HIDE OR A BIG QUANTITY OF COCAINE, OR IT CAN BE
3 FROM, YOU KNOW, JUST PARTICULATES OF COCAINE HAVING THE
4 METHYL BENZOATE EVAPORATE OUT.

5 Q DOES IT STAY IN THE AIR?

6 A IT'LL HANG IN -- IT WILL HANG IN THE AIR, IT WILL FOR
7 A LITTLE WHILE. DEPENDING ON TEMPERATURE, THE ODOR WILL
8 USUALLY FALL BECAUSE COOL AIR FALLS. WARM AIR RISES.

9 SO IF THERE IS AIR OR ODOR IN THE AIR, THE WARMER IT
10 IS, THE MORE IT WILL EMANATE OUT. THE COOLER IT IS, THE
11 MORE IT WILL FALL TOWARD THE GROUND.

12 Q LET'S TALK A LITTLE BIT MORE ABOUT HANDLER TRAINING
13 AND PRESENTATION.

14 A OKAY.

15 Q CAN YOU TELL US ABOUT HOW THE DOGS ARE TRAINED WITH
16 REGARD TO THEIR HANDLER PRESENTING INITIALLY?

17 A RIGHT. ONE OF THE THINGS THAT WE DO WHEN WE'RE
18 TRAINING THE DOGS IS WE WANT TO CREATE A LOT OF
19 INDEPENDENCE SO THAT THE DOG CAN GO OUT AND SEARCH ON
20 THEIR OWN.

21 HOWEVER, THE HANDLERS HAVE A CERTAIN AMOUNT OF
22 INFORMATION. LET'S SAY WE'RE GOING TO SEARCH A VEHICLE OR
23 A GROUP OF VEHICLES. I WANT TO MAKE SURE THAT MY DOG IS
24 GOING TO SEARCH WHAT WE CALL PRODUCTIVE AREAS.

25 AND A PRODUCTIVE AREA IS ANYWHERE WHERE -- THAT

1 ALLOWS THE ODOR TO ESCAPE OUT OF THE VEHICLE AND GET TO
2 THE DOG'S NOSE. SMELLING IN THE CENTER OF THE HOOD ON TOP
3 OR THE CENTER OF A QUARTER PANEL REALLY DOESN'T DO ANY
4 GOOD FOR US. WE WANT THE DOG TO PUT HIS NOSE ON SEAMS
5 WHERE ODOR CAN ESCAPE OUT FROM THE VEHICLE.

6 ONE OF THE THINGS THAT WE TEACH OUR HANDLERS IS TO
7 PRESENT THESE PRODUCTIVE AREAS TO THE DOG. SO, WE GO
8 THROUGH A RIGOROUS POINT IN THE TRAINING WHERE WE TEACH
9 THE HANDLER HOW TO PROPERLY HOLD THE LEASH NOT IMPEDING
10 THE DOG TO GET THE DOG TO PUT ITS NOSE IN VARIOUS PLACES.

11 PRESENTING A PRODUCTIVE AREA TO THE DOG DOES NOT
12 IMPLY THAT THE HANDLER IS INFLUENCING THAT DOG'S REACTION
13 AT ALL.

14 IN FACT, WHAT WE'RE TRYING TO DO AND THROUGHOUT ALL
15 OF OUR TRAINING WE TRY AND TEACH OUR OFFICERS TO NOT DO
16 ANYTHING TO INFLUENCE THE DOG'S REACTION. WE WANT THE DOG
17 ON THEIR OWN WHEN THEY GET INTO THE ODOR OF NARCOTICS TO
18 WORK THE SOURCE AND TO DELIVER THAT FINAL RESPONSE.

19 Q SO PRESENTING IT IS NOT TELLING THE DOG WHERE--

20 A PRESENTING IS DEFINITELY NOT FORCING AN INDICATION,
21 NO.

22 Q AND THAT'S -- PRESENTING IS SOMETHING THAT YOU TEACH
23 AS PART OF YOUR TRAINING OF THE--

24 A PRESENTING IS SOMETHING THAT EVERY NARCOTICS
25 DETECTION DOG TRAINER AND HANDLER LEARNS HOW TO DO.

1 Q AND THERE'S BEEN SOME TESTIMONY ABOUT FILA AND HER
2 TESTING AND MAKING PASSES. IF SHE DOESN'T GET IT ON THE
3 FIRST PASS BUT SHE GETS IT ON THE SECOND PASS, WHAT DOES
4 THAT MEAN?

5 A LET'S SAY -- LET'S SAY FOR EXAMPLE THAT WE HAVE A
6 VERY SMALL AMOUNT OF NARCOTIC THAT'S IN THE SIDE PANEL OF
7 A DRIVER'S DOOR OF A CAR STUCK IN BETWEEN INSIDE OF THE
8 DOOR, AND WE START THE DOG AND ALLOW THE DOG TO CONDUCT A
9 SNIFF ON HER OWN.

10 AND THE DOG JUMPS FROM THE GRILL AND RUNS BACK AND
11 BYPASSES THAT WHOLE DOOR AND RUNS RIGHT TO THE BACK DOOR
12 ON TO THE TIRE, INTO THE TRUNK AREA. AND WE GO ALL THE
13 WAY BACK AROUND TO WHERE WE STARTED.

14 AS OFFICER RUTLAND TESTIFIED, WHAT WE TEACH THEM TO
15 DO IS TO TURN AROUND AND GO IN THE OPPOSITE DIRECTION AND
16 THEN BRING THE DOG BACK. AND THE HANDLER KNOWS WHAT THE
17 DOG DIDN'T PUT THEIR NOSE ON. RIGHT.

18 SO WE WANT THAT DOG TO PUT THEIR NOSE ON THOSE SEAMS.
19 SO WHEN HE GOES BACK AROUND, HE IS GOING TO HAVE TAKEN
20 NOTE OF WHERE THE DOG DIDN'T PUT HER NOSE SO THAT HE CAN
21 COMPLETELY COVER THAT CAR.

22 BECAUSE WHEN YOU HAVE AN EXTREMELY SMALL AMOUNT OF
23 ODOR -- AND LET'S SAY THE CONDITIONS ARE FAIRLY COOL
24 OUTSIDE SO THE ODOR IS SORT OF HANGING AT ITS SOURCE
25 RATHER THAN EMANATING OUT VERY FAR, THAT DOG MAY HAVE TO

1 ACTUALLY PUT ITS NOSE ON THE SEAM AND DO THIS -- YOU SEE
2 DOGS DO THAT ALL THE TIME. THEY BLOW OUT AND THEY DRAW
3 BACK IN.

4 WHAT THAT DOES IS THAT BRINGS AIR OF THE CAR INTO
5 THEIR NOSE. OKAY. SO IF IT WAS INSIDE OF LET'S SAY THE
6 DOOR AND IT WAS A VERY SMALL AMOUNT, IF THEY WERE TO PUT
7 THEIR NOSE LET'S SAY ON THE DOOR HANDLE AND BREATHE IN,
8 THEN THAT WOULD ALLOW THE DOG TO GET THE ODOR TO THEIR
9 NOSE IN WHICH CASE THEY WOULD BE PHYSICALLY CAPABLE OF
10 GIVING A FINAL RESPONSE.

11 Q BUT THEY DON'T JUST GO AROUND AND AROUND AND AROUND;
12 DO THEY? I MEAN, THEY'RE TRAINED TO GO A CERTAIN AMOUNT
13 OF TIMES TO DETERMINE WHETHER OR NOT THERE IS--

14 A YES. WE GENERALLY TEACH TWO PASSES FOR SIMPLE
15 THOROUGHNESS. WE WANT TO MAKE SURE THAT THE DOG HAS HAD
16 AN OPPORTUNITY TO PUT THEIR NOSE ON PRODUCTIVE AREAS.
17 DOG -- THESE DOGS ARE -- IF YOU HAVE EVER SEE A POLICE DOG
18 WORK, THEY'RE VERY EXCITABLE. THEY'RE VERY DRIVEY.

19 THEY REALLY LIKE TO DO THEIR WORK. THEY'VE BEEN
20 SELF-SELECTED. THEY'VE BEEN SELECTED FOR THIS BECAUSE
21 THEY HAVE A LOT OF ENERGY.

22 AND SO BEING DOGS, THEY WILL SOMETIMES PASS BY
23 SOMETHING LIKE A SEAM, AND THE HANDLER TAKES NOTE OF IT
24 AND BRINGS THEM BACK TO IT. IF WE'RE SEARCHING A ROOM AND
25 THE DOG IS RUNNING OFF LEASH, THE DOG MIGHT CUT OFF A

1 WHOLE SECTION OF THE ROOM.

2 IT'S THE HANDLER'S JOB TO THEN TAKE THE DOG BACK TO A
3 PLACE IN THAT LARGE ROOM THAT THEY MIGHT HAVE BYPASSED
4 SIMPLY BECAUSE THE DOGS TEND TO SEARCH RANDOMLY. AND SO
5 IF THEY RUN OFF LEASH, THEY MIGHT MISS A PORTION.

6 THE HANDLER TAKES THEM TO THE PORTION THEY DIDN'T PUT
7 THEIR NOSE ON TO MAKE SURE THAT THE DOG HAS AN OPPORTUNITY
8 TO SMELL ITEMS IN THAT AREA.

9 SO THE JOB OF THE HANDLER IS EXTREMELY IMPORTANT
10 BECAUSE THE HANDLER PRETTY MUCH CATALOGS WHAT THE DOG HAS
11 DONE AND WHAT THE DOG HASN'T DONE.

12 SO IN THAT SECOND PASS, THE WAY WE TEACH AND MANY
13 OTHERS TEACH, IN THAT SECOND PASS AROUND, THE DOG WILL BE
14 ABLE TO PUT THEIR NOSE ON SOME OTHER PRODUCTIVE AREAS THAT
15 THEY MIGHT HAVE JUST PHYSICALLY BYPASSED.

16 IF THE DOG WAS SEARCHING LOW, THEY MIGHT HAVE
17 BYPASSED SOMETHING THAT WAS HIGH, SO THE HANDLER MAKES A
18 NOTE WHEN HE BRINGS THE DOG BACK AROUND TO PUT THE DOG'S
19 NOSE HIGH IN CERTAIN AREAS.

20 Q MR. BRADSHAW, CAN YOU DESCRIBE VARIOUS SUBSTANCES
21 THROUGH WHICH K-9 NARCOTICS ARE ABLE TO DETECT THE ODOR OF
22 NARCOTICS?

23 A YEAH. DOGS HAVE TO -- THERE HAS TO BE A CERTAIN
24 AMOUNT OF PERMEABILITY TO AN OBJECT IN ORDER FOR THE DOG
25 TO BE ABLE TO SMELL IT. YOU KNOW, IF WE TOOK -- IF WE'RE

1 IN A LABORATORY SITUATION WHERE WE COULD CHROMATICALLY
2 SEAL COCAINE INSIDE OF LET'S SAY GLASS, THE DOG WOULD NOT
3 BE ABLE TO SMELL IT BECAUSE THE GLASS IS IMPERMEABLE.

4 THE COCAINE MOLECULES ARE PHYSICALLY TOO BIG TO GET
5 THROUGH GLASS. THE COCAINE MOLECULES CAN EASILY GET
6 THROUGH CLOTH, WOVEN CLOTH. THE MOLECULES PASS RIGHT
7 THROUGH IT. PLASTICS, THE MOLECULES CAN PASS THROUGH
8 THAT.

9 SO PLASTIC BAGGIES, THINGS OF THAT NATURE THAT ARE
10 COMMONLY USED IN THE PACKAGING OF ELICIT NARCOTICS, THE
11 DOGS CAN SMELL THE ODOR PERMEATING THROUGH.

12 IT'S NOT AS EASY AS IF IT WAS RIGHT OUT IN THE OPEN
13 SITTING ON THE GROUND, BUT CERTAINLY THE DOGS CAN SMELL
14 THROUGH THOSE OBSTACLES.

15 Q WHEN YOU'RE TRAINING THEM AT YOUR FACILITY, JUST
16 BRIEFLY CAN YOU DESCRIBE SOME OF THE DIFFERENT SCENARIOS
17 THAT YOU WOULD USE, DIFFERENT SOURCES OF HIDE LOCATIONS
18 AND THINGS OF THAT NATURE?

19 A YEAH, IT DEPENDS. WE -- YOU KNOW, THERE ARE A FEW
20 THINGS THAT YOU NEED TO MAKE SURE THAT THE DOGS ARE
21 CAPABLE OF DOING. ONE IS SEARCHING A VEHICLE PROPERLY.

22 WE WANT TO -- YOU KNOW, WE WANT TO MAKE OUR OR PUT
23 OUR HIDES IN CERTAIN PLACES ON THE VEHICLE WHERE THE DOG
24 WILL REMEMBER TO TRY AND SEARCH ON THE NEXT CAR.

25 SO IF WE WERE TO HIDE THE ILLICIT NARCOTICS LET'S SAY

1 IN THE SAME PLACE ON EVERY CAR EVERY TIME, WHERE DO YOU
2 THINK THE DOG WOULD GO? TO THAT SAME PLACE EVERY TIME
3 BECAUSE IT'S BEEN SUCCESSFUL DOING THAT, RIGHT?

4 SO WE HIDE IT IN VARIOUS PLACES. WE HIDE IT INSIDE
5 OF THE VEHICLES, UNDER FLOORMATS, IN HEADRESTS, IN
6 HEADLINERS, INSIDE THE DASHBOARD, IN THE GLOVEBOX, UNDER
7 THE BACK SEATS, IN TRUNKS AND VARIOUS PLACES, UNDERNEATH
8 SPARE TIRES, INSIDE TIRES, IN THE GRILL, YOU KNOW, EVERY
9 PLACE THAT WOULD COMMONLY BE USED AS A PLACE IN A CAR
10 WHERE YOU MIGHT TRANSPORT NARCOTICS.

11 WE TRAIN THEM TO FIND IN BUILDINGS STARTING FROM
12 SMALL BUILDINGS TO LIKE OUTBUILDINGS, SHEDS, THINGS OF
13 THAT NATURE TO LARGE BUILDINGS, WAREHOUSES WITH NUMEROUS
14 FLOORS WHERE WE HAVE TO SYSTEMATICALLY SEARCH AREA TO AREA
15 TO AREA IN ORDER FOR THE DOG TO BE ABLE TO LOCATE WHAT
16 THEY MAY BE LOOKING FOR.

17 Q AND DO YOU TRAIN THEM WITH VARYING AMOUNTS OF
18 NARCOTICS --

19 A YES.

20 Q -- AT YOUR FACILITY.

21 A YES. WE TRAIN -- WE'RE -- OUR DEA LICENSE ALLOWS US
22 TO HAVE UP TO 28 GRAMS OF NARCOTICS. BUT WE ALSO HAVE
23 RELATIONSHIPS WITH LAW ENFORCEMENT IN OUR AREA, LEE
24 COUNTY, NORTH CAROLINA, WHICH IS THE COUNTY LAW
25 ENFORCEMENT AND THE CITY SANFORD, NORTH CAROLINA.

1 WE WILL TRAIN WITH THEM. AND THEY HAVE LARGE DRUG
2 SEIZURES, UP TO 10, 11 POUNDS IN SOME CASES OF MARIJUANA,
3 A KILO OF COCAINE, SO FORTH AN SO ON. SO WE EXPOSE THE
4 DOGS NOT ONLY TO VERY SMALL AMOUNTS, BUT WE ALSO EXPOSE
5 THEM TO LARGER AMOUNTS AS WELL.

6 Q SO THEY ARE EXPOSED TO VARYING LEVELS?

7 A ABSOLUTELY.

8 Q DO YOU TRAIN K-9S -- NARCOTICS K-9S RATHER TO DO OPEN
9 AIR SEARCHES?

10 A YES, WE DO.

11 Q CAN YOU DESCRIBE WHAT TYPE OF TRAINING THAT IS.

12 A YES. IT TYPICALLY WOULD BE A SITUATION WHERE WE
13 WOULD HAVE SOMEBODY TAKE AN AMOUNT OF COCAINE, MARIJUANA
14 OR HEROIN OR METHAMPHETAMINE AND TAKE IT INTO LET'S SAY A
15 FIELD OR IN THE WOODS.

16 WE WOULD SOMETIMES DIG A HOLE AND PLACE IT IN THE
17 HOLE AND COVER THE HOLE UP. WE WOULD HAVE SOMEBODY WALK
18 IT THROUGH A FIELD, DROP IT. WE WOULD HAVE SOMEBODY PUT
19 IT UP IN A TREE.

20 THESE ARE -- IN RURAL AREAS, THESE ARE SOMETIMES
21 COMMON HIDING PLACES IN OPEN AREAS. WE WOULD TAKE VERY
22 SMALL AMOUNTS AND PUT THEM IN LIKE FILM CANISTERS AND THE
23 LIKE AND, YOU KNOW, PUT THEM ON SAY ON THE OPPOSITE SIDE
24 OF THE CYCLONE FENCE FOR THE DOG TO BE ABLE TO SEARCH.

25 SO THE SCENARIOS THAT YOU WOULD COMMONLY FIND IN LAW

1 ENFORCEMENT OPERATIONS ARE THE ONES THAT WE WOULD USE IN
2 TRAINING THE DOG.

3 Q AND HOW SPECIFICALLY DOES AN OPEN AIR SEARCH WORK?

4 A FROM THE SOURCE OF THE ODOR, WHEREVER IT MIGHT BE.
5 IF IT'S -- LET'S SAY LAYING ON THE GROUND THAT METHYL
6 BENZOATE, WHICH IS THE BYPRODUCT OF COCAINE, AS IT HITS
7 THE AIR WILL START TO EMANATE OUT FROM THAT SOURCE OF
8 ODOR.

9 IF THE WIND BLOWS IT OR IF THE HEAT CAUSES IT TO
10 EVAPORATE FASTER OR IF THE COLD MAKES IT HANG MORE TOWARDS
11 THE SOURCE, IT PLUMES OUT FROM THE SOURCE.

12 IF THE WIND PUSHES IT, WE HAVE THAT NICE SCENT CONE.
13 AND THE DOG'S JOB IS TO FOLLOW THAT SCENT CONE ALL THE WAY
14 INTO THE SOURCE.

15 Q NOW, DESCRIBE FOR THE JURY WHAT THE HANDLER'S JOB IS
16 IN AN OPEN AIR SEARCH.

17 A IN SOME CASES WE WOULD ACTUALLY DEPLOY THE DOG -- IF
18 THERE IS A SAFETY ISSUE, WE WOULD DEPLOY THE DOG ON A
19 LEASH OR LONG LINE. AND IN SOME CASES WE WOULD ACTUALLY
20 JUST HAVE THE DOG GO OFF LEASH.

21 THE IMPORTANT THING IS WHEN WE SET UP OUR TRAINING,
22 WE WANT TO MAKE SURE, NUMBER ONE, IT'S SAFE. SO IF WE'RE
23 IN AN AREA LET'S SAY SOMEBODY THREW -- IF WE'RE DOING A
24 SCENARIO WHERE SOMEBODY WAS ON A HIGHWAY AND THREW
25 SOMETHING OFF THE SIDE, WE WOULD HAVE TO DEPLOY ON A LEASH

1 BECAUSE WE DON'T WANT OUR DOG RUNNING INTO THE ROAD WHILE
2 SEARCHING AND ACCIDENTALLY GET HIT BY A CAR.

3 IF WE'RE IN A FIELD OR THERE IS PERIMETER WHICH IS
4 BLOCKING TRAFFIC AND WE CAN ACTUALLY TURN THE DOG OFF
5 LEASH TO PERFORM THE SEARCH.

6 Q IS THERE A CERTAIN DISTANCE OF HOW FAR DOGS CAN
7 SMELL?

8 A IF THE ODOR CAN REACH THE DOGS NOSE, THE DOG CAN
9 SEARCH THAT DISTANCE. IT'S -- THERE IS NO SET LIMIT ON
10 THAT. IF THERE'S PARTICULATES IN THE AREA THAT ARE
11 EMITTING ODOR, THE DOG CAN CERTAINLY LOCATE THEM.

12 Q WHAT ABOUT IF THE SOURCE OF THE ODOR IS MOVING?

13 A IF THE SOURCE OF THE ODOR IS MOVING AND THERE ARE
14 PARTICULATES WHICH TYPICALLY WOULD FALL OFF OF THAT ODOR
15 SOURCE, THEN WHAT'S GOING TO HAPPEN IS THE PARTICULATES OF
16 COCAINE HYDROCHLORIDE WHICH WOULD THEN EMIT METHYL
17 BENZOATE, THE ODOR THAT THE DOG IS TRAINED TO FIND, WOULD
18 THEN BE LAYING ON THE GROUND, BE ON THE VEGETATION,
19 POSSIBLY BE STICKING TO THE WALLS OF BUILDINGS AND SO
20 FORTH.

21 DEPENDING ON WHERE IT GOES, YOU'RE GOING TO HAVE A
22 LITTLE TRAIL OF ODOR GOING ALL THE WAY TO THE FINAL
23 DESTINATION OF THE PACKAGE.

24 Q AND WAS FILA SPECIFICALLY TRAINED TO DO OPEN AIR
25 SEARCHES?

1 A YES, SHE WAS.

2 MRS. YOUNG: NO FURTHER QUESTIONS FOR MR. BRADSHAW
3 FROM THE STATE.

4 THE COURT: SIR?

5 CROSS-EXAMINATION

6 BY MR. WATSON:

7 Q MR. BRADSHAW, PRIOR TO COMING IN THE COURTROOM, YOU
8 GAVE ME A FEW MINUTES LESSON ON WHAT YOU DO FOR A LIVING;
9 IS THAT CORRECT?

10 A YES.

11 Q AND YOU'RE IN THE DOG TRAINING BUSINESS.

12 A YES, I AM.

13 Q YOU MAKE MONEY OFF OF TRAINING DOGS?

14 A YES, I DO.

15 Q YOU SELL DOGS TO POLICE DEPARTMENTS.

16 A YES, I DO.

17 Q AND THE SUCCESS OF YOUR BUSINESS WITH THOSE POLICE
18 DEPARTMENTS DEPENDS ON THEM BEING SATISFIED AND YOU HOPE
19 TO GET THEM FOR MORE BUSINESS.

20 A TRUE.

21 Q AND OF COURSE, IN THIS CASE YOU SOLD FILA TO THE
22 NORTH AUGUSTA POLICE DEPARTMENT.

23 A I DID.

24 Q NOW, HOW LONG AGO WAS IT THAT YOU SOLD FILA TO THE
25 NORTH AUGUSTA POLICE DEPARTMENT?

1 A I BELIEVE IT WAS IN 2007. I AM NOT EXACTLY SURE.

2 2006, 2007, SOMEWHERE IN THERE.

3 Q OKAY. DO THE DOGS OCCASIONALLY NEED REFRESHER
4 COURSES?

5 A DOGS NEED CONTINUED MAINTENANCE TRAINING, YES.

6 Q OKAY. DO THE DOGS EVER COME BACK TO YOUR FACILITY
7 FOR ADDITIONAL TRAINING?

8 A OCCASIONALLY THEY DO. WE INVITE OUR HANDLERS TO COME
9 BACK AT NO CHARGE TO COME TO OUR FACILITY SO OUR TRAINERS
10 CAN SEE HOW THE DOGS ARE DOING OVER TIME. OTHER HANDLERS,
11 DEPENDING ON THEIR DISTANCE FROM US IN SANFORD WILL GO
12 WITH LOCAL TRAINERS FROM OTHER AGENCIES TO DO THEIR
13 MAINTENANCE TRAINING.

14 BUT WE ALWAYS ENCOURAGE AND ACTUALLY NEVER CHARGE
15 THEM FOR ANY IN-SERVICE TRAINING THAT MIGHT COME BACK TO
16 OUR AGENCY -- EXCUSE ME -- OUR BUSINESS TO DO.

17 Q AND HAVE YOU EVER BROUGHT FILA BACK FOR ADDITIONAL
18 TRAINING?

19 A I BELIEVE SHE'S COME -- I BELIEVE SHE'S COME BACK FOR
20 SOME ADDITIONAL TRAINING.

21 Q YOU BELIEVE. ARE YOU SURE? YOU MEAN YOU DIDN'T --
22 YOU SENT THEM OUT THERE. ARE YOU SURE?

23 A I HAVE A LOT OF DOGS GO THROUGH MY FACILITY, OVER
24 130. SO I BELIEVE SHE'S BEEN BACK AND DONE SOME TRAINING,
25 YES.

1 Q AND WHY IS IT NECESSARY TO BRING THE DOGS BACK?

2 A IT'S NOT NECESSARY. THEY'RE WELCOMED TO BRING THEM
3 BACK IF THEY WANT TO DO SOME TRAINING WITH US.

4 Q WELL, CAN DOGS DEVELOP BAD HABITS WORKING WITH A
5 TRAINER IF THE TRAINER HIMSELF IS NOT WELL TRAINED?

6 A CERTAINLY THAT'S POSSIBLE.

7 Q THE HANDLER. THE DOG CAN DEVELOP BAD HABITS IN THE
8 FIELD WORKING WITH THE HANDLER; RIGHT?

9 A IF BAD TRAINING IS GOING ON.

10 Q RIGHT. AND HAVE YOU HAD A CHANCE TO REVIEW WHETHER
11 THE TRAINING THAT WAS BEING DONE WITH FILA?

12 A I HAVE SEEN THE DOG'S TRAINING RECORDS.

13 Q WHEN DID YOU SEE THOSE RECORDS?

14 A THE TRAINING RECORDS I'M SPEAKING OF ARE THE ONES
15 THAT INITIALLY WE DID THROUGHOUT THE HANDLER COURSE. ARE
16 YOU TALKING ABOUT SINCE--

17 Q YEAH. SINCE SHE'S BEEN IN THE FIELD.

18 A NO, I HAVEN'T REVIEWED THOSE RECORDS.

19 Q SO IF OFFICER RUTLAND HAS TAUGHT FILA A BUNCH OF BAD
20 HABITS, YOU HAVE NO WAY OF KNOWING THAT?

21 A WELL, USUALLY IF THERE IS BAD HABITS BEING TAUGHT,
22 IT'S GOING TO COME OUT IN THE DOG'S PERFORMANCE IN SOME
23 WAY, IN THE DOG'S RELIABILITY OR IN THE DOG'S
24 CERTIFICATIONS.

25 Q YOU WROTE AN ARTICLE. LET ME KNOW IF THIS IS YOUR

1 ARTICLE RIGHT HERE BEFORE I ATTRIBUTE IT TO YOU.

2 A YES.

3 Q OKAY. THANK YOU.

4 A THIS IS FROM...

5 Q I IMAGINE IT MUST BE SOMETHING THAT YOU SENT TO
6 MRS. YOUNG BECAUSE SHE GAVE IT TO ME AS PART OF YOUR
7 CREDENTIALS.

8 AND IN THE VERY FIRST PARAGRAPH YOU WROTE IT USED TO
9 BE THOUGHT THAT TO -- THAT TO DECOY A POLICE DOG REQUIRED
10 NO PREVIOUS TRAINING OR INSTRUCTION OTHER THAN CHOOSING A
11 GUY WHO HAD NO FEAR OF DOGS.

12 GET A GUY -- GET A GUY TO SUIT UP, TELL THEM TO RUN,
13 AND SEND THE DOG. THOSE DAYS HAVE TO BE OVER IF YOU ARE
14 TO PROGRESS OUR DOGS TO DO PROPER PATROL WORK. SO IN
15 OTHER WORDS, ANYONE CAN'T JUST WALK UP TO A DOG AND GRAB
16 THAT DOG AND GET THAT DOG TO PERFORM PROPERLY?

17 A WELL, ACTUALLY THAT ARTICLE IS REFERRING TO POLICE
18 PATROL IT WHICH IS BITE AND APPREHENSION. IT IS REFERRING
19 TO A VERY SPECIFIC PART OF THAT TRAINING WHICH IS THE GUY
20 WHO GETS IN THE BITE SUIT AND ACTUALLY TAKES THE BITE FROM
21 THE POLICE DOG.

22 IT IS REFERRING TO JUST PUTTING SOMEBODY WHO IS
23 UNSKILLED BUT ATHLETIC IN THE BITE SUIT AND LETTING THE
24 DOG GO BITE, AND IT'S SAYING THAT IN CASES OF TRAINING
25 DOGS FOR BITE APPREHENSION, WE WANT TO PUT A SKILLED

1 PERSON IN THE BITE SUIT BECAUSE THAT PERSON IS RESPONSIBLE
2 FOR HELPING THE DOG LEARN HOW TO RELEASE PROPERLY, HOW TO
3 BITE PROPERLY, SO FORTH AND SO ON.

4 SO IT REALLY DOESN'T DEAL WITH THE TYPE OF DOG THAT'S
5 IN THIS PARTICULAR CASE AT ALL.

6 Q NOW, IF I HAVE A DOG THAT'S WELL TRAINED AND I START
7 THAT DOG ON A TRAIL OF AN ODOR AND THAT DOG IS PROCEEDING
8 ALONG THAT PATH WHERE THAT DOG THINKS THIS ODOR IS
9 EMANATING AND ANOTHER STRONGER ODOR COMES INTO THE
10 PICTURE, DO YOU HAVE ANY WAY OF KNOWING WHETHER THAT DOG
11 WILL CONTINUE TO FOLLOW THE ORIGINAL PATH OR HE WILL GO TO
12 THE STRONGER ODOR?

13 A IF HE -- IF HE -- IT HAS NOTHING TO DO WITH THE
14 STRONGER ODOR NECESSARILY. IF THE DOG ENCOUNTERS A SCENT
15 CONE AND CAN WORK INTO THE SOURCE. IF THERE IS MULTIPLE
16 SOURCES -- IS THAT WHAT YOU'RE SAYING?

17 Q YES.

18 A THE DOG WOULD WORK INTO THE SOURCE OF THE SCENT CONE
19 THAT IT'S ENCOUNTERING.

20 Q ONE CONE. THESE CONES CAN INTERLAP, CAN CROSS OVER
21 EACH OTHER?

22 A IF WE'RE TO BELIEVE THAT THERE IS MULTIPLE SOURCES OF
23 COCAINE ALL OVER THE PLACE.

24 Q RIGHT. I MEAN, IT'S POSSIBLE. I AM GIVING YOU A
25 HYPOTHETICAL. THERE ARE MULTIPLE SOURCES OF IN THIS CASE

1 COCAINE AND A DOG WHO'S PUT ON THE PATH COULD GO THE
2 EITHER ONE OF THOSE SOURCES; IS THAT CORRECT?

3 A WE'RE ASSUMING THAT THERE ARE MULTIPLE SOURCES, YES.

4 THE COURT: ASSUME THAT FOR THE PURPOSE OF THE
5 QUESTION.

6 BY MR. WATSON:

7 Q THAT'S THE HYPOTHETICAL.

8 A YES.

9 Q IN SUCH A CASE, THE DOG THEN WOULD GO TO THE
10 STRONGEST ODOR?

11 A IT IS GOING TO GO TO THE ODOR THAT'S AVAILABLE TO
12 HIM, NOT NECESSARILY THE STRONGEST ONE.

13 Q HOW DO YOU KNOW THAT?

14 A BECAUSE DOGS ARE TRAINED TO FOLLOW THE SCENT INTO THE
15 SOURCE.

16 Q AND AGAIN, THE DOG IS JUST FOLLOWING A SCENT. HOW DO
17 YOU KNOW THAT THE DOG DOES NOT GO TO THE STRONGER SCENT
18 RATHER THAN THE ORIGINAL PATH HE WAS ON?

19 A BECAUSE IF THERE'S A -- IF THERE'S A VERY STRONG ODOR
20 THAT'S, YOU KNOW, ALONG -- SOMEWHERE ALONG THIS PATH BUT
21 OFF TO THE SIDE BUT IT'S -- THAT ODOR MAY BE VERY STRONG
22 IN ITS VICINITY, BUT IT IS NOT ACTUALLY REACHING THE DOG'S
23 NOSE, THE DOG WON'T GO TO IT.

24 Q ALL RIGHT. THE HYPOTHETICAL IS THAT IT IS REACHING
25 THE DOG'S NOSE --

1 A OKAY.

2 Q -- IN MULTIPLE SCENTS. WOULD THE DOG GO TO THE--

3 A IT MIGHT GO TO THE FIRST ONE IT ENCOUNTERS.

4 Q BUT YOU DON'T KNOW WHICH ONE IT IS GOING TO GO TO.

5 A NOT NECESSARILY.

6 Q NO FURTHER QUESTIONS.

7 THE COURT: REDIRECT IF, ANY.

8 REDIRECT EXAMINATION

9 BY MRS. YOUNG:

10 Q IN THIS HYPOTHETICAL WITH MULTIPLE SOURCES BASED TO
11 ON THE TRAINING THAT YOU GIVE THESE DOGS, IS IT POSSIBLE
12 OR LIKELY THAT THEY WOULD GO TO BOTH SCENT SOURCES IF THEY
13 COULD LOCATE THEM?

14 A YES. I MEAN, THE DOG COULD -- THE DOG IS CASTING
15 AROUND IN THAT AREA. THE BEHAVIOR -- THE BEHAVIOR OF THE
16 DOG IN THIS PARTICULAR CASE BASED ON THE ARREST -- OR THE
17 DEPLOYMENT REPORT THAT I READ, THE DOG STARTED IN THAT
18 YARD AND CONTINUED FOLLOWING A QUARTERING PATTERN WITHOUT
19 PAUSE ALL THE WAY TO WHERE IT RESPONDED FINALLY.

20 SO IT SEEMS TO ME, YOU KNOW, IN MY OPINION THAT THE
21 DOG WAS FOLLOWING, YOU KNOW, WHATEVER TRAIL WAS LAID WITH,
22 YOU KNOW, WITH THAT PARTICULAR ODOR.

23 MRS. YOUNG: NOTHING FURTHER.

24 THE COURT: THANK YOU.

25 MR. WATSON: CAN I ASK ONE QUESTION--

1 THE COURT: NO, SIR.

2 MR. WATSON: ONE QUESTION ON REDIRECT.

3 THE COURT: YOU'LL BE RECROSSING, BUT THAT'S
4 DISCRETIONARY WITH THE COURT. I NORMALLY DON'T ALLOW
5 RECROSS, BUT MR. WATSON, I'LL DO IT. ONE QUESTION.

6 RECROSS-EXAMINATION

7 BY MR. WATSON:

8 Q YOU TESTIFIED THAT IN YOUR EVALUATION IN THIS CASE,
9 THE DOG DID NOT COME TO ANY OTHER SCENT. THAT'S NOT THE
10 CASE HERE BECAUSE THERE WAS TESTIMONY ABOUT A SHED WHERE
11 THE DOG HESITATED AND WENT AROUND. SO YOUR FACTS IN THIS
12 CASE IS NOT CORRECT?

13 THE COURT: IS THAT A QUESTION?

14 MR. WATSON: THAT'S A QUESTION STATEMENT.

15 THE COURT: JUST STRIKE THAT. LAWYERS CAN ONLY ASK
16 QUESTIONS. STRIKE THAT, LADIES AND GENTLEMEN. ALL RIGHT.
17 YOU MAY STEP DOWN.

18 (WITNESS LEFT THE STAND.)

19 THE COURT: ALL RIGHT. CAN MR. JERRY BRADSHAW GO
20 BACK TO NORTH CAROLINA?

21 MRS. YOUNG: YES.

22 MR. WATSON: YES.

23 THE COURT: MR. BRADSHAW, I AM GOING TO RELEASE YOU.
24 YOU'RE WELCOME TO GO BACK, BUT YOU'RE WELCOME TO STAY WITH
25 US. WE ARE GOING TO GO ABOUT ANOTHER 45 MINUTES. NEXT

1 WITNESS.

2 MR. WEEKS: HE'S GOT A FLIGHT IN COLUMBIA AT EIGHT,

3 SO...

4 THE COURT: YOU GOT ANY OTHER WITNESSES?

5 MRS. YOUNG: IF YOU GIVE ME JUST A SECOND, I THINK MY

6 NEXT WITNESS HAS THE EXPERT'S LUGGAGE IN HIS CAR. SO WE

7 MIGHT NEED TO... BASED ON LOGISTICAL THINGS HAPPEN HERE.

8 STATE CALLS DETECTIVE PHILLIP TURNER.

9 PHILLIP TURNER, AFTER BEING DULY

10 SWORN, TESTIFIED AS FOLLOWS:

11 THE CLERK: HAVE A SEAT IN THE WITNESS BOX STATING

12 YOUR FULL NAME AND SPELLING YOUR LAST FOR THE COURT,

13 PLEASE.

14 THE WITNESS: I AM DETECTIVE PHILLIP , T-U-R-N-E-R.

15 THE COURT: HOLD ON ONE SECOND. YOU NEED TO LEAVE

16 MR, BRADSHAW?

17 THE WITNESS: YES, SIR.

18 THE COURT: DETECTIVE TURNER?

19 THE WITNESS: YES, SIR.

20 THE COURT: GOOD AFTERNOON.

21 THE WITNESS: GOOD AFTERNOON, SIR.

22 THE COURT: MA'AM, YOU MAY PROCEED.

23 MRS. YOUNG: THANK YOU, YOUR HONOR.

24 DIRECT EXAMINATION

25

1 BY MRS. YOUNG:

2 Q DETECTIVE TURNER, WHERE ARE YOU EMPLOYED?

3 A NORTH AUGUSTA DEPARTMENT OF PUBLIC SAFETY.

4 Q AND IN WHAT CAPACITY ARE YOU EMPLOYED WITH THE
5 DEPARTMENT?

6 A I AM A NARCOTICS INVESTIGATOR.

7 Q AND HOW LONG HAVE YOU BEEN GENERALLY EMPLOYED WITH
8 NORTH AUGUSTA?

9 A I HAVE BEEN WITH NORTH AUGUSTA A LITTLE OVER SEVEN
10 YEARS.

11 Q HOW LONG HAVE YOU BEEN A NARCOTIC INVESTIGATOR?

12 A A LITTLE OVER THREE YEARS.

13 Q DO YOU HAVE SPECIFIC TRAINING RELATING TO BEING A
14 NARCOTICS INVESTIGATOR?

15 A YES, MA'AM. I HAVE GOT HUNDREDS OF HOURS OF
16 SPECIALIZED TRAINING AND FORMAL TRAINING, I GUESS STARTING
17 WITH THE REGIONAL COUNTER DRUG TRAINING ACADEMY WHICH I
18 ATTENDED ON NUMEROUS OCCASIONS. ONE SUCH BEING NARCOTICS
19 INVESTIGATION.

20 THE REGIONAL COUNTER DRUG TRAINING ACADEMY IS LOCATED
21 IN WILLIAM, MISSISSIPPI. THEY ARE FUNDED BY THE
22 DEPARTMENT OF DEFENSE AND THEY TRAIN ON NOTHING BUT
23 SPECIALIZED TRAINING IN NARCOTICS.

24 I TOOK AN 80 HOUR COURSE, A TWO WEEK COURSE IN THERE
25 IN WHICH I WAS CERTIFIED. GETTING ON BEYOND THAT, I HAVE

1 TAKEN A RESPONSE TO STREET DRUGS CLASS AT THE REGIONAL
2 COUNTER DRUG ACADEMY WHICH WAS A 40 HOUR CLASS AND THE
3 PHYSIOLOGICAL EFFECT OF DRUGS AND READING THAT IN PEOPLE.

4 I TOOK A T CAPS CRIMINAL PATROL CLASS WHICH ITS MAIN
5 PRIORITY IS IN DRUG INTERDICTION, STOPS SUCH AS A CASE
6 LIKE THIS, LARGE QUANTITIES BEING TRAFFICKED IN A VEHICLE,
7 THE WAY THEY'RE PACKAGED, COVERED, HIDDEN, INDICATORS THAT
8 ARE GIVEN BY SUSPECT, THINGS OF THAT NATURE TO PERTAIN TO
9 THAT.

10 I AM A CERTIFIED MARIJUANA ANALYST THROUGH SLED AND
11 INTRODUCTION TO ACE THROUGH THE SOUTH CAROLINA LAW
12 ENFORCEMENT ACADEMY. I HAVE TAKEN BASIC UNDERCOVER
13 TECHNIQUES CLASSES AND I TEACH IN-HOUSE TRAINING AT MY
14 DEPARTMENT ON NARCOTICS RELATED CASES AND CASE LAW.

15 Q AND WHAT TYPE OF WORK DO YOU DO AS A NARCOTICS
16 OFFICER? CAN YOU DESCRIBE WHAT YOUR ACTUAL JOB IS A
17 LITTLE BIT?

18 A MY PRIMARY FUNCTIONS IS GENERALLY I INVESTIGATE
19 ANYTHING SURROUNDING A NARCOTICS OFFENSE TO INCLUDE I DO
20 UNDERCOVER PURCHASES.

21 Q HOW DOES THAT WORK?

22 A HOW DOES THAT WORK? IF I AM ACTING AS AN UNDERCOVER
23 OFFICER, I'M SEARCHED BY ANOTHER OFFICER GOING IN, I PLAY
24 A ROLE BASICALLY AS AN ACTOR TO MEET SOMEONE, GO OUT INTO
25 THE PUBLIC SOMETIMES WITH A TARGET, SOMETIMES WITHOUT,

1 KIND OF DRESSING THE SHEEP UP AS THE WOLF TO GO OUT AND
2 TRY TO MAKE CASES TO SEE WHEN PEOPLE SELL DRUGS TO ME,
3 DRUGS, GUNS. I MEAN, JUST ABOUT ANYTHING, PROSTITUTION,
4 ALCOHOL. I MEAN, JUST DEPENDING ON WHAT THE CASE -- CASE
5 BASIS IS.

6 Q AND HAVE YOU DONE THAT OFTEN?

7 A YES, MA'AM. I HAVE DONE THAT ON SEVERAL OCCASIONS.

8 Q DO YOU HAVE AN ESTIMATION AS TO HOW MANY?

9 A UNDERCOVER ACTIONS?

10 Q YES.

11 A ME ACTING 10 OR MORE. MORE THAN 10 OCCASIONS.

12 Q WHAT OTHER TYPES OF NARCOTICS OPERATIONS HAVE YOU
13 WORKED WITH IN TERMS OF SETTING UP?

14 A I'M A MEMBER OF THE BUREAU OF ALCOHOL, TOBACCO, AND
15 FIREARMS AND EXPLOSIVES, ATF. I AM DEPUTIZED WITH THEM.
16 I ALSO WORK WITH THEM ON TASK FORCE LEVEL HERE IN THE
17 DEPARTMENT OF JUSTICE.

18 I DO NARCOTICS PURCHASES WITH THEM. WE DO TRAFFIC
19 STOP CASES. WE'VE DONE INFORMANT BUY CASES WHERE WE WOULD
20 USE SOMEONE ELSE OUTSIDE OF LAW ENFORCEMENT TO GO AND DO
21 BUYS, NUMEROUS CASES.

22 Q HOW MANY TIMES WOULD YOU SAY THAT YOU'VE DONE AN
23 INFORMANT BUY WHEN YOU'RE USING SOMEBODY OFF THE STREET OR
24 SOMEBODY THAT'S NOT A LAW ENFORCEMENT OFFICER?

25 A WELL IN EXCESS OF 100 CASES.

1 Q AND DO YOU DO THIS ON A REGULAR BASIS AS PART OF YOUR
2 EMPLOYMENT?

3 A YES, MA'AM.

4 Q AND DO YOU TAKE CERTIFICATION CLASSES REGULARLY AS
5 PART OF YOUR EMPLOYMENT?

6 A YES, MA'AM.

7 MRS. YOUNG: YOUR HONOR, AT THIS TIME I WOULD LIKE TO
8 OFFER DETECTIVE PHILLIP TURNER AS AN EXPERT IN THE FIELD
9 OF NARCOTIC INVESTIGATION.

10 MR. WATSON: WITHOUT OBJECTION.

11 THE COURT: VERY WELL.

12 BY MRS. YOUNG:

13 Q HOW DID YOU GET INVOLVED WITH THIS CASE, DETECTIVE
14 TURNER?

15 A YES, MA'AM. ON THE INCIDENT DATE, DECEMBER THE 18, I
16 WAS AT HOME WHEN I WAS SUMMONED BY OFFICER FITTERY AND
17 OFFICER RUTLAND. I WORK AT THE SAME AGENCY AS THEM. THEY
18 SUMMONED ME.

19 AT OUR AGENCY WE HAVE A BIT OF A TWO-FOLD SYSTEM.
20 ANY TIME A GENERAL SESSIONS CASE, NARCOTICS CASE IS MADE,
21 AN INVESTIGATOR IS ASSIGNED TO THE CASE.

22 Q PHILLIP -- DETECTIVE TURNER, I MEAN, CAN YOU TELL THE
23 LADIES AND GENTLEMEN WHAT A GENERAL SESSIONS CASE IS?
24 THEY MIGHT NOT KNOW.

25 A WELL, THIS IS GENERAL SESSIONS COURT. ANYTHING

1 BEYOND THE SIMPLE POSSESSION OF MARIJUANA FIRST OFFENSE
2 OUTSIDE OF A TRAFFIC TICKET, ANY CASE BEYOND THAT IS
3 ASSIGNED TO AN INVESTIGATOR.

4 SO POSSESSION OF COCAINE, METHAMPHETAMINE, CONTROLLED
5 SUBSTANCES, SIMPLE POSSESSION MORE THAN FIRST ALL THE WAY
6 UP TO TRAFFICKING MORE THAN 200 GRAMS OF COCAINE, ANY OF
7 THAT IS PRESENTED TO ME PRIOR TO COMING FOR PROSECUTION.

8 Q AND THAT'S HOW YOU BECAME INVOLVED IN THIS CASE?

9 A IT IS. OFFICER FITTERY HAD CONTACTED ME AND ADVISED
10 ME -- I WAS AT HOME OFF DUTY -- AND ADVISED ME WHAT KIND
11 OF THE SITUATION AT HAND, AND JUST LETTING ME KNOW WHAT
12 WAS GOING ON.

13 A LOT OF TIME IN THE LARGER SCALE CASES I LIKE TO
14 KNOW BEFORE I GET -- SHOW UP LATER. SO IF THERE IS
15 SOMETHING, YOU KNOW, IF I CAN HELP OUT IN ANY WAY, I'LL
16 COME ON OUT.

17 I LEFT MY HOUSE THAT NIGHT AND CAME ON IN. BY THE
18 TIME I GOT THERE, THE DEFENDANT WAS ALREADY IN CUSTODY.
19 AND WE ACTUALLY MET AT THE STATION TO REVIEW AND GO
20 THROUGH THIS CASE.

21 Q DID YOU RESPOND TO THE SCENE ITSELF?

22 A I DID GO OUT TO THE SCENE. ONCE I GOT THERE, WE KIND
23 OF GOT THROUGH WHAT HAD HAPPENED. WE WENT BACK OUT FOR A
24 SHORT BRIEF TOUR OF THE SCENE TO SHOW ME SO I COULD KIND
25 OF GET A GOOD PICTURE OF WHAT HAPPENED.

1 Q DID YOU GO THE ENTIRE ROUTE THAT'S BEEN DESCRIBED --

2 A YES, MA'AM.

3 Q -- HERE IN COURT TODAY?

4 A YES, MA'AM. I HAVE BEEN OUT THERE SEVERAL TIMES.

5 Q AND THAT NIGHT IN PARTICULAR AND OTHER TIMES?

6 A YES, MA'AM.

7 Q DID YOU OBSERVE OFFICER FITTERY THAT EVENING?

8 A DID I OBSERVE HIM?

9 Q UH-HUH.

10 A YES, MA'AM.

11 Q AND WHAT WAS HE DOING?

12 A WHAT WAS HE DOING WHEN I OBSERVED HIM?

13 Q UH-HUH.

14 A I MET WITH HIM AT THE STATION. WE WERE -- HE WAS
15 BOOKING IN THE DEFENDANT AND WE BEGAN PROCESSING AND GOING
16 THROUGH KIND OF WHAT HAD HAPPENED. HE WAS PREPARING TO DO
17 HIS PAPERWORK AND -- IN CONCLUSION OF TRYING TO WRAP UP
18 AND GET HIS CASE GOING.

19 Q DID YOU EVER TAKE THE DRUGS OUT OF OFFICER FITTERY'S
20 HANDS?

21 A NO, MA'AM. THAT'S ONE OF THE THINGS I DO IS TRY TO
22 MAKE SURE THAT WE MAINTAIN CHAIN OF CUSTODY. IT'S VERY
23 IMPORTANT.

24 SO WHEN I -- ONCE I CAME TO SEE OFFICER FITTERY AND
25 SPEAK WITH OFFICER FITTERY, HE HAD THE DRUGS IN HIS

1 CUSTODY. WE WENT UPSTAIRS IMMEDIATELY. I MADE SURE HE
2 KEPT IT WITH HIM WHILE THEY PHOTOGRAPHED AND EVERYTHING,
3 OFFICER FITTERY KEPT IT IN HIS POSSESSION.

4 THE CHAIN OF CUSTODY WERE DONE. I EVEN NOTARIZED IT
5 AS A SWORN STATEMENT, THE FORM B. THAT'S MY SIGNATURE ON
6 IT AS A NOTARY.

7 Q ARE YOU A NOTARY?

8 A YES, MA'AM. I AM A NOTARY PUBLIC, TOO. WE
9 BROUGHT -- TOOK IT DOWN. I WATCHED HIM PERSONALLY DROP IT
10 INTO THE EVIDENCE DROP -- OUR LOCKER, SECURITY FACILITY
11 AND LEAVE IT THERE.

12 Q IF YOU SAW HIM DOING ALL OF THESE THINGS. YOU
13 TESTIFIED TO THAT. DOES THAT WHOLE BAG, THAT BLACK BAG GO
14 INTO EVIDENCE WITH THE DRUGS TO BE TESTED OR IS IT DONE
15 SOME OTHER WAY?

16 A IT IS DONE SEPARATELY. THE DRUGS ARE PUT ON WHAT'S
17 CALLED A RULE SIX FORM B WHICH SOUNDS KIND OF FANCY FOR
18 ONE PIECE OF PAPER. AND THEN THIS ONE ON A SEPARATE
19 REGULAR CHAIN OF CUSTODY, AND THEN THE MONEY ONE ON A
20 THIRD CHAIN OF CUSTODY. SO THERE IS THREE DONE. IT IS
21 JUST FOR TRACKING PURPOSES.

22 THE RULE SIX FORM B IS MORE LAWYER JARGON THAN I CARE
23 TO GO INTO BUT, IT IS SPECIFICALLY FOR DRUGS AND
24 CONTROLLED SUBSTANCES.

25 A REGULAR CHAIN OF CUSTODY IS FOR ANY OTHER TYPE OF

1 EVIDENCE THAT COMES IN. AND CURRENCY WE ALWAYS PUT ON ITS
2 OWN CHAIN SO THAT IT CAN BE SECURED IN A SAFE AND HELD AND
3 ONCE -- I MEAN, THERE IS A WHOLE OTHER POLICY THERE.

4 Q SO THE NARCOTICS WERE PACKAGE SEPARATELY FROM THIS
5 BLACK BAG THAT'S BEEN DISCUSSED TODAY?

6 A YES, MA'AM.

7 Q AND YOU OBSERVED HIM DO THAT?

8 A YES, MA'AM.

9 Q AND YOU OBSERVE HIM DROP IT IN THE DROP BOX?

10 A YES, MA'AM.

11 Q ARE YOU AWARE OF THE RESULTS THAT WERE GIVEN IN THIS
12 CASE?

13 A THE CHEMICAL ANALYSIS?

14 Q THE CHEMICAL ANALYSIS.

15 A YES, MA'AM.

16 Q AND HOW MUCH COCAINE IS THAT?

17 A THAT IS A LOT OF COCAINE. FOR US, FOR OUR REGION,
18 OUR AREA, THAT IS ABOVE WHAT WE GENERALLY SEE FROM A
19 STREET LEVEL DISTRIBUTOR. THAT'S WHAT WE COULD COMMONLY
20 REFER TO AS NINE -- OR THE STREET WOULD REFER TO AS
21 9 OUNCES, EVEN THOUGH IT MAY BE A LITTLE SLACK, YOU KNOW,
22 BECAUSE PEOPLE RIP YOU OFF.

23 Q WHAT DOES SLACK MEAN?

24 A SLACK MEANS IT'S A LITTLE SHORT ON THE WEIGHT.
25 GENERALLY IF YOU BUY AN OUNCE OF COCAINE, YOU DON'T GET

1 YOUR 28 GRAMS, YOU GET YOUR 26 GRAMS BECAUSE, YOU KNOW,
2 THE GUY IS GOING TO GET MONEY OFF YOU. THERE IS NO BETTER
3 BUSINESS BUREAU IN DRUG DEALING.

4 SO -- BUT WE REFER TO THAT AS NINE OR A QUARTER KEY.
5 THAT'S A LOT OF DRUGS.

6 Q WHAT DOES A QUARTER KEY MEAN?

7 A A KILO IS THE STANDARD MEASUREMENT. I'M SURE IF
8 YOU'VE SEEN ANY TV SHOWS, YOU'VE SEEN THEM TALK ABOUT
9 KILOS OR, YOU KNOW, COMING FROM COLUMBIA, IT'S IN A BRICK.
10 IT IS A THOUSAND GRAMS BASICALLY TO PUT IT VERY SIMPLE.

11 BUT IT IS A STANDARD UNIT WHICH IT'S PACKAGED IN WHEN
12 IT COMES FROM SOUTH AMERICA, WHICH IS WHERE COCAINE
13 GENERALLY COMES FROM. IT'S STAMPED. PUT INTO A TIGHT
14 LITTLE CYLINDER.

15 THEY PUSH IT DOWN AND MAKE IT REALLY HARD, AND THAT'S
16 THE METRIC UNIT WHICH THEY SELL IT IN WHEN IT COMES FROM
17 THE ORIGINAL POINT IN SOUTH AMERICA.

18 Q IN YOUR LAW ENFORCEMENT TRAINING AND EXPERIENCE IN
19 NARCOTICS, DID YOU OBSERVE ANYTHING PARTICULAR ABOUT THE
20 COCAINE IN THIS CASE?

21 A YES, MA'AM. CAN I TOUCH IT?

22 Q LET ME HAND IT TO YOU.

23 A I'D LIKE TO.

24 THE COURT: GIVE US THE NUMBER OF THE EXHIBIT AGAIN,
25 PLEASE.

1 THE WITNESS: IT IS 14. AND IT IS HARD FOR Y'ALL TO
2 SEE. IT WAS IN CHUNKS, LARGE, TIGHT, COMPRESSED CHUNKS.
3 COCAINE ON THE STREET IN A USER LEVEL, COCAINE ON A
4 DEALER'S LEVEL FOR A STREET LEVEL DEALER GENERALLY IS NOT
5 IN CHUNKS.

6 CHUNKS IS WHERE -- THE ONLY WAY COCAINE GETS THE
7 CHUNKS, IT'S LOOSE, THEY MAKE IT -- COCAINE COMES THROUGH
8 BASE AND THEN IT'S TURNED INTO HYDROCHLORIDE. THEY TAKE
9 IT BASICALLY AND STAMP IT.

10 LIKE I WAS TALKING EARLIER, IT GOES INTO A PRESS TYPE
11 THING WHICH COMPRESSES IT. THAT'S WHY MS. WAY HAS EVEN
12 GOT IT MARKED AS COMPRESSED COCAINE. THAT IS INDICATIVE
13 THAT THAT CAME STRAIGHT OFF OF A KILO, THAT THIS QUARTER
14 KEY WAS DROPPED, CUT, HOWEVER YOU WANT TO SAY, BUSTED,
15 THAT THAT CAME OFF A KILO. THAT'S VERY INDICATIVE OF IT.

16 I DON'T KNOW HOW TO MAKE IT BOND BACK TOGETHER LIKE
17 THAT MYSELF.

18 Q AND SO YOU, BASED ON YOUR LAW ENFORCEMENT EXPERIENCE,
19 DO YOU HAVE ANY OPINION AS TO THE VALUE OF THAT?

20 A BUYING LARGE QUANTITY LIKE THAT, WHICH I HAVE DONE,
21 THAT'S GOING TO GO BETWEEN \$6000 AND \$9000 AT -- BEING
22 PURCHASED AS THIS UNIT. STREET VALUE WOULD BE
23 TREMENDOUSLY MORE.

24 Q WHY WOULD THE STREET VALUE BE MORE?

25 A ONCE IT'S BROKEN DOWN, IT'S KIND OF LIKE IF YOU GO TO

1 A -- OR IF YOU GO TO SAM'S CLUB AND YOU WANT TO BUY TOILET
2 PAPER FROM SAM'S CLUB, YOU BUY IT IN A BIG BULK. YOU MAY
3 ONLY PAY A QUARTER A ROLL.

4 BUT IF WE GO TO THE CONVENIENCE AND BUY ONE ROLL,
5 WE'RE GOING TO BUY PAY A DOLLAR FOR IT. IT IS SORT OF THE
6 SAME THING. EVERY PERSON THAT TOUCHES IT COMING DOWN THE
7 LINE MAKES A LITTLE BIT MORE MONEY.

8 THEY GOT TO FIGURE A WAY TO MAKE MORE MONEY OFF OF
9 IT. IT IS THE BASIC SAME THING, SAME SUPPLY AND DEMAND
10 ECONOMIC SYSTEM THAT OUR COUNTRY IS MADE OF. GOT, YOU
11 KNOW, STARTS CHEAPER AND BUILDS UP IN PRICE.

12 THEY WILL TAKE THIS, THOUGH, AND ONCE IT'S CHOPPED
13 DOWN LIKE USUALLY YOU SEE COCAINE LOOKS LIKE BAKING SODA
14 OR BABY POWDER, IT IS A NICE POWDER FORM. THEY BUST IT
15 OFF THESE BLOCKS.

16 ONCE IT GETS TO THE GRAM, STREET -- AVERAGE STREET
17 VALUE OF A GRAM OF COCAINE AROUND HERE IS PROBABLY CLOSE
18 TO \$100 ON AVERAGE. FIFTY TO \$100. BUT MORE LIKELY THAN
19 NOT ACROSS THE BOARD, IF YOU AVERAGE IT OUT, IT WOULD BE
20 CLOSE TO \$100 A GRAM.

21 SO YOU FIGURE 250 GRAMS. THAT'S \$25,000 WORTH OF
22 COCAINE IF YOU BROKE IT DOWN AND SOLD IT BY THE GRAM
23 WHICH...

24 Q IS A GRAM TYPICALLY WHAT A --

25 A A GRAM IS A USER AMOUNT.

1 Q -- A STREET LEVEL PURCHASE WOULD BE?

2 A YEAH. STREET LEVEL PURCHASE GOES FROM TEN DOLLARS TO
3 WHAT WE CALL A DIME TO AN EIGHT BALL IS GENERALLY THE
4 STREET LEVEL PURCHASE. EIGHT BALL BEING ON THE VERY HIGH
5 END. A LOT OF DEALERS BUY EIGHT BALLS AND BREAK IT OFF
6 AND SELL IT INTO DIMES.

7 A DIME IS A TENTH OF A GRAM. IT'S TEN DOLLARS. IT'S
8 THE GENERAL TERM AND PURPOSE OF THAT. SO YOU CAN IMAGINE
9 THE MONEY. YOU SEE WHERE THE MONEY GOES FROM THIS.

10 Q BASED ON YOUR TRAINING AND EXPERIENCE WITH NARCOTICS,
11 DOES IT GO OUT ON THE STREET DIRECTLY JUST BUSTED UP LIKE
12 THAT OR IS SOMETHING ELSE OR -- OR CAN SOMEBODY (SIC) ELSE
13 BE DONE WITH IT?

14 A THERE IS A TERM IT'S CUT, IT'S STEPPED ON, SOMETHING
15 LIKE THAT. IT'S A LOT OF STREET TERMINOLOGY. BUT
16 BASICALLY WHAT IT MEANS IS YOU DILUTE IT. YOU PUT MORE
17 WATER IN THE KOOL AID TO MAKE IT GO FURTHER. IT MAKES YOU
18 MORE MONEY.

19 IF YOU CAN TAKE THIS, WHICH IS PRETTY PURE GENERALLY
20 COMING OFF OF A KEY. IF YOU TAKE SOMETHING LIKE THIS, YOU
21 CHOP IT DOWN, THROW YOU SOME BAKING SODA ANYTHING, ISO --
22 ANYTHING, ANY POWDERY SUBSTANCE.

23 I HAVE SEEN IT -- JUST ABOUT ANYTHING PUT IN THIS
24 POWDERY SUBSTANCE, YOU CUT IT DOWN AND YOU ADD WEIGHT TO
25 IT. AND YOU CAN TAKE THIS 9-OUNCES AND TURN IT INTO

1 SIGNIFICANTLY MORE.

2 YOU TAKE THAT 250 GRAMS AND MAKE YOURSELF 400 GRAMS,
3 500 GRAMS. IT ALL DEPENDS ON WHAT YOU WANT TO DO. THAT'S
4 A STREET LEVEL. YOU KNOW, IT IS JUST A GAME OF MAKING
5 MONEY.

6 Q DETECTIVE TURNER, YOU STATED YOU WERE PRESENT WITH
7 OFFICER FITTERY AND THE BAG ON THE EVENING IN QUESTION,
8 YOU OBSERVED HIM PACKAGE IT IN THE KIT THAT YOU TALKED
9 ABOUT. DID YOU TAMPER WITH THE EVIDENCE IN ANY WAY?

10 A NO, MA'AM. I NEVER TOOK POSSESSION OF THAT EVIDENCE.

11 Q AND DID YOU OBSERVE OFFICER FITTERY TAMPERING OR
12 ALTERING THE EVIDENCE IN ANY WAY?

13 A NO, MA'AM.

14 Q THROUGH YOUR INVESTIGATION IN THE CASE, WERE YOU ABLE
15 TO DETERMINE AN ADDRESS WHERE THE DEFENDANT LIVED?

16 A THE DEFENDANT?

17 Q UH-HUH.

18 A THROUGH MY -- I HAVE NEVER FIGURED OUT WHERE THE
19 DEFENDANT LIVED. NOT IN AIKEN, SOUTH CAROLINA IS WHAT
20 HE'S ALWAYS TOLD US, AND THAT'S WHAT HE'S REPORTED TO JUST
21 ABOUT EVERYBODY, EVEN THE BOND COURT.

22 Q NOT IN AIKEN OR IN AIKEN?

23 A IN AIKEN CITY. UP TOWARDS AIKEN CITY, NOT IN NORTH
24 AUGUSTA.

25 Q AND YOU STATED YOU HAD AN OPPORTUNITY TO GO OUT ON

1 THE EVENING IN QUESTION AND WALK THE ROUTE?

2 A YES, MA'AM.

3 Q HOW WOULD YOU DESCRIBE THE HOUSE WHERE -- THAT WAS IN
4 FRONT OF THE SHED WHERE THESE NARCOTICS WERE EVENTUALLY
5 FOUND?

6 A ABANDONED AND OVERGROWN.

7 Q DID IT APPEAR THAT ANYBODY WAS LIVING THERE AT THE
8 TIME?

9 A NO, IT DIDN'T -- IT DOESN'T APPEAR THAT ANYBODY LIVED
10 THERE IN QUITE SOME TIME TO BE HONEST.

11 Q AND DID YOU HAVE AN OPPORTUNITY TO OBSERVE THE
12 DISTANCE FROM THE SHED TO THE PYLANTS' BACK DOOR?

13 A FORTY OR 50 FEET AT THE MOST. IT IS VERY CLOSE IN
14 PROXIMITY. THOSE ARE SMALLER LOTS. THAT SHED SITS ON THE
15 VERY BACK CORNER OF ONE LOT. THE LOT DIRECTLY ADJACENT TO
16 THE PYLANTS'. AND THE PYLANTS' HOUSE ACTUALLY SITS TO THE
17 BACK OF THEIR LOT.

18 I CAN THROW A ROCK -- ANYBODY IN HERE COULD THROW A
19 ROCK AND GO FROM ONE TO THE OTHER. IT IS VERY CLOSE.

20 Q DETECTIVE TURNER, I AM GOING TO SHOW YOU WHAT'S BEEN
21 MARKED FOR IDENTIFICATION PURPOSES AS STATE'S EXHIBIT 18
22 AND ASK IF YOU RECOGNIZE IT.

23 A YES, MA'AM.

24 Q WHAT IS IT?

25 A IT IS A GIS DRAWING THAT WAS DONE THIS PAST WEEK OF

1 THE OVERVIEW OF THE INCIDENT LOCATION IN REFERENCE TO
2 NORTH AUGUSTA MIDDLE SCHOOL.

3 Q AND WERE YOU PRESENT WHEN THIS GIS MAP WAS DONE?

4 A YES, MA'AM.

5 Q AND IS THIS A FAIR AND ACCURATE DEPICTION --

6 A YES, MA'AM.

7 Q -- OF THE PROPERTY AS IT APPEARED?

8 A YES, MA'AM.

9 MRS. YOUNG: YOUR HONOR, AT THIS TIME WE WOULD MOVE
10 TO ENTER STATE'S EXHIBIT 18, A THIRD MAP, INTO EVIDENCE.

11 MR. WATSON: WITHOUT OBJECTION.

12 THE COURT: NO OBJECTION.

13 (WHEREUPON, STATE'S EXHIBIT 18 WAS ADMITTED INTO
14 EVIDENCE.)

15 MRS. YOUNG: MAY DETECTIVE TURNER COME DOWN FROM THE
16 STAND?

17 THE COURT: HE MAY.

18 BY MRS. YOUNG:

19 Q THIS LOOKS LIKE A PRETTY BIG AREA. IS IT OR...

20 A NO, MA'AM. THIS IS ONE NEIGHBORHOOD ACTUALLY. THIS
21 ACTUALLY IS ONE NEIGHBORHOOD. JUST A NORMAL SUBURBAN
22 NEIGHBORHOOD JUST LIKE ANY OTHER. IT'S NOT A METROPOLIS
23 OR LARGE AREA BY FAR.

24 WELL, LET'S -- TO PUT IT THIS WAY, THIS IS A HALF A
25 MILE RADIUS, THIS YELLOW LINE. NOTICE YOU CAN'T SEE THIS

1 SIDE OF IT OR THIS SIDE OF IT OR THAT SIDE OF IT. THIS IS

2 A HALF A MILE FROM HERE TO THERE.

3 Q WHAT IS THIS THAT YOU'RE POINTING TO?

4 A THIS IS NORTH AUGUSTA MIDDLE SCHOOL AND THIS
5 PROPERTIES AND GROUNDS RIGHT HERE. YOU SEE THE FOOTBALL
6 FIELD, THE SEVENTH GRADE HALL -- THE SIXTH GRADE AND THE
7 MAIN AREA OF THE SCHOOL GROUNDS. THAT'S ACTUALLY THE
8 PROPERTY POINTS OF THE SCHOOL.

9 Q AND WHAT IS THE SIGNIFICANCE OF THE YELLOW LINE?

10 A THE SIGNIFICANCE OF THE YELLOW LINE IS THE MARKING OF
11 ONE HALF A MILE BUFFER FROM THAT MIDDLE SCHOOL, FROM THE
12 EDGE OF THEIR PROPERTY LINE, THAT YELLOW LINE IS A HALF A
13 MILE OUT FROM.

14 Q OKAY. AND YOU'RE FAMILIAR WITH THE CASE. YOU'VE
15 DISCUSSED WITH OFFICER FITTERTY AND RUTLAND. ARE YOU
16 FAMILIAR WITH WHAT THE RED STAR ON THIS INDICATES?

17 A YES, MA'AM. THAT'S THE STOP LOCATION WHERE THE
18 PURSUIT OR THE FOOT PURSUIT STARTED, WHERE THE ACTUAL
19 TRAFFIC STOP TOOK PLACE AND THE GENTLEMAN TOOK OFF ON
20 FOOT. THE DEFENDANT DID.

21 AND I MEAN, JUST AS YOU NOTICED, KNOWING THIS MAP,
22 THIS IS THE ROUTE THAT WAS TAKEN. THIS IS THE BEGINNING
23 TO THE END.

24 THIS BRINGS HIM INSIDE OF THAT HALF MILE SCHOOL
25 BUFFER. AND HAD HE NOT STOPPED HERE, KEEP GOING, IT SHOWS

1 THE AREA WHERE HE WAS GOING TO AND WHERE HE IS AT RIGHT
2 NOW. IT ALSO CORRELATES TO THE CITY LIMITS OF NORTH
3 AUGUSTA.

4 EVERYTHING TO THE LEFT OF THIS LITTLE PRETTY RED LINE
5 IS THE CITY -- INSIDE THE CITY LIMITS.

6 Q THIS IS INSIDE OF THE CITY LIMITS?

7 A YES, MA'AM.

8 Q IS THERE ANY SIGNIFICANCE TO THE ROAD ON WHICH THE
9 STOP HAPPENED WITH REGARD TO THE SCHOOL?

10 A IT IS THE MAIN -- ONE OF THE MAIN STREETS GOING INTO
11 THAT SCHOOL. IF YOU TAKE THE LEGEND, YOU KNOW,
12 APPROXIMATELY HE IS 800 FEET FROM THE PROPERTY LINE OF
13 THAT SCHOOL JUST ME DOING THIS BY HAND, 800,000 FEET FROM
14 THE PROPERTY LINE OF A PUBLIC SCHOOL, NORTH AUGUSTA MIDDLE
15 SCHOOL.

16 Q 800,000?

17 A 800 TO A THOUSAND. I AM SORRY. I APOLOGIZE. I GET
18 AHEAD OF MYSELF. 800 TO 1,000 FEET.

19 Q ALL RIGHT. YOU CAN GO BACK ON THE STAND.

20 MRS. YOUNG: YOUR HONOR, AT THIS TIME I AM
21 APPROACHING THE WITNESS. AND I AM SHOWING HIM WHAT'S BEEN
22 ENTERED INTO EVIDENCE AS DEFENDANT'S EXHIBIT 6.
23 BY MRS. YOUNG:

24 Q AND ASK YOU IF YOU RECOGNIZE THAT.

25 A YES, MA'AM.

1 Q AND WHAT IS IT?

2 A IT'S THIS BAG THAT SITS BEFORE ME TODAY, THE
3 DIFFERENT KINDS OF COLOGNE IN THE BAG.

4 Q AND DID YOU DO ANYTHING WITH REGARD TO THAT BAG
5 PERSONALLY?

6 A I SIGNED IT OUT OF EVIDENCE AND TOOK IT DIRECTLY TO
7 LIEUTENANT ADAMS WHO TESTIFIED HERE EARLIER SO THAT A
8 THIRD PARTY, AN INDEPENDENT PARTY, COULD PROCESS IT, AN
9 EXPERT, BECAUSE I AM NOT THAT GOOD WITH FINGERPRINTS.

10 Q WERE YOU PRESENT WHEN HE DID THAT?

11 A YES, MA'AM.

12 Q IS THERE ANY SIGNIFICANCE ABOUT THE COLOGNE OR
13 DEODORANT BOTTLES BASED ON YOUR LAW ENFORCEMENT TRAINING
14 AND EXPERIENCE?

15 A YES, MA'AM. THEY -- IT IS A TREND IN TRAFFICKING
16 DRUGS. PEOPLE KNOW WE HAVE DOGS. THE BAD GUYS KNOW WE
17 HAVE THEM, YOU KNOW, JUST AS MUCH AS WE DO. SO A COMMON
18 TREND -- AND WHAT THE SIGNIFICANCE OF THAT IS TO ME OF ALL
19 OF THIS COLOGNE AND STUFF THAT'S PORTRAYED IN THIS PICTURE
20 THAT WAS PACKAGED IN THIS BAG WITH THE DRUGS IS IT IS A
21 LOT OF TIME USED AS A MASKING ODOR.

22 THIS MUCH COCAINE, IF I CUT IT OPEN, YOU COULD SMELL
23 IT WITH OUR OWN NOSE, AND I DON'T HAVE A DOG'S NOSE. IT
24 STINKS.

25 BUT THEY PUT IT IN WITH ALL OF THIS COLOGNE AND STUFF

1 TO TRY TO COVER THAT SCENT. IT IS A COVER SCREEN. IT'S
2 JUST PLAIN AND SIMPLY TO TRY TO FOOL OUR DOG. IT
3 GENERALLY DOESN'T WORK.

4 I HAVE SEEN PERFUME, COLOGNE, THERE IS DEODORANT IN
5 THERE, THERE IS ALL KIND OF STUFF. THAT'S A COMMON
6 METHOD. A LOT OF TIMES WHEN YOU'RE BUYING THIS TYPE
7 QUANTITY OF DRUGS, THEY'LL THROW THAT IN FOR FREE. KIND
8 OF A BONUS, BUY ONE, GET ONE FREE.

9 IF YOU'RE GOING TO BUY \$6,000 WORTH OF DRUGS FROM ME,
10 I'LL GIVE -- YOU KNOW, BECAUSE THEY HAD TO TRANSPORT IT
11 HERE -- THEY JUST HAND THE WHOLE BAG OVER, AND SOMETIMES
12 IT GOES ON DOWN THE ROAD THE WAY IT IS.

13 I BOUGHT DOPE IN A BOX OF CHEETOS BOX -- I MEAN IN A
14 BOX OF CHEESE ITS. SO IT IS JUST A COVER TO TRY TO GET IT
15 AWAY FROM THE DOG.

16 Q DETECTIVE TURNER, DID YOU HAVE AN OPPORTUNITY
17 PERSONALLY TO COME INTO CONTACT WITH TREVIS JOHNSON ON THE
18 EVENING IN QUESTION?

19 A YES, MA'AM.

20 Q AND IS TREVIS JOHNSON PRESENT IN THE COURTROOM?

21 A YES, MA'AM.

22 Q CAN YOU IDENTIFY HIM TO THE JURY?

23 A YES, MA'AM. HE IS WEARING A BLACK COAT, RED SWEATER,
24 STRIPED TIE, WHITE SHIRT, SHORT CUT HAIR, BLACK MALE, WHAT
25 APPEARS TO BE DENIM COLORED PANTS, DENIM COLORED PANTS,

1 BLACK SHOES, AND HE IS SITTING AT THE TABLE WITH THE
2 DEFENSE ATTORNEY.

3 MRS. YOUNG: YOUR HONOR, WE'D ASK THAT THE RECORD
4 REFLECT THAT THIS WITNESS HAS IDENTIFIED THE DEFENDANT.
5 AND THE STATE HAS NO FURTHER QUESTIONS FOR DETECTIVE
6 TURNER.

7 THE COURT: THANK YOU. CROSS.

8 CROSS-EXAMINATION

9 BY MR. WATSON:

10 Q I ONLY HAVE A FEW QUESTIONS FOR YOU. PHYSICALLY YOU
11 ARE WHAT WE CALL A VICE DETECTIVE?

12 A NO, SIR. I AM A NARCOTICS AND VICE.

13 Q OKAY. NARCOTICS AND VICE DETECTIVE.

14 A YES.

15 Q DO YOU WORK FOR THE FEDERAL GOVERNMENT?

16 A I AM DEPUTIZED AS A TASK FORCE OFFICER. ONLY UNDER
17 MY AGENCY'S DISCRETION I WORK FOR THE BUREAU OF ALCOHOL,
18 TOBACCO, FIREARMS, EXPLOSIVES, UNDER THE DEPARTMENT OF
19 JUSTICE.

20 Q THE DOES THAT MAKE YOU A FEDERAL AGENT?

21 A NO, SIR. IT MAKES ME A TASK FORCE AGENT WITH THE
22 ATF.

23 Q OKAY. YOU TOLD MR. JOHNSON YOU WERE A FEDERAL AGENT
24 WHEN YOU MET?

25 A NO. I HAD A FEDERAL AGENT WITH ME THAT NIGHT. I HAD

1 SPECIAL AGENT MATTHEW MORELAND ACTUALLY WAS WITH ME ON THE
2 EVENING WE MET.

3 Q BUT YOU NEVER TOLD HIM YOU WERE A FEDERAL AGENT?

4 A NO, SIR.

5 Q OFFICER RUTLAND REFERRED TO THIS AREA AS A KNOWN DRUG
6 AREA. IS THAT TRUE? IS THIS A KNOWN DRUG AREA?

7 A WHICH PART?

8 Q THE AREA WHERE MR. JOHNSON WAS FOUND.

9 A NO, SIR.

10 Q IT'S NOT A KNOWN DRUG AREA?

11 A THERE'S AREAS SURROUNDING THAT SUCH AS AUSTIN AND
12 WESTON STREET, MELODY LANE BELOW THIS, AND BRADLEYVILLE
13 ROAD. THOSE ARE KNOWN DRUG AREAS.

14 Q I SEE YOU KEEP LOOKING AT THIS PHOTO. I'M GOING TO
15 SEE IF YOU CAN POINT--

16 A I WAS TRYING TO SEE IF IT IS ON THERE, BUT I DON'T
17 THINK IT IS ON THERE. JUST BELOW THE MIDDLE SCHOOL IS A
18 KNOWN DRUG AREA. HERE, I CAN JUMP DOWN IF YOU'D LIKE. HE
19 WAS ACTUALLY ABOUT TO DRIVE INTO ONE ACTUALLY.

20 Q EXHIBIT NUMBER -- STATE'S EXHIBIT NUMBER 18 WHICH YOU
21 JUST HAD.

22 A IF YOU DROP ON DOWN HERE. THIS IS AUSTIN STREET.
23 THIS IS HUTCHINSON DRIVE. THIS WOULD BE MELODY LANE.
24 THIS IS WESTON STREET. THAT, SIR, WITHOUT A DOUBT IS A --
25 WHAT COULD BE COMMONLY REFERRED TO AS A KNOWN DRUG AREA.

1 Q ALL OF THAT IS CLOSE TO THE AUGUSTA MIDDLE SCHOOL
2 RIGHT THERE, NORTH AUGUSTA MIDDLE SCHOOL, THIS KNOWN DRUG
3 AREA?

4 A YES, SIR. AND THEN ON UP THIS DIRECTION THERE IS
5 ANOTHER KNOWN DRUG AREA. THERE IS ONE. THAT APARTMENT
6 COMPLEX RIGHT THERE IS OFF OF BRADLEYVILLE ROAD I BELIEVE
7 IF I AM LOOKING AT IT CORRECTLY, WHICH IS ACTUALLY -- IF
8 YOU TAKE THIS STREET RIGHT UP, YOU RUN INTO IT. BUT
9 THAT'S A KNOWN DRUG AREA IN MY DEPARTMENT.

10 Q I MEAN, YOU FIND DRUGS IN ALL AREAS WHETHER IT'S A
11 KNOWN DRUG AREA OR NOT; IS THAT CORRECT?

12 A I HAVE ARRESTED PEOPLE IN A LOT OF AREAS. I GUESS--

13 Q A LOT OF AREAS. WHETHER IT'S A SO-CALLED KNOWN DRUG
14 AREA OR AN AREA LIKE THAT THAT'S NOT -- YOU ARREST PEOPLE
15 IN ALL DIFFERENT TYPES OF AREAS; IS THAT CORRECT?

16 A I ARREST PEOPLE IN ALL DIFFERENT TYPES OF AREAS.
17 THAT'S CORRECT. WE DON'T TARGET ANY PARTICULAR AREA OR
18 ANYTHING.

19 Q NOW, YOU TALKED ABOUT THE VALUE OF THIS DRUGS
20 BEING -- BEFORE ANYTHING IS DONE WITH IT, FROM SIX TO
21 \$9,000; IS THAT CORRECT?

22 A YES, SIR.

23 Q DOES THAT MEAN THAT WHOEVER PURCHASED THIS DRUG WOULD
24 PROBABLY HAVE HAD SIX TO \$9,000 TO MAKE THE PURCHASE; IS
25 THAT CORRECT?

1 A BEFORE THEY PURCHASED IT?

2 Q YEAH.

3 A YES, SIR.

4 Q OKAY. MR. JOHNSON DIDN'T HAVE THAT TYPE OF MONEY ON
5 HIM AT ANY POINT THAT YOU ARE FAMILIAR WITH; RIGHT?

6 A THE DRUGS ARE ALREADY BROUGHT WHEN WE ENCOUNTERED
7 MR. JOHNSON.

8 Q OKAY. NOW, IT IS ALSO COMMON PRACTICE WHEN PEOPLE
9 HAVE THAT MUCH MONEY OR DRUGS, THEY ALSO HAVE WEAPONS WITH
10 THEM; IS THAT CORRECT?

11 A COMMON PRACTICE?

12 Q IT'S A HIGH CORRELATION BETWEEN DEFENDANTS HAVING
13 GUNS AND LARGE QUANTITIES OF DRUGS.

14 A THERE IS A CORRELATION BETWEEN GUNS AND DRUGS, DRUGS
15 AND VIOLENT CRIME.

16 Q AND MR. JOHNSON WAS NOT ACCUSED OF HAVING ANY GUNS IN
17 THIS CASE; IS THAT CORRECT?

18 A NO, SIR.

19 Q SO, THEN THAT MEAN THAT IF YOU SAY HE PURCHASED THESE
20 DRUGS, HE IS WALKING AROUND WITH \$9,000 OR THE EQUIVALENT
21 OF AT LEAST \$9,000 WORTH OF DRUGS UNPREPARED TO PROTECT
22 IT; IS THAT CORRECT?

23 A WELL, IT DEPENDS ON YOUR OUTLOOK. I CAN'T REALLY SAY
24 WHAT YOUR CLIENT WAS THINKING THAT EVENING. I MEAN, NOT
25 TO BE -- BUT I REALLY DON'T KNOW.

1 Q BUT IF YOU'RE SAYING THIS IS HIS DRUGS. IN YOUR
2 EXPERIENCE THEN--

3 A WELL, A LOT OF PEOPLE HAVE THE COMMON KNOWLEDGE THAT
4 IF THEY GET CAUGHT WITH THE DRUGS AND GUNS, THEY'RE GOING
5 TO BE IN TWICE AS MUCH TROUBLE.

6 Q WELL, YOU'D BE IN A LOT OF TROUBLE IF YOU JUST CAUGHT
7 WITH THE DRUGS.

8 A YOU'RE IN ENOUGH TROUBLE.

9 Q YOU MIGHT AS WELL TRY TO DEFEND IT; RIGHT?

10 A I DON'T KNOW. I HAVE NEVER DEALT DRUGS.

11 Q I SEE ON TV, YOU KNOW, PEOPLE ADVERTISING SARAN WRAP
12 AND OTHER PRODUCTS. SOME OF THEM ADVERTISE THE FACT THAT
13 YOU CAN'T SMELL THROUGH IT. HAVE YOU SEEN ANY COMMERCIALS
14 LIKE THAT?

15 A I HAVE SEEN TV COMMERCIALS, YES.

16 Q OKAY. SO THERE ARE SOME TYPES OF SERVICE --
17 WRAPPINGS THAT YOU CAN USE WHERE THE SMELL WON'T COME
18 THROUGH?

19 A I HAVE NEVER SEEN ONE. OTHER THAN GLASS--

20 Q SO THEY'RE JUST LYING TO US, JUST TAKING OUR MONEY
21 AND JUST LYING TO US ABOUT--

22 THE COURT: WHAT WAS THAT?

23 MR. WATSON: I SAID THOSE PEOPLE WHO WERE ADVERTISE
24 THEIR PRODUCT AS BEING ODOR-PROOF, AS FAR AS YOU'RE
25 CONCERNED, ARE LYING. I MEAN, IF THE SARAN WRAP OR OTHER

1 WRAPPINGS COULD CONTAIN THE ODOR OF DRUGS, CERTAINLY DRUG
2 DEALERS WOULD USE THEM; WOULDN'T YOU THINK?

3 MRS. YOUNG: YOUR HONOR, I OBJECT TO THAT. IT'S
4 OUTSIDE OF THE KNOWLEDGE OF THIS WITNESS'S...

5 THE COURT: DO YOU KNOW IF THEY MAKE A SARAN WRAP OR
6 WHATEVER THAT KEEPS ODOR OUT?

7 THE WITNESS: I HAVE NEVER FOUND A NON-PERMEABLE
8 PLASTIC, TO INCLUDE THIS RIGHT HERE, THAT OUR DOG COULD
9 SMELL THROUGH A HEAT SEALED BACK (SIC).

10 BY MR. WATSON:

11 Q OKAY. AND HOW MANY LEVELS OF PACKAGING WAS THAT DRUG
12 IN WHEN IT WAS INITIALLY FOUND?

13 A HOW MANY?

14 Q HOW MANY LEVELS OF PACKAGING WAS THE DRUGS IN WHEN IT
15 WAS FOUND?

16 A I THINK THAT WOULD PROBABLY BE MORE FOR OFFICER
17 FITTERY TO ANSWER, BUT--

18 THE COURT: WELL, JUST LOOK AT IT AND SEE. HOW
19 MANY--

20 THE WITNESS: YES, SIR. IT WAS INSIDE OF -- IT WAS
21 IN I BELIEVE THREE PLASTIC BAGS WHICH WERE PLACED INSIDE
22 OF THAT.

23 BY MR. WATSON:

24 Q SO FOUR LEVELS OF PACKAGING; IS THAT CORRECT?

25 A THAT'S TWO LEVELS OF PACKAGING. THE PLASTIC BAGS ON

1 THE DOPE AND THEN THIS BAG ON THE OUTSIDE OF THAT, THAT'S
2 TWO PER EACH BAG.

3 Q LEVEL OF PACKAGING. SO THAT WOULD AGAIN REDUCE THE
4 AMOUNT OF PARTICULATES FALLING TO THE GROUND AND THE
5 NUMBER OF LEVELS WRAPPED; IS THAT CORRECT?

6 A I HAVE NO IDEA. I AM NOT A SCENT EXPERT.

7 Q WHEN YOU -- YOU DESCRIBED THAT HOUSE WHERE THE DRUGS
8 WERE FOUND WAS -- WERE FOUND AS HAVING A LOT OF BRUSHES
9 AND BUSHES AND STUFF AROUND IT; IS THAT CORRECT?

10 A I DIDN'T. I SAID IT LOOKED TO BE ABANDONED AND THAT
11 NO ONE HAD LIVED IN IT FOR QUITE SOME TIME.

12 Q WHAT INDICATION IS THAT?

13 A IT WAS GROWN UP AROUND IT.

14 Q THAT'S WHAT I ASKED HIM.

15 A BUT I--

16 THE COURT: NO. YOU ASKED HIM DID HE SAY THAT. JUST
17 ANSWER EACH OTHER'S QUESTIONS.

18 THE WITNESS: YES, SIR.

19 BY MR. WATSON:

20 Q AND THESE DRUGS WEREN'T HIDDEN IN ANY OF THE BUSHES
21 AND ALL THAT. THEY WERE JUST IN PLAIN VIEW IN THE SHED;
22 IS THAT CORRECT?

23 A SIR, I WASN'T THERE WHEN THE DRUGS WERE FOUND. THE
24 DRUGS WERE NEVER PRESENT ON THAT PROPERTY WHILE I WAS
25 THERE.

1 Q YOU TALKED ABOUT CHAIN OF CUSTODY. YOU SAID THE
2 CHAIN OF CUSTODY WAS IMPORTANT. WHY IS THAT THE CASE?

3 A IT JUST ALWAYS HAS BEEN TO MAKE SURE THAT IT'S TAKEN
4 CARE OF AND HANDLED CORRECTLY, THAT WE CAN TRACK IT ALL
5 THE WAY THROUGH TO THE POINT IN WHICH IT WAS PROCESSED.

6 Q THAT MEANS YOU CAN TRACK IT TO THE POINT OF WHICH YOU
7 FOUND IT UNTIL IT ARRIVED HERE AT THIS COURTROOM; IS THAT
8 CORRECT?

9 A THAT'S TO AN EVIDENCE CUSTODIAN, BUT YES, SIR.

10 Q OKAY. BUT ALL OF THAT'S PART OF THE CHAIN OF
11 CUSTODY. YOU MENTIONED THERE WERE THREE DIFFERENT CHAINS
12 OF CUSTODY DOCUMENTS YOU USE. ALL OF THOSE ARE DESIGNED
13 TO SHOW A CONSISTENT -- CONSISTENTLY WHERE THE DRUG WAS
14 FROM THE TIME IT WAS SEIZED UNTIL THE TIME IT ARRIVES IN
15 THIS COURTROOM; IS THAT CORRECT?

16 A YES, SIR.

17 Q OKAY. AND YOU CAN'T SAY ANYTHING ABOUT THE CHAIN OF
18 CUSTODY BEFORE THE POLICE DEPARTMENT GOT A HOLD OF IT; IS
19 THAT CORRECT?

20 A NO, SIR. WE DON'T TRACK CHAIN OF CUSTODY UNTIL
21 GOVERNMENT INVOLVEMENT.

22 Q AGAIN, SO YOU DON'T KNOW. YOU CAN'T SAY ANYTHING
23 ABOUT CHAIN OF CUSTODY BEFORE THE DRUGS WERE ALLEGEDLY
24 FOUND IN THE SHED. YOU DON'T KNOW HOW THE DRUGS GOT
25 THERE?

1 A THAT'S CORRECT. I CAN ONLY SEE THE VIDEO AND WHAT
2 I'VE DONE AS THE CHIEF INVESTIGATING OFFICER IN THIS CASE.

3 Q NOW, YOU INDICATED THAT THE PLACE WHERE THE DRUGS
4 WERE FOUND WERE WITHIN A HALF A MILE OF THE SCHOOL ZONE --
5 SCHOOL; IS THAT RIGHT?

6 A YES, SIR.

7 Q THERE IS NO INDICATION THAT THESE DRUGS WERE INTENDED
8 TO BE USED AT THE SCHOOL. IF YOU WERE TO BELIEVE THAT
9 WHAT YOU SAID AND MY CLIENT HAD A CASE WITH DRUGS IN IT,
10 THAT WOULD SIMPLY MEAN--

11 MRS. YOUNG: I OBJECT TO THAT, YOUR HONOR. HE IS NOT
12 ASKING A QUESTION. HE IS JUST MAKING A STATEMENT.

13 MR. WATSON: I AM LEADING TO THE QUESTION.

14 THE COURT: WELL, ASK THE QUESTION BECAUSE THE LAW,
15 ALL IT REQUIRES IS FOR IT TO BE IN PROXIMITY. WHAT IS THE
16 QUESTION?

17 BY MR. WATSON:

18 Q THERE IS NO INDICATION THAT THIS DRUG WAS INTENDED TO
19 BE USED AT THE SCHOOL OR ANYTHING LIKE THAT; IS THAT
20 CORRECT?

21 MRS. YOUNG: I OBJECT TO THAT AGAIN, YOUR HONOR. HE
22 HAS NO WAY TO KNOW THIS PERSON'S PARTICULAR INTENT.

23 THE COURT: THAT CALLS FOR SPECULATION. SUSTAINED.

24 BY MR. WATSON:

25 Q AND TO YOUR KNOWLEDGE, THE DEFENDANT PRINTS WERE NOT

1 FOUND ON THIS DRUGS -- THESE DRUGS ANYWHERE; IS THAT
2 CORRECT?

3 A THAT'S CORRECT. NO PRINTS WERE FOUND IS WHAT I WAS
4 TOLD BY LIEUTENANT ADAMS.

5 Q SO THE ONLY THING THAT YOU ARE TRYING TO SAY THAT
6 CONNECT MR. JOHNSON TO THESE DRUGS IS THROUGH SOME OPEN
7 AIR SEARCH METHODOLOGY; IS THAT CORRECT?

8 A NO, SIR. AS CHIEF INVESTIGATING OFFICER, I COME OUT.
9 I VIEWED THE VIDEOTAPE. I VIEW THE EVIDENCE. I SPEAK
10 WITH THE OFFICERS, THE WITNESSES IF THERE ARE ANY. I HAVE
11 SPOKEN WITH ALL OF THOSE.

12 AND EVEN ON THAT NIGHT, THE NIGHT I CAME OUT I VIEWED
13 INVESTIGATE OR PSO FITTERY'S IN-CAR VIDEO. I REVIEWED
14 OFFICER RUTLAND'S VIDEO. I SPOKE WITH HIM. LOOKED AT THE
15 STATEMENTS. I VIEWED THE EVIDENCE.

16 THAT NIGHT I VIEWED -- AND I STILL STAY TO THIS. I
17 VIEWED THAT VIDEOTAPE. I SAW THAT BAG IN HIS HAND. I
18 ASKED OFFICER FITTERY, I SAID, HOW FAR AWAY FROM HIM WERE
19 YOU? OFFICER FITTERY SAID 10 TO 15 FEET, WHICH IS FROM ME
20 TO HER IN THE BACK OF THAT JURY.

21 I SAID, ARE YOU SURE THIS IS THING BAG? IT'S PRETTY
22 DISTINGUISHABLE. HE SAID, YEAH, THAT'S -- HE SAID, I KNOW
23 WHAT THAT IS. IT LOOKED LIKE A MAN PURSE.

24 Q YOU SAW A BAG WHEN THE DEFENDANT LEFT THE CAR; IS
25 THAT CORRECT?

1 A I SAW THE SAME VIDEO THAT YOU SAW. YES, SIR.

2 Q YES, SIR. AND YOU SAW A BAG.

3 A AND I SPOKE WITH FITTERY.

4 Q AND THERE IS NO CHAIN OF CUSTODY FROM THE BAG THAT
5 MR. JOHNSON HAD IN HIS HAND TO THE BAG THAT WAS FOUND IN
6 THE SHED.

7 A NO, SIR.

8 Q THANK YOU. NOTHING FURTHER.

9 THE COURT: REDIRECT IF ANY.

10 MRS. YOUNG: NOTHING FURTHER FROM THIS WITNESS.

11 THE COURT: ALL RIGHT. WE GOT A PHONE GOING OFF.

12 PLEASE TURN IT OFF. YOU MAY STEP DOWN. IT'S NOT YOURS;
13 IS IT?

14 THE WITNESS: NO, SIR.

15 MRS. YOUNG: YOUR HONOR, THE STATE RESTS.

16 THE COURT: IT IS OKAY. MERIT. HE IS GOING TO TAKE
17 THE LADY'S PHONE. I DON'T WANT TO DO THAT. I ASSUME THAT
18 YOU GOT SOME MOTIONS TO MAKE AND YOU ARE STILL -- YOU CAN
19 TELL ME IN THE MORNING. BUT AS OF RIGHT NOW, THERE IS
20 NO -- YOU DON'T HAVE ANY WITNESSES; IS THAT CORRECT?

21 MR. WATSON: THAT'S CORRECT.

22 THE COURT: BUT YOU CERTAINLY CAN CHANGE YOUR MIND.
23 I THINK I AM ALWAYS WRONG AT HOME WITH MY WIFE. I THINK
24 WE'RE THROUGH WITH THE TESTIMONY. SO WHAT THAT LEAVES IS
25 I'VE GOT A GOOD MANY MOTIONS I HAVE TO HEAR, AND WE HAVE

1 TO GO OVER THE JURY CHARGES THAT I AM GOING TO INSTRUCT
2 YOU ON THE LAW.

3 I HAVE TO TELL THE LAWYERS WHAT I AM GOING TO SAY IN
4 CASE THEY WANT ME TO SAY SOMETHING ELSE OR ADDITIONAL
5 CHARGES THEY MAY HAVE FOR ME.

6 I'VE GOT 4:45 ARMED ROBBERY -- THREE COUNTS OF ARMED
7 ROBBERY PLEA. I WANT TO GET IT OUT OF THE WAY THIS
8 AFTERNOON. WE'VE HAD SOME PEOPLE WAITING ALL AFTERNOON ON
9 THAT. I DON'T WANT Y'ALL TO SIT AROUND AND WAIT.

10 THE POINT I'M MAKING IS IF WE EVEN TRY TO CONCLUDE IT
11 TONIGHT, IT WOULDN'T GET TO YOU UNTIL ABOUT 6 O'CLOCK OR
12 SO, AND IT WOULD BE LATE INTO THE NIGHT. SO IF IT IS
13 OKAY, WE'LL START IN THE MORNING. 10 O'CLOCK OKAY?

14 THE JUROR: 9:30.

15 THE COURT: YOU WANT 9:30? WELL, I GOT A LAWYER
16 COMING FROM COLUMBIA. AND I NORMALLY TAKE CARE OF MY
17 PUBLIX PEOPLE, THOUGH. I USED TO WORK FOR PUBLIX. WHEN I
18 WAS A LITTLE FELLOW IN HIGH SCHOOL, MY FIRST JOB, I USED
19 TO -- YOU KNOW WHO THE JENKINSONS ARE, THE OWNERS--

20 THE JUROR: YES, I DO.

21 THE COURT: I USED TO WORK FOR MR. JENKINSON IN
22 LAKELAND, FLORIDA. THAT'S WHERE IT STARTED A LONG TIME
23 AGO.

24 SO LET'S START AT 10. NOW, I'LL LET YOU HAVE INPUT
25 ON THIS. SAUSAGE BISCUITS OR DOUGHNUTS AND MUFFINS

1 TOMORROW?

2 THE JUROR: DOUGHNUTS AND MUFFINS.

3 THE COURT: JELLY FILLED?

4 THE JUROR: YES, SIR, PLEASE.

5 THE COURT: MR. WHITTLE.

6 THE BAILIFF: YES, SIR.

7 THE COURT: CAN YOU HEAR ME?

8 THE BAILIFF: YES, SIR.

9 THE COURT: ALL RIGHT. IS THAT OKAY WITH YOU,
10 DOUGHNUTS, OR WOULD YOU RATHER HAVE A SAUSAGE BISCUIT?

11 THE JUROR: NOTHING. I'M FINE.

12 THE COURT: ALL RIGHT. WE'LL DO DOUGHNUTS AND
13 MUFFINS TOMORROW. YOU KNOW WHAT YOU NORMALLY BRING, MR.
14 WILLARD. HE COOKS THEM EVERY NIGHT.

15 WHAT WE'LL DO THEN IN THE MORNING, WE'LL HAVE
16 EVERYTHING DONE. AND DEPENDING ON WHAT I RULE ON SOME
17 MOTIONS, BUT WE SHOULD GET RIGHT INTO IT AT 10 O'CLOCK
18 WITH THE ARGUMENTS, AND DEPENDING ON SOME MOTIONS, BUT WE
19 SHOULD GET INTO IT RIGHT AT 10.

20 AND YOU SHOULD HAVE IT FOR YOU BY MID-MORNING AND
21 THEN WE'LL SEE HOW WE GO. IF WE NEED TO, WE'LL ORDER
22 LUNCH.

23 SO, HAVE A VERY PLEASANT EVENING. I AM GOING TO ASK
24 YOU ONCE AGAIN NOT TO DISCUSS IT WITH ANYBODY. DON'T LET
25 ANYBODY DISCUSS THE CASE WITH YOU.

1 THE PRESS IS HERE AGAIN TODAY. I WOULD ASK THAT YOU
2 NOT READ ANYTHING IN THE NEWSPAPER ABOUT IT. YOU CAN READ
3 IT WHEN IT'S ALL OVER, SAID AND DONE. HAVING SAID ALL OF
4 THAT, EVERYBODY GOT A RIDE? EVERYBODY OKAY? HAVE A VERY
5 PLEASANT EVENING. PLEASE BE ON TIME IN THE MORNING.
6 THANK YOU.

7 (WHEREUPON, THE JURY EXITED THE COURTROOM AT 4:48
8 PM.)

9 THE COURT: ALL RIGHT. ANYTHING ON BEHALF OF THE
10 STATE?

11 MRS. YOUNG: NOTHING FROM THE STATE.

12 THE COURT: MR. WATSON?

13 MR. WATSON: MOTION TO DISMISS BASED ON THE FACT THAT
14 THE PLAINTIFF DID NOT CARRY ITS BURDEN OF PROOF IN THE
15 CASE ESTABLISHING BEYOND A REASONABLE DOUBT THAT MY CLIENT
16 POSSESSED THE DRUGS AT ANY POINT.

17 THE COURT: ALL RIGHT. MR. WATSON, I AM GOING TO
18 RESPECTFULLY DENY THAT. OBVIOUSLY IT'S -- THERE'S
19 EVIDENCE IN THE RECORD THAT IF YOU BELIEVE THE
20 CIRCUMSTANCES -- OR IS CIRCUMSTANTIAL EVIDENCE, THERE IS
21 EVIDENCE THAT THEY COULD REACH A DECISION THAT HE HAD THE
22 DRUGS.

23 THAT'S OBVIOUSLY A FACTUAL ISSUE FOR THE JURY TO
24 DETERMINE. AND I RESPECTFULLY DENY THAT MOTION. ANYTHING
25 ELSE?

1 MRS. YOUNG: NO, SIR.

2 THE COURT: ALL RIGHT. WE WILL STAND AT EASE UNTIL
3 IN THE MORNING. LET'S BE HERE NO LATER THAN 9:30 SO WE
4 CAN GO OVER THE -- I'LL TRY IT AGAIN. WE CAN GO OVER THE
5 REQUESTS TO CHARGE, MY CHARGE, THE VERDICT FORM, ANYTHING
6 ELSE WE MAY HAVE IN THE MORNING.

7 SO, LET'S BE HERE AT 9:30 TO GET THAT OUT OF THE WAY.
8 ALL RIGHT. IF NOTHING ELSE, WE'LL STAND AT EASE UNTIL IN
9 THE MORNING. I AM READY TO DO THE ARMED ROBBERY PLEA.

10 ***** MARCH 19, 2009 *****

11 THE COURT: LET THE RECORD REFLECT THE DEFENDANT AND
12 MR. JOHNSON IS PRESENT WITH HIS COUNSEL. WE HAVE HAD AN
13 IN-CHAMBERS DISCUSSION ON THE JURY CHARGES. I HAVE GIVEN
14 BOTH THE STATE AND THE DEFENDANT A COPY OF MY PROPOSED
15 JURY CHARGE.

16 WE WENT OVER THAT IN CHAMBERS. I WILL ADD TO THAT A
17 CHARGE ON DIRECT AND CIRCUMSTANTIAL EVIDENCE. I WILL ALSO
18 ADD TO IT --THE ONE I GAVE YOU SIMPLY HAD POSSESSION WITH
19 INTENT TO DISTRIBUTE. I WILL CALL THAT POSSESSION WITH
20 INTENT TO DISTRIBUTE COCAINE WITHIN ONE HALF MILE
21 PROXIMITY OF A SCHOOL.

22 AND I WILL ADD THAT TO THE CHARGE THAT IT HAS TO BE
23 WITHIN ONE HALF MILE OF A PUBLIC SCHOOL. I WILL DEFINE
24 THE TRAFFICKING CHARGE, THE MEANING OF CONSTRUCTIVE
25 POSSESSION AND ACTUAL POSSESSION AS WELL AS IN THE

1 POSSESSION WITH INTENT TO DISTRIBUTE COCAINE WITHIN ONE
2 HALF MILE RADIUS OF A PUBLIC SCHOOL. I'LL DO THAT IN BOTH
3 OF THEM.

4 I HAVE REVIEWED STATE'S REQUEST TO CHARGE NUMBER ONE
5 AND I WILL RESPECTFULLY DENY THAT. I HAVE ALWAYS SIMPLY
6 CHARGED THAT REASONABLE DOUBT IS THE TYPE OF DOUBT THAT
7 WOULD CAUSE A PERSON TO HESITATE TO ACT. THAT'S OUR
8 GENERAL CHARGE. I WILL STAND BY THAT.

9 ANYTHING ELSE BY THE STATE? ANY ADDITIONAL REQUESTS
10 OR COMMENTS OR OBJECTIONS TO MY PROPOSED CHARGE?

11 MRS. YOUNG: NO, SIR.

12 THE COURT: MY FRIEND?

13 MR. WATSON: NOTHING FROM THE DEFENSE, YOUR HONOR.

14 THE COURT: ALL RIGHT. NOW, DO YOU HAVE ANY MOTIONS
15 WE NEED TO DEAL WITH BEFORE I BRING THE JURY IN BY THE
16 STATE?

17 MRS. YOUNG: NONE BY THE STATE.

18 MR. WATSON: NOTHING FROM THE DEFENSE.

19 THE COURT: ALL RIGHT. NOW, LET'S DO THOSE TWO
20 THINGS REAL QUICK.

21 (WHEREUPON THERE WAS A BREAK IN THE PROCEEDINGS.)

22 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

23 THE COURT: ALL RIGHT. THE JURY IS READY TO COME IN.

24 WE'RE READY TO ARGUE. FIRST OF ALL, ARE YOU GOING TO
25 WAIVE OPENING? HOW ARE YOU GOING TO HANDLE THAT ARGUMENT?

1 MRS. YOUNG: YOUR HONOR, MR. WEEKS IS GOING TO OPEN
2 ON THE LAW. I AM GOING TO CLOSE IN FULL.

3 THE COURT: OKAY. ANY OTHER MOTIONS BY THE STATE OR
4 ANY OTHER MATTERS--

5 MRS. YOUNG: NO, SIR, YOUR HONOR.

6 THE COURT: AS LAST CALL, ANYTHING BY THE DEFENDANT?

7 MR. WATSON: YES, YOUR HONOR. I LIKE TO MAKE THE
8 MOTION TO HAVE THE JURY GO OUT AND SEE THE ACTUAL SHED IN
9 QUESTION WITH THE SOLE PURPOSES OF SEEING THE SHED, NOT A
10 DISCUSSION OR ANYTHING AROUND THE SHED OR THE ROOTS OR
11 ANYTHING, JUST GO LOOK AT THE SHED AND COME BACK.

12 THE COURT: ALL RIGHT. WHAT IS THE STATE'S POSITION?

13 MRS. YOUNG: YOUR HONOR, WE OBJECT. IT IS WELL OVER
14 A YEAR SINCE THIS HAS HAPPENED. THE CONDITIONS HAVE
15 CHANGED. AND I JUST DON'T SEE HOW IT WOULD BE RELEVANT
16 FOR THEM TO BE AT THE SHED WHICH IS IN A COMPLETELY
17 DIFFERENT CONDITION FROM THE TESTIMONY OF THE OFFICERS
18 TODAY AS IT WAS ON THE EVENING IN QUESTION IN 2007.

19 THE COURT: WASN'T THERE TESTIMONY IN THE RECORD FROM
20 MR. -- WHAT WAS THE NEXT DOOR NEIGHBOR'S NAME? HOLD ON,
21 I'LL TELL YOU.

22 MRS. YOUNG: MR. PYLANT?

23 THE COURT: P-Y-L-A-N-T THAT SOMEBODY HAD MOVED INTO
24 THAT RESIDENCE AND HAD CLEANED UP AND IT LOOKED
25 SUBSTANTIALLY DIFFERENT THAN IT DID THEN?

1 MRS. YOUNG: YES, SIR.

2 MR. WATSON: YOUR HONOR, THE RESIDENCE MAY LOOK
3 SUBSTANTIALLY DIFFERENT. BUT WHEN I WENT UP AND LOOK AT
4 THE SHED AND IT LOOKS LIKE THE SAME AS IT DID -- IT'S BEEN
5 LIKE A MONTH AGO. NOW, I DON'T KNOW THAT THEY'VE PUT
6 ANYTHING IN IT. BUT IT'S BEEN SINCE 2007, 13 MONTH AGO
7 WHEN I WENT AND IT LOOKS EXACTLY AS IT DID IN THOSE
8 PICTURES.

9 THE COURT: SECTION 14 7-1320 SAYS IT'S DISCRETIONARY
10 WITH THE COURT AND SAYS THAT WHEN SOMEONE REQUESTS A
11 VIEWING OF THE SCENE AND I FIND THAT IT IS NECESSARY TO A
12 JUST DECISION, THE PARTY MAKING THE MOTION MUST ADVANCE A
13 SUM SUFFICIENT TO PAY THE ACTUAL EXPENSES OF THE JURY AND
14 THE OFFICERS WHO ATTEND THEM IN TAKING THEM TO THE VIEW --
15 TAKING THEM TO THE VIEW WHICH SHALL AFTERWARDS BE TAXED
16 LIKE ANY OTHER LEGAL COST.

17 NUMBER ONE, THERE HADN'T BEEN ANY MONIES PAID TO PAY
18 FOR THE EXPENSES. BUT I'LL WAIVE THAT IN THIS CASE. BUT
19 I MUST FIND IN ORDER TO SEND THEM OUT THERE THAT IT IS
20 NECESSARY TO A JUST DECISION.

21 IN THIS CASE THAT WE HAVE AMPLE PHOTOGRAPHS OF A
22 SHED. WE HAVE AERIAL PHOTOGRAPHS. WE HAVE AERIAL GPS
23 MATTERS. WE'VE HAD TESTIMONY CONCERNING THE SHED. WE
24 HAVE A NUMBER OF PICTURES SHOWING NOT ONLY THE SHED BUT
25 THE LOCATION OF THE BLACK BAG.

1 SO IN MY DISCRETION I FIND THAT IT IS NOT NECESSARY
2 FOR A JUST DECISION IN THIS CASE AND THERE IS AMPLE
3 EVIDENCE IN THE RECORD THAT THE JURY CAN KNOW WHAT THE
4 SCENE LOOKED LIKE OR WHAT THE SHED LOOKED LIKE, AND I
5 RESPECTFULLY DENY THE MOTION. ANYTHING ELSE?

6 MRS. YOUNG: NOTHING FROM THE STATE.

7 MR. WATSON: NOTHING FROM THE DEFENSE.

8 THE COURT: THANK YOU. BRING THE JURY IN.

9 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
10 APPROXIMATELY 10:06 AM.)

11 THE COURT: MR. FOREMAN, LADIES AND GENTLEMEN, GOOD
12 MORNING. I HOPE THE DOUGHNUTS WERE GOOD. ALL RIGHT.
13 WHAT WE'RE GOING TO HAVE LEFT THIS MORNING IS WE FINISHED
14 THE TESTIMONY, SO AT THIS TIME WE WILL HAVE OUR FINAL
15 ARGUMENTS.

16 JUST LIKE OPENING STATEMENTS, FINAL ARGUMENTS ARE NOT
17 EVIDENCE IN THE CASE. ALL THE LAWYERS ACT AS ADVERSARIES
18 FOR THEIR SIDE, SO THEY'LL BE ARGUING HOW THEY CLAIM OR
19 THEY THINK THE EVIDENCE IS AND WHAT IT SHOWED AND HOW IT
20 APPLIES TO THE LAW.

21 SO WHAT THEIR ARGUMENTS ARE, THAT IS NOT EVIDENCE.
22 YOU HAVE HEARD ALL OF THE EVIDENCE. THIS IS SIMPLY THE
23 LAWYERS' TAKE ON THE EVIDENCE OR HOW THEY PERCEIVE IT TO
24 BE.

25 OBVIOUSLY IT IS YOUR -- IT IS YOUR JOB TO DETERMINE

1 WHAT YOU BELIEVE THE TRUE FACTS ARE AND WHAT THE EVIDENCE
2 SHOWS.

3 THE WAY WE DO THAT IS THE STATE WILL OPEN. NORMALLY
4 WHAT WE SAY -- OPENING STATEMENTS ON THE LAW. THEY GET TO
5 DESCRIBE TO YOU A LITTLE BIT ABOUT THE LAW. FOLLOWED BY
6 THE DEFENDANT. AND SINCE THE STATE HAS THE BURDEN OF
7 PROOF, THEY HAVE THE FINAL ARGUMENT.

8 SO IT WILL BE A THREE PART ARGUMENT. ONCE THEY DO
9 THAT, THEN I WILL CHARGE OR INSTRUCT YOU ON THE LAW. MY
10 INSTRUCTIONS WILL PROBABLY BE ABOUT 12 MINUTES. THIS IS
11 NOT A REAL LONG -- SINCE THE STATUTE IS NOT THAT DIFFICULT
12 TO DESCRIBE.

13 SO WITH THAT IN MIND, PLEASE PAY VERY CLOSE ATTENTION
14 TO THE LAWYERS. AND ONCE THEY FINISH THAT, THEN I'LL GIVE
15 YOU THE INSTRUCTIONS. I DON'T THINK THEY'LL BE REAL LONG,
16 BUT IF ANYBODY GETS UNCOMFORTABLE OR NEEDS A BATHROOM
17 BREAK DURING THE ARGUMENTS OR AT ANY TIME, JUST RAISE YOUR
18 HAND AND I'LL MAKE SURE THAT YOUR NEEDS ARE ACCOMMODATED.

19 OKAY. MR. WEEKS?

20 MR. WEEKS: YOUR HONOR IF I MAY, COULD WE APPROACH
21 THE SIDE JUST REAL QUICK?

22 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

23 (COURT REPORTER MAKING NOTE THAT ALL EXHIBITS ARE IN
24 EVIDENCE AFTER REVIEWING JUDGE'S NOTES.)

25 THE COURT: MR. FOREMAN, LADIES AND GENTLEMEN Y'ALL

1 STEP BACK ONE SECOND. THERE IS ONE THING I FORGOT TO DO.
2 I'VE JUST GOT TO DO IT BEFORE WE START THE ARGUMENT. IT
3 WON'T TAKE ME BUT ABOUT FIVE MINUTES. I APOLOGIZE. I'M
4 SORRY.

5 (WHEREUPON, THE JURY EXITED THE COURTROOM AT 10:10
6 AM.)

7 THE COURT: MR. WATSON, I THINK YOU TOLD ME YESTERDAY
8 YOU DID NOT INTEND TO CALL ANY WITNESSES AND YOU REST OR
9 ARE NOT GOING TO PROVIDE ANY WITNESSES; IS THAT CORRECT?

10 MR. WATSON: THAT'S CORRECT, YOUR HONOR.

11 THE COURT: ALL RIGHT. DURING THE EVENING AND
12 YESTERDAY WERE YOU ABLE TO DISCUSS WITH YOUR CLIENT HIS
13 RIGHT TO TAKE THE STAND IN HIS OWN DEFENSE?

14 MR. WATSON: I HAVE, YOUR HONOR.

15 THE COURT: ALL RIGHT. WELL, LET ME MAKE SURE HE
16 UNDERSTANDS THOSE RIGHTS LIKE I DO IN EVERY CRIMINAL
17 TRIAL. SO, MR. JOHNSON, IF YOU WOULD PLEASE STAND ONE
18 SECOND FOR ME.

19 TREVIS JOHNSON, AFTER BEING DULY
20 SWORN, TESTIFIED AS FOLLOWS:

21 THE COURT: I AM GOING TO HAVE TO ASK YOU A COUPLE OF
22 QUESTIONS. MR. JOHNSON, WE'VE NOW REACHED THE STAGE IN
23 THE TRIAL WHERE OBVIOUSLY YOU HAVE THE OPPORTUNITY TO
24 PRESENT A DEFENSE.

25 THE DEFENDANT: YES, SIR.

1 THE COURT: YOU HAVE THE RIGHT TO CALL WITNESSES ON
2 YOUR BEHALF. YOU HAVE THE RIGHT TO INTRODUCE RELEVANT
3 EXHIBITS ON YOUR BEHALF. AND YOUR LAWYER HAS TOLD ME THAT
4 Y'ALL ARE NOT GOING TO CALL ANY WITNESSES; IS THAT
5 CORRECT?

6 THE DEFENDANT: YES, SIR.

7 THE COURT: YOU ALSO HAVE THE RIGHT TO TESTIFY IN
8 YOUR OWN DEFENSE.

9 THE DEFENDANT: YES, SIR.

10 THE COURT: DO YOU UNDERSTAND THAT?

11 THE DEFENDANT: YES, SIR.

12 THE COURT: BUT YOU ALSO HAVE THE RIGHT TO CLAIM THE
13 PROTECTIONS GIVEN TO YOU BY THE FIFTH AMENDMENT TO THE
14 CONSTITUTION OF THE UNITED STATES WHICH SAYS, QUOTE, NO
15 PERSON SHALL BE COMPELLED IN ANY CRIMINAL CASE TO BE A
16 WITNESS AGAINST HIMSELF. END OF QUOTE.

17 THIS MEANS THAT YOU CANNOT BE REQUIRED TO TESTIFY IN
18 THE CASE. YOU HAVE THE RIGHT TO TESTIFY, BUT NOBODY CAN
19 MAKE YOU TESTIFY. THIS IS A PERSONAL RIGHT. AND NO ONE
20 CAN WAIVE THIS RIGHT EXCEPT YOU.

21 IF YOU DECIDE TO TESTIFY, YOU WILL BE SUBJECTED TO
22 THE SAME RULES THAT GOVERN OTHER WITNESSES AND YOU MAY BE
23 CROSS-EXAMINED ON ANY RELEVANT ISSUE IN THE CASE. DOES HE
24 HAVE A PRIOR RECORD?

25 MRS. YOUNG: YES, SIR, HE DOES.

1 THE COURT: SINCE YOU HAVE PRIOR CONVICTIONS, IF I
2 DETERMINE THAT THE PROBATIVE VALUE OUTWEIGHS THE
3 PREJUDICIAL VALUE OF ADMITTING THESE PRIOR RECORDS, THEY
4 CAN INTRODUCE YOUR PRIOR RECORDS FOR ONE REASON AND ONE
5 REASON ONLY, AND THAT'S TO ATTACK YOUR CREDIBILITY OR
6 BELIEVABILITY.

7 AND I WOULD INSTRUCT THE JURY THAT WOULD BE THE ONLY
8 REASON THEY COULD CONSIDER THAT WHEN THEY CONSIDERED
9 WHETHER TO BELIEVE OR NOT BELIEVE YOU, IE, CREDIBILITY.

10 SO, IF YOU DECIDE TO TESTIFY, OBVIOUSLY THE DECISION
11 MUST BE FREELY AND VOLUNTARILY AND INTELLIGENTLY MADE WITH
12 THE KNOWLEDGE OF PROTECTIONS GIVEN TO YOU BY THE FIFTH
13 AMENDMENT AND THE CONSEQUENCES OF YOUR DECISION TO
14 TESTIFY.

15 IF YOU DECIDE NOT TO TESTIFY, THEN I WILL TELL THE
16 JURY THEY CANNOT HOLD THE FACT THAT YOU DIDN'T TESTIFY
17 AGAINST YOU IN ANY MANNER WHATSOEVER.

18 IN FACT, I WILL INSTRUCT AND CHARGE THEM THEY CAN'T
19 EVEN CONSIDER THE FACT, THEY CAN'T DISCUSS THE FACT, THEY
20 CAN'T EVEN COME UP WHEN THEY DELIBERATE YOUR GUILT OR
21 INNOCENCE THAT YOU DID NOT TESTIFY. THAT IS SOMETHING
22 THEY CANNOT CONSIDER, TALK ABOUT, DELIBERATE, OR EVEN
23 DISCUSS. DO YOU UNDERSTAND THAT?

24 THE DEFENDANT: YES, SIR, I DO.

25 THE COURT: ALL RIGHT, SIR. HAVE YOU UNDERSTOOD

1 EVERYTHING I'VE TOLD YOU?

2 THE DEFENDANT: YES, SIR.

3 THE COURT: DO YOU NEED ANY ADDITIONAL TIME TO TALK
4 TO YOUR LAWYER ABOUT YOUR RIGHT TO TESTIFY AND YOUR
5 CONSTITUTIONAL RIGHTS NOT TO TESTIFY?

6 THE DEFENDANT: NO. I THINK WE DISCUSSED EVERYTHING.

7 THE COURT: OKAY. AND I NEED TO KNOW NOW UNDER OATH
8 AS TO WHETHER OR NOT YOU WISH TO TESTIFY.

9 THE DEFENDANT: I DO NOT, SIR.

10 THE COURT: YOU DO NOT. ANY QUESTIONS YOU WANT TO
11 ASK ME?

12 THE DEFENDANT: NO, SIR.

13 THE COURT: AND THAT DECISION IS FINAL; IS THAT
14 CORRECT?

15 THE DEFENDANT: YES, SIR.

16 THE COURT: THANK YOU VERY MUCH.

17 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
18 APPROXIMATELY 10:14 AM.)

19 THE COURT: I'M SORRY. IT IS JUST ONE LITTLE THING I
20 FORGOT TO DO. THERE ARE A THOUSAND THINGS I'M SUPPOSED TO
21 DO. SO AT THIS TIME, MR. WEEKS.

22 MR. WEEKS: THANK YOU, YOUR HONOR. MAY IT PLEASE THE
23 COURT.

24 THE COURT: YES, SIR.

25 CLOSING STATEMENT

1 MR. WEEKS: GOOD MORNING. I KNOW THAT Y'ALL ARE
2 HURRY IT UP AND WAIT TO DEATH WITH THIS JURY SYSTEM, BUT
3 WE SURE APPRECIATE YOUR SERVICE. MY NAME IS BILL WEEKS.
4 I AM A PROSECUTOR HERE. Y'ALL HAVE BEEN INTRODUCED TO ME
5 IN THE VOIR DIRE.

6 THIS IS THE TIME OF THE TRIAL THEY TEACH LAWYERS TO
7 OPEN ON THE LAW. WELL, IT'S KIND OF THE WRONG WAY OF
8 STATING IT BECAUSE THE JUDGE IS GOING TO BE THE FINAL
9 VERSION OF THE LAW THAT YOU'LL HEAR.

10 YOU'RE GOING TO HEAR FROM ME SOME OF THE ARGUMENTS
11 THAT WE HAVE THAT THE LAW IN THIS CASE APPLIES TO THE
12 FACTS IN THIS CASE AND THAT THE DEFENDANT IS CHARGED WITH
13 THOSE VIOLATIONS OF LAW, AND THAT'S WHY WE'RE UP HERE
14 TODAY.

15 YOU KNOW, THE JUDGE IS GOING TO READ YOU THE LAW AT
16 THE END OF THE THING. AND ONE OF THE THINGS I LIKE TO
17 TELL JURORS IS, YOU KNOW, WE'VE KIND OF PLUCKED Y'ALL OUT
18 OF THE COMMUNITY.

19 Y'ALL DIDN'T GO TO LAW SCHOOL. THANK GOD THERE WOULD
20 BE 12 MORE LAWYERS I WOULD HAVE TO COMPETE WITH AND FIGHT
21 WITH AND THERE WOULD BE 12 LAWYERS IN THE JURY BOX, AND
22 YOU COULDN'T GET 12 LAWYERS TO AGREE ON ANYTHING.

23 SO WE PULL PEOPLE AT RANDOM FROM THE COMMUNITY TO SIT
24 HERE AND LISTEN TO THE FACTS. AND MRS. YOUNG TOLD YOU ALL
25 IN THE BEGINNING AND MR. WATSON PROBABLY ALLUDED TO IT

1 THAT WE DON'T EXPECT YOU TO LEAVE YOUR COMMON SENSE AT
2 HOME.

3 COMMON SENSE IS AN ELEMENT OF THE LAW IN A SENSE
4 BECAUSE WE DON'T GET YOU UP HERE AND TRAIN YOU TO BE
5 ROBOTS. WE TRAIN YOU TO BRING THAT COMMON SENSE IN AND
6 VIEW EVIDENCE AND VIEW WITNESSES WITH THAT COMMON SENSE IN
7 MIND.

8 NOW, SOME OF THE THINGS THAT WE EXPECT YOU TO DO ON
9 VERY SHORT NOTICE IS KIND OF PICK UP PRINCIPALS OF LAW.
10 THE DEFENDANT IS CHARGED WITH TRAFFICKING IN COCAINE IN
11 EXCESS OF 200 GRAMS.

12 WELL, THE WAY OUR LEGISLATURE CHOOSES TO NAME LAWS OR
13 CALL LAWS SOMETIMES GIVE AN INFERENCE THAT'S JUST NOT
14 CORRECT. TRAFFICKING COULD JUST VERY EASILY AND SHOULD BE
15 CHARGED EITHER ACTUAL CONSTRUCTIVE POSSESSION OF MORE THAN
16 200 GRAMS OF COCAINE.

17 WE DON'T HAVE TO PROVE TO YOU THAT THE DEFENDANT WAS
18 SELLING THE COCAINE; THAT HE WAS BRINGING IT FROM SOUTH
19 AMERICA. WE DON'T HAVE TO PROVE ANY OF THAT. WE JUST
20 HAVE TO PROVE THAT HE WAS ACTUALLY OR IN CONSTRUCTIVE
21 POSSESSION OF 200 GRAMS OR MORE OF COCAINE.

22 NOW, THE INDICTMENT THAT YOU'LL HAVE OR THE JUDGE
23 WILL CHARGE YOU MAY HAVE OR HE CHARGED AT THE BEGINNING OF
24 THE TRIAL A LOT MORE LANGUAGE ABOUT DIFFERENT TYPES OF
25 TRAFFICKING.

1 AND ALL OF THEM HAVE THE SAME ELEMENTS. BUT THE
2 INDICTMENT, THE CHARGING PAPER CHARGES WITH A WIDE RANGE
3 OF EVERYTHING. BUT WHAT IT BOILS DOWN TO IS THAT HE'S
4 CHARGED AND THE STATE IS PROVING THROUGH THIS TRIAL IS
5 THAT HE WAS IN CONSTRUCTIVE AND ACTUAL POSSESSION OF
6 200 GRAMS.

7 AND YOU HEARD THE TESTIMONY FROM THE STAND AS TO THE
8 WEIGHT OF THE DRUGS. TRAFFICKING IS A POSSESSION STATUTE
9 BUT IT'S ALSO A WEIGHT STATUTE. IT'S NOT AN ACTIVE VERB
10 AS MY ENGLISH TEACHER WOULD SAY.

11 IT IS THE ACT OF POSSESSING OR BEING IN ACTUAL
12 POSSESSION OR BEING IN CONSTRUCTIVE POSSESSION OF THAT
13 WEIGHT OF DRUG.

14 WELL, THAT KIND OF GOES INTO THE POSSESSION WITH
15 INTENT TO DISTRIBUTE CHARGE IN THE PROXIMITY OF A SCHOOL.
16 POSSESSION WITH INTENT TO DISTRIBUTE IS A CHARGE THAT IS
17 SORT OF BASED ON WEIGHT, TOO.

18 IT CAN BE BASED ON OTHER FACTORS OR OTHER FACTS THAT
19 THE STATE MAY HAVE IN A GIVEN CASE. BUT THE SIMPLE ACT OF
20 POSSESSING 200 OR IN EXCESS OF 200 GRAMS OF COCAINE FALLS
21 WITHIN THAT STATUTE.

22 AND THE ACT OF POSSESSING THAT 200 GRAMS OF COCAINE
23 IN THE PROXIMITY OF A SCHOOL IS WHAT THE STATE HAS TO
24 PROVE TO MAKE THE DEFENDANT GUILTY OF THAT CHARGE.

25 NOW, YOU'VE HEARD THE TESTIMONY THAT'S BEEN

1 PRESENTED. THE WITNESSES TESTIFIED THAT THE CRACK COCAINE
2 OR THAT THE COCAINE THAT WAS IN THE RED BAG EXCEEDED
3 200 GRAMS. I CAN'T REMEMBER THE -- 200 GRAMS. I CAN'T
4 REMEMBER THE EXACT AMOUNT. IT IS 250 SOMETHING.

5 YOU HEARD THEM TESTIFY THAT THE CONDITION THAT
6 COCAINE WAS IN. BUT NONE OF THAT IS REALLY IMPORTANT FOR
7 WHAT WE NEED TO PROVE TO YOU BEYOND A REASONABLE DOUBT.
8 WE HAVE TO PROVE THAT IT IS COCAINE AND THAT THE WEIGHT OF
9 IT EXCEEDED 200 GRAMS. AND I SUGGEST TO YOU THAT THE
10 STATE HAS DONE THAT.

11 THE JUDGE IS GOING TO CHARGE YOU THE LAW ON
12 POSSESSION. LIKE I SAID, YOUR COMMON SENSE, IT TELLS YOU
13 WHEN SOMEBODY POSSESSES SOMETHING THAT'S LIKE THE KEYS IN
14 MY POCKET.

15 IT'S IN MY POCKET. I SHOULD KNOW WHAT'S IN MY
16 POCKET. I GUESS YOU COULD MAKE AN ARGUMENT THAT I WAS
17 WEARING SOMEBODY ELSE'S PANTS AND I DIDN'T KNOW WHAT WAS
18 IN MY POCKET. BUT MY KEYS ARE IN MY POCKET. THAT'S
19 ACTUAL POSSESSION.

20 IF MY KEYS ARE ON THE COUNTER -- AND FOR SOME REASON
21 THE LEGISLATURE DECIDES THAT A BIG RING OF KEYS THAT ARE
22 AGAINST THE LAW AND THEY COME IN HERE WHEN I'VE GOT THOSE
23 KEYS ON THE COUNTER AND THEY CAN TIE THOSE KEYS TO ME
24 BECAUSE THEY SAW ME COME IN HERE AND THROW THEM ON THE
25 COUNTER, BECAUSE THEY SAW ME RUN FROM A CAR, BECAUSE THEY

1 SAW ME AT THE END WITHOUT WHAT I HAD WHEN I RAN FROM THE
2 CAR, ALL OF THAT GOES TO WHAT I AM GOING TO TALK ABOUT
3 NEXT IS DIRECT AND CIRCUMSTANTIAL EVIDENCE.

4 BUT IT GOES TO CONSTRUCTIVE POSSESSION, TOO.
5 CONSTRUCTIVE POSSESSION IS WHEN YOU HAVE POSSESSED
6 SOMETHING THAT MIGHT NOT BE IN YOUR DIRECT POSSESSION. I
7 MIGHT NOT HAVE IT IN MY HANDS, BUT I HAVE KNOWLEDGE THAT
8 IT'S THERE AND I HAVE THE ABILITY TO EXERCISE DOMINION AND
9 CONTROL OVER IT. THAT'S WHAT CONSTRUCTIVE POSSESSION IS.

10 IF YOU ARE DRIVING DOWN IN A CAR AND YOU HAVE GOT A
11 STOLEN TV, DRIVING DOWN THE ROAD WITH A STOLEN TV SITTING
12 IN THE CAR NEXT TO YOU, YOU'RE NOT HOLDING THE TV IN YOUR
13 LAP. YOU'RE IN CONSTRUCTIVE POSSESSION OF THE STOLEN TV.

14 THAT'S THE DIFFERENCE BETWEEN THE TWO POSSESSIONS
15 THAT THE JUDGE WILL CHARGE YOU ABOUT.

16 AND IT GOES INTO THE SAME THING WITH DIRECT AND
17 CIRCUMSTANTIAL EVIDENCE. WHAT CONSTRUCTIVE POSSESSION IS
18 IS CIRCUMSTANTIAL EVIDENCE THAT YOU POSSESSED SOMETHING,
19 THAT IT WAS IN YOUR DOMINION AND CONTROL.

20 THE JUDGE IS GOING TO TELL YOU DIFFERENTLY THAN I
21 GREW UP. THIS IS GOING TO AGE ME A LITTLE BIT. I KNOW
22 THAT Y'ALL DON'T THINK I'M THIS OLD. BUT I GREW UP WITH
23 PERRY MASON ON ON TV ON ONE OF THE TWO CHANNELS THAT WE
24 HAD.

25 AND PERRY MASON, YOU KNOW, HE WAS JUST A LAWYER THAT

1 NEVER LOST A CASE. HE WAS JUST BRILLIANT. IT WAS JUST
2 GREAT.

3 BUT ALL OF THE BAD GUYS ON THE PERRY MASON SHOW WOULD
4 START OUT BY SAYING, OH, THEY CAN'T GET ME. THEY AIN'T
5 GOT NOTHING BUT CIRCUMSTANTIAL EVIDENCE. WELL, TV LAW IS
6 NOT REAL LAW. TV SCENARIOS ARE NOT REAL SCENARIOS.

7 AND THE JUDGE IS GOING TO TELL YOU THAT DIRECT,
8 CIRCUMSTANTIAL EVIDENCE -- DIRECT AND CIRCUMSTANTIAL
9 EVIDENCE ARE APPLIED EQUALLY IN OUR COURTS AND THAT'S
10 BECAUSE SOMETIMES IT'S IMPOSSIBLE TO PROVE SOMETHING
11 DIRECTLY.

12 THE CLASSIC EXAMPLE IS, YOU KNOW, YOU'VE BEEN LOCKED
13 UP IN THAT JURY ROOM. YOU DON'T KNOW WHAT THE WEATHER IS
14 OUTSIDE. BUT YOU GO OUTSIDE AND THERE IS BIG PUDDLES IN
15 THE ROAD. WELL, I MEAN, IT DOESN'T TAKE A WHOLE LOT TO
16 REALIZE IT'S BEEN RAINING WHILE YOU'VE BEEN LOCKED UP
17 INSIDE.

18 YOU WOULDN'T DOUBT THAT AT ALL. SEEING ALL OF THOSE
19 PUDDLES IN THE ROAD. IT'S BEEN RAINING. THAT'S
20 CIRCUMSTANTIAL EVIDENCE. AND CIRCUMSTANTIAL EVIDENCE IS
21 EVIDENCE THAT IS JUST COMMON. IT IS COMMON.

22 IT IS COMMON AND IT'S USED BY Y'ALL EVERY DAY IN
23 Y'ALL LIVES. WE PULL Y'ALL OUT AT RANDOM FROM THE
24 COMMUNITY. WE ABSOLUTELY INSIST THAT YOU'RE NOT LAWYERS.
25 WE BRING YOU IN HERE AND WE PREACH TO YOU ABOUT THE LAW.

1 BUT WHEN IT ALL BOILS DOWN, IT'S COMMON SENSE. AND
2 IT'S THE KIND OF DECISIONS THAT YOU MAKE EVERY DAY OF YOUR
3 LIFE. AND YOU BASE IT ON FACTS THAT YOU HEAR, SEE.

4 AND AT THE END OF MY REMARKS, I AM GOING TO GIVE YOU
5 AN EXAMPLE THAT'S GOING TO TAKE IN CIRCUMSTANTIAL
6 EVIDENCE, IT IS GOING TO TAKE IN CONSTRUCTIVE POSSESSION,
7 AND IT'S GOING TO TAKE IN THE PRINCIPAL OF REASONABLE
8 DOUBT.

9 REASONABLE DOUBT HAS BEEN OFFERED THROUGH THE
10 CENTURIES TO JURIES AS THE BURDEN OF PROOF OF THE STATE.
11 THE STATE MUST PROVE BEYOND A REASONABLE DOUBT.

12 THEY STRUGGLE WITH WHAT REASONABLE DOUBT IS. THE
13 JUDGE IS GOING TO TELL YOU IT IS A HESITATION TO ACT. A
14 REASONABLE PERSON THAT HESITATES TO ACT.

15 WELL, IT'S KIND OF -- TO ME IT'S KIND OF EXPLAINED
16 MORE LIKE THIS. THE HESITATE TO ACT. WE HESITATE TO ACT
17 ON EVERYTHING. YOU WOULD HESITATE TO BELIEVE THAT I COULD
18 EVER PLAY BASKETBALL.

19 IF I TOLD YOU THAT, YOU'D THINK, WELL, HE'S TALL, BUT
20 HE CAN'T HARDLY FIT THROUGH THAT DOOR. I DON'T BELIEVE HE
21 CAN RUN UP AND DOWN THE COURT AND PLAY BASKETBALL.

22 WELL, THE WAY I WOULD PROVE SOMETHING TO YOU BEYOND A
23 REASONABLE DOUBT WOULD BRING IN EVIDENCE THAT AT ONE POINT
24 100 YEARS AGO AND 100 POUNDS AGO I COULD PLAY BASKETBALL.
25 AND I WOULD PROVE THAT BY CALLING WITNESSES WHO SAW ME

1 PLAY BASKETBALL.

2 I WOULD CALL WITNESSES WHO HEARD ABOUT ME PLAYING
3 BASKETBALL. I WOULD CALL NEWSPAPER WRITERS THAT MIGHT
4 HAVE WRITTEN -- IF THEY'RE NOT ALL DEAD -- ABOUT ME
5 PLAYING BASKETBALL.

6 WELL, THE FIRST THING YOU THOUGHT WHEN I SAID I USED
7 TO PLAY BASKETBALL WAS YOU HESITATED. WELL, WHAT YOU DO
8 IN A TRIAL IN REPRESENTING THE STATE OF SOUTH CAROLINA IS
9 TO TAKE AWAY THAT BY PROVING TO YOU WHAT THE DEFENDANT
10 DID. AND THAT'S WHAT WE DO IN A TRIAL.

11 THAT'S WHAT WE DO IN COURT. THAT'S WHAT WE DO BY
12 CALLING THESE OFFICERS, BY GETTING THE EXPERTS IN HERE,
13 BY -- AT SOME TIMES EVEN PROVING STUFF TO YOU THAT WE
14 DON'T HAVE. WE PROVE TO YOU THAT BECAUSE WE HAVE NOTHING
15 TO HIDE FROM YOU.

16 AND ONE OF THE EXAMPLES -- AND I'M REALLY BAD ABOUT
17 USING ANALOGIES, AND I PROMISED I WASN'T GOING TO USE A
18 HUNTING ANALOGY BECAUSE EVERYBODY IN MY OFFICE KNOWS HOW
19 MUCH I LOVE TO HUNT AND HOW MUCH I REALLY ENJOYED THE
20 TESTIMONY, THE EXPERT'S TESTIMONY ABOUT DOGS.

21 BUT ONE OF THE ANALOGIES THAT EXPLAINS THIS WHOLE
22 CASE TO ME IN A COMMON SENSE WAY, IN THE LEGAL ARGUMENTS
23 OF REASONABLE DOUBT, CIRCUMSTANTIAL EVIDENCE AND
24 CONSTRUCTIVE POSSESSION ARE BROUGHT HOME TO ME BY THINKING
25 ABOUT ONE DAY MY DAUGHTER WHO LOVES SNICKERS -- I MEAN,

1 YOU KNOW, SHE JUST LOVES SNICKERS BARS.

2 IF YOU BUY AN EIGHT PACK OF SNICKERS, SHE WOULD EAT
3 ALL EIGHT OF THEM THAT AFTERNOON. IT JUST GAGS ME
4 THINKING ABOUT IT. BUT SHE WOULD. SO WE HAVE TO KIND OF
5 SAY, MEGAN, ONE A DAY. ONE A DAY.

6 WELL, THAT'S ALL WELL AND GOOD. WELL, ONE DAY I WAS
7 COMING HOME AND WE KEEP THE SNICKERS BAR IN THIS CABINET
8 ABOVE THE REFRIGERATOR WHICH SHE CAN EASILY REACH. AND AS
9 I'M COMING IN THE BACK DOOR, I SEE HER BAIL OUT OF THE
10 KITCHEN.

11 IT'S KIND OF AN UNUSUAL ACTIVITY. SHE SHOULD BE
12 COMING TO SAY, OH, DADDY, I'M GLAD YOU'RE HOME. WELL, AS
13 I'M COMING IN I LET MY LABRADOR WHO IS A DUCK HUNTING
14 DOG -- BUT BLESS HIS HEART, HE IS 130-POUND LABRADOR AND
15 HE LOVES SNICKERS, TOO.

16 AND YOU KNOW, IT'S KIND OF ONE OF THEM THINGS THAT I
17 COULDN'T UNTRAIN HIM NOT TO LOVE SNICKERS BECAUSE AS YOU
18 CAN TELL, I DON'T MISS MANY MEALS EITHER.

19 WELL, THIS LABRADOR COMES IN THE DOOR WITH ME AND HE
20 IS ALL EXCITED I'M HOME. AND HE GETS TO KITCHEN AND HE IS
21 EXCITED THAT I'M HOME. AND I LOOK UP AND I SEE THE DOORS
22 TO THE CABINET OPEN.

23 AND I'M THINKING, I JUST SAW MEGAN BAIL OUT GOING
24 TOWARDS HER ROOM. WHAT'S UP? WELL, MY DOG -- AND ALL OF
25 A SUDDEN IT'S LIKE I LIT HIM AFIRE. HE TAKES OFF, BUT HE

1 DON'T GO ALL THE WAY TO MEGAN'S ROOM. HE STOPS.

2 THERE IS THIS LITTLE TRASHCAN RIGHT BY THE DOOR GOING
3 DOWN THE HALLWAY. AND IT'S A ROUND LITTLE BARREL. YOU
4 KNOW, IT'S NOT MUCH OF A TRASHCAN. BUT RIGHT NEXT TO THE
5 TRASHCAN IS A SNICKERS WRAPPER. AND IT'S SUCH A LITTLE
6 TRASHCAN THAT YOU COULD EASILY MISS IT WHEN YOU TOSS IN
7 THE SNICKERS WRAPPER.

8 WELL, HE IS ALL OVER THAT SNICKER'S WRAPPER. YOU
9 HEARD THE OFFICER TALK ABOUT HOW THE DOG SMELLS, YOU KNOW.
10 AND HE IS JUST THINKING THERE IS A SNICKERS THERE. THERE
11 IS NO SNICKERS THERE. THERE IS A SNICKERS WRAPPER.

12 BUT DOWN THE HALL HE GOES. IF YOU GO DOWN MY
13 HALLWAY, THERE IS A BOOKCASE. AND WE DON'T KEEP SNICKERS
14 IN THE BOOKCASE. BUT IN THE BOOKCASE THE DOG IMMEDIATELY
15 GOES TO THE BOOKCASE AND FINDS HALF A SNICKERS BAR.

16 WELL, I KNOW IT'S HALF A SNICKERS BAR, BUT I HAD TO
17 LOOK REAL QUICK BECAUSE THE SNICKERS BAR WAS HISTORY. IT
18 WAS HIS PRIZE. HE FOUND THAT SNICKERS BAR.

19 WELL, I GO IN MY DAUGHTER'S ROOM AND IT'S LIKE, OH,
20 DADDY YOU'RE HOME, I'M SO GLAD YOU'RE HOME. SHE'S GOT
21 THIS BIG CAT THAT ATE THE CANARY SMILE ON HER FACE. AND
22 THERE'S CHOCOLATE.

23 WELL, THE WHOLE POINT OF THAT STORY IS WE MAKE
24 DECISIONS THAT -- ALL OF THAT PROVED BEYOND A REASONABLE
25 DOUBT TO ME THAT MEGAN HAD JUST SNITCHED A SNICKER'S BAR.

1 NOW, WAS IT 200 GRAMS OF CRACK COCAINE OR 200 GRAMS
2 OF COCAINE? NO, IT WASN'T. BUT IT'S THE SAME PRINCIPAL
3 WE USE EVERYDAY. THANK YOU.

4 THE COURT: MR. WATSON?

5 MR. WATSON: MAY IT PLEASE THE COURT.

6 THE COURT: YES, SIR.

7 CLOSING STATEMENT

8 MR. WATSON: YOU PROBABLY OBSERVED IN THE TRIAL THE
9 BLOOD PRESSURE IS A LITTLE UP TODAY. I DON'T WANT TO FALL
10 DOWN WHILE I'M STANDING UP HERE.

11 FIRST OF ALL LET ME THANK YOU, OF COURSE, FOR
12 SPENDING THE LAST TWO OR THREE DAYS WITH US AND GIVING MY
13 CLIENT TREVIS JOHNSON THE BENEFIT OF YOUR TIME TO LISTEN
14 TO THE CASE AGAINST HIM.

15 OF COURSE, I BELIEVE OR I WOULD NOT BE STANDING HERE,
16 THAT MY CLIENT SHOULD BE FOUND NOT GUILTY. THE REASON I
17 BELIEVE THAT MY CLIENT SHOULD BE FOUND NOT GUILTY IS
18 BECAUSE THE STATE HAS THE BURDEN OF PROOF.

19 THE JUDGE WILL TALK TO YOU ABOUT -- TALK TO YOU ABOUT
20 THE LAW. MR. WEEKS KIND OF TALKED TO YOU ABOUT THE LAW,
21 BUT THEN THAT'S NOT HIS ROLE. THE JUDGE IS GOING TO GIVE
22 YOU SPECIFIC INSTRUCTIONS ON THE LAW BEFORE HE RELEASES
23 YOU TO GO TO -- GO TO YOUR DELIBERATION.

24 BUT I WILL TELL YOU WHY I THINK YOU SHOULD FIND MY
25 CLIENT NOT GUILTY. WHEN WE STARTED THIS CASE, I GOT A

1 HOLD OF THIS INDICTMENT IN THIS CASE AND I SAID -- TOLD
2 YOU WHAT THE INDICTMENT SAID.

3 I SAID IT SAID THAT MY CLIENT, EUGENE TREVIS JOHNSON,
4 IT SAYS A WHOLE LOT OF THINGS, BUT IT SAID THAT HE
5 POSSESSED MORE THAN 200 OR MORE GRAMS OF COCAINE. THIS IS
6 NOT EVIDENCE. THE JUDGE TOLD YOU THAT. THIS IS JUST A
7 WAY TO GET IN COURT.

8 AND IT SAYS THAT HE KNOWINGLY ACTUALLY OR
9 CONSTRUCTIVELY POSSESSED THAT DRUG. NOW, I TOLD YOU FROM
10 THE BEGINNING THIS IS A CASE ABOUT CONSTRUCTIVE
11 POSSESSION. IF IT WERE A CASE ABOUT ACTUAL POSSESSION, WE
12 WOULDN'T BE HERE.

13 IF THE POLICE OFFICER STOPPED MY CLIENT ON THAT DAY
14 AND HE HAD IN HIS POSSESSION 200 GRAMS OF COCAINE, CLEARLY
15 HE POSSESSED IT. IF IT IS IN HIS HAND AND THE OFFICER
16 CAUGHT IT IN HIS HAND AND THE CASE IS OVER. SO THERE
17 WOULD NOT BE A CASE AND WE WOULD NOT BE HERE.

18 BUT THE POLICEMAN DID NOT CATCH MY CLIENT WITH DRUGS
19 IN HIS HAND OR ANY DRUGS IN HIS HAND. ALL THEY SAW WAS
20 THAT HE LEFT THE CAR WITH A BAG IN HIS HANDS.

21 NOW, ANOTHER WAY FOR THEM TO PROVE THAT MY CLIENT
22 POSSESSED THE DRUG IS THROUGH CONSTRUCTIVE POSSESSION.
23 WELL, ONE WAY THEY COULD HAVE PROVED CONSTRUCTION
24 POSSESSION IS HAD HE LEFT DRUGS THERE IN THE CAR THAT HE
25 POSSESSED AND THE OFFICER SAW HIM RUN FROM THE CAR -- THE

1 OFFICER KNEW THAT HE JUST HAD POSSESSION OF THAT CAR --
2 HE'S THE ONLY ONE IN THE CAR; THEREFORE HE CONSTRUCTIVELY
3 POSSESSED THE DRUG.

4 THAT'S NOT THE CASE HERE. THERE WERE NO DRUGS FOUND
5 IN THE CAR.

6 SO, THEY'RE GOING TO TAKE YOU ALONG THE PATH THEN TO
7 TRY TO CONVINCE YOU THAT A BAG THAT THEY FOUND SOMEWHERE
8 IN A KNOWN -- IN A NEIGHBORHOOD THAT'S KNOWN TO BE A HIGH
9 DRUG AREA -- AND AGAIN, OFFICERS FIDGETED AROUND THAT.

10 YOU HEARD THE OFFICER RUTLAND TELL MY CLIENT WHEN HE
11 HAD HIM ON THE GROUND, FESS UP, THIS IS A KNOWN DRUG AREA.
12 THEN HE STARTED FUMBLING AROUND, MOVING THE EDGES AWAY AS
13 THEY TALK TO YOU TO TRY TO CONVINCE YOU. HOCUS POCUS. A
14 HIGH DRUG AREA ISN'T REALLY A HIGH DRUG AREA.

15 SO THERE ARE REALLY ONLY THREE POSSIBILITIES AS TO
16 HOW THIS BAG WITH THE 200 -- APPROXIMATELY 250 GRAMS OF
17 COCAINE -- THERE ARE ONLY THREE POSSIBILITIES AS TO WHY
18 THAT BAG WAS HERE.

19 WELL, ONE POSSIBILITY IS THAT THE BAG IN FACT
20 BELONGED TO MY CLIENT, MR. JOHNSON, AND THEREFORE YOU FIND
21 HIM GUILTY. I AM GOING TO COME BACK AND TELL YOU WHY
22 THAT'S NOT THE CASE. BUT LET ME ELIMINATE THESE TWO OTHER
23 POSSIBILITIES RIGHT OFF THE BAT.

24 NOW, THE ONLY THREE WAYS THAT THIS DRUG COULD HAVE
25 BEEN IN THAT SHED AS I SEE IT, NUMBER ONE -- AND THE JUDGE

1 IS GOING TO JUMP ALL OVER ME, BUT I HAVE TO RAISE IT
2 BECAUSE THERE IS AN INFERENCE THAT THE DRUGS POSSIBLY
3 COULD HAVE BEEN PUT THERE BY THE SHERIFF'S DEPARTMENT.

4 I AM NOT SAYING IT IS. I HAVE NO PROOF THAT IT IS
5 AND I DON'T WANT ANYBODY RUNNING OUT OF HERE SAYING THAT
6 ATTORNEY WATSON SAID THAT THE NORTH AUGUSTA POLICE
7 DEPARTMENT PLANTED DRUGS. I AM ONLY SAYING THAT IT'S A
8 REAL POSSIBILITY BECAUSE THE OFFICER HIMSELF RAISED THAT
9 POSSIBILITY.

10 HE SAID TO MY CLIENT, TELL US WHERE YOUR BAG IS,
11 BECAUSE IF YOU DON'T TELL US WHERE YOUR BAG IS, WE'RE
12 GOING TO SEARCH THE AREA AND EVERYTHING -- ALL THE DRUGS
13 WE FIND ARE GOING TO BE YOURS.

14 SO, I AM JUST SAYING IT'S A POSSIBILITY. HOW BIG OF
15 A STEP IS THERE FROM SAYING, WELL, WE CAN'T FIND YOUR BAG,
16 BUT WE KNOW THAT YOU HAD DRUGS, SO WE'RE GOING TO PUT A
17 BAG AND SAY IT'S YOUR BAG. IT IS A POSSIBILITY.

18 I AM GOING TO LEAVE THAT ALONE. I AM NOT GOING TO
19 SAY ANYTHING ELSE ABOUT THAT. BUT THAT'S ONE POSSIBILITY
20 OF HOW THAT BAG GOT THERE. IT WAS PLANTED.

21 ANOTHER POSSIBILITY IS THAT THE DRUGS BELONGED TO
22 SOME THIRD PARTY. AND WHILE IN PURSUIT OF MY CLIENT,
23 MR. JOHNSON, THEY CAME ACROSS A BLACK BAG AND THEY KNEW
24 THAT MR. JOHNSON HAD A BLACK BAG.

25 THEY CAME ACROSS A BLACK BAG, SO ERGO THEY SAY THAT

1 THE BAG BELONGS TO MR. JOHNSON. AGAIN, MR. JOHNSON CANNOT
2 PROVE THAT ANOTHER PARTY WAS THERE BUT CERTAINLY IT'S A
3 REAL POSSIBILITY IN A HIGH DRUG AREA.

4 I TOLD YOU EARLIER THAT I WAS GOING TO ASK THE JUDGE
5 TO ALLOW YOU TO GO OUT AND SEE THE SHED WHERE THE DRUGS
6 WERE FOUND. WELL, FOR VARIOUS REASONS THE JUDGE HAS
7 DECLINED TO LET YOU DO THAT EVEN THOUGH I MADE THE
8 REQUEST.

9 THE JUDGE SAID YOU CAN'T GO OUT THERE AND SEE THE
10 SHED. BUT IN MY MIND IF YOU LOOK AT THE EVIDENCE IN THE
11 CASE -- AND HERE YOU'LL SEE STATE'S EXHIBIT NO. 4. LOOK
12 AT ALL OF THE GRASS, DEBRIS, AND EVERYTHING AROUND THAT
13 SHED.

14 STATE'S EXHIBIT NO. 5. LOOK AT ALL THE GRASS,
15 DEBRIS, AND EVERYTHING AROUND THAT SHED. STATE'S EXHIBIT
16 NO. 6. INSIDE OF THE SHED THERE IS NOTHING. THE SHED
17 LOOKS LIKE THIS. WHEN I WENT TO SEE THE SHED 30 DAYS AGO,
18 THE SHED LOOKED EXACTLY LIKE THAT--

19 MRS. YOUNG: YOUR HONOR, I WOULD OBJECT.

20 THE COURT: YES, SIR. THAT'S NOT PROPER. YOU CAN'T
21 TESTIFY TO WHAT YOU SAW. IT'S GOT TO BE IN EVIDENCE.

22 MR. WATSON: OKAY. AGAIN, THAT SHED TO ME LOOKED
23 LIKE IT HAD BEEN IN USE--

24 MRS. YOUNG: OBJECTION.

25 THE COURT: SIR, YOU CAN'T INJECT YOUR OWN PERSONAL

1 OPINION THAT -- AS TO WHAT THE EVIDENCE SHOWS.

2 MR. WATSON: THANK YOU, YOUR HONOR. THAT'S WHY I
3 WANTED YOU TO GO LOOK FOR YOURSELF--

4 THE COURT: SIR, I'VE RULE ON THAT.

5 MR. WATSON: OKAY. THANK YOU, YOUR HONOR. ANYWAY,
6 THERE IS A REAL POSSIBILITY THAT THIS IS AN ABANDONED
7 HOUSE IN A HIGH DRUG AREA, THEN SOME OTHER PERSON COULD
8 HAVE BEEN USING THAT SHED.

9 THEY HEAR A PUNCH OF POLICE SIRENS IN THE AREA, WHAT
10 DO YOU THINK THEY'RE GOING TO DO? TAKE OFF AND LEAVE THE
11 DRUGS AND GO.

12 I AM JUST SAYING THAT'S A REAL POSSIBILITY. BUT
13 FORGET ABOUT THAT POSSIBILITY FOR NOW. LET'S LOOK AT THE
14 ONLY OTHER -- THE THIRD POSSIBILITY -- THE POSSIBILITY
15 THAT THE STATE WOULD HAVE YOU BELIEVE IS THAT MY CLIENT
16 POSSESSED THOSE DRUGS.

17 AND HOW WOULD THEY PROVE THAT? WELL, THEY'RE
18 ATTEMPTING TO PROVE IT BY CIRCUMSTANTIAL EVIDENCE. A GOOD
19 FRIEND OF MINE, JOHNNY GASSER, FORMER UNITED STATES
20 ATTORNEY JUST LIKE SOLICITOR STROM THURMOND -- FORMER
21 UNITED STATES ATTORNEY TELLS ME HE NEVER BRINGS A CASE TO
22 COURT UNLESS THERE IS INDEPENDENT CORROBORATION.

23 FOR INSTANCE, LET'S SAY TWO PEOPLE GO INTO A LIQUOR
24 STORE AND ROB THE LIQUOR STORE. ONE PERSON IS CLEARLY
25 CAPTURED ON THE CAMERA. YOU CAN SEE ANOTHER PERSON IS

1 THERE, BUT THAT PERSON CANNOT BE IDENTIFIED. THAT PERSON
2 RUNS OFF AND ESCAPES.

3 POLICE OFFICER GOES AND ARRESTS THE PERSON THAT THEY
4 CLEARLY RECOGNIZE. THEY ASK THE PERSON WHO WAS WITH YOU.
5 THEY SAID JOHN JONES WAS WITH ME. AND NINE TIMES OUT OF
6 10 THE POLICE OFFICER WILL NOT BRING THAT CASE AGAINST
7 JOHN JONES MERELY ON THE STATEMENT OF A CO-DEFENDANT.

8 THEY WILL BRING THAT CASE IF THE STATE COULD PROVE
9 THROUGH SOME OUTSIDE CORROBORATING WITNESS THAT THAT WAS
10 INDEED JOHN JONES.

11 NOW, THE WAY THE STATE CAN DO THAT IS THERE COULD BE
12 SOMEONE STANDING ON THE OUTSIDE OF THE STORE COMPLETELY
13 INDEPENDENT NOT RELATED TO THE POLICE DEPARTMENT TO COME
14 IN AND SAY, I SAW JOHN JONES RUN FROM THE STORE.

15 THAT PERSON IS A INDEPENDENT CORROBORATING WITNESS.
16 WE HAVE NO SUCH INDEPENDENT CORROBORATING WITNESS IN THIS
17 CASE. THE ONLY WITNESS WE HAVE IN HERE, HOCUS POCUS. YOU
18 SEE A WHOLE LOT OF PEOPLE IN RED OVER HERE AND YOU SEE THE
19 WHOLE POWER OF THE STATE.

20 YOU GOT THREE SOLICITORS OVER HERE. WE GOT THREE
21 SOLICITORS. WE GOT NORTH AUGUSTA. WE GOT AIKEN POLICE.
22 WE GOT ALL OF THIS ARRAY AGAINST A SINGLE INDIVIDUAL.

23 THE ONLY THING STANDING BETWEEN YOU AND THIS AWESOME
24 POWER OF THE STATE IS THE CLOAK THAT THE CONSTITUTION
25 GIVES HIM THAT YOU MUST FIND HIM GUILTY BEYOND A

1 REASONABLE DOUBT.

2 NOW, LIKE I SAY, IN THIS CASE THERE IS NO INDEPENDENT
3 CORROBORATING WITNESS EVEN THOUGH YOU SEE -- SAW HOW MANY
4 PEOPLE TESTIFIED. AT LEAST EIGHT DIFFERENT PEOPLE. THESE
5 EIGHT PEOPLE REPRESENT ONE ORGANIZATION. THERE IS NO
6 INDEPENDENT CORROBORATION.

7 THEY DID NOT BRING JOE BLOW OFF THE STREET TO SAY,
8 YEAH, I SAW A GENTLEMAN WITH -- PUT THAT BAG OVER THERE --
9 EXCUSE ME, NOT JOE, MY CLIENT BACK THERE -- I SAW
10 MR. JOHNSON WITH THAT EXACT SAME BAG IN HIS HAND AND I CAN
11 IDENTIFY THIS AS HIS BAG BECAUSE, YOU KNOW, IT HAS A
12 PARTICULAR NICK RIGHT HERE. THIS BAG HAS A NICK, SO
13 THEREFORE THAT'S MR. JOHNSON'S BAG.

14 THEY SAW HIM RUNNING WITH A BAG, BUT NOBODY CAN TELL
15 YOU THAT THIS IS THE EXACT SAME BAG THAT MR. JOHNSON LEFT
16 HIS CAR WITH.

17 NOW, AGAIN, HOCUS POCUS. EIGHT PEOPLE TESTIFY. BUT
18 THAT'S NOT EIGHT PEOPLE. THAT'S REALLY ONE PERSON. ONE
19 PERSON. LAW ENFORCEMENT ARRAY AGAINST MY CLIENT. THEY
20 BROUGHT NO ONE IN THERE -- THERE WAS AN ATTEMPT TO BRING
21 ONE INDEPENDENT WITNESS, AND THAT WAS THE NICE YOUNG
22 SOLDIER UP HERE IN THE UNIFORM.

23 AND WHAT DID HE TESTIFY TO? A WELL DRESSED MAN CAME
24 TO MY HOUSE AND ASKED TO USE THE PHONE. HE DIDN'T SAY A
25 MAN THAT LOOKED LIKE HE HAD BEEN RUNNING THROUGH BUSHES.

1 YOU SAW THE BUSHES. YOU JUST LOOKED AT THEM.

2 HE DIDN'T SAY A MAN THAT LOOKED LIKE HE HAD ANYTHING
3 ON HIM. A WELL DRESSED MAN CAME TO MY HOUSE TO USE THE
4 PHONE. I ASKED THE QUESTION -- I ASKED HIM THE QUESTION,
5 DID YOU HEAR THIS MAN TALKING ABOUT ANY DRUGS? NO.

6 NO CORROBORATION. NOTHING INDEPENDENT. THE ONLY
7 THING, HOCUS POCUS, IS THIS GROUP HERE THAT WANTED TO MAKE
8 YOU THINK THAT THEY'RE INDEPENDENT, BUT THEY'RE ALL IN THE
9 SAME POT. WE HAVE NO -- NOT A SINGLE SHRED OF INDEPENDENT
10 CORROBORATING EVIDENCE.

11 NOW, A WAY TO PROVE BEYOND A REASONABLE DOUBT THAT
12 THIS IS MR. JOHNSON'S BAG IS TO TAKE IT TO THE LAB. THIS
13 IS PLASTIC. PLASTIC IS ACCEPTABLE TO RETAINING
14 FINGERPRINTS.

15 I BELIEVE ONE OF THE OFFICERS TESTIFIED THAT HE
16 TUCKED THAT BAGGIE AND RAN. IT SEEMS TO ME THAT HIS DNA
17 AND HIS FINGERPRINT, SOMETHING WOULD BE ON THIS BAG IF
18 THIS IS THE VERY SAME BAG THAT HE WAS RUNNING WITH.

19 THEY TALK ABOUT ELAPSED TIME OF FIVE, SIX OR SEVEN
20 MINUTES. SO IN FIVE OR SIX OR SEVEN MINUTES, HE RUN,
21 STASHED THE BAG, CLEANED HIMSELF UP, GONE TO THESE
22 PEOPLE'S HOUSE TO USE THE PHONE IS WHAT THEY WOULD HAVE
23 YOU BELIEVE. DID NOT HAPPEN.

24 NOW, OFFICER -- AGAIN, THEY BROUGHT HOCUS POCUS.
25 THEY WANTED TO MAKE YOU THINK THAT THEY HAVE WHAT THEY

1 DON'T HAVE. THEY BROUGHT A FINGERPRINT EXPERT IN HERE,
2 LIEUTENANT CLAY ADAMS.

3 LIEUTENANT CLAY ADAMS, WHAT ARE YOU HERE FOR, TO
4 TESTIFY THAT YOU DIDN'T FIND ANY EVIDENCE? YES. THERE IS
5 NOTHING ON THIS BAG THAT BELONGS TO JOHNSON? YES. BUT
6 AGAIN, TO CONFUSE YOU.

7 THERE WAS NOTHING THERE. BUT THERE WAS A REASON WHY
8 THERE IS NOTHING THERE. YOU HAVE COMMON SENSE. YOU KNEW
9 IF THERE IS NOTHING THERE. IF THERE WAS ANYTHING THERE,
10 THEY WOULD HAVE BROUGHT IT TO YOU.

11 THEY WOULD HAVE SAID, BY GOD, WE HAVE HIS FINGERPRINT
12 ON THIS BAG, BY GOD WE GOT SOMEBODY, BY GOD HAVE HIS
13 FINGERPRINT ON ONE OF THESE TUBES IN THAT BAG. THEY CAN'T
14 TELL YOU. THERE IS NO EVIDENCE. BUT THEY WANT YOU TO
15 THINK THERE COULD HAVE BEEN EVIDENCE. USELESS.

16 NOW, YOU HAVE AN INDEPENDENT K-9 EXPERT. YOU THINK
17 HE'S AN INDEPENDENT CORROBORATING WITNESS? HE IS A PART
18 OF THIS CREW. HE MAKES A LIVING SELLING DOGS TO THE
19 POLICE DEPARTMENT.

20 IF WE SAY THAT DOG CAN'T TRACK, WHAT THE HELL, HE
21 CANNOT SELL ANY MORE DOGS. OKAY? SO HE IS BOUND TO SAY
22 THESE DOGS HAVE ALL OF THE CAPABILITY IN THE WORLD.
23 SURELY THIS DOG CAN DO ANYTHING.

24 OKAY. I SUBMIT TO YOU THAT THAT'S NOT AN INDEPENDENT
25 CORROBORATING WITNESS. AND THEY TALK ABOUT THIS OPEN AIR

1 SEARCH. WHAT IS AN OPEN AIR SEARCH? WHEN IT COMES DOWN
2 TO IT, THEY ARE TALKING ABOUT HIS OLD BLOODHOUND WITH HIS
3 NOSE ON THE GROUND.

4 I THOUGHT IT WAS SOME NEW TECHNIQUE. BUT IT'S -- ON
5 THIS DOG. IT'S NOT. THEY SAID THAT THE DOG FOLLOWS
6 PARTICULATES THAT FALL TO THE GROUND. THAT'S WHAT THE
7 DOG -- AND THESE PARTICULATES SUPPOSEDLY CAME FROM A BAG
8 THAT WAS DOUBLE -- AT LEAST DOUBLY WRAPPED.

9 THEY WANT TO HAVE YOU BELIEVE THEM THAT THIS DOG
10 FOLLOWED THE SCENT. NOW, IT'S AMAZING. THEIR ANSWER WAS
11 LOCK STED. I ASKED YOU EACH AND EVERY ONE, DID YOU SEE
12 HAVE -- SEE MR. JOHNSON WITH THAT BAG. AND THEY'LL SHOW
13 YOU A PICTURE WITH HIM RUNNING WITH A BAG. BUT DID YOU
14 SEE HIM WITH THIS BAG?

15 AND THEY'RE THEY ALL FUMBLING AROUND. NO ONE WOULD
16 ANSWER THAT QUESTION. THEY'RE LOCK STEPPED. BECAUSE NONE
17 OF THEM CAN SAY IF THAT WERE THE CASE, CASE OVER. WE
18 WOULDN'T EVEN BE HERE.

19 NOW, HERE GOES THE INFAMOUS CONE THEORY AS BEST I CAN
20 DEPICT IT. OKAY. THE INFAMOUS CONE THEORY. NOW, IF THIS
21 IS MY CLIENT'S CAR -- AND I CAN NEVER GET THEM TO
22 UNDERSTAND THIS. THIS IS COMMON SENSE. YOU DON'T NEED AN
23 EXPERT FOR THIS. HERE'S THE INFAMOUS CONE THEORY.

24 IF MY CLIENT GETS OUT OF A CAR HERE AND THE DOG HAS
25 HIS SCENT AND THE DOG IS FOLLOWING HIS SCENT WEAVING IN

1 AND OUT OF THIS CONE HERE, WHAT I KEPT SAYING TO THEM WHAT
2 IF ANOTHER CONE SCENT -- THE SHED WITH THE BAG IN IT WAS
3 OVER HERE.

4 AND THEY SAID, WELL, THAT DOG IS WORKING ALONG THIS
5 CONE AND HE WORKS IN AND OUT OF THE CONE SCENT, AND HE
6 WORKS INTO THIS CONE SCENT. HOW CAN THE DOG DISTINGUISH
7 THIS COCAINE FROM THAT COCAINE? ALL THEY'RE MUDDLED, THEY
8 FUDDLED, BUT -- OH, HE WAS -- HOW IS THAT POSSIBLE? TELL
9 ME HOW THAT'S POSSIBLE. THE INFAMOUS CONE SCENT. IT IS
10 CLEARLY NOT.

11 THERE WAS ANOTHER BAG OUT THERE. THE BAG THAT THE
12 DOG FOUND OR -- I AM NOT GOING TO GO TO THAT OTHER
13 POSSIBILITY, OKAY, BECAUSE I HAVE NO EVIDENCE TO PROVE
14 THAT.

15 AND CERTAINLY I CAN'T PROVE A NEGATIVE THAT SOME DRUG
16 DEALER WAS THERE AND LEFT. BUT AGAIN, BE WARY OF THAT.
17 NONE OF THEM WILL ADMIT TO WHAT IS COMMON SENSE, THAT THAT
18 DOG WAS FOLLOWING COCAINE.

19 AND THEY TELL US THAT THE DOG WAS NOT FOLLOWING
20 MR. JOHNSON'S SCENT. THEY TOLD US PLAINLY THE DOG DID NOT
21 TRACK HIM. OKAY. IF THE DOG IS TRACKING THE COCAINE AND
22 PICKS UP -- NO, NOBODY WOULD ADMIT THAT THE DOG WOULD GO
23 OFF IN THIS DIRECTION.

24 NOW, SO WE HAVE ABSOLUTELY NO -- POSITIVELY NO
25 PHYSICAL EVIDENCE, NO FINGERPRINTS, NO DNA, NO SWEAT. SO

1 WHAT DO WE HAVE? TESTIMONY. NOTHING THAT CAN BE
2 CORROBORATED.

3 THEY DO RE-CORROBORATED. THEY NEVER RE-CORROBORATE
4 EACH OTHER BY SAYING THE SAME THING OVER AND OVER. THAT'S
5 NOT CORROBORATION. THERE IS NOTHING INDEPENDENT COMING IN
6 HERE. THAT'S JUST THE POLICE SAYING THE SAME THINGS AGAIN
7 AND AGAIN, AND HE SAYS AND HE SAYS AND HE SAYS. THAT'S NO
8 CORROBORATION.

9 ALL WE HAVE IS TESTIMONY. NOT A SINGLE SHRED OF
10 OUTSIDE EVIDENCE, JUST THE LOCK STEP TESTIMONY OF THE
11 POLICE DEPARTMENT.

12 WE HAVE THIS UNPROVEN -- UNPROVEN SEARCH TECHNIQUE
13 THAT CLEARLY IS FLAWED. IN A KNOWN DRUG AREA, I IMAGINE
14 THERE ARE DRUGS ALL OVER THE AREA. AND IF THEY USE
15 TACTICS IF THERE ARE SOME -- THEY CHASE A SUSPECT, AND
16 THEY THROW DRUGS ALL THE TIME.

17 I AM -- WHAT IS GOING TO MAKE THAT DOG SAY, I AM -- I
18 AM NOT LOOKING FOR ANY OTHER DRUGS. I AM LOOKING FOR THE
19 DRUGS THAT WAS SUPPOSED TO BE IN THAT CAR.

20 EVEN IF MR. JOHNSON HAD COCAINE IN HIS BAG, THEY HAVE
21 TO BRING THAT TO COURT. OKAY. EVEN IF HE WERE RUNNING
22 WITH A BAG WITH COCAINE IN IT, WHICH IS NOT THE CASE. HE
23 WAS RUNNING FROM THE POLICE CLEARLY.

24 FOR WHAT? IT IS A WEEK BEFORE CHRISTMAS. IT'S
25 DECEMBER 18. HE HAS \$863 IN HIS POCKET. HE IS SUPPOSED

1 TO BE GOING SHOPPING FOR HIS CHILDREN'S CHRISTMAS. THAT'S
2 WHY HE HAS THAT MONEY.

3 NOW, ANOTHER WAY THE POLICE COULD PROVE THAT POSSIBLY
4 MR. JOHNSON BROUGHT THAT DRUG, INDEPENDENT CORROBORATION,
5 IS THERE IS ANOTHER WAY THEY COULD DO IT. THEY COULD HAVE
6 SAID, LOOK, WE HAVE HIS BANK ACCOUNT.

7 HE JUST WITHDREW 6,000, \$9,000. I BELIEVE ONE OF THE
8 OFFICERS TESTIFIED THAT THAT WAS THE VALUE OF THE DRUGS.
9 SEE, HE JUST WITHDREW THIS AMOUNT OF MONEY. HE CAN'T TELL
10 US WHERE THAT MONEY WENT.

11 DID YOU HEAR ANY TESTIMONY LIKE THAT? NONE. THAT
12 WOULD BE INDEPENDENT CORROBORATING WITNESS EVIDENCE. BUT
13 THEY CAN'T TELL YOU THAT BECAUSE IT DIDN'T HAPPEN. THAT
14 BAG DID NOT BELONG -- THIS BAG HERE DOES NOT BELONG TO
15 MR. JOHNSON.

16 NOW, EVERYBODY WILL TELL YOU THAT EYE WITNESS
17 TESTIMONY IS INHERENTLY FLAWED. PEOPLE ARE BEING LET OUT
18 OF PRISON ALMOST DAILY BECAUSE PEOPLE CAME AND ARE
19 POSITIVE ABOUT WHAT THEY SAW.

20 THERE IS A DOG AND PONY, A ROAD SHOW GOING ON WE'RE
21 GOING TO COME TO RIGHT NOW. THERE IS A BLACK GENTLEMAN
22 THAT'S ACCUSED OF RAPING THIS WHITE WOMAN--

23 MRS. YOUNG: YOUR HONOR, I OBJECT.

24 MR. WATSON: AGAIN, GIVE AN ILLUSTRATION?

25 THE COURT: SIR, THAT'S JUST NOT PROPER ARGUMENT IN

1 THIS CASE. I'M SORRY.

2 MR. WATSON: AGAIN, I WAS ATTEMPTING TO SHOW.

3 THE COURT: SIR--

4 MR. WATSON: I'M TALKING ABOUT RELIABILITY OF EYE
5 WITNESS TESTIMONY.

6 THE COURT: THERE IS NO TESTIMONY ABOUT EYE WITNESS
7 TESTIMONY IN THIS CASE AT ALL.

8 MR. WATSON: THEY WITNESSED -- THEY WITNESSED HIM
9 TAKE THE BAG FROM THE CAR IS THE TESTIMONY. OKAY.

10 NOW, AGAIN, WE ADMIT MR. JOHNSON HAD A BAG IN HIS
11 HAND WHEN HE LEFT THE CAR. WE SUBMIT TO YOU THAT HE DID
12 NOT HAVE THAT BAG AND THE STATE DID NOT PROVE THAT HE HAD
13 THAT BAG.

14 AND YOU KNOW, DOES THE AIKEN POLICE HAVE ANY
15 INCENTIVE -- THIS IS A BIG CASE WITH THE AIKEN POLICE --
16 NORTH AUGUSTA POLICE. THIS IS A BIG CASE. THEY TELL ME
17 THIS IS THE LARGEST AMOUNT OF DRUGS THEY'VE SEIZED IN SOME
18 TIME, SO THEY WANT TO CONVICT SOMEBODY OF IT.

19 YOU KNOW, THEY CAN'T PROVE HOW IT GOT TO WHERE IT GOT
20 TO BECAUSE THEY WANT TO -- THEY WANT TO CONVICT SOMEBODY
21 OF IT. SO THEY HAVE NO ACTUAL EVIDENCE. AND THEY WILL
22 HAVE YOU BELIEVE ABOUT THIS DOG FILA.

23 NOW, YOU CLEARLY SAW FILA AT THE CAR WHERE
24 MR. JOHNSON WAS. THEY TOLD YOU THAT FILA REACTED TO THE
25 MONEY. LOOK AT THAT VIDEO WHEN YOU GO BACK THERE, PLEASE.

1 LOOK AT THE VIDEO. FILA AND HIS HANDLER, OFFICER RUTLAND,
2 ARE SO TIGHTLY CONNECTED -- TO USE HIS WORDS, THEY'RE
3 BONDED.

4 OFTEN, YOU KNOW, I THINK IT'S NOT THE DOG THAT FIND
5 THE DRUGS, EVEN THOUGH THE DOGS DO FIND DRUGS ON OCCASION,
6 I ADMIT. OFTEN IT'S THE OFFICER. THE OFFICER KNOWS WHERE
7 THE DRUG ARE SO HE LEADS AND THE DOG SITS OR WHATEVER HE
8 DOES, SHOWS HIS -- THE FACT THAT YEAH, THERE IS DRUGS
9 HERE.

10 BUT IT'S THE OFFICER WHO IS FINDING THE DRUGS WITH
11 CORROBORATION BY THE DOG. AND HE WALKS THE DOGS ALL OVER.
12 THE DOG COMES OUT OF THE CAR, WALKS RIGHT UP TO MY CLIENT,
13 WALKS RIGHT PAST HIM.

14 HE CLAIMS THAT HE WOULDN'T LET HIM GO THERE. THE DOG
15 IS JUST WAGGING HIS TAIL, JUST GOING ON BY LIKE HE WASN'T
16 EVEN THERE. IF HE WAS RUNNING WITH THE SMELL OF ALL OF
17 THIS COCAINE ON IT, WHAT HAPPENED TO IT? WHY ISN'T THE
18 DOG GOING TO HIM?

19 IF THIS MONEY IN HIS POCKET HAD COCAINE ON IT, WHY
20 ISN'T THE DOG GOING TO THE MONEY? YOU SEE THE DOG WALK
21 PAST MR. JOHNSON. THE DOG WALK PAST THE MONEY. ONLY
22 AFTER HE DRAGS HIM DOWN STRAIGHT TO THERE -- WHERE THE
23 MONEY IS DOES THE DOG -- AND THE DOG DIDN'T EVEN SIT THEN.

24 YOU HAVE THE VIDEO. LOOK AT IT. OKAY. HOCUS POCUS.
25 NOW, THE STATE, THE GOVERNMENT, THE JUDGE WILL ALSO TELL

1 YOU THAT MR. JOHNSON HAS NO DUTY TO PROVE ANYTHING.
2 THAT'S WHY I ELECTED NOT TO PUT ON A CASE, A DEFENSE IN
3 THIS CASE.

4 BECAUSE FOR THEM TO CONVICT MR. JOHNSON, THEY HAVE TO
5 PROVE BEYOND A REASONABLE DOUBT THAT MR. JOHNSON HAD THIS
6 BAG, AND I SUBMIT TO YOU THAT THEY HAVE NOT DONE THAT;
7 THEREFORE MR. JOHNSON HAS TO BE FOUND NOT GUILTY BY LAW.

8 THE LAW SAYS THAT IF YOU'RE NOT CONVINCED BEYOND A
9 REASONABLE DOUBT -- AND I TELL YOU THERE IS PLENTY OF
10 REASONABLE DOUBT -- THEN YOU HAVE TO LET MR. JOHNSON GO.
11 OKAY. YOU HAVE TO FIND HIM NOT GUILTY.

12 AGAIN, WHEN YOU GO IN THE JURY ROOM AND YOU LOOK AT
13 THE EVIDENCE AND YOU SEE MR. JOHNSON RUN WITH A BAG, KEEP
14 IN MIND THE QUESTION IS NOT IF HE IS RUNNING WITH A BAG.
15 THE QUESTION IS NOT WHY HE'S RUNNING FROM THE POLICE EVEN
16 THOUGH HE'S GIVEN A GOOD EXPLANATION -- I DON'T WANT TO GO
17 TO JAIL.

18 THE QUESTION IS, IS THE BAG THAT HE LEFT WITH THIS
19 VERY SAME BAG. AND I SUBMIT TO YOU THAT THEY HAVE NOT
20 PROVED THAT BEYOND A REASONABLE DOUBT. THEY HAVE NOT
21 PROVED IT THROUGH PHYSICAL EVIDENCE. THEY HAVE NOT PROVEN
22 IT THROUGH THE SO-CALLED DOG EVIDENCE.

23 THEY HAVE NOT PROVED IT IN ANY MANNER THAT THIS
24 PARTICULAR BAG RIGHT HERE IN THIS COURTROOM BELONGED TO
25 MR. JOHNSON. SO WE TALKED ABOUT INDEPENDENT

1 CORROBORATION.

2 THERE IS NO INDEPENDENT CORROBORATION OTHER THAN THE
3 POLICE DEPARTMENT ITSELF CORROBORATING THEIR OWN TESTIMONY
4 WHICH MAKES IT NOT INDEPENDENT.

5 ANOTHER MAJOR FACTOR. CHAIN OF CUSTODY. THE CHAIN
6 OF CUSTODY IS SO IMPORTANT. THE NORTH AUGUSTA POLICE
7 DEPARTMENT CAN TRACE THIS BAG FROM THE TIME THEY QUOTE
8 UNQUOTE FOUND IT THROUGH PAPERWORK FOR EVERY HAND IT
9 TOUCHED UNTIL IT ARRIVES IN THIS COURTROOM BECAUSE THEY
10 DON'T WANT TO LEAVE THE BAG UNACCOUNTED FOR IN THE LAB AND
11 SOMEONE SWITCH BAGS.

12 NO. THAT'S WHY THE CHAIN OF CUSTODY IS SO IMPORTANT.
13 YOU HAVE TO ACCOUNT FOR THAT EXACT SAME BAG. YOU CAN'T
14 HAVE IT WHERE OTHER PEOPLE CAN COME INTO THE CHAIN AND
15 SOMEHOW DEFECT -- EFFECT THE CHAIN OF CUSTODY AND CREATE
16 DOUBT ABOUT WHETHER OR NOT THAT'S THE SAME DRUG THAT CAME
17 IN THE COURTROOM.

18 THERE IS NO DOUBT IN MY MIND THAT THIS IS THE SAME
19 BAG THAT THEY BROUGHT FROM THE SHED. THERE IS NO DOUBT.
20 BUT PRIOR TO THAT, WHERE IS THE CHAIN OF CUSTODY? OKAY.

21 THERE IS NO CHAIN OF CUSTODY FROM MR. JOHNSON TO THE
22 BAG. THE OFFICER LOST SIGHT OF MR. JOHNSON. SO THEREFORE
23 THERE COULDN'T POSSIBLY BE ANY CHAIN OF CUSTODY.

24 WELL, YOU'LL SAY, DOWN. WELL, THAT MEANS IF AN
25 OFFICER IS CHASING A SUSPECT WITH DRUGS ON THEM AND THAT

1 SUSPECT THROWS THE DRUGS, LET'S SAY I THROW THE DRUGS AND
2 CONTINUED TO RUN, THE OFFICER IS RIGHT BEHIND ME. THE
3 OFFICERS SAW ME DO THAT. OKAY. BUT THAT OFFICER
4 PROCEEDS.

5 NOW, THE CHAIN OF CUSTODY IS BROKEN TO AN EXTENT.
6 BUT THE OFFICER WHO THROUGH HIS OWN EYES CAN TESTIFY THAT
7 I SAW THE THROWING, I SAW THE PLACING, I SAW THE PUTTING.

8 EVEN MR. WEEKS' EXAMPLE HE SAID, YOU SAW ME THROW
9 THIS KEY. YOU SAW HIM DO THAT. NO ONE SAW MR. JOHNSON
10 PUT A BAG IN THAT SHED. THERE IS NO CHAIN OF CUSTODY FROM
11 THAT BAG TO MR. JOHNSON. THERE JUST SIMPLY ISN'T.

12 AS MUCH AS THEY WOULD LIKE FOR IT TO BE, I DON'T CARE
13 HOW MUCH THEY FEEL IT MIGHT BE HIS, IT IS SIMPLY NOT.
14 THEY HAVE NOT PROVED. IT. THEY HAVE NOT PROVED ANY
15 CUSTODY FROM THE TIME MR. JOHNSON LEFT THE BAG -- THE CAR
16 UNTIL THE DRUGS SHOWED UP AT THE SHED.

17 THERE WAS AN INTERVENING TIME PERIOD WHERE NO ONE
18 KNOWS WHAT'S GOING ON. COULD MR. JOHNSON HAVE ANOTHER BAG
19 AND STASH IT SOMEWHERE ELSE? THERE ARE A COUPLE OF PLACES
20 DOWN THE LOOP WHERE THE DOG STOPPED AND HESITATED. MAYBE
21 THAT'S WHERE MR. JOHNSON PUT HIS BAG.

22 OKAY. WE'LL NEVER KNOW THAT. BUT WE KNOW THAT THERE
23 IS NO CHAIN OF CUSTODY FROM MR. JOHNSON TO THIS BAG WHERE
24 THE DRUGS WERE FOUND.

25 BASED ON THAT, AGAIN, LET ME THANK YOU FOR BEING

1 HERE. I RESPECTFULLY REQUEST THAT YOU TURN THE -- RETURN
2 THE ONLY VERDICT YOU CAN IN THIS CASE BASED ON THE LACK OF
3 PROOF BEYOND A REASONABLE DOUBT AND FIND MR. JOHNSON NOT
4 GUILTY. THANK YOU FOR YOUR ATTENTION.

5 CLOSING STATEMENT

6 MRS. YOUNG: THANK YOU, YOUR HONOR. MAY IT PLEASE
7 THE COURT, MR. WATSON. GOOD MORNING, LADIES AND
8 GENTLEMEN. AT THE BEGINNING I TOLD YOU THAT THIS CASE WAS
9 ABOUT A BLACK BAG.

10 THE COURT: HOLD ON A SECOND. GENTLEMEN, PLEASE HAVE
11 A SEAT. GO AHEAD.

12 MRS. YOUNG: THIS CASE IS INDEED ABOUT A BLACK BAG.
13 THE CASE IS ABOUT THE DEFENDANT'S BLACK BAG. THE CASE IS
14 ALSO ABOUT A STATE'S WITNESS WHO SPOKE THE LOUDEST WITHOUT
15 EVER SAYING A WORD, AND THAT'S K-9 NARCOTICS DOG FILA.

16 I WANT TO ADDRESS SOMETHING RIGHT OFF THE BAT.
17 MR. WEEKS SAID THAT WE DON'T HAVE ANYTHING TO HIDE.
18 YOU'RE GOING TO HAVE PICTURES OF THE SHED. YOU'LL BE ABLE
19 TO SEE IT.

20 IT'S NOT IN THE SAME CONDITION THAT WAS TESTIFIED TO,
21 SO THERE IS NO -- IT WOULD NOT ASSIST YOU, AND THAT'S WHY
22 THE JUDGE MADE HIS DECISION THAT HE DID. BUT YOU'LL HAVE
23 ADEQUATE PICTURES OF IT AND YOU'LL BE ABLE TO SEE WHAT IT
24 LOOKS LIKE.

25 SO THE CASE IS ABOUT THIS BLACK BAG. OFFICER FITTERY

1 IS ON PATROL. HE STOPPED HIS CAR. HE'S GOT HIS
2 STATIONARY RADAR. HE SEES THIS CAR COMING DOWN THE ROAD.
3 HE IS SET UP THERE. HE SEES IT MAKE A QUICK TURN.

4 SO HE GOES AROUND AND TRIES TO CUT OFF THE CAR OR AT
5 LEAST TRY TO FIND IT ON ANOTHER STREET. AND THERE'S BEEN
6 A LOT OF QUESTIONS FROM MR. WATSON ABOUT WHEN THE CAMERA
7 TURNED ON. IT DIDN'T SHOW HIM RUNNING ANY STOP SIGNS.

8 BUT THE OFFICER TOLD YOU THAT HE OBSERVED THE SPEED
9 WITH HIS RADAR. HE VISUALLY OBSERVED IT. BUT WHAT'S
10 IMPORTANT IS WHEN HE DOES TURN ON HIS BLUE LIGHTS AND
11 SIREN, YOU DO NOT SEE MR. JOHNSON PULLING OVER FOR HIM.

12 YOU SEE HIM CONTINUING THE SAME PATTERN OF DRIVING
13 THAT OFFICER FITTERY DESCRIBED, GOING AWAY FROM HIM. NOT
14 PULLING OVER. HE IS NOT STOPPING. AND THAT'S BECAUSE
15 HE'S GOT SOMETHING TO HIDE.

16 NOW, OFFICER FITTERY DOESN'T EVEN HAVE A CHANCE --
17 YOU CAN PUT IT ON THE OTHER ONE. HE DOESN'T EVEN HAVE A
18 CHANCE TO SAY A WORD BEFORE MR. JOHNSON GETS OUT AND RUNS.
19 AND HE'S GOT THE BLACK BAG AND HE SHOWED YOU WHERE IT WAS.

20 AND NOW, Y'ALL MIGHT THINK HE SEES THE BLACK BAG AND
21 THEN HE IS GONE. BUT OFFICER FITTERY IS A TRAINED POLICE
22 OFFICER. HE'S OUT THERE EVERY DAY AND HE'S PUTTING
23 HIMSELF IN RISKY SITUATIONS.

24 WHEN HE SEES A DEFENDANT GET OUT OF THE CAR AND THERE
25 IS SOMETHING IN HIS HANDS, YOU KNOW HIS EYES IMMEDIATELY

1 GO TO WHAT'S IN HIS HANDS SO HE CAN HAVE SOME IDEA OF WHAT
2 IT IS AND WHETHER OR NOT IT MIGHT REPRESENT A THREAT TO
3 HIM.

4 HE TOLD YOU THAT HE WAS 10 OR 12 -- LET'S SAY 15 FEET
5 AT THE MOST AWAY FROM HIM AND HE WAS ABLE TO CLEARLY SEE
6 THE BLACK BAG, THIS BLACK BAG, WHICH IS THE BLACK BAG THAT
7 MR. JOHNSON GOT OUT AND RAN WITH.

8 OFFICER FITTERY SAID THIS IS THE BAG. HE WAS ABLE TO
9 IDENTIFY IT. THERE IS NO QUESTION IN HIS MIND THAT THAT
10 IS THE BAG.

11 NOW, OFFICER FITTERY DOES PURSUE HIM ON THE FOOT
12 PURSUIT AND HE GETS TO A CERTAIN POINT AND I THINK HE JUST
13 REALIZES IT'S CLEAR HE IS NOT GOING TO CATCH HIM ON FOOT,
14 SO HE -- HE TALKED ABOUT SAFETY AND SOME VARIOUS ISSUES
15 LIKE THAT. AND IF THIS THING FALLS, IT WOULD NOT SURPRISE
16 ME.

17 THE COURT: IF IT FALLS, WE WILL PICK IT UP.

18 MRS. YOUNG: OKAY. I ALWAYS HAVE TECHNICAL
19 DIFFICULTIES WITH THIS LITTLE STAND. BUT BASICALLY HE
20 TOLD YOU THIS IS WHERE THE TRAFFIC STOP WAS AND HE PURSUED
21 HIM HERE, AND MR. JOHNSON JUST GOT AWAY FROM HIM.

22 HE DIDN'T KNOW WHAT WAS IN HIS HAND. HE SAW THE
23 BLACK BAG. HE DIDN'T KNOW WHAT WAS IN THE BAG. THERE ARE
24 SOME SAFETY PROTOCOLS AND PROCEDURES THAT HE'S SUPPOSED TO
25 FOLLOW.

1 AND QUITE FRANKLY HE REALIZES, YOU KNOW, HE'S NOT A
2 SPRINTER. HE IS NOT GOING TO CATCH MR. JOHNSON. SO ALL
3 THE WHILE THIS IS GOING ON, HE IS CALLING THIS IN TO HIS
4 DISPATCHER. AND HE DESCRIBES THE PERSON THAT HE SEES WHO
5 IS VERY DISTINCTIVE.

6 HE DESCRIBES A BLACK MALE WITH DREAD LOCKS WEARING A
7 KHAKI BLAZER-TYPE OF JACKET AND JEANS WHICH IS -- YOU
8 KNOW, THAT'S A PRETTY DISTINCTIVE DESCRIPTION. HE IS
9 CALLING THAT IN WHILE HE'S CHASING AFTER HIM, CAN KIND OF
10 HEAR HIM, HE IS OUT OF BREATH, HE IS RUNNING, HE IS DOING
11 HIS BEST.

12 SO OFFICER RUTLAND COMES IN TO ASSIST HIM. AND HE
13 COMES FROM ANOTHER PART OF THE CITY. AND HE TESTIFIED
14 ABOUT HIS PATROL TAPE TIME.

15 NOW, THE POINT OF THAT WAS NOT TO SHOW WHAT TIME IT
16 WAS BECAUSE YOU CAN SEE ON OFFICER FITTERY'S VIDEO THAT
17 TIMES WERE DIFFERENT AND OFFICER RUTLAND SAID EVERY CAR
18 HAS A DIFFERENT TIME IN IT FOR WHATEVER REASON -- PROBABLY
19 BECAUSE THE OFFICERS MIGHT DO IT THEMSELVES AND
20 EVERYBODY'S WATCH HAS A DIFFERENT TIME ON IT.

21 BUT THE POINT OF THAT WAS TO SHOW YOU THAT FROM THE
22 TIME THAT OFFICER RUTLAND BEGAN RESPONDING, HIS CAR SAID
23 1722. AND BY THE TIME HE FIRST SAW THE DEFENDANT, HIS CAR
24 SAID 1729.

25 SO IT'S TO SET UP ABOUT -- TO SHOW YOU THAT IT'S

1 ABOUT A SEVEN TO EIGHT MINUTE TIME SPAN DURING WHICH THIS
2 DEFENDANT HAD TO RUN -- RUN OVER HERE, FIND A PLACE TO
3 STASH IT, AND GO UP TO THE PYLANTS' RESIDENCE.

4 NOW, THAT MIGHT NOT SEEM LIKE A LONG TIME, BUT I
5 SUBMIT TO YOU THAT THAT WOULD BE PLENTY OF TIME TO DO
6 THOSE THINGS IF YOU HAVE A REASON TO DO SO.

7 AND WHAT WAS HIS REASON? MR. WATSON CAME UP HERE AND
8 HE MADE A BIG DEAL ABOUT THE FACT THAT THERE WEREN'T ANY
9 DRUGS FOUND IN THE CAR.

10 WELL, LADIES AND GENTLEMEN, HE DIDN'T LEAVE THE DRUGS
11 IN THE CAR. HE TOOK THEM WITH HIM. THEY'RE IN THIS BAG.
12 THIS BAG RIGHT HERE. DETECTIVE TURNER TOLD YOU THAT THE
13 AMOUNT OF COCAINE IN THE BAG WHICH WAS TESTED AND DID COME
14 BACK POSITIVE TO 252 SOME ODD GRAMS WAS COMPRESSED AND
15 THERE WAS -- THAT WAS SIGNIFICANT, AND IT HAD A STREET
16 VALUE OF ANYWHERE FROM SIX TO \$9,000.

17 WELL, THAT MEANS SOMETHING TO THIS DEFENDANT. HE'S
18 NOT GOING TO LEAVE THAT IN THAT CAR FOR THIS OFFICER TO
19 FIND. HE IS JUST NOT GOING TO DO IT. HE'S GOING TO RUN.
20 HE'S GOING TO TRY TO GET AWAY FROM OFFICER FITTERY. AND
21 HE IS GOING TO FIND A PLACE THAT HE CAN STASH THAT AND
22 COME BACK AND GET IT LATER BECAUSE THAT'S A BIG PILE OF
23 MONEY.

24 SIX TO \$9,000 AND IT COULD BE SOLD FOR MORE, THAT'S
25 VERY VALUABLE TO HIM. HE DOES NOT WANT TO LET GO OF THAT.

1 SO, HE DOES SO. HE FINDS THIS ABANDONED HOUSE.

2 AND I WOULD SUBMIT TO YOU, LADIES AND GENTLEMEN, THAT
3 BASED ON THE K-9 TESTIMONY, THE FIRST PLACE HE LOOKS IS
4 RIGHT HERE, THIS LOCKED STORAGE BUILDING BECAUSE IT'S
5 PRETTY CLOSE TO WHERE OFFICER FITTERY LOST SIGHT OF HIM,
6 AND THEN HE FOUND OUT HE COULDN'T GET IN IT.

7 SO HE KEPT GOING AND FINDS THIS ABANDONED HOUSE WHICH
8 IS JUST A GOLD MINE FOR HIM WITH THIS OPEN SHED IN IT.

9 AND I WANT TO STRIKE DOWN THE WHOLE THIRD PERSON --
10 THAT DRUGS BELONGED TO THE THIRD PERSON THEORY. I JUST
11 DON'T THINKS THAT'S REASONABLE. YOU HAVE YOUR COMMON
12 SENSE.

13 NOBODY -- NO DRUG DEALER IS GOING TO LEAVE SIX TO
14 \$9,000 WORTH OF DRUGS LAYING OUT IN A SHED. AND YOU'LL
15 SEE THE SHED IS EMPTY AND YOU'LL SEE IT IN THE PICTURES.
16 THE BAG IS NOT DUSTY.

17 IT'S DIRTY BECAUSE, YOU KNOW, IT'S BEEN THROWN DOWN
18 IN THE DIRT, BUT IT'S NOT -- IT DOES NOT HAVE A LAYER OF
19 DUST LIKE IT'S BEEN SITTING HERE FOR ANY LENGTH OF TIME
20 AND IT'S KIND OF RIGHT INSIDE THE DOOR LIKE SOMEBODY PUT
21 IT THERE IN A QUICK MANNER.

22 NOW LET'S TALK ABOUT SOMETHING ELSE. AIRMAN PYLANT
23 IS EXACTLY WHAT MR. WATSON SAYS WE DON'T HAVE. AIRMAN
24 PYLANT IS A CITIZEN. HE'S NOT RELATED IN ANY WAY TO THE
25 NORTH AUGUSTA DEPARTMENT OF PUBLIC SAFETY. HE DOESN'T

1 KNOW MR. JOHNSON.

2 HE IS JUST AT HOME. AND HE TELLS YOU WHAT HAPPENED
3 THAT NIGHT. HE SAID THAT A WELL-DRESSED BLACK MAN CAME UP
4 TO HIS BACK DOOR, HIS BACK DOOR, AND ASKED TO USE THE
5 PHONE. SO -- AND FURTHER, HE CAME TO COURT AND IDENTIFIED
6 MR. JOHNSON AS BEING THAT MAN.

7 SO, MR. WATSON WOULD HAVE YOU BELIEVE THAT EVEN
8 THOUGH MR. JOHNSON RAN ALONG THIS ROUTE, HE WAS IDENTIFIED
9 BY MR. PYLANT AND CAME OUT TO WHERE OFFICER RUTLAND SAW
10 HIM, THAT THAT'S NOT HIS DRUGS. THAT'S JUST AN AMAZING
11 COINCIDENCE.

12 LET'S TALK ABOUT OFFICER RUTLAND'S ARRIVAL AND WHEN
13 HE SEES HIM. NOW, OFFICER RUTLAND ARRIVES AND HE'S HEARD
14 THE DESCRIPTION. HE IS LOOKING AROUND IN THE AREA. YOU
15 SEE HIM KIND OF BACKING UP AND FORWARDS AND SUCH.

16 AND HE GOES TO ANOTHER STREET AND SEES SOMEBODY IN
17 HIS MIRROR. AND HE SEES THAT THAT PERSON IS A BLACK MALE
18 WITH LONG DREAD LOCKS WEARING A BLAZER-TYPE JACKET AND
19 JEANS JUST LIKE WAS DESCRIBED.

20 SO HE SAYS, I THINK I'M OUT WITH HIM, AND HE
21 INITIATES A FELONY TRAFFIC STOP. HE DRAWS HIS WEAPON. HE
22 EXPLAINED TO YOU WHY HE DID THAT. HE TOLD YOU THE PERSON
23 HAD RUN FROM HIS COLLEAGUE, THAT THERE HAD BEEN, YOU KNOW,
24 CAR INTERACTION, WRECK-TYPE OF THING BETWEEN THE TWO, AND
25 QUITE FRANKLY, HE DOESN'T KNOW WHAT THE SITUATION IS THAT

1 HE'S WALKING INTO.

2 SO HE ORDERS HIM ON TO THE GROUND AND HE SAYS A FEW
3 CHOICE COMMENTS ABOUT FILA IS GOING TO EAT HIS BUTT OR
4 SOMETHING LIKE THAT, AND YOU HEARD IT. I JUST DON'T WANT
5 TO SAY THE WORD.

6 BUT HE TOLD YOU THAT WAS JUST A THREAT TO CONTROL
7 MR. JOHNSON AND TRY TO GET HIM TO COMPLY WITH HIM BECAUSE
8 HE WAS OUT THERE BY HIMSELF AND HE DID NOT KNOW THE
9 SITUATION THAT HE WAS FACING.

10 SO, HE GETS MR. JOHNSON ON THE GROUND. AND IT IS
11 MR. JOHNSON. THEY FIND HIS ID CARD. THEY ALSO FIND IN
12 HIS POCKET \$863 WHICH IS TAKEN OUT.

13 AND THEN OFFICER FITTERY PULLS UP -- AND YOU'LL HAVE
14 A CHANCE TO REVIEW THE VIDEO. THE VERY FIRST THING HE
15 SAYS WHEN HE PULLS UP IS, WHERE IS THE BAG? WHERE IS HIS
16 BAG?

17 SO THE THOUGHT THAT THESE POLICE PLANTED THIS IS
18 LUDICROUS. AND I AM GOING TO GET INTO THAT A LITTLE MORE.
19 BUT YOU'LL HAVE A CHANCE TO SEE IT. OFFICER FITTERY
20 IMMEDIATELY ASKS ABOUT THE BAG BEFORE THERE IS ANY
21 DISCUSSION ABOUT -- BETWEEN FITTERY AND RUTLAND ABOUT THIS
22 BAG.

23 RUTLAND JUST SAYS, I HAVEN'T GOTTEN THAT FAR YET.
24 NOW, THEN RUTLAND SAYS SOMETHING THAT QUITE FRANKLY IS
25 VERY STUPID. HE SAYS, YOU'RE IN A KNOWN DRUG AREA AND

1 ANYTHING I FIND ON THE GROUND I'M GOING TO -- IT'S GOING
2 TO BE YOURS.

3 AND HE TOLD YOU WHY HE SAID THAT. HE TOLD YOU THAT
4 IT WAS A TACTIC THAT SOMETIMES HE USES BECAUSE HE DOESN'T
5 KNOW. HE'S HEARD NOW THAT THERE IS A BAG. HE DOESN'T
6 KNOW WHAT'S IN THE BAG AND HE WANTS TO BE ABLE TO FIND THE
7 BAG EASILY, SO HE JUST WANTS MR. JOHNSON TO TELL HIM WHERE
8 IT IS.

9 YOU MIGHT NOT LIKE THAT STATEMENT. YOU MIGHT NOT
10 LIKE THE FACT THAT HE SAID IT. BUT IT DOESN'T TAKE AWAY
11 FROM THE EVIDENCE THAT WAS LATER FOUND IN THE CASE. OKAY?

12 YOU JUST KIND OF HAVE TO LOOK AT THE EVIDENCE AND TRY
13 TO DISREGARD YOUR DISLIKE FOR ANY OF THOSE STATEMENTS
14 BECAUSE THEY'RE BASED IN THE HEAT OF THE MOMENT. AND THE
15 OFFICERS ARE OUT THERE, THEY'RE PUTTING THEMSELVES IN
16 DANGEROUS SITUATIONS.

17 AND THEIR JOB IS TO PROTECT THE COMMUNITY. SO THEY
18 DON'T KNOW WHAT'S IN THE BAG. IT MIGHT HAVE A GUN IN IT.
19 WHAT IF SOME CHILD WERE TO WALK UP AND FIND THIS BAG WITH
20 A GUN?

21 THEIR GOAL IS TO KEEP THE COMMUNITY SAFE. AND THEY
22 WANT TO FIND THIS BAG. THAT'S THEIR WHOLE GOAL AND THEIR
23 WHOLE PURPOSE IN DOING SO.

24 AND SO HE MIGHT NOT HAVE ASKED THE QUESTION IN A GOOD
25 WAY AT ALL, BUT HIS PURPOSE WAS IN THE HEAT OF THE MOMENT

1 AND RELATED TO KEEPING THE COMMUNITY SAFE BECAUSE THEY
2 DIDN'T KNOW WHAT WAS IN THE BAG.

3 AND YOU KNOW, WHEN MR. JOHNSON, THE DEFENDANT, COMES
4 WALKING DOWN THE STREET -- AND YOU'LL SEE HIM ON THE
5 VIDEO -- GUESS WHAT HE DOESN'T HAVE? HE DOESN'T HAVE A
6 BLACK BAG ANY MORE. IT'S GONE. THIS BAG IS GONE BECAUSE
7 HE HID IT IN THAT ABANDONED SHED.

8 SO THEY TALK TO HIM ABOUT VARIOUS THINGS AND THEY
9 PICK HIM UP OFF THE GROUND, AND HE MAKES A COMMENT ABOUT
10 THE MONEY -- HE BEING OFFICER RUTLAND. AND YOU'LL HAVE A
11 CHANCE TO REVIEW THAT AND CLEARLY YOU CAN MAKE YOUR OWN
12 DECISIONS ABOUT WHETHER OR NOT THE DOG SITS.

13 I DO NOT THINK IT -- THERE IS ANY EVIDENCE AT ALL
14 THAT OFFICER RUTLAND PUSHES THE DOG'S BUTT DOWN LIKE
15 MR. WATSON TOLD YOU IN THE BEGINNING. THE OFFICER CLEARLY
16 SITS IN MY OPINION -- THE OFFICER DOESN'T SIT. THE DOG
17 SITS. AND YOU'LL HAVE A CHANCE TO REVIEW THAT.

18 AND YOU KNOW, HE IS SAYING THIS WORD. AND WHEN I
19 FIRST VIEWED THE TAPE, I SAID, WHAT IS THIS WORD HE IS
20 SAYING? BECAUSE IT SOUNDS LIKE HE IS SAYING, SIT, SIT,
21 SIT. AND I'M THINKING, WELL, THIS IS KIND OF GOOFY
22 BECAUSE HE IS TELLING THIS DOG TO SIT. AND, I MEAN, YOU
23 KNOW, THE DOG IS GOING TO SIT.

24 SO I TALKED TO HIM ABOUT IT AND HE SAID IT'S ZUCH,
25 AND THAT'S WHY I ASKED HIM ABOUT IT ON THE STAND SO YOU'LL

1 KNOW THAT HE IS NOT, HE IS TELLING THE DOG TO SIT, HE'S
2 TELLING TO DOG TO ZUCH, WHICH IS TO SEARCH.

3 AND HE TOLD YOU AND MR. BRADSHAW TOLD YOU THAT IT IS
4 PROPER FOR THE HANDLER TO START THE DOG OR PRESENT
5 SOMETHING TO HIM. THEY KNEW THAT MONEY CAME OUT OF
6 MR. JOHNSON'S POCKET, SO THEY JUST WANTED TO FINE OUT
7 WHETHER OR NOT THERE WAS A TRACE OF NARCOTICS ODOR, AND HE
8 RUNS HIS DOG.

9 AND IT IS THE STATE'S CONTENTION AND -- THAT WE FEEL
10 IS SHOWN THROUGH THE EVIDENCE THE DOG SAT AND ALERTED ON
11 THE MONEY. BUT THE MONEY IS NOT WHY WE'RE HERE. IT IS
12 JUST KIND OF -- IT GETS US TO THE STARTING POINT, BUT IT
13 IS REALLY A RED HERRING.

14 SO I MEAN, I WOULDN'T EVEN GET DISTRACTED ABOUT THAT
15 TOO MUCH. BUT THE DOG CLEARLY ALERTS ON THE MONEY. AND
16 THEN HE GOES UP AND DOWN THE STREETS SEARCHING LEAVING
17 OFFICER RUTLAND WITH FILA BECAUSE HE DOESN'T KNOW.

18 HE SAW MR. JOHNSON COMING DOWN THAT STREET. HE
19 DOESN'T KNOW IF HE MIGHT HAVE STASHED IT IN A TRASHCAN.
20 BECAUSE HE SAID, WHEN I SAW HIM, HE WAS STANDING NEXT TO A
21 TRASHCAN. SO THEY LOOK AND THEY DON'T FIND ANYTHING.

22 LADIES AND GENTLEMEN, IT'S JUST NOT PROPER -- THE
23 POLICE JUST CAN'T COME UP AND PUT THEIR DOGS ON YOU. I
24 MEAN, YOU HAVE CONSTITUTIONAL RIGHTS. THAT'S JUST NOT
25 PROPER.

1 SO OFFICER RUTLAND DOESN'T GO PUT HIS DOG ON
2 MR. JOHNSON BECAUSE MR. JOHNSON HAS RIGHTS. THE
3 CONSTITUTION PROTECTS HIM FROM BEING SEARCHED IN THAT
4 MANNER.

5 NOW, THE OBJECTS THAT HE'S HAD IN HIS POSSESSION,
6 THEY ARE A DIFFERENT STORY, BUT HE CAN'T JUST GO UP AND
7 PUT HIS DOG ON THE MAN. I MEAN, THEY TOLD YOU THAT
8 THEMSELVES. THEY HAVE RULES THEY HAVE TO FOLLOW.

9 SO THEY DO ALL OF THIS AND THEY SEARCH FOR A LITTLE
10 WHILE. AND THEN YOU'LL HEAR HIM TALKING ABOUT THE FACT
11 THAT THE CAR IS STILL WHERE IT -- WHERE IT WAS WHEN THEY
12 HAD THIS LITTLE INCIDENT OR HE LEFT IT IN REVERSE AND LET
13 IT ROLL BACK AND IT HIT OFFICER FITTERY'S CAR.

14 AND I'LL SUBMIT TO YOU THAT IT SLOWED OFFICER FITTERY
15 DOWN. I AM NOT SURE HE WOULD HAVE CAUGHT HIM ANYWAY, BUT
16 IT SLOWED HIM DOWN ENOUGH TO GIVE HIM A GOOD LITTLE
17 HEADSTART ON HIS RUNNING THERE.

18 SO THEY GO BACK TO THE SCENE OF THE CAR. NOW LADIES
19 AND GENTLEMEN, WE BROUGHT IN THIS EXPERT, MR. BRADSHAW.
20 AND THE JUDGE IS GOING TO TELL YOU ABOUT WHAT AN EXPERT
21 CAN TESTIFY TO AND THE WEIGHT THAT YOU CAN GIVE ANY
22 TESTIMONY THAT THE EXPERT SAID.

23 AND THE PURPOSE IN BRINGING MR. BRADSHAW WAS I'M NOT
24 A K-9 EXPERT AND I CAN'T GET UP THERE AND TELL YOU ANYWAY,
25 BUT IT'S TO EXPLAIN THE DOG'S BEHAVIOR AND EXPLAIN THE

1 TRAINING AND EXPLAIN, YOU KNOW, WHY THE DOG DID WHAT IT
2 DID.

3 AND YES, HE SOLD FILA TO THE NORTH AUGUSTA POLICE
4 DEPARTMENT, AND THAT'S HOW THEY KNOW HIM. BUT -- AND HE
5 KNOWS FILA. THAT'S IMPORTANT, TOO. HE TRAINED HER. BUT
6 HE ALSO SAID IF THERE IS SOME PROBLEM WITH THE DOG, HE
7 WOULD REPLACE IT.

8 I MEAN, HE SOLD THEM THE DOG. I SUBMIT TO YOU THAT
9 HE DID NOT HAVE ANY FINANCIAL INCENTIVE AT THIS POINT.
10 YOU KNOW, HE JUST SAYS HE WANTS HIS DOGS TO DO A GOOD JOB.
11 AND THEY DO DO A GOOD JOB BECAUSE OFFICER RUTLAND TOLD YOU
12 THAT AN INDEPENDENT THIRD AGENCY HAS CERTIFIED THIS DOG
13 EVERY YEAR SINCE HE HAD HER -- SINCE HE HAS HAD HER.

14 AN INDEPENDENT -- NOBODY RELATED TO MR. BRADSHAW, AN
15 INDEPENDENT AGENCY OF THE UNITED STATES POLICE K-9
16 ASSOCIATION. I THINK I GOT THAT ACRONYM RIGHT.

17 SO THAT WHOLE ANGLE OF, YOU KNOW, HIM WANTING TO GET
18 SOME KIND OF GAIN FROM IT IS JUST NOT THERE. HE'S HERE TO
19 EXPLAIN TO YOU ABOUT THE DOG AND THE DOG'S NOSE. AND HE
20 SAID SOME INTERESTING THINGS THAT I THINK ARE IMPORTANT TO
21 CONSIDER.

22 BUT I TOLD Y'ALL THAT YOU CAME IN HERE WITH YOUR
23 COMMON SENSE. AND I DON'T KNOW HOW MANY OF YOU HAVE DOGS,
24 BUT FOR MILLIONS OF YEARS OR HOWEVER LONG DOGS HAVE BEEN
25 AROUND, YOU KNOW, THEY'VE BEEN -- THEY CAN BE TRAINED TO

1 DO CERTAIN BEHAVIORS.

2 BE IT SIT, STAY, ROLL OVER. IF THEY'RE GIVEN A
3 REWARD AND GIVEN A COMMAND, THEY CAN BE TRAINED TO DO
4 CERTAIN BEHAVIORS. THEY GET USED TO A CERTAIN STIMULUS
5 AND THEY'LL RESPOND TO IT IN A CERTAIN WAY.

6 I HAVE THREE DOGS AND I LIKE TO CALL THEM YARD DOGS
7 BECAUSE THEY REALLY DON'T DO MUCH BUT SLEEP. AND THEY'VE
8 GOTTEN KIND OF HEFTY. SO MY VET TOLD ME THIS THING.

9 AND I DIDN'T TRY IT FOR A WHILE BECAUSE I THOUGHT IT
10 SOUNDED WEIRD, AND IT'S GOING TO SOUND WEIRD TO YOU, BUT
11 HE SAID FEED THEM GREEN BEANS BEFORE YOU GIVE THEM THEIR
12 FOOD BECAUSE THEY'LL EAT THE GREEN BEANS AND IT'S LESS
13 CALORIES. AND I THOUGHT THIS IS JUST WEIRD.

14 SO ONE DAY I GOT THIS WILD HAIR AND DECIDED I WOULD
15 TRY IT. AND I COULD NOT BELIEVE THE WAY THE DOGS RESPOND.
16 DOGS LOVE GREEN BEANS. IT IS STRANGE, BUT THEY DO.

17 SO EVER SINCE THEN MY DOGS HAVE GOTTEN USED TO THE
18 FACT THAT WHEN I COME HOME -- AND MY HUSBAND, HE WON'T
19 DO -- HE'S LIKE, I DON'T WANT TO DO THE GREEN BEANS, IT IS
20 TOO MUCH TROUBLE TO OPEN THREE CANS AND PUT THEM IN DOG'S
21 BOWL.

22 BUT WHEN I COME HOME, THEY START PAWING AT THE DOOR
23 BECAUSE THEY THINK -- THEY SEE ME, THEY THINK GREEN BEANS.
24 THEY'RE LIKE, SHE'S GOT THE GREEN BEANS. AND THEY GO
25 STRAIGHT TO THEIR BEDS IN A -- JUST A PREDICTABLE WAY

1 BECAUSE THEY'RE WANTING TO GET TO THESE GREEN BEANS.

2 AND THEY COULD PROBABLY SMELL GREEN BEANS 2 MILES
3 AWAY. AND YOU CAN SAY THE WORD GREEN BEANS AND I THINK
4 THEY JUST GO CRAZY.

5 SO THAT'S JUST A LITTLE PERSONAL EXAMPLE. BUT I
6 MEAN, YOU'VE HAD IN YOUR OWN EXPERIENCE CHANCES TO SEE
7 THAT DOGS CAN BE TRAINED. AND MR. WEEKS TALKS ABOUT
8 HUNTING DOGS. DOGS HAVE CERTAIN BEHAVIORS.

9 AND THE POINT IN BRINGING MR. BRADSHAW IS TO EXPLAIN
10 FURTHER WHAT WE ALL KNOW, IS THAT DOGS CAN BE TRAINED AND
11 DOGS CAN BE TRAINED TO DO CERTAIN THINGS. FILA IS JUST
12 LIKE ANY OTHER DOG. SHE'S RESPONDING TO A REWARD. SHE IS
13 TRYING TO GET TO HER REWARD.

14 AND SHE'S TRAINED TO DO THAT. AND IT'S A LITTLE MORE
15 COMPLICATED THAN JUST, YOU KNOW, GETTING THE DOG TO FETCH
16 THE BALL OR RESPONDING TO THE GREEN BEANS. I MEAN, SHE'S
17 TRAINED TO DO THIS BECAUSE IT'S HER JOB TO DO IT.

18 SO HE TOLD YOU IN DEPTH HOW HE TRAINED HER, AND I AM
19 NOT GOING TO REPEAT ALL OF THAT BECAUSE YOU HEARD IT, BUT
20 IT WAS IMPORTANT FOR YOU TO HEAR THAT SHE'S TRAINED ON ALL
21 DIFFERENT SURFACES, THAT SHE CAN GO INTO BUILDINGS AND GO
22 INTO CARS, AND SHE'S TRAINED AROUND DISTRACTIONS.

23 I MEAN, HE TOLD YOU WHY ALL OF THAT WAS IMPORTANT.
24 AND HE TOLD YOU THAT WHAT SHE'S TRAINED TO DETECT IS THE
25 ODOR OF NARCOTICS.

1 AND FILA, I WOULD SUBMIT TO YOU, IS THE MOST UNBIASED
2 WITNESS IN THE CASE BECAUSE SHE'S JUST HERE TO DO HER JOB,
3 WHICH IS TO FIND THE ODOR OF NARCOTICS AND HOPEFULLY GET A
4 REWARD.

5 SO THAT IS WHY MR. BRADSHAW CAME IN. THAT IS WHY HE
6 GAVE YOU THE TESTIMONY AND HE EXPLAINED THAT DOG'S NOSES
7 HAVE 200 MILLION RECEPTORS COMPARED TO OUR 10 MILLION, AND
8 THAT DOGS HAVE THE ABILITY TO BE ABLE TO SMELL SUBSTANCES
9 THAT HUMANS ARE NOT ABLE TO.

10 AND HE ALSO EXPLAINED THIS THEORY ABOUT THE SCENT
11 CONE THAT MR. WATSON DOESN'T SEEM TO LIKE. BUT
12 MR. BRADSHAW STATED -- HAS BEEN PROVEN SCIENTIFICALLY THAT
13 THIS IS REAL.

14 AND I WOULD JUST LIKE TO GIVE YOU AN ANALOGY THAT I
15 THINK MAYBE WILL MAKE YOU SEE HOW IT'S REAL IN A HUMAN
16 LEVEL. HE TALKS ABOUT THE HAMBURGERS GRILLING. HE TALKED
17 ABOUT THE HAMBURGERS ON THE GRILL AND HOW THE SMELL WAFTS
18 OUT TOWARD YOU AND YOU KNOW THERE ARE HAMBURGERS ON THE
19 GRILL EVEN THOUGH YOU CAN'T SMELL THEM.

20 I AM GOING TO KIND OF ANALOGIZE THAT TO THIS CASE
21 BECAUSE THEY START AT THE CAR. EVERY ONCE IN A WHILE WE
22 ALL GET HUNGRY AND WE GO THROUGH MICKIE D'S, WENDY'S AND
23 GRAB US A QUICK BURGER AND HAVE IT IN A CAR FOR A LITTLE
24 WHILE AND COME HOME AND THROW THE BAG AWAY.

25 NOW, IF OUR SPOUSE GOES OUT THERE WITHIN A COUPLE OF

1 HOURS OR OUR KIDS, THEY'RE GOING TO KNOW WE HAD MCDONALD'S
2 IN THE CAR BECAUSE YOU CAN STILL SMELL IT. YOU'RE NOT
3 SMELLING THE BURGER. THE BURGER IS GONE. YOU'RE SMELLING
4 THE ODOR OF THE FOOD.

5 AND THAT'S WHAT HAPPENED IN THIS CASE. THEY TOOK
6 FILA TO THE CAR. SHE ALERTED ON THE CAR. SHE ALERTED ON
7 THE OUTSIDE. AND THEN SHE ALERTED ON THE INSIDE. THERE
8 WEREN'T DRUGS FOUND IN THE CAR BECAUSE MR. JOHNSON TOOK
9 THEM WITH HIM.

10 BUT THE ODOR WAS STILL THERE. IT WAS STILL CLOSE
11 ENOUGH IN TIME. SHE COULD SMELL THE ODOR. AND QUITE
12 FRANKLY, YOU KNOW, THAT'S A LOT OF COCAINE. SO, IT'S
13 GOING TO HAVE A STRONG ODOR.

14 AND HE TESTIFIED ABOUT -- NOW I'M GOING TO TALK ABOUT
15 THIS OPEN AIR SEARCH. AGAIN, MR. WATSON, DOESN'T LIKE
16 THAT EVEN THOUGH THAT'S BEEN SCIENTIFICALLY PROVEN AND IS
17 ACCEPTED IN DOG TRAINING AS WELL AS MR. BRADSHAW STATED --
18 THAT FILA IS FOLLOWING THE SCENT.

19 AND AT THIS POINT SHE'S OFF THE LEASH. SHE IS
20 LEADING THE OFFICERS. SO SHE FOLLOWS. AND THEY START HER
21 IN THE OBVIOUS PLACE, WHICH IS WHERE MR. JOHNSON RAN. AND
22 SHE FOLLOWS THAT PATH.

23 AND SEE, THE GREEN LINE STOPS HERE -- THIS IS
24 MR. JOHNSON'S PATH -- BECAUSE OFFICER FITTERY SAID AFTER
25 HE RAN UP THIS HILL, HE DIDN'T SEE HIM ANY MORE. SO WE

1 DON'T SEE MR. JOHNSON AGAIN UNTIL OVER HERE RIGHT IN FRONT
2 OF THE PYLANT'S RESIDENCE.

3 BUT THE DOG GOES UP THE TRAIL AND SNIFFS AT THE
4 STORAGE BUILDING, AND SHE SHOWS SOME INTEREST IN IT. AND
5 I TOLD YOU BEFORE, MY THOUGHT ON THAT WAS MR. JOHNSON
6 THOUGHT THAT WAS BUILDING WAS HIS FIRST OPPORTUNITY BUT
7 COULDN'T GET TO IT.

8 THEN SHE FOLLOWS ON THROUGH. AND THEY'RE FOLLOWING
9 HER. THEY'RE NOT TELLING HER WHERE TO GO. SHE GOES HERE
10 ON HER OWN THROUGH HER TRAINING TO THIS HOUSE WHICH YOU'LL
11 HAVE A CHANCE TO SEE A PICTURE OF. IT'S AN ABANDONED
12 HOUSE.

13 AND SHE GOES THROUGH THE GATE WHICH YOU'LL ALSO SEE.
14 AND SHE GOES STRAIGHT TO THE STORAGE SHED. AND NOW,
15 MR. WATSON IN HIS QUESTIONING MADE A BIG DEAL ABOUT THE
16 FACT THAT THE PYLANTS' DOG WAS IN THE BACKYARD.

17 BUT THERE IS NO -- THERE HAS BEEN NO TESTIMONY THAT
18 FILA EVER WENT PAST THE SHED. SHE WENT STRAIGHT TO THE
19 SHED BECAUSE SHE WAS STILL DOING HER JOB.

20 AN OFFICER RUTLAND TOLD YOU WHEN SHE GOT TO THE SHED,
21 SHE WENT IN AND SHE CAME OUT AND GIVE A FINAL ALERT.
22 THAT'S THE ONLY PLACE SHE GIVE A FINAL ALERT WAS AT THAT
23 SHED.

24 SHE DIDN'T GIVE A FINAL ALERT. SHE WAS JUST
25 INTERESTED IN THAT BUILDING, AND THERE IS NOTHING WRONG

1 WITH THAT BECAUSE IF HE RAN UP CLOSE TO THE BUILDING AND
2 HAD THE COCAINE IN HIS HAND AND WAS LOOKING FOR A PLACE TO
3 HIDE IT, IT IS GOING TO HAVE A LITTLE STRONGER SCENT THAN
4 JUST WHAT'S ON THE GROUND.

5 SO, THAT'S HOW THEY FIND THIS 250 GRAMS -- A QUARTER
6 KILO, SIX TO \$9,000 WORTH OF COCAINE.

7 NOW, WE DID BRING IN OFFICER ADAMS OR LIEUTENANT
8 ADAMS NOW TO TESTIFY ABOUT FINGERPRINTS BECAUSE JURIES
9 EXPECT A LOT. THIS IS THE AGE OF CSI. I LIKE TO WATCH
10 CSI. IT IS ENTERTAINING.

11 JESSIE, CAN YOU -- AND YOU'LL SEE -- I MEAN, WE'RE
12 BRINGING YOU THE BEST EVIDENCE THAT WE HAVE. AND IF THIS
13 WAS -- IF I WAS CSI, I'D WILL BE ABLE TO ZOOM IN ON THAT
14 AND MAKE IT LOOK BIGGER AND PRETTIER, AND YOU COULD
15 CLEARLY SEE IF I HAD CSI CAPABILITIES LIKE THEY DO ON TV
16 THAT HE IS CARRYING THIS BAG LIKE THIS.

17 BUT I DON'T. AND THIS CAME FROM OFFICER FITTERY'S
18 PATROL CAR. AND IT IS A STILL. AND IT JUST GIVES YOU AN
19 OPPORTUNITY TO SEE BECAUSE ON THE VIDEO HE GOES BY REAL
20 FAST, BUT YOU CAN LOOK AT BOTH OF THEM.

21 BUT JURIES EXPECT TO FIND OR HEAR ABOUT DNA AND
22 FINGERPRINTS. SO IF I DIDN'T BRING IN OFFICER -- OR
23 LIEUTENANT ADAMS TO TELL YOU THAT WE TRIED TO GET
24 FINGERPRINTS, MR. WATSON WOULD HAVE SAID STOOD UP HERE AND
25 SAID THE STATE DIDN'T EVEN TRY TO GET FINGERPRINTS. SO IT

1 IS A DOUBLE EDGED SWORD BUT--

2 MR. WATSON: I OBJECT TO THAT. I NEVER SAID NO ONE
3 TRIED TO GET FINGERPRINTS.

4 THE COURT: Y'ALL HAVE HEARD THE EVIDENCE. YOU KNOW
5 WHAT THE EVIDENCE SHOWS. YOU DETERMINE WHAT THE EVIDENCE
6 SAYS. YOU'RE BOTH ARGUING.

7 MRS. YOUNG: LIEUTENANT ADAMS TOLD YOU WHY THERE IS A
8 POSSIBILITY OF FINDING NO FINGERPRINTS. HE SAID
9 FINGERPRINTS ARE VERY FRAGILE, VERY VERY FRAGILE.

10 THE BAG WAS FOUND ON THE GROUND IN THE DIRT. THIS
11 HAD A CHANCE TO RUB AGAINST THE DIRT. AND MR -- THEN
12 OFFICER FITTERY CARRIED IT AROUND. THEN IT WENT INTO
13 EVIDENCE.

14 AND SO THEY TRIED TO GET FINGERPRINTS, BUT THEY
15 WEREN'T ABLE TO. AND HE EXPLAINED TO YOU WHY. AND HE IS
16 THE EXPERT, SO I AM GOING TO LEAVE THAT IN YOUR KNOWLEDGE.
17 BUT THEY DID TRY.

18 AND AS FAR AS THE DNA GOES, AGAIN THAT'S A DOUBLE
19 EDGED SWORD. LIEUTENANT ADAMS TOLD YOU THAT YOU TRY TO
20 FIND THE BEST EVIDENCE. AND SOME OF THE TECHNIQUES FOR
21 TESTING FINGERPRINTS RUIN DNA, SO YOU JUST GO WITH WHAT
22 YOU THINK IS MOST LIKELY AND TRY TO FIND THE FINGERPRINT.

23 WELL, WHY DON'T WE TRY TO FIND DNA BECAUSE THAT'S
24 JUST THE BEST THING EVER. I WOULD SUBMIT TO YOU, LADIES
25 AND GENTLEMEN, THAT HAD THEY LOOKED FOR DNA ON THIS BAG,

1 THEY MIGHT HAVE FOUND SOME. WHOSE DNA MIGHT THEY HAVE
2 FOUND? WELL, MR. JOHNSON'S FIRST OF ALL--

3 MR. WATSON: OBJECTION, YOUR HONOR. SHE'S TALKING
4 ABOUT--

5 THE COURT: SHE IS ARGUING THE FACTS. GO AHEAD.

6 MRS. YOUNG: THEY MIGHT HAVE FOUND DNA FROM THE LADY
7 OR MAN WHO SOLD THIS. TO ME IT LOOKS KIND OF LIKE A GIFT
8 KIT -- OR YOU CAN DECIDE FOR YOURSELF -- AT THE STORE.

9 THEY PROBABLY WOULD HAVE FOUND OFFICER FITTERY'S DNA.

10 SO IN THIS CASE, THEY WEREN'T LOOKING FOR A PERSON.
11 THEY HAD THE PERSON. THEY HAD MR. JOHNSON. THEY WEREN'T
12 LOOKING FOR DNA. THEY WERE TRYING TO FIND THE FINGERPRINT
13 THAT WOULD SAY, YEAH, THAT'S HIS BAG. AND IF THEY HAD,
14 THEN WE WOULDN'T BE HERE.

15 BUT THEY DIDN'T FIND THAT. BUT LADIES AND GENTLEMEN,
16 THE CIRCUMSTANCES IN THIS CASE CAN LEAD YOU TO FIND
17 MR. JOHNSON GUILTY.

18 I AM GOING TO TALK A LITTLE BIT ABOUT THIS OTHER
19 THEORY THAT'S REALLY OFFENSIVE THAT THE POLICE OFFICER
20 WOULD PLANT THIS ON MR. JOHNSON.

21 I MEAN, FIRST OF ALL, IT'S LUDICROUS TO THINK THAT
22 EITHER MR -- OFFICER RUTLAND OR OFFICER FITTERY JUST
23 HAPPENS TO BE CARRYING AROUND A BLACK BAG IN THEIR CAR
24 JUST IN CASE THEY SEE SOMEBODY THAT'S CARRYING A BLACK
25 BAG.

1 I WOULD SUBMIT TO YOU THAT THIS IS PRETTY UNUSUAL.
2 OFFICER FITTERRY CALLS IT A MAN PURSE. AND IT WOULD BE,
3 YOU KNOW, MAYBE THAT ARGUMENT MIGHT BE A LITTLE MORE
4 LOGICAL IF IT WAS LIKE A WALMART BAG. BUT THAT'S JUST
5 OFFENSIVE.

6 I MEAN, THE POLICE OFFICERS ARE OUT THERE TO DO THEIR
7 JOB AND KEEP THE PUBLIC SAFE. AND YES, THEY WERE LOOKING
8 FOR SOMETHING BECAUSE THEY KNEW HE HAD A BAG. THEY KNEW
9 HE HAD A BAG.

10 BUT THE THOUGHT THAT THEY WOULD GO TO ALL OF THIS
11 TROUBLE AND HAVE A QUARTER KILO OF COCAINE AND PUT IT IN
12 THIS BAG AND JUST SAY IT WAS MR. JOHNSON'S, IT'S LUDICROUS
13 IT'S OFFENSIVE, AND I HOPE IT OFFENDS YOU AS MUCH AS IT
14 OFFENDS ME TO THINK THAT THE PEOPLE WHO ARE SWORN TO
15 PROTECT US AND SERVE US AND ARE OUT THERE EVERY DAY WOULD
16 DO THAT AND HAVE THE TIME TO DO THAT OR THE INCLINATION OR
17 WHATEVER. IT IS JUST LUDICROUS AND IT'S JUST NOT
18 REASONABLE AND IT'S OFFENSIVE.

19 SO IF YOU DON'T HAVE -- THESE THREE POSSIBILITIES.
20 IF YOU DON'T HAVE NORTH AUGUSTA PLANTING EVIDENCE AND YOU
21 DON'T HAVE THE DRUGS BELONGING TO A THIRD PARTY -- BECAUSE
22 I MEAN, OFFICER TURNER TOLD YOU, THAT'S A LOT OF MONEY.

23 THEN THE ONLY OTHER POSSIBILITY THAT HE GAVE YOU WAS
24 THE BAG BELONGS TO MR. JOHNSON. AND THE BAG DOES BELONG
25 TO MR. JOHNSON.

1 HE SAID SOMETHING ABOUT IF YOU HEAR PEOPLE RUNNING
2 AND OR IF PEOPLE ARE OUT IN THE AREA AND THEY HEAR SIRENS,
3 THEN THEY'RE GOING TO DITCH THE DRUGS.

4 WELL, LADIES AND GENTLEMEN, THAT'S WHAT HAPPENED
5 HERE. I MEAN, HE KNEW THE POLICE WERE AFTER HIM SO HE
6 DITCHED THE DRUGS. THIS IS MONEY. THIS ISN'T -- I KEEP
7 POINTING TO THE BAG LIKE THE COCAINE IS STILL IN IT. BUT
8 THIS IS MONEY TO HIM. IT'S NOT COCAINE AS HE IS GOING TO
9 USE IT. IT IS MONEY BECAUSE HE IS GOING TO SELL IT. LOOK
10 HOW MUCH IT IS.

11 I MEAN, DETECTIVE TURNER SAID 1 GRAM IS THE NORMAL
12 SALE. SO IF THIS IS PERSONAL USE FOR 250 DAYS OF THE
13 YEAR, IT'S JUST NOT -- AND THAT'S MONEY. AND SO HE
14 DOESN'T LEAVE IT IN THE CAR BECAUSE HE DOESN'T WANT
15 OFFICER FITTERY TO GET IT.

16 LADIES AND GENTLEMEN, I SUBMIT TO YOU THIS IS WHAT
17 HAPPENED. HE TAKES THE BAG AND HE RUNS. AND HE GOES OVER
18 AND HE FINDS A PLACE TO HIDE IT, AND IT'S NOT -- I MEAN,
19 IF IT WAS SOME THIRD PARTY HIDING IT, THEY WOULDN'T JUST
20 LEAVE IT OUT IN THE OPEN LIKE THIS.

21 THEY WOULD, YOU KNOW, AT LEAST PUT IT UNDER THERE OR
22 SOMEWHERE FURTHER THAT'S NOT RIGHT INSIDE OF THE DOOR.
23 THIS LOOK HAPHAZARDLY THROWN IN THERE. AND YOU CAN SEE
24 THAT FOR YOURSELVES.

25 AND YOU CAN SEE THAT THERE ARE BUSHES IN THE YARD,

1 BUT OBVIOUSLY A PERSON COULD GO IN THAT DOOR. SO HE
2 REALLY HAD THOUGHT HE HAD FOUND THE PERFECT SPOT TO HIDE
3 THOSE DRUGS.

4 THEN HE GOES UP TO THE PYLANTS. AND THIS IS
5 IMPORTANT. WHAT HE SAYS ON THE PHONE IS IMPORTANT.
6 MR. PYLANT REMEMBERS HIM BECAUSE HE STATES -- AND FIRST OF
7 ALL, LET ME SHOW YOU THIS PICTURE.

8 HE COMES TO HIS BACK DOOR AND IT'S, YOU KNOW, THE
9 DOOR AT THE BACK OF HIS HOUSE WHICH IS A LITTLE UNUSUAL.
10 IN STATE'S EXHIBIT NUMBER FOUR YOU'LL SEE THAT THEY
11 INDICATED -- OFFICER RUTLAND INDICATED THAT'S THE LIGHT OF
12 THEIR PORCH, THE PYLANT'S PORCH.

13 SO THIS MAN COMES TO THE DOOR, THE BACK DOOR. THEY
14 DON'T KNOW HIM. BUT HE IS WELL-DRESSED AND HE REMEMBERS
15 HIM. AND HE DECIDES TO LET HIM USE THE PHONE. BUT HE
16 DOESN'T LET HIM IN THE HOUSE. HE KEEPS HIM OUTSIDE AND
17 LETS HIM USE HIS PHONE AND STANDS THERE.

18 THE MAN MAKE THE CALL. WHAT DOES OFFICER -- I CALL
19 HIM OFFICER, BUT HE IS ACTUALLY AN AIRMAN. AIRMAN PYLANT
20 TELL YOU? HE HEARS HIM SAY, IT'S YOUR COUSIN, YOU NEED TO
21 COME PICK ME UP. YOU KNOW, IT'S YOUR COUSIN.

22 AND HE GIVE YOU AN EXAMPLE ABOUT THE LADY IN THE BAR
23 AND, YOU KNOW, I HAVE AN APPOINTMENT. THE DEFENDANT WAS
24 NOT SAYING HIS NAME BECAUSE HE DIDN'T WANT AIRMAN PYLANT
25 TO KNOW WHO HE WAS BECAUSE THINK ABOUT IT.

1 YOU'VE HEARD ABOUT THE CAR THAT HE'S WRECKED AND RUN
2 OFF FROM. YOU HEARD HIM SAY IT BELONGED TO SOMEBODY ELSE.
3 SO YOU CAN'T TIE THE CAR TO HIM. IF THE PYLANTS CAN'T SAY
4 HIS NAME, THEN THEY STILL DON'T KNOW HIS NAME.

5 THEY JUST KNOW THAT HIS COUSIN IS COMING TO GET HIM.
6 AND THE COUSIN CALLS BACK SEVERAL TIMES AND ASKS FOR
7 DIRECTIONS TO COME GET HIM.

8 NOW, WHEN OFFICER RUTLAND SEES HIM, HE IS STANDING UP
9 THERE BY THE TRASHCAN. HE SAID HE WAS STANDING. NOT
10 WALKING. AND I THINK THAT'S SIGNIFICANT BECAUSE I WOULD
11 SUBMIT TO YOU THAT HE STASHED THOSE DRUGS AND HE HAD TWO
12 HOPES.

13 ONE WAS -- HIS FIRST HOPE WAS THAT HIS COUSINS WOULD
14 GET THERE AND PICK HIM UP. THEY'D GET OUT OF THERE,
15 ESCAPE OR, YOU KNOW, ELUDE THE POLICE AND GET AWAY AND
16 COME BACK AND GET THE DRUGS LATER.

17 OR IF WORSE CAME TO WORSE AND HE KNEW HE WAS DRIVING
18 UNDER SUSPENSION AND COULD GET ARRESTED, YOU KNOW, HE HID
19 THEM IN A PLACE THAT HE COULD DIRECT SOMEBODY ELSE TO OR
20 HE COULD COME BACK LATER WHEN HE GETS OUT OF JAIL BECAUSE
21 HE WALKS UP TO OFFICER RUTLAND WHEN HE SEES HIM, HE
22 DOESN'T RUN BECAUSE THAT'S SUSPICIOUS, HE JUST WALKS RIGHT
23 UP TO HIM BECAUSE HE KNOWS HE DOESN'T HAVE THE BAG ANY
24 MORE. HE STASHED THE BAG.

25 LADIES AND GENTLEMEN, IT'S JUST NOT REASONABLE TO

1 THINK -- IF YOU THINK ABOUT THE THINGS THAT WE KNOW
2 HAPPENED AND YOU SAW HAPPENED. YOU SAW THE TRAFFIC STOP.
3 YOU SEE HIM RUN. YOU SEE HIM WITH THE BAG IN HIS HAND,
4 THE BLACK BAG AS OFFICER FITTERY IDENTIFIED AS BEING THIS
5 BLACK BAG.

6 YOU KNOW HE CHASES HIM UP THIS PATH BECAUSE THAT'S
7 WHAT HE TESTIFIED TO, AND LOSES HIM SOMEWHERE ALONG THE
8 WAY.

9 YOU KNOW THAT OFFICER RUTLAND FINDS HIM OVER HERE ON
10 MAY STREET, WHICH IS STILL IN THE SAME AREA AND AFTER HE'S
11 MADE THIS PHONECALL -- BECAUSE MR. PYLANT IDENTIFIED HIM.

12 HE DOESN'T KNOW HIM, BUT HE REMEMBERED EXACTLY WHAT
13 HE WAS WEARING AND DESCRIBED IT TO YOU AND IDENTIFIED HIM
14 WHEN THE DEFENSE ATTORNEY ASKED, THAT THAT WAS THE MAN WHO
15 MADE THE CALL.

16 IT IS JUST NOT REASONABLE TO THINK THAT MR. JOHNSON
17 IS RUNNING HERE WITH HIS BLACK BAG. THE DEFENDANT IS
18 RUNNING, RUNNING, RUNNING, DITCHES THE BAG AND COMES OUT
19 HERE AND ALL OF A SUDDEN HAS NO BAG, AND THAT IT'S JUST
20 SOMEBODY ELSE'S BLACK BAG.

21 I MEAN, LADIES AND GENTLEMEN, YOU'RE PICKED AS A JURY
22 FOR YOUR COMMON SENSE. USE YOUR COMMON SENSE. THINGS
23 HAPPEN EVERY DAY THAT YOU DON'T SEE BUT YOU KNOW THAT IT
24 HAPPENED.

25 RAINING IS A COMMON EXAMPLE BECAUSE YOU'RE STUCK IN

1 HERE AND YOU CAN'T SEE OUT OF THE WINDOWS. IF WE HAD EYE
2 WITNESSES TO EVERYTHING, THEN WE'LL NEVER HAVE TRIALS.
3 PEOPLE WOULD JUST PLEAD GUILTY.

4 WE'RE BRINGING YOU THE BEST EVIDENCE WE HAVE AND IN
5 PROVING THE CASE CIRCUMSTANTIALY AND DIRECTLY. AND THE
6 JUDGE IS GOING TO TELL YOU CIRCUMSTANTIAL EVIDENCE IS JUST
7 AS GOOD AS ANY OTHER EVIDENCE. YOU CAN WEIGH IT EQUALLY.

8 IT'S JUST NOT LOGICAL OR REASONABLE TO THINK THAT
9 THERE IS SOME OTHER PERSON IN THIS NEIGHBORHOOD OR IN THIS
10 AREA THAT JUST HAPPENS TO ALSO HAVE A BLACK BAG THAT
11 OFFICER FITTERY IDENTIFIED AND ASKED ABOUT IMMEDIATELY
12 UPON COMING UP TO THE SCENE. IT'S JUST NOT -- IT'S NOT
13 REASONABLE.

14 AND I WOULD ASK YOU TO USE YOUR COMMON SENSE AND
15 APPLY IT TO THE SITUATION AT HAND. AND THINK ABOUT FILA.
16 AGAIN, FILA HAS BEEN CRITICIZED A LOT, AND SHE'S NOT IN
17 THE COURTROOM, AND I KIND OF WISH SHE WAS BECAUSE Y'ALL
18 WOULD PROBABLY LIKE HER THE BEST OF ANYBODY.

19 SHE'S A PRETTY DOG. BUT FILA HAS NO -- SHE DOESN'T
20 KNOW MR. JOHNSON. HE HASN'T SEEN THE BAG. FILA JUST
21 KNOWS IF SHE CAN FIND THIS ODOR, SOURCE ODOR OF NARCOTICS,
22 SHE MIGHT GET HER REWARD, AND THAT'S HER JOB. THAT'S WHAT
23 SHE'S TRAINED TO DO.

24 AND THAT'S WHAT SHE DID. SHE STARTED HERE AT THE CAR
25 WHERE SHE SMELLED THE NARCOTICS THAT WERE IN THE CAR WHEN

1 MR. JOHNSON WAS DRIVING IT. SHE FOLLOWED THE PATH THAT
2 MR. JOHNSON RAN WHILE HE WAS CARRYING THE BAG WITH THE
3 PERMEABLE PLASTIC THAT MR. BRADSHAW SAID ODORS CAN COME
4 OUT OF, AND IT'S GOING ALL OF THE WAY TO THE POINT WHERE
5 IT STOPS AND SHE FIND IT. AND WHAT SHE FINDS IS
6 MR. JOHNSON'S BAG.

7 NOW, JUST ONE FINAL POINT I'D LIKE TO MENTION TO YOU
8 IS THE SCHOOL. THERE'S BEEN TESTIMONY THAT YOU HEARD THAT
9 IT IS WITHIN A HALF MILE RADIUS OF NORTH AUGUSTA MIDDLE
10 SCHOOL.

11 AND IF YOU SEE WHERE HE WAS STOPPED, YOU'LL SEE THAT
12 THE ROAD LEADS RIGHT TO THE MIDDLE SCHOOL AND IS IN FACT
13 VERY CLOSE. SO HE IS CLOSE ENOUGH TO THE SCHOOL. THERE
14 IS NO DOUBT ABOUT THAT.

15 LADIES AND GENTLEMEN, THIS COCAINE IS LIKE MONEY IN
16 THE BANK. AND I WOULD SUBMIT TO YOU THAT WHEN MR. JOHNSON
17 BOUGHT THE COCAINE, HE DIDN'T WRITE A CHECK FROM REGIONS
18 FOR IT. HE PROBABLY PAID CASH.

19 BUT IT IS MONEY TO HIM. IT'S VALUABLE. THAT'S WHY
20 HE GETS OUT OF THE CAR RUNNING WITH IT IN HIS BLACK BAG,
21 TAKES THAT ROUTE, STASHES IT, MAKES A PHONECALL FROM THE
22 PYLANT'S HOPING TO GET PICKED UP AND TAKEN OUT OF THE
23 AREA, AND THAT'S WHY HE GETS STOPPED THERE BECAUSE HE'S IN
24 THE AREA BECAUSE HE'S THE PERSON THAT HAD THE DRUGS AND
25 THIS IS HIS BLACK BAG.

1 I TOLD YOU AT THE BEGINNING THE CASE IS ABOUT A BLACK
2 BAG. ALL OF THE EVIDENCE IS IN. YOU'LL SEE THE TAPES AND
3 THE PICTURES AND THE BAG IN MR. JOHNSON'S HAND. YOU'LL
4 SEE THE LOCATION. YOU'VE HEARD WHAT THE WITNESSES
5 TESTIFIED TO.

6 LADIES AND GENTLEMEN, USE YOUR COMMON SENSE. THIS IS
7 MR. JOHNSON'S BAG. THIS IS MR. JOHNSON'S COCAINE. AND
8 YOU MUST FIND HIM GUILTY OF TRAFFICKING AND POSSESSION
9 WITH INTENT TO DISTRIBUTE BASED ON THE EVIDENCE. THANK
10 YOU.

11 THE COURT: MR. FOREMAN, LADIES AND GENTLEMEN OF THE
12 JURY, MY INSTRUCTIONS OR CHARGE IS PROBABLY 12 TO 15
13 MINUTES. DO YOU NEED A BATHROOM BREAK. EVERYBODY OKAY?
14 LET'S TAKE ABOUT A 10 MINUTE BREAK SO YOU CAN USE THE
15 RESTROOM AND STRETCH YOUR LEGS.

16 DO NOT DISCUSS THE CASE. DO NOT START DELIBERATIONS
17 UNTIL YOU COME BACK AND I'LL INSTRUCT YOU AND GIVE YOU THE
18 CASE. EVERYBODY ELSE REMAIN SEATED.

19 (JURY LEFT THE COURTROOM AT 11:39 AM.)

20 THE COURT: WE'LL STAND AT EASE FOR ABOUT 10 MINUTES.

21 (WHEREUPON, A BREAK WAS TAKEN.)

22 THE COURT: ANYTHING BEFORE ME BRING -- READY FOR THE
23 JURY ON BEHALF OF THE STATE?

24 MRS. YOUNG: YES, SIR YOUR HONOR.

25 THE COURT: MR. WATSON?

1 MR. WATSON: NOTHING FURTHER, YOUR HONOR.

2 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
3 APPROXIMATELY 12:00 PM.)

4 THE COURT: EVERYONE GET THEIR ORDER? PLACE YOUR
5 ORDER. HERE'S WHAT WE'RE GOING TO DO. MY CHARGE OR
6 INSTRUCTIONS 10, 12, 15 MINUTES AT THE MOST. ONCE WE DO
7 THAT, I'LL THEN TURN THE CASE OVER TO Y'ALL. AND
8 HOPEFULLY THE MEALS, THE LUNCHES WILL BE HERE WITHIN NOT
9 TOO LONG.

10 SO, WHEN THE MEALS GET HERE, YOU CAN CONTINUE TO
11 DELIBERATE OR YOU CAN BREAK WHILE YOU EAT, OR MR. FOREMAN,
12 THAT WILL BE UP TO HOWEVER Y'ALL WANT TO HANDLE IT. BUT
13 IF YOU DECIDE TO BREAK AND SOME OF YOU GO DOWN -- YOU NEED
14 TO STAY TOGETHER, SO LET ME KNOW IF YOU WANT TO DO OTHER
15 THAN STAYING THERE...

16 THE FOREPERSON: YES, SIR.

17 THE COURT: ALL RIGHT.

18 JURY CHARGE

19 THE COURT: MR. FOREMAN, LADIES AND GENTLEMEN OF THE
20 JURY, LET ME REMIND YOU AGAIN THE FACT THAT IN THIS CASE
21 THE DEFENDANT WAS ARRESTED, CHARGED AND INDICTED FOR
22 TRAFFICKING IN COCAINE AND POSSESSION WITH INTENT TO
23 DISTRIBUTE COCAINE WITHIN PROXIMITY OF A SCHOOL, AS I TOLD
24 YOU A NUMBER OF TIMES, THAT IS NOT EVIDENCE IN THE CASE
25 AND CANNOT BE CONSIDERED BY YOU AS EVIDENCE OF GUILT IN

1 THE CASE NOR DOES IT CREATE ANY PRESUMPTIONS OR INFERENCE
2 OF GUILT.

3 THE INDICTMENTS ARE SIMPLY THE DOCUMENTS BY WHICH THE
4 CHARGES ARE MADE AGAINST THE DEFENDANT. IT IS THE FORMAL
5 DOCUMENT BY WHICH -- OR DOCUMENTS BY WHICH THE CASE IS
6 BROUGHT INTO THE COURTROOM.

7 AS TO BOTH OF THESE INDICTMENTS THE DEFENDANT HAS
8 PLED NOT GUILTY. AND THAT PLEA PUTS THE BURDEN ON THE
9 STATE OF SOUTH CAROLINA TO PROVE THE DEFENDANT GUILTY
10 BEYOND A REASONABLE DOUBT.

11 A PERSON CHARGED WITH COMMITTING A CRIMINAL OFFENSE
12 IN SOUTH CAROLINA IS NEVER, NEVER REQUIRED TO PROVE
13 HIMSELF INNOCENT. I CHARGE AND INSTRUCT YOU IT IS A VERY
14 IMPORTANT CONSTITUTIONAL RULE OF LAW THAT A DEFENDANT IN A
15 CRIMINAL TRIAL, NO MATTER WHAT THE SERIOUSNESS OF THE
16 CHARGES MAY BE, WILL ALWAYS BE PRESUMED TO BE INNOCENT OF
17 THE CRIME FOR WHICH THE INDICTMENTS WERE ISSUED UNLESS
18 GUILT HAS BEEN PROVEN BY THE STATE BY EVIDENCE SATISFYING
19 YOU OF THAT GUILT BEYOND A REASONABLE DOUBT.

20 THIS PRESUMPTION OF INNOCENCE DOES NOT END WHEN YOU
21 BEGIN YOUR DELIBERATIONS BUT IT STAYS WITH THE DEFENDANT
22 THROUGHOUT THE TRIAL UNTIL YOU REACH A VERDICT OF GUILT
23 BASED ON EVIDENCE SATISFYING YOU OF THAT GUILT BEYOND A
24 REASONABLE DOUBT.

25 WHAT IS A REASONABLE DOUBT UNDER THE LAW? OUR STATE

1 SUPREME COURT HAS SORT OF SUCCINCTLY OR SHORTLY STATED
2 THAT A REASONABLE DOUBT IS THE KIND OF DOUBT THAT WOULD
3 CAUSE A REASONABLE PERSON TO HESITATE TO ACT.

4 A REASONABLE DOUBT IS THE KIND OF DOUBT THAT WOULD
5 CAUSE A REASONABLE PERSON TO HESITATE TO ACT. AS I TOLD
6 YOU AT THE BEGINNING OF THE CASE, YOU AND I HAVE HAD
7 CERTAIN DUTIES TO PERFORM.

8 AS THE TRIAL JUDGE IT – AS THE TRIAL JUDGE IT'S BEEN
9 MY RESPONSIBILITY TO RULE ON THE ADMISSIBILITY OF THE
10 EVIDENCE OFFERED DURING THE TRIAL. AND AS I TOLD YOU
11 EARLIER, I SUSPECTED THAT JUST ABOUT EVERYTHING WOULD COME
12 INTO THE RECORD. THERE WERE A FEW THINGS I SAID NOT TO,
13 BUT YOU CAN CONSIDER ANYTHING THAT WAS ADMITTED INTO THE
14 TRIAL OF THE CASE IN DECIDING WHAT THE TRUE FACTS ARE.

15 YOU CAN CONSIDER ALL OF THE TESTIMONY THAT'S COME
16 FROM THE WITNESS STAND AND ALL OF THE EXHIBITS THAT HAVE
17 BEEN MADE A PART OF THE RECORD IN THIS CASE.

18 I ALSO TOLD YOU IT IS MY DUTY AND MY RESPONSIBILITY
19 TO CHARGE YOU THE LAW IN THE CASE. I AM, MY POSITION, THE
20 SOLE JUDGE OF THE LAW AND IT IS YOUR DUTY AS JURORS TO
21 ACCEPT THE LAW AS I GIVE IT TO YOU.

22 AND AS I TOLD YOU AT THE BEGINNING, IF YOU HAVE SOME
23 PRECONCEIVED IDEA ABOUT WHAT THE LAW IS OR SHOULD BE, YOU
24 MUST SET THAT ASIDE AND ACCEPT THE LAW AS I GIVE IT TO
25 YOU.

1 I -- I KEEP SAYING I -- MY POSITION. I AM THE JUDGE
2 OF THE LAW IN THE CASE. Y'ALL HAVE TO TAKE THE LAW AS I
3 GIVE IT TO YOU. JUST AS IMPORTANT AS I AM THE SOLE AND
4 EXCLUSIVE JUDGE OF THE LAW IN THE CASE, YOU 12 PEOPLE
5 ACTING COLLECTIVELY, YOU 12 JURORS, Y'ALL BECOME THE SOLE
6 AND EXCLUSIVE JUDGE OF THE FACTS IN THE CASE.

7 Y'ALL CAN'T TELL ME WHAT THE LAW IS. I CAN'T TELL
8 YOU WHAT THE FACTS ARE. SO IF AT ANY TIME DURING THIS
9 TRIAL OF THIS CASE I HAVE SMILED OR FROWNED OR YAWNED OR
10 LOOKED DISGUSTED OR LOOKED HAPPY AND YOU THINK I'VE HAD
11 SOME FEELING ABOUT THE FACTS IN THE CASE, PLEASE DISREGARD
12 ANY OF THAT BECAUSE I CANNOT HAVE ANY OPINION WHATSOEVER
13 ABOUT THE FACTS IN THE CASE. THAT IS SOLELY YOUR DUTY.

14 SO IF I HAVE DONE ANYTHING TO MAKE YOU FEEL LIKE I
15 HAD SOME FEELING ABOUT THE FACTS, PLEASE SET THAT ASIDE
16 BECAUSE I AM NOT ALLOWED TO, NOR DO I HAVE ANY OPINION
17 ABOUT THE FACTS IN THE CASE. THAT IS FOR YOU, THE JURY,
18 TO DETERMINE.

19 YOU ARE THE FACT FINDERS IN THE CASE. YOU DETERMINE
20 THE EFFECT, THE VALUE, THE WEIGHT AND MAINLY AND MOST
21 IMPORTANTLY THE TRUTH OF THE EVIDENCE PRESENTED DURING THE
22 TRIAL.

23 THERE ARE TWO TYPES OF EVIDENCE WHICH ARE GENERALLY
24 PRESENTED DURING THE TRIAL. ONE IS CALLED DIRECT EVIDENCE
25 AND THE OTHER IS CALLED CIRCUMSTANTIAL EVIDENCE.

1 DIRECT EVIDENCE IS THE TESTIMONY OF A PERSON WHO
2 CLAIMS TO HAVE ACTUAL KNOWLEDGE OF A FACT SUCH AS AN EYE
3 WITNESS. IT IS EVIDENCE WHICH IMMEDIATELY ESTABLISHES THE
4 MAIN FACT TO BE PROVEN.

5 I THINK SOME OF THE LAWYERS IN THEIR CLOSING -- AND I
6 USE IT A LOT UP HERE -- DIRECT EVIDENCE IS IF YOU WALK
7 OUTSIDE AND IT'S RAINING AND YOU GET WET, THAT'S DIRECT
8 EVIDENCE IT'S RAINING.

9 CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN OF FACTS
10 AND CIRCUMSTANCES INDICATING THE EXISTENCE OF A FACT.
11 CIRCUMSTANTIAL EVIDENCE IS BASED ON INFERENCE AND NOT ON
12 PERSONAL KNOWLEDGE OR OBSERVATION.

13 TAKE THAT EXAMPLE ONE STEP FURTHER. YOU WALK OUTSIDE
14 AND IT IS NOT RAINING AND YOU DO NOT GET WET, THERE ARE
15 MUD PUDDLES EVERYWHERE AND THE CARS ARE WET. YOU CAN
16 INFER THROUGH CIRCUMSTANTIAL EVIDENCE, IE, THE MUD PUDDLES
17 AND THE WET CARS, THAT IT HAS JUST RECENTLY RAINED.
18 THAT'S CIRCUMSTANTIAL EVIDENCE.

19 THE MAIN THING ABOUT THOSE TWO TYPES OF EVIDENCE IS
20 THAT THE LAW MAKES ABSOLUTELY NO DISTINCTION BETWEEN THE
21 WEIGHT OR VALUE TO BE GIVEN EITHER TO CIRCUMSTANTIAL OR
22 DIRECT EVIDENCE, NOR IS A GREATER DEGREE OF CERTAINTY
23 REQUIRED OF CIRCUMSTANTIAL EVIDENCE THAN THAT OF DIRECT
24 EVIDENCE.

25 IN OTHER WORDS, YOU TREAT THEM BOTH THE SAME AND YOU

1 GIVE THEM WHAT WEIGHT, IF ANY, YOU WANT TO GIVE ALL THE
2 EVIDENCE IN THE CASE.

3 AFTER WEIGHING ALL OF THE EVIDENCE, IF YOU ARE NOT
4 CONVINCED OF THE GUILT OF THE DEFENDANT BEYOND A
5 REASONABLE DOUBT, THEN YOU MUST FIND THE DEFENDANT NOT
6 GUILTY.

7 SO, THERE ARE TWO TYPES OF EVIDENCE, DIRECT AND
8 CIRCUMSTANTIAL. THEY BOTH WEIGH THE SAME UNDER THE EYES
9 OF THE LAW. YOU GIVE IT WHATEVER WEIGHT YOU DEEM IS
10 NECESSARY IN MAKING YOUR DECISION. YOU TREAT THEM BOTH
11 THE SAME.

12 NOW, IN WEIGHING EVIDENCE AND IN DETERMINING WHAT
13 EVIDENCE YOU BELIEVE AND IN DETERMINING WHAT THE TRUE
14 FACTS ARE IN THE CASE, YOU OBVIOUSLY MUST DETERMINE THE
15 CREDIBILITY OF THE WITNESSES WHO HAVE TESTIFIED IN THE
16 CASE.

17 CREDIBILITY SIMPLY MEANS BELIEVABILITY. WHO DO YOU
18 BELIEVE? WHAT DO YOU BELIEVE? IT IS YOUR DUTY AS JURORS
19 TO ANALYZE AND TO EVALUATE THE EVIDENCE AND DETERMINE
20 WHICH EVIDENCE CONVINCES YOU OF ITS TRUTH.

21 YOU HEARD BOTH SIDES SAY, USE YOUR COMMON SENSE. YOU
22 ARE ADULTS. YOU USE YOUR ORDINARY COMMON SENSE IN
23 ANALYZING AND DETERMINING WHAT EVIDENCE YOU DETERMINE TO
24 BE TRUE OR WHAT CONVINCES YOU THAT IT'S TRUE.

25 IN DETERMINING THE BELIEVABILITY OR CREDIBILITY OF

1 WITNESSES WHO HAVE TESTIFIED IN THE CASE YOU MAY BELIEVE
2 ONE WITNESS OVER SEVERAL WITNESSES, SEVERAL WITNESSES OVER
3 ONE WITNESS.

4 YOU MAY BELIEVE A PART OF THE TESTIMONY OF A WITNESS
5 AND REJECT THE REMAINING PART. YOU MAY BELIEVE EVERYTHING
6 A WITNESS SAYS OR REJECT EVERYTHING A WITNESS SAYS.

7 IN OTHER WORDS, YOU HAVE THE RIGHT TO DETERMINE WHAT
8 YOU BELIEVE IS THE TRUE FACTS AND THE TRUE EVIDENCE IN THE
9 CASE.

10 YOU MAY CONSIDER WHETHER ANY WITNESS HAS EXHIBITED TO
11 YOU ANY INTEREST, BIAS, PREJUDICE OR OTHER MOTIVE IN THE
12 CASE AND YOU MAY ALSO CONSIDER HOW THE WITNESS APPEARED
13 AND HIS MANNER OR HER MANNER WHILE ON THE WITNESS STAND.

14 YOU DEAL WITH THAT DAY IN AND DAY OUT DEALING WITH
15 PEOPLE'S CREDIBILITY. YOU'RE TO DO THAT HERE IN THIS
16 COURTROOM AND DECIDE AND DETERMINE WHAT EVIDENCE WAS TRUE,
17 WHO YOU BELIEVE.

18 ONCE YOU DETERMINE THOSE TRUE FACTS, YOU APPLY THOSE
19 TRUE FACTS TO THE LAW AS I WILL GIVE IT TO YOU AND
20 CONTINUE TO GIVE IT TO YOU.

21 WE HAD A COUPLE OF WITNESSES WHO TESTIFIED AS
22 EXPERTS. I TOLD YOU WHILE -- WHEN WE QUALIFIED THOSE
23 PEOPLE THAT NORMALLY PEOPLE CANNOT TESTIFY ABOUT OPINIONS
24 OR CONCLUSIONS.

25 AN EXCEPTION DEALS WITH THOSE WITNESSES WE CALL

1 EXPERT WITNESSES. A WITNESS WHO BY EDUCATION AND
2 EXPERIENCE HAS BECOME AN EXPERT IN SOME ART, SCIENCE,
3 PROFESSION OR CALLING MAY STATE AN OPINION AS TO RELEVANT
4 AND MATERIAL MATTERS IN THE TRIAL AND IN WHICH THE WITNESS
5 CLAIMS TO BE AN EXPERT. HE CAN ALSO GIVE THE REASONS FOR
6 THAT OPINION.

7 YOU SHOULD CONSIDER ANY EXPERT OPINION RECEIVED IN
8 EVIDENCE IN THIS CASE AND LIKE ANY OTHER EVIDENCE -- AND
9 LIKE ANY OTHER EVIDENCE GIVE IT THE WEIGHT YOU THINK IT
10 DESERVES.

11 IF YOU DECIDE THAT THE OPINION OF AN EXPERT WITNESS
12 IS NOT BASED ON SUFFICIENT EDUCATION AND EXPERIENCE OR IF
13 YOU CONCLUDE THE REASONS GIVEN IN SUPPORT OF THE OPINION
14 ARE NOT SOUND OR THAT THE OPINION IS OUTWEIGHED BY OTHER
15 EVIDENCE, YOU MAY DISREGARD THE OPINION ENTIRELY.

16 AN EXPERT WITNESS'S TESTIMONY IS TO BE GIVEN NO
17 GREATER WEIGHT THAN THAT OF ANY OTHER WITNESS SIMPLY
18 BECAUSE THE WITNESS IS AN EXPERT. FURTHER, YOU'RE NOT
19 REQUIRED TO ACCEPT AN EXPERT'S OPINION EVEN THOUGH IT IS
20 NOT CONTRADICTED.

21 IN THIS CASE THE DEFENDANT DID NOT TESTIFY. I CHARGE
22 AND INSTRUCT YOU AND EMPHASIZE THAT THE FACT THE DEFENDANT
23 DID NOT TESTIFY IS NOT, IS NOT A FACTOR TO BE CONSIDERED
24 BY YOU IN ANY WAY IN YOUR DELIBERATION AND IN YOUR
25 CONSIDERATION ON THE QUESTION OF THE GUILT OR INNOCENCE OF

1 THE DEFENDANT.

2 IT MUST NOT BE CONSIDERED BY YOU IN ANY MANNER
3 WHATSOEVER. A DEFENDANT HAS THE CONSTITUTIONAL RIGHT TO
4 REMAIN SILENT. AND THE ASSERTION OF THAT RIGHT MUST NOT
5 BE CONSIDERED BY YOU IN YOUR DELIBERATIONS.

6 I REPEAT. UNDER YOUR OATH YOU'RE TO DRAW ABSOLUTELY
7 NO CONCLUSION WHATSOEVER FROM THE FACT THAT THE DEFENDANT
8 IN THIS CASE DID NOT TESTIFY. THE FACT THAT HE DID NOT
9 TESTIFY SHOULD NOT EVEN BE DISCUSSED IN THE JURY ROOM
10 DURING YOUR DELIBERATIONS.

11 THE BURDEN OF PROOF IS ON THE STATE OF SOUTH
12 CAROLINA. THE DEFENDANT IS NOT REQUIRED TO PROVE HIS
13 INNOCENCE. THE BURDEN OF PROOF REMAINS ON THE STATE TO
14 PROVE GUILT BEYOND A REASONABLE DOUBT.

15 NOW, MR. FOREMAN, LADIES AND GENTLEMEN OF THE JURY,
16 THOSE THINGS I HAVE JUST TOLD YOU, THEY APPLY TO CRIMINAL
17 CASES THAT I TRY ALL OVER THE STATE, WHETHER I'M IN
18 SPARTANBURG, CHARLESTON OR AIKEN OR WHEREVER.

19 THAT'S GENERAL INSTRUCTIONS DEALING WITH ALL CRIMINAL
20 CASES. REASONABLE DOUBT, CREDIBILITY OF WITNESSES, MY
21 DUTY, YOUR DUTY, FAILURE OF THE DEFENDANT TO TESTIFY,
22 PRESUMPTION OF INNOCENCE. THOSE ARE GENERAL PROPOSITIONS
23 THAT DEAL WITH ALL DEFENDANTS.

24 NOW WHAT I WANT TO TELL YOU IS WHAT HE IS CHARGED
25 WITH, WHAT HE'S INDICTED FOR. I NEED TO TELL YOU WHAT THE

1 ELEMENTS OF THOSE INDICTMENTS ARE OR THOSE OFFENSES ARE.
2 AND OBVIOUSLY THE STATE HAS TO PROVE THOSE ELEMENTS TO YOU
3 BEYOND A REASONABLE DOUBT.

4 THERE ARE TWO INDICTMENTS. I'LL TALK ABOUT THE
5 TRAFFICKING ONE FIRST.

6 THE DEFENDANT IS CHARGED WITH TRAFFICKING IN COCAINE.
7 THE STATE OF SOUTH CAROLINA MUST PROVE BEYOND A REASONABLE
8 DOUBT THAT THE DEFENDANT WAS KNOWINGLY IN ACTUAL OR
9 CONSTRUCTIVE POSSESSION OF COCAINE.

10 VERY SIMPLE. THE STATE MUST PROVE BEYOND A
11 REASONABLE DOUBT THAT THE DEFENDANT WAS KNOWINGLY EITHER
12 IN ACTUAL OR CONSTRUCTIVE POSSESSION OF COCAINE.

13 ACTUAL POSSESSION MEANS THAT THE COCAINE WAS IN THE
14 ACTUAL PHYSICAL CUSTODY OF THE DEFENDANT. CONSTRUCTIVE
15 POSSESSION MEANS THAT THE DEFENDANT HAD DOMINION AND
16 CONTROL OR THE RIGHT TO EXERCISE DOMINION OR CONTROL OVER
17 EITHER THE COCAINE ITSELF OR THE PROPERTY ON WHICH THE
18 COCAINE WAS FOUND.

19 MERE PRESENCE AT THE SCENE WHERE THE DRUGS WERE FOUND
20 DOES NOT PROVE POSSESSION. ACTUAL KNOWLEDGE OF THE
21 PRESENCE OF THE COCAINE IS STRONG EVIDENCE OF THE
22 DEFENDANT'S INTENT TO CONTROL ITS DISPOSITION OR USE.

23 THE DEFENDANT'S KNOWLEDGE AND POSSESSION MAY BE
24 INFERRED WHEN A SUBSTANCE IS FOUND ON THE PROPERTY UNDER
25 THE DEFENDANT'S CONTROL.

1 HOWEVER, THIS INFERENCE IS SIMPLY AN EVIDENTIARY FACT
2 TO BE TAKEN INTO CONSIDERATION BY YOU ALONG WITH THE OTHER
3 EVIDENCE IN THE CASE AND TO BE GIVEN THE WEIGHT YOU DECIDE
4 IT SHOULD HAVE.

5 SO, TRAFFICKING IN COCAINE, IN ORDER TO BE PROVEN
6 GUILTY, THE STATE MUST PROVE BEYOND A REASONABLE DOUBT
7 THAT THE DEFENDANT WAS KNOWINGLY IN ACTUAL OR CONSTRUCTIVE
8 POSSESSION OF COCAINE.

9 OF COURSE, THE NEXT THING THE STATE MUST PROVE TO YOU
10 BEYOND A REASONABLE DOUBT WAS THE AMOUNT OF THE COCAINE.
11 THEY MUST PROVE NUMBER ONE IT WAS COCAINE, AND NUMBER TWO
12 THE AMOUNT.

13 AND THE AMOUNT HAS TO BE BETWEEN 200 GRAMS AND
14 400 GRAMS. IT HAS TO BE 200 OR MORE -- BETWEEN 200 OR
15 MORE THAN LESS THAN 400. BETWEEN 200 AND 400. SO THAT'S
16 TRAFFICKING. IT SIMPLY MEANS THAT HE WAS IN POSSESSION,
17 EITHER ACTUAL OR CONSTRUCTIVE, BETWEEN 200 AND 400 GRAMS
18 OF COCAINE.

19 THE OTHER INDICTMENT IS WHAT WE CALL POSSESSION WITH
20 INTENT TO DISTRIBUTE COCAINE WITHIN PROXIMITY OF A PUBLIC
21 SCHOOL.

22 IN ORDER TO PROVE THAT OFFENSE THE STATE MUST PROVE
23 BEYOND A REASONABLE DOUBT THAT THE DEFENDANT POSSESSED
24 COCAINE WITH THE INTENT TO DISTRIBUTE IT WITHIN PROXIMITY
25 OF A SCHOOL.

1 ONCE AGAIN, TO PROVE POSSESSION THE STATE MUST PROVE
2 BEYOND A REASONABLE DOUBT THAT THE DEFENDANT HAD BOTH THE
3 POWER AND THE INTENT TO CONTROL THE DISPOSITION OR USE OF
4 COCAINE. THAT POSSESSION MAY BE EITHER ACTUAL OR
5 CONSTRUCTIVE.

6 AND ONCE AGAIN, ACTUAL POSSESSION MEANS THE COCAINE
7 WAS IN THE ACTUAL PHYSICAL CUSTODY OF THE DEFENDANT OR THE
8 OTHER WAY OF POSSESSING WOULD BE BY CONSTRUCTIVE
9 POSSESSION. THAT MEANS THE DEFENDANT HAD DOMINION AND
10 CONTROL OR THE RIGHT TO EXERCISE DOMINION OR CONTROL OVER
11 EITHER THE COCAINE ITSELF OR THE PROPERTY ON WHICH THE
12 COCAINE WAS FOUND.

13 ACTUAL KNOWLEDGE OF THE PRESENCE OF THE COCAINE IS
14 STRONG EVIDENCE OF THE DEFENDANT'S INTENT TO CONTROL ITS
15 DISPOSITION OR USE. THE DEFENDANT'S KNOWLEDGE AND
16 POSSESSION MAY BE INFERRED WHEN A SUBSTANCE IS FOUND ON
17 PROPERTY UNDER THE DEFENDANT'S CONTROL.

18 THE STATE MUST ALSO PROVE BEYOND A REASONABLE DOUBT
19 THAT THE DEFENDANT INTENDED TO DISTRIBUTE THE COCAINE.
20 DISTRIBUTE MEANS TO DELIVER OTHER THAN BY ADMINISTERING OR
21 DISPENSING A DRUG. IN OTHER WORDS, IT MEANS EXACTLY WHAT
22 IT SAYS, DISTRIBUTE MEANS TO DELIVER.

23 INTENT MAY BE SHOWN BY ACTS AND CONDUCT OF THE
24 DEFENDANT AND OTHER CIRCUMSTANCES FROM WHICH YOU MAY
25 NATURALLY AND REASONABLY INFER INTENT.

1 IN DETERMINING WHETHER THE DEFENDANT HAD THE INTENT
2 TO DISTRIBUTE THE COCAINE YOU MAY CONSIDER THE
3 CIRCUMSTANCES SURROUNDING THE DEFENDANT'S ALLEGED
4 POSSESSION.

5 YOU MAY CONSIDER THE AMOUNT OF THE SUBSTANCE ALLEGED
6 TO HAVE BEEN POSSESSED, THE MANNER IN WHICH IT WAS
7 ALLEGEDLY POSSESSED, THE PLACE WHERE IT WAS ALLEGEDLY
8 POSSESSED AND OTHER FACTORS WHICH YOU CONSIDER TO BE
9 IMPORTANT.

10 YOU MUST FIND THAT THE DEFENDANT DID NOT INTEND TO
11 HAVE THE COCAINE SOLELY FOR HIS OWN USE.

12 IN OUR STATE POSSESSION OF MORE THAN 10 GRAMS OF
13 COCAINE CREATES AN INFERENCE THAT THE DEFENDANT POSSESSED
14 THE COCAINE WITH INTENT TO DISTRIBUTE IT.

15 THIS INFERENCE DOES NOT RELIEVE THE STATE FROM
16 PROVING BEYOND A REASONABLE DOUBT THAT THE DEFENDANT HAD
17 THE INTENT TO DISTRIBUTE. IT IS SIMPLY AN EVIDENTIARY
18 FACT TO BE TAKEN INTO CONSIDERATION BY YOU ALONG WITH THE
19 OTHER EVIDENCE IN THE CASE AND TO BE GIVEN THE WEIGHT YOU
20 DECIDE IT SHOULD HAVE.

21 FURTHER, THE STATE MUST PROVE BEYOND A REASONABLE
22 DOUBT THAT THE DEFENDANT UNLAWFULLY POSSESSED WITH INTENT
23 TO DISTRIBUTE COCAINE WHILE IN, ON, OR WITHIN ONE HALF
24 MILE OF THE GROUNDS OF A PUBLIC OR PRIVATE SCHOOL.

25 SO THAT'S THE OTHER CHARGE. AND THAT'S THE LAW ON

1 THAT.

2 NOW, LADIES AND GENTLEMEN, YOUR VERDICT MUST BE
3 UNANIMOUS. ALL 12 OF YOU MUST AGREE AS TO BOTH
4 INDICTMENTS. YOUR DECISION HAS TO BE BASED SOLELY ON THE
5 EVIDENCE AS YOU PERCEIVE IT TO BE, HOW YOU FIND IT TO BE.

6 TAKE THAT EVIDENCE AND BASE IT ON THE LAW AS I EVEN
7 GIVEN IT TO YOU. IT CAN'T BE BASED ON ANY ARBITRARY
8 DECISION, ANY CAPRICIOUS DECISION. IT HAS TO BE BASED
9 SOLELY ON THE EVIDENCE.

10 YOU HAVE NO FRIENDS TO REWARD OR ENEMIES TO PUNISH.
11 YOU'RE HERE TO SIT AND DECIDE WHETHER THE STATE THROUGH
12 THEIR EVIDENCE HAS PROVED BEYOND A REASONABLE DOUBT THE
13 CHARGES IN BOTH INDICTMENTS.

14 THE -- AFTER YOU DELIBERATE AND YOU REACH A UNANIMOUS
15 VERDICT ON BOTH OF THEM, BOTH INDICTMENTS, THEN YOU HAVE A
16 VERDICT FORM. IT'S VERY SIMPLE.

17 IT'S ON THE FIRST ONE AS TO TRAFFICKING, WE FIND THE
18 DEFENDANT NOT GUILTY OR GUILTY.

19 AS TO THE INDICTMENT FOR POSSESSION WITH INTENT TO
20 DISTRIBUTE COCAINE WITHIN PROXIMITY OF A SCHOOL, WE FIND
21 HIM NOT GUILTY OR GUILTY.

22 YOU DECIDE EACH ONE OF THEM. IT HAS TO BE A
23 UNANIMOUS DECISION. WHATEVER YOUR DECISION IS, YOU CHECK
24 THE APPROPRIATE BOX, SIGN THE -- AS FOREPERSON.

25 AND WHEN YOU GET A VERDICT, JUST KNOCK ON THE DOOR

1 AND MRS. BARBARA OR ONE OF THE BAILIFFS WILL LET ME KNOW
2 THAT YOU HAVE A VERDICT.

3 SO, AT THIS TIME I AM GOING TO LET YOU RETIRE TO YOUR
4 JURY ROOM. MR. FOREMAN, ONCE AGAIN, DON'T START THE
5 DELIBERATIONS UNTIL I SEND ALL OF THE EVIDENCE BACK INTO
6 THE JURY ROOM.

7 SO I HAVE TO ASK THE LAWYERS IF I HAVE LEFT ANYTHING
8 OUT OF MY CHARGE, AND WE HAVE TO GET THE EVIDENCE TOGETHER
9 AND SEND IT BACK. YOU WILL BE SENT THE VIDEO DISK. IF
10 YOU WANT TO PLAY THE DISK, HOW ARE WE GOING TO DO THAT?

11 MR. WEEKS: WE HAVE A CLEAN COMPUTER OR THEY CAN
12 COME BACK OUT.

13 THE COURT: WE CAN DO IT ONE OF TWO WAYS. WE HAVE A
14 COMPUTER WE CAN SEND BACK WITH YOU AND WE'LL SEND SOMEBODY
15 TO INSTRUCT YOU ON HOW TO PUNCH THE BUTTON -- IT WON'T BE
16 ME NOR MR. WEEKS -- OR YOU CAN COME BACK OUT IF YOU WANT
17 TO SEE IT ON A LARGER SCREEN. WE CAN SHOW IT TO YOU ON
18 THE SCREEN. JUST LET US KNOW.

19 IF YOU HAVE ANY QUESTIONS OR ANY CONCERNS WHILE
20 YOU'RE DELIBERATING, PUT IT ON A PIECE OF PAPER, WRITE IT
21 OUT AND KNOCK ON THE DOOR. MRS. BARBARA AND THOSE WILL
22 HAND IT TO ME.

23 IF I CAN ANSWER IT, I WILL. IF I CAN'T, I'LL TELL
24 YOU I CAN'T AND WHY. OKAY? SO, I WILL LET YOU GO ON BACK
25 TO YOUR JURY ROOM NOW. DON'T START THE DELIBERATIONS

1 UNTIL I SEND EVERYTHING BACK WITH THE VERDICT FORM. THANK
2 YOU.

3 (WHEREUPON, THE JURY EXITED THE COURTROOM AT 12:22
4 PM.)

5 THE COURT: ANY OBJECTIONS OR REQUESTED ADDITIONS TO
6 THE JURY CHARGE ON BEHALF OF THE STATE?

7 MR. WEEKS: JUDGE -- AND WE APOLOGIZE -- BUT I THINK
8 YOUR CHARGE ON INFERENCE WAS MORE THAN 10 GRAMS. THAT'S
9 THE WAY IT'S TYPED, AND I DIDN'T CATCH IT.

10 THE COURT: WHAT IS IT?

11 MR. WEEKS: 1 GRAM. NEXT TO LAST PAGE, I BELIEVE.

12 THE COURT: ALL RIGHT. I'LL BRING THEM BACK OUT.
13 ANYTHING ELSE?

14 MR. WATSON: I HAVE NOTHING, YOUR HONOR.

15 THE COURT: BRING THEM BACK OUT ONE SECOND.

16 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
17 APPROXIMATELY 12:23 PM.)

18 THE COURT: LADIES AND GENTLEMEN AND MR. FOREMAN, I
19 WAS READING ABOUT THE -- TALKING ABOUT POSSESSION WITH
20 INTENT TO DISTRIBUTE AND WHEN WE WERE TALKING ABOUT
21 POSSESSION OF MORE THAN BLANK GRAMS OF COCAINE CREATES AN
22 INFERENCE THAT THE DEFENDANT POSSESSED THE COCAINE WITH
23 INTENT TO DISTRIBUTE, I SAID 10 GRAMS. IT'S 1 GRAM. I
24 READ MY THING WRONG.

25 SO POSSESSION OF MORE THAN 1 GRAM OF COCAINE CREATES

1 AN INFERENCE THAT THE DEFENDANT POSSESSED IT WITH INTENT
2 TO DISTRIBUTE. SO PLEASE CORRECT THAT. THAT'S MORE THAN
3 1 GRAM. OKAY. THANK YOU. YOU CAN GO BACK NOW AND WE'LL
4 SEND EVERYTHING TO YOU IN JUST A SECOND.

5 (WHEREUPON, THE JURY EXITED THE COURTROOM AT 12:24
6 PM.)

7 THE COURT: ALL RIGHT. EACH SIDE COME UP AND GO
8 THROUGH THE EXHIBITS AND MAKE SURE THAT WE HAVE
9 EVERYTHING.

10 (WHEREUPON THERE WAS A PAUSE.)

11 THE COURT: EVERYBODY IN AGREEMENT? LET THE RECORD
12 REFLECT THAT THE STATE AND DEFENSE COUNSEL, SOLICITOR AND
13 DEFENSE COUNSEL REVIEWED ALL OF THE EXHIBITS AND BOTH ARE
14 IN AGREEMENT AS TO ALL OF THEM BEING THERE AND GOING BACK
15 TO THE JURY. IS THAT CORRECT, MA'AM?

16 MRS. YOUNG: THAT'S CORRECT, YOUR HONOR.

17 THE COURT: IS THAT CORRECT, SIR?

18 MR. WATSON: THAT'S CORRECT.

19 THE COURT: THANK YOU.

20 (JURY BEGAN DELIBERATIONS AT 12:27 PM.)

21 (WHEREUPON, A BREAK WAS TAKEN.)

22 THE COURT: IS THE DEFENDANT READY TO RECEIVE THE
23 VERDICT?

24 MR. WATSON: WE ARE, YOUR HONOR.

25 THE COURT: THANK YOU.

VERDICT

(WHEREUPON, THE JURY CAME INTO OPEN COURT AT
APPROXIMATELY 2:48 PM.)

THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, I DO
NOT KNOW WHAT THE VERDICT IS, BUT I WILL NOT TOLERATE ANY
OUTBURST, CRIES, SHOUTS, WHOOPS, WHATEVER. SO IF YOU CAN
NOT CONTROL YOURSELF, I AM GOING TO ASK THAT YOU LEAVE
NOW. FAIR WARNING.

MR. FOREMAN, HAVE Y'ALL REACHED A VERDICT?

FOREMAN: YES, SIR, WE HAVE.

THE COURT: HAND IT TO THE BAILIFF RIGHT THERE FOR
ME. THANK YOU. HAVE YOUR CLIENT STAND AND RECEIVE THE
VERDICT, PLEASE.

THE CLERK: YOUR HONOR, WE HAVE STATE OF SOUTH
CAROLINA, COUNTY OF AIKEN VERSUS TREVIS EUGENE JOHNSON,
INDICTMENT NUMBER 2008-GS-02-522, TRAFFICKING COCAINE, WE
THE JURY FIND THE DEFENDANT GUILTY.

AS TO THE CHARGE OF STATE OF SOUTH CAROLINA, COUNTY
OF AIKEN VERSUS TREVIS EUGENE JOHNSON 2008-GS-02-523,
POSSESSION WITH INTENT TO DISTRIBUTE COCAINE WITHIN
PROXIMITY OF A SCHOOL, WE THE JURY FIND THE DEFENDANT NOT
GUILTY. WE UNANIMOUSLY AGREE. SIGNED BY FOREPERSON RYAN
MULLINICH DATED JANUARY 19, 2009.

LADIES AND GENTLEMEN OF THE JURY, IF THIS IS YOUR
VERDICT, PLEASE INDICATE BY RAISING YOUR RIGHT HAND. IS

1 THIS STILL YOUR VERDICT?

2 THE COURT: THANK YOU. ALL RIGHT. ANYTHING FROM THE
3 STATE FOR THE JURY BEFORE I DISMISS THEM?

4 MRS. YOUNG: NO, SIR, YOUR HONOR. THANK YOU.

5 THE COURT: HAND ME THE INDICTMENT. ANYTHING FOR THE
6 DEFENDANT?

7 MR. WATSON: MOTION FOR JNOV, YOUR HONOR, BASED ON
8 THEIR FAILURE TO--

9 THE COURT: JUST HOLD ON. WE'LL DO POST-TRIAL
10 MOTIONS. ANYTHING FOR THE JURY?

11 MR. WATSON: NO, SIR. NOTHING FOR THE JURY.

12 THE COURT: MR. FOREMAN, HOW ABOUT DO ME A FAVOR? ON
13 THE INDICTMENT FOR TRAFFICKING IN COCAINE, IF YOU WOULD
14 JUST PLEASE WRITE GUILTY AND SIGN YOUR NAME.

15 (WHEREUPON THERE WAS A PAUSE.)

16 THE COURT: ALL RIGHT. MR. FOREMAN, LADIES AND
17 GENTLEMEN OF THE JURY, I CAN'T THANK YOU ENOUGH FOR YOUR
18 WILLINGNESS TO SERVE. YOU'VE PAID JUST ABSOLUTELY CLOSE
19 ATTENTION TO THE TESTIMONY AND THE EVIDENCE AND MY
20 INSTRUCTIONS AND TO THE ARGUMENTS.

21 YOU'VE BEEN A GREAT JURY. I CAN'T THINK OF A BETTER
22 WAY TO RESOLVE DISPUTES BETWEEN CITIZENS. IN OTHER WORDS,
23 IF I AM IN A WRECK WITH YOU AND WE DECIDE WHO IS AT FAULT,
24 WE LET 12 PEOPLE DECIDE THAT.

25 IF I AM ACCUSED OF A CRIME, WE LET OUR CITIZENS

1 DECIDE WHETHER OR NOT I AM GUILTY OR NOT GUILTY. IT'S
2 MUCH BETTER THAN GOING BEFORE A DICTATOR OR ONE MAN GUY
3 LIKE THEY DO IN SO MANY OTHER COUNTRIES. THAT'S WHAT
4 MAKES THIS COUNTRY GREAT.

5 Y'ALL HAVE PARTICIPATED AND DONE YOUR DUTIES WELL. I
6 THANK YOU ON BEHALF OF THE CITIZENS OF AIKEN AND SOUTH
7 CAROLINA AS WELL AS THE JUDICIARY.

8 I WANT TO COMMEND THE LAWYERS. I THOUGHT THE LAWYERS
9 WORKED HARD FOR THEIR CLIENTS. THEY PRESENTED IT IN A
10 CIVIL WAY AND MANNERLY, AND I APPRECIATE THAT, AND I
11 APPRECIATE THEIR EFFORTS AND HARD WORK. THEY ARE AN ASSET
12 TO THE BAR.

13 HAVING SAID THAT, THIS WILL CONCLUDE YOUR SERVICE
14 THIS WEEK. CHECKS? WE HAVE YOUR CHECKS RIGHT HERE. SO
15 IF YOU WANT TO GO BACK INTO THE JURY ROOM, WE'LL GIVE YOU
16 YOUR CHECK, WORK EXCUSE, WHATEVER YOU NEED, AND THAT WILL
17 CONCLUDE YOUR SERVICE FOR THE WEEK.

18 EVERYBODY ELSE REMAIN SEATED. NOW, WHAT WE GOT LEFT
19 TO DO -- OBVIOUSLY I'VE GOT TO SENTENCE THE DEFENDANT.
20 YOU CAN SEE A WHOLE COURTROOM FULL OF PEOPLE. WE'VE
21 GOT -- HOW MANY GUILTY PLEAS WE GOT?

22 MR. WEEKS: MOSTLY MOTIONS TODAY.

23 THE COURT: WE'VE GOT MOTIONS, WE'VE GOT ABOUT SOME
24 ODD PROBATION VIOLATIONS I HAVE GOT TO DO THIS AFTERNOON.
25 WE'LL BE HERE MOST OF THE DAY TOMORROW. SO WE'VE HAD A

1 FULL WEEK AND WE'LL GET A GOOD BIT OF THIS DONE. BUT WE
2 CAN'T DO IT WITHOUT JURORS AND WE APPRECIATE Y'ALL COMING
3 AND YOUR WILLINGNESS TO SERVE.

4 SORRY WE DIDN'T GET ANYTHING FROM PUBLIX, BUT MAYBE
5 NEXT TIME. THANK Y'ALL. JUST FOLLOW MERIT, HE'LL GIVE
6 YOU THAT BIG OLD CHECK. THANK YOU, LADIES. THANK YOU,
7 SIR.

8 (WHEREUPON, THE JURY EXITED THE COURTROOM AT 2:55
9 PM.)

10 THE COURT: MR. WEEKS, YOU GOT A COPY OF THE CODE?
11 BEFORE WE DO THE SENTENCE, MR. WATSON, I'LL BE GLAD TO
12 HEAR ANY POST-TRIAL MOTIONS.

13 MR. WATSON: NUMBER ONE, I RENEW MY MOTION FOR A
14 MISTRIAL BASED ON THE CHANGE IN COMPOSITION OF THE JURY.
15 AND MY OTHER MOTION IS FOR A JUDGMENT NOTWITHSTANDING THE
16 VERDICT BASED ON THE FAILURE TO PROVE BEYOND A REASONABLE
17 DOUBT THAT MY CLIENT HAD POSSESSION OF THE DRUGS.

18 THE COURT: THANK YOU. MR. WATSON, AS I COMMENDED
19 YOU BEFORE THE JURY, I'LL COMMEND YOU AGAIN. YOU
20 CERTAINLY PERFORMED ADMIRABLY FOR YOUR CLIENT, ARGUED AS
21 FORCEFULLY AS YOU COULD AND PRESENTED THE EVIDENCE IN THE
22 LIGHT MOST FAVORABLE TO YOUR CLIENT.

23 BUT IT WAS A JURY QUESTION AS TO WHETHER OR NOT YOUR
24 CLIENT WAS IN CONSTRUCTIVE POSSESSION OF THE COCAINE. AND
25 THE JURY FOUND BASED ON THE CIRCUMSTANTIAL EVIDENCE AS

1 WELL AS THE DIRECT EVIDENCE THAT THE STATE DID PROVE IT
2 WAS GUILTY BEYOND A REASONABLE DOUBT, AND I RESPECTFULLY
3 DENY YOUR MOTIONS.

4 AS TO THE MISTRIAL, I'LL LIKEWISE DENY THAT ON THE
5 SAME REASON I GAVE AT THE TIME THAT I DID SO. IF YOU
6 WOULD HAVE MR. JOHNSON COME FORWARD, PLEASE.

7 MR. WATSON: ONE FURTHER MOTION, YOUR HONOR.

8 THE COURT: YES, SIR.

9 MR. WATSON: I'D LIKE TO MAKE A MOTION FOR A NEW
10 TRIAL AGAIN BASED ON THAT FOLLOWS LINE -- IN LINE WITH MY
11 MOTION FOR A MISTRIAL, BUT A MOTION FOR A NEW TRIAL.

12 THE COURT: RESPECTFULLY DENIED. COME FORWARD
13 PLEASE, SIR.

14 SENTENCING

15 THE COURT: MR. WATSON, I'LL BE GLAD TO HEAR FROM
16 YOU.

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

18 THE COURT: YES, SIR.

19 MR. WATSON: AS YOU KNOW, THE COURT HAS NO DISCRETION
20 IN THE SENTENCE THAT THE COURT HAS TO GIVE IN THIS CASE.
21 SO I CAN RECITE THE FACT THAT TREVIS HAS FOUR CHILDREN AGE
22 16 AND UNDER, BUT IT WOULDN'T HAVE ANY EFFECT ON THE
23 COURT, SO...

24 THE COURT: WELL, YOU KNOW, MR. WATSON, THE STATUTE
25 GIVES ME NO WIGGLE ROOM. I ASSUME THAT YOU'VE EXPLAINED

1 THAT TO YOUR CLIENT.

2 THE STATUTE SAYS THAT IF SOMEONE IS CONVICTED FOR
3 TRAFFICKING IN COCAINE BETWEEN 200 GRAMS OR MORE BUT LESS
4 THAN 400 GRAMS, A MANDATORY TERM OF IMPRISONMENT FOR 25
5 YEARS NO PART OF WHICH MAY BE SUSPENDED NOR PROBATION
6 GRANTED AND A FINE OF \$100,000. MR. JOHNSON, ANYTHING YOU
7 WANT TO TELL ME?

8 THE DEFENDANT: NO, SIR. NO, SIR.

9 THE COURT: MARK ON THERE THAT HE HAD A TRIAL.
10 MR. JOHNSON, AS YOU JUST HEARD ME TALK TO YOUR LAWYER, THE
11 STATUTE SAYS WHAT IT SAYS.

12 THE SENTENCE OF THIS COURT IS THAT YOU BE COMMITTED
13 TO THE STATE DEPARTMENT OF CORRECTIONS FOR A PERIOD OF 25
14 YEARS AND FINED \$100,000. GOOD LUCK.

15 (WHEREUPON, A BREAK WAS TAKEN.)

16 THE DEFENDANT: CAN I SEE MY WIFE AND KIDS?

17 THE COURT: PAUL, LET HIM SEE -- I AM NOT GOING TO
18 LET YOU SEE THE WHOLE FAMILY. WHO YOU GOT OUT THERE?

19 THE DEFENDANT: MY WIFE AND MY KIDS.

20 THE COURT: WIFE AND CHILDREN RIGHT THERE.

21 (END OF REQUESTED TRANSCRIPT OF RECORD.)
22
23
24
25

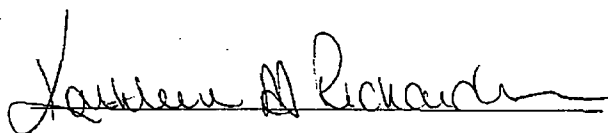
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

I, KATHLEEN RICHARDSON, RPR, CRR, OFFICIAL COURT
REPORTER FOR THE SECOND JUDICIAL CIRCUIT OF THE STATE OF
SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF
THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF
GENERAL SESSIONS FOR AIKEN COUNTY, SOUTH CAROLINA, ON THE
NINETEENTH DAY OF MARCH, 2009.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL NOR INTEREST TO ANY PARTY HERETO.

OCTOBER 20, 2009



KATHLEEN RICHARDSON, RPR, CRR

H 736941
FORM 5

2012-CP-02-102248
2008-CS-02-005437
Filed 9/6/2012
C.C.P. & G.S. - Aiken County
Trial Judge: D.A. FRANKLIN
Trial Atty.: Johnny Watson Jr.
Court Reporter: Lisa Davenport
Sec: PCR Petitioner
General Sessions
Appointed Atty.

STATE OF SOUTH CAROLINA)
COUNTY OF Aiken)
Travis Eugene Johnson #251600)
Full name and prison number (if any) of Applicant.)

IN THE COURT OF COMMON PLEAS
Time
of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original document which have been filed in my office this
POST-CONVICTION RELIEF
SEP 18 2012

v.
State of South Carolina)

INSTRUCTIONS - READ CAREFULLY

Deputy Clerk

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention McCormick Correctional Institution
2. Name and location of Court which imposed sentence Aiken County Court of General Sessions
3. Name(s) of co-defendant(s) (if any) N/A Aiken County
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2008-65-02-522
(b) _____
(c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
(a) March 19, 2009 / 25 years and \$100,000
(b) _____

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes / the judgment of conviction
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. result was submitted April 2, 2012 and filed April 25, 2012
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. only an unpublished opinion
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of Trial Counsel
- (b) Evidence disclosed after trial
- (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) see attached
- (b) evidence disclosed after trial (misheard the evidence)
- (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? no
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
- (d) any other petitions, motions or applications in this or any other Court? no

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(b) the name and location of the Court in which each was filed:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. N/A
- ii. _____
- iii. _____

ii. ~~(a) trial lawyer was ineffective for:~~

- ~~1. failure to prepare for trial~~
- ~~2. failure to request a continuance~~
- ~~3. failure to provide case law that establishes probable cause precedent~~
- ~~4. failure to request chain of custody documents associated with presented evidence (i.e. the black bag [state's exhibit 15])~~
- ~~5. failure to object to state's exhibit 15 being admitted into evidence with no valid chain of custody documents~~
- ~~6. failure to object to defense not being provided with fingerprint results before, during, or after trial.~~
- ~~7. failure to request that the jury be charged that trafficking is an enhanced possession charge~~
- ~~8. failure to request that the jury be charged that S.C. law prescribes that circumstantial evidence is not enough to convict on a charge of possession without more.~~
- ~~9. failure to request a mere presence instruction~~
- ~~10. failure to object to solicitor's statement that jury should disregard statements made by officers that implies intent to frame defendant~~
- ~~11. object to argument that misled the jury as to what evidence was presented. (i.e. "if I could blow this up you would see that this is the bag" and "if we did do a DNA test they might have found some - whose DNA might they have found? Well, Mr. Johnson's first of all.")~~

Charge

(b) ~~evidence discovered after trial (mishandled evidence)~~

~~lost evidence~~

- iv. _____
- (d) the date of each such disposition:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. N/A
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

no

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. N/A

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) This is the first opportunity to present these issues legally

(b) This is the first opportunity to present these issues legally

(c) _____

17. Were you represented by an attorney at any time during the course of:

STATE OF SOUTH CAROLINA)

County of Aiken County)

VERIFICATION

I JD being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

SWORN to and subscribed before me this 04
day of Sept, 2012.

J C Frankles (L.S.)
Notary Public

My Commission Expires: 12-16-2017

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Mr. J. E. Gads hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

J. E. Gads
J. E. Gads Applicant

SWORN or affirmed to and subscribed before me this
04 day of Sept, 2012

J. C. Franklin
Notary Public

My Commission Expires: 12-16-2019

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

Trevis Eugene Johnson, #251600,

Case No. 2012-CP-02-02248

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

The Respondent, making its Return to the application for post-conviction relief, filed September 6, 2012, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. The Applicant was true bill indicted at the April 2008 term of the Aiken County Grand Jury for Trafficking in Cocaine, Morphine, Opium, Salt, Isomer, Salt of an Isomer or Heroin, >200 g <400 g (2008-GS-02-0522) and Possession with Intent to Distribute Cocaine with Proximity of a School (2008-GS-02-0523). Johnny Watson, Jr., Esquire, represented him. On March 17-19, 2009, Applicant proceeded to a jury trial before the Honorable Doyet A. Early, III. On March 19, 2009, Applicant was found guilty of Trafficking Cocaine more than 200 grams less than 400 grams and not guilty of Possession with Intent to Distribute Cocaine with Proximity of a School. Judge Cothran sentenced Applicant to twenty-five years imprisonment and a \$100,000.00 fine.

Applicant appealed his convictions and an appeal was perfected. The South Carolina Court of Appeals dismissed the appeal. State v. Trevis Eugene Johnson, 2012-UP-244 (S.C. Ct. App. filed April 25, 2012). The Remittitur was issued on May 15, 2012.

Attached herewith and incorporated herein are the records of the Aiken County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, appellate records, and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel; and
 - a. "failure to prepare for trial"
 - b. "failure to request a continuance"
 - c. ~~"failure to provide case law that establishes probable cause precedent"~~
 - d. "failure to request chain of custody documents associated with presented evidence (i.e. the black bag [state's exhibit 15])"
 - e. "failure to object to state's exhibit 15 being admitted into evidence with no valid chain of custody documents"
 - f. ~~"failure to object to defense not being provided with fingerprint results before, during, or after trial"~~
 - g. "failure to request that the jury be charged that trafficking is an enhanced possession charge"
 - h. "failure to request that the jury be charged that S.C. law prescribes that circumstantial evidence is not enough to convict on a charge of possession without more"
 - i. "failure to request a mere presence instruction"
 - j. "failure to object to solicitor's statement that jury should disregard statements made by officers that implies intent to frame defendant"
 - k. "object to argument that misled the jury as to what evidence was presented (i.e. "if I could blow this up you would see that this is the bag" and "if we did do a DNA test they might have found some — whose DNA might they have found? Well, Mr. Johnson's first of all.")"

2. "Evidence discovered after trial."
 - a. "Evidence discovered after trial (mishandled evidence)."

Any claims not specifically enumerated in the post-conviction application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms". Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a

reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant's assertion that he is entitled to a new trial based upon after-discovered evidence is without merit. A defendant requesting a new trial based on after discovered evidence must show that the evidence:

(1) Is such as would probably change the result if a new trial was had; (2) Has been discovered since the trial; (3) Could not by the exercise of due diligence have been discovered before the trial; (4) Is material to the issue of guilt or innocence; and (5) Is not merely cumulative or impeaching. Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983).

The Applicant has not shown that the alleged evidence meets *any* of the requirements for after-discovered evidence, as he has failed to present any evidence to the Court which could allow for such a claim to proceed forward. The Court should summarily dismiss this allegation.

V.

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the State moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VI.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VII.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

By: Megan E. Harrigan
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

January 23, 2013

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS

2012-CP-02-02248

TREVIS EUGENE JOHNSON, 251600,

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,

Respondent.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Courtney C. Pope, Esquire
 Clyburn Pope and Price, LLC
 Post Office Box Q
 Aiken, SC 29802

DATED this 23rd day of January, 2013.

Lauren Meara
 Lauren Meara, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

Trevis Eugene Johnson, #251600,

Case No. 2012-CP-02-02248

Applicant,

v.

AMENDED RETURN

State of South Carolina,

Respondent.

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II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel; and

- ☒ a. "failure to prepare for trial" *How specifically?*
- ☒ b. "failure to request a continuance" *for what?*
- P.27 ☒ c. "failure to provide case law that establishes probable cause precedent"
- ☒ d. "failure to request chain of custody documents associated with presented evidence (i.e. the black bag [state's exhibit 15])"
- ☒ e. "failure to object to state's exhibit 15 being admitted into evidence with no valid chain of custody documents"
- P.30 ☒ f. "failure to object to defense not being provided with fingerprint results before, during, or after trial"
- ☒ g. "failure to request that the jury be charged that trafficking is an enhanced possession charge"
- ☒ h. "failure to request that the jury be charged that S.C. law prescribes that circumstantial evidence is not enough to convict on a charge of possession without more"
- ☒ i. "failure to request a mere presence instruction"
- ☒ j. "failure to object to solicitor's statement that jury should disregard statements made by officers that implies intent to frame defendant"
- ☒ k. "object to argument that misled the jury as to what evidence was presented (i.e. "if I could blow this up you would see that this is the bag" and "if we did do a DNA test they might have found some - whose DNA might they have found? Well, Mr. Johnson's first of all.")"

*possession law
not mere presence*

414

↑ he did do it

2. "Evidence discovered after trial."

a. "Evidence discovered after trial (mishandled evidence)."

Any claims not specifically enumerated in the post-conviction application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

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* The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. ⁽¹⁾ First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. ⁽²⁾ Second, counsel's deficient performance must have prejudiced the Applicant such

that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

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finger point (1) Is such as would probably change the result if a new trial was had; (2) Has been discovered since the trial; (3) Could not by the exercise of due diligence have been discovered before the trial; (4) Is material to the issue of guilt or innocence; and (5) Is not merely cumulative or impeaching. Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983).

The Applicant has not shown that the alleged evidence meets *any* of the requirements for after-discovered evidence, as he has failed to present any evidence to the Court which could allow for such a claim to proceed forward. The Court should summarily dismiss this allegation.

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VI.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VII.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

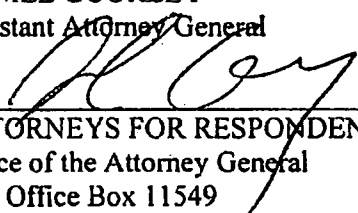
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

DANIEL GOURLEY
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

July 10, 2014

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	
	)	
	)	2012-CP-02-02248
	)	
TREVIS EUGENE JOHNSON, #251600,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Amended Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Courtney C. Pope, Esquire
 Clyburn Pope and Price, LLC
 Post Office Box Q
 Aiken, SC 29802

DATED this 10th day of July, 2014.


 Caroline Kaiser, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA

2 COUNTY OF AIKEN

CIRCUIT COURT
2012-CP-02-02248

3
4 TREVIS E. JOHNSON,
Applicant,

5 -vs-

TRANSCRIPT OF RECORD

6
7 STATE OF SOUTH CAROLINA,
Respondent.

8
9 Post-Conviction Relief Hearing

10 Heard on Thursday, May 21, 2015

11 Aiken, South Carolina

12
13 BEFORE:

14 THE HONORABLE TANYA A. GEE

15
16
17 APPEARANCES:

18 Counsel on Behalf of the Applicant:
Courtney Clyburn Pope, Esq.

19
20 Counsel on Behalf of the Respondent, State of SC:
Daniel F. Gourley, II, Esq.

21
22 Cheri L. Young, RPR
23 Circuit Court Reporter
24 P O Box 5232
Aiken, SC 29804-5232
25

EXAMINATION INDEX

TREVIS EUGENE JOHNSON

DIRECT BY MS. POPE

9

CROSS BY MR. GOURLEY

44

REDIRECT BY MS. POPE

54

JOHNNY E. WATSON, SR

DIRECT BY MR. GOURLEY

57

CROSS BY MS. POPE

66

EXHIBIT INDEX

(NO EXHIBITS IDENTIFIED/INTRODUCED.)

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1 ON THURSDAY, MAY 21, 2015 AT 10:58 A.M.:

2 THE COURT: Good morning, Mr. Gourley,
3 Ms. Pope.

4 Mr. Gourley, could you call this case,
5 please?

6 MR. GOURLEY: Yes, Your Honor.

7 This is Trevis Johnson versus the State of
8 South Carolina. Docket Number 2012-CP-02-02248.

9 He's presently confined in the South
10 Carolina Department of Corrections pursuant to
11 orders of commitment of the Aiken County Clerk of
12 Court. He was true-bill indicted at the April
13 2008 term of the Aiken County Grand Jury for
14 trafficking in cocaine, morphine, opium salt,
15 isomer salt or isomer heroin greater than 200
16 grams but less than 400 grams, and possession
17 with intent to distribute cocaine within
18 proximity of a school. Mr. Watson represented
19 him.

20 On March 17th through the 19th, 2009, he
21 proceeded to a jury trial before the Honorable
22 Doyet A. Early the Third. On March 19th, 2009,
23 he was found guilty of trafficking cocaine more
24 than 200 grams and less than 400 grams, and not
25 guilty of possession with intent to distribute

1 cocaine within proximity of a school. Judge
2 Early sentenced the Applicant to a 25-year term
3 of imprisonment and a \$100,000 fine.

4 He appealed his convictions and the South
5 Carolina Court of Appeals dismissed the appeal.
6 The remittitur was issued on May 15th, 2012.

7 He filed a timely application for PCR on
8 September 6th, 2012, alleging various claims of
9 ineffective assistance of counsel and evidence --
10 or newly-discovered evidence as well. The State
11 sent an amended return on July 11th, 2014.

12 And he is represented in this matter by
13 Ms. Pope.

14 THE COURT: All right. Thank you.

15 Ms. Pope, I'll hear from you.

16 MS. POPE: Yes, Your Honor, may it please
17 the Court.

18 I do have a motion to make before the Court
19 at this moment.

20 At this time we would like to make a motion
21 for a continuance. As you know, there were some
22 schedule rearrangements with the docket for this
23 week. We were originally scheduled for Friday.
24 And I had not met with my client for an extensive
25 amount of time immediately prior to this hearing.

1 My client is a bit uncomfortable with going
2 forward because we have not had the chance to
3 have that final meeting. Your Honor did allow us
4 to meet for approximately 30 or 45 minutes before
5 this hearing. However, my client does feel very
6 strongly that justice would not be served for him
7 if we did go forward today.

8 He's asking for a continuance until the
9 September term, Your Honor.

10 THE COURT: Has this case been continued
11 before?

12 MS. POPE: It has, Your Honor.

13 THE COURT: Okay. Mr. Gourley --

14 MR. GOURLEY: Your Honor --

15 THE COURT: -- when did this first come on
16 the docket?

17 MR. GOURLEY: I believe it came on the
18 docket the first time back in July of last year.
19 It didn't make it to an actual hearing. I
20 believe it was a consent to continuance back
21 then.

22 He was back in January in front of Judge
23 Brown. Judge Brown continued the case at that
24 point. We were present -- here for that, and
25 Mr. Watson was here for that as well back in

1 January, Your Honor.

2 MS. POPE: Your Honor, just for
3 clarification. I'd be remiss if I did not
4 mention this on my client's behalf.

5 THE COURT: Sure.

6 MS. POPE: The first continuance, I had just
7 had a baby.

8 THE COURT: Sure.

9 MS. POPE: So that was the reason for the
10 first continuance. There was a subsequent
11 continuance at that point.

12 THE COURT: Absolutely. And I understand
13 that this case needed to be continued those two
14 times before.

15 I deny your motion for a continuance on
16 this third time. I have provided you with the
17 opportunity to speak with him this morning and
18 we'll move forward with this hearing today.

19 MS. POPE: Thank you, Your Honor.

20 THE COURT: Thank you, both.

21 MR. GOURLEY: Thank you, Judge.

22 THE COURT: All right. Ms. Pope, you may
23 call your first witness.

24 MS. POPE: Your Honor, I would like to call
25 -- Your Honor, just a small matter for the Court.

TREVIS EUGENE JOHNSON - DIRECT BY POPE

1 THE COURT: Sure.

2 MS. POPE: My client does have double
3 handcuffs on. And I understand that it's for
4 security reasons. He does have his own personal
5 notes. I'm not asking that we take both sets of
6 handcuffs off, but just one set so that he is
7 able to freely flip through his notes.

8 Is that something that the Court is able to
9 do?

10 THE COURT: I look at my deputy. We have
11 had folks with double handcuffs on all week
12 without a problem with notes. So if there's a
13 problem flipping notes, certainly we can get him
14 some assistance in flipping through his notebook,
15 but I feel more comfortable, for the deputy's
16 sake, to keep the double handcuffs on.

17 MS. POPE: Thank you, Your Honor.

18 I'd like to call my first witness,
19 Mr. Trevis Eugene Johnson.

20 THE COURT: And if you could help him carry
21 his notes up to the stand, I think that would be
22 helpful.

23 TREVIS EUGENE JOHNSON, having been duly
24 sworn, was examined and testified as follows:

25 THE CLERK: Please have a seat in the

TREVIS EUGENE JOHNSON - DIRECT BY POPE

1 witness box and state your full name for the
2 Court.

3 THE WITNESS: My name's Trevis Johnson.

4 DIRECT EXAMINATION

5 BY MS. POPE:

6 Q. Good morning, Mr. Johnson.

7 A. Good morning.

8 Q. Mr. Johnson, first off I'd like to ask you a few
9 preliminary questions before we get into your PCR. And
10 that first question is: In April of 2008, you were
11 charged with trafficking cocaine; is that correct?

12 A. No. Actually I was charged in December.

13 Q. December of 2008?

14 A. Seven.

15 Q. December of 2007. Excuse me.

16 A. Yes.

17 Q. Okay. But your charges were trafficking cocaine;
18 is that correct?

19 A. Yes.

20 Q. And possession with intent to distribute cocaine --

21 A. Yes.

22 Q. -- within proximity of a school; is that correct?

23 A. Yes, it is.

24 Q. Okay. Thank you. And at that time did you have
25 legal representation?

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1 A. In December 2007?

2 Q. Yes, sir.

3 A. No, not at that time I didn't.

4 Q. Okay. Now, when was your trial date, Mr. Johnson?

5 A. It was, it was in March of 2009.

6 Q. Okay. And you did have a jury trial; is that
7 correct?

8 A. I did.

9 Q. Who was your attorney during that time?

10 A. Mr. Johnny Watson.

11 Q. Okay. Now you were sentenced after that trial; is
12 that correct?

13 A. I was.

14 Q. You were found guilty of trafficking cocaine?

15 A. Yes.

16 Q. Okay. And you were sentenced to 25 years; is that
17 correct?

18 A. Yes, ma'am.

19 Q. And your max-out date, do you know approximately
20 when your max-out date would be?

21 A. 2030, '31, somewhere about.

22 Q. So the year of 2030 or 2031, approximately?

23 A. About, yeah.

24 Q. Okay. You and I -- I represent you on this PCR
25 hearing.

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1 A. Yes, ma'am.

2 Q. You and I have discussed what it means to do a PCR;
3 is that correct?

4 A. We have.

5 Q. Okay. And is it your understanding that if you are
6 granted the post-conviction relief that your case will
7 start over?

8 A. Yes, yes.

9 Q. You understand that new charges -- or the same
10 charges may be brought by the solicitor; is that correct?

11 A. Yes.

12 Q. And you understand that you may be given a plea
13 deal or you may have to go to a trial?

14 A. Yes. We discussed this.

15 Q. So there's no guarantee that this will get you less
16 time or acquitted?

17 A. I understand that.

18 Q. And knowing all of that, is it your desire to go
19 forward? Is that correct, Mr. Johnson?

20 A. Yes.

21 Q. Thank you. Okay. Mr. Johnson, I do want to get
22 into some of the allegations that were involved on your
23 application. Okay. Now, just to clarify for the Court,
24 you did complete this application yourself; is that
25 correct?

TREVIS EUGENE JOHNSON - DIRECT BY POPE

1 A. Yes, I did file --

2 Q. And you did so without legal counsel at this point?

3 A. Right.

4 Q. Okay. Now, on that application you did -- you were
5 having this PCR for ineffective assistance of counsel; is
6 that correct?

7 A. Yes, ma'am.

8 Q. And you do list various reasons?

9 A. Yes.

10 Q. All right. What I'd like to do is go through those
11 reasons with you and give you an opportunity to speak
12 about those.

13 A. Yes, ma'am.

14 Q. All right. Your first reason is indicated by
15 letter A. And it says that there is a failure -- your
16 attorney failed to prepare for trial. Is that still a
17 current allegation?

18 A. Yes.

19 Q. Okay. Now you mentioned in December 2007 when you
20 were first charged you did not have an attorney. At that
21 time did you receive -- at any time after that did you
22 receive counsel?

23 A. Yes. I initially hired Robert Harte.

24 Q. Yes, sir. And when did you terminate Mr. Harte's
25 services?

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1 A. Officially it would have been January 2009.

2 Q. Thank you. When did you retain Mr. Watson as your
3 attorney?

4 A. I would say February. February.

5 Q. February of 2009?

6 A. Yes.

7 Q. Thank you. And you testified earlier that your
8 trial was in March of 2009; is that correct?

9 A. Yes.

10 Q. Okay. You retained him in early February or late
11 February?

12 A. Mid February.

13 Q. Mid February?

14 A. It was after Valentine's, I know.

15 Q. Thank you. So it was roughly about a month before
16 your trial?

17 A. Yes.

18 Q. Okay. How many times did Mr. Watson come to see
19 you before your trial date?

20 A. Including the date of trial, right before trial, I
21 would say four times.

22 Q. Four visits?

23 A. Yes.

24 Q. Can you give us an approximation of how much time
25 you spent with Mr. Watson during those visits?

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1 A. I would say on the average about 45 minutes.

2 Q. About 45 minutes?

3 A. Forty-five minutes.

4 Q. For those four visits?

5 A. Right.

6 Q. So roughly three or four hours before your trial?

7 A. Right.

8 Q. Were you concerned about that at that point?

9 A. I mean, when you're going to court on a charge like
10 trafficking cocaine you always want to be as prepared as
11 possible. So, of course I was concerned about it.

12 Q. Did you feel that those three or four hours, did
13 you feel that was an adequate amount of time to prepare
14 for a trial of that magnitude?

15 A. No, I don't.

16 Q. Okay. Let me ask you this, Mr. Johnson. Did you
17 all discuss defensive strategy before your trial?

18 A. I told him my version of the case.

19 Q. Okay.

20 A. But --

21 Q. Did he discuss with you any tactic or any strategy
22 that he would use during your trial?

23 A. Actual tactic and strategy. I mean, at that point
24 I probably wouldn't have understood him anyway. I'm not
25 a lawyer. So.

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1 Q. Right. What I mean is, did he say to you, "I will
2 present this argument for the defense of your case"?

3 A. Not particularly. I don't remember that kind of
4 conversation, no.

5 Q. Okay. Can you explain for the Court the dynamic of
6 those meetings? What was discussed during most of those
7 meetings?

8 A. Like I said, I gave him my version of the case.
9 And he told me exactly where -- he told me he wasn't too
10 sure the first two visits. He told me that he would try
11 to get me a plea deal.

12 Q. Okay.

13 A. The first two visits it was pretty much about a
14 plea deal.

15 Q. When you said he wasn't too sure, can you explain
16 to me what your understanding was?

17 A. My understanding was from what he had read or seen
18 from the case, that he thought my best option would be a
19 plea bargain. So he sought to get me a plea deal with
20 the solicitor, Ms. Beth Ann Young.

21 Q. Yes, sir. And did you receive a plea deal, a plea
22 offer?

23 A. No. She, she denied -- well, he informed me that
24 she denied. He actually wrote me a letter saying that
25 she denied our --

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1 Q. And at that point you all began to prepare for your
2 trial?

3 A. Right.

4 Q. Okay. And he saw you two times after that point;
5 is that correct?

6 A. Yes, he did.

7 Q. So your actual preparation was within two visits
8 for your trial?

9 A. I guess that would be it, yeah.

10 Q. Two or three visits?

11 A. Okay. Right.

12 Q. Is that correct?

13 A. I would say, I would say three visits.

14 Q. Three visits?

15 A. Two or three visits, yeah.

16 Q. So it is your testimony that, around three visits?

17 A. Right.

18 Q. Okay.

19 A. Right.

20 Q. I just want to clarify that for the Judge.

21 Mr. Johnson, did you all go over evidence such as
22 videotape on a police statement during your trial
23 preparation?

24 A. At the time I hired him I was up in the county. So,
25 access to video, I feel that was -- or at least I thought

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1 was limited. I didn't know I could see the video at that
2 time. So he had my, he had the case file. So I'm pretty
3 sure he went -- at least I like to think he went over it.

4 Q. But my question is --

5 A. We never sat down together and watched a video
6 together, no, no.

7 Q. Okay. Did you all sit down and read police reports
8 together?

9 A. No.

10 Q. Okay. All right. I'd like to move on to -- well,
11 let me ask you this. After you were found guilty, was
12 there an appeal done on your behalf?

13 A. Yes, yes. I think he did move for an appeal.

14 Well, I don't think. I'm sure he did.

15 Q. Yes. I'm sorry. Yes, sir.

16 Mr. Watson did your appeal?

17 A. No. It was actually handled by a State attorney,
18 Wanda Carter.

19 Q. Well, my question is: Did he write notice?

20 A. Yes.

21 Q. Did he submit an appeal on your behalf?

22 A. Yes, he did. He did.

23 Q. Okay.

24 Your Honor, I do have a copy of that appeal.

25 THE COURT: I have that. I have both the

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1 Anders brief, the record on appeal and the Court
2 of Appeals' opinion --

3 MS. POPE: Thank you, Your Honor.

4 THE COURT: -- in my file.

5 MS. POPE: May I have permission to
6 approach to refresh his memory?

7 THE COURT: Absolutely.

8 BY MS. POPE:

9 Q. I'm going to leave that here with you,
10 Mr. Watson -- Johnson. I'm sorry.

11 Mr. Johnson, is that a copy of your notice of
12 appeal?

13 A. Yes, it is.

14 Q. Prepared by Mr. Watson?

15 A. Yes, it is.

16 Q. In that appeal does Mr. Watson -- what does he --
17 what grounds does he give as a reason for your appeal?

18 A. He said, "the said verdict being the result of an
19 inadequate amount of time allowed for the attorney to
20 prepare properly for the trial; the failure to allow his
21 attorney to pursue the possible misconduct of the North
22 Augusta Police Department and possibly framing the
23 Applicant; the release of a juror during the course of
24 the trial over the objection of the Appellant; and the
25 lack of evidence to prove beyond a reasonable doubt that

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1 the drugs allegedly found by NAPD were handled by the
2 Appellant, amount of the effects" is what it says.

3 Q. So for the purposes of this allegation he does
4 admit in the appeal that there was failure -- excuse me,
5 there was an inadequate amount of time for him to prepare
6 for trial; is that correct?

7 A. Yes. That's what the notice says, yes.

8 Q. Okay. And is that your belief as well?

9 A. Yes, ma'am.

10 Q. Okay. I'd like to move on to your allegation B
11 which is the failure to request a continuance. Did you
12 and Mr. Watson ever discuss that there was an inadequate
13 amount of time for your case?

14 A. Right. I actually asked him to ask for a
15 continuance.

16 Q. You did ask -- request for him to make a motion for
17 continuance?

18 A. Yes.

19 Q. And to your knowledge, any time during the trial or
20 before the trial did he ask -- did he submit that motion
21 for a continuance?

22 A. No, no. Not during the trial, no.

23 Q. Did he submit a motion for continuance prior to the
24 trial when you all were sitting in the courtroom?

25 A. No.

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1 Q. Okay. Mr. Johnson, I'd like to move on to
2 allegation C. In C you allege that Mr. Watson had a
3 failure to provide case law that established a probable
4 cause precedent; is that correct?

5 A. Correct.

6 Q. Mr. Johnson, at one point in pretrial motions
7 Mr. Watson made a motion that the case be dismissed, that
8 the case be thrown out; is that correct?

9 A. Yes, yes, I think that was.

10 Q. Or rather that the evidence be suppressed; is that
11 correct?

12 A. Yes. It was, yeah. He asked for the evidence to
13 be suppressed, yes.

14 Q. Okay. Now he made that motion --

15 A. Yes.

16 Q. -- to the judge?

17 A. Yes.

18 Q. And that motion was based on the fact that there
19 was no probable cause for the arrest; is that correct?

20 A. That was his motion, yes.

21 Q. And that motion was based on you not receiving a
22 ticket for your speeding violation?

23 A. That's what's in the record, yes.

24 Q. Okay. And you were pulled over initially for
25 speeding in the facts of this case; is that correct?

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1 A. Yes. That's what Officer Fittery testified to,
2 yes.

3 Q. And as a result of that stop the alleged events
4 happened; is that correct?

5 A. Yes?

6 Q. So that was a big motion to make; is that correct?

7 A. Yes, I assume so, yes.

8 Q. Did you and Mr. Watson discuss that motion?

9 A. Yes.

10 Q. Okay. Can you tell me your discussion about that,
11 that probable cause motion?

12 A. He said as far as he knew he could make a motion to
13 try to get the evidence suppressed.

14 Q. Okay. Now let me ask you this. He did make that
15 motion. Did he have any case law to support that motion?

16 A. No, he didn't. No, ma'am.

17 Q. But he knew prior to making the motion that he
18 would be making that motion; is that correct?

19 A. He informed me he would, yes.

20 Q. Can you tell me -- can you tell me your position on
21 what that did to your case, him making a motion without
22 the case law?

23 A. My position, how I felt at the time?

24 Q. Yes, sir.

25 A. I really felt like he was antagonizing the judge.

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1 That's what I took from it. I took the judge didn't like
2 the motion or he didn't like the fact that he moved
3 something and wasn't allowed to.

4 Q. Do you think that the judge viewed -- well, strike
5 that. Do you believe that it was a frivolous motion?

6 A. I now do, yes, but at the time I, I was --

7 Q. Now --

8 A. -- I was kind of under-informed at the time, yes.

9 Q. And you felt under-informed about that motion?

10 A. Right.

11 Q. Okay. Do you think that his motion would have been
12 successful had he provided case law?

13 A. I think it's possible. Yes, I do.

14 Q. And if there was no case law, do you think it was a
15 frivolous motion?

16 A. Yes.

17 Q. Would you have asked him to make that motion
18 without any standing case law?

19 A. No.

20 Q. Thank you. I'd like to move onto section D which
21 is the failure to request the chain of custody
22 documents.

23 A. Actually I think it's supposed to be failure to
24 present chain of custody documents.

25 Q. The failure to present?

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1 A. Right.

2 Q. Is it your knowledge that he did have a copy of the
3 chain of custody?

4 A. I didn't -- like I said, we didn't really go over
5 the file. So at that time I thought -- I mean, I felt
6 like he did. I thought he did.

7 Q. That was your impression, is that he had that
8 document?

9 A. That was my impression.

10 Q. Did you ever see that document?

11 A. Yes, I wrote a letter to the North Augusta Police
12 Department requesting those documents under the Freedom
13 of Information Act.

14 Q. Did Mr. Watson present that document to you?

15 A. No, he didn't.

16 Q. Why was that document so important to you,
17 Mr. Johnson?

18 A. Because it established who possessed that
19 evidence. And, like I told him, giving him my version of
20 the case, that the bag that was presented as evidence was
21 not my bag. So, from the beginning I felt like there was
22 no way that they could prove that that bag was mine. So
23 having that chain of custody, I felt like it was a big
24 part of the case.

25 Q. Yes, sir.

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1 A. A big part of proving whose bag that was.

2 Q. Yes, sir. I'd like to explain to the Judge, your
3 case, your trafficking case involved a substantial amount
4 of cocaine located in a black bag; is that correct?

5 A. Yes, yes.

6 Q. And part of your defense during this trial was that
7 this was not -- there was a black bag found; is that
8 correct?

9 A. Yes, ma'am.

10 Q. But it was not your black bag?

11 A. Yes, ma'am.

12 Q. And part of your defensive strategy was that there
13 was no way to determine whether that was your bag; is
14 that correct?

15 A. I felt like the way to determine whose bag that was
16 would have been through the fingerprint evidence.

17 Q. Yes, sir.

18 A. So from the beginning, even when I had attorney,
19 Mr. Harte, I told him that the only way to prove whose
20 bag that was was to fingerprint the bag.

21 Q. Yes, sir.

22 A. So I offered it to Mr. Harte as well as Mr. Watson.

23 Q. Yes, sir.

24 A. And so I felt like the chain of custody would
25 establish who actually had that bag.

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1 Q. Okay. And there are several times that the chain
2 of custody comes up in the trial.

3 A. Yes.

4 Q. To your knowledge, during that trial almost every
5 witness was questioned about that chain of custody?

6 A. I think so.

7 Q. And you never saw a copy of the actual chain of
8 custody; is that correct?

9 A. Not before or during trial, no.

10 Q. Yes, sir. And do you think that if he had
11 presented that chain of custody that it would have
12 changed the outcome of your case?

13 A. Yes, because we actually had officers who testified
14 differently to who handled the evidence. We had
15 officer -- well, Detective Phillip Turner testified to
16 never possessing that evidence. And we had Lieutenant
17 Clay Adams who actually analyzed the bag for fingerprints
18 saying that the bag was brought to him by Detective
19 Turner.

20 Q. So that was a conflict of testimony. Is that your
21 testimony?

22 A. Yes.

23 Q. Is that your testimony?

24 A. Yes.

25 Q. Okay. Go on. I'm sorry. I interrupted you.

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1 A. And at the end of the day I felt like the chain of
2 custody would have proven exactly who handled that bag.
3 And with that being said, I don't think the chain of
4 custody -- well, the chain of custody that I eventually
5 saw didn't have Detective Turner mentioned as handling
6 that bag.

7 Q. But Detective Turner testified that he had not
8 handled the bag?

9 A. Right.

10 Q. And another officer testified that Turner had --

11 A. Lieutenant Clay Adams testified that the bag was
12 brought to him by Detective Turner and actually clarified
13 because his initial answer was, Detective Turner. And
14 when Solicitor Bill Weeks examined him on it, he
15 clarified it by saying Detective Phillip Turner of the
16 North Augusta Police Department. So he was very sure --

17 Q. Yes, sir.

18 A. -- of who brought him that bag.

19 Q. And, again, you think that that would have changed
20 the jury's mind?

21 A. I think that would at least change the judge mind
22 as far as allowing that evidence in. From what I now
23 know, if the chain of custody isn't correct then you
24 can't allow evidence.

25 Q. So, one of your allegations regarding State's

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1 Exhibit 15 which gets into allegation E is that Exhibit
2 15 should not have been admitted?

3 A. Correct.

4 Q. And what is Exhibit 15, Mr. Johnson?

5 A. That's the black bag.

6 Q. The black bag in question; is that correct?

7 A. Yes, ma'am.

8 Q. Okay. The black bag that held the drugs?

9 A. Yes, ma'am.

10 Q. For which you received 25 years for?

11 A. Yes, ma'am.

12 Q. Okay. Now, do you think your case -- the State
13 would have had a good case if they would have not had
14 possession of that bag?

15 A. No. In opening and closing arguments, Solicitor
16 Beth Ann Young said repeatedly that the case was about a
17 black bag. And the only way to connect me to those drugs
18 was to prove that that black bag was mine.

19 Q. Is it your belief that if that black bag had been
20 suppressed that you would have received a plea offer or a
21 dismissal?

22 A. Yes. I think so, yes.

23 Q. So moving forward into your allegation E which
24 states: Mr. Watson failed to object to State's Exhibit
25 15 being admitted into evidence with no valid chain of

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1 custody documents.

2 A. Yes.

3 Q. The testimony that you just provided would
4 reiterate that had you not -- I don't want to testify for
5 you. So strike that.

6 Your allegations D and E are allegations that go
7 together; is that correct?

8 A. Yes, ma'am. Yes, ma'am.

9 Q. All right. You said in opening and closing
10 arguments that the black bag was mentioned?

11 A. It was.

12 Q. If that bag was suppressed there would have been no
13 mention; is that correct?

14 A. Correct. I believe her, Solicitor Young's first
15 statement was, "This case is about a black bag." I'm
16 almost certain that was her first statement.

17 Q. Yes, sir. Allegation F. The failure for
18 Mr. Watson to object to defense not being provided with
19 fingerprint results before, during or after trial.

20 Did you and Mr. Watson ever discuss the fingerprint
21 analysis or lack thereof?

22 A. Yes. I told him that I wanted the bag to be
23 fingerprinted as proof of who handled it. I asked for
24 that specifically, yes.

25 Q. Did he ever get you any results in that regard?

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1 A. No. I never saw the results of the fingerprint
2 evidence, but he did tell me that Lieutenant Adams was
3 going to testify as to the results of the fingerprint
4 evidence, yes.

5 Q. Did Mr. Watson object to that testimony of the lack
6 of fingerprints?

7 A. I'm not sure. And I say that because he did give
8 an objection or he did move to not allowing certain
9 expert witnesses, but I can't go into his rationalization
10 as to how -- behind that.

11 Q. Well, let me ask you this. In those two or three
12 times that you all met prior to the trial, was the
13 fingerprint analysis or lack thereof discussed as a
14 defensive tactic?

15 A. No, I don't think so.

16 Q. Is it your belief that if there had been
17 fingerprint analysis done that you would not have had the
18 same result in this case?

19 A. Had fingerprint evidence not been established?

20 Q. Had it been -- had Mr. Watson requested to have
21 those reports.

22 A. I think we would have had more knowledge as to what
23 was going to happen, or what testimony was going to be
24 during the trial. So I think it would have been helpful
25 to us to have those documents, yes.

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1 Q. Well, my question is: The fingerprint analysis, is
2 that an integral part of your case, your defensive
3 strategy?

4 A. Yes, yes. Definitely.

5 Q. And you feel that he erred in not objecting to
6 that, the lack of that being able to be testified to?

7 A. Right, right, because I actually witnessed the bag
8 being handled. So with there being no evidence as to
9 fingerprints on the bag whatsoever, I don't think that's
10 possible. I actually saw people handle the bag after my
11 arrest.

12 Q. So it's your belief there should have been
13 someone's fingerprints?

14 A. Someone's fingerprints should have been on that
15 bag, yes.

16 Q. And do you think he was zealous in requesting those
17 results?

18 A. No.

19 Q. Mr. Johnson, I'd like to move onto allegation G., G
20 and H. G reads: The failure to request that the jury be
21 charged that trafficking is an enhanced possession
22 charge.

23 A. Right.

24 Q. H reads: That there's a failure to question that
25 the jury be charged that South Carolina law provides that

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1 circumstantial evidence is not enough to convict on a
2 charge of possession without more.

3 A. Yes.

4 Q. Okay. Can you get into -- can you get into that
5 allegation for us? Can you explain to the Court why you
6 think that if he had objected to those jury instructions
7 it would have determined a different outcome for you?

8 A. I feel like the entire case was based on
9 circumstantial evidence. In fact, I think both
10 solicitors agree that the case was pretty much
11 circumstantial.

12 And with that being the case if -- a possession
13 charge can't hold without more than circumstantial
14 evidence. And with traffic being an enhanced possession
15 offense, in my mind I'm just logically going from one
16 step to the other.

17 Q. So to explain it a little bit further. Have you
18 researched some case law yourself?

19 A. For?

20 Q. In regards to the jury instructions on mere
21 presence?

22 A. Yes, I did. I did. And I think Goldsmith versus
23 Witkowski which is a 1992 law.

24 Q. Yes, sir. Now the case law that you're
25 presenting -- not to cut you off, Mr. Johnson, but before

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1 you get into that. The reason that that is so important
2 to you is that you did not -- why is it so important to
3 you?

4 A. Because of the mere presence law, simply. Yeah.

5 Q. Do you think that argument should have been given
6 during your trial?

7 A. Yes. I would have liked for it to have been part
8 of the trial, yes.

9 Q. Did you and Mr. Watson discuss mere presence?

10 A. I found this law afterwards, after my conviction.
11 So we wouldn't have a reason to discuss it then. So at
12 least I trusted him. So.

13 Q. Okay. Can you tell us what case law you found,
14 briefly?

15 A. Yes. Like I said, it was Goldsmith versus
16 Witkowski, South Carolina Code 1976 24-53-370, Subsection
17 A(1). Those are the laws that I read that brought me to
18 this conclusion.

19 Q. Yes, sir. And if he had made that mere presence
20 argument or asked for those mere presence instructions,
21 is it your belief that the jury would have ruled
22 differently?

23 A. I would like to believe so, yes.

24 Q. Mr. Johnson, during your trial, there were several
25 motions and several breaks and pauses during your trial;

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1 is that correct?

2 A. Yes.

3 Q. To your recollection, did the sitting judge offer
4 to give Mr. Watson a copy of the jury instructions?

5 A. I think so. I think he did.

6 Q. Did you and Mr. Watson go over those jury
7 instructions together?

8 A. I -- he mentioned them to me, yes. So I -- we
9 didn't actually go over them word for word.

10 Q. Did you have an understanding of those jury
11 instructions?

12 A. I think what he told me was he discussed them with
13 the judge, the judge gave him a copy of what his charges
14 would be and it was pretty much by the book. That's what
15 he told me.

16 Q. Now you have not been to law school; is that
17 correct?

18 A. That's correct.

19 Q. So you wouldn't know whether the instructions were
20 good or not; is that correct?

21 A. No.

22 Q. But you did a little bit of research and found that
23 they could have been changed; is that correct?

24 A. Yes, yes.

25 Q. All right. Now, during the course of your trial,

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1 Mr. Johnson, do you feel that there were several
2 objections that Mr. Watson should have made?

3 A. I now think there were several objections he should
4 have made.

5 Q. Okay. I know that one of your allegations states
6 that he -- that at one point the solicitor during her
7 closing said that the jury should disregard statements
8 made by officers --

9 A. Yes.

10 Q. -- that imply intent to frame you?

11 A. Right, right.

12 Q. Do you believe that Mr. Watson should have objected
13 during that time?

14 A. Yes, yes, I do.

15 Q. What is the basis of that belief, Mr. Johnson?

16 A. As I read through the record and cases that I have
17 read, I now feel -- well, I now know that a prosecutor
18 improperly vouches for a witness's credibility and places
19 the government's prestige behind the witness by making
20 explicit personal assurances or by indicating the
21 information submitted to the jury will support the
22 testimony.

23 And I believe that at that point or the part in the
24 record that you're now talking about, I think she did
25 just that.

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1 Q. Thank you, Mr. Johnson.

2 And what you're referring to when you say "she did
3 just that," is that the solicitor vouched for the police
4 officers; is that correct?

5 A. Officer Rutland, his testimony.

6 MS. POPE: Your Honor, may I have permission
7 to approach?

8 THE COURT: You may.

9 BY MS. POPE:

10 Q. Mr. Johnson, I have this document in my hand. Is
11 that your transcript from your trial date?

12 A. Yes, ma'am, it is.

13 MS. POPE: Would you like to see this?

14 MR. GOURLEY: No, not at all.

15 BY MS. POPE:

16 Q. Mr. Johnson, I'd like you to -- I've turned to page
17 391. I'd like for you to read lines 12 through 16,
18 please.

19 A. This is Solicitor Beth Ann Young speaking. "You
20 just have to kind of look at the evidence and try to
21 disregard your dislike for any of those statements
22 because they're based in the heat of the moment. And the
23 officers out there, they're putting themselves in
24 dangerous situations."

25 Q. Thank you. Can you read line 16 through 23?

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1 A. And their job is to protect the community. So they
2 don't know what's in the bag. It might have a gun in
3 it. So what if some child were to walk up and find this
4 bag with the gun. Their goal is to the keep the
5 community safe. And they want to find the bag. That's
6 their whole goal and their whole purpose in doing so."

7 Q. Mr. Johnson, how did you interpret those statements
8 by Solicitor Young?

9 A. I felt like she was appealing to the biases of the
10 jurors.

11 Q. Do you feel as though she was vouching for the
12 police officers?

13 A. Yes.

14 Q. At that point, do you think it would have been
15 proper for Mr. Watson to make an objection?

16 A. Yes.

17 Q. And, again, you're not an attorney but you did seek
18 the legal advice of Mr. Watson; is that correct?

19 A. I did.

20 Q. He is an attorney?

21 A. Yes.

22 Q. And you trusted his legal expertise?

23 A. Yes.

24 Q. Or you trusted his legal advice.

25 A. I felt like he knew more than me.

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1 Q. Yes, sir.

2 A. Yes.

3 Q. Do you think that he should have known to make that
4 objection?

5 A. Yes.

6 Q. Do you think that the jury was persuaded by
7 Solicitor Young's argument?

8 A. Yes, definitely.

9 Q. Do you think that those statements persuaded the
10 jury in making their decision?

11 A. Yes.

12 Q. You don't know that for sure; is that correct?

13 A. I can't be certain, but.

14 Q. But it's your belief --

15 A. Yes, yes, it is.

16 Q. -- that --

17 A. Yes.

18 Q. -- that that's likely?

19 A. Yes.

20 Q. Mr. Johnson, that's just one of the objections. Is
21 there another objection that -- there are a number of
22 objections that you felt that he should have made; is
23 that correct?

24 A. Yes, during the closing arguments, yes.

25 Q. Is there another objection that you feel Mr. Watson

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1 should have made on your behalf?

2 A. Yes.

3 Q. Can you explain that to me?

4 A. I also think he should have objected to her
5 argument that based on K-9 testimony {sic}, that the
6 locked storage building is pretty much close to where
7 Officer Fittery lost sight of me and then he found out he
8 couldn't get into it.

9 And that was pretty much testimony -- her way of
10 getting testimony that wasn't in the transcript.

11 Q. Officer Fittery did not testify to that fact --

12 A. No, he didn't.

13 Q. -- during your trial, did he?

14 A. No, he didn't.

15 Q. So it's your belief that officer -- Solicitor Young
16 submitted some testimony of her own during that closing?

17 A. Right. I think she did.

18 Q. And because of that, you believe that Mr. Watson
19 should have known to object to that; is that correct?

20 A. Yes.

21 Q. Is it your belief that that may have persuaded the
22 jury?

23 A. Yes. Yes, it had something to do with it.

24 Q. Yes, sir. Is there another objection that
25 Mr. Watson should have made on your behalf?

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1 A. Yes. When Ms. Young said that, "Fela, I would
2 submit to you, is the most unbiased witness in the case
3 because she's just there to do her job which is to find
4 the odor of narcotics and hopefully get a reward. And I
5 would ask you to use your own common sense and apply it
6 to the situation at hand. And think about Fela. Again,
7 Fela has been criticized a lot. She's not in the
8 courtroom and I kind of wish she was because you all
9 would like her the best of anybody. She's a pretty dog
10 but Fela has no -- she doesn't know Mr. Johnson, and she
11 hasn't seen the bag." And I think that was her way of --

12 Q. Mr. Johnson -- I'm sorry.

13 A. And she --

14 Q. Continue.

15 A. Yeah. I think that was her way of, again, putting
16 her personal, her personal assessments and assurances
17 behind the testimony.

18 Q. You think she was vouching for the police officers?

19 A. Yes.

20 Q. Given the fact that she's a dog, you think she was
21 vouching for the K-9 officer?

22 A. Definitely. There was no testimony by the K-9,
23 obviously.

24 Q. Do you believe that Mr. Watson should have objected
25 at that point?

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1 A. Yes, I do.

2 Q. Now in your allegations you also list allegation K,
3 that he failed to object to argument that misled the jury
4 as to what evidence had been presented.

5 A. Excuse me? Could you say that again, please?

6 Q. I'm sorry. Allegation K says, object to the
7 argument. Mr. Watson failed to object to the argument
8 that misled the jury as to what evidence was presented.

9 A. Right.

10 Q. And you do give an example in your allegations.

11 A. Right.

12 Q. And the specific example that you give is in
13 regards to the black bag; is that correct?

14 A. Yes.

15 Q. Mr. Johnson, I'm going to show you page 402 of the
16 transcript.

17 I'm sorry. Permission to approach, Your Honor?

18 THE COURT: Yes, of course.

19 BY MS. POPE:

20 Q. Page 402 to 403.

21 A. Yes. Line 23?

22 Q. Can you read for me line 23 on page 402 over to
23 line four on 403?

24 A. And this is Solicitor Young speaking. "Well, why
25 don't we try to find DNA because that's just the best

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1 thing ever. I would submit to you, ladies and gentlemen,
2 that had they looked for DNA on this bag they might have
3 found some. Whose DNA might they have found. Well,
4 Mr. Johnson's, first of all."

5 And Mr. Watson objected. "Objection, Your Honor,
6 she's talking about" --

7 Q. Okay. Mr. Watson did object at that time; is that
8 correct?

9 A. He did.

10 Q. Was he overruled?

11 A. Yes.

12 Q. Did he make any argument with his objection?

13 A. No, he didn't.

14 Q. Do you believe that's why he was overruled?

15 A. Yes.

16 Q. Do you believe -- can you give me the basis for
17 that objection?

18 A. I think he was arguing the fact that she was
19 speculating at that point. And the judge overruled his
20 objection saying that she was arguing facts, but those
21 arguments that she placed were never testified to during
22 the trial.

23 Q. To your knowledge this conversation with -- in
24 court during this part of your trial, is that included in
25 your appeal?

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1 A. I think so, yes.

2 Q. Well, my question -- let me clarify my question.

3 In the appeal that Mr. Watson prepared on your behalf --

4 A. The notice.

5 Q. -- the notice of appeal.

6 A. Right.

7 Q. -- is it included that this -- is this

8 correspondence included in that appeal?

9 A. No.

10 Q. That's my question.

11 A. No, it's not.

12 Q. No. Okay. Do you believe that those are

13 inflammatory statements or speculation?

14 A. Yes, I do.

15 Q. And do you believe the jury was persuaded by that,

16 Mr. Johnson?

17 A. Definitely.

18 Q. Okay. Now, I'd like to just address one matter for

19 the Court that is in your application. And that is that

20 there is evidence discovered after the trial.

21 You and I discussed this allegation; is that

22 correct?

23 A. Yes, we did.

24 Q. Okay. And can you tell the Court what you told me

25 regarding this allegation?

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1 A. Like I say, at the time I'm putting in my
2 application I wasn't real sure about what I should be or
3 what I should include so I tried to include everything
4 that I thought would be of some help to my case. And I
5 was just mistaken as to what I could call
6 after-discovered evidence, yeah. Right.

7 Q. Yes, sir. But it's not your intent to -- it's not
8 your intent to deceive the Court --

9 A. No, no.

10 Q. -- with that allegation?

11 A. No, no.

12 Q. Mr. Johnson, is there anything else that I have not
13 covered that you would like the Court to know regarding
14 this PCR?

15 A. I would like for the officers to have testified
16 today.

17 Q. Yes, sir.

18 A. I would like for Detective Turner, Lieutenant Clay
19 Adams to testify to their testimony.

20 Q. Tell me how you think that would have been helpful
21 to your PCR today.

22 A. Rather than just the record -- I mean, I would've
23 liked for them to expound on exactly why certain answers
24 were given. And --

25 Q. Well, my question is: How would that have been

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1 helpful? Were they contradicting during the trial?

2 A. Yes, they were contradicting.

3 Q. So it's your testimony that the police officers
4 gave some disputed testimony?

5 A. Yes, yes.

6 Q. And what would their presence, their testimony
7 today have done for your PCR?

8 A. Since we weren't prepared to hear them say that
9 during trial, I think being prepared for that testimony
10 today could have helped a little bit, yes.

11 Q. Okay. Mr. Johnson, is there anything else, any
12 other factual details regarding the allegations against
13 Mr. Watson in regards to this PCR that you would like the
14 Court to know?

15 A. I think that's everything in my application.

16 MS. POPE: Your Honor, those are the
17 questions that I have. Please answer any
18 questions.

19 THE COURT: Thank you so much.
20 Mr. Gourley?

21 MR. GOURLEY: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. GOURLEY:

24 Q. Mr. Johnson, you met with Mr. Watson two or three
25 times before your trial?

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1 A. I think I said up to four times.

2 Q. Up to four times. And during those meetings did
3 y'all have the opportunity to go over any of the evidence
4 against you?

5 A. I gave him my version of what happened.

6 Q. Okay. And what was your version of events?

7 A. I told him specifically that the bag found was not
8 mine, and that fingerprint evidence would prove that I
9 never handled that bag.

10 Q. Okay. So just a little background for the Judge.
11 And basically the State alleged you were speeding. They
12 pulled you over. You got out of the car and fled. They
13 allege that you had a black bag in your hand --

14 A. Right.

15 Q. -- and then you disappeared for seven or eight
16 minutes. When they couldn't find you they allege that
17 you put this bag in this shed.

18 And I believe your testimony at trial was that you
19 had a -- you did have a black bag but it was a sunglass
20 bag; is that correct?

21 A. I didn't testify at trial.

22 Q. Okay. Well, it was alleged at trial by your
23 defense counsel that maybe it was a sunglass bag or
24 something like that; is that correct?

25 A. I don't think so.