

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

MAY 20 2018

S.C. SUPREME COURT

Certiorari to Anderson County

Honorable R. Scott Sprouse, Circuit Court Judge

DAVID MARIO JOHNSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2017-001878

APPENDIX

DAVID ALEXANDER
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

LINDSEY MCCALLISTER
Assistant Attorney General
Rembert Dennis Bldg., Room 519
1000 Assembly Street
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED MARCH 31, 2010	1
APPLICATION FOR POST-CONVICTION RELIEF	192
RETURN.....	206
MOTION TO AMEND POST-CONVICTION RELIEF APPLICATION.....	214
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED FEBRUARY 27, 2017...	221
ORDER OF DISMISSAL.....	253
INDICTMENTS	261

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE CIRCUIT COURT
OF THE TENTH JUDICIAL CIRCUIT
09-GS-04-2668,2669

STATE OF SOUTH CAROLINA,)

PLAINTIFF,)

vs)

DAVID MARIO JOHNSON,)

DEFENDANT.)

TRANSCRIPT OF RECORD

MARCH 31, 2010
ANDERSON, SOUTH CAROLINA

BEFORE: THE HONORABLE R. LAWTON MCINTOSH

FOR THE STATE:

T. MATTHEW BRADLEY, ESQUIRE
TENTH CIRCUIT SOLICITOR'S OFFICE
POST OFFICE BOX 8002
ANDERSON, SC 29622

FOR THE DEFENSE:

BRUCE BYRHOLDT, ESQUIRE
POST OFFICE BOX 2506
ANDERSON, SC 29622

JO RICE
COURT REPORTER

INDEX

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>RE-DIRECT</u>	<u>RE-CROSS</u>
PRE-TRIAL				
JURY SELECTION				6-21
JACKSON V DENNO HEARING				20-
INTRODUCTORY INSTRUCTIONS TO THE JURY				49-
OPENING STATEMENT - MR. BRADLEY				58-60
OPENING STATEMENT - MR. BYRHOLDT				60-
<u>SERGEANT JEFF MOSHER</u>				
MR. BRADLEY	62-78		83	
MR. BYRHOLDT		78-82		
<u>OFFICER JARVIS PITTS</u>				
MR. BRADLEY	84-88			
<u>DEPUTY MARK GREGORY</u>				
MR. BRADLEY	89-108		113-116	116-117
MR. BYRHOLDT		108-113		116
<u>SERGEANT TOMMY CLAMP</u>				
MR. BRADLEY	118-125		129-131	
MR. BYRHOLDT		125-129		131-132
<u>BELINDA LEE</u>				
MR. BRADLEY	133-136		138	
MR. BYRHOLDT		136-138		
<u>MEREDITH LANFORD</u>				
MR. BRADLEY	139-144		148-150	
MR. BYRHOLDT		144-148		
IN CAMERA - ARGUMENT ON ADMISSION OF EVIDENCE				150-157
CHARGE CONFERENCE				158-16

CLOSING ARGUMENT - MR. BRADLEY	164-168
CLOSING ARGUMENT - MR. BYRHOLDT	169-172
CHARGE ON THE LAW	173-181
VERDICT OF THE JURY	187-188
SENTENCING	190
CERTIFICATE	191

EXHIBITS

STATE'S EXHIBITS

S)	1	MIRANDA FORM	91
S)	2	DEFENDANT'S STATEMENT	
S)	3	CRACK COCAINE	157
S)	4	MARIJUANA	122
S)	5	4x6 PHOTOGRAPH	
S)	6	4x6 PHOTOGRAPH	70
S)	7	4x6 PHOTOGRAPH	74
S)	8	4x6 PHOTOGRAPH	
S)	9	4x6 PHOTOGRAPH	70
S)	10	4x6 PHOTOGRAPH	74
S)	11	4x6 PHOTOGRAPH	
S)	12	4x6 PHOTOGRAPH	70
S)	13	4x6 PHOTOGRAPH	74
S)	14	4x6 PHOTOGRAPH	
S)	15	4x6 PHOTOGRAPH	70
S)	16	4x6 PHOTOGRAPH	74
S)	17	4x6 PHOTOGRAPH	

DEFENSE EXHIBITS

NO EXHIBITS ENTERED BY THE DEFENSE

COURT EXHIBIT'S

C)	1	ELECTION OF FOREPERSON	19
C)	2	DEFENDANT'S FULL STATEMENT	
C)	3	CD DISK	47

1 **THE COURT:** ALL RIGHT. MISTER BYRHOLDT.

2 **MR. BYRHOLDT:** MY CLIENT DID NOT SHOW. YESTERDAY, THEY GOT A
3 BENCH WARRANT FOR HIM. I DID SPEAK WITH HIM BY TELEPHONE. HE KNEW
4 THAT THIS CASE WAS -- WE WERE ON THE TRIAL DOCKET TWO WEEKS AGO
5 AND IT WAS PUT BACK FOR THIS WEEK. I INFORMED HIM THAT THE STATE
6 HAD MADE AN OFFER AND THAT HE NEEDED TO COME INTO COURT AND HE
7 TOLD ME HE WOULD BE HERE. YESTERDAY MORNING AT 9:00, HE DIDN'T
8 SHOW. I FINALLY GOT HIM AGAIN AT ABOUT 2:30 IN THE AFTERNOON, TOLD
9 HIM THERE WAS A BENCH WARRANT, HE HAD TO BE IN COURT TOMORROW
10 AND THAT WE WERE GOING TO TRY HIS CASE. MISTER BRADLEY INFORMED
11 ME THAT THE CASE HAD BEEN MOVED UP. I TALKED WITH HIM AND TOLD HIM
12 TO BE HERE AT 9:00 THIS MORNING. HE STILL HASN'T SHOWN. WE'RE READY
13 TO GO FORWARD. IT WILL BE A TRIAL IN ABSENCE. I'VE GOT ALL THE
14 DISCOVERY. MISTER BRADLEY MADE ME AWARE OF A PIECE OF
15 EXCULPATORY INFORMATION THIS MORNING, BUT WE ARE READY TO GO
16 FORWARD. I DON'T KNOW WHAT TIME YOU WOULD LIKE US BACK TO DRAW A
17 JURY.

18 **THE COURT:** I WAS JUST THINKING. I HAVE THIS JURY THAT I BROUGHT
19 IN AT 11:00, THINKING THAT WE WOULD BE SUBSTANTIALLY FURTHER THAN
20 WHAT WE ARE, BUT WHAT IF WE COME BACK AROUND 2:30 AND PICK BOTH
21 JURIES AND THEN WE'LL START YOURS IN THE MORNING

22 **MR. BRADLEY:** ON MISTER JOHNSON'S CASE, MISTER BYRHOLDT
23 REPRESENTS MISTER JOHNSON. THE SOLICITOR'S OFFICE DID NOTIFY
24 MISTER JOHNSON THROUGH THE MAIL WITH A BOND COURT CARD. I WOULD
25 LIKE TO MAKE THAT A COURT'S EXHIBIT JUST TO BE ON THE RECORD

JURY SELECTION

1 THE COURT: SURE. ABSOLUTELY.

2 **MR. BYRHOLDT: NO OBJECTION, YOUR HONOR.**

3 THE COURT: ANYTHING ELSE, MISTER BRADLEY?

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

5 THE COURT: ALL RIGHT. THEN I'LL SEE Y'ALL AT 2:30.

6 (BREAK)

7 THE COURT: ALL RIGHT. SOLICITOR, WILL YOU CALL YOUR CASE,
8 PLEASE.

9 MR. BRADLEY: YES, YOUR HONOR. MAY IT PLEASE THE COURT. THE
10 STATE CALLS THE STATE VERSUS DAVID MARIO JOHNSON, ON INDICTMENT
11 2009-GS-04-2668 FOR TRAFFICKING CRACK COCAINE, TEN GRAMS OR MORE
12 BUT LESS THAN TWENTY-EIGHT GRAMS AND INDICTMENT 2009-GS-04-2669,
13 POSSESSION OF TWENTY-EIGHT GRAMS OR LESS OF MARIJUANA.

14 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN OF THE JURY, WE
15 ARE ABOUT TO BEGIN A NEW CASE, THE STATE VERSUS DAVID MARIO
16 JOHNSON, CHARGED WITH AN INDICTMENT OF CRACK COCAINE AND
17 TRAFFICKING IN MARIJUANA. I'M GOING TO ASK YOU TO LISTEN VERY
18 CAREFULLY TO A FEW QUESTIONS. YOU'VE BEEN THROUGH THE PROCESS A
19 LITTLE BIT, BUT I WANT TO MAKE SURE YOU LISTEN TO THESE QUESTIONS. IF
20 IT APPLIES TO YOU, BE SURE AND STAND AND GIVE US YOUR JUROR NUMBER
21 AND YOUR NAME AND THE ANSWERS.

22 FIRST, HAS ANYONE EVER BEEN RELATED BY BLOOD OR MARRIAGE TO
23 DAVID MARIO JOHNSON? IF SO, WOULD YOU PLEASE STAND. (NO ONE
24 STANDS)

25 HAS ANYONE ELSE ...

JURY SELECTION

1 WITH DAVID MARIO JOHNSON? IF SO, PLEASE STAND. (NO ONE STANDS)

2 THE FOLLOWING IS A LIST OF POTENTIAL WITNESSES IN THIS MATTER.

3 SERGEANT JEFF MOSHER, OFFICER JARVIS PITTS, DEPUTY MARK GREGORY,

4 MEREDITH LANFORD OF THE ANDERSON/OCONEE COUNTY REGIONAL

5 FORENSIC LABORATORY, SERGEANT TOMMY CLAMP, BELINDA LEE OF THE

6 ANDERSON COUNTY SHERIFF'S OFFICE. HAS ANYONE EVER BEEN RELATED

7 BY BLOOD OR MARRIAGE TO ANY OF THESE POTENTIAL WITNESSES THAT I'VE

8 READ TO YOU? IF SO, WOULD YOU PLEASE STAND. (NO ONE STANDS)

9 HAS ANYONE EVER HAD A CLOSE PERSONAL OR SOCIAL RELATIONSHIP

10 WITH ANY OF THESE POTENTIAL WITNESSES THAT I'VE JUST READ FOR YOU?

11 **MR. MCKENZIE:** I'M JUROR #106, MAURICE MCKENZIE. IF I'M NOT

12 MISTAKEN, ONE OF THE POTENTIAL WITNESSES WORKS FOR THE CITY OF

13 ANDERSON. IS THAT CORRECT?

14 **THE COURT:** THAT'S BELINDA LEE OF THE ANDERSON COUNTY

15 SHERIFF'S OFFICE.

16 **MR. MCKENZIE:** I MADE A MISTAKE. I THOUGHT THERE WAS ANOTHER

17 PERSON THAT WORKED FOR THE CITY OF ANDERSON.

18 **THE COURT:** THAT'S QUITE ALL RIGHT. I'D RATHER YOU BE SAFE THAN

19 SORRY.

20 **MR. MCKENZIE:** THANK YOU, SIR.

21 **CLERK OF COURT:** I THINK HE'S TALKING ABOUT JEFF MOSHER.

22 **THE COURT:** OH, YOU MEAN JEFF MOSHER?

23 **MR. MCKENZIE:** I WORK FOR THE CITY OF ANDERSON AND ALTHOUGH

24 WE DON'T HAVE A CLOSE RELATIONSHIP, I DO WORK WITH OTHER OFFICERS

25 IN THE FORCE INCLUDING THE POLICE

JURY SELECTION

1 **THE COURT:** YOU ARE AN EMPLOYEE OF ANDERSON?

2 **MR. MCKENZIE:** RIGHT.

3 **THE COURT:** ALL RIGHT. I'LL TELL YOU WHAT, COUNSEL, WHAT I DID
4 BEFORE WAS, I EXCUSED HIM FOR CAUSE FOR ME.

5 **MR. BYRHOLDT:** NO OBJECTION.

6 **THE COURT:** I'M GOING TO GO AHEAD AND EXCUSE - WHAT IS YOUR
7 NUMBER?

8 **MR. MCKENZIE:** 106.

9 **THE COURT:** 106?

10 **MR. MCKENZIE:** YES, SIR.

11 **THE COURT:** OKAY, SIR. I WILL EXCUSE YOU AND, IF YOU WOULD, NOT
12 TOMORROW -- LET ME SEE THE CLERK BEFORE YOU GO.

13 **MR. MCKENZIE:** I CAN WAIT.

14 **THE COURT:** ALL RIGHT.

15 (THE JUDGE CONFERS WITH THE CLERK OF COURT)

16 **THE COURT:** I'LL TELL YOU WHAT I'M GOING TO DO. I'M GOING TO ASK
17 YOU TO CALL BACK TOMORROW EVENING AFTER SIX. OKAY, SIR? BUT
18 YOU'RE FREE TO GO.

19 **MR. MCKENZIE:** TOMORROW AFTER SIX.

20 **THE COURT:** YES, SIR. THE NUMBER IS ON THAT SHEET YOU WERE
21 GIVEN EARLIER.

22 **MR. MCKENZIE:** VERY GOOD. THANK YOU, SIR.

23 **THE COURT:** THANK YOU VERY MUCH. ANYONE ELSE?

24 **MS. PRESSLEY:** JUROR 125. I THINK I KNOW BELINDA LEE.

JURY SELECTION

1 OFFICE?

2 **MS. PRESSLEY:** YES. SHE DOES SOME THINGS. SHE DOES -- I THINK I
3 KNOW HER.

4 **THE COURT:** OKAY. AND HOW DO YOU THINK YOU KNOW HER?

5 **MS. PRESSLEY:** I THINK HER MOTHER-IN-LAW LIVES ACROSS THE
6 STREET FROM ME.

7 **THE COURT:** OKAY. WOULD THE FACT THAT YOU MAY KNOW MS. LEE
8 PREVENT YOU FROM BEING FAIR AND IMPARTIAL TO BOTH THE STATE AND TC
9 THE DEFENDANT IN THIS MATTER?

10 **MS. PRESSLEY:** NO.

11 **THE COURT:** OKAY. ANY VOIR DIRE FROM THE DEFENDANT, MISTER
12 BYRHOLDT?

13 **MR. BYRHOLDT:** NO, YOUR HONOR.

14 **THE COURT:** FROM THE STATE, MISTER BRADLEY?

15 **MR. BRADLEY:** NO, SIR.

16 **THE COURT:** ANYONE ELSE? (NO ONE STANDS) ALL RIGHT, MISTER
17 BYRHOLDT, WOULD YOU STAND UP AND INTRODUCE YOUR FIRM, PLEASE,
18 SIR?

19 **MR. BYRHOLDT:** MAY IT PLEASE THE COURT. I'M BRUCE BYRHOLDT. I
20 PRACTICE LAW HERE IN ANDERSON WITH THE FIRM OF CHAPMAN, BYRHOLDT
21 AND YON. MY PARTNERS ARE LANIEL CHAPMAN AND PATRICK YON.

22 **THE COURT:** THANK YOU. MISTER BRADLEY?

23 **MR. BRADLEY:** IF IT PLEASES THE COURT, YOUR HONOR. MY NAME IS
24 MATTHEW BRADLEY. I WORK FOR THE SOLICITOR'S OFFICE HERE IN

JURY SELECTION

1 HERE WITH ME DURING THE COURSE OF THIS TRIAL WILL BE SERGEANT JEROME
2 MOSHER OF THE ANDERSON POLICE DEPARTMENT AND ASSISTANT
3 SOLICITOR RAME CAMPBELL.

4 **THE COURT:** HAS ANY MEMBER OF THE JURY PANEL EVER BEEN
5 REPRESENTED BY ANY OF THE ATTORNEYS INVOLVED IN THIS CASE OR BY
6 ANY MEMBERS OF THEIR FIRM? IF SO, WOULD YOU PLEASE STAND. (NO ONE
7 STANDS)

8 HAS ANYONE EVER BEEN RELATED BY BLOOD OR MARRIAGE OR HAVE
9 YOU EVER HAD A CLOSE PERSONAL OR SOCIAL RELATIONSHIP WITH ANY OF
10 THE ATTORNEYS INVOLVED IN THIS MATTER OR MEMBERS OF THEIR FIRM? IF
11 SO, WOULD YOU PLEASE STAND. (NO ONE STANDS)

12 HAS ANY MEMBER OF THE JURY PANEL FORMED OR EXPRESSED AN
13 OPINION ABOUT ANY ISSUE OR MATTER INVOLVED IN THIS CASE? IF SO,
14 WOULD YOU PLEASE STAND. (NO ONE STANDS)

15 IS THERE ANY MEMBER OF THE JURY PANEL AWARE OF ANY BIAS OR
16 PREJUDICE THAT THEY MAY HAVE TO EITHER THE STATE OR TO THE
17 DEFENDANT IN THIS CASE? IF SO, WOULD YOU PLEASE STAND. (NO ONE
18 STANDS)

19 IS THERE ANY MEMBER OF THE JURY PANEL WHO WAS A MEMBER OF
20 THE GRAND JURY FOR ANDERSON COUNTY THAT ISSUED THE INDICTMENTS
21 IN THIS MATTER? IF SO, WOULD YOU PLEASE STAND. (NO ONE STANDS)

22 IS THERE ANY MEMBER OF THE JURY PANEL WHO IS A MEMBER OF OR
23 A CONTRIBUTOR TO ANY GROUP WHICH HAS AS ITS PRIMARY CONCERN THE
24 PROMOTION OF LAW ENFORCEMENT OR VICTIM'S RIGHTS? THOSE GROUPS
25 WOULD INCLUDE BUT ARE NOT LIMITED TO:

JURY SELECTION

1

1 MEMBER OF OR A CONTRIBUTOR TO ANY OF THESE GROUPS OR OTHERS,
2 WOULD YOU PLEASE STAND. (NO ONE STANDS)

3 DOES ANY MEMBER OF THE JURY PANEL KNOW ANY REASON
4 WHATSOEVER WHY HE OR SHE SHOULD NOT SERVE AS A JUROR IN THIS
5 MATTER WITH PARTICULAR EMPHASIS BEING PLACED ON YOUR ABILITY TO
6 BE FAIR AND IMPARTIAL TO BOTH THE STATE AND TO THE DEFENDANT IN
7 THIS MATTER? IF SO, WOULD YOU PLEASE STAND. (NO ONE STANDS)

8 ANY ADDITIONAL QUESTIONS FROM THE DEFENSE?

9 MR. BYRHOLDT: IF IT PLEASES THE COURT, I WOULD ASK YOUR HONOR
10 TO INQUIRE WHETHER ANY MEMBER OF THE PANEL OR THEIR IMMEDIATE
11 FAMILY WORKS FOR LAW ENFORCEMENT.

12 THE COURT: OKAY. LADIES AND GENTLEMEN, IS THERE ANY MEMBER
13 OF THE JURY PANEL, OR ARE YOU RELATED BY BLOOD OR MARRIAGE TO
14 ANYONE WHO IS A MEMBER OF LAW ENFORCEMENT? IF SO, WOULD YOU
15 PLEASE STAND.

16 MS. MCGUIRE: MY UNCLE IS BRAD MCGUIRE AND IS IN LAW
17 ENFORCEMENT.

18 THE COURT: BRAD MCGUIRE?

19 MS. MCGUIRE: YES, SIR.

20 THE COURT: NUMBER 104?

21 MS. MCGUIRE: YES, SIR.

22 THE COURT: OKAY. THANK YOU, MA'AM. WOULD THE FACT THAT
23 MISTER MCGUIRE IS YOUR UNCLE PREVENT YOU FROM BEING FAIR AND
24 IMPARTIAL TO THE DEFENDANT AND THE STATE IN THIS MATTER?

25

JURY SELECTION

1 **THE COURT:** OKAY. THANK YOU VERY MUCH. YES, SIR?

2 **MR. HAMILTON:** NUMBER 62, LANCE HAMILTON. MY STEPBROTHER,
3 MICHAEL MOORE SERVES IN GREENVILLE COUNTY IN THE SHERIFF'S
4 DEPARTMENT. HE USED TO WORK IN ANDERSON COUNTY AND ANDERSON
5 CITY.

6 **THE COURT:** OKAY, SIR. AND ANDERSON CITY?

7 **MR. HAMILTON:** HE WAS.

8 **THE COURT:** HOW LONG AGO DID HE WORK FOR ANDERSON CITY?

9 **MR. HAMILTON:** ABOUT TWO OR THREE YEARS HE WAS IN ANDERSON
10 COUNTY AND NOW IS IN GREENVILLE COUNTY.

11 **THE COURT:** ALL RIGHT. THE FACT THAT YOUR COUSIN, YOU SAY?

12 **MR. HAMILTON:** HE'S MY STEPBROTHER.

13 **THE COURT:** STEPBROTHER. THE FACT THAT HE USED TO WORK FOR
14 THE CITY OF ANDERSON, COUNTY OF ANDERSON AND NOW IN GREENVILLE
15 PREVENT YOU FROM BEING FAIR AND IMPARTIAL TO BOTH THE DEFENDANT
16 AND THE STATE IN THIS MATTER?

17 **MR. HAMILTON:** I DON'T THINK IT WOULD.

18 **THE COURT:** ANY ADDITIONAL VOIR DIRE FROM THE DEFENSE?

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

20 **THE COURT:** FROM THE STATE?

21 **MR. BRADLEY:** NO, YOUR HONOR.

22 **THE COURT:** AND I NEGLECTED TO ASK, ANY ADDITIONAL VOIR DIRE OF
23 MISTER MCGUIRE FROM THE DEFENSE?

24 **MR. BYRHOLDT:** NO, YOUR HONOR.

JURY SELECTION

1:

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

2 **THE COURT: THANK YOU, SIR. THANK YOU, MS. MCGUIRE. ANYTHING**
3 **ELSE?**

4 **MR. BRADLEY: NOTHING FURTHER, YOUR HONOR.**

5 **MR. BYRHOLDT: NOTHING.**

6 **THE COURT: OKAY. ARE YOU READY TO STRIKE?**

7 **MR. BYRHOLDT: YES, SIR.**

8 **THE COURT: FIVE AND FIVE?**

9 **MR. BRADLEY: YES, SIR, YOUR HONOR.**

10 **CLERK OF COURT: LADIES AND GENTLEMEN, AS I CALL YOUR NAME,**
11 **PLEASE COME FORWARD AND PRESENT YOURSELF TO THE TWO TABLES.**

12 **JUROR #118, EDWARD OVERSTREET, III.**

13 **(WHEREUPON, EDWARD OVERSTREET, III, A WHITE MALE, COMES FORWARD)**

14 **CLERK OF COURT: WHAT SAY YOU FOR THE STATE?**

15 **MR. BRADLEY: PLEASE PRESENT THIS JUROR.**

16 **CLERK OF COURT: WHAT SAY YOU FOR THE DEFENDANT?**

17 **MR. BYRHOLDT: PLEASE SWEAR THE GENTLEMAN.**

18 **CLERK OF COURT: PLEASE HAVE A SEAT IN THE JURY BOX MISTER**
19 **OVERSTREET.**

20 **JUROR #37, RICHARD DOUDEN. #37.**

21 **(WHEREUPON, RICHARD DOUDEN, A WHITE MALE, COMES FORWARD)**

22 **CLERK OF COURT: WHAT SAY YOU FOR THE STATE?**

23 **MR. BRADLEY: PLEASE PRESENT THIS JUROR.**

24 **CLERK OF COURT: WHAT SAY YOU FOR THE DEFENDANT?**

JURY SELECTION

1 **CLERK OF COURT: PLEASE HAVE A SEAT IN THE JURY BOX, MISTER**

2 **DOUDEN.**

3 **#100, JACOB MCCANN. #100.**

4 **(WHEREUPON, JACOB MCCANN, A WHITE MALE, COMES FORWARD)**

5 **CLERK OF COURT: WHAT SAY YOU FOR THE STATE?**

6 **MR. BRADLEY: PLEASE PRESENT THIS JUROR.**

7 **CLERK OF COURT: WHAT SAY YOU FOR THE DEFENDANT?**

8 **MR. BYRHOLDT: PLEASE SWEAR THE GENTLEMAN.**

9 **CLERK OF COURT: HAVE A SEAT IN THE JURY BOX, PLEASE, MISTER**
10 **MCCANN.**

11 **#45, GREGORY EVANS. #45.**

12 **(WHEREUPON, GREGORY EVANS, A WHITE MALE, COMES FORWARD)**

13 **CLERK OF COURT: WHAT SAY YOU FOR THE STATE?**

14 **MR. BRADLEY: PLEASE PRESENT THIS JUROR.**

15 **CLERK OF COURT: WHAT SAY YOU FOR THE DEFENDANT?**

16 **MR. BYRHOLDT: SWEAR THE GENTLEMAN.**

17 **CLERK OF COURT: HAVE A SEAT, SIR, IN THE JURY BOX.**

18 **#22, BRITTANY CALLAHAM. #22.**

19 **(WHEREUPON, BRITTANY CALLAHAM, A BLACK FEMALE, COMES FORWARD)**

20 **CLERK OF COURT: WHAT SAY YOU FOR THE STATE?**

21 **MR. BRADLEY: PLEASE PRESENT THIS JUROR.**

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

23 **MR. BYRHOLDT: PLEASE SWEAR THE LADY.**

24 **CLERK OF COURT: HAVE A SEAT, PLEASE MA'AM, IN THE JURY BOX.**

JURY SELECTION

1

1 (WHEREUPON, LANCE HAMILTON, A WHITE MALE, COMES FORWARD)

2 CLERK OF COURT: WHAT SAY YOU FOR THE STATE?

3 MR. BRADLEY: PLEASE PRESENT THIS JUROR.

4 CLERK OF COURT: WHAT SAY YOU FOR THE DEFENDANT?

5 MR. BYRHOLDT: PLEASE SWEAR THE GENTLEMAN.

6 CLERK OF COURT: HAVE A SEAT, MISTER HAMILTON, IN THE JURY BOX.

7 #123, MARY PHILPOTT. #123.

8 (WHEREUPON, MARY PHILPOTT, A WHITE FEMALE, COMES FORWARD)

9 CLERK OF COURT: WHAT SAY YOU FOR THE STATE?

10 MR. BRADLEY: PLEASE PRESENT THIS JUROR.

11 CLERK OF COURT: WHAT SAY YOU FOR THE DEFENDANT?

12 MR. BYRHOLDT: PLEASE SWEAR THE LADY.

13 CLERK OF COURT: HAVE A SEAT, PLEASE MA'AM, IN THE JURY BOX.

14 #104, FAITH MCGUIRE. #104.

15 (WHEREUPON, FAITH MCGUIRE, A WHITE FEMALE, COMES FORWARD)

16 CLERK OF COURT: WHAT SAY YOU FOR THE STATE?

17 MR. BRADLEY: PLEASE EXCUSE THIS JUROR.

18 CLERK OF COURT: YOU MAY RETURN TO YOUR SEAT. THANK YOU, MS.

19 MCGUIRE.

20 #75, SHIRLEY JAMESON. #75.

21 (WHEREUPON, SHIRLEY JAMESON, A WHITE FEMALE, COMES FORWARD)

22 CLERK OF COURT: WHAT SAY YOU FOR THE STATE?

23 MR. BRADLEY: PLEASE PRESENT THIS JUROR.

24 CLERK OF COURT: WHAT SAY YOU FOR THE DEFENDANT?

JURY SELECTION

1 **CLERK OF COURT: YOU MAY RETURN TO YOUR SEAT. THANK YOU, MR.**
2 **JAMESON.**

3 **#41, JOHN EBERHART. #41.**

4 **(WHEREUPON, JOHN EBERHART, A WHITE MALE, COMES FORWARD)**

5 **CLERK OF COURT: WHAT SAY YOU FOR THE STATE?**

6 **MR. BRADLEY: PLEASE EXCUSE THIS JUROR.**

7 **CLERK OF COURT: THANK YOU, SIR.**

8 **#153, TAMAH TATE. #153.**

9 **(WHEREUPON, TAMAH TATE, A WHITE FEMALE, COMES FORWARD)**

10 **CLERK OF COURT: WHAT SAY YOU FOR THE STATE?**

11 **MR. BRADLEY: PLEASE PRESENT THIS JUROR.**

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

13 **MR. BYRHOLDT: PLEASE EXCUSE HER FROM SERVICE ON THIS CASE.**

14 **CLERK OF COURT: THANK YOU.**

15 **#66, LOU HAYES. #66.**

16 **(WHEREUPON, LOU HAYES, A WHITE MALE, COMES FORWARD)**

17 **CLERK OF COURT: WHAT SAY YOU FOR THE STATE?**

18 **MR. BRADLEY: PLEASE EXCUSE THIS JUROR.**

19 **CLERK OF COURT: YOU MAY RETURN TO YOUR SEAT. THANK YOU.**

20 **#6, INGRID BACHMEIER. #6.**

21 **(WHEREUPON, INGRID BACHMEIER, A WHITE FEMALE, COMES FORWARD)**

22 **CLERK OF COURT: WHAT SAY YOU FOR THE STATE?**

23 **MR. BRADLEY: PLEASE PRESENT THIS JUROR.**

24 **CLERK OF COURT: WHAT SAY YOU FOR THE DEFENDANT?**

JURY SELECTION

1 **CLERK OF COURT: PLEASE HAVE A SEAT IN THE JURY BOX.**

2 **#140, DORIS SCOTT. #140.**

3 **(WHEREUPON, DORIS SCOTT, A BLACK FEMALE, COMES FORWARD)**

4 **CLERK OF COURT: WHAT SAY YOU FOR THE STATE?**

5 **MR. BRADLEY: PLEASE PRESENT THIS JUROR.**

6 **CLERK OF COURT: WHAT SAY YOU FOR THE DEFENDANT?**

7 **MR. BYRHOLDT: PLEASE SWEAR THE LADY.**

8 **CLERK OF COURT: HAVE A SEAT, MS. SCOTT, IN THE JURY BOX.**

9 **#125, GLORIA PRESSLEY. #125.**

10 **(WHEREUPON, GLORIA PRESSLEY, A BLACK FEMALE, COMES FORWARD)**

11 **CLERK OF COURT: WHAT SAY YOU FOR THE STATE?**

12 **MR. BRADLEY: PLEASE PRESENT THIS JUROR.**

13 **CLERK OF COURT: WHAT SAY YOU FOR THE DEFENDANT?**

14 **MR. BYRHOLDT: PLEASE SWEAR THE LADY.**

15 **CLERK OF COURT: HAVE A SEAT, PLEASE, MS. PRESSLEY, IN THE JURY**
16 **BOX.**

17 **#38, EDWARD DUFFEY. #38.**

18 **(WHEREUPON, EDWARD DUFFEY, A WHITE MALE, COMES FORWARD)**

19 **CLERK OF COURT: WHAT SAY YOU FOR THE STATE?**

20 **MR. BRADLEY: PLEASE PRESENT THIS JUROR.**

21 **CLERK OF COURT: WHAT SAY YOU FOR THE DEFENDANT?**

22 **MR. BYRHOLDT: PLEASE SWEAR THE GENTLEMAN.**

23 **CLERK OF COURT: HAVE A SEAT, PLEASE, SIR.**

24 **#157, COURTNEY TILLET. #157.**

JURY SELECTION

1 **CLERK OF COURT: WHAT SAY YOU FOR THE STATE?**

2 **MR. BRADLEY: PLEASE PRESENT THIS JUROR.**

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

4 **MR. BYRHOLDT: PLEASE SWEAR THE LADY.**

5 **CLERK OF COURT: PLEASE HAVE A SEAT IN THE JURY BOX.**

6 **CLERK OF COURT: WOULD YOU LIKE ONE ALTERNATE, JUDGE?**

7 **THE COURT: YOU GUYS WANT AN ALTERNATE OR DO YOU WANT TO**

8 **WAIVE AN ALTERNATE?**

9 **MR. BYRHOLDT: WELL, SINCE IT'S OVERNIGHT, WE'LL PROBABLY NEED**

10 **ONE.**

11 **THE COURT: OKAY. LET'S DO THAT.**

12 **CLERK OF COURT: ALL RIGHT. THIS IS FOR THE ALTERNATE.**

13 **JUROR #65, FREDERICK HARTWIG. #65.**

14 **(WHEREUPON, FREDERICK HARTWIG, A WHITE MALE, COMES FORWARD)**

15 **CLERK OF COURT: WHAT SAY YOU FOR THE STATE?**

16 **MR. BRADLEY: PLEASE PRESENT THIS JUROR.**

17 **CLERK OF COURT: WHAT SAY YOU FOR THE DEFENDANT?**

18 **MR. BYRHOLDT: PLEASE SWEAR THE GENTLEMAN.**

19 **CLERK OF COURT: HAVE A SEAT, PLEASE, SIR, ON THE SECOND ROW.**

20 **YOU WILL BE OUR ALTERNATE JUROR.**

21 **THE COURT: OKAY, LADIES AND GENTLEMEN. I'M GOING TO ASK THAT**

22 **YOU FOLLOW MISTER HAMBY BACK. I HAVE A COUPLE OF ADMINISTRATIVE**

23 **MATTERS THAT I NEED TO TAKE UP AND I'M GOING TO ASK WHILE I'M TAKING**

24 **THOSE UP, THAT YOU DISCUSS AMONG YOURSELVES AND YOU FIGURE OUT**

JURY SELECTION

1:

1 AND SIGN YOUR NAME BY THE SPOKESPERSON WHO IS ELECTED, GIVE IT TO
2 MISTER HAMBY AND HE WILL BRING IT BACK TO OUR ATTENTION AND THEN
3 I'LL BRING YOU BACK HERE TO TALK TO YOU ABOUT SOME SCHEDULING
4 MATTERS FOR TOMORROW. OKAY? IF YOU'LL GO BACK AND DO THAT NOW
5 I'D APPRECIATE IT.

6 (JURY OUT AT 5:00 P.M.)

7 THE COURT: JUST ONE SECOND TO THE REMAINING MEMBERS OF THE
8 JURY PANEL. I NEED TO SEE THE SOLICITOR'S OFFICE UP HERE.

9 (BRIEF BENCH CONFERENCE OFF THE RECORD)

10 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN OF THE JURY PANEL
11 WHO ARE NOT SELECTED ON EITHER OF THE JURIES THAT ARE
12 OUTSTANDING, I'M GOING TO RELEASE YOU FOR THE REMAINDER OF THE
13 DAY WHICH IS NO BIG DEAL SINCE IT'S AFTER FIVE ANYWAY. HOWEVER,
14 YOU'RE NOT REQUIRED TO COME IN IN THE MORNING AND IF YOU WOULD,
15 LOOK AT YOUR SHEET. IT HAS A NUMBER ON IT. TOMORROW AFTERNOON
16 AFTER 6:00, IF YOU'D CALL AND – OKAY, HE'S GOING TO HAND OUT THE
17 NUMBER. IF YOU WOULD CALL THAT NUMBER AFTER SIX, THERE WILL BE A
18 MESSAGE ON THERE AS TO WHETHER OR NOT YOU NEED TO REPORT BACK
19 THURSDAY. OKAY? AND IT WILL SAY WHAT TIME. BUT YOU ARE EXCUSED
20 FOR THE DAY ONCE YOU GET YOUR SHEET. THANK YOU VERY MUCH.

21 (JURY PANEL OUT AT 5:03 P.M.)

22 (JURY IN AT 5:13 P.M.)

23 THE COURT: MADAM COURT REPORTER, DO YOU HAVE THE COURT
24 EXHIBIT? (COURT REPORTER HANDS TO THE JUDGE THE NOTE FROM THE
25 JURY NAMING THE FOREPERSON, HAVING BEEN MARKED AS COURT'S EXHIBIT

JACKSON V. DENNO HEARING

1 #1) THANK YOU MA'AM. GREGORY EVANS? (RAISES HAND) ALL RIGHT. I'M
 2 GOING TO ASK THAT, YOU DON'T HAVE TO DO IT RIGHT NOW BECAUSE I'M
 3 JUST GOING TO DISMISS YOU FOR THE DAY, BUT THROUGHOUT THE COURSE
 4 OF THIS TRIAL, I'M GOING TO ASK YOU TO SIT WHERE THIS GENTLEMAN IS O
 5 THE FRONT ROW. THE REST OF YOU CAN SIT WHEREVER YOU LIKE WHEN
 6 YOU COME IN AND OUT. AND AS FAR AS THE ALTERNATE, YOU WILL STAY
 7 RIGHT THERE EACH TIME. OKAY? NOW, I'M GOING TO DISMISS YOU TONIGHT
 8 AND ASK YOU TO BE BACK IN YOUR JURY ROOM NO LATER THAN 9:00. WE
 9 ARE GOING TO START THE TRIAL AS PROMPTLY AS WE CAN AROUND THAT
 10 TIME. REMEMBER THAT YOU ARE NOT TO SPEAK AMONGST YOURSELVES
 11 ABOUT THIS CASE. YOU ARE NOT TO SPEAK WITH ANYONE ELSE ABOUT THIS
 12 CASE. YOU ARE NOT TO READ ANY ARTICLES ABOUT THIS CASE AND IF IT
 13 HAPPENS TO COME UP ON THE NEWS, YOU MUST CHANGE IT RIGHT AWAY.
 14 OKAY? OTHERWISE, I AM GOING TO EXCUSE YOU FOR THE EVENING AND SEE
 15 YOU IN THE MORNING. THANK YOU VERY MUCH.

16 (JURY OUT AT 5:14 P.M.)

17 JACKSON VERSUS DENNO HEARING

18 THE COURT: MISTER BRADLEY, ARE YOU READY?

19 MR. BRADLEY: YES, SIR, YOUR HONOR.

20 THE COURT: I UNDERSTAND THAT WE NEED TO DO A JACKSON V.
 21 DENNO HEARING?

22 MR. BRADLEY: YES, SIR.

23 THE COURT: ALL RIGHT. GO AHEAD. CALL YOUR FIRST WITNESS.

24 MR. BRADLEY: THANK YOU, YOUR HONOR. THE STATE CALLS MARK

JACKSON V. DENNO HEARING

1 (AFTER BEING DULY SWORN BY THE CLERK OF COURT, MARK GREGO,
2 TESTIFIED AS FOLLOWS:)

3 **CLERK OF COURT:** PLEASE GO UP AND HAVE A SEAT IN THE WITNESS
4 CHAIR. IF YOU'LL STATE YOUR NAME AND SPELL YOUR LAST NAME FOR THE
5 RECORD.

6 **MR. GREGORY:** MY NAME IS MARK GREGORY. I'M SORRY, I DIDN'T HEAR
7 YOU, MA'AM.

8 **CLERK OF COURT:** AND SPELL YOUR LAST NAME FOR US, PLEASE, SIR.

9 **MR. GREGORY:** G-R-E-G-O-R-Y.

10 **CLERK OF COURT:** THANK YOU.

11 **DIRECT EXAMINATION OF MARK GREGORY BY MR. BRADLEY**

12 Q GOOD MORNING, DEPUTY GREGORY.

13 A GOOD MORNING.

14 Q WAS A STATEMENT GIVEN IN THIS CASE BY THE DEFENDANT?

15 A YES, SIR.

16 Q AND WHERE DID THIS GIVING OF THE STATEMENT TAKE PLACE?

17 A 219 COUNTY HOME ROAD. THE CLYDESTONE BUILDING AT THE
18 SHERIFF'S OFFICE.

19 Q AND WHAT DATE AND WHAT TIME?

20 A IT WAS THE END OF JULY AROUND 9:00 P.M.

21 Q AND WOULD YOU DESCRIBE THE PHYSICAL SURROUNDINGS OF THE
22 AREA WHERE IT TOOK PLACE?

23 A YES, SIR. IT WAS IN OUR GANG TASK FORCE OFFICE LOCATED ON THE
24 FAR RIGHT CORNER OF THE CLYDESTONE BUILDING. IT HAS A DOOR
25

SON V. DENNO HEARING

WHEN YOU ENTER THAT DOOR, THERE IS A SMALL HALLWAY WITH
FOUR OFFICES IN THERE WHERE WE HAD OUR OFFICES. MINE WAS
THE CLOSEST ONE TO THE CORNER NEAR CAMSON ROAD FACING
SERGEANT JEFF MOSHER'S OFFICE.

4
5 Q HOW LONG DID THIS INTERVIEW TAKE PLACE?

6 A FROM MY RECOLLECTION, AN HOUR-AND-A-HALF, GIVE OR TAKE.

7 Q AND WERE THERE ANY BREAKS TAKEN DURING THAT TIME?

8 A I DON'T RECALL IF THERE WERE ANY BREAKS TAKEN DURING THAT
9 TIME. BREAKS WERE OFFERED. WE DID TELL THE DEFENDANT THAT
10 THERE IS A RESTROOM AND THAT IF HE NEEDED WATER. I DO RECALL
11 ANOTHER OFFICER THERE MAKING SOME COFFEE. WE OFFERED
12 STUFF LIKE THAT, IF NEED BE.

13 Q SO HE WASN'T DENIED ACCESS TO A BATHROOM OR SOMETHING TO
14 DRINK OR ANYTHING LIKE THAT?

15 A NOT AT ALL.

16 Q WERE THERE ANY THREATS OR PROMISES MADE IN EXCHANGE FOR
17 HIS STATEMENT DURING THAT TIME?

18 A NO, SIR.

19 Q AND DID HE APPEAR TO BE UNDER THE INFLUENCE OF ALCOHOL OR
20 DRUGS OR IN ANY WAY HAVE IMPAIRMENT OF HIS ABILITIES TO
21 UNDERSTAND WHAT WAS GOING ON?

22 A HE DID NOT APPEAR.

23 Q DID HE APPEAR TO HAVE ANY PHYSICAL OR MENTAL DISABILITY THAT
24 WOULD IMPAIR HIS ABILITY TO UNDERSTAND WHAT WAS GOING ON?

25 A NO, SIR. HE DID NOT SEEM TO HAVE ANY MENTAL DISABILITIES.

JACKSON V. DENNO HEARING

2

1 Q WAS THE DEFENDANT UNDER ARREST AT THE TIME OF QUESTIONING?

2 A YES, SIR. HE WAS.

3 Q AND WAS THE DEFENDANT ADVISED OF HIS CONSTITUTIONAL RIGHTS
4 AND WAIVE HIS MIRANDA RIGHTS PRIOR TO ANY QUESTIONING
5 REGARDING THIS CRIME?

6 A YES, SIR.

7 Q AND WAS HIS ADVISEMENT OF RIGHTS ACCOMPANIED BY ANY TYPE OF
8 WRITING?

9 A YES. ON A MIRANDA FORM.

10 Q DEPUTY GREGORY, I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS
11 STATE'S EXHIBIT #1. (HANDS DOCUMENT TO WITNESS) TAKE A LOOK AT
12 THIS AND SEE IF YOU RECOGNIZE IT.

13 A YES, SIR. I DO RECOGNIZE IT.

14 Q HOW DO YOU RECOGNIZE IT?

15 A IT'S AN ADVISEMENT OF RIGHTS FORM THAT THE SHERIFF'S OFFICE
16 USES TO READ PEOPLE THEIR RIGHTS. IT IS MY HANDWRITING AND MY
17 SIGNATURE ON THIS FORM WITH THE DEFENDANT'S NAME IN THE TOP
18 RIGHT-HAND CORNER.

19 Q AND DOES IT APPEAR TO BE IN SUBSTANTIALLY THE SAME CONDITION
20 AS WHEN YOU SAW IT ON JULY 31, 2009?

21 A YES, SIR. IT DOES.

22 Q DOES IT APPEAR TO HAVE BEEN ALTERED OR EDITED IN ANY WAY?

23 A OTHER THAN THE STAMP THAT WAS JUST PLACED ON IT, NO, SIR, IT
24 DOES NOT.

25 Q OKAY IF YOU COULD PLEASE DESCRIBE THE FORM FOR ME

JACKSON V. DENNO HEARING

1 A THE FORM IS —

2 MR. BYRHOLDT: YOUR HONOR, WE STIPULATE TO THE FORM.

3 Q OKAY. HOW WAS THIS FORM EXPLAINED TO THE DEFENDANT?

4 A THE FORM IS BROKEN DOWN INTO TWO SECTIONS. THERE IS A LINE
5 THREE QUARTERS OF THE WAY DOWN THE PAGE. THE FIRST TOP PART
6 OF IT, GIVES PLACES WHERE YOU FILL IN THE BLANK. THE ADDRESS
7 GIVEN, A SPOT WHERE YOU COULD PUT THE DEFENDANT'S NAME, DATE
8 OF BIRTH, SO YOU CAN IDENTIFY THE PERSON WHICH THE FORM IS
9 READ TO. THEN YOU HAVE THE FIVE QUESTIONS, OR EXCUSE ME, THE
10 MIRANDA RIGHTS THEMSELVES WRITTEN DOWN ON THIS FORM AND
11 THERE IS A BOX THAT YOU CAN ACTUALLY CHECK THEM OFF AS YOU
12 ARE READING THEM TO THE DEFENDANT. NEXT COMES THE WITNESS'
13 SIGNATURES, THE DEFENDANT'S SIGNATURE, THE DATE AND TIME IT
14 WAS READ TO HIM. ONCE WE READ THE FORM TO THE DEFENDANT —

15 MR. BYRHOLDT: YOUR HONOR, WE STIPULATE THAT THE MIRANDA
16 RIGHTS WERE PROPERLY GIVEN AND EXECUTED.

17 THE COURT: SO STIPULATED.

18 MR. BRADLEY: THANK YOU, YOUR HONOR.

19 Q SO, WAS ANYONE ELSE PRESENT WITH YOU DURING THIS TIME THAT
20 THE ADVISEMENT OF RIGHTS WAS GIVEN?

21 A YES, SIR. JEFF MOSHER, SERGEANT JEFF MOSHER.

22 Q AND SO THE DEFENDANT APPEARED TO UNDERSTAND HIS RIGHTS?

23 A CORRECT.

24 Q DID HE APPEAR TO HAVE WAIVED THOSE RIGHTS?

25 A YES HE DID

JACKSON V. DENNO HEARING

1 Q AND DID HE SIGN THE FORM SAYING HE WAIVED I

2 A YES, SIR.

3 Q TO THE BEST OF YOUR KNOWLEDGE, THE DEFENDANT DID
4 VOLUNTARILY AND FREELY GIVE THE STATEMENT THAT YOU TOOK
5 FROM HIM THAT DAY ON JULY 31ST?

6 A YES, SIR.

7 Q OKAY. AND WAS THAT STATEMENT REDUCED TO WRITING?

8 A YES, SIR.

9 Q AND WHO DID THE WRITING?

10 A I DID, SIR.

11 Q AND AFTER THE STATEMENT WAS WRITTEN DOWN DID YOU GO BACK
12 OVER THE STATEMENT WITH THE DEFENDANT TO MAKE SURE IT WAS
13 WHAT HE SAID TO YOU IN THE INTERVIEW?

14 A YES.

15 Q DID HE HAVE A CHANCE TO LOOK AT HIS STATEMENT AFTER YOU HAD
16 WRITTEN IT DOWN?

17 A HE HAD A CHANCE TO HOLD IT. I PRINTED IT OUT AND GAVE HIM A
18 COPY TO READ OVER.

19 Q AND DID HE OBJECT TO ANYTHING THAT WAS IN THE STATEMENT AS
20 BEING FALSE?

21 A TO THE BEST OF MY KNOWLEDGE, NO. HE DID NOT.

22 Q AND DID THE DEFENDANT SIGN THE STATEMENT?

23 A YES. EXCUSE ME, NO. HE DID NOT.

24 Q AND WHY DID HE NOT SIGN THE STATEMENT?

25 MR. RYRHOUDT: OBJECTION YOUR HONOR THAT CALLS FOR

JACKSON V. DENNO HEARING

1 SPECULATION.

2 THE COURT: SUSTAINED, UNLESS YOU ESTABLISH A FOUNDATION TO
3 ESTABLISH HIS KNOWLEDGE OF WHY.

4 Q DID HE AT ANY TIME TELL YOU, AFTER VIEWING THE STATEMENT, THAT
5 HE DID NOT WANT TO SIGN THE STATEMENT?

6 A TO THE BEST OF MY KNOWLEDGE, AS I REMEMBER IT CORRECTLY,
7 THERE WERE REASONS WHY HE DID NOT WANT TO SIGN THAT
8 STATEMENT.

9 Q AND WHAT WERE THOSE REASONS?

10 A THE REASONS WERE, HE WAS TELLING ME ABOUT A LOT OF DRUG
11 DEALERS IN ANDERSON COUNTY THAT HE KNEW ABOUT AND HE WAS,
12 THEREFORE, A LITTLE NERVOUS ABOUT SIGNING A STATEMENT
13 BASICALLY GIVING UP PEOPLE WITHIN THE COUNTY THAT SOLD A LOT
14 OF DRUGS.

15 Q DID HE OBJECT TO ANYTHING IN THE STATEMENT AS BEING FALSE?

16 A NO. HE DID NOT.

17 Q EVERYTHING HE DID TELL YOU IN HIS STATEMENT WAS TRUE OF WHAT
18 HE HAD TOLD YOU IN THE INTERVIEW?

19 A YES, SIR.

20 Q OKAY. AT THIS TIME, I WILL SHOW YOU -- FIRST BEING MARKED AS
21 STATE'S EXHIBIT #2.

22 THE COURT: IT'S MY UNDERSTANDING YOU ARE GOING TO DO A
23 COURT'S EXHIBIT AND THEN A STATE'S EXHIBIT. IS THAT CORRECT?

24 MR. BRADLEY: YES, SIR, YOUR HONOR. STATE'S EXHIBIT #2 AND THIS

25 WILL BE COURT'S EXHIBIT #4. COURT'S EXHIBIT #4.

JACKSON V. DENNO HEARING

2

1 Q I WILL SHOW YOU WHAT IS STATE'S EXHIBIT #2, AND WHAT IS COURT'S
2 EXHIBIT #2. TAKE A LOOK AT THOSE AND SEE IF YOU RECOGNIZE
3 THEM.

4 A YES, SIR. I DO RECOGNIZE THEM.

5 Q AND HOW DO YOU RECOGNIZE THEM?

6 A THEY ARE THE STATEMENTS THAT I TYPED UP ON JULY 31, 2009.

7 Q AND WOULD YOU PLEASE EXPLAIN WHAT STATE'S EXHIBIT #2 IS?

8 A STATE'S EXHIBIT #2 IS THE STATEMENT THAT THE DEFENDANT GAVE
9 ME ON THE DRUGS THEMSELVES THAT WERE FOUND THAT NIGHT. IT
10 TELLS ME A LITTLE BIT ABOUT WHAT HAPPENED THAT NIGHT.

11 Q WOULD YOU PLEASE EXPLAIN WHAT COURT'S EXHIBIT #2 IS?

12 A COURT'S EXHIBIT #2 IS THE ACTUAL STATEMENT OF THE DRUGS THAT
13 WERE FOUND THAT NIGHT PLUS EVERYTHING ELSE THAT THE
14 DEFENDANT WANTED TO TALK ABOUT AS FAR AS OTHER DRUG
15 DEALERS WITHIN THE COUNTY; WHO WAS MOVING DRUGS, WHAT THEY
16 DROVE, WHAT THEIR NAMES WERE, THEIR NICKNAMES.

17 Q OKAY. AND WHAT IS THE DIFFERENCE BETWEEN STATE'S EXHIBIT #2
18 AND COURT'S EXHIBIT #2?

19 A THE DIFFERENCE IS, STATE'S EXHIBIT #2 ONLY TALKS ABOUT THE
20 DRUGS THAT WERE FOUND ON JULY 31, 2009 AND WHO THEY
21 BELONGED TO. COURT'S EXHIBIT #2 EXPLAINS THE DRUGS THAT WERE
22 FOUND THAT NIGHT, WHO THEY BELONGED TO, HOW WE CAME INTO
23 CONTACT WITH THEM PLUS OTHER ASPECTS OF DRUGS WITHIN
24 ANDERSON COUNTY THAT ARE NOT RELATED SPECIFICALLY TO THE
25 CASE ON JULY 31, 2009

JACKSON V. DENNO HEARING

1 Q BUT AS FAR AS THE INFORMATION GIVEN TO YOU REGARDING THE
2 DRUGS THAT NIGHT ON JULY 31, 2009, THE INFORMATION IN BOTH IS
3 THE SAME. IS THAT CORRECT?

4 A THAT IS CORRECT.

5 MR. BRADLEY: NO FURTHER QUESTIONS OF THIS WITNESS AT THIS
6 TIME.

7 THE COURT: ALL RIGHT. CROSS EXAMINATION?

8 MR. BYRHOLDT: MAY IT PLEASE THE COURT.

9 CROSS EXAMINATION OF DEPUTY MARK GREGORY BY MR. BYRHOLDT

10 Q I NOTICE THAT THE STATEMENT IS NOT SIGNED BY MY CLIENT.

11 A YES, SIR. THAT'S TRUE.

12 Q NOT WITNESSED BY YOU.

13 A YES, SIR.

14 Q NOT WITNESSED BY OFFICER MOSHER, WHO YOU CLAIM WAS
15 PRESENT.

16 A YES, SIR. THAT IS TRUE.

17 Q BUT YET IN YOUR INCIDENT REPORT, YOU SAY THAT YOU OBTAINED A
18 WRITTEN STATEMENT FROM THE DEFENDANT.

19 A I DON'T DISTINGUISH BETWEEN THE DIFFERENCE BETWEEN TYPED AND
20 WRITTEN. IT'S COMING FROM THE DEFENDANT AS I'M PUTTING IT ON
21 PAPER, SIR.

22 Q BUT YOU'VE TAKEN STATEMENTS BEFORE AND WHEN PEOPLE
23 CORRECT THEM, YOU USUALLY HAVE THEM SIGN OFF ON THEM.
24 CORRECT? IF THERE IS AN ERROR, THEY'LL SCRATCH THROUGH IT

25 AND INITIAL IT

JACKSON V. DENNO HEARING

21

1 A IF IT'S WRITTEN. YES, SIR.

2 Q THAT WAS NOT DONE IN THIS CASE.

3 A I CAN'T SPEAK FOR THE DEFENDANT, WHY HE DIDN'T WANT TO SIGN
4 THE STATEMENT, SIR.

5 Q SO, IT COULD HAVE BEEN BECAUSE IT WASN'T ACCURATE?

6 A I CHOOSE NOT TO BELIEVE THAT, BUT IT COULD BE ANYTHING —

7 Q I SAID THAT IT COULD BE THAT IT WASN'T ACCURATE.

8 A I DON'T BELIEVE THAT, SIR.

9 Q WELL, DID YOU RECORD THIS? I MEAN, APPARENTLY, YOU HAD A
10 COMPUTER THERE?

11 A YES, SIR.

12 Q DO YOU TAKE WRITTEN NOTES?

13 A I TOOK TYPED NOTES WHICH IS THE STATEMENT. THAT'S THE
14 STATEMENT ITSELF.

15 Q SO, IT'S YOUR TESTIMONY TODAY THAT YOU DID THIS
16 CONTEMPORANEOUSLY WITH YOUR INTERVIEW WITH THE DEFENDANT,
17 DAVID MARIO JOHNSON?

18 A COULD YOU ASK THAT QUESTION AGAIN, SIR?

19 Q YOU'RE TELLING THE COURT TODAY THAT YOU TYPED THIS
20 STATEMENT UP CONTEMPORANEOUSLY WITH YOUR INTERVIEW WITH
21 THE DEFENDANT? THAT'S NOT TRUE. IS IT?

22 A I DON'T UNDERSTAND THAT WORD.

23 Q AT THE SAME TIME.

24 A OKAY. SAY THAT AGAIN, NOW.

25 Q ARE YOU TELLING THE COURT TODAY THAT YOU GENERATED THIS

JACKSON V. DENNO HEARING

- 1 COMPUTER STATEMENT AT THE SAME TIME THAT YOU WERE ASKING
2 THE QUESTIONS OF MISTER JOHNSON? IT'S NOT TRUE. IS IT?
3 A YES. I ASKED QUESTIONS AND THEN TYPED THE QUESTIONS AND
4 ANSWERS OUT AS I ASKED THEM AND HE ANSWERED THEM. THAT --
5 Q YOU ARE SURE THAT'S WHAT HAPPENED?
6 A I AM POSITIVE THAT'S WHAT HAPPENED.
7 Q WHEN DID THE STATEMENT END? AT WHAT TIME?
8 A THE STATEMENT ENDED AT 11:05 P.M.
9 Q AND WHEN DID IT BEGIN?
10 A THE STATEMENT BEGAN AT 9:12 P.M.
11 Q SO, YOU ARE SAYING YOU TYPED FOR TWO HOURS?
12 A WE POSSIBLY COULD HAVE TAKEN A BREAK. WE POSSIBLY COULD
13 HAVE HAD A CUP OF COFFEE.
14 Q I'M NOT ASKING, POSSIBLY. I'M ASKING WHAT YOU DID THAT NIGHT,
15 SIR.
16 A I DIDN'T TYPE FOR TWO HOURS CONTINUOUSLY, SIR.
17 Q DID YOU MAKE ANY CONTEMPORANEOUS WRITTEN NOTES?
18 A NO, SIR. I DID NOT.
19 Q DID OFFICER MOSHER MAKE ANY CONTEMPORANEOUS WRITTEN
20 NOTES?
21 A NOT TO MY KNOWLEDGE.
22 Q DID YOU HAVE A HAND RECORDER AVAILABLE SO THAT YOU COULD
23 HAVE SET THE RECORDER DOWN AND RECORDED WHAT THIS
24 DEFENDANT WAS SAYING?
25 A NOT AT THAT TIME I DID NOT

JACKSON V. DENNO HEARING

3

1 Q NOTHING AT YOUR GANG TASK FORCE OFFICE? NO TAPE RECORDERS

2 A NO, SIR. WE WERE STILL IN THE PROCESS THEN OF OBTAINING ALL OF
3 OUR EQUIPMENT THAT WE NEEDED.

4 Q IF IT APPEARS THAT THIS WAS GENERATED AFTER YOU SAY YOUR
5 STATEMENT ENDED AT 2305, THEN IT WAS TYPED AFTERWARDS,
6 CORRECT? AND YOUR TESTIMONY WOULD NOT BE TRUE. WOULD YOU
7 AGREE WITH THAT?

8 A NO, SIR. NOTHING WAS TYPED AFTER 11:05 P.M. THERE WAS NOTHING
9 TYPED —

10 MR. BYRHOLDT: THAT'S ALL THE QUESTIONS I HAVE.

11 THE COURT: RE-DIRECT?

12 MR. BRADLEY: NOTHING FURTHER, YOUR HONOR.

13 THE COURT: I HAVE A FEW QUESTIONS. HOW OLD IS THIS MISTER
14 JOHNSON? HOW OLD IS HE?

15 MR. BRADLEY: HIS BIRTHDAY WAS 1981. TWENTY-EIGHT.

16 THE COURT: TWENTY-EIGHT. WHAT IS HIS EDUCATIONAL
17 BACKGROUND?

18 MR. BRADLEY: MAY I ASK THE OFFICER?

19 THE COURT: CERTAINLY.

20 MR. BRADLEY: YOUR HONOR, MAY IT PLEASE THE COURT.

21 RE-DIRECT EXAMINATION OF DEPUTY GREGORY BY MR. BRADLEY

22 Q DEPUTY GREGORY, IN YOUR INTERVIEW THAT NIGHT WITH THE
23 DEFENDANT, DID YOU ASCERTAIN THE LEVEL OF HIS EDUCATIONAL
24 BACKGROUND?

JACKSON V. DENNO HEARING

1 Q BUT YOU ASCERTAINED HIS AGE AS BEING WHAT?

2 A HE WAS BORN IN '81 AND SO THAT WOULD HAVE MADE HIM TWENTY-
3 EIGHT YEARS OLD.

4 Q AND DID HE GIVE THE IMPRESSION DURING THE INTERVIEW THAT HE
5 UNDERSTOOD HOW TO READ AND WRITE?

6 A YES. HE GAVE ME THAT IMPRESSION.

7 Q WAS HE ABLE TO WRITE ANYTHING DOWN DURING THIS TIME?

8 A HE SIGNED HIS NAME ON THE MIRANDA FORM, SIR, AND IT'S LEGIBLE.

9 Q AND AS YOU WENT THROUGH THE MIRANDA FORM AND THROUGH THE
10 STATEMENT AND AFTER YOU TYPED IT UP, DID HE GIVE YOU THE
11 IMPRESSION THAT HE COULD READ WHAT WAS WRITTEN DOWN?

12 A YES, SIR. BECAUSE I DID HAND HIM THE STATEMENT.

13 MR. BRADLEY: NO FURTHER QUESTIONS.

14 THE COURT: WHAT IS HIS PRIOR CRIMINAL HISTORY? DID YOU
15 ESTABLISH THAT AT THE TIME? WHAT OTHER INVOLVEMENT HAS HE HAD
16 WITH LAW ENFORCEMENT AT THE TIME THAT YOU INTERVIEWED HIM?

17 DEPUTY GREGORY: WHEN WE WERE OBTAINING THE STATEMENT,
18 THERE WERE SOME OTHER FACTORS GOING ON WHERE WE WOULD CALL
19 DISPATCH. THAT'S WHY I DIDN'T TYPE FOR TWO HOURS STRAIGHT. WE
20 WOULD CALL DISPATCH, HAVE A CRIMINAL HISTORY FAXED TO US. I DON'T
21 HAVE THE CRIMINAL HISTORY IN FRONT OF ME, BUT TO MY RECOLLECTION,
22 HE HAD TWO PRIOR DRUG TRAFFICKING CHARGES.

23 THE COURT: AND WHAT TIME -- I KNOW YOU BEGAN THE INTERVIEW AT
24 9:00, WHAT TIME DID YOU PICK HIM UP AND HAVE HIM IN YOUR CUSTODY, OR

25 DID LAW ENFORCEMENT

JACKSON V. DENNO HEARING

1 **DEPUTY GREGORY:** IT HAPPENED FAIRLY FAST, SII
2 PICKED UP AND SEARCHED AND WE DID EVIDENCE COLLECTIONS,
3 PHOTOGRAPHS, WHICH WOULD TAKE TWENTY TO THIRTY MINUTES,
4 ROUGHLY, WE PLACED HIM IN AN UNMARKED VEHICLE AND DROVE HIM
5 APPROXIMATELY FOUR MILES TO OUR OFFICE. THAT MAY BE ANOTHER
6 SEVEN OR EIGHT MINUTES AND SO WE'RE LOOKING AT LESS THAN
7 FORTY-FIVE MINUTES TOTAL.

8 **THE COURT:** NOW, ONE THING I AM CONCERNED ABOUT IS THE
9 STATEMENT. I KNOW YOU SAID YOU TYPED IT UP DURING THE COURSE OF
10 YOUR INTERVIEW WITH MISTER JOHNSON. AFTER IT WAS TYPED, DID YOU
11 GIVE IT TO HIM AND REVIEW IT WITH HIM OR DID YOU READ IT TO HIM SO
12 THAT HE COULD AFFIRM THAT AS BEING CORRECT?

13 **DEPUTY GREGORY:** YES, YOUR HONOR. I DID BOTH. I WOULD PRINT
14 ONE OUT FOR HIM AND I WOULD PRINT ONE OUT FOR MYSELF. I'D HAND HIM
15 A STATEMENT. THE STATEMENT THAT I PRINTED OUT FOR MYSELF, I WOULD
16 READ OVER IT WORD FOR WORD AND THEN I WOULD JUST HAVE HIM LOOK
17 AT THE STATEMENT THAT WAS PRINTED OUT FOR HIM AND WHILE HE WAS
18 HOLDING IT, MAKING SURE THAT IT WAS CORRECT AND THAT'S WHAT I
19 WOULD DO.

20 **THE COURT:** AND DID HE, IN FACT, ACKNOWLEDGE IT AS BEING A
21 CORRECT VERSION OF HIS STATEMENT?

22 **DEPUTY GREGORY:** YES, YOUR HONOR.

23 **THE COURT:** OKAY. ANY QUESTIONS FROM THE STATE OR THE
24 DEFENSE AS A RESULT OF MY QUESTIONING?

JACKSON V. DENNO HEARING

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

2 **THE COURT:** OKAY. THANK YOU, OFFICER. YOU MAY STEP DOWN.
3 **ANYTHING FURTHER?**

4 **MR. BRADLEY:** I HAVE SERGEANT MOSHER PRESENT TO TESTIFY AS
5 **WELL.**

6 **THE COURT:** OKAY, SIR.

7 **MR. BRADLEY:** WE CALL SERGEANT MOSHER TO THE STAND.

8 (AFTER BEING DULY SWORN BY THE CLERK OF COURT, JEFF MOSHER
9 **TESTIFIED AS FOLLOWS:)**

10 **CLERK OF COURT:** GO UP AND HAVE A SEAT IN THE WITNESS CHAIR.

11 **WOULD YOU STATE YOUR FULL NAME AND SPELL YOUR LAST NAME FOR THE**
12 **RECORD, PLEASE, SIR.**

13 **SERGEANT MOSHER:** JEFFREY ALLEN MOSHER. M-O-S-H-E-R.

14 **DIRECT EXAMINATION OF SERGEANT MOSHER BY MR. BRADLEY**

15 **Q GOOD MORNING, SERGEANT MOSHER.**

16 **A GOOD MORNING.**

17 **Q WERE YOU PRESENT, SIR, IN THE INTERVIEW BETWEEN DEPUTY**
18 **GREGORY AND THE DEFENDANT DAVID MARIO JOHNSON?**

19 **A I WASN'T PRESENT FOR THE ENTIRE TIME, BUT MY OFFICE IS DIRECTLY**
20 **ACROSS FROM DEPUTY GREGORY'S. I WAS WORKING ON THE**
21 **PAPERWORK ASPECT OF THE CASE AND SO I WAS IN AND OUT OF THE**
22 **INTERVIEW, BUT I WAS SITTING IN THERE AT TIMES.**

23 **Q AND WHEN DID THIS TAKE PLACE?**

24 **A I'M SORRY, I DRAW A BLANK ON THE DATE, BUT IT WAS RIGHT AFTER,**

JACKSON V. DENNO HEARING

3!

1 Q SO, HE WAS UNDER ARREST AT THE TIME THAT THIS INTERVIEW TOOK
2 PLACE?

3 A YES.

4 Q AND DID HE APPEAR TO KNOW WHAT WAS GOING ON AT THAT TIME?

5 A HE APPEARED TO. YES.

6 Q AND HOW LONG DID THE INTERVIEW TAKE PLACE, TO THE BEST OF
7 YOUR KNOWLEDGE?

8 A ANYWHERE BETWEEN AN HOUR-AND-A-HALF TO TWO HOURS,
9 PROBABLY. I THINK WE GOT BACK TO THE OFFICE ABOUT 9:00 AND IT
10 STARTED SHORTLY THEREAFTER.

11 Q WERE YOU PRESENT FOR – WERE ANY ADVISEMENT OF RIGHTS GIVEN
12 TO THE DEFENDANT SUCH AS A MIRANDA REGARDING THIS CRIME?

13 A YES. THEY WERE.

14 Q WERE YOU PRESENT DURING THE TIME THAT DEPUTY GREGORY GAVE
15 THOSE ADVISEMENTS OF RIGHTS?

16 A I DON'T REMEMBER IF I WAS THERE OR NOT. I KNOW THAT I SAW THE
17 MIRANDA WARNING, BUT I CAN'T REMEMBER IF I WAS THERE OR NOT
18 FOR THAT PORTION OF IT.

19 Q OKAY. FROM YOUR UNDERSTANDING, THE DEFENDANT APPEARED TO
20 HAVE WAIVED HIS RIGHTS, HIS MIRANDA WARNINGS, HIS MIRANDA
21 RIGHTS?

22 A YES.

23 Q OKAY. AND WERE YOU PRESENT DURING THE INTERVIEW, OR ALL OF
24 THE INTERVIEW THAT DEPUTY GREGORY GAVE?

25 A NO. I WAS IN AND OUT BUT I LISTENED TO PARTS OF IT BECAUSE SOME

JACKSON V. DENNO HEARING

1 OF IT HAD TO DO WITH OTHER CASES THAT WE WERE LOOKING AT,
2 SOME OF THE NAMES THAT HE WAS TALKING OF.

3 Q AND DID HE APPEAR TO BE RATIONAL AND RESPONSIVE AND
4 COHERENT AS TO WHAT DEPUTY GREGORY WAS ASKING HIM?

5 A YES.

6 Q DID HE APPEAR TO BE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS
7 IN ANY WAY?

8 A DIDN'T APPEAR TO BE.

9 Q DID HE APPEAR TO HAVE ANY MENTAL OR PHYSICAL DISABILITY THAT
10 WOULD CAUSE HIM NOT TO UNDERSTAND WHAT WAS GOING ON?

11 A NO.

12 Q AND TO YOUR KNOWLEDGE, WAS THE STATEMENT THAT THE
13 DEFENDANT GAVE TO DEPUTY GREGORY REDUCED TO WRITING?

14 A YES. DEPUTY GREGORY'S COMMON PRACTICE IS THAT HE TYPES
15 STATEMENTS AS HE'S TALKING TO THE PEOPLE THAT WE INTERVIEW,
16 WHETHER IT BE A DEFENDANT OR JUST A REGULAR INTERVIEW. HE
17 ALWAYS TYPES IT. ANYWHERE WE GO TO DO AN INTERVIEW, HE TAKES
18 HIS COMPUTER WITH HIM AND DOES THEM ON THE COMPUTER.

19 Q AND WHEN THE STATEMENT WAS FINISHED AND DEPUTY GREGORY
20 PRINTED THAT COPY OUT, WERE YOU PRESENT TO SEE IF THE
21 DEFENDANT HAD A CHANCE TO REVIEW IT?

22 A I -- AS A MATTER OF FACT, I RETRIEVED THE COPIES OFF THE COPIER
23 WHICH IS IN THE HALLWAY BETWEEN OUR OFFICES AND BROUGHT
24 THEM IN TO DEPUTY GREGORY.

25 Q AND DID THE DEFENDANT HAVE A CHANCE TO REVIEW THAT

JACKSON V. DENNO HEARING

1 STATEMENT?

2 A YES. HE GAVE HIM A COPY TO MISTER JOHNSON.

3 Q DID HE GO OVER WHAT WAS WRITTEN DOWN ON HIS COPY?

4 A THEY READ IT TOGETHER.

5 Q AND AT ANY TIME, DID THE DEFENDANT OBJECT TO WHAT WAS IN THE
6 BODY OF THAT STATEMENT?

7 A THE ONLY THING HE WAS CONCERNED WITH WAS THAT HIS NAME NOT
8 GET OUT AS TO WHAT HE HAD PUT IN THE STATEMENT ITSELF.

9 Q HE DID NOT SAY ANYTHING TO DEPUTY GREGORY THAT ANYTHING
10 THAT WAS WRITTEN OUT WAS FALSE?

11 A NO.

12 Q DID HE RECEIVE A COPY TO YOUR KNOWLEDGE?

13 A HE WAS OFFERED ONE. I CAN'T REMEMBER IF HE TOOK IT OR NOT. I
14 DON'T THINK HE TOOK IT, BUT HE WAS OFFERED ONE.

15 Q HE DID APPEAR TO HAVE THE ABILITY TO READ THAT STATEMENT AND
16 UNDERSTAND WHAT WAS WRITTEN DOWN?

17 A YES, SIR. YES, SIR.

18 Q AND DID HE SIGN THE STATEMENT?

19 A NO. HE DID NOT.

20 Q AND DID HE GIVE A REASON WHY HE DIDN'T WANT TO SIGN THE
21 STATEMENT?

22 A IF I REMEMBER CORRECTLY IT'S BECAUSE HE WAS CONCERNED ABOUT
23 HIS NAME BEING ATTACHED TO SOMETHING WITH ALL THE OTHER
24 NAMES INVOLVING DRUG DEALERS AND PEOPLE THAT WERE MOVING
25 DRUGS WITHIN THE COUNTY AND STATE.

JACKSON V. DENNO HEARING

1 ABOUT THAT.

2 Q DID YOU HAVE ANY REASON TO BELIEVE THAT IT WAS BECAUSE THERE
3 WAS ANYTHING FALSE WITHIN THE STATEMENT?

4 A NO. HE DIDN'T WANT HIS NAME ATTACHED TO THOSE PEOPLE.

5 MR. BRADLEY: MAY I APPROACH THE WITNESS, YOUR HONOR?

6 THE COURT: YES, SIR.

7 Q I'M SHOWING YOU WHAT HAS BEEN MARKED AS STATE'S EXHIBIT #2
8 AND COURT'S EXHIBIT #2. TAKE A LOOK AT THOSE AND SEE IF YOU
9 RECOGNIZE THOSE.

10 A YES, SIR.

11 Q AND COULD YOU PLEASE EXPLAIN THE DIFFERENCE BETWEEN THE
12 TWO?

13 A COURT'S EXHIBIT #2 IS THE ACTUAL STATEMENT THAT DEPUTY
14 GREGORY TYPED AND STATE'S EXHIBIT IS THE REDUCTION OF THAT
15 STATEMENT TO JUST TALKING ABOUT THE DRUGS AND THERE'S A
16 SHORT – NO, IT'S JUST ABOUT THE DRUGS FROM THAT DAY.

17 Q AND FROM YOUR UNDERSTANDING, THAT ORIGINAL STATEMENT THAT
18 WAS TAKEN, COURT'S EXHIBIT #2, THAT WAS WHAT THE DEFENDANT
19 GAVE TO DEPUTY GREGORY DURING THE INTERVIEW?

20 A YES.

21 Q HE DID NOT OBJECT TO ANYTHING AS BEING FALSE IN THAT
22 STATEMENT?

23 A NO. HE DID NOT.

24 Q AND WERE ANY PROMISES OR THREATS GIVEN TO THE DEFENDANT TO
25 OBTAIN THAT STATEMENTS

JACKSON V. DENNO HEARING

3

1 A NO.

2 MR. BRADLEY: NO FURTHER QUESTIONS OF THIS WITNESS, YOUR
3 HONOR.

4 THE COURT: CROSS EXAM?

5 MR. BYRHOLDT: IF IT PLEASE THE COURT.

6 CROSS EXAMINATION OF SERGEANT MOSHER BY MR. BYRHOLDT

7 Q NEITHER YOU NOR SERGEANT GREGORY SAID, "IF YOU COOPERATE
8 THINGS WILL GO BETTER ON YOU?"

9 A NO.

10 Q YOU NEVER SAID THAT IN YOUR ENTIRE LAW ENFORCEMENT CAREER?

11 A NO. I'VE ALWAYS TOLD THEM, "I CAN'T PROMISE YOU ANYTHING. THE
12 ONLY THING I CAN TELL YOU IS THAT I'LL TAKE YOUR STATEMENT," AND
13 THAT'S IT.

14 Q DID OFFICER GREGORY ASK MISTER JOHNSON TO READ THIS OUT
15 LOUD?

16 A THAT, I DON'T REMEMBER.

17 Q DID YOU HEAR ANYBODY READ IT OUT LOUD?

18 A YES, SIR.

19 Q THE ENTIRE STATEMENT?

20 A YES.

21 Q WHO WAS THAT?

22 A DEPUTY GREGORY.

23 Q WHY DIDN'T YOU SIGN OFF AS A WITNESS AND PUT ON THERE THAT
24 MISTER JOHNSON REFUSED TO SIGN THIS? YOU KNOW, WHY DIDN'T

25

JACKSON V. DENNO HEARING

1 A I DON'T KNOW.

2 MR. BYRHOLDT: NO FURTHER QUESTIONS. THANK YOU, SIR.

3 THE COURT: RE-DIRECT?

4 MR. BRADLEY: NOTHING FURTHER, YOUR HONOR.

5 THE COURT: MAY I SEE THOSE STATEMENTS, PLEASE?

6 (WITNESS HANDS DOCUMENTS TO THE JUDGE)

7 THE COURT: WHERE IS THE MIRANDA?

8 (WITNESS HANDS DOCUMENT TO THE JUDGE)

9 THE COURT: THANK YOU. ANYTHING FURTHER FROM THE STATE?

10 MR. BRADLEY: NOT AT THIS TIME. THE STATE WOULD ASK THAT THE
11 STATEMENTS BE ADMITTED, WILL BE ADMISSIBLE INTO EVIDENCE.

12 MR. BYRHOLDT: I HAVE ONE. I HAVE NO MORE QUESTIONS OF THIS
13 WITNESS.

14 THE COURT: OKAY. YOU MAY STEP DOWN. THANK YOU.

15 MR. BYRHOLDT: I WOULD ASK THE COURT TO REVIEW THE DISK THAT
16 THE STATE PROVIDED ME. IF I'M NOT MISTAKEN, THE TIME THAT THIS
17 DOCUMENT WAS GENERATED, IF MY MEMORY IS CORRECT, IS AFTER THE
18 TIME THAT THE OFFICER TESTIFIED IT ENDED.

19 THE COURT: ALL RIGHT. I WILL.

20 MR. BYRHOLDT: IF YOU'VE GOT A COMPUTER UP THERE.

21 (MISTER BYRHOLDT HANDS DISK TO THE JUDGE)

22 THE COURT: ALL RIGHT. I'LL TELL YOU THIS. I'M GOING TO GO BACK
23 HERE IN THE BACK ROOM. I'M GOING TO ASK YOU AND MISTER BRADLEY TO
24 COME BACK AND VIEW IT WITH ME.

JACKSON V. DENNO HEARING

41

1 (THE JUDGE, MISTER BRADLEY, MISTER BYRHOLDT AND THE LAW
2 CLERK LEAVE THE COURTROOM)

3 (BRIEF BREAK)

4 (DEPUTY GREGORY RETURNS TO THE WITNESS STAND)

5 THE COURT: YOU ARE STILL UNDER OATH. OKAY?

6 DEPUTY GREGORY: YES, YOUR HONOR.

7 THE COURT: NOW, I HAVE A FEW QUESTIONS. I LOOKED AT THIS DISK
8 THAT THE STATE HAS PROVIDED TO MISTER BYRHOLDT AND BASED ON WHAT
9 YOUR TESTIMONY WAS EARLIER, YOU BEGAN YOUR INTERROGATION OF
10 MISTER JOHNSON AT 9:12 P.M. CORRECT?

11 DEPUTY GREGORY: CORRECT.

12 THE COURT: YOU FINISHED EVERYTHING AND IT WAS DONE BY
13 11:05 P.M.

14 DEPUTY GREGORY: CORRECT.

15 THE COURT: BASED ON THE WHATEVER THE PROPER TERMINOLOGY IS
16 ON THIS DISK, THE DATE STAMPING, IT SAYS THAT THIS DOCUMENT WAS
17 MODIFIED BY 11:13 P.M. AFTER ALL THIS WAS SUPPOSEDLY, BASED ON YOUR
18 SWORN TESTIMONY, WAS DONE. NOW. THERE MAY BE A REASONABLE
19 EXPLANATION. I JUST WANT TO KNOW WHAT IT IS.

20 DEPUTY GREGORY: I'M NOT A COMPUTER GUY. WE'D HAVE TO BRING
21 SOMEBODY THAT IS, BUT TO THE BEST OF MY —

22 THE COURT: WELL, THE STATE HAS THE BURDEN OF PROVING THAT
23 THIS WAS A VOLUNTARY STATEMENT AND I WANT TO HEAR WHY THAT IS ON
24 THAT DOCUMENT. IF YOU KNOW.

JACKSON V. DENNO HEARING

1 SAYS 11:13 P.M.?

2 THE COURT: YES, SIR. AND I'LL BE GLAD -- YOU WANT TO LOOK AT IT?

3 DEPUTY GREGORY: NO, YOUR HONOR. I FULLY BELIEVE YOU.

4 BECAUSE, THIS IS FROM MY RECOLLECTION, WHEN I GO TO SAVE A
5 STATEMENT, I'M A LITTLE PARANOID ABOUT CLOSING SOMETHING OUT ON
6 THE COMPUTER SCREEN, SO WHAT I WILL DO IS I WILL SAVE IT AND I WILL
7 SAVE IT, I'LL CLICK THE SAVE BUTTON A FEW TIMES AND THEN GO TO THE
8 LITTLE RED "X" AND CLICK IT OUT. DEPENDING ON THE TIME OF DAY IS WHEN
9 IT WOULD LAST BE MODIFIED AS THAT SAVED STATEMENT. I WOULD
10 IMAGINE, YOUR HONOR, IF I WERE TO BRING MY COMPUTER IN HERE NOW
11 AND PULL UP HIS STATEMENT AND HIT SAVE ONE MORE TIME BEFORE I
12 EXITED OUT OF IT, BECAUSE IT'S ALREADY SAVED ON THERE, IT WOULD BE
13 MODIFIED AT TODAY'S DATE AND TODAY'S TIME WHEN I HIT THAT SAVED
14 BUTTON AGAIN. THAT'S THE BEST OF MY KNOWLEDGE WHY IT WOULD BE
15 MODIFIED AFTER THE STATEMENT BECAUSE I'M CLOSING OUT MY
16 COMPUTER.

17 THE COURT: SO, LET ME MAKE SURE I UNDERSTAND THIS AND I WILL
18 GIVE BOTH PARTIES, BOTH SIDES THE RIGHT TO QUESTION YOU ABOUT IT,
19 BUT YOU'RE SAYING THAT THROUGHOUT THE COURSE OF THIS INTERVIEW,
20 YOU TYPED AS YOU WENT ALTHOUGH THERE WAS OTHER INFORMATION
21 THAT WAS BEING DONE SO THERE WASN'T A CONSTANT TYPING PROCESS.

22 DEPUTY GREGORY: YES, SIR.

23 THE COURT: OKAY. AND THEN, AT THE TIME THAT YOU FINISHED YOUR
24 STATEMENT, AFTER YOU HAVE REVIEWED IT WITH MISTER JOHNSON, IT WAS

25 11:05 AND HE AFFIRMED IT AS AN ACCURATE AND TRUE STATEMENT.

JACKSON V. DENNO HEARING

4

1 CORRECT?

2 DEPUTY GREGORY: CORRECT.

3 THE COURT: AND, CORRECT ME AND PLEASE DON'T LET ME PUT
4 WORDS IN YOUR MOUTH, BUT YOU'RE SAYING THAT AT 11:13 THEN, YOU
5 BACKED OUT OF YOUR COMPUTER OR SIGNED OFF AND THAT WOULD HAVE
6 BEEN THE DATE STAMP AS MODIFIED? IS THAT WHAT YOU ARE SAYING?

7 DEPUTY GREGORY: YES. I WOULD HAVE SAVED IT ONE TIME OR
8 CLICKED THE LITTLE SAVED ICON AT THE TOP LEFT PART OF THE SCREEN,
9 CLICKED IT A COUPLE OF TIMES TO MAKE SURE IT WAS SAVED ONTO MY
10 COMPUTER AND THEN I WOULD HAVE EXITED OUT OF IT BY USING THE RED
11 "X" WITH MY MOUSE, WHICH MEANS IT WOULD HAVE BEEN MODIFIED THE
12 LAST TIME THAT I SAVED IT.

13 THE COURT: ALL RIGHT. ANY QUESTIONS FROM MISTER BYRHOLDT?

14 RE-CROSS EXAMINATION OF DEPUTY GREGORY BY MR. BYRHOLDT

15 Q DID YOU SAVE THIS DOCUMENT BEFORE YOU PRINTED IT?

16 A YES, SIR. I SAVED IT DURING THE STATEMENT AS I'D GO DOWN. DOES
17 THAT MAKE SENSE?

18 Q YEAH.

19 A BECAUSE I DON'T WANT TO —

20 Q SO YOU WON'T LOSE IT.

21 A ABSOLUTELY. ABSOLUTELY. WHEN I GET TO THE LAST -- WHEN I
22 FINISH THE STATEMENT, THE LAST THING THAT I WOULD DO WOULD BE
23 TO SAVE IT. IT DOESN'T NECESSARILY MEAN THAT I WOULD EXIT OUT
24 OF MY COMPUTER. IT STILL MAY BE ON THE SCREEN.

25 Q BUT YOU CAN'T TELL ME

JACKSON V. DENNO HEARING

1 WAS PRINTED OUT AT 2313 HOURS, 2305, 2300. YOU CAN'T. CAN YOU'
2 A NO. I CANNOT TELL YOU WHAT TIME THAT REPORT WAS PRINTED OUT
3 SIR.

4 Q WOULD YOU AGREE WITH ME THAT IF IT WAS PRINTED OUT AT 2313,
5 THEN YOUR TESTIMONY OF ALL THIS STUFF WOULD NOT HAVE BEEN
6 ACCURATE?

7 A I CANNOT AGREE WITH YOU THAT IT WAS PRINTED OUT AT 2313, SIR.

8 RE-DIRECT EXAMINATION OF DEPUTY GREGORY BY MR. BRADLEY

9 Q DETECTIVE GREGORY, FROM THE TIME THAT YOU DID PRINT OUT THE
10 STATEMENT UNTIL THE TIME THAT YOU LAST SAVED THE STATEMENT
11 ON YOUR COMPUTER, WAS ANYTHING ADDED OR TAKEN OUT?

12 A NO, SIR. I WOULD NOT HAVE DONE THAT.

13 Q OKAY. SO, WHEN YOU PRINTED IT OUT FROM THE COMPUTER, IS IT
14 TRUE THAT YOU CAN PRINT OUT A DOCUMENT WITHOUT SAVING IT?

15 A YES. THAT IS TRUE.

16 Q OKAY. BUT WHEN YOU —

17 A EXCUSE ME. I DO NOT KNOW IF THAT'S TRUE, BECAUSE I THINK IF YOU
18 WERE TO PRINT SOMETHING, DEPENDING ON THE COMPUTER OR THE
19 PRINTER ATTACHED TO IT, IT MAY SAY, "DO YOU WANT TO SAVE FIRST.
20 I CAN PRINT AN EMAIL WITHOUT SAVING IT IF THAT MAKES SENSE AND
21 IT WILL NOT ASK ME THAT LITTLE ICON. AGAIN, I'M -- I DON'T KNOW
22 MUCH ABOUT COMPUTERS. I CAN JUST TELL YOU WHAT MINE DOES,
23 SPECIFICALLY.

24 Q BUT WHEN YOU FINISHED THIS INTERVIEW WITH THE DEFENDANT —

25 A YES

JACKSON V. DENNO HEARING

4

1 Q — YOU PRINTED OUT THE DOCUMENT AND THE LAST TIME YOU SAVED
2 IT BEFORE CLOSING IT OUT OF THAT SOFTWARE, DID YOU ADD OR
3 CHANGE ANYTHING TO ALTER THIS STATEMENT AND WHAT THE
4 DEFENDANT TOLD YOU THAT DAY?

5 A NO, SIR. I DID NOT.

6 Q AND THE STATEMENT THAT YOU PRINTED OUT AND SHOWED TO HIM, IS
7 IT THE SAME THAT WE HAVE HERE TODAY?

8 A YES, SIR. IT IS.

9 Q DID HE OBJECT TO ANYTHING AS BEING FALSE?

10 A NO, SIR. HE DID NOT.

11 Q BESIDES THE DIFFERENCE BETWEEN COURT'S EXHIBIT #2 AND STATE'S
12 EXHIBIT #2, IS THERE ANYTHING CHANGED OR TAKEN OUT OF THAT
13 STATEMENT THAT THE DEFENDANT DID NOT KNOW ABOUT?

14 A NOTHING HAS BEEN TAKEN OUT OF THAT STATEMENT OR ADDED TO
15 THAT STATEMENT THAT I KNOW ABOUT. IT WOULD HAVE HAD TO HAVE
16 BEEN DONE FROM MY COMPUTER.

17 Q AND SO, YOUR TESTIMONY IS THAT THE LAST TIME THAT DOCUMENT
18 WAS MODIFIED ON YOUR COMPUTER, IT WAS JUST THE LAST TIME YOU
19 SAVED IT. NO CHANGES WERE MADE TO IT.

20 A CORRECT. THERE WOULD HAVE BEEN NO CHANGES. IT WOULD HAVE
21 BEEN A SAVE. IT WOULD HAVE JUST BEEN A SAVE ONTO THE
22 COMPUTER AGAIN.

23 MR. BRADLEY: NOTHING FURTHER, YOUR HONOR.

24 THE COURT: RE-CROSS?

25 MR. BRADLEY: JUST BRIEFLY.

JACKSON V. DENNO HEARING

1 RE-CROSS EXAMINATION OF DEPUTY GREGORY BY MR. BYRHOLDT

2 Q BUT YOUR TESTIMONY WAS THAT EVERYTHING ENDED AT 23:05 AND
3 THIS HAPPENED SOME NINE MINUTES LATER OR SIX MINUTES LATER.
4 YOU'VE GOT ANOTHER SIGNED STATEMENT THAT WASN'T EVEN
5 WITNESSED BY AN OFFICER. YOU'VE DONE STATEMENTS WHEN
6 SOMEONE REFUSED TO SIGN IT AND YOU WRITE THAT IN THERE. DON'T
7 YOU?

8 A ABSOLUTELY. NOW —

9 Q BUT NOT IN THIS CASE?

10 A SIR, I BELIEVE MY NAME'S ON THERE. I —

11 Q BUT YOUR NAME IS TYPED IN THERE. NO ONE SIGNED IT. YOU TYPED
12 IT —

13 A ABSOLUTELY.

14 THE COURT: Y'ALL LET EACH OTHER FINISH BEFORE YOU — DON'T TALK
15 OVER EACH OTHER.

16 Q NO QUESTION YOUR NAME IS ON THERE, TYPED, BUT NOBODY SIGNED
17 IT. NOBODY INITIALED IT.

18 A CORRECT.

19 Q YOU HAVE NO RECOLLECTION OF HAVING GIVEN MISTER JOHNSON A
20 COPY OF THIS?

21 A PARDON ME?

22 Q YOU HAVE NO RECOLLECTION OR ANY PROOF THAT YOU GAVE MISTER
23 JOHNSON EVEN A COPY OF THIS.

24 A NO. JUST MY WORD, SIR.

25 Q I GOT IT YESTERDAY. NO QUESTION —

JACKSON V. DENNO HEARING

1 HAVE SIGNED IT. RIGHT? YOU COULD HAVE SIGNED

2 DO IT. WE HAVE NO PROOF FROM THE COMPUTER. FOR WHATEVER
3 REASON, IT DISPUTES YOUR TESTIMONY THAT IT ENDED AT 23:05.

4 MR. BYRHOLDT: NOTHING FURTHER, YOUR HONOR.

5 THE COURT: ALL RIGHT. THIS IS WHAT I'M – THANK YOU, YOU MAY
6 STEP DOWN. (SPEAKING TO WITNESS)

7 MR. BYRHOLDT: YOUR HONOR, I'D ASK THIS BE MADE A COURT EXHIBIT.

8 THE COURT: YES, SIR. THAT WOULD BE #3? OKAY. THE DISK WILL BE
9 COURT'S EXHIBIT #3. FIRST, DEPUTY GREGORY, DO YOU HAVE YOUR
10 COMPUTER AVAILABLE IF MISTER BYRHOLDT WISHES TO TAKE A CHECK AND
11 LOOK TO SEE IF ANYTHING WOULD ESTABLISH OTHER THAN WHAT YOU
12 TESTIFIED TO?

13 DEPUTY GREGORY: I CAN MAKE MY COMPUTER AVAILABLE.

14 THE COURT: ALL RIGHT. I'LL INSTRUCT YOU TO DO THAT. IF HE
15 REQUESTS IT, I AM GOING TO INSTRUCT YOU TO MAKE IT AVAILABLE FOR
16 FIRST THING THIS MORNING, WHILE THIS CASE IS GOING ON. HOWEVER,
17 THAT BEING SAID, FROM THE STAND THAT I LOOK AT IT FROM THE
18 PREPONDERANCE OF THE EVIDENCE AND THE TOTALITY OF THE
19 CIRCUMSTANCES, I FIND, ONE, THAT SINCE THAT'S THE LAST MATTER THAT
20 WE WENT OVER THAT DEPUTY GREGORY'S EXPLANATION OF THE DATE TIME
21 STAMP OF 11:13 ON JULY 31, 2009 IS BOTH PLAUSIBLE AND CREDIBLE. I THINK
22 IT SOUNDS – I DON'T THINK HE SAID EVERYTHING IN THE WORLD WAS DONE.
23 I THINK HE SAID, "MY CONVERSATION AND INTERVIEW WAS OVER AND THEN I
24 BACKED OUT." THAT SOUNDS PLAUSIBLE AND CREDIBLE. THEIR
25 EXPLANATION, THE STATE'S EXPLANATION OF THE EVIDENCE...

JACKSON V. DENNO HEARING

1 DEFENDANT TO SIGN THE STATEMENT WAS AGAIN, BOTH PLAUSIBLE AND
2 CREDIBLE AND ALSO, I'D POINT OUT IN MAKING THAT FINDING THAT CLEARLY
3 MISTER JOHNSON WAS WILLING AT THE SAME POINT IN TIME TO SIGN A
4 WAIVER OF MIRANDA RIGHTS AND OBVIOUSLY KNEW THAT HE WAS MAKING
5 STATEMENT UNDER THE TOTALITY OF THE CIRCUMSTANCES. I FIND THAT
6 MISTER JOHNSON HAD NOT BEEN IN INTERROGATION FOR THAT LONG OF A
7 TIME AND THAT HIS STATEMENT WAS VOLUNTARILY GIVEN WITHOUT THREA
8 OR COERCION OR PROMISE OF LENIENCY AND ONLY GIVEN AFTER MISTER
9 JOHNSON HAD WAIVED HIS MIRANDA RIGHTS KNOWINGLY, VOLUNTARILY AND
10 INTELLIGENTLY AND THEREFORE, I'M GOING TO FIND THAT THE STATEMENT
11 IS ADMISSIBLE IN ITS REDACTED VERSION, AND THAT SHOULD BE STATE'S #2
12 CORRECT?

13 MR. BRADLEY: CORRECT, YOUR HONOR.

14 THE COURT: I AM GOING TO ADD A CAVEAT TO THAT, THAT DEPUTY
15 GREGORY MAKE YOUR COMPUTER AVAILABLE IMMEDIATELY. AS SOON AS I
16 ISSUE MY RULING, I WANT YOU TO GO CALL SOMEBODY, MAKE THAT
17 AVAILABLE TO MISTER BYRHOLDT IF HE DESIRES IT.

18 MR. BYRHOLDT: YOUR HONOR, I DON'T DESIRE THAT.

19 THE COURT: YOU DO NOT? OKAY. THANK YOU. THAT IS MY RULING.
20 ARE YOU GENTLEMEN READY TO PROCEED? DO YOU NEED A BREAK BEFORE
21 WE GO ON?

22 MR. BRADLEY: YES, SIR.

23 MR. BYRHOLDT: YES, SIR.

24 THE COURT: ALL RIGHT. FIVE MINUTES?

25 MR. BRADLEY: THAT WOULD BE GOOD, YOUR HONOR.

INTRODUCTORY INSTRUCTIONS TO THE JURY

48

1 **THE COURT: OKAY. BE BACK IN FIVE.**

2 **(BRIEF BREAK)**

3 **(JURY IN AT 9:56 A.M.)**

4 **THE COURT: GOOD MORNING. EXCUSE US FOR KEEPING YOU IN THERE**
5 **FOR AN AMOUNT OF TIME. IT WAS UNAVOIDABLE. WE'VE ACTUALLY BEEN**
6 **HERE SINCE BEFORE NINE WORKING ON THINGS, HOWEVER, CERTAIN**
7 **ADMINISTRATIVE PROCESSES ARE ALWAYS GOING ON AND SO I APOLOGIZE**
8 **TO YOU FOR THAT. BUT WE ARE ABOUT TO BEGIN THE TRIAL OF THE STATE**
9 **VERSUS DAVID MARIO JOHNSON. BEFORE WE DO, I'M GOING TO ASK THE**
10 **CLERK TO SWEAR YOU IN, PLEASE.**

11 **(JUROR'S OATH ADMINISTERED BY THE CLERK OF COURT)**

12 **THE COURT: LET ME SEE BOTH LAWYERS UP HERE, PLEASE.**

13 **(BRIEF BENCH CONFERENCE)**

14 **THE COURT: ALL RIGHT. LADIES AND GENTLEMEN OF THE JURY, AS I**
15 **TOLD YOU, WE ARE ABOUT TO BEGIN THE CASE OF THE STATE VERSUS**
16 **DAVID MARIO JOHNSON. HE HAS BEEN INDICTED ON TWO CHARGES. ONE IS**
17 **TRAFFICKING OF CRACK COCAINE AND THE OTHER IS POSSESSION OF**
18 **MARIJUANA AND WE WILL PROCEED WITH THAT CASE AT THIS POINT IN TIME.**
19 **I SEE THAT SOME OF YOU HAVE BEEN ON JURIES BEFORE, BUT SOME OF YOU**
20 **HAVEN'T AND SO FOR THOSE OF YOU THAT HAVE AND HAVEN'T BEEN ON**
21 **JURIES BEFORE, I DON'T KNOW WHICH OF YOU HAVE EVER WITNESSED A**
22 **TRIAL. I IMAGINE ALL OF YOU HAVE WITNESSED OR WATCHED SOME TYPE OF**
23 **LAW RELATED T.V. SHOW LIKE *LAW AND ORDER*. BEFORE WE GET STARTED,**
24 **I WANT YOU TO KNOW, THIS IS NOT *LAW AND ORDER*. THINGS DON'T WORK**
25 **IN THAT FASHION. CRIMINAL TRIALS ESPECIALLY ARE A VERY SERIOUS**

INTRODUCTORY INSTRUCTIONS TO THE JURY

1 AND METHODICAL. THEY ARE NOT HERE FOR ENTERTAINMENT. THEY ARE
2 FUNDAMENTAL PART OF OUR DEMOCRACY AND WHAT WE ARE HERE TODAY,
3 TO DO IS TO MAKE A SEARCH TO MAKE SURE WE FIND THE TRUTH SO THAT
4 JUSTICE IS DONE. LET ME TELL YOU THAT THESE ATTORNEYS, BOTH FOR
5 THE STATE AND FOR THE DEFENSE, ARE ADVOCATES FOR THEIR CLIENTS,
6 BUT THEY ARE ALSO OFFICERS OF THIS COURT. YOU CAN EXPECT BOTH OF
7 THESE ATTORNEYS TO BE PROFESSIONAL, ETHICAL AND REASONABLE IN
8 THEIR ACTIONS AND IN THIS TRIAL. YOU JUST TOOK AN OATH TO BE FAIR
9 AND IMPARTIAL, SO LIKEWISE, THESE ATTORNEYS, THESE PARTIES AND THIS
10 COURT HAVE A RIGHT TO EXPECT OF YOU THAT YOU WILL BE REASONABLE
11 AND ETHICAL IN YOUR DEALING WITH THIS MATTER.

12 NOW, WHAT I'M TELLING YOU NOW IS NOT A CHARGE ON THE LAW. I
13 WILL GIVE THAT TO YOU AT A LATER POINT IN THIS CASE. HOWEVER, MY
14 INSTRUCTIONS NOW ARE INTENDED TO AID AND ASSIST YOU IN TRYING THIS
15 CASE AND UNDERSTANDING A LITTLE BIT OF YOUR DUTIES AND YOUR ROLE
16 AS WELL AS THE PROCESS AND PROCEDURES THAT YOU WILL BE
17 WITNESSING IN THE COURTROOM TODAY.

18 NUMBER ONE, I DO NOT ALLOW NOTE TAKING IN COURT. I DO NOT
19 ALLOW NOTE TAKING WHEN YOU ARE IN THE JURY ROOM. SO, IF YOU
20 WOULD, PAY CLOSE ATTENTION TO THE ATTORNEYS, TO THE WITNESSES
21 AND TO THE TESTIMONY, BUT DO NOT ATTEMPT TO TAKE NOTES EITHER
22 DURING COURT OR OUTSIDE OF COURT.

23 AS I TOLD YOU, THERE ARE TWO INDICTMENTS. I GAVE YOU THE
24 CHARGES. THESE ARE THE INDICTMENTS. (INDICATING) THESE ARE THE
25 ACTUAL INDICTMENTS HERE THE FACT THAT THIS DEFENDANT HAS BEEN

RE-DIRECT EXAMINATION OF MEREDITH LANFORD BY MR. BRADLEY

5

1 INDICTED AND CHARGED IS, IN NO SENSE OF THE WORD, EVIDENCE OF HIS
2 GUILT. THESE INDICTMENTS ARE SIMPLY THE PAPER MECHANISM BY WHICH
3 THE STATE BRINGS THESE CHARGES BEFORE A JURY SUCH AS YOURSELVES
4 FOR RESOLUTION. THEREFORE, WHEN I SHOW YOU THESE PAPERS AT ANY
5 TIME DURING THIS CASE, IT DOES NOT RAISE AN INFERENCE OF ANY GUILT.
6 IT IS NOT EVIDENCE OF ANY GUILT. IN FACT, IN THIS CASE, THE DEFENDANT
7 HAS PLEAD NOT GUILTY. THAT PLACES THE BURDEN UPON THE STATE TO
8 PROVE THIS DEFENDANT GUILTY BEYOND A REASONABLE DOUBT. THAT
9 MEANS THAT THE STATE MUST PROVE EACH AND EVERY ELEMENT OF THE
10 CHARGES AGAINST THIS DEFENDANT BEYOND A REASONABLE DOUBT.

11 NOW, YOUR PURPOSE AS JURORS IS TO BE FINDERS OF THE FACTS. IN
12 THE VERNACULAR OF ATTORNEYS, WE CALL YOU THE JUDGES OF THE
13 FACTS. YOU ARE THE SOLE JUDGES OF THE FACTS. SO, IF AT ANY TIME
14 DURING THE COURSE OF THIS TRIAL THAT I MAKE A COMMENT, MAKE A
15 GESTURE OR DO ANYTHING THAT MAY INDICATE TO YOU THAT I HAVE A
16 PREFERENCE ON WHICH WAY YOU ARE TO RULE IN THIS MATTER, YOU ARE
17 TO DISREGARD IT. I CAN ASSURE YOU, I HAVE ABSOLUTELY NO PREFERENCE
18 WHATSOEVER. MY JOB IN THIS CASE, SOLELY, IS TO MAKE SURE THAT BOTH
19 SIDES RECEIVE A FAIR AND IMPARTIAL TRIAL AND THAT THE PROCEDURE IS
20 DONE PROPERLY.

21 NOW, WHAT DOES IT MEAN TO DETERMINE FACTS, TO BE JUDGES OF
22 THE FACTS? FIRST, NUMBER ONE, YOU ARE TO DETERMINE WHAT THE FACTS
23 ARE IN THIS CASE FROM THE EVIDENCE YOU HEAR FROM THIS WITNESS
24 STAND IN THIS TRIAL. OKAY? IT WILL BE SWORN TESTIMONY OR IT WILL BE
25 EVIDENCE THAT I ALLOW INTO EVIDENCE. OKAY? THAT'S ALL.

RE-DIRECT EXAMINATION OF MEREDITH LANFORD BY MR. BRADLEY

1 EVIDENCE, WHATEVER INFERENCES OR CONCLUSIONS YOU DRAW FROM
2 THAT EVIDENCE IS SOLELY YOUR PREROGATIVE. HOWEVER, YOU ARE NOT
3 TO BE INFLUENCED BY ANYTHING YOU SEE OR HEAR OUTSIDE OF THIS
4 COURTROOM EITHER FROM YOUR OWN PERSONAL EXPERIENCES OR BY
5 WHO YOU MAY HAPPEN TO RUN INTO WHILE THIS TRIAL IS IN SESSION. I
6 DON'T BELIEVE THIS IS GOING TO BE A VERY LONG TRIAL, BUT I DO
7 ANTICIPATE THERE WILL BE A BREAK OR TWO DURING THE PROCEEDINGS
8 AND SO IF YOU HAVE ANY OUTSIDE INFLUENCES, YOU ARE TO DISREGARD
9 THEM. I DON'T THINK YOU WILL, BUT I ASK YOU AND EACH AND EVERY ONE
10 OF YOU, THAT THROUGHOUT THIS CASE, YOU PAY CLOSE ATTENTION TO THE
11 EVIDENCE, BE CONSCIENTIOUS IN LISTENING TO BOTH THE ATTORNEYS AND
12 ALL THE WITNESSES AND WHAT I TELL YOU, BECAUSE AT SOME POINT VERY
13 SHORTLY, YOU ARE GOING TO BE CALLED UPON TO MAKE A DECISION IN THIS
14 MATTER.

15 AND JUST AS YOU ARE THE SOLE JUDGES OF THE FACTS IN THIS CASE
16 AND WITH EQUAL EMPHASIS, I AM THE JUDGE OF THE LAW AND THAT IS WHAT
17 THE STATE AND OUR CONSTITUTION PROVIDES. WHAT THAT SIMPLY MEANS
18 IS, YOU MAY NOT AGREE WITH THE LAW THAT I GIVE TO YOU AT THE END OF
19 THIS CASE. YOU MAY THINK IT SHOULD BE SOMETHING OTHER THAN IT IS,
20 HOWEVER, AS WE SIT HERE IN COURT TODAY AND AS YOU SIT HERE IN
21 COURT TODAY, YOU SHALL NOT CONCERN YOURSELVES WITH THOSE TYPES
22 OF CONSIDERATIONS. IT IS YOUR OBLIGATION AND YOUR DUTY TO ACCEPT
23 THE LAW AS I GIVE IT TO YOU AND THEN APPLY THE FACTS AS YOU FIND
24 THEM TO THE LAW AS I GIVE IT TO YOU.

25 AS I TOLD YOU THROUGHOUT THE TRIAL, THE LAW IS THE LAW.

RE-DIRECT EXAMINATION OF MEREDITH LANFORD BY MR. BRADLEY

5

1 BREAKS, AND I'M SURE THERE WILL BE. THROUGHOUT THESE BREAKS YOU
2 ARE NOT TO DISCUSS THIS CASE AMONGST YOURSELVES. YOU ARE NOT TO
3 DISCUSS THIS CASE WITH ANYONE ELSE. IF YOU HAPPEN TO RUN INTO ANY
4 OF THESE COURT PERSONNEL, ATTORNEYS OR WITNESSES, YOU ARE NOT
5 TO HAVE ANY CONVERSATION WITH THEM SIMPLY BECAUSE WE AREN'T
6 THINKING YOU ARE UP TO ANYTHING WITH AN ILL MOTIVE, BUT SOMEBODY
7 ELSE MAY SEE YOU SPEAKING TO THEM AND THINK THAT SOMETHING
8 IMPROPER IS GOING ON AND JUST THREATENS THE PROCESS. IF, BY SOME
9 STRANGE STRETCH OF THE IMAGINATION THIS CASE WERE TO GO INTO
10 OVERNIGHT OR OVER BREAK, I'M GOING TO ASK THAT YOU NOT SPEAK TO
11 ANYONE ELSE. YOU ARE NOT TO SPEAK TO YOUR FELLOW JURORS OR
12 FRIENDS, SPOUSES, RELATIVES, OR ANYONE ELSE CONNECTED WITH THIS
13 CASE. THAT MEANS NOT ONLY FACE TO FACE COMMUNICATIONS, BUT ALSO
14 ANY EMAILS AND AS MY DAUGHTER DOES, THE TEXT MESSAGES YOU SEE
15 GOING BACK AND FORTH, JUST NO COMMUNICATIONS WHATSOEVER, AND
16 THE REASON BEING IS QUITE SIMPLE. WE WANT YOU TO MAKE YOUR
17 DECISION ABOUT WHAT THE FACTS ARE BASED SOLELY FROM THE EVIDENCE
18 YOU HEAR FROM THIS COURTROOM AND NOT FROM ANY EXTRANEIOUS
19 CONSIDERATIONS. AGAIN, I BELIEVE I TOLD YOU WHEN I WAS GOING
20 THROUGH THE QUALIFICATION PROCESS, THESE ATTORNEYS KNOW THEY
21 ARE NOT TO SPEAK WITH YOU EITHER SO, IF YOU HAPPEN TO BUMP INTO
22 THEM, AND I DON'T THINK YOU WILL, THEY ARE NOT TO SPEAK WITH YOU AND
23 THEY ARE NOT BEING RUDE, THEY ARE DOING WHAT THEY ARE SUPPOSED
24 TO DO. IF YOU HAPPEN TO BE IN A POSITION TO HEAR ANY NEWS ABOUT
25 THIS CASE AND I DON'T THINK YOU WILL, YOU ARE NOT TO LISTEN TO IT

RE-DIRECT EXAMINATION OF MEREDITH LANFORD BY MR. BRADLEY

1 YOU ARE TO CUT IT OFF AND NOT CONSIDER ANYTHING ELSE ABOUT THIS
2 CASE OTHER THAN THE EVIDENCE IN THIS COURTROOM.

3 IN EACH AND EVERY CASE THAT COMES INTO THIS COURTROOM
4 WHERE A JURY SITS, THERE ARE FIVE PHASES: THERE WILL BE OPENING
5 STATEMENTS, THERE WILL BE A PRESENTATION OF THE EVIDENCE, THERE
6 WILL BE THE CLOSING ARGUMENTS TO THE JURY AND THEN I WILL INSTRUCT
7 YOU WHAT THE LAW IS AND THEN YOU WILL BEGIN YOUR DELIBERATIONS. I
8 TELL YOU THAT JUST SO YOU KNOW GENERALLY WHERE YOU ARE DURING
9 THE PROCESS.

10 IN FACT, IN JUST A MOMENT, THE SOLICITOR IS GOING TO MAKE AN
11 OPENING STATEMENT. HE WILL TELL YOU WHAT HE THINKS THIS CASE IS
12 ABOUT. I'LL TELL YOU RIGHT NOW, THAT WHAT HE SAYS IS NOT EVIDENCE.
13 IT'S NOT SWORN TESTIMONY. THE DEFENDANT MAY, BUT IS NOT REQUIRED,
14 TO GIVE YOU AN OPENING STATEMENT, BUT IF HE DOES, AGAIN, IT'S NOT
15 SWORN TESTIMONY. IT IS NOT EVIDENCE. I REPEAT TO YOU AND I WILL DO IT
16 OFTEN DURING THIS TRIAL, THE ONLY EVIDENCE IS THE EVIDENCE YOU HEAR
17 FROM THE COURTROOM FROM THE WITNESS STAND THAT I ALLOW INTO
18 EVIDENCE. ONCE THAT COMES IN, WHAT CONCLUSIONS AND INFERENCES
19 YOU DRAW FROM IT IS FOR YOU TO DETERMINE.

20 NOW, FROM TIME TO TIME I IMAGINE THERE WILL BE OBJECTIONS
21 RAISED BY EITHER ONE OF THESE ATTORNEYS. PART OF THE OATH AND
22 PART OF THE CREED THAT EACH ATTORNEY IN THIS STATE TAKES REQUIRES
23 IN A COURTROOM TO OBJECT IF HE OR SHE BELIEVES THAT THE PROCESS IS
24 NOT PROPERLY BEING FOLLOWED. THEREFORE, I AM GOING TO INSTRUCT
25 YOU THAT THE FACT THAT AN ATTORNEY RAISES AN OBJECTION OF THE

RE-DIRECT EXAMINATION OF MEREDITH LANFORD BY MR. BRADLEY

5:

1 MANNER IN WHICH I RULE ON THAT OBJECTION DOES NOT HAVE ANY
2 MEANING TO YOU WHATSOEVER AND YOU ARE NOT TO DRAW ANY
3 CONCLUSIONS FROM THE FACT THAT AN ATTORNEY MAKES AN OBJECTION
4 NOR SHALL YOU HAVE ANY CONCLUSIONS ABOUT MY RULINGS ON THEM.
5 THAT IS SIMPLY PART OF THE PROCESS THAT GOES FORWARD IN EACH AND
6 EVERY CASE IN THIS MATTER.

7 I WILL TELL YOU, GIVE YOU, SOME HELPFUL INSTRUCTIONS TO
8 DETERMINE THE FACTS. ONE OF THE THINGS THAT YOU WILL HAVE TO DO IS
9 TO DETERMINE WITNESS CREDIBILITY AND ONCE AGAIN, I ACCEPT EVIDENCE
10 INTO TRIAL, I LET IT COME INTO EVIDENCE. WHAT INFERENCE YOU DRAW
11 FROM THAT IS YOURS, BUT IN DECIDING WITNESS CREDIBILITY, I'LL GIVE YOU
12 SOME HELPFUL THINGS THAT YOU CAN CONSIDER. YOU ARE NOT REQUIRED
13 TO, BUT YOU MAY. YOU CAN CONSIDER THE INTERESTS OF THAT WITNESS IN
14 GIVING THAT TESTIMONY. YOU CAN CONSIDER ANY BIAS THAT WITNESS MAY
15 HAVE IN GIVING THAT TESTIMONY OR ANY PREJUDICE THAT WITNESS MAY
16 HAVE. YOU CAN CONSIDER THE OPPORTUNITY FOR THAT WITNESS TO HAVE
17 SEEN OR HEARD OR WITNESSED TO MATTERS THAT HE OR SHE TESTIFIED TO
18 AND YOU ALSO MAY CONSIDER THE WAY THAT WITNESS ACTS ON THE STAND
19 OR IN OTHER WORDS, THEIR DEMEANOR. YOU HAVE THE RIGHT TO
20 CONSIDER ANYTHING THAT IN YOUR DAY TO DAY EXPERIENCES THAT YOU
21 CONSIDER IS HELPFUL IN EVALUATION THE TRUTHFULNESS OR THE LACK OF
22 TRUTHFULNESS IN THE TESTIMONY THAT WILL BE PRESENTED IN THIS
23 COURT TODAY.

24 MADAM FOREMAN, IT WILL BE YOUR JOB TO RESIDE OVER THE JURY
25 ROOM. IF AT ANY TIME THERE ARE COMMUNICATIONS THAT YOU WANT TO

RE-DIRECT EXAMINATION OF MEREDITH LANFORD BY MR. BRADLEY

1 HAVE WITH THE COURT, I'M GOING TO ASK YOU TO WRITE IT DOWN AND GIVE
2 IT TO THIS BAILIFF OVER HERE, SIGN YOUR NAME TO IT, IT WILL BE BROUGHT
3 TO MY ATTENTION AND WE WILL DEAL WITH THAT AT THE APPROPRIATE
4 TIME. OKAY? AND I WILL GIVE YOU FURTHER INSTRUCTIONS AT THE END OF
5 THE TRIAL. OTHER THAN THAT, I AM GOING TO ASK YOU BRIEFLY TO STEP
6 BACK INTO YOUR JURY ROOM TO MAKE SURE I HAVEN'T OVERLOOKED
7 SOMETHING FROM EITHER ONE OF THESE ATTORNEYS AND THEN WE WILL
8 BEGIN THE TRIAL. THANK YOU.

9 (JURY OUT AT 10:09 A.M.)

10 THE COURT: ANY ADDITIONS OR EXCEPTIONS FROM THE STATE?

11 MR. BRADLEY: YOUR HONOR, I WAS JUST CURIOUS ON THE TRIAL IN
12 ABSENCE, IF YOU WERE GOING TO DO THAT AT THIS TIME.

13 THE COURT: WELL, I THINK I HAVE TO MAKE FINDINGS OF FACT PRIOR
14 TO GOING FORWARD WITH THE JURY. THANK YOU FOR BRINGING THAT TO
15 MY ATTENTION. TELL ME FIRST, WAS THE DEFENDANT NOTIFIED OF HIS
16 RIGHT TO BE AT TRIAL TODAY?

17 MR. BRADLEY: THAT'S CORRECT, YOUR HONOR.

18 THE COURT: OKAY. SO, YOU AGREE WITH THAT, MISTER BYRHOLDT?

19 MR. BYRHOLDT: YOUR HONOR, HE WAS, BY MAIL OUT FROM THE
20 SOLICITOR'S OFFICE. I ALSO SPOKE WITH MISTER JOHNSON ON MONDAY
21 AND ON TUESDAY. I SPOKE WITH HIS BROTHER THIS MORNING AND TOLD HIM
22 WE WERE STARTING AT 9:00 THIS MORNING. HE KNEW TO BE HERE, KNEW
23 WE WERE GOING FORWARD WITHOUT HIM.

24 THE COURT: AND AGAIN, HE WAS GIVEN A WARNING THAT THE TRIAL

25 WOULD PROCEED IN HIS ABSENCE

RE-DIRECT EXAMINATION OF MEREDITH LANFORD BY MR. BRADLEY

5.

1 **MR. BYRHOLDT:** THAT'S CORRECT, YOUR HONOR.

2 **THE COURT:** WELL, I'M GOING TO FIND THAT THE DEFENDANT WAS
3 GIVEN NOTICE OF HIS RIGHT TO BE PRESENT AND ALSO WARNED THAT IF HE
4 DIDN'T APPEAR, THAT THE TRIAL WOULD PROCEED IN HIS ABSENCE. I WILL,
5 HOWEVER, INSTRUCT THE JURY AS I'M REQUIRED TO DO BEFORE WE GET
6 STARTED, THAT HIS FAILURE TO APPEAR MAY NOT BE CONSTRUED AS AN
7 ADMISSION OF GUILT AND THANK YOU, MISTER BRADLEY. I APPRECIATE IT.

8 **MR. BRADLEY:** YOUR HONOR, I WANTED TO DIRECT YOUR ATTENTION
9 AGAIN TO COURT'S EXHIBIT #1 THAT I ADMITTED YESTERDAY AND THAT WAS
10 THE MAIL OUT THAT, A COPY OF THE MAIL OUT THAT HE WAS NOTIFIED TO BE
11 HERE THIS WEEK.

12 **THE COURT:** VERY GOOD. ANYTHING ELSE?

13 **MR. BRADLEY:** YES, SIR, YOUR HONOR. THE BOND FORM THAT HE
14 RECEIVED, THAT HE RECEIVED AT THE JAIL, DID NOTIFY HIM THAT HE WOULD
15 BE TRIED IN HIS ABSENCE IF HE DID NOT APPEAR WHEN SUMMONED TO BE IN
16 COURT.

17 **THE COURT:** THANK YOU, SIR. ANYTHING ELSE FROM THE STATE?

18 **MR. BRADLEY:** NOTHING FURTHER, YOUR HONOR.

19 **THE COURT:** FROM THE DEFENSE?

20 **MR. BYRHOLDT:** NO EXCEPTIONS OR ADDITIONS, YOUR HONOR.

21 **THE COURT:** OKAY. YOU CAN BRING THEM BACK.

22 (JURY IN AT 10:16 A.M.)

23 **THE COURT:** ALL RIGHT, LADIES AND GENTLEMEN, BEFORE WE GET
24 STARTED, I NEED TO INSTRUCT YOU. AS YOU NOTICED, THE DEFENDANT IS

RE-DIRECT EXAMINATION OF MEREDITH LANFORD BY MR. BRADLEY

1 YOU SHALL NOT CONSTRUE THAT IN ANY FORM OR FASHION AS AN
2 ADMISSION OF GUILT BY THE DEFENDANT. THE STATE STILL HAS THE
3 BURDEN OF PROVING HIS GUILT BEYOND A REASONABLE DOUBT. ARE YOU
4 READY TO PROCEED?

5 MR. BRADLEY: YES, SIR, YOUR HONOR. MAY IT PLEASE THE COURT.

6 THE COURT: YES, SIR.

7 OPENING STATEMENT BY MISTER BRADLEY

8 LADIES AND GENTLEMEN, ON JULY 31, 2009, OFFICERS WITH THE
9 ANDERSON COUNTY SHERIFF'S OFFICE AND THE ANDERSON CITY POLICE
10 DEPARTMENT, WERE PATROLLING THE AREA IN ANDERSON COUNTY AT
11 APPLETON STREET AND REYNOLDS STREET. AS SERGEANT MOSHER AND
12 OFFICER PITTS APPROACHED THAT AREA, THEY NOTICED THE DEFENDANT,
13 MARIO JOHNSON, STANDING IN FRONT OF A RESIDENCE ON WENZICK
14 STREET. THEY ALSO NOTICED THAT WHEN THE DEFENDANT NOTICED THEM
15 APPROACHING, HE IMMEDIATELY TURNED AND HURRIEDLY STARTED
16 WALKING AWAY. THEY ALSO NOTICED THAT WHEN HE ENTERED THE FRONT
17 YARD OF THE RESIDENCE AT THE CORNER OF APPLETON AND REYNOLDS
18 STREET, THEY NOTICED HE DISCARDED A PLASTIC BAGGIE FROM HIS RIGHT
19 HAND. OFFICER PITTS AND SERGEANT MOSHER IMMEDIATELY GOT OUT OF
20 THE VEHICLE AND ATTEMPTED TO STOP THIS DEFENDANT AND HE TURNED
21 AND TRIED TO WALK AWAY FROM THEM. OFFICER PITTS WAS ABLE TO
22 DETAIN HIM AT THAT TIME. SERGEANT MOSHER WENT DIRECTLY TO THE
23 AREA WHERE HE SAW HIM DISCARD THE PLASTIC BAGGIE AND HE DID FIND A
24 PLASTIC BAGGIE CONTAINING AN OFF-WHITE ROCK-LIKE SUBSTANCE HE
25 SUSPECTED OF BEING CRACK COCAINE. AT THAT TIME THE DEFENDANT

OPENING STATEMENT - MISTER BRADLEY

1 WAS PLACED UNDER ARREST AND A SEARCH OF HIS PERSON INCIDENT TO
2 ARREST DID REVEAL ANOTHER PLASTIC BAGGIE CONTAINING A GREEN LEAF
3 SUBSTANCE SUSPECTED TO BE MARIJUANA IN HIS FRONT LEFT PANTS
4 POCKET. THEREAFTER, THE DEFENDANT WAS QUESTIONED BY THE
5 OFFICERS AND HE DID GIVE A STATEMENT TO OFFICERS REGARDING THIS
6 CASE. THESE ARE THE FACTS THAT LED TO THE DEFENDANT BEING
7 ARRESTED AND CHARGED WITH THE CRIMES OF TRAFFICKING CRACK
8 COCAINE AND THE POSSESSION OF MARIJUANA.

9 NOW, SOUTH CAROLINA LAW DEFINES TRAFFICKING CRACK COCAINE
10 AS THE POSSESSION OF TEN GRAMS OR MORE OF CRACK COCAINE. IT
11 DEFINES THE CRIME OF THE POSSESSION OF MARIJUANA AS THE
12 POSSESSION OF LESS THAN TWENTY-EIGHT GRAMS OF MARIJUANA. NOW, AS
13 THE SOLICITOR, IT IS MY BURDEN TO PROVE TO YOU BEYOND A REASONABLE
14 DOUBT THAT THE DEFENDANT COMMITTED THOSE CRIMES AS CHARGED. I
15 WELCOME THAT BURDEN. BUT WHAT DOES BEYOND A REASONABLE DOUBT
16 MEAN? IT DOES NOT MEAN BEYOND ALL DOUBT. IT HAS BEEN DEFINED AS
17 THE KIND OF DOUBT THAT WOULD CAUSE A REASONABLE PERSON TO
18 HESITATE TO ACT. CAREFULLY CONSIDERING THE EVIDENCE IS NOT THE
19 SAME AS A HESITATION TO ACT. BASICALLY, IT MEANS THAT YOU, THE JURY,
20 AFTER VIEWING ALL THE EVIDENCE IN THIS CASE WILL BE FIRMLY
21 CONVINCED OF THE DEFENDANT'S GUILT AND FIND HIM GUILTY. THERE ARE
22 VERY FEW THINGS IN LIFE THAT WE KNOW WITH ABSOLUTE CERTAINTY AND
23 THE LAW DOES NOT REQUIRE THE STATE TO PROVIDE PROOF THAT
24 OVERCOMES EVERY POSSIBLE DOUBT. IT REQUIRES US TO PROVE IT
25 BEYOND A REASONABLE DOUBT

OPENING STATEMENT - MISTER BYRHOLDT

1 THE STATE IS CONFIDENT THAT AFTER HEARING ALL THE EVIDENCE IN
2 THIS CASE, YOU, THE JURY, WILL BE FIRMLY CONVINCED OF THE
3 DEFENDANT'S GUILT UPON HEARING AND SEEING ALL THE EVIDENCE.

4 THE TYPES OF EVIDENCE YOU WILL SEE WILL MOSTLY BE FROM
5 TESTIMONY BY THE OFFICERS WHO ARRESTED THE DEFENDANT THAT DAY
6 AND DID LOCATE THE SUBSTANCE THEY BELIEVED TO BE CRACK COCAINE
7 AND MARIJUANA. YOU WILL ALSO HEAR FROM THE OFFICER WHO TOOK THE
8 STATEMENT FROM THE DEFENDANT THAT DAY. YOU WILL HEAR FROM THE
9 FORENSIC CHEMIST THAT TESTED THE SUBSTANCE THEY BELIEVED TO BE
10 CRACK COCAINE AND YOU'LL HEAR FROM THE OFFICER THAT TESTED THE
11 SUBSTANCE BELIEVED TO BE MARIJUANA. AFTER HEARING ALL THAT
12 EVIDENCE, AGAIN, THE STATE OF SOUTH CAROLINA BELIEVES THAT YOU, THE
13 JURY, WILL BE FIRMLY CONVINCED OF THE DEFENDANT'S GUILT AND FIND HIM
14 GUILTY OF COMMITTING THE CRIME OF TRAFFICKING CRACK COCAINE AND
15 THE POSSESSION OF MARIJUANA.

16 I WANT TO THANK YOU FOR YOUR TIME AND YOUR PATIENCE AND YOUR
17 ATTENTION WHILE LISTENING TO ALL THE EVIDENCE. THANK YOU.

18 THE COURT: MISTER BYRHOLDT.

19 MR. BYRHOLDT: MAY IT PLEASE THE COURT.

20 **OPENING STATEMENT BY MISTER BYRHOLDT**

21 AS I INTRODUCED MYSELF YESTERDAY, I'M BRUCE BYRHOLDT. I
22 PRACTICE LAW HERE IN ANDERSON. I'VE PRACTICED HERE FOR THIRTY
23 YEARS AND I REPRESENT DAVID JOHNSON. SERVING ON A JURY, IT'S BEEN
24 SAID, IS THE MOST IMPORTANT SERVICE YOU CAN DO FOR YOUR COUNTRY

25 OTHER THAN SERVING IN THE ARMY.

OPENING STATEMENT - MISTER BYRHOLDT

6

1 TO PAY CLOSE ATTENTION DURING THE TRIAL. IT SHOULDN'T BE A VERY
2 LENGTHY TRIAL. WE'LL TRY TO GET THIS THING TO YOU AS SOON AS WE
3 CAN. IT'S AN IMPORTANT DAY TO DAVID JOHNSON, THE PERSON CHARGED
4 WITH THESE CRIMES. HE'S THE ONE THE STATE IS TRYING TO CONVICT AND
5 MY HOPE IS THAT YOU WILL HOLD THE STATE TO THAT HIGH BURDEN OF
6 PROVING THEIR CASE BEYOND A REASONABLE DOUBT AND I ASK YOU TO
7 REMEMBER THAT REASONABLE DOUBT IS THE KIND OF DOUBT THAT WOULD
8 CAUSE AN ORDINARY PERSON TO HESITATE TO ACT. REASONABLE DOUBT
9 ALSO COMES FROM LACK OF EVIDENCE, PROBLEMS IN THE INVESTIGATION
10 AND I ASK YOU TO KEEP AN OPEN MIND UNTIL YOU HEAR ALL THE
11 TESTIMONY. THANK YOU FOR TAKING TIME OUT OF YOUR SCHEDULES. NO
12 ONE LIKES TO SERVE ON JURY DUTY. IT INTERRUPTS YOUR FAMILY,
13 INTERRUPTS YOUR WORK, BUT IT'S THE MOST IMPORTANT CIVIL SERVICE
14 YOU CAN DO. ON BEHALF OF MISTER JOHNSON, I THANK YOU FOR WORKING,
15 HOPEFULLY, JUST FOR TODAY.

16 THE COURT: EXCUSE ME JUST A SECOND. DO YOU NEED A GLASS OF
17 WATER? (SPEAKING TO JUROR)

18 (WATER IS PROVIDED TO THE JUROR)

19 THE COURT: LADIES AND GENTLEMEN, AT ANY TIME DURING THE
20 COURSE OF THESE PROCEEDINGS YOU NEED SOMETHING LIKE WATER OR A
21 BREAK, IF SOMEBODY WILL JUST RAISE THEIR HANDS, WE WILL BE GLAD TO
22 ACCOMMODATE YOU. OKAY? MISTER BRADLEY.

23 MR. BRADLEY: THANK YOU, YOUR HONOR. THE STATE CALLS
24 SERGEANT JEFF MOSHER TO THE STAND.

25 (AFTER BEING CALLED TO THE STAND BY THE PROSECUTOR)

DIRECT EXAMINATION OF SERGEANT MOSHER BY MR. BRADLEY

1 **JEFF MOSHER TESTIFIED AS FOLLOWS:)**

2 **CLERK OF COURT: YOU CAN GO UP AND HAVE A SEAT IN THE WITNESS**
3 **CHAIR, PLEASE SIR. IF YOU WILL STATE YOUR FULL NAME AND SPELL YOUR**
4 **LAST FOR THE RECORD.**

5 **SERGEANT MOSHER: JEFFERY ALLEN MOSHER. M-O-S-H-E-R.**

6 **DIRECT EXAMINATION OF SERGEANT JEFF MOSHER BY MISTER BRADLEY**

7 **Q GOOD MORNING, SERGEANT MOSHER.**

8 **A GOOD MORNING.**

9 **Q WHERE ARE YOU EMPLOYED?**

10 **A ANDERSON CITY POLICE DEPARTMENT.**

11 **Q HOW LONG HAVE YOU BEEN THERE?**

12 **A IT WILL BE TEN YEARS IN MAY.**

13 **Q AND WHAT POSITION DO YOU HOLD THERE?**

14 **A CURRENTLY A SERGEANT ASSIGNED TO THE GANG TASK FORCE.**

15 **Q AND WHAT ARE YOUR DUTIES IN THAT POSITION?**

16 **A WE ARE ASSIGNED -- MYSELF AND DEPUTY GREGORY ARE TOGETHER**
17 **IN THE TASK FORCE -- WE ARE ASSIGNED WITH FIELDING COMPLAINTS**
18 **ABOUT GANG ACTIVITY, DRUG ACTIVITY ASSOCIATED WITH GANG**
19 **ACTIVITY.**

20 **MR. BYRHOLDT: YOUR HONOR.**

21 **THE COURT: JUST ONE SECOND. AS I TOLD YOU, LADIES AND**
22 **GENTLEMEN, DURING THE COURSE OF THIS TRIAL THERE WILL BE**
23 **OBJECTIONS. SO THIS IS ONE OF THESE TIMES. I NEED TO TAKE UP SOME**
24 **INFORMATION OUT OF YOUR PRESENCE. I AM GOING TO ASK THAT YOU TAKE**
25 **THEM BACK TO THE JURY ROOM. MISTER MOSHER, PLEASE RETURN TO THE**

DIRECT EXAMINATION OF SERGEANT MOSHER BY MR. BRADLEY

6

1 BACK IN JUST ONE MINUTE.

2 (JURY OUT AT 10:23 A.M.)

3 THE COURT: I UNDERSTAND THAT YOUR OBJECTION HAS TO DO WITH
4 HIM SAYING GANGS?

5 MR. BYRHOLDT: YES, SIR. THIS IS A DRUG TRIAL. IT'S NOT A GANG
6 TRIAL. IT'S HIGHLY PREJUDICIAL. THERE'S BEEN ALL KINDS OF PUBLICITY
7 AND THERE WAS ARGUMENT ABOUT MISTER JOHNSON LAST WEEK AND IT
8 WAS SAID HE CAN'T SAY, "GANG RELATED" AND THE ONLY PURPOSE IT'S
9 DONE FOR IS THAT THERE HAS BEEN A LOT OF PUBLICITY IN ANDERSON
10 COUNTY ABOUT GANG ACTIVITY, TEENAGED DRUG DEALING AND
11 EVERYTHING AND IT IS HIGHLY PREJUDICIAL TO THE DEFENDANT'S CASE TO
12 ASSOCIATE HIM WITH GANG ACTIVITY OR EVEN THE MENTION OF THE WORD
13 "GANG". AT THIS TIME, YOUR HONOR, I MOVE FOR A MISTRIAL.

14 THE COURT: OKAY. I AM GOING TO DENY YOUR MOTION.

15 MR. BYRHOLDT: I UNDERSTAND.

16 THE COURT: MY UNDERSTANDING IS, HE'S GIVING HIS QUALIFICATIONS.
17 PART OF HIS QUALIFICATIONS WAS RELATED TO GANG ACTIVITY. I AM MORE
18 THAN GLAD TO GIVE A CURATIVE INSTRUCTION TO THE JURY IF YOU WANT
19 ME TO, TO SAY THAT THIS CASE IS SOLELY ABOUT TRIAL AND HAS NOTHING
20 TO DO WITH GANG ACTIVITY.

21 MR. BYRHOLDT: I WOULD NOT ASK FOR A CURATIVE INSTRUCTION AT
22 THIS POINT. I WAIVE THAT, BUT I WOULD ASK THE COURT TO CAUTION THEM
23 NOT TO DISCUSS GANGS OR GANG ACTIVITY. IT'S JUST NOT PART OF THIS
24 TRIAL.

25 THE COURT: AND NOW...

DIRECT EXAMINATION OF SERGEANT MOSHER BY MR. BRADLEY

1 YOU UNDERSTAND —

2 MR. BRADLEY: YES, SIR, YOUR HONOR. I WOULD JUST LIKE TO SAY FOR
3 THE RECORD THAT HE WAS MENTIONING HIS OTHER DUTIES FOR HIS
4 POSITION. IT WAS IN NO WAY RELATED TO THE DEFENDANT AT THIS POINT.

5 THE COURT: AND I WILL NOTE FOR THE RECORD, THIS IS THE SECOND
6 TRIAL THAT MISTER MOSHER HAS BEEN IN THIS WEEK AND THE SAME EXACT
7 BIOGRAPHICAL INFORMATION ABOUT HIS BACKGROUND IS ALL THAT IS, AND
8 SO I AM GOING TO INSTRUCT YOU AND THE STATE NOT TO GET INTO GANG
9 RELATED ACTIVITY OR INNUENDO ABOUT GANG ACTIVITY. OKAY?

10 MR. BRADLEY: YES, SIR, YOUR HONOR.

11 THE COURT: ANYTHING ELSE?

12 MR. BYRHOLDT: NO, YOUR HONOR. THANK YOU.

13 SERGEANT MOSHER: I HAVE A QUESTION.

14 THE COURT: JUST ONE SECOND. DO YOU HAVE A QUESTION?

15 SERGEANT MOSHER: YES, SIR. THE REASON WE WERE IN THAT AREA
16 WAS BECAUSE OF GANG RELATED COMPLAINTS.

17 THE COURT: YOU ARE NOT TO GET INTO THAT.

18 SERGEANT MOSHER: HOW DO YOU WANT ME TO PUT THAT? THAT IS
19 WHAT I AM ASKING. I DON'T WANT TO SAY ANYTHING OUT OF THE WAY. JUST
20 THAT WE ARE THERE ON CRIMINAL ACTIVITY?

21 THE COURT: IT'S JUST AN AREA OF CRIME ACTIVITY, I GUESS. I CAN'T
22 TELL YOU HOW TO TESTIFY, BUT JUST DON'T SAY BECAUSE OF GANG
23 ACTIVITY.

24 SERGEANT MOSHER: OKAY.

DIRECT EXAMINATION OF SERGEANT MOSHER BY MR. BRADLEY

64

1 **SERGEANT MOSHER: YES, SIR.**

2 **THE COURT: YEAH, I'M NOT GOING TO TELL YOU HOW TO TESTIFY.**

3 **JUST DO NOT USE GANG, PLEASE, SIR.**

4 **MR. MOSHER: YES, SIR.**

5 **THE COURT: OKAY, IF YOU DO, THEN I WILL GRANT YOUR MISTRIAL. ALL**
6 **RIGHT, GO AHEAD.**

7 **(JURY IN AT 10:26 A.M.)**

8 **THE COURT: ALL RIGHT. MISTER BRADLEY, YOU MAY PROCEED.**

9 **MR. BRADLEY: THANK YOU, YOUR HONOR. MAY IT PLEASE THE**
10 **COURT?**

11 **CONTINUED DIRECT EXAMINATION OF SERGEANT MOSHER BY MR. BRADLEY**

12 **Q SERGEANT MOSHER YOU MAY CONTINUE WITH YOU DUTIES IN YOUR**
13 **POSITION.**

14 **A I AM ASSIGNED TO A TASK FORCE WITH DEPUTY GREGORY WHERE WE**
15 **RECEIVE COMPLAINTS OF CRIMINAL ACTIVITY AND WE GO OUT INTO**
16 **THOSE AREAS THAT WE RECEIVE THE COMPLAINTS ABOUT AND DO**
17 **HIGH SATURATION PATROL AREAS ON PATROL. SO, WE LOOK FOR**
18 **THAT TYPE OF CRIMINAL ACTIVITY.**

19 **Q WERE YOU WORKING IN THAT CAPACITY ON JULY 31, 2009?**

20 **A YES. I WAS.**

21 **Q AND DID YOU HAVE REASON TO COME INTO CONTACT WITH THE**
22 **DEFENDANT NAMED DAVID MARIO JOHNSON ON THAT DAY?**

23 **A YES. WE HAD RECEIVED COMPLAINTS IN THE AREA OF WENZICK AND**
24 **APPLETON OF CRIMINAL ACTIVITY. MYSELF AND OFFICER PITTS WERE**

25 **MANUEL. IT IS UNUSUAL THAT SERGEANT MOSHER**

DIRECT EXAMINATION OF SERGEANT MOSHER BY MR. BRADLEY

1 WITH ANOTHER OFFICER AND THERE WAS ANOTHER TWO-MAN
2 VEHICLE, BUT I CAN'T REMEMBER WHO WAS IN THAT ONE. WE WERE
3 PATROLLING THE AREA. WHEN WE APPROACHED THE CORNER OF
4 WENZICK AND APPLETON, WHICH IS ONE OF THE AREAS WE HAD
5 COMPLAINTS OF, OBSERVED A BLACK MALE, A BLACK MALE LATER
6 IDENTIFIED AS MISTER JOHNSON. HE TOOK NOTICE OF US, OR LOOKED
7 IN OUR DIRECTION, AND STARTED TO WALK AWAY HURRIEDLY
8 TOWARDS REYNOLDS, WHICH IS THE NEXT STREET OVER,
9 APPROXIMATELY TWENTY-FIVE YARDS AWAY.

10 Q WHAT HAPPENED NEXT?

11 A OF COURSE, SEEING HIM BEING THE FIRST ONE TO WALK AWAY IN THE
12 MANNER THAT HE WAS WALKING, WE TOOK NOTICE OF HIM. HE
13 LOOKED BACK AT US AS HE ROUNDED THE -- WE WERE GOING -- WE
14 WERE KIND OF PARALLEL WITH HIM WHEN HE WENT AROUND THE
15 CORNER OF THE TRAILER OVER ON REYNOLDS AND APPLETON. WE
16 WERE ALSO MAKING A TURN AND I SAW HIM DISCARD WHAT APPEARED
17 TO BE A PLASTIC BAG TOWARDS THE FRONT OF THE RESIDENCE AT
18 REYNOLDS AND APPLETON AND IT LANDED RIGHT NEXT TO THE FRONT
19 PORCH, AT WHICH TIME, MYSELF AND OFFICER PITTS GOT OUT WITH
20 MISTER JOHNSON. I HAD OFFICER PITTS STAND BY WITH MISTER
21 JOHNSON SO I COULD FIND OUT EXACTLY WHAT HE HAD DISCARDED. I
22 WENT DIRECTLY TO THE CORNER OF THE PORCH AND THERE WAS A
23 PLASTIC BAGGIE TIED UP IN A LITTLE, LIKE A LITTLE BUNDLE WITH AN
24 OFF-WHITE ROCK-LIKE SUBSTANCE WHICH I BELIEVED TO BE CRACK
25 COCAINE

DIRECT EXAMINATION OF SERGEANT MOSHER BY MR. BRADLEY

6

1 Q AND DURING THIS TIME, DID YOU TAKE YOUR EYES OFF THE
2 DEFENDANT?

3 A I KEPT AN EYE ON THE PLASTIC BAGGIE AND I HAD OFFICER PITTS
4 WATCH THE DEFENDANT THE WHOLE TIME.

5 Q AND WAS HE THE ONLY ONE IN THE FRONT OF THAT YARD THAT DAY?

6 A YES.

7 Q NO ONE ELSE WAS WITH HIM?

8 A NO.

9 Q AND AFTER YOU FOUND THE PLASTIC BAGGIE, WHAT DID YOU DO
10 NEXT?

11 A I HAD OFFICER PITTS – I TOLD OFFICER PITTS TO DETAIN HIM AT WHICH
12 TIME HE TRIED TO RUN FROM OFFICER PITTS. OFFICER PITTS
13 RESTRAINED HIM, PUT HANDCUFFS ON HIM. I SECURED THE EVIDENCE,
14 TUCKED IT INTO MY VEST. WENT OVER TO – WENT OVER TO MY CAR
15 AND DID A FIELD PRESUMPTIVE TEST ON THE SUBSTANCE TO MAKE
16 SURE IT WAS CRACK COCAINE. IT FIELD TESTED POSITIVE. WE
17 PLACED HIM UNDER ARREST AND SEARCH INCIDENT TO ARREST WE
18 FOUND A SMALL PLASTIC BAGGIE CONTAINING A GREEN LEAFY
19 SUBSTANCE. I CAN'T REMEMBER WHICH POCKET IT WAS IN, BUT WE
20 SUSPECTED THAT TO BE MARIJUANA. WE FIELD TESTED THAT AND IT
21 WAS MARIJUANA. IT FIELD TESTED POSITIVE FOR MARIJUANA.

22 Q WHAT DO YOU MEAN BY FIELD TEST?

23 A IT IS A SMALL LITTLE AMPULE. I DON'T KNOW THE CHEMICAL NAMES
24 FOR IT, BUT THERE ARE TWO REAGENTS IN IT WITH TWO LITTLE
25 AMPULES INSIDE THAT ONE YOU PUT THE SUBSTANCE INTO IT AND

DIRECT EXAMINATION OF SERGEANT MOSHER BY MR. BRADLEY

1 YOU BREAK THE BOTTOM AMPULE AND AGITATE IT, BREAK THE TOP
2 ONE AND AGITATE IT AGAIN. FOR THE CRACK COCAINE CONTENT, IT
3 WILL TURN A BLUE COLOR AND ON THE OTHER TEST FOR THE
4 MARIJUANA, I BELIEVE IT TURNS A PURPLISH COLOR.

5 Q OKAY.

6 MR. BRADLEY: MAY I APPROACH THE WITNESS, YOUR HONOR?

7 THE COURT: YES, SIR.

8 Q I AM SHOWING YOU WHAT HAS BEEN MARKED STATE'S EXHIBITS #3
9 AND #4. CAN YOU TAKE A LOOK AT THESE AND SEE IF YOU RECOGNIZE
10 THEM?

11 A (WITNESS COMPLIES) THIS IS A – THE INSIDE OF THIS BAG IS THE ONE
12 THAT I TURNED OVER TO DEPUTY GREGORY TO BE – SO HE COULD
13 SUBMIT IT TO THE FORENSIC LAB WITH THE SHERIFF'S OFFICE.

14 Q WHAT'S INSIDE THE BAG?

15 A THAT OFF-WHITE ROCK-LIKE SUBSTANCE THAT I FIELD TESTED FOR
16 CRACK COCAINE.

17 THE COURT: WOULD YOU IDENTIFY THE EXHIBIT PLEASE, MR. BRADLEY?

18 Q THIS IS STATE'S EXHIBIT #3, I BELIEVE. AND WAS THIS THE SUBSTANCE
19 FOUND ON THE GROUND WHERE THE DEFENDANT DISCARDED IT THAT
20 DAY?

21 A YES. IT WAS IN A PLASTIC BAG TIED UP AT THE TIME.

22 Q OKAY. HOW ABOUT STATE'S EXHIBIT #4? DO YOU RECOGNIZE THAT?
23 YOU MAY OPEN IT.

24 A OKAY. I'LL DO THAT. (OPENS THE BAG, PULLS OUT A PLASTIC BAG.)

25 THIS LOOKS LIKE THE BAG THAT THE DEFENDANT

DIRECT EXAMINATION OF SERGEANT MOSHER BY MR. BRADLEY

6

1 AND TURNED OVER TO -- I TURNED OVER TO DEPUTY GREGORY.

2 Q OKAY. AND TELL ME ABOUT THESE BAGS THAT YOU PLACED THEM IN.
3 WHAT'S THE PROCESS OF THAT?

4 A THEY ARE SEALED, THEY ARE -- EACH EVIDENCE BAG IS A CLEAR
5 PLASTIC BAG WITH PLACES TO PUT IN WHAT EVIDENCE IT IS, WHERE
6 WE RETRIEVED IT FROM, THE DATE, AND THEN THERE IS A TAMPER
7 SEAL THAT WE PRESS TOGETHER AND IT WILL SHOW UP IF ANYBODY
8 TRIES TO TAMPER WITH IT OTHER THAN THE PEOPLE THAT ARE IN THE
9 CHAIN OF CUSTODY.

10 Q OKAY. DO THESE SUBSTANCES, DO THEY APPEAR TO BE IN THE SAME
11 SUBSTANTIAL CONDITION AS THEY WERE THE DAY YOU TOOK THEM
12 FROM THE POSSESSION OF THE DEFENDANT?

13 A YES. THEY APPEAR TO BE.

14 Q AND I BELIEVE YOU TESTIFIED THAT THE OFF-WHITE ROCK-LIKE
15 SUBSTANCE THAT WAS FOUND WAS INITIALLY IN A PLASTIC BAGGIE? IS
16 THAT CORRECT?

17 A YES. IT WAS.

18 Q IS IT STILL IN THAT PLASTIC BAGGIE IN THAT BAG?

19 A NO. NO, THAT'S A -- NO. IT'S NOT.

20 Q AND WAS THERE ANY SPECIFIC REQUEST FOR THAT BAGGIE?

21 A AT THE TIME, JUST TO ERR ON THE SIDE OF CAUTION, WE REQUESTED
22 THAT THE BAG BE FINGERPRINTED, BUT IT HAS BEEN BROUGHT TO MY
23 ATTENTION THAT SOMEWHERE THAT PLASTIC BAGGIE HAS BEEN
24 MISPLACED.

25 Q OKAY AT THIS TIME I AM GOING TO ASK YOU A FEW MORE QUESTIONS.

DIRECT EXAMINATION OF SERGEANT MOSHER BY MR. BRADLEY

1 **MARKED AS STATE'S EXHIBITS #5 THROUGH #17. WOULD YOU TAKE A**
2 **LOOK AT THESE AND SEE IF YOU RECOGNIZE THEM?**

3 **A STATE'S EXHIBIT #5 IS THE RESIDENCE WHERE MISTER JOHNSON**
4 **DISCARDED THE BAGGIE WITH THE CRACK COCAINE IN IT.**

5 **MR. BYRHOLDT: YOUR HONOR, I JUST ASK THAT THEY IDENTIFY THEM**
6 **AT THIS POINT.**

7 **SERGEANT MOSHER: OH, I'M SORRY.**

8 **MR. BYRHOLDT: THE PICTURES SPEAK FOR THEMSELVES.**

9 **A (WITNESS LOOKS THROUGH PHOTOGRAPHS) YES, THESE ARE ALL**
10 **FROM THE INCIDENT DATE.**

11 **Q DO THEY ACCURATELY DEPICT THE SCENE AS IT WAS ON**
12 **JULY 31, 2009?**

13 **A THE ONLY DIFFERENCE IS THERE IS NOW SOMEONE AT THE RESIDENCE**
14 **THAT WASN'T THERE INITIALLY WHEN WE GOT THERE.**

15 **Q HAVE THESE EXHIBITS BEEN ALTERED OR EDITED IN ANY WAY, TO**
16 **YOUR KNOWLEDGE?**

17 **A THEY DON'T APPEAR TO BE. NO.**

18 **Q AT THIS TIME, YOUR HONOR, THE STATE WOULD ASK THAT EXHIBITS #5**
19 **THROUGH #17 BE ADMITTED INTO EVIDENCE.**

20 **THE COURT: ANY OBJECTIONS?**

21 **MR. BYRHOLDT: NO OBJECTIONS, YOUR HONOR.**

22 **THE COURT: ADMITTED WITHOUT OBJECTION.**

23 **(WHEREUPON, THIRTEEN 4x6 PHOTOGRAPHS ARE ENTERED INTO**
24 **EVIDENCE AS STATE'S EXHIBITS #5 THROUGH #17, WITHOUT OBJECTION)**

25 **MR. BRADLEY: PERMISSION TO SUBMIT TO THE JURY YOUR HONOR?**

DIRECT EXAMINATION OF SERGEANT MOSHER BY MR. BRADLEY

7.

1 **THE COURT:** ABSOLUTELY. IF YOU WOULD, BEFORE YOU DO THAT,
2 IDENTIFY EACH EXHIBIT, PLEASE SIR, SO WE HAVE A RECORD OF IT?

3 **MR. BRADLEY:** YES, SIR. (TURNS ON THE SCREEN) SERGEANT
4 MOSHER, WOULD YOU STEP DOWN HERE, PLEASE?

5 **MR. BYRHOLDT:** MAY IT PLEASE THE COURT? (STANDS SO AS TO SEE)

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

7 Q IF YOU WOULD GO OVER TO THE SCREEN AS I PLACE THESE ON THE
8 OVERHEAD AND EXPLAIN TO THE JURY WHAT WE ARE LOOKING AT.
9 (PHOTOGRAPHS ARE PROJECTED ONTO LARGE SCREEN IN FRONT OF
10 THE JURY)

11 A THIS IS THE TRAILER AT THE CORNER OF REYNOLDS AND APPLETON.
12 THE OTHER TRAILER WHERE MISTER JOHNSON WAS OUT BEHIND IT
13 AND THIS IS RIGHT WHERE I SAW HIM DISCARD THE PLASTIC BAGGIE.
14 (INDICATING ON SCREEN)

15 **THE COURT:** MISTER BRADLEY, WOULD YOU IDENTIFY THE EXHIBIT
16 NUMBER, PLEASE SIR?

17 **MR. BRADLEY:** YES, SIR. THAT WAS STATE'S EXHIBIT #5.

18 Q FOR STATE'S EXHIBIT #6?

19 A THIS IS THE STOP SIGN AT APPLETON AND REYNOLDS JUST SO WE CAN
20 SHOW A CLARIFICATION OF WHERE WE WERE AT.

21 Q STATE'S EXHIBIT #7.

22 A I'M RIGHT BEHIND THE DISCARDED BAGGIE. RIGHT THERE IS WHERE
23 THE PLASTIC BAGGIE WAS THAT HE THREW DOWN.

24 Q STATE'S EXHIBIT #8?

25 A THIS IS THE RIGHT HERE IS WHAT THE EXHIBIT IS

DIRECT EXAMINATION OF SERGEANT MOSHER BY MR. BRADLEY

1 LYING THERE AND THEN THIS.

2 Q STATE'S EXHIBIT #9?

3 A WE GOT JUST ANOTHER ANGLE OF WHAT HE THREW.

4 Q STATE'S EXHIBIT #10?

5 A AND THIS IS A PICTURE OF US RETRIEVING THE EVIDENCE.

6 Q STATE'S EXHIBIT #11?

7 A THAT'S AFTER WE RECOVERED THE EVIDENCE AND FIELD TESTED IT.

8 Q STATE'S EXHIBIT #12?

9 A NOT A VERY GOOD ONE, BUT THIS IS A PICTURE OF THE MARIJUANA
10 THAT WE RECOVERED.

11 Q STATE'S EXHIBIT #13?

12 A I BELIEVE THAT THIS IS THE BAG THE MARIJUANA WAS IN IN HIS
13 POCKET.

14 Q STATE'S EXHIBIT #14?

15 A THAT'S THE DEFENDANT, MISTER JOHNSON.

16 Q STATE'S EXHIBIT #15?

17 A THAT IS US JUST PLACING THE EVIDENCE INTO THE EVIDENCE BAG.

18 Q STATE'S EXHIBIT #16?

19 A AND ANOTHER PHOTOGRAPH OF MISTER JOHNSON.

20 Q STATE'S EXHIBIT #17?

21 A THAT'S A NAME THAT MISTER JOHNSON GAVE US INITIALLY.

22 Q YOU MAY RETURN TO YOUR SEAT.

23 (WITNESS COMPLIES)

24 Q SO, WHAT HAPPENED AFTER YOU FINISHED COLLECTING THE
25 EVIDENCE AND FIELD TESTED THE EVIDENCE?

DIRECT EXAMINATION OF SERGEANT MOSHER BY MR. BRADLEY

7

1 A MISTER JOHNSON, AGAIN, WAS PLACED INTO CUSTODY. HE WAS
2 PLACED IN OUR VEHICLE AND TRANSPORTED BACK TO OUR OFFICES A
3 -- I CANNOT -- I THINK IT'S 219 COUNTY HOME ROAD. I CAN'T REMEMBER
4 THE ADDRESS EXACTLY.

5 Q AND WHAT HAPPENED AT THAT TIME?

6 A HANDCUFFS WERE PLACED IN FRONT OF MISTER JOHNSON. HE WAS
7 TAKEN TO DEPUTY GREGORY'S OFFICE. I WENT TO MY OFFICE WHICH
8 IS DIRECTLY ACROSS FROM EACH OTHER. I STARTED MY PAPERWORK
9 AND DEPUTY GREGORY PROCEEDED TO ADVISE MISTER JOHNSON OF
10 HIS MIRANDA WARNINGS.

11 A OKAY. AND WHAT HAPPENED AFTER DEPUTY GREGORY GAVE HIM HIS
12 MIRANDA WARNINGS?

13 A AS COMMON PRACTICE ANY TIME WE MAKE AN ARREST, WE ASK IF
14 THEY WANT TO TALK TO ANYONE, IF THEY ARE WILLING TO. WE WILL
15 ADVISE THEM OF THEIR RIGHTS AND WILL CONDUCT AN INTERVIEW
16 AND TAKE A STATEMENT FROM THEM.

17 Q OKAY. AND DID THAT TAKE PLACE IN THIS CASE?

18 A YES. IT DID.

19 Q AND WHO CONDUCTED THE INTERVIEW?

20 A DEPUTY GREGORY DID.

21 Q WERE YOU PRESENT?

22 A I WAS -- OUR OFFICES ARE DIRECTLY ACROSS FROM EACH OTHER AND
23 THE DOORS WERE OPEN, SO I WAS IN AND OUT OF THE INTERVIEW AT
24 TIMES, BUT I WASN'T THERE FOR THE ENTIRE PROCESS.

25 Q OKAY. AND WHAT TIME OF DAY WAS THE INTERVIEW?

DIRECT EXAMINATION OF SERGEANT MOSHER BY MR. BRADLEY

1 A IT STARTED SHORTLY AFTER 9:00. THIS INCIDENT OCCURRED
2 SOMETIME AFTER 8:30 IN THE EVENING AND AFTER WE GOT HIM
3 SECURED AND THE EVIDENCE SECURED, WE GOT BACK TO OUR
4 OFFICES SHORTLY AFTER 9:00.

5 Q AND WHAT WERE THE PHYSICAL SURROUNDINGS OF THE ROOM
6 WHERE THIS INTERVIEW TOOK PLACE?

7 A THERE WERE TWO CHAIRS, TWO FOLDING CUSHION CHAIRS THAT
8 WERE IN FRONT OF DEPUTY GREGORY'S OFF - DESK. HIS DESK,
9 DEPUTY GREGORY WAS BEHIND HIS DESK. THERE'S SEVERAL
10 WINDOWS AROUND THE OFFICE ITSELF.

11 Q OKAY. AND DURING THAT TIME HE WAS GIVEN HIS RIGHTS, HIS
12 MIRANDA WARNINGS, DID HE UNDERSTAND THOSE WARNINGS, TO
13 YOUR KNOWLEDGE?

14 A TO MY KNOWLEDGE, YES SIR. I SAW HIM SIGN THE MIRANDA WAIVER
15 THAT HE PRODUCED.

16 Q OKAY. AND WAS THE ADVISEMENT OF HIS RIGHTS ACCOMPLISHED BY
17 ANY KIND OF WRITING?

18 A YES, SIR. THERE'S A FORM. WE HAVE ONE FOR THE POLICE
19 DEPARTMENT AND THE SHERIFF'S OFFICE HAS THEIR OWN INDIVIDUAL
20 FORM. IT'S AN ADVICE OF RIGHTS. IT PROVIDES EACH AND EVERY
21 MIRANDA WARNING SO WE CAN READ THEM DIRECTLY AND THERE IS
22 NO DISPUTE THAT WE READ IT TO THEM. AT THE BOTTOM THERE IS A
23 PLACE THAT HE SIGNS THAT HE UNDERSTOOD THE WARNINGS AND
24 THEN AT THE BOTTOM THERE IS ANOTHER LINE ON WHETHER OR NOT
25 HE WANTS TO SPEAK WITH US

DIRECT EXAMINATION OF SERGEANT MOSHER BY MR. BRADLEY

7

1 Q AND DID HE WISH TO SPEAK WITH YOU?

2 A HE SIGNED IT INDICATING SO. YES.

3 Q AND AT THAT TIME, DID HE GIVE A STATEMENT TO DEPUTY GREGORY?

4 A YES. HE DID.

5 Q AND --

6 MR. BRADLEY: MAY I APPROACH THE WITNESS, YOUR HONOR?

7 THE COURT: YES, SIR.

8 Q I'LL SHOW YOU WHAT HAS BEEN MARKED STATE'S EXHIBIT #1 AND
9 STATE'S EXHIBIT #2. WILL YOU TAKE A LOOK AT THESE? DO YOU
10 RECOGNIZE THEM?

11 A YES. I DO.

12 Q AT THE TIME THE DEFENDANT GAVE HIS STATEMENT AND SIGNED THE
13 WAIVER OF RIGHTS FORM, DID HE APPEAR TO BE UNDER THE
14 INFLUENCE OF ALCOHOL OR DRUGS OF ANY KIND?

15 A NO. HE DID NOT.

16 Q DID HE APPEAR TO BE IMPAIRED IN ANY WAY IN HIS MENTAL OR
17 PHYSICAL ABILITIES?

18 A NO. HE DID NOT.

19 Q DID HE APPEAR TO UNDERSTAND WHAT WAS GOING ON?

20 A YES. HE DID.

21 Q DID HE APPEAR TO BE RATIONAL AND RESPONSIVE AND COHERENT?

22 A YES.

23 Q DID HE APPEAR TO BE GIVING THIS STATEMENT, THIS WAIVER OF
24 RIGHTS, FREELY AND VOLUNTARILY?

25 A YES. HE DID.

DIRECT EXAMINATION OF SERGEANT MOSHER BY MR. BRADLEY

1 Q AND WERE ANY THREATS OR PROMISES GIVEN TO HIM IN EXCHANGE
2 FOR HIS STATEMENT?

3 A NO. NOT AT ALL.

4 Q OKAY. IN REGARDS TO STATE'S EXHIBIT #1 AND STATE'S EXHIBIT #2,
5 YOU SAY YOU DID RECOGNIZE THEM?

6 A YES.

7 Q HOW DO YOU RECOGNIZE THEM?

8 A STATE'S EXHIBIT #1 IS THE ADVISORY OF RIGHTS THAT DEPUTY
9 GREGORY FILLED OUT AND HAD MISTER JOHNSON SIGN AS WELL AS
10 DEPUTY GREGORY SIGN, AND STATE'S EXHIBIT #2 IS THE STATEMENT
11 RELATION TO THE CRACK COCAINE THAT WE FOUND THAT EVENING.

12 Q OKAY. AND AFTER THIS STATEMENT WAS GIVEN, WHAT WAS THE
13 PROCESS AFTER THE STATEMENT WAS GIVEN TO YOU AND DEPUTY
14 GREGORY?

15 A COMMON PRACTICE IS AFTER WE ARE DONE WITH A STATEMENT,
16 DEPUTY GREGORY DOES ALL THE STATEMENTS ON COMPUTER. WE
17 GO OVER -- WE MAKE A COPY AND GIVE IT TO THE PERSON THAT WE
18 ARE DOING THE STATEMENT WITH. WE GO OVER IT WITH HIM TO MAKE
19 SURE THAT EVERYTHING THAT HE SAID IS CORRECT, BECAUSE
20 ERRORS DO OCCUR, BUT HE, ONCE THEY AGREE TO IT, WE HAVE THEM
21 SIGN IT AND THEN WE SIGN IT AND GIVE HIM A COPY OF THE
22 STATEMENT, THE SIGNED STATEMENT.

23 Q AND AT THAT TIME, AS YOU FOLLOWED THAT PROCEDURE, THIS
24 PRINTING IT OUT AND GOING BACK OVER IT, DID THE DEFENDANT
25 OBJECT TO ANYTHING THAT WAS IN THAT STATEMENTS

DIRECT EXAMINATION OF SERGEANT MOSHER BY MR. BRADLEY

71

- 1 A NO. HE DID NOT.
- 2 Q DID HE SAY ANYTHING IN IT WAS FALSE AFTER HE READ IT?
- 3 A NO. HE DID NOT.
- 4 Q SO, WHAT HE HAD TOLD YOU AND DEPUTY GREGORY WAS WHAT WAS
- 5 WRITTEN ON THAT STATEMENT?
- 6 A YES.
- 7 Q AND DID HE SIGN THE STATEMENT?
- 8 A NO. HE DID NOT.
- 9 Q DID HE GIVE A REASON WHY HE DID NOT SIGN IT?
- 10 A THE -- SOME OF THE INFORMATION BEYOND THE SCOPE OF JUST THE
- 11 NARCOTICS THAT WE FOUND THAT NIGHT, HE TALKED ABOUT SOME
- 12 OTHER PEOPLE IN THE COUNTY AND CITY THAT WERE DOING, IN
- 13 RELATION TO OTHER ILLEGAL ACTIVITIES, AND HE WAS SCARED IF HIS
- 14 NAME WAS ATTACHED TO A STATEMENT WITH THEIR NAME IN IT, OF
- 15 RETRIBUTION.
- 16 Q AND THAT WAS THE ONLY REASON HE WOULDN'T SIGN?
- 17 A YES, SIR.
- 18 Q AND IT WASN'T BECAUSE WHAT YOU HAD WRITTEN DOWN WAS FALSE.
- 19 CORRECT?
- 20 A CORRECT.
- 21 Q OKAY. AND FROM -- AFTER THE STATEMENT WAS GIVEN, DID YOU HAVE
- 22 ANY OTHER INVOLVEMENT IN THIS CASE?
- 23 A AFTER EVERYTHING WAS COMPLETED, I DID PREPARE THE ARREST
- 24 WARRANTS AND GET THEM SIGNED.
- 25 Q AND WHAT TYPE OF WARRANTS DID HE RECEIVE?

CROSS EXAMINATION OF SERGEANT MOSHER BY MR. BYRHOLDT

1 A THE TRAFFICKING IN CRACK COCAINE AND SIMPLE POSSESSION OF
2 MARIJUANA ARREST WARRANTS.

3 Q AND THEN, YOU SAID YOU WERE THE ONE TO COLLECT THE EVIDENCE
4 AT THE SCENE AND SIGNED IT OVER TO DEPUTY GREGORY. IS THAT
5 CORRECT?

6 A YES. I COLLECTED THE CRACK COCAINE IMMEDIATELY AND RETAINED
7 IT AND I SIGNED IT OVER TO DEPUTY GREGORY SO HE COULD DROP IT
8 IN THE COUNTY FORENSICS. ON SCENE, WHEN WE RECOVERED THE
9 MARIJUANA, DEPUTY GREGORY TOOK CUSTODY OF THE MARIJUANA
10 AND HE DROPPED THE MARIJUANA.

11 Q WHAT DO YOU MEAN BY SIGN OVER?

12 A I'M SORRY?

13 Q WHAT DO YOU MEAN BY SIGNING OVER THE EVIDENCE?

14 A THERE IS A CHAIN OF CUSTODY. EVERY TIME THAT EVIDENCE
15 TOUCHES THE HANDS OF SOMEONE, THERE IS A CHAIN OF CUSTODY
16 THAT HAS TO BE SIGNED AND DATED AND THAT'S WHAT I MEANT BY
17 SIGNED OVER.

18 Q OKAY.

19 MR. BRADLEY: NO FURTHER QUESTIONS OF THIS WITNESS.

20 THE COURT: CROSS EXAMINATION?

21 MR. BYRHOLDT: MAY IT PLEASE THE COURT.

22 **CROSS EXAMINATION OF SERGEANT JEFF MOSHER BY MISTER BYRHOLDT**

23 Q SERGEANT MOSHER, NOW THE STATEMENT THAT YOU TALKED ABOUT
24 IS NOT SIGNED BY MISTER JOHNSON.

25 A NO SIR

CROSS EXAMINATION OF SERGEANT MOSHER BY MR. BYRHOLDT

79

- 1 Q NOT SIGNED BY YOU.
- 2 A NO, SIR.
- 3 Q NOT SIGNED BY OFFICER GREGORY.
- 4 A NO, SIR.
- 5 Q AND, I MEAN, YOU WANT SIGNATURES ON THERE TO SHOW THAT IT'S
- 6 ACCURATE. RIGHT?
- 7 A YES, SIR.
- 8 Q THAT THINGS ARE DONE RIGHT.
- 9 A YES, SIR.
- 10 Q LAW ENFORCEMENT WANTS TO MAKE SURE THEY DOT THEIR I'S AND
- 11 CROSS THEIR T'S.
- 12 A YES, SIR.
- 13 Q YOU TURNED OVER YOUR CHAIN OF CUSTODY ON THESE DRUGS TO
- 14 OFFICER MARK J. GREGORY, THE GENTLEMAN RIGHT THERE IN THE
- 15 MIDDLE.
- 16 A YES, SIR.
- 17 Q THE FORM CALLS FOR IT TO BE NOTARIZED. IS YOUR FORM
- 18 NOTARIZED, SIR?
- 19 A NO, SIR.
- 20 Q WELL, THE REASON IT'S NOTARIZED IS YOU SWEAR UNDER OATH THAT
- 21 YOU HAVE DONE THIS AND YOU HAVE GIVEN THE DRUGS TO THE
- 22 PERSON YOU CLAIM YOU GAVE IT TO.
- 23 A I WAS UNDER THE ASSUMPTION THE REASON THAT IT WAS NOTARIZED
- 24 IS, IF I WASN'T HERE TO TESTIFY THEY COULD -- THAT IT COULD BE
- 25 SWORN TO THAT THAT WAS MY STATEMENT -- THAT WAS MY

CROSS EXAMINATION OF SERGEANT MOSHER BY MR. BYRHOLDT

1 SIGNATURE.

2 Q WELL, WHY ISN'T THE FORM FILLED OUT PROPERLY?

3 A I ---

4 Q CAN YOU TELL THE JURY WHY?

5 A I WAS TOLD THAT WAS ALL I HAD TO DO BECAUSE I WAS GOING TO BE
6 HERE TO TESTIFY.

7 Q WHO FILLED THE FORM OUT?

8 A I DID.

9 Q THAT IS YOUR HANDWRITING?

10 A YES, SIR.

11 Q ON THE ENTIRE FORM?

12 A YES, SIR.

13 Q IS IT ALSO YOUR HANDWRITING ON SERGEANT GREGORY'S FORM? DI
14 YOU FILL OUT HIS FORM, TOO?

15 A NO.

16 Q SO, YOU DID NOT? YOU DID NOT FILL OUT ---

17 A NO, I DID NOT FILL THAT ONE OUT. I FILLED OUT THIS FIRST ONE.

18 Q OKAY. THE DOCUMENT SAYS THAT YOU ARE SWEARING THAT IT IS IN
19 SUBSTANTIALLY THE SAME CONDITION AS YOU RECEIVED IT AND IT'S
20 SUPPOSED TO BE NOTARIZED AND THAT IS NOT DONE. IS IT?

21 A NO. I WAS TOLD I DID NOT HAVE TO NOTARIZE IT.

22 Q WHO TOLD YOU THAT?

23 A THAT WAS THE PRACTICE FOR WHERE IT WAS BEING DROPPED.

24 Q THE PICTURES THAT YOU TOOK THAT NIGHT. I MEAN WAS IT LIGHT
25 OUT? I MEAN WAS IT TAKEN ---

CROSS EXAMINATION OF SERGEANT MOSHER BY MR. BYRHOLDT

8

- 1 A IT WAS GETTING TOWARDS DUSK BY THAT TIME.
- 2 Q WELL, SOME OF THESE PICTURES ARE VERY LIGHT. DID YOU GO BACK
- 3 AND TAKE THESE AT A DIFFERENT TIME?
- 4 A NO.
- 5 Q LET ME HAND, OR LET ME SHOW YOU STATE'S #5. I'LL ASK YOU TO
- 6 COME DOWN, IT PLEASES THE COURT? (MR. BYRHOLDT PROJECTS THE
- 7 PHOTOGRAPH ON THE SCREEN) YOU ARE TELLING THE JURY THAT WAS
- 8 TAKEN AT, I THINK IT'S 8:40 ON YOUR INCIDENT REPORT. SO, AT 8:40 IN
- 9 THE EVENING?
- 10 A APPROXIMATELY. YES, SIR.
- 11 Q OKAY. DO YOU KNOW WHAT TIME SUNDOWN WAS ON THAT DATE?
- 12 A NO. I DON'T.
- 13 Q I'M SORRY?
- 14 A NO. I DON'T.
- 15 Q WOULD YOU RETAKE YOUR SEAT, PLEASE, SIR. (WITNESS RETURNS TO
- 16 THE WITNESS STAND) I APOLOGIZE OFFICER MOSHER. CAN YOU COME
- 17 DOWN ONE MORE TIME? (WITNESS COMPLIES) STATE'S EXHIBIT #9,
- 18 YOUR HONOR. THERE ARE TWO ITEMS THAT ARE FOUND TOGETHER.
- 19 ONE APPEARS TO BE A WHITE CRYSTAL-LIKE SUBSTANCE AND ONE
- 20 APPEARS TO BE MAYBE A MCDONALD'S BAG?
- 21 A YES, SIR.
- 22 Q THOSE BAGS WERE FOUND RIGHT NEXT TO EACH OTHER?
- 23 A YES. RIGHT NEXT TO EACH OTHER.
- 24 Q HOW MANY BAGS DO YOU CLAIM THAT YOU SAW MISTER JOHNSON
- 25 THROW DOWN?

CROSS EXAMINATION OF SERGEANT MOSHER BY MR. BYRHOLDT

1 A JUST ONE.

2 Q AND JUST BY THE GRACE OF GOD YOU ARE SAYING IT JUST HAPPENED
3 TO LAND RIGHT NEXT TO A MCDONALD'S BAG?

4 A YES, SIR. RIGHT NEXT TO IT.

5 Q WOULD IT BE POSSIBLE THAT WHAT YOU SAW MISTER JOHNSON
6 THROW DOWN WAS A MCDONALD'S BAG?

7 A NO. IT DIDN'T HAVE ANY COLOR TO IT. IT WAS CLEAR PLASTIC.

8 Q AND WHERE IS THAT CLEAR PLASTIC -- I'M SORRY. YOU CAN TAKE
9 YOUR SEAT. (WITNESS COMPLIES) AND WHERE IS THAT CLEAR
10 PLASTIC BAG?

11 A I CAN'T ANSWER THAT ONE, SIR. I'M NOT SURE.

12 Q DID YOU TAKE POSSESSION OF IT?

13 A YES. WE DID.

14 Q WHO DID YOU TURN IT OVER TO?

15 A I TURNED THE BAGGIE AND THE CRACK OVER TO DEPUTY GREGORY.

16 Q YOU DIDN'T LOSE IT?

17 A NO, SIR.

18 Q BUT YOU DON'T HAVE IT NOW. NO ONE HAS IT NOW --

19 A NO, SIR.

20 Q -- AS FAR AS YOU KNOW?

21 A AS FAR AS I KNOW. NO, SIR.

22 Q THAT'S ALL THE QUESTIONS I HAVE FOR OFFICER MOSHER. THANK
23 YOU, SIR.

24 THE COURT: RE-DIRECT?

25 MR. BRADLEY: JUST A COUPLE MORE QUESTIONS

RE-DIRECT EXAMINATION OF SERGEANT MOSHER BY MR. BRADLEY

83

RE-DIRECT EXAMINATION OF SERGEANT JEFF MOSHER BY MISTER BRADLEY

Q AS FAR AS DEFENSE COUNSEL REFERRED TO STATE'S EXHIBIT #5, THE
LIGHTNESS OUTSIDE. WHAT TIME OF YEAR WAS THIS AGAIN?

A THE END OF JULY. JULY THE 31ST, I BELIEVE.

Q SO, DURING THAT TIME OF YEAR DOES IT GET DARK LATE OR EARLY?

A IT WAS LATER.

Q OKAY. AND AS FAR AS YOU NOT HAVING THE CHAIN OF CUSTODY FORM
NOTARIZED, AGAIN, IF YOU COULD EXPLAIN WHY THAT IS NOT
NOTARIZED.

A WHAT I HAVE BEEN TOLD IS THAT THE REASON FOR THE NOTARIZATION
OF THE SIGNATURE IS IN THE EVENT THAT THE PERSON THAT SIGNED
IT IS NOT THERE TO TESTIFY IN COURT, IT CAN BE CONSIDERED A
LEGAL DOCUMENT BECAUSE IT WAS NOTARIZED.

Q BUT YOU ARE HERE TO TESTIFY.

A YES, SIR.

MR. BRADLEY: NOTHING FURTHER.

THE COURT: RE-CROSS?

MR. BYRHOLDT: NOTHING.

THE COURT: MAY OFFICER MOSHER BE EXCUSED?

MR. BRADLEY: YES, YOUR HONOR.

THE COURT: THANK YOU, SIR. YOU MAY STEP DOWN.

THE COURT: CALL YOUR NEXT WITNESS, PLEASE SIR.

MR. BRADLEY: THANK YOU, YOUR HONOR. MAY IT PLEASE THE COURT?

THE STATE CALLS OFFICER JARVIS PITTS.

DIRECT EXAMINATION OF OFFICER PITTS BY MR. BRADLEY

1 TESTIFIED AS FOLLOWS:)

2 CLERK OF COURT: WILL YOU GO UP, PLEASE SIR, AND HAVE A SEAT IN
3 THE WITNESS CHAIR. WOULD YOU PLEASE STATE YOUR FULL NAME AND
4 SPELL YOUR LAST NAME FOR THE RECORD.

5 OFFICER PITTS: JARVIS PITTS. JARVIS LAMAR PITTS, SORRY. P-I-T-T-S
6 IS MY LAST NAME.

7 DIRECT EXAMINATION OF OFFICER PITTS BY MR. BRADLEY

8 Q GOOD MORNING, OFFICER PITTS.

9 A MORNING.

10 Q WHERE ARE YOU EMPLOYED?

11 A ANDERSON CITY POLICE DEPARTMENT.

12 THE COURT: ONE SECOND. CAN YOU HEAR OFFICER PITTS? I AM
13 GOING TO ASK YOU TO MOVE UP A LITTLE CLOSER SO THE JURY CAN HEAR
14 YOU AND SPEAK INTO THE MICROPHONE, PLEASE, SIR. EXCUSE ME.

15 MR. BRADLEY: THAT'S ALL RIGHT.

16 Q HOW LONG HAVE YOU BEEN EMPLOYED WITH THE ANDERSON CITY
17 POLICE DEPARTMENT?

18 A ABOUT A YEAR AND FOUR MONTHS NOW.

19 Q AND WHAT POSITION DO YOU HOLD THERE?

20 A I AM A PATROL OFFICER.

21 Q AND WHAT ARE YOUR DUTIES AT THAT POSITION?

22 A TO ANSWER CALLS FOR SERVICE IN THE CITY OF ANDERSON AND ALSO
23 TO PATROL THE CITY OF ANDERSON.

24 Q AND WERE YOU WORKING IN THAT CAPACITY ON JULY 31, 2009?

25 A YES

DIRECT EXAMINATION OF OFFICER PITTS BY MR. BRADLEY

8!

1 Q AND DID YOU HAVE REASON TO COME INTO CONTACT WITH THE
2 DEFENDANT, DAVID MARIO JOHNSON, ON THAT DAY?

3 A YES. I DID.

4 Q WHAT WAS THAT REASON?

5 A I WAS ON PATROL IN THAT AREA WITH SERGEANT MOSHER IN AN
6 UNMARKED WHITE SUV IN THE AREA OF REYNOLDS AND APPLETON
7 STREETS. IT'S AN AREA KNOWN FOR A HIGH CRIME AREA. WE HAVE A
8 LOT OF COMPLAINTS RECEIVED FROM THAT AREA. WE WERE RIDING
9 DOWN THE ROAD AND WE NOTICED IN FRONT OF A TRAILER ON
10 WENZICK STREET, A GROUP OF BLACK MALES STANDING THERE, IDLY.
11 WE DID TAKE NOTICE TO THE DEFENDANT AS HE, WHEN HE NOTICED
12 OUR VEHICLE, HE STARTED TO BACK OFF AND WALK IN THE OPPOSITE
13 DIRECTION. THE DEFENDANT THEN PICKED UP SPEED AS WE STARTED
14 TO GET A LITTLE BIT CLOSER. WE DID NOTICE THAT. HE STARTED TO
15 TAKE FLIGHT THROUGH SOME TRAILERS THAT WERE BEHIND IT, THE
16 TRAILER WE INITIALLY SAW THE DEFENDANT AT. AT THAT TIME,
17 OFFICER MOSHER AND MYSELF DID PULL AROUND THE CORNER. AT
18 THE TIME WE DID MEET FACE TO FACE, WE WERE OUT OF THE VEHICLE
19 AT THAT TIME, WITH THE DEFENDANT. WE NOTICED THAT HE
20 DISCARDED A PLASTIC BAGGIE IN THAT DIRECTION TOWARD A TRAILER
21 THAT WAS DIRECTLY ON THAT ROAD, OFFICER MOSHER DID. HE DID
22 RIDE OVER -- OR WALK OVER TO RETRIEVE WHATEVER THE
23 DEFENDANT HAD THROWN ON THE GROUND. I DID, AT THAT TIME,
24 DETAINED THE DEFENDANT. I DID STAY WITH THE DEFENDANT AND
25 DETAINED HIM. OFFICER MOSHER RETRIEVED A PLASTIC BAGGIE THAT

DIRECT EXAMINATION OF OFFICER PITTS BY MR. BRADLEY

1 CONTAINED A ROCK-LIKE SUBSTANCE THAT WAS SUSPECTED TO BE
2 CRACK COCAINE. IT WAS FIELD-TESTED POSITIVE ON THE SCENE. AT
3 THAT TIME, I DID PLACE THE DEFENDANT UNDER ARREST UNTIL HE
4 TRIED TO RUN FROM ME AND I DID HAVE TO RESTRAIN HIM BY PLACING
5 HIM ON THE GROUND.

6 Q DURING THIS TIME YOU AND SERGEANT MOSHER WERE FOLLOWING
7 THE DEFENDANT THROUGH THE YARD, DID YOU TAKE YOUR EYES OFF
8 HIM AT ANY TIME?

9 A NO.

10 Q OKAY. WAS ANYONE ELSE WITH HIM?

11 A NO.

12 Q DID YOU SEE ANYONE ELSE, AS FAR AS ANYBODY ELSE IN THE FRONT
13 OF THAT YARD?

14 A NO. I DIDN'T.

15 Q BUT YOU DID SEE SOMETHING, THE PLASTIC BAGGIE, DISCARDED FROM
16 HIS HAND?

17 A I DID.

18 Q AND WERE YOU PRESENT WHEN THE OFFICER SEARCHED THE
19 DEFENDANT AFTER HE WAS PLACED UNDER ARREST?

20 A I WAS ASSISTING, I BELIEVE, ANOTHER OFFICER, BUT I WAS IN THE
21 AREA WHEN HE WAS BEING SEARCHED.

22 Q OKAY. AND WHAT DID THAT SEARCH YIELD?

23 A THE SEARCH, INCIDENT TO ARREST, YIELDED A PLASTIC BAGGIE
24 CONTAINING A GREEN LEAFY-LIKE SUBSTANCE THAT WAS SUSPECTED
25 TO BE MARIJUANA. IT ALSO FIELD TESTED POSITIVE TO BE

DIRECT EXAMINATION OF OFFICER PITTS BY MR. BRADLEY

8

1 MARIJUANA..

2 Q OKAY.

3 MR. BRADLEY: PERMISSION TO APPROACH, YOUR HONOR?

4 THE COURT: YES, SIR.

5 Q IF YOU WANT TO GO AHEAD AND STEP DOWN. (WITNESS LEAVES THE
6 STAND)

7 MR. BYRHOLDT: YOUR HONOR, WE STIPULATE IF THIS OFFICER IS
8 GOING TO TESTIFY TO THE SAME PICTURES. IT'S CUMULATIVE, IF IT'S GOING
9 TO BE THE SAME PICTURES THAT SERGEANT MOSHER DID.

10 MR. BRADLEY: ALL RIGHT. THAT'S FINE.

11 Q SERGEANT, YOU MAY STEP BACK UP. (WITNESS COMPLIES) THANK YOU.
12 JUST FOR THE RECORD, OFFICER PITTS, STATE'S EXHIBITS THAT ARE
13 #5 THROUGH #17, DO THEY DEPICT THE SCENE AS YOU SAW IT THAT
14 DAY?

15 A YES, SIR.

16 Q AND DO THEY DEPICT THE ROCK-LIKE SUBSTANCE THAT THE
17 DEFENDANT DISCARDED IN THAT YARD?

18 A THEY DO.

19 Q AND DEPICTS THE GREEN LEAFY SUBSTANCE FOUND IN THE
20 DEFENDANT'S POCKET THAT DAY?

21 A YES. IT DOES.

22 MR. BRADLEY: NOTHING FURTHER FOR THE WITNESS, YOUR HONOR.

23 THE COURT: CROSS EXAMINATION?

24 MR. BYRHOLDT: NO QUESTIONS FOR OFFICER PITTS.

DIRECT EXAMINATION OF OFFICER PITTS BY MR. BRADLEY

1 **MR. BRADLEY:** YES, SIR.

2 **MR. BYRHOLDT:** NO OBJECTION.

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

4 **OFFICER PITTS:** THANK YOU.

5 **THE COURT:** ALL RIGHT. LADIES AND GENTLEMEN, WE HAVE BEEN
6 GOING FOR ABOUT AN HOUR. LET'S TAKE A FIVE MINUTE BREAK AND COME
7 BACK AND WE WILL RESUME TESTIMONY. SO, MISTER FOREMAN, IF YOU
8 WOULD TAKE YOUR JURY BACK TO YOUR JURY ROOM. WE WILL RESUME AT
9 11:05.

10 **(JURY OUT AT 10:57 A.M.)**

11 **THE COURT:** ARE YOU READY?

12 **MR. BRADLEY:** YES, SIR.

13 **MR. BYRHOLDT:** THE DEFENSE, WE HAVE RECEIVED YOUR CHARGE.
14 YOUR CHARGE.

15 **THE COURT:** YOU HAVE OR YOU HAVE NOT?

16 **MR. BYRHOLDT:** I HAVE.

17 **THE COURT:** OKAY, ANY OBJECTIONS TO IT? AND I WOULD BE GLAD TO
18 GO OVER THAT WITH YOU. DO YOU WANT TO DO THAT NOW OR DO YOU
19 WANT TO WAIT?

20 **MR. BYRHOLDT:** I HAVE NO PROBLEM WITH IT.

21 **THE COURT:** OKAY.

22 **MR. BYRHOLDT:** I HAVE SEEN IT BEFORE.

23 **MR. BRADLEY:** NO PROBLEM HERE, YOUR HONOR.

24 **THE COURT:** OKAY. THAT'S GOOD.

DIRECT EXAMINATION OF DEPUTY GREGORY BY MR. BRADLEY

89

1 (JURY IN AT 11:07 A.M.)

2 THE COURT: MISTER BRADLEY?

3 MR. BRADLEY: THANK YOU, YOUR HONOR. MAY IT PLEASE THE COURT.
4 THE STATE CALLS DEPUTY MARK GREGORY.

5 (AFTER BEING DULY SWORN BY THE CLERK OF COURT, (DEPUTY MARK
6 GREGORY TESTIFIED AS FOLLOWS:)

7 CLERK OF COURT: GO UP AND HAVE A SEAT IN THE WITNESS CHAIR,
8 PLEASE. IF YOU WILL STATE YOUR FULL NAME AND SPELL YOUR LAST NAME
9 FOR THE RECORD.

10 DEPUTY GREGORY: MARK JACKSON GREGORY. LAST NAME IS
11 SPELLED G-R-E-G-O-R-Y.

12 DIRECT EXAMINATION OF DEPUTY MARK GREGORY BY MR. BRADLEY

13 Q GOOD MORNING, DEPUTY GREGORY.

14 A GOOD MORNING.

15 Q WHERE DO YOU WORK?

16 A THE ANDERSON COUNTY SHERIFF'S OFFICE.

17 Q AND WHAT POSITION DO YOU WORK AT?

18 A I WORK IN NARCOTICS ON A JOINT CITY AND COUNTY TASK FORCE.

19 Q AND HOW LONG HAVE YOU BEEN THERE?

20 A I HAVE BEEN AT THE SHERIFF'S OFFICE ROUGHLY SEVEN-AND-A-HALF
21 YEARS. I WORKED IN THE PENDLETON POLICE DEPARTMENT ONE YEAR
22 PRIOR TO THAT AND IN MILITARY POLICE UNDER THE GANG UNIT IN THE
23 UNITED STATES MARINE CORP FOR FOUR YEARS.

24 Q AND IN YOUR CURRENT POSITION AT THE SHERIFF'S OFFICE, WHAT
25 POSITION DO YOU HOLD?

DIRECT EXAMINATION OF DEPUTY GREGORY BY MR. BRADLEY

1 A I HOLD A, JUST AN INVESTIGATOR AT THE SHERIFF'S OFFICE ON THE
2 CITY AND COUNTY GANG TASK FORCE.

3 Q AND WERE YOU WORKING IN THAT CAPACITY ON JULY 31, 2009?

4 A I WAS, SIR.

5 Q AND DID YOU HAVE REASON TO COME INTO CONTACT WITH THE
6 DEFENDANT, DAVID MARIO JOHNSON, ON THAT DAY?

7 A I DID.

8 Q WHAT WAS THAT REASON?

9 A WE WERE PATROLLING THE AREA OF APPLETON STREET, OF THE OLD
10 APPLETON MILL. IT'S A HIGH CRIME AREA. WE'VE HAD NUMEROUS
11 COMPLAINTS OUT THERE AT THE -- SPECIFICALLY, AT WENZICK
12 STREET. I DROVE BY IN AN UNMARKED VEHICLE PAST WENZICK
13 STREET AND OBSERVED A LARGE GROUP OF PEOPLE OUT IN THE
14 FRONT YARD, SOME OF WHOM I HAVE PREVIOUSLY MET. I WENT PAST
15 THAT RESIDENCE AND I BELIEVE SERGEANT JEFF MOSHER WAS BEHIND
16 ME IN AN UNMARKED VEHICLE. I CIRCLED THE BLOCK. SERGEANT
17 MOSHER CALLED ME ON THE RADIO AND SAID THEY HAD ONE
18 DETAINED. I CIRCLED BACK AROUND THE BLOCK AND CAME BACK TO
19 SERGEANT MOSHER AND THE OTHER OFFICERS THAT WERE PARKED IN
20 FRONT OF REYNOLDS STREET. I GOT OUT OF MY VEHICLE.
21 SERGEANT MOSHER THEN EXPLAINED TO ME WHAT THE SITUATION
22 WAS, THAT HE HAD SEEN SOMEBODY AND SUBSEQUENTLY FOUND A
23 BAGGIE WITH WHAT HE SUSPECTED TO BE CRACK COCAINE. I THEN
24 GOT MY CAMERA OUT AND HELPED HIM PROCESS THE SCENE.

25 Q WHAT DO YOU MEAN BY PROCESS?

DIRECT EXAMINATION OF DEPUTY GREGORY BY MR. BRADLEY

9.

1 A HE SHOWED ME EXACTLY WHERE THE DRUGS WERE, THE SUSPECTED
2 DRUGS WERE. HE SHOWED ME WHO THE PERSON WAS BELIEVED TO
3 HAVE HAD THE DRUGS. I PHOTOGRAPHED THE SCENE WITH A CAMERA
4 I PHOTOGRAPHED OTHER PICTURES THAT YOU HAVE ALREADY SEEN
5 TODAY, HELPED COLLECT EVIDENCE AND WHAT I MEAN BY HELPED
6 COLLECT EVIDENCE IS, I SUPPLIED THE BAGS AND DUE TO THE FACT
7 THAT THIS INCIDENT HAPPENED IN THE COUNTY OF ANDERSON, WE DID
8 A CHAIN OF CUSTODY WITH THE EVIDENCE AND IT SUBSEQUENTLY
9 CAME INTO MY HANDS AND I THEN TURNED IT IN TO THE ANDERSON
10 COUNTY SHERIFF'S DEPARTMENT'S EVIDENCE LOCKER.

11 Q OKAY. AND WHEN YOU SAY YOU PHOTOGRAPHED THE SCENE, WERE
12 YOU THE ONE THAT TOOK STATE'S EXHIBITS #5 THROUGH #17, THE
13 PHOTOGRAPHS?

14 A YES, SIR.

15 Q AND DO THOSE PHOTOGRAPHS ACCURATELY DEPICT THE SCENE AS IT
16 WAS ON JULY 31, 2009?

17 A YES, SIR.

18 Q I BELIEVED YOU TESTIFIED THAT THEY SHOWED THE DEFENDANT
19 THERE AT THE SCENE AND THE ITEMS THAT HE DISCARDED FOUND IN
20 HIS POSSESSION?

21 A YES.

22 Q SO, AFTER YOU FINISHED PHOTOGRAPHING THE SCENE AND
23 COLLECTING THE EVIDENCE, WHAT HAPPENED NEXT?

24 A OUR COMMON PRACTICE IS TO INVESTIGATE THINGS. IF WE WERE TO
25 GET A BAG OF DOPE OFF SOMEBODY AND PUT THEM IN JAIL I HAVEN'T

DIRECT EXAMINATION OF DEPUTY GREGORY BY MR. BRADLEY

92

1 DONE MUCH INVESTIGATING. ALL I HAVE DONE IS PUT SOMEBODY IN
2 JAIL FOR A CRIME THAT THEY HAVE COMMITTED. I LIKE TO FIGURE OUT
3 WHERE THE DRUGS COME FROM. COCAINE IS NOT MANUFACTURED IN
4 SOUTH CAROLINA. IT HAS TO COME FROM SOMEWHERE ELSE. SO, THE
5 FIRST QUESTION THAT WE WOULD NORMALLY ASK PEOPLE,
6 DISCREETLY, IS THERE ANYTHING THAT YOU CAN DO TO HELP OUR
7 INVESTIGATION WHERE DRUGS ARE COMING FROM. WE DON'T
8 PROMISE THEM ANYTHING THAT WE ARE GOING TO LET YOU OUT OF
9 JAIL. WE SPECIFICALLY TELL THEM YOU ARE GOING TO JAIL TONIGHT.
10 IT'S THEN UP TO THE SOLICITOR AND THE DEFENSE ATTORNEY OR
11 WHOEVER, ABOVE MY HEAD, TO FIGURE OUT CHARGES WILL THEN BE
12 REDUCED. WE DON'T SPECIFICALLY SAY THAT, BUT WE DO ASK THEM
13 IF THEY WANT TO HELP THEMSELVES IN THE FUTURE, BUT THEY ARE
14 STILL GOING TO JAIL TONIGHT. WE ASKED THE DEFENDANT, MISTER
15 JOHNSON, IF HE WANTED TO HELP HIMSELF AND HE SAID, "YES". WE
16 THEN PUT HIM INTO A UNMARKED CAR, NOT A POLICE CAR, AND GOT
17 HIM AWAY FROM THIS SCENE AS QUICKLY AS POSSIBLE. WE ARE STILL
18 DOING OUR JOB AND WE TOOK HIM TO THE ANDERSON COUNTY
19 SHERIFF'S OFFICE, TO OUR OFFICE SPECIFICALLY, AND CONDUCTED A
20 INTERVIEW ON HIM.

21 Q AND WHAT TIME OF DAY WAS IT WHEN THIS INTERVIEW STARTED?

22 A ROUGHLY AROUND 9:00.

23 Q AND WHAT WERE THE PHYSICAL SURROUNDING OF THIS INTERVIEW?

24 A THE BUILDING IS LAID OUT WITH A SMALL HALLWAY WITH FOUR

25 OFFICES. ALL ARE UNDER A LOCK AND KEY FROM THE OUTSIDE. ANY

DIRECT EXAMINATION OF DEPUTY GREGORY BY MR. BRADLEY

9:

1 OFFICE IS DIRECTLY ACROSS FROM SERGEANT MOSHER'S OFFICE. I
2 CAN SEE HIM IN A LINE OF SIGHT AS I CAN THE SOLICITOR RIGHT NOW.
3 THE INTERVIEW WAS CONDUCTED IN MY OFFICE. THE DEFENDANT WAS
4 SITTING IN FRONT OF MY DESK WITH HIS BACK TURNED TO SERGEANT
5 JEFF MOSHER, BUT I WAS STILL ABLE TO SEE SERGEANT MOSHER SO,
6 FROM THE OFFICE WHERE I WAS SITTING. PEOPLE WOULD COME IN
7 AND OUT PERIODICALLY OF MY OFFICE EITHER TO ONE, LISTEN TO
8 WHAT THE DEFENDANT WAS SAYING OR POSSIBLY HELP ME OUT WITH
9 A NAME THAT I WASN'T AWARE OF OR BRING A CUP OF WATER OR CUP
10 OF COFFEE TO MYSELF OR TO THE DEFENDANT IF HE REQUESTED IT
11 OR WHATNOT, BUT I PRIMARILY STAYED IN THE OFFICE AND
12 CONDUCTED THE INTERVIEW.

13 Q HOW LONG DID THIS INTERVIEW TAKE PLACE?

14 A ROUGHLY AN HOUR-AND-A-HALF TO TWO HOURS, GIVE OR TAKE.

15 Q AND DURING THAT TIME, WAS THE DEFENDANT DENIED ACCESS TO A
16 TELEPHONE, FOOD, A BATHROOM, OR ANYTHING LIKE THAT?

17 A HE WAS NOT DENIED ACCESS TO ANYTHING. IF HE NEEDED TO USE
18 THE RESTROOM, A CUP OF WATER. I OFFERED HIM COFFEE. I DON'T
19 BELIEVE HE DRANK IT. I BELIEVE WE DID GIVE HIM A PEPSI, IF I
20 REMEMBER CORRECTLY. WE OFFERED HIM DRINKABLE ITEMS. WE
21 OFFERED HIM THE RESTROOM. WE DID NOT LET HIM USE THE PHONE
22 AT THAT TIME. I TOLD HIM THAT AT THE JAIL, HE COULD USE THE
23 PHONE AND WHEN HE GOES TO THE JAIL, HE'S THEN ALLOWED TO
24 MAKE A PHONE CALL.

25 Q AND DURING THIS TIME WERE ANY BREAKS TAKEN?

DIRECT EXAMINATION OF DEPUTY GREGORY BY MR. BRADLEY

9

1 A I DON'T RECALL IF ANY MAJOR BREAKS WERE TAKEN. I DIDN'T
2 CONDUCT AN INTERVIEW FOR TWO SOLID HOURS. THERE WAS A LULL
3 IN PROBABLY HOW THE INTERVIEW PROCESS WENT. I MAY HAVE
4 SPOKEN WITH SERGEANT MOSHER ABOUT CERTAIN THINGS THAT THE
5 DEFENDANT WAS SAYING, SO IT DEPENDS ON WHAT YOUR DEFINITION
6 IS OF A BREAK.

7 Q OKAY. DURING THIS TIME, WERE ANY THREATS OR PROMISES MADE TO
8 FORCE THIS DEFENDANT INTO MAKING A STATEMENT?

9 A NO. NO.

10 Q WAS HE COERCED IN ANY WAY TO TALK WITH YOU?

11 A NO. HE WAS NOT.

12 Q DID THE DEFENDANT APPEAR TO BE UNDER THE INFLUENCE OF
13 ALCOHOL OR DRUGS AT THE TIME HE WAS GIVING HIS STATEMENT?

14 A HE DIDN'T SEEM TO BE UNDER THE INFLUENCE OF ANYTHING.

15 Q DID HE APPEAR TO HAVE A PHYSICAL OR MENTAL DISABILITY TO CAUSE
16 HIM NOT TO UNDERSTAND WHAT WAS GOING ON?

17 A I DIDN'T SEE ONE PRESENT. NO, SIR.

18 Q SO HE APPEARED TO BE RATIONAL AND COHERENT AND KNEW WHAT
19 WAS GOING ON?

20 A ABSOLUTELY. IN MY OPINION, YES.

21 Q AND WAS HE UNDER ARREST AT THE TIME OF HIS QUESTIONING?

22 A HE WAS, SIR.

23 Q AND WAS HE ADVISED OF HIS CONSTITUTIONAL RIGHTS AND
24 EXPLAINED MIRANDA PRIOR TO HIS GIVING THE STATEMENT?

25 A YES, SIR. HE WAS

DIRECT EXAMINATION OF DEPUTY GREGORY BY MR. BRADLEY

96

1 Q AND WAS THIS ADVISEMENT OF HIS RIGHTS ACCOMPLISHED BY ANY
2 FORM OF WRITING?

3 A IT WAS ACCOMPLISHED BY WRITING AND VERBAL OFF THE FORM THAT
4 WAS ALREADY PREPARED BY THE SHERIFF'S OFFICE.

5 MR. BRADLEY: PERMISSION TO APPROACH THE WITNESS, YOUR
6 HONOR.

7 THE COURT: YES, SIR.

8 Q I AM GOING TO SHOW YOU STATE'S EXHIBITS #1 AND #2 AND SEE IF YOU
9 RECOGNIZE THOSE.

10 A YES, SIR. I RECOGNIZE THEM.

11 Q AND IF YOU COULD PLEASE, TELL US HOW YOU RECOGNIZE THEM.

12 A WHICH ONE?

13 Q STATE'S EXHIBIT #1, PLEASE.

14 A STATE'S EXHIBIT #1, I RECOGNIZE IT TO BE AN ANDERSON COUNTY
15 SHERIFF'S OFFICE ADVISORY OF RIGHTS FORM, BASICALLY, A MIRANDA
16 FORM. IT LET'S SOMEBODY KNOW WHAT THEIR RIGHTS ARE SO I
17 DON'T DO THEM UNFAIRLY.

18 Q AND NOW STATE'S EXHIBIT #2?

19 A STATE'S EXHIBIT #2 IS A STATEMENT THAT I TYPED AS TO WHAT DAVID
20 MARIO JOHNSON TOLD ME.

21 Q AND ARE THESE THE ITEMS THAT YOU USED THAT DAY ON JULY 31,
22 2009?

23 A PARDON ME?

24 Q ARE THESE THE DOCUMENTS THAT YOU USED WITH THE DEFENDANT
25 TO OBTAIN HIS STATEMENT ON JULY 31, 2009?

DIRECT EXAMINATION OF DEPUTY GREGORY BY MR. BRADLEY

1 A YES, SIR.

2 MR. BRADLEY: YOUR HONOR, AT THIS TIME THE STATE WOULD MOVE
3 TO HAVE THESE ITEMS ADMITTED INTO EVIDENCE

4 MR. BYRHOLDT: I HAVE A MATTER TO TAKE UP OUTSIDE THE PRESENC
5 OF THE JURY, YOUR HONOR.

6 THE COURT: MISTER FOREMAN, IF YOU WOULD TAKE YOUR JURY BACK
7 TO THE JURY ROOM, PLEASE, SIR.

8 (JURY OUT AT 11:17 A.M.)

9 THE COURT: MISTER BYRHOLDT?

10 MR. BYRHOLDT: IF IT PLEASES THE COURT. AT THIS TIME, I'D RENEW
11 MY OBJECTION TO THE STATEMENT COMING IN. WHEN WE DID THE
12 JACKSON/DENNO, I ASKED THE OFFICERS IF THEY PROMISED ANYTHING OR
13 SAID ANYTHING AND DEPUTY GREGORY JUST SAID ON DIRECT THAT IF YOU
14 WANT TO HELP YOURSELF, TALK TO US. THAT'S DIFFERENT AND IT IMPLIES
15 AND IT CARRIES WITH IT A PROMISE THAT IF YOU TALK TO US WE ARE GOING
16 TO HELP YOU. BASED ON THAT, I RENEW MY MOTION TO SUPPRESS THAT
17 STATEMENT, YOUR HONOR.

18 THE COURT: YOU KNOW, I WROTE THAT DOWN WHEN HE SAID IT AND
19 "DO YOU WANT TO HELP YOURSELF IN THE FUTURE?" I MEAN, HOW WAS
20 THAT NOT A VEILED PROMISE OF LENIENCY?

21 MR. BRADLEY: I BELIEVE THOUGH, YOUR HONOR, THAT THEN HE
22 TESTIFIED THAT HE TOLD HIM HE COULDN'T PROMISE HIM ANYTHING. HE
23 SAID THE SOLICITOR AND THE DEFENSE ATTORNEY MADE THOSE DECISIONS
24 OVER HIS HEAD AND THIS IS JUST AN OPPORTUNITY TO, IF HE WANTED TO

DIRECT EXAMINATION OF DEPUTY GREGORY BY MR. BRADLEY

97

1 **THE COURT:** AND HE DID SAY THAT. BUT HOW DO YOU CONSTRUE
2 THAT STATEMENT AND COMPARE THAT, "DO YOU WANT TO HELP YOURSELF
3 IN THE FUTURE?" HOW DO YOU RECONCILE THAT WITH HIM SAYING, "I CAN'T
4 DO IT, SOMEBODY ELSE MAY BE ABLE TO HELP YOU IN THE FUTURE, BUT DO
5 YOU WANT TO HELP YOURSELF IN THE FUTURE." OBVIOUSLY, THE INTENT OF
6 THAT STATEMENT BESIDES GETTING HIM TO TALK, WHICH IS OBVIOUSLY
7 THEIR JOB, IS TO GIVE THEM SOME INDICATION THAT THEY ARE GOING TO
8 RECEIVE A BENEFIT BY HELPING THEM OUT. ISN'T THAT A PROMISE OF
9 LENIENCY?

10 **MR. BRADLEY:** YOUR HONOR, AGAIN, HE SAID, "I CAN'T PROMISE YOU
11 THAT THIS WOULD HELP YOU OUT. THIS IS AFFORDING YOU THE
12 OPPORTUNITY TO DO SO." AND THEN HE DID GO THROUGH HIS MIRANDA
13 WARNINGS AND ADVISEMENT OF RIGHTS TO MAKE SURE HE KNEW THAT HE
14 DID HAVE THE RIGHT TO REMAIN SILENT. HE WAIVED HIS RIGHTS.

15 **THE COURT:** ALL RIGHT. OKAY. MISTER BYRHOLDT?

16 **MR. BYRHOLDT:** I JUST THINK -- I KNOW IT IS COMMON PRACTICE. I
17 GIVE CREDIT TO OFFICER GREGORY WITH BEING HONEST, BUT I THINK THAT
18 IMPLIES AND PUTS A PROMISE OUT THERE. "IF YOU TALK TO US NOW IT'S
19 GOING TO HELP YOU." WELL, IT'S NOT. HE IS UP ON TRAFFICKING, 25 TO 30
20 YEARS. IT HAS BEEN NO HELP AT ALL. AND I ALSO DON'T THINK -- EVEN
21 WITHOUT THE STATEMENT, THEY'VE GOT THE OFFICER'S TESTIMONY. I JUST
22 THINK THAT, I THINK THE ERROR THAT THAT COULD CREATE IS JUST
23 UNNECESSARY. I DON'T THINK THEY NEEDED IT. OFFICERS PITTS AND
24 MOSHER SAID, AT LEAST TO THE JURY, THEY SAW HIM THROW DOWN THE
25 BAG. THE BAG CONTAINS DRUGS. THAT THE DRUGS COME IN AT SOME

DIRECT EXAMINATION OF DEPUTY GREGORY BY MR. BRADLEY

1 POINT.

2 THE COURT: LET ME JUST SAY THIS. I AGREE WITH YOU THAT, "DO YOU
3 WANT TO HELP YOURSELF IN THE FUTURE" IS A VEILED, IF NOT A DIRECT,
4 PROMISE OF LENIENCY. HOWEVER, YOU HAVE GOT TO COUNTERVAIL THAT
5 WITH THIS OFFICER'S UNCHALLENGED TESTIMONY THAT, "I CAN'T HELP YOU"
6 THAT'S FOR SOMEBODY ABOVE ME." I DON'T THINK THAT'S A GREAT
7 PRACTICE TO DO, BUT I AM GOING TO DENY YOUR MOTION. READY?

8 MR. BYRHOLDT: THANK YOU, YOUR HONOR.

9 THE COURT: AND FIND THAT THOSE ARE ADMITTED INTO EVIDENCE,
10 AGAIN. ARE YOU READY TO PROCEED?

11 MR. BRADLEY: YES SIR, YOUR HONOR.

12 (JURY IN AT 11:28 A.M.)

13 THE COURT: MISTER BRADLEY?

14 MR. BRADLEY: THANK YOU, YOUR HONOR. MAY IT PLEASE THE COURT
15 AGAIN, YOUR HONOR, I ASK THAT THE EXHIBITS BE ADMITTED INTO
16 EVIDENCE.

17 THE COURT: THEY CAN BE ADMITTED.

18 (WHEREUPON, STATE'S EXHIBITS #1, A MIRANDA FORM AND STATE'S
19 EXHIBIT #2, DEFENDANT'S STATEMENT, ARE ENTERED INTO EVIDENCE.)

20 MR. BRADLEY: THANK YOU, YOUR HONOR.

21 **CONTINUED DIRECT EXAMINATION OF DEPUTY GREGORY BY MR. BRADLEY**

22 Q DEPUTY GREGORY, WOULD YOU PLEASE EXPLAIN TO THE JURY WHAT
23 EXHIBIT #1 IS?

24 A EXHIBIT #1 IS A BLANK FORM THAT'S PROVIDED BY THE SHERIFF'S

DIRECT EXAMINATION OF DEPUTY GREGORY BY MR. BRADLEY

91

1 YOU ARE ASKED ANY QUESTIONS YOU MUST UNDERSTAND YOUR
2 RIGHTS." AND IT GOES INTO THE FIRST ONE. "YOU HAVE THE RIGHT TO
3 REMAIN SILENT. ANYTHING YOU SAY MAY BE USED AGAINST YOU IN
4 COURT. YOU HAVE THE RIGHT TO SPEAK TO A LAWYER FOR ADVICE
5 BEFORE YOU ARE ASKED ANY QUESTIONS AND HAVE WITH YOU
6 DURING QUESTIONING. IF YOU CANNOT AFFORD A LAWYER, ONE WILL
7 BE APPOINTED FOR YOU BEFORE ANY QUESTIONING IF YOU WISH. IF
8 YOU DO DECIDE TO ANSWER QUESTIONS NOW WITHOUT A LAWYER
9 PRESENT, YOU STILL HAVE THE RIGHT TO STOP ANSWERING
10 QUESTIONS AT ANY TIME. YOU ALSO HAVE THE RIGHT TO STOP
11 ANSWERING QUESTIONS AT ANY TIME UNTIL YOU SPEAK WITH A
12 LAWYER." I ASK THEM THEN, "DO YOU UNDERSTAND YOUR RIGHTS?"
13 THEY EITHER SAY YES OR NO. IN THIS CASE HE SAID, "YES". THERE IS
14 A SPOT FOR ME TO SIGN AS A WITNESS, THE DATE AND THE TIME THAT
15 THE MIRANDA WARNINGS WERE GIVEN AND THEN, OF COURSE, THE
16 SIGNATURE OF THE DEFENDANT. THERE IS THEN A LINE THREE
17 QUARTERS OF THE WAY DOWN THE PAGE AND THEN YOU HAVE THE
18 WAIVER OF RIGHTS AND IN THE WAIVER, IT SAYS, "I HAVE READ THIS
19 STATEMENT OF MY RIGHTS AND I UNDERSTAND WHAT MY RIGHTS ARE.
20 I AM WILLING TO MAKE A STATEMENT AND ANSWER QUESTIONS. I DO
21 NOT WANT A LAWYER AT THIS TIME. I UNDERSTAND AND KNOW WHAT I
22 AM DOING. NO PROMISES OR THREATS HAVE BEEN MADE TO ME AND
23 NO PRESSURE OR COERCION OF ANY KIND HAS BEEN USED AGAINST
24 ME." AGAIN, IT HAS A SPOT FOR ME TO SIGN. IT ALSO HAS A SPOT FOR
25 THE DATE AND TIME AND THE SIGNATURE OF THE PERSON SIGNING

DIRECT EXAMINATION OF DEPUTY GREGORY BY MR. BRADLEY

100

1 THE WAIVER OF RIGHTS, THE WAIVER OF THEIR ATTORNEY SO THEY
2 CAN SPEAK TO ME WITHOUT AN ATTORNEY PRESENT.

3 Q SO, THE DEFENDANT DID SIGN THIS FORM?

4 A YES. SIR. HE DID.

5 Q WAIVING HIS RIGHTS?

6 A YES, SIR.

7 Q AT THAT TIME, YOU BEGAN YOUR INTERVIEW. IS THAT CORRECT?

8 A CORRECT.

9 Q AND TELL US THE PROCESS OF HOW YOU CONDUCT YOUR INTERVIEW
10 AND HOW YOU RECORD IT.

11 A THE FIRST THING THAT I DO IS LET THEM KNOW I AM GOING TO WRITE
12 SMALL PARAGRAPH AT THE TOP OF THE STATEMENT. IN THAT
13 PARAGRAPH, IT'S GOING TO DESCRIBE TO ANYBODY READING IT, WHO
14 GAVE THIS STATEMENT AND HOW TO IDENTIFY THIS PERSON BE IT
15 SOCIAL SECURITY NUMBER AND ADDRESS, PHONE NUMBER AND DATE
16 OF BIRTH, WHATNOT. IT ALSO TELLS WHAT THEY HAVE BEEN CHARGE
17 WITH, IT TELLS WHAT TIME THE STATEMENT WAS STARTED, THE CASE
18 NUMBER AND THE DATE. AFTER I, BASICALLY, TYPE UP THAT
19 PARAGRAPH, I ASK THEM A FEW QUESTIONS AND IN THIS STATEMENT,
20 ASKED THE DEFENDANT A FEW QUESTIONS ABOUT THE DRUGS THAT
21 WE FOUND AT THE SCENE.

22 Q AND IF YOU COULD, JUST TELL US WHAT HE SAID IN THE STATEMENT.

23 A THE FIRST QUESTION I ASKED TO DAVID MARIO JOHNSON WAS, "DID
24 YOU HAVE IN YOUR POSSESSION THE 15.2 GRAMS OF CRACK

25 COCAINE?" HE RESPONDED "YES SIR "

DIRECT EXAMINATION OF DEPUTY GREGORY BY MR. BRADLEY

10

1 Q WHAT WAS THE NEXT QUESTION?

2 A "WERE YOU HOLDING THE 15.2 GRAMS OF CRACK COCAINE FOR
3 ANYBODY?" HE SAID, "YES, SIR." "WHO GAVE YOU THE 15.2 GRAMS OF
4 CRACK COCAINE?" HE THEN STATED, "CARSON DALEY, BLACK MALE ,
5 LIKE 22 TO 23 YEARS OLD, I CALL HIM 'C'." WE ASKED, "IS CARSON
6 DALEY IN A GANG?" HE SAID, "I DON'T THINK SO." AND THEN I ASKED
7 HIM, "DID YOU HAVE IN YOUR POSSESSION 7.9 GRAMS OF MARIJUANA?"
8 HE REPLIED, "OH, YES SIR. IT WAS MINE. IT WAS ALL THE WAY MINE."

9 Q AND DID HE GIVE YOU ANY OTHER INFORMATION IN HIS STATEMENT?

10 A HE DID. HE TOLD ME ABOUT SOME OTHER PEOPLE THAT WERE OUT
11 THERE. HE TOLD ME ABOUT A GUY NAMED TORY, A BLACK MALE ABOUT
12 23 OR 24 YEARS OLD. "I CALL HIM TORY. BOSTON, A BLACK MALE
13 CLOSE TO 40 YEARS OLD. C.J., A BLACK MALE ABOUT 22 YEARS OLD.
14 CHRIS, A BLACK MALE ABOUT 20 YEARS OLD. I CALL HIM BIG CHRIS.
15 BIG CHRIS IS STRICK'S BROTHER AND I CAN BUY FROM BIG CHRIS." AT
16 THIS TIME, I AM TRYING TO FIGURE OUT WHO HE CAN BUY FROM. I
17 THINK HE STAYS AT THE TOP OF WENZICK. "BIG ERV WAS THERE. HE
18 IS NO MORE THAN 23 YEARS OLD. A DUDE NAMED TRAV, A BLACK MALE
19 ABOUT 20. I WAS WITH ALL THESE PEOPLE BESIDE THE TRAIL ON
20 APPLETON AND WENZICK STREETS. THE JEEP WAS COMING UP THE
21 HILL." PEOPLE IN DRUG AREAS OR HIGH CRIME AREAS IN ANDERSON
22 COUNTY REFER TO THE JEEP AS THE WHITE CHEVY TAHOE THAT JEFF
23 MOSHER DRIVES. THAT'S COMMON PRACTICE FOR THEM TO CALL IT A
24 JEEP. "THE JEEP WAS COMING UP THE HILL. CARSON SAID RUN.
25 CARSON GAVE ME THE 15 GRAMS AND I RAN. HE WAS PROBABLY

DIRECT EXAMINATION OF DEPUTY GREGORY BY MR. BRADLEY

102

- 1 GOING TO GIVE ME A 20 OR 40 ROCK FOR RUNNING, WHICH IS 1 OR 2
2 ROCKS TO SMOKE. I WALKED NEAR THE TRAILER AND THREW THE 15
3 GRAMS. I WAS WALKING AND THE POLICE OFFICER GRABBED ME."
- 4 Q AND IS THAT ALL THE INFORMATION AT THAT TIME THAT HE GAVE YOU
5 A NO, SIR.
- 6 Q IN STATE'S EXHIBIT #2, DID HE SIGN THAT STATEMENT?
7 A NO, SIR.
- 8 Q AND DID HE GIVE YOU A REASON WHY HE DIDN'T WANT TO SIGN THAT
9 STATEMENT?
- 10 A THE REASON WAS THE PEOPLE THAT HE WAS POINTING A FINGER AT,
11 OR STATING THEIR NAMES IN THE STATEMENT, HE WAS SCARED THAT
12 HIS NAME WOULD BE ATTACHED TO THAT AND IT WOULD GET OUT ON
13 THE STREET THAT HE'S TALKING TO POLICE.
- 14 Q BUT HE DIDN'T EVER GIVE YOU A REASON THAT HE DID NOT WANT TO
15 SIGN THAT STATEMENT BECAUSE OF ANYTHING IN IT BEING FALSE
16 THAT YOU HAD WRITTEN DOWN. IS THAT CORRECT?
- 17 A HE NEVER TOLD ME THAT, SIR.
- 18 Q DID HE HAVE A CHANCE TO REVIEW THAT STATEMENT?
19 A HE DID, SIR.
- 20 Q DID YOU PRINT IT OUT AND HAND HIM A COPY?
21 A I DID. I PRINTED OUT TWO COPIES. GAVE MYSELF ONE TO READ AND
22 GAVE THE DEFENDANT, DAVID MARIO JOHNSON, A COPY SO HE COULD
23 PHYSICALLY HOLD IT AND LOOK OVER IT HIMSELF.
- 24 Q AND DID YOU READ IT OUT LOUD JUST LIKE YOU JUST DID FOR THE

DIRECT EXAMINATION OF DEPUTY GREGORY BY MR. BRADLEY

103

1 A I READ THE WHOLE THING OUT LOUD.

2 Q HE DIDN'T OBJECT AT ANY TIME TO ANY OF IT AS BEING FALSE?

3 A NO, SIR.

4 Q SO WHAT HE TOLD YOU IS ON THAT STATEMENT RIGHT THERE?

5 A CORRECT.

6 Q SO HE GAVE YOU THE IMPRESSION THAT HE HAD THE ABILITY TO READ
7 AND WRITE. IS THAT CORRECT?

8 A ABSOLUTELY.

9 Q AND HE GAVE THIS STATEMENT FREELY AND VOLUNTARILY?

10 A YES, SIR.

11 MR. BRADLEY: MAY I APPROACH THE WITNESS, YOUR HONOR?

12 THE COURT: YES, SIR.

13 Q AT THIS TIME, I AM GOING TO SHOW YOU WHAT HAS BEEN MARKED AS
14 STATE'S EXHIBIT #3 AND STATE'S EXHIBIT #4. TAKE A LOOK AT THOSE
15 AND SEE IF YOU RECOGNIZE THEM.

16 A I RECOGNIZE THEM.

17 Q HOW DO YOU RECOGNIZE THEM?

18 A I RECOGNIZE MY SIGNATURE ON THIS EVIDENCE KIT THAT'S SENT TO
19 THE FORENSICS DRUG LAB TO TEST THE DRUGS.

20 Q LET ME STOP YOU THERE. WHAT EXHIBIT ARE YOU REFERRING TO
21 WHEN YOU SAY THAT?

22 A STATE'S EXHIBIT #3.

23 Q OKAY. AND DO YOU RECOGNIZE WHAT'S INSIDE THAT BAG?

24 A I RECOGNIZE THAT TO BE WHAT APPEARS TO BE CRACK COCAINE.

25 Q AND DOES THAT APPEAR TO BE THE ITEMS FOUND ON THE DEFENDANT

DIRECT EXAMINATION OF DEPUTY GREGORY BY MR. BRADLEY

104

1 THAT NIGHT?

2 A IT APPEARS SO. IT'S A LITTLE DISCOLORED FROM AGE, I THINK, BUT
3 OTHER THAN THAT IT APPEARS TO BE THE SAME.

4 Q OKAY. WHAT ABOUT STATE'S EXHIBIT #4?

5 A STATE'S EXHIBIT #4 APPEARS TO BE A GREEN LEAFY SUBSTANCE
6 BELIEVED TO BE MARIJUANA. I DO RECOGNIZE THE BAG WHICH IS
7 INSIDE THE EVIDENCE BAG TO BE THE ONE THAT WAS HOLDING THE
8 MARIJUANA THAT WE FOUND IN DAVID MARIO JOHNSON'S POCKET.

9 Q AFTER THESE ITEMS WERE COLLECTED THAT NIGHT, WHAT DID YOU --
10 WHAT WAS THE PROCESS OF DEALING WITH THOSE?

11 A THE PROCESS IS, IS GENERALLY SPEAKING, THE OFFICER THAT FINDS
12 DRUGS, BASICALLY, IT BECOMES HIS CASE. IN THIS INSTANCE, WE ARE
13 IN THE COUNTY OF ANDERSON. A CITY POLICE OFFICER FOUND THE
14 DRUGS. IT'S A NEWLY FORMED TASK FORCE. I TOLD SERGEANT JEFF--
15 MOSHER THAT YOU JUST GO ON ABOUT YOUR BUSINESS LIKE YOU
16 NORMALLY WOULD COLLECT EVIDENCE AND DO IT BY THE BOOK.
17 WHAT WE WILL DO IS WHEN WE GET BACK TO THE OFFICE, WE WILL DO
18 A CHAIN OF CUSTODY. YOU WILL SIGN THE EVIDENCE OVER TO ME. I'LL
19 THEN PLACE THE EVIDENCE IN THE ANDERSON COUNTY SHERIFF'S
20 OFFICE'S EVIDENCE LOCKER FOR SAFE KEEPING. THE MARIJUANA I DID
21 MYSELF.

22 Q OKAY. AND ONCE YOU GOT BACK TO THE OFFICE, DID YOU DO
23 ANYTHING WITH THOSE ITEMS?

24 A WE WEIGHED THEM, OF COURSE, AND THEN PLACED THEM INTO --
25 PLACED THE SUSPECTED CRACK COCAINE INTO WHAT WE CALL A

DIRECT EXAMINATION OF DEPUTY GREGORY BY MR. BRADLEY

105

1 "BEST KIT". IT IS A EVIDENCE BAG THAT COMES WITH SOME OTHER
2 PAPERWORK TO SHOW A CHAIN OF CUSTODY. WE SEAL THE EVIDENCE
3 BAG OR "BEST KIT", FILL OUT THE PROPER PAPERWORK AND AN
4 EVIDENCE SHEET, AND THEN PLACE IT INTO EVIDENCE.

5 Q WHEN YOU WEIGHED IT AT THAT TIME, DO YOU WEIGH IT INSIDE THE
6 BAG?

7 A I DO. YES, SIR.

8 Q AND DO YOU RECALL WHAT THE WEIGHT WAS INSIDE THE BAGGIE AT
9 THAT TIME?

10 A IF I RECALL CORRECTLY, IT WAS 15.2 GRAMS OF A WHITE ROCK-LIKE
11 SUBSTANCE SUSPECTED TO BE CRACK COCAINE.

12 Q AND THE OTHER ONE. STATE'S EXHIBIT #4?

13 A I WILL HAVE TO REFER BACK TO THE STATEMENT. I DON'T REMEMBER
14 OFF THE TOP OF MY HEAD WHAT THE MARIJUANA WAS. IT SAYS 7.9
15 GRAMS OF MARIJUANA. I WOULD HAVE WEIGHED IT INSIDE THE BAG
16 THAT WE FOUND IT IN AS WELL.

17 Q AND ONCE YOU HAVE DONE ALL THAT PROCESSING WITH THE
18 PLACEMENT OF EVIDENCE IN THE EVIDENCE KIT BAG, WHAT DO YOU DO
19 WITH IT?

20 A I FILL OUT AN EVIDENCE SHEET THAT I ATTACH AND STAPLE TO THE
21 "BEST KIT" ITSELF AND ON THAT EVIDENCE SHEET IT SHOWS THE
22 CONTROL NUMBER OF THE "BEST KIT" AND I TURN IN THE EVIDENCE
23 SHEET AND THE "BEST KIT" WITH THE DRUGS INSIDE OF IT TO THE
24 EVIDENCE LOCKER.

25 Q WHAT IS THIS LOCKER LIKE? COULD YOU DESCRIBE IT FOR US?

DIRECT EXAMINATION OF DEPUTY GREGORY BY MR. BRADLEY

106

- 1 A IT'S A SEPARATE BUILDING OF IT'S OWN. YOU HAVE TO HAVE A CODE
2 TO GET INTO IT. IT IS SECURED BY AN ALARM SYSTEM IF YOU WERE TO
3 ACTUALLY ENTER INTO THE EVIDENCE PORTION OF THIS BUILDING. I,
4 OF COURSE, TYPED IN THE CODE, ENTERED THE BUILDING AND SLID
5 THIS EVIDENCE THROUGH A, BASICALLY A MAIL SLOT, ON A SOLID
6 WOODEN DOOR THAT IS LOCKED AND SECURED. I BELIEVE IT'S
7 ALARMED.
- 8 Q ONCE YOU PUT IT IN, CAN YOU GET IT OUT?
- 9 A NO, SIR. YOU CAN NOT.
- 10 Q SO NOT EVERYBODY CAN HAVE ACCESS TO IT. IS THAT CORRECT?
- 11 A CORRECT. THERE WOULDN'T HAVE BEEN ANYWAY IF I HAD
12 FORGOTTEN SOMETHING OR IF I HAD DROPPED IT BEFORE I WAS
13 READY TO, I WOULD NOT HAVE BEEN ABLE TO GET IT OUT UNTIL AN
14 ACTUAL EVIDENCE TECH, TECHNICIAN, CAME TO WORK THE NEXT DAY.
- 15 Q AND WHEN YOU PLACE IT IN THE EVIDENCE STORAGE LOCKER, DO YOU
16 PUT IN A REQUEST WITH THAT OR ANY INFORMATION?
- 17 A I DID IN THIS CASE. I REQUESTED THAT THIS BAG THAT THE
18 SUSPECTED CRACK COCAINE WAS IN, BE FINGERPRINTED. THAT'S A
19 WHOLE 'NOTHER FORM IN ITSELF. I FILLED IT OUT SO THAT WE WOULD
20 GET FINGERPRINTS ON THE BAG. WE HAVE A NOTE HERE THAT SAYS
21 "PLEASE FINGERPRINT THE BAG", WHICH TO MY KNOWLEDGE -- THE
22 FORM THAT IS FILLED OUT TO FINGERPRINT AN ITEM, TO MY
23 KNOWLEDGE, WOULD NOT GO WITH THE "BEST KIT" TO THE FORENSIC
24 LAB. IT MIGHT, BUT THERE ARE OTHER PEOPLE THAT WOULD BE ABLE
25 TO SPEAK BETTER ON THAT SITUATION. I'M NOT SURE

DIRECT EXAMINATION OF DEPUTY GREGORY BY MR. BRADLEY

107

1 **MR. BYRHOLDT:** YOUR HONOR, I WOULD OBJECT. HE CAN'T
2 SPECULATE, IF HE DOESN'T KNOW.

3 **THE COURT:** SUSTAINED.

4 A HOWEVER, THERE IS A NOTE —

5 **THE COURT:** JUST ONE SECOND.

6 **DEPUTY GREGORY:** YES, SIR.

7 **THE COURT:** WHEN I RULE, YOU DON'T GO BACK INTO YOUR
8 TESTIMONY, UNDERSTAND? RE-ASK THE QUESTION, OKAY?

9 **DEPUTY GREGORY:** YES, SIR, YOUR HONOR.

10 Q REGARDING THE ITEMS THAT YOU SUBMITTED TO THE LOCKER AND
11 THE REQUEST THAT YOU MADE, WHEN YOU TESTIFIED THAT YOU SAID
12 YOU FILLED OUT A FORM, WOULD YOU PLEASE DESCRIBE THAT FORM
13 YOU FILLED OUT. WHAT IS IT FOR? WHAT ARE YOU ASKING?

14 A I AM ASKING THAT THE BAG THAT THE SUSPECTED CRACK COCAINE
15 WAS IN, THE CLEAR PLASTIC BAG, BE FINGERPRINTED FOR
16 FINGERPRINTS FROM THE DEFENDANT.

17 Q AND TO YOUR KNOWLEDGE, WAS THAT BAG FINGERPRINTED?

18 A NO, SIR. NOT TO MY KNOWLEDGE.

19 Q AND TO YOUR KNOWLEDGE, DO YOU HAVE THAT BAG?

20 A NO, SIR. WE DO NOT, TO MY KNOWLEDGE.

21 Q DO YOU KNOW WHAT HAPPENED TO IT?

22 A NO, SIR. I DO NOT.

23 Q WHEN YOU PLACED THE ITEMS THAT WERE SUSPECTED TO BE CRACK
24 COCAINE THAT WERE IN THE BAGGIE IN THE EVIDENCE BAG, IT WAS

—

CROSS EXAMINATION OF DEPUTY GREGORY BY MR. BYRHOLDT

108

1 A YES, SIR.

2 Q AND DO YOU KNOW THE PROCESS OF, IF THEY WERE GOING TO TEST
3 THE ITEMS THAT YOU BELIEVED TO BE CRACK COCAINE AND TEST THE
4 BAGGIE, WOULD THE PROCEDURE BE TO SEPARATE THOSE TWO
5 ITEMS?

6 A YES. BECAUSE TWO DIFFERENT PEOPLE WOULD HAVE TO DO THAT, TO
7 MY UNDERSTANDING. YES, SIR.

8 Q BUT IN THAT BAG THAT IS STATE'S EXHIBIT #3, I BELIEVE IT IS -- STATE'S
9 EXHIBIT #3, THAT IS THE ITEMS THAT YOU RECOVERED, YOU AND
10 SERGEANT MOSHER RECOVERED, THAT NIGHT OF JULY 31ST FROM THE
11 DEFENDANT. IS THAT CORRECT?

12 A THAT'S CORRECT, SIR.

13 Q OKAY. THE ONLY THING THAT'S MISSING IS THE PLASTIC BAGGIE THAT
14 IT WAS ORIGINALLY IN. IS THAT CORRECT?

15 A THAT IS CORRECT.

16 Q OKAY.

17 MR. BRADLEY: NOTHING FURTHER FROM THIS WITNESS.

18 THE COURT: CROSS EXAMINATION?

19 MR. BYRHOLDT: MAY IT PLEASE THE COURT.

20 CROSS EXAMINATION OF DEPUTY MARK GREGORY BY MISTER BYRHOLDT

21 Q ON STATE'S EXHIBIT #1, WHICH I BELIEVE IS THE RIGHTS FORM?

22 A YES. IT IS, SIR.

23 Q ON THE BOTTOM IT SAYS YOU HAVE MADE NO PROMISES OR THREATS?

24 A CORRECT.

25 Q WELL, DID YOU TELL JUDGE JOHNSON THAT IF HE TRIED TO

CROSS EXAMINATION OF DEPUTY GREGORY BY MR. BYRHOLDT

108

1 YOU HE WOULD HELP HIMSELF? EASY QUESTION, OFFICER.

2 A SIR, I SAID HE WAS GOING TO JAIL THAT NIGHT AND I ALSO SAID THAT IF
3 HE COOPERATES THERE IS A POSSIBILITY THAT THE SOLICITOR IS ABLE
4 TO HELP HIM OUT, BUT MARK GREGORY IS NOT ABLE TO HELP HIM OUT
5 WHATSOEVER.

6 Q WELL, WHY WOULD YOU SAY, "YOU COULD HELP YOURSELF," THEN?

7 A PARDON ME?

8 Q WHY WOULD YOU TELL MISTER JOHNSON, OR ANY DEFENDANT, "IF YOU
9 TALK TO ME YOU CAN HELP YOURSELF," WHEN YOU DON'T HAVE THE
10 ABILITY TO KEEP THAT PROMISE? DID YOU EVER RECOMMEND TO
11 ANYONE ABOVE YOU TO HELP MISTER JOHNSON BECAUSE HE
12 COOPERATED? YOU DIDN'T, DID YOU?

13 A NO, SIR.

14 Q WHEN YOU LOCKED THE DRUGS IN THE EVIDENCE LOCKER, THEY
15 WERE IN A CLEAR PLASTIC BAG?

16 A THEY WERE INSIDE OF ANOTHER BAG WHICH WAS INSIDE A MANILLA
17 ENVELOPE.

18 Q THE CLEAR PLASTIC BAG. SOMEBODY ASKED FOR FINGERPRINTS.
19 WHO ASK FOR FINGERPRINTS?

20 A I DID, SIR.

21 Q DID YOU EVER GET THEM?

22 A NO, SIR.

23 Q DID YOU EVER INQUIRE WHAT HAD HAPPENED TO THE PLASTIC BAG?

24 A NO, SIR.

25 Q SO IN JULY OF 2000, IN SIX MONTHS YOU NEVER MADE AN INQUIRY

CROSS EXAMINATION OF DEPUTY GREGORY BY MR. BYRHOLDT

110

1 "WHAT ABOUT MY EVIDENCE"?

2 A NO, SIR. I BELIEVE I OBTAINED A LAB REPORT.

3 Q THE REASON YOU WANTED THE FINGERPRINTS ON THE CLEAR PLASTIC
4 BAG WOULD BE IF MISTER JOHNSON'S FINGERPRINTS WERE ON THAT
5 BAG, THAT WOULD SUPPORT THE OFFICER'S TESTIMONY, CORRECT?

6 A YES, SIR.

7 Q BECAUSE ANYBODY CAN SAY ANYTHING FROM THAT WITNESS STAND
8 AND ARE NOT NECESSARILY GOING TO TELL YOU THE TRUTH.
9 CORRECT?

10 A THAT IS CORRECT, SIR.

11 Q BUT FORENSIC EVIDENCE, HARD EVIDENCE, YOU CAN'T CHANGE THAT
12 IF HIS FINGERPRINTS ARE ON THERE, HE HAD THE BAG IN HIS HAND AT
13 SOME POINT.

14 A ABSOLUTELY.

15 Q AND WE DON'T HAVE THAT. DO WE?

16 A NO, SIR.

17 Q AND IN THE STATEMENT THAT YOU TOOK, EXHIBIT #2, THE FIRST
18 PARAGRAPH IS NOT HIS STATEMENT, THAT'S YOUR NARRATION.
19 CORRECT? IT'S WHAT YOU WROTE.

20 A YES.

21 Q THAT'S NOT WHAT DAVID TOLD YOU, THAT'S YOUR INTERPRETATION OF
22 WHAT HAPPENED.

23 A THERE'S NOTHING IN THERE THAT SPECIFICALLY SAYS WHAT
24 HAPPENED. IT SAYS WHAT HE IS CHARGED WITH, WHAT TIME THE
25 STATEMENT WAS ISSUED, WHO WAS PRESENT, AND WHERE THIS

CROSS EXAMINATION OF DEPUTY GREGORY BY MR. BYRHOLDT

11'

1 INCIDENT OCCURRED AT.

2 Q BUT THAT IS YOUR WORDS, NOT MISTER JOHNSON'S.

3 A ABSOLUTELY.

4 Q OKAY. THAT STATEMENT IS NOT SIGNED BY MISTER JOHNSON.

5 CORRECT?

6 A CORRECT.

7 Q IT'S NOT SIGNED BY OFFICER MOSHER, WHO YOU CLAIM WITNESSED

8 THIS STATEMENT. SERGEANT MOSHER WAS IN AND OUT. HE WAS NOT

9 THERE FOR THE HOUR OR HOUR-AND-A-HALF, WHATEVER, YOU WERE

10 IN THERE. IT WAS ONE ON ONE, YOU AND DAVID.

11 A YES, SIR.

12 Q AND YOU DIDN'T SIGN THAT DOCUMENT.

13 A NO, SIR.

14 Q IT WASN'T RECORDED. COULD HAVE GOTTEN A TAPE RECORDER OR

15 VIDEO RECORDER. DOES YOUR COMPUTER HAVE A VIDEO CAMERA

16 WITH IT?

17 A NO. IT'S A DELL. IT'S NOT A MAC. YES SIR, THERE IS NO VIDEO.

18 Q DO YOU HAVE TAPE RECORDERS AT THE SHERIFF'S OFFICE?

19 A CERTAIN PEOPLE DO. I DID NOT AT THIS POINT.

20 Q VIDEO CAMERAS?

21 A AGAIN, CERTAIN PEOPLE DO.

22 Q WELL, ARE THEY AVAILABLE? IF YOU ARE GOING TO CONDUCT A

23 DEBRIEFING, IT WOULD BE REAL EASY TO VIDEOTAPE IT.

24 A YES, BUT I --

25 Q THEN THE JURY COULD SEE WHAT HAPPENED

CROSS EXAMINATION OF DEPUTY GREGORY BY MR. BYRHOLDT

112

1 A I ALSO GO OFF OF PRACTICES THAT I HAVE BEEN TAUGHT AND I DON'T
2 BELIEVE IT IS COMMON PRACTICE TO VIDEO STATEMENTS AT THE
3 SHERIFF'S OFFICE.

4 Q AND THE REASON IS, IF THERE IS NOT A VIDEOTAPE, THE JURY HAS
5 GOT TO TAKE YOUR WORD FOR WHAT HAPPENED. RIGHT?

6 A I DON'T KNOW WHAT THE REASON IS, SIR.

7 Q WELL, I MEAN, WILL YOU AGREE WITH ME THAT IF WE HAD A
8 VIDEOTAPE THAT SHOWED START TO FINISH OF THIS DEBRIEFING WE
9 REALLY WOULDN'T HAVE MUCH TO ARGUE ABOUT. WOULD WE?

10 A I —

11 Q WE WOULD ALL BE WATCHING TELEVISION WATCHING THIS THING. WE
12 DON'T HAVE THAT IN THIS CASE. DO WE?

13 A ABSOLUTELY, SIR.

14 Q AND I TAKE IT, WHEN HE TURNED IN — OFFICER MOSHER GAVE YOU THE
15 DRUGS, SIGNED THE FORM OVER, AND HANDED YOU THE DRUGS. YOU
16 THEN HAD A FORM TO FILL OUT TO PUT THE DRUGS INTO THE
17 EVIDENCE LOCKER. CORRECT?

18 A CORRECT.

19 Q YOURS IS NOT NOTARIZED EITHER. IS IT?

20 A NO, SIR. IT IS NOT.

21 Q THAT WAS JUST A BLANK SPACE THAT SOMEBODY PUT THERE BUT
22 NOBODY UTILIZES IT.

23 A AGAIN, I GO OFF THE PRACTICES THAT I WAS — THAT I HAVE BEEN
24 TAUGHT.

25 Q WHO TAUGHT YOU THESE PRACTICES?

RE-DIRECT EXAMINATION OF DEPUTY GREGORY BY MR. BRADLEY

11:

1 A A FEW PEOPLE. EVER SINCE I STARTED WORKING AT THE SHERIFF'S
2 OFFICE, WE HAVEN'T HAD TO GET THE FORM NOTARIZED.

3 Q CAN YOU GET A, AND I MAY HAVE MISUNDERSTOOD AND I APOLOGIZE IF
4 I DID, DID YOU GET A REPORT BACK FROM FINGERPRINTS OR NOT?

5 A WELL, NO SIR. I NEVER GOT A REPORT BACK FROM FINGERPRINTS.

6 Q YOU REQUESTED IT AND NOTHING EVER CAME BACK.

7 A CORRECT.

8 Q WHO DID YOU MAKE THAT REQUEST TO?

9 A IT'S A GENERIC FORM.

10 Q WELL, WHO DOES IT GO TO?

11 A IT GOES TO THE FORENSICS INVESTIGATORS.

12 Q OFFICER CLAMP?

13 A I BELIEVE HE'S OVER EVIDENCE, BUT, I MEAN, HE VERY WELL COULD BE
14 ONE OF THE FIRST PEOPLE TO ACTUALLY LAY HANDS ON THAT FORM.
15 HE MAY ISSUE IT TO SOMEBODY ELSE.

16 Q WELL, WHEN YOU FILLED OUT THAT FORM WHAT DID YOU DO WITH IT?

17 A I ATTACH IT TO THE EVIDENCE. I WOULD HAVE ATTACHED IT TO THE
18 EVIDENCE BAG.

19 Q AND IT WOULD HAVE BEEN DROPPED IN THE LOCK BOX?

20 A ABSOLUTELY.

21 Q THANK YOU, SIR. NOTHING FURTHER.

22 THE COURT: RE-DIRECT?

23 MR. BRADLEY: YES SIR, YOUR HONOR. JUST A FEW.

24 RE-DIRECT EXAMINATION OF DEPUTY MARK GREGORY BY MISTER BRADLEY

25 Q IN REGARDS TO STATE'S EXHIBIT 11, A REPORT FROM THE

RE-DIRECT EXAMINATION OF DEPUTY GREGORY BY MR. BRADLEY

114

1 OF THE DEFENDANT. AFTER YOU FINISHED THE INTERVIEW WITH THE
2 DEFENDANT, YOU PRINTED OUT THE DOCUMENT. YOU DID NOT ADD OR
3 TAKE ANYTHING OUT THAT THE DEFENDANT DIDN'T KNOW ABOUT. IS
4 THAT CORRECT?

5 A THAT IS CORRECT.

6 Q SO, WHAT HE SAW THAT DAY AND WHAT YOU READ OVER WITH HIM IS
7 WHAT HE TOLD YOU.

8 A THAT WOULD BE CORRECT, SIR.

9 Q AND AS FAR AS WHEN YOU ASKED HIM IF HE WANTED TO GIVE YOU A
10 STATEMENT TO HELP HIMSELF, YOU TOLD HIM THAT YOU COULDN'T
11 PROMISE HIM ANYTHING. IS THAT RIGHT?

12 A ABSOLUTELY.

13 Q EVEN IF HE DID, YOU COULDN'T PROMISE HIM ANYTHING.

14 A I TELL PEOPLE I AM JUST A DEPUTY AND I CAN NOT DO ANY MORE FOR
15 YOU THAN THAT.

16 Q AND HE FREELY AND KNOWINGLY UNDERSTOOD THAT HE WAS
17 WAIVING HIS RIGHTS TO TALK TO YOU AND SERGEANT MOSHER?

18 A THAT IS MY OPINION BASED ON THE FORM THAT HE SIGNED, SIR.

19 Q AND HE UNDERSTOOD THAT HE DIDN'T HAVE TO TALK. IS THAT
20 CORRECT? HE HAD THE RIGHT TO REMAIN SILENT.

21 A AGAIN, I READ HIM HIS RIGHTS. HE WOULD HAVE HAD TO HAVE
22 UNDERSTOOD THAT WHEN HE SIGNED IT, SIR.

23 Q OKAY. AND AGAIN, WHEN YOU PLACED THE EVIDENCE INTO THE BAG
24 AND SUBMITTED IT TO THE EVIDENCE STORAGE LOCKER, THE DRUGS
25 WERE STILL IN THE PLASTIC BAG. IS THAT CORRECT?

RE-DIRECT EXAMINATION OF DEPUTY GREGORY BY MR. BRADLEY

11t

1 A THAT'S CORRECT.

2 Q OKAY. AND SERGEANT MOSHER WAS THERE. WAS HE THERE FOR THE
3 MAJORITY OF THE INTERVIEW?

4 A HE WAS IN THE BUILDING THE ENTIRE TIME, SIR, FROM START TO
5 FINISH. NOW, WAS HE ACTUALLY IN MY SPECIFIC OFFICE? NO, SIR.

6 Q I BELIEVE YOU SAID IN LINE OF SIGHT. HE'S VERY CLOSE. HIS OFFICE IS
7 RIGHT ACROSS.

8 A YES, SIR. THAT IS CORRECT.

9 Q OKAY. AND, AGAIN, THE DEFENDANT GAVE YOU A REASON FOR NOT
10 SIGNING THE DOCUMENT. IS THAT CORRECT?

11 A THAT IS CORRECT.

12 Q AND AGAIN, IT WASN'T BECAUSE ANYTHING WAS FALSE IN IT OR HE
13 DIDN'T AGREE WITH ANYTHING IN IT, BUT BECAUSE HE WAS SCARED.
14 MR. BYRHOLDT: YOUR HONOR, I OBJECT. HE IS LEADING.

15 THE COURT: SUSTAINED. RE-PHRASE THAT QUESTION.

16 MR. BRADLEY: I APOLOGIZE, YOUR HONOR.

17 Q WHAT WAS THAT REASON HE GAVE YOU FOR NOT SIGNING THE
18 STATEMENT.?

19 A HE DIDN'T WANT HIS NAME TO BE ASSOCIATED WITH GIVING UP OTHER
20 PEOPLE IS BASICALLY WHAT IT AMOUNTED TO.

21 Q AND DID HE SAY, "THIS IS NOT WHAT I SAID. THIS ISN'T WHAT I TOLD
22 YOU."

23 A NO, SIR.

24 Q HE AGREED THAT WHAT HE TOLD YOU WAS WRITTEN, WAS WHAT YOU
25 WROTE DOWN

RE-CROSS EXAMINATION OF DEPUTY GREGORY BY MR. BYRHOLDT

116

1 A YES, SIR.

2 Q OKAY.

3 MR. BRADLEY: NOTHING FURTHER, YOUR HONOR.

4 MR. BYRHOLDT: TWO QUESTIONS, YOUR HONOR.

5 RE-CROSS EXAMINATION OF DEPUTY MARK GREGORY BY MISTER BYRHOLDT

6 Q EVERYTHING IN THAT STATEMENT YOU ARE CLAIMING IS 100%
7 ACCURATE?

8 A ACCURATE AS FAR AS HE TOLD ME. YES, SIR.

9 Q AND HE TOLD YOU THIS GUY NAMED 'C', CARSON DALEY, GAVE HIM THIS
10 AND THEN HE THREW IT DOWN.

11 A YES.

12 Q LAST PARAGRAPH.

13 A CORRECT.

14 Q DID YOU GUYS ARREST CARSON DALEY?

15 A NO, SIR.

16 Q NOTHING FURTHER. THANK YOU.

17 MR. BRADLEY: THE COURT'S INDULGENCE FOR ONE MOMENT? JUST A
18 FEW, YOUR HONOR.

19 RE-DIRECT EXAMINATION OF DEPUTY MARK GREGORY BY MISTER BRADLEY

20 Q DEPUTY GREGORY, THIS PERSON THAT HE NAMED AS GIVING HIM THE
21 DRUGS, THIS CARSON DALEY, WHAT DID BECOME OF THAT? DID YOU
22 LOOK INTO THAT MATTER?

23 A WE FOUND OUT THAT CARSON DALEY IS A D-J ON M-T-V. ACTUALLY, HI
24 WAS SPEAKING ABOUT A DIFFERENT CARSON WITH A DIFFERENT LAST

RE-DIRECT EXAMINATION OF DEPUTY GREGORY BY MR. BRADLEY

117

1 Q AND DID YOU -- ON THAT DAY, DID YOU SEE CARSON DALEY WHEN YOU
2 SAW THE DEFENDANT?

3 A I DON'T RECALL IF I PERSONALLY SAW HIM THAT DAY. I CAN TELL YOU
4 THAT I SAW SOME PEOPLE I DID RECOGNIZE THAT DAY.

5 Q AND TO YOUR KNOWLEDGE, BOTH YOU AND SERGEANT MOSHER AND
6 OFFICER PITTS WERE PATROLLING THAT AREA, THE ONLY ONE FOUND
7 TO HAVE DISCARDED THAT PLASTIC BAGGIE IN THAT YARD THAT DAY
8 WAS THE DEFENDANT. IS THAT CORRECT?

9 A CORRECT.

10 MR. BYRHOLDT: YOUR HONOR, HE IS LEADING AGAIN.

11 THE COURT: RE-PHRASE. SUSTAINED.

12 MR. BRADLEY: I APOLOGIZE, YOUR HONOR. NOTHING FURTHER, YOUR
13 HONOR.

14 MR. BYRHOLDT: NOTHING.

15 THE COURT: MAY THIS OFFICER BE EXCUSED?

16 MR. BRADLEY: YES SIR, YOUR HONOR.

17 THE COURT: YOU MAY STEP DOWN.

18 DEPUTY GREGORY: THANK YOU, YOUR HONOR.

19 THE COURT: YES, SIR. ARE YOU READY FOR YOUR NEXT WITNESS?

20 MR. BRADLEY: YES, SIR. THE STATE CALLS TOMMY CLAMP, SERGEANT
21 TOMMY CLAMP.

22 (AFTER BEING DULY SWORN BY THE CLERK OF COURT, SERGEANT CLAMP
23 TESTIFIED AS FOLLOWS:)

24 CLERK OF COURT: GO UP AND HAVE A SEAT IN THE WITNESS CHAIR. IF

DIRECT EXAMINATION OF SERGEANT CLAMP BY MR. BRADLEY

11c

1 RECORD.

2 SERGEANT CLAMP: MY NAME IS JOHN THOMAS CLAMP, JUNIOR. MY
3 LAST NAME IS SPELLED C-L-A-M-P.

4 DIRECT EXAMINATION OF SERGEANT TOMMY CLAMP BY MISTER BRADLEY

5 Q SERGEANT CLAMP, WHAT IS YOUR OCCUPATION?

6 A I AM A DEPUTY SHERIFF WITH THE ANDERSON COUNTY SHERIFF'S
7 OFFICE WITH THE RANK OF SERGEANT ASSIGNED TO THE PROPERTY
8 AND EVIDENCE DIVISION.

9 Q HOW LONG HAVE YOU BEEN EMPLOYED THERE?

10 A I HAVE BEEN WITH ANDERSON COUNTY SHERIFF'S OFFICE SINCE
11 CHRISTMAS DAY OF 1991.

12 Q AND WHAT ARE YOUR DUTIES IN THAT POSITION?

13 A OUR MAIN DUTIES ARE TO INTAKE PROPERTY INTO EVIDENCE, GET
14 THOSE TO APPROPRIATE PLACES FOR ANALYSIS. OTHER PERIPHERAL
15 DUTIES ARE, WE DO VARIOUS TYPES OF ANALYSIS; FINGERPRINT
16 EXAMINATION, MARIJUANA ANALYSIS, AS WELL AS RESPOND TO SOME
17 CRIME SCENE CALLS.

18 Q AND IN THIS PARTICULAR CASE, DID YOU COME INTO THE POSSESSION
19 OF ANY EVIDENCE?

20 A YES, SIR. WE DID.

21 Q WHAT WAS THAT?

22 A I BELIEVE IN THIS CASE THERE WERE TWO ITEMS OF EVIDENCE. ONE
23 OF THEM WAS THE "BEST KIT", WHICH IS SIMPLY IN LAYMAN'S TERMS, A
24 PLASTIC BAG WITH A CONTROL NUMBER ON IT AND THE OTHER CASE
25 WAS SOME SUSPECTED MARIJUANA

DIRECT EXAMINATION OF SERGEANT CLAMP BY MR. BRADLEY

119

- 1 Q AND FROM WHERE WERE THOSE ITEMS RECEIVED?
- 2 A THOSE ITEMS WERE RECEIVED FROM THE EVIDENCE DROP BOX. BY
- 3 THAT, I MEAN WE STAFF MONDAY THROUGH FRIDAY, TYPICALLY 8:00 TO
- 4 5:00 TO BE SOMEONE THERE TO EXCHANGE IT BY HAND, BUT IN THE
- 5 OFF HOURS, IN THE EVENING AND THE WEEK-ENDS, THERE IS A MAIL
- 6 SLOT IN THE DOOR SIMILAR TO THE DOOR YOU SEE HERE. THERE IS A
- 7 MAIL SLOT IN IT AND THE OFFICER WOULD FILL OUT THE APPROPRIATE
- 8 PAPERWORK IN THE APPROPRIATE PACKAGE AND DROP THAT
- 9 THROUGH THE MAIL SLOT AND THAT ROOM IS CONTROLLED BY ONLY
- 10 FOUR PERSONS WITH KEYS AND IT IS ALARMED AFTER HOURS.
- 11 Q OKAY. SO, WHEN SOMEBODY PUTS SOMETHING IN THAT MAIL SLOT
- 12 THEY CAN'T REACH IN AND TAKE IT OUT AND TAKE IT.
- 13 A THERE IS ABSOLUTELY NO WAY THEY CAN GET IT OUT WITHOUT
- 14 SEEING ONE OF THE FOUR PERSONS WITH THE KEYS.
- 15 Q AND DO YOU KNOW WHO RETRIEVED THE ITEMS FROM THE DROP BOX
- 16 IN THIS CASE?
- 17 A YES, SIR. THE PAPERWORK REFLECTS THAT ONE OF THE PERSONS
- 18 THAT WORKS WITH ME IN EVIDENCE. IT WOULD BE BELINDA LEE.
- 19 Q AND ONE OF YOUR DUTIES IS TO OVERSEE THE OFFICE. IS THAT
- 20 CORRECT?
- 21 A THAT'S CORRECT.
- 22 Q AND AT THIS TIME I AM GOING TO SHOW YOU...
- 23 MR. BRADLEY: PERMISSION TO APPROACH, YOUR HONOR?
- 24 THE COURT: YES, SIR.
- 25 Q I'LL SHOW YOU STATE'S EXHIBIT #2 AND #4. TAKE A LOOK AT THOSE

DIRECT EXAMINATION OF SERGEANT CLAMP BY MR. BRADLEY

120

1 AND SEE IF YOU RECOGNIZE THOSE?

2 A YES, SIR. I DO.

3 Q HOW DO YOU RECOGNIZE THEM?

4 A I RECOGNIZE THIS -- CAN I SHOW IT? CAN I HOLD IT UP OR IS IT --

5 Q NOT YET. IF YOU WILL JUST REFER TO THE --

6 A STATE'S EXHIBIT #3 IS THE "BEST KIT" WHICH WOULD HAVE CONTAINED

7 THE SUSPECTED COCAINE. STATE'S EXHIBIT #4 IS A MANILLA

8 ENVELOPE THAT CONTAINS THE SUSPECTED MARIJUANA.

9 Q AND HOW DO YOU RECOGNIZE THOSE ITEMS?

10 A I RECOGNIZE THEM BY THE BAR CODE LABEL THAT'S ON THEM AND

11 ALSO I PLACED INITIALS ON STATE'S EXHIBIT #4. STATE'S EXHIBIT #3

12 HAS MY INITIALS AS WELL ON IT.

13 Q WHAT IS THE REASON FOR PUTTING YOUR INITIALS ON THERE?

14 A SO THAT YOU CAN IDENTIFY THEM IF THEY ARE PRESENTED TO YOU AT

15 ANY POINT IN TIME.

16 Q OKAY. THAT MEANS THEY CAME INTO YOUR CUSTODY AT SOME POINT

17 A THAT'S CORRECT.

18 Q IN REFERENCE TO STATE'S EXHIBIT #4, I BELIEVE IT IS.

19 A YES, SIR.

20 Q OKAY. DO YOU HAVE ANY OTHER DUTIES AT THE SHERIFF'S OFFICE?

21 A YES, SIR. I DO.

22 Q AND WHAT ARE THOSE DUTIES?

23 A LATENT PRINT ANALYSIS, MARIJUANA ANALYSIS, CRIME SCENE

24 INVESTIGATION, AND SEVERAL PERIPHERAL DUTIES.

25 Q AND WHAT KIND OF TRAINING DO YOU HAVE TO HAVE FOR MARIJUANA

DIRECT EXAMINATION OF SERGEANT CLAMP BY MR. BRADLEY

12'

1 ANALYSIS?

2 A MARIJUANA ANALYSIS, THE ORIGINAL CERTIFICATION IS A THREE-DAY
3 COURSE AT SLED WHICH I ATTENDED SLED --

4 MR. BYRHOLDT: YOUR HONOR, WE STIPULATE THAT OFFICER CLAMP IS
5 A CERTIFIED MARIJUANA ANALYST. NO QUESTION ABOUT THAT.

6 THE COURT: CERTIFIED IN GIVING HIS OPINION WITH REGARD TO THE
7 ANALYSIS PERFORMED?

8 MR. BYRHOLDT: YES, SIR.

9 THE COURT: OKAY. SO STIPULATED.

10 MR. BRADLEY: YOUR HONOR, IF I MAY, I HAVE A COUPLE OF
11 QUESTIONS JUST FOR THE JURY.

12 THE COURT: VERY WELL.

13 MR. BYRHOLDT: YOUR HONOR, WE STIPULATE TO THE MARIJUANA. IT
14 IS MARIJUANA.

15 CONTINUED DIRECT EXAMINATION OF SERGEANT CLAMP BY MR. BRADLEY

16 Q SO, SERGEANT, DID YOU HAVE A CHANCE TO TEST THESE ITEMS?

17 A YES, SIR. I DID. STATE'S EXHIBIT #4, I'M SORRY.

18 Q AND IF YOU COULD, PLEASE EXPLAIN HOW THAT HAPPENS.

19 A STATE'S EXHIBIT #4 IS MARIJUANA ACCORDING TO THE PROTOCOL
20 THAT WE ARE TRAINED THROUGH SLED OR THE SOUTH CAROLINA LAW
21 ENFORCEMENT DIVISION.

22 Q AND DID YOU HAVE A CHANCE TO WEIGH IT?

23 A YES, SIR. I DID.

24 Q OKAY. WHAT WAS THE WEIGHT OF THAT?

DIRECT EXAMINATION OF SERGEANT CLAMP BY MR. BRADLEY

122

1 Q AND REGARDS TO WHERE THIS ITEM CAME FROM, DOES IT HAVE A
2 STATE'S CASE OR NUMBER ON IT?

3 A YES, SIR. IT DOES. THE STATE'S CASE NUMBER. I'M SORRY,
4 ANDERSON COUNTY SHERIFF'S OFFICE CASE NUMBER THAT
5 CORRESPONDS TO THE PROPERTY EVIDENCE RECEIPT THAT DEPUTY
6 GREGORY PLACED INTO EVIDENCE.

7 Q ALL RIGHT. AND WHO DID HE RECEIVE THAT FROM? WHERE DID IT
8 COME FROM?

9 A DEPUTY GREGORY STATES THAT HE RECEIVED STATE'S EXHIBIT #4
10 FROM DAVID MARIO JOHNSON, ACCORDING TO THIS PAPERWORK.

11 Q OKAY. AND THAT IS THE ITEM THAT YOU TESTED AND FOUND TO BE
12 MARIJUANA AND WEIGHED, I BELIEVE YOU TESTIFIED TO, 6.9 GRAMS?

13 A THAT IS CORRECT.

14 Q AND THAT CAME FROM THE DEFENDANT, DAVID MARIO JOHNSON. IS
15 THAT CORRECT?

16 A THAT IS CORRECT, ACCORDING TO OFFICER GREGORY'S EVIDENCE
17 TICKET.

18 MR. BRADLEY: AT THIS TIME, YOUR HONOR, I WOULD ASK THAT
19 STATE'S EXHIBIT #4 TO BE ADMITTED INTO EVIDENCE.

20 THE COURT: ANY OBJECTION?

21 MR. BYRHOLDT: NO OBJECTION.

22 THE COURT: EXHIBIT #4 WILL BE ADMITTED.

23 (WHEREUPON, A BAG CONTAINING MARIJUANA IS ENTERED INTO
24 EVIDENCE AS STATE'S EXHIBIT #4, WITHOUT OBJECTION)

25 MR. BRADLEY: THANK YOU, YOUR HONOR.

DIRECT EXAMINATION OF SERGEANT CLAMP BY MR. BRADLEY

123

1 Q GOING BACK TO STATE'S EXHIBIT #3, WHEN THAT CAME INTO THE
2 OFFICE OUT THERE, TO THE EVIDENCE STORAGE OFFICE, DID IT HAVE
3 ANY PAPERWORK WITH IT?

4 A YES, SIR. IT DOES. IT HAS SEVERAL COPIES OF PAPERWORK.

5 Q AND WHAT ARE THOSE?

6 A I BELIEVE THREE OF THE COPIES ARE JUST CHAIN OF CUSTODY FORMS
7 WHERE IT'S CHANGING HANDS. THERE WAS A FORM THAT REQUESTED
8 LATENT FINGERPRINTS BE DONE ON THE PACKAGE THAT IT WAS IN AND
9 ALSO IT WAS NOTED ON THE PACKAGE ITSELF, WHICH IS PRETTY
10 COMMON PRACTICE TO REQUEST FOR PRINTS ON THE BAG.

11 Q IF THERE IS A REQUEST MADE OF THAT NATURE, WHAT IS THE
12 PROCESS? WHAT IS THE NEXT STEP?

13 A IN THIS CASE, THE EVIDENCE COMES SEALED IN THE BAG. WE, IN THE
14 EVIDENCE DIVISION, WE DON'T OPEN THE BAG AT THE RISK OF
15 CONTAMINATING THE SUSPECTED SAMPLE OR LOSING PART OF THE
16 SUSPECTED SAMPLE. IT'S TRANSFERRED TO OUR DRUG LAB AND
17 ONCE IT'S AT THE DRUG LAB THE DRUG LAB WILL RE-PACKAGE IT INTO
18 TWO SEPARATE SEALED PACKAGES. WHEN IT COMES BACK, ONE WILL
19 HAVE THE SUSPECTED SUBSTANCE IN IT AND THE OTHER WOULD HAVE
20 THE ENVELOPE OR THE PACKAGING FOR THE PACKAGE THAT
21 ACTUALLY HELD IT ORIGINALLY.

22 Q OKAY. AND IN THIS CASE, WHAT HAPPENED WITH THE BAG THAT WAS
23 SUPPOSED TO BE FINGERPRINTED?

24 A I CAN'T ANSWER THAT. THERE -- WE HAVE SYSTEMS, CHECKS AND
25 BALANCES IN PLACE TO AVOID THAT TYPE OF INCIDENT. RIIT

DIRECT EXAMINATION OF SERGEANT CLAMP BY MR. BRADLEY

124

1 THERE'S ALWAYS THAT HUMAN ERROR THAT COMES INTO PLACE AND
2 ULTIMATELY AS THE SUPERVISOR OF THAT DIVISION, IT'S MY
3 RESPONSIBILITY TO TAKE THAT ON MY SHOULDERS AND DEPUTY
4 GREGORY SAYS IT WAS PLACED IN THE BAG. IT WAS SEALED WHEN IT
5 WENT TO THE LAB. THE LAB TYPICALLY SEPARATES IT. SO, I CAN'T SAY
6 THAT THEY DIDN'T SEPARATE IT. I CAN ONLY TELL YOU IT'S NOT HERE
7 TODAY AND, YOU KNOW, THAT WE FAILED. I FAILED IN MY DUTY IN
8 THAT ASPECT.

9 Q BUT TO YOUR KNOWLEDGE, YOU JUST DON'T KNOW WHERE THE BAG
10 IS. IS THAT CORRECT?

11 A THAT'S CORRECT. THERE WERE -- WHEN WE DO A TRANSFER, IT'S
12 JUST NOT THE ONE CASE THAT WE ARE WORKING ON. THERE MAY BE
13 TEN TO TWENTY TRANSFERS OF EVIDENCE AT ONE TIME. I PULLED ALL
14 OF THE CASES THAT WENT THAT DAY, THAT WAS TAKEN, ALL OF THE
15 CASES WHEN THEY CAME BACK, TO MAKE SURE WE HADN'T PUT IT IN A
16 SEPARATE PACKAGE BY ACCIDENT. IT'S NOT THERE. APPARENTLY, IT
17 WAS LOST WHEN IT CAME BACK INTO THE LAB.

18 Q BUT WHAT YOU ARE REFERRING TO IS THE ABSENT PLASTIC BAG.

19 A THE NARCOTICS. THE SUSPECTED NARCOTICS ARE HERE. WE ARE
20 TALKING ABOUT THE ORIGINAL PACKAGE THAT THEY WERE IN BEFORE
21 THEY WERE PLACED INTO THE "BEST KIT".

22 Q SO NOTHING HAS HAPPENED TO THE SUSPECTED CRACK COCAINE
23 THAT WAS REMOVED FROM THAT EVIDENCE BAG?

24 A TO MY KNOWLEDGE, ACCORDING TO ALL THE EVIDENCE SEALS AND
25 EVERYBODY'S INITIALS IT IS INTACT. THE NARCOTICS THE

CROSS EXAMINATION OF SERGEANT CLAMP BY MR. BYRHOLDT

125

1 SUSPECTED NARCOTICS IS INTACT. AS IT WAS IN THE --

2 Q AFTER IT WAS TESTED, IT WAS BROUGHT BACK TO THE EVIDENCE
3 STORAGE AREA?

4 A THAT'S CORRECT.

5 Q AND WHAT HAPPENS TO IT THERE?

6 A IT REMAINS THERE UNTIL IT'S EITHER DISPOSED OF OR IT'S
7 REQUESTED TO BE BROUGHT TO COURT.

8 Q AND SO IT HAS BEEN SITTING OUT THERE SINCE THE TEST WAS DONE
9 ON IT?

10 A THAT'S CORRECT. SINCE IT CAME BACK FROM THE LAB IT REMAINED
11 UNTIL WE BROUGHT IT TO COURT THIS MORNING.

12 Q AND DOES ANYBODY HAVE ACCESS TO IT WHEN IT'S SITTING IN THERE?

13 A NO, SIR. THERE ARE ONLY FOUR PERSONS AT THE SHERIFF'S OFFICE
14 THAT HAS ACCESS TO EVIDENCE STORAGE. IF SHERIFF SKIPPER
15 WANTED TO GET INTO THE EVIDENCE VAULT, HE WOULD HAVE TO BE
16 ACCOMPANIED BY ONE OF THOSE FOUR PEOPLE.

17 MR. BRADLEY: NOTHING FURTHER, YOUR HONOR.

18 THE COURT: CROSS EXAMINATION?

19 CROSS EXAMINATION OF SERGEANT TOMMY CLAMP BY MR. BYRHOLDT

20 Q SO, WE'VE GOT EVIDENCE THAT WAS LOST OR DESTROYED?

21 A YES, THAT IS CORRECT. IT WAS -- THE PACKAGE THAT THE ORIGINAL
22 SUSPECTED NARCOTICS CAME IN IS NOT ON HAND TODAY.

23 Q WELL, THEN IT HAD TO BE -- IF IT WAS PLACED IN THE "BEST EVIDENCE
24 KIT," THAT KIT'S SEALED. RIGHT?

25 A YES, SIR. THAT KIT WOULD BE SEALED WHEN IT COMES TO US AND IT'S

CROSS EXAMINATION OF SERGEANT CLAMP BY MR. BYRHOLDT

12c

1 SEALED WHEN IT GOES TO THE LAB OR THE LAB WILL NOT ACCEPT IT.

2 Q SO, IF OFFICER GREGORY TESTIFIED HE PUT THE BAG AND THE DRUGS
3 IN THE "BEST EVIDENCE KIT" THAT WAS SEALED, THEN IT HAD TO BE
4 LOST IN THE LAB. CORRECT?

5 A NO, SIR. I CAN'T CAST BLAME. I WILL NOT CAST BLAME. ULTIMATELY,
6 IT'S MY RESPONSIBILITY TO ENSURE THAT THAT'S HERE.

7 Q HOW CAN YOU TELL THIS JURY THEN, BEYOND A REASONABLE DOUBT
8 THAT THE DRUGS IN STATE'S EXHIBIT #3 ARE THE DRUGS THAT WERE
9 PUT IN THE "BEST EVIDENCE KIT", IF THAT EVIDENCE KIT HAS BEEN
10 TAMPERED WITH. PART OF IT IS MISSING. RIGHT?

11 A THE PACKAGING THAT CONTAINED THE ORIGINAL NARCOTICS IS NOT
12 BACK.

13 Q AND WE CAN'T FIND IT? WE DON'T KNOW WHERE IT WENT.

14 A NO, SIR. I MADE EVERY EFFORT THAT I COULD MAKE TO LOOK
15 THROUGH EVERYTHING I KNEW WHERE TO LOOK TO FIND IT.

16 Q THEN HOW DO WE KNOW THAT THESE DRUGS ARE THE DRUGS THAT
17 WERE FOUND THAT DAY? WE DON'T. DO WE?

18 A I CAN'T ATTEST TO THAT. I CAN ONLY ATTEST TO MY INITIALS AND ALL
19 THE OTHER PERSONS' CORRESPONDING INITIALS THERE.

20 Q WELL, WHEN YOU SENT IT OFF, YOU ARE SAYING THE BAG WAS THERE

21 A I DIDN'T LOOK. I DIDN'T OPEN IT. I DON'T OPEN THE KIT. YOU CAN'T
22 SEE INTO THE KIT WHEN IT'S UNOPENED.

23 Q YOU CAN'T SEE IN THE KIT?

24 A NO, SIR. I DON'T WANT TO HOLD IT UP, BUT --

25 Q YOU CAN'T SEE -- I MEAN BECAUSE HERE YOU CAN SEE THE STITCHES

CROSS EXAMINATION OF SERGEANT CLAMP BY MR. BYRHOLDT

127

1 IN THERE. (HOLDING UP EXHIBIT)

2 A CORRECT.

3 Q AND AT SOME POINT, A PLASTIC BAG OR SOMETHING ELSE WAS
4 SUPPOSED TO BE IN HERE. CORRECT?

5 A THAT'S CORRECT.

6 Q AND THAT'S WHAT'S MISSING.

7 A THAT'S CORRECT.

8 Q AND WE CAN'T TELL THIS JURY TODAY IF THOSE ARE THE SAME DRUGS
9 OR NOT. CAN WE?

10 A I CAN ONLY TELL YOU THAT IT'S SEALED. THIS PACKAGE WAS SEALED
11 WITH MY INITIALS WHEN WE RECEIVED IT BACK. I OPENED IT TO MAKE
12 A LOOK --TO MAKE SURE THE OTHER ENVELOPE WASN'T IN THERE.

13 Q BUT SOMETHING -- YOU OPENED IT WHEN IT GOT BACK FROM THE
14 FORENSIC LAB?

15 A YES, SIR. I DID.

16 Q THAT'S NOT STANDARD PROCEDURE. IS IT?

17 A NO, SIR. IT'S NOT.

18 Q YOU ARE SUPPOSED TO KEEP THAT SEALED UNTIL IT GETS TO COURT.
19 CORRECT?

20 A NOT IN ALL CASES. NO, SIR.

21 Q IT --

22 A IT NEEDS TO REMAIN-- I'M SORRY. GO AHEAD, SIR.

23 Q IT'S SEALED TO PRESERVE THE INTEGRITY OF THE EVIDENCE.

24 A THAT'S CORRECT. IT IS.

25 Q WE'VE GOT LOST EVIDENCE IN THIS CASE

CROSS EXAMINATION OF SERGEANT CLAMP BY MR. BYRHOLDT

12c

1 A THAT'S CORRECT.

2 Q WE ALSO HAVE THE FACT THAT YOU OPENED A SEALED EVIDENCE KIT,
3 AFTER IT CAME BACK FROM THE FORENSIC LAB.

4 A YES, SIR, I DID TO LOOK TO MAKE SURE THAT IT WASN'T
5 INADVERTENTLY LEFT INSIDE THE PACKAGE.

6 Q DID YOU GET PERMISSION FROM ANYBODY TO DO THAT?

7 A NO, SIR. AGAIN, I TAKE THAT ON MY SHOULDERS AS A SUPERVISOR OF
8 THAT DIVISION. IT'S MY RESPONSIBILITY TO MAKE EVERY EFFORT
9 POSSIBLE TO LOCATE THAT IF IT HAS BEEN MISPLACED OR LOST.

10 Q BUT THERE'S NO WAY YOU CAN TELL, OTHER THAN HAVING INITIALS OF
11 A BAG THAT THINGS HAVE BEEN LOST OUT OF, IF THAT'S THE RIGHT
12 DRUGS OR NOT. CAN WE?

13 A NO, SIR. ONLY THAT THE SEALS ARE INTACT.

14 Q AND IN ALL THE CHAIN OF CUSTODY FORMS, NONE OF THEM ARE
15 NOTARIZED.

16 A THERE IS ONE CHAIN OF CUSTODY FORM THAT IS NOTARIZED, WHICH
17 COMMON PRACTICE. WHEN WE TAKE, WHEN I SAY WE, I MEAN THE
18 EVIDENCE DIVISION, I WILL NOTIFY MS. LEE OR MS. CULLEN THAT
19 WORKS WITH ME. I NOTARIZE THEIR SIGNATURE. BUT TYPICALLY
20 THERE'S NOT A NOTARY ON DUTY WORKING ON EVERY SHIFT THAT
21 COULD NOTARIZE ANOTHER SIGNATURE WHEN IT'S DROPPED INTO THE
22 BOX. BASICALLY THEY ARE JUST WITNESSING THAT -- WHEN I
23 NOTARIZE THAT, I'M JUST WITNESSING THAT MS. LEE SIGNED HER
24 NAME ON THE FORM. THAT'S WHAT THAT NOTARY BLOCK IS THERE
25 FOR ON THAT CHAIN OF CUSTODY FORM

RE-DIRECT EXAMINATION OF SERGEANT CLAMP BY MR. BRADLEY

129

1 Q BUT THE CHAIN OF CUSTODY FORMS SAYS THAT ON THE FORM.
2 DOESN'T IT OFFICER?

3 A I'M SORRY. I DIDN'T UNDERSTAND

4 Q YOU'RE AFFIRMING THAT THE EVIDENCE RECEIVED IS IN
5 SUBSTANTIALLY THE SAME CONDITION AS WHEN YOU RECEIVED IT.
6 THAT'S WHY IT'S NOTARIZED. THE LAST SENTENCE, SIR.

7 A THAT'S CORRECT, SIR. IT DOES SAY THAT.

8 Q SO, WHAT WE HAVE HERE IS MISSING EVIDENCE, A BAG THAT HAS
9 BEEN OPENED. WE DON'T KNOW WHAT WE HAVE. DO WE, SIR?

10 A THAT'S CORRECT. THE BAG'S MISPLACED. I'VE INITIATED AN ATTEMPT
11 TO LOOK FOR IT.

12 Q THANK YOU. NO FURTHER QUESTIONS.

13 THE COURT: RE-DIRECT?

14 MR. BRADLEY: YES, SIR, YOUR HONOR. MAY IT PLEASE THE COURT.

15 **RE-DIRECT EXAMINATION OF SERGEANT TOMMY CLAMP BY MR. BRADLEY**

16 Q WHEN YOU OPENED THE BAG WHEN IT CAME BACK TO THE SHERIFF'S
17 OFFICE, WHEN YOU OPENED THE BAG, DID YOU TAMPER WITH THE
18 ITEMS INSIDE OF IT IN ANY WAY?

19 A NO, SIR. I DID NOT. I ONLY OPENED THE OUTER BAG IN AN ATTEMPT TO
20 LOOK TO SEE THAT THE ORIGINAL PACKAGE WASN'T PLACED IN HERE
21 BY ACCIDENT, MAKING EVERY EFFORT TO LOOK FOR THAT ITEM.

22 Q AND SO THIS PACKAGING, IT HAS EVERY NOTATION OF WHO CAME INTO
23 CONTACT WITH IT AND WHERE IT CAME FROM. IS THAT CORRECT?

24 A YES, SIR. IT DOES.

25 Q AND WHAT IS THE REASON FOR HAVING ALL THAT?

RE-DIRECT EXAMINATION OF SERGEANT CLAMP BY MR. BRADLEY

130

- 1 A IT'S SO THAT WE CAN ARTICULATE WHERE THAT'S BEEN OR SHOW
2 WHO'S OPENED IT AND THE DATE AND TIME THAT THEY HAVE OPENED
3 IT.
- 4 Q AND I BELIEVE THAT YOU TESTIFIED EARLIER THAT WHEN IT'S SENT UI
5 TO THE LAB WITH A REQUEST FOR FINGERPRINTS, IT'S GOING TO BE
6 SEPARATED FROM THE ORIGINAL PACKAGING. IS THAT CORRECT?
- 7 A THAT'S COMMON PRACTICE TO SEPARATE IT FROM THE ORIGINAL
8 PACKAGE AND SEND THE ORIGINAL PACKAGE BACK IN AN ENVELOPE
9 ITSELF, OTHER THAN WITH THE SUSPECTED NARCOTICS.
- 10 Q OKAY. SO WHEN THAT PROCESS IS DONE, THE ITEMS ARE RETURNED
11 TO THE SHERIFF'S OFFICE LOOKING LIKE THIS. IS THAT RIGHT?
12 (HOLDING UP PACKAGE) IT'S BEEN SEPARATED.
- 13 A CORRECT.
- 14 Q IT'S NOT SUPPOSED TO BE IN THERE. IS THAT CORRECT?
- 15 A CORRECT.
- 16 Q AND FROM YOUR TESTIMONY, YOUR OFFICE EXAMINED IT WITH DUE
17 DILIGENCE TO ATTEMPT TO LOCATE THE PLASTIC BAGGIE THAT WAS
18 REQUESTED TO BE FINGERPRINTED.
- 19 Q IN MY OPINION, YES, SIR. I'VE CHECKED EVERY PACKAGE THAT WENT
20 OVER WITH IT AND EVERY PACKAGE THAT CAME BACK. THE ACTUAL
21 PACKAGE ITSELF.
- 22 A BUT TO YOUR KNOWLEDGE, THIS WAS NOT DESTROYED IN ANY
23 CAPACITY. IS THAT CORRECT?
- 24 A NO, SIR.
- 25 Q INTENTIONALITY?

RE-CROSS EXAMINATION OF SERGEANT CLAMP BY MR. BYRHOLDT

13'

1 A NOT INTENTIONALLY DESTROYED.

2 Q OKAY. LIKE YOU SAID, I THINK YOU SAID IT WAS HUMAN ERROR. IS
3 THAT CORRECT?

4 A IT'S MY HUMAN ERROR. YES, SIR.

5 Q AGAIN, WHEN YOU OPENED THE BAG, WHAT WAS THE PROCESS AFTER
6 YOU OPENED THE BAG WHEN IT CAME BACK?

7 A WHEN IT CAME BACK ON FEBRUARY 8TH, I BELIEVE IS THE DATE THAT I
8 OPENED IT, JUST TO LOOK FOR THAT PACKAGE TO MAKE SURE IT
9 WASN'T THERE. I IMMEDIATELY SEALED IT BACK UP. I DIDN'T EVEN -- I
10 DIDN'T REMOVE ANYTHING FROM THE BAG. I JUST OPENED IT AND
11 LOOKED INSIDE OF IT.

12 Q OKAY.

13 MR. BRADLEY: NOTHING FURTHER, YOUR HONOR.

14 **RE-CROSS EXAMINATION OF SERGEANT TOMMY CLAMP BY MR. BYRHOLDT**

15 Q THE CHAIN OF CUSTODY FORM IS FILLED OUT EVERY TIME EVIDENCE IS
16 MOVED. RIGHT? SUPPOSED TO BE?

17 A THIS PARTICULAR FORM IS FILLED OUT EVERY TIME THE "BEST KITS"
18 ARE TAKEN TO THE LAB.

19 Q ALL RIGHT. AND SHOULDN'T THERE BE A FORM WHEN SOMEBODY
20 OPENS THAT UP AND TAKES SOMETHING OUT TO SHOW WHERE THAT
21 OBJECT WENT? IF YOU ARE TAKING A PLASTIC BAG OUT, THERE
22 SHOULD BE A FORM SAYING, "I REMOVED THE PLASTIC BAG FROM THE
23 BEST EVIDENCE KIT, WHATEVER NUMBER IT IS, AND SENT IT TO
24 OFFICER JONES."

25 A I AM NOT SURE WHAT WHAT HOW THEY ANNOTATE THAT AT THE

RE-CROSS EXAMINATION OF SERGEANT CLAMP BY MR. BYRHOLDT

132

1 LAB. THAT PARTICULAR INCIDENT WOULD HAVE TAKEN PLACE AT THE

2 ANDERSON-OCONEE FORENSICS LAB.

3 Q THIS LADY RIGHT HERE. MS. LANFORD?

4 A CORRECT. MS. LANFORD WORKS AT THE LAB.

5 Q THANK YOU.

6 A YES, SIR.

7 THE COURT: ANYTHING FURTHER?

8 MR. BRADLEY: NOTHING FURTHER, YOUR HONOR.

9 THE COURT: MAY OFFICER CLAMP BE EXCUSED?

10 MR. BRADLEY: YES, SIR.

11 MR. BYRHOLDT: NO OBJECTION.

12 THE COURT: THANK YOU, SIR. CALL YOUR NEXT WITNESS.

13 MR. BRADLEY: WE CALL BELINDA LEE TO THE STAND, PLEASE.

14 THE COURT: JUST ONE SECOND, PLEASE. (THE JUDGE SPEAKS WITH
15 THE CLERK OF COURT OFF THE RECORD) MISTER FOREMAN, I AM GOING TO
16 ASK YOU TO TAKE YOUR JURY BACK TO THE JURY ROOM AND WHAT YOU ARE
17 GOING TO DO IS ORDER YOUR LUNCH AND SHE CAN GO AHEAD AND GET
18 YOUR ORDERS AND WE WILL GO AHEAD AND RESUME THE TRIAL. OKAY?

19 (JURY OUT AT 12:05 P.M.)

20 (JURY IN AT 12:22 P.M.)

21 THE COURT: MR. BRADLEY?

22 MR. BRADLEY: THANK YOU, YOUR HONOR, MAY IT PLEASE THE COURT.

23 THE STATE CALLS BELINDA LEE TO THE STAND.

24 (AFTER BEING DULY SWORN BY THE CLERK OF COURT, BELINDA LEE

DIRECT EXAMINATION OF BELINDA LEE BY MR. BRADLEY

13

1 **CLERK OF COURT: PLEASE GO UP AND HAVE A SEAT IN THE WITNESS**
2 **CHAIR. IF YOU WILL STATE YOUR FULL NAME AND SPELL YOUR LAST NAME**
3 **FOR THE RECORD, PLEASE.**

4 **MS. LEE: JONNIE BELINDA LEE. L-E-E.**

5 **DIRECT EXAMINATION OF BELINDA LEE BY MISTER BRADLEY**

6 Q **GOOD AFTERNOON, MS. LEE. WHERE DO YOU WORK?**

7 A **ANDERSON COUNTY SHERIFF'S OFFICE.**

8 Q **WHAT DO YOU DO THERE?**

9 A **EVIDENCE TECHNICIAN.**

10 Q **HOW LONG HAVE YOU DONE THAT?**

11 A **I'VE DONE THAT GOING ON THREE YEARS, BUT I HAVE BEEN OUT THERE**
12 **TWENTY-SEVEN YEARS.**

13 Q **AND IN THE CAPACITY OF EVIDENCE TECHNICIAN, WHAT ARE YOUR**
14 **DUTIES?**

15 A **I TAKE IN THE EVIDENCE THAT HAS BEEN TURNED IN AND LOCK IT INTO**
16 **ITS PROPER STORAGE PLACES.**

17 Q **DO YOU HAVE ANY OTHER DUTIES WITH THAT?**

18 A **LIKE I TAKE THE DRUGS TO THE LAB.**

19 Q **AND DID YOU COME INTO CONTACT WITH THE CUSTODY OF ANY**
20 **EVIDENCE IN THIS CASE?**

21 A **I DID.**

22 Q **AND FROM WHERE DID YOU RECEIVE THOSE ITEMS?**

23 A **OUT OF THE DROP BOX IN THE STORAGE ROOM.**

24 Q **AND FOR WHAT PURPOSE DID YOU RECEIVE THEM?**

25 A **IT WAS TURNED IN AS EVIDENCE**

DIRECT EXAMINATION OF BELINDA LEE BY MR. BRADLEY

1 Q OKAY. AND WHAT DID YOU DO WITH THEM AFTER YOU HAD TAKEN
2 THEM FROM THE LOCK BOX?

3 A I ENTERED IT INTO THE COMPUTER AND STORED IT IN ITS PROPER
4 PLACES AND I TOOK THE DRUGS TO THE LAB.

5 Q AND WHEN YOU DID THAT, DID YOU PUT ANY KIND OF NOTATION ON
6 THERE THAT YOU HAD COME IN CONTACT WITH THEM?

7 A YES. I SIGNED THE EVIDENCE SHEET HERE.

8 Q OKAY.

9 MR. BRADLEY: PERMISSION TO APPROACH THE WITNESS?

10 THE COURT: YES, SIR.

11 Q I'LL SHOW YOU STATE'S EXHIBITS #3 AND #4. SEE IF YOU RECOGNIZE
12 THOSE.

13 A I DO.

14 Q AND HOW DO YOU RECOGNIZE THEM?

15 A I ENTERED IT INTO THE COMPUTER AND FILED IT.

16 Q OKAY. AND WHERE DID THEY COME FROM?

17 A OFFICER GREGORY TURNED IT IN.

18 Q OKAY. AND IN REGARDS TO WHAT CASE?

19 A DAVID MARIO JOHNSON.

20 Q OKAY. SO THESE ARE THE ITEMS THAT ARE -- WELL, FIRST, STATE'S
21 EXHIBIT #3, IS THIS THE ITEM THAT YOU TOOK TO THE LAB --

22 A IT IS.

23 Q -- FOR TESTING? AND WHAT DO YOU DO WHEN YOU TAKE IT TO THE
24 LAB? WHAT IS THE PROCESS FOR THAT?

25 A I DO THE PAPERWORK AND LOG IT IN AND LOG IT AS TESTED

DIRECT EXAMINATION OF BELINDA LEE BY MR. BRADLEY

13f

1 TRANSFERRED TO THE ANDERSON-OCONEE FORENSIC LAB AND THEN I

2 TAKE IT OVER AND ENTER IT OR I GIVE IT TO MEREDITH.

3 Q WHEN YOU SAY MEREDITH, WHO ARE YOU REFERRING TO?

4 A MEREDITH LANFORD.

5 Q AND WHAT'S HER POSITION?

6 A SHE IS IN THE FORENSIC LAB.

7 Q OKAY. AND ONCE IT'S THERE AT THE LAB, WHAT HAPPENS TO IT THAT
8 YOU KNOW OF? DOES IT GETS TESTED, ANALYZED?

9 A YES. IT DOES.

10 Q OKAY. AND AFTER IT'S TESTED AND ANALYZED WHAT HAPPENS TO IT?

11 A I GO BACK AND PICK IT UP AND LOCK IT BACK IN AS IT BEING BACK INTO
12 OUR STORAGE.

13 Q DID YOU DO THAT PROCEDURE FOR STATE'S EXHIBIT #3 IN THIS CASE?

14 A I DID.

15 Q OKAY. AND AFTER YOU PICK IT UP AND YOU LOG IT BACK INTO
16 STORAGE, WHERE DOES IT REMAIN?

17 A IN THE LOCKED EVIDENCE ROOM.

18 Q AND NOBODY, I THINK WE'VE HEARD TESTIMONY, NOBODY – NOT
19 EVERYBODY HAS ACCESS TO THAT. IS THAT RIGHT?

20 A THAT'S CORRECT.

21 Q AND THEN, DID YOU BRING THE ITEMS HERE TODAY TO COURT?

22 A I DID.

23 Q AND THAT'S PART OF YOUR DUTIES, STANDARD PROCEDURE?

24 A CORRECT.

25 Q OKAY

CROSS EXAMINATION OF BELINDA LEE BY MR. BYRHOLDT

136

1 MR. BRADLEY: NOTHING FURTHER FOR THIS WITNESS.

2 MR. BYRHOLDT: MAY IT PLEASE THE COURT.

3 CROSS EXAMINATION OF BELINDA LEE BY MISTER BYRHOLDT

4 Q MS. LEE, YOU SAID THERE WAS A FORM THAT YOU SIGNED WHEN YOU

5 TOOK THE EVIDENCE TO THE DRUG LAB?

6 A CORRECT.

7 Q DO YOU HAVE THAT FORM BEFORE YOU?

8 MR. BYRHOLDT: MAY I APPROACH, YOUR HONOR?

9 THE COURT: YES, SIR.

10 (WITNESS HANDS TWO DOCUMENTS TO MISTER BYRHOLDT.)

11 Q ALL RIGHT, ON AUGUST THE 19TH, YOU TOOK IT TO THE DRUG LAB?

12 A CORRECT.

13 Q AND WHEN YOU TOOK IT TO THE DRUG LAB, WHAT WAS IN THE

14 EVIDENCE KIT? WAS THE PLASTIC BAGGIE THAT THE DRUGS

15 ALLEGEDLY WERE IN, INSIDE THAT KIT?

16 A CORRECT.

17 Q DID YOU TAKE ANYTHING OUT OF THE KIT?

18 A NO. I DID NOT.

19 Q AT ANY TIME -- AND THEN LATER ON YOU WENT AND PICKED UP THE

20 EVIDENCE FROM THE DRUG LAB.

21 A CORRECT.

22 Q DID YOU LOOK AT IT WHEN YOU PICKED IT UP AND DID YOU SIGN FOR

23 IT?

24 A YES. I SIGNED FOR IT.

25 Q WHAT WAS IN THE EVIDENCE THAT YOU PICKED UP FROM THE DRUG

CROSS EXAMINATION OF BELINDA LEE BY MR. BYRHOLDT

137

1 LAB?

2 A WELL, IT'S ALL IN A SEALED BAG AND IT WAS THE DRUGS AND THE
3 PLASTIC BAG SHOULD HAVE BEEN IN THERE.

4 Q BUT IT'S NOT.

5 A WELL, I DON'T KNOW EXACTLY WHAT HAPPENED TO THE BAG. I PICK
6 UP A LOT OF EVIDENCE IN THIS, BUT IT'S JUST NOT CLEAR WHAT
7 HAPPENED TO THE BAG.

8 Q BUT THE EVIDENCE SHOULDN'T BE MIXED WITH OTHER EVIDENCE,
9 SHOULD IT?

10 A WELL, IT SHOULD HAVE BEEN PUT IN A SEPARATE SEALED BAG FROM
11 THE DRUGS, THE PLASTIC BAG.

12 Q NOW, DID YOU OPEN UP THE BAG AND SEE IF THE PLASTIC BAG WAS
13 MISSING?

14 A NO. I DID NOT.

15 Q YOU JUST BROUGHT THE BAG BACK AND PUT IT BACK INTO EVIDENCE?

16 A AND FILED IT. CORRECT.

17 Q WHEN DID YOU FIND OUT THAT THE PLASTIC BAG ON WHICH OFFICER
18 GREGORY SOUGHT FINGERPRINTS WAS MISSING?

19 A WHEN WE WERE SUMMONED THAT WE WERE GOING TO HAVE TO
20 APPEAR IN COURT.

21 Q SO, WHEN HE ASKED FOR THE EVIDENCE, THAT'S WHEN YOU FOUND
22 OUT IT WAS MISSING?

23 A CORRECT.

24 Q JUST RECENTLY?

25 A CORRECT

RE-DIRECT EXAMINATION OF BELINDA LEE BY MR. BRADLEY

138

1 **MR. BYRHOLDT:** THAT'S ALL THE QUESTIONS I HAVE OF THIS WITNESS

2 **THANK YOU.**

3 **THE COURT:** RE-DIRECT?

4 **MR. BRADLEY:** JUST A COUPLE, YOUR HONOR. MAY IT PLEASE THE
5 **COURT.**

6 **RE-DIRECT EXAMINATION OF BELINDA LEE BY MISTER BRADLEY**

7 **Q** **MS. LEE, WHEN YOU HAD CUSTODY OF THESE ITEMS – WELL, YOU JUST**
8 **TESTIFIED, YOU DIDN'T OPEN THE BAG.**

9 **A** **NO. I DID NOT.**

10 **Q** **AT ANY TIME?**

11 **A** **NO.**

12 **Q** **WHEN YOU FIRST RECEIVED THESE ITEMS FROM THE LOCK BOX FROM**
13 **DETECTIVE GREGORY, DID THEY APPEAR TO BE ALTERED OR EDITED IN**
14 **ANY WAY?**

15 **A** **NO. THEY WERE NOT.**

16 **Q** **TAMPERED WITH?**

17 **A** **NO.**

18 **Q** **IF THEY HAD BEEN TAMPERED WITH, WOULD YOU HAVE ACCEPTED**
19 **THEM?**

20 **A** **NO. I WOULDN'T HAVE.**

21 **MR. BRADLEY:** NOTHING FURTHER, YOUR HONOR.

22 **THE COURT:** MAY THIS WITNESS BE EXCUSED?

23 **MR. BRADLEY:** YES, YOUR HONOR.

24 **MR. BYRHOLDT:** NO OBJECTION.

DIRECT EXAMINATION OF MEREDITH LANFORD BY MR. BRADLEY

139

1 MR. BRADLEY: YOUR HONOR, THE STATE CALLS MEREDITH LANFORD.

2 (AFTER BEING DULY SWORN BY THE CLERK OF COURT, MEREDITH
3 LANDFORD TESTIFIED AS FOLLOWS:))

4 CLERK OF COURT: YOU CAN GO UP AND HAVE A SEAT IN THE WITNESS
5 CHAIR. IF YOU WILL PLEASE STATE YOUR FULL NAME AND SPELL YOUR LAST
6 NAME FOR THE RECORD.

7 MS. LANDORD: MEREDITH LEE LANFORD. L-A-N-F-O-R-D.

8 DIRECT EXAMINATION OF MEREDITH LANFORD BY MISTER BRADLEY

9 Q GOOD AFTERNOON, MS. LANFORD. WHAT'S YOUR OCCUPATION?

10 A I AM A FORENSIC CHEMIST.

11 Q AND WHERE DO YOU WORK?

12 A I WORK WITH THE ANDERSON-OCONEE REGIONAL FORENSIC
13 LABORATORY.

14 MR. BYRHOLDT: YOUR HONOR, WE ALSO STIPULATE TO MS. LANFORD'S
15 EXPERTISE AS A CERTIFIED FORENSIC CHEMIST.

16 THE COURT: AND TO HER ABILITY TO GIVE HER OPINION AS TO THE
17 NATURE OF THE SUBSTANCE?

18 MR. BYRHOLDT: WITHOUT OBJECTION ON THAT, YOUR HONOR.

19 THE COURT: OKAY. JUST ONE SECOND. LADIES AND GENTLEMEN OF
20 THE JURY, USUALLY WITNESSES ARE LIMITED TO TESTIFYING ABOUT WHAT
21 THEY CAN SEE, WHAT THEY CAN HEAR, WHAT THEY CAN TASTE. IN OTHER
22 WORDS, WHAT YOUR SENSES SHOW TO YOU. HOWEVER, IF SOMEBODY,
23 BECAUSE OF THEIR EDUCATION OR EXPERIENCE OR BOTH, HAS REACHED A
24 LEVEL OF EXPERTISE AND THEY ARE QUALIFIED AS SUCH, THEY ARE ABLE TO

DIRECT EXAMINATION OF MEREDITH LANFORD BY MR. BRADLEY

141

1 CASE, IT IS STIPULATED THAT MS. LANFORD IS AN EXPERT AS A FORENSIC
2 CHEMIST AND THEREFORE WILL BE ABLE TO GIVE HER OPINION IN THAT
3 AREA. JUST LIKE ANY OTHER EVIDENCE IN THIS TRIAL YOU CAN DO WITH IT
4 WHAT YOU WANT. THANK YOU.

5 MR. BRADLEY: THANK YOU, YOUR HONOR.

6 Q MS. LANFORD, AS A FORENSIC CHEMIST, YOU HAVE AN OPPORTUNITY
7 TO DO AN ANALYSIS ON CONTROLLED SUBSTANCES. IS THAT
8 CORRECT?

9 A YES. IT IS.

10 Q AND YOU CAN DETERMINE IF THOSE SUBSTANCES CONTAIN CRACK
11 COCAINE, FOR EXAMPLE?

12 A CORRECT.

13 Q AND HOW MANY TIMES, OFF THE TOP OF YOUR HEAD, WOULD YOU SAY
14 YOU HAVE DONE TESTS LIKE THAT?

15 A ANY?

16 Q FOR CRACK COCAINE.

17 A OVER FIVE HUNDRED.

18 Q OKAY. AND NOW, DID YOU COME INTO POSSESSION OR CUSTODY OF
19 ANY EVIDENCE IN THIS CASE?

20 A YES. I DID.

21 Q FOR WHAT PURPOSE?

22 A TO TEST TO SEE IF THE EVIDENCE CONTAINED ANY CONTROLLED
23 SUBSTANCES.

24 MR. BRADLEY: PERMISSION TO APPROACH, YOUR HONOR?

25 THE COURT: YES. SID

DIRECT EXAMINATION OF MEREDITH LANFORD BY MR. BRADLEY

14

1 Q I'M SHOWING YOU WHAT HAS BEEN MARKED AS STATE'S EXHIBIT #3.

2 TAKE A LOOK AT THAT AND SEE IF YOU RECOGNIZE IT.

3 A YES. I DO.

4 Q HOW DO YOU RECOGNIZE IT?

5 A THIS IS OUR, WHAT WE CALL A "BEST KIT". THIS INNER BAG HERE IS
6 THE "BEST KIT". IT HAS OUR LABORATORY NAME ON IT, MY INITIALS
7 ARE ON IT, AS WELL AS THE LAB NUMBER THAT I ASSIGN EACH PIECE
8 OF EVIDENCE.

9 Q AND WHEN YOU RECEIVED IT, WHAT CONDITION WAS IT IN?

10 A IT'S A SEALED PLASTIC BAG UP HERE. (INDICATING)

11 Q OKAY. AND DID IT APPEAR TO HAVE BEEN TAMPERED WITH IN ANY
12 WAY?

13 A NO. IT DIDN'T.

14 Q WAS THERE ANYTHING ELSE INSIDE THAT WHEN YOU FIRST RECEIVED
15 IT?

16 A WHEN I FIRST RECEIVED IT, THIS WAS A SEALED PLASTIC BAG AND IT
17 CONTAINED A PLASTIC BAG WITH THIS ROCK-LIKE SUBSTANCE.

18 Q AND WHEN YOU RECEIVED IT, WHAT WAS ASKED FOR YOU TO DO WITH
19 IT?

20 A WHEN I RECEIVE IT, LIKE I SAY, I INITIALLY GIVE IT A LAB NUMBER AND I
21 PUT THIS INTO MY EVIDENCE LOCKER UNTIL I'M READY TO ANALYZE
22 THE EVIDENCE AND THAT'S WHEN I RECEIVE IT WITH THE ANALYSIS ON
23 WHATEVER DATE.

24 Q DID YOU PERFORM ANY ANALYSIS ON THESE ITEMS?

25 A I DID. I PERFORMED THE ANALYSIS SEPTEMBER 02, 2000.

DIRECT EXAMINATION OF MEREDITH LANFORD BY MR. BRADLEY

142

1 Q WOULD YOU PLEASE DESCRIBE THAT ANALYSIS?

2 A THE FIRST THING I DO IS, I REMOVE ANY PACKAGING THAT THE
3 SUBSTANCE MAY BE IN AND I TAKE A WEIGHT OF JUST THE SUBSTANCE
4 ITSELF. I THEN PERFORM TWO SCREEN TESTS ON THE SUBSTANCE
5 JUST TO NARROW DOWN WHAT KIND OF CONTROLLED SUBSTANCE
6 MAY BE PRESENT AND I THEN PERFORM TWO CONFIRMATORY TESTS
7 ON OUR INSTRUMENTS IN THE LAB TO CONFIRM THAT THE
8 CONTROLLED SUBSTANCE IS PRESENT OR NOT.

9 Q AND WERE YOU ABLE TO CONFIRM A CONTROLLED SUBSTANCE WAS
10 PRESENT IN THIS CASE?

11 A YES. I DID.

12 Q AND ACCORDING TO YOUR EXPERT OPINION, WHAT IS THE SUBSTANCE
13 FOUND?

14 A I FOUND THAT THE SUBSTANCE CONTAINED COCAINE BASE, WHICH IS
15 ALSO CALLED CRACK COCAINE AT 13.52 GRAMS.

16 Q OKAY. AND THAT'S MORE THAN TEN GRAMS. IS THAT RIGHT?

17 A RIGHT.

18 Q OKAY. AND IS CRACK COCAINE AN ILLEGAL SUBSTANCE HERE IN THE
19 U.S.?

20 A CORRECT. IT'S A SCHEDULE II SUBSTANCE.

21 Q AND I BELIEVE YOU SAID ONCE YOU GOT IT FOR YOUR EXAMINATION,
22 YOU SEPARATE THE ORIGINAL PACKAGING WITH THE PLASTIC BAGGIE
23 WERE THERE ANY OTHER NOTATIONS ON THE BAG ASKING YOU TO DO
24 ANYTHING ELSE WITH THAT?

25 A YES WHEN REI INDA BROUGHT THIS TO ME TO THE LABORATORY SHE

DIRECT EXAMINATION OF MEREDITH LANFORD BY MR. BRADLEY

143

1 SHOWED ME THAT THE OFFICER REQUESTED FOR FINGERPRINTS TO
2 BE TAKEN. ON THE OUTSIDE OF THIS BAG, I WROTE "TEST FOR
3 FINGERPRINTS, WITH MY INITIALS" AND I PUT, "SEND TO BE
4 FINGERPRINTED." I DO NOT PERFORM THE FINGERPRINT ANALYSIS.
5 THAT IS FOR FORENSICS INVESTIGATORS TO DO. SO I WROTE THAT
6 NOTE TO REMIND MYSELF WHEN I OPENED THIS, THAT I NEEDED TO
7 SEPARATE THE BAGGIE FROM THE DRUGS IN ORDER FOR THEM TO
8 TEST IT. SO, ON THE DAY THAT I DID THE ANALYSIS, I TOOK THE
9 BAGGIE AND PLACED IT IN – THIS IS CALLED A "K-PACK" BAG. THIS KIND
10 OF PLASTIC BAG, THIS IS WHAT WE CALL IT. I SEALED UP THE PLASTIC
11 BAG THAT CONTAINED THE DRUGS IN A SEPARATE "K-PACK" BAG AND
12 LABELED IT WITH THE LAB NUMBER THAT WE HAD GIVEN IT, WHICH IN
13 THIS CASE IS LAB #L09-00363. SO, ONCE I WAS DONE TESTING THE
14 DRUGS, I PUT THE ORIGINAL "BEST KIT" BACK INTO THIS SEPARATE
15 "K-PACK" ALONG WITH THE ORIGINAL DRUGS TO BE SENT BACK WITH
16 BELINDA.

17 Q AND TO YOUR KNOWLEDGE, DO YOU KNOW WHAT HAPPENED TO THE
18 PLASTIC BAGGIE THAT YOU SEPARATED FROM THE DRUGS?

19 A NO. I DO NOT. TO MY KNOWLEDGE, IT WAS SENT BACK OVER.

20 Q OKAY. AND BECAUSE THAT PLASTIC BAGGIE HAS BEEN MISPLACED,
21 DID THAT EFFECT YOUR ANALYSIS ON THESE DRUGS?

22 A NO. IT DID NOT.

23 Q SO, THESE DRUGS THAT YOU RECEIVED TO BE TESTED, THAT CAME
24 FROM DEPUTY GREGORY AND SERGEANT MOSHER, THEY WERE CRACK
25 COCAINE?

CROSS EXAMINATION OF MEREDITH LANFORD BY MR. BYRHOLDT

144

1 A CORRECT.

2 Q AND AGAIN, THE WEIGHT WAS 13.52 GRAMS. IS THAT CORRECT?

3 A CORRECT.

4 MR. BRADLEY: AT THIS TIME, YOUR HONOR, THE STATE WOULD ASK T

5 HAVE STATE'S EXHIBIT #3 MOVED INTO EVIDENCE.

6 THE COURT: MISTER BYRHOLDT?

7 MR. BYRHOLDT: I WOULD ASK THE COURT TO WAIT UNTIL MY CROSS

8 EXAMINATION IS CONCLUDED.

9 THE COURT: I WILL DO THAT.

10 MR. BRADLEY: NOTHING FURTHER. NO MORE QUESTIONS AT THIS

11 TIME, YOUR HONOR.

12 MR. BYRHOLDT: MAY IT PLEASE THE COURT, YOUR HONOR.

13 THE COURT: YES, SIR.

14 CROSS EXAMINATION OF MEREDITH LANFORD BY MISTER BYRHOLDT

15 Q MS. LANFORD, SO, WE DON'T KNOW WHAT HAPPENED TO THE PLASTIC
16 BAGGIE FOR FINGERPRINTS.

17 A CORRECT.

18 Q WELL, YOU HAVE TO MAINTAIN A CHAIN OF CUSTODY. CORRECT?

19 A CORRECT.

20 Q WHEN YOU SENT THE EVIDENCE BACK TO ANDERSON COUNTY, YOU
21 SUBMITTED A CHAIN OF CUSTODY FORM WITH IT TELLING THEM WHAT
22 YOU WERE RETURNING. CORRECT?

23 A CORRECT.

24 Q AND YOU TOOK -- YOU'VE TOLD THE JURY THAT YOU TOOK THE PLASTIC

CROSS EXAMINATION OF MEREDITH LANFORD BY MR. BYRHOLDT

145

1 A YES. I DID, SIR.

2 Q SHOULDN'T THERE HAVE BEEN A CHAIN OF CUSTODY FORM
3 GENERATED FOR THAT SEPARATE ENTITY?

4 A THE WAY OUR LABORATORY INFORMATION MANAGEMENT SYSTEM
5 WORKS, THERE IS NO WAY FOR ME TO DESIGNATE THAT.

6 Q WELL, WHO LOST IT?

7 A THAT'S A GOOD QUESTION.

8 Q AND YOU ARE SURE THIS IS THE DRUGS THAT WERE SEIZED FROM
9 MISTER JOHNSON?

10 A I AM SURE THAT THIS IS THE DRUGS THAT WERE SEALED UP IN THIS
11 "BEST KIT".

12 Q ALL RIGHT. LET ME HAND YOU WHAT HAS BEEN MARKED AND
13 ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT #2 AND ASK YOU TO
14 TELL THE JURY WHAT THE WEIGHT OF THE DRUGS WAS IN THAT
15 REPORT BY OFFICER GREGORY.

16 A 15.2 GRAMS.

17 Q 15.2 GRAMS. NOW, WHAT DO WE HAVE?

18 A WE HAVE 13.52 GRAMS.

19 Q OKAY. SO, WE'VE GOT EITHER SHRINKING DRUGS, OR MISSING DRUGS,
20 OR DIFFERENT DRUGS?

21 A NO. WE HAVE -- I DO NOT TAKE THE WEIGHT OF THE PLASTIC BAG.

22 Q HOW MUCH DID THE PLASTIC BAG WEIGH?

23 A I DO NOT WEIGH THE PLASTIC BAG.

24 Q WELL, THEN HOW DO YOU KNOW THAT'S WHAT IS MISSING? WE DON'T.
25 NO WE?

CROSS EXAMINATION OF MEREDITH LANFORD BY MR. BYRHOLDT

146

1 A I BELIEVE THAT GREGORY TESTIFIED THAT HE WEIGHED THE PLASTIC
2 BAG WITH THE DRUGS.

3 Q YOU ARE SURE ABOUT THAT?

4 A I AM NOT POSITIVE, BUT I THOUGHT HE SAID THAT THAT IS WHAT HE
5 TOOK THE WEIGHT OF AND THAT'S, MOST OF THE TIME THAT'S WHAT
6 THEY DO.

7 Q NOT WHAT WAS, MOST OF THE TIME. WHAT WAS DONE THIS — YOU
8 DON'T KNOW WHAT WAS DONE IN THIS CASE. DO YOU?

9 A I KNOW WHAT I DID IN THIS CASE.

10 Q WE DON'T KNOW WHERE THE BAG IS. WE DON'T HAVE ANY
11 FINGERPRINTS.

12 A NO.

13 Q AND WE HAVE A DIFFERENT AMOUNT FROM THE STATEMENT THAN
14 FROM WHAT YOU FOUND.

15 A CORRECT.

16 Q YOU DON'T WEIGH THE BAGS AND SO YOU CAN'T TELL IF THE TWO
17 PLUS GRAMS WAS THE WEIGHT OF A PLASTIC BAG OR NOT.

18 A RIGHT. I DO NOT WEIGH THE PLASTIC BAG.

19 Q DID YOU GET A WRITTEN REQUEST FOR THE FINGERPRINTS? IS THAT
20 ANYWHERE IN YOUR RECORDS?

21 A I MADE A NOTE ON HERE THAT SHE HAD ASKED FOR THIS TO BE
22 TESTED.

23 Q MY QUESTION, MA'AM, WAS IN YOUR RECORDS DID YOU GET A —

24 A NO —

25 Q WRITTEN REQUEST —

CROSS EXAMINATION OF MEREDITH LANFORD BY MR. BYRHOLDT

147

1 A NO. I DID NOT --

2 THE COURT: JUST ONE SECOND. JUST ONE SECOND. LET HIM FINISH
3 HIS QUESTION BEFORE YOU BEGIN AND LET HER FINISH BEFORE YOU
4 QUESTION. OKAY? GO AHEAD.

5 Q DID YOU GET ANY WRITTEN REQUEST FOR FINGERPRINTS OFF THE BAG
6 ALLEGEDLY CONTAINING CRACK COCAINE?

7 A I DO NOT HAVE A WRITTEN REQUEST. NO.

8 MR. BYRHOLDT: BEG THE COURT'S INDULGENCE ONE MOMENT.

9 THE COURT: YES, SIR.

10 (MR. BYRHOLDT HAS DOCUMENT MARKED FOR I.D.)

11 Q HAVE YOU EVER SEEN THAT DOCUMENT REQUESTING LATENT
12 FINGERPRINTS?

13 A I DO NOT KNOW IF I SAW THIS OR NOT.

14 Q IF YOU DID, IT WOULD BE IN YOUR RECORDS. CORRECT? YOU WOULD
15 HAVE A COPY?

16 A NO.

17 Q YOU DON'T KEEP COPIES OF THE CHAIN OF CUSTODY OR ANYTHING?

18 A I HAVE COPIES OF THE CHAIN OF CUSTODY. YES. BUT I DO NOT HAVE
19 COPIES OF FINGERPRINT REQUESTS.

20 Q I MEAN, IF SOMEONE IS MAKING A REQUEST FROM YOU, IF THE
21 EVIDENCE COMES TO, YOU ARE NOT GOING TO KEEP A COPY OF WHAT
22 THEY REQUEST?

23 A THAT REQUEST IS FOR THE FORENSIC INVESTIGATORS, NOT FOR OUR
24 LABORATORY.

25 Q WHICH FORENSIC INVESTIGATORS, WHO

RE-DIRECT EXAMINATION OF MEREDITH LANFORD BY MR. BRADLEY

148

1 A OUR CRIME SCENE INVESTIGATORS THAT DO THE FINGERPRINT
2 ANALYSIS WOULD GET THAT REQUEST. I DO NOT KEEP THE COPIES OF
3 THAT REQUEST.

4 Q IS THAT PART OF THE LAB THAT YOU WORK AT?

5 A NO. THAT IS OVER WITH THE CRIME SCENE INVESTIGATION UNIT.

6 Q WHERE IS YOUR LAB LOCATED?

7 A 219 CAMDEN ROAD.

8 Q IN WHAT CITY?

9 A ANDERSON, SOUTH CAROLINA.

10 Q WHERE IS THE FORENSIC LAB LOCATED?

11 A MY FORENSIC LAB?

12 A THE ONE THAT WOULD DO THE FINGERPRINTS. ISN'T THAT AT THE
13 SAME LOCATION?

14 A NO. THEY ARE IN A SEPARATE BUILDING BEHIND US.

15 Q WELL – OKAY. NOTHING FURTHER.

16 THE COURT: RE-DIRECT?

17 MR. BRADLEY: YES, SIR, YOUR HONOR.

18 **RE-DIRECT EXAMINATION OF MEREDITH LANFORD BY MISTER BRADLEY**

19 Q WHEN YOU DO YOUR ANALYSIS AND YOU ARE TESTING THE WEIGHT,
20 WOULD YOU PLEASE DESCRIBE THAT PROCESS AGAIN.

21 A OKAY. I REMOVE ALL OF THE PACKAGING THAT THE ITEMS CAME IN
22 AND ONLY WEIGH JUST THE SUBSTANCE.

23 Q AND SO, IF AN OFFICER WERE TO WEIGH IT IN THE BAGGIE, IT'S GOING
24 TO WEIGH LESS THAN WHAT IT WAS WHEN THEY WEIGHED IT INITIALLY.
25 IS THAT CORRECT?

RE-DIRECT EXAMINATION OF MEREDITH LANFORD BY MR. BRADLEY

149

1 A RIGHT.

2 Q OKAY. AND HOW ABOUT IF THE PROCESS -- CRACK COCAINE, THE
3 MAKE-UP OF IT, CAN IT CHANGE WEIGHT AS FAR AS WHETHER IT IS
4 WET OR DRY OR ANYTHING LIKE THAT?

5 A YES. IT CAN.

6 Q OKAY. AND IF IT WERE TO DRY OUT, WOULD IT BE MORE WEIGHT OR
7 LESS WEIGHT?

8 A IT WOULD BE LESS WEIGHT.

9 Q OKAY. AND AGAIN, YOU DON'T CONDUCT ANY KIND OF FINGERPRINT
10 ANALYSIS. IS THAT CORRECT?

11 A NO. I DO NOT.

12 Q SO, YOU WOULDN'T RECEIVE THE ACTUAL REQUEST THAT WAS ASKING
13 FOR FINGERPRINT ANALYSIS. RIGHT?

14 A RIGHT.

15 Q YOU ARE JUST A FORENSIC CHEMIST. IS THAT RIGHT?

16 A CORRECT.

17 Q JUST LOOK FOR CHEMICALS.

18 A WE ONLY ANALYZE DRUG EVIDENCE.

19 Q OKAY. SO, YOU WOULDN'T HAVE A REASON TO KEEP THE FORM THE
20 DEFENSE COUNSEL SHOWED YOU.

21 A NO. I DO NOT HAVE ANY REASON FOR THAT.

22 MR. BRADLEY: YOUR HONOR, AT THIS TIME THE STATE WOULD MOVE,
23 AGAIN, TO HAVE STATE'S EXHIBIT #3 ADMITTED INTO EVIDENCE.

24 THE COURT: RIGHT. JUST ONE SECOND. MISTER EVANS, IF YOU

25 WOULD YOU TAKE YOUR JURY BACK TO THE JURY ROOM. I HAVE A

IN CAMERA ARGUMENT - ADMISSION OF EVIDENCE

1 COUPLE MATTERS OF LAW I NEED TO TAKE UP WITH THESE ATTORNEYS.

2 (JURY OUT AT 12:44 P.M.)

3 THE COURT: ALL RIGHT, MISTER BYRHOLDT, I WOULD LIKE TO HEAR
4 FROM YOU ABOUT THE ADMISSIBILITY OF THIS DOCUMENT AS EVIDENCE.

5 MR. BYRHOLDT: BASED ON WHAT HE ASKED, I HAD ONE MORE
6 QUESTION. IT MAY GO TO THE POINT, I THINK, THAT YOU ARE ABOUT TO
7 RAISE.

8 THE COURT: OKAY. WE ARE STILL *IN CAMERA*.

9 IN CAMERA CROSS EXAMINATION OF MS. LANDFORD BY MR. BYRHOLDT

10 MR. BYRHOLDT: WHEN YOU SENT THE EVIDENCE BACK TO ANDERSON
11 COUNTY, IT'S PRESERVED INTACT. IT'S SEALED. ISN'T IT?

12 A UH-HUH.

13 Q SHOULD ANYONE OPEN THAT PACKAGE AT ALL PRIOR TO COMING TO
14 COURT, TO MAINTAIN THE INTEGRITY OF THE EVIDENCE?

15 A NOT TO MY KNOWLEDGE.

16 MR. BYRHOLDT: MY ARGUMENT, YOUR HONOR, WOULD BE THAT IT
17 WAS CONTAMINATED WHEN OFFICER CLAMP WENT IN THERE AND OPENED IT
18 UP LOOKING FOR THE MISSING PLASTIC BAGGIE WE HAVE NO RECORD OF.
19 SHE HAS A RECORD THAT IT WAS REQUESTED BY HER. SHE MADE A NOTE
20 ON THIS, BUT WE DON'T KNOW WHATEVER HAPPENED TO THE BAG OR
21 ANYTHING ELSE.

22 MR. BRADLEY: YOUR HONOR, AS FAR AS THE DRUGS GO, THE CHAIN OF
23 CUSTODY HAS NOT BEEN CONTAMINATED AND IT IS COMPLETE. AS FAR AS
24 SERGEANT CLAMP OPENING IN THE BAG, HE DID TESTIFY AS TO WHAT HE DID

IN CAMERA ARGUMENT - ADMISSION OF EVIDENCE

151

1 WERE IN. IT WAS THE OUTSIDE BAG. SO, THE DRUGS HAVE NOT BEEN
2 CONTAMINATED THEMSELVES. THE CHAIN OF CUSTODY IS STILL COMPLETE
3 NO MATTER THAT HE DID OPEN IT. AS THE FORENSIC ANDERSON COUNTY
4 SUPERVISOR IN THE FORENSIC OFFICE HE HAS THE ABILITY TO MAINTAIN THE
5 EVIDENCE AND TO LOOK AND MAKE SURE WHAT'S INSIDE, STAYS INSIDE.

6 THE COURT: WELL, LET ME ASK YOU THIS. ISN'T THE PURPOSE OF
7 SEALING THESE BAGS ON EACH TRANSFERENCE TO PREVENT EXACTLY
8 WHAT JUST HAPPENED IN THIS CASE? WHETHER IT BE -- I AM SURE IT WAS
9 INNOCENT. I AM NOT SUGGESTING THAT MISTER CLAMP DID ANYTHING WITH
10 ANY SCIENTER OR ANY BAD MOTIVE. BUT, HOWEVER, INNOCENT AS HIS
11 MOTIVE IS, DOESN'T THE FACT THAT IT HAS BEEN OPENED DESTROY THE
12 CHAIN, BECAUSE THAT'S EXACTLY WHAT YOU ARE TRYING TO PREVENT, IS
13 SOMEBODY GETTING TO THE EVIDENCE BEFORE YOU COME HERE.

14 MR. BRADLEY: YOUR HONOR, I WOULD ARGUE THAT IT WOULD NOT
15 DESTROY —

16 THE COURT: YES, LET ME STOP YOU BEFORE THAT. I'M GOING TO LET
17 YOU FINISH. IF THAT IS NOT THE REASON FOR SEALING THE BAG, THEN WHY
18 DO YOU SEAL IT WHATSOEVER? WHY?

19 MR. BRADLEY: YES, SIR.

20 THE COURT: WHY?

21 MR. BRADLEY: I BELIEVE YOU SEAL IT TO PRESERVE THE EVIDENCE
22 BEFORE IT IS TAKEN TO BE ANALYZED.

23 THE COURT: OKAY.

24 MR. BRADLEY: AND THEN ONCE IT IS BACK FROM BEING ANALYZED AND
25 THE REPORT HAS BEEN MADE AND THE ANALYST HAS BEEN DONE

IN CAMERA ARGUMENT - ADMISSION OF EVIDENCE

15:

1 THERE IS NO -- THE MAIN PURPOSE OF IT THEN IS TO MAINTAIN IT UNTIL THE
2 PROPER TRIAL. THAT'S WHAT SERGEANT CLAMP DID. HE MAINTAINED IT
3 UNTIL THE PROPER TRIAL AND WAS SEARCHING WITH DUE DILIGENCE FOR
4 THIS PLASTIC BAGGIE. HE WAS NOT GOING IN TO CONTAMINATE IT OR,
5 AGAIN, TO OPEN THE BAG INSIDE THE BAG THAT THE ACTUAL DRUGS
6 ORIGINATED FROM. AS SERGEANT MOSHER AND DETECTIVE GREGORY
7 COLLECTED THOSE ITEMS AND PLACED THEM IN THE INITIAL EVIDENCE BAG
8 THAT'S WHAT IS INSIDE THE OUTER BAG AND IT HAS NOT BEEN
9 CONTAMINATED. IT'S NOT BEEN CHANGED SINCE THE TIME MS. LANFORD
10 TESTED THOSE ITEMS AND MADE HER REPORT. HER REPORT IS BASED ON
11 WHAT SHE RECEIVED INITIALLY AND IT HAD NOT BEEN CONTAMINATED AND IT
12 HAD NOT BEEN TAMPERED WITH. ONCE IT HAS GONE BACK TO THE
13 FORENSIC OFFICE, SERGEANT CLAMP DID MAKE AN ATTEMPT TO GO IN
14 THERE TO TRY TO ATTEMPT TO FIND THE PLASTIC BAGGIE AND THEN
15 RESEALED IT AND HE TESTIFIED THAT HE DID NOT TAMPER WITH IT IN ANY
16 WAY. I THINK HIS TESTIMONY ON THE STAND WAS THAT HE HAS THE DUTY
17 TO MAINTAIN IT AND HIS TESTIMONY WAS THAT HE DID NOT TAMPER WITH IT
18 IN ANY WAY OTHER THAN OPENING IT AND LOOKING INSIDE AND THEN
19 RESEALING IT AND MAKING A NOTATION. SO, YOUR HONOR, I BELIEVE THE
20 CHAIN OF CUSTODY IS STILL COMPLETE AND THE EVIDENCE HAS BEEN
21 PRESERVED AND HAS MAINTAINED THE INTEGRITY FOR COURT.

22 THE COURT: I SEE THAT YOU WANT TO JUMP UP BUT LET ME CLARIFY,
23 COUPLE OF THINGS IN MY MIND. MISTER BRADLEY, IN EACH OF THESE
24 TRIALS WE HAVE BEEN HEARING THE CHAIN OF CUSTODY AND ONE OF THE
25 THINGS THAT THE STATE TAKES GREAT LENGTHS TO ESTABLISH IS NUMBER

IN CAMERA ARGUMENT - ADMISSION OF EVIDENCE

153

1 ONE, ONCE THAT EVIDENCE GOES INTO THE LOCKER -- AND ONLY SEVERAL
2 TECHNICIANS HAVE A RIGHT TO GET TO IT, NOT EVERYBODY HAS KEYS, NOT
3 EVEN THE SHERIFF. I HAVE HEARD THAT SEVERAL TIMES -- AND THAT ONCE
4 IT IS RETURNED FROM THE FORENSIC LAB THAT IT'S SEALED AND WHERE IT
5 REMAINS IN THE LOCKED LOCKER IN THE SEALED BAG UNTIL IT'S BROUGHT
6 UP HERE IN THAT SEALED CONDITION. CORRECT?

7 MR. BRADLEY: CORRECT.

8 THE COURT: SO, WHY ISN'T IT THEN, THAT OPENING THAT BAGGIE BY
9 MISTER CLAMP, AND AGAIN I LISTENED TO MISTER CLAMP'S TESTIMONY. I
10 FIND THE REASON HE SAID HE LOOKED FOR IT IS THE REASON HE SAID HE
11 LOOKED FOR IT. I DON'T THINK THERE IS ANY BAD MOTIVE ON THE PART OF
12 THE SHERIFF'S DEPARTMENT. BUT NOT WITHSTANDING, AS INNOCENT AS IT
13 MAY BE, WHY DOES THAT NOT DESTROY IT IF ALL YOUR PROCEDURES THAT
14 YOU HAVE ESTABLISHED AND THAT YOU TESTIFIED TO IN GREAT LENGTHS
15 THAT IT IS SEALED, STAYS SEALED FROM ONE PORTAGE TO THE OTHER
16 UNTIL YOU GET UP HERE IN THE COURTROOM? I AM NOT QUITE SEEING WHY
17 THAT DOESN'T DESTROY THE CHAIN.

18 MR. BRADLEY: YOUR HONOR, I AGAIN I WOULD ARGUE THAT THE INSIDE
19 BAG THAT THE DRUGS ARE CONTAINED IN HAS NOT BEEN OPENED, HAS NOT
20 BEEN UNSEALED, HAS NOT BEEN DESTROYED.

21 THE COURT: I THOUGHT THAT WAS EXACTLY WHAT IT WAS THAT HE
22 OPENED, THE OUTSIDE CONTAINER BAG.

23 MR. BRADLEY: THE OUTSIDE CONTAINER BAG, NOT THE BAG THAT THE
24 DRUGS WERE IN. I BELIEVE, YOUR HONOR, IF I MAY.

25 THE COURT: YES, SIR.

IN CAMERA ARGUMENT - ADMISSION OF EVIDENCE

154

1 (MISTER BRADLEY HOLDS UP STATE'S EXHIBIT #3)

2 MR. BRADLEY: THEY ARE IN A SEPARATE BAG INSIDE THIS BAG. HE
3 OPENED AND RESEALED THIS OUTSIDE BAG. THAT IS WHAT I WAS ARGUING,
4 YOUR HONOR, THAT THOSE HAVE NOT BEEN TAMPERED WITH. AS HE
5 TESTIFIED TO, THEY HAVE NOT BEEN TAMPERED WITH IN ANY WAY. HE SAID
6 THAT HE JUST OPENED THIS BAG.

7 THE COURT: HE DID SAY THAT.

8 MR. BRADLEY: AND SO I WOULD ARGUE THAT THE INTEGRITY OF THE
9 DRUGS STILL REMAINS THE SAME FROM THE TIME MS. LANFORD TESTED
10 THEM AND WEIGHED THEM AND PLACED THEM BACK INSIDE THIS BAG. THAT
11 BAG HASN'T BEEN TAMPERED WITH IN ANY WAY.

12 THE COURT: WELL, THE IDENTITY OF THE DRUGS CERTAINLY REMAINS
13 THE SAME, AS THAT IT IS CRACK COCAINE. THE INTEGRITY, WE DON'T KNOW.

14 MR. BRADLEY: YOUR HONOR, I WOULD ARGUE ALSO, AS FAR AS
15 ADMISSIBILITY OF IT, THE ARGUMENTS THAT YOU ARE ASKING ME ABOUT ALL
16 MORE GO TO CREDIBILITY THAN ADMISSIBILITY.

17 THE COURT: IT GOES TO THE WEIGHT AS OPPOSED TO ADMISSIBILITY?
18 WHY DOESN'T IT GO TO THE WEIGHT AS TO THE ADMISSIBILITY, MISTER
19 BYRHOLDT?

20 MR. BYRHOLDT: BECAUSE THAT'S THE BASIS BEFORE YOU CAN EVEN
21 GO TO THE JURY. THE CHAIN OF CUSTODY IS MAINTAINED SOLELY FOR THAT
22 PURPOSE. THE REASON WE HAVE CHAIN OF CUSTODY IS TO PROTECT THE
23 STATE'S INTEREST IN HAVING THEIR EVIDENCE ABOVE REPROACH. ALSO, IT
24 GIVES US THE OPPORTUNITY, WE KNOW WHERE IT HAS BEEN AND WHO HAS

IN CAMERA ARGUMENT - ADMISSION OF EVIDENCE

15f

1 OPENED AT ALL. THAT'S WHY IT IS SEALED. THE SEAL IS SUPPOSED TO BE
2 BROKEN IN COURT IN THE PRESENCE OF THE JUDGE, THE DEFENDANT, THE
3 DEFENSE COUNSEL, AND THE SOLICITOR SO THERE IS NO MISTAKE. HAD
4 THEY WANTED TO DO THAT, I THINK THEY COULD HAVE NOTIFIED ME THAT
5 THERE WAS A PROBLEM, ASKED ME TO COME UP AND LOOK AT IT OR GET
6 THE COURT'S PERMISSION TO OPEN THIS SEALED EXHIBIT AND MAKE SURE
7 THERE'S NO PROBLEMS. NONE OF THAT WAS DONE.

8 THE COURT: MISTER BRADLEY, IS THERE ANY KIND OF RECORD THAT
9 MISTER CLAMP MADE THAT, "I AM COMING IN HERE AND OPENING THIS SEAL
10 AND LOOKING IN THIS BAGGIE AND CLOSING IT BACK?" IT'S JUST -- I KNOW HE
11 HAS TESTIFIED, BUT IS THERE NO RECORD OF THAT?

12 MR. BYRHOLDT: THERE ISN'T, YOUR HONOR.

13 THE COURT: ALL RIGHT. GIVE ME FIFTEEN MINUTES. I'M GOING TO
14 LOOK AT THIS FOR A FEW MINUTES AND I WANT TO MAKE SURE THAT IT IS
15 CLEAR FOR THE RECORD THAT I AM NOT SUGGESTING IN ANY FORM OR
16 FASHION THAT MISTER CLAMP DID ANYTHING IMPROPER OR ILLEGAL OR I
17 SHOULD SAY ILLEGAL OR WITH A BAD MOTIVE AND THAT IS CERTAINLY NOT
18 WHAT I AM FINDING OR THAT I HAVE HEARD. NOTWITHSTANDING --

19 MR. BYRHOLDT: I WOULD --

20 THE COURT: -- AND I AM SURE YOU WOULD STIPULATE TO THAT.

21 MR. BYRHOLDT: I WOULD STIPULATE TO JUST THAT AND I WAS GOING
22 TO SUGGEST THAT. I HOLD HIM IN THE HIGHEST ESTEEM.

23 THE COURT: OKAY. IT'S JUST A MATTER OF LAW TO WHETHER OR NOT
24 THE CHAIN HAS BEEN TAINTED TO THE EXTENT IT'S NOT ADMISSIBLE. THAT'S

IN CAMERA ARGUMENT - ADMISSION OF EVIDENCE

15c

1 MINUTES.

2 (SHORT BREAK)

3 THE COURT: I ASK Y'ALL TO COME UP HERE RIGHT QUICK, PLEASE.

4 (BRIEF BENCH CONFERENCE OFF THE RECORD)

5 THE COURT: ALL RIGHT, I HAVE HAD OPPORTUNITY TO CONSIDER THIS
6 AND DISCUSS IT WITH WISER MINDS AS WELL AS LOOK AS SOME OF THE
7 CASE LAW THAT IS PROVIDED TO ME BY MY CLERK. I'M REFERRING TO
8 STATE VERSUS CARTER, WHICH SHE JUST HANDED TO ME. IT SAYS, "AS
9 LONG AS THE CHAIN OF POSSESSION IS COMPLETE THE STATE NEED NOT
10 PROVIDE EVIDENCE THAT EXCLUDES ALL POSSIBILITIES OF TAMPERING,
11 THEY ONLY NEED TO PROVE EVIDENCE THAT ESTABLISHES A REASONABLE
12 PROBABILITY THAT THE EVIDENCE HAS NOT BEEN TAMPERED WITH. CITING
13 HAMMER VERSUS STATE AND STATE VERSUS CARTER. IN THIS CASE, THE
14 EVIDENCE SHOWS IT GOING UP TO THE LAB AND BACK TO THE SHERIFF'S
15 DEPARTMENT'S LOCKER. THERE IS NO ISSUE OF TAMPERING. THE ISSUE
16 WAS THAT OFFICER CLAMP MISTAKENLY OPENED THE EVIDENCE BAG
17 WITHOUT SOME TYPE OF COURT ORDER OR STIPULATION FROM DEFENSE
18 COUNSEL WHICH SHOULD OBVIOUSLY HAVE BEEN DONE IN ORDER TO
19 PREVENT THE QUESTION OF TAMPERING BEING MADE. I DO NOT FIND IT
20 PROHIBITS IT FROM COMING INTO EVIDENCE. I AM NOT GOING TO EXCLUDE
21 IT. I AM GOING TO ADMIT IT INTO EVIDENCE. I AM GOING TO ALLOW MISTER
22 BYRHOLDT WIDE LATITUDE IN CLOSING ARGUMENT, ANY QUESTIONS HE
23 FEELS APPROPRIATE TO ARGUE WHAT HE WANTS TO WITH THAT, BUT I AM
24 GOING TO ADMIT IT INTO EVIDENCE. OKAY. NOW, DO WE NEED TO FINISH UP
25 THE TESTIMONY FROM THIS WITNESS? I KNOW THERE IS ANOTHER

IN CAMERA ARGUMENT - ADMISSION OF EVIDENCE

157

1 QUESTION THAT WAS ASKED *IN CAMERA*.

2 MR. BYRHOLDT: I DON'T BELIEVE SO.

3 MR. BRADLEY: IT'S JUST WHEN THEY COME BACK OUT, I'D ASK THAT IT
4 BE ADMITTED.

5 THE COURT: VERY WELL. AND LISTEN, WHEN YOU DO THAT, DON'T ACT
6 AS IF I WON THIS ARGUMENT. ARE Y'ALL READY TO PROCEED?

7 MR. BYRHOLDT: YES, YOUR HONOR.

8 THE COURT: ALL RIGHT.

9 MR. BRADLEY: YES, YOUR HONOR. AFTER THEY COME BACK IN I'LL ASK
10 TO EXCUSE THIS WITNESS AND ADMIT THE EVIDENCE.

11 THE COURT: ALL RIGHT. GOOD. THANK YOU.

12 (JURY IN AT 1:07 P.M.)

13 THE COURT: MISTER BRADLEY?

14 MR. BRADLEY: YOUR HONOR, MAY IT PLEASE THE COURT. AT THIS TIME
15 I WOULD LIKE TO HAVE STATE'S EXHIBIT #3 ADMITTED INTO EVIDENCE.

16 THE COURT: SO ADMITTED.

17 (WHEREUPON, DRUGS ARE ENTERED INTO EVIDENCE AS STATE'S
18 EXHIBIT #3, WITHOUT OBJECTION)

19 THE COURT: ANYTHING FURTHER FROM THIS WITNESS?

20 MR. BRADLEY: NO, SIR. NO FURTHER QUESTIONS FOR THIS WITNESS.

21 THE COURT: FROM THE DEFENSE?

22 MR. BYRHOLDT: NOTHING FURTHER FROM THE DEFENSE.

23 THE COURT: OKAY.

24 MR. BRADLEY: MAY THIS WITNESS BE EXCUSED?

—



IV

CS

1

OF

—

AT-

UT

1

CHARGE CONFERENCE

159

1 THINK IT'S JUST A COURT RECORD.

2 MR. BRADLEY: OKAY. THEN I AGREE WITH THE COURT.

3 THE COURT: OKAY. LET ME GO OVER -- HAVE YOU LOOKED AT -- DID
4 YOU GET TO MY CHARGE ON POSSESSION AND TRAFFICKING? BOTH OF
5 THEM?

6 MR. BYRHOLDT: I DID, YOUR HONOR.

7 MR. BRADLEY: YES, SIR.

8 THE COURT: I WAS JUST GOING TO STRIKE OUT THE LAST LINE THAT
9 SAYS, "TWO OR MORE PERSONS MAY HAVE JOINT POSSESSION OF A DRUG."
10 THAT DOESN'T SEEM LIKE IT WOULD BE APPROPRIATE IN THIS CASE, UNLESS
11 YOU JUST WANT IT.

12 MR. BYRHOLDT: NO, YOUR HONOR.

13 MR. BRADLEY: NO, SIR.

14 THE COURT: OKAY. BEFORE WE GO OVER JUST MY GENERAL CHARGE,
15 I WANT TO DO IT FAIRLY QUICKLY, BUT I WAS GOING TO SAY, IN THE PAST I
16 HAVE GIVEN ATTORNEYS THE CHOICE OF EITHER ME CHARGING THE JURY
17 AND THEM CLOSING AFTER OR YOU GO AHEAD AND DO YOUR CLOSING AND
18 THEN I WILL CHARGE THE JURY ONCE YOU ARE FINISHED. WHATEVER WAY. I
19 KNOW SOME ATTORNEYS HAVE LIKED IT GOING AFTER, BECAUSE THEY CAN
20 SAY, "YOU'VE HEARD THE JUDGE TELL YOU, ET CETERA." OTHERS SAY, "I
21 DON'T LIKE THAT. IT'S JUST NOT THE NORM." SO THEY -- IF YOU BOTH AGREE
22 I WILL BE GLAD TO DO IT, YOU KNOW, CHARGE FIRST AND LET YOU CLOSE.
23 WHATEVER YOU WANT TO DO.

24 MR. BYRHOLDT: WHAT DID YOU DO YESTERDAY? JUST REGULAR?

--

CHARGE CONFERENCE

1b

1 **MR. BYRHOLDT:** YES, JUST THE REGULAR. I RATHER KEEP IT NOW,
2 BECAUSE WE'VE GOT PEOPLE THAT HAVE BEEN ON THE JURY AND WE MAY
3 CONFUSE THEM IF WE CHANGE.

4 **THE COURT:** WELL, WE DEFINITELY DID IT THE REGULAR WAY
5 YESTERDAY.

6 **MR. BRADLEY:** THE CLOSINGS AND THEN THE CHARGE.

7 **THE COURT:** OKAY. I WOULD JUST AS SOON GO AHEAD AND LET'S GET
8 THIS THING DONE AND THEN IN THAT WAY LET THE JURY GO BACK AND
9 START EATING THEIR LUNCH. HE IS NOT BACK YET, IS HE?

10 **CLERK OF COURT:** NO, THAT'S RIGHT, YOUR HONOR. HE'S TO PICK IT
11 UP AT 1:30.

12 **THE COURT:** OKAY. LET'S GO. Y'ALL WANT TO DO THAT? SO, YOU WILL
13 GO FIRST THEN, AND THEN YOU WILL CLOSE LAST. MY CHARGE, I HAVE -- I
14 DON'T KNOW IF YOU'VE BEEN IN FRONT OF JUDGE HILL, BUT I STOLE SOME
15 OF HIS. IT'S THREE PARTS. I HAVE THE GENERAL RULES AND THE CONTROL
16 AND DEFINE JUROR'S DUTIES. I HAVE THE LAW SPECIFIC TO THIS CASE AND
17 THEN RULES ON DELIBERATIONS. FIRST, I GIVE THEM THE CHARGE ABOUT
18 APPLYING THE FACTS. YOU KNOW, MAKING A DECISION ON WHAT THEY
19 HEARD IN THE COURTROOM FROM THE WITNESS STAND. THEY HAVE TO
20 FOLLOW WHAT MY INSTRUCTIONS ARE. I TELL THEM WHAT IS AND WHAT IS
21 NOT EVIDENCE. THERE ARE NO STIPULATIONS IN THIS CASE EXCEPT FOR
22 THE EXPERTISE OF THE WITNESSES. RIGHT?

23 **MR. BYRHOLDT:** JUDGE, WE STIPULATED ON THE MARIJUANA.

24 **MR. BRADLEY:** YES, YOUR HONOR.

CHARGE CONFERENCE

161

1 THE COURT: OKAY. SO YOU STIPULATED ON —

2 MR. BRADLEY: STATE'S EXHIBIT #4, I BELIEVE IT WAS.

3 MR. BYRHOLDT: YES.

4 THE COURT: EXHIBIT #4. OKAY, YOU ALSO STIPULATED TO THE
5 EXPERTISE OR DID YOU STIPULATE TO THE MARIJUANA AND THEN YOU
6 STIPULATED TO THE EXPERTISE OF MS. FREEMONT. IS THAT WHO IT WAS?

7 MR. BYRHOLDT: LANFORD.

8 MR. BRADLEY: LANFORD AND SERGEANT CLAMP WAS CERTIFIED TO
9 TEST MARIJUANA.

10 THE COURT: SO, I WILL JUST SAY, STIPULATED TO THE EXPERTISE OF
11 OFFICER CLAMP AND MS. LANFORD. DO Y'ALL AGREE TO THAT?

12 MR. BYRHOLDT: YES, SIR.

13 MR. BRADLEY: YES, SIR.

14 THE COURT: OKAY. AND THEN I WILL TELL THEM WHAT IS NOT
15 EVIDENCE. DESCRIBE FOR THEM WHAT IS DIRECT AND CIRCUMSTANTIAL
16 EVIDENCE. GO OVER THEM MAKING CREDIBILITY OF WITNESS' ANALYSIS AND
17 FACTORS THEY CAN USE IN DOING THAT. GO OVER EXPERT TESTIMONY AND
18 THAT THEY CAN ACCEPT OR REJECT IT. GO OVER THE FACT THAT THERE
19 ARE MULTIPLE INDICTMENTS. THE FACT THAT THE ARREST, CHARGE OR
20 INDICTMENT IS NOT EVIDENCE AND CANNOT BE CONSIDERED AS EVIDENCE
21 OF GUILT, IT'S JUST THE FORMALITY TO BRING IT BEFORE THE JURY. THE
22 PRESUMPTION OF INNOCENCE. DESCRIBE FOR THEM WHAT IS REASONABLE
23 DOUBT. NOW, I HAVE A QUESTION. DO I NEED TO HAVE INTENT SINCE THE
24 STATUTE, AS FAR AS THE CRACK, HAS A STATUTORY INTENT IN IT. DO I HAVE

CHARGE CONFERENCE

1 **MR. BRADLEY:** THE STATE'S ARGUMENT WOULD BE THAT YOU DON'T
2 HAVE TO. IT'S NOT PART OF THE STATUTE. WE DON'T HAVE TO PROVE THAT
3 HE INTENDED, WHAT HIS CONTROL AND INTENTION OF IT WAS, JUST THAT HE
4 HAD POSSESSION OF TEN OR MORE GRAMS.

5 **THE COURT:** WHAT IS YOUR POSITION?

6 **MR. BYRHOLDT:** I WOULD AGREE. THERE IS NO EVIDENCE. I WOULD
7 CHARGE JUST THE SECOND PART OF THE STATUTE, BUT I DON'T THINK YOU
8 NEED THE FIRST PART THAT DEALS WITH INTENT.

9 **MR. BRADLEY:** THAT IS CORRECT.

10 **THE COURT:** JUST CHARGE THE SECOND PART OF THE STATUTE?

11 **MR. BYRHOLDT:** THAT HAS THE WEIGHT.

12 **MR. BRADLEY:** THE POSSESSION OF TEN OR MORE GRAMS OF CRACK
13 COCAINE.

14 **THE COURT:** SO, THAT YOU HAVE ESTABLISHED THAT IT IS MORE THAN
15 TEN AND LESS THAN TWENTY-EIGHT?

16 **MR. BRADLEY:** YES, SIR.

17 **THE COURT:** OKAY. ALSO, I WILL GIVE THEM A CHARGE ON THE
18 FAILURE OF THE DEFENDANT TO TESTIFY AND ALSO TO BE PRESENT. I WILL
19 REITERATE THE FACT THAT THAT'S NOT AN ADMISSION.

20 **MR. BYRHOLDT:** I WOULD ALSO -- IT SHOULD NOT BE CONSIDERED IN
21 ANY WAY WHATSOEVER BY THE JURY THAT HE'S NOT HERE.

22 **THE COURT:** NO. I WAS TALKING ABOUT -- I DO SAY THE FAILURE TO
23 TESTIFY SHALL NOT BE CONSIDERED IN ANY FORM OR FASHION, BUT ALSO
24 THE FACT THAT HE DID NOT APPEAR CANNOT BE CONSTRUED AS AN

CHARGE CONFERENCE

163

1 **MR. BYRHOLDT:** YES, SIR.

2 **THE COURT:** OKAY. THEN I WILL GO OVER THE JACKSON/DENNO
3 CHARGE IN THIS CASE, THAT THERE WAS AN ALLEGED STATEMENT, THAT
4 THE STATEMENT IS ALLEGED TO HAVE BEEN MADE BY HIM AND THEY HAVE
5 TO FIND AND OTHER CONSIDERATIONS. YOU KNOW, THEY HAVE THE
6 FACTORS THEY CAN CONSIDER AND THEY HAVE TO FIND IT TO BE
7 VOLUNTARY BEYOND A REASONABLE DOUBT. THEN I GO OVER, JUST AFTER
8 GIVING THE SPECIFIC LAW APPLICABLE TO THE TRAFFICKING AND
9 POSSESSION, I GIVE THEM THE GENERAL CHARGE ON DELIBERATIONS AND
10 WHAT IT MEANS. STANDARD STUFF, NOTHING EARTH SHATTERING AND YOU
11 ARE MORE THAN WELCOME TO LOOK AT MY NOTES AND HIGHLIGHTS IF YOU
12 WANT TO, BUT IT IS BASIC STUFF. THEN I GO OVER THE VERDICT FORM,
13 WHICH I HAVE IN THIS CASE WHICH SAYS, "WE, THE JURY, UNANIMOUSLY
14 FIND THE DEFENDANT, DAVID MARIO JOHNSON, IS 1) NOT GUILTY OF
15 POSSESSION OF MARIJUANA OR 2) GUILTY OF POSSESSION OF MARIJUANA
16 ON INDICTMENT #2269." AND THEN UNDER INDICTMENT #2668, "WE, THE JURY,
17 UNANIMOUSLY FIND THE DEFENDANT, DAVID MARIO JOHNSON, IS NOT GUILTY
18 OF TRAFFICKING COCAINE OR GUILTY OF TRAFFICKING COCAINE." YOU ARE
19 WELCOME TO LOOK AT IT.

20 **MR. BYRHOLDT:** YOUR HONOR, THE INSTRUCTIONS AND THE JURY
21 CHARGE ARE THE SAME ONES YOU GAVE LAST NIGHT?

22 **MR. CAMPBELL:** UH-HUH. WITH THE BUILT IN STUMBLES AND FUMBLES
23 AND, YOU KNOW, WHATEVER YOU WILL FIND AS I GO THROUGH IT.

24 **MR. BRADLEY:** YOUR HONOR, IF I MAY CLARIFY, JUST ON THE JURY
25 FORM, DID YOU SAY CRACK COCAINE OR COCAINE?

CLOSING ARGUMENT - MISTER BRADLEY

1 **THE COURT:** CRACK COCAINE. I'M SORRY.

2 **MR. BRADLEY:** OKAY. JUST MAKING SURE.

3 **THE COURT:** TAKE A LOOK AND MAKE SURE YOU ARE OKAY.

4 (MR. BRADLEY LOOKS AT DOCUMENT)

5 **MR. BRADLEY:** THAT'S GOOD.

6 **THE COURT:** AND I WILL LET YOU LOOK AT IT AGAIN BEFORE WE TAKE
7 IT BACK THERE. ALL RIGHT, YOU GUYS READY TO GO?

8 **MR. BRADLEY:** WE'RE READY, YOUR HONOR.

9 **THE COURT:** OKAY. WILL YOU BRING THE JURY BACK, PLEASE?

10 (JURY IN AT 1:17 P.M.)

11 **THE COURT:** ALL RIGHT MISTER EVANS, LADIES AND GENTLEMEN OF
12 THE JURY, THAT ENDS ALL OF THE EVIDENCE PORTION OF THIS TRIAL. WE
13 ARE GOING TO THE NEXT STAGE AND THAT IS THE CLOSING ARGUMENTS OF
14 THE ATTORNEYS. YOU WILL HEAR FIRST FROM THE STATE. MR. BRADLEY?

15 **MR. BRADLEY:** THANK YOU, YOUR HONOR. MAY IT PLEASE THE COURT.

16 **THE COURT:** YES, SIR.

17 **CLOSING ARGUMENT - MISTER BRADLEY**

18 LADIES AND GENTLEMEN, THIS MORNING I STOOD UP HERE AND TOLD
19 YOU THAT IT WAS MY BURDEN TO PROVE BEYOND A REASONABLE DOUBT
20 THE DEFENDANT COMMITTED THE CRIMES CHARGED OF TRAFFICKING IN
21 CRACK COCAINE AND THE POSSESSION OF MARIJUANA. AS I TOLD YOU, I
22 WELCOME THAT BURDEN AND I SUBMIT TO YOU THAT I HAVE PROVEN THAT
23 TO YOU AND CARRIED THAT BURDEN. AND AGAIN, AS I WAS TALKING TO YOU
24 ABOUT WHAT BEYOND A REASONABLE DOUBT MEANS, IT DOES NOT MEAN

CLOSING ARGUMENT - MISTER BRADLEY

165

1 WOULD CAUSE A REASONABLE PERSON TO HESITATE TO ACT, BUT WHEN
2 YOU GO BACK INTO THE JURY ROOM AND CAREFULLY CONSIDER THE
3 EVIDENCE, THAT IS NOT A HESITATION TO ACT. AGAIN, I AM NOT REQUIRED
4 BY LAW TO PROVIDE PROOF THAT OVERCOMES EVERY POSSIBLE DOUBT,
5 JUST BEYOND A REASONABLE DOUBT. AGAIN, BEYOND A REASONABLE
6 DOUBT MEANS THAT AFTER HEARING THE EVIDENCE IN THIS CASE, YOU THE
7 JURY, MUST BE FIRMLY CONVINCED OF THE DEFENDANT'S GUILT OF THE
8 CRIME CHARGED. AGAIN, I SUBMIT TO YOU THAT THE STATE HAS CARRIED
9 THAT BURDEN.

10 AND AGAIN, THE CRIME CHARGED IS POSSESSION OF CRACK COCAINE.
11 IT IS DEFINED AS THE POSSESSION OF MORE THAN TEN GRAMS OF CRACK
12 COCAINE. HE HAS ALSO BEEN CHARGED WITH THE POSSESSION OF
13 MARIJUANA. IT IS DEFINED AS THE POSSESSION OF LESS THAN TWENTY-
14 EIGHT GRAMS OF MARIJUANA AND IN THE STATE OF SOUTH CAROLINA THERE
15 ARE TWO TYPES OF POSSESSION. THERE IS ACTUAL POSSESSION AND
16 CONSTRUCTIVE POSSESSION. THE JUDGE WILL GO THROUGH THE
17 DEFINITIONS OF THESE POSSESSIONS IN A MINUTE, BUT BRIEFLY, ACTUAL
18 POSSESSION IS KNOWN AS, THE DRUGS WERE LOCATED IN ACTUAL
19 PHYSICAL CUSTODY OF THE PERSON CHARGED AND CONSTRUCTIVE
20 POSSESSION IS MORE WHEN THE DRUGS ARE FOUND TO BE ON THE
21 PREMISES OF WHICH THE PERSON CHARGED HAS MEANING OR CONTROL. IN
22 THIS CASE, WE ARE DEALING WITH ACTUAL POSSESSION. THE DRUGS WERE
23 SEEN AND FOUND IN THE ACTUAL PHYSICAL CUSTODY OF THE DEFENDANT,
24 DAVID MARIO JOHNSON. AS YOU HEARD SERGEANT MOSHER AND OFFICER
25 PITTS TESTIFY. THEY NEVER TOOK THEIR EYES OFF HIM THAT DAY THEY

CLOSING ARGUMENT - MISTER BRADLEY

161

1 SAW HIM IN THAT FRONT YARD ON APPLETON AND REYNOLDS STREET AND
2 THEY SAW HIM DISCARD THAT PLASTIC BAGGIE. THEY PICKED UP THAT
3 PLASTIC BAGGIE AND IT HAD AN OFF-WHITE, ROCK-LIKE SUBSTANCE LATER
4 TESTED AND ADMITTED AND CONFIRMED TO BE CRACK COCAINE. HE HAD IT
5 IN HIS HAND, THE CRACK COCAINE IN HIS HAND, BEFORE HE DISCARDED IT
6 ONTO THE GROUND. ACTUAL PHYSICAL CUSTODY.

7 AND THEN THE MARIJUANA WAS FOUND IN HIS FRONT PANTS POCKET
8 AFTER HIS ARREST. THEY WERE SEARCHING HIM INCIDENT TO ARREST AND
9 IT WAS IN HIS ACTUAL PHYSICAL CUSTODY, ON HIS PERSON. SO HE HAD
10 ACTUAL POSSESSION OF BOTH DRUGS, CRACK COCAINE AND MARIJUANA.
11 NOT ONLY DID SERGEANT MOSHER AND OFFICER PITTS SEE HIM DISCARD
12 THIS AND DID SEE IT IN HIS POSSESSION, WHEN HE WAS QUESTIONED BY
13 LAW ENFORCEMENT, HE ADMITTED IT. THE DEFENDANT SAID, "YEAH, THESE
14 ARE MY DRUGS." HERE, YOU WILL BE ALLOWED TO TAKE THESE BACK IN THE
15 JURY ROOM WITH YOU. (INDICATING)

16 HE WAS TOLD HIS RIGHTS. HE HAD THE RIGHT TO REMAIN SILENT AND
17 HIS RIGHT TO AN ATTORNEY. HE WAIVED ALL THESE RIGHTS. HE SAID "YEAH
18 I'LL TALK TO YOU. I WILL TELL YOU WHAT HAPPENED." AND HE GAVE HIS
19 STATEMENT. YOU CAN TAKE THIS BACK WITH YOU. (INDICATING) AND IT WAS
20 READ TO YOU BY DEPUTY GREGORY A WHILE AGO, THAT HE ASKED HIM, "DID
21 YOU HAVE IN YOUR POSSESSION THIS 13.52 GRAMS OF CRACK COCAINE?
22 AND HE SAID, "YES, SIR." AND IF YOU LOOK DOWN FURTHER, HE ASKED IF HE
23 HAD POSSESSION OF 7.9 GRAMS OF MARIJUANA. HE SAID, "YES, SIR. IT WAS
24 MINE. ALL THE WAY MINE." THOSE WERE HIS EXACT WORDS. IT WAS
25 TESTIFIED BY DEPUTY GREGORY AND SERGEANT MOSHER THAT HE NEVER

CLOSING ARGUMENT - MISTER BRADLEY

16

1 OBJECTED TO ANYTHING IN THIS STATEMENT AS BEING FALSE AND HE TOLD
2 THEM THE ONLY REASON HE WOULD SIGN IT -- AND YOU CAN SEE IT WASN'T
3 SIGNED -- HE SAID THE ONLY REASON HE DIDN'T SIGN IT WAS HE WAS
4 SCARED OF RETALIATION. HE DIDN'T OBJECT TO ANYTHING IN IT, BUT HE
5 SAID, "YEAH, BECAUSE THAT'S WHAT I TOLD YOU IS WHAT HAPPENED." AND
6 NOT ONLY DID SERGEANT MOSHER AND OFFICER PITTS SEE IT, HE ADMITTED
7 TO IT. HE WAS IN POSSESSION OF BOTH ITEMS.

8 AS FAR AS PROVING THAT IT WAS CRACK COCAINE. YOU HEARD FROM
9 MEREDITH LANFORD, THE FORENSIC CHEMIST, AN EXPERT WITNESS WHO
10 TESTIFIED THAT, "YES, I ANALYZED IT, I TESTED IT AND IT WAS CONFIRMED TO
11 BE COCAINE BASE, OTHERWISE KNOWN AS CRACK COCAINE, AN ILLEGAL
12 SUBSTANCE." IT WAS TESTIFIED THAT THIS WAS THE SUBSTANCE THAT WAS
13 TAKEN FROM THE DEFENDANT THAT NIGHT AND DEPUTY GREGORY
14 RECOVERED IT AND SUBMITTED IT INTO EVIDENCE STORAGE AND SUBMITTED
15 IT INTO THE LAB. FROM THE DEFENDANT'S HAND THAT DAY, TO THE GROUND,
16 TO THE COURTROOM TODAY, THESE ARE THE DRUGS, CONFIRMED TO BE
17 CRACK COCAINE. SHE TESTIFIED THEY WEIGHED 13.52 GRAMS, MORE THAN
18 10.

19 IN THE STATE OF SOUTH CAROLINA, FOR THE PURPOSES OF THE
20 TRAFFICKING STATUTE, WE DON'T HAVE TO PROVE WHAT HE INTENDED TO
21 DO WITH IT, WHAT THE DEFENDANT INTENDED TO DO WITH IT, JUST THAT HE
22 HAD POSSESSION OF IT. WE'VE ALREADY GONE OVER IT. AS DEFINED BY
23 SOUTH CAROLINA LAW, HE HAS TO HAVE ACTUAL PHYSICAL CUSTODY OF THE
24 DRUGS, AND HE HAD IN HIS PHYSICAL CUSTODY 13.52 GRAMS OF CRACK
25 COCAINE.

CLOSING ARGUMENT - MISTER BRADLEY

161

1 FOR THE MARIJUANA. YOU HEARD SERGEANT CLAMP TESTIFY THAT H
2 CERTIFIED THAT HE DID THE ANALYSIS AND HE DID DO THE ANALYSIS OF THE
3 GREEN LEAFY SUBSTANCE FOUND IN THE DEFENDANT'S PANT'S POCKET
4 THAT DAY AND IT WAS CONFIRMED TO BE MARIJUANA. THE DEFENSE EVEN
5 STIPULATED TO IT BEING MARIJUANA. SERGEANT CLAMP TESTIFIED THAT
6 WHEN HE WEIGHED IT , IT WEIGHED 6.9 GRAMS, WHICH IS LESS THAN
7 TWENTY-EIGHT, SO IT'S POSSESSION OF MARIJUANA. AND AGAIN, HE WAS
8 SEEN WITH THE DRUGS IN HIS HAND AND FOUND IN HIS POCKET, AND HE
9 ADMITTED TO IT IN HIS STATEMENT.

10 THE EVIDENCE IS OVERWHELMING IN THIS REGARD. THE STATE HAS
11 PROVED BEYOND A REASONABLE DOUBT THAT HE WAS IN POSSESSION OF
12 BOTH MORE THAN 10 GRAMS OF CRACK COCAINE AND LESS THAN 28 GRAMS
13 OF MARIJUANA. THAT'S WHAT IS IMPORTANT HERE. DON'T ALLOW
14 YOURSELVES TO BE DISTRACTED BY ANYTHING ELSE, BECAUSE THE MAIN
15 ELEMENTS OF THE CRIME ARE MET. HE POSSESSED CRACK COCAINE. HE
16 POSSESSED MARIJUANA.

17 YES, THE OFFICER TESTIFIED THAT THIS BAGGIE, THIS PLASTIC BAGGIE
18 THAT THE DRUGS WERE ORIGINALLY IN, HAS BEEN LOST. IT HAS BEEN
19 MISPLACED. HE SAID IT WAS HUMAN ERROR, NOT INTENTIONALLY
20 DESTROYED. HUMAN ERROR. BUT THAT DOESN'T TAKE AWAY FROM THE
21 FACT THAT THE DEFENDANT ADMITTED TO IT AND WAS SEEN WITH IT IN HIS
22 POSSESSION. HE ADMITTED TO IT. IT NEVER CHANGED FROM THE TIME IT
23 WAS TAKEN OFF THE GROUND OR TAKEN FROM THE DEFENDANT'S PANTS
24 POCKET AND WAS SUBMITTED TO THE LAB. IT WAS ALWAYS THE SAME. THE
25 BAGGIE WAS LOST AFTER THAT SO THE DRUGS WERE TAKEN FROM HIM ON

CLOSING ARGUMENT - MISTER BYRHOLDT

16!

1 JULY 31, 2009, WERE TESTED, CONFIRMED TO BE MARIJUANA ON THE ONE
2 HAND AND CRACK COCAINE ON THE OTHER AND THEREAFTER, THE BAGGIE
3 MAY HAVE BEEN LOST, MISPLACED. IT DOESN'T TAKE AWAY FROM THE FACT
4 THAT HE ADMITTED TO POSSESSING THEM. IT WAS SEEN IN POSSESSION,
5 BOTH ITEMS.

6 AND THEREFORE, I SUBMIT TO YOU THAT THE STATE HAS CARRIED IT'S
7 BURDEN TO PROVE TO YOU BEYOND A REASONABLE DOUBT THAT THE
8 DEFENDANT COMMITTED THE CRIMES CHARGED. I ASK THAT WHEN YOU GO
9 BACK TO THE JURY ROOM AND YOU DELIBERATE, YOU FOCUS ON THOSE
10 ITEMS, THE MAIN ELEMENTS, THE BASIC FACTS. HE WAS SEEN IN
11 POSSESSION OF THEM AND HE ADMITTED TO IT. IT WAS CONFIRMED TO BE
12 THE CONTROLLED SUBSTANCES OF CRACK COCAINE AND MARIJUANA.

13 I THANK YOU FOR YOUR TIME AND YOUR PATIENCE AND YOUR
14 ATTENTION THROUGHOUT THIS PROCESS AND I ASK YOU TO FIND THE
15 DEFENDANT, DAVID MARIO JOHNSON, GUILTY OF TRAFFICKING IN CRACK
16 COCAINE AND THE POSSESSION OF MARIJUANA. THANK YOU VERY MUCH.

17 **THE COURT: MISTER BYRHOLDT?**

18 **MR. BYRHOLDT: MAY IT PLEASE THE COURT.**

19 **CLOSING ARGUMENT - MISTER BYRHOLDT**

20 MISTER FOREMAN, LADIES AND GENTLEMEN, I APPRECIATE THE CLOSE
21 ATTENTION YOU HAVE PAID DURING THIS TRIAL. AT THE START, YOU TOOK
22 AN OATH TO HOLD THE STATE OF SOUTH CAROLINA TO A HIGH BURDEN OF
23 PROVING GUILT BEYOND A REASONABLE DOUBT AND REASONABLE DOUBT
24 COMES FROM THE EVIDENCE THAT HAS BEEN SUBMITTED. IT ALSO COMES
25 FROM THE LACK OF EVIDENCE THROUGH TESTIMONY AND THE FACT THAT

CLOSING ARGUMENT - MISTER BRYHOLDT

170

1 WE'VE GOT HERE, THE REASON WE SEAL THESE BAGS IS TO PRESERVE THE
2 EVIDENCE TO MAKE SURE NOBODY HAS TAMPERED WITH IT, TO MAKE SURE
3 THAT IT HASN'T BEEN ALTERED OR CHANGED IN ANY WAY WHATSOEVER.
4 WELL, WE KNOW FROM OFFICER CLAMP'S TESTIMONY WHEN HE CAME --
5 WHEN THIS BAG CAME BACK FROM THE LAB AND HE COULDN'T FIND THE
6 PLASTIC BAG AND HE OPENED, HE OPENED THIS UP, (INDICATING) THAT
7 SHOULDN'T HAVE BEEN DONE. THAT SHOULD NOT HAVE BEEN DONE. WE
8 DON'T KNOW WHERE THE BAG IS. THE BAG IS ONE THING THAT WE CAN'T
9 CHANGE. YOU CAN TESTIFY TO ANYTHING. IT'S UNFORTUNATE THAT BY
10 RAISING YOUR HAND AND SWEARING TO TELL THE TRUTH, THAT DOESN'T
11 AUTOMATICALLY MEAN THAT YOU'RE GOING TO TELL THE TRUTH. IT'S
12 UNFORTUNATE. BUT ASK YOURSELVES WHAT HAPPENED. NOBODY CAN
13 EXPLAIN HOW EVIDENCE COULD DISAPPEAR. WELL, EVIDENCE SHOULDN'T
14 DISAPPEAR. THIS SHOULDN'T HAPPEN. WE'VE GOT FORMS THAT WEREN'T
15 FILLED OUT CORRECTLY. WE'VE GOT EVIDENCE THAT WAS REQUESTED A
16 TEST BE DONE, THAT WASN'T TESTED. WE HAVE EVIDENCE THAT HAS BEEN
17 LOST. WHEN YOU LOOK AT THIS STATEMENT, LOOK AT STATE'S EXHIBIT #1
18 AND IT SAYS THAT, "NO PROMISES OR THREATS HAVE BEEN MADE, NO
19 PRESSURE OR COERCION OF ANY KIND WAS USED AGAINST ME." OFFICER
20 GREGORY TESTIFIED, "IF YOU TALK TO ME, YOU MIGHT BE ABLE TO HELP
21 YOURSELF." I DON'T CARE WHAT YOU CALL IT. IF THAT'S NOT A PROMISE, I
22 DON'T KNOW WHAT IS. AND THEN READ THE STATEMENT. WHAT WAS SAID
23 IS, "I WAS COMING DOWN THE HILL, ALL OF THESE PEOPLE WERE AROUND
24 ME. THE JEEP WAS DRIVING UP THE HILL AND CARSON SAID, 'RUN'." CARSON
25 HANDS HIM THE DRUGS. HE TAKES THEM AND THROWS THEM DOWN. HE

CLOSING ARGUMENT - MISTER BRYHOLDT

171

1 GETS CAUGHT AND ASK YOURSELF IF HE IS THE ONE THAT REALLY HAD
2 POSSESSION OF THE DRUGS. I GUESS -- I GUESS TECHNICALLY, HE'S GOT
3 POSSESSION. THAT'S NOT WHAT THIS LAW IS FOR. THIS LAW IS FOR
4 PUTTING PEOPLE AWAY THAT DEAL DRUGS. THE OFFICER TESTIFIED THAT
5 THERE WAS A GROUP OF YOUNG BLACKS BEING OUT THERE AT THE SCENE.
6 UNFORTUNATELY, DAVID IS THE ONE THAT GETS HANDED THE STUFF, SEES
7 WHO IS COMING, TOLD TO RUN, HE DROPS THE STUFF, HE GETS CAUGHT.
8 THAT'S NOT WHAT THIS IS ABOUT. I WILL BE UP FRONT WITH YOU. HE HAD
9 MARIJUANA IN HIS POCKET. WE SPENT A LOT OF TIME TALKING ABOUT THAT,
10 BUT IT'S THE OTHER CHARGE THAT BOTHERS ME. IT BOTHERS ME THE
11 MISTAKES THAT WERE MADE. IT BOTHERS ME THAT PROMISES ARE MADE.
12 PROMISES WHICH WEREN'T KEPT. I ASKED OFFICER GREGORY, "DID YOU
13 RECOMMEND ANYTHING BE DONE?" HE SAID, "NO". YOU HAVE A YOUNG GUY,
14 HE'S BEEN ARRESTED, SCARED TO DEATH. "TELL ME ANYTHING WE WANT TO
15 HEAR AND IT'S GOING TO GO BETTER ON YOU." THAT'S NOT THE TRUTH. NOT
16 TRUE AT ALL. THAT'S NOT RIGHT. THAT'S WHY THE FORM SAYS, "NO
17 THREATS, PROMISES, OR COERCION." THAT'S NOT THE WAY WE DO
18 BUSINESS. THAT'S NOT THE WAY OUR SYSTEM OF DEMOCRACY WORKS.
19 THAT'S NOT THE WAY OUR SYSTEM OF LAW ENFORCEMENT SHOULD WORK.
20 IT SHOULD BE ABOVEBOARD. YOU DON'T MAKE PROMISES. YOU DON'T MAKE
21 DEALS. YOU DON'T MAKE THREATS. YOU DO YOUR JOB. I WOULD LOVE TO
22 HAVE THAT PLASTIC BAGGIE WITH FINGERPRINTS AND HAVE IT COME BACK
23 WITH CARSON'S, OR JOHN'S, OR WHOEVER'S PRINTS WERE ON IT. IT WOULD
24 MAKE MY JOB A LOT EASIER. UNFORTUNATELY, I DON'T HAVE THE EVIDENCE.
25 NEITHER DOES THE STATE AND THEY CAN'T EXPLAIN WHERE IT WENT

CLOSING ARGUMENT - MISTER BRYHOLDT

172

1 BECAUSE EVERY TIME YOU ARE SUPPOSED TO HANDLE THIS STUFF YOU FILL
2 OUT THE FORM AND SIGN IT AND YOU TRANSFER IT. THAT'S DONE FOR ONE
3 PURPOSE AND ONE PURPOSE ONLY, TO MAINTAIN THE INTEGRITY OF THE
4 EVIDENCE BEFORE IT'S BROUGHT INTO THIS COURTHOUSE. THAT WASN'T
5 DONE IN THIS CASE. THAT BAG SHOULD NEVER BEEN OPENED BEFORE WE
6 CAME INTO COURT TODAY AND SHOULD BE OPENED IN THE PRESENCE OF
7 THE JUDGE, THE ATTORNEYS AND THE PARTIES INVOLVED. IT JUST NEVER
8 SHOULD HAVE BEEN DONE.

9 THANK YOU FOR THE CLOSE ATTENTION YOU'VE PAID DURING THIS
10 CASE. IT'S A VERY IMPORTANT CASE. IT'S IMPORTANT TO THE STATE OF
11 SOUTH CAROLINA. IT'S IMPORTANT FOR DAVID JOHNSON, BECAUSE HE'S
12 THE PERSON THAT'S FACING THIS CRIMINAL OFFENSE. NO ONE ELSE. IT HAS
13 BEEN SAID THAT IF THE STATE FAILS TO PROVE THEIR CASE, EVEN IF YOU
14 HAVE SUSPICION, UNDER YOUR OATH, IT'S YOUR DUTY TO RETURN A
15 VERDICT OF ACQUITTAL. NOT BECAUSE YOU MIGHT SUSPECT SOMETHING.
16 IT IS WHETHER THE STATE HAS MET THEIR BURDEN OF PROVING EACH AND
17 EVERY ELEMENT BEYOND A REASONABLE DOUBT. I DON'T BELIEVE THEY
18 HAVE IN THIS CASE. I THINK DOUBTS WERE CREATED BY THE OPENING OF
19 THE BAGS, BY MAKING PROMISES, BY LOSING EVIDENCE, EVIDENCE THAT
20 COULD HAVE HELPED MISTER JOHNSON. WE DON'T HAVE THAT EVIDENCE.
21 WE DON'T HAVE THAT OPPORTUNITY. WHEN YOU GO BACK THERE, TAKE A
22 MINUTE TO REFLECT INDIVIDUALLY BEFORE YOU DISCUSS IT AND THEN
23 DISCUSS IT FULLY AND BRING BACK A VERDICT WHICH HOLDS THE STATE TO
24 THE HIGH BURDEN THAT THEY HAVE. IF YOU DO THAT, YOU'VE DONE YOUR
25 DUTY AND I APPRECIATE THE OPPORTUNITY TO WORK WITH YOU TODAY.

CHARGE ON THE LAW

173

1 TODAY. THANK YOU.

2 CHARGE ON THE LAW

3 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN, FIRST CAN YOU HEAR
4 ME OKAY? OKAY. NOW LADIES AND GENTLEMEN OF THE JURY, NOW THAT
5 YOU HAVE HEARD ALL THE EVIDENCE IT'S TIME FOR ME TO CHARGE YOU ON
6 THE LAW THAT IS APPLICABLE TO THIS CASE. THESE INSTRUCTIONS WILL BE
7 IN THREE PARTS. THE FIRST PART OF MY INSTRUCTIONS WILL BE TO
8 DESCRIBE AND DEFINE FOR YOU YOUR ROLE AND DUTIES AS JURORS. I WILL
9 THEN GIVE YOU THE SPECIFIC LAW THAT IS APPLICABLE TO THE CHARGE OF
10 TRAFFICKING CRACK COCAINE AND THE LAW APPLICABLE TO POSSESSION
11 OF ONE OUNCE OR LESS OF MARIJUANA AND THEN I WILL GIVE YOU THE LAW
12 JUST APPLICABLE TO YOUR DELIBERATIONS. SO, IT'S THREE PARTS.

13 NOW, FIRST, AS I TOLD YOU AT THE BEGINNING OF THIS CASE IT IS
14 YOUR DUTY, AND YOU TOOK AN OATH, TO BE THE JUDGES OF THE FACTS
15 BASED ON THE EVIDENCE THAT YOU HEARD IN THIS COURTROOM FROM THIS
16 WITNESS STAND. THAT IS THE ONLY EVIDENCE THAT YOU ARE ALLOWED TO
17 CONSIDER IN THIS MATTER. TO THOSE FACTS, YOU MUST APPLY THE LAW
18 THAT I GIVE TO YOU NOW. YOU ARE NOT TO CONCERN YOURSELF WITH
19 WHAT THE LAW IS, OR WHAT IT SHOULD BE, OR WHAT YOU WANT IT TO BE,
20 BUT ONLY WITH WHAT THE LAW IS. YOU SHALL NOT BE INFLUENCED BY
21 ISSUES OF SYMPATHY, ANY PERSONAL LIKES, ANY PERSONAL DISLIKES, ANY
22 PERSONAL OPINIONS YOU MAY HAVE, OR ANY PREJUDICE OR SYMPATHY FOR
23 ONE SIDE OR THE OTHER. YOU ARE TO CONFINE YOUR DECISION TO THE
24 FACTS THAT HAVE BEEN PRESENTED FROM THE EVIDENCE PRESENTED IN
25 THIS CASE. IN FACT, YOU TOOK AN OATH PROMISING TO DO JUST THAT.

CHARGE ON THE LAW

174

1 ALSO, IN FOLLOWING MY INSTRUCTIONS TO YOU THAT YOU ARE HEARING
2 NOW, YOU ARE NOT ALLOWED AND YOU SHALL NOT APPLY SOME OF THEM
3 AND DISREGARD OTHER PARTS OF MY INSTRUCTIONS. YOU MUST AND YOU
4 SHALL APPLY ALL OF THEM, BECAUSE EACH OF THEM ARE EQUALLY
5 IMPORTANT.

6 NOW, FIRST, AS I TOLD YOU AT THE BEGINNING OF THIS TRIAL, IF I HAVE
7 DONE ANYTHING THROUGHOUT THIS TRIAL THAT SUGGESTS TO YOU THAT I
8 HAVE A PREFERENCE FOR ONE SIDE OR THE OTHER IN THIS CASE, I ASK
9 THAT YOU DISREGARD IT AND I INSTRUCT YOU TO DISREGARD IT, BECAUSE I
10 CAN ASSURE YOU THAT I ABSOLUTELY HAVE NO PREFERENCE. THE LAW
11 DOESN'T ALLOW ME TO HAVE ONE AND I DON'T. THAT IS SOLELY YOUR
12 PROVENANCE TO BE THE JUDGES OF THE FACTS IN THIS MATTER.

13 NOW, IN DETERMINING WHAT THE FACTS ARE, YOU HAVE TO EVALUATE
14 AND WEIGH THE EVIDENCE THAT YOU HEARD FROM THE WITNESS STAND
15 AND WHAT IS RECEIVED INTO EVIDENCE. THERE'S NO WAY THAT YOU CAN
16 LITERALLY WEIGH EVIDENCE. THIS IS ENTIRELY A MENTAL EXERCISE AND
17 YOU USE YOUR GOOD COMMON SENSE AND LOGIC IN COMING TO THE
18 FINDINGS OF FACT THAT YOU ULTIMATELY WILL.

19 NOW IN THIS CASE, IN THIS STATE, THERE ARE THINGS THAT
20 CONSTITUTE EVIDENCE AND THERE ARE THINGS THAT ARE NOT EVIDENCE.
21 FIRST, LET ME TELL YOU WHAT IS, IN FACT, EVIDENCE: THE SWORN
22 TESTIMONY FROM THE WITNESSES FROM THIS WITNESS STAND, THE
23 EXHIBITS THAT WERE ADMITTED INTO EVIDENCE IS EVIDENCE, WHETHER
24 HEARD ON CROSS EXAMINATION OR DIRECT EXAMINATION OR
25 IRREGARDLESS OF WHOEVER CALLED THE PERSON OR REGARDLESS OF

CHARGE ON THE LAW

175

1 WHOEVER INTRODUCED THE EVIDENCE. THAT IS EVIDENCE THAT YOU MAY
2 CONSIDER. ANY FACTS THAT HAVE BEEN STIPULATED BY THE ATTORNEYS IN
3 THIS CASE IS ALSO EVIDENCE THAT YOU CAN CONSIDER AND IT HAS BEEN
4 STIPULATED THAT EXHIBIT #4 IN THIS CASE IS, IN FACT, MARIJUANA. IT IS
5 ALSO STIPULATED THAT OFFICER CLAMP WAS AN EXPERT IN ANALYSIS ON
6 MARIJUANA AND ALSO STIPULATED THAT MS. LANFORD IS AN EXPERT
7 CHEMIST IN DOING ANALYSIS ON CRACK COCAINE.

8 NOW, CERTAIN THINGS ARE NOT EVIDENCE. AND WHAT IS THAT? THE
9 ARGUMENTS AND THE STATEMENTS OF THESE LAWYERS, ALTHOUGH IT'S
10 HELPFUL IN HELPING YOU REACH A CONCLUSION. IF YOU THINK IT IS, YOU
11 CAN USE IT ONLY FOR THAT. HOWEVER, IT IS NOT EVIDENCE IN THE SENSE
12 OF THE WORD THAT YOU CONSIDER EVIDENCE WHEN YOU GO BACK AND DO
13 YOUR CONSIDERATIONS. IF YOU REMEMBER THINGS DIFFERENTLY THAN
14 WHAT THESE ATTORNEYS IN THEIR CLOSING ARGUMENTS OR IN THEIR
15 COMMENTS OR CONDUCT IN THIS TRIAL INDICATE TO YOU WHAT THE FACTS
16 ARE, THEN YOUR MEMORY CONTROLS. ALSO, ANY QUESTIONS OR
17 OBJECTIONS FROM THESE ATTORNEYS ARE NOT EVIDENCE. THAT IS SIMPLY
18 PART OF THE PROCESS AND IS SIMPLY PART OF THESE ATTORNEYS DOING
19 THEIR JOBS AS OFFICERS OF THE COURT AND AS TRAINED PROFESSIONALS.
20 ALSO, ANYTHING THAT YOU MAY HAVE HEARD OUTSIDE OF THIS COURTROOM
21 IS NOT EVIDENCE AND SHALL NOT, AND MUST NOT, BE CONSIDERED BY YOU
22 IN YOUR DELIBERATIONS.

23 IN SOUTH CAROLINA, THERE IS TWO TYPES OF EVIDENCE: DIRECT
24 EVIDENCE AND CIRCUMSTANTIAL EVIDENCE. DIRECT EVIDENCE IS BASICALLY
25 WHAT IT SOUNDS LIKE. IT'S TESTIMONY OF A PERSON WHO ASSERTS OR

CHARGE ON THE LAW

176

1 CLAIMS TO HAVE ACTUAL AND DIRECT KNOWLEDGE OF A FACT SUCH AS AN
2 EYE WITNESS. YOU ALSO HAVE CIRCUMSTANTIAL EVIDENCE, WHICH IS
3 INDIRECT PROOF OR PUT ANOTHER WAY, IT'S CIRCUMSTANTIAL EVIDENCE OF
4 A CHAIN OF FACTS OR CIRCUMSTANCES FROM WHICH YOU CAN INFER THAT
5 ANOTHER FACT EXISTS, EVEN THOUGH THAT FACT HAS NOT BEEN PROVEN
6 DIRECTLY. TO GIVE YOU AN EXAMPLE OF THAT, IF YOU WAKE UP IN THE
7 MORNING AND THERE IS SNOW ON THE GROUND IN YOUR FRONT YARD AND
8 YOU SEE TRACKS ACROSS YOUR FRONT YARD, YOU CAN INFER THAT
9 SOMEBODY HAS WALKED ACROSS YOUR FRONT YARD. THAT IS INDIRECT
10 EVIDENCE AND THERE IS ABSOLUTELY NO DISTINCTION THAT IS MADE IN THIS
11 STATE BETWEEN THE WEIGHT OR VALUE TO BE GIVEN EITHER TO DIRECT OR
12 CIRCUMSTANTIAL EVIDENCE. BOTH OF THEM ARE EQUALLY ENTITLED TO
13 YOUR CONSIDERATION. THERE IS NOT A GREATER DEGREE OF PROOF
14 REQUIRED FOR CIRCUMSTANTIAL EVIDENCE, BUT I WILL TELL YOU THAT
15 AFTER CONSIDERING ALL THE EVIDENCE, BOTH DIRECT AND
16 CIRCUMSTANTIAL, IF YOU ARE NOT CONVINCED OF THE GUILT OF THE
17 DEFENDANT BEYOND A REASONABLE DOUBT, THEN IT IS YOUR OBLIGATION
18 AND DUTY TO FIND THE DEFENDANT NOT GUILTY.

19 NOW, IF IN ANY TIME A GROUP SUCH AS YOURSELVES IS CALLED UPON
20 TO DETERMINE WHAT THE FACTS ARE BASED ON TESTIMONY, YOU MUST
21 DECIDE THE CREDIBILITY OF THE WITNESSES. IN DOING THIS, YOU HAVE A
22 RIGHT TO CONSIDER WHICH TESTIMONY YOU ARE GOING TO BELIEVE AND
23 WHICH TESTIMONY YOU ARE NOT GOING TO BELIEVE. YOU HAVE A RIGHT TO
24 DISBELIEVE ALL OR PART OF ANY WITNESS' TESTIMONY. YOU HAVE A RIGHT
25 TO BELIEVE ALL OF ANY WITNESSES TESTIMONY, BUT IN MAKING THAT

CHARGE ON THE LAW

17i

1 CONSIDERATION LET ME GIVE YOU SEVERAL FACTORS FOR YOUR
2 CONSIDERATION THAT YOU MAY, OR YOU DON'T HAVE TO, USE IN JUDGING
3 THE CREDIBILITY OF THE WITNESSES: ONE, WAS THE WITNESS ABLE TO SEE
4 OR HEAR OR KNOW THE THINGS ABOUT WHICH THE WITNESS TESTIFIED.
5 HOW WELL WAS THE WITNESS ABLE TO RECALL AND DESCRIBE THOSE
6 THINGS. WHAT WAS THE WITNESS' MANNER WHILE TESTIFYING OR WHAT WE
7 NORMALLY CALL, WHAT WAS THE WITNESS' Demeanor. IS THERE SOME
8 REASON A WITNESS WOULD WANT TO GIVE TESTIMONY THAT WOULD HELP
9 OR HURT ONE SIDE OR THE OTHER. DID THE WITNESS HAVE AN INTEREST IN
10 THE OUTCOME OF THIS CASE OR ANY BIAS OR PREJUDICE THAT CONCERNS
11 ANY PARTY OR ANY MATTER INVOLVED IN THIS CASE. HOW REASONABLE
12 WAS THE WITNESS' TESTIMONY CONSIDERED IN LIGHT OF ALL THE
13 EVIDENCE. WAS THE WITNESS' TESTIMONY CONTRADICTED BY WHAT THAT
14 WITNESS HAD SAID OR HAD DONE AT ANOTHER TIME OR BY THE TESTIMONY
15 OF ANY OTHER WITNESSES OR BY ANY OTHER EVIDENCE. NOW, LADIES AND
16 GENTLEMEN OF THE JURY, THOSE ARE JUST SOME BUT NOT ALL OF THE
17 FACTORS THAT YOU CAN CONSIDER IN DETERMINING THE CREDIBILITY OF
18 WITNESSES. AND, OF COURSE, YOU DO NOT CHECK IN YOUR GOOD COMMON
19 SENSE WHEN YOU ARE SWORN IN TO BE JURORS AND YOU SHOULD NOT DO
20 SO NOW. YOU CAN AND YOU SHOULD TAKE INTO ACCOUNT THOSE THINGS IN
21 YOUR DAY TO DAY EXPERIENCES YOU FIND INDICATIVE OF TRUTHFULNESS,
22 OR INDICATIVE OF LACK OF TRUTHFULNESS, IN MAKING YOUR FINAL
23 DECISION.

24 IN THIS CASE, YOU HAVE HEARD FROM PERSONS WHO HAVE BEEN
25 DESCRIBED AS EXPERTS AND AS I TOLD YOU DURING THE TRIAL, PERSONS

CHARGE ON THE LAW

178

1 WHO BECAUSE OF THEIR EDUCATION OR EXPERIENCE HAVE BECOME AN
2 EXPERT IN SOME FIELD, HAVE A RIGHT TO STATE THEIR OPINION ON
3 MATTERS WITHIN THAT FIELD. THEY CAN ALSO STATE THE REASONS FOR
4 GIVING THAT OPINION, BUT EXPERT OPINION TESTIMONY SHOULD BE JUDGED
5 JUST AS ANY OTHER TESTIMONY THAT IS INVOLVED IN THIS CASE. YOU MAY
6 ACCEPT IT OR YOU MAY REJECT IT. YOU CAN GIVE IT AS MUCH WEIGHT AS
7 YOU THINK IT DESERVES CONSIDERING THE WITNESS' EDUCATION, THEIR
8 EXPERIENCE, THE REASONS GIVEN FOR THE OPINION, AS WELL AS ALL THE
9 OTHER EVIDENCE THAT HAS BEEN PRESENTED IN THIS CASE.

10 LADIES AND GENTLEMEN, AS I TOLD YOU AT THE BEGINNING OF THIS
11 TRIAL THERE ARE TWO INDICTMENTS, ONE FOR TRAFFICKING IN CRACK
12 COCAINE, THE OTHER FOR POSSESSION OF 1 OUNCE OR LESS OF
13 MARIJUANA. AGAIN, I REITERATE TO YOU THESE INDICTMENTS THAT YOU
14 SEE IN MY HAND ARE SIMPLY CHARGING DOCUMENTS. THEY ARE NOT, IN AN
15 SENSE OF THE WORD, EVIDENCE. THEY ARE NOT EVIDENCE OF GUILT OF
16 ANY FORM OR FASHION. IT IS SIMPLY A METHOD BY WHICH THE STATE GETS
17 THE CHARGES BEFORE YOU TO MAKE A DETERMINATION. THE FACT THAT
18 THE DEFENDANT WAS CHARGED AND INDICTED IS NOT EVIDENCE OF GUILT IN
19 ANY FORM OR FASHION.

20 THE STATE, AT ALL TIMES, HAS THE BURDEN OF ESTABLISHING EACH
21 AND EVERY ELEMENT OF THE CHARGES AGAINST THIS DEFENDANT BEYOND
22 A REASONABLE DOUBT. IN FACT, IN THIS CASE THE DEFENDANT HAS PLED
23 NOT GUILTY AND THAT PUTS THE BURDEN ON THE STATE TO PROVE THE
24 DEFENDANT GUILTY. A PERSON CHARGED WITH COMMITTING A CRIMINAL
25 OFFENSE IN SOUTH CAROLINA IS NEVER REQUIRED TO PROVE HIMSELF

CHARGE ON THE LAW

179

1 INNOCENT. I CHARGE YOU THAT IT IS AN IMPORTANT RULE OF LAW THAT A
2 DEFENDANT IN A CRIMINAL TRIAL, NO MATTER WHAT THE SERIOUSNESS OF
3 THE TRIAL, WILL ALWAYS BE PRESUMED TO BE INNOCENT OF THE CRIME FOR
4 WHICH THE INDICTMENT WAS ISSUED UNLESS THAT GUILT HAS BEEN
5 PROVEN BY EVIDENCE SATISFYING YOU OF GUILT BEYOND A REASONABLE
6 DOUBT.

7 THE PRESUMPTION OF INNOCENCE DOES NOT END WHEN YOU BEGIN
8 YOUR DELIBERATIONS. IT ACCOMPANIES THE DEFENDANT THROUGHOUT
9 THIS TRIAL UNTIL YOU REACH A VERDICT OF GUILT BASED ON EVIDENCE
10 SATISFYING YOU OF GUILT BEYOND A REASONABLE DOUBT. IT IS SAID IN THE
11 LAW THAT THE PRESUMPTION OF INNOCENCE IS LIKE A ROBE OF
12 RIGHTEOUSNESS PLACED UPON THE SHOULDERS OF THE DEFENDANT
13 WHICH REMAINS THERE UNTIL IT HAS BEEN STRIPPED BY EVIDENCE
14 SATISFYING YOU OF GUILT BEYOND A REASONABLE DOUBT. AND LADIES AND
15 GENTLEMEN, THE PRESUMPTION OF INNOCENCE IS NOT JUST A MERE LEGAL
16 THEORY, IT IS NOT JUST A PHRASE. IT IS A SUBSTANTIAL RIGHT WHICH
17 EVERY DEFENDANT IN EVERY COURT IN THIS STATE HAS UNLESS YOU, THE
18 JURY, ARE SATISFIED OF THEIR GUILT BEYOND A REASONABLE DOUBT.

19 NOW WHAT IS A REASONABLE DOUBT? A REASONABLE DOUBT IS THE
20 KIND OF DOUBT THAT WOULD CAUSE A REASONABLE, SINCERE, HONEST, AND
21 CONSCIENTIOUS PERSON TO HESITATE TO ACT IN AN IMPORTANT MATTER IN
22 THEIR OWN AFFAIRS. PROOF BEYOND A REASONABLE DOUBT IS PROOF THAT
23 LEAVES YOU FIRMLY CONVINCED OF A DEFENDANT'S GUILT. THERE ARE
24 VERY FEW THINGS IN THIS WORLD THAT WE KNOW WITH ABSOLUTE
25 CERTAINTY AND THAT, IN FACT, IN CRIMINAL CASES IS THE SAME HERE. THE

CHARGE ON THE LAW

186

1 STATE IS NOT REQUIRED TO OVERCOME EVERY POSSIBLE DOUBT. IF, BASED
2 ON YOUR CONSIDERATION OF THE EVIDENCE, YOU ARE FIRMLY CONVINCED
3 THAT THE DEFENDANT IS GUILTY OF THE CRIME CHARGED, YOU MUST FIND
4 THE DEFENDANT GUILTY. BUT ON THE OTHER HAND, IF YOU THINK THAT
5 THERE IS A REAL POSSIBILITY THAT THE DEFENDANT IS NOT GUILTY, YOU
6 MUST GIVE THE DEFENDANT THE BENEFIT OF THE DOUBT AND FIND HIM NOT-
7 GUILTY. A REASONABLE DOUBT MAY ARISE FROM THE EVIDENCE OR FROM
8 THE LACK OF EVIDENCE. I FURTHER INSTRUCT YOU THAT THE DEFENDANT IS
9 ENTITLED TO EVERY REASONABLE DOUBT THAT MAY ARISE IN THE CASE.
10 WHAT THAT SIMPLY MEANS IS THIS; IF UPON ANY ESSENTIAL ISSUE
11 NECESSARY TO A CONVICTION AND A VERDICT OF GUILTY OF AN OFFENSE, I
12 YOU HAVE A REASONABLE DOUBT AS TO HOW THAT ISSUE SHOULD BE
13 RESOLVED IT IS YOUR DUTY TO RESOLVE THAT ISSUE IN FAVOR OF THE
14 DEFENDANT.

15 LADIES AND GENTLEMEN, I INFORMED YOU AT THE BEGINNING OF THE
16 CASE, AND I REMIND YOU THAT THE FACT THE DEFENDANT DID NOT APPEAR
17 IN THIS MATTER SHALL NOT AND CANNOT BE CONSTRUED BY YOU AS AN
18 ADMISSION OF GUILT BY THE DEFENDANT. IN ADDITION, I INSTRUCT YOU AND
19 EMPHASIZE THE FACT THAT THE DEFENDANT DID NOT TESTIFY IS NOT AND
20 SHALL NOT BE A FACTOR TO BE CONSIDERED BY YOU IN ANY FORM OR
21 FASHION IN YOUR DELIBERATIONS. YOU ARE NOT TO DISCUSS IT.

22 NOW, THERE IS A STATEMENT. CAN YOU STILL HEAR ME OKAY?
23 (JURORS INDICATE BY NODS) OKAY. THERE IS A STATEMENT ALLEGED TO
24 HAVE BEEN MADE BY THE DEFENDANT THAT HAS BEEN ADMITTED INTO
25 EVIDENCE IN THIS CASE AND WHILE THE COURT HAS DETERMINED THAT THE

CHARGE ON THE LAW

181

1 STATEMENT IS ADMISSIBLE, I INSTRUCT YOU THAT YOU MAKE THE ULTIMATE
2 DECISION OF WHETHER OR NOT THE DEFENDANT MADE THE STATEMENT. IF
3 THE DEFENDANT DID MAKE THE STATEMENT, YOU MUST DETERMINE
4 WHETHER THE STATEMENT WAS MADE BY THE DEFENDANT VOLUNTARILY
5 AND OF HIS OWN FREE WILL. THIS MEANS THAT THE STATEMENT WAS NOT
6 CAUSED BY PRESSURE, FORCE, FEAR, THREATS, COERCION OR
7 INTIMIDATION, OR BY HOPE OF A PROMISE OF LENIENCY OR A REWARD OF
8 ANY KIND. IN DETERMINING WHETHER THE STATEMENT WAS VOLUNTARY,
9 YOU SHOULD CONSIDER BOTH THE CHARACTERISTICS OF THE DEFENDANT
10 AND THE DETAILS OF THE QUESTIONS. SOME OF THE FACTORS THAT YOU
11 MUST CONSIDER ARE: THE AGE OF THE DEFENDANT, THE DEFENDANT'S
12 EDUCATION OR LACK OF EDUCATION, THE DEFENDANT'S MENTAL ABILITY OR
13 CAPACITY, THE DEFENDANT'S I.Q. OR INTELLIGENCE, THE DEFENDANT'S
14 BACKGROUND AND ENVIRONMENT, THE PLACE AND LENGTH OF DETENTION,
15 THE NATURE OF THE QUESTIONING, AND THE ADVICE OR LACK THEREOF TO
16 THE DEFENDANT OF HIS CONSTITUTIONAL RIGHTS, INCLUDING BUT NOT
17 LIMITED TO, THE RIGHT TO REMAIN SILENT, THAT ANY STATEMENT COULD BE
18 USED AGAINST HIM IN A COURT OF LAW, THE RIGHT TO HAVE A LAWYER
19 PRESENT AND IF HE COULD NOT AFFORD A LAWYER, A LAWYER WOULD BE
20 APPOINTED TO REPRESENT HIM WITHOUT ANY COST AND THAT HE COULD
21 STOP MAKING HIS STATEMENT AT ANY TIME. YOU MUST CAREFULLY
22 CONSIDER ALL OF THE SURROUNDING CIRCUMSTANCES BEFORE YOU GIVE
23 ANY WEIGHT TO THE ALLEGED STATEMENT. THE STATE HAS THE BURDEN OF
24 PROVING BEYOND A REASONABLE DOUBT THAT THE ALLEGED STATEMENT
25 WAS VOLUNTARY. IF YOU DETERMINE THAT IT WAS YOU MUST GIVE THE

CHARGE ON THE LAW

185

1 STATEMENT ANY FURTHER CONSIDERATION THAT YOU DEEM PROPER. YOU
2 MUST DECIDE WHAT WEIGHT, IF ANY, SHOULD BE GIVEN TO THE ALLEGED
3 STATEMENT. IF YOU DETERMINE THAT THE ALLEGED STATEMENT WAS NOT A
4 FREE AND VOLUNTARY STATEMENT OF THE DEFENDANT, YOU SHOULD NOT
5 CONSIDER THE STATEMENT AT ALL.

6 NOW, LADIES AND GENTLEMEN, THAT HAS TAKEN A COUPLE OF
7 MINUTES, BUT THOSE ARE THE GENERAL RULES THAT DEFINE AND CONTROL
8 YOUR DUTIES AS JURORS. I NOTICED YOUR HEADS WERE BOBBING UP AND
9 DOWN A LITTLE BIT, SO I'LL ASK YOU TO TAKE A MINUTE AND STAND UP AND
10 JUST STAND UP AND JUST RELAX, GET SOME BLOOD TO YOUR FEET AND I
11 WILL GIVE YOU THE LAW APPLICABLE TO THIS CASE. I AM NOT ASKING YOU
12 TO LEAVE. JUST STAND UP A MINUTE. (JURORS COMPLY)

13 ALL RIGHT. THIS IS THE SECOND PART OF MY CHARGE AND THIS IS THE
14 LAW THAT IS APPLICABLE TO THE SPECIFIC CHARGES. I WILL FIRST GIVE YO
15 THE LAW THAT IS APPLICABLE TO TRAFFICKING IN CRACK COCAINE. THE
16 DEFENDANT IS CHARGED WITH TRAFFICKING IN CRACK COCAINE. THE STATE
17 MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT
18 KNOWINGLY SOLD, MANUFACTURED, CULTIVATED, DELIVERED, PURCHASED,
19 BROUGHT INTO THIS STATE, PROVIDED FINANCIAL ASSISTANCE, OR
20 OTHERWISE AIDED, ABETTED, ATTEMPTED OR CONSPIRED TO SELL,
21 MANUFACTURE, CULTIVATE, DELIVER, PURCHASE, OR BRING INTO THIS
22 STATE NORMALLY IN ACTUAL OR CONSTRUCTIVE POSSESSION OR NORMALLY
23 ATTEMPTED TO BECOME AN ACTUAL OR CONSTRUCTED POSSESSION OF
24 CRACK COCAINE. THE STATE MUST ALSO PROVE BEYOND A REASONABLE
25 DOUBT THAT THE AMOUNT OF THE CRACK COCAINE WAS TEN GRAMS OR

CHARGE ON THE LAW

183

1 MORE BUT LESS THAN TWENTY-EIGHT GRAMS. THAT IS THE LAW APPLICABLE
2 TO THE CHARGE OF TRAFFICKING IN CRACK COCAINE.

3 THIS IS THE LAW APPLICABLE TO THE POSSESSION OF MARIJUANA. TO
4 PROVE POSSESSION, THE STATE MUST PROVE BEYOND A REASONABLE
5 DOUBT THAT THE DEFENDANT HAD BOTH THE POWER AND THE INTENT TO
6 CONTROL THE DISPOSITIONARY USE OF THE MARIJUANA. POSSESSION MAY
7 BE EITHER ACTUAL OR CONSTRUCTIVE. ACTUAL POSSESSION MEANS THAT
8 THE MARIJUANA WAS IN THE ACTUAL PHYSICAL CUSTODY OF THE
9 DEFENDANT. CONSTRUCTIVE POSSESSION MEANS THAT THE DEFENDANT
10 HAD DOMINION AND CONTROL OR THE RIGHT TO EXERCISE DOMINION OR
11 CONTROL OVER EITHER THE MARIJUANA ITSELF OR THE PROPERTY ON
12 WHICH THE MARIJUANA WAS FOUND. MERE PRESENCE AT THE SCENE
13 WHERE THE DRUGS WERE FOUND IS NOT ENOUGH TO PROVE POSSESSION.
14 ACTUAL KNOWLEDGE OF THE PRESENCE OF THE MARIJUANA IS STRONG
15 EVIDENCE OF THE DEFENDANT'S INTENT TO CONTROL ITS DISPOSITION OR
16 USE. THE DEFENDANT'S KNOWLEDGE AND POSSESSION MAY BE INFERRED
17 WHEN THE SUBSTANCE IS FOUND ON THE PROPERTY UNDER THE
18 DEFENDANT'S CONTROL. HOWEVER, THIS INFERENCE IS SIMPLY AN
19 EVIDENTIARY FACT TO BE TAKEN INTO CONSIDERATION BY YOU ALONG WITH
20 THE OTHER EVIDENCE IN THIS CASE AND TO BE GIVEN THE WEIGHT THAT
21 YOU DECIDE IT MUST HAVE. THOSE ARE THE SPECIFIC LAWS THAT YOU ARE
22 CHARGED WITH APPLYING TO THE FACTS OF THIS CASE.

23 NOW, LADIES AND GENTLEMEN, THE FINAL PART OF MY CHARGE TO
24 YOU IS THE LAW OR THE RULES ABOUT YOUR DELIBERATIONS. FIRST, LET
25 ME POINT OUT TO YOU THAT YOU WERE SELECTED AND CHOSEN AS JURORS

CHARGE ON THE LAW

184

1 IN THIS CASE NOT BECAUSE YOU ARE PARTISANS, NOT BECAUSE YOU ARE
2 ADVOCATES FOR ONE SIDE OR THE OTHER. YOU WERE CHOSEN BY BOTH
3 SIDES BECAUSE EACH SIDE BELIEVED THAT YOU COULD BE FAIR AND
4 IMPARTIAL, BOTH TO THE STATE AND TO THE DEFENDANT, AND GIVE A
5 DECISION WHICH IS BASED ON THE EVIDENCE PRESENTED SOLELY FROM
6 THIS WITNESS STAND IN THIS COURTROOM. IN COMING TO YOUR DECISION
7 ON WHAT THE FACTS ARE IN THIS CASE, I CHARGE YOU THAT YOU SHOULD
8 USE YOUR EXPERIENCES IN LIFE. YOU SHOULD USE YOUR GOOD COMMON
9 SENSE AND ALSO YOUR SENSE OF LOGIC AND REASON. DELIBERATION IS
10 DEFINED AS THIS: CAREFUL CONSIDERATION WEIGHED UP WITH A VIEW TO A
11 DECISION AND THAT IS ONE OF GENIUSES ABOUT OUR JURY SYSTEM. IT
12 ALLOWS TWELVE PEOPLE FROM DIFFERENT WALKS, FROM DIFFERENT
13 BACKGROUNDS AND WITH DIFFERENT TYPES OF EXPERIENCES TO CONSIDER
14 THE EVIDENCE, TO THOROUGHLY AND CALMLY AND RATIONALLY DISCUSS
15 THAT EVIDENCE AND TO COME TO A ULTIMATE, UNANIMOUS VERDICT ABOUT
16 THEIR DECISION. WE CALL THEM DELIBERATIONS FOR A REASON, BECAUSE
17 YOU GO THROUGH THE EVIDENCE CAREFULLY AND DELIBERATELY. YOU
18 DISCUSS IT CALMLY, COURTEOUSLY, AND THOROUGHLY. AND AGAIN, YOU
19 ARE JUDGES OF THE FACTS. YOUR SOLE GOAL IS TO FIND THE TRUTH BASED
20 ON THE EVIDENCE THAT HAS BEEN PRESENTED AND YOU ARE NOT TO BE
21 ADVOCATES FOR ONE SIDE OR THE OTHER. I ASK YOU AND ALSO CHARGE
22 YOU THAT YOU ARE TO LISTEN TO EACH OTHER IN THE JURY ROOM. YOU
23 ARE TO CONSIDER OTHER PEOPLE'S POINTS OF VIEW. YOU SHOULD TALK
24 THROUGH AND DISCUSS ALL THE EVIDENCE THAT YOU HAD PRESENTED TO
25 YOU AND IF YOU ARE DOING SOMETHING DELIBERATELY, YOU ARE NOT TO BE

CHARGE ON THE LAW

185

1 HURRIED AND YOU SHOULD NOT HERE. THIS CASE IS IMPORTANT TO BOTH
2 THE STATE AND TO THE DEFENDANT.

3 REMEMBER YOUR VERDICT, IN ORDER TO BE VALID, MUST BE
4 UNANIMOUS. HOWEVER, EACH OF YOU MUST DECIDE THE CASE BY
5 YOURSELF AND YOU SHOULD ONLY DO SO AFTER YOU HAVE IMPARTIALLY
6 CONSIDERED ALL THE EVIDENCE, DISCUSSED IT WITH YOUR FELLOW
7 JURORS, AND LISTENED TO THE VIEWS OF ONE ANOTHER. DO NOT BE
8 AFRAID TO CHANGE YOUR OPINION IF THE DISCUSSION PERSUADES YOU
9 THAT YOU SHOULD DO SO. BUT DO NOT COME TO A DECISION SIMPLY
10 BECAUSE THE OTHER JURORS SAY IT'S THE RIGHT THING TO DO. IT IS
11 IMPORTANT THAT YOU REACH A UNANIMOUS VERDICT, BUT OF COURSE, YOU
12 CAN ONLY DO THAT AFTER YOU HAVE MADE UP YOUR OWN DECISION. DO
13 NOT CHANGE A HONEST BELIEF ABOUT THE WEIGHT AND THE EFFECT OF
14 THE EVIDENCE SIMPLY TO REACH A VERDICT. IN OTHER WORDS, DON'T
15 REACH A VERDICT FOR THE SAKE OF HAVING A UNANIMOUS VERDICT.

16 NOW, MISTER EVANS, IN YOUR DELIBERATIONS IF ANY QUESTIONS
17 OCCUR, I AM GOING TO ASK THAT YOU WRITE THOSE QUESTIONS DOWN ON A
18 PIECE OF PAPER AND YOU DELIVER IT TO THIS BAILIFF RIGHT HERE AND SIGN
19 YOUR NAME TO IT AND WE WILL DISCUSS AND GO OVER THOSE QUESTIONS
20 IN OPEN COURT AND DEPENDING ON WHAT IT IS, WE MAY BRING YOU BACK
21 OUT HERE OR SEND YOU BACK FOR FURTHER DELIBERATIONS. WHEN YOU
22 GET BACK THERE YOU SHOULD HAVE YOUR LUNCH. Y'ALL CAN BEGIN HAVING
23 YOUR LUNCH. I DO NOT WANT YOU TO BEGIN YOUR DELIBERATIONS YET. I
24 HAVE A FEW MATTERS TO GO OVER WITH THESE ATTORNEYS, BUT
25 REMEMBER THIS, IF YOU DO NEED TO COMMUNICATE WITH ME DO NOT EVER

CHARGE ON THE LAW

186

1 TELL ME, DO NOT TELL ANYONE INVOLVED, BAILIFF'S OR ANYONE, WHERE
2 THE JURY MAY STAND NUMERICALLY ON THEIR DECISION MAKING PROCESS.

3 OKAY?

4 NOW I HAVE PREPARED A VERDICT FORM IN THIS MATTER. IT HAS
5 FOUR OPTIONS. THERE ARE TWO DIFFERENT CHARGES, SO YOU HAVE THE
6 OPTION OF NOT GUILTY OR GUILTY, NOT GUILTY OR GUILTY. LET ME GO
7 OVER IT WITH YOU. THE FIRST ONE IS UNDER INDICTMENT #2269 AND YOUR
8 OPTIONS ARE ONE OF TWO: NOT GUILTY OF POSSESSION OF MARIJUANA OR
9 GUILTY OF POSSESSION OF MARIJUANA. AND LET ME TELL YOU THIS. THE
10 ORDER THAT THE CHOICES APPEAR, THEY HAVE TO COME IN SOME ORDER,
11 SO DON'T PAY THAT ANY ATTENTION WHATSOEVER. IT HAS NO BEARING
12 WHATSOEVER. UNDER INDICTMENT #2668 YOUR OPTIONS WOULD BE NOT
13 GUILTY OF TRAFFICKING IN CRACK COCAINE. OR GUILTY OF TRAFFICKING IN
14 CRACK COCAINE. NOW, MISTER EVANS, WHAT YOU WILL DO IS SIMPLY
15 WHATEVER THE DECISION IS FOR THE JURY, YOU MARK THE APPROPRIATE
16 SPOT WITH AN "X" OR A CHECK, WHATEVER YOU PREFER. AFTER YOU GO
17 OVER BOTH THESE INDICTMENTS AND HAVE DONE THAT AND IT IS AN
18 UNANIMOUS VERDICT, I AM GOING TO ASK YOU CITE IT AND KNOCK ON THE
19 DOOR, LET THE BAILIFF KNOW THAT YOU HAVE REACHED A UNANIMOUS
20 VERDICT AND THEN WE WILL RECEIVE IT HERE IN THE COURTROOM. OKAY,
21 SIR? NOW I AM GOING TO SEND YOU BACK TO YOUR JURY ROOM NOW. I AM
22 GOING TO ASK THAT YOU NOT TO BEGIN YOUR DELIBERATIONS BECAUSE I
23 HAVE TO GO OVER A COUPLE OF MATTERS WITH THESE ATTORNEYS AND
24 THEN I WILL SEND BACK THE EVIDENCE AND LET YOU KNOW WHEN YOU CAN
25 BEGIN YOUR DELIBERATIONS. HOWEVER, YOU CAN BEGIN EATING LUNCH.

VERDICT OF THE JURY

1 **THANK YOU.**

2 **(JURY OUT AT 1:59 P.M.)**

3 **THE COURT: ANY ADDITIONS OR EXCEPTIONS FROM THE STATE?**

4 **MR. BRADLEY: NOTHING FROM THE STATE, YOUR HONOR.**

5 **THE COURT: FROM THE DEFENSE?**

6 **MR. BYRHOLDT: NO, YOUR HONOR.**

7 **THE COURT: DO YOU WANT TO LOOK AT THIS VERDICT FORM? ARE**
8 **YOU OKAY WITH IT?**

9 **MR. BYRHOLDT: I HAVE SEEN IT.**

10 **THE COURT: OKAY. Y'ALL —**

11 **MR. BYRHOLDT: WE NEED TO GET THE ALTERNATE OUT OF THERE.**

12 **THE COURT: YEAH. THANK YOU. (SPEAKING TO THE BAILIFF) BUCK, IF**
13 **YOU WOULD DO AS YOU DID YESTERDAY. WHEN YOU TAKE THIS EVIDENCE**
14 **BACK, JUST MOVE THE ALTERNATE OVER WITH HIS LUNCH. LET HIM EAT.**
15 **ASK HIM TO STAY THERE AND LET YOU KNOW WHEN HE HAS FINISHED**
16 **EATING AND LET ME KNOW WHEN HE IS FINISHED AND I CAN THEN TALK TO**
17 **HIM. THANK YOU, GENTLEMEN, FOR BEING PREPARED AND READY TO GO.**

18 **(EXHIBITS ARE SENT BACK AT 2:01 P.M. TO THE JURY FOR DELIBERATION)**

19 **VERDICT OF THE JURY**

20 **(JURY IN AT 5:12 P.M.)**

21 **THE COURT: MISTER EVANS, IT IS MY UNDERSTANDING THAT THE JURY**
22 **HAS REACHED A VERDICT.**

23 **MR. EVANS: YES, SIR.**

24 **THE COURT: IS IT UNANIMOUS?**

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

VERDICT OF THE JURY

188

1 **THE COURT:** WOULD YOU PASS IT TO THE BAILIFF, PLEASE SIR? (THE
2 BAILIFF HANDS IT TO THE CLERK OF COURT WHO HANDS IT TO THE JUDGE.)

3 WOULD YOU PLEASE PUBLISH THE VERDICT, PLEASE MA'AM?

4 **CLERK OF COURT:** YES, SIR. AS TO INDICTMENT 2007-GS-04-2269, THE
5 STATE OF SOUTH CAROLINA VERSUS DAVID MARIO JOHNSON, THE VERDICT
6 OF THE JURY: WE, THE JURY, UNANIMOUSLY FIND THAT THE DEFENDANT,
7 DAVID MARIO JOHNSON, IS GUILTY OF POSSESSION OF MARIJUANA.

8 AS TO INDICTMENT 2007-GS-04-2668, THE STATE OF SOUTH CAROLINA
9 VERSUS DAVID MARIO JOHNSON, THE VERDICT: WE, THE JURY,
10 UNANIMOUSLY FIND THAT THE DEFENDANT, DAVID MARIO JOHNSON, IS
11 GUILTY OF TRAFFICKING CRACK COCAINE.

12 **MISTER FOREMAN,** LADIES AND GENTLEMEN OF THE JURY, IF THIS IS
13 YOUR VERDICT WOULD YOU PLEASE INDICATE BY RAISING YOUR RIGHT
14 HAND? (JURY COMPLIES) ALL HANDS RAISED. THE VERDICT OF THE JURY,
15 YOUR HONOR.

16 **THE COURT:** THANK YOU. ANYTHING FROM THE DEFENSE?

17 **MR. BYRHOLDT:** NO, YOUR HONOR.

18 **THE COURT:** OKAY. MISTER EVANS, LADIES AND GENTLEMEN OF THE
19 JURY, THANK YOU FOR YOUR SERVICE TO ANDERSON COUNTY AND TO THE
20 STATE OF SOUTH CAROLINA. I AM GOING TO EXCUSE YOU BACK TO THE JUR
21 ROOM AND ASK YOU TO WAIT FOR ME FOR JUST ONE MINUTE AND I WILL BE
22 BACK THERE IN JUST ONE SECOND, PLEASE. THANK YOU.

23 (JURY OUT AT 5:15 P.M.)

24 **THE COURT:** THE INDICTMENT THAT WAS GIVEN TO THE JURY WAS THE
25 WRONG YEAR NUMBER. THE FIRST ONE WAS 2000-2269 ON MARIJUANA. THE

SENTENCING (SEALED)

188

1 OTHER WAS INDICTMENT 2007 FOR THE TRAFFICKING IN COCAINE. I DON'T
2 KNOW IF THAT MAKES ANY DIFFERENCE.

3 MR. BYRHOLDT: I WOULD JUST ASK YOU IF YOU WILL CHANGE THE
4 DATE, YOUR HONOR, AND INITIAL IT, I HAVE GOT NO PROBLEM WITH THAT.

5 THE COURT: OKAY. THAT'S FINE. IS THAT FINE WITH THE STATE,
6 SOLICITOR?

7 MR. BYRHOLDT: IT'S JUST A CLERICAL ERROR.

8 MR. BRADLEY: THAT'S FINE, YOUR HONOR.

9 THE COURT: OKAY. DO YOU WANT TO MAKE ANY POST-TRIAL
10 MOTIONS?

11 MR. BYRHOLDT: NO, SIR.

12 THE COURT: ARE YOU GOING TO MAKE ANY MOTIONS?

13 MR. BYRHOLDT: NO, SIR. IT WAS A JURY ISSUE AND I JUST ASK THE
14 COURT TO SEAL THE SENTENCE.

15 THE COURT: WE WILL DO THAT.

16 MR. BYRHOLDT: AND WHEN THEY FIND MISTER JOHNSON FOR
17 SENTENCING, I WILL BE BACK FOR THAT.

18 THE COURT: I AM GOING TO GO BACK AND SAY ONE THING TO THEM
19 AND THEN I WILL COME BACK AND SIGN THE SENTENCING SHEET. OKAY?
20 THANK YOU. BOTH OF YOU GUYS DID A GREAT JOB.

21 MR. BYRHOLDT: ENJOYED TRYING THE CASE WITH YOU JUDGE.

22 MR. BRADLEY: THANK YOU, JUDGE.

(THE JUDGE SIGNED AND SEALED THE SENTENCING SHEET)

SENTENCING

JUNE 10, 2010

SENTENCING

MR. BRADLEY: MAY IT PLEASE THE COURT, YOUR HONOR.

THE COURT: YES, SIR.

MR. BRADLEY: THIS IS DAVID MARIO JOHNSON. YOU MAY RECALL, WE TRIED HIM BACK ON MARCH 31ST OF THIS YEAR IN HIS ABSENCE AND THE JURY DID FIND HIM GUILTY OF TRAFFICKING CRACK COCAINE, THIRD OR SUBSEQUENT OFFENSE ON INDICTMENT 2009-GS-04-2668 AND ALSO FOUND HIM GUILTY ON INDICTMENT 2009-GS-04-2669 FOR POSSESSION OF MARIJUANA, THIRD OR SUBSEQUENT OFFENSE. AT THAT TIME, YOU SENTENCED HIM AND SEALED IT. HE WAS PICKED UP A COUPLE OF NIGHTS AGO AND WE CAME OVER TO HAVE HIS SENTENCE READ.

THE COURT: ALL RIGHT. (THE JUDGE OPENS SEALED ENVELOPE) ARE YOU READY?

MR. BYRHOLDT: YES, SIR.

THE COURT: UNDER INDICTMENT 2009-GS-04-2668, TRAFFICKING IN ICE, CRANK OR CRACK COCAINE, TEN GRAMS OR MORE BUT LESS THAN TWENTY-EIGHT GRAMS, THIRD OFFENSE, I SENTENCE YOU TO THIRTY YEARS AND FINE YOU \$50,000.00.

UNDER INDICTMENT 2009-GS-04-2669, POSSESSION OF TWENTY-EIGHT GRAMS OR LESS OF MARIJUANA, I SENTENCE YOU TO ONE YEAR, WHICH IS CONCURRENT WITH INDICTMENT 2668.

MR. BYRHOLDT: THANK YOU, YOUR HONOR.

MR. BRADLEY: THANK YOU, SIR.

THE COURT: YES, SIR.

CERTIFICATE

I, THE UNDERSIGNED JO RICE, OFFICIAL COURT REPORTER FOR THE TENTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING ONE HUNDRED NINETY PAGED TRANSCRIPT IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF THE HEARING IN THE CAPTIONED CASE, IN THE COURT OF GENERAL SESSIONS FOR ANDERSON COUNTY, SOUTH CAROLINA ON MARCH 31, 2010 AND FOR THE SENTENCING HELD ON JUNE 10, 2010, AT THE ANDERSON COUNTY COURTHOUSE, TO THE BEST OF MY SKILL AND ABILITIES.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

NOVEMBER 7, 2010

A handwritten signature in cursive script, appearing to read "Jo Rice", is written over a horizontal line.

JO RICE

STATE OF SOUTH CAROLINA

County of ANDERSON
#269185DAVID MARIO JOHNSON

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2013- CP - 04 - 00842APPLICATION FOR
POST-CONVICTION RELIEF**INSTRUCTIONS B 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.

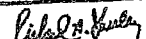
Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

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.

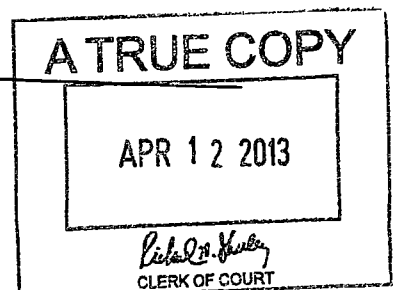
1. Place of detention PERRY C.I. 430 OAKLAWN RD.
PELZER S.C. 29669
2. Name and location of Court which imposed sentence ANDERSON GENERAL
SESSION COURT, ANDERSON S.C. 8002
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 09-GS-04-2668

A TRUE COPY

APR 12 2013


CLERK OF COURT

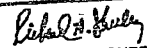
- (b) _____
 (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 (a) JUNE 10-2010 30 YEARS
 (b) _____
 (c) _____
6. Check whether a finding of guilty was made:
 (a) after a plea of guilty N/A
 (b) after a plea of not guilty YES
 (c) after a plea of nolo contendere N/A
7. Did you appeal from the judgment of conviction or the imposition of sentence? YES
8. If you answered Ayes@ to (7), list:
 (a) the name of each Court to which you appealed:
 i. APPEALATE COURT
 ii. _____
 iii. _____
 (b) the result in each such Court to which you appealed:
 i. _____
 ii. _____
 iii. _____
 (c) the date of each such result:
 i. _____
 ii. _____
 iii. _____
 (d) if known, citations of any written opinion or orders entered pursuant to such results:
 i. _____
 ii. _____
 iii. _____
9. If you answered Ano@ 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) SUBJECT MATTER JURISDICTION
 (b) DUE-PROCESS VIOLATION TANTED EVIDENCE
 (c) BURDEN SHIFTING / INEFFECTIVE ASSI: COUNSEL
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
 (a) SEE ATTACHMENT FACTS
 (b) SEE ATTACHMENT FACTS
 (c) SEE ATTACHMENT FACTS
12. Prior to this application have you filed with respect to this conviction:
 (a) any petition in a State Court under South Carolina Law? NIA
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO FIRST TIME ON P.C.R.
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NIA
 (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:
 (a) the specific nature thereof:
 i. NIA
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. NIA
 ii. _____
 iii. _____

A TRUE COPY

APR 12 2013


 CLERK OF COURT

- 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?

NONE

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:

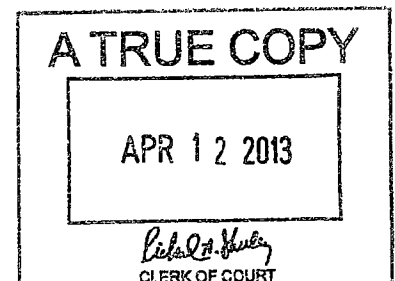
- i. N/A
- ii. _____
- iii. _____

A TRUE COPY

APR 12 2013

Richard A. Nye
CLERK OF COURT

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) FIRST TIME ON P.C.B.
- (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 Ayes@ to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. BRUCE BYRHOLDT ESQUIRE
P.O. BOX 2506
- ii. ANDERSON, S.C. 29622
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. PLEA / TRIAL / SENTENCING
- ii. _____
- iii. _____



19. State clearly the relief you seek in filing this application:

FOR SENTENCE TO BE VACATED WITH
PREJUDICE or a reduced sentence

20. Are you now under sentence from any other court that you have not challenged?

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of GREENVILLE)

VERIFICATION

I, DAVID MARIO JOHNSON, 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.

David Johnson

SWORN to and subscribed before me this 10th
 day of April, 2013.

Katharine Buchanan (L.S.)
 Notary Public

My Commission Expires: 4-26-2020

A TRUE COPY

APR 12 2013

Richard A. Huley
 CLERK OF COURT

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

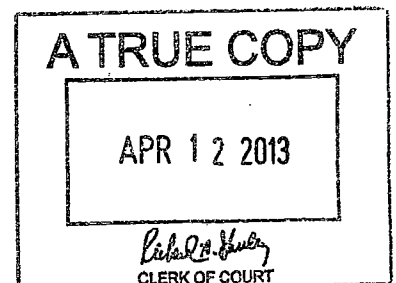
I, DAVID MARIO JOHNSON, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (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.

David Johnson
Applicant

SWORN or affirmed to and subscribed before me this
10th day of APRIL, 2013.
Patricia Buchanan
Notary Public

My Commission Expires: 4-26-2020



ATTACHMENT OF FACTS
SUBJECT MATTER JURISDICTION NOT VESTED

The solicitor in this case left out essential elements. In doing so, the indictment left the grand jury to speculate on the priors of the defendant.

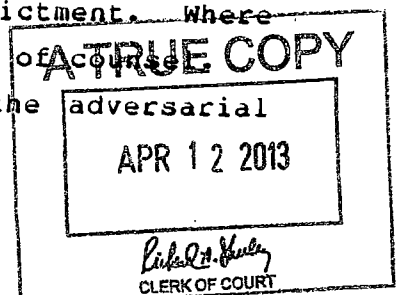
Without a proper indictment the circuit court lacks jurisdiction to enter a conviction and impose sentence for a crime. SC Code of Law, Ann., § 17-19-10; SC Const., Art. 1, § 11; under federal rules of criminal procedure Rule 7(c)(1) requires that an indictment be a plain, concise, and definite written statement of the essential facts constituting the offense charged. An indictment need only contain those facts and elements of the alleged offense necessary to inform the accused of the charge so that he or she may prepare a defense. The solicitor's office can not show any prior trafficking or distribution charges on the defendant. So jurisdiction is not vested to pass any sentence on David M. Johnson. See, U.S. v. Rogers, 41 F.3d 25, 30 (1st Cir. 1994) indictment for firearm possession by felon stating date and location of offense, make, type, and serial No. of weapon and felony conviction underlying charge sufficient under 7(c)(1).

If David M. Johnson's indictment had been proper as U.S. v. Rogers, the Court would have jurisdiction. Johnson's indictment had no priors of trafficking on it and none in his record.

State v. Beachum, 288 S.C. 325, 342 S.E.2d 597 (1986); if it contains the necessary elements of the offense and gives notice to the defendant of what he must be prepared to meet. State v. Smalls, 336 S.C. 301, 519 S.E.2d 793 (1999). Hence, if the indictment fails to allege the necessary elements of the offense charged, the indictment is not sufficient, and the Court lacks authority to enter conviction or impose sentence.

When he knew the indictment was not proper, counsel should have moved the Court in a motion to quash said indictment. Where counsel failed to do so, is ineffective assistance of counsel.

This undermined the proper functioning of the adversarial



process that the trial can not be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984). Defendant should be granted new trial.

This is the indictment that defendant David M. Johnson was sentenced for and true billed trafficking crack cocaine third of subsequent offense on indictment 2009-GS-04-2668.

Thus, defendant may challenge the sufficiency of the indictment on the post-conviction relief application. A defendant in a criminal case is entitled to be tried only on the charges set forth in the indictment, SC Code, Ann., § 17-19-10 (1976)

The test of sufficiency of an indictment is whether or not it contains the necessary elements of the offense intended to be charged and sufficiently apprises the defendant of what he must be prepared to defend, SC Code, Ann., § 17-19-20.

The defendant was denied due process of law as guaranteed under the Fourteenth Amendment of the U.S. Constitution and Article 1, § 3 of the S.C. Constitution. Defendant had two (2) simple possession of cocaine charges on his record. No prior trafficking or distribution charge of drugs. This is prosecutorial misconduct and jurisdiction is not vested.

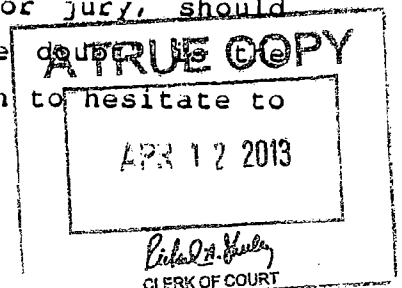
BURDEN SHIFTING REASONABLE

DOUBT JURY CHARGE

State v. Manning, 409 S.E.2d 372 (SC 1991) Defendant appealed. The Supreme Court, GREGORY, C.J. held that jury charge on "reasonable doubt" rendered it so confusing that reasonable juror could have interpreted charge as whole to allow a finding of guilt based on degree of proof below that required by Due Process Clause.

REVERSE and REMAND

Trial Court when defining reasoable doubt for jury, should give no further instruction than that "reasonable doubt" is a kind of doubt that would cause a reasonable person to hesitate to act.



This transition resulted from the United States Supreme Court's pronouncement that the Due Process Clause of the Fourteenth Amendment is violated when a jury charge creates a mandatory presumption and impermissibly shifts the burden of proof to the defendant. See, Sandstrom v. Montana, 442 U.S. 510, 524 (1979), holding that "burden shifting" deprives a defendant of due process of law, and therefore, unconstitutional. Due Process Clause forbids a state from placing the burden on the accused.

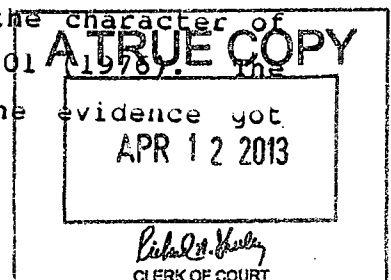
SC Const., Art. V, § 21 "Judges shall not charge juries in respect to matters of fact, but shall declare the law."

At trial transcript, pg. 178-180, lines 20-25/1-25/1-14, the jury in the case of David M. Johnson was confused and by reading these pages will show the burden shifting. The judge erred in this charge and a new trial should be granted. And counsel may be found deficient for failing to object to erroneous jury instructions.

In Plyler v. State 309 S.C. 408, 424 S.E.2d 477 (1992) counsel was deficient for failing to object to improper charge on reasonable doubt. This is ineffective assistance of trial counsel. Failure to object to trial court error made by the judge.

TAINTED EVIDENCE

At trial transcript, pg. 127, lines 3-19, the evidence is tainted by property officer and the analysis of the defendant's fingerprints by the lab and property officer has lost this evidences that would have showed his hands were never on the missing baggie: Brady v. Maryland, 83 S.Ct. at 1197. If the suppression of evidence results in constitutional error, it is because of the character of the evidence, not the character of the prosecutor. U.S. v. Agurs, 96 S.Ct. 2392, 2401 (1978). The trial transcript, at pp. 118-157, shows how the evidence got



tainted. This evidence should have been opened in front of the judge and attorney for the defendant and prosecutor. See, Terry v. Ohio, on tainted evidence.

EXPERT WITNESSES

Counsel's failure to call an expert witness at trial to rebut the State's expert testimony, will raise to the level of deficient. Counsel should have had an expert on tainted evidence to show the Court this evidence could not be used and cross examination of the State's witness. Frasier v. State, 306 S.C. 1, 58 410 S.E.2d 572 (1991).

MISTRIAL NOT GRANTED

At trial transcript, pg. 65, line 3, the judge told prosecutor "just do not use gang, please sir." At line 5, The Court: "Okay, if you do, then I will grant your mistrial." Then at trial transcript, pg. 101, line 6, "Daly in a gang?" The judge should have granted the mistrial then. Moreover, trial counsel was further deficient in failing to renew his motion for mistrial regarding the prejudicial inference of gang affiliation.

CORPUS DELECTI

Confessions standing alone are not enough to convict because the state is required to prove the corpus delecti of every crime. The idea corpus delecti is latin for "body of crime". The statement in this case of David M. Johnson was not signed by the defendant and the defendant was not present at trial. This makes the statement "hearsay" counsel should have objected to inadmissible evidence.

Dawkin v. State, 436 S.C. 151, 155 S.E.2d 260 (2001) "Failure to object to hearsay; improper arguments by the prosecution."
Mathews v. State, 2001 WL 1881491 (SC Sup.Ct. Decided 6-17-2002)
The judge erred by allowing the statement into evidence.

TRUE COPY

APR 12 2013

Richard D. Huley
CLERK OF COURT

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

Strickland v. Washington, 466 U.S. 668 (1984). From Strickland, we have the rule that guides us for claims of ineffective assistance of counsel. A PCR applicant must show both: (1) that counsel failed to render reasonable effective assistance under prevailing norms, and (2) that he was prejudiced by his counsel's ineffective performance. Strickland; Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1994)

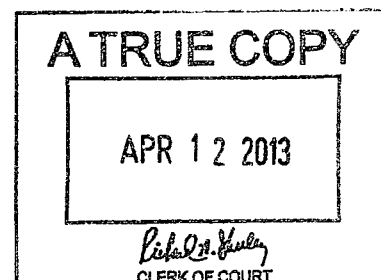
DEFICIENT PERFORMANCE

Strickland necessarily created a flexible standard to judge counsel's conduct. So an unlimited number of ways exist for counsel to potentially render deficient performance. Failure to object to trial court errors. Another common claim is that counsel did not investigate critical tainted evidence and be prepared for trial. Strickland also assigns additional duties to counsel as assistance to the defendant, to advocate the defendant's cause and the more particular duties to consult with the defendant on important decisions. This case should be reversed and remanded for new trial.

The above matters are respectfully presented in support of Applicant's allegations/assertions within his post-conviction relief application. However, there may be other issues within the record and history of Applicant's case in need of discovery by Applicant's PCR counsel.

Date: _____
Greenville County _____

- 5 -



DAVID M. JOHNSON #269185
Q-4-B-208
430 OAKLAWN RD.
PELZER S.C. 29669

2013 CP - 04 - 00842

DATE 3-27-2013

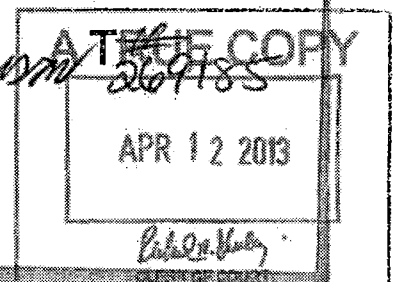
CLERK OF COURT
P.O. Box 8002
ANDERSON, S.C. 29622

RE: CLOCK STAMP P.C.R. APPLICATION
IN FILE BOOK:

DEAR, CLERK OF COURT:
AT THIS TIME I REQUEST YOU
AS CLERK OF COURT TO CLOCK STAMP
THIS P.C.R. APPLICATION IN YOUR
FILE BOOK AND RETURN A CLOCKED
COPY TO ME FOR MY RECORDS.

THANKING YOU IN ADVANCE
I REMAIN

David Mario Johnson



David M. Johnson, 4259135
Perry C.I. / 04B-203
430 Oaklawn Road
Pelzer, SC 29569

2013 CP - 04 00842

Date: _____, 2012

Anderson County Courthouse
Clerk of Court
Post Office Box 8002
Anderson, SC 29622

Re: Clock Stamp PCR Application in File Book

Dear Clerk,

At this time I request you as Clerk of Court to clock-stamp this PCR application in your file book and return a clocked copy to me for my records.

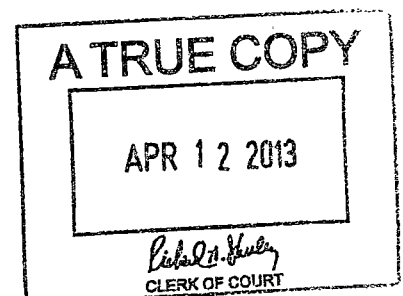
Thanking you in advance, I remain

Sincerely,

David Mario Johnson

cc: PCR Counsel

File





ALAN WILSON
ATTORNEY GENERAL

January 26, 2017

The Honorable Richard A. Shirley
Clerk of Court, Anderson County
PO Box 8002
Anderson, SC 29622-8002

Re: David M. Johnson, #269185 v. State of South Carolina
2013-CP-04-0842

Dear Mr. Shirley:

Enclosed please find the **Return** of the Respondent, in the above-captioned case, for filing in your office.

Sincerely,

Lindsey A. McCallister
Assistant Attorney General

LAM/dgr
Enclosure

cc: R. Mills Ariail, Jr., Esquire

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ANDERSON	)	FOR THE TENTH JUDICIAL CIRCUIT
	)	
David Mario Johnson	)	C.A. No. 2013-CP-04-0842
S.C.D.C. No. 269185	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

Respondent, making its Return to the Application for Post-Conviction Relief filed on April 12, 2013, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. Applicant was indicted at the October 2009 term of the Anderson County Grand Jury for trafficking in ice, crank, or crack in an amount of 10 grams or more but less than 28 grams (2009-GS-04-2668). Bruce Byrholdt, Esq., represented Applicant. On March 31, 2010, Applicant proceeded to a trial before the Honorable R. Lawton McIntosh and a jury. He was found guilty as indicted. Judge McIntosh sentenced Applicant to a term of thirty years imprisonment.¹

A timely Notice of Appeal was filed and perfected on Applicant's behalf. Bruce Byrholdt, Esq., represented Applicant on appeal. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Johnson, Op. No. 2012-UP-264 (filed May 2, 2012). The Remittitur was issued on May 18, 2012.

¹ As reflected in Applicant's sentencing sheet, Applicant was sentenced on March 31, 2010, but the sentence was not opened and read before the Court until June 10, 2010.

Attached to this Return and incorporated herein are the records of the Anderson County Clerk of Court regarding the subject conviction(s), Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, and the trial transcript. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Subject Matter Jurisdiction"
 - a. "Without a proper indictment the circuit court lacks jurisdiction to enter a conviction and impose sentence for a crime"
2. "Due Process Violation Tainted Evidence"
 - a. "At trial transcript, pg. 127, lines 3-19, the evidence is tainted by property officer and the analysis of the defendant's fingerprints by the lab and property officer has lost this evidences that would have showed his hands were never on the missing baggie" [sic]
 - b. "Counsel should have had an expert on tainted evidence"
3. "Burden Shifting/ Ineffective AssiCounse [sic]"
 - a. "Trial Court when defining reasonable doubt for jury, should give not further instruction than that 'reasonable doubt' is the kind of doubt that would cause a reasonable person to hesitate to act"
 - b. "Failure to object to trial court errors"

In a document entitled "Motion to Amend Post-Conviction Relief Application," which Applicant filed through counsel² on October 3, 2016, Applicant further alleges:

1. "The applicant was denied the right to effective assistance of trial counsel's failure (sic) to object to the Judges (sic) erroneous failure to establish a complete chain of custody for admission of its drug evidence against him."
2. "The applicant was denied the right to effective assistance of trial counsel by trial counsel's failure to move to quash his marijuana indictment which failed to charge an indictable offense."
3. "The applicant was denied the right to effective assistance of counsel by counsel (sic)

² The document filed with the Clerk's office indicates that Applicant's counsel sent a carbon copy to the Attorney General's Office on September 30, 2016. However, Respondent's records do not show that this document was ever received from Applicant.

failure to object to trial judges (sic) erroneous and burden shifting jury charge on the applicants (sic) dispositional (sic) use of marijuana and control of property where the marijuana was found.”

Any claims not specifically enumerated in the application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRPC.

III.

Respondent submits that Applicant’s claim that the circuit court was without subject-matter jurisdiction because the indictments were invalid is entirely without merit and should be summarily dismissed. Defects in the indictment do not affect subject-matter jurisdiction. *See State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005); *U.S. v. Cotton*, 535 U.S. 625 (2002). The indictment is a notice document, and any challenges to its sufficiency must be made in accordance with S.C. Code Ann. § 17-19-90 (2003). *See also* S.C. Code § 17-19-20 (2003). Subject-matter jurisdiction is the power of a court to hear a particular class of cases, and it has nothing to do with the indictment document. *See Gentry*, 363 S.C. 93, 610 S.E.2d 494; *Dove v. Gold Kist, Inc.*, 314 S.C. 235, 442 S.E.2d 598 (1994).

In post-conviction relief, an applicant wishing to raise challenges to the sufficiency of an indictment must do so in the context of ineffective assistance of counsel, basically alleging that his trial counsel failed to properly move to quash the indictment in accordance with S.C. Code Ann. § 17-19-90. An applicant may still challenge the subject-matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. *See Brown v. State*, 343 S.C. 342, 540 S.E.2d 846 (2001), *overruled in part by Gentry*, 610 S.E.2d 494. However, “[c]ircuit courts obviously have subject-matter jurisdiction to try criminal matters.” *Gentry*, 610 S.E.2d 494; *see also* S.C. Const. Art. V, § 7. Therefore, Applicant must present evidence that his case is of some

class over which the circuit court does not have the authority to preside. Respondent contends that Applicant's conviction involved a criminal charge in General Sessions Court, and thus asserts that the circuit court had proper subject-matter jurisdiction. Therefore, Applicant's first claim should be summarily dismissed.

IV.

In Applicant's due process violation claim, he fails to set forth with specificity any facts supporting his claim that he was denied due process of law. The Uniform Post-Conviction Procedure Act requires that the applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In a post-conviction relief application, the applicant must make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) ("It is, therefore, incumbent upon the applicant to make at least a *prima facie* showing entitling him to relief." (citing Babb v. State, 240 S.C. 235, 125 S.E.2d 467 (1962); Crosby v. State, 241 S.C. 40, 126 S.E.2d 843 (1962); Tillman v. Manning, 241 S.C. 221, 127 S.E.2d 721 (1962); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965))).

Since Applicant has failed to make even a *prima facie* showing, Respondent would submit this allegation should be dismissed pursuant to Rule 12(b)(6), SCRPC, for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. In the alternative, Respondent would submit Applicant should be required to provide a more definite statement pursuant to Rule 12(e), SCRPC, because this allegation is so vague and ambiguous Respondent cannot reasonably be required to frame a response.

V.

Applicant also alleges ineffective assistance of trial counsel. Respondent submits that Applicant's claim is without merit. In a PCR action, the applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of trial counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process" that the plea proceedings "cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes trial counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove trial counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of trial counsel probably raises questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

VI.

Respondent denies each and every allegation not hereinbefore expressly admitted, qualified, or explained.

VII.

WHEREFORE, having made its return, Respondent requests an evidentiary hearing be held solely to determine whether Applicant's right to the effective assistance of counsel at trial was violated.

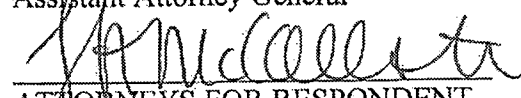
Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

LINDSEY A. MCCALLISTER
Assistant Attorney General


ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

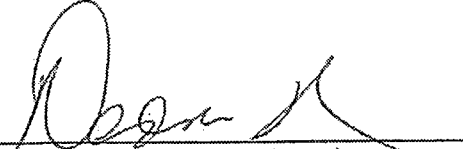
1/26, 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	
	)	2013-CP-04-0842
	)	
DAVID M. JOHNSON, #269185	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent,	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**R. Mills Ariail, Jr., Esquire
 Law Office of R. Mills Ariail, Jr.
 11 North Irvine Street, Suite 11
 Greenville, SC 29601**

DATED this the 26th day of January, 2017.



 Deonna Rogers, Legal Assistant
 For Respondent

R. MILLS ARIAIL, JR.
ATTORNEY AT LAW

11 NORTH IRVINE STREET, SUITE 11 • GREENVILLE, SC 29601
PHONE 864.232.9390 • FAX 864.232.9392 • E-MAIL MILLS@RMALAWOFFICE.COM

September 30, 2016

US MAIL

The Honorable Richard A. Shirley
Clerk of Court, Anderson County
Post Office Box 8002
Anderson, SC 29622-8002

RE: David M. Johnson vs. State of South Carolina
Case Number: 2013-CP-04-842

Dear Mr. Shirley:

Enclosed please find the original and a copy of a Motion to Amend Post-Conviction Relief Application that my client has requested that I file on his behalf. Once filed, please return the copy to me in the envelope provided for your convenience.

Thank you for your consideration of this letter.

Sincerely,
LAW OFFICE OF R. MILLS ARIAIL, JR.
Attorney at Law



R. Mills Ariail, Jr.

RMAjr/dl

Cc: Johanna C. Valenzuela

FILED-CLERK'S OFFICE
ANDERSON SO
2016 OCT -3 PM 1:11
COMMON PLEAS AND
GENERAL SESSIONS



State of South Carolina

County of Anderson

David Mario Johnson,
Applicant,

v.

State of South Carolina,

Respondent,

In The Court OF Common Pleas
For Anderson County

Motion To Amend

Post-Conviction Relief

Application

COMMON PLEAS AND
GENERAL SESSIONS

2016 OCT -3 PM 1:10

FILED CLERK'S OFFICE
ANDERSON SC

Come Now, the applicant, above named, through his undersigned
PCR Counsel moves the Honorable court to grant him leave
pursuant to Rule 21.1 (d), SCRPC, to amend the following grounds
to his PCR application:

(1) The applicant was denied the right to effective assistance of
trial counsel's failure to object to the Judge's erroneous failure to
establish a complete chain of custody for admission of its drug
evidence against him.

In this case, the record shows that on July 31, 2009, the Anderson
County Sheriff and police were patrolling Appleton street in Anderson
County when Sgt. Mosher and Officer Pitts noticed applicant immediately
turn and hurriedly start walking away from them. They further alleged
when the applicant entered the front yard of a residence on the corner
of Appleton and Reynolds street, they noticed him discard a
"plastic baggie" from his right hand. Tr. p. 66 lines 3-25

As a result, the applicant was detained while an officer went directly to the area where he said he saw the applicant discard the plastic baggie and found a plastic baggie containing an "off white-rock-like substance" he suspected of being crack cocaine and then placed the applicant under arrest. A search of the applicant revealed a plastic baggie with suspected marijuana in his front left pocket. Tr. p. 62, 11-28.

It was later revealed at trial that the crack cocaine found by the police weighed 15.2 grams that led to the applicant being charged with a trafficking offense. It was also revealed at trial that the marijuana weighed 7.9 grams which led to applicants possession of marijuana offense, Tr. p. 106. lines 17-20; 123 L. 6-10.

Nevertheless, when the drugs were returned from the lab, it was discovered that Sgt. Tommy Clomp of the Anderson County Property and Evidence Division opened the "Best Evidence Kit"¹ to allegedly look inside for the "plastic bag" that was tested for the applicants fingerprints. Sgt. Clomp admitted that he failed in his duty by losing the bag that could have either proved or disproved that the applicant possessed the bag that contained the crack cocaine for which he was charged.

Prior to the Judges ~~adverse~~ ruling on the admission of the drug evidence against the applicant, his counsel argued that Sgt. Clomp should not have opened the "Best Evidence kit" at all because the seal was supposed to be broken in the presence of the Judge, the applicant, the defense counsel, and

the defense counsel, and the solicitor so as to eliminate any mistake and to establish a complete chain of custody.

(1.) It should be noted that the "Best Evidence kit" was a transparent kit that one could see inside of without opening it.

Following counsel's argument, the Judge ruled that he was admitting the states drug evidence against the applicant based on the courts ruling in Cartor v State, 544 S.E. 2d 835, (S.C. 2001). In Cartor, the defendant was charged with burglary where blood and saliva was found at the crime scene. Following the tests for the blood and saliva, the saliva sample was missing from the kit which contained the blood sample also. The custodian of the blood sample testified that he did not alter the evidence and that the security tape was unbroken.

As a result, the Judges found there was nothing to indicate that the integrity of the blood samples themselves had been compromised to negate Cartor's identity as the contributor, and the Judges further held that the missing saliva went to the weight of the evidence and not the admissibility since the state had established a complete chain of Cartor's blood evidence for its admission.

The applicant contends that contrary to the Judges reliance on Cartor, the state in his case failed to establish a complete chain of custody for admission of the drug evidence against him found at the scene of his arrest because the bag that was requested to be tested for his fingerprints to establish his possession

of the drug evidence was lost, and the Evidence kit's security tape was broken without any motion placed. Therefore, applicants' missing fingerprint evidence, contrary to the judges ruling, went to the admissibility of the drug evidence against him and not its weight. Thus the state failed to establish a complete chain of custody to prove the applicants' possession of the baggie in which the drugs were found.

Finally, our Supreme Court has held that where the analyzed substance have passed through several hands, the evidence must not leave to conjecture as to who had it and what was done with it between the taking and analysis; and while proof of chain of custody need not negate all possibility of tampering, it must establish a complete chain of evidence. State v. Johnson, 456 S. E. 2d 442 (1995)

Notwithstanding, as the state failed to establish a complete chain of custody to establish applicants' possession of its drug evidence against him, his counsel's failure to object to the judges admission of the state's drug evidence against him was ineffective assistance of the counsel that was per se prejudicial as the drug evidence was the only evidence against him. see Edmond v. State 539 S.E. 2d 682 (S.C. 2000)

- (2) The applicant was denied the right to effective assistance of trial counsel by counsel's failure to move to quash his marijuana indictment which failed to charge an indictable offense.

In this case, the applicant was found with 2.9 grams of marijuana in his possession. As a result, he was indicted for possession of marijuana. (09-GS-04-2669) Tr. P. 49-1-18. The applicant contends that under S.C. Code §44-53-370(4)(3) an indictable PWID marijuana offense is defined as "possession of then 28 grams or more than one ounce of marijuana." Here, as the record showed that the applicant possession of 2.9 grams should not have exposed him to an indictable felony offense, his counsel's failure to move to quash his marijuana indictment on the grounds that it insufficiently charged ~~and~~ him with a felony marijuana ~~possession~~ possession offense was ineffective assistance of trial counsel that was prejudicial to his case.

- (3) The applicant was denied the right to effective assistance of counsel by counsel failure to object to trial judges erroneous and burden shifting jury charge on the ~~applicant's~~ applicant's disposition use of marijuana and control of property where the marijuana was found

Accordingly, in this case the state's evidence showed that the police were investigating a "drug area" in Anderson County when they arrested the applicant after he allegedly discarded a bag of

Crack cocaine. T-P 85-86. The evidence further showed that during a search of the applicant incident to an arrest the police found on his person a plastic bag with 7.9 grams of marijuana. T-P 86 L. 18-25. There was no testimony at trial that the applicant either owned or controlled any property evidence was located. Therefore the judge charge in this instance shifted the burden to the applicant to disprove that he did not, in fact have any dominion and control over the property where the marijuana, or crack cocaine, was found. Therefore counsels failure to object to the judges erroneous burden shifting charge in this instance was ineffective assistance of trial counsel that was per se prejudicial insofar as it deprived him of a fundamental right to a fair trial.

Respectfully Submitted

David Johnson

David Mario Johnson

SCDC#269185

cc: File

McCormick Correctional Institution

Dorm F2 - room 233B

386 Redemption ~~road~~ way

McCormick, SC 29899

Sworn to before me this day
 15th day of ~~August~~ ^{September}, 2016
 15 Sept 2016 Franklin
 (Notary Public for South Carolina)

My Commission expires 12-16-2019

page 6

David Johnson

David Mario Johnson v. The State of South Carolina 2013-CP-04-00842 February 27, 2017

1 State of South Carolina
2 County of Anderson In the Court of Common Pleas
3
4 David Mario Johnson,)
5 Plaintiff,) 2013-CP-04-00842
6 -vs-) February 27, 2017
7 The State of South Carolina,)
8 Defendant.)
9 Transcript of Record

10
11 B E F O R E:

12 The Honorable R. Scott Sprouse, Judge
13

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

15 Robert Mills Ariail, Esquire
16 Attorney for Applicant

17 Lindsey McCallister, Esquire
18 SC Attorney General's Office
19 Attorney for Respondent
20
21

22 Diane L. Marcengill, RPR, CRR
23 Circuit Court Reporter
24
25

David Mario Johnson v. The State of South Carolina 2013-CP-04-00842 February 27, 2017

I N D E X

<u>Witnesses</u>	<u>Page</u>
DAVID MARIO JOHNSON	
Direct Examination By Mr. Ariail	4
Cross-Examination By Ms. McCallister	13
BRUCE BYRHOLDT	
Direct Examination By Mr. Ariail	18
Cross-Examination By Ms. McCallister	23
Reporter's Certificate	32

E x h i b i t s

For the Applicant:

Marked	Description	I.D.	Admitted
	None offered.		

For the Respondent:

Marked	Description	I.D.	Admitted
	None offered.		

David Mario Johnson - Direct
David Mario Johnson v. The State of South Carolina 2013-CP-04-00842 February 27, 2017

1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at 10:22 a.m.)

4 MS. McCALLISTER: This is David Mario Johnson
5 versus the State of South Carolina, 2013-CP-04-0842.
6 We're here today on an application for postconviction
7 relief that was filed on April, 12, 2013.

8 Mr. Johnson is currently confined in the South
9 Carolina Department of Corrections pursuant to orders
10 of commitment from the Anderson County Clerk of Court.
11 He was indicted at the October 2009 term of the
12 Anderson County Grand Jury for trafficking in ice,
13 crank, or crack in an amount of ten grams or more but
14 less than 28 grams and possession of marijuana. He was
15 represented by Bruce Byrholdt on those charges.

16 On March 31, 2010, he proceeded to trial before
17 the Honorable Judge R. Lawton McIntosh. He was found
18 guilty as indicted and sentenced to a term of 30 years
19 imprisonment.

20 A timely notice of appeal was filed, and that
21 appeal -- the South Carolina Court of Appeals affirmed
22 his convictions and sentence on May, 2, 2012.

23 The applicant is present in the courtroom today,
24 and he is represented by Mills Ariail, and I will let
25 Mr. Ariail speak.

David Mario Johnson - Direct

David Mario Johnson v. The State of South Carolina 2013-CP-04-00842 February 27, 2017

1 THE COURT: Mr. Ariail.

2 MR. ARIAIL: Thank you, Your Honor. May it please
3 the court. I represent Mr. Johnson in this matter, and
4 I've talked with him in regard to his case. He has
5 just told me, as he came in here today, he has narrowed
6 his PCR down.

7 He filed -- and I think it's part of the court
8 file -- on October 3, 2016, an amended PCR application.
9 There's several issues he has listed in there. He says
10 his main issues today that he's proceeding on are the
11 State v. Carter issue and a tainted evidence which was
12 the BEST evidence kit that was allowed into evidence in
13 this case. Those are the issues that kind of are
14 hand-in-hand, so those are the ones he's concentrating
15 on and would like to present evidence on today.

16 I can proceed by calling Mr. Johnson to the stand.

17 THE COURT: Call your witness.

18 DAVID MARIO JOHNSON,

19 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

20 DIRECT EXAMINATION

21 BY MR. ARIAIL:

22 Q Mr. Johnson, how you doing today?

23 A I'm doing all right.

24 Q Good. I know it's tough to get close to that
25 microphone, but if you can, it makes it easier for

David Mario Johnson - Direct
David Mario Johnson v. The State of South Carolina 2013-CP-04-00842 February 27, 2017

1 everybody to hear. I know you're soft spoken.

2 Now, we have gone back and forth. I have
3 represented you on this PCR, correct?

4 A Yes, sir.

5 Q And you've kind of narrowed down your issues. You
6 kind of started broad, and now you've gotten them
7 narrowed down.

8 The two issues I think you want to raise and I
9 want to go through are the *State v. Carter* issue and
10 the tainted evidence issue, which kind of plays
11 hand-in-hand; is that correct?

12 A Yes, sir.

13 Q Tell me, Mr. Byrholdt represented you on both of
14 these charges; is that correct?

15 A Yes, sir.

16 Q He took it to trial; is that correct?

17 A Yes, sir.

18 Q I know a lot of times there's some question as to
19 whether or not he -- attorneys have provided discovery
20 and information and talked about the case. You don't
21 have any concerns about that with him, do you?

22 A No.

23 Q What I'm basically saying is, do you feel like,
24 before you went to trial, do you feel like you
25 understood the evidence that was going to be presented

David Mario Johnson - Direct

David Mario Johnson v. The State of South Carolina 2013-CP-04-00842 February 27, 2017

1 against you?

2 A Oh, yes, sir.

3 Q Did he go over that with you?

4 A No, sir. I wasn't present at trial, so he didn't
5 get to go over nothing.

6 Q Before trial?

7 A Not really. He ain't really.

8 Q Let's go back over through that because that might
9 be an issue that I thought you weren't raising but
10 could potentially be one.

11 Did you understand what they were going to be
12 trying you in regards to?

13 A Oh, yes, sir.

14 Q Did he talk to you about what the facts were? I
15 mean, this was a case of drugs being involved --

16 A Oh, yes, sir, he did.

17 Q -- and being in your possession all that.

18 You understood that?

19 A Yes, sir, I understood that.

20 Q So he explained that to you and kind of what you
21 were looking at going forward in trial?

22 A Oh, yes, sir.

23 Q Okay. Now, as part of that, when you went
24 forward, you're saying you weren't there at the trial,
25 correct?

David Mario Johnson - Direct
David Mario Johnson v. The State of South Carolina 2013-CP-04-00842 February 27, 2017

1 A Yes, sir.

2 Q What was the reason that you didn't attend the
3 trial?

4 A Because he supposedly had called my emergency
5 contact and let me know, but no one ever called, so I
6 really didn't know I was supposed to be tried that day.
7 He had told me that they was going to do something on a
8 Monday, but he told me it wasn't that important, so I
9 didn't look at it as that important.

10 Now, when they tried me in my absence, I didn't
11 even know until I seen it in the newspaper.

12 Q But he provided you some type of notice of hearing
13 or some type of court date on that Monday?

14 A I don't -- not no trial date. He said it wasn't
15 very important, so I didn't really look at it as it was
16 important.

17 Q Now, going forward, you've gotten your transcript.
18 You've been able to take a look at it, and you've
19 raised issues in regards to *State v. Carter* and the
20 tainted evidence.

21 Now, tell the court what you're saying the issues
22 are in regards to those two things.

23 A All right. Well, as far as with the type of
24 evidence, Mr. Byrholdt supposed to have objected to the
25 missing plastic baggie that supposed to have been

David Mario Johnson - Direct

David Mario Johnson v. The State of South Carolina 2013-CP-04-00842 February 27, 2017

1 fingerprinted in my case and the broken seal of my case
2 that Mr. Tommy Clapp admitted to opening on transcript
3 pages 127, 10 through 15. If I read it right here --

4 Q Just slow down a little bit. So you're
5 saying that there's -- I'm going to take it back a
6 step.

7 So he was supposed to have objected to the opening
8 of the BEST evidence kit?

9 A After it came back from forensic lab.

10 Q Correct. There's apparently some opening of that
11 kit, which you said spoiled the evidence or broke the
12 chain of custody, pretty much?

13 A Yes, sir.

14 Q Did he make an objection to that at trial?

15 A No, sir.

16 Q You're saying there was no discussion about that
17 or any type of objection?

18 A No. He was in camera, but there was no verbal
19 objection made so it wasn't like preserved for like no
20 direct appeal or anything.

21 Q Okay. So you're saying he should have made an
22 objection to that to try to keep that information
23 suppressed or out?

24 A Yes.

25 Q So you were going to cite the transcript. What in

David Mario Johnson - Direct
David Mario Johnson v. The State of South Carolina 2013-CP-04-00842 February 27, 2017

1 the transcript -- you don't have to read it out. You
2 can cite it and tell us what you think.

3 A Like I say, page 127, 10 through 15. Basically
4 Mr. Tommy Clapp basically admitted to opening the seal
5 and took full responsibility and actually telling him
6 that it was wrong. It wasn't a seizure on anything.
7 He didn't put no proper motions in or anything. It
8 should never have been opened.

9 Q So what you're saying is he should have filed some
10 pretrial motion or some motion during the trial to
11 exclude that since it had been opened?

12 A Yeah.

13 Q I thought there was a discussion about that, and
14 the judge reviewed that and made a decision it should
15 come in, and actually evaluated *State v. Carter*, too,
16 correct?

17 A Yes, which is totally different from my case.

18 Q So -- well, I'm a little confused. Was there an
19 objection by Mr. Byrholdt in regards to that evidence
20 coming in?

21 A No. He was like -- the judge was like, "Well,
22 Mr. Byrholdt, I know what you want." And Mr. Byrholdt
23 was like, "Yeah." So he never verbally objected so it
24 was never preserved. Apparently, it was never
25 preserved or anything on direct appeal.

David Mario Johnson - Direct

David Mario Johnson v. The State of South Carolina 2013-CP-04-00842 February 27, 2017

1 Q So you're also saying there should have been some
2 objection to the application of *State v. Carter* because
3 it was distinguishable from your circumstances; is that
4 right?

5 A Yes, sir.

6 Q And Mr. Byrholdt never did that?

7 A No, sir.

8 Q Okay. Now -- and I've tried to summarize it as
9 best I can. Are there other things you want to add in
10 in regards to those two issues because those are the
11 two issues that you have brought up?

12 A Yes, sir. Like the difference is -- I can tell
13 you the difference in *Carter* and my case.

14 Q If you want to put that on the record, be glad to.

15 A I would like to put that. In *Carter*, the
16 defendant was found guilty because the blood samples
17 was --

18 MS. McCALLISTER: Your Honor, I would object.
19 He's not qualified to draw legal conclusions about
20 what's one case versus his case, so I would object to
21 him testifying as to that. I mean, he can make it
22 clear that that's what his issue is, but I don't think
23 it's appropriate for him to testify how *Carter* applies
24 or doesn't apply to his case.

25 THE COURT: I'm going to overrule the objection.

David Mario Johnson - Direct

David Mario Johnson v. The State of South Carolina 2013-CP-04-00842 February 27, 2017

1 I'm going to let the applicant state why he feels it's
2 applicable to his case.

3 THE DEFENDANT: Thank you, Your Honor.

4 Like in *Carter*, the defendant was charged with
5 burglary where blood and saliva samples were found at
6 the scene of the crime. Following the test for the
7 blood and saliva, the saliva sample was missing, which
8 contained the blood sample also. Custodian of the
9 blood sample testified that he did not alter the
10 evidence, and the security tape was unbroken. As a
11 result, the judge found there was nothing to indicate
12 that integrity of the blood samples themselves had been
13 compromised to negate Carter's identity as the
14 contributor.

15 And the judge further held that the missing saliva
16 went to the weight of the evidence and not the
17 admissibility since the state had established a
18 complete chain of Carter's blood evidence for
19 submission.

20 Now, contrary to the judge's reliance on *Carter*,
21 the state, in my case, failed to establish a complete
22 chain of custody for admission of the drug evidence
23 against me found at the scene of my arrest because the
24 bag that was requested to be tested from my evidence
25 was lost, and the evidence kit security tape had been

David Mario Johnson - Cross

David Mario Johnson v. The State of South Carolina 2013-CP-04-00842 February 27, 2017

1 broken after it came back from forensic lab; therefore,
2 my missing prints evidence, contrary to the judge's
3 ruling, went to the admissibility of drug evidence
4 against me and not its weight. The state failed to
5 establish a complete chain of custody proving my
6 possession of the baggie in which the drugs were found.

7 And the supreme court held that, even though the
8 subject had passed through several hands, the evidence
9 must not lead to conjecture as to who had it and what
10 was done with it between the taking and analysis, and
11 why proof of chain of custody does not negate all
12 possibility. It must complete a chain of evidence.

13 Now that the state failed to establish a complete
14 chain of my possession of drug evidence against me, my
15 counsel failed to object to the judge's admission of
16 state's drug evidence against me was ineffective
17 assistance of trial counsel. That was prejudice, as
18 the drug evidence was the only evidence against me.
19 And that's about it.

20 Q Okay. Now, those are the distinguishable items.
21 Are there other things -- and I think I've covered
22 pretty much what you wanted me to in regards to it, and
23 I think you've put on the record what the two issues
24 are.

25 Anything else you want to raise at this time?

David Mario Johnson - Cross
David Mario Johnson v. The State of South Carolina 2013-CP-04-00842 February 27, 2017

1 A No. Just those two.

2 Q Okay.

3 MR. ARIAIL: I have no further questions, Your
4 Honor.

5 THE COURT: All right.

6 Ms. McCallister, your witness.

7 MS. McCALLISTER: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MS. McCALLISTER:

10 Q Okay. I want to clarify what you said about when
11 did you meet with Mr. Byrholdt. Did you meet with him
12 before trial?

13 A No. Like I say, I wasn't present for trial, so --

14 Q No. I know you weren't present at the actual
15 trial itself, but when your case was being prepared for
16 trial.

17 A Yes, ma'am.

18 Q You had a chance to meet with Mr. Byrholdt?

19 A Yes, ma'am.

20 Q Do you recall how many times you met with him?

21 A I really don't recall. It would have been a
22 couple times. About two, three.

23 Q And did you discuss this issue with him when you
24 met with him?

25 A About me going to trial?

David Mario Johnson - Cross

David Mario Johnson v. The State of South Carolina 2013-CP-04-00842 February 27, 2017

1 Q No. The issue of the bag being missing and the
2 chain of custody.

3 A No. I don't think he even found that out until
4 like the day before trial. I think it's on page five.
5 On page five. I think he didn't find out until like
6 the morning before trial. He didn't even know. The
7 state never disclosed that to him either.

8 Q Okay. And you were not present at trial?

9 A No, ma'am.

10 Q So you were not able to help Mr. Byrholdt during
11 the presentation of evidence because you weren't
12 present, correct?

13 A Right.

14 Q So you couldn't -- if things were happening that
15 you didn't like at the trial, you weren't there to tell
16 him?

17 A Yeah.

18 Q And you say that you weren't there because someone
19 didn't call?

20 A No -- yeah. I ain't get no -- nobody called me.
21 He say he called my brother, but I don't have a
22 brother. I gave my emergency contact, like if you
23 can't get in contact with me for trial or something
24 come up. It was Ashley Johnson, but nobody called her
25 either.

David Mario Johnson - Cross
David Mario Johnson v. The State of South Carolina 2013-CP-04-00842 February 27, 2017

1 Q But did you understand that you -- that if you
2 didn't show up, the trial was going to go forward
3 without you?

4 A Yeah, but only if I would have knew, but I didn't
5 know, so.

6 Q Okay. And you didn't -- you didn't make any
7 efforts to get in touch with Mr. Byrholdt to find out
8 what was going on because --

9 A No. By the time -- I didn't think I needed to.
10 But by the time all this happened, it was too late. I
11 was already like -- when I found out, it was really too
12 late. It was already in the newspaper that he gave me
13 some time.

14 Q I thought you said that he told you something was
15 happening on Monday?

16 A Yeah, he did, but he told me it wasn't a big deal,
17 so I ain't really think about it.

18 Q But you did have some communication with him --

19 A Oh, yeah.

20 Q -- that something was happening?

21 A Sure.

22 Q But you just didn't think it was important?

23 A Like -- he was like, it ain't no big deal, so I
24 didn't think it was important.

25 Q Okay. And you -- are you contending that

David Mario Johnson - Cross

David Mario Johnson v. The State of South Carolina 2013-CP-04-00842 February 27, 2017

1 Mr. Byrholdt did not object to the admission of the
2 evidence at all?

3 A No, he didn't object. The judge just said -- it
4 was like, "Mr. Byrholdt, I know what you want." He was
5 like, "Yes, sir, Your Honor, I would."

6 Q Okay. Have you had a chance to review the
7 transcript?

8 A Yes, ma'am. It's on -- one second. I'll find
9 which page this is on.

10 Q Are you looking at page 127?

11 A No, ma'am, but I can. Where he didn't object,
12 127, lines 10 through 15.

13 Q Well, on page 127, I'll call your attention to
14 that and Your Honor's attention to page 127.

15 Does -- Mr. Byrholdt does question the officer as
16 to why the package was not sealed?

17 THE COURT: Ms. McCallister, let me stop you for a
18 minute. Do you have a transcript copy that has page
19 numbers on it? What has been submitted to the court
20 has all the page numbers cut off.

21 MS. McCALLISTER: Your Honor, they all do. I can
22 hand you a different copy if you think it's any better.

23 THE COURT: If they're all the same, I'll figure
24 it out.

25 MS. McCALLISTER: They're pretty much the same.

David Mario Johnson - Cross

David Mario Johnson v. The State of South Carolina 2013-CP-04-00842 February 27, 2017

1 THE COURT: I'll figure it out. Go ahead.

2 MS. McCALLISTER: Thank you, Your Honor.

3 Q Are you able to find page 127?

4 A Yes, ma'am. Mine are numbered.

5 Q And you do see that Mr. Byrholdt questioned the
6 officer about this issue, correct?

7 A Yes.

8 Q Okay. And then a little bit later, on page --
9 it's 150 is where it starts, 150 to 157, 158. There's
10 another long discussion about that evidence, and
11 Mr. Byrholdt makes arguments about why it should not
12 come in. Do you see that?

13 A Yes, ma'am. I see.

14 Q Okay. So what are you saying, then, that he
15 didn't do what he should have done?

16 A He should have at least objected to like preserve
17 it. Like if you don't object, you can't preserve it
18 for direct appeal. And that's what I'm talking about.
19 No objection. Like he could have objected and probably
20 tried to ask for a mistrial or anything.

21 Q So you're saying that he made arguments against
22 admitting the evidence, but he didn't object?

23 A Yeah. He didn't object.

24 Q Okay. And that's your only issue with him in
25 terms of the trial is that he didn't object to that

Bruce Byrholdt - Direct

David Mario Johnson v. The State of South Carolina 2013-CP-04-00842 February 27, 2017

1 evidence?

2 A Yeah. And he didn't object to the use of State
3 vs. Carter.

4 Q As to the rest of his representation with you,
5 you're satisfied with his performance; you're not going
6 forward on any other issues today?

7 A No, not going forward on any other issues.

8 MS. McCALLISTER: That's all the questions I have.

9 THE COURT: Any redirect?

10 MR. ARIAIL: No, Your Honor.

11 THE COURT: Thank you, Mr. Johnson. You can step
12 down.

13 MR. ARIAIL: We call Mr. Byrholdt as our next
14 witness.

15 **BRUCE BYRHOLDT,**

16 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

17 **DIRECT EXAMINATION**

18 **BY MR. ARIAIL:**

19 Q Mr. Byrholdt, how you doing today?

20 A Doing fine. Good morning.

21 Q Good morning.

22 I want to go back through the two issues, the
23 *State v. Carter* issue and the tainted evidence issue.

24 First, did you go over -- I guess he says he had
25 conversations with you in regards to the facts and

Bruce Byrholdt - Direct
David Mario Johnson v. The State of South Carolina 2013-CP-04-00842 February 27, 2017

1 evidence in this case. Do you remember discussing that
2 with him?

3 A We did. We reviewed the evidence prior to trial.
4 This case was set for trial two weeks before it went to
5 trial. It was put off, and then it was rescheduled
6 with -- Matthew Bradley was the solicitor.

7 Q Was he aware -- apparently it was a TIA.

8 A It was. I talked to him, as I said in the record,
9 before court. You know, I told him that he had to be
10 in court, that they had called the case for trial,
11 moved it up, and I had to proceed without him.

12 Q Okay. The two issues, and I think they kind of go
13 hand-in-hand, the *State v. Carter* issue. Now, I know
14 there's some question as to this evidence coming in.
15 It was allowed in at that time by Judge McIntosh. I
16 mean, do you remember what you did? And I know we've
17 got the transcript in regards to it being some type of
18 tampering or some alteration of that. Do you remember
19 this issue and what you did to try to address it?

20 A Well, I mean, when they talked about the drugs,
21 the BEST evidence kit, in my opinion, had been altered
22 because the drugs -- law enforcement claimed the drugs
23 were found at the scene. The officer said he saw
24 Mr. Johnson discard a plastic bag.

25 Well, there were no fingerprints in this case, and

Bruce Byrholdt - Direct

David Mario Johnson v. The State of South Carolina 2013-CP-04-00842 February 27, 2017

1 we go up there to try the case, the plastic bag was no
2 longer in the BEST evidence kit. And no one knew what
3 happened to it. No one knew who took it or who lost
4 it, and my argument was, because, I mean, the bad
5 thing, David had a prior record. He had turned down an
6 offer. Been offered 20 years. He turned that down,
7 and he was looking at 25 to 30 plus mandatory fine.
8 And the only chance he had, in my opinion, was to try
9 to keep the drugs out. When that issue came up, I
10 addressed it as best I could in the middle of the
11 trial.

12 Q It looks like you raised it, and then there was an
13 in-camera cross-examination of Ms. Lanford in regards
14 to it; is that correct?

15 A Right.

16 Q So, I mean, I guess what I'm trying to
17 understand -- I'm going back and looking at the
18 transcript. He says there was no objection which would
19 have preserved it for appeal. Do you remember -- I
20 mean, looking back, there was some -- clearly some, you
21 know, objection you raised to the court to be able to
22 get that in-camera cross-examination.

23 A I did. And when I sent appellate -- when this
24 case ended, I believe the judge erred in not
25 suppressing the evidence. I sent issues on appeal for

Bruce Byrholdt - Direct

David Mario Johnson v. The State of South Carolina 2013-CP-04-00842 February 27, 2017

1 indigent defense to handle. Unfortunately, the only
2 one they raised was one issue. And I just found that
3 out today when I saw the remittitur. In their brief,
4 they only raised one issue. They didn't even address
5 the drug issue.

6 Q So, apparently, you sent that; you thought that
7 was an issue, and appellate defense didn't raise it?

8 A I sent five issues that I thought had merit to go
9 forward.

10 Q They only raised one of those, and it was not this
11 issue?

12 A Right. It was not this issue.

13 Q Do you see anything else that you could have done
14 during this period of time to try to suppress this or
15 try to keep it out based on chain of custody being
16 broken or some type of --

17 A No. I think the issue was going to be the same
18 thing. It was addressed with Judge McIntosh. I think
19 this may have been his first trial, and I don't think
20 he was going to suppress any evidence in his first
21 trial. And the expert, the drug analyst, testified
22 that it did not taint the quantity of the drugs, but my
23 question was if we don't know where the baggie is, that
24 might be the drugs that were seized. That was my
25 argument.

Bruce Byrholdt - Cross

David Mario Johnson v. The State of South Carolina 2013-CP-04-00842 February 27, 2017

1 Q Did you think at any time of trying to get a
2 continuance based on this, or was this something that
3 you felt like you could handle at the time, and there
4 was no reason --

5 A I thought it was better to take advantage of it
6 when we had the opportunity.

7 Q How do you think it would have affected his case
8 if there had been the evidence on -- I mean, I guess if
9 the evidence was there, do you think it would have been
10 exculpatory or could have helped him? Do you have
11 any --

12 A I don't know. If you believe the state's
13 position, if they would have tested it, they would have
14 found his fingerprints on the plastic baggie. The
15 reality of it probably would have been the fingerprint
16 man coming in and saying, "Well, fingerprints are hard
17 to get off anything, let alone a plastic bag," so it
18 may have been inconsequential.

19 Q Okay. You clearly -- I think you've testified you
20 thought it was prejudicial to him?

21 A I did. Any time drug evidence comes in, it's
22 prejudicial.

23 Q Right. Did you think that there was some way to
24 distinguish *State v. Carter* from the way Judge
25 McIntosh, I guess, interpreted it?

Bruce Byrholdt - Cross

David Mario Johnson v. The State of South Carolina 2013-CP-04-00842 February 27, 2017

1 A I did not. I did not.

2 Q Okay. Do you see any other ways that you thought
3 you could try to keep this evidence out based on what
4 you had raised?

5 A Not, like I say, in the middle of the trial and
6 when it came out, no. I took advantage of what I
7 thought was the best opportunity we had to try and keep
8 the evidence out. I mean, you have got an officer that
9 said he saw Mr. Johnson drop this bag. I also argued
10 because the weight they claimed was two grams less than
11 they initially claimed, I asked them what happened with
12 that. Again, those were factual issues. It's for the
13 jury to decide.

14 Q Okay.

15 MR. ARIAIL: I have no further questions.

16 THE WITNESS: Thank you.

17 CROSS-EXAMINATION

18 BY MS. McCALLISTER:

19 Q Mr. Byrholdt, at the time of this trial, how long
20 had you been practicing law?

21 A You have to tell me when the date of the trial is.
22 I did not review the transcript or anything.

23 A It was March 31, 2010.

24 A At that time, 30 years. I guess it's 37 now.

25 Q Okay. And how much of that was criminal law?

Bruce Byrholdt - Cross

David Mario Johnson v. The State of South Carolina 2013-CP-04-00842 February 27, 2017

1 A Probably 80 percent of my practice. Other than a
2 few years I clerked.

3 Q Okay. So I think you touched on this a little
4 bit, but there were two separate drug charges in this
5 case; is that correct?

6 A There was.

7 Q So there was --

8 A Well, there were, I think, initially four he was
9 arrested for. They indicted him on two charges, the
10 trafficking and a marijuana charge.

11 Q And so the evidence that was at issue was on the
12 trafficking charge; is that correct?

13 A Yes.

14 Q So there was no issue with the evidence in terms
15 of the marijuana charge?

16 A Well, I won't say there's no issue. I wasn't
17 concerned about that, but the marijuana charge wasn't
18 going to put him in prison for 25 or 30 years.

19 Q So this issue with the BEST kit and the baggie,
20 that involved the trafficking charge, not the
21 marijuana?

22 A That's correct.

23 Q Okay. And did you know that the evidence was
24 missing before trial started?

25 A No. That's when they went to open the BEST

Bruce Byrholdt - Cross

David Mario Johnson v. The State of South Carolina 2013-CP-04-00842 February 27, 2017

1 evidence kit and something was missing in it. It was
2 brought to my attention that morning.

3 Q And was there testimony on that at the trial?

4 A Yes.

5 Q And what was the testimony? What did you try to
6 establish in that testimony?

7 A Well, the problem is they didn't know what
8 happened. I mean, somebody opened -- the BEST evidence
9 kit is supposed to be sealed; chain of custody
10 maintained through the the handling of that evidence.
11 And when it's opened to be tested and then resealed,
12 it's supposed -- whoever has touched it along the way
13 is supposed to sign off on that record.

14 Well, there was something missing, and nobody
15 could explain what happened to it, and I --

16 Q Was the paperwork correct? Did everyone sign off
17 on it?

18 A Well, the paperwork was fine. There was just
19 something missing.

20 Q But it didn't reflect that someone had taken that
21 bag out?

22 A No. No.

23 Q Okay. And did the officers, did they admit that
24 on the stand, that someone had messed up?

25 A Yes.

Bruce Byrholdt - Cross

David Mario Johnson v. The State of South Carolina 2013-CP-04-00842 February 27, 2017

1 Q Okay. So you did get a chance to question them
2 about that, and they did admit in front of the jury
3 that someone -- something had gotten haywire in their
4 process?

5 A That is true.

6 Q Okay. And you did argue -- do you remember making
7 arguments about keeping that evidence out?

8 A I do.

9 Q Do you remember the substance of your argument?

10 A Probably I could speculate, but I can't remember
11 seven years ago.

12 MS. McCALLISTER: Your Honor, I would just call
13 the court's attention -- I believe that argument is on
14 page -- I believe it's 150 to 158. I know the numbers
15 are kind of strange. I think the transcript speaks for
16 itself as to what he argued.

17 THE COURT: I'll see if I can find it.

18 BY MS. McCALLISTER:

19 Q Okay. If Mr. Johnson had been there at trial, do
20 you think that would have affected your defense or your
21 ability to put up a defense or to challenge this
22 evidence?

23 A Not really.

24 Q Okay.

25 A I mean, I would have rather had him sitting there.

Bruce Byrholdt - Cross

David Mario Johnson v. The State of South Carolina 2013-CP-04-00842 February 27, 2017

1 I hate to try a case with an empty chair. Even though
2 the jury is instructed not to use that against him,
3 it's kind of hard for them to disregard it.

4 Q Okay. And you did make efforts to notify him of
5 the trial beforehand?

6 A As I testified or as I told the court on the
7 record, you know, that I had contacted him; the case
8 was supposed to have gone to court two weeks earlier.
9 It was put off. I told him we were supposed to
10 probably start on Wednesday that week; they moved it up
11 to Monday, and I told him to be in court. And his bond
12 papers, he was required to be in court every time he
13 got a card. He knew to be in court that week.

14 Q So you felt he was aware that the trial was
15 starting?

16 A I was not pleased that he did not show up.

17 Q I believe you said that there was a plea offer in
18 this case; is that correct?

19 A They sent me a plea -- Matthew Bradley was the
20 prosecutor at that time. He offered to reduce it down
21 to trafficking, but they wanted a 20-year term of
22 incarceration at 85 percent. It's a lot of time.

23 Q And he did not accept that offer?

24 A No.

25 Q But you did convey that offer to him?

Bruce Byrholdt - Cross

David Mario Johnson v. The State of South Carolina 2013-CP-04-00842 February 27, 2017

1 A Yeah. That was when we were up two weeks prior to
2 that.

3 Q And you discussed all the pros and cons of that
4 with him?

5 A Yes.

6 Q And he wanted to go to trial?

7 A He did not want to go to prison.

8 Q Okay. And you discussed with him the fact that if
9 he went to trial, he would be facing more time than
10 what they were offering?

11 A I told him that with trafficking, with prior
12 offenses, he was 25 to 30 plus a mandatory fine of
13 \$50,000.

14 Q And did you discuss the state's burden of proof
15 with him and whether you felt the state would meet that
16 burden?

17 A Well, again, it depends on if the drugs came in,
18 they had enough evidence to go forward and meet their
19 burden of proof.

20 Q And you told that to Mr. Johnson?

21 A Yes.

22 Q So he knew that the case kind of hinged on whether
23 the drugs came in or not?

24 A Well, he knew it was going to be a long shot
25 because you had officers that testified at the prelim

Bruce Byrholdt - Cross.

David Mario Johnson v. The State of South Carolina 2013-CP-04-00842 February 27, 2017

1 they saw him discard the bags with the drugs in it.

2 Q That would be the bag that relates to the
3 trafficking charge?

4 A Yes, ma'am.

5 Q So there was eyewitness testimony that he had that
6 bag and discarded it from the arresting officer?

7 A Yes.

8 Q And that was at trial as well?

9 A Yes.

10 Q Okay. I believe you said you sent a couple issues
11 to OID?

12 A It was five or six issues I sent down. It was a
13 strange appeal because he was declared indigent
14 following the trial. I did that so he wouldn't have to
15 pay for a transcript. You get a free transcript. And
16 then, for whatever reason, appellate defense didn't
17 order it, so I filed a motion to get the transcript out
18 of time, which was granted. I sent, like I say, I
19 think it was five to six issues down there dealing with
20 the evidentiary questions because I thought that was a
21 legitimate thing to raise on appeal. I don't know why
22 it wasn't done by appellate defense.

23 Q But if it wasn't raised on appeal, that wasn't
24 your call; that was appellate defense's?

25 A No. By that time, appellate defense had taken

Bruce Byrholdt - Cross

David Mario Johnson v. The State of South Carolina 2013-CP-04-00842 February 27, 2017

1 over the case.

2 Q Thank you.

3 MS. McCALLISTER: Your Honor, I have nothing
4 further.

5 MR. ARIAIL: I have no further questions.

6 THE COURT: Thank you, Mr. Byrholdt. You may step
7 down.

8 THE WITNESS: May I be excused?

9 THE COURT: Any objection?

10 MR. ARIAIL: No.

11 That's our case.

12 THE COURT: Anything from the state?

13 MS. McCALLISTER: No. Mr. Byrholdt was our only
14 witness.

15 THE COURT: Any summation?

16 MR. ARIAIL: I think my client has testified to
17 the points that are necessary and provided all the
18 information I can provide at this time.

19 THE COURT: Thank you, Mr. Ariail.

20 Ms. McCallister.

21 MS. McCALLISTER: Thank you, Your Honor. I
22 believe I've given you the transcript cites that I
23 believe are relevant to show that Mr. Byrholdt did, in
24 fact, challenge this evidence and challenged it rather
25 vigorously, and we would just ask that Your Honor

David Mario Johnson v. The State of South Carolina 2013-CP-04-00842 February 27, 2017

1 review those and deny this relief.

2 THE COURT: All right. I want to read the
3 transcript, the first parts, and review the material
4 submitted, so I'll take this under advisement. I'll
5 have my law clerk e-mail you my decision.

6 MS. McCALLISTER: Thank you.

7 (WHEREUPON, proceedings concluded at 10:57 a.m.)

8 ***END OF REQUESTED TRANSCRIPT OF RECORD***
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

David Mario Johnson v. The State of South Carolina 2013-CP-04-00842 February 27, 2017

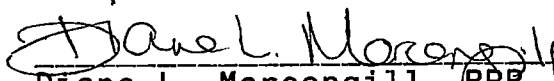
Certificate of Reporter

I, Diane L. Marcengill, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of a portion of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Anderson County, South Carolina, on the 27th day of February 2017.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

December 16, 2017


Diane L. Marcengill, RPR, CRR
Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

David M. Johnson, #269185,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

Case No. 2013-CP-04-0842

ORDER OF DISMISSAL

FILED-CLERK'S OFFICE
ANDERSON SC
2017 JUL 21 AM 10:57
COMMON PLEAS AND
GENERAL COURT

Presiding Judge:
Applicant's Attorney:
Respondent's Attorney:
Trial Counsel:
Date of Hearing:
Court Reporter:

R. Scott Sprouse
R. Mills Ariail, Esquire
Lindsey A. McCallister, Esquire
Bruce A. Byrholdt, Esquire
February 27, 2017
Diane L. Marcengill

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed April 12, 2013. Respondent made its return on or about January 26, 2017. An evidentiary hearing on the matter was convened on February 27, 2017 at the Anderson County Courthouse. Applicant was present at the hearing and represented by R. Mills Ariail, Esquire. Lindsey A. McCallister, Esquire, of the South Carolina Office of the Attorney General represented Respondent.

Applicant testified on his own behalf. Also testifying was Bruce A. Byrholdt, Esquire. The Court had before it the trial transcript, the Anderson County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, Applicant's application, Respondent's return, and Applicant's appellate records.

RSS

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Anderson County Clerk of Court. Applicant was indicted at the October 2009 term of the Anderson County Grand Jury for trafficking in ice, crank, or crack in an amount more than 10 grams but less than 28 grams (2009-GS-04-2668) and for possession of marijuana in an amount less than 28 grams. He was represented by Bruce A. Byrholdt, Esquire. On March 31, 2010, Applicant proceed to trial before the Honorable R. Lawton McIntosh and a jury, and Applicant was found guilty as indicted. Judge McIntosh sentenced Applicant to a term of 30 years imprisonment.

A timely notice of appeal was filed on Applicant's behalf at the South Carolina Court of Appeals. Elizabeth Ann Franklin-Best, Esquire, of the Office of Appellate Defense represented Applicant on appeal. The South Carolina Court of Appeals affirmed the Applicant's convictions and sentences. *State v. Johnson*, Op. No. 2012-UP-264 (S.C. Ct. App. filed May 2, 2012). The Remittitur was issued on May 18, 2012.

ALLEGATIONS

In his application and amendments thereto filed October 3, 2016, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Lack of Subject Matter Jurisdiction
2. Due Process Violation
 - a. Admission of tainted evidence
3. Ineffective Assistance of Counsel for failing to object various trial court errors, including improper burden shifting and failure to object to admission of drug evidence.

At the hearing, Applicant testified he was only going forward on the issues in his application related to the suppression of tainted evidence and the applicability of State v. Carter¹ to his case.

¹ 344 S.C. 419, 544 S.E.2d 835 (2001).

PSS

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. Sec. 17-27-80 (2003).

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 625. First, the applicant must prove that counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland v. Washington, 466 U.S. 668, 688 (1984)). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors,

PS)

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 the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

A. Ineffective Assistance of Counsel

Applicant contends Counsel should have objected to the admission of the crack cocaine and the “Best Kit” evidence because the State failed to prove that the chain of custody was complete. On cross examination, however, Applicant conceded that Counsel did object to the admission of the evidence and did question witnesses on that issue, but Applicant stated that he felt Counsel failed to preserve the issue for appellate review. Applicant testified that before his trial, he understood the charges against him, the factual basis for the charges, and had reviewed evidence with Counsel. Applicant testified he was not present at trial because Counsel told him that “something” was happening, but Applicant didn’t “think it was important.”

Counsel testified that at the time of this trial, he had approximately 27 years of experience practicing law and 80% of his practice has been criminal work. He stated he reviewed the evidence before trial with Applicant. He also stated he notified Applicant that the trial had been moved up on the schedule, and he was not pleased when Applicant didn’t appear. He testified he did make efforts to notify Applicant, and he put all of those efforts on the record at trial. However, Counsel stated Applicant’s absence probably did not affect the outcome, at least as far as the issue of admissibility of the evidence.

Counsel testified he wasn’t made aware that the baggie in question was missing until the morning of trial, and he tried to take advantage of the best way to keep it out, which was arguing that all of the drug evidence should be inadmissible since the kit had been opened. Counsel testified he did not see any way to distinguish Applicant’s case from the judge’s interpretation of

RSS

State v. Carter. Counsel further testified that the missing evidence only related to the trafficking charge, the drugs themselves were not tainted, and there was eyewitness testimony at trial that Applicant dropped the bag containing the drugs while he was running from the officers. Counsel testified Applicant's only defense was to try to keep the drugs out.

Counsel testified Applicant rejected a plea offer of 20 years to a reduced charge, and Counsel advised him that he would be facing more time if he went to trial and lost. Counsel stated Applicant did not want to do any time and wanted a trial. Counsel also testified he sent materials to OAD after they took over on appeal and highlighted several issues he felt were meritorious, including the admission of the drug evidence. However, Counsel did not represent Applicant on appeal, so he was not involved in deciding which issues should be raised. Applicant did not have appellate counsel present to testify.

Regarding Applicant's claims of ineffective assistance of counsel, this Court finds Applicant has failed to meet his burden of proof. This Court finds Applicant's testimony regarding Counsel's ineffectiveness is not credible, while also finding Counsel's testimony is credible. This Court finds Counsel provided effective assistance in this case. Counsel is a trial practitioner who has extensive experience in the trial of criminal offenses. Counsel conferred with Applicant on multiple occasions, during which Counsel discussed the pending charges, Applicant's constitutional rights, the State's evidence, and possible defenses.

Accordingly, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by

RSS

Counsel's performance. Applicant's own testimony acknowledged Counsel did in fact object to the admission of evidence, made arguments to the judge regarding its admissibility (or lack thereof) and cross-examined the State's witnesses on the issue. This Court concludes Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. The allegation is denied and dismissed.

B. All Other Allegations

As to any and all allegations that were raised in the application or at the hearing on this matter and not specifically addressed in this Order, this Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

Based on all the forgoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient, nor was Applicant prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice. This Court also finds, as to all other allegations, that Applicant failed to present evidence of such claims and thus, this Court deems them abandoned.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek

appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 17 day of July, 2017.



R. Scott Sprouse
Presiding Judge
Tenth Judicial Circuit

Waltham, South Carolina.

FILED-CLERK'S OFFICE
ANDERSON SC
2017 JUL 21 AM 10:57
COMMON PLEAS AND
GENERAL SESSIONS

STATE OF SOUTH CAROLINA)

COUNTY OF ANDERSON)

DAVID M. JOHNSON, #269185)

Plaintiff,)

vs.)

STATE OF SOUTH CAROLINA)

Defendant.)

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

CASE NO: 2013-CP-04-0842

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:

R. Mills Ariail, Jr., Bar No.

Address:

11 North Irvine Street, Suite 11

Greenville, SC 29601

Phone: Fax

E-mail: Other:

Defendant's Attorney:

Lindsey A. McCallister, Bar No.

Address:

PO Box 11549

Columbia, SC 29211

Phone: Fax

E-mail: Other:

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: _____

Estimated Time Needed: _____ Court Reporter Needed: ☐ YES/☒ NO**SECTION II: Motion/Order Type**

- ☐ Written motion attached
☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff/☒ Defendant

June 15, 2017

Date submitted

SECTION III: Motion Fee☐ PAID - AMOUNT: \$ _____

EXEMPT:

(check reason)

- ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION☐ Motion Fee to be paid upon filing of the attached order.☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____☐ CONTESTED - AMOUNT DUE: \$ _____

FILED-CLERK'S OFFICE
ANDERSON SC
2017 JUL 21 AM 10:57
COMMON PLEAS AND
GENERAL SESSIONS

WITNESSES

J Mosher, Anderson Police Dept.

ARREST WARRANT NUMBER

J897301

ACTION OF GRAND JURY

TRUE BILL

OCT 27 2009

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

3/31/10

DOCKET NO. 2009GS04 - 02668

The State of South Carolina

County of Anderson

COURT OF GENERAL SESSIONS

OCT 27 2009

Term

THE STATE

vs.

David Mario Johnson

Blw issued 03/29/10 - comp
Blw Recalled 6/10/10 - RT

TMB

Indictment for

Drugs / Trafficking in ice, crank, or crack -
10 g or more, but less than 28 g

SC Code: 44-53-0375(C)(1)(c)
CDR Code: 0452

2013-CP-04-00848

COMMITMENT

6-10-10/RT

A TRUE COPY

APR 12 2013

Richard M. Kiley
CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF Anderson)

INDICTMENT

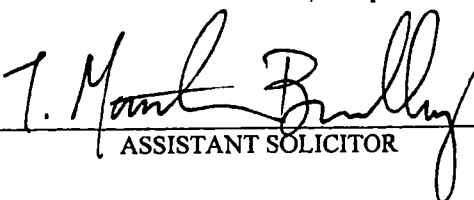
OCT 27 2009

At a Court of General Sessions, convened on _____, the Grand Jurors of Anderson County present upon their oath:

Drugs / Trafficking in ice, crank, or crack - 10 g or more, but less than 28 g

That the Defendant, David Mario Johnson, on or about July 31, 2009, in Anderson County, South Carolina, did knowingly sell, manufacture, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of more than ten (10) grams but less than twenty-eight (28) grams of crack cocaine/ice/crank, a schedule II controlled substance, as defined and otherwise limited in Sections 44-53-110, 44-53-210(b)(4), 44-53-210(d)(1), or 44-53-210(d)(2), all in violation of Section 44-53-375, Code of Laws of South Carolina, (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR