

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Dillon County

Honorable Thomas A. Russo, Circuit Court Judge

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JOHNNY JONES,

S.C. SUPREME COURT

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-000849

APPENDIX

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ORIGINAL

STATE OF SOUTH CAROLINA]

IN THE COURT OF
GENERAL SESSIONS

COUNTY OF DILLON]

THE STATE OF SOUTH CAROLINA,]
PLAINTIFF,]

VS.]

TRANSCRIPT OF RECORD

ARTIE BURNS AND]
JOHNNY JONES,]
DEFENDANTS.]

OCTOBER 17, 18, 19, & 20, 2006
DILLON, SOUTH CAROLINA

BEFORE:

THE HONORABLE, JUDGE JOHN L. BREEDEN, JR., JUDGE

APPEARANCES:

MARY JOHNSON-LEE, ESQUIRE
ATTORNEY FOR THE PLAINTIFF

KINARD REDMOND, ESQUIRE
ATTORNEY FOR THE PLAINTIFF

DAVID WATSON, ESQUIRE
ATTORNEY FOR THE DEFENDANT, ARTIE BURNS

LOIS MCMILLAN, ESQUIER
ATTORNEY FOR THE DEFENDANT, JOHNNY JONES

PAMELA OZMENT-CARTEE,
COURT REPORTER

I-N-D-E-X

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1 THE COURT: ARE YOU READY TO CALL
2 YOUR CASE, SOLICITOR?

3 MR. REDMOND: THE STATE'S READY.
4 MRS. MARY JOHNSON-LEE WILL CALL THE CASE, YOUR HONOR.

5 MRS. JOHNSON-LEE: MAY IT PLEASE
6 THE COURT, YOUR HONOR, YOU HAVE BEFORE YOU DOCKET #
7 06-GS-17-0413, THE STATE VERSUS ARTIE TYRONE BURNS,
8 INDICTMENT FOR TRAFFICKING 100 GRAMS OR MORE OF
9 COCAINE. AND DOCKET #06-GS-17-441, STATE VERSUS JOHNNY
10 JONES, INDICTED FOR TRAFFICKING COCAINE, 100 OR MORE
11 GRAMS.

12 THE DEFENDANTS ARE PRESENT WITH THEIR
13 ATTORNEYS, MR. DAVID WATSON REPRESENTS MR. ARTIE BURNS
14 AND MRS. LOIS MCMILLAN REPRESENTS JOHNNY JONES. THE
15 STATE IS READY TO PROCEED.

16 THE COURT: LADIES AND GENTLEMEN
17 OF THE JURY PANEL, WE'RE ABOUT TO BEGIN THE CASES OF THE
18 STATE VERSUS THE TWO DEFENDANTS; MR. JONES AND MR.
19 BURNS. YOU WERE YESTERDAY QUALIFIED GENERALLY FOR
20 SERVICE AS A JUROR. WHAT WE INTEND TO DO NOW IS QUALIFY
21 YOU SPECIFICALLY FOR THIS CASE. AS I INDICATED TO YOU
22 YESTERDAY, WE WANT TO MAKE SURE YOU DON'T HAVE ANY
23 CONFLICTS OF INTEREST WITH ANY DEFENDANT, ANY PERSON,
24 ANY WITNESS, ANY ATTORNEY OR ANY ISSUE IN THIS CASE. SO
25 THAT'S THE REASON I'M ASKING THESE QUESTIONS, AND KEEP

1 THAT IN MIND AS YOU ANSWER THEM.

2 FIRST OF ALL, IS THERE ANY MEMBER OF THE JURY
3 PANEL RELATED BY BLOOD OR CONNECTED BY MARRIAGE, OR
4 HAVE ANY CLOSE SOCIAL RELATIONSHIP SUCH AS GO TO THE
5 SAME CHURCH, WORK FOR THE SAME EMPLOYER, IN THE SAME
6 CIVIC ORGANIZATION, ON THE SAME BASEBALL TEAM, OR
7 ANYTHING LIKE THAT, KIDS PLAY TOGETHER, OR ANYTHING OF
8 THAT NATURE? IS THERE SOME SOCIAL CLOSENESS THAT MIGHT
9 CONSTITUTE A CONFLICT OF INTEREST. IS THERE ANY MEMBER
10 OF THE JURY PANEL RELATED BY BLOOD OR CONNECTED BY
11 MARRIAGE WITH, FIRST OF ALL, ARTIE TYRONE BURNS? MR.
12 BURNS, WILL YOU STAND PLEASE AND TURN AROUND AND FACE
13 THE JURY PANEL? (DEFENDANT COMPLIES.)

14 THANK YOU, SIR, YOU MAY SIT DOWN. IF SO, PLEASE
15 STAND. (NO RESPONSE FROM JURY PANEL)

16 THE SAME QUESTIONS I ASKED, BUT WITH REGARD TO
17 JOHNNY JONES. MR. JONES, WILL YOU STAND UP AND TURN
18 AROUND AND FACE THE JURORS? (DEFENDANT COMPLIES.)

19 ANYBODY RELATED BY BLOOD, CONNECTED BY
20 MARRIAGE OR HAVE ANY CLOSE SOCIAL CONNECTION WITH MR.
21 JONES? (NO RESPONSE FROM THE JURY PANEL.)

22 APPARENTLY THERE ARE NONE. IS THERE ANY
23 MEMBER OF THE JURY PANEL WHO HAS EXPRESSED AN OPINION
24 OR FORMED AN OPINION ABOUT THE GUILT OR INNOCENCE OF
25 THESE DEFENDANTS? IF SO, PLEASE STAND.

1 (NO RESPONSE FROM THE JURY PANEL.)

2 THE COURT: APPARENTLY THERE ARE
3 NONE. IS THERE ANY MEMBER OF THE JURY PANEL CONSCIOUS
4 OR AWARE OF ANY BIAS OR PREJUDICE FOR OR AGAINST THE
5 STATE, OR FOR OR AGAINST THESE DEFENDANTS? IF SO,
6 PLEASE STAND AND TELL US.

7 (NO RESPONSE FROM THE JURY PANEL.)

8 THE COURT: APPARENTLY THERE ARE
9 NONE. IS THERE ANYONE THAT CANNOT GIVE BOTH THE STATE
10 OF SOUTH CAROLINA AND THE DEFENDANTS A FAIR AND
11 IMPARTIAL TRIAL? IF SO, PLEASE STAND.

12 (NO RESPONSE FROM THE JURY PANEL.)

13 THE COURT: APPARENTLY THERE ARE
14 NONE. THE DEFENDANTS, AS YOU HEARD, ARE REPRESENTED BY
15 MRS. MCMILLAN AND MR. WATSON. IS THERE ANY MEMBER OF
16 THE JURY PANEL THAT'S EVER BEEN REPRESENTED BY, SUED BY,
17 OR USED EITHER OF THESE ATTORNEYS IN ANY PROFESSIONAL
18 CAPACITY; FOR A REAL ESTATE CLOSING, OR A DIVORCE, OR
19 ANYTHING LIKE THAT, OR RELATED BY BLOOD OR CONNECTED
20 BY MARRIAGE, OR HAVE ANY CLOSE SOCIAL CONNECTION WITH
21 EITHER OF THESE ATTORNEYS REPRESENTING THE DEFENDANTS?
22 IF SO, PLEASE STAND.

23 A JUROR: YOUR HONOR, I AM A
24 MEMBER OF THE ROTARY CLUB THAT MR. WATSON'S IN.

25 THE COURT: IN WHAT CLUB?

1 THE JUROR: THE LATTA ROTARY CLUB.

2 THE COURT: WELL, WOULD THAT
3 FACT, MA'AM, KEEP YOU FROM BEING A FAIR AND IMPARTIAL
4 JUROR IN THIS CASE?

5 THE JUROR: NO, YOUR HONOR.

6 THE COURT: YOU COULD BE FAIR AND
7 IMPARTIAL NOT WITHSTANDING THAT YOU'RE BOTH IN THE
8 SAME ROTARY CLUB?

9 THE JUROR: YES, SIR.

10 THE COURT: AND YOUR NAME IS?

11 THE JUROR: JOHNNIE LUEHRS.

12 THE CLERK: NUMBER 81, YOUR HONOR.

13 THE COURT: I ASK THE SAME
14 QUESTION, THEN, WITH REGARD - TELL ME YOUR NAME AGAIN,
15 PLEASE, MA'AM.

16 MRS. JOHNSON-LEE: MARY JOHNSON
17 LEE.

18 THE COURT: JOHNSON-LEE, THAT'S
19 ONE OF THOSE HYPHENATED NAMES. I'M GOING TO CHANGE MY
20 NAME, I THINK. I'M FROM THE OLD SCHOOL, I DIDN'T KNOW
21 WHAT A HYPHEN WAS UNTIL ABOUT 20 YEARS AGO. I THOUGHT
22 IT WAS A DASH. ANYWAY, THIS IS MRS. JOHNSON-LEE, SHE IS
23 REPRESENTING THE STATE OF SOUTH CAROLINA. SHE AND MR.
24 REDMOND WILL BE PROSECUTING THIS CASE ON BEHALF OF THE
25 STATE. IS THERE ANY MEMBER OF THE JURY PANEL RELATED BY

1 BLOOD, CONNECTED BY MARRIAGE WITH EITHER OF THESE
2 ATTORNEYS, OR ANYONE IN THE SOLICITOR'S OFFICE, TO YOUR
3 KNOWLEDGE, OR GO TO THE SAME CHURCH, HAVE ANY CLOSE
4 SOCIAL RELATIONSHIPS, OR EVER BEEN SUED BY OR
5 REPRESENTED BY EITHER OF THESE ATTORNEYS, OR USED THEM
6 IN ANY KIND OF PROFESSIONAL FASHION? YES, MA'AM?

7 THE JUROR: HE REPRESENTED ME
8 WHEN I WAS WORKING.

9 THE COURT: MR. REDMOND
10 REPRESENTED YOU?

11 THE JUROR: YES.

12 THE COURT: HOW LONG AGO WAS
13 THAT?

14 MR. REDMOND: IT WAS WITHIN ABOUT
15 THE LAST, OVER THE LAST SEVEN YEARS UP UNTIL ABOUT TWO
16 OR THREE YEARS AGO.

17 THE COURT: AND YOUR NAME IS
18 WHAT, MA'AM?

19 THE JUROR: ANN ENGLISH.

20 THE CLERK: SHE IS NUMBER 39.

21 THE COURT: COULD YOU STILL BE A
22 FAIR AND IMPARTIAL JUROR, MA'AM, NOTWITHSTANDING THE
23 FACT THAT HE USED TO REPRESENT YOU IN THE MATTER?

24 THE JUROR: YES.

25 THE COURT: VERY WELL, YOU MAY BE

1 SEATED. ANYONE ELSE? YES, SIR?

2 THE JUROR: YEAH, I WAS INVOLVED IN
3 A CASE WITH HIM LAST WEEK.

4 THE COURT: MR. REDMOND?

5 MR. REDMOND: YES, SIR.

6 THE COURT: HOW WERE YOU
7 INVOLVED IN A CASE WITH HIM?

8 MR. REDMOND: I ALSO PROSECUTE
9 JUVENILE COURT, HE MUST HAVE BEEN THERE WITH SOMEONE IN
10 JUVENILE COURT, YOUR HONOR.

11 THE COURT: WERE YOU A WITNESS, A
12 PARENT, OR WHAT WERE YOU?

13 THE JUROR: I WAS A PARENT.

14 THE COURT: YOU WERE A PARENT OF
15 ONE OF THE CHILDREN THAT WAS PROSECUTED?

16 THE JUROR: YES, SIR.

17 THE COURT: I'M GOING TO EXCUSE YOU
18 FOR CAUSE IN THIS MATTER. YOUR NAME IS?

19 THE JUROR: EARL HUNT.

20 THE CLERK: HE IS NUMBER 63.

21 THE COURT: ANYONE ELSE?

22 (NO RESPONSE FROM THE JURY PANEL)

23 THE COURT: IS THERE ANY MEMBER OF
24 THE JURY PANEL THAT'S A MEMBER OF ANY ORGANIZATION
25 SUCH AS MOTHER'S AGAINST DRUNK DRIVING, OR CASA, OR PAR,

1 THAT'S PEOPLE AGAINST RAPE, OR CAVE,* CITIZENS AGAINST
2 VIOLENT, OR ANY GROUP SUCH AS THAT THAT ENCOURAGES
3 STRICT ENFORCEMENT OF THE CRIMINAL LAWS? IF SO, PLEASE
4 STAND. (NO RESPONSE FROM JURY PANEL.)

5 THE COURT: APPARENTLY THERE ARE
6 NONE. IS ANY MEMBER OF THE JURY PANEL A PERSON WHO
7 BELIEVES THAT THE CRIMINAL LAWS OF THIS STATE AND OF
8 THE UNITED STATES ARE TOO LENIENT? IF SO, PLEASE STAND
9 AND EXPLAIN THAT. (NO RESPONSE FROM JURY PANEL.)

10 THE COURT: APPARENTLY THERE ARE
11 NONE. IS ANY MEMBER OF THE JURY PANEL A MEMBER OF
12 ALCOHOLIC'S ANONYMOUS OR ALANON, OR COCAINE
13 ANONYMOUS, OR ANY OTHER SUPPORT GROUP THAT HELPS
14 PEOPLE WITH DRUG AND ALCOHOL DEPENDENCY? IF SO,
15 PLEASE STAND. OR YOU CAN SEE ME LATER DOWN FRONT IF
16 YOU DON'T WANT TO STAND UP AND TELL ME THAT. AND YOU
17 WILL SEE ME LATER DOWN FRONT. I TOLD YOU THE PROBLEM I
18 HAD IN RICHLAND COUNTY. SO IF YOU DON'T WANT TO ANSWER
19 OUT THERE, YOU CAN COME DOWN LATER AND TELL ME YOUR
20 ANSWER TO THAT QUESTION. (NO RESPONSE FROM JURY
21 PANEL.)

22 THE COURT: SO FAR THERE APPEAR TO
23 BE NONE. IS THERE ANY MEMBER OF THE JURY PANEL EMPLOYED
24 OR RELATED BY BLOOD OR MARRIAGE, OR FRIENDS OR
25 ACQUAINTANCE OF ANYONE EMPLOYED BY THE SOLICITOR'S

1 OFFICE OR ANY PROSECUTING ATTORNEY'S OFFICE? IF SO,
2 PLEASE STAND. (NO RESPONSE FROM JURY PANEL.)

3 THE COURT: THERE APPEARS TO BE
4 NONE. IS NUMBER SIX APPROPRIATE FOR THIS CASE?

5 MR. REDMOND: I DON'T HAVE A COPY
6 IN FRONT OF ME. I'LL LOOK AT IT, YOUR HONOR, I'LL
7 WITHDRAW SIX AND SEVEN.

8 THE COURT: IS THERE ANY MEMBER OF
9 THE JURY PANEL RELATED BY BLOOD OR MARRIAGE, OR A
10 FRIEND OR CLOSE ACQUAINTANCE OF ANY MEMBER OF LAW
11 ENFORCEMENT, OR ANY LAW ENFORCEMENT AGENCY,
12 PARTICULARLY THE DILLON COUNTY SHERIFF'S DEPARTMENT?
13 IF SO, PLEASE STAND. YOUR NAME MA'AM?

14 THE JUROR: CHRISTA BUCY.

15 THE CLERK: NUMBER 20, YOUR HONOR.

16 THE JUROR: I AM MARRIED TO ROBERT
17 BUCY OF THE SHERIFF'S DEPARTMENT.

18 THE COURT: HE'S A DEPUTY?

19 THE JUROR: YES, SIR.

20 THE COURT: DID THEY MAKE THE
21 CASE IN THIS?

22 MR. REDMOND: THEY DID, AND HE HAS
23 BEEN SUPPLIED AS A WITNESS TO THE DEFENSE.

24 THE COURT: WE WILL EXCUSE YOU FOR
25 CAUSE, MA'AM.

1 THE COURT: IS THERE ANY MEMBER OF
2 THE JURY PANEL--- I'M SORRY, YOUR NAME, SIR?

3 THE JUROR: TIMOTHY MANNING. I'M
4 (INAUDIBLE) SMITH'S BROTHER.

5 THE COURT: IS HE A DEPUTY?

6 THE JUROR: YES, SIR.

7 THE COURT: YOUR BROTHER IS A
8 DEPUTY?

9 MR. REDMOND: SHE. SHE'S WITH THE
10 DILLON COUNTY SHERIFF'S DEPARTMENT, AS WELL, YOUR
11 HONOR.

12 THE CLERK: HE'S NUMBER 85, YOUR
13 HONOR.

14 THE COURT: WE WILL EXCUSE THIS
15 GENTLEMEN FOR CAUSE AS WELL, THANK YOU, YOU MAY BE
16 SEATED. IS THERE ANYONE ON THE JURY PANEL WHO HAS
17 HEARD ANYTHING ABOUT THIS CASE DISCUSSED, OR SOMEONE
18 ELSE DISCUSS THIS BEFORE TODAY? IF SO, PLEASE STAND.

19 (NO RESPONSE FROM THE JURY PANEL.)

20 THE COURT: THERE APPEARS TO BE
21 NONE. IS THERE ANYONE ON THE JURY PANEL WHO WOULD
22 BELIEVE A POLICE OFFICER'S TESTIMONY OVER THAT OF A
23 DEFENDANT SIMPLY BECAUSE HE OR SHE IS A POLICE OFFICER?

24 (NO RESPONSE FROM THE JURY PANEL.)

25 THE COURT: THERE APPEAR TO BE

1 NONE. IS THERE ANYONE ON THE JURY PANEL WHO BELIEVES
2 THAT SOMEONE IS PROBABLY GUILTY BECAUSE THEY'VE BEEN
3 CHARGED WITH A CRIME? IF SO, PLEASE STAND.

4 (NO RESPONSE FROM THE JURY PANEL.)

5 THE COURT: THERE APPEAR TO BE
6 NONE. I DON'T THINK 13 IS -- I THINK THAT'S---

7 MR. REDMOND: I WILL CONCEDE TO
8 THE COURT'S DIRECTION IN THAT.

9 THE COURT: ANY OTHER QUESTIONS
10 FROM THE STATE OR DEFENDANT?

11 MR. WATSON: YOUR HONOR, I DON'T
12 RECALL -- THERE WAS ONE THAT I SUBMITTED CONCERNING
13 JURORS AND MEMBERS OF THEIR FAMILIES, IF THEY'D EVER BEEN
14 CHARGED WITH A DRUG OFFENSE.

15 THE COURT: HAS ANY MEMBER OF THE
16 JURY PANEL, OR ANYONE IN YOUR IMMEDIATE FAMILY EVER BEEN
17 CHARGED WITH A DRUG OFFENSE? BEFORE YOU ANSWER THAT,
18 YOU DON'T HAVE TO ANSWER IT OUT THERE, I'LL GIVE YOU AN
19 OPPORTUNITY ALONG WITH ANY OF THE OTHER QUESTIONS
20 THAT I'VE ASKED TO COME DOWN TO THE BENCH HERE AND
21 ASK US QUESTIONS IF YOU LIKE. THE QUESTION IS HAVE YOU OR
22 ANY MEMBER OF YOUR IMMEDIATE FAMILY EVER BEEN CHARGED
23 WITH A DRUG OFFENSE? AND ANY OF THE PRECEDING
24 QUESTIONS, IF YOU DIDN'T WANT TO ANSWER THEM PUBLICLY,
25 YOU CAN COME DOWN THERE AND ANSWER THEM LATER.

1 YES, MA'AM, YOUR NAME?
2 THE JUROR: SHERRY DILLARD.
3 THE COURT: YES, MA'AM?
4 THE JUROR: MY FATHER WAS CHARGED
5 WITH A DRUG CHARGE.
6 THE COURT: WOULD THAT FACT
7 PREVENT YOU FROM BEING A FAIR AND IMPARTIAL JUROR?
8 THE JUROR: NO, SIR.
9 THE COURT: YOU COULD STILL BE FAIR
10 AND IMPARTIAL?
11 THE JUROR: YES, SIR.
12 THE COURT: THANK YOU, YOU MAY BE
13 SEATED.
14 THE CLERK: THAT'S JUROR NUMBER
15 36, YOUR HONOR.
16 THE COURT: ARE THERE ANY FURTHER
17 QUESTIONS?
18 MR. REDMOND: NONE FROM THE
19 STATE, YOUR HONOR.
20 THE COURT: I'LL GIVE ANYBODY THE
21 OPPORTUNITY TO COME DOWN TO THE BENCH NOW AND
22 ANSWER ANY OF THE PRECEDING QUESTIONS, IF THEY WISH TO
23 DO SO.
24 (A JUROR APPROACHES THE BENCH.)
25 THE COURT: IS THERE ANYONE ELSE?

1 (OFF-THE-RECORD BENCH COUNSEL)

2 THE COURT: MS. LINDA MOODY, WOULD
3 YOU COME DOWN, PLEASE, MA'AM?

4 (OFF-THE-RECORD BENCH COUNSEL.)

5 THE COURT: ANY ADDITIONAL
6 REQUESTS BY THE STATE OR THE DEFENSE?

7 MR. REDMOND: NONE FROM THE
8 STATE, YOUR HONOR.

9 MR. WATSON: I HAVE TALKED WITH
10 BOTH DEFENDANTS AND CO-COUNSEL, THERE ARE NO OTHER
11 REQUESTS.

12 THE COURT: BEFORE WE DO THIS, LET
13 ME TELL YOU WHAT WE'RE DOING; THE CLERK IS GOING TO CALL
14 YOUR NAME AND WHEN SHE DOES, IF YOU WILL, COME RIGHT
15 AROUND HERE IN FRONT OF THE BENCH AND FACE THE BACK OF
16 THE COURTROOM - OR THE FRONT, I DON'T KNOW WHETHER
17 THAT'S THE FRONT OR THE BACK. FACE THE CROWD OUT
18 THERE. AND THEN THEY'RE KIND OF LIKE THE BAPTIST CHURCH,
19 THEY'LL VOTE ON YOU. I'M A METHODIST, I'VE VISITED THE
20 BAPTIST CHURCH SEVERAL TIMES AND EVERY TIME THEY IF WE
21 HAVE A VISITOR, RAISE THEIR HANDS, AND I THOUGHT I WAS IN
22 AN ELECTION OR SOMETHING. AND THAT'S ABOUT LIKE WHAT'S
23 GOING TO HAPPEN HERE. WHEN YOU TURN AROUND AND FACE
24 THE SIDE OF THE COURTROOM THE STATE WILL SAY EITHER
25 "PRESENT THE JUROR," OR EXCUSE THE JUROR" ON THIS

1 PARTICULAR CASE. IF HE SAYS TO PRESENT THE JUROR, THEN
2 THE DEFENSE SAYS TO EITHER SEAT THE JUROR OR EXCUSE THE
3 JUROR IN THIS PARTICULAR CASE. AND IT'S KIND OF LIKE
4 THEY'RE PASSING JUDGMENT ON YOU. IT MAY BE A LITTLE
5 EMBARRASSING FOR YOU, BUT DON'T LET IT BE. IF THEY
6 EXCLUDE YOU OR ACCEPT YOU AS A JUROR, IT HAS NO MEANING
7 WHATSOEVER AS FAR AS WHETHER YOU'RE A GOOD PERSON OR
8 A BAD PERSON. IT'S NOT BECAUSE THEY DON'T THINK YOU'RE
9 FAIR.

10 IT'S SIMPLY BECAUSE YOU DON'T MEET THEIR IDEA OR
11 THEIR CRITERIA FOR WHAT A GOOD JUROR WILL BE. OBVIOUSLY
12 THE DEFENSE WANTS PEOPLE THAT WILL AGREE WITH THEIR
13 VERSION OF THE FACTS OF THE CASE. THE STATE WANTS TO
14 PUT PEOPLE ON THE JURY THAT AGREE WITH THEIR VERSION OF
15 THE FACTS OF THE CASE, AND THEY HAVE SOME IDEA OF A
16 PROFILE AND TYPE JUROR THEY'RE LOOKING FOR. AND IF THEY
17 EXCLUDE YOU, IT SIMPLY MEANS THAT YOU DON'T MEET THE
18 PROFILE OF THE TYPE OF JUROR THEY'RE LOOKING FOR. AND WE
19 DON'T KNOW WHAT THE PROFILE IS. THEY CAN EXCLUDE YOU
20 FOR VIRTUALLY ANY REASON. SO DON'T FEEL BAD ABOUT IT,
21 IT'S NOT MEANT TO BE ANYTHING DEROGATORY ABOUT YOU.
22 HAVING SAID THAT, PLEASE GIVE US A JURY.

23 MR. WATSON: FOR THE DEFENSE, YOUR
24 HONOR, I'VE SPOKEN WITH THE DEFENDANTS AND CO-COUNSEL,
25 SHE ASKS AND THEY ASK THAT I ANNOUNCE OUR DECISION AS

1 TO WHETHER OR NOT TO EXCUSE OR SEAT A JUROR.

2 THE CLERK; NUMBER 16, LATASAH
3 BILDON. WHAT SAYETH THE STATE?

4 MRS. JOHNSON-LEE: PLEASE PRESENT
5 THE JUROR.

6 THE CLERK: DEFENDANT?

7 MR. WATSON: FOR THE PURPOSES OF
8 THIS RECORD, ARTIE BURNS EXERCISES HIS STRIKE ON THIS
9 JUROR.

10 THE COURT: THAT MEANS YOU'RE
11 STRIKING THIS JUROR?

12 MR. WATSON: YES, YOUR HONOR.

13 THE CLERK: THANK YOU, MR. WATSON.
14 YOU'RE EXCUSED, MA'AM. NUMBER 130, SCOTT R. SPIVEY.
15 WHAT SAYETH THE STATE?

16 MRS. JOHNSON-LEE: PLEASE PRESENT
17 THE JUROR.

18 THE CLERK: DEFENDANT?

19 MR. WATSON: I AM TOLD BY MRS.
20 MCMILLAN THAT JIMMY JONES WISHES TO EXERCISE HIS STRIKE.

21 THE CLERK: YOU'RE EXCUSED, SIR.
22 NUMBER 84, KATIE MANNING. WHAT SAYETH THE STATE?

23 MRS. JOHNSON-LEE: PLEASE PRESENT
24 THE JUROR.

25 THE CLERK: DEFENDANT?

1 MR. WATSON: SWEAR THE MADAME
2 JUROR.
3 THE CLERK: HAVE A SEAT IN THE JURY
4 BOX, PLEASE, MA'AM, TO MY RIGHT. NUMBER 125, CHARLES L.
5 SIMPSON. WHAT SAYETH THE STATE?
6 MRS. JOHNSON-LEE: PLEASE EXCUSE
7 THE JUROR FROM THIS CASE.
8 THE CLERK: YOU'RE EXCUSED, SIR.
9 NUMBER 73, BONNIE H. LANE. WHAT SAYETH THE STATE?
10 MRS. JOHNSON-LEE: PLEASE PRESENT
11 THE JUROR.
12 THE CLERK: DEFENDANTS?
13 MR. WATSON: THE DEFENSE WOULD
14 EXCUSE THE MADAME JUROR.
15 THE CLERK: YOU'RE EXCUSED, MA'AM.
16 NUMBER 8, JOYCE BASKIN. WHAT SAYETH THE STATE?
17 MRS. JOHNSON-LEE: PLEASE PRESENT
18 THE JUROR.
19 THE CLERK: DEFENDANTS?
20 MR. WATSON: DEFENSE WOULD
21 EXCUSE THE MADAME JUROR.
22 THE CLERK: YOU'RE EXCUSED, MA'AM.
23 NUMBER 128, CAROL SNEAD. WHAT SAYETH THE STATE?
24 MRS. JOHNSON-LEE: PLEASE PRESENT
25 THE JUROR.

1 THE CLERK: DEFENDANTS?
2 MR. WATSON: SWEAR THE MADAME
3 JUROR.
4 THE CLERK: HAVE A SEAT IN THE JURY
5 BOX, PLEASE, MA'AM. NUMBER 81; JOHNNIE P. LUEHRS. WHAT
6 SAYETH THE STATE?
7 MRS. JOHNSON-LEE: PLEASE PRESENT
8 THE JUROR.
9 THE CLERK: DEFENDANT?
10 MR. WATSON: DEFENSE WOULD
11 EXCUSE THE MADAME JUROR.
12 THE CLERK: YOU'RE EXCUSED, MA'AM.
13 NUMBER 27, DEBORAH CHESTNUT. WHAT SAYETH THE STATE?
14 MRS. JOHNSON-LEE: PLEASE PRESENT
15 THE JUROR.
16 THE CLERK: DEFENDANTS?
17 MR. WATSON: INDULGENCE A MOMENT,
18 MADAME CLERK. WE EXCUSE THE MADAME JUROR FOR THE
19 PURPOSES OF THIS TRIAL.
20 THE CLERK: YOU'RE EXCUSED, MA'AM.
21 NUMBER 19, DONALD M. BROWN.
22 MR. WATSON: MADAME CLERK, WHEN
23 THE JUROR PRESENTED HIMSELF FOR QUESTIONING HE SAID HE
24 WAS EMPLOYED. I WAS UNABLE TO HEAR WHERE HE WAS
25 EMPLOYED. I WONDER IF I COULD ASK THE COURT TO INQUIRE

1 OF HIM.
2 THE COURT: ARE YOU EMPLOYED, SIR?
3 THE JUROR: (INAUDIBLE)
4 THE CLERK: WHAT SAYETH THE
5 STATE?
6 MRS. JOHNSON-LEE: PLEASE PRESENT
7 THE JUROR.
8 THE CLERK: DEFENDANTS?
9 MR. WATSON: SWEAR THE JUROR.
10 THE CLERK: HAVE A SEAT IN THE JURY
11 BOX, PLEASE, SIR. NUMBER 3; GEORGETTE ALFORD. WHAT
12 SAYETH THE STATE?
13 MRS. JOHNSON-LEE: PLEASE PRESENT
14 THE JUROR.
15 THE CLERK: DEFENDANTS?
16 MR. WATSON: WE WOULD EXCUSE THE
17 MADAME JUROR.
18 THE CLERK: YOU'RE EXCUSED, MA'AM.
19 NUMBER 51, LARRY HARGROVE. WHAT SAYETH THE STATE?
20 MRS. JOHNSON-LEE: PLEASE PRESENT
21 THE JUROR.
22 THE CLERK: DEFENDANT?
23 MR. WATSON: DEFENSE WOULD
24 EXCUSE THE JUROR.
25 THE CLERK: YOU'RE EXCUSED, SIR.

1 NUMBER 43, STEPHEN FOWLER. WHAT SAYETH THE STATE?
2 MRS. JOHNSON-LEE: PLEASE PRESENT
3 THE JUROR.
4 THE CLERK: DEFENDANT?
5 MR. WATSON: MADAME CLERK, SWEAR
6 THE JUROR.
7 THE CLERK: HAVE A SEAT IN THE JURY
8 BOX, PLEASE, SIR. NUMBER 61, WILLIAM L. HUGGINS, JR., WHAT
9 SAYETH THE STATE?
10 MRS. JOHNSON-LEE: PLEASE PRESENT
11 THE JUROR.
12 THE CLERK: DEFENDANT?
13 MR. WATSON: SWEAR THE JUROR.
14 THE CLERK: HAVE A SEAT IN THE JURY
15 BOX, PLEASE SIR. NUMBER 47, SHAWN GOINGS. WHAT SAYETH
16 THE STATE?
17 MRS. JOHNSON-LEE: PLEASE PRESENT
18 THE JUROR.
19 THE CLERK: DEFENDANT?
20 MR. WATSON: DEFENSE WOULD
21 EXCUSE THE JUROR.
22 THE CLERK: YOU'RE EXCUSED, SIR.
23 NUMBER 117, TIMOTHY ROUSE. WHAT SAYETH THE STATE?
24 MRS. JOHNSON-LEE: PLEASE PRESENT
25 THE JUROR.

1 THE CLERK: DEFENDANT?

2 MR. WATSON: MADAME CLERK,

3 DEFENSE WOULD EXCUSE THE JUROR.

4 THE CLERK: YOU'RE EXCUSED, SIR.

5 THE COURT: LET ME SEE THE

6 ATTORNEYS AT THE BENCH JUST A MOMENT, PLEASE.

7 (OFF-THE-RECORD COUNSEL AT THE BENCH.)

8 THE COURT: LADIES AND GENTLEMEN, I

9 INADVERTENTLY FORGOT TO ASK YOU ABOUT ANY

10 RELATIONSHIP YOU MAY HAVE WITH ANY OF THE WITNESSES IN

11 THIS CASE, ANY PROPOSED WITNESSES, OR ANY PERSONS THAT

12 MAY BE A WITNESS. THEY DON'T HAVE TO BE A WITNESS IN

13 THE CASE, IF THEY'RE NOT CALLED AS A WITNESS THAT

14 SHOULDN'T RAISE ANY INFERENCE; YOU SHOULDN'T SAY,

15 "EWWW, HE WASN'T CALLED AS A WITNESS, WE WERE ASKED IF

16 WE WERE KIN TO THEM OR HE WAS SUPPOSED TO BE A

17 WITNESS." THESE ARE JUST POTENTIAL WITNESSES, PEOPLE

18 THAT MAY BE CALLED AS A WITNESS.

19 AND I NEED TO KNOW, INCLUDING THE PEOPLE ON

20 THE JURY, EVERYBODY THAT'S A JUROR, IF YOU'RE RELATED BY

21 BLOOD OR CONNECTED BY MARRIAGE, OR HAVE ANY CLOSE

22 SOCIAL RELATIONSHIP WITH ANY OF THE FOLLOWING PERSONS.

23 I'M GOING TO READ OUT ALL THE NAMES, AND THEN THAT WILL

24 BE THE QUESTION TO APPLY TO THEM. SERGEANT DAVID LANE

25 OF THE DILLON POLICE DEPARTMENT? SERGEANT CARRIE

1 POWERS OF THE DILLON POLICE DEPARTMENT? SERGEANT
2 JAMIE HAMILTON OF THE DILLON POLICE DEPARTMENT?
3 CORPORAL ROBBIE BUCY OF THE DILLON COUNTY SHERIFF'S
4 OFFICE? ALICE **** STANLEY OF THE SOUTH CAROLINE LAW
5 ENFORCEMENT DIVISION? CORPORAL JAMES HAYES OF THE
6 DILLON POLICE DEPARTMENT? AND SERGEANT JASON TURNER
7 OF THE DILLON POLICE DEPARTMENT?

8 ANY MEMBER OF THE JURY PANEL AT ALL RELATED
9 BY BLOOD, CONNECTED BY MARRIAGE OR HAVE ANY CLOSE
10 SOCIAL RELATIONSHIP WITH ANY OF THESE POSSIBLE
11 WITNESSES? IF SO, RAISE YOUR HAND.

12 (NO RESPONSE FROM THE JURY PANEL.)

13 THE COURT: THERE ARE NONE. GOOD.
14 YOU MAY CONTINUE.

15 THE CLERK: NUMBER 48, ANN GRAVES.
16 WHAT SAYETH THE STATE?

17 MRS. JOHNSON-LEE: PLEASE EXCUSE
18 THE JUROR FOR THIS CASE.

19 THE CLERK: YOU'RE EXCUSED, MA'AM.
20 NUMBER 30, LINDA COOPER. WHAT SAYETH THE STATE?

21 MRS. JOHNSON-LEE: PLEASE EXCUSE
22 THE JUROR FOR THIS CASE.

23 THE CLERK: YOU'RE EXCUSED, MA'AM.
24 NUMBER 34, JENNIFER DESHANE. WHAT SAYETH THE STATE?

25 MRS. JOHNSON-LEE: PLEASE PRESENT

1 THE JUROR.

2 THE CLERK: DEFENDANT?

3 MR. WATSON: MADAME CLERK, SWEAR

4 THE MADAME JUROR.

5 THE CLERK: HAVE A SEAT IN THE JURY

6 BOX, PLEASE, MA'AM.

7 THE COURT: IS THAT A TRAIN? DO YOU

8 HAVE SOMETHING TO SAY?

9 THE JUROR: YES, SIR, MAY I BE

10 EXCUSED FROM THE CASE?

11 THE COURT: IF YOU'RE SAYING

12 SOMETHING, I CAN'T HEAR YOU. APPROACH THE BENCH, PLEASE

13 COME ON DOWN HERE.

14 MR. REDMOND: YOUR HONOR, MAY I

15 APPROACH WITH HIM?

16 THE COURT: YOU MAY IF YOU LIKE, AS

17 THE DEFENSE MAY AS WELL.

18 (OFF-THE-RECORD BENCH CONFERENCE.)

19 THE COURT: THE PERSON WAS A

20 DEFENDANT - NOT IN THIS CASE -- BUT THE STATE HAS NO

21 OBJECTION TO RELEASING HIM TODAY TO TAKE CARE OF SOME

22 BUSINESS.

23 THE CLERK: NUMBER 80, MELISSA LOPES.

24 WHAT SAYETH THE STATE?

25 MRS. JOHNSON-LEE: PLEASE EXCUSE

1 THE JUROR FOR THIS CASE.
2 THE CLERK: YOU'RE EXCUSED, MA'AM.
3 NUMBER, MICHAEL SATTANE, WHAT SAYETH THE STATE?
4 MRS. JOHNSON-LEE: PLEASE PRESENT
5 THE JUROR.
6 THE CLERK: DEFENDANT?
7 MR. WATSON: DEFENSE WOULD
8 EXCUSE THE JUROR.
9 THE CLERK: YOU'RE EXCUSED, SIR.
10 NUMBER 21, VIRGINIA VALESQUEZ.* WHAT SAYETH THE STATE?
11 MRS. JOHNSON-LEE: PLEASE PRESENT
12 THE JUROR.
13 THE CLERK: DEFENDANT?
14 MR. WATSON: SWEAR THE MADAME
15 JUROR.
16 THE CLERK: THAT'S NUMBER 21.
17 NUMBER 135, ANNIE VANDERHALL. WHAT SAYETH THE STATE?
18 MRS. JOHNSON-LEE: PLEASE PRESENT
19 THE JUROR.
20 THE CLERK: DEFENDANT?
21 MR. WATSON: WE WOULD EXCUSE THE
22 MADAME JUROR FOR THE PURPOSES OF THIS TRIAL.
23 THE CLERK: YOU'RE EXCUSED, MA'AM.
24 NUMBER 69, GALE JACOBS. WHAT SAYETH THE STATE?
25 MRS. JOHNSON-LEE: PLEASE PRESENT

1 THE JUROR.
2 THE CLERK: DEFENDANT?
3 PLEASE PRESENT THE JUROR.
4 MR. REDMOND; MADAME CLERK,
5 SWEAR THE MADAME JUROR.
6 THE CLERK HAVE A SEAT IN THE
7 WITNESS BOX, PLEASE.
8 MR. REDMOND: WHAT NUMBER WAS
9 THAT, MADAME CLERK?
10 THE CLERK: NUMBER 69. NUMBER
11 107, JEFFREY PAGE, JR. WHAT SAYETH THE STATE?
12 MRS. JOHNSON-LEE: PLEASE PRESENT
13 THE JUROR.
14 THE CLERK: DEFENDANT?
15 MR. WATSON: EXCUSE THE JUROR.
16 THE CLERK: YOU'RE EXCUSED, SIR.
17 NUMBER 88, FELICIA MCCALL. WHAT SAYETH THE STATE?
18 MRS. JOHNSON-LEE: PLEASE EXCUSE
19 THE JUROR.
20 THE CLERK: YOU'RE EXCUSED, MA'AM.
21 THE COURT: WHAT NUMBER WAS
22 THAT?
23 THE CLERK: THAT WAS NUMBER 88,
24 YOUR HONOR. NUMBER 71, TAMMY KELLY. WHAT SAYETH THE
25 STATE?

1 MRS. JOHNSON-LEE: PLEASE PRESENT
2 THE JUROR.
3 THE CLERK: DEFENDANTS?
4 MR. WATSON: DEFENSE WOULD
5 EXCUSE THE MADAME JUROR.
6 THE CLERK: YOU'RE EXCUSED, MA'AM.
7 NUMBER 143, KATHY WILLIAMS. WHAT SAYETH THE STATE?
8 MRS. JOHNSON-LEE: PLEASE PRESENT
9 THE JUROR.
10 THE CLERK: DEFENDANT?
11 MR. WATSON: SWEAR THE MADAME
12 JUROR.
13 THE CLERK: HAVE A SEAT IN THE JURY
14 BOX, PLEASE, MA'AM. NUMBER 23, STONEY CARMICHAEL.
15 WHAT SAYETH THE STATE?
16 MRS. JOHNSON-LEE: PLEASE EXCUSE
17 THE JUROR FOR THIS CASE.
18 THE CLERK: YOU'RE EXCUSED, SIR.
19 NUMBER 49, LARRY GRIMSLEY. WHAT SAYETH THE STATE?
20 MRS. JOHNSON-LEE: PLEASE PRESENT
21 THE JUROR.
22 THE CLERK: DEFENDANTS?
23 MR. WATSON: EXCUSE THE POTENTIAL
24 JUROR.
25 THE CLERK: YOU'RE EXCUSED, SIR.

1 NUMBER 144, MARILYN WILLIAMS. WHAT SAYETH THE STATE?
2 MRS. JOHNSON-LEE: PLEASE PRESENT
3 THE JUROR.
4 THE CLERK: DEFENDANTS?
5 MR. WATSON: SWEAR THE MADAME
6 JUROR.
7 THE CLERK: HAVE A SEAT IN THE JURY
8 BOX, PLEASE, MA'AM. NUMBER 24, RICHARD CARNES. WHAT
9 SAYETH THE STATE?
10 MRS. JOHNSON-LEE: PLEASE PRESENT
11 THE JUROR.
12 THE CLERK: DEFENDANT?
13 MR. WATSON: EXCUSE THE POTENTIAL
14 JUROR.
15 THE CLERK: YOU'RE EXCUSED, SIR.
16 JUROR NUMBER 58, MOSES HEYWARD. WHAT SAYETH THE
17 STATE?
18 MRS. JOHNSON-LEE: PLEASE PRESENT
19 THE JUROR.
20 THE CLERK: DEFENDANTS?
21 MR. WATSON: STRIKE THE JUROR.
22 THE CLERK: YOU'RE EXCUSED, SIR.
23 NUMBER 32, FLEMMON DAVIS.
24 MRS. JOHNSON-LEE: I THOUGHT---
25 THE CLERK: HE WAS EXCUSED BY THE

1 COURT YESTERDAY, YOUR HONOR. NUMBER 33, PRESTON DAVIS.
2 WHAT SAYETH THE STATE?
3 MRS. JOHNSON-LEE: PLEASE PRESENT
4 THE JUROR.
5 THE CLERK: DEFENDANTS?
6 THE COURT: MAY I SEE THE
7 ATTORNEYS, PLEASE?
8 (OFF-THE-RECORD BENCH CONFERENCE.)
9 THE CLERK: WHAT SAYETH THE
10 STATE?
11 MRS. JOHNSON-LEE: PRESENT THE
12 JUROR.
13 THE CLERK: DEFENDANTS?
14 MR. WATSON: EXCUSE THE JUROR.
15 THE CLERK: YOU'RE EXCUSED, SIR.
16 MR. WATSON: YOUR HONOR, MAY WE
17 HAVE A MOMENT?
18 THE COURT: YES.
19 MR. WATSON: MAY WE APPROACH,
20 YOUR HONOR?
21 THE COURT: YOU MAY.
22 (OFF-THE-RECORD BENCH CONFERENCE.)
23 THE CLERK: NUMBER 33, PRESTON
24 DAVIS.
25 THE COURT: THAT'S THE ONE WE JUST

1 CALLED.

2 THE CLERK: THEY EXCUSED HIM,
3 SORRY, JUDGE. OKAY, THAT WAS THE LAST ONE, YOUR HONOR.

4 THE COURT: ALL RIGHT, GENTLEMEN,
5 DO YOU NEED A MOMENT, NOW?

6 MR. WATSON: ARE WE COMPLETED?

7 THE CLERK: THAT'S COMPLETE.

8 MR. REDMOND: YOUR HONOR, I
9 WONDER IF THIS WOULD BE AN APPROPRIATE TIME FOR JUST A
10 VERY BRIEF RECESS?

11 THE COURT: LADIES AND GENTLEMEN
12 OF THE JURY, IF YOU WILL - THIS JURY RIGHT HERE - STEP BACK
13 TO YOUR JURY ROOM JUST A MOMENT. DO NOT DISCUSS THIS
14 CASE. WHILE YOU'RE BACK THERE YOU CAN TALK ABOUT HOW
15 THE ARIZONA CARDINALS COLLAPSED, OR HOW IT IS RAINING,
16 OR ANYTHING ELSE, BUT PLEASE DO NOT TALK ABOUT THIS
17 CASE. WE WILL CALL YOU OUT SHORTLY.

18 (THE JURY LEAVES THE COURTROOM AT THIS TIME)

19 THE COURT: FOR THE RECORD, I'M
20 TOLD THAT BOTH SIDES, BOTH THE STATE AND THE
21 DEFENDANT HAVE AGREED TO GO FORWARD WITH THE 10
22 JURORS THAT HAVE BEEN SELECTED; IS THAT CORRECT?

23 MR. WATSON: THAT'S CORRECT.

24 MRS. JOHNSON-LEE: THAT IS CORRECT.

25 THE COURT: MR. JONES?

1 THE DEFENDANT: YES, SIR.

2 THE COURT: AND MR. BURNS?

3 THE DEFENDANT: YES, SIR..

4 THE COURT: AND THAT'S RIGHT WITH
5 THE STATE?

6 MR. REDMOND: THAT IS CORRECT,
7 YOUR HONOR.

8 THE COURT: IT'S NOW 12:00, WHAT'S
9 YOUR PLEASURE? DO YOU WANT TO GET THIS UNDERWAY NOW
10 OR DO YOU WANT TO TELL THE JURY TO COME BACK AT TWO
11 O'CLOCK, TWO-THIRTY AND START THE PLEAS AND DO THOSE
12 OTHER MATTERS WE HAVE?

13 MR. REDMOND: YOUR HONOR, SINCE
14 THE DEFENSE, I DON'T THINK THEY'VE WITHDRAWN THEIR
15 SUPPRESSION MOTIONS, WE WOULD HAVE TO HAVE THAT. AND
16 WE'VE GOT SERGEANT LANE HERE TO DO THAT.

17 THE COURT: WE DO HAVE STILL HAVE
18 THOSE MOTIONS IN THIS CASE?

19 MR. WATSON: THE SUPPRESSION
20 MOTION IS BOUNDED BY THE TAPE THAT WAS MADE BY
21 SERGEANT LANE. IT LASTS ABOUT 40 MINUTES. AND IT WOULD
22 BE THE DEFENSE'S POSITION THAT BEFORE ARGUMENT IT WOULD
23 BE INCREDIBLY IMPORTANT IF THE COURT WOULD WATCH THAT
24 TAPE AND THEN LISTEN TO THE MOTION FOR SUPPRESSION. AT
25 ISSUE IS A JANUARY 2006 CASE; THE STATE VERSUS PICHARDO,*

1 WHICH WE WILL HAND UP PRIOR TO THE TAPE BEING PLAYED.
2 WE BELIEVE IT TO BE A FOOTPRINT DIRECTLY ONE ISSUE FROM
3 THE OTHER. THERE ARE OTHER ANCILLARY MATTERS AS TO
4 MERE PRESENCE AND THERE'S ANOTHER ARGUMENT WHICH JUST
5 DOESN'T COME TO MIND.

6 THERE ARE BASICALLY FOUR ISSUES; SEQUESTRATION
7 OF STATE'S WITNESSES, ALL OF WHICH WOULD NEED TO BE
8 TAKEN CARE OF PRIOR TO THE BEGINNING OF THE CASE. AT A
9 HEARING BY THE MADAME ASSISTANT SOLICITOR BEFORE JUDGE
10 LOCKEMY, WE HAVE COMPLAINED ON SEVERAL OCCASIONS AS
11 TO THE NATURE OF MY CLIENT'S PRIOR CRIMINAL RECORD. IT
12 HAS NEVER BEEN VERIFIED. IT WOULD MAKE A HUGE DIFFERENCE
13 AS TO WHETHER OR NOT I WOULD CALL MY CLIENT, AND
14 WHETHER OR NOT HE HAS A PRIOR RECORD WHICH IS
15 ADMISSIBLE WOULD NEED TO BE, I SUBMIT, RULED ON BEFORE WE
16 BEGIN THIS CASE.

17 THE MADAME ASSISTANT SOLICITOR WAS TOLD BY
18 JUDGE LOCKEMY AT THE LAST HEARING TO HAVE A PERSON OR
19 PERSONS FROM THE STATE WHERE THESE ALLEGED OFFENSES
20 OCCURRED TO VALIDATE OR VERIFY THE CRIMINAL RECORD. WE
21 SUBMIT AND HAVE SUBMITTED FOR MORE THAN SIX MONTHS
22 THAT MY CLIENT'S RECORD AS SUBMITTED IS NOT MY CLIENT.
23 AND NOT HAVING THAT ISSUE SQUARED AWAY WOULD IN
24 EFFECT PREVENT HIM FROM TESTIFYING IF THEY PROFFERED
25 SUCH A RECORD AND IT IS NOT HIM. AND I NEED THAT

1 C CLEARED UP ON BEHALF OF MY CLIENT BEFORE WE GET STARTED.

2 MR. REDMOND: YOUR HONOR, IF THE
3 COURT PLEASE, I CAN ADDRESS THAT ISSUE ON BEHALF OF
4 ASSISTANT SOLICITOR JOHNSON-LEE. YOUR HONOR, WE HAD
5 ACTUALLY - AND ONE OF THE ISSUES THAT CAME UP WAS
6 WHETHER OR NOT IT WAS EITHER BRING A PERSON HERE OR GET
7 A CERTIFIED COPY OF THE RECORD JUST TO CLARIFY. I
8 ACTUALLY THOUGHT MR. WATSON HAD IT. AND I APOLOGIZE
9 FOR THAT. BUT WE DID GET A CERTIFIED CLOCKED-IN COPY,
10 TRUE COPIES FROM THE STATE OF FLORIDA. HOWEVER, AS AN
11 OFFICER OF THE COURT I WOULD HAVE TO ADVISE THE COURT
12 THAT WHAT WE HAVE FROM FLORIDA DIFFERS AS IT RELATES TO
13 THE DATES OF BIRTH THAT WE HAD IN HERE AND THAT WE PUT
14 INTO OUR NCIC.

15 SO, YOUR HONOR, DURING ANY BREAK WE HAVE, I
16 CAN GO AHEAD AND PRESENT THESE TO MR. WATSON FOR HIS
17 REVIEW, BUT I DO TELL THE COURT THAT DATES OF BIRTH ON
18 THE CERTIFIED RECORDS FROM THE STATE OF FLORIDA
19 ACTUALLY DIFFER BY THREE YEARS, AND NOT JUST THE YEARS
20 BUT ALSO THE ACTUAL MONTH AND DAY ARE ACTUALLY
21 DIFFERENT. SO THEREIN LIES THE QUANDRY AS IT RELATES TO
22 THE STATES POSITION AS TO PRIOR RECORD.

23 THE COURT: HOW LONG ARE THESE
24 MOTIONS GOING TO TAKE? DO YOU WANT ME TO DISMISS THE
25 JURY NOW AND TELL THEM TO COME BACK TOMORROW

1 MORNING? WILL IT TAKE THE REMAINDER OF THE DAY, DO YOU
2 THINK?

3 MR. WATSON: YES, SIR. THAT AND THE
4 PLEAS WILL DEFINITELY TAKE THE REST OF THE DAY.

5 THE COURT: ALL RIGHT, LET'S DO
6 THAT. WHAT DO YOU THINK, MR. REDMOND?

7 MR. REDMOND: YOUR HONOR,
8 ACTUALLY WE WERE WONDERING AS FAR AS -- AND OF COURSE
9 WHATEVER THE COURT'S PLEASURE IS IS FINE. QUITE FRANKLY
10 WITH THE MOTIONS HEARING AS THEY WERE, AND I'VE GOT MY
11 SLED EVIDENCE HERE, IF WE COULD AT LEAST - I WAS
12 ANTICIPATING QUITE FRANKLY BEING ABLE TO START THE TRIAL
13 AT SOME POINT PROBABLY THIS AFTERNOON, IF POSSIBLE. IT'S
14 NOT A LONG CASE, QUITE FRANKLY. WE'VE GOT SEVEN
15 WITNESSES, THE LONGEST WITNESS BEING SERGEANT LANE.
16 EVERYBODY ELSE IS A CHAIN OF CUSTODY AND I THINK TWO OF
17 THE OTHER OFFICERS THAT WERE AT THE SCENE. AND THE
18 REMAINING WITNESSES ARE CHAIN OF CUSTODY WITH THE
19 EXCEPTION OF MRS. KUKILA STANLEY, WHO IS HERE, WHO HAS
20 ARRIVED FROM SLED.

21 MR. WATSON: THE STATE HAS THE
22 ABILITY TO PRINT MONEY. THEY CAN PUT HER UP IN A HOTEL
23 TONIGHT. IF YOU GRANT THE SUPPRESSION MOTION, THE CASE
24 IS OVER.

25 THE COURT: WELL, I UNDERSTAND

1 THAT. IT MAY MAKE IT VERY DIFFICULT, IF NOT IMPOSSIBLE.

2 MR. WATSON: BUT GENUINELY THE
3 MOTION'S GOING TO TAKE A COUPLE HOURS. AND THAT'S JUST
4 THE SUPPRESSION MOTION. AND IF THE SOLICITOR ON A
5 CRIMINAL RECORD WHICH HE ADMITS IS THE WRONG BIRTHDATE
6 AND WRONG OTHER IDENTIFIES THAT HE STILL WANTS TO
7 PROCEED ON THAT, IT DOESN'T GET MORE OPUSCATED* THAN
8 THAT.

9 MR. REDMOND: WELL, YOUR HONOR, I
10 HAVEN'T ACTUALLY STIPULATED I'M GOING TO TRY TO
11 CONTINUE ON IT BECAUSE ONE OF THE THINGS OBVIOUSLY AS A
12 PROSECUTOR I HAVE TO KEEP IN MIND IS THE INTEGRITY OF THE
13 RECORD. AND I CAN TELL THE COURT THAT THERE WAS
14 SOMETHING THAT I WOULD PROPOSE AS IT RELATES TO
15 QUESTIONING THE DEFENDANT REGARDING HIS PRIOR RECORD
16 UNDER OATH. BUT DEPENDING ON HIS ANSWERS, THEN THAT
17 WOULD DETERMINE WHETHER WE'D GO FORWARD WITH THAT.
18 AND, OF COURSE, THE OBVIOUS ANSWER TO THAT BEING UNDER
19 OATH, THEN IF SUBSEQUENTLY I AM ABLE TO ASCERTAIN THAT
20 HE HAS PERJURED HIMSELF, THEN I'LL GOVERN MYSELF
21 ACCORDINGLY IN THE FUTURE.

22 MR. WATSON: BUT HE'S GOT THAT
23 RIGHT ANYWAY.

24 THE COURT: HERE'S WHAT WE'RE
25 GOING TO DO. WE'RE GOING TO START THIS TRIAL AT NINE--

1 THIRTY IN THE MORNING. I APOLOGIZE TO THE SLED AGENTS
2 WHO'VE COME DOWN TODAY AND ANYBODY ELSE THAT IT
3 INCONVENIENCES. WE HAVE ENOUGH ON OUR PLATE TO TAKE
4 CARE OF THE REST OF THE DAY. SO THAT'S WHAT WE'LL DO.
5 MAKE YOUR PLANS ACCORDINGLY. LET'S GET THE JURY BACK
6 OUT HERE.

7 (WHEREUPON THE JURY ENTERS THE COURTROOM)

8 THE COURT: LADIES AND GENTLEMEN
9 OF THE JURY, THERE ARE 10 OF YOU. NORMALLY THERE WOULD
10 BE 12 JURORS AND PERHAPS AN ALTERNATE. THE - WE DON'T
11 HAVE AND DID NOT HAVE AS IT TURNS OUT, ENOUGH JURORS
12 HERE TO COMPLETE THE JURY. HOWEVER, BOTH THE DEFENSE
13 AND THE STATE HAVE AGREED TO GO FORWARD WITH 10 OR
14 LESS. I ASSUME THAT EVERYONE WILL REMAIN HEALTHY,
15 NOBODY IS GOING TO COME DOWN WITH DIRE FLU OR SOME
16 NEW TERRIBLE CONDITION THAT WILL RESULT IN THEIR HAVING
17 TO BE DISMISSED FROM THE JURY, BUT IF THAT'S THE CASE, SO
18 BE IT. BUT WE'RE READY TO GO FORWARD WITH 10 JURORS, NOT
19 THE 12. THAT'S WHY WE SENT YOU OUT THERE DECIDING HOW
20 TO GO ABOUT GOING FORWARD. WE HAD TO DISMISS JURORS
21 BECAUSE OF THEIR RELATIONSHIP WITH LAW ENFORCEMENT; ONE
22 WAS A PREACHER TO HAVE A FUNERAL COME UP THAT HE HAS
23 TO TAKE CARE OF TODAY, AND OTHER REASONS THAT
24 DESISMATED THE RANKS OF THE JURORS SO THAT WE ONLY
25 HAVE 10. THAT'S FINE. IN FACT, SOME STATES ONLY HAVE SIX

1 PERSONS, AND FLORIDA IS ONE OF THEM, I BELIEVE.

2 WE HAVE SOME PRELIMINARY MATTERS, AND I'LL GET
3 INTO THIS LATER ON, BUT I'LL TELL YOU NOW - AND I ALLUDED
4 TO THAT WHEN I SAID THAT THE STATE WANTED JURORS THAT
5 WOULD AGREE WITH THEIR VERSION OF THE FACTS OF THE CASE
6 AND THAT THE DEFENSE WOULD LIKE JURORS THAT AGREES
7 WITH THEIR VERSION OF THE FACTS OF THE CASE. AND I TOLD
8 YOU THAT BECAUSE YOU AS THE JURY ARE THE JUDGE OF THE
9 FACTS OF THE CASE. YOU DETERMINE THE FACTS OF THE CASE;
10 AND BASICALLY THAT'S WHO, WHAT, WHEN, WHY, AND WHERE.
11 WHAT HAPPENED, WHEN DID IT HAPPEN, OR WHATEVER THE
12 FACTS OF THE CASE MAY BE. YOU ARE THE DETERMINER OF THE
13 FACTS OF THE CASE BASED ON THE EVIDENCE THAT'S
14 PRESENTED TO YOU.

15 NOW, YOU BEING THE JUDGE OF THE FACTS AND
16 THE COURT BEING THE JUDGE OF THE LAW THAT APPLIES TO
17 THIS CASE. SO WHEN WE TAKE UP MATTERS OF LAW, THAT
18 DOESN'T CONCERN YOU, ,THAT CONCERNS THE JUDGE. WHEN
19 YOU TAKE UP MATTERS OF THE FACTS, THAT DOESN'T
20 CONCERN ME. I CAN'T COMMENT ON THE FACTS OF THE CASE, I
21 HAVE NO OPINION AS TO THE FACTS OF THE CASE. SO
22 SOMETIMES WHEN YOU DELIBERATE ON THE FACTS OF THE CASE,
23 OR ALL OF THE TIME YOU DELIBERATE ON THE FACTS OF THE
24 CASE YOU WILL BE IN THE JURY ROOM AND THE COURT WILL NOT
25 BE THERE TO HEAR YOUR DELIBERATIONS.

1 WHEN THE COURT HAS MATTERS OF LAW TO
2 DELIBERATE OR TO CONSIDER, YOU CAN'T BE PRIVY TO THOSE
3 LEGAL MATTERS THAT THE COURT IS INVOLVED WITH. WE HAVE
4 LEGAL MATTERS THAT'S GOING TO TAKE UP THE REMAINDER OF
5 THE DAY TODAY; MOTIONS THAT ARE BEING MADE, LEGAL
6 MOTIONS THAT I'LL HAVE TO RULE ON. FOR YOU TO BE PRIVY
7 TO THOSE AND LISTEN IN ON THOSE WOULD PREJUDICE YOU IN
8 YOUR JOB AS THE FACT FINDER, JUST LIKE I CAN'T HEAR YOUR
9 DELIBERATIONS IN THE JURY ROOM.

10 SO, THAT HAVING BEEN SAID, I THINK IT IS NOT THE
11 THING TO DO TO KEEP YOU HERE ALL AFTERNOON IN THAT
12 LITTLE JURY ROOM. YOU MIGHT GET TO KNOW EACH OTHER
13 TOO GOOD. AND I'M SURE YOU HAVE OTHER THINGS TO TAKE
14 UP YOUR DAY FOR THE REST OF DAY. SO I'M GOING TO EXCUSE
15 YOU TODAY FOR THE REMAINDER OF THIS DAY. PLEASE BE BACK
16 IN YOUR JURY ROOM AT NINE-THIRTY IN THE MORNING AND
17 WE'LL START THE TRIAL OF THE CASE AS SOON THEREAFTER AS
18 POSSIBLE. ENJOY YOUR EVENING. THIS IS SOMETHING THAT'S
19 SUPREMELY IMPORTANT. DO NOT DISCUSS THIS CASE WITH
20 ANYONE. YOU ARE THE 10 MOST IMPORTANT PEOPLE IN THE
21 WORLD TO THESE DEFENDANTS AND YOU ARE THE 10 MOST
22 IMPORTANT PEOPLE IN THE WORLD TO THE STATE. THEY'VE
23 CHOSEN YOU TO DETERMINE THE OUTCOME OF THIS CASE. AND
24 ANYBODY THAT MAY WANT TO TALK TO YOU ABOUT IT; YOUR
25 HUSBAND OR YOUR WIFE, YOUR SIGNIFICANT OTHER, JUST TELL

1 THEM THIS OLD JUDGE SAID YOU COULDN'T TALK TO THEM
2 ABOUT THAT. BECAUSE THEY WANT TO KNOW WHAT YOUR
3 FEELINGS ARE ABOUT IT, SO DON'T DISCUSS THE CASE WITH
4 ANYONE. THAT INCLUDES YOUR FELLOW JURORS. THE PROPER
5 TIME TO DISCUSS THIS CASE AT ALL IS AFTER YOU'VE HEARD ALL
6 THE EVIDENCE IN THE CASE AND AFTER YOU'VE HEARD ALL
7 ARGUMENTS FROM COUNSEL, YOU'VE HEARD THE JUDGE'S
8 INSTRUCTIONS TO YOU ON THE LAW THAT APPLIES TO THE
9 CASE. AND THAT IS WHEN THE CASE IS OVER AND YOU RETIRE
10 TO DELIBERATE YOUR VERDICT. THAT IS THE TIME YOU SHOULD
11 START YOUR DISCUSSION AND NOT ANY TIME PRIOR TO THAT.

12 SO ENJOY YOUR AFTERNOON, YOUR EVENING, DON'T
13 DISCUSS THE CASE WITH ANYONE, AND WE WILL SEE YOU BACK
14 AT NINE-THIRTY IN THE MORNING. THANK YOU VERY MUCH.

15 (THE JURY EXITS THE COURTROOM FOR THE DAY.)

16 THE COURT: IF THERE'S NO OBJECTION,
17 WE'LL TAKE UP THESE MOTIONS NOW. AS I UNDERSTAND IT,
18 APPARENTLY MR. WATSON WANTS ME TO WATCH A VIDEO
19 BEFORE THE MOTION. IS THERE ANY OBJECTION TO THAT?

20 MR. REDMOND: NONE FROM THE
21 STATE, YOUR HONOR. YOUR HONOR, IF I MAY? SERGEANT JAMIE
22 HAMILTON AND CHIEF DEPUTY PURNELL* JUST MADE ME AWARE
23 OF THE FACT THAT THERE IS A MECHANISM THAT THEY HAVE
24 THAT IF WE WERE TO FINGERPRINT IT, THAT THEY COULD
25 ACTUALLY GET IN CONTACT WITH THE FBI AS IT RELATES TO

1 CRIMINAL HISTORY. AND THEY CAN PROBABLY EXPLAIN IT
2 BETTER THAN I CAN, QUITE FRANKLY. BUT THE REQUEST THAT
3 WE WOULD HAVE, YOUR HONOR, WHILE WE ARE WORKING AT
4 THE TAPE FOR THE SUPPRESSION HEARING----

5 THE COURT: DO YOU WANT TO
6 EXPLAIN THAT BETTER?

7 THE WITNESS: WHAT WE'D DO
8 BASICALLY, YOUR HONOR, IS JUST FINGERPRINT HIM AND SEND
9 IT OFF TO THE FBI FOR FINGERPRINT IDENTIFICATION AND
10 THEY'LL GIVE US A POSITIVE MATCH. AND THEY'LL THEN GIVE
11 HIS FULL CRIMINAL HISTORY THROUGH THE SYSTEM THEY'VE
12 GOT. WE HAD THIS PROBLEM---

13 THE COURT: YOU HAVEN'T DONE THAT
14 ALREADY?

15 THE WITNESS: WELL, WE
16 FINGERPRINTED HIM WHEN HE WAS ARRESTED, BUT WE HAVEN'T
17 DONE A FINGERPRINT COMPARISON AND SENT IT TO THE FBI.
18 USUALLY WE JUST PUT IT ON A CARD, YOUR HONOR, AND THEN
19 IT GETS FORWARDED TO SLED AND UPON DISPOSITION OF THE
20 CASE IS KNOWN AFTER COURT, BUT IN THIS CASE THERE'S SOME
21 ARGUMENT ABOUT WHAT HIS CRIMINAL HISTORY IS, IT COULD
22 JUST BE A WAY TO CLARIFY EXACTLY WHO HE IS AND WHAT
23 EXACTLY HIS CRIMINAL HISTORY IS.

24 THE COURT: ANY OBJECTION TO
25 THAT, MR. WATSON?

1 MR. WATSON: YES, SIR. YOUR HONOR,
2 FIRST, HE WAS FINGERPRINTED WHEN HE WAS ARRESTED, BOTH
3 OF THEM WERE. ONE OF MY EARLIEST CONVERSATIONS WITH MY
4 CLIENT WAS JULY THE 20TH, 2006, AND I SENT TO THE SOLICITOR
5 THE FOLLOWING LETTER SAYING, YOU KNOW, BOYS AND GIRLS,
6 HIS CRIMINAL HISTORY IS WRONG. THAT'S JULY.

7 AND NOW THE DAY OF TRIAL THEY SAY WELL HERE,
8 LET ME GET IT STRAIGHT. AT THE LAST HEARING BEFORE JUDGE
9 LOCKEMY THEY WERE TOLD TO GET IT STRAIGHT THEN. NOW
10 THE DAY OF TRIAL THEY WANT TO DO SOMETHING. WE FILED
11 MOTIONS TO SUPPRESS ANYTHING DELIVERED 10 DAYS PRIOR TO
12 TRIAL. I MEAN, ON THE EVE OF TRIAL NOW WE'RE TRYING TO
13 DECIDE WHETHER OR NOT I'M EVEN GOING TO BE ABLE TO PUT
14 MY CLIENT UP. I MEAN, THAT IS POWERFULLY LATE. BUT THAT'S
15 NOT THE FIRST LETTER, THAT'S NOT THE ONLY LETTER. THIS
16 GOES ALL THE WAY BACK TO JULY THE 20TH. THIS IS OCTOBER
17 17TH. BUT THEY WERE FINGERPRINTED AT THE COUNTY JAIL. I
18 MEAN THAT HAS BEEN A PROMINENT CONCERN OF MINE SINCE
19 THIS MATTER BEGAN.

20 THE COURT: MR. REDMOND, WHEN DID
21 YOU GET THE UPDATED CRIMINAL HISTORY?

22 MR. REDMOND: WE GOT THE UPDATED
23 CRIMINAL HISTORY, IT ACTUALLY ARRIVED HERE AFTER THE LAST
24 TERM OF COURT. AND I'LL TELL THE COURT IT WAS ALMOST
25 LIKE AN ACT OF CONGRESS JUST GETTING THESE FROM THE

1 STATE OF FLORIDA BECAUSE WE ACTUALLY CORRESPONDED
2 WITH THEM IMMEDIATELY AFTER THE LAST TERM OF COURT
3 THAT MR. WATSON IS REFERRING TO. AND SO IT DID TAKE US
4 QUITE A WHILE TO ACTUALLY GET THESE DOCUMENTS, AND WE
5 DIDN'T ACTUALLY RECEIVE THEM UNTIL ABOUT A WEEK AGO.

6 THE COURT: AND DID I UNDERSTAND
7 YOU TO SAY THAT WHAT YOU HAVE IS NOT ACCURATE?

8 MR. REDMOND: WELL, IT'S AS IT
9 RELATES TO THE DATES OF BIRTH. AND THAT, AGAIN, IS AN
10 ISSUE, IF WE CAN TAKE - WHICH WAS ONE OF THE REASONS I
11 ASKED ABOUT PUTTING IT ON THE RECORD, BECAUSE I WILL SAY
12 THE DATES OF DISPOSITION ARE CONSISTENT WITH WHAT'S ON
13 THE RAP SHEET BASED ON WHAT WE RAN CONCERNING HIS SAME
14 DATE OF BIRTH. BUT THE DATE OF BIRTH PROVIDED BY THE
15 STATE OF FLORIDA WAS ACTUALLY [REDACTED]/66 WHEN THE DATE OF
16 BIRTH THAT WE SENT IN - IF THE COURT WOULD INDULGE ME -
17 WAS [REDACTED]/69. SO THERE'S A DIFFERENCE, BUT THE DISPOSITION
18 DATES ARE CONSISTENT. AND SO IT'S SOMEWHAT CONFUSING,
19 QUITE FRANKLY, BASED ON WHAT WE'VE GOT AND THE RAP
20 SHEETS THAT WE'VE RUN.

21 MR. WATSON: I'VE GOT A COUPLE OF
22 MATTERS TO HAND UP WHEN APPROPRIATE.

23 THE COURT: I BELIEVE IT'S APPROPRIATE
24 NOW. HERE IS WHAT I'M DEALING WITH. I AM DEALING WITH
25 SOMEONE WHO SAYS - YOU KNOW THE ANSWER TO HIS

1 CRIMINAL RECORD DETERMINES WHETHER I PUT HIM ON THE
2 STAND OR NOT. IT'S THE DAY OF TRIAL, THE DAY BEFORE THE
3 DATE OF TRIAL AND I'M JUST NOW GETTING HIS CRIMINAL
4 RECORD WHICH THEY SAY IS FROM FLORIDA, OR IS FROM
5 FLORIDA AND THEY SAY IT'S A DIFFERENT DATE OF BIRTH THAN
6 WHAT THE NCIC HERE SAYS.

7 MR. WATSON: IT IS DIFFERENT, THE
8 DATES OF BIRTH ARE DIFFERENT.

9 THE COURT: AND I DON'T KNOW HOW
10 TO RECONCILE THAT.. OF COURSE, YOUR CLIENT KNOWS HIS
11 BIRTHDAY, YOUR CLIENT KNOW HIS CRIMINAL RECORD.

12 MR. WATSON: YES, YOUR HONOR.

13 THE COURT: AND THEY SAY THAT IT'S
14 A SIMPLE MATTER OF RUNNING FINGERPRINTS AND CHECKING
15 WITH THE FBI AND THEY'LL COME BACK WITH EXACTLY WHAT
16 HIS CRIMINAL RECORD IS FROM WHATEVER STATE. AND YOU
17 DON'T WANT TO DO THAT BECAUSE IT COMES TOO LATE, IS
18 THAT---

19 MR. WATSON: YES, SIR.

20 THE COURT: OR YOU DON'T WANT TO
21 KNOW THE TRUTH.

22 MR. WATSON: I DO WANT TO KNOW
23 THE TRUTH BECAUSE I DON'T---

24 THE COURT: YOU ALREADY KNOW THE
25 TRUTH.

1 MR. WATSON: YES, SIR, BUT I WOULD
2 NEVER WANT TO BE IN A POSITION TO PERPETRATE A FRAUD ON
3 ANY COURT OF ANY JURISDICTION. BUT IF YOU LOOK AT THE
4 TWO MOTIONS THAT I'VE HANDED UP IN CONJUNCTION - THIS
5 CASE HAS BEEN ON THE TRIAL ROSTER WITH BITS AND STARTS
6 SUCH THAT DEFENSE COUNSEL EITHER SINGULARLY OR
7 TOGETHER WITH OUR CO-DEFENDANT WOULD BE STANDING AT
8 A TRIAL WHERE WE DIDN'T KNOW WHAT THE FACTS WERE
9 AGAINST US.

10 FIRST, YOU'LL NOTICE THERE'S A MOTION TO
11 SUPPRESS ANY EVIDENCE NOT RECEIVED BY OCTOBER THE
12 4TH, 2006. THE SOLICITOR WAS PUT ON NOTICE AT THE LAST
13 TERM OF COURT, GET IT RIGHT, GET IT TO THEM, AND THAT
14 DIDN'T OCCUR. AND NOW AT THE DATE OF TRIAL WE'RE
15 SUPPOSED TO DECIDE WHETHER OR NOT WE CAN RELY ON OUR
16 CLIENT'S NOT HAVING ANY PRIOR CRIMINAL RECORD. I THINK
17 THAT'S WAY OUTSIDE.

18 AND, SECONDLY, THERE'S A NEW CASE DECIDED BY
19 OUR STATE'S SUPREME COURT THAT SAYS THAT IF IT WAS THE
20 PRIOR RECORD THAT THE SOLICITOR SPEAKS OF, IT IS
21 INADMISSIBLE AS IMPEACHMENT AGAINST THEM.

22 SO FIRST, IT WASN'T DELIVERED WITHIN THE 30 DAYS.
23 SECOND, WE FILED A MOTION TO SUPPRESS, AND THIRD, WE
24 SUBMIT THAT THAT WHICH THE STATE PROFFERS IS
25 INADMISSIBLE AND THERE'S A BRAND NEW CASE DECIDED BY

1 OUR SUPREME COURT TO SUPPORT THAT.

2 MR. REDMOND: WELL, I WOULD
3 LOVE THE SITE OF THE INFORMATION ON THIS NEW CASE. I'VE
4 HEARD A LOT ABOUT NEW CASES.

5 MRS. MCMILLAN: THE STATE
6 VERSUS KEITH, YOUR HONOR.

7 MR. REDMOND: BUT, YOUR
8 HONOR, TRUTH BE TOLD, AS I INDICATED EARLIER, TO PRESERVE
9 THE RECORD IN THIS CASE, AND, AGAIN, AS A PROSECUTOR MY
10 MAIN GOAL IS TO MAKE SURE THERE'S A FAIR TRIAL. I DO NOT
11 WANT TO SEE THIS
12 CASE AGAIN. AND SO THAT BEING THE CASE, RATHER THAN
13 DEALING WITH -- THERE ARE WAYS THAT IT CAN BE DEALT WITH
14 IN LIGHT OF EVERYTHING THAT OCCURRED, BECAUSE, AGAIN, I
15 WASN'T AWARE OF THIS PARTICULAR PROCEDURE UNTIL A
16 MINUTE AGO. I DID WHAT WE HAD DISCUSSED WITH JUDGE
17 LOCKEMY AT THE LAST HEARING, WHICH WAS ACTUALLY BACK
18 IN AUGUST, YOUR HONOR, WHERE WE GOT THE CERTIFIED TRUE
19 COPIES OF THE CRIMINAL HISTORY FROM FLORIDA, AND OF
20 COURSE HAVE MADE THE COURT AWARE OF IT.

21 THE FACT THAT THOSE DATES OF BIRTH ARE NOT
22 CONSISTENT, THAT BEING THE CASE, I SIMPLY REQUEST PUTTING
23 HIM ON THE STAND. IF HE TESTIFIES AND MAINTAINS HIS
24 TESTIMONY THAT IT IS NOT HIM, THEN SO BE IT. I'M GOING TO
25 BE STUCK WITH THAT FOR THE PURPOSES OF THIS TRIAL. AND I

1 THINK THAT WOULD BE THE QUICK SOLUTION TO IT RATHER
2 THAN GOING THROUGH THE HISTORICALS OF WHAT WAS AND
3 WASN'T DONE, THERE'S THE SIMPLE SOLUTION THAT I WOULD
4 PROPOSE. AND THEN IN ESSENCE WITH WHAT HE'S TESTIFIED
5 TO, AGAIN, TAKING THE RECORD INTO CONSIDERATION, I
6 UNDERSTAND THAT I WOULD BE STUCK WITH THAT FOR
7 PURPOSES OF THIS TRIAL. HOWEVER, THAT WOULD NOT
8 PRECLUDE ANY POSSIBLE PERJURY ACTION SHOULD WE
9 SUBSEQUENTLY FIND OUT THAT THAT INFORMATION IS
10 INCORRECT.

11 MRS. MCMILLAN: YOUR HONOR, I
12 WANT TO MAKE SURE THAT I UNDERSTAND EXACTLY WHAT MR.
13 SOLICITOR HAS JUST SAID BECAUSE HE AND I HAVE BEEN
14 THROUGH MY CLIENT'S RECORD, AND THERE ARE NUMEROUS
15 PAGES IN HERE THAT CERTAINLY ARE NOT MINE. BUT IS HE
16 SAYING THAT HE'S NOT GOING TO PRODUCE ANY PRIOR
17 RECORD?

18 MR. REDMOND: NO, THE MOTION WAS
19 ONLY MADE AS IT RELATES TO THIS. AND THE ONLY THING I
20 DISCUSSED THE LAST TIME IS MR. BURNS. WE DID NOT HAVE
21 THIS SAME DISCUSSION AS IT RELATES TO MR. JONES. NOW IF
22 MADAME COUNSEL IS MAKING THAT ASSERTION ON BEHALF OF
23 MR. JONES, THAT IS AN ASSERTION THAT WOULD BE COMING
24 TODAY AS IT RELATES TO HIS CRIMINAL HISTORY. BECAUSE I
25 CAN TELL THE COURT, IN FACT, WE HAVE TALKED WITH FOLKS

1 IN FLORIDA AS IT RELATES TO HIS SITUATION. HIS SITUATION IS
2 DIFFERENT THAN ARTIE BURNS SITUATION. MR. WATSON MADE
3 A SPECIFIC MOTION REGARDING IT. AND WHEN WE HAD THAT
4 HEARING, MR. BURNS WAS THE ONLY ONE THAT THESE ISSUES
5 WERE ADDRESSED TO. SO, OF COURSE, EVEN THOUGH THEY'RE
6 BEING TRIED TOGETHER, THEY STAND SEPARATELY IN THEIR
7 DEFENSE. SO OBVIOUSLY WITH THE RAP SHEET, IF THAT
8 ASSERTION IS BEING MADE BY MR. JONES AT THIS TIME, TOO, I
9 WOULD PROPOSE THE SAME THING.

10 BUT, AGAIN, THE ISSUES CONCERNING ALL OF WHAT
11 MR. WATSON WAS TALKING ABOUT, THAT PROCESS WAS ONLY
12 AS IT RELATES TO MR. BURNS. HE'S THE ONLY ONE THAT
13 ACTUALLY INDICATED HE WAS CONTESTING HIS CRIMINAL
14 HISTORY.

15 THE COURT: WELL, THE PROCEDURE
16 WOULD BE THE SAME. THE PROCEDURE, AS I UNDERSTAND YOU
17 TO SAY WITH REGARD TO MR. BURNS, YOU DON'T INTEND TO
18 INTRODUCE HIS RECORD UNLESS HE TAKES THE STAND.

19 MR. REDMOND: THAT'S CORRECT.

20 THE COURT: IF HE TAKES THE STAND
21 YOU'LL SAY, ARE YOU THE SAME MR. BURNS THAT WAS
22 CONVICTED OF SO AND SO? NO. YOU'RE NOT THAT MR. BURNS?
23 NO, MY BIRTHDAY'S SO AND SO. WHAT BIRTHDAY DO YOU HAVE,
24 MR. REDMOND. AND IT'S A MATTER OF CREDIBILITY.

25 MR. REDMOND: THAT'S CORRECT.

1 THE COURT: BUT WITH REGARD TO MR.
2 JONES, THE SAME THING. HIS CREDIBILITY IS NOT AT ISSUE IF HE
3 DOESN'T TAKE THE STAND. IF HE DOES TAKE THE STAND YOU
4 CAN QUESTION HIM ABOUT ANY MATTERS OF PRIOR BAD ACTS,
5 OR ANY CONVICTIONS DURING THE LAST 10 YEARS.

6 MR. WATSON: BUT TO ALLOW HIM TO
7 SAY ARE YOU CONVICTED OF SOME DRUG OFFENSE AND HE SAYS
8 NO, THEN THE DRUG OFFENSE CHARGE, WHETHER IT IS AGAINST
9 THIS ARTIE BURNS OR SOME OTHER ARTIE BURNS; IS BEFORE THE
10 COURT, AND THAT'S WHY I ASKED FOR AN IN CAMERA HEARING.
11 THEY ARE RELYING UPON A NAME AND THEY ARE RELYING UPON
12 CHARGES AS TO A NAME EXACTLY SIMILAR TO MY CLIENT. AND
13 MR. REDMOND SAYS, WELL ARE YOU ARTIE BURNS AND WERE
14 YOU CONVICTED OF THIS, AND HE SAYS NO, THAT'S A
15 POWERFUL THING IN FRONT OF THE JURY AND I THINK IT IS
16 PREJUDICIAL. IF WE ARE GOING TO DO IT THAT WAY I WILL TALK
17 TO MY CLIENT AND ASK HIM TO DO IT OUTSIDE THE PRESENCE
18 OF THE JURY AND YOU MAKE A DECISION AS TO WHETHER OR
19 NOT IT'S ADMISSIBLE. BECAUSE IF IT'S NOT HIM, HE SHOULDN'T
20 BE ABLE TO ASK HIM ABOUT IT.

21 THE COURT: THAT'S A QUESTION OF
22 FACT FOR THE JURY.

23 MR. WATSON: IT WOULD BE IF THE
24 DATE AND SOCIAL SECURITY NUMBER AND ALL OF THE
25 IDENTIFIERS WERE THE SAME, BUT THE STATE ADMITS THEY'RE

1 NOT. THE STATE CAME BEFORE YOU AND SAID, THIS IS WHAT WE
2 HAVE GOT AND WE DON'T THINK IT IS ACCURATE. THAT IS---

3 THE STATE: I DIDN'T HEAR HIM SAY
4 THEY DIDN'T THINK IT WAS ACCURATE. I HEARD HIM SAY IT
5 WAS DIFFERENT.

6 MR. REDMOND: IT'S DIFFERENT. I SAID
7 THE DATES OF DISPOSITION ARE EXACTLY THE SAME, JUDGE. SO
8 I THINK THE COURT IS RIGHT IN THE SENSE OF MY
9 UNDERSTANDING OF IT---

10 THE COURT: WELL I THINK THIS. I
11 THINK THE INFORMATION IS GARBAGE IN, GARBAGE OUT. IF YOU
12 ASK THE DEFENDANT HIS BIRTHDAY AND HE DOESN'T TELL YOU
13 THE RIGHT BIRTHDAY, YOU'RE GOING TO GET THE WRONG
14 BIRTHDAY. SO THEIR INFORMATION ISN'T ANY BETTER THAN
15 THE DEFENDANT WHO GAVE IT TO THEM. AND IF YOUR
16 DEFENDANT GAVE THEM A DIFFERENT BIRTHDAY THAN THE ONE
17 THEY GAVE IN SOUTH CAROLINA, IT MAY BE THE SAME PERSON,
18 IT MAY BE THE SAME OFFENSE, IT MAY BE THE SAME DISPOSITION
19 DATE, BUT THEY HAVE DIFFERENT BIRTHDAYS. AND THAT'S FOR
20 THE JURY TO DETERMINE, THAT'S NOT FOR THE COURT TO
21 MAKE. I CAN'T PASS ON A FACTUAL MATTER LIKE THAT. I
22 THINK THAT'S A FACTUAL MATTER.

23 MR. WATSON: BUT MORE THAN THAT
24 IT GOES TO MY SUPPRESSION, I'VE NEVER BEEN PROVIDED WITH
25 WHAT THEY SAY IS INACCURATE.

1 THE COURT: THEY DIDN'T SAY IT'S
2 INACCURATE.

3 MR. WATSON: OKAY, I'VE NEVER BEEN
4 PROVIDED WITH WHATEVER IT IS THEY HAVE.

5 THE COURT: WELL THAT'S A PROBLEM,
6 WHY HASN'T HE BEEN PROVIDED IT?

7 MR. WATSON: AND IT'S IN MY MOTION.

8 MR. REDMOND: AND, YOUR HONOR, I
9 ACTUALLY THOUGHT THAT MR. WATSON HAD IT BECAUSE IT
10 WAS LEFT AND SUPPOSED TO HAVE BEEN PROVIDED TO MR.
11 WATSON. AND USUALLY WHEN WE DO DISCOVERY, HAND OVER
12 DISCOVERY, WE GIVE THEM THE SHEET SHOWING WHAT WE'VE
13 GIVEN TO THEM. I CANNOT FIND THE SHEET CONFIRMING THAT
14 HE WAS ACTUALLY GIVEN HIS CRIMINAL HISTORY. I CAN TELL
15 THE COURT THAT SINCE THE TRIAL IS STARTING TOMORROW, I
16 WOULD BE MORE THAN HAPPY TO GO AHEAD AND - I ACTUALLY
17 CAN GIVE HIM THIS, OR A COPY OF THIS TO HIM IMMEDIATELY
18 AND HE AND HIS CLIENT WILL HAVE AN OPPORTUNITY TO
19 REVIEW IT.

20 THEY'VE ALREADY GOTTEN THE RAP SHEET, LET ME
21 MAKE THAT CLEAR. HIS CRIMINAL HISTORY HAD PREVIOUSLY
22 BEEN PROVIDED. THIS IS THE ONLY DOCUMENTS, THESE
23 DOCUMENTS, THAT ARE DOCUMENTS THAT HE DOES NOT HAVE
24 WHICH ACTUALLY CORRELATE TO WHAT'S ON THE CRIMINAL
25 HISTORY.

1 MR. WATSON: THE CRIMINAL HISTORY
2 SINCE JULY THE 20TH IS NOT MY CLIENT. IT IS NOT MY CLIENT.
3 NOW HE SAYS TODAY, WELL LET ME GIVE YOU SOMETHING TO
4 USE TOMORROW. IT MAY OR MAY NOT BE YOUR CLIENT, I JUST
5 DON'T KNOW.

6 MR. REDMOND: WELL, YOUR HONOR,
7 AGAIN, IF THE ISSUE----

8 THE COURT: WELL IS THIS
9 INFORMATION THAT YOU GOT ORDERED TO BE GOTTEN - FOR
10 LACK OF A BETTER WORD - BY JUDGE LOCKEMY?

11 MR. REDMOND: IT WAS ORDERED TO BE
12 - JUDGE LOCKEMY INDICATED EITHER GETTING THIS OR A
13 CERTIFIED TRUE COPY FROM THE STATE OF FLORIDA, WHICH
14 THESE ARE CERTIFIED TRUE COPIES. HE DID ORDER US TO GET
15 THOSE. NOW AS IT RELATES TO SPECIFIC DATES, MR. WATSON'S
16 MOTION SAYS THAT IT WAS NOT INDICATED EXACTLY WHEN,
17 QUITE FRANKLY. I WILL TELL THE COURT MY INTENTION WAS
18 THAT HE GOT THIS WHEN I GOT IT. I'M NOT NECESSARILY
19 SAYING HE DIDN'T GET IT, I JUST DO NOT HAVE THE FORM THAT
20 WE NORMALLY SEND OUT SAYING THAT HE DID----

21 MR. WATSON: I DIDN'T GET IT.

22 THE COURT: WELL, HE SAYS HE DIDN'T.

23 MR. WATSON: AND IF HE SAYS THAT, I
24 WILL ACCEPT THAT, JUDGE. BUT WHAT I'M SAYING SIMPLY IS
25 THIS; THAT THE ISSUE IS WHETHER OR NOT HIS CLIENT'S GOING

1 TO TESTIFY, AND THIS IS WHAT HE'S SAYING THAT WAS GOING
2 TO CONSIDERATION WITH. I FAIL TO SEE AT THIS POINT HOW
3 HE'S BEEN PREJUDICED AS OF TODAY WHEN THE TRIAL WON'T
4 COMMENCE UNTIL TOMORROW. WE'RE HERE AT 12:30, I HAVE
5 THESE DOCUMENTS FOR HIM. THAT GIVES HIM IN EXCESS OF 20
6 HOURS TO TALK WITH HIS CLIENT ABOUT THESE PARTICULAR
7 CONVICTIONS AS TO WHETHER OR NOT THEY ARE HIM.

8 AND THE QUESTION IS SIMPLE, GO THROUGH EACH
9 OF THEM; DID YOU DO THIS, YES OR NO. SO, AGAIN, I THINK IN
10 THE EXCESS OF 20 HOURS TO IN ESSENCE GO THROUGH AND
11 GET WHAT IS GOING TO BE A YES OR NO ANSWER, I DON'T SEE
12 WHERE THIS WOULD BE PREJUDICE TO THE POINT WHERE IT
13 SHOULD NOT BE ALLOWED FOR THE STATE TO AT LEAST
14 QUESTION HIM ABOUT IT.

15 MR. WATSON: YOU KNOW IF WE WERE
16 IN CIVIL COURT, JUDGE, YOU WOULD NOT ALLOW THAT TO BE
17 INTRODUCED. IT WOULD BE THE EVE OF THE TRIAL. AND NOW
18 WHERE MY CLIENT STANDS WHERE HE HAS A CHANCE OF LOSING
19 HIS FREEDOM, WE WOULD USE RULES OF EVIDENCE WHICH ARE
20 MORE RELAXED THAN THAT OF CIVIL PROCEDURE? RULE FIVE
21 MEANS WHAT IT SAYS. THIS IS NOT A NEW ISSUE, THIS HAS BEEN
22 AN ISSUE FOR MONTHS, AND 20 HOURS IS NOT APPROPRIATE TO
23 BE HANDING ME NEW EVIDENCE THAT YOU WANT TO USE TO
24 CONVICT MY CLIENT. THAT'S THE SOLE REASON WE HAVE
25 CRIMINAL DISCOVERY, TO MAKE IT MEANINGFUL. AND NOW

1 THEY PROPOSE TO TAKE SOME NEW FINGERPRINTS AND LET'S
2 SEND THOSE TO THE FBI?

3 MR. REDMOND: YOUR HONOR, I'M
4 ABANDONING THAT POSITION FOR THE PURPOSES OF THIS
5 TRIAL. THE ONLY ISSUE I'M DEALING WITH NOW IS HIM BEING
6 ABLE TO VIEW CRIMINAL HISTORY WITH HIS CLIENT TO
7 DETERMINE WHETHER OR NOT IT COULD BE ALLOWED.

8 LET ME JUST SAY ONE OTHER THING, TOO, JUDGE, AS
9 I READ AND INTERPRET RULE FIVE. AND AS MR. WATSON
10 HIMSELF KNOWS FROM BEING A DEFENSE ATTORNEY AND
11 FORMER PROSECUTOR, OFTENTIMES IT IS - AND I'M NOT SAYING
12 IT'S CORRECT, AND OBVIOUSLY I TRIED NOT TO DO THAT AND
13 AGAIN, WE'VE PROVIDED THE RAP SHEET PRIOR TO TRIAL -
14 OFTENTIMES DURING THE COURSE OF A TRIAL IS WHEN THE
15 ISSUE CONCERNING THE CRIMINAL HISTORY OF A DEFENDANT
16 COMES UP, AND HERE SINCE WE ARE NOT TAKING ANY
17 TESTIMONY FROM THE DEFENDANT AT THE EARLIEST UNTIL
18 TOMORROW, WHICH WOULD BE IN EXCESS OF 23 HOURS BEFORE
19 THE DEFENDANT MIGHT TESTIFY, I WOULD SUBMIT TO THE
20 COURT, YOUR HONOR, THAT AGAIN WE BE ALLOWED TO SIMPLY
21 QUESTION HIM ABOUT IT BECAUSE, AGAIN, I'M NOT
22 INTRODUCING ANY EVIDENCE SAYING THAT IT IS.

23 HE MAY GET UP THERE AND SAY NO, IT'S NOT ME.
24 I'M ENTITLED TO ASK HIM ABOUT THIS. AND IF HE SAYS NO,
25 THAT'S IT, I'M STUCK WITH HIS ANSWER, AS YOUR HONOR

1 INDICATED AND AS I PREVIOUSLY INDICATED. AND THAT'S THE
2 ONLY PURPOSE THAT THE STATE IS PROFFERING THIS. I'M NOT
3 PROFFERING IT FOR ANY PURPOSE OF TRYING TO GET HIM
4 CONVICTED OF USING IT. IT GOES STRICTLY TO CREDIBILITY
5 AND IF HE SAYS NO, IT'S NOT HIM, THEN THAT'S WHAT I'M
6 STUCK WITH. BUT I THINK I'M ENTITLED TO AT LEAST ASK HIM
7 ABOUT THAT.

8 THE COURT: ONLY IF HE TAKES THE
9 STAND.

10 MR. REDMOND: THAT'S CORRECT,
11 ONLY IF HE TAKES THE STAND.

12 MR. WATSON: BUT HE'S NOT ENTITLED
13 TO ASK MY CLIENT ANY QUESTIONS ABOUT IT. AND ONE OF THE
14 SPECIFIC MATTERS FOR DISCOVERY UNDER THE CRIMINAL
15 PRACTICE RULE FIVE IS THE CRIMINAL HISTORY OF THE
16 DEFENDANT. AND I'LL DIG OUT MY RULE FIVE - IT'S BEEN FILED
17 FOR MANY MONTHS BEFORE JULY. I FILED AND SERVED THE
18 RULE FIVE REQUEST UPON THE SOLICITOR ON THE 12TH DAY OF
19 MAY, 2006. AND AS PART OF THAT RULE FIVE DISCOVERY. . . I'M
20 TRYING TO SEE WHERE I SPECIFICALLY ASKED FOR THE CRIMINAL
21 RECORD OF THE DEFENDANT. I ASKED FOR IT SPECIFICALLY.
22 UNDER ITEM "F," THAT'S ONE OF THEM. AND IN IT I ASKED
23 UNDER BRADY VERSUS MARYLAND, AND THIS IS A SPECIFIC
24 QUOTE, "FOR THE SOLICITOR TO PRODUCE SUCH MATERIAL WELL
25 IN ADVANCE OF THE SCHEDULED TRIAL DATE." 24 HOURS

1 BEFORE TRIAL IS JUST WOEFULLY INACCURATE.

2 MR. REDMOND: WELL, YOUR HONOR, I
3 DON'T MEAN TO INTERRUPT HIM, BUT I'M LOOKING AT RULE FIVE
4 UNDER SECTION "A," 1(B), WHICH TALKS ABOUT THE
5 DEFENDANT'S PRIOR RECORD. AND IT JUST INDICATES IT'S MY
6 DUTY TO INFORM HIM OF THE CRIMINAL HISTORY. AND I
7 UNDERSTAND HIS SITUATION IS SOMEWHAT DIFFERENT IN THE
8 FACT THAT WE HAD THAT CRIMINAL HISTORY AND I WAS ASKED
9 TO GET THE CERTIFIED TRUE COPIES OF THE REPORT, BUT THE
10 ISSUE, MR. WATSON IS AWARE OF WHAT THE STATE WAS
11 PROFFERING AS HIS CRIMINAL HISTORY.

12 AND, AGAIN, I'M NOT SAYING THAT WE HAVE PROOF
13 THAT THIS IS THE DEFENDANT. I'M SIMPLY SAYING THAT WE'VE
14 GOT DOCUMENTS HERE THAT IT MAY BE THE DEFENDANT. I'M
15 ALLOWED TO ASK HIM ABOUT IT. SO, AGAIN, I STILL DON'T
16 HEAR WHAT MR. WATSON HAS SAID THAT MAKES HIM
17 PREJUDICED. AND, AGAIN, IT IS PRIOR TO THE TRIAL. AND AS I
18 LOOK THROUGH RULE FIVE I DON'T SEE WHAT I HAVE ACTUALLY
19 VIOLATED.

20 THE COURT: WELL LET'S SAY THE
21 COURT WOULD RULE THAT YOU CAN'T USE THE FLORIDA
22 DOCUMENTATION CERTIFICATION AS TO HIS RECORD BECAUSE
23 IT'S UNTIMELY. THAT MEANS THAT THE ONLY THING THAT CAN
24 COME INTO THE RECORD, IF APPROPRIATE AND IF THE WITNESS
25 TAKES THE STAND, IS THAT YOU ASK HIM QUESTIONS

1 REGARDING HIS RAP SHEET. HE CAN ADMIT IT, DENY IT,
2 QUALIFY IT, SAY IT AIN'T ME, OR ANYTHING ELSE. WOULD YOU
3 AGREE WITH THAT, MR. WATSON?

4 MR. WATSON: I AGREE THAT HE CAN
5 DO THAT AND THAT IS THE ONLY THING THAT HE HAS
6 PROVIDED ME ARGUABLY TIMELY, BUT IT IS INACCURATE.
7 WHAT I DISAGREE WITH---

8 THE COURT: HOW DO YOU KNOW IT'S
9 INACCURATE?

10 MR. WATSON: OTHER THAN WHAT MY
11 CLIENT TELLS ME, I HAVE NO OTHER WAY TO KNOW IT. AND
12 BASED UPON WHAT THE SOLICITOR TELLS THE COURT, I HAVE
13 REASON TO RELY ON WHAT MY CLIENT TELLS ME. THE ORIGINAL
14 RAP SHEET IS WRONG, HENCE WE GOT THIS WHICH WE'RE NOT
15 SURE IS RIGHT, HENCE, YOU KNOW, WE CAN TAKE THE
16 FINGERPRINTS AND GO AGAIN. THERE'S NOT AN OFFICER OF
17 THE COURT STANDING BEFORE YOU WHO THINKS THAT THE RAP
18 SHEETS THAT ARE PROFFERED ARE CORRECT.

19 MR. REDMOND: YOUR HONOR,
20 ACTUALLY AS I WAS THUMBING THROUGH THEM, I ACTUALLY
21 CAUGHT AN INTERESTING BLURB THAT I HADN'T CAUGHT
22 BEFORE AS IT RELATES TO - AND, AGAIN, I WOULD PROPOSE TO
23 DO WHAT THE COURT INDICATED, JUST GO BY THE RAP SHEET
24 SINCE HE HAS BEEN PROVIDED THAT. I ASK HIM, IF HE DENIES IT,
25 SO BE IT, I'M STUCK WITH THAT ANSWER. I CANNOT ASK HIM

1 ANYTHING ELSE, I CANNOT ALLUDE TO THE FACT THAT I HAD
2 REQUESTED DOCUMENTS FROM THE STATE OF FLORIDA. BUT
3 JUST TO CLARIFY, MY POSITION IS NOT THAT THEY'RE
4 INACCURATE, I'M JUST STATING THE DATES OF BIRTH ARE
5 DIFFERENT - AN INTERESTING LITTLE BLURB I SAW IS SOMETHING
6 ON THERE FROM FLORIDA A/K/A ARTIE BURNS, THAT HE HAD
7 USED THAT NAME BEFORE. BUT AGAIN, THAT'S THE ONLY THING
8 ON THERE, SO I CANNOT USE THAT AND I WOULD NOT EVEN
9 MENTION ANYWHERE IN OPEN COURT IN THE PRESENCE OF THE
10 JURY THAT I GOT ANY DOCUMENTS FROM THE STATE OF
11 FLORIDA. SIMPLY PUT, I'D ASK HIM "WERE YOU CONVICTED ON
12 SUCH AND SUCH A DATE OF SUCH AND SUCH AN OFFENSE?" IF
13 HE SAYS NO, MOVE ON TO THE NEXT THING. IF HE SAYS NO TO
14 EVERYTHING, THEN I'LL MOVE ON TO THE REST OF MY CROSS
15 EXAMINATION.

16 MRS. MCMILLAN: YOUR HONOR IT
17 SOUNDS LIKE TO ME, AND I WOULD LIKE TO BE HEARD ON THIS,
18 THAT WE'RE GETTING TO MY MOTION AS FAR AS THE HEATH*
19 CASE AND WHAT CAN BE MENTIONED IN FRONT OF THE JURY.
20 AND THAT WAS MY SOLE PURPOSE BEHIND WANTING TO KNOW
21 EXACTLY WHAT HE WOULD ASK ABOUT ON THE RECORD THAT I
22 WAS PROVIDING TO MY CLIENT. BECAUSE IF IT IS ANYTHING
23 FALLING UNDER THE PROHIBITIONS OF THE HEATH CASE, THEN I
24 DO NOT BELIEVE THAT HE SHOULD BE ALLOWED TO ASK THAT IN
25 FRONT OF THE JURY.

1 MR. REDMOND: IT'S OPINION 26200
2 FILED AUGUST 14TH, 2006.

3 MRS. MCMILLAN: AND IN THAT CASE,
4 YOUR HONOR. THE SUPREME COURT CLEARLY SAYS IF IT IS
5 EMBEZZLEMENT, BAD CHECKS, THAT TYPE OF THING, THAT THE
6 DEFENDANT CAN BE QUESTIONED ABOUT THAT. BUT IF IT IS
7 RELATED - AND THEN THERE'S A LONG LITANY THAT YOU WILL
8 READ INCLUDING FORMER DRUG CHARGES, THINGS LIKE THAT,
9 THAT ARE INADMISSIBLE AND NOT TO BE PRESENTED TO THE
10 JURY.

11 MR. WATSON: EVEN FOR THE PURPOSES
12 OF POTENTIAL IMPEACHMENT. YOU CAN'T WALK UP AND SAY,
13 DID YOU DO THIS? I THINK THAT CASE STANDS ON THE FOUR
14 CORNERS FOR THAT.

15 MR. REDMOND: AND QUITE FRANKLY,
16 YOUR HONOR, I AM AWARE OF THAT, AND WHAT I'M SAYING IS I
17 DON'T DISAGREE WITH THAT AS IT RELATES TO DRUG CHARGES.

18 MR. MCMILLAN: YOUR HONOR, HE
19 SAYS HE HAS NOT READ THE CASE.

20 MR. REDMOND: I'M ACTUALLY
21 AGREEING WITH THE JUDGE.

22 MRS. MCMILLAN: I'M SORRY, I'M
23 ABOUT TO THROW EVERYTHING UP IN THE AIR. I'M HAVING A
24 VERY HARD TIME WITH MR. REDMOND.

25 THE COURT: IT'S YOUR GO.

1 MRS. MCMILLAN: I HEARD THE
2 SOLICITOR SAY THAT HE WASN'T FAMILIAR WITH THE CASE AND I
3 WOULD APPRECIATE IT IF HE WOULD AT LEAST LET ME HAVE AN
4 A OPPORTUNITY TO READ IT.

5 MR..REDMOND: YOUR HONOR, I
6 APOLOGIZE. BASICALLY WHAT I WAS SAYING, MRS. MCMILLAN, IF
7 YOU'D LISTEN TO ME, I DON'T EVEN THINK THAT'S NECESSARY
8 BECAUSE I DON'T DISAGREE WITH HER AS IT RELATES TO THAT
9 PRINCIPLE. AND THEN I DIDN'T MAKE THIS CLEAR, THEY'VE
10 BOTH GOT CONVICTIONS OTHER THAN DRUG OFFENSES THAT I
11 WOULD BE ASKING THEM ABOUT. I WOULD NOT ASK THEM
12 ABOUT DRUG OFFENSES BECAUSE WITH THEM SAYING NO AND
13 ME NOT BEING ABLE TO PROVE THAT THAT IS THEM, YES, I
14 COULD SEE IT COMING BACK. AND THAT'S PART OF WHAT I WAS
15 REFERRING TO. AND AS I'M SAYING, THAT'S NOT EVEN
16 NECESSARY. I'LL STIPULATE THAT I WON'T ASK THEM ABOUT
17 ANY DRUG CONVICTIONS.

18 MRS. MCMILLAN: IF HE'LL STIPULATE
19 THAT HE WILL NOT ASK THEM ANYTHING PROHIBITED BY THE
20 HEATH CASE, INCLUDING WEAPONS VIOLATIONS, THEN WE ARE
21 IN AGREEMENT.

22 THE COURT: WELL YOU'LL WORK OUT
23 THE STIPULATIONS, I CAN'T GET INVOLVED IN THE
24 STIPULATIONS. IF EVERYBODY'S THROUGH FOR THE MOMENT,
25 I'LL READ THE CASE.

1 (THE JUDGE DOES SO.)

2 THE COURT: MRS. MCMILLAN, I DON'T
3 SEE WHERE THIS HAS ANYTHING TO DO WITH HIS RECORD.

4 MRS. MCMILLAN: SIR?

5 THE COURT: THIS HAS TO DO WITH
6 CONSTRUCTIVE POSSESSION.

7 MRS. MCMILLAN: WE HANDED UP THE
8 WRONG CASE, YOUR HONOR.

9 MR. REDMOND: IT'S A DIFFERENT
10 CASE, I'M AWARE -- AND THAT'S WHY I WASN'T FAMILIAR WITH
11 THE HEATH CASE - I'M AWARE OF CASE LAW THAT INDICATES---

12 THE COURT: I JUST SPENT 20 MINUTES
13 READING THE WRONG CASE?

14 MRS. MCMILLAN: I'M SO SORRY. LET
15 ME FIND THE BRYANT CASE, PLEASE, SIR.

16 MR. REDMOND: YOUR HONOR, IF I
17 MIGHT JUST BRIEFLY; I DON'T HAVE THE SITES, BUT THE
18 RESEARCH I HAVE PREVIOUSLY DONE INDICATES - AND THE
19 REASON I SAID I WOULD NOT OPPOSE IT, BECAUSE I AM AWARE
20 OF CASE LAW THAT SAYS IF I'M TRYING THEM FOR DRUG CASES
21 IF THERE'S ANYTHING ON THEIR RECORD THAT WOULD BE
22 DRUG-RELATED, I WOULD NOT BE ALLOWED TO GET INTO THAT.
23 I'VE ACTUALLY HAD THAT OCCUR IN CASES BEFORE, SO I AM
24 AWARE OF THAT PRINCIPLE AND WOULD STIPULATE SO.

25 MRS. MCMILLAN: YOUR HONOR, I

1 APOLOGIZE, SERIOUSLY. I AM SO SORRY, I GET THESE MEN
2 MIXED UP.

3 THE COURT: IT'S TWENTY MINUTES
4 UNTIL ONE O'CLOCK. I NEED TO WATCH A DVD, OR VCR, AND I
5 NEED TO READ A CASE, AND IT WE NEED TO HAVE LUNCH. IT
6 SEEMS TO ME IN THE INTEREST OF TIME THAT WE BREAK FOR
7 LUNCH NOW AND START BACK AT 2:00. THAT'S GIVE ME TIME
8 TO - I UNDERSTAND IT'S 40 MINUTES FOR THE TELEVISION
9 MONITOR, AND I CAN READ THIS AND WATCH THAT AND HAVE
10 LUNCH. ANY OBJECTION TO THAT?

11 MR. WATSON: I WOULD PROPOSE THAT
12 WE START THE TAPE AT TWO O'CLOCK SO ALL THE PARTIES,
13 INCLUDING THE DEFENDANTS ARE PRESENT TO WATCH.

14 MR. REDMOND: I COULD NOT HEAR
15 MR. WATSON.

16 THE COURT: YOU WANT ME TO WATCH
17 IT IN THE PRESENCE OF THE PARTIES?

18 MR. WATSON: STATE, DEFENSE
19 COUNSEL, AND DEFENDANTS, YES, SIR.

20 MR. REDMOND: YOUR HONOR, IF I MAY
21 BE HEARD? SINCE YOU WILL HAVE THE TAPE AND SERGEANT
22 LANE* WILL BE TESTIFYING, PERSONALLY I DON'T HAVE ANY
23 NECESSITY TO ACTUALLY BE THERE WHEN YOU WATCH IT. WE
24 HAVE NO PROBLEM, THE STATE HAS NO PROBLEMS WITH YOU
25 WATCHING IT ON YOUR OWN PRIOR TO HEARING THE

1 TESTIMONY WITHOUT THE PARTIES BEING PRESENT. THAT IS THE
2 POSITION OF THE STATE.

3 THE COURT: ALL RIGHT, WELL, WE'LL
4 WATCH IT IN HERE AND I'LL HAVE LUNCH ON THE BENCH. AND
5 YA'LL CAN WATCH ME WATCH IT. IN THE MEANTIME I'LL BE
6 READING THE CASE. I WON'T START WATCHING THE DVD OR
7 VCR UNTIL THE DEFENDANTS ARE PRESENT AND THE
8 DEFENDANTS' ATTORNEYS. WE'LL NOTIFY YOU WHEN I GET
9 READY TO WATCH IT. SO WE'LL STAND AT EASE UNTIL AT LEAST
10 TWO O'CLOCK.

11 (AT THIS TIME THERE WAS A LUNCH BREAK.)

12 THE COURT: ALL RIGHT, BEFORE WE
13 WATCH THE C.D. OR D.V.D.?

14 MR. REDMOND: VIDEO TAPE, OLD-
15 FASHIONED STUFF.

16 THE COURT: YOU HAD A SHORT
17 MATTER, MR. REDMOND, YOU WANTED TO TAKE UP?

18 MR. REDMOND: YES, SIR.

19 (AT THIS TIME OTHER MATTERS WERE TAKEN UP IN UNRELATED CASES)

20 MR. REDMOND: YOUR HONOR, I JUST
21 WANTED TO CLARIFY SOMETHING FOR THE RECORD REAL
22 QUICKLY. YOUR HONOR, I DO THIS JUST TO MAKE SURE AS AN
23 OFFICER OF THE COURT I DON'T MISLEAD THE COURT. I'D
24 INDICATED THAT I WAS LOOKING FOR THE SIGNED SHEET
25 REGARDING WHEN THE DISCOVERY WAS SUPPLIED, HOWEVER,

1 THE DISCOVERY IN THIS CASE WAS PROVIDED PRIOR TO THAT ON
2 THE 19TH OF JULY. OUR ASSISTANT DIDN'T COME IN UNTIL
3 AUGUST THAT STARTED DOING THAT, THOSE FORMS, AND I JUST
4 WANTED TO MAKE THAT CLEAR. THAT DOES NOT IMPACT THE
5 MOTION AS IT STANDS, JUDGE, BUT JUST FOR CLARITY I WANT
6 TO MAKE SURE BECAUSE I DID SAY THAT, AND WANTED TO
7 CLARIFY THE FACT THAT AT THAT TIME WE DID NOT ACTUALLY
8 HAVE SOMEBODY THERE THAT LISTED AND INITIALED IT ON THE
9 FRONT OF THE FILE. AND I JUST WANTED TO CLARIFY THAT.

10 THE COURT: YES, SIR.

11 (AT THIS TIME THE TAPE WAS PLAYED.)

12 MR. WATSON: YOUR HONOR, I'M GOING
13 TO HAND UP A SOUTH CAROLINA COURT OF APPEALS CASE; THE
14 STATE VERSUS PICHARDO,* IT WAS HEARD OCTOBER 12TH, 2005.
15 AND WAS DENIED JANUARY 19TH, 2006. I HAND UP A COPY OF
16 THOSE FOR BOTH YOU AND THE CLERK.

17 YOUR HONOR, IF IT PLEASE THE COURT, I ALSO HAND UP
18 OUT OF THAT FROM COLLETON COUNTY IN THE COURT OF
19 GENERAL SESSIONS THE ORDER OF SUPPRESSION WHICH WAS THE
20 SUBJECT OF THAT APPEAL, SIGNED BY JUDGE BUCKNER, WHO WAS
21 THE PRESIDING JUDGE. IT WAS DATED SEPTEMBER THE 22ND,
22 2003. IT WAS CLERKED WITH THE COLLETON COUNTY COURT
23 OF GENERAL SESSIONS ON SEPTEMBER THE 26TH, 2003.

24 MR. REDMOND: AND, YOUR HONOR, IF
25 THE DEFENSE HAS COPIES, I HAVE NOT HAD A CHANCE TO LOOK

1 AT THEM.

2 MR. WATSON: I HAND OVER
3 PICHARDO*, I DO NOT HAVE ANOTHER COPY OF THE ORDER OF
4 SUPPRESSION FOR THE SOLICITOR.

5 THE COURT: I HAVE ONE.

6 MR. WATSON: IF WE TOOK THIS CASE
7 ON ITS SEMINAL* ISSUES, I WOULD BEG THE COURT'S ATTENTION
8 TO THE LAST PAGE OF THE SUPPRESSION ORDER WHERE JUDGE
9 BUCKNER SAYS, "I CONCLUDE BASED UPON THE FOREGOING
10 ANALYSIS THAT THE SEARCH IN THIS CASE WAS IMPROPER IN
11 THAT IT WAS NOT BASED UPON PROBABLE CAUSE OR SUSPICION
12 AND WAS STILL WITHIN THE SCOPE OF THE TRAFFIC STOP", AND
13 - I ADD EMPHASIS HERE - "EXPLOITIVE OF THAT STOP, AND AS
14 SUCH VIOLATED THE PRINCIPLES ENUNCIATED IN STATE VERSUS
15 WILLIAMS, AND THAT NO VOLUNTARY CONSENT BY RIZE,* WHO
16 WAS THE DEFENDANT IN THAT CASE, THE FOREIGN-SPEAKING
17 OFFICER OF THE VEHICLE WAS EVER OBTAINED."

18 IF IT PLEASE THE COURT. THERE AROSE FROM THAT
19 THE CASE OF STATE VERSUS PICHARDO, WHICH I HAVE HANDED
20 UP TO YOU, WHICH IS IN THIS INSTANCE THE CASE WHICH IS
21 WITHOUT QUESTION THE TEMPLATE UPON THE REASON
22 EVERYTHING SHOULD BE SUPPRESSED. THE STATE SEEKS TO
23 MORPH A TRAFFIC STOP INTO A FOURTH AMENDMENT SEARCH
24 AND SEIZURE.

25 I WOULD NEVER MEAN TO INSTRUCT THE COURT,

1 BUT THERE ARE SO MANY SITES IN STATE VERSUS PICHARDO
2 WHICH ARE ABSOLUTELY ON POINT AS A FOOTPRINT, I'D LIKE TO
3 GO THROUGH A FEW OF THEM, IF I MIGHT.

4 I AM NOT QUOTING THE PUBLICATION OF THE STATE
5 SUPREME COURT. I AM, HOWEVER, QUOTING A YAHOO MAIL
6 PRINTOUT WHICH I BELIEVE TO BE PRECISE AND EXACT WHEN IT
7 COMES TO THOSE THINGS WHICH ARE ENUNCIATED IN THE
8 STATE COURT OF APPEALS CASE. I ADD EMPHASIS TO THE FACT
9 THAT A HEARING BEFORE THE STATE SUPREME COURT WAS
10 DENIED. IT IS EXQUISITELY INTERESTING THAT IN PICHARDO IT
11 WAS AN I-95 CASE. IT WAS IN IMMINENTLY INTERESTING THAT
12 TON PICHARDO THERE WAS A STOP, A WARNING, AND FROM
13 THAT WARNING THE STATE SAID, OH, BY THE WAY, WE HAVE
14 TROUBLE ON INTERSTATE 95 WITH DRUGS, MAY WE SEARCH
15 YOUR CAR? DAVID LANE DID EXACTLY THE SAME THING.

16 THE CRUCIBLE OF DETERMINING WHETHER A TRAFFIC
17 STOP CAN BY INFERENCE OR BY VOLUNTARY ACT BE CONVERTED
18 INTO A FOURTH AMENDMENT SEARCH AND SEIZURE IS OUTLINED
19 IN THIS CASE WITH JUST EXCRUCIATING SPECIFICITY. I WILL
20 SPARE THE COURT OF READING ANY OF THAT.

21 ONE OF THE CONTROLLING, CAPTIVATING, AND
22 ULTIMATE CONCLUSIONS OF PICHARDO WAS IF YOU'RE GOING
23 TO HAVE A TRAFFIC STOP, YOU MUST STOP ANY INVESTIGATION
24 AT THE SUBJECT OF THAT TRAFFIC STOP. MR. LANE ENTERED
25 INTO A CONVERSATION WITH THE DEFENDANTS ABOUT WHERE

1 THEY WERE GOING, WHAT THEY WERE DOING, AND OH, BY THE
2 WAY, ARE YOU SLEEPY OR HAVE YOU BEEN DOING DRUGS? HE
3 CHOSE NOT TO ARREST THE DEFENDANTS, CHOSE NOT TO
4 ARREST THEM. ONCE THEY MADE THAT DECISION, ANYTHING
5 BEYOND THE SUBJECT OF THAT TRAFFIC STOP AS SPECIFICALLY
6 OUTLINED IN PICHARDO THIS YEAR, BECAME INVALID AND MUST
7 BE SUPPRESSED.

8 THE COURT IN PICHARDO RELIED UPON PROBABLE
9 CAUSE OR REASONABLE ARTICULABLE SUSPICION IF YOU BELIEVE
10 A VIOLATION OF THE LAW HAS OCCURRED OUTSIDE THE FOUR
11 CORNERS OF THE TRAFFIC STOP. AS AN ESSENTIAL PART OF
12 THAT, THE DEFENDANT IN PICHARDO AS DETERMINED BY THE
13 COURT, NEVER HAD BEEN GIVEN A REASONABLE OPPORTUNITY
14 TO LEAVE NOR GIVEN THE IMPRESSION HE WAS FREE TO LEAVE.
15 THAT WAS PRECISELY WHAT HAS HAPPENED IN THIS CASE.

16 THE COURT SAID THAT ONCE THAT OCCURS, WE
17 DON'T HAVE TO GET TO THE FRUIT OF THE POISONOUS TREE,
18 WHICH THEY GO THROUGH A VERY INTERESTING ANALYSIS OF.
19 THEY SAY THE WHOLE SEARCH IS IMPROPER, AND EVERY PART OF
20 IT SHALL BE SUPPRESSED.

21 THE VIDEO TAPE THE COURT HAS HAD THE
22 OPPORTUNITY TO SEE IS MOST TELLING IN THE INCIDENT CASE.
23 THERE ARE CONTAINED IN THE VIDEO TAPE CERTAIN POINTS
24 WHICH ARE VERY CLEAR. I WILL GO IN REVERSE ORDER FOR A
25 SECOND. THE TAPE ITSELF SHOULD BE SUPPRESSED, ONE,

1 BECAUSE IT IS AN INVALID COMMENT UPON MY CLIENT'S
2 CONSTITUTIONAL RIGHT TO REMAIN SILENT. DAVID LANE SAID,
3 IF YOU DON'T HELP YOURSELF NOW, YOU CAN'T LATER, YOU
4 CAN'T COME TO ME SIX MONTHS FROM NOW, I KNOW THE
5 ANSWERS TO MOST OF THE QUESTIONS. HE ASKED THEM, DO
6 YOU HAVE A QUARTER, KILO, OR WHAT? MY CLIENT REMAINED
7 SILENT. HE WAS AVAILING HIMSELF OF THE CONSTITUTIONAL
8 RIGHTS THAT OFFICER TOLD HIM HE HAD.

9 MOST IMPORTANTLY IN THE VIDEO TAPE WHEN YOU
10 WATCH THAT IT BEGINS AT 44:33, IT WAS NOT UNTIL - AND I'M
11 JUST GOING TO GIVE YOU THE NUMBERS OF WHERE THE
12 INCIDENTS OCCURRED - 55:39 THAT MY CLIENT WAS
13 MIRANDIZED, NOR WAS MRS. MCMILLAN'S CLIENT MIRANDIZED.
14 THERE IS NO QUESTION; THERE IS NO QUESTION THAT MR. LANE
15 KNEW FROM THE TIME HE STOPPED MY CLIENT UNTIL HE
16 MIRANDIZED THEM, THE QUALITY, THE NATURE AND THE RESULT
17 OF HIS ACTIONS HAD CHANGED SUBSTANTIALLY. THE
18 COMMENTS OF MY CLIENT ABOUT WHERE HE WAS GOING, WHAT
19 HE WAS GOING TO DO WERE WITHOUT BENEFIT OF MIRANDA.
20 MR. LANE NEVER LEFT MY CLIENT OR MRS. MCMILLAN'S CLIENT.
21 ALL OF THOSE COMMENTS, BECAUSE HE WAS NOT MIRANDIZED
22 AND THE SUBJECT OF AN ILLEGAL SEARCH, MUST BE SUPPRESSED.

23 THE COURT: STOP JUST A MINUTE. I'M
24 NOT SURE I UNDERSTAND WHAT YOU JUST SAID. IT'S MY
25 UNDERSTANDING OF THE QUESTIONS ABOUT WHERE HE WAS

1 GOING ALL TOOK PLACE BEFORE MIRANDA,

2 MR. WATSON: THAT IS CORRECT.

3 THE COURT: AND HAD NOTHING TO
4 DO WITH THE SEARCH. HE WAS JUST ASKING HIM QUESTIONS
5 LIKE WHERE ARE YOU GOING AND THAT.

6 MR. WATSON: LET ME ADD A
7 FOOTNOTE TO THAT. THAT IS CORRECT, IN THAT THE ORIGINAL
8 PURPOSE OF THE STOP WAS FOR A TRAFFIC VIOLATION.

9 THE COURT: WHAT WAS THE TRAFFIC
10 VIOLATION?

11 MR. WATSON: I BELIEVE MR. LANE
12 TOLD HIM HE WAS FOLLOWING THE CAR TOO CLOSELY OR THAT
13 HE WAS SWERVING, ONE OF THOSE TWO. I DIDN'T WRITE THAT
14 DOWN. BUT HE ASKED HIM IF WAS SLEEPY, OR IF HE HAD BEEN
15 DOING DRUGS? THAT'S THE REASON HE STOPPED HIM. AND HE
16 SAID, HERE'S A WARNING, IT WON'T GO AGAINST YOUR LICENSE.
17 AND THAT'S WHEN HE ENTERED INTO THE DIATRIBE, OH, BY THE
18 WAY, WE HAVE TROUBLE HERE ON INTERSTATE 95 WITH DRUGS.
19 THAT'S WHEN EVERYTHING CHANGED, AS IS OUTLINED IN
20 PICHARDO.

21 WHEN MY CLIENT NO LONGER HAD THE ABILITY TO
22 LEAVE, IT WAS NOT A SEARCH, BUT A DETENTION. IF YOU LOOK
23 BEGINNING AT 53:70, MY CLIENT WAS INSTRUCTED TO STAND
24 UP AGAINST THE TRUCK, AND HE REMAINED THERE. IT WASN'T
25 UNTIL MRS. MCMILLAN'S CLIENT SAID, MAY I HAVE MY JACKET,

1 THAT MR. LANE PULLED OUT HIS GUN AND DREW IT ON HIM.
2 IT WAS NEVER EVER, EVER, ANY MOVEMENT BY THIS GENTLEMEN
3 WHICH WAS RECORDED ON THAT VIDEO TAPE TO SHOW A
4 SUBSTANTIAL REASON TO DRAW A GUN. THE DRAWING OF THAT
5 WEAPON CHANGES IT BECAUSE THAT IS A CUSTODIAL ARREST.
6 THAT RIGHT THEN EXCEEDED THE TRAFFIC STOP.

7 THE CITATIONS IN PICHARDO ARE NUMEROUS ABOUT
8 THAT. YOU CAN'T STOP FOR IMPROPER LANE CHANGE OR
9 FOLLOWING TOO CLOSE AND THEN SEARCH MY VEHICLE,
10 BECAUSE AS IT SAYS BY OUR COURT OF APPEALS, "THERE MUST
11 BE A REASONABLE, ARTICULABLE SUSPICION THAT THERE IS A
12 CRIME BEING COMMITTED OTHER THAN THE TRAFFIC STOP."

13 HERE IS IT ABUNDANTLY CLEAR BY THE RES JESTAE OF
14 THAT TAPE THAT THERE WAS NO ARTICULABLE SUSPICION OF
15 ANYTHING. IF YOU GO TO PICHARDO IN COLLETON COUNTY,
16 THE CASE THAT ARISES THERE THAT GAVE US PICHARDO, THE
17 EXACT SAME THING HAPPENED. THE OFFICER STOPPED HIM,
18 GAVE HIM THE WARNING TICKET, AND THEN LAPSED INTO THE;
19 YOU KNOW, WE HAVE A LOT OF TROUBLE ON I-95 WITH DRUGS,
20 MAY I SEARCH YOUR CAR. OUR COURT OF APPEALS SAID THAT'S
21 WRONG, SIMPLY JUST WRONG.

22 IT IS A BRIGHT*-LINE TEST THAT ONCE YOU DECIDE
23 YOU'RE NOT GOING TO SITE SOMEBODY, THEY HAVEN'T BROKEN
24 THE LAW, YOU OFFER THEM A WARNING WHICH IS NOT A
25 CITATION, AND YOU BID THEM FAREWELL, YOU MAY NOT THEN

1 EXPAND THAT INTO A SEARCH FOR ANYTHING. WITH RESPECT
2 TO THIS COURT, IT'S JUST AS CLEAR AS THOSE LIGHTS THAT ARE
3 ON RIGHT THERE. SO WE HAVE A STOP---

4 THE COURT: HOW ABOUT IF YOU HAVE
5 REASONABLE SUSPICION THAT SOME CRIMINALITY IS AFOOT?

6 MR. WATSON: I'M SORRY?

7 THE COURT: UNDER MATT V OHIO, OR
8 UNDER TERRY VERSUS OHIO, I RECALL THAT WAS LIKE A STOP
9 AND FRISK CASE OR SOMETHING THAT HAD TO DO WITH AN
10 OFFICER'S EXPERIENCE, BASED ON HIS EXPERIENCE IF HE
11 THOUGHT SOME CRIMINALITY WAS AFOOT, OR SOME VIOLATION
12 OF THE LAW HAD TAKEN PLACE OR WAS TAKING PLACE OUTSIDE
13 THE BOUNDS OF THE TRAFFIC STOP, IS THAT WHAT YOU'RE
14 TALKING ABOUT IF HE HAD SOME ARTICULABLE REASON?

15 MR. WATSON: NO, SIR.. THERE HAS TO
16 BE AT THE TIME OF THE STOP A REASONABLE ARTICULABLE---

17 THE COURT: AT THE TIME OF THE
18 STOP?

19 MR. WATSON: YES, SIR.

20 THE COURT: ARE YOU TELLING ME
21 THAT YOU CAN'T GET AN ARTICULABLE REASON TO CONTINUE
22 TO SEARCH BY VIRTUE OF WHAT TURNED UP AT THE STOP?

23 MR. WATSON: WHAT I'M TELLING YOU
24 IS THIS; IN THIS CASE NOTHING TURNED UP. AND SINCE
25 NOTHING TURNED UP, HE COULD NOT THEN TURN TO THE

1 DEFENDANT----

2 THE COURT: WHAT DO YOU MEAN,
3 NOTHING TURNED UP? HOW ABOUT THE MANNER IN WHICH
4 THEY ANSWERED THE QUESTIONS, WHAT THEIR FACIAL
5 EXPRESSIONS LOOKED LIKE, WHETHER THEY WERE NERVOUS,
6 WHETHER THEY COULDN'T COME UP WITH SIMPLE ANSWERS LIKE
7 "WHAT'S YOUR NAME." AND I COULDN'T HARDLY HEAR WHAT
8 THE QUESTIONS WERE THAT HE WAS ASKING ON THE TAPE.

9 MR. WATSON: I CAN TELL YOU THAT
10 THAT HAS FINALLY BEEN SPECIFICALLY ANSWERED IN PICHARDO.
11 AND LET ME TAKE ONE THAT IS THE MOST PROMINENT
12 EVERYWHERE; THAT THE PERSON WAS NERVOUS. OUR COURT
13 HAS SAID THAT THAT IS NOT REASONABLE, ARTICULABLE
14 SUSPICION TO FURTHER GO SEARCH FOR SOMETHING ELSE. AND
15 WITH RESPECT, SIR, THAT IS JUST AS CLEAR AS THAT LIGHT
16 THAT'S ON.

17 YOU CAN'T STOP FOR WEAVING IF YOU THINK THERE
18 ARE DRUGS. IF YOU THINK THERE ARE DRUGS IN THE CAR,
19 YOU'VE GOT TO WALK UP TO THE DEFENDANT, ACCORDING TO
20 PICHARDO, AND SAY I BELIEVE THAT THERE IS REASONABLE,
21 ARTICULABLE SUSPICION - IN SOME PROPER WAY - THAT THERE
22 ARE DRUGS IN THIS CAR, MAY I SEARCH THE CAR? YOU CAN'T
23 STOP THEM FOR WEAVING, GIVE THEM A WARNING, BID THEM
24 FAREWELL, AND THEN SAY, OH, BY THE WAY, I WANT TO
25 CONTINUE THIS STOP AND IF I FIND DRUGS I'M GOING TO

1 ARREST YOU FOR IT. THAT IS NOT PROPER, IT IS NOT PROPER, IT
2 IS CLEAR. AND THE ISSUE OF BEING NERVOUS IS RESOLVED IN
3 PICHARDO.

4 THIS CASE IS SUCH A TEMPLATE FROM THAT COURT
5 OF APPEALS CASE, IT IS MOST IRONIC. BUT YOU TALKED ABOUT
6 MATT VERSUS OHIO, YOU TALKED ABOUT TERRY - I'M GETTING
7 THEM WRONG - BUT ONE'S A STOP AND FRISK CASE WHERE YOU
8 BELIEVE THAT THE POTENTIAL DEFENDANT MAY BE ARMED. IF
9 YOU REMEMBER THE VIDEO TAPE, THE OFFICER SEARCHED BOTH
10 OF THEM, HE ASKED THEM, ARE THERE ANY ARMS, OR IS THERE
11 ANYTHING THE CAR I SHOULD BE WORRIED ABOUT. AND GUESS
12 WHAT, THEY SAID NO, AND HE SEARCHED THEM ANY WAY.
13 THAT WAS DONE BEFORE HE ISSUED THE WARNING. THAT'S THE
14 IMPORTANT PART HERE. HE SEARCHED THEM FOR POTENTIAL
15 ARMS, HE SEARCHED THEM FOR POTENTIAL DANGER, AND AFTER
16 THAT, AFTER ALL OF THAT WAS BORN OUT BY THE VIDEO TAPE,
17 HE SAID I'M GOING TO GIVE YOU A WARNING, IT WON'T HURT
18 YOUR DRIVER'S LICENSE, I BID YOU FAREWELL.

19 OUR COURT OF APPEALS SAID ONCE YOU DO THAT,
20 ONCE YOU MAKE THAT ELECTION, YOU HAVE SAID TO THE
21 DEFENDANTS BY YOUR ACTION THAT THERE IS NO REASONABLE
22 ARTICULABLE SUSPICION, THEN YOU COUPLE THAT WITH THE
23 ABSOLUTE MEETING OF THE STOP AND THEN THE SEARCH, NOT
24 BASED ON A REASONABLE ARTICULABLE SUSPICION, THEN IT
25 MUST BE SUPPRESSED.

1 THE COURT: DO YOU THINK YOU
2 CAN'T GIVE THEM AN OPPORTUNITY TO REASONABLY
3 ARTICULATE THAT BASIS?

4 MR. WATSON: NO.

5 THE COURT: THEY DON'T GET A
6 CHANCE TO TELL YOU WHY THEY DID IT?

7 MR. WATSON: SIR?

8 THE COURT: THE OFFICERS DON'T GET
9 A CHANCE TO TELL YOU WHY THEY WENT FORWARD WITH IT?

10 MR. WATSON: I'M SORRY, I DIDN'T
11 HEAR YOU.

12 THE COURT: I HEAR YOU SAYING
13 YOU'RE MAKING THE DETERMINATION HAVING WATCHED THAT
14 VIDEO AND SEEING THINGS OR NOT SEEING THINGS THAT THE
15 OFFICERS COULD, THAT THERE IS NO REASONABLE ARTICULABLE
16 REASON FOR CONTINUING AFTER I BID YOU FAREWELL?

17 MR. WATSON: IN THE INCIDENT CASE
18 AGAINST THESE TWO DEFENDANTS---

19 THE COURT: THAT'S THE ONE I'M
20 TALKING ABOUT.

21 MR. WATSON: --- COUPLED WITH THE
22 GUIDANCE GIVEN IN PICHARDO, YES, SIR, THAT IS THE
23 INEXTRICABLE OUTCOME. BECAUSE WHAT HAPPENS ONCE YOU
24 SAY YOU HAVE VIOLATED NO LAW, AND IN THIS CASE AFTER HE
25 HAS BEEN SEARCHED FOR WEAPONS, ASKED ABOUT MONEY,

1 AFTER ALL OF THAT HE IS GIVEN A WARNING AND HE IS NOT
2 CITED FOR ANY CRIMINAL VIOLATION. THAT WAS AN ELECTION
3 BASED UPON THE LAW ENFORCEMENT OFFICER WHO TELLS YOU
4 ON THE VIDEO TAPE, I'VE BEEN DOING THIS FOR A LONG TIME.
5 IT MAY NOT LOOK LIKE I HAVE BEEN, BUT I'VE BEEN AN OFFICER
6 FOR A LONG TIME. AND ONCE HE MAKES---

7 THE COURT: IS THAT WHAT HE SAID?

8 MR. WATSON: YES, SIR. YES, SIR.

9 WHEN HE WAS TALKING TO MY CLIENT ABOUT NOT GIVING HIM
10 A STATEMENT HE SAID I KNOW THE ANSWERS TO MOST OF MY
11 QUESTIONS, YOU MAY NOT THINK I'VE BEEN DOING THIS FOR A
12 LONG TIME, BUT I HAVE. HE MAKES THAT STATEMENT IN THE
13 VIDEO TAPE. WHEN YOU COUPLE THAT WITH THE DECISION NOT
14 TO ARREST HIM FOR ANYTHING AND THEN START AN
15 INDEPENDENT SEARCH -- IN PICHARDO, OUR COURT SAYS
16 CLEARLY THAT ONCE YOU DO THAT, THEN THE SEARCH IS AN
17 INDEPENDENT EVENT WHICH IS NOT DEFENSIBLE AND A
18 VIOLATION OF THE FOURTH AMENDMENT. IT'S JUST CLEAR.

19 THE COURT: IS IT YOUR POSITION
20 THAT WHEN HE WAS TELLING YOUR CLIENT THAT I KNOW THE
21 ANSWER TO MOST OF THESE QUESTIONS, ANYWAY, I'M GOING
22 TO GIVE YOU AN OPPORTUNITY TO. . . THAT HE WASN'T UNDER
23 ARREST AT THAT TIME?

24 MR. WATSON: OH, YEAH, HE WAS
25 CLEARLY UNDER ARREST AT THAT TIME. THERE'S NO QUESTION

1 THAT HE WAS UNDER ARREST.

2 THE COURT: I THOUGHT IT WAS YOUR
3 POSITION HE WAS NOT UNDER ARREST.

4 MR. WATSON: NO, SIR, THAT IS NOT
5 MY POSITION. I BELIEVE THAT HE WAS UNDER ARREST WHEN
6 THEY DREW THE GUN ON HIM, AND THAT WAS BEFORE THEY
7 EVER FOUND ANY DRUGS BECAUSE THAT MAN ASKED FOR HIS
8 COAT. YOU NOTICED EVERYBODY IN THE VIDEO TAPE WAS
9 WEARING TWO OR THREE COATS, AND AFTER HE ASKED FOR HIS
10 COAT, DAVID LANE DREW A GUN ON HIM. AND THERE'S
11 NOTHING IN THAT TAPE THAT SHOWED HIM MAKING ANY
12 MOVEMENTS WHICH WOULD CAUSE THAT OFFICER TO DRAW A
13 GUN ON HIM.

14 THE COURT: FRANKLY, I THOUGHT THE
15 REASON HE DREW A GUN ON HIM IS BECAUSE HE FOUND
16 SOMETHING IN THE CAR.

17 MR. WATSON: BELONGING TO?

18 THE COURT: BELONGING TO
19 WHOEVER'S IN CONTROL, CUSTODY AND DOMINION OF THE
20 CAR. IT LOOKED TO ME LIKE HE FOUND SOMETHING IN THE CAR
21 AND THEN PULLED THE GUN, NOTHING ABOUT A COAT.

22 MR. WATSON: BUT IN THE VIDEO TAPE
23 HE ASKED FOR THE COAT.

24 THE COURT: I DIDN'T EVEN HEAR HIM
25 ASK FOR THE COAT.

1 MR. WATSON: HE SAID, "MAY I HAVE
2 MY COAT?" AND DAVID LANE DRAWS THE GUN. IT'S IN THE
3 VIDEO TAPE, I CAN PROMISE YOU IT IS.

4 THE COURT: WELL I SAW HIM DRAW
5 THE GUN ON HIM. BUT TO ME, THE WAY I VIEWED IT, WAS AS IF
6 HE HAD FOUND SOMETHING IN THE CAR WHILE SEARCHING,
7 AFTER ASKING THEM DO YOU MIND IF I TAKE A LOOK IN THE
8 CAR, THAT CAUSED HIM TO PULL THE GUN ON HIM. EEW - - IT
9 DIDN'T SAY THIS, BUT AS IF TO SAY THIS - WHOA, WE'VE GOT
10 DRUGS, WE GOT GUNS, WE GOT SOMETHING HERE, DON'T MOVE.

11 MR. WATSON: THERE NEVER HAS BEEN
12 ALLEGATION OF ANY GUNS OR ANY ARMS IN THIS CASE.

13 THE COURT: WELL, I DIDN'T SAY IT
14 WAS, I MEANT FOUND SOME THING. I COULDN'T SEE IN THE
15 CAR, THEY COULD. BUT WHILE HE WAS LOOKING HE ABRUPTLY
16 STOPPED AND PULLED A GUN ON HIM. I DIDN'T HEAR ANYTHING
17 ABOUT A COAT. ADMITTEDLY, I'M HARD OF HEARING, MAYBE
18 YA'LL COULD DISCERN THAT, I DIDN'T.

19 MR. WATSON: I PROMISE YOU AS AN
20 OFFICER OF THE COURT THAT IT' S ON THE VIDEO JUDGE.

21 THE COURT: SO IT'S YOUR POSITION
22 THAT HE DREW THE GUN ON HIM BECAUSE HE ASKED FOR THE
23 COAT?

24 MR. WATSON: I DON'T KNOW WHY HE
25 DREW THE GUN ON HIM, YOUR HONOR. BUT I SAID IF HE WAS

1 UNDER ARREST FROM THE MOMENT THAT WEAPON WAS DRAWN
2 - I CAN'T TELL YOU LOOKING---

3 THE COURT: I THINK YOU'RE RIGHT, HE
4 WAS NOT FREE TO LEAVE AFTER THE GUN WAS DRAWN.

5 MR. WATSON: BUT IF YOU LOOK AT
6 THE VIDEO TAPE AND COMPARE THAT WITH -- AND I HATE TO
7 KEEP REFERRING TO A CASE THAT'S NOT BEEN READ BY THE
8 COURT, BUT IF YOU LOOK AT THE VIDEO TAPE AND YOU LOOK
9 AT MY CLIENT, HE IS, AFTER INSTRUCTIONS OF GETTING OUT OF
10 THE CAR, LONG BEFORE WE GET TO THE WARNING AND HEAR
11 HAVE A GOOD DAY, HE IS UP AGAINST DAVID LANE'S YUKON OR
12 CHEVROLET, WHATEVER IT IS. IF YOU LOOK AT THAT VIDEO
13 TAPE, MY CLIENT IS ALWAYS LEANING AGAINST, WITH BOTH
14 HANDS OUT, THAT CAR. THERE IS ON REASONABLE INFERENCE
15 THAT HE EVER THOUGHT HE WAS FREE TO LEAVE. THAT'S
16 ANOTHER BEDROCK* ISSUE IN PICHARDO. NOT ONLY DOES THE
17 OFFICER TELL HIM HE IS FREE TO LEAVE, BUT THE DEFENDANT
18 MUST DEMONSTRATE THAT HE IS FREE TO LEAVE. THAT'S THE
19 BRIGHT* LINE TEST IN PICHARDO.

20 THE COURT: THE DEFENDANT MUST
21 DEMONSTRATE THAT HE'S FREE TO LEAVE?

22 MR. WATSON: HE MUST DEMONSTRATE
23 OR BELIEVE THAT HE IS FREE TO LEAVE.

24 THE COURT: BELIEVE THAT HE IS FREE
25 TO LEAVE.

1 MR. WATSON: YES, SIR, PICHARDO.
2 I'M GOING TO GO BACKWARDS, IF I CAN, FOR A SECOND. THE
3 MORPH; THE CHANGE FROM A TRAFFIC STOP TO A SEARCH IS
4 WHERE WE RUN AFOUL OF THE LAW OF THIS STATE. AND IT IS
5 INTRACTABLE AND IT IS ABSOLUTELY SINGULARLY EXACT TO
6 WHAT HAPPENED IN THIS CASE.

7 SECOND, ONCE THE DEFENDANTS FELT THAT THEY
8 WERE NOT FREE TO LEAVE, AND THAT CASE SHOWS THAT THIS IS
9 A SEAMLESS EVENT FROM TRAFFIC STOP TO BEING PUT IN THE
10 CARS TO BEING TAKEN AWAY. IT'S AN ABSOLUTELY SEAMLESS
11 EVENT. THERE WAS NEVER ANY TIME WHEN THEY WERE NOT IN
12 CUSTODY, EVEN BEFORE THEY HAD THEIR GUN DRAWN. THERE'S
13 NOT AN ARGUMENT TO BE MADE THAT MY CLIENT, WITH HIS
14 HANDS UP AGAINST THE HOOD OF THAT CAR, COULD GET UP
15 AND WALK AWAY. AND FOR PICHARDO, NOT TO KICK THE
16 WHOLE THING INTO SUPPRESSION, HE HAS TO DEMONSTRATE
17 THROUGH HIS ACTIONS THAT HE WAS FREE TO LEAVE.

18 SECOND, WHEN YOU TAKE THE MORPH, WHICH IS
19 NOT ALLOWED, AND IT IS A DELIGHTFUL DISCUSSION, AND IT'S
20 JUST ABOUT SEVEN FOOTNOTES ABOUT - YOU KNOW, BACK
21 WHEN WE WERE IN LAW SCHOOL AND WE STUDIED WANG SUNG*
22 AND THE FRUIT OF THE POISONESS TREE? OUR COURT OF
23 APPEALS SAYS, NO, THAT'S NOT AN ISSUE NOW. ONCE YOU
24 HAVE EXCEEDED - AND I WANT TO GO BACK TO JUDGE
25 BUCKNER'S LANGUAGE BECAUSE HIS LANGUAGE IN THE ORDER

1 OF SUPPRESSION WAS ADOPTED BY THE COURT OF APPEALS AND
2 THAT CASE DENIED REHEARING BY THE STATE SUPREME COURT,
3 AND IT WAS DONE IN JANUARY BEFORE THIS CASE AROSE ON, I
4 THINK FEBRUARY 8TH, 2006. SO THIS WAS GOOD LAW AT THE
5 TIME OF THE ARREST OF OUR TWO DEFENDANTS.

6 IT SAYS THAT "I CONCLUDE BASED UPON THE
7 FOREGOING ANALYSIS THAT THE SEARCH IN THIS CASE WAS
8 IMPROPER IN THAT IT WAS NOT BASED UPON PROBABLE CAUSE
9 OF SUSPICION AND WAS STILL WITHIN THE SCOPE OF THE
10 TRAFFIC STOP." SEE, THIS IS ALL WITHIN THE SCOPE OF THE
11 TRAFFIC STOP. HE SAYS, YOU SLEEPY, YOU BEEN DOING DRUGS,
12 SOMETHING? I'M NOT GOING TO LOCK YOU UP SO YOU'RE FREE
13 TO GO, BUT, OH, BY THE WAY, WE'VE GOT TROUBLE HERE ON
14 '95, AND EXPLOITIVE OF THAT STOP, AND AS SUCH VIOLATES
15 THE PRINCIPLES OF STATE VERSUS WILLIAMS. THIS CASE
16 DEFINES WITH PARTICULARITY THOSE THINGS WE RELIED UPON
17 IN THE STATE VERSUS WILLIAMS.

18 GOING BACK TO THE ISSUE AT HAND AND THAT NO
19 VOLUNTARY CONSENT WAS GIVEN BY THE DEFENDANT, IN 23
20 YEARS I'VE NEVER SEEN A TEMPLATE - IT'S EVEN ON I-95, AND IF
21 YOU LOOK AT THE COMMENTS OF DAVID LANE---

22 THE COURT: I GET THE PICTURE, IT'S
23 EXACTLY LIKE THE OTHER CASE.

24 MR. WATSON: YES, SIR, THE
25 COMMENTS OF DAVID LANE ARE REPORTED IN PICHARDO; YOU

1 KNOW, WE'VE GOT A LOT OF TROUBLE ON 95. AND OUR COURT
2 OF APPEALS SAID THEY NEED PROBABLE CAUSE, AND IF THEY
3 SUBMIT IT, THAT'S EVIDENCE THAT MUST BE SUPPRESSED. AND
4 WITH RESPECT, JUDGE, IT IS AS ABUNDANTLY AS CLEAR AS THAT
5 LIGHT THAT'S ON BEFORE US.

6 THE COURT: LET ME TELL YOU THAT I
7 HAD A CASE IN ORANGEBURG THAT I THINK IS A TEMPLATE FOR
8 THIS CASE ON I-95. THEY STOPPED THEIR CAR FOR SOME
9 REASON, I DON'T KNOW WHAT THE REASON WAS, SOME TRAFFIC
10 VIOLATION OR SOME SUSPICION OF SOMETHING. THEY STOPPED
11 IT. THE REASON FOR THE STOP WAS OVER. THEY DIDN'T
12 CHARGE HIM WITH ANY OFFENSE. AND THEY ASKED HIM IF THEY
13 COULD SEARCH THE CAR.

14 HE GAVE THEM PERMISSION TO SEARCH THE CAR,
15 AND THEY HAD A DRUG DOG SNIFF AROUND THE CAR AND THEY
16 SAID IT HIT ON A PARTICULAR PLACE IN THE CAR. AND I READ
17 THESE SAME CASES, OR THE CASES THAT WERE MENTIONED. IN
18 FACT, I WANT TO GO READ STATE VERSUS WILLIAMS. IT MIGHT
19 HAVE BEEN MY CASE, I DON'T KNOW. WHO WAS THE JUDGE IN
20 STATE VERSUS WILLIAMS?

21 MR. WATSON: JUDGE,. I LOOKED TO
22 SEE IF YOUR NAME WAS ON IT AND MY MEMORY SAYS IT WAS
23 NOT. I DON'T BELIEVE IT WAS YOURS.

24 MR. REDMOND: I DON'T BELIEVE IT WAS
25 YOURS.

1 THE COURT: I KNOW CHARLES

2 WILLIAMS REPRESENTED THE DEFENDANT, I DO REMEMBER THAT.

3 AND I WORRIED WHEN I LEFT WHETHER OR NOT I WAS GOING TO

4 GET PULLED GOING BACK TO NORTH MYRTLE BEACH BECAUSE I

5 RULED AGAINST THE OFFICERS IN THAT. BUT LET ME READ YOU

6 SOMETHING HERE AND SEE WHAT YOU SAY ABOUT IT; "ONCE

7 THE UNDERLYING BASIS FOR THE INITIAL TRAFFIC STOP HAS

8 CONCLUDED, IT DOES NOT AUTOMATICALLY FOLLOW THAT

9 ANY FURTHER DETENTION FOR QUESTIONING IS

10 UNCONSTITUTIONAL OR FOURTH AMENDMENT JURISPRUDENCE

11 IS CLARIFIED" - EXCUSE ME, "THAT ANY FURTHER DETENTION

12 FOR QUESTIONING IS UNCONSTITUTIONAL. LENGTHENING THE

13 DETENTION FOR FURTHER QUESTIONING BEYOND THAT RELATED

14 TO THE INITIAL STOP IS PERMISSIBLE IN TWO CIRCUMSTANCES;

15 FIRST, THE OFFICER MAY DETAIN THE DRIVER FOR QUESTIONING

16 UNRELATED TO THE INITIAL STOP IF HE HAS AN OBJECTIVELY

17 REASONABLE AND ARTICULABLE SUSPICION THAT ILLEGAL

18 ACTIVITY HAS OCCURRED OR IS OCCURRING" I CALL THAT

19 CRIMINALITY AFOOT.

20 "SECONDLY, FURTHER QUESTIONING UNRELATED TO

21 THE INITIAL STOP IS PERMISSIBLE IF THE INITIAL DETENTION HAS

22 BECOME A CONSENSUAL ENCOUNTER." I HEAR YOU SAYING THE

23 INITIAL DETENTION HAD NOT BECOME A CONSENSUAL

24 ENCOUNTER BECAUSE YOUR PEOPLE WERE NOT FREE TO LEAVE IN

25 THEIR MIND.

1 MR. WATSON: FIRST AND SECOND, IN
2 PICHARDO THAT POSITION WAS ADDRESSED. IT SAYS, "ONCE THE
3 PURPOSE OF THE ORDINARY TRAFFIC STOP HAS BEEN FULFILLED,
4 THE CONTINUED DETENTION OF THE CAR AND THE OCCUPANTS
5 AMOUNTS TO A SECOND DETENTION." A SECOND DETENTION.
6 "THE BASIS OF THE STOP WAS COMPLETED WHEN THE TROOPER
7 SAID, I AM GIVING YOU A WARNING TICKET."

8 NOW, DAVID LANE WAS SITTING OUT THERE WITH
9 DRUG DOG "SAM" BARKING IN THAT CAR. HE NEVER HAD A
10 MOMENTS THOUGHT OF SAYING, WELL, LET'S WALK DRUG DOG
11 SAM AROUND THE CAR, BECAUSE IF HE HAD UNDER THE FIRST
12 DETENTION, YOU KNOW WHAT, THAT WOULD HAVE BEEN
13 PERFECTLY LEGAL AND WE WOULDN'T HAVE A LEG TO STAND
14 ON. BUT DAVID LANE AND DRUG DOG SAM DIDN'T THINK THERE
15 WAS ANY NEED TO WALK AROUND THAT CAR.

16 THERE IS NO QUESTION, NO QUESTION, THAT IT WAS
17 A SECOND DETENTION AND ANYTHING THERE UNDER FOUND
18 MUST BE SUPPRESSED. IT IS WITH RESPECT, SIR, SPECIFICALLY
19 DELINEATED.

20 THE COURT: ARE YOU SAYING THAT
21 THIS IS NOT FURTHER DETENTION FOR QUESTIONING?

22 MR. WATSON: I'M SAYING THAT IT IS A
23 SECOND DETENTION. I'M SAYING THAT THE FIRST ONE IS - I'M
24 SAYING THE FIRST ONE ENDED AS NOTED IN PICHARDO---

25 THE COURT: HAVE A NICE DAY.

1 MR. WATSON: YES, SIR. IT SAYS, AS THE
2 COURT STATED IN PICHARDO, "ONCE THE PURPOSE OF THE
3 ORDINARY TRAFFIC STOP HAD BEEN FULFILLED, THE CONTINUED
4 DETENTION OF THE CAR AND THE OCCUPANTS AMOUNTS TO A
5 SECOND DETENTION. THE BASIS OF THE STOP WAS COMPLETED
6 WHEN THE TROOPER SAID, I AM GIVING YOU A WARNING TICKET,
7 THERE WILL BE NO FINE.

8 THE COURT: WELL, HOW DOES THIS
9 SQUARE? "ONCE THE UNDERLYING BASIS FOR THE INITIAL
10 TRAFFIC STOP HAS CONCLUDED" - AND I ASSUME THAT MEANS,
11 HERE'S YOUR WARNING, HAVE A NICE DAY -- "IT DOES NOT
12 AUTOMATICALLY FOLLOW THAT ANY FURTHER DETENTION FOR
13 QUESTIONING IS UNCONSTITUTIONAL.

14 MR. WATSON: IT DOES UNDER A
15 NUMBER OF SCENARIOS WHICH ARE PAINTED WITHIN PICHARDO.
16 QUESTIONING WHICH DOES NOT GIVE RISE TO A SEARCH IS
17 ARGUABLY OKAY, BUT IN THIS CASE. IF WE RELY UPON THE
18 COURT OF APPEALS, IT SAYS THE FIRST STOP, SEARCH,
19 WHATEVER YOU WANT TO CALL IT, WAS COMPLETED, HERE'S
20 YOUR WARNING. COUPLED WITH IT IN THIS CASE, AN
21 EXPERIENCED OFFICER BY HIS OWN ADMISSION IN HIS VEHICLE AT
22 THE SCENE THERE WITH THE DRUG DOG CHOSE NOT TO WALK
23 HIM AROUND HIS CAR.

24 THE COURT: WAS THAT BARKING DOG
25 A DRUG----

1 MR. WATSON: YEAH, SITTING IN MR.
2 LANE'S CAR. NOW, YOU KNOW, YOU SPOT MY CLIENTS, YOU
3 WALK THAT DRUG DOG AROUND BEFORE YOU HAVE THE FIRST
4 WORD WITH THEM, THAT'S ARGUABLY ADMISSIBLE. I DON'T
5 CONCEDE THAT, BUT IT ARGUABLY IS. SO IF THAT'S THE CASE,
6 THEN THE CONVERSE MUST BE APPLICABLE. IF I HAD MY
7 EXPERIENCED OFFICER SITTING THERE WITH HIS TRAINED DOG
8 WHO'LL HIT ON SOMETHING, AND YOU KNOW, THEY KIND OF
9 TRY TO MAKE THE DECISION IN THAT VIDEO TAPE, THEY SAID, IS
10 IT A QUARTER KILO, IS IT HALF A KILO? AND HE DOESN'T THINK
11 IT'S NECESSARY TO TAKE THE DOG SAM OUT TO STRETCH HIS
12 LEGS AROUND THAT CAR? THAT IS A CLASSIC, CLASSIC POLICE
13 DECISION.

14 THEY'RE WORKING THE INTERSTATE FOR DRUGS. HE
15 TELLS MY CLIENT, YOU KNOW, WE'VE GOT A LOT OF TROUBLE
16 ON THE INTERSTATE WITH DRUGS. AND HE DOESN'T TAKE HIS
17 DOG OUT? WHEEEW, THAT'S A DECISION. THAT'S A DECISION
18 THAT BUTTRESSES HIS DECISION TO SAY HERE'S A WARNING, IT
19 WON'T GO AGAINST YOUR LICENSE. AND THAT CONCLUSIVELY
20 BEYOND A SHADOW OF A DOUBT ENDS THAT FIRST DETENTION.
21 BECAUSE IF HE HAD REASONABLE ARTICULABLE SUSPICION,
22 JUDGE, HE WOULD HAVE TAKEN THAT DOG OUT AND THAT DOG
23 WOULD HAVE STRETCHED HIS LEGS.

24 THE COURT: WELL THAT'S INDICATIVE
25 THAT HE DIDN'T HAVE A REASONABLE ARTICULABLE SUSPICION.

1 YOU SAID THAT'S CONCLUSIVE ON THE POINT?

2 MR. WATSON: WELL, NO, SIR, I BACK UP
3 A LITTLE BIT. I THINK THAT'S A LITTLE MORE CONCLUSIVELY - IF
4 THAT'S A WORD - BUT I'M GOING TO WEAR OUT A QUOTE; "THE
5 PURPOSE OF THE ORDINARY TRAFFIC STOP HAS BEEN FULFILLED
6 AND THE CONTINUED DETENTION AMOUNTS TO A SECOND
7 DETENTION. THE BASIS OF THE STOP WAS COMPLETED WHEN
8 THE TROOPER SAID I'M GIVING YOU A WARNING TICKET, THERE
9 WILL BE NO FINE." MERE SECONDS PASSED BEFORE THE TROOPER
10 ASKED IF HE COULD SEARCH THE VEHICLE WHEN LEGALLY THE
11 TROOPER SHOULD HAVE ENDED THE DETENTION AND ALLOWED
12 THE DEFENDANTS TO LEAVE. AND THE FAILURE TO RELEASE THE
13 DEFENDANTS VIOLATED THE FOURTH AMENDMENT." THAT'S
14 WHAT'S CONTAINED IN PICHARDO.

15 WHEN HE SAID I'M DONE, HE HAD AN OBLIGATION TO
16 QUIT, AND THAT'S WHAT'S IN THE CASE I HANDED UP TO YOU.
17 COUPLE THAT WITH THE FACT WE GOT SAM BACK THERE JUST
18 SALIVATING TO GO FOR A WALK, AND THIS OFFICER DOESN'T
19 THINK IT'S NECESSARY.

20 THE COURT: ALL RIGHT. YES, SIR?

21 MR. REDMOND: MAY IT PLEASE THE
22 COURT. AND I WILL TRY TO BE AS BRIEF AND THOROUGH AS
23 POSSIBLE. MR. WATSON'S ARGUMENT PRESUMES ONE THING
24 THAT IS AN ERROR ON HIS PART. AS IS REFLECTED IN THE
25 REPORT THAT THE DEFENDANT'S HAVE, I CAN TELL THE COURT

1 THAT THAT REPORT NEVER INDICATES THAT THE WARNING
2 CITATION WAS GIVEN. I CAN TELL THE COURT THAT THAT
3 WARNING CITATION WAS NEVER GIVEN. WHAT HAPPENED IN THE
4 TAPE, HE INICATED THAT HE WAS GOING TO ISSUE A WARNING
5 AND THEN ASKED FOR CONSENT TO SEARCH HIM. HE NEVER
6 SAID, AS IN PICHARDO, HAVE A NICE DAY, OR ANY OF THAT.
7 DID NOT ACTUALLY HAND HIM THE CITATION. DID NOT SAY,
8 HAVE A NICE DAY, YOU'RE FREE TO GO, OH, BY THE WAY, LET ME
9 SEARCH YOUR VEHICLE.

10 FURTHER, YOUR HONOR, AND THIS IS ALSO
11 REFLECTED IN THE REPORT---

12 THE COURT: WHAT REPORT ARE YOU
13 TALKING ABOUT?

14 MR. REDMOND: I'M TALKING ABOUT
15 THE OFFICER'S REPORT THAT DEFENSE HAS AVAILABLE AS IT
16 RELATES TO THE OFFICER'S TESTIMONY OR WHAT HIS
17 INDICATION WAS OF THE STOP. AND THIS IS WHAT THEY HAD.
18 YOUR HONOR, IF THE COURT WILL INDULGE ME.

19 INITIALLY OFFICER LANE ASKED FOR THE DRIVER
20 REGISTRATION. UPON GETTING THE REGISTRATION - HE DIDN'T
21 GET A REGISTRATION, HE GOT A RENTAL AGREEMENT. THAT
22 RENTAL AGREEMENT, WHEN HE ASKED, AS IS ALLOWED, THE
23 DRIVER TO EXIT THE VEHICLE AND COME TO THE BACK, HE
24 ASKED HIM ABOUT THE RENTAL AGREEMENT BECAUSE THERE ARE
25 A COUPLE THINGS IN THE RENTAL AGREEMENT, WHICH WE

1 WOULD HAVE. ONE, IT INDICATES IN FLORIDA ONLY, IT'S
2 SUPPOSED TO BE USED IN FLORIDA. THE SECOND THING IS THAT
3 WHEN OFFICER LANE HAD QUESTIONED HIM OR ASKED HIM
4 ABOUT WHO RENTED THE VEHICLE, AND THIS IS, AGAIN, IN THE
5 REPORT, HE PAUSED. HE BEING MR. BURNS, PAUSED.

6 AND THE -- AND BEG THE COURT'S INDULGENCE. . .
7 HE PAUSED AND - HE ASKED HIM WHO RENTED THE VEHICLE
8 AND BURNS PAUSED FOR A MOMENT AND THEN THE OFFICER
9 WAS ACTUALLY COVERING UP THE NAME ON THE RENTAL
10 AGREEMENT WITH HIS DRIVER'S LICENSE. HE THEN MOVED THE
11 DRIVER'S LICENSE AND READ THE NAME. AT THAT POINT THAT'S
12 WHEN THE OFFICER KNEW THAT THERE WAS SOMETHING AMISS.
13 SO, IN OTHER WORDS, HE COULDN'T TELL HIM INITIALLY WHO
14 HAD RENTED THE VEHICLE. AND THAT WAS OBVIOUSLY
15 SOMETHING THAT TRIGGERED SOME REASONABLE ARTICULABLE
16 SUSPICION.

17 I GO FURTHER, YOUR HONOR. THEN HE ASKED BURNS
18 WHERE WERE THEY HEADED. BURNS TELLS HIM THEY WERE
19 HEADED TO THE UNIVERSITY OF VIRGINIA, HE HAD A COUSIN
20 THAT WAS UP THERE AND PLAYED FOOTBALL, AND, I THINK, WAS
21 HAVING AN M.R.I. SURGERY BEING DONE. SUBSEQUENTLY, YOUR
22 HONOR, HE GOES BACK TO THE CAR - NEVER ASKS, HE NEVER
23 ASKED BURNS OUT OF THE CAR INITIALLY WHEN HE WAS STILL
24 GOING THROUGH THE QUESTION. I MEAN NOT BURNS, EXCUSE
25 ME, JONES. JONES WAS STILL IN THE CAR.

1. SO HE APPROACHES THE CAR AND THIS PART IS
2. INAUDIBLE IN THE TAPE, BUT HE ASKS HIM ABOUT WHERE
3. THEY'RE GOING. AND YOU DO HEAR PARTS IN THE TAPE WHEN
4. SERGEANT LANE ASKS MR. BURNS ABOUT WHO WAS THE GUY
5. THAT HE WAS RIDING WITH, THE ONLY THING THAT HE COULD
6. SAY WAS JAMES, YOU CAN HEAR THIS ON THE TAPE. HE SAYS
7. JAY, JOHNNY, HE DOESN'T KNOW HIS LAST NAME.

8. THE COURT: HE SAID JONES, DIDN'T
9. HE?

10. MR. REDMOND: AT SOME POINT I THINK
11. HE, AT FIRST HE SAID - AND IT IS ON THE TAPE -- AT FIRST HE
12. SAID JAY.* AND JAY OVER AGAIN. AND THEN HE SAID - HE
13. ASKED WHAT THE PASSENGER'S LAST NAME WAS AND HE STATED
14. HE DID NOT KNOW. AND I THINK AT THAT POINT I ACTUALLY
15. HEARD JOHNNY, AND YOU CAN GO BY YOUR RECOLLECTION,
16. BUT MY RECOLLECTION IS THAT HE SAID JOHNNY AS OPPOSED
17. TO JOHN.*

18. BUT FURTHER, WHEN, AGAIN, OFFICER LANE
19. APPROACHES JONES IN THE CAR, JONES SAYS THAT THEY'RE
20. GOING TO VIRGINIA FOR A COUPLE OF DAYS TO GO SEE SOME
21. GIRLS, THEN THEY'RE GOING TO ATLANTA. SO THE STORIES ARE
22. NOT CONSISTENT. AGAIN, REASONABLE SUSPICION. AND THIS IS
23. BEFORE ANY GUNS WERE DRAWN OR EVEN BEFORE THE SEARCH
24. BEGAN OR WAS REQUESTED. SO THESE ARE THINGS DURING THE
25. SCOPE OF THE SEARCH THAT OCCURRED THAT GAVE SEGREGANT

1 LANE REASONABLE SUSPICION TO BELIEVE THAT THERE WAS
2 SOMETHING AMISS.

3 THE COURT: DID YOU SAY DURING THE
4 SCOPE OF THE SEARCH?

5 MR. REDMOND: DURING THE SCOPE OF
6 THE STOP, I'M SORRY, I MISSPOKE. DURING THE STOP THAT
7 OCCURRED, AGAIN, STARTING WITH THE TIME THAT HE WAS
8 HANDED THAT RENTAL AGREEMENT BECAUSE AS I INDICATED
9 EARLIER, WHEN HE WAS HANDED THE RENTAL AGREEMENT MR.
10 BURNS COULDN'T STATE WHO IT WAS UNTIL THE DRIVER'S
11 LICENSE WAS MOVED FROM THAT PORTION OF THE RENTAL
12 AGREEMENT AND SERGEANT LANE READ THE NAME. THAT IS KEY
13 IN MY MIND.

14 AND THIS IS DURING THE COURSE OF THE STOP, AND
15 IF I COULD JUST SAY, THIS IS IN THE ORDINARY COURSE OF THE
16 TRAFFIC STOP BECAUSE SINCE IT'S A RENTAL AGREEMENT, THERE
17 IS NO REGISTRATION. WHAT HE WOULD HAVE IS THAT RENTAL
18 AGREEMENT TO SHOW THAT THAT CAR WAS RENTED FOR HIM
19 AND IT'S IN HIS NAME, SO WE DON'T HEAR ANY DISCUSSION
20 ABOUT A REGISTRATION, BUT WE HEAR ABOUT THIS RENTAL
21 AGREEMENT. THAT IS PART OF A TRAFFIC STOP, ESPECIALLY
22 WHEN ONE IS IN A RENTED VEHICLE.

23 SO THIS IS NOT OUTSIDE OF THE SCOPE. WHAT
24 INITIALLY ALERTED SERGEANT LANE'S ATTENTION WAS
25 SOMETHING THAT WOULD HAVE OCCURRED DURING THE

1 ORDINARY COURSE OF A TRAFFIC STOP INVOLVING A RENTAL
2 VEHICLE. AND, FURTHER, I WOULD SAY MR. WATSON TALKS
3 ABOUT PICHARDO. ONE OF THE THINGS IN PICHARDO THAT IS
4 CLEARLY DISTINGUISHABLE IS THE FACT THAT, AGAIN,
5 PICHARDO WAS STOPPED AND THEN OUT OF THE BLUE AT THE
6 END OF IT AFTER HANDING THE WARNING CITATION, OH, CAN I
7 SEARCH YOUR VEHICLE. REYES, BECAUSE I THINK PICHARDO WAS
8 THE FRIEND OR THE INTERPRETER OR THE FRIEND, IF I REMEMBER
9 RIGHT, REYES, THERE'S PLENTY OF EVIDENCE SHOWING THAT HE
10 REALLY DIDN'T UNDERSTAND ENGLISH. AND THAT WAS AN
11 ISSUE THAT THE COURT HAD TO ADDRESS IN DETERMINING
12 WHETHER OR NOT IT WAS VOLUNTARY.

13 NOW, HAVING REASONABLE ARTICULABLE SUSPICION
14 THAT, AGAIN, SOMETHING WAS AMISS. YOU'VE GOT PARTIES
15 WHO ARE UNINSURED. AND, AS A MATTER OF FACT, I FAILED TO
16 MENTION THAT WHEN TALKING WITH MR. JONES WHILE IN THE
17 CAR, YOU COULD HEAR HIM SAY SOMETHING TO THE EFFECT OF
18 - AND I MIGHT MISTAKE - YOU CAN HEAR THIS PART ON THE
19 TAPE - GOES INTO A DIATRIBE ABOUT THE FACT THAT, YOU
20 KNOW, HE MENTIONS SOMETHING LIKE, IT'S NOT LIKE THAT, OR
21 WE'RE NOT LIKE THAT, REFERRING TO THE FACT THAT, AGAIN,
22 THERE'S SOME KIND OF DISCONNECT BETWEEN THESE TWO
23 PEOPLE BUT YET THEY TRAVELED ALL THE WAY FROM FLORIDA
24 TO VIRGINIA TOGETHER. AND, OF COURSE, THEN THAT RAISED
25 A SIGN.

1 YOUR HONOR, IF THE COURT WILL INDULGE ME, I'D
2 LIKE TO HIGHLIGHT A COUPLE PARTS OF THE PICHARDO CASE, IF
3 I CAN FIND WHERE I LAID IT. I'VE BEEN MOVING AROUND SO
4 FAST. AND THAT'S WHERE IT OUTLINES WHAT HAPPENS OR HOW
5 THIS CASE IS DISTINGUISHED. AND THE INTERESTING THING
6 HERE, JUDGE, IS THAT IN THIS CASE UNDER THE FACTUAL AND
7 PROCEDURAL BACKGROUND IT ACTUALLY - AND THIS IS ON
8 PAGE 80 OF WHAT MR. WATSON HAD COPIED - IT INDICATES
9 THAT ONE, AT THAT TIME DEPUTIES TOLD THE MEN THEY'D
10 BETTER BE CAREFUL, SHOOK PICHARDO'S HAND, RETURNED
11 THEIR PAPERWORK AND TURNED AWAY FROM THE MEN.
12 STIVERS* THEN TURNED BACK AROUND AND ASKED AND
13 STARTED INTO THIS PROCESS. THE COURT WENT OUT OF ITS
14 WAY TO ACTUALLY HIGHLIGHT THAT PARTICULAR PROCESS.
15 AND I WOULD CHALLENGE MR. WATSON OR ANYBODY ON
16 BEHALF OF THE DEFENSE TO PLEASE TELL ME WHERE IN THIS
17 CASE DOES THAT OCCUR.

18 AS WE'VE INDICATED, NEVER WAS GIVEN A WARNING
19 CITATION, NEVER WAS ACTUALLY TOLD TO HAVE A GOOD DAY
20 AT THAT POINT BECAUSE BASED ON THE REASONABLE
21 SUSPICION, AND IF A REASONABLE SUSPICION OCCURS DURING
22 THE SEARCH THEN A REASONABLE DETENTION IS ALLOWED.

23 LET ME JUST SAY THIS; IF YOU NOTICED ON THE TAPE,
24 SERGEANT LANE CALLED FOR BACKUP, BUT HE INITIATED HIS
25 SEARCH PRIOR TO HIS BACKUP BEING THERE BECAUSE THERE IS

1 DISCUSSION IN THE CASE ABOUT UNREASONABLE DETENTION.
2 RATHER THAN HAVING THEM JUST SIT THERE, HE INITIATES THE
3 SEARCH TWO OF THEM, ONE OF HIM, BUT TO AVOID THE
4 UNREASONABLE DELAY OR AN UNREASONABLE DETENTION, HE
5 GOES AHEAD AND BEGINS THE SEARCH BEFORE HIS BACKUP
6 ARRIVES.

7 FURTHER, YOUR HONOR, AND THERE WAS A
8 DISCUSSION ABOUT THE GUN BEING POINTED. AND YOUR
9 HONOR IS CORRECT, THE GUN ACTUALLY WAS POINTED ONCE
10 THE DRUGS WERE FOUND, AND IN THE REPORT IT INDICATES
11 WHERE THE DRUGS WERE FOUND IN THE SPARE TIRE
12 COMPARTMENT, ONE ON TOP AND ONE UNDERNEATH IT. WHEN
13 THE ONE ON TOP WAS FOUND, THAT'S WHEN THE GUN
14 WAS POINTED. THAT'S THE POINT THE OFFICER KNEW THERE
15 WAS ILLEGAL ACTIVITY GOING ON, AND AT THAT POINT THAT'S
16 WHEN THEY WERE BEING PLACED UNDER ARREST, AND OF
17 COURSE YOU SAW THE GUYS FROM THE STATE DEPARTMENT
18 COME IN. BY THAT TIME THE OTHER OFFICER HAD ARRIVED AND
19 THEY WERE ABLE TO SECURE THE ARREST AND PROCEED WITH
20 THE SEARCH.

21 I INDICATED I WOULD BE BRIEF, BUT, AGAIN, YOUR
22 HONOR, WHEN I HEAR MR. WATSON SAY THAT THESE CASES ARE
23 IN ESSENCE MIRROR IMAGES OF EACH OTHER; PICHARDO AND
24 THE CASE AT HAND, I WOULD HAVE TO OBVIOUSLY STRONGLY
25 DISAGREE BECAUSE IN PICHARDO THE ONLY THING MENTIONED

1 IS THE FACT THAT HE WAS STOPPED FOR HAVING WEAVED,
2 WHICH THE COURT SPECIFICALLY INDICATES WAS OKAY, THE
3 COURT SAYS THAT THE REASON FOR THE STOP WAS OKAY. BUT
4 UNLIKE IN PICHARDO, WE ACTUALLY HAVE THOSE INSTANCES
5 THAT OCCURRED WHICH AMOUNT TO REASONABLE SUSPICION.

6 AS I READ PICHARDO, BASICALLY IT WAS A SITUATION
7 WHERE THEY'RE STOPPED, ONE OF THEM DOES NOT HAVE A
8 DRIVER'S LICENSE, AND THEN THE OTHER ONE, HE ALLOWS THEM
9 TO SWITCH VEHICLES, WRITES THEM A WARNING TICKET, HANDS
10 THEM THE CITATION, AND THEN WALKS AWAY, HAVE A NICE
11 DAY, OH BY THE WAY, LET ME ASK YOU THIS.

12 NONE OF THAT OCCURRED HERE. CLEARLY
13 DISTINGUISHABLE, YOUR HONOR. SO I WOULD RESPECTFULLY
14 INDICATE, AND I THINK THE RECORD IS SUCH AND WILL BE SUCH
15 THAT CLEARLY THIS IS A SEARCH THAT IS DISTINGUISHABLE
16 FROM PICHARDO, CLEARLY DISTINGUISHABLE, BOTH FACTUALLY
17 AND AS A MATTER OF LAW.

18 AND YOUR HONOR, -- AND MR. WATSON, HE TALKED
19 ABOUT IT, BUT I'LL JUST BE BRIEF IN THIS REGARD, YOU NOTICE
20 FROM THE TIME THAT SERGEANT LANE REQUESTED THE
21 CONSENT, IT WAS NOT BY MY COUNT TWO SECONDS BEFORE
22 THE CONSENT WAS GRANTED. THERE WAS NOT ANY PAUSE -
23 ANY MORE PAUSE WHEN HE WAS TRYING TO THINK OF WHO
24 RENTED THE VEHICLE THAN THERE WAS WHEN WHETHER OR NOT
25 THE CONSENT WAS GIVEN.

1 AND I THINK TAKING THAT INTO CONSIDERATION, THAT
2 WOULD ALSO BE IN LINE WITH THE FACT THAT THIS CASE IS
3 CLEARLY DISTINGUISHABLE AND THAT THE CONSENT WAS
4 VOLUNTARY BASED ON REASONABLE ARTICULABLE SUSPICION
5 FOR THE REASONS THAT I HAVE STATED BEFORE.

6 MR. WATSON: MAY IT PLEASE THE
7 COURT. I BELIEVE MR. REDMOND AND I ARE IN TWO DIFFERENT
8 COURTROOMS ARGUING TWO DIFFERENT CASES. I HAND UP
9 DEFENDANT'S FOR IDENTIFICATION NUMBER TWO; MR.
10 REDMOND SAYS THERE WAS NO WARNING? I'M GOING TO HAND
11 YOU UP A COPY OF THE DILLON INTERSTATE CRIME
12 ENFORCEMENT WARNING THAT WAS ISSUED TO MY CLIENT AND
13 A PHOTOCOPY OF HIS DRIVER'S LICENSE.

14 MR. REDMOND: YOUR HONOR, LET ME -
15 AND I HATE TO INTERRUPT - I SAID, "AT THAT TIME." AT THAT
16 TIME BEING WHEN THE CONSENT WAS GIVEN. AT THAT TIME.

17 MR. WATSON: AND WE'RE GOING TO
18 GO BACK TO MR. REDMOND'S ANALYSIS. PLEASE REMEMBER
19 THAT MRS. MCMILLAN'S CLIENT WAS IN THE CAR GOT IN DIRECT
20 CONVERSATION WITH THE OFFICER; REMEMBER DAVID LANE
21 SAID, SOMEBODY DROPPED THEIR MONEY. NOW THAT WAS
22 LONG BEFORE THAT WARNING TICKET WAS GIVEN. LONG
23 BEFORE. IT EXCEEDS THE PURPOSE OF THAT WARNING. AND
24 DIRECT QUOTE FROM PICHARDO;---

25

1 THE COURT: WAIT A MINUTE. WHAT
2 DOES GIVING SOMEBODY BACK THEIR MONEY HAVE TO DO
3 WITH---

4 MR. WATSON: NO, SIR, THE SEARCH OF
5 THE DEFENDANT. NOT THAT HE GAVE HIM BACK THE MONEY,
6 HE WAS ALREADY SEARCHING. THE OTHER INTERESTING TIDBIT
7 OF TRIVIA, IF WE LOOK AT THE DIGITAL COUNTER ON THE VIDEO
8 TAPE, 4579, WHILE MR. LANE WAS RUNNING MY CLIENT'S
9 DRIVER'S LICENSE, WHICH HE TOLD HIM WAS CLEAR, HE'S
10 CALLING FOR HIS OTHER INTERSTATE CRIME ENFORCEMENT
11 PERSON WHO SHOWS UP IN THAT OTHER YUKON. 4579, 4579.
12 HE KNEW THEN THAT HE WAS GOING TO EXPAND THE SEARCH.
13 HE KNEW THEN THAT THAT DOG SITTING IN HIS CAR, THAT HE
14 WASN'T GOING TO WALK HIM AROUND.

15 THERE'S NO REASONABLE ARTICULABLE SUSPICION -
16 WHEN MR. REDMOND SAYS THERE WAS NO WARNING TICKET
17 ISSUED, THERE IT IS. MY CLIENT'S GOT IT IN HIS PERSONAL
18 PROPERTY LOCKER DOWN AT THE JAIL. AND WHEN YOU MARRY
19 THAT WITH THE DIRECTIVE IN PICHARDO, IT SAYS ONCE YOU'VE
20 GIVEN A WARNING TICKET YOU ARE - AND HERE, "MERE
21 SECONDS PASSED BEFORE THE TROOPER ASKED HIM IF HE COULD
22 SEARCH THE VEHICLE WHEN LEGALLY THE TROOPER SHOULD
23 HAVE ENDED THE DETENTION AND ALLOWED THE DEFENDANTS
24 TO LEAVE. AND THE FAILURE TO RELEASE THE DEFENDANTS
25 VIOLATED THE FOURTH AMENDMENT." THAT'S A DIRECT QUOTE

1 FROM PICHARDO.

2 THE COURT: MR. REDMOND SAYS HE
3 WAS GIVEN THE TICKET THAT DAY, YOU SAID IT WAS GIVEN TO
4 HIM THAT MOMENT. HE SAYS IT WAS NOT GIVEN TO HIM AT
5 THAT MOMENT BUT LATER ON THAT DAY SOME TIME. NOW I
6 DON'T KNOW WHEN HE WAS GIVEN THE TICKET. I THINK WHAT
7 WE HAVE HERE IS I'M BEING ASKED TO VIEW A VIDEO TAPE THAT
8 IN MY JUDGMENT IS HARD TO UNDERSTAND. I MEAN, IT'S HARD
9 FOR ME TO HEAR AND UNDERSTAND. I HEAR THE NOISE, I HEAR
10 THE WIND BLOWING IN THE MICROPHONE, I HEAR THE CARS
11 DRIVING UP AND DOWN THE ROAD, AND I HEAR HIM ASKING
12 SOME QUESTIONS. IT'S HARD FOR ME TO DISCERN WHAT'S
13 BEING ASKED, BUT I CAN'T SEE THE FACES OF THE PEOPLE HE'S
14 DETAINING.

15 ONE THING THAT DISTRESSES ME A LITTLE BIT, IT
16 LOOKED LIKE THE OFFICER CLEARLY TOOK HIM OUT OF THE
17 PICTURE. INSTEAD OF LEAVING HIM RIGHT THERE WHERE HE
18 COULD BE SEEN IT LOOKED TO ME LIKE HE TOOK HIM OUT OF
19 THE PICTURE. HE MIGHT HAVE BEEN TRYING TO LINE HIM UP
20 WITH THE CAMERA, I DON'T KNOW. BUT IN ACTUALITY HE TOOK
21 HIM FROM A PLACE WHERE YOU CAN SEE THE DEFENDANT TO A
22 PLACE WHERE YOU COULD ONLY SEE A PART OF HIS SHOULDER.

23 NOW YOU'RE ASKING ME TO MAKE A
24 DETERMINATION THAT HE GAVE HIM THIS WARNING AT THE
25 TIME ON THE SCENE AND IN EFFECT TOLD HIM THE REASON FOR

1 THE STOP IS OVER, HERE'S YOUR WARNING, GO ON - BY THE
2 WAY, WE'VE HAD A LOT OF TROUBLE ON I-95 WITH DRUG
3 TRAFFICKING, YOU DON'T MIND IF I SEARCH YOUR CAR OR TAKE
4 A LOOK AROUND, DO YOU? MR. REDMOND SAYS THAT DID NOT
5 HAPPEN, HE DID NOT GIVE HIM THAT UNLIKE PICHARDO. YOU
6 SAY HE DID BECAUSE HERE IT IS.

7 MR. WATSON: IT'S ON THE TAPE, TOO.
8 4673 IS THE DIGITAL MARKER. THAT'S WHERE HE SAYS, HERE IT
9 IS, HERE'S YOUR WARNING, IT WON'T AFFECT YOUR INSURANCE.
10 4673, IT'S ON THE TAPE.

11 MR. REDMOND: AND, YOUR HONOR,
12 OBVIOUSLY IT'S MENTIONED ON THE TAPE, BUT MR. WATSON
13 SAYS HE WAS GIVEN THE WARNING AT THAT TIME. HE WAS NOT
14 GIVEN THE WARNING UNTIL HE GOT TO THE JAIL AND THE
15 WARNING WAS GIVEN WITH HIS LICENSE, ALL THAT WAS
16 RETURNED TO HIM AT THE JAIL. AND I CAN TELL YOU THAT
17 WOULD BE THE TESTIMONY. SO, AGAIN, HE WAS NOT GIVEN -
18 AND PLUS IF YOU LOOK AT THE TAPE, HE NEVER SAYS, HERE IT
19 IS, HAVE A NICE DAY---

20 THE COURT: I DON'T THINK SAYING
21 HAVE A NICE DAY, IT'S NOT LIKE HIS HEIRS AND ASSIGNS
22 FOREVER. IT'S NOT LIKE MAGIC WORDS. THAT JUST HAPPENED
23 TO BE WHAT HAPPENED IN THE WILLIAMS CASE OR THE
24 PICHARDO, OR WHATEVER CASE.

25 MR. REDMOND: AND BRIEFLY, JUDGE,

1 UNLIKE PICHARDO, I'VE OUTLINED THE ARTICULABLE SUSPICIOUS
2 REASONS THAT DAVID LANE HAD ON THE SEARCH, ON THE
3 STOP, THE REASON THAT THEY GAVE HIM ARTICULABLE
4 SUSPICION TO PROCEED FURTHER AND REQUEST CONSENT TO
5 SEARCH, WHICH WAS GIVEN.

6 THE COURT: ANYTHING FURTHER?

7 MR. REDMOND: NOTHING FURTHER
8 FROM THE STATE, YOUR HONOR.

9 THE COURT: I'M NOT GOING TO RULE
10 ON THIS RIGHT NOW. I'M GOING TO READ PICHARDO BEFORE I
11 DO, I'LL READ IT OVER THE EVENING.

12 MR. WATSON: THE WARNING IS 4673,
13 YOUR HONOR. MAY I ADDRESS CO-COUNSEL FOR A SECOND,
14 YOUR HONOR?

15 THE COURT: YOU MAY.

16 MR. WATSON: MAY IT PLEASE THE
17 COURT?

18 THE COURT: YES, SIR.

19 MR. WATSON: IN THE COURSE OF THE
20 CONVERSATION, IF YOU TOOK THE ARGUMENT MOST
21 FAVORABLE TO THE STATE, AND SAID THAT HE DID NOT GIVE
22 HIM A WARNING UNTIL HE WAS AT THE JAIL, OR SOMETIME
23 AFTER THAT, WHICH WE DO NOT AGREE TO, BUT EVEN IF YOU
24 TOOK THAT ARGUMENT, THE DECISION IS UNEQUIVOCAL BY THE
25 STATEMENT AND THE ACTIVITY OF DAVID LANE, WHO SAID, I'M

1 GOING TO GIVE YOU A WARNING, IT WON'T AFFECT YOUR
2 INSURANCE. AND THAT CONVERSATION IS AUDIBLE ON THE
3 TAPE; HAVE A NICE DAY. I MEAN, THAT'S SIMPLY WHAT
4 OCCURRED. AND IF HE MADE THAT DECISION COUPLED WITH
5 THE FACT THAT HE DIDN'T BRING SAM OUT OF THE TRUCK, HE
6 HAD NO REASON FOR ARTICULABLE SUSPICION TO CONDUCT
7 THE DETENTION AS IS DEFINED IN PICHARDO. EVEN IF DIDN'T
8 GIVE HIM THE TICKET, HE'D ALREADY SAID, I'M GOING TO GIVE
9 YOU A WARNING.

10 AND HE PERFECTED IT, IF YOU TAKE THAT POSITION,
11 BY GIVING IT TO HIM AT THE JAIL. SO THE DECISION AND THE
12 TOTALITY OF THE CIRCUMSTANCES ENDED WITH THAT
13 DECISION.

14 THE COURT: WHAT DO YOU SAY
15 TO THAT, MR. REDMOND?

16 MR.. REDMOND: YOUR HONOR,
17 THE LAST THING I'M GOING TO SAY, I PROMISE -- AND THIS IS
18 THE PART I WAS LOOKING AT - "ONCE THE PURPOSES OF THE
19 INITIAL TRAFFIC STOP WERE COMPLETED, THERE'S NO DOUBT
20 THE OFFICER COULD NOT FURTHER DETAIN THE VEHICLE OR ITS
21 OCCUPANTS UNLESS SOMETHING OCCURRED DURING THE STOP
22 THAT GENERATED A NECESSARY REASONABLE SUSPICION TO
23 JUSTIFY A FURTHER DETENTION."

24 HERE'S THE IMPORTANCE - AND YOUR HONOR SAID
25 IT YOURSELF -- "HAVE A NICE DAY," THOSE ARE NOT MAGIC

1 BUZZ WORDS. AND I SUBMIT TO YOU THAT PARAGRAPH, AND
2 WHAT IT SAYS, THOSE ARE NOT BUZZ WORDS BECAUSE IT SAYS
3 EVEN IF THE INITIAL REASON FOR THE INITIAL STOP HAS
4 COMPLETED, IF THERE IS ARTICULABLE SUSPICION TO PROCEED
5 FURTHER, YOU CAN STILL PROCEED FURTHER. I THINK THE ISSUE
6 IN PICHARDO WAS THEY DIDN'T HAVE THAT ARTICULABLE
7 SUSPICION. I HAVE DELINEATED THE SUSPICION THAT WE HAD
8 IN THIS CASE THAT WE WOULD SUBMIT WAS THERE, YOUR
9 HONOR. THANK YOU.

10 THE COURT: THANK YOU VERY MUCH.
11 YOU HAD SOME OTHER MOTIONS AS WELL?

12 MR. WATSON: JUDGE. I TAKE THE
13 POSITION THAT THAT TAPE IS INADMISSIBLE BECAUSE IT IS A
14 COMMENT ON MY CLIENT'S RIGHT TO REMAIN SILENT AS
15 EXPLAINED TO HIM BY DAVID LANE. HE KEPT SAYING, HELP
16 YOURSELF NOW OR YOU WON'T BE ABLE TO HELP YOURSELF SIX
17 MONTHS FROM NOW. AND THAT CANNOT GO BEFORE A JURY
18 BECAUSE THAT'S A COMMENT ON HIS RIGHT TO REMAIN SILENT.

19 THE COURT: I JUST DON'T FOLLOW
20 THAT ARGUMENT. I MEAN, AS A POLICE OFFICER, AFTER HE'S
21 BEEN ARRESTED, YOU'RE TELLING ME THAT TO SAY HELP
22 YOURSELF NOW OR WE WON'T MAKE YOU THIS DEAL LATER IS A
23 COMMENT ON HIS RIGHT TO REMAIN SILENT?

24 MR. WATSON: IT WENT FURTHER THAN
25 THAT. AS THEY WERE TURNING AT SOUTH OF THE BORDER, HE

1 SAID, NOW TELL ME, WHAT IS THAT, IS THAT A QUARTER KILO
2 OR A HALF KILO, WHAT IS IT YOU'VE GOT? AND HE SAYS
3 REPEATEDLY, NOT JUST ONE TIME, HELP YOURSELF NOW. IT'S
4 NOT JUST A ONE TIME THING.

5 THE COURT: YOU'RE TALKING ABOUT
6 HE DIDN'T STOP QUESTIONING HIM AFTER HE'D GIVEN HIM HIS
7 MIRANDA RIGHTS?

8 MR. WATSON: YES, SIR. AND THAT IS
9 AN IMPROPER INFERENCE ON MY CLIENT'S RIGHT TO REMAIN
10 SILENT BECAUSE HE CONTINUED TO SAY, YOU'D BETTER HELP
11 YOURSELF NOW OR YOU CAN'T HELP YOURSELF LATER. HE
12 CAN'T MAKE THOSE STATEMENTS, NOT IN A VIDEO TAPE TO BE
13 SHOWN TO A JURY BECAUSE THAT'S A STATEMENT ON MY
14 CLIENT'S RIGHT TO REMAIN SILENT.

15 THE COURT: WELL WHAT DO YOU
16 THINK THE REMEDY FOR THAT IS?

17 MR. WATSON: REDACT THAT PORTION
18 OF THE VIDEO TAPE, ERASE IT IF YOU ADMIT IT.

19 MR. REDMOND: WITHOUT OBJECTION
20 FROM THE STATE, YOUR HONOR..

21 MR. WATSON: THERE IS ANOTHER
22 MOTION BEFORE YOUR HONOR TO SUPPRESS ANY EVIDENCE
23 GIVEN AFTER OCTOBER THE 4TH, 2006, THAT WAS 10 DAYS PRIOR
24 TO TRIAL.

25 MR. REDMOND: AND, YOUR HONOR, I

1 CAN GET WITH COUNSEL. I DON'T KNOW OF ANYTHING THEY
2 DON'T HAVE, I THINK WE ADDRESSED THIS EARLIER. THE ONLY
3 ISSUE WAS THE ISSUE ABOUT THE RECORDS, THE CRIMINAL
4 HISTORY. OTHER THAN THAT WE'D PROVIDED, LIKE I
5 INDICATED, BY THE 19TH OF JULY ALL OF THE DOCUMENTS IN
6 THIS PARTICULAR CASE. I CAN GET WITH COUNSEL TO MAKE
7 SURE, BUT AS FAR AS I AM AWARE, AND BASED ON MY NOTES,
8 WE HAVE ACTUALLY COMPLIED. THE ONLY THING THAT WAS AT
9 ISSUE PREVIOUSLY WAS HIS CRIMINAL HISTORY.

10 MRS. MCMILLAN: YOUR HONOR? IF I
11 MAY, WE FILED A JOINT MOTION, AS MR. WATSON HAS SAID, WE
12 ASKED THAT ANYTHING NOT PRODUCED BY OCTOBER THE 4TH BE
13 SUPPRESSED. I ARRIVED THIS MORNING AND SITTING ON MY
14 CHAIR WAS A TWO-PAGE DOCUMENT HERE DATED SEPTEMBER
15 20TH, IT'S CALLED A SUPPLEMENTAL PROPERTY FORM, YOUR
16 HONOR.

17 THE COURT: SUPPLEMENTAL WHAT?

18 MR. REDMOND: I ACTUALLY DID LEAVE
19 THAT FOR HER THIS MORNING, THAT IS THE CHAIN OF CUSTODY
20 SHEET. BUT I SUBMIT TO COUNSEL, QUITE FRANKLY, WE WOULD
21 CONTEND THAT IS NOT DISCOVERABLE UNDER THE PROVINCE OF
22 RULE FIVE, BUT I DID GIVE IT TO THEM ANYWAY. THAT IS
23 SIMPLY THE CHAIN OF CUSTODY SHEET SHOWING THAT JAMES
24 (INAUDIBLE) OF THE DILLON POLICE DEPARTMENT GOT THE
25 DRUGS FROM COLUMBIA AND GAVE THEM TO JASON TURNER,*

1 WITH DILLON P.D. THAT'S ALL IT IS, IS CHAIN OF CUSTODY.
2 AND WE ADVISED THEM OF THAT, WE JUST PROVIDED THE
3 ACTUAL WRITTEN PAPERWORK TO GO ALONG WITH IT. BUT, OF
4 COURSE, THEIR TESTIMONY IS MORE THAN SUFFICIENT FOR
5 THAT, BUT WE JUST DID THAT AND I GAVE IT TO THEM SINCE I
6 JUST GOT IT YESTERDAY. BUT SHE IS CORRECT---

7 THE COURT: DID YOU NOTIFY THEM
8 THAT THEY WOULD BE TESTIFYING AS TO CHAIN OF CUSTODY?

9 MRS. MCMILLAN: MR. REDMOND, I
10 WOULD LIKE TO BE HEARD IF MR. REDMOND WOULD HAVE A
11 SEAT.

12 THE COURT: YOU'D LIKE TO BE HEARD,
13 BUT WHAT?

14 MRS. MCMILLAN: I WAS ALSO GIVEN A
15 LIST OF WITNESSES AND THEY HAPPEN TO BE THE TWO NAMES
16 ON THIS IRRELEVANT DOCKET THAT IS NOT DISCOVERABLE. IF
17 IT'S NOT DISCOVERABLE, WHY DID HE FEEL SO COMPELLED TO
18 PROVIDE IT TO ME THIS MORNING ALONG WITH A LIST OF OTHER
19 WITNESSES'S NAMES? THE TRUTH OF THE MATTER IS HE KNEW IT
20 WAS DISCOVERABLE, AND I BELIEVE THEY INTENTIONALLY HELD
21 IT. AND I'D LIKE FOR YOU TO FIND OUT WHO WITHHELD THIS
22 DOCUMENT DATED SEPTEMBER THE 20TH. WE HAD FILED A RULE
23 FIVE AND RULE SIX A LONG TIME AGO ASKING FOR THE CHANGE
24 OF CUSTODY. NOW HE CANNOT SIT HERE AND TELL YOU THIS IS
25 NOT RELEVANT. THERE ARE TOO MANY NAMES ON HERE

1 RATHER THAN SERGEANT MUNN* AND MR. BUSEY. THERE ARE
2 TWO MORE NAMES ON HERE AND THEY INVOLVE CASES OTHER
3 THAN THIS CASE.

4 AND IT SEEMS THAT EVERY TIME WE HAVE A TERM
5 OF COURT, WE'RE NOT GETTING DOCUMENTS FROM LAW
6 ENFORCEMENT. WE WERE TOLD BY THE SOLICITOR'S OFFICE
7 THEY'RE NOT GETTING THEM FROM LAW ENFORCEMENT. I'M
8 TOLD BY LAW ENFORCEMENT THAT IT'S NOT BEEN ASKED FOR
9 BY THE SOLICITOR'S OFFICE. BUT WHEN WE FILE THAT RULE
10 FIVE AND RULE SIX, YOUR HONOR, I BELIEVE WE'RE ENTITLED TO
11 HAVE IT.

12 AND I'M SORRY THAT THIS COMES OUT DURING YOUR
13 TERM, BUT THIS HAS BEEN A CONSISTENT PROBLEM SINCE I
14 BECAME THE ASSISTANT PUBLIC DEFENDER. AND FOR HIM TO
15 SAY THAT THIS IS NOT ADMISSIBLE, THEN I CANNOT ACCEPT
16 THAT.

17 THE COURT: HE DIDN'T SAY IT WASN'T
18 ADMISSIBLE, HE SAID THAT HE DIDN'T THINK IT WAS
19 DISCOVERABLE, THAT THEY DID THAT OVER AND ABOVE WHAT
20 WAS REQUIRED.

21 MR. REDMOND: AND, YOUR HONOR---

22 THE COURT: YOU DON'T THINK IT'S
23 NECESSARY TO GIVE THEM YOUR CHAIN OF CUSTODY?

24 MR. REDMOND: WELL, YOUR HONOR,
25 AND AGAIN, I DID - JUST TO CLARIFY - I ACTUALLY TOLD --

1 AND I DON'T REMEMBER IF MRS. MCMILLAN WAS THERE, BUT I
2 TALKED WITH MR. WATSON, I CANNOT REMEMBER IF SHE WAS
3 THERE OR NOT YESTERDAY, BUT I INFORMED HIM AT THAT TIME
4 THAT IT WOULD BE HAYES AND TURNER WOULD ACTUALLY BE
5 TESTIFYING IN THIS PARTICULAR CASE. THIS MORNING PRIOR TO
6 DRAWING THE JURY I DID GIVE THEM THE WITNESS SHEET AND I
7 HAD IT THERE FOR THEM FIRST THING THIS MORNING, AS YOU'LL
8 RECALL WE DID NOT ACTUALLY POLL THE JURY ON THIS CASE
9 UNTIL SOME TIME LATER THIS MORNING.

10 I WOULD SUBMIT TO YOUR HONOR, AND, AGAIN, AS I
11 READ RULE FIVE, AS IT RELATES TO REPORTS AND THE LIKE,
12 SUCH AS AN INCIDENT REPORT, I GIVE THEM INCIDENT REPORTS.
13 I DON'T HAVE TO. AND, AGAIN, WE'VE GOT THE TESTIMONY
14 HERE IN ORDER TO SET OUT THE CHANGE OF CUSTODY, AND
15 QUITE FRANKLY - AND LET ME JUST SAY THIS BRIEFLY, THERE
16 WERE SOME ASSERTIONS MADE THAT I RESENT, WILL NOT
17 FORGET, BUT AT THE SAME TIME WILL NOT ADDRESS THEM AT
18 THIS TIME WHEN THESE TWO DEFENDANTS ARE ENTITLED TO A
19 FAIR TRIAL. BUT THEY WILL NOT BE FORGOTTEN.

20 AND LET ME JUST SAY THIS, JUDGE, AND LET ME
21 JUST MAKE THIS CLEAR. I AT NO TIME INTENTIONALLY DID
22 ANYTHING - I HAVE GONE OUT OF MY WAY FOR MRS. MCMILLAN.
23 SHE SAT IN MY OFFICE FRIDAY, FRIDAY AFTERNOON WE WENT
24 THROUGH THIS FILE AND WENT THROUGH AND MADE A CALL TO
25 FLORIDA, THAT I DIDN'T HAVE TO DO, THAT'S HER DOGGONE

1 JOB. BUT THEN TO BE TOLD THAT I'M DOING WHAT I'M DOING -
2 LIKE I SAID, YOUR HONOR, I WILL GOVERN MYSELF
3 ACCORDINGLY. AND WITH THAT I THINK DISCRETION WOULD BE
4 THE BETTER PART OF VALOR.

5 MRS. JOHNSON-LEE: YOUR HONOR, IF I
6 MAY? I WAS ONE OF THE MAIN COUNSEL ON THIS CASE, I HAD
7 TALKED TO MR. REDMOND, OF COURSE, BUT I ALSO DID NOT
8 KNOW UNTIL YESTERDAY WHEN I GOT TO COURT THAT THESE
9 OTHER TWO WITNESSES WERE A PART OF THE CASE. THAT'S
10 WHY THEIR NAMES ARE ACTUALLY HAND-WRITTEN ON OUR
11 WITNESS LIST. WE DIDN'T REALIZE THAT THEY WERE THE FOLKS
12 WHO SLED WOULD GET, WE JUST ASSUMED IT WAS RODNEY
13 BUSEY.

14 SO AS SOON AS MR. REDMOND FOUND OUT, HE MADE ME
15 AWARE YESTERDAY MORNING WHEN I GOT TO THIS COURTROOM
16 AND TOLD ME TO THEY WERE HERE, TO GO TALK TO THEM,,
17 AND I WENT AND TALKED WITH MR. HAYES AND JASON TURNER.
18 I FOUND OUT THE SAME TIME THAT THE DEFENSE ATTORNEY
19 DID. MR. REDMOND MADE US AWARE AS SOON AS HE FOUND
20 OUT, YOUR HONOR. THERE WAS NO WITHHOLDING INFORMATION
21 BY ANYBODY. THAT JUST WOULDN'T EVEN MAKE SENSE.

22 MR. WATSON: THE QUESTION STARTED
23 ON MAY 12TH OF 2006 WHEN WE REQUESTED IT, BUT THE
24 PROBLEM THAT I HAVE, JUDGE, IF YOU LOOK AT THE SECOND
25 PAGE WHERE IT TALKS ABOUT EVIDENCE THAT WAS EXAMINED.

1 IT'S NOT MERELY A CHAIN OF CUSTODY FORM, IT TALKS ABOUT
2 EVIDENCE. AND I THINK MY RULE FIVE DISCOVERY, IT WOULD
3 HAVE INCLUDED THIS. OSTENSIBLY THERE ARE TWO OTHER
4 CASES THAT ARE TALKING ABOUT DRUG CASES AND ANALYSIS
5 THAT IF, SAY, THEY WERE INTENDING TO INTRODUCE THIS OVER
6 MY OBJECTIONS, THEY'VE GOT DEFENDANTS THAT HAVE
7 NOTHING TO DO WITH THIS CASE. SHOULD FOR ANY REASON
8 THEY FACTUALLY WANTED TO INTRODUCE THE CHAIN OF
9 CUSTODY AS MR. REDMOND OR THE MADAME ASSISTANT
10 SOLICITOR SPEAKS OF, IT TALKS ABOUT SOME OF THOSE OTHER
11 CASES WHICH WITHOUT IT BEING, I THINK, ILLUSTRATIVE OF
12 OTHER CRIMINAL ACTIVITY WHICH WOULD BE PREJUDICED
13 AGAINST OUR CLIENT. IT'S JUST WRONG.

14 MR. REDMOND: YOUR HONOR, MAY I
15 HAVE THE OPPORTUNITY TO CLARIFY THIS? YOU KNOW I
16 PRESENT SOMETIMES - AND I APOLOGIZE, BECAUSE I TRY TO
17 HOLD MY PEACE, BUT I NEVER SAID I WAS GOING TO TRY TO
18 INTRODUCE IT. LIKE I SAID, IT'S PERFECTLY SUFFICIENT THROUGH
19 TESTIMONY. BUT I CAN TELL YOU, I HAVE ABSOLUTELY NO
20 INTENTION OF INTRODUCING THAT DOCUMENT. THEY'RE GOING
21 TO BE HERE TO TESTIFY TO IT.

22 AND YOU KNOW, SOMETIMES QUITE FRANKLY, JUDGE,
23 YOU TRY TO GO A LITTLE BIT ABOVE TO DO SOMETHING AND
24 THEN IT TURNS BACK AND BITES YOU. I WANT TO MAKE SURE
25 THE RECORD REFLECTS THIS BECAUSE WHEN I START GOING BY

1 THE LETTER OF RULE FIVE; NOT GIVING INCIDENT REPORTS, NOT
2 DOING THINGS LIKE THAT, THE LETTER OF RULE FIVE, IT WON'T
3 BE OUT OF THE MEANNESS OF MY HEART. AS YOU SEE, WHEN I
4 DO TRY TO COOPERATE IT'S THROWN BACK ME. IT WON'T
5 HAPPEN AGAIN, JUDGE, I GUARANTEE YOU THAT.

6 AND I APOLOGIZE THAT THIS HAS TO BE DEALT WITH
7 LIKE THIS IN FRONT OF YOUR HONOR.

8 THE COURT: ANYTHING
9 FURTHER?

10 MRS. JOHNSON-LEE: I JUST
11 WANTED TO MENTION THAT KUKILA STANLEY OF SLED, THE
12 ANALYST, DID NOT PREPARE HER REPORT UNTIL AUGUST 24TH,
13 FAXED IT TO MR. REDMOND THE NEXT DAY, AND AS SOON AS HE
14 GOT IT HE THEN FAXED IT TO BOTH MR. WATSON AND MRS.
15 MCMILLAN. I HAVE THE CONFIRMATION SHEET, AND WHAT WE
16 RECEIVED ON THIS FAX DID INCLUDE THE CHAIN OF CUSTODY AS
17 FAR AS DAVID LANE RECEIVING THE DRUGS FROM THE
18 DEFENDANTS CAR AND ROBBIE BUSEY RECEIVING THEM AND
19 THEY THEN TAKING THEM TO SLED. THOSE WERE INCLUDED
20 AND SENT OVER. THE ONLY THING THEY DIDN'T HAVE IS WHAT
21 WE JUST GOT YESTERDAY MORNING, WHICH THEY WERE FILED
22 AT THE SAME TIME.

23 MRS. MCMILLAN: FOLLOWING THE
24 APOLOGY OF THE SOLICITOR - AND I DO APOLOGIZE ON THE
25 RECORD, YOUR HONOR, BECAUSE APPARENTLY THIS IS CLEARLY

1 LAW ENFORCEMENT'S FAILURE TO COMPLY WITH THE LAW.

2 THE COURT: ANYTHING FURTHER?

3 (NO RESPONSE.)

4 THE COURT: I'M NOT GOING TO ALLOW
5 THE FLORIDA DOCUMENT TO COME IN, FEELING THAT IT SHOULD
6 HAVE BEEN CONVEYED TO THEM EARLIER IMMEDIATELY UPON
7 RECEIVING IT. IF A WITNESS TAKES THE STAND AND PUTS HIS
8 CREDIBILITY AT ISSUE, YOU CAN USE WHATEVER ELSE YOU HAVE
9 TO - OTHER LEGAL MEANS OF QUESTIONING OR IMPEACHING HIS
10 CREDIBILITY, BUT NOT THAT.

11 I DON'T THINK THAT UPDATING THE WITNESS LIST
12 WHEN YOU FIND OUT YOU'RE GOING TO HAVE OTHER WITNESSES
13 IS A VIOLATION OF BRADY. IT SOUNDS TO ME LIKE THEY MAY
14 HAVE BEEN ABLE TO VIEW IT WITHIN A REASONABLE TIME FROM
15 THE TIME THEY FOUND IT OUT. SO I DENY YOUR MOTION TO
16 KEEP IT OUT. I'M GOING TO ALLOW THEM TO USE THE WITNESS.
17 HE TELLS ME HAS NO INTENTION OF INTRODUCING THE
18 DOCUMENT, SO THAT WON'T BE A PROBLEM. I'M GOING TO
19 TAKE THE OTHER MATTERS UNDER ADVISEMENT AND RULE ON
20 THEM IN THE MORNING.

21 MR. REDMOND: THANK YOU, YOUR
22 HONOR, AND AGAIN I APOLOGIZE.

23 THE COURT: WELL I THINK THERE'S A
24 LOT OF APOLOGIES, ENOUGH TO GO AROUND HERE FOR
25 EVERYBODY. YOU KNOW, WE'RE SUPPOSED TO BE

1 PROFESSIONAL MEN AND WOMEN, AND WE'RE SUPPOSED TO
2 HAVE - HARD TO BELIEVE - BUT WE'RE SUPPOSED TO HAVE THE
3 SAME GOAL IN MIND, AND THAT IS TO BE FAIR AND TO REAP A
4 JUST CONCLUSION AS TO THESE DEFENDANTS.

5 IT TAKES SUPREME COURTS, IT TAKES COURTS OF
6 APPEAL, IT TAKES UNDERLING JUDGES LIKE MYSELF TO HELP
7 ADVOCATES REACH THAT GOAL. BUT IN THE SPIRIT OF
8 COLLEGIALITY, I'M HOPEFUL THAT WE WON'T HAVE TO AIR
9 DIRTY LAUNDRY AGAIN TOMORROW AND THROUGHOUT THIS
10 TRIAL. THANK YOU, I'LL SEE YA'LL AT NINE-THIRTY.

11 -----COURT ADJOURNED FOR THE DAY-----
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1 THE COURT: WITH REGARD TO THE
2 MOTION TO SUPPRESS, I RESPECTFULLY DENY YOUR MOTION TO
3 SUPPRESS. AFTER HAVING READ THE PICHARDO CASE AND
4 OTHERS SITED IN THAT CASE, AND THE ORDER OF SUPPRESSION
5 BY JUDGE BUCKNER. IT'S THE COURT'S RULING THAT THERE ARE
6 TWO INSTANCES WHERE CONTINUED QUESTIONING OR FURTHER
7 DETENTION IS ALLOWED AFTER THE EXPIRATION OF THE REASON
8 FOR WHICH A TRAFFIC STOP WAS MADE; THAT'S A
9 REASONABLE AND ARTICULABLE SUSPICION THAT SOMETHING
10 ILLEGAL HAD HAPPENED OR WAS HAPPENING AT THAT TIME,
11 AND THE SECOND, AND PROBABLY THE MOST
12 IMPORTANT IN THIS CASE IS FURTHER QUESTIONING UNRELATED
13 TO THE INITIAL STOP WAS DURING A CONSENSUAL ENCOUNTER,
14 AN ENCOUNTER FOR WHICH CONSENT WAS GIVEN, AND NOT
15 COERCED. EVEN IF - AND I DON'T SAY THIS IS THE SITUATION,
16 BUT EVEN IF THE REASON FOR THE INITIAL STOP HAD EXPIRED,
17 AND FOR LACK OF A BETTER TIME, AT THE TIME THAT THE
18 VIDEO SAID, I'M GOING TO GIVE YOU A WARNING AND HAVE A
19 NICE DAY, EVEN IF YOU SAY HE HAD THE REASONABLE
20 SUSPICION OR WHATEVER REASONABLE SUSPICION WAS CITED,
21 THEN THE REASONABLE SUSPICION THAT THE COURT FINDS
22 THAT THERE WAS REASONABLE SUSPICION, AND THAT WAS THE
23 AUTOMOBILE LEASE SAYING THE CAR SHOULDN'T HAVE BEEN
24 TAKEN OUR OF FLORIDA, THE ANSWERS TO QUESTIONS ABOUT
25 WHERE YOU'RE GOING, AND WHO YOU ARE, AND WHY ARE YOU

1 GOING THERE, WITH REGARD TO THE UNCLE, OR MAYBE IT'S NOT
2 AN UNCLE, BUT THEIR RESPONSES TO THE QUESTIONS. THERE
3 WAS EVEN ONE THING IN THE VIDEO ABOUT ALL THIS MONEY,
4 AND IF I WAS MAKING ALL THIS MONEY AND THAT WAS MINE, I'D
5 BE GOING TO TIJUANA, OR SOMETHING LIKE THAT, IN THE CAR.

6 IF YOU TAKE THOSE INSTANCES AS BEING
7 REASONABLE SUSPICION IN THE CASE, AND THE COURT DOES
8 FIND THAT WOULD BE REASONABLE SUSPICION. NOW THE
9 DEFENSE MAY SAY, WELL THEY HAD ALL THAT SUSPICION AND
10 THEN HAD A CANINE - AND I HATE TO SAY A CANINE DOG
11 BECAUSE ALL DOGS ARE CANINES, BUT A "K-9" DRUG DOG IN
12 THE CAR, THEN THEY SHOULD HAVE EXERCISED THAT
13 REASONABLE SUSPICION AND DONE SOMETHING ABOUT IT THEN.
14 PERHAPS.

15 BUT WE HAVE TWO PEOPLE ABOUT WHICH THE
16 REASONABLE SUSPICION CONCERNED; ONE IN THE CAR AND ONE
17 OUT OF THE CAR, AND ONE POLICE OFFICER THERE. I DON'T
18 KNOW THAT I WOULD NECESSARILY ACT ON THAT REASONABLE
19 SUSPICION UNTIL I HAD HELP IF I WERE A POLICE OFFICER. I
20 DON'T KNOW THAT HIS ACTIONS WERE UNREASONABLE UNDER
21 THAT CIRCUMSTANCE.

22 FURTHER, IF ENDING THE INITIAL STOP, THE REASON
23 FOR THE INITIAL STOP BY SAYING HERE IS YOUR CITATION, IF THE
24 CITATION WAS HANDED TO HIM AT THAT TIME, THERE'S A
25 DIFFERENCE OF OPINION OR FACTUAL QUESTION ABOUT

1 WHETHER HE GOT THAT CITATION AT THAT TIME, OR THE
2 WARNING, OR LATER ON AT THE POLICE STATION, OR SOME TIME
3 LATER ON, AND THE HAVE A NICE DAY BLURB, EVEN IF THAT
4 WAS THE TERMINATION OF THE REASON FOR THE INITIAL STOP,
5 THEREAFTER, IN THE COURT'S JUDGMENT WAS THE SECOND
6 INSTANCE WHERE CONTINUED QUESTIONING IS ALLOWED. AND
7 THAT IS A CONSENSUAL ENCOUNTER.

8 NOW CONSENSUAL ENCOUNTER IS DEFINED IN THE
9 PICHARDQ CASE AS "SIMPLY THE VOLUNTARY COOPERATION OF
10 A PRIVATE CITIZEN IN RESPONSE TO NON-COERSIVE
11 QUESTIONING BY A LAW ENFORCEMENT OFFICIAL." WE HAVE A
12 LOT OF DRUG ACTIVITY UP AND DOWN THIS I-95, DO YOU MIND
13 IF I HAVE A LOOK AROUND? ANYTHING IN YOUR CAR? NO. DO
14 YOU MIND IF I LOOK AROUND? NO, GO AHEAD. AND IT WASN'T
15 LET'S SEE. . . IT WAS NO, GO AHEAD.

16 THAT MET, IN THE COURT'S JUDGMENT, THE SECOND
17 ALLOWABLE CONTINUING QUESTIONING AFTER THE REASON FOR
18 THE INITIAL STOP ENDED IF IN FACT IT HAD ENDED AT THAT
19 TIME. THEREAFTER THE OFFICER FOUND THE DRUGS AND
20 THEREAFTER, OR AFTER THE CONSENSUAL SEARCH WAS MADE,
21 OR DURING THAT TIME, HE DID PULL A GUN ON HIM. WHETHER IT
22 WAS A RESULT OF, LET ME GET MY JACKET, OR AT THE TIME HE
23 FOUND THE DRUGS, I DON'T KNOW. IN VIEWING IT, IT APPEARED
24 TO BE HE FOUND SOMETHING IN THE CAR AND THEN DID IT, BUT
25 IT MIGHT HAVE BEEN SIMULTANEOUS OR THEREABOUT AT THE

1 TIME HE ASKED, DO YOU MIND IF I GET MY COAT.

2 HE MIGHT HAVE ASKED, DO YOU MIND IF I GET MY
3 COAT BECAUSE HE WAS GETTING REAL CLOSE TO WHERE THE
4 DRUGS WERE. THERE MIGHT HAVE BEEN A GUN IN THE COAT.
5 THAT MIGHT HAVE BEEN THE REASON HE WAS ASKING FOR THE
6 COURT, BECAUSE THEY WERE GETTING WARM. I DON'T KNOW.
7 BUT I THINK THE OFFICER WOULD HAVE DONE WHAT ANY GOOD
8 OFFICER WOULD HAVE DONE UNDER THAT CIRCUMSTANCE.
9 EITHER SOMETHING TRIGGERED HIS PULLING THE GUN AND
10 PUTTING IT ON HIM AT THAT TIME, WHETHER HE THOUGHT HE
11 WAS GOING FOR A WEAPON, HE HAD THE OPPORTUNITY TO GO
12 FOR A WEAPON IF IT WAS IN THE COAT, OR BECAUSE HE HAD
13 FOUND THE DRUGS.

14 CLEARLY TO THE COURT IN VIEWING IT, IT WAS AS A
15 RESPONSE TO, I BELIEVE HAVING FOUND THE DRUGS. THAT
16 MAY BE WRONG, BUT THAT'S WHAT IT APPEARS TO ME, AND I
17 THINK I ARTICULATED THAT YESTERDAY.

18 IN ANY EVENT, AFTER THAT TIME HE WAS NOT FREE
19 TO LEAVE. THERE WAS SOME DISCUSSION YESTERDAY ABOUT
20 HOW THE DEFENDANT WAS NOT FREE TO LEAVE BECAUSE HE
21 WAS STANDING THERE WITH HIS HANDS ON THE CAR. THAT DID
22 NOT LOOK THAT WAY, THE WAY HE HAD HIS HANDS ON THE
23 CAR, TO THE COURT. HE HAD HIS ELBOWS ON THE CAR LEANING
24 FORWARD ON THE CAR GOING THROUGH HIS WALLET.

25 HE WASN'T TOLD HE COULDN'T LEAVE. HE WAS

1 TOLD TO STEP BACK OVER HERE. THEY WERE ON THE SIDE OF
2 THE HIGHWAY. I CAN'T TELL YOU HOW MANY TIMES I'VE
3 WATCHED "COPS" AND SEEN GET RUN OVER BY CARS STANDING
4 ON THE SIDE OF THE HIGHWAY, OR OFFICERS GETTING RUN OVER
5 BY CARS, CARS GETTING HIT WHILE STANDING ON THE HIGHWAY.
6 AND I'M NOT SURE WHAT ORDINARY POLICE PROCEDURE IS, BUT
7 IT WOULD SEEM TO ME EVERY TIME I'VE EVER BEEN PULLED, TO
8 USE THE VERNACULAR, MAY I SEE YOUR DRIVER'S LICENSE AND
9 REGISTRATION. IF YOU HAVE ANY MORE QUESTIONS, WOULD
10 YOU STEP OUT OF THE CAR WITH ME AND TAKE ME BACK HERE.
11 I THINK THAT'S PROBABLY STANDARD POLICE PROCEDURE.

12 I DON'T VIEW THAT AS BEING COERCIVE, I DON'T
13 VIEW THAT AS BEING A CUSTODIAL SITUATION OR AN ARREST,
14 CERTAINLY NOT AN ARREST. I HAVE NO REASON TO THINK I IN
15 THE TOTALITY OF THE CIRCUMSTANCES THAT HE WAS NOT FREE
16 TO LEAVE UP UNTIL THE TIME HE PUT THE GUN ON HIM. SO
17 THAT'S THE COURT'S RULING AND THE REASON FOR THE RULING.
18 DO YOU HAVE ANOTHER MOTION?

19 MR. WATSON: I HAVE TWO OR
20 THREE. BUT WITH RESPECT TO MY CLIENT, IF THE TRIAL
21 PROCEEDS, YOU WILL NOTE MY EXCEPTION AND MY
22 PRESENTATION BEFORE YOU IN DEFENSE OF MY CLIENT BECAUSE
23 OF YOUR RULING IN NO WAY WAIVES ANY APPELLATE RIGHT TO
24 ME OR MY CLIENT.

25 THE COURT: VERY WELL.

1 MR. WATSON: THERE IS A
2 PROBLEM WITH YOU HAVING JURISDICTION OVER MY CLIENT AT
3 ALL, YOUR HONOR. THERE WAS PRESENTED TO THE DILLON
4 COUNTY GRAND JURY ON OCTOBER THE 12TH, 2006 AN
5 AMENDED INDICTMENT AGAINST MY CLIENT. HE WAS
6 ORIGINALLY CHARGED WITH POSSESSION WITH INTENT TO
7 DISTRIBUTE. IN HIS WRITTEN AMENDMENT, 06-GS-17-413 IT
8 WAS PRESENTED TO THE GRAND JURY ON OCTOBER 12TH, I HAVE
9 NOT BEEN SERVED WITH A COPY, MY CLIENT HAS NOT BEEN
10 SERVED WITH A COPY.

11 UNDER OUR LAW AN INDICTMENT MAY BE AMENDED A
12 TRIAL PROVIDED SUCH AMENDMENT DOES NOT CHANGE THE
13 NATURE OF THE OFFENSE CHARGED. POSSESSION WITH INTENT
14 TO DISTRIBUTE IS NOT A LESSER INCLUDED OFFENSE OF
15 TRAFFICKING.

16 ONE WHO IS FACED WITH AN INCREASED PUNISHMENT
17 DEPRIVES THE COURT OF SUBJECT MATTER JURISDICTION;
18 HOPKINS VERSUS STATE, 317 S.C. 7. IT'S STILL GOOD LAW IN
19 THIS STATE. THE LAST HEARING - OH, BY THE WAY, MY CLIENT
20 WAS ORIGINALLY INDICTED MAY 18TH, 2006.. THIS IS ONE MORE
21 WAY THAT THE SOLICITOR HAS PRESENTED SUBSEQUENT
22 SIMILAR PRESENTMENTS FOR A DIFFERENT BILL OF INDICTMENT
23 TO THE SAME GRAND JURY.

24 IT HAS IT IN THE POSITION THAT YOU CAN RE-
25 PRESENT SOMETHING TO THE EXACT SAME GRAND JURY ON THE

1 EXACT SAME FACTS FOR A DIFFERENT INCREASED CHARGE.
2 BE THAT AS IT MAY, I ASK THE COURT TO REQUIRE THAT THE
3 SOLICITOR RETURN THE ORIGINAL INDICTMENT TO THE
4 POSSESSION OF THE CLERK OF COURT. IT IS A COURT'S
5 DOCUMENT, AND NOT A DOCUMENT BELONGING TO THE
6 SOLICITOR. ONCE IT IS PRESENTED TO THE GRAND JURY, IT
7 MUST STAY IN THE POSSESSION OF THE CLERK OF COURT.

8 I HAVEN'T BEEN GIVEN A COPY, MY CLIENT HAS NOT
9 BEEN GIVEN A COPY. CASE LAW IS CLEAR; HE HAS AN INCREASE
10 IN PENALTY, YOU DO NOT HAVE SUBJECT MATTER JURISDICTION.

11 MR. REDMOND: MAY IT PLEASE
12 THE COURT, YOUR HONOR? MR. WATSON - AND I CAN
13 APPRECIATE CERTAIN POSITIONS , BUT I QUITE FRANKLY TAKE
14 OBJECTION, THE COURT IS NOT APPRISED OF THE ENTIRE
15 BACKGROUND OF THE SITUATION. SO IF THE COURT WOULD
16 ALLOW ME, I WOULD LIKE TO DO THAT NOW.

17 WHAT MR. WATSON FAILS TO MENTION IS THAT
18 DURING THE LAST TERM OF COURT WE WENT THROUGH THIS
19 VERY ISSUE WHEN WE WERE ABOUT TO TRY THIS CASE. IN
20 FACT, THE ORIGINAL INDICTMENT, LET ME JUST CORRECT MR.
21 WATSON, IF I MIGHT, I DON'T KEEP THE INDICTMENT, THE
22 CLERK'S OFFICE KEEPS THE INDICTMENT. IN FACT, IMMEDIATELY
23 BEFORE WE DREW THE JURY IN THIS CASE I HAD TO GO TO
24 MADAME CLERK TO GET THE INDICTMENT. I DON'T EVEN KEEP A
25 COPY,

1 HOWEVER, THAT SAID, JUDGE, MR. WATSON MADE
2 THE SAME ARGUMENT BEFORE YOU. SPECIFICALLY WHAT HE'S
3 REFERRING TO IS THE WRITING IN THE OLD INDICTMENT THAT IS
4 STILL IN THE CLERK'S POSITION, THAT HAS NOT BEEN
5 DISREGARDED, INDICATING ON THE FRONT OF THE INDICTMENT IT
6 SAYS , TRAFFICKING." IN THE BODY IT MENTIONS POSSESSION
7 WITH INTENT TO DISTRIBUTE. HOWEVER, JUDGE LOCKEMY HAS
8 ALREADY RULED ON THAT. WE WENT THROUGH THIS HEARING
9 AND THE JUDGE MAINTAINED AT THE TIME, AND MR. WATSON,
10 I'M SURE, CANNOT DISAGREE WITH ME BECAUSE WE WERE ALL
11 THERE - THE JUDGE INDICATED THAT IT WAS PROPER AT THE
12 TIME. AND EVEN THEN THE DISCUSSION WAS THAT SINCE THE
13 CASE WAS CONTINUED, WE WOULD JUST AMEND IT.

14 I WOULD PROPOSE TWO THINGS. IF HE'S NOT BEEN
15 SERVED WITH THE NEW INDICTMENT, THE OLD INDICTMENT WAS
16 ALREADY RULED UPON AND THE JUDGE ORDERED AT THAT TIME
17 WE COULD PROCEED WITH THE LANGUAGE BEING AMENDED
18 FROM POSSESSION WITH INTENT TO TRAFFICKING BECAUSE THE
19 DEFENDANT WAS ON NOTICE OF THE CHARGES. THE WARRANT
20 SAID IT , THE FRONT OF THE INDICTMENT SAID IT.

21 THROUGHOUT THE COURSE OF DISCUSSIONS IN THIS
22 CASE IT WAS MADE VERY CLEAR THAT THE CHARGE WAS
23 TRAFFICKING. I'VE EVEN GOT FAXES AND DOCUMENTS TO MR.
24 WATSON REGARDING THIS BEING A TRAFFICKING CASE, MY POINT
25 BEING THAT THIS MATTER'S ALREADY BEEN DECIDED. I WOULD

1 PROPOSE, AND WE'D HAVE NO OBJECTION TO THE INDICTMENT
2 THAT JUDGE LOCKEMY RULED ON STILL BEING IN THE CLERK'S
3 POSSESSION AND THE COURT'S JURISDICTION. WE WOULD
4 PROCEED TO GO FORWARD ON THAT PURSUANT TO THE ORDER
5 AS ALREADY RENDERED BY JUDGE LOCKEMY.

6 MR. WATSON: HE'S MADE THE
7 DECISION, HE'S MADE THE DECISION TO AMEND IT, HE'S
8 PRESENTED IT TO THE GRAND JURY, NOW HE WANTS TO
9 RESCIND AN ACTION HE CHOSE UNFAIRLY TO MAKE TO THE
10 GRAND JURY. THE DECISION OF JUDGE LOCKEMY WAS, YOU MAY
11 TRY HIM, HE GETS TO USE - HE BEING ME - GETS TO USE THAT
12 INDICTMENT BEFORE THE GRAND JURY SAYING IT'S POSSESSION
13 WITH INTENT TO DISTRIBUTE AND NOT TRAFFICKING. BY
14 PUTTING THIS UP, BY PUTTING THIS UP---

15 THE COURT: WHAT DO YOU MEAN BY
16 PUTTING THIS UP?

17 MR. WATSON: BY SUBMITTING IT TO
18 THE GRAND JURY HE HAS, ONE, ATTEMPTED TO CLOSE THAT
19 APPELLATE ISSUE. HE DID IT BY OFFERING A SECOND
20 INDICTMENT TO THE EXACT SAME GRAND JURY, IT'S FOR A
21 GREATER PENALTY, AND THE CASE LAW IS STILL SOLID AND
22 IT'S CLEAR; YOU DON'T HAVE SUBJECT MATTER JURISDICTION.

23 THE COURT: ARE YOU SAYING HE
24 CANNOT GIVE IT TO THE SAME GRAND JURY?

25 MR. WATSON: I'M SAYING HE CANNOT

1 GIVE THE SAME FACTS TO THE SAME GRAND JURY FOR AN
2 INCREASED PENALTY WHEN THE FACTS REMAIN THE SAME, YES,
3 SIR, I AM. AND IF HE CHOOSES TO DO IT AND THE GRAND JURY
4 DOES IT, HOPKINS VERSUS STATE STANDS FOR THE
5 PROPOSITION THAT YOU DON'T HAVE SUBJECT MATTER
6 JURISDICTION, SO I CAN'T GO ON TO TRIAL.

7 MR. REDMOND: YOUR HONOR, AND
8 ACTUALLY I COULD JUST TELL THE COURT BRIEFLY; MR.
9 WATSON HASN'T MENTIONED ONE THING ABOUT HOW HIS
10 CLIENT'S BEEN PREJUDICED. AND ANTICIPATING THAT, THAT'S
11 WHY THE ORIGINAL INDICTMENT WAS NEVER DISREGARDED,
12 BECAUSE IT HAS BEEN RULED UPON. AND, AGAIN, THEY WERE
13 AWARE THIS ACTION WOULD BE TAKEN BECAUSE THAT WAS
14 DISCUSSED. AS A MATTER OF FACT, JUDGE LOCKEMY HIMSELF
15 RAISED THAT DURING THE COURSE OF THE DETERMINATION AT
16 THAT TIME. BUT HE SPECIFICALLY RULED THAT WE COULD GO
17 FORWARD ON THE OLD INDICTMENT.

18 THE COURT: FOR WHAT CHARGE?

19 MR. REDMOND: ON THE CHARGE OF
20 TRAFFICKING. AND I THINK IT'S STILL IN THE POSSESSION OF
21 MADAME CLERK, THE OLD INDICTMENT, THE ACTUAL ORIGINAL
22 SHOULD BE IN MADAME CLERK'S POSSESSION BECAUSE I NEVER
23 TOOK IT ON PURPOSE. WE HAD IT YESTERDAY.

24 THE COURT: IF YOU WOULD, RESURRECT
25 THAT FOR ME AND LET ME TAKE A LOOK AT IT. IT SEEMS TO ME

1 IF IT'S YOUR POSITION, MR. WATSON, THAT THE SAME GRAND
2 JURY CAN'T INCREASE THE CHARGES WITH ANOTHER
3 INDICTMENT AFTER HAVING PASSED ON ONE, THAT EVERYTHING
4 AFTER SUBMITTING IT TO THEM WOULD BE NULL.

5 MR. WATSON: UNTIL THE COMPOSITION
6 OF THE GRAND JURY IS CHANGED SIX MONTHS AND THEN IT
7 COULD BE RE-PRESENTED.

8 THE COURT: ALL RIGHT, WELL IF IT'S A
9 NULLITY, THEN THE INDICTMENT THAT WE HAVE HERE CAN'T BE
10 USED, IS THAT YOUR POSITION?

11 MR. WATSON: THAT'S BE FINE.

12 THE COURT: IS THAT YOUR POSITION?

13 MR. WATSON: MY POSITION IS THAT
14 YOU DON'T HAVE SUBJECT MATTER JURISDICTION OVER MY
15 CLIENT.

16 THE COURT: WELL WHAT DO YOU
17 THINK HAPPENED TO THE OLD ONE, IT JUST WENT AWAY?

18 MR. WATSON: I WOULD HOPE EITHER
19 MADAME CLERK, WHEN I ASKED WHERE IT WAS, OR THE
20 SOLICITOR HAS IT. THAT'S WHAT I WAS RELYING ON.

21 THE COURT: WHETHER I HAVE IT, SHE
22 HAS IT, OR THE SOLICITOR HAS IT, DO YOU THINK IT JUST
23 DOESN'T COUNT, THAT IT DIDN'T HAPPEN, BECAUSE THEY
24 ATTEMPTED TO DO SOMETHING THAT YOU SAY THEY CAN'T DO?

25 MR. WATSON: I THINK THE

1 PRESENTATION IS SO TAINTED THAT IT HAS TO WAIT FOR THE
2 GRAND JURY TO RE-FORM

3 THE COURT: I THINK YOU CAN HAVE
4 ONE OR THE OTHER, BUT YOU CAN'T HAVE IT BOTH WAYS. YOU
5 EITHER GO FORWARD ON THE NEW INDICTMENT SAYING IT'S
6 OKAY, OR YOU CAN SAY IT'S NOT OKAY, BUT THAT DOESN'T
7 MAKE THE OLD INDICTMENT A NULLITY, IT HAPPENED. I MEAN IT
8 WAS PRESENTED TO THE GRAND JURY, THE GRAND INDICTED
9 HIM, RETURNED A TRUE BILL OF INDICTMENT, AND UNLESS IT'S
10 BEEN NOL PROSSED IT'S STILL IN EXISTENCE. IF YOU GO TO THE
11 GRAND JURY LATER AND TRY TO INCREASE THAT AND ARE
12 SUCCESSFUL, IT EITHER COUNTS OR IT DOESN'T COUNT. IF IT
13 COUNTS, THEN THEY CAN'T TRY HIM ON THIS ONE, THAT WOULD
14 BE DOUBLE JEOPARDY.

15 MR. WATSON: CORRECT.

16 THE COURT: IF THEY CHARGE HIM ON
17 THIS ONE AND YOU TRY HIM ON THIS ONE, FINE. IF YOU SAY
18 THAT GRAND JURY CAN'T DO THAT, THEN IN EFFECT IT'S VOID
19 ABADICIO FROM THE TIME THEY ATTEMPTED TO GET IT AND YOU
20 FALL BACK ON THE ONE THAT NOTHING'S HAPPENED TO.

21 MR. WATSON: I BELIEVE TWO THINGS
22 HAPPEN, JUDGE. I BELIEVE THAT ONCE THE SECOND ONE IS
23 PRESENTED YOU CANNOT GO FORWARD ON IT, PERIOD, THE
24 AMENDED, THE INCREASED ONE IN THIS INSTANCE, I DON'T
25 THINK YOU CAN GO FORWARD ON IT. THE SECOND THING THAT I

1 BELIEVE OCCURS IS THAT WHEN YOU MAKE A SUBSEQUENT
2 IDENTICAL PRESENTMENT TO A GRAND JURY SOLELY FOR THE
3 DIFFERENCE OF WRITING ON A PAPER THAT HAS SO PREJUDICED
4 THAT GRAND JURY THAT YOU HAVE TO WAIT FOR THE
5 REFORMATION OF A GRAND JURY TO PUT OUT A BILL OF
6 INDICTMENT WHICH IS CORRECT. I DON'T THINK YOU CAN GO
7 FORWARD ON THE OLD ONE OR THE NEW ONE BECAUSE THE
8 GRAND JURY NOW IS SO TAINTED.

9 THE COURT: WHAT DOES THE GRAND
10 JURY NOW, AND THE TAINTING AFTER THEY'VE RETURNED THE
11 TRUE BILL HAVE TO DO WITH IT?

12 MR. WATSON: I'M SORRY?

13 THE COURT: IF I HAVE A PIECE OF
14 STEAK AND IT WAS GOOD, AND LATER ON IT'S TAINTED, IT WAS
15 GOOD WHEN I HAD IT.

16 MR. WATSON: YES, SIR, I UNDERSTAND
17 THAT. I AGREE.

18 THE COURT: I MEAN I DON'T THINK
19 THERE'S ANYTHING WRONG WITH THE FIRST ONE. THE ONLY
20 QUESTION I HAVE IN MY MIND IS WHETHER YOU GO FORWARD
21 WITH POSSESSION WITH INTENT TO DISTRIBUTE OR TRAFFICKING
22 ON THE FIRST INDICTMENT. AND YOU SAY---

23 MR. REDMOND: THAT'S BEEN RULED
24 UPON.

25 THE COURT: YOU SAY JUDGE LOCKEMY

1 SAID IT'S ALRIGHT TO GO FORWARD WITH TRAFFICKING.

2 MR. WATSON: HE DID RULE ON THAT
3 INDICTMENT. HE SAID THE STATE COULD PROCEED AND THAT I
4 HAD THE ARGUMENT USING THAT INDICTMENT THAT THE ONLY
5 OFFENSE HE COMMITTED, IF HE COMMITTED ANYTHING, WAS
6 POSSESSION WITH INTENT TO DISTRIBUTE. BUT WHAT THE
7 SOLICITOR DIDN'T TELL ME IS, I'M GOING TO RE-INDICT.YOUR
8 GUY. I'VE GOT TO BE SERVED WITH THE NEW INDICTMENT AS
9 DOES MY CLIENT BEFORE HE CAN GO TO TRIAL, PERIOD.

10 AND OUR STATE SUPREME COURT SAYS IF YOU'RE
11 GOING TO INCREASE THE PENALTY, AND POSSESSION WITH
12 INTENT TO DISTRIBUTE IS NOT A LESSER INCLUDED OFFENSE,
13 IS IF YOU DON'T HAVE JURISDICTION THE GREAT MALICE IS
14 NOBODY SAID, OH BY THE WAY, YOUR CLIENT HAS BEEN RE-
15 INDICTED, BEFORE THE TRIAL YOU'D BETTER GO LOOK AT THE
16 INDICTMENT AND MAKE SURE IT AIN'T AMENDED.

17 THERE'S AN OBLIGATION ON THE SOLICITOR TO
18 SERVE NOT ONLY THE DEFENDANT BUT COUNSEL AS WELL WITH
19 AN AMENDED INDICTMENT PRIOR TO TRIAL. IT HASN'T BEEN
20 DONE. PERIOD.

21 MR. REDMOND: YOUR HONOR, WHAT
22 HE FAILS TO ADDRESS IS, AGAIN, BASED ON THE FACT THAT
23 THE RULING ON THE FIRST INDICTMENT THAT YOU NOW HAVE
24 WAS MADE, AND THE JUDGE DID INDICATE THAT HE COULD
25 ARGUE TO THE JURY THAT THE LANGUAGE IN THERE SAID

1 POSSESSION WITH INTENT, BUT THAT HE COULD MAKE THAT AS
2 AN ARGUMENT AS IT RELATES TO BEING AMENDED. BUT THE
3 JUDGE DID RULE THAT WE COULD GO FORWARD WITH
4 TRAFFICKING BECAUSE HE WAS ON NOTICE. MR. WATSON AT
5 THAT TIME COULD NOT SAY HOW HE WAS PREJUDICED. HE
6 KNEW IT, IT'S NOT LIKE HE DIDN'T KNOW IT. AND THAT IN
7 SOUTH CAROLINA IS A NOTICE.

8 MR. WATSON: YOU BET.

9 MR. REDMOND: AND IT IS A NOTICE,
10 AND HE HAD ABSOLUTELY PLENTY OF NOTICE. AND I WOULD
11 CHALLENGE MR. WATSON, I'D BE GLAD TO HEAR OR SEE
12 ANYTHING TO SHOW ME THAT HE AND HIS CLIENT WEREN'T
13 PERFECTLY AWARE THAT THIS WAS A TRAFFICKING CASE.

14 AND THAT BEING THE CASE, AS IT RELATES TO THE
15 FIRST ONE, INTERESTINGLY WE DIDN'T REALLY SPEND MUCH TIME
16 DISCUSSING THE FIRST ONE BECAUSE THAT'S ALREADY BEEN
17 RULED UPON. AND EVEN AT THAT TIME---

18 THE COURT: ARE YOU SAYING THAT
19 JUDGE LOCKEMY SAID THAT THIS DOCUMENT THAT I NOW HOLD
20 IN MY HAND THAT'S GOT DOCKET #06-GS-17-0413, THE
21 OUTSIDE OF THE DOCUMENT SAYS "AN INDICTMENT FOR
22 TRAFFICKING 100 GRAMS OR MORE OF COCAINE BUT LESS THAN
23 200 GRAMS," AND THEN ON THE INSIDE IT SAYS, "THE
24 DEFENDANT, BURNS IN THE COUNTY OF DILLON ON OR ABOUT
25 FEBRUARY 28TH, TRANSPORTED, DELIVERED KNOWINGLY. . .,"

1 BLAH, BLAH, BLAH, BLAH, BLAH, "THIS CONSTITUTING THE
2 CRIME OF POSSESSION WITH INTENT TO DISTRIBUTE COCAINE."
3 ARE YOU TELLING ME THAT JUDGE LOCKEMY SAID THAT THIS
4 WAS A TRUE BILL OF INDICTMENT FOR TRAFFICKING?

5 MR. REDMOND: THAT'S CORRECT,
6 JUDGE, AND HE DID IT BASED ON A COUPLE THINGS; ONE BEING
7 THE FRONT OF THE INDICTMENT, AND ALSO ON THE TOP
8 PORTION OF THE INDICTMENT IT SAYS "TRAFFICKING." THE
9 ONLY PART THAT SAYS INSIDE THE DOCUMENT THE TOP
10 PORTION INSIDE INDICATES TRAFFICKING AND THE POSSESSION
11 WITH INTENT WAS A SCRIVENER'S ERROR WITHIN THE ACTUAL
12 OTHER PORTION. EVERYTHING ELSE, INCLUDING THE FRONT OF
13 THE INDICTMENT AND THE TOP PORTION INDICATES THAT IT'S
14 TRAFFICKING. AND WE DISCUSSED, WE WENT THROUGH THIS
15 WHOLE PROCESS ALREADY DURING THE LAST TERM OF COURT.

16 MR. WATSON: BUT I EXCEPTED TO
17 THAT RULING AND HE NOTED MY EXCEPTION. I'VE NEVER
18 WAIVED THAT. AND IF YOU RULE I'VE GOT TO GO FORWARD ON
19 THAT, I STILL WOULD EXCEPT YOUR RULING, BUT THE POINT
20 STILL IS WHERE I WAS WHEN I LOOKED AT THAT AMENDED
21 INDICTMENT THAT IS NOT WHAT IS BEFORE YOU NOW, BUT
22 SOMETHING THAT DOESN'T SAY WHAT A JUDGE HAS RULED ON,
23 AND UNDER OUR LAW YOU HAVE TO SERVE ME WITH AN
24 INDICTMENT THAT HAS BEEN AMENDED, AND YOU'VE GOT TO
25 SERVE THE DEFENDANT. IT HAS CHANGED THE PENALTY. IT

1 HAS CHANGED THE PENALTY.

2 THE COURT: ARE YOU SAYING, THEN -
3 IT SOUNDS TO ME LIKE YOU'RE SAYING THAT JUDGE LOCKEMY
4 PAINTED HIMSELF INTO A CORNER BY SAYING IT'S OKAY TO GO
5 FORWARD ON THIS, THAT'S A SCRIVENER'S ERROR, IN MAKING
6 THAT RULING, IF HE DID.

7 MR. WATSON: HE DID THAT.

8 THE COURT: AND FOR SOME REASON
9 THE TRIAL DIDN'T GO FORWARD, I DON'T KNOW WHAT IT WAS.

10 MR. REDMOND: I THINK MRS. MCMILLAN
11 HAD A PROBLEM WITH A FAMILY MEMBER AND SHE HAD TO
12 LEAVE, SO WE DIDN'T GET TO THE TRIAL.

13 THE COURT: WELL, IT MAKES NO
14 DIFFERENCE, BUT YOU DIDN'T GO FORWARD.

15 MR. WATSON: NO, SIR.

16 THE COURT: MR. WATSON, IT SOUNDS
17 TO ME LIKE WHAT YOU WOULD HAVE THE SOLICITOR DO AFTER
18 THE COURT MADE THAT RULING WAS GET A NEW TRUE BILL OF
19 INDICTMENT, GIVE IT TO THE GRAND JURY TO GET A NEW TRUE
20 BILL OF INDICTMENT, AN AMENDED BILL OF INDICTMENT, OR
21 EITHER WRITE IT OUT ON THIS PIECE OF PAPER AND HAND IT
22 BACK TO YOU.

23 MR. WATSON: WOULDN'T DO EITHER
24 ONE, WITH RESPECT TO THE COURT. THE JUDGE MADE A
25 RULING WHICH I EXCEPTED TO. I THINK THAT'S AN APPEALABLE

1 ERROR, SHOULD MY CLIENT BE CONVICTED. BY DOING WHAT
2 YOU SUGGEST, WITH ALL COURTESY EXTENDED TO YOU, THEN I
3 HAVE WAIVED THAT APPEAL. FIRST, I DIDN'T THINK IT WAS THE
4 SOLUTION, SECOND, I THINK IT WAIVED APPELLATE RIGHTS, AND
5 THIRD, IT DIDN'T MAKE MY CASE AS I SAW IT.

6 THE JUDGES SAID WE HAD TO GO FORWARD ON THAT
7 INDICTMENT, I OBJECTED TO IT. HE OVERRULED MY OBJECTION
8 AND I EXCEPTED. WHERE I AM PREJUDICED IS BY THE AMENDED
9 INDICTMENT THAT THE SOLICITOR TRIED TO GO FORWARD ON
10 THAT I HAD NOT BEEN SERVED WITH, NOR MY CLIENT, WITH NO
11 NOTICE. THERE'S NOTICE OF THAT BECAUSE WE HAD A
12 HEARING.

13 THERE'S NO NOTICE OF THE NEW AMENDED INDICTMENT,
14 WHICH IS PRESENTED TWICE, THE SAME FACTS TO THE SAME
15 GRAND JURY.

16 THE COURT: AND IS THERE A STATUTE
17 THAT SAYS YOU CAN'T DO THAT WITH THE SAME GRAND JURY?

18 MR. WATSON: I DON'T HAVE THE
19 STATUTE IN FRONT OF MY, JUDGE, I CAN'T ANSWER THAT. I
20 DON'T THINK IT'S STATUTORY, I THINK IT'S CASE LAW.

21 MR. REDMOND: I DON'T THINK IT'S
22 EITHER, YOUR HONOR, BECAUSE THIS ISSUE HAS COME UP
23 BEFORE AND I'VE ACTUALLY ASKED MR. WATSON EVEN THEN.
24 SO THIS ISN'T THE FIRST CASE THIS ISSUE'S COME UP AND I'VE
25 YET TO SEE ANY CASE LAW REGARDING MR. WATSON'S

1 POSITION. I KNOW MR. WATSON WELL ENOUGH TO KNOW THAT
2 HE IS VERY GOOD AT ARGUING LAW.

3 MR. WATSON: I CAN TELL YOU THERE IS
4 NO QUESTION WITH RESPECT TO THE NEW INDICTMENT, THERE IS
5 NO SUBJECT MATTER JURISDICTION.

6 THE COURT: ALL RIGHT. THIS IS THE
7 RULING OF THE COURT. IF WE GO FORWARD WITH THE TRIAL,
8 WE'RE GOING TO GO FORWARD WITH A TRIAL ON - DO WE HAVE
9 ONE FOR MR. JONES, AS WELL?

10 MR. REDMOND: YES, YOUR HONOR, WE
11 DO. I THINK I'VE HANDED THEM BOTH OF THEM UP.

12 MR. WATSON: THIS ISSUE IS JUST AS IT
13 RELATES TO MR. BURNS. MR. JONES IS ANOTHER CASE.

14 THE COURT: YOU HANDED ME THE
15 WHOLE BURNS INDICTMENT. HERE IT IS, THIS IS THE SECOND
16 BURNS INDICTMENT. IF WE GO FORWARD, WE'RE GOING TO GO
17 FORWARD ON THE ONLY JONES INDICTMENT AND THE FIRST
18 BURNS INDICTMENT PRESERVING YOUR APPELLATE RIGHTS,
19 TAKING EXCEPTION TO JUDGE LOCKEMY'S RULING---

20 MR. WATSON: AND MAY I TAKE
21 EXCEPTION TO YOUR RULING, AS WELL? I TAKE EXCEPTION TO
22 IT.

23 THE COURT: I'LL NOTE YOUR
24 EXCEPTION.

25 MRS. MCMILLAN: YOUR HONOR, AT

1 THIS TIME JUST FOR THE RECORD I'D LIKE TO RENEW MY MOTION
2 TO SUPPRESS THE DRUG EVIDENCE AGAINST MY CLIENT, JOHNNY
3 JONES. AND I UNDERSTOOD, YOUR HONOR, THE BASIS YOU'RE
4 YOUR NOT GRANTING IT AS TO THE CO-DEFENDANT, ARTIE
5 BURNS BECAUSE YOU DO BELIEVE THAT IT WAS A CONSENSUAL
6 ENCOUNTER.

7 THERE IS NO QUESTION THAT MY CLIENT WAS A
8 PASSENGER IN THE VEHICLE. HE WAS A PASSENGER EVEN AT
9 THE TIME THAT THE WORDS ARE ARTICULATED BY MR. BURNS IN
10 RESPONSE TO THE QUESTIONS. THERE'S NO EVIDENCE THAT MY
11 CLIENT WAS ANYTHING OTHER THAN PRESENT IN THE VEHICLE,
12 AND I BELIEVE THAT ANY EVIDENCE AS A RESULT OF THE
13 SEARCH THAT MAY HAVE BEEN CONSENSUAL, WHICH WE DO
14 OBJECT TO, FOR THE RECORD, IS NOT BINDING UPON MY CLIENT,
15 YOUR HONOR.

16 HE NEVER CONSENTED, HE WAS NOT DRIVING THE
17 VEHICLE, HE HAD NOT KNOWLEDGE OF ANYTHING GOING ON.
18 AND THE GUN WAS PULLED ON HIM AND I FOUND THAT TO BE
19 REALLY ATROCIOUS, BECAUSE ON THE TAPE WHEN I LISTENED
20 TO THE TAPE THEY HAD ASKED THEM FOR THEIR COAT, AND I
21 BELIEVE THE OFFICERS HAD ALREADY SHAKEN THE COAT WHEN
22 THEY WERE REMOVING MY CLIENT FROM THE VEHICLE.

23 SO, YOUR HONOR, I THINK YOU SHOULD RECONSIDER
24 YOUR RULING, WITH RESPECT, WHEN IT COMES TO MY CLIENT
25 BECAUSE---

1 THE COURT: DO YOU THINK MY RULING
2 WAS RIGHT WITH REGARD TO THE CONSENSUAL SEARCH? I
3 MEAN, YOU REMOVED YOUR OBJECTION TO YOUR MOTION.

4 MRS. MCMILLAN: YES, SIR, AS TO MR.
5 BURNS. I UNDERSTAND YOUR HONOR'S REASONING BECAUSE IT
6 WAS ARTICULATED THAT HE MAY HAVE CONSENTED, EVEN
7 THOUGH WE HAVE DISPUTED THAT. BUT I'M NOW RENEWING MY
8 MOTION AS TO JOHNNY BECAUSE JOHNNY NEVER CONSENTED.
9 HE WAS STILL IN THE VEHICLE WHEN THIS PERIOD OF CONSENT
10 WAS GIVEN. AND I'D ASK YOU TO RECONSIDER AS FAR AS
11 JOHNNY JONES UNDER PICHARDO, ALSO.

12 THE COURT: THE SAME RULING
13 APPLIES TO YOUR CLIENT AS WELL, WITH RESPECT. THANK YOU.
14 I'LL NOTE YOUR EXCEPTION.

15 MR. REDMOND: YOUR HONOR, WITH
16 THAT IF I MAY JUST TAKE A MOMENT TO EXCUSE THE REST OF
17 THE DEFENDANTS HERE BEFORE WE GET STARTED?

18 THE COURT: YOU MAY.

19 (AT THIS TIME THERE WAS A SHORT BREAK.)

20 THE COURT: WITH REGARD TO THE
21 FIRST BURNS INDICTMENT, JUDGE LOCKEMY RULED THAT THAT
22 WAS A SCRIVENER'S ERROR IN THERE AND YOU COULD PROCEED
23 ON TRAFFICKING?

24 MR. REDMOND: THAT'S CORRECT.

25 MR. WATSON: HE SAID HE WOULD NOT

1 PROHIBIT ME FROM PRESENTING TO THE JURY AND ARGUING
2 THAT THE STATE HAD MADE A DECISION FOR POSSESSION WITH
3 INTENT TO DISTRIBUTE, NOR WOULD HE PREVENT FROM THE
4 STATE FROM PROCEEDING ON TRAFFICKING THROUGH THEIR
5 PRESENTATION. I EXCEPTED TO THAT.

6 THE COURT: HE SAID HE'D LET YOU
7 ARGUE TO THE JURY THAT THE INDICTMENT WAS FAULTY?

8 MR. WATSON: YES, SIR, THAT THEY
9 HAD MADE A DECISION THAT IT WAS POSSESSION WITH INTENT
10 TO DISTRIBUTE, YES, SIR, HE DID. OH, YES, SIR, HE DID.

11 MR. REDMOND: AND I CANNOT
12 CONTEST THAT HE DIDN'T. AND MR. WATSON'S RIGHT IN THAT
13 REGARD, HE SAID THAT THERE WAS MORE THAN ADEQUATE
14 NOTICE THAT THE DEFENDANT WAS ON TRIAL FOR TRAFFICKING
15 BASED UPON ALL OF THE CIRCUMSTANCES WE'VE GOTTEN INTO,
16 BUT HE INDICATED TO MR. WATSON, AND I RECALL HE ALMOST
17 PREVAILED, THAT DID NOT PRECLUDE YOU FROM ARGUING TO
18 THE JURY THAT THEY HAD ACTUALLY INTENDED TO PROCEED---

19 MR. WATSON: NOR CONSENTING TO
20 THE INDICTMENT TO THE JURY. THAT'S WHY I WAS SAYING IT
21 NEEDS TO BE POSSESSION WITH INTENT TO DISTRIBUTE AND
22 NOT TRAFFICKING. HE OVERRULED ME AND I EXCEPTED. THAT'S
23 WHERE WE ARE.

24 THE COURT: YOU EXCEPTED OR
25 ACCEPTED?

1 MR. WATSON: I SAID, I DON'T LIKE IT, I
2 DON'T THINK IT'S RIGHT.

3 THE COURT: SO YOU EXCEPTED TO IT.

4 MR. WATSON: THAT IS CORRECT.

5 THE COURT: OKAY. THEN I WOULD
6 ASSUME THAT YOU WOULD EXCEPT MY STRIKING CONSTITUTING
7 THE CRIME OF POSSESSION WITH INTENT TO DISTRIBUTE
8 COCAINE AND PUT TRAFFICKING IN THERE?

9 MR. WATSON: I WOULD.

10 MR. REDMOND: NOW MY
11 RECOLLECTION, THOUGH, IS THAT THAT IS WHAT JUDGE
12 LOCKEMY INDICATED HE WAS GOING TO DO. WE JUST DIDN'T
13 TRY THE CASE AT THAT TIME. BUT HE INDICATED THAT EVEN
14 WITH THAT, MR. WATSON COULD, AND OF COURSE, WE'D HAVE
15 TO STIPULATE TO THE FACT THAT IT WAS AMENDED, BECAUSE
16 IT DOES SAY POSSESSION WITH INTENT, AND THAT HE WOULD
17 STILL BE ABLE TO ARGUE THAT EVEN WITH THE MARKING OF
18 THE INDICTMENT FOR TRAFFICKING.

19 MR. WATSON: BUT IT IS SUCH A
20 CLOUDY ISSUE.

21 THE COURT: WELL, IT'S NOT CLOUDY,
22 WITH DUE RESPECT, IF HE RULED IT WAS A SCRIVENER'S ERROR.
23 WHAT SHOULD HAVE HAPPENED WAS FOR HIM TO SAY ON THE
24 DOCUMENT ITSELF TO NOTE THAT, SCRIVENER'S ERROR, AND
25 STRIKE THAT AND PUT TRAFFICKING AND INITIAL IT SAYING IT'S

1 BEEN AMENDED.

2 MR. WATSON: MR. REDMOND AND I DID
3 WHAT HE ULTIMATELY SAID. HE SAID THAT THEY WOULD BE
4 ALLOWED - BY THEM, THE STATE WOULD BE ALLOWED TO
5 PROCEED ON TRAFFICKING, AND THAT BECAUSE OF HIS RULING I
6 WOULD BE ALLOWED TO USE THE INDICTMENT AS PRESENTED
7 WITHOUT ANY AMENDMENT TO SAY, HERE LADIES AND
8 GENTLEMEN OF THE JURY, THE ONLY THING THEY THOUGHT HE
9 WAS GUILTY OF WAS POSSESSION WITH INTENT TO DISTRIBUTE.

10 AS MR. REDMOND SAID THAT HE DID SAY THAT MY
11 CLIENT HAD NOTICE BEFORE MY APPOINTMENT THAT THEY WERE
12 GOING TO GO FORWARD WITH TRAFFICKING. BUT THE JUDGE DID
13 NOT CHANGE THAT INDICTMENT.

14 MR. REDMOND: AND, YOUR HONOR,
15 THE STATE'S POSITION IS THAT EITHER WAY IS FINE WITH US
16 BECAUSE EITHER WAY, EVEN IF IT'S STRICKEN, IT WILL BE
17 ARGUED AND THEY'LL BE ABLE TO SEE IT AND SO EITHER WAY
18 ITS' GOING TO BE AN ARGUMENT, WE'VE ALREADY ANTICIPATED
19 DEALING WITH IT.

20 THE COURT: DO BOTH OF YOU AGREE
21 THAT POSSESSION WITH INTENT TO DISTRIBUTE IS NOT A
22 LESSER INCLUDED OFFENSE OF TRAFFICKING?

23 MR. WATSON: YES, SIR.

24 MR. REDMOND: YES, SIR, I DIDN'T
25 THINK IT WAS. I HAD TO CONFER WITH MY COUNSEL ON THAT,

1 JUDGE. WE WOULD AGREE.

2 THE COURT: SO THE JURY CAN'T BE
3 CHARGED WITH POSSESSION WITH INTENT TO DISTRIBUTE?

4 MR. WATSON: THEY CAN OR CANNOT?

5 MR. REDMOND: THEY CANNOT.

6 MR. WATSON: YES, THEY CAN---

7 THE COURT: IF IT'S NOT A LESSER
8 INCLUDED OFFENSE, HOW AM I GOING TO CHARGE THEM?

9 MR. WATSON: BECAUSE OF THE BILL
10 OF INDICTMENT THAT WAS PRESENTED TO THE GRAND JURY.

11 THE COURT: THAT LOOKS LIKE A
12 CATCH-22 OR CIRCULAR ARGUMENT. IF IT'S NOT A LESSER
13 INCLUDED OFFENSE I DON'T KNOW HOW I CAN CHARGE THAT.

14 MR. WATSON: MAY BE BY CONSENT.

15 THE COURT: DO YA'LL CONSENT TO
16 THAT?

17 MR. WATSON: I'LL TAKE IT UP WITH MY
18 CLIENT AFTER THE STATE'S CASE AND SEE IF IT BECOMES
19 NECESSARY.

20 MR. REDMOND: JUDGE, JUST ONE BRIEF
21 ISSUE. AND AS I'D INDICATED AT SIDEBAR, YOUR HONOR, IF I
22 COULD HAVE SERGEANT TURNER - AND FOR THE RECORD,
23 SERGEANT JASON TURNER WITH THE DILLON POLICE
24 DEPARTMENT IS HANDING THE EVIDENCE BAG CONTAINING
25 DRUGS TO DAVID LANE, SERGEANT LANE. AND SO I JUST

1 WANTED TO MAKE SURE THAT TRANSFER WAS ON THE RECORD.
2 SERGEANT TURNER IS GOING TO TESTIFY, BUT, AGAIN, JUST OUT
3 OF AN ABUNDANCE OF CAUTION I JUST WANTED TO AT LEAST
4 MAKE IT CLEAR FOR THE RECORD THAT THIS TRANSFER IS
5 TAKING PLACE SINCE SERGEANT LANE IS GOING TO BE MY FIRST
6 WITNESS.

7 THE COURT: ALL RIGHT, SIR.

8 MR. REDMOND: THANK YOU, YOUR
9 HONOR.

10 MR. WATSON: AT THE HEARING
11 YESTERDAY THE STATE AGREED TO REDACT THE VIDEO TAPE
12 CONTAINING THOSE ISSUES WHICH WERE COMMENTS UPON MY
13 CLIENT'S RIGHT TO REMAIN SILENT. I'D ASK IF THAT HAS BEEN
14 DONE.

15 THE COURT: REDACTING THE VIDEO
16 TAPE?

17 MR. REDMOND: AND THIS IS WHAT I
18 PROPOSE BECAUSE I TALKED TO SERGEANT LANE ABOUT THAT.
19 WE WOULD SIMPLY PROPOSE THAT IF THE JURY DECIDES THEY
20 NEED TO HEAR IT, BECAUSE THE PROBLEM WITH REDACTING, I
21 DON'T KNOW IF THAT'S THE ORIGINAL COPY---

22 MR. WATSON: IT'S NOT THE ORIGINAL.

23 MR. REDMOND: OKAY. AND THAT'S
24 WHAT WE WEREN'T SURE ABOUT. BUT IF THEY NEED TO SEE OR
25 REPLAY ANY PARTS OF THE TAPE, AND THEN I'VE HAD THIS

1 ISSUE COME UP WHERE CERTAIN PARTS OF THE TAPE WERE NOT
2 ALLOWED, IF THEY NEED TO COME OUT THEN WE COULD JUST
3 NOT - BUT THE PORTION OF THE TAPE YOU'RE REFERRING TO IS
4 THE LAST PART OF THE TAPE ANYWAY. SO IT'S NOT LIKE IT'S IN
5 BETWEEN AND WE'D HAVE TO KIND OF CUT AND PASTE, OR
6 WHAT NOT. AND SO WE WOULD SIMPLY PROPOSE TO JUST
7 PLAY IT UP TO THAT POINT IN THE TAPE AND THEN AT THAT
8 POINT, OF COURSE, IT MAY, OF COURSE IN DELIBERATIONS, IF
9 THE CASE GOT THAT FAR, ASSUMING IT DOES, THEN WE COULD
10 JUST BRING THEM OUT AND REPLAY THE TAPE, AGAIN, MINUS
11 THAT LAST PORTION THAT MR. WATSON OBJECTED TO.

12 THE COURT: IS THAT ALRIGHT WITH
13 YOU, MR. WATSON?

14 MR. WATSON: AS LONG AS IT DOESN'T
15 GET TO THE JURY. HOWEVER WE DO IT, JUST AS LONG AS IT
16 DOESN'T GET TO THE JURY.

17 MR. REDMOND: AND JUST FOR
18 RECOLLECTION SO I CAN REMEMBER WHEN WE'RE UP THERE
19 HAVING HIM TESTIFY, WHAT PART ARE WE STOPPING IT AT?

20 MR. WATSON: WHEN HE STARTS
21 READING HIS MIRANDA WARNINGS.

22 MR. REDMOND: ONCE HE STARTS
23 READING MIRANDA WARNINGS, CUT IT OFF, OR AFTER THE
24 MIRANDA WARNING?

25 MR. WATSON: WHATEVER.

1 MR. REDMOND: AFTER THE MIRANDA
2 WARNINGS ARE READ, WE'LL JUST CUT IT OFF.

3 MR. WATSON: BUT DURING THE
4 MIRANDA HE SAID I KNOW WHAT'S GOING ON, YOU WANT TO
5 GIVE ME SOME INFORMATION. I SUBMIT THAT WE STOP IT WHEN
6 THE MIRANDA WARNINGS ARE STARTED.

7 MR. REDMOND: AND WE COULD DO
8 THAT, WE HAVE NO OBJECTION TO THAT.

9 MRS. MCMILLIAN: AND, YOUR HONOR,
10 AS FAR AS JOHNNY JONES, MAY I MAKE MY MOTION?

11 THE COURT: YES, MA'AM.

12 MRS. MCMILLAN: YOUR HONOR, AT
13 THIS TIME I WOULD MAKE A MOTION TO SEVER THESE TRIALS
14 BASED ON YOUR HONOR'S PRIOR RULING AS FAR AS THE
15 CONSENSUAL SEARCH. I THINK THAT MY CLIENT'S DEFENSE HAS
16 BEEN IRREPARABLY TAINTED BY THE ADMISSION OF THE FACT
17 THAT MR. BURNS GAVE A VERBAL CONSENT, WHETHER OR NOT
18 IT WAS COERCED OR NOT. AND I DON'T BELIEVE THAT THERE'S
19 ANY WAY THAT MY CLIENT CAN DEFEND HIMSELF AGAINST THAT
20 ILLEGAL SEARCH.

21 THE COURT: ALL RIGHT. LET ME MAKE
22 MY RULING REAL CLEAR OR CLEARER. I THOUGHT I'D MADE IT
23 REAL CLEAR. AND STILL THINK I DID, BUT TO REITERATE; I'M NOT
24 CONCEDED THAT THE STOP WASN'T JUSTIFIABLE UNDER THE
25 FIRST EXCEPTION TO THE - I THINK THE BRIGHT* LETTER RULE IS

1 THAT ONCE THE PURPOSE FOR WHICH THE TRAFFIC STOP WAS
2 MADE IS TERMINATED, YOU CAN'T GO FURTHER WITH
3 QUESTIONING OR ANYTHING ELSE. TWO EXCEPTIONS TO THAT
4 ARE IF THE OFFICER HAS A REASONABLE AND ARTICULABLE
5 SUSPICION OF A CRIME. I'M NOT CONCEDED THAT. IN FACT, I
6 THINK HE DID HAVE A REASONABLE AND ARTICULABLE
7 SUSPICION THAT SOME CRIME HAD BEEN COMMITTED OR WAS
8 BEING COMMITTED BASED ON THOSE THINGS I MENTIONED.

9 EVEN IF HE DIDN'T, THEN IN THE COURT'S MIND,
10 SURELY THE SECOND EXCEPTION, THAT BEING THE CONSENSUAL
11 ENCOUNTER WAS MET. I'M NOT BASING MY WHOLE RULING ON
12 THE CONSENSUAL ENCOUNTER. AND IN MY DENYING YOUR
13 MOTION THAT NO CONSENT WAS GIVEN BY YOUR CLIENT, I
14 DON'T THINK CONSENT HAS TO BE GIVEN BY YOUR CLIENT. SO
15 THAT'S WHY I DID THAT.

16 NOW, I'M ALSO GOING TO DENY YOUR MOTION TO
17 SEVER. I'M NOT FEELING ANY COMPULSION TO DO THAT
18 BECAUSE I DON'T THINK IT'S NECESSARY TO DO THAT. I DON'T
19 THINK YOUR CLIENT WOULD BE PREJUDICED BY THAT, AND FOR
20 JUDICIAL ECONOMY AND TRYING TO NOT UNDO WHAT'S
21 ALREADY AFOOT, I'M GOING TO CONTINUE WITH IT AND TRY
22 BOTH AT THE SAME TIME.

23 MRS. MCMILLAN: YOUR HONOR, IF YOU
24 WILL PLEASE NOTE MY OBJECTION. WE WILL BE PARTICIPATING
25 IN THE DEFENSE, BUT ANY OF OUR PARTICIPATION I WANT IT TO

1 BE NOTED THAT IF IT GOES UP ON APPEAL THAT IT WAS DONE
2 BASED ON YOUR HONOR'S RULING AND WITH MY OBJECTION.

3 THE COURT: VERY WELL. YOUR
4 PARTICIPATION WON'T PREJUDICE YOUR POSITION THAT YOU
5 TAKE AN EXCEPTION TO THE COURT'S RULING.

6 MRS. MCMILLAN: THANK YOU, SIR.

7 MR. WATSON: WE'VE DONE SO MANY
8 THINGS IN SO MANY HEARINGS IN THIS CASE THAT SOME
9 COURT'S HOLD IF YOU DON'T KEEP RENEWING YOUR OBJECTIONS
10 OR RENEWING YOUR EXCEPTION, YOU LOSE IT. I WOULD HOPE IN
11 THIS CASE THAT THE COURT WOULD RULE THAT THE
12 EXCEPTIONS MADE ARE MADE CONTINUING---

13 THE COURT: THEY ARE.

14 MR. WATSON: AND THE OBJECTIONS
15 PRIOR TO THE PRESENTATION OF EVIDENCE ARE MADE
16 CONTINUING, AND THAT WE DO NOT WAIVE THEM BY OUR
17 PARTICIPATION EITHER SINGULARLY OR TOGETHER IN THE
18 DEFENSE OF THIS CASE BECAUSE WE ARE COMPELLED TO DO SO.

19 THE COURT: THEY ARE. BUT I THINK
20 AT THE TIME ANYTHING IS OFFERED, THAT IN ORDER TO
21 FURTHER PROTECT YOURSELF AT THE TIME IT'S OFFERED, YOU
22 NEED TO NOTE YOUR OBJECTION. OUT OF AN ABUNDANCE OF
23 CAUTION, I FEEL THAT'S NECESSARY. YOU DON'T HAVE TO
24 CONTINUE TO DO IT TIME AND TIME AND TIME AGAIN, BUT FOR
25 INSTANCE IF SOMETHING GOES FORWARD WITH REGARD TO THE

1 EVIDENCE, SIMPLY SAY SOMETHING ON THE RECORD, LIKE JUDGE,
2 YOU KNOW WE'VE OBJECTED TO THAT, OR SIMPLY PUT
3 SOMETHING ON THE RECORD SO THAT IT'S ANNOUNCED. JUST
4 KIND OF LIKE A MOTION IN LIMINE, YOU NEED TO DO IT AT THE
5 TIME. ONCE DURING THE PRESENTATION BEFORE THE JURY I
6 THINK YOU NEED TO MAKE YOUR OBJECTION.

7 MRS. MCMILLAN: RIGHT, JUST KIND OF
8 DO A SHOW OF OUR HAND AND MAKE SURE THAT THE COURT
9 REPORTER CAN GET IT, AND SO YOUR HONOR WILL NOTE MY
10 OBJECTION RATHER THAN MAKE A BIG ISSUE.

11 THE COURT: YES, I' M NOT GOING TO
12 HAVE YOU ARGUE THE OBJECTION, JUST SAY NOTE MY
13 OBJECTION.

14 MRS. MCMILLAN: RIGHT, BECAUSE I'VE
15 BEEN ON A JURY BEFORE AND I KNOW THEY'LL THINK
16 EVERYBODY'S HIDING THINGS WHEN ATTORNEYS STAND UP AND
17 DO THAT KIND OF THING.

18 THE COURT: IF YOU'LL JUST SAY TO
19 NOTE YOUR OBJECTION, I THINK THAT'S SUFFICIENT.

20 MR. REDMOND: AND, YOUR HONOR,
21 JUST ONE MORE MATTER WITH REGARD TO THE TAPE. THE
22 OTHER ITEMS ARE ALREADY PRE-MARKED, I DON'T KNOW IF
23 DEFENSE HAS ACTUALLY LOOKED THROUGH THEM OR NOT, BUT
24 AS RELATES TO THE TAPE, SINCE WE'VE ALREADY PLAYED THAT
25 AND I THINK IT'S BEEN MARKED AS A DEFENSE EXHIBIT, BUT MY

1 QUESTION SIMPLY IS AS TO WHETHER OR NOT IT'S BEEN MOVED.
2 INTO EVIDENCE.

3 MR. WATSON: THAT'S NOT THE
4 ORIGINAL, WE'D ASK THE ORIGINAL BE PROVIDED, IT HAS MUCH
5 BETTER AUDIO. THAT'S A COPY AND IT WAS JUST FOR THE
6 MOTION, THAT WAS NOT FOR THE TRIAL.

7 MR. REDMOND: THAT'S WHY I ASKED
8 THAT BECAUSE WE DIDN'T KNOW. THE ORIGINAL IS ACTUALLY
9 AT HIS OFFICE.

10 MR. WATSON: WHICH IS RIGHT ACROSS
11 THE STREET.

12 MR. REDMOND: SO IF HE CAN, I WOULD
13 JUST ASK HIM TO KEEP POSSESSION OF IT. BECAUSE I DON'T
14 WANT TO DELAY THE TRIAL, AND WE'RE READY TO PROCEED.
15 SO IF HE COULD GO GET THAT ORIGINAL.

16 THE COURT: YES. ARE WE READY TO
17 PROCEED NOW?

18 MR. REDMOND: STATE'S READY TO
19 PROCEED, YOUR HONOR.

20 MR. WATSON: DEFENSE IS READY.

21 THE COURT: LET'S GET THE JURY BACK.
22 NOTHING HAS BEEN MOVED INTO EVIDENCE.

23 MR. REDMOND: I DIDN'T THINK IT HAD,
24 BUT I JUST WANTED TO CLARIFY IT.

25 MR. WATSON: I WANT THE TAPE FOR

1 THE PURPOSES OF THE SUPPRESSION HEARING, BUT NOT FOR
2 THE CASE IN CHIEF. I'M NOT OFFERING IT FOR THE CASE IN
3 CHIEF.

4 THE COURT: WELL YOU WOULDN'T BE
5 OFFERING IT, ANYWAY, WOULD YOU?

6 MR. WATSON: NO. BUT YESTERDAY I
7 WANTED TO MAKE SURE THAT WE HAD ONE SO WE BROUGHT
8 THAT AND IT'S BEEN MARKED, IT'S THE ONE PROVIDED TO US IN
9 DISCOVERY.

10 THE COURT: DO YOU OFFER IT?

11 MR. WATSON: NOT TODAY, BUT FOR
12 YESTERDAY I DO.

13 THE COURT: ALL RIGHT THE, FOR
14 YESTERDAY'S PURPOSES THE COPY IS IN EVIDENCE.
15 (DEFENDANT'S EXHIBIT NO. 1 INTRODUCED INTO EVIDENCE.)

16 (AT THIS TIME THE JURY ENTERS THE COURTROOM)

17 THE COURT: MADAME CLERK, WOULD
18 YOU SWEAR IN THE JURY, PLEASE?

19 Thereupon, JURY MEMBERS, were sworn in.

20 THE COURT: GOOD MORNING, LADIES
21 AND GENTLEMEN, I APOLOGIZE FOR THE DELAY IT TOOK TO
22 FINALLY GET YOU OUT HERE. WE HAD - YOU REMEMBER I TOLD
23 YOU THERE WERE MATTERS OF LAW AND MATTERS OF FACT, WE
24 HAD SOME OTHER MATTERS OF LAW THAT WE HAD TO TAKE UP
25 AND WE DIDN'T FINISH YESTERDAY AFTERNOON WHEN WE LET

1 YOU GO. I THOUGHT WE WOULD, AND I WAS WRONG. STORY OF
2 MY LIFE. WHAT'S YOUR NAME, RIGHT HERE IN THE BLUE?

3 THE JUROR: JENNIFER DESHANE.

4 THE COURT: MRS. DESHANE, I'M GOING
5 TO ASK YOU TO SERVE AS THE FOREPERSON OF THE JURY, IF
6 YOU WILL. YOU'RE ALMOST SITTING WHERE THE FOREPERSON
7 SITS. SINCE WE DON'T HAVE BUT 10 JUROR HERE, AND OF
8 COURSE BOTH SIDES HAVE AGREED TO TRY THIS WITH 10 OR 11.
9 YOU'D NORMALLY BE IN THIS CHAIR RIGHT OVER HERE, BUT
10 SINCE YOU'RE RIGHT THERE, YOU'RE GOING TO BE THE
11 FOREPERSON.

12 LET ME TELL YOU WHAT YOUR DUTIES AND
13 RESPONSIBILITIES ARE OTHER THAN THAT OF A NORMAL JUROR.
14 AND THAT IS THAT YOU WILL BE THE SPOKESPERSON FOR THE
15 JURY. IF THE JURY HAS ANY QUESTIONS THAT THEY WANT TO
16 ASK, IF THEY HAVE ANYTHING THAT THEY WANT TO BRING TO
17 THE ATTENTION OF THE COURT, THEY WOULD FIRST ASK THOSE
18 QUESTIONS OF YOU AND THEN YOU WOULD RELAY THAT
19 QUESTION OR STATEMENT, OR WHATEVER IT MAY BE, TO THE
20 COURT. YOU WILL BE THE LIASON BETWEEN THE COURT AND
21 THE JURY, BEING THE SPOKESPERSON FOR THE JURY.

22 SECOND, YOU WILL BE THE PRESIDING JUROR. IN
23 FACT, SOME JUDGES EVEN CALL THEIR FOREPERSONS THE
24 PRESIDING JUROR. SOME JUDGES LET THE JURY ELECT THEIR
25 FOREPERSON. I'M KIND OF OLD-FASHIONED IN THAT I APPOINT.

1 SOME JUDGE HAVE TROUBLE GETTING AN ELECTION
2 ACCOMPLISHED, THEY CAN'T MAKE THEIR MIND UP WHO THEY
3 WANT TO BE THE FOREPERSON. THAT'S A LITTLE SCARY.

4 BUT IN ANY EVENT, I'M GOING TO APPOINT YOU AS
5 THE FOREPERSON AND YOU WILL BE THE PRESIDING JUROR.
6 THAT IS TO SAY ONCE YOU'VE HEARD ALL THE EVIDENCE IN
7 THE CASE, YOU'VE HEARD THE ARGUMENTS OF COUNSEL,
8 YOU'VE HEARD THE COURT'S INSTRUCTIONS TO YOU ON THE
9 LAW, AND YOU RETIRE TO YOUR JURY ROOM TO DELIBERATE
10 YOUR DECISION IN THIS MATTER, YOU WILL BE THE PERSON
11 PRESIDING OVER THOSE DELIBERATIONS. AND IT'S YOUR DUTY
12 AND RESPONSIBILITY TO MAKE SURE THAT EACH AND EVERY
13 JUROR HAS A COMPLETE AND FULL OPPORTUNITY TO EXPRESS
14 HIS OR HER VIEWS ON ANY AND ALL ASPECTS OF THE CASE.

15 AND, THIRDLY, AND FINALLY, YOUR OTHER
16 EXCEPTIONAL DUTY OVER AND ABOVE THAT OF A NORMAL
17 JUROR, IS TO WRITE THE VERDICT FOR THE JURY. ONCE THE JURY
18 HAS REACHED A UNANIMOUS VERDICT IN THIS CASE YOU WILL
19 WRITE THE VERDICT FOR THAT JURY ON A FORM THAT WILL BE
20 PROVIDED FOR YOU. I APPRECIATE YOU SERVING IN THAT
21 CAPACITY, IF YOU WOULD.

22 NOW LET ME TELL YOU A LITTLE BIT ABOUT HOW
23 WE'RE GOING TO PROCEED HERE. THE SOLICITOR WHO IS THE
24 PROSECUTING ATTORNEY IN THIS CASE WILL APPEAR BEFORE
25 YOU SHORTLY TO EXPLAIN TO YOU THE CHARGE, WHAT THE

1 DEFENDANTS ARE CHARGED WITH IN THIS CASE AFTER WHICH
2 COUNSEL FOR THE DEFENDANT WILL HAVE AN OPPORTUNITY TO
3 APPEAR BEFORE YOU IN WHAT'S CALLED AN OPENING
4 STATEMENT.

5 THAT'S WHAT THESE APPEARANCES BEFORE YOU
6 AND THEIR REMARKS TO YOU WILL BE CALLED, THEIR OPENING
7 STATEMENTS. THEY MAY OR MAY NOT DISCUSS THE
8 INDICTMENT IN THIS CASE. AN INDICTMENT IS SIMPLY A
9 WRITTEN DOCUMENT WHICH CONTAINS THE CHARGE OR
10 CHARGES MADE AGAINST A DEFENDANT. IT'S NOT EVIDENCE IN
11 A CASE AND CANNOT BE CONSIDERED BY YOU AS EVIDENCE IN A
12 CASE. THESE OPENING STATEMENT WHICH ARE PERMITTED IN
13 THE CASE ARE NOT EVIDENCE AND CANNOT BE CONSIDERED BY
14 YOU AS EVIDENCE IN A CASE.

15 UPON THE COMMENCEMENT OF THE TRIAL, EVIDENCE
16 WILL BE PRESENTED, AND UPON THE COMPLETION OF THE
17 PRESENTATION OF THE EVIDENCE THE SOLICITOR AND COUNSEL
18 FOR THE DEFENDANT WILL ADDRESS THE TRIAL JURY IN WHAT'S
19 CALLED A CLOSING ARGUMENT. SOMETIMES IT'S CALLED A
20 SUMMATION. AT THE CLOSE OF THE PRESENTATION OF ALL THE
21 EVIDENCE THE ATTORNEYS WILL APPEAR BEFORE YOU AND
22 MAKE THIS SUMMATION OR CLOSING ARGUMENT TO YOU.

23 WHAT'S SAID BY THE LAWYERS IN CLOSING
24 ARGUMENTS OR SUMMATION, JUST LIKE WHAT IS SAID BY THE
25 LAWYERS IN THE OPENING STATEMENTS, IS NOT EVIDENCE IN

1 THE CASE AND CANNOT BE CONSIDERED BY YOU AS EVIDENCE IN
2 THE CASE. AFTER THE CLOSING ARGUMENTS ARE COMPLETED, I
3 WILL THEN INSTRUCT YOU ON THE LAW THAT'S APPLICABLE TO
4 THE CASE AFTER WHICH YOU WILL RETIRE TO YOUR JURY ROOM
5 TO CONSIDER YOUR VERDICT IN THE CASE.

6 NOW YOUR FUNCTION AS JURORS IS TO DETERMINE
7 THE FACTS OF THE CASE AND THEN APPLY THE LAW WHICH I
8 STATE TO YOU AS BEING THE LAW THAT'S APPLICABLE TO
9 THOSE FACTS. YOU WILL APPLY THE LAW TO THOSE FACTS AS
10 YOU FIND THEM TO BE. AND YOUR CONCLUSION THUS REACHED
11 WILL BE YOUR VERDICT IN THE CASE. NOW THE VERDICT MUST
12 BE A UNANIMOUS VERDICT, THE VERDICT OF ALL 12 JURORS -
13 EXCUSE ME, ALL 10 JURORS. AND ALL 10 OF YOU MUST AGREE
14 ON THE VERDICT WHICH YOU AUTHORIZE THE FOREPERSON OF
15 THE JURY TO WRITE FOR YOU.

16 THE LAW REQUIRES THAT YOUR DECISION BE
17 REACHED SOLELY UPON THE COMPETENT EVIDENCE BEFORE
18 YOU. NOW THE COMPETENT EVIDENCE BEFORE YOU IS THE
19 EVIDENCE FROM SWORN TESTIMONY, FROM THE EXHIBITS THAT
20 ARE INTRODUCED AND ALLOWED INTO EVIDENCE, AND ANY
21 STIPULATIONS THAT THE PARTIES MAY MAKE. THAT'S THREE
22 SOURCES AND THREE SOURCES ALONE.

23 THAT'S SWORN TESTIMONY FROM THE WITNESS
24 STAND, ANY EXHIBITS - NOW AN EXHIBIT IS SOMETHING
25 TANGIBLE, SOMETHING YOU CAN TOUCH. IT MIGHT BE A GUN, OR

1 A MAP, OR A REPORT, OR A DOCUMENT, OR A PHOTOGRAPH.
2 AND THE THIRD SOURCE OF EVIDENCE IS ANY STIPULATIONS.
3 NOW THAT'S A FANCY WORD, BUT IT MEANS AGREEMENT. ANY
4 AGREEMENT THAT THE PARTIES MAKE AS TO A FACT OR SET OF
5 FACTS. TO GIVE YOU AN EXAMPLE, IT'S NOT IN THIS CASE, BUT
6 THEY MAY STIPULATE THAT ON DECEMBER THE 27TH OF 2005
7 THAT IS WAS SNOWING. NOW THAT MAY BE YOUR BIRTHDAY
8 AND YOU REMEMBER ON YOUR BIRTHDAY IT DIDN'T SNOW. BUT
9 FOR PURPOSES OF THIS TRIAL, IF THEY STIPULATE THAT IT WAS
10 SNOWING, THEN IT WAS SNOWING. THAT'S A CONCLUSIVE FACT
11 ON THAT ISSUE WITH REGARD TO THIS TRIAL.

12 THAT'S A FACT YOU DON'T HAVE TO FIND BECAUSE
13 THEY'VE AGREED TO IT. AS A FINDER OF THE FACTS YOU WON'T
14 HAVE TO BE CONCERNED IF IT WAS SNOWING OR NOT, THEY
15 TOLD YOU IT WAS SNOWING. EVEN IF IT WASN'T THEY TOLD
16 YOU IT WAS SNOWING, SO IT'S CONCLUSIVE ON THAT POINT.
17 YOU DON'T NEED TO GO ANY FURTHER. IT WAS SNOWING.
18 THAT'S A STIPULATION.

19 NOW, MANY MANY TRIALS DON'T HAVE ANY
20 STIPULATIONS AT ALL AND THERE PROBABLY WON'T BE IN THIS
21 TRIAL. BUT IF THERE ARE, THEY WILL BE BROUGHT TO YOUR
22 ATTENTION. SOMETIMES AN ATTORNEY WILL SAY, "JUDGE,
23 WE'LL STILL STIPULATE TO SO AND SO AND SO AND SO." WELL
24 THEN, THAT'S AN AGREEMENT, THAT'S A FACT YOU DON'T
25 HAVE TO BE CONCERNED WITH.

1 I'M MAKING A LOT TO DO ABOUT STIPULATIONS
2 BECAUSE THEY'RE KIND OF OUT OF THE ORDINARY. BUT THE
3 TWO SOURCES YOU ARE GENUINELY CONCERNED ABOUT ARE
4 TESTIMONY AND EXHIBITS. WHAT THE LAWYERS SAY, I TOLD
5 YOU, IN THEIR OPENING STATEMENTS AND CLOSING ARGUMENTS
6 OR SUMMATIONS IS NOT EVIDENCE IN THE CASE.

7 NOW LET ME QUICKLY TELL YOU THAT DOES NOT
8 MEAN THAT WHAT THEY SAY IS UNIMPORTANT. IT IS
9 IMPORTANT, BUT IT'S ARGUABLE. AT THE CLOSE OF THE CASE
10 THEY WILL ARGUE THEIR CASE TO YOU - AND AN ARGUMENT IS
11 NOT A FUSS, I USED TO SAY IF YOU ARGUE, YOU'RE FUSSING. MY
12 MOM AND DADDY ALWAYS CALLED IT A DISCUSSION.

13 BUT A CLOSING ARGUMENT IS WHEN THEY WILL TRY
14 TO GET YOU, THE JURY, TO AGREE WITH THEIR VERSION OF THE
15 FACTS OF THE CASE NORMALLY AND USUALLY BY POINTING OUT
16 PARTS OF THE EVIDENCE THAT SUPPORT THEIR BELIEF THAT
17 THIS IS THE FACT OF THE CASE. NOW THAT'S THEIR JOB AS
18 LAWYERS TO TRY TO PERSUADE YOU TO AGREE WITH THEIR
19 VERSION OF THE FACTS OF THE CASE. AND THAT'S NORMALLY
20 DONE BY SAYING, YOU'LL RECALL SO AND SO AND SO AND SO.
21 AND THEY WOULDN'T BE TELLING YOU THAT UNLESS THAT
22 SUPPORTED THEIR PART OF THE CASE.

23 SO WHAT THEY SAY IS IMPORTANT, BUT IT'S NOT
24 EVIDENCE, AND YOUR DECISION MUST BE BASED ON THE
25 EVIDENCE THAT COMES FROM THE WITNESS STAND, FROM

1 EXHIBITS, AND ANY STIPULATION.

2 SO, LET ME TELL YOU THEN THAT AFTER YOUR
3 VERDICT, WHICH HAS TO BE UNANIMOUS, AND IT'S KIND OF
4 STRANGE PERHAPS THAT I SAY IT HAS TO BE THE UNANIMOUS
5 VERDICT OF ALL TEN JURORS, THAT SOUNDS LIKE A
6 REDUNDANCY BECAUSE UNANIMOUS IS ALL TEN JURORS. I HAD A
7 JURY ONE TIME THAT CAME BACK AND SAID THIS IS OUR
8 VERDICT, IT'S A UNANIMOUS VERDICT. SOMEBODY ELSE SAID
9 NO, IT'S NOT UNANIMOUS, I DIDN'T VOTE FOR THAT. AND THE
10 FOREPERSON SAID WELL OF ALL THE PEOPLE VOTING, THEY ALL
11 VOTED FOR IT. HE'D REFUSED TO VOTE AT ALL. SO THAT WAS
12 ONLY 11 OUT OF THE 12 THAT VOTED, SO THAT WAS NOT A
13 UNANIMOUS VERDICT. SO THAT CAUSED A PROBLEM. ALL TEN
14 OF YOU MUST AGREE ON THE VERDICT THAT THE FOREPERSON
15 WILL WRITE FOR YOU.

16 YOUR VERDICT, AS I SAY, MUST BE BASED ON THE
17 TESTIMONY, THE EXHIBITS AND THE STIPULATIONS, IF THERE IS
18 ANY, ARE PLACED IN THE RECORD TOGETHER WITH THE
19 INSTRUCTIONS BY THE COURT ON THE LAW THAT'S APPLICABLE.
20 YOU THE TRIAL JURY ARE THE SOLE AND EXCLUSIVE JUDGES OF
21 THE FACTS OF THE CASE. THE COURT IS THE SOLE AND
22 EXCLUSIVE JUDGE OF THE LAW. I AS THE TRIAL JUDGE HAVE
23 THE RESPONSIBILITY TO INSTRUCT YOU IN THE LAW THAT'S
24 APPLICABLE TO THE CASE AND IT'S YOUR DUTY AS JURORS TO
25 ACCEPT THAT LAW AS I INSTRUCT IT TO YOU AND APPLY IT

1 PRECISELY TO THE FACTS AS YOU FIND THEM TO BE.

2 NOW, MADAME FOREPERSON, MEMBERS OF THE JURY,
3 THE STATE OF SOUTH CAROLINA CHARGES BOTH OF THESE
4 DEFENDANTS WITH TRAFFICKING COCAINE. TRAFFICKING IS 100
5 GRAMS OR MORE OF COCAINE, BUT LESS THAN 200 GRAMS OF
6 COCAINE. TO THESE INDICTMENTS THE DEFENDANTS HAVE PLED
7 NOT GUILTY. NOW THAT PLACES THE BURDEN UPON THE STATE
8 TO PROVE THESE DEFENDANTS GUILTY BEYOND A REASONABLE
9 DOUBT.

10 NOW A PERSON CHARGED WITH A CRIMINAL OFFENSE
11 IN THIS STATE IS NEVER REQUIRED TO PROVE HIM OR HERSELF
12 INNOCENT, THEY ARE PRESUMED TO BE INNOCENT. I CHARGE
13 YOU THAT IT'S A VITAL AND IMPORTANT RULE OF THE LAW OF
14 EVIDENCE THAT THE DEFENDANT IN A CRIMINAL TRIAL, NO
15 MATTER HOW GREAT OR SERIOUS OR SEVERE THAT THE
16 OFFENSE MAY BE WITH WHICH HE OR SHE IS CHARGED, THEY
17 MUST ALWAYS BE PRESUMED INNOCENT UNTIL THEIR GUILT HAS
18 BEEN PROVED BEYOND A REASONABLE DOUBT.

19 NOW THIS PRESUMPTION OF INNOCENCE REMAINS
20 WITH THE DEFENDANT AT ALL TIMES, FROM THE MOMENT THAT
21 HE OR SHE IS ARRAIGNED AND THROUGHOUT THE TRIAL UNTIL
22 THE JURY HAS, WITH THE TESTIMONY AND EVIDENCE
23 PRESENTED, REACHED A VERDICT OF GUILTY BEYOND A
24 REASONABLE DOUBT. FOR IT'S THE SOLEMN DUTY OF THE JURY,
25 IF NOT CLEARLY CONVINCED OF HIS GUILT BEYOND EVERY

1 REASONABLE DOUBT TO THE CONTRARY, TO FIND THE
2 DEFENDANT NOT GUILTY.

3 ON THE OTHER HAND, IF THE STATE HAS PROVEN TO
4 YOUR SATISFACTION THE GUILT OF THE ACCUSED BEYOND
5 EVERY REASONABLE DOUBT, IT WOULD THEN BE YOUR SOLEMN
6 DUTY TO FIND THE DEFENDANTS GUILTY. SO THE BURDEN OF
7 PROOF IS UPON THE STATE TO ESTABLISH BY THE EVIDENCE TO
8 YOUR SATISFACTION THE GUILTY BEYOND A REASONABLE
9 DOUBT OF THESE DEFENDANTS HERE ON TRIAL FOR THE CRIME
10 OF TRAFFICKING IN COCAINE IN THE AMOUNT OF OVER 100
11 GRAMS BUT LESS THAN 200 GRAMS.

12 NOW I TOLD YOU YESTERDAY NOT TO DISCUSS THE
13 CASE WITH ANYONE, I TRUST YOU FOLLOWED MY INSTRUCTION.
14 THAT INSTRUCTION CONTINUES UNTIL THE END OF THE TRIAL.
15 IF WE BREAK FOR LUNCH, AND WE WILL BE BREAKING SHORTLY,
16 DON'T DISCUSS IT WITH ANYBODY, DON'T LET ANYBODY
17 DISCUSS IT WITH YOU AND THAT INCLUDES YOUR FELLOW
18 JURORS. THAT'S VERY IMPORTANT. AS I TOLD YOU, YOU'RE THE
19 TEN MOST IMPORTANT PEOPLE IN THE WORLD TO BOTH SIDES
20 BECAUSE THEY'VE CHOSEN YOU TO DETERMINE THE OUTCOME
21 OF THIS CASE AND NO ONE ELSE. AND WE WANT TO KEEP YOU
22 AS FREE AS POSSIBLE FROM ANY OUTSIDE INFLUENCES.

23 I DON'T THINK THERE'S ANYTHING ELSE I NEED TO
24 TELL YOU ABOUT. IS THERE ANYTHING ELSE YOU THINK I'VE
25 FORGOTTEN, MR. WATSON?

1 MR. WATSON: NO, YOUR HONOR.

2 THE COURT: MRS. JOHNSON-
3 LEE? I MEAN MR. KINARD -- REDMOND. KINARD IS A LAST NAME
4 IN NEWBERRY COUNTY AND I SOMETIMES CALL MR. REDMOND
5 MR. KINARD, AND I APOLOGIZE.

6 MR. REDMOND: I'M USED TO IT,
7 YOUR HONOR. NO, SIR, JUDGE, NOTHING ELSE.

8 THE COURT: ARE WE READY TO
9 PROCEED IN THE MATTER WITH OUR OPENING STATEMENTS?
10 SOLICITOR?

11 MRS. JOHNSON-LEE: MY NAME'S
12 MARY THOMAS JOHNSON-LEE. IT'S A LONG NAME, FIRST PART IS
13 SOUTHERN, FIRST AND MIDDLE TOGETHER, LAST PART WAS TO
14 MAKE MY DAD AND MY HUSBAND HAPPY, YOU KNOW HOW THAT
15 GOES SOMETIMES. AND I'M AN ASSISTANT SOLICITOR FOR
16 DILLON COUNTY AND CHESTERFIELD COUNTY, THE TWO OTHER
17 COUNTIES IN OUR CIRCUIT. AND WE'RE HERE TODAY BECAUSE
18 OF A DRUG TRAFFICKING CASE INVOLVING ARTIE BURNS WHO'S
19 SEATED NEXT TO HIS ATTORNEY, MR. WATSON, AND JOHNNY
20 JONES, WHO'S SEATED NEXT TO HIS ATTORNEY, MRS.
21 MCMILLAN.

22 NOW, MR. REDMOND AND I ARE GOING TO PROVE TO
23 YOU TODAY THAT THOSE TWO INDIVIDUALS WERE TRAFFICKING
24 COCAINE THROUGH DILLON COUNTY, SOUTH CAROLINA ON
25 INTERSTATE 95 ON FEBRUARY 28TH OF THIS YEAR. FEBRUARY

1 28TH WAS LIKE A LOT OF WINTER DAYS HERE IN SOUTH
2 CAROLINA; IT WAS COLD, IT WAS OVERCAST, THE SUN WASN'T
3 REALLY COMING THROUGH THE CLOUDS OR ANYTHING, IT WAS
4 DREARY.

5 AND THOSE TWO INDIVIDUALS WERE COMING UP
6 INTERSTATE 95 FROM FLORIDA HEADING TO VIRGINIA AND THEY
7 WERE PASSING THROUGH DILLON COUNTY. AT THE SAME TIME
8 THEY WERE TRAVELING UP INTERSTATE 95 WITH THEIR COCAINE
9 HIDDEN IN THE TRUNK OF THE CAR, SERGEANT DAVID LANE
10 HERE WITH THE POLICE DEPARTMENT WAS ON DUTY. HE WAS IN
11 HIS MARKED SPORTS UTILITY VEHICLE, HAS "ICE" TEAM ON THE
12 SIDE, THAT STANDS FOR "INTERSTATE CRIMINAL
13 ENFORCEMENT," HAD HIS DOG IN THE BACK. HE'S OUT
14 PATROLLING THE INTERSTATES FOR SAFETY AND HE SEES THAT
15 CAR KIND OF WEAVING A LITTLE BIT ACROSS THE LINES, KIND
16 OF GOING OFF THE SIDE OF THE LINE A LITTLE BIT.

17 SO HE INITIATED A TRAFFIC STOP TO CHECK ON
18 THINGS, SEE WHAT'S GOING ON. HE GOT THE DRIVER, MR. ARTIE
19 BURNS OUT, AFTER HE HAD APPROACHED THE PASSENGER SIDE
20 TO TALK TO HIM. HE TOOK MR. BURNS AROUND TO THE BACK
21 OF THE CAR, DOWN BY HIS POLICE VEHICLE, KIND OF OFF THE
22 ROADWAY FOR SAFETY; DON'T WANT ANYONE TO HIT YOU
23 WHILE YOU'RE STANDING THERE, SO HE TOOK HIM TO THE SIDE
24 AND TALKED TO HIM, ASKED HIM WHERE THEY WERE GOING,
25 WHO OWNED THE CAR, JUST STANDARD QUESTIONS.

1 HE ASKED HIM WHO RENTED THE VEHICLE. MR.
2 BURNS TOLD HIM HE DIDN'T KNOW WHO RENTED IT, TOLD HIM
3 HE WAS GOING TO VIRGINIA BECAUSE HIS COUSIN WAS HAVING
4 AN M.R.I. DONE. WELL, WHEN OFFICER LANE THEN TALKED TO
5 JOHNNY JONES WHO WAS THE PASSENGER IN THE VEHICLE, HE
6 INDICATED THAT THEY WERE GOING TO VIRGINIA, SAME AS MR.
7 BURNS DID, BUT HE SAID THEY WERE GOING UP THERE TO MEET
8 SOME GIRLS, WHICH IS A TOTALLY DIFFERENT STORY THAN
9 GOING UP THERE BECAUSE HIS COUSIN'S HAVING AN M.R.I. DONE.
10 AND THEN HE WASN'T EVEN COMPLETELY SURE ABOUT WHAT
11 MR. ARTIE BURN'S LAST NAME WAS. HE WASN'T COMPLETELY
12 SURE ABOUT IT.

13 SO SERGEANT LANE, BEING THE GOOD POLICE
14 OFFICER THAT HE IS, HAS A RED FLAG GOING UP IN HIS HEAD,
15 HE'S THINKING WHAT'S GOING ON HERE. SO THE TRAFFIC STOP
16 PROCEEDS AS MOST OF THEM DO, HE ASKED SOME MORE
17 QUESTIONS, GOT BOTH OF THEM OUT OF THE CAR. HE DID ASK
18 MR. BURNS IF HE COULD SEARCH HIS CAR BECAUSE HE HAD
19 SOME REASONABLE SUSPICIONS ABOUT WHAT WAS AFOOT.
20 SO HE SAID, DO YOU MIND IF I LOOK IN YOUR CAR?

21 AND ARTIE BURNS WITH NO HESITATIONS SAYS,
22 YEAH. NO HESITATION AT ALL. SO SERGEANT LANE SAYS, WILL
23 YOU OPEN THE TRUNK, SO HE OPENS THE TRUNK AND SERGEANT
24 BEGINS SEARCHING THE CAR. WELL, AS HE'S IN THE TRUNK
25 AREA HE'S GOT HIS HAND NEAR A CERTAIN AREA, HE'S ABOUT

1 TO PICK UP SOMETHING, AND JUST THEN - AND YOU'LL SEE THIS
2 ON THE VIDEO TAPE THAT WE'RE GOING TO SHOW YOU,
3 BECAUSE WE'RE GOING TO PROVE THIS TO YOU -- YOU HEAR A
4 PERSON ON THE VIDEO TAPE SAYING, HEY I NEED MY JACKET.
5 HE'S LIKE, WELL, I'LL GET IT FOR YOU. AND THEN JUST THEN
6 SERGEANT LANE LOOKS AND THERE'S A BAG OF COCAINE SO HE
7 IMMEDIATELY PULLS HIS WEAPON AND ORDERS THE TWO OF
8 THEM ON TO THE GROUND BECAUSE HE'S FOUND THE COCAINE.
9 THEY TRIED TO DIVERT HIM, BUT HE FOUND IT ANYWAY.

10 HE GETS BACK-UP OFFICERS THERE, FINISH
11 SEARCHING THE CAR, AND THEN THEY FOUND MORE COCAINE.
12 THE FIRST BAG WAS FOUND IN THE TRUNK ABOVE WHERE YOU
13 PUT THE SPARE TIRE, THE OTHER ONE WAS FOUND UNDERNEATH
14 THERE. THERE WAS ONE SMALL BAG AND THEN ANOTHER BAG
15 THAT HAD TWO SMALLER BAGS IN IT. THE TOTAL WEIGHT OF
16 ALL THAT COCAINE WAS 138.68 GRAMS.

17 WE'RE GOING TO PROVE TO YOU THAT THOSE DRUGS
18 FOUND IN THAT TRUNK ARE COCAINE BECAUSE WE'RE GOING TO
19 HAVE A SLED AGENT COME IN HERE WHO ANALYZED THOSE
20 DRUGS. AND SHE'S GOING TO COME TAKE THAT STAND AND
21 SHE'S GOING TO TELL YOU ABOUT THE TESTS THAT SHE DID,
22 AND SHE'S GOING TO TELL YOU ALL THREE BAGS DEFINITELY
23 CONTAINED COCAINE. AND SHE'S GOING TO TELL YOU THE
24 WEIGHT OF IT, TOO. THAT'S THE WEIGHT OUTSIDE THE
25 PACKAGE, NOT INCLUDING THE BAG, AND SHE'S GOING TO TELL

1 YOU THAT. JUST THE COCAINE ITSELF IS 138.68 GRAMS.

2 LADIES AND GENTLEMEN, THAT IS TRAFFICKING IN
3 SOUTH CAROLINA. AND WE'RE GOING TO PROVE TO YOU WITH
4 ALL THE WITNESSES WE'RE GOING TO PUT UP THAT THAT'S
5 WHAT THOSE TWO FOLKS DID, THEY CAME THROUGH SOUTH
6 CAROLINA TRAFFICKING DRUGS. AND WHEN WE FINISH THIS
7 TRIAL WE'RE GOING TO ASK YOU TO RETURN A VERDICT OF
8 GUILTY AS CHARGED FOR MR. BURNS AND MR. JONES. AND I
9 THANK YOU.

10 MR. WATSON: MAY IT PLEASE
11 THE COURT? MRS. JOHNSON-LEE, MR. REDMOND, MADAME
12 ASSOCIATE COUNSEL. MIGHT I HOLD THE INDICTMENTS?

13 LADIES AND GENTLEMEN OF THE JURY, GOOD
14 MORNING, OR AFTERNOON. YOU KNOW, WHEN YOU WERE UP
15 HERE GETTING EXAMINED TO BE A JUROR YOU WONDERED, IS MY
16 COAT BUTTONED, ALL THAT KIND OF STUFF. FOR THAT
17 MOMENT YOU WERE CONCERNED HOW YOU LOOKED, YOU WERE
18 CONCERNED WHAT WE AS LAWYER KNEW ABOUT YOU, YOU
19 WERE CONCERNED WHAT IMAGE YOU PORTRAYED.

20 AS LAWYERS, WE ARE CONCERNED ABOUT THAT,
21 TOO. MRS. JOHNSON-LEE WANTED TO TELL YOU ABOUT HER
22 NAME. WHAT I'D LIKE TO DO IS JUST TELL YOU MY FIRST
23 NAME'S DAVID AND LET'S TALK ABOUT THIS CASE. I'VE BEEN
24 AN ORPHAN FOR MOST OF MY LIFE, I WATCHED YOU, I FIND THE
25 TELEPHONE A NECESSARY NUISANCE, AND I FIND DECISIONS

1 COME FROM TWO PLACES; YOUR HEAD AND YOUR HEART, AND I
2 STILL THINK THAT A PERSON'S WORD IS THEIR BOND.

3 NOW MY CLIENT WITH HIS CO-DEFENDANT AND MRS.
4 MCMILLAN AND I SIT AT ONE TABLE. IT HAS BEEN THE STATE'S
5 DECISION THAT THEY SHOULD BE TRIED TOGETHER. LET'S GO
6 BACK TO MY WORDS AND MY BOND. MADAME FORELADY, AND
7 LADIES AND GENTLEMEN OF THE JURY, MY CLIENT IS NOT
8 GUILTY.

9 ALL THAT STUFF THAT THE MADAME ASSISTANT
10 SOLICITOR WANTED TO TELL YOU ABOUT, NOT ONE SINGLE
11 THING WAS SUFFICIENT ENOUGH, AS SHE TALKED ABOUT IT, TO
12 ARREST MY CLIENT. IF YOU HAVE CHILDREN YOU KNOW HOW
13 YOU HAVE TO ASK A NUMBER OF QUESTIONS TO KIND OF GET
14 WHERE YOU'RE GOING. IF YOU'VE GOT A MINISTER WHO TALKS
15 TO YOU, YOU KNOW WHEN HE HAMMERS YOU BECAUSE HE
16 KNOWS WHAT YOU'RE NOT TELLING HIM. AND THIS CASE IS
17 SORT OF LIKE THAT.

18 WHEN I WAS A CHILD I LIVED WITH MY
19 GRANDFATHER. USED TO BE THAT WHEN YOU CROSSED THE
20 RAILROAD TRACKS THERE WAS NOTHING BUT CROSSING ARMS,
21 NO LIGHTS, NO NOTHING. SOMETHING SAID STOP, LOOK, AND
22 LISTEN. MADAME FORELADY, LET ME BEG YOU TO DO THAT IN
23 THIS CASE. PLEASE STOP, PLEASE LOOK, AND PLEASE LISTEN.

24 I USE FIRST NAMES - I'M SORRY, THAT'S WRONG, BUT
25 I USE FIRST NAMES. LOIS AND I ARE GOING TO TRY NOT TO

1 PLOW THE SAME GROUND 50 TIMES TO BORE YOU TO DEATH..
2 WE'RE NOT - BUT AS MUCH AS THE JUDGE IS GOING TO TRY TO
3 KEEP US IN LINE, THERE ARE GOING TO BE THINGS THAT
4 EVERYBODY MAY HAVE MOMENT THAT THEY DON'T AGREE
5 WITH.

6 THE MADAME COURT REPORTER JUST ABOUT WANTS
7 TO SKIN ALL OF US WHEN THREE OR FOUR OF US TALK AT ONE
8 TIME, BUT EVERYTHING THAT HAPPENS IN THIS CASE IS TERRIBLY
9 IMPORTANT. BECAUSE, YOU SEE, MY CLIENT, ARTIE BURNS, IS
10 ON TRIAL FOR THE LOSS OF HIS LIBERTY. IT IS AN IMPORTANT
11 DAY.

12 THE JUDGE SAID YOU MAY REMEMBER A DATE - THIS
13 IS ALLEGED TO HAVE HAPPENED ON FEBRUARY THE 28TH OF
14 2006. MY CLIENT COMES TO ME BY APPOINTMENT. HE HASN'T
15 PAID ME A PENNY. MRS. MCMILLAN AND I REPRESENT PEOPLE
16 WHO ARE INDIGENT. IT'S DONE IN THIS STATE. WE ARE
17 ASSIGNED PEOPLE TO REPRESENT. THAT'S THE NATURE OF MY
18 ASSOCIATION WITH MR. BURNS. I'LL TELL YOU RIGHT NOW I LIKE
19 ARTIE. I'LL TELL YOU RIGHT NOW MY CLIENT IS NOT GUILTY.

20 REMEMBER WHAT THE JUDGE SAID? WHAT THE
21 LAWYERS SAY IS NOT EVIDENCE, BUT HOW THEY FEEL ABOUT
22 THE CASE. OH BOY, OH BOY. I NOTICED THAT THE MADAME
23 ASSISTANT SOLICITOR DIDN'T WANT TO TELL YOU, YOU KNOW
24 THEY PRESENTED A TRAFFICKING INDICTMENT AGAINST MY
25 CLIENT, BUT THE GRAND JURY TRUE-BILLED, WHAT DID THEY

1 TRUE BILL? POSSESSION WITH INTENT TO DISTRIBUTE. THAT'S
2 SIGNIFICANT, THAT'S SIGNIFICANT. BUT THAT'S NOT THE ONLY
3 SIGNIFICANT THING YOU'RE GOING TO HEAR IN THIS CASE.

4 NOW, MRS. JOHNSON-LEE DECIDED THAT SHE'D TELL
5 YOU ABOUT SOME EVIDENCE THAT HASN'T BEEN ADMITTED YET,
6 BUT THAT WAS HER DECISION. NOW REMEMBER SHE GAVE YOU
7 A NUMBER ABOUT THE AMOUNT OF COCAINE FOUND IN THE CAR
8 AND SHE WAS PROUD OF THAT NUMBER. BUT WHEN WE GET
9 THE SLED REPORT BACK - AND SHE'S ALSO VERY PROUD OF
10 THAT - THE NUMBERS DON'T ADD UP. NOW IF IT AIN'T THE
11 NUMBER THE POLICE SAY IT IS WHEN IT GETS TO THEIR EXPERT,
12 WHAT'S THE PROBLEM?

13 MRS. JOHNSON-LEE WANTED TO TELL YOU ABOUT
14 WHAT DAVID LANE DID. I BELIEVE HIM TO BE AN HONORABLE
15 MAN. I BELIEVE THIS CASE NOT TO BE HONORABLE. I BELIEVE
16 THE FACTS SOMEHOW GOT TAMPERED WITH. LET ME REPEAT
17 THAT; I BELIEVE THE FACTS SOMEHOW GOT TAMPERED WITH.

18 WHEN MR. LANE WAS PREPARING THIS CASE, HE GOES
19 AND PREPARES A DOCUMENT, A DOCUMENT, A DOCUMENT
20 OUTLINING WHAT HE DID. AND MRS. JOHNSON-LEE'S ALREADY
21 TOLD YOU ABOUT THAT DOCUMENT. AND IN THAT DOCUMENT,
22 WHICH WAS FILED WITH THE CLERK OF COURT ON APRIL THE
23 12TH, 2006, HE SAYS HE FOUND TWO - COUNT THEM - TWO
24 BAGS OF COCAINE. THAT'S IN THIS DOCUMENT.

25 NOW WATCH THE MADAME SLED AGENT. SHE'S

1 GOING TO TELL YOU THREE. WATCH THE BAG THAT HE'S GOING
2 TO HAVE TO TRY TO INTRODUCE, AND HE'S GOING TO TELL YOU
3 HE'S GOT FOUR. AND THE NUMBER SHE GAVE AND THE NUMBER
4 THE SLED AGENT LADY'S GOING TO GIVE YOU AIN'T THE SAME.
5 MAN, IF THAT DON'T MAKE YOU SIT DOWN AND SCRATCH
6 BEHIND YOUR EAR, LET ME GIVE YOU ANOTHER ONE.

7 NOW MRS. JOHNSON-LEE WANTS TO TELL YOU
8 THERE'S A TON OF DOPE OF DOPE FOUND IN THE TRUNK. WHEN
9 YOU COME HOME AND CAUGHT YOUR CHILDREN SOMETHING,
10 WHO DONE THIS, RIGHT? WELL, HOW WOULD YOU FEEL IF I
11 TOLD YOU THAT THE PERSON THEY'RE ALL EXCITED ABOUT
12 ABOUT IT BEING A RENTAL CAR, THE PERSON WHO IS THE
13 RENTER, THE PERSON WHO HAS DOMINION AND CONTROL OVER
14 IT, THEY AIN'T NEVER GOING TO TALK TO. MAKE SENSE?

15 THE COURT: SPEAK UP, THE COURT
16 REPORTER CAN'T HEAR YOU.

17 MR. WATSON: I'M SORRY, EXCUSE ME.
18 SEE, EVERYBODY TELLS ME WHAT TO DO AND THE COURT
19 REPORTER SAYS I TALK TOO LOW, AND I APOLOGIZE. SO WE
20 GOT AN OFFICER SAYING HE HAD TWO BAGS OF DOPE. WE GOT
21 MRS. JOHNSON-LEE SAYING THERE WERE THREE BAGS OF DOPE.
22 BUT YOU WATCH WHAT THEY TRYING TO PUT IN; IT'S GOING TO
23 BE FOUR BAGS OF DOPE. BUT THERE'S SOMETHING ELSE
24 BOTHERING ME.

25 WHY WOULD IT BE THAT SOMEBODY WOULDN'T

1 WANT TO KNOW THE ANSWER TO A QUESTION? LET ME GIVE
2 YOU MY THEORY. MAYBE IT MIGHT BE BECAUSE IT'S GOING TO
3 TAKE IT AWAY FROM MY CLIENTS. IT'S GOING TO MAKE THEM
4 LOOK NOT GUILTY, BECAUSE I'M TELLING YOU THEY ARE NOT
5 GUILTY. I WANT YOU TO TAKE A LOOK AT THEM PLASTIC BAGS
6 THEY'RE GOING TO SHOW YOU.

7 YOU KNOW ONE OF THE NEAT THINGS, IF YOU'VE
8 EVER HAD SARAN WRAP OR SOMETHING LIKE THAT AND YOU
9 PULL IT ACROSS AND EVERYBODY SEES IT'S FANCY NEW SARAN
10 WRAP YOU PULL IT OVER AND IT JUST CLINGS REAL TIGHT,
11 WHAT'S THE ONE THING YOU'D NOTICE WHEN YOU PUT THAT
12 PUPPY IN THE REFRIGERATOR? GOT CLEAN WRAP ON IT.

13 NOW IF YOU WERE PRONE TO ASK THE QUESTION,
14 AND I DON'T KNOW IF YOU ARE, WHY IN THE WORLD WOULD
15 THEM BAGS OF DOPE BE TAKEN OUT OF THE CAR WHEN THEY
16 NEVER ASKED ANYBODY WHO RENTED THE CAR, IS THIS YOUR
17 DOPE? THINK ABOUT THAT. WHY WOULD THEY NOT BE
18 WANTING TO SEE WHOSE IT WAS?

19 SO WHEN THE JUDGE SAID IT'S NOT EVIDENCE,
20 LADIES AND GENTLEMEN, I TELL YOU AS AN OFFICER OF THE
21 COURT, AS THE JUDGE WILL CHARGE YOU, GUILT CAN ONLY BE
22 HAD WHEN THE EVIDENCE POINTS CONCLUSIVELY TO EACH OF
23 YOU BEYOND A REASONABLE DOUBT TO GUILT. IF WE STOPPED
24 RIGHT NOW YOU COULDN'T GET THE GUILT.

25 DURING THE COURSE OF THIS TRIAL THERE WILL BE A

1 NUMBER OF ISSUES WHICH ARISE THAT HAVE TO BE DISCUSSED
2 OUTSIDE OF YOUR PRESENCE, AND FOR THAT, I APOLOGIZE.
3 MRS. MCMILLAN AND I SOMETIMES DON'T AGREE ON HOW TO
4 REPRESENT OUR CLIENTS, SOMETIMES WE DO. SHE WILL HAVE
5 TO BRING ISSUES TO BRING UP THAT I WON'T AND I'LL HAVE
6 SOME THAT SHE DOESN'T. AND IT'S GOING TO LOOK LIKE WE'RE
7 ON A JUNGLE-GYM BY THE TIME WE'RE THROUGH, AND FOR THAT
8 I APOLOGIZE. BUT I LIKE TRYING TRYING CASES WITH LOIS, SHE'S
9 ABSOLUTELY QUEEN WHEN IT COMES TO PAYING ATTENTION TO
10 THE DETAILS.

11 YOU CAN'T TAKE TWO BAGS OF DOPE OUT OF A CAR,
12 SEND IT TO SLED AND MAKE THREE OUT OF IT AND BRING FOUR
13 TO COURT AND HAVE THAT RIGHT. YOU CAN'T TAKE THE GUY
14 WHO RENTED THE CAR AND NEVER GO SEE HIM AND HAVE THAT
15 RIGHT. YOU CAN'T TAKE THE PLASTIC BAGS AND OBLITERATE
16 THEM, MAKE THEM WHERE THEY ARE UNEXAMINABLE AND MAKE
17 THAT RIGHT.

18 THAT BEING THE CASE, YOU CAN'T GET GUILT. AND
19 IF YOU TAKE THE FINDINGS OF THE GRAND JURY YOU GET
20 POSSESSION WITH INTENT TO DISTRIBUTE, NOT TRAFFICKING.
21 PASSION IN AN INTERESTING WORD. YOU FEEL IT IN YOUR
22 HEART, YOU FEEL IT IN YOUR PROFESSION, YOU FEEL IT IN YOUR
23 FAITH, YOU FEEL IT ABOUT YOUR FAMILY, YOU KNOW WHAT IT IS
24 WHEN IT TRIPS YOU UP. I TELL YOU SOMETIMES MY CLIENT WILL
25 HOLD ON TO A CHAIN AT TIMES SITTING AT THE TABLE TO SHUT

1 ME UP, AND FOR THAT I APOLOGIZE NOW.

2 FOR 14 YEARS I DID WHAT MR. REDMOND AND THE
3 MADAME ASSISTANT SOLICITOR DID, I USED TO PROSECUTE
4 CASES. REMEMBER, IT'S NOT THE OATH THAT MAKES THE
5 TESTIMONY BELIEVEABLE, IT IS THE TESTIMONY THAT MAKES
6 THE OATH ACCEPTABLE. YOU CAN'T FIDDLE WITH THE
7 NUMBERS, YOU CAN'T FIDDLE WITH THE BAGS, YOU CAN'T
8 FIDDLE WITH THE INDICTMENT, AND EVER REACH GUILT, NOT
9 THE LEAST OF WHICH IS WHO RENTED THE CAR AND WHY ISN'T
10 HE HERE?

11 I LOOK FORWARD TO TRYING THIS CASE. I HOPE
12 THAT IT IS NOT SOMETHING THAT LASTS FOR A GREAT DEAL OF
13 TIME. I'LL TRY TO BE BRIEF WHICH, ACCORDING OT MR.
14 REDMOND, IS SOMETHING THAT IS DIFFICULT FOR ME TO DO.
15 THAT OATH YOU TOOK, WHERE THE TRUTH WILL LIE, BETWEEN
16 THE STATE AND THE DEFENDANTS IN THIS CASE, NOT ONLY DO
17 YOU LITERALLY HAVE THEM IN THE PALMS OF YOUR HANDS, YOU
18 CONTROL THEIR FATE, THEIR FUTURE, AND A LARGE PART OF
19 THE FUTURE OF THEIR LIFE.

20 I THINK THE JUDGE IS GOING TO TELL YOU WHEN THIS
21 CASE COMES TO AN END THAT REASONABLE DOUBT,
22 REASONABLE DOUBT IS A DOUBT WHICH WOULD CAUSE A
23 REASONABLE MAN TO HESITATE. THE CONFUSION; FOUR BAGS,
24 TWO BAGS, NUMBERS THAT DON'T ADD UP, AND THEY DIDN'T
25 EVEN TALK TO THE GUY THAT RENTED THE CAR. AND FOR

1 SOME UNKNOWN REASON THEY WERE NEVER INTERESTED
2 ENOUGH TO CHECK OUT WHO LAST TOUCHED THOSE BAGS
3 BEFORE YOU - AND YOU KNOW WHAT, THEY CAN'T SAY THAT
4 OUR CLIENTS LAST TOUCHED THOSE BAGS. AND THAT IS NOT
5 MY CLIENT'S FAULT. THE JUDGE IS GOING TO TELL YOU . . .
6 EXCUSE ME, I'M TALKING TO MRS. MCMILLAN AND I DON'T MEAN
7 TO.

8 I'M SAYING THE DEFENDANTS DON'T HAVE TO PROVE
9 ANYTHING. THEY CAN REMAIN SILENT DURING THE ENTIRE
10 TRIAL, THE JUDGE IS GOING TO TELL YOU THAT. IT IS THE
11 STATE'S BURDEN IN THEIR CASE IN CHIEF TO PROVE GUILT
12 BEYOND A REASONABLE DOUBT. I THINK IF THE REASONABLE
13 DOUBTS IN THIS CASE WERE ACCUMULATED AS BODIES ON THE
14 PEWS, YOU WOULD SEE TONS OF THEM SITTING IN THIS
15 COURTROOM. YOU CAN'T FIDDLE WITH THE WEIGHT, YOU CAN'T
16 FIDDLE WITH NUMBERS. TWO BAGS, TWO BAGS THE DAY DAVID
17 LANE MADE THIS ARREST CAN'T LEGITIMATELY TURN INTO FOUR.
18 IF THERE WERE FOUR NOW, THERE WOULD HAVE BEEN FOUR
19 THEN, AND IT WOULD HAVE BEEN WHAT HE WROTE, AND IT
20 AIN'T WHAT HE WROTE.

21 MRS. MCMILLAN: YOUR HONOR,
22 SOLICITOR, AS DAVID JUST TOLD YOU, WE'RE GOING TO TRY
23 AND DO THESE TOGETHER AS MUCH AS WE CAN, BUT THERE'S
24 SOME THINGS THAT I'D LIKE TO LET YOU KNOW ABOUT MY
25 CLIENT, JOHNNY JONES. UNLIKE JOHNNY, I'VE BEEN IN

1 CONTACT WITH HIS FAMILY. JOHNNY HAS BEEN TRUTHFUL WITH
2 ME SINCE DAY ONE. WE'RE HERE TODAY BECAUSE HE WAS A
3 PASSENGER IN A RENTAL VEHICLE THAT CAME THROUGH
4 DILLON. A PASSENGER. AND I WANT YOU TO VISUALIZE, IF ANY
5 OF YOU HAVE EVER RENTED A CAR, YOU RENT THAT CAR FOR A
6 SPECIFIC PURPOSE, TO GET FROM PLACE TO ANOTHER. IT NEVER
7 CROSSED MY MIND THAT I NEEDED TO SEARCH THAT CAR
8 BEFORE I EVER STEPPED FOOT IN THAT CAR. I THINK HOW MANY
9 TIMES I HAVE DRIVEN TO TAMPA, ORLANDO, OR FLOWN TO
10 TAMPA, RENTED A CAR, OR CLEVELAND. YOU RENT A CAR, YOU
11 DON'T THINK THAT.

12 MR. WATSON, IF I'M NOT MISTAKEN, IS DRIVING A
13 RENTAL CAR RIGHT NOW, AND I CAN BET YOU HE'S NEVER
14 LOOKED AT THAT RENTAL CAR VERY CLOSELY. BECAUSE WHEN
15 YOU GET THAT CAR, ALL YOU'RE THINKING ABOUT IS THIS IS
16 GOING TO GET ME TO MY DESTINATION SAFELY. AND THAT'S
17 WHAT MY CLIENT WAS DOING, HE WAS RIDING TRYING TO EAT
18 HIS HAMBURGER - IF YOU SEE THE TAPE YOU'LL SEE THEY
19 THREW HIS HAMBURGER OUT ON THE GROUND, THEY HAD HIS
20 COAT, THEY WERE SHAKING HIS COAT AROUND, HE WAS COLD.

21 BUT HE WAS ONLY A PASSENGER IN THIS VEHICLE.
22 AND THERE WILL BE ABSOLUTELY NO EVIDENCE, NO EVIDENCE
23 AT ALL THAT HE KNEW OF ANY DRUGS IN THIS VEHICLE, THAT
24 HE KNEW ANYTHING ABOUT IT. AND YOU'RE GOING TO HEAR
25 THAT MR. BURNS TELLS THE OFFICER HE CAN SEARCH IT. MY

1 CLIENT WAS JUST SITTING IN THE CAR. HE DIDN'T HEAR THAT.
2 BUT MY CLIENT WAS TAKEN OUT AND FRISKED. HE'S A
3 PASSENGER AND HE WAS TAKEN OUT AND FRISKED. AND IF YOU
4 DO SEE THE VIDEO YOU CAN SEE HE WAS HELD AT GUNPOINT. I
5 CAN'T THINK OF ANYTHING MORE HORRIBLE HAPPENING THAN
6 WHAT HAS HAPPENED TO THESE TWO MEN. AND I AM GOING
7 TO, AGAIN, LIKE DAVID DID, ASK YOU DON'T THROW YOUR
8 COMMON SENSE OUT THE DOOR.

9 I HAVE NOT BEEN ON BOTH SIDES OF THE FENCE LIKE
10 MR. REDMOND AND MR. WATSON. I'VE NEVER PROSECUTED
11 CASES, AND I'M RELATIVELY NEW TO THE PUBLIC DEFENDER'S
12 OFFICE. BUT I GREW UP BELIEVING THAT LAW ENFORCEMENT
13 WAS ALWAYS ON MY SIDE. AND I BELIEVE AFTER YOU HEAR THE
14 TESTIMONY IN THIS CASE, YOU'RE GOING TO SEE WHAT I SEE
15 AND HOW MY EYES ARE BEING OPENED ALMOST DAILY WITH
16 WHAT GOES ON IN POLICE INVESTIGATIONS IN THIS COUNTY.

17 WE HAVE TO DEPEND ON YOU TEN TO DO WHAT IS
18 RIGHT. SOMEBODY HAS GOT TO STOP THIS TAMPERING WITH
19 EVIDENCE, SOMEBODY HAS GOT TO STOP IT. AND ONLY JURORS
20 CAN DO THIS, YOU'RE THE ONLY ONES WHO CAN. AND I BELIEVE
21 YOU'LL BRING BACK THE RIGHT DECISION. I HOPE YOU DO.

22 IF I GET OUT OF LINE OR RAISE MY VOICE OR
23 SOMETHING, I'M SURE THE JUDGE WILL STOP ME. I'M FROM
24 LEXINGTON COUNTY, ORIGINALLY, SO SAY NO MORE. BUT
25 PLEASE LISTEN, BECAUSE I DO NOT BELIEVE THAT THEY CAN

1 PROVE THAT MY CLIENT HAD ANY KNOWLEDGE WHATSOEVER
2 AND THAT HE WAS A SIMPLE PASSENGER IN A CAR THAT HAD
3 BEEN RENTED. WE DON'T NEED TO KNOW THE PERSON WHO
4 RENTED IT, HE'S NOT HERE. THANK YOU.

5 MR. REDMOND: PLEASE THE COURT,
6 YOUR HONOR?

7 THE COURT: YES, SIR.

8 MR. REDMOND: AND IF THE COURT
9 WOULD INDULGE ME TO SAVE TIME, SINCE WE'VE GOT THIS
10 VIDEO, WE'RE A LITTLE BIT LIMITED IN WHAT WE HAVE TO WORK
11 WITH AND I DON'T THINK THE CORD WILL REACH ALL THE WAY
12 TO THAT END, SO I WAS GOING TO SEE IF IT WOULD BE
13 POSSIBLE FOR THE JURORS TO RECONFIGURE THEMSELVES AND I
14 WAS GOING TO TRY TO PUT THE T.V. IN THIS CORNER.

15 Thereupon, DAVID LANE, being
16 first duly sworn, testified as follows:

17 DIRECT EXAMINATION BY MR. REDMOND:

18 Q SGT. LANE, BY WHOM ARE YOU EMPLOYED?

19 A I'M EMPLOYED BY DILLON POLICE DEPARTMENT.

20 Q OKAY, AND HOW LONG HAVE YOU BEEN EMPLOYED BY THE
21 DILLON POLICE DEPARTMENT?

22 A GOING ON NINE YEARS.

23 Q IS THAT YOUR ONLY LAW ENFORCEMENT EXPERIENCE, WITH THE
24 DILLON POLICE?

25 A I STARTED WITH THE DILLON POLICE DEPARTMENT.

1 Q OKAY. AND LET ME ASK YOU THIS; DID YOU GO THROUGH ANY
2 TRAINING, SPECIFICALLY AS IT RELATES TO TRAFFIC STOPS
3 WHILE AT THE DILLON POLICE DEPARTMENT?

4 A I HAVE. AS IT RELATES TO TRAFFIC STOPS I STARTED GOING
5 THROUGH SOME TRAINING APPROXIMATELY, OTHER THAN WHAT
6 I HAVE LEARNED AT THE POLICE ACADEMY, I WENT THROUGH
7 SOME TRAINING AT NUMEROUS DIFFERENT PLACES STARTING
8 ABOUT THREE OR FOUR YEARS AGO, THREE AND A HALF YEARS.

9 Q ARE YOU WITH WHAT WE REFER TO AS THE I.C.E TEAM?

10 A THAT IS CORRECT.

11 Q COULD YOU EXPLAIN WHAT THAT MEANS AND WHAT YOU DO
12 ON THE I.C.E. TEAM?

13 A IT STANDS FOR INTERSTATE CRIMINAL ENFORCEMENT. AND
14 WHAT WE DO IS WE WORK ON INTERSTATE 95, MAKE TRAFFIC
15 STOPS FOR ROUTINE VIOLATIONS, AND MAKE AN ATTEMPT TO
16 LOCATE CRIMINAL ACTIVITY SUCH AS DRUG TRAFFICKING,
17 MONEY LAUNDERING, THINGS OF THAT NATURE.

18 Q AND DID YOU HAVE TO GO THROUGH ANY TRAINING FOR THE
19 I.C.E. TEAM?

20 A I HAVE.

21 Q COULD YOU EXPLAIN THAT TO THE JURY?

22 A I STARTED OUT BY GOING TO PERSONAL TRAINING WITH
23 CLASSES PUT ON BY E.P.I.C., WHICH IS EL PASO INTELLIGENCE
24 CENTER IN THE AREA OF HIGHWAY SAFETY. AND THIS IS AN
25 ORGANIZATION THAT IS WHAT THEY FOCUS ON IS PIPELINE

1 INTERVENTION, AND WHEN THEY TALK ABOUT PIPELINE
2 INTERVENTION, IT IS THE DRUG TRAFFICKING AND MONEY
3 LAUNDERING THAT OCCURS ON THE INTERSTATE HIGHWAYS,
4 THE MAIN HIGHWAYS.

5 Q AND HOW LONG HAVE YOU BEEN WITH THE I.C.E. TEAM?

6 A STARTED IN 2002 OR 2003, I THINK IT WAS 2003.

7 Q SO OVER THREE YEARS, WOULD THAT BE FAIR TO SAY THAT
8 YOU'VE BEEN WITH THE I.C.E. TEAM?

9 A YES.

10 Q AND DURING THAT TIME HAVE YOU MADE NUMEROUS TRAFFIC
11 STOPS?

12 A I HAVE.

13 Q AND I GUESS BASED ON COUNSEL'S OPENING ARGUMENT I GUESS
14 WITH EACH STOP YOU MAKE YOU GO AND SEARCH EVERYBODY
15 BECAUSE YOU JUST WANT TO DO IT?

16 MR. WATSON: OBJECTION, LEADING.

17 THE COURT: SUSTAINED.

18 BY MR. REDMOND:

19 Q I'LL REPHRASE. DO YOU SEARCH EVERYBODY YOU STOP?

20 A NO, A SMALL PERCENTAGE OF THE PEOPLE WE STOP WE
21 ACTUALLY SEARCH.

22 Q OKAY, AND WHY IS IT THAT YOU ENGAGE IN SEARCHES; WHAT
23 MAKES YOU DECIDE TO SEARCH A PARTICULAR VEHICLE?

24 A WELL, ONCE WE STOP A PERSON THROUGH THE TRAINING THAT
25 WE'VE RECEIVED TO, WHICH IS PRETTY WELL CONSISTENT WITH

1 ALL THE TRAINING THAT GOES ON OVER THE ENTIRE UNITED
2 STATES, BECAUSE IT'S NOT A LOCAL THING, IT'S A THING OVER
3 THE UNITED STATES. THERE'S LOTS OF DIFFERENT INTERSTATE
4 UNITS THAT DO THIS. AND WE USE WHAT WE CALL INDICATORS.

5 Q USE WHAT?

6 A WE USE INDICATORS SUCH AS WHEN -- WE DON'T LIKE TO USE
7 THE WORD "NERVOUS," BECAUSE IT DOES NOT DESCRIBE A
8 PERSON. PRETTY MUCH MOST PEOPLE THAT GET STOPPED,
9 THEY'RE PRETTY WELL NERVOUS. BUT WE TALK TO THE PEOPLE
10 AND ASK THEM WHERE THEY'RE GOING, WHERE THEY'RE COMING
11 FROM, OBVIOUS THINGS THAT WE WOULD WANT TO KNOW IF
12 WE THINK THERE'S SOMETHING GOING ON. AND LOTS OF TIMES
13 WE SEE THAT THE PEOPLE IN THESE CARS, THEY DON'T KNOW
14 WHO IS WITH THEM, THEY DON'T KNOW -- THE TWO PEOPLE'S
15 STORIES DON'T MATCH AS TO WHERE THEY'RE GOING---

16 MR. WATSON: I WOULD OBJECT TO HIS
17 ANSWER BECAUSE IT'S GENERIC AND NOT SPECIFIC AS TO WHAT
18 PERSON.

19 THE COURT: OVERRULE YOUR
20 OBJECTION. YOU MAY CONTINUE.

21 BY MR. REDMOND:

22 Q GO AHEAD, SGT. LANE.

23 A THESE ARE THINGS THAT WE USE TO DEVELOP SOME SORT OF
24 INDICATORS -- NOT NECESSARILY INDICATORS, BUT THOSE ARE
25 THE THINGS THAT WE USE TO MAKE THE DETERMINATION

1 WHETHER OR NOT WE WOULD ASK FOR A CONSENT TO SEARCH
2 A VEHICLE OR ULTIMATELY TO ACTUALLY THINK THAT THERE IS
3 SOMETHING ILLEGAL GOING ON INSIDE OF THESE VEHICLES.

4 Q AND LET ME JUST ASK YOU IF ON THE 28TH OF FEBRUARY OF
5 THIS YEAR IF YOU WERE ON DUTY AT THAT TIME?

6 A I WAS.

7 Q AND YOUR RANK, BY THE WAY, IS SERGEANT?

8 A THAT'S CORRECT.

9 Q IF I CALL YOU OFFICER LANE, OF COURSE I ACKNOWLEDGE THE
10 FACT THAT YOU ARE A SERGEANT WITH THE DILLON POLICE
11 DEPARTMENT. SO IF I DO MAKE THAT MISTAKE, PLEASE PARDON
12 ME. BUT ON THE 28TH OF FEBRUARY, 2006, DID YOU ENCOUNTER
13 THE DEFENDANTS, ARTIE BURNS, AND JOHNNY JONES?

14 A I DID.

15 Q COULD YOU TELL THE JURY WHAT CAUSED YOU TO STOP THEIR
16 VEHICLE?

17 A I WAS TRAVELING IN MY PATROL VEHICLE DOWN INTERSTATE
18 95, I WAS GOING NORTHBOUND. I WAS SOMEWHERE IN THE
19 NEIGHBORHOOD OF THE 196 MILE MARKER, WHICH IS
20 APPROXIMATELY THREE MILES FROM SOUTH OF THE BORDER.
21 WHILE I WAS TRAVELING NORTHBOUND I NOTICED A BLUE
22 DODGE CHARGER, I BELIEVE IT WAS---

23 MRS. MCMILLAN: YOUR HONOR, IF THE
24 WITNESS IS USING A DOCUMENT TO REFRESH HIS MEMORY, I'D
25 LIKE TO KNOW WHAT IT IS.

1 BY MR. REDMOND:

2 Q ARE YOU USING YOUR INCIDENT REPORT?

3 A THAT'S CORRECT.

4 MR. REDMOND: AND THAT IS A
5 DOCUMENT THAT HAS ACTUALLY BEEN SUPPLIED TO THE
6 DEFENSE THAT MR. WATSON ACTUALLY ALLUDED TO A MINUTE
7 AGO.

8 THE COURT: DO YOU WANT TO SEE IT?

9 MRS. MCMILLAN: I WOULD LIKE TO
10 HAVE IT, YOUR HONOR.

11 MR. REDMOND: YOUR HONOR, THIS IS
12 THE WRITTEN REQUEST FOR IT. WHETHER OR NOT THIS IS THE
13 SAME DOCUMENT THAT MR. WATSON HAS, THE FILED COPY
14 WHICH WAS FILED WHEN THE WARRANTS WERE TRANSMITTED,
15 THAT IS A COPY OF WHAT WAS FILED. IT'S NOT A FILED COPY,
16 BUT IT IS THE SAME COPY AS WAS FILED THAT MR. WATSON
17 ALLUDED TO IN HIS OPENING STATEMENT.

18 THE COURT: YOU MAY
19 CONTINUE. BLUE DODGE CHARGER, I THINK WAS THE LAST
20 THING YOU SAID.

21 BY MR. REDMOND:

22 Q GO AHEAD.

23 A OKAY. NOTICED A BLUE DODGE CHARGER, THIS VEHICLE WAS
24 TRAVELING DOWN 95 HEADED NORTHBOUND IN FRONT OF ME.
25 THE VEHICLE IT SOMEWHAT SWERVED, IT WENT INTO - IT WAS

1 DRIVING IN THE OUTSIDE LANE, WHICH IS THE LANE CLOSEST TO
2 THE WOODS, FURTHEST AWAY FROM THE MEDIAN, AND THE
3 VEHICLE ACTUALLY ENTERED INTO THE OTHER LANE, THE INSIDE
4 LANE, AND THEN WENT BACK INTO THE OUTSIDE LANE. WE
5 HAVE A LOT OF PROBLEMS ON THE INTERSTATE WITH PEOPLE
6 WHO ARE SLEEPY, WHO'VE BEEN DRINKING, AND FOR SAFETY
7 REASONS, NOT TO MENTION THE FACT THAT THEY HAD BROKEN
8 THE LAW, BECAUSE YOU ARE SUPPOSED TO MAINTAIN THAT
9 LANE THAT YOU'RE TRAVELING IN. SO THAT'S THE REASON FOR
10 INITIATING THE TRAFFIC STOP ON THE TWO DEFENDANTS.

11 Q AT THE TIME YOU INITIATED THE TRAFFIC STOP, WHERE WAS IT
12 THAT THIS STOP WAS INITIATED, IN OTHER WORDS, WHERE DID
13 THEY PULL OVER?

14 A AT MILE MARKER 197 NORTHBOUND.

15 Q WOULD THAT BE NEAR SOUTH OF THE BORDER?

16 A THAT'S CORRECT.

17 Q AND, AGAIN, YOU SAID TRAVELING NORTH?

18 A THAT'S CORRECT.

19 Q AT THE TIME OF THE STOP IS YOUR VEHICLE EQUIPPED WITH
20 AUDIO AND VIDEO?

21 A THAT'S CORRECT. IT AUTOMATICALLY COMES ON WHENEVER
22 WE CUT ON THE BLUE LIGHTS THE AUDIO AND VIDEO EQUIPMENT
23 COME ON.

24 MR. REDMOND: I DON'T KNOW IF WE'VE
25 ACTUALLY MARKED THIS SINCE THIS IS THE ORIGINAL, IF I COULD

1 HAVE THIS MARKED AS STATE'S FOUR WITH THE COURT
2 REPORTER'S INDULGENCE.

3 (STATE'S EXHIBIT NO. 4 MARKED INTO EVIDENCE.)

4 BY MR. REDMOND:

5 Q I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS STATE'S
6 EXHIBIT NUMBER FOUR. COULD YOU LOOK AT THAT AND TELL
7 US IF THAT IS THE ORIGINAL VIDEO TAPE FROM THE STOP ON
8 THE 28TH OF FEBRUARY?

9 A IT IS, AND IN MY HANDWRITING I MARKED THIS AS ORIGINAL.

10 Q AND IS THAT THE TAPE YOU RETRIEVED FROM YOUR OFFICE THIS
11 MORNING?

12 A THAT'S CORRECT.

13 Q WE ACTUALLY HAVE COPIES, AND FOR PURPOSES OF THE TRIAL
14 WE GOT THE ORIGINAL, ISN'T THAT CORRECT?

15 A THAT'S CORRECT.

16 Q IS IT IN THE SAME FORM THAT IT WAS WHEN IT WAS RECORDED
17 ON THE 28TH OF FEBRUARY?

18 A TO MY KNOWLEDGE IT IS.

19 Q IN OTHER WORDS, HAVE YOU TAMPERED WITH IT OR DONE
20 ANYTHING WE HEARD TALK ABOUT, TAMPERING AND THINGS
21 LIKE THAT? HAS IT BEEN TAMPERED WITH OR ANYTHING?

22 A NO, SIR.

23 Q DOES THIS TAPE DEPICT WHAT OCCURRED ON THE 28TH OF
24 FEBRUARY REGARDING THESE TWO DEFENDANTS?

25 A YES, IT DOES.

1 MR. REDMOND: AT THIS TIME, YOUR
2 HONOR, I WOULD MOVE TO ADMIT STATE'S EXHIBIT NUMBER
3 FOUR INTO EVIDENCE.

4 THE COURT: ANY OBJECTION?

5 MR. WATSON: YES, YOUR HONOR.
6 FIRST IN THE TAPE DURING THE COURSE OF THE ACTIVITIES OF
7 THE WITNESS, HE INTENTIONALLY TURNED OFF AN AUDIO
8 DEVICE AS HE WAS TALKING TO OTHER OFFICERS. HE DID NOT
9 TURN THAT BACK ON UNTIL HE WAS IN THE CAR SPEAKING WITH
10 MY CLIENT. IT EFFECTIVELY IS AN IMPRESSION OF ONE THING
11 THAT DOES NOT GIVE A TOTAL RESULT OF WHAT OCCURRED,
12 AND IT FAILS TO ENCOMPASS WHAT HE HAS TESTIFIED TO AND
13 FILED IN HIS AFFIDAVIT. HE CUT OFF THE AUDIO INTENTIONALLY
14 WHEN HE WAS TALKING TO LAW ENFORCEMENT, AND I BELIEVE
15 IT FAILS TO ACCURATELY DEPICT WHAT OCCURRED ON THE
16 TRAFFIC STOP.

17 MRS. MCMILLAN: AND, YOUR HONOR, I
18 WOULD LIKE TO OBJECT TO THE INTRODUCTION OF THE TAPE.
19 AND I WOULD ALSO OBJECT TO MR. REDMOND'S STATEMENT
20 THAT THIS WAS A COMPLETE DEPICTION OF WHAT OCCURRED
21 BETWEEN THIS WITNESS AND MY CLIENT.

22 MR. WATSON: YOUR HONOR, THERE'S
23 A COUNTER ON THERE, AND AT COUNTER 5109, THE AUDIO IS
24 TURNED OFF. THERE IS AUDIO, EXCUSE ME, THERE'S VISUAL
25 DEPICTION OF THINGS THAT ARE GOING ON, AND YOU WILL

1 NOTE THAT OTHER OFFICERS WALK UP. AND THE AUDIO IS NOT
2 TURNED BACK ON BY THE OFFICER UNTIL 5435. THAT IS A
3 SIGNIFICANT PERIOD OF TIME WHEN OUTSIDE THE PRESENCE OF
4 THE DEFENDANTS, THIS OFFICER AND TWO OR THREE OTHERS
5 WERE DISCUSSING WHAT TO DO IN THIS CASE AND IT'S NOT
6 AVAILABLE FOR THIS JURY TO LISTEN TO.

7 THE COURT: ANYTHING ELSE?

8 MRS. MCMILLAN: JUST NOTE FOR THE
9 RECORD MY CONTINUING OBJECTION.

10 MR. WATSON: MY CONTINUING
11 OBJECTION AS TO THE MATTERS PREVIOUSLY HEARD, AND
12 EXCEPTION.

13 THE COURT: VERY WELL. I OVERRULE
14 YOUR OBJECTION.

15 MR. WATSON: ONCE AGAIN, NOTE MY
16 EXCEPTION.

17 THE COURT: VERY WELL.

18 (PLAINTIFF'S EXHIBIT NO. 4 INTRODUCED INTO EVIDENCE.)

19 BY MR. REDMOND:

20 Q IN LIGHT OF THAT, THOUGH, I WILL ASK YOU THIS BEFORE WE
21 PUBLISH THE TAPE; DURING THE COURSE OF THE TAPE MR.
22 WATSON ALLUDES TO A PORTION WHERE YOU CUT IT OFF.
23 WOULD YOU EXPLAIN HOW THE AUDIO WORKS? DO YOU ALSO
24 HAVE AN AUDIO DEVICE?

25 A YES, I HAVE AN AUDIO DEVICE THAT IS ACTUALLY ON ME WITH

1 A MIKE RIGHT IN THIS VICINITY. AND I ALSO HAVE ANOTHER
2 MIKE THAT IS INSIDE OF THE PATROL VEHICLE. THE MIKE THAT
3 IS ON ME, THE POWER CAN BE CUT OFF. THE MIKE ON THE
4 INSIDE, I THINK YOU CAN CUT THE POWER OFF, I'M NOT SURE.
5 BUT THE MIKE ON THE INSIDE WAS NEVER CUT OFF.

6 Q AND IN THIS PARTICULAR CASE WHAT MR. WATSON ALLUDED
7 TO, DID YOU CUT IT OFF AT ANY TIME?

8 A I DID.

9 Q OKAY, COULD YOU EXPLAIN TO THE JURY WHY YOU CUT IT OFF -
10 YOU HAVE NOTHING TO HIDE - AND EVEN GO FURTHER AND
11 TELL THEM WHAT WAS GOING ON WHEN YOU CUT IF OFF.

12 A WHEN I CUT THE VIDEO OFF THE TWO DEFENDANTS WERE
13 ALREADY PLACED UNDER ARREST. THE DEFENDANTS, ONE OF
14 THEM WAS IN MY CAR AND ONE OF THEM WAS IN MY PARTNER'S
15 CAR, IF I RECALL CORRECTLY. AND ANOTHER OFFICER CAME UP,
16 SGT. HAMILTON CAME UP AND WE WERE DISCUSSING THE FACT
17 THAT - AND LIKE MR. REDMOND SAID EARLIER, IT WAS PRETTY
18 COLD THIS DAY - WE WERE DISCUSSING THE FACT THAT HE DID
19 NOT HAVE ANY HEAT IN HIS VEHICLE. HIS HEATER WENT OUT
20 AND HE CALLED ME ON THE RADIO WHENEVER, RIGHT AFTER
21 THE TWO DEFENDANTS WERE ARRESTED, AND HE WAS LIKE, ARE
22 YOU BUSY, AND I SAID, WELL, YEAH, I'M BUSY, AND HE SAID
23 WELL WHERE YOU AT, AND I TOLD HIM THAT I WAS ON THE
24 INTERSTATE AND I TOLD HIM WE HAD SOMETHING. BUT
25 ANYWAY, HE ARRIVES OUT THERE, ONCE HE REALIZED WE HAD A

1 SITUATION OUT THERE HE CAME OUT THERE. AND HE WAS
2 TALKING ABOUT THE FACT THAT IT WAS SOL COLD THAT DAY
3 AND THE HEATER HAD GONE OUT, AND THE INITIAL REASON HE
4 WAS CALLING ME IS BECAUSE HE WANTED ME TO PICK HIM UP
5 AT RICE'S WHERE HE WAS GOING TO GET HIS HEATER FIXED.

6 Q NOW, AND ON THE TAPE, AND I THINK THE TAPE WILL SHOW
7 THIS, AT THE TIME YOU CUT IT OFF, HAD YOU ALREADY FOUND
8 ANYTHING THAT CAUSES US TO BE HERE TODAY?

9 A YES.

10 Q AND WHAT WOULD THAT BE THAT YOU FOUND?

11 A A BAG OF COCAINE.

12 Q AND TELL THE JURY WHERE YOU FOUND IT..

13 A IT WAS LOCATED IN THE TRUNK COMPARTMENT OF THIS
14 VEHICLE. AND IN THIS PARTICULAR VEHICLE THERE IS A
15 STORAGE COMPARTMENT UNDERNEATH THE FLAT PART OF THE
16 TRUNK THAT YOU CAN ACTUALLY LIFT UP WHERE THE SPARE
17 TIRE IS KEPT. AND LAYING RIGHT ON TOP OF THE SPARE TIRE ON
18 THE RIM OF THE SPARE TIRE WAS THIS FIRST BAG OF COCAINE,
19 WHITE POWDER SUBSTANCE.

20 Q OKAY. NOW YOU HEARD MR. WATSON, WHEN YOU SAY FIRST
21 BAG, YOU HEARD MR. WATSON ALLUDE TO THE FACT THAT
22 YOUR REPORT SAYS TWO BAGS. DID YOUR REPORT SAY TWO
23 BAGS?

24 A THAT IS CORRECT.

25 Q AND HOW MANY BAGS WERE THERE?

1 A THERE WAS ONE SMALL BAG, THERE WAS ONE LARGE BAG, AND
2 INSIDE OF THE LARGE BAG WAS ANOTHER SMALLER BAG. THERE
3 WERE - IN MY POSSESSION I HAD TWO BAGS, BUT INSIDE OF THE
4 LARGER BAG WAS A SMALLER BAG.

5 Q OKAY.. AND LET ME SHOW YOU, IF I MAY APPROACH THE
6 WITNESS, WHAT HAS BEEN MARKED AS STATE'S EXHIBIT
7 NUMBER THREE. I'M NOT GOING TO ASK YOU TO OPEN IT AT
8 THIS TIME, BUT COULD YOU LOOK AT THAT AND CAN YOU TELL
9 US WHETHER OR NOT THOSE ARE THE DRUGS THAT YOU SEIZED
10 THAT DAY?

11 A TO MY KNOWLEDGE THEY ARE. I SEE THE BEST* BAG, WHICH IS
12 THE BAG THAT WE PUT ALL OF OUR DRUG EVIDENCE IN. AND
13 THIS PARTICULAR BEST BAG WAS SEALED AND INITIALED BY ME
14 ON THE SEAL. AND THIS BAG INSIDE CONTAINS THIS BEST BAG
15 THAT I PUT THE DRUGS IN.

16 Q NOW, DID YOU - AND I SAID THE OUTSIDE BAG, THE BIG BAG, IS
17 THAT A BAG THAT YOU GENERATE, OR IS THAT GENERATED BY
18 SOMEONE ELSE?

19 A NO, WHEN THIS CAME BACK FROM SLED THIS IS HOW IT WAS.
20 MY BAG WAS INSIDE, WHICH THEY HAD TO OPEN MY BAG IN
21 ORDER TO GET THE DRUGS OUT. AND THIS IS ACTUALLY SLED'S
22 BAG.

23 Q AND DID YOU RETRIEVE THAT PARTICULAR BAG FROM SOMEONE
24 TODAY?

25 A I DID.

1 Q AND WHO DID YOU RETRIEVE THAT FROM?

2 A SGT. JASON TURNER WHO IS EMPLOYED BY THE DILLON POLICE

3 DEPARTMENT.

4 Q AND WHAT DOES HE DO SPECIFICALLY AS IT RELATES TO

5 EVIDENCE?

6 A HE IS OUR EVIDENCE CUSTODIAN FOR THE POLICE DEPARTMENT.

7 Q OKAY. COULD YOU BRIEFLY EXPLAIN, JUST SO THE JURY WON'T

8 BE CONFUSED, WHAT'S THE IMPORTANCE OF THE EVIDENCE

9 CUSTODIAN?

10 A IT'S MUCH EASIER FOR ONE PERSON TO HOLD ALL THE DRUGS,

11 OR ALL THE EVIDENCE. THAT WAY YOU DON'T HAVE 15

12 DIFFERENT PEOPLE WITH THEIR HANDS IN THE EVIDENCE AND

13 THEN IF YOU HAVE A TRIAL SUCH AS THIS, THEN YOU'VE GOT

14 TO GO BACK AND SAY, WELL HOW MANY PEOPLE HAD ACCESS

15 TO WHERE YOU'RE KEEPING YOUR EVIDENCE. AND THEN YOU'VE

16 GOT 15 PEOPLE THAT ALL HAVE TO COME IN AND TESTIFY;

17 WELL, I WAS IN THERE, BUT I DIDN'T MESS WITH IT, I WAS IN

18 THERE. . . SO WE HAVE ONE PERSON WHO IS THE EVIDENCE

19 CUSTODIAN WHO HOLDS ALL OF OUR EVIDENCE UNTIL WE GO TO

20 COURT.

21 Q AND SPEAKING OF WHICH, IS THAT ALSO ENOUGH TO HELP

22 REBUT THE CONTENTIONS OR ALLEGATIONS OF TAMPERING?

23 A THAT'S CORRECT.

24 Q AS WE HEARD EARLIER. NOW, IS THAT YOUR INITIAL ON THE

25 SEAL ON THE OUTSIDE OF THE BAG?

1 A ON THE OUTSIDE, NO.

2 Q AND THE REASON I ASK YOU THAT IS BECAUSE I'M ACTUALLY
3 GOING TO ASK YOU, IF YOU COULD, AND I DIDN'T ASK YOU IF
4 YOU HAD A KNIFE OR SOMETHING, TO OPEN THAT BAG.

5 MR. WATSON: I WOULD OBJECT.

6 THE COURT: WHAT'S YOUR
7 OBJECTION?

8 MR. WATSON: TO PUT INTO THE JURY
9 ROOM EVIDENCE WHICH IS NOW TESTIFIED TO BY THIS OFFICER
10 AS BEING NOT IN THE SAME CONDITION IT WAS WHEN HE
11 OBTAINED IT. HE JUST SAID IT'S NOT IN THE SAME BAG, IT'S
12 NOT PACKAGED THE SAME WAY. NOW MR. REDMOND WANTS
13 TO DEMONSTRATE SOMETHING NOT IN THE FASHION HE FOUND
14 IT TO THE JURY. SO THERE'S GOT TO BE SOMEBODY ELSE TO
15 SAY I CHANGED THIS.

16 THE COURT: WHAT'S YOUR REASON
17 FOR WANTING HIM TO OPEN THE BAG?

18 MR. REDMOND: YOUR HONOR, AS MR.
19 WATSON HIMSELF ARGUED IN HIS OPENING STATEMENT ABOUT
20 THE BAGS, TWO, THREE, WHATEVER THERE WERE, INSIDE THOSE
21 BAGS AS THE OFFICER HAS TESTIFIED TO, IS THE BAG THAT HE
22 PLACED THEM IN. HE EXPLAINED THE BAG THAT HE PLACES IT
23 IN AND THE BAGS THAT HE HAD WERE IN THERE AND HE SAID IT
24 APPEARS TO BE, BUT HE DOESN'T ACTUALLY HAVE THE BAGS IN
25 HIS HAND. I'M SIMPLY ASKING HIM TO OPEN IT TO SEE IF THOSE

1 ARE THE DRUGS THAT HE GOT, IF THEY ARE THE SAME BAGS
2 THAT HE TOOK THAT DAY.

3 MR. WATSON: HE SAYS IT'S NOT IN
4 THE SAME CONDITION. THE PERSON THAT CHANGED IT NEEDS
5 TO DO THAT.

6 THE COURT: OVERRULED.

7 MR. REDMOND: HE SAID IT APPEARS TO
8 BE.

9 THE COURT: OVERRULE THE
10 OBJECTION. YOU MAY CONTINUE.

11 MR. WATSON: NOTE MY EXCEPTION.

12 THE WITNESS: I DON'T HAVE A KNIFE.

13 BY MR. REDMOND:

14 Q LET'S DO THIS, THEN, LET'S SEE IF WE CAN RETRIEVE A KNIFE.
15 WE'VE GOT A TAPE THAT WE NEED TO WATCH. YOUR HONOR,
16 FIRST I WOULD MOVE TO ADMIT ONLY THE VIDEO TAPE AT THIS
17 TIME INTO EVIDENCE AND THEN, OF COURSE, PUBLISH IT FOR
18 THE JURY. AND THEN ONCE THAT'S DONE I'D LIKE TO FURTHER
19 QUESTION SGT. LANE.

20 MR. WATSON: I RENEW MY OBJECTION.

21 MRS. MCMILLAN: I STATE MINE, ALSO.

22 THE COURT: IT'S A CONTINUING
23 OBJECTION TO THE VIDEO TAPE.

24 MR. WATSON: BUT THE ADDITIONAL
25 OBJECTION TO THIS IS NOW MR. REDMOND SAYS TO OPEN THIS

1 AND TELL ME IF IT'S THE BAGS. IN THE VIDEO THERE IS ONLY
2 ONE BAG THAT IS EVER SHOWN. NOW WE HAVE THE OFFICER
3 SAYING IT'S FOUR BAGS. I THINK THAT IF YOU'RE GOING TO
4 SHOW THE TAPE, WITH ALL DUE RESPECT, THAT THAT BE DONE
5 WITH PEOPLE WHO ARE GOING TO SAY, I CHANGED THE WAY
6 ALL THIS STUFF IS PACKAGED UP NEED TO BE IN LINE---

7 THE COURT: I'M GOING TO LET HIM
8 PRESENT HIS CASE HOW HE WANTS TO.

9 MR. REDMOND: THANK YOU, YOUR
10 HONOR.

11 BY MR. REDMOND:

12 Q BEFORE I PUBLISH THE TAPE I HAVE ONE OTHER QUESTION.
13 TELL US ABOUT THE CONDITIONS OUT THERE THAT DAY. WHEN
14 I SAY CONDITIONS, WAS IT WINDY---

15 THE COURT: THE WEATHER
16 CONDITIONS.

17 THE WITNESS: IT WAS REALLY WINDY.
18 AND YOU'LL ACTUALLY BE ABLE TO SEE ON THE VIDEO WHERE
19 THESE MIKES ARE EXPOSED AND THE WIND GOES BY, AND
20 YOU'LL SEE. IT WAS A PRETTY COOL DAY AND IT WAS WINDY
21 OUTSIDE, SO IT MAKES IT SOMEWHAT DIFFICULT TO HEAR, NOT
22 TO MENTION ALL THE TRAFFIC GOING BY.

23 MR. REDMOND: YOUR HONOR, IF THE
24 DEFENSE DOES NOT OBJECT I'M GOING TO PLAY NOW AND HAVE
25 SGT. LANE STEP DOWN AND ASSIST ME WITH THIS SINCE HE'S

1 HAD THE ORIGINAL AND MAKE SURE THAT THE TAPE IS IN THE
2 PROPER PLACE AND PROCEED TO PUBLISH IT TO THE JURY.

3 MR. WATSON: CONTINUING OBJECTION.

4 THE COURT: YOU OBJECT TO HIM
5 OPERATING THE VIDEO TAPE?

6 MR. WATSON: I DON'T OBJECT TO HIM
7 OPERATING THE VIDEO, BUT I OBJECT TO HIM PUBLISHING IT.

8 THE COURT: VERY WELL. IT'S ONE
9 O'CLOCK, LET'S EAT AND THEN COME BACK AND WATCH IT.
10 WE'RE GOING TO BREAK FOR LUNCH, WE'LL HAVE IT SET UP FOR
11 YOU WHEN WE COME BACK. WE'LL VIEW THE TAPE AFTER
12 LUNCH. WE'LL START BACK AT TWO-THIRTY. DO NOT DISCUSS
13 THE CASE OVER LUNCH, DON'T LET ANYBODY DISCUSS IT WITH
14 YOU.

15 MR. REDMOND: AND, IN FACT, I WILL
16 JUST GO AHEAD AND TELL SGT. LANE, ALL THE WITNESSES ARE
17 SEQUESTERED AND NOT TO GO WHERE THE WITNESSES ARE.

18 THE COURT: YES. THANK YOU.

19 (AT THIS TIME THERE WAS A BREAK FOR LUNCH.)

20 THE COURT: ARE YOU SET UP AND
21 READY TO GO? BRING THE JURY BACK IN. I'LL REMIND THE
22 WITNESS HE'S STILL UNDER OATH.

23 CONT'D DIRECT EXAMINATION BY MR. REDMOND:

24 Q FIRST OF ALL, I'LL ASK YOU; DURING LUNCH, DAVID, DID YOU
25 DISCUSS THIS CASE WITH ANYBODY?

1 A NO, SIR.

2 Q IN FACT, DID YOU EAT LUNCH WITH ANYBODY ELSE?

3 A NO, SIR, I HAD TO EAT BY MYSELF.

4 Q OKAY GOOD ENOUGH. NOW I'M GOING TO ASK YOU TO DO
5 SOMETHING DIFFERENT THAN I INDICATED BEFORE LUNCH. I'M
6 GOING TO ASK YOU SOME MORE QUESTIONS ABOUT THE STOP
7 BEFORE WE ACTUALLY SHOW THE TAPE. NOW WE HAD
8 ESTABLISHED THAT THIS WAS ON THE 28TH OF FEBRUARY, BUT
9 COULD YOU TELL THE JURY APPROXIMATELY WHAT TIME THIS
10 STOP OCCURRED?

11 A AT APPROXIMATELY 9:18 A.M.

12 Q NOW I HAD ASKED YOU ABOUT THE CONDITIONS AND YOU
13 ALREADY EXPLAINED, BUT JUST FOR THE RECORD, REFRESH
14 EVERYBODY'S RECOLLECTION. WHAT WERE THE CONDITIONS
15 LIKE THAT DAY?

16 A IT WAS PRETTY WINDY AND IT WAS PRETTY COOL THAT
17 MORNING.

18 Q NOW AT THE TIME YOU INITIATED THE STOP, I'M ACTUALLY
19 GOING TO ASK YOU TO TAKE US THROUGH THAT PROCESS.
20 COULD YOU TELL US WHAT OCCURRED ONCE THE VEHICLE
21 STOPPED ON I-95?

22 A ONCE I STOPPED THE VEHICLE I APPROACHED THE PASSENGER
23 SIDE WINDOW. IT'S OUR PROCEDURE TO APPROACH A VEHICLE
24 ON THE PASSENGER SIDE FOR SEVERAL REASONS, SO WE CAN
25 SEE INSIDE OF THE CAR A LITTLE BETTER AND ALSO WE'RE

1 . AWAY FROM THE HIGHWAY BECAUSE, AS YOU KNOW, I-95 IS A
2 PRETTY DANGEROUS PLACE. ONCE I GOT TO THE PASSENGER
3 SIDE WINDOW OF THE VEHICLE, THE VEHICLE WAS OBVIOUSLY
4 OCCUPIED BY TWO INDIVIDUALS WHO ARE THE TWO
5 DEFENDANTS, AND I ASKED THE DRIVER, WHO WAS MR. ARTIE
6 BURNS, FOR HIS DRIVER'S LICENSE AND REGISTRATION.

7 Q AND LET ME JUST CLARIFY; THE TWO INDIVIDUALS THAT WERE
8 IN THE CAR, DO YOU SEE THOSE TWO INDIVIDUALS IN THE
9 COURTROOM TODAY

10 A YES, SIR.

11 Q AND COULD YOU AGAIN, FOR THE RECORD, POINT THOSE TWO
12 INDIVIDUALS OUT.

13 A THE TWO DEFENDANTS.

14 Q YOUR HONOR, IF THE RECORD WOULD REFLECT THAT THE
15 DEFENDANTS HAVE BEEN IDENTIFIED BY SGT. LANE. NOW, SGT.
16 LANE, ONCE YOU APPROACHED THE VEHICLE, TELL US WHAT
17 OCCURRED NEXT.

18 A I ASKED FOR DRIVER'S LICENSE AND REGISTRATION AND MR.
19 BURNS ATTEMPTED TO RETRIEVE HIS DRIVER'S LICENSE. HE WAS
20 HAVING DIFFICULTY BECAUSE HIS HANDS WERE SHAKING. AND
21 THE REGISTRATION THAT WAS SUPPLIED WAS ACTUALLY A
22 RENTAL AGREEMENT. IT WAS A RENTAL AGREEMENT OUT OF
23 FLORIDA FOR ENTERPRISE RENTAL.

24 Q NOW I'LL STOP YOU THERE. NOW, DID HE ACTUALLY GIVE YOU
25 THIS RENTAL AGREEMENT? IN OTHER WORDS DID HE, HE BEING

1 ARTIE BURNS, DID HE HAND YOU THE RENTAL AGREEMENT?

2 A IT WAS HANDED TO ME. I'M NOT SURE IF IT WAS HANDED
3 THROUGH ON THE PASSENGER SIDE AND ACTUALLY MR. JONES
4 HANDED ME THE RENTAL AGREEMENT, OR MR. BURNS HANDED
5 ME THE AGREEMENT. I'M NOT POSITIVE WHICH ONE HANDED IT
6 TO ME, BUT IT WAS HANDED THROUGH TO THE PASSENGER SIDE.

7 Q IF I MAY APPROACH WITH WHAT HAS BEEN MARKED AS STATE'S
8 EXHIBIT NUMBER ONE AND ASK YOU TO IDENTIFY THAT
9 DOCUMENT?

10 A THIS IS A COPY OF THE RENTAL AGREEMENT THAT I RECEIVED.

11 Q AND IN LOOKING AT IT, DOES IT ACCURATELY REFLECT THE
12 AGREEMENT AS YOU RECALL THAT DAY?

13 A YES, IT DOES.

14 Q OKAY. NOW YOUR HONOR, AT THIS TIME I WOULD ACTUALLY GO
15 AHEAD AND MOVE TO ADMIT STATE'S ONE INTO EVIDENCE.

16 THE COURT: ANY OBJECTION?

17 MR. WATSON: I WOULD OBJECT.

18 FIRST, THAT'S NOT THE ORIGINAL AGREEMENT. SECOND,
19 THERE'S BEEN NOBODY HERE TO VERIFY THAT AS BEING KEPT IN
20 THE NORMAL COURSE OF BUSINESS. THIRD, THERE'S BEEN
21 NOBODY HERE TO VERIFY THE SIGNATURE OF THE PERSON WHO
22 RENTED THE CAR. FOURTH, THERE'S BEEN NO TESTIMONY THAT
23 MY CLIENT RENTED ANYTHING. FIFTH, THAT AGREEMENT AS IT
24 APPEARS AS HAS BEEN MARKED HAS NOT BEEN PROFFERED TO
25 ME. NOW I'M HOLDING A COPY OF SOMETHING ELSE, BUT THAT

1 IS A PHOTOSTAT OF SOMETHING ELSE THAT BEARS MORE
2 WRITING THAN WHAT I WAS PROVIDED WITH.

3 MR. REDMOND: AND, YOUR HONOR, I
4 HAVE NOT SEEN WHAT - I MEAN I'VE SEEN IT, OBVIOUSLY, IT'S A
5 COPY OF THAT - BUT I HAVEN'T SEEN ANYTHING THAT
6 INDICATES ANY MORE WRITING THAN WHAT IS THERE. BUT IF I
7 MAY, THE OFFICER TESTIFIED IT WAS GIVEN TO HIM BY THE
8 DEFENDANT.

9 THE COURT: NOTHING GIVES ME ANY
10 PROBLEM EXCEPT THE LAST THING HE MENTIONED. THE LAST
11 THING HE MENTIONED WAS THAT HE HADN'T BEEN GIVEN IT.

12 MR. REDMOND: YES, SIR, I CAN TELL
13 YOU AS AN OFFICER OF THE COURT I HAVE GIVEN IT TO HIM,
14 AND, IN FACT, BEFORE LUNCH, EVEN BEFORE WE STARTED THE
15 TRIAL, POINTED OUT THE FACT THESE EXHIBITS WERE HERE. I
16 POINTED IT OUT TO HIM, I SAID THE EXHIBITS ARE HERE IF YA'LL
17 NEED TO LOOK THROUGH THEM BEFORE WE START THE TRIAL.
18 AND NOBODY SAID ANYTHING.

19 THE COURT: OVERRULE YOUR
20 OBJECTION. LET'S CONTINUE.

21 MR. REDMOND: THANK YOU, YOUR
22 HONOR.

23 MR. WATSON: NOTE IT.

24 MRS. MCMILLAN: FOR THE RECORD

25 NOTE MY OBJECTION.

1 THE COURT: YOU'RE MAKING THE SAME
2 OBJECTION?

3 MRS. MCMILLAN: YES, ,SIR.

4 THE COURT: VERY WELL. I OVERRULE
5 THAT, TOO.

6 MR. WATSON: NOTING OUR EXCEPTION.

7 THE COURT: NOTED.

8 MR. REDMOND: AND, YOUR HONOR,
9 VERY BRIEFLY, SINCE THE OBJECTION IS NOTED, ALSO NOTE THE
10 FACT THAT DURING OPENING STATEMENTS MR. WATSON
11 ACTUALLY ALLUDED TO---

12 THE COURT: I'VE ALREADY RULED
13 WITH YOU.

14 (PLAINTIFF'S EXHIBIT NO. 1 INTRODUCED INTO EVIDENCE.)

15 BY MR. REDMOND:

16 Q NOW, SGT. LANE, TELL US AGAIN, IS THAT A COPY OF THE
17 DOCUMENT WHICH YOU RECEIVED FROM THE DEFENDANTS?

18 A IT IS.

19 Q OKAY, NOW AT THE TIME YOU GOT THAT DOCUMENT, COULD
20 YOU TELL US WHAT OCCURRED NEXT?

21 THE COURT: WAIT JUST A MINUTE.
22 THIS IS A COPY OF THE DOCUMENT HE GOT FROM THE
23 DEFENDANT?

24 MR. WATSON: I RENEW MY OBJECTION.

25 MR. REDMOND: I CAN LAY A

1 FOUNDATION, JUDGE, IF YOU WOULD ALLOW ME.

2 THE COURT: IF IT WAS A RENTAL
3 AGREEMENT BY NECESSITY, OR BY PRACTICE, ALL RENTAL
4 AGREEMENTS THAT ARE IN THE CAR ARE COPIES. NOW IF THIS
5 IS A COPY OF THE COPY THAT HE GOT, IS THAT WHAT THIS IS?

6 MR. REDMOND: THAT'S CORRECT. I
7 CAN LAY A FOUNDATION.

8 THE COURT: GO AHEAD.

9 BY MR. REDMOND:

10 Q AS RELATES TO THE RENTAL AGREEMENT, DO YOU HAVE THE
11 ORIGINAL COPY THAT WAS GIVEN TO YOU BY THE DEFENDANT?

12 A NO, SIR, I MADE A PHOTO COPY.

13 Q AND WHY DID YOU DO THAT, SERGEANT?

14 A I RETURNED THE ACTUAL RENTAL AGREEMENT TO THE VEHICLE
15 AND THE REASON I DID IT IS BECAUSE THE RENTAL AGREEMENT
16 WAS UNDER THE NAME OF MIKO* WILLIAMS, HOWEVER MR.
17 BURNS WAS A SECOND DRIVER OF THE VEHICLE, AN ADDITIONAL
18 DRIVER, THAT I FELT THAT I NEEDED TO RETURN THAT
19 DOCUMENT, THE ORIGINAL DOCUMENT TO THE VEHICLE FOR
20 ENTERPRISE.

21 Q AND COULD YOU EXPLAIN HOW THAT TOOK PLACE? IN OTHER
22 WORDS, WHO DID YOU RETURN IT TO?

23 A I PUT IT BACK IN THE VEHICLE WITH WHATEVER ELSE WAS IN
24 THE VEHICLE AND THAT REMAINED IN THE CUSTODY OF THE
25 WRECKER SERVICE UNTIL ENTERPRISE RENTAL CAME AND GOT

1 THE VEHICLE.

2 THE COURT: YOU MAY CONTINUE.

3 BY MR. REDMOND:

4 Q NOW, SERGEANT, GETTING BACK TO WHAT HAPPENED. SO YOU
5 GET THE DRIVER'S LICENSE, YOU GET THE RENTAL AGREEMENT.
6 NOW TELL THE LADIES AND GENTLEMEN OF THE JURY WHAT
7 OCCURRED NEXT.

8 A I ASKED FOR THE DRIVER, MR. BURNS, TO ACCOMPANY ME AT
9 THE REAR OF HIS VEHICLE, AND HE DID SO. AT THAT POINT I
10 IMMEDIATELY PATTED HIM DOWN FOR ANY TYPES OF WEAPONS
11 BECAUSE AT THIS TIME I WAS THERE BY MYSELF AND
12 OBVIOUSLY I DIDN'T KNOW THEM JUST LIKE THEY DIDN'T KNOW
13 ME, SO I DID A PAT-DOWN FOR WEAPONS.

14 Q DID YOU QUESTION MR. BURNS ABOUT THE RENTAL AGREEMENT?

15 A I DID.

16 Q OKAY, COULD YOU EXPLAIN THAT TO THE JURY?

17 A I FIRST ASKED MR. BURNS WHO RENTED THE VEHICLE BECAUSE
18 IT WAS CLEAR THAT HE WAS NOT THE RENTER OF THE VEHICLE.
19 AND THE REASONING FOR IT WAS BECAUSE IN THIS PARTICULAR
20 RENTAL AGREEMENT IT SAID THAT THIS VEHICLE WAS ONLY
21 ALLOWED IN THE STATE OF FLORIDA. I WANTED TO DETERMINE
22 WHAT THE SITUATION WAS, BASICALLY. I ASKED HIM WHO
23 RENTED THE VEHICLE, AND I COULD TELL THAT HE WAS
24 UNSURE AS TO WHO RENTED THE VEHICLE. SO I TOOK HIS
25 LICENSE AND I PUT IT OVER THE NAME WHICH IS AT THE TOP OF

1 THE RENTAL AGREEMENT AND AT THAT POINT HE ACTUALLY
2 PUSHED THE LICENSE DOWN SO HE COULD READ THE NAME AND
3 READ THE NAME OF WHO RENTED THE VEHICLE OFF THE TOP OF
4 THE RENTAL AGREEMENT.

5 Q AND DID THAT CAUSE YOU CONCERN?

6 A IT DID. I KNEW AT THIS POINT THAT HE DID NOT KNOW WHO
7 RENTED THE VEHICLE.

8 MR. WATSON: OBJECTION, HE'S TRYING
9 TO LOOK INTO THE MIND OF SOMEBODY ELSE. HE CAN SAY
10 WHAT HE SAID AND OBSERVED.

11 THE COURT: HE'S TELLING YOU WHAT
12 HE THOUGHT. I'LL ALLOW IT, GO AHEAD.

13 BY MR. REDMOND:

14 Q CONTINUE. WHY DID IT CAUSE YOU CONCERN?

15 A WELL, LET ME GO BACK AND SAY THAT HE SAID THAT HIS
16 UNCLE RENTED THE VEHICLE. I'M SORRY, HE SAID THAT MR.
17 JONES'S UNCLE RENTED THE VEHICLE. THEN HE COULDN'T TELL
18 ME WHO MR. JONES'S UNCLE WAS. AND IT WAS OBVIOUS THIS
19 WAS A MAN HE HAD IN HIS VEHICLE AND DID NOT KNOW HIS
20 UNCLE WHO ACTUALLY HAD SIGNED HIS NAME, MR. BURNS, AND
21 USED HIS CREDIT CARD, AND HE DID NOT KNOW WHO THIS
22 PERSON WAS. SO THAT GAVE ME CONCERN BECAUSE I'M NOT
23 GOING TO GIVE MY CREDIT CARD AND CHARGE SOMETHING ON
24 MY CREDIT CARD WHEN I DON'T KNOW WHO IT IS I'M GIVING IT
25 TO.

1 Q AND JUST FOR THE RECORD TO MAKE SURE IT'S CLEAR, SINCE
2 THAT DOCUMENT'S BEEN ADMITTED, AGAIN, WHOSE NAME IS
3 LISTED AS THE PERSON RENTING THE VEHICLE?

4 A MIKO* WILLIAMS.

5 Q AND WHOSE NAME WAS LISTED AS THE DRIVER OF THE
6 VEHICLE?

7 A HE'S LISTED AS AN ADDITIONAL DRIVER, AND THAT PERSON IS
8 ARTIE BURNS.

9 Q AND FURTHER, IS THERE ANYTHING ON THAT DOCUMENT THAT
10 YOU NOTICED REGARDING WHERE THAT VEHICLE IS TO BE
11 DRIVEN?

12 A IT SAYS ONLY FLORIDA.

13 Q WERE YOU IN FLORIDA AT THE TIME THAT YOU MADE THE STOP?

14 A NO, SIR, WE WERE HERE IN DILLON.

15 Q NEAR THE NORTH CAROLINA LINE?

16 A NEAR THE NORTH CAROLINA LINE.

17 Q NOW, BACK TO THE STOP ITSELF. SO THEN DID YOU PROCEED
18 TO ASK MR. BURNS ANY MORE QUESTIONS, AND IF YOU DID,
19 TELL THE JURY WHAT AND HOW THAT TRANSPIRED.

20 Q I DID. LOOKING OVER MY REPORT, PRIOR TO ASKING HIM THAT I
21 ACTUALLY EXPLAINED THE REASONING FOR THE TRAFFIC STOP.
22 AND MR. BURNS STATED THAT HE WAS DOING SOMETHING WITH
23 HIS CELL PHONE AND THAT WAS THE REASON FOR SWERVING.

24 Q NOW, DID YOU ASK HIM ANY QUESTIONS CONCERNING THE
25 PASSENGER AND WHERE HE WAS GOING?

1 A I DID.

2 Q COULD YOU TELL US WHAT?

3 MRS. MCMILLAN: YOUR HONOR, I'M
4 GOING TO OBJECT. THIS IS HEARSAY. IT'S COMING FROM MR.
5 BURNS TO THE TROOPER, ALLEGEDLY. AND I'D ASK THAT IT BE
6 STRICKEN.

7 THE COURT: OVERRULED.

8 BY MR. REDMOND:

9 Q YOU CAN PROCEED, SERGEANT.

10 A I ASKED MR. BURNS WHERE THEY WERE GOING AND HE STATED
11 THAT HE WAS GOING TO THE UNIVERSITY OF VIRGINIA WHERE
12 HIS COUSIN WAS HAVING AN M.R.I. DONE ON HIS KNEE. HE SAID
13 THAT HIS COUSIN PLAYED FOOTBALL FOR THE UNIVERSITY OF
14 VIRGINIA, AND MR. BURN'S AUNT WANTED SOMEONE THERE
15 WHILE HE HAD THE M.R.I. DONE.

16 Q AND ONCE YOU FINISHED GETTING THAT INFORMATION FROM MR.
17 BURNS DID YOU ASK HIM ANYTHING ABOUT WHO WAS RIDING
18 WITH HIM?

19 A I DID.

20 Q AND CAN YOU TELL THE JURY ABOUT THAT?

21 A I ASKED HIM WHO HIS PASSENGER WAS, AND MR. BURNS PAUSED
22 FOR A MOMENT AND THEN HE SAID "JAY." AND THEN I ASKED
23 WHAT HIS LAST NAME WAS AND THEN HE STARTED SAYING,
24 JAY, JOHN, JOHN, JAY, AND HE KEPT SAYING IT OVER AND OVER
25 AS IF HE WAS TRYING TO REMEMBER WHAT THE PERSON'S NAME

1 WAS.

2 Q AND AT ANY POINT DID HE INDICATE TO YOU THAT HE DID NOT
3 KNOW THE LAST NAME OF THIS PASSENGER?

4 MR. WATSON: OBJECTION, LEADING.

5 BY MR. REDMOND:

6 Q I'LL REPHRASE. WHAT ELSE DID HE SAY WITH REGARD TO A
7 LAST NAME? DID HE EVER GIVE YOU A LAST NAME?

8 A NOT TO MY KNOWLEDGE HE NEVER GAVE ME A LAST NAME. I
9 THINK AT SOME POINT HE FINALLY SAID THE NAME JOHNNY, BUT
10 I DON'T RECALL EVER HEARING A LAST NAME. AND I ASKED
11 THIS QUESTION SEVERAL TIMES.

12 Q DID YOU GET AN ANSWER TO YOUR QUESTION AS TO WHAT THE
13 PASSENGER'S NAME WAS IMMEDIATELY AFTER YOU ASKED HIM?

14 A NO.

15 Q DID YOU HAVE TO GO THROUGH AND ASK SEVERAL QUESTIONS
16 BEFORE YOU GOT SOMEWHAT OF AN ANSWER?

17 A I DID.

18 Q OKAY, THANK YOU. NOW, DID YOU EVER TALK WITH THE
19 PASSENGER AT ANY TIME?

20 A I DID.

21 Q AND COULD YOU TELL THE JURY ABOUT HOW YOU APPROACHED
22 THE PASSENGER AND THEN WHAT TOOK PLACE?

23 A ONCE I LEFT MR. BURNS AT THE FRONT RIGHT PASSENGER SIDE
24 OF MY VEHICLE AND I WALKED UP TO MR. JONES WHO WAS
25 STILL SEATED IN THE VEHICLE AND I GREETED HIM, AND I ASKED

1 HIM WHERE THEY WERE GOING. AND MR. JONES SAID THAT THEY
2 WERE GOING TO VIRGINIA AND THEN THEY WERE GOING TO
3 ATLANTA. I ASKED HIM HOW LONG HE WAS GOING TO BE IN
4 VIRGINIA AND HE NEVER GAVE ME A REAL CLEAR ANSWER AND
5 FINALLY HE SAID THAT THEY WERE GOING TO VIRGINIA TO SEE
6 SOME GIRLS.

7 Q LET ME STOP YOU THERE. DID YOU TALK TO MR. JONES AFTER
8 YOU TALKED TO MR. BURNS?

9 A THAT'S CORRECT.

10 Q DID MR. BURNS EVER MENTION ANYTHING ABOUT GOING TO SEE
11 GIRLS IN VIRGINIA?

12 A NO, SIR.

13 Q BUT MR. JONES DID?

14 A YES.

15 Q BUT HERE'S THE INTERESTING THING. DID MR. JONES EVER
16 MENTION WHERE ELSE THEY MIGHT BE GOING?

17 MR. WATSON: OBJECTION TO
18 THE FORM OF THE QUESTION. THAT'S LEADING.

19 BY MR. REDMOND:

20 Q I'LL REPHRASE IT. DID YOU ASK ANY QUESTIONS ABOUT WHERE
21 THEIR ULTIMATE DESTINATION WAS?? IN OTHER WORDS, DID
22 YOU ASK THEM WHERE THEY WERE HEADED?

23 A I DID.

24 Q AND WHAT ANSWER DID YOU GET FROM MR. JONES?

25 A THE ANSWER I GOT WAS THAT THEY WERE GOING TO VIRGINIA

1 AND THEN THEY WERE GOING TO ATLANTA.

2 Q DID MR. BURNS EVER MENTION ANYTHING ABOUT ATLANTA?

3 A NO, SIR.

4 Q NOW, DID YOU ENGAGE IN ANY FURTHER DISCUSSION WITH MR.
5 JONES WHILE HE WAS STILL IN THE VEHICLE?

6 A I DID. I THEN ASKED HIM WHO RENTED THE VEHICLE BECAUSE IT
7 WAS CLEAR THAT I HAD STILL NOT GOTTEN A CLEAR ANSWER
8 AS TO WHO RENTED THE VEHICLE. AND WHEN I ASKED HIM
9 WHO RENTED THE VEHICLE HE STATED THAT HIS UNCLE RENTED
10 THE VEHICLE. AND I THEN ASKED HIM WHAT HIS UNCLE'S NAME
11 WAS, AND HE SAID HE WASN'T SURE. AND THEN HE WENT ON
12 TO SAY THAT IT REALLY WASN'T MY UNCLE.

13 Q AND SO WHEN HE TOLD YOU REALLY NOT HIS UNCLE, DID HE
14 TELL YOU ANYTHING ELSE CONCERNING EITHER HIS UNCLE OR
15 MR. BURNS?

16 A I WENT ON AND ASKED HIM WHO WAS WITH HIM. AND HE SAID
17 THAT HIS NAME WAS AUDIE.* AND IT WAS CLEAR THAT HE
18 WASN'T SAYING ARTIE, HE SAID AUDIE.*

19 Q LIKE THE CAR, AUDIE?*

20 A WELL, I SAY OWDIE,* BUT IT WAS AUDIE IS WHAT HE RESPONDED
21 TO ME AS. AND I ASKED HIM WHAT MR. BURNS LAST NAME WAS
22 AND HE SAID HE DIDN'T KNOW HIM LIKE THAT.

23 Q THAT HE DIDN'T KNOW HIM LIKE THAT? DID HE GIVE YOU ANY
24 OTHER EXPLANATION AS TO WHY HE MIGHT NOT HAVE KNOWN
25 HIM LIKE THAT?

- 1 A HE SAID THAT MR. BURNS WAS OLDER THAN HIM.
- 2 Q SO, ANYTHING IN THIS DISCUSSION THAT CAUSED YOU
- 3 CONCERN?
- 4 A I WAS VERY CONCERNED. I FELT THAT THERE WAS SOME SORT
- 5 OF CRIMINAL ACTIVITY. AT THIS POINT I DID NOT KNOW WHAT
- 6 THE CRIMINAL ACTIVITY WAS, BUT I FELT THAT THERE WAS
- 7 CRIMINAL ACTIVITY.
- 8 Q NOW WHAT DID YOU DO NEXT, SERGEANT?
- 9 A I RETURNED TO MY VEHICLE AND BEGAN WRITING A WARNING
- 10 CITATION FOR THE FAILURE TO MAINTAIN THE LANE.
- 11 Q NOW, DID YOU ACTUALLY EVER GIVE THAT WARNING CITATION
- 12 TO MR. BURNS AT THE TIME YA'LL WERE STOPPED THERE ON
- 13 THE ROAD?
- 14 A NO, SIR.
- 15 Q OKAY. SO YOU EXPLAINED TO HIM ABOUT GIVING HIM A
- 16 WARNING. COULD YOU TELL US WHAT TOOK PLACE THEN?
- 17 A ONCE I EXPLAINED TO HIM THAT IT WAS A WARNING FOR THE
- 18 TRAFFIC VIOLATION AND I EXPLAINED TO HIM THAT IT DID NOT
- 19 AFFECT HIS LICENSE, HE DIDN'T HAVE TO APPEAR IN COURT,
- 20 THAT IT WAS JUST BASICALLY FOR MY RECORDS. AND AT THAT
- 21 POINT I SAID, CAN I ASK YOU A FEW QUESTIONS.
- 22 Q AND WHAT WAS HIS RESPONSE?
- 23 A HE SAID YES.
- 24 Q AND COULD YOU TELL US WHAT YOU ASKED HIM AND WHAT HIS
- 25 ANSWER WAS.

1 Q I THEN EXPLAINED TO HIM THAT LAW ENFORCEMENT WAS
2 HAVING PROBLEMS WITH PEOPLE TRANSPORTING ILLEGAL DRUGS
3 UP AND DOWN THE INTERSTATE, AND I ASKED HIM IF THERE
4 WERE ANY TYPES OF ILLEGAL DRUGS IN THE VEHICLE. AND I
5 ACTUALLY WENT DOWN THE LIST AND ASKED HIM; MARIJUANA,
6 HEROIN, COCAINE, ECSTASY PILLS, ALL THE DIFFERENT MAJOR
7 DRUGS THAT WE HAVE PROBLEMS WITH ALONG THE
8 INTERSTATE. AND MR. BURNS STATED THAT NONE OF THAT
9 WAS IN HIS VEHICLE.

10 Q AND YOU MIGHT HAVE MENTIONED CURRENCY, DID YOU ASK HIM

11 A I EXPLAINED TO HIM, ALSO, THAT LAW ENFORCEMENT WAS
12 HAVING PROBLEMS WITH PEOPLE TRANSPORTING LARGE SUMS
13 OF ILLEGAL DRUG MONEY, AND ASKED HIM IF THERE WAS MORE
14 THAN \$10,000 IN THE VEHICLE AND HE SAID NO. BUT HE
15 ELABORATED A LITTLE BIT, AND I CAN'T REMEMBER EXACTLY
16 WHAT HE WAS. . . I'M TRYING TO REMEMBER EXACTLY HOW HE
17 ELABORATED. HE SAID THAT HE WOULD BE GOING SOMEWHERE,
18 OR IF HE HAD THAT KIND OF MONEY HE WOULD BE DOING
19 SOMETHING, I'M NOT SURE EXACTLY HOW HE ELABORATED, BUT
20 HE DID ELABORATE.

21 Q AND WHAT DID YOU DO NEXT AFTER HE ELABORATED ABOUT
22 THE MONEY? WHAT DID YOU ASK HIM AFTER THAT?

23 A I SAID CAN I SEARCH YOUR VEHICLE? AND MR. BURNS SAID YES.

24 Q DID HE HESITATE AT ALL IN SAYING YES?

25 A NOT AT ALL.

1 Q AND AT THE TIME HE SAID YES, YOU COULD SEARCH HIS
2 VEHICLE; WHAT WAS THE NEXT STEP YOU TOOK?

3 A I ASKED HIM IF HE WOULD OPEN THE TRUNK OF THE VEHICLE
4 AND HE DID.

5 Q AND AT THE TIME HE DID THAT, COULD YOU THEN TELL US
6 WHAT OCCURRED NEXT?

7 A WELL, WHEN I RETURNED TO MY VEHICLE I CALLED FOR SGT,
8 POWERS, WHO IS MY BACKUP AND VICE-VERSA ON I-95 BECAUSE
9 I KNEW THAT I HAD A SITUATION WHERE I WAS UNSURE OF
10 WHAT WAS GOING ON. AND, LIKE I SAID, AT THAT POINT I
11 KNEW THAT THERE WAS SOME SORT OF CRIMINAL ACTIVITY, OR I
12 THOUGHT THAT THERE WAS SOME SORT OF CRIMINAL ACTIVITY.

13 SO I CALLED HIM TO BACK ME UP ON THIS PARTICULAR STOP.
14 AND THEN ONCE HE CONSENTED TO SEARCHING THE VEHICLE I
15 BEGAN SEARCHING THE CAR. AND THERE WAS NO LUGGAGE IN
16 THE CAR.

17 Q LET ME STOP YOU THERE. WHERE DID THEY COME FROM,
18 WHERE DID THEY TELL YOU THEY WERE COMING FROM?

19 A MIAMI, FLORIDA.

20 Q AND WHERE WERE THEY GOING?

21 A TO VIRGINIA.

22 Q AND WHERE WERE THEY GOING AFTER THAT, ACCORDING TO
23 MR. JONES?

24 A TO ATLANTA.

25 Q AND DID I HEAR YOU CORRECTLY WHEN YOU SAID THERE WAS

1 NO LUGGAGE IN THE CAR?

2 MR. WATSON: OBJECTION, LEADING.

3 BY MR. REDMOND:

4 Q I'LL REPHRASE. WAS THERE ANY LUGGAGE IN THE CAR?

5 A NO, SIR. EXCUSE ME. THERE MAY HAVE BEEN SOME SORT OF
6 CLOTHING, SOME SORT OF APPAREL, BUT THERE WERE NO
7 SUITCASES WITH LUGGAGE IN THEM.

8 THE COURT: NO SUITCASES WITH
9 LUGGAGE IN THEM?

10 THE WITNESS: THAT'S CORRECT.
11 THERE WAS NO BAGGAGE. THERE MAY HAVE BEEN A PAIR OF
12 JEANS IN THE BACK SEAT OF THE CAR AND A JACKET OR TWO.

13 BY MR. REDMOND:

14 Q I'LL ASK YOU LIKE THIS; WAS THERE A SUITCASE, OR A CARRY
15 BAG, OR AN OVERNIGHT BAG WITH CLOTHES INSIDE OF IT?

16 A TO MY KNOWLEDGE THERE WAS NONE OF THAT.

17 Q DID YOU SEARCH THE BACK OF THE VEHICLE AND THE INSIDE OF
18 THE VEHICLE?

19 A I DID.

20 Q DID YOU RETRIEVE ANY OF SAID ITEMS, THAT BEING A TRAVEL
21 BAG, OVERNIGHT BAG, OR SUITCASE WITH CLOTHING FROM THE
22 CAR?

23 A NO, SIR.

24 Q SO WHAT DID YOU DO NEXT?

25 A I STARTED THE SEARCH OF THE VEHICLE IN THE FRONT AREA OF

1 THE VEHICLE. AND ONCE I FELT LIKE I HAD COMPLETED THAT
2 INITIAL SEARCH OF THE FRONT PASSENGER COMPARTMENT,
3 THEN I WENT TO THE TRUNK OF THE VEHICLE. WHILE I WAS
4 SEARCHING THE TRUNK OF THE VEHICLE THERE WAS SOME SORT
5 OF CONTAINER WITH SOME CAR CARE STUFF IN IT, OR
6 SOMETHING TO THAT EFFECT, AND THEN I WAS ON THE VERGE
7 OF REACHING TO PULL UP THE STORAGE COMPARTMENT FOR
8 THE SPARE TIRE. AS I REACHED TO PULL UP THAT SPARE TIRE
9 COMPARTMENT MR. - I'M NOT SURE, IT WAS MR. JONES OR MR.
10 BURNS CALLED TO ME AND SAID, CAN I GET MY JACKET? WHEN
11 I LIFTED IT UP I IMMEDIATELY SAW A BAG OF WHITE POWDER.
12 AND BASED ON MY EXPERIENCE I KNEW THE WAY THEY ACTED
13 AND WHAT I'D SEEN IN THE PAST, I KNEW IT WAS COCAINE.

14 AND SO IMMEDIATELY - I WAS STILL THERE BY MYSELF - I
15 IMMEDIATELY DREW MY WEAPON, ORDERED BOTH OF THE
16 INDIVIDUALS TO THE GROUND AND I DIDN'T KNOW AT THE TIME
17 MY PARTNER WAS ON THE FAR OTHER SIDE OF THE INTERSTATE,
18 HE WAS DOWN NEAR THE OAK GROVE EXIT, SO IT TOOK HIM
19 QUITE A WHILE TO GET TO ME. AND SO I WAS STILL WAITING
20 ON HIM AND I HAD THEM - THEY WERE DOWN ON THE GROUND
21 AND I HAD MY WEAPON DRAWN ON THEM, AND I WAS WAITING
22 ON MY PARTNER TO GET THERE SO I COULD ACTUALLY
23 HANDCUFF THEM. I DID NOT WANT TO HANDCUFF THESE
24 INDIVIDUALS UNTIL HE GOT THERE FOR SAFETY REASONS,
25 OBVIOUSLY. IF I WERE TO TRY AND HANDCUFF ONE - NOT TO

1 SAY IT WOULD HAPPEN, BUT IT COULD HAPPEN, SOMEONE
2 COULD TRY AND HARM ME.

3 Q AND DID YOU MAINTAIN YOUR WEAPON AT THE SCENE, DID YOU
4 CONTINUE TO HAVE YOUR WEAPON DRAWN UNTIL BACKUP
5 ARRIVED?

6 A I DID.

7 Q AND HOW WAS YOUR BACK UP, AGAIN?

8 A SGT. TERRY POWERS.

9 Q AND IS HE ALSO WITH THE DILLON POLICE DEPARTMENT I.C.E.
10 TEAM?

11 A THAT IS CORRECT.

12 Q NOW DID YOU WHILE YOU HAD THE GUN DRAWN, WERE YOU
13 ABLE TO CONTINUE ANY SEARCH OR DO ANYTHING ELSE?

14 A NO.

15 Q OKAY. AND I THINK THE ANSWER IS OBVIOUS, BUT I'LL ASK YOU
16 WHY WEREN'T YOU ABLE TO CONTINUE THE SEARCH?

17 A I KNEW THAT THERE WAS - I'D FOUND DRUGS AND I WAS NOT
18 GOING TO DO ANYTHING UNTIL THE TWO DEFENDANTS WERE
19 PLACED IN HANDCUFFS, BECAUSE I WANT TO GO HOME AT
20 NIGHT.

21 Q SO YOUR BACKUP ARRIVES. WAS THAT THE END OF YOUR
22 SEARCH, OR DID YOU CONTINUE SEARCHING?

23 A I THEN STARTED BACK - ONCE WE HAD THE TWO DEFENDANTS
24 IN THE VEHICLES, I STARTED MY SEARCH AGAIN. AND SGT.
25 POWERS WAS THERE TO HELP ME WITH THE SEARCH. AND

1 BACK TO THE SPARE TIRE COMPARTMENT AND UNDERNEATH
2 THE SPARE TIRE, ACTUALLY FOUND - WELL, ACTUALLY I COULD
3 SEE ANOTHER PACKAGE. IT WAS ANOTHER LARGER PACKAGE
4 AND IT WAS ACTUALLY UNDERNEATH THE SPARE TIRE AND I
5 INITIALLY DIDN'T SEE IT BECAUSE IT WAS REALLY UNDER THERE
6 WHERE YOU COULD SEE IT, AND I HAD TO DO SOME ACTUAL
7 WORK TO GET THE THING OUT OF THERE.

8 Q AND WERE YOU ABLE TO GET IT OUT?

9 A I WAS.

10 Q AND WHAT WAS IT THAT YOU GOT OUT?

11 MR. WATSON: OBJECTION. HE CAN'T
12 TESTIFY TO WHAT IT WAS, HE CAN TESTIFY TO WHAT HE
13 THOUGHT IT WAS.

14 THE COURT: HE CAN TESTIFY TO WHAT
15 HE GOT OUT OF IT. I OVERRULE YOUR OBJECTION TO THAT
16 EXTENT.

17 BY MR. REDMOND:

18 Q WHAT DID YOU GET OUT OF IT?

19 A IT WAS ANOTHER BAG OF WHITE POWDER, AND IT WAS MUCH
20 LARGER THAN THE FIRST. AND THERE WAS AN ADDITIONAL BAG
21 INSIDE OF THAT BAG THAT WAS SMALLER. IT WAS TESTED AND
22 IT WAS COCAINE.

23 Q WE'LL GET TO THE TESTING ASPECT IN A LITTLE WHILE, BUT
24 LET'S CONTINUE WITH THROUGH THE STOP. NOW COULD YOU
25 TELL US WHAT ELSE WAS TRANSPIRING AT THIS POINT ONCE

1 YOU FOUND THE SECOND BAG?

2 A WHENEVER I - ANY TYPE OF EVIDENCE - WHENEVER I RETRIEVE
3 IT FROM A VEHICLE I ALWAYS PLACE IT ON THE HOOD OF MY
4 CAR. AND I PUT IT ON THE DRIVER'S SIDE RIGHT ON THE HOOD
5 WHERE YOU CAN SEE IT NORMALLY. THIS PARTICULAR
6 INSTANCE, THE VIDEO CAMERA I DIDN'T KNOW THAT IT WAS
7 TURNED, BUT IT WAS ACTUALLY TURNED JUST TO THE RIGHT,
8 AND SURELY IF I'D HAVE KNOWN THAT I'D HAVE PUT IT RIGHT IN
9 THE CENTER OF THE HOOD, BUT IT WAS ACTUALLY JUST OUT OF
10 VIEW OF THE DRUGS, BUT PLACED ON THE HOOD. THEN THAT'S
11 WHEN SGT. HAMILTON CAME UP.

12 Q AND I THINK YOU TOUCHED UPON THAT, BUT I'LL JUST BE BRIEF
13 WITH THAT PART OF IT. WHEN SGT. HAMILTON GOT THERE,
14 WHAT OCCURRED? LET ME ASK YOU THIS; I THINK YOU
15 TESTIFIED EARLIER ABOUT THE AUDIO AND MANUAL EQUIPMENT.
16 DID YOU CUT YOUR AUDIO EQUIPMENT OFF WITH SGT.
17 HAMILTON THERE?

18 A YES.

19 Q AND WHY DID YOU DO THAT AND WHAT WAS DISCUSSED ONCE
20 YOU DID THIS?

21 A WELL, WE WERE TALKING ABOUT THINGS THAT - HINDSIGHT'S
22 20/20, AND I GUESS I PROBABLY SHOULD HAVE LEFT IT ON, BUT
23 WE WERE TALKING ABOUT THINGS THAT WERE NOT RELATED TO
24 LAW ENFORCEMENT, AND WE WERE TALKING ABOUT, OF
25 COURSE, HIS HEATER GOING OUT. AND IN ADDITION TO THAT I

1 WAS TELLING HIM WHAT I'D FOUND, AND BASICALLY THE FACTS
2 ABOUT THE STOP.

3 Q AND DURING THE TIME THIS WAS TAKING PLACE WAS THERE
4 ANY, ANY ISSUE ABOUT YA'LL TRYING TO OBSTRUCT EVIDENCE,
5 OR ANY KIND OF PLAN OR CONSPIRING TO TRY TO UNDERMINE
6 THESE TWO DEFENDANTS?

7 A NO, SIR.

8 Q AND I WOULD SIMPLY ASK YOU THIS; IF YOU HAD NOT FOUND
9 DRUGS IN THAT VEHICLE, WOULD THE DEFENDANTS HAVE BEEN
10 PLACED UNDER ARREST?

11 A NO, SIR.

12 Q WHAT WOULD HAVE OCCURRED IF THOSE DRUGS HAD NOT BEEN
13 FOUND IN THE VEHICLE?

14 A I'D HAVE THANKED THEM FOR GIVING ME THE TIME TO SEARCH
15 THE VEHICLE, AND THEY'D HAVE BEEN RELEASED, JUST LIKE, OF
16 COURSE, WE'VE SEARCHED VEHICLES AND NOT FOUND
17 ANYTHING. THAT'S OUR PROCEDURE. THANKED THEM FOR
18 THEIR TIME AND RELEASED THEM.

19 Q NOW, ON THE TAPE YOU TALK ABOUT THE CONDITIONS BEING
20 WINDY. HAVE YOU HAD THE OPPORTUNITY TO VIEW THE TAPE?

21 A YES.

22 Q AND IN THE TAPE, THE ENTIRE DISCUSSION ON THE STOP, IS IT
23 ALL ON THE TAPE?

24 A NO.

25 Q CAN YOU EXPLAIN THAT TO THE JURY?

1 A LIKE I SAID, IT WAS PRETTY WINDY THAT DAY. AND I'M TALKING
2 TO HIM, BUT IT'S DIFFICULT TO HEAR BECAUSE OF THE FACT
3 THAT THE WIND'S BLOWING AND IT'S BLOWING ACROSS THIS
4 MIKE, AND YOU'VE GOT THE INTERSTATE TRAFFIC GOING BY,
5 AND IT MAKES IT DIFFICULT TO - YOU CAN HEAR SOME THINGS,
6 BUT IT'S DIFFICULT TO MAKE OUT OTHER THINGS. AND I
7 ATTEMPTED TO TRY AND MAKE IT BETTER WHEN I SPOKE WITH
8 MR. JONES BECAUSE I ACTUALLY I WAS PRETTY WELL IN THE
9 VEHICLE, MY HEAD WAS IN THE VEHICLE BECAUSE MY MIKE SITS
10 ABOUT HERE, AND I WAS TRYING TO GET IT WHERE THE MIKE
11 WOULD ACTUALLY PICK HIM UP.

12 Q NOW AT THIS POINT, YOUR HONOR, WITH THE COURT'S
13 PERMISSION, I'D LIKE TO APPROACH THE WITNESS WITH STATE'S
14 EXHIBIT THREE AT THIS POINT FOR IDENTIFICATION ONLY. NOW
15 JUST TO BRIEFLY RECAP; BEFORE LUNCH HAD YOU HAD THE
16 OPPORTUNITY TO LOOK OVER THAT PARTICULAR EXHIBIT?

17 A YES.

18 Q AND NOW I'M GOING TO ASK YOU, AND YOU TESTIFIED AS TO
19 THE INITIALS ON THERE, BUT AT THIS TIME I'M GOING TO HAND
20 THIS PAIR OF SCISSORS TO SGT. LANE. BEFORE I ASK YOU TO
21 CUT THAT, LET ME ASK YOU ONE LAST QUESTION---

22 MRS. MCMILLAN: YOUR HONOR, IF I
23 MAY? I'D LIKE TO MAKE AN OBJECTION TO HIM OPENING THIS
24 OUTSIDE BAG. IT'S A SEALED BAG, AND I BELIEVE IT IS FROM
25 ANOTHER PARTY. AND ONCE HE OPENS THAT BAG THAT HAS

1 BEEN TAMPERED WITH IN THE PRESENCE OF THE JURY.

2 MR. WATSON: AND WE WOULD OBJECT
3 TO THE INTRODUCTION BECAUSE THAT PERSON WILL HAVE TO
4 SAY THAT IT IS IN THE SAME CONDITION AS WHEN IT WAS
5 RETURNED.

6 THE COURT: REALLY THEY DON'T
7 HAVE TO SAY ANYTHING. BUT I RESPECTFULLY OVERRULE YOUR
8 OBJECTIONS. THANK YOU, I'LL NOTE YOUR EXCEPTIONS.

9 BY MR. REDMOND:

10 Q LET ME ASK YOU; IS THE BAG SEALED?

11 A YES.

12 Q AND LET ME ASK YOU, IF I COULD, TO -- AND I'LL SHOW
13 COUNSEL SO THAT IT'S CLEAR WHERE I'M ASKING YOU TO CUT.
14 IF I COULD GET YOU TO CUT ABOUT RIGHT HERE WHEN YOU
15 UNSEAL IT, COULD YOU GO AHEAD AND UNSEAL THIS
16 PARTICULAR BAG ABOUT RIGHT HERE BELOW THE INITIALS?

17 A (WITNESS COMPLIES.)

18 Q MAKE SURE - I WAS GOING TO SAY THERE'S ANOTHER BAG IN
19 THERE, DON'T CUT THAT. NOW I'M GOING TO ASK YOU TO GO
20 AHEAD AND ONE AT A TIME REMOVE THE CONTENTS FROM
21 THAT PARTICULAR BAG. AND I'LL STOP YOU THERE AND ASK
22 COULD YOU EXPLAIN TO THE JURY WHAT THAT ITEM IS AND
23 WHAT THE SIGNIFICANCE OF THAT ITEM IS.

24 A THIS IS WHAT WE REFER TO AS A BEST BAG. THIS IS WHERE OUR
25 BEST EVIDENCE GOES. AND WE PLACE THIS, OR ANY TYPE OF

1 DRUG EVIDENCE, THIS IS THE TYPE BAG IT HAS TO GO IN. AND
2 ONCE WE PUT OUR EVIDENCE IN THIS BAG, IN ORDER FOR IT TO
3 BE ANALYZED, THIS IS THE WAY SLED ACCEPTS IT. WE HAVE TO
4 SEAL IT, WHICH IT HAS A TAMPER-PROOF SEAL ON THE TOP AND
5 ONCE IT IS SEALED WE HAVE TO INITIAL THE TOP.

6 Q NOW DID YOU INITIAL THE TOP WHEN YOU SEALED IT?

7 A I DID.

8 Q DID YOU SEAL IT?

9 A I DID.

10 Q AND ONCE IT'S SEALED, THEN WHERE IS IT PLACED?

11 A IT'S PLACED IN THE DRUG VAULT AT THE DILLON COUNTY
12 SHERIFF'S OFFICE.

13 Q AND WHO PLACED IT IN THE DRUG VAULT?

14 A I DID.

15 Q AND FROM THERE DO YOU KNOW WHO TRANSPORTED IT TO
16 SLED?

17 A ROBERT BUSEY.

18 Q AND, OF COURSE WE'LL HEAR FROM HIM. NOW YOU TESTIFIED IT
19 WAS SEALED IN THIS BAG.

20 A THAT'S CORRECT.

21 Q NOW WOULD YOU PULL OUT THE NEXT ITEM, AND COULD YOU
22 EXPLAIN THE SIGNIFICANCE OF THAT PARTICULAR ITEM?

23 A THIS APPEARS TO BE ONE OF THE PACKAGES WHICH CONTAINED
24 THE COCAINE WHICH WAS RETRIEVED FROM THE TRUNK OF THE
25 VEHICLE.

- 1 Q AND ARE THERE ANY MARKS OR ANYTHING THAT LEAD YOU TO
2 BELIEVE - AND OF COURSE WE WILL HEAR FROM THE SLED
3 ANALYST, BUT COULD YOU TELL US HOW THAT PARTICULAR
4 ITEM WOULD HAVE BEEN STORED? IN OTHER WORDS, WHEN
5 YOU ACTUALLY RETRIEVE IT, WHAT WOULD YOU DO WITH IT,
6 WHERE WOULD IT HAVE BEEN PLACED?
- 7 A I'M SORRY, I DON'T. . .
- 8 Q IN OTHER WORDS, WHERE WOULD THIS ITEM HAVE BEEN PLACED
9 TO PRESERVE?
- 10 A AS FAR AS I'M CONCERNED THIS ITEM WOULD HAVE BEEN
11 PLACED IN THIS BEST BAG.
- 12 Q AND IN FACT WAS THAT ITEM PLACE IN THERE?
- 13 A YES.
- 14 Q BY WHOM?
- 15 A BY ME.
- 16 Q THANK YOU. NOW, COULD YOU PULL OUT THE NEXT ITEM?
- 17 A (WITNESS COMPLIES.)
- 18 Q AND COULD YOU TELL US WHAT THAT ITEM IS?
- 19 A THIS APPEARS TO BE ANOTHER PACKAGE THAT WAS RETRIEVED
20 FROM THE TRUNK OF THE VEHICLE.
- 21 Q AND, AGAIN, HOW WOULD THAT HAVE BEEN STORED AND
22 PRESERVED FOR EVIDENCE PURPOSES?
- 23 A THIS WOULD HAVE BEEN PUT IN THE SAME BEST BAG.
- 24 Q OKAY. AND HOW WOULD IT HAVE BEEN PRESERVED?
- 25 A SAME WAY IN THE BEST BAG.

1 Q AND WAS THAT A BAG THAT WAS FOUND AT THE TIME OF THIS
2 INCIDENT?

3 A TO MY KNOWLEDGE, YES, IT WAS.

4 Q ALL RIGHT. AND NEXT?

5 A THESE ARE THE SAME BAGS. I'M UNSURE AS TO HOW MANY
6 TIMES THE PARTICULAR PACKAGES WERE WRAPPED. IT APPEARS
7 THAT THERE'S NO RESIDUE IN SOME OF THESE BAGS, WHICH I'M
8 NOT SURE HOW MANY BAGS WERE WRAPPED ON TOP OF BAGS.

9 Q AND WHEN YOU SAY THERE'S NO RESIDUE, LET'S GET TO THAT;
10 WOULD YOU TELL THE JURY THE SIGNIFICANCE OF THAT, SOME
11 BAGS WITH RESIDUE, SOME BAGS THAT ARE CLEAR?

12 A TO ME THIS BAG APPEARS TO HAVE NO TYPE OF RESIDUE, SO NO
13 COCAINE RESIDUE, WHICH LEADS ME TO BELIEVE THAT THIS WAS
14 A PACKAGED OR SOMETHING WAS PUT INSIDE OF THE BAG AS
15 NOT TO HAVE ANY RESIDUE ON IT.

16 Q AND WOULD THAT APPLY TO THE SECOND BAG THAT YOU
17 REFERRED TO THAT YOU JUST PULLED OUT?

18 A I'M NOT SURE. IT APPEARS THAT THERE MAY BE SOME RESIDUE
19 ON THIS ONE. THIS ONE IS NOT AS CLEAN AS THAT ONE.

20 Q AND IF YOU COULD PULL OUT THE NEXT ITEM. NOW DOES THAT
21 APPEAR TO BE THE SUBSTANCE THAT YOU SAW ON THAT
22 PARTICULAR DAY?

23 MR. WATSON: OBJECTION. EITHER IT
24 IS OR IT IS NOT. HE CAN'T IDENTIFY IT BECAUSE THERE'S
25 NOTHING ON THERE WITH HIS MARK OR ANYTHING.

1 THE COURT: HE DIDN'T ASK HIM TO
2 IDENTIFY IT. REPEAT YOUR QUESTION.

3 BY THE SOLICITOR.

4 Q WOULD YOU IDENTIFY WHAT THAT PARTICULAR ITEM THAT
5 YOU'RE HOLDING IS?

6 MR. WATSON: I RENEW MY OBJECTION.

7 THE COURT: WHAT IS YOUR
8 OBJECTION?

9 MR. WATSON: HE CANNOT IDENTIFY
10 THAT AS BEING IN THE CAR. IT DOES NOT BEAR A SINGLE
11 LETTER, ANNOTATION, OR ANYTHING OF HIS, IT HAS NOT BEEN
12 IN HIS POSSESSION, IT IS INDIFFERENT, AS TO HIS TESTIMONY, AS
13 TO WHAT HE FOUND IN THE CAR. HE CAN'T IDENTIFY IT AS
14 THAT BEING COMING OUT OF THE CAR.

15 THE COURT; WELL, WE'LL FIND OUT.
16 CAN YOU IDENTIFY THAT AS BEING COMING OUT OF THE CAR?

17 THE WITNESS: NO, SIR.

18 BY MR. REDMOND:

19 Q AND I'LL REPHRASE IT, BECAUSE MY QUESTION WAS ACTUALLY
20 DOES THAT APPEAR TO LOOK LIKE THE SUBSTANCE---

21 MRS. MCMILLAN: YOUR HONOR, I
22 WOULD OBJECT TO HIM LEADING THIS WITNESS. THE WITNESS
23 HAS ALREADY SAID THAT HE CANNOT IDENTIFY THIS HAVING
24 COME OUT OF THE VEHICLE IN WHICH MY CLIENT WAS RIDING.

25 MR. WATSON: STRAIGHT-UP ANSWER

1 WAS NO.

2 MR. REDMOND: AND, YOUR HONOR,
3 ACTUALLY IF I COULD FINISH ASKING THE QUESTION, WHICH I
4 DIDN'T HAVE A CHANCE TO DO.

5 MR. REDMOND: MY QUESTION IS
6 WHETHER OR NOT THAT APPEARS TO BE THE SUBSTANCE -
7 APPEARS TO BE, BECAUSE AS I SAID, WE'LL HAVE OTHER
8 WITNESSES---

9 THE COURT: WELL, WHAT IS YOUR
10 QUESTION?

11 MR. REDMOND: MY QUESTION IS DOES
12 THAT APPEAR TO BE THE SUBSTANCE---

13 THE COURT: CAN YOU ANSWER THAT
14 QUESTION OR NOT?

15 THE WITNESS: YES, SIR.

16 THE COURT: WHAT'S THE ANSWER TO
17 THE QUESTION?

18 THE WITNESS: YES, SIR, IT DOES
19 APPEAR TO BE.

20 THE COURT: VERY WELL.

21 BY MR. REDMOND:

22 Q THANK YOU. AND IF YOU WOULD MOVE ON TO THE NEXT ITEM,
23 SIR, I ASK YOU THE SAME QUESTION; DOES THAT APPEAR TO BE
24 THE SUBSTANCE THAT YOU RETRIEVED FROM THE TRUNK OF THE
25 DEFENDANT'S VEHICLE?

1 A YES, IT DOES.

2 Q NEXT ITEM? AND I ASK THE SAME THING; DOES THAT APPEAR
3 TO BE THE SUBSTANCE THAT YOU FOUND IN THE VEHICLE OF
4 THE DEFENDANTS?

5 A YES, SIR, IT DOES.

6 Q NOW AGAIN THIS EXHIBIT'S JUST FOR IDENTIFICATION, IF YOU
7 COULD, RESTORE THE ITEMS BACK INSIDE THE BAG. DID YOU DO
8 A FIELD TEST ON THESE PARTICULAR ITEMS?

9 A I DID.

10 Q AND COULD YOU EXPLAIN TO THE JURY WHAT A FIELD TEST IS
11 AND HOW IT WORKS?

12 A A FIELD TEST IS A TEST THAT WE USE, THE PARTICULAR TEST I
13 USED CAME FROM A COMPANY CALLED STURCHY,* I BELIEVE IS
14 THE NAME OF IT, BUT ALL IT IS IS IT IS A SOMETHING TO - IT'S
15 NOTHING FOR US TO USE OTHER THAN OURSELVES TO CONFIRM
16 OUR SUSPICIONS THAT WE BELIEVE IT IS COCAINE, OR HEROIN OR
17 WHATEVER. AND I USED A STURCHY* TEST, AND IT DID
18 CONFIRM THAT IT WAS COCAINE.

19 Q AND DO YOU ACTUALLY DO SOME TYPE OF TEST OR SOME TYPE
20 OF ESTIMATION OF THE WEIGHT OF THE DRUGS?

21 A YES, WE DO.

22 Q HOW DO YOU DO THAT?

23 A WE DO THAT BY - WE'VE GOT SEVERAL DIFFERENT SETS OF
24 SCALES AT OUR OFFICE, AND WE DO NOT REMOVE THE DRUGS
25 FROM THE PACKAGES, BUT WE JUST WEIGH TO GIVE A ROUGH

1 ESTIMATE AS TO WHAT WE THINK THE DRUGS WEIGHT.

2 Q SO IT IS UNUSUAL FOR YOUR WEIGHT TO DIFFER FROM THE
3 WEIGHT ONCE IT'S SENT AND TESTED AT SLED?

4 A NO, SIR. BECAUSE SLED EXAMINES IT WITHOUT PACKAGING. WE
5 DON'T REMOVE IT FROM THE PACKAGING BECAUSE A OBVIOUSLY
6 WE'RE NOT IN A CONTROLLED ENVIRONMENT AND THE FEAR OF
7 LOSING DRUG EVIDENCE. SO WE DON'T REMOVE IT FROM THE
8 PACKAGING, WE JUST PUT IT ON THE SCALES AND WHATEVER
9 READING WE GET, THEN THAT GIVES US A ROUGH ESTIMATE AS
10 TO WHAT IT IS.

11 Q AND IN YOUR PARTICULAR SITUATION, DID YOU ESTIMATE 142
12 GRAMS?

13 A THAT'S WHAT I ESTIMATED, YES, SIR.

14 Q NOW IF I COULD WITH THE COURT'S PERMISSION ASK YOU TO
15 STEP DOWN AGAIN, WE'RE GOING TO TRY THE VIDEO.

16 MR. WATSON: I WONDER IF WE COULD
17 DO CROSS EXAMINATION BEFORE THE VIDEO?

18 THE COURT: IS HE GOING TO OFFER
19 ANY TESTIMONY DURING THE VIDEO, OR IS HE JUST GOING TO
20 TURN ON THE MACHINE?

21 MR. REDMOND: I'M GOING TO - THAT'S
22 WHY I ACTUALLY HAD HIM TESTIFY FIRST BECAUSE, YOU KNOW, I
23 UNDERSTAND LETTING THE TAPE SPEAK FOR ITSELF, SO
24 ANTICIPATING THAT, THIS WAS ACTUALLY GOING TO CONCLUDE
25 WITH THE TAPE.

1 THE COURT: ALL RIGHT, WE'LL HAVE
2 CROSS EXAMINATION THEN.

3 CROSS EXAMINATION BY MR. WATSON:

4 Q MAY I SEE YOUR WARNING BOOK, PLEASE, SIR?

5 A EXCUSE ME?

6 Q MAY I SEE THE DILLON CITY, DILLON I.C.E. WARNING BOOK IN
7 YOUR POSSESSION?

8 THE COURT: WARNING BOOK?

9 MR. WATSON: YES, SIR.

10 MR. REDMOND: YOUR HONOR, HE'S
11 NEVER ACTUALLY INDICATED ONE WAS IN HIS POSSESSION. NO
12 OBJECTION FROM THE STATE.

13 BY MR. WATSON:

14 Q YOU SPOKE IN GREAT VOLUME ABOUT A BEST BAG, BUT I DID
15 NOT HEAR YOU MENTION THE SLED DRUG ANALYSIS REQUEST
16 WHICH YOU COMPLETED IN THIS CASE. TELL ME ABOUT THAT
17 DOCUMENT. GOT IT?

18 A YES.

19 Q WHAT'S THE CONTROL NUMBER AT THE RIGHT TOP CORNER?

20 A IT APPEARS TO BE 171---

21 Q 339?

22 A ---339.

23 Q WHERE DOES IT APPEAR ON THAT BEST BAG?

24 A RIGHT HERE.

25 Q ALL RIGHT. NOW, WHAT IS THE DATE OF THE INCIDENT?

1 A THE INCIDENT DATE WAS FEBRUARY THE 28TH, I BELIEVE, 2006.

2 Q AND WHO DOES IT LIST AS DEFENDANTS, MR. LANE?

3 A ON THE ANALYSIS REQUEST?

4 Q YES, SIR.

5 A IT LISTS ARTIE TYRONE BURNS AND JOHNNY JONES.

6 Q ALL RIGHT, GO WITH ME NOW TO THE BOTTOM WHERE IT SAYS

7 "EVIDENCE," I WANT YOU TO READ TO THE JURY WHAT YOU

8 TOLD SLED YOU WANTED TO BE ANALYZED.

9 A "TWO CLEAR PLASTIC BAGS CONTAINING WHITE POWDER
10 SUBSTANCE."

11 Q DIDN'T HEAR YOU.

12 A "TWO PLASTIC BAGS CONTAINING WHITE POWDER SUBSTANCE."

13 Q NOW, AIN'T NOTHING ON THAT ABOUT 15 OR 20 OTHER BAGS,
14 IS THERE?

15 A NO, SIR, NOT ON HERE.

16 Q AIN'T NOTHING ON THERE ABOUT SOMETHING BEING INSIDE
17 SOMETHING ELSE, IS THERE?

18 A I'M SORRY?

19 Q AIN'T NOTHING ABOUT COCAINE BEING WRAPPED UP IN
20 SOMETHING AND NOT BEING WRAPPED, THE ONLY THING YOU
21 ASKED FOR IS TWO CLEAR---

22 MR. REDMOND: YOUR HONOR, I'M
23 GOING TO OBJECT. THAT'S A COMPOUND QUESTION, OR I'M NOT
24 EVEN SURE IF THERE IS A QUESTION IN THERE.

25 BY MR. WATSON:

1 Q THERE IS NOTHING IN YOUR ANALYSIS REPORT THAT SAYS THERE
2 IS BAGS WITHIN BAGS, IS THERE?

3 A NO, SIR.

4 Q ALL RIGHT. LET'S GO TO YOUR REPORT ON THE EVENT OF
5 FEBRUARY THE 28TH, 2006. WHEN DID YOU FILE IT WITH THE
6 CLERK OF COURT?

7 A I NEVER FILED IT WITH THE CLERK OF COURT.

8 Q YOU WOULD ADMIT THAT IT'S BEEN FILED?

9 A I WOULD. I'VE SEEN A FILED DOCUMENT.

10 Q NOW, LET'S GO TO HOW MANY BAGS YOU SAID YOU FOUND IN
11 THAT REPORT; WHAT DOES YOUR REPORT SAY, ONE OR TWO?

12 A TWO.

13 Q AND IT DOESN'T SAY ANYTHING ABOUT A BAG BEING WITHIN A
14 BAG, DOES IT?

15 A NO, SIR.

16 Q OKAY. THIS RENTAL AGREEMENT, WHEN DID YOU TALK TO THE
17 PERSON WHO RENTED THE CAR?

18 A I HAVE NOT TALKED WITH THE PERSON WHO RENTED THE
19 VEHICLE.

20 Q WHEN WERE THE DRUGS YOU SAY YOU FOUND IN THAT CAR PUT
21 IN THAT CAR?

22 A I HAVE NO IDEA.

23 Q WHO PUT THE DRUGS IN THE CAR?

24 A I DO NOT KNOW.

25 Q AND YOU CAN'T EVEN SAY THEY BELONG TO MY CLIENT.

1 THE COURT: IS THAT A QUESTION?

2 MR. WATSON: YES, SIR.

3 MR. REDMOND: I DIDN'T HEAR THE
4 QUESTION, YOUR HONOR.

5 MR. WATSON: I SAID HE COULD NOT
6 SAY THEY BELONGED TO MY CLIENT.

7 BY MR. WATSON:

8 Q AND YOUR ANSWER WAS?

9 A NO, SIR.

10 Q AND YOU CAN'T IDENTIFY THIS STUFF AS HAVING COME OUT OF
11 MY CLIENT'S CAR?

12 A NO, SIR.

13 Q AND THE COCAINE YOU FOUND WAS NOT IN PLAIN VIEW.

14 A THE COCAINE I FOUND---

15 Q THAT YOU SAY YOU FOUND WAS NOT IN PLAIN VIEW.

16 A NO, SIR.

17 Q NOW, YOU WENT THROUGH THIS LONG LIST OF QUESTIONS WITH
18 MR. REDMOND; YOU SAID THIS HAPPENED, THIS HAPPENED, THIS
19 HAPPENED, THEY DIDN'T KNOW THIS, THEY DIDN'T KNOW. . .AND
20 YOU STILL DIDN'T PLACE THEM UNDER ARREST UNTIL AFTER A
21 SEARCH, RIGHT?

22 A THAT'S CORRECT.

23 Q AND YOU DID NOT INVENTORY THAT CAR?

24 A NO, SIR.

25 Q AND YOU RETURNED THAT CAR BACK, YOU TURNED IT TO

1 IMPOUND.

2 A NO, I TURNED IT OVER TO THE WRECKER SERVICE.

3 Q WHO YOU SAY -- YOU PUT THE RENTAL AGREEMENT BACK IN

4 BECAUSE YOU WANTED IT TO BE WITH THE CAR BECAUSE IT

5 WAS ENTERPRISE, RIGHT?

6 A YES, SIR.

7 Q WOULDN'T YOU TELL ME THAT AS A RESULT OF YOUR TRAINING

8 WHEN YOU DO A SEARCH YOU COMPLETE AN INVENTORY?

9 A DO I COMPLETE AN INVENTORY?

10 Q WHEN YOU SEARCH A BUILDING, A PLACE, OR A VEHICLE, AND

11 FIND EVIDENCE OF ANY KIND, SIMILAR TO A SEARCH WARRANT

12 YOU DO AN INVENTORY. YOU LIST THOSE THINGS YOU FIND TO

13 BE CONTRABAND AND THOSE NOT TO BE CONTRABAND.

14 A I HAVE NOT.

15 Q YOU'VE NEVER DONE THAT?

16 A I HAVE MAYBE TWICE.

17 Q AND IT IS PREFERRED?

18 A YES.

19 Q BUT THAT WASN'T DONE, EITHER. NOW WE DON'T KNOW HOW

20 THE DRUGS GOT IN THE CAR, WE DON'T KNOW WHO PUT IT IN

21 THERE, YOU CAN'T IDENTIFY AND SAY THEY'RE MY CLIENT'S

22 DRUGS. IS THAT CORRECT SO FAR?

23 A THAT'S CORRECT.

24 Q NOW, YOU TALKED ABOUT WHAT IS ON YOUR TAPE AND YOU

25 SAID THAT YOU LEANED IN THE WINDOW TALKING TO MRS.

1 MCMILLAN'S CLIENT SO THAT WHAT COULD BE HEARD WOULD
2 BE CLEAR; IS THAT CORRECT?

3 A CLEARER.

4 Q BUT YOU WOULD AGREE WITH ME, SIR, THAT THERE IS NOTHING
5 ON THIS TAPE THE JURY'S ABOUT TO SEE THAT SAYS ANYTHING
6 ABOUT ANY WOMEN, ABOUT GOING TO ATLANTA, OR ANY OF
7 THOSE NEFARIOUS TRIPS THAT YOU'VE TALKED ABOUT, IS
8 THERE?

9 A I'M NOT SURE.

10 Q YOU WOULD AGREE THAT THERE ARE NOT?

11 A I'M NOT SURE.

12 Q BUT YOU WOULDN'T BE SURPRISED TO KNOW IF THAT WAS ON
13 THE TAPE?

14 A I AM NOT SURE.

15 Q OKAY. WHY DO YOU LIKE RENTAL CARS?

16 A I'M SORRY?

17 THE COURT: WHAT WAS YOUR
18 QUESTION?

19 BY MR. WATSON:

20 Q WHY DO YOU LIKE RENTAL CARS?

21 THE COURT: WHO SAID HE LIKED
22 THEM?

23 BY MR. WATSON:

24 Q I'LL REPHRASE THE QUESTION. WHY DO YOU LIKE RENTAL CARS
25 TO STOP?

- 1 A I DIDN'T KNOW I DID.
- 2 Q WELL, LET'S TAKE A LOOK STARTING WITH OUR CLIENT'S CASE,
3 WHICH I THINK IS 1428, AND I WANT YOU TO GO BACK 15 AND
4 TELL THIS JURY OUT OF THE 15 PREVIOUS WARNINGS THAT YOU
5 WROTE, HOW MANY OF THEM WERE RENTAL CARS?
- 6 A GO BACK 15?
- 7 Q YES, SIR. TAKE OUR CLIENTS AS THE STARTING POINT AND
8 BACK UP 15.
- 9 A IT'S EITHER THREE OR FOUR.
- 10 Q OKAY. IN YOUR JOB, WHY DO YOU LIKE LOOKING AT RENTAL
11 CARS?
- 12 A I'M NOT SURE I UNDERSTAND WHAT YOU MEAN.
- 13 Q YOU WOULD AGREE WITH ME THAT WHEN YOU STOP A RENTAL
14 CAR IT IS POSSESSED OR OWNED BY A COMPANY AND NOT AN
15 INDIVIDUAL?
- 16 A THAT IS CORRECT.
- 17 Q WOULD YOU AGREE WITH ME THAT SOMETHING COULD BE IN
18 THAT CAR UNKNOWN TO THE OCCUPANT OR DRIVER?
- 19 A I WOULD NOT AGREE.
- 20 Q YOU WOULDN'T?
- 21 A NO, SIR.
- 22 Q SO YOU'RE TELLING ME MY CLIENT HAD AN OBLIGATION TO
23 MOVE THAT TIRE BEFORE THEY MOVED, IF IN FACT THAT WAS IN
24 THERE?
- 25 A WELL THE FIRST BAG WAS SITTING ON TOP OF THE TIRE.

1 Q BUT YOU HAD TO SEARCH TO FIND IT?
2 A NOT THE FIRST BAG. I HAD TO PICK UP THE COMPARTMENT.
3 Q EXACTLY. BUT YOU DON'T KNOW WHO PUT IT IN THERE, RIGHT?
4 A NO, SIR.
5 Q YOU HAVE NO WAY TO SAY THAT IT EVEN BELONGED TO EITHER
6 ONE OF THE TWO CLIENTS ON TRIAL.
7 A I DO NOT.
8 Q WHY WOULD YOU TAKE BAGS AND MAKE THEM SO THEY
9 COULDN'T BE FINGERPRINTED?
10 A I'M SORRY.
11 Q WHEN YOU PICKED UP EVERYTHING YOU DIDN'T PICK IT UP WITH
12 GLOVED HANDS, AS WOULD BE THE NORM, YOU PICKED IT UP
13 WITH BARE HANDS.
14 A THAT'S CORRECT.
15 Q WHY DID YOU DO THAT?
16 A I HAD NO INTENTIONS OF FINGERPRINTING TO BE QUITE HONEST.
17 Q WHY?
18 A JUST DID NOT.
19 Q WHY DID YOU NOT CONTACT THE PERSON WHO RENTED THE
20 CAR?
21 A I DON'T KNOW WHO MIKO WILLIAMS IS.
22 Q GOT AN ADDRESS ON YOUR RENTAL AGREEMENT, DOESN'T IT?
23 A I DON'T SEE ONE.
24 Q YOU DON'T?
25 A I MAY BE MISTAKEN.

1 Q WHAT'S THE TIME ON YOUR WARNING TICKET?

2 A THE TIME?

3 Q UM-HUH.

4 A I BELIEVE THE TIME WAS 9:45 A.M.

5 Q AND WHAT TIME, WHAT TIME DID YOU SAY THEY WERE
6 ARRESTED?

7 A SOMEWHERE SHORTLY THEREAFTER, SOMEWHERE IN THAT
8 VICINITY. I DID NOT PUT AN EXACT TIME, I PUT AN ESTIMATED
9 TIME ON THIS PARTICULAR WARNING, THE VIDEO. THE TIME MAY
10 BE DIFFERENT FROM THE CLOCK ON MY VEHICLE, I DON'T KNOW.

11 MR. WATSON: NOTHING FURTHER, YOUR
12 HONOR.

13 MRS. MCMILLAN: YOUR HONOR, IF I
14 MAY? MAY I APPROACH?

15 THE COURT: YOU MAY.

16 CROSS EXAMINATION BY MRS. MCMILLAN:

17 Q MAY I SEE YOUR TICKET BOOK AGAIN, PLEASE, SIR?

18 A YES, MA'AM.

19 Q I WANT YOU TO START AT TICKET NUMBER 1405 AND GIVE ME
20 THE NAME OF THE DRIVER, THE OPERATOR OF THE VEHICLE,
21 ONLY THIS RENTAL, IF YOU WOULD.

22 MR. REDMOND: YOUR HONOR, I'M
23 ACTUALLY HAVING TROUBLE HEARING MRS. MCMILLAN. IF SHE'D
24 SPEAK UP A LITTLE?

25 THE COURT: I AM, TOO.

1 BY MRS. MCMILLAN:

2 Q IF YOU WILL, I'M GOING TO START AT TICKET NUMBER 1405,
3 WHICH IS A RENTAL CAR WARNING TICKET. I'D LIKE FOR YOU TO
4 TELL THE JURY WHAT DATE YOU ISSUED THE TICKET, TO WHOM
5 YOU ISSUED IT, THEIR RACE, THEIR SEX, AND WHAT RENTAL CAR
6 COMPANY.

7 A THE FIRST ONE IS ERIC JAMES BATSON*, IT'S AN ENTERPRISE
8 RENTAL, ISSUED ON AUGUST 12TH, 2005, HE WAS A WHITE
9 MALE.

10 Q GO TO THE NEXT ONE.

11 MR. REDMOND: I DIDN'T HEAR THAT.

12 THE COURT: GO TO THE NEXT ONE.

13 MR. REDMOND: NO, I MEAN BEFORE
14 THAT WHAT HE READ ON THE TICKET, THE LAST PART.

15 THE COURT: WHAT DID YOU SAY?

16 THE WITNESS: I ISSUED THIS WARNING
17 ON AUGUST THE 12TH, 2005 AND THE SUBJECT WAS A WHITE
18 MALE.

19 BY MRS. MCMILLAN:

20 Q NEXT ONE?

21 A THE NEXT WAS SHAHIN, S-H-A-H-I-N MUHAMMED*. THE DATE OF
22 THE WARNING WAS AUGUST THE 24TH, 2005, IT WAS AN
23 ENTERPRISE RENTAL, AND HE WAS A WHITE MALE. THE NEXT
24 WAS ON CYNTER* PEREZ,* IT WAS A THRIFY RENTAL ISSUED ON
25 OCTOBER 3RD, 2005, A WHITE MALE. THIS IS WILLIAM GLESIAS,

1 G-L-E-S-I-A-S, IT WAS A WHITE MALE, ISSUED ON OCTOBER THE
2 5TH, 2005. THIS IS AN AVIS RENTAL, AND I'M NOT SURE HOW
3 YOU PRONOUNCE THIS FIRST NAME.
4 Q SPELL IT.
5 A I-S-H-L-A-M ROBINSON. AND IT'S A BLACK MALE. THIS WAS
6 ISSUED ON OCTOBER 21ST, 2005. THE NEXT IS A HERTZ RENTAL,
7 S-A-C-H-A, OR S-A-C-B-A BRYANT, BLACK MALE, HERTZ RENTAL
8 ISSUED ON FEBRUARY 21ST, 2006. AND THEN MR. BURNS.
9 Q BLACK MALE?
10 A THAT'S CORRECT.
11 Q RENTAL CAR?
12 A THAT'S CORRECT.
13 Q THE WHITE MALES, WERE THEY ALL SWERVING, TOO? IS THAT
14 WHY YOU STOPPED THEM?
15 A I'M NOT SURE.
16 Q WHAT CITATION DID YOU GIVE THEM?
17 A I'M NOT SURE, I HAVE A VIOLATION CODE AND IT WAS 82 FOR
18 OTHER VIOLATIONS.
19 Q 82?
20 A THAT'S CORRECT.
21 Q DRIVING IN THE WRONG LANE IS NUMBER 29; IS THAT CORRECT?
22 A DRIVING IN THE WRONG LANE, THAT IS CORRECT.
23 Q OR WRONG SIDE OF THE ROAD. AREN'T THERE OTHER KINDS OF
24 THINGS IN THERE?
25 A ABSOLUTELY. THERE'S 4(B), WHICH IS FOLLOWING TOO CLOSE.

1 THERE'S TOO FAST FOR CONDITIONS.

2 Q SO YOU USE THAT NUMBER THAT YOU USED ON MR. BURNS JUST
3 AS A ROUTINE ALL-ENCOMPASSING CHARGE?

4 A NO, I DO NOT. THE VIOLATIONS THAT ARE NOT LISTED HERE,
5 AND IT IS A MOVING VIOLATION, THAT IS WHEN I PUT "82."

6 Q MY CLIENT WAS NOT DRIVING THE VEHICLE, WAS HE?

7 A NO, MA'AM.

8 Q AND DID HE APPEAR TO BE INTOXICATED TO YOU?

9 A NOT THAT I RECALL.

10 Q UNDER THE INFLUENCE OF ANY DRUGS OR ANYTHING?

11 A NOT THAT I RECALL.

12 MRS. MCMILLAN: THAT'S ALL I HAVE,
13 YOUR HONOR.

14 REDIRECT EXAMINATION BY MR. REDMOND:

15 Q THE PART ABOUT THE EVIDENCE BAG, JUST TO CLARIFY ONE
16 MORE TIME. WHEN YOU PUT THE - AND IF I MAY APPROACH THE
17 WITNESS, FOR THE RECORD, I'M GOING TO PULL OUT THE FIRST
18 BAG THAT YOU DISCUSSED AND I'M GOING TO HAND THAT TO
19 YOU; IS THAT THE BAG THAT YOU PLACED THE EVIDENCE IN?

20 A THAT IS.

21 Q AND THAT BAG IS SEALED. IN OTHER WORDS, DO YOU SEAL
22 THAT BAG?

23 A THAT'S CORRECT.

24 Q AND COULD YOU EXPLAIN WHAT THE SIGNIFICANCE OF SEALING
25 THE BAG IS?

- 1 A BY SEALING IT, THAT WAY IF I WERE TO GO BACK TO IT TO
2 RETRIEVE IT FROM THE VAULT, THEN IF IT WERE TAMPERED WITH
3 IN ANY WAY, THEN I WOULD KNOW. BECAUSE IT WOULD BE CUT
4 OPEN OR YOU COULD SEE ON THIS TAMPER-PROOF SEAL WHERE
5 SOMEONE HAD TAMPERED WITH IT.
- 6 Q SO WHEREVER THAT BAG ENDED UP, ONCE IT'S SEALED IF IT
7 HAD BEEN TAMPERED WITH, WHOEVER GOT IT WOULD BE ABLE
8 TO TELL IT WAS TAMPERED WITH ; IS THAT CORRECT?
- 9 A THAT'S CORRECT.
- 10 Q THANK YOU. NOW WHEN YOU STOP A VEHICLE - THERE WAS
11 SOME ALLUSION TO THE FACT THAT YOU LIKED STOPPING
12 RENTAL VEHICLES, OR SOMETHING TO THAT EFFECT - DO YOU
13 KNOW IT'S A RENTAL BEFORE YOU ACTUALLY GET TO THE CAR
14 OR BEFORE YOU STOP THE VEHICLE?
- 15 A BEFORE I STOP IT, NO.
- 16 Q WELL AT WHAT POINT DO YOU FIND OUT THAT IT'S A RENTAL
17 VEHICLE?
- 18 A IF I WERE TO WALK UP TO THE VEHICLE AND SEE A - YOU COULD
19 SEE A SMALL BAR CODE THAT WOULD BE IN THE BACK GLASS
20 OR FRONT GLASS, OR A KEYCHAIN THAT SAYS "ENTERPRISE
21 RENTAL," OR A RENTAL AGREEMENT.
- 22 Q OR A RENTAL AGREEMENT. AND DID YOU GET A RENTAL
23 AGREEMENT FROM THE DEFENDANT?
- 24 A THAT'S CORRECT.
- 25 Q AND AT THE TIME YOU STOP IT, YOU SAID ONCE YOU WALK UP

1 TO THE VEHICLE. WOULD YOU WALK UP TO THE VEHICLE AFTER
2 YOU HAD STOPPED THEM?

3 A NO, SIR - YES, YES, YES.

4 Q I MEAN AFTER YOU STOP THEM, YOU WALK UP TO THE VEHICLE.

5 A RIGHT.

6 Q AND WOULD YOU ALSO HAVE ALSO ALREADY SEEN THE CAR
7 SWERVING INTO---

8 MR. WATSON: OBJECTION, LEADING.

9 THE COURT: OVERRULED. HE'S GIVING

10 AN EXAMPLE.

11 BY MR. REDMOND:

12 Q WOULD YOU ALREADY HAVE SEEN THE CAR SWERVING AS YOU
13 HAD TESTIFIED TO EARLIER, SWERVING INTO ANOTHER LANE?

14 A YES.

15 Q NOW, LET'S TALK ABOUT I-95.

16 MR. WATSON: OBJECTION, THIS IS
17 REDIRECT, ONLY TO ENCOMPASS THINGS TAKEN UP ON MY
18 CROSS EXAMINATION. THIS IS NEW MATERIAL.

19 THE COURT: I'M GOING TO FIND OUT
20 WHAT THE QUESTION IS FIRST. YOU CAN OBJECT AFTER THE
21 QUESTION, IF YOU WANT.

22 BY MR. REDMOND:

23 Q DO YOU ENCOUNTER A LOT OF TRAFFIC ON I-95 FROM
24 TRAVELER'S OUT OF STATE BOTH NORTH AND SOUTH?

25 A YES.

1 MR. WATSON: I'M GOING TO RENEW MY
2 OBJECTION.

3 THE COURT: OVERRULED.

4 BY MR. REDMOND:

5 Q AND WITH THAT, BASED ON YOUR EXPERIENCE AS A LAW
6 ENFORCEMENT OFFICER, HOW WOULD YOU CLASSIFY I-95 AS IT
7 RELATES TO VOLUME OF CARS; IS IT A VERY BUSY HIGHWAY?

8 A I WOULD SAY AT TIMES IT'S AN EXTREMELY BUSY HIGHWAY.

9 Q IS IT UNUSUAL FOR YOU TO ENCOUNTER A RENTAL VEHICLE IN A
10 TRAFFIC STOP, GIVEN THE VOLUME OF TRAFFIC ON I-95?

11 A NO.

12 Q NOW LET'S TALK ABOUT THE CHARGES THAT YOU BROUGHT.
13 WHAT DID YOU CHARGE THEM WITH?

14 A THE DEFENDANTS WITH?

15 Q YES.

16 A TRAFFICKING COCAINE.

17 Q AND YOU'VE TESTIFIED BECAUSE YOU WERE ASKED ON CROSS
18 ABOUT WHETHER YOU KNEW THAT THE DRUGS WERE THERE, OR
19 WHAT NOT. LET'S GO BACK TO THOSE INDICATORS THAT YOU
20 TESTIFIED ABOUT.

21 MR. WATSON: OBJECTION, INDICATORS
22 WERE NOT DONE IN CROSS EXAMINATION, THAT WAS DONE ON
23 DIRECT.

24 THE COURT: WHERE ARE YOU GOING
25 WITH THE REDIRECT?

1 MR. REDMOND: I WAS JUST GOING TO
2 ASK HIM CONCERNING THE FACT THAT MR. WATSON ASKED HIM
3 WELL YOU DIDN'T SEE -- CAN YOU SAY THAT THAT WAS THERE
4 DRUGS, AND WHATNOT, AND, AGAIN, BASED ON THE CROSS
5 EXAMINATION I'M ACTUALLY - AGAIN, HE ASKED HIM ABOUT IF
6 YOU CAN'T SAY THAT IT WAS THEIR DRUGS, YOU DON'T KNOW
7 THAT IT WAS THEIR DRUGS, ETCETERA, ETCETERA, ETCETERA.
8 AND SO I'M JUST ADDRESSING THAT TO CLARIFY.

9 THE COURT: VERY WELL, I'LL ALLOW
10 IT.

11 MRS. MCMILLAN: NOTE MY OBJECTION,
12 TOO, YOUR HONOR.

13 THE COURT: WELL HE HASN'T EVEN
14 ADDRESSED YOUR CROSS YET, HE'S TALKING ABOUT THE FIRST
15 CROSS EXAMINATION RIGHT NOW. I DON'T KNOW THAT YOU
16 CAN OBJECT TO SAYING IT'S NOT SOMETHING YOU BROUGHT UP
17 ON CROSS WHEN HE'S DIRECTING HIS REDIRECT TO SOMETHING
18 THAT'S BROUGHT UP BY ANOTHER LAWYER ON CROSS
19 EXAMINATION.

20 MRS. MCMILLAN: JUST FOR
21 CLARIFICATION, YOUR HONOR, I WAS TALKING ABOUT THE
22 ATTRIBUTES THAT HE GAVE WHEN HE WAS ANSWERING MR.
23 KINARD'S QUESTIONS, THE TYPES OF INDICATORS. AND THAT
24 WAS ON DIRECT, AND HE'S DREDGING DIRT THAT HE'S ALREADY
25 DUG UP ON DIRECT.

1 THE COURT: I OVERRULE YOU. I'M NOT
2 SURE I UNDERSTOOD, BUT I OVERRULE IT ANYWAY. GO AHEAD.

3 BY MR. REDMOND:

4 Q DID YOU NOTICE INCONSISTENCIES IN THE DEFENDANTS'
5 STATEMENTS?

6 A YES.

7 Q DID THAT GIVE YOU CONCERN?

8 A THAT DID. THAT WAS THE ENTIRE BASIS FOR ASKING FOR A
9 CONSENT TO SEARCH.

10 Q AND YOUR CONCERN WAS WHAT?

11 A THE CONCERNS - THERE WERE NUMEROUS CONCERNS AS TO THE
12 FACTS THAT THE DEFENDANTS KNOW EACH OTHER, DIDN'T
13 KNOW WHO RENTED THE VEHICLE, NO LUGGAGE, THERE WERE, I
14 MEAN JUST A LIST OF DIFFERENT THINGS THAT YOU WOULD NOT
15 ENCOUNTER IN A NORMAL TRAFFIC STOP THAT LED ME TO
16 BELIEVE THAT THERE WAS CRIMINAL ACTIVITY.

17 Q AND DID YOUR EXPERIENCE AS A LAW ENFORCEMENT OFFICER
18 WORKING TRAFFIC LEAD YOU TO REQUEST A SEARCH?

19 A YES.

20 Q AND DID YOU FIND ANYTHING BASED ON YOUR SUSPICIONS?

21 A I DID.

22 Q AND WHAT, AGAIN, DID YOU FIND?

23 A OVER 100 GRAMS OF COCAINE.

24 Q WOULD IT BE FAIR TO SAY THAT YOUR SUSPICIONS WERE---

25 MR. WATSON: OBJECTION.

1 THE COURT: NO SIR, THAT'S LEADING.

2 MR. REDMOND: I'LL WITHDRAW THAT.

3 NOTHING FURTHER, YOUR HONOR.

4 RECROSS EXAMINATION BY MR. WATSON:

5 Q MR. REDMOND WAS TALKING TO YOU ABOUT THE BEST BAG AND
6 IT BEING OPENED BY YOU, AND YOU SAID IT COULD BE RE-
7 SEALED. IF THIS WERE SEALED BACK UP TODAY IT WOULD NOT
8 SHOW ANYTHING THAT HAD BEEN TAKEN OUT OR PUT BACK IN
9 THIS BAG, WOULD IT?

10 A I DON'T UNDERSTAND YOUR QUESTION.

11 Q MR. REDMOND ASKED YOU WHETHER OR NOT IF YOU TOUCHED
12 THIS BAG OR FIDDLER WITH THIS BAG IF IT WOULD SHOW
13 TAMPERING. YOUR ANSWER WAS YES. WHAT I ASK YOU, SIR, IS
14 YOU CUT THE BAG OPEN, YOU TOOK STUFF OUT, AND YOU PUT
15 STUFF BACK IN. WHAT HAPPENS IS IT GETS RESEALED, RIGHT?

16 A WELL, NOW THAT BAG THAT I CUT OPEN IS NOT MY BAG.

17 Q I UNDERSTAND, BUT YOU SAID IT WOULD SHOW TAMPERING, YOU
18 AGREE WITH THAT?

19 A ON MY BAG IT WOULD.

20 Q DO YOU ADMIT OR DENY THAT IT WOULD SHOW TAMPERING ON
21 THE BEST BAG?

22 A ON THE BEST BAG?

23 Q YEAH.

24 A IF SOMEONE WERE TO OPEN IT?

25 Q YEAH.

1 A YES.

2 Q BUT YOU WOULD ALSO ADMIT THAT IF SOMEBODY OPENED IT

3 AND HEAT-SEALED IT BACK UP, THERE IS NO WAY YOU COULD

4 TELL BY LOOKING AT THE BAG WHAT WAS TAKEN OUT OR PUT

5 BACK IN?

6 A ALL THE BAGS ARE NOT HEAT-SEALED.

7 Q THIS BAG IS WHAT I'M TALKING ABOUT.

8 A BUT THAT'S NOT MY BAG.

9 Q WELL I'M GOING TO GO BACK TO YOUR ANSWER TO MR.

10 REDMOND FOR A SECOND. IS THIS YOUR BEST BAG?

11 A THAT IS MY BAG, YES, SIR.

12 Q NOW IT IS SIMILAR TO THIS OR NOT SIMILAR TO THIS?

13 A I DO NOT THINK SO.

14 Q YOU WOULD AGREE THAT THIS IS A HEAT-SEALED BAG,

15 WOULDN'T YOU?

16 A THAT IS A HEAT-SEALED BAG, MY BAG IS NOT.

17 Q ALL RIGHT. WHAT ON THIS BAG, ONCE IT IS DELIVERED TO SLED

18 AND OPENED AS YOU OPENED THIS BAG, YOURS, SLEDS, YOURS,

19 SLEDS, SHOWS HOW YOU CAN TELL NOTHING HAS BEEN

20 CHANGED IN THE BAG YOU OPENED? YOU CAN'T, CAN YOU?

21 THE COURT: COUNSEL, I'M NOT SURE I

22 UNDERSTAND THE QUESTION.

23 THE WITNESS: I'M NOT SURE I

24 UNDERSTAND WHAT YOU'RE ASKING.

25 MR. REDMOND: OBJECTION---

1 THE COURT: I DON'T NEED ANYTHING.
2 FIRST OF ALL, THERE'S TWO SEPARATE BAGS, TWO SEPARATE
3 WAYS TO OPEN THEM. NOW YOU SAY YOU OPENED IT, YOU JUST
4 SAID YOU DID THIS. NO, HE DIDN'T. SEE IF YOU CAN CLARIFY
5 THE QUESTION, MR. WATSON.

6 BY MR. WATSON:

7 Q WHEN YOU AND THE ASSISTANT SOLICITOR WERE TALKING HE
8 ASKED YOU TO OPEN THIS BAG WHICH HAS BEEN MARKED FOR
9 IDENTIFICATION AS NUMBER THREE. MR. REDMOND ASKED YOU
10 TO OPEN THAT BAG, RIGHT?

11 A YES.

12 THE COURT: CUT IT OPEN.

13 THE WITNESS: YES, SIR.

14 BY MR. WATSON:

15 Q YOU TOLD MR. REDMOND THAT SOMETHING YOU FOUND IN
16 THERE, THIS BEST BAG, WAS SOMETHING THAT YOU USED AT
17 THE CRIME SCENE, IS THAT RIGHT, OR AFTER YOU MADE THE
18 ARREST?

19 A THAT'S CORRECT.

20 Q THERE IS NOTHING IN YOUR BAG, OR THE BAG THAT WAS
21 OPENED BY YOU FOR IDENTIFICATION, WHICH IS STATE'S NUMBER
22 THREE, THERE'S NO WAY TO TELL WHETHER THE CONTENTS OF
23 THE BAG YOU OPENED HAD BEEN FIDDLER WITH.

24 A THIS BAG?

25 Q YES, SIR. YOU CAN'T TELL.

1 A ALL I CAN TELL YOU IS FROM THE TIME I RECEIVED IT---

2 Q UNTIL TODAY.

3 A RIGHT, WHEN I RECEIVED IT TODAY.

4 Q AND YOU WOULD AGREE WITH ME, EVERY TIME YOU WROTE
5 SOMETHING DOWN YOU SAID TWO BAGS?

6 A I DID, YOU'RE ABSOLUTELY RIGHT.

7 Q AND YOU WOULD AGREE WITH ME YOU CANNOT ASSOCIATE
8 WHAT'S IN STATE'S EXHIBIT NUMBER THREE WITH EITHER OF THE
9 DEFENDANTS? YOU CAN'T TELL ME THEY PUT IT IN THE CAR,
10 CAN YOU?

11 A NO, SIR, I CANNOT.

12 Q YOU CAN'T TELL ME IT BELONGED TO THEM, CAN YOU?

13 A I CAN TELL YOU I BELIEVED IT DID.

14 Q BUT YOU CAN'T TELL ME THAT IT DID, YOU DON'T KNOW WHEN
15 IT WAS PUT IN THERE.

16 A YOU'RE ABSOLUTELY RIGHT.

17 Q YOU CAN'T EVEN TELL ME IF IT WAS PUT IN THE CAR PRIOR TO
18 THE RENTAL AGREEMENT IN YOUR POSSESSION.

19 MR. REDMOND: YOUR HONOR, I
20 ACTUALLY DIDN'T HEAR THAT QUESTION, HE WAS TALKING SO
21 FAST.

22 THE COURT: REPEAT YOUR QUESTION.

23 BY MR. WATSON:

24 Q YOU CAN'T TELL ME IF THOSE DRUGS WERE IN THAT RENTAL
25 CAR PRIOR TO THE EXISTENCE OF THE RENTAL AGREEMENT IN

1 YOUR POSSESSION?

2 A NO, SIR.

3 Q AND THERE'S NO WAY ANYONE CAN?

4 A YOU'RE RIGHT.

5 Q AND IF I WANTED TO FINGERPRINT THE PLASTIC BAGS THAT YOU
6 HAD I COULDN'T NOW WITH ANY CERTAINTY BECAUSE THEY
7 WERE TOUCHED WITH CLEAN HANDS AND NOT A GLOVE, RIGHT?

8 A I'M SURE THEY PROBABLY STILL COULD BE FINGERPRINTED AND
9 JUST ELIMINATE ME AS AN INDIVIDUAL ON THE BAG. BUT YOU
10 WOULD ALSO HAVE TO ELIMINATE WHOMEVER ELSE TOUCHED IT
11 AT SLED.

12 Q WHY WOULDN'T WHO TOUCHED THE BAGS BE OF INTEREST TO
13 YOU?

14 A ARE YOU ASKING ME? CAN YOU REPEAT THAT ONCE MORE?

15 Q WHY WOULDN'T WHO TOUCHED THOSE BAGS BE OF INTEREST
16 TO YOU IN YOUR INVESTIGATION?

17 A BECAUSE THE TWO DEFENDANTS WERE IN THE VEHICLE, I HAVE
18 THIS LIST OF INDICATORS, AND THEY WERE PRETTY WELL
19 CAUGHT RED-HANDED.

20 Q BUT YOU DON'T KNOW HOW LONG IT WAS IN THERE, YOU DON'T
21 KNOW WHO PUT IT IN THERE; THAT'S YOUR TESTIMONY?

22 A THAT'S CORRECT.

23 Q SO THE HANDS---

24 MR. REDMOND: I DIDN'T HEAR THE
25 LAST QUESTION.

1 THE COURT: I DIDN'T EITHER.

2 MR. REDMOND: UNLESS IT WAS A
3 QUESTION I WOULD OBJECT TO IT.

4 MR. WATSON: I'LL WITHDRAW IT.

5 THE COURT: WHAT WAS THE LAST
6 QUESTION?

7 MR. WATSON: I SAID THE HANDS
8 AREN'T VERY RED IF YOU CAN'T TELL, IF IT AIN'T THERE, OR YOU
9 DON'T KNOW IT'S THERE THEN THE HANDS AREN'T VERY RED.

10 THE WITNESS: I'VE ALREADY SAID
11 THAT I FELT LIKE THEY WERE CAUGHT RED-HANDED.

12 MR. WATSON: BUT YOU ALSO SAID
13 YOU DON'T WHOSE IT WAS.

14 MR. REDMOND: YOUR HONOR, I WOULD
15 OBJECT. ASKED AND ANSWERED THREE TIMES. I WOULD
16 OBJECT, IT'S BEEN ASKED AND ANSWERED OVER AND OVER
17 AGAIN.

18 THE COURT: THIS IS THE LAST TIME,
19 ASK HIM.

20 MR. WATSON: YES, SIR. YOU SAID YOU
21 DIDN'T KNOW WHOSE IT WAS?

22 THE WITNESS: THAT'S CORRECT.

23 MR. WATSON: THANK YOU, SIR. NO
24 MORE QUESTIONS.

25 BY MR. REDMOND:

1 Q BUT I HEARD YOU SAY EARLIER YOU BELIEVE BASED UPON THE
2 INDICATORS THAT IT WAS, AND THAT'S WHY YOU MADE THE
3 ARREST; IS THAT CORRECT?

4 A THAT'S CORRECT.

5 MR. REDMOND: NOTHING FURTHER. AT
6 THIS TIME, HOWEVER, I WOULD ASK IF WE COULD PLAY THE
7 TAPE FOR THE LADIES AND GENTLEMEN OF THE JURY.

8 (AT THIS TIME THE VIDEO TAPE WAS PLAYED.)

9 MR. REDMOND: YOUR HONOR, THAT'S
10 THE END OF IT.

11 THE COURT: HOW LONG WILL YOUR
12 NEXT WITNESS TAKE?

13 MR. REDMOND: I DON'T' KNOW. SHE
14 WILL BE MRS. STANLEY FROM SLED, THE ANALYST.

15 THE COURT: WE'RE GOING TO BREAK
16 FOR TODAY, THEN. IT'S TEN MINUTES TO FIVE, OR THEREABOUT.
17 NOW LADIES AND GENTLEMEN, DO NOT DISCUSS THE CASE
18 OVER THE EVENING. BE BACK IN THE JURY ROOM AT NINE-
19 THIRTY AND WE'LL CONTINUE THE CASE AT THAT TIME. THANK
20 YOU.

21 -----AT THIS TIME THE PROCEEDINGS WERE ADJOURNED-----

22 THE COURT: GOOD MORNING. WE'RE
23 WAITING FOR THE JURY TO COME BACK IN?

24 MRS. JOHNSON-LEE: JUDGE, WE HAVE
25 AN ISSUE CONCERNING A STATEMENT THAT WAS MADE DURING

1 OPENING ARGUMENTS BY MR. WATSON THAT WOULD OPEN THE
2 DOOR TO THE REMAINDER OF THE TAPE COMING INTO EVIDENCE.
3 DURING OPENING ARGUMENT, HE SAID TO THE JURORS THAT
4 NOBODY ASKED HIS CLIENT IF IT WAS HIS DOPE.

5 AND THE END OF THE VIDEO TAPE, WHICH HE HAD
6 EARLIER ASKED TO BE EXCLUDED, CONCERNS SGT. LANE
7 QUESTIONING MR. BURNS AS TO WHETHER OR NOT IT WAS HIS
8 DOPE AND WAS TELLING HIM WHY DON'T YOU GO AHEAD AND
9 COME CLEAN NOW. BUT WE FEEL THAT BY MR. WATSON MAKING
10 THAT STATEMENT, THAT OPENED THE DOOR TO THE REST OF
11 THE TAPE COMING IN, SO THE JURY CAN SEE THAT HE DID AT
12 LEAST TRY TO TALK TO HIM TO FIND OUT IF IT WAS HIS DOPE.

13 THE COURT: CAN YOU STIPULATE THAT
14 IT WAS SAID?

15 MR. WATSON: I CAN STIPULATE TO
16 THE FACT THAT THEY ASKED MY CLIENT, IS THIS YOUR DOPE,
17 AND HE SAID ABSOLUTELY NOTHING. I CANNOT STIPULATE TO
18 THE FACT THAT THE BALANCE OF THAT TAPE WOULDN'T BE AN
19 IMPROPER COMMENT UPON HIS RIGHT TO REMAIN SILENT.
20 BECAUSE HE SAID ABSOLUTELY NOTHING.

21 THE COURT: SHE SAID YOUR
22 STATEMENT WAS THAT NOBODY ASKED HIM IF IT WAS HIS DOPE.

23 MR. WATSON: NO, WHAT THEY ASKED
24 HIM WAS, TELL ME WHAT'S GOING ON. I GOT ANSWERS TO
25 MOST OF MY QUESTIONS HERE. BUT THEY NEVER SPECIFICALLY

1 SAID, IS THIS YOUR DOPE.

2 MRS. JOHNSON-LEE: BUT THE
3 QUESTIONING BY SGT. LANE WAS TO GET AT IS THIS YOUR DOPE,
4 TELL ME WHAT YOU KNOW ABOUT IT. THAT WAS THE WHOLE
5 BASIS FOR THOSE QUESTIONS. AND THE IMPRESSION THAT THE
6 JURORS OBVIOUSLY WOULD HAVE GOTTEN FROM THE OPENING
7 ARGUMENT OF MR. WATSON IS THAT THEY WERE NEVER ASKED
8 AT ALL IF THEY HAD ANYTHING TO DO WITH THAT DOPE,
9 WHEN, IN FACT, ONE OF THEM WAS QUESTIONED ABOUT IT.

10 MR. WATSON: WHAT THE MADAME
11 ASSISTANT SOLICITOR HAS FAILED TO DO IN THE PRESENTATION
12 OF HER CASE WHEN SHE HAD MR. LANE ON THE STAND, SHE
13 HAD THE EXCELLENT OPPORTUNITY TO SAY, DID YOU ASK HIM
14 WAS IT HIS, DID YOU ASK HIM WAS IT HIS. AND SHE DIDN'T DO
15 IT. MR. REDMOND DIDN'T DO IT. NOW THEY WANT TO DO BY
16 BOOTSTRAP WHAT THEY DIDN'T DO ON DIRECT EXAMINATION.
17 THEY HAD THAT CHANCE BEFORE THEY FINISHED WITH MR.
18 LANE, THEY DIDN'T DO IT.

19 THE COURT: WELL YOU MADE A
20 MISSTATEMENT TO THE JURY, THOUGH, IF HE DID THAT, MR.
21 WATSON, AND THAT'S WHAT THEY'RE TRYING TO - IT SEEMS TO
22 ME THAT YOU MADE A POINT THAT THEY DON'T KNOW WHOSE
23 DOPE IT IS.

24 MR. WATSON: CORRECT.

25 THE COURT: THEY DON'T KNOW WHO

1 PUT IT IN THERE.

2 MR. WATSON: CORRECT.

3 THE COURT: THERE'S NOTHING TO TIE
4 THAT DOPE WITH THEM, OF COURSE OTHER THAN THE FACT
5 THAT IT WAS IN THE CAR THEY WERE DRIVING.

6 MR. WATSON: CORRECT.

7 THE COURT: AND THEN YOU SAY
8 NOBODY ASKED THEM IF IT WAS THEIR DOPE. WELL, THEY DID.
9 NOW WHEN YOU TELL THE JURY THAT, THEY THINK THAT'S A
10 FACT, AND THEY CAN REFUTE THAT FACT, BUT IT COMES IN AT
11 A TIME THAT HE DOESN'T HAVE TO ANSWER THE QUESTION.
12 AND HE DIDN'T ANSWER THE QUESTION.

13 MR. WATSON: HE REMAINED SILENT,
14 AS HE WAS ALLOWED TO DO.

15 THE COURT: THAT'S RIGHT. NOW,
16 SOMEHOW WITHOUT COMMENTING ON HIS SILENCE, WE NEED TO
17 CORRECT THAT MISSTATEMENT TO THE JURY.

18 MR. WATSON: I'M OPEN TO ANY
19 SUGGESTION BY STIPULATION OR ANYTHING ELSE. BUT I DON'T
20 BELIEVE THE TAPE SAYS, IS IT YOUR DOPE. I THINK MR. LANE
21 SAYS, I KNOW WHAT'S GOING ON HERE, WHAT DO YOU WANT
22 TO TELL ME.

23 THE COURT: WELL, WHAT DOES IT
24 SAY?

25 MR. REDMOND: WELL, YOUR HONOR, IF

1 I MAY SINCE MR. LANE IS MY WITNESS, THE TAPE ACTUALLY
2 GOES INTO, OF COURSE, HIM BEING READ HIS MIRANDA RIGHTS.
3 AND AT SOME POINT IN THE TAPE YOU COULD HEAR THE
4 PASSENGER WITH MR. LANE SAY SOMETHING TO THE EFFECT,
5 AND I HAD WRITTEN IT DOWN PREVIOUSLY IN VIEWING THE
6 TAPE, SOMETHING TO THE EFFECT OF YOU CAN GO AHEAD AND
7 TAPE IT, OR SOMETHING LIKE THAT, YOU CAN GO AHEAD AND
8 YOU CAN HEAR MR. LANE SAYING NO, YOU KNOW, I DON'T NEED
9 IT, OR SOMETHING TO THAT EFFECT. BUT THERE WAS A
10 COLLOQUY BETWEEN THE TWO OF THEM REGARDING THAT.

11 AND, AGAIN, AS YOUR HONOR SAID, MR. WATSON
12 OPENED THAT DOOR. ON THE TAPE YOU HEAR MR. LANE -
13 BECAUSE THAT'S THE POINT THAT WE QUIT - GIVE THE
14 MIRANDA RIGHTS. READ HIM HIS RIGHTS, EXPLAIN HIS RIGHTS,
15 WENT THROUGH ALL OF HIS RIGHTS; TO REMAIN SILENT, TO
16 HAVE AN ATTORNEY, TO REQUEST FOR ONE TO BE APPOINTED
17 FOR HIM, WENT THROUGH HIS RIGHTS COMPLETELY AND THEN
18 STARTED ASKING HIM ABOUT THE DRUGS.

19 MR. WATSON IN HIS OPENING STATEMENT HAS
20 OPENED THE DOOR TO THAT PART OF IT COMING IN BECAUSE OF
21 THE FACT THAT HE STOOD IN FRONT OF THE JURY AND SAID
22 THEY DIDN'T ASK HIM ANYTHING ABOUT THE DRUGS, IMPLYING
23 THAT WELL, WE JUST GOT THE DRUGS AND THAT WAS IT, WE
24 JUST ENDED EVERYTHING AND WENT ON. WHEN, IN FACT, SGT.
25 LANE DID ENGAGE IN QUESTIONING CONCERNING THE DRUGS.

1 MR. WATSON: THE ONLY QUESTIONS
2 AT 5573 AND 5602; IF YOU DON'T WANT TO HELP YOURSELF,
3 FINE. 5602; JUST TELL ME ONE WAY OR THE OTHER. THAT'S
4 WHAT WAS SAID.

5 THE COURT: WELL, MY SUGGESTION,
6 AND IT MIGHT BE MY RULING, I'LL HEAR FROM YOU, IS THAT
7 THEY MAY RECALL THE OFFICER AND ASK HIM THAT QUESTION.
8 AND HE CAN ANSWER IT THEY HAD EXERCISED THEIR RIGHT TO
9 REMAIN SILENT.

10 MR. WATSON: THERE'S AN ISSUE THAT
11 I DON'T WANT TO BE PUTTING MY CLIENT UP, BUT I NEED TO DO
12 IT IN CAMERA IN THE INFORMATION MRS. MCMILLAN SAYS
13 THROUGH HER CLIENT HE WAS THE PERSON ASKED IF IT WAS HIS
14 DOPE. NOW I DON'T KNOW IF YOU WANT TO PUT HIM UNDER
15 OATH AND ASK THAT OR NOT, BUT HE SAYS HE'S THE ONE WHO
16 WAS ASKED THAT. AND I WOULD HAVE - IF THAT IS IN FACT
17 THE CASE - I WOULD HAVE TOLD THE JURY THE TRUTH, THEY
18 DIDN'T ASK MY CLIENT.

19 MRS. JOHNSON-LEE: IF THAT IS SO,
20 THEN WE WOULD JUST ASK THAT IT BE STIPULATED ON THE
21 RECORD THAT IT WAS MR. WATSON'S PARTICULAR CLIENT WHO
22 WAS NEVER ASKED THAT QUESTION, THEN.

23 MR. WATSON: I'M NOT GOING TO
24 STIPULATE TO THAT BECAUSE I DIDN'T TELL THE JURY
25 ANYTHING WRONG.

1 MR. REDMOND: IF I MAY, YOUR HONOR.
2 HE SAID IT, EVEN THOUGH HE WAS SPEAKING ON BEHALF OF
3 HIM, AND REMEMBER THE NATURE OF HIS OPENING STATEMENT.
4 THERE'S ALLUSION BY BOTH COUNSEL THAT THEY MAY BE
5 WORKING TOGETHER. HE DID NOT SPECIFY HIS CLIENT, HE JUST
6 SAYS THAT THEY DIDN'T ASK QUESTIONS ABOUT THE DRUGS.

7 MRS. WATSON: MRS. MCMILLAN
8 OPENED FOR HER CLIENT. I DID NOT OPEN FOR BOTH
9 DEFENDANTS, NO, SIR, THAT DOG WON'T HUNT.

10 MR. REDMOND: BUT HE OPENED THE
11 DOOR WHEN HE SAID THEY NEVER QUESTIONED ABOUT THE
12 DRUGS.

13 MR. WATSON: NOT FOR HER CLIENT I
14 DIDN'T.

15 THE COURT: I'M NOT GOING TO ALLOW
16 IT. LET'S CONTINUE, I THINK THAT IS A PREJUDICIAL EFFECT,
17 THAT WOULD BE A COMMENT ON HIS RIGHT TO REMAIN SILENT.
18 AND I DON'T THINK HE OPENED THE DOOR TO ALLOW
19 QUESTIONS ABOUT DID YOU ASK HIM AND HE REFUSED TO
20 ANSWER.

21 MR. REDMOND: NOW WITH THAT, YOUR
22 HONOR, I WOULD JUST SIMPLY ASK, AT THIS POINT, OF COURSE
23 BEING IN LIMINE, AS IT RELATES BASED ON THE RULE, AND
24 AGAIN, WITH THE COURT'S RULING, WE OF COURSE ACCEPT
25 THAT, BUT FOR THE PURPOSES OF CLOSING ARGUMENTS, I

1 WOULD JUST ASK FOR A MOTION IN LIMINE AS IT RELATES TO
2 THAT PARTICULAR ISSUE BECAUSE THE COURT HAS RULED HE
3 DIDN'T OPEN THE DOOR BUT AGAIN I JUST WANT TO MAKE IT
4 CLEAR AND UNDERSTAND THAT HE SHOULD NOT BE ALLOWED
5 TO THEN TURN AND ARGUE THAT KNOWING THAT IN FACT
6 THERE WAS QUESTIONING ABOUT THE DRUGS.

7 THE COURT: WELL I'M IN A QUANDRY
8 HERE BECAUSE I DON'T WANT TO LEAVE THE JURY WITH A
9 FALSE IMPRESSION AND I WANT TO PROTECT THE DEFENDANT'S
10 RIGHT TO REMAIN SILENT AND NOT COMMENT ON THEIR
11 REFUSAL TO ANSWER QUESTIONS. AND WE CAN WORK IT ANY
12 WAY THAT YOU FOLKS CAN AGREE ON, OR I'LL MAKE A RULING.
13 BUT I'M GOING TO PROTECT THE BEST I CAN BOTH OF THOSE
14 SITUATIONS. IF THERE'S ANY STIPULATIONS THAT YA'LL CAN
15 MAKE THAT YOU CAN LIVE WITH ABOUT LETTING THE JURY
16 KNOW, IF THAT'S CURTAILING A CLOSING ARGUMENT OR
17 GRANTING SOME MOTION IN LIMINE - I NEVER HAVE HEARD OF
18 MOTION IN LIMINE ON A CLOSING ARGUMENT, BUT TO LIMIT THE
19 CLOSING ARGUMENT AS FAR AS COMMENTING ON MAKING
20 ANY KIND OF ARGUMENT THAT THEY NEVER ASKED THE
21 DEFENDANTS WHETHER OR NOT IT WAS THEIR DOPE.

22 MR. WATSON: I BELIEVE THAT IT IS
23 POSSIBLE FOR ME TO FASHION A CLOSING ARGUMENT FOR MY
24 CLIENT WITHOUT SAYING THEY WERE NEVER ASKED IF IT WAS
25 THEIR DOPE. I BELIEVE THAT I CAN DO THAT WITHOUT ANY

1 TROUBLE.

2 THE COURT: WILL THAT SATISFY YOU,
3 MR. REDMOND?

4 MR. REDMOND: YOUR HONOR, I
5 ACTUALLY WOULD HARKEN BACK TO INITIALLY WHEN THE
6 COURT HAD INDICATED IN ITS INSTRUCTIONS, BECAUSE,
7 REMEMBER, EVEN IN THE CONTEXT OF THE COURT'S
8 INSTRUCTION TO THE JURY, THE COURT WILL INSTRUCT THE
9 JURY THAT THE JURY CANNOT CONSIDER THE FACT THAT THEY
10 EXERCISED THEIR RIGHTS TO REMAIN SILENT.

11 THE COURT: IF, IN FACT, THEY DO.

12 MR. REDMOND: EXACTLY. AND I
13 WOULD SIMPLY SUGGEST THAT THE JURY BE MADE AWARE OF
14 THE FACT THAT THERE WERE QUESTIONS CONCERNING THE
15 DRUGS, THEIR CLIENTS EXERCISED THEIR RIGHTS TO REMAIN
16 SILENT.

17 MR. WATSON: WHEN YOU FIRST SPOKE
18 YOU SAID THAT YOU HAD MADE THE FACTUAL DETERMINATION
19 THAT MY COMMENTS ABOUT MY CLIENT HAD NOT OPENED THE
20 DOOR. MR. REDMOND ASKED FOR ONE THING, THAT I STAY
21 AWAY FROM THAT COMMENT. AND THEN HE ASKED YOU FOR A
22 MOTION IN LIMINE, WHICH YOU'VE NEVER HEARD OF IN A
23 CLOSING ARGUMENT, WHICH I SUBMITTED TO. NOW AS A
24 MOVING TARGET NOW THAT HE'S GOT WHAT HE WANTS, HE
25 WANTS SOMETHING ELSE.

1 I'M GOING TO STAY AWAY FROM THAT ISSUE ON
2 BEHALF OF MY CLIENT. NOW HE WANTS TO GO BACK INTO
3 MIRANDA, WHICH IS NOT PROPER---

4 MR. REDMOND: YOUR HONOR, I HATE
5 TO INTERRUPT, BUT HE SHOULD HAVE THOUGHT ABOUT THAT IN
6 HIS OPENING STATEMENT.

7 MR. WATSON: HE SHOULD HAVE
8 THOUGHT ABOUT WHAT HE ACCUSED ME OF.

9 MR. REDMOND: LET'S NOT TALK
10 ABOUT ACCUSATIONS IN THIS.

11 MR. WATSON: BE GLAD TO. LET'S
12 LOOK AT THE INDICTMENT.

13 THE COURT: WE'RE NOT GOING TO
14 HAVE ANY - DON'T COMMENT ON THAT MATTER IN YOUR
15 CLOSING ARGUMENT.

16 MR. WATSON: YES, SIR, NO PROBLEM

17 THE COURT: THAT'S IT.

18 MR. WATSON: THANK YOU, YOUR
19 HONOR.

20 THE COURT: ANYTHING FURTHER?

21 MRS. JOHNSON-LEE: NOTHING FROM
22 THE STATE.

23 THE COURT: LET'S GET THE JURY
24 BACK, PLEASE.

25 (AT THIS TIME THE JURY ENTERS THE COURTROOM.)

1 THE COURT: BE SEATED. THANK YOU.
2 WE'RE READY TO PROCEED WITH THE NEXT WITNESS, LADIES
3 AND GENTLEMEN. CALL YOUR NEXT WITNESS.

4 MRS. JOHNSON-LEE: WE'D CALL AGENT
5 KUKILA STANLEY.

6 Thereuupon, KUKILA STANLEY,
7 being first duly sworn, testified as follows:

8 DIRECT EXAMINATION BY MRS. JOHNSON-LEE:

9 Q MRS. STANLEY, WHAT AGENCY DO YOU WORK FOR?

10 A I WORK FOR THE SOUTH CAROLINA LAW ENFORCEMENT
11 DIVISION.

12 Q IN WHAT CAPACITY?

13 A I'VE BEEN HIRED TO BE A DRUG ANALYST.

14 Q HOW LONG HAVE YOU BEEN A DRUG ANALYST AT SLED?

15 MR. WATSON: IF IT PLEASE THE COURT,
16 YOUR HONOR, I CAN STIPULATE THAT SHE WORKS FOR THE
17 STATE LAW ENFORCEMENT DIVISION. I CAN STIPULATE THAT
18 SHE IS A CHEMIST. I CAN STIPULATE THAT SHE ANALYZED
19 DRUGS THAT WERE BROUGHT TO HER, PURPORTEDLY, IN THIS
20 CASE. AND I CAN STIPULATE AS TO WHAT SHE FOUND.

21 MRS. JOHNSON-LEE: CAN YOU
22 STIPULATE THAT SHE IS AN EXPERT IN THE FIELD OF CHEMICAL
23 ANALYSIS OF SUBSTANCES?

24 MR. WATSON: I STIPULATED TO HER
25 RESULTS, I GUESS I DID.

1 THE COURT: IS THAT A YES?

2 MR. WATSON: YES, SIR.

3 THE COURT: VERY WELL.

4 MRS. JOHNSON-LEE: THANK YOU.

5 THE COURT: I TOLD YOU LADIES AND
6 GENTLEMEN OF THE JURY, I TOLD YOU THAT YOU'D KNOW WHEN
7 A STIPULATION WAS, THAT THAT WAS A CONCLUSIVE FACT. SO
8 IT'S CONCLUSIVE ON THE POINT THAT THIS YOUNG LADY IS AN
9 EXPERT IN THE FIELD OF CHEMICAL ANALYSIS. AND IT'S
10 CONCLUSIVE THAT HER RESULTS ARE WHAT THEY ARE AND
11 THEY'RE ACCURATE. AND IT'S CONCLUSIVE THAT SHE IS
12 EMPLOYED BY THE SOUTH CAROLINA LAW ENFORCEMENT
13 DIVISION, OR SLED, AND I GUESS IT'S CONCLUSIVE THAT SHE'S
14 KUKILA STANLEY.

15 MR. WATSON: YES, SIR. AND I AM
16 TOLD MY COUNSEL, MRS. MCMILLAN, THAT THE STIPULATIONS
17 ARE FOR BOTH DEFENDANTS.

18 THE COURT: ALL RIGHT, THE
19 STIPULATIONS ARE FOR BOTH OF THE DEFENDANTS. YES,
20 MA'AM?

21 BY MRS. JOHNSON-LEE:

22 Q MRS. STANLEY, I'M GOING TO SHOW YOU WHAT'S BEEN MARKED
23 AS STATE'S EXHIBIT NUMBER THREE AND HAND THAT UP TO
24 YOU. AND THAT WAS OPENED---

25 MR. WATSON: OBJECTION TO THE

1 COLLOQUY OF WHEN IT WAS OPENED. THAT'S IMPROPER.

2 MRS. JOHNSON-LEE: ALL RIGHT,

3 WITHDRAWN.

4 BY MRS. JOHNSON-LEE:

5 Q DO YOU RECOGNIZE THAT ITEM?

6 A YES.

7 Q HOW IS IT THAT YOU CAN IDENTIFY THAT ITEM?

8 A I IDENTIFY IT BY THE LAB NUMBER, AND MY INITIALS, AND MY
9 HANDWRITING.

10 Q DID YOU WRITE THE LAB NUMBER ON THERE?

11 A YES, MA'AM.

12 Q WHEN WAS THAT ITEM SUBMITTED TO YOU?

13 A MAY I REFER TO MY NOTES?

14 Q YES, MA'AM, PLEASE.

15 A I RECEIVED THE EVIDENCE ON AUGUST THE 3RD, 2006.

16 Q IS THAT ALSO THE SAME DATE THAT IT WAS SUBMITTED AT
17 SLED?

18 A NO, MA'AM.

19 Q COULD YOU TELL US HOW AN ITEM IS SUBMITTED AT SLED
20 ITSELF?

21 A THE ITEMS ARE SUBMITTED BY THE OFFICER FROM THE
22 PARTICULAR COUNTY, AND IT'S TURNED INTO THE EVIDENCE
23 ROOM. AND THEY DO A PERSON-TO-PERSON TRANSACTION.

24 Q NOW WHEN LAW ENFORCEMENT BRINGS AN ITEM, SUCH AS
25 DRUGS, TO SLED TO BE ANALYZED, WHERE DO THEY PUT THAT

1 ITEM?

2 A THEY HAVE THE ITEM LOCKED IN THE EVIDENCE ROOM.

3 Q HOW DO THEY DO THAT?

4 A I'M NOT VERY FAMILIAR WITH THE PROCEDURES IN WHICH THEY
5 KEEP THEIR ITEMS DOWN IN THE EVIDENCE ROOM. I KNOW THAT
6 THEY TAKE THE DRUGS FROM THE OFFICER AND THEY LOCK IT
7 UP INTO A PLACE WHERE THEY KEEP ALL OF THE DRUGS.

8 Q HOW DO YOU ACTUALLY RETRIEVE AN ITEM FROM EVIDENCE?

9 A I GO DOWN TO EVIDENCE AND DO A PERSON-TO-PERSON
10 TRANSACTION.

11 Q AND DESCRIBE HOW YOU DO THAT.

12 A I GO DOWN THERE AND TELL THEM THE CASE THAT I WANT.
13 THEY GIVE IT TO ME. THEY LOG IT INTO THE SYSTEM AS ME
14 BEING THE PERSON THAT'S RECEIVING IT. I RECEIVE IT BY
15 ENTERING IN A PASSWORD INTO THE SYSTEM THAT ONLY I HAVE
16 ACCESS TO.

17 Q NOW WHEN YOU RECEIVE THAT PARTICULAR ITEM FROM
18 EVIDENCE, HOW IS IT PACKAGED?

19 A IT'S PACKAGED IN WHAT WE CALL A BEST KIT, WHICH WOULD
20 BE THIS ENVELOPE WITH THE EVIDENCE ON THE INSIDE OF IT.
21 AND IT'S ALSO PACKAGED IN A BROWN ENVELOPE, WHICH IS
22 THIS ENVELOPE RIGHT HERE.

23 Q CAN YOU PLEASE PULL THE BEST ITEM OUT OF THAT PACKET?

24 A (WITNESS COMPLIES.)

25 Q AND YOU SAID THAT PLASTIC BEST ITEM IS INSIDE THE MANILA

1 ENVELOPE?

2 A YES, MA'AM.

3 Q NOW IS THE PLASTIC BEST KIT SEALED UP WHEN YOU RECEIVE
4 IT?

5 A YES, IT'S SEALED WHEN I RECEIVE IT AND I CAN TELL WHETHER
6 OR NOT IT'S INTACT ACCORDING TO THIS GREEN AREA UP AT
7 THE TOP. IF IT'S BEEN REMOVED OR TAMPERED WITH, THIS
8 GREEN AREA WOULD NO LONGER BE IN INTACT. WHEN I RECEIVE
9 THE EVIDENCE I PUT THE LAB NUMBER THAT IT WAS RECEIVED
10 INTACT, THE DATE, AND MY INITIALS.

11 Q WAS THAT PARTICULAR ITEM INTACT WHEN YOU RECEIVED IT?

12 A YES.

13 Q DID IT APPEAR TO HAVE BEEN TAMPERED WITH?

14 A NO.

15 Q ARE YOU THE PERSON WHO OPENED THAT BEST KIT?

16 A YES.

17 Q AND WHAT DATE DID YOU OPEN THAT KIT?

18 A AUGUST 3RD 2006.

19 Q WHAT DID YOU TAKE OUT OF THAT BEST KIT?

20 A WHAT I TOOK OUT OF THE BEST KIT WAS A PLASTIC BAG
21 CONTAINING THREE PLASTIC BAGS. AND ONE OF THE PLASTIC
22 BAGS WAS DOUBLE WRAPPED.

23 Q ARE THOSE PLASTIC BAGS INSIDE THE PACKET THAT YOU'RE
24 HOLDING AT THIS TIME?

25 A YES.

1 Q YOU SAID ONE OF THE ITEMS WAS DOUBLE-WRAPPED, WHAT
2 WAS DOUBLE WRAPPED?

3 A ONE OF THE THREE ITEMS THAT WAS IN THE LARGER PLASTIC
4 BAGS.

5 Q IN THE KIT THAT YOU HAVE BEFORE YOU THERE ARE THREE
6 BAGS CONTAINING SUBSTANCE. CAN YOU HOLD THOSE UP ONE
7 AT A TIME?

8 A (WITNESS COMPLIES.)

9 Q THE SUBSTANCE THAT ARE IN THOSE BAGS, WERE THEY IN
10 THOSE PARTICULAR BAGS WHEN YOU RECEIVED THEM?

11 A NO.

12 Q WERE THEY IN THOSE OTHER BAGS---

13 MR. WATSON: OBJECTION TO LEADING.

14 THE COURT: OVERRULED.

15 BY MRS. JOHNSON-LEE:

16 Q WERE THEY IN THOSE OTHER BAGS THAT YOU OPENED EARLIER?

17 A YES.

18 Q WHO PUT THE SUBSTANCES IN THOSE BAGS THAT THEY'RE IN
19 NOW?

20 A I DID.

21 Q WHY DID YOU PUT THEM IN THOSE PARTICULAR BAGS?

22 A THAT'S JUST OUR WAY OF RE-PACKAGING THE EVIDENCE. WE
23 DON'T NECESSARILY USE THE INITIAL BAG. THERE'S NO
24 PARTICULAR REASON WHY, THAT'S JUST SOMETHING THAT WE
25 DO.

1 Q NOW WHEN YOU TOOK THOSE ITEMS OUT OF THE ORIGINAL
2 BAGS AND PUT THEM IN THE OTHERS, DID YOU REMOVE
3 ANY SAMPLES FOR ANY REASON?

4 A YES.

5 Q DID YOU REMOVE SAMPLES FROM EACH OF THOSE BAGS FOR
6 TESTING?

7 A YES.

8 Q DID YOU TEST SAMPLES FROM EACH OF THOSE THREE BAGS?

9 A YES.

10 Q WHAT WERE THE RESULTS?

11 A THE RESULTS FOR THE FIRST BAG WAS COCAINE FOUND, 27.52
12 GRAMS, 424.68 GRAINS,* SCHEDULE TWO DRUG. THE SECOND
13 BAG, COCAINE FOUND, 83.28 GRAMS, 1,285.17 GRAINS*,
14 SCHEDULE TWO DRUG, AND THE THIRD BAG, COCAINE FOUND,
15 27.88 GRAMS, 430.24 GRAINS,* SCHEDULE TWO DRUG.

16 Q NOW WHEN YOU WEIGHED THOSE DRUGS WAS THAT DONE
17 INSIDE OR OUTSIDE OF ANY PACKAGING?

18 A OUTSIDE OF THE PACKAGING.

19 Q DO YOU HAVE ANY KNOWLEDGE AS TO WHETHER OR NOT LAW
20 ENFORCEMENT WEIGHS THE DRUGS INSIDE OR OUTSIDE THE
21 PACKAGING?

22 MR. WATSON: I WOULD INTERPOSE AN
23 OBJECTION AS TO A GENERAL ANSWER. I WOULD ASK THAT A
24 SPECIFIC QUESTION TO THIS CASE BE POSED.

25 THE COURT: VERY WELL.

1 BY MRS. JOHNSON-LEE:

2 Q DO YOU HAVE PERSONAL KNOWLEDGE AS TO WHETHER OR NOT
3 LAW ENFORCEMENT IN THIS CASE TOOK THOSE DRUGS OUT OF
4 THE ORIGINAL PACKAGING TO WEIGH THEM VERSUS HAVING
5 WEIGHED THEM IN THE PACKAGES?

6 A I HAVE NO KNOWLEDGE.

7 Q THANK YOU. ARE YOU AWARE OF ANY OCCASIONS WHEN LAW
8 ENFORCEMENT OFFICERS REMOVED THE DRUGS FROM THEIR
9 ORIGINAL PACKAGING TO WEIGH THEM OUTSIDE OF THE
10 PACKAGING?

11 A I'M NOT AWARE.

12 Q HOW MANY TYPES OF TESTS DID YOU DO ON THOSE DRUGS TO
13 DETERMINE THEIR CHARACTER?

14 A I DID TWO TYPES OF TESTS.

15 Q TELL THE JURORS WHAT TYPES OF TESTS THOSE WERE.

16 A ONE WAS A SCREENING TEST, AND THAT'S WHERE WE MINIMIZE
17 THE POSSIBILITIES OF WHAT THE DRUG COULD BE. THE SECOND
18 ONE WAS A CONFIRMATORY TEST THE IDENTIFIES THE
19 SUBSTANCE TO THE EXCLUSION OF ALL OTHERS.

20 Q DID BOTH OF THOSE TESTS SHOW THAT THOSE DRUGS THAT
21 YOU'RE HOLDING ARE COCAINE?

22 A YES.

23 MRS. JOHNSON-LEE: YOUR HONOR, BEG
24 THE COURT'S INDULGENCE.

25 BY MRS. JOHNSON-LEE:

1 Q AT THIS TIME I'M GOING TO SHOW YOU WHAT'S BEEN MARKED
2 FOR IDENTIFICATION AS STATE'S EXHIBIT TWO. DO YOU
3 RECOGNIZE THAT DOCUMENT?

4 A YES.

5 Q WHAT IS THAT DOCUMENT?

6 A THIS IS THE REPORT OF THE DRUGS THAT I ANALYZED.

7 Q ON WHAT DATE DID YOU PREPARE THAT REPORT?

8 A AUGUST 24TH, 2006.

9 Q AND DOES THAT REPORT ACCURATELY REFLECT YOUR FINDINGS
10 FROM THE TESTING PROCEDURES THAT YOU USED ON THESE
11 DRUGS?

12 A YES.

13 MRS. JOHNSON-LEE: AT THIS TIME I
14 WOULD MOVE TO HAVE MRS. STANLEY'S REPORT FROM AUGUST
15 24TH, 2006 INTO EVIDENCE.

16 MRS. WATSON: YOUR HONOR, BEFORE I
17 WOULD CONSENT OR NOT I WOULD ASK THAT CROSS
18 EXAMINATION BE ALLOWED TO DETERMINE IT BE ADMISSIBLE.

19 THE COURT: BEFORE YOU CONSENT?

20 MR. WATSON: I DON'T KNOW IF I'M
21 GOING TO CONSENT OR NOT BEFORE SOME QUESTIONS THAT I
22 WOULD HAVE ON CROSS EXAMINATION.

23 THE COURT: I THOUGHT YOU'D
24 ALREADY CONSENTED TO IT. YOU STIPULATED TO THE TEST
25 RESULTS.

1 MR. WATSON: BUT NOT TO THE
2 REPORT.

3 THE COURT: VERY WELL.

4 MRS. JOHNSON-LEE: MAY I COMPLETE
5 MY EXAMINATION?

6 THE COURT: YES, MA'AM.

7 BY MRS. JOHNSON-LEE:

8 Q MRS. STANLEY, ONCE YOU'D COMPLETED YOUR TESTING, WHAT
9 DID YOU DO WITH THOSE DRUGS?

10 A I PUT THEM INTO THIS PLASTIC HEAT* PACK, SEALED AND
11 INITIALED.

12 Q AND WHEN YOU SAY SEALED, HOW WAS THAT DONE?

13 A IT'S DONE WITH A HEAT SEAL MACHINE. WE TAKE IT, WE PUT
14 THE PLASTIC IN BETWEEN IT, COMPRESS IT AND THE HEAT IS
15 APPLIED TO IT TO SEAL THE BAG.

16 Q AND AFTER THAT IS FINALLY SEALED, DO YOU HOLD ON TO IT
17 YOURSELF?

18 A WE RETURN IT DOWNSTAIRS TO THE EVIDENCE ROOM.

19 Q AND DOES IT STAY IN THE EVIDENCE ROOM UNTIL SOMEONE
20 FROM LAW ENFORCEMENT RETRIEVES IT?

21 A YES.

22 Q MRS. STANLEY, WHEN I HANDED YOU THAT EXHIBIT TODAY,
23 WHICH IS THAT BAG, WAS THE SEAL INTACT?

24 A THE SEAL WAS STILL INTACT, BUT I COULD SEE WHERE IT WAS
25 CUT OPEN.

1 Q NOW, IF IT HAD NOT BEEN CUT OPEN ARE YOU SAYING THAT THE
2 SEAL WAS INTACT---

3 MR. WATSON: OBJECTION TO LEADING.
4 THE COURT: REPHRASE YOUR
5 QUESTIONS.

6 BY MRS. JOHNSON-LEE:

7 Q WHAT DOES IT MEAN BY THE SEAL BEING INTACT?

8 A SEAL BEING INTACT MEANS THAT THE SEAL HASN'T BEEN
9 TAMPERED WITH, NO ONE HAS BROKEN THE INITIAL SEAL THAT I
10 PUT ON IT TO GET INTO THIS BAG.

11 MR. JOHNSON-LEE: THANK YOU.
12 ANSWER ANY QUESTIONS MR. WATSON HAS FOR YOU, PLEASE.

13 CROSS EXAMINATION BY MR. WATSON:

14 Q DO ME A FAVOR, MA'AM, TELL ME YOUR NAME AGAIN.

15 A KUKILA STANLEY.

16 Q HOW LONG HAVE YOU BEEN WITH STATE LAW ENFORCEMENT?

17 A ONE YEAR, THREE MONTHS.

18 Q THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION HAS A
19 NUMBER OF ANALYTICAL ARMS, YOU DO TRACE, YOU DO ALL
20 KINDS OF SERVICES, YOU HAVE LABORATORIES WHERE YOU
21 ANALYZE DRUGS; IS THAT CORRECT?

22 A YES.

23 Q YOU ARE IN THE OVERALL SCHEME OF LABORATORIES, A
24 LABORATORY THAT SEEKS TO BE ACCREDITED; IS THAT
25 CORRECT?

1 A YES.

2 Q I WANT YOU TO TELL THIS JURY WHAT TO BE ACCREDITED
3 MEANS.

4 A TO BE ACCREDITED MEANS THAT WE ABIDE BY ANY PROCEDURES
5 OR PROTOCOL THAT HAS BEEN GIVEN TO US BY ASLAN.*

6 Q I CAN'T GET THE ACRONYM RIGHT. THAT'S THE GROUP THAT
7 CERTIFIES YOU AS BEING A GOOD LAB AND YOU DO THINGS
8 RIGHT, RIGHT?

9 A YES.

10 Q NOW IF I WERE TO JUST TALK TO YOU GENERALLY I WOULD
11 IMAGINE THAT YOU WOULD KNOW THOSE RULES AND
12 REGULATIONS FAIRLY WELL; IS THAT RIGHT?

13 A YES.

14 Q BECAUSE WHAT YOU DO AFFECTS WHAT YOUR LAB IS ABLE TO
15 CLAIM AS CERTIFICATION?

16 A YES.

17 Q WHEN WE LOOK AT THIS BAG, THERE'S NO QUESTION THAT
18 WHEN YOU ISSUED YOUR REPORT IN STATE'S FOR I.D. NUMBER
19 TWO, ALL THIS WAS SEALED UP, RIGHT?

20 A YES.

21 Q NOW WHEN YOU LAST SAW IT, IT WAS ALL SEALED UP?

22 A YES.

23 Q UNDER THE CERTIFICATION OF YOUR LABORATORY SINCE IT HAS
24 BEEN OPENED YOU CANNOT CERTIFY NOW THAT THE CONTENTS
25 OF THIS BAG ARE THE CONTENTS OF THIS REPORT.

1 A I CAN CERTIFY THAT WHEN I GAVE THEM THE BAG, THESE WERE
2 THE CONTENTS THAT WERE IN THE BAG.

3 Q BUT ONCE THE BAG IS OPENED OUTSIDE YOUR PRESENCE, YOU
4 CAN NO LONGER CERTIFY THAT THIS IS THAT.

5 A I CAN CERTIFY THAT THAT IS THAT ACCORDING TO THE LAB
6 NUMBERS THAT I PUT ON THERE WHEN I SEALED THE BAG.

7 Q THAT'S EXACTLY WHAT I SAID. BUT THE BAG'S NO LONGER
8 SEALED.

9 A THERE ARE LAB NUMBERS ON THE INDIVIDUAL ITEMS TO
10 IDENTIFY WHAT'S IN THE REPORT.'

11 Q AND YOU CAN'T CERTIFY WHAT'S IN HERE NOW SINCE IT'S BEEN
12 OPENED OUTSIDE YOUR PRESENCE AND NOT IN YOUR CUSTODY?

13 A NO, I CAN'T.

14 Q THAT'S RIGHT. YOU SAID THAT THIS CAME TO THE LAB ON
15 APRIL THE 11TH, 2006, RIGHT?

16 A YES.

17 Q AND YOU TOLD THE JURY THAT YOU WEREN'T FAMILIAR WITH
18 WHAT'S COMMONLY KNOWN AS THE EVIDENCE DROP ROOM,
19 RIGHT?

20 A CORRECT.

21 Q IF THEY WERE TO WALK INTO THE EVIDENCE DROP ROOM, IT
22 WOULD LOOK LIKE A NUMBER OF MAILBOX RECEPTACLES,
23 WOULDN'T IT?

24 A NO, IT WOULDN'T.

25 Q TELL ME WHAT IT WOULD LOOK LIKE.

- 1 A IT WOULD BE A ROOM WITH COMPUTERS IN IT AND IN THE BACK
2 THERE'S ACCESS TO WHERE ONLY THE PEOPLE THAT WORK IN
3 EVIDENCE IN THAT LAB HAVE ACCESS.
- 4 Q BUT YOU LITERALLY DROP THE DRUGS - THERE'S NOT A CHEMIST
5 THERE 24 HOURS A DAY LOGGING THE DRUGS IN, IS THERE?
- 6 A THERE'S NOT A CHEMIST THERE, BUT THERE ARE PEOPLE THAT
7 WORK IN THE EVIDENCE ROOM THAT TAKES THE DRUGS FROM
8 THE PEOPLE THAT BRING IT IN FROM THE AGENCY.
- 9 Q SO WHEN WE TALK ABOUT THE CHAIN OF CUSTODY FORM
10 WHICH IS ON YOUR REPORT, THE CHAIN OF CUSTODY FORM
11 NEVER MENTIONS THOSE PEOPLE WHO HANDLED THOSE DRUGS
12 BEFORE THEY WERE GIVEN TO YOU.
- 13 A THIS IS THE CHAIN OF CUSTODY FORM THAT THE OFFICER AND
14 THE RECEIVING OFFICER TAKES IN, BUT I HAVE A CHAIN OF
15 CUSTODY THAT'S IN THE SYSTEM OF WHERE IT SHOWS THE
16 PEOPLE THAT ACTUALLY TAKE THE EVIDENCE.
- 17 Q BUT WHAT I'M DRIVING AT IS EXACTLY WHAT YOU SAID. THAT'S
18 A CHAIN OF CUSTODY FORM THAT AN OFFICER MAY HAVE LEFT
19 WITH THAT BAG AT SLED, THAT'S THE CHAIN OF
20 CUSTODY FORM, CORRECT?
- 21 A CORRECT.
- 22 Q NOW, THAT FORM DOES NOT TELL EVERYBODY WHO TOUCHED
23 IT BEFORE YOU SAW IT, DOES IT?
- 24 A THIS FORM DOESN'T.
- 25 Q OKAY. THANK YOU. FOR THIS JURY, TELL THEM WHO ELSE

1 TOUCHED IT BEFORE YOU GOT IT.

2 A MAY I REFER TO MY NOTES?

3 Q ABSOLUTELY.

4 A FORENSIC TECHNICIAN AMY* STEVENS.*

5 Q NOW AMY STEVENS IS NOT A CHEMIST, IS SHE?

6 A SHE'S NOT A CHEMIST, BUT SHE'S A PERSON THAT WORKS IN
7 THE EVIDENCE LOCKER.

8 Q BUT MY POINT IS SHE'S NOT A CHEMIST?

9 A NO.

10 Q SHE DOES NOT HAVE THE SAME OBLIGATIONS FOR
11 CERTIFICATION YOU HAVE?

12 A NO.

13 Q AND SHE DOES NOT WORK IN THE LAB?

14 A NO.

15 Q YOU'VE NEVER MET WITH AMY?

16 A WHAT DO YOU MEAN?

17 Q YOU DIDN'T MEET WITH AMY CONCERNING THIS BAG AND SAY,
18 OH BY THE WAY, THIS WAS WHAT WAS IN THE BAG WHEN I GOT
19 IT?

20 A NO.

21 Q SO YOU DON'T KNOW WHAT AMY GOT AND YOU DON'T KNOW
22 WHAT CONDITION IT WAS IN, DO YOU?

23 A I KNOW WHAT CONDITION IT WAS IN BASED ON WHAT WAS ON
24 THE BEST REQUEST FORM.

25 Q BUT YOU DON'T KNOW WHAT AMY SAW, YOU CAN'T SPEAK FOR

1 HER, RIGHT?

2 A NO.

3 Q OKAY. NOW WHO ELSE OTHER THAN AMY TOUCHED IT BEFORE
4 YOU TOUCHED IT?

5 A THAT'S IT.

6 Q AND WHEN YOU GOT THROUGH WITH IT YOU PUT IT BACK IN THE
7 BAG THAT WAS SEALED UP BY YOU?

8 A CORRECT.

9 Q AND IT WAS GIVEN BACK TO ANOTHER TECHNICIAN, OR WAS IT
10 TAKEN FROM YOU?

11 A IT WAS GIVEN BACK TO ANOTHER TECHNICIAN.

12 Q WHAT'S THAT TECHNICIAN'S NAME?

13 A AMY STEVENS.

14 Q AND YOU DID NOT DISCUSS WITH AMY STEVENS WHAT YOU
15 FOUND IN THAT BAG?

16 A NO.

17 Q OR THE CONDITION YOU'D FOUND IT?

18 A NO.

19 Q AND BY YOUR TESTIMONY YOU CHANGED THE CONDITION OF
20 WHAT WAS IN THE BAG WHEN IT WAS DELIVERED TO YOU.

21 A I'M NOT UNDERSTANDING WHAT YOU'RE SAYING.

22 Q I THINK YOU WENT THROUGH A LIST OF ISSUES WITH THE
23 MADAME ASSISTANT SOLICITOR I WENT THROUGH THIS BAG, I
24 WENT THROUGH THIS BAG, AND I WENT THROUGH THIS BAG.

25 A CORRECT.

1 Q OKAY. BUT WHEN YOU GOT IT, IF I UNDERSTOOD YOUR
2 TESTIMONY, ALL OF THE COCAINE YOU SAID YOU FOUND WAS IN
3 A BLUNCH OF BAGS?

4 A CORRECT.

5 Q AND THEN YOU TOOK THEM OUT OF THOSE BAGS AND YOU PUT
6 THEM IN OTHER BAGS?

7 A RIGHT.

8 Q AND THE BAGS YOU PUT THEM IN IS IN SOMETHING YOU SAY YOU
9 DIDN'T OPEN NOW.

10 A THE CONTENTS THAT I TOOK FROM OUT OF THE INITIAL BAGS
11 ARE THE SAME THAT I PUT INTO THE NEW BAG.

12 Q BUT WHEN AMY GOT IT, YOU DON'T KNOW WHAT, IF ANYTHING,
13 SHE DID WITH IT?

14 A THERE'S NOTHING THAT SHE COULD HAVE DONE IT ONCE I GAVE
15 IT TO HER IF THE BAGS WERE SEALED.

16 Q YOU DON'T KNOW WHAT SHE DID WITH IT BEFORE SHE GAVE IT
17 TO YOU?

18 A I CAN ONLY GO OFF OF WHAT WAS GIVEN TO ME.

19 Q I'LL GO BACK TO MY QUESTION; YOU DON'T KNOW, WHAT, IF
20 ANYTHING SHE DID WITH IT?

21 A NO.

22 Q AND YOU WOULD HAVE NO WAY OF KNOWING.

23 A NO.

24 Q OKAY. HOW MANY TIMES WOULD YOU SAY LAW ENFORCEMENT
25 DIVISION HAS LOST ITS CERTIFICATION FOR ITS PROGRAM?

1 A I DON'T HAVE THAT INFORMATION.
2 Q WOULD YOU ADMIT THAT IT HAS?
3 A NO.
4 Q YOU DON'T KNOW THAT IT HAS?
5 A NO.
6 Q YOU DON'T KNOW THAT THE SLED LAB HAS EVER LOST ANY
7 DRUGS?
8 A NO.
9 Q EVER?
10 A NO.
11 Q NEVER IN THE PAST?
12 A NOT THAT I'M AWARE OF.
13 Q BUT YOU CAN'T SAY THAT THERE HAS NOT?
14 A I'M NOT AWARE OF THAT INFORMATION.
15 Q OKAY. TAKE A LOOK AT YOUR CHAIN OF CUSTODY FORM
16 SIGNED BY MR. BUSEY. IT IS DATED, LOOKS LIKE APRIL 11TH,
17 2006 AND SIGNED BY HIM AND SIGNED AT SLED ON APRIL THE
18 11TH, 2006; DO YOU AGREE?
19 A YES.
20 Q HOW MANY BAGS DOES IT SAY - DESCRIBE SUBSTANCE OR
21 CONTAINER WITH SUFFICIENT PARTICULARITY TO DESCRIBE IT OR
22 TO DISTINGUISH IT. I WANT YOU TO READ FOR THIS JURY WITH
23 PARTICULARITY WHAT MR. BUSEY SAID THE CONTAINERS WERE,
24 EXACTLY WHAT HE WROTE.
25 A "TWO CLEAR PLASTIC BAGS---

1 MRS. JOHNSON-LEE: OBJECTION, YOUR
2 HONOR, THIS HAS NOT BEEN PUT INTO EVIDENCE BECAUSE MR.
3 WATSON DIDN'T WANT IT IN EVIDENCE UNTIL HE HAD A CHANCE
4 TO CROSS EXAMINE. IT'S NOT YET IN EVIDENCE.

5 THE COURT: SUSTAINED.

6 BY MR. WATSON:

7 Q HOW MANY BAGS WERE DELIVERED TO SLED BY MR. BUSEY?

8 A ACCORDING TO MY RECORDS THERE WERE FIVE BAGS.

9 Q I'M GOING TO ASK YOU SOMETHING REAL SIMPLE. IS THE CHAIN
10 OF CUSTODY FORM YOU WERE JUST READING FROM PART OF
11 YOUR RECORDS, OR NOT?

12 A ARE WE STILL REFERRING TO THE CHAIN OF CUSTODY FORM, OR
13 ARE WE REFERRING TO---

14 Q CHAIN OF CUSTODY FORM.

15 A ACCORDING TO THE CHAIN OF CUSTODY FORM---

16 MRS. JOHNSON-LEE: YOUR HONOR IF HE
17 WANTS TO GO AHEAD AND INTRODUCE THIS AS AN EXHIBIT IN
18 EVIDENCE, I'LL---

19 MR. WATSON: I'M NOT GOING TO
20 INTRODUCE IT.

21 THE COURT: HE'S NOT GOING TO
22 INTRODUCE IT.

23 BY MR. WATSON:

24 Q I JUST WANT TO KNOW FROM YOUR FORM WHAT MR. BUSEY
25 SAYS.

1 A ACCORDING TO THIS CHAIN OF CUSTODY FORM IT SAYS, "TWO
2 CLEAR PLASTIC BAGS WITH WHITE POWDER SUBSTANCE
3 (COCAINE.)

4 Q OKAY.

5 THE COURT: DON'T ASK ANY MORE
6 QUESTIONS ABOUT THAT FORM UNLESS IT GOES INTO EVIDENCE.

7 BY MR. WATSON:

8 Q YOU TOLD THE MADAME ASSISTANT SOLICITOR THAT YOU DID A
9 NUMBER OF TESTS; YOU SAID TWO, BUT YOU ACTUALLY DID
10 THREE, IS THAT NOT CORRECT?

11 A TWO TESTS FOR EACH BAG.

12 Q ALL RIGHT. THEN YOU TAKE THE CHEMICAL TEST AND THE
13 PRESUMPTION TEST TO BE ONE INDIVIDUAL TEST?

14 A CORRECT.

15 Q AND THE GASTACHROMOTOGRAPHY* AS OPPOSED TO THE
16 MASTECHTOGRAPHY,* THAT'S ONE OR TWO?

17 A THAT'S ONE.

18 Q WHEN I LOOK AT THE GASTAMATOGRAPPH* I GET A BELL-
19 SHAPED CURVE, IS THAT RIGHT, KIND OF, SORT OF, AND THAT
20 TELLS YOU WHAT THE SUBSTANCE IS?

21 A YOU DON'T GET A BELL-SHAPED CURVE, BUT THERE'S A
22 SECTION THAT'S SPECIFIC FOR EACH MOLECULE THAT'S RAN ON
23 THAT INSTRUMENT.

24 Q FOR EACH MOLECULE THAT'S RUN ON THE SUBSTANCE THAT
25 YOU'RE TESTING; IS THAT RIGHT?

1 A CORRECT.

2 Q NOW IT'S NOT UNUSUAL FOR YOU TO FIND OTHER THINGS OTHER
3 THAN COCAINE THAT ARE NOT ILLEGAL, IS IT?

4 A CORRECT.

5 Q WHAT DID YOU FIND IN THIS TEST OTHER THAN COCAINE?

6 A THERE WASN'T ANYTHING ELSE THAT I DID FIND. THE ONLY
7 THING THAT I WAS INTERESTED IN WAS THE ACTUAL COCAINE.

8 Q YOU WEREN'T INTERESTED IN ANYTHING ELSE THAT MIGHT HAVE
9 BEEN IN THE SUBSTANCE?

10 A WE'RE LOOKING FOR CONTROLLED SUBSTANCES.

11 Q WHY WOULD YOU NOT BE INTERESTED IN ANYTHING ELSE THAT
12 MIGHT BE IN THE SUBSTANCE?

13 A BECAUSE WE'RE LOOKING FOR CONTROLLED SUBSTANCES.

14 Q WHAT DID YOU LOOK FOR IN THIS SPECIFIC TEST?

15 A I LOOKED FOR A CONTROLLED SUBSTANCE WHICH TURNED OUT
16 TO BE COCAINE.

17 Q BUT DID YOU LOOK FOR ANYTHING ELSE, IS WHAT I'M ASKING.

18 A NO, I DIDN'T.

19 Q TELL ME THE PRESUMPTION TEST YOU USED.

20 A THE PRESUMPTIVE TEST THAT I USED IS CALLED TENCHLORIDE*
21 AND PROPOTHYATHYACYMATE*. IT'S A SUBSTANCE -

22 Q FOR THE JURORS, IF YOU CAN, DO IT IN LAYMEN'S TERMS. IF
23 YOU CAN'T THAT'S ALL RIGHT.

24 A THOSE ARE THE NAMES OF IT. YOU HAVE A PINK SUBSTANCE OF
25 WHICH YOU PUT THE FIRST DROP, YOU PUT ABOUT TENTH OF A

1 GRAM OF THE SAMPLE IN THERE AND ONCE YOU DO THAT YOU
2 LOOK FOR A COLOR CHANGE. AND IN THIS CASE I HAD A BLUE
3 COLOR CHANGE WHICH DID MEAN SOMEWHAT OF AN INDICATION
4 THAT IT'S POSSIBLY COCAINE. SO WHEN I ADDED THE
5 TENCHLORIDE,* WHICH IS THE SECOND PART OF THIS
6 PARTICULAR TEST, THE COLOR REMAINED BLUE. BLUE
7 INDICATES THAT IT'S COCAINE.

8 Q YOU DON'T KNOW WHERE THESE DRUGS CAME FROM, DO YOU?

9 A I RECEIVED THE DRUGS FROM THE EVIDENCE ROOM.

10 Q I DIDN'T ASK THAT QUESTION VERY CLEARLY. WHERE WERE YOU
11 ON FEBRUARY THE 28TH, 2006?

12 A I DON'T HAVE THAT INFORMATION.

13 Q YOU WEREN'T INVOLVED IN THE ARREST OF THE DEFENDANTS IN
14 THIS CASE, WERE YOU?

15 A NO.

16 Q YOU KNOW NOTHING ABOUT THIS CASE OTHER THAN WHAT YOU
17 SAY WAS DELIVERED TO YOU AND WHAT TESTS YOU'VE
18 TESTIFIED TO; IS THAT RIGHT?

19 A CORRECT.

20 MR. WATSON: NOTHING FURTHER,
21 YOUR HONOR.

22 THE COURT: REDIRECT?

23 REDIRECT EXAMINATION BY MRS. JOHNSON-LEE:

24 Q CAN YOU CERTIFY, MRS. STANLEY, THAT WHAT YOU ACTUALLY
25 PUT BACK IN THESE THREE BAGS AT THE TIME YOU PUT IT IN

1 THESE THREE BAGS WAS COCAINE?

2 A YES.

3 Q DO THOSE THREE BAGS APPEAR TO BE THE SAME ITEMS THAT
4 YOU PUT BACK INTO THE BAG THAT YOU HEAT-SEALED?

5 A YES.

6 Q WHEN YOU RECEIVED THAT BEST KIT CONTAINING THE DRUGS IN
7 THE ORIGINAL PACKAGING, DID THAT BEST KIT APPEAR TO HAVE
8 BEEN TAMPERED WITH OR OPENED BY ANYONE BEFORE YOU?

9 A NO.

10 Q WOULD YOU HAVE TESTED THOSE DRUGS IF THAT SEAL ON
11 THAT BEST KIT HAD BEEN BROKEN?

12 A NO, I WOULD NOT.

13 Q AND YOU SAID EARLIER WHEN HE WAS ASKING YOU SOME
14 QUESTIONS, YOU SAID SOMETHING ABOUT HAVING TOUCHED -
15 WERE YOU REFERRING TO THE BEST BAG OR THE ACTUAL BAGS
16 OF DRUGS? IN OTHER WORDS, WHEN HE WAS REFERRING TO
17 ANYBODY BEFORE YOU TOUCHING THOSE BAGS.

18 A YES, I WAS REFERRING TO THIS BAG RIGHT HERE, THE BEST KIT
19 OF WHICH THE DRUGS ACTUALLY COME IN.

20 Q AND JUST FOR CLARIFICATION, THE FIVE BAGS THAT YOU WERE
21 REFERRING TO, IF YOU'LL TAKE THOSE OUT, PLEASE.

22 A (WITNESS COMPLIES.)

23 Q WERE THERE DRUGS IN EACH OF THOSE FIVE BAGS WHEN YOU
24 RECEIVED THE BEST KIT?

25 A NO.

1 Q TELL THE JURY AGAIN HOW THOSE DRUGS WERE PACKAGED IN
2 THOSE BAGS.

3 A THIS WAS THE OUTSIDE BAG. THESE TWO BAGS WERE
4 SEPARATE ON THE INSIDE OF THIS BAG.

5 Q WHEN YOU SAY THEY WERE SEPARATE, WAS THERE ANYTHING IN
6 THOSE TWO BAGS?

7 A THESE TWO SEPARATE BAGS BOTH CONTAINED A POWDER
8 SUBSTANCE. AND THEN THERE WAS THIS BAG CONTAINING THIS
9 BAG THAT HAD THE POWDER SUBSTANCE IN IT.

10 Q THAT'S THE ONE YOU REFERRED TO AS BEING DOUBLE
11 WRAPPED?

12 A RIGHT. IT WAS LIKE THIS.

13 Q AND ALL OF THOSE WERE STUCK DOWN IN ONE BAG?

14 A ALL THREE OF THESE BAGS WERE STUCK DOWN INTO THIS BAG.

15 Q AND DO YOU HAVE ANY KNOWLEDGE YOURSELF AT WHAT TIME
16 ANYBODY PLACED THOSE BAGS OF COCAINE INSIDE THE OUTER
17 BAG?

18 A NO.

19 Q EXPLAIN TO THE JURY WHY YOU WOULD NOT HAVE TESTED
20 THOSE DRUGS IF THE SEAL HAD BEEN BROKEN ON THE BEST
21 KIT?

22 A BECAUSE THAT WOULD HAVE BEEN AN INDICATION TO ME THAT
23 THE EVIDENCE WAS TAMPERED WITH, THEREFORE I WOULD HAVE
24 TO SEND IT BACK TO THE AGENCY SO THAT THEY COULD
25 VERIFY AND RESUBMIT IT FOR ANALYSIS.

1 MRS. JOHNSON-LEE: THANK YOU, MRS.

2 STANLEY.

3 RECROSS EXAMINATION BY MR. WATSON:

4 Q IF YOU WOULD, WOULD YOU TAKE THOSE LITTLE BAGS OUT?

5 A (WITNESS COMPLIES.)

6 Q DO THEY HAVE MARKS ON THEM THAT YOU MADE?

7 A YES.

8 Q WILL YOU DO ME A FAVOR? WILL YOU TAKE THEM ALL OUT FOR
9 ME?

10 A (WITNESS COMPLIES.)

11 Q WOULD YOU BE KIND ENOUGH TO - THAT'S YOUR MARK?

12 A YES.

13 Q WOULD YOU BE KIND ENOUGH TO JUST SHOW ME YOUR MARK
14 ON ALL OF THE BAGS?

15 A THAT'S MY MARK.

16 Q UH-HUH.

17 A THAT'S MY MARK.

18 Q UH-HUH.

19 A THAT'S MY MARK.

20 Q UH-HUH.

21 A THAT'S MY MARK, AND THAT'S MY MARK.

22 Q THAT'S FIVE, RIGHT?

23 A YES.

24 Q BUT IN YOUR REPORT YOU'VE ONLY MENTIONED---

25 THE COURT: YOU'RE TALKING ABOUT

1 THE REPORT AGAIN. I THINK THE REPORT NEEDS TO GO INTO
2 EVIDENCE IF YOU'RE GOING TO KEEP TALKING ABOUT THE
3 REPORT. THEY NEED THE BENEFIT OF THE WHOLE REPORT, YOU
4 CAN'T PIECE-MEAL IT AND NOT PUT IT INTO EVIDENCE.

5 MRS. JOHNSON-LEE: WE'D MOVED
6 EARLIER TO HAVE IT PUT IN EVIDENCE, AND WE WOULD RE-OPEN
7 THAT AND MOVE IT INTO EVIDENCE.

8 THE COURT DO YOU HAVE AN
9 OBJECTION?

10 MR. WATSON: WITHOUT OBJECTION
11 (PLAINTIFF'S EXHIBIT NO. 2 INTRODUCED INTO EVIDENCE.)

12 MRS. JOHNSON-LEE: WE'D ASK THAT
13 MRS. STANLEY BE EXCUSED.

14 THE COURT: ANY OBJECTION?

15 MR. WATSON: NO, I KNOW MRS.
16 STANLEY HAS OTHER WORK TO DO. NO OBJECTION.

17 MRS. JOHNSON-LEE: NEXT THE STATE
18 WOULD CALL CORPORAL ROBERT BUCY.

19 Thereupon ROBERT BUCY,
20 being first

21 Duly sworn, testified as follows:

22 DIRECT EXAMINATION BY MRS. JOHNSON-LEE:

23 Q STATE YOUR FULL NAME.

24 A ROBERT BUCY, B-U-C-Y.

25 Q OFFICER BUCY, WHERE ARE YOU EMPLOYED?

- 1 A DILLON COUNTY SHERIFF'S OFFICE.
- 2 Q IN WHAT CAPACITY?
- 3 A DEPUTY SHERIFF.
- 4 Q HOW LONG HAVE YOU BEEN THERE?
- 5 A 11 YEARS.
- 6 Q WHAT ARE YOUR JOB DUTIES AT THE SHERIFF'S OFFICE?
- 7 A WORK IN NARCOTICS.
- 8 Q AS A NARCOTICS OFFICER, DO YOU EVER TRANSPORT DRUGS TO
- 9 SLED?
- 10 A YES, I DO.
- 11 Q I BELIEVE IN FRONT OF YOU THERE IS A BEST KIT, STATE'S
- 12 EXHIBIT NUMBER THREE; DO YOU RECOGNIZE THAT ITEM?
- 13 A NO, I DON'T. I IF I COULD EXPLAIN? I TAKE A BUNCH OF BEST
- 14 BAGS TO SLED EVERY MONTH. I MEAN, THEY ALL LOOK THE
- 15 SAME EXCEPT FOR THE NUMBERS AT THE TOP.
- 16 Q DO YOU WRITE ANYTHING DOWN OR NOTATE ANYWHERE WHAT
- 17 PARTICULAR BAGS YOU TAKE TO SLED AND ON WHAT DATE?
- 18 A NO, I DON'T.
- 19 Q DO YOU SIGN ANY TYPE OF CHAIN OF CUSTODY FORM BEFORE
- 20 YOU CAN TAKE ANY ITEMS TO SLED?
- 21 A YES, MA'AM.
- 22 Q MAY I HAVE WHAT'S BEEN MARKED AS STATE'S EXHIBIT TWO?
- 23 TURNING TO THE LAST PAGE, DO YOU RECOGNIZE THAT?
- 24 A YES, MA'AM.
- 25 Q WHAT IS THAT ITEM?

- 1 A IT'S A FORM "C", IT'S A SUBSEQUENT CHAIN OF CUSTODY
2 SAYING THAT DAVID LANE HAD TURNED OVER TWO CLEAR
3 PLASTIC BAGS WITH WHITE POWDER TO ME ON 4/11/06, AND I
4 TOOK IT TO SLED ON THAT DAY.
- 5 Q IS THERE A SIGNATURE ON THAT DOCUMENT?
- 6 A THAT'S MINE.
- 7 Q WOULD YOU HAVE SIGNED THAT DOCUMENT IF YOU HAD NOT
8 RECEIVED THE ITEM FROM DAVID LANE?
- 9 A NO, MA'AM.
- 10 Q WOULD YOU HAVE SIGNED THAT DOCUMENT IF YOU HAD NOT
11 TAKEN THOSE PARTICULAR DRUGS TO SLED?
- 12 A NO, I WOULDN'T .
- 13 Q WHEN YOU CARRY DRUGS TO SLED, WHERE DO YOU PUT THEM?
- 14 A IN THE TRUNK OF MY CAR.
- 15 Q AND THEN WHEN YOU GET TO SLED WHAT DO YOU DO WITH
16 THAT?
- 17 A WHEN I GET TO SLED I TURN IT OVER TO EVIDENCE LOGGING.
- 18 Q HOW DO YOU LOG IN EVIDENCE?
- 19 A WE TAKE IT IN AND THERE'S USUALLY THREE OR FOUR LADIES
20 THAT WORK IN THERE, AND THEY JUST LOG IT IN THROUGH
21 THEIR SYSTEM THAT THEY RECEIVED THE BEST BAG OF THE
22 DOPE.
- 23 Q NOW WHAT DOES THE BEST BAG LOOK LIKE WHEN YOU CARRY
24 IT OVER THERE?
- 25 A LOOKS JUST LIKE THIS EXCEPT IT'S IN ANOTHER ENVELOPE.

1 Q WHO WOULD HAVE PLACED THAT ITEM INSIDE THE MANILA
2 ENVELOPE?

3 A ACCORDING TO THE OUTSIDE OF THIS DAVID LANE SEALED IT ON
4 2/28/06.

5 Q DID YOU EVER UNSEAL THE MANILA ENVELOPE THAT YOU HAD?

6 A NO, MA'AM.

7 Q WAS IT SEALED THE ENTIRE TIME IT WAS UNDER YOUR CARE,
8 CUSTODY, AND CONTROL?

9 A THE MANILA ENVELOPE, YOU CAN UNSEAL IT. BUT YOU CAN'T
10 UNSEAL THIS WITHOUT DESTROYING THE SECURITY FEATURE
11 THAT'S ON IT. BUT WHEN I SIGN FOR THE DOPE I WOULD MAKE
12 SURE, I WOULD TAKE IT OUT AND LOOK AND MAKE SURE I WAS
13 GETTING WHAT I SIGNED FOR.

14 Q AND WHEN YOU WOULD TAKE THAT OUT, WOULD YOU LOOK AT
15 IT TO SEE IF THE BEST BAG ITSELF HAD BEEN UNSEALED OR
16 TAMPERED WITH?

17 A YES.

18 Q DO YOU RECALL EVER HAVING A BAG WHICH YOU CARRIED TO
19 SLED BEING UNSEALED OR TAMPERED WITH?

20 A NO.

21 Q AND THAT WOULD INCLUDE THE TIME YOU CARRIED THIS BAG TO
22 THE BEST OF YOUR RECOLLECTION?

23 A YES.

24 Q HAVE YOU EVER TAMPERED WITH ANY ITEM THAT YOU CARRIED
25 TO SLED?

1 A NO.

2 Q DO YOU MAINTAIN THE INTEGRITY OF EVERY ITEM THAT YOU
3 CARRY TO SLED?

4 A YES, WE DO.

5 MRS. JOHNSON-LEE: THANK YOU, SIR,
6 THAT'S ALL I HAVE. PLEASE ANSWER ANY QUESTIONS OF MRS.
7 MCMILLAN OR MR. WATSON.

8 MRS. MCMILLAN: YOUR HONOR, BOTH
9 DEFENDANT'S HAVE NO QUESTIONS, THANK YOU.

10 MR. WATSON: I'D ASKED THAT HE BE
11 SEQUESTERED IN CASE WE DO WISH TO CALL HIM.

12 MR. REDMOND: AND THAT'S WHAT I
13 WAS GOING TO REQUEST, YOUR HONOR, AS RELATES TO THE
14 FACT THAT HE'S ALREADY TESTIFIED. MAY WE APPROACH FOR
15 A MOMENT AS RELATES TO THAT?

16 THE COURT: YOU MAY.

17 (OFF-THE-RECORD CONFERENCE AT THE BENCH.)

18 MR. REDMOND: YOUR HONOR, THE
19 STATE'S NOT OPPOSED TO OFFICER BUCY'S SEQUESTRATION,
20 HOWEVER, IF I COULD ASK THAT HE NOT HAVE TO REMAIN HERE
21 AT THE COURTHOUSE, WE COULD CONTACT HIM IF NECESSARY?

22 MR. WATSON: THAT'S FINE.

23 THE COURT; THANK YOU.

24 Thereupon, JAMES HAYES, being
25 first duly sworn, testified as follows:

1 MR. WATSON: MAY WE APPROACH,
2 YOUR HONOR?

3 THE COURT: YES.

4 (OFF-THE-RECORD CONFERENCE AT THE BENCH.)

5 THE COURT: LADIES AND GENTLEMEN
6 OF THE JURY, I UNDERSTAND THAT I DID TELL YOU THAT I'D
7 TELL YOU OF ANY STIPULATIONS. HERE IS ANOTHER
8 STIPULATION; THE PARTIES AGREE THAT WITH REGARD TO THE
9 CHAIN OF EVIDENCE, WHO TOUCHED THE EVIDENCE, THAT THIS
10 PERSON AND ANOTHER PERSON TOUCHED THE EVIDENCE. IS
11 THAT A FAIR REPRESENTATION OF YOUR STIPULATION?

12 MR WATSON: THAT THEY IN FACT
13 GAVE IT, WHEN THEY GOT IT, TO THE NEXT PERSON WHO WILL
14 TESTIFY, THAT THEY WERE NOT AT THE SCENE OF THE ARREST.

15 MRS. JOHNSON-LEE: THAT'S CORRECT,
16 YOUR HONOR. JAMES HAYES, IT'S STIPULATED THAT HE PICKED
17 UP THE DRUGS FROM SLED AND BROUGHT THEM BACK TO
18 DILLON COUNTY. IT IS STIPULATED THAT SGT. JASON TURNER
19 OF THE DILLON POLICE DEPARTMENT RECEIVED THE DRUGS IN
20 EVIDENCE AND BROUGHT THEM TO THE COURTROOM YESTERDAY
21 WHERE THEY WERE OPENED BY SGT. DAVID LANE.

22 THE COURT: AND YOU AGREE WITH
23 THAT STIPULATION?

24 MR. WATSON: I BELIEVE THAT TO BE
25 ACCURATE.

1 THE COURT: VERY WELL. THAT'S
2 CONCLUSIVE ON THAT POINT, LADIES AND GENTLEMEN, YOU
3 MAY STEP DOWN, MR. HAYES, UNLESS YOU HAVE ANY OTHER
4 QUESTIONS.

5 MRS. JOHNSON-LEE: NO, WE'D JUST
6 ASK THAT HE BE EXCUSED, AND ALSO THAT SGT. TURNER BE
7 RELEASED FROM SEQUESTRATION AND BE RELEASED AS WELL.

8 MR. WATSON: I DON'T HAVE ANY
9 PROBLEM WITH THAT.

10 THE COURT: VERY WELL, YOU MAY BE
11 EXCUSED FROM YOUR SUBPOENA. AND WOULD YOU TELL
12 SOMEONE TO TELL SGT. TURNER THE SAME THING?

13 MRS. JOHNSON-LEE: AND SO, JUDGE,
14 THAT WOULD COMPLETE THE CHAIN OF CUSTODY ON THE DRUG
15 EVIDENCE, SO WE'D MOVE THAT THEY BE PLACED INTO
16 EVIDENCE AT THIS TIME.

17 THE COURT: ANY OBJECTION?

18 MR. WATSON: THE OBJECTION IS
19 THAT, ONE, THOSE THINGS THAT WERE TESTIFIED TO AS BEING
20 SUBMITTED TO SLED ARE, FIRST, NOT WHAT HAS BEEN BROUGHT
21 TO COURT BY WAY OF THE EVIDENCE. NOT THAT THE PEOPLE
22 WHO BROUGHT THEM HERE ARE NOT THE PEOPLE WHO BROUGHT
23 THEM HERE, BUT WE SUBMIT IT'S NOT THE SAME EVIDENCE.

24 THERE'S NO QUESTION BUT THE REPORT SAYS TWO
25 BAGS, AND WE NOW HAVE FIVE. WE SUBMIT THAT IT HAS BEEN

1 SO PROSTITUTED AS TO BE INDISTINGUISHABLE AND OF ITSELF
2 IT SHOULD NOT BE ADMITTED.

3 MRS. MCMILLAN: WE WOULD JOIN IN
4 THAT MOTION, YOUR HONOR. AND I BELIEVE HER LAST NAME
5 WAS SHIRLEY -- STANLEY, WAS A VERY CREDIBLE WITNESS,
6 YOUR HONOR. AND I WROTE IT DOWN VERBATIM, "MY RECORDS
7 INDICATE THAT FIVE BAGS WERE DELIVERED TO ME." AND HER
8 OTHER NOTES WERE THAT THERE HAD ONLY BEEN TWO BAGS.

9 THE COURT: I OVERRULE YOUR
10 OBJECTION.

11 MR. WATSON: WOULD YOU NOTE OUR
12 EXCEPTION?

13 THE COURT: I WILL. IT'S IN EVIDENCE.
14 (PLAINTIFF'S EXHIBIT NUMBER 3 INTRODUCED INTO EVIDENCE.)

15 MRS. JOHNSON-LEE: THE NEXT
16 WITNESS WILL BE SGT. TERRY POWERS.

17 Thereupon, TERRY POWERS, being
18 first duly sworn, testified as follows:

19 DIRECT EXAMINATION BY MRS. JOHNSON-LEE:

20 Q STATE YOUR FULL NAME.

21 A TERRY TRACY POWERS.

22 Q WHERE ARE YOU EMPLOYED?

23 A THE DILLON POLICE DEPARTMENT.

24 Q IN WHAT CAPACITY?

25 A SERGEANT.

1 Q HOW LONG HAVE YOU BEEN WITH THE DILLON POLICE
2 DEPARTMENT?

3 A A LITTLE OVER 10 YEARS, DECEMBER WILL BE 11.

4 Q WHAT TYPE OF WORK DO YOU DO AS A SERGEANT WITH THE
5 DILLON POLICE DEPARTMENT?

6 A WE WORK INTERDICTION ON THE INTERSTATE.

7 MR. WATSON: COULD I ASK THAT MR.
8 POWERS SPEAK UP?

9 BY MRS. JOHNSON-LEE:

10 Q AND EXPLAIN WHAT YOU MEAN BY WORKING INTERDICTION ON
11 THE INTERSTATE?

12 A WE STOP TRAFFIC OFFENSES, ISSUE CITATIONS AND WARNINGS
13 ON THE INTERSTATE.

14 Q DO YOU RECALL IF YOU WERE WORKING ON THE MORNING OF
15 FEBRUARY 28TH, 2006?

16 A YES, MA'AM.

17 Q DO YOU RECALL WHERE YOU WERE AT APPROXIMATELY 9:18?

18 A AROUND THE 181 MILE MARKER OF I-95.

19 Q WHERE IS THAT?

20 A AROUND THE OAK GROVE EXIT.

21 Q DID YOU ASSIST SGT. LANE WITH ANYTHING THAT MORNING ON
22 THE INTERSTATE?

23 A YES, MA'AM.

24 Q TELL ME ABOUT THAT. TELL THE JURY ABOUT THAT.

25 A HE CALLED ME AND ASKED ME TO ASSIST HIM. IT TOOK ME A

1 WHILE TO GET THERE BECAUSE I WAS SO FAR FROM HIM. WHEN I
2 ARRIVED HE HAD TWO SUSPECTS ON THE GROUND AT
3 GUNPOINT. AT THAT TIME I EXITED MY VEHICLE, APPROACHED,
4 AND ASSISTED HIM IN HANDCUFFING THE VEHICLE — I'M SORRY,
5 HANDCUFFING THE SUSPECTS.

6 Q WHAT DID YOU AND SGT. LANE DO AFTER HANDCUFFING THE
7 TWO INDIVIDUALS?

8 A WE CONTINUED TO SEARCH THE VEHICLE, THE SUSPECTS'
9 VEHICLE.

10 Q DO YOU RECALL WHO THOSE SUSPECTS WERE?

11 A MR. JONES AND MR. BURNS.

12 Q LET THE RECORD REFLECT HE NODDED TOWARDS ARTIE BURNS
13 AND JOHNNY JONES. WAS ANYTHING FOUND IN THAT VEHICLE?

14 A UPON MY ARRIVAL SGT. LANE HAD ALREADY FOUND A SMALL
15 BAG OF WHITE SUBSTANCE THAT APPEARED TO BE COCAINE. IT
16 WAS LOCATED ON TOP OF SGT. LANE'S PATROL VEHICLE, THE
17 HOOD.

18 Q WAS ANYTHING ELSE FOUND AFTER THAT?

19 A WHILE WE WERE SEARCHING THE VEHICLE I WAS SEARCHING THE
20 HOOD COMPARTMENT, THE ENGINE COMPARTMENT, AND SGT,
21 LANE CONTINUED TO SEARCH THE TRUNK COMPARTMENT. AT
22 THAT TIME HE LOCATED---

23 MR. WATSON: OBJECTION TO WHAT
24 SGT. LANE DID. IN THE VIDEO IT'S CLEAR THAT HE COULDN'T
25 SEE WHAT SGT. LANE WAS DOING. THAT'S HEARSAY.

1 THE COURT: IF HE KNOWS WHAT HE
2 DID, HE SAW WHAT HE DID, HE CAN TELL WHAT HE DID.

3 BY MRS. JOHNSON-LEE:

4 Q TELL THE COURT WHAT YOU SAW.

5 A SGT. LANE CALLED ME---

6 THE COURT: DON'T TELL US WHAT HE
7 SAID.

8 THE WITNESS: HE GOT MY ATTENTION
9 AND HELD UP ANOTHER BAG OF WHITE POWDER THAT
10 APPEARED TO BE COCAINE AND PLACED IT ON THE HOOD OF HIS
11 CAR.

12 BY MRS. JOHNSON-LEE:

13 Q NOW DID YOU EVER GET UP CLOSE AND EXAMINE THIS BAG TO
14 SEE HOW IT WAS PACKAGED?

15 A YES, MA'AM, IT WAS LAID UP ON THE HOOD OF THE PATROL
16 CAR.

17 Q WHAT DID YOU SEE?

18 A TWO - IT WAS, I BELIEVE IT WAS LIKE A GALLON-SIZED, MAYBE,
19 LIKE A LARGER ZIP LOCK BAG WITH TWO INDIVIDUAL PACKETS
20 OF COCAINE, IF I RECALL CORRECTLY.

21 Q WHAT TYPE OF TRAINING HAVE YOU HAD IN THE NARCOTICS
22 INTERDICTION AREA?

23 A WE GO TO DIFFERENT SCHOOLS AROUND THE STATE, WELL
24 ACTUALLY AROUND THE COUNTRY. WE'RE MEMBERS OF E.N.C.*
25 NATIONAL CRIMINAL ENFORCEMENT ASSOCIATION, WHICH DEALS

1 WITH THIS TYPE OF STUFF. E.P.I.C., EL PASO INTELLIGENCE
2 CENTER PUTS ON CLASSES EACH YEAR, WE ATTEND SOME OF
3 THOSE.

4 Q HOW MANY OF THOSE CLASSES OR TRAINING SESSIONS HAVE
5 YOU ATTENDED THROUGH THE COURSE OF YOUR LAW
6 ENFORCEMENT CAREER?

7 A ALL TOGETHER ROUGHLY I'D SAY FIVE OR SIX.

8 Q I'M SORRY, I DID NOT HEAR YOU.

9 A JUST AN ESTIMATE, FIVE OR SIX, OR POSSIBLY MORE.

10 Q SGT. LANE REFERENCED INDICATORS---

11 MR. WATSON: OBJECTION.

12 BY MRS. JOHNSON-LEE:.

13 Q I CAN REPHRASE. DO YOU KNOW WHAT INDICATORS ARE?

14 A YES, MA'AM.

15 Q BASED ON YOUR TRAINING, WHAT ARE INDICATORS?

16 A THEY'RE THINGS THAT NORMAL PEOPLE JUST DON'T - THAT IN
17 THE NORMAL COURSE OF SOMEONE'S TRIP OR EVERYDAY LIFE IS
18 JUST NOT FEASIBLE.

19 Q WHAT TYPES OF INDICATORS HAVE YOU SEEN DURING TRAFFIC
20 STOPS THAT HAVE EVER ALERTED YOU TO ANY TYPE OF
21 CRIMINAL ACTIVITY?

22 MRS. MCMILLAN: YOUR---

23 MR. WATSON: OBJECTION. GO AHEAD,
24 LOIS, EXCUSE ME.

25 MRS. MCMILLAN: YOUR HONOR, I AM

1 GOING TO OBJECT TO THIS GENERAL DISCUSSION OF
2 INDICATORS. ALSO I'M GOING TO OBJECT BECAUSE I BELIEVE
3 SHE'S TRYING TO BOLSTER THE TESTIMONY OF ONE OF HER
4 PRIOR WITNESSES, THE POLICE OFFICER'S TESTIMONY ABOUT
5 GENERALITIES. HE WAS NOT THERE DURING THE ISSUE OF
6 WHETHER OR NOT THE INDICATORS WERE PRESENT TO
7 WARRANT THE REASONABLE SUSPICION. AND THE COURT HAS
8 ALREADY ADDRESSED THAT. AND I DO BELIEVE THAT THIS
9 WITNESS'S TESTIMONY IN THAT REGARD IS SUPERFULOUS, AND I
10 ALSO BELIEVE THAT IT IS DAMAGING TO MY CLIENT.

11 MR. WATSON: THE SECOND POINT
12 THAT I WOULD MAKE ABOUT HIS DIRECT TESTIMONY TO THE
13 ASSISTANT MADAME SOLICITOR IS WHEN I GOT THERE THEY
14 WERE ALREADY ON THE GROUND UNDER ARREST, AND ANYTHING
15 HE WOULD HAVE HEARD FROM SOMEBODY ELSE WOULD BE
16 HEARSAY, BUT BY HIS TESTIMONY THE DECISION TO ARREST
17 WAS ALREADY MADE.

18 THE COURT: WHAT'S THE PURPOSE OF
19 TRYING TO ELICIT THIS INFORMATION?

20 MRS. JOHNSON-LEE: JUST TO SHOW
21 THAT THERE ARE INDICATORS THAT LAW ENFORCEMENT ARE
22 TRAINED TO---

23 THE COURT: YOU DON'T KNOW WHAT
24 INDICATORS WERE PRESENT IN THIS, AND HE DOESN'T EITHER.
25 SO LET'S MOVE ON TO SOMETHING ELSE.

1 MRS. JOHNSON-LEE: YES, SIR. I HAVE
2 NO FURTHER QUESTIONS AT THIS TIME OF OFFICER POWERS. BUT
3 I WOULD JUST ASK THAT YOU ANSWER ANYTHING THAT MR.
4 WATSON OR MRS. MCMILLAN MIGHT HAVE. THANK YOU, SIR.

5 MRS. MCMILLAN: YOUR HONOR,
6 NEITHER OF THE DEFENDANTS HAVE ANY QUESTIONS OF THIS
7 WITNESS.

8 THE COURT: THANK YOU, SIR, YOU
9 MAY STEP DOWN:

10 MRS. JOHNSON-LEE: WE CALL SGT.
11 JAMIE HAMILTON.

12 Thereupon, JAMES L. HAMILTON,
13 being first duly sworn, testified as follows:

14 MRS. MCMILLAN: YOUR HONOR, WE'LL
15 STIPULATE HIS NAME AND WHAT HIS JOB TITLE IS.

16 THE COURT: VERY WELL. ANOTHER
17 STIPULATION, AND THAT IS HE WHO HE PURPORTS TO BE AND
18 WORKS FOR WHO HE PURPORTS TO WORK FOR.

19 DIRECT EXAMINATION BY MRS. JOHNSON-LEE:

20 Q SGT. HAMILTON, HOW LONG HAVE YOU WORKED IN LAW
21 ENFORCEMENT?

22 A I'VE BEEN WITH THE CITY OF DILLON POLICE DEPARTMENT FOR A
23 LITTLE OVER FIVE YEARS NOW.

24 Q DO YOU HAVE ANY PRIOR LAW ENFORCEMENT EXPERIENCE?

25 A YES, MA'AM, I'VE BEEN POLICING FOR ABOUT 13 YEARS. I

1 ACTUALLY STARTED WITH THE CITY OF MULLINS BACK IN EARLY
2 1994. FROM THERE I WENT TO THE DILLON COUNTY SHERIFF'S
3 DEPARTMENT IN SEPTEMBER OF '96. AND IN JULY OF 2001 I
4 WENT TO THE CITY OF DILLON POLICE DEPARTMENT.

5 Q ARE YOU A CERTIFIED LAW ENFORCEMENT OFFICER?

6 A YES, I AM.

7 Q TELL THE JURY ABOUT YOUR BACKGROUND AND EDUCATION IN
8 NARCOTICS INVESTIGATION.

9 A OF COURSE I GRADUATED FROM THE SOUTH CAROLINA CRIMINAL
10 JUSTICE ACADEMY IN BASIC LAW ENFORCEMENT, I'VE
11 ATTENDED VARIOUS CLASSES. DRUG ENFORCEMENT
12 ADMINISTRATION HAS A NARCOTICS COMMANDER'S SCHOOL I
13 ATTENDED ALSO AT THE CRIMINAL JUSTICE ACADEMY. I'M A
14 CERTIFIED MARIJUANA ANALYST FOR THE STATE LAW
15 ENFORCEMENT DIVISION. I ALSO WAS ATTACHED TO THE DRUG
16 ENFORCEMENT ADMINISTRATION TASK FORCE FOR ABOUT TWO
17 YEARS WHERE I WORKED EXCLUSIVELY OUT OF THE FEDERAL
18 BUILDING IN FLORENCE WORKING CASES WHICH SERVED ABOUT
19 11 COUNTIES IN THE PEE DEE AREA IN COOPERATION WITH THE
20 LOCAL AND STATE GOVERNMENT.

21 MRS. JOHNSON-LEE: YOUR HONOR, WE
22 WOULD MOVE THAT SGT. HAMILTON BE QUALIFIED AS AN
23 EXPERT IN THE FIELD OF NARCOTICS INVESTIGATION BASED ON
24 HIS EXPERIENCE AND TRAINING.

25 MR. WATSON: I DON'T SEE THE

1 PURPOSE OF THIS WITNESS BECAUSE THE DECISION FOR ARREST
2 WAS MADE BEFORE THE SGT. SHOWED UP. THE TAPE IS
3 ABSOLUTELY CLEAR THAT HE WASN'T THERE WHEN THE STOP
4 OCCURRED AND HE WASN'T THERE WHEN THE DEFENDANT'S
5 WERE PUT UNDER ARREST. HE KNOWS NOTHING OF THE
6 ARREST.

7 THE COURT: THAT WASN'T THE
8 QUESTION. THE QUESTION WAS IS HE A CERTIFIED NARCOTICS
9 INVESTIGATOR. WE'LL FIND OUT WHAT HE'S GOING TO TESTIFY
10 TO. DO YOU HAVE ANY QUESTIONS ON HIS---

11 MRS. MCMILLAN: I HAVE AN OBJECTION
12 THAT HE WAS ONLY SHOWN AS A WITNESS AND NOT IDENTIFIED
13 AS AN EXPERT WITNESS. AND UNLESS HE HAS ANY PERSONAL
14 KNOWLEDGE, OTHER THAN WHAT MR. WATSON HAS
15 ADDRESSED, I DON'T THINK HIS TESTIMONY IS IRRELEVANT.

16 THE COURT: OVERRULE THE
17 OBJECTION. DO YOU HAVE ANY OBJECTION?

18 MR. WATSON: I THINK HE'S A DRUG
19 AGENT. I HAVE KNOWN JAMIE ALL MY LIFE.

20 THE COURT: WELL WE KNOW HE'S A
21 DRUG AGENT. THE QUESTION IS; DO YOU AGREE OR DISAGREE,
22 OR HAVE ANY QUESTIONS ABOUT HIS EXPERTISE AS A - HOW DO
23 YOU OFFER HIM, AS AN EXPERT IN THE FIELD OF NARCOTIC
24 INVESTIGATION?

25 MR. WATSON: I BELIEVE HE'S

1 EMPLOYED AS ONE, BUT WITH NO DISRESPECT, I DON'T BELIEVE
2 HE'S AN EXPERT.

3 THE COURT: ALL RIGHT, SO YOU WISH
4 TO VOIR DIRE THE WITNESS?

5 MR. WATSON: YES, SIR.

6 BY MR. WATSON:

7 Q MR. HAMILTON, GOING BACK TO YOUR EDUCATION, YOU TALKED
8 ABOUT WORKING A BUNCH OF PLACES.

9 A YES, SIR.

10 Q TELL ME IN SOUTH CAROLINA ARE YOU CERTIFIED BY THE STATE
11 LAW ENFORCEMENT DIVISION IN ANY CAPACITY?

12 A AS A CERTIFIED MARIJUANA ANALYST.

13 Q BUT NOTHING IN COCAINE?

14 A NOTHING IN COCAINE.

15 Q AND WHEN IT COMES TO A CERTIFIED MARIJUANA ANALYST,
16 THAT'S THE PERSON WHO'D DO A FIELD TEST, TO DO THE
17 PRESUMPTIVE TEST?

18 A CORRECT.

19 Q YOU'RE NOT CERTIFIED TO DO ANYTHING WITH COCAINE
20 ANYWHERE IN THIS STATE?

21 A NO.

22 Q YOU WOULD AGREE THAT THE SUBJECT OF THIS CASE IS THAT
23 OF COCAINE?

24 A YES.

25 Q ALL RIGHT. YOU DIDN'T SEE ANY OF THE ARREST TAPE PLAYED?

1 A NO, SIR.

2 Q YOU DIDN'T SEE ANY OF THE ACTIVITIES PRIOR TO THE ARREST
3 TAPE PLAYED?

4 A NO, SIR.

5 Q SO YOU WOULD NOT HAVE ANY BASIS FOR ANY TESTIMONY AS
6 TO ANYTHING LEADING UP TO THE ARREST---

7 THE COURT: THAT HAS NOTHING TO
8 DO WITH HIS EXPERTISE. TALK ABOUT HIS EXPERTISE.

9 MR. WATSON: HE SAYS THE ONLY
10 THING HE'S QUALIFIED BY STATE ON---

11 THE COURT; I HEARD WHAT HE SAID.
12 ANY OTHER QUESTIONS?

13 MR. WATSON: NO, YOUR HONOR.

14 MRS. JOHNSON-LEE: JUDGE, I HAVE
15 SOME FOLLOW-UP QUESTIONS PRIOR TO YOUR MAKING A RULING.

16 THE COURT: VERY WELL.

17 BY MRS. JOHNSON-LEE:

18 Q SGT. HAMILTON, HAVE YOU EVER TESTIFIED IN COURT
19 PREVIOUSLY?

20 A YES, I HAVE.

21 Q HOW MANY TIMES HAVE YOU TESTIFIED IN STATE COURT?

22 A I'D SAY IN EXCESS OF - IN THE STATE AND THE LOCAL
23 MAGISTRATE COURT, OVER 50 TIMES.

24 Q HAVE YOU EVER TESTIFIED IN FEDERAL COURT?

25 A YES, I HAVE.

1 Q HOW MANY TIMES HAVE YOU TESTIFIED IN THE FEDERAL COURT
2 SYSTEM?

3 A I'D SAY APPROXIMATELY TEN TIMES.

4 Q HAVE ANY OF THOSE CASES INVOLVED COCAINE?

5 A YES.

6 Q HAS THE FEDERAL COURT EVER EXCLUDED YOUR TESTIMONY
7 BECAUSE YOU WEREN'T CERTIFIED AS AN EXPERT IN COCAINE?

8 A NO, MA'AM.

9 Q HAS ANY STATE COURT EVER EXCLUDED YOUR
10 TESTIMONY BECAUSE YOU WEREN'T CERTIFIED AS AN EXPERT IN
11 COCAINE?

12 A NO.

13 MRS. JOHNSON-LEE: YOUR HONOR, AT
14 THIS TIME I WOULD RENEW MY MOTION.

15 THE COURT: WELL YOU HAVEN'T
16 ASKED THE ACTUAL QUESTION HAS HE EVER BEEN CERTIFIED
17 BEFORE AS AN EXPERT WITNESS IN THE FIELD OF NARCOTICS
18 INVESTIGATIONS?

19 MRS. JOHNSON-LEE: HAVE YOU EVER
20 BEEN CERTIFIED BEFORE?

21 THE WITNESS: YES, AS IT RELATES TO
22 MARIJUANA, BEING A CERTIFIED MARIJUANA ANALYST I HAVE
23 BEEN QUALIFIED AS AN EXPERT TO TESTIFY AS TO THAT.

24 THE COURT: HAVE YOU EVER BEEN
25 QUALIFIED AS AN EXPERT IN THE FIELD OF NARCOTICS

1 INVESTIGATION IN ANY COURT AT ANY TIME?

2 THE WITNESS: NO, SIR.

3 THE COURT: VERY WELL. I DON'T FIND
4 HE'S QUALIFIED.

5 MRS. JOHNSON-LEE: THANK YOU,
6 JUDGE. AND THAT'S JUST TO QUALIFY HIM AS AN EXPERT?

7 THE COURT: THAT'S RIGHT.

8 BY MR. JOHNSON-LEE:

9 Q BUT YOU TESTIFIED YOU HAVE WORKED WITH D.E.A., ASSIGNED
10 FOR FEDERAL COURT SYSTEM AND WHAT NOT; IS THAT
11 CORRECT?

12 A YES, MA'AM.

13 Q BASED ON YOUR EDUCATION, YOUR TRAINING, AND YOUR
14 BACKGROUND, WORKING WITH THE D.E.A. AND OTHER AGENCIES,
15 IS THERE ANY SIGNIFICANCE TO YOU TO TWO INDIVIDUALS
16 HAVING DRUGS---

17 MRS. MCMILLAN: YOUR HONOR, HE'S
18 NOT BEEN QUALIFIED AS AN EXPERT. THERE'S NO FOUNDATION
19 THAT HE HAS ANY PERSONAL KNOWLEDGE ABOUT WHERE I
20 THINK SHE'S HEADED.

21 THE COURT: I HAVEN'T HEARD
22 THE QUESTION YET. BEFORE YOU ANSWER THE QUESTION, LET
23 ME HEAR THE QUESTION, MRS. JOHNSON-LEE.

24 MRS. JOHNSON-LEE: THE QUESTION
25 WAS IS THERE ANY SIGNIFICANCE TO TWO INDIVIDUALS

1 TRAVELING TOGETHER WITH DRUGS IN THE CAR WHILE THEY
2 DON'T KNOW ONE ANOTHER'S LAST NAMES.

3 THE COURT: I'M NOT GOING TO ALLOW
4 THAT.

5 MRS. MCMILLAN: ABSOLUTELY. I
6 WOULD ASK THAT THE JURY BE GIVEN AN INSTRUCTION.

7 THE COURT: THAT WHAT?

8 MR. WATSON: A CURATIVE*
9 INSTRUCTIONS.

10 THE COURT: I CAN'T HEAR YOU, YOU
11 HAVEN'T ANSWERED THE QUESTION.

12 MRS. MCMILLAN: THE DAMAGE IS IN
13 THE QUESTION, YOUR HONOR.

14 THE COURT: I REFUSE TO GIVE A
15 CURATIVE* INSTRUCTION. THE QUESTION WAS ASKED, IT WAS
16 NOT ANSWERED, IT WAS NOT ALLOWED TO BE ANSWERED, HE'S
17 NOT AN EXPERT. AND THAT QUESTION SHOULD BE ADDRESSED
18 TO AN EXPERT, AND HE'S NOT. SO DON'T ASK THE QUESTION
19 AND DON'T ANSWER THE QUESTION. NEXT QUESTION.

20 BY MRS. JOHNSON-LEE:

21 Q HAVE YOU EVER STOPPED ANY CARS ON THE INTERSTATE?

22 A YES, I HAVE.

23 Q HOW MANY TIMES HAVE YOU MADE TRAFFIC STOPS ALONG I-95?

24 THE COURT: WHAT'S THE RELEVANCE
25 OF THE QUESTION?

1 MRS. JOHNSON-LEE: MY QUESTION
2 WAS GOING TO CONCERN THE USE OF RENTAL VEHICLES.

3 THE COURT: NO.

4 BY MRS. JOHNSON-LEE:

5 Q SGT. HAMILTON, WHERE WERE YOU ON FEBRUARY 28TH, 2006
6 AFTER NINE O'CLOCK A.M.?

7 A WHERE WAS I AT?

8 Q YES, SIR.

9 A I WAS WORKING THAT DAY. I WENT OUT TO INTERSTATE 95.

10 Q WHERE DID YOU GO ON INTERSTATE 95?

11 A I FORGET WHAT MILE MARKER, I THINK IT WAS LIKE THE 196,
12 197 MILE MARKER.

13 Q WHAT WAS YOUR PURPOSE IN GOING THERE?

14 A ACTUALLY IT WAS QUITE EMBARRASSING. I ACTUALLY RADIOED
15 IN OR CALLED SGT. LANE BECAUSE MY HEATER WASN'T
16 WORKING IN MY CAR THAT MORNING AND I ASKED HIM IF HE WAS
17 AVAILABLE TO PICK ME UP AT RICE'S AUTOMOTIVE. AND HE, OF
18 COURSE, TOLD ME THAT HE WAS TIED UP WITH A TRAFFIC STOP.
19 AND I JUST WENT OUT TO SEE IF MAYBE I COULD ASSIST HIM. I
20 ASSIST HIM ON A REGULAR BASIS, AS DOES HE ASSIST ME ON A
21 REGULAR BASIS.

22 Q DID YOU AND SGT. LANE HAVE ANY DISCUSSION ABOUT THE
23 INCIDENCE OF THE HEATER WHILE YOU WERE ACTUALLY ON THE
24 SCENE?

25 MR. WATSON: OBJECTION,

1 RELEVANCY.

2 THE COURT: OVERRULED.

3 THE WITNESS: YES, WE DID. I JUST
4 TOLD HIM IT WAS KIND OF COLD THAT MORNING AND MY
5 HEATER WASN'T WORKING. I'D ASKED HIM ONCE HE CLEARED
6 LATER ON, OR WHATEVER, IF HE COULD PICK ME UP AT RICE'S
7 AUTOMOTIVE LOCATED ON 301 HERE IN DILLON.

8 BY MRS. JOHNSON-LEE:

9 Q WHAT DID YOU OBSERVE ONCE YOU ARRIVED ON THE SCENE?

10 A I OBSERVED SOMETHING ON THE HOOD OF SGT. LANE'S PATROL
11 VEHICLE, IF I RECALL CORRECTLY, AND BASICALLY ASKED HIM
12 WHAT THE STOP WAS, WHAT HE HAD.

13 Q DID YOU EVER WALK OVER AND LOOK AT WHAT WAS ON THE
14 HOOD OF HIS VEHICLE?

15 A IT SEEMS LIKE I DID. BUT, AGAIN, I CAN'T REMEMBER A HUNDRED
16 PERCENT. I KNOW HE'D FOUND SOME DRUGS.

17 Q AND WHAT APPEARED TO BE ON THE HOOD OF HIS VEHICLE?

18 MR. WATSON: OBJECTION. HE SAID HE
19 COULDN'T REMEMBER.

20 THE COURT: IF HE CAN ANSWER THE
21 QUESTION, HE CAN, IF HE CAN'T ANSWER THE QUESTION, HE
22 CAN'T.

23 MRS. JOHNSON-LEE: I MAY HAVE
24 MISUNDERSTOOD HIS ANSWER. I THOUGHT HE SAID HE DIDN'T
25 GO OVER AND EXAMINE AND THAT'S WHY I ASKED WHAT IT

1 APPEARED TO BE FROM WHERE HE WAS. BUT THAT IS MY
2 FAULT, I MISUNDERSTOOD. AT THIS POINT I WOULD HAVE NO
3 FURTHER QUESTIONS. SGT. HAMILTON, ANSWER ANY
4 QUESTIONS THAT MR., WATSON OR MRS. MCMILLAN MIGHT HAVE
5 FOR YOU.

6 MRS. MCMILLAN: YOUR HONOR, WE
7 HAVE NO QUESTIONS FOR THIS WITNESS AT THIS TIME.

8 MR. WATSON: IF HE NEEDS TO BE
9 EXCUSED, HE CAN BE EXCUSED.

10 MRS. JOHNSON-LEE: JUDGE, CAN WE
11 TAKE A BRIEF BREAK?

12 THE COURT: 15 MINUTES, THANK YOU.
13 PLEASE STEP BACK TO YOUR JURY ROOM, PLEASE DON'T
14 DISCUSS THE CASE WHILE YOU'RE BACK THERE.

15 (AT THIS TIME THERE WAS A BREAK TAKEN,)

16 MR. REDMOND: CAN WE GO AHEAD
17 AND REST AT THIS TIME?

18 THE COURT: LET'S DO THAT FOR THE
19 JURY.

20 (THE JURY ENTERS THE COURTROOM.)

21 THE COURT: LADIES AND GENTLEMEN,
22 BE SEATED. MR. REDMOND?

23 MR. REDMOND: YOUR HONOR, MAY IT
24 PLEASE THE COURT? LADIES AND GENTLEMEN, ON BEHALF OF
25 THE STATE, WE AT THIS TIME RESPECTFULLY REST OUR CASE.

1 THE COURT: VERY WELL. LADIES AND
2 GENTLEMEN, YOU'VE HEARD THE STATE'S CASE. BEFORE THE
3 DEFENDANT'S GIVEN AN OPPORTUNITY TO PUT UP A CASE, IF
4 THEY WISH TO DO SO, WE'RE GOING TO BREAK NOW FOR LUNCH.
5 I'VE DISCUSSED IT WITH THESE TWO ATTORNEYS - FOUR, I
6 DIDN'T MEAN TO LEAVE THE MEN OUT. DO NOT DISCUSS THE
7 CASE OVER LUNCH. ENJOY YOUR LUNCH, BE BACK IN THE JURY
8 ROOM AT ONE-THIRTY.

9 THE COURT: IF YOU HAVE ANY
10 REQUESTS FOR CHARGE, I'LL CONSIDER THEM.

11 MR. REDMOND: YES, SIR. YOUR HONOR,
12 I CAN SAY, AND I HAVE NOT RUN IT, BUT I CAN TELL THE COURT
13 THAT I'LL START WITH WHAT I ANTICIPATE TO BE THE
14 STANDARD CHARGES IN SUCH A CASE, AND WOULD
15 RESPECTFULLY REQUEST THE CHARGES OF CIRCUMSTANTIAL
16 EVIDENCE AND CONSTRUCTIVE POSSESSION.

17 MRS. MCMILLAN: YOUR HONOR, I
18 WOULD LIKE TO GIVE YOU MINE AFTER I MAKE A MOTION
19 OUTSIDE OF THE PRESENCE OF THE JURY.

20 THE COURT: ALL RIGHT. DO YOU
21 WANT TO DO HER MOTION NOW? WE ARE OUTSIDE OF THE
22 PRESENCE, WE CAN DO IT NOW OR WE CAN DO IT WHEN WE
23 COME BACK.

24 MRS. MCMILLAN: WE CAN DO IT WHEN
25 COME BACK.

1 THE COURT: WE'LL STAND AT EASE
2 THEN.

3 (AT THIS TIME THERE WAS A LUNCH BREAK.)

4 MR. WATSON: I HAVE GOOD NEWS,
5 JUDGE. I AM COLD AND THAT'S A MARVELOUS THING.

6 THE COURT: ALL RIGHT. THE
7 TEMPERATURE DID FACTOR INTO IT. WHAT'S THE STATUS ON
8 WHETHER OR NOT YOUR CLIENTS ARE GOING TO TESTIFY?

9 MR. WATSON: MY CLIENT IS NOT GOING
10 TO TESTIFY.

11 THE COURT: HOW ABOUT YOURS, MRS.
12 MCMILLAN?

13 MRS. MCMILLAN: WE'RE NOT, EITHER,
14 YOUR HONOR.

15 THE COURT: THEN I ASSUME YOU'LL
16 WANT A CHARGE AS TO SOMEONE NOT TAKING THE CHANGE?

17 MR. WATSON: YES, YOUR HONOR.

18 THE COURT: I ASSUME YOU WANT ONE
19 ON MERE PRESENCE. ANYTHING ELSE?

20 MRS. MCMILLAN: YES, SIR. I'D LIKE
21 ONE ON THE BURDEN OF PROOF AND THAT IT CANNOT BE
22 SHIFTED TO THE DEFENSE.

23 THE COURT: CANNOT WHAT?

24 MRS. MCMILLAN: CANNOT BE SHIFTED
25 TO THE DEFENDANTS.

1 THE COURT: WELL I DON'T KNOW IF
2 THERE'S A CHARGE ABOUT IT CANNOT BE SHIFTED, BUT I'LL
3 TELL THEM THAT EACH CASE IS SEPARATE. AND THE BURDEN
4 OF PROOF OF EACH HAS TO BE ON ITS OWN, IT CAN'T BE
5 SHIFTED TO SOMEONE ELSE.

6 MRS. MCMILLAN: RIGHT.

7 THE COURT: I MEAN I DON'T KNOW IF
8 IT'S IN THOSE WORDS OF SHIFTING.

9 MRS. MCMILLAN: AND THE
10 PRESUMPTION OF INNOCENCE.

11 THE COURT: WELL, THAT'S
12 STANDARD.

13 MRS. MCMILLAN: OKAY AND MR.
14 WATSON AND I HAD WANTED YOU TO SPECIFICALLY USE SOME
15 LANGUAGE FROM THE STATE V MANNING AS TO REASONABLE
16 DOUBT, AND THAT'S JUST THE DOUBT THAT WOULD CAUSE A
17 REASONABLE MAN TO HESITATE- I THINK THAT'S PROBABLY
18 JUST STANDARD.

19 THE COURT: VICTOR V NEBRASKA,
20 AND THAT'S FIRMLY CONVINCED, THAT THE JURY MUST BE
21 FIRMLY CONVINCED OF THE DEFENDANTS' GUILT BEFORE THEY
22 CAN RENDER A VERDICT OF GUILTY. AND IF THEY ARE NOT
23 FIRMLY CONVINCED OF HIS GUILT, THEY MUST RETURN A
24 VERDICT OF NOT GUILTY.

25 MR. WATSON: WE'D ASK THAT YOU

1 ALSO CHARGE STATE V MANNING.

2 THE COURT: VERY WELL.

3 MR. WATSON: OUR SUPREME COURT
4 HAS BEEN UBIQUITOUSLY AWARE OF A NUMBER OF REASONABLE
5 DOUBT CHARGES. THE ONE THAT WAS DECIDED IN THIS VERY
6 COURTROOM IS SO CLEAR IN ITS PURPOSE THAT I HOPE YOU
7 WILL DO IT IN ADDITION. IN THE STATE VERSUS MANNING, IT
8 WAS IN FACT, AS LOIS SAID, TO CAUSE A REASONABLE MAN TO
9 HESITATE. I DON'T BELIEVE IT IS IN CONFLICT WITH THE OTHER
10 ONE THAT YOU WISH TO USE.

11 THE COURT: I DON'T KNOW IF ITS IN
12 CONFLICT, BUT I KNOW THE OTHER ONE'S PASSED MUSTER.
13 VICTOR V NEBRASKA, LET ME READ IT TO YOU BEFORE YOU SAY
14 YOU DON'T WANT IT. "THE GOVERNMENT HAS THE BURDEN OF
15 PROVING THE DEFENDANT GUILTY BEYOND A REASONABLE
16 DOUBT. SOME OF YOU MAY HAVE SERVED AS JURORS IN CIVIL
17 CASES WHERE YOU WERE TOLD IT'S ONLY NECESSARY TO PROVE
18 THAT A FACT IS MORE LIKELY TRUE THAN NOT TRUE.

19 IN CRIMINAL CASES, THE GOVERNMENT'S PROOF
20 MUST BE MORE POWERFUL THAN THAT. IT MUST BE BEYOND A
21 REASONABLE DOUBT. PROOF BEYOND A REASONABLE DOUBT IS
22 PROOF THAT LEAVES YOU FIRMLY CONVINCED OF THE
23 DEFENDANT'S GUILT. THERE ARE VERY FEW THINGS IN THIS
24 WORLD THAT WE KNOW WITH ABSOLUTE CERTAINTY, AND IN
25 CRIMINAL CASES THE LAW DOES NOT REQUIRE PROOF THAT

1 OVERCOMES EVERY POSSIBLE DOUBT. IF BASED ON YOUR
2 CONSIDERATION OF THE EVIDENCE YOU ARE FIRMLY CONVINCED
3 THAT THE DEFENDANT IS GUILTY OF THE CRIME CHARGED, YOU
4 MUST FIND HIM GUILTY.

5 IF, ON THE OTHER HAND, YOU THINK THERE IS A REAL
6 POSSIBILITY THAT HE'S NOT GUILTY, YOU MUST GIVE HIM THE
7 BENEFIT OF THE DOUBT AND FIND HIM NOT GUILTY."

8 MR. WATSON: I WOULD ASK THAT YOU
9 ADD THE STATE VERSUS MANNING.

10 MRS. MCMILLAN: IT'S JUST ONE
11 SENTENCE.

12 MR. WATSON: WHICH I THINK IS AN
13 ABSOLUTE---

14 THE COURT: I UNDERSTAND ABOUT A
15 MAN HESITATING TO ACT. WHAT'S YOUR POSITION ON THAT,
16 SOLICITOR?

17 MR. REDMOND: YOUR HONOR, MY
18 POSITION WOULD BE THAT IF IT TELLS THEM FIRMLY CONVINCED
19 IN VICTOR VERSUS NEBRASKA, THEN I THINK THAT LANGUAGE IN
20 AND OF ITSELF IS SUFFICIENT BECAUSE IF YOU START COMBINING
21 THE TWO THEN IT MIGHT, IT MIGHT LEAVE ITSELF OPEN FOR
22 MISINTERPRETATION BY THE JURORS AS IT RELATES TO FURTHER
23 DEFINING WHAT AND HOW THEY ARE SUPPOSED TO ACT.

24 IF YOU ARE FIRMLY CONVINCED HE'S GUILTY, OR IF
25 EITHER ONE OF THE INDIVIDUALS ARE GUILTY, THAT IS

1 SUFFICIENT. IT'S BEEN UPHELD, YOUR HONOR. I THINK THAT IS
2 SIMPLISTIC IN THE SENSE THAT THE JURY UNDERSTANDS IT AND
3 CLEARLY STATES WHAT THE STANDARD IS AND SHOULD BE AS
4 FAR AS THE STATE IS CONCERNED.

5 MR. WATSON: AND, YOUR HONOR, THE
6 MANNING CHARGE HAS NEVER BEEN DISTURBED* IN ANY
7 APPEAL.

8 THE COURT: I'VE NEVER CHARGED
9 THAT. IN 11 YEARS, I'VE NEVER CHARGED THAT.

10 MRS. MCMILLAN: IT'S THE ONE
11 SENTENCE THAT WE WOULD LIKE---

12 THE COURT: I UNDERSTAND THE
13 SENTENCE THAT YOU WANT READ, AND THAT'S THE VERY
14 SENTENCE, OF COURSE, THAT GIVES ME TROUBLE. I WANT TO
15 READ THE WHOLE THING IN ITS ENTIRETY BEFORE I WILL TELL
16 YOU I WILL OR WILL NOT CHARGE IT.

17 MR. REDMOND: AND YOUR HONOR, AS
18 STATED - AND I DON'T KNOW WHETHER THEY ARE GOING TO
19 PUT UP ANY EVIDENCE, BECAUSE IF THEY AREN'T I WOULD ASK
20 THAT THE OTHER OFFICERS WHO ARE SEQUESTERED TO COME
21 BACK INTO COURT.

22 MR. WATSON: WE ARE NOT GOING TO
23 OFFER ANY EVIDENCE, AND THEY ARE RELEASED FROM ANY
24 SEQUESTRATION AS FAR AS WE ARE CONCERNED.

25 THE COURT: VERY WELL. DO YOU

1 HAVE A COPY OF THE MANNING CASE?

2 MRS. MCMILLAN: I'M SORRY, I DID NOT
3 BRING IT WITH ME.

4 MR. WATSON: I CAN GO GET IT.

5 THE COURT: WHILE WE'RE FINDING
6 THAT, IS THERE ANYTHING ELSE YOU'D HAVE THE COURT
7 CHARGE, ANY REQUESTS TO CHARGE? I'M GOING TO CHARGE
8 STANDARD CHARGES LIKE BURDEN OF PROOF, PRESUMPTION OF
9 INNOCENCE, THE SILENCE OF A WITNESS, FAILURE TO TAKE THE
10 STAND CANNOT, MUST NOT, WILL NOT BE HELD AGAINST THEM,
11 AND THEY CAN'T BRING UP THE DISCUSSION IN THE JURY ROOM.
12 MERE PRESENCE, DIRECT AND CIRCUMSTANTIAL EVIDENCE,
13 EXPERT WITNESSES, CHARGE THEM THE STATUTE ON
14 TRAFFICKING IN CRACK COCAINE, GIVE THEM THE CHARGE ON
15 WHAT'S ACTUAL POSSESSION AND WHAT'S CONSTRUCTIVE
16 POSSESSION. THE JURY BEING THE JUDGE OF THE FACT AND
17 THE CREDIBILITY OF THE WITNESSES AND THE COURT BEING THE
18 INSTRUCTOR IN THE LAW.

19 MR. WATSON: WITH RESPECT TO MERE
20 PRESENCE, YOUR HONOR, THERE IS A BRAND NEW CASE THAT
21 WAS JUST HANDED DOWN IN OUR STATE.

22 THE COURT: THERE'S A WHAT?

23 MR. WATSON: THE STATE VERSUS
24 HEATH*, AND IT TALKS ABOUT MERE PRESENCE.

25

1 MRS. MCMILLAN: STATE VERSUS
2 HEATH. IT'S THE ONE THAT I HANDED UP BY MISTAKE THE
3 OTHER DAY, YOUR HONOR. IT GIVES SPECIFIC INSTRUCTIONS
4 ABOUT THE---

5 THE COURT: IS IT DIFFERENT THAN -
6 "MERE PRESENCE AT THE SCENE IS NOT SUFFICIENT TO PROVE
7 SOMEONE GUILTY OF A CRIME. A DEFENDANT'S PRESENCE
8 WHERE A CRIME IS BEING COMMITTED OR MERE ASSOCIATION
9 WITH A PERSON WHO COMMITS A CRIME DOES NOT MAKE A
10 DEFENDANT AN ACCOMPLIS, OR AN AIDER, OR ABETTOR OF THE
11 PERSON COMMITTING THE CRIME."

12 MRS. MCMILLAN: YES, SIR, IT GOES
13 FURTHER. IT SAYS "MERE PRESENCE---

14 THE COURT: I'M NOT THROUGH. "THE
15 BURDEN IS ON THE STATE TO PROVE EVERY ELEMENT OF THE
16 CRIME CHARGED. IF YOU FIND AFTER VIEWING ALL THE
17 EVIDENCE THAT THE STATE HAS PROVED THAT THE DEFENDANT
18 WAS ONLY PRESENT AT THE SCENE OF A CRIME AND THEY HAVE
19 NOT PROVED BEYOND A REASONABLE DOUBT ANY OTHER
20 PARTICIPATION IN THE CRIME, THEN YOU MUST FIND THE
21 DEFENDANT NOT GUILTY. THE LAW IS THAT PROOF OF MERE
22 PRESENCE AT THE SCENE OF THE CRIME IS NOT SUFFICIENT TO
23 FIND SOMEONE GUILTY,"

24 MR. WATSON: IN THIS CASE---

25 THE COURT: WELL, WHERE IS IT? IF

1 YOU'VE GOT IT, I'LL READ IT.

2 MRS. MCMILLAN: IT GOES TO THE
3 CONSTRUCTIVE POSSESSION.

4 THE COURT: I THOUGHT YOU
5 WERE TALKING ABOUT MERE PRESENCE CHARGE.

6 MRS. MCMILLAN: WE ARE. BUT
7 THEY ALSO ADDRESS MERE PRESENCE, AND IT WOULD
8 JUST BE AN ADDENDUM TO YOUR INSTRUCTIONS.

9 THE COURT: I DIDN'T HEAR YOU.

10 MRS. MCMILLAN: IT WOULD JUST
11 BE AN ADDENDUM TO YOUR INSTRUCTION, WHICH IS---

12 THE COURT: I'M GOING TO
13 CHARGE THEM WITH CONSTRUCTIVE POSSESSION, ACTUAL
14 POSSESSION, AND MERE PRESENCE. NOW WHAT---

15 MRS. MCMILLAN: MERE PRESENCE
16 IS NOT---

17 (MR. WATSON AND MRS. MCMILLAN CONFER)

18 THE COURT: YOU HAVE HERE
19 "MERE PRESENCE IS INSUFFICIENT TO PROVE
20 CONSTRUCTIVE POSSESSION."

21 MR. WATSON: THAT'S IT. AS OF
22 AUGUST 16TH, THAT'S THE LAW IN THIS STATE.

23 MRS. JOHNSON-LEE: YOUR
24 HONOR, I HATE TO BEAT WHAT MIGHT BE A DEAD HORSE,
25 BUT THAT IS THE EXACT ISSUE THAT WENT UP IN THAT

1 CASE.

2 THE COURT: DIDN'T I SAY WE
3 WERE CHARGING THAT?

4 THE LAW CLERK: OUR DEFINITION
5 OF CONSTRUCTIVE POSSESSION HAS THAT EXACT
6 STATEMENT IN IT. "MERE PRESENCE AT THE SCENE WHERE
7 THE DRUGS WERE FOUND IS NOT ENOUGH TO PROVE
8 POSSESSION." THAT'S IN HIS CHARGE ON ACTUAL
9 CONSTRUCTION.

10 MR. WATSON: COULD YOU READ
11 THAT ONE MORE TIME?

12 THE COURT: IN THE DEFINITION
13 OF CONSTRUCTIVE POSSESSION, "CONSTRUCTIVE
14 POSSESSION MEANS THAT THE DEFENDANT HAD
15 DOMINION AND CONTROL OR THE RIGHT TO EXERCISE
16 DOMINION OR CONTROL OVER EITHER THE COCAINE-BASED
17 DRUGS ITSELF OR THE PROPERTY ON WHICH THE COCAINE-
18 BASED DRUGS WERE FOUND. MERE PRESENCE AT THE
19 SCENE WHERE THE DRUGS WERE FOUND IS NOT ENOUGH
20 TO PROVE POSSESSION."

21 MR. WATSON: THAT'S IT.

22 THE COURT: ANYTHING FURTHER
23 FROM THE STATE?

24 MR. REDMOND: NOTHING
25 FURTHER FROM THE STATE.

1 MRS. MCMILLAN: YOUR HONOR,
2 AT THIS TIME - FIRST OF ALL, I WANT TO THANK YOU FOR
3 YOUR PATIENCE WITH ME. I CANNOT SEE YOU WHEN I'M
4 READING BECAUSE---

5 THE COURT: WELL IT'S NOT A
6 PRETTY SIGHT ANYWAY. GO AHEAD.

7 MRS. MCMILLAN: AT THIS TIME I
8 WANT TO MAKE A MOTION FOR A DIRECTED VERDICT ON
9 BEHALF OF BOTH THE DEFENDANTS. BUT THERE WILL BE
10 AN ISSUE THAT WILL BE DIRECTED DIRECTLY TO MY
11 CLIENT, THE PASSENGER, JOHNNY JONES, AND THEN MR.
12 WATSON, I BELIEVE ALSO HAS A MOTION FOR A DIRECTED
13 VERDICT. IF I MAY?

14 YOUR HONOR, THE STATE ALLEGES THAT
15 THESE DEFENDANTS HAVE VIOLATED THE TRAFFICKING OF
16 COCAINE STATUTE, AND THERE ARE THREE ELEMENTS OF
17 THAT. AND I'M JUST GOING TO BRIEFLY GO THROUGH THE
18 ONES THAT I THINK ARE BEFORE YOU TODAY.

19 THE COURT REPORTER: SPEAK
20 UP, PLEASE.

21 MRS. MCMILLAN: THAT THESE
22 DEFENDANTS MUST KNOWINGLY BRING INTO THIS STATE,
23 AID AND ABET, OR ATTEMPT TO BRING INTO THIS STATE,
24 AGAIN ACTUAL CONSTRUCTIVE POSSESSION OF COCAINE.
25 AND MY CLIENT IS PRESUMED TO BE INNOCENT. THE GUILT

1 OF HIM HAS TO BE PROVEN BEYOND A REASONABLE
2 DOUBT. AND THE REASON FOR THAT RULE IS THAT ALL
3 PRESUMPTIONS OF LAW, REGARDLESS OF WHAT HAS
4 COME FROM THE WITNESS STAND TODAY AND
5 YESTERDAY, ARE IN FAVOR OF HIM BEING INNOCENT.
6 AND HE CANNOT BE REQUIRED TO PROVE THAT HE DIDN'T
7 HAVE ANY KNOWLEDGE OF THESE DRUGS.

8 THIS POSES A SIGNIFICANTLY GREATER ONUS
9 ON HIM AND MORE SIGNIFICANTLY OBLITERATES HIS
10 PRESUMPTION OF INNOCENCE. AS TO THE FIRST ELEMENT,
11 KNOWINGLY, UNDER STATE V LANE,* THE STATE HAS TO
12 SHOW THE INTENT TO CONTROL THE DISPOSITION OR USE
13 OF THE DRUGS. THAT SITE IS 271 S.C. 68, 245 S.C. 2ND,
14 114 ,1978, THERE IS NO EVIDENCE, YOUR HONOR, IN THE
15 RECORD, SUPPORTING ANY THEORY THAT MY CLIENT HAD
16 KNOWLEDGE OF ANY DRUGS IN THIS MOVING VEHICLE.

17 THE ARRESTING OFFICER, SGT. LANE, THE
18 STATE'S CHIEF WITNESS, TESTIFIED THAT HE DIDN'T
19 KNOW WHO PUT THE DRUGS IN THAT VEHICLE. HE
20 CANNOT ASSOCIATE THOSE BAGS OF DRUGS FROM THE
21 VEHICLE FROM WHICH HE SAYS HE REMOVED TWO BAGS
22 OF DRUGS. AND HE COULDN'T SAY THAT THOSE WERE
23 THE DRUGS THAT HE DID REMOVE FROM THE VEHICLE.

24 I BELIEVE THAT MIGHT HAVE BEEN THE MOST
25 TRUTHFUL AND HONEST STATEMENT THAT HE MADE

1 WHEN HE SAID HE COULDN'T VERIFY THAT THOSE ARE THE
2 SAME DRUGS. AND I DON'T BELIEVE THERE'S
3 ANY QUESTION THAT HE MAY HAVE GOTTEN ONE BAG OF
4 DRUGS, WE SAW THE VIDEO. BUT HE DID SAY UNDER
5 OATH THAT HE DID NOT KNOW IF THESE WERE THE DRUGS
6 REMOVED FROM THE TRUNK.

7 THE COURT: THAT'S NOT
8 SURPRISING AT ALL TO ME BECAUSE OF DRUGS HE
9 HAPPENED TO SEND TO SLED THAT HE DOESN'T KNOW
10 WHAT CAME BACK FROM SLED.

11 MRS. MCMILLAN: RIGHT. AND,
12 YOUR HONOR, HE SAYS HE REMOVED - AT ONE POINT HE
13 SAID TWO BAGS AND THEN ANOTHER POINT---

14 THE COURT: THE TWO BAGS, OR
15 ONE BAG DOESN'T CONCERN ME IN THE LEAST.

16 MRS. MCMILLAN: IT DOES
17 CONCERN US, YOUR HONOR, BECAUSE WE BELIEVE THAT---

18 THE COURT: LET ME TELL YOU
19 WHAT DOES CONCERN ME. MAYBE THIS WILL HELP YOU. I
20 DON'T THINK THEY'VE PROVED KNOWINGLY BROUGHT
21 INTO THIS. I DON'T THINK THEY PROVED THAT. WHAT'S
22 THE SECOND ONE?

23 MRS. MCMILLAN: THE SECOND
24 ONE IS THE CONSTRUCTIVE POSSESSION.

25 THE COURT: NO, THAT'S THE

1 THIRD ONE. WHAT'S THE SECOND ONE? FIRST IS ACTUAL
2 POSSESSION---

3 MRS. MCMILLAN: THAT'S IT,
4 YOUR HONOR, WE'RE TALKING ABOUT CONSTRUCTIVE
5 POSSESSION AT THIS POINT.

6 THE COURT: WELL, THE ONLY
7 THING THEY MAY HAVE SHOWN IS CONSTRUCTIVE
8 POSSESSION.

9 MRS. MCMILLAN: RIGHT, AND I
10 DON'T BELIEVE THAT THEY HAVE SHOWN THAT.

11 THE COURT: I UNDERSTAND YOU
12 DON'T THINK THAT. AND IT'S A REAL CLOSE QUESTION,
13 I'LL GRANT YOU.

14 MRS. MCMILLAN: AND AS TO MY
15 CLIENT, YOUR HONOR---

16 THE COURT: I'M TALKING ABOUT
17 YOUR CLIENT.

18 MRS. MCMILLAN: RIGHT, I'M
19 TRYING TO SEE YOU AND SEE MY NOTES.

20 THE COURT: LISTEN TO ME.
21 MAKE LIKE IT'S COMING FROM THE WIZARD OF OZ, OR
22 SOMETHING. YOU CAN'T SEE ME BUT YOU CAN HEAR ME.
23 YOU'VE GOT A GOOD ARGUMENT FOR TWO OR THREE OF
24 THE THREE POSSIBILITIES. THE THIRD POSSIBILITY YOU
25 HAVE A FAIR ARGUMENT, AND THAT IS CONSTRUCTIVE

1 POSSESSION. DID HE HAVE THE RIGHT TO CONTROL THE
2 PLACE THAT THE DRUGS WERE FOUND? THE CAR. DID HE
3 HAVE A RIGHT TO CONTROL THAT? I DON'T' KNOW. HIS
4 NAME WASN'T ON THE LEASE, BUT NEITHER WAS THE
5 PERSON WHO WAS DRIVING THE CAR'S NAME ON THE
6 LEASE. BUT HE WAS DRIVING IT. HE WAS EXERCISING
7 DOMINION AND CONTROL OVER IT.

8 MRS. MCMILLAN: HE WAS AN
9 AUTHORIZED DRIVER, YOUR HONOR.

10 THE COURT: HE WAS. WELL,
11 THAT'S EVEN MORE SO. BUT YOUR CLIENT WAS NOT?

12 MRS. MCMILLAN: NO, SIR. HE
13 DIDN'T HAVE A KEY---

14 THE COURT: BUT YOUR CLIENT
15 SAID SOMEWHERE THAT IT WAS HIS UNCLE, MY UNCLE
16 LEASED IT. BUT HE AIN'T REALLY AN UNCLE, HE'S
17 SOMETHING LIKE AN UNCLE, OR SOME SORT OF
18 DISCUSSION LIKE THAT THAT WAS FAIRLY INAUDIBLE TO
19 ME.

20 NOW I DON'T KNOW, FRANKLY, IF IT'S MY
21 UNCLE, DOES THAT NECESSARILY GIVE ME THE RIGHT TO
22 CONTROL IT OR NOT? I'M GOING TO LET THE JURY FIND
23 THAT. AND I'M GOING TO SUBMIT IT TO THE JURY. AND
24 I'M GOING TO WITH RESPECT DENY YOUR MOTION AT THIS
25 TIME. I MAINTAIN THE RIGHT TO ACT AS THE 11TH JUROR,

1 AS IT TURNS OUT, AND I'M GOING TO GIVE THIS EVEN
2 MORE THOUGHT. IT HASN'T GONE UNNOTICED OVER THE
3 LUNCH HOUR RIGHT UP TO RIGHT NOW. IN FACT, RIGHT UP
4 UNTIL WE WALKED OUT OF THE DOOR. WHAT YOU GONNA
5 DO ON A DIRECTED VERDICT MOTION, JUDGE? I DON'T
6 KNOW. BECAUSE IT'S A VERY CLOSE QUESTION.

7 BUT FOR THE MOMENT I'M GOING TO LET IT TO
8 GO TO THE JURY ON THE ISSUE OF CONSTRUCTIVE
9 POSSESSION AND WHETHER OR NOT HE HAD THE RIGHT
10 TO MAINTAIN ANY DOMINION OR CONTROL OVER THE
11 PLACE WHERE THE DRUGS WERE FOUND.

12 I KNOW ONE THING, IF THEY FIND YOUR CLIENT
13 NOT GUILTY, THEY'VE MADE THAT DETERMINATION. IF
14 THEY FIND YOUR CLIENT GUILTY THEN I HAVE ANOTHER
15 OPPORTUNITY. AND I WANT SOME MORE TIME TO THINK
16 ABOUT IT.

17 MRS. MCMILLAN: SO, YOUR
18 HONOR, YOU'RE GOING TO LOOK AT IT AFTER THE
19 VERDICT COMES IN?

20 THE COURT: ALWAYS.

21 MRS. MCMILLAN: AND AT THAT
22 POINT WOULD I HAVE AN OPPORTUNITY TO RAISE MY
23 FINAL ISSUE?

24 THE COURT: YOU ALWAYS HAVE
25 THAT OPPORTUNITY TO RAISE THAT, AND I'M ALWAYS

1 AWARE - IN A POST-TRIAL MOTION IF THEY SHOULD FIND
2 YOUR CLIENT GUILTY YOU HAVE THE RIGHT TO MAKE THAT
3 MOTION IN A POST-TRIAL MOTION. AND I THINK I HAVE
4 THE RIGHT TO ACT WHETHER YOU MAKE THAT MOTION
5 OR NOT.

6 AND BECAUSE OF WHAT I JUST SAID, I'M NOT
7 GOING TO CHARGE STATE VERSUS MANNING, I'M GOING TO
8 CHARGE VICTOR VERSUS NEBRASKA. I'LL NOTE YOUR
9 OBJECTION. I THINK EITHER IS ACCEPTABLE. I'VE ALWAYS
10 USED VICTOR VERSUS NEBRASKA, I KNOW THAT TO PASS
11 MUSTER. I FEEL COMFORTABLE WITH THAT, AND I DON'T
12 FEEL AS COMFORTABLE WITH STATE VERSUS MANNING
13 PARTICULARLY WITH THE SENTENCE YOU WANT CHARGED,
14 AND THAT'S THAT WOULD CAUSE A REASONABLE MAN TO
15 HESITATE TO ACT. OBVIOUSLY I'M HESITATING TO ACT
16 ON YOUR MOTION. I HOPE YOU UNDERSTAND WHERE I AM
17 IN THIS MATTER.

18 MRS. MCMILLAN: YES, SIR, I DO,
19 AND I APPRECIATE IT. I REALIZE YOU'RE A VERY ASTUTE
20 MAN AND YOU HAVE A LOT OF EXPERIENCE.

21 THE COURT: WELL, IT DOESN'T
22 TAKE EXPERIENCE. THESE PEOPLE AREN'T EXPERIENCED,
23 EITHER, BUT THEY ARE THE TRYERS OF FACT. AND AS A
24 FACTUAL MATTER THEY HAVE THE RIGHT, I BELIEVE, AND
25 OBVIOUSLY I'M RULING THAT WAY, THEY HAVE THE RIGHT

1 TO DETERMINE WHETHER OR NOT YOUR CLIENT WAS IN
2 CONSTRUCTIVE POSSESSION OF THE DRUGS. AND THEY
3 HAVE A RIGHT TO MAKE THAT DETERMINATION IN LIGHT
4 OF THE OTHER CHARGES I'M GIVING THEM SUCH AS MERE
5 PRESENCE DOES NOT CONSTITUTE GUILT, IN LIGHT OF THE
6 FACT OF THE DEFINITION OF CONSTRUCTIVE POSSESSION,
7 IN LIGHT OF THE FACT OF THE INSTRUCTION ON
8 CIRCUMSTANTIAL EVIDENCE, IN LIGHT OF THE FACT OF
9 VICTOR VERSUS NEBRASKA.

10 AND IF THEY OVERCOME - WHICH IS THE
11 WORDS YOU WOULD PROBABLY BE USING - ALL THOSE
12 INSTRUCTIONS AND FIND HIM GUILTY, THEN IT'S STILL ON
13 ME. I DO HAVE A CONSCIENCE, AND I HAVE TO LIVE WITH
14 THAT CONSCIENCE. IF THEY, ON THE OTHER HAND, SAY
15 HE'S NOT GUILTY, THEN THE JURY SPOKE. DO YOU
16 FOLLOW MY DRIFT OF WHERE I AM?

17 MRS. MCMILLAN: I DO.

18 THE COURT: I HOPE SO. YES,
19 SIR?

20 MR. WATSON: SHE WAS MAKING
21 THAT MOTION FOR BOTH CLIENTS. I TAKE IT YOU WOULD
22 RECONSIDER ANY MOTION MADE ON BEHALF OF MY CLIENT
23 AFTER A JURY VERDICT IF IT'S ADVERSE TO HIM, AS WELL?

24 THE COURT: ALWAYS. BECAUSE
25 ALWAYS THE MOTION THAT DEFENSE COUNSELS MAKE.

1 MR. WATSON: THANK YOU, YOUR
2 HONOR. I MERELY WOULD ADOPT THE SAME ARGUMENT THAT
3 MRS. MCMILLAN DID INSTEAD OF RE-PLOWING ANY OF THE
4 GROUND. I DO HAVE ONE FAVOR. ALL LAWYERS TRY TO DO
5 THE BEST THEY CAN ABOUT ADVISING THEIR CLIENTS TO
6 TESTIFY OR NOT TESTIFY. I WONDER IF THE COURT WOULD
7 TAKE A MOMENT TO TALK TO MY CLIENT ABOUT THAT ISSUE?

8 THE COURT: I'M GOING TO DO THAT,
9 NOT ONLY YOUR CLIENT, BUT MRS. MCMILLAN'S CLIENT AS
10 WELL. MR. BURNS AND MR. JONES.? YOU HAVE THE RIGHT TO
11 REMAIN SILENT. BE SEATED, YOU DON'T NEED TO STAND FOR
12 THIS. YOUR RIGHT TO REMAIN SILENT IS AN IMPORTANT RIGHT
13 THAT YOU HAVE.

14 YOU DON'T HAVE TO SAY ANYTHING AT YOUR TRIAL
15 BECAUSE YOU HAVE NOTHING TO PROVE. THE STATE HAS THE
16 BURDEN OF PROVING BEYOND A REASONABLE DOUBT TO THESE
17 PEOPLE CALLED THE JURY YOUR GUILT. IF THEY FAIL TO DO
18 THAT, THEN THE JURY CANNOT AND MUST NOT FIND YOU
19 GUILTY. YOU DON'T HAVE TO PROVE YOUR OWN INNOCENCE.
20 THAT'S THE STRONGEST PRESUMPTION I KNOW OF. UNLIKE IN
21 SOME COUNTRIES WHERE YOU'RE PRESUMED TO BE GUILTY AND
22 YOU HAVE TO PROVE YOUR OWN INNOCENCE. IT DOESN'T WORK
23 THAT WAY HERE.

24 THE JURY WILL BE INSTRUCTED BY ME JUST EXACTLY
25 WHAT I'VE SAID. NOT IN THOSE SAME WORDS, BUT EVEN MORE

1 PRECISELY, THAT YOUR FAILURE TO TAKE THE STAND AND
2 TESTIFY AND SUBMIT YOURSELF TO CROSS EXAMINATION DOES
3 NOT RAISE ANY INFERENCE WHATSOEVER AS TO YOUR GUILT OR
4 INNOCENCE. THEY CANNOT INFER ANYTHING FROM THAT.
5 THAT'S SIMPLY EXERCISING WHAT IS YOUR PREROGATIVE.

6 FURTHER, I WILL INSTRUCT THEM THAT THEY CAN'T
7 EVEN BRING UP FOR DISCUSSION IN THE JURY ROOM WHEN THEY
8 RETIRE TO DELIBERATE YOUR GUILT OR INNOCENCE, THE FACT
9 THAT YOU HAVE CHOSEN NOT TO TAKE THE STAND, OR TO
10 REMAIN SILENT TO FURTHER ENSURE THAT THAT SILENCE WON'T
11 BE HELD AGAINST YOU. I TELL THEM THEY CAN'T EVEN TALK
12 ABOUT IT.

13 ON THE OTHER HAND, YOU DO HAVE A RIGHT TO
14 TESTIFY. YOU CAN TAKE THE STAND, BE SWORN IN
15 AND TESTIFY IF YOU WISH TO DO SO. I MUST TELL YOU IF YOU
16 DO THAT, HOWEVER, YOU'RE PLACING YOUR CREDIBILITY, YOUR
17 BELIEVABILITY IN ISSUE, YOUR TRUTHFULNESS. AND ANYTHING
18 THAT WOULD BEAR ON YOUR TRUTHFULNESS,
19 YOUR CREDIBILITY, CAN BE TALKED ABOUT BY THE
20 PROSECUTION. THEY CAN, FOR INSTANCE, BRING UP ANY CRIMES
21 IN THE PAST TEN YEARS THAT WOULD BEAR ON YOUR
22 TRUTHFULNESS OR YOUR CREDIBILITY, ANY CRIME THAT YOU
23 WERE CONVICTED OF. THEY CAN ASK OTHER QUESTIONS THAT
24 WOULD DEAL WITH YOUR BELIEVABILITY OR YOUR
25 TRUTHFULNESS.

1 SO WHEN YOU PLACE YOUR CREDIBILITY AT ISSUE,
2 YOU'RE RUNNING A RISK, BUT IT'S A RISK YOU MAY WANT TO
3 TAKE, OF HAVING TO WITHSTAND CROSS EXAMINATION ON
4 THAT ISSUE OR ANY OTHER ISSUES THAT ARE RELEVANT.

5 IT'S YOUR DECISION WHETHER YOU WISH TO TESTIFY
6 OR NOT, AND THE COURT WILL ABIDE BY ANY DECISION YOU
7 MAKE. I'M TOLD YOU DO NOT WANT TO TESTIFY. MR. BURNS, IS
8 THAT YOUR DECISION?

9 DEFENDANT BURNS: YES, SIR.

10 THE COURT: IS THAT YOUR DECISION,
11 MR. JONES?

12 DEFENDANT JONES: YES, SIR.

13 THE COURT: VERY WELL.. ANYTHING
14 ELSE YOU'D HAVE ME ADVISE THEM OF, MR. WATSON?

15 MR. WATSON: I CANNOT THINK OF A
16 THING, YOUR HONOR.

17 THE COURT: MRS. MCMILLAN?

18 MRS. MCMILLAN: NOTHING FURTHER,
19 YOUR HONOR.

20 THE COURT: MR. REDMOND, MRS. LEE?

21 MR. REDMOND: NOTHING FURTHER,
22 YOUR HONOR.

23 THE COURT: VERY WELL.

24 MR. WATSON: MAY IT PLEASE THE
25 COURT?

1 THE COURT: YES, SIR.

2 MR. WATSON: MY UNDERSTANDING IS
3 THE DEFENSE HAS THE FINAL ARGUMENT?

4 THE COURT: YES.

5 MR. REDMOND: AND THAT'S MY
6 UNDERSTANDING AS WELL.

7 THE COURT: LET'S GET THE JURY BACK
8 IN.

9 MR. WATSON: I WOULD PROPOSE TO
10 REST IN FRONT OF THE JURY, YOUR HONOR.

11 (AT THIS TIME THE JURY ENTERS THE COURTROOM)

12 THE COURT: BE SEATED, PLEASE. GIVE
13 ME JUST ONE MOMENT. LADIES AND GENTLEMEN OF THE JURY,
14 YOU'VE HEARD THE STATE'S CASE. THE STATE HAS RESTED,
15 THEY PROPOSE TO PUT UP NO MORE TESTIMONY. YOU HAVE ALL
16 OF THE PROOF THAT THE STATE INTENDS TO INTRODUCE IN THIS
17 MATTER. NOW IT'S THE DEFENSE'S TURN.

18 MR. WATSON: MAY IT PLEASE THE
19 COURT? WITH RESPECT TO THE DEFENDANT ARTIE BURNS, AND
20 WITH RESPECT TO THE DEFENDANT, JOHNNY JONES, THE
21 DEFENSE RESTS.

22 THE COURT: VERY WELL. AS YOU
23 NOTICE, THEY'RE NOT GOING TO PUT UP ANY TESTIMONY. THEY
24 DON'T HAVE TO. I'LL INSTRUCT YOU MOMENTARILY WITH
25 REGARD TO A WHOLE LOT OF THINGS, THE LAW THAT'S

1 APPLICABLE TO THIS CASE. AND I'LL TELL YOU THAT ONE OF
2 THOSE CHARGES WILL BE THAT THEY DON'T HAVE TO TESTIFY,
3 THEY DON'T HAVE TO TAKE THE STAND. THAT'S THEIR RIGHT,
4 THEIR PREROGATIVE, AND YOU CAN'T HOLD THEIR SILENCE
5 AGAINST THEM IN ANY WAY. THEY HAVE NOTHING TO PROVE,
6 THE STATE HAS THE BURDEN OF PROVING THEIR GUILT. THEY DO
7 NOT HAVE TO PROVE THEIR INNOCENCE.

8 FURTHER, I'M GOING TO TELL YOU THAT YOU CAN'T
9 BRING THAT BACK UP FOR DISCUSSION IN THE JURY ROOM WHEN
10 YOU RETIRE TO THE JURY ROOM FOR DELIBERATIONS TO
11 DELIBERATE THEIR GUILT OR INNOCENCE. BUT RIGHT NOW IS
12 NOT THE TIME FOR CHARGING THE JURY. RIGHT NOW IS THE
13 TIME FOR CLOSING ARGUMENTS. YOU REMEMBER, I TOLD YOU
14 THAT THE TRIAL WOULD BE DIVIDED INTO PHASES; THE FIRST
15 PHASE BEING OPENING STATEMENTS WHERE THEY TELL YOU
16 WHAT THEY INTENDED TO SHOW IN SUPPORT OF THEIR POSITION
17 IN THIS MATTER. AND THAT I TOLD YOU THEN THE EVIDENCE
18 WOULD BE PRESENTED, REMINDING YOU THAT WHAT THE
19 ATTORNEYS SAID WAS IMPORTANT, BUT ANYTHING THE
20 ATTORNEYS SAY IS NOT EVIDENCE IN THE CASE.

21 EVIDENCE COMES FROM THREE SOURCES; SWORN
22 TESTIMONY, EXHIBITS, AND THEIR STIPULATIONS THAT I TOLD
23 YOU ABOUT, WHICH WOULD MAKE THE SUBJECT OF THE
24 STIPULATION A CONCLUSIVE FACT IN THE MATTER. NOW,
25 THE NEXT PHASE WILL BE CLOSING ARGUMENTS OR

1 SUMMATIONS, AS I TOLD YOU THEY'RE SOMETIMES CALLED. IF
2 IT'S F. LEE BAILEY THE CALL IT A SUMMATION, THINK, I DON'T
3 KNOW WHY. BUT IT'S CLOSING ARGUMENTS. I REMIND YOU THAT
4 WHAT THEY WILL DO USUALLY, AND I DON'T KNOW WHAT
5 THEY'LL DO THIS TIME, BUT USUALLY THEY POINT OUT PART OF
6 THE EVIDENCE THAT SUPPORTS THEIR POSITION IN THE MATTER,
7 AND TRY TO GET YOU TO AGREE WITH THEIR VERSION OF THE
8 FACTS OF THE CASE, YOU BEING THE JUDGE OF THE FACTS OF
9 THE CASE.

10 THEIR CLOSING ARGUMENTS WILL BE FOLLOWED BY
11 THE COURT'S INSTRUCTIONS TO YOU ON THE LAW THAT'S
12 APPLICABLE TO THIS CASE. CLOSING INSTRUCTIONS, JURY
13 CHARGE, BOTH MEAN THE SAME THING. AND THEN AFTER
14 THAT'S OVER, YOU'LL RETIRE TO YOUR JURY ROOM TO
15 DELIBERATE YOUR VERDICT IN THE MATTER, REMINDING YOU
16 THAT YOUR VERDICT MUST BE A UNANIMOUS VERDICT OF ALL
17 10 JURORS. ARE WE READY TO PROCEED NOW WITH CLOSING
18 ARGUMENTS?

19 MR. REDMOND: STATE'S READY, YOUR
20 HONOR.

21 THE COURT: VERY WELL.

22 MR. REDMOND: MAY IT PLEASE THE
23 COURT?

24 THE COURT: YES.

25 MR. REDMOND: MR. WATSON, MRS.

1 MCMILLAN? LADIES AND GENTLEMEN, THIS IS THE FIRST
2 CHANCE I'VE HAD TO ACTUALLY FORMALLY INTRODUCE MYSELF
3 TO YOU AS THE JURY. LET ME JUST SAY IT'S A PLEASURE TO BE
4 IN FRONT OF YOU AND TO SERVE AS A DEPUTY SOLICITOR. MY
5 NAME IS KINARD REDMOND. I'M ORIGINALLY FROM HARTSVILLE.
6 THAT IS NOT ALWAYS A GOOD THING TO ADMIT, BUT I AM
7 PROUD AND MOST HAPPY TO BE SERVING THE PEOPLE OF
8 DILLON COUNTY AS A DEPUTY SOLICITOR. I WORK WITH MRS.
9 MARY THOMAS JOHNSON-LEE, AS I CALL HER, I HAVE TO PUT A
10 THOMAS IN THERE, AND OBVIOUSLY GLAD TO BE ABLE TO
11 ASSIST HER ON THIS PARTICULAR CASE. SHE IS OUR
12 PROSECUTOR AND DOES AN EXCELLENT JOB AT IT.

13 LET ME THANK YOU, LADIES AND GENTLEMEN,
14 BECAUSE I'VE HEARD IT SAID OFTEN, AND I TELL EVERY JURY I
15 ENCOUNTER THIS, THAT OTHER THAN IN TIMES OF WAR, WHICH
16 OF COURSE, UNFORTUNATELY WE FIND OURSELVES IN, THERE IS
17 NO GREATER DUTY THAT A CITIZEN CAN PERFORM THAN THAT
18 OF JURY SERVICE. BECAUSE YOU ARE THE LAST BASTION OF
19 JUSTICE. WE PUT UP AND PRESENT CASES AND YOU MAKE
20 THOSE DECISIONS AND DETERMINATIONS, SO YOU'RE THE LAST
21 BASTION OF JUSTICE. SO YOUR WILLINGNESS TO SERVE AND
22 THE ATTENTION THAT YOU PAY DURING THE COURSE OF THIS
23 TRIAL IS MOST APPRECIATED. NOW, I'M GOING TO ALSO
24 ADDRESS A FEW THINGS THAT WERE BROUGHT UP IN OPENING
25 STATEMENTS.

1 AS I HAVE FIRST ARGUMENTS, YOU WILL THEN HEAR
2 FROM DEFENSE COUNSEL AND I WON'T HAVE A CHANCE TO
3 ADDRESS YOU AGAIN, AND THAT'S FINE BECAUSE I CAN ONLY
4 CONTROL THE CASE THAT WE HAVE. BUT LET ME JUST SAY
5 THIS; THERE WAS TALK, INNUENDO, IMPLICATIONS, AND I THINK
6 A WORD I HEARD WAS TAMPERING.

7 I HEARD WORDS SUCH AS, OR I THINK A
8 REPRESENTATIONS THAT THERE - I THINK MRS. MCMILLAN EVEN
9 SAID THAT SHE WAS NOW LEARNING THAT LAW ENFORCEMENT
10 HERE IS UNTRUSTWORTHY, OR SOMETHING TO THAT EFFECT.
11 LET ME JUST SAY THIS, AND IF I'M ON A SOAPBOX, I APOLOGIZE,
12 BUT I THINK IT'S APPLICABLE IN THIS SITUATION.

13 SGT. DAVID LANE, SGT. TERRY POWERS, CORP.
14 ROBERT BUCY, AMONG OTHERS IN LAW ENFORCEMENT, WE ASK
15 THEM TO PERFORM AND AWESOME, AWESOME DUTY AND
16 RESPONSIBILITY. WE PUT THAT RESPONSIBILITY AND TRUST ON
17 THEIR SHOULDERS.

18 AND PERSONALLY, RATHER THAN SIT HERE AND
19 HAVE TO LISTEN TO INNUENDOS AND IMPLICATIONS THAT THEY
20 ARE ENGAGED IN SOME WRONGDOING AND SOME HIGH LEVEL
21 CONSPIRACY AGAINST THESE TWO DEFENDANTS, EVERY ONCE IN
22 A WHILE A SIMPLE THANK YOU WOULD SUFFICE. THANK YOU
23 FOR PUTTING YOURSELF IN THE POSITION THAT YOU DO,
24 BECAUSE ON FEBRUARY 28TH, 2006, AND YOU HEARD FROM SGT.
25 LANE, WHO WAS OUT THERE BY HIMSELF AT THAT PARTICULAR

1 TIME WITH TWO SUSPECTS, NOW AS WE KNOW, DEFENDANTS,
2 AND THEN FINDING DRUGS.

3 OBVIOUSLY WE CAN ALL UNDERSTAND AND
4 APPRECIATE THE DANGER WITH WHICH HE AND OTHERS IN LAW
5 ENFORCEMENT PUT THEMSELVES IN. BUT ALL I'VE HEARD IN
6 OPENING STATEMENTS WAS A BASHING. AND HERE'S THE
7 THING---

8 MRS. MCMILLAN: YOUR HONOR, I'M
9 GOING TO OBJECT AT THIS TIME TO HIS CONTINUOUS HARPING
10 ON THIS BECAUSE IT IS NOT THIS JURY'S ROLE TO MAINTAIN
11 LAW AND ORDER. AND HE IS TRYING TO TELL THEM SOMETHING
12 OTHER THAN WHAT THEIR DUTY IS. WE ALL KNOW LAW
13 ENFORCEMENT'S DUTIES ARE VERY DIFFICULT AND LIFE-
14 THREATENING.

15 MR. REDMOND: YOUR HONOR, IF I MAY,
16 THEY ARE THE ONES THAT MADE THOSE COMMENTS IN OPENING.
17 AND ACTUALLY I WAS GOING TO ADDRESS THE TAPE AS IT
18 RELATES TO THAT.

19 THE COURT: YOU MAY CONTINUE.

20 MR. REDMOND: THANK YOU, YOUR
21 HONOR. NOW, AS I WAS SAYING, THE TAPE; SGT. LANE
22 APPROACHED ON THE 28TH OF FEBRUARY ON I-95 -- I DIDN'T
23 HEAR ANYTHING OUT OF THE ORDINARY, IN FACT, I HEARD AN
24 OFFICER BEING VERY RESPECTFUL WITH HIM. AND, IN FACT I
25 ALSO OBSERVED AN OFFICER -- AND, OF COURSE, PARTS OF THE

1 TAPE ARE HARD TO HEAR THROUGH THE WIND, BUT THEN THERE
2 ARE THINGS THAT YOU DO HEAR THAT ARE INTERESTING AND
3 THAT WE'LL GET TO LATER, BUT AS HE APPROACHED THESE
4 TWO PARTIES, NOW DEFENDANTS, HOW ARE YOU DOING TODAY,
5 HE WAS VERY RESPECTFUL.

6 AND EVEN ONCE HE GOT MR. BURNS IN HIS VEHICLE
7 HE WAS STILL BEING RESPECTFUL, EVEN UP UNTIL THE TIME
8 THAT HE HAD ASKED FOR CONSENT TO SEARCH. BUT ONCE HE
9 FOUND THOSE DRUGS, THE SITUATION CHANGED BECAUSE AT
10 THAT TIME THERE WAS CRIMINAL ACTIVITY GOING ON. HE'S AN
11 OFFICER BY HIMSELF ON THE SIDE OF THE ROAD WITH TWO
12 TRAFFICKERS OF COCAINE, OR FOR A SUBSTANCE HE BELIEVED
13 TO BE COCAINE AT THE TIME AND THAT WE NOW KNOW IS
14 COCAINE, AND AT THAT POINT HE HAD TO MAKE SURE THAT HE
15 WAS PROTECTED.

16 OF COURSE, HE ACTED REASONABLY. HE DREW A
17 WEAPON ON THEM, WAITED UNTIL BACKUP ARRIVED, THEY WERE
18 CUFFED, AND EVEN THEN DO YOU OBSERVE ANYTHING OUT OF
19 THE ORDINARY? AND WE HAVE SEEN THINGS THAT HAPPENED -
20 AND, AGAIN, THEY'VE THROWN THESE INNUENDOES OUT, AND
21 WHATNOT - WE SEE THINGS ON T.V. THAT SHOW BAD OFFICERS,
22 AND YES, THAT HAPPENS, UNFORTUNATELY IT DOES.

23 BUT LET'S NOT PUNISH ALL OF THE OFFICERS, ALL OF
24 THOSE INDIVIDUALS WHO ARE PUTTING THEIR LIVES ON THE LINE
25 FOR US EVERY DAY. DON'T PUNISH THEM. YOU LOOK AT WHAT

1 YOU'VE GOT IN FRONT OF YOU, AND I WOULD CHALLENGE YOU
2 AND ASK YOU TO SEE AND AGREE WITH ME IN THIS REGARD HE
3 DID EVERYTHING AS REASONABLY AS ANY OFFICER COULD IN
4 THAT PARTICULAR SITUATION. AND, AGAIN, FOR THAT, I THANK
5 YOU, AND WE ALL THANK YOU.

6 NOW, REASONABLE DOUBT, YOU'VE HEARD THAT
7 TERM TOSSED AROUND A LOT. NOW I WOULD SUBMIT TO YOU,
8 LADIES AND GENTLEMEN, THAT BASED ON THE EVIDENCE THAT
9 YOU'VE HEARD, THAT IF WHAT YOU'VE HEARD THAT WE'VE
10 PRESENTED TO YOU LEAVES YOU FIRMLY CONVINCED OF THE
11 DEFENDANT'S GUILT, AT THAT POINT YOU THEN ARE TO FIND
12 THE DEFENDANTS GUILTY. AND I'M GOING TO EXPLAIN TO YOU
13 WHY WE BELIEVE THAT WE HAVE MET THAT BURDEN, AND WHY
14 IT HAS BEEN FIRMLY ESTABLISHED THAT THEY ARE, IN FACT,
15 GUILTY.

16 LET'S GO TO THE STOP. WHEN SGT. LANE WISELY
17 SEPARATED THE TWO INDIVIDUALS HE SEES WHAT IS STATE'S
18 EXHIBIT NUMBER ONE, WHICH IS IN EVIDENCE. HE SEES THIS
19 RENTAL AGREEMENT --AND YOU'LL HAVE IT BACK THERE IN
20 YOUR DELIBERATIONS - ALL THE WAY FROM FLORIDA, WHERE
21 THEY WEREN'T EVEN SUPPOSED TO BE DRIVING IN THE STATE OF
22 SOUTH CAROLINA. REMEMBER, THERE WAS TESTIMONY TO
23 THAT. SO, OF COURSE, THAT RAISES A FLAG.

24 AND THEN UPON GETTING MR. BURNS OUT OF THE
25 CAR, THE DEFENDANT BURNS, HE THEN ASKED HIM ABOUT WHO

1 RENTED THE CAR. HE REALLY COULDN'T TELL HIM, HE KIND OF
2 STUMBLED ON THAT, BUT YET HIS NAME WAS ON HERE AS A
3 DRIVER, AND, AGAIN. YOU'LL HAVE THIS BACK THERE WITH YOU
4 IN YOUR DELIBERATIONS. THEN SGT. LANE ASKED HIM WHO HE
5 WAS DRIVING WITH, PERFECTLY REASONABLE UNDER THE
6 CIRCUMSTANCES, PERFECTLY REASONABLE, AND HE COULDN'T,
7 HE SAYS - YOU COULD HEAR THIS ON THE TAPE WHERE HE
8 TALKS ABOUT "J" AND SGT. LANE ASKED THAT SEVERAL TIMES.
9 FINALLY HE GIVES AN ANSWER OF JOHNNY, BUT WE NEVER DID
10 GET A LAST NAME.

11 PEOPLE TRAVELING ALL THE WAY FROM MIAMI TO
12 VIRGINIA. AND AS WE ALL KNOW JUST FROM BASIC
13 GEOGRAPHY, THAT IS A PRETTY GOOD RIDE TO SAY THE LEAST.
14 BUT IT GOES EVEN FURTHER. SO THEN HE GOES BACK TO THE
15 VEHICLE, TALKS WITH THE DEFENDANT JONES, WHO WAS STILL
16 IN THE VEHICLE, STILL IN THE VEHICLE. HE DIDN'T ORDER THEM
17 THEM BOTH OUT OF THE VEHICLE AND EVERYTHING LIKE SOME
18 MAD MAN, HE LEFT DEFENDANT JONES IN THE VEHICLE WHILE
19 HE TALKED TO THE DRIVER. AGAIN, PERFECTLY REASONABLE.

20 I DON'T SEE A COP GOING OFF, I SEE AN OFFICER
21 ACTING REASONABLY UNDER THE CIRCUMSTANCES. AT THAT
22 POINT HE ASKED - OH, AND I SKIPPED A PART WHERE SGT.
23 LANE THEN ASKED DEFENDANT BURNS WHERE WERE THEY
24 GOING? VIRGINIA BECAUSE HIS COUSIN WAS HAVING AN M.R.I.,
25 SOMETHING TO THAT EFFECT.

1 THEN HE APPROACHED DEFENDANT JONES AND THEN
2 IT BECOMES, WE'RE GOING UP TO VIRGINIA TO SEE A COUPLE OF
3 GIRLS. REMEMBER, YOU CAN ACTUALLY PICK UP ON THE TAPE
4 WHERE DEFENDANT BURNS SAYS THEY WERE GOING STRAIGHT
5 BACK TO FLORIDA. BUT DEFENDANT JONES SAID THEY ARE
6 THEN GOING TO ATLANTA. NOW, HERE'S THE THING, WITH ALL
7 THESE INCONSISTENCIES DEFINITELY RAISING A RED FLAG.

8 BUT THEN AFTER THE SEARCH, AND I'M SKIPPING
9 AHEAD A LITTLE BIT, BUT THE CURIOUS THING TO ME WAS WITH
10 ALL OF THAT TRAVELING, THERE WAS NO LUGGAGE. NO
11 LUGGAGE. AND MIND YOU, ONE OF THE PARTIES IN THE COURT
12 SAYING THEY WERE GOING TO ATLANTA, I THINK WE CAN ALL
13 AGREE THROUGH OUR COMMON SENSE THAT IF YOU WERE TO
14 TAKE A TRIP SUCH AS THAT YOU WOULD HAVE SOME LUGGAGE
15 WITH YOU.

16 NO LUGGAGE, AND IT'S UNCONTRADICTED IN THE
17 STATE'S CASE THAT THERE WAS NOT ANY LUGGAGE. THERE
18 WAS NO LUGGAGE. NOW, WE ALSO GET INTO THE ISSUE WITH
19 DEFENDANT JONES ABOUT LAST NAMES. WELL, HIS NAME WAS
20 AUDIE, OR ARTIE, OR WHATEVER, BUT STILL DOESN'T KNOW A
21 LAST NAME. BUT THEN IT GETS EVEN BETTER BECAUSE AGAIN
22 REMEMBER WHEN SGT. LANE ASKED ABOUT WHO RENTED
23 THE VEHICLE, AND DEFENDANT BURNS DIDN'T REALLY KNOW,
24 HE JUST SAID JONES, OR JONES'S UNCLE, I MEAN THAT HE KNEW
25 JONES'S UNCLE BUT HE DIDN'T KNOW HIS NAME, EXCUSE ME.

1 BUT THEN YOU GET TO DEFENDANT JONES AND HE
2 ASKED JONES ABOUT IT. AND JONES SAYS YEAH, HE AND HIS
3 UNCLE RENTED IT. BUT THEN HE GOES AND SAYS IT'S NOT
4 REALLY HIS UNCLE, BUT WE NEVER GET A NAME. IT WAS JUST A
5 GUY HE KNEW.

6 SO, LADIES AND GENTLEMEN, WHEN YOU LOOK AT
7 THE WHOLE PICTURE AND LOOK AT THE ENTIRE
8 CIRCUMSTANCES, THEN IT RAISES A FLAG. AND THE REASON I
9 GET INTO THAT NOW IS THAT HIS HONOR'S GOING TO INSTRUCT
10 YOU ON CIRCUMSTANTIAL EVIDENCE. OF COURSE, AS MR.
11 WATSON ASKED SGT. LANE, SGT. LANE WASN'T THERE WHEN
12 THE DRUGS WERE PUT IN THE CAR, SGT. LANE CANNOT SAY
13 HOW THE DRUGS GOT IN THE CAR.

14 BUT ALL WE KNOW IS THAT THE DRUGS WERE IN
15 THE CAR BASED ON HOW THOSE DEFENDANTS WERE ACTING AT
16 THE TIME THEY WERE BEING QUESTIONED, IT WAS CLEAR AND
17 FIRMLY ESTABLISHED THAT THESE DEFENDANTS KNEW THAT
18 THEY WERE TRAFFICKING COCAINE IN THE STATE OF SOUTH
19 CAROLINA, WHICH IS AGAINST THE LAW, WHICH HIS HONOR WILL
20 EXPLAIN TO YOU LATER.

21 AND I APOLOGIZE IF I HAVE TO BLOW ON MY HANDS
22 FROM TIME TO TIME, BECAUSE IT IS A BIT CHILLY. NOW HIS
23 HONOR'S ALSO GOING TO CHARGE YOU ON CONSTRUCTIVE
24 POSSESSION. AND IN ESSENCE, WHAT THAT MEANS AS IT
25 RELATES TO THIS CASE IS THAT THE DRUGS WERE NOT IN THE

1 POSSESSION IN THEIR HANDS, BUT THEY WERE IN THE TRUNK.
2 AND YOU SEE THAT ON THE TAPE. THE ISSUE IS WHETHER OR
3 NOT THESE DEFENDANTS EXERCISED OR COULD EXERCISE
4 DOMINION OR CONTROL OVER THOSE PARTICULAR DRUGS. AND,
5 AGAIN, CIRCUMSTANTIAL, WHEN YOU TAKE EVERYTHING THAT
6 I HAVE ALREADY DISCUSSED, THE RED FLAGS, THE INDICATORS
7 THAT SGT. LANE REFERRED TO, THEN IT MAKES YOU WONDER,
8 WELL, YOU KNOW, THEY KNEW WHAT WAS GOING ON. AND,
9 AGAIN, AT THE END I'LL TIE THIS ALL IN.

10 BUT WHEN I TALK ABOUT CIRCUMSTANTIAL
11 EVIDENCE, LET ME ADD ONE OTHER THING; YOU'RE ALLOWED TO
12 MAKE INFERENCES. IN OTHER WORDS, BASED ON ALL THE
13 CIRCUMSTANCES THAT YOU'VE HEARD, YOU CAN INFER THAT
14 SUCH AND SUCH WAS THE CASE. HERE YOU CAN INFER THAT
15 THESE DEFENDANTS WERE TRAFFICKING COCAINE INTO THE
16 STATE OF SOUTH CAROLINA AND THEY WERE BOTH AWARE OF
17 IT BECAUSE BOTH OF THEM GAVE INCONSISTENT ANSWERS.
18 BOTH OF THEM DID.

19 THAT, LADIES AND GENTLEMEN, IS ENOUGH FOR YOU
20 TO MAKE THAT INFERENCE THAT THEY BOTH KNEW WHAT WAS
21 GOING ON AT THE TIME THAT THEY WERE STOPPED.
22 CIRCUMSTANTIAL EVIDENCE, QUITE SIMPLY PUT, IS EVIDENCE OF
23 A NATURE THAT LEADS TO A PARTICULAR CONCLUSION. AND I
24 WOULD SUBMIT TO YOU WE HAVE ALREADY ADDRESSED AND
25 FIRMLY ESTABLISHED WHAT THAT CONCLUSION IS.

1 NOW, WE HEARD FROM OTHER WITNESSES THAT
2 WERE CHAIN OF CUSTODY WITNESSES. I'LL START WITH MRS.
3 STANLEY AND SHE TALKED ABOUT THE WHOLE SITUATION WITH
4 THE BAGS AND THE DRUGS AND THE TESTS THAT WERE DONE.
5 AND OF COURSE WE HEARD AGAIN ABOUT TAMPERING IN THE
6 DEFENSE'S OPENING STATEMENTS. AND MRS. STANLEY
7 TESTIFIED ABOUT HOW THAT PROCESS WORKS.

8 BECAUSE IN ORDER TO MAINTAIN THE INTEGRITY OF
9 THE DRUGS, SGT. LANE PUT THEM IN THIS BAG. AND SHE
10 DESCRIBED FOR YOU, SHE BEING MRS. STANLEY, HOW THEY
11 WERE WHEN SHE GOT THEM, AND GAVE A PERFECTLY
12 REASONABLE EXPLANATION TO YOU FOR THE WHOLE PROCESS
13 THAT IS USED.

14 NOW, SGT. LANE -- AND THIS IS ALL IN EVIDENCE SO
15 YOU'LL HAVE A CHANCE TO REVIEW THIS -- SGT. LANE
16 TESTIFIED HE SEALED IT, AND MORE IMPORTANTLY MRS.
17 STANLEY TESTIFIED TO YOU THE SEAL WAS STILL INTACT WHEN
18 SHE RECEIVED IT, IF IT NOT BEEN INTACT SHE WOULD HAVE
19 NEVER TESTED THE DRUGS. SO IN ESSENCE, ONCE THIS IS
20 SEALED, THERE'S THE LINE THAT THEY WERE TALKING ABOUT,
21 THAT GREEN STRIP, AND IF IT IS BROKEN, OF COURSE, IT WOULD
22 INDICATE THAT THAT PARTICULAR SEAL HAD BEEN BROKEN AND
23 SHE WOULD NOT HAVE TESTED THE DRUGS.

24 LET'S TALK ABOUT THE DRUGS FOR A MINUTE. MY
25 MATH MIGHT BE WRONG BECAUSE I WENT TO LAW SCHOOL

1 BECAUSE I'M NOT GOOD IN MATH, BUT I CAN TELL YOU WHAT I
2 KNOW; THAT THIS IS MORE THAN 100 GRAMS OF COCAINE.
3 AND WHY DO I SAY THAT, LADIES AND GENTLEMEN? AND THIS
4 ALSO WILL BE BACK FOR YOU TO SEE, 136.68 GRAMS OF
5 COCAINE.

6 MR. WATSON TALKED ABOUT THE INDICTMENT, AND
7 I DON'T HAVE IT IN FRONT OF ME, BUT YOU'LL HAVE IT BACK
8 WITH YOU. AND LET ME JUST FALL ON THE SWORD FOR A
9 MOMENT, IF I MAY. THE INDICTMENT INDICATES ON THE FRONT,
10 "TRAFFICKING," AS THE CHARGE. IN THE TOP PART OF THE
11 BODY OF THE INDICTMENT INSIDE IT INDICATES "TRAFFICKING."
12 THERE IS A PART IN THERE, AS HE INDICATED, THAT SAYS
13 "POSSESSION WITH INTENT TO DISTRIBUTE."

14 THAT IS WHAT WE REFER TO AS A SCRIVENER'S
15 ERROR. BECAUSE ALSO IN THE BODY, AND MR. WATSON, DIDN'T
16 TAKE THIS, AND YOU'LL SEE IT, IT INDICATES 100 TO 200
17 GRAMS OF POWDER COCAINE. AND GUESS WHAT WE'VE GOT?
18 AND GUESS WHAT HIS HONOR IS GOING TO INSTRUCT YOU AS IT
19 RELATES TO WHAT THE SIGNIFICANCE OF WHAT THAT IS?

20 AND I'LL TELL YOU; THAT MEANS IT'S TRAFFICKING.
21 THAT MEANS THEY'RE GUILTY OF TRAFFICKING. SO WHEN I SAY I
22 FALL ON THE SWORD, BLAME ME FOR THAT ERROR. THAT WAS
23 A SCRIVENER'S ERROR, BY THAT I MEAN IT WAS MIS-WRITTEN.
24 BUT WHEN YOU SEE EVERYTHING ELSE IN THAT INDICTMENT IT IS
25 CLEAR THAT THIS DEFENDANT, SPECIFICALLY MR. BURNS, WAS

1 CHARGED WITH TRAFFICKING. AND ALSO RECALL SGT. LANE'S
2 TESTIMONY TO THE EFFECT THAT HE ACTUALLY CHARGED THEM
3 WITH TRAFFICKING.

4 NOW, WHEN OFFICERS MAY - AND I DIDN'T SAY
5 THIS, LET ME JUST TOUCH ON THIS, TOO - WHEN AN OFFICER
6 MAKES A TRAFFIC STOP, AND WE LIVING IN DILLON COUNTY
7 HAVE ALL BEEN ON I-95 AND KNOW HOW TRAFFIC IS
8 SOMETIMES. AND, OF COURSE, IT WAS UP TO THESE OFFICERS
9 TO MAKE SURE THE TRAFFIC IS SAFE FOR EVERYONE, BUT
10 REMEMBER WE IN DILLON COUNTY HAVE TO USE THOSE
11 HIGHWAYS, TOO. AND SO WHEN HE SEES A VIOLATION HE IS
12 PERFECTLY WITHIN HIS RIGHTS TO EXECUTE A TRAFFIC STOP.

13 AND JUST LOOK AT THE NATURE OF THE STOP. DID
14 THIS LOOK LIKE AN OFFICER THAT HAD A PRECONCEIVED
15 NOTION THAT HE WAS GOING TO ARREST ANYBODY?
16 ABSOLUTELY NOT. BECAUSE IF HE DID THEN HE WOULD HAVE
17 BEEN A LOT DIFFERENT THAN THE OFFICER THAT YOU SAW IN
18 THIS PARTICULAR TAPE.

19 BUT THEN HERE'S THE THING. WE TALK ABOUT
20 WHETHER OR NOT HE HAD REASONABLE SUSPICION. WELL, I
21 THINK THE SUSPICION WOULD BE REASONABLE IF FOUND
22 SOMETHING. HE SUSPECTED CRIMINAL ACTIVITIES AND LOW
23 AND BEHOLD, WHAT DID HE FIND? SO OBVIOUSLY HE WAS
24 REASONABLE IN HIS SUSPICIONS BECAUSE NOW WE HAVE OVER
25 130 GRAMS OF THIS POISON OFF OF THE STREETS THAT WILL

1 NOT ENTER INTO THE BLOODSTREAM OF OUR CHILDREN THANKS
2 TO THE ACTIONS OF SGT. LANE.

3 NOW, JUST TO QUICKLY RECAP, LADIES AND
4 GENTLEMEN, LAST NAMES. RIDING ALL THE WAY FROM MIAMI
5 BUT DON'T KNOW EACH OTHER, DON'T EVEN AGREE AND CAN'T
6 EVEN GET CONSISTENT WITH WHERE THEY ARE GOING OR HOW
7 LONG THEY ARE GOING TO BE GONE. MR. BURNS SAID THEY'RE
8 GOING STRAIGHT BACK, MR. JONES SAID THEY'RE GOING TO
9 ATLANTA. WITH NO LUGGAGE. OH, AND OF COURSE, THEN
10 THEY'RE GOING TO VIRGINIA TO SEE GIRLS, NO, THEY'RE TO
11 VIRGINIA TO SEE SOMEONE FOR AN M.R.I, THERE'S A LITTLE
12 DIFFERENCE BETWEEN GOING TO SEE GIRLS AND GOING FOR AN
13 M.R.I.

14 AND THEN LET'S TALK ABOUT THE FACT THAT WE
15 STILL, AND THEY CANNOT EVEN CONSISTENTLY TELL SGT. LANE
16 WHO RENTED THE CAR OR WHAT THE CIRCUMSTANCES WERE; IT
17 WENT FROM AN UNCLE TO NOT AN UNCLE TO I DON'T KNOW.
18 AND, AGAIN, NO LAST NAMES. LET ME TELL YOU WHAT WAS
19 GOING ON, LADIES AND GENTLEMEN. THE REASON THERE WAS
20 NO LUGGAGE WAS BECAUSE THESE DEFENDANTS IN THEIR
21 TRAFFICKING WERE HEADED TO VIRGINIA AND GOING STRAIGHT
22 BACK TO MIAMI. THIS POISON WAS GOING TO GET DROPPED OFF
23 AND MONEY WAS COMING BACK.

24 THAT'S THE STATE'S POSITION, LADIES AND
25 GENTLEMEN, AND IT MAKES SENSE. THEY DIDN'T HAVE ANY

1 LUGGAGE BECAUSE THEY DIDN'T NEED IT. THEY WERE GOING
2 STRAIGHT THERE TO MAKE THIS DROP AND HEADING STRAIGHT
3 BACK WITH THE PROCEEDS OF THEIR GOODS; THIS POISON.

4 LADIES AND GENTLEMEN, WE'VE TALKED ABOUT
5 WARS, I TALKED ABOUT THAT EARLIER IN MY CLOSING, BUT
6 THERE'S ANOTHER WAR THAT'S BEEN GOING ON FOR A LONG
7 TIME, THAT BEING THE WAR ON DRUGS. LET ME JUST SAY THIS;
8 DAVID LANE WAS THE FIRST LINE OF DEFENSE IN THAT WAR,
9 THE WAR TO HELP ENSURE THAT INDIVIDUALS SUCH AS THESE
10 DEFENDANTS DO NOT HAVE THE OPPORTUNITY TO TRAFFIC AND
11 TRANSPORT THEIR POISON AND INFECT THE BLOODSTREAM OF
12 THIS COUNTRY.

13 BUT GUESS WHO THE LAST FRONT, THE FINAL FRONT
14 IN THAT PARTICULAR WAR IS, LADIES AND GENTLEMEN? THAT
15 WOULD BE YOU. THIS IS WHERE THE BATTLE LINES ARE DRAWN,
16 BUT YET THIS IS WHERE THE BATTLE ITSELF CULMINATES, WITH
17 YOU, LADIES AND GENTLEMEN. BECAUSE HERE TODAY WITH
18 YOUR VERDICT WE HAVE THE OPPORTUNITY TO SEND A
19 MESSAGE LOUD AND CLEAR UP AND DOWN THE EAST COAST OF
20 THIS NATION; WE WILL NOT TOLERATE THE HIGHWAYS IN OUR
21 COUNTY TO BE UTILIZED TO TRANSPORT THIS POISON.

22 AND, LADIES AND GENTLEMEN, I ASSURE YOU, THAT
23 MESSAGE WILL BE HEARD LOUDLY, IT WILL BE HEARD CLEARLY,
24 AND, AGAIN, INDIVIDUALS SUCH AS THESE DEFENDANTS WILL
25 KNOW FULL WELL THAT WE AIN'T GOING TO TAKE IT ANYMORE.

1 WE ARE NOT GOING TO TAKE YOUR TRANSPORTING AND
2 TRAFFICKING THIS POISON THROUGH OUR COUNTY ANYMORE.
3 PERIOD. I THANK YOU AND WISH YOU GODSPEED IN YOUR
4 DELIBERATIONS.

5 MRS. MCMILLAN: I WANT TO THANK
6 YOU ALL FOR YOUR ATTENTION. AND AS I STOOD UP HERE WITH
7 MY BRIEF OPENING ARGUMENT I TOLD YOU THERE WOULD BE
8 INCONSISTENCIES. AND I CAN ASSURE YOU LAW ENFORCEMENT
9 IS VERY UPSET WITH MY OPENING COMMENTS. AND I AM GIVING
10 YOU WHAT I CALL MY SUMMATION, AND I WILL NOT RETRACT
11 WHAT I SAID.

12 THE COURT REPORTER: SPEAK UP FOR
13 ME, PLEASE, MA'AM.

14 MRS. MCMILLAN: I DON'T KNOW HOW
15 MANY OF YOU HAVE EVER SEEN POWDER COCAINE, BUT I
16 BELIEVE ALL OF YOU HAVE SEEN BAGS. REMEMBER WHAT I
17 TOLD YOU, THAT I THOUGHT THE EVIDENCE MAY HAVE BEEN
18 TAMPERED WITH? YOU'LL NOTICE THE LITTLE GREEN THINGS
19 THAT MRS. STANLEY MARKED ON HERE.

20 WE HAVE ONE, TWO, THREE, FOUR, FIVE BAGS. SHE
21 TOLD THE TRUTH. AND WHEN YOU SAW HER BAG THEM UP YOU
22 SAW HOW SHE BAGGED THEM, YOU WERE CLOSER TO HER THAN
23 I WAS. AND AS FOR SGT. LANE, SGT. LANE IS A FINE YOUNG
24 MAN, BUT I BELIEVE IN THIS PARTICULAR CASE HE MADE A
25 MISTAKE. HE SAID OVER AND OVER, AND I BELIEVE THIS WAS

1 UP UNTIL LUNCH TIME, THAT HE FOUND ONE BAG ON A RIM OF A
2 SPARE TIRE. AND THEN AFTER LUNCH HE CAME BACK AND HE
3 SAID HE FOUND ONE BAG - HE HAD TO LIFT UP THE SPARE TIRE
4 COVERING ON THE RENTAL CAR AND THEN HE SAW THE ONE
5 BAG - I DON'T KNOW WHICH OF THESE FIVE - LYING ON THAT
6 RIM OR ON THE SPARE TIRE.

7 AND NOW, QUOTING HIM, "AFTER SEARCHING AND
8 SEARCHING AND SEARCHING, I FOUND ANOTHER BAG." WHEN
9 WE CAME BACK AFTER LUNCH, YOU REMEMBER HE HAD NOT
10 SPOKEN TO ANYBODY BUT HE RE-TOOK THE STAND. AFTER
11 LUNCH WHAT DID HE TELL US? WOOPS, THERE WAS ANOTHER
12 BAG IN ONE OF THE BAGS, SO THERE WERE THREE BAGS, NOT
13 TWO. BUT THE WITNESSES COULDN'T HEAR WHAT EACH OTHER
14 HAD TO SAY. AND SGT. BUCY, WHO I ALSO DEEPLY RESPECT,
15 EVEN MORE SO THAN MR. REDMOND BECAUSE I LIVE IN THE CITY
16 AND COUNTY OF DILLON AND THEY'VE HAD TO COME TO MY
17 HOUSE ON OCCASIONS, WHAT DID SGT. BUCY TELL US?

18 HE SAID THAT SGT. LANE BROUGHT HIM TWO BAGS
19 OF COCAINE. I SUBMIT TO YOU, LADIES AND GENTLEMEN, WAS
20 IT THIS BAG OR THIS BAG? WAS IT THIS BAG AND THIS BAG?
21 HOW ABOUT THESE TWO BAGS? THESE TWO? OR THESE
22 THREE? UNLESS SGT. LANE AND SGT. BUCY AND SGT. POWERS -
23 POOR SGT. POWERS.

24 THE COURT REPORTER JUST ASKED WHAT I'M
25 LOOKING FOR, I'M LOOKING FOR THAT HALF GALLON ZIPLOCK

1 BAG. DO YOU HAVE IT?

2 THE COURT REPORTER: NO, MA'AM.

3 MRS. MCMILLAN: I DIDN'T (INAUDIBLE)

4 YOU ALL IN MY OPENING STATEMENT. I AM A PUBLIC DEFENDER,

5 I HAVE NO REASON TO.. MR. REDMOND WOULD HAVE YOU SIT

6 THERE AND THINK THAT YOU ARE THE ONLY PEOPLE IN THE

7 WORLD WHO HAVE THE DUTY TO FIGHT THE DRUG PROBLEM

8 THAT WE HAVE. AND THAT ISN'T TRUE.

9 YOUR DUTY TODAY IS TO DO JUSTICE. AND YOUR
10 DUTY TODAY IS TO PICK OUT WHAT IS TRUTH AND WHAT IS NOT
11 TRUTH. IF IT IS AN HONEST MISTAKE, THAT'S ONE THING, BUT
12 NO ONE HAS SAID IT WAS A MISTAKE. BUT YOU'VE HEARD THE
13 WITNESSES, SOMETHING HAS HAPPENED.

14 IT IS LAW ENFORCEMENT'S DUTY TO MANAGE THE
15 DRUG PROBLEM, IT IS NOT THIS JURY'S ROLE. THE JUDGE, I
16 BELIEVE, HIS HONOR, WILL CHARGE YOU AS TO REASONABLE
17 DOUBT AND THE BURDEN OF PROOF. AND WHEN IT COMES TO
18 REASONABLE DOUBT, I BELIEVE HE'S GOING TO TELL YOU THAT
19 IF YOU HAVE ANY REASONABLE DOUBT AS TO ANY SPECIFIC
20 ITEM OF THE CHARGE OF TRAFFICKING IN COCAINE, WHETHER
21 THEY KNEW IT WAS THERE OR WHETHER THEY HAD
22 CONSTRUCTIVE OR ACTUAL POSSESSION, IF YOU HAVE ANY
23 DOUBT AT ALL IN YOUR MIND THAT THEY KNEW IT WAS IN THAT
24 CAR OR THAT THEY WERE IN POSSESSION OF IT AND HAD
25 DOMINION AND CONTROL OVER IT, IF THERE'S ANY REASONABLE

1 DOUBT YOU HAVE TO BRING BACK A NOT GUILTY VERDICT. AND
2 I BELIEVE THAT'S WHAT HIS HONOR WILL CHARGE YOU.

3 I DON'T WANT TO PICK ON SGT. LANE, BUT HE WAS
4 THE ARRESTING OFFICER. AND IF YOU WILL REMEMBER BEFORE
5 LUNCH THAT HE SAID THERE WAS NO LUGGAGE IN THE CAR,
6 AND AFTER CAR HE REMEMBERED THAT THERE MAY BE SOME
7 JEANS, SOME COATS, AND SOME THINGS LIKE THAT IN THE CAR,
8 IT IS JUST LITTLE THINGS LIKE THAT THAT YOU NEED TO USE.
9 YOU CAN JUDGE THE CREDIBILITY OF EACH ONE OF THESE
10 WITNESSES.

11 YOU CAN CHOOSE TO BELIEVE ONE OF THEM AS
12 OPPOSED TO ANOTHER ONE, OR PART OF WHAT THEY SAY AND
13 NOT PART OF ANOTHER. BUT WHAT YOU CANNOT DO IS SAY,
14 WELL, THERE'S COCAINE IN THIS COURTROOM SO I WILL THROW
15 THESE MEN IN JAIL. BECAUSE SITTING HERE TODAY NOT ONE OF
16 US KNOWS WHERE ANY OF THESE THREE BAGS OF COCAINE
17 CAME FROM. ONE THING'S FOR SURE, SGT. LANE COULD NOT
18 SAY THAT THEY CAME OUT OF THE DODGE CHARGER THAT HE
19 PULLED ON FEBRUARY THE 28TH. AGAIN, I WANT TO THANK YOU
20 FOR YOUR TIME.

21 MR. WATSON: MADAME FORELADY,
22 LADIES AND GENTLEMEN OF THE JURY, GOOD AFTERNOON.
23 EVERY HEARING, EVERY TRIAL HAS ITS OWN STORY. I CAN TELL
24 YOU THAT I DON'T GET TO MAKE THE FACTS OR THE EVENTS OR
25 DETERMINE WHAT EVIDENCE THERE MAY BE IN THE CASE, BUT I

1 CAN TELL YOU I KNOW WITHOUT EXCEPTION I SAW DURING THIS
2 TRIAL AND I REMEMBER CLEARLY WHAT I HEARD.

3 YOU KNOW, IF YOU TOOK THE TAPE THAT
4 EVERYBODY'S SO INTERESTED IN - I WAS SITTING THERE
5 HURRIEDLY MAKING NOTES AND THERE'S A LITTLE TICKER ON
6 THE SIDE THAT SHOWS YOU WHERE IN THE FILM SOMETHING
7 HAPPENS, I WAS IMPRESSED BY MR. LANE AT MILE MARKER
8 4626, YOU MADE JUST HAD THE MOST DELIGHTFUL BURP*. BUT
9 BEYOND THAT I DIDN'T SEE MUCH THAT TROUBLE ME.

10 I KNOW WHAT I HEARD AND I KNOW WHAT I SAW.
11 AND IF YOU ARE GOING TO GET GUILTY, YOU'VE GOT TO BE
12 GUILTY BEYOND A REASONABLE DOUBT. WHAT I DIDN'T HEAR
13 THE SOLICITOR TELL ABOUT IS SOMETHING THAT THE JUDGE IS
14 GOING TO TELL YOU; HE'S GOING TO TELL YOU THAT MERE
15 PRESENCE FOR A CRIME THAT'S OCCURRED CANNOT BE
16 SUFFICIENT IN AND OF ITSELF FOR GUILT.

17 MERE PRESENCE FOR A CRIME THAT MAY HAVE
18 OCCURRED IS INSUFFICIENT FOR GUILT. I HEARD SOMETHING
19 ELSE THROUGH THE EVIDENCE. AND IT IS IN THIS CASE
20 SEMINAL* IN ITS IMPORTANCE. IT IS, YOU KNOW HOW WHEN
21 YOU GO TO CHURCH AND HEAR YOUR MINISTER COME UP WITH
22 THAT ONE THING THAT WHEN YOU WALK OUT ON SUNDAY YOU
23 KNOW WHAT WAS PREACHED TO YOU?

24 YOU KNOW WHAT WAS PREACHED TO YOU? LET ME
25 TELL YOU WHAT WAS PREACHED TO YOU THIS WEEK. THIS IS A

1 STATE'S EXHIBIT NUMBER TWO AND IT SAYS, "DESCRIBES
2 SUBSTANCE OR CONTAINER WITH SUFFICIENT PARTICULARITY TO
3 DISTINGUISH IT." IF YOU HAVE A TATOO ON YOUR FOREARM I
4 HOPE IT WOULD READ "DESCRIBE SUBSTANCE OR CONTAINER
5 WITH SUFFICIENT PARTICULARITY TO DISTINGUISH IT."

6 NOW, WHEN THE DEFENDANTS WERE ARRESTED
7 THAT WAS FEBRUARY THE 28TH, 2006. WHAT WAS TAKEN TO
8 SLED BY THE STATE'S PRESENTATION WERE TWO CONTAINERS.
9 NOW WE HAVE ONE, TWO, THREE, FOUR, FIVE TODAY, AND I'M
10 TELLING YOU WHAT THEY WROTE BECAUSE I SAW IT TODAY
11 BECAUSE THEY PUT IT IN EVIDENCE WITH PARTICULARITY. TWO
12 CONTAINERS, NOT ONE AND THEN ANOTHER.

13 SO WHEN YOU ARE TALKING ABOUT REASONABLE
14 DOUBT, HERE IS NUMBER ONE, AND IT IS ONE NOTCH DOWN
15 FROM GUILTY, CONTAINERS. IT GETS WORSE. NOW I DID NOT
16 GENERATE THIS IN THE LIGHT MOST FAVORABLE TO THE STATE.
17 I AM TAKING THEIR WORDS TO TELL YOU THAT THEIR BURDEN
18 WITHOUT EXCEPTION HAS NOT BEEN MET.

19 YOU WERE TOLD THAT ON - AND REMEMBER, THE
20 ARREST IS FEBRUARY THE 28TH, IT DIDN'T GET DELIVERED UNTIL
21 APRIL THE 11TH, AND THERE WEREN'T BUT TWO CONTAINERS.
22 NO MATTER HOW YOU SLICE IT, NOT MATTER HOW YOU DICE IT,
23 THERE WEREN'T BUT TWO CONTAINERS. DO YOU REMEMBER
24 OUR SLED AGENT? PART OF STATE'S EXHIBIT NUMBER TWO IS
25 THE REPORT WHICH SHE GENERATED OUTSIDE THOSE TWO

1 DEFENDANTS' PRESENCE IN COLUMBIA.

2 LET'S GET TO THE SECOND REASONABLE DOUBT.
3 DO YOU REMEMBER HOW THE STATE KEPT PUTTING IN
4 EVERYBODY THAT TOUCHED THE STUFF? MADAME FORELADY,
5 LADIES AND GENTLEMEN OF THE JURY, GUESS WHAT WE
6 LEARNED TODAY? THERE IS A MYSTERY EMPLOYEE AT SLED
7 WHO HASN'T BEEN CALLED, HAS ABSOLUTELY HANDLED IT,
8 TOOK IT TO THE CHEMIST. NOW YOU ASSIGN WHATEVER
9 WEIGHT YOU WANT TO THEM NOT BEING HERE.

10 BUT WATCH THIS. NOT A THING I SAID, AND I KNOW
11 WHAT I HEARD AND I KNOW WHAT I SAW, WHY ARE THE BAGS
12 IMPORTANT? HERE IS THE THING. THE OFFICERS CAN SAY
13 WHAT THEY WANT BUT NOBODY THAT HAS EVER SAID THAT
14 ANYTHING MORE THAN TWO BAGS WERE EVER DELIVERED TO
15 SLED. THERE IS IT IN BLACK IN WHITE. THERE IT IS IN EVIDENCE,
16 AND IT'S ADMITTED. OKAY.

17 WHEN IT GETS TO SLED IN APRIL IT IS ANALYZED ON
18 AUGUST THE 24TH. AND WATCH THIS. ITEM ONE; WHAT ABOUT
19 ITEM ONE? IT IS A BAG CONTAINING THREE BAGS. WATCH THIS
20 NOW. ITEM ONE IS A BAG CONTAINING THREE BAGS, SO THIS
21 WOMAN FROM SLED SAYS, I ONLY FOUND FOUR BAGS. I KNOW
22 WHAT I SAW AND I KNOW WHAT I HEARD BECAUSE I SAW HER
23 REPORT, IT'S SIGNED BY HER, IT'S IN EVIDENCE. WHERE'S THE
24 FIFTH BAG?

25 NOW IF THAT ISN'T IMPORTANT, IF THAT ISN'T

1 IMPORTANT, I THINK WE LIVE IN A PARALLEL UNIVERSE. IF THAT
2 ISN'T REASONABLE DOUBT. . . YOU KNOW A CASE WE TRIED HERE
3 IN THIS VERY COURTROOM, THE STATE VERSUS MANNING SAYS
4 REASONABLE DOUBT IS A DOUBT WHICH WOULD GIVE A
5 REASONABLE PERSON---

6 MR. REDMOND: YOUR HONOR, I
7 WOULD OBJECT.

8 THE COURT: . SUSTAINED.

9 MR. WATSON: YOU'RE GOING TO
10 HEAR WHAT THE JUDGE WILL TELL YOU ABOUT REASONABLE
11 DOUBT. WHEN YOU TOOK YOUR OATH TO WELL AND TRULY TRY
12 AND IN TRUE DELIBERANCE MAKE AND RENDER A VERDICT
13 ACCORDING TO THE LAW AND THE EVIDENCE, YOU CAN'T
14 OVERLOOK TWO BAGS THAT THEN BECOME FIVE AND NOBODY
15 CAN TELL YOU WHY.

16 MRS. MCMILLAN LIKES TO CALL ME OLD AND CHEAP.
17 I GUESS SHE'S RIGHT. SHE DOESN'T THROW UGLY IN VERY
18 OFTEN, BUT I GUESS SHE COULD DO THAT, TOO. LAST
19 THURSDAY MY PRIZED FORD EXPLORER WITH 351,000 MILES
20 DROPPED ITS TRANSFER* CASE AND I WAS HEARTSICK. AS LUCK
21 WOULD HAVE IT, I MARCHED MY SORRY SELF OVER TO THE
22 AIRPORT OVER IN FLORENCE AND I RENTED ME A CAR, GOT ME
23 AN AVIS CAR SITTING DOWNSTAIRS.

24 WE TALKED ABOUT RENTAL CARS IN THIS CASE WITH
25 ABSOLUTE ABANDON. REMEMBER HOW MR. REDMOND WAS

1 TALKING ABOUT THE RENTAL AGREEMENT? I KNOW WHAT I
2 HEARD AND I KNOW WHAT I WAS SHOWN. REASONABLE DOUBT
3 NUMBER THREE.

4 THE COURT REPORTER: COULD YOU
5 SPEAK UP, PLEASE, SIR?

6 MR. WATSON: THEY NEVER TALKED TO
7 THE PERSON THAT RENTED IT. WHY IS THAT IMPORTANT?
8 BECAUSE MERE PRESENCE IS INSUFFICIENT TO CONVICT
9 SOMEBODY FOR A CRIMINAL OFFENSE. YOU'RE GOING TO HEAR
10 THE WORDS DOMINION, CONTROL, OPPORTUNITY, AND STUFF
11 LIKE THAT, BUT IF YOU WERE GOING TO CONVICT MY CLIENT YOU
12 HAVE GOT TO HAVE MORE EVIDENCE THAN WE HAVE HERE
13 TODAY BECAUSE THOSE THREE OTHER MAJOR THINGS
14 HAPPENED.

15 YOU KNOW HOW WE HAVE ALL CONFESSED THAT WE
16 ARE EITHER HARD OF HEARING, OR TOO HOT, OR TOO COLD? I
17 AM PROBABLY THE TWO WORST EARS TO WALK INTO THE
18 COURTROOM. SO WHAT I TELL YOU ABOUT EVIDENCE YOU HAVE
19 THE RIGHT TO ASK MADAME COURT REPORTER. WHAT SHE
20 TAKES DOWN IS THE OFFICIAL RECORD AT THIS PROCEEDING.
21 BUT I KNOW WHAT I SAW AND I KNOW WHAT I'VE HEARD.

22 I ASKED SGT. LANE IF HE COULD ASSOCIATE THESE
23 DRUGS WHICH HAVE BEEN PUT INTO EVIDENCE WITH THE
24 DEFENDANTS IN THIS CASE AND HIS ANSWER WAS NO. I ASKED
25 HIM IF HE KNEW WHEN THEY WERE PUT THEM IN THE CAR AND

1 HIS ANSWER WAS NO. I ASKED HIM IF HE HAD ANY PROOF
2 WHETHER THE DEFENDANTS HAD ANY DOMINION OR CONTROL
3 OVER IT AND THE ANSWER WAS NO. THE CASE STOPPED.
4 BECAUSE AS THE JUDGE WILL TELL YOU, MERE PRESENCE IS
5 INSUFFICIENT WITHOUT ESTABLISHING CLEAR AND CONVINCING
6 EVIDENCE - EXCUSE ME, EVIDENCE BEYOND A REASONABLE
7 DOUBT THAT THE DEFENDANTS HAD DOMINION AND CONTROL
8 OVER THE VEHICLE.

9 YOU KNOW ONE OF THE THINGS THAT THE LAW
10 DOESN'T REQUIRE? YOU REMEMBER MR. LANE TOLD YOU THAT
11 THE DRUGS WERE FOUND ON OR UNDER THE SPARE TIRE, AND I
12 HAVEN'T DRIVEN A NEW CAR IN 11 YEARS, AND I FOUND OUT
13 SOMETHING. YOU HAVE TO LIFT THE FLOOR OF THE TRUNK TO
14 GET TO IT, AND EVEN IF YOU PUT CLOTHES IN THE TRUNK---

15 MR. REDMOND: YOUR HONOR, I'M
16 GOING TO OBJECT AT THIS POINT BECAUSE IF I UNDERSTAND
17 COUNSEL, IT SOUNDS LIKE HE'S USING HIS SITUATION, IN
18 ESSENCE TESTIFYING TO FACTS NOT IN EVIDENCE. I THINK HIS
19 EXAMPLES OF HIS VEHICLE VERSUS A VEHICLE THAT WE DON'T
20 HAVE ANY EVIDENCE OF.

21 MR. WATSON: I BELIEVE SGT. LANE
22 WAS CLEAR WHEN HE SAID HE LIFTED THE SPARE TIRE AND HE
23 LIFTED THE COMPARTMENT.

24 THE COURT: HE DID SAY THAT.

25 CONTINUE.

1 MR. WATSON: THANK YOU, YOUR
2 HONOR. IF YOU TOOK THOSE THREE THINGS, IF YOU REMEMBER
3 THE TESTIMONY, WHEN THE SOLICITOR GOT BACK UP HE SAID
4 DO THEY RESEMBLE THE DRUGS TAKEN FROM THE CAR, OR
5 SOMETHING SPECIFIC LIKE THAT, HE NEVER SAID TAKEN FROM
6 THE DEFENDANT. MERE PRESENCE AT THE SCENE OF A CRIME IS
7 INSUFFICIENT.

8 MR. REDMOND TOLD YOU ABOUT EVIDENCE, CERTAIN
9 INFERENCES. AND YOU KNOW AN INFERENCE HAS TO POINT TO
10 THE GUILT OF THE DEFENDANTS ABOVE ALL OTHERS FOR YOU
11 TO CONVICT THEM. YOU CAN'T HAVE A REASONABLE DOUBT
12 AND CONVICT THEM. DESCRIBE THE PARTICULARITIES. I KNOW
13 WHAT I HEARD AND WHAT I SAW.

14 SOMETHING THAT REALLY, REALLY GOT MY
15 ATTENTION WAS MR. LANE, WHEN HE FILED HIS AFFIDAVIT, OR
16 WHEN IT WAS FILED WITH THE CLERK OF COURT ON APRIL THE
17 12TH, 2006. AND THAT IS IMPORTANT BECAUSE IT IS BEFORE
18 THE AUGUST 24TH ANALYSIS, HIS AFFIDAVIT SAID THERE WERE
19 ONLY TWO BAGS. THE CHEMIST SAYS THERE IS FOUR BAGS.
20 YET, THEY BRING YOU FIVE BACK TO TAKE A LOOK AT, AND WHY
21 IS THAT A PROBLEM?

22 DO YOU REMEMBER WHEN I APPROACHED THE
23 MADAME CHEMIST AND SAID CAN YOU TELL ME IF YOU MARKED
24 EACH OF THESE BAGS? AND DID YOU NOTICE HOW SHE PULLED
25 THEM OUT AND SHE PUT THE LAB NUMBER ON THEM AND SAID

1 THAT THE GREEN MARKS WERE HER MARKS? SHE MARKED FIVE
2 BAGS AND SHE ONLY TALKED ABOUT ONE EMPTY ONE AND
3 FOUR DOPE BAGS. WHERE IS THE FIFTH ONE? I KNOW WHAT I
4 SAW AND I KNOW WHAT I HEARD.

5 I ASKED MR. LANE WHEN HE WAS ON THE STAND
6 WHEN YOU SUBMITTED THE BEST BAG THAT THEY WERE ALL SO
7 HAPPY ABOUT, THE BEST BAG WAS SEALED UP IN A MANILA
8 ENVELOPE AND IT HAD A PIECE OF PAPER IN IT. AND I ASKED
9 MR. LANE IF HE COULD TELL ME WHAT HE TOLD THEM WHEN
10 THEY ANALYZED IT? TWO CLEAR PLASTIC BAGS. THAT IS FROM
11 THE ARRESTING OFFICER.

12 YOU KNOW, I HEARD SOMETHING THAT TROUBLED
13 ME. WE LEARNED THAT MR. LANE SAID THAT THEY WEIGHED
14 EVERYTHING, BAGS AND ALL, BECAUSE THEY DIDN'T WANT TO
15 LOSE ANYTHING IN THE ENVIRONMENT THAT THEY WERE IN. MR.
16 LANE SAID WITH PARTICULARITY THAT IT WAS ON FEBRUARY
17 THE 28TH, 142 GRAMS.

18 THE SLED CHEMIST SAID WITH PARTICULARITY THAT
19 WHEN SHE GOT THE FIVE BAGS THAT NOBODY KNOWS WHERE
20 THEY CAME FROM, 138.68 GRAMS. THERE'S A PHRASE THAT I
21 JUST ABSOLUTELY DESPISE, THEY SAY IT'S CLOSE ENOUGH FOR
22 GOVERNMENT* WORK. IF YOU ARE GOING TO CONVICT THE
23 CLIENTS, MRS. MCMILLAN AND ME, THEY'VE GOT TO BE GUILTY
24 BEYOND A REASONABLE DOUBT. YOU DON'T TAKE BAGS OF
25 WHATEVER ELSE, RUBBERBANDS, WHATEVER, AND SAY, OH, BY

1 THE WAY, THAT'S COCAINE.

2 THE SECOND AGENT THAT CAME UP, MR. POWERS,
3 WHAT DID HE TELL YOU? HE TOLD YOU, AS MRS. MCMILLAN DID,
4 THAT THERE WAS A ZIPLOCK HALF GALLON BAG ON THAT
5 TRUCK WITH TWO OTHER BAGS. NOW LADIES, I DON'T MEAN
6 TO DISCOURAGE YOU, AND GENTLEMEN, I THINK THEY COOK
7 MORE THAN WE DO, I BET IF YOU HAD BAGGED UP YOURSELF A
8 BAG OF CHICKEN BOG YOU KNOW THAT AIN'T NONE OF THESE
9 ARE ANYTHING MORE THAN A SANDWICH BAG AND THERE AIN'T
10 A ONE OF THEM A HALF GALLON.

11 AND EVEN BY MR. - I CAN'T RECALL HIS NAME, THE
12 SECOND GUY - MR. POWERS, YES---

13 THE COURT REPORTER: CAN YOU
14 SPEAK UP, PLEASE?

15 MR. WATSON: WHEN MR. POWERS
16 CAME OVER YOU KNOW SOMETHING ELSE? HE DIDN'T SEE BUT
17 ONE BAG.

18 THE COURT: SPEAK UP, PLEASE.

19 MR. WATSON: I'M SORRY, FORGIVE ME,
20 I'LL TRY TO TALK LOUDER. YOU KNOW, I DON'T THINK WE SAW
21 BUT ONE BAG BEING PLACED ON THE HOOD. AND I THINK THE
22 VIDEO SHOWS MR. LANE LOOKING DOWN IN THE CAR, OR I
23 MISSED IT. YOU ALL HAVE THE VIDEO TO WATCH. WHILE WE'RE
24 HERE, IS THERE A DEGREE OF ACCURACY? IS THERE A DEGREE
25 OF ACCEPTABLE UNDERSTATEMENT OR OVERSTATEMENT?

1 NO. BECAUSE IT MUST BE ONE THING, GUILT
2 BEYOND A REASONABLE DOUBT. MADAME FORELADY, LADIES
3 AND GENTLEMEN OF THE JURY, I DON'T THINK WE'VE EVER MET
4 BEFORE. BUT YOU CAN'T EXPLAIN TO ME WHY THERE IS NO
5 HALF GALLON ZIPLOCK, YOU CAN'T EXPLAIN TO ME WHY FOUR
6 OFFICERS SAID ANALYZE TWO CLEAR PLASTIC BAGS AND TO
7 SHOW UP WITH FIVE? YOU CAN'T EXPLAIN TO ME WHEN IT IS
8 SUPPOSED TO BE MORE ON THE STREET THEN IT GETS TO SLED
9 AND CHANGES.

10 BUT LAST, BUT NOT LEAST, YOU CAN'T EXPLAIN TO
11 ME WHAT WAS RECEIVED UNTIL SEPTEMBER 15TH, WHY THIS
12 WASN'T RECEIVED UNTIL SEPTEMBER 15TH. COME ON. YOU WILL
13 HAVE THESE TWO DOCUMENTS THAT SHOW WHAT WAS TAKEN
14 TO SLED, AND THE SAME THING, THE TWO PLASTIC BAGS.

15 YOU WILL HAVE AN ANALYSIS THAT DOESN'T SAY
16 ANYTHING BUT FOUR PLASTIC BAGS, AND IF YOU ADD ALL OF
17 THAT UP IT NEVER ADDS UP TO WHAT THE POLICE SAY BECAUSE
18 THE POLICE WANTED TO ADD* (INAUDIBLE). IT'S NOT A DEGREE
19 OF ACCURACY, IT IS IN EACH AND EVERY INSTANCE A
20 DESCRIPTION WITH PARTICULARITY SUFFICIENT TO DISTINGUISH
21 IT; FIVE BAGS, NOT TWO.

22 ONE OF THE THINGS THAT I HAVE FOUND STARTLING,
23 I THOUGHT I HEARD THE CHEMIST TELL ME THAT SHE WAS NOT
24 FAMILIAR WITH DROP BOXES, THAT SOMEBODY BROUGHT HER
25 THE DRUGS. SHE COULD NOT THEN TELL ME WHAT WAS

1 DELIVERED TO SLED. SHE COULD TELL YOU WHAT SHE GOT.
2 SHE SAID IT WAS FOUR BAGS. AND THEY TELL US TODAY IN
3 COURT IT'S FIVE BAGS. SHE TELLS YOU WHAT SHE GOT BUT SHE
4 CAN'T TELL YOU WHAT WAS DELIVERED TO SLED.

5 I LISTENED TO A LOT OF THINGS. AND THE
6 ARGUMENTS OF ALL THE COUNSEL WHO APPEARED AND THE
7 WITNESSES WHO TESTIFIED. AND I HEARD THAT SOMEBODY
8 WHO MIGHT BE GOING FROM MIAMI TO VIRGINIA IS A CRIMINAL?
9 THERE'S NOTHING IN OUR LAW THAT SUPPORTS THAT. I HEARD
10 THAT SOMEBODY WHO WAS GOING FROM MIAMI TO VIRGINIA TO
11 ATLANTA TO FLORIDA IS A CRIMINAL? AND THERE'S NOTHING IN
12 OUR LAW AND NOTHING IN THIS CASE THAT SUPPORTS THAT.

13 BY NOT PICKING UP THE PLASTIC BAGS WITH PLASTIC
14 GLOVES IT DENIES NOT ONLY ME BUT YOU TO KNOW WHO
15 TOUCHED THE BAG. I CAN TELL YOU THEY TOLD ME THAT WAS
16 NOT IMPORTANT. I DISAGREE. WHERE, WHERE DO WE DESCRIBE
17 THIS CASE WITH SUFFICIENT PARTICULARITY TO KNOW WHAT
18 HAPPENED? EVEN THE VIDEO TAPE DOES NOT DO THAT,
19 BECAUSE FOR WHATEVER REASONS OF LAW ENFORCEMENT,
20 THEY CUT IT OFF.

21 WHEN I SAW THE GUN DRAWN, AND YOU WILL HAVE
22 A RIGHT TO LOOK AT IT HOWEVER YOU WANT, I THINK YOU WILL
23 FIND THAT POINTING WAS DOWN TOWARDS THE GROUND AND
24 THERE WAS NO OFFENSIVE MOVE MADE BY ANY DEFENDANT.

25 MADAME FORELADY, THERE WAS SOMETHING ELSE I

1 SAW. YOU KNOW HOW EVERYBODY WAS TALKING ABOUT THE
2 DEFENDANT BEING NERVOUS? I RE-WATCHED HOW MY CLIENT
3 STOOD VERY CALM AND MOTIONLESS AT THE HOOD OF MR.
4 LANE'S CAR, NO FIDGITS, NO NOTHING. AND I WATCHED HOW
5 WITHOUT HESITATION, WITHOUT DISCUSSION, WITHOUT
6 ANYTHING, MR. LANE SAID WILL YOU OPEN THE TRUNK AND HE
7 WALKED OVER AND DID IT. AND I AM WONDERING WHY IN THE
8 WORLD SOMEBODY TRAFFICKING COCAINE WOULD OPEN THEIR
9 TRUNK KNOWING IT WAS THERE. COMMON SENSE TELLS YOU
10 THAT - COMMON SENSE IS A RUDIMENTARY PRINCIPLE OF
11 REASONABLE DOUBT.

12 IF YOU WANTED TO DESCRIBE THIS CASE WITH
13 MEANINGFUL PARTICULARITIES SUFFICIENT TO DESCRIBE IT, IT IS
14 AT BEST A TRAVESTY. IT DOES AT BEST PROVE NOTHING
15 BECAUSE THOSE PEOPLE WHO OUR CHARGED WITH OUR
16 PROTECTION CANNOT ASSERT WITH SINCERITY WHAT
17 THEY SAY. NOT THE BAGS, NOT THE WEIGHT, NOT WHAT THEY
18 SAW, NOT WHAT THEY INCURRED, PERIOD. THAT'S THE ENTIRE
19 BASIS OF THE CASE.

20 TO WELL AND TRULY TRY, AND IN TRUE DELIVERANCE
21 MAKE BETWEEN THE STATE AND THE DEFENDANTS WHO THEY
22 HAVE CHARGED, AND RENDER A VERDICT ACCORDING TO THE
23 LAW AND THE EVIDENCE. I WON'T CALL IT SHODDY BUT I WILL
24 CALL IT AN ABSOLUTE MESS AND I WILL TELL YOU THAT WHAT I
25 SAW AND WHAT I HEARD IS NOT SUPPORTED BY WHAT IS

1 BEFORE YOU.

2 I WILL TELL YOU THAT THE GRAND JURY - MR.
3 REDMOND WANTS TO TALK ABOUT THE INDICTMENT - THE
4 GRAND JURY RETURNED A TRUE BILL AGAINST MY CLIENT, AND I
5 INVITE YOU TO READ IT. IT SAYS THE ONLY THING HE DID, IF HE
6 DID ANYTHING, WAS POSSESSION WITH INTENT TO DISTRIBUTE.
7 BUT HIS HONOR'S ONLY GOING TO CHARGE YOU ON
8 TRAFFICKING. THAT IS ALL HE IS GOING TO CHARGE YOU.

9 YOU KNOW, HE IS GOING TO TELL YOU THAT
10 SOMEONE HAS TO KNOWINGLY AND INTENTIONALLY BRING
11 DRUGS INTO THIS STATE. THE POLICE CAN'T EVEN TELL US
12 HOW MANY BAGS THERE WAS. IF THAT IS GUILT BEYOND A
13 REASONABLE DOUBT, I AM IN THE WRONG PLACE. THANK YOU.

14 THE COURT: TAKE ABOUT A FIVE
15 MINUTE BREAK BEFORE I TELL YOU THE LAW IN THIS CASE.
16 DON'T DISCUSS THE CASE. COME RIGHT BACK FOR THE CHARGE,
17 (AT THIS TIME THERE WAS A SHORT BREAK.)

18 THE COURT: BE SEATED, PLEASE.
19 LADIES AND GENTLEMEN OF THE JURY, UNDER THE LAW AND
20 THE CONSTITUTION AND THE LAWS OF THIS STATE, YOU'RE THE
21 SOLE FINDERS OF THE FACTS IN THIS CASE. I DON'T HAVE THE
22 RIGHT TO PASS UPON THE FACT OR EVEN TO EXPRESS ANY
23 OPINION I MAY HAVE AS TO THEM, NOR MAY I INTIMATE IN ANY
24 WAY WHAT I THINK ABOUT THE GUILT OR THE INNOCENCE OF
25 THE DEFENDANT.

1 IF I HAVE GIVEN YOU THAT IMPRESSION THROUGH
2 SOME FACIAL EXPRESSION OR VOICE INFLECTION OR GESTURE OR
3 ANYTHING I HAVE SAID OR DONE, PLEASE I ASK YOU TO
4 DISREGARD THAT, IT WOULD HAVE BEEN PURELY ACCIDENTAL
5 ON MY PART, OR IT WOULD HAVE BEEN PURELY INADVERTENT
6 ON MY PART. FOR I TELL YOU, NOT ONLY MAY I NOT HAVE AN
7 OPINION AS TO THE GUILT OR INNOCENCE IN THIS CASE, I TELL
8 YOU I DO NOT.

9 BECAUSE YOU ARE THE SOLE JUDGES OF THE FACTS,
10 YOU ARE THE SOLE JUDGES OF THE CREDIBILITY. THAT'S A
11 FANCY WORD FOR BELIEVABILITY OF THE WITNESSES AND THE
12 VALUE OR THE WEIGHT TO BE GIVEN TO THEIR TESTIMONY, YOU
13 ALONE MUST DECIDE THE FORCE, AND THE EFFECT, AND THE
14 TRUTH OF THE TESTIMONY AND IN MAKING THIS DECISION THERE
15 IS MANY THINGS YOU SHOULD TAKE INTO ACCOUNT, SUCH AS
16 THE APPEARANCE AND THE MANNER OF THE WITNESSES ON THE
17 STAND, SOMETIMES REFERRED TO AS THE DEMEANOR OF THE
18 WITNESS, THE MANNER IN WHICH THE WITNESS TESTIFIED; WAS
19 THE WITNESS FORTHRIGHT OR HESITANT, WHAT WAS THE
20 ABILITY OF THE WITNESS TO KNOW THE FACTS ABOUT WHICH
21 HE OR SHE TESTIFIED, THE EXTENT OF A WITNESSES CAPACITY
22 TO PROCEED, TO RECOLLECT, TO COMMUNICATE ABOUT
23 ANY MATTER ABOUT WHICH HE OR SHE TESTIFIED. THE
24 EXISTENCE OF NON-EXISTENCE OF A BIAS OR INTEREST, OR
25 OTHER MOTIVE; DID THE WITNESS HAVE A CAUSE OR A REASON

1 TO BE BIAS?

2 WAS THE TESTIMONY CORROBORATED AND MADE
3 STRONGER BY OTHER TESTIMONY AND EVIDENCE, OR WAS IT
4 MADE WEAKER? AS JURORS, YOU HAVE A RIGHT TO BELIEVE A
5 SMALL PORTION OF A WITNESSES TESTIMONY AND DISCARD THE
6 LARGER, OR VICE-VERSA. YOU MAY BELIEVE ALL OF A
7 WITNESSES TESTIMONY OR YOU MAY BELIEVE NONE OF IT. YOU
8 MAY BELIEVE A SINGLE WITNESS AGAINST THAT OF MANY
9 WITNESSES, OR THE OTHER WAY AROUND.

10 ALL THESE THINGS YOU WILL CONSIDER BEARING IN
11 MIND THAT YOU MUST GIVE THE DEFENDANT THE BENEFIT OF
12 EVERY REASONABLE DOUBT. NOW BY THE SAME CONSTITUTION
13 AND LAW THAT MAKES YOU THE FINDERS OF THE FACTS AND
14 THE EVIDENCE, I AM AS THE TRIAL JUDGE MADE THE ONLY AND
15 THE SOLE JUDGE OR INSTRUCTOR IN THE LAW. YOU MUST
16 ACCEPT AS CORRECT THE LAW WHICH I CHARGE AND APPLY IT
17 TO THE EVIDENCE AS YOU FIND IT AND REACH YOUR VERDICT.
18 YOUR VERDICT MUST BE A UNANIMOUS VERDICT, A TRUE
19 VERDICT, A VERDICT THAT SPEAKS THE TRUTH.

20 I CHARGE YOU IN THIS REGARD THAT NEITHER YOU
21 NOR I FOR THAT MATTER SHOULD BE CONCERNED ABOUT WHAT
22 THE LAW OUGHT TO BE, BUT RATHER I CHARGE YOU BY WHAT
23 THE LAW IS. IT WOULD BE A VIOLATION OF YOUR OATH TO
24 BASE YOUR VERDICT UPON ANYTHING OTHER THAN THE LAW
25 AND THE FACTS IN THIS CASE.

1 YOU MUST NOT CONSIDER ANY EVIDENCE THAT WAS
2 STRICKEN BY THE COURT, IT'S TO BE TREATED AS IF YOU'D
3 NEVER HEARD IT. QUESTIONS ARE NOT EVIDENCE, AND
4 QUESTIONS ARE ONLY IMPORTANT WHEN THEY SUPPLY MEANING
5 TO AN ANSWER.

6 MADAME FORELADY AND MEMBERS OF THE JURY, THE
7 STATE OF SOUTH CAROLINA CHARGES BOTH OF THESE
8 DEFENDANTS WITH THE OFFENSE OF TRAFFICKING COCAINE IN
9 AM AMOUNT OF OVER 100 GRAMS, OR LESS THAN 200 GRAMS.
10 THE STATE OF SOUTH CAROLINA HAS ACCUSED THESE
11 DEFENDANTS OF THAT CRIME AND THE DEFENDANTS HAVE PLED
12 NOT GUILTY TO THIS CHARGE.

13 A BASIC CONCEPT OF OUR LEGAL SYSTEM IS THAT A
14 PERSON IS PRESUMED INNOCENT UNTIL YOU THE JURY
15 UNANIMOUSLY FIND HIM OR HER GUILTY BEYOND A REASONABLE
16 DOUBT. NOW THIS PRESUMPTION OF INNOCENCE REMAINS WITH
17 THE DEFENDANT FROM THE TIME THAT HE'S FIRST CHARGED
18 UNTIL THE TIME YOU RETURN A VERDICT. A DEFENDANT IS
19 NEVER REQUIRED TO PROVE HIMSELF INNOCENT.

20 THEREFORE, THE STATE HAS THE BURDEN TO PROVE
21 TO YOU BEYOND A REASONABLE DOUBT THAT THE DEFENDANT
22 IS GUILTY. THE STATE ALWAYS HAS THE BURDEN OF PROVING
23 BEYOND A REASONABLE DOUBT ANYTHING THEY ALLEGE TO BE
24 TRUE. IF AFTER LISTENING TO ALL THE TESTIMONY AND
25 CONSIDERING ALL THE EVIDENCE PRESENTED YOU HAVE A

1 REASONABLE DOUBT IN YOUR MIND AS TO THE DEFENDANT'S
2 GUILT OR INNOCENCE, THEN IT IS YOUR DUTY TO RETURN A
3 VERDICT OF NOT GUILTY.

4 HOWEVER, IF YOU FIND THE STATE HAS PROVEN THE
5 DEFENDANT GUILTY BEYOND A REASONABLE DOUBT THEN YOU
6 HAVE A DUTY TO FIND THE DEFENDANT GUILTY. REMEMBER,
7 THE BURDEN OF PROOF IS UPON THE STATE FROM THE
8 BEGINNING TO THE END TO ESTABLISH BY THE EVIDENCE
9 BEYOND A REASONABLE DOUBT THE GUILT OF THE DEFENDANT
10 FOR THE CRIME WITH WHICH THEY'RE CHARGED. THE PROPER
11 MANNER TO WEIGHT THE EVIDENCE PRESENTED DURING THE
12 TRIAL OF THIS CASE, REGARDLESS OF ITS SOURCE, IN ORDER TO
13 DETERMINE IF THE STATE HAS MET ITS BURDEN OF PROOF IS
14 THROUGH THE EXERCISE OF YOUR GOOD COMMON SENSE AND
15 JUDGMENT, NOT SIMPLY BY COUNTING WITNESSES.

16 YOU MUST ALSO ASK YOURSELF WHAT EVIDENCE
17 CONVINCES ME THAT IT IS TRUE. IT'S ENTIRELY A MENTAL
18 PROCESS. AND IN THIS MANNER YOU SHALL WEIGH THE
19 EVIDENCE AND RENDER A FAIR AND IMPARTIAL AND A JUST
20 VERDICT. NOW THE GOVERNMENT HAS THE BURDEN OF
21 PROVING THE DEFENDANT GUILTY, AS I SAY, BEYOND A
22 REASONABLE DOUBT. SOME OF YOU MAY HAVE SERVED AS
23 JURORS IN CIVIL CASES WHERE YOU WERE TOLD THAT IT'S ONLY
24 NECESSARY TO PROVE THAT A FACT IS MORE LIKELY TRUE THAN
25 NOT TRUE.

1 WELL, IN CRIMINAL CASES THE GOVERNMENT'S
2 PROOF MUST BE MORE POWERFUL THAN THAT. IT MUST BE
3 BEYOND A REASONABLE DOUBT. PROOF BEYOND A
4 REASONABLE DOUBT IS PROOF THAT LEAVES YOU FIRMLY
5 CONVINCED OF THE DEFENDANT'S GUILT.

6 NOW THERE ARE VERY FEW THINGS IN THIS WORLD
7 THAT WE KNOW WITH ABSOLUTE CERTAINTY, AND IN CRIMINAL
8 CASES THE LAW DOES NOT REQUIRE PROOF THAT OVERCOMES
9 EVERY POSSIBLE DOUBT. IF BASED ON YOUR CONSIDERATION OF
10 THE EVIDENCE YOU ARE FIRMLY CONVINCED THAT THE
11 DEFENDANT IS GUILTY OF THE CRIME CHARGED, YOU MUST FIND
12 HIM GUILTY.

13 ON THE OTHER HAND, IF YOU THINK THERE IS A REAL
14 POSSIBILITY THAT HE IS NOT GUILTY, YOU MUST GIVE HIM THE
15 BENEFIT OF THAT DOUBT AND FIND HIM NOT GUILTY. I
16 INSTRUCT YOU NOW AS I HAVE PREVIOUSLY AND EMPHASIZE TO
17 YOU THAT THE FACT THAT A DEFENDANT DOES NOT TESTIFY IN
18 HIS OWN BEHALF IN A CRIMINAL TRIAL IS NOT. I REPEAT NOT A
19 FACTOR TO BE CONSIDERED BY YOU IN ANY WAY IN YOUR
20 DELIBERATIONS. YOU MUST NOT CONSIDER THE FACT THAT THE
21 DEFENDANT HAS CHOSEN NOT TO TESTIFY WHEN YOU
22 DETERMINE THE GUILT OF INNOCENCE OF THE DEFENDANT.
23 IT MUST NOT BE CONSIDERED BY YOU IN ANY MANNER
24 WHATSOEVER EITHER AGAINST OR FOR THE DEFENDANT. A
25 DEFENDANT HAS THE CONSTITUTIONAL RIGHT TO REMAIN

1 SILENT.

2 THE ASSERTION OF THAT CONSTITUTIONAL RIGHT
3 CANNOT AND MUST NOT BE CONSIDERED BY YOU IN YOUR
4 DELIBERATIONS. UNDER YOUR OATH, THEN , YOU ARE TO REACH
5 NO INFERENCE AND DRAW NO CONCLUSION WHATSOEVER FROM
6 THE FACT THAT A DEFENDANT IN THIS CASE DID NOT TESTIFY.
7 THE FACT THAT THE DEFENDANT DID NOT TESTIFY SHOULD NOT
8 EVEN BE DISCUSSED IN YOUR JURY ROOM

9 THE BURDEN OF PROOF, AS I HAVE STATED TO YOU,
10 IS UPON THE STATE. IT IS NOT UPON THE DEFENDANT AND IT IS
11 NOT UPON THE ACCUSED TO PROVE HIS INNOCENCE. THE
12 BURDEN OF PROOF REMAINS ON THE STATE TO PROVE GUILT
13 BEYOND EVERY REASONABLE DOUBT. AGAIN, I EMPHASIZE THE
14 FACT THAT A DEFENDANT DID NOT TESTIFY IS NOT A FACTOR
15 TO BE CONSIDERED BY YOU IN DETERMINING THE GUILT OR
16 INNOCENCE OF A DEFENDANT, OR IN ANY OTHER ASPECT OF
17 YOUR DELIBERATIONS.

18 NOW LADIES AND GENTLEMEN, DURING THE TRIAL OF
19 THIS CASE IN ADDITION TO THE TESTIMONY OF THE LAY
20 WITNESSES, YOU'VE HEARD TESTIMONY FROM INDIVIDUALS WHO
21 ARE GENERALLY CALLED EXPERTS. AS I STATED DURING THE
22 TRIAL OF THIS CASE -- OR MAYBE I HAVEN'T - ORDINARILY
23 WITNESSES ARE NOT PERMITTED TO COME IN AND TESTIFY TO
24 ANYTHING OTHER THAN MATTERS WHICH ARE CAPABLE OF
25 BEING PERCEIVED BY ONE'S SENSES, SUCH AS I SAW, I TOUCHED,

1 I FELT, I TASTED, I SMELLED, ONE OF THE FIVE SENSES.

2 USUALLY WITNESSES ARE NOT PERMITTED TO GIVE
3 THEIR OPINIONS ON ISSUES. OUR RULES DO PERMIT IN SOME
4 CASES, HOWEVER, IN CERTAIN CIRCUMSTANCES THAT SOME
5 PERSONS WHO BECAUSE OF EDUCATION, EXPERIENCE, OR
6 TRAINING PROFESS SOME EXPERTISE MAY BE PERMITTED TO GIVE
7 AN OPINION IN REGARD TO THEIR FIELD OF EXPERTISE. NOW
8 THAT DOESN'T MEAN THAT THEIR TESTIMONY NECESSARILY HAS
9 TO RECEIVE MORE WEIGHT THAN THAT OF ANY OTHER WITNESS.

10 YOU SHOULD CONSIDER THE EXPERT TESTIMONY IN
11 THE SAME MANNER AS YOU DO ANY OTHER TESTIMONY AND
12 GIVE TO SUCH WEIGHT AS YOU BELIEVE IT TO BE ENTITLED
13 WHEN CONSIDERED WITH ALL THE OTHER EVIDENCE IN THE
14 CASE.

15 SUCH TESTIMONY IS GIVEN FOR THE PURPOSE OF
16 HELPING YOU UNDERSTANDING THE EVIDENCE AND NOT FOR THE
17 PURPOSE OF CONTROLLING YOUR JUDGMENT. AND THE VALUE
18 OF IT DOES NOT DEPEND UPON THE SKILL AND KNOWLEDGE
19 PROFESSED BY THE EXPERT, BUT RATHER UPON THE SKILL AND
20 KNOWLEDGE HE OR SHE ACTUALLY POSSESSES. IT IS FOR YOU
21 TO JUDGE WHETHER AN EXPERT DOES POSSESS SUCH
22 KNOWLEDGE.

23 IN THIS REGARD YOU MAY CONSIDER HIS OR HER
24 TRAINING, EXPERIENCE, ABILITY TO COMMUNICATE THEIR IDEAS,
25 THE LOGIC OF THAT EXPERTS OPINION AND THE FACTUAL

1 SUPPORT FOR THE OPINION, AND ALL OTHER FACTORS USED TO
2 JUDGE AND WEIGH THE TESTIMONY OF ANY OTHER WITNESS.
3 NO MERE OPINION OF AN EXPERT CAN BE ACCEPTED AS
4 TRUTHFUL OR RELIABLE IN AND OF ITSELF AND FOR THAT
5 REASON ALONE. IT FIRST MUST BE WEIGHED BY YOU AND
6 CONVINCE YOUR JUDGMENT BEYOND A REASONABLE DOUBT
7 AND WITH THE SAME FORCE AND EFFECT AS ANY OTHER FACT
8 PROVED IN THIS CASE BEFORE YOU CAN RELY UPON IT.

9 THEREFORE, LADIES AND GENTLEMEN, GIVE SUCH
10 EXPERT TESTIMONY THE WEIGHT, IF ANY, TO WHICH YOU DEEM IT
11 ENTITLED.

12 UNDER SOUTH CAROLINA LAW, LADIES AND
13 GENTLEMEN, ANY PERSON WHO KNOWINGLY SELLS,
14 MANUFACTURES, DELIVERS, OR BRINGS INTO THIS STATE, OR
15 WHO IS KNOWINGLY IN POSSESSION OF 10 GRAMS OR MORE OF
16 COCAINE, OR ANY MIXTURES CONTAINING COCAINE IS GUILTY OF
17 A FELONY, WHICH IS KNOWN AS TRAFFICKING IN COCAINE.

18 IN ORDER FOR YOU TO FIND THE DEFENDANT GUILTY
19 UNDER THIS SECTION, THE STATE MUST PROVE BEYOND A
20 REASONABLE DOUBT THAT THE DEFENDANT KNOWINGLY SOLD,
21 MANUFACTURED, DELIVERED, OR BROUGHT INTO THIS STATE
22 THE QUANTITIES OF THE DRUGS SET FORTH ABOVE, OR THAT
23 THE DEFENDANT PROVIDED FINANCIAL ASSISTANCE OR
24 OTHERWISE AIDED AND ABETTED, OR CONSPIRED TO
25 MANUFACTURE, SELL, OR BRING INTO THE STATE THE

1 QUANTITIES OF THE DRUGS SET FORTH ABOVE.

2 OR, THAT THE DEFENDANT WAS KNOWINGLY IN
3 ACTUAL OR CONSTRUCTIVE POSSESSION OF THE QUANTITIES OF
4 THE DRUGS SET FORTH ABOVE. SECONDLY, THE STATE MUST
5 PROVE THE SUBSTANCE WAS, IN FACT, COCAINE.

6 SHOULD THE STATE FAIL TO PROVE EACH OF THE
7 ELEMENTS BEYOND A REASONABLE DOUBT, THEN YOU SHOULD
8 RETURN A VERDICT OF NOT GUILTY.

9 LET ME DEFINE FOR YOU ACTUAL POSSESSION AND
10 CONSTRUCTIVE POSSESSION. ACTUAL POSSESSION MEANS
11 THAT THE COCAINE BASED DRUG WAS IN THE ACTUAL PHYSICAL
12 CUSTODY OF THE DEFENDANT. CONSTRUCTIVE POSSESSION
13 MEANS THAT THE DEFENDANT HAD DOMINION AND CONTROL,
14 OR THE RIGHT TO EXERCISE DOMINION OR CONTROL OVER EITHER
15 THE COCAINE BASED DRUGS ITSELF OR THE PROPERTY ON WHICH
16 THE COCAINE BASED DRUGS WERE FOUND.

17 MERE PRESENCE AT THE SCENE WHERE THE DRUGS
18 WERE FOUND IS NOT ENOUGH TO PROVE POSSESSION. ACTUAL
19 KNOWLEDGE OF THE PRESENCE OF THE COCAINE BASED DRUGS
20 IS STRONG EVIDENCE OF THE DEFENDANT'S INTENT TO CONTROL
21 ITS DISPOSITION OR USE. THE DEFENDANT'S KNOWLEDGE AND
22 POSSESSION MAY BE INFERRED WHEN A SUBSTANCE IS FOUND
23 ON THE PROPERTY UNDER THE DEFENDANT'S CONTROL.

24 HOWEVER, THIS INFERENCE IS SIMPLY AN
25 EVIDENTIARY FACT TO BE TAKEN INTO CONSIDERATION BY YOU

1 ALONG WITH THE OTHER EVIDENCE IN THE CASE AND TO BE
2 GIVEN THE WEIGHT YOU DECIDE IT SHOULD HAVE.

3 AGAIN, MERE PRESENCE AT THE SCENE IS NOT
4 SUFFICIENT TO PROVE SOMEONE GUILTY OF A CRIME. A
5 DEFENDANT'S PRESENCE WHERE A CRIME IS BEING COMMITTED
6 OR MERE ASSOCIATION WITH A PERSON WHO COMMITS A CRIME
7 DOES NOT MAKE A DEFENDANT AN ACCOMPLIS OR AN AN AIDER
8 OR ABETTOR OF THE PERSON COMMITTING THE CRIME. THE
9 BURDEN IS ON THE STATE TO PROVE EVERY ELEMENT OF THE
10 CRIME CHARGED.

11 IF YOU FIND AFTER REVIEWING ALL OF THE EVIDENCE
12 THAT THE STATE HAS PROVED THAT THE DEFENDANT WAS
13 ONLY PRESENT AT THE SCENE OF A CRIME AND THAT THEY
14 HAVE NOT PROVED BEYOND A REASONABLE DOUBT ANY OTHER
15 PARTICIPATION IN THE CRIME, THEN YOU MUST FIND THE
16 DEFENDANT NOT GUILTY. THE LAW IS THAT PROOF OF
17 PRESENCE AT THE SCENE OF THE CRIME IS NOT SUFFICIENT TO
18 FIND SOMEONE GUILTY.

19 LADIES AND GENTLEMEN, I CHARGE YOU WITH DIRECT
20 AND CIRCUMSTANTIAL EVIDENCE. THERE ARE TWO TYPES OF
21 EVIDENCE WHICH ARE GENERALLY PRESENTED DURING THE TRIAL
22 OF A CASE; DIRECT AND CIRCUMSTANTIAL EVIDENCE. DIRECT
23 EVIDENCE IS THE TESTIMONY OF A PERSON WHO CLAIMS TO
24 HAVE ACTUAL KNOWLEDGE OF A FACT, SUCH AS AN EYE
25 WITNESS. IT IS EVIDENCE WHICH IMMEDIATELY ESTABLISHES

1 THE MAIN FACT TO BE PROVED. CIRCUMSTANTIAL EVIDENCE IS
2 PROOF OF A CHAIN OF FACTS AND CIRCUMSTANCES INDICATING
3 THE EXISTENCE OF A FACT. IT IS EVIDENCE WHICH IMMEDIATELY
4 ESTABLISHES COLLATERAL FACTS FROM WHICH THE MAIN FACT
5 MAY BE INFERRED.

6 CIRCUMSTANTIAL EVIDENCE IS BASED ON INFERENCE
7 AND NOT ON PERSONAL KNOWLEDGE OR OBSERVATION. TO
8 GIVE YOU AN EXAMPLE, DIRECT EVIDENCE IS EVIDENCE SUCH AS,
9 I SAW THE GRASS LAST NIGHT. AN EXAMPLE OF
10 CIRCUMSTANTIAL EVIDENCE IS. WHEN I WENT TO BED LAST
11 NIGHT I LOOKED OUT THE WINDOW AND IT WAS NOT SNOWING.
12 WHEN I WOKE UP IN THE MORNING THERE WAS SNOW ON THE
13 GROUND. YOU MAY INFER FROM THAT THAT IT SNOWED DURING
14 THE NIGHT. THAT'S AN EXAMPLE OF CIRCUMSTANTIAL
15 EVIDENCE.

16 THE LAW MAKES ABSOLUTELY NO DISTINCTION
17 BETWEEN THE WEIGHT OR THE VALUE TO BE GIVEN TO EITHER
18 DIRECT OR CIRCUMSTANTIAL EVIDENCE. NOR IS A GREATER
19 DEGREE OF CERTAINTY REQUIRED OF CIRCUMSTANTIAL EVIDENCE
20 REQUIRED THAN THAT OF DIRECT EVIDENCE.

21 YOU SHOULD WEIGH ALL THE EVIDENCE IN THE CASE,
22 AND IF AFTER WEIGHING ALL THE EVIDENCE IF YOU'RE NOT
23 CONVINCED OF THE DEFENDANT BEYOND A REASONABLE
24 DOUBT, YOU MUST FIND THE DEFENDANT NOT GUILTY.

25 LADIES AND GENTLEMEN, YOU'VE BEEN SELECTED

1 AS FAIR AND IMPARTIAL JURORS, SWORN TO BE IMPARTIAL
2 AND TO TRY AND DETERMINE THE FACTS OF THE CASE. AND
3 WHEN YOU COMPLY WITH YOUR OATH TO DO SO THEN NO ONE
4 WILL HAVE A RIGHT TO CRITICIZE YOUR VERDICT AND YOU WILL
5 HAVE FULLY DISCHARGED YOUR DUTY AS JURORS.

6 YOUR VERDICT MUST NOT BE BASED ON PASSION OR
7 PREJUDICE, OR ON PUBLIC OPINION, BUT MUST BE BASED ON THE
8 EVIDENCE AND THE LAW ONLY. AND WHEN YOU DO THAT,
9 THAT IS TO SAY BASE YOUR VERDICT ON THE EVIDENCE AND
10 THE LAW, NO ONE CAN FIND FAULT WITH YOUR VERDICT.

11 NOW THERE ARE TWO VERDICTS -- FIRST OF ALL,
12 LET ME MAKE THIS REAL CLEAR; THERE ARE TWO DEFENDANTS
13 IN THIS CASE. THE STATE MUST PROVE THE ELEMENTS OF THE
14 OFFENSE OF TRAFFICKING AGAINST EACH OF THOSE
15 INDIVIDUALS. YOU MUST CONSIDER THE EVIDENCE AGAINST ONE
16 AND THEN CONSIDER THE EVIDENCE AGAINST THE OTHER.

17 YOU MAY FIND ONE GUILTY AND ONE NOT GUILTY.
18 YOU MAY FIND BOTH NOT GUILTY OR YOU MAY FIND BOTH
19 GUILTY. THERE ARE TWO VERDICTS WITH REGARD TO EACH
20 DEFENDANT, OBVIOUSLY; GUILTY OR NOT GUILTY. AND ON
21 THESE FORMS I COULD HAVE PUT EITHER FIRST. SOMETHING'S
22 GOT TO COME FIRST, THERE'S NOT BUT TWO, AND IN THESE I
23 HAPPENED TO PUT "NOT GUILTY" FIRST. THIS IS ONE VERDICT
24 FORM. THIS SAYS "VERDICT FORM, THE STATE OF SOUTH
25 CAROLINA, PLAINTIFF VERSUS ARTIE TYRONE BANKS,

1 DEFENDANT," THEN IT SAYS, "WE THE JURY ON THE CHARGE OF
2 TRAFFICKING 100 GRAMS OR MORE OF COCAINE BUT LESS THAN
3 200 GRAMS, AND THE STATUTE NUMBER, UNANIMOUSLY FIND
4 THE DEFENDANT ARTIE TYRONE BANKS GUILTY OR NOT GUILTY."
5 WHICHEVER YOUR UNANIMOUS VERDICT IS, MADAME FORELADY,
6 YOU CHECK THE APPROPRIATE LINE HERE, THE ONE OUT FROM
7 GUILTY OR THE ONE OUT FROM NOT GUILTY. AND THEN SIGN
8 YOUR NAME DOWN HERE.

9 THAT'S EXACTLY THE SAME AS THE VERDICT FORM
10 WITH REGARD TO JOHNNY JONES. "WE THE JURY ON THE
11 CHARGE OF TRAFFICKING 100 GRAMS OR MORE OF COCAINE BUT
12 LESS THAN 200 GRAMS UNANIMOUSLY FIND THE DEFENDANT,
13 JOHNNY JONES GUILTY OR NOT GUILTY." WHICHEVER YOUR
14 UNANIMOUS VERDICT WITH REGARD TO MR. JONES, YOU CHECK
15 THAT APPROPRIATE BOX AND SIGN YOUR NAME DOWN HERE.

16 ONCE YOU HAVE DONE THAT SOMEONE WILL COME
17 RETRIEVE BOTH YOU AND YOUR VERDICTS IN THESE CASES. IF
18 THEY'RE IN THE PROPER FORM, THE COURT WILL PUBLISH THOSE.
19 I'M GOING TO ASK YOU NOW IN JUST A MINUTE TO STEP BACK
20 TO YOUR JURY ROOM AGAIN. AND I'LL TELL YOU WHILE YOU'RE
21 GONE I'M GOING TO ASK THESE DEFENDANTS IF I HAVE
22 MISSPOKEN MYSELF, IF I HAVE SAID DEFENDANT WHEN I SHOULD
23 HAVE SAID STATE, OR IF I HAVE MADE A MISTAKE, IF I HAVE
24 NOT CHARGED YOU SOMETHING THAT I SHOULD HAVE, OR
25 CHARGED YOU WITH SOMETHING THAT I SHOULD NOT HAVE, OR

1 READ IT INCORRECTLY. I DON'T THINK I HAVE, I HOPE I
2 HAVEN'T. BUT IF I HAVE IT MAY BE NECESSARY FOR ME TO
3 BRING YOU BACK OUT HERE AND CORRECT THAT MISTAKE.

4 LET ME TELL YOU NOW IN THE EVENT THAT
5 HAPPENS, AND I HOPE IT DOESN'T, BUT IF IT DOES AND I CHARGE
6 YOU WITH A PIECE OF LAW THAT I HAVEN'T OR I SAY THE SAME
7 PIECE OVER AGAIN MAYBE A LITTLE BIT DIFFERENTLY, IT'S NOT
8 THAT I'M TRYING TO BRING ANY EMPHASIS TO THAT, IT'S SIMPLY
9 THAT I'M TRYING TO CORRECT A MISTAKE THAT I MADE, AND
10 THAT'S ALL. IT'S NOT TO PUT ANY EMPHASIS ON THAT. SO IF
11 YOU WOULD, PLEASE STEP BACK TO YOUR JURY ROOM. DON'T
12 START YOUR DELIBERATIONS UNTIL THE BAILIFF TELLS YOU TO
13 DO SO, AND DON'T DISCUSS THE CASE UNTIL THAT TIME.

14 (AT THIS TIME THE JURY LEAVES THE COURTROOM.)

15 THE COURT: I DON'T KNOW WHERE I
16 GOT THE NAME BANKS FROM, BRING THE JURY BACK IN. LADIES
17 AND GENTLEMEN, I'D HOPED TO CATCH YOU BEFORE YOU GOT
18 BACK TO YOUR ROOM BECAUSE EVERYBODY IN THE COURTROOM
19 HEARD ME SAY IT WRONG EXCEPT MYSELF. THE DEFENDANT'S
20 NAME IS MR. BURNS, NOT MR. BANKS. I MEANT NO DISRESPECT
21 FOR THAT, MR. BANKS, I APOLOGIZE, I SIMPLY HAD IT TYPED
22 WRONG. THE DEFENDANT'S NAME IS MR. BURNS. AND I'M GOING
23 TO CORRECT THAT NOW ON THE VERDICT FORM. YOU MAY STEP
24 BACK TO YOUR JURY ROOM NOW AND LET'S SEE IF THERE'S
25 OTHER MISTAKES I'VE MADE.

(THE JURY LEAVES THE COURTROOM.)

THE COURT: ANY CORRECTIONS
OR ADDITIONS TO THE CHARGE?

MR. REDMOND: NONE FROM THE
STATE, YOUR HONOR.

MR. WATSON: NO, YOUR HONOR.

MRS. MCMILLAN: NO.

THE COURT: PASS THE VERDICT
FORM IN AND TELL THEM, THEN, THEY MAY COMMENCE
THEIR DELIBERATIONS. I HAVE HAD THE DRUGS IN THE
PLASTIC BAGS PUT INTO A BIGGER PLASTIC BAG AND
SEALED SO THEY WON'T HAVE ACCESS TO THE DOPE. IF
THEY WISH TO TAKE IT OUT AND LOOK AT IT, I'M SURE
THEY'LL MAKE IT KNOWN TO THE BAILIFF AND WE'LL
TAKE IT OUT AND LET THEM LOOK AT IT AGAIN. BUT
THEY GOT A GOOD LOOK AT WHATEVER WAS PLACED IN
THE BAG AND IT WOULD BE IRRESPONSIBLE FOR ME TO
SEND IT BACK THERE IN AN UNSEALED CONDITION. BUT I
DO WANT TO MAKE YOU AWARE THAT WE DID SEAL IT
BACK UP.

MR. WATSON: THANK YOU, YOUR
HONOR.

(AT THIS TIME COURT RECESSED FOR THE JURY TO DELIBERATE)

THE COURT: I UNDERSTAND WE
HAVE A VERDICT. IS THE DEFENSE READY TO RECEIVE THE

1 VERDICT?

2 MR. WATSON: YES.

3 THE COURT: STATE READY TO
4 RECEIVE THE VERDICT?

5 MRS. JOHNSON-LEE: YES, YOUR
6 HONOR.

7 THE COURT: CALL THE JURY IN,
8 PLEASE.

9 (AT THIS TIME THE JURY ENTERS THE COURTROOM)

10 THE COURT: I UNDERSTAND
11 YOU'VE REACHED A VERDICT, MADAME FORELADY? WOULD
12 YOU PASS THAT UP TO THE BAILIFF, PLEASE? BE SEATED.
13 VERY WELL, MADAME CLERK, YOU MAY PUBLISH THE VERDICT.

14 THE CLERK: ON YOUR HONOR'S
15 DOCKET AS 06-GS-17-413. THE STATE OF SOUTH CAROLINA
16 VERSUS ARTIE TYRONE BURNS. WE THE JURY, ON THE CHARGE
17 OF TRAFFICKING 100 GRAMS OR MORE OF COCAINE, BUT LESS
18 THAN 200 GRAMS, UNANIMOUSLY FIND THE DEFENDANT MR.
19 ARTIE TYRONE BURNS GUILTY. SIGNED BY FOREPERSON,
20 JENNIFER DESHANE, OCTOBER 19TH, 2006.

21 ON YOUR HONOR'S DOCKET AS 06-GS-17-441. THE
22 STATE OF SOUTH CAROLINA VERSUS JOHNNY JONES, WE THE
23 JURY FIND GUILTY. SIGNED BY FOREPERSON JENNIFER DESHANE,
24 OCTOBER 19TH, 2006.

25 THE COURT: IS THIS YOUR

1 VERDICT? SO SAY YA'LL, IF SO , PLEASE RAISE YOUR RIGHT
2 HAND.

3 (THE JURY COMPLIES.)

4 THE COURT: DO YOU HAVE THE
5 JURY POLLED?

6 MR. WATSN: PLEASE.

7 THE COURT: POLL THE JURY,
8 PLEASE, MA'AM - EXCUSE ME, WITH REGARD TO BOTH
9 DEFENDANTS?

10 MRS. MCMILLAN: YES, SIR.

11 THE COURT: VERY WELL, WITH
12 REGARD TO BOTH DEFENDANTS.

13 THE CLERK: JENNIFER DESHANE,
14 WOULD YOU JUST STAND FOR ME, PLEASE, MA'AM? IS THIS
15 YOUR VERDICT ON ARTIE TYRONE BURNS?

16 THE JUROR: YES, IT IS.

17 THE CLERK: IS THIS YOUR
18 VERDICT ON JOHNNY JONES?

19 THE JUROR: YES, MA'AM.

20 THE CLERK: YOU MAY BE
21 SEATED. KATIE C. MANNING? IS THIS YOUR VERDICT ON ARTIE
22 TYRONE BURNS?

23 THE JUROR: YES, MA'AM.

24 THE CLERK: IS THIS YOUR
25 VERDICT ON JOHNNY JONES?

1 THE JUROR: YES, MA'AM.
2 THE CLERK: CAROL L. SNEAD?
3 IS THIS YOUR VERDICT ON ARTIE TYRONE BURNS?
4 THE JUROR: YES, MA'AM.
5 THE CLERK: IS THIS YOUR
6 VERDICT ON JOHNNY JONES?
7 THE JUROR: YES, MA'AM.
8 THE CLERK: DONALD M. BROWN?
9 IS THIS YOUR VERDICT ON ARTIE TYRONE BURNS?
10 THE JUROR: YES, MA'AM.
11 THE CLERK: IS THIS YOUR
12 VERDICT ON JOHNNY JONES?
13 THE JUROR: YES, MA'AM.
14 THE CLERK: STEPHEN FOWLER?
15 IS THIS YOUR VERDICT ON ARTIE TYRONE BURNS?
16 THE JUROR: YES, MA'AM.
17 THE CLERK: IS THIS YOUR
18 VERDICT ON JOHNNY JONES?
19 THE JUROR: YES, MA'AM.
20 THE CLERK: WILLIAM L.
21 HUGGINS, JR? IS THIS YOUR VERDICT ON ARTIE TYRONE BURNS?
22 THE JUROR: YES MA'AM.
23 THE CLERK: VIRGINIA
24 VALESQUEZ? IS THIS YOUR VERDICT ON ARTIE TYRONE BURNS?
25 THE JUROR: YES, IT IS.

1 THE CLERK: IS THIS YOUR
2 VERDICT ON JOHNNY JONES?
3 THE JUROR: YES, IT IS.
4 THE CLERK: GALE JACOBS? IS
5 THIS YOUR VERDICT ON ARTIE TYRONE BURNS?
6 THE JUROR: YES, MA'AM.
7 THE CLERK: IS THIS YOUR
8 VERDICT ON JOHNNY JONES?
9 THE JUROR: YES, MA'AM.
10 THE CLERK: CATHY WILLIAMS? IS
11 THIS YOUR VERDICT ON ARTIE TYRONE BURNS?
12 THE JUROR: YES, MA'AM.
13 THE CLERK: IS THIS YOUR
14 VERDICT ON JOHNNY JONES?
15 THE JUROR: YES, MA'AM.
16 THE CLERK: MARILYN WILLIAMS?
17 IS THIS YOUR VERDICT ON ARTIE TYRONE BURNS?
18 THE JUROR: YES, MA'AM.
19 THE CLERK: IS THIS YOUR
20 VERDICT ON JOHNNY JONES?
21 THE JUROR: YES, MA'AM.
22 THE CLERK: THAT'S IT.
23 THE COURT: ANYTHING
24 FURTHER?
25 MR. WATSON: NOTHING FOR THE

1 JURY.

2 THE COURT: VERY WELL. LADIES
3 AND GENTLEMEN OF THE JURY, THANK YOU MUCH FOR YOUR
4 SERVICES. IT'S NOT AN EASY JOB TO BE A JUROR, BUT IT'S A
5 JOB WITHOUT WHICH OUR SYSTEM OF JUSTICE COULD NOT
6 WORK. I THANK YOU VERY MUCH. YOUR DUTIES AND
7 RESPONSIBILITIES WITH REGARD TO THIS TRIAL HAVE COME TO A
8 CONCLUSION AND WE WON'T NEED YOU ANYMORE THIS WEEK.
9 THAT'S THE BAD NEWS. THE GOOD NEWS, I GUESS, FOR YOU IS
10 THAT YOU WON'T BE BOTHERED WITH JURY DUTY FOR THREE
11 MORE YEARS AT LEAST IN THIS COURTHOUSE. THANK YOU, AND
12 YOU MAY BE EXCUSED.

13 (THE JURY EXITS THE COURTROOM AT THIS TIME)

14 THE COURT: ALL RIGHT, SIR, ANY
15 MOTIONS?

16 MR. WATSON: WE'D MAKE A
17 MOTION FOR A DIRECTED VERDICT.

18 MRS. MCMILLAN: THE SAME
19 MOTION.

20 THE COURT: I WILL TAKE THAT
21 MATTER UNDER ADVISEMENT. I INDICATED TO YOU BEFORE
22 WHAT I INDICATED TO YOU. AND I'D LIKE TO HEAR FROM THE
23 SOLICITOR WITH REGARD TO MR. JONES ONLY AS RELATES TO
24 HIS GUILT OR INNOCENCE. THE MOTION'S BEEN MADE FOR A
25 DIRECTED VERDICT. WHAT PROOF THAT WOULD RISE TO

1 BEYOND A REASONABLE DOUBT IS THERE OF MR. JONES GUILT?

2 MR. REDMOND: YOUR HONOR, WE
3 WOULD SUBMIT TO THE COURT THAT, ONE, GIVEN THE NATURE
4 OF THE TRAFFIC STOP AS SGT. LANE TESTIFIED TO, WITH THE
5 INCONSISTENT QUESTIONS, WITH THE FACT THAT - AND RATHER
6 THAN GETTING INTO ALL THE DETAILS, THEY'RE IN THE RECORD
7 - BUT THEN ALSO THE FACT THAT THEY WERE IN A VEHICLE
8 THAT WAS A RENTAL THAT NOBODY COULD TELL WHO
9 EXACTLY IT WAS THAT RENTED IT. AND THEN YOU HAVE THE
10 DRUGS IN THAT PARTICULAR VEHICLE CONCEALED. BUT THERE'S
11 NO LUGGAGE ON THE PART OF THESE TWO INDIVIDUALS.

12 AND SO, WITH THAT, YOUR HONOR - AND OF
13 COURSE WITH MR. BURNS BEING THE PERSON THAT IS LISTED AS
14 THE PRIMARY DRIVER ON THAT VEHICLE. AND SO WITH THOSE
15 THINGS, THEN I WILL YIELD TO MRS. JOHNSON LEE IF I HAVE
16 MISSED ANYTHING. BUT WITH THOSE FACTS IN EVIDENCE, YOUR
17 HONOR, CLEARLY I THINK THAT WOULD SUPPORT A CONVICTION
18 ON BOTH. AND SINCE YOUR HONOR ASKED ME ONLY TO
19 ADDRESS MR. JONES, I'M ONLY ADDRESSING---

20 THE COURT: WELL, LET ME BE
21 MORE SPECIFIC. THE ONLY PART OF THIS VERDICT THAT I'M
22 CONCERNED ABOUT IS THE CONSTRUCTIVE POSSESSION OF THE
23 DRUGS WITH REGARD TO - WELL, BOTH DEFENDANTS I'M GOING
24 TO CONSIDER IT, BUT PARTICULARLY WITH MR. JONES. MR.
25 BURNS WAS DRIVING THE AUTOMOBILE. THAT TO ME EVIDENCES

1 DOMINION AND CONTROL OVER IT.

2 THE QUESTION WITH REGARD TO MR. JONES IS
3 WHAT PROOF IS THERE IN THE RECORD THAT WOULD SUSTAIN A
4 VERDICT OF GUILTY THAT MR. JONES WAS IN CONSTRUCTIVE
5 POSSESSION OF THE DRUGS, EVEN MORE SPECIFICALLY, WHAT
6 RIGHT DID HE HAVE TO EXERCISE DOMINION AND CONTROL OVER
7 THE VEHICLE, OR THE DRUGS?

8 MRS. JOHNSON-LEE: JUDGE, IF I
9 MAY? MR. JONES DURING THE STATE'S TESTIMONY, I BELIEVE,
10 HAD INITIALLY CLAIMED IT WAS HIS UNCLE WHO HAD RENTED
11 THE VEHICLE, WHICH TIED HIM TO IT. AND THEN HE COULDN'T
12 REMEMBER THE UNCLE'S NAME. BUT HE AT LEAST TIED HIMSELF
13 TO THE VEHICLE BY SAYING IT WAS HIS UNCLE WHO RENTED IT.

14 THE COURT: WHAT DO YOU
15 MEAN BY TIED HIMSELF TO THE VEHICLE?

16 MRS. JOHNSON-LEE: WELL MR.
17 BURN'S NAME WAS ON THE RENTAL AGREEMENT AS THE
18 ADDITIONAL DRIVER, NOT MR. JONES. MR. JONES CLAIMED IT
19 WAS HIS UNCLE WHO HAD RENTED THE VEHICLE FOR THEM, THEN
20 HE COULDN'T REMEMBER HIS NAME. BUT HE TIED HIMSELF TO
21 THE VEHICLE BY SAYING THAT HIS UNCLE RENTED IT.

22 THE COURT: WELL, DOES THAT
23 SHOW THAT HE HAS A RIGHT TO CONTROL THE VEHICLE?

24 MRS. JOHNSON-LEE: WELL,
25 JUDGE, HE WAS THERE INSIDE THE VEHICLE. AND WITH ALL THE

1 CIRCUMSTANCES TAKEN TOGETHER---

2 THE COURT: WELL, WHAT ARE
3 THOSE CIRCUMSTANCES? LET'S BE SPECIFIC NOW. THIS IS NOT
4 BY THE GREATER WEIGHT OR THE PREPONDERANCE OF THE
5 EVIDENCE, OR I BELIEVE HE'S GUILTY; THE QUESTION IS DID YOU
6 PROVE HIS GUILT BEYOND A REASONABLE DOUBT?

7 MRS. JOHNSON-LEE: JUDGE, WE
8 CONTEND THAT THE CIRCUMSTANTIAL EVIDENCE IS
9 SUBSTANTIAL, AND THAT CONSISTS OF ALL OF THE
10 INDICATORS; THAT INCLUDES THE DIFFERENT STORIES ABOUT
11 WHY THEY WERE GOING TO VIRGINIA. MR. JONES SAID THEY
12 WERE GOING THERE TO SEE GIRLS. MR. JONES CLAIMED THAT IT
13 WAS HIS UNCLE WHO RENTED THE CAR, AND THAT WAS ALSO
14 CONFIRMED BY MR. BURNS, WHO SAID IT WAS MR. JONES'S
15 UNCLE WHO RENTED IT FOR THEM.

16 MR. JONES SAID THEY WERE GOING TO ATLANTA
17 AFTER VIRGINIA. MR. JONES IS THE ONE WHO SAID HE AND MR.
18 BURNS GREW UP TOGETHER AND HE COULDN'T REMEMBER MR.
19 BURN'S FIRST NAME, IT WAS AUDIE OR AUUBY, THEN HE DIDN'T
20 KNOW MR. BURN'S LAST NAME.

21 ALL OF THOSE THINGS TAKEN TOGETHER
22 CONSTITUTE SUBSTANTIAL CIRCUMSTANTIAL EVIDENCE WHICH
23 WOULD---

24 THE COURT: THAT WHAT?

25 MRS. JOHNSON-LEE: ---TO SHOW

1 THAT HE WOULD HAVE HAD AS MUCH DOMINION AND CONTROL
2 OVER ANYTHING IN THAT CAR. IF ANYTHING, HE WAS A PART OF
3 IT. THIS WAS SOMETHING THE TWO OF THEM WERE DOING
4 TOGETHER, CARRYING THOSE DRUGS TO THE STATE OF VIRGINIA.
5 HE WAS AS MUCH A PART OF THIS AS MR. BURNS WAS.

6 THE COURT: WHAT OF THOSE
7 THINGS YOU'VE JUST TOLD ME INDICATES HE HAD CONTROL, OR
8 THE RIGHT TO CONTROL THE DRUGS? YOU'RE SAYING THOSE
9 THINGS YOU JUST TOLD ME IS THE EVIDENCE OF THAT?

10 MRS. JOHNSON-LEE: I THINK
11 THEY DO.

12 THE COURT: ANYTHING
13 FURTHER?

14 MRS. MCMILLAN: I WOULD JUST
15 DRAW YOUR HONOR'S ATTENTION , AGAIN, TO THE (INAUDIBLE)
16 SITUATION WHERE HIS MOTHER OWNED A HOME AND WHERE
17 JUSTICE TOAL REVERSED THE COURT AND SHE USED IN NO
18 UNCERTAIN TERMS USED THE LANGUAGE THAT YOU DIDN'T USE
19 FOR THIS JURY. MERE PRESENCE---

20 THE COURT: WHAT'S THE CASE?

21 MRS. MCMILLAN: STATE VERSUS
22 TED HEATH. MERE PRESENCE---

23 THE COURT: WHAT?

24 MR. WATSON: H-E-A-T-H.

25 MRS. MCMILLAN: YES, SIR. AND

1 IN THAT CASE YOU HAVE A HOUSE, NOT A MOVING VEHICLE,
2 AND YOU HAVE COCAINE AND BAGGIES AND EVERYTHING INSIDE
3 AND OUTSIDE THE HOUSE. AND JUSTICE TOAL - AND THE
4 QUESTION THAT WENT ON APPEAL WAS DID THE TRIAL COURT
5 ERR IN FAILING TO DIRECT A VERDICT IN FAVOR OF APPELLANT
6 BECAUSE OF THE STATE'S FAILURE TO ESTABLISH THE
7 ESSENTIAL ELEMENT OF THE CRIME. AND THAT IS EXACTLY THE
8 QUESTION YOU JUST ASKED THE SOLICITOR.

9 AND SHE SAID IN THIS ORDER, "MERE PRESENCE IS
10 INSUFFICIENT TO PROVE CONSTRUCTIVE POSSESSION. IN ORDER
11 TO PROVE CONSTRUCTIVE POSSESSION THE STATE MUST SHOW
12 A DEFENDANT HAD DOMINION AND CONTROL, OR THE RIGHT TO
13 EXERCISE DOMINION AND CONTROL. AND JUST BECAUSE THE
14 POLICE DISCOVERED THE CRACK OUTSIDE THE HOUSE AND THE
15 CRACK INSIDE THE HOUSE, IT WAS NOT SUBSTANTIAL
16 EVIDENCE." AND THAT CASE WAS REVERSED AND SENT BACK.

17 AND, YOUR HONOR, I DON'T THINK IT COULD BE ANY
18 CLEARER THAT MY CLIENT HAD NO DOMINION AND NO CONTROL
19 OVER THIS VEHICLE.

20 THE COURT: IT COULD BE
21 CLEARER, IT COULD BE A LOT CLEARER. IF HIS UNCLE HAD
22 NOTHING TO DO WITH IT, IF HE DIDN'T GIVE THE WRONG
23 ANSWER, AND A LOT OF THINGS LIKE THAT IT COULDN'T BE
24 CLEARER. BUT THE QUESTION I HAVE, IS IT CLEAR ENOUGH?
25 NOT IS IT CLEAR ENOUGH FOR HIS INNOCENCE, THE QUESTION IS

1 IS THE EVIDENCE CLEAR ENOUGH TO SUPPORT A VERDICT OF
2 GUILTY BEYOND A REASONABLE DOUBT? AND I'M GOING TO
3 TAKE THE MATTERS UNDER ADVISEMENT AND I'LL LET YOU
4 KNOW MY RULING TOMORROW.

5 MR. WATSON: AS TO BOTH
6 DEFENDANTS?

7 THE COURT: AS TO BOTH
8 DEFENDANTS.

9 MR. WATSON: WILL WE HAVE A
10 CHANCE TO SPEAK TO YOU IN THE MORNING BEFORE YOU RULE?

11 MR. WATSON: AND I WOULD ASK
12 THE SAME QUESTION, JUDGE, IF WE'D HAVE A CHANCE TO BE
13 HEARD FURTHER.

14 THE COURT: YES, I'LL HEAR
15 FROM YOU. PENDING MY RULING, THEY'RE STILL IN CUSTODY.

16 MR. WATSON: THANK YOU, YOUR
17 HONOR.

18 MRS. JOHNSON-LEE: THANK YOU.

19 MR. REDMOND: THANK YOU,
20 JUDGE.

21 -----AT THIS TIME COURT WAS ADJOURNED-----
22
23
24
25

1 THE COURT: BE SEATED,
2 PLEASE. YESTERDAY THE JURY CAME BACK WITH GUILTY
3 VERDICTS AS TO BOTH DEFENDANTS. I HAD INDICATED I WOULD
4 TAKE THE MATTER AND MOTIONS FOR DIRECTED VERDICT UNDER
5 ADVISEMENT. I HAVE DONE THAT, AND I'LL HEAR FROM YOU
6 NOW IF YOU WANT TO ARGUE A POSITION.

7 MR. WATSON: WHAT ORDER
8 WOULD YOU WANT TO HEAR FROM US IN?

9 THE COURT: WHICHEVER WAY
10 YOU WANT TO DO THEM.. LET'S DO YOURS FIRST.

11 MR. WATSON: I WONDER IF YOU
12 WOULD DO ME THE COURTESY OF ASKING THAT MY CLIENT BE
13 ALLOWED TO SIT WITH ME AND NOT IN SHACKLES?

14 THE COURT: THAT'S FINE,
15 UNLESS THERE'S SOME SECURITY REASON HE SHOULDN'T SIT
16 THERE.

17 MR. WATSON: JUDGE, WHEN I
18 WAS FIDGITING WITH THIS LAST NIGHT FOR A LONG TIME, WHICH
19 COST ME ANOTHER NIGHTS' SLEEP---

20 THE COURT: I CAUSED MYSELF
21 ONE.

22 MR. WATSON: I WAS DRAWING
23 SOME STUFF OUT AND I WONDERED IF YOU'D LET ME USE MY
24 EASEL ON A COUPLE OF ISSUES BECAUSE IT MAY HELP ME DO
25 THE EXPLANATION.

1 THE COURT: YES. NO JURY TO
2 WORRY ABOUT.

3 MR. WATSON; YESTERDAY WHEN
4 YOU ENDED COURT I WAS GALVANIZED BY COMMENTS MADE IN
5 YOUR ASSESSMENT OF CASES THAT PUT ME IN THE ARGUMENT I
6 WANT TO GIVE YOU TODAY.

7 IF YOU TAKE MY CLIENT, ARTIE BURNS, NUMBER ONE,
8 AND JOHNNY JONES, NUMBER TWO, IN YOUR COMMENTS
9 YESTERDAY---

10 THE COURT: JUST A MINUTE,
11 PLEASE. I WANT BOTH DEFENDANTS IN CHAINS SITTING BY
12 THEIR LAWYERS. THANK YOU. THERE'S NO REASON TO NOT PUT
13 CHAINS ON THEM. THEY'VE BEEN CONVICTED BY A JURY, AND
14 THERE'S NO JURY HERE TO PREJUDICE THEIR BEING IN CHAINS. I
15 THINK IT'S JUST GOOD SECURITY TO DO THAT.

16 MR. WATSON: THE ONLY THING,
17 IF HE HAD SOMETHING FOR ME TO BRING UP, I WOULD JUST
18 WANT HIM TO BE ABLE TO WRITE IT DOWN.

19 THE COURT: THAT'S FINE, HE'S
20 GOING TO BE SITTING THERE WITH YOU. IF YOU WANT TO WAIT
21 UNTIL THEY RE-CHAIN HIM AND PUT HIM THERE, THAT'S FINE.

22 MR. WATSON: YESTERDAY WHEN
23 WE FINISHED AND YOU WERE HAVING A GENUINELY HEARTFELT
24 CONVERSATION WITH MY CO-COUNSEL, OR COUNSEL FOR MR.
25 JONES, THERE WAS SUCH AN INTERESTING DISTINCTION

1 BETWEEN JOHNNY JONES, WHO WE'LL POINT OUT AS PERSON
2 NUMBER TWO, AND MY CLIENT, ARTIE BURNS. YOU KNOW IF WE
3 TALKED ABOUT INSURANCE LAW WE WOULD TALK ABOUT
4 MAYBE CLASS ONE AND CLASS TWO INSURED, BUT THROUGH
5 THAT EXAMPLE I HEARD THE COURT TRYING TO MAKE A
6 DISTINCTION BETWEEN MY CLIENT AND THE PASSENGER IN THE
7 CAR FOR THE PURPOSES OF POSSESSION, WHICH IS ENUNCIATED
8 IN STATE VERSUS HEATH.

9 THAT CASE, JUDGE, I JUST THINK IS SEMINAL WHEN
10 IT TALKS ABOUT ACTUAL AND CONSTRUCTIVE POSSESSION,
11 LET ME TELL YOU THAT I DON'T THINK YOU CAN DO THAT, AND
12 PLEASE LET ME TELL YOU WHY, IT HAS BEEN THE POSITION OF
13 THE STATE THROUGH STATE'S EXHIBIT NUMBER ONE, WHICH IS A
14 CONTRACT, THAT THE NATURE OF THE AGREEMENT, AND
15 HENCE, CONTROL, IS BETWEEN THE PERSON WHO RENTED THE
16 CAR AND ENTERPRISE RENTAL.

17 WHAT THE STATE WISHES TO DO BY INTRODUCING
18 THIS DOCUMENT IS TAKE CONTRACT LAW AND TO CONVICT MY
19 CLIENT. LET ME GET MORE SPECIFIC. THERE IS NO ASSERTION
20 BY ANYONE THAT THIS IS THE ORIGINAL DOCUMENT, MERELY
21 THE DOCUMENT THAT WAS FOUND IN THE VEHICLE.

22 THERE WAS NO TESTIMONY PROFFERED BY THE
23 STATE CONCERNING THE AGREEMENT BETWEEN THE LEASING
24 INSTITUTION AND THE PERSON WHO RENTED IT. BY CONTRACT,
25 ANY ASSOCIATION FOUND HEREUNDER ENDED AT THE FLORIDA

1 STATE LINE. ONCE THAT HAPPENED THIS CONTRACT CLEARLY
2 SAYS VALID ONLY IN THE STATE OF FLORIDA, AND IF YOU
3 WANTED TO ENHANCE SOMEBODY'S STATUS IN THE CAR YOU
4 COULDN'T DO IT AFTER THEY CROSSED THE FLORIDA LINE BY
5 CONTRACT. AND IT WAS A CONTRACT UPON WHICH THE STATE
6 OF SOUTH CAROLINA RELIED TO SAY, WELL GUESS WHAT, HE'S
7 AN ADDITIONAL DRIVER.

8 BUT BEING AN ADDITIONAL DRIVER DOESN'T GO
9 BACK TO THE INSTANT WHEN THE CAR LEFT THE PERSON WHO
10 RENTED IT. THAT'S IMPORTANT WHEN YOU LOOK AT - AND I'M
11 GOING TO WEAR OUT THE STATE VERSUS HEATH. I'M AFRAID;
12 "THE DEFENDANT'S KNOWLEDGE AND POSSESSION MAY BE
13 INFERRED IF THE SUBSTANCE WAS FOUND ON PREMISES UNDER
14 HIS CONTROL."

15 HEATH IS AN INTERESTINGLY DISTINGUISHABLE CASE
16 BECAUSE IT TALKS ABOUT IT TALKS ABOUT REAL PROPERTY. IT
17 TALKS ABOUT EITHER A FREE-HOLD ESTATE OR A LEASE-HOLD
18 ESTATE AFTER THE CRIMINAL EVENT OCCURRED AND THE
19 PROPERTY WAS RETURNED TO THE DEFENDANTS AFTER THE
20 DECISION. IT'S SIGNIFICANTLY IMPORTANT HERE THAT THE
21 VEHICLE, THERE'S NO PROPERTY INTEREST, AND THE
22 AGREEMENT AS TO WHO HAD DOMINION AND CONTROL WAS
23 BOUNDED BY ENTERPRISE AND THE PERSON WHO ORIGINALLY
24 RENTED THE CAR.

25 THE COURT: YOU'RE ASSUMING THAT.

1 MR. WATSON: I DO HAVE MORE THAN
2 ASSUMING. BECAUSE THE ONLY EVIDENCE WE HAVE IS IN
3 WRITING.

4 THE COURT: NO, SIR, I DISAGREE. YOU
5 HAVE YOUR MAN DRIVING THE AUTOMOBILE.

6 MR. WATSON: WE DO. BUT IN YOUR
7 COMMENTS YESTERDAY IT WAS INFERRED THAT HE HAD
8 DOMINION AND CONTROL OVER IT SUCH THAT IT GAVE RISE TO
9 KNOWLEDGE ABOUT DRUGS. THAT JUST SIMPLY IS NOT BOUND
10 OUT IN THE FACTS OR THE PRESENTATION MADE BEFORE YOU.

11 THE COURT: LET ME INTERRUPT YOU
12 THERE FOR A MINUTE. I DON'T THINK YOU HAVE TO FIND
13 DOMINION AND CONTROL, I DON'T THINK THAT AS A RESULT OF
14 FINDING DOMINION AND CONTROL THAT THAT NECESSARILY
15 SHOWS KNOWLEDGE. IT DOESN'T SAY KNOWLEDGE, IT SAYS
16 DOMINION OR CONTROL. FOR INSTANCE - I'M SORRY, CONTINUE.

17 MR. WATSON: I ASK THE COURT TO
18 HARKEN TO THE TESTIMONY OF DAVID LANE. IT WAS AN
19 INTERESTING COLLOQUY I HAD WITH HIM ABOUT; CAN YOU TELL
20 ME WHEN THE DRUGS WERE PLACED IN THE CAR? HE COULD
21 NOT. CAN YOU TELL ME WHO PLACED THEM IN THE CAR? HE
22 COULD NOT. AND THE TRANSCRIPT IS AVAILABLE THROUGH THE
23 MADAME COURT REPORTER, BUT MY RECOLLECTION IS I ASKED
24 HIM IF HE COULD ASSOCIATE THE DRUGS THAT HE BROUGHT
25 INTO THE COURTROOM WITH THE DEFENDANT, AND HE COULD

1 NOT.

2 IT'S IMPORTANT WHEN YOU LOOK AT THE TAPE
3 THAT YOU NOTE THAT THOSE DRUGS WERE NOT IN PLAIN VIEW.
4 FIRST, A COMPARTMENT HAD TO BE LIFTED, AND THEN SECOND,
5 THE TIRE HAD TO BE REMOVED TO FIND WHATEVER WAS FOUND
6 UNDER THE TIRE.

7 THE COURT: BUT THAT DOESN'T
8 MEAN THAT SOMETHING WASN'T FOUND BEFORE THE TIRE WAS
9 REMOVED.

10 MR. WATSON: I BELIEVE IT DOES
11 MEAN THAT.

12 THE COURT: I DON'T THINK SO. I
13 THINK ONE, HE SAID, WAS FOUND ON TOP OF THE TIRE.

14 MR. WATSON: LET ME GO BACK
15 OVER ONE POINT AGAIN THAT I MAY NOT HAVE MADE CLEAR.
16 HE LISTED THE COMPARTMENT WHERE THE TIRE IS KEPT IN THE
17 BACK, IT WAS CLOSED. AND ON THE TIRE RIM ON THE TOP, I
18 AGREE, YOUR HONOR. THAT THERE WAS BY WAY OF THE
19 EVIDENCE PRESENTED AN ASSERTION THAT THERE WAS
20 COCAINE ON THE TOP OF THE RIM, THAT ONCE HE OPENED THAT
21 HE WOULD HAVE SEEN.

22 THE COURT: YES.

23 MR. WATSON: ADDITIONALLY
24 THERE WERE BY THE TESTIMONY PRESENTED---

25 THE COURT: IT WAS NOT IN

1 PLAIN VIEW UNTIL SOMETHING WAS LIFTED, OKAY, I'LL GRANT
2 YOU THAT.

3 MR. WATSON: BUT LET ME SAY
4 ONE MORE THING AND I'LL TRY TO MOVE ON. THE OTHER
5 TESTIMONY OF MR. LANE WAS, YOU KNOW, HE HAD TO REALLY
6 SEARCH AND MOVE AROUND TO FIND THIS STUFF BELOW. THAT
7 PRESENTS ANOTHER ISSUE THAT IS SWIMMING AROUND IN THIS.
8 IF YOU'RE GONNA LOOK AT THE DRUGS THEMSELVES, THEN
9 THEY PRESENT A SECOND SET OF - I DON'T WANT TO CALL
10 THEM OPPORTUNITIES, BUT A SECOND SET OF POTENTIAL
11 VIOLATIONS.

12 YOU HAVE TO BELIEVE THAT ONE PERSON PUT ALL
13 THE DRUGS IN THE CAR, AND THAT THAT PERSON WAS EITHER
14 MY CLIENT OR THE PERSON RIDING WITH HIM, TO CONVICT HIM, I
15 BELIEVE. THERE ABSOLUTELY IS NO DIRECT EVIDENCE TO
16 ASSERT THAT.

17 IF YOU TOOK THE COCAINE THAT WAS ON TOP OF
18 THE TIRE RIM, SEE WE DON'T KNOW WHAT THAT IS AND THAT'S
19 PROBLEMATIC, BUT IF YOU WANTED TO ASSERT THAT, ONE, THE
20 COCAINE ON TOP OF THE TIRE RIM OF A CERTAIN WEIGHT WAS
21 PLACED INTO THE CAR EITHER BY MY CLIENT OR THE
22 DEFENDANT, THAT WOULD NOT YIELD TRAFFICKING, BUT THE
23 BAG UNDER THE TIRE RIM WOULD. BUT THERE'S NO ASSERTION
24 THAT ONE PERSON DID BOTH OF THEM. SO YOU HAVE THE
25 POTENTIAL, SINCERELY, FOR TWO DIFFERENT RESULTS UNDER

1 THE SAME FACTS SITUATION WHICH SHOULD HAVE BEEN
2 FURTHER DEVELOPED BY THE STATE. GO BACK NOW - DAVID
3 LANE CAN'T TELL YOU WHO PUT IT THERE, WHEN THEY PUT IT
4 THERE.

5 FIDDLING WITH THE BAGS AND NOT ANALYZING
6 THEM ARE SPECIFIC, THERE'S A LOT OF CASES IN SOUTH
7 CAROLINA THAT SAY LOST OR DESTROYED EVIDENCE ENTITLES
8 ME TO A CHARGE FAVORABLE TO ME. AND THAT IS A NOTCH AT
9 LEAST AWAY FROM BEYOND A REASONABLE DOUBT.

10 WHEN WE TALK ABOUT STATE VERSUS HEATH, YOU
11 FIND IN THERE A NUMBER OF WAYS THAT YOU CAN USE AS
12 CIRCUMSTANTIAL EVIDENCE OF GUILT OR ACTUAL OR
13 CONSTRUCTIVE POSSESSION. HEATH WAS INTERESTING NOT
14 ONLY IN THAT IT WAS REAL PROPERTY, HEATH WAS
15 INTERESTING IN THAT WHEN THE POLICE ARRIVED, AND I'M
16 QUOTING FROM PAGE TWO, I THINK IT'S BEYOND FOOTNOTE 19,
17 IT SAYS, "UPON THE POLICE OFFICER'S ARRIVAL, THE
18 APPELLANT FURTHER IMMEDIATELY RAN INTO THE HOUSE AND
19 LOCKED HIMSELF IN THE BATHROOM."

20 WE HAVE A LIST OF CASES IN CRIMINAL LAW THAT
21 SAYS EVIDENCE OF FLIGHT IS EVIDENCE OF GUILTY. AND TAKEN
22 IN THE LIGHT MOST FAVORABLE TO THE STATE, THERE'S
23 ABSOLUTELY NO EVIDENCE OF FLIGHT IN THE VIDEO TAPE
24 WHICH WAS PRESENTED. CRUCIAL AND UNADDRESSED IS WHEN
25 THE DRUGS WERE PUT IN THE CAR. THE GREATEST STICKING

1 POINT IN ALL OF THOSE THINGS WHICH WILL BE MELDED BEFORE
2 YOU WILL IS MERE PRESENCE.

3 IF WE TOOK THAT AS A PLACE TO BEGIN AND GO
4 BACKWARDS, THE ASSERTION THAT MY CLIENT AND THE
5 PERSON IN THE VEHICLE WITH HIM WERE PRESENT WHEN DRUGS
6 WERE FOUND IS GOING TO BE DIFFICULT IF NOT IMPOSSIBLE TO
7 DENY. GOING BACK TO HEATH, "THE STATE MUST SHOW A
8 DEFENDANT HAD DOMINION AND CONTROL OR THE RIGHT TO
9 EXERCISE DOMINION AND CONTROL OVER THE ILLEGAL
10 SUBSTANCE." DIRECT QUOTE.

11 IF THERE'S NO EVIDENCE OF FLIGHT, INFERENTIALLY
12 NO ADMISSION OF GUILT, HOW DO WE GET BACK TO SHOWING
13 ANYWHERE THAT THEY HAD KNOWLEDGE THAT IT WAS THERE
14 OTHER THAN MERE PRESENCE? THERE IS NONE.

15 THE COURT: I DISAGREE, BUT GO
16 AHEAD.

17 MR. WATSON: I CAN'T ADDRESS
18 YOUR DISAGREEMENT - I'LL DO IT HOWEVER YOU WANT TO DO
19 IT.

20 THE COURT: I UNDERSTAND
21 YOUR POSITION, MR. WATSON, IS THAT THERE IS NO TESTIMONY
22 OR EVIDENCE OTHER THAN MERE PRESENCE BECAUSE WE DON'T
23 KNOW WHEN THE DRUGS WERE PUT THERE. THAT'S YOUR
24 POSITION.

25 MR. WATSON: YES, SIR. AMONG

1 OTHER THINGS, YES, SIR.

2 THE COURT: WELL, YOU INDICATED
3 CRUCIAL AND UNANSWERED AS WHEN THE DRUGS WERE PLACED
4 IN THE CAR.

5 MR. WATSON: YES, SIR.

6 THE COURT: I DON'T KNOW THAT
7 THAT'S CRUCIAL. WHAT I THINK IS CRUCIAL IS WHAT HEATH DID
8 SAY, ALTHOUGH I THINK HEATH IS DISTINGUISHABLE FROM THIS
9 CASE.

10 MR. WATSON: CAN WE TAKE THAT
11 ISSUE JUST FOR A SECOND? IF THIS WAS A TERCARY* LEASE, IF
12 THIS HAD BEEN RENTED TWICE PREVIOUSLY AND THE DRUGS
13 HAD REMAINED THERE, BY WAY OF ILLUSTRATION, TWO PRIOR
14 TIMES, IT IS JUST THE SAME CASE THAT WE HAVE NOW. WE
15 DON'T KNOW WHO PUT THEM IN THERE OR WHEN THEY WERE
16 PUT IN THERE. SO WHEN THEY WERE PUT IN THERE IS
17 INCREDIBLY IMPORTANT.

18 THE COURT: I DON'T DENY IT'S
19 IMPORTANT, BUT I DON'T THINK IT'S CRUCIAL. I DON'T THINK
20 IT'S A DEAL-BREAKER, IF YOU WILL, FOR THIS REASON; FOR
21 LACK OF A BETTER TERM, THE TERMINOLOGY THAT THEY USE IS
22 INDICATORS. BY THAT I MEAN NO BAGGAGE, EVASIVE OR
23 CONTRADICTORY ANSWERS TO QUESTIONS, A LEASE THAT SAID
24 IT WAS ONLY SUPPOSED TO BE IN FLORIDA AND THEY'RE IN
25 SOUTH CAROLINA, A LEASE TO SOMEONE ELSE, NOT THE

1 PERSONS THAT ARE DRIVING THE CAR OR THE PASSENGER IN
2 THE CAR. ALL THOSE THINGS - INFERENCES MAY BE DRAWN
3 BY THE JURY FROM THOSE INDICATORS, FROM THOSE FACTS.

4 THOSE INDICATORS OR THOSE INFERENCES DRAWN
5 CAN LEAD A JURY TO A FINDING OF KNOWLEDGE, OR A FINDING
6 OF DOMINION AND CONTROL, OR A FINDING OF THE RIGHT TO
7 EXERCISE DOMINION AND CONTROL OVER THE PLACE THAT THE
8 DRUGS WERE LOCATED, NOT IN THE BOOT OR UNDER THE TIRE,
9 BUT IN THE CAR ITSELF.

10 YOU'RE ABSOLUTELY RIGHT, IT'S NOT A MATTER OF
11 REAL ESTATE LAW; IT'S NOT A MATTER OF REAL PROPERTY. TO
12 THE CONTRARY, I THINK THIS CASE DISTINGUISHES IT FROM
13 HEATH.

14 MR. WATSON: BUT THAT DISTINCTION, I
15 THINK, IF YOU LOOK AT RESIDUAL PROPERTY RIGHTS, AND
16 THOSE WHICH ARE ENGAGED BY ANYBODY, CONTROL. LET ME
17 TAKE THAT JUST FOR A SECOND. YOU'VE GOT TO DO MORE
18 THAN SAY I'M IN THE CAR WHERE DRUGS ARE FOUND. THE WAY
19 THEY WERE CONCEALED, THE WAY THEY WERE CONCEALED,
20 AND THE OFFICER'S TESTIMONY THAT FROM WHAT HE SAW HE
21 COULDN'T ASSOCIATE IT WITH THE DEFENDANTS HURT THE
22 PROPOSITION THAT JUST BECAUSE HE SAID OH, I'M GOING TO
23 VIRGINIA, OR I DON'T HAVE ANY CLOTHES IN THE CAR, THAT I
24 KNOW THERE ARE DRUGS IN THE BACK.

25 YOU KNOW, WHEN IT COMES TO SEARCH AND

1 SEIZURE AND WE TALKED ABOUT HOW CARS ARE SUBJECT TO
2 SEARCH WITHOUT SEARCH WARRANTS UNDER SITUATIONS, IT
3 WAS INTERESTING THAT NO INVENTORY WAS TAKEN. AND IT
4 WAS INTERESTING THAT IF YOU WERE GOING TO FIND DRUGS
5 THAT THEY WERE IN TWO DIFFERENT PLACES IN ONE WHEEL
6 RING.

7 NOTHING WAS DONE TO PRESERVE EITHER
8 INCULPATORY* OR EXCULPATORY* INFORMATION WHICH WOULD
9 HAVE EITHER INCULPATED MY CLIENT OF THE CO-DEFENDANT
10 OR EXCULPATED THEM. YOU CAN'T GET AROUND THAT. AND
11 THAT'S STILL A NOTCH AWAY FROM BEYOND A REASONABLE
12 DOUBT.

13 WHILE A CAR IS DISTINGUISHABLE FROM HEATH,
14 THERE'S A QUOTE IN THERE WHICH I THINK IS CRYSTALINE IN
15 THIS CASE; IT SAYS "AS A RESULT IT IS ARGUABLE THAT THE
16 APPELLANT MERELY HAD THE RIGHT TO ACCESS THE AREA
17 WHERE THE CRACK WAS FOUND, NOT THE ACTUAL DOMINION
18 AND CONTROL." TO HAVE DOMINION AND CONTROL, JUDGE, TO
19 HAVE DOMINION AND CONTROL OVER THE DRUGS THAT WERE
20 FOUND IN THERE, YOU HAD TO KNOW THEY WERE IN THERE.
21 YOU HAD TO.

22 IF THIS WAS A TERCARY* LEASE, YOU COULDN'T
23 KNOW IT. IF IT WAS A SECOND-TIME IT WAS LEASED, YOU
24 COULDN'T KNOW IT. AND THERE'S NO EVIDENCE TO THE
25 CONTRARY THAT NOBODY SHOWED THAT ANYBODY KNEW THE

1 DRUGS WERE IN THERE. THE TRAFFICKING STATUTE SAYS,
2 "KNOWINGLY AND INTENTIONALLY." AND THERE'S NO EVIDENCE
3 OF A KNOWING OR INTENTIONAL ACT BY EITHER OF THE
4 DEFENDANTS, MUCH LESS MINE.

5 BUT GOING BACK TO THE ORIGINAL PROPOSITION
6 THAT I GOT ASTRAY FROM, THE DEFENDANTS IN THE CAR
7 BY THE VERY NATURE OF THE PROPERTY STAND EQUALLY
8 BEFORE YOU.

9 THE COURT: I'M SORRY?

10 MR. WATSON: BECAUSE OF THE
11 TESTIMONY, IT'S MY POSITION THAT THE DEFENDANTS IN THE
12 CAR STAND EQUALLY BEFORE YOU, BECAUSE IF YOU TAKE ONE
13 FROM THE OTHER YOU SAY IT'S A JOINT ENTERPRISE. IF YOU
14 LISTEN TO THE TAPE, IT WAS, I THINK, JOHNNY JONES WHO'S
15 SAYING THIS IS WHERE WE'RE GOING, AND NONE OF THAT,
16 WHILE CALLED AN INDICATOR, IS ILLEGAL. THERE'S NO
17 EVIDENCE OF ILLEGAL ACTIVITY. EVEN ALTHOUGH HE MAY
18 HAVE BEEN NERVOUS, HE WAS FIDGITING, WHEN YOU LOOKED
19 AT MY CLIENT ARTIE BURNS ON THE TAPE THERE WAS NO
20 FIDGITING, BUT JUST MOST IMPORTANTLY THE OFFICER SAID TO
21 GO OPEN THAT TRUNK.

22 AND WHILE WE DON'T CONSENT THAT IT WAS A
23 VOLUNTARY SEARCH, I CAN TELL YOU THAT HIS DEMEANOR
24 WAS THAT HE DID IT IMMEDIATELY. HE DIDN'T TRY AND RUN
25 AWAY AS IN HEATH, BECAUSE IN HEATH THE CO-DEFENDANT'S

1 BROTHER RAN DIRECTLY IN THE HOUSE AND BARRICADED
2 HIMSELF IN THE BATHROOM. SO YOU WANT TO TALK ABOUT
3 INDICATORS ADVERSE TO THE DEFENDANT, I SUBMIT THAT
4 MAYBE SOME INDICATORS FAVORABLE TO THE DEFENSE ARE
5 APPLICABLE AS WELL.

6 FIRST, LACK OF EVIDENCE OF FLIGHT, LACK OF
7 EVIDENCE OF NERVOUSNESS, WHICH WAS TESTIFIED TO THAT
8 JUST SIMPLY DOES NOT SHOW UP ON THE TAPE. I SUBMIT THAT
9 WHEN THE COURT LOOKS AT IT, A REASONABLE MAN WOULD
10 SAY THAT THERE'S NO EVIDENCE WHATSOEVER OF FEAR OR
11 FLIGHT, TWO THINGS FAVORABLE TO THE DEFENDANTS IN THIS
12 CASE.

13 FOR CONSTRUCTIVE POSSESSION, FOR CONSTRUCTIVE
14 POSSESSION, OUR COURTS ARE CLEAR; YOU'VE GOT TO HAVE
15 DOMINION AND CONTROL.

16 THE COURT: OR THE RIGHT TO
17 DOMINION AND CONTROL OVER THE PREMISES OR OVER THE
18 PLACE WHERE THE DRUGS ARE.

19 MR. WATSON: OKAY. TAKING THAT AS
20 AN ADDITIONAL POINT, BUT I WANT TO - IF YOU JUST SIMPLY
21 SAY THEY HAD THE RIGHT ACCORDING TO THE STATE YOU'VE
22 MODIFIED THE LEASE, WHICH I DON'T THINK YOU CAN DO, TO
23 INCREASE IT TO A CRIMINAL ACT. BECAUSE TO SAY ONE
24 DEFENDANT IS GUILTY AND ONE IS NOT PUTS THEM AT A
25 DIFFERENT LEVEL OF ACTIVITY. AND THERE'S NO EVIDENCE

1 ANYWHERE THAT THE ACTIVITY OF THE DEFENDANTS WAS EVER
2 ANY DIFFERENT. THERE'S NOT.

3 GOING BACK TO YOUR PRINCIPLE THAT THERE HAS TO
4 BE DOMINION AND CONTROL EITHER OVER THE ILLEGAL
5 SUBSTANCE OR THE PREMISES, IN THIS INSTANCE THERE'S NEVER
6 BEEN ANY ALLEGATION, ANY PROOF OR ANYTHING, THAT
7 ANYBODY CHARGED WITH A CRIME EVER ACCESSED WHERE THE
8 DRUGS WERE. QUITE TO THE CONTRARY. IT STILL HARKENS
9 BACK TO A BAREBONES ASSERTION OF MERE PRESENCE.
10 EVERYTHING HARKENS BACK TO A BAREBONES ASSERTION OF
11 MERE PRESENCE. NOBODY CAN SAY THAT THE DEFENDANTS
12 EVER WENT INTO THAT TIRE WELL.

13 AND PLOWING SOME GROUND THE SECOND TIME;
14 WHATEVER THE POSSESSION WAS, IF IT WAS IN FACT
15 POSSESSION ON THE TOP OF THE TIRE WOULD NEVER HAVE
16 EQUATED TO TRAFFICKING. THAT DENIED THE OPPORTUNITY
17 FOR THE DEFENDANTS TO BE TRIED ON A LESSER CHARGE. AS
18 AN ANCILLARY ISSUE, I BELIEVE THAT PROCEEDING WITH THE
19 INDICTMENT AS IT WAS CAUSED MY CLIENT TO LOSE AN
20 ELECTION TO BE TRIED FOR POSSESSION WITH INTENT TO
21 DISTRIBUTE.

22 AS A HOUSEKEEPING MATTER, GOING FORWARD WITH
23 THE TAPE WHEN I DID NOT BELIEVE IT WAS A CONSENSUAL
24 SEARCH PUT ME IN A POSITION OF ASSERTING DEFENSES, WHICH
25 I THINK ON APPEAL MAY BE CONFLICTING.

1 WE LEARN IN SOME OF THE ISSUES OF SEARCH AND
2 SEIZURE WHEN DRUGS ARE NOT IN PLAIN VIEW THERE SHOULD
3 BE AN IMPOUNDING OF THE CAR AND AN INVENTORY SEARCH.
4 AN INVENTORY SEARCH WAS NOT HAD. IF, AS I BELIEVE, THAT
5 SEARCH WAS NOT VOLUNTARY, THEN THE CAR SHOULD HAVE
6 BEEN IMPOUNDED AND SEARCHED. THAT WAS A VIOLATION OF
7 HIS CONSTITUTIONAL RIGHTS.

8 THE COURT: ARE YOU CLAIMING HE
9 HAD A CONSTITUTIONAL RIGHT TO HAVE THE CAR SEARCHED?

10 MR. WATSON: I BELIEVE THAT HE DID,
11 AND LET ME TELL YOU WHY.

12 THE COURT: TO HAVE THE CAR
13 SEARCHED?

14 MR. WATSON: TO PRESERVE THE
15 EVIDENCE WHICH MAY HAVE BEEN FAVORABLE TO HIM. LET'S
16 GO THROUGH THAT FOR A MINUTE. IF YOU TAKE WHAT THEY
17 FOUND IN THE CAR, YOU COULD SEE IN THE TAPE THAT THERE
18 WERE A NUMBER OF ITEMS OF PERSONALTY. THERE WAS GREAT
19 EMPHASIS MADE OF THERE BEING NO SUITCASES, BUT THERE
20 WERE PANTS, THERE WERE COATS, AND THERE WERE OTHER
21 ITEMS IN THAT CAR, NOT LIMITED TO BUT INCLUDING FOOD
22 STUFF. AND NONE OF THAT WAS INVENTORIED.

23 AND ALL OF THAT WAS INVENTORIED, AND ALL OF
24 THAT MAY HAVE BEEN INDICATIVE OF LACK OF DOMINION AND
25 CONTROL POTENTIALLY. BUT WHAT THAT DOES IS IT

1 EFFECTUALLY TAKES THAT POTENTIAL DEFENSE FROM THE
2 DEFENDANTS. YES, I THINK IF YOU SEARCH - ITS JUST LIKE
3 WHEN YOU EXECUTE A SEARCH WARRANT AND MAKE A RETURN,
4 I THINK YOU HAVE AN OBLIGATION TO LIST EVERYTHING YOU
5 FIND SO THE DEFENSE CAN FROM THE RETURN MAKE A DEFENSE
6 IF ONE CAN BE MADE THAT THE ACTIVITY WAS NOT ILLEGAL.

7 YOU KNOW, IF THERE WERE RECEIPTS - THEY FOUND
8 A RENTAL AGREEMENT - BUT IF THERE WERE RECEIPTS SHOWING
9 PLACES THAT THEY HAD BEEN, PLACES WHERE THEY STAYED,
10 THAT WOULD HAVE BEEN HELPFUL TO THE DEFENSE IN
11 DEVELOPING ITS CASE. AND I DO BELIEVE THAT WE HAVE A
12 CONSTITUTIONAL RIGHT TO HAVE THE EVIDENCE NOT LOST OR
13 DESTROYED.

14 AND IN FACT GOING BACK TO THE ORIGINAL CHARGE
15 AVAILABLE UNDER THOSE SITUATIONS -- I HATE TO CALL IT A
16 CHARGE BENEFICIAL TO ME, BUT I'M ENTITLED TO IT UNDER
17 LOST OR DESTROYED EVIDENCE.

18 THE COURT: HAS THERE BEEN ANY
19 ALLEGATION OF LOST OR DESTROYED EVIDENCE?

20 MR. WATSON: IT IS, I THINK, WHOLLY
21 EVIDENT IN THE VIDEO TAPE THAT NONE OF THAT WAS
22 MAINTAINED BY THE SOLICITOR. WE HAVE EVERYTHING THAT
23 HE GAVE US. THE ONLY THINGS THAT HE GAVE US WAS THE
24 RENTAL AGREEMENT, THE DRUG REPORT, A CRIMINAL HISTORY.
25 BUT WE'VE NEVER BEEN PROVIDED ACCESS TO ANYTHING THAT

1 WAS TAKEN FROM THAT CAR, NOR HAVE WE BEEN PROVIDED
2 ACCESS TO THE CAR. THAT CAR WAS GONE LONG BEFORE I
3 WAS EVER APPOINTED.

4 THE COURT: HAVE YOU ASKED FOR IT?

5 MR. WATSON: I HAVE NOT ASKED FOR
6 THE CAR, NO, SIR.

7 THE COURT: HAVE YOU ASKED FOR
8 ANYTHING SPECIFICALLY THAT YOU CLAIM WAS IN THE CAR
9 THAT YOU DIDN'T GET?

10 MR. WATSON: I ASKED IN MY RULE FIVE
11 DISCOVERY, AND I'LL READ IT TO YOU---

12 THE COURT: NO, SIR, I'M NOT TALKING
13 ABOUT THE RULE FIVE DISCOVERY; HAVE YOU ASKED FOR
14 ANYTHING SPECIFICALLY IN THE CAR SUCH AS BAGGAGE,
15 CLOTHES, OTHER RENTAL AGREEMENTS, OR ANYTHING LIKE
16 THAT THAT YOU DIDN'T GET? IN SHORT, IS THERE ANY
17 ALLEGATION THAT SOMETHING WAS STOLEN THAT BELONGED
18 TO THEM, THAT SOMETHING WAS LOST THAT BELONGED TO
19 THEM, SOMETHING WAS NOT ACCOUNTED FOR?

20 MR. WATSON: I DON'T KNOW WHAT
21 WAS IN THE CAR, SO I CAN'T TELL IF SOMETHING WAS LOST OR
22 STOLEN FROM THEM. BUT I ASKED FOR EVERYTHING THEY
23 INTENDED TO USE AT TRIAL AND EVERYTHING THAT
24 THEY DIDN'T INTEND TO USE AT TRIAL, AND I THINK I SAID
25 SEIZED AS A RESULT OF THEIR INVESTIGATION AND---

1 THE COURT: WHAT WAS SEIZED?

2 MR. WATSON: IT WAS CLEARLY IN THE
3 VIDEO TAPE.

4 THE COURT: I JUST FIND IT
5 INTERESTING THAT YOU COMPLAIN THEY DIDN'T HAVE A RIGHT
6 TO SEARCH, YET YOU SAY IT'S UNCONSTITUTIONAL BECAUSE
7 THEY DIDN'T SEARCH.

8 MR. WATSON: LET ME TELL YOU WHY
9 THAT IS. IF I HAD OTHER INDITIA* OF IMPROPRIETY REGARDING
10 THE SEARCH AND IT WAS CONTAINED IN ANYTHING THAT MIGHT
11 HAVE BEEN GIVEN AWAY FROM ME, IT WOULD HAVE ADDED TO
12 MY ARGUMENT. MY CONSTITUTIONAL ARGUMENT IS ONE; I
13 WANTED TO SEE EVERYTHING IF IT GAVE ME ADDITIONAL
14 ARGUMENT. IF YOU DON'T SHOW ME EVERYTHING, YOU DENIED
15 ME A POTENTIAL ARGUMENT, PERIOD. IT DOESN'T NECESSARILY
16 MEAN THAT I WOULD HAVE HAD ONE, BUT I SURE KNOW I DON'T
17 HAVE ONE WHEN THEY DON'T GIVE ME EVERYTHING THEY'VE
18 FOUND. PERIOD.

19 AND THERE'S BEEN SO MUCH CONTROVERSY ABOUT
20 TRAFFICKING AND THE DISTINCTION MADE NOW BY THE
21 DIFFERENCE BETWEEN REAL AND PERSONAL PROPERTY THAT
22 WHEN IT COMES TO 4453(370), NO ONE CAN SAY WITH
23 CERTAINTY BEYOND A REASONABLE DOUBT, WHICH IS THE
24 STANDARD, THAT EITHER OF THE DEFENDANTS KNOWINGLY
25 BROUGHT, MANUFACTURED, BORROWED, OR SOLD 100 GRAMS

1 OF COCAINE IN SOUTH CAROLINA. EVEN LAW ENFORCEMENT
2 DOESN'T KNOW WHERE IT CAME FROM, EVEN LAW
3 ENFORCEMENT DOESN'T KNOW WHEN IT ARRIVED. DON'T EVEN
4 KNOW IF IT HAD BEEN IN THIS CAR BEFORE.

5 THE GOLD STANDARD OF WRAPPING THE CASE UP, I
6 THINK IS IN THREE THINGS; ONE, A CONVERSATION OVER TIME
7 WITH THE PERSON WHO ORIGINALLY RENTED THE CAR, SECOND;
8 A BETTER ANALYSIS OF THE DRUGS AS TO WHERE THEY WERE,
9 AND WHAT THEY WEIGHED WHERE THEY WERE BECAUSE THAT
10 WOULD HAVE GIVEN MY CLIENT OTHER CHARGES WHICH MAY OR
11 MAY NOT HAVE BEEN APPROPRIATE, THIRD; AN INVENTORY OF
12 ALL THINGS IN THE CAR WHICH WOULD HAVE TOLD ME MORE
13 THAN I'M ABLE TO LEARN NOW. FOURTH, THERE'S JUST NOT
14 EVIDENCE BEYOND A REASONABLE DOUBT OF KNOWING
15 POSSESSION. THERE'S JUST NOT. YOU CAN'T DO IT
16 INFERENTIALLY, YOU CAN'T DO IT BY MERE PRESENCE, AND YOU
17 CAN'T DO IT BY THE TESTIMONY.

18 IT IS - I KNOW MY REASONABLE DOUBT ARGUMENT
19 MAKES SOME PEOPLE CHAFE -- BUT IT IS A STANDARD WHERE
20 PEOPLE THINK YEAH, THEY DID SOMETHING ILLEGAL. BUT IF YOU
21 TAKE THE REAL PROPERTY CASE AS A BEDROCK GUIDANCE,
22 COUPLE IT WITH SOME OF THE EXIGENCIES YOU MIGHT FIND IN
23 AUTOMOBILES, AND COUPLE IT WITH ALL OF THE TESTIMONY,
24 IT'S NOT BEYOND A REASONABLE DOUBT, IT'S JUST NOT.

25 IT SIMPLY IS NOT, IT SIMPLY IS NOT. MY CLIENT HAD

1 THE GREAT MISFORTUNE OF LOSING THE STEERING WHEEL FIGHT.
2 IF THE CO-DEFENDANT HAD BEEN UNDER THAT STEERING
3 WHEEL, HE WOULD BE IN EQUAL STANDING WITH MY CLIENT.
4 AND NO WHERE HAVE THEY PROVEN AGAINST HIM THAT HE PUT
5 THE DRUGS IN THE CAR ON THE TOP OF THE WHEEL WELL OR IF
6 HE PUT THE ONES UNDER THE WHEEL WELL.

7 IT IS SO POLLUTED AND PROSTITUTED YOU CAN'T
8 GET TO BEYOND A REASONABLE DOUBT. YOU CAN'T DO IT.
9 THANK YOU, YOUR HONOR. MAY I ASK MY CLIENT IF I'VE MISSED
10 ANYTHING?

11 (ATTORNEY/CLIENT CONFER AT THE TABLE)

12 THE COURT: MRS. MCMILLAN?

13 MRS. MCMILLAN: YOUR HONOR IF
14 YOU WILL RECALL AT THE TIME YOU MADE YOUR DECISION
15 AFTER OUR PICHARDO ARGUMENTS, I ASKED THAT JOHNNY
16 JONES TRIAL BE SEVERED FROM THAT OF THE DRIVER THAT
17 THEY APPARENTLY AND ACCORDING TO YOUR RULING, GAVE A
18 CONSENT TO THE SEARCH, BECAUSE I BELIEVE THAT THAT
19 WOULD TAIN MY CLIENT'S IMMINENT RIGHT TO JUSTICE.
20 AND THE REASONS THAT THAT DECISION SHOULD BE SEPARATE
21 HAS, IN FACT, DONE THAT.

22 I HAVE THE UTMOST RESPECT FOR THE JURY SYSTEM,
23 BUT I BELIEVE THAT THE FACT THAT MY CLIENT WAS TRIED
24 WITH A DRIVER WHOSE NAME WAS SOMEWHERE ON THE LEASE
25 BASICALLY ALLOWED THEM TO MAKE AN INFERENCE THAT

1 SOMEHOW HE WAS IN KNOWING POSSESSION OF THESE DRUGS.
2 AND SO AT THIS TIME I WOULD LIKE TO RENEW MY MOTION AND
3 NOW ASK FOR A NEW TRIAL. I WOULD ALSO ASK FOR YOU TO
4 OVERTURN THE JURY'S VERDICT, BECAUSE I BELIEVE THAT
5 THERE IS NO DEFINITIVE EVIDENCE THAT ESTABLISHING THAT
6 JOHNNY EVER EXERCISED ANY DOMINION OR CONTROL, THAT HE
7 DID NOT EVEN KNOW THAT THERE WERE ANY DRUGS THERE.

8 AND ONE THING THAT I WOULD LIKE TO AGAIN
9 BRING OUT IS THAT HE WAS MERELY A PASSENGER IN A
10 VEHICLE, HE WAS NOT PRESENT OUTSIDE THE VEHICLE
11 WHENEVER THE ALLEGED PURPORTED CONSENT WAS GIVEN.
12 AND I RESERVE MY OBJECTION AS TO THAT BECAUSE I STILL
13 BELIEVE THAT WAS A COERCED CONSENT ON THE PART OF THE
14 CO-DEFENDANT.

15 BUT, YOUR HONOR, EVEN MORE CHALLENGING TO
16 ME IS THAT THE TROOPER HIMSELF TREATED THEM
17 DIFFERENTLY. HE DID NOT ASK MR. JONES PERMISSION TO
18 SEARCH THE VEHICLE BECAUSE HE KNEW THE PERSON WITH
19 DOMINION AND CONTROL OF THE VEHICLE WAS THE DRIVER.
20 AND THAT IS THE PERSON THAT HE GOT THE ALLEGED CONSENT
21 FROM.

22 THERE IS ABSOLUTELY NO INFERENCES THAT
23 SHOULD HAVE BEEN DRAWN OR COULD HAVE BEEN DRAWN
24 THAT LINKED MY CLIENT TO ANY ILLEGAL SUBSTANCES IN THE
25 VEHICLE. AND I THINK WHEN THERE ARE - AND I BELIEVE THAT

1 THE CASE LAW SHOWS THIS - WHEN THERE IS MORE THAN ONE
2 OR TWO PEOPLE INVOLVED, AND MR. WATSON HAS SITED
3 SEVERAL CASES, WHEN THERE'S MORE THAN TWO PEOPLE
4 PRESENT, THE BURDEN IS EVEN GREATER ON THE STATE TO
5 PROVE WHICH OF THE TWO OR MORE HAD KNOWLEDGE. THE
6 MERE INFERENCE THAT THEY WERE PRESENT AND THEREFORE
7 THEY HAD KNOWLEDGE CANNOT AND SHOULD NOT HAVE BEEN
8 MADE BY THE JURY.

9 I FIRMLY BELIEVE THAT THE JURY REACHED AN
10 INAPPROPRIATE DECISION REGARDING THE KNOWINGLY IN
11 POSSESSION, AND FOR WHATEVER REASON ONCE THAT WAS
12 REACHED, EITHER BY THE RULING OR THE COURT OR BY SOME
13 INFERENCE, WHICH I DO NOT BELIEVE IS IN THE EVIDENCE OR
14 THE TESTIMONY, BUT ONCE THEY'VE REACHED THAT, THEY
15 THEN REACHED THE WRONG DECISION AS TO THE POSSESSION
16 AND THE TRAFFICKING.

17 YOUR HONOR, I JUST DO NOT THINK THAT THE
18 JURY'S VERDICT SHOULD STAND IN THIS CASE. I DON'T BELIEVE
19 THAT IT WOULD. I WOULD ASK YOU TO DO WHATEVER YOU CAN
20 AT THIS POINT TO CORRECT WHAT I BELIEVE HAS BEEN A GROSS
21 MISCARRIAGE OF JUSTICE. I DID NOT SLEEP LAST NIGHT, YOUR
22 HONOR. I TRUST THE JURY SYSTEM, BUT I FELT LIKE THESE TWO
23 DIFFERENT DEFENDANTS BEING TRIED TOGETHER AT THIS POINT
24 WITH THE ISSUE OF THE CONSENT, WITH THE ISSUE OF THE
25 PURPORTED AGREEMENT, THAT MY CLIENT WOULD BE TAINTED,

1 YOUR HONOR. AND THAT HAS, IN FACT, HAPPENED, YOUR
2 HONOR. AND I WOULD ASK THAT YOU RECONSIDER "A," YOUR
3 DENIAL ON MY MOTION FOR SEVERANCE, AND "BE," MY MOTION
4 FOR A DIRECTED VERDICT. AND I WOULD ASK THAT YOU GRANT
5 ME A NEW TRIAL. THANK YOU, YOUR HONOR.

6 MR. REDMOND: YOUR HONOR, BRIEFLY.
7 IF THE COURT WILL ALLOW US, WE WILL BIFURCATE OUR
8 PRESENTATION BRIEFLY AS TO MR. BURNS, AND THEN I WOULD
9 ASK MRS. MARY THOMAS JOHNSON-LEE TO PRESENT HER, I
10 GUESS REBUTTAL TO THE CASE AND THE ISSUES AS TO MR.
11 JONES.

12 AS TO MR. BURNS, YOUR HONOR, AND QUITE
13 FRANKLY THE COURT WITH SOME OF ITS QUESTIONS ADDRESSED
14 SOME OF THE ISSUES I WAS GOING TO ADDRESS, BUT I WOULD
15 JUST SAY THAT FIRST IN THE LIGHT MOST FAVORABLE TO THE
16 STATE, WHICH, OF COURSE, I WOULD INDICATE AS THE
17 STANDARD REGARDING THESE PROCEEDINGS, AT THIS POINT IN
18 TIME IN THE TRIAL, ONE, IT WAS INTERESTING TO ME THAT MR.
19 WATSON STAYED AWAY FROM THE TERM INFERENCES UNTIL
20 YOUR HONOR BROUGHT UP THE TERM INFERENCES.

21 AND CLEARLY KNOWING THE LAW IN A LONG LINE
22 OF CASES ON THESE ISSUES ALLOW FOR THE JURIES TO MAKE
23 INFERENCES. NOW HERE'S THE THING; WHEN THE ISSUE GOT
24 INTO DOMINION AND CONTROL, WHICH MRS. JOHNSON-LEE WILL
25 EXPLAIN MORE FULLY WHEN SHE DISCUSSES THE U.S. SUPREME

1 COURT CASE THAT WE'VE PROVIDED TO YOU, BUT JUST ON THE
2 ISSUE OF DOMINION AND CONTROL, MR. WATSON FAILS TO
3 MENTION THAT ON THE TAPE AND IN THE TESTIMONY WHO WAS
4 THE ONE THAT OPENED THE TRUNK? DAVID LANE DID NOT
5 TAKE THE KEY AND GO OPEN THE TRUNK, HE ASKED THE
6 DEFENDANT BURNS TO GO AND OPEN THE TRUNK. CLEARLY
7 EVIDENCE OF DOMINION AND CONTROL,

8 NOW ME SAYING THAT, I AM NOT ACKNOWLEDGING
9 THAT THAT IS THE STANDARD BY WHICH THIS SHOULD BE MET,
10 AND I SAY THAT BECAUSE MRS. JOHNSON-LEE WILL ADDRESS
11 THE ISSUES CONCERNING COMMON ENTERPRISE BASED ON THE
12 SUPREME COURT CASE. AND I'LL LET HER ADDRESS THAT.

13 BUT JUST ON THAT ISSUE AT THIS POINT, AND IT
14 WAS JUST CURIOUS AND INTERESTING TO ME THAT MR. WATSON
15 STAYED AWAY FROM THAT ASPECT. CLEARLY I THINK THE JURY
16 CONSIDERED ALL THE EVIDENCE, AND INFERENCES THAT ARE,
17 YOUR HONOR, THAT ARE IN EVIDENCE CONCERNING DOMINION
18 AND CONTROL. WE WOULD CLEARLY SAY THAT THE VERDICT
19 RENDERED AS TO MR. BURNS BE ALLOWED TO STAND. AND IF I
20 DO NEED TO ELABORATE FURTHER, I WOULD BE GLAD TO DO SO,
21 BUT AT THIS POINT I WOULD OFFER MRS. JOHNSON.

22 MRS. JOHNSON-LEE: JUDGE, FIRST OF
23 ALL WITH RESPECT TO SEVERANCE OF TRIALS, THAT IS A
24 MATTER FOR APPEAL THAT WAS RULED ON PRIOR TO THE
25 BEGINNING OF THE CASE. SECONDLY, THE JURY VERDICT

1 CANNOT BE OVERTURNED SIMPLY BECAUSE ANY PERSON FEELS
2 THAT THE VERDICT WAS INAPPROPRIATE OR WRONG, AND NO
3 ONE CAN SUBSTITUTE THEIR JUDGMENT FOR THE JURY AS LONG
4 AS THERE IS COMPETENT EVIDENCE TO SUPPORT THEIR VERDICT,
5 THE VERDICT MUST STAND, AND AFTER ALL THE EVIDENCE HAS
6 BEEN PRESENTED, AND YOUR HONOR RECOLLECTS THE
7 EVIDENCE THAT SUPPORTS THAT VERDICT.

8 THIRDLY, THE ISSUE OF MR. JONES BEING A
9 PASSENGER IN THE CAR I FEEL IS ADDRESSED BY THE UNITED
10 STATES SUPREME COURT CASE OF MARYLAND V PRINGLE. THAT
11 WAS ARGUED NOVEMBER 3RD, 2003 AND DECIDED DECEMBER
12 15TH, 2003 IN A UNANIMOUS OPINION THAT WAS WRITTEN BY
13 CHIEF JUSTICE RENQUIST, A STATE OF MARYLAND CASE, NOT A
14 FEDERAL CASE, BUT A STATE OF MARYLAND CASE IN WHICH A
15 FRONT SEAT PASSENGER WAS CONVICTED OF POSSESSION OF
16 COCAINE AND POSSESSION WITH INTENT TO DISTRIBUTE
17 COCAINE AFTER DRUGS WERE FOUND INN A BACKSEAT
18 ARMREST.

19 THE MARYLAND COURT OF APPEALS AFFIRMED THAT
20 CONVICTION, STATE COURT OF SPECIAL APPEALS REVERSED.
21 THE STATE THEN APPEALED THAT CASE TO THE UNITED STATES
22 SUPREME COURT. THE UNITED STATES SUPREME COURT HELD
23 THAT EVEN THOUGH THE MARYLAND SPECIAL COURT OF
24 APPEALS HELD THAT DOMINION AND CONTROL OVER THE DRUGS
25 MUST BE SHOWN, OTHERWISE IT IS JUST A MERE PRESENCE, OUR

1 THE U.S. SUPREME COURT WENT ON TO HOLD THE ISSUE
2 ACTUALLY WAS THE OFFICER HAD PROBABLE CAUSE TO BELIEVE
3 THAT THAT PARTICULAR DEFENDANT COMMITTED THE CRIME
4 WITH WHICH HE WAS CHARGED.

5 THE U.S. SUPREME COURT WENT ON TO STATE
6 THAT THE PROBABLE CAUSE STANDARD DEALS WITH
7 PROBABILITIES AND DEPENDS ON THE TOTALITY OF THE
8 CIRCUMSTANCES, WHICH IS SOMETHING I WAS ADDRESSING
9 YESTERDAY.

10 THE SUBSTANTIAL CIRCUMSTANTIAL EVIDENCE IN
11 THIS CASE ,THE TOTALITY OF ALL THAT SHOWS THAT THE
12 OFFICER CLEARLY HAD PROBABLE CAUSE TO CHARGE MR. JONES
13 WITH THE CRIME OF TRAFFICKING. YOU HAVE TO LOOK AT
14 WHAT LED UP TO THE ARREST, ALL THE INDICATORS AND THE
15 ACTUAL FINDING OF DRUGS IN THIS CASE.

16 AND THE U.S. SUPREME COURT ALSO IN ITS
17 UNANIMOUS OPINION WRITTEN BY CHIEF JUSTICE RENQUIST HELD
18 IT WAS REASONABLE TO INFER THERE WAS A COMMON
19 ENTERPRISE AMONG THE PASSENGER AND DRIVER IN THE CAR.
20 WHEN YOU LOOK AT THE AMOUNT OF DRUGS, WHERE THE
21 DRUGS WERE LOCATED, THE NUMBER OF PEOPLE IN THE CAR.

22 AND, JUDGE. IN THIS CASE WE HAD 138.68 GRAMS
23 OF COCAINE. THESE TWO INDIVIDUALS BOTH CAME FROM MIAMI,
24 FLORIDA, AND THIS ISN'T AN ISSUE WHERE MR. BURNS MAY
25 HAVE PICKED UP A HIJACKER - EXCUSE ME, A HITCHIKER.

1 THEY HAD LEFT FLORIDA TOGETHER TO GO TO
2 VIRGINIA TOGETHER, SUPPOSEDLY GOING TO ATLANTA
3 TOGETHER THEY HAD BEEN TOGETHER ALL ALONG. IT WAS
4 CLEARLY A COMMON ENTERPRISE BETWEEN THE TWO OF THEM.
5 MR. BURNS WOULD HAVE BEEN UNLIKELY TO HAVE PUT MR.
6 JONES IN THE CAR WITH HIM IF HE WAS AN INNOCENT PERSON
7 BECAUSE IT IS REASONABLE THAT A DRUG TRAFFICKER ISN'T
8 GOING TO HAVE AN INNOCENT PERSON THERE WHO MIGHT
9 SOMEHOW FIND OUT THERE IS EVIDENCE THAT COULD BE USED
10 AGAINST HIM AND BASICALLY TELL ON HIM, SO TO SPEAK. THAT
11 IS JUST NOT A REASONABLE THING, AND THE U.S. SUPREME
12 COURT ADDRESSED THAT, ALSO, IN THAT OPINION.

13 SO BASICALLY WHAT IT COMES DOWN TO IS THE
14 UNITED STATES SUPREME COURT TOOK A STATE CASE THAT
15 HELD THAT THERE WAS NO DOMINION AND CONTROL OVER THE
16 DRUGS BY A PASSENGER AND CHANGED THAT ANALYSIS TO A
17 PROBABLE CAUSE ANALYSIS.

18 AND WHEN YOU APPLY THAT TYPE OF ANALYSIS TO
19 THIS CASE, LOOKING AT ALL THE INDICATORS IN THE CASE, AND
20 EVERYTHING THAT OCCURRED UP TO THE POINT OF ARREST,
21 SGT. LANE CLEARLY HAD PROBABLE CAUSE TO ARREST MR.
22 JONES, AND CLEARLY THE JURY'S VERDICT SHOULD STAND.

23 MRS. MCMILLAN: YOUR HONOR?

24 THE COURT: VERY WELL.

25 MRS. MCMILLAN: THE MOST

1 IMPORTANT THING THAT CAME OUT OF THAT IS THAT THE
2 DRUGS IN THAT CRIMINAL CASE, IF I RECALL THOSE DRUGS WERE
3 FOUND IN AN ARMREST AND I BELIEVE OPPOSING COUNSEL JUST
4 TOLD YOU THAT.

5 AND I BELIEVE THERE IS ANOTHER ISSUE WHICH IS
6 DIRECTLY OPPOSED TO THE SITUATION, THAT HERE THE DRUGS
7 WERE CLEARLY HIDDEN TO THE EXTENT THAT EVEN THE
8 ARRESTING OFFICER HAD TO SEARCH, SEARCH, AND SEARCH TO
9 LOCATE THE SECOND BAG OF DRUGS.

10 I BELIEVE THAT WHAT OPPOSING COUNSEL FROM
11 THE STATE WANTS YOU TO SAY IS THAT IF THERE IS MERE
12 SUSPICION THAT HE KNEW THE DRUGS WERE THERE THAT THAT
13 WOULD BE SUFFICIENT. AND YOUR HONOR, I SUBMIT THAT IT'S
14 NOT.

15 MRS. JOHNSON-LEE: YOUR
16 HONOR, IF I MAY?

17 THE COURT: ALL RIGHT, AND
18 THEN WE'RE NOT GOING TO HAVE ANY MORE ARGUMENT.

19 MRS. JOHNSON: YES, YOUR
20 HONOR. I WAS JUST GOING TO SAY THAT AT NO POINT DURING
21 THAT DECISION DOES THE U.S. SUPREME COURT TAKE AN
22 OPPORTUNITY TO DIFFERENTIATE BETWEEN WHETHER THE
23 DRUGS HAVE BEEN FOUND IN THE TRUNK OF THE CAR AS
24 OPPOSED TO IN THE REAR SEAT OF THE CAR. THEY'VE BASED
25 THEIR ANALYSIS SOLELY ON THE DRUGS BEING FOUND IN THE

1 CAR. SO I THINK THAT THE LAW OF THE LAND IS THAT IF THE
2 DRUGS ARE IN THE CAR, YOU JUST LOOK AT WHETHER OR NOT
3 THERE WAS A COMMON ENTERPRISE BETWEEN THE PASSENGER
4 AND THE DRIVER.

5 THE COURT: LET ME TELL YOU AGAIN,
6 AND AS I SAID YESTERDAY, THIS IS A VERY DELICATE AREA. I
7 DON'T THINK THERE'S ANY BRITE* LINE TEST YOU CAN LOOK AT
8 TO DETERMINE THESE MATTERS. I AM AWARE THAT THE COURT
9 HAS THE RIGHT TO OVERTURN A JURY'S DECISION BASED ON
10 THE THEORY OF THE 13TH - OR IN THIS CASE THE 11TH JUROR. IN
11 11 YEARS I HAVEN'T DONE THAT. I HAVE GREAT CONFIDENCE IN
12 THE JURY SYSTEM.

13 I WOULD ONLY DO THAT IN A CASE WHERE I WAS
14 COMPLETELY SATISFIED THAT THERE WAS NO POSSIBLE BASIS
15 FOR THE JURY TO REACH THE DECISION THAT THEY DID. IN THIS
16 CASE, HOWEVER, I CAN'T SAY THAT. I CAN'T SAY THERE'S NO
17 POSSIBLE WAY THAT THEY COULD REACH THE DECISION THAT
18 THEY DID. AND I DO NOT CHOOSE TO OVERTURN THE JURY'S
19 DECISION.

20 AND I'LL TELL YOU WHY. I, TOO, DIDN'T SLEEP
21 MUCH LAST NIGHT. AND I DO NOT, I REPEAT, I DO NOT TAKE
22 THIS LIGHTLY. I'M FULLY AWARE THAT SOME PEOPLES'
23 FREEDOM ARE AT STAKE. I'M LIKEWISE AWARE THAT IF I'M
24 MAKING A MISTAKE IN RULING AS I AM, AND TAKE GREAT
25 SOLACE IN KNOWING THAT THERE'S AN APPEALS COURT THAT

1 WILL TAKE A LOOK AT WHAT I DID. I DON'T DO IT FOR THAT
2 PURPOSE. I DO IT WITH THE COMFORT AND UNDERSTANDING
3 THAT IF I IN GOOD CONSCIENCE, AND I SAID IN GOOD
4 CONSCIENCE BECAUSE I HAVE TO LIVE WITH MY OWN
5 CONSCIENCE, HAVE MADE A MISTAKE, THAT MISTAKE MAY BE
6 CORRECTED.

7 HERE YOU HAVE A CONCERN - LET ME FIRST OF ALL
8 SAY THAT I APPRECIATE THE ARGUMENTS MR. WATSON MAKES
9 ON BEHALF OF HIS CLIENT, BUT I THINK THERE IS A DISTINCTION
10 BETWEEN THE TWO PEOPLE IN THE AUTOMOBILE. THE
11 DISTINCTION IS CLEARER AFTER LAST NIGHT THAN IT WAS
12 BEFORE.

13 NUMBER ONE, THE DRIVER OF THE AUTOMOBILE
14 WAS MR. BURNS. THAT IS EXERCISING, IN MY JUDGMENT,
15 DOMINION AND CONTROL OVER THE DRUGS. YOU CONTROL THE
16 LOCATION OF WHERE THEY ARE. IF YOU'RE IN A MOVING
17 VEHICLE YOU CONTROL IT WHETHER IT'S IN SOUTH CAROLINA,
18 FLORIDA, GEORGIA, VIRGINIA, WHEREVER. DOES HE HAVE TO
19 EXERCISE DOMINION AND CONTROL OVER THE TIRE WELL WITHIN
20 THE AUTOMOBILE OR THE GLOVE COMPARTMENT OR THE
21 ARMREST, OR WHEREVER?

22 I THINK WHERE THE DRUGS ARE LOCATED IS IN AN
23 AUTOMOBILE, AND AN AUTOMOBILE THAT WAS STOPPED
24 OSTENSIBLY FOR FOLLOWING TOO CLOSELY -- OR EXCUSE ME,
25 DRIFTING INTO ANOTHER LANE IMPROPERLY. BUT FOR THE

1 STATED PURPOSE, IF NOT STATED PURPOSE, ALL BUT STATED
2 PURPOSE, BORNE OUT BY I.C.E OF TRYING TO STOP DRUGS FROM
3 BEING TRANSPORTED UP THE I-95 CORRIDOR, OR MONEY
4 LAUNDERING CRIMINALITY, OR FOR OTHER REASONS, IT
5 SOMETIMES RUBS KIND OF THE WRONG WAY TO KNOW THAT
6 YOU HAVE TO DO SOMETHING ONE WAY IN ORDER - ALMOST
7 LIKE BACK-DOORING SOMETHING. I'M LOOKING FOR ONE WAY
8 TO FIND SOMETHING WRONG; IS THERE A LIGHT OUT OVER THE
9 TAILLIGHT, IS THERE A LIGHT OUT OVER THE LICENSE PLATE,
10 ANYTHING TO GET INTO A VEHICLE WHEN THERE'S NO
11 PROBABLE CAUSE IF THERE'S ANY CRIMINALITY WITH REGARD TO
12 THE REAL REASON THE CAR IS BEING STOPPED.

13 I UNDERSTAND LAW ENFORCEMENT HAS A
14 DIFFICULT JOB. THERE'S DRUG TRAFFICKING, THERE'S MONEY
15 LAUNDERING, AND OTHER BIGGER ENTERPRISES THAN A
16 TAILLIGHT OUT OVER A LICENSE TAG, OR SOMEONE DRIFTING
17 INTO THE OTHER LANE. BUT IT SOMETIMES CONCERNS ME THAT
18 IN ORDER TO EXERCISE THAT CONCERN AND IN DOING
19 SOMETHING ABOUT THAT CONCERN THAT YOU HAVE TO RESORT
20 TO ALMOST A RUSE TO GET TO DO THAT WHICH YOU'RE TRYING
21 TO DO.

22 BUT THAT'S WHAT WAS DONE. I CAN'T SAY IT'S
23 ILLEGAL, IT'S JUST STRANGE THAT THAT HAS TO BE DONE IN
24 ORDER TO GET TO WHAT WE WANT TO DO, AND THAT'S STOP
25 DRUG TRAFFICKING AND STOP MONEY LAUNDERING, AND OTHER

1 LARGER ENTERPRISES.

2 NOW IN THIS CASE I DO NOT HAVE A PROBLEM WITH
3 THE SEARCH AND SEIZURE. I DO NOT HAVE A PROBLEM WITH
4 THE CONSENSUAL SEARCH. I DON'T HAVE A PROBLEM WITH
5 REASONABLE AND ARTICULABLE SUSPICION. ALL OF THAT HAS
6 BEEN ARGUED FOR - YOUR POSITIONS HAVE BEEN NOTED ON
7 THE RECORD. THE ONE THING THAT GAVE ME MORE TROUBLE
8 THAN ANYTHING, AND THAT IS THE PASSENGER IN THIS
9 AUTOMOBILE. DID THE PASSENGER EXERCISE, OR HAVE THE
10 RIGHT TO EXERCISE DOMINION AND CONTROL OVER THE DRUGS?

11 WHEN YOU COUPLE THE INDICATORS, EVASIVE
12 ANSWERS, CONTRADICTIONARY ANSWERS, NO LUGGAGE, IN AN
13 AUTOMOBILE THAT WAS LEASED IN FLORIDA ON A TRIP TO
14 EITHER NORTH CAROLINA OR VIRGINIA DEPENDING ON WHOSE
15 STORY YOU TAKE, BUT VIRGINIA, OSTENSIBLY, WHETHER THE
16 UNCLE RENTED THE CAR, HE WASN'T REALLY AN UNCLE BUT WE
17 CALL HIM AN UNCLE, A CAR THAT WITHIN THE LEASE ITSELF
18 WAS NOT TO BE DRIVEN OUTSIDE THE STATE OF FLORIDA, NO
19 INDICATION THAT HE WAS A HITCHHIKER, THAT HE WAS THERE
20 FOR A SHORTER PERIOD OF TIME THAN THE DRIVER WAS.

21 ALL INDICATIONS WERE THAT THEY WERE
22 COMPANIONS; WE ARE GOING HERE, WE ARE DOING THIS.
23 ALTHOUGH WHEN ASKED QUESTIONS ABOUT LAST NAMES AND
24 WHAT, THAT WAS A LITTLE BIT IFFY, ABOUT WHO ARTIE IS OR
25 WHAT IS HIS LAST NAME, AND CONTRADICTIONARY OR EVASIVE

1 ANSWERS, THOSE FACTORS. AND COUPLED WITH THE
2 PROVISIONS OR THE LAW AND THE RULES THAT ARE
3 ENUNCIATED IN THE PRINGLE CASE, PARTICULARLY THAT THAT
4 SAYS - AND IT'S NOTHING NEW - THAT INFERENCES FROM
5 FACTS MAY PROVIDE SUFFICIENT EVIDENCE. AND HERE
6 INFERENCES FROM THOSE FACTS, AND SOME THAT I PROBABLY
7 HAVE NOT EVEN ENUNCIATED, COULD HAVE, IN MY JUDGMENT,
8 PROVIDED SUFFICIENT EVIDENCE TO CONVINCE A JURY THAT
9 BOTH OCCUPANTS HAD THE RIGHT TO EXERCISE DOMINION AND
10 CONTROL, OR SUFFICIENT EVIDENCE TO CONVINCE A JURY THAT
11 THEY HAD KNOWLEDGE OF THE PRESENCE OF THE DRUGS.

12 FURTHER, THE HEATH CASE WAS A REAL PROPERTY
13 CASE, IF YOU WILL. THE DRUGS WERE FOUND IN A BIN OF SOME
14 SORT, A BIN IN A WASHING MITT OR SOMETHING IN AN OUT-
15 BUILDING, SOMETHING ATTACHED TO THE HOUSE LIKE AN
16 OUTBUILDING. A HOUSE IS A PERMANENT FIXTURE AND IT AIN'T
17 MOVING, IT'S GOING TO BE THERE. IF YOU LOOK TO THE
18 OWNERSHIP OF THE HOUSE, WHO OWNS THE HOUSE, WHO
19 CONTROLS THE HOUSE, WHO HAS THE LEGAL RIGHT TO
20 CONTROL IT.

21 THIS IS AN AUTOMOBILE, IT'S MUCH SMALLER. AS IT
22 SAID IN ONE OF THE CASES, IT'S NOT A TAVERN, OR A HOUSE,
23 OR SOME UNWITTING PATRON IN A TAVERN NOT KNOWING
24 WHAT SOMEONE ELSE IS DOING IN THERE, OR MAYBE A VISITOR
25 TO A HOUSE THAT DOES NOT KNOW WHAT THE OWNERS OR

1 THE RESIDENTS OF THE HOUSE ARE DOING.

2 FURTHER NOTING THAT OFT TIMES A PASSENGER IN
3 AN AUTOMOBILE IS OFTEN ENGAGED IN A COMMON ENTERPRISE
4 WITH THE DRIVER. THEY'RE THERE FOR A SHORT PERIOD OF
5 TIME, WITH A SPECIFIC PURPOSE OR DESTINATION, AND IT'S
6 USED FOR A TEMPORARY TRIP OR PURPOSE, TO GO FROM POINT
7 "A" TO POINT "B," IT'S NOT A PERMANENT RESIDENCE.

8 THEREFORE, MORE OFTEN THAN NOT, THE PEOPLE IN
9 THE AUTOMOBILE, IF THEY'RE NOT AN UNWITTING PASSENGER
10 SUCH AS A HITCHHIKER OR SOMEBODY, ARE THERE FOR A
11 COMMON PURPOSE.. THAT PURPOSE NORMALLY IS TO GO TO
12 THE SAME LOCATION AND FOR THE SAME REASON.

13 BASED ON THAT, AND THAT AS A PRACTICAL
14 MATTER OR A REASONABLE MATTER, IF A DRIVER IS INVOLVED
15 IN TRAFFICKING AND TRANSPORTING COCAINE IN AN AMOUNT
16 THAT WE'RE TALKING ABOUT HERE, IT WOULD BE HIGHLY
17 UNLIKELY TO HAVE A PASSENGER IN THAT CAR WHO WAS NOT
18 ALSO INVOLVED IN THE SAME ACTIVITY.

19 IT WOULD BE UNLIKELY TO HAVE SOME STRANGER
20 OR SOME PERSON NOT KNOWING THE SAME INFORMATION YOU
21 KNOW, OR ENGAGED IN THE SAME ACTIVITY OR THE SAME
22 ENTERPRISE AS YOU KNOW OR ARE ENGAGED IN, OR GOING TO
23 THE SAME DESTINATION YOU'RE GOING TO, BECAUSE HE MAY
24 ACCIDENTALLY UNCOVER THE CRIMINALITY THAT'S AFOOT.
25 HE MAY IN PUTTING A PAIR OF BOOTS IN THE TRUNK OF THE CAR

1 DISCOVER THE DRUGS BACK THERE. YOU WOULDN'T WANT A
2 STRANGER WITH YOU THAT MIGHT DO THAT.

3 SO, CONCEIVABLY, NOT UNREASONABLY IT COULD
4 BE FOUND BY A JURY, I THINK, THAT A DRIVER INVOLVED IN
5 TRAFFICKING AND TRANSPORTING COCAINE WOULD UNLIKELY
6 HAVE A PASSENGER IN THERE THAT WAS NOT AWARE OF WHAT
7 WAS GOING ON AND ENGAGED IN THE SAME ACTIVITY.

8 NOW, DOES THIS RISE TO THE LEVEL OF BEYOND A
9 REASONABLE DOUBT, THESE INFERENCES AND THE
10 CIRCUMSTANTIAL EVIDENCE. I DON'T KNOW. WHAT IS BEYOND
11 A REASONABLE DOUBT? IT IS THAT THE JURY MUST BE FIRMLY
12 CONVINCED OF THE GUILT BASED ON THOSE MATTERS BEFORE
13 THEY COULD RETURN A GUILTY VERDICT.

14 THAT WAS CLEARLY THE INSTRUCTION THAT WAS
15 GIVEN THE JURY. FURTHER, WITH REGARD TO CONSTRUCTIVE
16 POSSESSION, I TOLD THE JURY THAT THAT MEANT THAT THE
17 DEFENDANT HAD DOMINION AND CONTROL, OR THE RIGHT TO
18 EXERCISE DOMINION AND CONTROL OVER EVEN THE COCAINE-
19 BASED DRUGS ITSELF, OR THE PROPERTY ON WHICH THE
20 COCAINE-BASED DRUGS WERE FOUND, THE PROPERTY ON WHICH
21 THE COCAINE-BASED DRUGS. NOT THE CONTAINER IN WHICH
22 THE COCAINE DRUGS WERE FOUND, BUT THE PROPERTY.

23 THE PROPERTY HERE IN MY JUDGMENT IS THE
24 AUTOMOBILE, NOT THE TIRE WELL. I TOLD THEM FURTHER WITH
25 REGARD TO CONSTRUCTIVE POSSESSION THAT MERE PRESENCE

1 AT THE SCENE WHERE THE DRUGS WERE FOUND IS NOT ENOUGH
2 TO PROVE POSSESSION. ACTUAL KNOWLEDGE OF THE
3 PRESENCE OF THE COCAINE-BASED DRUGS IS STRONG EVIDENCE
4 OF THE DEFENDANT'S INTENT TO CONTROL ITS DISPOSITION OR
5 USE. I DON'T THINK THAT WAS SHOWN, ACTUAL KNOWLEDGE.

6 THE DEFENDANT'S KNOWLEDGE AND POSSESSION
7 MAY BE INFERRED, I WENT ON TO INSTRUCT THEM, WHEN A
8 SUBSTANCE IS FOUND ON THE PROPERTY UNDER THE
9 DEFENDANT'S CONTROL. HOWEVER, THIS INFERENCE IS SIMPLY
10 AN EVIDENTIARY FACT TO BE TAKEN INTO CONSIDERATION
11 BY YOU - THE JURY - ALONG WITH THE OTHER EVIDENCE IN THE
12 CASE, AND TO BE GIVEN THE WEIGHT YOU DECIDE IT SHOULD
13 HAVE.

14 THERE WAS NO CORRECTION TO THOSE
15 INSTRUCTIONS, NO EXCEPTION TAKEN TO THOSE INSTRUCTIONS,
16 AND I THINK THAT IS THE LAW OF THIS STATE. BASED ON THAT
17 THE JURY FOUND BOTH THESE DEFENDANTS GUILTY. AND IT'S
18 THE COURT'S FINDING THAT THEY GAVE THE WEIGHT TO THOSE
19 MATTERS THAT I JUST ENUMERATED AND ENUNCIATED THAT
20 THEY DECIDED IT SHOULD HAVE, AND THEREBY REACHED TO
21 THEIR SATISFACTION THAT THEIR GUILT WAS PROVEN BEYOND A
22 REASONABLE DOUBT, THAT THEY WERE FIRMLY CONVINCED
23 BASED ON THAT THAT THESE DEFENDANTS WERE GUILTY.

24 I DON'T FIND THAT SO REMOTE AND SO IMPROPER
25 AFTER SERIOUSLY LOOKING AT THIS MATTER TO MOVE ME TO

1 EXERCISE THE RIGHT THE COURT HAS UNDER THE 13TH JUROR
2 THEORY. AND SO I, WITH RESPECT, AND I MEAN THAT WITH
3 RESPECT, I'M GOING TO DENY YOUR MOTIONS.; YOUR MOTION,
4 MR. WATSON, AND YOUR MOTION, MRS. MCMILLAN. AND THAT'S
5 THE RULING OF THE COURT.

6 MR. WATSON: YOU WOULD NOTE MY
7 EXCEPTION?

8 THE COURT: I WILL.

9 MRS. MCMILLAN: AND MINE, YOUR
10 HONOR?

11 THE COURT: I WILL.

12 MR. REDMOND: THANK YOU, YOUR
13 HONOR.

14 THE COURT: ARE WE READY FOR
15 SENTENCING?

16 MR. REDMOND: THE STATE'S PREPARED
17 FOR SENTENCING, I HAVE SOME SENTENCING SHEETS THAT I'LL
18 GIVE TO THE DEFENDANTS.

19 THE COURT: ANYTHING FROM THE
20 STATE?

21 MRS. JOHNSON-LEE: NO, JUDGE,
22 NOTHING FURTHER.

23 MR. WATSON: MY CLIENT HAS NO
24 PRIOR CRIMINAL RECORD WHICH WOULD BE APPLICABLE
25 AGAINST HIM IN THIS SITUATION.

1 THE COURT: MRS. MCMILLAN, IS THERE
2 ANYTHING YOU'D LIKE TO SAY ON BEHALF OF YOUR CLIENT?

3 MRS. MCMILLAN: YES, SIR, THERE IS.
4 MY CLIENT IS THE FATHER OF FOUR SMALL CHILDREN, HE HAS A
5 LOVING MOTHER WHO CARES DEEPLY ABOUT HIM. HIS CRIMINAL
6 RECORD, MOST OF IT, IS MORE THAN 10 YEARS OLD. THERE ARE
7 SOME CHARGES THAT MR. SOLICITOR AND I - AND HE ALLUDED
8 THEM THE OTHER DAY PRESENTLY PENDING BUT FOR WHICH HE'S
9 NOT BEEN BROUGHT TO TRIAL. NOT THESE TYPE OF CHARGES,
10 YOUR HONOR, AND I WOULD ASK THAT YOU BE MOST LENIENT
11 ON HIM BECAUSE ONCE HE IS REMOVED FROM THE STATE OF
12 SOUTH CAROLINA HE WILL THEN BE TRANSPORTED TO THE
13 STATE OF FLORIDA TO STAND TRIAL ON THOSE CHARGES.

14 I'D ALSO ASK YOU TO STILL TAKE INTO
15 CONSIDERATION THAT HE WAS A MERE PASSENGER, WITH ALL
16 DUE RESPECT TO YOUR HONOR'S DECISION ON MY MOTIONS. I DO
17 NOT BELIEVE HE WAS A WILLING PARTICIPANT IN THIS
18 ENTERPRISE.

19 THE COURT: IS THERE ANYTHING YOU'D
20 LIKE TO SAY, MR. JONES?

21 THE DEFENDANT: YOUR HONOR, I'M
22 JUST GOING TO PUT EVERYTHING UNDER YOUR DISCRETION. I'M
23 FIRMLY CONTENT WITH ANYTHING THAT YOU DECIDE. I HAVE NO
24 FURTHER COMMENT. THANK YOU.

25 THE COURT: MR. BURNS, IS THERE

1 ANYTHING YOU'D LIKE TO SAY?

2 THE DEFENDANT: ALL I GOT TO SAY IS
3 THIS IS A GREAT MISJUSTICE.

4 THE COURT: THE SENTENCE IN THESE
5 CASES ARE THE SAME, AND THAT IS FOR BOTH MR. JONES AND
6 MR. BURNS THAT YOU BE COMMITTED TO THE DEPARTMENT OF
7 CORRECTIONS FOR A PERIOD OF 25 YEARS AND PAY A \$50,000
8 FINE.

9 MR. WATSON: ASK THAT THE COURT
10 RECONSIDER YOUR SENTENCE. I'LL EITHER DO IT BY FORMAL
11 MOTION OR HAVE IT HEARD IN HORRY COUNTY, OR WHEREVER
12 IT'S CONVENIENT.

13 MRS. JOHNSON-LEE: JUDGE, IF I MAY,
14 SECTION 4453(370)E-2-C OF THE SOUTH CAROLINA CODE OF
15 LAWS FOR TRAFFICKING IN COCAINE 100 GRAMS OR MORE BUT
16 LESS THAN 200 GRAMS SPECIFIES A MANDATORY SENTENCE OF
17 25 YEARS AND A \$50,000 FINE AND SPECIFIES THAT CANNOT
18 BE SUSPENDED.

19 THE COURT: IT'S MY UNDERSTANDING
20 THAT THAT'S THE ONLY SENTENCE I CAN GIVE UNDER THIS
21 CONVICTION FOR THAT CHARGE. SO IN MY JUDGMENT THERE'S
22 NOTHING TO RECONSIDER WITH REGARD TO THE SENTENCE,
23 THANK YOU, THOUGH.

24 MR. WATSON: FOR THE PURPOSE OF
25 APPEAL, YOU'LL NOTE MY EXCEPTION.

1 MRS. MCMILLAN: MINE, TOO, YOUR
2 HONOR.
3 THE COURT: VERY WELL.
4 MRS. JOHNSON-LEE: THANK YOU, YOUR
5 HONOR.
6 THE COURT: THANK YOU.
7 MR. REDMOND: THANK YOU, YOUR
8 HONOR. YOUR HONOR WE PROVIDE SENTENCING SHEETS FOR
9 THEIR SIGNATURE. I DON'T KNOW IF THEY HAVE A PARTICULAR
10 POSITION ON THEM OR NOT.
11 MRS. MCMILLAN: WE'VE SIGNED THEM.
12 MR. REDMOND: OKAY.
13 THE COURT: THANK YOU.
14 -----AT THIS TIME THE TRIAL OF THE CASE WAS CONCLUDED-----
15
16 *PHONETIC
17
18
19
20
21
22
23
24
25

1 STATE OF SOUTH CAROLINA]

2] CERTIFICATE OF REPORTER

3 COUNTY OF RICHLAND]

4
5
6 I, THE UNDERSIGNED, MEG A. MOLLOHAN , OFFICIAL COURT
7 REPORTER FOR THE 5TH JUDICIAL CIRCUIT OF THE STATE OF SOUTH
8 CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE,
9 ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL OF THE
10 VIDEO TAPED PROCEEDINGS IN THE HEARING OF THE CAPTIONED CASE,
11 RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR
12 DILLON COUNTY, SOUTH CAROLINA, ON THE 17TH, 18TH, 19TH AND 20TH
13 DAYS OF OCTOBER, 2006

14 I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL,
15 NOR INTEREST TO ANY PARTY HERETO.
16
17
18

19 Meg A. Mollohan

20 2/23/11

21
22
23 CERTIFIED COURT REPORTER
24
25

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF Dillon

Johnny Jones, 318253
Full name and prison number (if any) of Applicant

IN THE COURT OF COMMON PLEAS

2011-CP-17

APPLICATION FOR

State of South Carolina

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 set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay 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 Lee Correctional Institution
2. Name and location of Court which imposed sentence Dillon Co. Court in Dillon County
3. Name(s) of co-defendant(s) (if any) Archie Burns
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2006-C5-17-0441
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) October 20 2006
 - (b) _____

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 DILLON COUNTY

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. July 2010
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- 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 assistant of Counsel
- (b) Ineffective appellate Counsel
- (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) _____
- (b) see attachment
- (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? Yes
- (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?
- N/A
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) could not be raised in appeals court
- (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? Yes
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. Lois Eagle McMillan
 - ii. _____
 - iii. _____
 - (b) the proceedings at which each such attorney represented you:
 - i. trial
 - ii. Appeal
 - iii. _____
19. State clearly the relief you seek in filing this application:
Reversed and Vacated
20. Are you now under sentence from any other court that you have not challenged?
NO

STATE OF SOUTH CAROLINA)

County of)

VERIFICATION

I, _____, 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.

Johnny Jones

SWORN to and subscribed before me, this 5
day of May, 2011.
[Signature] (L.S.)
Notary Public

My Commission Expires: 5-16-12

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, _____, 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.

Johnny Jones
Applicant

SWORN or affirmed to and subscribed before me this
5 day of May, 2011

J. Bracy Sims
Notary Public

My Commission Expires: 5-16-14

Ineffective Assistant of Counsel

1) for advising client to go to trial in a felony case with a 10 man jury. Article. v § 22 the Petition of the Circuit Court shall consist of twelve members 13 C.A Sixth and Fourteenth

2) Failure to have indictment for trafficking saw
 Indictment failed to contain all the elements of crime charged. The test for the sufficiency of indictment is whether [the indictment] contains the necessary elements of the offense intended to be charged and sufficiently apprises the defendant of what he must be prepared to defend - S.C. Code Ann § 17-19-20
 see Exhibit 1

3) Failure to challenge the legitimacy of the traffic stop. the defendant was stop for "some what swerved" no a violation we swerved or we did not swerve. violating the 4th Amendment. See S.C. Statute 56-5-1900 Driving on roadways lane traffic.

4) Failure to move for judge to recuse himself from the trial Rule 30.1 - Disqualification. Comments cannot be made in front of lawyer or defendants where they would feel prejudice to them. The judge stated "I worried when I

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left whether or not I was going to get pulled going back to North Myrtle Beach because I ruled against the officers in that "violating defendants Fourteenth Amendment Tr. P. 78 see Exhibit 2

2) Failed to move for a directed Verdict on the Grounds of insufficient evidence or no evidence. trial court in a directed Verdict motion is concerned with the existence or non-existence of evidence not its weight. TrP. 371 Line 22-25 This was Plain error by the Judge and Counsel.

3) Counsel failed to object to an defective chain of custody. Counsel should have objected to the chain on the Grounds the State did not reveal an adequate chain of Custody to satisfy admissibility requirements or Credibility. TrP 278 Line 19-25 TrP 279 Line 1-2 the evidence change from two bags to three bags to four to five see exhibits 3-9.

3) Prosecutorial misconduct

Prosecutorial misconduct. The Prosecution Procured fraudulent indictment based on the Presentation of evidence or no evidence in an unfair manner. indictment was true billed four days before the Grand Jury convened and three months before the evidence report was back for Sled. As the record will support.

Prosecutor makes Improper comments in Present of Jury. when he know there is no evidence of the defend having Drugs. the State Chief witness testified the evidence in the Court is not the evidence he remove for the car. The Prosecutor was inflaming the Passion of the jury. by saying "we Have over 130 Grams of this Poison off the streets that will not enter into the Blood stream of our children." Exhibit 10-14 see Exhibit A

b) Appellate Counsel failed to raise the chain of Custody issues.

WITNESSES

David Lane

Dcsd

ARREST WARRANT #:

K046047

Arrested on February 28, 2006

ACTION OF GRAND JURY

TRUE BILLForeman: *Pauline Brown* 5/18/06

Grand Jury

VERDICT

Foreman:

Petit Jury

Date:

DOCKET #: 06GS17-0441

THE STATE OF SOUTH CAROLINA

County of Dillon

COURT OF GENERAL SESSIONS

Term: May, 2006

THE STATE

vs.

Johnny Jones

INDICTMENT FOR

0280

TRAFFICKING 100 GRAMS OR MORE COCAINE

BUT LESS THAN 200 GRAMS (44-53-370)

A CERTAIN
TRUE COPYCLERK OF COURT
DILLON COUNTY

1 THE COURT: I KNOW CHARLES
2 WILLIAMS REPRESENTED THE DEFENDANT, I DO REMEMBER THAT.
3 AND I WORRIED WHEN I LEFT WHETHER OR NOT I WAS GOING TO
4 GET PULLED GOING BACK TO NORTH MYRTLE BEACH BECAUSE I
5 RULED AGAINST THE OFFICERS IN THAT. BUT LET ME READ YOU
6 SOMETHING HERE AND SEE WHAT YOU SAY ABOUT IT; "ONCE
7 THE UNDERLYING BASIS FOR THE INITIAL TRAFFIC STOP HAS
8 CONCLUDED, IT DOES NOT AUTOMATICALLY FOLLOW THAT
9 ANY FURTHER DETENTION FOR QUESTIONING IS
10 UNCONSTITUTIONAL OR FOURTH AMENDMENT JURISPRUDENCE
11 IS CLARIFIED" - EXCUSE ME, "THAT ANY FURTHER DETENTION
12 FOR QUESTIONING IS UNCONSTITUTIONAL. LENGTHENING THE
13 DETENTION FOR FURTHER QUESTIONING BEYOND THAT RELATED
14 TO THE INITIAL STOP IS PERMISSIBLE IN TWO CIRCUMSTANCES;
15 FIRST, THE OFFICER MAY DETAIN THE DRIVER FOR QUESTIONING
16 UNRELATED TO THE INITIAL STOP IF HE HAS AN OBJECTIVELY
17 REASONABLE AND ARTICULABLE SUSPICION THAT ILLEGAL
18 ACTIVITY HAS OCCURRED OR IS OCCURRING" I CALL THAT
19 CRIMINALITY AFOOT.

20 "SECONDLY, FURTHER QUESTIONING UNRELATED TO
21 THE INITIAL STOP IS PERMISSIBLE IF THE INITIAL DETENTION HAS
22 BECOME A CONSENTUAL ENCOUNTER." I HEAR YOU SAYING THE
23 INITIAL DETENTION HAD NOT BECOME A CONSENTUAL
24 ENCOUNTER BECAUSE YOUR PEOPLE WERE NOT FREE TO LEAVE IN
25 THEIR MIND.

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BILLOM COUNTY

South Carolina Law Enforcement Division



FACSIMILE

TO: Mr. RedmanDATE: 08/25/06PHONE: (803)FAX: (803) 772-4448PAGE 1 of 6FROM: (803) 896-7378PHONE: (803) 896-7269FAX: (803) 896-3267

MESSAGE:

LO6-05224 Final ReportFILED
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CLERK OF COURT
DILLON COUNTYSLED FORENSICS
P. O. BOX 21398
COLUMBIA, SC 29221
(803) 896-7300

FORENSICS MAIN FAX.....	(803) 896-7351
SEROLOGY/DNA/TRACE/ARSON FAX.....	(803) 896-7541
TOXICOLOGY FAX.....	(803) 896-7542
DRUG ID FAX.....	(803) 896-7267

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SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

MARK SANFORD
Governor



ROBERT M. STEWART
Chief

David C Lane
Dillon Police Department
P.O. Drawer 431
Dillon, SC 29536

DRUG ANALYSIS
August 24, 2006
SLED LAB: L06-05224
Your Case No: 20060215
Incident Date: 02/28/2006
[S] Artie Burns
[S] Johnny Jones

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Robert M. Stewart, Chief
South Carolina Law Enforcement Division

ITEMS OF EVIDENCE:

- Sub # 1 On April 11, 2006, items were received in B171339 from Robert Bucy of the Dillon County Sheriff's Office.
- Item: 1 Plastic bag containing...
- Item: 1.1 Plastic bag containing powder substance.
RESULTS:
Cocaine found, 27.52 grams (424.68 grains), C-II.
- Item: 1.2 Plastic bag containing powder substance.
RESULTS:
Cocaine found, 83.28 grams (1285.17 grains), C-II.
- Item: 1.3 Plastic bag containing plastic bag containing powder substance.
RESULTS:
Cocaine found, 27.88 grams (430.24 grains), C-II.

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 DILLON COUNTY



USE BALLPOINT PEN AND PRESS FIRMLY, PRINT ALL INFORMATION
EXCEPT WHERE SIGNATURE IS REQUIRED:

SLED DRUG ANALYSIS REQUEST

LAB NO. _____
COUNTY Dillon

CONTROL NO. 171339
WARRANT NO. _____

INCIDENT

Contributing Agency ORI SCO 17000 Contributing Agency Case No. 2006-0215
New Case ☐ Additional Evidence ☐ Case No. _____
Type of Crime Trafficking Cocaine
Incident Date 02-28-06
Incident Address Interstate 95 mile 177

Report should be mailed to:
David Lane Sgt
Name of Individual Receiving Report Rank
305 W. Hampton Blvd. Dillon, MT 59701
Department Telephone No.
305 W Hampton Blvd
Street Address of Post Office Number
Dillon MT 59701
City State Zip Code

SUBJECTS

Burns Artie Tyrone
LAST FIRST MIDDLE
Jones Johnny
LAST FIRST MIDDLE

LAST FIRST MIDDLE

Race B Sex M DOB ____-69
DL, SS or FBI No. _____
Race B Sex M DOB ____-72
DL, SS or FBI No. _____
Race _____ Sex _____ DOB _____
DL, SS or FBI No. _____

EVIDENCE

The items submitted below will be examined with your assurance that the submitted specimens have not been nor will be submitted to any other laboratory or agency for Technical or Scientific examination.

Specimens submitted for examination:

2 clear plastic bags containing white powder substance (cocaine)

David C Lane

PRINT Name Of Requesting Officer

[Signature]
SIGNATURE Of Requesting Officer

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DILLON, MONTANA
EV-350
EV-350

CONTROL NO. B171339

PRINT ALL INFORMATION EXCEPT WHERE SIGNATURE IS REQUIRED

FORM B (RULE 6)
CERTIFICATE OF PROOF OF CHAIN OF PHYSICAL CUSTODY OR CONTROL
 (Initial Custody)

This is to certify that I David Lane am employed by Dillon P.D. and that on 2-22-06, I seized from Artie Burns, Johnny Jones pursuant to otherwise at or near E-95 197N. on D. Hwy 51C the following substance(s) or container(s):
 (Describe substance or container with sufficient particularity to distinguish it)
2 clear plastic bag with white powder (cocaine)

On 4-11-06, I made delivery of the above described substance(s) or container(s) to Robert Bue of Dillon Co SO in substantially the same condition as when I received it.

Place: DEPT F
 Date: 4-11-06

Sworn before me on this 11 day of April, 2006

[Signature]
 Notary Public for South Carolina
 My Commission expires: Sept 2009

[Signature]
 (Signature)

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Exhibit 6

CONTROL NO. B171339

PRINT ALL INFORMATION EXCEPT WHERE SIGNATURE IS REQUIRED

FORM C (RULE 6)CERTIFICATE OF PROOF OF CHAIN OF PHYSICAL
CUSTODY OR CONTROL
(Subsequent Change of Custody)This is to certify that I Robert Bruce am employed byDillon Co SO as Deputy and that on4-11-06 I received IN PERSONfrom David Lane of Dillon P.D.

the following substance(s) or container(s) which were originally seized by

David Lane

(Describe substance or container with sufficient particularity to distinguish it)

2 clear plastic bags with white powder (cocaine)On 4-11-06 I made delivery of the above describedsubstance(s) or container(s) to SLED Evidence ofSLED in substantially the same condition

as when I received it.

Place: SLEDDate: 4-11-06

Sworn before me on this _____ day of _____

Notary Public for South Carolina.

My Commission expires: _____

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DILLON COUNTY

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Laboratory Evidence Release Form

Lab Case: 1.06-04088

Department Case:

Items:

Container: No Container Assigned

Item #:1 Described As: One (1) sealed Rock substance containing A plastic ziplock bag containing rock substance.

Total Items: 1

Lab Case: L.06-04091

Department Case:

Items:

Container: No Container Assigned

Item #:1 Described As: One (1) sealed Powder substance containing An orange plastic ziplock bag containing powder substance.

Total Items: 1

Lab Case: L.06-05224

Department Case: 20060215

Items:

Container: A

Item #:1 Described As: One (1) sealed Item containing Plastic bag containing...

Item #:1.1 Described As: One (1) sealed Powder substance containing Plastic bag containing powder substance.

Item #:1.2 Described As: One (1) sealed Powder substance containing Plastic bag containing powder substance.

Item #:1.3 Described As: One (1) sealed Powder substance containing Plastic bag containing plastic bag containing powder substance.

Total Items: 4

Signature (Released To)

Betty W. Butler (Lab) - 09/20/2006
Signature (Released By)

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DILLON COUNTY

FORM A

REPORT OF ANALYSIS FOR
CONTROLLED DANGEROUS SUBSTANCES
(Substance Found)

I, Kukila N. Stanley, am a Chemical Analyst employed by the South Carolina State Law Enforcement Division (SLED), certified by SLED as a chemist or analyst qualified to perform testing and analysis for controlled dangerous substances prohibited by law in this State by Title 44, Chapter 53 of the Code of Laws and Rule 61-4 of the Department of Health and Environmental Control.

I have 1 years and 1 months experience as a Chemical Analyst. During that period, I have been qualified as an expert witness and testified in court no less than 0 times. I have received the following training as a chemical analyst.

B.S. Chemistry, University of South Carolina, Columbia, SC, 2004
Training in Forensic Drug Analysis, South Carolina Law Enforcement Division, 2005
Legal's Training, South Carolina Criminal Justice Academy, 2005
Lab Technician, Hueck Foils LLC, Blythewood SC, 2004

Sub # : - On April 11, 2006, items were received in B171339 from Robert Bucy of the Dillon County Sheriff's Office.

I tested the above item(s) using the following legally reliable forensic laboratory procedures approved by SLED:

☒ Chemical Test
☐ Microscopic Exam
☐ Infrared Spectroscopy
☐ Ultraviolet Spectroscopy

☒ Gas Chromatography
☒ Mass Spectroscopy
☐ Liquid Chromatography
☐ Physical Test
☐ Published Literature

See Drug Analysis Report L06-05224 for Results.

Chemical Analyst

Kukila
Kukila N. Stanley
Date: August 24, 2006
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then asked Jones where they were going and Jones state VA and then they were going to Atlanta GA. Sgt. Lane then asked how long they were going to be in VA and Jones stated that they were going to see some girls. Sgt. Lane then asked who rented the vehicle and Jones stated that Burns and his uncle rented the vehicle. Sgt. Lane then asked what his uncle's name was and Jones was not sure. Sgt. Lane then asked Jones how he was related to Burns and Jones stated that they grew up together and Sgt. Lane then asked what Burns name was and Jones stated Audi. Sgt. Lane then asked Jones what Burns last name was and Jones stated that Burns was older than him and he did not know him like that. Sgt. Lane then returned to Burns and began issuing a warning citation for the violation. Sgt. Lane then returned to Burns and asked where he was employed to complete the warning citation and Burns stated that he was not employed. Sgt. Lane then completed warning # 1428. Sgt. Lane then explained to Burns that he was not going to issue a citation only a warning. Based on the following facts, the inconsistent stories in the length of stay, The lack of luggage in the vehicle, the little knowledge of one another, the fact that neither subject knew who rented the vehicle, the nervous behavior exhibited by both subjects, Sgt. Lane then stated explained to Burns that law enforcement was having problems with people transporting illegal drugs up and down the interstate. Sgt. Lane then asked if there were any marijuana, cocaine, heroin or ecstasy pills in the vehicle and Burns stated no. Sgt. Lane then explained law enforcement was also having problems with people transporting large sums of illegal drug money. Sgt. Lane then asked if there was more than ten thousand dollars in the vehicle. Burns stated no. Sgt. Lane then stated "can I search your vehicle". Burns stated yes. Sgt. Lane then asked Burns if he would open the trunk of the vehicle and he did so. Sgt. Lane was then accompanied by Sgt. Powers of the Dillon Police Department to assist in the search of the vehicle. Sgt. Lane then began the search of the vehicle in the passenger compartment of the vehicle and then to the trunk compartment of the vehicle. There was no luggage in the trunk of the vehicle. Sgt. Lane then lifted the spare tire compartment in the trunk and located one clear plastic bag containing white powder substance (cocaine). The subjects were placed under arrest. After a further search of the spare tire compartment another clear plastic bag containing white powder substance was located under the spare tire. The subjects were Mirandize and both subjects stated that they had no knowledge of the drugs in the vehicle. The subjects were transported to Dillon County Detention and charged with Trafficking Cocaine.

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DILLON COUNTY

Exhibit 9

1 BECAUSE I'M NOT GOOD IN MATH, BUT I CAN TELL YOU WHAT I
2 KNOW; THAT THIS IS MORE THAN 100 GRAMS OF COCAINE.
3 AND WHY DO I SAY THAT, LADIES AND GENTLEMEN? AND THIS
4 ALSO WILL BE BACK FOR YOU TO SEE, 136.68 GRAMS OF
5 COCAINE.

6 MR. WATSON TALKED ABOUT THE INDICTMENT, AND
7 I DON'T HAVE IT IN FRONT OF ME, BUT YOU'LL HAVE IT BACK
8 WITH YOU. AND LET ME JUST FALL ON THE SWORD FOR A
9 MOMENT, IF I MAY. THE INDICTMENT INDICATES ON THE FRONT,
10 "TRAFFICKING," AS THE CHARGE. IN THE TOP PART OF THE
11 BODY OF THE INDICTMENT INSIDE IT INDICATES "TRAFFICKING."
12 THERE IS A PART IN THERE, AS HE INDICATED, THAT SAYS
13 "POSSESSION WITH INTENT TO DISTRIBUTE."

14 THAT IS WHAT WE REFER TO AS A SCRIVENER'S
15 ERROR. BECAUSE ALSO IN THE BODY, AND MR. WATSON, DIDN'T
16 TAKE THIS, AND YOU'LL SEE IT, IT INDICATES 100 TO 200
17 GRAMS OF POWDER COCAINE. AND GUESS WHAT WE'VE GOT?
18 AND GUESS WHAT HIS HONOR IS GOING TO INSTRUCT YOU AS IT
19 RELATES TO WHAT THE SIGNIFICANCE OF WHAT THAT IS?

20 AND I'LL TELL YOU; THAT MEANS IT'S TRAFFICKING.
21 THAT MEANS THEY'RE GUILTY OF TRAFFICKING. SO WHEN I SAY I
22 FALL ON THE SWORD, BLAME ME FOR THAT ERROR. THAT WAS
23 A SCRIVENER'S ERROR, BY THAT I MEAN IT WAS MIS-WRITTEN.
24 BUT WHEN YOU SEE EVERYTHING ELSE IN THAT INDICTMENT IT IS
25 CLEAR THAT THIS DEFENDANT, SPECIFICALLY MR. BURNS, WAS

1 CHARGED WITH TRAFFICKING. AND ALSO RECALL SGT. LANE'S
2 TESTIMONY TO THE EFFECT THAT HE ACTUALLY CHARGED THEM
3 WITH TRAFFICKING.

4 NOW, WHEN OFFICERS MAY - AND I DIDN'T SAY
5 THIS, LET ME JUST TOUCH ON THIS, TOO - WHEN AN OFFICER
6 MAKES A TRAFFIC STOP, AND WE LIVING IN DILLON COUNTY
7 HAVE ALL BEEN ON I-95 AND KNOW HOW TRAFFIC IS
8 SOMETIMES. AND, OF COURSE, IT WAS UP TO THESE OFFICERS
9 TO MAKE SURE THE TRAFFIC IS SAFE FOR EVERYONE, BUT
10 REMEMBER WE IN DILLON COUNTY HAVE TO USE THOSE
11 HIGHWAYS, TOO. AND SO WHEN HE SEES A VIOLATION HE IS
12 PERFECTLY WITHIN HIS RIGHTS TO EXECUTE A TRAFFIC STOP.

13 AND JUST LOOK AT THE NATURE OF THE STOP. DID
14 THIS LOOK LIKE AN OFFICER THAT HAD A PRECONCEIVED
15 NOTION THAT HE WAS GOING TO ARREST ANYBODY?
16 ABSOLUTELY NOT. BECAUSE IF HE DID THEN HE WOULD HAVE
17 BEEN A LOT DIFFERENT THAN THE OFFICER THAT YOU SAW IN
18 THIS PARTICULAR TAPE.

19 BUT THEN HERE'S THE THING. WE TALK ABOUT
20 WHETHER OR NOT HE HAD REASONABLE SUSPICION. WELL, I
21 THINK THE SUSPICION WOULD BE REASONABLE IF FOUND
22 SOMETHING. HE SUSPECTED CRIMINAL ACTIVITIES AND LOW
23 AND BEHOLD, WHAT DID HE FIND? SO OBVIOUSLY HE WAS
24 REASONABLE IN HIS SUSPICIONS BECAUSE NOW WE HAVE OVER
25 130 GRAMS OF THIS POISON OFF OF THE STREETS THAT WILL

NOT ENTER INTO THE BLOODSTREAM OF OUR CHILDREN THANKS
TO THE ACTIONS OF SGT. LANE.

3 NOW, JUST TO QUICKLY RECAP, LADIES AND
4 GENTLEMEN, LAST NAMES. RIDING ALL THE WAY FROM MIAMI
5 BUT DON'T KNOW EACH OTHER, DON'T EVEN AGREE AND CAN'T
6 EVEN GET CONSISTENT WITH WHERE THEY ARE GOING OR HOW
7 LONG THEY ARE GOING TO BE GONE. MR. BURNS SAID THEY'RE
8 GOING STRAIGHT BACK, MR. JONES SAID THEY'RE GOING TO
9 ATLANTA. WITH NO LUGGAGE. OH, AND OF COURSE, THEN
10 THEY'RE GOING TO VIRGINIA TO SEE GIRLS, NO, THEY'RE TO
11 VIRGINIA TO SEE SOMEONE FOR AN M.R.I., THERE'S A LITTLE
12 DIFFERENCE BETWEEN GOING TO SEE GIRLS AND GOING FOR AN
13 M.R.I.

14 AND THEN LET'S TALK ABOUT THE FACT THAT WE
15 STILL, AND THEY CANNOT EVEN CONSISTENTLY TELL SGT. LANE
16 WHO RENTED THE CAR OR WHAT THE CIRCUMSTANCES WERE; IT
17 WENT FROM AN UNCLE TO NOT AN UNCLE TO I DON'T KNOW.
18 AND, AGAIN, NO LAST NAMES. LET ME TELL YOU WHAT WAS
19 GOING ON, LADIES AND GENTLEMEN. THE REASON THERE WAS
20 NO LUGGAGE WAS BECAUSE THESE DEFENDANTS IN THEIR
21 TRAFFICKING WERE HEADED TO VIRGINIA AND GOING STRAIGHT
→ 22 BACK TO MIAMI. THIS POISON WAS GOING TO GET DROPPED OFF
23 AND MONEY WAS COMING BACK.

24 THAT'S THE STATE'S POSITION, LADIES AND
25 GENTLEMEN, AND IT MAKES SENSE. THEY DIDN'T HAVE ANY

COUNTY OF Dillon

IN THE COURT OF COMMON PLEAS

Johnny Jones

Plaintiff(s)

CIVIL ACTION COVERSHEET

2011-CP-17-153

vs.

State of South Carolina
Defendant(s)

(Please Print)

Submitted By: _____

Address: _____

SC Bar #: _____

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 filled out completely, 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 (certificate 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) ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Slander/Label (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (450) ☐ Other (499)
Inmate Petitions ☒ PCR (500) ☐ Sexual Predator (510) ☐ 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) ☐ Other (799)	Administrative Law/Relief ☐ Reinstate Driver's License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture (840) ☐ 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) ☐ Public Service Commission (990) ☐ Employment Security Comm (991) ☐ Other (999)
Special/Complex/Other ☐ Environmental (600) ☐ Pharmaceuticals (630) ☐ Automobiles Arb. (610) ☐ Unfair Trade Practices (640) ☐ Medical (620) ☐ Out-of-State Depositions (650) ☐ Other (699)			

Submitting Party Signature: Johnny JonesDate: 5/5/11

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.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2011-CP-17-0153
COUNTY OF DILLON	)	
	)	
Johnny Jones,	)	
S.C.D.C. No. 318253,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed May 6, 2011, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Dillon County Clerk of Court's orders of commitment. The Dillon County Grand Jury indicted the Applicant at the May 2006 term of the Dillon County Grand Jury for trafficking cocaine, between 100-200 grams (2006-GS-17-0441). Lois E. McMillan, Esquire represented the Applicant.

After the State brought the case to trial, the Applicant was found guilty. On October 20, 2006, the Honorable John L. Breeden, Jr. sentenced the Applicant to twenty-five (25) years imprisonment.

A notice of appeal was filed at the South Carolina Court of Appeals. Robert M. Pachak, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The Court of Appeals affirmed the Applicant's conviction and sentence. State v. Jones, Op. No. 2008-UP-715 (S.C. Ct. App. filed December 18, 2008).

Attached herewith and incorporated herein by reference are the records of the Dillon County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the appellate records.

II.

In his application for post-conviction relief the Applicant alleges he is being held in custody unlawfully for the following reason:

1. Ineffective assistance of trial counsel:
 - a. Advised the Applicant to go to trial with a ten person jury.
 - b. Failure to quash indictment.
 - c. Failure to challenge the legitimacy of the traffic stop.
 - d. Failure to move for the trial judge to recuse himself.
 - e. Failure to move for a directed verdict on the grounds of insufficient evidence.
 - f. Failure to object to defective chain of custody.
2. Ineffective assistance of appellate counsel:
 - a. Failure to raise the issue of chain of custody.
3. Prosecutorial misconduct.

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of a "reasonableness within professional norms" for a defense attorney.

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 on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation

within the range of competence required in criminal cases. The courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). 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. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington 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, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

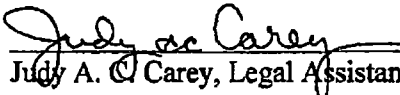
October 19, 2011

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DILLON	)	
	)	
	)	2011-CP-17-0153
	)	
JOHNNY JONES, 318253	)	
	)	
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** of the Respondent in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Johnny Jones, 318253
Lee Correctional Institution
990 Wisacky Highway
Bishopville SC 29010**

DATED this 19th day of October, 2011.


Judy A. Carey, Legal Assistant
For Respondent

State of South Carolina) In the Court of Common Pleas
) Seventeenth Judicial Circuit
 County of Dillon) 2011-CP-17-0153

Johnny Jones,)
)
 Plaintiff,)
)
 Vs.) Transcript of Record
)
)
 The State of South Carolina,)
)
 Defendant.)
)
 _____)

July 21, 2014
 Dillon, South Carolina

B e f o r e:

The Honorable Judge Thomas A. Russo

A p p e a r a n c e s:

J. Thomas, Esq.
 Attorney for the Plaintiff

Tristan Shafffer,
 Attorney for the Defendant.

Bonnie H. Kelly, CVR
 Circuit Court Reporter

I N D E XWITNESS/DESCRIPTION PAGE NO.

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EXHIBITS

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1 (On the Record 11:39 a.m.)

2 THE COURT: Ready to proceed?

3 MR. THOMAS: Yes, sir. If it please the Court? This
4 is the case of *Johnny Jones vs the State of South Carolina*.
5 It's Case No. 2011-CP-17-00153.

6 Mr. Jones was indicted in May of 2006, for trafficking
7 cocaine, 100 to 200 grams. He was represented on the
8 charge by Lois McMillan. He went to trial on October 17
9 through 20, 2010 before the Honorable John L. Breeden, Jr.
10 and a jury. The jury found him guilty as indicted. Judge
11 Breeden sentenced him to 25 years.

12 An appeal was filed by Robert Paycheck, The Office of
13 Appellate Defense. The Court of Appeals affirmed the
14 conviction in unpublished opinion 2008-UV-715.

15 He did file his PCR on May 6, 2011, alleging
16 ineffective assistance of counsel and prosecutorial
17 misconduct, and Mr. Shaffer has subsequently filed an
18 amendment basically alleging ineffective assistance of
19 counsel on several different grounds.

20 The State is ready to proceed. I'll turn it over to
21 him.

22 THE COURT: All right.

23 MR. SHAFFER: Your Honor, I think we can go ahead and
24 jump into this. Just to make sure, I believe I filed this,
25 but I want to read through it.

1 The first supplemental ground would be ineffective
2 assistance of appellate counsel for failure to argue that
3 the drugs should have been suppressed based off the
4 termination of estoppel.

5 I -- I believe this was filed. Do you have in your
6 packet something that was filed in August -- July or August
7 of last year?

8 MR. THOMAS: I don't think he has the file copies. I
9 ---

10 THE COURT: I do.

11 MR. THOMAS: --- don't have the copies myself.

12 THE COURT: (As read) "July 15, 2013. Supplemental
13 grounds for Post Conviction Relief."

14 MR. SHAFFER: All right. Thank you, Your Honor. I
15 just want to make sure that that's preserved through the
16 argue -- arguing those grounds before we begin.

17 If you -- if you'd like, I -- I believe we can just go
18 ahead and begin with -- with Mr. Redmond.

19 THE COURT: All right.

20 MR. THOMAS: And -- and I think you need to -- he
21 needs to just amend to include the failure to convey ---

22 MR. SHAFFER: Oh. Thank you ---

23 MR. THOMAS: Yeah.

24 MR. SHAFFER: --- very much. There's also another
25 ground that was not amended then.

1 After this hearing, I learned that there was a plea
2 offer conveyed that was not conveyed to my client. And we
3 would argue that it was ineffectiveness for failing to --
4 or ineffective assistance of counsel for failure to convey
5 that to my client; and believe that my client actually
6 would have accepted that plea offer had it been conveyed to
7 him.

8 THE COURT: All right. The State has no objection to
9 that amendment?

10 MR. THOMAS: (No audible response.)

11 THE COURT: All right. We'll -- we'll take up that
12 issue as well.

13 MR. SHAFFER: Thank you, Your Honor. Applicant will
14 call Kenard Redmond.

15 KENARD REDMOND, having been first
16 duly sworn, testifies as follows:

17 DIRECT EXAMINATION

18 BY MR. SHAFFER:

19 Q Good morning, Mr. Redmond.

20 A Good morning.

21 Q You prosecuted this case, correct?

22 A I did.

23 Q Okay. Tell us a little bit about your background.

24 A My background?

25 Q Yes, sir.

DIRECT EXAMINATION BY TRISTAN SHAFFER - KENARD REDMOND

7

1 A Graduated law-school 1993. Licensed -- well, started
2 with the Solicitor's Office January of 2004. Stayed here
3 for about a year and a half/two years. Left, went into
4 private practice for a few years. Came back to the
5 Solicitor's Office in '97, stayed another couple years.

6 Left and went into private practice with the Saleeby
7 Firm in 1998, stayed there five years. And then came back
8 to the Solicitor's Office in August of '03, and have been
9 back ever since. And I currently one of two Deputy
10 Solicitors; and of course, I work with Solicitor Will
11 Rogers.

12 Q Okay. And you prosecuted the case against Johnny
13 Jones, correct?

14 A That is correct.

15 Q Okay. And Arte Burns was co-defendant, right?

16 A Yes.

17 Q Give us a brief factual -- well, do you recall the
18 case?

19 A I recall the case. The only -- the main thing I can't
20 recall, I can't recall which one of them was driving.
21 There was a driver and a passenger. We prosecuted both of
22 them. Got convictions of both of them, if I recall
23 correctly. It was trafficking heroin, I think it was; and
24 they were both given the mandatory 25-year sentence.

25 Q Okay. Did it -- did it come out of a traffic stop?

1 A It did. On -- on 95, in Dillon County.

2 Q Were these guys from out of state?

3 A They were from Florida, if I recall correctly.

4 Q Okay. And this occurred in Dillon County, right?

5 A That is correct, yes.

6 Q And as a result of your prosecution -- well, during
7 the course of your prosecution, do you recall conveying any
8 sort of a plea offer?

9 A I recall -- I do recall there being -- there being
10 discussions. Now, as it relates to the Defendant,
11 obviously I never had any direct contact with him.

12 And the nature of it, and I -- I'd have to remember,
13 and it seems like I might have actually done an affidavit
14 of something along those lines, and I might need to refer
15 to that because I don't remember the exact circumstances.

16 The thing I can't recall and swear to is whether or
17 not I specifically told the attorneys. I know David Watson
18 was one of the attorneys involved and he represented Mr.
19 Burns.

20 And my recollection is that, throughout any
21 discussions, it was pretty much said that this was going to
22 be a trial. And I may have mentioned something around --
23 for some reason eight years stands out in my head. I
24 remember eight years. But as it relates to the nature of
25 that being conveyed, I cannot say because my recollection

DIRECT EXAMINATION BY TRISTAN SHAFFER - KENARD REDMOND 9

1 is that the attorneys had informed me that their clients
2 wanted trials.

3 Q Okay. Now, if could, I -- I actually have an unsigned
4 copy of the affidavit ---

5 A Yes. And that'll be fine because I think when I did
6 that I actually had the benefit of -- of reviewing some
7 stuff.

8 (Mr. Shaffer hands a document to the witness.)

9 A Okay. Yes. It does indicate that I'd spoken to --
10 well, this specifically says "Ms. McMillan," but I also
11 remember talking with Mr. Watson about -- about a plea to
12 eight years -- about eight years under the possession with
13 intent to distribute portion of that particular statute.
14 And that my understanding was that their clients were not
15 interested in any kind of plea.

16 So I can't say whether or not it was communicated, but
17 I do remember eight years being tossed around.

18 Q Okay.

19 A I do remember that. And the reason I remember it is
20 because interestingly, after the trial, one of them sent
21 word or something through one of the jailers about the fact
22 that, "Oh. Well, they would have taken eight years."

23 Now, you know people say stuff after the trial all the
24 time, but I cannot say whether or not -- and -- and let me
25 just say this, knowing Ms. McMillan as I have for the last

1 20 years, and they -- literally when I started practicing
2 law -- I'd have no reason to doubt anything that she would
3 say because she's never lied to me.

4 And -- and I do remember the fact that, you know, I
5 was told that the clients wanted a trial. That they wanted
6 a trial. And so -- but that's pretty much the best I can
7 tell you because I had no direct contact with either one of
8 the Defendant's obviously because they had lawyers.

9 Q Okay. And the eight years, was that tossed from your
10 side over to their side, or ---

11 A Oh, no. That was something that I threw out just
12 to see ---

13 Q Okay.

14 A --- if we could get a plea. And if my recollection is
15 correct, they weren't entertaining any kind of plea offers;
16 because, I mean, we ended up having to try the case, and it
17 was not one of those situations when we sat down before
18 trial, you know, when you the pull the jury -- you know how
19 that happens.

20 Q Uh-huh.

21 A You pull the jury, you sit down, and try to negotiate.
22 There wasn't any of that. It was literally pull the jury
23 and go to trial.

24 So that's why I get the sense that, from what they
25 were telling me as far as their clients's positions, I

DIRECT EXAMINATION BY TRISTAN SHAFFER - KENARD REDMOND 11

1 don't have any reason to doubt that because of the fact
2 that we did not engage in any substantive sit down
3 negotiations in this case.

4 Q Okay. But -- now, with the -- with your experience,
5 you've prosecuted a lot of drug charges in Dillon County,
6 right?

7 A Over the years. Not lately, but over the -- I think
8 this actually the last one that I really did a drug case on
9 in Dillon County.

10 Q Okay. But as a -- not necessarily as a Deputy
11 Solicitor, but as a Assistant Solicitor, you would have
12 prosecuted a lot of them.

13 A I did.

14 Q Okay. And generally -- is it the practice of the
15 Fourth Circuit Solicitor's Office generally to make offers
16 in drug cases?

17 A It -- it is. I mean, we usually do make offers in
18 drug cases and -- and -- and I mean, we make offers in -- I
19 say most non-violent type cases. But in drug cases, it's
20 not unusual for us to make offers.

21 Q Okay.

22 A That's -- I would say it's standard practice.

23 Q And there's -- and he was facing, off the original
24 charge, 25 to 30, right?

25 A I think that's correct.

1 Q Okay.

2 A I know it was at least 25 years ---

3 Q 25 minimum.

4 A --- that he was facing. Uh-huh.

5 Q Okay.

6 MR. SHAFFER: No further questions.

7 THE COURT: Mr. Thomas.

8 MR. THOMAS: May it please the Court?

9 CROSS-EXAMINATION

10 BY MR. THOMAS

11 Q Mr. Redmond, so this was an actual offer? It wasn't
12 just a discussion about, you know, "Hey, go and ask your
13 client if he'll take eight?"

14 A And -- and -- and see -- and it's -- it's -- and
15 again, I'm going by recollection. And that's an
16 interesting question because sometimes you may have a
17 discuss -- "Well, will they plead to eight years or
18 whatnot."

19 So I know eight years was tossed out. I cannot tell
20 -- I know it was not written. It wasn't like I sent a
21 written offer of eight years because normally that's what I
22 would do. I would -- you know, I would -- I think at that
23 time I would fax an offer. I would do it, fax it to them
24 on the offer sheet saying, you know, "This is the offer:
25 eight years."

1 Don't think that was one in this case, don't recall it
2 being done in this case. And -- and I think that when that
3 was mentioned, again, that may have been something in
4 passing, Well, will he plead to eight years," which is what
5 we do sometimes.

6 I wish I could be sure and tell you exactly how that
7 came about, but I can tell you eight years was tossed out.

8 Q Do you remember what -- about what date that was?

9 A I don't. I know it was not too long before the trial.
10 That's the best I can -- I don't even think it was the day
11 of trial.

12 I think this was something that may have been
13 discussed before trial. But the day of trial, my
14 recollection is we literally went in, pulled the jury, and
15 -- and started the trial with Judge Breeden.

16 Q Okay. And so just sort of, to the best of your
17 recollection, was it a couple of months beforehand, weeks
18 beforehand, or would it have been early in the case?

19 A They were incarcerated, so -- and I don't think they
20 stayed in jail that long compared to -- because one of the
21 reasons we went ahead and tried it was because they were
22 incarcerated. So it would have -- it -- it wouldn't have
23 been a long period of time prior to trial because I'm
24 thinking they were in jail that long before the trial if my
25 recollection is correct.

1 MR. THOMAS: Thank you, Mr. Redmond.

2 THE COURT: Redirect?

3 REDIRECT EXAMINATION

4 BY TRISTAN SHAFFER:

5 Q Mr. Redmond, in cases when you say, you know, "Would
6 your client take eight years," if she would have came back
7 and said "yes," you would have offered -- you would have
8 given them eight years, is that ---

9 (Mr. Redmond and Mr. Shaffer speak simulataneously.)

10 A That's true. I would have -- I mean, if they had
11 taken ---

12 Q --- right? You would have recommended eight ---

13 A --- eight years, I would have given it to them.

14 Q Okay.

15 MR. SHAFFER: No further questions.

16 THE COURT: All right. Thank you very much, sir. You
17 may step down.

18 (The witness exits the stand.)

19 THE COURT: Any objection to Mr. Redmond being
20 excused?

21 MR. SHAFFER: No, Your Honor.

22 MR. THOMAS: No objection.

23 THE WITNESS: Thank you, Judge. I'll probably sit
24 around a little bit ---

25 THE COURT: Sure. I'd be happy to have you. Just let

DIRECT EXAMINATION BY MR. SHAFFER - LOIS MCMILLAN

15

1 you know that you're free to go whenever you decide to.

2 All right.

3 MR. SHAFFER: Your Honor, Applicant calls Lois
4 McMillan to the stand.

5 THE COURT: All right. Ms. McMillan, if you'd please
6 come around to be sworn.

7 LOIS MCMILLAN, having been first
8 duly sworn, testifies as follows:

9 THE COURT REPORTER: Would you state your name,
10 please?

11 THE WITNESS: Lois, L-o-i-s; Bargle, B-a-r-g-l-e;
12 McMillan, M-c-m-i-l-l-a-n.

13 DIRECT EXAMINATION

14 BY TRISTAN SHAFFER:

15 Q Good morning, Ms. McMillan.

16 A Good morning.

17 Q You represented Johnny Jones, correct?

18 A I did.

19 Q Okay. And tell us a little bit about how you came to
20 represent him.

21 A I was one of two -- well, I was the Assistant Public
22 Defender. The Public Defender had died in office,
23 tragically. And David Watson and I were both hired --
24 (coughs)-- excuse me -- I've been driving all morning --
25 okay. And that's how I became his attorney.

1 Q Okay. And just for a little bit of background, were
2 you a full-time employee for the Public Defender's Office?

3 A No, I was not.

4 Q Okay.

5 A This was part-time in addition to my full-time
6 practice.

7 Q Okay. So it was basically a contract for you to
8 handle all the public defending?

9 A Yes, sir, it was.

10 Q Okay. Now, you said David Watson assisted or that
11 he represented Artie Burns; is that right?

12 A That's correct.

13 Q Okay. Going into this case, what was your strategy
14 for trial?

15 A Our strategy primarily was that the *Pichardo* case was
16 going to take priority in our minds; and particularly as
17 far as it came to Johnny because he was a passenger in the
18 vehicle.

19 And I felt very strongly that based on what I
20 considered to be inconsistencies in the actual exhibits
21 themselves as far as the drugs and what was actually
22 presented to the jury and the contradictions in the
23 testimony from the various state's witnesses, that His
24 Honor would rule in our favor on the *Pichardo* issue.

25 Q Okay. And the *Pichardo* issue is a -- that involved

DIRECT EXAMINATION BY TRISTAN SHAFFER - LOIS MCMILLAN 17

1 a suppression, correct?

2 A That's correct.

3 MR. SHAFFER: Okay. And Pichardo is spelled P-i-c-h-
4 a-r-d-o, and it's 367 South Carolina 84. Your Honor, I
5 apologize, I only have one copy ---

6 A Is that a question?

7 Q Yes.

8 A Okay.

9 Q Is your recollection of the *Pichardo* case -- you
10 don't have to answer that. I'm doing it for the Court
11 Reporter.

12 A P-i-c-h-a-r-d-o.

13 Q Okay. So you believed that the drugs were going to
14 get suppressed, right?

15 A Yes, sir.

16 Q Okay. And you made a motion prior to -- prior to
17 trial?

18 A Yes.

19 Q Okay.

20 A That's the best of my recollection we did.

21 Q And what was the result of that motion?

22 A The judge took it under advisement. If I recall, he
23 took it under advisement overnight.

24 Q Okay.

25 A And he chose not to take our position.

1 Q Okay. And --

2 A He felt like that there were some inconsistencies that
3 wouldn't warrant *Pichardo* actually applying in Johnny's
4 case.

5 Q Tell us about the stop. Do you recall?

6 A I reviewed it, yes.

7 Q Okay.

8 A And in this stop, what concerned me was, basically,
9 they had been told to go, that they were free to go.

10 And Sergeant Lane, I believe, continued them in
11 conversation. I think Johnny was trying to get his coat out
12 of the car, and at some point Sergeant Lane actually pulled
13 a weapon on him. But this was after, I thought, that they
14 were free to go and go on about their business.

15 Q Okay. So ---

16 A And as a result, he was then arrested.

17 Q Okay. He was arrested and after the officer told
18 him he could go, right?

19 A After he made that statement to Mr. Burns, and I
20 assume, since Johnny was the passenger, yes.

21 Q Okay. And then they did the search and found the
22 drugs, correct?

23 A That's my understanding.

24 Q Okay. And that was the basis of your argument to the
25 Court, right?

DIRECT EXAMINATION BY TRISTAN SHAFFER - LOIS MCMILLAN 19

1 A Correct.

2 Q For why it should be suppressed. And you cited
3 Picaro -- the *Pichardo* case?

4 A Yes, I did. And what -- may I say something?

5 A Yes, ma'am.

6 Q What really bothered me was a week or two later, in
7 this same circuit, a different judge heard this same
8 argument. And it's my understanding that it was upheld, and
9 I really was disappointed.

10 I see Mr. Redmond shaking his head.

11 This is a -- I felt like if there could -- there could
12 not have been a case more factually similar to Johnny's than
13 the *Pichardo* case; and I was so, so disappointed.

14 It was a recent case, admittedly, and I do believe
15 Judge Breeden did his best; but I felt like, with the
16 *Pichardo* case, that his ruling should have been different.
17 Particularly, as to Johnny.

18 Q Okay. Did y'all discuss *Pichardo* and the suppression
19 prior to trial?

20 A Did who discuss it?

21 Q Did you discuss it with Johnny?

22 A With Johnny?

23 Q Yeah.

24 A Oh, I'm sure I did. Yes, sir.

25 Q Okay.

1 A It was major.

2 Q Now, do you recall any plea negotiations during this
3 trial?

4 A No sir, I don't. But I do -- Mr. Redmond said we'd
5 known each other 20 years, and we actually are friends
6 outside the courtroom, believe it or not.

7 But I'm a prolific taker of notes and especially under
8 the circumstances that I was hired. When Mr. Ingram passed
9 away, there was not one file of any defendant in Dillon
10 County able to be located. I had nothing to start with
11 except people in jail and warrants coming in.

12 And so everything I did I made notes. And I still do
13 that, that's just my habit. And I did find a note.

14 Apparently David Watson was appointed before me, but
15 the Clerk realized there was a mistake because he had also
16 been appointed for Artie Burns. So I was then appointed for
17 Johnny.

18 And I met with Kenard, my notes say two hours, on July
19 15, 2006. And based on the notes, if I may, Kenard told me
20 that my client was in jail, that he had an extensive record.
21 And I told Kenard I have nothing, nothing at all; not even
22 an appointment sheet, which I didn't get until three or four
23 days later.

24 He said he was thinking about offering a -- letting
25 him plead to five years; plea to trafficking first. And

DIRECT EXAMINATION BY TRISTAN SHAFFER - LOIS MCMILLAN 21

1 then he talked -- we went on and we talked about the ICE
2 stop and that Artie was the driver. It was a rental vehicle
3 in a third party's name, and that I could see the video
4 after I talked with David Lane. But that was -- my notes
5 say two hours because I had to keep track of my time.

6 Q Okay. Now, do you recall discussing a possible plea
7 offer with my client?

8 A No, sir. There would have been no reason to because
9 at that point, he didn't know me, I didn't know him.

10 Q Okay.

11 A And there was no offer. I mean, it was just a
12 discussion that I think Kenard was throwing out that that
13 might be a possibility.

14 Q Okay. But did you -- do you recall at any point
15 discussing a plea offer with my client, with Mr. Jones?

16 A No, sir.

17 Q Okay.

18 A I don't think there was one.

19 Q Okay. And you don't recall ...

20 Mr. Shaffer: Court's indulgence.

21 (Brief pause.)

22 Q After the suppression hearing was denied, did you
23 discuss with him what his options were?

24 A Yes. And I did file a notice of intent to appeal.

25 Q Okay. And now, during the closing argument -- and I

1 reference this at one point during my objection -- do you
2 have a copy of the transcript?

3 A Yes, I do. One moment.

4 Q Okay.

5 (Brief pause.)

6 Q Well, before we get into going through the transcript,
7 what evidence did they have or what evidence did they try to
8 present to show that my client was -- knew about the drugs
9 being in the car?

10 A I recall a rental agreement and -- and the drugs that
11 were sitting out that we introduced.

12 Q Okay. But is it -- you said that they're -- in your
13 recollection, it's in plain view that they were sitting out?

14 A No. I'm saying they were sitting out at court. It
15 took them a long time to find the drugs in the vehicle.

16 Q Okay. And the drugs in the vehicle, was there
17 anything that they said, "Well, clearly he's -- he knew
18 about the drugs because of this," or anything like that? Do
19 you recall any -- any allegation of any evidence that showed
20 that they were his drugs versus the co-defendant's drugs?

21 A No, sir.

22 Q Okay. If you could go to page 333.

23 A 3-0 ...

24 Q 333.

25 A I've got that one flipped back myself.

DIRECT EXAMINATION BY TRISTAN SHAFFER OF LOIS MCMILLAN 23

1 Q And if you could review line 4 on that page, just
2 either to yourself or you can aloud; to line 4 and the page
3 after that.

4 A Read it out loud?

5 Q Sure.

6 A (As Read): "Now, just to quickly recap, ladies and
7 gentlemen, last names, riding all the way from Miami, they
8 don't know each other, don't even agree and can't ---

9 MR. SHAFFER: I -- I apologize.

10 THE COURT: Excuse me.

11 MR. SHAFFER: That -- that should be on line 4 on 333.

12 THE COURT: Line 4 on page 333?

13 MR. SHAFFER: Yes, sir.

14 THE COURT: Where it says ---

15 THE WITNESS: Ladies and gentlemen ...

16 THE COURT: --- "Ladies and gentlemen"?

17 MR. SHAFFER: Yeah.

18 THE COURT: Okay.

19 A Okay. (As Read): "Ladies and gentlemen, we've talked
20 about wars. I talked about that earlier in my closing, but
21 there's another war that's been going on for a long time,
22 that being the war on drugs.

23 "Let me just say this: David Lane was the first line
24 of defense in that war, the war to help ensure that
25 individuals, such as these defendants, do not have the

1 opportunity to traffic and transport their poison and infect
2 the bloodstream of this county."

3 THE WITNESS: Keep going?

4 MR. SHAFFER: Yes, please.

5 A (As read): "But guess who is the last front, the
6 final front in that particular war is, ladies and gentlemen?
7 That would be you. This is where the battle lines are
8 drawn. But yet, this is where the battle itself culminates,
9 with you ladies and gentlemen.

10 "Because here today, with your verdict, we have the
11 opportunity to send a message loud and clear, up and down
12 the east coast of this nation, we will not tolerate the
13 highways in our county to be utilized to transport this
14 poison.

15 "And ladies and gentlemen, I assure you that message
16 will be heard loudly. It will be heard clearly. And again,
17 individuals such as these defendants will know full well
18 that we ain't going to take it anymore. We are not going to
19 take your transporting and trafficking this poison through
20 our county anymore. Period.

21 "I thank you and wish you godspeed in your
22 deliberations."

23 Q And that was the end of the State's closing argument,
24 correct?

25 A It was.

DIRECT EXAMINATION BY TRISTAN SHAFFER - LOIS MCMILLAN 25

1 Q Okay. Did you find that objectionable?

2 A I do now.

3 Q Okay.

4 A Looking back, I do.

5 Q But you don't recall making an objection on that?

6 A I didn't. But I read a case just in the last year or
7 so that clearly said that this type of comment by the
8 solicitor would be grounds for reversal, or you know, for a
9 new trial. And I'm sorry, I don't remember the case.

10 Q Okay.

11 A Because it puts an onerous burden on that jury to keep
12 the county clean. It doesn't have them focusing on Johnny.

13 Q Okay. Well, could that case be *State v Liverte*, L-I-
14 v-e-r-t-e?

15 A And what's the date?

16 Q It's a 1999 case, Court of Appeals.

17 A I couldn't say.

18 Q It might ---

19 A I'm sorry.

20 Q Okay. And just to recap, there wasn't a whole lot of
21 evidence saying that the drugs they found in that car
22 belonged to my client versus the co-defendant.

23 A Correct.

24 MR. SHAFFER: Okay. No further questions.

25 MR. THOMAS: May it please the Court?

CROSS-EXAMINATION BY MR. THOMAS - LOIS MCMILLAN

1 THE COURT: Yes, sir.

2 CROSS EXAMINATION

3 BY MR. THOMAS:

4 Q Good morning, Ms. McMillan.

5 A Good morning.

6 Q Thanks for being with us.

7 A Thank you.

8 Q Just briefly, how much -- how much experience -- how
9 long had you been practicing when you got assigned to this
10 case?

11 A I was -- I passed the Bar in '79, and I was admitted
12 in '79.

13 Q And ...

14 A But I was not -- I had not done a lot of criminal law,
15 if that's what you're getting at.

16 Q Just -- just basically sort of background,
17 education. That's fine.

18 You -- I believe you said you were appointed to this
19 case. Do you remember, was that July 19 you got appointed?

20 A Yes, sir. It looks like it was because that was the
21 day I wrote my letter to the Magistrate.

22 Q And did you also file for discovery at that time?

23 A I did.

24 Q And did you ever have a chance to review that

CROSS-EXAMINATION BY MR. THOMAS - LOIS MCMILLAN

1 discovery with Mr. Jones?

2 A I did.

3 Q And I believe you testified that you discussed the
4 fact that your -- your defense to this was really to
5 challenge the traffic stop?

6 A Correct.

7 Q Okay. Did you ever promise him that that defense
8 would be successful?

9 A Oh, no, sir.

10 Q So you basically advised him that that was still up to
11 the judge, and that you were kind of rolling the dice to
12 take it to trial?

13 A Yes, sir. I would -- I would not be able to make some
14 promise like that, ever.

15 Q Did you have an opportunity to meet with Mr. Jones
16 while he was in jail on July 26th? Is that in your notes?

17 A I met with Johnny several times at the jail, yes, but
18 I -- I can't -- let me see.

19 (Brief pause.)

20 A Yes, I did. I had a lengthy meeting with him on that
21 day.

22 Q What'd you discuss in that meeting?

23 A Again, I have to refer to my notes. We discussed
24 the charge that had been brought against him, the fact that

CROSS-EXAMINATION BY MR. THOMAS - LOIS MCMILLAN

1 I had not received any SLED reports at that point. We
2 talked about the amount of the drugs.

3 And I do have a note, I must say, that on July the 5,
4 there was an offer made. Well, it doesn't say made. It
5 says (as read): "Five years plea to trafficking first."

6 And I can only assume -- and I stand corrected then --
7 that that was based on my conversation with Kenard, and that
8 Johnny and I did discuss that.

9 Q And after reviewing your notes, do you recall what his
10 position was on that plea? Did he want to accept it or ---

11 A Apparently not because we went on for quite
12 some time.

13 He said he was in the vehicle and Artie Burns was the
14 driver -- he didn't know his name -- and that there was a
15 video of the stop. And he says that Artie had allowed the
16 search. And apparently the drugs were found under the spare
17 tire, and Johnny told me that the -- he thought there were
18 two clear plastic bags.

19 You want me to keep going about that meeting?

20 Q Sure.

21 A He said he had many priors. He had had eight years in
22 prison from '90 -- in '97, I believe; and then in '92, three
23 years and four months.

24 He gave me the numbers and names of some people in Key

CROSS-EXAMINATION BY MR. THOMAS - LOIS MCMILLAN

1 West and Miami, who I went -- who I called when I got back
2 to my office. One was a Detective McLain, who said that
3 some of the charges in Florida were: Resistant --
4 resistance without violence to an officer; concealed weapon;
5 firearm -- felony possession of a firearm; that Johnny was a
6 career criminal in Florida

7 And I called the State's attorney. He said -- I think
8 his name was David Shapiro. He said -- he gave me a case
9 number. He said that the same date a warrant had been
10 issued for Johnny, for his arrest, was the same date he was
11 also to have gone to court on some other charge.

12 And he would -- he was considered a career criminal
13 and would get life if found guilty down there. And he said
14 if Johnny would cooperate down there, they would -- they
15 would assist him in his case.

16 Q And I guess -- so at any point in your meetings,
17 did Mr. Jones ever ask you to go find him a plea offer?

18 A No, sir.

19 Q Do you still have the transcript before you?

20 A I do.

21 Q Can I get you to look at page 322?

22 A Okay.

23 Q And you can just read it to yourself and I'll ask you
24 some questions about it. But starting on line 3 all the way

CROSS-EXAMINATION BY MR. THOMAS - LOIS MCMILLAN

1 through line 19.

2 (Brief pause as the witness complies.)

3 A Okay.

4 Q So Mr. Redmond actually started talking about the job
5 -- the -- the -- the difficult job of police and you
6 objected to it at that point?

7 A Yes, I did.

8 Q And the -- the judge overruled your objection or told
9 Mr. Redmond he could ---

10 A To continue.

11 Q I believe that's all I have. You -- as far as the
12 constructive possession argument, you basically argued that
13 Mr. Jones was a passenger in the car? That was your -- one
14 of your defenses is that he didn't know anything about it?

15 A Correct. And -- and I just felt like he -- I've
16 rented so many cars myself and I even told the jury that.
17 Mr. Watson was driving a rental at that time, I think, he
18 had had his in the shop. I didn't see how Johnny could
19 possibly know what may or may not be in the vehicle.

20 MR. THOMAS: Thank you, Ms. McMillan

21 THE WITNESS: Okay.

22 MR. THOMAS: That's all I have.

23 RE-DIRECT EXAMINATION

24 BY MR. SHAFFER:

RE-DIRECT EXAMINATION BY BY MR. SHAFFER - LOIS MCMILLAN

1 Q Ms. McMillan, do you mind if I actually saw [sic] that
2 note, the one referencing the five years?

3 A Yes. The one from Kenard's visit to my office or the
4 one with the jail ---

5 Q The one at the jail.

6 A Okay.

7 (The witness hands a document to Mr. Shaffer.)

8 Q You had this marked in your file?

9 A Yes.

10 Q When did you discover this?

11 A It would have been probably the last time this was
12 scheduled. I can't remember why it was continued. It's
13 been continued so many times.

14 Q Okay. So it says (as read): "Offer 7/5/06. Five
15 years, plead to trafficking first."

16 That's the part you're referencing, right?

17 A Yes, sir.

18 MR. SHAFFER: Your Honor, if -- if you would allow us
19 to keep the record open so that we can introduce a copy of
20 this later on, this document right here, this note
21 (indicates)?

22 THE COURT: Yes.

23 MR. THOMAS: I was just going to say that we can run
24 back and make a copy.

25 THE COURT: Yeah. I want Ms. McMillan to have the

1 original, but we can make a copy. Any objection to that,
2 Solicitor?

3 MR. THOMAS: No objection to that being introduced as
4 an exhibit.

5 MR. SHAFFER: Thank you. I -- I might actually pass
6 it up to you ---

7 THE COURT: All right.

8 MR. SHAFFER: --- for exhibit purposes right now.

9 THE COURT REPORTER: Make it a Court's Exhibit?

10 MR. SHAFFER: Yes, ma'am.

11 (Marked Court's Exhibit No. 1, note.)

12 (Brief pause.)

13 THE COURT: Do you need that before you proceed with
14 your questioning?

15 MR. SHAFFER: Your Honor, I apologize. I didn't hear
16 you.

17 THE COURT: Do you need that before you proceed with
18 your questioning?

19 MR. SHAFFER: No, Your Honor.

20 THE COURT: All right. You may proceed then.

21 MR. SHAFFER: Thank you.

22 RE-DIRECT EXAMINATION

23 BY MR. SHAFFER:

24 Q Now, the charges in Florida, they had nothing to do
25 with this offense, right?

1 A Nothing. Uh-huh.

2 Q Okay. And he didn't get any sort of benefit on the
3 charges in Florida by what he did up here, and didn't get a
4 benefit for charges up here for what he did in Florida,
5 right? I mean, to your knowledge ---

6 A They had nothing to with each other.

7 Q Okay.

8 A This was information he gave me as his attorney and as
9 -- and we were trying to figure out where he was as far as
10 what it would do to him in Florida.

11 Q Yes, ma'am. But you never got any sort of indication
12 that they would drop the charges based off of him going to
13 trial up here or anything like that, right?

14 A No, sir.

15 Q And in fact, they said they would help the charges up
16 here if he helped out down there, right?

17 A Who?

18 Q Was that what your testimony was that Mr. Shapiro had
19 informed you that if he helped out in Florida or assisted
20 the government in Florida, that they would assist him with
21 charges up here or try to.

22 A No, sir. If I ---

23 Q Okay, I apologize.

24 A If I indicate ---

25 Q I misunderstood you.

1 A Okay. Mr. Shaffer, if I -- if I said that, I've
2 misspoke.

3 Q Okay. Could you clarify -- but there's -- there was
4 basically no connection, right?

5 A None.

6 Q Okay.

7 MR. SHAFFER: No further questions.

8 THE COURT: Anything further?

9 MR. THOMAS: If I could be allowed one brief question.

10 THE COURT: Sure.

11 RE-CROSS EXAMINATION

12 BY MR. THOMAS:

13 Q You didn't represent him on any of the Florida charges
14 because you're not licensed in Florida, are you?

15 A No, sir. I didn't represent him on any of those.

16 MR. THOMAS: Thank you, Ms. McMillan.

17 THE COURT: All right. Thank you very much, ma'am.

18 THE WITNESS: Thank you, sir.

19 THE COURT: You may step down.

20 (The witness complies.)

21 THE COURT: (To Ms. McMillan) Let me get your -- you
22 can get your original back. There you go.

23 (To the court clerk) And then we'll -- if you'll
24 staple that together and we'll make that a Court's exhibit.

25 (Brief pause.)

DIRECT EXAMINATION BY MR. SHAFFER - JOHNNY JONES 35

(Marked Court's Exhibit No. 2, note, 2 pages.)

THE COURT: All right.

MR. SHAFFER: Applicant calls Johnny Jones.

THE COURT: All right. Mr. Jones, if you'd please
come around to be sworn, sir.

JOHNNY JONES, having been first
duly sworn, testifies as follows:

THE COURT REPORTER: State your name for the record,
please.

THE WITNESS: Johnny Jones.

DIRECT EXAMINATION

BY MR. SHAFFER:

Q Mr. Jones, where are you currently housed at?

A In Lee County prison.

Q Okay. So you're at Lee Correctional Institution.

A Yes, sir.

Q What sentence are you currently serving?

A 25 years.

Q Okay and what was that for?

A Trafficking of cocaine.

Q Okay. And you were represented by Ms. McMillan,
correct?

A Yes, sir.

Q Okay. Where are you from originally?

A Miami, Florida.

1 Q Okay. You have family there? Do you have family
2 there?

3 A Yes, sir.

4 Q Okay. What family do you have there?

5 A Everybody. My mother, kids, everybody.

6 Q Your Mother's here today, right?

7 A Yes.

8 Q Okay. Now, you are currently doing 25 years. That is
9 the minimum sentence for what you were convicted of, right?

10 A Yes, sir.

11 Q Okay. Do you recall the -- do you recall Ms. McMillan
12 informing you about any plea offers that were made?

13 A She was -- she was speaking about getting one, but
14 she, you know, never addressed me with it.

15 Q Okay. Did you ever hear about a eight-year offer?

16 A Yes, sir.

17 Q When did you hear about that?

18 A Round and about when we first -- I think when we first
19 got incarcerated.

20 Q Okay. Did -- is that something she said she was going
21 to try to get or that she actually had?

22 A I mean, she didn't never -- that was what the
23 solicitor was speaking on.

24 Q Okay. Did the solicitor tell you prior to going to
25 trial about a eight-year offer or did you learn that later?

DIRECT EXAMINATION BY MR. SHAFFER - JOHNNY JONES

37

1 Which did ysou ---

2 A I found that in my paperwork.

3 Q In your paperwork? What do you mean "your paperwork"?

4 A In my transcript. That was -- I had a offer for that,
5 but then no one never even explained to me that I was
6 supposed to get that.

7 Q Where in your offer -- where in your transcript did
8 you see that?

9 A I had brought that -- I don't have my transcripts
10 anymore.

11 Q Okay.

12 A I don't have any of my paperwork from trans -- being
13 transferred back and forth to Miami and ...

14 Q Are you sure that I didn't tell you about a eight-year
15 plea offer?

16 A Yes, sir, you told me.

17 Q You -- so I told you about a eight-year offer?

18 A Yeah, later on.

19 Q When did I get appointed to your case?

20 A (No audible response.)

21 Q Was it after your appeal?

22 A Yes, sir.

23 Q Okay. But I'm the one who told you about the eight-
24 year offer?

DIRECT EXAMINATION BY MR. SHAFFER - JOHNNY JONES 38

1 A No. I told you about it, and then you -- you found
2 out about it and told me.

3 Q Are you sure about that? When -- who -- didn't you
4 tell -- do you not recall telling me that -- that you didn't
5 know anything about an offer?

6 A Yeah.

7 Q And then I told you that I talked with Kenard and
8 apparently an offer was made?

9 A Yes, sir.

10 Q But you're saying it's in your transcript. It's not
11 in your transcript, is it? Do you know?

12 A Yes, sir.

13 Q Okay. Are you nervous here today?

14 A Yeah, a little bit.

15 Q Okay. I want you to calm down, okay?

16 A All right.

17 Q Do you recall dates very well?

18 A No.

19 Q Okay. Tell me this: If you would have known prior to
20 trial that you had a eight-year offer, would you have taken
21 it?

22 A Yes, sir.

23 Q Okay. You have charges in the past?

24 A Not in South Carolina.

1 Q In Florida?

2 A Yes.

3 Q Did you go to trial on those or did you plead guilty?

4 A I went to trial with some and -- and I went to plead
5 guilty to some.

6 Q You pled guilty on the other ones? Okay.

7 But you're saying that if there was an eight-year
8 offer that was made to you before trial, you would have
9 taken it?

10 A Yes, sir.

11 Q Why would you have taken it?

12 A 25 years is -- is excessive to -- to what, you know,
13 I'm being convicted of.

14 MR. SHAFFER: Okay. No further questions.

15 MR. THOMAS: I have no questions for this witness.

16 THE COURT: All right. Thank you, sir, you may step
17 down.

18 (The witness complies.)

19 MR. SHAFFER: Applicant has no further witnesses, Your
20 Honor.

21 THE COURT: I'm sorry. What was that?

22 MR. SHAFFER: Oh. The Applicant has no further
23 witnesses.

24 THE COURT: All right. Mr. Thomas, on behalf of the
25 State?

1 MR. THOMAS: The State would just rest on the records
2 before the Court.

3 THE COURT: All right.

4 MR. SHAFFER: Your Honor, I would like to make a brief
5 argument.

6 THE COURT: Yes, sir. I'd be more than happy to hear
7 from you.

8 MR. SHAFFER: Thank you, Your Honor. Regarding the --
9 the plea offer, it's pretty clear that an offer was made.

10 Mr. Redmond was clear. He said he couldn't describe
11 exactly the way it was made, but he had offered them and
12 told them that he would allow Mr. Jones to plead guilty to
13 eight years, with a recommended sentence of eight years.

14 It's also very clear from Ms. McMillan's testimony
15 that -- well, she had indicated that she didn't offer
16 anything. Okay?

17 THE COURT: No. That's not what she testified to.

18 MR. SHAFFER: Well, Your Honor, I believe that -- and
19 I -- I'm not trying to argue with the Court, but during her
20 direct, she said, "No offer was made. I don't believe an
21 offer was made."

22 THE COURT: All right. That's correct and then on
23 cross ...

24 MR. SHAFFER: She -- she changed her statement, Your
25 Honor.

1 THE COURT: Based on?

2 MR. SHAFFER: The -- the note, Your Honor, that she
3 had ---

4 THE COURT: Correct.

5 MR. SHAFFER: --- tabbed prior to this hearing.

6 THE COURT: Correct.

7 MR. SHAFFER: If she had a tabbed note prior to the
8 hearing and then testified on direct when she was making
9 that statement, she was aware of the note.

10 THE COURT: She used the note to refresh her memory,
11 from what I gathered.

12 MR. SHAFFER: Okay. Your Honor, I -- my -- I -- I --
13 I think, Your Honor -- and I -- I'm -- to say that you were
14 going to refresh your memory and you had a tabbed note that
15 you refreshed your memory previously -- and she told you
16 that she had pulled it and reviewed it before this hearing,
17 you know, and she had the tabbed note and then said, "Well
18 no -- no offer was made. But then on cross, I'm going to
19 say that an offer was made," I know I've seen someone's ---
20 whenever you have a note that was tabbed out of your -- your
21 statement that she admits that p---

22 MR. THOMAS: I'm going to object to that, Your Honor,
23 I ---

24 THE COURT: Sustained to that objection.

25 MR. SHAFFER: Your Honor, I'm ---

1 THE COURT: You -- you're -- you're -- you're --
2 you're basically saying that she lied on direct only to
3 change her testimony on cross.

4 MR. SHAFFER: And Your Honor, I don't know exactly
5 what -- what's going on. I'm just saying that it's not
6 consistent with what she had said.

7 I'm not saying that -- that it's necessarily that
8 she's lying intentionally. I'm just saying that she's not
9 consistent in her statements between direct and cross; which
10 I -- I think decreases her credibility or -- or the Court
11 should look at whenever judging credibility in this court.

12 THE COURT: And -- and if I'm not mistaken, that exact
13 thing occurred with Mr. Jones on the stand.

14 MR. SHAFFER: And you're right, Your Honor. I -- I'm
15 not saying that Mr. -- Mr. Jones is consistent with his
16 statement. He's clearly nervous up there. He -- he
17 couldn't -- couldn't -- you know, he was saying stuff that
18 obviously just didn't make sense, Your Honor.

19 This originally came up whenever I talked to Ms.
20 McMillan here about a year ago. Then I called Kenard up
21 later that afternoon and said, you know, "Was there an offer
22 made?" Because it doesn't make any sense to me that in
23 Dillon County, that they're not going to offer something in
24 a drug case because Ms. McMillan told me a year ago that
25 they didn't.

1 So I called Kenard and say, "Was an offer made?"

2 "Yeah. I remember making an offer of eight years."

3 Your Honor, Mr. -- Mr. Redmond had absolutely no
4 reason to lie about this. It's clear that a five -- eight-
5 year offer was not conveyed to my client, Your Honor, I --
6 and I think that, you know, you can certainly say -- despite
7 the inconsistent statement that was given by Ms. McMillan,
8 you can certainly say that Kenard was -- Mr. Redmond -- I
9 apologize -- Mr. Redmond was -- was staying true to the fact
10 that, even though he doesn't understand -- know exactly the
11 wording or the context of the conversation that it came up,
12 but he is aware of the fact the he -- he made a eight-year
13 offer.

14 THE COURT: Well, I think his testimony was he
15 believes that an eight-year offer was made; and I believe
16 Ms. McMillan, through her notes, believes it was a five-year
17 offer --

18 MR. SHAFFER: Yes, Your Honor ---

19 THE COURT: -- based on her notes.

20 MR. SHAFFER: And that was after she -- but she said
21 also said no offer was made. And she had to say, "I have to
22 assume that I conveyed it to my client."

23 THE COURT: She -- in her direct examination, she said
24 she believes she remembered talking to Mr. Redmond, but it
25 was not in the form of an offer. It was simply inquiring,

1 well, you know, would your client -- what would your clients
2 do? Would they take eight years?

3 And she didn't consider that as an offer, but as a
4 discussion -- preliminary discussion. That was her
5 testimony, to that effect, words to that effect..

6 MR. SHAFFER: And Your Honor, if -- if that was so,
7 you know, I -- I believe that it's still something that must
8 be conveyed, even if it was a preliminary discussion. He
9 said he would have honored it. It's -- even if it doesn't
10 have the, you know --

11 THE COURT: But then, Mr. Shaffer, she testified that
12 she conveyed to Mr. Jones the five-year offer, and you
13 asked, "Did he reject that?" And she said, "Well, he must
14 have or we wouldn't have gone forward."

15 MR. SHAFFER: Yes, Your Honor. She made that
16 assumption based off of her notes. She said -- and her
17 exact wording was, "I must assume that he rejected it;
18 otherwise, we wouldn't have ---

19 The COURT: Correct.

20 MR. SHAFFER: --- gone forward."

21 THE COURT: Correct.

22 MR. SHAFFER: And Your Honor, I think that's an
23 unjustified assumption based off of what you have in the
24 notes. You know, it says (as read): "Offer; date, 7/5/08;
25 offer," and then it goes into five years.

1 Your Honor, she had no independent recollection of
2 discussing it. She merely said she must have discussed it
3 with him and he must have rejected it. She has no
4 recollection of that, my client doesn't have any
5 recollection of it.

6 You know, I -- I don't know the context that that was
7 made in, but certainly she never mentioned an eight-year
8 offer that came from the Solicitor's Office.

9 Your Honor, I -- I think that, you know, certainly is
10 at least -- you know, it's a fact finding role of the Court.
11 You can at least make the factual finding that an offer was
12 made from the Solicitor's Office.

13 I -- I think that you can make the finding based off
14 of Mr. Redmond, you know -- you know, rep -- still
15 represents this State and has no good reason for ever
16 testifying the way he did. You know, as a representative of
17 the State, he had no good reason to say, "Hey, an eight-year
18 offer was made."

19 You know, that -- that you know, other than telling
20 the truth, he has no reason to say that. You know, he has
21 no motivation behind that.

22 I -- I think that that was credible testimony that the
23 eight-year offer was made. And if you also look at the time
24 frame, the time frame, from what he said, was close to
25 trial.

1 She -- she was talking about something that occurred
2 early on in her representation as well. He's saying, "I
3 must have made it really close to trial. I remember making
4 it -- you know, it wouldn't have been very -- very far from
5 the trial."

6 I -- I think the offer was made sometime, like Mr.
7 Redmond said, later on, and that offer was never conveyed.
8 Whether it was conveyed because she didn't think my client
9 wanted it or any other reason, that's not -- that's not -- I
10 guess that doesn't change the fact that an offer was made
11 and not conveyed.

12 It's still ineffective assistance of counsel, even if
13 she thought, "Well, my client -- or Mr. Jones, might not
14 take this." That's still not a good reason not to convey an
15 offer. And I think that she was under a duty to do that,
16 and I think it's pretty clear that if -- you know, if that
17 offer was made but not conveyed to him, that that's
18 ineffective of counsel warranting a reversal.

19 There's -- you know, I have the other arguments as
20 well that are outlined in my additions that I don't want to
21 waive, of course; but I just -- my primary issue right now,
22 I guess, is the offer.

23 THE COURT: Mr. Attorney General.

24 MR. THOMAS: Just for the record, Your Honor, I think
25 you understand my position. But just so it's on the record,

1 I mean, it's -- despite the discrepancies in the testimony
2 about how many years were offered, I -- I think the record's
3 clear that Mr. Jones was never willing to plead to anything.
4 He was planning on going to trial this entire time.

5 Just to -- to sort of -- so that Ms. -- Ms. McMillan's
6 character isn't impugned anymore, I do have notes where I
7 spoke to her the last time this was on the roster. That's
8 where that July 26 -- that's how I knew to say, "Don't you
9 have notes from July 26?" So she has not recently
10 fabricated that. That's been in there the whole time.

11 You can judge her credibility. She was obviously a
12 little nervous, too, if -- if that's what -- what our
13 standard is here.

14 As far as the other -- the other arguments, I guess
15 the failure to argue against the constructive possession,
16 obviously she did argue that he was just a passenger in the
17 car. The failure to object to the solicitor's closing, she
18 did object. Failure to object to the strong evidence
19 language of the charge. That case saying that is not good
20 law came out after this trial. And that would be the case
21 of -- beg the Court's indulgence a second.

22 (Brief pause.)

23 MR. THOMAS: That is the case of *State v Cheeks*, C-h-
24 e-e-k-s. It's 401 South Carolina 322, and it basically
25 overrules the prior cases which have said the strong

1 evidence of guilt language was appropriate. That case came
2 out in January of 2013, which was well after this trial. So
3 Counsel, at the time of this trial, was under no duty to
4 object to that language in the charge. Failure -- appellate
5 counsel's failures: I would just submit to the Court that
6 -- If I could -- if I could approach?

7 THE COURT: Yes, sir.

8 (Mr. Thomas hands a document to the Court.)

9 MR. THOMAS: Submit for the Court's consideration the
10 case of *State v Artie Burns*, the co-defendant.

11 It's an unpublished opinion, but I think it's -- it
12 can be cited in this case, at least because it bears on the
13 issues as provided by Rule 268.

14 It is Opinion No. 2009 UP 262. That's the co-
15 defendant's direct appeal.

16 Basically they did raise that argument about *Pichardo*
17 and how the trial court failed, and the Appellate Court ---

18 THE COURT: About the what?

19 MR. THOMAS: That the -- that basically, the
20 allegation against appellate counsel, the State's position
21 is, one, it's his burden. There's a presumption that she
22 chose viable issues.

23 Number 2, there's no prejudice from appellate
24 counsel's failure to brief the suppression issue on appeal.
25 And as evidence that they -- there's no prejudice, the co-

1 defendant did brief that issue on appeal and the co-
2 defendant did not win his appeal.

3 So that would be the State's position as far as the
4 allegations of ineffective appellate counsel.

5 THE COURT: All right.

6 MR. SHAFFER: Your Honor, if I may ---

7 THE COURT: Yeah.

8 MR. SHAFFER: --- briefly respond?

9 THE COURT: Sure.

10 MR. SHAFFER: Regarding Artie Burns's appeal -- and I
11 think it could be cited pursuant to the rule. I also don't
12 think it's controlling in any way.

13 Your Honor, I -- he -- Derrick Cheeks and Ricky
14 Cheeks, what he's talking about, I believe it was Derrick's
15 appeal; and you know, even though the Court found one way on
16 that case about that issue, the same issue was briefed for
17 Ricky Cheeks and it went the exact opposite direction.

18 That's the reason that unpublished opinions, you
19 can't cite to them outside of that very case, you know, Your
20 Honor, because sometimes different panels rule differently,
21 Your Honor.

22 And -- and I -- I'm just saying that as a example
23 because in Ricky, I mean, Derrick Cheek's case, you know,
24 the same issue that the Supreme Court found one way onm the
25 Court of Appeals, a panel of them actually, you know, denied

1 the appeal on the exact same issue because they were co-
2 defendant's in the same trial. But the -- and so I don't
3 think Artie Burn's opinion is controlling this case.

4 What I would like to mention also is that I -- I
5 didn't mean to make it sound like I -- I'm accusing Ms.
6 McMillan of lying. What I'm trying to say is that, you
7 know, I think that she anticipated my -- my response and
8 gave it as accurately as possible, which was initially,
9 she'd been maintaining for awhile that no offer was made.
10 She then, you know, indicated that she found a letter, and
11 I'm not saying that she made that letter up. I'm not saying
12 that she falsified anything. I'll never say that. You know
13 I don't think that she would do that.

14 What I'm saying is that letter alone does not say that
15 ---

16 THE COURT: You're talking about notes.

17 MR. SHAFFER: Yeah. Or that note. Those notes alone
18 do not indicate that she somehow -- there's no prejudice in
19 her failing to make an eight-year offer later on.

20 I believe that, you know, you can establish that maybe
21 there was prejudice. Your Honor, I don't know, if that was
22 a five-year offer, if that was ever made. Mr. Redmond tends
23 to think not, that the offer was made later. Very well
24 could have been, "Hey, I approached Kenard about it. He
25 didn't want it." You know, it very well could have been,