

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Anderson County

J. Cordell Maddox, Jr., Circuit Court Judge

RECEIVED
AUG 17 2016
SC SUPREME COURT

RAHIEM KIRKMAN

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2015-002372

APPENDIX

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STATE OF SOUTH) IN THE COURT OF GENERAL
 CAROLINA) SESSIONS
)
 COUNTY OF ANDERSON) INDICTMENT NO: 2006-GS-04-2922

STATE OF SOUTH)
 CAROLINA)
)
 PLAINTIFF,) TRANSCRIPT OF RECORD
) TRIAL, VOLUME I
 -VS-)
)
 RAHIEM KIRKMAN,)
)
 DEFENDANT.)

NOVEMBER 5, 2007
 ANDERSON, SOUTH CAROLINA

B E F O R E:

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

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

RAME CAMPBELL, ESQ.
 ASSISTANT 10TH CIRCUIT SOLICITOR
 ATTORNEY FOR THE STATE

DOROTHY MANIGAULT, ESQ.
 ATTORNEY FOR THE DEFENDANT

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

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

2 (WHEREUPON, THE TRIAL IN THE MATTER OF THE
3 STATE VERSUS RAHIEM KIRKMAN COMMENCED ON
4 MONDAY, NOVEMBER 5, 2007, AT APPROXIMATELY
5 11:40 A.M.)

6 **THE COURT:** ALL RIGHT. THE STATE MAY CALL ITS NEXT
7 CASE.

8 **MR. CAMPBELL:** YOUR HONOR, THE STATE IS READY IN
9 INDICTMENT NUMBER 2006-GS-04-2922, THE STATE VERSUS
10 RAHIEM KIRKMAN FOR TRAFFICKING IN COCAINE MORE THAN 400
11 GRAMS.

12 **THE COURT:** ALL RIGHT. THE STATE VERSUS RAHIEM
13 KIRKMAN, 2006-GS-04-2922. THE STATE IS REPRESENTED BY
14 MR. CAMPBELL. THE DEFENDANT IS REPRESENTED BY
15 MS. MANIGAULT.

16 IS THE DEFENDANT WITH US, MS. MANIGAULT?

17 **MS. MANIGAULT:** THE DEFENDANT IS NOT PRESENT, YOUR
18 HONOR.

19 **THE COURT:** ALL RIGHT. DO YOU WANT TO PUT ON THE
20 RECORD THAT I DENIED YOUR MOTION TO BE RELIEVED?
21 DEFENDANT'S ATTORNEY'S MOTION TO BE RELIEVED:

22 **MS. MANIGAULT:** YES, SIR. I HAVE NOT HEARD FROM THE
23 DEFENDANT IN THE LAST SIX MONTHS. I HAVE NEVER MET THE
24 DEFENDANT. I WAS RETAINED ON THE TELEPHONE, BY MAIL. SO
25 I WOULD MOVE TO -- HE HAS NOT CONTACTED ME, HE HAS NOT

1 RESPONDED TO ANY OF MY LETTERS. HIS PHONE HAS BEEN CUT
2 OFF.

3 THE LAST SEVERAL LETTERS I SENT TO HIM BY MAIL HAVE
4 BEEN RETURNED TO ME. I TALKED WITH HIS BONDSMAN WHO
5 TALKED WITH HIS MOTHER WHO TRIED TO GET HIM HERE LAST
6 WEEK FRIDAY.

7 THE COURT: SO YOU HAVE BEEN IN TOUCH WITH HIM. I'M
8 GOING TO DENY YOUR MOTION TO BE RELIEVED. OBVIOUSLY YOU
9 HAVE TRIED TO REPRESENT HIM AND YOU HAVE TAKEN EVERY
10 EFFORT TO REPRESENT HIM. AND AS I UNDERSTAND IT YOU WERE
11 IN TOUCH WITH HIS BONDSMAN?

12 MS. MANIGAULT: YES, SIR.

13 THE COURT: AND THAT HE WAS AWARE OF THE TRIAL TODAY
14 OR AT LEAST THAT THE CASE COULD BE CALLED THIS WEEK?

15 MS. MANIGAULT: YES, SIR.

16 THE COURT: THANK YOU VERY MUCH. I WILL DENY YOUR
17 MOTION.

18 ALL RIGHT. IS MR. RAHIEM KIRKMAN IN THE COURTROOM?
19 (NO RESPONSE.) ALL RIGHT. COULD WE HAVE ONE OF THE
20 BAILIFFS -- OR HAVE YOU HAD --

21 MR. CAMPBELL: WE'VE GOT THAT. PEARLIE SADDLER
22 CALLED.

23 THE COURT: MS. SADDLER, IF YOU COULD APPROACH?

24 (WHEREUPON, MRS. PEARLIE SADDLER WAS SWORN BY
25 THE COURT.)

1 **THE COURT:** ALL RIGHT. MS. SADDLER WERE YOU GIVEN
2 THE NAME -- WELL, FIRST OF ALL, FOR THE RECORD, YOUR
3 POSITION HERE AT THE ANDERSON COUNTY COURTHOUSE?

4 **THE WITNESS:** COURTROOM BAILIFF.

5 **THE COURT:** ALL RIGHT. WERE YOU GIVEN THE NAME OF
6 RAHIEM KIRKMAN TO CALL?

7 **THE WITNESS:** YES.

8 **THE COURT:** AND YOU, DID YOU DO, DID YOU CALL HIS
9 NAME?

10 **THE WITNESS:** YES, SIR.

11 **THE COURT:** AND HOW MANY TIMES DID YOU CALL HIS
12 NAME?

13 **THE WITNESS:** THREE TIMES.

14 **THE COURT:** WAS THERE EVER A RESPONSE?

15 **THE WITNESS:** NO RESPONSE.

16 **THE COURT:** ALL RIGHT. ANY QUESTIONS FROM THE
17 STATE?

18 **MR. CAMPBELL:** NONE, YOUR HONOR.

19 **THE COURT:** FROM THE DEFENDANT?

20 **MS. MANIGAULT:** JUST ONE QUESTION, YOUR HONOR.

21 DID YOU CALL HIM ON EACH FLOOR OF THE COURTHOUSE AND
22 ALSO OUTSIDE THE COURTHOUSE?

23 **THE WITNESS:** YES, MA'AM.

24 **MS. MANIGAULT:** THANK YOU, MA'AM.

25 **THE COURT:** VERY GOOD. THANK YOU, MA'AM.

1 ALL RIGHT. I FIND THAT RAHIEM KIRKMAN IS ABSENT AT
2 THE TIME HIS CASE WAS CALLED.

3 NOW, DOES THE STATE WISH TO PROCEED IN HIS ABSENCE?

4 **MR. CAMPBELL:** THAT'S CORRECT, YOUR HONOR.

5 **THE COURT:** WHAT DO YOU HAVE IN THE WAY OF NOTICE OF
6 THE RIGHT TO BE PRESENT THE DEFENDANT WAS GIVEN?

7 **MR. CAMPBELL:** YOUR HONOR, I'LL HAND UP -- WE CAN GO
8 AHEAD AND MARK IT AS A COURT'S EXHIBIT. I'LL MARK THIS
9 AS COURT'S EXHIBIT 1.

10 THIS IS A BOND FORM THAT HE SIGNED ON AUGUST 24TH,
11 2006, UNDER WHICH IT STATES (READING):

12 I UNDERSTAND AND I HAVE BEEN INFORMED THAT I HAVE
13 THE RIGHT AND OBLIGATION TO BE PRESENT AT TRIAL, AND
14 SHOULD I FAIL TO ATTEND THE COURT THE TRIAL WILL PROCEED
15 IN MY ABSENCE.

16 HE DID SIGN THAT. HE GAVE AN ADDRESS AT THAT TIME
17 OF 3420 BROTHERTON ROAD, GREENSBORO, NORTH CAROLINA,
18 27405. THEREAFTER HE WAS BONDED OUT, I BELIEVE IT WAS A
19 \$100,000 BOND.

20 AND GRAHAM BONDING COMPANY WROTE OUR OFFICE A LETTER
21 DATED AUGUST THE 28TH '06 IN WHICH THEY CORRECTED THE
22 ADDRESS, HIS DRIVER'S LICENSE OF 2420 BURLINGTON ROAD,
23 GREENSBORO, NORTH CAROLINA, 27405. I'M GOING TO MARK
24 THAT AS STATE'S EXHIBIT NUMBER 2 -- I MEAN COURT'S
25 EXHIBIT NUMBER 2.

1 (COURT'S EX. # 1, SURETY BOND FORM, WAS
2 MARKED FOR IDENTIFICATION AND RECEIVED INTO
3 COURT'S EVIDENCE.)

4 (COURT'S EX. # 2, LETTER FROM GRAHAM BONDING
5 DATED 8-38-06, WAS MARKED FOR IDENTIFICATION
6 AND RECEIVED INTO COURT'S EVIDENCE.)

7 **MR. CAMPBELL:** HE WAS PLACED ON THE TRIAL ROSTER,
8 YOUR HONOR. ACTUALLY, THIS IS ABOUT THE FOURTH TIME WE
9 HAVE ATTEMPTED TO CALL THIS FOR TRIAL, STARTING THE TERM
10 OF MAY 21ST OF THIS YEAR, JULY 16TH. AUGUST THE 6TH WE
11 ACTUALLY WERE GOING TO COURT AND MS. MANIGAULT AND I HAD
12 MET ON THAT MONDAY. WE WERE GOING TO PICK A JURY. AND
13 TOLD THE FRIDAY PREVIOUS I DISCOVERED SOME INFORMATION
14 THAT THE STATE HAD NOT TURNED OVER. AT THAT POINT I GAVE
15 IT TO MS. MANIGAULT AND WE CONTINUED THE CASE TO GIVE HER
16 TIME TO REVIEW IT. AND THIS CASE HAS BEEN PLACED ON THE
17 TRIAL DOCKET FOR TODAY.

18 FURTHERMORE, I DID SEND A LETTER TO MS. MANIGAULT
19 INDICATING THIS CASE WAS FOR TRIAL ON OCTOBER 26TH, '07
20 AND DID MAKE A PHONE CALL. WE ALSO DID MAIL OUT THE BOND
21 CARDS TO MR. KIRKMAN AT 3420 BURLINGTON ROAD, GREENSBORO
22 NORTH CAROLINA, FOR TRIAL TODAY, AND I'LL MAKE THAT
23 COURT'S NUMBER 3, YOUR HONOR.

24 **THE COURT:** IS IT 2430 BURLINGTON ROAD?

25 **MR. CAMPBELL:** YES, SIR.

1 (COURT'S EX. # 3, PHOTOCOPIES OF APPEARANCE
2 FOR TRIAL CARDS, WAS MARKED FOR
3 IDENTIFICATION AND RECEIVED INTO COURT'S
4 EVIDENCE.)

5 **MR. CAMPBELL:** HIS BOND PAPER SAYS BROTHERTON, BUT
6 IT'S BURLINGTON. AND THAT'S OUR NOTICE WE HAVE.

7 **THE COURT:** LET ME SEE YOUR EXHIBIT 1.

8 ALL RIGHT. MS. MANIGAULT, ANYTHING ON BEHALF OF THE
9 DEFENDANT?

10 **MS. MANIGAULT:** WE REQUEST THE COURT NOT TRY THE
11 DEFENDANT IN HIS ABSENCE. HE IS ENTITLED TO HIS DAY IN
12 COURT. I HAVE NO INFORMATION WHETHER HE MIGHT BE SICK,
13 IN THE HOSPITAL OR OTHERWISE DETAINED. SO WE WOULD ASK
14 THE COURT NOT TO TRY HIM IN HIS ABSENCE. A BENCH WARRANT
15 WOULD SERVE THE SAME AS MOVING THE CASE FROM THE ACTIVE
16 DOCKET TO THE INACTIVE DOCKET. AND EVEN IF HE IS -- IF
17 THE COURT TRIES HIM IN HIS ABSENCE AND THE JURY FINDS HIM
18 GUILTY, THE SENTENCE IS SEALED AND PLACED ON THE BENCH
19 WARRANT DOCKET ANYWAY, SO WE ASK THE COURT NOT TO TRY HIM
20 IN HIS ABSENCE.

21 **THE COURT:** WHAT DOES THE STATE SAY?

22 **MR. CAMPBELL:** THE STATE IS READY TO PROCEED, YOUR
23 HONOR, WE HAVE, ALL OF OUR WITNESSES ARE HERE. THIS CASE
24 HAS BEEN ON THE DOCKET SINCE AUGUST OF LAST YEAR, SO
25 WE'RE READY TO PROCEED.

1 **THE COURT:** WELL, I NOTICED ONE THING ON THE STATE'S
2 EXHIBIT ONE, WHICH IS THE BOND FORM. ALTHOUGH THEY HAVE
3 IT CHECKED THAT THE DEFENDANT SHALL APPEAR AT THE TERM OF
4 COURT BEGINNING ON, OR WILL BE NOTIFIED TO APPEAR BY THE
5 ANDERSON COUNTY SOLICITOR'S OFFICE, MR. POTTER DID NOT
6 INITIAL THAT. NEVERTHELESS, I DO NOTE THAT IT HAS
7 PROVIDED THAT I UNDERSTAND AND HAVE BEEN INFORMED -- THIS
8 IS AN ACKNOWLEDGMENT BY DEFENDANT. I UNDERSTAND AND HAVE
9 BEEN INFORMED THAT I HAVE THE RIGHT AND OBLIGATION TO BE
10 PRESENT AT TRIAL, AND SHOULD I FAIL TO ATTEND COURT THE
11 TRIAL WILL PROCEED IN MY ABSENCE. FURTHER, IT HAS BEEN
12 EXPLAINED TO ME THAT MY FAILURE TO APPEAR BEFORE THE
13 COURT AS REQUIRED WILL RESULT IN AN ADDITIONAL CHARGE
14 MADE AGAINST ME. AND IT IS SIGNED BY THE DEFENDANT ON
15 AUGUST THE 24TH, 2006.

16 AGAIN, IT ALSO APPEARS THAT EVERY EFFORT HAS BEEN
17 MADE TO CONTACT THE DEFENDANT, AND HE HASN'T STAYED IN
18 TOUCH WITH HIS FAMILY AND HIS BONDSMAN. HE HAS BEEN MADE
19 AWARE. INASMUCH AS THE CASE IS SCHEDULED AND HAS BEEN
20 CALLED AND THE JURY PANEL IS READY FOR SELECTION OF A
21 JURY, I FIND THAT THE DEFENDANT HAS RECEIVED NOTICE OF A
22 RIGHT TO BE PRESENT AND A WARNING THAT A TRIAL WOULD
23 PROCEED IN HIS ABSENCE UPON HIS FAILURE TO ATTEND COURT.
24 THEREFORE, I FIND THE DEFENDANT HAS FREELY, VOLUNTARILY,
25 KNOWINGLY AND INTELLIGENTLY WAIVED HIS RIGHT TO BE

1 PRESENT AT TRIAL AND MAY BE TRIED IN HIS ABSENCE UNDER
2 STATE VS PATTERSON, 367 S.C. 219, COURT OF APPEALS 2006.

3 ALL RIGHT. AGAIN, I THINK WE'RE READY -- I'LL
4 NOTICE YOUR OBJECTION AND MY RULING, MS. MANIGAULT.

5 **MS. MANIGAULT:** YES, SIR.

6 **THE COURT:** BUT WE WILL PROCEED ON THE DRAWING OF
7 THE JURY. I THINK WE NEED -- MR. ROBINSON, LET'S CLEAR
8 THE MIDDLE SECTION. THAT LEAVES THE COURTROOM FOR THE
9 JURY. ANYTHING FROM THE STATE BEFORE I OPEN THE DOORS?

10 **MR. CAMPBELL:** JUST ONE MORE FOR THE RECORD. THE
11 TRIAL DOCKET IN THIS CASE WAS PUBLISHED ON OCTOBER 22ND,
12 2007.

13 **THE COURT:** THIS CASE WAS DOWN.

14 **MR. CAMPBELL:** YES, SIR, HIS CASE WAS DOWN.

15 **THE COURT:** YES, MA'AM.

16 **MS. MANIGAULT:** YOUR HONOR, ON BEHALF OF THE
17 DEFENSE, WE WOULD ASK THE COURT TO EXCUSE ALL JURORS
18 EMPLOYED BY THE STATE, PARTICULARLY THE SOUTH CAROLINA
19 DEPARTMENT OF TRANSPORTATION, THE DEPARTMENT OF SOCIAL
20 SERVICES, ALL EMPLOYEES OF THE COUNTY OF ANDERSON AND THE
21 CITY OF ANDERSON.

22 **THE COURT:** ANY VOIR DIRE REQUESTS FROM THE...

23 **MR. CAMPBELL:** JUST BEING THAT THE MEMBERS OF THE
24 JURY PANEL HAVE USED MS. MANIGAULT AS AN ATTORNEY
25 CURRENTLY OR IN THE PAST, HAVE USED MS. MANIGAULT AS AN

1 ATTORNEY.

2 **THE COURT:** ALL RIGHT. AS I UNDERSTAND IT, THE
3 DEFENDANT WISHES TO VOIR DIRE THE JURORS AS TO WHETHER
4 ANY MEMBERS OF THE JURY PANEL ARE EMPLOYEES OF THE STATE
5 OF SOUTH CAROLINA, COUNTY OF ANDERSON OR CITY OF ANDERSON
6 TO INCLUDE BUT NOT LIMITED TO THE SOUTH CAROLINA HIGHWAY
7 DEPARTMENT?

8 **MS. MANIGAULT:** YES, SIR. OR ANY LAW ENFORCEMENT
9 AGENCY.

10 **THE COURT:** ALL RIGHT. I DON'T KNOW IF I CAN
11 EXCLUDE THE CAUSE, BUT I WILL CERTAINLY VOIR DIRE THEM ON
12 THAT AND ASK THEM IF THAT WOULD INTERFERE WITH THEIR
13 ABILITY TO GIVE BOTH THE STATE AND THE DEFENDANT A FAIR
14 AND IMPARTIAL TRIAL.

15 **MS. MANIGAULT:** AND ALSO, YOUR HONOR, THE
16 SOLICITOR'S OFFICE.

17 **THE COURT:** ALL RIGHT. I'M GOING TO DO THE EQUAL
18 VOIR DIRE IN THE SENSE THAT ANY MEMBER OF THE JURY PANEL
19 HAS BEEN REPRESENTED OR HAD CASES WITH OR THAT THE
20 SOLICITOR HAS BEEN AGAINST THEM. OKAY. ANYTHING ELSE?

21 **MS. MANIGAULT:** YOUR HONOR, JUST IN PARTICULAR I
22 KNOW THAT ONE OF THE JURORS ON THE LIST WAS EMPLOYED BY
23 THE SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION.

24 **THE COURT:** I DID. THERE IS ONE. BUT AGAIN I THINK
25 IT COMES DOWN TO WHETHER OR NOT THEY COULD BE FAIR AND

1 IMPARTIAL TO ALL PARTIES. BUT I WILL ASK THAT AND, OF
2 COURSE, ONE OF THE THINGS THAT DIDN'T RESPOND WAS THE
3 DEPARTMENT OF MENTAL HEALTH.

4 **MS. MANIGAULT:** THANK YOU.

5 **THE COURT:** ALL RIGHT. YOU MAY OPEN THE DOORS,
6 PLEASE.

7 (THE JURY PANEL ENTERED THE COURTROOM AT
8 11:54 A.M.)

9 **THE COURT:** ALL RIGHT. IS THAT EVERYBODY,
10 MS. PHILLIPS?

11 **THE CLERK:** YES, YOUR HONOR.

12 **THE COURT:** ALL RIGHT. SOLICITOR, YOU MAY CALL YOUR
13 NEXT CASE.

14 **MR. CAMPBELL:** MAY IT PLEASE THE COURT. YOUR HONOR,
15 THE STATE IS READY IN INDICTMENT NUMBER 2006-GS-04-2922,
16 *THE STATE VERSUS RAHIEM KIRKMAN*, FOR TRAFFICKING IN
17 COCAINE GREATER THAN 400 GRAMS.

18 JURY VOIR DIRE:

19 **THE COURT:** LADIES AND GENTLEMEN OF THE JURY PANEL,
20 PLEASE GIVE ME YOUR ATTENTION. WE ARE ABOUT TO COMMENCE
21 THE TRIAL OF *THE STATE OF SOUTH CAROLINA VERSUS RAHIEM*
22 *KIRKMAN* WHO IS CHARGED IN INDICTMENT NUMBER
23 2006-GS-04-2922 WITH THE OFFENSE OF TRAFFICKING IN
24 COCAINE HAVING, KNOWINGLY AND UNLAWFULLY HAVING IN HIS
25 POSSESSION MORE THAN 400 GRAMS OF COCAINE.

1 THE STATE WILL BE REPRESENTED BY MR. CAMPBELL.

2 MR. CAMPBELL, IF YOU WOULD STAND, INTRODUCE YOURSELF
3 AND ANYONE WHO WILL BE ASSISTING YOU IN THE PROSECUTION
4 OF THIS CASE.

5 **MR. CAMPBELL:** THANK YOU, YOUR HONOR.

6 MY NAME IS RAME CAMPBELL. I'M ASSISTANT SOLICITOR
7 HERE IN ANDERSON COUNTY. I WORK FOR OUR SOLICITOR,
8 CHRISSY ADAMS, SEATED OVER HERE. I'LL BE TRYING THIS
9 CASE BY MYSELF ALONG WITH THE OTHER OFFICERS WHO ARE
10 WITNESSES IN THE CASE.

11 **THE COURT:** THE DEFENDANT, RAHIEM KIRKMAN, HAS
12 WAIVED HIS RIGHT TO BE PRESENT AT TRIAL TODAY, WHICH IS
13 WITHIN HIS CONSTITUTIONAL PREROGATIVE, BUT HE IS
14 REPRESENTED BY MS. MANIGAULT.

15 MS. MANIGAULT, IF YOU WOULD PLEASE STAND, INTRODUCE
16 YOURSELF AND MEMBERS OF YOUR OFFICE.

17 **MS. MANIGAULT:** LADIES AND GENTLEMEN, I'M DOROTHY
18 MANIGAULT, I'M A MEMBER OF THE GREENVILLE BAR. I
19 REPRESENT THE DEFENDANT, MR. RAHIEM KIRKMAN.

20 **THE COURT:** NOW, IS ANY MEMBER OF THE JURY PANEL
21 RELATED BY BLOOD OR MARRIAGE TO THE DEFENDANT, RAHIEM
22 KIRKMAN? IF SO, PLEASE STAND. ANY MEMBER OF THE JURY
23 PANEL RELATED BY BLOOD OR MARRIAGE, NOW OR FORMERLY, OR
24 CLOSE PERSONAL FRIEND OF THE DEFENDANT RAHIEM KIRKMAN, IF
25 SO, PLEASE STAND AT THIS TIME. (NO RESPONSE.)

1 NOW, WAS ANY MEMBER OF THE JURY PANEL A MEMBER OF
2 THE GRAND JURY THAT RETURNED THE INDICTMENT IN THIS CASE?
3 IF SO, PLEASE STAND. (NO RESPONSE.)

4 NOW I'M GOING TO BE -- I'M GOING TO CALL OUT THE
5 NAMES OF POTENTIAL WITNESSES. WHEN I SAY POTENTIAL
6 WITNESSES, I MEAN WITNESSES WHO MAY BE CALLED BUT DO NOT
7 HAVE TO BE CALLED DURING THE TRIAL OF THIS CASE. AND IF
8 THEY ARE IN THE COURTROOM AT THE TIME THEIR NAMES ARE
9 CALLED, IF THEY WOULD PLEASE STAND AND LOOK UPON THE
10 JURY.

11 CRAIG MIZE, ANDERSON COUNTY SHERIFF'S OFFICE.
12 THANK YOU, SIR.

13 JAMIE CRAWFORD WITH THE ANDERSON COUNTY SHERIFF'S
14 OFFICE.

15 THANK YOU, SIR.

16 BRAD MCGUIRE WITH THE ANDERSON COUNTY SHERIFF'S
17 OFFICE.

18 TOMMY CLAMP WITH THE ANDERSON COUNTY SHERIFF'S
19 OFFICE.

20 MARGARET VECCHIO WITH THE ANDERSON COUNTY SHERIFF'S
21 OFFICE.

22 GENE BROCK WITH THE ANDERSON COUNTY SHERIFF'S
23 OFFICE.

24 MEREDITH LANFORD OF THE ANDERSON OCONEE FORENSICS
25 LABS.

1 TODD CARON, C-A-R-O-N, OF THE ANDERSON COUNTY
2 SHERIFF'S OFFICE.

3 CHRIS SCOTT WITH THE ANDERSON COUNTY SHERIFF'S
4 OFFICE.

5 RUSTY SCOGGINS OF THE ANDERSON COUNTY SHERIFF'S
6 OFFICE.

7 IS THERE ANY MEMBER OF THE JURY PANEL RELATED BY
8 BLOOD OR MARRIAGE, NOW OR FORMERLY, CLOSE PERSONAL FRIEND
9 OR BUSINESS ASSOCIATE OF ANY OF THE POTENTIAL WITNESSES
10 IN THIS CASE: CRAIG MIZE, JAMIE CRAWFORD, BRAD MCGUIRE,
11 TOMMY CLAMP, MARGARET VECCHIO, GENE BROCK, MEREDITH
12 LANFORD, TODD CARON, CHRIS SCOTT OR RUSTY SCOGGINS? IF
13 SO, PLEASE STAND. (NO RESPONSE.)

14 IS THERE ANY MEMBER OF THE JURY PANEL OR MEMBERS OF
15 THEIR IMMEDIATE FAMILY EMPLOYEES OF THE STATE OF SOUTH
16 CAROLINA, COUNTY OF ANDERSON OR THE CITY OF ANDERSON OR
17 ANY OF THEIR SUBDIVISIONS OR AGENCIES TO INCLUDE BUT NOT
18 LIMITED TO THE SOUTH CAROLINA HIGHWAY DEPARTMENT OR ANY
19 OTHER STATE AGENCY, COUNTY AGENCY OR CITY AGENCY OR
20 DEPARTMENT, IF YOU WOULD PLEASE STAND AT THIS TIME.

21 ALL RIGHT. WE WILL START ON THIS SIDE. YES, MA'AM.
22 THE CLOSEST. YES, MA'AM. YOUR NAME FIRST AND THEN WHICH
23 AGENCY OR DEPARTMENT.

24 **POTENTIAL JUROR:** MARGOT MARTIN, CITY OF ANDERSON
25 HIGHWAYS DEPARTMENT.

1 **THE COURT:** ALL RIGHT. AND WOULD THAT IN ANY WAY
2 INTERFERE WITH YOUR ABILITY TO GIVE BOTH THE STATE AND
3 THE DEFENDANT A FAIR AND IMPARTIAL TRIAL?

4 **POTENTIAL JUROR MARTIN:** I WOULDN'T THINK SO.

5 **THE COURT:** NOW I NEED TO KNOW FOR CERTAIN. THE
6 REASON FOR THAT IS -- THERE ARE TWO REASONS I ASK THIS
7 QUESTION. NOT ONLY ARE THE PARTIES, MEANING THE STATE
8 AND DEFENDANT, ENTITLED TO A FAIR AND IMPARTIAL JURY; BUT
9 SECOND, AND JUST AS IMPORTANT TO THE COURT, IS THAT NONE
10 OF YOU ASKED TO BE HERE, AND SO IF YOU HAVE ANY
11 RESERVATION ABOUT SITTING ON A CASE, I NEED TO KNOW IT.

12 ALL RIGHT. SO I'M ASKING YOU AGAIN: WOULD THE FACT
13 THAT YOU ARE EMPLOYED BY THE CITY OF ANDERSON INTERFERE
14 WITH YOUR ABILITY TO GIVE THE STATE AND THE DEFENDANT A
15 FAIR AND IMPARTIAL TRIAL?

16 **POTENTIAL JUROR MARTIN:** NO, YOUR HONOR.

17 **THE COURT:** VERY GOOD. THANK YOU, MA'AM.

18 YES, MA'AM.

19 **POTENTIAL JUROR:** JUANITA HAWKINS, DEPARTMENT OF
20 SOCIAL SERVICES.

21 **THE COURT:** ALL RIGHT. WOULD THAT IN ANY WAY
22 INTERFERE WITH YOUR ABILITY TO GIVE BOTH THE STATE AND
23 THE DEFENDANT A FAIR AND IMPARTIAL TRIAL?

24 **POTENTIAL JUROR HAWKINS:** NO, SIR.

25 **THE COURT:** VERY GOOD. THANK YOU, MA'AM.

1 YES, MA'AM, ON THE FRONT ROW.

2 **POTENTIAL JUROR:** I'M CHARLOTTE BURROUGHS AND I'M
3 WITH THE DEPARTMENT OF SOCIAL SERVICES.

4 **THE COURT:** ALL RIGHT. WOULD THAT IN ANY WAY
5 INTERFERE WITH YOUR ABILITY TO GIVE BOTH THE STATE AND
6 THE DEFENDANT A FAIR AND IMPARTIAL TRIAL?

7 **POTENTIAL JUROR BURROUGHS:** NO, SIR.

8 **THE COURT:** VERY GOOD. THANK YOU, MA'AM.
9 YES, MA'AM.

10 **POTENTIAL JUROR:** DID YOU SAY A BLOOD RELATIVE?

11 **THE COURT:** YES, MA'AM, EITHER YOU OR IMMEDIATE
12 FAMILY.

13 **POTENTIAL JUROR:** I'M MARCIA SIMMONS. MY SON IS AN
14 OFFICER FOR THE CITY OF ANDERSON POLICE DEPARTMENT.

15 **THE COURT:** WOULD THAT IN ANY WAY INTERFERE WITH
16 YOUR ABILITY TO GIVE BOTH THE STATE AND THE DEFENDANT A
17 FAIR AND IMPARTIAL TRIAL?

18 **POTENTIAL JUROR SIMMONS:** NO, SIR.

19 **THE COURT:** VERY GOOD. THANK YOU, MA'AM.
20 YES, SIR. YOUR NAME, PLEASE?

21 **POTENTIAL JUROR:** JOHN SAMMONS. I USED TO WORK WITH
22 THE DEPARTMENT OF TRANSPORTATION.

23 **THE COURT:** WOULD THAT IN ANY WAY INTERFERE WITH
24 YOUR ABILITY TO GIVE BOTH THE STATE AND THE DEFENDANT A
25 FAIR AND IMPARTIAL TRIAL?

1 **POTENTIAL JUROR SAMMONS:** NO, SIR.

2 **THE COURT:** THANK YOU, SIR.

3 NOW, IS ANY MEMBER OF THE JURY PANEL OR MEMBERS OF
4 THEIR IMMEDIATE FAMILY CONNECTED WITH ANY LAW ENFORCEMENT
5 AGENCY NOW OR FORMERLY? THAT WOULD INCLUDE FEDERAL,
6 STATE, LOCAL, OR COUNTY OR CITY. AND IF YOU WOULD PLEASE
7 STAND. I'M GOING TO ASK YOU TO STAND AGAIN IF YOU WILL
8 RESPOND TO THAT, TOO. ANY MEMBER OF THE JURY PANEL WHO
9 EITHER THEMSELVES OR MEMBERS OF THEIR IMMEDIATE FAMILY
10 ARE CONNECTED WITH A LAW ENFORCEMENT AGENCY, FEDERAL,
11 STATE, I SAID COUNTY OR CITY, IF YOU WOULD PLEASE STAND
12 AT THIS TIME. VERY GOOD.

13 YES, MA'AM.

14 **POTENTIAL JUROR:** MY HUSBAND IS A POLICE OFFICER
15 WITH THE CITY.

16 **THE COURT:** WITH THE CITY OF ANDERSON.

17 **POTENTIAL JUROR:** YES, SIR.

18 **THE COURT:** YOUR NAME, PLEASE?

19 **POTENTIAL JUROR:** CHARLOTTE BURROUGHS. I'M SORRY.

20 **THE COURT:** ALL RIGHT. WOULD THAT IN ANY WAY
21 INTERFERE WITH YOUR ABILITY TO GIVE BOTH THE STATE AND
22 THE DEFENDANT A FAIR AND IMPARTIAL TRIAL?

23 **POTENTIAL JUROR:** NO, SIR.

24 **THE COURT:** YES, MA'AM, AGAIN.

25 **POTENTIAL JUROR SIMMONS:** I'M MARSHA SIMMONS. MY

1 SON IS AN OFFICER WITH THE CITY OF ANDERSON POLICE
2 DEPARTMENT.

3 THE COURT: ALL RIGHT. WOULD THAT IN ANY WAY
4 INTERFERE WITH YOUR ABILITY TO GIVE BOTH THE STATE AND
5 THE DEFENDANT A FAIR AND IMPARTIAL TRIAL?

6 POTENTIAL JUROR SIMMONS: NO, SIR.

7 THE COURT: THANK YOU.

8 YES, MA'AM.

9 POTENTIAL JUROR: MINNIE ALEXANDER. I'M A DISTANT
10 RELATIVE OF MICHELLE LANFORD -- NOT MICHELLE BUT ---

11 THE COURT: ALL RIGHT. WOULD THAT IN ANY WAY
12 INTERFERE WITH YOUR ABILITY TO GIVE BOTH THE STATE AND
13 THE DEFENDANT A FAIR AND IMPARTIAL TRIAL?

14 POTENTIAL JUROR: NO, SIR.

15 THE COURT: VERY GOOD. THANK YOU, MA'AM.

16 ANYONE ELSE? (NO RESPONSE.)

17 NOW, HAS ANY MEMBER OF THE JURY PANEL OR MEMBERS OF
18 THEIR IMMEDIATE FAMILY EVER BEEN EMPLOYED BY OR
19 ASSOCIATED WITH THE TENTH CIRCUIT SOLICITOR'S OFFICE,
20 EITHER AS A WITNESS, SUBJECT TO AN ACTION BY THE
21 SOLICITOR'S OFFICE? IF SO, PLEASE STAND. ANY MEMBER OF
22 THE JURY PANEL OR MEMBERS OF THEIR IMMEDIATE FAMILY EVER
23 BEEN EMPLOYED BY OR ASSOCIATED WITH THE TENTH CIRCUIT
24 SOLICITOR'S OFFICE, EITHER AS A WITNESS OR SUBJECT TO AN
25 ACTION BY THE SOLICITOR'S OFFICE? IF SO, PLEASE STAND.

1 (NO RESPONSE.)

2 ANY MEMBER OF THE JURY PANEL OR MEMBERS OF THEIR
3 IMMEDIATE FAMILY EVER BEEN REPRESENTED OR EMPLOYED BY
4 ATTORNEY DOROTHY MANIGAULT OR HER OFFICE IN GREENVILLE,
5 SOUTH CAROLINA? IF SO, PLEASE STAND. (NO RESPONSE.)

6 HAS ANY MEMBER OF THE JURY PANEL FORMED OR EXPRESSED
7 AN OPINION ABOUT THIS CASE? IF SO, PLEASE STAND (NO
8 RESPONSE.)

9 IS ANY MEMBER OF THE PANEL AWARE OF ANY INTEREST,
10 BIAS OR PREJUDICE TOWARDS EITHER THE DEFENDANT OR THE
11 STATE OF SOUTH CAROLINA? IF SO, PLEASE STAND. (NO
12 RESPONSE.)

13 DOES ANY MEMBER OF THE PANEL KNOW OF ANY REASON WHY
14 HE OR SHE COULD NOT GIVE BOTH THE STATE OF SOUTH CAROLINA
15 AND THE DEFENDANT A FAIR AND IMPARTIAL TRIAL? IF NOT,
16 PLEASE STAND. (NO RESPONSE.)

17 ANY ADDITIONAL QUESTIONS FROM THE STATE?

18 **MR. CAMPBELL:** NO, YOUR HONOR.

19 **THE COURT:** FROM THE DEFENDANT?

20 **MS. MANIGAULT:** NONE FROM THE DEFENSE, YOUR HONOR.

21 **THE COURT:** VERY GOOD. THANK YOU, MA'AM.

22 JURY SELECTION:

23 **THE COURT:** LADIES AND GENTLEMEN OF THE JURY, WE'LL
24 NOW SELECT A JURY. AND THE WAY WE DO THAT IN GENERAL
25 SESSIONS COURT IS THAT THE CLERK OF COURT WILL CALL OUT

1 THE NAME OF THE JURORS WHICH HAVE BEEN SELECTED RANDOMLY,
2 AND IF YOUR NAME IS CALLED, COME FORWARD AND BRING
3 WHATEVER YOU MIGHT HAVE WITH YOU AND STAND IN FRONT OF
4 THE COURTROOM WHERE THE BAILIFF IS STANDING AND FACE BACK
5 TOWARDS THE BACK OF THE COURTROOM. THE STATE WILL GO
6 FIRST IN THE SELECTION OF THE JURY AND THE STATE WILL
7 EITHER SAY PRESENT THE JUROR OR EXCUSE THE JUROR. THEN
8 THE DEFENDANT WILL HAVE THE OPPORTUNITY TO EITHER SAY
9 SWEAR THE JUROR OR TO EXCUSE THE JUROR, AND IN THAT WAY
10 WE'LL SELECT A JURY OF 12 AND LET'S HAVE ONE ALTERNATE AS
11 WELL.

12 **THE CLERK:** YES, YOUR HONOR.

13 **THE COURT:** MADAM CLERK, IF YOU WOULD PLEASE GIVE US
14 A JURY.

15 **THE CLERK:** YES, YOUR HONOR.

16 **THE COURT:** BY THE WAY, LADIES AND GENTLEMEN OF THE
17 JURY PANEL, YOU ARE THE FIRST JURY TO BE SELECTED BY THE
18 NEW TECHNOLOGY. IN THE PAST WE HAD YOUR INDIVIDUAL NAMES
19 PUT IN A CAPSULE, AND THOSE CAPSULES PUT IN A DRUM, AND
20 THE CLERK WOULD TURN THE DRUM. AND THE LAW ACTUALLY SAID
21 THAT YOU EITHER HAD A PERSON WHO WAS LEGALLY BLIND OR A
22 CHILD WHO COULD NOT READ OR WRITE DRAW THE CAPSULE FROM
23 THE DRUM. SO WE'VE SORT OF GOTTEN AWAY FROM THAT AND
24 TODAY WE'RE USING A NEW SYSTEM HERE IN ANDERSON THAT'S
25 INSTITUTED BY THE STATE COURT SYSTEM THAT YOUR NAMES HAVE

1 BEEN RANDOMLY SELECTED AND APPEAR ON A LIST THAT WILL BE
2 CALLED IN BY THE CLERK.

3 ALL RIGHT, MADAM CLERK, IF YOU WOULD, PLEASE.

4 **THE CLERK:** THANK YOU, YOUR HONOR.

5 LADIES AND GENTLEMEN, AS I CALL YOUR NAME, IF YOU
6 WILL PLEASE COME FORWARD AND PRESENT YOURSELVES TO THE
7 TWO TABLES.

8 JUROR NUMBER ONE, JAMES R. SMITH, JUNIOR. I BELIEVE
9 IT'S JUROR NUMBER 132 ON YOUR LIST. (WHITE MALE).

10 WHAT SAY YOU FOR THE STATE?

11 **MR. CAMPBELL:** PRESENT THE JUROR.

12 **THE CLERK:** WHAT SAY YOU FOR THE DEFENDANT?

13 **MS. MANIGAULT:** SWEAR THE JUROR.

14 **THE COURT:** MR. SMITH, IF YOU WILL GO OVER AND HAVE
15 A SEAT IN THE JURY-BOX, PLEASE.

16 NUMBER 32, ABIGAIL L. CLARK, NUMBER 32. (WHITE
17 FEMALE).

18 WHAT SAY YOU FOR THE STATE?

19 **MR. CAMPBELL:** PRESENT THE JUROR.

20 **THE CLERK:** WHAT SAY YOU FOR THE DEFENDANT?

21 **MS. MANIGAULT:** SWEAR MS. CLARK.

22 **THE CLERK:** IF YOU WILL GO OVER AND HAVE A SEAT IN
23 THE JURY-BOX, PLEASE, MS. CLARK.

24 JUROR NUMBER TEN, ESTELLE C. BENNETT, NUMBER 10
25 (WHITE FEMALE).

1 WHAT SAY YOU FOR THE STATE?

2 **MR. CAMPBELL:** PRESENT THE JUROR.

3 **THE CLERK:** WHAT SAY YOU FOR THE DEFENDANT?

4 **MS. MANIGAULT:** SWEAR MS. BENNETT.

5 **THE CLERK:** MS. BENNETT, IF YOU WOULD GO OVER AND

6 HAVE A SEAT IN THE JURY-BOX, PLEASE, MA'AM.

7 JUROR NUMBER 80, ANN J. HOLLIDAY, NUMBER 80. (WHITE
8 FEMALE).

9 WHAT SAY YOU FOR THE STATE?

10 **MR. CAMPBELL:** PRESENT THE JUROR.

11 **THE CLERK:** WHAT SAY YOU FOR THE DEFENDANT?

12 **MS. MANIGAULT:** SWEAR MS. HOLLIDAY.

13 **THE CLERK:** MS. HOLLIDAY, IF YOU WOULD GO OVER AND

14 HAVE A SEAT IN THE JURY-BOX, PLEASE, MA'AM.

15 JUROR NUMBER 47, TERRENCE A. DEVEAUX, NUMBER 47

16 (BLACK MALE).

17 WHAT SAY YOU FOR THE STATE?

18 **MR. CAMPBELL:** PRESENT THE JUROR.

19 **THE CLERK:** WHAT SAY YOU FOR THE DEFENDANT?

20 **MS. MANIGAULT:** SWEAR MR. DEVEAUX.

21 **THE CLERK:** IF YOU WILL HAVE A SEAT IN THE JURY-BOX,

22 PLEASE, MR. DEVEAUX.

23 NUMBER 137, JANA L. TENIJENHUIS, NUMBER 137 (WHITE

24 FEMALE).

25 WHAT SAY YOU FOR THE STATE?

1 **MR. CAMPBELL:** PRESENT THE JUROR.

2 **THE CLERK:** WHAT SAY YOU FOR THE DEFENDANT?

3 **MS. MANIGAULT:** PLEASE SWEAR MS. TENIJENHUIS.

4 **THE CLERK:** IF YOU WILL HAVE A SEAT IN THE JURY-BOX,
5 PLEASE, MA'AM.

6 JUROR NUMBER 57, LISA R. EPPS, NUMBER 57 (WHITE
7 FEMALE).

8 WHAT SAY YOU FOR THE STATE?

9 **MR. CAMPBELL:** PRESENT THE JUROR.

10 **THE CLERK:** WHAT SAY YOU FOR THE DEFENDANT?

11 **MS. MANIGAULT:** PLEASE EXCUSE MS. EPPS.

12 **THE CLERK:** YOU MAY RETURN TO YOUR SEAT. THANK YOU,
13 MS. EPPS.

14 JUROR NUMBER 38, LOIS J. COOK, NUMBER 38 (WHITE
15 FEMALE).

16 WHAT SAY YOU FOR THE STATE?

17 **MR. CAMPBELL:** PRESENT THE JUROR.

18 **THE CLERK:** WHAT SAY YOU FOR THE DEFENDANT?

19 **MS. MANIGAULT:** PLEASE EXCUSE MS. COOK.

20 **THE CLERK:** YOU MAY RETURN TO YOUR SEAT. THANK YOU,
21 MS. COOK.

22 NUMBER 14, GARY L. BOLTON, NUMBER 14. (WHITE MALE).

23 WHAT SAY YOU FOR THE STATE?

24 **MR. CAMPBELL:** PRESENT THE JUROR.

25 **THE CLERK:** WHAT SAY YOU FOR THE DEFENDANT?

1 **MS. MANIGAULT:** SWEAR MR. BOLTON.

2 **THE CLERK:** IF YOU WILL PLEASE HAVE A SEAT RIGHT UP
3 THERE IN THE JURY-BOX, MR. BOLTON. THANK YOU.

4 NUMBER 71, MCCALL G. HEMINGWAY, III, NUMBER 71.
5 (WHITE MALE).

6 WHAT SAY YOU FOR THE STATE?

7 **MR. CAMPBELL:** PRESENT THE JUROR.

8 **THE CLERK:** WHAT SAY YOU FOR THE DEFENDANT?

9 **MS. MANIGAULT:** PLEASE SWEAR MR. HEMINGWAY.

10 **THE CLERK:** NUMBER 22, KRISTEN T. BURTON, NUMBER 22
11 (WHITE FEMALE).

12 WHAT SAY YOU FOR THE STATE?

13 **MR. CAMPBELL:** PRESENT THE JUROR.

14 **THE CLERK:** WHAT SAY YOU FOR THE DEFENDANT?

15 **MS. MANIGAULT:** PLEASE EXCUSE MS. BURTON.

16 **THE CLERK:** THANK YOU, MS. BURTON. YOU MAY RETURN
17 TO YOUR SEAT.

18 JUROR NUMBER TWO, MINNIE L. ALEXANDER, NUMBER TWO
19 (BLACK FEMALE).

20 WHAT SAY YOU FOR THE STATE?

21 **MR. CAMPBELL:** PRESENT THE JUROR.

22 **THE CLERK:** WHAT SAY YOU FOR THE DEFENDANT?

23 **MS. MANIGAULT:** PLEASE SWEAR MS. ALEXANDER.

24 **THE CLERK:** MS. ALEXANDER, IF YOU WOULD GO RIGHT
25 OVER HERE AND HAVE A SEAT IN THE JURY-BOX, PLEASE, MA'AM.

1 NUMBER 101, MARGOT V. MARTIN, 101 (WHITE FEMALE).

2 WHAT SAY YOU FOR THE STATE?

3 **MR. CAMPBELL:** PRESENT THE JUROR.

4 **THE CLERK:** WHAT SAY YOU FOR THE DEFENDANT?

5 **MS. MANIGAULT:** PLEASE EXCUSE MS. MARTIN.

6 **THE CLERK:** YOU MAY RETURN TO YOUR SEAT. THANK YOU,

7 MS. MARTIN.

8 NUMBER 43, RICKY L. CUSHMAN, NUMBER 43 (WHITE MALE).

9 WHAT SAY YOU FOR THE STATE?

10 **MR. CAMPBELL:** PRESENT THE JUROR.

11 **THE CLERK:** WHAT SAY YOU FOR THE DEFENDANT?

12 **MS. MANIGAULT:** PLEASE SWEAR MR. CUSHMAN.

13 **THE CLERK:** IF YOU WILL HAVE A SEAT IN THE JURY-BOX,

14 MR. CUSHMAN.

15 NUMBER 131, ALBERT D. SMITH, JUNIOR, NUMBER 131

16 (WHITE MALE).

17 WHAT SAY YOU FOR THE STATE?

18 **MR. CAMPBELL:** PRESENT THE JUROR.

19 **THE CLERK:** WHAT SAY YOU FOR THE DEFENDANT?

20 **MS. MANIGAULT:** PLEASE SWEAR MR. SMITH.

21 **THE CLERK:** IF YOU WILL HAVE A SEAT IN THE JURY-BOX,

22 PLEASE, MR. SMITH.

23 NUMBER 54, TOMMY J. DUNN, NUMBER 54 (WHITE MALE).

24 WHAT SAY YOU FOR THE STATE?

25 **MR. CAMPBELL:** PRESENT THE JUROR.

1 **THE CLERK:** WHAT SAY YOU FOR THE DEFENDANT?

2 **MS. MANIGAULT:** PLEASE SWEAR MR. DUNN.

3 **THE CLERK:** IF YOU WOULD HAVE A SEAT RIGHT THERE IN
4 THE JURY-BOX, PLEASE, MR. DUNN.

5 ALTERNATE, YOUR HONOR?

6 **THE COURT:** YES, PLEASE.

7 **THE CLERK:** NUMBER 152, MONICA J. WILLIFORD, NUMBER
8 152 (BLACK FEMALE).

9 WHAT SAY YOU FOR THE STATE?

10 **MR. CAMPBELL:** PRESENT THE JUROR.

11 **THE CLERK:** WHAT SAY YOU FOR THE DEFENDANT?

12 **MS. MANIGAULT:** PLEASE SWEAR MS. WILLIFORD.

13 **THE CLERK:** MS. WILLIFORD, IF YOU WILL HAVE A SEAT
14 ON THE SECOND ROW, YOU WILL BE OUR ALTERNATE JUROR,
15 PLEASE, MA'AM.

16 **THE COURT:** ALL RIGHT. IS THERE ANY REASON THIS
17 JURY CANNOT BE SWORN FOR THE TRIAL OF THIS CASE FROM THE
18 STATE?

19 **MR. CAMPBELL:** NO, YOUR HONOR.

20 **THE COURT:** FROM THE DEFENSE?

21 **MS. MANIGAULT:** JUST PLEASE NOTE OUR PRIOR
22 EXCEPTION.

23 **THE COURT:** CERTAINLY. NOTED YOUR OBJECTIONS. BUT
24 NO MOTIONS AT THIS TIME?

25 **MS. MANIGAULT:** NONE.

1 **THE COURT:** VERY GOOD.

2 MR. HEMINGWAY, I'M GOING TO ASK YOU TO SERVE AS
3 FOREMAN OF THIS JURY, SO IF YOU WOULD SWAP, IF YOU WOULD
4 PLEASE, WITH MS. HOLLIDAY, NOT AT THIS TIME BUT WHEN WE
5 COME BACK TO THE COURTROOM.

6 **THE FOREMAN:** YES, SIR.

7 **THE COURT:** AND LET'S SEE.

8 COULD COUNSEL APPROACH, PLEASE?

9 (DISCUSSION AT SIDE-BAR AMONG COURT AND
10 COUNSEL AND WITH THE CLERK OF COURT.)

11 **THE COURT:** THE REASON I WAS ASKING, SOMETIMES I USE
12 THE SMALLER COURTROOM DOWNSTAIRS TO TRY CASES. BUT WE
13 WILL USE THIS COURTROOM FOR THE TRIAL OF THIS CASE. SO
14 WHEN WE COME BACK I'M GOING TO ASK YOU, MR. HEMINGWAY, IF
15 YOU WOULD SIT WHERE MS. HOLIDAY IS NOW; AND THEN,
16 MS. WILLIFORD, YOU WILL ALWAYS SIT IN THE CHAIR THAT YOU
17 ARE SITTING IN. OTHERWISE, EVERYONE ELSE CAN SIT
18 WHEREVER THEY WANT ON THE JURY-BOX EXCEPT FOR THAT LAST
19 SEAT ON THE END. THE REASON FOR THAT IS I NEED TO KNOW
20 WHERE THE FOREPERSON IS AND WHERE THE ALTERNATE IS, AND
21 THOSE TWO SEATS ON THE END ARE FOR THE ALTERNATES. BUT
22 YOU CAN SIT ANYWHERE ELSE IN THE JURY-BOX.

23 NOW, I'M GOING TO ASK YOU TO GO WITH THE BAILIFF AT
24 THIS TIME AND HE WILL SHOW YOU THE JURY ROOM THAT YOU
25 WILL BE USING. I NEED TO TAKE UP SOME MATTERS WITH THE

1 OTHER JURORS, AND IT WILL ONLY TAKE A FEW MINUTES AND
2 THEN WE'LL COME BACK AND I'LL GIVE YOU SOME OTHER
3 INSTRUCTIONS.

4 NOW, ONE THING THROUGHOUT THE TRIAL IS GOING TO BE
5 MY INSTRUCTION THAT YOU ARE NOT TO DISCUSS THIS CASE IN
6 ANY WAY, EVEN AMONG YOURSELVES. THE REASON FOR THAT IS
7 THAT A CASE OR A TRIAL FOLLOWS A CERTAIN ORDER OF THINGS.
8 YOU NEVER KNOW WHAT'S GOING TO BE THE MOST IMPORTANT
9 PART. IT COULD BE THE OPENING STATEMENTS BY THE
10 ATTORNEYS, THE FIRST WITNESS, THE LAST WITNESS, THE
11 CLOSING ARGUMENTS BY THE ATTORNEYS OR THE CHARGE ON THE
12 LAW. AND SO YOU NEED TO HAVE AN OPEN MIND THROUGHOUT THE
13 TRIAL OF THE CASE. SO DO NOT PERMIT ANYBODY TO DISCUSS
14 IT WITH YOU, OF COURSE, BUT EVEN AMONG YOURSELVES UNTIL
15 THE CASE IS FINALLY GIVEN TO YOU FOR YOUR DELIBERATIONS.
16 NOW, THAT MEANS EVEN PERSONALITIES. SO AGAIN, PLEASE DO
17 NOT UNDERTAKE DISCUSSION AT ALL AMONG YOURSELVES.

18 BUT DO GO TO THE JURY ROOM THAT THE BAILIFF WILL BE
19 SHOWING YOU AND I'LL ASK YOU TO COME BACK IN JUST A FEW
20 MINUTES.

21 EVERYONE ELSE REMAIN SEATED WHILE THE JURY RETIRES
22 FROM THE COURTROOM.

23 (WHEREUPON, THE JURY LEFT THE COURTROOM AT
24 12:21 P.M.)

25 **THE COURT:** LADIES AND GENTLEMEN OF THE JURY PANEL

1 THAT WERE NOT SELECTED ON THE TRIAL OF THIS JURY, AS I
2 MENTIONED WHEN WE STARTED TODAY, THE CLERK OF COURT,
3 MS. PHILLIPS, HAS PROVIDED A SYSTEM WHEREBY YOU CAN CALL
4 IN IN THE EVENING AND FIND OUT WHAT IS GOING TO BE
5 NECESSARY FOR THE NEXT DAY NOT TO HAVE YOU COME IN AND
6 GET THE INFORMATION HERE. AND THAT CALL-IN IS A
7 TELEPHONE ANSWERING MACHINE. NOW, DOES EVERYBODY HAVE --

8 **THE CLERK:** THEY WILL BE GETTING THEM, YOUR HONOR.

9 **THE COURT:** THE BAILIFFS WILL BE GIVING YOU A PAPER
10 THAT HAS RIGHT IN THE MIDDLE A NUMBER TO CALL FOR JURY
11 MESSAGE (864) 260-4639. AND THAT MESSAGE WILL BE PUT ON
12 AT 6:00, SO CALL THE NUMBER AFTER 6:00 AND THERE WILL BE
13 A MESSAGE EITHER TO THE EFFECT OF CALL BACK TOMORROW AT A
14 CERTAIN TIME OR COME IN TOMORROW AT A CERTAIN TIME. BUT
15 WHATEVER THE MESSAGE IS, PLEASE DO WHATEVER YOU ARE
16 INSTRUCTED TO DO.

17 ALTHOUGH THE CLERK HAS MADE EVERY EFFORT TO MAKE
18 YOUR JURY SERVICE AS LESS INCONVENIENT AS POSSIBLE, WHEN
19 IT IS NECESSARY FOR YOU TO BE HERE, IT'S ABSOLUTELY
20 ESSENTIAL THAT YOU ARE. SO IF THE MESSAGE IS TO COME IN
21 AT A CERTAIN TIME, EITHER TOMORROW OR TO CALL BACK, DO
22 WHAT THE MESSAGE SAYS. I REGRET THAT IF YOU DON'T GET
23 THE MESSAGE FROM THE MACHINE, YOU WILL HAVE TO GET IT
24 FROM ME AT 9:00 TOMORROW MORNING, SO I THINK YOU WILL
25 PROBABLY PREFER TO GET THE MESSAGE FROM THE MACHINE. AS

1 I SAY, IT'S AN ANSWERING MACHINE SO IT WILL BE ON ALL
2 NIGHT. IF YOU DON'T GET THROUGH THE FIRST TIME, KEEP
3 TRYING UNTIL YOU GET IT.

4 I DO LOOK FORWARD TO WORKING WITH YOU THIS WEEK AND
5 I THANK YOU VERY MUCH FOR YOUR PATIENCE WITH THE COURT
6 THIS MORNING, AND YOU ARE NOW EXCUSED FOR THE BALANCE OF
7 THE DAY AND THEN CALL IN TONIGHT AFTER 6:00.

8 DOES EVERYBODY HAVE THE NUMBER? ANYBODY THAT
9 DOESN'T HAVE THE NUMBER RAISE YOUR HAND AND WE'LL BE SURE
10 YOU GET THE PAPER. DOES ANYBODY HAVE ANY QUESTIONS ABOUT
11 WHAT TO DO? CALL THIS NUMBER AFTER 6:00 AND DO WHAT THE
12 MESSAGE ON THE MACHINE SAYS.

13 VERY GOOD. THANK YOU VERY MUCH.

14 EVERYONE ELSE REMAIN SEATED WHILE THE JURY RETIRES
15 FROM THE COURTROOM.

16 (THE JURY PANEL WAS EXCUSED AT 12:25 P.M.)

17 **THE COURT:** MR. CAMPBELL, MS. MANIGAULT, WHAT DO YOU
18 THINK, 2:00?

19 **MR. CAMPBELL:** THAT WOULD BE FINE, YOUR HONOR.

20 **THE COURT:** ALL RIGHT. I'D LIKE FOR YOU TO BE BACK
21 A LITTLE BIT BEFORE BECAUSE IF YOU HAVE EXHIBITS, HAVE
22 THEM MARKED FOR IDENTIFICATION. ANYTHING YOU CAN AGREE
23 ON, FINE, BUT AT LEAST GET WITH THE COURT REPORTER SO SHE
24 CAN PUT THEM TOGETHER TO HAVE MARKED, PLEASE.

25 ANYTHING FROM THE STATE BEFORE I BRING THE JURY BACK

1 IN? I'M NOT GOING TO SWEAR THEM UNTIL THEY COME BACK.

2 MS. MANIGAULT: YOUR HONOR, THE DEFENSE HAS A MOTION
3 FOR SUPPRESSION.

4 THE COURT: ALL RIGHT. SO WE NEED A LITTLE MORE
5 TIME.

6 MR. CAMPBELL: PROBABLY A JACKSON V. DENNO. HE DID
7 GIVE A STATEMENT.

8 THE COURT: HE DID GIVE A STATEMENT? WHOA. HOW
9 MANY WITNESSES ON YOUR JACKSON V. DENNO?

10 MR. CAMPBELL: JUST ONE.

11 THE COURT: HOW ABOUT THE SUPPRESSION, IT'S A
12 SEARCH?

13 MR. CAMPBELL: IT'S THE MAIN OFFICER AND THE BACKUP
14 OFFICER.

15 THE COURT: BUT I MEAN AS FAR AS THE SEARCH AND
16 SEIZURE YOU NEED ONLY TWO WITNESSES?

17 MR. CAMPBELL: BASICALLY, YES, SIR.

18 THE COURT: ALL RIGHT. THAT TAKEN INTO
19 CONSIDERATION, THAT WILL BE -- I MIGHT ASK THEM TO COME
20 BACK AT 2:30 AND WE BE BACK AS CLOSE TO 1:30 AS WE CAN.
21 I MEAN, IF WE MISS IT, WE'LL START AS SOON AS WE ALL GET
22 BACK, BUT I'LL GIVE THEM TILL 2:30 TO HOPEFULLY GIVE US
23 MORE TIME.

24 ANYTHING ELSE FROM THE STATE BEFORE WE BRING THE
25 JURY BACK?

1 **MR. CAMPBELL:** NO, YOUR HONOR.

2 **THE COURT:** ANYTHING FROM THE DEFENDANT?

3 **MS. MANIGAULT:** NO, YOUR HONOR.

4 **THE COURT:** ALL RIGHT, VERY GOOD.

5 ASK THE JURY TO JOIN US, PLEASE.

6 (WHEREUPON, THE JURY ENTERED THE COURTROOM AT
7 12:27 P.M.)

8 **THE COURT:** LET THE RECORD REFLECT THE JURY AND
9 ALTERNATE ARE IN THE JURY-BOX.

10 MR. FOREMAN, LADIES AND GENTLEMEN OF THE JURY, I'M
11 GOING TO SUGGEST THAT YOU GO TO LUNCH AT THIS TIME AND
12 I'M GOING TO GIVE YOU A RATHER LONG LUNCH BREAK. THE
13 REASON FOR THAT, I HAVE TO TAKE UP SOME MATTERS WITH THE
14 ATTORNEYS BEFORE WE START THE TRIAL OF THE CASE.
15 HOPEFULLY THAT WILL MAKE THE CASE MOVE A LITTLE BIT
16 SMOOTHER AND A BIT MORE EFFICIENTLY.

17 WITH THAT IN MIND I SUGGEST YOU TAKE TWO HOURS, IN
18 OTHER WORDS, BE BACK IN THE JURY ROOM AT 2:30, AND THEN
19 WE'LL START THE TRIAL OF THE CASE AT THAT TIME.

20 AGAIN, AS I SAID EARLIER, YOU ARE NOT TO DISCUSS THE
21 CASE AMONG YOURSELVES OR PERMIT ANYBODY TO DISCUSS IT
22 WITH YOU. IF ANYBODY SHOULD ATTEMPT TO DISCUSS IT WITH
23 YOU, REPORT THEM TO THE BAILIFF OR TO THE CLERK OR TO ME
24 BECAUSE THAT WOULD BE A VIOLATION OF YOUR DUTY, AND IF
25 ANYBODY INTERFERES WITH THAT DUTY, THEY WILL BE DEALT

1 WITH APPROPRIATELY.

2 AND WITH THAT I'LL EXCUSE YOU UNTIL 2:30. AT 2:30
3 COME BACK TO THE JURY ROOM THAT YOU HAVE JUST BEEN IN AND
4 WE'LL START THE CASE AT THAT TIME.

5 EVERYONE ELSE REMAIN SEATED WHILE THE JURY RETIRES
6 FROM THE COURTROOM.

7 (WHEREUPON, THE JURY LEFT THE COURTROOM AT
8 12:32 P.M.)

9 **THE COURT:** ANYTHING FROM THE STATE BEFORE WE RETIRE
10 FOR LUNCH?

11 **MR. CAMPBELL:** NO, YOUR HONOR.

12 **THE COURT:** ANYTHING FROM THE DEFENDANT?

13 **MS. MANIGAULT:** NOTHING, YOUR HONOR.

14 **THE COURT:** VERY GOOD. I'LL SEE YOU BACK AT 1:30.

15 (A LUNCHEON RECESS OCCURRED.)
16
17
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AFTERNOON PROCEEDINGS

THE COURT: IS THE STATE READY TO PROCEED?

MR. CAMPBELL: YES, SIR.

THE COURT: IS THE DEFENSE READY TO PROCEED?

MS. MANIGAULT: YES, SIR.

THE COURT: I UNDERSTAND THAT THE DEFENSE HAS TWO
MOTIONS AS TO THE SUPPRESSION OF A STATEMENT AND
SUPPRESSION OF CERTAIN EVIDENCE?

MS. MANIGAULT: YES, SIR.

THE COURT: PHYSICAL EVIDENCE?

MS. MANIGAULT: YES, SIR.

THE COURT: WHICH ONE DO YOU WANT TO TAKE UP FIRST?

MS. MANIGAULT: YOUR HONOR, WE COULD TAKE UP THE
SUPPRESSION ON THE EVIDENCE.

THE COURT: PHYSICAL EVIDENCE?

MS. MANIGAULT: YES, SIR.

THE COURT: DO YOU INTEND TO INTRODUCE ANY PHYSICAL
EVIDENCE?

MR. CAMPBELL: YES, SIR, I DO.

THE COURT: ALL RIGHT. LET'S SEE WHAT WE CAN DO
WITH THAT.

SUPPRESSION HEARING:

MR. CAMPBELL: WOULD YOU LIKE FOR ME TO CALL MY
FIRST WITNESS?

THE COURT: YES.

1 **MR. CAMPBELL:** YOUR HONOR, THE STATE CALLS JAMIE
2 CRAWFORD TO THE STAND.

3 (THE WITNESS WAS SWORN BY THE CLERK OF
4 COURT.)

5 WHEREUPON,

6 JAMIE CRAWFORD,
7 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:
8 DIRECT EXAMINATION BY MR. CAMPBELL:

9 Q. STATE YOUR NAME FOR THE RECORD.

10 A. JAMIE CRAWFORD.

11 Q. MR. CRAWFORD DO YOU WORK FOR THE ANDERSON COUNTY
12 SHERIFF'S DEPARTMENT?

13 A. I DO.

14 Q. AND IN WHAT CAPACITY ARE YOU EMPLOYED THERE?

15 A. I'M A DEPUTY SHERIFF.

16 Q. AND WERE YOU WORKING AS A DEPUTY SHERIFF ON AUGUST
17 22ND, 2006?

18 A. I WAS.

19 Q. ON THAT DAY DID YOU HAVE AN OCCASION TO COME INTO
20 CONTACT WITH A RAHIEM KIRKMAN?

21 A. I DID.

22 Q. WHERE EXACTLY WAS THAT, WHERE DID YOU COME INTO
23 CONTACT WITH HIM?

24 A. I-85 NORTHBOUND ABOUT THE 19 MILE MARK.

25 Q. WHEN YOU SAY MILE MARKER, WERE YOU WORKING THE

1 INTERSTATE THAT DAY?

2 A. I WAS.

3 Q. AND THAT'S I-85 HERE IN ANDERSON COUNTY?

4 A. THAT'S CORRECT.

5 Q. AND WHAT DID YOU OBSERVE?

6 A. I INITIALLY OBSERVED A VEHICLE, A SMALLER COMPACT
7 FOUR-DOOR SEDAN FOLLOWING TOO CLOSE BEHIND AN 18-WHEELER
8 PASSED BY ME AT 17.

9 Q. AND WHAT WAS THE WEATHER CONDITIONS THAT DAY?

10 A. IT WAS RAINING.

11 Q. AND DID YOU HAVE YOUR WINDSHIELD WIPERS ON?

12 A. I DID.

13 Q. AND AFTER YOU SAW THAT, WHAT, IF ANYTHING, DID YOU
14 DO NEXT?

15 A. I GOT BEHIND THE VEHICLE AND I MADE A TRAFFIC STOP
16 ON THE VEHICLE AT EXIT 19 NORTHBOUND ON INTERSTATE 85.

17 Q. AND HOW MANY PEOPLE WERE IN THIS VEHICLE?

18 A. ONE.

19 Q. AND WHEN YOU CAME TO A STOP, WERE YOU ON THE
20 INTERSTATE?

21 A. I WAS.

22 Q. AND HOW DID YOU APPROACH THE CAR?

23 A. VIA PASSENGER'S SIDE APPROACH.

24 Q. AND DESCRIBE THE INDIVIDUAL THAT WAS IN THE CAR.

25 A. A BLACK MALE. I WOULDN'T SAY HE WAS BALD, I THINK

1 IT WAS MORE OF A BAD HAIR CUT. A VERY NERVOUS
2 INDIVIDUAL.

3 Q. AND DID YOU ASK HIM FOR ANY TYPE OF
4 IDENTIFICATION?

5 A. I ASKED HIM FOR A DRIVER'S LICENSE AND VEHICLE
6 INFORMATION, AND WHICH --

7 Q. HE PROVIDED THIS TO YOU?

8 A. HE DID.

9 Q. AND WHAT DID YOU DO NEXT?

10 A. WELL, AS HE WAS HANDING ME HIS DRIVER'S LICENSE, I
11 NOTICED THAT HIS HANDS WERE SHAKING, VISIBLY SHAKING.
12 AND HE ALSO ASKED ME WHY DID I STOP HIM AGAIN, AFTER I
13 ALREADY TOLD HIM ONCE. AND I TOLD HIM. HE SAID HE WAS
14 SORRY AND APOLOGETIC FOR IT. AND HE ASKED ME WHAT, WHAT
15 WAS A REASONABLE AMOUNT OF SPACE, YOU KNOW.

16 Q. WHAT DID YOU TELL HIM?

17 A. I TOLD HIM FOR EVERY TEN MILES PER HOUR HE'S
18 TRAVELING YOU SHOULD ALLOW AT LEAST ONE CAR LENGTH
19 BETWEEN HIM AND THE VEHICLE IN FRONT OF HIM.

20 Q. SO YOU INFORMED HIM AT THIS POINT IN TIME THAT YOU
21 WERE GOING TO WRITE HIM A WARNING TICKET?

22 A. THAT'S CORRECT.

23 Q. AND DID YOU ASK HIM TO STEP BACK TO YOUR CAR?

24 A. I DID.

25 Q. NOW, AS PART OF YOUR JOB ON THE INTERSTATE YOU

1 LOOK FOR NARCOTICS?

2 A. WE LOOK FOR NARCOTICS, OTHER IMPLEMENTS OF
3 CRIMINAL ACTIVITY ON THE INTERSTATE.

4 Q. SUCH AS STOLEN PROPERTY?

5 A. STOLEN PROPERTY, WEAPONS.

6 Q. AND BEFORE YOU EVEN MAKE UP YOUR MIND AND DECIDE
7 TO SEARCH A CAR, DO YOU BASE -- DO YOU HAVE SOME SORT OF
8 SUSPICION OR IDEA THAT SOMETHING MAY BE GOING ON IN THAT
9 VEHICLE?

10 A. THAT'S RIGHT.

11 Q. AND WHAT DO YOU LOOK FOR?

12 A. JUST A NONVERBAL INDICATOR SUCH AS SHAKING HANDS,
13 CAROTID ARTERY PULSE BEING AT AN EXCESSIVE LEVEL, SWEATY.
14 SLURRED SPEECH, LIKE IF SOMEBODY WAS INTOXICATED BUT THEY
15 CAN'T GET THEIR WORDS TO COME OUT RIGHT BECAUSE THEY'RE
16 SO NERVOUS. SEVERAL OTHER INDICATORS, I MEAN, THAT WE
17 LOOK FOR IS, WE LIKE TO CALL THEM PRESTOP INDICATORS.

18 Q. AND WHEN YOU GOT HIM BACK IN THE CAR, HOW WAS HIS
19 BEHAVIOR OR Demeanor?

20 A. HE WAS VERY NERVOUS, VERY, VERY ON EDGE. LIKE I
21 SAY, HIS CAROTID ARTERY WAS PULSATING SO HARD THAT I
22 COULD SEE IT. HIS SHIRT WAS RISING. EVERY TIME HIS
23 HEART WOULD BEAT HIS SHIRT WOULD GO UP AND DOWN, UP AND
24 DOWN.

25 Q. AND THIS IS AFTER YOU ALREADY TOLD HIM YOU WERE

1 JUST GONNA ISSUE HIM A WARNING TICKET?

2 A. THAT'S RIGHT.

3 Q. NOW, AS PART OF YOUR NORMAL TRAFFIC STOP
4 PROCEDURE, DID YOU RUN HIS DRIVER'S LICENSE THROUGH THE
5 N.C.I.C.?

6 A. I DID.

7 Q. AND WHILE YOU WERE WAITING FOR THAT INFORMATION TO
8 COME BACK WHAT, IF ANYTHING, DID YOU DO?

9 A. I DEPLOYED MY TRAINED POLICE CANINE TO THE VEHICLE
10 TO CONDUCT A SNIFF.

11 Q. ARE YOU A CERTIFIED CANINE OFFICER?

12 A. I AM.

13 Q. AND WHAT IS YOUR DOG'S NAME?

14 A. IT IS ANTAC, A-N-T-A-C.

15 Q. AND HOW LONG HAVE YOU AND ANTAC BEEN PARTNERS?

16 A. THREE AND A HALF, FOUR YEARS NOW.

17 Q. NOW, AS PART OF YOUR DUTIES AS A CANINE HANDLER,
18 DO YOU ROUTINELY TAKE YOUR DOG THROUGH NARCOTIC ODOR
19 DETECTION?

20 A. WE DO.

21 Q. AND JUST TELL THE COURT WHAT TYPE OF TRAINING THIS
22 DOG HAS HAD.

23 A. THIS PARTICULAR DOG IS CERTIFIED ON THE ODORS OF
24 MARIJUANA, METHAMPHETAMINE, COCAINE, CRACK COCAINE,
25 HEROIN, AND ECSTASY. WE DO TRAINING WITH ALL THOSE

1 NARCOTIC ODORS, WITH THE EXCEPTION OF HEROIN. WE DO NOT
2 HAVE THE HEROIN TO TRAIN ON. BUT HE IS CERTIFIED ON
3 HEROIN THROUGH THE GUY THAT WE GOT THE DOG FROM.

4 Q. HEROIN IS NOT A BIG DRUG IN ANDERSON COUNTY?

5 A. THAT'S NOT A VERY LARGE PROBLEM, I DON'T GUESS.

6 Q. AND HOW OFTEN DO YOU TRAIN YOUR OH DOG?

7 A. WE TRY TO DO IT ONCE. IF NOT ONCE A WEEK, ONCE
8 EVERY -- BIWEEKLY.

9 Q. AND YOU KEEP RECORDS ON THIS?

10 A. I KEEP RECORDS.

11 Q. AND AS YOU ARE WAITING FOR N.C.I.C. AND THE
12 DRIVER'S LICENSE CHECK TO COME THROUGH, WHAT DID YOU AND
13 ANTAC DO?

14 A. I GOT MY DOG OUT; I GAVE HIM A, LET HIM TAKE A
15 BREAK. I STARTED MY FREE AIR SNIFF AT THE RIGHT FRONT
16 PORTION OF THE VEHICLE, AND I WORK IN A COUNTERCLOCKWISE
17 MOTION. I STARTED FROM THE RIGHT FRONT PORTION OF THE
18 CAR, WENT COUNTERCLOCKWISE, GOT TO THE LEFT REAR DOOR.
19 AT THIS TIME ANTAC, MY PARTNER, STARTED SHOWING SOME
20 INTEREST IN THE DOOR BY SCRATCHING. I GAVE HIM PRAISE.
21 CONTINUED ON WITH THE SEARCH. ONCE WE COMPLETED ONE
22 REVOLUTION, WE WENT AGAIN TO KIND OF PROVE THE AREA HE
23 GAVE ME AN INDICATION ON. ONCE WE GOT TO THE LEFT REAR
24 DOOR AGAIN HE STARTED SCRATCHING AND ACTUALLY BIT THE
25 DOOR HANDLE, AND HE BIT IT SO HARD I COULDN'T EVEN PULL

1 HIM OFF THE CAR, WHICH TO ME IS A DEFINITE CHANGE IN
2 BEHAVIOR, WHICH IS ONE THING THAT WE LOOK FOR WHENEVER WE
3 GET AN INDICATION FROM A DOG.

4 Q. NOW, AFTER ALL THIS TOOK PLACE, WERE YOU STILL BY
5 YOURSELF?

6 A. I WAS.

7 Q. AT THE SCENE?

8 A. UH-HUH.

9 Q. AT THE TRAFFIC STOP?

10 A. THAT'S RIGHT.

11 Q. AND DID YOU INFORM MR. KIRKMAN OF THE INDICATORS
12 THAT YOU HAD FOUND?

13 A. AT THAT TIME -- ONCE I HAD PUT MY DOG BACK IN THE
14 CAR, AND I WAS STILL KIND OF WAITING THERE FOR MY PARTNER
15 TO GET THERE JUST BASED ON THE STATE THAT THIS GUY WAS
16 IN, HE WAS VERY NERVOUS. SHORTLY AFTER I SAT DOWN IN THE
17 CAR, HOWEVER, DISPATCH CAME BACK AND TOLD ME THAT HIS
18 DRIVER'S LICENSE WAS CLEAR.

19 AND I BEGAN EXPLAINING TO MR. KIRKMAN AGAIN WHY I
20 STOPPED HIM, THAT IT WAS JUST A WARNING CITATION. AND
21 THEN I ASKED HIM IF THERE WAS ANY REASON WHY MY DOG WOULD
22 GIVE A POSITIVE INDICATION FOR THE ODOR OF NARCOTICS ON
23 HIS VEHICLE.

24 Q. AND WHAT DID HE TELL YOU?

25 A. HE SAID THAT MY DOG DID NOT ALERT TO HIS VEHICLE

1 AND HE WANTED HIS STUFF AND HE WANTED TO GO. AT THAT
2 TIME HE STARTED REACHING FOR HIS DRIVER'S LICENSE WHICH I
3 HAD IN MY HAND STILL. BECAUSE HE WASN'T -- I HADN'T
4 GIVEN IT BACK TO HIM YET BECAUSE I WAS STILL IN THE
5 PROCESS OF ASKING QUESTIONS. HE REACHED FOR HIS DRIVER'S
6 LICENSE. I DIDN'T GIVE IT BACK TO HIM. ABOUT THAT TIME
7 MY PARTNER PULLED UP.

8 Q. DEPUTY CRAIG MIZE?

9 A. DEPUTY MIZE, THAT'S RIGHT.

10 Q. AND WHAT, IF ANYTHING, HAPPENED AFTER DEPUTY MIZE
11 ARRIVED?

12 A. AFTER DEPUTY MIZE PULLED UP, ME AND MR. KIRKMAN
13 WERE STILL TALKING, AND HE REALLY BECAME MORE AGITATED,
14 REALLY GETTING AGITATED WHEN HE SEEN MY PARTNER PULL UP.
15 HE SAID HE WANTED HIS STUFF. HE WANTED HIS DRIVER'S
16 LICENSE, THAT HE WANTED TO GO. I TOLD HIM HE WASN'T FREE
17 TO LEAVE, THAT MY DOG DID INDICATE ON THE VEHICLE, AND I
18 WAS GONNA SEARCH HIS VEHICLE.

19 AT THIS TIME HE SAID, YOU'RE NOT GOING ANYWHERE
20 CLOSE TO MY CAR.

21 I ONCE AGAIN TOLD HIM THAT WE WERE GONNA SEARCH
22 HIS CAR, AND I ASKED HIM IF HE HAD ANY WEAPONS, NARCOTICS
23 OR LARGE SUMS OF U.S. CURRENCY IN THE VEHICLE. AT THIS
24 TIME MR. KIRKMAN SAID HE HAD ABOUT \$18,000 IN THE BACK
25 SEAT IF I WANTED IT. I TOLD HIM I DIDN'T WANT HIS MONEY.

1 AND DUE TO THE AGGRESSIVE NATURE OF MY DOG AT THIS
2 PARTICULAR TIME, I GAVE MR. KIRKMAN THE OPTION OF SITTING
3 IN MY CAR OR STANDING OUTSIDE OF THE VEHICLE WHILE WE
4 WERE GOING TO SEARCH THE CAR BECAUSE MY DOG BARKS A LOT.
5 AS SOON AS WE OPENED THE DOOR TO STEP OUT, HE RAN OFF ON
6 FOOT.

7 Q. AND DID YOU GIVE CHASE TO HIM?

8 A. WE DID.

9 Q. AND WERE YOU ABLE TO CATCH HIM?

10 A. WE WERE NOT.

11 Q. AND EVENTUALLY AT SOME POINT DID YOU COME BACK TO
12 THE CAR?

13 A. WE DID.

14 Q. AND DID YOU SEARCH THE CAR?

15 A. WE DID.

16 Q. NOW, WAS ALL THIS -- WERE YOU IN A UNIFORM LIKE
17 YOU ARE TODAY?

18 A. I WAS.

19 Q. AND WERE YOU IN A MARKED PATROL CAR?

20 A. I WAS.

21 Q. AND IN THIS PATROL CAR DO YOU HAVE A CAMERA THAT
22 VIDEOTAPES THE TRAFFIC STOP?

23 A. I DO.

24 Q. DOES IT RECORD WHAT IS SEEN ACTUALLY ON THE
25 HIGHWAY AND ALSO FOR SOUND?

1 A. IT'S SUPPOSED TO.

2 Q. AND IN THIS CASE IT DIDN'T ACTUALLY DO BOTH OF
3 THOSE?

4 A. NO. IT RECORDED, IT RECORDED WHAT HAPPENED; IT
5 HAD NO AUDIO.

6 Q. AND SINCE THEN YOU HAVE GOTTEN A NEW SYSTEM IN
7 THERE; IS THAT RIGHT?

8 A. THAT'S RIGHT.

9 Q. AND I SHOW YOU WHAT'S BEEN MARKED AS STATE'S
10 EXHIBIT TWO. IS THIS A COPY OF THE TAPE FROM THE
11 INCIDENT DATE OF OCTOBER 22ND, 2006?

12 A. YES.

13 Q. AND THAT RECORDS A FAIR AND ACCURATE
14 REPRESENTATION OF WHAT WAS PLAYED THAT DAY OR WHAT
15 HAPPENED THAT DAY?

16 A. YES.

17 Q. I ALSO SHOW YOU STATE'S EXHIBIT ONE. IS THIS A
18 COPY OF THE WARNING CITATION THAT YOU ISSUED MR. KIRKMAN?

19 A. IT IS.

20 Q. AND IT'S FOR FOLLOWING TOO CLOSE?

21 A. THAT'S RIGHT.

22 Q. OKAY. NOW, AFTER YOU GOT BACK TO THE CAR AND THE
23 SUSPECT WAS GONE, WHAT DID YOU DO AT THAT POINT IN TIME?

24 A. WE CONDUCTED A SEARCH OF THE VEHICLE, MYSELF AND
25 DEPUTY MIZE. THE FRONT OF THE VEHICLE, THE CAB, WAS

1 CLEAR OF ANY NARCOTICS. WE WENT TO THE TRUNK OF THE
2 VEHICLE. WHEN WE OPENED THE TRUNK, WE OBSERVED A LARGE
3 SPEAKER BOX, A LARGE BLACK DUFFLE BAG BACK THERE. WE GOT
4 THE DUFFLE BAG OUT. AS SOON AS WE PICKED IT UP, IT WAS
5 REAL HEAVY. WE PUT IT ON THE HOOD OF MY CAR. WE OPENED
6 IT, AND INSIDE WERE TEN RECTANGULAR PACKAGES THAT WERE
7 CONSISTENT WITH THE WAY THAT A KILO PACKAGE OF COCAINE OR
8 NARCOTICS IS PACKAGED.

9 Q. HOW MANY PACKAGES WERE THERE?

10 A. TEN.

11 Q. AND DID YOU SEARCH THE CAR -- DID YOU FIND
12 ANYTHING ELSE IN THE CAR?

13 A. WE DID. IN THE BACK SEAT THERE WAS A WHITE
14 PLASTIC BAG THAT CONTAINED ABOUT \$20,000 IN U.S.
15 CURRENCY.

16 Q. I'M GOING TO SHOW YOU WHAT'S BEEN MARKED FOR
17 IDENTIFICATION STATE'S EXHIBIT FIVE. IF YOU WILL STEP
18 OFF THE STAND JUST FOR A SECOND, PLEASE, SIR.

19 (WITNESS LEAVES STAND.)

20 Q. IS THIS THE BLACK BAG THAT YOU RECOVERED THAT DAY?

21 A. IT IS.

22 Q. OKAY. AND INSIDE IS THIS THE TEN BUNDLES THAT YOU
23 FOUND?

24 A. IT IS.

25 Q. AND YOU SECURED THIS; IS THAT CORRECT?

1 A. THAT'S RIGHT, I SECURED IT IN MY TRUNK.

2 Q. AND MR. KIRKMAN AT THIS POINT IN TIME -- YOU MAY
3 RE-TAKE THE STAND -- IS NOWHERE TO BE FOUND; IS THAT
4 RIGHT?

5 A. (WITNESS RESUMES STAND.) THAT'S RIGHT.

6 Q. AND AT SOME POINT WAS MR. KIRKMAN ARRESTED?

7 A. THE NEXT DAY.

8 Q. AND WHERE WAS HE ARRESTED?

9 A. ON I-85 AGAIN.

10 Q. AND DEPUTY JIM BROCK OF YOUR DEPARTMENT WAS ABLE
11 TO FIND HIM AND PLACED HIM UNDER ARREST; IS THAT RIGHT?

12 A. THAT'S RIGHT.

13 Q. AS A RESULT YOU TOOK OUT A WARRANT FOR TRAFFICKING
14 IN COCAINE GREATER THAN 400 GRAMS; IS THAT CORRECT?

15 A. ACTUALLY, INVESTIGATOR MCGUIRE ACTUALLY OBTAINED
16 THE WARRANT FOR THAT.

17 Q. YOU FIELD-TESTED IT?

18 A. THAT'S RIGHT. THAT NIGHT WE FIELD-TESTED IT.

19 Q. AND THEN YOU TURNED IT OVER TO EVIDENCE TO BE
20 SUBMITTED FOR ANALYSIS?

21 A. THAT'S RIGHT.

22 **MR. CAMPBELL:** I HAVE NO FURTHER QUESTIONS. PLEASE
23 ANSWER ANY QUESTIONS MS. MANIGAULT MAY HAVE.

24 **THE COURT:** CROSS-EXAMINE?
25

1 CROSS-EXAMINATION BY MS. MANIGAULT:

2 Q. DEPUTY CRAWFORD, AT WHAT POINT DID YOU GIVE RAHIEM
3 KIRKMAN THE WARNING TICKET, WHICH IS STATE'S EXHIBIT FOR
4 IDENTIFICATION NUMBER ONE?

5 A. AFTER THE CANINE SNIFF WAS COMPLETED, I GOT BACK
6 IN MY CAR AND ASKED THE DISPATCHER TO COME BACK AND LET
7 ME KNOW HIS INFORMATION, HIS DRIVER'S LICENSE AND
8 EVERYTHING WAS CLEAR IN N.C.I.C.

9 Q. ALL RIGHT. AND YOU GAVE HIM THE WARNING TICKET.
10 AND DID YOU ALSO GIVE HIM HIS DRIVER'S LICENSE?

11 A. I HAD IT IN MY HAND TO GIVE IT TO HIM, THAT'S
12 RIGHT.

13 Q. AND YOU NEVER DID PASS IT ON TO HIM?

14 A. NO, I DID NOT.

15 Q. NOW, YOUR REASONS FOR INITIAL STOP YOU SAID WAS
16 FOLLOWING TOO CLOSE ON AN 18-WHEELER?

17 A. THAT'S RIGHT.

18 Q. WHEN DID THE TRAFFIC STOP END AND YOUR
19 INVESTIGATION FOR ILLEGAL ACTIVITIES BEGIN?

20 A. WHEN DID MY TRAFFIC STOP END?

21 Q. YES, SIR.

22 A. LATER ON THAT NIGHT I GUESS WHEN WE --

23 Q. SIR?

24 A. YOU HAVE TO BE MORE SPECIFIC.

25 Q. YOU SAID YOU STOPPED FOLLOWING TOO CLOSE.

1 A. THAT'S RIGHT.

2 Q. AND YOU TOLD HIM YOU WERE ONLY GONNA GIVE HIM A
3 WARNING TICKET FOR FOLLOWING TOO CLOSE?

4 A. THAT'S CORRECT.

5 Q. YOU ASKED HIM TO EXIT HIS CAR AND GO AND SIT IN
6 YOUR CAR?

7 A. RIGHT.

8 Q. ALL RIGHT. AT THAT POINT YOU GOT INFORMATION FROM
9 HIM: DRIVER'S LICENSE, REGISTRATION?

10 A. RIGHT.

11 Q. AND YOU LEFT THEM IN YOUR CAR AND GOT OUT OF YOUR
12 CAR WITH YOUR DOG?

13 A. THAT'S RIGHT.

14 Q. WHERE WAS YOUR DOG WHEN MR. KIRKMAN GOT IN YOUR
15 CAR?

16 A. HE WAS WHERE THE BACK SEAT WOULD BE.

17 Q. IN THE BACK SEAT?

18 A. WELL, THE BACK SEAT WOULD BE -- THERE'S A KENNEL
19 BACK THERE, IT'S NOT A BACK SEAT, BUT IT'S WHERE THE BACK
20 SEAT WOULD BE.

21 Q. OKAY, WHERE THE BACK SEAT WOULD BE. SO IT WAS
22 OUTSIDE THE SITTING AREA WHERE MR. KIRKMAN WOULD HAVE
23 BEEN SITTING?

24 A. RIGHT.

25 Q. OKAY. YOU GOT BACK OUT OF THE CAR, GOT YOUR DOG

1 AND WENT TO DO A FREE SNIFF?

2 A. THAT'S RIGHT.

3 Q. AT THAT POINT WAS THE TRAFFIC STOP OVER?

4 A. NO.

5 Q. WHY WERE YOU DOING A FREE SNIFF?

6 A. BECAUSE I CAN.

7 Q. EXCUSE ME?

8 A. BECAUSE I CAN.

9 Q. BECAUSE YOU CAN?

10 A. THAT'S RIGHT.

11 Q. OKAY. SO ALTHOUGH YOU ARE MAKING A TRAFFIC, A
12 TRAFFIC STOP, OR YOU STOPPED FOR A TRAFFIC VIOLATION, DO
13 YOU ROUTINELY FREE SNIFF EVERY CAR YOU STOP?

14 A. NO.

15 Q. NO?

16 A. NO.

17 Q. SO WHY DID YOU FREE SNIFF THIS CAR WITH YOUR DOG?

18 A. BASED ON THE INDICATORS THAT I HAD GOTTEN FROM
19 MR. KIRKMAN.

20 Q. ALL RIGHT. YOU SAID HIS HAND WAS SHAKING?

21 A. THAT'S RIGHT.

22 Q. AND HE APOLOGIZED FOR FOLLOWING TOO CLOSELY?

23 A. THAT'S RIGHT.

24 Q. AND YOU COULD SEE, I BELIEVE YOU SAID, HIS SHIRT
25 MOVING?

1 A. THAT'S RIGHT.

2 Q. WAS THERE ANYTHING ELSE?

3 A. HIS CAROTID ARTERY WAS PULSATING IN HIS NECK, HIS
4 BOTTOM LIP WAS QUIVERING.

5 Q. OKAY. SO YOU'VE NEVER SEEN ANYBODY ELSE BREATHING
6 HARD WHEN YOU STOPPED THEM ON A REGULAR TRAFFIC STOP?

7 A. NOT LIKE THAT, NO, MA'AM.

8 Q. ALL RIGHT. AND THE PERSON'S HAND SHAKING, YOU
9 HAVE SEEN THAT INDICATION ON A TRAFFIC STOP IN THE PAST?

10 A. I'M SORRY. SAY THAT LAST QUESTION AGAIN.

11 Q. YOU SAID THE HANDS WERE SHAKING --

12 A. RIGHT.

13 Q. -- WHEN HE WAS GIVING YOU HIS DRIVER'S LICENSE.

14 A. THAT'S RIGHT.

15 Q. ALL RIGHT. SO YOU ARE SAYING THAT'S VERY UNUSUAL?

16 A. NO, THAT'S NOT THAT UNUSUAL. PEOPLE WHO HAVE
17 SOMETHING TO HIDE ARE PRETTY NERVOUS, SO IT DOESN'T
18 HAPPEN ON EVERY TRAFFIC STOP.

19 Q. OKAY. SO WOULD IT HAPPEN FOR SOMEBODY WHO DIDN'T
20 HAVE ANYTHING TO HIDE? I MEAN, COULD A PERSON BE NERVOUS
21 BECAUSE YOU ARE A POLICE OFFICER?

22 A. SOME, SOME PEOPLE ARE, THAT'S RIGHT.

23 Q. ALL RIGHT. I THINK YOU SAID YOU DO TWO
24 REVOLUTIONS AROUND THE CAR WITH THE DOG?

25 A. THAT'S RIGHT.

1 Q. THE FIRST ONE WAS A SLIGHT INDICATION, THE SECOND
2 ONE WAS VERY STRONG?

3 A. THAT'S RIGHT.

4 Q. AND YOU HAD TO PULL HIM OFF THE CAR?

5 A. THAT'S RIGHT.

6 Q. SO AT THAT POINT THE TRAFFIC STOP WAS COMPLETELY
7 OVER?

8 A. NOT NECESSARILY. I WAS STILL WAITING FOR THE
9 INFORMATION FROM DISPATCH TO COME BACK.

10 Q. YOU GOT BACK IN YOUR CAR, YOU PUT THE DOG UP?

11 A. THAT'S RIGHT.

12 Q. GOT BACK IN YOUR CAR AND WENT TO KIRKMAN?

13 A. THAT'S RIGHT.

14 Q. AND DISPATCH CLEARED HIM FOR HIS DRIVER'S LICENSE?

15 A. THAT'S RIGHT.

16 Q. BUT YOU STILL DIDN'T GIVE HIM HIS DRIVER'S LICENSE
17 BACK?

18 A. NO, I DID NOT.

19 Q. WAS THERE ANY REASON YOU DIDN'T GIVE HIM HIS
20 DRIVER'S LICENSE BACK AT THIS POINT?

21 A. I WAS EXPLAINING TO HIM EVERYTHING THAT -- THE
22 REASON FOR HIS STOP, IT WAS ONLY A WARNING CITATION, THAT
23 IT WOULD COST NOTHING, TO JUST SEND IT BACK IN. ONCE
24 THAT WAS DONE, I JUST CONFRONTED HIM ABOUT THE POSITIVE
25 INDICATION FROM MY DOG SNIFF.

1 Q. SO YOU ESSENTIALLY EXPLAINED ABOUT YOU WERE ONLY
2 GIVING HIM A WARNING TICKET, THIS IS YOUR SECOND TIME
3 EXPLAINING OR THIRD TIME?

4 A. I DON'T REMEMBER. PROBABLY MY SECOND OR THIRD. I
5 DON'T KNOW.

6 Q. OKAY. SO WHEN YOU GOT OUT OF THE CAR, YOU SAID
7 YOU WERE ONLY GONNA GIVE HIM A WARNING, TO GET IN YOUR
8 CAR. BEFORE YOU GOT OUT OF THE CAR WITH THE DOG, YOU
9 SAID YOU WERE ONLY GONNA GIVE HIM A WARNING; IS THAT
10 RIGHT?

11 A. PROBABLY NOT.

12 Q. SO THIS TIME YOU GOT BACK IN THE CAR, YOU ONLY
13 GIVE HIM A WARNING?

14 A. RIGHT.

15 Q. SO WHY DOES IT TAKE SO LONG JUST TO GIVE A WARNING
16 TICKET?

17 A. I CAN'T CONTROL WHAT HAPPENS INSIDE DISPATCH
18 COMMUNICATIONS CENTER.

19 Q. ALL RIGHT. NOW, YOU HAVE EXPLAINED THAT, YOU HAVE
20 GIVEN HIM THE WARNING TICKET, BUT YOU ARE STILL HOLDING
21 HIS DRIVER'S LICENSE IN YOUR HAND. AND THEN YOU ASK HIM
22 WHY DID YOUR DOG INDICATE TO HIS VEHICLE?

23 A. I ASKED HIM IF THERE WAS ANY REASON WHY MY DOG
24 WOULD INDICATE TO HIS VEHICLE, THAT'S RIGHT.

25 Q. AND HE SAID, NO?

1 A. HE SAID, NO, YOUR DOG ---

2 Q. YOUR DOG DID NOT INDICATE?

3 A. THAT'S RIGHT.

4 Q. AND HE ASKED FOR HIS DRIVER'S LICENSE?

5 A. THAT'S RIGHT.

6 Q. AND HE TOLD YOU HE WANTED TO LEAVE?

7 A. I DON'T KNOW IF HE EVER SAID HE WANTED TO LEAVE.

8 I THINK HE SAID HE WANTED HIS STUFF.

9 Q. THAT HE WANTED HIS STUFF. AND I THINK YOU
10 TESTIFIED ON DIRECT, HE SAID HE WANTED TO GO?

11 A. WELL, THEN IF I SAID IT, IT MUST HAVE HAPPENED,
12 THEN.

13 Q. OKAY. SO BUT YOU DID NOT LET HIM GO?

14 A. THAT'S RIGHT.

15 Q. SO AT THAT TIME YOU ASKED HIM ABOUT THE MONEY IN
16 THE CAR?

17 A. I ASKED HIM IF HE HAD ANY WEAPONS, NARCOTICS, OR
18 LARGE SUMS OF U.S. CURRENCY IN THE CAR.

19 Q. HE VOLUNTEERED HE HAD APPROXIMATELY 18,000-PLUS IN
20 THE CAR?

21 A. HE SAID HE HAD 18,000 IN THE BACK SEAT IF I WANTED
22 IT.

23 Q. OKAY. 18,000 IN THE BACK SEAT IF YOU WANTED IT?

24 A. IF I WANTED IT.

25 Q. ALL RIGHT. AT THIS POINT HE'S NOW DETAINED FOR AN

1 INVESTIGATION?

2 A. THAT'S RIGHT.

3 Q. AND AT THIS POINT DID YOU GIVE HIM HIS MIRANDA
4 RIGHTS?

5 A. NO.

6 Q. AND AT THIS POINT DID YOU DETAIN HIM SO HE COULD
7 PROCURE A SEARCH WARRANT FOR THE VEHICLE?

8 A. NO.

9 Q. ALL RIGHT. SO HE SAID HE WANTED TO LEAVE, THEN
10 YOUR PARTNER DROVE UP, WAS COMING UP?

11 A. RIGHT.

12 Q. AND YOU GAVE HIM THE OPTION GETTING OUT OF YOUR
13 CAR AND STANDING OUTSIDE, OR SITTING IN YOUR CAR?

14 A. THAT'S RIGHT.

15 Q. AND HE WAS UNDER DETENTION AT THAT POINT?

16 A. THAT'S RIGHT.

17 Q. AND YOU SAID HE OPENED THE DOOR AND RAN?

18 A. THAT'S RIGHT.

19 Q. ALL RIGHT. THANK YOU.

20 **THE COURT:** RE-EXAM?

21 **MR. CAMPBELL:** I HAVE NO FURTHER QUESTIONS, YOUR
22 HONOR, OF THIS WITNESS.

23 **THE COURT:** YOU MAY STEP DOWN.

24 (WHEREUPON, THE WITNESS WAS EXCUSED.)

25 **THE COURT:** NEXT WITNESS?

1 **MR. CAMPBELL:** YOUR HONOR, I'M JUST GONNA PUT UP
2 DEPUTY CRAWFORD. THE REST OF THE WITNESSES WOULD BE
3 DUPLICATIVE OF THE TRAFFIC STOP IN THE CASE.

4 **THE COURT:** IS THAT YOUR CASE FOR THE SEIZURE?

5 **MR. CAMPBELL:** JUST FOR THE SEIZURE. AND THEN WE GO
6 INTO THE JACKSON V. DENNO.

7 **THE COURT:** ALL RIGHT. ANYTHING FROM THE DEFENDANT?

8 **MS. MANIGAULT:** YOUR HONOR, JUST IN REGARD, YOU
9 KNOW...

10 **THE COURT:** YES, MA'AM, MS. MANIGAULT?

11 **MS. MANIGAULT:** MAY IT PLEASE THE COURT, YOUR HONOR,
12 IT IS THE DEFENSE'S CONTENTION THAT THE DRUGS SHOULD BE
13 SUPPRESSED, THAT THE TRAFFIC STOP CLEARLY TURNED INTO
14 MORE THAN A TRAFFIC STOP, AN INVESTIGATION WHICH LED TO
15 THE SEARCH OF THE VEHICLE.

16 AND WE OFFER TO THE COURT THAT THIS WAS A FOURTH
17 AMENDMENT VIOLATION OF UNREASONABLE SEARCH AND SEIZURE;
18 THAT THE TRAFFIC STOP HAD TRANSGRESSED INTO MORE THAN A
19 TRAFFIC STOP; THAT THE DEFENDANT HAD CERTAIN RIGHTS THAT
20 HE WAS NOT AVAILED TO, HE WAS NOT GIVEN THE MIRANDA
21 WARNING.

22 THE OFFICER HAD AMPLE TIME. HE TESTIFIED THAT HE
23 WAS THEN UNDER DETENTION, HE WAS NOT FREE TO GO. THE
24 OFFICER COULD HAVE PROCURED A SEARCH WARRANT FOR THE
25 VEHICLE IF HIS DOG HAD ALERTED. WE WOULD OFFER TO THE

1 COURT THAT IS A VIOLATION OF THE DEFENDANT'S FOURTH
2 AMENDMENT RIGHT.

3 UNDER THE CASE OF STATE V. WILLIAMS AND SUBSEQUENT
4 CASES WE BELIEVE THE DRUGS SHOULD BE SUPPRESSED.

5 **THE COURT:** ALL RIGHT. MR. CAMPBELL?

6 WAS THAT IT? THAT'S YOUR MOTION?

7 **MS. MANIGAULT:** YES.

8 **THE COURT:** MR. CAMPBELL?

9 **MR. CAMPBELL:** YES, SIR. YOUR HONOR, OF COURSE THE
10 STATE DISAGREES, FEELS THE OFFICER DID A LAWFUL TRAFFIC
11 STOP AND DID NOT VIOLATE THE DEFENDANT'S FOURTH AMENDMENT
12 RIGHT. BASED ON *U.S. VERSUS SULLIVAN*, FOURTH AMENDMENT
13 CASE FROM 1988, BASICALLY SAYS THE OFFICER, ONCE HE MAKES
14 A TRAFFIC STOP MAY ASK THE INDIVIDUAL TO STEP OUT, RUN
15 HIS DRIVER'S LICENSE, DO A COMPUTER CHECK, ISSUE A
16 CITATION, AND THAT'S WHAT WE WERE DOING WITH THIS CASE.

17 FURTHERMORE, ALL THE INDICATORS -- IF YOU LOOK AT
18 THE TOTALITY OF THE CIRCUMSTANCES, ALL THE INDICATORS ARE
19 INDICATING THAT SOME ILLEGAL ACTIVITY IS ONGOING INSIDE
20 THIS CAR THAT WAS STOPPED. BASED UPON THE DRIVER'S OWN
21 ACTIONS WHILE DEPUTY CRAWFORD WAS WAITING ON THE N.C.I.C.
22 TO COME BACK TO DETERMINE WHETHER HIS DRIVER'S LICENSE
23 HAD BEEN CLEARED OR NOT, HE'S ALLOWED UNDER *ILLINOIS*
24 *VERSUS CABRERA*, AN ILLINOIS U.S. SUPREME COURT CASE, TO
25 HAVE HIS DOG SNIFF AROUND THE CAR, WHICH IS NOT VIOLATION

1 OF THE FOURTH AMENDMENT. IN THIS CASE THE DOG HIT, A DOG
2 HE HAD FOR THREE AND A HALF YEARS, HE KNOWS THE WAY THE
3 DOG ACTS, REACTS WHEN HE DETERMINES OR DETECTS THE ODOR
4 OF NARCOTICS. AS SUCH, HE WAS ALLOWED TO CONTINUE AND GO
5 FURTHER IN THIS TRAFFIC STOP, WHICH HE DID.

6 FURTHERMORE, THE DEFENDANT DIDN'T GIVE HIM A CHANCE
7 TO FINISH THE TRAFFIC STOP BY HIS OWN ACTIONS BY RUNNING
8 OFF AND FLEEING FROM THE CASE, FROM THE CRIME SCENE HERE,
9 AND THAT EVEN GOES TO HE ABANDONED HIS CAR ON THE SIDE OF
10 THE ROAD AND THAT THE OFFICERS HAD A, RIGHT THEN A RIGHT
11 TO CHECK THE CAR AND LOOK TO SEE WHAT WAS IN IT FOR
12 PURPOSES OF TOWING THE VEHICLE.

13 SO BASED UPON THAT WE FEEL THE DRIVER IN THIS CASE,
14 DEFENDANT KIRKLAND'S FOURTH AMENDMENT RIGHTS WERE NOT
15 VIOLATED AND THE OFFICER WAS CORRECT IN HIS STOP.

16 **THE COURT:** ALL RIGHT. MS. MANIGAULT?

17 **MS. MANIGAULT:** YOUR HONOR, THE OFFICER'S TESTIMONY
18 TAKEN IN THE BEST LIGHT FOR THE STATE AND/OR DEFENSE, THE
19 MERE FACT THAT SOMEBODY IS BREATHING HARD OR THE SHIRT IS
20 GOING UP AND DOWN. IF YOU LOOK AT MY SHIRT, YOU CAN SEE
21 THAT MY SHIRT IS GOING UP AND DOWN. YOU CAN SEE THAT I'M
22 BREATHING HARD, BUT I'M NOT INVOLVED IN ANY ILLEGAL
23 ACTIVITY.

24 YOUR HONOR, AS FAR AS HIS HANDS SHAKING, THAT'S JUST
25 A NORMAL INDICATOR OF SOMEONE BEING STOPPED BY A POLICE

1 OFFICER. WE DO NOT BELIEVE THAT THE INDICATORS THAT THE
2 OFFICER TESTIFIED TO WAS SUFFICIENT TO RAISE TO THE LEVEL
3 OF SUSPICION FOR ILLEGAL ACTIVITY. SO WE BELIEVE THAT
4 ONCE THE TRAFFIC STOP WAS PERFECTED, THE CITATION
5 WRITTEN, THAT HE SHOULD HAVE ALLOWED MY CLIENT TO GO.

6 **THE COURT:** OH, I SEE. HE SHOULD HAVE LET HIM GO.

7 **MS. MANIGAULT:** YES, SIR.

8 **THE COURT:** IS THE STATE SUGGESTING THAT THERE WAS
9 REASONABLE SUSPICION AT SOME POINT TO THINK THAT THE
10 CRIME WAS -- HAD BEEN COMMITTED AND WAS IN THE PROCESS?

11 **MR. CAMPBELL:** YES, SIR. BASED UPON THE INDICATORS
12 THAT HE SEES. HE'S TRAINED TO LOOK FOR INDICATORS. AND
13 BASED ON THOSE INDICATORS, HE SEARCHED THE CAR -- OR NOT
14 SEARCHED THE CAR, PULLED HIS CANINE OUT OF THE CAR AND
15 WENT AROUND IT. AND THE U.S. SUPREME COURT HAS HELD IN
16 *THE STATE OF ILLINOIS VERSUS CABRERA*, THAT THE OFFICER IS
17 ALLOWED TO SEARCH OR RUN THE DOG AROUND THE CAR DOES NOT
18 VIOLATE THE FOURTH AMENDMENT. BASED ON THIS, ON THE
19 TOTALITY OF THE CIRCUMSTANCES, BASED UPON THE QUIVERING
20 LIP, THE FACT THAT HE WAS BREATHING HEAVY, HE CHANGING
21 HIS STORY ON STUFF, HE WAS SWEATING MORE THAN HE SHOULD--

22 **THE COURT:** WHERE DID HE CHANGE HIS STORY?

23 **MR. CAMPBELL:** MAYBE THAT'S NOT IN THE EVIDENCE.
24 YOU MISSED THAT PART OF IT.

25 BUT FURTHERMORE, YOU TESTIFIED THAT THE INDICATORS

1 HE HAD, HANDS SHAKING, FAST BREATHING, LIP QUIVERING,
2 TALKING ABOUT HIS HEART RATE, HE WAS AGITATED, DIDN'T
3 WANT HIM TO SEARCH THE CAR. AS SOON AS THE OTHER DEPUTY
4 ARRIVED, HE KNEW SOMETHING WAS UP.

5 AN OFFICER IS ALLOWED WHILE HE'S WAITING FOR THE
6 COMPUTER TO COME BACK TO SEE IF HIS LICENSE IS CLEAR, TO
7 CONTINUE WITH HIS DOG, WHICH HE DID IN THIS CASE.
8 THEREFORE, HE HAD REASONABLE SUSPICION WHEN THAT DOG
9 PINPOINTED. AND BASED UPON HIS TRAINING AND EXPERIENCE
10 AND HIS THREE AND A HALF YEARS WITH THE DOG, HE KNEW
11 THERE WAS NARCOTICS IN THE VEHICLE.

12 THE DEFENDANT'S OWN ACTIONS BY THE TAKING OFF AND
13 RUNNING EVEN FURTHER HEIGHTENED HIS SUSPICION AND
14 CONFIRMED IT.

15 **THE COURT:** MS. MANIGAULT, ANYTHING?

16 **MS. MANIGAULT:** YOUR HONOR, THE CASES CLEARLY
17 INDICATE THAT A TRAFFIC STOP CAN TRANSITION INTO MORE,
18 BUT THE OFFICER HAS TO HAVE REASONABLE PROBABLE CAUSE OR
19 INDICATORS ---

20 **THE COURT:** REASONABLE SUSPICION; NOT PROBABLE
21 CAUSE, I DON'T THINK.

22 **MS. MANIGAULT:** OKAY. REASONABLE SUSPICION.

23 YOUR HONOR, WHAT HE'S LISTED IS NOT -- DOES NOT RISE
24 TO THE LEVEL OF A SUSPICION THAT IS HELD IN STATE V.
25 WILLIAMS AND SUBSEQUENT CASES. BUT THE SUPREME COURT HAS

1 ALSO RULED THAT, YES, HE CAN DO A SNIFF OR OTHER
2 INVESTIGATION, BUT THAT INVESTIGATION STOPS THE TRAFFIC
3 STOP AND GOES INTO A DETENTION INVESTIGATION. AND SO WE
4 WOULD SUBMIT TO THE COURT THAT THIS -- THE DRUGS SHOULD
5 BE SUPPRESSED BECAUSE THE OFFICER STEPPED OUTSIDE OF
6 BOUNDS ALLOWED UNDER *STATE V. WILLIAMS* AND SUBSEQUENT
7 CASES.

8 **THE COURT:** I WON'T SAY IT'S QUITE SEAMLESS, BUT IT
9 DOES APPEAR THAT THERE WAS PROBABLE CAUSE FOR THE STOP IN
10 THE SENSE THAT FOLLOWING TOO CLOSE, WHICH I UNDERSTAND
11 THE DEFENDANT, ACCORDING TO THE TESTIMONY FROM THE
12 OFFICER THAT AGREED WITH OR ADMITTED THAT IT WAS A
13 VIOLATION TO EXPLAIN TO HIM.

14 AN OFFICER IS PERMITTED TO CONDUCT A NONINVASIVE
15 INSPECTION OF A VEHICLE THAT IS -- WHICH BY DEFINITION IS
16 CAPABLE OF LEAVING THE SCENE AND TAKING WHATEVER WITH
17 HIM.

18 HERE, ALSO THERE WERE CERTAIN INDICES THAT SOMETHING
19 WAS AFOOT, SO TO SPEAK: HANDS SHAKING, APOLOGIZE,
20 FOLLOWING TOO CLOSELY, PULSATING CAROTID ARTERY SO MUCH
21 AS TO MOVE THE NECK, LOWER LIP QUIVERING. BASED ON THE
22 EXPERIENCE OF THE OFFICER, APPARENTLY THESE WERE
23 INDICATIONS THAT SOMETHING WASN'T AS -- AT THAT TIME, I'M
24 NOT EXACTLY SURE. IT'S KIND OF INTERESTING BEING IN
25 DETENTION HE WAS STANDING OUTSIDE THE CAR OR GOING TO THE

1 OTHER PLACE. IT WASN'T A SENSE THAT HE PUT HIM IN
2 CUSTODY OF THE OTHER OFFICER AS MUCH AS HE JUST SAID
3 STAND BACK TO THAT SIDE. IF YOU DON'T WANT TO SIT IN THE
4 CAR WITH THE DOG YOU DON'T HAVE TO. AND AT THIS POINT HE
5 ASKED ABOUT NARCOTICS, WEAPONS, OR LARGE AMOUNTS OF MONEY
6 WHICH WOULD BE REASONABLE UNDER THE CIRCUMSTANCES THAT --
7 OF COURSE, NARCOTICS, ILLEGAL WEAPONS THAT COULD BE
8 DANGEROUS FOR YOURSELF OR PROTECTING ANYBODY THAT MIGHT
9 HAVE A WEAPON THAT IT BE USED APPROPRIATELY.

10 AND MONEY, OF COURSE, HE WAS WANTING TO SECURE IT IF
11 HE WAS GOING TO LEAVE IT ON THE SIDE OF THE ROAD TO GO
12 GET A SEARCH WARRANT, AND HE WAS TOLD AT THAT TIME THAT
13 THERE WAS 18,000 ON THE BACK SEAT, AND HE COULD HAVE IT,
14 WHICH COULD BE CONSTRUED IN LIGHT MOST FAVORABLE TO THE
15 STATE AS AN OFFER OF A BRIBE WHICH IS A FELONY IN SOUTH
16 CAROLINA. SO I THINK, IF ANYTHING, HE WAS ENTITLED TO
17 PUT HIM UNDER ARREST AT THAT TIME RATHER THAN SUBMIT TO
18 ARREST OR EVEN GO INTO MORE ARREST. HE APPARENTLY TOOK
19 OFF AND THE NEXT DAY HE WAS CAPTURED.

20 I FIND THERE WAS SUFFICIENT CAUSE FOR STOPPING,
21 REASONABLE SUSPICION FOR THE INQUIRY AND, OF COURSE, THE
22 DRIVER'S LICENSE WAS HELD UNTIL THE N.C.I.C. SEARCH COULD
23 BE MADE. BY THAT TIME REASONABLE SUSPICION, AND THEN, IN
24 FACT, THAT THE, UNDER THE TESTIMONY, THAT AN ACTUAL
25 OFFENSE OR FELONY WAS POSSIBLY, IF NOT PROBABLY, WAS

1 MADE. SO I FIND THAT THE MATERIAL SEIZED WAS DONE SO
2 WITHOUT VIOLATION OF THE CONSTITUTIONAL RIGHTS OF THE
3 DEFENDANT IN ORDER TO ADMIT THE EVIDENCE.

4 ALL RIGHT. I NOTICE YOU GOT A BIG BOX. IS THAT
5 WHAT THAT IS?

6 MR. CAMPBELL: YES, SIR. THE DUFFEL BAG IN HERE IS
7 THE BAG THAT WAS SEIZED IN THE FRONT OF HIS CAR.

8 THE COURT: IS THAT THE DUFFEL BAG OR IS THAT
9 THE ---

10 MR. CAMPBELL: THE TEN KILOS WERE INSIDE THE DUFFEL
11 BAG.

12 THE COURT: WHAT NUMBER IS THAT?

13 MR. CAMPBELL: THAT'S STATE'S EXHIBIT NUMBER FIVE.

14 THE COURT: NUMBER FIVE IS A DUFFEL BAG.

15 MR. CAMPBELL: A DUFFEL BAG WITH TEN PACKAGES INSIDE
16 OF IT OF COCAINE. IT'S 22 POUNDS' WORTH.

17 THE COURT: ALL RIGHT. YES, MA'AM.

18 MS. MANIGAULT: YOUR HONOR, WE JUST TAKE EXCEPTION
19 TO YOUR RULING FOR THE RECORD.

20 THE COURT: OBVIOUSLY. ALL RIGHT. SUBJECT TO THE
21 COURT'S RULING ON THE ADMISSIBILITY, WHICH THE COURT, TO
22 WHICH THE DEFENDANT TAKES EXCEPTION AND NOTES ITS
23 OBJECTION TO MY RULING FOR THE RECORD, STATE'S NUMBER
24 FIVE, THE DUFFEL BAG WITH TEN PACKAGES -- EQUAL TO
25 APPROXIMATELY 25 OR 22 POUNDS?

1 **MR. CAMPBELL:** 22.

2 **THE COURT:** -- 22 POUNDS. I WOULD TRUST A WHITE
3 SUBSTANCE?

4 **MR. CAMPBELL:** YES, YOUR HONOR.

5 **THE COURT:** ALL RIGHT. IT WILL BE ADMITTED OVER THE
6 OBJECTION OF THE DEFENDANT.

7 (STATE'S EXHIBIT # 5, DUFFLE BAG WITH 22
8 POUNDS OF WHITE POWDER SUBSTANCE, WAS
9 RECEIVED IN EVIDENCE.)

10 JACKSON V. DENNO HEARING:

11 **THE COURT:** ALL RIGHT. NEXT THE JACKSON V. DENNO.

12 **MR. CAMPBELL:** YOUR HONOR, THE STATE CALLS DETECTIVE
13 MCGUIRE.

14 (WHEREUPON, NEAL BRADLEY MCGUIRE WAS SWORN BY
15 THE CLERK.)

16 **THE CLERK:** PLEASE STATE YOUR FULL NAME AND SPELL
17 YOUR LAST NAME FOR THE RECORD.

18 **THE WITNESS:** NEAL BRADLEY MCGUIRE, M-C-G-U-I-R-E.
19 WHEREUPON,

20 NEAL BRADLEY MCGUIRE,
21 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:
22 DIRECT EXAMINATION BY MR. CAMPBELL:

23 Q. STATE YOUR FULL NAME FOR THE RECORD, PLEASE.

24 A. NEAL BRADLEY MCGUIRE.

25 Q. AND WHERE ARE YOU EMPLOYED?

1 A. ANDERSON COUNTY SHERIFF'S OFFICE.

2 Q. AND WERE YOU EMPLOYED IN THAT CAPACITY ON AUGUST
3 23RD, 2006?

4 A. YES, SIR.

5 Q. AND HOW LONG HAVE YOU BEEN IN LAW ENFORCEMENT?

6 A. SINCE 1993.

7 Q. AND YOU ARE CURRENTLY IN THE NARCOTICS DIVISION OF
8 THE ANDERSON COUNTY SHERIFF'S DEPARTMENT?

9 A. YES, SIR.

10 Q. AND WERE YOU IN THAT CAPACITY OR POSITION ON
11 AUGUST 23RD '06?

12 A. YES, SIR.

13 Q. ON THAT DAY DID YOU HAVE AN OCCASION TO COME INTO
14 CONTACT WITH A RAHIEM KIRKMAN?

15 A. ON WHICH DAY, SIR?

16 Q. AUGUST THE 23RD, 2006.

17 A. YES, SIR, I DID.

18 Q. AND WHERE DID YOU MEET MR. KIRKMAN?

19 A. I WAS FAMILIAR WITH THE INCIDENT THAT OCCURRED ON
20 THE 22ND WHILE ON THE INTERSTATE. WE WERE ACTUALLY
21 CALLED OUT TO TRY TO APPREHEND THE SUBJECT, THE DEFENDANT
22 AS HE RAN. WE WERE UNABLE TO FIND HIM THAT NIGHT.

23 THE NEXT MORNING, SOMETIME OVER IN THE MORNING OF
24 THE DAYLIGHT HOURS, I WAS INFORMED THAT DEPUTY BROCK HAD
25 ACTUALLY APPREHENDED THE DEFENDANT ON THE INTERSTATE AND

1 HE WAS BROUGHT TO OUR OFFICE.

2 Q. AND WHEN HE WAS BROUGHT IN, YOU SAY YOUR OFFICE AT
3 THE SHERIFF'S DEPARTMENT?

4 A. YES, SIR.

5 Q. AND DID YOU SPEAK WITH HIM?

6 A. YES, SIR, I DID.

7 Q. AND WERE YOU ALONE WHEN YOU SPOKE TO HIM?

8 A. THE INITIAL CONTACT WITH HIM, NO, SIR, I HAD
9 ANOTHER INVESTIGATOR WITH ME.

10 Q. INVESTIGATOR SCOGGINS?

11 A. RUSTY SCOGGINS, YES, SIR.

12 Q. AND WAS HE IN HANDCUFFS AT THIS TIME?

13 A. I DON'T REMEMBER. I DON'T THINK HE WAS. I THINK
14 HE WAS WHEN HE COME IN, I BELIEVE I REMOVED THEM, AND I
15 MAY HAVE OFFERED HIM SOMETHING TO DRINK DURING THAT TIME.

16 Q. YOU OFFERED HIM A DRINK?

17 A. YES. I USUALLY DO WHEN WE'RE TALKING, I TRY TO,
18 YOU KNOW, GIVE AS MUCH COURTESY AS WE CAN TO PEOPLE. AND
19 I THINK I DID OFFER HIM SOMETHING TO DRINK.

20 Q. AND DID YOU ALLOW HIM IF HE WANTED TO USE THE
21 BATHROOM GO TO THE BATHROOM OR ANYTHING LIKE THAT?

22 A. IF HE HAD REQUESTED IT, HE MAY HAVE. HE WAS THERE
23 SOME TIME, BUT I DON'T REMEMBER IF HE ACTUALLY DID OR
24 NOT.

25 Q. AND NOW, DID YOU -- WAS THAT YOUR PURPOSE THERE

1 TALKING TO HIM TO FIND OUT WHAT HIS SIDE OF THE STORY OR
2 THE EVENTS OF, HIS VERSION OF THE EVENTS THAT TOOK PLACE?

3 A. MY JOB AS AN INVESTIGATOR IS TO FIND OUT, BASED ON
4 THE INFORMATION I HAD RECEIVED, IF THE DEFENDANT ACTUALLY
5 WANTED TO OFFER SOMETHING, MAYBE IN HIS DEFENSE OR
6 SOMETHING THAT COULD MAYBE FURTHER OUR INVESTIGATION IN
7 THE NARCOTICS BUSINESS.

8 Q. IN THIS CASE DID YOU TAKE A STATEMENT FROM
9 MR. KIRKMAN?

10 A. YES, SIR, I DID.

11 Q. AND PRIOR TO TAKING THAT STATEMENT, DID YOU DO AN
12 ADVICE OF RIGHTS?

13 A. YES, SIR, I DID.

14 Q. AND I'M GONNA SHOW YOU WHAT HAS BEEN MARKED
15 STATE'S EXHIBIT THREE. IF YOU COULD PLEASE IDENTIFY WHAT
16 THIS IS, SIR?

17 A. THIS IS THE ANDERSON COUNTY SHERIFF'S OFFICE
18 ADVISORY OF RIGHTS. IT'S A COMMON FORM THAT
19 INVESTIGATORS USE THAT EXPLAINS THE FOURTH AMENDMENT OR
20 MIRANDA WARNINGS; AND IT HAS A SECOND PART, THE WAIVER OF
21 THE RIGHTS WITH THE UNDERSTANDING OF WHAT THE DEFENDANT'S
22 RIGHTS ARE AGAIN.

23 Q. AND WHEN YOU -- THE PROCEDURE YOU GO TO, DID YOU
24 READ THIS TO HIM FIRST?

25 A. YES, SIR.

1 Q. AND AT THIS POINT WHEN YOU WERE TALKING TO HIM DID
2 HE APPEAR TO BE UNDER THE INFLUENCE OF ANY ALCOHOL OR
3 NARCOTICS OR ANYTHING THAT WOULD AFFECT HIS ABILITY TO
4 UNDERSTAND WHAT WAS GOING ON?

5 A. NO, SIR. AS AN INVESTIGATOR I ALWAYS, ONE OF THE
6 VERY FIRST QUESTIONS I ASK THEM IS ARE THEY COHERENT OR
7 DO THEY UNDERSTAND WHY THEY ARE THERE, CAN THEY READ AND
8 WRITE, ARE THEY UNDER THE INFLUENCE OF ANY KIND OF DRUGS
9 OR ALCOHOL, AND DO THEY FEEL THREATENED.

10 Q. AND IN THIS CASE DID YOU ASK HIM THOSE QUESTIONS?

11 A. YES, I DID.

12 Q. AND WHAT DID HE RESPOND TO YOU?

13 A. THAT HE WAS -- ACTUALLY, HE WAS VERY NERVOUS ABOUT
14 THE SITUATION, THAT HE UNDERSTOOD THAT HE WAS IN TROUBLE,
15 AND HE WANTED TO TRY TO COOPERATE WITH SOME CONSIDERATION
16 FOR HIS CHARGES.

17 Q. AND PRIOR TO TAKING A STATEMENT, DID YOU RUN
18 THROUGH HIS RIGHTS?

19 A. YES, SIR. PART OF THE PROCEDURE IS I'LL ACTUALLY
20 ASK AT THAT TIME I'LL TELL HIM THAT WE HAVE FORMS THAT WE
21 HAVE TO FILL OUT AND I WANT TO MAKE SURE THAT HE
22 UNDERSTANDS WHAT HIS RIGHTS ARE VERBALLY AND WRITTEN.
23 AND AT THAT TIME I GAVE HIM MIRANDA WARNINGS VERBALLY. I
24 ACTUALLY READ IT OFF THIS SHEET OF PAPER. AND THEN I
25 ASKED HIM ABOUT HIS EDUCATION LEVEL. HE SAID HE COULD

1 READ AND WRITE. AND I ASKED HIM IF HE WOULD READ THEM
2 BACK TO ME. AND THERE'S A CHECKED SQUARE BOX ON EACH
3 SIDE OF THE MIRANDA SHEET. I ASKED HIM AS HE READ THEM
4 IF HE WOULD INITIAL THOSE. HE DID SO.

5 AFTER HE DID THAT, WE PUT THE TIME ON IT AND HIS
6 SIGNATURE, MY SIGNATURE, AND INVESTIGATOR RUSTY SCOGGINS'
7 SIGNATURE AS A WITNESS THAT HE HAD READ THOSE AND HE DID
8 UNDERSTAND MY VERBAL WARNINGS TO HIM AS WELL AS THE
9 WRITTEN ONES.

10 THE SECOND PART WAS THE WAIVER. I READ THAT TO
11 HIM. I EXPLAINED SOME OF THE WORDING TO HIM SUCH AS
12 COERCION OR THREATS OR ANYTHING LIKE THAT. HE UNDERSTOOD
13 THAT. HE READ IT BACK TO ME. HE ALSO AGREED THAT HE
14 KNEW THAT HE COULD STOP TALKING AT ANY TIME, AND HE
15 WANTED TO MAKE A STATEMENT AT THAT TIME, AND HE DID SIGN
16 THAT AS WELL IN FRONT OF THE WITNESS, INVESTIGATOR
17 SCOGGINS, AND MYSELF.

18 Q. AND YOU READ OFF TO HIM (READING):

19 YOU HAVE THE RIGHT TO REMAIN SILENT. ANYTHING YOU
20 SAY MAY BE USED AGAINST YOU IN COURT.

21 YOU HAVE THE RIGHT TO SPEAK TO A LAWYER FOR ADVICE
22 BEFORE WE -- BEFORE YOU ARE ASKED ANY QUESTIONS AND HAVE
23 HIM WITH YOU DURING QUESTIONING. IF YOU CANNOT AFFORD A
24 LAWYER, ONE WILL BE APPOINTED FOR YOU BEFORE ANY
25 QUESTIONING IF YOU WISH.

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

6 IS THAT WHAT YOU READ TO HIM?

7 A. YES, SIR.

8 Q. AND HE READ AND INITIALED EACH OF THOSE SENTENCES;
9 IS THAT CORRECT?

10 A. YES, SIR.

11 Q. AND THEN HE SIGNED THAT AND THEN HE SIGNED THE
12 WAIVER OF RIGHTS; IS THAT RIGHT?

13 A. YES, SIR.

14 Q. AND DID YOU PROMISE HIM OR THREATEN HIM OR FORCE
15 HIM TO GET HIM TO MAKE A STATEMENT FOR YOU?

16 A. NO, SIR, I DID NOT.

17 Q. YOU DIDN'T THREATEN HIM OR ANYTHING LIKE THAT?

18 A. NO, SIR.

19 Q. AND HE FREELY AND VOLUNTARILY OF HIS OWN FREE WILL
20 AND ACCORD GAVE YOU A STATEMENT?

21 A. YES, SIR, HE DID.

22 Q. AND HE APPEARED TO UNDERSTAND THESE RIGHTS THAT
23 YOU READ HIM THAT HE INITIALED?

24 A. YES, SIR.

25 Q. NOW, YOU WROTE A STATEMENT FOR HIM; IS THAT RIGHT?

1 A. YES, SIR, I DID.

2 Q. DID HE ASK YOU TO WRITE THE STATEMENT OR DID YOU
3 ASK HIM TO WRITE IT?

4 A. WHEN WE STARTED TALKING, I ASKED HIM IF HE WANTED
5 TO GIVE THE STATEMENT. HE SAID HE WOULD. I ASKED HIM
6 DID HE WANT TO WRITE THE STATEMENT. HE SAID THAT HE WAS
7 STILL NERVOUS AT THAT TIME. HE SAID, "CAN YOU WRITE IT?"
8 IN SOME FORM OF WORDS, NOT TO QUOTE HIS WORDING. AND I
9 SAID I CAN WRITE IT. I WILL PUT ON HERE THAT I WANT YOU
10 TO READ YOUR STATEMENT AND MAKE ANY KIND OF CORRECTIONS
11 THAT MAY BE NECESSARY; ANYTHING THAT I MAY BLUNDER ON AS
12 FAR AS A MISTAKE, THAT YOU WILL INITIAL OVER IT. LET ME
13 KNOW THAT THAT WORD HAD BEEN SCRATCHED OUT, AND AT THE
14 END OF IT SIGN IT AND MARK AS THE END OF STATEMENT.
15 IDENTIFY NO ONE ELSE HAD ADDED OR TAKEN AWAY ANYTHING
16 THAT HE HAD NOT GIVEN ME IN PRETTY MUCH HIS OWN WORDS.

17 Q. AND DID HE TELL YOU WHAT HAPPENED?

18 A. YES, SIR.

19 Q. AND IS THIS WRITTEN DOWN IN THIS ONE-PAGE
20 STATEMENT?

21 A. YES, SIR.

22 Q. AND IS THIS EXACTLY HOW HE WROTE IT TO YOU OR TOLD
23 IT TO YOU?

24 A. IT'S AS CLOSE AS I COULD PUT INTO WORDS WITH WHAT
25 HE WAS TELLING ME IN HIS WORDING, YES, SIR, THAT'S A

1 CORRECT AND ACCURATE DEPICTION.

2 Q. AND AFTER IT WAS DONE, DID YOU GIVE IT BACK TO HIM
3 TO REVIEW IT?

4 A. YES, SIR. I ALSO GAVE HIM A COPY OF IT. AFTER HE
5 INITIALED OVER IT AND SIGNED IT, I GAVE HIM A COPY OF
6 THAT AS WELL.

7 Q. AND ARE THERE CERTAIN PLACES ON HERE THAT HE
8 CORRECTED?

9 A. YES, SIR.

10 Q. AND DID HE INITIAL WHERE HE CORRECTED?

11 A. YES, SIR.

12 Q. AND I SHOW YOU WHAT'S BEEN MARKED AS STATE'S
13 EXHIBIT FOUR. IS THIS THE STATEMENT THAT HE GAVE YOU ON
14 AUGUST 23RD, 2006?

15 A. YES, SIR, IT IS.

16 Q. IS THAT HIS SIGNATURE AT THE BOTTOM?

17 A. YES, SIR, IT IS.

18 Q. AND IN THIS STATEMENT DID HE ACKNOWLEDGE HIS
19 INVOLVEMENT IN THIS CASE?

20 A. YES, SIR.

21 Q. OKAY. AND WHAT, IF ANYTHING, DID HE TELL YOU?

22 A. WOULD YOU LIKE ME TO READ THE STATEMENT OR JUST
23 GIVE YOU AN OVERVIEW, SIR?

24 Q. JUST GIVE ME AN OVERVIEW.

25 A. WHEN WE STARTED THE INTERVIEW, WE ACTUALLY WOULD

1 TALK A LITTLE BIT AND I WOULD WRITE A LITTLE BIT, AND WE
2 TALKED ABOUT HIS INVOLVEMENT, HOW LONG HE HAD BEEN
3 INVOLVED IN IT, WHO WAS INVOLVED IN IT, IF HE WANTED TO
4 TRY TO CONSIDER DOING SOME WORK IN, WHERE THE COCAINE WAS
5 DESTINED TO, WHERE THE COCAINE HAD COME FROM. WE TALKED
6 SEVERAL DIFFERENT TIMES ABOUT THAT, AND I WOULD PUT DOWN,
7 YOU KNOW, AFTER I ASKED HIM A SERIES OF QUESTIONS, I
8 WOULD WRITE DOWN SOMETHING IN HIS RESPONSE TO REFLECT
9 WHAT HE WAS SAYING.

10 Q. AND IN THIS CASE DID HE ADMIT, ACKNOWLEDGE THAT HE
11 HAD TEN KILOS IN HIS CAR?

12 A. YES, SIR, HE DID.

13 Q. DID HE ACKNOWLEDGE THAT IT WAS COMING FROM
14 ATLANTA, IT WAS COMING FROM ATLANTA?

15 A. YES, SIR, HE DID.

16 Q. OKAY. AND THAT HE RECEIVED A WARNING TICKET ON
17 I-85?

18 A. YES, HE DID.

19 Q. AND THAT HE RAN?

20 A. SIR?

21 Q. THAT HE RAN FROM LAW ENFORCEMENT?

22 A. YES, SIR, HE DID.

23 Q. IN FACT, HE SAID HE WAS PAYING EIGHTEEN,
24 EIGHTEEN-FIVE A KILO; IS THAT RIGHT?

25 A. YES, SIR, IT IS.

1 Q. AND HE HAS MOVED APPROXIMATELY 150 KILOS SINCE HE
2 HAD BEEN DEALING WITH HIS PARTNER, MIKE?

3 A. YES, SIR, APPROXIMATELY 150 KILOS.

4 Q. AND THAT HE HAS A FRIEND COME TRY TO PICK HIM UP
5 AND TAKE HIM BACK TO NORTH CAROLINA?

6 A. YES, SIR. AND SHE, IT WAS A FEMALE WHO ACTUALLY
7 DID COME. THAT'S WHEN HE WAS APPREHENDED, THE PARTICULAR
8 FRIEND HE WAS TALKING ABOUT.

9 Q. AND AT NO POINT DID YOU THREATEN HIM TO MAKE THIS
10 STATEMENT?

11 A. NO, SIR. MY JOB IS TO TRY TO SEE IF WE CAN CARRY
12 IT TO THE NEXT LEVEL, TO INVESTIGATE TO SEE IF WE CAN DO
13 SOMETHING THAT CAN TAKE MORE DRUGS AND CRIMINAL
14 VIOLATORS, CRIMINAL ELEMENTS OUT OF OUR COMMUNITIES.

15 Q. YOU SAY YOU HAVE BEEN IN LAW ENFORCEMENT SINCE
16 '93?

17 A. YES, SIR.

18 Q. HOW LONG HAVE YOU BEEN INVOLVED IN NARCOTICS?

19 A. SINCE 19- -- I'VE BEEN IN NARCOTICS INVESTIGATIONS
20 SINCE 1996.

21 Q. IN ANDERSON COUNTY WHAT'S THE STREET VALUE OF
22 THOSE TEN KILOS?

23 A. TEN KILOS WOULD BE ABOUT A HUNDRED THOUSAND GRAMS,
24 AT \$500 PER GRAM, IF YOU SOLD IT PER GRAM.

25 Q. ABOUT A MILLION DOLLARS WORTH OF STREET VALUE?

1 A. YES, SIR. I NEED A CALCULATOR. I THINK IT'S
2 SOMEWHERE CLOSE.

3 MR. CAMPBELL: I HAVE NO FURTHER QUESTIONS. PLEASE
4 ANSWER ANY QUESTIONS MS. MANIGAULT MAY HAVE.

5 THE COURT: MS. MANIGAULT?

6 MS. MANIGAULT: THANK YOU, YOUR HONOR.

7 CROSS-EXAMINATION BY MS. MANIGAULT:

8 Q. INVESTIGATOR MCGUIRE, YOU SAID YOU CAME IN CONTACT
9 WITH KIRKMAN ON 8-23-06?

10 A. YES, MA'AM.

11 Q. AND WHAT WAS HIS CONDITION WHEN YOU FIRST SAW HIM?

12 A. HE WAS -- IF I REMEMBER CORRECTLY, HE WAS IN SOME
13 KIND OF A WINDBREAKER-TYPE SUIT. YOU COULD TELL HE HAD
14 BEEN OUT PRETTY MUCH ALL NIGHT RUNNING THROUGH THE
15 BRUSHES AND THE WOODS AND EVERYTHING; THAT HE MORE OR
16 LESS JUST ELUDED POLICE BY STAYING IN THE WOODED AREA
17 UNTIL DAYLIGHT WHEN YOU COULD SEE. NOT IN A MOTEL
18 ANYWHERE.

19 Q. HOW COULD YOU TELL THAT?

20 A. BY THE WAY HIS APPEARANCE WAS, HIS DRESS. HE HAD
21 NO LUGGAGE OR ANYTHING. WHEN HE CAME TO SEE ME IN THE
22 OFFICE AND EVERYTHING, YOU COULD TELL THAT HE HAD IN MY
23 OPINION BEEN OUT IN THE WOODS THAT NIGHT.

24 Q. OKAY. ALL RIGHT. CAN YOU DESCRIBE PHYSICALLY HOW
25 HE LOOKED?

1 A. HE LOOKED LIKE HE HAD BEEN IN MUD, HE HAD BEEN IN
2 GRASS; DIRT WAS ON HIS CLOTHING AND HIS SHOES.

3 Q. ALL RIGHT. AND DID HE APPEAR COHERENT TO YOU?

4 A. VERY MUCH SO, MA'AM.

5 Q. COULD HE UNDERSTAND WHAT YOU WERE SAYING TO HIM?

6 A. YES, MA'AM.

7 Q. AND DID HE ASK YOU ANY QUESTIONS?

8 A. HE ASKED ME A SERIES OF QUESTIONS AS WELL AS I
9 ASKED HIM OVER THE PERIOD OF THE INVESTIGATION, YES,
10 MA'AM.

11 Q. DID HE APPEAR TO YOU, HIS BEHAVIOR TO BE UNDER THE
12 INFLUENCE OF ANY DRUGS OR ALCOHOL, NARCOTICS?

13 A. I DIDN'T HEAR THE FIRST PART OF YOUR QUESTION,
14 MA'AM.

15 Q. DID IT APPEAR FROM HIS BEHAVIOR OR REACTION TO
16 YOU, WAS HE UNDER THE INFLUENCE OF ANY DRUGS OR ALCOHOL?

17 A. BASED ON MY EXPERIENCE AS A POLICE OFFICER, NO,
18 MA'AM, HE WAS VERY COHERENT. HE WAS SOMEWHAT OF AN
19 EDUCATED PERSON. HE UNDERSTOOD WHAT HE WAS SAYING AND HE
20 WAS DOING, AND I FELT VERY COMFORTABLE IN INTERVIEWING
21 HIM, BELIEVING HE KNEW WHAT HE WAS SAYING AND DOING.

22 Q. DID YOU AT ANY TIME TELL HIM THAT HE SHOULD MAKE
23 THIS STATEMENT TO HELP HIMSELF?

24 A. NO, MA'AM, I DID NOT.

25 Q. DID YOU EVER OFFER TO HELP HIM WITH HIS CASES OR

1 IT WILL GO BETTER FOR HIM IF HE MADE THE STATEMENT?

2 A. MA'AM, I EXPLAINED TO HIM WHAT THE LAWS WAS IN
3 SOUTH CAROLINA. ONE OF THE QUESTIONS HE WOULD ASK IS
4 WHAT AM I FACING. IS THERE ANYTHING I CAN DO TO HELP ME.
5 AND AT THAT POINT IN TIME PRETTY MUCH EVERY PERSON I
6 INTERVIEW WILL ASK THAT QUESTION, AND I'LL GIVE THEM THE
7 SAME RESPONSE: I'M NOT SURE EXACTLY WHAT YOU ARE FIXING
8 TO TELL ME, BUT I'M NOT PROMISING YOU ANYTHING OR
9 OFFERING YOU ANYTHING. I'M JUST SIMPLY GONNA GET THE
10 FACTS OUT THERE. IF THERE'S SOMETHING THAT WOULD BE
11 BENEFICIAL THEN IT MAY BE SOMETHING THAT COULD HELP YOU.

12 Q. WHAT WAS -- WHAT SIZE ROOM WERE Y'ALL IN, OR AREA?

13 A. MY OFFICE IS ABOUT AN EIGHT-BY-FOURTEEN, MA'AM.

14 Q. AND WHAT WAS THE CONDITION OR ENVIRONMENT OF THAT
15 OFFICE: COLD, HOT?

16 A. IT'S ABOUT THE SAME AS IN HERE TODAY, SOMEWHERE
17 AROUND 70 DEGREES.

18 Q. AND DID MR. KIRKMAN AT ANY POINT APPEAR TO BE
19 UNCOMFORTABLE OR WANTING TO LEAVING THE ROOM OR END THE
20 CONVERSATION WITH YOU?

21 A. NO, MA'AM, ABSOLUTELY NOT.

22 Q. DID HE AT ANY TIME TELL YOU THAT HE DID NOT WANT
23 TO TALK TO YOU ANYMORE?

24 A. NO, MA'AM, HE DID NOT.

25 Q. THAT HE WANTED A LAWYER?

1 A. NO, MA'AM.

2 Q. AND WAS THERE ANY -- DID THE TWO OF YOU EVER GET
3 INTO AN ARGUMENT, OR HIGH TONE, PITCHED VOICES TOWARD
4 EACH OTHER?

5 A. NO, MA'AM. HE WAS IN A MOOD THAT I WOULD DESCRIBE
6 AS A COOPERATIVE MOOD, WHICH ALLOWED ME TO INVESTIGATE,
7 YOU KNOW, WHAT WAS, ACTUALLY HAD HAPPENED, WHAT POSSIBLY
8 COULD HAPPEN LATER ON. IT WAS, YOU KNOW, NOT A PLEASANT
9 INTERVIEW BECAUSE OF THE CIRCUMSTANCES, BUT IT WAS A VERY
10 LEVEL TONE OF VOICE INTERVIEW.

11 Q. AND FROM START TO FINISH, INVESTIGATOR, HOW LONG
12 DID TAKING THE STATEMENT TAKE?

13 A. FROM THE TIME I FIRST SPOKE WITH HIM UNTIL WE GOT
14 THE FORMALITIES OF THE FORMS, THE ACTUAL INTERVIEW DOWN
15 ON PAPER, I WOULD SAY PROBABLY AN HOUR AND A HALF, TWO
16 HOURS.

17 Q. ALL RIGHT. AND ALL THE INFORMATION THAT'S
18 CONTAINED IN THIS STATEMENT WAS WHAT HE VOLUNTEERED TO
19 YOU REGARDING HIS ACTIVITIES?

20 A. YES, MA'AM.

21 **THE COURT:** RE-EXAM?

22 **MR. CAMPBELL:** I HAVE NO FURTHER QUESTIONS, YOUR
23 HONOR.

24 **THE COURT:** ALL RIGHT. YOU MAY STEP DOWN. THANK
25 YOU, SIR.

1 (WHEREUPON, THE WITNESS LEFT THE WITNESS
2 STAND.)

3 **MR. CAMPBELL:** I'M JUST GOING TO PUT DETECTIVE
4 MCGUIRE, INVESTIGATOR MCGUIRE UP. MR. SCOGGINS WAS ALSO
5 PRESENT, YOUR HONOR. IT'S GONNA BE DUPLICATE TESTIMONY,
6 SO THAT'S THE STATE'S CASE.

7 **THE COURT:** THAT'S THE STATE'S TESTIMONY?

8 **MR. CAMPBELL:** THAT'S THE STATE'S TESTIMONY OF THE
9 JACKSON V. DENNO HEARING, YOUR HONOR.

10 **THE COURT:** ALL RIGHT. ANYTHING FROM THE DEFENDANT?

11 **MS. MANIGAULT:** NOTHING, YOUR HONOR. JUST OUR
12 MOTION.

13 **THE COURT:** MOVE TO SUPPRESS IT?

14 **MS. MANIGAULT:** YES, SIR.

15 **THE COURT:** MR. CAMPBELL?

16 **MR. CAMPBELL:** YOUR HONOR, BASED UPON THE JACKSON V.
17 DENNO CASE, THAT DETECTIVE MCGUIRE, INVESTIGATOR MCGUIRE
18 DID EXACTLY AS HE WAS SUPPOSED TO. HE FILLED OUT THE
19 ADVICE OF RIGHTS WHICH THE DEFENDANT FREELY AND
20 VOLUNTARILY SIGNED. HE GAVE THE STATEMENT ADMITTING TO
21 INVOLVEMENT WHICH CORROBORATES ALL THE INFORMATION THAT
22 WAS TAKEN FROM OR LEARNED FROM THE CRIME SCENE. AS SUCH
23 THERE'S NO INDICATION THAT HE WAS THREATENED OR COERCED
24 OR FORCED OR INTIMIDATED IN ORDER TO GET HIM TO MAKE A
25 STATEMENT. AS SUCH, THE STATE CONTENDS THIS STATEMENT

1 WAS GIVEN VOLUNTARILY TO INVESTIGATOR MCGUIRE, AND WE
2 FEEL LIKE THE MOTION TO SUPPRESS THE STATEMENT SHOULD BE
3 DENIED.

4 **THE COURT:** MS. MANIGAULT?

5 **MS. MANIGAULT:** WELL, YOUR HONOR, AS FAR AS I'M AT A
6 SERIOUS DISADVANTAGE SINCE MY CLIENT IS NOT PRESENT, SO
7 WE JUST STAND ON OUR MOTION TO KEEP THE STATEMENT OUT.

8 **THE COURT:** LET ME SEE EXHIBIT THREE AND FOUR,
9 STATE'S EXHIBITS THREE AND FOUR.

10 **MR. CAMPBELL:** (HANDING.)

11 **THE COURT:** ALL RIGHT. HAVING VIEWED THE EXHIBITS
12 AS WELL AS THE TESTIMONY OF THE INVESTIGATING AND
13 INTERROGATING OFFICER, I'M CONVINCED BY A PREPONDERANCE
14 OF THE EVIDENCE THAT THE DEFENDANT WAS FULLY ADVISED OF
15 HIS RIGHTS UNDER THE FIFTH AND SIXTH AMENDMENT: THAT IS
16 TO REMAIN SILENT, THAT ANY STATEMENT CAN AND WILL BE USED
17 AGAINST HIM, THE RIGHT TO AN ATTORNEY, AND IF HE COULD
18 NOT AFFORD ONE, THE COURT WOULD APPOINT ONE; THE RIGHT TO
19 CONSULT WITH AN ATTORNEY BEFORE INTERROGATION, THE RIGHT
20 TO INTERRUPT AND TERMINATE THE INTERROGATION, AND THAT
21 THE INTERROGATION WOULD CEASE UNTIL HE HAD THE
22 OPPORTUNITY TO CONSULT WITH AN ATTORNEY.

23 THE DEFENDANT, I FURTHER FIND FROM THE TESTIMONY AND
24 EVIDENCE, KNOWINGLY AND INTELLIGENTLY WAIVED HIS RIGHTS
25 UNDER THE FIFTH AND SIXTH AMENDMENTS. NEVER TOLD THAT HE

1 DIDN'T WANT TO TALK TO ANY, HE DIDN'T WANT TO TALK ANY
2 MORE, AND HE NEVER SAID HE WANTED A LAWYER.

3 THE ALLEGEDLY INCRIMINATING STATEMENT OBTAINED FROM
4 THE DEFENDANT, THEREFORE, WAS FREELY AND VOLUNTARILY
5 GIVEN WITHOUT DURESS, WITHOUT COERCION, WITHOUT UNDUE
6 INFLUENCE, WITHOUT REWARD, WITHOUT PROMISE OF HOPE OF
7 REWARD; AND ALTHOUGH THE EFFECT OF, OR I THINK THE
8 QUESTION WAS HE WANTED TO KNOW WHAT HE COULD DO TO HELP
9 HIMSELF, NOTHING WAS PROMISED, AND SO I FIND IT WAS FOUND
10 WITHOUT COMPULSION OR INDUCEMENT OF ANY KIND. THE
11 STATEMENT OR CONFESSION WAS THE VOLUNTARY PRODUCT OF THE
12 FREE AND UNCONSTRAINED WILL OF THE DEFENDANT. I FIND ALL
13 OF THESE CONCLUSIONS TO BE BEYOND A REASONABLE DOUBT,
14 HOWEVER, OF COURSE, IT WILL BE FOR THE JURY TO DETERMINE
15 WHETHER ULTIMATELY THE STATEMENTS WERE MADE, IF THEY WERE
16 DONE FREELY, VOLUNTARILY, KNOWINGLY AND INTELLIGENTLY,
17 AND THAT THEY COULD BE RELIED UPON.

18 VERY GOOD. ALL RIGHT. ANYTHING ELSE FROM THE
19 STATE?

20 **MR. CAMPBELL:** NO, YOUR HONOR.

21 **THE COURT:** ANYTHING FROM THE DEFENDANT?

22 **MS. MANIGAULT:** NOTHING, YOUR HONOR, OTHER THAN WE
23 TAKE EXCEPTION TO YOUR RULING.

24 **THE COURT:** ALL RIGHT. SUBJECT TO THE COURT'S
25 RULING, THE STATEMENT BY THE DEFENDANT WILL BE ADMITTED.

1 ALL RIGHT. IT'S ABOUT 20 OF. DO YOU NEED A SHORT BREAK
2 BEFORE WE BEGIN?

3 **MR. CAMPBELL:** YES, SIR.

4 **THE COURT:** ALL RIGHT. WE'LL TAKE A VERY SHORT
5 BREAK. AND WHEN YOU ARE READY COME ON BACK, WE'LL BRING
6 THE JURY IN AND START.

7 (WHEREUPON, A RECESS WAS TAKEN.)

8 **THE COURT:** ALL RIGHT. LET'S GET STARTED.
9 IS ANYTHING FROM THE STATE BEFORE WE BEGIN?

10 **MR. CAMPBELL:** NO, YOUR HONOR.

11 **THE COURT:** ALL RIGHT. JUST SO THE RECORD IS CLEAR,
12 THE DEFENDANT HAS MADE TWO MOTIONS, ONE TO SUPPRESS THE
13 PHYSICAL EVIDENCE, WHICH I THINK IS STATE'S EXHIBIT
14 NUMBER FIVE; AND THE COURT HAS OVERRULED OR DENIED THE
15 DEFENDANT'S MOTION TO SUPPRESS AND OVERRULED THEIR
16 OBJECTION TO THE COURT'S RULING. FOR THE RECORD IT WILL
17 NOT NEED, OF COURSE, TO BE RENEWED.

18 ALSO, THE DEFENDANT'S MOTION TO SUPPRESS THE
19 STATEMENT BY THE DEFENDANT AND THE ADVICE OF RIGHTS,
20 WHICH WOULD BE STATE'S EXHIBIT THREE, AND THE STATEMENT,
21 STATE'S EXHIBIT FOUR, THE COURT HAS DENIED THE MOTION TO
22 SUPPRESS THE STATEMENT AND OVERRULED THE DEFENDANT'S
23 OBJECTION TO THE COURT'S RULING. AGAIN, NEITHER OF THOSE
24 MOTIONS HAVE TO BE RENEWED FOR THE RECORD.

25 **MS. MANIGAULT:** YOU SAID NEITHER HAVE TO BE RENEWED?

1 **THE COURT:** NEITHER NEED TO BE RENEWED.

2 **MS. MANIGAULT:** OKAY, THANK YOU.

3 **THE COURT:** UNLESS THE COURT CHANGES ITS OPINION,
4 THEN I GUESS WE WOULD HEAR A MOTION FROM THE STATE. BUT
5 AT THIS TIME THE COURT IS SATISFIED THAT AT LEAST BY THE
6 PREPONDERANCE I DID FIND BEYOND A REASONABLE DOUBT THAT
7 IT WAS FREELY, VOLUNTARILY, KNOWINGLY AND INTELLIGENTLY
8 MADE. SO EXHIBITS FOUR AND FIVE -- OR THREE AND FOUR,
9 EXCUSE ME -- WELL, FIVE IS ADMITTED INTO EVIDENCE. THREE
10 AND FOUR -- WELL, THREE MIGHT BE ADMITTED, BUT FOUR
11 DEPENDS ON HOW THE CASE COMES. BUT THE STATEMENT WILL
12 COME IN AS FAR AS A WRITTEN STATEMENT GOING BACK AS AN
13 EXHIBIT, THAT WILL BE SOMETHING ELSE. ALL RIGHT.

14 BUT AGAIN, DEFENDANT'S MOTION TO SUPPRESS BOTH THE
15 PHYSICAL EVIDENCE AND THE STATEMENT HAVE BEEN RULED ON
16 AND DO NOT HAVE TO BE RENEWED.

17 (STATE'S EXHIBIT # 3, ADVICE/WAIVER OF RIGHTS
18 FORM DATED 8-23-06 WAS RECEIVED IN EVIDENCE.)

19 **THE COURT:** ALL RIGHT. ANYTHING ELSE FROM THE
20 DEFENDANT?

21 **MS. MANIGAULT:** NOTHING, YOUR HONOR.

22 **THE COURT:** ALL RIGHT. ASK THE JURY TO JOIN US,
23 PLEASE.

24 (THE JURY ENTERED THE COURTROOM AT
25 APPROXIMATELY 2:52 P.M.)

1 **THE COURT:** LET THE RECORD REFLECT THE JURY AND
2 ALTERNATE ARE IN THE JURY-BOX.

3 MADAM CLERK, IF YOU WOULD, PLEASE SWEAR THE JURY.

4 (WHEREUPON, THE JURY WAS SWORN.)

5 **THE CLERK:** BE SEATED, PLEASE.

6 PRELIMINARY INSTRUCTIONS BY COURT TO JURY:

7 **THE COURT:** MR. FOREMAN, LADIES AND GENTLEMEN OF THE
8 JURY, I'M SURE THAT EACH OF YOU NOW FULLY APPRECIATES
9 THAT THIS COURT, THE COURT OF GENERAL SESSIONS FOR
10 ANDERSON COUNTY, EXISTS FOR THE PURPOSE OF REVOLVING
11 QUESTIONS OF ALLEGED CRIMINAL CONDUCT ARISING BETWEEN THE
12 STATE OF SOUTH CAROLINA AND THE DEFENDANT.

13 IT IS A GUARANTEED RIGHT OF EVERY CITIZEN THAT A
14 CHARGE OF CRIMINAL CONDUCT BE PRESENTED IN OPEN COURT
15 ACCORDING TO CERTAIN RULES OF PROCEDURE. THE STATE HAS
16 NOT ONLY AN EQUAL RIGHT BUT THE DUTY TO PRESENT A CHARGE
17 OF CRIMINAL CONDUCT IN OPEN COURT ACCORDING TO THE SAME
18 RULES OF PROCEDURE. EACH OF THE PARTIES, THEREFORE, BOTH
19 THE STATE AND THE DEFENDANT, THEN, HAVE AN EQUAL RIGHT TO
20 THE OPPORTUNITY OF THIS JUDICIAL PROCEEDING AND TO HAVE
21 YOU AS THE JURY SELECTED AND NOW SWORN FOR THE TRIAL OF
22 THIS CASE.

23 ONE OF THE MOST IMPORTANT ASPECTS OF YOUR DUTY AS
24 THE JURY LIES ESSENTIALLY IN THE OATH THAT YOU HAVE NOW
25 TAKEN, TO WELL AND TRULY TRY AND DETERMINE THE FACTS OF

1 THIS CASE. THAT OATH IN A VERY ESSENTIAL WAY SAYS THAT
2 YOU ARE THE SOLE JUDGES OF THE FACTS IN THIS CASE.
3 OBVIOUSLY, ANY CASE TRIED IN COURT WILL INVOLVE A
4 QUESTION ABOUT WHAT HAPPENED OR HOW SOMETHING CAME TO
5 HAPPEN OR WHOM, IF ANYONE, DID ANYTHING IN A PARTICULAR
6 OCCURRENCE OR CIRCUMSTANCE. FROM THIS POINT FORWARD,
7 THEN, NO ONE CONCERNED WITH THE TRIAL -- WITH THIS TRIAL
8 HAS THE RIGHT TO DECIDE ANY QUESTION OF FACT IN THIS
9 TRIAL OR THE TRUTH OF IT EXCEPT YOU, THE JURY. THE FACTS
10 THEN ARE FOR YOUR RESOLUTION AND YOUR DECISION AND YOURS
11 ALONE. AND AFTER YOU HEAR ALL OF THE EVIDENCE IN THE
12 CASE, THEN IT WILL BE YOUR DUTY BY YOUR MUTUAL AND JOINT
13 DISCUSSIONS TO DETERMINE THE TRUTH OF THIS CASE BY
14 DECIDING THE WEIGHT AND BELIEVABILITY OF EACH PART OF THE
15 EVIDENCE AND BY APPLYING THE LAW OF THE CASE THERETO.

16 AS TRIAL JUDGE I AM THE JUDGE ON THE LAW IN THE
17 CASE. IT IS ALSO MY RESPONSIBILITY AMONG OTHER DUTIES TO
18 PRESIDE OVER THIS TRIAL, TO RULE ON THE ADMISSIBILITY OF
19 EVIDENCE OFFERED DURING THE PROGRESS OF TRIAL AND TO
20 STATE TO YOU, THE JURY, THE LAW APPLICABLE IN THIS CASE
21 UNDER THE CONSTITUTION OF SOUTH CAROLINA.

22 THAT SAME CONSTITUTION MANDATES THAT I AS THE TRIAL
23 JUDGE CANNOT DIRECTLY OR INDIRECTLY COMMENT ABOUT THE
24 FACTS IN THIS CASE.

25 THE PROCESS OF A VERDICT THEN IS SIMPLY THAT YOU,

1 THE JURY, FIRST DETERMINE WHAT IS THE TRUTH OF THE FACTS,
2 AND THEN APPLY TO THAT TRUE STATE OF FACTS THE PRINCIPLE
3 OF LAW APPLICABLE, AND BY THAT PROCESS DETERMINE AND
4 REPORT TO THIS COURT YOUR FINAL VERDICT IN THE CASE,
5 SPEAKING THE TRUTH OF THE CASE AS YOU DETERMINE IT.

6 I WILL MORE FULLY AND COMPLETELY STATE TO YOU THE
7 PRINCIPLES OF LAW APPLICABLE TO THE ISSUES IN THIS CASE
8 BEFORE THIS CASE IS SUBMITTED TO YOU, THE JURY, FOR YOUR
9 DECISION.

10 HOWEVER, THERE ARE CERTAIN PRINCIPLES APPLICABLE TO
11 EVERY CASE IN GENERAL SESSIONS COURT. I'LL OUTLINE SOME
12 OF THESE BASIC PRINCIPLES TO YOU FOR YOUR GUIDANCE.

13 NOW, THE DEFENDANT HAS ENTERED A PLEA OF NOT GUILTY
14 TO THE CHARGES CONTAINED IN THE INDICTMENT. THE
15 INDICTMENT IN A CASE IS NOT EVIDENCE, IT IS SIMPLY THE
16 WRITTEN INSTRUMENT THAT CONTAINS THE CHARGE OR CHARGES
17 AGAINST THE DEFENDANT AND IT SERVES AS THE FORMAL
18 DOCUMENT BY WHICH THIS CASE IS PROCESSED INTO COURT. THE
19 PLEA OF NOT GUILTY PLACES UPON THE STATE THE BURDEN OF
20 PROOF IN THIS CASE, AND AS FOR WHAT IS MEANT BY THE
21 BURDEN OF PROOF, THE DEFENDANT IS PRESUMED IN LAW
22 INNOCENT OF ALL CHARGES CONTAINED IN THE INDICTMENT. THE
23 BURDEN OF PROOF REQUIRES THE STATE TO PROVE GUILT BEYOND
24 A REASONABLE DOUBT AND, THEREFORE, CONSISTENT WITH THAT
25 BURDEN THE DEFENDANT OR THE ACCUSED PARTY SHALL BE

1 PRESUMED TO BE INNOCENT, AND THAT PRESUMPTION OF
2 INNOCENCE IS SUFFICIENT TO COMPEL A VERDICT OF NOT GUILTY
3 OR A VERDICT OF ACQUITTAL UNLESS YOU, THE JURY, CONCLUDE
4 THAT THE STATE HAS SATISFIED ITS OBLIGATION TO PROVE THE
5 DEFENDANT GUILTY BEYOND A REASONABLE DOUBT.

6 A REASONABLE DOUBT IS THE KIND OF DOUBT THAT WOULD
7 CAUSE A REASONABLE PERSON TO HESITATE TO ACT. I MIGHT
8 NOTE THAT UNDER THE LAWS OF THIS STATE, THE DEFENDANT MAY
9 BE TRIED EVEN IF THE DEFENDANT DOES NOT ATTEND THE TRIAL.
10 BUT THE FACT THAT THE DEFENDANT IS NOT PRESENT MAY NOT BE
11 CONSIDERED AGAINST THE DEFENDANT IN ANY MANNER
12 WHATSOEVER.

13 NOW, THIS CASE WILL BE OPENED BY THE SOLICITOR,
14 AFTER WHICH THE SAME OPPORTUNITY WILL BE AFFORDED TO THE
15 DEFENDANT TO MAKE AN OPENING STATEMENT. WHEN ALL THE
16 EVIDENCE HAS BEEN RECEIVED BY THE COURT, COUNSEL FOR THE
17 STATE AND COUNSEL FOR THE DEFENDANT WILL STATE TO YOU,
18 THE JURY, THEIR RESPECTIVE POSITIONS, AFTER WHICH THE
19 COURT WILL MORE FULLY STATE THE APPLICABLE LAW IN THIS
20 CASE.

21 OBVIOUSLY, ALL PARTS OF THE CASE ARE IMPORTANT. YOU
22 DO NOT KNOW WHICH WITNESS IN A CASE WILL MOST IMPRESS
23 YOU, WHETHER THE FIRST WITNESS OR THE LAST WITNESS. IN
24 REACHING YOUR FINAL CONCLUSION YOU WILL NEED THE GUIDANCE
25 AND THE JUDGMENT OF THE OTHER JURORS. YOU WILL NEED THE

1 GUIDANCE OF THE PRINCIPLES OF LAW THAT WILL BE STATED TO
2 YOU BY THE COURT. FOR ALL THESE REASONS, THEN, WHEN WE
3 HAVE ANY RECESS PERIODS WHEN YOU RETIRE TO YOUR JURY ROOM
4 OR OVERNIGHT OR MEAL RECESS, I INSTRUCT YOU THAT YOU MUST
5 NOT UNDERTAKE THE DISCUSSION OF THIS CASE AMONG
6 YOURSELVES UNTIL THE CASE IS FINALLY GIVEN TO YOU FOR
7 YOUR DELIBERATIONS. NOR ARE YOU TO DISCUSS THIS CASE
8 WITH ANYONE OR PERMIT ANYONE TO DISCUSS THE CASE WITH
9 YOU. IF ANYONE TRIES TO DO SO, AS I SAID EARLIER, YOU
10 ARE TO REPORT THEM.

11 NOW, THE VERDICT IN THIS CASE MUST BE THE UNANIMOUS
12 VERDICT OF ALL 12 JURORS.

13 NOW, THERE ARE A FEW OTHER THINGS I NEED TO MENTION
14 BEFORE WE BEGIN. AS I SAID EARLIER, ALTHOUGH I AM THE
15 ONLY PERSON WHO CAN TELL YOU WHAT THE LAW IS, YOU AND YOU
16 ALONE ARE THE ONLY ONES WHO CAN DETERMINE THE FACTS. I
17 DO NOT HAVE THE RIGHT TO INDICATE HOW I MAY FEEL ABOUT
18 THE EVIDENCE PRESENTED, AND THROUGHOUT THIS TRIAL MY
19 INTENTION WILL BE TO ACT IMPARTIALLY TOWARDS EACH PARTY.

20 SECOND, FROM TIME TO TIME AN ATTORNEY MAY OBJECT TO
21 SOME BIT OF TESTIMONY OR EVIDENCE WHICH THE OTHER SIDE
22 SEEKS TO PRESENT. AS IN SPORTS OR BUSINESS OR ANY OTHER
23 STRUCTURED ACTIVITY, THERE ARE CERTAIN RULES THAT BOTH
24 SIDES MUST OBEY IN PRESENTING EVIDENCE. THESE RULES HAVE
25 A DEFINITE PURPOSE. THEY ENSURE THAT THE INFORMATION YOU

1 RECEIVE IS THE MOST TRUSTWORTHY AND RELIABLE EVIDENCE
2 AVAILABLE. AN OBJECTION IS A PROCEDURE WE USE FOR AN
3 ATTORNEY TO CALL A POSSIBLE VIOLATION OF THE RULES TO THE
4 COURT'S ATTENTION, AND FOR THIS REASON YOU SHOULD NOT
5 HOLD THE ATTORNEY'S OBJECTION AGAINST HIS OR HER CLIENT,
6 NOR SHOULD YOU CONCLUDE FROM MY RULING ON THE OBJECTION
7 THAT I FAVOR ONE SIDE OR THE OTHER.

8 FINALLY, I WOULD ASK THAT YOU PAY THE CLOSEST
9 ATTENTION POSSIBLE TO THE EVIDENCE PRESENTED TO YOU.

10 I WILL ALSO ASK THAT YOU DO NOT TO TAKE NOTES. IF
11 YOU MAKE AN ERROR IN THOSE NOTES, THOSE NOTES CAN BE MORE
12 DETRIMENTAL THAN HELPFUL DURING THE DELIBERATION. THE
13 TIME-TESTED SYSTEM IS FOR EACH OF YOU TO LISTEN CAREFULLY
14 AND I'M CONFIDENT THAT EACH OF YOU DO THAT.

15 NOW, THE REASON I SUGGEST THAT YOU NOT TAKE NOTES,
16 AS I'VE SAID, IS FROM THIS POINT ON YOU MUST MAKE YOUR
17 DECISION BASED SOLELY AND ONLY ON THE EVIDENCE FROM THIS
18 WITNESS STAND THROUGH THE SWORN WITNESSES AND AS TO THE
19 EXHIBITS AND OTHER EVIDENCE INTRODUCED IN THIS COURTROOM.
20 THEREFORE, YOU MUST PAY VERY CAREFUL AND CLOSE ATTENTION
21 TO WHAT IS HAPPENING AT THE TIME.

22 AND IT'S MY EXPERIENCE IF YOU TAKE NOTES YOU HAVE A
23 TENDENCY TO CONCENTRATE ON THE NOTE TO BE SURE YOU PUT
24 DOWN WHAT YOU THINK YOU HEARD AS WELL AS SPELLING AND
25 EVEN IF IT'S GRAMMATICALLY OR SEMANTICALLY CORRECT. IN

1 DOING THAT, YOU ARE DISTRACTED FROM WHAT IS HAPPENING AT
2 THE TIME. IT'S MORE IMPORTANT THAT YOU OBSERVE AND YOU
3 LISTEN AND YOU TAKE IN EVERYTHING THAT IS HAPPENING AS IT
4 HAPPENS. THAT'S WHY I SUGGEST THAT YOU NOT TAKE NOTES.
5 ALSO, AS I'VE SAID, NOTES CAN BE DETRIMENTAL IF AN ERROR
6 IS MADE. FOR EXAMPLE, IF YOU JUST MISS ONE WORD IN A
7 STATEMENT, IT CAN CHANGE THAT STATEMENT ENTIRELY. THINK
8 ABOUT THE WORD "NOT", N-O-T. IF YOU MISS THAT WORD IN
9 MAKING YOUR NOTE, YOU HAVE CHANGED THE WHOLE THRUST, IN
10 FACT, YOU HAVE CHANGED IT ENTIRELY. SO, THEREFORE, I
11 SUGGEST YOU DO NOT TAKE NOTES AND THAT YOU CONCENTRATE ON
12 WHAT IS HAPPENING AT THE TIME. AND IF THERE IS A
13 QUESTION, THEN USE THE COLLECTIVE MEMORY AND THOUGHTS OF
14 YOUR FELLOW JURORS.

15 NOW, HAVING SAID THAT, I DO TAKE NOTES. IT IS NOT
16 ONE OF THOSE THINGS, DO AS I SAY, NOT AS I DO. PLEASE
17 UNDERSTAND THAT YOU HAVE AN ENTIRELY DIFFERENT FUNCTION
18 FROM MINE IN THIS COURTROOM. YOU ARE THE ONLY ONES THAT
19 CAN DECIDE THE TRUTH IN THIS CASE. THE STATEMENT OF FACT
20 AND HOW IT RELATES TO THIS CASE, I AM NOT CONCERNED WITH
21 THE VALUE OF THE TESTIMONY OR EVIDENCE. I AM ONLY
22 CONCERNED WHETHER OR NOT SOMETHING OCCURS; IN OTHER
23 WORDS, I AM JOTTING DOWN WHAT OCCURS, NOT THE
24 SIGNIFICANCE OF IT, THAT IS FOR YOU TO DO. SO THEREFORE
25 YOU WILL NOTE THAT I DO TAKE NOTES AND I DO SOMETIMES

1 RATHER VOLUMINOUS NOTES, BUT AT THE SAME TIME I SUGGEST I
2 RECOMMEND THAT YOU DO NOT.

3 NOW WE'LL START THE TRIAL OF THE CASE AND I
4 RECOGNIZE THE SOLICITOR FOR HIS OPENING STATEMENT.

5 **MR. CAMPBELL:** THANK YOU, YOUR HONOR. MAY IT PLEASE
6 THE COURT?

7 **THE COURT:** MR. CAMPBELL.

8 OPENING STATEMENT ON BEHALF OF THE STATE:

9 **MR. CAMPBELL:** LADIES AND GENTLEMEN OF THE JURY,
10 SOMETIMES THINGS OBVIOUSLY SPEAK FOR THEMSELVES. WHEN I
11 WAS PREPARING FOR THIS CASE I WAS TRYING TO FIGURE OUT
12 WHAT DO I TELL Y'ALL ABOUT THIS CASE? HOW DO I START
13 THIS? WELL, 22 POUNDS OF POWDER COCAINE SPEAKS FOR
14 ITSELF. IT'S A LOT OF DOPE.

15 THIS OFFICER RIGHT HERE, DETECTIVE -- DEPUTY JAMIE
16 CRAWFORD, WORKS FOR THE ANDERSON COUNTY SHERIFF'S
17 DEPARTMENT, WORKS ALONG WITH HIS PARTNER, DEPUTY MIZE.

18 ABOUT 7:40, AUGUST 22ND, 2006, KIND OF RAINY
19 WEATHER. THE DEFENDANT IN THIS CASE, RAHIEM KIRKMAN, WAS
20 DRIVING A SILVER VOLKSWAGEN PASSAT FOLLOWING TOO CLOSE
21 BEHIND AN 18-WHEELER TRACTOR-TRAILER, SO HE MADE A
22 TRAFFIC STOP. AND HE GOES UP THERE, AND BASED ON HIS
23 TRAINING AND EXPERIENCE, HE STARTS PUTTING THINGS
24 TOGETHER AND HE NOTICED THAT HE WAS MORE NERVOUS THAN
25 PEOPLE ARE. AND PEOPLE ARE NERVOUS WHEN WHEY GET STOPPED

1 BY LAW ENFORCEMENT, BUT HE WAS THINKING HE WAS MORE
2 NERVOUS THAN NORMAL. ALL THE OTHER INDICATORS STARTED
3 SHOWING: SHAKING, QUIVERING, LIP QUIVERING. THINGS THAT
4 JUST WASN'T ADDING UP.

5 AND AS HE GOT HIM OUT, HE TOOK HIM BACK TO HIS
6 PATROL CAR AND HE WAS SITTING DOWN. AND WHILE HE WAS
7 SITTING THERE, HE RAN HIS DRIVER'S LICENSE, RUN IT
8 THROUGH TO MAKE SURE IT WAS CLEAR, TO MAKE SURE THAT HE
9 HAD NO WARRANTS OR ANYTHING LIKE THAT ON HIM. HE TOOK
10 HIS DOG OUT. SEE, DEPUTY CRAWFORD HERE IS ALSO A CANINE
11 HANDLER, HAS A DOG, DRUG DOG. AND SO WHILE HE'S WAITING
12 FOR DISPATCH TO COME BACK WITH THE DRIVER'S LICENSE TO
13 SEE IF IT WAS CLEAR, HE TAKES HIS DOG AND RUNS TWICE
14 AROUND HIS CAR, GIVING A POSITIVE HIT ON THE BACK LEFT
15 SIDE.

16 ABOUT THIS TIME HIS PARTNER, DEPUTY MIZE, SHOWS UP.
17 THE DEFENDANT IN THIS CASE, RAHIEM KIRKMAN, STARTS
18 GETTING REAL AGITATED, REAL NERVOUS, STARTS SHAKING,
19 WANTING TO GO, ALL OF A SUDDEN I GOT TO GO. WE GOT TWO
20 OFFICERS HERE.

21 WELL, THEY ASK HIM, CAN WE SEARCH YOUR CAR? DO YOU
22 HAVE ANYTHING ILLEGAL IN THIS CAR? HE SAID, THERE'S
23 NOTHING. THAT DOG DIDN'T HIT ON MY CAR. THEY SAID,
24 WELL, OUR DOG DID HIT ON YOUR CAR, AND BASED ON WHAT WE
25 SEE WE GOT REASONABLE SUSPICION YOU GOT DRUGS IN YOUR

1 CAR.

2 THEN RAHIEM KIRKMAN GOT OUT OF THE CAR AND TAKES OFF
3 RUNNING DOWN THE INTERSTATE, JUMPS OVER THE FENCE AND
4 GOES INTO THE WOODS. BOTH DEPUTIES CHASE AFTER HIM BUT
5 WEREN'T ABLE TO CATCH UP WITH HIM. THEY COME BACK TO THE
6 CAR.

7 THEN THEY START TO SEARCH. AND IN THAT SEARCH WHEN
8 THEY POPPED THE TRUNK, THEY FOUND A BLACK DUFFEL BAG; AND
9 WHEN THEY OPENED IT, THEY FOUND TEN PACKAGES ALREADY
10 SEALED UP AND WRAPPED. THEY PLACED IT ON THE HOOD OF THE
11 CAR AND YOU'LL GET TO SEE THE VIDEO SHOWING THIS. THE
12 VIDEO DOESN'T HAVE ANY AUDIO, IT WASN'T WORKING, BUT YOU
13 WILL SEE THE EVENTS THAT TOOK PLACE THAT DAY ON TAPE.
14 THEY TESTED THAT AND IT FIELD-TESTED POSITIVE FOR POWDER
15 COCAINE, WHICH IT WAS SENT OFF TO THE LAB IN ORDER TO BE
16 TESTED AND IT CAME BACK AND IT WAS 22 POUNDS OF POWDER
17 COCAINE. WHICH EXPLAINS WHY HE RAN.

18 WELL, THE NEXT DAY THEY HAD A B.O.L.O., BE ON THE
19 LOOK-OUT FOR THIS INDIVIDUAL. AND A CALL CAME IN SAYING,
20 HEY, SOME GUY LOOKS SUSPICIOUS AND IS TRYING TO CATCH A
21 RIDE. SO DEPUTY GENE BROCK FROM THE SHERIFF'S DEPARTMENT
22 WAS DISPATCHED TO THE AREA. HE HAPPENED TO SEE THE
23 DESCRIPTION OF THE CAR AND HE MADE A TRAFFIC STOP. AND
24 LO AND BEHOLD, IN THE BACK SEAT WAS RAHIEM KIRKMAN, THE
25 DEFENDANT IN THIS CASE.

1 AS A RESULT OF THAT, HE WAS CHARGED WITH TRAFFICKING
2 COCAINE MORE THAN 400 GRAMS. AND AS THE JUDGE STATED,
3 IT'S OUR BURDEN TO PROVE TO YOU BEYOND A REASONABLE DOUBT
4 THAT HE, IN FACT, DID THESE THINGS.

5 NOW, A TRAFFICKING CASE, YOU DON'T HAVE TO PROVE YOU
6 ARE ACTUALLY SELLING IT HAND-TO-HAND OR ANYTHING LIKE
7 THAT. TRAFFICKING IS BASED UPON WEIGHT. ALL WE HAVE TO
8 PROVE TO YOU IS THAT, ONE, IT'S COCAINE, IT'S AN ILLEGAL
9 SUBSTANCE, AND IT'S MORE THAN 400 GRAMS.

10 AND HOW DO YOU GO ABOUT DOING THAT? THE JUDGE GAVE
11 YOU THE DEFINITION OF REASONABLE DOUBT. THIS IS THE WAY
12 I LOOK AT IT. IF YOU THINK HE DID IT, FIND HIM GUILTY.
13 IF YOU THINK HE DIDN'T DO IT, FIND HIM NOT GUILTY. IT'S
14 AS SIMPLE AS THAT.

15 HOW DO YOU PROVE THAT HE KNEW IT WAS HIS? YOU LOOK
16 AT POSSESSION. THERE'S ACTUAL AND CONSTRUCTIVE
17 POSSESSION. ACTUALLY, YOU ACTUALLY HAD IT PHYSICALLY ON
18 YOU. OR CONSTRUCTIVE, YOU HAVE CONTROL OF THE PREMISES.
19 IN THIS CASE THE PREMISES BEING THE VEHICLE, WHICH IT WAS
20 HIS CAR. BY HIS OWN ACTIONS I THINK IT KIND OF SHOWED
21 THAT HE KNEW WHAT WAS IN THERE. THAT'S HOW YOU SHOW THAT
22 HE HAD ACTUAL OR CONSTRUCTIVE POSSESSION OF THESE
23 NARCOTICS, THIS ILLEGAL DRUG.

24 AS THE JUDGE SAID, Y'ALL'S JOB IS THE FACT-FINDERS,
25 Y'ALL DETERMINE WHAT IS TRUE. AND AT THE END OF THE

1 CASE, THE TESTIMONY YOU'RE GONNA HEAR AND WHAT YOU BASE
2 YOUR DECISION UPON COMES FROM THAT STAND AND THE EVIDENCE
3 YOU GET TO SEE. IT'LL BE THERE FOR Y'ALL TO LOOK AT.

4 AND AFTER YOU HEAR EVERYTHING, AT THAT POINT I'M
5 GOING TO ASK YOU TO COME BACK WITH A VERDICT AT THE END
6 OF THIS TRIAL, A VERDICT THAT TRUTH DICTATES AND JUSTICE
7 DEMANDS. AND I LOOK FORWARD TO SEEING YOU ALL AT THE END
8 OF THIS CASE. THANK YOU.

9 **THE COURT:** MS. MANIGAULT?

10 **MS. MANIGAULT:** THANK YOU, YOUR HONOR.

11 OPENING STATEMENT ON BEHALF OF DEFENDANT:

12 **MS. MANIGAULT:** LADIES AND GENTLEMEN, AGAIN, MY NAME
13 IS DOROTHY MANIGAULT, AND I'M THE ATTORNEY FOR RAHIEM
14 KIRKMAN IN THIS CASE.

15 THE SOLICITOR HAS GIVEN YOU AN ORATION OF A
16 SITUATION, BUT AS THE COURT HAS TOLD YOU, THE STATE HAS
17 THE BURDEN OF PROOF, THAT WHATEVER HE HAS JUST RECITED TO
18 YOU MUST BE PROVEN BEYOND A REASONABLE DOUBT. AND WE ASK
19 THAT YOU LISTEN TO THE TESTIMONY OF THE OFFICERS AND
20 ANYONE ELSE THAT IS PRESENTED TO YOU HERE TODAY OR DURING
21 THE DURATION OF THIS TRIAL.

22 WE ASK THAT YOU WEIGH THAT EVIDENCE CAREFULLY AND,
23 AS THE SOLICITOR HAS SAID, IT IS YOUR RESPONSIBILITY TO
24 DECIDE WHAT THE FACTS IN THE CASE IS, WHAT ACTUALLY
25 HAPPENED. ARE THE OFFICERS PRESENTING TO YOU THE ENTIRE

1 PICTURE?

2 YOUR HONOR HAS EXPLAINED TO YOU THE PREMISE OF HOW A
3 CASE GETS TO COURT. AND IT GETS HERE BY AN INDICTMENT,
4 BUT THE INDICTMENT DOES NOT INDICATE GUILT. THAT IS THE
5 JOB OF THE JURY TO DECIDE AFTER HEARING ALL OF THE
6 EVIDENCE IN THE CASE WHAT ACTUALLY HAPPENED. SO WE ASK
7 THAT YOU PAY CLOSE ATTENTION TO THE INFORMATION PRESENTED
8 TO YOU AND MAKE YOUR DECISION APPROPRIATELY AT THE END.
9 THANK YOU.

10 **THE COURT:** MR. CAMPBELL, YOU MAY CALL YOUR FIRST
11 WITNESS.

12 **MR. CAMPBELL:** YOUR HONOR, THE STATE CALLS DEPUTY
13 JAMIE CRAWFORD TO THE STAND.

14 (WHEREUPON, JAMIE CRAWFORD WAS SWORN BY THE
15 CLERK.)

16 **THE CLERK:** PLEASE STATE YOUR FULL NAME AND SPELL
17 YOUR LAST NAME FOR THE RECORD.

18 **THE WITNESS:** JAMIE CRAWFORD, LAST NAME IS
19 C-R-A-W-F-O-R-D.

20 WHEREUPON,

21 JAMIE CRAWFORD,

22 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

23 DIRECT EXAMINATION BY MR. CAMPBELL:

24 Q. DEPUTY CRAWFORD, WHERE ARE YOU EMPLOYED?

25 A. ANDERSON COUNTY SHERIFF'S OFFICE.

1 Q. AND HOW LONG HAVE YOU BEEN EMPLOYED THERE?

2 A. TWO AND A HALF YEARS.

3 Q. HOW LONG HAVE YOU BEEN IN LAW ENFORCEMENT?

4 A. IT'S GOING ON EIGHT YEARS.

5 Q. AND IN YOUR CURRENT CAPACITY WHAT JOB DO YOU HAVE
6 AT THE SHERIFF'S DEPARTMENT?

7 A. I'M ASSIGNED TO THE AGGRESSIVE CRIMINAL
8 ENFORCEMENT TEAM, THE TRAFFIC DIVISION. I'M A CANINE
9 HANDLER AT THE SHERIFF'S OFFICE.

10 Q. AND WHAT EXACTLY DOES AN AGGRESSIVE CRIMINAL
11 ENFORCEMENT TEAM, WHAT EXACTLY DO YOU ALL DO? YOU'RE ALL
12 CALLED THE A.C.E. TEAM; IS THAT RIGHT?

13 A. THAT'S RIGHT.

14 Q. WHAT DO YOU ALL DO?

15 A. ME SPECIFICALLY, I WORK ON THE INTERSTATE WORKING
16 TRAFFIC ENFORCEMENT ON THE INTERSTATE. WE HAVE SEVERAL
17 OTHER DIFFERENT THINGS WE DO, BUT THAT'S WHAT I MAINLY
18 DO.

19 Q. AND AS PART OF YOUR JOB AND YOUR TRAINING, WHAT
20 ARE YOU LOOKING FOR WHILE YOU'RE ON THE INTERSTATE?

21 A. NARCOTICS, WEAPONS, ANY OTHER IMPLEMENTS OF
22 CRIMINAL ACTIVITY, STOLEN STUFF, STUFF LIKE THAT.

23 Q. AND WERE YOU WORKING IN YOUR CURRENT CAPACITY ON
24 OCTOBER 22ND, 2006?

25 A. I WAS.

1 Q. NOW, AS PART OF YOUR JOB -- LET ME STEP BACK --
2 HAVE YOU BEEN TO SPECIALIZED SCHOOLS AND TRAINING ON
3 NARCOTIC DETECTION?

4 A. I HAVE.

5 Q. AND CAN YOU JUST TELL BRIEFLY THE LADIES AND
6 GENTLEMEN OF THE JURY WHAT SCHOOLS YOU HAVE BEEN TO?

7 A. I'VE BEEN TO THE SOUTH CAROLINA DEPARTMENT OF
8 PUBLIC SAFETY A.C.E. PROGRAM, A RURAL DRUG ENFORCEMENT,
9 HIGHWAY VEHICLE STOPS ON A DRUG TRAFFICKER, TALKING HANDS
10 (PHONETIC), INTERVIEW AND INTERROGATION. THERE'S SEVERAL
11 OTHERS. THAT'S JUST ME PERSONALLY AS FAR AS CANINE GOES,
12 I'VE BEEN TO SEVERAL CANINE SCHOOLS HERE IN THE UPSTATE,
13 A COUPLE NATIONALLY-ACCREDITED ORGANIZATIONS WITH MY
14 CANINE.

15 Q. OKAY. NOW, YOU WERE WORKING ON OCTOBER -- EXCUSE
16 ME -- AUGUST 22ND, 2006?

17 A. I WAS.

18 Q. AND YOU WERE WORKING THE INTERSTATE; IS THAT
19 CORRECT?

20 A. THAT'S RIGHT.

21 Q. I-85?

22 A. THAT'S RIGHT.

23 Q. AND WERE YOU IN ANDERSON COUNTY?

24 A. I WAS.

25 Q. AND ON THAT DAY WERE YOU DRESSED AS YOU ARE

1 DRESSED TODAY IN YOUR UNIFORM?

2 A. I WAS.

3 Q. AND WHAT TYPE PATROL CAR WERE YOU IN?

4 A. AT THE TIME I WAS IN A BLACK 2004 CROWN VICTORIA,
5 FULLY MARKED WITH BLUE LIGHTS AND THE INSIGNIA ON THE
6 SIDE AND THE REFLECTIVE TAPE.

7 Q. WAS THAT ONE OF THE OLDER CARS AT THE TIME?

8 A. THAT'S RIGHT.

9 Q. AND AT THAT TIME WAS THE CAR YOU WERE IN EQUIPPED
10 WITH A TAPE RECORDER, BASICALLY?

11 A. IT WAS EQUIPPED WITH A MOBILE VISION CAMERA.

12 Q. AND THIS CAMERA, DOES IT RECORD AUDIO AND VIDEO?

13 A. IN A PERFECT WORLD. BUT MINE DID NOT, IT JUST
14 RECORDED AUDIO -- I'M SORRY -- THE VIDEO.

15 Q. THE CAMERA AT THE TIME, THE AUDIO WAS NOT WORKING?

16 A. THAT'S RIGHT.

17 Q. AND SINCE THEN YOU REPLACED THE UNIT, I ASSUME?

18 A. WE HAVE.

19 Q. NOW, THAT DAY, WHAT WAS THE WEATHER CONDITIONS
20 LIKE?

21 A. IT WAS RAINING.

22 Q. AND DID YOU HAVE YOUR WINDSHIELD WIPERS ON?

23 A. I DID.

24 Q. ON THAT DAY DID YOU HAVE THE OCCASION TO COME INTO
25 CONTACT WITH A RAHIEM KIRKMAN?

1 A. I DID.

2 Q. AND WHERE EXACTLY DID YOU COME IN CONTACT WITH
3 HIM?

4 A. I-85 NORTHBOUND AT MILE MARKER 19.

5 Q. NOW, THE NORTHBOUND LANE ON I-85, WHICH DIRECTION
6 WAS THAT: HEADING TOWARDS ATLANTA OR WAS THAT TOWARDS
7 CHARLOTTE?

8 A. IT WAS GOING TOWARDS CHARLOTTE.

9 Q. AND YOU WERE WORKING THERE, WERE YOU BY YOURSELF
10 THAT DAY?

11 A. NO, SIR, I WAS WORKING WITH MY PARTNER, DEPUTY
12 MIZE.

13 Q. AND WERE Y'ALL TOGETHER OR SIDE BY SIDE ON THE
14 SIDE OF THE ROAD?

15 A. NO, SIR.

16 Q. WHERE WAS HE LOCATED?

17 A. I THINK HE WAS A LITTLE FURTHER SOUTH OF ME. HE
18 WAS ON ANOTHER CAR STOP.

19 Q. AND WHILE YOU WERE THERE, APPROXIMATELY 7:40 P.M.
20 WHAT, IF ANYTHING, DID YOU OBSERVE?

21 A. AS FAR AS HIS DEMEANOR OR THE...

22 Q. THE CAR.

23 A. THE CAR? I WAS SITTING ON THE SIDE OF I-85. WHEN
24 THIS VEHICLE PASSED BY ME IT WAS DIRECTLY BEHIND AN
25 18-WHEELER, WAY, IT WAS FOLLOWING WAY TOO CLOSE BEHIND AN

1 18-WHEELER.

2 Q. AND WHAT KIND OF CAR WAS IT?

3 A. IT WAS A LITTLE SILVER OR GRAY-IN-COLOR VOLKSWAGEN
4 PASSAT.

5 Q. AND AT THAT POINT IN TIME DID YOU INITIATE A
6 TRAFFIC STOP?

7 A. I DID.

8 Q. AND THE CAR CAME TO A STOP ON THE INTERSTATE?

9 A. IT DID.

10 Q. ON THE SIDE OF THE INTERSTATE?

11 A. IT DID.

12 Q. AND ABOUT WHAT MILE MARKER DID HE STOP?

13 A. ABOUT MILE MARKER 19.

14 Q. YOU OBSERVED HIM AT MILE MARKER 17?

15 A. I DID.

16 Q. NOW, WAS THERE ANY, WAS THERE ANYBODY ELSE IN THE
17 CAR OR WAS IT JUST ONE PERSON?

18 A. JUST THAT ONE PERSON.

19 Q. AND THIS CAR THAT YOU STOPPED, YOU SAID IT WAS A
20 VOLKSWAGEN, WAS IT -- WHERE WAS IT REGISTERED THE LICENSE
21 PLATE?

22 A. OUT OF NORTH CAROLINA.

23 Q. AND CAN YOU DESCRIBE TO THE LADIES AND GENTLEMEN
24 OF THE JURY YOUR PROCEDURE WHEN YOU DO A TRAFFIC STOP?
25 HOW DO YOU GO ABOUT GOING THROUGH ONE, CONDUCTING ONE?

1 A. GET A MOVING INFRACTION, STOP THE VEHICLE,
2 APPROACH THE VEHICLE VIA PASSENGER'S SIDE APPROACH. MAKE
3 CONTACT WITH THE DRIVER, ADVISE HIM WHY WE STOPPED HIM,
4 ASK FOR THEIR INFORMATION, AND DEPENDING ON WHAT THE
5 NATURE OF THE VIOLATION IS, THEY GET A WARNING CITATION
6 OR AN ACTUAL TRAFFIC CITATION.

7 Q. AND BASED UPON YOUR INITIAL OBSERVATION OF THE
8 CAR, WHAT TYPE OF CITATION WERE YOU GOING TO ISSUE TO
9 MR. KIRKMAN?

10 A. I WAS GOING TO CHECK HIS WELL-BEING INITIALLY AND
11 JUST A WARNING CITATION.

12 Q. AND HOW DID YOU DETERMINE THAT IT WAS RAHIEM
13 KIRKMAN THAT WAS DRIVING THIS VEHICLE?

14 A. HE WAS THE SOLE OCCUPANT AND HE GAVE ME HIS
15 DRIVER'S LICENSE.

16 Q. AND WERE YOU ABLE TO DETERMINE WHO OWNED THIS CAR?

17 A. I LOOKED AT THE REGISTRATION THAT THE DRIVER GIVE
18 [SIC] ME AND IT WAS REGISTERED TO RAHIEM KIRKMAN.

19 Q. AND IT WAS ISSUED OUT OF NORTH CAROLINA?

20 A. THAT'S RIGHT.

21 Q. NOW, AS PART OF YOUR TRAINING AND EXPERIENCE, DO
22 YOU LOOK FOR ANY TYPE OF OBSERVATION OR INDICATORS TO SEE
23 IF THERE'S POSSIBLY SOME ONGOING OR WRONGDOING CRIMINAL
24 ACTIVITY?

25 A. THAT'S RIGHT.

1 Q. AND CAN YOU TELL THE LADIES AND GENTLEMEN OF THE
2 JURY WHAT KIND OF INDICATORS YOU LOOK FOR TO SEE IF
3 SOMETHING ELSE ILLEGAL -- IF SOMETHING ILLEGAL IS GOING
4 ON?

5 A. WHAT WE ARE TRAINED TO LOOK FOR IS SEVERAL
6 NONVERBAL CUES, SUCH AS TREMBLING HANDS, THE CAROTID
7 ARTERY, WHICH IS IN THE NECK, PULSATING WHEN SOMEONE GETS
8 EXTREMELY NERVOUS; CHANGE IN BREATHING PATTERNS, LABORED
9 BREATHING. SEVERAL OTHER DIFFERENT THINGS: LIPS
10 QUIVERING UNCONTROLLABLY. JUST ANYTHING THAT'S, THAT YOU
11 DON'T TYPICALLY SEE IN SOMEBODY WHO IS NOT UNDER STRESS.

12 Q. NOW, YOU HAVE MADE A LOT OF STOPS BEING IN LAW
13 ENFORCEMENT?

14 A. SEVERAL.

15 Q. DO YOU TYPICALLY FIND THOSE TYPE OF INDICATORS IN
16 EVERY TRAFFIC STOP?

17 A. NO.

18 Q. AND IT'S NORMAL FOR PEOPLE TO BE NERVOUS WHEN LAW
19 ENFORCEMENT STOPS THEM. WOULD YOU AGREE?

20 A. I AGREE A HUNDRED PERCENT.

21 Q. AND BASED UPON YOUR INITIAL OBSERVATIONS, DID YOU
22 OBSERVE ANY OF THESE INDICATORS THAT MR. KIRKMAN MAY HAVE
23 EXHIBITED?

24 A. WELL, WHEN MR. KIRKMAN HANDED ME HIS DRIVER'S
25 LICENSE, HIS HAND WAS SHAKING. THE REASON I KNOW THAT IS

1 BECAUSE HE HAD HIS LICENSE IN HIS HAND HANDING IT TO ME
2 AND IT WAS SHAKING. HIS BOTTOM LIP WAS QUIVERING
3 UNCONTROLLABLE, UNCONTROLLABLY.

4 LET ME REFER BACK TO MY REPORT HERE.

5 THAT WAS JUST -- THOSE TWO RIGHT THERE WERE JUST,
6 RIGHT OFF THE BAT, THE SHAKING OF THE HANDS AND THE LIP
7 QUIVERING.

8 Q. AT THIS POINT DID YOU HAVE A CONVERSATION WITH
9 MR. KIRKMAN?

10 A. AT THIS POINT I HAD ASKED HIM, YOU KNOW, FOR HIS
11 DRIVER'S LICENSE AND REGISTRATION AND ADVISED HIM WHY I
12 STOPPED HIM, AND HE ASKED WHY I STOPPED HIM AND I TOLD
13 HIM THAT IT WAS FOR FOLLOWING TOO CLOSELY. HE APOLOGIZED
14 FOR FOLLOWING TOO CLOSELY AND AFTER THAT HE ASKED ME WHAT
15 WAS, I GUESS WHAT WOULD BE ACCEPTABLE? AND I TOLD HIM
16 THAT FOR EVERY TEN MILES PER HOUR YOU ARE TRAVELING, THAT
17 YOU SHOULD ALLOW ONE CAR LENGTH BETWEEN YOU AND THE
18 VEHICLE IN FRONT OF YOU, AND HE WAS GOING 69 MILES AN
19 HOUR. I SAID YOU SHOULD ALLOW ABOUT SEVEN CAR LENGTHS
20 BEHIND YOU. THAT'S A NATIONAL HIGHWAY TRAFFIC
21 ADMINISTRATION NATIONAL STANDARD.

22 Q. NOW, BUT HE ACKNOWLEDGED HE WAS FOLLOWING TOO
23 CLOSELY?

24 A. THAT'S RIGHT.

25 Q. AND AT THIS POINT DID YOU ASK HIM TO STEP BACK TO

1 YOUR PATROL CAR?

2 A. I DID.

3 Q. AND WHAT WAS THE PURPOSE OF THAT?

4 A. JUST TO TALK TO HIM A LITTLE MORE AND ADVISE HIM,
5 TO ISSUE THE WARNING CITATION.

6 Q. AND DID HE SIT IN YOUR PATROL CAR?

7 A. HE DID.

8 Q. IN THE PASSENGER'S SEAT?

9 A. THAT'S RIGHT.

10 Q. NOW, YOUR PATROL CAR AT THAT TIME, SINCE YOU ARE A
11 CANINE UNIT, WHERE DO YOU KEEP YOUR DOG?

12 A. WHERE THE BACK SEAT WOULD BE, THE BACK SEAT HAS
13 BEEN REMOVED AND THERE'S A KENNEL.

14 Q. AND CAN YOU ACCESS IT FROM THE FRONT OF YOUR CAR?

15 A. I CAN. THERE'S A LITTLE SLIDING GATE BETWEEN THE
16 TWO FRONT SEATS.

17 Q. BUT IT'S CLOSED OFF SO THE DOG CAN'T GET OUT?

18 A. THAT'S RIGHT, IT'S CLOSED OFF.

19 Q. AND AT THIS POINT WHAT DID YOU TELL, OR EXPLAIN TO
20 THE LADIES AND GENTLEMEN OF THE JURY WHAT YOU WENT
21 THROUGH WITH MR. KIRKMAN?

22 A. ONCE WE SAT DOWN INSIDE MY VEHICLE, I BEGAN TO
23 ISSUE HIM THE WARNING CITATION. WHILE I WAS ISSUING THE
24 WARNING CITATION, I ASKED MR. KIRKMAN WHERE HE WAS COMING
25 FROM. HE SAID HE WAS COMING FROM ATLANTA.

1 Q. AND BASED UPON YOUR TRAINING AND EXPERIENCE, IS
2 ATLANTA A HUB FOR ILLEGAL NARCOTIC ACTIVITY?

3 A. THAT'S RIGHT. IT IS, VERY MUCH SO.

4 Q. A LOT OF DRUGS COME OUT OF ATLANTA?

5 A. YES, SIR.

6 MS. MANIGAULT: YOUR HONOR, I OBJECT.

7 THE COURT: SUSTAINED UNLESS YOU CAN LAY A
8 FOUNDATION.

9 MR. CAMPBELL: I'LL MOVE ON.

10 THE COURT: ALL RIGHT. DISREGARD ANYTHING ABOUT
11 WHAT HIS UNDERSTANDING IS UNLESS THERE'S A FOUNDATION.
12 BY MR. CAMPBELL:

13 Q. NOW, DEPUTY CRAWFORD, HOW WAS HE, WHILE HE WAS IN
14 YOUR PATROL CAR, WHAT WAS HIS DEMEANOR LIKE, HOW WAS HE
15 ACTING?

16 A. VERY, VERY NERVOUS. HIS CAROTID ARTERY WAS
17 PULSATING SO HARD THAT YOU COULD SEE IT PUMPING EVERY
18 TIME HIS HEART BEAT. HIS HEARTBEAT WAS GOING SO RAPIDLY,
19 YOU COULD SEE HIS SHIRT RAISE UP AND DOWN UP AND DOWN.
20 AND HE HAD JUST WALKED FROM HIS CAR TO MY VEHICLE, WHICH
21 IS FIVE YARDS. AND JUST EXTREMELY, EXTREMELY NERVOUS.

22 Q. AND DID YOU ASK HIM MORE ABOUT WHERE HE WAS COMING
23 FROM?

24 A. I DID.

25 Q. AND WHAT WAS HE TELLING YOU?

1 A. HE TOLD ME THAT HE HAD WENT TO ATLANTA TO DROP HIS
2 GIRLFRIEND OFF AT HER SCHOOL, AND WHEN I ASKED HIM ABOUT
3 WHAT SCHOOL THAT HE DROPPED HER OFF AT, HE SAID HE
4 COULDN'T REMEMBER. I FELT LIKE IT WAS KIND OF ODD IF HE
5 JUST LEFT FROM THERE YOU WOULD THINK HE WOULD REMEMBER.
6 SHORTLY AFTER THAT HE SAID HE DIDN'T DROP HER OFF AT
7 SCHOOL BUT HE DROPPED HER OFF AT HER HOUSE. I ASKED WHAT
8 CITY SHE LIVED IN AND HE SAID STONE MOUNTAIN, GEORGIA.

9 Q. NOW, AS PART OF YOUR PROCEDURE DURING TRAFFIC
10 VIOLATIONS, DO YOU DO ANYTHING WITH THE DRIVER'S LICENSE?

11 A. YES. WE HAVE DISPATCHER CHECK THEM, CHECK THEM
12 THROUGH THEIR HOME STATE AND WE ALSO CHECK THEM THROUGH
13 N.C.I.C.

14 Q. AND DO YOU NORMALLY DO THAT?

15 A. WE DO.

16 Q. DID YOU DO THAT IN THIS CASE?

17 A. I DID.

18 Q. AND YOU CALLED THIS NUMBER IN TO DISPATCH AND HAD
19 THEM CHECK IT TO SEE IF THERE WAS ANYTHING, ANY
20 OUTSTANDING WARRANTS OR ANYTHING; IS THAT RIGHT?

21 A. TO BE SURE HIS DRIVING LICENSE WEREN'T REVOKED AND
22 TO CHECK HIM THROUGH N.C.I.C. TO MAKE SURE HE WASN'T A
23 WANTED PERSON.

24 Q. AND DURING THIS TIME, THE TRAFFIC STOP WHILE
25 YOU'RE WAITING FOR DISPATCH TO COME BACK TO YOU, WHAT DID

1 YOU DO?

2 A. I DEPLOYED MY POLICE CANINE, GOT HIM OUT THE BACK
3 OF MY CAR. I LET HIM TAKE A BREAK, LET HIM USE THE
4 RESTROOM REAL QUICK. AND I STARTED A FREE AIR SNIFF AT
5 THE RIGHT FRONT PORTION OF HIS VEHICLE. AND AS WITH ALL
6 CARS, WE ALWAYS WORK IN A COUNTERCLOCKWISE MOTION WHEN IT
7 COMES TO VEHICLES. AND I STARTED MY SNIFF AT THE RIGHT
8 FRONT PORTION. WHEN I GOT TO THE PASSENGER'S SIDE REAR
9 DOOR, MY DOG SHOWED SOME INDICATION TO THE AREA. I GAVE
10 HIM A LITTLE BIT OF PRAISE AND WE CONTINUED WITH THE
11 SEARCH. DID REAL GOOD AT THE FREE AIR REVOLUTION.

12 I STARTED BACK IN THE SAME DIRECTION
13 COUNTERCLOCKWISE AGAIN TO KIND OF PROVE THE AREA THAT HE
14 SHOWED ME SOME INDICATION. ONCE WE GOT TO THAT AREA
15 AGAIN, HE GAVE ME A FULL-BLOWN INDICATION BY SCRATCHING
16 THE SIDE OF THE VEHICLE. AND HE ALSO BIT THE DOOR
17 HANDLE, WHICH IS AN ODD RESPONSE, OR NOT INDICATION AND
18 HE REFUSED TO LET IT GO, WHICH WAS A VERY DISTINCT CHANGE
19 IN BEHAVIOR WHICH IS WHAT WE LOOK FOR AS A CANINE
20 HANDLER.

21 Q. AND LET ME TALK A LITTLE BIT ABOUT YOUR DOG HERE.
22 WHAT'S YOUR DOG'S NAME?

23 A. ANTAC, A-N-T-A-C.

24 Q. AND WHAT KIND OF BREED OF DOG IS HE?

25 A. HE'S A GERMAN SHEPHERD.

1 Q. HOW LONG HAVE YOU HAD HIM?

2 A. I'VE HAD HIM FOR ABOUT THREE AND A HALF YEARS NOW.

3 Q. HOW OLD IS HE?

4 A. HE'LL BE FIVE DECEMBER 10TH.

5 Q. AND I KNOW ABOUT YOUR TRAINING. WHAT KIND OF
6 TRAINING DOES ANTAC HAVE?

7 A. LIKE I THINK I ALLUDED TO EARLIER, WE, WEEKLY OR
8 BIWEEKLY WE DO REFRESHER TRAINING. WE WENT TO SEVERAL,
9 SEVERAL DIFFERENT SCHOOLS. HE'S ACCREDITED THROUGH THE
10 NATIONAL POLICE CANINE ASSOCIATION. AS YOU CAN SEE,
11 EVERY TIME WE DO TRAINING WE DOCUMENT IT, DOCUMENT THE
12 KIND OF NARCOTICS WE USE, WHERE WE HID IT AT, AND IF THE
13 DOG FOUND IT OR NOT.

14 Q. NOW, WHEN YOU RECEIVED ANTAC, WAS HE ALREADY
15 TRAINED?

16 A. HE WAS.

17 Q. AND SINCE THEN YOU CONTINUE HIS TRAINING ON A
18 WEEKLY TO BIWEEKLY BASIS?

19 A. THAT'S RIGHT.

20 Q. AND WHAT IS HE TRAINED IN?

21 A. HE'S TRAINED TO DETECT THE ODORS OF MARIJUANA,
22 METHAMPHETAMINE, COCAINE, CRACK COCAINE, HEROIN, AND
23 ECSTASY.

24 Q. AND NORMALLY ON A WEEKLY OR BIWEEKLY BASIS, WHAT
25 TYPE OF DRUGS DO YOU NORMALLY TRAIN HIM WITH OR I GUESS

1 TEST HIM TO SEE IF HE'S DOING RIGHT?

2 A. ALL OF THOSE WITH THE EXCLUSION OF HEROIN. WE DO
3 NOT HAVE ANY HEROIN TO USE AT THIS TIME.

4 Q. IS HEROIN A BIG DRUG IN ANDERSON COUNTY?

5 A. RIGHT NOW IT'S NOT.

6 Q. AND BASED ON HIS TRAINING, DO YOU LEARN HOW HE
7 REACTS WHEN HE SMELLS OR COMES INTO CONTACT WITH THE ODOR
8 OF A NARCOTIC DRUG YOU JUST DESCRIBED?

9 A. THAT'S RIGHT.

10 Q. AND TYPICALLY WHAT DOES YOUR DOG DO?

11 A. HE'S -- YOU GET A REAL DISTINCT CHANGE OF
12 BREATHING. YOU LOOK FOR HEAD TURNS. THAT'S WHY WHENEVER
13 WE WALK MY DOG IN A COUNTERCLOCKWISE MOTION, WE KIND OF
14 WALK AT AN ACCELERATED PACE. IF THE DOG WALKS BY A
15 CERTAIN PORTION OF THE VEHICLE, ESPECIALLY SEAMS OF A
16 VEHICLE OR DOORS CLOSED, THE ODOR IS SEEPING OUT, AND I'M
17 GOING AT A QUICK PACE, AND HE'LL SNAP HIS HEAD BACK ON
18 HIS OWN. AND ONCE HE KNOWS THE ODOR IS WHAT HE'S LOOKING
19 FOR, HE'LL START SCRATCHING OR BITING AT THE SOURCE.

20 Q. AND YOU ONLY LEARNED THIS OR DETERMINE HE DOES
21 THIS THROUGH CLOSE WORKING RELATIONSHIP WITH THIS DOG; IS
22 THAT RIGHT?

23 A. YES, SIR.

24 Q. DOES THE DOG LIVE WITH YOU OR STAY AT THE
25 SHERIFF'S DEPARTMENT?

1 A. HE STAYS WITH ME AT MY HOUSE.

2 Q. SO YOU ARE RESPONSIBLE FOR FEEDING ANTAC EVERY
3 DAY?

4 A. THAT'S RIGHT.

5 Q. NOW, AFTER YOUR DOG HIT THE ALERT, WAS THIS
6 RECORDED ON A VIDEOTAPE?

7 A. YES.

8 Q. NOW, AFTER YOU FINISHED THE SEARCH WITH THE DOG,
9 WHAT, IF ANYTHING, DID YOU DO NEXT?

10 A. ONCE I COMPLETED THE SEARCH, I GAVE HIM SOME
11 PRAISE, I GOT HIM IN A REAL PLAYFUL MOOD. I PUT HIM BACK
12 IN MY PATROL CAR AND I JUST WAITED FOR DISPATCH TO COME
13 BACK WITH THE INFORMATION I HAD REQUESTED PRIOR TO DOING
14 THE FREE AIR SNIFF.

15 Q. SO DISPATCH HADN'T CALLED YOU BACK AT THIS POINT
16 IN TIME?

17 A. THEY HAD NOT.

18 Q. AND YOU PUT YOUR DOG, ANTAC, EVENTUALLY BACK INTO
19 HIS KENNEL; IS THAT RIGHT?

20 A. THAT'S RIGHT.

21 Q. AND AT THAT POINT DID YOU TALK TO MR. KIRKMAN ANY
22 MORE?

23 A. I DID. ONCE DISPATCH FINALLY CAME BACK AND SAID
24 THAT MR. KIRKMAN'S DRIVER'S LICENSE WAS CLEAR, THAT HE
25 HAD NO OUTSTANDING WARRANTS IN N.C.I.C., I EXPLAINED TO

1 HIM AGAIN WITH WHY I STOPPED HIM, THAT IT WAS ONLY A
2 WARNING CITATION, THAT WOULDN'T AFFECT HIS DRIVER'S
3 LICENSE. AND ONCE I EXPLAINED THOSE TWO THINGS, I
4 IMMEDIATELY CONFRONTED MR. KIRKMAN WITH THE QUESTION. I
5 ASKED HIM IF THERE WAS ANY REASON WHATSOEVER FOR MY DOG
6 TO GIVE ME A POSITIVE INDICATION TO THE VEHICLE FOR THE
7 ODOR OF NARCOTICS.

8 Q. AND WHAT DID HE TELL YOU?

9 A. HE TOLD ME, NO, THAT MY DOG DID NOT ALERT TO THE
10 VEHICLE.

11 Q. AND DID YOU ASK FOR CONSENT TO SEARCH HIS CAR AT
12 THIS POINT IN TIME?

13 A. PRIOR TO THAT I ASKED HIM IF HE HAD ANYTHING IN
14 THE VEHICLE ILLEGAL: ANY WEAPONS, ANY NARCOTICS, ANY
15 LARGE AMOUNTS OF U.S. CURRENCY.

16 Q. AND WHAT DID HE TELL YOU?

17 A. HE TOLD ME HE HAD \$18,000 LAYING ON THE BACK SEAT
18 IF I WANTED IT.

19 Q. AND HOW DID YOU TAKE THAT TYPE OF RESPONSE?

20 A. I WAS KIND OF SHOCKED A LITTLE BIT. I TOOK IT AS
21 SOMETHING TO DIVERT MY ATTENTION FROM SOMETHING ELSE,
22 POSSIBLY A BRIBE OR SOMETHING LIKE THAT.

23 Q. NOW, AT THAT POINT N.C.I.C. -- THE DISPATCH SAID
24 IT DID NOT COME BACK YET WITH HIS DRIVER'S LICENSE
25 INFORMATION?

1 A. NO. DISPATCH HAD ALREADY COME BACK AND SAID HE
2 WAS CLEARED.

3 Q. AND DID YOU ISSUE HIM A WARNING CITATION AT THAT
4 POINT IN TIME?

5 A. I HAD IT IN MY HAND, YES, SIR.

6 Q. I'M GONNA SHOW YOU WHAT'S BEEN MARKED FOR
7 IDENTIFICATION STATE'S EXHIBIT ONE. CAN YOU PLEASE
8 IDENTIFY WHAT THIS IS, SIR?

9 A. THIS IS AT THE TIME THE STANDARD ANDERSON COUNTY
10 SHERIFF'S OFFICE WARNING TICKET.

11 Q. AND NUMBER 3048; IS THAT RIGHT?

12 A. THAT'S RIGHT.

13 Q. IS THIS THE WARNING CITATION THAT YOU ISSUED TO
14 MR. RAHIEM KIRKMAN?

15 A. THIS IS THE CARBON COPY OF IT.

16 Q. AND HE IS OUT OF NORTH CAROLINA?

17 A. HE IS.

18 Q. AND WHO IS THE OWNER OF THE CAR?

19 A. MR. KIRKMAN.

20 Q. AND YOU WERE ABLE TO CONFIRM THAT; IS THAT RIGHT?

21 A. WE WERE.

22 Q. AND THE WEATHER CONDITION, IT WAS RAINING THAT
23 DAY; IS THAT RIGHT?

24 A. IT WAS.

25 Q. CAN YOU DESCRIBE TO THE LADIES AND GENTLEMEN OF

1 THE JURY ABOUT MR. KIRKMAN'S PHYSICAL APPEARANCE?

2 A. UM ---

3 MR. CAMPBELL: YOUR HONOR, AT THIS TIME I'M GONNA
4 MOVE STATE'S EXHIBIT ONE INTO EVIDENCE.

5 THE COURT: ANY OBJECTION?

6 MS. MANIGAULT: NO OBJECTION, YOUR HONOR.

7 THE COURT: ALL RIGHT. WITHOUT OBJECTION, STATE'S
8 EXHIBIT NUMBER ONE IS ADMITTED.

9 (STATE'S EXHIBIT # 1, CARBON COPY OF WARNING
10 TICKET, WAS RECEIVED IN EVIDENCE.)

11 THE WITNESS: HE WAS ABOUT 5'10", A YOUNG BLACK
12 MALE -- I SAY YOUNG, HE MAY BE IN HIS THIRTIES. HE HAD
13 ON A BLACK T-SHIRT, HE HAD ON SOME VERY LOUD YELLOW
14 SHORTS. AND WHAT I MEAN BY "LOUD," IT JUST KIND OF STUCK
15 OUT, STUCK OUT IN MY MIND.

16 BY MR. CAMPBELL:

17 Q. WAS HE BIG, HEAVYSET, SLIM?

18 A. HE WAS A PRETTY SOLID FELLA. HE WAS 5'8", 250.

19 Q. AND WHILE YOU WERE GIVING HIM THIS CITATION, DID
20 YOU EVER ACTUALLY HAND IT TO HIM?

21 A. I HAD IT IN MY HAND. I DON'T RECALL HANDING IT TO
22 HIM DIRECTLY.

23 Q. AND WHAT HAPPENED AT THIS POINT IN TIME?

24 A. AS I WAS -- WHILE I WAS CONFRONTING HIM ABOUT THE
25 DOG INDICATION, I STILL HAD EVERYTHING IN MY HAND, HIS

1 REGISTRATION, HIS DRIVER'S LICENSE AND THE WARNING
2 CITATION IN MY HAND, HE INSISTED THAT MY DOG DID NOT
3 INDICATE. SHORTLY AFTER THAT MY PARTNER PULLED UP.

4 Q. AND YOUR PARTNER BEING DEPUTY MIZE?

5 A. THAT'S RIGHT.

6 Q. AND WHEN DEPUTY MIZE PULLED UP, WHAT WENT ON AFTER
7 THAT?

8 A. MR. KIRKMAN BECAME REALLY AGITATED. HE DEMANDED
9 THAT I GIVE HIM HIS DRIVER'S LICENSE AND INFORMATION SO
10 HE COULD LEAVE. I COULD TELL HE WAS GETTING AGITATED,
11 AND I ASKED HIM IF HE MINDED IF WE SEARCHED HIS VEHICLE.
12 HE SAID, YOU'RE NOT GOING NOWHERE NEAR MY VEHICLE.

13 I PRETTY MUCH THEN TOLD HIM THAT SINCE THE DOG HAD
14 INDICATED TO THE VEHICLE FOR THE ODOR OF NARCOTICS, WE
15 WERE GONNA SEARCH THE VEHICLE WHETHER WE HAD HIS CONSENT
16 OR NOT.

17 Q. AND WHAT DID HE DO AT THIS POINT IN TIME?

18 A. AT THIS TIME I GUESS MY PARTNER WAS WALKING TO MY
19 VEHICLE, AND I GIVE EVERYBODY THE OPTION OF EITHER
20 STANDING OUTSIDE OF MY VEHICLE OR SITTING INSIDE MY
21 VEHICLE. BECAUSE AS SOON AS I GET OUT MY DOG WILL START
22 BARKING. I DON'T WANT NOBODY TO GET SCARED AND FREAK OUT
23 SITTING IN MY CAR. SO MR. KIRKMAN OPENED THE DOOR LIKE
24 HE WAS GONNA STEP OUT.

25 Q. AND WHAT DID HE DO THEN?

1 A. AND WHEN HE STEPPED OUT, HE KEPT ON STEPPING.

2 Q. AND WHERE DID HE GO?

3 A. HE RAN STRAIGHT DOWN 85 TOWARDS THE EXIT RAMP, AND
4 HURDLED THE FENCE AND RAN OFF TO THE WOOD LINE.

5 Q. DID YOU GIVE CHASE?

6 A. WE TRIED.

7 Q. WERE YOU ABLE TO CATCH HIM?

8 A. NO.

9 Q. AND AFTER THE CHASE, DID YOU CALL IN OTHER
10 OFFICERS TO TRY TO LOCATE MR. KIRKMAN?

11 A. WE DID. WE JUST PUT OUT A GENERAL BROADCAST THAT
12 WE WERE IN FOOT PURSUIT, GAVE A DESCRIPTION, AND WE EVEN
13 ATTEMPTED CANINE TRACKS OF MR. KIRKMAN WHICH PROVED
14 UNSUCCESSFUL.

15 Q. YOU WERE NOT ABLE TO FIND HIM THAT NIGHT; IS THAT
16 RIGHT?

17 A. THAT'S RIGHT, WE WERE NOT.

18 Q. AND AT THAT POINT IN TIME DID YOU COME -- DID YOU
19 GET BACK TO YOUR CAR?

20 A. I DID.

21 Q. WAS YOUR CAR IN THE SAME POSITION AND WAS
22 MR. KIRKMAN'S CAR IN THE SAME POSITION AS WHEN YOU LEFT?

23 A. IT WAS.

24 Q. AND WAS ANYBODY ELSE THERE WHEN YOU ARRIVED?

25 A. THERE WAS A -- I BELIEVE THERE WAS ANOTHER DEPUTY

1 THERE WHO JUST HAD HEARD OUR CALL THAT WE WERE IN FOOT
2 PURSUIT. HE SHOWED UP. I DO NOT KNOW THAT DEPUTY'S
3 NAME. I ASKED HIM IF HE WOULD JUST STAND BY THERE TO
4 SECURE THE VEHICLE WHILE WE WERE LOOKING FOR MR. KIRKMAN.
5 HE SAID HE WOULD, AND I WENT BACK TO THE GENERAL AREA
6 THAT MR. KIRKMAN FLED TO.

7 Q. AND SO NOBODY MESSED WITH YOUR CAR OR
8 MR. KIRKMAN'S CAR DURING THE PERIOD OF TIME THAT YOU WERE
9 ATTEMPTING TO APPREHEND HIM AND CHASE HIM DOWN?

10 A. THAT'S CORRECT.

11 Q. AND ALL THIS WAS BEING RECORDED ON VIDEOTAPE?

12 A. THAT'S RIGHT.

13 Q. NOW, AFTER YOU CAME BACK TO HIS CAR WAS YOUR
14 PARTNER, DEPUTY MIZE, WITH YOU?

15 A. THAT'S RIGHT.

16 Q. WHAT DID YOU DO NEXT?

17 A. WE BEGAN OUR SEARCH OF THE VEHICLE. WE STARTED
18 INSIDE THE CAB OF THE VEHICLE, CHECKED IT, FOUND NO
19 VISIBLE CONTRABAND. WE THEN WENT TO THE TRUNK AREA,
20 POPPED THE TRUNK. IN THAT TRUNK WE NOTICED A LARGE
21 STEREO BOX AND ALSO A BLACK DUFFEL BAG. WE REMOVED THE
22 DUFFEL BAG TO THE HOOD OF MY CAR, OPENED IT UP. INSIDE
23 THE DUFFEL BAG WERE TEN RECTANGLE-SHAPED PACKAGES THAT
24 WAS CONSISTENT WITH THE WAY THAT DRUG SMUGGLERS PACKAGE
25 NARCOTICS.

1 Q. DEPUTY CRAWFORD, IF YOU WOULD PLEASE COME OFF THE
2 STAND.

3 (WITNESS LEAVES STAND.)

4 Q. I'LL SHOW YOU WHAT'S BEEN MARKED FOR
5 IDENTIFICATION AS STATE'S EXHIBIT FIVE. WOULD YOU PLEASE
6 COME IDENTIFY WHAT THIS IS, SIR? YOU CAN TAKE THIS OUT.

7 A. THIS IS THE BLACK DUFFEL BAG THAT WAS INSIDE THE
8 TRUNK AREA OF THE VEHICLE.

9 Q. AND THIS IS THE BAG THAT YOU TOOK POSSESSION OF
10 OUT OF THE BACK OF MR. KIRKMAN'S CAR?

11 A. THAT'S RIGHT.

12 Q. OKAY. NOW, AFTER YOU GOT THE BAG OUT OF THE TRUNK
13 OF THE CAR, WHAT DID YOU DO NEXT?

14 A. I UNZIPPED IT AND LOOKED INSIDE.

15 Q. AND WHAT DID YOU FIND?

16 A. I FOUND, LIKE I EXPLAINED A MINUTE AGO, TEN
17 RECTANGLE-SHAPED PACKAGES.

18 Q. YOU CAN PULL THEM OUT?

19 A. THIS IS WHAT WAS INSIDE THE PACKAGES, THIS IS ONE
20 KILOGRAM OF COCAINE.

21 Q. NOW, THIS PACKAGE RIGHT HERE, WAS THIS THE SAME
22 WAY THIS WAS WHEN YOU TOOK IT OUT OF THE BACK SEAT OF THE
23 TRUNK OF THAT CAR?

24 A. NO. ALL THE PACKAGES WERE WRAPPED IN THIS RIGHT
25 HERE, WHICH IS A, SEVERAL LAYERS, LAYERS OF DUCT TAPE AND

1 PLASTIC.

2 Q. IS THAT TYPICAL THROUGH YOUR TRAINING AND
3 EXPERIENCE DO YOU FIND ILLEGAL DRUGS PACKAGED?

4 A. VERY TYPICAL. WE ONE BY ONE TOOK THESE KILO
5 PACKAGES OUT OF THE VEHICLE (DEMONSTRATING) UNTIL THERE
6 WAS NOTHING ELSE BESIDE THE DUFFEL BAG.

7 Q. OKAY. AND THE REST OF THIS STUFF IS JUST MORE
8 TAPE?

9 A. THAT'S RIGHT. THIS IS -- WHENEVER THIS STUFF GOT
10 SHIPPED TO THE FORENSICS LAB TO BE TESTED, THEY HAD TO
11 REMOVE THE ACTUAL COCAINE BRIEF FROM THE OUTER SHELL WITH
12 THE DUCT TAPE AND THE PLASTIC.

13 Q. NOW, WHEN YOU FIRST PULLED OUT THESE PACKAGES,
14 WERE YOU ABLE TO DETERMINE JUST BY ITSELF THAT THIS WAS
15 COCAINE?

16 A. NO.

17 Q. WHAT, IF ANYTHING, DID YOU DO AT THE ROADSIDE TO
18 DETERMINE IF THIS WAS COCAINE?

19 A. AT THE ROADSIDE WE COULDN'T REALLY DO ANYTHING.
20 ONCE WE GOT BACK TO THE SHERIFF'S OFFICE WE CUT A LITTLE
21 SLIT IN ONE OF THE PACKAGES AND UTILIZED A FIELD TEST KIT
22 WHICH TURNS A BRIGHT BLUE WHENEVER IT COMES IN CONTACT
23 WITH COCAINE AND COCAINE OPIOIDS, AND THAT'S WHAT
24 HAPPENED.

25 Q. YOU DID THAT IN THIS CASE?

1 A. THAT'S RIGHT.

2 Q. NOW, AND IT TURNED IN YOUR OPINION POSITIVE FOR
3 COCAINE?

4 A. THAT'S RIGHT.

5 Q. AND BASED UPON YOUR TRAINING AND EXPERIENCE DOES
6 THIS APPEAR TO BE COCAINE TO YOU?

7 A. YES.

8 Q. NOW, AFTER YOU REMOVED IT, DID IT STAY IN YOUR
9 CONTINUOUS POSSESSION? DID ANYBODY ELSE TAKE POSSESSION
10 OF THIS AFTER YOU REMOVED IT FROM THE TRUNK OF YOUR CAR?

11 A. ONCE WE MOVED IT FROM THE TRUNK, WE PUT THE
12 CONTENTS ON THE HOOD TO BE DOCUMENTED BY THE CAMERA, PUT
13 IT BACK INTO THE BAG, ACTUALLY I THINK DEPUTY MIZE MAY
14 HAVE TOOK IT TO MY TRUNK, I HAD TO OPEN MY TRUNK AND HE
15 CARRIED IT FOR ME, PUT IT IN THE TRUNK AND I SECURED IT
16 BACK.

17 Q. AND THEN WHAT, IF ANYTHING, DID YOU DO NEXT WITH
18 THIS?

19 A. WITH THIS WE TOOK TO THE SHERIFF'S OFFICE, I TOOK
20 IT UPSTAIRS TO GET A WEIGHT ON EACH KILO PACKAGE AND ALSO
21 FIELD-TESTED THAT.

22 Q. AND FOR THE LADIES AND GENTLEMEN OF THE JURY'S
23 INFORMATION, I SEE THESE ARE SQUARE BLOCKS. IS THAT
24 TYPICALLY HOW YOU FIND NARCOTICS OR COCAINE?

25 A. THAT'S LARGE AMOUNTS. KILO BRICKS OF COCAINE

1 THAT'S HOW WE FIND THEM.

2 Q. AND THAT'S WHAT IT'S CALLED?

3 A. THAT'S WHAT IT'S CALLED, A KILO.

4 Q. A KILO BEING A THOUSAND GRAMS?

5 A. THAT'S RIGHT.

6 Q. NOW, ON TOP OF THESE BRICKS, DO YOU SEE SOME
7 MARKINGS? WHAT EXACTLY IS THIS THAT YOU SEE?

8 A. IT IS A ROLEX WATCH EMBLEM.

9 Q. IT DOESN'T NORMALLY COME THAT WAY, DOES IT, WHEN
10 THEY MAKE IT?

11 A. WELL, WHENEVER THEY, WHEREVER THIS STUFF IS MADE
12 AT, THEY HAVE KILO PRESSES, AND ON THOSE PRESSES YOU CAN
13 WELD IN THERE ANY TYPE OF -- I'M AT A LOSS FOR WORDS --
14 BUT YOU CAN MAKE ANY TYPE OF EMBLEM ON THERE. THIS ONE
15 IS ROLEX. WE HAVE HAD SOME THAT WERE BIG ZEROES, WE'VE
16 HAD SOME WITH SPEARS AND STARS AND PEOPLE'S NAMES,
17 SUPERMAN. IT'S LIKE A CALLING CARD OF EACH INDIVIDUAL
18 DRUG MANUFACTURER.

19 Q. SO THAT'S NOTHING UNUSUAL, THEN ---

20 A. NO.

21 Q. --- TO FIND THAT TYPE THERE?

22 A. NO.

23 Q. YOU CAN GO AHEAD AND TAKE THE STAND AGAIN. THANK
24 YOU.

25 (WITNESS RESUMES STAND.)

1 Q. NOW, BASED ON YOUR TRAINING AND EXPERIENCE IN THE
2 AREA OF LAW ENFORCEMENT, YOU DO A LOT OF NARCOTICS WORK
3 IN ANDERSON COUNTY?

4 A. THAT'S RIGHT.

5 Q. AND DO YOU KNOW WHAT THE GOING RATE FOR A GRAM OF
6 COCAINE IS IN ANDERSON?

7 A. ABOUT A HUNDRED DOLLARS FOR A GRAM.

8 Q. I'M SORRY, I DIDN'T HEAR YOU.

9 A. ABOUT A HUNDRED DOLLARS PER GRAM.

10 Q. NOW, THIS WASN'T YOUR ONLY SEARCH. YOU DIDN'T
11 FINISH SEARCHING THE CAR AT THIS POINT IN TIME. YOU
12 CONTINUED ON; IS THAT RIGHT?

13 A. THAT'S RIGHT. ONCE WE SECURED THOSE PACKAGES IN
14 MY CAR, WE CONTINUED ON WITH THE SEARCH.

15 Q. AND WHAT, IF ANYTHING, ELSE DID YOU FIND IN THE
16 CAR?

17 A. IN THE BACK SEAT IN A WHITE PLASTIC BAG WAS
18 APPROXIMATELY \$20,000 IN U.S. CURRENCY THAT WAS BUNDLED
19 UP IN RUBBER BANDS.

20 Q. AND WHAT DID YOU DO WITH THIS MONEY?

21 A. TOOK IT TO THE HOOD OF MY CAR, COUNTED IT ON THE
22 HOOD OF MY CAR FOR DOCUMENTATION WITH MY CAMERA, AND I
23 PUT IT WITH THE COCAINE AND SECURED IT IN MY VEHICLE.

24 Q. AND THEN YOU TURNED IT OVER TO EVIDENCE AT THAT
25 POINT IN TIME?

1 A. THAT'S RIGHT.

2 Q. NOW, WAS MR. KIRKMAN APPREHENDED THAT NIGHT?

3 A. NO, SIR.

4 Q. WAS HE EVENTUALLY ARRESTED?

5 A. HE WAS, THE NEXT DAY.

6 Q. NOW, YOU DID NOT ARREST HIM, DID YOU?

7 A. NO.

8 Q. DID YOU FIND ANYTHING ELSE INSIDE HIS CAR TO
9 INDICATE THAT HE WAS INVOLVED IN ILLEGAL NARCOTIC
10 ACTIVITY?

11 A. JUST MULTIPLE CELL PHONES. I BELIEVE THAT THAT
12 MIGHT HAVE BEEN IT.

13 IF I CAN REFER BACK TO MY REPORT.

14 JUST THE MULTIPLE CELL PHONES, AND WE TOOK THOSE
15 AND PLACED THEM INTO EVIDENCE.

16 Q. AND WHEN YOU DO -- WHEN YOU FIRST WEIGHED THIS
17 COCAINE WITH THE PACKAGES, WHAT WEIGHT DID YOU GET?

18 A. EACH ONE OF THEM WEIGHED APPROXIMATELY 2.25
19 POUNDS.

20 Q. AND I THINK YOU CAME UP WITH A WEIGHT OF ABOUT 25
21 POUNDS AT THAT POINT IN TIME?

22 A. THAT'S RIGHT.

23 Q. BUT THAT WAS ALSO INCLUDING THE DUCT TAPE, THE
24 PACKAGING THE WAY IT WAS; IS THAT RIGHT?

25 A. THAT'S RIGHT.

1 Q. AND YOU DID NOT WEIGH IT YOURSELF WITHOUT THE DUCT
2 TAPE ON THERE?

3 A. NO.

4 Q. LIKE IN THIS STATE RIGHT HERE?

5 A. NO.

6 Q. I'M GONNA SHOW YOU WHAT'S BEEN MARKED AS STATE'S
7 EXHIBIT NUMBER TWO. IF YOU COULD PLEASE IDENTIFY THIS,
8 SIR.

9 A. THIS IS A COPY OF THE TAPE FROM MY IN-CAR CAMERA
10 SYSTEM.

11 Q. OKAY. AND THIS TAPE JUST SHOWS ON A VIDEO WHAT
12 HAPPENED, BUT THERE'S NO SOUND TO IT; IS THAT RIGHT?

13 A. THAT'S RIGHT.

14 Q. OKAY. AND THIS FAIRLY AND ACCURATELY REPRESENTS
15 THE EVENTS THAT TOOK PLACE ON AUGUST 22ND, 2006?

16 A. THAT'S RIGHT.

17 MR. CAMPBELL: YOUR HONOR, AT THIS TIME I MOVE THE
18 TAPE TO BE ENTERED INTO EVIDENCE, STATE'S EXHIBIT NUMBER
19 TWO.

20 THE COURT: ANY OBJECTION?

21 MS. MANIGAULT: NONE, YOUR HONOR.

22 THE COURT: ALL RIGHT. VERY WELL.

23 STATE'S EXHIBIT NUMBER 2 WILL BE ADMITTED INTO
24 EVIDENCE.

25 (STATE'S EXHIBIT # 2, VIDEOTAPE, WAS RECEIVED

1 IN EVIDENCE.)

2 MR. CAMPBELL: YOUR HONOR, AT THIS TIME I WOULD LIKE
3 TO PUBLISH IT TO THE JURY.

4 THE COURT: VERY WELL.

5 MR. CAMPBELL: YOUR HONOR, MAY WE APPROACH?

6 THE COURT: CERTAINLY.

7 (DISCUSSION AT SIDE-BAR.)

8 THE COURT: MR. FOREMAN, LADIES AND GENTLEMEN OF THE
9 JURY, I SUGGEST YOU TAKE A SHORT BREAK. THE TAPE MIGHT
10 TAKE SOME TIME. AND I'M GOING TO SEE IF THEY CAN MAYBE
11 GET THE PORTION OF THE TAPE THAT'S THE MOST RELEVANT TO
12 THE ISSUES IN THIS CASE, SO THEREFORE I'M GOING TO ASK
13 YOU TO RETIRE TO THE JURY ROOM AND TAKE A SHORT BREAK.

14 WHEN YOU ARE READY TO COME BACK JUST KNOCK ON THE
15 DOOR AND WE'LL COME BACK IN AND CONTINUE THE CASE AT THAT
16 TIME. AGAIN, DO NOT UNDERTAKE ANY DISCUSSION OF THE CASE
17 AMONG YOURSELVES IN ANY WAY.

18 EVERYONE ELSE REMAIN SEATED WHILE THE JURY RETIRES
19 FROM THE COURTROOM.

20 (WHEREUPON, THE JURY LEFT THE COURTROOM AT
21 APPROXIMATELY 3:45 P.M.)

22 THE COURT: ALL RIGHT. WE'LL TAKE A SHORT BREAK.

23 MR. CAMPBELL: THANK YOU, YOUR HONOR.

24 THE COURT: OFFICER, YOU CAN STEP DOWN, BUT YOU DO
25 UNDERSTAND YOU ARE UNDER OATH SO YOU CAN'T DISCUSS YOUR

1 TESTIMONY WITH ANYONE?

2 THE WITNESS: YES, SIR.

3 (WHEREUPON, A RECESS WAS TAKEN.)

4 THE COURT: ALL RIGHT. IS THERE ANYTHING FROM THE
5 STATE BEFORE WE BRING THE JURY BACK?

6 MR. CAMPBELL: NO, YOUR HONOR.

7 THE COURT: ANYTHING FROM THE DEFENSE?

8 MS. MANIGAULT: NOTHING, YOUR HONOR.

9 THE COURT: ALL RIGHT, VERY GOOD. ASK THE JURY TO
10 JOIN US, PLEASE.

11 (WHEREUPON, THE JURY ENTERED THE COURTROOM AT
12 APPROXIMATELY 4:00 P.M.)

13 THE COURT: LET THE RECORD REFLECT THE JURY AND
14 ALTERNATE ARE IN THE JURY-BOX.

15 MR. FOREMAN, LADIES AND GENTLEMEN OF THE JURY, WE'LL
16 NOW CONTINUE THE TRIAL OF THE CASE.

17 MR. CAMPBELL?

18 (WITNESS RESUMES STAND.)

19 BY MR. CAMPBELL:

20 Q. DEPUTY CRAWFORD, WE MARKED STATE'S EXHIBIT TWO
21 WHICH IS A VIDEO THAT WAS TAKEN FROM YOUR CAR CAMERA ON
22 THAT DAY; IS THAT CORRECT?

23 A. THAT'S RIGHT.

24 (OFF-THE-RECORD DISCUSSION.)

25 (VIDEOTAPE, WITHOUT AUDIO, WAS PLAYED FOR THE

1 JURY.)

2 **THE COURT:** COUNSEL APPROACH.

3 (DISCUSSION AT SIDE-BAR.)

4 BY MR. CAMPBELL:

5 Q. PLEASE TELL THE LADIES AND GENTLEMEN OF THE JURY,
6 I KNOW THERE'S NO SOUND, BUT WHAT THEY HAVE BEEN
7 OBSERVING UP TO THIS POINT IN TIME?

8 A. MY INITIAL APPROACH WAS ON THE, I APPROACHED THE
9 PASSENGER'S SIDE FOR THE ISSUE OF OFFICER'S SAFETY.

10 **THE COURT:** I'M GOING TO SUGGEST, OFFICER, IF YOU
11 WOULD STAND TO THE OTHER SIDE SO THAT YOU ARE TALKING
12 BACK, NOT ONLY TO THE JURY -- NOT IN THE JURY-BOX. THANK
13 YOU -- AND ALSO SO THE COURT REPORTER CAN SEE YOU. GO
14 AHEAD.

15 **THE WITNESS:** ALL RIGHT. I OBSERVED A BUNCH OF
16 NONVERBAL CUES OR INDICATORS. I PULLED MY DOG. YOU
17 DIDN'T SEE HIM INDICATE ON THIS SIDE THE FIRST
18 REVOLUTION. THE SECOND TIME YOU SEEN ME RIGHT HERE AND
19 MY DOG WAS ACTUALLY LATCHED ONTO THE DOOR THAT WAS ON
20 THAT SIDE. YOU CAN'T SEE 'CAUSE THE WHITE LINE AND THE
21 FOG LINES IS RIGHT HERE. HE'S RIGHT BESIDE THAT LINE.
22 AND I DIDN'T WANT TO PUT MYSELF IN JEOPARDY SO I PARKED
23 TO THE SIDE. THAT'S WHY YOU COULDN'T SEE MY DOG INDICATE
24 ON THIS SIDE. BUT IF YOU CAN REMEMBER, WHEN I GOT RIGHT
25 HERE ON THAT SECOND REVOLUTION, I CAME TO A COMPLETE STOP

1 BECAUSE MY DOG LOCKED DOWN AND MADE AN INDICATION BACK
2 OVER HERE. RIGHT NOW MY PARTNER SHOULD HAVE JUST ABOUT
3 PULLED UP AND I COULDN'T SEE -- HERE SHORTLY RIGHT NOW
4 I'M LETTING HIM KNOW I'M GONNA SEARCH HIS CAR AND HE'S
5 TELLING ME THAT I'M NOT. THE GUY IS A PRETTY HEFTY
6 FELLOW. I AIN'T NO SMALL GUY MYSELF, BUT THE ODDS ARE IN
7 OUR FAVOR WITH MORE THAN ONE PERSON FOR OFFICER SAFETY.

8 SO HERE IN A FEW MOMENTS YOU WILL SEE HIM EXIT THE
9 VEHICLE. THAT'S WHEN I TOLD HIM HE COULD STEP OUTSIDE OR
10 STAY INSIDE MY CAR. AND I DON'T KNOW EXACTLY WHAT TIME
11 THAT HE RUNS IS, BUT IT SHOULD BE ANY MOMENT.

12 BY MR. CAMPBELL:

13 Q. DEPUTY CRAWFORD, JUST STEP BACK THIS WAY.

14 A. (COMPLIES.)

15 HE CONTINUES DOWN TO A BREAK IN THE FENCE. HE
16 JUMPS THE FENCE. I STAY PUT, KEEP A GOOD EYE ON WHEN HE
17 WENT ACROSS THE ROAD, WENT INTO THE WOOD LINE. THAT'S MY
18 PARTNER YOU SEEN RUNNING BACK TO HIS VEHICLE AND I JUST
19 STAY RIGHT THERE UNTIL MY PARTNER GETS WHERE IT PARALLELS
20 THE INTERSTATE RIGHT HERE. ONCE HE GETS THERE, I THEN
21 JUMP THE FENCE AND WE BEGIN TO RUN A DOG TRACK WHERE I
22 SAW THE SUSPECT, MR. KIRKMAN, LAST GO INTO THE WOODS.

23 Q. AND WAS THAT HIM IN FRONT OF YOU THAT YOU WERE
24 CHASING?

25 A. THAT'S RIGHT.

1 **MR. CAMPBELL:** AT THIS POINT, YOUR HONOR, I'M GOING
2 TO FAST-FORWARD TO THE NEXT PART THAT'S RELEVANT.

3 **THE COURT:** ALL RIGHT.

4 BY MR. CAMPBELL:

5 Q. AND DURING THIS TIME YOU WERE DOING THE SEARCH, IS
6 THAT RIGHT, FOR MR. KIRKMAN?

7 A. THAT'S RIGHT. WE WERE IN THE WOODS TRYING TO
8 LOCATE HIM.

9 Q. ALL RIGHT. IN THIS PICTURE WHAT ARE YOU SHOWING
10 HERE?

11 A. RIGHT NOW WE'RE GOING THROUGH THE REAR OF THE
12 VEHICLE. AS YOU CAN SEE, THE TRUNK IS UP.

13 Q. THOSE ARE YOUR WINDSHIELD WIPERS GOING?

14 A. THAT'S MY WINDSHIELD WIPERS, THAT'S CORRECT.

15 Q. IS THIS THE BAG WE HAVE SITTING IN FRONT OF US?

16 A. THAT'S THE BLACK DUFFEL BAG AND MOMENTARILY WE'LL
17 PULL OUT THE KILO-SHAPED PACKAGES.

18 **MS. MANIGAULT:** YOUR HONOR, COULD I ASK THE DEPUTY
19 TO SPEAK A LITTLE LOUDER?

20 **THE WITNESS:** YES. RIGHT NOW WE'RE JUST PULLING
21 OUT, WE LOCATED THE BLACK DUFFEL BAG INSIDE OF THE TRUNK
22 AND WE ARE PULLING OUT THE KILO-SHAPED PACKAGES.

23 BY MR. CAMPBELL:

24 Q. AND THESE PACKAGES AT THIS POINT IN TIME ARE
25 WRAPPED IN THE DUCT TAPE THAT WE SEE HERE; IS THAT

1 CORRECT?

2 A. THAT'S RIGHT.

3 Q. THE PURPOSE OF PUTTING THEM ON YOUR CAR HOOD IS
4 FOR WHAT?

5 A. JUST TO DOCUMENT IT FOR EVIDENTIARY PURPOSES.

6 RIGHT ABOUT HERE DEPUTY MIZE ASKED ME TO GO UNLOCK
7 THE TRUNK, WHICH I DO SO, AND WE TAKE THOSE BACK TO MY
8 TRUNK.

9 RIGHT HERE I PUT THEM IN THE BACK SEAT. THIS IS
10 WHERE I FIND A WHITE PLASTIC BAG. RIGHT NOW I'M LOOKING
11 INSIDE THE BAG, I SEE THAT THIS IS MONEY. HERE
12 MOMENTARILY I PULL THE BAG OUT OF THE CAR AND PLACE IT ON
13 MY HOOD.

14 Q. DO YOU RECALL WHAT DENOMINATIONS THIS MONEY WAS
15 IN?

16 A. I KNOW THEY WERE HUNDREDS, 50'S, 20'S, I THINK
17 THERE WERE A FEW 10'S.

18 Q. AND WHAT IS THIS SHOWING RIGHT HERE?

19 A. THAT'S A TEXAS LICENSE PLATE THAT WAS FOUND INSIDE
20 THE TRUNK OF THE VEHICLE, AS WELL.

21 Q. AND AFTER THIS YOU SECURED THE CAR?

22 A. RIGHT. SHORTLY AFTER THIS MR. RAY TAYLOR, WHO WAS
23 AT THAT TIME EMPLOYED AT THE ANDERSON COUNTY SHERIFF'S
24 OFFICE, BROUGHT THE ANDERSON COUNTY TOW TRUCK OUT THERE
25 AND THE VEHICLE WAS TOWED BACK TO THE ANDERSON COUNTY

1 SHERIFF'S OFFICE.

2 Q. AT WHICH POINT YOU TURNED IT OVER TO FORENSICS?

3 A. THAT'S RIGHT.

4 MR. CAMPBELL: THAT'S ALL WE HAVE.

5 (WITNESS RESUMES STAND.)

6 MR. CAMPBELL: YOUR HONOR, I THINK I MOVED THIS INTO
7 EVIDENCE, BUT IF I DIDN'T, I'M GOING TO MOVE STATE'S
8 EXHIBIT TWO INTO EVIDENCE.

9 THE COURT: ANY OBJECTION?

10 MS. MANIGAULT: NO, YOUR HONOR.

11 THE COURT: WITHOUT OBJECTION STATE'S EXHIBIT NUMBER
12 TWO IS ADMITTED.

13 (STATE'S EXHIBIT # 2, VIDEO, WAS RECEIVED IN
14 EVIDENCE.)

15 MR. CAMPBELL: COURT'S INDULGENCE, PLEASE.

16 YOUR HONOR, MAY WE APPROACH?

17 THE COURT: CERTAINLY.

18 (DISCUSSION AT SIDE-BAR.)

19 THE COURT: MR. FOREMAN, LADIES AND GENTLEMEN OF THE
20 JURY, WE'VE COME TO A POINT WHERE, AS I UNDERSTAND IT,
21 THE STATE HAS FINISHED ITS DIRECT EXAMINATION OF THE
22 WITNESS?

23 MR. CAMPBELL: THAT'S CORRECT, YOUR HONOR.

24 THE COURT: ALL RIGHT. AND WE'LL HAVE -- THE
25 WITNESS WILL HAVE FURTHER TESTIMONY ON CROSS-EXAMINATION.

1 BUT AS WILL HAPPEN SOMETIMES THE FIRST DAY OF COURT I
2 HAVE SOME OTHER THINGS I NEED TO DO. I'M GOING TO
3 SUGGEST THAT WE BREAK AT THIS TIME AND COME BACK IN THE
4 MORNING AND WE'LL COMPLETE THE TESTIMONY OF THIS WITNESS
5 AND THEN ALSO CONTINUE WITH THE TRIAL OF THE CASE. WE
6 CAN'T DO IT -- WE COULDN'T COMPLETE EVERYTHING THIS
7 AFTERNOON ANYWAY, SO WE HAVE TO BREAK AT SOME TIME IN
8 ORDER TO GET THIS OTHER MATTER OUT OF THE WAY THIS
9 AFTERNOON, AND I BELIEVE THIS IS A GOOD TIME FOR US TO
10 BREAK.

11 YOU MAY STEP DOWN, SIR, IF YOU WOULD LIKE.

12 (WITNESS LEAVES STAND.)

13 **THE COURT:** I TELL JURIES THAT THIS IS PROBABLY THE
14 MOST DIFFICULT PART OF THE CASE FOR YOU, BECAUSE YOU ARE
15 GOING HOME AND SOMEBODY IS GOING TO ASK YOU, WHAT ARE YOU
16 DOING?

17 AND YOU'RE GOING TO SAY, WELL, I'VE BEEN DRAWN ON A
18 JURY.

19 AND THEY'LL SAY, WELL, WHAT IS IT ABOUT?

20 AND YOU'RE GONNA HAVE TO TELL THEM, WELL, I CAN'T
21 DISCUSS IT.

22 AND THEY'LL SAY, WELL, WHY NOT?

23 AND YOU'LL SAY, BECAUSE THE JUDGE SAID SO.

24 AND THEY'LL PROBABLY SAY SOMETHING ABOUT, WELL,
25 THAT'S RIDICULOUS.

1 I THINK THAT YOU UNDERSTAND THAT THIS IS AN
2 IMPORTANT CASE FOR EVERYONE WHO'S INVOLVED, AND IT NEEDS
3 TO BE RESOLVED IN A PROPER FASHION. AND NO ONE WHO IS
4 NOT SITTING WHERE YOU ARE RIGHT NOW OR WILL BE IN THAT
5 JURY ROOM WHEN YOU GET THE CASE FOR YOUR DECISION WILL BE
6 ABLE TO HELP YOU, THEY CAN ONLY INTERFERE WITH IT.
7 BECAUSE THEY HAVEN'T HEARD THE FIRST BIT OF TESTIMONY OR
8 SEEN THE FIRST BIT OF EVIDENCE IN THIS COURTROOM, AND
9 ANYTHING THEY MIGHT OFFER WOULD BE OF NO VALUE, IN FACT,
10 AS I SAY, IT WOULD INTERFERE WITH THE PROPER RESOLUTION
11 SO I'M GOING TO NOT ONLY SUGGEST TO YOU, I'M GOING TO
12 ADMONISH YOU THAT IF SOMEBODY DOES INSIST ON TALKING TO
13 YOU ABOUT IT, TELL THEM THAT I'LL BE HERE AT 9:00 IN THE
14 MORNING AND I'LL BE GLAD TO EXPLAIN IT TO THEM. BUT THIS
15 IS A CASE THAT NEEDS TO BE RESOLVED, AND PARTICULARLY
16 UNDER SOME OF THE CIRCUMSTANCES WE NEED TO BE SURE THAT
17 IT'S DONE ABSOLUTELY IN A PROPER FASHION.

18 NOW, HAVING SAID THAT, I HAVE IMPOSED UPON YOU OFTEN
19 TODAY IN ORDER TO GET MY WORK OUT OF THE WAY BEFORE WE
20 STARTED AND THEN CONTINUE WITH THE TRIAL, SO I'M GOING TO
21 ASK YOU, MR. FOREMAN, THIS WILL BE YOUR FIRST DUTY, CHECK
22 WITH YOUR JURY AND FIND OUT WHAT TIME YOU WOULD LIKE TO
23 START IN THE MORNING. AS I SAY, I WOULD SUGGEST ANYWHERE
24 FROM 9:00, 9:30 OR 10:00. BUT YOU ALL KNOW WHAT YOU HAVE
25 TO DO BEFORE YOU CAN GET HERE. YOU CAN DO IT JUST IN THE

1 BOX THERE. BY THE WAY, THIS IS NOT A UNANIMOUS VERDICT,
2 THIS IS JUST A CONSENSUS. SO SEE WHAT WOULD BE MORE
3 ACCEPTABLE TO THE JURY, JUST CHECK WITH THEM. 9:00,
4 9:30, OR 10:00.

5 **THE FOREMAN:** 9:30, SIR.

6 **THE COURT:** VERY GOOD. SO I WILL SEE YOU AT 9:30 IN
7 THE MORNING. AS I SAY, PLEASE DO NOT UNDERTAKE THE
8 DISCUSSION OF THE CASE OR PERMIT ANYBODY TO DISCUSS IT
9 WITH YOU. WHEN IT'S OVER YOU CAN DO WHAT YOU LIKE. BUT
10 UNTIL THAT TIME LET'S LIMIT ANY SORT OF INTERFERENCE WITH
11 YOUR DUTIES AS JURORS IN THIS CASE. SO WITH THAT I WILL
12 EXCUSE YOU AND SEE YOU AT 9:30 IN THE MORNING. THANK YOU
13 VERY MUCH.

14 EVERYONE ELSE REMAIN SEATED WHILE THE JURY RETIRES
15 FROM THE COURTROOM.

16 (WHEREUPON, THE JURY LEFT THE COURTROOM AT
17 APPROXIMATELY 4:26 P.M.)

18 **THE COURT:** IF YOU WOULD, YOU DON'T HAVE TO EXCHANGE
19 THEM OR ANYTHING, BUT IF YOU HAVE ANY REQUESTS FOR
20 CHARGES, PLEASE LET MARY KNOW. EVEN IF YOU GOT REQUESTS
21 FROM ANDERSON, ERVIN OR SOMETHING LIKE THAT. BUT AT
22 LEAST GIVE ME A HEADS UP AS TO WHAT YOU WANT. AND YOU
23 DON'T HAVE TO EXCHANGE THEM OR ANYTHING AT THIS TIME BUT
24 JUST GIVE THEM TO THE LAW CLERK SO SHE CAN START
25 PREPARING THE CHARGE.

1 NOW, WITH THAT, 9:30 IN THE MORNING FROM THE STATE?

2 MR. CAMPBELL: YES, SIR.

3 THE COURT: FROM THE DEFENSE?

4 MS. MANIGAULT: YES, SIR.

5 THE COURT: I'LL SEE YOU AT 9:30.

6 NOW, MR. CRAWFORD, YOU ARE UNDER OATH NOW SO YOU
7 CANNOT DISCUSS YOUR TESTIMONY WITH ANYONE, YOUR ATTORNEYS
8 OR ANYBODY ELSE. DO YOU UNDERSTAND THAT?

9 THE WITNESS: YES, SIR.

10 THE COURT: ALL RIGHT. VERY GOOD. I'LL SEE YOU IN
11 THE MORNING.

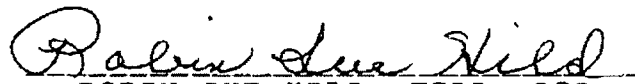
12 (WHEREUPON, THE TRIAL IN THE MATTER OF THE
13 STATE OF SOUTH CAROLINA VERSUS RAHIEM KIRKMAN
14 ADJOURNED ON THE 5TH DAY OF NOVEMBER, 2007 AT
15 APPROXIMATELY 4:30 P.M., TO RESUME ON THE 6TH
16 DAY OF NOVEMBER, 2007, AT APPROXIMATELY 9:30
17 A.M.)
18
19
20
21
22
23
24
25

CERTIFICATE OF COURT REPORTER

I, THE UNDERSIGNED, ROBIN SUE HILD, FCRR, RPR,
OFFICIAL COURT REPORTER FOR THE TENTH JUDICIAL CIRCUIT OF
THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE
FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF
RECORD OF THE PROCEEDINGS HAD AND THE EVIDENCE INTRODUCED
IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL,
IN THE COURT OF GENERAL SESSIONS FOR ANDERSON COUNTY,
SOUTH CAROLINA, ON THE 5TH DAY OF NOVEMBER 2009.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL
NOR INTEREST TO ANY PARTY HERETO.

OCTOBER 21, 2009


ROBIN SUE HILD, FCRR, RPR
CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
)
 COUNTY OF ANDERSON) INDICTMENT NO: 2006-GS-04-2922

STATE OF SOUTH)
 CAROLINA)
)
 PLAINTIFF,) TRANSCRIPT OF RECORD
) TRIAL, VOLUME II
 -VS-)
)
 RAHIEM KIRKMAN,)
)
 DEFENDANT.)

NOVEMBER 6, 2007
 ANDERSON, SOUTH CAROLINA

B E F O R E:

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

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

RAME CAMPBELL, ESQ.
 ASSISTANT 10TH CIRCUIT SOLICITOR
 ATTORNEY FOR THE STATE

DOROTHY MANIGAULT, ESQ.
 ATTORNEY FOR THE DEFENDANT

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

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*** REPORTER'S NOTE: STATE'S EXHIBIT 6, FORENSICS REPORT DATED NOVEMBER 27, 2006, WAS MARKED FOR IDENTIFICATION PURPOSES ONLY AND NOT RECEIVED INTO EVIDENCE ***

C 1,	SURETY BOND FORM	7
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1 (WHEREUPON, THE TRIAL OF THE STATE VERSUS
2 RAHIEM KIRKMAN WAS CONTINUED ON TUESDAY,
3 NOVEMBER 6, 2007, AT APPROXIMATELY 9:35 A.M.)

4 **THE COURT:** WE'RE BACK ON THE CASE OF STATE VERSUS
5 RAHIEM KIRKMAN, 2006-GS-04-2922.

6 THE COURT HAS BEEN HANDED A NOTE FROM ONE OF THE
7 JURORS DATED 11-6-07 TO SEE CATHY PHILLIPS OUR CLERK OF
8 COURT AND SIGNS HIS NAME IS SUBMITTED BY THE FOREMAN OF
9 THE JURY, 06-07. I ASKED THE CLERK, AFTER CONSULT WITH
10 THE ATTORNEYS I ASKED THE CLERK JUST TO VISIT WITH THE
11 JUROR TO FIND OUT WHAT HE WAS CONCERNED ABOUT AND IT
12 SEEMS IT'S A PERSONAL MATTER THAT HE HAS TO TAKE HIS
13 GRANDSON TO THERAPY TOMORROW, WEDNESDAY, AND SO I SEE NO
14 NEED TO FOLLOW THROUGH. WE DO HAVE AN ALTERNATE IF WE
15 SHOULD GO THROUGH TOMORROW. SO I DON'T THINK ANY FURTHER
16 ACTION IS NECESSARY YET, BUT ANYTHING THE STATE MIGHT
17 SUGGEST, MR. CAMPBELL?

18 **MR. CAMPBELL:** NO, YOUR HONOR.

19 **THE COURT:** THE DEFENSE?

20 **MS. MANIGAULT:** NONE, YOUR HONOR.

21 **THE COURT:** LET'S MARK THIS AS AN EXHIBIT.

22 (COURT'S EX. # 4, JURY NOTE, WAS MARKED FOR
23 IDENTIFICATION.)

24 **THE COURT:** ALL RIGHT. IF WE WOULD HAVE OFFICER
25 CRAWFORD RETAKE THE STAND.

1 (WITNESS RESUMES STAND.)

2 THE COURT: YOU DO UNDERSTAND YOU ARE STILL UNDER
3 OATH?

4 THE WITNESS: YES, SIR.

5 THE COURT: ANYTHING FROM THE STATE BEFORE WE BRING
6 THE JURY BACK?

7 MR. CAMPBELL: NO, YOUR HONOR.

8 THE COURT: FROM THE DEFENSE?

9 MS. MANIGAULT: NOTHING, YOUR HONOR.

10 THE COURT: VERY GOOD. THANK YOU, MA'AM.
11 ASK THE JURY TO JOIN US, PLEASE.

12 (COUNSEL CONFER.)

13 (WHEREUPON, THE JURY ENTERED THE COURTROOM AT
14 APPROXIMATELY 9:39 A.M.)

15 THE COURT: LET THE RECORD REFLECT THE JURY AND
16 ALTERNATE ARE IN THE JURY-BOX.

17 MR. FOREMAN, LADIES AND GENTLEMEN OF THE JURY, WE'LL
18 NOW CONTINUE WITH THE TRIAL OF THE CASE. AT THIS TIME I
19 THINK THE STATE HAD COMPLETED ITS DIRECT EXAMINATION.
20 IS THAT CORRECT?

21 MR. CAMPBELL: THAT'S CORRECT, YOUR HONOR.

22 THE COURT: MS. MANIGAULT, YOU MAY CROSS-EXAMINE.

23 MS. MANIGAULT: THANK YOU, YOUR HONOR.
24
25

1 WHEREUPON,

2 JAMIE CRAWFORD,

3 AFTER PREVIOUSLY HAVING BEEN DULY SWORN, TESTIFIED AS
4 FOLLOWS:

5 CROSS-EXAMINATION BY MS. MANIGAULT:

6 Q. DEPUTY CRAWFORD, WE LEFT OFF YESTERDAY VIEWING THE
7 VIDEO.

8 THE REASON FOR YOUR STOP YOU SAID WAS FOLLOWING
9 TOO CLOSE?

10 A. THAT'S RIGHT.

11 Q. ALL RIGHT. AND WHAT WAS THE TIME OF YOUR STOP?

12 A. I'D HAVE TO LOOK AT THAT PARTICULAR TICKET, I
13 GUESS.

14 Q. I CAN'T HEAR YOU.

15 A. IT WAS 7:40 IN THE EVENING.

16 Q. AND WHAT WAS THE LENGTH OF YOUR STOP?

17 A. THE LENGTH. I HAVE MY REPORT FROM THE TIME HE WAS
18 STOPPED UNTIL THE TIME I ACTUALLY CLEARED, WHICH WOULD BE
19 THAT NIGHT, WAS -- WELL, FROM 7:40 TO 1:00 IN THE
20 MORNING.

21 Q. OKAY. WHAT WAS THE LENGTH OF THE TIME THAT, FROM
22 THE STOP AT 7:40 P.M., THAT YOU TOOK RAHIEM KIRKMAN TO
23 YOUR CAR AND HE STAYED IN YOUR CAR, YOUR PATROL CAR?

24 A. I REALLY COULDN'T SAY WITHOUT WATCHING THE VIDEO.

25 Q. ALL RIGHT. DOES YOUR VIDEO HAVE A TIME COUNTER?

1 A. AT THE, I BELIEVE IT'S THE TOP LEFT.

2 Q. SO THE VIDEO WOULD SHOW THAT?

3 A. THAT'S RIGHT.

4 Q. AND DO YOU HAVE ANY IDEA HOW LONG IT TOOK DISPATCH
5 TO GIVE YOU AN ANSWER REGARDING RAHIEM KIRKMAN'S LICENSE
6 EXPERIENCE?

7 A. ONE OR TWO MINUTES.

8 Q. ONE OR TWO MINUTES?

9 A. THAT'S RIGHT.

10 Q. AND THAT WAS AN ANSWER BACK FROM THEM THAT HIS
11 LICENSE WAS CLEAR?

12 A. THAT'S RIGHT.

13 Q. SO HOW LONG WOULD YOU SAY IT TOOK YOU TO TAKE YOUR
14 DOG TO DO A FREE SNIFF AROUND THE CAR?

15 A. ABOUT A MINUTE, MINUTE AND A HALF, MAYBE.

16 Q. SO THAT WOULD INCLUDE THE TWO REVOLUTIONS AROUND
17 THE CAR?

18 A. THAT'S RIGHT.

19 Q. AND I BELIEVE YOU TESTIFIED THAT WHEN YOU
20 INITIALLY STOPPED THE CAR, YOU INFORMED THE DRIVER THAT
21 YOU WERE STOPPING HIM FOR FOLLOWING TOO CLOSELY; AND AT
22 SOME POINT TOLD HIM THAT YOU WERE GOING TO GIVE HIM A
23 WARNING CITATION?

24 A. THAT'S RIGHT.

25 Q. AND DO YOU RECALL HOW MANY TIMES YOU TOLD HIM THAT

1 YOU WERE GONNA GIVE HIM A WARNING CITATION?

2 A. I BELIEVE TWO, TWO TIMES, I BELIEVE; MAYBE THREE.

3 Q. AND AT WHAT POINT DID YOU TELL HIM THAT YOU WERE
4 GONNA GIVE HIM A WARNING CITATION? WAS HE STILL IN HIS
5 CAR OR WAS HE IN YOUR CAR?

6 A. MAY I REFER BACK TO MY REPORT?

7 Q. YES, SIR.

8 A. YES, MA'AM, HE WAS STILL IN HIS VEHICLE.

9 Q. EXCUSE ME?

10 A. HE WAS STILL IN HIS VEHICLE THE FIRST TIME I
11 TALKED TO HIM.

12 Q. SO THE FIRST TIME HE WAS IN HIS VEHICLE?

13 A. YES.

14 Q. AND THE OTHER ONE OR TWO TIMES HE WAS IN YOUR
15 VEHICLE?

16 A. YES, MA'AM. I BELIEVE IT WAS JUST ONE MORE TIME
17 AND THAT WAS AFTER THE CANINE SNIFF AND I WAS WAITING FOR
18 DISPATCH TO COME BACK WITH THE INFORMATION, THAT'S WHEN I
19 BELIEVE I TOLD HIM AGAIN.

20 Q. SO ONE MORE TIME AFTER THE CANINE HAD RUN AROUND
21 THE CAR TWICE --

22 A. YES, MA'AM.

23 Q. -- YOU GOT BACK IN YOUR CAR AND YOU TOLD HIM YOU
24 WERE GONNA GIVE HIM A WARNING CITATION?

25 A. ACTUALLY, I WAS EXPLAINING IT. I HAD EVERYTHING

1 IN MY HAND. DISPATCH HAD CAME BACK, SAID LICENSE IS
2 CLEAR. I HAD HIS THINGS IN MY HAND AND I TOLD HIM ONCE
3 AGAIN, THIS IS ONLY A WARNING CITATION, THAT IT WASN'T
4 GONNA AFFECT HIS DRIVER'S LICENSE, NOTHING LIKE THAT.

5 Q. YOU HAD IT IN YOUR HAND?

6 A. THAT'S RIGHT.

7 Q. THE ACOUSTICS IN THIS ROOM IS NOT VERY GOOD SO I'M
8 GONNA ASK YOU TO KEEP YOUR VOICE UP.

9 A. OKAY.

10 Q. ALL RIGHT. IN A PRIOR HEARING BEFORE THIS COURT
11 YOUR TESTIMONY WAS THAT YOU GAVE THE WARNING CITATION TO
12 RAHIEM KIRKMAN WHILE HE WAS SITTING IN YOUR CAR?

13 A. THAT'S RIGHT.

14 Q. IS THAT ACCURATE?

15 A. LET ME REFER BACK TO MY REPORT.

16 I DON'T BELIEVE I ACTUALLY GAVE IT TO HIM.

17 Q. SO YOUR PRIOR TESTIMONY BEFORE THE COURT WAS
18 INCORRECT, YOU DID NOT GIVE IT TO HIM?

19 A. ACCORDING TO MY REPORT I SAID AFTER RECEIVING THIS
20 INFORMATION FROM DISPATCH, I EXPLAINED AGAIN TO HIM WHY I
21 STOPPED HIM, AND I EXPLAINED TO HIM THE WARNING CITATION.
22 I WENT THEN TO CONFRONT HIM ABOUT THE REASON FOR THE
23 CANINE INDICATING ON THE CAR.

24 Q. ALL RIGHT. SO YOUR TESTIMONY AT THIS POINT BEFORE
25 THE COURT IS THAT YOU NEVER GAVE HIM THE WARNING

1 CITATION?

2 A. I HAD IT IN MY HAND AND I WAS EXPLAINING IT TO
3 HIM. I HAD EVERYTHING IN MY HAND, WHICH IS I BELIEVE
4 WHAT I SAID BEFORE: I HAD THE REGISTRATION, THE DRIVER'S
5 LICENSE AND THE WARNING TICKET IN MY HAND.

6 Q. SO YOU NEVER GAVE HIM THE CITATION?

7 A. IT WAS ALL IN MY HAND.

8 Q. ALL RIGHT. AND DID YOU EVER GIVE HIM HIS LICENSE
9 BACK?

10 A. NO.

11 Q. DID THE GENTLEMAN ASK FOR HIS LICENSE BACK?

12 A. YES, HE DID.

13 Q. AND HOW MANY TIMES DID HE ASK FOR IT BACK?

14 A. ONCE OR TWICE.

15 Q. AND DID HE EVER TELL YOU THAT HE WANTED TO GO, TO
16 LEAVE?

17 A. HE DID.

18 Q. AND DID HE SAY THAT MORE THAN ONE TIME?

19 A. I THINK HE ONLY SAID IT ONCE. HE KEPT SAYING THAT
20 HE WANTED HIS STUFF, AND AT ONE POINT HE TOLD ME THAT HE
21 WANTED HIS STUFF AND HE WANTED TO LEAVE.

22 Q. ALL RIGHT. AND DID YOU ASK HIM PERMISSION TO
23 SEARCH HIS CAR?

24 A. I DID.

25 Q. AND DID HE GIVE YOU PERMISSION TO SEARCH THE CAR?

1 A. HE DID NOT.

2 Q. IS ANY PORTION OF YOUR CONVERSATION WITH THE
3 GENTLEMAN RECORDED ON THIS VIDEO?

4 A. NO, IT IS NOT.

5 Q. AND WHY IS THAT?

6 A. AT THE TIME THE CAMERA THAT I WAS EQUIPPED WITH
7 DID NOT HAVE AN OPERATING MICROPHONE.

8 Q. AND HOW LONG WAS THAT CAMERA WITHOUT AN OPERATING
9 MICROPHONE?

10 A. QUITE A WHILE.

11 Q. WHAT IS "QUITE A WHILE"?

12 A. I'M SORRY?

13 Q. WHAT IS "QUITE A WHILE"?

14 A. SEVERAL MONTHS.

15 Q. SEVERAL MONTHS? SO THERE IS NO WAY FOR US TO
16 VERIFY WHAT YOU SAID OR WHAT THE GENTLEMAN SAID EXCEPT
17 WHAT YOU ARE TELLING US TODAY; IS THAT CORRECT?

18 A. THAT'S RIGHT.

19 Q. HOW MANY TRAFFIC STOPS DID YOU MAKE PRIOR TO THIS
20 ONE ON AUGUST 22ND, 2006, WITHOUT YOUR AUDIO WORKING?

21 A. ON THAT DAY OR JUST ALTOGETHER?

22 Q. DURING THE TIME PERIOD WHERE YOUR AUDIO WAS NOT
23 WORKING, HOW MANY TIMES DID YOU MAKE A TRAFFIC STOP PRIOR
24 TO THAT DAY?

25 A. I CAN'T ACCURATELY ANSWER THAT QUESTION. SEVERAL.

1 Q. SEVERAL? WOULD YOU SAY IT WAS MORE THAN FIVE?

2 A. YES.

3 Q. AND HOW MANY TRAFFIC STOPS DID YOU MAKE AFTER
4 AUGUST 22ND, 2006 WITH YOUR AUDIO NOT WORKING?

5 A. SEVERAL.

6 Q. I BELIEVE YOU TESTIFIED THAT YOU WERE PART OF WHAT
7 IS CALLED THE A.C.E. TEAM?

8 A. THAT'S RIGHT.

9 Q. AND YOUR PURPOSE ON THE HIGHWAY IS TO LOOK FOR
10 WEAPONS AND DRUGS?

11 A. AND TO ENFORCE TRAFFIC.

12 Q. AND TO ENFORCE TRAFFIC?

13 SO A TRAFFIC STOP WOULD NOT JUST BE A PRETENSE FOR
14 YOU TO LOOK FOR OTHER ILLEGAL ACTIVITIES?

15 A. NO, MA'AM. OUR, ONE OF OUR MAIN GOALS IS TO
16 ENSURE THAT THE MOTORING PUBLIC OUT THERE IS SAFE THROUGH
17 THEIR COMMUTE THROUGH ANDERSON COUNTY.

18 Q. I DIDN'T UNDERSTAND YOU.

19 A. I SAID, ONE OF OUR MAIN GOALS IS TO ENSURE THAT
20 THE MOTORING PUBLIC OUT THERE IS SAFE THROUGHOUT THEIR
21 COMMUTE THROUGH ANDERSON COUNTY.

22 Q. NOW, YOU SAY YOUR DOG ALERTED ON THE CAR ON THE
23 LEFT PASSENGER'S, ON THE DRIVER'S SIDE ON THE DOOR?

24 A. YES, MA'AM.

25 Q. AND HE ALERTED BOTH TIMES OR THE SECOND TIME OR...

1 A. BOTH TIMES. THE FIRST TIME HE SHOWED SLIGHT
2 INTEREST IN THE AREA. THE SECOND TIME I WENT BACK TO
3 PROVE IT IS WHEN HE GAVE ME A FULL-BLOWN INDICATION FOR
4 THE ODOR OF NARCOTICS.

5 Q. AND WHAT DID YOU TELL THE COURT THAT ARE
6 INDICATORS FOR YOUR DOG'S BEHAVIOR?

7 A. WHAT HE DOES, FOR THE UNTRAINED CANINE HANDLER,
8 YOU WOULD SEE A DOG LIKE MINE, HE SCRATCHES. ONCE HE
9 FINDS THE SOURCE OF THE ODOR, HE'LL START SCRATCHING THAT
10 GENERAL AREA. MY DOG ALSO HAS A TENDENCY TO START BITING
11 THAT PARTICULAR AREA NOW. LIKE I SAID EARLIER, WHEN WE
12 ARE WORKING A VEHICLE, ESPECIALLY ON THE ROAD, AN ODOR
13 CAN SEEP OUT OF ANY SEAM IN THAT VEHICLE, BE IT A DOOR
14 JAMB. AND WHEN THAT PRODUCT IS DEEP INSIDE OF IT, IT'S
15 GOT AN ODOR, IT MAKES IT POSSIBLE FOR IT TO COME OUT.

16 AND WHEN THAT DOG WALKS BY THOSE SEAMS -- THAT'S
17 WHY WE WALK AT AN ACCELERATED PACE -- WHEN HE WALKS BY
18 THE SEAMS, IF YOU GET A REAL QUICK HEAD TURN, AND HE GOES
19 BACK TO A SPOT, BACK TOWARD A SEAM AND STARTS SNIFFING,
20 WE LOOK FOR THAT AS WELL. THAT'S A CHANGE IN BEHAVIOR.
21 BUT THERE'S SEVERAL OTHER WAYS A DOG WOULD INDICATE. BUT
22 IN MY DOG'S CASE THE SCRATCHING, THE CHANGE OF BREATHING,
23 THE HEAD TURN, THE BITING IN THE GENERAL AREA, THAT'S ALL
24 A CHANGE OF BEHAVIOR AND THAT'S AN INDICATION TO ME THAT
25 THE NARCOTICS EITHER IS OR HAS BEEN IN THAT VEHICLE.

1 Q. OKAY. AND I BELIEVE YOU TESTIFIED THAT YOUR DOG
2 IS IN TRAINING WEEKLY OR BIWEEKLY?

3 A. THAT'S RIGHT.

4 Q. DID YOU TESTIFY THE HOURS OF TRAINING THAT YOUR
5 DOG HAS HAD?

6 A. I DID NOT.

7 Q. AND WHAT IS THAT?

8 A. IT WILL TAKE ME A LITTLE BIT TO COUNT IT.

9 Q. APPROXIMATELY. AND IF YOU WANT TO REFER TO YOUR
10 NOTES, I HAVE NO OBJECTION TO THAT.

11 A. OKAY. IT'S SEVERAL HUNDRED.

12 Q. SEVERAL HUNDRED HOURS?

13 A. SEVERAL HUNDRED HOURS.

14 Q. OKAY. YOU TESTIFIED EARLIER THAT THERE WAS SOME
15 SUSPICIOUS INDICATORS WHEN YOU STOPPED THE SILVER PASSAT,
16 WHEN YOU SAW THE GENTLEMAN IN THE CAR?

17 A. WHEN I STOPPED HIM, YES, MA'AM.

18 Q. OKAY. SO WHEN YOU STOPPED HIM, WHAT WAS HIS
19 SUSPICIOUS INDICATOR THAT YOU NOTED?

20 A. THE VERY FIRST THING THAT I SEEN WHEN I WALKED
21 INTO THE VEHICLE WAS THESE MULTIPLE CELL PHONES LYING
22 THERE. BUT THE BIGGER THING THAT STUCK OUT TO ME IS WHEN
23 HE HANDED ME HIS DRIVER'S LICENSE, HIS HAND WAS SHAKING
24 SO BAD, I REALLY THOUGHT HE WAS GONNA DROP HIS LICENSE.

25 Q. OKAY. DID YOU SAY HE DROPPED HIS LICENSE?

1 A. NO. I SAID I THOUGHT IT WAS POSSIBLE HE WAS GOING
2 TO DROP HIS LICENSE BECAUSE OF HOW BAD HIS HAND WAS
3 SHAKING.

4 Q. BUT HE DID NOT?

5 A. HE DID NOT DROP THE DRIVER'S LICENSE, NO.

6 Q. HE HANDED YOU THE LICENSE?

7 A. HE DID.

8 Q. AND AFTER HE HANDED YOU THE LICENSE, YOU ASKED HIM
9 TO EXIT THE VEHICLE?

10 A. AFTER I ASKED HIM FOR THE -- AFTER I EXPLAINED TO
11 HIM WHY I STOPPED HIM AND ASKED HIM FOR THE VEHICLE
12 INFORMATION, THEN I ASKED HIM TO STEP OUT OF THE VEHICLE.

13 Q. OKAY. AND I BELIEVE WE CAN SEE ON THE VIDEO THE
14 GENTLEMAN GETTING OUT OF THE CAR AND WALKING AROUND
15 TOWARDS YOUR CAR?

16 A. THAT'S RIGHT.

17 Q. AND AFTER HE GOT IN YOUR CAR, WHAT ELSE DID YOU
18 NOTICE?

19 A. ONCE HE SAT DOWN IN MY VEHICLE AND I BEGAN TO
20 ISSUE THE WARNING CITATION, AS I WAS WRITING THE WARNING
21 CITATION I ASKED HIM ABOUT HIS TRAVEL ITINERARY. AT THIS
22 POINT HIS CAROTID ARTERY IN HIS NECK STARTED PULSATING AT
23 A RATE WHERE I COULD ACTUALLY SEE IT PULSING. HIS
24 BREATHING WAS KIND OF LABORED. HIS SHIRT WOULD RISE AND
25 FALL EACH TIME WITH HIS HEARTBEAT, JUST THUMPING; JUST

1 VERY EXTREMELY NERVOUS, EXTREMELY ON THE EDGE.

2 Q. HAVE YOU STOPPED OTHER MOTORISTS THAT HAVE BEEN
3 NERVOUS?

4 A. YES, I HAVE.

5 Q. DID YOU ASK THE GENTLEMAN WHETHER HE HAD ANY
6 MEDICAL PROBLEMS?

7 A. NO, I DID NOT.

8 Q. DID YOU ASK HIM ABOUT HIS BREATHING? DID HE HAVE
9 ANY MEDICAL PROBLEMS ABOUT HIS BREATHING?

10 A. NO.

11 Q. DID YOU ASK HIM ABOUT WHETHER HE HAD ANY NERVOUS
12 MEDICAL PROBLEMS ABOUT HIS HANDS SHAKING?

13 A. NO.

14 Q. DID YOU ASCERTAIN WHETHER HE HAD ANY MEDICAL
15 PROBLEMS AT ALL FOR SOME OF THE INDICATORS YOU HAVE
16 TESTIFIED TO FOR THE COURT?

17 A. NO.

18 Q. I BELIEVE ONE OF THE INDICATORS YOU TESTIFIED WAS
19 LIPS QUIVERING?

20 A. THAT'S RIGHT.

21 Q. HANDS SHAKING?

22 A. YES.

23 Q. AND HEAVY, DIFFICULT BREATHING OR HEAVY BREATHING?

24 A. THAT'S RIGHT.

25 Q. SO YOU DID NOT INQUIRE OF HIM ABOUT THOSE

1 INDICATORS?

2 A. NO, MA'AM.

3 Q. WHEN DID YOUR TRAFFIC STOP END AS FAR AS YOU HAVE
4 NOW DECIDED THAT YOU ARE GOING TO GIVE HIM A CITATION AND
5 YOU ARE CHANGING INTO ANOTHER FORM OF INVESTIGATION?

6 A. I HAD MY SUSPICIONS PRIOR TO THE, FILING THE
7 PLACEMENT OF THE WARNING CITATION. ONCE MY DOG INDICATED
8 ON THE CAR FOR THE ODOR OF NARCOTICS, AT THAT POINT I
9 KNEW IN MY MIND THAT I NEEDED TO SEARCH HIS VEHICLE. SO
10 AFTER THAT MY DOG A MINUTE LATER WHEN DISPATCH SAID HE
11 WAS CLEAR, FROM THAT POINT ON, AND EVERYTHING ELSE FROM
12 THERE WAS, WAS A SHORT LITTLE BIT TELLING HIM WHY I
13 STOPPED HIM, IT WAS JUST A WARNING TICKET, AND I WENT
14 STRAIGHT INTO ASKING HIM IF THERE WAS ANY REASON FOR MY
15 DOG TO INDICATE.

16 Q. ALL RIGHT. WHEN YOU GOT BACK INTO YOUR PATROL CAR
17 AFTER WHEN YOU HAD REVOLVED THE DOG AT LEAST TWICE AROUND
18 THE GENTLEMAN'S CAR, YOUR MIND WAS ALREADY MADE UP THAT
19 YOU WERE GONNA SEARCH HIS VEHICLE?

20 A. PRETTY MUCH, YES.

21 Q. AND REALLY AT THAT POINT IN TIME THE TRAFFIC STOP
22 HAD ALREADY ENDED?

23 A. NO. I WAS STILL WAITING FOR DISPATCH TO COME BACK
24 WITH THE INFORMATION.

25 Q. OKAY. SO WHY WERE YOU WAITING FOR DISPATCH TO

1 COME BACK WITH INFORMATION IF YOU SAID IN YOUR MIND YOU
2 WERE GONNA SEARCH HIS CAR?

3 A. BECAUSE THAT'S JUST WHAT WE DID, I MEAN, THAT'S
4 WHAT I DO. I WAIT FOR DISPATCH TO COME BACK WITH
5 INFORMATION, MAKE SURE HIS DRIVER'S LICENSE IS CLEAR AND
6 MAKE SURE HE WASN'T A WANTED PERSON.

7 Q. SO AT THE POINT WHERE YOUR DOG ALERTED ON THE CAR
8 YOU WERE NOW IN SOME INVESTIGATION, QUOTE-UNQUOTE, FOR
9 SOME ACTIVITIES THAT YOU THOUGHT WERE ILLEGAL?

10 A. WELL, I WASN'T GONNA PURSUE THAT INVESTIGATION
11 UNTIL I ADVISED HIM WHY I STOPPED HIM AND TOLD HIM
12 EVERYTHING ELSE. AFTER THAT MY DOG INDICATED, SO I
13 WANTED TO FIND OUT WHY HE INDICATED.

14 Q. OKAY. ON YOUR NORMAL TRAFFIC STOP DO YOU ASK ALL
15 YOUR DRIVERS TO EXIT THEIR CARS, TO SIT IN YOUR CAR?

16 A. NO.

17 Q. YOU DO NOT?

18 A. NO.

19 Q. WHY DID YOU ASK RAHIEM KIRKMAN TO EXIT HIS CAR TO
20 SIT IN YOUR CAR?

21 A. JUST THE WAY HE WAS ACTING, JUST EXTREME
22 NERVOUSNESS, I THOUGHT SOMETHING MIGHT BE AMISS.

23 Q. WAS IT MORE BECAUSE HE WAS A BLACK MALE WITH NORTH
24 CAROLINA TAGS COMING FROM ATLANTA, GEORGIA?

25 A. NO. I DON'T EVEN THINK THAT JUSTIFIES AN ANSWER,

1 TO BE HONEST WITH YOU.

2 Q. I DIDN'T HEAR YOUR ANSWER.

3 A. NO.

4 Q. DOES THE A.C.E. TEAM HAVE A PROFILE FOR STOPPING
5 OR LOOKING FOR VIOLATORS ON THE HIGHWAY BESIDES TRAFFIC
6 VIOLATIONS?

7 A. DO WE HAVE A PROFILE FOR LOOKING FOR VIOLATORS ON
8 THE HIGHWAY?

9 Q. WERE YOU LOOKING FOR WEAPONS, ILLEGAL DRUGS? DO
10 YOU HAVE A PROFILE OF INDIVIDUAL CARS?

11 A. NO. WE STOP I'D SAY BETWEEN 15, 20 CARS A DAY PER
12 PERSON, AND WE SEARCH BASED ON INDICATORS OF CRIMINAL
13 ACTIVITY.

14 Q. WHAT IS YOUR NORMAL PROCEDURE FOR YOUR TRAFFIC
15 STOP, FOR A NORMAL TRAFFIC STOP?

16 A. FIND A MOVING INFRACTION, STOP THE VEHICLE,
17 PASSENGER'S SIDE APPROACH TO THE VEHICLE, ADVISE THE
18 DRIVER OF WHY I STOPPED THEM, I ASK FOR THEIR DRIVER'S
19 LICENSE THE VEHICLE INFORMATION, AND I CARRY ON FROM
20 THERE. ISSUE A WARNING CITATION. AND IF I HAVE
21 INDICATORS, THEN WE'LL GO ON FROM THERE.

22 Q. ALL RIGHT. SO YOU ISSUE A WARNING CITATION OR A
23 TICKET?

24 A. THAT'S RIGHT.

25 Q. IF YOU DON'T HAVE INDICATORS, YOU RETURN THE

1 DOCUMENTS AND THE PERSON IS FREE TO GO?

2 A. THAT'S RIGHT.

3 Q. IF YOU HAVE WHAT YOU CONSIDER INDICATORS, THEN YOU
4 PROCEED WITH YOUR INVESTIGATION FROM THAT POINT?

5 A. THAT'S RIGHT.

6 Q. AND DID YOU FOLLOW THE KNOWN PROCESS OR PROCEDURE
7 DURING THE STOP WITH THIS GENTLEMAN ON AUGUST 22ND, 2006?

8 A. SURE DID.

9 Q. HOW LONG GENERALLY, IF YOU ARE ISSUING A CITATION
10 IN THE NORMAL COURSE OF YOUR DUTIES, FOR FOLLOWING TOO
11 CLOSELY OR SPEEDING, HOW MANY MINUTES WOULD THAT TAKE
12 FROM START TO FINISH?

13 A. FOUR TO FIVE MINUTES, I GUESS. MAYBE A LITTLE
14 LONGER. BUT NOT ANY LESS.

15 Q. FOUR TO FIVE MINUTES?

16 A. THAT'S RIGHT.

17 Q. OR LONGER.

18 I WANT TO ASK YOU TO EXPLAIN SOMETHING ON THIS
19 VIDEO FOR ME.

20 A. OKAY.

21 Q. I THINK THAT YOU EXPLAINED YESTERDAY. THIS IS
22 STATE'S EXHIBIT NUMBER TWO?

23 **THE COURT:** IT IS NUMBER TWO.

24 **MS. MANIGAULT:** YES, SIR.

25 (OFF-THE-RECORD DISCUSSION.)

1 (COUNSEL CONFER.)

2 THE COURT: IS IT WORKING?

3 MS. MANIGAULT: WE SHALL SEE SHORTLY, YOUR HONOR.

4 THE COURT: MR. CAMPBELL, WHO OPERATES THE VIDEO FOR
5 YOUR OFFICE?

6 MR. CAMPBELL: HERE.

7 BY MS. MANIGAULT:

8 Q. OFFICER, WHILE THIS IS STOPPED, THE NUMBER IS
9 19:25:11. WHAT DOES THAT INDICATE?

10 A. THAT MEANS IT'S 7:25, ROUGHLY, HOWEVER, THAT
11 CAMERA SYSTEM IS AN OLD CAMERA SYSTEM, AND THERE WAS NO
12 WAY FOR ME TO CHANGE THAT TIME. THAT TIME WAS ABOUT 15
13 MINUTES OFF. THE ACTUAL TIME I STOPPED THIS VEHICLE WAS
14 19:40 WHICH IS 7:40 IN THE EVENING.

15 Q. OKAY. BUT THIS WOULD SHOW ACTUALLY THE NUMBER OF
16 SECONDS OR MINUTES --

17 A. RIGHT.

18 Q. -- THAT THE STOP WOULD HAVE TAKEN?

19 A. THAT'S RIGHT.

20 Q. ALL RIGHT.

21 (COUNSEL CONFER.)

22 MR. CAMPBELL: JUST HIT PLAY.

23 (VIDEOTAPE PLAYING.)

24 BY MS. MANIGAULT:

25 Q. WE STARTED AT 19:25:11; IS THAT RIGHT?

1 A. THAT'S RIGHT.

2 Q. AND AT THE CAR NOW, WHAT ARE YOU DOING?

3 A. I'M EXPLAINING TO HIM WHY I STOPPED HIM. I'M
4 ASSUMING I'VE ALREADY ASKED FOR HIS DRIVER'S LICENSE AND
5 HIS VEHICLE INFORMATION.

6 Q. ALL RIGHT.

7 A. AT THIS POINT I'VE ASKED HIM TO STEP FROM MY
8 VEHICLE.

9 Q. AND THE GENTLEMAN IS GETTING OUT OF THE CAR?

10 A. RIGHT. I CONDUCTED A PROTECTIVE PAT-DOWN TO MAKE
11 SURE HE'S NOT CARRYING ANY WEAPONS.

12 Q. SO NOW IT IS 19:27:10?

13 A. THAT'S RIGHT.

14 Q. SO IS THAT TWO MINUTES?

15 A. TWO MINUTES.

16 Q. ALL RIGHT. AND YOU HAVE GONE TO YOUR CAR?

17 A. THAT'S RIGHT.

18 Q. SO THIS IS THE POINT IN THE CAR WHERE YOU ARE
19 TELLING HIM ABOUT THE WARNING CITATION AGAIN?

20 A. NO. RIGHT HERE I'M JUST WRITING THE WARNING
21 CITATION AND ASKING HIM WHERE HE WAS COMING FROM.

22 Q. ANY OTHER QUESTIONS THAT YOU ARE ASKING HIM?

23 A. I ASKED HIM WHERE HE WAS COMING FROM -- DO YOU
24 WANT ME TO GO OVER THE WHOLE CONVERSATION?

25 Q. YES, SIR.

1 A. OKAY. I ASKED HIM WHERE HE WAS COMING FROM.

2 HE SAID HE WAS COMING FROM ATLANTA.

3 I ASKED HIM WHAT HE WAS DOING IN ATLANTA.

4 HE SAID HE DROPPED HIS GIRLFRIEND OFF AT HER
5 SCHOOL.

6 WHEN I ASKED HIM WHAT SCHOOL THAT HE DROPPED HER
7 OFF AT, HE COULDN'T REMEMBER. A FEW MOMENTS LATER HE
8 SAID THAT HE HAD DROPPED HER OFF AT HER HOME INSTEAD OF
9 HER SCHOOL, AND THAT HER HOME WAS STONE MOUNTAIN,
10 GEORGIA.

11 Q. ALL RIGHT. AND WHAT ELSE WAS GOING ON? YOU GOT
12 IN THE CAR AT 19:27:18?

13 A. RIGHT.

14 Q. IT IS NOW 19:28:40. SO IS THERE OTHER
15 CONVERSATION GOING ON IN THE CAR?

16 A. RIGHT. IT IS RIGHT NOW. THE CONVERSATION IS
17 GOING ON. AND WHAT YOU CAN'T SEE IS HIS CAROTID ARTERY
18 THROBBING, HIS CHEST POUNDING, AND HIS BREATHING BECOMING
19 LABORED. YOU CAN'T SEE OR HEAR THAT.

20 Q. WELL, WITH THAT DESCRIPTION THAT YOU JUST
21 DESCRIBED, DO YOU THINK HE WAS HAVING A HEART ATTACK OR
22 SOMETHING? IS IT THAT BAD?

23 A. I'M NOT A DOCTOR, I CAN'T SAY THAT.

24 Q. OKAY. HERE WE ARE AT 19:29:10, YOU ARE OUT WITH
25 THE DOG; IS THAT RIGHT?

1 A. THAT'S RIGHT.

2 Q. SO YOU STAYED IN THE CAR APPROXIMATELY TWO
3 MINUTES?

4 A. THAT'S RIGHT.

5 Q. WE CAN'T SEE WHAT YOU ARE DOING. WE ASSUME THAT
6 YOU ARE IN FRONT OF THE CAR.

7 A. RIGHT NOW I'M WAITING FOR TRAFFIC BECAUSE WE ARE
8 PARKED REAL CLOSE TO THE FOG LINE, WAITING FOR TRAFFIC TO
9 KIND OF GO BY.

10 RIGHT HERE MY DOG KIND OF SLOWS DOWN BY ITSELF,
11 KIND OF GOES BACK A LITTLE BIT.

12 I CONTINUE ON WORKING THE VEHICLE. I START AGAIN,
13 I'M STARTING MY SECOND REVOLUTION RIGHT NOW.

14 ONCE I GET HERE, YOU'LL SEE ME STOP BECAUSE MY DOG
15 HAS STARTED SCRATCHING AND FOR SOME REASON THE CAR -- THE
16 MOVIE STOPPED. (VIDEOTAPE PAUSED.)

17 Q. I STOPPED IT.

18 A. MY DOG HAD STARTED SCRATCHING ON THE SIDE OF THE
19 CAR. YOU SEE ME, I HAD TO KIND OF GO BACK. I HAD THE
20 LEASH IN MY HAND, AND HE HAD COMPLETELY STOPPED AND THERE
21 WAS TENSION ON THE LEASH. RIGHT HERE I'M GIVING HIM A
22 LOT OF PRAISE, HE'S PLAYING, AND WE'RE GOING BACK TO THE
23 CAR.

24 Q. ALL RIGHT. SO IT'S NOW 19:30:00. THAT'S THE
25 FIRST REVOLUTION FOR THE CAR. IT'S A REPLAY?

1 A. YES.

2 Q. ALL RIGHT. NOW, AT THAT POINT YOU SAID HE
3 STOPPED. IT DOESN'T APPEAR THAT HE STOPPED THE FIRST
4 TIME.

5 A. BACK HERE IN THE BACK LEFT PORTION OF THE DOOR, I
6 GOT A QUICK HEAD TURN, THEN HE WENT BACK TO THAT DOOR.
7 SO I SLOWED DOWN AND HE CAME BACK TO ME. THIS TIME HE
8 CAME BACK TO THAT DOOR AGAIN AND HE STOPPED ON HIS OWN
9 AND STARTED SCRATCHING.

10 Q. SO IT'S 19:36?

11 A. 19:30.

12 Q. 19:30:06?

13 A. OKAY.

14 Q. AND APPROXIMATELY DO YOU RECALL HOW LONG AFTER YOU
15 PUT THE DOG BACK IN THE CAR THAT YOU HEARD FROM DISPATCH?

16 A. ABOUT MAYBE A MINUTE OR SO LATER.

17 Q. A MINUTE OR SO LATER. ALL RIGHT. YOU MAY RETAKE
18 THE STAND. (WITNESS RESUMES STAND.)

19 BY MS. MANIGAULT:

20 Q. ALL RIGHT. WHEN YOU GET BACK INTO THE CAR, THIS
21 IS THE POINT WHERE YOU HEAR FROM DISPATCH AND YOU
22 COMPLETE WRITING YOUR CITATION TICKET?

23 A. RIGHT. I BELIEVE -- LET ME DOUBLE-CHECK.

24 I GOT BACK IN MY VEHICLE AND I WAS JUST WAITING TO
25 HEAR FROM DISPATCH.

1 Q. ALL RIGHT. AND DID YOU HAVE AN ADDITIONAL
2 CONVERSATION WITH RAHIEM KIRKMAN AT THAT POINT?

3 A. I JUST TOLD RAHIEM THAT I WAS WAITING FOR
4 INFORMATION TO COME BACK FROM DISPATCH.

5 Q. THAT'S THE POINT WHERE YOU TOLD HIM THAT YOUR DOG
6 ALERTED ON THE CAR?

7 A. NOT YET. THAT'S WHEN DISPATCH TOLD ME THE LICENSE
8 WAS CLEAR. THAT'S WHEN I SAID, THIS IS JUST A WARNING
9 CITATION, YOU'LL HAVE NO POINTS ON YOUR DRIVER'S LICENSE,
10 THERE'S NO COURT, NO FINE. I HAD ALL THE INFORMATION IN
11 MY HAND. THAT'S WHEN I ASKED HIM IF THERE WAS ANY REASON
12 FOR MY DOG TO GIVE ME A POSITIVE INDICATION FOR THE ODOR
13 OF NARCOTICS. I JUST WENT STRAIGHT INTO IT.

14 Q. SO YOU TOLD HIM HIS LICENSE HAS CLEARED, YOU
15 FINISH THE CITATION, YOU HAVE THE CITATION AND LICENSE IN
16 YOUR HAND, AND BEFORE YOU HANDED IT OFF YOU ASKED HIM,
17 WAS THERE ANY REASON WHY YOUR DOG ALERTED ON HIS CAR?

18 A. THAT'S RIGHT.

19 Q. THAT'S WHEN HE SAID THE DOG DID NOT ALERT?

20 A. NO. AT THAT TIME THAT'S WHEN HE SAID NOT THAT HE
21 KNEW OF.

22 AND THAT'S WHEN I ASKED HIM IF HE HAD ANY
23 NARCOTICS, WEAPONS, OR LARGE SUMS OF CURRENCY INSIDE THE
24 VEHICLE.

25 Q. SO AT THAT POINT YOU WERE DETAINING HIM FOR

1 QUESTIONING UNRELATED TO THE STOP?

2 A. THAT'S RIGHT.

3 Q. AND IT WAS AT THIS POINT -- WHICH POINT DID HE SAY
4 HE WANTED TO LEAVE AND GIVE HIM HIS STUFF BACK?

5 A. IT WAS I BELIEVE AFTER MY PARTNER ARRIVED, AND --
6 I HAVE TO REFER BACK TO MY REPORT JUST TO MAKE SURE.

7 HE SAID THAT WHEN HE SAW DEPUTY MIZE WALKING UP TO
8 MY VEHICLE, THAT'S WHEN HE TOLD ME THAT I WASN'T GONNA
9 SEARCH HIS VEHICLE AND HE ASKED FOR HIS DRIVER'S LICENSE
10 AND HE STATED HE WANTED TO LEAVE.

11 Q. I CAN'T RECALL ON THE VIDEO THAT WE REVIEWED
12 YESTERDAY, DID IT SHOW WHERE DEPUTY MIZE CAME UP?

13 A. IT DOES NOT.

14 Q. IT DOES NOT?

15 A. NO.

16 Q. AND WHEN DEPUTY MIZE CAME UP, WAS HE IN A REGULAR
17 PATROL CAR OR UNMARKED CAR?

18 A. HE WAS IN A REGULAR PATROL CAR.

19 Q. AND WAS HE DRESSED IN UNIFORM?

20 A. HE WAS.

21 Q. AND YOU WERE DRESSED IN UNIFORM THAT DAY?

22 A. THAT'S RIGHT.

23 Q. AND YOU WERE IN A PATROL CAR?

24 A. THAT'S RIGHT.

25 Q. SO YOU HAD BEEN BACK IN THE CAR, WHAT, THREE OR

1 MORE MINUTES BEFORE DEPUTY MIZE SHOWED UP?

2 A. PROBABLY NOT THAT LONG. JUST A COUPLE MINUTES.

3 Q. A COUPLE MINUTES. SO YOUR BASIS FOR THE STOP HAD
4 BEEN COMPLETED; IS THAT RIGHT?

5 A. THAT'S RIGHT.

6 Q. AND THAT'S WHEN YOU STARTED ADDITIONAL QUESTIONING
7 ABOUT THE DOG ALERTING?

8 A. ABOUT?

9 Q. ABOUT YOUR DOG ALERTING ON THE CAR?

10 A. YES, MA'AM.

11 Q. AND AT SOME POINT MR. KIRKMAN DID NOT OR REFUSED
12 TO GIVE YOU CONSENT, ASKED IF HE COULD LEAVE; IS THAT
13 RIGHT?

14 A. THAT'S RIGHT.

15 Q. AND YOU TOLD HIM THAT HE COULD NOT?

16 A. UM...

17 Q. THAT YOU WERE GONNA SEARCH HIS CAR?

18 A. YES, MA'AM, I DID TELL HIM THAT.

19 **MS. MANIGAULT:** ALL RIGHT. THANK YOU.

20 **THE COURT:** ALL RIGHT. HAVE YOU COMPLETED YOUR
21 CROSS?

22 **MS. MANIGAULT:** YES, SIR.

23 **THE COURT:** ANY REDIRECT?

24 **MR. CAMPBELL:** YES, YOUR HONOR.

25 REDIRECT EXAMINATION BY MR. CAMPBELL:

1 Q. NOW, DEPUTY CRAWFORD, THE VEHICLE YOU WERE IN BACK
2 ON AUGUST THE 22ND, 2006, WAS THAT AN OLD PATROL CAR OR A
3 NEW PATROL CAR?

4 A. IT WAS AN OLD PATROL CAR.

5 Q. AND DO YOU PERSONALLY PROVIDE THE CAMERA THAT'S IN
6 YOUR VEHICLE?

7 A. NO, I DID NOT.

8 Q. OKAY. AND THERE'S SOME QUESTIONS ON
9 CROSS-EXAMINATION ABOUT THE AUDIO. YOUR AUDIO WAS NOT
10 WORKING?

11 A. THAT'S RIGHT.

12 Q. DID YOU DO ANYTHING PRIOR TO THAT DAY IN REGARDS
13 TO THE AUDIO?

14 A. I, I HAD TRIED TO GET A NEW CAMERA SYSTEM
15 INSTALLED, TRIED TO GET THAT FIXED, BUT IT WAS ...

16 Q. WHO PROVIDES THOSE CAMERAS TO YOU, TO THE
17 DEPARTMENT?

18 A. A LOT OF TIMES THE STATE DOES.

19 Q. AND DID YOU BRING THIS TO THE ATTENTION OF YOUR
20 SUPERVISOR THAT YOUR AUDIO WAS NOT WORKING?

21 A. I DID.

22 Q. AND TODAY DO YOU HAVE A NEW SYSTEM?

23 A. I DO.

24 Q. NOW, BASED ON YOUR TRAINING AND EXPERIENCE, WAS
25 THIS TRAFFIC STOP ANY DIFFERENT THAN ANY OTHER TRAFFIC

1 STOP YOU HAVE CONDUCTED, DEALING WITH TIME?

2 A. THE TIME?

3 Q. YES, SIR.

4 A. NO, NOT REALLY. I MEAN, IT'S JUST -- WE CAN'T
5 CONTROL WHAT HAPPENS IN DISPATCH. WHEN WE ASK FOR
6 SOMETHING, SOME INFORMATION, I MEAN, THAT'S...

7 Q. WAS DISPATCH BUSY THAT DAY?

8 A. THEY'RE ALWAYS BUSY.

9 Q. AND BASED UPON WHAT WAS OBSERVED, AS MS. MANIGAULT
10 HAS SHOWED, FROM THE TIME OF THE STOP WHEN YOU ASKED HIM
11 BACK TO YOUR CAR TO THE TIME YOU PUT THE DOG BACK IT WAS
12 ABOUT FIVE MINUTES; IS THAT RIGHT?

13 A. MAYBE NOT. I DON'T THINK IT'S EVEN THAT LONG.

14 Q. AND IS THAT ABOUT A NORMAL TIME FRAME WHEN YOU DO
15 CONDUCT A TRAFFIC STOP?

16 A. YES, SIR.

17 Q. REGARDING THAT DAY DID YOU SEARCH ANY OTHER
18 VEHICLES THAT DAY?

19 A. NONE.

20 Q. DO YOU NORMALLY SEARCH EVERY VEHICLE THAT YOU
21 STOP?

22 A. NO.

23 Q. AND HOW DO YOU DECIDE OR MAKE YOUR DECISION TO
24 SEARCH A VEHICLE?

25 A. WE SEARCH VEHICLES BASED ON INDICATORS OF CRIMINAL

1 ACTIVITY.

2 Q. AND DO YOU SEARCH A VEHICLE BASED UPON RACE?

3 A. NO.

4 Q. GENDER?

5 A. NO.

6 Q. HOW OLD A PERSON IS?

7 A. NO.

8 Q. WHAT DO YOU USE YOUR BASIS TO SEARCH A VEHICLE?

9 A. I KNOW IT'S A BROAD ANSWER, BUT INDICATORS OF
10 CRIMINAL ACTIVITIES. YOU GOT MULTIPLE CELL PHONES, YOU
11 GOT BEHAVIOR FROM -- EVERYBODY GETS NERVOUS WHEN THE
12 POLICE GETS BEHIND THEM. I KNOW I DO AND Y'ALL PROBABLY
13 DO, TOO. OVERLY NERVOUS, APOLOGETIC FOR WHY I STOPPED
14 HIM; WANTED TO KNOW WHAT HE COULD DO TO FIX THE PROBLEM,
15 THE INFRACTION.

16 ONCE WE GOT IN MY VEHICLE I NOTICED THE LABORED
17 BREATHING, THE CAROTID ARTERY PULSATING, THE STORY WHICH
18 DIDN'T MAKE ANY SENSE; ALL OF THOSE COUPLED WITH THE FACT
19 MY DOG INDICATED ON THE CAR, THAT JUST -- I MEAN, YOU GOT
20 ALL THOSE INDICATORS, YOU KNOW, THAT'S OVERWHELMING.

21 Q. AND ON THAT DAY HAD YOU STOPPED ANY VEHICLES PRIOR
22 TO STOPPING MR. KIRKMAN?

23 A. I HAD.

24 Q. AND DID YOU SEARCH ANY OF THOSE VEHICLES?

25 A. I DID NOT.

1 Q. AND WHILE YOU WERE TALKING TO HIM INSIDE YOUR CAR,
2 YOU WERE STILL WAITING ON DISPATCH TO COME BACK WHETHER
3 HIS DRIVER'S LICENSE WAS CLEAR?

4 A. THE INITIAL CONVERSATION WAS I ASKED HIM WHERE HE
5 WAS GOING AND WHERE HE WAS COMING FROM. I WAS ACTUALLY
6 WRITING THE CITATION WHILE I WAS TALKING WITH HIM.
7 SORRY.

8 Q. GO AHEAD.

9 A. ONCE THAT WAS DONE, I HAD ASKED FOR DISPATCH TO
10 CHECK HIS INFORMATION. AT THAT POINT IS WHEN I GOT MY
11 CANINE OUT.

12 Q. AND DID YOU DEPLOY YOUR CANINE OR SEARCH ON ANY
13 OTHER CAR THAT DAY?

14 A. NO.

15 Q. AND DO YOU NORMALLY PULL YOUR DOG OUT TO GO AROUND
16 THE CAR ON ALL YOUR TRAFFIC STOPS?

17 A. NO.

18 Q. AND IS IT YOUR PROCEDURE, DO YOU NORMALLY ASK THEM
19 AFTER YOU HAVE THE INDICATORS WHETHER THEY HAVE ANY
20 DRUGS, GUNS, MONEY IN THEIR CAR?

21 A. THAT'S RIGHT, WE DO.

22 Q. AND DID YOU DO THAT IN THIS CASE?

23 A. I DID.

24 Q. AND WHAT WAS HIS RESPONSE?

25 A. HIS RESPONSE WAS THAT HE HAD \$18,000 IN THE BACK

1 SEAT IF I WANTED IT.

2 Q. WAS THAT A NORMAL RESPONSE THAT YOU NORMALLY GET?

3 A. THAT IS NOT.

4 Q. AND YOU NEVER ACTUALLY GOT TO FINISH DOING THE
5 SEARCH WITH MR. KIRKMAN PRESENT, DID YOU?

6 A. NO.

7 Q. AND WHY WAS THAT?

8 A. BECAUSE HE FLED ON FOOT.

9 Q. AND YOU DIDN'T CATCH HIM THAT DAY, DID YOU?

10 A. NO.

11 MR. CAMPBELL: I HAVE NO FURTHER QUESTIONS.

12 THE COURT: RECROSS?

13 MS. MANIGAULT: NOTHING, YOUR HONOR.

14 THE COURT: YOU MAY STEP DOWN. THANK YOU, SIR.

15 (WHEREUPON, THE WITNESS WAS EXCUSED.)

16 THE COURT: WOULD COUNSEL APPROACH, PLEASE?

17 (DISCUSSION AT SIDE-BAR.)

18 THE COURT: ALL RIGHT. YOU MAY CALL YOUR NEXT
19 WITNESS.

20 MR. CAMPBELL: YOUR HONOR, THE STATE CALLS DEPUTY
21 CRAIG MIZE TO THE STAND, PLEASE.

22 (WHEREUPON, THE WITNESS WAS SWORN BY THE
23 CLERK.)

24 THE CLERK: PLEASE STATE YOUR FULL NAME AND SPELL
25 YOUR LAST NAME FOR THE RECORD.

1 **THE WITNESS:** CRAIG R. MIZE, SPELLING M-I-Z-E.

2 WHEREUPON,

3 CRAIG R. MIZE,

4 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

5 DIRECT EXAMINATION BY MR. CAMPBELL:

6 Q. DEPUTY MIZE, WHERE ARE YOU EMPLOYED?

7 A. ANDERSON COUNTY SHERIFF'S OFFICE.

8 Q. HOW LONG HAVE YOU BEEN EMPLOYED THERE?

9 A. NINE YEARS.

10 Q. AND ARE YOU ALSO INVOLVED WITH THE A.C.E. TEAM?

11 A. YES, SIR, ALONG WITH OTHER DUTIES.

12 Q. AND WHAT TYPE OF TRAINING AND EXPERIENCE DO YOU
13 HAVE REGARDING THE A.C.E. TEAM?

14 A. THE A.C.E. TEAM IS MULTIFACETED. WE DO, WE DO, WE
15 WORK HIGH CRIME AREAS ALONG WITH TRAFFIC HIGH-RISK SEARCH
16 WARRANTS, ASSIST NARCOTICS. SO HUNDREDS IF NOT THOUSANDS
17 OF HOURS OF DIFFERENT TYPES OF TRAINING.

18 Q. HAVE YOU GONE TO SCHOOL FOR NARCOTIC DETECTION?

19 A. YES, SIR.

20 Q. WHAT TYPE OF SCHOOL OR TRAINING HAVE YOU HAD?

21 A. PROBABLY ROUGHLY A HUNDRED HOURS OF PROBABLY
22 CANINE ACTUAL TRAINING, EXPERT TRAINING; ALONG WITH MY
23 TRAINING ALONG WITH DEPUTY CRAWFORD'S LIKE HE STATED
24 EARLIER. WE DO TRAIN WEEKLY OR AT LEAST TWICE A MONTH.

25 Q. AND DO YOU TRAIN WITH DEPUTY CRAWFORD?

1 A. I DO.

2 Q. AND YOU ARE ALSO A CANINE OFFICER?

3 A. YES, SIR, I AM.

4 Q. AND WERE YOU A CANINE OFFICER ON AUGUST 22ND,
5 2006?

6 A. YES, SIR.

7 Q. AND ON THAT DAY WERE YOU WORKING THE INTERSTATE?

8 A. YES, SIR.

9 Q. NOW, YOU DON'T RIDE WITH DEPUTY CRAWFORD?

10 A. NO, SIR. WE PATROLLED IN SEPARATE VEHICLES IN
11 CLOSE PROXIMITY TO EACH OTHER.

12 Q. AND ON THAT DAY WHAT SHIFT WERE Y'ALL WORKING? DO
13 YOU RECALL?

14 A. WE DON'T ACTUALLY WORK A *PER SE* FIRST OR SECOND
15 SHIFT. WE KIND OF FLUCTUATE OUR HOURS. BUT AT THAT TIME
16 WE WERE WORKING A LATE EVENING SHIFT.

17 Q. AND WHAT LANE OF TRAFFIC WERE YOU WORKING THAT
18 DAY?

19 A. I BELIEVE AT THE TIME OF HIS STOP, IF I'M NOT
20 MISTAKEN, I WAS WORKING THE SOUTHBOUND LANE.

21 Q. DO YOU NORMALLY TAKE A DIFFERENT SIDE OF THE
22 INTERSTATE?

23 A. WE, WE WILL, YES, SIR.

24 Q. AND ON THAT DAY -- YOU WEREN'T WORKING THE SAME
25 LANE THAT HE WAS WORKING --

1 A. NO, SIR.

2 Q. -- THE SAME SIDE OF THE INTERSTATE?

3 A. NO, SIR.

4 Q. AND THE SOUTHBOUND SIDE, WHICH DIRECTION IS THAT
5 GOING?

6 A. THE SOUTHBOUND IS GOING TOWARD FLORIDA.

7 Q. AND ON THAT DAY DID YOU HAVE AN OCCASION TO BACK
8 UP DEPUTY CRAWFORD AT A TRAFFIC STOP?

9 A. YES, I DID.

10 Q. NOW, PRIOR TO THAT, DID YOU KNOW THAT HE HAD MADE
11 A TRAFFIC STOP?

12 A. I'M SURE I KNEW OF HIS TRAFFIC STOP DUE TO HIS
13 RADIO TRAFFIC. LIKE I SAID, PART OF OUR JOB IS TO, FOR
14 LACK OF A BETTER WORD, PROTECT EACH OTHER. THAT'S WHY WE
15 WORK IN A CLOSE PROXIMITY TO EACH OTHER. SO, YEAH, I'M
16 SURE I KNEW HE WAS ON A TRAFFIC STOP AS WELL AS HE KNOWS
17 WHEN I'M ON A TRAFFIC STOP.

18 Q. AND PRIOR TO THAT HAD YOU MADE ANY TRAFFIC STOPS
19 THAT DAY?

20 A. YES.

21 Q. AND YOU YOURSELF, DID YOU SEARCH ANY VEHICLES THAT
22 DAY?

23 A. NO, SIR, I DON'T THINK SO.

24 Q. DID YOU DEPLOY YOUR CANINE THAT DAY?

25 A. NO, SIR.

1 Q. DO YOU NORMALLY DEPLOY YOUR CANINE ON ALL YOUR
2 TRAFFIC STOPS?

3 A. NO, SIR.

4 Q. AND WHAT DO YOU BASE IT ON?

5 A. WELL, IT'S BASED ON SEVERAL, LIKE HE STATED
6 EARLIER, INDICATORS FROM THE DRIVER OR PASSENGERS INSIDE
7 A VEHICLE. TRAINING AND EXPERIENCE. WHAT THE JURY
8 REALLY DOESN'T UNDERSTAND IS THAT WE STOP HUNDREDS OF
9 CARS A WEEK. WHAT'S NERVOUS TO SOMEBODY, OVERLY NERVOUS
10 IS A TOTALLY DIFFERENT THING TO US. I MEAN, IF THERE'S,
11 IF YOU ARE UPSET OR A LITTLE SHAKEN OR SOMETHING, IT'S
12 EVEN, THAT'S JUST, THAT'S JUST NERVOUS.

13 WE'VE HAD, I'VE HAD PEOPLE A LOT OF TIMES THAT WE
14 DEAL WITH WHICH IS A GREAT INDICATOR, WE'VE HAD THEM PASS
15 OUT WHILE WE INTERVIEW THEM THEY JUST PASS OUT. SO ANY
16 TYPE OF INDICATORS, WE'RE TRAINED TO NOTICE ANY TYPE OF
17 ABNORMAL BEHAVIOR IN A PERSON, READ THEIR BODY LANGUAGE.

18 Q. DO YOU NORMALLY EXPECT PEOPLE TO BE NERVOUS DURING
19 YOUR TRAFFIC STOPS?

20 A. TO A SMALL DEGREE, YES.

21 Q. NOW, ON OCTOBER [SIC] THE 22ND, 2006, DID YOU GO
22 TO BACK HIM UP DEALING WITH THIS TRAFFIC STOP WE ARE
23 DEALING HERE TODAY ABOUT?

24 A. YES, I DID.

25 Q. AND PRIOR TO THAT YOU WERE ON THE SOUTHBOUND SIDE?

1 A. THAT'S CORRECT.

2 Q. ABOUT WHAT MILE MARKER DID YOU GO TO?

3 A. IF I'M WORKING THE SOUTHBOUND SIDE, GENERALLY I
4 WORK FROM ROUGHLY THE 10 DOWN TO THE FOUR-MILE MARKER.

5 Q. AND DID YOU GO TO BACK HIM UP THAT DAY, YOU DID?

6 A. I DID.

7 Q. AND HOW WERE YOU DRESSED THAT DAY?

8 A. I WAS DRESSED IN WHAT WE CALL, IT'S A GREEN D.B.U.
9 TYPE UNIFORM, IT'S MORE OF A UTILITY TYPE, CANINE-SUITED
10 UNIFORM.

11 Q. DOES IT SHOW THAT YOU ARE A DEPUTY SHERIFF?

12 A. YES, IT DOES. IT'S MARKED ON THE BACK AND THE
13 PROPER EMBLEMS ON THE FRONT.

14 Q. AND HOW ABOUT YOUR CAR? WHAT KIND OF CAR WERE YOU
15 DRIVING THAT DAY?

16 A. IT WAS A FULLY MARKED PATROL VEHICLE, BLACK IN
17 COLOR.

18 Q. BLUE LIGHTS?

19 A. YES, SIR.

20 Q. WAS IT ONE OF THE OLDER BLACK UNITS --

21 A. YES, SIR.

22 Q. -- OR WAS IT ONE OF THE OLDER WHITE MODELS?

23 A. IT WAS A BLACK OLDER MODEL.

24 Q. AND WAS YOUR CAR ALSO EQUIPPED WITH A CAMERA?

25 A. YES.

1 Q. AND WHEN YOU ARRIVED, CAN YOU JUST TELL THE LADIES
2 AND GENTLEMEN OF THE JURY WHAT YOU OBSERVED WHEN YOU
3 ARRIVED?

4 A. UPON MY ARRIVAL DEPUTY CRAWFORD HAD MR. KIRKMAN
5 ALREADY INSIDE HIS PATROL CAR CONDUCTING HIS, I GUESS,
6 INTERVIEW AND DOING THE PAPER, WHAT WE CALL THE
7 PAPERWORK, WRITING THE CITATION OUT.

8 COMMON PRACTICE FOR US WHEN WE CHECK ON EACH
9 OTHER, GENERALLY WHAT I'LL DO IS WALK UP AND JUST STAND
10 BESIDE HIS PATROL CAR. I DON'T REALLY INTERFERE WITH HIS
11 TRAFFIC STOP. I JUST KIND OF MAKE A PRESENCE. AS HE
12 DOES ALSO FOR ME.

13 Q. AND DID YOU HAVE ANY CONTACTS WITH THE INDIVIDUAL
14 THAT MR., DEPUTY CRAWFORD HAD IN HIS CAR?

15 A. AS I WAS APPROACHING THE PASSENGER'S SIDE OF THE
16 VEHICLE, I WOULD SAY I WAS PROBABLY AT THE TRUNK AREA OF
17 DEPUTY CRAWFORD'S VEHICLE WHEN MR. KIRKMAN OPENED HIS
18 DOOR AND TOOK OFF.

19 Q. WHEN HE TOOK OFF, WHAT WAS HE DOING?

20 A. HE WAS RUNNING.

21 Q. AND DID YOU GIVE CHASE?

22 A. YES.

23 Q. DID YOU CATCH HIM?

24 A. NO, SIR.

25 Q. HE OUTRAN BOTH OF Y'ALL?

1 A. YES, SIR, FOR A SHORT TIME.

2 Q. NOW, DID YOU GET A GOOD LOOK AT HIM THAT DAY?

3 A. YES, SIR.

4 Q. AND ON OCTOBER [SIC] 22ND, 2006, DID YOU HAVE ANY
5 FURTHER CONTACT WITH MR. KIRKMAN?

6 A. I DID. I BELIEVE YOU ARE REFERRING TO WHEN
7 OFFICER, DEPUTY BROCK ACTUALLY TOOK THE SUBJECT INTO
8 CUSTODY. THAT WAS THE NEXT TIME I SAW HIM.

9 Q. OKAY, THAT WAS THE NEXT TIME. THAT WAS THE NEXT
10 DAY, RIGHT?

11 A. RIGHT.

12 Q. BUT ON THAT DAY, OCTOBER 22ND, YOU HAD NO FURTHER
13 CONTACT WITH MR. KIRKMAN?

14 A. NOT, NOT ACTUALLY FACE-TO-FACE. WE DID MAKE
15 SEVERAL ATTEMPTS TO LOCATE HIM BY RUNNING DOG TRACKS AND
16 THINGS SUCH AS THAT, BUT NO, I DID NOT MAKE ANY CONTACT
17 WITH HIM.

18 Q. NOW, DID YOU DO ANYTHING ELSE REGARDING THIS
19 TRAFFIC STOP, YOU YOURSELF?

20 A. AFTER ASSISTING HIM IN AN ATTEMPT TO LOCATE
21 MR. KIRKMAN, I ASSISTED DEPUTY CRAWFORD IN THE SEARCH OF
22 THE VEHICLE.

23 Q. AND WERE YOU PRESENT IN THE COURTROOM YESTERDAY?

24 A. I WAS.

25 Q. COULD YOU OBSERVE THE VIDEO OF THE TRAFFIC STOP?

1 A. I DID, YES, SIR.

2 Q. (VIDEO PLAYING) WAS THAT YOU ALSO IN THE VIDEO?

3 A. YES, SIR. THAT WAS ME IN THE GREEN, WHAT I CALL
4 D.B. UNIFORM, OR THE GREEN UNIFORM.

5 Q. AND YOU YOURSELF ALSO HELPED DEPUTY CRAWFORD PULL
6 OUT THAT BLACK BAG OUT OF THE TRUNK?

7 A. THAT'S CORRECT.

8 Q. NOW, AFTER YOU PULLED OUT THE BAG, WHAT, IF
9 ANYTHING, DID YOU FIND?

10 A. INSIDE THE BAG ONCE WE UNZIPPED IT, WE FOUND THE
11 TEN PACKAGES WRAPPED IN PLASTIC, IT APPEARED THAT THEY
12 WERE TAPED IN EITHER BLACK DUCT TAPE OR BLACK ELECTRICAL
13 TAPE AND THEN SEALED IN SARAN PLASTIC.

14 Q. AND THAT'S YOU ON THE VIDEO PUTTING THEM ON THE
15 HOOD OF THE CAR?

16 A. YES, IT IS.

17 Q. NOW, AFTER THAT, THE TRAFFIC STOP WAS OVER AT THAT
18 POINT IN TIME; IS THAT RIGHT?

19 A. AT THE TIME OF THE SEARCH, YES, SIR.

20 Q. AND WHAT, IF ANYTHING, DID YOU ALL DO WITH THE
21 CAR?

22 A. THE CAR WAS -- IT WAS EVENTUALLY TRANSPORTED TO
23 THE SHERIFF'S OFFICE.

24 Q. AND BY WHAT MEANS WAS IT TRANSPORTED?

25 A. IF I'M NOT MISTAKEN, IT WAS TOWED BY OUR WRECKER

1 SERVICE.

2 Q. AND AFTER THAT DAY, DID YOU -- WHEN WAS THE NEXT
3 TIME YOU HAD AN INVOLVEMENT IN THIS CASE?

4 A. WELL, WE, WE APPROACHED THE VEHICLE AGAIN LATER ON
5 THAT NIGHT TO DO WHAT WE CONSIDERED TO BE A MORE THOROUGH
6 SEARCH, AND TURNED UP NO OTHER NARCOTICS. WE DID LOCATE
7 THE HIDDEN COMPARTMENT INSIDE THE VEHICLE, BUT WE DIDN'T
8 TURN UP ANY OTHER NARCOTICS OR...

9 Q. NOW, THE NEXT DAY, OCTOBER [SIC] 23RD, 2006, DID
10 YOU GO BACK AND RESUME YOUR REGULAR DUTIES?

11 A. NOT MY REGULAR DUTIES. I GOT UP EXTRA EARLY AND
12 WENT OUT ON THE INTERSTATE PATROLLING IN AN ATTEMPT TO
13 LOCATE MR. KIRKMAN.

14 Q. SO THE SHERIFF'S DEPARTMENT WAS STILL LOOKING FOR
15 HIM?

16 A. YES, SIR.

17 Q. AND WHAT, IF ANYTHING -- DID YOU HAVE ANY OTHER
18 CONTACT WITH MR. KIRKMAN?

19 A. A SHORT TIME. AND DEPUTY BROCK I'M SURE WILL HAVE
20 HIS PAPERWORK THAT I DON'T HAVE IN FRONT OF ME. BUT I
21 WOULD, JUST A GUESSTIMATE, I WOULD SAY MAYBE BETWEEN 7:00
22 AND 8:00. I HEARD ON THE RADIO THAT A CITIZEN HAD
23 POSSIBLY SPOTTED A SUSPICIOUS PERSON MEETING
24 MR. KIRKMAN'S CLOTHING DESCRIPTION ESPECIALLY. HE HAD ON
25 A REAL BRIGHT PAIR OF YELLOW SHORTS WHICH WAS ALMOST --

1 YOU COULDN'T HARDLY MISS THEM. AND THIS COMPLAINANT WHO
2 CALLED IN SAID THAT HE WAS I BELIEVE JUST OFF THE
3 INTERSTATE USING A PHONE OR SOMETHING, OR SOMETHING TO
4 THAT NATURE.

5 Q. AND AS A RESULT OF THAT, WHAT DID YOU DO?

6 A. I WAS ALREADY IN THE GENERAL AREA, SO I WENT TO
7 THAT DIRECTION. PRIOR TO ME GETTING ON LOCATION, DEPUTY
8 BROCK, ALONG WITH ANOTHER OFFICER, HAD, I BELIEVE, GOT
9 INFORMATION THAT THIS SUBJECT HAD, HAD GOT INTO A VEHICLE
10 AND WAS ACTUALLY ATTEMPTING TO GET BACK ON THE
11 INTERSTATE.

12 Q. AND HIS VEHICLE WAS EVENTUALLY STOPPED; IS THAT
13 RIGHT?

14 A. IT WAS.

15 Q. AND DID YOU GO TO WHERE THIS VEHICLE WAS?

16 A. I DID.

17 Q. AND AT THAT POINT IN TIME WERE YOU ABLE TO
18 IDENTIFY THE INDIVIDUALS IN THE CAR?

19 A. YES, I WAS. DEPUTY BROCK ALONG WITH HIS ASSISTANT
20 THERE HAD HIM IN CUSTODY.

21 Q. AND WHO DID YOU SEE THAT DAY ON THE 23RD OF
22 AUGUST?

23 A. IT WAS MR. KIRKMAN.

24 Q. WERE YOU ABLE TO POSITIVELY IDENTIFY HIM?

25 A. YES, I POSITIVELY IDENTIFIED HIM FOR DEPUTY BROCK.

1 (STATE'S EX. # 7, PHOTOGRAPH OF RAHIEM
2 KIRKMAN, WAS MARKED FOR IDENTIFICATION.)

3 BY MR. CAMPBELL:

4 Q. DEPUTY MIZE, I'M GONNA SHOW YOU WHAT'S BEEN MARKED
5 FOR IDENTIFICATION STATE'S EXHIBIT NUMBER SEVEN. CAN YOU
6 PLEASE IDENTIFY WHAT THIS IS, SIR?

7 A. YES, SIR. THAT'S A PHOTO OF RAHIEM KIRKMAN.

8 Q. IS THAT THE INDIVIDUAL YOU SAW ON AUGUST 22ND AND
9 23RD, 2006?

10 A. IT IS.

11 MR. CAMPBELL: YOUR HONOR, AT THIS TIME I ASK TO
12 MOVE THIS IN AS STATE'S EXHIBIT NUMBER SEVEN AND PUBLISH
13 IT TO THE JURY.

14 THE COURT: ANY OBJECTION?

15 MS. MANIGAULT: NONE, YOUR HONOR.

16 THE COURT: WITHOUT OBJECTION STATE'S EXHIBIT NUMBER
17 SEVEN IS ADMITTED INTO EVIDENCE.

18 (STATE'S EXHIBIT # 7 WAS RECEIVED IN
19 EVIDENCE.)

20 BY MR. CAMPBELL:

21 Q. AND THIS PHOTOGRAPH DEPICTS, FAIRLY AND ACCURATELY
22 REPRESENTS AND SHOWS MR. KIRKMAN; IS THAT RIGHT?

23 A. IT IS.

24 Q. AND AFTER THAT, YOU HAD NO FURTHER INVOLVEMENT --
25 DID YOU HAVE ANY FURTHER INVOLVEMENT IN THIS CASE?

1 A. I ASSISTED DEPUTY CRAWFORD PRIOR TO HIM GETTING
2 INTO CUSTODY WITH EVIDENCE AND THINGS SUCH AS THAT.

3 Q. BUT AFTER THAT, AFTER HIS ARREST DID YOU HAVE ANY
4 OTHER INVOLVEMENT?

5 A. NO, SIR.

6 **MR. CAMPBELL:** DEPUTY MIZE, I HAVE NO OTHER
7 QUESTIONS. PLEASE ANSWER ANY QUESTIONS MS. MANIGAULT
8 MIGHT HAVE.

9 **THE COURT:** CROSS-EXAMINATION.

10 **MS. MANIGAULT:** JUST A COUPLE QUESTIONS, YOUR HONOR.
11 CROSS-EXAMINATION BY MS. MANIGAULT:

12 Q. DEPUTY, I BELIEVE YOU SAID YOU HAD NO CONTACT WITH
13 RAHIEM KIRKMAN, YOU JUST STOOD BESIDE THE CAR OF DEPUTY
14 CRAWFORD?

15 A. NO VERBAL CONTACT.

16 Q. NO VERBAL CONTACT?

17 A. I'M SURE I PROBABLY HOLLERED AT HIM AS HE WAS
18 RUNNING, BUT I HAD NO CONVERSATION WITH HIM.

19 Q. WHEN YOU WALKED UP TO THE CAR, DID YOU HAVE ANY
20 INITIAL CONTACT WITH RAHIEM KIRKMAN?

21 A. NO, MA'AM.

22 Q. OKAY. YOU SAID YOU ASSISTED WITH THE SEARCH OF
23 THE VEHICLE?

24 A. YES, MA'AM.

25 Q. DO YOU RECALL HOW MANY TRAFFIC STOPS YOU HAD MADE

1 THAT DAY, AUGUST 22ND, 2006?

2 A. NO, MA'AM. I DON'T HAVE MY TRAFFIC BOOK IN FRONT
3 OF ME. I MEAN, I CAN GIVE YOU ESTIMATES, BUT THAT'S ALL
4 THEY WOULD BE IS JUST ROUGH ESTIMATES.

5 Q. OKAY. BUT YOU RECALL THAT YOU SAID YOU MADE A
6 STOP THAT DAY?

7 A. YES, MA'AM.

8 Q. AND THAT YOU DID YOU SEARCH ANY -- YOU YOURSELF
9 DID NOT SEARCH ANY VEHICLES?

10 A. NO, MA'AM.

11 Q. AND DID NOT DEPLOY YOUR DOG TO SEARCH VEHICLES?

12 A. NO, MA'AM.

13 **MS. MANIGAULT:** NO FURTHER QUESTIONS, YOUR HONOR.

14 **THE COURT:** RE-EXAM?

15 **MR. CAMPBELL:** THE STATE HAS NO FURTHER QUESTIONS
16 FOR THIS WITNESS.

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

18 (WHEREUPON, THE WITNESS WAS EXCUSED.)

19 **THE COURT:** CALL YOUR NEXT WITNESS.

20 I'LL TELL YOU WHAT. APPROACH. LET ME SEE WHAT WE
21 HAVE.

22 (DISCUSSION AT SIDE-BAR.)

23 **THE COURT:** MR. FOREMAN, LADIES AND GENTLEMEN OF THE
24 JURY, I THINK THIS WOULD BE A GOOD TIME TO TAKE A BREAK.
25 DOCTOR, IF YOU WOULD SEE THAT THEY'VE GOT REFRESHMENTS.

1 AND WHEN YOU ARE READY TO COME BACK, JUST KNOCK ON THE
2 DOOR AND WE'LL COME BACK AND CONTINUE WITH THE TRIAL.
3 AGAIN, DO NOT UNDERTAKE DISCUSSIONS AMONG YOURSELVES IN
4 ANY WAY.

5 EVERYONE ELSE REMAIN SEATED WHILE THE JURY RETIRES
6 FROM THE COURTROOM.

7 (WHEREUPON, THE JURY LEFT THE COURTROOM AT
8 APPROXIMATELY 10:37 A.M.)

9 MATTER OF LAW:

10 **THE COURT:** ALL RIGHT. THE REASON I THOUGHT THIS
11 WOULD BE A GOOD TIME TO TAKE A BREAK, I'VE HAD AN
12 OPPORTUNITY TO REVIEW CERTAIN CASES ON THE POINT OF
13 SEARCH AS A RESULT FROM A STOP, TRAFFIC STOP, TO INCLUDE,
14 OF COURSE, A CASE THAT THE DEFENDANT CITED, *STATE VERSUS*
15 *WILLIAMS*, 351 S.C. 591, COURT OF APPEALS 2002.

16 BUT ALSO I WAS ABLE TO FIND ANOTHER CASE THAT CITES
17 *WILLIAMS*, *STATE VERSUS JONES*, 364 S.C. 51, 2005. AND YOU
18 MIGHT SAY, MS. MANIGAULT, I AM *SUI SPONTE* ADDRESSING YOUR
19 PRIOR MOTIONS FOR SUPPRESSION OF THE EVIDENCE THAT WAS
20 SEIZED AS A RESULT OF THE SEARCH.

21 I FIND THAT THE JONES CASE IS PERHAPS, AND ALSO IF
22 IN *JONES* THEY DISTINGUISH *WILLIAMS*, IS PERHAPS A LITTLE
23 MORE APPLICABLE IN THIS PARTICULAR CASE, BECAUSE IN THAT
24 CASE, ONE OF THE OCCUPANTS OF THE AUTOMOBILE RAN, AND
25 DURING HIS ESCAPE OR WHATEVER, IT WAS FOUND, OR AFTER HE

1 LEFT THE VEHICLE, THEY FOUND CONTRABAND THAT HE WAS
2 TRYING TO SECRETE.

3 BUT MOREOVER, AND BOTH CASES CITE *UNITED STATES*
4 *VERSUS SULLIVAN* FOR THE PROPOSITION THAT ANY FURTHER
5 DETENTION FOR QUESTIONING BEYOND THE REQUEST OF THE
6 DRIVER'S LICENSE AND THE VEHICLE REGISTRATION AND TO RUN
7 COMPUTER CHECK AND ISSUE A CITATION, ANY FURTHER
8 DETENTION FOR QUESTIONING IS BEYOND THE SCOPE OF THE STOP
9 AND THEREFORE ILLEGAL UNLESS THE OFFICER HAS A REASONABLE
10 SUSPICION OF A SERIOUS CRIME.

11 AND IN *WILLIAMS* APPARENTLY THEY DIDN'T FIND
12 REASONABLE SUSPICION OF A FURTHER CRIME. JONES, OF
13 COURSE, DID, AND IT RELATES SOME OF THE SAME INDICATORS
14 THAT THE OFFICERS IN THIS CASE FOUND: NERVOUSNESS, OTHER
15 PHYSICAL MANIFESTATIONS OF BEING MORE THAN JUST A LITTLE
16 BIT ILL AT EASE. AND, AS I SAY, ALSO THE ESCAPE FROM
17 CUSTODY.

18 THE POINT IS, ALSO, AS I UNDERSTAND IT FROM THE
19 TESTIMONY IN THIS PARTICULAR CASE, IT WAS PRIOR TO
20 ISSUING OF THE CITATION THAT THE TROOPER, CRAWFORD,
21 DEPUTY CRAWFORD ASKED THE DEFENDANT IF HE HAD ANY ITEMS
22 THAT HE SHOULD BE CONCERNED ABOUT, WHICH WAS ALSO THE
23 CASE IN *JONES*, AS I UNDERSTAND IT.

24 AND THE RESPONSE WAS, OF COURSE, I'VE GOT \$18,000 ON
25 THE BACK SEAT AND YOU CAN GET IT. THAT IN ITSELF IS

1 ENOUGH TO SUGGEST TO A LAW ENFORCEMENT OFFICER UNDER THE
2 CASE OF *STATE V CRENSHAW* IS CONSIDERED AN EXECUTIVE
3 OFFICER AND IS SUBJECT TO FELONY BRIBERY, THAT THERE WAS
4 A SERIOUS FELONY SUGGESTED THAT HE HAD REASONABLE
5 SUSPICION. THAT ALONE WOULD HAVE LED TO THE STOP.

6 ALSO, I MIGHT NOTE THAT DEPUTY CRAWFORD WAS CANDID
7 ENOUGH TO SAY THAT, NO, HE DIDN'T ASK FOR CONSENT TO
8 SEARCH. HE WAS SEARCHING BASED ON HIS REASONABLE
9 SUSPICION OF A CRIME HAVING BEEN COMMITTED BASED ON THE
10 DOG'S HIT, WHICH IS ALSO ANOTHER CASE THAT BOTH *WILLIAMS*
11 AND *JONES* CITE, THE U.S. CASE OF *CABALLES, ILLINOIS*
12 *VERSUS CABALLES*, 125 S.CT. 834 (2005). AND IN THAT CASE
13 THEY SAID IT WAS REASONABLE FOR THE -- NOT ONLY IN
14 CARRYING OUT THE STOP MADE AT THE REQUEST OF DRIVER'S
15 LICENSE, VEHICLE REGISTRATION AND COMPUTER CHECK, ISSUE A
16 CITATION AND FOR -- I GUESS THAT'S YOUR -- WHAT DO YOU
17 CALL IT, SNIFF?

18 MR. CAMPBELL: FREE AIR SNIFF.

19 THE COURT: PARDON?

20 MR. CAMPBELL: FREE AIR SNIFF.

21 THE COURT: FREE WHAT?

22 MR. CAMPBELL: FREE AIR SNIFF?

23 THE COURT: FREE AIR?

24 MR. CAMPBELL: A-I-R. THEY RUN THE DOG AROUND.

25 THE COURT: THAT'S A REASONABLE PART OF THE THING.

1 AS LONG AS THE CITATION HAS NOT BEEN ISSUED. SO ALL OF
2 THESE THINGS, I'VE GONE AT LENGTH BECAUSE THIS IS AN
3 UNUSUAL CASE, WHERE THE DEFENDANT IS BEING TRIED IN HIS
4 ABSENCE, AND OBVIOUSLY SINCE THE DEFENDANT IS NOT HERE,
5 THE CONTRABAND OR THE CONTROLLED SUBSTANCE IS THE CENTER
6 OF ATTRACTION, SO I WANTED TO GIVE YOU THE BASIS FOR MY
7 RULING.

8 NOW, IS THERE ANY FURTHER ARGUMENT FROM THE STATE?

9 **MR. CAMPBELL:** NO, YOUR HONOR.

10 **THE COURT:** FROM THE DEFENDANT, OTHER THAN YOUR
11 MOTION IS RENEWED THAT --

12 **MS. MANIGAULT:** YES, SIR, I WAS GOING TO RENEW AT
13 THE END OF THE CASE.

14 THE CASES THAT THE COURT HAS CITED I'VE ALSO FOUND
15 AND I WOULD LIKE TO ADD TO THAT STATE VERSUS I THINK IT'S
16 PICHARDO, P-I-C-H-A-R-D-O, AT S.C. 384.

17 **THE COURT:** PICHARDO, S.C. 2004, COURT OF APPEALS
18 2005.

19 **MS. MANIGAULT:** I BELIEVE THAT CASE DISCUSSED MERE
20 NERVOUSNESS WAS NOT ENOUGH, SO I WOULD JUST RENEW MY
21 MOTION.

22 **THE COURT:** THANK YOU, MA'AM. THE MOTION IS DENIED,
23 TO INCLUDE THE COURT'S RULING ON THE MOTION TO
24 RECONSIDER. THANK YOU. I'M DENYING THAT, TOO.

25 ALL RIGHT. ANYTHING ELSE? HAVE THEY KNOCKED OR

1 ANYTHING? ALL RIGHT. SO LET US TAKE A SHORT BREAK AND
2 AS SOON AS THE JURY IS READY TO COME BACK, WE'LL
3 CONTINUE.

4 (A RECESS WAS TAKEN.)

5 **THE COURT:** ALL RIGHT. WE ARE BACK ON THE IN STATE
6 *VERSUS KIRKMAN.*

7 ANYTHING FROM THE STATE BEFORE WE BRING THE JURY
8 BACK?

9 **MR. CAMPBELL:** NOTHING, YOUR HONOR.

10 **THE COURT:** FROM THE DEFENDANT?

11 **MS. MANIGAULT:** NO, YOUR HONOR.

12 **THE COURT:** VERY GOOD. ASK THE JURY TO JOIN US,
13 PLEASE.

14 (WHEREUPON, THE JURY ENTERED THE COURTROOM AT
15 APPROXIMATELY 11:00 A.M.)

16 **THE COURT:** ALL RIGHT. LET THE RECORD REFLECT THE
17 JURY AND ALTERNATE ARE IN THE JURY-BOX.

18 YOU MAY PROCEED WITH YOUR CASE.

19 **MR. CAMPBELL:** YOUR HONOR, THE STATE CALLS GENE
20 BROCK TO THE STAND.

21 (WHEREUPON, GENE BROCK WAS SWORN BY THE
22 CLERK.)

23 **THE CLERK:** PLEASE STATE YOUR FULL NAME AND SPELL
24 YOUR LAST NAME FOR THE RECORD.

25 **THE WITNESS:** GENE BROCK, B-R-O-C-K.

1 WHEREUPON,

2 GENE BROCK,

3 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

4 DIRECT EXAMINATION BY MR. CAMPBELL:

5 Q. MR. BROCK, WHERE ARE YOU EMPLOYED?

6 A. ANDERSON COUNTY SHERIFF'S DEPARTMENT.

7 Q. HOW LONG HAVE YOU BEEN IN LAW ENFORCEMENT?

8 A. 22 YEARS.

9 Q. AND WHAT CAPACITY OR POSITION CURRENTLY EMPLOYED
10 IN?

11 A. I'M IN THE CRIMINAL INVESTIGATOR DIVISION OF THE
12 SHERIFF'S DEPARTMENT.

13 Q. ON OCTOBER -- EXCUSE ME -- AUGUST 23RD, 2006, WERE
14 YOU EMPLOYED AS AN INVESTIGATOR?

15 A. NO, SIR. I WAS EMPLOYED IN THE UNIFORM PATROL
16 UNIT.

17 Q. I WANT TO TALK TO YOU ABOUT AUGUST 23RD, 2006. ON
18 THAT DAY DID YOU HAVE AN OCCASION TO COME INTO CONTACT
19 WITH A RAHIEM KIRKMAN?

20 A. YES, SIR, I DID.

21 Q. AND WHERE EXACTLY WAS THAT LOCATION?

22 A. IT WAS AT MILE MARKER 24 ON I-85 NORTHBOUND.

23 Q. IS THAT IN ANDERSON COUNTY?

24 A. YES, SIR, IT IS.

25 Q. CAN YOU PLEASE TELL THE LADIES AND GENTLEMEN OF

1 THE JURY HOW YOU HAD COME ABOUT COMING INTO CONTACT WITH
2 MR. KIRKMAN?

3 A. YES, SIR. AT 6:45 A.M. ON THE 23RD I RECEIVED
4 INFORMATION THAT A TRAFFIC STOP HAD BEEN CONDUCTED THE
5 NIGHT BEFORE WHERE A MALE HAD RAN FROM THE SITE OF THE
6 TRAFFIC STOP AND THEY GAVE A CLOTHING DESCRIPTION OF
7 WEARING A BLACK SHIRT AND BRIGHT YELLOW SHORTS; THAT HE
8 WAS STILL ELUSIVE AND AT THAT TIME THEY THOUGHT WAS THE
9 85 AREA.

10 WE THEN BROKE FROM ROLL CALL WHEN THAT INFORMATION
11 HAD BEEN RECEIVED AND I WAS ON DIRECT PATROL AT THAT
12 TIME.

13 Q. AND ABOUT WHAT TIME OF THE DAY WAS THIS AFTER ROLL
14 CALL?

15 A. AFTER ROLL CALL IT WAS ROUGHLY 7:00 IN THE MORNING
16 ON THE 23RD.

17 Q. AND AFTER ROLL CALL WHERE DID YOU GO?

18 A. I WENT TO MY ASSIGNED DUTY AREA WHICH WAS IN THE
19 TOWNVILLE/FAIR PLAY AREA TO PATROL.

20 Q. AND AFTER THAT DID YOU HAVE AN OCCASION TO BE
21 DISPATCHED TO A CALL REGARDING AN INDIVIDUAL?

22 A. YES, SIR. I WAS GIVEN INFORMATION THAT A
23 SUSPICIOUS MALE WAS IN THE SANDY SPRINGS AREA STANDING
24 ALONG THE ROADWAY WEARING A BLACK SHIRT, BRIGHT YELLOW
25 PANTS, AND HE HAD JUST ENTERED A WHITE COMPACT FORD

1 VEHICLE.

2 Q. AND WERE YOU IN THIS CLOSE PROXIMITY TO THIS AREA
3 AT THIS POINT IN TIME?

4 A. THE INITIAL CALL WAS ABOUT FIVE MINUTES OUT.
5 AFTER RECEIVING THE INFORMATION FROM DISPATCH I PROCEEDED
6 TO SANDY SPRINGS WESTBOUND ON HIGHWAY 76.

7 Q. AND THAT'S CLEMSON BOULEVARD?

8 A. YES, SIR.

9 Q. AND YOU SAY IT WAS WESTBOUND. WHICH DIRECTION
10 WERE YOU HEADED?

11 A. THAT WOULD BE GOING TOWARDS CLEMSON FROM THE
12 ANDERSON AREA.

13 Q. NOW, WHAT, IF ANYTHING, DID YOU OBSERVE ONCE YOU
14 GOT INTO THE AREA?

15 A. AS I STATED, THE INFORMATION I RECEIVED THAT A
16 MALE HAD ENTERED A WHITE COMPACT FORD VEHICLE WHICH WAS
17 BEARING A NORTH CAROLINA LICENSE AND THERE WAS A FEMALE
18 DRIVING THE VEHICLE. THE CALLER HAD STATED THAT THE MALE
19 HAD GOT INTO THE BACK SEAT OF THE VEHICLE AND WAS
20 CURRENTLY LYING DOWN.

21 AS I CAME OFF OF 85 SOUTHBOUND ON TO HIGHWAY 76
22 TRAVELING WEST, I PASSED A COMPACT CAR WITH A FEMALE
23 DRIVER. I THEN PROCEEDED TO DO A U-TURN TO TRAFFIC EAST
24 ON 76. WE THEN ENTERED THE ENTRANCE RAMP ON TO I-85
25 GOING NORTHBOUND.

1 Q. AND DID YOU CONDUCT A TRAFFIC STOP UPON THIS WHITE
2 VEHICLE?

3 A. I DID. I CONDUCTED A TRAFFIC STOP ON MILE MARKER
4 24, TO WHICH THE FEMALE DRIVER COMPLIED WITH THE VEHICLE
5 STOP.

6 Q. AND WHEN YOU APPROACHED THE CAR, WHAT DID YOU
7 OBSERVE?

8 A. PRIOR TO APPROACHING, A BLACK MALE EXITED THE REAR
9 PASSENGER'S SEAT WEARING A BLACK SHIRT AND YELLOW PANTS.
10 FROM THE REAR PASSENGER AREA HE RAN, IT WOULD BE A
11 SOUTHEASTERN FROM 85 INTO A WOODED AREA TO WHICH I GAVE
12 CHASE.

13 Q. AND WERE YOU ABLE TO CATCH UP WITH THIS
14 INDIVIDUAL?

15 A. FINALLY I CAUGHT UP WITH HIM, YES. IT WAS A BRIEF
16 FOOT CHASE WHERE I -- DURING THE PURSUIT THE WHOLE TIME,
17 OF COURSE, I WAS GIVING THE COMMAND TO STOP, LAW
18 ENFORCEMENT, STOP, WHICH HE REFUSED.

19 Q. HOW WERE YOU DRESSED THAT DAY?

20 A. I WAS IN A CLASS B UNIFORM WHICH IS A SHORT SLEEVE
21 MARKED UNIFORM.

22 Q. JUST LIKE A GRAY SHIRT AND A GRAY UNIFORM THAT THE
23 SHERIFF'S OFFICE WEARS?

24 A. YES, SIR.

25 Q. AND DID HE KNOW, THIS INDIVIDUAL KNOW THAT YOU

1 WERE LAW ENFORCEMENT?

2 A. YES, SIR, I IDENTIFIED MYSELF FOUR TIMES RUNNING
3 THROUGH THE WOODLAND AREA.

4 Q. AT ANY POINT DID HE STOP AFTER YOU IDENTIFIED
5 YOURSELF AS BEING LAW ENFORCEMENT?

6 A. NO, SIR.

7 Q. DID YOU EVENTUALLY APPREHEND THIS INDIVIDUAL?

8 A. I DID. WE, AS WE RAN THROUGH THE WOODED AREA WE
9 OPENED UP INTO A FIELD AREA WHERE HE WAS FINALLY
10 APPREHENDED. I THEN DETAINED HIM WHERE I CONTACTED
11 OFFICER MIZE BY RADIO TO HAVE HIM TO COME TO MY LOCATION
12 OF THE STOP TO IDENTIFY HIM AS BEING ONE AND THE SAME
13 THAT WAS STOPPED THE NIGHT PRIOR WITH THE TRAFFICKING
14 COCAINE CHARGE.

15 Q. WAS HE IDENTIFIED?

16 A. HE WAS IDENTIFIED -- IF I MAY BACK UP?

17 Q. GO AHEAD.

18 A. THE ONLY CONVERSATION THAT I HAD WITH THE
19 DEFENDANT, ONCE HE WAS APPREHENDED I ASKED HIM WHAT HIS
20 NAME WAS. HE SAID KIRKMAN. THAT'S WHEN I CONTACTED
21 DEPUTY MIZE BY RADIO.

22 HE CAME TO THE ACTUAL STOP SITE AND IDENTIFIED
23 HIM. I ADVISED HIM HE WAS UNDER ARREST FOR TRAFFICKING
24 IN COCAINE.

25 Q. LET ME ASK YOU, DURING THE ARREST DID HE COME

1 PEACEFULLY?

2 A. ONCE HE WAS APPREHENDED HE DID.

3 Q. I'M GONNA SHOW YOU WHAT'S BEEN MARKED AS STATE'S
4 EXHIBIT NUMBER SEVEN. WOULD YOU PLEASE IDENTIFY THIS,
5 SIR?

6 A. THAT WOULD BE THE DEFENDANT, KIRKMAN.

7 Q. AND THIS IS THE INDIVIDUAL THAT YOU ARRESTED ON
8 AUGUST THE 23RD, 2006?

9 A. HE WAS ARRESTED AT 10:20 ON AUGUST THE 23RD, YES,
10 SIR.

11 Q. AND THIS IS THE INDIVIDUAL THAT YOU HAD DEPUTY
12 MIZE I.D.; IS THAT CORRECT?

13 A. YES, SIR, IT IS.

14 Q. DID YOU HAVE ANY FURTHER INVOLVEMENT AFTER THE
15 ARREST?

16 A. NO, SIR, I DID NOT.

17 Q. OKAY.

18 MR. CAMPBELL: I HAVE NO FURTHER QUESTIONS FOR
19 DEPUTY BROCK.

20 THE COURT: CROSS-EXAMINE?

21 MS. MANIGAULT: I HAVE NO QUESTIONS, YOUR HONOR.

22 THE COURT: YOU MAY STEP DOWN.

23 MR. CAMPBELL: YOUR HONOR, MAY THIS WITNESS BE
24 EXCUSED?

25 MS. MANIGAULT: WITHOUT OBJECTION, YOUR HONOR.

1 **THE COURT:** WITHOUT OBJECTION YOU MAY BE EXCUSED.

2 THANK YOU, SIR.

3 (WHEREUPON, THE WITNESS WAS EXCUSED.)

4 **THE COURT:** YOU MAY CALL YOUR NEXT WITNESS.

5 **MR. CAMPBELL:** YOUR HONOR, THE STATE CALLS TODD
6 CARON.

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

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

11 **THE WITNESS:** TODD CARON, C-A-R-O-N.

12 WHEREUPON,

13 TODD CARON,

14 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

15 DIRECT EXAMINATION BY MR. CAMPBELL:

16 (STATE'S EX. # 8 PHOTO OF VOLKSWAGEN PASSAT,
17 WAS MARKED FOR IDENTIFICATION.)

18 BY MR. CAMPBELL:

19 Q. MR. CARON, WHERE ARE YOU CURRENTLY EMPLOYED?

20 A. ANDERSON COUNTY SHERIFF'S OFFICE.

21 Q. AND IN WHAT CAPACITY ARE YOU EMPLOYED THERE?

22 A. THE FORENSICS DIVISION, CRIME SCENE.

23 Q. AND WERE YOU EMPLOYED IN THAT CAPACITY ON AUGUST
24 23RD, AROUND THAT TIME, 2006?

25 A. YES, SIR.

1 Q. AS PART OF YOUR DUTY AS A CRIME SCENE -- WELL,
2 TELL THE LADIES AND GENTLEMEN OF THE JURY WHAT KIND OF
3 DUTIES YOU PERFORM BEING A FORENSIC UNIT.

4 A. WE RESPOND TO VARIOUS CRIME SCENES, ANYTHING WHERE
5 GENERALLY ANY TYPE OF CRIME HAS BEEN COMMITTED WHERE
6 SOMETHING NEEDS TO BE FINGERPRINTED, PHOTOGRAPHED, ANY
7 TYPE OF EVIDENCE COLLECTED, THINGS OF THAT NATURE.

8 Q. AND DID YOU HAVE AN OCCASION TO BE -- TO WORK AT A
9 CRIME SCENE DEALING WITH RAHIEM KIRKMAN?

10 A. YES, SIR. ON AUGUST 24TH I WAS CONTACTED BY
11 DEPUTY CRAWFORD TO PROCESS THE VOLKSWAGEN PASSAT THAT WAS
12 PARKED BEHIND THE FORENSICS BUILDING.

13 Q. I WANT TO SHOW YOU STATE'S EXHIBIT 8. CAN YOU
14 PLEASE IDENTIFY WHAT THAT IS, SIR?

15 A. YES, SIR. THAT WOULD BE THE VOLKSWAGEN PASSAT.

16 Q. THAT IS THE VEHICLE YOU WERE ASKED TO PROCESS?

17 A. YES, SIR, IT IS.

18 MR. CAMPBELL: YOUR HONOR, AT THIS TIME I MOVE
19 STATE'S NUMBER EIGHT INTO EVIDENCE.

20 THE COURT: ANY OBJECTION?

21 MS. MANIGAULT: NONE, YOUR HONOR.

22 THE COURT: NO OBJECTION. WITHOUT OBJECTION IT WILL
23 BE ADMITTED INTO EVIDENCE, STATE'S EXHIBIT NUMBER EIGHT.

24 (STATE'S EXHIBIT # 8 WAS RECEIVED IN
25 EVIDENCE.)

1 BY MR. CAMPBELL:

2 Q. THIS IS SHOWING THE CAR THAT YOU PROCESSED; IS
3 THAT RIGHT?

4 A. YES, SIR.

5 Q. THAT YOU WERE ASKED TO PROCESS?

6 A. THAT'S RIGHT. I PHOTOGRAPHED THE VEHICLE BEFORE I
7 PROCESSED IT.

8 Q. CAN YOU TELL THE LADIES AND GENTLEMEN OF THE JURY
9 HOW YOU GO ABOUT PROCESSING A CRIME SCENE, OR IN THIS
10 CASE THE CRIME SCENE BEING A CAR, HOW DO YOU GO ABOUT
11 PROCESSING IT?

12 A. BASICALLY JUST USE FINGERPRINT POWDER AND APPLY IT
13 WITH A BRUSH TO, ALL OVER THE CAR CHECKING FOR
14 FINGERPRINTS.

15 Q. DID YOU DO THAT IN THIS CASE?

16 A. I DID, YES, SIR.

17 Q. AND WHEN YOU ARE USING THE FINGERPRINT POWDER,
18 WHAT EXACTLY -- WHAT ARE YOU TRYING TO FIND OR LOCATE?

19 A. LATENT PRINTS, FINGERPRINTS ON THE CAR.

20 Q. WHEN YOU WERE REFERRING TO LATENT PRINTS, WHAT
21 DOES THAT MEAN TO A FORENSIC --

22 A. THEY'RE UNKNOWN FINGERPRINTS, YOU DON'T KNOW WHOSE
23 THEY ARE.

24 Q. AND DID YOU DO THAT IN THIS CASE?

25 A. I DID, YES, SIR.

1 Q. AND WERE YOU ABLE TO LIFT ANY IDENTIFIABLE LATENT
2 PRINTS FROM THIS CAR?

3 A. YES, SIR. I BELIEVE I PULLED FIVE LATENT PRINTS
4 OFF THE VEHICLES.

5 Q. AND WERE YOU ABLE TO MATCH THOSE PRINTS UP?

6 A. YES, I DID.

7 Q. AND CAN YOU DESCRIBE TO THE LADIES AND GENTLEMEN
8 OF THE JURY HOW YOU GO ABOUT MATCHING PRINTS UP?

9 A. BASICALLY FINGERPRINTS, EVERYONE'S FINGERPRINTS,
10 THERE'S DIFFERENT TYPES OF PATTERNS OF FINGERPRINTS:
11 WHIRLS, LOOPS, ARCHES, AND EACH OF THOSE FINGERPRINTS HAS
12 ITS OWN IDENTIFICATION CHARACTERISTICS, SUCH AS WHERE A
13 RIDGE WOULD SPLIT, A FINGERPRINT RIDGE WOULD BREAK OFF
14 INTO TWO RIDGES, OR WHERE A RIDGE STOPS. BASICALLY TO
15 MATCH A FINGERPRINT YOU WOULD CHECK ONE FINGERPRINT
16 AGAINST ANOTHER TO TRY TO FIND THOSE POINTS IN THAT
17 PATTERN WHERE THEY WOULD ALL LINE UP.

18 Q. AND DID YOU DO THAT IN THIS CASE?

19 A. I DID, YES, SIR.

20 Q. AND AFTER YOU REMOVED THE PRINTS, YOUR LATENT
21 PRINTS THAT YOU HAD FOUND ON THIS VEHICLE, HOW DO YOU GO
22 ABOUT COMPARING THEM? WHAT DO YOU COMPARE THEM TO, I
23 SHOULD SAY?

24 A. I'M SORRY?

25 Q. WHAT DID YOU COMPARE THEM TO?

1 A. I COMPARED THEM TO THE FINGERPRINT CARD OF
2 MR. KIRKMAN.

3 Q. AND BASED UPON YOUR COMPARISON, WHAT, IF ANYTHING,
4 DID YOU DETERMINE?

5 A. I WAS ABLE TO MATCH ONE FINGERPRINT OFF THE CARD
6 TO MR. KIRKMAN, AND I ALSO COLLECTED SOME PAPERWORK OUT
7 OF THE VEHICLE WHERE WE MATCHED FINGERPRINTS TO
8 MR. KIRKMAN.

9 Q. AND DID THIS PAPERWORK IDENTIFY OR HAVE
10 MR. KIRKMAN'S NAME ON IT?

11 A. YES, IT DID.

12 Q. DID YOU ALSO, YOUR FORENSIC DEPARTMENT, DID Y'ALL
13 ALSO RECEIVE STATE'S EXHIBIT NUMBER FIVE INTO EVIDENCE
14 FOR PROCESSING?

15 A. YES, SIR.

16 Q. AND DID YOU-ALL ATTEMPT TO PROCESS IT?

17 A. YES, SIR. IT WAS PROCESSED ON SEPTEMBER THE 6TH.

18 Q. AND WHAT, IF ANYTHING, WERE YOU ABLE TO LEARN FROM
19 PROCESSING?

20 A. THERE WERE NO FINGERPRINTS ON IT.

21 Q. SO YOU NEVER WERE ABLE BE TO GET ANY FINGERPRINTS
22 OFF THE DOPE?

23 A. THAT'S CORRECT.

24 Q. DEPUTY CARON, IS IT COMMON FOR Y'ALL TO PULL
25 FINGERPRINTS OFF OF NARCOTICS?

1 A. NOT VERY OFTEN, NO.

2 Q. SO IT DOESN'T HAPPEN THAT OFTEN?

3 A. NO.

4 Q. SO IN YOUR OPINION WOULD THIS BE UNUSUAL NOT TO
5 FIND ANY FINGERPRINTS UPON THE TEN KILOS IN THIS CASE?

6 A. NO, IT WOULD NOT BE UNUSUAL NOT TO FIND ANY
7 FINGERPRINTS ON ANY TYPE OF NARCOTICS.

8 MR. CAMPBELL: YOUR HONOR, I HAVE NO FURTHER
9 QUESTIONS.

10 THE COURT: CROSS-EXAMINATION.

11 CROSS-EXAMINATION BY MS. MANIGAULT:

12 Q. MR. CARON?

13 A. YES, MA'AM.

14 Q. WOULD YOU TELL US YOUR EDUCATIONAL BACKGROUND,
15 PLEASE?

16 A. LET'S SEE. AS FAR AS FINGERPRINTS OR JUST IN
17 GENERAL?

18 Q. IN GENERAL.

19 A. OKAY. I HAVE GRADUATED HIGH SCHOOL, I HAVE
20 ATTENDED SOME CLASSES AT TRI-COUNTY TECH, I DID NOT GET A
21 DEGREE FROM THERE. AS FAR AS CRIME SCENE CLASSES, I'VE
22 BEEN TO ONE 40-HOUR GENERAL CRIME SCENE CLASS, BLOOD
23 STAIN ANALYSIS CLASS, AND TWO 40-HOUR LATENT PRINT
24 EXAMINATION CLASSES.

25 Q. HOW RECENT WAS THAT, THE TWO 40-HOUR LATENT PRINT

1 EXAMINATION CLASSES?

2 A. ONE WAS PROBABLY TWO YEARS AGO AND THE OTHER WAS
3 PROBABLY THREE.

4 Q. THREE YEARS AGO?

5 A. YES, MA'AM.

6 Q. ARE YOU REQUIRED -- ARE YOU CERTIFIED?

7 A. NO, MA'AM.

8 Q. ALL RIGHT. ARE YOU REQUIRED TO KEEP YOUR TRAINING
9 UP?

10 A. AS FAR AS FINGERPRINTING EXAMINATION, THERE'S NOT
11 LIKE A RECERTIFICATION. THEY DO ISSUE -- I'M SORRY.
12 THEY DO ISSUE A CERTIFICATE FROM THE CLASSES, FROM THE
13 FINGERPRINT CLASSES, BUT THERE IS NOT A REQUIREMENT TO
14 RECERTIFY.

15 Q. OKAY. AND SO YOU HAVE APPROXIMATELY 120 HOURS OF
16 CLASS EXPERIENCE WITH CRIME SCENE AND LATENT
17 FINGERPRINTS?

18 A. APPROXIMATELY, YES, MA'AM.

19 Q. AND HOW MANY SCENES HAVE YOU PROCESSED, CRIME
20 SCENES?

21 A. MORE THAN I COULD COUNT. I REALLY COULDN'T EVEN
22 PUT A NUMBER TO IT.

23 Q. WOULD YOU SAY IT WAS MORE THAN 25?

24 A. YES, MA'AM.

25 Q. HAVE YOU EVER BEEN CERTIFIED AS AN EXPERT WITNESS

1 IN GENERAL SESSIONS COURT?

2 A. NO, MA'AM.

3 Q. YOU HAVE NOT?

4 HAVE YOU EVER TESTIFIED IN GENERAL SESSIONS COURT
5 BEFORE?

6 A. YES, MA'AM.

7 MS. MANIGAULT: THANK YOU.

8 THE COURT: RE-EXAM?

9 MR. CAMPBELL: NO FURTHER QUESTIONS, YOUR HONOR.

10 THE COURT: YOU MAY STEP DOWN. THANK YOU, SIR.

11 MR. CAMPBELL: YOUR HONOR, MAY THIS WITNESS BE
12 EXCUSED?

13 THE COURT: ANY OBJECTION?

14 MS. MANIGAULT: NO OBJECTION, YOUR HONOR.

15 THE COURT: WITHOUT OBJECTION YOU MAY BE EXCUSED.
16 THANK YOU, SIR.

17 (WHEREUPON, THE WITNESS WAS EXCUSED.)

18 MR. CAMPBELL: YOUR HONOR, THE STATE CALLS MARGARET
19 VECCHIO TO THE STAND.

20 (WHEREUPON, MARGARET VECCHIO WAS SWORN BY THE
21 CLERK.)

22 THE CLERK: PLEASE STATE YOUR FULL NAME AND SPELL
23 YOUR LAST NAME FOR THE RECORD.

24 THE WITNESS: MARGARET VECCHIO, V-E-C-C-H-I-O.
25 WHEREUPON,

1 MARGARET VECCHIO,
2 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:
3 DIRECT EXAMINATION BY MR. CAMPBELL:
4 Q. MS. VECCHIO, WHERE ARE YOU EMPLOYED?
5 A. ANDERSON COUNTY SHERIFF'S OFFICE.
6 Q. AND WHAT POSITION OR CAPACITY ARE YOU IN?
7 A. I WORK IN THE EVIDENCE DIVISION AS EVIDENCE
8 CUSTODIAN.
9 Q. AND AS PART OF YOUR DUTIES DO YOU NORMALLY DELIVER
10 EVIDENCE TO BE TESTED OR ANALYZED?
11 A. YES, SIR.
12 Q. ON OR ABOUT OCTOBER [SIC] 19TH, 2006, DID YOU HAVE
13 AN OCCASION TO RETRIEVE SOME EVIDENCE FROM YOUR STORAGE
14 LOCKER?
15 A. I DID.
16 Q. I'M GONNA SHOW YOU WHAT'S BEEN MARKED AS STATE'S
17 EXHIBIT NUMBER FIVE. HAVE YOU BEEN ABLE TO SEE THIS,
18 MA'AM?
19 A. YES.
20 Q. DID YOU RECEIVE THIS ITEM OUT OF YOUR EVIDENCE
21 LOCKER?
22 A. I DID.
23 Q. AND WAS IT IN THIS CONDITION, WAS IT SEALED?
24 A. IT WAS.
25 Q. AND WHAT, IF ANYTHING, DID YOU DO WITH THIS ITEM?

1 A. I TRANSPORTED IT TO THE LAB.

2 Q. AND TO YOUR KNOWLEDGE HAD IT BEEN IN YOUR
3 CONTINUOUS CARE, CUSTODY AND CONTROL AT THE SHERIFF'S
4 DEPARTMENT, EVIDENCE DEPARTMENT, SINCE Y'ALL RECEIVED IT?

5 A. YES.

6 Q. AND HAD IT BEEN TAMPERED, ALTERED WITH OR CHANGED
7 IN ANY SHAPE, WAY OR FORM?

8 A. NO, SIR.

9 Q. WOULD YOU HAVE TRANSPORTED IT TO THE CHEMIST IF IT
10 HAD BEEN -- IF THE SEAL HAD BEEN BROKEN?

11 A. NO, SIR.

12 Q. AND WAS IT IN PROPER CONDITION WHEN YOU TOOK IT
13 OUT OF THE EVIDENCE LOCKER?

14 A. IT WAS.

15 Q. AND YOU DELIVERED IT WHERE?

16 A. TO THE ANDERSON-OCONEE LAB.

17 Q. TO BE TESTED?

18 A. YES.

19 Q. AND DID YOU EVER COME BACK INTO CONTACT WITH THIS
20 ITEM?

21 A. I PICKED IT UP ON DECEMBER THE 4TH AND BROUGHT IT
22 BACK TO THE EVIDENCE LOCKER.

23 Q. AND HAS IT BEEN IN YOUR CONTINUOUS CARE, CUSTODY
24 AND CONTROL SINCE THAT TIME?

25 A. YES, SIR.

1 Q. AND HAS IT BEEN TAMPERED, ALTERED WITH IN ANY
2 SHAPE, WAY OR FORM, TO YOUR KNOWLEDGE?

3 A. NO, SIR.

4 Q. AND WHEN YOU ARE LOCATED IN THE SHERIFF'S
5 DEPARTMENT, WHO ALL HAS ACCESS TO EVIDENCE SUCH AS THIS?

6 A. THERE ARE THREE PEOPLE THAT WORK IN THE EVIDENCE
7 DEPARTMENT, AND WE ALL HAVE KEYS TO THE EVIDENCE LOCKERS
8 ALONG WITH THE LIEUTENANT THAT WE REPORT TO, AND HE ALSO
9 HAS A KEY.

10 Q. CAN DEPUTIES EMPLOYED WITH THE SHERIFF'S
11 DEPARTMENT JUST COME IN AND LOOK AT EVIDENCE?

12 A. NO, SIR, NOT WITHOUT ONE OF US GETTING IT OUT OF
13 THE LOCKER FOR THEM TO SEE.

14 Q. AND IF IT'S LOOKED AT, DO YOU-ALL RECORD THAT? IS
15 IT RECORDED?

16 A. IF IT'S LOOKED AT, NO. BUT WE STAY WITH THE
17 EVIDENCE. IF IT LEAVES THE BUILDING, THEN THERE IS A --
18 THAT'S ENTERED INTO, THERE'S A CHAIN OF CUSTODY ON THAT.

19 Q. AT ANY POINT DOES IT LEAVE THE BUILDING ONCE YOU
20 RECEIVE IT BACK?

21 A. NO, SIR. NOT UNTIL IT CAME TO COURT.

22 **MR. CAMPBELL:** NO FURTHER QUESTIONS.

23 **THE COURT:** CROSS-EXAMINATION?

24 CROSS-EXAMINATION BY MS. MANIGAULT:

25 Q. IS THERE A CHECKS AND BALANCES SYSTEM THAT YOU

1 HAVE FOR A PERSON SIGNING IN PROPERTY?

2 A. YES, MA'AM, THERE IS.

3 Q. I'M SORRY?

4 A. YES, THERE'S CHECKS AND BALANCES. THEY'RE ENTERED
5 IN, IT EITHER COMES THROUGH ON A FORM OR ENTERED INTO A
6 COMPUTER THAT WAY.

7 Q. AND IN THIS CASE WAS IT ENTERED INTO THE COMPUTER
8 OR SIGN-IN OR SIGN-OUT SHEET?

9 A. I DON'T KNOW THAT.

10 Q. DO YOU HAVE ANY KNOWLEDGE OF WHO PUT THE ITEM INTO
11 PROPERTY AND EVIDENCE?

12 A. NO, MA'AM, I DON'T.

13 **MS. MANIGAULT:** THANK YOU.

14 **THE COURT:** RE-EXAM?

15 REDIRECT EXAMINATION BY MR. CAMPBELL:

16 Q. MS. VECCHIO, YOU JUST RETRIEVE THE ITEMS ONCE
17 SOMEBODY PUTS IT IN THERE?

18 A. THAT'S CORRECT.

19 Q. AND WHAT EXACTLY IS THE EVIDENCE LOCKER?

20 A. WHERE IS IT?

21 Q. WHAT EXACTLY IS IT?

22 A. THERE ARE TWO SEPARATE LOCKERS. THE ONE WHERE THE
23 DRUGS AND GUNS ARE KEPT STAY WITHIN THE FORENSIC BUILDING
24 IN THE SHERIFF'S OFFICE.

25 Q. AND WHEN SOMEBODY PUTS SOMETHING IN EVIDENCE, WHEN

1 SOMEBODY SUCH AS THE SUBSTANCE IN THIS CASE, NARCOTICS,
2 WHAT PROCEDURE DOES THAT PERSON GO THROUGH?

3 A. IT'S EITHER GIVEN DIRECTLY TO SOMEBODY IN EVIDENCE
4 OR MOST LIKELY INTO AN EVIDENCE LOCKER. ONCE THAT LOCKER
5 IS SHUT, IT CANNOT BE OPENED FROM THE OUTSIDE, ONLY FROM
6 THE INSIDE, WHICH WOULD ONLY BE ACCESSIBLE BY SOMEONE
7 THAT WORKS IN EVIDENCE THAT HAS A KEY TO THAT LOCKER.

8 Q. WHEN YOU ARE REFERRING TO LOCKER, IS IT KIND OF
9 LIKE YOUR HIGH SCHOOL GYM LOCKER?

10 A. NOT THAT, NOT THAT UNSIMILAR. VERY SIMILAR TO
11 THAT.

12 **MR. CAMPBELL:** NO FURTHER QUESTIONS.

13 **MS. MANIGAULT:** NOTHING, YOUR HONOR.

14 **THE COURT:** VERY GOOD. YOU MAY STEP DOWN.

15 **MR. CAMPBELL:** YOUR HONOR, THE STATE CALLS TOMMY
16 CLAMP TO THE STAND.

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

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

21 **THE WITNESS:** MY NAME IS JOHN THOMAS CLAMP, JUNIOR,
22 LAST NAME IS SPELLED C-L-A-M-P.

23 WHEREUPON,

24 TOMMY CLAMP,

25 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

1 DIRECT EXAMINATION BY MR. CAMPBELL:

2 THE COURT: MAY THE WITNESS BE EXCUSED?

3 MS. MANIGAULT: YES, YOUR HONOR.

4 THE COURT: WITHOUT OBJECTION THE WITNESS WILL BE
5 EXCUSED. THANK YOU, MA'AM.

6 (WHEREUPON, THE WITNESS WAS EXCUSED.)

7 BY MR. CAMPBELL:

8 Q. MR. CLAMP, WHERE ARE YOU EMPLOYED?

9 A. ANDERSON COUNTY SHERIFF'S OFFICE.

10 Q. AND WHAT POSITION ARE YOU EMPLOYED IN?

11 A. A SUPERVISOR IN THE EVIDENCE DIVISION.

12 Q. AND DOES MARGARET VECCHIO WORK FOR YOU?

13 A. YES, SIR, SHE DOES.

14 Q. AND HOW LONG HAVE YOU BEEN IN EVIDENCE?

15 A. I'VE BEEN IN EVIDENCE SINCE 2004, APPROXIMATELY
16 AUGUST 2004. EXCUSE ME. APPROXIMATELY AUGUST OF 2003.

17 Q. AND AS PART OF YOUR DUTIES AS SERGEANT IN THE
18 FORENSIC UNIT, DO YOU ROUTINELY RECEIVE ITEMS RECOVERED
19 BY DEPUTIES INVOLVED IN CASES?

20 A. THAT'S OUR PRIMARY JOB. ONCE EVIDENCE IS
21 RECOVERED FROM CRIME SCENE OR PERSON, IT'S SUBMITTED INTO
22 EVIDENCE AND IT'S OUR JOB TO TAKE THAT ITEM, WHATEVER IT
23 BE, INTO EVIDENCE AND MAINTAIN ITS INTEGRITY UNTIL IT'S
24 CALLED OUT, EITHER TRANSPORTED TO THE LAB OR BROUGHT TO
25 COURT OR RETURNED TO THE PROPER OWNER.

1 Q. AND DID YOU HAVE THE OCCASION TO COME INTO CONTACT
2 WITH STATE'S EXHIBIT NUMBER 5?

3 A. YES, SIR, I DID.

4 Q. AND DID YOU HAVE AN OPPORTUNITY TO LOOK AT THIS?

5 A. YES, SIR. I ACTUALLY BROUGHT IT TO COURT THIS
6 MORNING.

7 Q. AND WHERE DID YOU BRING THIS FROM?

8 A. I BROUGHT IT FROM THE EVIDENCE STORAGE ROOM AT THE
9 ANDERSON COUNTY SHERIFF'S OFFICE.

10 Q. AND TO YOUR KNOWLEDGE WAS THIS ITEM, THIS BAG WITH
11 THE KILOS IN IT, WAS THAT PROPERLY ENTERED INTO EVIDENCE?

12 A. YES, IT WAS. IT WAS ENTERED INTO EVIDENCE ON
13 AUGUST 23RD '06 BY DEPUTY JAMIE CRAWFORD.

14 Q. AND WHEN YOU RECEIVED THIS ITEM, WHAT PROCESS DID
15 YOU GO THROUGH IN ORDER TO PLACE IT INTO EVIDENCE?

16 A. BASICALLY I PLACED THE BAG WITH ITS CONTENTS
17 INSIDE THE BOX AND SEALED IT UP FOR STORAGE PURPOSES AND
18 TO SHOW THAT IT WOULD NOT HAVE BEEN TAMPERED WITH.

19 Q. WHEN YOU RECEIVED IT, THIS IS THE WAY YOU RECEIVED
20 IT, LIKE THIS, IS THAT RIGHT, I MEAN WITH THE BAG?

21 A. CORRECT. THAT'S CORRECT.

22 Q. NOW, WERE THE ITEMS, WHEN YOU RECEIVED THEM, WERE
23 THEY PLACED IN THESE BAGS RIGHT HERE?

24 A. NO, SIR. THOSE WOULD HAVE BEEN PLACED IN THOSE
25 BAGS AT THE LAB, WHEN THEY WERE PROCESSED AT THE LAB.

1 Q. AND DID YOU YOURSELF RETRIEVE THIS FROM THE
2 EVIDENCE LOCKER, DO YOU RECALL?

3 A. FROM THE DROP LOCKER, YES, SIR. TO ELABORATE ON
4 THAT IF I MAY?

5 Q. PLEASE.

6 A. THE DROP LOCKER IS BASICALLY A LOCKER. WE HAVE
7 VARIOUS SIZES. WE AREN'T THERE OBVIOUSLY 24 HOURS TO
8 RECEIVE EVIDENCE. SO AN OFFICER COMING FROM A CRIME
9 SCENE WILL PUT IT INTO A LOCKER, SLAM THE DOOR, AND THERE
10 IS NO HANDLE OR MECHANISM WHERE THE OFFICER CAN OPEN IT.
11 THE ONLY THREE OR FOUR PERSONS THAT CAN RECEIVE THAT ITEM
12 IS LIEUTENANT CHRIS SCOTT, MYSELF, MS. VECCHIO AND
13 MS. BELINDA LEE THAT WORKED FOR ME. WE WERE THE ONLY
14 THREE PERSONS IN THIS OFFICE THAT HAVE ACCESS TO THE
15 EVIDENCE ROOM AND HAVE ACCESS TO OBTAIN EVIDENCE FROM
16 THOSE TEMPORARY LOCKERS. NO ONE ELSE IN THIS DEPARTMENT
17 COULD DO THAT.

18 Q. SO NO DEPUTY CAN COME IN AND TAKE A LOOK AT IT?

19 A. NO, SIR, ABSOLUTELY NOT. THE BUILDING, THE
20 BUILDING IS ALARMED. PROBABLY SIX PEOPLE HAVE ACCESS TO
21 THE BUILDING, BUT ONLY FOUR OF US HAVE ACCESS TO THE
22 EVIDENCE STORAGE ROOMS.

23 Q. AND WHEN YOU RECEIVED THIS ON OCTOBER THE --
24 AUGUST 23RD, 2006, IT WAS IN THIS BAG JUST LIKE THIS WHEN
25 YOU PUT IT IN THIS BOX?

1 A. YES, SIR.

2 Q. AND THEN YOU SEALED IT UP?

3 A. CORRECT.

4 Q. AFTER THAT, WHAT DID YOU DO WITH IT?

5 A. IT WAS PLACED IN A PERMANENT STORAGE AREA IN THE
6 DRUG VAULT AT THE SHERIFF'S OFFICE.

7 Q. AND WHEN YOU SAY VAULT, DOES ANYBODY ELSE HAVE
8 ACCESS TO THIS VAULT?

9 A. NO, SIR. ONLY THE FOUR OF US, THE FOUR PERSONS
10 THAT, MY SUPERVISOR AND THE TWO PEOPLE THAT WORK FOR ME.

11 Q. AND IF THIS IS REMOVED FROM THE VAULT, IS THERE A
12 PROCEDURE THAT YOU FOLLOW THROUGH OR GO THROUGH TO SHOW
13 THAT SOMEBODY HAS LOOKED AT THIS?

14 A. YES. IF WE WERE TO TRANSPORT THAT TO THE LAB IN
15 THIS CASE, THERE WOULD HAVE BEEN A SIGN-OUT WHERE IT WAS
16 SIGNED TO THE PERSON WHO RECEIVED IT AT THE
17 ANDERSON-OCONEE FORENSICS LAB.

18 Q. AND WOULD THIS ITEM BE TRANSPORTED IF IT HAD BEEN
19 ALTERED OR TAMPERED IN ANY SHAPE, WAY OR FORM?

20 A. NO, SIR. THE LAB WOULD NOT RECEIVE IT IF THE SEAL
21 HAD BEEN BROKEN OR IF IT WERE NOT SEALED.

22 Q. SO THE SEAL WOULDN'T HAVE BEEN -- IT WOULD HAVE
23 BEEN SEALED WHEN IT GOES TO THE LAB?

24 A. CORRECT, YES, IT WOULD.

25 Q. AND WAS THAT DONE IN THIS CASE?

1 A. YES, SIR, IT WAS.

2 Q. AND WAS IT DOCUMENTED THAT THIS ITEM, STATE'S
3 EXHIBIT NUMBER FIVE, WAS TAKEN TO THE LAB?

4 A. YES, SIR.

5 Q. AND Y'ALL RETRIEVE IT AFTER IT'S ANALYZED; IS THAT
6 CORRECT?

7 A. THAT'S CORRECT. THEY CALL US WHEN THE ANALYSIS OF
8 THE DRUGS IS COMPLETED AND WE GO AND RETRIEVE IT AND
9 BRING IT BACK TO OUR STORAGE AREA.

10 Q. AND YOU PUT IT BACK INTO THIS VAULT?

11 A. YES, SIR, WE DO.

12 Q. AND DID YOU DO THAT IN THIS CASE?

13 A. I THINK I ACTUALLY ASSISTED MS. VECCHIO DUE TO THE
14 WEIGHT AND PUT IT BACK IN THE STORAGE AREA.

15 Q. AND HAS IT BEEN IN Y'ALL'S CONTINUOUS CARE,
16 CUSTODY AND CONTROL SINCE THEN?

17 A. YES, SIR, IT HAS.

18 Q. AND TO YOUR KNOWLEDGE HAS THIS BEEN TAMPERED WITH,
19 ALTERED OR CHANGED IN ANY SHAPE, WAY OR FORM?

20 A. NO, SIR.

21 Q. AND YOU WERE THE ONE WHO BROUGHT IT FROM THE
22 EVIDENCE VAULT TO COURT?

23 A. THAT'S CORRECT. YESTERDAY AND TODAY.

24 **MR. CAMPBELL:** I HAVE NO FURTHER QUESTIONS. PLEASE
25 ANSWER QUESTIONS OF MS. MANIGAULT.

1 **THE COURT:** CROSS-EXAMINE?

2 **MS. MANIGAULT:** I HAVE NO QUESTIONS, YOUR HONOR.

3 **THE COURT:** YOU MAY STEP DOWN.

4 **MR. CAMPBELL:** MAY THIS WITNESS BE EXCUSED, PENDING
5 ON HIS WATCHING THE DOPE? THAT'S HIS JOB.

6 (WHEREUPON, THE WITNESS WAS EXCUSED.)

7 **THE COURT:** YOU MAY CALL YOUR NEXT WITNESS.

8 **MR. CAMPBELL:** THE STATE CALLS BRAD MCGUIRE TO THE
9 STAND.

10 (WHEREUPON, BRAD MCGUIRE WAS SWORN BY THE
11 CLERK.)

12 **THE CLERK:** PLEASE STATE YOUR FULL NAME AND SPELL
13 YOUR LAST NAME FOR THE RECORD.

14 **THE WITNESS:** NEAL BRADLEY MCGUIRE, M-C-G-U-I-R-E.
15 WHEREUPON,

16 NEAL BRADLEY MCGUIRE,
17 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:
18 DIRECT EXAMINATION BY MR. CAMPBELL:

19 Q. MR. MCGUIRE, WHERE ARE YOU EMPLOYED?

20 A. ANDERSON COUNTY SHERIFF'S OFFICE.

21 Q. AND HOW LONG HAVE YOU BEEN IN LAW ENFORCEMENT?

22 A. SINCE 1993.

23 Q. WHAT POSITION ARE YOU CURRENTLY EMPLOYED IN?

24 A. I'M A NARCOTICS VICE INVESTIGATOR WITH THE
25 ANDERSON COUNTY SHERIFF'S OFFICE.

1 Q. HOW LONG HAVE YOU BEEN IN NARCOTICS?

2 A. ASSIGNED FULL-TIME TO THE NARCOTICS DIVISION WAS
3 IN JUNE OF 1996. PRIOR TO THAT I WAS ASSIGNED
4 TEMPORARILY DOING VARIOUS DIFFERENT THINGS FROM 1994
5 UNTIL THE FULL-TIME POSITION CAME OPEN IN 1996.

6 Q. AND HAVE YOU PRIMARILY WORKED HERE IN ANDERSON
7 COUNTY?

8 A. MY JOB DESCRIPTION, I'VE ALWAYS BEEN PAID BY
9 ANDERSON COUNTY AND WORKED UNDER THE COUNTY OF ANDERSON.

10 Q. AND DO YOU HAVE ANY TRAINING AND EXPERIENCE IN THE
11 FIELD OF NARCOTICS?

12 A. YES, SIR. I'VE GOT AN EXTENSIVE AMOUNT OF
13 TRAINING AND EXPERIENCE IN NARCOTICS.

14 Q. CAN YOU PLEASE TELL THE LADIES AND GENTLEMEN OF
15 THE JURY WHAT TYPE OF TRAINING AND EXPERIENCE YOU HAVE?

16 A. I'VE GOT NUMEROUS CERTIFICATIONS FROM SCHOOLS,
17 FROM THE SOUTH CAROLINA CRIMINAL JUSTICE ACADEMY, AND
18 DRUG FRIENDS, WITH INVESTIGATIVE TECHNIQUES, WITH THE
19 FEDERAL BUREAU OF INVESTIGATION IN BIOTERRORISM,
20 NARCOTICS, DRUG TRENDS WITH THE FEDERAL BUREAU OF
21 INVESTIGATION. I SERVED AS A FEDERAL TASK FORCE OFFICER
22 WITH THE DRUG ENFORCEMENT ADMINISTRATION FOR TWO AND A
23 HALF YEARS, IN WHICH I HAVE FEDERAL CREDENTIAL. WORK
24 FEDERAL CASES LOCALLY AS WELL AS ABROAD FROM SOUTH
25 CAROLINA TO CALIFORNIA. I'VE GOT NUMEROUS TRAINING FROM

1 THE BASIC DRUG ENFORCEMENT ADMINISTRATION TRAINING TO
2 METHAMPHETAMINE, TRAINING WITH CLANDESTINE LAB
3 OPERATIONS, UNDER COVER TECHNIQUES. CURRENT TREND OF HOW
4 DRUG DEALERS OPERATE AND THE CURRENT MODES IN WHICH THEY
5 OPERATE IN.

6 Q. AND ARE YOU UP TO DATE ON THE DEALINGS OF DRUG
7 ACTIVITY HERE IN ANDERSON COUNTY?

8 A. YES, SIR.

9 Q. AND AS PART OF YOUR DUTIES DO YOU ROUTINELY WORK
10 WITH OTHER AGENCIES OR OTHER STATES?

11 A. YES, SIR. THROUGHOUT MY CAREER I WORKED
12 EXTENSIVELY WITH THE GEORGIA BUREAU OF INVESTIGATIONS,
13 NORTH CAROLINA BUREAU OF INVESTIGATIONS, THE DRUG
14 ENFORCEMENT ADMINISTRATION, FBI, U.S. CUSTOMS. I'VE
15 WORKED LOCALLY AND ABROAD FROM CALIFORNIA TO SOUTH
16 CAROLINA. I'VE TESTIFIED IN STATE, LOCAL AND FEDERAL
17 COURTS AND BEEN QUALIFIED AS AN EXPERT WITNESS ON
18 NUMEROUS OCCASIONS IN THE FIELD OF NARCOTICS.

19 MR. CAMPBELL: YOUR HONOR, AT THIS TIME I'D MOVE TO
20 HAVE INVESTIGATOR BRADLEY MCGUIRE QUALIFIED AS AN EXPERT
21 IN THE FIELD OF NARCOTICS.

22 THE COURT: VOIR DIRE?

23 MS. MANIGAULT: I HAVE NO ADDITIONAL, YOUR HONOR.

24 THE COURT: ALL RIGHT. THE WITNESS WILL BE FOUND
25 QUALIFIED AS AN EXPERT IN THE FIELD OF NARCOTICS.

1 MR. FOREMAN, LADIES AND GENTLEMEN OF THE JURY,
2 NORMALLY A WITNESS IS NOT PERMITTED TO GIVE THEIR
3 OPINION, THEY CAN ONLY TESTIFY TO THINGS THEY KNOW OF
4 THEIR OWN KNOWLEDGE, THAT IS BY REASON OF EXERCISE OF
5 THEIR SENSES. HOWEVER, IF A WITNESS IS QUALIFIED IN A
6 PARTICULAR AREA BY REASON OF BACKGROUND, TRAINING OR
7 EXPERIENCE OR THE LIKE, THEN THEY MAY BE QUALIFIED AS AN
8 EXPERT IN THAT AREA OF EXPERTISE AND GIVE THEIR OPINIONS
9 AS TO MATTERS THAT THEY WOULD NORMALLY DEAL WITH IN THEIR
10 PARTICULAR AREA.

11 HOWEVER, ALL WITNESSES' TESTIMONY, EXPERT AS WELL AS
12 FACT WITNESSES, ARE FOR YOUR DETERMINATION AS TO THE
13 VALUE OR IMPORTANCE TO BE GIVEN. VERY GOOD.

14 MR. CAMPBELL: THANK YOU, YOUR HONOR.

15 BY MR. CAMPBELL:

16 Q. NOW, INVESTIGATOR MCGUIRE, REGARDING ILLEGAL DRUG
17 OPERATIONS OR DEALINGS IN ANDERSON COUNTY, WHAT ARE THE
18 MAIN NARCOTICS YOU NORMALLY SEE?

19 A. IN THE ANDERSON AREA WE HAVE A MAJOR INFLUX OF
20 COCAINE IN VARIOUS FORMS, WHETHER IT BE POWDER COCAINE,
21 CRACK COCAINE; METHAMPHETAMINE, WHETHER IT BE
22 METHAMPHETAMINE OR ICE IN THE FORM OF ICE METHAMPHETAMINE
23 WHICH IS A PURE FORM OF THAT; MARIJUANA; SOME OF THE
24 PRESCRIPTION DRUGS AS WELL.

25 Q. AND DUE TO YOUR TRAINING AND EXPERIENCE, DO YOU

1 KNOW HOW NORMALLY COCAINE IS SOLD?

2 A. YES, SIR.

3 Q. AND HOW IS THAT EXACTLY DONE? DEALING
4 SPECIFICALLY WITH ANDERSON COUNTY.

5 A. WITHIN ANDERSON COUNTY WE'RE CONSIDERED A MAJOR
6 HUB BETWEEN ATLANTA AND CHARLOTTE, AND IT CAN BE A
7 DROP-OFF POINT OR ACTUALLY A PLACE THAT A LOT OF DRUG
8 DEALERS TRANSACT SOME OF THEIR TRANSACTIONS, MOVING
9 VARIOUS FORMS OF MONEY, LARGE AMOUNTS OF MONEY OR
10 CONTRABAND OR DRUGS THROUGH THE AREA.

11 WE BASICALLY AS A LOCAL DIVISION OF LAW
12 ENFORCEMENT WILL SEE COCAINE ON THE USAGE BASE ANYWHERE
13 FROM A GRAM TO AN EIGHTH OF AN OUNCE WHICH WOULD BE
14 CONSIDERED IN COMMON TERMS AS AN EIGHT BALL OR 3.55
15 GRAMS, WHICH IS AN EIGHTH OF AN OUNCE. AND COCAINE OR IN
16 METHAMPHETAMINE, IN THE MARIJUANA FIELD IT WOULD BE A
17 LITTLE DIFFERENT, FROM AN OUNCE DOWN TO JUST A FEW
18 INDIVIDUALLY WRAPPED JOINTS SO TO SPEAK.

19 Q. NOW YOU MENTIONED ATLANTA AND CHARLOTTE. DOES
20 THAT HAVE ANY SIGNIFICANCE IN DEALING WITH NARCOTICS,
21 THOSE TWO TOWNS?

22 A. YES, SIR. THROUGHOUT MY CAREER MUCH OF MY CAREER
23 WHEN I WAS WORKING WITH THE TASK FORCE WITH D.E.A. AS
24 WELL AS F.B.I. AND SOME OF THE OTHER JOINT TASK FORCES,
25 GEORGIA BUREAU OF INVESTIGATION AND NORTH CAROLINA CRIME

1 BUREAU, WE -- AND SOME OF THE LOCAL MUNICIPALITIES AS
2 WELL AS THE SHERIFF'S OFFICE, WE WERE IN CONSTANT CONTACT
3 WITH THEM WHERE DRUGS WERE BEING TRANSPORTED FROM ONE
4 PLACE TO ANOTHER WHICH WOULD USUALLY BE ATLANTA WOULD BE
5 THE HUB SOURCE OF THE DRUGS AND THEN THE MONEY WOULD
6 ACTUALLY BE COMING IN FROM THE NORTH, FROM THE CHARLOTTE
7 OR FROM THE RALEIGH AREA, GREENVILLE AREA, OR ANYWHERE
8 NORTH WOULD BE SHIPPING MONEY SOUTH AND DRUGS WOULD BE
9 GOING NORTH.

10 SINCE THE MILLENNIUM THE ATLANTA AREA IS NOW KNOWN
11 AS THE DRUG HUB OF THE UNITED STATES. IT'S VERY WELL
12 KNOWN THAT IN THE EIGHTIES AND EARLY NINETIES MIAMI WAS.
13 NOW ATLANTA IS NOW KNOWN AS THE DRUG HUB OF THE UNITED
14 STATES.

15 Q. NOW, DID YOU HAVE AN OCCASION -- LET ME JUST STEP
16 BACK.

17 BASED ON YOUR TRAINING AND EXPERIENCE,
18 SPECIFICALLY JUST DEALING WITH ANDERSON COUNTY, DO YOU
19 KNOW WHAT A GRAM OF POWDER COCAINE IS GOING FOR TODAY?

20 A. YES, SIR. BASED ON THE PURITY LEVEL, A BRICK OR A
21 KILO OF COCAINE IN ITS PUREST FORM THAT WOULD ACTUALLY
22 COME FROM SOUTH AMERICA OR MEXICO WOULD BE ABOUT A
23 HUNDRED DOLLARS PER GRAM IN THE MORE PURE FORM OF POWDER
24 COCAINE.

25 Q. AND NORMALLY IS COCAINE SOLD IN ITS PURE FORM?

1 A. NO, SIR. THERE'S A CUTTING AGENT OR SOMETHING TO
2 DILUTE THE PURITY RATE WHICH DOES TWO THINGS. PURE
3 COCAINE INGESTED GIVES YOU A GREATER CHANCE OF HAVING
4 SOME KIND OF HEALTH ISSUES: HEART ATTACK OR STROKE OR
5 SOMETHING OF THAT NATURE.

6 IF YOU CUT IT TO A LESSER PURITY LEVEL, IT DOES
7 TWO THINGS: IT BASICALLY MAY KEEP YOU ALIVE AS WELL AS
8 IT INCREASES THE PROFIT TWO TO ONE, THREE TO ONE, IN A
9 DRUG DEALER'S POCKET.

10 Q. NOW I WANT TO SHOW YOU WHAT'S BEEN MARKED AS
11 STATE'S EXHIBIT NUMBER FIVE.

12 **MR. CAMPBELL:** YOUR HONOR, MAY I HAVE THE WITNESS
13 COME OFF THE STAND?

14 **THE COURT:** CERTAINLY.

15 (WITNESS LEAVES STAND.)

16 BY MR. CAMPBELL:

17 Q. WOULD YOU PLEASE TAKE A LOOK AT THIS AND TELL ME
18 WHAT YOU OBSERVED?

19 A. BASED ON MY TRAINING AND EXPERIENCE --

20 **THE COURT:** LET'S DO THIS. OFFICER, IF YOU WOULD
21 STAND WHERE MR. CAMPBELL IS SO YOU ARE SPEAKING BACK IN
22 THIS DIRECTION SO THE COURT REPORTER CAN SEE YOU AS WELL
23 AS HEAR YOU AND YOU CAN SPEAK TO THE JURY AT THE SAME
24 TIME.

25 **THE WITNESS:** BASED ON MY TRAINING AND EXPERIENCE

1 THIS WOULD BE CONSIDERED A BRICK OR KILO OR 2.25 POUNDS
2 OR A THOUSAND KILOGRAMS OF COCAINE OR SOME SIMILAR
3 SUBSTANCE THAT WOULD REPRESENT COCAINE ON MY EXPERIENCE.

4 WHAT I SEE ODD IN THIS, WE'VE ALREADY HAD TESTIMONY
5 THAT THE OTHER, THEY USUALLY HAVE IT WRAPPED IN SOME KIND
6 OF WAY THAT YOU WOULDN'T NORMALLY BE ABLE TO IDENTIFY
7 THIS AS COCAINE OR AS METHAMPHETAMINE OR ANY OTHER KIND
8 OF CONTRABAND. WHAT STICKS OUT IN THIS PARTICULAR BRICK
9 OF COCAINE IS THE EMBLEMS OF, LIKE A CROWN OR INSIGNIA,
10 AND THAT'S SOMETHING THAT'S VERY DISTINGUISHED WHEN YOU
11 ARE IN THE DRUG WORLD WHEN YOU ARE WORKING WITH MEXICAN
12 CARTELS OR DRUG LORDS. THEY IDENTIFY THEIR SOURCES AND
13 IT ACTUALLY COMES IN FROM CERTAIN PARTS OF THE AREA. AND
14 WHEN YOU BECOME A LAW ENFORCEMENT OFFICER, YOU BEGIN
15 LOOKING. THIS PRODUCT HERE HAS BEEN IN SOME KIND OF
16 PRESS, PRESSED OR COMPACTED TO GET IT TO THE TIGHTEST
17 CONSISTENCY YOU CAN HAVE TO MAKE IT SMALLER THAT IT WOULD
18 BE MORE INTO A BRICK FORM OR A HARD FORM. SO THIS BAG
19 HAS BEEN PUT INTO SOME KIND OF PRESS TO CONDENSE IT.
20 EVEN THOUGH IT STILL WEIGHS 2.25 POUNDS, AND THEN THE
21 INSIGNIA THAT STANDS OUT TO ME AS AN INVESTIGATOR WHEN I
22 SEE THIS, THIS COMES FROM A CERTAIN GROUP OF INDIVIDUALS
23 IDENTIFYING THIS IS THEIR COCAINE OR THIS IS THEIR
24 CONTRABAND.

25 Q. AND NORMALLY IS THIS HOW THIS IS SOLD, IN A BRICK

1 FORM ON THE STREET?

2 A. STREET LEVEL, STREET LEVEL WOULD NOT BE INTO A
3 BRICK FORM, IT WOULD ACTUALLY BE BROKEN DOWN INTO SMALLER
4 QUANTITIES. IT WOULD ACTUALLY BE MIXED WITH SOME OTHER
5 CHEMICALS TO GIVE YOU MORE THAN ONE BRICK OF COCAINE.
6 YOU MAY ACTUALLY GET TWO KILOS OF COCAINE WHEN YOU PUT A
7 CUTTING AGENT IN IT.

8 Q. I'M GONNA SHOW YOU THIS PACKAGE HERE. IS THIS
9 SHOWING THE EMBLEM THAT YOU WERE TALKING ABOUT?

10 A. YES, SIR. THIS ONE HERE IS A LITTLE BIT MORE
11 OBVIOUS. IT SHOWS AN INSIGNIA AND IT HAD ROLEX WRITTEN
12 ON THE BOTTOM WHICH WOULD IDENTIFY THROUGH EPIC
13 (PHONETIC) OR SOME OTHER FEDERAL AGENCY COULD TELL THIS
14 COMES FROM A CERTAIN GROUP OR CERTAIN CARTEL OF DRUG
15 DEALERS.

16 Q. IS THIS THE IMAGE YOU ARE REFERRING TO, RIGHT
17 HERE?

18 A. YES, SIR. THE IMAGE REALLY IS NOT THAT VISIBLE
19 THAT YOU CAN ACTUALLY SEE THE POINTS OF LIKE A CREST OR
20 SOMETHING AT THE VERY BOTTOM YOU CAN ACTUALLY SEE SOME OF
21 THE LETTERS RAISED OUT AND IT ACTUALLY SPELLS OUT
22 "ROLEX", WHICH WOULD BE AN INDICATOR IT COMES FROM THAT
23 CARTEL OR THAT GROUP OF DRUG DEALERS.

24 Q. IN A NORMAL STREET USER, THEY DON'T RECEIVE IT
25 LIKE THIS. HOW WOULD THEY RECEIVE IT?

1 A. THEY WOULD RECEIVE IT, IF THEY WERE BUYING POWDER
2 COCAINE, THEY WOULD RECEIVE IT IN SMALLER INCREMENTS SUCH
3 AS A GRAM, OR POSSIBLY TWO GRAMS, OR 3.55 GRAMS WHICH
4 WOULD BE AN EIGHTH OF AN OUNCE. THE INDIVIDUAL DOSAGE
5 UNIT, IS HOW WE WERE TRAINED, IS PER GRAM. THAT'S THE
6 WAY WE WOULD REPORT IT TO S.L.E.D. OR WHEN WE WRITE OUR
7 REPORTS.

8 Q. IF YOU WOULD GO AHEAD AND TAKE THE STAND AGAIN.

9 (WITNESS RESUMES STAND.)

10 BY MR. CAMPBELL:

11 Q. NOW, INVESTIGATOR MCGUIRE, BASED UPON TEN PACKAGES
12 HERE BEING TEN KILOS, WHAT WOULD BE THE STREET VALUE
13 BEFORE IT BEING CUT, OR CHANGED IN ANY SHAPE, WAY OR
14 FORM, IN ANDERSON COUNTY?

15 A. WELL, WE WOULD FIRST HAVE TO LOOK AT SOME MATH ON
16 IT. A KILO IS A THOUSAND KILOGRAMS WHICH WOULD BE A
17 THOUSAND GRAMS -- NOT KILOGRAM BUT A THOUSAND GRAMS,
18 WHICH WOULD BE, IN PURE FORM WOULD BE WORTH ABOUT A
19 HUNDRED DOLLARS PER GRAM.

20 IF YOU, THE COMMON TERM WOULD BE "STEPPED ON" OR
21 "CUT" THE COCAINE AS WE SEE IT TODAY, YOU COULD ACTUALLY
22 MAKE TWO KILOS OF COCAINE, PROBABLY TWO AND A HALF, MAYBE
23 THREE AND STILL BE ABLE TO SELL IT, WHICH WOULD INCREASE
24 THE VALUE TWO TO THREE-FOLD OF WHAT AN ACTUAL HUNDRED
25 DOLLARS PER GRAM OF WHAT COCAINE WOULD BE WORTH ON THE

1 STREET TODAY IN SOUTH CAROLINA, PARTICULARLY IN ANDERSON.

2 Q. AND WHAT WOULD BE THE VALUE IN PURE FORM OF THESE
3 ITEMS SITTING HERE IN THIS COURTROOM TODAY?

4 A. IF IT WAS THE FORM THE PURITY LEVEL THAT WOULD BE
5 HERE TODAY, IT WOULD BE SOMEWHERE AROUND A HUNDRED
6 DOLLARS PER GRAM. THERE'S TEN THOUSAND GRAMS THERE,
7 WHICH WOULD BE ABOUT A MILLION DOLLARS' WORTH OF STREET
8 VALUE.

9 Q. AND BESIDES JUST BEING POWDER COCAINE, COULD THIS
10 BE PROCESSED INTO ANY OTHER TYPE OF COCAINE?

11 A. YES. IN THE PROCESS OF COCAINE, COCAINE IS
12 ACTUALLY A GREEN PLANT, IT COMES FROM A COCA LEAF
13 PREDOMINANTLY GROWN IN SOUTH AMERICA. WHEN YOU MIX IT
14 WITH SOME CHEMICALS AND ACTUALLY COOK IT UP, IT BECOMES
15 COCAINE PASTE, WHICH IS DRIED AND PRESSED INTO THE PASTE
16 AS YOU SEE IT TODAY.

17 IF YOU ARE WANTING IT TO BE JUST PURE COCAINE,
18 THERE WOULD BE SOME IMPURITY LEVEL IN THIS; IT COULD BE
19 ANYWHERE FROM 70 TO 80 PERCENT, 85 PERCENT COCAINE IS
20 WHAT YOU ARE SEEING TODAY, WHICH IS WAY TOO POTENT FOR A
21 HUMAN TO REALLY INGEST IN SOME FORM OR FASHION WITHOUT
22 HAVING SOME MEDICAL ISSUES.

23 IF YOU TOOK SOME OF THE IMPURITIES OUT, RE-ROCK IT
24 OR MAKE IT INTO CRACK COCAINE, THEN YOU WOULD BE
25 INGESTING COCAINE IN A PURER FORM, IN A VAPOR WHICH YOU

1 INGEST INTO YOUR LUNGS. SO YOU COULD ACTUALLY TAKE THAT
2 POWDER COCAINE AND DO A BETTER PROCESS, MAKE IT INTO
3 CRACK COCAINE, AND IT WOULD BE EVEN MORE OF A PURE FORM,
4 AND IT WOULD BE EVEN MORE DANGEROUS TO A HUMAN TO
5 CONSUME.

6 Q. NOW, INVESTIGATOR MCGUIRE, DID YOU, BACK ON AUGUST
7 23RD OF 2006 HAVE OCCASION TO COME INTO CONTACT WITH A
8 RAHIEM KIRKMAN?

9 A. YES, SIR.

10 Q. AND WHERE WAS THAT?

11 A. AT THE SHERIFF'S OFFICE IN ANDERSON COUNTY.

12 Q. AND CAN YOU TELL THE LADIES AND GENTLEMEN OF THE
13 JURY WHAT LED UP TO YOUR CONTACT OR ASSOCIATION WITH
14 MR. KIRKMAN?

15 A. YES, SIR. AS WE WELL KNOW IN ANDERSON COUNTY, WE
16 HAVE A VERY LIMITED AMOUNT OF OFFICERS, NARCOTICS
17 OFFICERS IN THE COUNTY. ON THE 22ND MY SUPERVISOR CALLED
18 AND SAID THAT THERE HAD BEEN AN INCIDENT ON THE
19 INTERSTATE WHERE SOMEONE HAD ACTUALLY ELUDED POLICE AND
20 RAN, AND WITH OUR INVESTIGATORS BEING IN UNDERCOVER
21 VEHICLES, AND USUALLY WEAR PLAIN CLOTHES AND MAYBE A
22 BEARD OR LONG HAIR OR SOMETHING THAT LOOKS A LITTLE
23 DIFFERENT THAN NORMAL. HE ASKED US TO SORT OF INFILTRATE
24 THE AREA AND SEE IF WE COULD FIND THE SUBJECT WE WERE
25 LOOKING FOR. WE WERE GIVEN A DESCRIPTION.

1 BY THE TIME I ARRIVED ON THE 22ND CLOSER TO THE
2 AREA OF THE INCIDENT, WE WERE GIVEN A DESCRIPTION OF THE
3 DEFENDANT, AND WE CONTINUALLY WENT AROUND THE AREA FOR A
4 FEW HOURS LOOKING NO, TO NO AVAIL. WE WERE NOT ABLE TO
5 FIND THE SUBJECT THAT NIGHT.

6 ON THE 23RD I WAS CONTACTED IN THE MORNING ON THE
7 WAY TO THE OFFICE AND SAID HE HAD BEEN APPREHENDED AND I
8 WAS ASKED TO, YOU KNOW, SPEAK WITH THE DEFENDANT.

9 Q. AND DID YOU MEET MR. KIRKMAN?

10 A. YES, I DID.

11 Q. AND WHEN YOU MET HIM, WERE YOU DRESSED LIKE YOU
12 ARE DRESSED TODAY?

13 A. NO, SIR.

14 Q. HOW WERE YOU DRESSED?

15 A. I WOULD DEFINITELY HAVE BEEN IN BLUE JEANS AND
16 TENNIS SHOES. I WOULD EITHER HAVE HAD A PULLOVER SHIRT
17 OR A BUTTON UP SHIRT; AND AT THAT PARTICULAR TIME I WOULD
18 PROBABLY HAVE HAD A SCRUFFY BEARD LIKE I HAVE TODAY.

19 Q. YOU WERE IN PLAIN CLOTHES. YOU WEREN'T IN UNIFORM
20 LIKE THE OFFICERS HERE TODAY?

21 A. YES, SIR.

22 Q. AND WHERE DID YOU MEET HIM AT?

23 A. AT THE SHERIFF'S OFFICE IN MY OFFICE.

24 Q. WAS HE UNDER ARREST AT THIS POINT IN TIME?

25 A. YES, SIR.

1 Q. AND WAS HE IN HANDCUFFS TO YOUR KNOWLEDGE?

2 A. INITIALLY WHEN HE COME INTO THE OFFICE I BELIEVE
3 HE WAS HANDCUFFED, AND DUE TO US CONDUCTING AN INTERVIEW
4 WE DID REMOVE THE HANDCUFFS AND TALK WITH HIM, AND SO HE
5 WAS NOT HANDCUFFED DURING THE TIME OF THE INTERVIEW WHEN
6 I ACTUALLY STARTED MY PROCESS.

7 Q. SO YOU EVENTUALLY TALKED TO HIM ABOUT THE EVENTS
8 THAT TOOK PLACE?

9 A. YES, SIR.

10 Q. AND PRIOR -- EXACTLY YOU SAID IN YOUR OFFICE.
11 WHERE EXACTLY IS YOUR OFFICE LOCATED?

12 A. MY OFFICE IS LOCATED ON THE SECOND FLOOR OF THE
13 SHERIFF'S OFFICE IN THE CORNER OF THE SECOND FLOOR OF THE
14 NARCOTICS SPECIAL OPERATIONS DIVISION.

15 Q. AND HOW BIG IS YOUR OFFICE?

16 A. I THINK IT'S EITHER A 10-BY-14 OR AN 8-BY-14.

17 Q. AND WHEN YOU MET MR. KIRKMAN, WERE YOU BY
18 YOURSELF?

19 A. NO, SIR. I HAD ANOTHER INVESTIGATOR WITH ME.

20 Q. AND PRIOR TO YOU TALKING TO MR. KIRKMAN OR ANY
21 OTHER SUSPECT, WHAT PROCEDURES DO YOU GO THROUGH?

22 A. AS AN INVESTIGATOR WE ARE TRAINED TO MAKE SURE
23 THAT THE PERSON IS UNDER ARREST, UNDERSTANDS THAT THEY
24 ARE UNDER ARREST. WE EXPLAIN A LITTLE BIT ABOUT THE
25 CHARGES THAT THEY ARE FACING. WE EXPLAIN BEFORE WE ASK

1 THEM ANY QUESTIONS, THAT THEY MUST UNDERSTAND THAT THEY
2 HAVE A MIRANDA WARNING. AND WE TRY TO, YOU KNOW, TALK
3 WITH THEM ON AN EVEN TONE AND SPEAK WITH THEM AND LET
4 THEM KNOW THAT IF THEY WISH TO SPEAK WITH US, BEFORE WE
5 DO, SO WE HAVE TO GO THROUGH A CERTAIN PROCEDURE. I
6 ACTUALLY GAVE THE DEFENDANT VERBAL MIRANDA WARNINGS. WE
7 HAVE ANOTHER FORM THAT OUR SHERIFF'S OFFICE HAS IN PLACE
8 AND IT IS PART OF OUR POLICY THAT WE HAVE TO GET A
9 WRITTEN MIRANDA.

10 PRIOR TO THAT WE USUALLY TALK FOR JUST A MINUTE,
11 JUST NOTHING TO DO WITH THE PARTICULAR CASE, TO MAKE SURE
12 THAT I FEEL CONFIDENT THAT THE PERSON I'M GONNA INTERVIEW
13 IS COHERENT, THAT THE PERSON UNDERSTANDS AND KNOWS WHAT
14 IS GOING ON, THAT HE'S NOT UNDER THE INFLUENCE OF ANY
15 ALCOHOL OR DRUGS TO MAKE HIM NOT BE ABLE TO MAKE AN
16 ACCURATE STATEMENT OR NOT BE SURE OF WHAT HE WAS TALKING
17 ABOUT.

18 Q. AND DID YOU FOLLOW THESE PROCEDURES IN DEALING
19 WITH MR. KIRKMAN?

20 A. YES, I DID.

21 Q. I'M GONNA SHOW YOU WHAT'S BEEN MARKED FOR
22 IDENTIFICATION STATE'S EXHIBIT 3. CAN YOU PLEASE
23 IDENTIFY WHAT THIS IS, SIR?

24 A. IT'S THE ANDERSON COUNTY SHERIFF'S OFFICE ADVISORY
25 OF RIGHTS. IT'S A FORM THAT WE HAVE PRINTED THAT HAS THE

1 MIRANDA WARNINGS IN WRITING. THIS IS SOMETHING THAT,
2 WHEN I START THE INTERVIEW PROCESS, AFTER I'VE MADE THE
3 DETERMINATION THAT THE PERSON I BELIEVE THAT IS CAPABLE
4 OF UNDERSTANDING AND ABLE TO COMPREHEND WHAT'S GOING ON,
5 I'LL GO THROUGH THE PROCESS.

6 THERE ARE SEVERAL BLOCKS IN THIS THING THAT WHEN I
7 READ THE MIRANDA WARNINGS, I'LL ASK AGAIN IF THE SUBJECT
8 WANTS TO CONTINUE TALKING. IF HE SAYS SO, THEN I'LL ASK
9 HIM TO READ THIS TO ME, THOSE TWO THINGS. IT LETS ME
10 KNOW THAT HE IS COHERENT, THAT HE CAN READ AND WRITE, AND
11 HE DOES UNDERSTAND WHAT HE'S READING. AND IT ASSURES ME
12 THAT I'M NOT TALKING WITH SOMEONE THAT MAY HAVE SOME KIND
13 OF AN ISSUE, OR UNDER THE INFLUENCE OR SOME KIND OF A
14 MENTAL ISSUE THAT HE MAY NOT BE ABLE TO COMPREHEND WHAT'S
15 HAPPENING.

16 Q. DID HE APPEAR TO HAVE ANY -- LIKE DID HE APPEAR TO
17 HAVE ANY EFFECTS OF ALCOHOL OR DRUGS WHEN YOU TALKED TO
18 HIM?

19 A. NO, SIR.

20 Q. I'M GONNA SHOW YOU -- THIS IS A COPY OF STATE'S
21 EXHIBIT NUMBER THREE.

22 A. YES, SIR.

23 Q. NOW, CAN YOU PLEASE TELL THE LADIES AND GENTLEMEN
24 OF THE JURY -- NOW I WANT TO GO THROUGH WHAT YOU DID TO
25 MR. KIRKMAN ON THAT DAY. THIS IS A COPY OF STATE'S

1 EXHIBIT NUMBER THREE. IF YOU CAN PLEASE START WITH THE
2 TOP AND EXPLAIN TO THEM WHAT L-E-C MEANS.

3 A. ALL RIGHT. THE LOCATION OF WHERE THE INTERVIEW
4 WAS CONDUCTED IS THE LAW ENFORCEMENT CENTER, THAT'S JUST
5 THE ABBREVIATION FOR THE LAW ENFORCEMENT CENTER. IT WAS
6 CONDUCTED ON AUGUST THE 23RD AT APPROXIMATELY 1:50 P.M.
7 AND AT THAT TIME I READ HIM THE MIRANDA WARNINGS, AND
8 THEN I ASKED HIM TO READ THEM BACK TO ME AND INITIAL EACH
9 ONE AS HE DOES TO MAKE SURE HE UNDERSTANDS EACH ELEMENT
10 OF THE MIRANDA WARNINGS.

11 Q. AND DID YOU DO THAT IN THIS CASE?

12 A. YES, SIR, I DID.

13 Q. AND JUST PLEASE GO THROUGH THE PROCESS THAT YOU
14 WENT THROUGH AND WHAT HE DID.

15 A. ALL RIGHT. I ASKED HIM THAT YOU HAVE THE RIGHT TO
16 REMAIN SILENT. AND HE READ IT BACK TO ME AND THEN
17 INITIALED IT.

18 HE READ BACK TO ME: ANYTHING THAT YOU SAY MAY BE
19 USED AGAINST YOU IN COURT. HE INITIALED THAT.

20 YOU HAVE THE RIGHT TO SPEAK TO A LAWYER FOR ADVICE
21 BEFORE WE, YOU ARE ASKED ANY QUESTIONS AND HAVE HIM WITH
22 YOU DURING QUESTIONING. HE INITIALED THAT.

23 IF YOU CANNOT AFFORD A LAWYER, ONE WILL BE
24 APPOINTED FOR YOU BEFORE ANY QUESTIONS IF YOU WISH. HE
25 READ AND INITIALED THAT.

1 IF YOU DECIDE TO ANSWER QUESTIONS NOW WITHOUT A
2 LAWYER PRESENT, YOU WILL STILL HAVE THE RIGHT TO STOP
3 ANSWERING QUESTIONS AT ANY TIME. YOU ALSO HAVE THE RIGHT
4 TO STOP ANSWERING AT ANY TIME UNTIL YOU SPEAK WITH A
5 LAWYER. THAT WAS ALSO INITIALED. AT THAT POINT HE
6 SIGNED IT AND SAID HE UNDERSTOOD WRITTEN AND VERBAL
7 WARNINGS. I SIGNED IT AND INVESTIGATOR RUSTY SCOGGINS
8 WAS INSIDE THE OFFICE WITH ME DURING THAT TIME, AND HE
9 ALSO WITNESSED THE SIGNATURE.

10 AT THE SECOND PART, THE WAIVER OF RIGHTS ---

11 Q. LET ME JUST BACK UP FOR A SECOND. IS THIS HIS
12 SIGNATURE RIGHT HERE?

13 A. YES, SIR, IT IS.

14 Q. AND THIS IS YOU RIGHT HERE?

15 A. YES, SIR.

16 Q. PLEASE CONTINUE, SIR.

17 A. ON THE WAIVER OF RIGHTS, IT'S AN ADDITIONAL
18 PROCEDURE THAT WE DO WHICH SORT OF REITERATES THAT THEY
19 UNDERSTAND WHAT THEY ARE DOING. AGAIN IT GIVES THEM SOME
20 TIME TO REFLECT AND TO MAKE SURE THAT THEY DO WANT TO
21 MAKE STATEMENTS AND THEY KNOW THAT THEY CAN STOP AT ANY
22 TIME UNTIL THEY TALK WITH A LAWYER OR UNTIL ONE HAS BEEN
23 CONTACTED OR THE INTERVIEW IS OVER. AND I READ IT TO HIM
24 AND I ASKED HIM TO READ IT BACK TO ME, WHICH HE DID.

25 IN MY OPINION I BELIEVED AT THAT TIME THAT

1 MR. KIRKMAN WAS SOMEWHAT OF AN EDUCATED MAN BECAUSE HE
2 READ PRETTY WELL; HE UNDERSTOOD, AND I WAS CONVINCED THAT
3 HE WAS COHERENT OF WHAT WAS GOING ON.

4 Q. AND DID HE SIGN THIS WAIVER OF RIGHTS?

5 A. YES, SIR, HE DID.

6 Q. AND WAS THAT HIS SIGNATURE HERE AT THE BOTTOM?

7 A. YES, SIR. AND I ALSO EXPLAINED TO HIM ABOUT
8 PRESSURE AND COERCION. I EXPLAINED TO HIM THAT WE WERE
9 NOT GONNA PROMISE HIM ANYTHING, THAT WE WERE NOT GONNA
10 BASICALLY BEAT HIM UP IF HE DIDN'T TELL US ANYTHING. I
11 TOLD HIM THAT WE WERE OUT HERE TO CONDUCT AN INTERVIEW
12 AND IF HE FELT LIKE HE NEEDED TO TALK WITH US, THEN
13 THAT'S SOLELY HIS DECISION, AND AT THAT TIME HE CHOSE TO
14 DO SO.

15 Q. AND AT ANY POINT DID HE ASK YOU TO STOP AND SPEAK
16 TO AN ATTORNEY OR A LAWYER?

17 A. NO, SIR, HE DID NOT.

18 Q. AT ANY POINT DURING YOUR CONVERSATION WITH HIM DID
19 HE WISH TO CONSULT WITH ANYBODY ELSE REGARDING THE EVENTS
20 THAT HAD TAKEN PLACE?

21 A. NO, SIR, HE DID NOT.

22 Q. AND DID HE TALK TO YOU ABOUT WHAT HAD HAPPENED?

23 A. YES, SIR, HE DID.

24 Q. BEFORE I GET TO THAT --

25 **MR. CAMPBELL:** YOUR HONOR, I WANT TO MOVE STATE'S

1 EXHIBIT NUMBER THREE INTO EVIDENCE.

2 THE COURT: ANY OBJECTION?

3 MS. MANIGAULT: SUBJECT TO MY FORMER EXCEPTION.

4 THE COURT: CERTAINLY. YOUR EXCEPTIONS TO THE
5 COURT'S RULINGS AND THE OBJECTIONS THERETO, STATE'S
6 EXHIBIT NUMBER 3 IS ADMITTED.

7 (STATE'S EXHIBIT # 3, MIRANDA FORM AND WAIVER
8 OF RIGHTS FORM, WAS RECEIVED IN EVIDENCE.)

9 BY MR. CAMPBELL:

10 Q. NOW, INVESTIGATOR MCGUIRE, AFTER YOU GO THROUGH
11 THIS FORM, WHAT, IF ANYTHING, DID YOU DO NEXT?

12 A. WE BEGAN TALKING ABOUT NATURALLY WHERE HE BEGAN IN
13 THE BUSINESS OF -- THE ALLEGED BUSINESS OF RUNNING
14 COCAINE AND --

15 Q. FIRST OF ALL, I WANT TO BACK UP.

16 A. YES, SIR.

17 Q. WHAT WERE YOU TALKING TO HIM ABOUT TO BEGIN WITH?
18 I'M GETTING BACK TO THE EVENTS THAT TOOK PLACE ON AUGUST
19 22ND, 2006.

20 A. YES, SIR. I SPOKE WITH HIM ABOUT ACTUALLY THE
21 VEHICLE STOP. I SPOKE WITH HIM BRIEFLY ABOUT THAT WITH
22 HIM ELUDING POLICE. BASICALLY CONFIRMING THAT, YOU KNOW,
23 HE DID UNDERSTAND THAT HE WAS AGAIN UNDER ARREST. THAT
24 IF HE WANTED TO GIVE ME HIS SIDE OF THE STORY OF WHAT HE
25 BELIEVED WOULD BE, YOU KNOW, THE TRUTH OF WHAT HE WAS

1 WANTING TO SAY WAS THE TRUTH, I WOULD BE GLAD TO
2 INTERVIEW HIM.

3 Q. AND WAS THIS PUT DOWN IN WRITING?

4 A. YES, SIR, IT WAS.

5 Q. AND DID HE WRITE IT OR DID YOU WRITE IT?

6 A. I WROTE IT.

7 Q. AND WAS THAT AT HIS REQUEST OR DO YOU NORMALLY
8 TELL THEM YOU'RE GONNA WRITE THE STATEMENT FOR THEM?

9 A. NORMALLY WE TRY TO WRITE THE STATEMENTS. BUT IT
10 WAS HIS REQUEST, HE HAD ASKED ME TO WRITE THE STATEMENT.
11 AND AT THAT TIME WE DISCUSSED THAT I WOULD TRY TO PUT IT
12 INTO THE WORDS WHEN WE TALKED, I WOULD TRY TO PUT IT AS
13 CLOSE TO HIS WORDS AS I COULD, YOU KNOW, WITH HIM, WHAT
14 HE WAS TELLING ME ABOUT THE STATEMENT.

15 Q. AND DID YOU DO THAT IN THIS CASE?

16 A. YES, SIR, I DID.

17 Q. AND AFTER YOU HAVE WRITTEN THIS STATEMENT OUT, IS
18 THE INDIVIDUAL SUCH AS MR. KIRKMAN IN THIS CASE GIVEN AN
19 OPPORTUNITY TO REVIEW THE STATEMENT?

20 A. YES, SIR. EVERY INTERVIEW THAT I'VE EVER
21 CONDUCTED, IF THERE IS A STATEMENT WRITTEN, BEFORE THE
22 DEFENDANT OR THE PERSON GIVING THE STATEMENT, THEY HAVE
23 ALWAYS RE-READ THE STATEMENT AND THEY WILL INITIAL ANY
24 SCRATCH-OUTS OR CHANGEOVERS OR ANYTHING THAT THEY DON'T
25 FEEL IS CORRECT, THEY'LL SCRATCH THROUGH IT OR WE WILL

1 ACTUALLY DO AN ADDITIONAL STATEMENT OR SOMETHING TO MAKE
2 SURE THAT WHAT THE PERSON IS TELLING ME GETS PUT DOWN TO
3 WHAT THEY BELIEVE IS FACT.

4 Q. AND WAS THAT DONE IN THIS CASE?

5 A. YES, SIR.

6 Q. AT THE END DID MR. KIRKMAN SIGN THIS?

7 A. YES, SIR, HE DID.

8 Q. I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS
9 STATE'S EXHIBIT FOUR FOR IDENTIFICATION. WOULD YOU
10 PLEASE IDENTIFY THIS, SIR?

11 A. THIS IS THE STATEMENT OF MR. KIRKMAN THAT I WROTE
12 AT MY OFFICE ON THE 23RD OF 2006.

13 Q. AND I WANT TO SHOW YOU, IS THIS A COPY OF STATE'S
14 EXHIBIT NUMBER FOUR?

15 A. YES, SIR, IT IS.

16 Q. OKAY. AND THIS IS HIS STATEMENT THAT YOU TOOK ON
17 AUGUST 23RD, 2006?

18 A. YES, SIR, IT IS.

19 **MR. CAMPBELL:** YOUR HONOR, AT THIS TIME I MOVE
20 STATE'S EXHIBIT NUMBER FOUR INTO EVIDENCE.

21 **MS. MANIGAULT:** SUBJECT TO MY PRIOR OBJECTION.

22 **THE COURT:** ALL RIGHT. SUBJECT TO THE COURT'S PRIOR
23 RULINGS, EXHIBIT 4 WILL BE ADMITTED.

24 (STATE'S EXHIBIT # 4, STATEMENT DATED AUGUST
25 23, 2006, WAS RECEIVED IN EVIDENCE.)

1 **THE COURT:** MR. FOREMAN, LADIES AND GENTLEMEN OF THE
2 JURY, WHILE THE COURT DETERMINES THE ADMISSIBILITY OF
3 EVIDENCE, YOU, THE JURY, MUST DETERMINE THE EXISTENCE
4 VOLUNTARINESS AND WEIGHT OF ANY ALLEGED STATEMENT MADE BY
5 THE DEFENDANT. YOU MUST MAKE THE ULTIMATE DETERMINATION
6 OF WHETHER OR NOT THE DEFENDANT, IN FACT, MADE THE
7 ALLEGED STATEMENT. IF YOU DETERMINE THE DEFENDANT MADE
8 THE STATEMENT, YOU MUST THEN DETERMINE WHETHER THE
9 STATEMENT WAS MADE FREELY AND VOLUNTARILY. FINALLY YOU
10 WILL DECIDE WHAT WEIGHT, IF ANY, SHOULD BE GIVEN TO ANY
11 ALLEGED STATEMENT.

12 YOU MUST DETERMINE WHETHER THE ALLEGED STATEMENT WAS
13 A PRODUCT OF AN ESSENTIALLY FREE AND UNCONSTRAINED CHOICE
14 BY ITS MAKER, THE STATEMENT MUST PROVE THE VOLUNTARY --
15 THE STATE MUST PROVE THE VOLUNTARINESS OF THE STATEMENT
16 MADE BEYOND A REASONABLE DOUBT. IF YOU DETERMINE BEYOND
17 A REASONABLE DOUBT THAT A STATEMENT WAS GIVEN FREELY AND
18 VOLUNTARILY, THEN YOU MAY GIVE THE STATEMENT SUCH FURTHER
19 CONSIDERATION AS YOU DEEM PROPER.

20 IF YOU DETERMINE THAT THE ALLEGED STATEMENT WAS NOT
21 THE FREE AND VOLUNTARILY WILLED EXPRESSION OF THE
22 DEFENDANT, THEN YOU SHOULD NOT CONSIDER THE STATEMENT AS
23 EVIDENCE.

24 IN DETERMINING WHETHER THE WILL WAS OVERCOME IN
25 OBTAINING THE STATEMENT, THE LAW REQUIRES YOU TO CONSIDER

1 WHAT IS KNOWN AS THE TOTALITY OF THE CIRCUMSTANCES. YOU
2 SHOULD CONSIDER BOTH THE CHARACTERISTICS OF THE DEFENDANT
3 AND THE CIRCUMSTANCES SURROUNDING ANY QUESTIONING OR
4 INTERROGATION. SOME OF THE FACTORS THE LAW SAYS YOU MAY
5 CONSIDER ARE THE AGE OF THE DEFENDANT, THE DEFENDANT'S
6 EDUCATIONAL BACKGROUND, THE DEFENDANT'S MENTAL ABILITY OR
7 CAPACITY, AND THE DEFENDANT'S BACKGROUND ALONG WITH ALL
8 OTHER FACTORS AND CIRCUMSTANCES SURROUNDING THE MAKING OF
9 AN ALLEGED STATEMENT.

10 IN DETERMINING THE VOLUNTARINESS OF ANY ALLEGED
11 STATEMENT, YOU SHOULD CONSIDER WHETHER THE DEFENDANT WAS
12 ADVISED OF AND UNDERSTOOD HIS OR HER CONSTITUTIONAL
13 RIGHTS. THE LAW REQUIRES THAT BEFORE ANY INTERROGATION
14 OR QUESTIONING OF A PERSON IN CUSTODY MAY BEGIN, THE LAW
15 REQUIRES THAT THEY MUST ADVISE THE ACCUSED OF HIS *MIRANDA*
16 RIGHTS. THIS MEANS THAT THEY ADVISE HIM THAT HE HAS THE
17 RIGHT TO REMAIN SILENT, THAT STATEMENT COULD BE USED
18 AGAINST THE ACCUSED IN A COURT OF LAW, THAT THE ACCUSED
19 HAS A RIGHT TO A LAWYER PRESENT, AND THAT IF THE ACCUSED
20 CANNOT AFFORD A LAWYER, THEN A LAWYER WOULD BE APPOINTED
21 TO REPRESENT HIM WITHOUT ANY COST; AND THAT THE ACCUSED
22 CAN STOP MAKING A STATEMENT AT ANY TIME.

23 OTHER FACTORS TO BE CONSIDERED ARE THE PLACE AND
24 LENGTH OF ANY DETENTION AND THE NATURE OF QUESTIONING.
25 YOU MUST CAREFULLY SCRUTINIZE ALL OF THE SURROUNDING

1 CIRCUMSTANCES BEFORE YOU GIVE ANY WEIGHT TO AN ALLEGED
2 STATEMENT. YOU MUST BE SATISFIED BEYOND A REASONABLE
3 DOUBT THE STATEMENT WAS MADE BY THE DEFENDANT,
4 UNINFLUENCED BY PROMISE OF REWARD OR THREAT OF HARM. IF
5 YOU FIND BEYOND A REASONABLE DOUBT THAT ANY ALLEGED
6 STATEMENT WAS GIVEN VOLUNTARILY, THEN YOU MUST DECIDE
7 WHAT WEIGHT, IF ANY, SHOULD BE GIVEN TO THE STATEMENT.

8 IF YOU FIND THE STATEMENT WAS NOT VOLUNTARY, THEN IN
9 THAT EVENT YOU MUST CONSIDER -- YOU MUST NOT CONSIDER THE
10 STATEMENT AS EVIDENCE FOR ANY PURPOSE.

11 VERY WELL. YOU MAY PROCEED.

12 **MR. CAMPBELL:** THANK YOU, YOUR HONOR.

13 BY MR. CAMPBELL:

14 Q. NOW, INVESTIGATOR MCGUIRE, WOULD YOU TELL THE
15 LADIES AND GENTLEMEN OF THE JURY WHAT YOU AND MR. KIRKMAN
16 DISCUSSED AND TALKED ABOUT?

17 A. BASICALLY WE BEGAN THE INTERVIEW ABOUT WHERE HE
18 WAS BORN, HOW OLD HE WAS. THAT AT THE CONCLUSION OF THE
19 STATEMENT HE WOULD READ IT AND MAKE ANY CHANGES NECESSARY
20 WHICH IS SOMETHING I'D INDICATED EARLIER THAT HE WOULD
21 SCRATCH THROUGH ANYTHING THAT WAS A MISSPELLED WORD OR
22 SOMETHING THAT WAS NOT WHAT HE WAS SAYING TO BE THE FACT
23 OF WHAT HE WAS TRYING TO TELL ME THAT DAY.

24 ONCE WE BEGAN, HE BEGAN TELLING ME ABOUT FOUR
25 YEARS PRIOR WHERE HE HAD GOTTEN, ACTUALLY HAD WENT TO A

1 DOG SHOW IN NORTH CAROLINA AND BEGAN GAMBLING, AND A
2 COUPLE YEARS LATER BEGAN DRUG DEALING; THAT HE HAD
3 ACTUALLY MADE SOME CONTACTS THERE. AND HE WOULD USUALLY
4 BUY TWO KILOS OF COCAINE AT A TIME ONCE A WEEK. HE SAID
5 THAT LASTED FOR ABOUT SIX MONTHS. HE CLAIMED ON HIS
6 STATEMENT THAT AROUND TAX TIME THAT HE BEGAN DOING FIVE
7 TO TEN KILOS FROM JANUARY OF '06 TO APRIL OF '06 A WEEK.
8 AFTER THE TAX TIME IT HAD BASICALLY GONE AWAY. HE WOULD
9 GET TEN KILOS EVERY FOUR TO SIX WEEKS.

10 WE TALKED ABOUT THE PRICES. HE SAID THAT HIS
11 PRICE WAS AT \$18,000 PER KILO TO \$18,500 PER KILO. THAT
12 MAY -- WE WERE TALKING ABOUT THAT MAY FLUCTUATE A LITTLE
13 BIT.

14 HE, FROM THE 22ND THERE WAS SOME CONVERSATION
15 BETWEEN A BLACK GENTLEMAN NAMED MIKE THAT HE HAD
16 IDENTIFIED WITH NO OTHER NAME THAT, FOR HIS USUAL DRUG
17 SHIPMENT HE WOULD GO TO EXIT 115 IN ATLANTA, WHICH IS A
18 VERY COMMON SPOT FOR DRUG TRANSACTIONS. BUT HIS
19 STATEMENT DID SAY THAT.

20 HE MET SOME HISPANICS THERE, A RED F-150, AND HE
21 PURCHASED TWO KILOS OF COCAINE AND LEFT, AND THEN HE GOT
22 STOPPED IN ANDERSON ABOUT 7:40 P.M. THEN HE RAN IN SOME
23 WOODED AREAS NEAR I-85, AND THAT'S WHERE HE STAYED UNTIL
24 THE EARLY MORNING WHERE HE CALLED HIS GIRLFRIEND OUT,
25 ELIZABETH POPE, AND ASKED HER TO COME, HE HAD PAID FOR A

1 PREPAID PHONE AT ONE OF THE CONVENIENCE STORES, AND HE
2 ASKED HER TO COME GET HIM. AND WHEN SHE PICKED HIM UP HE
3 WAS APPREHENDED SOON AFTER.

4 WHEN WE ACTUALLY TALKED ABOUT THE COCAINE THAT HE
5 HAD PURCHASED OVER THE DRUG TRANSACTIONS, HE ADMITTED
6 THAT HE HAD GOTTEN APPROXIMATELY 150 KILOS OF COCAINE
7 FROM THIS BLACK MALE KNOWN AS MIKE.

8 Q. THIS IS HIS STATEMENT RIGHT HERE?

9 A. YES, SIR.

10 Q. THIS IS WHAT YOU WERE READING FROM; IS THAT
11 CORRECT?

12 A. YES, SIR. I WAS JUST GIVING AN OVERVIEW, I DIDN'T
13 ACTUALLY READ IT WORD FOR WORD.

14 Q. YOU WROTE DOWN WHAT HE TOLD YOU; IS THAT RIGHT?

15 A. YES, SIR, I DID.

16 Q. IS THIS HIS SIGNATURE HERE AT THE BOTTOM?

17 A. YES, SIR, IT'S HIS SIGNATURE THERE AND ABOUT THE
18 FIFTH OR SIXTH LINE DOWN THERE WAS A SCRATCH-OFF AND HE
19 ACTUALLY INITIALED IT, AND THEN A COUPLE LINES DOWN TO
20 THE LEFT HE DID TWO MORE PLACES.

21 Q. SO THE SPOTS YOU ARE REFERRING TO RIGHT HERE AND
22 RIGHT HERE IS WHERE HE -- AFTER YOU GAVE HIM AN
23 OPPORTUNITY TO RE-READ IT --

24 A. YES.

25 Q. -- AND MAKE ANY CORRECTIONS?

1 A. RIGHT.

2 Q. AND THIS IS HIS CORRECTIONS; IS THAT CORRECT?

3 A. YES, SIR.

4 Q. AND THOSE ARE HIS INITIALS?

5 A. YES, SIR, IT IS.

6 Q. AND WHAT HE TOLD YOU HAS BEEN PUT DOWN IN WRITING
7 IN THIS CASE; IS THAT RIGHT?

8 A. YES, SIR.

9 Q. AND IS THIS -- I'LL SHOW YOU WHAT'S BEEN MARKED AS
10 STATE'S EXHIBIT NUMBER SEVEN -- THIS IS THE INDIVIDUAL
11 THAT YOU SPOKE TO ON THAT DAY?

12 A. YES, SIR, IT IS.

13 Q. OKAY. SO THIS IS THE MAN WHO WROTE AND GAVE YOU
14 THE STATEMENT; IS THAT RIGHT?

15 A. YES, SIR.

16 Q. AND HE'S REFERRING TO -- I WANT TO SHOW YOU --
17 HE'S REFERRING TO TEN KILOS. HE SAID AFTER TAX TIME, I
18 GOT TEN KILOS EVERY FOUR TO SIX WEEKS, FROM EIGHTEEN TO
19 EIGHTEEN-FIVE; ON AUGUST 22ND, 2006 -- DOES THAT SAY HE
20 CALLED ME?

21 A. YES, SIR.

22 Q. AND WHO IS IT YOU ARE REFERRING TO AS HE?

23 A. HE WAS TALKING ABOUT THE BLACK GENTLEMAN KNOWN
24 ONLY AS MIKE.

25 Q. AND WHAT WAS YOUR TAKE WHEN HE SAYS, I TOLD HIM I

1 WAS READY?

2 A. IN THE DRUG WORLD, WHEN YOU SAY I'M READY, IT
3 MEANS THAT YOU ARE READY FOR YOUR NEXT SHIPMENT OF DRUGS,
4 THAT YOU ARE READY TO CONDUCT BUSINESS.

5 Q. AND IN YOUR OPINION WAS THIS BASICALLY A RESUPPLY?

6 A. YES, SIR. BASED ON THE STATEMENT THAT HE GAVE AND
7 THE AMOUNT ACTUALLY FOUND, I BELIEVE THAT WAS JUST A
8 NORMAL REOCCURRING RESUPPLY OF COCAINE.

9 Q. AND IN THIS HE'S ACKNOWLEDGING THAT HE GOT THE TEN
10 KILOS AND LEFT?

11 A. YES, SIR, FROM EXIT 115 WHERE HE'S REFERRING TO
12 THERE IN ATLANTA, WHICH IS WHERE THE ATLANTA MALL IS, THE
13 BIG ATLANTA MALL.

14 Q. AND HE IS REFERRING TO THIS DOPE THAT WE HAVE
15 SITTING HERE IN THIS COURTROOM TODAY?

16 A. YES, SIR.

17 Q. AND AFTER YOU WENT THROUGH THIS, YOU DIDN'T FORCE
18 HIM OR THREATEN HIM OR COERCE HIM TO GIVE YOU THIS
19 STATEMENT; IS THAT RIGHT?

20 A. NO, SIR, I DID NOT.

21 Q. DID YOU MAKE ANY PROMISES OR HOLD OUT TO HIM
22 ANYTHING TO HIM THAT WOULD GET HIM TO MAKE THIS
23 STATEMENT?

24 A. NO, SIR, I DID NOT. HE FELT LIKE IT WAS IN HIS
25 BEST INTERESTS TO GIVE THIS STATEMENT AND, YOU KNOW, THE

1 DEFENDANT DID ASK IF THERE WAS A POSSIBILITY THAT HE MAY
2 BE ABLE TO, YOU KNOW, WORK SOME OF HIS CHARGES, AND I
3 SAID I'M NOT ABLE TO MAKE THAT DETERMINATION. I'VE GOT
4 TO FIND OUT THROUGH THE INTERVIEW WHAT IS ACTUALLY THERE.

5 WHEN HE PUT THIS STATEMENT, YOU KNOW, GIVING IT TO
6 ME IN HIS WORDS, I WENT TO MY CAPTAIN. THE CAPTAIN SAID
7 IT'S BEEN TOO MANY HOURS, TOO MANY PEOPLE WERE LOOKING
8 FOR HIM, AND THAT HE HAD ALREADY RAN AWAY ONE TIME, THAT
9 WE WOULD NOT BE ABLE TO DO ANY KIND OF REVERSES OR ANY
10 OTHER KIND OF DEALS.

11 Q. AT ANY POINT DID HE EVER ASK TO STOP AND QUIT
12 GIVING THE STATEMENT?

13 A. NO, SIR.

14 Q. AT ANY POINT DID HE EVER ASK TO TALK TO AN
15 ATTORNEY?

16 A. NO, SIR.

17 Q. AND IN YOUR OPINION, BASED UPON YOUR TRAINING AND
18 EXPERIENCE, WOULD YOU CONSIDER MR. KIRKMAN A USER OF
19 COCAINE?

20 A. IN MY TRAINING AND EXPERIENCE I WOULD EXPECT HIM
21 TO BE A BUSINESSMAN BECAUSE OF THE MERE WEIGHT OF THE
22 PRODUCT THAT HE WAS MOVING WAS NOT TYPICAL FOR A USER.

23 Q. AND YOU CONSIDER HIM TO BE A DEALER?

24 A. YES, SIR.

25 Q. AND HE'S REFERRING, EIGHTEEN THOUSAND TO EIGHTEEN

1 THOUSAND-FIVE, IS HE REFERRING TO BUYING EACH OF THESE
2 FOR THAT AMOUNT OF MONEY?

3 A. YES, SIR.

4 Q. ALL TEN OF THESE?

5 A. YES, SIR.

6 Q. AND IN YOUR EXPERIENCE IS IT COMMON TO BE ABLE TO
7 PULL FINGERPRINTS OFF OF ILLEGAL DRUGS SUCH AS THIS?

8 A. NO, SIR. WITH THE WRAPPINGS THAT THE ORIGINAL
9 COCAINE WAS FOUND IN, IT'S THE NORMAL PROCEDURE FOR DRUG
10 DEALERS WHO ARE PACKAGING THIS WILL ACTUALLY GO THROUGH
11 SEVERAL PROCESSES TO MAKE SURE THAT THERE'S NO LATENT
12 PRINTS THERE OR ANY KIND OF IDENTIFIABLE PRINTS OR
13 ANYTHING THAT COULD IDENTIFY A SOURCE.

14 Q. AND APPROXIMATELY HOW LONG DID YOU TALK TO
15 MR. KIRKMAN FROM THE TIME YOU FIRST MET HIM UNTIL THE
16 TIME THIS STATEMENT WAS WRITTEN?

17 A. IT WOULD HAVE BEEN APPROXIMATELY AN HOUR, AN HOUR
18 AND A HALF.

19 (OFF-THE-RECORD DISCUSSION.)

20 **MR. CAMPBELL:** INVESTIGATOR MCGUIRE, THAT'S ALL THE
21 QUESTIONS I HAVE FOR YOU. IF YOU WOULD PLEASE ANSWER ANY
22 QUESTIONS MS. MANIGAULT MAY HAVE.

23 CROSS-EXAMINATION BY MS. MANIGAULT:

24 Q. INVESTIGATOR MCGUIRE, YOU SAID YOUR INITIAL
25 CONTACT WITH RAHIEM KIRKMAN WAS ON 8-23-06 AT YOUR

1 OFFICE?

2 A. YES, MA'AM.

3 Q. WHAT WAS HIS CONDITION WHEN HE WAS BROUGHT TO YOU?

4 A. HIS CONDITION WAS, IN MY OPINION, THAT SOMEONE HAD
5 BEEN OUT THERE IN THE WOODS ALL NIGHT, THAT HE, I BELIEVE
6 HE HAD DIRT ON HIS SHOES, MAYBE DIRT ON HIS CLOTHING THAT
7 MAY BE CONSISTENT WITH SOMEONE RUNNING THROUGH THE WOODS
8 OR TRYING TO ESCAPE.

9 Q. OKAY. I THINK YOU SAID THAT IN YOUR PREVIOUS
10 TESTIMONY HE HAD MUD ON HIM?

11 A. YES, MA'AM, I BELIEVE HE HAD MUD ON HIS SHOES, I
12 THINK.

13 Q. ALL RIGHT. WAS HE SCRATCHED UP OR BRUISED, CUT?

14 A. I DON'T REMEMBER SEEING ANY BRUISES OR CUTS ON HIS
15 PERSON OR ANYTHING. IT JUST LOOKED LIKE SOMEONE HAD
16 ACTUALLY BEEN OUT ALL NIGHT OR WAS ACTUALLY RUNNING.

17 Q. I'M TRYING TO GET YOU TO DESCRIBE HOW HE LOOKED
18 FOR ME ON HIS SKIN OR CLOTHING. YOU SAW NO BRUISES AND
19 NO CUTS?

20 A. NONE THAT I REMEMBER, NO, MA'AM.

21 Q. ALL RIGHT. AND SO HE APPEARED TO YOU TO BE TIRED
22 OR EXHAUSTED?

23 A. HE APPEARED TO ME THAT HE WAS TIRED, YES, MA'AM.

24 Q. AND I BELIEVE YOU STATED THAT YOUR OFFICE IS
25 EITHER 8-BY-14 OR 10-BY-14?

1 A. IT'S EITHER A 10- OR 12-BY-14. I'M NOT REALLY
2 SURE. IT'S NOT VERY LARGE.

3 Q. ALL RIGHT. AND WOULD YOU DESCRIBE THE INTERIOR OF
4 YOUR OFFICE?

5 A. YES, MA'AM. JUST, IT'S BASICALLY ABOUT THE SAME
6 COLOR AS THE COURTROOM OVERHEAD. IT'S A REAL LIGHT
7 COLOR. I HAVE A FEW CERTIFICATES ON THE WALL. I HAVE A
8 COMPUTER, A DESK, A COUPLE OF CHAIRS. NOTHING, JUST SOME
9 CASES AND SOME FILE CABINETS THAT I WORKED OVER THE YEARS
10 AND PICTURES OF MY KIDS.

11 Q. ALL RIGHT. YOU SAID THERE WAS ANOTHER OFFICER
12 PRESENT?

13 A. YES, MA'AM.

14 Q. AND HE WAS ALSO INSIDE OF YOUR OFFICE?

15 A. YES, MA'AM.

16 Q. AND IS YOUR OFFICE SECLUDED IN AN AREA BY ITSELF
17 OR ARE THERE OTHER INVESTIGATORS AND OFFICERS AND
18 DEPUTIES AROUND THERE?

19 A. WE ALL HAVE WORKING OFFICES AND WE HAVE DOORS WE
20 CAN SECURE AND LOCK, SO WE EACH HAVE INDIVIDUAL OFFICES.

21 Q. SO WHAT WAS THE ENVIRONMENT LIKE OUTSIDE OF YOUR
22 OFFICE?

23 A. JUST A HALLWAY 10 TO 12 FEET WIDE; 60, 70 FEET
24 LONG ONE WAY; 30 OR 40 FEET THE OTHER WAY.

25 Q. OKAY. AND WAS THERE ANY OTHER DEPUTIES OR

1 OFFICERS STANDING AROUND OUTSIDE OF YOUR OFFICE OR IN THE
2 HALLWAY WHILE YOU WERE QUESTIONING RAHIEM KIRKMAN?

3 A. DURING THE INTERVIEW, DURING THE PROCESS THERE
4 WERE SEVERAL -- OUR DIVISION WORKS OFF OF ONE SIDE OF A
5 HALLWAY ON A SECOND FLOOR. DURING THAT NATURALLY THERE
6 WOULD HAVE BEEN PEOPLE COMING IN AND OUT OF THE HALLWAY
7 OR WOULD HAVE BEEN GOING IN AND OUT OF LIEUTENANTS' OR
8 CAPTAINS' OFFICES. I DON'T KNOW HOW MANY. NO ONE I
9 REMEMBER STANDING AROUND THE OFFICE AT THE DOOR OR
10 ANYTHING.

11 Q. SO NO ONE WAS THERE PRESENT IN YOUR DOOR?

12 A. NO, MA'AM, NOT THAT I REMEMBER, NO, MA'AM.

13 Q. AND I THINK YOU TESTIFIED TO THE COURT THAT YOU
14 TRIED TO WRITE DOWN WHAT WAS SAID TO YOU IN THE
15 STATEMENT, STATE'S EXHIBIT NUMBER 4?

16 A. YES, MA'AM.

17 Q. HE ASKED YOU TO WRITE EXACTLY WHAT HE SAID AND I
18 DON'T RECALL WHAT YOUR ANSWER WAS.

19 A. I TRIED TO WRITE DOWN EXACTLY WHAT HE WAS RELAYING
20 TO ME. I MAY HAVE ASKED HIM A SERIES OF QUESTIONS, WE
21 WOULD TALK A MINUTE, AND THEN I WOULD WRITE SOMETHING
22 DOWN. AND I WOULD ASK HIM IS THIS WHAT YOU WERE TELLING
23 ME? AND HE WOULD SAY YES. AND WE MOVED TO ANOTHER
24 SERIES OF QUESTIONS.

25 Q. ALL RIGHT. SO YOU WERE QUESTIONING HIM AND TAKING

1 INFORMATION AND THEN PLACING IT ON A SHEET; IS THAT
2 CORRECT?

3 A. YES, MA'AM.

4 Q. AND AT ANY TIME DID YOU PROMISE THAT YOU WOULD
5 HELP HIM OR ASSIST HIM OR MAKE ANY PROMISE OF REWARD?

6 A. NO, MA'AM, I DID NOT.

7 Q. AND AT ANY TIME DID HE ASK YOU TO STOP, THAT HE
8 DIDN'T WANT TO TALK ANY MORE?

9 A. NO, MA'AM, HE DID NOT.

10 Q. DID HE APPEAR TO YOU TO BE INTOXICATED, ON ANY
11 DRUGS OR ALCOHOL?

12 A. NO, MA'AM, HE DID NOT.

13 Q. AND WAS HIS CONVERSATION, WAS HIS SPEECH SLURRED
14 OR CLEAR?

15 A. HIS SPEECH WAS CLEAR, YES, MA'AM.

16 Q. AND HE APPEARED TO UNDERSTAND WHAT YOU WERE ASKING
17 HIM AND SAYING?

18 A. YES, MA'AM.

19 Q. SO YOUR CONVERSATION WITH HIM LASTED ABOUT AN HOUR
20 AND A HALF?

21 A. SOMEWHERE BETWEEN AN HOUR, AN HOUR AND A HALF IN
22 THE BEGINNING OF THE INTERVIEW TO THE END GETTING DOWN ON
23 PAPER WHAT WE DISCUSSED, AND I WOULD ESTIMATE AN HOUR TO
24 AN HOUR AND A HALF, YES, MA'AM.

25 Q. SO AN HOUR, AN HOUR AND A HALF, YOU ONLY HAVE A

1 ONE PAGE STATEMENT WHICH IS STATE'S EXHIBIT NUMBER FOUR;
2 IS THAT CORRECT?

3 A. NO, MA'AM. I HAVE ACTUALLY TWO. THE ADVICE OF
4 RIGHTS TAKES SEVERAL MINUTES TO GO OVER, AND BEFORE WE
5 START GETTING INTO THE SPECIFICS OF ANY CRIME, I HAVE TO
6 MAKE SURE IN MY MIND THAT I BELIEVE THAT THE DEFENDANT IS
7 CLEAR AND COHERENT, SO THERE IS ACTUALLY SOME
8 CONVERSATIONS, A PREQUALIFIER TO MAKE SURE I FEEL IT'S
9 OKAY TO INTERVIEW THIS PERSON.

10 Q. THAT'S STATE'S EXHIBIT THREE YOU TESTIFIED TO
11 PREVIOUSLY, THE RIGHTS FORM?

12 A. YES, MA'AM.

13 Q. BUT AS FAR AS A SIGNED STATEMENT BY RAHIEM
14 KIRKMAN, THERE'S ONLY A ONE-PAGE STATEMENT?

15 A. YES, MA'AM, THERE IS ONLY ONE STATEMENT.

16 **MS. MANIGAULT:** ALL RIGHT. THANK YOU.

17 **MR. CAMPBELL:** I HAVE NO FURTHER QUESTIONS.

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

19 (WHEREUPON, THE WITNESS WAS EXCUSED.)

20 **THE COURT:** MR. FOREMAN, LADIES AND GENTLEMEN OF THE
21 JURY, WE HAVE ONE MORE WITNESS THIS MORNING. I THINK IT
22 WOULD BE GOOD IF WE COULD GO AHEAD AND FINISH THAT
23 WITNESS WHILE WE CAN. BUT NOW DOES ANYBODY NEED TO TAKE
24 A BREAK, A SHORT BREAK? IF SO, LET ME KNOW.

25 (JURY CONFERS IN JURY-BOX.)

1 **THE FOREMAN:** NO.

2 **THE COURT:** ALL RIGHT. PROCEED. YOU MAY CALL YOUR
3 NEXT WITNESS.

4 **MR. CAMPBELL:** YOUR HONOR, THE STATE CALLS MEREDITH
5 LANFORD TO THE STAND.

6 (WHEREUPON, MEREDITH LANFORD WAS SWORN BY THE
7 CLERK.)

8 **THE CLERK:** PLEASE STATE YOUR FULL NAME AND SPELL
9 YOUR LAST NAME FOR THE RECORD.

10 **THE WITNESS:** MEREDITH LEE LANFORD, L-A-N-F-O-R-D.
11 WHEREUPON,

12 MEREDITH LEE LANFORD,
13 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:
14 DIRECT EXAMINATION BY MR. CAMPBELL:

15 Q. MS. LANFORD, WHERE ARE YOU EMPLOYED?

16 A. I AM EMPLOYED AT THE ANDERSON-OCONEE REGIONAL
17 FORENSICS LABORATORY.

18 Q. AND HOW LONG HAVE YOU BEEN EMPLOYED THERE?

19 A. I'VE BEEN EMPLOYED THERE SINCE FEBRUARY OF 2006.

20 Q. AND DO YOU HAVE ANY PREVIOUS LAW ENFORCEMENT
21 EXPERIENCE?

22 A. I WORKED FOR THE CHARLESTON POLICE LABORATORY
23 STARTING THERE IN MARCH OF 2005 THROUGH FEBRUARY OF 2006.

24 Q. AND WHAT POSITION OR CAPACITY HAVE YOU BEEN
25 EMPLOYED IN THESE TWO AREAS?

1 A. AS A FORENSIC CHEMIST.

2 Q. AND CAN YOU TELL THE LADIES AND GENTLEMEN OF THE
3 JURY BRIEFLY YOUR TRAINING AND EXPERIENCE IN THIS AREA?

4 A. YES. I GRADUATED FROM CLEMSON UNIVERSITY WITH A
5 BACHELORS OF SCIENCE DEGREE IN CHEMISTRY. I WENT ON TO
6 COMPLETE THE FORENSIC SCIENCE CERTIFICATE PROGRAM AT
7 GREENVILLE TECHNICAL COLLEGE. I WAS CERTIFIED AS A
8 FORENSIC CHEMIST BY THE CHARLESTON POLICE LABORATORY AS
9 WELL AS THE ANDERSON-OCONEE LABORATORY. I AM A CERTIFIED
10 MARIJUANA ANALYST OF THE SOUTH CAROLINA LAW ENFORCEMENT
11 DIVISION. I ALSO RECEIVED TRAINING FROM THE DRUG
12 ENFORCEMENT AGENCY AND I'M A MEMBER OF THE AMERICAN
13 CHEMICAL SOCIETY.

14 Q. AS PART OF YOUR DUTIES DO YOU TYPICALLY ANALYZE
15 COCAINE?

16 A. YES, I DO.

17 Q. AND DO YOU KNOW APPROXIMATELY HOW MANY SAMPLES OF
18 COCAINE YOU HAVE ANALYZED SINCE I THINK YOU SAID 2005?

19 A. I WOULD SAY WELL OVER 300.

20 Q. AND HAVE YOU EVER TESTIFIED IN COURT BEFORE?

21 A. YES, I HAVE.

22 Q. AND BEEN QUALIFIED AS AN EXPERT IN FORENSIC DRUG
23 CHEMISTRY?

24 A. YES, I HAVE.

25 **MR. CAMPBELL:** YOUR HONOR, AT THIS TIME I MOVE TO

1 HAVE MS. LANFORD QUALIFIED AS AN EXPERT.

2 THE COURT: VOIR DIRE?

3 MS. MANIGAULT: JUST A COUPLE OF QUESTIONS, YOUR
4 HONOR.

5 VOIR DIRE EXAMINATION BY MS. MANIGAULT:

6 Q. MS. LANFORD, CAN YOU JUST GIVE US AN ESTIMATE OF
7 HOW MANY TIMES YOU HAVE BEEN CERTIFIED IN A STATE COURT?

8 A. I HAVE NOT BEEN CERTIFIED IN STATE COURT. I HAVE
9 BEEN CERTIFIED IN FEDERAL COURT.

10 Q. ALL RIGHT. AND HOW MANY TIMES HAVE YOU TESTIFIED
11 IN FEDERAL COURT?

12 A. ONE TIME.

13 Q. ONE TIME?

14 A. YES, MA'AM.

15 MS. MANIGAULT: THANK YOU.

16 THE COURT: RENEW YOUR MOTION.

17 MR. CAMPBELL: YES, SIR, I RENEW MY MOTION TO HAVE
18 HER QUALIFIED.

19 THE COURT: ANY OBJECTION?

20 MS. MANIGAULT: NONE, YOUR HONOR.

21 THE COURT: ALL RIGHT. I FIND THAT THE WITNESS IS
22 QUALIFIED AS A FORENSIC CHEMIST -- IS THAT IT?

23 THE WITNESS: YES, SIR.

24 MR. CAMPBELL: YES, SIR.

25 THE COURT: ALL RIGHT -- IN THE AREA OF DRUG

1 ANALYSIS.

2 AGAIN, MR. FOREMAN, LADIES AND GENTLEMEN OF THE
3 JURY, SHE HAS BEEN QUALIFIED AS AN EXPERT IN THE AREA OF
4 FORENSIC CHEMISTRY AND DRUG ANALYSIS AND WOULD THEREFORE
5 BE ABLE TO, OR MAY BE PERMITTED TO GIVE HER OPINION.
6 AGAIN, EXPERT TESTIMONY, LIKE ANY OTHER TESTIMONY, IS FOR
7 YOUR EVALUATION AS TO WHAT WEIGHT TO BE GIVEN.

8 YOU MAY PROCEED.

9 MR. CAMPBELL: THANK YOU, YOUR HONOR.

10 BY MR. CAMPBELL:

11 Q. MS. LANFORD, WOULD YOU STEP OFF THE STAND, PLEASE,
12 MA'AM.

13 (WITNESS LEAVES STAND.)

14 BY MR. CAMPBELL:

15 Q. WOULD YOU PLEASE IDENTIFY -- I'M GONNA SHOW YOU
16 WHAT'S BEEN MARKED AS STATE'S EXHIBIT NUMBER FIVE. CAN
17 YOU PLEASE IDENTIFY WHAT THIS IS, MA'AM?

18 A. THESE ARE THE INDIVIDUAL KILO BRICKS THAT I
19 RECEIVED IN THE LABORATORY.

20 Q. AND WHEN YOU RECEIVED THEM, DID YOU RECEIVE THEM
21 IN THIS PACKAGE FORM LIKE THIS?

22 A. NO, I DID NOT.

23 Q. AND WHO PUT THOSE IN THE SEALED PACKAGES THAT YOU
24 ARE HOLDING?

25 A. I DID.

1 Q. AND WHAT WAS THE PURPOSE OR REASON WHY YOU DID
2 THAT?

3 A. BASICALLY BECAUSE I HAD TO REMOVE THEM FROM THE
4 OUTER PACKAGING, SO BY THAT TIME YOU CAN'T PUT THEM BACK
5 THE WAY THEY WERE, SO YOU HAD TO ---

6 Q. IF YOU COULD SPEAK UP. JUST SPEAK UP, PLEASE,
7 MA'AM.

8 NOW, WHEN YOU RECEIVED THESE ITEMS (REMOVING FROM
9 DUFFEL BAG), CAN YOU PLEASE IDENTIFY WHAT THESE ARE,
10 MA'AM?

11 A. THIS IS THE ACTUAL, OUR PACKAGING THAT THE WHITE
12 BRICKS WERE CONTAINED IN.

13 Q. AND DID YOU PLACE -- DID YOU UNWRAP EACH OF THESE
14 BRICKS?

15 A. YES, I DID.

16 Q. AND YOU DID YOU PUT THE WRAPPING THAT YOU REMOVED
17 BACK INTO THESE PLASTIC EVIDENCE BAGS?

18 A. YES, I DID.

19 Q. AND HOW DO YOU KNOW THAT THIS IS THE DRUGS THAT
20 YOU ANALYZED YOURSELF?

21 A. THEY HAVE MY INITIALS ON THEM AS WELL AS THE DATE
22 THAT I SAW IT.

23 Q. IF YOU COULD PLEASE SHOW THE LADIES AND GENTLEMEN
24 OF THE JURY WHERE YOUR INITIALS ARE AND WHERE THE
25 MARKINGS ARE ON EACH OF THESE BRICKS?

1 A. ON EACH ONE OF THESE I PUT OUR LABORATORY NUMBER
2 WITH THE ITEM NUMBER. AND THEN I PUT MY INITIAL AND ALSO
3 PUT B-A FOR BAG ADDED, MEANING THAT I PUT THIS BAG INTO
4 THE CASE. THIS BAG WAS NOT ORIGINALLY WITH THE
5 SUBSTANCE.

6 Q. AND ARE THOSE YOUR INITIALS ON THERE?

7 A. YES, THEY ARE.

8 Q. HAVE YOU HAD AN OPPORTUNITY TO LOOK AT EACH OF
9 THESE BRICKS TO SEE IF THESE ARE EXACTLY THE ONES THAT
10 YOU ANALYZED?

11 A. YES.

12 Q. AND ARE THESE THE ONES THAT YOU ANALYZED IN THE
13 DRUGS IN THIS CASE?

14 A. YES, THEY ARE.

15 Q. AND AFTER YOU WERE DONE, YOU DID PLACE ALL OF THE
16 PACKING MATERIAL THAT THESE CAME IN BACK INTO THE BAG; IS
17 THAT RIGHT?

18 A. THAT'S RIGHT.

19 Q. AND CAN YOU PLEASE -- I'LL LET YOU TAKE A SEAT
20 BACK ON THE STAND FOR A SECOND.

21 (WITNESS RESUMES STAND.)

22 BY MR. CAMPBELL:

23 Q. CAN YOU PLEASE TELL THE LADIES AND GENTLEMEN OF
24 THE JURY, WHEN YOU RECEIVED -- HOW DID YOU RECEIVE THIS
25 PACKAGE?

1 A. I RECEIVED IT IN THAT WHITE SEALED BOX.

2 Q. AND THE SEAL WAS NOT BROKEN WHEN YOU RECEIVED IT?

3 A. THAT'S CORRECT.

4 Q. AND IF THE SEAL HAD BEEN BROKEN, WHAT, IF
5 ANYTHING, WOULD YOU HAVE DONE?

6 A. WE WOULD NOT HAVE ACCEPTED IT INTO THE LABORATORY.

7 Q. SO YOU RECEIVED IT IN THE PROPER MANNER THAT YOUR
8 LABORATORY REQUIRES?

9 A. THAT IS CORRECT.

10 Q. AFTER YOU RECEIVED IT, WHAT, IF ANYTHING, DID YOU
11 DO NEXT?

12 A. AS FAR AS ANALYSIS?

13 Q. DEALING FIRST, WHEN YOU FIRST RECEIVE A PACKAGE,
14 WHETHER IT'S THIS OR ANY OTHER PACKAGE, AFTER YOU RECEIVE
15 IT INTO EVIDENCE, WHAT PROCEDURE DO YOU GO THROUGH PRIOR
16 TO ANALYZING IT?

17 A. I GIVE IT AN ACTUAL LAB NUMBER AND LOG IT INTO OUR
18 COMPUTER.

19 Q. AND YOU DID THAT IN THIS CASE?

20 A. THAT'S RIGHT.

21 Q. IS THAT NUMBER IN THIS CASE THAT LO 600493?

22 A. THAT'S RIGHT.

23 Q. THERE'S A DASH AND IT HAS NUMBERED TABS. WHAT
24 DOES THAT MEAN?

25 A. THAT IS ACTUAL ITEM NUMBER THAT I GET WHEN I

1 CONDUCT THE ANALYSIS. WHEN THERE'S A LOT OF ITEMS IN THE
2 CASE, I'LL ATTACH A NUMBER TO THE ITEM.

3 Q. ONE THROUGH 10 MARKED AFTER THESE NUMBERS?

4 A. CORRECT.

5 Q. AND THAT IS IDENTIFYING WHICH ITEM -- YOU ANALYZED
6 EACH INDIVIDUAL ITEM; IS THAT RIGHT?

7 A. CORRECT.

8 Q. NOW, AFTER YOU DO THAT, DO YOU ANALYZE THESE, DID
9 YOU ANALYZE THIS SAMPLE YOU RECEIVED?

10 A. I DID.

11 Q. AND HOW DID YOU GO ABOUT ANALYZING -- WHAT
12 PROCEDURES DO YOU DO?

13 A. THE FIRST THING THAT I DID WAS REMOVE EACH ITEM
14 FROM THEIR OUTER PACKAGING. I TAKE A WEIGHT OF THE ITEM,
15 AND THEN I PERFORM TWO SCREENING TESTS THAT GIVES ME A
16 GENERAL IDEA OF WHAT KIND OF DRUG MAY OR MAY NOT BE
17 PRESENT. AND THEN I PERFORM TWO CONFIRMATORY TESTS ON
18 OUR LAB INSTRUMENTS AND THAT IDENTIFIED A POSITIVE
19 SUBSTANCE.

20 Q. AND WHO DID YOU RECEIVE THIS ITEM FROM?

21 A. MARGARET VECCHIO.

22 Q. WAS THAT ALSO OF THE ANDERSON COUNTY SHERIFF'S
23 OFFICE?

24 A. CORRECT.

25 Q. AND WHEN YOU RECEIVE IT, DOES IT STAY IN YOUR

1 CARE, CUSTODY AND CONTROL THE ENTIRE TIME THAT YOU ARE
2 ANALYZING THIS?

3 A. YES, IT DOES.

4 Q. AND ARE THESE SAMPLES LOCKED WHERE NOBODY ELSE CAN
5 GET TO THEM?

6 A. CORRECT.

7 Q. AND IS THIS ITEM SUBSTANTIALLY IN THE SAME
8 CONDITION AS IT WAS WHEN YOU ANALYZED IT BACK NOVEMBER
9 27TH, 2006?

10 A. RIGHT.

11 Q. OKAY. NOW, WHAT TYPE OF TEST DID YOU PERFORM TO
12 DETERMINE WHAT TYPE OF NARCOTIC THIS IS?

13 A. REPEAT THAT?

14 Q. WHAT TYPE OF TEST IN YOUR LABORATORY DID YOU
15 PERFORM TO DETERMINE WHAT TYPE OF ILLEGAL SUBSTANCE OR
16 NARCOTICS THIS WAS?

17 A. THE TWO SCREENING TESTS I PERFORMED WERE THE TWO
18 CHEMICAL TESTS AND THE ULTRAVIOLET SPECTROSCOPY TESTS AND
19 THEN THE TWO CONFIRMATORY TESTS, ONE BEING THE INFRARED
20 SPECTROMETER, AND THE OTHER THE GAS CHROMATOGRAPH AND
21 MASS SPECTROMETER.

22 Q. AND WHAT DO THESE MACHINES, THESE TESTS LOOK FOR
23 TO TRY AND DETERMINE THE DRUG YOU ARE TRYING TO FIND?

24 A. THEY LOOK FOR THE CHEMICAL MAKEUP.

25 Q. AND DID YOU RUN THESE TESTS IN THIS CASE?

1 A. YES, I DID.

2 Q. AND WHAT, IF ANYTHING, DID YOUR TESTS DETERMINE?

3 A. IN EACH OF THE ITEMS I FOUND THAT COCAINE WAS
4 PRESENT.

5 Q. AND IF THIS WAS CRACK COCAINE, WOULD YOU INDICATE
6 THAT IN YOUR REPORT?

7 A. YES, I WOULD HAVE.

8 Q. AND WAS THIS CRACK COCAINE?

9 A. NO. IT WAS COCAINE.

10 Q. JUST POWDER COCAINE?

11 A. CORRECT.

12 Q. AND WERE YOU ABLE TO GET A WEIGHT ON THE TEN ITEMS
13 THAT YOU SAMPLED?

14 A. YES, I DID.

15 Q. AND HOW MUCH WAS THAT?

16 A. THE TOTAL WEIGHT CAME OUT TO 10,044 GRAMS.

17 Q. AND KIND OF BREAK IT DOWN IN PERSPECTIVE FOR THE
18 JURORS TO FULLY UNDERSTAND. WERE YOU ABLE TO CONVERT
19 THIS, CAN YOU CONVERT THIS INTO POUNDS FOR THEM?

20 A. YES. IT'S ABOUT 22 POUNDS.

21 Q. AND HOW MANY OUNCES -- DO YOU KNOW HOW MANY OUNCES
22 THIS WOULD HAVE BEEN?

23 A. IT'S ABOUT 354 OUNCES.

24 Q. AND TO GIVE THEM SOME IDEA AS TO A COMPARISON, DO
25 YOU KNOW HOW MANY OUNCES IS IN A HALF GALLON OF MILK?

1 A. I BELIEVE -- WELL, A GALLON I BELIEVE IS ABOUT 64
2 OUNCES.

3 Q. OR A HALF-GALLON IS 64?

4 A. YES.

5 Q. AND WOULD YOU KNOW HOW MANY HALF-GALLONS, IF YOU
6 POURED THIS INTO HALF-GALLONS, THIS WOULD BE?

7 A. ABOUT FIVE.

8 Q. AND DID YOU ISSUE A REPORT IN THIS CASE?

9 A. YES, I DID.

10 Q. AND DID YOU FORM AN OPINION ON EXACTLY WHAT TYPE
11 OF DRUGS THIS WAS?

12 A. YES, I DID.

13 Q. AND WHAT TYPE OF SUBSTANCE IS THIS?

14 A. COCAINE.

15 **MR. CAMPBELL:** YOUR HONOR, I WILL MOVE STATE'S
16 EXHIBIT NUMBER FIVE INTO EVIDENCE.

17 **THE COURT:** ANY OBJECTION?

18 **MS. MANIGAULT:** JUST SUBJECT TO MY PREVIOUS
19 OBJECTION, YOUR HONOR.

20 **THE COURT:** ALL RIGHT. SUBJECT TO THE COURT'S PRIOR
21 RULING, STATE'S EXHIBIT NUMBER FIVE IS ADMITTED INTO
22 EVIDENCE.

23 (STATE'S EXHIBIT # 5 WAS RECEIVED IN
24 EVIDENCE.)

25 BY MR. CAMPBELL:

1 Q. MS. LANFORD, I WANT TO SHOW YOU WHAT'S BEEN MARKED
2 ONLY FOR IDENTIFICATION. CAN YOU PLEASE IDENTIFY WHAT
3 THIS IS, MA'AM?

4 A. THIS IS OUR OFFICIAL LAB REPORT THAT WE ISSUE.

5 Q. AND IS THAT YOUR SIGNATURE ON THE BACK?

6 A. YES, IT IS.

7 Q. AND THAT JUST SHOWS THAT YOU ANALYZED EACH OF
8 THESE BRICKS AND THE WEIGHTS OF THEM?

9 A. CORRECT.

10 Q. AND COCAINE WAS FOUND IN EACH OF THEM?

11 A. CORRECT.

12 Q. AND WHAT YOU JUST TESTIFIED TO IS MEMORIALIZED IN
13 THIS REPORT?

14 A. CORRECT.

15 MR. CAMPBELL: I'M GOING TO MOVE THIS JUST FOR
16 IDENTIFICATION AS STATE'S EXHIBIT NUMBER SIX.

17 THE COURT: VERY WELL.

18 MS. MANIGAULT: MAY I SEE IT?

19 THE COURT: THAT'S NOT BEING ADMITTED, IT'S JUST FOR
20 THE RECORD.

21 (COUNSEL CONFER.)

22 MR. CAMPBELL: YOUR HONOR, I HAVE NO FURTHER
23 QUESTIONS OF THIS WITNESS.

24 THE COURT: CROSS-EXAMINE?

25 MS. MANIGAULT: I HAVE NO QUESTIONS, YOUR HONOR.

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

2 (WHEREUPON, THE WITNESS WAS EXCUSED.)

3 **THE COURT:** MR. FOREMAN, LADIES AND GENTLEMEN OF THE
4 JURY, I THINK THIS WOULD BE A GOOD TIME TO TAKE THE LUNCH
5 BREAK. LET ME ASK YOU. WE'VE WORKED, WE'VE GONE PRETTY
6 FAIR THIS MORNING. I DO HAVE A FEW THINGS I NEED TO TAKE
7 UP WITH THE ATTORNEYS BEFORE WE START BACK FOR THE TRIAL.
8 I'M GOING TO SUGGEST THAT WE TAKE UNTIL 2:00 FOR YOUR
9 BREAK, AND WE'LL BE DOING SOME OTHER THINGS WHILE YOU'RE
10 GONE BUT THAT WILL GIVE US TIME FOR THE STAFF AS WELL AS
11 THE ATTORNEYS TO HAVE LUNCH.

12 IF YOU WOULD COME BACK AT 2:00 TO THE JURY ROOM,
13 THEN WE'LL START THE TRIAL -- CONTINUE THE TRIAL AT THAT
14 TIME.

15 AGAIN, DO NOT UNDERTAKE DISCUSSION OF THE CASE AMONG
16 YOURSELVES OR PERMIT ANYBODY TO DISCUSS IT WITH YOU.
17 THANK YOU. YOU MAY RETIRE TO YOUR JURY ROOM AND GO TO
18 LUNCH.

19 EVERYBODY ELSE REMAIN SEATED WHILE THE JURY RETIRES
20 FROM THE COURTROOM.

21 (WHEREUPON, THE JURY LEFT THE COURTROOM AT
22 APPROXIMATELY 12:31 P.M.)

23 **THE COURT:** ANYTHING FURTHER FROM THE STATE?

24 **MR. CAMPBELL:** NO, YOUR HONOR.

25 **THE COURT:** THE STATE RESTS.

1 IS THE DEFENDANT GONNA TESTIFY?

2 MS. MANIGAULT: NO, YOUR HONOR.

3 THE COURT: DOES THE DEFENDANT HAVE ANY CASE AT ALL?

4 MS. MANIGAULT: NO, SIR.

5 THE COURT: SO WE'LL BE GOING TO THE JURY AT 2:00.

6 NOW, OF COURSE, DEFENSE HASN'T PUT UP ANYTHING.

7 MS. MANIGAULT HAS THE CLOSING ARGUMENT.

8 MR. CAMPBELL: YES, SIR.

9 THE COURT: ANY CHARGES?

10 MR. CAMPBELL: NOTHING OUT OF THE ORDINARY. JUST
11 THE STANDARD CHARGES, YOUR HONOR.

12 THE COURT: WHICH IS GO BACK TO THE JURY ROOM AND DO
13 RIGHT?

14 MR. CAMPBELL: YES, YOUR HONOR.

15 MS. MANIGAULT: I WOULD INQUIRE, DOES THE COURT HAVE
16 A CHARGE ON MERE NERVOUSNESS?

17 THE COURT: NO, MA'AM, I DON'T. THE ONLY THING I
18 DID NOTICE IN YOUR CASE THAT YOU CITED WAS -- PICHARDO?

19 MS. MANIGAULT: PICHARDO.

20 THE COURT: THERE IT SAID NERVOUSNESS ALONE IS NOT
21 SUFFICIENT TO SUPPORT REASONABLE SUSPICION OF SOME OTHER
22 CRIME. BUT IT MIGHT BE INABILITY TO SPEAK ENGLISH.

23 MS. MANIGAULT: YOU WOULD NOT CONSIDER CHARGING THAT
24 NERVOUSNESS --

25 THE COURT: I MIGHT GIVE A GENERAL THING. I'LL LOOK

1 AT IT AND SEE IF I CAN'T COME UP WITH SOMETHING. IT
2 WOULD BE GREAT IF YOU ALL WOULD SUGGEST SOMETHING.
3 OTHERWISE, NOW, WE HAVEN'T HAD ANY TESTIMONY OR ANYTHING
4 ELSE TO SUGGEST ANYTHING OTHER THAN 400 GRAMS.

5 MS. MANIGAULT: THAT'S RIGHT.

6 THE COURT: SO IT'S GOING TO THE JURY AS TRAFFICKING
7 MORE THAN 400.

8 MR. CAMPBELL: THAT'S RIGHT.

9 THE COURT: NO LESSER-INCLUDED OR ANYTHING ELSE.

10 MR. CAMPBELL: NO, SIR. SHE TESTIFIED 10,000.

11 THE COURT: I HAVE THE TRAFFICKING, POSSESSION AND
12 ALL OF THAT. I'LL SEE IF I CAN FIND SOMETHING ON
13 REASONABLE SUSPICION, BUT OTHERWISE YOU MIGHT HAVE TO
14 JUST -- AGAIN, THAT'S IN EVIDENCE FOR YOU TO ARGUE IF
15 THAT IS REASONABLE OR NOT UNDER THE CIRCUMSTANCES
16 CONSIDERING THE TOTALITY OF THE EVIDENCE.

17 ALL RIGHT. WE DO HAVE EXPERT TESTIMONY SO I'LL HAVE
18 TO GIVE AN EXPERT CHARGE.

19 AND OBVIOUSLY I'LL REASSERT THE RIGHT OF THE
20 DEFENDANT NOT TO -- OR THAT IT CANNOT BE CONSIDERED, NOT
21 BEING HERE.

22 MS. MANIGAULT: YES, SIR.

23 THE COURT: BUT ALSO GIVE THEM A PRELIMINARY
24 INSTRUCTION ON THE DEFENDANT NOT TESTIFYING OR PRESENTING
25 ANY EVIDENCE.

1 ALL RIGHT. ANYTHING ELSE? IF Y'ALL WOULD, IF YOU
2 COULD FIND SOMETHING YOU WOULD LIKE ME TO CHARGE, PLEASE
3 PRESENT IT. OTHERWISE I'LL SEE YOU LET'S SAY ABOUT A
4 QUARTER TILL TO FIND OUT IF YOU'VE GOT ANY PROBLEMS.

5 **MS. MANIGAULT:** YOUR HONOR, BEFORE WE LEAVE, I WAS
6 TRYING TO RECALL A STATE GRAND JURY WHERE THE DEFENDANT
7 WAS CONVICTED OF TRAFFICKING, AND THE DEFENSE ATTORNEY
8 ASKED FOR A LESSER-INCLUDED CHARGE AND WAS DENIED, AND
9 THE SUPREME COURT OVERTURNED IT AND SAID IT SHOULD HAVE
10 BEEN CHARGED. COULD I HAVE JUST UNTIL WE GET BACK FROM
11 LUNCH?

12 **THE COURT:** DO YOU THINK THE STATE GRAND JURY IS ONE
13 OF OUR MORE RECENT CASES?

14 **MS. MANIGAULT:** WE TRIED IT BEFORE JUDGE MADDOX
15 ABOUT FOUR YEARS AGO.

16 **THE COURT:** MS. MANIGAULT?

17 **MS. MANIGAULT:** YES.

18 **THE COURT:** THAT'S RECENT. WHEN I LOOK AT SOME OF
19 THESE OTHER PEOPLE THAT HAVE BEEN AROUND, FOUR YEARS IS
20 LIKE YESTERDAY.

21 (A LUNCHEON RECESS OCCURRED.)

22

23

24

25

AFTERNOON PROCEEDINGS

THE COURT: ALL RIGHT. WE'RE READY TO GO BACK ON THE RECORD IN *STATE VERSUS KIRKMAN*.

MR. CAMPBELL: THE STATE HAS RESTED, YOUR HONOR.

THE COURT: I JUST WANTED TO FIND OUT IF WE'RE READY TO GO ON THE RECORD OR NOT. THE STATE IS READY AND THE DEFENSE IS READY?

MS. MANIGAULT: DEFENSE IS READY.

THE COURT: THE STATE HAS RESTED; IS THAT CORRECT?

MR. CAMPBELL: THAT'S CORRECT, YOUR HONOR.

THE COURT: ALL RIGHT. ANYTHING ELSE THE STATE NEEDS TO PUT IN?

MR. CAMPBELL: NO, YOUR HONOR.

THE COURT: ALL RIGHT. ANYTHING FROM THE DEFENSE?

MS. MANIGAULT: YOUR HONOR, THE DEFENSE WOULD MAKE A MOTION TO DISMISS THE CHARGES ON THE GROUNDS THAT THE STATE HAS NOT PROVED THE ELEMENTS OF THE CHARGE IN ITS ENTIRETY, AND ALSO FURTHERING THE GROUNDS THAT MY CLIENT WAS DENIED HIS DAY IN COURT BY A TRIAL IN HIS ABSENCE. I THINK THE FRAMERS OF YOUR CONSTITUTION HAD IN MIND THAT THE PERSON TO BE PRESENT TO ASSIST WITH HIS OR HER DEFENSE, AND I BELIEVE TRIED IN ABSENCE HAS DENIED HIM THE OPPORTUNITY TO HAVE ASSISTANCE, SO WE ASK FOR A DISMISSAL.

1 **THE COURT:** ALL RIGHT. WHAT DOES THE STATE SAY?

2 **MR. CAMPBELL:** YOUR HONOR, REGARDING THE TRIAL IN
3 ABSENCE, THE DEFENDANT WAS DULY NOTIFIED PER HIS BOND,
4 HIS BONDSMAN. HE HASN'T HAD ANY CONTACT WITH
5 MS. MANIGAULT, AS SHE STATED IN PRE-TRIAL, FOR ABOUT SIX
6 MONTHS. THIS CASE HAS BEEN READY FOR TRIAL FOR A COUPLE
7 OF TIMES AND WE HAVE CONTINUED IT. HE DEFINITELY HAD
8 NOTICE.

9 ON THE SECOND ISSUE, THE STATE FEELS THAT IT'S
10 PROVEN THE ELEMENTS OF TRAFFICKING IN COCAINE GREATER
11 THAN 400 GRAMS. THERE'S AMPLE TESTIMONY THAT THE DRUGS
12 WERE COCAINE THAT IT WAS TEN KILOS INSTEAD OF 10,000
13 GRAMS, WHICH DEFINITELY MEETS THE ELEMENTS.

14 **THE COURT:** ALL RIGHT. AS FAR AS RIGHT OF A
15 DEFENDANT TO BE PRESENT AT TRIAL, THE COURT DOES
16 UNDERSTAND, RECOGNIZE AND APPRECIATE THAT VERY VALUABLE
17 RIGHT. HOWEVER, THIS COURT ALSO RECOGNIZES THE RIGHT OF
18 THE DEFENDANT TO WAIVE HIS PRESENCE AT TRIAL. THE COURT
19 HAS FOUND THAT, OF COURSE, THAT THERE WAS SUFFICIENT
20 NOTICE AND WARNING AS TO WHAT WOULD BE THE EFFECTS IF HE
21 DID NOT APPEAR AS INSTRUCTED; AND ALSO THAT THE COURT HAS
22 FOUND THAT HE FREELY, VOLUNTARILY, KNOWINGLY AND
23 INTELLIGENTLY WAIVED HIS RIGHT TO BE PRESENT AT TRIAL AS
24 SET FORTH IN *STATE VERSUS PATTERSON*, 367 S.C. 219.
25 NOTICE BEING SUFFICIENT AND THE WARNING AS TO WHAT WOULD

1 OCCUR IF HE -- OR THAT HIS TRIAL WOULD PROCEED IN HIS
2 ABSENCE. THE COURT DENIES THE DEFENDANT'S MOTION BASED
3 ON ABSENCE.

4 AS FAR AS INSUFFICIENCY OF THE EVIDENCE, OBVIOUSLY
5 RULE 19 OF THE RULES OF CRIMINAL PROCEDURE PROVIDES THAT
6 THE TRIAL JUDGE SHALL NOT CONSIDER THE WEIGHT OF THE
7 EVIDENCE, ONLY WHETHER OR NOT THERE IS ANY EVIDENCE THAT
8 WOULD SUPPORT SUCH A CHARGE, AND THE COURT FINDS THERE IS
9 SUFFICIENT EVIDENCE TO GO TO THE JURY IN THIS CASE. THE
10 MOTION FOR DIRECTED VERDICT AS WELL AS THE MOTION AS TO
11 THE CONSTITUTIONAL RIGHTS NOT BEING WAIVED ARE DENIED.

12 **MS. MANIGAULT:** THANK YOU, YOUR HONOR.

13 **THE COURT:** ALL RIGHT. AS FAR AS CHARGES, I'M GOING
14 TO GIVE, RENEW THE CHARGE AS TO THE ABSENT DEFENDANT,
15 THAT'S NOT TO BE CONSTRUED AGAINST HIM. IT'S MY
16 UNDERSTANDING THE DEFENDANT, OF COURSE, IS NOT GOING TO
17 PUT UP ANY EVIDENCE, I'M GOING TO CHARGE PRELIMINARILY OF
18 HIS CONSTITUTIONAL RIGHT TO REMAIN SILENT AND NOT HAVE TO
19 PRESENT EVIDENCE. I'LL RENEW THOSE IN THE FORMAL CHARGE
20 AS WELL AS THE CHARGE ON VOLUNTARINESS OF THE STATEMENT.

21 OTHERWISE, CREDIBILITY OF WITNESSES, TO INCLUDE
22 EXPERT WITNESSES. AS I SAY, THE STATEMENT OF THE
23 DEFENDANT, HOW IT IS TO BE CONSIDERED. PRESUMPTION OF
24 INNOCENCE, DIRECT AND CIRCUMSTANTIAL EVIDENCE, CRIMINAL
25 INTENT. THE FACT THAT THERE IS AN INDICTMENT IS NOT TO

1 BE CONSTRUED AS EVIDENCE IN ANY FASHION. TRAFFICKING
2 COCAINE MORE THAN 400 GRAMS, AND IT'S BEEN DECIDED THAT,
3 OF COURSE, THERE IS NO LESSER-INCLUDED OFFENSE, THAT'S
4 *SELLERS VERSUS STATE*, I THINK IT IS. THE EVIDENCE WOULD
5 NOT SUPPORT ANY LESSER CHARGE.

6 DEFINE COCAINE, POSSESSION, ACTUAL AND CONSTRUCTIVE
7 DELIVERY, DISTRIBUTE, MANUFACTURE, AND THAT IS ABOUT IT.
8 AS I SAY, OTHER THAN I'LL BE GIVING THE RIGHT OF THE
9 DEFENDANT NOT TO BE PRESENT OR TO TESTIFY.

10 ANYTHING ELSE FROM THE STATE?

11 **MR. CAMPBELL:** NO, YOUR HONOR.

12 **THE COURT:** FROM THE DEFENSE?

13 **MS. MANIGAULT:** NOTHING, YOUR HONOR.

14 **THE COURT:** YOU ARE RESERVING YOUR RIGHT TO ACCEPT
15 THE CHARGE IN HIS ABSENCE BUT NOTHING TO ADD AT THIS
16 POINT.

17 **MR. CAMPBELL:** NOTHING, YOUR HONOR.

18 **MS. MANIGAULT:** NOTHING TO ADD.

19 **THE COURT:** THE STATE GOES FIRST, THEN THE DEFENSE
20 CLOSES. FOR THE BENEFIT OF THE JURY, IF THE STATE COULD
21 REST, AND THEN I'LL RECOGNIZE YOU, MS. MANIGAULT, TO
22 ANNOUNCE THAT THE DEFENSE -- WHAT WOULD THE DEFENSE SAY?

23 **MS. MANIGAULT:** RESTED.

24 **THE COURT:** THAT YOU REST, AS WELL. PERFECT. THANK
25 YOU.

1 (WHEREUPON, THE JURY ENTERED THE COURTROOM AT
2 APPROXIMATELY 2:10 P.M.)

3 THE COURT: ALL RIGHT. LET THE RECORD REFLECT THE
4 JURY AND ALTERNATE ARE IN THE JURY-BOX. I'LL RECOGNIZE
5 THE SOLICITOR. YOU MAY PROCEED.

6 MR. CAMPBELL: YOUR HONOR, THAT IS THE STATE'S CASE.

7 THE COURT: THE STATE RESTS?

8 MR. CAMPBELL: YES, SIR.

9 THE COURT: I RECOGNIZE THE DEFENDANT,
10 MS. MANIGAULT.

11 MS. MANIGAULT: YOUR HONOR, THE DEFENSE RESTS.

12 THE COURT: AS I MENTIONED EARLIER WHEN WE STARTED
13 THE CASE, UNDER THE LAWS OF THE STATE THE DEFENDANT MAY
14 BE TRIED EVEN IF THE DEFENDANT DOES NOT ATTEND THE TRIAL.
15 BUT THAT FACT THAT THE DEFENDANT IS NOT PRESENT MAY NOT
16 BE CONSIDERED AGAINST THE DEFENDANT IN ANY MANNER
17 WHATSOEVER.

18 MOREOVER, A DEFENDANT HAS THE CONSTITUTIONAL RIGHT
19 TO REMAIN SILENT, TO PUT UP NO EVIDENCE AND REQUIRE THE
20 STATE TO MEET ITS BURDEN OF PROOF BEYOND A REASONABLE
21 DOUBT. THE ASSERTION OF THE CONSTITUTIONAL RIGHT NOT TO
22 TESTIFY OR PRESENT EVIDENCE MUST NOT BE CONSIDERED BY YOU
23 IN YOUR DELIBERATIONS. UNDER YOUR OATH YOU ARE TO DRAW
24 NO CONCLUSION WHATSOEVER FROM THE FACT THAT THE DEFENDANT
25 IN THIS CASE DID NOT APPEAR NOR TESTIFY OR PUT UP ANY

1 EVIDENCE.

2 AS I STATED, THE DEFENDANT IS NOT REQUIRED TO PROVE
3 HIS INNOCENCE AND THE BURDEN OF PROOF REMAINS UPON THE
4 STATE TO PROVE GUILT BEYOND A REASONABLE DOUBT.

5 WITH THAT, IT BRINGS US TO THE FINAL STAGES OF THE
6 TRIAL WHICH WILL BE THE CLOSING ARGUMENTS BY THE STATE
7 AND THE DEFENDANT AND THE CHARGE ON THE LAW. AFTER THAT
8 YOU WILL BE GIVEN THE CASE FOR YOUR DECISION.

9 I RECOGNIZE MR. CAMPBELL FOR HIS CLOSING ARGUMENT.

10 MR. CAMPBELL: THANK YOU, YOUR HONOR. MAY IT PLEASE
11 THE COURT, MS. MANIGAULT.

12 CLOSING ARGUMENT ON BEHALF OF THE STATE:

13 MR. CAMPBELL: LADIES AND GENTLEMEN OF THE JURY,
14 WHEN I STARTED THIS CASE YESTERDAY, I TOLD YOU SOME
15 THINGS JUST SPEAK FOR THEMSELVES. AS YOU LOOK AT STATE'S
16 EXHIBIT NUMBER FIVE, YOU HAVE TEN REASONS, TEN ITEMS
17 (TAKING OUT OF DUFFEL BAG) THAT ALL SPEAK FOR THEMSELVES.

18 WHAT IS THIS? THIS IS JUST NOT AN ILLEGAL DRUG.
19 IT'S A LOT MORE THAN THAT. TO AN INDIVIDUAL, A DOPE
20 DEALER LIKE RAHIEM KIRKMAN, THIS IS MONEY. THIS RIGHT
21 HERE IS A MILLION DOLLARS' WORTH OF STREET VALUE DRUGS IN
22 ITS PUREST FORM IN ANDERSON COUNTY. THAT'S WHAT A
23 MILLION BUCKS LOOKS LIKE.

24 THAT'S BEFORE IT'S CUT. AS YOU CAN SEE, IT BREAKS
25 APART, AND AS INVESTIGATOR MCGUIRE TESTIFIED, THEY START

1 CUTTING IT TO THIN IT OUT TO MAKE TWO OR THREE TIMES THE
2 PROFIT.

3 THIS IS NOT FOR A HABIT. THIS RIGHT HERE IS EVIL,
4 IT'S PAIN, AND IT'S HURT. THIS HURTS PEOPLE RIGHT HERE.
5 AND ALL FOR WHAT? MONEY.

6 IN THE DEFENDANT'S OWN WORDS, MR. KIRKMAN SAYS HE
7 PAID 18,000, 18,500 PER KILO, FOR ONE OF THESE. HOW LONG
8 DOES IT TAKE YOU TO MAKE \$18,000 TAX FREE?

9 ON AUGUST 22ND, 2006, MAYBE IT WASN'T MR. KIRKMAN'S
10 LUCKY DAY. THE PATROL OFFICERS, CRAWFORD AND MIZE WERE
11 OUT DOING THEIR JOBS WORKING THE INTERSTATE. THEY
12 STOPPED HIM. AS HE TESTIFIED ON THE STAND, YOU KNOW,
13 IT'S NOT JUST NERVOUSNESS. PEOPLE GET NERVOUS WHEN THEY
14 SPEAK IN FRONT OF PEOPLE. OR I KNOW EVERYBODY GETS
15 NERVOUS WHEN BLUE LIGHTS GO ON BEHIND THEM. WHY DO YOU
16 GET NERVOUS? BECAUSE YOU KNOW THE DIFFERENCE BETWEEN
17 RIGHT AND WRONG. EVEN IF YOU HAVEN'T DONE ANYTHING
18 WRONG, YOU START THINKING, HAVE I DONE SOMETHING WRONG?
19 YOU START LOOKING AT YOUR SPEEDOMETER WHEN BLUE LIGHTS GO
20 ON BEHIND YOU. YOU ALWAYS DO THAT SIGH OF RELIEF WHEN
21 THE CAR GOES PAST YOU. BUT THE REASON WHY IS YOU HAVE
22 VALUES AND YOU HAVE STANDARDS, YOU KNOW THE DIFFERENCE
23 BETWEEN RIGHT AND WRONG. YOU DON'T HAVE TO BE TAUGHT
24 RIGHT AND WRONG. CHILDREN KNOW THE DIFFERENCE BETWEEN
25 RIGHT AND WRONG. ANIMALS AND PUPPIES KNOW THE DIFFERENCE

1 BETWEEN RIGHT AND WRONG. WHEN THEY KNOW THEY'VE DONE
2 SOMETHING, AND CHILDREN KNOW THEY'VE DONE SOMETHING THAT
3 THEY'RE NOT SUPPOSED TO, AND THEY GIVE YOU THAT LOOK.

4 MR. KIRKMAN WAS CAUGHT RED-HANDED. HE MIGHT NOT
5 HAVE BEEN ABLE TO GET IN THAT CAR AT THAT POINT IN TIME,
6 BUT HE KNEW THE GAME WAS UP. AND THIS ISN'T HIS
7 FIRST-TIME DEAL GOING DOWN THE INTERSTATE. HE'S BEEN
8 DOWN THIS INTERSTATE NUMEROUS TIMES.

9 AS YOU READ HIS STATEMENT IN HIS OWN WORDS: I HAVE
10 MOVED 150 KILOS SINCE KNOWING MIKE. 150 KILOS, TAKING
11 EVEN HIS LOW VALUE OF \$18,000 PER KILO, \$2.7 MILLION
12 WORTH OF DRUGS JUST WHOLESALE. \$2,700,000 THIS GUY HAS
13 MOVED, NOT INCLUDING THIS STUFF RIGHT HERE.

14 NO WONDER HE WAS SHAKING WHEN DEPUTY CRAWFORD ASKED
15 FOR HIS DRIVER'S LICENSE AND VEHICLE REGISTRATION.

16 AS THE DEPUTY TOLD YOU, THAT'S WHY THE CAR WAS
17 SEARCHED, BASED UPON INDICATORS, NOT WHO HE IS, NOT WHERE
18 HE'S FROM. BUT THE INDICATORS DUE TO MY TRAINING AND
19 EXPERIENCE WE HAVE LEARNED TO DETERMINE IF POSSIBLY
20 FURTHER ILLEGAL CRIMINAL ACTIVITY WAS GOING ON. I'LL
21 TELL YOU THIS. HE WAS RIGHT, WASN'T HE? DEPUTY CRAWFORD
22 THROUGH HIS TRAINING AND EXPERIENCE WAS CORRECT. HE HIT
23 THE NAIL ON THE HEAD.

24 HE REALIZED THERE WAS SOMETHING ELSE GOING ON. HIS
25 DOG BEING A CANINE UNIT, ANTAC, KNEW ALSO WHAT WAS GOING

1 ON. HE ALERTED AND THEY WERE CORRECT. YOU ARE SITTING
2 HERE LOOKING AT IT.

3 THAT BRINGS UP ANOTHER THING ABOUT COCAINE, OR ANY
4 TYPE OF DRUG. THE ONE THING ABOUT IT, THIS RIGHT HERE IS
5 EQUAL OPPORTUNITY. DOPE DEALERS, THEY DON'T CARE, THEY
6 DON'T GET INTO ANYTHING ABOUT YOUR AGE, YOUR RACE, YOUR
7 SEX. THEY DON'T CARE. THE ONLY THING THEY CARE ABOUT IS
8 MONEY. THEY'LL SELL IT TO YOU IF YOU ARE BLACK, WHITE,
9 HISPANIC, MALE, FEMALE, YOUNG OR OLD. IT DOES NOT MATTER
10 AS LONG AS YOU BUY THE FINISHED PRODUCT.

11 AND THIS DOPE HERE MAY NOT HAVE BEEN DESTINED FOR
12 ANDERSON COUNTY, BUT IT WAS DESTINED FOR A DIFFERENT
13 COMMUNITY JUST LIKE ANDERSON. AND THAT'S WHY HE WAS
14 CHARGED. AS A MATTER OF FACT, IT SHOWED THAT HE KNEW THE
15 GAME WAS UP BY HIS OWN ACTIONS. HE TOOK OFF RUNNING.
16 YOU DON'T RUN UNLESS YOU HAVE SOMETHING TO HIDE. EVEN
17 BEFORE YOU CAN GET TO THE RUNNING PART, WHAT DOES HE TRY
18 TO DO? HE TRIES TO BRIBE DEPUTY CRAWFORD. THERE'S
19 \$18,000 SITTING IN THE BACK SEAT AND YOU SAW HIM IN THE
20 VIDEO PULL UP WITH THE PLASTIC BAG WITH THE MONEY.

21 WHAT DID HE DO? HE TURNED IT IN LIKE HE'S SUPPOSED
22 TO. HE CONTINUED ON. HE COULDN'T BRIBE HIM. SO NOW
23 THAT THE GAME IS UP, I CAN'T BRIBE MY OFFICER. WHAT DO I
24 DO NEXT? I RUN. THIS DAY I HAPPENED TO BE CAUGHT.

25 HE WAS CHARGED WITH TRAFFICKING POWDER COCAINE, JUST

1 COCAINE, MORE THAN 400 GRAMS. AS THE CHEMIST TOLD YOU,
2 THIS IS COCAINE. YOU ARE LOOKING AT A KILO EACH IN THESE
3 BAGS. 10,000 GRAMS ARE SITTING RIGHT HERE ON THIS TABLE.
4 IN ANDERSON COUNTY THAT VALUE IS A HUNDRED GRAMS. YOU
5 ARE LOOKING AT A MILLION STREET VALUE.

6 IT'S THE BURDEN UPON THE STATE TO PROVE TO YOU
7 BEYOND A REASONABLE DOUBT, AND WE WELCOME THAT BURDEN
8 BECAUSE THIS IS WHAT WE WERE TRYING TO REMOVE FROM NOT
9 ONLY OUR COMMUNITY BUT OTHER COMMUNITIES.

10 THERE'S NO TELLING HOW MANY PEOPLE ARE DOING BETTER
11 BECAUSE THEY MADE THIS TRAFFIC STOP. THIS WAS GOING
12 SOMEWHERE, IT WAS DESTINED TO GET INTO SOMEBODY'S HANDS,
13 WHETHER IT WAS OTHER DEALERS, USERS. THIS STUFF RIGHT
14 HERE, WHAT MR. KIRKMAN WAS TRAFFICKING. AND WE DON'T
15 HAVE TO PROVE TO YOU THAT HE WAS SELLING HAND TO HAND.
16 AS WE STATED BEFORE, TRAFFICKING IS BASED PURELY ON
17 WEIGHT. YOUR OWN COMMON SENSE CAN TELL YOU WHAT THIS IS
18 HERE FOR, IT'S TO DEAL.

19 THIS STUFF RIGHT HERE GOES RIGHT TO THE FIBER OF OUR
20 COMMUNITIES. THIS TEARS THE MORTAR BETWEEN THE BRICKS
21 OUT OF OUR COMMUNITIES WHERE THEY WILL FALL BECAUSE THIS
22 HURTS FAMILY, FRIENDS, PEOPLE, ALL FOR MONEY. THIS ISN'T
23 SOME INNOCENT RIGHT HERE. THIS IS SOMETHING MR. KIRKMAN
24 MAKES HIS LIVING AT, APPARENTLY A PRETTY GOOD LIVING.

25 HE GOT CAUGHT IN THE SOUTHBOUND LANE GOING TO

1 ATLANTA AS IT WAS ALREADY DISCUSSED, A MAJOR HUB FOR OUR
2 DRUGS IN THE LOWER SOUTHEAST. THEY PROBABLY GOT
3 \$200,000. YOU ARE LOOKING AT A HUNDRED AND EIGHT
4 THOUSAND RIGHT THERE THAT HE PAID FOR. 18,000 IN THE
5 BACK OF HIS CAR. I BET HE DOESN'T PAY THAT ON INCOME
6 TAX. DO YOU THINK HE PUNCHES A CLOCK FROM NINE TO FIVE?
7 HE DOESN'T MAKE AN HONEST LIVING. HE RUINS PEOPLE.

8 THE STATE HAS MET ITS BURDEN IN THIS CASE. WE HAVE
9 PROVED BEYOND A REASONABLE DOUBT THAT RAHIEM KIRKMAN IS
10 GUILTY OF TRAFFICKING MORE THAN 400 GRAMS OF COCAINE.

11 AND AS I STATED AT THE BEGINNING, I WANT TO ASK YOU
12 ALL TO RETURN A VERDICT, THE VERDICT IN THIS CASE THAT
13 TRUTH DICTATES AND JUSTICE DEMANDS, AND THAT IS RAHIEM
14 KIRKMAN IS GUILTY OF TRAFFICKING MORE THAN 400 GRAMS IN
15 ANDERSON COUNTY ON AUGUST 22ND, 2006.

16 AND I THANK YOU FOR YOUR TIME.

17 **MS. MANIGAULT:** MAY IT PLEASE THE COURT?

18 **THE COURT:** MS. MANIGAULT?

19 CLOSING STATEMENT ON BEHALF OF THE DEFENDANT:

20 **MS. MANIGAULT:** LADIES AND GENTLEMEN, AGAIN, I'M
21 DOROTHY MANIGAULT AND I REPRESENT RAHIEM KIRKMAN.

22 IN MY STATEMENT I MENTIONED TO YOU THAT THE STATE
23 HAD THE BURDEN OF PROOF TO PROVE TO YOU BEYOND A
24 REASONABLE DOUBT THE ELEMENTS OF THE CRIME OF THE CHARGE
25 IN THIS CASE. RAHIEM KIRKMAN ENTERED A PLEA OF NOT

1 GUILTY. YOUR HONOR HAS TOLD YOU THAT HE HAS WAIVED HIS
2 RIGHT TO BE PRESENT. HE'S ALSO TOLD YOU THAT HE HAS --
3 YOU CANNOT HOLD AGAINST HIM THAT PRIVILEGE OR THAT RIGHT.

4 YOU HAVE SEEN WHAT THE STATE HAS TO PRESENT. THERE
5 IS NOTHING ELSE TO PRESENT. THERE IS NO OTHER
6 INFORMATION, THERE IS NO OTHER WITNESSES. SO IT IS UP TO
7 YOU TO DECIDE AFTER YOU GET TO THE JURY ROOM, THE 12 OF
8 YOU, TO DECIDE WHETHER THE STATE HAS MET ITS BURDEN OF
9 PROOF.

10 YOU HAVE SEEN THE WITNESSES TESTIFY, YOU EVEN HAD AN
11 OPPORTUNITY TO VIEW THE VIDEO, AND YOU HAVE LISTENED VERY
12 ATTENTIVELY, WHICH WE APPRECIATE. SO I CAN ONLY SAY TO
13 YOU THE VERDICT THAT YOU BRING BACK SHOULD MEET THE
14 EVIDENCE THAT YOU VIEWED. AND IF YOU BELIEVE THAT THE
15 STATE HAS MET ITS BURDEN, THEN THAT IS YOUR DECISION.
16 THANK YOU.

17 CHARGE ON THE LAW BY THE COURT:
18

19 **THE COURT:** MR. FOREMAN, LADIES AND GENTLEMEN OF THE
20 JURY, IT NOW BECOMES MY DUTY TO CHARGE YOU, WHICH SIMPLY
21 MEANS TO INSTRUCT YOU AS TO THE FACTS -- WELL, NOT THE
22 FACTS BUT AS TO THE LAW IN THE CASE. IN FACT, WE HAVE
23 CERTAIN FUNCTIONS AND RESPONSIBILITIES TO PERFORM WHICH
24 ARE ENTIRELY SEPARATE AND DISTINCT FROM THOSE OF MINE AS
25 THE TRIAL JUDGE.

1 I AM PROHIBITED BY THE CONSTITUTION OF OUR STATE
2 FROM CHARGING YOU ON THE FACTS IN THIS CASE. I'M ALSO
3 PROHIBITED FROM DISCUSSING THE FACTS OF THE CASE WITH YOU
4 OR IN ANY WAY INTIMATING WHAT MY FEELINGS, IF ANY, ARE
5 ABOUT THE FACTS OF THE CASE.

6 IT IS YOUR RESPONSIBILITY AND YOURS ALONE TO PASS
7 UPON ALL THE ISSUES OF FACT PRESENTED IN THE CASE. I
8 WOULD, THEREFORE, CHARGE YOU THAT IF DURING THE COURSE OF
9 THE TRIAL OR DURING MY CHARGE YOU HAVE BEEN GIVEN OR LEFT
10 WITH THE IMPRESSION OR FEELING THAT I DO HAVE A PERSONAL
11 FEELING ABOUT THE FACTS OF THE CASE, I WOULD SPECIFICALLY
12 INSTRUCT YOU THAT YOU ARE TO DISREGARD THAT FEELING OR
13 IMPRESSION.

14 MOREOVER, YOU ARE THE SOLE JUDGES OF WHAT THE
15 TESTIMONY WAS AND NOT THE ARGUMENT OF COUNSEL. IT'S ALSO
16 YOUR DUTY AND YOURS ALONE TO WEIGH THE TESTIMONY AND
17 EVIDENCE IN THE CASE AND TO PASS UPON THE CREDIBILITY OR
18 BELIEVABILITY OF THE WITNESSES.

19 IN THIS CONNECTION YOU HAVE THE RIGHT TO BELIEVE ALL
20 THAT A WITNESS TELLS YOU OR DISBELIEVE ALL THAT A WITNESS
21 TELLS YOU. YOU HAVE THE RIGHT TO BELIEVE A PART OF WHAT
22 A WITNESS TELLS YOU OR TO DISBELIEVE A PART OF WHAT A
23 WITNESS TELLS YOU. YOU HAVE THE RIGHT TO TAKE INTO
24 CONSIDERATION ANY BIAS OR PREJUDICE OR INTEREST YOU FEEL
25 A WITNESS MIGHT HAVE IN THE CASE. I SAY THIS MERELY TO

1 EMPHASIZE THAT THE WEIGHT YOU SEE FIT TO GIVE TO THE
2 TESTIMONY, TO THE CREDIBILITY OF THE WITNESSES, AS WELL
3 AS ALL ISSUES OF FACTS ARE FOR YOUR DETERMINATION.

4 AS JUDGES OF THE FACTS YOU ARE THE SOLE JUDGES OF
5 THE CREDIBILITY, THAT IS THE BELIEVABILITY OF THE
6 WITNESSES WHO HAVE TESTIFIED IN THIS CASE. IN PASSING
7 UPON THEIR CREDIBILITY YOU MAY TAKE INTO CONSIDERATION
8 MANY THINGS, SUCH AS THE APPEARANCE OR THE MANNER OF THE
9 WITNESS ON THE STAND, SOMETIMES REFERRED TO AS THE
10 Demeanor OF THE WITNESS. WAS THE WITNESS FORTHRIGHT OR
11 HESITANT? WAS THE WITNESS'S TESTIMONY CONSISTENT OR DID
12 IT CONTAIN DISCREPANCIES? WHAT WAS THE ABILITY OF THE
13 WITNESS TO KNOW THE FACTS ABOUT WHICH HE OR SHE
14 TESTIFIED? DID THE WITNESS HAVE A CAUSE OR A REASON TO
15 BE BIASED AND PREJUDICED IN FAVOR OF THE TESTIMONY HE OR
16 SHE GAVE? WAS THE TESTIMONY OF THE WITNESS CORROBORATED
17 OR MADE STRONGER BY OTHER TESTIMONY AND EVIDENCE OR WAS
18 IT MADE WEAKER OR IMPEACHED BY SUCH OTHER TESTIMONY AND
19 EVIDENCE?

20 AS JURORS YOU HAVE THE RIGHT TO BELIEVE A SMALL
21 PORTION OF A WITNESS'S TESTIMONY AND DISCARD THE LARGER,
22 OR VICE VERSA. YOU MAY BELIEVE ALL OF A WITNESS'S
23 TESTIMONY OR NONE.

24 THE RULES OF EVIDENCE ORDINARILY DO NOT PERMIT
25 WITNESSES TO TESTIFY TO OPINIONS OR CONCLUSIONS. AN

1 EXCEPTION TO THE RULE WHICH IS A WITNESS WHO IS CALLED AN
2 EXPERT WITNESS. A WITNESS WHO, BY EDUCATION OR
3 EXPERIENCE, HAS BECOME EXPERT IN ART, SCIENCE OR
4 PROFESSION OR CALLING MAY STATE AN OPINION AS TO RELEVANT
5 AND MATERIAL MATTER IN WHICH THE WITNESS MIGHT BE AN
6 EXPERT AND MAY ALSO STATE THE REASONS FOR THE OPINION.

7 YOU SHOULD CONSIDER ANY EXPERT OPINION GIVEN OR
8 RECEIVED IN THIS CASE, AND LIKE ANY OTHER EVIDENCE, GIVE
9 IT THE WEIGHT YOU THINK IT DESERVES. AN EXPERT WITNESS'S
10 OPINION IS TO BE GIVEN NO GREATER WEIGHT THAN OTHER
11 WITNESSES SIMPLY BECAUSE THE WITNESS IS AN EXPERT.

12 FURTHER, YOU ARE NOT REQUIRED TO ACCEPT AN EXPERT'S
13 OPINION EVEN THOUGH IT'S UNCONTROVERTED. THROUGHOUT THIS
14 ENTIRE PROCESS YOU HAVE BUT ONE SINGLE OBJECTIVE AND THAT
15 IS TO SEEK THE TRUTH REGARDLESS OF FROM WHAT WITNESS THE
16 TESTIMONY MAY HAVE COME.

17 NOW, THERE HAS BEEN ADMITTED INTO THE RECORD IN THIS
18 CASE A STATEMENT ALLEGEDLY THAT HAD BEEN MADE BY THE
19 DEFENDANT. BEFORE YOU MAY CONSIDER THIS STATEMENT AS
20 EVIDENCE FOR ANY PURPOSE YOU MUST DETERMINE FOUR
21 QUESTIONS: DID THE DEFENDANT MAKE THE STATEMENT? WAS
22 THE DEFENDANT WARNED OF HIS CONSTITUTIONAL RIGHTS? DID
23 THE DEFENDANT KNOWINGLY AND INTELLIGENTLY WAIVE HIS
24 CONSTITUTIONAL RIGHTS? AND WERE THE STATEMENTS GIVEN
25 VOLUNTARILY?

1 THE FACT THAT THE COURT HAS ADMITTED THE STATEMENT
2 INTO EVIDENCE SHOULD NOT BE CONSIDERED BY YOU AS ANY
3 EVIDENCE WHATSOEVER THAT THE DEFENDANT MADE SUCH A
4 STATEMENT OR THAT THE REQUIRED CONSTITUTIONAL SAFEGUARDS
5 WERE WAIVED BY THE DEFENDANT OR THAT THE STATEMENT WAS
6 VOLUNTARILY GIVEN. BECAUSE THESE ISSUES ARE FOR YOU, THE
7 JURY, TO DETERMINE.

8 THE STATE MUST PROVE BEYOND A REASONABLE DOUBT EACH
9 OF THE FOUR REQUIREMENTS I JUST STATED TO YOU BEFORE YOU
10 MAY CONSIDER THE STATEMENT AS EVIDENCE FOR ANY PURPOSE
11 WHATSOEVER.

12 IF YOU DETERMINE THAT THE CONSTITUTIONAL RIGHTS WERE
13 NOT GIVEN TO THE DEFENDANT PRIOR TO INTERROGATION AND
14 TAKING OF A STATEMENT OR THAT A DEFENDANT WAS NOT
15 AFFORDED AN OPPORTUNITY TO EXERCISE THESE RIGHTS, YOU
16 MUST COMPLETELY DISREGARD THE STATEMENT AND IN THAT EVENT
17 YOU CANNOT CONSIDER THE STATEMENT AS EVIDENCE IN ANY
18 MANNER WHATSOEVER.

19 DID THE DEFENDANT KNOWINGLY AND INTELLIGENTLY WAIVE
20 HIS CONSTITUTIONAL RIGHTS? IF YOU FIND THAT THE
21 DEFENDANT DID NOT KNOWINGLY AND INTELLIGENTLY WAIVE HIS
22 CONSTITUTIONAL RIGHTS, THEN ANY ANSWER GIVEN BY HIM OR
23 ANY STATEMENT MADE BY HIM CANNOT BE USED AGAINST HIM AND
24 YOU MUST COMPLETELY DISREGARD ALL THE TESTIMONY
25 CONCERNING ANY SUCH ANSWER OR ALLEGED STATEMENT.

1 WHETHER THE STATEMENT WAS GIVEN VOLUNTARILY. A
2 STATEMENT IS NOT VOLUNTARY AND IT MAY NOT BE USED AGAINST
3 THE DEFENDANT UNLESS IT IS THE PRODUCT OF AN ESSENTIALLY
4 FREE AND UNCONSTRAINED CHOICE BY THE MAKER. THE TRUE
5 TEST TO BE APPLIED AS TO WHETHER A STATEMENT IS FREELY
6 AND VOLUNTARILY MADE, WITHOUT COMPULSION OR INDUCEMENT,
7 IN DETERMINING WHETHER OR NOT THE ALLEGED STATEMENT OF
8 THE DEFENDANT WAS VOLUNTARY, YOU MAY CONSIDER ALL OF THE
9 FACTS AND CIRCUMSTANCES SURROUNDING THE TAKING OR MAKING
10 OF THE STATEMENT.

11 WITH REGARD TO THE ALLEGED STATEMENT OF THE
12 DEFENDANT, THE STATE MUST PROVE BY EVIDENCE EACH AND
13 EVERY REQUIREMENT ABOUT WHICH I HAVE INSTRUCTED YOU
14 BEYOND A REASONABLE DOUBT BEFORE YOU CAN CONSIDER THE
15 ALLEGED STATEMENT IN THIS CASE. ABSENT ONE OF THESE
16 REQUIREMENTS ABOUT WHICH I'VE INSTRUCTED YOU, THE ALLEGED
17 STATEMENT MUST BE DISREGARDED COMPLETELY, AND IN THAT
18 EVENT YOU WILL ACCORD NO EVIDENTIARY WEIGHT WHATSOEVER TO
19 ANY PART OF THE STATEMENT.

20 THE SAME CONSTITUTION AND LAW WHICH MAKES YOU THE
21 FINDERS OF THE FACTS AND EVIDENCE, WHICH I'VE DISCUSSED
22 WITH YOU, I AM AS THE JUDGE MADE SOLELY AND ONLY
23 INSTRUCTOR IN THE LAW, AND YOU MUST ACCEPT AS CORRECT THE
24 LAW WHICH I CHARGE AND APPLY TO IT THE EVIDENCE AS YOU
25 FIND IT TO REACH YOUR VERDICT. IF I SHOULD MAKE AN ERROR

1 IN THE LAW AS I INSTRUCT IT TO YOU, THERE'S ANOTHER TIME
2 AND PLACE THAT ERROR CAN BE CONSIDERED AND, IF NECESSARY,
3 CORRECTED. BUT FOR THE PURPOSES OF THIS CASE TODAY YOU
4 MUST ACCEPT THE LAW AS I CHARGE IT TO YOU TO BE THE
5 CORRECT LAW.

6 FINALLY I CHARGE YOU IN THIS REGARD. YOU NOR FOR
7 THAT MATTER AM I ARE CONCERNED WITH WHAT THE LAW OUGHT TO
8 BE BUT RATHER WHAT I CHARGE YOU THE LAW TO BE. AS I HAVE
9 MENTIONED BEFORE, UNDER THE LAWS OF THIS STATE THE
10 DEFENDANT MAY BE TRIED EVEN IF THE DEFENDANT DOES NOT
11 ATTEND THE TRIAL. BUT THE FACT THAT THE DEFENDANT IS NOT
12 PRESENT MAY NOT BE CONSIDERED AGAINST THE DEFENDANT IN
13 ANY MANNER WHATSOEVER. MOREOVER, THE DEFENDANT HAS PLED
14 NOT GUILTY TO THIS INDICTMENT AND THAT PLEA PUTS THE
15 BURDEN ON THE STATE TO PROVE THE DEFENDANT'S GUILT. A
16 PERSON CHARGED WITH COMMITTING A CRIMINAL OFFENSE IN
17 SOUTH CAROLINA IS NEVER REQUIRED TO PROVE HIMSELF
18 INNOCENT. I CHARGE YOU THAT IT IS AN IMPORTANT RULE OF
19 LAW THAT A DEFENDANT IN A CRIMINAL TRIAL, NO MATTER WHAT
20 THE SERIOUSNESS OF THE CHARGE MAY BE, WILL ALWAYS BE
21 PRESUMED TO BE INNOCENT OF THE CRIME OF WHICH THE
22 INDICTMENT WAS ISSUED UNLESS THAT GUILT HAS BEEN PROVEN
23 BY EVIDENCE SATISFYING YOU OF THE GUILT BEYOND A
24 REASONABLE DOUBT.

25 THIS PRESUMPTION OF INNOCENCE DOES NOT END WHEN YOU

1 BEGIN YOUR DELIBERATIONS, BUT IT ACCOMPANIES THE
2 DEFENDANT THROUGHOUT THE TRIAL UNTIL YOU REACH A VERDICT
3 OF GUILTY BASED UPON EVIDENCE SATISFYING YOU OF THAT
4 GUILT BEYOND A REASONABLE DOUBT.

5 THE PRESUMPTION OF INNOCENCE IS LIKE A ROBE OF
6 RIGHTEOUSNESS PLACED ABOUT THE SHOULDERS OF THE DEFENDANT
7 WHICH REMAINS WITH THE DEFENDANT UNTIL IT HAS BEEN
8 STRIPPED FROM THE DEFENDANT BY EVIDENCE SATISFYING YOU OF
9 THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.
10 PRESUMPTION OF INNOCENCE IS NOT A MERE LEGAL THEORY, IT
11 IS NOT JUST A LEGAL PHRASE. IT IS A SUBSTANTIAL RIGHT TO
12 WHICH EVERY DEFENDANT IS ENTITLED UNLESS YOU, THE JURY,
13 IS SATISFIED FROM THE EVIDENCE OF THE DEFENDANT'S GUILT
14 BEYOND A REASONABLE DOUBT. A REASONABLE DOUBT IS THE
15 KIND OF DOUBT THAT WOULD CAUSE A REASONABLE PERSON TO
16 HESITATE TO ACT.

17 NOW, I INSTRUCT YOU AND EMPHASIZE THAT THE FACT THE
18 DEFENDANT DID NOT TESTIFY OR PUT UP EVIDENCE IS NOT A
19 FACTOR TO BE CONSIDERED BY YOU IN ANY WAY IN YOUR
20 DELIBERATIONS AND IN YOUR CONSIDERATION ON THE QUESTION
21 OF WHETHER THE STATE HAS PROVEN THE DEFENDANT IS GUILTY
22 OR NOT GUILTY OF THE CHARGES IN THE INDICTMENT. IT MUST
23 NOT BE CONSIDERED BY YOU IN ANY MANNER WHATSOEVER. A
24 DEFENDANT HAS THE CONSTITUTIONAL RIGHT TO REMAIN SILENT,
25 AND THE ASSERTION OF THIS RIGHT MUST NOT BE CONSIDERED BY

1 YOU IN YOUR DELIBERATIONS.

2 I REPEAT: UNDER YOUR OATH YOU HAVE TO DRAW NO
3 CONCLUSION WHATSOEVER FROM THE FACT THE DEFENDANT IN THIS
4 CASE DID NOT TESTIFY OR PRESENT EVIDENCE. THE FACT THAT
5 THE DEFENDANT DID NOT TESTIFY SHOULD NOT EVEN BE
6 DISCUSSED BY YOU IN THE JURY ROOM. THE BURDEN OF PROOF,
7 AS I HAVE STATED TO YOU, IS ON THE STATE. THE DEFENDANT
8 IS NOT REQUIRED TO PROVE HIS INNOCENCE. THE BURDEN OF
9 PROOF REMAINS ON THE STATE TO PROVE GUILT BEYOND A
10 REASONABLE DOUBT.

11 NOW, THERE ARE TWO TYPES OF EVIDENCE GENERALLY
12 PRESENTED DURING A TRIAL: DIRECT EVIDENCE AND
13 CIRCUMSTANTIAL EVIDENCE. DIRECT EVIDENCE IS THE
14 TESTIMONY OF A PERSON WHO CLAIMS TO HAVE ACTUAL KNOWLEDGE
15 OF A FACT, SUCH AS AN EYEWITNESS. IT IS EVIDENCE WHICH
16 IMMEDIATELY ESTABLISHES THE MAIN FACT TO BE PROVED.

17 CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN OF FACTS
18 AND CIRCUMSTANCES INDICATING THE EXISTENCE OF A FACT. IT
19 IS EVIDENCE WHICH IMMEDIATELY ESTABLISHES COLLATERAL
20 FACTS FROM WHICH THE MAIN FACT MAY BE INFERRED.

21 CIRCUMSTANTIAL EVIDENCE IS BASED ON INFERENCE AND NOT ON
22 PERSONAL KNOWLEDGE OR OBSERVATION. IT IS PROOF THAT DOES
23 NOT ACTUALLY ESTABLISH THE FACT IN QUESTION, BUT THAT
24 ASSERTS OR DESCRIBES SOMETHING ELSE BY WHICH YOU MAY
25 REASONABLY INFER THE TRUTH OF THE FACT OR AT LEAST

1 REASONABLY INFER AN INCREASE IN THE PROBABILITY THAT THE
2 FACT IS TRUE. FOR CIRCUMSTANTIAL EVIDENCE TO BE
3 SUFFICIENT TO WARRANT THE FINDING OF A FACT,
4 CIRCUMSTANCES MUST LEAD TO THAT FACT WITH REASONABLE
5 CERTAINTY. THE FACTS AND CIRCUMSTANCES SHOULD BE
6 CONSIDERED IN LIGHT OF ORDINARY EXPERIENCE AND COMMON
7 SENSE. THE EXISTENCE OF A FACT CANNOT BE BASED ON
8 SPECULATION, SURMISE OR CONJECTURE. THE LAW MAKES
9 ABSOLUTELY NO DISTINCTION BETWEEN THE WEIGHT OR VALUE TO
10 BE GIVEN TO EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE, NOR
11 IS GREATER DEGREE OF CERTAINTY REQUIRED OF CIRCUMSTANTIAL
12 EVIDENCE THAN DIRECT EVIDENCE.

13 FOR EXAMPLE, CRIMINAL INTENT IS A STATE OF MIND THAT
14 OPERATES JOINTLY WITH AN ACT OR A MISSION OR OMISSION IN
15 A CRIMINAL. CRIMINAL INTENT IS A MENTAL STATE. CRIMINAL
16 LIABILITY IS NORMALLY BASED ON THE CONCURRENCE OF TWO
17 FACTORS: AN EVIL-MEANING MIND AND AN EVIL-DOING HAND.
18 PROOF OF INTENT NECESSARILY RESTS ON INFERENCE FROM
19 CONDUCT.

20 NOW, IN INDICTMENT NUMBER 2006-GS-04-2922, THE
21 DEFENDANT, RAHIEM KIRKMAN, IS CHARGED WITH TRAFFICKING IN
22 COCAINE IN EXCESS OF 400 GRAMS, IN VIOLATION OF THE SOUTH
23 CAROLINA CODE OF LAWS, SECTION 44-53-370(E)(2)(E). I
24 REMIND YOU THE FACT THE DEFENDANT WAS ARRESTED, CHARGED
25 AND INDICTED IN THIS CASE IS NOT EVIDENCE IN THIS CASE

1 AND CANNOT BE CONSIDERED BY YOU AS EVIDENCE OF GUILT IN
2 THIS CASE, NOR DOES IT CREATE ANY PRESUMPTION OR
3 INFERENCE OF GUILT. AN INDICTMENT IS SIMPLY THE FORMAL
4 INSTRUMENT WHICH CONTAINS THE CHARGE MADE AGAINST THE
5 DEFENDANT. IT IS THE FORMAL DOCUMENT BY WHICH THE CASE
6 IS BROUGHT INTO THIS COURT.

7 NOW, THE DEFENDANT IS CHARGED WITH TRAFFICKING IN
8 COCAINE. THE STATE MUST PROVE BEYOND A REASONABLE DOUBT
9 THAT THE DEFENDANT KNOWINGLY SOLD, MANUFACTURED,
10 CULTIVATED, DELIVERED, PURCHASED, BROUGHT INTO THIS
11 STATE, OR PROVIDED FINANCIAL ASSISTANCE OR OTHERWISE
12 AIDED, ABETTED, ATTEMPTED OR CONSPIRED TO SELL,
13 MANUFACTURE, CULTIVATE, DELIVER, PURCHASE OR BRING INTO
14 THIS STATE, OR WAS KNOWINGLY IN ACTUAL OR CONSTRUCTIVE
15 POSSESSION OF OR KNOWINGLY ATTEMPTED TO BECOME IN ACTUAL
16 OR CONSTRUCTIVE POSSESSION OF COCAINE.

17 IN THIS CASE THE STATE MUST ALSO PROVE BEYOND A
18 REASONABLE DOUBT THAT THE AMOUNT OF COCAINE OR ANY
19 MIXTURE CONTAINING COCAINE WAS 400 GRAMS OR MORE PURSUANT
20 TO SOUTH CAROLINA CODE OF LAWS SECTION
21 44-53-370(E)(2)(E).

22 TO PROVE POSSESSION THE STATE MUST PROVE BEYOND A
23 REASONABLE DOUBT THAT THE DEFENDANT HAD BOTH THE POWER
24 AND THE INTENT TO CONTROL THE DISPOSITION OR USE OF THE
25 COCAINE. POSSESSION MAY BE EITHER ACTUAL OR

1 CONSTRUCTIVE. ACTUAL POSSESSION MEANS THE COCAINE WAS IN
2 THE ACTUAL PHYSICAL CUSTODY OF THE DEFENDANT.

3 CONSTRUCTIVE POSSESSION MEANS THE DEFENDANT HAD DOMINION
4 AND CONTROL OR THE RIGHT TO EXERCISE DOMINION AND CONTROL
5 OVER EITHER THE COCAINE ITSELF OR THE PROPERTY WHERE THE
6 COCAINE WAS FOUND.

7 MERE PRESENCE AT THE SCENE WHERE THE DRUGS WERE
8 FOUND IS NOT ENOUGH TO PROVE POSSESSION. ACTUAL
9 KNOWLEDGE OF THE PRESENCE OF THE COCAINE IS STRONG
10 EVIDENCE OF THE DEFENDANT'S INTENT TO CONTROL ITS
11 DISPOSITION AND USE. THE DEFENDANT'S KNOWLEDGE AND
12 POSSESSION MAY BE INFERRED WHEN THE SUBSTANCE IS FOUND TO
13 BE UNDER THE DEFENDANT'S CONTROL. HOWEVER, THIS
14 INFERENCE IS SIMPLY AN EVIDENTIARY FACT TO BE TAKEN INTO
15 CONSIDERATION BY YOU ALONG WITH THE OTHER EVIDENCE AND TO
16 BE GIVEN THE WEIGHT YOU DECIDE IT SHOULD HAVE. TWO OR
17 MORE PERSONS MAY HAVE JOINT POSSESSION OF A DRUG.

18 TO DELIVER MEANS TO ACTUALLY CONSTRUCTIVELY OR
19 ATTEMPT TO TRANSFER THE DRUG. TO DISTRIBUTE MEANS TO
20 DELIVER OTHER THAN BY ADMINISTERING OR DISPENSING A DRUG.
21 MANUFACTURING MEANS USE, PREPARE, CONVERT, PROCESS,
22 PLANT, CULTIVATE, GROW OR HARVEST A DRUG NATURALLY OR
23 CHEMICALLY. MANUFACTURING INCLUDES ANY PACKAGING OR
24 REPACKAGING OF THE DRUG OR LABELING OR RELABELING OF THE
25 DRUG CONTAINED.

1 NOW, MR. FOREMAN, LADIES AND GENTLEMEN OF THE JURY,
2 YOU HAVE BEEN SELECTED AS FAIR AND IMPARTIAL JURORS SWORN
3 TO IMPARTIALLY TRY AND DETERMINE THE FACTS OF THIS CASE,
4 AND WHEN YOU COMPLY WITH YOUR OATH TO DO SO, THEN NO ONE
5 WILL HAVE THE RIGHT TO CRITICIZE YOUR VERDICT AND YOU
6 WILL HAVE FULLY DISCHARGED YOUR DUTY AS JURORS. YOU
7 SHOULD NOT BE INFLUENCED BY OPINIONS OR EXPRESSIONS OF
8 OPINIONS, IF ANY, YOU MAY HAVE HEARD ON THE OUTSIDE, BUT
9 YOU ARE TO DECIDE THE CASE ACCORDING TO THE TESTIMONY YOU
10 HAVE HEARD FROM THE LIPS OF THE SWORN WITNESSES ALONG
11 WITH THE OTHER EVIDENCE WHICH HAS BEEN INTRODUCED.

12 AS I SAID EARLIER, YOU ARE THE JUDGES OF THE FACTS
13 IN THIS CASE, AND YOU ARE TO DETERMINE ONLY IF THIS
14 DEFENDANT IS GUILTY OR NOT GUILTY BASED UPON THE
15 TESTIMONY AND EVIDENCE PRESENTED IN THE TRIAL AND
16 APPLYING THE LAW AS I GIVE IT TO YOU. IF FROM THE
17 EVIDENCE YOU HAVE REASONABLE DOUBT AS TO WHETHER OR NOT
18 THE DEFENDANT IS GUILTY, IT IS YOUR DUTY TO ACQUIT HIM
19 AND WRITE THE TWO WORDS "NOT GUILTY." UNDER THE OATH YOU
20 TOOK YOU SWORE TO TRY THIS CASE BASED SOLELY AND ONLY ON
21 THE EVIDENCE AND LAW PRESENTED AND HEARD IN THIS
22 COURTROOM. IT IS YOUR DUTY TO LAY ASIDE ALL BIAS,
23 PREJUDICE AND SYMPATHY YOU MAY HAVE IN REACHING YOUR
24 VERDICT. YOU HAVE NO FRIENDS TO REWARD OR ENEMIES TO
25 PUNISH.

1 I MIGHT NOTE THAT THE WORD "VERDICT" COMES FROM THE
2 LATIN TERM "VEREDICTO" WHICH MEANS TO SPEAK THE TRUTH.
3 ABIDE BY YOUR OATH AND RETURN A VERDICT WHICH SPEAKS THE
4 TRUTH.

5 NOW, MR. FOREMAN, I'VE GIVEN YOU A COPY OF WHAT WILL
6 BE THE VERDICT FORM IN THIS CASE. AS I MENTIONED, THERE
7 ARE ONLY TWO VERDICTS POSSIBLE IN THIS CASE. IT MAKES NO
8 DIFFERENCE WHICH ONE COMES FIRST. ONE JUST HAS TO
9 PRECEDE THE OTHER. AND WHATEVER VERDICT THAT YOU REACH,
10 IT HAS TO BE UNANIMOUS, THAT MEANS ALL 12 MEMBERS OF THE
11 JURY HAVE TO AGREE ON THAT VERDICT.

12 HOWEVER, MR. FOREMAN, YOU WILL BE THE ONE TO CHECK
13 THE APPROPRIATE BLOCK AND THEN SIGN YOUR NAME. AS YOU
14 WILL NOTE, IT PROVIDES (READING):

15 INDICTMENT NUMBER 2006-GS-04-2922, TRAFFICKING IN
16 COCAINE, 400 GRAMS OR MORE. WE, THE JURY, UNANIMOUSLY
17 FIND THAT THE DEFENDANT, RAHIEM KIRKMAN, IS EITHER GUILTY
18 OF TRAFFICKING IN COCAINE 400 GRAMS OR MORE OR NOT
19 GUILTY.

20 AS I SAY, WHATEVER VERDICT YOU REACH, MR. FOREMAN,
21 YOU WILL INDICATE THE VERDICT ON THE FORM BY CHECKING THE
22 BLOCK OR THE LINE -- OF THE APPROPRIATE VERDICT ON THE
23 LINE PROVIDED AND THEN SIGN YOUR NAME ABOVE AND ON THE
24 LINE PROVIDED.

25 ONCE YOU REACH YOUR VERDICT YOU WILL KNOCK ON THE

1 DOOR AND WE WILL RECEIVE YOUR VERDICT AT THAT TIME.

2 I'M GOING TO HAVE TO ASK YOU TO RETIRE TO THE JURY
3 ROOM ONE MORE TIME WITHOUT BEGINNING YOUR DELIBERATIONS.
4 BUT AS SOON AS I CONFER WITH THE ATTORNEYS, THEN I'LL
5 SEND IN THE VERDICT FORM TOGETHER WITH THE EVIDENCE THAT
6 YOU WILL HAVE IN YOUR POSSESSION.

7 NOW, I WILL NOT SEND THE COCAINE IN BECAUSE OF ITS
8 NATURE OR ITS PARTICULAR NATURE. IF YOU NEED TO SEE THE
9 COCAINE, I'LL BE GLAD TO BRING YOU BACK AND LET YOU LOOK
10 AT IT, BUT I'D RATHER DO IT IN THE OPEN COURTROOM HERE.
11 THAT'S NO REFLECTION. IT'S JUST THAT I DON'T WANT ANY
12 ACCIDENTS TO HAPPEN. ALL RIGHT.

13 SO WITH THAT I'M GOING TO ASK YOU TO RETIRE TO THE
14 JURY ROOM. BUT DO WAIT UNTIL I SEND IN THE VERDICT FORM
15 AND THE EXHIBITS THAT HAVE BEEN INTRODUCED IN THIS CASE
16 BEFORE YOU BEGIN YOUR DELIBERATION. ONCE YOU HAVE
17 REACHED -- YES, MA'AM.

18 **ALTERNATE JUROR:** DO I GET TO...

19 **THE COURT:** NO, MA'AM. YOU GET TO STAY WITH US.

20 **ALTERNATE JUROR:** I DON'T GET TO SEE WHAT'S GOING ON
21 AT THE END?

22 **THE COURT:** YES, MA'AM. BUT YOU DON'T HAVE TO GO
23 BACK AND DELIBERATE.

24 AS I SAY, IF YOU WOULD, MR. FOREMAN, LADIES AND
25 GENTLEMEN OF THE JURY, RETIRE TO THE JURY ROOM, BUT MADAM

1 ALTERNATE, IF YOU WILL WAIT WITH US.

2 (WHEREUPON, THE JURY LEFT THE COURTROOM AT
3 APPROXIMATELY 2:43 P.M., EXCEPT FOR THE
4 ALTERNATE JUROR.)

5 THE COURT: ALL RIGHT. ANY EXCEPTIONS OR REQUESTS
6 FROM THE STATE?

7 MR. CAMPBELL: NO, YOUR HONOR.

8 THE COURT: FROM THE DEFENDANT?

9 MS. MANIGAULT: NONE, YOUR HONOR.

10 THE COURT: SUBJECT TO PRIOR RULINGS AND MOTIONS
11 THAT HAVE BEEN DENIED.

12 MS. MANIGAULT: YES, SIR.

13 THE COURT: VERY GOOD. ALL RIGHT. IF YOU WOULD
14 PLEASE, LET'S CHECK EVERYTHING THAT NEEDS TO GO BACK.
15 YOU CAN SEND THE TAPE BACK, BUT IF THEY WANT TO SEE THE
16 TAPE, BRING THEM BACK OUT.

17 MS. MANIGAULT: YES, SIR.

18 THE COURT: SO WE DON'T HAVE ANY ACCIDENTS WITH
19 THAT, EITHER. AND I DO FEEL THAT THE BEST INTERESTS IS
20 TO KEEP THE CONTRABAND HERE.

21 (OFF-THE-RECORD DISCUSSION.)

22 (THE COURT CONFERRED WITH THE ALTERNATE
23 JUROR, AFTER WHICH THE ALTERNATE JUROR WAS
24 EXCUSED.)

25 THE COURT: WE'LL STAND AT EASE UNTIL WE GET A

1 VERDICT.

2 AGAIN, THANK YOU BOTH FOR A TOUGH CASE WELL TRIED.

3 **MR. CAMPBELL:** THANK YOU, YOUR HONOR.

4 **MS. MANIGAULT:** THANK YOU, YOUR HONOR.

5 (WHEREUPON, THE JURY STARTED THEIR

6 DELIBERATIONS AT APPROXIMATELY 2:45 P.M.)

7 (WHEREUPON, A VERDICT WAS REACHED AT 3:00

8 P.M.)

9 **THE COURT:** ALL RIGHT. IT'S MY UNDERSTANDING THAT
10 THE JURY HAS REACHED A VERDICT.

11 ANYTHING FROM THE STATE BEFORE WE BRING THE JURY
12 BACK?

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

14 **THE COURT:** FROM THE DEFENSE?

15 **MS. MANIGAULT:** NOTHING, YOUR HONOR.

16 **THE COURT:** ALL RIGHT. ASK THE JURY TO JOIN US,
17 PLEASE.

18 (WHEREUPON, THE JURY ENTERED THE COURTROOM AT
19 APPROXIMATELY 3:03 P.M.)

20 **THE COURT:** ALL RIGHT. MR. FOREMAN, I UNDERSTAND
21 THE JURY HAS REACHED A VERDICT?

22 **THE FOREMAN:** YES, SIR.

23 **THE COURT:** IF YOU WOULD PLEASE HAND IT UP TO THE
24 BAILIFF.

25 IF YOU WOULD, PLEASE, PUBLISH THE VERDICT, MADAM

1 CLERK.

2 VERDICT OF THE JURY:

3 **THE CLERK:** CASE 2006-GS-04-2922, THE STATE OF SOUTH
4 CAROLINA VERSUS RAHIEM KIRKMAN, INDICTMENT FOR
5 TRAFFICKING IN COCAINE, 400 GRAMS OR MORE, THE VERDICT:
6 WE, THE JURY, UNANIMOUSLY FIND THAT THE DEFENDANT, RAHIEM
7 KIRKMAN, IS GUILTY OF TRAFFICKING IN COCAINE 400 GRAMS OR
8 MORE.

9 THAT'S SIGNED MCCALL G. HEMINGWAY, III, FOREMAN.

10 MR. FOREMAN, LADIES AND GENTLEMEN OF THE JURY, IF
11 THIS IS YOUR VERDICT WOULD YOU PLEASE INDICATE BY RAISING
12 YOUR RIGHT HAND.

13 ALL HANDS RAISED. VERDICT OF THE JURY, YOUR HONOR.

14 **THE COURT:** ALL RIGHT. ANYTHING FURTHER FROM THE
15 STATE.

16 **MR. CAMPBELL:** NO, YOUR HONOR.

17 **THE COURT:** FROM THE DEFENSE?

18 **MS. MANIGAULT:** NOTHING, YOUR HONOR.

19 **THE COURT:** LADIES AND GENTLEMEN OF THE JURY, AS THE
20 COURT I'M NOT INTERESTED IN A VERDICT, ONLY HOW THAT
21 VERDICT WAS REACHED. AND I CAN ASSURE YOU THAT THIS WAS
22 A UNIQUE CASE, BUT I NOTICED THROUGHOUT THE TRIAL YOU ALL
23 PAID VERY CAREFUL AND CLOSE ATTENTION TO ALL THE
24 TESTIMONY AND EVIDENCE AND THAT IS EXACTLY WHAT IS
25 NECESSARY FOR YOU TO DO YOUR DUTY, AND I CAN ASSURE YOU

1 THAT I'M SATISFIED THAT YOU GAVE BOTH THE STATE AND THE
2 DEFENDANT EVEN IN HIS ABSENCE A VERY FAIR TRIAL AND YOU
3 REACHED A VERDICT THAT WAS IN ACCORDANCE WITH YOUR
4 CONSCIENCE, AND YOU HAVE SERVED YOUR DUTY WELL AS JURORS
5 HERE IN ANDERSON COUNTY.

6 I'M GOING TO GIVE YOU A LITTLE GOOD NEWS. THE FACT
7 THAT JURORS WERE AVAILABLE THIS WEEK, WE WILL BE ABLE TO
8 ACCOMPLISH A LOT OF WORK IN YOUR ABSENCE. PEOPLE DON'T
9 HAVE A TENDENCY TO DO THINGS UNTIL THEY HAVE TO, AND ONE
10 OF THE THINGS THAT GIVE THE PEOPLE AN IMPETUS TO
11 ACCOMPLISH THINGS IN GENERAL SESSIONS OR CRIMINAL COURT
12 IS WHEN A JURY IS AVAILABLE. AND THIS WEEK YOU WERE
13 AVAILABLE SO WE'LL BE ABLE TO CONCLUDE A LOT OF CASES IN
14 YOUR ABSENCE. AS YOU'VE SEEN, EVEN WHEN THERE IS NO
15 DEFENSE, IT STILL TAKES A LONG TIME TO TRY A CASE UNDER
16 OUR LAW, WHICH IS RIGHTFULLY SO. BUT IF THERE IS A PLEA,
17 THEN IT SAVES THE STATE AND ALL OF US THE EXPENSE AS WELL
18 AS INCONVENIENCE. AND BECAUSE Y'ALL WERE AVAILABLE THIS
19 WEEK, WE HAVE BEEN ABLE TO DISPOSE OF A CASE THAT COULD
20 NOT BE DISPOSED OF IN ANY OTHER WAY, AND THE SECOND THING
21 IS THAT, THE SECOND AND THEN SOME, WE WERE ABLE TO
22 DISPOSE OF MANY CASES FOR THE REMAINDER OF THE WEEK
23 BECAUSE YOU WERE HERE AND PEOPLE WERE WILLING AT THAT
24 TIME TO REACH AGREEMENTS WE'LL BE ABLE TO PUT ON THE
25 RECORD LATER.

1 SO YOU HAVE WORKED NOT ONLY SITTING ON THIS JURY BUT
2 ALSO BY BEING HERE THIS WEEK, AND I THANK YOU FOR IT.

3 NOW, THE OTHER NEWS I HAVE FOR YOU IS IF YOU
4 REMEMBER WHEN I QUALIFIED YOU YESTERDAY, I ASKED IF
5 ANYBODY HAD SERVED IN THE LAST THREE YEARS. AT LEAST YOU
6 WON'T HAVE TO SERVE FOR ANOTHER THREE YEARS. BUT I DO
7 HOPE THAT YOUR SERVICE HAS NOT BEEN WITHOUT SOME BENEFIT,
8 BECAUSE WITHOUT CITIZEN PARTICIPATION OUR SYSTEM OF
9 JUSTICE WOULD NOT BE ABLE TO OPERATE AT ALL AND I THANK
10 YOU FOR IT.

11 SO YOU ARE EXCUSED FOR THE BALANCE OF THE WEEK AND
12 I'LL SEE YOU IN THREE YEARS. THANK YOU VERY MUCH. Y'ALL
13 HAVE A WONDERFUL REMAINDER OF THE WEEK.

14 (TO ALTERNATE) AND THANK YOU, TOO. I APPRECIATE IT.

15 **THE CLERK:** THE BAILIFF HAS PASSED OUT EMPLOYERS'
16 STATEMENTS FOR YOU TO TAKE BACK TO WORK IF YOU NEED
17 THOSE. THANK YOU SO MUCH.

18 **THE COURT:** OH, WAIT A MINUTE, I DO NEED TO SEE THE
19 FOREMAN.

20 **THE CLERK:** THE FOREMAN.

21 (THE FOREMAN RETURNED TO THE COURTROOM AND
22 CONFERRED WITH THE COURT OFF THE RECORD.)

23 **THE COURT:** YES, MA'AM.

24 **MS. MANIGAULT:** YOUR HONOR, MAY I PUT MY MOTION ON
25 THE RECORD, PLEASE?

1 **THE COURT:** YES, MA'AM.

2 **MS. MANIGAULT:** I WOULD MAKE A MOTION THAT THE
3 VERDICT BE SET ASIDE, AND IT DOES NOT BEAR THE WEIGHT OF
4 THE EVIDENCE PRESENTED BY THE STATE, AND I WOULD ALSO
5 MAKE A MOTION FOR A NEW TRIAL.

6 **THE COURT:** VERY WELL. WHAT DOES THE STATE SAY?

7 **MR. CAMPBELL:** YOUR HONOR, I BELIEVE THE JURY HAS
8 SPOKEN AND THEY'VE HEARD ALL THE EVIDENCE AND TESTIMONY
9 AND EVIDENCE.

10 **THE COURT:** NOT ONLY THAT. I FEEL THERE WAS
11 SUFFICIENT EVIDENCE TO SUSTAIN THE VERDICT. AND ALONG
12 WITH YOUR OTHER MOTIONS, I'M GOING TO DENY THIS MOTION AS
13 I HAVE THE OTHERS, AND FOR THE RECORD THEY WILL REMAIN AS
14 A PART OF THE RECORD, THAT MOTIONS WERE MADE AND DENIED.

15 ALL RIGHT. IT'S NOW FOR ME TO SENTENCE. HAVE YOU
16 GOT SOMEBODY TO SEAL THE RECORD? ANYTHING THE STATE
17 WANTS TO SAY?

18 **MR. CAMPBELL:** YOUR HONOR, YOU HEARD ALL THE FACTS.
19 TRAFFICKING IN COCAINE GREATER THAN 400 GRAMS IS BETWEEN
20 25 AND 30 YEARS AND A \$200,000 FINE. IN THIS CASE WE
21 SHOWED NO RECORD ON MR. KIRKMAN.

22 **THE COURT:** NO PRIOR RECORD?

23 **MR. CAMPBELL:** NONE THAT WE SHOWED.

24 **THE COURT:** AND THE RANGE OF SENTENCES IS A MINIMUM
25 OF 25 AND MAXIMUM OF 30?

1 **MR. CAMPBELL:** THAT'S CORRECT, YOUR HONOR.

2 **THE COURT:** WHAT'S THE MAXIMUM FINE?

3 **MR. CAMPBELL:** 200,000.

4 **THE COURT:** MINIMUM FINE?

5 **MR. CAMPBELL:** IT JUST SAYS \$200,000.

6 **THE COURT:** 200,000.

7 ALL RIGHT, MS. MANIGAULT, ANYTHING YOU WOULD LIKE TO
8 SAY?

9 **MS. MANIGAULT:** ON BEHALF OF MY CLIENT, I ASK THE
10 COURT TO CONSIDER THE MINIMUM SENTENCE IN THIS CASE, YOUR
11 HONOR, AND ALSO ASK YOUR HONOR TO MAKE A NOTE THAT I BE
12 NOTIFIED WHEN HIS SENTENCE IS READ TO HIM.

13 **THE COURT:** ALL RIGHT, VERY GOOD.

14 **MS. MANIGAULT:** THANK YOU.

15 **THE COURT:** LET ME ASK YOU. IT'S A VIOLENT?

16 **MS. MANIGAULT:** YES, SIR.

17 **MR. CAMPBELL:** YES, SIR, MOST SERIOUS.

18 **THE COURT:** AND MOST SERIOUS?

19 **MR. CAMPBELL:** YES, SIR.

20 **MS. MANIGAULT:** YES, SIR.

21 **THE COURT:** ALL RIGHT. I'LL TELL YOU WHAT I'M GOING
22 TO DO IF YOU DON'T MIND. I HAVEN'T SENTENCED YET, BUT I
23 WANT Y'ALL, IF YOU WOULD, SIGN YOUR NAMES AS TO THE
24 SOLICITOR AND THE DEFENSE SO THAT WE WILL KNOW WHO THE --
25 AND THIS TIME DO IT SO PEOPLE CAN READ IT.

1 **MR. CAMPBELL:** I'LL TRY MY BEST.

2 **THE COURT:** THAT WAY I'LL BE ABLE TO...

3 YES, MA'AM. DO YOU NEED THE SENTENCING SHEET?

4 **THE CLERK:** I DO.

5 **THE COURT:** AND GET THE WHOLE THING IN THE ENVELOPE.

6 **THE CLERK:** YES, YOUR HONOR.

7 **THE COURT:** ARE YOU GOING TO SEAL IT?

8 **THE CLERK:** YOU CAN SEAL IT IF YOU WANT TO.

9 **THE COURT:** (COURT SEALS SENTENCE.) ALL RIGHT.

10 THAT'S IT. AND AGAIN, I DO WANT TO THANK YOU. I PUT
11 NOTIFY DEFENSE ATTORNEY, DOROTHY MANIGAULT, FOR THE
12 SENTENCING.

13 **MR. CAMPBELL:** ONE MORE THING BEFORE WE CLOSE THE
14 RECORD, YOUR HONOR. WE WOULD ASK THE COURT TO ISSUE A
15 BENCH WARRANT ON MR. KIRKMAN.

16 **THE COURT:** WILL DO. SO DONE.

17 ALL RIGHT. ANYTHING ELSE?

18 **MR. CAMPBELL:** NOTHING FROM THE STATE.

19 **THE COURT:** VERY GOOD. THANK YOU VERY MUCH. I
20 APPRECIATE IT.

21 (THE TRIAL OF THE STATE OF SOUTH CAROLINA
22 VERSUS RAHIEM KIRKMAN WAS CONCLUDED ON
23 TUESDAY, NOVEMBER 6, 2008, AT APPROXIMATELY
24 3:30 P.M.)

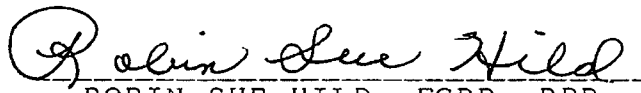
25 ***** END OF REQUESTED TRANSCRIPT OF RECORD *****

CERTIFICATE OF COURT REPORTER

I, THE UNDERSIGNED, ROBIN SUE HILD, FCRR, RPR,
OFFICIAL COURT REPORTER FOR THE TENTH JUDICIAL CIRCUIT OF
THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE
FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF
RECORD OF THE PROCEEDINGS HAD AND THE EVIDENCE INTRODUCED
IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL,
IN THE COURT OF GENERAL SESSIONS FOR ANDERSON COUNTY,
SOUTH CAROLINA, ON THE 6TH DAY OF NOVEMBER, 2008.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL
NOR INTEREST TO ANY PARTY HERETO.

OCTOBER 21, 2009


ROBIN SUE HILD, FCRR, RPR
CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Rahiem Kirkman, # 334886

Plaintiff(s)

vs.

STATE OF SOUTH CAROLINA

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2012 -CP- 09 - 03291

(Please Print)

Submitted By: Rahiem KirkmanAddress: Lieber Correctional InstP.O. BOX 205, Ridgeville, S.C.
29472SC Bar #: N/A

Telephone #: _____

Fax #: _____

Other: _____

E-mail: _____

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be completed, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action Is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
- ☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts**
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ Employment (120)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Other (199)

- Torts - Professional Malpractice**
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)
- Previous Notice of Intent Case # 20 -CP- _____
- ☐ Notice/ File Med Mal (230)
- ☐ Other (299)

- Torts - Personal Injury**
- ☐ Assault/Slander/Libel (300)
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Other (399)

- Real Property**
- ☐ Ejectment (400)
- ☐ Eminent Domain (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499)

- Domestic Petitions**
- ☒ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

- Judgments/Settlements**
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Other (799)

- Administrative Law/Relief**
- ☐ Reinstate Driver's License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture-Consent Order (850)
- ☐ Other (899)

- Appeals**
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Administrative Law Judge (980)

- Special/Complex /Other**
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Sexual Predator (510)

Submitting Party Signature: Rahiem KirkmanDate: 9/28/12

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

A TRUE COPY

OCT 12 2012

IN THE COURT OF COMMON PLEAS


 CLERK OF COURT

STATE OF SOUTH CAROLINA)

ANDERSON)

County of _____)

Rahiem Kirkman, #334886)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

2012 - CP - 04 - 03291

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall be in concise form the answers to each applicable question. If necessary, applicant may furnish an answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber Correctional Inst. PO BOX 205
Ridgeville, S.C. 29472
2. Name and location of Court which imposed sentence Anderson County Court
of General Sessions
3. Name(s) of co-defendant(s) (if any) none
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2006-GS-04-2922)(Trafficking)

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 ANDERSON SC
 2012 OCT 12
 A-88371
 COMMON PLEAS
 GENERAL SESSIONS

- (b) _____
 (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 (a) **April 12, 2009) twenty-five years**
 (b) _____
 (c) _____
6. Check whether a finding of guilty was made:
 (a) after a plea of guilty _____
 (b) after a plea of not guilty **X**
 (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
 (a) the name of each Court to which you appealed:
 i. **S.C. Court of Appeals**
 ii. _____
 iii. _____
 (b) the result in each such Court to which you appealed:
 i. **Affirmed**
 ii. _____
 iii. _____
 (c) the date of each such result:
 i. **November 9, 2011**
 ii. _____
 iii. _____
 (d) if known, citations of any written opinion or orders entered pursuant to such results:
 i. **Unpublished Opinion NO 2011-UP-500**
 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 counsel
- (b) _____
- (c) See Attached Sheets.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) failing to object to jury instruction on being trial
- (b) in absence.
- (c) See attached sheets
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. _____

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) I was trial in my absence
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? yes
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? no
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Dorothy Manigault of Greenville
- ii. Falkner Wilkes, Esquire
114 Whitsett Street Greenville, S.C. 29601
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Dorothy Manigault (Trial)
- ii. Falkner Wilkes (Appeal)
- iii. _____

19. State clearly the relief you seek in filing this application:

vacate conviction and sentence

20. Are you now under sentence from any other court that you have not challenged?

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)
)
County of Dorchester)

VERIFICATION

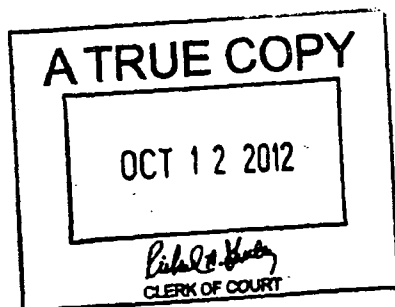
I, RAHEM KIRKMAN, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Rahem Kirkman

SWORN to and subscribed before me this 28th
day of September, 2012.

Judith Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020



FILED-CLERK'S OFFICE
ANDERSON SC
2012 OCT 12 A 8:37
COMMON PLEAS AND
GENERAL SESSIONS

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, RAHIEM KIRKMAN, 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:

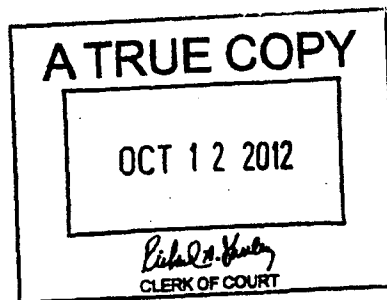
- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Rahiem Kirkman
Applicant

SWORN or affirmed to and subscribed before me this
28th day of September, 2012.

Ludman Bryant
Notary Public

My Commission Expires: May 26, 2020



FILED-CLERK'S OFFICE
ANDERSON SC
2012 OCT 12 A 8:31
COMMON PLEAS AND
GENERAL SESSIONS

1. Counsel was ineffective during the trial by failing to object to the jury instructions that "the defendant is not present may not be considered against the defendant in any manner whatsoever."

2. Counsel was ineffective for failing to object to the Court's erroneous jury instructions, the defendant's trial in his absence.

3. Counsel was ineffective by failing to object to the Jackson v Denno Hearing on the ground she had not spoken with her client, and that her client could have been coerced in signing the statement.

4. Counsel was ineffective by failing to include the South Carolina Constitution, Article 1, Section 10, along with the U.S. Const. amend.IV, in the suppression of evidence motion.

Dated

7/27/2012

Ranier Kirkman
Ranier Kirkman

1. Counsel was ineffective during the trial by failing to object to the jury instructions that "the defendant is not present may not be considered against the defendant in any manner whatsoever."

2. Counsel was ineffective for failing to object to the Court's erroneous jury instructions on the defendant's trial in his absence.

LAW

The Sixth Amend to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v Washington, 466 U.S. 688, 104 S.Ct. 2052, 80 L.Ed 2d 674 (1984); Lomax v State, 379 S.C. 93, 665 S.E.2d 164 (2008). Courts use a two-prong test in evaluating allegations of ineffective assistance of counsel. Strickland v Washington 466 U.S. at 687, 104 S.Ct. at 2052; Cherry v State, 300 S.C. 115, 38 S.E.2d 624 (1989). First, the applicant must show counsel's representation was deficient, which is measure by an objective standard of reasonableness. Strickland, 46 U.S. at 687, 104 S.Ct. at 2052. Next, the applicant must show he was prejudiced by counsel's performance such that, but for counsel's error, there is a reasonable probability the result of the proceedings would have been different. Strickland at 693, 104 S. Ct. at 2052.

In the case the Court during the instructions to the jury, "Under the laws of this State the defendant may be tried even if the Defendant does not attend trial." "but the fact the the defendant is not present may not be considered against the defendant in any manner whatsoever." Tr. p. 281, lines 9-13, p. 268, lines 12-17.

Counsel for the defendant said, "your Honor has told you that he waived his right to be present." "He's also told you that he has ___ you can cannot hold against him that privilege or that right. Tr. p. 275, lines 1-3.

In Jackson this Court held, "When a defendant is tried in absenia, the trial court should instructed the jury that the defendant's failure to appear may not be construed as an admission of guilt. McFadden v State, 342 S.C. 673, 637, 539 S.E.2d 371 (2000) quoting State v Jackson, 301 S.C. 49, 51, 389 S.E. 2d 654, 655 (1990). Jackson expressly guarantees that an accused absence from trial cannot be used as evidence of guilt.

In addition, the applicant never received notice that his trial was to begin on a particular day.

Applicant request an evidentiary hearing pursuant to §17-27-80 of the Uniform Post Conviction Act.

Counsel was ineffective by failing to object to the Jackson v Denno Hearing on the ground she had not spoken with her client and that her client could have been coerced in signing the statement.

Q. And that he has a friend come try to pick him up and take him back to North Carolina?

A. Yes, Sir, And she, it was a female who actually did come. That's when he was apprehended, the particular friend he was talking about.

Q. And at no point did you threaten him to make this statement?

A. No, Sir. My job is to try to see if we can carry it to the next level, to investigate to see if we can do something that can take more drugs and criminal violators, criminal elements out of our communities. Tr. p. 74, lines 4-14

Q. Now, what, if anything, did you observe once you got into the area?

A. As I stated, The information I received that a male had entered a white compact Ford vehicle which was bearing a North Carolina license and there was a female driving the vehicle. The caller had stated that the male had got into the back seat of the vehicle and was currently lying down. Tr. p. 190, lines 13-20.

Q. And when you approached the car, what did you observed?

A. Prior to approaching, a black male exited the rear passenger's seat wearing a black shirt and yellow pants, from the rear passenger area he ran it would be a Southeastern from 35 into a wooded area to which I gave chase.

Q. And were you able to catch up with this individual?

A. Finally I caught up with him, yes. Tr. p. 191, lines 8-15.

Applicant's deal was imposed, that we will let your Elizabeth Pope, go free, but you'll have to give us a statement that the drug and money are yours, so we can show our boss, and you won't be prosecuted for that offence. I agreed.

MIRANDA RULE

Test for involuntariness is whether suspect's will was overborne or whether confession was product of rational intellect and free-will. Haynes v Wash., 373 U.S. 503; Townsend v Sain, 372 U.S. 293, 307 (1963). Will overborne if statement not product of an essentially free and unconstrained choice by its maker Culombe v Conn. 367 U.S. 568, 602 (1961)

That a law enforcement officer promise something to a person suspected of a crime in exchange for the person's speaking about the crime does not automatically render inadmissible any

statement obtained as a result of that promise. Despite some language in early Supreme Court cases such as Brady v. United States 168 U.S. 532-542-43, 18 S.Ct. 133, 42 L.Ed. 563 (1897)(indicating that a confession cannot be obtained by any direct or implied promise, however slight, nor by the exertion of any improper influence.

This case does not display the public safety exception. See U.S. v. Mobley, 40 F.3d 638 (4th Cir. 1994), but the total of circumstance including whether a confession obtained by direct or implied promise can stand.

Rogers confession was not voluntary for the purposes of the Fifth Amendment. Representative of Lee County Sheriff's Office assured Rogers that he would not be arrested if he cooperated with them by retrieving the guns stolen by Thrasher. The following day, acting on reliance on this promise, Rogers retrieved and delivered the guns to the Sheriff's Office. The next day Rogers received a telephone call from someone at the sheriff's office who requested that he return to the office for further questioning concerning his purchase of the guns. The interview by two Federal officers occurred in a secretary's office at the Sheriff's Department. United State v Rogers, 900 F.2d 189, 190 (7th Cir. 1989)

Because the interview was conducted under the auspices of the Lee County Sheriff's Department, whose representatives had

assured Rogers that he would not be prosecuted for his purchase of the stolen guns, Roger's statement was not voluntary for the purpose of the Fifth Amendment. Roger waiver of his Fifth Amendment Rights was not made with a full awareness of the consequences of the decision to abandon his rights or with the requisite level of comprehension. See Moran v Buroine, 475 U.S. at 421, 106 S.Ct. at 1141, Pare v Michael, 442 U.S. at 735, 99 S.Ct. 2572.

The burden of proof governing the waiver is the ordinary civil standard of a preponderance of the evidence. Colorado v Connelly 479 U.S. 157, 107 S.Ct. 515 (1986). In short, the Court must determine whether it is more likely than not that defendant validly waived the Miranda Rights.

We are mindful that a valid waiver of constitutional rights does not occur in a vacuum but rather in response to a particular set of facts. United States v McCrary, 643 F.2d 323, 329 (5th Cir. Unit B 1981).

Applicant, request an Evidentiary Hearing to determined whether his statement can stand under the total of circumstance, pursuant to 917-27-30 of the Uniform Post Conviction Act.

Counsel was ineffective by failing to include the South Carolina Constitution, Article I, Section 10, along with United States Constitutional Amendment IV, in the motion to suppress evidence.

FACT

Counsel move to suppressed evidence seized from the car pursuant to the 4th Amendment. Tr. p. 55-57.

S.C. CONST. ART. I, §10

Applicant, would have been further protected against unreasonable search and seizure under provisions of the South Carolina Constitution. See S.C. Const. Art. I, § 10. The Fourth Amendment and Article I, § 10 act in parallel to provide a safeguard against unlawful searches and seizures. "State courts may afford more expansive rights under state constitution." State v Easler, 327 S.C. 121, 131 n.13, 489 S.E.2d 617, 615 n.13 (1997). The relationship between the federal and state rights has been described as a recognition that the federal Constitution sets the floor for individual rights while the state constitution establishes the ceiling. State v Forrester 343 S.C. 637, 642, 541 S.E.2d 837, 840 (2001) quoting Segura v Texas, 826 S.W. 2d 178, 182 (TEX. 1992).

The respective rights provided under the Fourth Amendment and Article I, Section 10, our courts have reasoned that South Carolina Courts could interpret the same language in our state constitution as providing more protection than the federal counterpart. Special attention has been given to the additional language in Article I, § 10 which provides for the right to be free from unreasonable invasions of privacy. "the people of South Carolina have indicated that searches and seizures that do not offend the federal Constitution may still offend the South Carolina Constitution. Violations of which, may result in the exclusion of the discovered evidence. State v. Forrester, 343 S.C. 637, 642, 541 S.E.2d 837, 840 (2001).

The only evidence supporting Applicant's removal from his car and subsequent detention in the patrol car was Deputy Crawford's testimony that Applicant was nervous when initially pulled over. Such nervousness alone is insufficient to support Applicant's detention and interrogation in this case. See State v. Pichardo 367 S.C. 84, 105, 623 S.E.2d 840, 851 (Ct App. 2005) The lack of a observable facts to warrant the initial detention, search of the vehicle with the K-9 and interrogation of Applicant, along with the continued manipulation of the events by the police to orchestrate a bases for a search of Applicant's car, violates

CONCLUSION

The applicant need only established prejudice by counsel's performance such that, but for counsel's error, there is a reasonable probability the result of the proceedings would have been different, therefore applicant request an evidentiary hearing pursuant to § 17-27-80 of the Uniform Post Conviction Act.

Respectfully submitted

September 28 2012

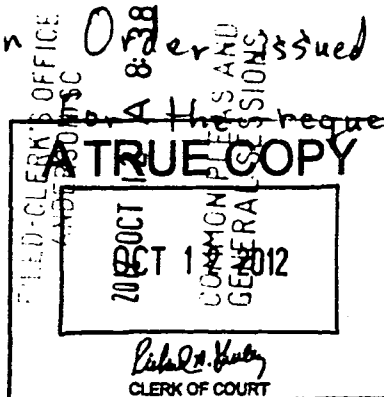


Raniem Kirkman

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON) FOR THE 10th JUDICIAL CIRCUIT
)
Rahiem Kirkman, # 334886) C/A No. 06-GS-04-2922
Applicant,) 2012-CP-04-03241
vs.) MOTION TO ADDRESS ALL
State of South Carolina,) ISSUES PRESENTED Pursuant
Respondents) to : S.C. code Ann § 17-27-80

COMES NOW, Petitioner respectfully asks this Honorable Court to direct the Attorney General's Office to address [all] issues presented, Pursuant to S.C. Code Ann § 17-27-80, as decided by the South Carolina Supreme Court in the case Pruitt v. State, 423 S.E. 2d 127. That each and every issue presented be addressed at any P.C.R. hearing that is held according to Bryson v. State, 493 S.E. 2d 500 (1991).

Petitioner further asks that each and every issue raised herein be addressed by the Court, at any hearing that is held and that this Court direct all issues be Addressed in Order issued by this Court.



And the requested, Petitioner respectfully prays.

Respectfully Submitted,
/s/ Rahiem Kirkman
Rahiem Kirkman, #334886
Applicant

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON) FOR THE 10th JUDICIAL CIRCUIT

) 112-CP-04-03291

Rahiem Kirkman, *334886

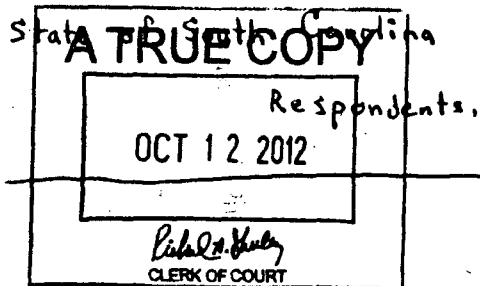
) C/A No. 06-GS-04-2922

Applicant,

) ATTACHMENT

vs.

) MEMORANDUM OF LAW



) SUPPORTING APPLICATION FOR

) POST-CONVICTION RELIEF

FILED-CLERK'S OFFICE
ANDERSON SC
2012 OCT 12 A 8:38
COMMON PLEAS AND
GENERAL SESSIONS

In Support of Applicants Post-Conviction relief, the Applicant alleges that Counsel rendered Ineffective Assistance of Counsel in the following Particulars, that Applicant was prejudiced to the extent that there exists a probability that Counsel's deficient performance affected the outcome of Applicants trial, and as a result Applicant is entitled to have his sentenced Reversed for New Trial. Applicant submits that Counsel's representation fell below an Objective Standard of Reasonableness and But for Counsel's Unprofessional errors a Reasonable probability exist that the result of the proceeding would have been different had Counsel not violated Applicants Rights, Protections; and Guarantees Pursuant to the 6th Amendment to the U.S. Constitution, S.C. Constitution Art. 1 § 14, S.C. Code § 17-23-60; Strickland v. Washington, 466 U.S. 668, 688 (1984) see: issues attached.

QUESTION #1

1.) Was Counsel Constitutionally Ineffective For failing to move to have a Continuance since Counsel had never talked to the Applicant; was not in contact with him; or did he receive any type of notice of Trial in a violation of the 6th Amendment of the U.S. Constitution and a violation of Applicants Due Process under the 14th Amendment?

FACTS

see: Tr. T. pg. 3 lines 22 through line 4 pg. 4

22. Ms. Manigault. Yes, sir. I have not heard from the
 23. defendant in the last six months. I have never met the
 24. defendant. I was retained on the telephone, by mail. so
 25. I would move to -- he has not contacted me, he has not
 1. responded to any of my letters. His phone has been cut
 2. off.
 3. The last several letters I sent to him by mail have
 4. been returned to me...

DISCUSSION

Rule 16, SCRCrim.P.

[A] person indicted for misdemeanors and/or felonies may

voluntarily waive his right to be present and may be tried in his absence upon a finding by the court that such person has received notice of his right to be present and that a warning was given that the trial would proceed in his absence upon a failure to attend the Court.

However, a waiver of such an important right is permitted only in limited circumstances. see: City of Aiken v. Koontz, 368 S.C. 542, 547, 629 S.E.2d 686, 689 (2006).

Therefore, before a defendant may be tried in absentia, the trial court must determine a defendant voluntarily waived his right to be present at trial, making findings of fact on the record that the defendant (1) received notice of his right to be present and (2) was warned that the trial would proceed in his absence.

However, if the record does not reveal the defendant was afforded notice of his trial, the resulting conviction in absentia cannot stand. see: State v. Jackson, 290 S.C. 435, 436, 351 S.E.2d 167, 167 (1986)

Counsel clearly states that she had never spoken to him and that all mail was returned to sender. therefore he did not know. see: Strickland v. Washington, 466 U.S. 668, 688 (1984)

QUESTION # 2

2.) Was Counsel Ineffective for failing to Object to the Solicitor's improper Closing Argument that impermissibly violated the "Golden Rule" in a violation of Applicants 6th Amendment to the U.S. Constitution for failing to properly object when the Solicitor appeals to the personal biases of jury and therefore in a violation of Applicants Due Process under the 14th Amendment?

FACTS

The Solicitor repeatedly violated the ["Golden Rule"] in his closing Argument to the jury, as will be seen in the following: Colloquy / Trial Transcript.

see: Tr. T. pg. 270 lines 7-8

7.

... How long

8. does it take "you" to make \$18,000 tax free?

see: Tr. T. pg. 270 line 12 and 15 through 3 pg. 271

12.

... "You" know.

15

... why do "you"

16. get nervous? Because "you" know the difference between

17. right and wrong. Even if "you" haven't done anything

18 Wrong, "You" start thinking, have I done something wrong?
 19 "You" start looking at your speedometer when blue lights go
 20 on behind "You". "You" always do that sigh of relief when
 21 the car goes past "you". But the reason why is "You" have
 22 values and "you" have standards, "You" know the difference
 23 between right and wrong. "You" don't have to be taught
 24 Right and wrong. Children know the difference between
 25. Right and wrong. Animals and puppies know difference
 1 Between right and wrong. When they know they've done
 2 something, and children know they've done something that
 3. They're not supposed to, and they give "you" that look.

see: Tr. T. pg. 271 lines 16

16. As the Deputy told "you"...

see Tr. T. pg. 271 line 20-21

20.

... I'll

21. tell "you" this. He was right, wasn't he?

see: Tr. T. pg. 272 lines 1-2.

1.

... "You" are sitting

2. here looking at it.

see: Tr. T. pg. 272 lines 5-10

5. Equal opportunity. Dope dealers, they don't care, they
6. don't get into anything about "your" age, "your" race, "your"
7. sex. They don't care. The only thing they care about is
8. money. They'll sell it to "you" if "you" are Black, white
9. Hispanic, male, female, young or old. It does not matter
10. as long as "you" buy the finished product.

see: Tr. T. pg. 272 lines 16-17

16. "You" don't run unless "you" have something to hide. Even
17. Before "you" can get ~~into~~ the running part, what does he try

see: Tr. T. pg. 273 lines 20-22

- 20 communities. This tears the motor between the Bricks
- 21 out of "our" communities where they will fall because this
- 22 hurts family, friends, people, all for money...

see: Tr. T. pg. 274 lines 6

6. Do "you" think he punches a clock from nine to five?

DISCUSSION

It's clear by the record that the Solicitor's argument indisputably asked jurors to abandon their impartiality and view

the evidence in the "shoes" of the Jury themselves in a violation of the "Golden Rule" the South Carolina Supreme Court has repeatedly forbidden closing arguments of this sort. As it purely prematurely directs the verdict for the state.

A solicitor's closing argument must be carefully tailored not to appeal to the personal biases of the jury.

see: Von Dahlen v. State, 360 S.C. 598, 602 S.E. 2d 738 (2004), cert. denied, 544 U.S. 943, 125 S.Ct. 1645, 161 L.Ed. 2d. 511 (2005)

The argument must not be calculated to arouse the jurors passions or prejudices, and its content should stay within the record and reasonable inferences that may be drawn therefrom Id.

Jurors are sworn to be governed by the Evidence, and it is their duty to consider the facts of the case impartially. Id.

A [Golden Rule] argument asking the jurors to place themselves in the shoes of the Defendant / or alleged suspect tends to completely destroy all sense of impartiality of the jurors and its effect is to arouse passion and prejudice.

see: State v. McDaniel, 320 S.C. 33, 462 S.E. 2d 882 (Ct. App. 1995) (reversing Conviction and remanding for new trial in sexual assault/robbery case when solicitor used "you" or a form of "you" some 45 times asking jury to put

in place of the victim); see: also: State v. Reese, 370 S.C. 31 (2006) reversed on other grounds State v. Reese, 359 S.C. 260 (App. 2004).

see: Donnelly v. De Christoforo, 416 U.S. 637, 94 S.Ct. 1868, 40 L.Ed. 2d 431 (1974).

Darden v. Wainwright, 477 U.S. 168, 106 S.Ct. 2464, 91 L.Ed. 2d 144 (1986)

see: Strickland v. Washington, 466 U.S. 668, (1984)
when Counsel failed to Object in violation of
Applicants 6th, 14th Amendment to U.S. Constitution
and S.C. Constitution to Due Process of Law,
as "You" or form of "You" 78 times No objection.

QUESTION #3

3.) Was Counsel Constitutionally Ineffective by the Solicitor in closing Argument commenting on Prior Bad acts in a violation of Applicants 6th Amendment to the U.S. Constitution and a violation of Applicants Due Process under 14th Amendment which shift Burden?

FACTS

see: Tr. T. pg. 271 lines 6-8

6. But he knew the game was up. And this isn't his
 7. First time deal going down the interstate. He's been
 8. down this interstate numerous times

This is clearly Burden Shifting Closing Argument
DISCUSSION

see: State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923)

see: In Re Winship, 397 U.S. 158 (1970)

Rule 404(b) SCRE provides. / Tr. T. pg. 295 line 20-21 No Record

Evidence of other crimes, wrongs, or acts is not admissible to prove character of a person in order to show action in conformity therewith. It may, however, be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent.

Counsels Ineffective should have Objected to that line of Argument.

see: Strickland v. Washington, 466 U.S. 668, 688 (1984)

QUESTION * 5

5.) Was Counsel Ineffective for failing to Object when the Judge told the jury that if he should make an Error in law there's another time and place that error can be considered; and if necessary corrected in a violation of Applicant's 6th Amendment right to the U.S. Constitution as well as Due Process of Law under 14th Amendment. S.C. Constitution?

FACTS

see: Tr. T. pg. 280 lines 25 through pg. 281 lines 3

25. ... If I should make an Error
 1. In the Law as I instruct it to you, there's another time
 2. and place that error can be considered and, If necessary,
 3. corrected ...

DISCUSSION

see: United States v. Fiorito, 300 F. 2d 424, (7th Cir. 1962)

The 7th circuit concluded that "such dilution of the final responsibility of the jury as was thus inferred as permissive to the jury in its determination of the verdict [was] prejudicial to the defendant. Id at 427

States v. Lulaski, 341 F. 2d. 325, 330 (7th Cir. 1965)

Strickland v. Washington, 466. U.S. 668, 688 (1984

QUESTION #6

6.) Was Counsel Constitutionally Ineffective for failing to argue and preserve for appeal whether the Search and Seizure was in a violation of Article I, § 10 of the S.C. Constitution?

FACTS

Counsel's motion moved to suppress the Evidence based solely on the Fourth Amendment protection against unreasonable searches and seizures, and never mentioned the South Carolina Constitution. see: Tr. T. pg. 56-57; and therefore, by failing to raise the issue of whether the search and seizure in this case violated the South Carolina Constitution was not properly preserved for appellate review because it was not raised and ruled upon by the circuit court.

DISCUSSION

The Applicant is protected against unreasonable search and seizure under similar provisions of the South Carolina Constitution. see: S.C. Const. art. I, § 10.

As "State Courts may afford more expansive rights under state constitutional provisions than the rights which are conferred by the Federal Constitution". State v. Easler, 327 S.C. 121, 131n.

13, 489 S.E.2d 617, 625 n. 13 (1997); see also: State v. Austin, 306 S.C. 9, 409 S.E.2d 811 (Ct. App. 1991)

The relationship between federal and state rights has been described as a recognition that the Federal Constitution sets the floor for individual rights while the State Constitution establishes the ceiling. See: State v. Forrester, 343 S.C. 637, 642, 541 S.E.2d 837, 840 (2001) quoting Segura v. Texas, 826 S.W.2d 178, 182 (Tex. 1992)

In analysis special attention has been given to the additional language in Article 1, §10 which provides for the right to be free from Unreasonable invasions of privacy.

By articulating a specific prohibition against "Unreasonable invasions of privacy," the people of South Carolina have indicated that searches and seizures that do not offend the Federal Constitution may still offend the South Carolina Constitution. Violations of which, may result in the exclusion of the discovered Evidence. see: State v. Forrester, 343 S.C. 637, 642, 541 S.E.2d 837, 840 (2001)

The Only Evidence supporting Applicant's removal from his car and subsequent detention in the Patrol car was Deputy Crawford's testimony that Applicant was nervous when initially pulled over. Such nervousness alone is insufficient to support Applicant's detention and interrogation in this case.

see: State v. Pichardo, 367 S.C. 84, 105, 623 S.E. 2d 840, 851 (Ct. App. 2005)

The lack of a observable facts to warrant the initial detention, search of the vehicle with the K-9 and interrogation of Applicant, along with the Continued manipulation of the events by the police to Orchestrate a basis for a search of Applicant's car, violate the privacy provisions under Article I § 10. And by Counsel failing to Argue this fact was a violation of see: Strickland v. Washington, 466 U.S. 668, 688 (1984)

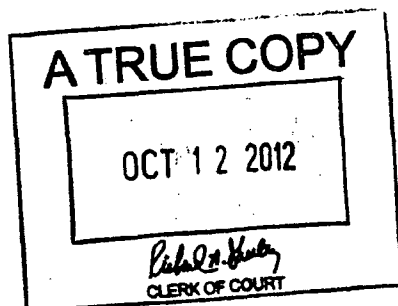
Because even if the Search and seizure in Applicants' case were found not to violate the 4th Amendment, they remain Unreasonable Under Article I, Section 10 of the South Carolina Constitution. As the Fruits of such acts would have been excluded and there would have been No Evidence against the Applicants had Counsel made the proper Argument and the resulting Conviction would not have been that of a Guilty verdict. Here Counsel was Clearly Ineffective and the Applicant is entitled to a New Trial as a matter of Law.

CERTIFICATE OF SERVICE

J00 - CP - 04 - 03291

The undersigned hereby certify that he cause to be mail the foregoing Application for Post Conviction Relief to the Clerk of Court for Anderson County this 28 day of September 2012, by depositing same in the U.S. mail postage prepaid at Lieber mail-room.

Rahiem Kirkman
Rahiem Kirkman



FILED CLERK'S OFFICE
ANDERSON SC
2012 OCT 12 A 8:39
COMMON PLEAS AND
GENERAL SESSIONS

Anderson County Clerk of Court
Cathy M. Phillips, Clerk
P O BOX 8002
Anderson, S.C. 29622

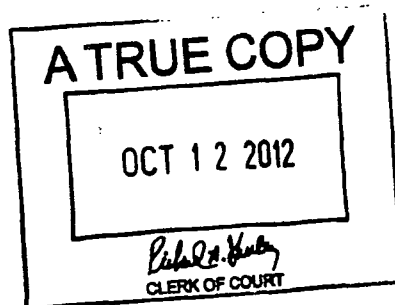
RE: Post Conviction Application For Filing

Dear Clerk,

Enclosed would you please find two PCR applications,
please file the original and return stamp filed copy to me.

Yours truly,

Rahim Rahman



FILED-CLERK'S OFFICE
ANDERSON SC
2012 OCT 12 A 8:39
COMMON PLEAS AND
GENERAL SESSIONS

FILED-CLERK'S OFFICE
ANDERSON SC

2012 OCT 12 A 8 42

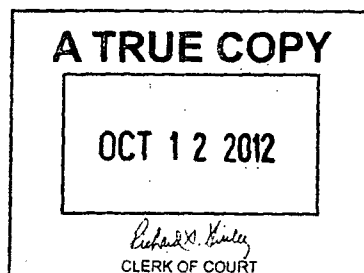
COMMON PLEAS AND
GENERAL SESSIONS

RAHEEM KIRKMAN #334886
LIEBER CORRECTIONAL
ROOM CB22
P.O. BOX 205
Ridgeville S.C. 29472

2012-CP-04-03291

Anderson County Clerk of Court
Cathy M. Phillips, Clerk
P.O. Box 8002
Anderson S.C. 29622

RECEIVED
OCT 08 2012
MAIL ROOM
LIEBER C.L.



STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON)

TENTH JUDICIAL CIRCUIT

Rahiem Kirkman,)

CASE NO.: 2012-CP-04-3291

PLAINTIFF,)

vs.)

ORDER SUBSTITUTING COUNSEL

State of South Carolina,)

DEFENDANT.)

A TRUE COPY**NOV 26 2012**

It appears that Lewey C. Hammett was appointed as the attorney for the Plaintiff, Rahiem Kirkman, in the above-entitled matter.

It appears that Hugh W. Welborn has consented to be substituted as the attorney for the Plaintiff, Rahiem Kirkman, for Lewey C. Hammett, in the above-entitled matter.

NOW THEREFORE IT IS ORDERED, AJUDGED AND DECREED:

1. That Lewey C. Hammett be relieved as attorney for the Plaintiff, Rahiem Kirkman.
2. That Hugh W. Welborn is appointed as substitute attorney for the Plaintiff, Rahiem Kirkman.

Mr. Welborn is to immediately notify all parties.

IT IS SO ORDERED.

Anderson, South Carolina

October 26, 2012

I CONSENT:

Lewey C. Hammett, Jr.
Lewey C. Hammett, Jr.

I CONSENT:

Hugh W. Welborn
Hugh W. Welborn

[Signature]
PRESIDING FAMILY COURT JUDGE
TENTH JUDICIAL CIRCUIT

FILED
GENERAL SESSIONS
CLERK OF COURT

NOV 26 AM 11:48

FILED-CLERK'S OFFICE

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON	)	Case No. 2012-CP-04-3291
	)	
Rahiem Kirkman,	)	
S.C.D.C. No. 334886,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed October 12, 2012, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Anderson County. Applicant was indicted at the September 2006 term of the Court of General Sessions for Anderson County for trafficking in cocaine (2006-GS-04-2922). He was represented by Dorothy Manigault, Esq. On May 20, 2009, Applicant's case was called for trial. Rame Campbell, Esq., of the Tenth Judicial Circuit Solicitor's Office represented the State. The jury found Applicant guilty as indicted. He was sentenced by the Honorable J.C. Nicholson, Jr., to confinement for a period of twenty-five years of incarceration for trafficking in cocaine.

A timely Notice of Appeal was filed on Applicant's behalf. The appeal was perfected by Falkner Wilkes, Esq. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Kirkman, Op. No. 2011-UP-500 (S.C. Ct. App. filed November 9, 2011).

Attached herewith and incorporated herein by reference are the records of the Anderson County Clerk of Court regarding the subject conviction(s), Applicant's records from the Department of Corrections, the transcript of the proceeding against Applicant, and Applicant's appellate records. Respondent reserves the right to amend its return upon the receipt of other relevant records.

II.

In his Application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Trial Counsel;
 - a. "Failure to object to jury instruction that 'the defendant is not present may not be considered against the defendant in any manner whatsoever.'"
 - b. "Failure to object to the Court's erroneous jury instructions, the defendant's trial in his absence."
 - c. Failure to object to Jackson v. Denno hearing.
 - d. "Failure to include the South Carolina Constitution, Article 1, Section 10, along with the U.S. Const. amend. IV in the suppression of evidence motion."
 - e. Failure to move for a continuance since Counsel had never talked to Applicant.
 - f. Failure to object to Solicitor's closing argument that violated "The Golden Rule."
 - g. Failure to object to Solicitor discussing prior bad acts in closing argument.
 - h. Failure to object to Judge telling jury that if he makes an error of law, there is another time and place for that error to be corrected.
 - i. Failure to preserve search and seizure issue for appeal.

III.

The Applicant's first claim is an allegation of ineffective assistance of trial counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 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, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 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 cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent 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.

V.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code '17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

VI.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VII.

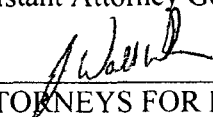
WHEREFORE, having made its Return, the Respondent requests that a hearing be held.

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

WALT WHITMIRE
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

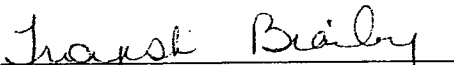
August 1st, 2013

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE TENTH CIRCUIT
COUNTY OF ANDERSON	)	
	)	
	)	201 ~~2~~ -CP-04-3291
	)	
RAHIEM KIRKMAN, # 334886	)	
	)	
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 and request for counsel in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Hugh W. Welborn, Esq.
P.O. Box 173
Anderson, SC 29622

DATED this 1st day of August, 2013


 Troyeshi Brailey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	
Rahiem Kirkman,	)	
	)	
Plaintiff,	)	
v.	)	Case No. 12-CP-04-3291
	)	
State of South Carolina,	)	
	)	
Defendant.	)	

TRANSCRIPT OF HEARING

The within Post-Conviction Relief Hearing in the above-captioned matter was held on February 20, 2014, before The Honorable Cordell Maddox, Jr., in the Court of Common Pleas for Anderson County, South Carolina; attended by counsel as follows:

APPEARANCES:

Hugh W. Welborn, Esq.
P O Box 173
Anderson, South Carolina 29622
... Appearing for Applicant

Walt Whitmire, Assistant Attorney General
OFFICE OF ATTORNEY GENERAL
P O Box 11549
Columbia, South Carolina 29211
... Appearing for State of South Carolina

Transcribed for Vivian Cross, Official Court Reporter

Deborah Garrison
Circuit Court Reporter – 9th Judicial Circuit
P O Box 901
Johns Island, South Carolina 29457
dgarrison@sccourts.org

Rahiem Kirkman v State of South Carolina
Case No. 12-CP-04-03291
Hearing of February 20, 2014
Before The Honorable J. Cordell Maddox, Jr.

2

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- None Entered -

Rahiem Kirkman v State of South Carolina

3

Case No. 12-CP-04-03291

Hearing of February 20, 2014

Before The Honorable J. Cordell Maddox, Jr.

1 MR. WHITMIRE: Judge, may we
2 approach?

3 THE COURT: Yes, sir.

4 (OFF RECORD BENCH CONFERENCE)

5 MR. WHITMIRE: Your Honor, the
6 State calls Rahiem Kirkman versus the State
7 of South Carolina. Case number 2012-CP-04-
8 03291.

9 Mr. Kirkman was indicted September
10 2006 for trafficking more than four hundred
11 (400) grams of cocaine.

12 He was represented by Dorothy
13 Manigault.

14 In 2007, November, the case was
15 called for trial and Mr. Kirkman tried and
16 convicted in his absence.

17 In 2009 that sentence was unsealed.

18 Timely notice of appeal was filed on
19 Mr. Kirkman's behalf and perfected by Jeff
20 Wilkes.

21 The Court of Appeals confirmed his
22 conviction in an unpublished opinion filed
23 November 9th, 2011.

24 He has timely filed an application
25 for post-conviction relief alleging the

Rahiem Kirkman v State of South Carolina

4

Case No. 12-CP-04-03291

Hearing of February 20, 2014

Before The Honorable J. Cordell Maddox, Jr.

1 following allegations:

2 Ineffective assistance of
3 counsel, failure to object to the jury
4 instruction 'that the defendant is not
5 present and (his absence) may not be
6 considered against the defendant in any
7 manner.' End quote.

8 Failure to object to the
9 court's erroneous jury instruction, again.

10 Failure to object to the
11 *Jackson v. Denno* hearing.

12 Failure to include the South
13 Carolina Constitution Article I, Section X;
14 or the U.S. Constitution Amendment 4 and
15 Amendment 9.

16 Failure to suppress evidence
17 Motion.

18 Failure to move for a
19 continuance since counsel had never talked to
20 the Applicant.

21 Failure to object to the
22 Solicitor's closing argument, violating own
23 rule (phonetic).

24 Failure to object to the
25 Solicitor's discussion of prior bad acts in

Rahiem Kirkman v State of South Carolina
Case No. 12-CP-04-03291
Hearing of February 20, 2014 - Testimony of Rahiem Kirkman
Before The Honorable J. Cordell Maddox, Jr.

5

1 his closing argument.

2 Failure to object to the judge
3 telling the jury that if he makes an error of
4 law that there is another time and place for
5 that error to be corrected.

6 And, last, failure to preserve
7 the search-and-seizure issue for appeal.

8 Your Honor, I would like to ask for
9 summary judgment first on that last
10 allegation. The Court of Appeals opinion
11 squarely addresses the fact that Ms.
12 Manigault properly preserved all Fourth
13 Amendment issues.

14 Starting at the beginning with failure to
15 object to jury instruction from the TIA
16 trial, Page 281, clearly it was correct.

17 Again, the State moves for summary
18 judgment on the Applicant's allegation
19 relating to the judge's jury instructions on
20 errors of law and error of fact, Page 281.

21 At this time, Respondent turns this
22 Hearing over to Applicant.

23 For the record, the sentencing transcript
24 of what the sentence was sealed ---

25 THE COURT: Any objection to

Rahiem Kirkman v State of South Carolina

6

Case No. 12-CP-04-03291

Hearing of February 20, 2014 - Testimony of Rahiem Kirkman
Before The Honorable J. Cordell Maddox, Jr.

1 having that incorporated at a later date?

2 MR. WELBORN: No objection.

3 THE COURT: All right. You can
4 call your first witness.

5 MR. WHITMIRE: We call Rahiem
6 Kirkman.

7 (WITNESS TAKES STAND)

8 RAHIEM KIRKMAN, having been sworn to
9 tell the truth, and nothing but the truth,
10 testified as follows:

11 DIRECT EXAMINATION

12 BY MR. WELBORN:

13 Q. Mr. Kirkman, you need to speak up.
14 I'm going to talk from right here so that you
15 can shout at me.

16 A. Okay.

17 Q. So that the Court can hear you.

18 A. Okay.

19 Q. Understand?

20 A. Yes, sir.

21 Q. You are Rahiem Kirkman?

22 A. Yes.

23 Q. Mr. Kirkman, you are before the
24 court on a post-conviction relief action that
25 you filed based on your conviction in this

Rahiem Kirkman v State of South Carolina
Case No. 12-CP-04-03291
Hearing of February 20, 2014 - Testimony of Rahiem Kirkman
Before The Honorable J. Cordell Maddox, Jr.

7

1 court on or about November the 6th; is that
2 correct? 2007?

3 A. Yes, sir.

4 Q. Is that correct?

5 A. Yes, sir.

6 Q. And in that particular matter you
7 were charged with a number of -- you were
8 charged with trafficking cocaine and you were
9 found guilty of that. Is that correct?

10 A. Yes, sir.

11 Q. And we won't go into the issues of
12 why you weren't in court but you were not in
13 court during your trial, is that correct?

14 A. Yes, sir.

15 Q. You were sentenced by Judge
16 Nicholson to twenty-five years incarceration
17 for trafficking in cocaine; is that correct?

18 A. Yes, sir.

19 Q. Now, this matter was appealed to the
20 Court of Appeals and it confirmed your
21 conviction, is that correct?

22 A. Yes, sir.

23 Q. Now, you allege in your application
24 for post-conviction relief that you received
25 ineffective assistance of counsel.

1 I'm going to go through these
2 allegations and there are some questions.
3 You allege that your lawyer, your trial
4 lawyer was ineffective in failing to object
5 to a jury instruction that, quote, "the
6 defendant is not present and that may not be
7 used or considered against the defendant in
8 any manner whatsoever."

14 A. Yes, sir.

18 A. I fell like by me not being here,
19 not being present, being tried in my absence,
20 that -- by them not seeing me here, that --
21 you could say that to them but common sense
22 to any person -- they might feel like,
23 'well,' they don't -- they just know that
24 this guy is not here, they don't know what
25 circumstances he is not here under. They

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1 always go -- you know what I'm saying? It's
2 going to prejudice me. They're going to
3 kinda feel like 'he's guilty, he's running
4 away from something.'

5 Q. Are you suggesting them that your
6 lawyer should have insisted that there be an
7 instruction -- or just not even mention the
8 fact of your absence?

9 A. No, I am not saying that. I am
10 just, like, saying that she should have --
11 like I said, she should have objected to
12 that.

13 Q. Do you understand, Mr. Kirkman, that
14 the judge told the court that they couldn't
15 even discuss or consider the fact that you
16 weren't there. That in their deliberations
17 that they couldn't even talk about that. Do
18 you understand that?

19 A. Yes.

20 Q. You're still telling the court that
21 your lawyer should have objected to that
22 because it causes the jury to wonder where
23 you are. Is that correct?

24 A. Yes.

25 Q. All right. Very good. You also

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1 allege that there was a failure to object to
2 the court's erroneous jury instructions about
3 being tried in your absence.

4 Is that basically what you just said
5 a moment ago, that the jury should not have
6 been instructed about your absence?

7 A. Yes.

8 Q. All right.

9 A. Yes, sir.

10 Q. You also allow that there was a
11 failure -- that your lawyer failed to object
12 to the *Jackson v. Denno* hearing.

13 A. Right.

14 Q. Now, what did your lawyer not object
15 to in that hearing that she should have
16 objected to?

17 A. She should have objected to the
18 instruction that -- that the jury be
19 instructed that the defendant's failure to
20 appear may not be construed as an admission
21 of guilty.

22 Q. I want you to slow down and talk a
23 little bit louder so that I can hear you.
24 Say that again, sir.

25 A. She should have been instructed --

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1 she should have objected -- you know what I'm
2 saying? That my not being there should be
3 construed as an admission of guilt in any
4 way.

5 Q. Let me see if we can communicate a
6 little better. You've alleged in your
7 application that your lawyer failed to object
8 to their being a *Jackson v. Denno* hearing.

9 A. Right.

10 Q. Let me be sure that I am
11 understanding. Are you telling the court
12 that she should have said, 'we'll need a
13 *Jackson v. Denno* hearing' or are you telling
14 the court that she should have made
15 objections to issues within that hearing?

16 A. She should have made objections to
17 issues within that hearing.

18 Q. What issues should she have objected
19 to?

20 A. She should have objected to -- there
21 was no way for me to defend myself. You know
22 what I'm saying? By me not being here, there
23 was no way for me to even defend myself.
24 There was no way for me to defend myself, to
25 where I could have been coerced into my --

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1 into my statement. And there were a lot of
2 things that could have came out at my trial,
3 but by me not being here, there was a lot of
4 things that weren't in my trial that could
5 have came out.

6 Q. Can you be more specific about what
7 she should have objected to, that came out in
8 that hearing?

9 A. She should have objected to about
10 how by not even speaking with me that
11 anything could have went down within the
12 timeframe of my being arrested upon the
13 timeframe of my statement that was given to
14 the police.

15 Q. Can you say that again?

16 A. (No verbal response).

17 Q. I want to understand that. Go
18 ahead, tell me again.

19 A. She should have objected that --
20 hearing that I had not spoken -- by not
21 speaking to me from the timeframe of my being
22 arrested to the timeframe of my signing the
23 statement, anything could have went into that
24 particular situation.

25 Q. All right. Let's talk about that.

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1 You say that she should have objected -- or
2 you have told me that she should have
3 objected to even representing you, or words
4 to that effect?

5 A. (No verbal response).

6 Q. That you didn't know that you had a
7 hearing that day. Tell the court about that.

8 A. Well, particularly -- I'm from North
9 Carolina, like I said. Me and -- Ms.
10 Manigault was hired when I was bailed out --
11 there was a friend of mine that was bailed
12 out, was told by Ms. Manigault and she hired
13 her on my behalf to actually get me a
14 continuance or whatever.

15 Me and Ms. Manigault hadn't had any
16 correspondence during my time and -- the
17 address that they had was the address from my
18 driver's license and I had moved. My mail
19 was supposed to have been forwarded. I
20 wasn't receiving any of my notices from my
21 lawyer, nor had I received any of my notices
22 from the court.

23 Q. Let me see if I understand this, so
24 that the court can understand it. Are you
25 telling the court that someone hired your

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1 lawyer without your permission?

2 A. They were doing it as a favor to me.

3 You know what I'm saying? It was like ---

4 Q. But did they have your permission?

5 A. No, they just did it.

6 Q. Well, let me ask you this. Why ---

7 A. And they gave her a downpayment.

8 Q. --- did you not hire your own lawyer
9 if that is an objection of yours? The court
10 needs to understand that.

11 A. At the time I thought that I had
12 more time to get money together to even get
13 another lawyer. At the time, I was in
14 trucking school so I thought that I had more
15 time to even get another lawyer.

16 So by the time I came back to check on
17 the issue, I'm finding out that I was already
18 tried and convicted, represented by a lawyer
19 -- which, I mean, I mean I thank her for --
20 you understand what I'm saying?

21 It was real honorable of her to even
22 represent me, not being paid.

23 Q. Let's talk about that. At what
24 point did you discover that you had a lawyer
25 that someone had hired for you? Was that

1 after trial was over?

2 A. You mean, -- after trial was over,
3 yeah. After trial was over. Like I said,
4 when I was on -- I mean, I didn't -- when I
5 arrested and brought back -- back to Anderson
6 County, I find out -- I'm thinking that I'm
7 coming back to go stand trial for this -- you
8 know, for my charges. Then they come to me
9 and say, you know, 'well, you been tried and
10 convicted.'

11 Q. Did you have a bail bondsman that
12 bailed you out, set up a bond for you?

13 A. Yes.

14 Q. Did you stay in touch with that
15 person?

16 A. We was in -- we stayed in contact
17 but we didn't really stay in contact, 'cause
18 at the time I didn't have any phone. I
19 didn't have a phone, so he would leave
20 messages.

21 Q. Well, is it your bail bondsman fault
22 and is it your attorney's fault that they
23 didn't contact you?

24 A. I wouldn't say -- I mean -- I mean,
25 I don't know whose fault that it should go

4 A. She should have -- I feel like she
5 should notified the courts way ahead of the
6 -- she knew way ahead of my trial.

13 Q. What should she have done?

24 MR. WHITMIRE: Objection.

25 Relevance. Applicant is not an attorney.

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1 THE COURT: Sustained.

2 DIRECT EXAMINATION CONTINUED

3 BY MR. WELBORN:

4 Q. Let me see if I can help you a
5 little bit. Should your lawyer have moved to
6 withdraw as your attorney? Is that what
7 you're alleging?

8 A. Yes, way before it even came to
9 trial.

10 Q. All right. So you should have been
11 tried, then, in your absence without the
12 lawyer representing you?

13 A. I don't know if I would have been
14 tried but had I not had any lawyer, period,
15 would they have tried me in my absence?

16 Q. Well, what I'm trying to do, Mr.
17 Kirkman, I'm trying to understand, and I'm
18 sure the court is trying to understand, what
19 somebody should have done differently for you
20 and would you have rather been tried in your
21 absence than to -- to have your attorney
22 there, that you've objected to for trial
23 techniques. What do you want?

24 A. I would rather have been present at
25 my trial.

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1 Q. Okay. And what could she have done
2 that she did not do to notify you of your
3 trial?

4 A. She could have got in touch with my
5 bondsman. It would have been his
6 responsibility -- if he can't get in touch
7 with me, then it is his responsibility to
8 make sure that I appear in court, to find out
9 where is the breakdown in communication.
10 Like I said, I stay in a whole different
11 state.

12 Q. Well, what responsibility, Mr.
13 Kirkman, did you have?

14 A. Like I said, I am supposed to check
15 back in on the issue. But by the time I
16 checked back in on the issues they'd tried me
17 in my absence. They tried me a whole lot
18 faster than I thought that they were.

19 Q. So they tried this case too fast for
20 you, is that your complaint?

21 A. That's not my complaint. That's
22 just what happened.

23 Q. All right, you have also alleged
24 that she failed to move for a continuance
25 since she had never talked to you.

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1 A. (No verbal response).

2 Q. So in addition to her withdrawing as
3 your attorney, she should have moved that the
4 case be continued?

5 A. Yes, to give us more time. Give us
6 time to have ---

7 Q. Now, she did move for a continuance.

8 A. (No verbal response).

9 Q. Didn't she?

10 A. I am not too sure of what'all she
11 done.

12 Q. Now, you also allege that she failed
13 to object to the solicitor's closing argument
14 that violated, quote, "the Golden Rule."
15 What is the Golden Rule, for the court's
16 edification?

17 A. One second -- (reviewing papers).

18 Q. Or what do contend is the Golden
19 Rule?

20 A. (No verbal response).

21 Q. Let me see, Mr. Kirkman, if I can
22 speed this along a little bit. You've
23 alleged in some of your issues that the
24 Golden Rule is based on referring to people
25 on the jury as to 'how long does it take you

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1 to make eighteen thousand dollars'; you know,
2 'what would you do?' You know, in other
3 words, it's putting the jury in your place.
4 Is that what you're trying to say?

5 A. Yes, burden shift.

6 Q. And you are aware that the attorney
7 did not object to those characterization when
8 the prosecutor was making his closing
9 argument. Is that correct?

10 A. Yes.

11 MR. WHITMIRE: Objection to
12 relevance. Mr. Kirkman is not an attorney.

13 THE COURT: All right. Overruled.
14 Go ahead. He's just making his allegations.

15 DIRECT EXAMINATION CONTINUED

16 BY MR. WELBORN:

17 Q. And part of that allegation is the
18 closing argument by the solicitor: "you know
19 the difference between right and wrong", "you
20 haven't done anything wrong", it starts
21 making them think 'have I done something
22 wrong?' So your allegation is basically that
23 he put the jury into your shoes. Is that it?

24 A. Yes.

25 Q. All right. Now, you also allege

1 that your attorney failed to object to the
2 solicitor discussing prior bad acts in your
3 closing argument. What prior bad acts did he
4 allege that your lawyer should have objected
5 to?

6 A. When he said -- when the prosecutors
7 said, "Well, he knew the game was up and this
8 isn't his first time going down the
9 interstate. He's been down this interstate
10 numerous times."

11 Q. He's been down the interstate
12 numerous times?

13 A. "He's been down this interstate
14 numerous times."

15 Q. Now, what about driving down the
16 interstate numerous times would be considered
17 to be prior bad acts for you, in your
18 opinion?

19 A. In this case -- you know what I'm
20 saying, I was being tried for trafficking, so
21 basically what he was stating to the jury is
22 that 'oh, he's done this' -- you know what
23 I'm saying. Basically saying 'he's guilty of
24 this, this is not his first time doing this,
25 he's done done this numerous times.'

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1 Q. But he didn't actually say that,
2 though, did he?

3 A. That is what he said in the
4 transcript. I'm not telling you, I'm reading
5 the transcript.

6 Q. Okay. So he should have left out
7 "He's been down the interstate numerous
8 times"?

9 A. (No verbal response).

10 Q. That prejudiced you?

11 A. Yes.

12 Q. All right. You also allege that
13 your lawyer failed to object to the judge
14 telling the jury that if a judge makes an
15 error of law that there is another time and
16 place to correct that error. What is your
17 complaint about your lawyer not objecting to
18 that?

19 A. Basically what they are saying is
20 that whether we get this right or wrong that
21 the day will come when they can come back
22 around at doing this, that there will be
23 another chance at this.

24 Q. Well, could it be that the judge was
25 trying to say that there is a court at a

1 higher level, a court of appeals, that can
2 review errors of law. Couldn't that be it?

3 A. Then that's what he should have
4 stated then. If you're saying that is what
5 he was trying to say, then he should have
6 said it. This way he's telling the jury --
7 the jury is like me, ---

8 Q. You're objecting to ---

9 A. --- and we don't know the law. So
10 basically they are going to take the judge's
11 word that is the law.

12 Q. What should the judge have said
13 differently that ---

14 A. I'm not saying that they should have
15 said anything different. It's just that by
16 saying that, they -- that -- like I said.

17 Q. All right. You also allege that she
18 failed to preserve the search-and-seizure
19 issue for appeal, which I think opposing
20 counsel said that she did. Are you still
21 pressing that issue?

22 A. She didn't say it was under the
23 South Carolina law/Constitution. This was
24 something that I did appeal on in my direct
25 appeal, but I wasn't able to do it under the

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1 South Carolina Constitution.

2 MR. WELBORN: Thank you. Answer
3 anything opposing counsel may have.

4 MR. WHITMIRE: May it please the
5 court?

6 THE COURT: Yes, sir.

7 CROSS EXAMINATION

8 BY MR. WHITMIRE:

9 Q. Good morning, Mr. Kirkman. Mr.
10 Kirkman, where were you between 2006 and
11 2007?

12 A. At the time of my trial, I was
13 enrolled in trucker's school.

14 Q. Which is where?

15 A. It was in North Carolina.

16 Q. What part?

17 A. Should have been -- that's in
18 Highpoint, North Carolina.

19 Q. Now, you bonded out on these
20 charges; is that correct?

21 A. Yes, sir.

22 Q. Do you recall reviewing your
23 obligations with your bondsman when you
24 bonded out?

25 A. He didn't say much.

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1 Q. So that's ---

2 A. Me and my bondsman met for about
3 five minutes and that was the last I seen --
4 last I've seen of him.

5 Q. Did you sign any papers when you
6 bonded out?

7 A. I mean I signed -- when they release
8 you, you've got to sign papers.

9 Q. Who hired Ms. Manigault for you?

10 A (No verbal response).

11 Q. Who hired your attorney for you?

12 A. Oh, a female that I was dating at
13 the time.

14 Q. What is her name?

15 A. Elizabeth Pope (phonetic).

16 Q. Now, you were arrested for
17 trafficking over four hundred grams of
18 cocaine; is that correct?

19 A. Yes, sir.

20 Q. And it was actually 18.3 kilos?

21 A. No, sir. It was ten kilos.

22 Q. And you knew that the State was
23 going to take that case to trial?

24 A. Yes, sir.

25 Q. You've reviewed the transcript prior

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1 to today, is that correct?

2 A. Yes, sir.

3 Q. At the beginning of trial, didn't
4 your attorney put on the record all of the
5 efforts that she'd made to contact you?

6 A. Yes, sir. Well, she said that she
7 mailed something. She sent several letters,
8 that's all that she done.

9 Q. And you knew that Ms. Manigault was
10 going to try this case for you in Anderson
11 County?

12 A. No. No, sir. I did not know that
13 she was going to try this case.

14 Q. So you had no idea who your
15 girlfriend at the time hired?

16 A. Well, she told me that she hired an
17 attorney to get me a continuance, to get me
18 more time to get myself ready.

19 Q. Did you ever inquire who this
20 attorney was?

21 A. Like I said, she told me who she was
22 and she told me that they spoke briefly. But
23 like I said, me and Ms. Manigault didn't have
24 a chance to review my case or anything like
25 that because, actually, I wasn't intending on

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1 using Ms. Manigault.

2 Q. Why didn't you show you in Anderson
3 County and find another attorney?

4 A. Like I said, I hadn't received
5 notice that -- I thought it would take at
6 least a year and a half to two years for this
7 to come to trial, so I thought that I had
8 more time. So I -- I hadn't received notice.

9 Q. Wasn't your case continued four
10 times prior to your trial?

11 A. I never received notice of any
12 continuance, of anything. So I don't know if
13 it was continued one time, two times or no
14 times.

15 Q. Did that ever concern you over the
16 year, that you had not allegedly received any
17 correspondence regarding this case?

18 A. No.

19 Q. So you were just going to let your
20 girlfriend at the time handle it?

21 A. No, I spoke with my bondsman, so he
22 could tell me and he didn't tell me. When I
23 went to trucker's school, he was unable to
24 get in contact with me because I didn't have
25 a phone at the time. But he left a message

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1 with my mother but, like I said, by the time
2 that I got it, the case was already over.

3 Q. Now, you said that you reviewed the
4 transcript. You gave a statement to the
5 police?

6 A. Yes, but I didn't write the
7 statement. They wrote the statement. And at
8 the time of the statement -- see, that's why
9 I needed to be at the trial, because at the
10 time of the statement basically -- I'm not
11 going to say that I was coerced into the
12 statement, but I was pressured into the
13 statement -- you understand? I was chased
14 along the highway and slept out in the woods
15 overnight and when the person that came to
16 pick me up -- came to pick me up in order for
17 me to sign the statement, ---

18 Q. Not to interrupt you, Mr. Kirkman,
19 but didn't Ms. Manigault argue all of that on
20 your behalf at the trial?

21 A. No. How could she argument
22 something that she has no privy, no knowledge
23 of.

24 Q So what you're ---

25 A. She didn't ---

1 Q. --- saying is that the transcript is
2 wrong, that she didn't argue that you had
3 slept outside that night after you'd fled.

4 A. She couldn't argue that I was
5 coerced into signing the statement, she
6 couldn't argue that. This statement wasn't
7 written by me, it's not in my handwriting or
8 anything like that. She can't argue as to
9 the purpose of why I signed the statement.
10 She didn't even bring in any witnesses -- the
11 one witness that was there with me. The
12 person that was there with me, they were
13 going to charge them, so basically I was
14 forced to sign this statement so that they
15 wouldn't ---

16 Q. I don't mean to interrupt you again,
17 but you were Mirandized by the Anderson
18 County police?

19 A. Was I Mirandized?

20 Q. (Affirmative nod).

21 A. No.

22 Q. You were -- you never signed a
23 waiver?

24 A. No, when I got there -- I signed
25 everything that they told me to sign to let

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1 that person go. When I got there, I told
2 them that I wanted to speak to an attorney.
3 They said, 'I guess you don't want to speak
4 to us.' I said, 'no, I want to speak to an
5 attorney.'

6 So then they come back and say, 'well, we
7 are going to charge this person here along
8 with you' and they had nothing to do with it,
9 so ---

10 Q. Mr. Kirkman, I have one more
11 question about your statement. In your
12 statement, didn't you tell police that you
13 had delivered over a hundred and fifty kilos
14 of cocaine back and forth between Atlanta and
15 North Carolina in your operation?

16 A. In my operation?! I had no
17 operation.

18 Q. The police just made all this stuff
19 up?

20 A. I had to tell them what they wanted
21 to hear to let this person go. I could not
22 let them charge -- I could not let them
23 charge the female that came to pick me up, so
24 -- (pause). Basically they told me -- like I
25 said, by me not being at trial, by me not

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1 being there, because they were -- you know
2 what I'm saying? Because they were trying to
3 make a deal with me.

4 MR. WHITMIRE: Beg the court's
5 indulgence -- no further questions.

6 THE COURT: I have one question.
7 Why didn't you notify -- prior to leaving,
8 why didn't you tell your lawyer where you
9 were going? In other words, why didn't you
10 say 'I'm going to be out of town. If you
11 need to get in touch with me, call me at this
12 number' or 'call my girlfriend, she can get
13 in touch with me.' I am just kinda curious.

14 APPLICANT: Like I say, at the
15 time, Your Honor, I wasn't even planning on
16 using Ms. Manigault as my trial lawyer.

17 THE COURT: Okay. So you didn't
18 think that she was going to be the one to try
19 it?

20 APPLICANT: Yes, Your Honor.

21 THE COURT: All right, you can
22 step down.

23 (WITNESS STEPS DOWN)

24 MR. WELBORN: That's our case.

25 THE COURT: Are you going to call Ms.

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1 Manigault?

2 MR. WHITMIRE: Yes, Your Honor.

3 THE COURT: I need a five-minute
4 break to return a call. I know you have been
5 waiting, Ms. Manigault, but we will get you
6 out of here.

7 (BRIEF RECESS)

8 THE COURT: Thank you. You may
9 call your first witness.

10 MR. WHITMIRE: If it please the
11 court, Your Honor, the respondent calls Ms.
12 Manigault to the stand.

13 (WITNESS TAKES STAND)

14 DOROTHY MANIGAULT, having been sworn
15 to tell the truth, and nothing but the truth,
16 testified as follows:

17 DIRECT EXAMINATION

18 BY MR. WHITMIRE:

19 Q. Have you reviewed your file in
20 anticipation of testifying today?

21 A. Yes, I have.

22 Q. How long have you practiced law?

23 A. Since 1974.

24 Q. What is the primary concentration of
25 your practice?

1 A. Criminal practice, criminal defense.

2 Q. What were the circumstances of you
3 getting retained on Mr. Kirkman's case?

4 A. I was retained on Mr. Kirkman's case
5 after he was released on bond. A male
6 representing himself as Rahiem Kirkman called
7 me several times regarding being retained.

8 Q. Do you recall the date of those
9 conversations?

10 A. No, I do not.

11 Q. Did you have any conversation with
12 Mr. Kirkman about meeting to discuss the
13 case?

14 A. The male representing himself to be
15 calling from North Carolina, uh, as Rahiem
16 Kirkman, said that he would make an
17 appointment to come in; which never happened.

18 Q. Between you getting retained and the
19 actual trial, how much time passed?

20 A. The incident was August 24rd, 2006,
21 the trial was November 5th and 6th, 2007. I am
22 guessing probably between six and seven
23 months.

24 Q. Did you start getting any early
25 impressions that Mr. Kirkman might be a no

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1 show in his defense?

2 A. No. He kept in limited contact. I
3 mean, he wasn't calling me every week but he
4 kept in contact. I provided him discovery
5 whenever I received it. We talked on the
6 phone about the case even before I got
7 discovery, asking whether they had a good
8 case. He never denied his guilt. He said it
9 was pretty, uh, -- he told me that he had ten
10 kilos in the car and that he had run from the
11 police on 85.

12 Q. Did you discuss his statement with
13 him?

14 A. Yes, I did. His statement is more
15 than just the drugs that he had in the car at
16 the time. His statement was about his
17 activity with other people and the amount of
18 drugs that he had transported and/or sold
19 with this other guy. He did not give me all
20 the details but he did say that he gave a
21 statement, personally, calling on the phone,
22 representing himself as Rahiem Kirkman. He
23 said that he gave a statement to the police
24 admitting to the drugs and other drug
25 activities.

1 Q. How many -- approximately, and I
2 know this is probably an unfair question.
3 But approximately how many narcotics cases
4 have you tried in your career?

5 A. I've been practicing twenty-plus
6 years, so I'd say it's a good number. I am
7 going to give you a low estimate. Well over
8 a hundred. I prosecuted for three years
9 before I switched to defense, so I've tried
10 cases from the prosecution side also --
11 Richland County, 5th Circuit.

12 Q. What is your standard procedure in
13 practice in preparing a narcotics case such
14 as Mr. Kirkman's?

15 A. Well, the procedures and practice is
16 talking to the client, getting their version
17 of what happened; then getting discovery
18 information, and providing that discovery
19 information to the client to make sure that
20 they are fully aware of what the State is
21 going to present.

22 In this case, that was his statement, his
23 girlfriend's name was Elizabeth Pope, she was
24 the female that came to Anderson County to
25 pick him up when the police was looking for

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1 him. She gave a statement also. So he was
2 aware of that. Even before I told him, he
3 already knew that she had given a statement.

4 Then there was a video of my client
5 running down I-85 from the police after they
6 had made the stop. I made him aware of that.
7 I am trying to think of whether the video
8 showed him jumping the fence. But, anyway,
9 when he jumped the fence he dropped his
10 wallet. So the police was able to find the
11 wallet right there after chasing him. They
12 were able to find and locate him several
13 hours later from a tip that they had
14 received.

15 So you would review the information,
16 discuss the information and find out whether
17 the client was to enter a plea, if they want
18 me to do any negotiations with the State or
19 does the client want to move forward with
20 trial.

21 It was never my understanding that Mr.
22 Kirkman was going to go forth with a trial.
23 His saying was that they had caught him red-
24 handed and he wanted me to work out any
25 negotiations that I could with the State.

1 Q. What difficulties did you have
2 trying to negotiate a plea offer due to Mr.
3 Kirkman's lack of involvement with the case?

4 A. The problem was not -- with the
5 negotiation it was not a lack of involvement
6 by Mr. Kirkman. The negotiation process was
7 the State didn't have to. They had the
8 video, they had a statement, they had the
9 girlfriend, they had the officers to testify.
10 So when you try to negotiate looking at those
11 fact, you try to get as less (sic) time as
12 you can since the client is saying that he's
13 guilty. So you try to get the least amount
14 of time.

15 Q. When was the last time that you had
16 contact with Mr. Kirkman prior to his trial?

17 A. Prior to the trial, I had written
18 Mr. Kirkman several letters, some of them
19 were returned in the last -- I believe months
20 -- months before the trial.

21 I did contact Mr. Kirkman's bondsman, who
22 indicated that he would be in contact with
23 the address and phone number that he had for
24 relatives, to notify them about the trial.

25 Q. When was the case first called to

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1 trial by the solicitor?

2 A. Oh, gosh. I cannot recall but it'd
3 been continued a couple of times, for sure.
4 I don't know if that was on my motion or
5 whether it was not reached on the trial
6 docket.

7 Q. Do you recall your preparations in
8 getting ready for trial in this case?

9 A. Yes.

10 Q. Did you discuss this?

11 A. Yes. Of course, in reviewing the
12 discovery material and in looking again at
13 the video, uh, even before the case got on
14 the trial docket the last time, I was begging
15 for some kind of negotiated plea on behalf of
16 my client.

17 You know, in originally talking to him
18 there were no witnesses that he provided for
19 himself, for his defense. He was in the car
20 alone when he was stopped.

21 The only other witness would have been
22 Ms. Pope, who would testify that she came to
23 pick him up when he was running from the
24 police -- and she knew that.

25 Q. Just a few more quick questions for

1 you, Ms. Manigault.

2 A. Okay.

3 Q. Do you recall what suppression
4 defenses that you formulated and executed at
5 trial?

6 A. What suppression defenses?

7 Q. (Affirmative nod).

8 A. Well, the transcript would show but
9 the -- the idea was to try your best to keep
10 the drugs out of the trial, which was not
11 going to happen.

12 The officer stopped -- according to the
13 officer's statement and report, he had
14 stopped Mr. Kirkland for following too
15 closely.

16 Immediately upon the stop, he and Mr.
17 Kirkman engaged in conversation and Mr.
18 Kirkman readily provided him the requested
19 identification and information. The officer,
20 in talking with him, noted -- according to
21 the officer, the officer noted that he was
22 very nervous, lips quivering, breathing very
23 hard. So when he -- he put Mr. Kirkman in
24 his car, the patrol car, and called in for
25 him to check on a valid driver's license.

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1 While in the car, -- this officer had a
2 canine with him. So he left Mr. Kirkman in
3 the car and while he was waiting on the
4 verification of a valid driver's license, he
5 got out of the car, took the canine out of
6 the car and walked to canine to do a free air
7 sniff around the vehicle. According to this
8 officer, by his testimony and in his report
9 that was in discovery, the dog alerted a
10 couple of times -- I think that it was at the
11 left read door of the car.

12 So you would try to say that the Warning
13 ticket was issued, the reason for the stop
14 was ended, so there was no need for him to
15 continue to detain Mr. Kirkman. But there
16 was not a clear line for releasing Mr.
17 Kirkman after the Warning ticket. All of
18 this was happening at the same time.

19 Q. Did you get chance to review Mr.
20 Kirkman's application for post-conviction
21 relief prior to today?

22 A. Yes. Yes, I did.

23 Q. What if any issues would you have
24 taken with Mr. Nicholson's remarks and
25 instructions to the jury?

1 A. I would have taken none. If he
2 hadn't done it, I would have requested it --
3 the charge that my client's not being present
4 should not be held against him.

5 Q. I believe I recall you testifying
6 that you'd previously been a solicitor?

7 A. Yes.

8 Q. Were there any potential meritorious
9 objections to this solicitor's closing
10 argument?

11 A. Not that I saw at the time. The --
12 I took the solicitor's statement as a
13 generalization, not "you, the jury" but 'you'
14 in general, that a person would, that one
15 would do this or one would that. So I didn't
16 ever seen him dragging the jurors in
17 personally.

18 MR. WHITMIRE: No further
19 questions. Thank you very much, Ms.
20 Manigault. Please answer any questions that
21 Mr. Welborn may have for you.

22 THE COURT: Mr. Welborn.

23 CROSS EXAMINATION

24 BY MR. WELBORN:

25 Q. Ms. Manigault, isn't it a fact that

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1 you never spoke to my client at all?

2 A. I had spoken to a male. I spoke to
3 a male caller ---

4 Q. A male caller.

5 A. --- from North Carolina who
6 represented to me on the phone that he was
7 Rahiem Kirkman.

8 Q. How many times did you talk with
9 someone who identified themselves as that
10 person?

11 A. I talked with that person before
12 being retained. We discussed the retainer
13 agreement. I told them that they could bring
14 it to my office when they came for an
15 appointment. They did not do that. The male
16 called back and said that they would mail a
17 certified mail, and that's what they did.

18 I talked with that person probably three
19 or four times in the months of representa-
20 tion.

21 Q. And did his number at some point
22 become disconnected or change?

23 A. Yes. When we were notified about
24 the final trial, the numbers were not
25 working. Letters had been sent -- some

1 letters were not returned but the letters
2 that were sent regarding this trial was
3 returned; and, therefore, I contacted the
4 bondsman to try to get in touch with him.

5 Q. Now, Mr. Kirkman said that you
6 should have moved to be relieved as his
7 counsel. Is that standard procedure when
8 under those circumstances someone doesn't
9 come to court?

10 A. I did move to be relieved as his
11 counsel the day of trial. My reasoning for
12 that was lack of cooperation. He was
13 released from jail on bond. Even if this
14 male that was calling me was not him, he knew
15 that he had a charge in Anderson County,
16 South Carolina, that he was responsible for
17 answering for. So I did move on the day of
18 trial. I did not believe that he wouldn't
19 show up.

20 I think that the information that I got
21 from the bondsman -- you know, that the
22 contact information would be given to him;
23 you know, the trial date. So I expected him
24 to be here, until the date of trial when he
25 didn't show up.

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1 Q. I know that this could be costly,
2 what I am fixing to suggest, but is there any
3 reason why you didn't hire a private
4 investigator to try to track him down?

5 A. No, I would not have done that.
6 I wouldn't not have done that. My stance is
7 that a client has the responsibility to
8 appear for court, or to call and check with
9 his or her attorney to see what is going on
10 with the case.

11 MR. WHITMIRE: If the court would
12 bear with me.

13 THE COURT: Certainly.

14 CROSS EXAMINATION CONTINUED

15 BY MR. WELBORN:

16 Q. Did you get some letters from my
17 client or his girlfriend?

18 A. Did I get some letters?

19 Q. Yes.

20 A. I got an Express Mail with a
21 certified check in it, on the front part of
22 the case.

23 Q. Did you get any more letters or mail
24 after that?

25 A. Communications with my client? No,

1 not more from client.

2 Q. How about from Ms. Pope -- or Hope?
3 What was her name?

4 A. Her name is Pope, Elizabeth Pope.
5 She is the individual that came down -- he
6 testified today that that was his girlfriend.
7 She was the individual that came down to
8 Anderson County to pick him up when he was on
9 the run.

10 Q. I understand. Did she send you any
11 letters besides the retainer?

12 A. The retainer came addressed from
13 Rahiem Kirkman, not Elizabeth Pope.

14 Q. So there are no other letters then
15 besides the retainer letter?

16 A. That's all that I have.

17 Q. I would imagine, Ms. Manigault, that
18 you've had clients disappear before?

19 A. (No verbal response).

20 Q. Is that correct?

21 A Yes.

22 Q What else do you normally do in a
23 situation like that, that you didn't do in
24 this case?

25 A. That I didn't do in this case?

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1 Q. (Affirmative nod).

2 A. I try to call or contact all the
3 numbers that I have for a client for a
4 contact person. What I did in this case was
5 to contact the numbers that I had. If those
6 numbers were not -- if they were cut off or
7 had been disconnected, then my next step
8 would be going to the bondsman because he was
9 responsible for helping get him back to
10 court.

11 Q. And you did that?

12 A. I did that. So there was nothing
13 else that I could do.

14 Q. Did you send certified letters to
15 his last known address or did you have an
16 address?

17 A. I sent the letters -- they were not
18 certified. I sent letter to Mr. Kirkman's
19 last known address. I had two addresses for
20 him. I sent those letters, as I've testified
21 today and at the time of trial, and those
22 letters were returned.

23 Q. Thank you.

24 MR. WHITMIRE: Your Honor,
25 Respondent rests and just asks that Ms.

1 Manigault be released.

2 (WITNESS STEPS DOWN)

3 THE COURT: You are released.

4 Thank you very much for your patience this
5 morning. All right, I will take it under
6 advisement and let you know something before
7 the week if over.

8 (HEARING CONCLUDED)

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STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF CHARLESTON)

I further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Laura Garrison

Charleston, South Carolina
March 2, 2016

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON) FOR THE TENTH JUDICIAL CIRCUIT

Rahiem Kirkman,
S.C.D.C. No. 334886,

C.A. No. 2012-CP-04-3291

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

FILED-CLERK'S OFFICE
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COMMON PLEAS AND
GENERAL SESSIONS

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed October 12, 2012. Respondent made its Return on or about August 1, 2013. An evidentiary hearing into the matter was convened on February 20, 2014, at the Anderson County Courthouse. Applicant was present and was represented by Hugh W. Welborn, Esquire. Respondent was represented by Walt Whitmire, Esquire, of the South Carolina Attorney General's Office.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial counsel, Dorothy Manigault, Esquire, also testified. This Court had before it a copy of the trial transcript, the records of the Anderson County Clerk of Court regarding the subject guilty pleas, Applicant's records from the South Carolina Department of Corrections, Applicant's direct appeal records, and the pleadings. The Court finds as follows:

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. Applicant was indicted at the September 2006 term of the Anderson County Grand Jury for trafficking in cocaine, more than

40 grams (2006-GS-04-2922). He was represented by Dorothy Manigault, Esquire. On May 20, 2009, Applicant was tried and convicted in his absence. The Honorable J.C. Nicholson, Jr., sentenced him to confinement for a period of twenty-five (25) years.

A timely Notice of Appeal was filed on Applicant's behalf and perfected by J. Falkner Wilkes, Esquire. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Kirkman, Op. No. 2011-UP-500 (S.C. Ct. App. filed November 9, 2011).

Allegations

In his application for post-conviction relief, Applicant alleged that he was being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel, specifically:
 - a. "Failure to object to jury instruction that 'the defendant is not present may not be considered against the defendant in any matter whatsoever.'"
 - b. "Failure to object to the Court's erroneous jury instructions, the defendant's trial in his absence."
 - c. "Failure to object to Jackson v. Denno hearing."
 - d. "Failure to include the South Carolina Constitution, Article 1, Section 10, along with the U.S. Const. amend. IV in the suppression of evidence motion."
 - e. Failure to move for a continuance since Counsel had never talked to Applicant.
 - f. "Failure to object to Solicitor's closing argument that violated the 'Golden Rule.'"
 - g. "Failure to object to Solicitor discussing prior bad acts in closing argument."
 - h. "Failure to object to Judge telling jury that if he makes an error of law, there is another time and place for that to be corrected."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony

accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject's convictions, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, and legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2015), this Court makes the following findings of fact based upon all of the probative evidence presented.

Ineffective Assistance of Counsel

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that,

but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Failure to Request Continuance

Applicant has failed to present any evidence that counsel was deficient in failing to request a continuance. The Supreme Court has held that a failure to request a continuance prior to a trial *in absentia* may, under some circumstances, result in a finding of deficient performance. See Morris v. State, 371 S.C. 278, 282, 639 S.E.2d 53, 56 (2006). These circumstances, however, are not present in Applicant's case.

In Morris, the morning before being tried in his absence, the defendant signed a sentencing sheet in anticipation of entering a guilty plea to a lesser included offense. 371 S.C. at 280, 639 S.E.2d at 55. Upon learning his client had gone missing, the attorney failed to request a continuance and proceeded with the trial *in absentia*. While he did object to the defendant being tried in his absence, our state's Supreme Court concluded the failure to request the continuance so that the defendant could enter the agreed upon plea to the lesser included offense constituted deficient performance. Such circumstances were not present in this case. Crucially, Applicant did not inexplicably disappear immediately before he was set to enter into a beneficial plea deal: instead, Counsel had been unable to contact Applicant for roughly six months leading to the trial date despite numerous attempts *and numerous previous continuances*. This Court is convinced Counsel would have been reasonable in believing any further attempts to reach Applicant, even following a continuance, would have been futile. Accordingly, under the circumstances of this case, Counsel did not exhibit deficient performance in failing to request a continuance prior to his trial *in absentia*.

Applicant has also failed to show that he was prejudiced by the fact that Counsel did not request a continuance. In order to show prejudice arising out of the failure to request a continuance prior to a trial *in absentia*, an applicant for post-conviction relief must also show either that the presiding judge would have granted the request, or that denying it would have constituted reversible error. See State v. Ravenell, 387 S.C. 449, 457-58, 692 S.E.2d 554, 558-59 (2010) (citing Morris at 280-81, 639 S.E.2d at 55).

Applicant has not presented evidence that a request for continuance, if made, would have been granted. This Court notes Counsel made the request that Applicant not be tried in his absence – eliciting a denial by the trial court. Finding the Applicant had received notice of his right to be present and a warning that a trial would proceed in his absence upon his failure to attend, the presiding judge concluded Applicant freely, voluntarily, knowingly and intelligently waived his right to be present at trial. (Tr. p. 9-10).¹

Moreover, there is nothing to indicate a denial of any such continuance request would have constituted reversible error. It is well-settled in South Carolina that a trial court's denial of a motion for continuance "will not be disturbed absent a clear abuse of discretion." State v. McKennedy, 348 S.C. 270, 280, 559 S.E.2d 850, 855 (2002) (quoting State v. Tanner, 299 S.C. 459, 395 S.E.2d 832 (1989)). In fact, reversals of a continuance are as "rare as the proverbial hens' teeth." State v. Lytchfield, 230 S.C. 405, 409, 95 S.E.2d 857, 859 (1957). Here, there is no indication that the trial court would have abused its discretion by denying such a request. Accordingly, this Court finds Applicant has not met his burden to prove ineffective assistance of counsel in failing to request a continuance. This allegation is therefore denied and dismissed.

¹ While Counsel's request that the trial not proceed in Applicant's absence probably did not constitute a motion for continuance, see Morris at 56, 639 S.E.2d at 282, the trial court's denial certainly suggests additional delays would have been met with skepticism. In any event, it was Applicant's burden to show otherwise at the evidentiary hearing.

Trial in Absentia

To the extent Applicant alleges that he was tried *in absentia* as a result of his trial counsel's deficient performance, this Court finds such an allegation is without merit. It is well established that, although the Sixth Amendment of the United States Constitution guarantees the right of an accused to be present at every stage of his trial, this right may be waived, and a defendant may be tried in his absence. State v. Ravenell, 387 S.C. 449, 454, 692 S.E.2d 554, 557 (2010) (citing State v. Fairey, 374 S.C. 92, 99, 646 S.E.2d 445, 448 (Ct. App. 2007)). A trial judge must determine a criminal defendant voluntarily waived his right to be present at trial in order to try a defendant in his absence. State v. Jackson, 288 S.C. 94, 95, 341 S.E.2d 375, 375 (1986). The judge must make findings of fact on the record that the defendant (1) received notice of his right to be present and (2) was warned that he would be tried in his absence should he fail to attend. Id.

In the present case, the trial judge made both of the required findings and determined Applicant had "freely, voluntarily, knowingly and intelligently waived his right to be present at trial." (Tr. p. 9-10). Moreover, this Court finds credible and compelling Counsel's testimony that she tried to get in touch with Applicant prior to trial – including contacting Applicant's bail bondsman – without avail. Considering Applicant's phone number was disconnected and letters sent by Counsel were returned unopened, this Court is firmly convinced that Counsel met her obligation in this regard. Moreover, in light of the trial court's finding that Applicant was on notice of the trial date, he did not need his attorney to remind him simply to show up. As such, this allegation is denied and dismissed.

Failure to Object to Jury Instructions

This Court has also considered Applicant's allegation that counsel was ineffective in failing to object to jury instructions regarding his trial *in absentia* and found it to without merit. When a defendant is tried *in absentia*, the trial court should instruct the jury that the defendant's failure to appear may not be construed as an admission of guilt. McFadden v. State, 342 S.C. 637, 539 S.E.2d 391 (2000). In fact, failure to request such an instruction where the defendant is absence constitutes ineffective assistance of counsel. Id.

The record reflects that the trial court gave the required instruction, charging to the jury that "the fact that the defendant is not present may not be considered against the defendant in any manner whatsoever." (Tr. p. 281). Applicant's testimony at the PCR evidentiary hearing indicates he believes this charge highlighted his absence, and that "common sense" would have led the jury to assume he was guilty as a result. Such a claim is illogical. Jurors are presumed to follow the law as instructed to them. State v. Grovenstein, 335 S.C. 347, 353, 517 S.E.2d 216, 218 (1999). To hold otherwise would undermine the very bedrock of our justice system. Applicant has thus failed to meet his burden, and this allegation must be dismissed.

Failure to Object to Evidence of Prior Bad Act

Applicant's claim that counsel was ineffective for failure to object to the Solicitor's discussion of his prior bad acts during closing argument is similarly without merit. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. Rule 404(b), SCRE. Such evidence may, however, be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent. Id.

This Court first finds it prudent to point out that the purported “prior bad act” evidence Applicant believes should have been excluded was only brought to the State’s - and eventually the jury’s – attention *as a result of his own voluntary statement*. Applicant admitted to police, after waiving his right to remain silent, that over the course of several months he routinely took “five to ten kilos” at a time to sell in Atlanta – totaling roughly *one hundred and fifty (150) pounds*. (Tr. p. 237). With this in mind, this Court finds such evidence clearly tended to prove the existence of a common scheme or plan under Rule 404(b), SCRE. See State v. Raffaldt, 318 S.C. 110, 114, 456 S.E.2d 390, 392 (1995) (common scheme or plan existed where there was a close degree of similarity or connection between prior bad act and the crime); see also State v. Kirton, 381 S.C. 7, 28, 671 S.E.2d 107, 117 (Ct. App. 2008) (“Prior bad act evidence is admissible where the evidence is of such a close similarity to the charged offense that the previous act enhances the probative value of the evidence so as to outweigh the prejudicial effect.”). Accordingly, Counsel was not deficient in failing to object where the evidence was clearly admissible.

Applicant has also failed to meet his burden to show prejudice. Additionally, the evidence of Applicant’s guilt was utterly overwhelming in this case. See Applicant was caught red handed: he was pulled over for violating with a large amount of cocaine in his car, and subsequently gave a full confession. This is further reflected by the fact that it took the jury only fifteen minutes of deliberations to reach a guilty verdict. (Tr. p. 291). Therefore, this allegation is denied and dismissed.

Failure to Suppress Statement to Police and Physical Evidence

Applicant’s allegation concerning suppression of his statement to police and evidence presented at trial also falls short under the applicable standard. Applicant testified at the PCR

evidentiary hearing that he believes his trial counsel failed to apply the constitution to evidence of drugs seized from his car, as well as his admission of guilt – specifically, he said he was pressured into giving the statement, and it should not have come out at trial when he was not present. Applicant also alleged the police “put words in his mouth,” and that he was afraid they would arrest a female acquaintance² of his if he did not cooperate. He admitted, however, that he was read his Miranda rights and signed a waiver prior to giving the statement. Moreover, the Trial Court specifically found that Applicant made a knowing and intelligent wavier of his rights under the Fifth and Sixth Amendments. (Tr. p. 80).

Applicant has failed to prove counsel was deficient in any regard. Counsel made her objections for the record. Additionally, the issue of whether the evidence was seized as part of an unlawful search and seizure was adequately preserved for review, as indicated by the fact that the South Carolina Court of Appeals heard and considered the merits of that issue on Applicant’s direct appeal of his criminal conviction. This allegation is therefore denied and dismissed.

Failure to Object to Golden Rule Violation

Applicant next alleges Counsel was ineffective in failing to object to a purported “Golden Rule” violation by the Solicitor during closing arguments. Specifically, Applicant takes issue with the phrase “[y]ou know the difference between right and wrong,” directed toward the jury. (Tr. p. 270-271).

A “Golden Rule” argument which suggests to jurors to put themselves in the shoes of one of the parties is generally impermissible because it encourages the jurors to depart from neutrality and to decide the case on the basis of personal interest and bias rather than evidence. State v. Reese, 359 S.C. 260, 271, 597 S.E.2d 169, 175 (S.C. Ct. App. 2004).

² It appears Applicant was referring to Elizabeth Pope, his girlfriend at the time who was with him when he was apprehended.

This Court finds Applicant has failed to show a “Golden Rule” violation occurred. Looking at the contested statement in light of the entire record, it is clear that the Solicitor was not asking the jury to place themselves in Applicant’s shoes. Instead, the Solicitor was explaining how the type of nervousness Applicant exhibited when stopped was categorically distinct from the type of nervousness most people experience when stopped by police – to the extent that it became an independent indicator of suspicious activity.

This Court further finds that even if it were possible to construe the offending statement as a “Golden Rule” violation, Applicant has failed to show he was prejudiced by Counsel’s failure to object. A reviewing court must view the alleged impropriety of the solicitor’s argument in the context of the entire record, including whether the trial judge’s instruction adequately cured the improper argument *and whether there is overwhelming evidence of guilt. Simmons v. State*, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998)(emphasis added). Improper comments do not automatically require reversal if they are not prejudicial to the defendant, and the Applicant has the burden of proving he did not receive a fair trial because of the alleged improper argument. *Humphries v. State*, 351 S.C. 362, 373, 570 S.E.2d 16, 166 (2002). The relevant question is whether the solicitor’s comments so infected the trial with unfairness as to make the resulting conviction a denial of due process. *State v. Hornsby*, 326 S.C. 121, 129, 484 S.E.2d 869, 873 (1997) (“A denial of due process occurs when a defendant in a criminal trial is denied the fundamental fairness essential to the concept of justice.”). Nothing in the record supports a finding that Applicant’s trial was not fundamentally unfair as a result of the Solicitor’s closing argument – nor has Applicant presented any evidence that would lead the court to such a conclusion. This is even clearer when considering – as discussed above – the overwhelming

evidence of Applicant's guilt. Therefore, this Court is left with no choice but to deny and dismiss this allegation.

CONCLUSION

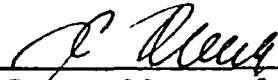
Based on the foregoing, this Court finds that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of Respondent

AND IT IS SO ORDERED this 5 day of November, 2015.


J. CORDELL MADDOX, JR.
Presiding Judge
Tenth Judicial Circuit

Anderson, South Carolina

FILED-CLERK'S OFFICE
ANDERSON SC
2015 NOV 10 PM 3:04
COMMON PLEAS AND
GENERAL SESSIONS

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Anderson
STATE VS.
Rahiem Kirkman
AKA: _____
Race: B Sex: M Age: 31
DOB: 11-07 SS#: [REDACTED]
Address: BURLINGTON ROAD
GREENSBORO, NC 27405
DL#: _____ SID#: _____

INDICTMENT/CASE#: 2006GS042922
A/W#: J420901
Date of Offense: 8/22/2006
S.C. Code §: 44-53-0370(e)(2)(e)
CDR Code #: 0281

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Drugs / Trafficking in cocaine. 400 g or more

in violation of § 44-53-0370(e)(2)(e) of the S.C. Code of Laws, bearing CDR Code # 0281
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Rame L. Campbell
Solicitor: SCB# 13981

Defendant

Dorothy A. Mawhault
Attorney for Defendant
Dorothy A. Mawhault
SC #03615

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ 200,000.00; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def Waives Hearing ☐ Ordered PTUP
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$ 200,000.00
§ 14-1-206 (Assessments 107.5 %) \$ 215,000.00
§ 14-1-211(A)(1) (Conv Surcharge) \$100 \$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
§ 56-5-2995 (DUI Assessment) \$12 \$ _____
§ 35.13 (Public Def/Prob) \$500 \$ _____
§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00
§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____
§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
3% to County (if paid in installments) \$ 12,453.90
TOTAL \$ 5.00

TOTAL

\$ 427,583.90

A TRUE COPY

OCT 12 2012

CLERK OF COURT

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other:

Notify Defense Attorney, Dore A. Mawhault
Prison
Supervision

☐ Appointed PD or appointed other counsel §35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 1

Sentence Date: 11/6/07

Court Reporter: Jollison
SCCA /217 (10/2007)

Sentence opened + read to Def.
05/20/09 the judge d.c. nicholson

DOCKET NO. 2006-GS-04-2922

The State of South Carolina,

County of ANDERSON

COURT OF GENERAL SESSIONS

SEP 19 2006

TERM

THE STATE

RAM

vs.

RAHIEM KIRKMAN

COMMITMENT

05/20/09-cmg

Indictment for

TRAFFICKING IN COCAINE
44-53-0370(e)(2)(e) [0281]

WITNESSES

ACSO, N. MCQUIRE

ARREST WARRANT NO. J-420904

ACTION OF GRAND JURY
TRUE BILL

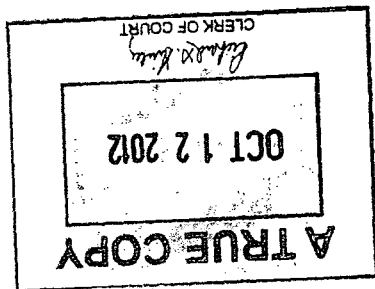
SEP 19 2006

Foreman of Grand Jury
Foreperson

VERDICT

Guilty

Foreman of Grand Jury
Date: 11-6-2007



FORM 32 (12/87)

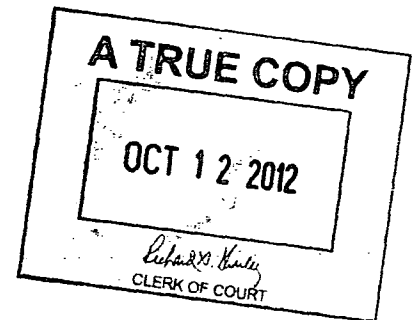
STATE OF SOUTH CAROLINA)
)
 COUNTY OF ANDERSON)

INDICTMENT FOR
 TRAFFICKING IN COCAINE
 44-53-0370(e)(2)(e) [0281]

At a Court of General Sessions, convened on SEP 19 2006,
 ANDERSON
 the Grand Jurors of _____ County present upon their oath:

TRAFFICKING IN COCAINE

That Rahiem Kirkman did in Anderson County, South Carolina, on or about August 22, 2006, knowingly and unlawfully have in his possession more than 400 grams of cocaine.



Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Ronell Campbell
 att. SOLICITOR

ARREST WARRANT

J-420901

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
ANDERSON

 THE STATE
against

KIRKMAN, RAHIEM

Address: BURLINGTON RD

GREENSBORO, NC 27405-0000

Phone: [REDACTED] SSN: [REDACTED]

Sex: M Race: B Height: 5 4 Weight: 230

DL State: 11/07 DL#: [REDACTED]

DOB: [REDACTED] Agency ORI#: 0400

Prosecuting Agency: SHERIFF DEPT.

Prosecuting Officer: MCGUIRE, BRAD

Offense: TRAFFICKING IN COCAINE

Code/Ordinance Sec. 44-53-370

Offense Code: 178

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

 The accused
is to be arrested and brought before me to be
dealt with according to law.

(L.S.)

Signature of Judge

Date:

RETURN

 A copy of this arrest warrant was delivered to
defendant KIRKMAN, RAHIEM
on

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

CASE NUMBER 2006-30253

**

 Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

 STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
ANDERSON

AFFIDAVIT

N.B. MCGUIRE/ACSO

Personally appeared before me the affiant

being duly sworn deposes and says that defendant KIRKMAN, RAHIEM

did within this county and state on or about 8/22/2006 violate the criminal laws of the

State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of)

in the following particulars:

DESCRIPTION OF OFFENSE: TRAFFICKING IN COCAINE

 I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

 THAT AS A RESULT OF A LAWFUL TRAFFIC STOP ON INTERSTATE 85 NORTH
BOUND NEAR THE 18 MILE MARKER. THE DEFENDANT WAS FOUND TO BE
IN POSSESSION OF APPROXIMATELY 22 POUNDS OF AN OFF WHITE
SUBSTANCE BELIEVED TO BE COCAINE, AS WELL AS APPROXIMATELY
\$20,000.00 DOLLARS IN US CURRENCY. THIS INCIDENT OCCURRED WITHIN
ANDERSON COUNTY.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
ANDERSON

Affiant's Address

Affiant's telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

 on 8/22/2006 defendant KIRKMAN, RAHIEM
did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☐ Municipality of

) as set forth below:

DESCRIPTION OF OFFENSE:

TRAFFICKING IN COCAINE

 Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be
delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 8/24/2006

Signature of Issuing Judge (L.S.)

 Judge Code: 733
☒ Magistrate ☐ Municipal ☐ Circuit

Judge's Address POB 8002, 107 S. MAIN ST.

ANDERSON SC 29622-0000

Judge's Telephone 260-4156

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL